

The State of South Carolina
In The Supreme Court

Appeal from Charleston County
Hon. R. Markley Dennis, Jr., Circuit Court Judge
Unpublished Opinion 2017-UP-282
Circuit Court Case No. 2011-CP-10-9200

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S.C. SUPREME COURT

Appellate Case No. 2015-001920

Mother Doe A, ... Petitioner

v.

The Citadel Respondent

APPENDIX – VOLUME IV

Gregg Meyers, S.C. Bar No. 9908
Of Counsel, Pierce Hems Sloan & Wilson LLC
321 East Bay Street
Charleston SC 29401

Attorney for Appellant-Petitioner Mother Doe A

Other Counsel of Record:

Dawes Cooke
Barnwell, Whaley, Patterson & Helms
286 Meeting Street
Charleston SC 29401

Attorney for Respondent The Citadel

compliance, specifies that recipients must agree that education programs or activities operated by the recipient will be operated in compliance with the Title IX regulations, including taking any action necessary to remedy its discrimination or the effects of its discrimination in its programs.²¹

The regulations set out the basic Title IX responsibilities a recipient undertakes when it accepts Federal financial assistance, including the following specific obligations.²² A recipient agrees that, in providing any aid, benefit, or service to students, it will not, on the basis of sex—

- Treat one student differently from another in determining whether the student satisfies any requirement or condition for the provision of any aid, benefit, or service;²³
- Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;²⁴
- Deny any student any such aid, benefit, or service;²⁵
- Subject students to separate or different rules of behavior, sanctions, or other treatment;²⁶
- Aid or perpetuate discrimination against a student by providing significant assistance to any agency, organization, or person that discriminates on the basis of sex in providing any aid, benefit, or service to students;²⁷ and
- Otherwise limit any student in the enjoyment of any right, privilege, advantage, or opportunity.²⁸

For the purposes of brevity and clarity, this guidance generally summarizes this comprehensive list by referring to a school's obligation to ensure that a student is not denied or limited in the ability to participate in or benefit from the school's program on the basis of sex.

The regulations also specify that, if a recipient discriminates on the basis of sex, the school must take remedial action to overcome the effects of the discrimination.²⁹

In addition, the regulations establish procedural requirements that are important for the prevention or correction of sex discrimination, including sexual harassment. These requirements include issuance of a policy against sex discrimination³⁰ and adoption and publication of grievance procedures providing for prompt and equitable resolution of complaints of sex discrimination.³¹ The regulations also require that recipients designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance.³²

To comply with these regulatory requirements, schools need to recognize and respond to sexual harassment of students by teachers and other employees, by other students, and by third parties. This guidance explains how the requirements of the Title IX regulations apply to situations involving sexual harassment of a student and outlines measures that schools should take to ensure compliance.

V. Determining a School's Responsibilities

In assessing sexually harassing conduct, it is important for schools to recognize that two distinct issues are considered. The first issue is whether, considering the types of harassment discussed in the following section, the conduct denies or limits a student's ability to participate in or benefit from the program based on sex. If it does, the second issue is the nature of the school's responsibility to address that conduct. As discussed in a following section, this issue depends in part on the identity of the harasser and the context in which the harassment occurred.

A. Harassment that Denies or Limits a Student's Ability to Participate in or Benefit from the Education Program

This guidance moves away from specific labels for types of sexual harassment.³³ In each case, the issue is whether the harassment rises to a level that it denies or limits a student's ability to participate in or benefit from the school's program based on sex. However, an understanding of the different types of sexual harassment can help schools determine whether or not harassment has occurred that triggers a school's responsibilities under, or violates, Title IX or its regulations.

The type of harassment traditionally referred to as quid-pro quo harassment occurs if a teacher or other employee conditions an educational decision or benefit on the student's submission to unwelcome sexual conduct.³⁴ Whether the student resists and suffers the threatened harm or submits and avoids the threatened harm, the student has been treated differently, or the student's ability to participate in or benefit from the school's program has been denied or limited, on the basis of sex in violation of the Title IX regulations.³⁵

By contrast, sexual harassment can occur that does not explicitly or implicitly condition a decision or benefit on submission to sexual conduct. Harassment of this type is generally referred to as hostile environment harassment.³⁶ This type of harassing conduct requires a further assessment of whether or not the conduct is sufficiently serious to deny or limit a student's ability to participate in or benefit from the school's program based on sex.³⁷

Teachers and other employees can engage in either type of harassment. Students and third parties are not generally given responsibility over other students and, thus, generally can only engage in hostile environment harassment.

1. Factors Used to Evaluate Hostile Environment Sexual Harassment

As outlined in the following paragraphs, OCR considers a variety of related factors to determine if a hostile environment has been created, i.e., if sexually harassing conduct by an employee, another student, or a third party is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the school's program based on sex. OCR considers the conduct from both a subjective³⁸ and objective³⁹ perspective. In evaluating the severity and pervasiveness of the conduct, OCR considers all relevant circumstances, i.e., "the constellation of surrounding circumstances, expectations, and relationships."⁴⁰ Schools should also use these factors to evaluate conduct in order to draw commonsense distinctions between conduct that constitutes

sexual harassment and conduct that does not rise to that level. Relevant factors include the following:

- The degree to which the conduct affected one or more students' education. OCR assesses the effect of the harassment on the student to determine whether it has denied or limited the student's ability to participate in or benefit from the school's program. For example, a student's grades may go down or the student may be forced to withdraw from school because of the harassing behavior.⁴¹ A student may also suffer physical injuries or mental or emotional distress.⁴² In another situation, a student may have been able to keep up his or her grades and continue to attend school even though it was very difficult for him or her to do so because of the teacher's repeated sexual advances. Similarly, a student may be able to remain on a sports team, despite experiencing great difficulty performing at practices and games from the humiliation and anger caused by repeated sexual advances and intimidation by several team members that create a hostile environment. Harassing conduct in these examples would alter a reasonable student's educational environment and adversely affect the student's ability to participate in or benefit from the school's program on the basis of sex.

A hostile environment can occur even if the harassment is not targeted specifically at the individual complainant.⁴³ For example, if a student, group of students, or a teacher regularly directs sexual comments toward a particular student, a hostile environment may be created not only for the targeted student, but also for others who witness the conduct.

- The type, frequency, and duration of the conduct. In most cases, a hostile environment will exist if there is a pattern or practice of harassment, or if the harassment is sustained and nontrivial.⁴⁴ For instance, if a young woman is taunted by one or more young men about her breasts or genital area or both, OCR may find that a hostile environment has been created, particularly if the conduct has gone on for some time, or takes place throughout the school, or if the taunts are made by a number of students. The more severe the conduct, the less the need to show a repetitive series of incidents; this is particularly true if the harassment is physical. For instance, if the conduct is more severe, e.g., attempts to grab a female student's breasts or attempts to grab any student's genital area or buttocks, it need not be as persistent to create a hostile environment. Indeed, a single or isolated incident of sexual harassment may, if sufficiently severe, create a hostile environment.⁴⁵ On the other hand, conduct that is not severe will not create a hostile environment, e.g., a comment by one student to another student that she has a nice figure. Indeed, depending on the circumstances, this may not even be conduct of a sexual nature.⁴⁶ Similarly, because students date one another, a request for a date or a gift of flowers, even if unwelcome, would not create a hostile environment. However, there may be circumstances in which repeated, unwelcome requests for dates or similar conduct could create a hostile environment. For example, a person, who has been refused previously, may request dates in an intimidating or threatening manner.
- The identity of and relationship between the alleged harasser and the subject or subjects of the harassment. A factor to be considered, especially in cases involving allegations of sexual harassment of a student by a school employee, is the identity of

and relationship between the alleged harasser and the subject or subjects of the harassment. For example, due to the power a professor or teacher has over a student, sexually based conduct by that person toward a student is more likely to create a hostile environment than similar conduct by another student.⁴⁷

- The number of individuals involved. Sexual harassment may be committed by an individual or a group. In some cases, verbal comments or other conduct from one person might not be sufficient to create a hostile environment, but could be if done by a group. Similarly, while harassment can be directed toward an individual or a group,⁴⁸ the effect of the conduct toward a group may vary, depending on the type of conduct and the context. For certain types of conduct, there may be "safety in numbers." For example, following an individual student and making sexual taunts to him or her may be very intimidating to that student, but, in certain circumstances, less so to a group of students. On the other hand, persistent unwelcome sexual conduct still may create a hostile environment if directed toward a group.
- The age and sex of the alleged harasser and the subject or subjects of the harassment. For example, in the case of younger students, sexually harassing conduct is more likely to be intimidating if coming from an older student.⁴⁹
- The size of the school, location of the incidents, and context in which they occurred. Depending on the circumstances of a particular case, fewer incidents may have a greater effect at a small college than at a large university campus. Harassing conduct occurring on a school bus may be more intimidating than similar conduct on a school playground because the restricted area makes it impossible for students to avoid their harassers.⁵⁰ Harassing conduct in a personal or secluded area, such as a dormitory room or residence hall, can have a greater effect (e.g., be seen as more threatening) than would similar conduct in a more public area. On the other hand, harassing conduct in a public place may be more humiliating. Each incident must be judged individually.
- Other incidents at the school. A series of incidents at the school, not involving the same students, could — taken together — create a hostile environment, even if each by itself would not be sufficient.⁵¹
- Incidents of gender-based, but nonsexual harassment. Acts of verbal, nonverbal or physical aggression, intimidation or hostility based on sex, but not involving sexual activity or language, can be combined with incidents of sexual harassment to determine if the incidents of sexual harassment are sufficiently serious to create a sexually hostile environment.⁵²

It is the totality of the circumstances in which the behavior occurs that is critical in determining whether a hostile environment exists. Consequently, in using the factors discussed previously to evaluate incidents of alleged harassment, it is always important to use common sense and reasonable judgement in determining whether a sexually hostile environment has been created.

2. Welcomeness

The section entitled "Sexual Harassment" explains that in order for conduct of a sexual nature to be sexual harassment, it must be unwelcome. Conduct is unwelcome if

the student did not request or invite it and "regarded the conduct as undesirable or offensive."⁵³ Acquiescence in the conduct or the failure to complain does not always mean that the conduct was welcome.⁵⁴ For example, a student may decide not to resist sexual advances of another student or may not file a complaint out of fear. In addition, a student may not object to a pattern of demeaning comments directed at him or her by a group of students out of a concern that objections might cause the harassers to make more comments. The fact that a student may have accepted the conduct does not mean that he or she welcomed it.⁵⁵ Also, the fact that a student willingly participated in conduct on one occasion does not prevent him or her from indicating that the same conduct has become unwelcome on a subsequent occasion. On the other hand, if a student actively participates in sexual banter and discussions and gives no indication that he or she objects, then the evidence generally will not support a conclusion that the conduct was unwelcome.⁵⁶

If younger children are involved, it may be necessary to determine the degree to which they are able to recognize that certain sexual conduct is conduct to which they can or should reasonably object and the degree to which they can articulate an objection. Accordingly, OCR will consider the age of the student, the nature of the conduct involved, and other relevant factors in determining whether a student had the capacity to welcome sexual conduct.

Schools should be particularly concerned about the issue of welcomeness if the harasser is in a position of authority. For instance, because students may be encouraged to believe that a teacher has absolute authority over the operation of his or her classroom, a student may not object to a teacher's sexually harassing comments during class; however, this does not necessarily mean that the conduct was welcome. Instead, the student may believe that any objections would be ineffective in stopping the harassment or may fear that by making objections he or she will be singled out for harassing comments or other retaliation.

In addition, OCR must consider particular issues of welcomeness if the alleged harassment relates to alleged "consensual" sexual relationships between a school's adult employees and its students. If elementary students are involved, welcomeness will not be an issue: OCR will never view sexual conduct between an adult school employee and an elementary school student as consensual. In cases involving secondary students, there will be a strong presumption that sexual conduct between an adult school employee and a student is not consensual. In cases involving older secondary students, subject to the presumption,⁵⁷ OCR will consider a number of factors in determining whether a school employee's sexual advances or other sexual conduct could be considered welcome.⁵⁸ In addition, OCR will consider these factors in all cases involving postsecondary students in making those determinations.⁵⁹ The factors include the following:

- The nature of the conduct and the relationship of the school employee to the student, including the degree of influence (which could, at least in part, be affected by the student's age), authority, or control the employee has over the student.
- Whether the student was legally or practically unable to consent to the sexual conduct in question. For example, a student's age could affect his or her ability to do so. Similarly, certain types of disabilities could affect a student's ability to do so.

If there is a dispute about whether harassment occurred or whether it was welcome — in a case in which it is appropriate to consider whether the conduct would be welcome — determinations should be made based on the totality of the circumstances. The following types of information may be helpful in resolving the dispute:

- Statements by any witnesses to the alleged incident.
- Evidence about the relative credibility of the allegedly harassed student and the alleged harasser. For example, the level of detail and consistency of each person's account should be compared in an attempt to determine who is telling the truth. Another way to assess credibility is to see if corroborative evidence is lacking where it should logically exist. However, the absence of witnesses may indicate only the unwillingness of others to step forward, perhaps due to fear of the harasser or a desire not to get involved.
- Evidence that the alleged harasser has been found to have harassed others may support the credibility of the student claiming the harassment; conversely, the student's claim will be weakened if he or she has been found to have made false allegations against other individuals.
- Evidence of the allegedly harassed student's reaction or behavior after the alleged harassment. For example, were there witnesses who saw the student immediately after the alleged incident who say that the student appeared to be upset? However, it is important to note that some students may respond to harassment in ways that do not manifest themselves right away, but may surface several days or weeks after the harassment. For example, a student may initially show no signs of having been harassed, but several weeks after the harassment, there may be significant changes in the student's behavior, including difficulty concentrating on academic work, symptoms of depression, and a desire to avoid certain individuals and places at school.
- Evidence about whether the student claiming harassment filed a complaint or took other action to protest the conduct soon after the alleged incident occurred. However, failure to immediately complain may merely reflect a fear of retaliation or a fear that the complainant may not be believed rather than that the alleged harassment did not occur.
- Other contemporaneous evidence. For example, did the student claiming harassment write about the conduct and his or her reaction to it soon after it occurred (e.g., in a diary or letter)? Did the student tell others (friends, parents) about the conduct (and his or her reaction to it) soon after it occurred?

B. Nature of the School's Responsibility to Address Sexual Harassment

A school has a responsibility to respond promptly and effectively to sexual harassment. In the case of harassment by teachers or other employees, the nature of this responsibility depends in part on whether the harassment occurred in the context of the employee's provision of aid, benefits, or services to students.

1. Harassment by Teachers and Other Employees

Sexual harassment of a student by a teacher or other school employee can be discrimination in violation of Title IX.⁶⁰ Schools are responsible for taking prompt and effective action to stop the harassment and prevent its recurrence. A school also may be responsible for remedying the effects of the harassment on the student who was harassed. The extent of a recipient's responsibilities if an employee sexually harasses a student is determined by whether or not the harassment occurred in the context of the employee's provision of aid, benefits, or services to students.

A recipient is responsible under the Title IX regulations for the nondiscriminatory provision of aid, benefits, and services to students. Recipients generally provide aid, benefits, and services to students through the responsibilities they give to employees. If an employee who is acting (or who reasonably appears to be acting) in the context of carrying out these responsibilities over students engages in sexual harassment – generally this means harassment that is carried out during an employee's performance of his or her responsibilities in relation to students, including teaching, counseling, supervising, advising, and transporting students – and the harassment denies or limits a student's ability to participate in or benefit from a school program on the basis of sex,⁶¹ the recipient is responsible for the discriminatory conduct.⁶² The recipient is, therefore, also responsible for remedying any effects of the harassment on the victim, as well as for ending the harassment and preventing its recurrence. This is true whether or not the recipient has "notice" of the harassment. (As explained in the section on "Notice of Employee, Peer, or Third Party Harassment," for purposes of this guidance, a school has notice of harassment if a responsible school employee actually knew or, in the exercise of reasonable care, should have known about the harassment.) Of course, under OCR's administrative enforcement, recipients always receive actual notice and the opportunity to take appropriate corrective action before any finding of violation or possible loss of federal funds.

Whether or not sexual harassment of a student occurred within the context of an employee's responsibilities for providing aid, benefits, or services is determined on a case-by-case basis, taking into account a variety of factors. If an employee conditions the provision of an aid, benefit, or service that the employee is responsible for providing on a student's submission to sexual conduct, i.e., conduct traditionally referred to as quid pro quo harassment, the harassment is clearly taking place in the context of the employee's responsibilities to provide aid, benefits, or services. In other situations, i.e., when an employee has created a hostile environment, OCR will consider the following factors in determining whether or not the harassment has taken place in this context, including:

- The type and degree of responsibility given to the employee, including both formal and informal authority, to provide aids, benefits, or services to students, to direct and control student conduct, or to discipline students generally;
- the degree of influence the employee has over the particular student involved, including in the circumstances in which the harassment took place;
- where and when the harassment occurred;
- the age and educational level of the student involved; and

- as applicable, whether, in light of the student's age and educational level and the way the school is run, it would be reasonable for the student to believe that the employee was in a position of responsibility over the student, even if the employee was not.

These factors are applicable to all recipient educational institutions, including elementary and secondary schools, colleges, and universities. Elementary and secondary schools, however, are typically run in a way that gives teachers, school officials, and other school employees a substantial degree of supervision, control, and disciplinary authority over the conduct of students.⁶³ Therefore, in cases involving allegations of harassment of elementary and secondary school-age students by a teacher or school administrator during any school activity,⁶⁴ consideration of these factors will generally lead to a conclusion that the harassment occurred in the context of the employee's provision of aid, benefits, or services.

For example, a teacher sexually harasses an eighth-grade student in a school hallway. Even if the student is not in any of the teacher's classes and even if the teacher is not designated as a hall monitor, given the age and educational level of the student and the status and degree of influence of teachers in elementary and secondary schools, it would be reasonable for the student to believe that the teacher had at least informal disciplinary authority over students in the hallways. Thus, OCR would consider this an example of conduct that is occurring in the context of the employee's responsibilities to provide aid, benefits, or services.

Other examples of sexual harassment of a student occurring in the context of an employee's responsibilities for providing aid, benefits, or services include, but are not limited to -- a faculty member at a university's medical school conditions an intern's evaluation on submission to his sexual advances and then gives her a poor evaluation for rejecting the advances; a high school drama instructor does not give a student a part in a play because she has not responded to sexual overtures from the instructor; a faculty member withdraws approval of research funds for her assistant because he has rebuffed her advances; a journalism professor who supervises a college newspaper continually and inappropriately touches a student editor in a sexual manner, causing the student to resign from the newspaper staff; and a teacher repeatedly asks a ninth grade student to stay after class and attempts to engage her in discussions about sex and her personal experiences while they are alone in the classroom, causing the student to stop coming to class. In each of these cases, the school is responsible for the discriminatory conduct, including taking prompt and effective action to end the harassment, prevent it from recurring, and remedy the effects of the harassment on the victim.

Sometimes harassment of a student by an employee in the school's program does not take place in the context of the employee's provision of aid, benefits, or services, but nevertheless is sufficiently serious to create a hostile educational environment. An example of this conduct might occur if a faculty member in the history department at a university, over the course of several weeks, repeatedly touches and makes sexually suggestive remarks to a graduate engineering student while waiting at a stop for the university shuttle bus, riding on the bus, and upon exiting the bus. As a result, the student stops using the campus shuttle and walks the very long distances between her classes. In this case, the school is not directly responsible for the harassing conduct because it did not occur in the context of the employee's responsibilities for the provision

of aid, benefits, or services to students. However, the conduct is sufficiently serious to deny or limit the student in her ability to participate in or benefit from the recipient's program. Thus, the school has a duty, upon notice of the harassment,⁶⁵ to take prompt and effective action to stop the harassment and prevent its recurrence.

If the school takes these steps, it has avoided violating Title IX. If the school fails to take the necessary steps, however, its failure to act has allowed the student to continue to be subjected to a hostile environment that denies or limits the student's ability to participate in or benefit from the school's program. The school, therefore, has engaged in its own discrimination. It then becomes responsible, not just for stopping the conduct and preventing it from happening again, but for remedying the effects of the harassment on the student that could reasonably have been prevented if the school had responded promptly and effectively. (For related issues, see the sections on "OCR Case Resolution" and "Recipient's Response.")

2. Harassment by Other Students or Third Parties

If a student sexually harasses another student and the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the program, and if the school knows or reasonably should know⁶⁶ about the harassment, the school is responsible for taking immediate effective action to eliminate the hostile environment and prevent its recurrence.⁶⁷ As long as the school, upon notice of the harassment, responds by taking prompt and effective action to end the harassment and prevent its recurrence, the school has carried out its responsibility under the Title IX regulations. On the other hand, if, upon notice, the school fails to take prompt, effective action, the school's own inaction has permitted the student to be subjected to a hostile environment that denies or limits the student's ability to participate in or benefit from the school's program on the basis of sex.⁶⁸ In this case, the school is responsible for taking effective corrective actions to stop the harassment, prevent its recurrence, and remedy the effects on the victim that could reasonably have been prevented had it responded promptly and effectively.

Similarly, sexually harassing conduct by third parties, who are not themselves employees or students at the school (e.g., a visiting speaker or members of a visiting athletic team), may also be of a sufficiently serious nature to deny or limit a student's ability to participate in or benefit from the education program. As previously outlined in connection with peer harassment, if the school knows or should know⁶⁹ of the harassment, the school is responsible for taking prompt and effective action to eliminate the hostile environment and prevent its recurrence.

The type of appropriate steps that the school should take will differ depending on the level of control that the school has over the third party harasser.⁷⁰ For example, if athletes from a visiting team harass the home school's students, the home school may not be able to discipline the athletes. However, it could encourage the other school to take appropriate action to prevent further incidents; if necessary, the home school may choose not to invite the other school back. (This issue is discussed more fully in the section on "Recipient's Response.")

If, upon notice, the school fails to take prompt and effective corrective action, its own failure has permitted the student to be subjected to a hostile environment that limits

the student's ability to participate in or benefit from the education program.⁷¹ In this case, the school is responsible for taking corrective actions to stop the harassment, prevent its recurrence, and remedy the effects on the victim that could reasonably have been prevented had the school responded promptly and effectively.

C. Notice of Employee, Peer, or Third Party Harassment

As described in the section on "Harassment by Teachers and Other Employees," schools may be responsible for certain types of employee harassment that occurred before the school otherwise had notice of the harassment. On the other hand, as described in that section and the section on "Harassment by Other Students or Third Parties," in situations involving certain other types of employee harassment, or harassment by peers or third parties, a school will be in violation of the Title IX regulations if the school "has notice" of a sexually hostile environment and fails to take immediate and effective corrective action.⁷²

A school has notice if a responsible employee "knew, or in the exercise of reasonable care should have known," about the harassment.⁷³ A responsible employee would include any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility.⁷⁴ Accordingly, schools need to ensure that employees are trained so that those with authority to address harassment know how to respond appropriately, and other responsible employees know that they are obligated to report harassment to appropriate school officials. Training for employees should include practical information about how to identify harassment and, as applicable, the person to whom it should be reported.

A school can receive notice of harassment in many different ways. A student may have filed a grievance with the Title IX coordinator⁷⁵ or complained to a teacher or other responsible employee about fellow students harassing him or her. A student, parent, or other individual may have contacted other appropriate personnel, such as a principal, campus security, bus driver, teacher, affirmative action officer, or staff in the office of student affairs. A teacher or other responsible employee of the school may have witnessed the harassment. The school may receive notice about harassment in an indirect manner, from sources such as a member of the school staff, a member of the educational or local community, or the media. The school also may have learned about the harassment from flyers about the incident distributed at the school or posted around the school. For the purposes of compliance with the Title IX regulations, a school has a duty to respond to harassment about which it reasonably should have known, i.e., if it would have learned of the harassment if it had exercised reasonable care or made a "reasonably diligent inquiry."⁷⁶

For example, in some situations if the school knows of incidents of harassment, the exercise of reasonable care should trigger an investigation that would lead to a discovery of additional incidents.⁷⁷ In other cases, the pervasiveness of the harassment may be enough to conclude that the school should have known of the hostile environment — if the harassment is widespread, openly practiced, or well-known to students and staff

(such as sexual harassment occurring in the hallways, graffiti in public areas, or harassment occurring during recess under a teacher's supervision.)⁷⁸

If a school otherwise knows or reasonably should know of a hostile environment and fails to take prompt and effective corrective action, a school has violated Title IX even if the student has failed to use the school's existing grievance procedures or otherwise inform the school of the harassment.

D. The Role of Grievance Procedures

Schools are required by the Title IX regulations to adopt and publish grievance procedures providing for prompt and equitable resolution of sex discrimination complaints, including complaints of sexual harassment, and to disseminate a policy against sex discrimination.⁷⁹ (These issues are discussed in the section on "Prompt and Equitable Grievance Procedures.") These procedures provide a school with a mechanism for discovering sexual harassment as early as possible and for effectively correcting problems, as required by the Title IX regulations. By having a strong policy against sex discrimination and accessible, effective, and fairly applied grievance procedures, a school is telling its students that it does not tolerate sexual harassment and that students can report it without fear of adverse consequences.

Without a disseminated policy and procedure, a student does not know either of the school's policy against and obligation to address this form of discrimination, or how to report harassment so that it can be remedied. If the alleged harassment is sufficiently serious to create a hostile environment and it is the school's failure to comply with the procedural requirements of the Title IX regulations that hampers early notification and intervention and permits sexual harassment to deny or limit a student's ability to participate in or benefit from the school's program on the basis of sex,⁸⁰ the school will be responsible under the Title IX regulations, once informed of the harassment, to take corrective action, including stopping the harassment, preventing its recurrence, and remedying the effects of the harassment on the victim that could reasonably have been prevented if the school's failure to comply with the procedural requirements had not hampered early notification.

VI. OCR Case Resolution

If OCR is asked to investigate or otherwise resolve incidents of sexual harassment of students, including incidents caused by employees, other students, or third parties, OCR will consider whether — (1) the school has a disseminated policy prohibiting sex discrimination under Title IX⁸¹ and effective grievance procedures;⁸² (2) the school appropriately investigated or otherwise responded to allegations of sexual harassment,⁸³ and (3) the school has taken immediate and effective corrective action responsive to the harassment, including effective actions to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects.⁸⁴ (Issues related to appropriate investigative and corrective actions are discussed in detail in the section on "Recipient's Response.")

If the school has taken, or agrees to take, each of these steps, OCR will consider the case against the school resolved and will take no further action, other than monitoring compliance with an agreement, if any, between the school and OCR. This is true in cases

in which the school was in violation of the Title IX regulations (e.g., a teacher sexually harassed a student in the context of providing aid, benefits, or services to students), as well as those in which there has been no violation of the regulations (e.g., in a peer sexual harassment situation in which the school took immediate, reasonable steps to end the harassment and prevent its recurrence). This is because, even if OCR identifies a violation, Title IX requires OCR to attempt to secure voluntary compliance.⁸⁵ Thus, because a school will have the opportunity to take reasonable corrective action before OCR issues a formal finding of violation, a school does not risk losing its Federal funding solely because discrimination occurred.

VII. Recipient's Response

Once a school has notice of possible sexual harassment of students — whether carried out by employees, other students, or third parties — it should take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps

reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again. These steps are the school's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school to take action.⁸⁶ As described in the next section, in appropriate circumstances the school will also be responsible for taking steps to remedy the effects of the harassment on the individual student or students who were harassed. What constitutes a reasonable response to information about possible sexual harassment will differ depending upon the circumstances.

A. Response to Student or Parent Reports of Harassment; Response to Direct Observation of Harassment by a Responsible Employee

If a student or the parent of an elementary or secondary student provides information or complains about sexual harassment of the student, the school should initially discuss what actions the student or parent is seeking in response to the harassment. The school should explain the avenues for informal and formal action, including a description of the grievance procedure that is available for sexual harassment complaints and an explanation of how the procedure works. If a responsible school employee has directly observed sexual harassment of a student, the school should contact the student who was harassed (or the parent, depending upon the age of the student),⁸⁷ explain that the school is responsible for taking steps to correct the harassment, and provide the same information described in the previous sentence.

Regardless of whether the student who was harassed, or his or her parent, decides to file a formal complaint or otherwise request action on the student's behalf (including in cases involving direct observation by a responsible employee), the school must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. However, in all cases the inquiry must be prompt, thorough, and impartial. (Requests by the student who

was harassed for confidentiality or for no action to be taken, responding to notice of harassment from other sources, and the components of a prompt and equitable grievance procedure are discussed in subsequent sections of this guidance)

It may be appropriate for a school to take interim measures during the investigation of a complaint. For instance, if a student alleges that he or she has been sexually assaulted by another student, the school may decide to place the students immediately in separate classes or in different housing arrangements on a campus, pending the results of the school's investigation. Similarly, if the alleged harasser is a teacher, allowing the student to transfer to a different class may be appropriate. In cases involving potential criminal conduct, school personnel should determine whether appropriate law enforcement authorities should be notified. In all cases, schools should make every effort to prevent disclosure of the names of all parties involved -- the complainant, the witnesses, and the accused -- except to the extent necessary to carry out an investigation.

If a school determines that sexual harassment has occurred, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation.⁸⁸ Appropriate steps should be taken to end the harassment. For example, school personnel may need to counsel, warn, or take disciplinary action against the harasser, based on the severity of the harassment or any record of prior incidents or both.⁸⁹ A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.⁹⁰ In some cases, it may be appropriate to further separate the harassed student and the harasser, e.g., by changing housing arrangements⁹¹ or directing the harasser to have no further contact with the harassed student. Responsive measures of this type should be designed to minimize, as much as possible, the burden on the student who was harassed. If the alleged harasser is not a student or employee of the recipient, OCR will consider the level of control the school has over the harasser in determining what response would be appropriate.⁹²

Steps should also be taken to eliminate any hostile environment that has been created. For example, if a female student has been subjected to harassment by a group of other students in a class, the school may need to deliver special training or other interventions for that class to repair the educational environment. If the school offers the student the option of withdrawing from a class in which a hostile environment occurred, the school should assist the student in making program or schedule changes and ensure that none of the changes adversely affect the student's academic record. Other measures may include, if appropriate, directing a harasser to apologize to the harassed student. If a hostile environment has affected an entire school or campus, an effective response may need to include dissemination of information, the issuance of new policy statements, or other steps that are designed to clearly communicate the message that the school does not tolerate harassment and will be responsive to any student who reports that conduct.

In some situations, a school may be required to provide other services to the student who was harassed if necessary to address the effects of the harassment on that student.⁹³ For example, if an instructor gives a student a low grade because the student failed to respond to his sexual advances, the school may be required to make arrangements for an independent reassessment of the student's work, if feasible, and change the grade accordingly; make arrangements for the student to take the course again

with a different instructor; provide tutoring; make tuition adjustments; offer reimbursement for professional counseling; or take other measures that are appropriate to the circumstances. As another example, if a school delays responding or responds inappropriately to information about harassment, such as a case in which the school ignores complaints by a student that he or she is being sexually harassed by a classmate, the school will be required to remedy the effects of the harassment that could have been prevented had the school responded promptly and effectively.

Finally, a school should take steps to prevent any further harassment⁹⁴ and to prevent any retaliation against the student who made the complaint (or was the subject of the harassment), against the person who filed a complaint on behalf of a student, or against those who provided information as witnesses.⁹⁵ At a minimum, this includes making sure that the harassed students and their parents know how to report any subsequent problems and making follow-up inquiries to see if there have been any new incidents or any retaliation. To prevent recurrences, counseling for the harasser may be appropriate to ensure that he or she understands what constitutes harassment and the effects it can have. In addition, depending on how widespread the harassment was and whether there have been any prior incidents, the school may need to provide training for the larger school community to ensure that students, parents, and teachers can recognize harassment if it recurs and know how to respond.⁹⁶

B. Confidentiality

The scope of a reasonable response also may depend upon whether a student, or parent of a minor student, reporting harassment asks that the student's name not be disclosed to the harasser or that nothing be done about the alleged harassment. In all cases, a school should discuss confidentiality standards and concerns with the complainant initially. The school should inform the student that a confidentiality request may limit the school's ability to respond. The school also should tell the student that Title IX prohibits retaliation and that, if he or she is afraid of reprisals from the alleged harasser, the school will take steps to prevent retaliation and will take strong responsive actions if retaliation occurs. If the student continues to ask that his or her name not be revealed, the school should take all reasonable steps to investigate and respond to the complaint consistent with the student's request as long as doing so does not prevent the school from responding effectively to the harassment and preventing harassment of other students.

OCR enforces Title IX consistent with the federally protected due process rights of public school students and employees. Thus, for example, if a student, who was the only student harassed, insists that his or her name not be revealed, and the alleged harasser could not respond to the charges of sexual harassment without that information, in evaluating the school's response, OCR would not expect disciplinary action against an alleged harasser.

At the same time, a school should evaluate the confidentiality request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. The factors that a school may consider in this regard include the seriousness of the alleged harassment, the age of the student harassed, whether there have been other complaints or reports of harassment against the alleged harasser, and the rights of the

accused individual to receive information about the accuser and the allegations if a formal proceeding with sanctions may result.⁹⁷

Similarly, a school should be aware of the confidentiality concerns of an accused employee or student. Publicized accusations of sexual harassment, if ultimately found to be false, may nevertheless irreparably damage the reputation of the accused. The accused individual's need for confidentiality must, of course, also be evaluated based on the factors discussed in the preceding paragraph in the context of the school's responsibility to ensure a safe environment for students.

Although a student's request to have his or her name withheld may limit the school's ability to respond fully to an individual complaint of harassment, other means may be available to address the harassment. There are steps a recipient can take to limit the effects of the alleged harassment and prevent its recurrence without initiating formal action against the alleged harasser or revealing the identity of the complainant. Examples include conducting sexual harassment training for the school site or academic department where the problem occurred, taking a student survey concerning any problems with harassment, or implementing other systemic measures at the site or department where the alleged harassment has occurred.

In addition, by investigating the complaint to the extent possible — including by reporting it to the Title IX coordinator or other responsible school employee designated pursuant to Title IX — the school may learn about or be able to confirm a pattern of harassment based on claims by different students that they were harassed by the same individual. In some situations there may be prior reports by former students who now might be willing to come forward and be identified, thus providing a basis for further corrective action. In instances affecting a number of students (for example, a report from a student that an instructor has repeatedly made sexually explicit remarks about his or her personal life in front of an entire class), an individual can be put on notice of allegations of harassing behavior and counseled appropriately without revealing, even indirectly, the identity of the student who notified the school. Those steps can be very effective in preventing further harassment.

C. Response to Other Types of Notice

The previous two sections deal with situations in which a student or parent of a student who was harassed reports or complains of harassment or in which a responsible school employee directly observes sexual harassment of a student. If a school learns of harassment through other means, for example, if information about harassment is received from a third party (such as from a witness to an incident or an anonymous letter or telephone call), different factors will affect the school's response. These factors include the source and nature of the information; the seriousness of the alleged incident; the specificity of the information; the objectivity and credibility of the source of the report; whether any individuals can be identified who were subjected to the alleged harassment; and whether those individuals want to pursue the matter. If, based on these factors, it is reasonable for the school to investigate and it can confirm the allegations, the considerations described in the previous sections concerning interim measures and appropriate responsive action will apply.

For example, if a parent visiting a school observes a student repeatedly harassing a group of female students and reports this to school officials, school personnel can speak with the female students to confirm whether that conduct has occurred and whether they view it as unwelcome. If the school determines that the conduct created a hostile environment, it can take reasonable, age-appropriate steps to address the situation. If on the other hand, the students in this example were to ask that their names not be disclosed or indicate that they do not want to pursue the matter, the considerations described in the previous section related to requests for confidentiality will shape the school's response.

In a contrasting example, a student newspaper at a large university may print an anonymous letter claiming that a professor is sexually harassing students in class on a daily basis, but the letter provides no clue as to the identity of the professor or the department in which the conduct is allegedly taking place. Due to the anonymous source and lack of specificity of the information, a school would not reasonably be able to investigate and confirm these allegations. However, in response to the anonymous letter, the school could submit a letter or article to the newspaper reiterating its policy against sexual harassment, encouraging persons who believe that they have been sexually harassed to come forward, and explaining how its grievance procedures work.

VIII. Prevention

A policy specifically prohibiting sexual harassment and separate grievance procedures for violations of that policy can help ensure that all students and employees understand the nature of sexual harassment and that the school will not tolerate it. Indeed, they might even bring conduct of a sexual nature to the school's attention so that the school can address it before it becomes sufficiently serious as to create a hostile environment. Further, training for administrators, teachers, and staff and age-appropriate classroom information for students can help to ensure that they understand what types of conduct can cause sexual harassment and that they know how to respond.

IX. Prompt and Equitable Grievance Procedures

Schools are required by the Title IX regulations to adopt and publish a policy against sex discrimination and grievance procedures providing for prompt and equitable resolution of complaints of discrimination on the basis of sex.⁹⁸ Accordingly, regardless of whether harassment occurred, a school violates this requirement of the Title IX regulations if it does not have those procedures and policy in place.⁹⁹

A school's sex discrimination grievance procedures must apply to complaints of sex discrimination in the school's education programs and activities filed by students against school employees, other students, or third parties.¹⁰⁰ Title IX does not require a school to adopt a policy specifically prohibiting sexual harassment or to provide separate grievance procedures for sexual harassment complaints. However, its nondiscrimination policy and grievance procedures for handling discrimination complaints must provide effective means for preventing and responding to sexual harassment. Thus, if, because of the lack of a policy or procedure specifically addressing sexual harassment, students are unaware of what kind of conduct constitutes sexual harassment or that such conduct is

prohibited sex discrimination, a school's general policy and procedures relating to sex discrimination complaints will not be considered effective.¹⁰¹

OCR has identified a number of elements in evaluating whether a school's grievance procedures are prompt and equitable, including whether the procedures provide for —

- Notice to students, parents of elementary and secondary students, and employees of the procedure, including where complaints may be filed;
- Application of the procedure to complaints alleging harassment carried out by employees, other students, or third parties;
- Adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
- Designated and reasonably prompt timeframes for the major stages of the complaint process;
- Notice to the parties of the outcome of the complaint;¹⁰² and
- An assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.¹⁰³

Many schools also provide an opportunity to appeal the findings or remedy, or both. In addition, because retaliation is prohibited by Title IX, schools may want to include a provision in their procedures prohibiting retaliation against any individual who files a complaint or participates in a harassment inquiry.

Procedures adopted by schools will vary considerably in detail, specificity, and components, reflecting differences in audiences, school sizes and administrative structures, State or local legal requirements, and past experience. In addition, whether complaint resolutions are timely will vary depending on the complexity of the investigation and the severity and extent of the harassment. During the investigation it is a good practice for schools to inform students who have alleged harassment about the status of the investigation on a periodic basis.

A grievance procedure applicable to sexual harassment complaints cannot be prompt or equitable unless students know it exists, how it works, and how to file a complaint. Thus, the procedures should be written in language appropriate to the age of the school's students, easily understood, and widely disseminated. Distributing the procedures to administrators, or including them in the school's administrative or policy manual, may not by itself be an effective way of providing notice, as these publications are usually not widely circulated to and understood by all members of the school community. Many schools ensure adequate notice to students by having copies of the procedures available at various locations throughout the school or campus; publishing the procedures as a separate document, including a summary of the procedures in major publications issued by the school, such as handbooks and catalogs for students, parents of elementary and secondary students, faculty, and staff; and identifying individuals who can explain how the procedures work.

A school must designate at least one employee to coordinate its efforts to comply with and carry out its Title IX responsibilities.¹⁰⁴ The school must notify all of its students and employees of the name, office address, and telephone number of the employee or employees designated.¹⁰⁵ Because it is possible that an employee designated to handle Title IX complaints may himself or herself engage in harassment, a school may want to designate more than one employee to be responsible for handling complaints in order to ensure that students have an effective means of reporting harassment.¹⁰⁶ While a school may choose to have a number of employees responsible for Title IX matters, it is also advisable to give one official responsibility for overall coordination and oversight of all sexual harassment complaints to ensure consistent practices and standards in handling complaints. Coordination of recordkeeping (for instance, in a confidential log maintained by the Title IX coordinator) will also ensure that the school can and will resolve recurring problems and identify students or employees who have multiple complaints filed against them.¹⁰⁷ Finally, the school must make sure that all designated employees have adequate training as to what conduct constitutes sexual harassment and are able to explain how the grievance procedure operates.¹⁰⁸

Grievance procedures may include informal mechanisms for resolving sexual harassment complaints to be used if the parties agree to do so.¹⁰⁹ OCR has frequently advised schools, however, that it is not appropriate for a student who is complaining of harassment to be required to work out the problem directly with the individual alleged to be harassing him or her, and certainly not without appropriate involvement by the school (e.g., participation by a counselor, trained mediator, or, if appropriate, a teacher or administrator). In addition, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. In some cases, such as alleged sexual assaults, mediation will not be appropriate even on a voluntary basis. Title IX also permits the use of a student disciplinary procedure not designed specifically for Title IX grievances to resolve sex discrimination complaints, as long as the procedure meets the requirement of affording a complainant a "prompt and equitable" resolution of the complaint.

In some instances, a complainant may allege harassing conduct that constitutes both sex discrimination and possible criminal conduct. Police investigations or reports may be useful in terms of fact gathering. However, because legal standards for criminal investigations are different, police investigations or reports may not be determinative of whether harassment occurred under Title IX and do not relieve the school of its duty to respond promptly and effectively.¹¹⁰ Similarly, schools are cautioned about using the results of insurance company investigations of sexual harassment allegations. The purpose of an insurance investigation is to assess liability under the insurance policy, and the applicable standards may well be different from those under Title IX. In addition, a school is not relieved of its responsibility to respond to a sexual harassment complaint filed under its grievance procedure by the fact that a complaint has been filed with OCR.¹¹¹

X. Due Process Rights of the Accused

A public school's employees have certain due process rights under the United States Constitution. The Constitution also guarantees due process to students in public and State-supported schools who are accused of certain types of infractions. The rights established under Title IX must be interpreted consistent with any federally guaranteed due process rights involved in a complaint proceeding. Furthermore, the Family Educational Rights and Privacy Act (FERPA) does not override federally protected due process rights of persons accused of sexual harassment. Procedures that ensure the Title IX rights of the complainant, while at the same time according due process to both parties involved, will lead to sound and supportable decisions. Of course, schools should ensure that steps to accord due process rights do not restrict or unnecessarily delay the protections provided by Title IX to the complainant. In both public and private schools, additional or separate rights may be created for employees or students by State law, institutional regulations and policies, such as faculty or student handbooks, and collective bargaining agreements. Schools should be aware of these rights and their legal responsibilities to individuals accused of harassment.

XI. First Amendment

In cases of alleged harassment, the protections of the First Amendment must be considered if issues of speech or expression are involved.¹¹² Free speech rights apply in the classroom (e.g., classroom lectures and discussions)¹¹³ and in all other education programs and activities of public schools (e.g., public meetings and speakers on campus; campus debates, school plays and other cultural events¹¹⁴; and student newspapers, journals, and other publications¹¹⁵). In addition, First Amendment rights apply to the speech of students and teachers.¹¹⁶

Title IX is intended to protect students from sex discrimination, not to regulate the content of speech. OCR recognizes that the offensiveness of a particular expression as perceived by some students, standing alone, is not a legally sufficient basis to establish a sexually hostile environment under Title IX.¹¹⁷ In order to establish a violation of Title IX, the harassment must be sufficiently serious to deny or limit a student's ability to participate in or benefit from the education program.¹¹⁸

Moreover, in regulating the conduct of its students and its faculty to prevent or redress discrimination prohibited by Title IX (e.g., in responding to harassment that is sufficiently serious as to create a hostile environment), a school must formulate, interpret, and apply its rules so as to protect academic freedom and free speech rights. For instance, while the First Amendment may prohibit a school from restricting the right of students to express opinions about one sex that may be considered derogatory, the school can take steps to denounce those opinions and ensure that competing views are heard. The age of the students involved and the location or forum may affect how the school can respond consistently with the First Amendment.¹¹⁹ As an example of the application of free speech rights to allegations of sexual harassment, consider the following:

Example 1: In a college level creative writing class, a professor's required reading list includes excerpts from literary classics that contain descriptions of explicit

sexual conduct, including scenes that depict women in submissive and demeaning roles. The professor also assigns students to write their own materials, which are read in class. Some of the student essays contain sexually derogatory themes about women. Several female students complain to the Dean of Students that the materials and related classroom discussion have created a sexually hostile environment for women in the class. What must the school do in response?

Answer: Academic discourse in this example is protected by the First Amendment even if it is offensive to individuals. Thus, Title IX would not require the school to discipline the professor or to censor the reading list or related class discussion.

Example 2: A group of male students repeatedly targets a female student for harassment during the bus ride home from school, including making explicit sexual comments about her body, passing around drawings that depict her engaging in sexual conduct, and, on several occasions, attempting to follow her home off the bus. The female student and her parents complain to the principal that the male students' conduct has created a hostile environment for girls on the bus and that they fear for their daughter's safety. What must a school do in response?

Answer: Threatening and intimidating actions targeted at a particular student or group of students, even though they contain elements of speech, are not protected by the First Amendment. The school must take prompt and effective actions, including disciplinary action if necessary, to stop the harassment and prevent future harassment.

Endnotes

¹ This guidance does not address sexual harassment of employees, although that conduct may be prohibited by Title IX. 20 U.S.C. 1681 *et seq.*; 34 CFR part 106, subpart E. If employees file Title IX sexual harassment complaints with OCR, the complaints will be processed pursuant to the Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance. 28 CFR 42.604. Employees are also protected from discrimination on the basis of sex, including sexual harassment, by Title VII of the Civil Rights Act of 1964. For information about Title VII and sexual harassment, see the Equal Employment Opportunity Commission's (EEOC's) Guidelines on Sexual Harassment, 29 CFR 1604.11, for information about filing a Title VII charge with the EEOC, see 29 CFR 1601.7–1607.13, or see the EEOC's website at www.eeoc.gov.

² 20 U.S.C. 1681; 34 CFR part 106.

³ See, e.g., Davis v. Monroe County Bd. of Educ., 526 U.S. 629, 649–50 (1999); Gebser v. Lago Vista Ind. Sch. Dist., 524 U.S. 274, 281 (1998); Franklin v. Gwinnett County Pub. Sch., 503 U.S. 60, 75 (1992); S. REP. NO. 100-64, 100th Cong., 1st Sess. 14 (1987); Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (1997 guidance), 62 FR 12034 (1997).

⁴ As described in the section on “Applicability,” this guidance applies to all levels of education.

⁵ For practical information about steps that schools can take to prevent and remedy all types of harassment, including sexual harassment, see “Protecting Students from Harassment and Hate Crime, A Guide for Schools,” which we issued jointly with the National Association of Attorneys General. This Guide is available at our web site at: www.ed.gov/pubs/Harassment.

⁶ See, e.g., Davis, 526 U.S. at 653 (alleged conduct of a sexual nature that would support a sexual harassment claim included verbal harassment and “numerous acts of objectively offensive touching;” Franklin, 503 U.S. at 63 (conduct of a sexual nature found to support a sexual harassment claim under Title IX included kissing, sexual intercourse); Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 60–61 (1986) (demands for sexual favors, sexual advances, fondling, indecent exposure, sexual intercourse, rape, sufficient to raise hostile environment claim under Title VII); Ellison v. Brady, 924 F.2d 872, 873–74, 880 (9th Cir. 1991) (allegations sufficient to state sexual harassment claim under Title VII included repeated requests for dates, letters making explicit references to sex and describing the harasser’s feelings for plaintiff); Lipsett v. University of Puerto Rico, 864 F.2d 881, 904–5 (1st Cir. 1988) (sexually derogatory comments, posting of sexually explicit drawing of plaintiff, sexual advances may support sexual harassment claim); Kadiki v. Virginia Commonwealth University, 892 F.Supp. 746, 751 (E.D. Va. 1995)

(professor's spanking of university student may constitute sexual conduct under Title IX); Doe v. Petaluma, 830 F.Supp. 1560, 1564-65 (N.D. Cal. 1996) (sexually derogatory taunts and innuendo can be the basis of a harassment claim); Denver School Dist. #2, OCR Case No. 08-92-1007 (same to allegations of vulgar language and obscenities, pictures of nude women on office walls and desks, unwelcome touching, sexually offensive jokes, bribery to perform sexual acts, indecent exposure); Nashoba Regional High School, OCR Case No. 01-92-1377 (same as to year-long campaign of derogatory, sexually explicit graffiti and remarks directed at one student).

⁷ See also Shoreline School Dist., OCR Case No. 10-92-1002 (a teacher's patting a student on the arm, shoulder, and back, and restraining the student when he was out of control, not conduct of a sexual nature); Dartmouth Public Schools, OCR Case No. 01-90-1058 (same as to contact between high school coach and students); San Francisco State University, OCR Case No. 09-94-2038 (same as to faculty advisor placing her arm around a graduate student's shoulder in posing for a picture); Analy Union High School Dist., OCR Case No. 09-92-1249 (same as to drama instructor who put his arms around both male and female students who confided in him).

⁸ 20 U.S.C. 1687 (codification of the amendment to Title IX regarding scope of jurisdiction, enacted by the Civil Rights Restoration Act of 1987). See 65 FR 68049 (November 13, 2000) (Department's amendment of the Title IX regulations to incorporate the statutory definition of "program or activity").

⁹ If a school contracts with persons or organizations to provide benefits, services, or opportunities to students as part of the school's program, and those persons or employees of those organizations sexually harass students, OCR will consider the harassing individual in the same manner that it considers the school's employees, as described in this guidance. (See section on "Harassment by Teachers and Other Employees.") See Brown v. Hot, Sexy, and Safer Products, Inc., 68 F.3d 525, 529 (1st Cir. 1995) (Title IX sexual harassment claim brought for school's role in permitting contract consultant hired by it to create allegedly hostile environment).

In addition, if a student engages in sexual harassment as an employee of the school, OCR will consider the harassment under the standards described for employees. (See section on "Harassment by Teachers and Other Employees.") For example, OCR would consider it harassment by an employee if a student teaching assistant who is responsible for assigning grades in a course, i.e., for providing aid, benefits, or services to students under the recipient's program, required a student in his or her class to submit to sexual advances in order to obtain a certain grade in the class.

¹⁰ Cf. John Does 1 v. Covington County Sch. Bd., 884 F.Supp. 462, 464-65 (M.D. Ala. 1995) (male students alleging that a teacher sexually harassed and abused them stated cause of action under Title IX).

¹¹ Title IX and the regulations implementing it prohibit discrimination "on the basis of sex;" they do not restrict protection from sexual harassment to those circumstances in

which the harasser only harasses members of the opposite sex. See 34 CFR 106.31. In Oncale v. Sundowner Offshore Services, Inc., the Supreme Court held unanimously that sex discrimination consisting of same-sex sexual harassment can violate Title VII's prohibition against discrimination because of sex. 523 U.S. 75, 82 (1998). The Supreme Court's holding in Oncale is consistent with OCR policy, originally stated in its 1997 guidance, that Title IX prohibits sexual harassment regardless of whether the harasser and the person being harassed are members of the same sex. 62 FR 12039. See also Kinman v. Omaha Public School Dist., 94 F.3d 463, 468 (8th Cir. 1996), rev'd on other grounds, 171 F.3d 607 (1999) (female student's allegation of sexual harassment by female teacher sufficient to raise a claim under Title IX); Doe v. Petaluma, 830 F.Supp. 1560, 1564-65, 1575 (N.D. Cal. 1996) (female junior high student alleging sexual harassment by other students, including both boys and girls, sufficient to raise a claim under Title IX); John Does 1, 884 F.Supp. at 465 (same as to male students' allegations of sexual harassment and abuse by a male teacher.) It can also occur in certain situations if the harassment is directed at students of both sexes. Chiapuzo v. BLT Operating Corp., 826 F.Supp. 1334, 1337 (D.Wyo. 1993) (court found that if males and females were subject to harassment, but harassment was based on sex, it could violate Title VII); but see Holman v. Indiana, 211 F.3d 399, 405 (7th Cir. 2000) (if male and female both subjected to requests for sex, court found it could not violate Title VII).

In many circumstances, harassing conduct will be on the basis of sex because the student would not have been subjected to it at all had he or she been a member of the opposite sex; e.g., if a female student is repeatedly propositioned by a male student or employee (or, for that matter, if a male student is repeatedly propositioned by a male student or employee.) In other circumstances, harassing conduct will be on the basis of sex if the student would not have been affected by it in the same way or to the same extent had he or she been a member of the opposite sex; e.g., pornography and sexually explicit jokes in a mostly male shop class are likely to affect the few girls in the class more than it will most of the boys.

In yet other circumstances, the conduct will be on the basis of sex in that the student's sex was a factor in or affected the nature of the harasser's conduct or both. Thus, in Chiapuzo, a supervisor made demeaning remarks to both partners of a married couple working for him, e.g., as to sexual acts he wanted to engage in with the wife and how he would be a better lover than the husband. In both cases, according to the court, the remarks were based on sex in that they were made with an intent to demean each member of the couple because of his or her respective sex. 826 F.Supp. at 1337. See also Steiner v. Showboat Operating Co., 25 F.3d 1459, 1463-64 (9th Cir. 1994), cert. denied, 115 S.Ct. 733 (1995); but see Holman, 211 F.3d at 405 (finding that if male and female both subjected to requests for sex, Title VII could not be violated).

¹² Nashoba Regional High School, OCR Case No. 01-92-1397. In Concjo Valley School Dist., OCR Case No. 09-93-1305, female students allegedly taunted another female student about engaging in sexual activity; OCR found that the alleged comments were sexually explicit and, if true, would be sufficiently severe, persistent, and pervasive to create a hostile environment.

¹³ See Williamson v. A.G. Edwards & Sons, Inc., 876 F.2d 69, 70 (8th Cir. 1989), cert. denied 493 U.S. 1089 (1990); DeSantis v. Pacific Tel. & Tel. Co., Inc., 608 F.2d 327, 329-30 (9th Cir. 1979)(same); Bhum v. Gulf Oil Corp., 597 F.2d 936, 938 (5th Cir. 1979)(same).

¹⁴ It should be noted that some State and local laws may prohibit discrimination on the basis of sexual orientation. Also, under certain circumstances, courts may permit redress for harassment on the basis of sexual orientation under other Federal legal authority. See Nabozny v. Podlesny, 92 F.3d 446, 460 (7th Cir. 1996) (holding that a gay student could maintain claims alleging discrimination based on both gender and sexual orientation under the Equal Protection Clause of the United States Constitution in a case in which a school district failed to protect the student to the same extent that other students were protected from harassment and harm by other students due to the student's gender and sexual orientation).

¹⁵ However, sufficiently serious sexual harassment is covered by Title IX even if the hostile environment also includes taunts based on sexual orientation.

¹⁶ See also, Price Waterhouse v. Hopkins, 490 U.S. 228, 251 (1989) (plurality opinion) (where an accounting firm denied partnership to a female candidate, the Supreme Court found Title VII prohibits an employer from evaluating employees by assuming or insisting that they match the stereotype associated with their sex).

¹⁷ See generally Gebser; Davis; See also Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 65-66 (1986); Harris v. Forklift Systems Inc., 510 U.S. 14, 22 (1993); see also Hicks v. Gates Rubber Co., 833 F.2d 1406, 1415 (10th Cir. 1987) (concluding that harassment based on sex may be discrimination whether or not it is sexual in nature); McKinney v. Dole, 765 F.2d 1129, 1138 (D.C. Cir. 1985) (physical, but nonsexual, assault could be sex-based harassment if shown to be unequal treatment that would not have taken place but for the employee's sex); Cline v. General Electric Capital Auto Lease, Inc., 757 F.Supp. 923, 932-33 (N.D. Ill. 1991).

¹⁸ See, e.g., sections on "Harassment by Teachers and Other Employees," "Harassment by Other Students or Third Parties," "Notice of Employee, Peer, or Third Party Harassment," "Factors Used to Evaluate a Hostile Environment," "Recipient's Response," and "Prompt and Equitable Grievance Procedures."

¹⁹ See Lipsett, 864 F.2d at 903-905 (general antagonism toward women, including stated goal of eliminating women from surgical program, statements that women shouldn't be in the program, and assignment of menial tasks, combined with overt sexual harassment); Harris, 510 U.S. at 23; Andrews v. City of Philadelphia, 895 F.2d 1469, 1485-86 (3rd Cir. 1990) (court directed trial court to consider sexual conduct as well as theft of female employees' files and work, destruction of property, and anonymous phone calls in determining if there had been sex discrimination); see also Hall v. Gus Construction Co., 842 F.2d 1010, 1014 (8th Cir. 1988) (affirming that harassment due to the employee's sex

may be actionable even if the harassment is not sexual in nature); Hicks, 833 F.2d at 1415; Eden Prairie Schools, Dist. #272, OCR Case No. 05-92-1174 (the boys made lewd comments about male anatomy and tormented the girls by pretending to stab them with rubber knives; while the stabbing was not sexual conduct, it was directed at them because of their sex, i.e., because they were girls).

²⁰ Davis, 526 U.S. at 650 ("Having previously determined that 'sexual harassment' is 'discrimination' in the school context under Title IX, we are constrained to conclude that student-on-student sexual harassment, if sufficiently severe, can likewise rise to the level of discrimination actionable under the statute."); Franklin, 503 U.S. at 75 ("Unquestionably, Title IX placed on the [school] the duty not to discriminate on the basis of sex, and 'when a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor "discriminate[s]" on the basis of sex.' ... We believe the same rule should apply when a teacher sexually harasses and abuses a student." (citation omitted)).

OCR's longstanding interpretation of its regulations is that sexual harassment may constitute a violation. 34 CFR 106.31; See Sexual Harassment Guidance, 62 FR 12034 (1997). When Congress enacted the Civil Rights Restoration Act of 1987 to amend Title IX to restore institution-wide coverage over federally assisted education programs and activities, the legislative history indicated not only that Congress was aware that OCR interpreted its Title IX regulations to prohibit sexual harassment, but also that one of the reasons for passing the Restoration Act was to enable OCR to investigate and resolve cases involving allegations of sexual harassment. S. REP. NO. 64, 100th Cong., 1st Sess. at 12 (1987). The examples of discrimination that Congress intended to be remedied by its statutory change included sexual harassment of students by professors, id. at 14, and these examples demonstrate congressional recognition that discrimination in violation of Title IX can be carried out by school employees who are providing aid, benefits, or services to students. Congress also intended that if discrimination occurred, recipients needed to implement effective remedies. S. REP. NO. 64 at 5.

²¹ 34 CFR 106.4.

²² These are the basic regulatory requirements. 34 CFR 106.31(a)(b). Depending upon the facts, sexual harassment may also be prohibited by more specific regulatory prohibitions. For example, if a college financial aid director told a student that she would not get the student financial assistance for which she qualified unless she slept with him, that also would be covered by the regulatory provision prohibiting discrimination on the basis of sex in financial assistance, 34 CFR 106.37(a).

²³ 34 CFR 106.31(b)(1).

²⁴ 34 CFR 106.31(b)(2).

²⁵ 34 CFR 106.31(b)(3).

²⁶ 34 CFR 106.31(b)(4).

²⁷ 34 CFR 106.31(b)(6).

²⁸ 34 CFR 106.31(b)(7).

²⁹ 34 CFR 106.3(a).

³⁰ 34 CFR 106.9.

³¹ 34 CFR 106.8(b).

³² 34 CFR 106.8(a).

³³ The 1997 guidance referred to quid pro quo harassment and hostile environment harassment. 62 FR 12038-40.

³⁴ See Alexander v. Yale University, 459 F.Supp. 1, 4 (D.Conn. 1977), aff'd, 631 F.2d 178 (2nd Cir. 1980) (stating that a claim "that academic advancement was conditioned upon submission to sexual demands constitutes [a claim of] sex discrimination in education..."); Crandell v. New York College, Osteopathic Medicine, 87 F.Supp.2d 304, 318 (S.D.N.Y. 2000) (finding that allegations that a supervisory physician demanded that a student physician spend time with him and have lunch with him or receive a poor evaluation, in light of the totality of his alleged sexual comments and other inappropriate behavior, constituted a claim of quid pro quo harassment); Kadiki, 892 F.Supp. at 752 (reexamination in a course conditioned on college student's agreeing to be spanked should she not attain a certain grade may constitute quid pro quo harassment).

³⁵ 34 CFR 106.31(b).

³⁶ Davis, 526 U.S. at 651 (confirming, by citing approvingly both to Title VII cases (Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57,67 (1986) (finding that hostile environment claims are cognizable under Title VII), and Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75, 82 (1998)) and OCR's 1997 guidance, 62 FR at 12041-42, that determinations under Title IX as to what conduct constitutes hostile environment sexual harassment may continue to rely on Title VII caselaw).

³⁷ 34 CFR 106.31(b). See Davis, 526 U.S. at 650 (concluding that allegations of student-on-student sexual harassment that is "so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits" supports a claim for money damages in an implied right of action).

³⁸ In Harris, the Supreme Court explained the requirement for considering the "subjective perspective" when determining the existence of a hostile environment. The Court stated— "... if the victim does not subjectively perceive the environment to be abusive, the

conduct has not actually altered the conditions of the victim's employment, and there is no Title VII violation." 510 U.S. at 21-22.

³⁹ See Davis, 526 U.S. at 650 (conduct must be "objectively offensive" to trigger liability for money damages); Elgamil v. Syracuse University, 2000 U.S. Dist. LEXIS 12598 at 17 (N.D.N.Y. 2000) (citing Harris); Booher v. Board of Regents, 1998 U.S. Dist. LEXIS 11404 at 25 (E.D. Ky. 1998) (same). See Oncale, 523 U.S. at 81, in which the Court "emphasized ... that the objective severity of harassment should be judged from the perspective of a reasonable person in the [victim's] position, considering 'all the circumstances,'" and citing Harris, 510 U.S. at 20, in which the Court indicated that a "reasonable person" standard should be used to determine whether sexual conduct constituted harassment. This standard has been applied under Title VII to take into account the sex of the subject of the harassment, see, e.g., Ellison, 924 F.2d at 878-79 (applying a "reasonable woman" standard to sexual harassment), and has been adapted to sexual harassment in education under Title IX, Patricia H. v. Berkeley Unified School Dist., 830 F.Supp. 1288, 1296 (N.D. Cal. 1993) (adopting a "reasonable victim" standard and referring to OCR's use of it).

⁴⁰ See Davis, 526 U.S. at 651, citing both Oncale, 523 U.S. at 82, and OCR's 1997 guidance (62 FR 12041-12042).

⁴¹ See, e.g., Davis, 526 U.S. at 634 (as a result of the harassment, student's grades dropped and she wrote a suicide note); Doe v. Petaluma, 830 F. Supp. at 1566 (student so upset about harassment by other students that she was forced to transfer several times, including finally to a private school); Modesto City Schools, OCR Case No. 09-93-1391 (evidence showed that one girl's grades dropped while the harassment was occurring); Weaverville Elementary School, OCR Case No. 09-91-1116 (students left school due to the harassment). Compare with College of Alameda, OCR Case No. 09-90-2104 (student not in instructor's class and no evidence of any effect on student's educational benefits or service, so no hostile environment).

⁴² Doe v. Petaluma, 830 F.Supp. at 1566.

⁴³ See Waltman v. Int'l Paper Co., 875 F.2d 468, 477 (5th Cir. 1989) (holding that although not specifically directed at the plaintiff, sexually explicit graffiti on the walls was "relevant to her claim"); Monteiro v. Tempe Union High School, 158 F.3d 1022, 1033-34 (9th Cir. 1998) (Title VI racial harassment case, citing Waltman; see also Hall, 842 F. 2d at 1015 (evidence of sexual harassment directed at others is relevant to show hostile environment under Title VII).

⁴⁴ See, e.g., Elgmil 2000 U.S. Dist. LEXIS at 19 ("in order to be actionable, the incidents of harassment must occur in concert or with a regularity that can reasonably be termed pervasive"); Andrews, 895 F.2d at 1484 ("Harassment is pervasive when 'incidents of harassment occur either in concert or with regularity'"); Moylan v. Maries County, 792 F.2d 746, 749 (8th Cir. 1986).

⁴⁵ 34 CFR 106.31(b). See Vance v. Spencer County Public School District, 231 F.3d 253 (6th Cir. 2000); Doe v. School Admin. Dist. No. 19, 66 F.Supp.2d 57, 62 (D. Me. 1999). See also statement of the U.S. Equal Employment Opportunity Commission (EEOC): "The Commission will presume that the unwelcome, intentional touching of [an employee's] intimate body areas is sufficiently offensive to alter the conditions of her working environment and constitute a violation of Title VII. More so than in the case of verbal advances or remarks, a single unwelcome physical advance can seriously poison the victim's working environment." EEOC Policy Guidance on Current Issues of Sexual Harassment, 17. Barrett v. Omaha National Bank, 584 F. Supp. 22, 30 (D. Neb. 1983), aff'd, 726 F. 2d 424 (8th Cir. 1984) (finding that hostile environment was created under Title VII by isolated events, i.e., occurring while traveling to and during a two-day conference, including the co-worker's talking to plaintiff about sexual activities and touching her in an offensive manner while they were inside a vehicle from which she could not escape).

⁴⁶ See also Ursuline College, OCR Case No. 05-91-2068 (a single incident of comments on a male student's muscles arguably not sexual; however, assuming they were, not severe enough to create a hostile environment).

⁴⁷ Davis, 526 U.S. at 653 ("The relationship between the harasser and the victim necessarily affects the extent to which the misconduct can be said to breach Title IX's guarantee of equal access to educational benefits and to have a systemic effect on a program or activity. Peer harassment, in particular, is less likely to satisfy these requirements than is teacher student harassment."); Patricia H., 830 F. Supp. at 1297 (stating that the "grave disparity in age and power" between teacher and student contributed to the creation of a hostile environment); Summerfield Schools, OCR Case No. 15-92-1929 ("impact of the ... remarks was heightened by the fact that the coach is an adult in a position of authority"); cf. Doe v. Taylor I.S.D., 15 F.3d 443, 460 (5th Cir. 1994) (Sec. 1983 case; taking into consideration the influence that the teacher had over the student by virtue of his position of authority to find that a sexual relationship between a high school teacher and a student was unlawful).

⁴⁸ See, e.g., McKinney, 765 F.2d at 1138-49; Robinson v. Jacksonville Shipyards, 760 F. Supp. 1486, 1522 (M.D. Fla. 1991).

⁴⁹ Cf. Patricia H., 830 F. Supp. at 1297.

⁵⁰ See, e.g., Barrett, 584 F. Supp. at 30 (finding harassment occurring in a car from which the victim could not escape particularly severe).

⁵¹ See Hall, 842 F. 2d at 1015 (stating that "evidence of sexual harassment directed at employees other than the plaintiff is relevant to show a hostile environment") (citing Hicks, 833 F. 2d, 1415-16). Cf. Midwest City-Del City Public Schools, OCR Case No. 06-92-1012 (finding of racially hostile environment based in part on several racial incidents at school shortly before incidents in complaint, a number of which involved the same student involved in the complaint).

⁵² In addition, incidents of racial or national origin harassment directed at a particular individual may also be aggregated with incidents of sexual or gender harassment directed at that individual in determining the existence of a hostile environment. Hicks, 833 F.2d at 1416; Jefferies v. Harris County Community Action Ass'n, 615 F.2d 1025, 1032 (5th Cir. 1980).

⁵³ Does v. Covington Sch. Bd. of Educ., 930 F.Supp. 554, 569 (M.D. Ala. 1996); Henson v. City of Dundee, 682 F.2d 897, 903 (11th Cir. 1982).

⁵⁴ See Meritor Savings Bank, 477 U.S. at 68. "[T]he fact that sex-related conduct was 'voluntary,' in the sense that the complainant was not forced to participate against her will, is not a defense to a sexual harassment suit brought under Title VII.... The correct inquiry is whether [the subject of the harassment] by her conduct indicated that the alleged sexual advances were unwelcome, not whether her actual participation in sexual intercourse was voluntary."

⁵⁵ Lipsett, 864 F.2d at 898 (while, in some instances, a person may have the responsibility for telling the harasser "directly" that the conduct is unwelcome, in other cases a "consistent failure to respond to suggestive comments or gestures may be sufficient...."); Danna v. New York Tel. Co., 752 F.Supp. 594, 612 (despite a female employee's own foul language and participation in graffiti writing, her complaints to management indicated that the harassment was not welcome); see also Carr v. Allison Gas Turbine Div. GMC, 32 F.3d 1007, 1011 (7th Cir. 1994) (finding that cursing and dirty jokes by a female employee did not show that she welcomed the sexual harassment, given her frequent complaints about it: "Even if ... [the employee's] testimony that she talked and acted as she did [only] in an effort to be one of the boys is ... discounted, her words and conduct cannot be compared to those of the men and used to justify their conduct.... The asymmetry of positions must be considered. She was one woman; they were many men. Her use of [vulgar] terms ... could not be deeply threatening....").

⁵⁶ See Reed v. Shepard, 939 F.2d 484, 486-87, 491-92 (7th Cir. 1991) (no harassment found under Title VII in a case in which a female employee not only tolerated, but also instigated the suggestive joking activities about which she was now complaining); Weinsheimer v. Rockwell Int'l Corp., 754 F.Supp. 1559, 1563-64 (M.D. Fla. 1990) (same, in case in which general shop banter was full of vulgarity and sexual innuendo by men and women alike, and plaintiff contributed her share to this atmosphere.) However, even if a student participates in the sexual banter, OCR may in certain circumstances find that the conduct was nevertheless unwelcome if, for example, a teacher took an active role in the sexual banter and a student reasonably perceived that the teacher expected him or her to participate.

⁵⁷ The school bears the burden of rebutting the presumption.

⁵⁸ Of course, nothing in Title IX would prohibit a school from implementing policies prohibiting sexual conduct or sexual relationships between students and adult employees.

⁵⁹ See note 58.

⁶⁰ Gebser, 524 U.S. at 281 (“Franklin ... establishes that a school district can be held liable in damages [in an implied action under Title IX] in cases involving a teacher’s sexual harassment of a student...”; 34 CFR 106.31; See 1997 Sexual Harassment Guidance, 62 FR 12034.

⁶¹ See Davis, 526 U.S. at 653 (stating that harassment of a student by a teacher is more likely than harassment by a fellow student to constitute the type of effective denial of equal access to educational benefits that can breach the requirements of Title IX).

⁶² 34 CFR 106.31(b). Cf. Gebser, 524 U.S. at 283-84 (Court recognized in an implied right of action for money damages for teacher sexual harassment of a student that the question of whether a violation of Title IX occurred is a separate question from the scope of appropriate remedies for a violation).

⁶³ Davis, 526 U.S. at 646.

⁶⁴ See section on “Applicability of Title IX” for scope of coverage.

⁶⁵ See section on “Notice of Employee, Peer, or Third Party Harassment.”

⁶⁶ See section on “Notice of Employee, Peer, or Third Party Harassment.”

⁶⁷ 34 CFR 106.31(b).

⁶⁸ 34 CFR 106.31(b).

⁶⁹ See section on “Notice of Employee, Peer, or Third Party Harassment.”

⁷⁰ Cf. Davis, 526 U.S. at 646.

⁷¹ 34 CFR 106.31(b).

⁷² 34 CFR 106.31(b).

⁷³ Consistent with its obligation under Title IX to protect students, cf. Gebser, 524 U.S. at 287, OCR interprets its regulations to ensure that recipients take reasonable action to address, rather than neglect, reasonably obvious discrimination. Cf. Gebser, 524 U.S. at 287-88; Davis, 526 U.S. at 650 (actual notice standard for obtaining money damages in private lawsuit).

⁷⁴ Whether an employee is a responsible employee or whether it would be reasonable for a student to believe the employee is, even if the employee is not, will vary depending on

factors such as the age and education level of the student, the type of position held by the employee, and school practices and procedures, both formal and informal.

The Supreme Court held that a school will only be liable for money damages in a private lawsuit where there is actual notice to a school official with the authority to address the alleged discrimination and take corrective action. Gebser, 524 U.S. at 290, and Davis, 526 U.S. at 642. The concept of a "responsible employee" under our guidance is broader. That is, even if a responsible employee does not have the authority to address the discrimination and take corrective action, he or she does have the obligation to report it to appropriate school officials.

⁷⁵ The Title IX regulations require that recipients designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the regulations, including complaint investigations. 34 CFR 106.8(a).

⁷⁶ 34 CFR 106.31. See Yates v. Avco Corp., 819 F.2d 630, 636 (6th Cir. 1987); Katz v. Dole, 709 F.2d 251, 256 (4th Cir. 1983).

⁷⁷ For example, a substantiated report indicating that a high school coach has engaged in inappropriate physical conduct of a sexual nature in several instances with different students may suggest a pattern of conduct that should trigger an inquiry as to whether other students have been sexually harassed by that coach. See also Doe v. School Administrative Dist. No. 19, 66 F.Supp.2d 57, 63-64 and n.6 (D.Me. 1999) (in a private lawsuit for money damages under Title IX in which a high school principal had notice that a teacher may be engaging in a sexual relationship with one underage student and did not investigate, and then the same teacher allegedly engaged in sexual intercourse with another student, who did not report the incident, the court indicated that the school's knowledge of the first relationship may be sufficient to serve as actual notice of the second incident).

⁷⁸ Cf. Katz, 709 F.2d at 256 (finding that the employer "should have been aware of the problem both because of its pervasive character and because of [the employee's] specific complaints .."); Smolsky v. Consolidated Rail Corp., 780 F.Supp. 283, 293 (E.D. Pa. 1991), reconsideration denied, 785 F.Supp. 71 (E.D. Pa. 1992) "where the harassment is apparent to all others in the work place, supervisors and coworkers, this may be sufficient to put the employer on notice of the sexual harassment" under Title VII); Jensen v. Eveleth Taconite Co., 824 F.Supp. 847, 887 (D.Minn. 1993); "[s]exual harassment ... was so pervasive that an inference of knowledge arises The acts of sexual harassment detailed herein were too common and continuous to have escaped Eveleth Mines had its management been reasonably alert.", Cummings v. Walsh Construction Co., 561 F.Supp. 872, 878 (S.D. Ga. 1983) ("... allegations not only of the [employee] registering her complaints with her foreman ... but also that sexual harassment was so widespread that defendant had constructive notice of it" under Title VII); but see Murray v. New York Univ. College of Dentistry, 57 F.3d 243, 250-51 (2nd Cir. 1995) (concluding that other students' knowledge of the conduct was not enough to charge the school with notice, particularly because these students may not have been aware that the conduct was offensive or abusive).

⁷⁹ 34 CFR 106.9 and 106.8(b).

⁸⁰ 34 CFR 106.8(b) and 106.31(b).

⁸¹ 34 CFR 106.9.

⁸² 34 CFR 106.8(b).

⁸³ 34 CFR 106.31.

⁸⁴ 34 CFR 106.31 and 106.3. Gebser, 524 U.S. at 288 ("In the event of a violation, [under OCR's administrative enforcement scheme] a funding recipient may be required to take 'such remedial action as [is] deem[ed] necessary to overcome the effects of [the] discrimination.' §106.3.").

⁸⁵ 20 U.S.C. 1682. In the event that OCR determines that voluntary compliance cannot be secured, OCR may take steps that may result in termination of Federal funding through administrative enforcement, or, alternatively, OCR may refer the case to the Department of Justice for judicial enforcement.

⁸⁶ Schools have an obligation to ensure that the educational environment is free of discrimination and cannot fulfill this obligation without determining if sexual harassment complaints have merit.

⁸⁷ In some situations, for example, if a playground supervisor observes a young student repeatedly engaging in conduct toward other students that is clearly unacceptable under the school's policies, it may be appropriate for the school to intervene without contacting the other students. It still may be necessary for the school to talk with the students (and parents of elementary and secondary students) afterwards, e.g., to determine the extent of the harassment and how it affected them.

⁸⁸ Gebser, 524 U.S. at 288; Bundy v. Jackson, 641 F.2d 934, 947 (D.C. Cir. 1981) (employers should take corrective and preventive measures under Title VII); accord, Jones v. Flagship Int'l, 793 F.2d 714, 719-720 (5th Cir. 1986) (employer should take prompt remedial action under Title VII).

⁸⁹ See Doe ex rel. Doe v. Dallas Indep. Sch. Dist., 220 F.3d 380 (5th Cir. 2000) (citing Waltman); Waltman, 875 F.2d at 479 (appropriateness of employer's remedial action under Title VII will depend on the "severity and persistence of the harassment and the effectiveness of any initial remedial steps"); Domhecker v. Malibu Grand Prix Corp., 828 F.2d 307, 309-10 (5th Cir. 1987); holding that a company's quick decision to remove the harasser from the victim was adequate remedial action).

⁹⁰ See Intlekofer v. Turnage, 973 F.2d 773, 779-780 (9th Cir. 1992) (holding that the employer's response was insufficient and that more severe disciplinary action was

necessary in situations in which counseling, separating the parties, and warnings of possible discipline were ineffective in ending the harassing behavior).

⁹¹ Offering assistance in changing living arrangements is one of the actions required of colleges and universities by the Campus Security Act in cases of rape and sexual assault. See 20 U.S.C. 1092(f).

⁹² See section on "Harassment by Other Students or Third Parties."

⁹³ University of California at Santa Cruz, OCR Case No. 09-93-2141 (extensive individual and group counseling); Eden Prairie Schools, Dist. #272, OCR Case No. 05-92-1174 (counseling).

⁹⁴ Even if the harassment stops without the school's involvement, the school may still need to take steps to prevent or deter any future harassment — to inform the school community that harassment will not be tolerated. Wills v. Brown University, 184 F.3d 20, 28 (1st Cir. 1999) (difficult problems are posed in balancing a student's request for anonymity or limited disclosure against the need to prevent future harassment); Fuller v. City of Oakland, 47 F.3d 1522, 1528-29 (9th Cir. 1995) (Title VII case).

⁹⁵ 34 CFR 106.8(b) and 106.71, incorporating by reference 34 CFR 100.7(c). The Title IX regulations prohibit intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX.

⁹⁶ Tacoma School Dist. No. 10, OCR Case No. 10-94-1079 (due to the large number of students harassed by an employee, the extended period of time over which the harassment occurred, and the failure of several of the students to report the harassment, the school committed as part of corrective action plan to providing training for students); Los Medanos College, OCR Case No. 09-84-2092 (as part of corrective action plan, school committed to providing sexual harassment seminar for campus employees); Sacramento City Unified School Dist., OCR Case No. 09-83-1063 (same as to workshops for management and administrative personnel and in-service training for non-management personnel).

⁹⁷ In addition, if information about the incident is contained in an "education record" of the student alleging the harassment, as defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, the school should consider whether FERPA would prohibit the school from disclosing information without the student's consent. Id. In evaluating whether FERPA would limit disclosure, the Department does not interpret FERPA to override any federally protected due process rights of a school employee accused of harassment.

⁹⁸ 34 CFR 106.8(b). This requirement has been part of the Title IX regulations since their inception in 1975. Thus, schools have been required to have these procedures in place since that time. At the elementary and secondary level, this responsibility generally lies

with the school district. At the postsecondary level, there may be a procedure for a particular campus or college or for an entire university system.

⁹⁹ Fenton Community High School Dist. #100, OCR Case 05-92-1104.

¹⁰⁰ While a school is required to have a grievance procedure under which complaints of sex discrimination (including sexual harassment) can be filed, the same procedure may also be used to address other forms of discrimination.

¹⁰¹ See generally Meritor, 477 U.S. at 72-73 (holding that "mere existence of a grievance procedure" for discrimination does not shield an employer from a sexual harassment claim).

¹⁰² The Family Educational Rights and Privacy Act (FERPA) does not prohibit a student from learning the outcome of her complaint, i.e., whether the complaint was found to be credible and whether harassment was found to have occurred. It is the Department's current position under FERPA that a school cannot release information to a complainant regarding disciplinary action imposed on a student found guilty of harassment if that information is contained in a student's education record unless — (1) the information directly relates to the complainant (e.g., an order requiring the student harasser not to have contact with the complainant); or (2) the harassment involves a crime of violence or a sex offense in a postsecondary institution. See note 97. If the alleged harasser is a teacher, administrator, or other non-student employee, FERPA would not limit the school's ability to inform the complainant of any disciplinary action taken.

¹⁰³ The section in the guidance on "Recipient's Response" provides examples of reasonable and appropriate corrective action.

¹⁰⁴ 34 CFR 106.8(a).

¹⁰⁵ Id.

¹⁰⁶ See Meritor, 477 U.S. at 72-73.

¹⁰⁷ University of California, Santa Cruz, OCR Case No. 09-93-2131. This is true for formal as well as informal complaints. See University of Maine at Machias, OCR Case No. 01-94-6001 (school's new procedures not found in violation of Title IX in part because they require written records for informal as well as formal resolutions). These records need not be kept in a student's or employee's individual file, but instead may be kept in a central confidential location.

¹⁰⁸ For example, in Cape Cod Community College, OCR Case No. 01-93-2047, the College was found to have violated Title IX in part because the person identified by the school as the Title IX coordinator was unfamiliar with Title IX, had no training, and did not even realize he was the coordinator.

¹⁰⁹ Indeed, in University of Maine at Machias, OCR Case No. 01-94-6001, OCR found the school's procedures to be inadequate because only formal complaints were investigated. While a school isn't required to have an established procedure for resolving informal complaints, they nevertheless must be addressed in some way. However, if there are indications that the same individual may be harassing others, then it may not be appropriate to resolve an informal complaint without taking steps to address the entire situation.

¹¹⁰ Academy School Dist. No 20, OCR Case No. 08-93-1023 (school's response determined to be insufficient in a case in which it stopped its investigation after complaint filed with police); Mills Public School Dist., OCR Case No. 01-93-1123, (not sufficient for school to wait until end of police investigation).

¹¹¹ Cf. EEOC v. Board of Governors of State Colleges and Universities, 957 F.2d 424 (7th Cir. 1992), cert. denied, 506 U.S. 906 (1992).

¹¹² The First Amendment applies to entities and individuals that are State actors. The receipt of Federal funds by private schools does not directly subject those schools to the U.S. Constitution. See Rendell-Baker v. Kohn, 457 U.S. 830, 840 (1982). However, all actions taken by OCR must comport with First Amendment principles, even in cases involving private schools that are not directly subject to the First Amendment.

¹¹³ See, e.g., George Mason University, OCR Case No. 03-94-2086 (law professor's use of a racially derogatory word, as part of an instructional hypothetical regarding verbal torts, did not constitute racial harassment); Portland School Dist. 1J, OCR Case No. 10-94-1117 (reading teacher's choice to substitute a less offensive term for a racial slur when reading an historical novel aloud in class constituted an academic decision on presentation of curriculum, not racial harassment).

¹¹⁴ See Iota Xi Chapter of Sigma Chi Fraternity v. George Mason University, 993 F.2d 386 (4th Cir. 1993) (fraternity skit in which white male student dressed as an offensive caricature of a black female constituted student expression)

¹¹⁵ See Florida Agricultural and Mechanical University, OCR Case No. 04-92-2054 (no discrimination in case in which campus newspaper, which welcomed individual opinions of all sorts, printed article expressing one student's viewpoint on white students on campus.)

¹¹⁶ Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 506 (1969) (neither students nor teachers shed their constitutional rights to freedom of expression at the schoolhouse gates); Cf. Cohen v. San Bernardino Valley College, 92 F.3d 968, 972 (9th Cir. 1996) (holding that a college professor could not be punished for his longstanding teaching methods, which included discussion of controversial subjects such as obscenity and consensual sex with children, under an unconstitutionally vague sexual harassment policy); George Mason University, OCR Case No. 03-94-2086 (law professor's use of a

racially derogatory word, as part of an instructional hypothetical regarding verbal torts, did not constitute racial harassment.)

¹¹⁷ See, e.g., University of Illinois, OCR Case No. 05-94-2104 (fact that university's use of Native American symbols was offensive to some Native American students and employees was not dispositive, in and of itself, in assessing a racially hostile environment claim under Title VI.)

¹¹⁸ See Meritor, 477 U.S. at 67 (the "mere utterance of an ethnic or racial epithet which engenders offensive feelings in an employee" would not affect the conditions of employment to a sufficient degree to violate Title VII), quoting Henson, 682 F.2d at 904; cf. R.A.V. v. City of St. Paul, 505 U.S. 377, 389 (1992) (citing with approval EEOC's sexual harassment guidelines); Monteiro, 158 F.3d at 1032-34 (9th Cir. 1998) (citing with approval OCR's racial harassment investigative guidance).

¹¹⁹ Compare Bethel School Dist. No. 403 v. Fraser, 478 U.S. 675, 685 (1986) (Court upheld discipline of high school student for making lewd speech to student assembly, noting that "[t]he undoubted freedom to advocate unpopular and controversial issues in schools must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior."), with Iota Xi, 993 F.2d 386 (holding that, notwithstanding a university's mission to create a culturally diverse learning environment and its substantial interest in maintaining a campus free of discrimination, it could not punish students who engaged in an offensive skit with racist and sexist overtones).



Sexual Violence

Definition

Sexual violence is a form of sexual harassment prohibited by Title IX.

- Sexual violence refers to physical sexual acts **perpetrated against a person's will** or where a person is **incapable of giving consent** due to the victim's use of drugs or alcohol
- An individual also may be unable to give consent due to an intellectual or other disability
- May include rape, sexual assault, sexual battery, and sexual coercion



Bottom Line

- If your institution knows or reasonably should know about sexual harassment that creates a hostile environment, Title IX **requires immediate action** to eliminate the harassment, prevent its recurrence, and address its effects.

- Regardless of whether a harassed student, his or her parent, or a third party files a complaint



Preparing to Investigate

Impartial investigator

- No bias or conflict of interest
- Consider giving the parties an opportunity to object to the investigator
- Use a different investigator if you feel there is a possible or actual conflict
- Per OCR, should not be Title IX Coordinator or college/university attorney, which could present a conflict of interest
- Per OCR, should have adequate training or knowledge regarding sexual violence
- Per OCR, do not rely on police or insurance investigations. The institution needs to conduct its own review

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CASE NO. 2011-CP-10-9200
MOTHER DOE A,)
Plaintiff,)
vs.)
THE CITADEL,)
Defendant.)

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CASE NO. 2012-CP-10-1860
JOHN DOE CAMPER,)
Plaintiff,)
vs.)
THE CITADEL,)
Defendant.)

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CASE NO. 2012-CP-10-1858
JOHN DOE 2,)
Plaintiff,)
vs.)
THE CITADEL,)
Defendant.)



VIDEOTAPED

30(b)(6) DEPOSITION OF: COLONEL WILLIAM A. FLETCHER

CAROLINA REPORTING

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Electronically signed by Eve Wilbanks (101-177-349-8970)

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Page 14	Page 16
1 correct? 2 A. That's correct. 3 Q. You never had any training on what to 4 look for, you never had any training on how to 5 interview a potential child sexual predator, to 6 make sure that it would be done right; is that 7 correct? 8 A. That's correct 9 Q. Now, also, my understanding would be, if 10 -- if you had a report of a child sexual predator, 11 that since you didn't have -- let me ask it this 12 way, first: You would agree with me that if there 13 is a potential child sexual predator, that that is 14 a -- that's a serious matter at The Citadel, 15 correct? 16 A. Anywhere, yes. 17 Q. Anywhere. All right. And my 18 understanding is if you didn't feel like you had 19 the proper training to be the person who should be 20 investigating a child sexual predator or doing an 21 interview of a child sexual predator, that you 22 would call in someone -- an agency that had 23 expertise in that, like SLED; is that correct? 24 A. That's correct. 25 Q. And so if you had been provided with an	1 alleging something, that there were allegations 2 that this person was a child sexual predator, 3 right? 4 A. That's a good possibility, yes 5 Q. And if you had those allegations, 6 wouldn't the best thing to do be to turn that over 7 to SLED or someone else who had expertise in 8 investigating child sexual predators and 9 interviewing child sexual predators to make sure 10 that it got done right? 11 A. That's -- yes 12 Q. All right. 13 MR. SLOAN: Let me take a break. 14 THE VIDEOGRAPHER: Off the record at 15 10:27. 16 (The deposition went off the record) 17 THE VIDEOGRAPHER: On the record at 18 10:38. 19 BY MR. SLOAN. 20 Q. Chief Fletcher, you mentioned a moment 21 ago in talking about a child sexual predator, you 22 would agree with me that any child sexual predator 23 is not only a threat to The Citadel campus, but a 24 threat to the community at large; would you agree 25 with that?
Page 15	Page 17
1 allegation that -- of criminal sexual conduct 2 involving a potential child sexual predator at The 3 Citadel in 2007, you would not have hauled off and 4 tried to have done an investigation and 5 interviewed the perpetrator on your own; you would 6 have called SLED; isn't that the best and -- 7 proper and best thing to do? 8 MR. STONEY: Objection. 9 A. I'm not sure if I would; it depended on 10 the situation. 11 Q. Let's say the situation is that the 12 alleged is accused of showing pornography to a 13 minor in violation of South Carolina Code, 14 exposing his genitals to a 13-year-old in 15 violation of South Carolina Code, and masturbating 16 in front of a 13-year-old in violation of South 17 Carolina Code and coercing two 13-year-olds to 18 masturbate in front of him; that would be a 19 serious allegation, wouldn't it? 20 A. Yes 21 Q. And if the allegation were that this 22 perpetrator had done it not only to the person 23 reporting it but to many others who were minors, 24 that would be an indication to you that this 25 wasn't a one-time incident where one person was	1 A. Yes. 2 Q. Are you familiar with this Margolis 3 report that's come out from The Citadel? 4 A. No, I'm not. 5 Q. As the current chief of Citadel Public 6 Safety, from January of this year up until today's 7 date in June of 2013, have you been given any new 8 guidelines or criteria as the chief of Citadel 9 Public Safety with regard to sexual abuse claims, 10 children on campus claims, sexual assault, 11 criminal sexual conduct, or any other area of 12 sexual misconduct on The Citadel campus? 13 A. No -- no, I haven't 14 Q. And my understanding is that at The 15 Citadel Public Safety, you are an authorized or a 16 licensed South Carolina law enforcement officer; 17 is that correct? 18 A. That's correct. The term is certified 19 Q. Certified. Okay. And do you expect The 20 Citadel to make The Citadel Public Safety 21 Department aware of any laws or codes that 22 specifically apply to The Citadel? 23 A. I'm not sure I understand what you mean, 24 a situation 25 Q. Let's say, for instance, like the

5 (Pages 14 to 17)

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Page 18	Page 20
1 Jessica Horton Act, have you heard of that? 2 A. Yes. 3 Q. And did The Citadel -- 4 A. Clery? 5 Q. -- tell you about it? 6 A. Clery Act? 7 Q. Well, now, those are two different 8 things. 9 A. I know the Clery Act. 10 Q. Do you know what the Clery Act is? 11 A. Yes. 12 Q. And The Citadel made you aware of the 13 Clery Act? 14 A. Law enforcement training did. 15 Q. So was it a law enforcement seminar you 16 went to? 17 A. Yes. It's like a week-long, two- or 18 three-day course, that sort of thing. 19 Q. I've got you. What about, have you 20 heard of the Jessica Horton Act? 21 A. Yes. 22 Q. And as a certified law enforcement 23 officer of South Carolina, if under the Horton Act 24 you were required to notify SLED of an 25 investigation, you would do so, right?	1 pled guilty to violating the South Carolina 2 Criminal Code with regard to 23 children on The 3 Citadel campus, that would be 23 separate 4 incidents under the Clery Act? 5 A. That's correct. 6 MR STONEY: Objection. 7 Q. Is that a yes? 8 A. Yes. 9 Q. And no one from The Citadel has 10 instructed you as chief of Citadel Public Safety 11 to do anything with regard to the Clery Act as to 12 Skip ReVill and his guilty pleas? 13 A. Not to my knowledge, no. I don't recall 14 anything. 15 Q. In calendar year 2013, how many -- have 16 there been any sexual abuse or sexual assault or 17 sexual harassment claims reported to The Citadel 18 Public Safety department? 19 A. No. 20 Q. Do you know whether or not there have 21 been any that have happened on campus that haven't 22 been reported to you? 23 A. No, I'm not aware of them. 24 Q. Let's go back to the example of someone 25 breaking in a car at The Citadel. Let's say that
Page 19	Page 21
1 A. Yes. 2 Q. Have you spoken to Chief Mullen of the 3 Charleston Police Department about the ReVill 4 case? 5 A. No, I haven't. 6 Q. My understanding is that The Citadel 7 Public Safety had nothing to do whatsoever with 8 the Skip ReVill case, correct? 9 A. That's correct. 10 Q. To this day, nothing? 11 A. (Indicating a negative response.) 12 Q. Is that correct? 13 A. That's correct. 14 Q. Are you aware of any crimes that have 15 occurred on the campus of The Citadel where 16 General Rosa has gone straight to the Charleston 17 Police Department and not informed you or anybody 18 at The Citadel Public Safety of what's happened? 19 A. I can't remember any particular case at 20 this time, no. 21 Q. Does the Skip ReVill case -- has that 22 been reported under the Clery Act in any way? 23 A. I'm not sure about that at this time. I 24 would have to check our records. 25 Q. And if you had -- if Skip ReVill had	1 whoever reported it said that the person -- let's 2 say it was John Smith that did it, and you found 3 out that John Smith wasn't somebody that worked at 4 The Citadel or was a Citadel person; it was just 5 somebody from out in the community. Okay? Would 6 you call -- would you handle that, or would you 7 send that to the Charleston Police Department or 8 -- 9 A. We would handle that. 10 Q. You could handle that? 11 A. Yes. 12 Q. So you could go to Mr. Pleasant and 13 interview him or do whatever you need to do? 14 A. As long as he's in the state, we can do 15 it. 16 Q. Okay. Let me ask you, if an allegation 17 had come in to you -- the allegation we discussed 18 earlier that you said you would have called in the 19 experts at SLED, can we agree that if that 20 allegation had been turned in to you at Citadel 21 Public Safety -- can we agree that you would 22 not at Citadel Public Safety have been authorized 23 to offer -- the person who made the allegation, 24 you wouldn't have been authorized to offer them 25 any money, right?

6 (Pages 18 to 21)

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Page 22	Page 24
1 MR. STONEY: Objection. 2 A In reference to what? 3 Q. In reference to the allegation that the 4 person was making about the sexual child predator 5 -- you wouldn't offer anybody any money, right? 6 MR. STONEY: Objection. 7 A. For what reason? 8 Q. I agree. But I'm just -- you wouldn't 9 offer anybody any money for any reason, would you? 10 MR. STONEY: Objection. 11 A No. 12 Q. And you wouldn't research the civil 13 statute of limitations, would you, at Citadel 14 Public Safety? You would have no reason to do 15 that, would you? 16 A No. 17 Q. That wouldn't be the thrust of your 18 investigation, would it? 19 A No. 20 Q. And once -- when SLED gets involved, 21 would you offer them any cooperation, any courtesy 22 that they ask for when they're investigating 23 something on The Citadel campus? 24 A. Yes. Any preliminary work that we would 25 do, we'd forward to them; if they needed to speak	1 the questions I have for you today. I 2 appreciate you coming. 3 THE WITNESS: Thank you. 4 MR. ROBERTS: I have none. 5 THE VIDEOGRAPHER: This concludes the 6 deposition of William A. Fletcher. We're off 7 the record at 10:57. 8 (The deposition concluded at 10:57 a.m.) 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 23	Page 25
1 to witnesses, we'd make those available 2 Q. Okay. And I take it that from time to 3 time you've worked with SLED or Charleston Police 4 Department and if they needed something, you'd 5 help them out and make sure every courtesy is 6 extended on campus, right? 7 A That's correct. 8 Q. As deputy chief of police in 2007 at The 9 Citadel, would you agree with me that you can't 10 conduct an investigation if you don't know there's 11 been an allegation of a crime, right? 12 A. If you don't know about it, that's 13 correct. 14 Q. Likewise, you can't alert SLED to 15 anything if you don't know about it as the deputy 16 chief? 17 A That's correct 18 MR. SLOAN Let's go off the record 19 again 20 THE VIDEOGRAPHER: Off the record at 21 10:51 22 (The deposition went off the record) 23 THE VIDEOGRAPHER: On the record at 24 10:56 25 MR. SLOAN Chief Fletcher, that's all	1 CERTIFICATE 2 STATE OF SOUTH CAROLINA. 3 COUNTY OF CHARLESTON: 4 I, EVE WILBANKS, Registered Professional 5 Reporter and Notary Public, State of South 6 Carolina at Large, certify that I was authorized 7 to and did stenographically report the foregoing 8 deposition; and that the transcript is a true 9 record of the testimony given by the witness 10 I further certify that I am not a 11 relative, employee, attorney or counsel of any of 12 the parties, nor am I a relative or employee of 13 any of the parties' attorney or counsel connected 14 with the action, nor am I financially interested 15 in the action. 16 WITNESS MY HAND AND OFFICIAL SEAL this 17 19th day of June, 2013, in the City of Charleston, 18 County of Charleston, State of South Carolina. 19 20 21   22 Registered Professional Reporter 23 and Notary Public 24 25 My commission expires. December 16, 2014

7 (Pages 22 to 25)

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~~CONFIDENTIAL~~

From: Jennifer M. Hawley Shiel (/O=FIRST ORGANIZATION/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=SHIELJ137528770)
Sent: Wednesday, October 24, 2007 5:03 PM
To: 'Joe Trez'
Subject: Legal File System
Attachments: Untitled attachment 168783.htm; File List.xls; File System.xls



Untitled

achment 168783.ht



File List.xls



File System.xls

I've mentioned this to you, but I thought you might want to see this system Mark & I have devised. It works like a champ. The only thing I haven't done is put in all the locations yet... I'm using a numbering system for the file locations, with 1 being the copier room and 4 being Records Management. That way when Mark wants a file, we can go straight to it without looking in several places. I also insist on using the file Out cards when we pull a file. It keeps me from having to try to remember who has what file. I've driven myself crazy too often to rely on my memory.

The other list attached explains the file numbering system.

It is really a thing of beauty.

Mrs. Jennifer Shiel
President's Support Office
Bond Hall, Room 369
Phone: (843) 953-5815
Fax: (843) 953-7592

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Culture Change at the Air Force Academy

October 14, 2003 at 12:00 AM EDT

[Sorry, the video for this story has expired, but you can still read the transcript below.]

TRANSCRIPT

TOM BEARDEN: Cadets call it "the beast," five weeks of hard-core basic training that all freshmen must endure before starting classes at the Air Force Academy. But this year, the training was a little less beastly. While freshmen still had to endure grueling physical challenges, they did so without the humiliating verbal assaults by upperclassmen that characterized the training in years past. Instead, the older cadets shouted out encouragement to their new charges.

LT. GEN. JOHN ROSA, Academy Superintendent: There's not so much "in your face," as we call it, the yelling and the one-on-one interchange. It's been a much more professional environment.

TOM BEARDEN: The new approach is part of a broad effort to repair the school's damaged reputation after a series of highly publicized investigations into allegations of widespread sexual assaults over many years, and charges that the academy punished the victims instead of the perpetrators.

LT. GEN. JOHN ROSA: But we'll get there.

TOM BEARDEN: Newly installed superintendent Lieutenant General John Rosa thinks treating young cadets with more professionalism from the very start will foster more unit cohesion, and reduce hostility directed at female cadets, and he hopes that in turn will reduce sexual harassment and assault.



LT. GEN. JOHN ROSA: If I said we were changing one thing, we're changing young people's mindsets. And we're trying to change, over time, if you change the mindset, what's acceptable and what's not acceptable.

TOM BEARDEN: It all started last spring when dozens of former cadets came forward saying they had been raped while at the academy, and that when they reported the rapes, they were ignored by their superiors.

In March, the Air Force secretary replaced the academy's top leadership team, and ordered that a 165-point Agenda for Change be adopted. In May, the Defense Department Inspector General's Survey found that nearly 20 percent of female cadets said they had been victims of sexual assault, 7 percent said it was in the form of rape or attempted rape. And in September, a civilian commission appointed by Congress concluded that there had been a "deep chasm" in leadership, both at the academy and the Pentagon. Former Congresswoman Tillie Fowler chaired that investigation.

TILLIE FOWLER: We believe that this chasm in leadership helped create an environment in which sexual assault became a part of life. The roots of this crisis go as deep as the institution's culture. Just last year, more than one-fourth of the male cadets responding to the academy's own survey stated they did not believe that women belong at the academy. This is a severe problem in the culture of the academy, and reflects a failure of character and values.

SPOKESPERSON: Hup, two, three, four, hup, two, three, four...

TOM BEARDEN: General Rosa and the new leadership team say they're trying to change that culture. In addition to the "gentler" treatment of freshmen, they have a tough new alcohol policy. A cadet can be kicked out after two infractions. Academy officials say that alcohol was involved in at least 40 percent of the sexual assault cases.

The new administration has also made it clear that criminal activity of any kind will not be tolerated. Even failure to report offenses of other cadets can be grounds for dismissal.

There's a new emphasis on educating cadets about the necessity to report assaults, and a demand that cadets not tolerate inappropriate behavior by their peers. Recently, Brigadier

General John Weida, the new commandant of the cadets, brandished a sword as he lectured students about the warrior heritage they needed to uphold.

BRIG. GEN. JOHN WEIDA, Commandant of Cadets: Ladies and gentlemen, if you think we don't have a sexual assault or sexual harassment problem at the Air Force Academy, your head is in the sand. Pull it out right now.

If we don't reverse this trend, the very existence of this institution is threatened. And there's a few in the audience that I've made eye contact with that I'm not sure get it. You will get it, or you will leave this institution.

TOM BEARDEN: Senior Cadet Dana Stockton says he's gotten the message loud and clear. He says he won't stand idly by if he sees offensive behavior.

DANA STOCKTON, Senior Cadet: We all see little things now that need to be fixed, just the little things that never have been looked at before. And all those things now, we see, and we'll stop.

TOM BEARDEN: Little things like?

DANA STOCKTON: Little things like stupid jokes. There's... sometimes stupid jokes go on here, and they're not necessary, and a lot of the females here just brush it off, which... and it's not a big deal. But it is a big deal now, and we realize that, and those things are changing.

TOM BEARDEN: Junior Cadet Stephanie Vidal says other things are changing, too. In previous years, Vidal says many female cadets felt pressure not to report assaults because it would reflect poorly on their squadrons. She says that's not the case anymore.

STEPHANIE VIDAL, Junior Cadet: There's a sense that if we have an issue as females to discuss, that people are open to hear and to listen. There's also a sense that if there is a problem, you won't get ridiculed or ostracized for coming forth.

TOM BEARDEN: In the past, assault victims said the system in which senior cadets controlled virtually every aspect of a freshman's life also needed to change. Last spring, a rape victim explained the connection to the NewsHour correspondent Betty Ann Bowser.

"LIZ," Former Cadet: In essence, it's kids training kids, and that's really what it comes down to. It's teenagers on teenagers. And there is a tremendous amount of power vested in these teenagers that are so-called "above" other teenagers, just because of the ranking system. And that does teach discipline, but it is just taken way out of context sometimes.

BETTY ANN BOWSER: But does that also encourage men to use their power over women, including rape?

"LIZ:" Yes, it does. They really... it really is a power trip. It definitely is a power trip. That's what rape is all about. It's not about the sex at all.

TOM BEARDEN: Senior Cadet Kristina Belcourt says that training system has been abolished by the new administration.

KRISTINA BELTCOURT: You don't have people in a direct position of authority, like where they control every single aspect of your life anymore. You have people that will help you out, more so than controlling you. There's a lot more discipline instead of, like...

TOM BEARDEN: Harassment?

KRISTINA BELTCOURT: Not harassment. We called it... we called it beating, but it wasn't beating. It was just physical training. So there's a lot less of that, and I think that really improves the environment around here.

TOM BEARDEN: But even as some cadets see positive changes, a recent academy survey tells a different story. Eight in ten cadets say they've heard other cadets make sexual slurs and jokes. 40 percent of the cadets said they drank while underage. Almost one-fifth of female cadets said they don't know how to report sexual misconduct. And a nearly equal number of women said they feared reprisal if they did file such reports.

Ironically, some of that fear may be a result of the new Agenda for Change, which abolished confidential reporting of sexual assault. Previously, victims' names weren't made public. That change troubles Cadet Belcourt.

KRISTINA BELTCOURT: I have problems with it, simply because the victims that I've known have had problems bringing it forward, because you don't want your dirty laundry to be

aired to everyone.

TOM BEARDEN: The loss of confidentiality also troubled the Fowler Commission.

TILLIE FOWLER: The agenda for change overlooked an established form of privileged communication that is currently available throughout the armed forces, and can benefit cadet victims.

TOM BEARDEN: General Rosa says the reason confidentiality was abolished was to aid in the prosecution of cases.

LT. GEN. JOHN ROSA: You report a crime. That way, you have a victim. The commander — it's in the chain of command. The commander knows that we have a victim. We can preserve evidence, take care of that victim, preserve evidence so that as the trauma passes, we can bring the appropriate action to the alleged perpetrator. So that's the program we have now.

TOM BEARDEN: But Rosa says Air Force officials are aware of the widespread opposition to the change, and they're working to see if a compromise solution can be worked out.

SPOKESMAN: Hup, two, three, four...

TOM BEARDEN: He says the entire Agenda for Change is just a blueprint, and will be revised if the culture doesn't fundamentally improve at the academy.



JOSEPH P. RILEY, JR.
Mayor

City of Charleston

SOUTH CAROLINA

POLICE DEPARTMENT

06 August 2001

REUBEN M. GREENBERG
Chief of Police

Colonel John G. Lackey III
The Citadel / Office of the Commandant
171 Moultrie St.
Charleston, SC 29409

RE: Investigation regarding Captain Mike Arpaio

Dear Colonel J. G. Lackey III,

I'm writing this letter to inform you of my investigation regarding Captain Mike Arpaio. I have interviewed numerous persons and could not establish enough probable cause to arrest Captain Mike Arpaio; therefore the investigation has been closed due to the fact that I was unable to prove that Captain Arpaio touched (b) (6) in an inappropriate manner. However, during my investigation I discovered information on some of the activities or practices that are going on during The Citadel Summer Camp Sessions that should be brought to your attention.

While speaking with staff members, campers, and parents the following information was established. Some of the counselors are allowing certain campers to leave their rooms after they are supposed to be in bed for the night. While these campers are out of their rooms they are allowed to go into camp counselor's room, watch movies, and fall asleep in the same bed with counselors until the following morning. Some of the counselors engage in sexual conversation in the presence of the campers. A camper had seen alcohol and tobacco products that belong to counselors in the barracks. A Counselor has taken certain campers off campus on functions that were not camp related functions without the parent's consent.

These are the most serious findings that were brought to my attention during my investigation. I am sure these activities will be addressed and corrected in the future. If there are any questions or concerns regarding this matter, please feel free to contact me at (843) 720-1999.

(b) (6)



180 LOCKWOOD BLVD. CHARLESTON, SC 29403



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
Mother Doe A,

Plaintiff,

v.

The Citadel

Defendant,

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
CAMPER DOE 6

Plaintiff,

v.

THE CITADEL,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No.: 2011-CP-10-9200

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No.

AFFIDAVIT OF
LOUIS NEAL "SKIP" REVILLE

I, Louis Neal "Skip" ReVillle, provide this affidavit of my own free will on Friday, September 20, 2013 at the Perry Correctional Institute; 430 Oaklawn Road; Pelzer, SC; 29669.

1. Due to the lack of adult supervision and oversight of the barracks at night, I was able to sexually abuse numerous minor campers, at night, in my assigned barracks room, behind a closed door, while I was employed by The Citadel Summer Camp during the summer sessions of the camp in 2001, 2002 and 2003.
2. During the 2001, 2002, and 2003 sessions of The Citadel Summer Camp, Bill Bates and Jenni Garrott never visited or inspected my barracks room after Taps had been



played. In addition, neither the Tactical Officer, nor the on duty CCQ visited or inspected my barracks room after Taps had sounded.

3. After the Arpaio allegations surfaced at the end of the First Session of the 2001 Citadel Summer Camp, staff training was held before the Second Session began to emphasize that campers and counselors were not to be in the same barracks room alone. The Camp's Director, Bill Bates, and Deputy Director, Jenni Garrott, did nothing to see that this emphasized rule was enforced.
4. During the 2002 Summer Camp while I was employed as the Senior Counselor, Bill Bates and Jenni Garrott had a meeting with me. They explained that they had heard that I was having minor male campers visit my barracks room at night, after Taps, when the campers were to be in bed. I was told not to put myself in a situation where I could get into trouble. After this meeting, no one ever visited or inspected my room after Taps to enforce the no minors in counselor's room rule.
5. During the ^{2003 ER} ~~2002~~ Summer Camp while I was employed as the Senior Counselor, Col. ^{ER} John Lackey met with me and advised me that I should not place myself in ^{Col. Lackey had been advised by another counselor that} compromising situations with the minor male campers. ^{minor campers}
6. During 2001, 2002, and 2003, while employed by The Citadel Summer Camp, I ^{were visiting} would regularly have nightly food deliveries brought to me at the barracks and would ^{my room at night} invite the minor male campers that I had targeted for sexual abuse to join me in my ^{after taps.} room to help me eat it. The food was used to lure the minor male campers into my room for grooming and sexual abuse. The amount of food ordered was clearly for more than one person. No one ever questioned the amount or frequencies of the deliveries of food that were made to me at the barracks.

7. My activities with the minor male campers did not change as a result of these meetings. The no campers in counselor's room rule was not enforced, and I remained free, as the 2002 Senior Counselor in charge of the barracks at night, to continue to have minor male campers visit my room after Taps.
8. In 2002, one of the campers had a heat rash between his legs and could hardly walk. The camper was to stay with me and not participate in activities until this rash cleared up. Jenni Garrott opened the door and walked into my room one afternoon to find the camper with the rash sitting on one side of the couch and me on the other. Ms. Garrott simply warned me that I should not be in my room with a minor camper.
9. It is my understanding that I should have been fired for violating the 2002 Camp Policy of no campers in counselor's rooms behind closed doors.
10. One afternoon, at the beginning of the Second Session of the 2003 Citadel Summer Camp, Jenni Garrott opened the closed door of my assigned barracks room and caught me with a minor Junior Counselor. (I am advised that this minor male is referred to as Camper Doe 6 for litigation purposes.) The minor had just completed a run and I was rubbing sports cream on the Junior Counselor's upper thighs and calves. I was grooming Camper Doe 6 and had not yet sexually abused him at the time Ms. Garrott caught the two of us alone. Ms. Garrott warned me that I should not permit minors to be alone with me in my room.
11. It is my understanding that I should have been fired for violating the 2003 Camp Policy of no campers in counselor's rooms.

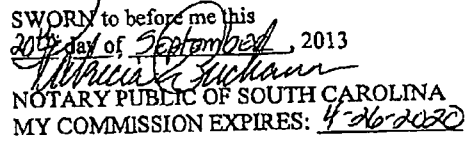
JK

12. Had I been fired when Ms. Garrott caught me alone with Camper Doe 6, I would not have been allowed the opportunity to sexually abuse Camper Doe 6 on several occasions during the remainder of the 2003 Second Session.
13. As a result of the Arpaio incident, I came to the realization that it was not normal to show pornography to and masturbate with minor males. I also realized that it was criminal to participate in these activities with minor males. In spite of this knowledge, and a ~~high~~^{strong} desire on my part to cease the sexual abuse, the lack of competent adult supervision and oversight of the barracks at The Citadel Summer Camps, especially at night, made it all too easy for me to continue to prey upon and sexually abuse the minor male campers.
14. As an Academic Review Tutor in 2001, I was permitted to hold my review sessions with the minor male campers in my barracks room instead of the Mess Hall, where all other review sessions were held. I used these closed door review sessions ^{to} ~~to groom~~ ^{be} campers that I had targeted to sexually abuse.
15. In 2001, 2002 and 2003, had there been frequent and random after Taps room checks to enforce the no campers in counselor's rooms rule, I would have stopped having campers visit my barracks room at night for fear of being caught and fired;

or I would have actually been caught in the act of sexually abusing the minor male campers resulting in my being fired and reported to law enforcement. .

Further affiant sayeth not.


Louis Neal "Skip" Reville

SWORN to before me this
20th day of September, 2013

NOTARY PUBLIC OF SOUTH CAROLINA
MY COMMISSION EXPIRES: 4-26-2020

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Charleston: 12-GS-10-1835 et al
	)	Berkeley: 12-GS-08-0353 et al
Louis Neal "Skip" ReVile,	)	Dorchester: 12-GS-18-0425 et al
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Hearing was held on June 13, 2012, before The Honorable R. Markley Dennis, Jr. in Courtroom 4C of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel, as follows:

APPEARANCES:

Scarlett Wilson, Solicitor
Debi Herring-Lash, Assistant Solicitor
9TH CIRCUIT SOLICITORS OFFICE
Charleston, South Carolina

-and-

Meghan Hall, Assistant Solicitor
1ST CIRCUIT SOLICITOR'S OFFICE
St. George, South Carolina
Appearing for State of South Carolina

Craig Jones, Esq.
Appearing for Defendant

Lewis Hems, Esq.

William Nixon, Esq.

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 901
Johns Island, South Carolina 29457
dGarrison@sccourts.org



1 it is hard to sit here and listen to this. It
2 takes a toll year after year. We came to you
3 and asked that you hear this case and you didn't
4 run, and you could have. You never run from us.
5 I know you are able, but I also know the toll
6 that it takes.

7 The clerk's office has been remarkable
8 from the start of this case, trying to stream-
9 line things so that we could get this done at
10 this time; for the victims, that was very
11 important for us. I appreciate all the work
12 that they did for us, from the Grand Jury
13 process forward.

14 You know, we've heard so much today.
15 What I think is very important for all of us
16 to see is that child molestation is an adult
17 problem. It is our problem as adults.

18 THE COURT: Amen.

19 SCARLETT WILSON: When we see people
20 that have children -- as you know, I don't have
21 children of my mine, I do have many in my life.
22 It takes enormous trust to raise your child and
23 to be able to give them a healthy and happy
24 life. You have to trust other people. You have
25 to trust other parents, you have to trust

1 coaches, you have to let them grow and be
2 independent and learn from others. To have that
3 trust and then have it taken away, I know what I
4 imagine that would be like. I also know that I
5 can't really imagine, not being a parent myself,
6 what it must feel like to have to take that leap
7 of faith, have that trust and then have it taken
8 away.

9 You know, the victim who stepped
10 forward tapped into something that I would hope
11 would be brought forward, and that's the anger.
12 We hear so much about the tears, about the
13 mourning, the loss, but the anger is there.
14 While we wouldn't ask the Court to do anything
15 out of anger, this prosecution has not been out
16 of anger, but it is outrageous -- it is
17 outrageous that some that we have trusted in
18 this community, some of those people have taken
19 advantage of loopholes in the law and have
20 shirked their responsibilities, morally, to do
21 what was right.

22 That aspect of this case is something
23 that this victim has taken on. While I don't
24 have children, I will take the liberty of saying
25 (addressing John Doe #13), 'Son, it was not your

1 fault. It was not your job.'

2 There were some who had a job and who
3 had a role. To hear those people neglect and --
4 to see that they have neglected to stand up and
5 the time to do something strong, something
6 right, reputations be damned. That opportunity
7 was neglected.

8 To hear them justify that by saying
9 'there was no corroboration, we didn't have
10 enough evidence,' there is never enough evidence
11 on day one. There is never enough evidence when
12 witness one, victim one comes forward on that
13 first day. People who are not trained, who do
14 not have the tools and who do not have the
15 motivation but had the audacity to say there was
16 no corroboration, there was no case, that's what
17 we are here for. We have some of the best in
18 the state, if not the nation, in prosecution.
19 We have law enforcement. We have the D. Norton
20 Children's Center. We are not the backwoods.
21 We have every resource you can imagine in this
22 community and it was there. People were
23 discouraged from using it. It is a true shame.

24 That said, the investigation that
25 eventually took place was an investigation

1 gearing us for trial. That investigation could
2 have easily taken place a decade ago.

3 But what happened that Friday when the
4 phone started ringing, Ms. Herring Lash was
5 brought into the case immediately, I was brought
6 in. Mount Pleasant Police Department,
7 Detectives Bacon and Willis, they did a
8 remarkable job -- because in a case like this,
9 with this volume, you have two things that can
10 happen -- and I know you see it in some of our
11 bigger trials. One is that you can have too
12 many chiefs and everybody wanting to be a boss,
13 or you can have so many people involved that
14 nobody wants to take responsibility and nothing
15 gets none. In this case they were organized,
16 they were methodical. We met, we had a plan and
17 the plan was to get this thing ready for trial
18 in June, one way or the other. If it was a
19 guilty plea, great. If it was a trial, great.
20 But we wanted these children to be able to have
21 a summer with this behind them and start the new
22 year fresh. We have accomplished that. I
23 commend them for that -- of course, Ms. Hall,
24 Ms. Herring Lash, all of the law enforcement
25 agencies that were involved.

1 Your Honor, you know, from the many
2 conversations that we've had administratively
3 how I feel about the importance of accepting
4 responsibility and the value that it has in our
5 system. It's critical in almost every case.

6 In this case, this defendant -- he
7 has cooperated and he has accepted full
8 responsibility. While we appreciate that, it's
9 also important to note that he has started from
10 day one the effort to save his skin. His
11 manipulation continued from the moment that this
12 thing unfolded. There was one person in this
13 world, on October 28th, one person, who realized
14 the landslide, the landslide of victims, and
15 accusations that were going to be out there --
16 it was him. He knew more than anyone and he
17 started with the letters to parents, trying to
18 reach back out to victims, to mitigate. I
19 don't want the Court to misunderstand that in
20 considering accepting and admitting
21 responsibility.

22 You know, the overwhelming, overarching
23 thing is that this man has threatened, gravely
24 threatened two of the most important aspects of
25 any young person's life, I believe, especially

1 in this country. The first is the involvement
2 in sports. Gosh, so many of us who have gone on
3 to do well can look back to those times playing
4 sports. Having a team. Having people taken an
5 interest in them. Having those great mentors.
6 Parents kinda have to love you. When you've got
7 a wonderful coach or a teacher who invests in
8 you, that does wonders for your self-worth.
9 This man has threatened that, greatly threatened
10 it. I am using that word for a reason, and I'll
11 explain that in a minute.

12 The other aspect, obviously, is that
13 this man has used and abused in the name of God.
14 He used God as a ruse, as a ruse. He was more
15 methodical than we were, and he epitomized evil,
16 he epitomized what the devil can do. It's hard
17 enough in this life, especially in this day and
18 age, to find that spiritual path; to have
19 someone threaten that spiritual path the way
20 that he has is abominable. We've seen that here
21 today.

22 I use the word "threaten" not to
23 minimize what's happened here but I think it's
24 important for all of us, as the adults in the
25 room, for all of us to recognize and to give

1 hope that these lives -- these lives -- don't
2 have to be relived. They are threatened. It is
3 a long road. For those victims, especially the
4 ones in Dorchester who were not able or willing
5 to come forward, we can only hope that the
6 message gets out that they've got to deal with
7 it now, because it will be back one way or the
8 other -- one way or the other.

9 There is hope. We don't know what's
10 going to happen from here. The threat will be
11 there for a long time but these lives don't have
12 to be ruined. We have to remember that this
13 young man, and the young men who did cooperate
14 with police and were able to -- perhaps they had
15 that family support that some don't, -- that
16 they did stand up, unlike some of the adults in
17 this community. They did stand up when it was
18 time. They did do the right thing. I believe
19 that they've given you all you need to put Mr.
20 Reville away forever.

21 From hereon, we as a community have to
22 make sure that we give these victims hope. We
23 have to make sure that we recognize that this is
24 not an isolated problem -- and that is one of
25 the things that was so great about your

1 (addressing John Doe #13) talking here today.
2 In this country, we act like this just doesn't
3 happen. We have such a hard time with these
4 cases because people don't want to believe it.
5 They do not want to believe it.

6 Perhaps one of the good things that
7 will come out of this case and the publicity,
8 perhaps one of the good things that will come
9 out of Pennsylvania, is that finally adults will
10 believe that this stuff really does happen, that
11 children really aren't equipped to deal with it,
12 that we have to deal with it. We can't just
13 look the other way, pass the buck and say,
14 'Next.'

15 As I mentioned, Debi Herring Lash was
16 brought into this case that day, as was I. We
17 are fortunate to have her, certainly, in the
18 office. But more than that, bigger than that,
19 in this community.

20 THE COURT: I agree.

21 SCARLETT WILSON: She is going to
22 address the Court more specifically as to
23 sentencing, but thank you for your patience and
24 for your willingness to serve.

25 THE COURT: Thank you, Solicitor.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Mother Doe A,)

Plaintiff,)

v.)

The Citadel)

Defendant,)

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

CAMPER DOE 6)

Plaintiff,)

v.)

THE CITADEL,)

Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No.: 2011-CP-10-9200

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No.

AFFIDAVIT OF
LOUIS NEAL "SKIP" REVILLE

I, Louis Neal "Skip" Reville, provide this affidavit of my own free will on Friday, September 20, 2013 at the Perry Correctional Institute, 430 Oaklawn Road, Pelzer, SC 29669.

1. In April of 2007, I met with Mark Brandenburg and Col. Joseph Trez in Bond Hall on the campus of The Citadel.

2. I was informed during the meeting that a camper who attended The Citadel Summer Camp in 2002, while I served on the camp staff as the Head CCQ, alleged that I had acted inappropriately with him. I lied to Mr. Brandenburg and Col. Trez and denied allegations



ek

of inappropriate activity with the minor camper. I had, in fact, sexually abused the camper in my assigned barracks room, at night, behind a closed door.

3. After the April 2007 meeting with Mr. Brandenburg and Col. Trez, I lived in fear for a year that The Citadel was going to report the child sexual abuse allegation to law enforcement which would result in my being arrested and charged.

4. In October 2011, when confronted by the Mt. Pleasant Police and questioned about sexually abusing minor males, I freely co-operated with the law enforcement investigators and admitted/confessed to the sexual abuse of my victims.

5. Being questioned by law enforcement in October 2011 made me realize that I had been caught, and that I was not going to be able to lie my way out of the child sexual abuse accusations that were being made against me.

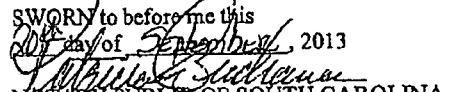
6. Had I been reported to and questioned by law enforcement officials any time after the April 2007 meeting with Dr. Brandenburg and Col. Trez, I would have admitted to the sexual abuse of the complaining minor camper, as well as the other minor campers that I sexually abused while I was employed by The Citadel Summer Camp during the years 2001, 2002, and 2003.

7. Had The Citadel reported the allegations of child sexual abuse to law enforcement, and had I been questioned by law enforcement in or about April of 2007, my admission/confession of the child sexual abuse would have resulted in my conviction; and I would not have been able to sexually abuse numerous other minor males until my arrest in October 2011.

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Further affiant sayeth not.


Louis Neal "Skip" Renville

SWORN to before me this
20th day of September, 2013

NOTARY PUBLIC OF SOUTH CAROLINA
MY COMMISSION EXPIRES: 4-26-2016



STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CASE NO. 2011-CP-10-9200
MOTHER DOE A,)
Plaintiff,)
vs.)
THE CITADEL,)
Defendant.)

SATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CASE NO. 2012-CP-10-1860
JOHN DOE CAMPER,)
Plaintiff,)
vs.)
THE CITADEL,)
Defendant.)

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CASE NO. 2012-CP-10-1858
JOHN DOE 2,)
Plaintiff,)
vs.)
THE CITADEL,)
Defendant.)

VIDEOTAPED
DEPOSITION OF:

PATRICIA KINARD



CAROLINA REPORTING

843.832.0801 * www.carolina-reporting.com

Electronically signed by Denise Lauder (301-268-293-2597)

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Page 30	Page 32
1 way the question was asked.	1 CERTIFICATE OF REPORTER
2 THE WITNESS: I see	2
3 MR. STONEY: So don't take that as any	3 I, Carol Denise Lauder, Registered
4 signal from me. If you know the answer to the	4 Professional Reporter and Notary Public for the
5 question, go ahead and answer.	5 State of South Carolina at Large, do hereby certify
6 THE WITNESS: Okay. Could you repeat	6 that the foregoing transcript is a true, accurate,
7 it again?	7 and complete record
8 BY MR. SLOAN.	8 I further certify that I am neither related
9 Q. In 2007, if you had received a call	9 to nor counsel for any party to the cause pending
10 when you were the administrative assistant to the	10 or interested in the events thereof.
11 President from a Citadel alumnus that his son had	11 Witness my hand, I have hereunto affixed my
12 been at the summer camp and was sexually abused	12 official seal this 15th day of June, 2013 at
13 there, isn't it true that you would have called	13 Charleston, Charleston County, South Carolina.
14 Public Safety?	14
15 A. Yes, sir	15
16 Q. Okay. And is there a particular	16
17 Citadel policy that you would refer to to do that	17
18 or is it just common sense? Why would you do that?	18
19 A. There may be a policy, sir, I don't	19
20 know, but I believe that would be common sense.	20
21 Q. Okay. All right. I believe that's all	21
22 the questions that I have for you. I don't know if	22
23 Ellis has any.	23
24 MR. ROBERTS: None.	24
25 MR. STONEY: I don't have any.	25
Page 31	
1 THE VIDEOGRAPHER: This concludes the	
2 deposition of Patricia Kinard Off the record at	
3 3:03 Tape one	
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9 (Pages 30 to 32)

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STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CASE NO. 2011-CP-10-9200
MOTHER DOE A,)
Plaintiff,)
vs.)
THE CITADEL,)
Defendant.)

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CASE NO. 2012-CP-10-1860
JOHN DOE CAMPER,)
Plaintiff,)
vs.)
THE CITADEL,)
Defendant.)

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CASE NO. 2012-CP-10-1858
JOHN DOE 2,)
Plaintiff,)
vs.)
THE CITADEL,)
Defendant.)

VIDEOTAPED DEPOSITION OF:
COLONEL GLENN ADDISON



1 he never saw this letter, right?

2 A. That's what he shared with the board,
3 yes.

4 Q. If General Rosa had seen this letter on
5 May 16th of 2007, would you have expected him to
6 fully inform the board of what he had been told
7 about these allegations?

8 A. I think he would have initially
9 contacted the chairman and maybe the executive
10 committee and then -- yes, he would have informed
11 the entire board in a short period of time, based
12 upon his previous experience and knowledge.

13 Q. The school had just come through the
14 Arpaio litigation, where it paid out \$3.5 million
15 and it was truly an embarrassment to The Citadel,
16 right?

17 A. The Insurance Reserve Fund was 3.5, and
18 it was -- it was an embarrassment because it
19 involved one of our own and -- but it was also --
20 it was just an embarrassment.

21 Q. If General Rosa received this letter on
22 May 16th of 2007, tell me why it's not -- if he
23 never said anything to the board about it, why
24 it's not a cover-up by him, or, in the
25 alternative, gross incompetence?

1 MR. COOKE: Objection to the form.

2 A. As I said before, I had complete
3 confidence in General Rosa. He's never given me
4 any reason to question his work; he's a man of
5 integrity and honor. And I take him at his word
6 that he never saw it. Why he never saw it, I
7 don't know. But all I can do is take him at his
8 word for that. Because nothing that I've seen him
9 do the entire time I've known him would have
10 prevented him from taking immediate action had he
11 seen this. There would have been no reason not to
12 on his part; he would have. And that's why I
13 wrestled with this when I first saw it; I tried to
14 figure out what had occurred. But all I could
15 assume was he knew nothing, and I take him at his
16 word that he didn't.

17 Q. I take it, then, that if you would have
18 expected General Rosa to immediately act based on
19 this and tell the board everything, we know one
20 person for absolute sure who knew everything in
21 there and who authored the letter and signed it?

22 A. Yes.

23 Q. And we know for sure he never told the
24 board about this, did he?

25 A. No.

1 Q. That's gross incompetence, isn't it?

2 MR. COOKE: Objection to the form of the
3 question.

4 A. I'm not -- I don't know what the term
5 would be for it. I have a -- my lack of
6 confidence in his abilities. Whether it rises to
7 the level of gross incompetence or whether he was
8 actually in the process of doing an investigation,
9 trying to corroborate or whatever, I don't know.
10 But should this have been shared with the
11 President and the -- by the policy or by the
12 guidelines? Absolutely. And that's why I was as
13 adamant as I was that we should have been
14 informed.

15 Q. And if Mr. Brandenburg's excuse for not
16 telling the board in May or June about everything
17 in this May 16, 2007, letter -- his excuse is
18 that, I was doing an investigation, then you would
19 agree with me that his investigation was
20 pathetically bad, wouldn't you?

21 MR. COOKE: Objection to the form of the
22 question.

23 A. I think I used those words.

24 MR. SLOAN: Okay. All right, sir. Why
25 don't we take a break and we'll --

Mark C. Brandenburg

From: David Stuckey <dastuckey@irf.sc.gov>
Sent: Friday, November 16, 2007 2:40 PM
To: Mark C. Brandenburg
Subject: RE: [REDACTED] Incident
Attachments: W-9 Form (Mark Brandenburg).pdf

Mark,

We have no problem in reimbursing you for your investigation into this matter.

Please complete the attached W-9 Federal Identification Form and fax it to the below listed number. Once we have received the completed W-9 form, your reimbursement check will be processed within 10-14 working days.

David L. Stuckey, Jr.
Professional Liability Representative
South Carolina Insurance Reserve Fund
P.O. Box 11066
Columbia, SC 29211
Office: (803) 737-0028
Fax: (803) 737-3757

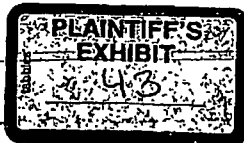
From: Mark C. Brandenburg [mailto:mark.brandenburg@citadel.edu]
Sent: Friday, November 16, 2007 12:20 PM
To: Mark C. Brandenburg; David Stuckey
Cc: Dan Parris
Subject: RE: [REDACTED] Incident.

Gentlemen

I have held this file on my desk since August, thinking there would be additional developments. There were a scant few, in the days immediately before freshman matriculated, but since then, I have had no more communication with the [REDACTED]. As a result, I submit this e-mail as an interim report -- and request for reimbursement. I plan to put this file back in my file cabinet, but do not plan to take any action on it further.

As you may recall, during the week before freshman reported, [REDACTED] called, asking if The Citadel would accept [REDACTED] in this year's freshman class. I negotiated intensely with [REDACTED], explaining that [REDACTED] lacked at least [REDACTED] required for admission. Thus, we discussed a scenario in which [REDACTED] would take those classes at a community or technical college, and then matriculate with next year's freshman class. Under that scenario, The Citadel would also reach a financial settlement with [REDACTED]. I spoke with Dan during those negotiations, and he gave me authority of twenty-thousand (\$20,000) dollars at that time. He asked for some documentation of expenses, and I relayed that request to [REDACTED]. [REDACTED] tentatively agreed to the proposal, and promised to provide me with documentation with which we could reach a financial settlement. However, I have not heard from him since.

As I indicated in my e-mail earlier (copied below), [REDACTED] now lives in [REDACTED] whereas [REDACTED]. At last contact [REDACTED] was working for a grocery store, and living with friends. During our negotiations [REDACTED] indicated that he planned to bring [REDACTED] from [REDACTED] to [REDACTED] to attend a community college. Thus, I suspect that [REDACTED] made that suggestion. [REDACTED] balked, and decided against attending The Citadel whatsoever. Of course, I have not called the [REDACTED] confirm that suspicion.



THE CITADEL 0000651
(FOIA 2011)

We COULD receive a call sometime next summer from the [REDACTED] if [REDACTED] manages to take the required classes next spring or summer. I do not anticipate that will happen, however. The cadets now at The Citadel who attended camp with [REDACTED] several years ago are currently [REDACTED] and will be [REDACTED] when [REDACTED] enters The Citadel next fall. I doubt he will want to face them in that situation. Nonetheless, I will put [REDACTED] in the cabinet, and diary it for next spring.

Fortunately, since we now have a transcript of my interview with [REDACTED] we have an unequivocal trigger of the statute of limitations. As you know, under S.C. Code Ann. § 15-3-555, "An action to recover damages for injury to a person arising out of an act of sexual abuse or incest must be commenced within six years after the person becomes twenty-one years of age or within three years from the time of discovery by the person of the injury and the causal relationship between the injury and the sexual abuse or incest, whichever occurs later." At this point, we know that [REDACTED] as "discovered"... the causal relationship between the injuries he described in the interview and the alleged abuse. Thus, at the very latest, the statute began to run on the date of the interview in June. Unfortunately, though, since the statute provides that the limitations period does not expire until three years after that discovery or six years after the person becomes twenty-one years of age, the period arguably does not expire until [REDACTED] birthday. That date is [REDACTED]

As I indicated earlier, I will be happy to send you a transcript of the interview; if you wish, in the meantime, though, I am attaching a pdf version of the receipts which I collected during my trip to [REDACTED] (I will be happy to send hard copies of these documents, or the originals, to you via regular mail, if you wish.) These only consist of the flights from [REDACTED] and from [REDACTED] and the hotel room and conference room I used in [REDACTED]. This amount totals \$1080.66. I put all of those amounts on my personal credit card, so if you could have a check issued to me, I would appreciate it. I am also attaching a copy of the bill from the court reporter, in the amount of \$770. That bill is still outstanding, so I would appreciate you issuing a check directly to that company.

Thank you again for all of your cooperation in this incident. I am sorry we were not able to close it with a release, but I feel confident that we are well armed if [REDACTED] should ever decide to pursue a case against The Citadel.

I hope you have a wonderful Thanksgiving!

Mark

Mark C. Brandenburg
General Counsel
The Citadel
171 Moultrie Street
Boad Hall, Room 369
Charleston, SC 29409
(843) 953-5252 (office)
(843) 475-8465 (mobile)
(843) 953-7592 (fax)
mark.brandenburg@citadel.edu

From: Mark C. Brandenburg
Sent: Wednesday, August 08, 2007 10:16 AM
To: 'David Stuckey'
Cc: Dan Parris
Subject: RE: [REDACTED] Incident

David and Dan,

I stopped in [REDACTED] after my convention trip to [REDACTED] at the end of June. I met with [REDACTED] (the former camper / complainant) and his parents. [REDACTED] We talked for a couple of hours, and I recently received the rough draft of the interview. I know that [REDACTED] received a copy as well, and has forwarded it on to his son. I have not received an errata sheet, however.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Mother Doe A,

Plaintiff,

v.

The Citadel,

Defendant.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

John Doe Camper,

Plaintiff,

v.

The Citadel,

Defendant.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JOHN DOE 2,

Plaintiff,

v.

THE CITADEL,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No.: 2011-CP-10-9200

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No.: 2012-CP-10-1860

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No.: 2012-CP-10-1858

FILED
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JULIE A. ARNOLD
CLERK OF COURT
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**REPLY BRIEF OF PLAINTIFFS
MOTHER DOE A, CAMPER DOE 6 AND
JOHN DOE TO THE CITADEL'S
MEMORANDUM IN SUPPORT OF
SUMMARY JUDGMENT AS TO JOHN DOE
CAMPER, JOHN DOE 2 & MOTHER DOE 2.**

In response to Defendant's Memorandum in Support of Motion for Summary Judgment, Plaintiffs Mother Doe A, Camper Doe 6 and John Doe submit the instant Reply brief regarding the issue of duty.¹ On April 18, 2014, the Court heard arguments on The Citadel's summary judgment motions as to Plaintiff's John Doe Camper, John Doe 2, and Mother Doe 2. While ruling in favor of Plaintiffs as to the statute of limitations, the Court took under advisement the issue of whether The Citadel owed a common law duty of care to Plaintiffs. As set forth herein, the testimony of Citadel 30(b)(6) deponent Mark Brandenburg and Citadel expert Gary Margolis leads to the reasonable inference that such a duty exists in the instant case.

I. THE QUESTION OF DUTY IN THIS CASE IS ONE OF FACT.

The Citadel incorrectly maintains that the issue of duty in this case is a matter of law. Rather, South Carolina law makes clear that such a determination is a mixed question of law and fact where, as here, there are factual issues regarding the circumstances giving rise to a duty. See Miller v. City of Camden, 329 S.C. 310, 314-15, 494 S.E.2d 813, 815-16 (1997) (the question whether a duty of care arises in a given case may depend on the existence of particular facts); Vaughan v. Town of Lyman, 370 S.C. 436, 635 S.E.2d 631, 637-38 (2006) (finding genuine issue of material fact as to whether there was a voluntary undertaking of the maintenance of town sidewalks where there were references to sidewalk maintenance in town minutes; there were town ordinances regulating sidewalks; town was aware of complaints about the sidewalks and

¹ This brief is a supplement to Plaintiffs' fifty-six page Memorandum and attached Exhibits. See Memorandum of Plaintiffs Mother Doe A, Camper Doe 6 and John Doe in Opposition to The Citadel's Motion for Summary Judgment as to John Doe Camper, John Doe 2 & Mother Doe 2, filed on April 17, 2014. Certain testimony cited herein of Gary Margolis and President Rosa was not previously submitted as an exhibit to Plaintiffs' initial memorandum and is attached hereto as Exhibits "A" and "B". See Exhibit A, Deposition of Margolis, pp. 57, 286-287, 290; Exhibit B, Deposition of Rosa, Vol. I, p. 53.

did not report these to any other authority; and the town had previously handled complaints about sidewalks); Fickling v. City of Charleston, 372 S.C. 597, 643 S.E.2d 110, 116 (Ct. App. 2007) (fielding complaints, maintaining a log of calls, and having a policy and employees in place to repair sidewalks was used by a court as evidence to assess whether there was a voluntary undertaking). As stated in detail in Plaintiff's initial memorandum, and reiterated herein, there are ample factual issues regarding the existence of a common law duty in this case.

II. THE EVIDENCE ESTABLISHES A COMMON LAW DUTY UNDER THE EXCEPTIONS ENUMERATED IN MARION AND FAILE.

An affirmative legal duty may be created by statute, a contractual relationship, status, property interest, or some other special circumstance. Jensen v. Anderson County Dept. of Soc. Servs., 304 S.C. 195, 199, 403 S.E.2d 615, 617 (1991); Miller, 317 S.C. at 33-34, 451 S.E.2d at 404. In Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007) and Faile v. S.C. Dept. of Juvenile Justice, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002), the South Carolina Supreme Court enumerated five circumstances or exceptions where there is a common law duty to control the conduct of another or to warn a third person or potential victim of danger: 1) where the defendant has a special relationship to the victim; 2) where the defendant has a special relationship to the injurer; 3) where the defendant voluntarily undertakes a duty; 4) where the defendant negligently or intentionally creates the risk; and 5) where a statute imposes a duty on the defendant. Id., 350 S.C. at 334, 566 S.E.2d at 546. For purposes of this reply brief, Plaintiffs will focus on exceptions three and four.

As argued in Plaintiffs' Memorandum in Opposition, Marion only addresses one of the four exceptions applicable to the instant case for purposes of establishing the existence of a common law duty—the exception “where the defendant has a special relationship with the

injurer.” While Plaintiffs assert that the special relationship exception applies in the instant case, two other exceptions directly apply—namely, exceptions (3) where the defendant voluntarily undertakes a duty, and (4) where the defendant negligently or intentionally creates the risk. The facts and holding in Marion are simply irrelevant to the determination of the existence of a duty in the ReVille Citadel cases under these two exceptions.

a. Exceptions of Voluntarily Undertaking a Duty and Creation of the Risk Do Not Require a Specific Threat of Harm to the Victim

Neither of these exceptions requires knowledge by the defendant of a “specific threat of harm” to the victim. Rather, the “specific threat of harm” requirement is *only* implicated when analyzing the existence of a duty under the special relationship exception. Thus, while the evidence establishes that such a relationship and knowledge of such a threat did, in fact, exist, the requirement of a specific threat of harm is not interpolated into the remaining exceptions addressed in this brief.

Under South Carolina law, a specific threat of harm is simply not an element of the voluntary duty analysis.² See Miller, 329 S.C. at 315, 494 S.E.2d at 815 (imposing no requirement of a specific threat of harm in finding issue of fact as to whether defendant voluntarily assumed a duty). In fact, most South Carolina cases analyzing the voluntary duty exception involve no threat of specific harm whatsoever. See Bryant v. City of North Charleston, 304 S.C. 123, 403 S.E.2d 159 (1991) (finding duty owed to remote plaintiff injured

² Notwithstanding, The Citadel’s own witnesses have acknowledged that at least one of the reasons for voluntarily undertaking the duties to report and to investigate was to prevent harm to other boys and prevent harm to potential victims, *i.e.* the Plaintiffs. (See Deposition of Mark Brandenburg, pp. 31, 259). Of course, such an undertaking would also prevent further harm and reduce the threat of continuing harm to past and current victims of ReVille.

on sidewalk because defendant voluntarily undertook maintenance of the area); Vaughn, 370 S.C. at 447-48, 635 S.E.2d at 637-38 (reversing grant of summary judgment where evidence, including town ordinances regulating sidewalks, created factual issue as to whether defendant assumed duty to remote plaintiff injured on sidewalk). Likewise, South Carolina law imposes no requirement of a specific threat of harm where a defendant negligently or intentionally creates the risk of harm. See Greenville Memorial Auditorium v. Martin, 301 S.C. 242, 391 S.E.2d 546 (1990) (requiring no specific threat of harm in finding city liable for injuries to plaintiff resulting from the criminal acts of another based on the city's negligence in securing the premises where the negligence created a foreseeable risk of injury); Madison ex rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 143, 638 S.E.2d 650, 660 (2006) (requiring no specific threat of harm in noting government entity may be held liable for its conduct in relation to prior notice of inappropriate care of a client by another entity where such negligence creates the risk of injury).

b. The Citadel Voluntarily Undertook a Duty to Report ReVille to Citadel Public Safety/Law Enforcement

In devoting less than a single page of its fifty-five page brief to the issue of voluntary duty, Defendant overlooks the overwhelming evidence in this case establishing that The Citadel voluntarily undertook a duty to exercise due care to report ReVille's illegal and immoral activity to Citadel Public Safety and law enforcement. See e.g. Bergstrom v. Palmetto Health Alliance, 352 S.C. 221, 229, 573 S.E.2d 805, 809 (Ct. App. 2002) affd in part, vacated in part, 358 S.C. 388, 596 S.E.2d 42 (2004) (recognizing that hospital's internal policies created a duty to mother).

Defendant ignores the plain language of The Citadel's own policies and procedures, which detail self-imposed duties to report to law enforcement, including the Serious Incidents Policy, Summer Camp Policies Regarding Sexual Misconduct Issues, Sexual Harassment Policy,

and the Citadel's Sexual Assault Policy. Specifically, Mark Brandenburg, The Citadel's Rule 30(b)(6) witness with the most knowledge about Citadel policy and procedure relating to Doe's 2007 complaint of child sexual abuse, conceded that the Serious Incidents Policy required Colonel Trez to report Doe's allegations to Citadel Public Safety:

- Q So it's Colonel Trez's job to report the ReVille allegations to the Department of Public Safety and he didn't do it?
- A According to this memo, he is to report allegations of illegal or immoral activities, right.
- Q There's just no question that what ReVille did with those 14-year-old boys was illegal and immoral?
- A It's clear now, yes.
- Q It was immoral when it came in, wasn't it?
- A The allegations -- It was allegations of immoral activity, yes.

(Brandenburg Deposition, Vol II, p. 264).

Citadel expert Gary Margolis likewise conceded that the Serious Incidents Policy required reporting ReVille to law enforcement and that the Citadel voluntarily undertook the duty to report ReVille:

- Q. Would you agree with me that if The Citadel had a policy and procedure that applied to those [Doe] allegations that required The Citadel to report ReVille to law enforcement, that The Citadel had voluntarily undertaken the duty to report a child sexual predator to law enforcement?
- A. If there was a policy that existed to that effect, I would agree with you.

(Margolis Deposition, Vol. I, p. 57).

- Q. So when Wanda Milligan or Mark Brandenburg were notified that the crime had been committed on the Citadel campus, they should have notified Public Safety, according to this policy [Serious Incidents Policy], right?
- A. According to this policy, correct.

(Margolis Deposition, Vol. I, p. 286-287).

- Q. Okay. And so, now, you have and I have established that under the serious incidents memo, which applies to everybody at The Citadel and was in effect in April of 2007, that there are two separate parts of that

serious incidents memo which required reporting the allegations to law enforcement, correct?

A. Correct.

(Margolis Deposition, Vol. I, p. 290).

That the duties undertaken by these policies extended to the Plaintiff victims is also clear under The Citadel's core values and college regulations. In fact, President Rosa testified that The Citadel's core value of duty, *i.e.* the moral obligation of responsibility for the welfare of others, applies to The Citadel's policies and procedures:

Q And under core values under – this is the statement of vision, under core value, it says, "Duty, we emphasize the importance of individual accountability and a moral obligation of responsibility for the welfare of others." Is that correct, what it says?

A Right.

Q Do you agree with that?

A Right.

Q Would you agree with me that some of The Citadel's policies and procedures and guidelines, when they're written, they take into account the duty of a moral obligation of responsibility for the welfare of others?

A Right.

(Deposition of President Rosa, Vol. I, p. 53). Thus, based on The Citadel's own witness and expert testimony, The Citadel had a duty to report ReVille to law enforcement and the reason for reporting was for the welfare of others—namely, victims and future victims of ReVille.

c. The Citadel Undertook the Duty to Investigate Doe's Claims and to Prevent Harm to Other Young Boys and Potential Victims.

The Citadel's Rule 30(b)(6) witness with the most knowledge regarding the investigation into Doe's allegations testified as follows:

Q Would you agree with me that preventing harm to other young boys or victims was a goal of the investigation?

A Sure.

Q Would you agree with me that by undertaking the investigation, that The Citadel was aiming to prevent harm to potential victims?

A I assume so.

(Brandenburg Deposition, Vol. I, p. 31)

Q Under Core Values, could you read what No. 2 says about duty?

A "We emphasize the importance of individual accountability and the moral obligation of responsibility for the welfare of others."

Q Would you agree that that moral sense of duty would apply to investigating an alleged sexual offense?

A Yes.

(Brandenburg Deposition, Vol. II, p. 259). Thus, not only did The Citadel voluntarily undertake the duty of investigating Doe's report of sexual abuse, it did so with the "goal of preventing harm to other young boys or victims," *i.e.* the Plaintiffs in this action. Moreover, Mark Brandenburg conceded that the "moral obligation of responsibility for the welfare of others," *i.e.* the Plaintiffs, applied to the investigation.

d. Duty Owed Pursuant to Negligent or Intentional Creation of Risk

Plaintiffs have also presented ample evidence that The Citadel negligently and even intentionally created the risk at issue. Defendant maintains in a one paragraph summary argument that The Citadel "did not 'create' any dangerous condition that would not have existed otherwise." (Defendant's Memorandum in Support of Motion for Summary Judgment, p. 13). Defendant's lack of argument as to this exception is telling. Indeed, Defendant did create the risk, both negligently and intentionally, in a number of ways, including the following: neglecting its duty to report ReVille to law enforcement; concealing the allegations and designating the matter "close hold"; alerting ReVille to the allegations; directing ReVille to lay-low; failing to conduct an impartial investigation; failing to interview witnesses; failing to involve the Title IX coordinator/SARC; failing to file an anonymous report and failing to "punish ReVille" per The Citadel Sexual Assault Policy; failing to document ReVille's Summer Camp policy violations in ReVille's file; failing to follow up regarding Sergeant Middleton's August 6, 2001 letter; and

failing to permit Camper Doe 6 to report ReVille. These negligent and intentional acts, all of which are supported by the evidence, constitute affirmative conduct by The Citadel in concealing a known child sexual predator. Such affirmative acts enabled ReVille to gain access to his victims, including the Plaintiffs.

Indeed, Defendant's own expert witness testimony supports the inference that The Citadel created the dangerous condition by providing ReVille access to his victims:

- Q. Would you agree with me that if you were notified that an individual had sexually abused a minor on campus five years previously, and that individual is currently on campus, and that there are minors on campus when that report comes in five years later, that that person poses a threat to the campus?
- A. I would agree with you, yes.
- Q. And when that individual leaves the campus, he's a threat to minors wherever he goes off campus, correct?
- A. I would agree that that's a reasonable assumption.

(Deposition of Margolis, Vol. I, p. 19-20). At the very least, the evidence creates an issue of fact for the jury that The Citadel's negligent disregard of duty and intentional concealment of ReVille's sexual abuse from 2001-2011 had the effect of unleashing a known predator into the community. There is no greater creation of risk than that.

e. *Oblachinski v. Reynolds* Does Not Apply to the Exceptions at Issue

In denying the existence of a duty owed by The Citadel, Defendant cites Oblachinski v. Reynolds, 391 S.C. 557, 562, 706 S.E.2d 844, 846 (2011), a medical malpractice case in which the plaintiff asked the Court to find an exception to the general rule that no duty of care exists between a physician and a third party. The present case has nothing to do with the specific issue of whether a physician owes a duty to a third party. The Citadel is not a physician or health care provider. Plaintiffs are instead asserting the existence of a common law duty based upon the

exceptions enumerated above in Doe v. Marion and Faile. These exceptions were not at issue in Oblachinski or the cases cited therein.

Defendant also cites Oblachinski for the proposition that “[f]oreseeability of injury, in and of itself, does not give rise to a duty.” Id. (emphasis in original) (citing Charleston Dry Cleaners & Laundry, Inc. v. Zurich American Ins. Co., 355 S.C. 614, 618, 586 S.E.2d 586, 588 (2003); and South Carolina State Ports Authority v. Booz-Allen & Hamilton, Inc., 289 S.C. 373, 346 S.E.2d 324 (1986)).³ The existence of a duty in this case is not rooted in foreseeability. Rather, the evidence cited herein and in Plaintiffs’ initial memorandum shows that The Citadel voluntarily undertook duties and created a risk, not simply that ReVille’s subsequent assaults were foreseeable. Indeed, none of the testimony cited addresses foreseeability. The evidence shows that The Citadel assumed a duty by creating or increasing the risk of harm to Plaintiffs, by voluntarily undertaking policies requiring reporting to law enforcement, and by voluntarily undertaking to investigate sexual abuse claims. Plaintiffs have also presented evidence that The Citadel had a moral responsibility for the welfare of others, including the prevention of harm to other boys and potential victims. Accordingly, these claims fall under the exceptions enumerated above in Marion and Faile.

³ In supporting this proposition, Oblachinski relies on two cases, Charleston Dry Cleaners and S.C. State Ports Authority, which are equally distinguishable from the matters at hand. Charleston Dry Cleaners upheld the majority rule that a negligence claim cannot be brought directly against an independent adjustor and noted that the plaintiff could bring a claim against insurer to recover because the acts of the independent adjustor (agent) may be imputed to the insurer (principal). Id. at 618-619. S.C. State Ports Authority found a duty owed to the S.C. State Ports Authority to accurately report objective factual data concerning the Charleston Port by a consulting company hired by the Georgia Ports Authority. Id. at 377. None of these cases addressed the exceptions creating the existence of a duty in this case.

Moreover, like the elements of all negligence claims, the Plaintiffs have also proven that it is foreseeable that a breach of these duties could harm a third person—the Plaintiffs. SC State Ports Authority held foreseeability of injury, in the absence of a duty to prevent that injury, is an insufficient basis on which to rest liability. Id. at 376. Here, the evidence establishes both the existence of a duty to prevent injury and foreseeability. As noted, Citadel witness testimony supports the reasonable inference that The Citadel had a duty to prevent injury to other potential victims, and that The Citadel's negligence in performing these duties increased the risk of harm to Plaintiffs. Such circumstances giving rise to the existence of a duty in this case were neither addressed nor at issue in Oblachinski or the cases cited therein.

CONCLUSION

Plaintiffs have provided ample evidence establishing that an issue of fact exists as to whether the Citadel had a duty to report ReVille to law enforcement, whether The Citadel undertook a duty to investigate Doe's allegations to prevent harm to other young boys and protect potential victims, and whether The Citadel assumed a duty by creating the risk of harm to Plaintiffs. The evidence forming the basis of this factual dispute is derived directly from The Citadel's own witnesses: Citadel 30(b)(6) deponent, Mark Brandenburg; and Citadel expert witness, Gary Margolis. Accordingly, based upon the foregoing reply and the arguments advanced in Plaintiff's initial memorandum to the Court, Plaintiffs Mother Doe A, Camper Doe 6 and John Doe respectfully request that Defendant's motions be denied.

--Signature Page to Follow--

Respectfully submitted,

PIERCE, HERNS, SLOAN & WILSON, LLC

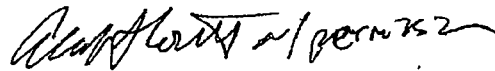


Carl E. Pierce, II
Allan P. Sloan, III
Louis P. Herns
Kristen B. Fehsenfeld
321 East Bay Street
Post Office Box 22437
Charleston, SC 29401
(843) 722-7733

ATTORNEYS FOR PLAINTIFF'S
MOTHER DOE A AND CAMPER DOE G

April 25, 2014
Charleston, South Carolina

JEFF ANDERSON & ASSOCIATES, P.A.
Gregg Meyers, #9908
Jeffrey R. Anderson, pro hac vice pending
1 Poston Road Suite 110
Charleston, SC 29407
843-556-1025, 843-556-1055 facsimile
Jeff@Andersonadvocates.com
Gregg@Andersonadvocates.com



GEDNEY M. HOWE, III, P.A.
Gedney M. Howe, III, Esq.
8 Chalmers Street (29401)
Post Office Box 1034
Charleston, SC 29402-1034
(843) 722-8048

WYNDHAM LAW FIRM, LLC
Robert J. Wyndham, Esq.
47 State Street (29401)
Post office Box 598
Charleston, SC 29402-0598
(843) 853-6121

ATTORNEYS FOR PLAINTIFF JOHN DOE

 2014
Charleston, South Carolina

CAMPER DOE 6,

Plaintiff,

vs.

Case Action No.: 2013-CP-10-5247

THE CITADEL,

Defendant,

JOHN DOE, A MINOR, BY HIS
GUARDIAN AD LITEM JOHN ROE,

Plaintiff,

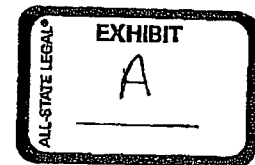
vs.

Case Action No.: 2013-CP-10-4770

THE CITADEL,

Defendant,

Videoconference Deposition of GARY MARGOLIS,
held on Monday, February 17, 2014, taken at the Sound
Vision, 310 Hurricane Lane, Suite 1, Williston, Vermont,
05495, commencing at 10:11 a.m., before Karen L. Wright,
a RPR, CRR and Notary Public in and for the State of
Vermont.



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G. MARGOLIS

1 coordinator?

2
3 A. She might be both. But in terms of
4 the Title IX coordinator, my understanding as
5 I sit here is that it was Janet Shealy.

6 Q. All right.

7 A. I could be wrong about that, but
8 that's my recollection.

9 Q. And if Mark Brandenburg and Colonel
10 Trez have stated under oath that Skip ReVille
11 had a special relationship with The Citadel,
12 you wouldn't have any reason to object to
13 that or disagree with it, correct?

14 A. Correct.

15 Q. Would you agree with me that if The
16 Citadel had a policy and procedure that
17 applied to those allegations that required
18 The Citadel to report ReVille to law
19 enforcement, that The Citadel had voluntarily
20 undertaken the duty to report a child sexual
21 predator to law enforcement?

22 A. If there was a policy that existed
23 to that effect, I would agree with you.

24 Q. Would you agree with me that if The
25 Citadel had known in 2001 how Mr. Arpaio had



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G. MARGOLIS

A. No. I said they mirror the Clery -- the first several mirror the Clery Act crimes. They're right out of the federal regulations.

Q. Yes. But then they go beyond the Clery Act, right?

A. Correct. Yes, they do.

Q. All right. And they're just examples of crime, right? You and I have already agreed that what ReVille was accused of doing by Doe to him and others was certainly a crime, correct?

A. Yes, sir.

Q. All right. And over on the next page, it says what are the individual responsibilities when you become aware of a crime. What does it say under "Individual responsibilities"?

A. "Notify the Department of Public Safety."

Q. All right. So when Wanda Milligan or Mark Brandenburg were notified that the crime had been committed on The Citadel campus, they should have notified Public



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G. MARGOLIS

Safety, according to this policy, right?

A. According to this policy, correct.

Q. All right. And then Public Safety's responsibilities, they're to initiate an incident report and investigate as necessary, right?

A. That's what it says, correct.

Q. All right. If you'd turn over two pages to Section L: It says: "Other Incidents."

A. Yes, sir.

Q. And my Bates number for that is 1692. What's yours?

A. 2405.

Q. All right. It says: "Any incident which has a recognized potential for news media interest will be reported by the first individual aware of the incident. Examples of such incidents include, but are not limited to, a scandal involving an individual closely identified with the college, allegations concerning illegal or immoral activities at the college."

Now, you and I have already agreed



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6 vs.)
7 The Citadel,)
8 Defendant.)
9)
10)
11)
12)

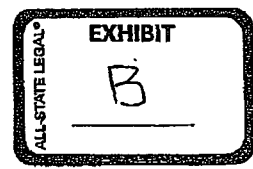
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14 VIDEOTAPED
15 DEPOSITION OF: GENERAL JOHN W. ROSA -- VOL. I
16 DATE TAKEN: Monday, July 29, 2013
17 TIME: 10:00 a.m.
18 PLACE: 321 East Bay Street
19 Charleston, SC
20 REPORTED BY: TERI L. SAMPSON, RPR,
21 Notary Public and Certified
22 Live Note Reporter
23 * * * * *

24 POST OFFICE BOX 21784
25 CHARLESTON, SOUTH CAROLINA 29413-1784
0003

1 A P P E A R A N C E S
2

3 REPRESENTING THE PLAINTIFF MOTHER DOE A:
4 ALLAN P. SLOAN, III, ESQUIRE
5 Pierce, Hearn, Sloan & Wilson, LLC
6 321 East Bay Street
7 Charleston, SC 29401
8 (843) 722-7733
9 email: chipsloan@phswlaw.com
10 REPRESENTING THE PLAINTIFFS JOHN DOE CAMPER, JOHN DOE
11 2, MOTHER DOE 2:
12 W. MULLINS MCLEOD, JR., ESQUIRE
13 McLeod Law Group, LLC
14 134 Meeting Street
Suite 160
Charleston, SC 29401
(843) 277-6655
email: mullins@mcleod-lawgroup.com



1 BY MR. SLOAN:

2 Q This is Bates number -- if you'll turn to
3 Bates 1094, which is the first page. And now, the -- I
4 take it the college regulations apply to you as well,
5 correct?

6 A Yes.

7 Q And they apply to Mark Brandenburg and Joe
8 Trez, is that correct?

9 A Right.

10 Q And under core values under -- this is the
11 statement of vision, under core value, it says, "Duty,
12 we emphasize the importance of individual
13 accountability and a moral obligation of responsibility
14 for the welfare of others." Is that correct, what it
15 says?

16 A Right.

17 Q Do you agree with that?

18 A Right.

19 Q Would you agree with me that some of The
20 Citadel's policies and procedures and guidelines, when
21 they're written, they take into account the duty of a
22 moral obligation of responsibility for the welfare of
23 others?

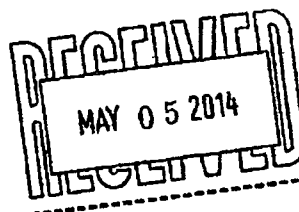
24 A Right.

25 Q All right. If you would turn over to Tab 3,



M. Dawes Cooke, Jr., Esquire
John W. Fletcher, Esquire

May 2, 2014



VIA HAND DELIVERY

The Honorable Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad Street, Suite 106
Charleston, South Carolina 29401

Re: *Mother Doe A vs. The Citadel*
Civil Action No.: 2011-CP-10-9200
BWPH File No.: 1.521

Dear Julie:

Enclosed herewith please find the original and two (2) copies of The Citadel's Notice of Motion and Motion for Summary Judgment in the above-referenced matter. Also enclosed please find a Motion and Order Information Form and Cover Sheet and our firm's check in the amount of \$25.00 for the filing fee. We would appreciate you filing the original Motion and returning the clocked copies to us.

Thank you for your assistance in this regard.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dawes Cooke".

M. Dawes Cooke, Jr.
John W. Fletcher

MDCjr/JWF/jgc
Enclosures

cc: **VIA E-MAIL AND U.S. MAIL**

Allan P. Sloan, III, Esquire
Louis Hems, Esquire
Carl Pierce, Esquire
Gregg Meyers, Esquire

M. Dawes Cooke, Jr.
B.C. Killough*
Randell C. Stoney, Jr.
Phillip S. Ferderigos
K. Michael Barfield

William C. Helms, III*

* Registered patent attorney
* Retired

Ernest B. Lipscomb, III*
J. Gall Rahn
Todd M. Musheff
John A. Jones
Lucinda D. Gardner
John W. Fletcher

Alissa D. Fleming
Barbara J. Wagner, Ph.D.
Jeremy E. Bowers
D. Summers Clarke, II
Jeffrey M. Bogdan
Bradley B. Bantlas

288 Meeting Street, Suite 200, Charleston, SC 29401
Mail: P.O. Drawer H, Charleston, SC 29402 P 843.577.7700 F 843.577.7708
www.barnwell-whaley.com

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Mother Doe A

☐ Plaintiff

v.

The Citadel

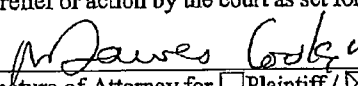
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2011-CP-10-9200

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Allan P. Sloan, III/Louis Hems, Bar No. Address: 321 East Bay Street, Charleston SC 29401 phone: 843-722-7733 fax: 843-722-7732 e-mail: chipsloan@phswlaw.com other:		Defendant's Attorney: M. Dawes Cooke, Jr./John Fletcher, Bar No. Address: Post Office Drawer H, Charleston, SC 29402 phone: 843.577.7700 fax: 843.577.7708 e-mail: mdc@barnwell-whaley.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Notice of Motion and Motion for Summary Judgment Estimated Time Needed: 45 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted: May 2, 2014			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: <u>2011-CP-10-9200</u>
MOTHER DOE A,	)	
	)	
Plaintiff,	)	NOTICE OF MOTION AND MOTION
	)	FOR SUMMARY JUDGMENT
v.	)	
	)	
THE CITADEL,	)	
	)	
Defendant.	)	

TO: GREGG MEYERS, ESQUIRE, LOUIS P. HERNS, ESQUIRE AND ALLAN P. SLOAN III, ESQUIRE, ATTORNEYS FOR PLAINTIFF, MOTHER DOE A:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for Defendant, The Citadel ("Defendant"), will move before this Court, at least ten (10) days from the date hereof or as soon as thereafter as counsel may be heard, for an Order granting Defendant summary judgment and entering judgment against the Plaintiff pursuant to Rule 56 of the South Carolina Rules of Civil Procedure because there are no genuine issues of material fact supporting Plaintiff's claims. The grounds for this motion are that:

- (a) Defendant is entitled to summary judgment as to all claims because, under South Carolina law, Defendant owed no common law or statutory duty of care to Plaintiff. *See e.g., Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007).
- (b) Defendant is entitled to summary judgment as to all claims because Plaintiff cannot present any evidence that she sustained any damages cognizable under South Carolina law. In the alternative, this Court should enter partial summary judgment, limiting Plaintiff's potential recovery in this case to: (1) out of pocket medical expenses and (2) loss of her son's services.
- (c) Defendant is entitled to summary judgment as to all of Plaintiff's claims because such claims are barred by the statute of limitations contained in the South Carolina Tort Claims Act, at S.C. Code § 15-78-110, because she did not file this action within two years after the loss was discovered.

- (d) Defendant is entitled to summary judgment as to Plaintiff's outrage claim (Count 2) because that claim is barred by the South Carolina Tort Claims Act, *see e.g.*, S.C. Code § 15-78-30(f), and because Plaintiff has had other potential remedies available to her.
- (e) Defendant is entitled to summary judgment as to Plaintiff's outrage claim (Count 2) because Plaintiff cannot proffer a scintilla of evidence that The Citadel acted with the requisite level of culpability for an outrage claim.
- (f) Plaintiff's potential recovery is limited to \$300,000.00 under the South Carolina Tort Claims Act, S.C. Code § 15-78-120(a)(1), because Plaintiff's claims involve a single alleged "occurrence."

This Motion may also be supported by a memorandum of law filed subsequent hereto, and by the argument of counsel at the hearing of these motions. This Motion will also be supported by the pleadings, depositions, discovery and documents produced in this matter.

BARNWELL, WHALEY, PATTERSON, AND
HELMS, LLC

By: M. Dawes Cooke, Jr.

M. Dawes Cooke, Jr., Esq.

Randell C. Stoney, Esq.

John W. Fletcher, Esq.

P.O. Drawer H (29402)

288 Meeting Street, Suite 200

Charleston, SC 29401

(843) 577-7700

Counsel for Defendant The Citadel

Dated: May 2, 2014
Charleston, South Carolina

CERTIFICATE OF SERVICE

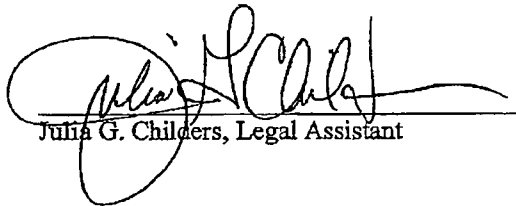
The undersigned hereby certifies that a true copy of the DEFENDANT'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT was served upon all counsel of record via E-Mail & U.S. Mail on this 2nd day of May, 2014.

ATTORNEY FOR PLAINTIFF:

Allan P. Sloan, III, Esq.
Louis Hems, Esq.
Carl Pierce, Esq.
Pierce, Hems, Sloan & Wilson, LLC
321 East Bay Street
Charleston, SC 29401
louisphems@phswlaw.com
chipsloan@phswlaw.com
carlpierce@phswlaw.com

ATTORNEY FOR PLAINTIFF:

Gregg Meyers, Esq.
Jeff Anderson & Associates, P.A.
366 Jackson St., Suite 100
St. Paul, MN 55101
Gregg@AndersonAdvocates.com



Julia G. Childers, Legal Assistant

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
Mother Doe A,	)	
	)	
Plaintiff,	)	
v.	)	Case No. 12-CP-10-1858 & 1860
	)	
The Citadel,	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on June 6, 2014, before The Honorable R. Markley Dennis in Courtroom 4B of the Charleston County, 100 Broad Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Mullins McLeod, Esq.

Chip Sloan, Esq.
Appearing for Mother Doe A and Camper Doe 6

Dawes Cook, Esq.

Gedney Howe, Esq.

Gregg Meyers, Esq.

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
P O Box 901
Johns Island, South Carolina 29457
dgarrison@sccourts.org

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1 THE COURT: Okay, gentlemen, thank you
2 all very much. I appreciate your patience.
3 It's beneficial to hear from you all in
4 addition to all of the materials that have
5 been provided, and I thank you very much for
6 those as well.

7 We are here on the Motion to re-
8 consider. So let's go ahead and hear that.

9 MR. SLOAN: Thank you, Your Honor.
10 Chip Sloan. I represent Mother Doe A and
11 Camper Doe 6.

12 While these summary judgment Motions
13 are in Mr. McLeod's cases, they do affect our
14 cases and an unfiled case that also Mr. Howe
15 wishes to bring in this case.

16 THE COURT: Right.

17 MR. SLOAN: Your Honor, I want to
18 start with the standard review that the Court
19 is to construe all evidence, including
20 reasonable inferences from the evidence in
21 the light most favorable to the plaintiffs.

22 THE COURT: No question, and no
23 question that we are dealing with a scintilla
24 world.

25 MR. SLOAN: Yes, sir. What I want

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1 to start with is what The Citadel does not
2 want -- what they tried to ignore in the
3 admission of 30(b)(6) deponent. In this
4 case, under the voluntary undertaking of duty
5 exception in Doe v. Marion, that we all
6 recognize, number one, the admitted fact of a
7 30(b)(6) deponent is that they voluntarily
8 undertook a duty to investigate Doe's
9 allegations ReVille ---

10 THE COURT: Let's just focus --
11 because, really and truly, reading this --
12 and it's helpful to read it and I appreciate
13 everything that has been given.

14 I guess really, Mr. Cook, I think I
15 need you to respond. I think probably the
16 best way to do this is that you respond.
17 Because that was the one thing that has given
18 me cause for concern, is the actions taken
19 and were they in fact a voluntary entry into
20 this, which then placed -- and the law is
21 clear on that. In Canvas (phonetic), because
22 I remember reading that, they went in -- they
23 undertook the duty and once they did, the law
24 said 'yeah, you have the responsibility to
25 act with due care and reasonably.'

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1 The question that I think that I
2 have is that when they did meet -- I think
3 what you're talking about is that when they
4 came and met, had the conversation and said
5 'we are going to do certain things.' You
6 believe that -- that that is the voluntary
7 entry into the world of protection?

8 MR. SLOAN: Well, yes, sir. That
9 and the admission in the deposition.

10 THE COURT: I understand.

11 MR. SLOAN: They are saying, 'I
12 undertook the duty.' Then they had a policy
13 that said what they had to do.

14 THE COURT: Well, what's the --
15 and I -- maybe y'all can address it, and
16 maybe I am confusing this with another area.
17 But what is the duty with respect to a crime?
18 Basically what's tantamount to a crime? In
19 the position that they were in, did they not
20 have a duty to report that to the proper
21 authorities?

22 MR. SLOAN: At The Citadel, they
23 had a written policy requiring them to do ---

24 THE COURT: Yeah.

25 MR. SLOAN: --- and they breached

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1 it.

2 THE COURT: As a matter of public
3 policy, don't they have a duty?

4 MR. SLOAN: I believe so. Yes,
5 sir.

6 THE COURT: Okay.

7 MR. SLOAN: And they ---

8 THE COURT: Address that for me,
9 Mr. Cook. Really and truly, we're talking
10 about -- obviously they're in a position --
11 a layperson, maybe. I don't -- just being
12 fair, not everybody understands the
13 significance of a pedophile, pedophilia.
14 But they are in a position where they should
15 understand that and what they -- and the
16 problems associated with that.

17 MR. COOK: Right.

18 THE COURT: Would you -- I mean,
19 you won't argue that they're in a superior
20 position when it comes to recognizing
21 pedophiles and knowing what they need to be
22 doing ---

23 MR. COOK: I will even do one
24 better than that. All of our people agree
25 that they understood -- from the president to

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1 members of the board, to Mark Brandenburg,
2 everybody said 'we understand that pedophilia
3 is -- that pedophiles are dangerous people.'
4 And, 'we understand that if a pedophile is
5 allowed to go free that he is likely to do
6 it again.' I mean, that's not unique to
7 pedophiles ---

8 THE COURT: I would agree with you
9 except that when you're in the position that
10 they were in, and you have notice of a fact
11 where a person has acted, ---

12 MR. COOK: Right.

13 THE COURT: I understand your
14 argument, and it's a -- and this is an area
15 that probably I -- my focus was on moreso
16 than what it should be for the purposes of
17 the action itself. Where does that take us?

18 MR. COOK: It ---

19 THE COURT: Does it take you to
20 where you have the right to recover because a
21 person acted? What is the foreseeability?
22 That becomes a jury issue, doesn't it?

23 MR. COOK: Well, no, and that's
24 the -- you've honed in on what I think is the
25 critical legal question. I've deliberately

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1 tried to avoid any issues of a scintilla of
2 evidence or facts, because I am not
3 contesting any of the factual allegations.

4 THE COURT: And I appreciate that.

5 MR. COOK: At least for today.

6 We've got another day to ---

7 THE COURT: Sure.

8 MR. COOK: The test of assumed
9 duty -- or I'll say also that the same thing
10 applies for a statutorily-imposed duty, and
11 that is -- it is not foreseeability.

12 Foreseeability is not the question, it's not
13 the test. That's the test of proximate cause
14 but it's not the test of existence of a duty.

15 And I want to talk, if I could --
16 and I don't mean to preempt Chip, but ---

17 THE COURT: No. I want you to
18 address this business of -- because I will
19 agree with you -- well, let me say this just
20 for the purpose of discussion. Maybe there
21 is something that I've overlooked.

22 Assuming for a moment that we don't
23 have any voluntary undertaking, I think that
24 there is a legitimate legal question of
25 whether they had any duty just because they

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1 existed. But they did undertake it.

2 MR. COOK: Right. But the reason
3 why that doesn't create a duty is because
4 they did not undertake a duty to the
5 plaintiffs. I want to talk about some of the
6 cases that ---

7 THE COURT: Well, I've read --
8 those cases -- if you're talking about those
9 cases that you cited and quoted, I -- I've
10 looked at those.

11 MR. COOK: If you start, for
12 example, with ---

13 THE COURT: Maybe I missed it.
14 Are there any South Carolina cases that
15 address it ---

16 MR. COOK: Oh, yeah.

17 THE COURT: Specially?

18 MR. COOK: Yes.

19 THE COURT: Okay.

20 MR. COOK: I want to talk about
21 the Doe versus Walmart Stores case, ---

22 THE COURT: Okay.

23 MR. COOK: --- because that
24 involved the voluntary assumption of the
25 duty. And I have to start with *Doe v.*

1 Marion because the other case follows it.

2 THE COURT: Right.

3 MR. COOK: So *Doe v. Marion* was
4 the one where there actually was a violation
5 of the reporting statute, because this was a
6 doctor/therapist and a therapist does have a
7 duty ---

8 THE COURT: Right.

9 MR. COOK: --- to report if they
10 discover evidence of child abuse; not just
11 sexual abuse but any child abuse by a
12 guardian or custodian. This therapist did
13 not do that.

14 The report said, 'Okay, we under-
15 stand that but the question is, did that
16 statute create a duty to these plaintiffs?'
17 They did the analysis and they say there's
18 nothing -- the "the section is silent as to
19 civil liability." Then they go on to say "in
20 determining that Dr. Graf had no duty to
21 report, we look to the purposes of the
22 children's code and determine the statute is
23 concerned with the protection of the public
24 and not of the protection of an individual's
25 private right."

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1 Now, that's critical because you --
2 you would agree that the Children's Code
3 would say, 'Well, who else are you supposed
4 to be protecting if it's not a subsequent
5 victim? Why do you have all this reporting
6 stuff?'

7 The Court said, 'we understand that,
8 but that's not what we mean when we say a
9 duty to the specific plaintiff, because --
10 remember, we've got all the -- the Terasotte
11 (phonetic) case and the other cases that say
12 to create a duty to protect a specific
13 individual, that criminal or that dangerous
14 person that you had custody of had to have
15 specifically threatened that individual.' So
16 the Court has very narrowly circumscribed
17 that.

18 Then it says that this case is
19 distinguishable from *Jensen*. *Jensen* -- and
20 this is critical also. *Jensen* is the case
21 where they said that you could sue DSS for
22 failing to properly investigate claims of
23 abuse of a young man. But that was a
24 situation where *Jensen* actually had -- that
25 DSS had custody, had responsibility

1 specifically to the plaintiff in that case.

2 The Court in *Doe* said this case is
3 distinguishable from *Jensen* because there
4 existed no special duty between Dr. Graf and
5 James Doe, the plaintiff. That's the wide
6 gulf that the plaintiffs can't cross in this
7 one. If -- and this is why we're not making
8 this Motion with regard to the campers,
9 people who were injured or assaulted while
10 they were on campus ---

11 THE COURT: I understand.

12 MR. COOK: --- because there is
13 that special relationship.

14 Now, then you go to *Doe v. Walmart*.
15 It's really kind of a sad case factually,
16 where an aunt of a three-year-old child was
17 concerned that the child was being abused by
18 its parents and she -- she took photographs
19 of the bruises on the child's rear end, took
20 it in to be developed.

21 Well, the people at Walmart had a
22 policy where they said, 'we don't develop
23 pictures of naked children.' So they
24 destroyed -- they told her that they
25 destroyed the pictures. Subsequent -- so she

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1 didn't have any evidence to go to DSS. with.
2 Subsequent to that, the child was sexually
3 abused by the father.

4 So the plaintiffs said, 'What do we
5 do?' They sued Walmart because there's that
6 child reporting statute that specifically
7 said "persons responsible for processing film
8 must report, in accordance with this section,
9 when in the person's professional capacity
10 the person has received information which
11 gives the person reason to that a child may
12 have been abused or neglected."

13 They followed *Doe v. Marion* and said
14 that doesn't create a duty. But ---

15 THE COURT: I would agree with you
16 but in both situations -- and I may be
17 missing it. You're right, I -- I agree with
18 you, everything about the cases that you've
19 cited. But in none of those cases do you
20 have the agency saying, 'I am going to do
21 something.'

22 MR. COOK: I am getting to that
23 part.

24 THE COURT: Okay. Because those
25 are all dealing specifically with the

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1 statutory obligation.

2 MR. COOK: Right.

3 THE COURT: I don't quarrel with
4 the Court's narrowing of it, restricting to
5 some extent, who can be but, uh, -- in this
6 case, the distinction, at least for me right
7 now is they said, 'we are going to do
8 something about this.' So that changes the
9 dynamics of those cases a little bit, I
10 think.

11 MR. COOK: I am getting ready to
12 get to that.

13 THE COURT: All right.

14 MR. COOK: It would change it if
15 they said that to the plaintiffs. If they
16 were to -- to somebody that had some
17 connection with the plaintiffs and the
18 plaintiffs relied on that duty. I am going
19 to get to that one in just a minute.

20 THE COURT: All right.

21 MR. COOK: But before I do, in
22 the same Doe case, it turns out that Walmart
23 did voluntarily undertake the duty. It says
24 "Respondent has..." -- and that is Walmart.
25 "Respondent has an internal policy against

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1 developing photos depicting nudity. The
2 policy requires employees to bring to the
3 attention of the store manager pornographic
4 pictures of children or where child abuse is
5 suspected." It also prohibits the printing
6 of picture depicting nudity and requires that
7 they be shredded if printed in error.

8 "There is an exception for cases of
9 suspected child abuse where the developed
10 photos must be kept as evidence, however the
11 policy requires that processed negatives be
12 returned to customers." However, in this
13 case they didn't do that. They didn't let
14 anybody know that they had suspected child
15 abuse, they didn't keep them as evidence, and
16 they didn't return the negatives. In fact,
17 they told the aunt that they had all been
18 destroyed.

19 The Court said that the, "Circuit
20 Court found that Walmart neither owed any
21 common law duty to the victim nor did it
22 create or undertake any duty when its
23 employees failed to follow Walmart's internal
24 policies."

25 This part is critical, (reading):

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1 "We find that the Circuit Court properly
2 granted summary judgments to these
3 alternative causes of action because Walmart
4 owed no duty to the victim. It is clear that
5 Walmart had no general duty to control the
6 conduct of the victim's father or to warn the
7 victim of the danger of sexual abuse.
8 Further, none of the exceptions enumerated in
9 *Fyall* (phonetic) apply. Walmart had no
10 special relationship with either the victim
11 or his father because it did not have the
12 ability to monitor, supervise or control
13 either."

14 And they cite *Doe v. Marion*,
15 "Walmart did not negligently or intentionally
16 create the risk of the father's sexual
17 abuse." -- that is critical also, because in
18 this case they're accused of failing to stop
19 the abuse, not of creating the abuse. That's
20 the exact same thing that we have here.

21 Lastly it discussed about Walmart's
22 duty to report and "the failure to report
23 under the statute cannot give rise" -- uh, so
24 it says, (reading): "However, this internal
25 policy cannot be said to constitute the

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1 voluntary understanding of a duty. Rather,
2 it can simply serve as evidence of the
3 standard of care once that duty was
4 established by law."

5 Then you go to the case the
6 plaintiff's cite, *Miller v. City*. This is
7 the dam case. In that case the Court has a
8 very important footnote in which it says, the
9 text around that is "whether these facts
10 establish that Kendall volunteered to monitor
11 the lake level for the benefit of third
12 parties, or something facilitating it's own
13 arrangement with the City is an issue that
14 can be resolved by the jury."

15 That's a -- there's a factual issue
16 there because, you remember, the -- Kendall
17 had -- there were minutes of meetings that
18 showed that a Kendall representative was
19 there at the meetings where they were talking
20 about planning for, you know, failures of the
21 dam and so forth. So the argument was being
22 made that they actually did voluntarily
23 undertake to protect the various plaintiffs.

24 But then the Court says in a
25 footnote, (reading): "We decline to adopt

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1 the expanded liability of restatement in
2 Section 324(a). This section imposes a duty
3 on one who undertakes to render services to
4 another, which he should recognize as
5 necessary for the protection of a third
6 person and requires no actual volunteer
7 relationship between the defendant and the
8 third party."

9 So that's the difference. That
10 under the restatement of some other courts,
11 they would say that once you've undertaken
12 this duty then you have the duty to -- that
13 someone foreseeably is injured, uh, can
14 recover.

15 Here the Court says that we are not
16 going to go that far, that there has to be
17 some relationship between the defendant and
18 the injured third party. That's why they
19 sent this case back, to find out if there was
20 a relationship.

21 THE COURT: And I appreciate all
22 that. We also understand, too, the attitude
23 of this state concerning sex abuse and child
24 abuse and pedophilia. That's why there's
25 situations -- that's why there has been a

1 tremendous movement. The problem that I have
2 is you're asking me to rule on this, really
3 and truly, in a summary judgment fashion
4 rather than where it may be best served at a
5 trial on the issues.

6 I really have a problem, personally.
7 I understand what you're saying. Maybe at a
8 trial -- I don't know who is going to be the
9 trial judge. If it is set on my docket, it
10 might be the day that I say 'see ya'. But I
11 will tell you that I -- really and truly in
12 reading that and knowing what they obviously
13 knew, and what they've indicated they knew,
14 uh, I think they jumped in -- put themselves
15 right in with the dam situation, totally. I
16 think that they've undertook it to protect
17 society and anybody else because a pedophile
18 is somebody who has to be -- if you allow
19 that to exist -- not only to exist, but you
20 almost facilitate it. Really. That's what
21 scares me. They were in the position to have
22 -- what the person should have done was to
23 report it immediately, for the person to have
24 been arrested, because one thing's for sure.
25 One thing is for sure, at least I am

1 comfortable with this one -- my assistant
2 recently had some surgery and the physician
3 -- I know him, he operated on both my
4 parents, but he asked her, he said, 'Why did
5 he -- I just don't understand why the judge
6 sentenced him to only fifty years.' Well,
7 if he wants to know, it was because I did
8 eighty-five percent. I took his age, I
9 figured that he'd be about seventy-seven or
10 seventy-eight, if he makes it that long, but
11 then he's got to go through the hurdle of the
12 sexually violent predator requirements, and
13 he will never probably see daylight again;
14 which he shouldn't, and I don't think anybody
15 in this room thinks that he should. But that
16 could have been -- that could have happened
17 long before, and he wouldn't have hurt a
18 soul. That's the concern that I have.

19 This isn't just -- this isn't --
20 I understand the Walmart case, but Walmart
21 didn't bring the people in and say, 'look
22 here' -- this -- we -- 'this is bad, we're
23 not going to -- we're going to look into
24 this.'

25 That's what you're saying. You're

1 basically -- let's take the Walmart case.
2 They had a policy. The Walmart case, to
3 liken it to this is bringing the guy in and
4 saying, 'look, here, you don't straighten up,
5 we're going to report you.'

6 But they didn't even say that. They
7 said they were going to take care of this.
8 That's what they said.

9 MR. COOK: But they didn't say it
10 to the plaintiffs. That's the difference.

11 THE COURT: Yeah, they did. They
12 said it to me, they said it to you, they said
13 it to everybody in the world as far as I'm
14 concerned. When you're in that situation and
15 you've got a person who has committed a
16 crime, who is likely -- and they know likely
17 -- to reoffend, -- and I understand what
18 you're -- and the Court -- I, really and
19 truly, believe that this case could begin to
20 change and maybe go back to the restatement.
21 The restatement of the law is -- I'm not
22 applying restatement of law, but the logic of
23 that, to me, makes perfect sense; especially,
24 especially when -- the dam wasn't a crime.

25 I mean, there's no question about

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1 this. This is a crime. This is a criminal
2 act that they knew about and frankly should
3 have -- they should have prosecuted him. I
4 mean, that's what I don't understand.

5 MR. COOK: Well, I -- I didn't
6 get into that because I didn't want to get
7 into the scintilla of evidence. There are
8 strong issues about ---

9 THE COURT: Well, listen, if
10 they're worried -- what are they worried
11 about? Legal prosecution?

12 MR. COOK: Well, no. The statute
13 -- the reporting statute does not ---

14 THE COURT: I am just asking them
15 why not call the police, saying 'you need to
16 come investigate this.'

17 MR. COOK: That's a fair
18 question.

19 THE COURT: .Because -- I mean, a
20 person says 'I don't want to get involved.'
21 I understand their reluctance. They don't
22 want to do a lot of things. That's why we're
23 in -- when Debi Herring-Lash (Solicitor)
24 brings these people in and has to try them,
25 it's an ordeal. It's a trauma. No question

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1 about that. But that ain't -- that's not
2 their fault. I mean, to me that's something
3 -- that's something that says you as a
4 responsible person, in a position that they
5 were in, of continuing to operate a camp,
6 saying 'I know this crime happened but...' ---

7 MR. COOK: The camp was closed by
8 the time that he came forward.

9 THE COURT: I understand that, to
10 an extent. But you're not telling me that
11 they're not involved with young people?
12 Males on males, today?

13 MR. COOK: Well, they have done
14 and awful lot to ---

15 THE COURT: I'm aware of that, I
16 understand that. I'm not being critical of
17 The Citadel. I think that it is a wonderful
18 institution and I think that this community,
19 this state, this country is served -- in
20 fact, we probably are talking about -- I
21 mean, today is D Day. A lot of people have
22 served, been connected with that institution
23 -- for sure.

24 In fact, we were talking about -- I
25 was watching a program just -- General Mark

1 Clark spoke to my graduating class. We were
2 watching a show on the sixties and talking
3 about the big push that we all remember,
4 those of us that were around. 'We've got to
5 stop communism, it's going to take over the
6 world.' And Mark Clark said that's a stupid
7 argument, you can't do that, you can't fight
8 a numbers war. He was dead right, in 1966 he
9 said that. Now everybody says, 'yeah, that's
10 what we did, we made a mistake.'

11 No, there's some beautiful, wonder-
12 ful people -- and I'm not being critical of
13 them. I am just saying that in this
14 particular case somebody dropped the ball.

15 MR. COOK: Could I just make one
16 -- and I don't want to keep arguing.

17 THE COURT: No, Mr. Cook, my
18 friend, -- the one thing that I will agree
19 with everything that has been said about you
20 and the gentleman -- you and Gregg -- Gregg
21 spoke to our group, and I agree with Gregg's
22 statement. You're not even going to make --
23 you're not going -- he won't make you mad.
24 So I understand that.

25 MR. COOK: Thank you. These

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1 points are very important, and I would like
2 to say just a couple of things.

3 One thing is that it is not just
4 sexual abuse. There are other things: drunk
5 driving, the offense of murder, ---

6 THE COURT: Oh, I couldn't agree
7 more. And what have we done about drunk
8 driving? We've just passed some laws, just
9 this year, to talk about that.

10 I am just telling you what I think.
11 I think that it is an injustice. First of
12 all, I think that it is -- I think that act,
13 to me, is a scintilla world and it creates
14 the problem. I can't get around that.

15 I mean, I could go with all the
16 other arguments that you make. I don't have
17 any legal issue with that, I don't have a
18 problem. But when they undertook something
19 and that -- frankly, I mean, it could've --
20 I just think that the Court needs to say,
21 'nope, notwithstanding all this law that we
22 have passed, we're not going to place that
23 burden' -- we are not going to say that
24 people -- to expect that somebody would abuse
25 a child one time or that they would have a

1 picture of one time, to me that is not even
2 -- I cannot reconcile that.

3 Pedophiles, we know, I mean there
4 are statistics about that. Now, I'll grant
5 you, uh, -- one of the things with the
6 sexually violent predators, in fact they
7 always talk -- that there is a twenty to
8 forty percent chance of, or it used to be, of
9 repeating. I'm ballparking. To reoffend.
10 That's why we need to keep them in. Well, I
11 asked Westie (Westmoreland Clarkson) one
12 time, who was prosecuting, who handled those
13 actions for the State, 'that means there is a
14 sixty to eighty percent chance that they
15 won't.' But nobody talks about that. They
16 talk about what can be.

17 But in this particular situation,
18 uh, I just -- I just think that it simply ---

19 MR. COOK: May I make one ---

20 THE COURT: Sure.

21 MR. COOK: You said something
22 really important. You said that this may
23 be the case where the Court changes it's
24 thinking.

25 THE COURT: I don't ---

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1 MR. COOK: It could be. Could
2 be. But -- and there's no question but that
3 both of those Doe cases were tragic cases
4 involving ---

5 THE COURT: Very.

6 MR. COOK: --- sexual abuse of
7 the victims. But if you were -- this case is
8 going to go to the Supreme Court, the Court
9 of Appeals, ---

10 THE COURT: I know it.

11 MR. COOK: You know, in the
12 Federal Court you could deny the Motion,
13 then certify it for immediate appeal. In
14 the State court you can't.

15 THE COURT: I understand.

16 MR. COOK: The only way to get it
17 up there is to have a judgment. These guys
18 may or may not agree with this, but if you
19 allow this case to go forward, there may be
20 'thirty' other cases out there. Everybody
21 that was offended by ReVille might feel like
22 they've got to bring a case. But if the
23 Supreme Court gets a chance to rule and -- if
24 there is a cause of action, we should all
25 know that. Why drag all those people through

1 a trial to find out?

2 THE COURT: You know something?
3 You're arguing something that I -- John
4 Kittredge and I, when John was a Circuit
5 Court judge, we talked about it. We shared,
6 we had coffee over it. One of the things
7 that we said -- I might as well put this in
8 there, because they'll read it someday.
9 Maybe I will be gone then and they won't be
10 able to say, 'bring your robe to Columbia.'
11 But we both feel that it is a travesty for
12 both sides that we can't do more of what the
13 Federal Court does in allowing these issues
14 to be addressed and not have to spend all the
15 money that all of us that practice law know
16 that we have to spend to get to that point.
17 I don't know the answer to that. I wish that
18 I did.

19 I still don't know the answer, and
20 it's twenty years now removed, why you have a
21 motion to change venue and you can't hear the
22 convenience of witnesses at the same time.
23 You have to change it, then go there and
24 argue the convenience of witnesses and come
25 back. That makes no sense to me.

1 It makes no sense to me that I can't
2 consider something that I was slapped on the
3 wrist -- fortunately Bill didn't get anybody
4 to go with him, but he got my attention on
5 Motions to dismiss when I was practicing law.
6 I knew where it was going, that it was going
7 to be slammed in a summary judgment but that
8 wasn't before me, and I considered things
9 outside of the pleadings. Can't do that.
10 That doesn't make any sense either. Why
11 don't we streamline a lot of things? But
12 that's not before me. I also didn't create
13 the scintilla world either.

14 But, having said all of that, I hear
15 you. I know that. All I can say is that
16 it's like -- Albright Wilson, that's one of
17 the cases that I remember being involved in
18 before I went on the bench. There were lots
19 of cases, you try one -- I did -- I was
20 assigned the I-26 cases, there were sixty or
21 seventy of those filed. We got one, it
22 settled and then everything went down the
23 road.

24 If we try one, we won't have to try
25 them all. We pick the best one, try it.

1 Take it up, see where we go.

2 Obviously the people will be filing
3 to protect their right to bring a suit, I'm
4 sure. But that's an easy -- that's a
5 scheduling -- that's an administrative judge
6 nightmare. That's not a -- it's not
7 insurmountable. I hear you, I understand
8 what you're saying and I agree with you but I
9 just don't' think -- frankly, what good is it
10 -- I'll give you this, I -- I shouldn't put
11 this on the record. Oh, I don't care.

12 I was trying a case in Florence
13 about two months and had something happen
14 that I'd never had happen. A person in the
15 audience starting screaming at the solicitor
16 in closing arguments. I'd made a comment in
17 my ruling on a directed verdict and he said,
18 "you said you would have shot him." It was a
19 question of pointing-and-presenting. An
20 officer shot the man, he had a pistol and
21 there was a question if he pointed it. He
22 did. The officer said that he pointed it
23 twice. I said, 'If I had been in his shoes,
24 I would have shot him the first time that he
25 pointed it. I think that he was well within

1 his right to do that.' The fellow hollered
2 and said, 'Judge, you even said you'd do
3 that.' The jury is sitting there. I said,
4 'No, sir, sit down.' He said, 'You did so.'
5 So I excused the jury.

6 And I thought 'this is a mistrial.'
7 I went back to the office and thought about
8 it. I called my then colleague Mike Baxley,
9 who was from that area and said, 'What do you
10 think?' He said, 'Well, I think you can.
11 I wouldn't. You make the call. But let me
12 just tell you this, if you go ahead and have
13 the trial and they think that you are wrong
14 they'll give them a chance to try it again.'
15 So there's no harm, no foul. I said that
16 makes sense.

17 The same is true here. If I grant
18 you summary judgment, it goes up. They're
19 not going to address all these issues.
20 They're going to say, 'Judge, it was a
21 scintilla. Go back. Try it.' Nobody has
22 any guidance. This way we get some guidance.
23 So that's -- that's my thought process in
24 response to your question. So I hear you.

25 MR. COOK: You actually didn't

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1 grant it. You took it under advisement.

2 THE COURT: Okay, everything was
3 couched as a Motion to reconsider, so I
4 thought that ---

5 MR. COOK: You might be thinking
6 about the computer case.

7 THE COURT: The computer case.
8 We're getting old.

9 MR. COOK: We all briefed the
10 statute of limitation and I think that you
11 did deny the ---

12 THE COURT: Yeah, I did deny the
13 statute of limitations. I thought that they
14 were well within -- that's an issue that is
15 preserved, no question. You know what -- if
16 and when I still -- if and when it gets up
17 there and they say, 'Judge Dennis should have
18 granted summary judgment' then that will help
19 me the next time.

20 Thank you very much. Just a form
21 Order? Saying summary judgment Motion
22 denied. Thank you, gentlemen. I thank you
23 for your patience with me.

24 (HEARING CONCLUDED)

25

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STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF CHARLESTON)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 9th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the hearing held in the within action heard on June 6, 2014, before The Honorable R. Markley Dennis, Jr.;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Deborah Garrison

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
MOTHER DOE A,

Plaintiff,

v.

THE CITADEL,

Defendants.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
JOHN DOE CAMPER,

Plaintiff,

v.

THE CITADEL,

Defendant.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
JOHN DOE 2

Plaintiff,

v.

THE CITADEL,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No.: 2011-CP-10-9200

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No.: 2012-CP-10-1860

FILED
2013 DEC 12 PM 4:40
JENNIFER STRONG
CLERK OF COURT
BY _____

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No.: 2012-CP-10-1858

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
MOTHER DOE 2, on behalf of)
JOHN DOE 3,)
)
Plaintiff,)
)
v.)
)
THE CITADEL,)
)
)
Defendant.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
CAMPER DOE 6,)
)
Plaintiff,)
)
v.)
)
THE CITADEL,)
)
)
Defendant.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
JOHN DOE, A MINOR, BY HIS)
GUARDIAN AD LITEM JOHN ROE,)
)
Plaintiff,)
)
v.)
)
THE CITADEL,)
)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No.: 2012-CP-10-1859

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No.: 2013-CP-10-5247

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No. 2013-CP-10-4770

**AMENDED COMPLAINT
OF MOTHER DOE A
(Jury Trial Requested)**

The Plaintiff, Mother Doe A, complaining of the above-named Defendants alleges as follows:

1. Mother Doe A is a former citizen and resident of South Carolina, presently a citizen and resident of a state other than South Carolina. She is the natural parent of a child who in late 2007 and 2008 was under the age of 16 and was sexually abused by Louis Neal "Skip" ReVille on multiple occasions over a time span of more than a year. By ReVille's own admission, the Plaintiff's child is a person upon whom the crime of criminal sexual conduct has been committed. The Plaintiff is referred to in this public filing by pseudonym to maintain the confidentiality of her child's identity pursuant to S.C. Code § 16-3-730, which prohibits publication of the names of victims of criminal sexual conduct. The Citadel has been informed of the identity of the Plaintiff and her child by separate communication upon their agreement to maintain confidentiality of the information as to the public record.

2. The Citadel is a public college owned and operated by the State of South Carolina with its principal place of business in Charleston County, South Carolina. Among other things, The Citadel maintains an Alumni Association website that provides contact information of former Citadel cadets, including employment information and personal accolades. Skip ReVille is a former Citadel cadet, former Citadel Summer Camp counselor, and former employee of The Citadel. In April 2007, while ReVille was employed as a member of the Citadel faculty, The Citadel had knowledge that ReVille had demonstrated a sexual interest in children and a willingness to engage in inappropriate and unlawful sexual behavior with young boys and that such behavior had occurred on its campus. At the various times giving rise to the numerous separate occurrences set forth in this Complaint, The Citadel was acting through its agents, servants, employees, and/or officers.

3. This action is filed in the county in which the numerous separate and distinct occurrences giving rise to this case occurred.

4. This Court has personal jurisdiction over the parties to this action and subject matter jurisdiction over the claims alleged herein.

FACTUAL BACKGROUND—THE 2005 & 2007 REPORT

5. From 1957 to 2006, the Citadel operated a residential sports camp for children ages ten to fifteen ("The Camp") with a focus on athletics and activities aimed at the strengthening of character in a disciplined and structured environment. The Camp consisted of two three-week sessions per summer during which campers resided in barrack style dorm rooms on The Citadel campus.

6. The Camp was operated by and through the Office of The Commandant of Cadets, through which The Citadel selected, employed, and supervised current and former Citadel cadets to serve as staff and camp counselors.

7. In operating The Camp, and in selecting, employing, and supervising its counselors, The Citadel assumed a duty to screen, monitor, and supervise its employee counselors, as well as a duty to maintain the safety of the children who interacted with its employees, and a duty to represent accurately its experience with its counselors.

8. Among the counselors selected, employed, and supervised by The Citadel was Skip ReVille. A Citadel cadet from 1998—2002, ReVille was employed as a counselor at The Camp from 2001—2003 and was an employee of the State of South Carolina working for The Citadel in the summer of 2002 and during the 2006—2007 academic year.

9. During his tenure at The Camp, ReVille sexually abused at least seventeen campers on The Citadel campus. To do so, ReVille violated established Citadel policies, and did so with the knowledge of Director Jennifer Garrott and other Citadel officials.

10. In particular, throughout the summer of 2001, 2002 and 2003, ReVille engaged in behavior which violated clearly established Camp policy and Citadel regulations on numerous instances, with the knowledge of Ms. Garrott, by:

- i. Coercing minor campers to his dorm room after Taps/lights out;
- ii. Having minor campers in his dorm room behind closed doors with no other adult supervision during day and evening hours;
- iii. Providing food to campers to coerce them into his dorm room;
- iv. Coercing campers and other minors to spend the night in his dorm room;
- v. Showing pornography to minor campers, who were between the ages of ten and fifteen;
- vi. Masturbating in front of minor campers and forcing campers to do the same;
- vii. Showering with minor campers;
- viii. And any other such particulars as may be shown at trial.

11. Upon information and belief, Ms. Garrott, as well as other Citadel officials and staff, were aware of ReVille's deviant, pedophilic tendencies as early as 2001, wherein it was noted that ReVille was "senior counselor material *if learns to distance himself from campers . . .*" (Exhibit A, 2001 Employee Evaluation).

12. During the summer of 2002, Plaintiff is informed and believes that Ms. Garrott, caught ReVille in his dorm room alone with a minor camper. Upon information and belief, both Ms. Garrott and Company Tactical Officer, Major Bates, discussed the issue with ReVille, but declined to reprimand or terminate his employment despite established policies and procedures requiring such action. In addition, Plaintiff is informed and believes that neither Ms. Garrott nor Major Bates ever followed up with the minor camper or other counselors to investigate any

inappropriate or suspicious behavior involving ReVille and other minor campers. Further, upon information and belief, no written report of ReVille's infraction was ever recorded in his employee file.

13. During the summer of 2003, another victim, identified in this Complaint by his designation in this litigation as Camper Doe 6, was abused by ReVille at The Camp. In fact, at the beginning of The Camp's Second Session, before ReVille had actually succeeded in sexually abusing and molesting Camper Doe 6, Ms. Garrott caught ReVille alone in his dorm room with Camper Doe 6 rubbing "Icy-Hot" on the minor's leg. Ms. Garrott has stated that she became extremely upset upon catching ReVille alone with Camper Doe 6. She consequently yelled at ReVille "because he was supposed to make the example and not put himself into a situation that might be misconstrued." (Exhibit B, Deposition of Jennifer Garrott at page 43, lines 21-24). Consistent with the practice and custom of The Citadel to suppress information about sexual abuse of children despite Citadel policy requiring immediate termination for such behavior, Ms. Garrott failed to terminate ReVille and further neglected to draft a report or memorandum to document the serious policy violation.

14. Ms. Garrott now concedes, however, that pursuant to Camp and Citadel policies and procedures, ReVille should have been terminated immediately for having a minor in his room and rubbing "Icy-Hot" on his leg, the incident should have been recorded in ReVille's permanent file, and a written report should have been drafted and circulated regarding the matter. Ms. Garrott has likewise conceded that had ReVille been terminated, Camper Doe 6 and other minor victims would not have been subjected to ReVille's sexual abuse and molestation. (Exhibit B, Deposition of Jennifer Garrott at page 57, lines 10-13).

15. Instead, ReVille was permitted to continue to serve at The Camp as Senior Counselor for the entirety of the second session of 2003. During this three week session, after Ms. Garrott caught ReVille alone with Camper Doe 6 in ReVille's room, ReVille repeatedly and on numerous separate occasions initiated inappropriate contact with Camper Doe 6 in ReVille's dorm room. This inappropriate contact progressed to sexual molestation which occurred on multiple separate occasions throughout the duration of the camp session.

16. In the summer of 2005, after being subjected to ReVille's sexual abuse and molestation in 2003, Camper Doe 6 returned to work at The Camp as a Junior Counselor. Upon information and belief, Camper Doe 6 was "a good kid" and model counselor with no complaints or disciplinary problems. (See Exhibit B, Deposition of Jennifer Garrott at page 31, lines 22-23). After completing pre-camp counselor training in June of 2005, which included a section on child sexual abuse drafted by People Against Rape, Camper Doe 6 recalled his 2003 sexual abuse by ReVille and felt compelled to report ReVille's acts of sexual abuse to Camp Director Garrott.

17. Confronting ReVille's abuse was extremely difficult for Camper Doe 6 but he nonetheless went to Ms. Garrott's office and indicated he wanted to discuss something that was bothering him. Ms. Garrott welcomed Camper Doe 6 and invited him to sit down in her office. Once in Ms. Garrott's office, Camper Doe 6 explained that he wanted to talk with her about "Skip ReVille." The moment ReVille's name was mentioned Ms. Garrott's demeanor immediately changed. She abruptly called off the meeting, claiming she had another obligation, and directed Camper Doe 6 to return to his room. Consistent with the practice and custom of The Citadel to suppress information about sexual abuse of children, Director Garrott refused to take the detailed report Camper Doe 6 was prepared to make about ReVille in the summer of 2005.

18. Within an hour of Camper Doe 6 attempting to report ReVille to Director Garrott, a Senior Counselor, acting at the direction of Ms. Garrott, came to Camper Doe 6's room and directed Camper Doe 6 to come to the Parade Ground. Once there, Camper Doe 6 was fired by the Senior Counselor and instructed to leave the premises within two hours.

19. Plaintiff is informed and believes that in the two hour period before Camper Doe 6 was fired, Ms. Garrott spoke to Colonel Lackey about Camper Doe 6's attempt to report ReVille. Upon information and belief, because Citadel and Camp policy would require reports of sexual abuse to be disclosed to Citadel Public Safety and other appropriate law enforcement agencies, The Citadel chose to terminate Camper Doe 6 without just cause to avoid the damaging ramifications such a report could have on the college. (See Exhibit C, Counselor Code of Conduct and Counselor Handbook, prohibiting sexual activity in any form and requiring counselors to abide by the regulations of The Citadel, including the college's Honor Code and Summer School Regulations; Exhibit D, Camp Policies Regarding Sexual Misconduct Issues, requiring reports of sexually inappropriate conduct to be turned over to the Citadel Public Safety Department requiring Public Safety to contact the appropriate law enforcement agency).

20. Acting at Director Garrott's direction, the Camp's Senior Counselor stated, as a pretext for terminating Camper Doe 6, that Camper Doe 6 called one of the campers a "faggot." Camper Doe 6 informed the Senior Counselor that he had never used that term to refer to any camper. Ms. Garrott was similarly aware that Camper Doe 6 had not referred to any camper in that manner, and the pretext used by the Senior Counselor was merely a means to conceal the actual reason for terminating Camper Doe 6, i.e. that he had attempted to report ReVille's sexual misconduct with minors.

21. Ms. Garrott knew as early as 2002 that ReVille violated camp rules to isolate himself with minor campers. He did so, to her knowledge, more than once. Had she not truncated Camper Doe 6's report regarding ReVille in 2005, it would have violated the practice and custom of The Citadel to suppress reports of sexual misconduct of Citadel staff with minors, and her prior knowledge and lack of proper supervision of ReVille between 2002 and 2005 would have become known. For those reasons, it was preferable that Camper Doe 6 be terminated from the 2005 Citadel Summer Camp on a pretext.

22. The Senior Counselor that fired Camper Doe 6 gave him hours to leave The Citadel campus. Management of the camp would not speak with him. Director Garrott saw campers interacting with Camper Doe 6 shortly after his termination but before his departure and ordered him to get away from the campers and to leave the campus. The actions by Garrott and the Senior Counselor to terminate Camper Doe 6 and remove him from The Citadel campus were taken because Camper Doe 6 attempted to report ReVille's misconduct. The reason used to terminate Camper Doe 6 was a pretext.

23. The practice and custom of The Citadel is to suppress reports of sexual misconduct of Citadel staff with minors.

24. In 2005, Mark Brandenburg became general counsel for The Citadel. The custom and practice of The Citadel to suppress reports of sexual misconduct of Citadel staff with minors was continued under Mr. Brandenburg's tenure.

25. In January 2006, Defendant Rosa became the President of The Citadel. The custom and practice of The Citadel to suppress reports of sexual misconduct of Citadel staff with minors was continued under Defendant Rosa's tenure.

26. In April 2007, while ReVille was working in The Citadel's writing center, The Citadel received information concerning allegations of child sexual abuse by ReVille. (See Exhibit E, MHA Interviews 00036 (stating "Skip was working in the writing center at the time the call came in."))).

27. Specifically, on April 23, 2007, the father of a former camper called the office of Lieutenant General John W. Rosa, President of The Citadel, and reported to Mark C. Brandenburg, The Citadel's General Counsel, that his son ("John Doe" or "Doe") had been sexually abused by ReVille while attending The Camp in 2002.

28. In addition, it was reported that ReVille, while on the premises of The Citadel and during the course and scope of his employment with The Camp, engaged in inappropriate sexual conduct with many other campers under age sixteen.

29. Doe's father further indicated that "he wanted the school to know about this incident and to know that an apparent predator was once affiliated with the school." (See May 16, 2007 Correspondence to IRF attached hereto as Exhibit F).

30. In a follow-up phone call with Mr. Brandenburg later that day, Doe reiterated that the sexual abuse was frequent and involved many other campers, stating ReVille "engaged in this activity frequently, though, and with many other campers." (See Exhibit F).

31. Mr. Brandenburg has stated that he recalled immediate concerns upon receipt of Doe's report on April 23, 2007. (See Exhibit G, Margolis Report at 13). Upon information and belief, these concerns stemmed from Brandenburg's recent involvement in a series of civil suits concerning numerous instances of child sexual abuse at The Camp by Captain Michael J. Arpaio of the United States Marine Corps, a senior counselor and volunteer from 1995-2001.

32. Like the call from Doe's father, the Arpaio litigation similarly commenced with a report by a camper's parent alleging that a counselor, in this case Captain Arpaio, had sexually abused several campers in the counselor's dorm room. This initial report led to a police investigation and subsequent involvement by the Marine Corps that soon revealed that Captain Arpaio had committed multiple acts of child sexual abuse while working at The Camp.

33. Throughout the Arpaio matter, Mr. Brandenburg, then a private attorney for the firm of Barnwell Whaley Patterson and Helms, LLC, along with Citadel Executive Assistant to the President Colonel Joseph Trez, was heavily involved in the subsequent lawsuits brought against The Citadel by the victims and their families. (See Exhibit G, Margolis Report at 13-14).

34. Upon information and belief, during the Arpaio litigation, which extended for a period of years before settling in 2006, Mr. Brandenburg, Colonel Trez and others became intimately acquainted with the mandates of The Citadel's policies and procedures regarding sexual abuse, sexual harassment, serious incidents, and sexual misconduct issues, including, but not limited to, the following:

i. Memo 51, Sexual Harassment Policy:

- a. "Whenever there is an incident of sexual assault or sexual abuse, the incident will be reported to the police."
- b. Examples of sexual harassment include: "[d]isplaying sexual graffiti and sexually explicit pictures," "[s]exually touching or rubbing oneself in a suggestive way when around another person," and "[c]ommitting sexual assault."

ii. Camp Policies Regarding Sexual Misconduct Issues:

- a. "Regardless of the validity of the violation, any sexually inappropriate conduct reports concerning any camper or employee of the camp will be turned over to the citadel public safety department and a thorough investigation conducted."

- b. "All sexual misconduct allegations disclosed at any time concerning any individual(s), currently or formerly, associated with the camp, will be investigated upon disclosure. There are no time period restrictions regarding sexual misconduct investigations."
- iii. Memo 39, Serious Incidents Policy:
 - a. "Serious Incidents" include: "The occurrence on The Citadel campus or the involvement of a member of The Citadel Corps of Cadets, day/evening student, faculty, staff or campus dependent, as the suspect or victim in an incident," "scandal involving an individual closely identified with the college," and "allegations concerning illegal or immoral activities at the college."
 - b. "Serious Incidents" must be reported to the Executive Assistant to the President (i.e., Col. Trez in April – December 2007).
 - c. The Executive Assistant to the president must report the serious incident to Citadel Public Safety.
 - d. Once reported, Citadel Public Safety is entrusted with "initiat[ing] an incident report and investigation as necessary" and "contact[ing] the appropriate law enforcement agency (agencies) as necessary to ascertain the facts in the situation."
- iv. Memo 9, Sexual Assault Crisis Intervention Policy:
 - a. Defining sexual assault as including "rape and all other forms of unlawful sexual behavior and contact which is not mutually agreed upon . . . without affirmative consent by all persons involved."
 - b. Affirmative consent cannot be given where the person is under eighteen years of age.
- v. College Regulations:
 - a. Section I, p. 1, under "Core Values" states, "Duty: We emphasize the importance of individual accountability and the moral obligation of responsibility for the welfare of others."
 - b. "Ignorance of any order or regulation is not considered an excuse for neglect or misconduct."

(See Exhibit H, Memo 51, Sexual Harassment Policy CIT 001697, 001703; Exhibit D, Camp Policies Regarding Sexual Misconduct Issues; Exhibit I, Memorandum Number 39, "Serious Incidents" at page 10 and 12; Exhibit J, Sexual Assault Crisis Intervention Policy, Memo No. 9 (later replaced and superseded by Memo No. 4 of the same title and containing the same cited language); Exhibit K, Code of Regulations, p. 1 & 17).

35. At all times prior to, during, and after Doe's April 2007 report of criminal sexual conduct, President Rosa, Mr. Brandenburg, Colonel Trez, Jennifer Garrott and others knew or should have known their duties and obligations pursuant to the above-referenced policies and procedures, including, but not limited to, the duty to report the allegations to law enforcement.

36. Despite The Citadel's duties and obligations pursuant to these policies and procedures and consistent with the practice and custom of The Citadel to suppress information about sexual abuse of children, The Citadel deliberately declined to report the incident to The Citadel Public Safety, the Charleston Police, or the State Law Enforcement Division ("SLED").

37. Instead of reporting the allegations, Defendant Brandenburg, at the direction of Defendant Rosa, investigated the information given by the 2002 camper. Brandenburg was chosen precisely because The Citadel could claim (incorrectly) that all information he received could be withheld from others, since he was an attorney.

38. Although Mr. Brandenburg conceded that a goal of the investigation was to prevent harm to other young boys, the investigation was not processed through the customary channels as mandated by The Citadel's internal policies and procedures. (See Exhibit L, Brandenburg Deposition at p. 31).

39. Rather, Plaintiff is informed and believes that the investigation was conducted solely by The Citadel's top ranking officials so as to prevent additional negative publicity and to avoid another round of lawsuits concerning child sexual abuse at The Camp.

40. On April 24, 2007, Brandenburg attempted to contact ReVille, who, upon information and belief, was on campus working in The Citadel's writing center when he received a call to meet with Mr. Brandenburg and Colonel Trez.

41. When confronted by Brandenburg and Colonel Trez, Plaintiff is informed and believes that ReVille initially denied the allegations, stating, "You know me, I'm Skip ReVille."

42. Upon information and belief, at the time of the April 24, 2007 meeting, Skip ReVille had a special relationship with The Citadel and was subject to discipline pursuant to The Citadel's policies and procedures to the extent he was a member of The Citadel faculty, a current job applicant for two open positions with The Citadel, and an individual closely identified with The Citadel who continued to maintain and utilize a Citadel faculty email address. (See Exhibit M, ReVille Payroll Check History, referencing final check issued on May 15, 2007, and S.C. Employment Security Commission Records, referencing 4/30/2007 as last day worked and indicating "still employed by The Citadel"; Exhibit L, Brandenburg Deposition at 127, 129 & 132; Exhibit S, Deposition of Col. Trez at 81).

43. However, instead of complying with The Citadel's internal policies and procedures requiring reporting of allegations of sexual misconduct involving faculty, staff or individuals associated with the college, Mark Brandenburg and Colonel Trez instructed ReVille to "lay low."

44. Later that day, Mr. Brandenburg spoke with Ms. Garrott who informed Brandenburg that prior to ReVille's employment at The Citadel in 2006, ReVille had been asked

to leave his former employment at Pinewood Preparatory School in Summerville, South Carolina ("Pinewood").

45. As a result of this discussion, The Citadel had in its possession a handwritten note by Brandenburg which stated, "Skip was asked to leave Pinewood Prep [knowing look]." (See Exhibit N, Brandenburg notes dated 4/27/07 (emphasis in original)).

46. Plaintiff is informed and believes that both Ms. Garrott and Mr. Brandenburg were aware that ReVille had been asked to leave Pinewood for reasons related to inappropriate behavior with children and/or child sexual abuse.

47. However, Brandenburg neglected to contact Pinewood to inquire as to the nature of his termination or as to any complaints of inappropriate behavior regarding ReVille.

48. In fact, at no time during or after the April 24, 2007 meetings with ReVille and Ms. Garrott did Mr. Brandenburg, President Rosa, Colonel Trez or any other Citadel official inquire about ReVille's previous, current or other employment or activities to determine whether he had contact with or access to children or to determine the reasons for his termination(s) or dismissals from employment, including the reason for his termination from Pinewood. (See Exhibit G, Margolis Report at 16).

49. Plaintiff is further informed and believes that Ms. Garrott, who was aware of ReVille's sexual abuse of minors, either withheld this information from Brandenburg or shared her knowledge of the noted instances involving ReVille's inappropriate conduct with minors at The Camp, including the 2003 "Icy Hot" incident, and collaborated with Brandenburg, Rosa and Trez in concealing ReVille's sexual abuse. (See Exhibit B, Garrott Deposition Volume II at 93).

50. Sometime between the April 23, 2007 report and May 1, 2007, Mr. Brandenburg and others were aware that several other former campers who were allegedly abused by ReVille

in 2002, as well as an eyewitness to Doe's abuse, were currently on The Citadel campus and enrolled as Citadel Cadets.

51. Plaintiff is informed and believes that although Brandenburg contacted some of these individuals by email to inquire as to the allegations, he either failed to speak with the former campers/current cadets or in the alternative, he discussed the abuse with the former campers/current cadets and confirmed Doe's allegations of sexual abuse and misconduct by ReVile. Nonetheless, in either case, Brandenburg never reported the abuse or the allegations to The Citadel Public Safety, the Charleston Police, SLED or Citadel Staff specializing in responding to reports of sexual and gender violence.

52. Despite the directives of established Citadel policies, at no time during The Citadel's investigation into the matter did Mr. Brandenburg, President Rosa, Colonel Trez, Jennifer Garrott or others disclose the report, the nature of the allegations, or the information gleaned with The Citadel Public Safety, the Charleston Police, SLED or Citadel Staff specializing in responding to reports of sexual and gender violence. (See Exhibit G, Margolis Report at 16).

53. Instead, these details were shared only with The Citadel's insurance carrier, the South Carolina Insurance Reserve Fund ("IRF").

54. Given Mr. Brandenburg's experience with the investigation into the Arpaio matter and his "extensive knowledge of the camp from this time period," he offered to conduct a further pre-suit investigation of Doe's allegations wherein he would serve as the IRF's special investigator. (See Exhibit F, May 16, 2007 Correspondence to IRF).

55. According to Mr. Brandenburg, having the IRF fund an interview with the former camper would be “the most likely approach to lead to a *quick and inexpensive resolution* of this claim.” (See Exhibit F) (emphasis added).

56. However, Plaintiff is informed and believes that Mr. Brandenburg knew ReVille personally and was aware of ReVille’s stellar reputation as a highly respected cadet, faculty member, and former Chairman of the Honor Committee.

57. Notwithstanding the inherent potential for bias, Mr. Brandenburg suggested, and President Rosa, the Board of Visitors, and the IRF all agreed, to allow him to continue to lead the investigation into the allegations of abuse by a child sexual predator despite the fact that the alleged perpetrator was an individual whom Brandenburg, along with the majority of the Citadel community, highly regarded.

58. Thereafter, Mr. Brandenburg, acting as the IRF’s special investigator, was dispatched to Dallas, Texas to meet with Doe and take his statement.

59. Plaintiff is informed and believes that Mr. Brandenburg’s visit to Texas to interview Doe was a step beyond The Citadel and the IRF’s normal activity, demonstrating The Citadel’s desire to obtain a quick resolution, to avoid negative publicity, to keep the matter out of the public eye, and to protect ReVille. (See Exhibit F; see also Exhibit G, Margolis Report at 19-20).

60. On July 1, 2007, a court reporter transcribed the former camper’s statement, which disclosed to The Citadel the following details regarding the abuse:

- i. In 2001, ReVille hosted movie nights where he would order pizza or Chinese food to entice campers to come to his room to watch pornography. During these movie nights, ReVille would masturbate in front of the boys and encourage them to do the same. ReVille would also shower with the boys.

- ii. On one occasion, ReVille invited Doe and his friend, also a camper, to his room. ReVille ordered Chinese food and began showing the boys pornographic videos on his computer. Eventually, ReVille began masturbating in front of the boys and encouraged them to join him. When Doe refused, ReVille "got a little aggressive" and asked the boy to come back to the computer and join him, which he did.
- iii. ReVille also insisted that Doe and the other camper spend the night with him in his room. When Doe tried to leave, ReVille coerced him into staying and masturbating in front of him.
- iv. ReVille abused the other camper who accompanied Doe to ReVille's dorm room, as well as four other campers, multiple times during the summers of 2001 and 2002.
- v. Furthermore, Doe personally observed younger boys going into ReVille's room late at night over the course of the summer. He further explained that at least five other boys had been involved, stating: "I know there are about five other kids that experienced it a few times."

(See Exhibit O, July 1, 2007 Statement at 73-75, 80-81, 83).

61. At numerous points throughout the statement, Doe reiterated that there were many other instances and victims of ReVille's abuse. Notably, many details provided by Doe, such as the identification of the actual names of other victims through camp yearbook photos and other camp materials, came as new information to The Citadel since the April 23, 2007 report.

62. The former camper concluded the interview expressing his foremost desire to put an end to the abuse, stating: "Most of all, the thing I want the most is just to make sure that [ReVille] doesn't have a chance to do this to anyone else." (Exhibit O at page 109).

63. In response to Doe's request, Mr. Brandenburg assured Doe and his family that The Citadel would continue to investigate the matter and would report ReVille to the proper authorities. However, Brandenburg failed to disclose to the Doe family that the actual purpose for taking the statement was to provide a reference point for the statute of limitations and to ensure that no formal criminal or civil complaint was filed.

64. Reporting ReVille to authorities was the obvious solution to ending the abuse and preventing other children, including Plaintiff's child, from becoming victimized; however, instead of reporting the sexual abuse to law enforcement, The Citadel continued its practice and custom of suppressing reports of sexual misconduct of Citadel staff with minors and instead approached the matter as a civil defense claim with the goal of obtaining a "quick and inexpensive resolution." See Exhibit F, May 16, 2007 Correspondence to IRF.

65. In an email to the IRF, dated August 8, 2007, Mr. Brandenburg summarized his findings from the interview, stating, "In short. . . I found [Doe] to be believable." (See Exhibit P, Aug. 8, 2007 Email to IRF).

66. In this same email, Mr. Brandenburg called attention to ReVille's emphatic denial of the allegations, and even likened his statements to similar comments made by Arpaio during the 2002 sexual abuse investigation. (See Exhibit P).

67. Upon receipt of the April 23, 2007 report and the July 1, 2007 statement, The Citadel had clear and unambiguous notice that crimes of sexual conduct against minors had occurred on its premises and that "many other" campers were abused by a serial sexual predator. Furthermore, The Citadel had clear and unambiguous notice that the suspect was not only an alumnus but was also a member of The Citadel Faculty who was an acquaintance of Mr. Brandenburg—the individual leading the investigation.

68. However, despite the admitted similarities to the Arpaio matter and the confirmed credibility of the information obtained from the investigation, The Citadel never reported the abuse to the Citadel Public Safety, the Charleston Police, SLED or other authorities as mandated by clearly established campus policies and procedures as well as statutory and common law.

69. After undertaking the duty to investigate Doe's allegations, Brandenburg and The Citadel conducted no further investigation regarding the other victims identified by Doe in the July 1, 2007 statement.

70. The Citadel chose instead to ignore the allegations implicating multiple other victims and to bypass the proper channels for investigation and reporting in favor of reaching a settlement with the Doe family in exchange for their silence regarding the matter.

71. Upon information and belief, Mr. Brandenburg was given authority to settle the matter with the Doe family for Twenty Thousand Dollars (\$20,000 and 00/100) but was unable to obtain Doe's consent.

72. Receiving no further communication from Doe or his family, Brandenburg ceased to take any further action in the matter, stating "I plan to put this file back in my file cabinet, but do not plan to take any action on it further." (Exhibit Q, November 16, 2007 Email to IRF).

73. Similarly, by letter dated August 20, 2008, David Stuckey, Professional Liability Representative for the IRF, indicated he would be closing the file in the matter due to a lack of pursuit by Doe. (See Exhibit R, Aug. 20, 2008 Correspondence from IRF).

74. In 2011, allegations again surfaced of ReVille's sexual misconduct against children—this time at a private preparatory school.

75. It wasn't long before these allegations brought attention to Doe's report of sexual abuse by ReVille at The Camp in 2002. Together, these allegations prompted a local police investigation and involvement by SLED, which revealed at least 22 other victims of sexual abuse.

76. ReVille was arrested on October 28, 2011, and is currently serving a 50 year sentence for the sexual molestation and abuse of 23 boys, including John Doe and the Plaintiff's child.

77. At all times relevant herein, the State of South Carolina has recognized the serious threat posed to children by sexual abuse:

The General Assembly finds it fundamentally necessary to improve the ability to prevent, detect, investigate, and prosecute crimes that . . . and obscenity crimes that are directed toward or involve children under the age of eighteen. The serious and unacceptable threat these crimes pose to children is self-evident and impacts the State as a whole.

S.C. Code Ann. § 14-7-1610.

78. The sexual abuse of a minor is a criminal offense under South Carolina law. Section 16-15-305 of the South Carolina Code defines criminal sexual conduct to include, among other things, "masturbation" and "lewd exhibition, actual or simulated, of the genitals." S.C. Code Ann. § 16-15-305(C)(1)(b).

79. Pursuant to Section 16-3-657 of the South Carolina Code, the testimony of a victim need not be corroborated in prosecutions for criminal sexual conduct.

80. Since 2001, The Citadel has known that on multiple occasions ReVille would isolate himself with campers, contrary to Citadel rules.

81. Since the summer of 2005, The Citadel has had reason to know that ReVille is a person dangerous to children.

82. Conduct reported to The Citadel in 2005 and 2007 was sufficient to have ReVille terminated from The Citadel's employment and constituted criminal acts.

83. No report to law enforcement about ReVille was made by anyone at The Citadel in 2005 or 2007.

84. Instead, President Rosa and Mark Brandenburg coordinated the custom and practice of concealing the sexual abuse allegations and withholding the report from law enforcement and anyone else. The Citadel Board of Visitors ratified that failure to report, and continues to direct The Citadel to take the position that The Citadel has no duty to report the allegations of child sexual abuse or Citadel staff who engage children in group masturbation.

85. Both Camper Doe 6 and Doe reported ReVille to The Citadel in an attempt to prevent other children from being sexually abused by ReVille. In 2007, Doe testified to Brandenburg, under oath, that stopping ReVille from harming another child was "the thing I want most." (See Exhibit O at page 109).

86. Defendants each knew, or should have known, since 2007, that ReVille was dangerous to children. Doe explained to The Citadel how and why ReVille was dangerous to children.

87. In 2005 and 2007, the Citadel concealed information about ReVille's criminal conduct. That concealment continued until after October 28, 2011.

88. Both the April 23, 2007 report, and the July 1, 2007 statement containing additional specific facts and allegations of sexual abuse and identification of victims not only alleged acts of inappropriate sexual misconduct against the former camper himself but also alleged acts of criminal sexual conduct against many other children. (Exhibit O, Former Camper's Statement at 105).

89. These allegations were sufficient to trigger the duties set forth under the Citadel's policies and procedures regarding reporting to law enforcement as well as the duties to report set forth under state and federal law, including, but not limited to:

- (i) S.C. Code Ann. § 59-154-10, ("The Jessica Horton Act");
- (ii) S.C. Code Ann. § 63-7-310, ("Mandatory Reporting Act");

(iii) 20 U.S.C. § 1092(f), ("Clery Act");

(iv) 20 U.S.C. § 1681, ("Title IX").

90. In fact, Mr. Brandenburg and Colonel Trez both agreed that the April 23, 2007 report and the July 1, 2007 statement concerned criminal sexual conduct as contemplated by the South Carolina Criminal Code. (See Exhibit L, Deposition of Brandenburg at 177-78 & 185; Exhibit S, Deposition of Colonel Trez at 94).

91. Likewise, Mr. Brandenburg and Colonel Trez both agreed that the April 23, 2007 report and the July 1, 2007 statement concerned illegal and immoral conduct and scandal involving an individual closely identified with the college so as to require reporting to Citadel Public Safety as contemplated by The Citadel's policy regarding "Serious Incidents." (See Exhibit L, Deposition of Brandenburg at 262-263; Exhibit S, Deposition of Colonel Trez at 41-42; Exhibit I, Memorandum Number 39, "Serious Incidents" at page 10).

92. Plaintiff is further informed and believes, and Citadel witnesses admit, that the crime of sexual misconduct against a minor qualifies as a "Serious Incident" pursuant to the "Serious Incidents" policy in 2007. Notwithstanding, neither Rosa, nor Brandenburg, nor Colonel Trez, nor Jennifer Garrott, nor any other Citadel official reported the allegations to Citadel Public Safety or other law enforcement authorities.

93. Additionally, upon information and belief, Doe's April 23, 2007 report and the July 1, 2007 statement alleged acts that constituted sexual assault under The Citadel's Sexual Assault Crisis Intervention Policy and required reporting to The Citadel's Sexual Assault Response Coordinator ("SARC"), who in turn was required to file a report of the abuse. (See Exhibit J).

94. The Citadel's internal policies and procedures require Citadel public safety officers to report all criminal offenses to SLED. (See Exhibit T, Keeping Our College Safe and Secure; Exhibit I, Memorandum Number 39, at page 10).

95. As commissioned law enforcement officers, Citadel Public Safety Officers are further required to report suspected child sexual abuse under South Carolina's Mandatory Reporting Act, S.C. Code Ann. § 63-7-310.

96. Educators, administrators, and teachers, including, but not limited to, President Rosa, Colonel Trez, Brandenburg, Bob Williamson, and Colonel Lackey are also mandatory reporters pursuant to the Act. Notwithstanding, Plaintiff is informed and believes that Citadel educators, administrators, and teachers and were apprised of the allegations of sexual abuse against ReVillie yet neglected to report the abuse to law enforcement.

97. In addition to South Carolina's Mandatory Reporting Act, The Jessica Horton Act, effective June 6, 2007, requires reporting of allegations of criminal sexual conduct on the property of the institution to SLED and "[u]pon notification, the State Law Enforcement Division [SLED] shall participate in a joint investigation of the . . . alleged act of criminal sexual conduct." S.C. Code Ann. § 59-154-10.

98. Had Citadel Public Safety been contacted pursuant to established Citadel policies and procedures, the Mandatory Reporting Act or the Jessica Horton Act, the matter would have immediately been reported to and turned over to SLED. (See Exhibit U, Fletcher Deposition at 16, & 18-19).

99. Federal law also requires disclosure and reporting of sexual abuse under The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092(f) ("Clery Act"). Specifically, under the Clery Act, The Citadel was required to make a

timely warning about the 2007 report of sexual abuse because ReVille was a member of The Citadel faculty, a frequent visitor of The Citadel campus and had access to The Citadel campus as demonstrated by his visits to the campus on April 24, 2007, and again in 2008 when he was asked back to the Campus as a guest speaker to the Honor Council.

100. Although the abuse against Doe and camper Doe 6 occurred in 2002 and 2003, ReVille posed an ongoing threat to The Citadel community because of his frequent visits to the campus, his work as a tutor in the writing center, his participation as a guest speaker, and his otherwise demonstrated access to the campus, including his use of a Citadel email address and his status as a Citadel job applicant.

101. Upon information and belief, President Rosa, Mark Brandenburg, Colonel Trez, Jennifer Garrott and others were well-informed, or should have been informed, of their duties and obligations under The Clery Act, Title IX, the Mandatory Reporting Act, and the Jessica Horton Act, as well as The Citadel's internal policies regarding the handling of allegations of criminal sexual conduct, including the requirement that such incidents be reported to and investigated by law enforcement.

102. However, despite the reporting requirements mandated by these policies and by state and federal law, these officials deliberately neglected to inform Citadel Public Safety, the Charleston Police, SLED, the Title IX Coordinator, or the SARC of the alleged acts of criminal sexual conduct. These officials also neglected to inform Citadel Public Safety, the Charleston police or SLED of the allegations that many other minor campers were abused.

103. Further, pursuant to The Citadel's internal policies, state and federal law, and accepted professional standards, these officials knew they had a duty to report ReVille as well as

a duty to ensure that ReVille's personnel file would accurately reflect the reason for his termination so as to place other employers on notice of ReVille's conduct.

104. Instead of complying with The Citadel's internal policies and procedures, statutory requirements, and accepted professional standards, The Citadel deliberately concealed the abuse, allowing ReVille to avoid detection through investigation and interrogation by SLED agents trained to investigate child sexual predators and preventing future employers from discovering ReVille's propensity for sexually abusing young children.

105. As part of this deliberate effort to conceal the abuse, President Rosa, Mark Brandenburg and others agreed ReVille would be released from his employment at The Citadel for "mutually agreeable reasons," despite their knowledge of the true nature of his termination—sexual abuse of minors. (See Exhibit V, Employee Termination Form, Citadel FOIA 0000282; Citadel 0003128).

106. Mr. Brandenburg further acknowledged placing great weight on the "life-altering" impact that reporting the allegations to law enforcement would have on ReVille, and even drew a comparison to the impact of similar allegations in unfounded cases on individuals such as the Duke Lacrosse players or Catholic clergy. This effort by The Citadel to avoid any action that might tarnish ReVille's otherwise stellar reputation further demonstrates the presence of bias that overshadowed the investigation and the deliberate effort on the part of The Citadel to conceal the abuse to avoid negative publicity. (See Exhibit G, Margolis Report at 29).

107. As such, The Citadel deliberately neglected to update ReVille's personnel file to reflect the true nature of his termination and, upon information and belief, when subsequent employers contacted The Citadel orally and in writing regarding ReVille, The Citadel refused to

disclose the allegations of abuse and refused to disclose that ReVille was, in fact, not eligible for rehire.

108. Upon information and belief, these employers would not have hired ReVille had they been accurately informed of the allegations and ReVille would not have had access to children including, in particular, the Plaintiff's child.

109. Actions taken by Mr. Brandenburg, President Rosa, Colonel Trez, Jennifer Garrott and others in furtherance of concealing the allegations, protecting ReVille's reputation, and enabling ReVille's ability to gain unfettered access to children are in clear violation of accepted professional standards and established Citadel policies and procedures, including the Citadel's policy regarding employee misconduct, which enumerates the following consequences for employees "accused of sexual misconduct":

- i. The allegation, the outcome of the investigation, and any disciplinary action stemming from the incident will go in your permanent employee file.
- ii. The Citadel will not expunge molestation findings from your record.
- iii. The Citadel will not terminate an investigation of sexual misconduct in exchange for resignation.
- iv. The Citadel will report necessary information about the incident to state licensing entities and other clearinghouses.
- v. The Citadel will not provide you with positive referrals before concluding an investigation.
- vi. The Citadel will refuse to negotiate gag order clauses in employee termination agreements.
- vii. The Citadel will provide factual and candid responses to inquiries by other potential employees about your behavior.
- viii. The Citadel will fully cooperate with law enforcement agencies that are conducting investigations.

(Exhibit W, In the Event of Employee Misconduct).

110. In undertaking these actions to conceal the abuse, The Citadel acted entirely in its own interest, without regard to the law, common decency, accepted professional standards, and the interests of parents, children, and families whom The Citadel knew would be affected by ReVille after 2007

111. Had The Citadel disclosed or made available information pertaining to the nature of ReVille's termination, the allegations of abuse, and that ReVille was not eligible for rehire, subsequent employers, through which ReVille was able to gain access to future victims, including the Plaintiff's child, would never have hired ReVille and the risk of abuse to future victims, including the Plaintiff's child, would have been abated.

112. By concealing the abuse and allowing ReVille to continue to prey on children under the guise of duty and honor, The Citadel provided ReVille with the very currency that enabled him to attract his victims, including the Plaintiff's child.

113. Further, from 2001 until the Summer Camp was officially closed in 2006, The Citadel knew or should have known that acts of sexual abuse or inappropriate conduct were occurring at The Camp.

114. Had The Citadel adhered to its internal policies and procedures, including those policies specifically regarding the Summer Camp during this time, the conditions which facilitated ReVille's continuing abuse of minor campers would have been frustrated or, in the alternative, the sexual abuse would have been discovered, ReVille would have been prosecuted as a child sexual predator, and resulting harm to other victims, including the Plaintiff's child, would have been abated. These policies, include, but are not limited to, the following:

- i. The Citadel Summer Camp Counselor Code of Conduct that prohibited "sexual activity, in any form, with any person".

- ii. The Citadel Summer Camp policy regarding the prohibition of "Sexual Harassment" as adopted from the "Blue Book Regulations for the Corps of Cadets" which states "Sexual harassment is unwanted sexual attention."
- iii. The Citadel Summer Camp policy which mandated that: campers were to remain "in their own rooms after Taps;" "counselors will not visit with campers in their rooms after Taps;" "Campers may not "switch" rooms (even if it is "just for the night"); "Campers will NEVER be allowed to sleep in a counselor's room;" and counselors were to "always" leave their "door open" when campers visited their rooms or when the counselor's visited the camper's room.
- iv. The Citadel's "Camp Policies Regarding Sexual Misconduct."
- v. The Citadel's "Sexual Assault Crisis Intervention Policy" defining "Sexual Assault" as "... all other forms of unlawful sexual behavior ... which is not mutually agreed upon."
- vi. The Citadel policy entitled "Keeping Our College Safe and Secure," requiring prosecution of criminal offenders through the Solicitor's or Magistrate's office.
- vii. The Citadel's "Core Values," as set forth in the "College Regulations" defining "duty" as "... the moral obligation of responsibility for the welfare of others."
- viii. The Citadel's "Guideline on Child Sex Abuse and Exploitation – For Camp Counselors" requiring reporting of sexual abuse to law enforcement authorities.
- ix. The Citadel's policy on "Summer Camps Operation" requiring "All camp sponsors [to] submit a report to the Risk Management and Safety Office in the event of an incident that could give rise to Citadel liability."
- x. The Citadel's "Children on the Citadel Campus" policy mandating that "Camp directors . . . report any incident or accident involving injury, or which could give rise to camp or institution liability, to the Risk Management and Safety Officer and the Provost, Athletic Director, or Commandant, as appropriate."

115. Decisions made by The Citadel to refrain from reporting the abuse by ReVille and to protect, at all costs, the institution and the perpetrator, their once highly regarded faculty member and Honor Committee Chair, were actions taken by officials, agents, and employees of the State of South Carolina acting within the scope and performance of their official duties.

116. The acts of these Citadel agents and employees in intentionally failing to comply with The Citadel's internal policies and applicable statutory requirements, or in failing to be informed of the policy mandates or statutory duties, even in the wake of the Arpaio scandal, fell below accepted professional standards and outside the exercise of discretion or judgment.

117. Further, this conscious failure by Citadel agents and employees to comply with laws, policies, and procedures enacted for the purpose of protecting victims, such as the Plaintiff's child, demonstrates a failure to exercise even slight care.

118. Indeed, President Rosa has admitted that The Citadel failed to meet its standards when addressing the camper's allegations in 2007. He similarly acknowledged that it is clear they "should have done more." (See Exhibit G, Margolis Report at 32; Exhibit X, November 12, 2011 Media Advisory).

119. President Rosa further conceded that had he known there were other possible victims, The Citadel would have reported the matter to SLED.

120. Plaintiff is informed and believes that President Rosa was, however, aware of the allegation that the abuse spanned multiple victims as evidenced by numerous discussions with Brandenburg and Colonel Trez regarding the matter as well as his receipt of Brandenburg's May 16, 2007 letter to the IRF which reiterated Doe's assertion that ReVille "engaged in this behavior frequently, though, and with many other campers." (Exhibit F).

121. Colonel Trez likewise agreed that, in hindsight, "they should have called the police." (See Exhibit G, Margolis Report at 30; Exhibit S, Trez Deposition at 60:1-7, 65:5-13, 67:22-24, 74:20-21, 75:1-7, 92:16-21, 95:3-8, 142:16-22).

122. Given the details of Doe's allegations as stated in Brandenburg's May 16, 2007 letter to the IRF, Colonel Trez further agreed the abuse should have been reported, conceding

“that would have been enough.” (Exhibit S, Colonel Trez Deposition at 67:22-24 (regarding the details of the May 16, 2007 letter)).

123. As one member of the Citadel Board of Visitors put it, Mr. Brandenburg’s handling of the matter was “pathetically bad.”

124. Even Patricia Kinard, Administrative Assistant to the President, agreed the abuse should have immediately been reported, stating “that would be common sense.” (See Exhibit Y, Deposition of Patricia Kinard, at 30:9-20).

125. As a result of The Citadel’s insufficient investigation, deliberate indifference, and gross negligence in failing to comply with, or failing to have knowledge of, its own internal policies and procedures, state and federal law, and reasonably accepted professional standards, ReVille went on to teach, coach and volunteer at various schools and public and private organizations, including, but not limited to, Pinewood Prep., the Dorchester County School District, Mt. Pleasant Recreation, Velocity Sports, Coastal Christian Preparatory School, Moultrie Middle School, and Rollins Middle School of the Arts, including all other points of contact between ReVille and Plaintiff’s child, thereby significantly increasing the likelihood of future inappropriate and sexually abusive conduct against other children, including the Plaintiff’s child.

FACTUAL BACKGROUND -- MOTHER DOE A

126. In the fall of 2007, after The Citadel had received actual notice of ReVille’s propensity for sexually abusing young boys, the Plaintiff’s child began taking athletic supervision from ReVille in a first location in Mt. Pleasant, South Carolina.

127. The Citadel knew, or should have known, that ReVille had undertaken that employment which placed him in contact with minor children, including the Plaintiff’s child.

128. From 2007—2011, the Defendants chose to conceal ReVille's sexual misconduct with children and to not report ReVille's propensity for abuse around children in the first location.

129. The Citadel knew, or should have known, that its silence and efforts to conceal the abuse by ReVille misrepresented that ReVille was a proper person equipped to work with and around children, including the Plaintiff's child.

130. In 2008, the Plaintiff's child began taking athletic supervision from ReVille in a second location, and a second athletic activity, in Mt. Pleasant.

131. The Citadel knew, or should have known, that ReVille had undertaken employment that placed him in contact with minor children, including the Plaintiff's child.

132. From 2007—2011, the Defendants chose to conceal ReVille's sexual misconduct with children and ReVille's work around children. The Citadel knew, or should have known, that its silence and efforts to conceal the abuse by ReVille misrepresented that ReVille was equipped to work with and around children, including the Plaintiff's child.

133. As a proximate result of The Citadel's gross negligence and deliberate indifference to the safety and well-being of others in failing to warn or report ReVille, The Plaintiff's child was sexually assaulted by ReVille on multiple occasions in 2007 and 2008.

134. ReVille has admitted sexually assaulting the Plaintiff's child multiple times, and has been criminally convicted on that admission.

135. Disclosures about ReVille and the Defendants prior knowledge were not known to the Plaintiff until after October 28, 2011, when ReVille was arrested and charged with multiple acts of sexual misconduct with minors.

136. The Citadel's gross negligence and deliberate indifference to the safety and well-being of others in failing to report the allegations of sexual abuse when originally reported to President Rosa on April 23, 2007, and again after new allegations were reported on July 1, 2007, constitutes separate and distinct occurrences as set forth under S.C. Code Ann. § 15-78-120.

137. Decisions made by the Defendants to not report ReVille were actions taken by Citadel agents and employees acting within the scope of their official duty. The Defendants acted in a reckless and grossly negligent manner in executing their state functions and failed, on hundreds of occasions between 2002 and 2011 to make any report about ReVille.

138. Each day the Defendants actively concealed the known allegations and other knowledge of ReVille's sexual abuse constitutes separate and distinct negligent acts and/or omissions giving rise to hundreds of occurrences as contemplated by S.C. Code § 15-78-120.

139. Each of the separate and distinct negligent acts and/or omissions of the Defendants outlined herein, standing alone, are a proximate cause of the injuries and losses suffered by Plaintiff, constituting numerous separate occurrences under S.C. Code § 15-78-120, including but not limited to:

- i. Failing to close the Summer Camp upon learning of the Arpaio allegations in 2001;
- ii. Failing to interview all campers after the Arpaio allegations in 2001 to determine whether any campers were abused by any counselors, including ReVille;
- iii. Allowing The Camp to operate from 2001 to 2005 without making absolutely certain that a child predator could not harm children, including failing to ensure the methods used by Arpaio to carry out his abuse (having minors alone in his room) were not capable of being repeated;
- iv. Failing to interview all campers after learning that ReVille needed to "distance himself from campers" in 2001 to determine whether ReVille had been inappropriate with them in any manner;

- v. Failing to reprimand, terminate, document or take any otherwise appropriate preventative action in 2002 when ReVille was caught alone in his room with a camper contrary to Citadel policy;
- vi. Failing to reprimand, terminate, document or take any otherwise appropriate preventative action in 2003 when ReVille was caught alone in his room with Camper Doe 6 rubbing "Icy Hot" on the minor's leg contrary to Citadel policy;
- vii. Failing to take Camper Doe 6's report in 2005 and failing to take any action to frustrate ReVille's ability to continue abusing children despite knowledge that Camper Doe 6 was abused and was attempting to report ReVille;
- viii. Failing to report ReVille's 2002 and 2003 abuse after adopting and implementing the Summer Camp Policy Regarding Sexual Misconduct issues, which emphasized the lack of time period restrictions regarding reporting and mandated that all sexual misconduct allegations be reported;
- ix. Failing to immediately report Doe's call on April 23, 2007 to Citadel Public Safety, the Charleston Police or SLED (See Exhibit Y, Deposition of Patricia Kinard, at 30:9-20;
- x. Referring Doe's call on April 23, 2007 to Mark Brandenburg instead of reporting to Colonel Trez and Citadel Public Safety;
- xi. Failing to report to Colonel Trez, Citadel Public Safety and other law enforcement authorities after Mark Brandenburg spoke with Doe and his father on April 23, 2007;
- xii. Meeting with ReVille on April 24, 2007 and alerting him to the allegations prior to law enforcement involvement;
- xiii. Advising ReVille to "lay low;"
- xiv. Failing to report to Colonel Trez and Citadel Public Safety the abuse of eyewitness Doe or the other campers referenced in Doe's report after learning, between April 23, 2007 and May 1, 2007, that the eyewitness and others who were abused were cadets on the Citadel campus in 2007;
- xv. Failing to take appropriate action to investigate the allegations against eyewitness Doe and the many others by neglecting to take any action other than sending an email to these victims (See Exhibit L, Brandenburg Deposition at 151-152);

- xvi. Failing to immediately report the allegations to public safety when Rosa received the May 16, 2007 letter informing him of the abuse and the existence of many other victims or, in the alternative, failing to exercise slight care in carrying out his official duties by neglecting to read his mail;
- xvii. During the May 2007 Board of Visitors meeting, each board member was grossly negligent in failing to ask a single question about the allegations, Brandenburg was negligent in not informing the Board of the details of Doe's report, and President Rosa was negligent in failing to correct Brandenburg to ensure the Board was aware of all allegations including the allegations implicating many other victims;
- xviii. Failing to report to law enforcement or take any action with regard to eyewitness Doe and other involved campers after taking Doe's July 1, 2007 statement containing new information identifying these victims by name and photograph;
- xix. Failing to document and update ReVille's personnel file with Doe's allegations as to Doe, eyewitness Doe and the many others;
- xx. During the September 2007 Board of Visitors meeting, each board member was grossly negligent in failing to ask a single question about the allegations, Brandenburg was negligent in not informing the Board of the details of Doe's report and Doe's July 1, 2007 statement, and President Rosa was negligent in failing to correct Brandenburg to ensure the Board was aware of all allegations including the allegations implicating many other victims;
- xxi. Failing to inform employers who were conducting background checks or reference checks on ReVille;
- xxii. Defendant Garrott was grossly negligent and deliberately indifferent to ReVille's abuse in failing to inform Brandenburg during or after their meeting on April 24, 2007, of ReVille's inappropriate acts and sexual misconduct in 2001, 2002 and 2003 and in failing to inform him of Camper Doe 6's attempt to report in 2005, or in the alternative, Garrott did inform Brandenburg about the 2001, 2002, 2003 and 2005 incidents, and he ignored or concealed the information;
- xxiii. Failing to exercise slight care in reviewing and analyzing the Citadel policies, procedures and guidelines applicable to Garrott's discovery in 2002 and 2003 of ReVille alone in a room with a minor and failing to ascertain the appropriate action

mandated by those policies, including termination, reprimand, internal documentation of the violation and reporting of the abuse to law enforcement;

- xxiv. Failing to exercise slight care in reviewing and analyzing the Citadel policies, procedures and guidelines applicable to the April 23, 2007 report and the July 1, 2007 statement as to Doe, eyewitness Doe and the many others, and failing to ascertain the appropriate action mandated by those policies, including internal documentation of the abuse and reporting of the abuse to law enforcement;
- xxv. Failing to know and comply with South Carolina law with regard to reporting allegations of child sexual abuse to law enforcement.

140. As a direct and proximate result of the Defendants acts and/or omissions, Plaintiff has endured severe physical and mental pain and suffering, permanent psychological damages, extensive medical costs and expenses as well as any and all other damages established at the trial of this case.

ADMISSIONS OF THE CITADEL

141. Mark Brandenburg, Citadel General Counsel and the sole investigator of Doe's allegations of sexual abuse by ReVille, has made the following admissions in sworn deposition testimony dated June 5, 2013 and June 6, 2103, at the following page numbers:

- i. Preventing harm to other young boys or victims was a goal of the investigation. P. 31.
- ii. By undertaking the investigation the Citadel was aiming to prevent harm to potential victims. P. 31.
- iii. The Citadel College Regulations, stating, "[w]e emphasize the importance of individual accountability and the moral obligation of responsibility for the welfare of others," apply to Brandenburg and that the moral sense of duty for the welfare of others would apply to his investigation of an alleged sexual offense. P. 258-259.
- iv. It is important to interview and find eyewitnesses to an event giving rise to a cause of action because eyewitnesses are the best source of information. P. 34.

- v. As investigator, he had no power or authority to force anyone to meet with him, or talk to him or respond to him. P. 35.
- vi. A police officer has more power in investigating a sexual abuse claim than Brandenburg does as General Counsel of the Citadel. P. 35.
- vii. Brandenburg had no experience and is not a skilled law enforcement investigator trained to investigate a child sexual predator. P. 279 & 288.
- viii. ReVille had an official Citadel email address on April 23, 2007. P. 45.
- ix. On April 24, 2007, ReVille informed Brandenburg that he was a current applicant for employment at the Citadel for jobs other than the Writing Center. P. 127.
- x. It is possible that when Brandenburg called ReVille on April 23, 2007, regarding the Doe allegations, ReVille was on the Citadel campus in the Writing Center. P. 44.
- xi. He never informed the Citadel Human Resources Department about Doe's allegations regarding ReVille. P. 47.
- xii. He never reviewed any Citadel documents or alumni documents to determine if ReVille was working with children. P. 48.
- xiii. Any camper at the Citadel Summer Camp who was 10-12 years old in 2002 could have still been a minor on April 23, 2007.
- xiv. Doe identified an eyewitness to ReVille's sexual misconduct who in 2007 was a cadet at the Citadel. ("Eyewitness Doe") P. 135.
- xv. Other than sending an email to Eyewitness Doe's Citadel email address on May 1, 2007, Brandenburg never received a return email from Eyewitness Doe, never talked to Eyewitness Doe, and has no notes or memory of ever meeting with or speaking to Eyewitness Doe regarding Doe's allegations. P. 139-140, 142.
- xvi. Brandenburg never walked the five minutes from his office to Eyewitness Doe's barracks to attempt to speak with Eyewitness Doe. P. 144.
- xvii. Brandenburg, upon finding out on July 1, 2007, that Eyewitness Doe and five other minors had been sexually abused by ReVille, **cannot recall doing anything** to investigate the allegations of child sexual abuse and child sexual misconduct against Eyewitness Doe or the five others. P. 151-152.

- xviii. Brandenburg was told by Doe on July 1, 2007 the name of Eyewitness Doe and one other, and was directed to pictures of 2 or 3 others who were sexually abused. Brandenburg knew where to find Eyewitness Doe and the other named victim and could have determined how to find the two others identified by photograph. These are new sexual abuse victims identified on July 1, 2007 that were not known to Brandenburg and the Citadel prior to July 1, 2007. Brandenburg made no attempt to communicate with or locate or identify any of the individuals named by Doe after July 1, 2007. P. 158-160.
- xix. The best way to honor Doe's request that the Citadel "make sure that Skip doesn't have a chance to do this to anyone else," would have been to report ReVille to law enforcement. P. 172.
- xx. The Jessica Horton Act became effective June 6, 2007. New sexual abuse victims were identified by Doe on July 1, 2007 that were not known to Brandenburg and the Citadel prior to July 1, 2007. Brandenburg made no attempt to communicate with or locate or identify any of the individuals named by Doe after July 1, 2007 nor did he report to Citadel Public Safety or law enforcement. P. 158-160.
- xxi. The Jessica Horton Act applies to the Citadel. SC Code 59-154-10 – The Chief of the Campus Police . . . shall notify SLED . . . if the officer or another official of the institution is in receipt of a report alleging that an act of criminal sexual conduct has occurred on the property of the institution. P. 180.
- xxii. Brandenburg, Rosa, Trez and the Board of Visitors are officials of the Citadel. P. 173.
- xxiii. The South Carolina Code section upon which ReVille was charged defines criminal sexual conduct as masturbation, excretory functions, or lewd exhibition, actual or simulated, of the genitals – the very things Doe alleged about ReVille – and no touching is required. P. 177-178, 185.
- xxiv. The sexual misconduct alleged by Doe occurred on the Citadel property. P. 178.
- xxv. Brandenburg told the Citadel BOV that there was more than one allegation of sexual abuse by Doe – that there were others who were abused. P. 203.

- xxvi. Brandenburg copied Rosa on the May 16, 2007 letter to the IRF detailing there were allegations many others were abused and also told Rosa that there were many other victims. P. 212, 219-220.
- xxvii. From the time he arrived on the Citadel campus in 2006 until June 2013, he has never experienced or heard of an individual not receiving internal Citadel mail that he/she was copied on. P. 42.
- xxviii. The Serious Incidents Memo applied to the Citadel and Brandenburg in 2007. Brandenburg admits that Doe's allegations about ReVille constituted a scandal involving an individual closely identified with the Citadel and that the allegations involved illegal and immoral activity. Pursuant to this policy, Brandenburg was required to notify the Executive Assistant to the President, then Colonel Trez, of the Doe allegations and Colonel Trez was, in turn, required to report the allegations to Citadel Public Safety. Colonel Trez should have reported the Doe allegations to Citadel Public Safety. P. 261-263.
- xxix. It is certainly possible that when Doe reported the allegations to The Citadel in 2007, ReVille was still sexually abusing children. P. 318-319.
- xxx. Any victim of child sexual abuse is going to suffer some kind of emotional pain. P. 292.

(Exhibit L, Deposition of Mark Brandenburg).

142. Colonel Trez, Executive Assistant to the President from 2006—2008, has made the following admissions in sworn deposition testimony dated June 10, 2013 and June 11, 2103, at the following page numbers:

- i. Col. Trez relies on Brandenburg to know the laws of South Carolina and to inform him of any laws that would apply to Trez and the Citadel. P. 11-12.
- ii. Brandenburg never informed him or briefed him about the Jessica Horton Act. P. 12.
- iii. Col. Trez claims that in 2007 he did not know it was against the law in South Carolina for an adult to show a minor pornography or for an adult to expose his genitals and masturbate in front of a child. P. 26.

- iv. It is immoral activity for an adult to show pornography to a thirteen year old boy, masturbate in front of a thirteen year old boy, and coerce a thirteen year old boy to masturbate in front of an adult. P. 34.
- v. If an activity is immoral and the Citadel administration is unsure if it is a criminal act – the safest and best thing to do is to report it to Citadel Public Safety to determine if a crime has been committed. P. 39.
- vi. The Serious Incidents Memo No. 39 was in effect in 2007. P. 35-36.
- vii. In 2007, Col. Trez could have and should have consulted the Serious Incidents Memo. P. 59.
- viii. If a crime is committed on the Citadel campus – the number one individual priority of any Citadel employee or administrator when they become aware of the criminal offense is to notify Citadel Public Safety Department. P. 40.
- ix. Citadel Public Safety is then required to contact the appropriate law enforcement agency. P. 40.
- x. Doe's allegations regarding ReVille constitute a scandal involving an individual closely identified with the Citadel and immoral behavior. P. 41.
- xi. Anytime a Citadel employee or administrator becomes aware of immoral activity on the Citadel campus they must report it to the Executive Assistant to the President and the Executive Assistant to the President must report it to Citadel Public Safety. P. 41-43.
- xii. A child sexual predator is an ongoing threat to the community at large. P. 52.
- xiii. If an applicant for employment at the Summer Camp had on their arrest record charges for disseminating pornography to a minor or lewd exhibition of the genitals he would not have hired them. P. 62-63.
- xiv. The only way ReVille could have been arrested in 2007 is if the Doe allegations had been reported to law enforcement. P. 63.
- xv. The Citadel Summer Camp was run by the Citadel. P. 72.
- xvi. Col. Trez knew Doe's allegations concerned the Citadel Summer Camp. P. 74.
- xvii. Col. Trez did not consult the Citadel Summer Camp policy which states: "Regardless of the validity of the violation, any sexually inappropriate conduct reports concerning any camper or employee of the camp will be turned over to The

Citadel Public Safety Department and a thorough investigation will be conducted;” and “All sexual misconduct allegations disclosed at any time concerning any individual, currently or formerly, associated with the camp will be investigated upon disclosure. There are no time period restrictions regarding sexual misconduct investigations.” P. 73-74.

- xviii. If Col. Trez had seen and reviewed the Summer Camp policy – he would have reported Doe’s allegations to Citadel Public Safety. P. 75.
- xix. If Brandenburg had brought Col. Trez the Serious Incidents Memo and the Summer Camp policy in April through August 2007, Col. Trez would have told Brandenburg that they have a duty to report Doe’s allegations to Citadel Public Safety. P. 76.
- xx. Col. Trez and Brandenburg were designated by the Citadel as the persons with the most knowledge regarding the guidelines, rules, policies and procedures of The Citadel that applied to Doe’s allegations. (Rule 30(b)(6), SCRCP designations).
- xxi. A graduate who returns to campus on a repetitive basis to speak to the Honor Committee or other Citadel organizations has a special relationship with the Citadel. P. 81.
- xxii. According to Col. Trez if a sexual misconduct or abuse claim is uncorroborated by an eyewitness, The Citadel human resources department will never know about it and it will not be disclosed to potential employers seeking information on a job applicant. Instead the investigation is put in a lock box. P. 83-85.
- xxiii. Any potential employer of ReVille from May 2007 forward would not have been informed of Doe’s allegations regarding ReVille. P. 83-85.
- xxiv. Brandenburg made more than one simple mistake in the investigation. P. 87.
- xxv. There is a difference between making one mistake and making many, many mistakes. P. 86.
- xxvi. President Rosa did not stand up in the Board of Visitors meetings in 2007 and educate the Board that there was an eyewitness to Doe’s allegations who was also abused and that there were many others. P. 89.
- xxvii. If Col. Trez had seen Brandenburg’s May 16, 2007 letter copied to President Rosa, he would have reported the allegations to Citadel Public Safety. P. 93-95.

- xxviii. If President Rosa claims he did not receive the May 16, 2007 letter, it would be the first time Col. Trez has ever heard of at the Citadel where the President of the Citadel claims he did not receive a letter he was copied on from intercampus Citadel mail. P. 96-97.

(Exhibit S, Deposition of Colonel Trez).

143. Chief of Citadel Public Safety, William A. Fletcher, has made the following admissions in sworn deposition testimony, dated June 12, 2103, at the following page numbers:

- i. In any investigation, if there is an eyewitness – there is a duty to speak to the eyewitness. P. 9.
- ii. If a cadet were an eyewitness, he would call the Cadet's TAC officer to instruct the cadet to come to Public Safety office. P. 9-10.
- iii. If a cadet does not report – a second phone call will make sure the cadet reports to Citadel Public Safety for questioning. P. 10-11.
- iv. A potential child sexual predator is a serious matter anywhere, including The Citadel. P. 14.
- v. Any child sexual predator is a threat to The Citadel campus and a threat to the community at large. P. 16-17.
- vi. Fletcher did not have the proper training to be the person who should be investigating a child sexual predator or doing an interview of a child sexual predator so he would call in a law enforcement agency with expertise in that area like SLED. P. 14.
- vii. If Doe's allegations had been reported to Chief Fletcher he would have considered the accused to be a potential child sexual predator given that there was more than one victim and, in fact, the allegations indicated there were many other victims. P. 15-16.
- viii. If Doe's allegations had been presented to Chief Fletcher – he would have reported the allegations to SLED or another law enforcement agency with expertise in investigating and interviewing child sexual predators. P. 16.
- ix. If under the Horton Act he and Citadel Public Safety were required to notify SLED of an investigation – he would do so. P. 18-19.

- x. If Doe's allegations had been reported to Citadel Public Safety – Fletcher and Citadel Public Safety would not have offered the Doe family money in an effort to settle the matter nor would Citadel Public Safety have researched the civil statute of limitations. P. 22.
- xi. If SLED needed to speak to a witness – Citadel Public Safety would make the witness available. P. 22-23.
- xii. Citadel Public Safety cannot conduct an investigation or notify SLED or ask SLED to do an investigation if allegations are never reported to Citadel Public Safety. P. 23.
- xiii. From April 2007 to the present day, there has never been a report to Citadel Public Safety concerning ReVille or even a report pursuant to the Clery Act documenting ReVille's criminal conviction regarding 23 children on the Citadel campus. P. 19-20.

(Exhibit U, Deposition of Chief Fletcher).

144. Patricia Kinard, Administrative Assistant to the President, has made the following admissions in sworn deposition testimony, dated June 11, 2103, at the following page numbers:

- i. If she had received the call from Doe's father on April 23, 2007, she would have called Citadel Public Safety. P. 30.
- ii. In reaching the determination that the allegations of sexual abuse should have been immediately reported to Public Safety, Kinard indicated she would not need to turn to any official Citadel policy, stating: "There may be a policy . . . but I believe that would be **common sense**." P. 30. (Emphasis Added)

(See Exhibit Y, Deposition of Patricia Kinard).

FOR A FIRST CAUSE OF ACTION AS TO THE CITADEL
(Gross Negligence – Failure to Warn)

145. The allegations of the preceding paragraphs are incorporated and alleged as if fully set forth herein.

146. At all times relevant herein, The Citadel and its agents and employees, including Mr. Brandenburg, Colonel Trez, President Rosa, Jennifer Garrott, the Board of Visitors, and

others were well-informed, or should have been informed, of The Citadel's policies and procedures, and their responsibilities and duties provided therein, regarding serious incidents, immoral conduct, sexual abuse, sexual harassment and sexual misconduct allegations. These same officials were also well-informed, or should have been informed, of the various duties imposed by state and federal law to report criminal activity, sexual abuse and suspected child abuse and to protect the public from the obvious threat that ReVille posed as a sexual predator.

147. The duties of The Citadel and its agents and employees, including Mr. Brandenburg, Colonel Trez, President Rosa, Jennifer Garrott, the Board of Visitors and others, extend far beyond the walls of The Citadel to include the surrounding cities, counties and the people of the State of South Carolina. (See Exhibit B, Deposition of Jennifer Garrott Vol. III at 119).

148. Beginning in 2007 and continuing through 2011, The Citadel possessed but failed to disclose information of ReVille's sexual interest in children and propensity for sexual abuse to law enforcement, employers with whom ReVille worked, or parents of children in proximity to ReVille including, in particular, the Plaintiff.

149. Through this knowledge, The Citadel was apprised of a distinct, specific, overt threat of harm to young boys whom ReVille had access, including the Plaintiff's child.

150. With this knowledge, the Citadel voluntarily undertook the duty to investigate the abuse with the goal of preventing harm to other young boys, including the Plaintiff's child. (See Exhibit L, Brandenburg Deposition at 31).

151. By voluntarily undertaking an investigation into the abuse with the goal of preventing harm to other young boys or other victims of ReVille's abuse, including the Plaintiff's child, The Citadel assumed the duty to perform a proper investigation, to report its

findings and the allegations to law enforcement and to warn children and parents or guardians of children in proximity to ReVille.

152. The Citadel's gross negligence in failing to exercise reasonable care in performing its investigation, in failing to report the allegations to law enforcement, and in failing to warn employers, children and parents or guardians of children in proximity to ReVille, including the Plaintiff, increased the risk of harm to Plaintiff's child.

153. On April 23, 2007 and July 1, 2007 and all times thereafter, The Citadel had a special relationship with ReVille in that ReVille was an alumnus, former senior camp counselor, member of The Citadel faculty, former Chairman of The Honor Council, and an invited guest lecturer to the Honor Council and, therefore, The Citadel had the ability to monitor, supervise, and control ReVille's conduct.

154. Colonel Trez even admitted that a graduate, such as ReVille, who returns to campus as a guest speaker or, for other similar reasons, has a special relationship with The Citadel. (See Exhibit S, Deposition of Col. Trez at 81).

155. Additionally, from the date the abuse was reported on April 23, 2007 until May 15, 2007, The Citadel, as ReVille's employer, had a special relationship with ReVille as demonstrated through its continuing obligation and legal duty to compensate him for his employment in the Citadel Writing Lab that extended until the pay period ending on May 15, 2007, as well as through monitoring ReVille's continued use of a Citadel faculty email address and, therefore, had the ability to monitor, supervise, and control ReVille's conduct during this time. (See Exhibit M).

156. Further, as evidenced by The Citadel's capacity to command ReVille's presence on campus for the interview with Brandenburg and Colonel Trez on April 24, 2007, and his

subsequent return to campus in 2008 and at other times to serve as a speaker before the Honor Committee and as a speaker to incoming classes, The Citadel's ability to monitor, supervise and control ReVille's conduct extended well beyond May 15, 2007, up to and including the time ReVille was finally apprehended and reported to law enforcement in 2011. .

157. Through this special relationship, The Citadel had a duty to discipline ReVille, to report ReVille to law enforcement, and to warn the community, including the Plaintiff and the Plaintiff's child, of the immediate and specific threat that ReVille posed.

158. Based on The Citadel's special relationship with ReVille and The Citadel's operation and maintenance of its Alumni Association, employee personnel files, and other records, The Citadel knew or should have known where ReVille was employed after his termination in 2007, that ReVille was, in fact, employed in positions working with and around young boys, including Plaintiff's child, and that he posed an immediate threat to these children and Plaintiff's child.

159. As an adolescent boy in proximity to ReVille, Plaintiff's child was part of a discrete class at an increased risk of abuse by ReVille.

160. That the Plaintiff's child would be sexually abused by ReVille was, therefore, reasonably foreseeable to The Citadel.

161. As a former employer of ReVille, The Citadel had a duty to accurately represent the reason for ReVille's termination, the allegations of sexual abuse, and that ReVille was not eligible for rehire.

162. Parents of children in proximity to ReVille, including the Plaintiff, relied on The Citadel's representation that ReVille was an appropriate individual equipped to work with and around children.

163. By voluntarily undertaking the investigation into the abuse with the goal of preventing harm to other young boys, including the Plaintiff's child, and by summoning ReVille and directly confronting him with the allegations, The Citadel voluntarily undertook the duty to control ReVille's conduct and to warn potential victims so as to prevent physical harm to other young boys, including the Plaintiff's child.

164. In undertaking an investigation into the abuse and in adopting internal policies and procedures mandating the reporting of such abuse, The Citadel assumed a duty to perform a proper investigation, to report its findings of sexual misconduct against children, and to warn authorities, law enforcement, and the public, including the Plaintiff and other parents of children that would be placed within proximity to ReVille.

165. The Citadel breached these duties and acted recklessly, negligently, grossly negligent, maliciously, willfully and wantonly by:

- i. Failing to enforce, or failing to know, or to comply with internal policies and procedures after The Citadel was put on notice of ReVille's sexual misconduct while acting within the scope of his official duties and despite the foreseeability that other victims, including, in particular, the Plaintiff's child, would be injured and would suffer the injuries described herein;
- ii. Violating established statutory duties to report ReVille to authorities and to warn the community and Plaintiff, in particular, of the threat ReVille posed to young boys, including, in particular those duties set forth in the following statutes:
 - a. Jessica Horton Act, S.C. Code Ann. § 59-154-10;
 - b. Child Abuse Reporting Statute, § 63-7-310
 - c. Jeanne Clery Act, 20 U.S.C. § 1092(f); and
 - d. Title IX, 20 U.S.C. § 1681;

- iii. Failing to enforce internal policies and procedures against ReVille while he was employed as a member of The Citadel faculty in 2007, including failing to discipline ReVille and enforce The Citadel's disciplinary code;
- iv. Failing to supervise, monitor and control the conduct of ReVille while he was a Citadel cadet, a member of The Citadel faculty, an alumnus, frequent visitor, and guest speaker so as to prevent ReVille from abusing other victims, including Plaintiff's child;
- v. Failing to record the allegations, the outcome of the investigation and any disciplinary action in ReVille's personnel file;
- vi. Failing and falsely representing to future employers that ReVille's termination was based upon "mutually agreeable reasons" when in fact the reason for his termination was child sexual abuse;
- vii. Failing to amend ReVille's personnel file to reflect that he was not eligible for rehire;
- viii. Failing to disclose to future employers that ReVille was not eligible for rehire;
- ix. Failing to provide negative referrals to ReVille's future employers;
- x. Failing to provide factual and candid responses to inquiries by potential employers;
- xi. Failing to report ReVille's conduct to his employers despite knowing that ReVille continued to be employed in the community and had access to and worked with potential victims;
- xii. Failing to report the allegations and the abuse to Citadel Public Safety, which in turn was required to report to SLED;
- xiii. Failing to report ReVille's conduct to other law enforcement agencies such as the Charleston Police or SLED;
- xiv. Failing to comply with internal policies prohibiting molestation findings from being expunged from an employee's record;
- xv. Terminating the investigation of sexual abuse in exchange for ReVille's resignation;
- xvi. Offering the John Doe family money in exchange for their silence regarding the abuse;

- xvii. Failing to report the incident or investigation to state licensing entities and other clearinghouses;
- xviii. Failing to properly investigate whether ReVille engaged in sexual misconduct with other campers;
- xix. Failing to interview other potential victims identified by Doe, including an eyewitness to the sexual abuse, who, in 2007, was enrolled as a Citadel cadet and housed less than a five minute walk from the lead investigator's office;
- xx. Failing to perform any follow up or research whatsoever as to the child sexual abuse victims identified by Doe in his July 1, 2007 statement;
- xxi. Failing to properly investigate whether ReVille was working around children in 2007 and beyond;
- xxii. Failing to investigate or inquire as to the reason for ReVille's termination from Pinewood Prep in 2006;
- xxiii. Failing to disrupt in any way ReVille's sexual interest in children;
- xxiv. Alerting ReVille of the allegations and instructing him to "Lay low" so as to assist ReVille in avoiding detection;
- xxv. Failing to have sufficient education and training for its employees, staff, and agents about reporting persons known to have engaged in sexual misconduct with children;
- xxvi. Creating a condition where children, including Plaintiff's child, would be isolated with a person with a known sexual interest in children, while withholding information that would enable a parent to choose whether to permit their child to participate in an activity under the supervision of a person with a sexual interest in children;
- xxvii. Allowing an acquaintance of the suspect to lead an investigation into claims of abuse;
- xxviii. Failing to recognize that an investigation conducted by its own in-house counsel would be biased, self-serving and counterproductive to obtaining the truth;
- xxix. Failing to know that established policies and procedures mandated that Doe's claims of sexual abuse be reported to Citadel Public Safety;

- xxx. Failing to know that established policies and procedures mandated that Doe's claims of sexual abuse be reported to The Citadel's Sexual Assault Response Coordinator;
- xxxi. Failing to adequately train its administration and ensure that Citadel officials had knowledge of the law and internal policies regarding reporting of child sexual abuse to law enforcement, even after the Arpaio matter;
- xxxii. In warning ReVille of the 2007 report to provide notice about his risk of discovery and provide an opportunity for ReVille to adjust the method and means by which he approached children and families to gain access for purposes of sexual manipulation of children;
- xxxiii. In any other such particulars as may be shown at trial or as revealed during the course of this litigation.

166. The Citadel's actions in deliberately failing to report the abuse and in failing to comply with its own internal policies and procedures established to address serious incidents and incidents involving sexual abuse and to prevent the threat of harm to future victims created the risk that Plaintiff's child would be harmed by ReVille.

167. Because The Citadel concealed the abuse and failed to report the abuse, the normal mechanisms for investigation, apprehension and prosecution of ReVille that would have insulated Plaintiff's child from abuse were frustrated.

168. Had The Citadel reported the allegations in 2007, the information would have controlled, prevented or limited ReVille's access to children and his ability to sexually abuse the Plaintiff's child, as ReVille, who immediately confessed to the abuse upon confrontation by law enforcement in 2011, would have been identified as a sexual predator in criminal background checks, precluded from employment in work around children, and prevented from injuring additional children, including the Plaintiff's child. Likewise, employers could have been alerted to the need for heightened supervision of ReVille and parents could have made informed

judgments about exposing their child to such an individual with a known sexual interest in children.

169. The Citadel's failure to report the former camper's allegations of abuse in April 2007, and again after receiving additional allegations of abuse in July 1, 2007, constitutes two separate occurrences, both reports containing allegations sufficient to trigger the duties set forth under the Citadel's policies and procedures regarding reporting to law enforcement as well as the duties set forth in the above-referenced statutes.

170. Each of ReVile's multiple opportunities to sexually assault the Plaintiff's child occurred because of the various acts of gross negligence by agents and employees of The Citadel in intentionally failing to adhere to The Citadel's internal policies and procedures, statutory and common law, and accepted professional standards.

171. In failing to prevent the risk of harm to Plaintiff's child by intentionally violating established internal policies and procedures as well as state and federal law, the actions of The Citadel and its agents and employees were not discretionary as contemplated by the South Carolina Tort Claims Act and failed to meet acceptable professional standards.

172. By intentionally violating established internal policies and procedures as well as state and federal law, The Citadel demonstrated a conscious failure to exercise even slight care.

173. Further, the failure to do that which is "common sense," is the failure to exercise slight care. (See Exhibit Y, Deposition of Patricia Kinard at 30, remarking that the duty to report sexual abuse allegations such as those reported to The Citadel on April 23, 2007, is "common sense.").

174. As a direct and proximate result of The Citadel's gross negligence as set forth in Paragraph 142 above, Plaintiff's child was sexually abused by ReVile.

175. The Citadel's knowledge that ReVille's future exploitation of Plaintiff's child was foreseeable demonstrates a direct causal relationship between The Citadel's gross negligence as set forth herein and the resulting harm suffered by Plaintiff.

176. The Plaintiff has suffered serious, permanent intangible injuries and has incurred costs for treating and providing professional care for her child as a result of The Citadel's conduct.

177. The Plaintiff is entitled to damages and injunctive relief as a result of the acts and/or omissions of The Citadel.

FOR A SECOND CAUSE OF ACTION AS TO THE CITADEL
(Negligent Hiring, Retention, and Supervision)

178. The allegations of the preceding paragraphs are incorporated and alleged as if fully set forth herein.

179. In operating a military college, The Citadel undertook the duty to exercise reasonable care in hiring, retaining and supervising employees and staff on the duties of reporting serious incidents, sexual misconduct, sexual assault and sexual harassment occurring on its campus.

180. As the military college of South Carolina, The Citadel's duties and the duties of its officials, employees and/or agents extend beyond the walls of The Citadel to the State of South Carolina.

181. As a parent of a child subjected to ReVille's abuse, The Citadel owed to Plaintiff a duty of care to exercise its right and ability to monitor, supervise or otherwise control the operation of The Citadel to ensure proper reporting procedures were in place.

182. The Citadel owed to Plaintiff a duty to exercise reasonable care in reporting allegations of child sexual abuse to law enforcement so as to prevent ReVille from harming other

children or from conducting himself in such a manner as to create an unreasonable risk of bodily harm to others, including the Plaintiff's son.

183. The Citadel was grossly negligent, malicious, willful and wanton, and breached this duty with respect to Plaintiff by:

- i. Failing to properly train and/or supervise its personnel, employees and/or agents so as to insure that proper reporting procedures are in place and followed;
- ii. Failing to draft or implement proper policies and procedures for reporting allegations of child sexual abuse to law enforcement;
- iii. Failing to draft or implement proper policies and procedures aimed at preventing child sexual abuse and maintaining the safety of minor children on The Citadel campus;
- iv. If such policies existed, failing to follow policies aimed at preventing sexual abuse and ensuring child safety and well-being;
- v. Failing to adequately and competently train its personnel, employees and/or agents, including senior officials and Board of Visitors members, regarding sexual predators, detection of child sexual abuse, and the necessity of reporting allegations of child sexual abuse;
- vi. Failing to adequately and competently train its personnel, employees and/or agents, including senior officials and Board of Visitors members regarding Darkness to Light;
- vii. Failing to have in place proper safeguards for whistleblowers who would otherwise be reluctant to report allegations of child sexual abuse or inappropriate conduct with children by respected members of The Citadel community or others in positions of authority;
- viii. Deliberately concealing and/or ignoring ReVille's sexual abuse and molestation of minor children on its premises;
- ix. Instituting a custom and practice of concealing allegations of child sexual abuse or inappropriate conduct with minors;

- x. Failing to designate ReVille as ineligible for rehire in April 2007 and failing to document the allegations of sexual abuse and policy violations in ReVille's employee file;
- xi. Facilitating and/or creating an environment which permitted ReVille to obtain access to and prey on minors in the community;
- xii. Carrying out its obligation to report allegations of child sexual abuse in an egregious and arbitrary manner;
- xiii. Failing to report the allegations of child sexual abuse and molestation to the appropriate legal authorities;
- xiv. And any other particulars which may be shown at trial.

184. As the parent of a minor in proximity to ReVille, Plaintiff was a reasonably foreseeable victim of The Citadel's failure or refusal to implement and/or enforce an appropriate policy for reporting of sexual misconduct regarding children.

185. As a direct and proximate result of The Citadel's acts and omissions, the Plaintiff's son was sexually abused by ReVille in 2007 and 2008.

186. The Plaintiff has suffered serious, permanent intangible injuries and has incurred costs for treating and providing professional care for her child as a result of The Citadel's conduct.

187. The Plaintiff is entitled to damages and injunctive relief as a result of the acts and/or omissions of The Citadel.

FOR A THIRD CAUSE OF ACTION AS TO THE CITADEL
(§ 59-154-10, Jessica Horton Act)

188. The allegations of the preceding paragraphs are incorporated and alleged as if fully set forth herein.

189. The Jessica Horton Act, effective June 6, 2007, requires reporting of sexual misconduct to law enforcement: "The chief of the campus police of an institution of higher

learning, or his designee, immediately shall notify the State Law Enforcement Division . . . if the officer or another official of the institution is in receipt of a report alleging that an act of criminal sexual conduct has occurred on the property of the institution. Upon notification, the State Law Enforcement Division shall participate in a joint investigation of the . . . alleged act of criminal sexual conduct.”

190. The Act further provides that “[t]he campus police and other employees of the institution of higher learning shall cooperate with an investigation conducted by the State Law Enforcement Division.” S.C. Code Ann. § 59-154-10.

191. The sexual abuse of a minor is a criminal offense under South Carolina law. Section 16-15-305 of the South Carolina Code defines sexual conduct to include, among other things, “masturbation” and “lewd exhibition, actual or simulated, of the genitals.” S.C. Code Ann. § 16-15-305(C)(1)(b).

192. Pursuant to Section 16-3-657 of the South Carolina Code, the testimony of a victim need not be corroborated in prosecutions for criminal sexual conduct.

193. Both the former camper’s initial report on April 23, 2007 and the July 1, 2007 statement containing additional specific facts and allegations of sexual abuse not only alleged acts of inappropriate sexual misconduct against the former camper himself but also alleged acts of criminal sexual conduct against many other children. (Exhibit O, Former Camper’s Statement at 105). These allegations were sufficient to trigger the duties set forth under the Jessica Horton Act.

194. Additionally, the July 1, 2007 statement contained new allegations identifying other victims of ReVille’s abuse, including the identity of specific individuals who were abused, all of which triggered the duties set forth pursuant to the Jessica Horton Act.

195. Upon information and belief, Mr. Brandenburg, General Rosa, Colonel Trez and others were well-informed, or should have been informed, of the statutory mandates of the Jessica Horton Act, which became effective prior to Mr. Brandenburg's visit to Texas to take the former camper's statement.

196. However, despite their knowledge of the Act and its reporting requirements, these officials deliberately neglected to inform the campus police or SLED of the alleged acts of criminal sexual conduct. These officials also neglected to inform campus police or SLED of the allegations that many other minor campers were abused.

197. Had Citadel Public Safety been contacted pursuant to the Jessica Horton Act, the matter would have immediately been reported to and turned over to SLED. (See Exhibit U).

198. The essential purpose of § 59-154-10 is to victims who are threatened by sexual misconduct, including, in particular, the Plaintiff's child.

199. Section 59-154-10 was enacted for the benefit of individuals threatened by sexual misconduct. A child in proximity to a known sexual predator, such as Plaintiff's child, is within the class of persons the statute was intended to protect and is, therefore, identifiable before the fact.

200. The Citadel, through its Alumni Association, personnel records and frequent contact with ReVille, knew or should have known where ReVille was working and volunteering after his termination in 2007, that ReVille was working in proximity to Plaintiff's child, and the likelihood of harm to Plaintiff's child if the allegations of ReVille's sexual misconduct went unreported.

201. The Citadel, through the acts and omissions of its agents and employees in failing to comply with their statutory duty to report sexual misconduct allegations, was negligent,

careless, and reckless, and proximately caused Plaintiff's injuries by enabling ReVille to continue working and volunteering with and around minor children, including Plaintiff's child, that were subjected to sexual abuse.

202. By deliberately concealing knowledge of sexual misconduct in contravention of § 59-154-10, The Citadel's failure to report the allegations of sexual misconduct to Citadel Public Safety and SLED constitutes negligence per se and gross negligence.

203. The Plaintiff has suffered serious, permanent intangible injuries and has incurred costs for treating and providing professional care for her child as a result of The Citadel's conduct.

204. The Plaintiff is entitled to damages and injunctive relief as a result of the acts and/or omissions of The Citadel.

FOR A FOURTH CAUSE OF ACTION AS TO THE CITADEL
(Civil Conspiracy)

205. The allegations of the preceding paragraphs are incorporated and alleged as if fully set forth herein.

206. Following receipt of the 2002 camper's report of sexual abuse, The Citadel, including President Rosa, Mark Brandenburg, Colonel Trez, the Board of Visitors and others, conspired with ReVille to conceal ReVille's sexual abuse of the young campers.

207. Instead of complying with accepted professional standards, internal policies and procedures, and the mandates of state and federal law regarding reporting of abuse allegations, The Citadel embraced an institutional practice espousing conscious disregard for, and deliberate indifference to, the safety and well-being of children and parents of children in the community who were victims or were likely to become victims and suffer harm as a result of The Citadel's failure to report ReVille.

208. The Citadel deliberately disregarded established policies, procedures and statutory mandates, all in an effort to conceal the abuse so as to avoid negative publicity, escape criminal and civil liability, prevent additional costly litigation, permit ReVille to escape detection, and facilitate ReVille's access to families in the community for the purpose of abusing children.

209. In furtherance of the conspiracy, Mark Brandenburg, in his own deposition, claimed he believed ReVille, despite the admitted similarity between ReVille's emphatic denial of the allegations and that of Arpaio, and refused to even interview or track down and question the identified victims, including an eyewitness believed to be enrolled as a cadet housed less than a five minute walk from Brandenburg's office.

210. Additionally, Mark Brandenburg admitted that he did not want to take any action that would tarnish ReVille's reputation and placed great weight on the "life-altering" impact reporting the allegations to law enforcement would have on ReVille. (See Exhibit G, Margolis Report at 29)

211. As further evidence of the conspiracy, Plaintiff is informed and believes that Mark Brandenburg and Colonel Trez met with ReVille on April 24, 2007, and instructed ReVille to "lay low."

212. Additionally, in written correspondence to the IRF on May 16, 2007, Brandenburg reiterated The Citadel's emphasis on protecting ReVille and the institution stating: "The school believes it would be beneficial to both the IRF and the institution, and the most likely approach to lead to a quick and inexpensive resolution of this claim." (See Exhibit F).

213. This effort to safeguard The Citadel's image and ReVille's reputation over protecting young boys and families subjected to ReVille's abuse, coupled with the deliberate disregard for such duties as protecting the welfare of others and reporting criminal acts and

suspected child sexual abuse to law enforcement, exemplifies the foremost objectives of the co-conspirators common design, including, but not limited to: escaping criminal or civil liability; avoiding another round of litigation, preventing negative publicity; protecting ReVille's reputation; assisting ReVille in evading liability; and facilitating ReVille's access to families for the purpose of abusing children, including the Plaintiff's child.

214. Upon information and belief, this common design began on or about April 24, 2007 and continued until the co-conspirator, ReVille, was arrested on numerous counts of sexual misconduct with a minor in late 2011.

215. The Citadel contends ReVille was not an employee of The Citadel on April 24, 2007 and not under the control of The Citadel during this time.

216. Actions taken by The Citadel in furtherance of the conspiracy contravened the responsibilities and duties of The Citadel as set forth by established Citadel policies and state and federal law, and therefore failed to meet accepted professional standards and were not discretionary as contemplated by the South Carolina Tort Claims Act.

217. Because The Citadel concealed and failed to report the abuse, the normal mechanisms for investigation, apprehension, and prosecution of ReVille that would have insulated Plaintiff's child from abuse were frustrated. Such overt acts to conceal ReVille's sexual abuse had the foreseeable consequence that other families, children and parents would become victimized by ReVille's abuse, including the Plaintiff.

218. Had The Citadel not aided and abetted ReVille, as its former employee and co-conspirator, to avoid detection and prosecution, Plaintiff's child would not have been sexually abused.

219. In aiding and abetting ReVille, it was substantially certain that other children, including Plaintiff's child, would be sexually abused and, in fact, such abuse did occur and continued until the co-conspirator, ReVille, was arrested on numerous counts of child abuse and sexual misconduct in 2011.

220. The Citadel's awareness of the foreseeability of ReVille's manipulation of Plaintiff and exploitation of Plaintiff's child demonstrates a direct causal relationship between The Citadel's conduct as set forth herein and the resulting harm suffered by Plaintiff.

221. As a direct and proximate result of The Citadel's acts in concealing the abuse, ReVille was not prosecuted, his sexual abuse went undetected, and he was able to continue to prey on families, children and parents under the guise of duty and honor as a highly respected and trustworthy Citadel alumnus.

222. As a direct and proximate result of The Citadel's acts and/or omissions in conspiring for the purpose of injuring Plaintiff, the Plaintiff has suffered serious, permanent intangible injuries resulting in special damages insofar as the Plaintiff has incurred costs for treating and providing professional care for her child, as well as other injury, as a result of The Citadel's conduct.

223. The Plaintiff is entitled to damages and injunctive relief as a result of the acts and/or omissions of The Citadel.

FOR A FIFTH CAUSE OF ACTION AS TO THE CITADEL
(§ 63-7-310, Mandatory Reporting Statute)

224. The allegations of the preceding paragraphs are incorporated and alleged as if fully set forth herein.

225. S.C. Code Ann. § 63-7-310 imposes a duty on teachers, school administrators and law enforcement, including Citadel Public Safety, to guard against child abuse and neglect by reporting suspected instances of child sexual abuse, among other forms of abuse or neglect.

226. The essential purpose of § 63-7-310 is to protect children who are threatened by child abuse and neglect, including, in particular, the sexual abuse suffered by Plaintiff's child.

227. The Citadel, including teachers, school administrators and law enforcement had a continuing duty, pursuant to § 63-7-310, to report ReVille's alleged child sexual abuse to the appropriate law enforcement authorities when the allegation of abuse involving Doe and "many other campers" was reported in April 2007.

228. Further, upon receipt of the July 1, 2007 statement specifically identifying additional minor victims, The Citadel had a continuing duty to report these allegations of child sexual abuse.

229. Section 63-7-310 was enacted for the benefit of children who are threatened by child abuse and neglect.

230. A child in proximity to a known sexual predator, such as Plaintiff's child, is within the class of persons the statute was intended to protect and is, therefore, identifiable before the fact.

231. The Citadel, through its Alumni Association, personnel records, and frequent contact with ReVille, knew or should have known where ReVille was working and volunteering after his termination in 2007, that ReVille was working in proximity to Plaintiff's child, and the likelihood of harm to Plaintiff's child if the allegations of ReVille's predilection for sexually molesting children went unreported.

232. Plaintiff's child, being subjected to and threatened by the sexual abuse of ReVille, is a member of the class of persons § 63-7-310 is intended to protect.

233. Citadel educators, administrators, and teachers who had knowledge of the sexual abuse allegations against ReVille, including but not limited to, President Rosa, Colonel Trez, Brandenburg, Bob Williamson, and Colonel John Lackey, had a duty pursuant to § 63-7-310 to report the suspected child abuse.

234. Similarly, members of Citadel Public Safety who had knowledge of the sexual abuse allegations had a duty pursuant to § 63-7-310 to report the suspected abuse.

235. Actions by Citadel professors, administrators, and Citadel Public Safety to refrain from reporting the abuse by ReVille and to protect, at all costs, the institution, were actions taken by Citadel agents and employees acting within the scope and performance of their official duties.

236. The Citadel, in failing to comply with its statutory duty to report suspected child abuse, was negligent, careless and reckless and proximately caused Plaintiff's injuries by enabling ReVille to continue working and volunteering with and around minor children subjected to his abuse, including Plaintiff's child.

237. By deliberately concealing knowledge of suspected child abuse in contravention of its continuing duty pursuant to § 63-7-310, The Citadel's failure to report constitutes negligence per se and gross negligence.

FOR A SIXTH CAUSE OF ACTION AT TO THE CITADEL
(Intentional Infliction of Emotional Distress/Outrage)

238. The allegations of the preceding paragraphs are incorporated and alleged as if fully set forth herein.

239. The Citadel acted in a reckless manner that resulted in severe emotional distress that was certain or substantially certain to be inflicted on any parent whose child was sexually

assaulted as a result of The Citadel's failure to take any action to stop, prevent, eliminate or interfere with ReVille's ability to engage in inappropriate and criminal sexual misconduct with children.

240. The Citadel was grossly negligent in at least the following particulars:

- i. Failing to enforce, or failing to know, or to comply with internal policies and procedures after The Citadel was put on notice of ReVille's sexual misconduct while acting within the scope of his official duties and despite the foreseeability that other victims, including, in particular, the Plaintiff's child, would be injured and would suffer the injuries described herein;
- ii. Violating established statutory duties to report ReVille to authorities and to warn the community and Plaintiff, in particular, of the threat ReVille posed to young boys, including, in particular those duties set forth in the following statutes:
 - a. Jessica Horton Act, S.C. Code Ann. § 59-154-10;
 - b. Child Abuse Reporting Statute, § 63-7-310
 - c. Jeanne Clery Act, 20 U.S.C. § 1092(f); and
 - d. Title IX, 20 U.S.C. § 1681;
- iii. Failing to enforce internal policies and procedures against ReVille while he was employed as a member of The Citadel faculty in 2007, including failing to discipline ReVille and enforce The Citadel's disciplinary code;
- iv. Failing to supervise, monitor and control the conduct of ReVille while he was a Citadel cadet, a member of The Citadel faculty, an alumnus, frequent visitor, and guest speaker so as to prevent ReVille from abusing other victims, including Plaintiff's child;
- v. Failing to record the allegations, the outcome of the investigation and any disciplinary action in ReVille's personnel file;
- vi. Failing and falsely representing to future employers that ReVille's termination was based upon "mutually agreeable reasons" when in fact the reason for his termination was child sexual abuse;

- vii. Failing to amend ReVille's personnel file to reflect that he was not eligible for rehire;
- viii. Failing to disclose to future employers that ReVille was not eligible for rehire;
- ix. Failing to provide negative referrals to ReVille's future employers;
- x. Failing to provide factual and candid responses to inquiries by potential employers;
- xi. Failing to report ReVille's conduct to his employers despite knowing that ReVille continued to be employed in the community and had access to and worked with potential victims;
- xii. Failing to report the allegations and the abuse to Citadel Public Safety, which in turn was required to report to SLED;
- xiii. Failing to report ReVille's conduct to other law enforcement agencies such as the Charleston Police or SLED;
- xiv. Failing to comply with internal policies prohibiting molestation findings from being expunged from an employee's record;
- xv. Terminating the investigation of sexual abuse in exchange for ReVille's resignation;
- xvi. Offering the John Doe family money in exchange for their silence regarding the abuse;
- xvii. Failing to report the incident or investigation to state licensing entities and other clearinghouses;
- xviii. Failing to properly investigate whether ReVille engaged in sexual misconduct with other campers;
- xix. Failing to interview other potential victims identified by Doe, including an eyewitness to the sexual abuse, who, in 2007, was enrolled as a Citadel cadet and housed less than a five minute walk from the lead investigator's office;
- xx. Failing to perform any follow up or research whatsoever as to the child sexual abuse victims identified by Doe in his July 1, 2007 statement;
- xxi. Failing to properly investigate whether ReVille was working around children in 2007 and beyond;

- xxii. Failing to investigate or inquire as to the reason for ReVille's termination from Pinewood Prep in 2006;
- xxiii. Failing to disrupt in any way ReVille's sexual interest in children;
- xxiv. Alerting ReVille of the allegations and instructing him to "Lay low" so as to assist ReVille in avoiding detection;
- xxv. Failing to have sufficient education and training for its employees, staff, and agents about reporting persons known to have engaged in sexual misconduct with children;
- xxvi. Creating a condition where children, including Plaintiff's child, would be isolated with a person with a known sexual interest in children, while withholding information that would enable a parent to choose whether to permit their child to participate in an activity under the supervision of a person with a sexual interest in children;
- xxvii. Allowing an acquaintance of the suspect to lead an investigation into claims of abuse;
- xxviii. Failing to recognize that an investigation conducted by its own in-house counsel would be biased, self-serving and counterproductive to obtaining the truth;
- xxix. Failing to know that established policies and procedures mandated that Doe's claims of sexual abuse be reported to Citadel Public Safety;
- xxx. Failing to know that established policies and procedures mandated that Doe's claims of sexual abuse be reported to The Citadel's Sexual Assault Response Coordinator;
- xxxi. Failing to adequately train its administration and ensure that Citadel officials had knowledge of the law and internal policies regarding reporting of child sexual abuse to law enforcement, even after the Arpaio matter;
- xxxii. In warning ReVille of the 2007 report to provide notice about his risk of discovery and provide an opportunity for ReVille to adjust the method and means by which he approached children and families to gain access for purposes of sexual manipulation of children;

xxxiii. In any other such particulars as may be shown at trial or as revealed during the course of this litigation.

241. Through its investigation into the initial allegations of abuse in 2007, The Citadel was well aware of the devastating impact and severe emotional distress inflicted on victims of ReVille's sexual abuse. Mr. Bradenburg, President Rosa, Colonel Trez, Ms. Garrott, the Board of Visitors, and others were also well informed of the traumatic effects of child sexual abuse on individuals following the Arpaio matter. Further, President Rosa's prior experience as the Superintendent of the U.S. Air Force Academy, through which he was revered for his efforts to improve the process of reporting sexual and gender violence at the Air Force Academy, also imparted a keen awareness as to the devastating impact of sexual abuse on individuals.

242. The Citadel was well aware that failing to report ReVille would permit ReVille to continue to work with and around children who would ultimately become victims of ReVille's sexual abuse. Indeed, by concealing the abuse and allowing ReVille to continue to prey on children under the guise of duty and honor, The Citadel provided ReVille with the very currency that enabled him to attract his victims, including the Plaintiff's child.

243. Further, still recovering from the Arpaio scandal and the recent settlement, The Citadel commenced a course of action to avoid another round of sexual abuse claims and to protect, at all costs, The Citadel's reputation, including: deliberately shielded the allegations from spreading beyond a small circle of administrators who knew and protected ReVille; refusing to report the allegations to professionals on the Citadel campus who would have reported the allegations to law enforcement; refusing to report the allegations to law enforcement; attempting to silence the Doe family with a monetary settlement; and refusing to properly and thoroughly investigate the allegations implicating many other victims. In undertaking these actions, The Citadel placed the reputation of the institution and the desire to

avoid another child sexual abuse scandal above the protection of children from a serial child sexual predator—upon information and belief, that is the definition of outrageous conduct.

244. In deliberately choosing to remain silent despite knowledge that ReVille continued to work around children that would become victims of his sexual abuse, The Citadel's conduct was egregious, outrageous, and exceeds all bounds of decency. The notion that ReVille should be permitted to leave The Citadel with an unblemished record that in turn enabled him to obtain continued access to children for the purposes of sexual exploitation is atrocious and utterly intolerable.

245. Had The Citadel adhered to its own internal policies and procedures, statutory and common law, and accepted professional standards, the Plaintiff's child would never had been exposed to ReVille or subjected to ReVille's atrocious acts of abuse. The acts and omissions of The Citadel proximately caused the Plaintiff's emotional distress.

246. The emotional distress suffered by the Plaintiff in knowing her child was sexually abused when the abuse could have been avoided had The Citadel merely reported to law enforcement, ReVille's employers, or the community is so severe that no reasonable person could be expected to endure it.

247. As a result of the egregious conduct of The Citadel, Plaintiff is entitled to damages and injunctive relief.

FOR A SEVENTH CAUSE OF ACTION AS TO THE CITADEL
(Loss of Services)

248. The allegations of the preceding paragraphs are incorporated and alleged as if fully set forth herein.

249. The Citadel had a duty to refrain from any act or omission which might cause harm to minor children within a foreseeable danger, including Plaintiff's minor child.

250. The Citadel was grossly negligent, in at least the following particulars:

- i. Failing to enforce, or failing to know, or to comply with internal policies and procedures after The Citadel was put on notice of ReVille's sexual misconduct while acting within the scope of his official duties and despite the foreseeability that other victims, including, in particular, the Plaintiff's child, would be injured and would suffer the injuries described herein;
- ii. Violating established statutory duties to report ReVille to authorities and to warn the community and Plaintiff, in particular, of the threat ReVille posed to young boys, including, in particular those duties set forth in the following statutes:
 - a. Jessica Horton Act, S.C. Code Ann. § 59-154-10;
 - b. Child Abuse Reporting Statute, § 63-7-310 ;
 - c. Jeanne Clery Act, 20 U.S.C. § 1092(f); and
 - d. Title IX, 20 U.S.C. § 1681;
- iii. Failing to enforce internal policies and procedures against ReVille while he was employed as a member of The Citadel faculty in 2007, including failing to discipline ReVille and enforce The Citadel's disciplinary code;
- iv. Failing to supervise, monitor and control the conduct of ReVille while he was a Citadel cadet, a member of The Citadel faculty, an alumnus, frequent visitor, and guest speaker so as to prevent ReVille from abusing other victims, including Plaintiff's child;
- v. Failing to record the allegations, the outcome of the investigation and any disciplinary action in ReVille's personnel file;
- vi. Failing and falsely representing to future employers that ReVille's termination was based upon "mutually agreeable reasons" when in fact the reason for his termination was child sexual abuse;
- vii. Failing to amend ReVille's personnel file to reflect that he was not eligible for rehire;
- viii. Failing to disclose to future employers that ReVille was not eligible for rehire;
- ix. Failing to provide negative referrals to ReVille's future employers;

- x. Failing to provide factual and candid responses to inquiries by potential employers;
- xi. Failing to report ReVille's conduct to his employers despite knowing that ReVille continued to be employed in the community and had access to and worked with potential victims;
- xii. Failing to report the allegations and the abuse to Citadel Public Safety, which in turn was required to report to SLED;
- xiii. Failing to report ReVille's conduct to other law enforcement agencies such as the Charleston Police or SLED;
- xiv. Failing to comply with internal policies prohibiting molestation findings from being expunged from an employee's record;
- xv. Terminating the investigation of sexual abuse in exchange for ReVille's resignation;
- xvi. Offering the John Doe family money in exchange for their silence regarding the abuse;
- xvii. Failing to report the incident or investigation to state licensing entities and other clearinghouses;
- xviii. Failing to properly investigate whether ReVille engaged in sexual misconduct with other campers;
- xix. Failing to interview other potential victims identified by Doe, including an eyewitness to the sexual abuse, who, in 2007, was enrolled as a Citadel cadet and housed less than a five minute walk from the lead investigator's office;
- xx. Failing to perform any follow up or research whatsoever as to the child sexual abuse victims identified by Doe in his July 1, 2007 statement;
- xxi. Failing to properly investigate whether ReVille was working around children in 2007 and beyond;
- xxii. Failing to investigate or inquire as to the reason for ReVille's termination from Pinewood Prep in 2006;
- xxiii. Failing to disrupt in any way ReVille's sexual interest in children;
- xxiv. Alerting ReVille of the allegations and instructing him to "Lay low" so as to assist ReVille in avoiding detection;

- xxv. Failing to have sufficient education and training for its employees, staff, and agents about reporting persons known to have engaged in sexual misconduct with children;
- xxvi. Creating a condition where children, including Plaintiff's child, would be isolated with a person with a known sexual interest in children, while withholding information that would enable a parent to choose whether to permit their child to participate in an activity under the supervision of a person with a sexual interest in children;
- xxvii. Allowing an acquaintance of the suspect to lead an investigation into claims of abuse;
- xxviii. Failing to recognize that an investigation conducted by its own in-house counsel would be biased, self-serving and counterproductive to obtaining the truth;
- xxix. Failing to know that established policies and procedures mandated that Doe's claims of sexual abuse be reported to Citadel Public Safety;
- xxx. Failing to know that established policies and procedures mandated that Doe's claims of sexual abuse be reported to The Citadel's Sexual Assault Response Coordinator;
- xxxi. Failing to adequately train its administration and ensure that Citadel officials had knowledge of the law and internal policies regarding reporting of child sexual abuse to law enforcement, even after the Arpaio matter;
- xxxii. In warning ReVille of the 2007 report to provide notice about his risk of discovery and provide an opportunity for ReVille to adjust the method and means by which he approached children and families to gain access for purposes of sexual manipulation of children;
- xxxiii. In any other such particulars as may be shown at trial or as revealed during the course of this litigation.

251. Plaintiff was harmed as a result of the gross negligence of The Citadel as set forth above in that she has been deprived of the services and companionship of her child.

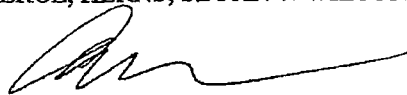
252. Plaintiff is entitled to a judgment against The Citadel, for damages in an amount to be determined by the jury, and injunctive relief to be ordered by the Court.

WHEREFORE, Plaintiff respectfully requests the following:

- i. Trial by jury;
- ii. Judgment against Defendants for actual damages, punitive damages, special damages, consequential damages, and treble damages in an amount to be determined by the jury;
- iii. Injunctive relief to enjoin the Defendants from failing to report to law enforcement information received about sexual misconduct and child sexual abuse which occurs on the campus of The Citadel, including requiring The Citadel to report past unreported instances of abuse occurring at The Camp pursuant to The Clery Act, 20 U.S.C. § 1092(f);
- iv. Costs and reasonable attorneys' fees against The Citadel pursuant to S.C. Code § 15-77-300;
- v. And such other and further relief as the Court and jury deem just and proper.

Respectfully submitted,

PIERCE, HERNS, SLOAN & WILSON, LLC

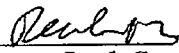


Carl E. Pierce, II
Allan P. Sloan, III
Louis P. Herns
Ryan K. Miller
Kristen B. Fehsenfeld
321 East Bay Street
Post Office Box 22437
Charleston, SC 29401
(843) 722-7733
Attorneys for Plaintiff

December 12, 2013
Charleston, South Carolina

JEFF ANDERSON & ASSOCIATES, P.A.

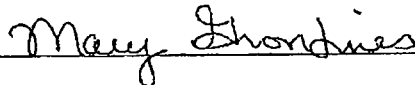

Gregg Meyers, #9908
Jeffrey R. Anderson, pro hac vice pending
1 Poston Road Suite 110
Charleston, SC 29407
843-556-1025, 843-556-1055 facsimile
Jeff@Andersonadvocates.com
Gregg@Andersonadvocates.com
Attorneys for Plaintiff

 2013
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the forgoing document was served on each party or counsel of record by mailing or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 12th day of Dec., 2013



STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

MOTHER DOE A,)
)
Plaintiff,)
)
v.)
)
THE CITADEL,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-10-9200

DEFENDANT'S ANSWER TO
AMENDED COMPLAINT

FILED
2014 FEB -5 PM 4:43
JULIE ARMSTRONG
CLERK OF COURT

AND NOW COMES Defendant The Citadel ("Defendant"), by and through its undersigned counsel, and files the following Answer to Plaintiff's Amended Complaint:

FOR A FIRST DEFENSE AND BY WAY OF ANSWER

1. Defendant admits in part and denies in part the averments of Paragraph 1 of Plaintiff's Amended Complaint. Defendant admits only that Mother Doe A is a former citizen of South Carolina and that Plaintiff is referenced in the Amended Complaint by a pseudonym to maintain her confidentiality. The parties have agreed to a protective order in this case to protect Mother Doe A's identity. After reasonable investigation, Defendant is without sufficient knowledge to admit or deny the remaining allegations of Paragraph 1 of Plaintiff's Amended Complaint. Therefore, Defendant denies the remaining allegations of Paragraph 1 of Plaintiff's Amended Complaint.

2. Defendant admits in part and denies in part the averments of Paragraph 2 of Plaintiff's Amended Complaint. Defendant admits only that The Citadel is a South Carolina public college with its principal place of business in Charleston County, South Carolina. Defendant further admits that it maintains an Alumni Association website and that Skip ReVille is a former Citadel cadet. Defendant denies the remaining averments of Paragraph 2 of Plaintiff's Amended Complaint.

3. The averments of Paragraph 3 of Plaintiff's Amended Complaint constitute

conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant admits only that Charleston County is a proper venue for the claims asserted in this case. Defendant denies the remaining averments of Paragraph 3 of Plaintiff's Amended Complaint.

4. The averments of Paragraph 4 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant admits only that this Court possesses subject matter and personal jurisdiction over the claims asserted in this case. Defendant denies the remaining averments of Paragraph 4 of Plaintiff's Amended Complaint.

Factual Background — The 2005 & 2007 Report

5. Defendant admits in part and denies in part the averments of Paragraph 5 of Plaintiff's Amended Complaint. Defendant admits only the averments of the first sentence of Paragraph 5 of Plaintiff's Amended Complaint. After reasonable investigation, Defendant is without sufficient knowledge to admit or deny the remaining allegations of Paragraph 5 of Plaintiff's Amended Complaint. Therefore, Defendant denies the remaining allegations of Paragraph 5 of Plaintiff's Amended Complaint.

6. Defendant admits in part and denies in part the averments of Paragraph 6 of Plaintiff's Amended Complaint. Defendant admits only that, at the time of the events relevant to this lawsuit, the Camp was operated by the Office of The Commandant of Cadets, which was responsible for personnel decisions. Defendant denies the remaining averments of Paragraph 6 of Plaintiff's Amended Complaint.

7. The averments of Paragraph 7 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 7 of Plaintiff's Amended Complaint.

8. Defendant admits in part and denies in part the averments of Paragraph 8 of Plaintiff's Amended Complaint. Defendant admits only that: (a) ReVille was a Citadel cadet from 1998-2002; (b) at various times between 2001 and 2003, ReVille worked in various capacities at the Camp; and (c) ReVille was employed at The Citadel, in a capacity unrelated to the Camp, in 2002 and 2006-07. Defendant denies the remaining averments of Paragraph 8 of Plaintiff's Amended Complaint.

9. Defendant admits in part and denies in part the averments of Paragraph 9 of Plaintiff's Amended Complaint. Defendant admits only that ReVille has admitted to engaging in sexual misconduct with campers at the Camp in violation of The Citadel's policies. Defendant denies the remaining averments of Paragraph 9 of Plaintiff's Amended Complaint.

10. Defendant denies the averments of Paragraph 10 of Plaintiff's Amended Complaint.

11. Defendant denies the averments of Paragraph 11 of Plaintiff's Amended Complaint.

12. Defendant denies the averments of Paragraph 12 of Plaintiff's Amended Complaint.

13. Defendant denies the averments of Paragraph 13 of Plaintiff's Amended Complaint.

14. Defendant denies the averments of Paragraph 14 of Plaintiff's Amended Complaint.

15. Defendant admits in part and denies in part the averments of Paragraph 15 of Plaintiff's Amended Complaint. Defendant admits only that ReVille was a Senior Counselor at the Camp during the second session of 2003. Defendant denies the remaining averments of Paragraph 15 of Plaintiff's Amended Complaint.

16. Defendant denies the averments of Paragraph 16 of Plaintiff's Amended

Complaint.

17. Defendant denies the averments of Paragraph 17 of Plaintiff's Amended Complaint.

18. Defendant denies the averments of Paragraph 18 of Plaintiff's Amended Complaint.

19. Defendant denies the averments of Paragraph 19 of Plaintiff's Amended Complaint.

20. Defendant denies the averments of Paragraph 20 of Plaintiff's Amended Complaint.

21. Defendant denies the averments of Paragraph 21 of Plaintiff's Amended Complaint.

22. Defendant denies the averments of Paragraph 22 of Plaintiff's Amended Complaint.

23. Defendant denies the averments of Paragraph 23 of Plaintiff's Amended Complaint.

24. Defendant admits in part and denies in part the averments of Paragraph 24 of Plaintiff's Amended Complaint. Defendant admits only that in 2005 Mark Brandenburg became General Counsel of The Citadel. Defendant denies the remaining averments of Paragraph 24 of Plaintiff's Amended Complaint.

25. Defendant admits in part and denies in part the averments of Paragraph 25 of Plaintiff's Amended Complaint. Defendant admits only that in 2006 John W. Rosa became President of The Citadel. Defendant denies the remaining averments of Paragraph 25 of Plaintiff's Amended Complaint. Defendant specifically denies that President Rosa is a "Defendant" in this lawsuit.

26. Defendant denies the averments of Paragraph 26 of Plaintiff's Amended

Complaint.

27. Defendant denies the averments of Paragraph 27 of Plaintiff's Amended Complaint.

28. Defendant denies the averments of Paragraph 28 of Plaintiff's Amended Complaint.

29. Defendant admits in part and denies in part the averments of Paragraph 29 of Plaintiff's Amended Complaint. Defendant admits only that this Paragraph accurately quotes Exhibit F to Plaintiff's Amended Complaint, a May 16, 2007 letter. This written document is the best and only evidence of its contents. Defendant objects to any characterization of the contents of Exhibit F to Plaintiff's Amended Complaint. Defendant denies the remaining averments of Paragraph 29 of Plaintiff's Amended Complaint.

30. Defendant admits in part and denies in part the averments of Paragraph 30 of Plaintiff's Amended Complaint. Defendant admits only that this Paragraph accurately quotes Exhibit F to Plaintiff's Amended Complaint, a May 16, 2007 letter. This written document is the best and only evidence of its contents. Defendant objects to any characterization of the contents of Exhibit F to Plaintiff's Amended Complaint. Defendant denies the remaining averments of Paragraph 30 of Plaintiff's Amended Complaint.

31. Defendant admits in part and denies in part the averments of Paragraph 31 of Plaintiff's Amended Complaint. Defendant admits only that Exhibit G to Plaintiff's Amended Complaint is a document entitled "Investigation into The Citadel's Handling of Allegations Involving Louis N. 'Skip' ReVille." This written document is the best and only evidence of its contents. Defendant objects to any characterization of the contents of Exhibit G to Plaintiff's Amended Complaint. Defendant denies the remaining averments of Paragraph 31 of Plaintiff's Amended Complaint.

32. Defendant denies the averments of Paragraph 32 of Plaintiff's Amended

Complaint.

33. Defendant admits in part and denies in part the averments of Paragraph 33 of Plaintiff's Amended Complaint. Defendant admits only that Mark Brandenburg was one of the attorneys representing The Citadel in lawsuits alleging sexual abuse by Arpaio. Defendant denies the remaining averments of Paragraph 33 of Plaintiff's Amended Complaint.

34. Defendant admits in part and denies in part the averments of Paragraph 34 of Plaintiff's Amended Complaint. Defendant admits only that this Paragraph accurately quotes Exhibits H, I, J and K to Plaintiff's Amended Complaint. These written documents are the best and only evidence of their contents. Defendant objects to any characterization of the contents of Exhibits H, I, J and K to Plaintiff's Amended Complaint. Defendant denies the remaining averments of Paragraph 34 of Plaintiff's Amended Complaint.

35. The averments of Paragraph 35 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 35 of Plaintiff's Amended Complaint.

36. The averments of Paragraph 36 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 36 of Plaintiff's Amended Complaint.

37. Defendant denies the averments of Paragraph 37 of Plaintiff's Amended Complaint.

38. Defendant denies the averments of Paragraph 38 of Plaintiff's Amended Complaint.

39. Defendant denies the averments of Paragraph 39 of Plaintiff's Amended Complaint.

40. Defendant denies the averments of Paragraph 40 of Plaintiff's Amended Complaint.

41. Defendant admits in part and denies in part the averments of Paragraph 41 of Plaintiff's Amended Complaint. Defendant admits only that, when confronted with claims by this camper, ReVille denied the allegations. Defendant denies the remaining averments of Paragraph 41 of Plaintiff's Amended Complaint.

42. The averments of Paragraph 42 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 42 of Plaintiff's Amended Complaint.

43. Defendant denies the averments of Paragraph 43 of Plaintiff's Amended Complaint.

44. Defendant denies the averments of Paragraph 44 of Plaintiff's Amended Complaint.

45. Defendant admits the averments of Paragraph 45 of Plaintiff's Amended Complaint.

46. Defendant denies the averments of Paragraph 46 of Plaintiff's Amended Complaint.

47. Defendant denies the averments of Paragraph 47 of Plaintiff's Amended Complaint.

48. Defendant denies the averments of Paragraph 48 of Plaintiff's Amended Complaint.

49. Defendant denies the averments of Paragraph 49 of Plaintiff's Amended Complaint.

50. Defendant denies the averments of Paragraph 50 of Plaintiff's Amended

Complaint.

51. Defendant denies the averments of Paragraph 51 of Plaintiff's Amended Complaint.

52. Defendant denies the averments of Paragraph 52 of Plaintiff's Amended Complaint.

53. After reasonable investigation, Defendant is without sufficient knowledge to admit or deny the allegations of Paragraph 53 of Plaintiff's Amended Complaint. Therefore, Defendant denies the allegations of Paragraph 53 of Plaintiff's Amended Complaint.

54. Defendant denies the averments of Paragraph 54 of Plaintiff's Amended Complaint.

55. Defendant denies the averments of Paragraph 55 of Plaintiff's Amended Complaint.

56. Defendant denies the averments of Paragraph 56 of Plaintiff's Amended Complaint.

57. Defendant denies the averments of Paragraph 57 of Plaintiff's Amended Complaint.

58. Defendant admits in part and denies in part the averments of Paragraph 58 of Plaintiff's Amended Complaint. Defendant admits only that Mr. Brandenburg travelled to Dallas, Texas, to meet with and interview "Doe." Defendant denies the remaining averments of Paragraph 58 of Plaintiff's Amended Complaint.

59. Defendant denies the averments of Paragraph 59 of Plaintiff's Amended Complaint.

60. Defendant admits in part and denies in part the averments of Paragraph 60 (including subparts (i) through (v)) of Plaintiff's Amended Complaint. Defendant admits only that Exhibit O to Plaintiff's Amended Complaint is a document entitled "Re: Summer Camp

Interview July 1, 2007." This written document is the best and only evidence of its contents. Defendant objects to any characterization of the contents of Exhibit O to Plaintiff's Amended Complaint. Defendant denies the remaining averments of Paragraph 60 (including subparts (i) through (v)) of Plaintiff's Amended Complaint.

61. Defendant denies the averments of Paragraph 61 of Plaintiff's Amended Complaint.

62. Defendant admits in part and denies in part the averments of Paragraph 62 of Plaintiff's Amended Complaint. Defendant admits only that Exhibit O to Plaintiff's Amended Complaint is a document entitled "Re: Summer Camp Interview July 1, 2007." This written document is the best and only evidence of its contents. Defendant objects to any characterization of the contents of Exhibit O to Plaintiff's Amended Complaint. Defendant denies the remaining averments of Paragraph 62 of Plaintiff's Amended Complaint.

63. Defendant denies the averments of Paragraph 63 of Plaintiff's Amended Complaint.

64. Defendant denies the averments of Paragraph 64 of Plaintiff's Amended Complaint.

65. Defendant admits in part and denies in part the averments of Paragraph 65 of Plaintiff's Amended Complaint. Defendant admits only that Exhibit P to Plaintiff's Amended Complaint is an August 8, 2007 email. This written document is the best and only evidence of its contents. Defendant objects to any characterization of the contents of Exhibit P to Plaintiff's Amended Complaint. Defendant denies the remaining averments of Paragraph 65 of Plaintiff's Amended Complaint.

66. Defendant admits in part and denies in part the averments of Paragraph 66 of Plaintiff's Amended Complaint. Defendant admits only that Exhibit P to Plaintiff's Amended Complaint is an August 8, 2007 email. This written document is the best and only evidence of

its contents. Defendant objects to any characterization of the contents of Exhibit P to Plaintiff's Amended Complaint. Defendant denies the remaining averments of Paragraph 66 of Plaintiff's Amended Complaint.

67. Defendant denies the averments of Paragraph 67 of Plaintiff's Amended Complaint.

68. Defendant denies the averments of Paragraph 68 of Plaintiff's Amended Complaint.

69. The averments of Paragraph 69 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 69 of Plaintiff's Amended Complaint.

70. Defendant denies the averments of Paragraph 70 of Plaintiff's Amended Complaint.

71. Defendant denies the averments of Paragraph 71 of Plaintiff's Amended Complaint.

72. Defendant admits in part and denies in part the averments of Paragraph 72 of Plaintiff's Amended Complaint. Defendant admits only that this Paragraph accurately quotes Exhibit Q to Plaintiff's Amended Complaint, a November 16, 2007 email. This written document is the best and only evidence of its contents. Defendant objects to any characterization of the contents of Exhibit Q to Plaintiff's Amended Complaint. Defendant denies the remaining averments of Paragraph 72 of Plaintiff's Amended Complaint.

73. Defendant admits in part and denies in part the averments of Paragraph 73 of Plaintiff's Amended Complaint. Defendant admits only that Exhibit R to Plaintiff's Amended Complaint is an August 20, 2008 email. This written document is the best and only evidence of its contents. Defendant objects to any characterization of the contents of Exhibit R to Plaintiff's

Amended Complaint. Defendant denies the remaining averments of Paragraph 73 of Plaintiff's Amended Complaint.

74. Defendant admits in part and denies in part the averments of Paragraph 74 of Plaintiff's Amended Complaint. Defendant admits only that in 2011 ReVille was accused of sexually abusing children at a private school. Defendant denies the remaining averments of Paragraph 74 of Plaintiff's Amended Complaint.

75. Defendant denies the averments of Paragraph 75 of Plaintiff's Amended Complaint.

76. Defendant admits in part and denies in part the averments of Paragraph 76 of Plaintiff's Amended Complaint. Defendant admits only that ReVille was arrested on October 28, 2011, and is presently serving a 50-year sentence for the sexual abuse of boys. Defendant denies the remaining averments of Paragraph 76 of Plaintiff's Amended Complaint.

77. The averments of Paragraph 77 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 77 of Plaintiff's Amended Complaint.

78. The averments of Paragraph 78 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 78 of Plaintiff's Amended Complaint.

79. The averments of Paragraph 79 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 79 of Plaintiff's Amended Complaint.

80. Defendant denies the averments of Paragraph 80 of Plaintiff's Amended

Complaint.

81. Defendant denies the averments of Paragraph 81 of Plaintiff's Amended Complaint.

82. Defendant denies the averments of Paragraph 82 of Plaintiff's Amended Complaint.

83. Defendant admits the averments of Paragraph 83 of Plaintiff's Amended Complaint.

84. Defendant denies the averments of Paragraph 84 of Plaintiff's Amended Complaint.

85. Defendant admits in part and denies in part the averments of Paragraph 85 of Plaintiff's Amended Complaint. Defendant admits only that this Paragraph accurately quotes Exhibit O to Plaintiff's Amended Complaint, a document entitled "Re: Summer Camp Interview July 1, 2007." This written document is the best and only evidence of its contents. Defendant objects to any characterization of the contents of Exhibit O to Plaintiff's Amended Complaint. Defendant denies the remaining averments of Paragraph 85 of Plaintiff's Amended Complaint.

86. Defendant denies the averments of Paragraph 86 of Plaintiff's Amended Complaint.

87. Defendant denies the averments of Paragraph 87 of Plaintiff's Amended Complaint.

88. Defendant denies the averments of Paragraph 88 of Plaintiff's Amended Complaint.

89. The averments of Paragraph 89 (including subparagraphs (i) through (iv)) of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 89 (including subparagraphs (i) through (iv)) of Plaintiff's Amended

Complaint.

90. Defendant admits in part and denies in part the averments of Paragraph 90 of Plaintiff's Amended Complaint. Defendant admits only that Exhibits L and S to Plaintiff's Amended Complaint are the deposition transcripts of Mr. Brandenburg and Col. Trez. These written documents are the best and only evidence of their contents. Defendant objects to any characterization of the contents of Exhibits L and S to Plaintiff's Amended Complaint. Defendant denies the remaining averments of Paragraph 90 of Plaintiff's Amended Complaint.

91. Defendant admits in part and denies in part the averments of Paragraph 91 of Plaintiff's Amended Complaint. Defendant admits only that Exhibits L and S to Plaintiff's Amended Complaint are the deposition transcripts of Mr. Brandenburg and Col. Trez and that Exhibit I is Memorandum Number 39 "Serious Incidents." These written documents are the best and only evidence of their contents. Defendant objects to any characterization of the contents of Exhibits I, L and S to Plaintiff's Amended Complaint. Defendant denies the remaining averments of Paragraph 91 of Plaintiff's Amended Complaint.

92. Defendant denies the averments of Paragraph 92 of Plaintiff's Amended Complaint.

93. Defendant denies the averments of Paragraph 93 of Plaintiff's Amended Complaint.

94. Defendant admits in part and denies in part the averments of Paragraph 94 of Plaintiff's Amended Complaint. Defendant admits only that Exhibit I to Plaintiff's Amended Complaint is a document entitled Memorandum Number 39 "Serious Incidents" and that Exhibit T to Plaintiff's Amended Complaint is a document entitled "Keeping our College Safe and Secure." These written documents are the best and only evidence of their contents. Defendant objects to any characterization of the contents of Exhibits I and T to Plaintiff's Amended Complaint. Defendant denies the remaining averments of Paragraph 94 of Plaintiff's Amended

Complaint.

95. The averments of Paragraph 95 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 95 of Plaintiff's Amended Complaint.

96. The averments of Paragraph 96 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 96 of Plaintiff's Amended Complaint.

97. The averments of Paragraph 97 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 97 of Plaintiff's Amended Complaint.

98. The averments of Paragraph 98 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 98 of Plaintiff's Amended Complaint.

99. The averments of Paragraph 99 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 99 of Plaintiff's Amended Complaint.

100. Defendant denies the averments of Paragraph 100 of Plaintiff's Amended Complaint.

101. Defendant denies the averments of Paragraph 101 of Plaintiff's Amended Complaint.

102. Defendant denies the averments of Paragraph 102 of Plaintiff's Amended Complaint.

103. Defendant denies the averments of Paragraph 103 of Plaintiff's Amended Complaint.

104. Defendant denies the averments of Paragraph 104 of Plaintiff's Amended Complaint.

105. Defendant denies the averments of Paragraph 105 of Plaintiff's Amended Complaint.

106. Defendant denies the averments of Paragraph 106 of Plaintiff's Amended Complaint.

107. Defendant denies the averments of Paragraph 107 of Plaintiff's Amended Complaint.

108. After reasonable investigation, Defendant is without sufficient knowledge to admit or deny the allegations of Paragraph 108 of Plaintiff's Amended Complaint. Therefore, Defendant denies the allegations of Paragraph 108 of Plaintiff's Amended Complaint.

109. Defendant admits in part and denies in part the averments of Paragraph 109 of Plaintiff's Amended Complaint. Defendant admits only that this Paragraph accurately quotes Exhibit W to Plaintiff's Amended Complaint, a document entitled "In the Event of Employee Misconduct." This written document is the best and only evidence of its contents. Defendant objects to any characterization of the contents of Exhibit W to Plaintiff's Amended Complaint. Defendant denies the remaining averments of Paragraph 109 of Plaintiff's Amended Complaint.

110. Defendant denies the averments of Paragraph 110 of Plaintiff's Amended Complaint.

111. After reasonable investigation, Defendant is without sufficient knowledge to admit or deny the allegations of Paragraph 111 of Plaintiff's Amended Complaint. Therefore,

Defendant denies the allegations of Paragraph 111 of Plaintiff's Amended Complaint.

112. Defendant denies the averments of Paragraph 112 of Plaintiff's Amended Complaint.

113. Defendant denies the averments of Paragraph 113 of Plaintiff's Amended Complaint.

114. Defendant denies the averments of Paragraph 114 (including subparagraphs (i) through (x)) of Plaintiff's Amended Complaint.

115. The averments of Paragraph 115 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 115 of Plaintiff's Amended Complaint.

116. The averments of Paragraph 116 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 116 of Plaintiff's Amended Complaint.

117. The averments of Paragraph 117 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 117 of Plaintiff's Amended Complaint.

118. Defendant admits in part and denies in part the averments of Paragraph 118 of Plaintiff's Amended Complaint. Defendant admits only that Exhibit G to Plaintiff's Amended Complaint is a document entitled "Investigation into The Citadel's Handling of Allegations Involving Louis N. 'Skip' ReVille" and that Exhibit X is a November 12, 2011 Media Advisory. These written documents are the best and only evidence of their contents. Defendant objects to any characterization of the contents of Exhibits G and X to Plaintiff's Amended Complaint.

Defendant denies the remaining averments of Paragraph 118 of Plaintiff's Amended Complaint.

119. Defendant denies the averments of Paragraph 119 of Plaintiff's Amended Complaint.

120. Defendant admits in part and denies in part the averments of Paragraph 120 of Plaintiff's Amended Complaint. Defendant admits only that this Paragraph accurately quotes Exhibit F to Plaintiff's Amended Complaint, a May 16, 2007 letter. This written document is the best and only evidence of its contents. Defendant objects to any characterization of the contents of Exhibit F to Plaintiff's Amended Complaint. Defendant denies the remaining averments of Paragraph 120 of Plaintiff's Amended Complaint.

121. Defendant admits in part and denies in part the averments of Paragraph 121 of Plaintiff's Amended Complaint. Defendant admits only that Exhibit G to Plaintiff's Amended Complaint is a document entitled "Investigation into The Citadel's Handling of Allegations Involving Louis N. 'Skip' ReVile" and that Exhibit S is a portion of the deposition transcript of Col. Joseph Trez. These written documents are the best and only evidence of their contents. Defendant objects to any characterization of the contents of Exhibits G and S to Plaintiff's Amended Complaint. Defendant denies the remaining averments of Paragraph 121 of Plaintiff's Amended Complaint.

122. Defendant admits in part and denies in part the averments of Paragraph 122 of Plaintiff's Amended Complaint. Defendant admits only that Exhibit S is a portion of the deposition transcript of Col. Joseph Trez. This written document is the best and only evidence of its contents. Defendant objects to any characterization of the contents of Exhibit S to Plaintiff's Amended Complaint. Defendant denies the remaining averments of Paragraph 122 of Plaintiff's Amended Complaint.

123. Defendant denies the averments of Paragraph 123 of Plaintiff's Amended Complaint.

124. Defendant admits in part and denies in part the averments of Paragraph 124 of Plaintiff's Amended Complaint. Defendant admits only that Exhibit Y is a portion of the deposition transcript of Patricia Kinard. This written document is the best and only evidence of its contents. Defendant objects to any characterization of the contents of Exhibit Y to Plaintiff's Amended Complaint. Defendant denies the remaining averments of Paragraph 124 of Plaintiff's Amended Complaint.

125. The averments of Paragraph 125 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 125 of Plaintiff's Amended Complaint.

Factual Background – Mother Doe A

126. Defendant denies the averments of Paragraph 126 of Plaintiff's Amended Complaint. Defendant specifically denies that it had received actual notice of ReVille's propensity for sexually abusing young boys in the fall of 2007. As to the remaining averments of Paragraph 126 of Plaintiff's Amended Complaint, after reasonable investigation, Defendant is without sufficient knowledge to admit or deny the remaining allegations of Paragraph 126 of Plaintiff's Amended Complaint. Therefore, Defendant denies the remaining allegations of Paragraph 126 of Plaintiff's Amended Complaint.

127. Defendant denies the averments of Paragraph 127 of Plaintiff's Amended Complaint.

128. Defendant denies the averments of Paragraph 128 of Plaintiff's Amended Complaint.

129. Defendant denies the averments of Paragraph 129 of Plaintiff's Amended Complaint.

130. After reasonable investigation, Defendant is without sufficient knowledge to

admit or deny the allegations of Paragraph 130 of Plaintiff's Amended Complaint. Therefore, Defendant denies the allegations of Paragraph 130 of Plaintiff's Amended Complaint.

131. Defendant denies the averments of Paragraph 131 of Plaintiff's Amended Complaint.

132. Defendant denies the averments of Paragraph 132 of Plaintiff's Amended Complaint.

133. Defendant denies the averments of Paragraph 133 of Plaintiff's Amended Complaint.

134. After reasonable investigation, Defendant is without sufficient knowledge to admit or deny the allegations of Paragraph 134 of Plaintiff's Amended Complaint. Therefore, Defendant denies the allegations of Paragraph 134 of Plaintiff's Amended Complaint.

135. After reasonable investigation, Defendant is without sufficient knowledge to admit or deny the allegations of Paragraph 135 of Plaintiff's Amended Complaint. Therefore, Defendant denies the allegations of Paragraph 135 of Plaintiff's Amended Complaint.

136. The averments of Paragraph 136 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 136 of Plaintiff's Amended Complaint.

137. The averments of Paragraph 137 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 137 of Plaintiff's Amended Complaint.

138. The averments of Paragraph 138 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 138 of Plaintiff's

Amended Complaint.

139. The averments of Paragraph 139 (including subparagraphs (i) through (xxv)) of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 139 (including subparagraphs (i) through (xxv)) of Plaintiff's Amended Complaint.

140. The averments of Paragraph 140 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 140 of Plaintiff's Amended Complaint.

Admissions of The Citadel

141. Defendant admits in part and denies in part the averments of Paragraph 141 (including subparts (i) through (xxx)) of Plaintiff's Amended Complaint. Defendant admits only that Mr. Brandenburg was deposed on June 5 and 6, 2013. The transcripts of those depositions are written documents and the best and only evidence of their contents. Defendant objects to any characterization of the contents of the transcripts of Mr. Brandenburg's depositions. Defendant denies the remaining averments of Paragraph 141 (including subparts (i) through (xxx)) of Plaintiff's Amended Complaint.

142. Defendant admits in part and denies in part the averments of Paragraph 142 (including subparts (i) through (xxvii)) of Plaintiff's Amended Complaint. Defendant admits only that Col. Trez was deposed on June 10 and 11, 2013. The transcripts of those depositions are written documents and the best and only evidence of their contents. Defendant objects to any characterization of the contents of the transcripts of Col. Trez's depositions. Defendant denies the remaining averments of Paragraph 142 (including subparts (i) through (xxvii)) of Plaintiff's Amended Complaint.

143. Defendant admits in part and denies in part the averments of Paragraph 143 (including subparts (i) through (xii)) of Plaintiff's Amended Complaint. Defendant admits only that Mr. Fletcher was deposed on June 12, 2013. The transcript of this deposition is a written documents and the best and only evidence of its contents. Defendant objects to any characterization of the contents of the transcripts of Mr. Fletcher's deposition. Defendant denies the remaining averments of Paragraph 143 (including subparts (i) through (xii)) of Plaintiff's Amended Complaint.

144. Defendant admits in part and denies in part the averments of Paragraph 144 (including subparts (i) through (ii)) of Plaintiff's Amended Complaint. Defendant admits only that Ms. Kinard was deposed on June 11, 2013. The transcript of that deposition is a written document and the best and only evidence of its contents. Defendant objects to any characterization of the contents of the transcript of Ms. Kinard's deposition. Defendant denies the remaining averments of Paragraph 144 (including subparts (i) through (ii)) of Plaintiff's Amended Complaint.

For a First Cause of Action as to The Citadel

(Gross Negligence — Failure to Warn)

145. Defendant incorporates by reference the averments of Paragraphs 1 through 144 of this Answer to Amended Complaint as if set forth at length herein.

146. The averments of Paragraph 146 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 146 of Plaintiff's Amended Complaint.

147. The averments of Paragraph 147 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 147 of Plaintiff's

Amended Complaint.

148. Defendant denies the averments of Paragraph 148 of Plaintiff's Amended Complaint.

149. Defendant denies the averments of Paragraph 149 of Plaintiff's Amended Complaint.

150. The averments of Paragraph 150 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 150 of Plaintiff's Amended Complaint.

151. The averments of Paragraph 151 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 151 of Plaintiff's Amended Complaint.

152. The averments of Paragraph 152 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 152 of Plaintiff's Amended Complaint.

153. The averments of Paragraph 153 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 153 of Plaintiff's Amended Complaint.

154. The averments of Paragraph 154 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 154 of Plaintiff's Amended Complaint.

155. The averments of Paragraph 155 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 155 of Plaintiff's Amended Complaint.

156. The averments of Paragraph 156 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 156 of Plaintiff's Amended Complaint.

157. The averments of Paragraph 157 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 157 of Plaintiff's Amended Complaint.

158. Defendant denies the averments of Paragraph 158 of Plaintiff's Amended Complaint.

159. The averments of Paragraph 158 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 158 of Plaintiff's Amended Complaint.

160. The averments of Paragraph 159 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 159 of Plaintiff's Amended Complaint.

161. The averments of Paragraph 161 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 161 of Plaintiff's

Amended Complaint.

162. After reasonable investigation, Defendant is without sufficient knowledge to admit or deny the allegations of Paragraph 162 of Plaintiff's Amended Complaint. Therefore, Defendant denies the allegations of Paragraph 162 of Plaintiff's Amended Complaint.

163. The averments of Paragraph 163 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 163 of Plaintiff's Amended Complaint.

164. The averments of Paragraph 164 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 164 of Plaintiff's Amended Complaint.

165. The averments of Paragraph 165 (including subparagraphs (i) through (xxxiii)) of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 165 (including subparagraphs (i) through (xxxiii)) of Plaintiff's Amended Complaint.

166. The averments of Paragraph 166 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 166 of Plaintiff's Amended Complaint.

167. Defendant denies the averments of Paragraph 167 of Plaintiff's Amended Complaint.

168. Defendant denies the averments of Paragraph 168 of Plaintiff's Amended Complaint.

169. The averments of Paragraph 169 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 169 of Plaintiff's Amended Complaint.

170. The averments of Paragraph 170 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 170 of Plaintiff's Amended Complaint.

171. The averments of Paragraph 171 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 171 of Plaintiff's Amended Complaint.

172. The averments of Paragraph 172 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 172 of Plaintiff's Amended Complaint.

173. The averments of Paragraph 173 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 173 of Plaintiff's Amended Complaint.

174. The averments of Paragraph 174 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 174 of Plaintiff's Amended Complaint.

175. The averments of Paragraph 175 of Plaintiff's Amended Complaint constitute

conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 175 of Plaintiff's Amended Complaint.

176. The averments of Paragraph 176 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 176 of Plaintiff's Amended Complaint.

177. The averments of Paragraph 177 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 177 of Plaintiff's Amended Complaint.

For a Second Cause of Action as to The Citadel

(Negligent Hiring, Retention and Supervision)

178. Defendant incorporates by reference the averments of Paragraphs 1 through 177 of this Answer to Amended Complaint as if set forth at length herein.

179. The averments of Paragraph 179 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 179 of Plaintiff's Amended Complaint.

180. The averments of Paragraph 180 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 180 of Plaintiff's Amended Complaint.

181. The averments of Paragraph 181 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is

deemed necessary or appropriate, Defendant denies the averments of Paragraph 181 of Plaintiff's Amended Complaint.

182. The averments of Paragraph 182 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 182 of Plaintiff's Amended Complaint.

183. The averments of Paragraph 183 (including subparagraphs (i) through (xiv)) of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 183 (including subparagraphs (i) through (xiv)) of Plaintiff's Amended Complaint.

184. The averments of Paragraph 184 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 184 of Plaintiff's Amended Complaint.

185. The averments of Paragraph 185 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 185 of Plaintiff's Amended Complaint.

186. The averments of Paragraph 186 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 186 of Plaintiff's Amended Complaint.

187. The averments of Paragraph 187 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is

deemed necessary or appropriate, Defendant denies the averments of Paragraph 187 of Plaintiff's Amended Complaint.

For a Third Cause of Action as to The Citadel

(§ 59-154-10, Jessica Horton Act)

188. Defendant incorporates by reference the averments of Paragraphs 1 through 187 of this Answer to Amended Complaint as if set forth at length herein.

189. The averments of Paragraph 189 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, this statute speaks for itself. For this reason, Defendant denies the averments of Paragraph 189 of Plaintiff's Amended Complaint.

190. The averments of Paragraph 190 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, this statute speaks for itself. For this reason, Defendant denies the averments of Paragraph 190 of Plaintiff's Amended Complaint.

191. The averments of Paragraph 191 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, this statute speaks for itself. For this reason, Defendant denies the averments of Paragraph 191 of Plaintiff's Amended Complaint.

192. The averments of Paragraph 192 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, this statute speaks for itself. For this reason, Defendant denies the averments of Paragraph 192 of Plaintiff's Amended Complaint.

193. The averments of Paragraph 193 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 193 of Plaintiff's

Amended Complaint.

194. The averments of Paragraph 194 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 194 of Plaintiff's Amended Complaint.

195. The averments of Paragraph 195 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 195 of Plaintiff's Amended Complaint.

196. Defendant denies the averments of Paragraph 196 of Plaintiff's Amended Complaint.

197. After reasonable investigation, Defendant is without sufficient knowledge to admit or deny the allegations of Paragraph 197 of Plaintiff's Amended Complaint. Therefore, Defendant denies the allegations of Paragraph 197 of Plaintiff's Amended Complaint.

198. The averments of Paragraph 198 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, this statute speaks for itself. For this reason, Defendant denies the averments of Paragraph 198 of Plaintiff's Amended Complaint.

199. The averments of Paragraph 199 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, this statute speaks for itself. For this reason, Defendant denies the averments of Paragraph 199 of Plaintiff's Amended Complaint.

200. Defendant denies the averments of Paragraph 200 of Plaintiff's Amended Complaint.

201. The averments of Paragraph 201 of Plaintiff's Amended Complaint constitute

conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 201 of Plaintiff's Amended Complaint.

202. The averments of Paragraph 202 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 202 of Plaintiff's Amended Complaint.

203. The averments of Paragraph 203 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 203 of Plaintiff's Amended Complaint.

204. The averments of Paragraph 204 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 204 of Plaintiff's Amended Complaint.

For a Fourth Cause of Action as to The Citadel

(Civil Conspiracy)

205. Defendant incorporates by reference the averments of Paragraphs 1 through 204 of this Answer to Amended Complaint as if set forth at length herein.

206. Defendant denies the averments of Paragraph 206 of Plaintiff's Amended Complaint.

207. Defendant denies the averments of Paragraph 207 of Plaintiff's Amended Complaint.

208. Defendant denies the averments of Paragraph 208 of Plaintiff's Amended Complaint.

209. Defendant denies the averments of Paragraph 209 of Plaintiff's Amended Complaint.

210. Defendant denies the averments of Paragraph 210 of Plaintiff's Amended Complaint.

211. Defendant denies the averments of Paragraph 211 of Plaintiff's Amended Complaint.

212. Defendant admits in part and denies in part the averments of Paragraph 212 of Plaintiff's Amended Complaint. Defendant admits only that Exhibit F to Plaintiff's Amended Complaint is a May 16, 2007 correspondence. This written document is the best and only evidence of its contents. Defendant objects to any characterization of the contents of Exhibit F to Plaintiff's Amended Complaint. Defendant denies the remaining averments of Paragraph 212 of Plaintiff's Amended Complaint.

213. Defendant denies the averments of Paragraph 213 of Plaintiff's Amended Complaint.

214. Defendant denies the averments of Paragraph 214 of Plaintiff's Amended Complaint.

215. Defendant admits the averments of Paragraph 215 of Plaintiff's Amended Complaint.

216. The averments of Paragraph 216 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 216 of Plaintiff's Amended Complaint.

217. Defendant denies the averments of Paragraph 217 of Plaintiff's Amended Complaint.

218. Defendant denies the averments of Paragraph 218 of Plaintiff's Amended

Complaint.

219. Defendant denies the averments of Paragraph 219 of Plaintiff's Amended Complaint.

220. The averments of Paragraph 220 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 220 of Plaintiff's Amended Complaint.

221. The averments of Paragraph 221 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 221 of Plaintiff's Amended Complaint.

222. The averments of Paragraph 222 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 222 of Plaintiff's Amended Complaint.

223. The averments of Paragraph 223 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 223 of Plaintiff's Amended Complaint.

For a Fifth Cause of Action as to The Citadel

(§ 63-7-310, Mandatory Reporting Statute)

224. Defendant incorporates by reference the averments of Paragraphs 1 through 223 of this Answer to Amended Complaint as if set forth at length herein.

225. The averments of Paragraph 225 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is

deemed necessary or appropriate, this statute speaks for itself. For this reason, Defendant denies the averments of Paragraph 225 of Plaintiff's Amended Complaint.

226. The averments of Paragraph 226 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, this statute speaks for itself. For this reason, Defendant denies the averments of Paragraph 226 of Plaintiff's Amended Complaint.

227. The averments of Paragraph 227 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 227 of Plaintiff's Amended Complaint.

228. The averments of Paragraph 228 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 228 of Plaintiff's Amended Complaint.

229. The averments of Paragraph 229 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, this statute speaks for itself. For this reason, Defendant denies the averments of Paragraph 229 of Plaintiff's Amended Complaint.

230. The averments of Paragraph 230 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, this statute speaks for itself. For this reason, Defendant denies the averments of Paragraph 230 of Plaintiff's Amended Complaint.

231. Defendant denies the averments of Paragraph 231 of Plaintiff's Amended Complaint.

232. The averments of Paragraph 232 of Plaintiff's Amended Complaint constitute

conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 232 of Plaintiff's Amended Complaint.

233. The averments of Paragraph 233 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 233 of Plaintiff's Amended Complaint.

234. The averments of Paragraph 234 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 234 of Plaintiff's Amended Complaint.

235. The averments of Paragraph 235 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 235 of Plaintiff's Amended Complaint.

236. The averments of Paragraph 236 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 236 of Plaintiff's Amended Complaint.

237. The averments of Paragraph 237 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 237 of Plaintiff's Amended Complaint.

For a Sixth Cause of Action as to The Citadel

(Intentional Infliction of Emotional Distress/Outrage)

238. Defendant incorporates by reference the averments of Paragraphs 1 through 237 of this Answer to Amended Complaint as if set forth at length herein.

239. The averments of Paragraph 239 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 239 of Plaintiff's Amended Complaint.

240. The averments of Paragraph 240 (including subparagraphs (i) through (xxxi)) of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 240 (including subparagraphs (i) through (xxxi)) of Plaintiff's Amended Complaint.

241. Defendant denies the averments of Paragraph 241 of Plaintiff's Amended Complaint.

242. Defendant denies the averments of Paragraph 242 of Plaintiff's Amended Complaint.

243. Defendant denies the averments of Paragraph 243 of Plaintiff's Amended Complaint.

244. The averments of Paragraph 244 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 244 of Plaintiff's Amended Complaint.

245. The averments of Paragraph 245 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is

deemed necessary or appropriate, Defendant denies the averments of Paragraph 245 of Plaintiff's Amended Complaint.

246. The averments of Paragraph 246 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 246 of Plaintiff's Amended Complaint.

247. The averments of Paragraph 247 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 247 of Plaintiff's Amended Complaint.

For a Seventh Cause of Action as to The Citadel

(Loss of Services)

248. Defendant incorporates by reference the averments of Paragraphs 1 through 247 of this Answer to Amended Complaint as if set forth at length herein.

249. The averments of Paragraph 249 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 249 of Plaintiff's Amended Complaint.

250. The averments of Paragraph 250 (including subparagraphs (i) through (xxxiii)) of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 250 (including subparagraphs (i) through (xxxiii)) of Plaintiff's Amended Complaint.

251. The averments of Paragraph 251 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is

deemed necessary or appropriate, Defendant denies the averments of Paragraph 251 of Plaintiff's Amended Complaint.

252. The averments of Paragraph 252 of Plaintiff's Amended Complaint constitute conclusions of law to which no response is necessary or appropriate. To the extent a response is deemed necessary or appropriate, Defendant denies the averments of Paragraph 252 of Plaintiff's Amended Complaint.

253. Defendant denies that Plaintiff is entitled to any of the relief requested in the WHEREFORE clause of the Amended Complaint.

FOR A SECOND DEFENSE
(Failure to State a Claim)

254. The Plaintiff's Amended Complaint fails to state a claim upon which relief may be granted.

FOR A THIRD DEFENSE
(Statute of Limitations)

255. The Plaintiff's claims are barred by the applicable statute of limitations.

FOR A FOURTH DEFENSE
(Laches)

256. The Plaintiff's claims are barred by the doctrine of laches.

FOR A FIFTH DEFENSE
(South Carolina Tort Claims Act)

257. The Plaintiff's claims are barred by the provisions of the South Carolina Tort Claims Act, specifically S.C. Code Ann. §§ 15-78-60 (2), (5), (20), (23), and (25).

FOR A SIXTH DEFENSE
(South Carolina Tort Claims Act)

258. The Plaintiff's recovery, if any, is limited by the provisions of the South Carolina Tort Claims Act, specifically S.C. Code Ann. § 15-78-120.

FOR A SEVENTH DEFENSE
(Public Duty Rule)

259. The Plaintiff fails to state a claim for which relief can be granted for negligence on the grounds of the well-established "public duty" doctrine requires the existence of a "special relationship" to establish a legal duty to warn. The Citadel had no special relationship with Plaintiff or ReVille at the time of the Plaintiff's claims that would give rise to a legal duty to warn the Plaintiff or any other individual about ReVille.

FOR AN EIGHTH DEFENSE
(Waiver/Estoppel)

260. The Plaintiff's claims are barred by the doctrines of waiver and/or estoppel.

FOR A NINTH DEFENSE
(Lack of Proximate Cause)

261. No act or omission on the part of the Defendant either caused or contributed to any alleged injury or damage Plaintiff may have sustained.

FOR A TENTH DEFENSE
(Intervening & Superseding Criminal Acts of a Third-Party)

262. The Plaintiff's damages were caused by intervening willful, malicious, and criminal acts of a third-party, unforeseeable by The Citadel. The Citadel pleads those intervening willful, malicious, and criminal acts of others as a complete bar to Plaintiff's recovery.

FOR AN ELEVENTH DEFENSE
(Intervening & Superseding Acts of a Third-Party)

263. The Plaintiff's damages were caused by a third-party for whom The Citadel has no liability. The Citadel pleads those acts of others, whether intervening, superseding, or otherwise, as a complete bar to Plaintiff's recovery.

FOR A TWELFTH DEFENSE
(Failure to State a Claim)

264. Some of the Plaintiff's claims are barred by his failure to state sufficient facts to give rise to any cause of action against the Defendant.

FOR A THIRTEENTH DEFENSE

(Reservation of Additional Defenses)

265. The Citadel reserves the right to assert any additional and further defenses that may be revealed by information obtained during the course of investigation and discovery as consistent with the South Carolina Rules of Civil Procedure.

PRAYER

WHEREFORE, having fully answered Plaintiff's Amended Complaint in this matter, The Citadel respectfully prays:

- a. That Plaintiff's claims be dismissed;
- b. That Plaintiff take nothing by reason of his suit;
- c. That the Defendant recover its costs;
- d. For trial by jury; and
- e. For any such further relief to which they may be entitled.

BARNWELL, WHALEY, PATTERSON, AND
HELMS, LLC

By: 

M. Dawes Cooke, Jr., Esq.

Randell C. Stoney, Esq.

John W. Fletcher

P.O. Drawer H (29402)

288 Meeting Street, Suite 200

Charleston, SC 29401

(843) 577-7700

Counsel for Defendant The Citadel

Dated: February 5, 2014
Charleston, South Carolina

11-9200

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the DEFENDANT'S ANSWER TO AMENDED COMPLAINT was served upon all counsel of record via E-Mail & U.S. Mail on this 5th day of February, 2014.

ATTORNEY FOR PLAINTIFF:

Allan P. Sloan, III, Esq.
Louis Hems, Esq.
Carl Pierce, Esq.
Pierce, Hems, Sloan & Wilson, LLC
321 East Bay Street
Charleston, SC 29401

ATTORNEY FOR PLAINTIFF:

Gregg Meyers, Esq.
Jeff Anderson & Associates, P.A.
366 Jackson St., Suite 100
St. Paul, MN 55101

BY: Karen L. Jessee
Karen L. Jessee, Legal Secretary
KJessee@Barnwell-Whaley.com

FILED
2014 FEB -5 PM 4:43
JULIE C. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

John Doe 201 and Jane Doe 201,

Plaintiff(s)

vs.

The Citadel et al

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013-CP - 10- 10330

(Please Print)

Submitted By: Gregg Meyers

Address: 366 Jackson Street, St Paul MN 55101

SC Bar #: 9908

Telephone #: 651-227-9990

Fax #: 651-297-6543

Other:

E-mail: Gregg@andersonadvocates.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20-CP- ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☒ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature:



Date:

10-16-13

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

**SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE
DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.**

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA
PLEAS

COUNTY OF CHARLESTON

Father John Doe 201 and Mother Jane Doe
201,

Plaintiffs,

v.

The Citadel, John Rosa, individually;
Mark Brandenburg, individually,

Defendants,

IN THE COURT OF COMMON

2013-CP-10-

6330

FILED
2013 OCT 25 PM 4:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Summons

TO: The Citadel
John Rosa
Mark Brandenburg

YOU ARE HEREBY SUMMONED and required to answer the complaint in this action. A copy of the complaint is served upon you with this summons.

Your answer to the complaint is to be served upon the attorney for the plaintiff at 366 Jackson Street, St. Paul MN 55101.

According to the South Carolina Rules of Civil Procedure, which govern litigation, you are required to appear and defend yourself in this action by making and serving an answer to this complaint within thirty (30) days after the complaint is served upon you. The thirty days begin to run from the date after this summons and complaint are served upon you; the date the service is made is excluded.

If within that time you fail to appear and defend as you are required to do by the Rules of Civil Procedure, the plaintiff in this action shall apply to the Court for the relief

demanded in this Complaint and judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregg Meyers". The signature is fluid and cursive, with the first name "Gregg" being more prominent and the last name "Meyers" following in a similar style.

Gregg Meyers, SC Bar No. 9908
Jeff Anderson & Associates, P.A.
366 Jackson Street
St. Paul, MN 55101
651-227-9990

Attorneys for the Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2013-CP-10- 6330

Father John Doe 201 and Mother Jane Doe
201,

Plaintiffs,

v.

The Citadel, John Rosa, individually; Mark
Brandenburg, individually,

Defendants,

Gross Negligence
Loss of services
42 USC § 1983 (two counts)

FILED
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CLERK OF COURT

COMPLAINT

For their Complaint, the Plaintiffs, parents of John Doe 201, allege:

1. Father Doe 201 and Mother Doe 201 are citizens and residents of South Carolina. They are the natural parent of a male child born in 1997. After August, 2007, when their child was under the age of 16, he was sexually abused by Louis "Skip" Reville multiple times over a two year period. In this Complaint, Louis Reville is referred to as Reville.

2. By Reville's own admission to criminal charges, the Plaintiffs' child is a person upon whom Reville committed criminal sexual conduct.

3. The Plaintiffs are referred to in this public filing by pseudonym to maintain confidentiality of their child's identity pursuant to S.C. Code § 16-3-730, which prohibits publication of the names of victims of criminal sexual conduct. The Defendants will be informed of the identity of the Plaintiffs and their child by separate communication upon their agreement to maintain confidentiality of the information as to the public record.

4. The Citadel is a public college with its principal place of business in Charleston County. It is owned and operated by the state of South Carolina.

5. John Rosa is a General in the United States military. Since January, 2006 he has served as the President of the Citadel. His office is in Charleston County, on the Citadel campus. In his capacity as President his actions and inactions are under color of state and federal law. In the third and fourth causes of action he is sued individually, in his capacity as President of the Citadel, for actions he has taken and failed to state under color of state law within the scope of his employment.

6. Mark Brandenburg is an employee of The Citadel serving as general counsel. His office is in Charleston County, on the Citadel campus. He is supervised by, among others, John Rosa. In the capacity of general counsel his actions and inactions are under color of state and federal law. In the third cause of action, he is sued individually, in his official capacity, for actions he has taken and failed to take under color of state law, within the scope of his employment.

7. This action is filed in Charleston County because the Defendants are located in Charleston County, regularly conduct business in Charleston County, and because the acts and omissions set forth in this Complaint occurred in Charleston County.

8. The Circuit Court has jurisdiction for the subject matter of this action, and personal jurisdiction over the parties to this action.

Nature of Wrongdoing

9. Until October 28, 2011, the Defendants fraudulently concealed information that Reville was known to have a sexual interest in children, and their knowledge about Reville's sexual interest in children. Disclosures about Reville and the Citadel's prior knowledge were not known to the Plaintiffs until after October 28, 2011, when Reville was arrested and charged with various acts of sexual misconduct with minors.

10. Among other things, The Citadel maintains an Alumni Association website.

11. Reville is an alumnus of The Citadel who graduated in 2002. Reville was also a counselor at the Citadel's summer camp from 2002 to 2004. In 2007, before the Plaintiffs' child had ever even met Reville, The Citadel, and Defendants Rosa and Brandenburg, became aware that Reville had demonstrated a sexual interest in children and a willingness to act in inappropriate ways with children.

12. From 1957 to 2006, the Citadel operated a youth summer camp for which the Citadel selected, employed, and supervised counselors.

13. Among the counselors selected, employed, and supervised by The Citadel from 2000 to 2004 was Reville.

14. In operating the summer camp, and in selecting, employing, and supervising employees as counselors, The Citadel assumed a duty to screen, monitor, and supervise its employee counselors, assumed a duty to maintain safety of children who interacted with its employees, and assumed a duty to represent accurately its experience with its counselors.

15. During his tenure as a camp counselor, Reville sexually abused multiple campers on the grounds of the Citadel. To do so, Reville violated rules of the camp, and did so with the knowledge of Deputy Director Jenni Garrott and other camp officials.

16. Among Reville's summer camp victims was a camper, identified in this Complaint by his designation in the Reville guilty plea as John Doe 13. John Doe 13 was sexually abused by Reville in 2003. Reville not only directly abused John Doe 13, Reville used John Doe 13 to report his abuse of other campers by Reville taking those campers into his room at The Citadel to watch pornographic videos with them and coerce them to masturbate with Reville. Reville would tell John Doe 13 about his exploits with other children.

17. In 2005 John Doe 13 was himself a counselor at the Citadel Summer camp.

18. During the 2005 camp session, John Doe 13 went to the office of the person who was second in command of the Summer Camp, Deputy Director Jenni Garrott.

19. John Doe 13's intention in that meeting was to report Reville's sexual abuse, of himself and other minors.

20. As John Doe 13 began his report, and identified Reville as its subject, Ms. Garrott's demeanor immediately changed, and she stated that she did not have time to talk with him. Until John Doe 13 identified Reville as his subject, Ms. Garrott had time to talk with John Doe 13. Ms. Garrott directed John Doe 13 to return to his room. He returned to his room as she directed.

21. Consistent with the practice and custom of The Citadel to suppress information about sexual abuse of children, Citadel Camp Deputy Director Jenni Garrott refused to take the detailed report John Doe 13 was prepared to make about Reville in the summer of 2005.

22. Within an hour of John Doe 13 attempting to report Reville to Deputy Director Jenni Garrott, a Senior Summer Camp Counselor named Patrick Reed, acting at the direction of Jenni Garrott, came to John Doe 13's room and directed John Doe 13 to come with him to the Parade Ground. John Doe 13 complied. At the parade ground, Mr. Reed fired John Doe 13 as a counselor.

23. Acting at Deputy Director Garrott's direction, Senior Summer Camp Counselor Patrick Reed stated, as a pretext for terminating John Doe 13, that the reason John Doe 13 was being terminated as a camp counselor was that John Doe 13 called one of the campers a "faggot." John Doe 13 informed Mr. Reed that John Doe 13 had not called any camper a "faggot." Jenni Garrott was aware that John Doe 13 had not referred to any camper by that term, and the pretext used by Patrick Reed was to conceal the actual reason for terminating John Doe 13: that he had attempted to report Reville to Jenni Garrott for Reville's sexual misconduct with minors.

24. Jenni Garrott knew as early as 2002 that Reville violated camp rules to isolate himself with minor campers. He did so, to her knowledge, more than once. Had she not truncated John Doe 13's report about Reville in 2005, it would have violated the practice and custom of The Citadel to suppress reports of sexual misconduct of Citadel staff with minors, and her prior knowledge and lack of proper supervision of Reville between 2002 and 2005 would have become known. For those reasons, it was preferable that John Doe 13 be terminated from the 2005 Citadel Summer Camp on a pretext.

25. The practice and custom of The Citadel is to suppress reports of sexual misconduct of Citadel staff with minors.

26. Mr. Reed gave John Doe 13 five hours to leave The Citadel campus. Management of the camp would not speak with him. Deputy Director Jenni Garrott saw campers interacting with John Doe 13 after his termination but before his departure, and yelled at John Doe 13 to get away from the Campers and for him to leave the Citadel. The actions by Garrott and Reed to terminate John Doe 13 and remove him from the Citadel campus was because John Doe 13 attempted to report Reville's misconduct. The reason used to terminate John Doe 13 was a pretext.

27. In 2005, Mark Brandenburg became general counsel for The Citadel. The custom and practice of The Citadel to suppress reports of sexual misconduct of Citadel staff with minors was continued under Mr. Brandenburg's tenure.

28. In January, 2006, Defendant Rosa became the President of The Citadel. The custom and practice of The Citadel to suppress reports of sexual misconduct of Citadel staff with minors was continued under Defendant Rosa's tenure.

29. In April, 2007 the Citadel received information from a former camper that in 2002 Reville had, on the premises of The Citadel, and during the course and scope of his employment

with the summer camp, engaged in sexually inappropriate conduct with multiple children under age 16 at its summer camp. The person making the 2007 report is referred to in this complaint as the 2002 camper.

30. Since 2002, the Citadel has known that on multiple occasions Reville would isolate himself with campers, contrary to Citadel rules.

31. Since the summer of 2005, The Citadel has had reason to know that Reville is a person dangerous to children.

32. Conduct reported to The Citadel in each of 2005 and 2007 was sufficient to have Reville terminated from The Citadel's employment, and constituted criminal acts by Reville.

33. No report to law enforcement about Reville was made by anyone at the Citadel in 2005.

34. No report to law enforcement about Reville was made by anyone at the Citadel in 2007.

35. Defendant Rosa and Defendant Brandenburg coordinated between themselves not reporting Reville to law enforcement or anyone else.

36. The Board of Visitors of The Citadel ratified that failure to report by Rosa and Brandenburg, and continues to direct the Citadel to take the position that The Citadel has no duty to report to law enforcement Citadel staff who engage children in group masturbation.

37. The Citadel Board of Visitors continues to advocate not reporting to law enforcement when its staff engages children in group masturbation.

38. Both John Doe 13 and the 2002 camper reported Reville to The Citadel in an attempt to avoid other children being sexually abused by Reville. In 2007, the 2002 camper described to Defendant Brandenburg, under oath, that stopping Reville from harming another child was "the thing I want most."

39. Defendants each knew, or should have known, since 2007, that Reville was dangerous to children. The 2002 camper explained to Defendant Brandenburg how and why Reville was dangerous to children.

40. In both 2005 and 2007, the Citadel concealed information about Reville's criminal conduct. That concealment continued until after October 28, 2011.

41. In 2007, Defendant Brandenburg, at the direction of Defendant Rosa, investigated the information given by the 2002 camper. Brandenburg was chosen precisely because The Citadel could claim (incorrectly) that all information he received could be withheld from others, since he was an attorney.

42. The 2002 camper identified how Reville victimized himself and others. Defendant Brandenburg determined the information was credible, and shared information with both Rosa and the South Carolina Insurance Reserve Fund, which provides insurance coverage for the Citadel. At no point prior to Reville's 2011 arrest was the Defendants' information about Reville shared with law enforcement, employers of Reville, or parents of children around whom Reville worked after 2007.

43. In the Fall of 2009, the Plaintiffs' child began taking athletic supervision from Louis Reville in Mt. Pleasant. The Defendants knew, or should have known, that Reville had undertaken employment that placed him in contact with minor children.

44. Beginning in 2007 and extending through October 28, 2011, the Defendants chose to remain silent about Reville's sexual misconduct with children. The Defendants each knew, or should have known, that failing to report Reville in 2007, or 2008, or 2009, or 2010, or 2011 implicitly represented that the Defendants had no information by which they knew that Reville

was a dangerous person to permit to work around children. That representation was false, and was known to have been false when it was made.

45. The Plaintiffs' child had contact with Reville, and was sexually exploited by Reville, between 2009 and 2011.

46. The Defendants each knew, or should have known, that Reville had undertaken employment that placed him in contact with minor children, including the Plaintiffs' child.

For a First Cause of Action: Gross Negligence (Failure to Warn)

47. This cause of action is alleged against The Citadel under state law.

48. Allegations above are incorporated into this cause of action as if fully stated.

49. Agents and employees of The Citadel failed to warn about Reville's danger to children and his sexual interest in children.

50. The Plaintiffs' child was sexually assaulted by Reville on multiple occasions between 2009 and 2011 as a proximate result of the gross negligence of The Citadel's agents and employees having failed to warn about Reville.

51. Reville has admitted sexually assaulting the Plaintiffs' child multiple times, and has been criminally convicted on that admission.

52. Each of Reville's multiple opportunities to sexually assault the Plaintiffs' child was proximately caused by the various acts of gross negligence by the Defendants. Reville sexually assaulting the Plaintiffs' child was reasonably foreseeable to the Defendants.

53. Starting in 2007, and continuing through 2011, The Citadel possessed, but did not disclose to law enforcement, or Reville's employers, or to parents of children Reville had access

to, or to the children Reville had access to, information by which Reville's sexually exploitive conduct towards children could be impeded.

54. The Citadel had a duty to report Reville to law enforcement. That duty was imposed on The Citadel by federal law, by professional standards, and by state law in the form of the policies of The Citadel.

55. The policies of The Citadel that required reporting applied to all Citadel employees, including Defendants Rosa and Brandenburg.

56. Had The Citadel reported its information at any time between 2007 and 2009, the information would have impeded Reville's access to sexually assault other children, and prevented Reville's sexual abuse of the Plaintiffs' child. Either Reville could have been arrested for sexual misconduct with children, employers could have been alerted to the risk of employing Reville (and either declined to hire him or provide him with heightened supervision), or parents could have made informed judgments about exposing to Reville any child of theirs knowing that Reville had a sexual interest in children.

57. Had these Plaintiffs been informed that Reville had a sexual interest in children, they would not have permitted their child to be around Reville.

58. Knowledge by The Citadel and its officials in 2005 and 2007 placed The Citadel in a special relationship with every other employer of Reville, and those parents whose children were in contact with Reville through those other employers, because of the implicit, but false, representation by The Citadel that Reville was not known to present a danger to children.

59. The information possessed by The Citadel created a duty to warn by The Citadel.

60. The Citadel has publicly acknowledged that in 2007 it had a duty to warn.

61. A duty to report Reville was independently required of The Citadel by federal law, the standard of care for college administrators, and Citadel policy.

62. The Citadel breached its duty, and was grossly negligent in making no disclosure of any type of the information it knew in 2007 that Reville was dangerous to children.

63. The Citadel has on one hand publicly acknowledged it should have reported in 2007 the information it had about Reville, and on the other hand claimed it had no obligation to report.

64. In fact, as The Citadel knew, Reville was dangerous to children due to the sexual interest Reville had in children. In 2007 that sexual interest was known to Reville, his victims, and to officials at The Citadel, including Defendants Rosa and Brandenburg and other Citadel agents and employees.

65. Starting not later than April, 2007, the Citadel had an obligation to use reasonable care to protect children with whom Reville interacted, and the parents of such children.

66. The Citadel undertook no steps to warn either the children with whom Reville interacted, the parents of those children, Reville's employers, or law enforcement, that Reville had a sexual interest in children.

67. Having learned that Reville had a sexual interest in children, The Citadel's concern was solely with The Citadel. The interests of children being protected from sexual assault by Reville after 2007, and of children sexually assaulted by Reville before 2007, were of no significance to The Citadel.

68. Injunctive relief is properly imposed upon The Citadel to compel The Citadel to concern itself with protecting children from sexual assault by persons known to have a sexual interest in children. The Citadel should be enjoined from failing to report to law enforcement any sexual assault or sexual misconduct which occurs on The Citadel campus.

69. Unless The Citadel is ordered to do so, The Citadel and its officials will continue its practice of failing to concern itself with protecting children from sexual assault by persons known to have a sexual interest in children, and The Citadel will continue to disregard any interest in protecting children from sexual assault by persons known to have a sexual interest in children.

70. For example, while The Citadel stated publicly, through Defendant Rosa, in November, 2011, that “we didn’t do what should have been done,” implying that The Citadel agreed that Reville should have been reported to law enforcement in 2007, those comments by Rosa were disingenuous and were made merely for public consumption, and to further mislead the public about The Citadel. The Citadel has taken, and continues to take, the position that it has no duty to make any report to law enforcement, and had no duty to report Reville to law enforcement.

71. Without injunctive relief from the Court, The Citadel will continue to ignore its duty to report and, if and when caught, it will claim that it was merely mistaken, when in fact there is, and has long been, a custom and practice at The Citadel to withhold information about sexual misconduct by Citadel employees and staff. The custom and practice continues.

72. In maintaining silence about Reville after 2007, the Citadel breached its various duties to warn and report, and acted in a grossly negligent manner.

73. As a direct and proximate result of the failures by the Citadel from 2007 to 2011, and the Citadel’s gross negligence, as exhibited on multiple occasions and in multiple ways, the Plaintiffs’ child was sexually assaulted by Reville.

74. The Plaintiffs have incurred costs for treating their child, for providing their child professional care while maintaining his anonymity, and have lost the services of their child, as alleged in more detail below.

75. The Plaintiffs have suffered tangible and intangible injury as a result of the conduct by The Citadel.

76. The Plaintiffs are entitled to damages and injunctive relief as a result of the conduct of The Citadel.

For a Second Cause of Action: Loss of Services

77. This cause of action is alleged against The Citadel under state law.

78. Allegations above are incorporated into this cause of action as if fully stated.

79. The Citadel had a duty to refrain from any act or omission which might cause harm to a minor child within a foreseeable danger, including the Plaintiffs' minor child.

80. Every parent has an interest in avoiding injury to his or her child, and sustains an injury himself or herself when his or her child is injured.

81. The Citadel was grossly negligent, in at least the following particulars:

- a. In failing to report Reville's conduct to law enforcement;
- b. In failing to report Reville's conduct to Reville's employers starting in 2007,
- c. In failing to report Reville's conduct to parents of children under supervision and control of Reville,
- d. In failing to correct the implicit, but false, representation by The Citadel that Reville was not known by The Citadel to be an improper person to supervise and control children; when in fact it was known to officials at The Citadel that Reville had a sexual interest in children and that the implicit representation it made by its silence was false,
- e. In failing to disrupt or impede in any way Reville's sexual interest in children;
- f. in failing to have sufficient education and training for its President, administrators, general counsel, employees, staff, and agents about reporting persons known to have engaged in sexual misconduct with children;
- g. By creating conditions where children, including Plaintiffs' child, would be isolated with a person known to be sexually interested in children, while The Citadel withheld the information that would have enabled the Plaintiffs to

knowingly choose whether to permit their child to participate in an activity under the supervision and control of a person with a sexual interest in their child.

- h. In warning Reville of the 2007 complaints against him, to provide him information about his risk of discovery and provide him the opportunity to adjust the means by which he approached children and families to gain access for purposes of sexual manipulation of children, making him even more dangerous to families.

82. Plaintiffs have been harmed as a result of the gross negligence of The Citadel as set forth above, in that they have had impaired their interests in the services and companionship of their child by proximate result of the conduct by The Citadel.

83. As a proximate result of the conduct of The Citadel, the Plaintiffs must be mindful of the potential for long-lasting effects on their child of Reville's sexual abuse, and must be mindful of the increased risks of harm that accompanies a minor's sexual abuse and which extends well into adulthood.

84. Conduct by The Citadel has been aimed directly at the parents' interest in their child and the parent-child relationship. Among other things, since 2007 officials at The Citadel remained silent even though it had direct knowledge that Reville's conduct had caused to the parents of the 2002 camper damage to those parents and to the relationship between those parents and their child.

85. Plaintiffs are entitled to a judgment against The Citadel, for damages in an amount to be determined by the jury, and injunctive relief to be ordered by the Court.

**For a Third Cause of Action:
Violation of 42 U.S.C. § 1983 Count One: State Created Danger**

86. This cause of action is directed against Defendants Rosa and Brandenburg individually under federal, not state, law, pursuant to 42 U.S.C. § 1983, in their individual and official

capacities acting within the course and scope of their respective positions at The Citadel.

87. Allegations above are incorporated into this cause of action, other than allegations of negligence and gross negligence by agents and employees of The Citadel, and the allegations about a special relationship between the Defendants and the Plaintiffs or between the Defendants and the Plaintiffs' child.

88. Defendants Rosa and Brandenburg acted intentionally so as to harm the parents' interest as to their child, and created a danger for the Plaintiffs, or by their conduct were deliberately indifferent to the dangers created for the Plaintiffs interests.

89. Defendants Rosa and Brandenburg analyzed the facts reported to them in 2007 and made a conscious decision to not report Reville's conduct.

90. Each Plaintiff has an interest, cognizable under the United States Constitution, in the bodily integrity of their minor child, including an interest in familial relations and the care, custody, management and bodily integrity of their minor child.

91. Each Plaintiff has an interest, cognizable under the United States Constitution, to raise their child in an environment free from sexual abuse.

92. Conduct by the Defendants Rosa and Brandenburg posed a direct injury, and direct harm, to the Constitutional interest of each of the Plaintiff Parents. It was foreseeable to Defendants Rosa and Brandenburg in 2007 that failing to report Reville's known and demonstrated sexual interest in children would leave Reville at liberty to subject other children to sexual abuse and to deprive each of the Plaintiffs, along with other parents, of their personal Constitutional rights.

93. The Plaintiffs' parental interests have been directly affected by Rosa and Brandenburg failing to report Reville because it is parents who act in the interest of their child in arranging

schooling and extracurricular activity for their children. Defendants Rosa and Brandenburg having failed to report someone sexually interested in children who was known to work around children posed a direct risk of injury to that personal, parental interest as well as a risk of injury to their child. This complaint does not seek relief on behalf of the child, but on behalf of each of the parents.

94. In 2007, when investigating what had been reported about Reville's sexual interest in children, Defendants Rosa and Brandenburg carefully considered the interests of The Citadel and acted entirely in the interest of The Citadel, at the expense of the interests of the Plaintiffs, whose interests (and the interests of their child) was ignored. Defendants Rosa and Brandenburg were each deliberately indifferent to the interests of parents, children, and families who might be affected by Reville, including the Plaintiffs.

95. By their actions and inactions, Defendants Rosa and Brandenburg themselves each created for the Plaintiffs (and the Plaintiffs' child) the danger of enabling Reville's access to unwitting children and families so Reville could continue to sexually exploit children.

96. Defendants Rosa and Brandenburg each knew, and were deliberately indifferent to, Reville continuing in 2007 to sexually exploit children.

97. The conduct by the individual Defendants was egregious and arbitrary, and reflected a callous disregard so ill-conceived and malicious that it shocks the conscience. Defendants Rosa and Brandenburg concealed Reville's sexual abuse of children, concealed what was known about Reville's sexual interest in children, alerted Reville to the allegations of the 2002 camper and his parents, enabled Reville to revise his tactics for sexual exploitation to avoid detection by parents, and assisted Reville to create the harm suffered by Plaintiffs.

98. Defendants Rosa and Brandenburg coordinated between themselves and among others at The Citadel their decision not to report Reville to law enforcement in and after 2007. In doing so Defendants Rosa and Brandenburg acted under color of state law and within the scope of their official duty.

99. Since April, 2007, Defendants Brandenburg and Rosa have each had reason to know, and have known, that Reville is dangerous to children.

100. Defendants Rosa and Brandenburg are each aware that parents are individually affected when their child has been sexually abused.

101. Defendants Brandenburg and Rosa are each aware that parents whose children have been sexually abused have additional concerns to attend to as their children age, such as an increased risk of harm from substance abuse and other complications. "Trigger" mechanisms can occur throughout an abuse victim's life to disrupt the victim's stability. Those changes are now a permanent part of the responsibility for these parent Plaintiffs, and those permanent changes were proximately caused by the misconduct of Defendants Rosa and Brandenburg.

102. In 2007, Defendants Rosa and Brandenburg were each deliberately indifferent to the known risk to the Plaintiffs as to reporting to law enforcement Reville's criminal conduct.

103. The harm ultimately caused to the Plaintiffs, Reville sexually exploiting their child and burdening the Plaintiffs' parental obligations to their child, was foreseeable to each of Defendants Rosa and Brandenburg, and directly resulted from Reville's not having been reported and having had continued access to children after 2007.

104. Defendants Rosa and Brandenburg each willfully disregarded the safety of all parents of children with whom Reville could isolate himself after April, 2007.

105. Defendants Rosa and Brandenburg each assumed a duty to the Plaintiffs in investigating the 2007 reports about Reville.

106. Once the Defendants Rosa and Brandenburg confirmed that the 2007 report about Reville's sexual misconduct with children was credible, the Defendants exacerbated that risk by meeting with Reville in 2007 to alert him to the reports, but took no action to report that sexual interest to law enforcement.

107. Alerting Reville to the reports in 2007, but failing to report Reville to law enforcement in 2007, enabled Reville not only to continue sexually exploiting children, but alerted Reville to his need to more skillfully conceal his misconduct with children. Defendants Rosa and Brandenburg each assisted Reville's sexual exploitation of children and were consciously and deliberately indifferent to the interests of the Plaintiffs and their child.

108. After his 2007 meeting with Defendant Brandenburg, which had been coordinated with Defendant Rosa, Reville changed the tactics by which he ingratiated himself to parents and arranged by those new methods to continue his access to sexually exploit children.

109. Defendants Rosa and Brandenburg used their authority to enable Reville's continued access to children, to create the danger that otherwise would not have existed for Reville's crimes to occur, and to make that danger more potent by alerting Reville to the complaints so he could adjust his techniques to better allay parental suspicions.

110. Defendants affirmatively acted to create and exacerbate a dangerous situation for the Plaintiffs and their child, who were within the identifiable harm of which the Defendants were aware in 2007.

111. This complaint concerns the injury caused to the Parents.

112. Defendants Rosa and Brandenburg were active tortfeasors with Reville in the harm to the Plaintiffs, and willfully disregarded the safety of the Plaintiffs and their child.

113. Without the involvement of Defendants Rosa and Brandenburg, and their informing Reville about the 2007 complaints, Reville would have been unaware of the need to refine his approach to gaining parental confidence. But for the conduct of Defendants Rosa and Brandenburg in failing to report Reville but alerting Reville to his danger of detection, Reville's opportunities to assault the Plaintiffs' child would not have existed.

114. Defendants Rosa and Brandenburg each used their positions as state actors and were deliberately indifferent to the harm to the Plaintiffs and their child.

115. Defendants Rosa and Brandenburg were each aware that Reville had continued access to children after 2007 and that those children and their Parents were each exposed to the increased risk of harm that the Defendants used their state positions to create by alerting Reville to the 2007 complaints against him, and making Reville even more dangerous to families than he would otherwise have been.

116. Plaintiffs were in a worse position as a result of the 2007 intervention and non-action by the Defendants Rosa and Brandenburg, and their child was exposed to an even greater risk from an alerted and forewarned Reville, and their conduct prevented the timely investigation, apprehension, and prosecution of Reville.

117. Actions by Defendants Rosa and Brandenburg were deliberate, and concealed Reville's sexual abuse despite professional standards for university administrators, internal policies of The Citadel, and provisions of the Clery Act, 20 U.S.C. § 1092(f). Conferring with Reville without reporting him to law enforcement made Reville an even more dangerous threat to the Plaintiffs and had the foreseeable consequence of harm to the Plaintiffs and their child.

118. Plaintiffs were in the discrete class of foreseeable victims, as they are parents of an adolescent boy in the Charleston area exposed to Reville because Defendants Rosa and Brandenburg informed Reville of the 2007 complaints, allowed Reville to separate from The Citadel with no mention of the sexual abuse, and withheld Reville's conduct from law enforcement.

119. Defendants Rosa and Brandenburg were told in 2007, by the parents of the 2002 camper, how damaging it was to both the parents, as well as to their child, to have their child subjected to Reville's sexual exploitation. The Defendants were told the parents were "absolutely furious" that their child was exposed at The Citadel to Reville's misconduct, and the parents related the multitude of problems caused for their son, hence for them, by Reville's misconduct.

120. The Plaintiffs' child would have had no exposure to Reville had Defendants Rosa and Brandenburg not (a) alerted Reville to the 2007 complaints and (b) maintained silence about Reville's misconduct. After 2007 Reville altered his tactics and changed the setting of the opportunity he sought to sexually interact with children. The conduct by Defendants Rosa and Brandenburg shocks the conscience in the disregard each had for children and families.

121. The Plaintiffs are entitled to actual and punitive damages in amounts to be determined by the trier of fact.

**For a Fourth Cause of Action:
Violation of 42 U.S.C. § 1983 Count Two: Supervisor Liability**

122. This cause of action is directed against Defendant Rosa, under federal, not state law, pursuant to 42 U.S.C. § 1983, in his individual capacity acting within the course and scope of his position at the Citadel.

123. Defendant Rosa was the supervisor to Brandenburg and others at The Citadel.

124. Allegations above are incorporated into this cause of action other than allegations of negligence and gross negligence, and the allegations about a special relationship between the Defendants and the Plaintiffs or the Plaintiffs' child.

125. As supervisor to Brandenburg and others, Defendant Rosa has supervisor liability for the conduct of The Citadel, not from *respondeat superior* but for his supervisory indifference or tacit authorization of his subordinates' failure to report Reville.

126. Rosa's indifference proximately caused the interference between the plaintiffs and their child and the loss of the child's services from the child's sexual abuse. The harm to and injury to the parents' interest was not incidental to the harm to their child, but was a direct harm to their parental relationship as a foreseeably affected interest, and was directly harmed as a proximate result of Rosa's inactions.

127. Rosa had actual or constructive knowledge in April, 2007, that Reville had a sexual interest in children and was a danger to children.

128. In April, 2007, Rosa was deliberately indifferent to Brandenburg's failure to report Reville.

129. In June and July, 2007, Rosa approved Brandenburg's travel to Texas to take the July 1, 2007 statement of the 2002 camper, and Rosa had actual or constructive knowledge of the content of that statement as well as Brandenburg's evaluation of the 2002 camper's statement.

130. Rosa had actual or constructive knowledge of Brandenburg's 2007 detailed analysis of how to protect The Citadel from Reville's conduct, and the lack of analysis of how to protect other children from Reville's conduct.

131. When Brandenburg returned from Texas and reported to Rosa, Rosa was

deliberately indifferent to Brandenburg's failure to report Reville.

132. Failing to report Reville permitted the harm to the Plaintiffs' constitutional interests to continue unchecked.

133. Rosa failed to take action as a supervisor. His inaction caused a violation of the Plaintiffs' rights by his failing to require that Reville be reported.

134. As supervisor, Rosa had actual or constructive knowledge that his subordinate was engaged in conduct that posed a pervasive and unreasonable risk of constitutional injury to every parent whose child was exposed to Reville. Rosa was aware, actually or constructively, that Brandenburg had confirmed Reville's misconduct with multiple children, and had confirmed its harmful impact on parents other than the Plaintiffs.

135. Rosa was actually or constructively aware that Brandenburg had done a detailed analysis of a course of action to take to protect The Citadel from Reville's misconduct but had made no analysis or proposal for action to protect other parents from Reville.

136. Rosa had actual or constructive knowledge that Brandenburg was familiar with Reville, and was not himself capable of making an independent judgment about Reville.

137. Rosa had actual or constructive knowledge that Brandenburg would not permit his own children to be around Reville based on the knowledge Brandenburg had acquired in his official capacity, and Rosa had actual or constructive knowledge that Brandenburg proposed no action to protect the interests of other parents from Reville.

138. Rosa had knowledge of conduct engaged in by Brandenburg that posed a pervasive and unreasonable risk of constitutional injury to each of the plaintiffs.

139. It is "pervasive" and "unreasonable" to permit a known pedophile to have undisturbed and unreported access to any parent's child.

140. It is "pervasive" and "unreasonable" to alert a known pedophile that his behaviors with children have been the subject of one or more complaints, to enable that known pedophile to adjust the techniques by which he gained the trust of parents whose children he wanted to sexually exploit so as to injure each of the Plaintiffs.

141. On multiple occasions between 2007 and 2009, Rosa had the opportunity to himself report Reville or have his subordinates report Reville. He failed to do so. Each omission posed an unreasonable risk of harm of constitutional injury to each of the Plaintiffs.

142. Rosa's supervisory response to Brandenburg's strategy to make no report about Reville was so inadequate as to show deliberate indifference to, or tacit authorization of, Brandenburg's repeated, and deliberate, failures to report Reville.

143. An affirmative causal link exists between Rosa's inaction and the particular constitutional injury suffered by each of the Plaintiffs.

144. Had Rosa required Brandenburg to report Reville, Brandenburg would have reported Reville.

145. Had Rosa required Brandenburg to alter The Citadel's personnel records to assure that Reville would get no recommendation for any work around children, Brandenburg would have done so.

146. Rosa as supervisor demonstrated continued inaction in the face of documented abuses by Reville which affected multiple minors and their families.

147. An affirmative causal link exists between Rosa's inaction and the harm suffered by the Plaintiffs. Had Rosa acted at any time in 2007 or 2008 to require that either Reville be reported to law enforcement or The Citadel assure that its internal recordkeeping would prevent Reville from getting any job working around children, the harm Reville caused to each of the

Plaintiffs would not have occurred.

148. Each of Rosa's multiple inactions as supervisor was aimed not only at the interests of their child but also, and more directly, at the Plaintiff parents, who were the decision-makers and caretakers of their child, his education, and his extra-curricular activities.

149. Rosa was deliberately indifferent to Brandenburg's failure to report and failure to adjust The Citadel's internal files on Reville, or, alternatively, Rosa authorized Brandenburg's failures, and acquiesced in the constitutionally offensive conduct of his subordinates, among them Brandenburg.

150. Rosa is liable to each of the Plaintiffs for the proximate and natural consequences of his actions.

151. By 2007 it was clearly established that parents had constitutionally protected interests in their children and that Rosa could be held liable under 42 U.S.C. § 1983 for constitutional violations committed by Brandenburg, and that failing to report Reville or otherwise prevent him from working around children was improper.

152. A reasonable person in Rosa's position would have known that his actions were unlawful and inadequate to the risk of harm and threat posed by Reville to each of the Plaintiffs.

153. Rosa's inaction to the known risks posed by Reville shocks the conscience and is completely unacceptable as a response to a known pedophile.

154. In Rosa's public statements, he was careful to refer not to what more he should have done but what The Citadel should have done. Rosa will continue to disclaim his responsibility for creating the harm to the Plaintiffs.

155. Despite his public statements about his inaction, Rosa has either embraced, or acquiesced in, the argument by The Citadel that neither Rosa, nor anyone else at The Citadel,

had a duty to report Reville. Rosa's public statements to the contrary, that more should have been done as to Reville, were disingenuous and designed solely for public relations. Rosa has said one thing and done another.

156. Rosa's disingenuous public comments, in contrast to The Citadel's formal position denying any and all liability to report Reville, also shock the conscience.

157. Rosa identifies his function at The Citadel as primarily fundraising. Rosa's supervisory responsibilities have been exercised so as to maximize fundraising. Maintaining silence as to Reville despite the significant risk of harm he posed was one strategy adopted by Rosa so as to not interfere with his fundraising activities for The Citadel.

158. Rosa had actual or constructive knowledge that his subordinate, Brandenburg, was engaged in conduct that posed a pervasive and unreasonable risk of constitutional injury to citizens like the Plaintiffs.

159. Rosa's inaction was so inadequate as to show deliberate indifference to or tacit authorization of the alleged offensive practices of failing to report Reville, and failing even to adjust The Citadel's internal records to inhibit Reville from working around children.

160. Rosa had actual or constructive knowledge that Brandenburg met with Reville in 2007, enabling Reville to alter the approach he used to make himself even more dangerous to the interests of parents such as the Plaintiffs.

161. Rosa had actual or constructive knowledge from the Arpaio experience that the best response to a sexual abuse claim was not maintaining silence but to widely broadcast to parents that abuse had been reported. Rosa as supervisor explicitly or implicitly approved a course of conduct known to be against the Constitutional interests of each of the Plaintiffs.

162. The Plaintiffs are each entitled to actual and punitive damages in amounts to be determined by the trier of fact.

Request for Jury Trial

163. Plaintiff requests trial by jury for each cause of action above, actual damages as assessed by the jury for the first and second causes of action, actual and punitive damages for the third cause of action, and injunctive relief.

164. Under the first and second causes of action, pursuant to S.C. Code § 15-77-300, Plaintiffs seek costs and reasonable attorneys fees to be taxed against The Citadel for acting without substantial justification. Under the third and fourth causes of action, pursuant to 42 U.S.C. §§ 1983 and 1988, the Plaintiffs seek costs and reasonable attorneys fees against Defendants Rosa and Brandenburg, as applicable, and actual and punitive damages as provided by law. Under each cause of action Plaintiffs seek injunctive relief to enjoin the Defendants from failing to report to law enforcement information it receives about sexual misconduct which occurs on the campus of The Citadel, and for such other and further relief as is deemed just and proper.

Respectfully submitted,

Dated: _____

JEFF ANDERSON & ASSOCIATES, P.A.



Gregg Meyers, SC Bar No. 9908

Jeffrey R. Anderson, *pro hac vice pending*

Jeff Anderson & Associates, P.A.

366 Jackson Street, Suite 100

St. Paul, MN 55101

651-227-9990, 297-6543 facsimile

Gregg@andersonadvocates.com

Attorneys for Plaintiff

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.
Circuit Court Judge
Case No.: 2011-CP-10-9200

RECEIVED

APR 04 2016

SC Court of Appeals

Appellate Case No. 2015-001920

Mother Doe A.....Appellant,

v.

The Citadel.....Respondent.

And

Case No.: 2013-CP-10-6330

John Doe 201 and Jane Doe 201.....Appellants,

v.

The Citadel.....Respondent.

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g), SCACR the undersigned hereby certifies that the Record on
Appeal contains all material proposed to be included by any of the parties and does not contain
any other material.



Allan P. Sloan, III, SC Bar #006914
Joseph C. Wilson, IV
Kristen B. Fehsenfeld
PIERCE, HERNS, SLOAN & WILSON, LLC
321 East Bay St.
Charleston, SC 29401
T: (843)722-7733; F: (843)722-7734
chipsloan@phswlaw.com
joewilson@phswlaw.com
kristenfehsefeld@phswlaw.com

and

Gregg Meyers, #9908
Jeffrey R. Anderson, pro hac vice pending
JEFF ANDERSON & ASSOCIATES, P.A.
366 Jackson Street Suite 100
Saint Paul, MN 55101
T: (651) 227-9990; F: (651) 297-6543
Jeff@Andersonadvocates.com
Gregg@Andersonadvocates.com
Attorneys for Appellants

March 25, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.
Circuit Court Judge
Case No.: 2011-CP-10-9200

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APR 21 2016

SC Court of Appeals

Appellate Case No. 2015-001920

Mother Doe A.....Appellant,

v.

The Citadel.....Respondent.

BRIEF OF APPELLANT

Allan P. Sloan, III, SC Bar #006914
Kristen B. Fehsenfeld, SC Bar #76971
PIERCE, HERNS, SLOAN & WILSON, LLC
P.O. Box 22437
Charleston, SC 29402
Phone: (843)722-7733; Fax: (843)722-7732
chipsloan@phswlaw.com
kristenfehsefeld@phswlaw.com

Gregg Meyers, SC Bar #9908
Jeffrey R. Anderson, pro hac vice pending
JEFF ANDERSON & ASSOCIATES, P.A.
366 Jackson Street Suite 100
Saint Paul, MN 55101
Phone: (651)227-9990; Fax: (651)297-6543
Gregg@Andersonadvocates.com
Attorneys for Appellant

COUNSEL OF RECORD:

M. Dawes Cooke, Esq.
Randall C. Stoney, Jr., Esq.
John W. Fletcher, Esq.
Barnwell Whaley Patterson & Helms, LLC
Post Office Drawer H
Charleston, SC 29402
(843)577-7700
Attorneys for Respondent

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STATEMENT OF ISSUES ON APPEAL

- I. THE CIRCUIT COURT ERRED IN CONSTRUING THE SCOPE OF DAMAGES AVAILABLE FOR A PARENT'S CLAIM FOR LOSS OF HER CHILD'S SERVICES.
- II. THE CIRCUIT COURT ERRED IN FINDING APPELLANT'S OUTRAGE AND CONSPIRACY CLAIMS BARRED BY THE TORT CLAIMS ACT.
- III. THE CIRCUIT COURT ERRED IN FINDING APPELLANT'S OUTRAGE CLAIM BARRED ON THE BASIS THAT NO CONDUCT WAS DIRECTED TOWARD APPELLANT.
- IV. THE CIRCUIT COURT ERRED IN FINDING INSUFFICIENT EVIDENCE OF LOSS OF SERVICES AND OUTRAGE DAMAGES RESULTING FROM THE CITADEL'S CONDUCT.
- V. THE CIRCUIT COURT ERRED IN FINDING NO EVIDENCE OF SPECIAL DAMAGES TO SUPPORT APPELLANT'S CONSPIRACY CLAIM.

STATEMENT OF THE CASE

This appeal involves two of six consolidated cases¹ filed against The Citadel arising out of the sexual abuse and molestation of numerous child victims by former cadet and Citadel employee, Louis “Skip” ReVille. As the parents of children who were sexually molested by ReVille, Appellants brought these actions stating claims under state and federal law against The Citadel after discovering numerous actions undertaken by Citadel officials throughout a six year period to conceal knowledge of ReVille’s dangerous propensities. Repeated rule violations by ReVille, reports of inappropriate behavior concerning ReVille, and a 2007 complaint from a victim who directly reported being sexually abused by ReVille were ignored and concealed as part of a “close hold” policy which assisted ReVille to avoid detection and, ultimately, created the opportunity for ReVille to abuse Appellants’ children.

While the Citadel took no action to inform law enforcement, child protective services, or its own Title IX Coordinator about any of the allegations between 2001 and 2007, Citadel officials instead took affirmative steps to alert ReVille to the 2007 complaint, to advise him to “lay low,” and to ensure ReVille’s Citadel employment file reflected none of the multiple complaints against him. As a result, with the assistance of the Citadel officials that concealed his abuse, ReVille traded on his Citadel reputation to gain employment as a tennis and basketball instructor in Mt. Pleasant, South Carolina, which provided ReVille access and opportunity to groom and abuse Appellants’ children on multiple instances.

¹ The following cases are consolidated with the instant cases for purposes of discovery: John Doe Camper v. The Citadel, C/A No. 2012-CP-10-1860; John Doe 2 v. The Citadel, C/A No. 2012-CP-10-1858; Mother Doe 2, on behalf of, John Doe 3 v. The Citadel, C/A No. 2012-CP-10-1859; Camper Doe 6 v. The Citadel, C/A No. 013-CP-10-5247; and John Doe, a minor, by his Guardian Ad Litem, John Roe v. The Citadel, C/A No. 2013-CP-10-4770.

Appellant Mother Doe A filed the instant matter on December 14, 2011, alleging claims of gross negligence/failure to warn; negligent hiring, retention and supervision; civil conspiracy; outrage; and loss of services.² John Doe 201 and Jane Doe 201 followed with similar claims. The parties have stipulated that the claims made by the Doe 201 parents are nearly identical to the claims made by Mother Doe A, distinguished only by the Doe 201 parents having out of pocket expenses for their child's post-abuse mental health and medical treatment. The Doe 201 parents alleged, "[t]he Plaintiffs have incurred costs for treating their child, for providing their child professional care while maintaining his anonymity, and have lost the services of their child."

On March 6, 2014, The Citadel filed summary judgment motions in the cases of John Doe Camper v. The Citadel, Case No. 2012-CP-10-1860; John Doe 2 v. The Citadel, Case No. 2012-CP-10-1858; and Mother Doe 2 on behalf of John Doe 3 v. The Citadel, Case No. 2012-CP-10-1859, asserting several arguments critical to all plaintiffs in the consolidated matters, including, but not limited to, the following grounds: (1) that The Citadel owed no duty of care to plaintiffs; (2) that plaintiffs' claims involve a single occurrence as defined by the South Carolina Tort Claims Act ("SCTCA") so as to limit each plaintiff's potential recovery to the SCTCA limit of \$300,000; and (3) that certain plaintiffs' claims are barred by the two-year statute of limitations of the SCTCA. (R. pp. 981-992). Given the common issues of law and fact underlying the consolidated matters, Appellant Mother Doe A, while not a party to the March 6, 2014 motions, filed a memorandum in opposition to The Citadel's motion. (R. pp. 924-980).

On April 18, 2014, the court heard arguments on The Citadel's summary judgment motions as to Plaintiff's John Doe Camper, John Doe 2, and Mother Doe 2. While ruling in favor of Plaintiffs as to the statute of limitations, the court took under advisement the issue of whether The

² Appellant's Amended Complaint also alleged claims under the Jessica Horton Act and Mandatory Reporting Statute, which have since been dropped.

Citadel owed a common law duty of care to Plaintiffs. Consequently, Mother Doe A filed a Reply Brief on April 25, 2014, addressing the issues of “specific threat of harm” and other factual disputes concerning the duty argument. (R. pp. 1264-1277). Following a supplemental hearing on the issue of duty, the Court denied The Citadel’s motion for summary judgment in its entirety. (R. pp. 1289-1319). The summary judgment determination as to the issue of duty was deemed to apply to all six consolidated cases, including the instant case.

On May 2, 2014, The Citadel filed a summary judgment motion in the present case, arguing:

- (1) The Citadel owed no common law or statutory duty of care to Plaintiff;
- (2) Mother Doe A has no evidence of cognizable damages or, in the alternative, that her recovery is limited to out of pocket medical expenses and loss of services;
- (3) Mother Doe A’s claims are barred by S.C. Code § 15-78-110, the two-year statute of limitations of the South Carolina Tort Claims Act;
- (4) The Plaintiff’s outrage claim is barred by 15-78-30(f) and by the presence of “other potential remedies;”
- (5) Mother Doe A “cannot proffer a scintilla of evidence that The Citadel acted with the requisite level of culpability for an outrage claim; and
- (6) The Plaintiff’s claims involve a single “occurrence” as defined by the TCA, limited to a potential recovery to \$300,000.

(R. pp. 1285-1287). Because Appellant obtained a favorable ruling on the duty issue in the previous motion, the court held a hearing solely on the issue of loss of services on September 22, 2014. On September 24, 2014, the Court issued a Form 4 order denying Defendant’s motion, followed by a formal written order entered on December 1, 2014. (R. pp. 431-507).

The case proceeded to trial on January 26, 2015. At the commencement of jury selection, Defendant filed a Renewed Motion for Summary Judgment, asserting the following grounds previously denied by the December 1, 2014 Order:

- (1) Plaintiff's claims fail because she has not sustained any proximately caused injury recoverable under South Carolina law (*i.e.* loss of services);
- (2) The Citadel did not owe a duty of care to Mother Doe A; and
- (3) The South Carolina Tort Claims Act bars Plaintiff's outrage and civil conspiracy claims.

(R. pp. 326-332). A hearing on the Renewed Motion was held the next morning, during which the court determined that summary judgment on the first and third grounds asserted was appropriate—a ruling which in effect reversed the court's previous order denying summary judgment on these same grounds. (R. pp. 284-324). The second issue—the issue of duty—was not addressed given the court's previous rulings denying summary judgment on that ground. The parties stipulated that the outcome of this case determines the outcome of John Doe 201 and Jane Doe 201 v. The Citadel, which is reflected in the Rule 59(e) motion filed after receipt of the trial court's order. (R. p. 17, stating: "The parties stipulate that the rationale of the Mother Doe A order applies to the intangible injuries and tangible costs also incurred by the Doe 201 parents for treating their child."). When that Rule 59(e) motion was denied, this appeal followed.

For the reasons stated herein, the circuit court committed reversible error in granting summary judgment on the issues of loss of services, conspiracy and outrage, and the matter should be remanded for trial.

FACTUAL BACKGROUND

Appellants are the parents of John Doe A and Doe 201, two of numerous child victims sexually abused by ReVille. The sexual abuse of John Doe A and Doe 201 occurred after The Citadel was on notice that ReVille had displayed a sexual interest in children, and that he had, in fact, abused other children on The Citadel campus.

The events giving rise to John Doe A and Doe 201's abuse date back to ReVille's time at The Citadel Summer Camp, a residential summer camp operated by The Citadel for children ages ten to fifteen. ReVille, who served as Head Counselor in Charge of Quarters in 2001 and Senior Counselor for the summers of 2002 and 2003, repeatedly violated Citadel and Camp policy to sexually abuse and molest at least seventeen boys during the summers of 2001, 2002, and 2003. Throughout this time, The Citadel turned a blind eye to inappropriate conduct, policy violations, and Citadel procedures requiring termination and reporting of sexual assault, sexual abuse, sexual harassment, sexual misconduct, and immoral and illegal conduct.

During ReVille's first summer at The Camp, The Citadel was notified that a highly regarded volunteer counselor, former Citadel Cadet, Citadel Graduate and United States Marine Corps Captain, Michael Arpaio, had sexually abused and molested a ten-year old male camper in his dorm room during the course of The Camp's First Session. In addition, The Citadel learned that campers attending The Camp had been exposed to pornography, profanity, alcohol, and inappropriate touching. The Citadel was later informed that additional minor campers were sexually abused by Michael Arpaio while attending The Camp between 1995 and 2000.

Following the criminal investigation of the Arpaio matter, Sergeant Dale Middleton of the Charleston Police Department advised The Citadel by letter dated August 8, 2001, of certain activities and practices occurring at The Camp that warranted attention. These activities and

practices included counselors allowing campers to leave their rooms at night, campers watching movies and sleeping in the same bed as counselors, counselors engaging in sexual conversation in the presence of campers, campers viewing alcohol and tobacco products belonging to counselors in the barracks, and counselors taking campers off campus on unrelated camp functions without parental consent. (R. p. 588, Middleton Letter, August 8, 2001). Sergeant Middleton indicated in his letter that “[t]hese are the most serious findings that were brought to [his] attention during [his] investigation,” and concluded the correspondence with an invitation to The Citadel to contact him regarding the matter. (R. p. 588). However, no one at The Citadel ever contacted Sergeant Middleton regarding the letter, his concerns, or the other findings that warranted attention. Rather, following notice of Arpaio’s acts of sexual abuse at The Camp and of the concerning practices and activities highlighted in Sergeant Middleton’s letter, The Citadel neglected to implement new policies and procedures to eliminate the threat of harm posed by child sexual predators and instead placed increased emphasis on the pre-existing anti-cohabitation policy which prohibited counselors from being alone with a minor behind closed doors.

After the abuses perpetrated by Arpaio, The Citadel opened its doors for the second camp session of 2001. Initially, increased emphasis was placed by staff on The Camp’s long standing rule restricting counselors from being alone with minors behind closed doors. But within days, The Camp reverted back to operating as it had in the past—with “laxity.” According to ReVille, “After I saw that everything was going back to the laxity – the laxity that this was before, then I started – I resumed my selecting and grooming the campers.” (R. p. 591, lines 7-11). In fact, ReVille admitted to committing at least a dozen acts of abuse during the month long session immediately following Arpaio’s termination. (R. p. 591, lines 21-23). Absent additional safety precautions, ReVille, like Arpaio, was able to utilize The Camp to sexually abuse and molest at

least seventeen boys during the summers of 2001, 2002 and 2003. Throughout this time, The Citadel turned a blind eye to inappropriate conduct, policy violations, and Citadel procedures requiring termination and reporting of sexual assault, sexual abuse, sexual harassment, sexual misconduct, and immoral and illegal conduct.

Camp Director Major Bill Bates, Deputy Director Jennifer Garrott, Colonel John Lackey, Commandant General Emory Mace, and others were aware of ReVille's deviant, pedophilic tendencies as early as 2001, wherein it was noted that ReVille was "senior counselor material *if learns to distance himself from campers . . .*" (R. p. 600). These individuals, as well as other Citadel officials and staff, were likewise aware of ReVille's policy and code of conduct violations and knew, or should have known, that ReVille was sexually harassing, molesting and abusing The Camp's minor campers on The Citadel campus.

In particular, during the summer of 2002, The Camp's Deputy Director, Jennifer Garrott, caught ReVille alone with a minor camper in his dorm room. Both Garrott and Camp Director Major Bates discussed the issue with ReVille, but declined to reprimand or terminate his employment despite established policies and procedures requiring immediate termination for such a violation. Additionally, neither Garrott nor Bates followed up with the minor camper or other counselors to investigate any inappropriate or suspicious behavior involving ReVille and minor campers, and no written report of ReVille's infraction was ever recorded in his employee file. Instead, when faced with notice of ReVille's inappropriate behavior, The Citadel took no action, and as a result, at least four young boys were sexually abused and molested by ReVille at The Camp in 2002.

In 2003, ReVille was asked back to The Camp to again serve as Senior Counselor.³ At least six times during the 2003 Camp, ReVille was confronted by Camp staff member, Anna Bronk, for violating the rules against having minors in his room at night. However, no formal action was taken and laxity continued to reign over enforcement of the rules.

Furthermore, in July 2003, at the beginning of The Camp's Second Session, Camp Director Garrott caught ReVille alone in his room rubbing "Icy-Hot" on the leg of a minor identified in this litigation as Camper Doe 6 or Doe 6. Upon discovering ReVille and Doe 6 alone, Garrott ignored, neglected and disregarded The Camp's policy requiring immediate termination for such behavior and further neglected to even draft a report or memorandum to document the violation. (R. p. 592, line 10-p. 593, line 4). ReVille, who at the time had not yet succeeded in abusing Camper Doe 6, went on to abuse Doe 6 repeatedly and on numerous separate occasions throughout the remainder of the three-week camp session. ReVille has since stated that he considered his conduct in applying the sports cream to be "a sexual act." (R. p. 825, lines 2-5).

Despite declining to take appropriate remedial action at the time, Garrott now concedes that, pursuant to Camp and Citadel policies and procedures, ReVille should have been terminated immediately, the incident should have been recorded in ReVille's permanent file, and a written report should have been drafted and circulated regarding the matter. Garrott has likewise conceded that had ReVille been terminated, Doe 6 would not have been subjected to ReVille's sexual abuse and molestation. (R. p. 602, Deposition of Jennifer Garrott at 57:10-13).

In the summer of 2005, Doe 6 returned to work at The Camp as a Junior Counselor. After completing pre-camp counselor training in June of 2005, which included a section on mandatory

³ Notably, ReVille was hired as Senior Counselor despite a clearly deficient application which The Citadel's own experts agree was cause for concern. (R. p. 613, line 2-p. 615, line 22, Deposition of Leonard Shapiro referencing 2003 Counselor Application by ReVille at R. p. 609).

reporting of child sexual abuse, Doe 6 felt compelled to report ReVille's sexual abuse to Director Garrott. However, as soon as Doe 6 explained to Garrott that he wanted to talk about "Skip ReVille," her demeanor immediately changed. She abruptly called off the meeting, claiming she had another obligation. No less than an hour later, Doe 6 was fired and instructed to leave the premises within two hours. (R. p. 605, line 14-p. 608, line 24). Because Citadel and Camp policy would require reports of sexual abuse to be disclosed to Citadel Public Safety and other appropriate law enforcement agencies, The Citadel chose to terminate Doe 6 without just cause to avoid the damaging ramifications such a report could have on the college.

In 2007, The Citadel received yet another report of abuse regarding ReVille—this time involving multiple children. Specifically, on April 23, 2007, the father of a former camper called President John W. Rosa and reported that his son had been sexually abused while attending The Camp in 2002. The call was forwarded to Mark Brandenburg, The Citadel's General Counsel, who followed up with the former camper ("Camper Doe" or "Doe") that evening. The abuse reported by Doe was subsequently memorialized in a letter from Brandenburg to The Citadel's insurance carrier, the Internal Reserve Fund ("IRF"), and copied to President Rosa. The letter, dated May 16, 2007, stated:

Both allege that during one summer, [Doe] and another camper were coerced by a counselor into the counselor's room, where the counselor showed them pornographic movies and convinced them to masturbate. [Doe] alleges the counselor watched the movies and masturbated as well. Importantly, however, [Doe] specifically said that the counselor never touched him or the other camper. [Doe] does allege that the counselor *engaged in this activity frequently, though, and with many other campers.*

The letter further noted that Doe's father "wanted the school to know about this incident and to know that an apparent predator was once affiliated with the school." (R. pp. 633-634).

Despite the gravity of Camper Doe's allegations and Citadel policy and state and federal law mandating reporting to law enforcement, Brandenburg performed an integral part of a "close hold" policy instituted by President Rosa to conceal the allegations of suspected child sexual abuse within a small group of Rosa's subordinates for the purposes of protecting the reputation of The Citadel and insulating ReVille from detection. (R. p. 746, lines 3-20, p.748, line 12-p. 750, line 4). By withholding the abuse from those outside the President's office, other Citadel staff who were mandatory reporters of child abuse, or who otherwise were required to report, or would have reported, the allegations to law enforcement, were not given the opportunity to do so. Taking part in this overt policy worked to directly set in motion a series of actions undertaken by Brandenburg and others within Rosa's staff that ultimately created the opportunity for ReVille to harm the Plaintiff's child.

Among such actions was an internal investigation undertaken by Brandenburg. Notably, Brandenburg's decision to investigate was in contravention of Title IX and the Department of Education's recommendation warning against school attorneys performing Title IX investigations. (R. p. 623, line 18-p. 624, line 11, p. 804). As part of this investigation, Brandenburg met with ReVille and Colonel Trez on April 24, 2007. During this meeting, Brandenburg and Trez alerted ReVille to the allegations of abuse against him and instructed him to stay off campus and "lay low." (R. pp. 739-741). Within thirty (30) minutes of this meeting, ReVille contacted two eyewitnesses identified by Doe and specifically instructed them to remain silent about the abuse if contacted by Brandenburg or any other individual investigating the abuse.

Thereafter, Brandenburg was dispatched to Dallas, Texas on July 1, 2007, to take Camper Doe's statement. The statement was transcribed by a court reporter and revealed the following:

- i. In 2001, ReVille hosted movie nights where he would order pizza or Chinese food to entice campers to come to his room to watch pornography. During these movie nights,

ReVille would masturbate in front of the boys and encourage them to do the same. ReVille would also shower with the boys.

- ii. On one occasion, ReVille invited the 2002 Camper and his friend, also a camper, to his room. ReVille ordered Chinese food and began showing the boys pornographic videos on his computer. Eventually, ReVille began masturbating in front of the boys and encouraged them to join him. When the camper refused, ReVille “got a little aggressive” and asked the boy to come back to the computer and join him, which he did.
- iii. ReVille also insisted that the 2002 Camper and the other camper spend the night with him in his room. When the 2002 Camper tried to leave, ReVille coerced him into staying and masturbating in front of him.
- iv. ReVille abused the other camper who accompanied the 2002 Camper to ReVille’s dorm room, as well as four other campers, multiple times during the summers of 2001 and 2002.
- v. Furthermore, the 2002 Camper personally observed younger boys going into ReVille’s room late at night over the course of the summer. He further explained that at least five other boys had been involved, stating: “I know there are about five other kids that experienced it a few times.”

(R. pp. 636-643). When asked by Brandenburg whether “there [was] anything [he] want[ed] the Citadel to do as a result of this,” Doe expressed his foremost desire to put an end to the abuse, stating: “Most of all, the thing I want the most is just to make sure that [ReVille] doesn’t have a chance to do this to anyone else.” (R. p. 643, lines 23-25). Notably, Citadel written policy, including Summer Camp policy and the Serious Incidents Memo, required Brandenburg and Citadel staff to report the contents of Doe’s statement to Citadel Public Safety and law enforcement both at the time Father Doe and Camper Doe reported the abuse, and again after the interview of Doe revealed even more victims. (R. p. 716, Brandenburg Deposition at 261:5-263:23). Brandenburg even acknowledged that the best way to honor Doe’s wishes and to prevent harm to other children, would have been to report to law enforcement. (R. p. 710, Deposition of Brandenburg at 172:20-24).

In an email to the IRF, dated August 8, 2007, Brandenburg summarized his findings from the interview, stating, “In short. . . I found [Camper Doe] to be believable.” (R. p. 644, Aug. 8, 2007 Email to IRF). In this same email, Brandenburg called attention to ReVille’s emphatic denial of the allegations, and likened his statements to similar comments made by Captain Michael Arpaio, who pleaded guilty to sexually molesting several campers between 1999 and 2001. However, despite the admitted similarities to the Arpaio matter and the confirmed credibility of the information obtained from the investigation, The Citadel never reported the abuse to the Public Safety, the Charleston Police, SLED, the Title IX Coordinator, or other authorities as mandated by clearly established campus policies and procedures, accepted professional standards, and state and federal law.

Both the April 23, 2007 report, and the July 1, 2007 statement containing additional specific facts and allegations of sexual abuse and identification of victims not only alleged acts of inappropriate sexual misconduct against the former camper himself but also alleged acts of criminal sexual conduct against many other children, including victims presently residing on The Citadel campus enrolled as cadets. (R. p. 642, July 1, 2007 Statement). Alarming, outside of sending one email to these former campers—one of which was the eyewitness to Doe’s abuse—Brandenburg never spoke with the alleged victims because ReVille was able to obtain their silence. (R. p. 708, Deposition of Brandenburg at 143:25-145:3).

After returning from Texas, Brandenburg attempted to negotiate a settlement with Camper Doe and his family. The settlement offer was around twenty thousand (\$20,000.00) and included assistance in admitting Doe to The Citadel. Brandenburg was particularly pleased with his effort to settle the matter while also securing the Doe family’s silence regarding the abuse. As one board member recalled, Brandenburg was pleased to save The Citadel money compared to the

settlements in the Arpaio abuse cases. (Deposition of Col. Leonard Fulgham, Jr. at 46:2-23; MHA Interview Notes at 123). However, the offer was never accepted and Brandenburg never heard back from the Doe family.

Around this same time, ReVille obtained employment as a basketball coach and tennis instructor in Mt. Pleasant through which he was provided access to other minor victims, including Appellants' children. In January of 2008, after learning that The Citadel had not conducted the thorough investigation that it said it would and that no notice had been sent to former campers notifying them of the allegations,⁴ ReVille was reassured that The Citadel let him "off the hook." Immediately thereafter, ReVille began grooming John Doe A for what would progress into sexual abuse and molestation which occurred on at least forty-five separate occasions throughout a two year period. Around this same time, ReVille groomed and abused Doe 201 in similar fashion.

Despite The Citadel's duties and obligations pursuant to Citadel policies and procedures, The Citadel concealed ReVille's child sexual abuse until October of 2011, when ReVille was finally arrested on charges of molestation and sexual abuse of twenty-three boys. ReVille has since admitted that close to thirty victims—including Appellants' children—would have been spared had The Citadel contacted law enforcement in 2007.

STANDARD OF REVIEW

Summary judgment is a drastic remedy which should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. Madison ex rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 134, 638 S.E.2d 650, 655 (2006). When reviewing a grant of

⁴ In 2003, The Citadel sent a letter informing parents of campers that a former counselor, Michael Arpaio, had sexually abused several boys during the 2001 Summer Camp. ReVille assumed a similar letter would be sent regarding Doe's allegations. When he learned that no letter had been sent and that the allegations were being concealed from the public, ReVille was reassured to resume his grooming and sexual abuse of children in the community, with John Doe A being the first target victim.

summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRCP. David v. McLeod Reg'l Med Ctr., 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). Summary judgment is proper only when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP.

In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences from the evidence in the light most favorable to the non-moving party. Madison ex rel. Bryant, at 134, 638 S.E.2d at 655. Where the proof standard is a preponderance of evidence, as it is here, “the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). Summary judgment should be denied if more than one inference can be drawn from the evidence. Miller v. City of Camden, 329 S.C. 310, 315, 494 S.E.2d 813, 815 (1997) (citing Koester v. Carolina Rental Center, Inc., 313 S.C. 490, 443 S.E.2d 392 (1994)).

An abuse of discretion occurs if the court’s ruling is controlled by an error of law or if the ruling is based upon findings of fact that are without evidentiary support. Sharps v. Sharps, 342 S.C. 71, 79, 535 S.E.2d 913, 917 (2000).

ARGUMENT

I. THE CIRCUIT COURT ERRED IN CONSTRUING THE SCOPE OF DAMAGES AVAILABLE FOR A PARENT’S CLAIM FOR LOSS OF HER CHILD’S SERVICES.

The circuit court order overlooks South Carolina common law recognizing a cognizable claim for a parent’s loss of his or her child’s services. At pages nine to eleven of its May 29, 2015

order, the trial court acknowledged that Justice Pleicones' dissent in Doe v. Greenville County School District, 375 S.C. 63, 651 S.E.2d 305 (2007) (hereafter "Doe v GCSD"), was more "persuasive" than the majority opinion. Indeed, as set forth herein, the dissent is better reasoned and contains a more accurate statement of the history of the common law loss of services cause of action. Notwithstanding, the trial court granted The Citadel's motion for summary judgment because it "was compelled to follow the mandate of the majority of the Supreme Court." (R. p. 13).

This case presents an opportunity for the Court to correct the confusion and inaccurate historical *dicta* in former Chief Justice Toal's opinion in Doe v. GCSD, a case in which the complaint alleged claims for various negligence concepts, seduction, and filial consortium, but did not allege a common law "loss of services" claim. (Compare, 651 S.E.2d at 307, upholding dismissal of the loss of consortium" claim; and 651 S.E.2d at 308, "South Carolina law does not recognize claims for loss of filial consortium" with 651 S.E.2d 309: trial court did not err in dismissing most claims because it did "not claim for loss of services.").

In short, the pleadings in Doe v. GCSD presented the Supreme Court with a different question than the question presented by the pleadings in this appeal. This case, by contrast, directly concerns the ancient common law cause of action known as loss of services, and thereby requires the court to address the historically inaccurate *dicta* in Doe v. GCSD, which states:

our common law only allowed a parent to maintain an action for the loss of a child's services and earning capacity. These common law claims did not include the intangible losses of aid, companionship, and society"

651 S.E.2d at 308. Based on this inaccurate *dicta*, the trial court dismissed the loss of services claim for Mother Doe A.

A parent's right to claim a child's loss of services is mentioned in Blackstone. Its common law roots trace to at least 1653, when the claim was adapted as an overt fiction transposing the claim for injury to a servant to enable a parent to recover for their injuries when his or her child was injured. See United States v. Standard Oil, 332 U.S. 301, 312 n. 16 & 17, 67 S.Ct. 1604, 1610 n. 16 & 17 (1947) ("extension of the action *per quod servitium amisit* to domestic relations, upon a fictional basis, took place as early as 1653."). The cause of action has *always* included intangible damages. E.g. Tullidge v. Wade, 3 Wils. K.B. 18 (Kings Bench 1769) (affirming a damage finding of fifty pounds, because "[A]lthough the plaintiff's loss in this case may not really amount to the value of twenty shillings, yet the jury have done right in giving liberal damages.").⁵

In 1712, the Reception Statute, S.C. Code § 14-1-50, adopted the English common law until altered by the legislature:

All, and every part, of the common law of England, where it is not altered by the Code or inconsistent with the Constitution or laws of this State, is hereby continued in full force and effect in the same manner as before the adoption of this section.

S.C. Code § 14-1-50 (1976); see also State v. Charleston Bridge Co., 113 S.C. 116, 126, 101 S.E. 657, 660 (1919) (the reception statute is "declaratory in its nature" in stating that South Carolina courts are guided by the principles of the settled common law from England); accord Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 20-21, 567 S.E.2d 881, 891 (Ct. App. 2002). Since the enactment of the Reception Statute, the legislature has made no modification to the loss of services cause of action.

The 2007 majority in Doe v GCSD (Justices Toal, Burnett, Moore, and acting justice Maccauley) declined to recognize a "loss of filial consortium" cause of action at common law, and held that no such cause of action had been provided for by the legislature. 651 S.E.2d 308. We

⁵ For ready access, a copy of the 1769 English opinion is attached as an appendix to this brief.

have no quarrel with those findings, neither of which has anything to do with the distinct common law cause of action for loss of services. Through the Reception Statute, the legislature has reserved to itself changes to the common law cause of action, and no change has been made to the cause of action. The Doe v. GCSD court simply misstated history to conclude that because there was no claim for loss of filial consortium at common law, there was no claim of any type available at common law to a parent for “intangible losses of aid, companionship, and society” of a child. 651 S.E.2d at 308.

As established very clearly in South Carolina case law, and by the dissent in Doe v GCSD (written by now Chief Justice Pleicones), a historically accurate account of a parent’s right of recovery under South Carolina common law includes intangible injury through the loss of services cause of action. E.g. Webb v. Southern Ry. Co., 104 S.C. 89, 88 S.E. 297, 299 (S.C. 1916) (“The mother was entitled to the services of her minor child. *She was entitled to his companionship...*”) (emphasis added). South Carolina law recognizes the overt fiction through which loss of services includes intangible injury. Villepigue v. Shuler, 1849 WL 2667 at 2, 34 SCL 462 (3 Strob. 462) (S.C. 1849) (“loss of service is well understood to be little more than a legal fiction, which has been introduced to secure *compensation for outraged feelings.*”) (emphasis added). Moreover, a parent’s independent injury when his or her child is injured is explicitly recognized under the Tort Claims Act as a separate and distinct “loss” from that of the injured child. Wright v. Colleton County School District, 301 S.C. 282, 289, 391 S.E.2d 564, 569 (1990) (“we find that the parent’s claims for loss of services and medical expenses are within the statutory definition of “loss” as contained in Section 15-78-30(f) and are therefore recoverable.”).

The trial court’s confusion based on the flawed majority opinion in Doe v. GCSD is understandable, and genuine, but the court’s 2007 *dicta* is historically incorrect, an affirmative

misstatement of South Carolina common law, and fails to recognize the distinct origins of loss of a child's services compared to loss of a spouse's consortium.⁶ Simply put, the majority opinion in Doe v. GCSD misstated legal history. Loss of services is a long-standing common law cause of action. It has never been altered by the South Carolina legislature. It has always included a parent's intangible loss, in English common law and in South Carolina common law, as Webb and Villepigue show. No policy reason was given by the GCSD Court for trying to usurp the plain language and application of the Reception Statute.

Applying an accurate account of the loss of services cause of action at common law, Appellants are entitled to claim damages for the intangible loss of services of their children as a result of the sexual abuse inflicted upon them. Consequently, the circuit court committed reversible error in failing to recognize Appellants' right to recover damages for intangible injuries arising from the loss of their children's services.

II. THE CIRCUIT COURT ERRED IN FINDING APPELLANT'S OUTRAGE AND CONSPIRACY CLAIMS BARRED BY THE TORT CLAIMS ACT.

a. The Tort of Outrage Falls within the Scope of the SCTCA When Based Upon Reckless Rather than Intentional Conduct.

It is well settled that a plaintiff can state a claim for outrage by alleging that the defendant acted recklessly, rather than intentionally. Bass v. S. Carolina Dep't of Soc. Servs., 414 S.C. 558, 575, 780 S.E.2d 252, 260-61 (2015) (considering intentional infliction of emotional distress claim based on DSS's reckless rather than intentional conduct). In siding with the Respondent, the

⁶ See Black's Law Dictionary (9th ed. 2009). The trespass claim *per quod consortium amisit* ("Whereby he lost the company of his wife") is the origin of loss of spousal consortium. *Per quod servitium amisit* ("whereby he lost services of his servant") is the origin of the parent's loss of services claim through the overt fiction which transposed it from a claim for a servant to a claim for a child, and did so specifically in order to include the parent's intangible loss.

Circuit Court has mistakenly interpreted § 15-78-30(f)'s preclusion of loss arising out of the "intentional infliction of emotional harm" to conclude that Mother Doe A is not entitled to recover for the tort of outrage. Such a holding overlooks the plain language of the SCTCA's definition of "loss", which permits outrage causes of action where, as here, the claim is based upon "reckless" conduct.

Section 15-78-30(f) of the SCTCA defines the parameters of compensable "loss" as follows:

"Loss" means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm.

S.C. Code Ann. § 15-78-30(f). While intentional infliction of emotional harm is precluded under this definition of "loss," there is no specific preclusion for loss based upon reckless conduct. Indeed, the conduct supporting an outrage claim can be "reckless" without being "intentional." Bass, 414 S.C. at 575, 780 S.E.2d at 260-61 (considering intentional infliction of emotional distress claim based on DSS's reckless rather than intentional conduct).

As recently observed by the South Carolina Supreme Court in Bass, the tort of outrage does not automatically implicate "intentional" conduct. 414 S.C. at 575, 780 S.E.2d at 260-61. Bass involved gross negligence and outrage claims against the South Carolina Department of Social Services ("DSS") under the TCA. Although the outrage verdict was reversed on appeal for lack of sufficient evidence, the claim was allowed to proceed to verdict against DSS under the SCTCA because it was based on "reckless" as opposed to "intentional" conduct. The Bass Court recited the following elements for the tort of outrage, observing that the underlying conduct can be either intentional *or reckless*:

To recover for outrage—otherwise known as intentional infliction of emotional distress—a plaintiff must establish the following:

- (1) the defendant intentionally *or recklessly* inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct;
- (2) the conduct was so “extreme and outrageous” so as to exceed “all possible bounds of decency” and must be regarded as “atrocious, and utterly intolerable in a civilized community;”
- (3) the actions of the defendant caused plaintiff’s emotional distress; and
- (4) the emotional distress suffered by the plaintiff was “severe” such that “no reasonable man could be expected to endure it.”

Bass, 414 S.C. at 575, 780 S.E.2d at 260-61 (quoting Argoe v. Three Rivers Behavioral Health, L.L.C., 392 S.C. 462, 475, 710 S.E.2d 67, 74 (2011))(emphasis added).

Thus, the SCTCA does not bar a claim for outrage where, as here, it is based on “reckless”, rather than “intentional” conduct. Moreover, “[i]t is always for the jury to determine whether a party has been reckless, willful, and wanton.” Wise v. Broadway, 315 S.C. 273, 277, 433 S.E.2d 857, 859 (1993) (citing Ralls v. Saleeby, 178 S.C. 431, 182 S.E. 750 (1935)). Accordingly, given that the SCTCA does not bar Appellant’s outrage claim based on reckless conduct, the Circuit Court erred as a matter of law in prematurely granting summary judgment on this basis.

b. Appellant’s Civil Conspiracy Claim is Proper Under § 15-78-70 Against Citadel Officials Individually.

The Court erred in granting summary judgment as to Mother Doe A’s civil conspiracy claim based upon the requirement of “intent to harm.” In particular, it was reversible error to dismiss Appellant’s conspiracy claim where the claim is asserted against Citadel employees who fall outside the scope of SCTCA immunity, and in accordance with § 15-78-70(c), only The Citadel, and not the individual employees, are required to be a named party in the litigation. See Flateau v. Harrelson, 355 S.C. 197, 207, 584 S.E.2d 413, 418 (Ct. App. 2003) (quoting Faile v. S.C. Dep’t of Juvenile Justice, 350 S.C. 315, 321 n. 1, 566 S.E.2d 536, 539 n. 1 (2002) (“When a

plaintiff claims an employee of a state agency acted negligently in the performance of his job, the South Carolina Tort Claims Act requires a plaintiff to sue the agency for which the employee works, rather than suing the employee directly.”)).

Pursuant to section 15–78–70(a) of the South Carolina Code, “[a]n employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b).” Section 15–78–70(b) provides:

Nothing in the chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee’s conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, *intent to harm*, or a crime involving moral turpitude.

S.C. Code Ann. § 15–78–70(b) (2005). Section 15–78–30(i) defines “scope of official duty” as “(1) acting in and about the official business of a governmental entity and (2) performing official duties.” S.C. Code Ann. § 15–78–30(i). Thus, if a conspiracy claim alleges actual malice or intent to harm, then the claim falls outside the scope of SCTCA immunity. See Pridgen v. Ward, 391 S.C. 238, 248, 705 S.E.2d 58, 64 (Ct. App. 2010); DeCecco v. Univ. of S. Carolina, 918 F. Supp. 2d 471, 500 (D.S.C. 2013) (finding school officials immune from suit in their individual capacity where there was no evidence that the state employees acted with “actual fraud, actual malice, intent to harm, or a crime involving moral turpitude,” which would cause the claim against them to fall outside the scope of SCTCA immunity); Smith v. Ozmint, 394 F.Supp.2d 787, 792 (D.S.C. 2005) (finding a state employee can, in these limited circumstances, be held personally liable for some intentional torts committed within the scope of his employment); DiLorenzo v. S. Carolina Dep’t of Corr., No. 2:10-CV-02356-RMG, 2010 WL 5389994, at *3 (D.S.C. Dec. 22, 2010) (holding claim for intentional infliction of emotional distress is not subject to dismissal where plaintiff alleged intent to harm within her claim for intentional infliction of emotional distress).

In Pridgen, the South Carolina Court of Appeals upheld the trial court's determination that the government employee defendants were not entitled to immunity under the SCTCA because there was evidence that the defendants acted outside the scope of their official duty and with the intent to harm the plaintiff. 391 S.C. at 248, 705 S.E.2d at 64. Under this rationale, the requirement of an "intent to harm" does not preclude claims like civil conspiracy from being asserted against employees of a government entity in their individual capacity. See Ozmin, 394 F. Supp. 2d at 792 (finding a state employee can, in these limited circumstances, be held personally liable for some intentional torts committed within the scope of his employment); Roberts v. City of Forest Acres, 902 F.Supp. 662, 671 (D.S.C. 1995) (finding government employee liable when the employee's conduct falls within the exceptions listed in § 15-78-70(b)).

Here, the facts revealed through discovery support the inference that by knowingly conspiring with ReVille to conceal his devious sexual predilections, enable ReVille's future employment around children, and insulate ReVille from law enforcement, Citadel officials such as Brandenburg, Rosa, Trez and Garrott knew that other children would be sexually abused by ReVille and, thus, these officials acted with an intent to harm future victims like John Doe A and Doe 201. In fact, these Citadel officials knew that ReVille was a preferential child molester, who targeted adolescent boys like John Doe A and John Doe 201. Therefore, Appellant's civil conspiracy claim does not fail as a matter of law simply because it requires the element of "intent to harm." Accordingly, pursuant to § 15-78-70, Appellant's conspiracy claim as to these individuals is not barred by the SCTCA's immunity provisions.

III. THE CIRCUIT COURT ERRED IN FINDING APPELLANT'S OUTRAGE CLAIM BARRED ON THE BASIS THAT NO CONDUCT WAS DIRECTED TOWARD APPELLANT.

Conduct directed toward the Appellant is unnecessary where, as in the instant case, the injury is a natural and foreseeable consequence of the Citadel's conduct. It is well known that pedophiles pose a serious threat to all children within their preference group—e.g. adolescent boys in the instant case. Therefore, conduct undertaken to conceal a pedophile creates an obvious risk of danger to any child within the identifiable at risk group.

Here, The Citadel's conduct in instituting a close hold policy to conceal ReVille's sexual abuse directly enabled ReVille to use his Citadel reputation to gain access to boys within his target preference group, including John Doe A, who was subsequently abused and molested repeatedly from early 2008 through the summer of 2009. The risk of danger posed by assisting a child sexual predator to avoid detection is obvious, and while it may not have been clear to The Citadel who the particular victims would be, it was intimately clear that there would be victims and that these victims would be adolescent boys within ReVille's proximity, i.e. a distinct identifiable at risk group. Thus, even though The Citadel may not have directed its conduct *directly* at the Appellant, it was certainly obvious that Appellant would suffer injury as a result of its conduct.

In siding with The Citadel, the circuit court relied on Doe v. Rojas, 2007 WL 8327520 (Ct. App. April 26, 2007), an unpublished decision involving an outrage claim against the Richland County School District arising out of a teacher's sexual abuse of the plaintiffs' minor daughter. After denying the appeal on preservation grounds, the Rojas Court alternatively rejected plaintiffs' outrage claim for failure to present any evidence that the School District directed the alleged misconduct toward the plaintiffs. Unlike the present case, the outrage claim in Rojas was premised only on two allegations: (1) that the School District's failed to provide appropriate sexual harassment training to staff; and (2) that it failed to follow mandatory federal guidelines. Such a finding is inapposite and bears no relevance to the reckless conduct of The Citadel in assisting a

known sexual predator. The conduct at issue in Rojas was not that of a conspiracy to conceal a preferential child molester, which, as reasoned above, is conduct sufficiently directed at the Appellant given John Doe A's classification within an identifiable at risk group.

Accordingly, despite the presence of conduct specifically directed at Appellant, there is indeed sufficient evidence entitling Appellant to relief against The Citadel for its reckless conduct in assisting a known sexual predator to remain undetected.

IV. THE CIRCUIT COURT ERRED IN FINDING INSUFFICIENT EVIDENCE OF LOSS OF SERVICES AND OUTRAGE DAMAGES RESULTING FROM THE CITADEL'S CONDUCT.

As to the finding that Appellant has presented insufficient evidence of outrage damages, the Court's opinion overlooks the wealth of testimony previously raised to the Court demonstrating Appellant's severe emotional distress. (R. pp. 810-823). Specifically, there is ample evidence that Mother Doe A is outraged and has suffered "the irreplaceable loss of th[e] comfort and society" of her child. Mother Doe A testified that the abuse, and her son's attempt to conceal the abuse from his siblings, has created "a major ordeal within [the] family." (R. p. 816, Deposition of Mother Doe A at 105:2-3). Unfortunately, despite Plaintiff's attempt to get her son therapy, the "wedge between [her] sons" remains. (R. p. 817, Deposition of Mother Doe A at 106:2-3). Mother Doe A "constantly" worries about her son and has developed serious concerns, including that he is a "ticking time bomb." (R. pp. 817-818, Deposition of Mother Doe A at 108:13, 112:9-11). She further testified:

My son was a great kid. Now I'm left with a sullen, melancholy kid that basically does not have anything to do with anyone in our family. And he would be appalled to know — I couldn't even tell my own father about this. It's affected every single relationship I have with all of my children. Because they're having to deal with a mom who has good days and bad days.

(R. p.819, Deposition of Mother Doe A at 113:16-23).

Mother Doe A has sought professional mental health help and would like to obtain additional mental health counseling for herself when her finances permit. (R. p. 819). “[She] worr[ies] about when the shoe is going to drop on a daily basis.” (R. p. 822, Deposition of Mother Doe A at 174:23-24). Given the testimony cited herein, there is certainly evidence that Mother Doe A is outraged and has suffered “the irreplaceable loss of th[e] comfort and society” of her child. Moreover, the cited testimony establishes sufficient evidence to create a genuine issue of material fact as to Mother Doe A’s: (1) “shame, humiliation, and mental anguish;” (2) “the insult offered to [a parent’s] feeling;” (4) “the agony in the destruction of his hopes concerning his child;” and (5) the effect on the child’s “companionship.” Given such testimony⁷, there is more than sufficient evidence in the record to satisfy Appellant’s burden of demonstrating loss of services and emotional distress damages.

Furthermore, as observed in the Court’s May 29, 2015 Order, one of three circumstances in which liability for emotional distress is recognized is when the claim is based on “outrage.” (R. p. 11, stating “[t]he modern rule of the Supreme Court has been to recognize emotional distress damages in three circumstances: (a) when accompanied by physical trauma; (b) outrage; and (c) negligent infliction in a ‘bystander’ situation.”).

The South Carolina Supreme Court expressly defined the tort of intentional infliction of emotional distress—also known as the tort of “outrage” in Ford v. Hutson, 276 S.C. 157, 276 S.E.2d 776 (1981). There, the Court held that in order to recover for intentional infliction of emotional distress, the complaining party must establish that:

⁷ (R. p. 19, page-line designations for the deposition of Chet Williams, concerning the tangible elements of damage to Mother Doe A for the medical costs and expenses associated with her son’s treatment) This exhibit was submitted in response to the motions renewed by The Citadel on the day of trial and was further intended as an offer of proof of what would have been introduced at trial.

- (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct;
- (2) the conduct was so “extreme and outrageous” so as to exceed “all possible bounds of decency” and must be regarded as “atrocious, and utterly intolerable in a civilized community;”
- (3) the actions of the defendant caused plaintiff’s emotional distress; and
- (4) the emotional distress suffered by the plaintiff was “severe” such that “no reasonable man could be expected to endure it.”

Id. at 162, 276 S.E.2d at 778 (quoting Restatement (Second) of Torts § 46, cmts. d, i, and j) (citations omitted). Thus, a party can recover damages for emotional distress in the absence of physical impact or physical injury. See Hansson v. Scalise Builders of S. Carolina, 374 S.C. 352, 356, 650 S.E.2d 68, 70-71 (2007). In other words, when based on outrage, there is no requirement that the emotional distress be “accompanied by physical trauma” or that the negligent infliction must occur in a “bystander” situation. Consequently, there being evidence of emotional distress falling well beyond “mere bald assertions,” the Order granting summary judgment as to Appellant’s loss of services and outrage claims was error and should be reversed and remanded accordingly.

V. THE CIRCUIT COURT ERRED IN FINDING NO EVIDENCE OF SPECIAL DAMAGES TO SUPPORT APPELLANT’S CONSPIRACY CLAIM.

Appellant presented sufficient evidence of special damages to support Mother Doe A’s conspiracy claim at the summary judgment stage. Civil conspiracy claims require a showing of special damages. While general damages “are the immediate, direct, and proximate result of the” tortfeasor’s conduct, special damages “are the natural, but not the necessary or usual, consequence of the” tortfeasor’s conduct. Benedict Coll. v. Nat’l Credit Sys., Inc., 400 S.C. 538, 546, 735 S.E.2d 518, 522 (Ct. App. 2012). Here, Appellant’s Amended Complaint alleges she “has suffered serious, permanent intangible injuries resulting in special damages insofar as the Plaintiff has incurred costs for treating and providing professional care for her child, as well as other injury, as

a result of The Citadel's conduct." (R. p. 1380, Mother Doe A's Amended Complaint at ¶ 222). With regard to costs for such other injuries, Mother Doe A has testified to numerous permanent intangible injuries as a result of The Citadel's conspiracy with ReVille to conceal ReVille's dangerous propensities. These include injuries such as major disruptions within her family and deteriorated relationships among her sons. (R. p. 816, Deposition of Mother Doe A at 105:2-3, her son's attempt to conceal the abuse from his siblings, has created "a major ordeal within [the] family."). Such injuries are undoubtedly natural, but not necessary or usual, consequences of The Citadel's conspiracy and, therefore, constitute evidence of special damages to support Appellant's conspiracy claim.

CONCLUSION

In all of human experience there is no more significant bond than the bond between a parent and a child. Through reversing the trial court's findings based upon inaccurate *dicta* in Doe v. GCSD, this case presents the Court with an opportunity to properly state the history and correct scope of the loss of services cause of action. This case likewise calls into question the trial court's application of the law as to the scope of the SCTCA with regard to Appellant's outrage and conspiracy claims. As demonstrated herein, Appellant has provided ample evidence establishing (1) the viability of Appellant's outrage claim based upon reckless and not intentional conduct, and (2) the liability of Citadel officials for engaging in a civil conspiracy with the intent to harm.

Accordingly, based upon the foregoing, Mother Doe A respectfully requests that the Order of the Circuit Court granting The Citadel's Renewed Motion for Summary Judgment be reversed and that the matter be remanded for further proceedings, specifically to include permitting a claim for intangible damages for Mother Doe A and the Doe 201 parents.

Respectfully submitted,



Allan P. Sloan, III, SC Bar #006914
Kristen B. Fehsenfeld, SC Bar #76971
PIERCE, HERNS, SLOAN & WILSON, LLC
321 East Bay St.
Charleston, SC 29401
T: (843)722-7733; F: (843)722-7734
chipsloan@phswlaw.com
kristenfehsefeld@phswlaw.com

Gregg Meyers, SC Bar #9908
Jeffrey R. Anderson, pro hac vice pending
JEFF ANDERSON & ASSOCIATES, P.A.
366 Jackson Street Suite 100
Saint Paul, MN 55101
T: (651) 227-9990; F: (651) 297-6543
Jeff@Andersonadvocates.com
Gregg@Andersonadvocates.com
Attorneys for Appellant

Charleston, South Carolina

Dated: 4/20/16

APPENDIX

Tullidge v. Wade, 3 Wils. K.B. 18 (Kings Bench 1769).....32-33

to take up the bill and note, and to save the plaintiff, Chilton, harmless; they broke their promise, Chilton was terrified and arrested. Here is an injury to a certain degree, but no debt owing by the defendants to Chilton, before his body was in execution for the certain sum. How could the plaintiff, Chilton, at the time of the commission of bankruptcy issued, have sworn to a debt, before he had advanced a shilling for the defendants? He certainly could not: but now his body being in execution, he has thereby paid the debt. So the postea must be delivered to the plaintiff, and he must have judgment. Per totam Curiam.

[18] EASTER TERM, 9 GEO. III. 1769.

TULLIDGE *versus* WADE. C. B. Trespass for getting plaintiff's daughter with child per quod servitium amisit.

Trespass against the defendant, that he with force and arms made an assault upon A. B. daughter and servant of the plaintiff, and got her with child, whereby he lost the benefit of her service for a certain space of time, and was put to great charge and expence in her time of lying-in: the defendant pleaded not guilty. The cause was tried before Mr. Justice Gould, at the last assizes; when the jury found a verdict for the plaintiff, and gave him 50*l.* damages.

Serjeant Davy moved for a new trial, and grounded his motion upon an affidavit tending to shew, that under the circumstances of the case appearing at the trial, the damages were excessive; and also, that evidence was given, at the trial, of a promise of marriage made by the defendant to A. B. which ought not to have been permitted, because she may have another sort of action upon that promise.

Whereupon Mr Justice Gould made his report to the Court, and, after stating the declaration as above, he said, that A. B. the plaintiff's daughter was called as a witness at the trial, and swore that the plaintiff was a maltster, and kept a public house; that she was his daughter and servant, and was about thirty years old; that the defendant was an exciseman, made his addresses to her as a lover, with an intention (as she then thought) to marry her; that he was well received on that account by the plaintiff her father, and very civilly treated by him and his family, and often spent the evening with them: she also swore, that he promised her marriage, and got her with child. The brother of A. B. was also called, who deposed that the plaintiff was wholly deprived of A. B.'s service and assistance in his business, and paid some money on account of her lying-in. The counsel for the defendant, at the trial, objected to the evidence given, as to the promise of marriage; upon which A. B. [19] offered to give the defendant a release as to that promise; but the counsel for the defendant refused to accept thereof. Upon summing up the evidence to the jury, the Judge (Gould) was pleased to say, that he told them over and over again, that, in giving damages in this action, they must not consider the injury done to A. B. as to the promise of marriage, but must leave that matter quite out of the question, because A. B. might have her action for breach of that promise; that he thought the plaintiff, A. B.'s father, was by nature bound to take care of her while she laid in, and that they should consider his expences on that account, as well as his loss of his daughter's service. Whereupon the jury gave 50*l.* damages, with which the Judge said he was not at all dissatisfied; and that he thought, if the jury had then considered the promise of marriage, they would have given six times as much damages.

Lord Chief Justice Wilmot. Actions of this sort are brought for example's sake; and although the plaintiff's loss in this case may not really amount to the value of twenty shillings, yet the jury have done right in giving liberal damages; and if A. B. brings another action against defendant for the breach of promise of marriage, so much the better; he ought to be punished twice. A. B. being of the age of 30, is nothing to mitigate damages, or lessen the defendant's fault, and we will pay no regard to any affidavit read to us, Brother Gould being satisfied with the verdict; if much greater damages had been given, we should not have been dissatisfied therewith; the plaintiff having received this insult in his own house; where he had civilly received the defendant, and permitted him to make his addresses to his daughter.

Clive Justice. If the jury had given 100*l.* damages, I should not have thought them too much.

Bathurst Justice. To be sure, the giving the promise of marriage in evidence at the trial of this cause, was very improper; but as the jury were cautioned not to take notice of it, I am inclined to think they did not; for if they had, I think they would have given more than 50*l.* in damages. In actions of this nature, and of assaults, the circumstances of time and place, when and where the insult is given, require different damages; as it is a greater insult to be beaten upon the Royal Exchange, than in a private room. I am of the same opinion with my Lord Chief Justice and my brothers.

Serjeant Davy took nothing by his motion; so the plaintiff had judgment per totam Curiam.

[20] MICHAELMAS TERM, 10 GEO. III. 1769.

DYE *versus* LEATHERDALE AND SIMPSON. C. B. Declaration in trespass for taking plaintiff's hog.

Norfolk, (to wit) — John Leatherdale, late of, &c. and Cornelius Simpson, late of, &c. were attached to answer John Dye, of a plea, wherefore, with force and arms, &c. the said J. L. and C. took a certain hog of the said J. D. of the value of, &c. at Frenze in the county aforesaid, there found and being, and drove and carried away the same, and converted and disposed thereof to their own use, and there did other wrongs to the said J. D. to the great damage of the said J. D. and against the peace of our said lord the now King, &c. and thereupon the said J. D. by Robert Greenacre his attorney complains, that the said J. L. and C. on the first day of September, in the year our Lord 1768, with force and arms, &c. took a certain hog of the said J. D. of the value of four pounds, at F. aforesaid there found and being, and drove and carried away the same, and converted and disposed thereof to their own use (to wit) at F. aforesaid, and then and there did other wrongs to the said J. D. to the great damage of the said J. D. and against the peace of our said lord the now King, &c. wherefore the said J. D. saith, that he is injured, and hath sustained damage to the value of 4*l.* and thereupon he brings this suit, &c.

And the said J. L. and C. by Henry Browne their attorney, come and defend the force and injury when, &c. and say, that they are not guilty of the trespass aforesaid, above laid to their charge, in manner and form as the said J. D. hath above thereof complained against them, and of this they put themselves upon the country, and the said J. D. likewise.

And for further plea, as to the taking the said hog, in the said declaration mentioned, and driving and carrying the same away, by the said J. L. and C. above supposed to have been [21] done, they the said J. L. and C. by leave of the Court here to them for this purpose granted, according to the form of the statute in such case made and provided, say, that the said J. D. ought not to have or maintain his aforesaid action thereof against them; because they say, that the said C. long before, and at the said last time, when, &c. was lawfully possessed of, and in a certain close, called Newson's Lay, lying and being at F. aforesaid, in the county aforesaid. And because the said hog, at the said last time, when, &c. was in the said close of the said C. eating up the wheat then growing there, and there doing damage to the said C. He the said C. in his own right, and the said J. L. as his servant, and by his command, at the said last time, when, &c. took the said hog, in the said declaration mentioned, so being, in the said close called N. L. and doing damage there as aforesaid, for and in the name of a distress, and drove the same away, and impounded the same in the common pound there, (to wit) at F. aforesaid and there left the same, as it was lawful for him to do, for the cause aforesaid; which are the same taking the said hog, in the said declaration mentioned, and driving and carrying the same away, whereof the said J. D. hath above complained against them, and this they are ready to verify; wherefore the said J. L. and C. pray judgment, if the said J. D. ought to have or maintain his aforesaid action thereof against them, &c.

WM. JEPHSON

And as to the plea of the said J. L. and C. by them lastly above pleaded in bar, as to the taking the said hog, in the said declaration mentioned, and driving and carrying away the same, by the said J. L. and C. above done, he the said J. D. says that by any thing in that plea above alledged, he ought not to be barred from having

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In The Court of Common Pleas

Honorable R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2015-001920

Mother Doe/A Appellant,

v.

The Citadel Respondent.

FINAL BRIEF OF RESPONDENT

M. Dawes Cooke, Esq.
Randell C. Stoney, Jr., Esq.
John W. Fletcher, Esq.
Barnwell Whaley Patterson & Helms, LLC
288 Meeting Street, Suite #200 (29401)
Post Office Drawer H
Charleston, South Carolina 29402-0197
(843) 577-7700
Attorneys for Respondent

Allan P. Sloan, III, Esq.
Joseph C. Wilson, IV, Esq.
Kristen B. Fehsenfeld, Esq.
Pierce, Hems, Sloan & Wilson, LLC
321 East Bay St.
Charleston, SC 29401
(843) 722-7733
and
Gregg Meyers, Esq.
Jeffrey R. Anderson, Esq., pro hac vice pending
Jeff Anderson & Associates, P.A.
366 Jackson Street Suite 100
Saint Paul, MN 55101
651-227-9990, 651-297-6543 facsimile
Attorneys for Appellant

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court properly grant summary judgment here, where Plaintiff ("Mother") can show no damages other than emotional distress/loss of filial consortium and where the South Carolina Supreme Court has expressly held that a parent's damages for injury to a child are limited to medical expenses and loss of services?

Suggested Answer: Yes.

2. Did the trial court properly grant summary judgment where the South Carolina Tort Claims Act ("SCTCA") bars Mother's outrage claim?

Suggested Answer: Yes.

3. Did the trial court properly grant summary judgment on Mother's outrage claim where there is no evidence that The Citadel directed any conduct toward her?

Suggested Answer: Yes.

4. Did the trial court properly grant summary judgment as to Mother's outrage claim where there is no evidence of extreme or outrageous conduct?

Suggested Answer: Yes.

5. Did the trial court properly grant summary judgment as to Mother's outrage claim where she could have pursued alternate claims?

Suggested Answer: Yes.

6. Did the trial court properly grant summary judgment as to Mother's conspiracy claim on the ground that the SCTCA bars such a claim?

Suggested Answer: Yes.

7. Did the trial court properly grant summary judgment as to Mother's negligence-based claims (including Counts 1, 2, 3 and 5) where The Citadel did not owe even Mother's son -- let alone Mother -- a duty of care (either through voluntary assumption, creation of the danger or statutory imposition)?

Suggested Answer: Yes.

8. Did the trial court properly grant summary judgment as to Mother's negligence-based claims (including Counts 1, 2, 3 and 5) where there is no evidence that The Citadel's alleged conduct did not proximately cause Mother's injuries.

Suggested Answer: Yes.

STATEMENT OF THE CASE

A. Procedural History

Plaintiff Mother Doe A (“Mother”)¹ sued The Citadel, The Military College of South Carolina (“The Citadel”) for failing to prevent Louis “Skip” ReVille, a former counselor at The Citadel’s former summer camp, from sexually abusing her son. Mother's son concededly never attended the camp and had no affiliation with The Citadel. Mother alleges claims against The Citadel sounding in:

- (a) Count I — Gross Negligence/Failure to Warn
- (b) Count II — Negligent Hiring, Retention and Supervision
- (c) Count III — S.C. Code § 59-154-10 (Jessica Horton Act)
- (d) Count IV — Civil Conspiracy
- (e) Count V – S.C. Code § 63-7-310 (Mandatory Reporting Statute)
- (f) Count VI — Intentional Infliction of Emotional Distress/Outrage
- (g) Count VII — Loss of Services

(See R. pp. 1321-92).

On January 26, 2015, The Citadel filed its Notice of Motion and Renewed Motion for Summary Judgment, arguing that Mother's claims failed for several reasons. (See R. pp. 0326-430). On February 2, 2015, the Honorable R. Markley Dennis entered an order granting The Citadel's Renewed Motion for Summary Judgment. (See R. p. 0003). On May 29, 2015, the Court entered a more detailed Order Granting Defendant's Motion for Summary Judgment. (See R. pp. 0004-15). On June 15, 2015, Mother filed a Motion to

¹ Plaintiff's Brief includes *two* captions; one for this case and one for *John Doe 201 and Jane Doe 201 v. The Citadel*, Case No. 2013-CP-10-6330. The *John Doe 201* case, like this case, is brought by the parents of a ReVille abuse victim. The parties agreed that, given the similarities between *John Doe 201* and the instant case, that lawsuit should be held in abeyance pending the resolution of this appeal. However, the trial court has *not* entered judgment in the *John Doe 201* case. Plaintiffs have *not* filed an appeal in the *John Doe 201* case. Simply put, *John Doe 201* is not properly before this Court and John Doe 201 is not an appellant here. To the extent Mother's Brief seeks to make arguments on behalf of *John Doe 201*, such arguments are improper and the Court should disregard them.

Alter or Amend, which the trial court denied on August 6, 2015. Mother filed the instant Notice of Appeal on or about August 31, 2015.

B. Factual Background

1. The 2007 Report

On April 23, 2007, the father of a nineteen-year-old former camper at The Citadel's summer camp ("Camper Doe") — who is *not* the Plaintiff in this lawsuit — informed The Citadel that ReVille had engaged in sexual misconduct with his son five years prior. Camper Doe's father spoke by telephone with Mark Brandenburg, The Citadel's General Counsel ("Brandenburg"), and told Brandenburg that once during Camper Doe's stay at the camp, a counselor named "Skip" invited his son into his room, where they watched pornography and masturbated. (*See* R. p. 3607 ¶ 3). Brandenburg subsequently spoke on the phone with Camper Doe, who confirmed that "Skip" once invited him into his room, showed him pornography and convinced him to masturbate. (*See id.* ¶ 4). Brandenburg telephoned ReVille, who coincidentally submitted his resignation on March 22, 2007 to pursue other interests and had recently worked his final day. (*See* R. pp. 0885-89). ReVille emphatically denied Camper Doe's allegations.

Brandenburg continued his investigation on July 1, 2007, when he met with Camper Doe and his parents in Texas. Camper Doe's father expressed a desire for privacy, stating, "I don't want to be another name in the Charleston papers" or to become "a part of Charleston gossip." (*See* R. pp. 0892-94). Camper Doe's father noted that Camper Doe had applied for admission to The Citadel but The Citadel had not accepted him and suggested that The Citadel "can be part of the root cause to fix him" by admitting him. (*See* R. p. 0893:16-17). Camper Doe's father opined that admitting his son as a cadet would be, "a very inexpensive way for The Citadel to say, do you know what – we'll fix our own." (*See* R. p. 0893:19-23).

In accordance with the wishes of Camper Doe and his family, Brandenburg worked with Citadel admissions staff in an effort to allow Camper Doe's admission as a

cadet. (*See* R. pp. 0897:25-0898:25). When The Citadel determined that Camper Doe lacked the requisite academic qualifications, Brandenburg proposed that the South Carolina State Insurance Reserve Fund pay for courses to permit him to reapply to The Citadel. (*See* R. p. 0899:1-0900:16). After this meeting, Brandenburg never heard again from Camper Doe or his parents. There is no evidence that he ever received any independent corroboration of Camper Doe's claim of having been victimized at the summer camp, which was no longer in operation.

The following facts with regard to Camper Doe's report in 2007 and The Citadel's response thereto are undisputed (*see generally* R. pp. 0895-0900):

- The report concerned an incident that had occurred approximately five years prior.
- Camper Doe was an adult at the time of his report.
- The summer camp closed the year prior to Camper Doe's report.
- ReVille resigned from The Citadel (working for the college, not the summer camp) prior to Camper Doe's report.
- Camper Doe's report did not identify any physical sexual contact.
- Brandenburg could not obtain independent verification that any other camper was present during the abuse.
- Camper Doe was an adult, with the autonomy to make his own decision about how to handle his claim of sexual misconduct.
- Camper Doe and his family did not report the incident to law enforcement.
- Camper Doe did not follow up with Brandenburg after the interview.

In light of these accumulated factors and in compliance with applicable laws, The Citadel did not report the alleged incident to law enforcement

In October 2011, ReVille's sexual misconduct came to light, and various law enforcement agencies initiated investigations. ReVille was ultimately charged with crimes in Charleston, Berkeley, and Dorchester counties. On June 13, 2012, ReVille

pleaded guilty to numerous charges of criminal sexual conduct with minors, solicitation of minors, lewd acts upon a minor, and dissemination of obscene material. The Honorable R. Markley Dennis, Jr., sentenced ReVille to fifty years imprisonment.

2. The Abuse of Mother's Son

Plaintiff Mother Doe A alleges that ReVille abused her son on occasions in 2007 and 2008. (*See* R. p. 1352 ¶ 133). There is no evidence that ReVille abused Mother's son at the summer camp or on campus. To the contrary, Mother claims only that ReVille abused her son was abused while being coached by ReVille in Mount Pleasant after ReVille's involvement with the summer camp ended.

ARGUMENTS

I. Standard of Review

Summary judgment is proper when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Summary judgment should be granted when plain, palpable, and undisputable facts exist on which reasonable minds cannot differ. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. In order to resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial. Once a party moving for summary judgment carries the initial burden of showing an absence of evidentiary support for the nonmoving party's case, the nonmoving party may not simply rest on mere allegations or denials contained in the pleadings.

NationsBank v. Scott Farm, 320 S.C. 299, 303, 465 S.E.2d 98, 100 (Ct. App. 1995) (internal citations omitted). “[A] court cannot ignore facts unfavorable to th[e non-moving] party and must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts.” *Stewart v. State Farm Mut. Auto Ins. Co.*, 341 S.C. 143, 533 S.E.2d 597, 600 (Ct. App. 2000).

It is not sufficient that one create an inference that is not reasonable or an issue of fact that is not genuine. The judge is not required to single out some one morsel of evidence and attach to it great significance when patently the evidence is introduced solely in a vain attempt to create an issue of fact that is not genuine [or material].

Priest v. Brown, 302 S.C. 405, 396 S.E.2d 638 (Ct. App. 1990) (citations omitted). “[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” See *Logan v. Cherokee Landscaping & Grading Co.*, 389 S.C. 611, 617 n.4, 698 S.E.2d 879, 882 n.4 (Ct. App. 2010) (citation omitted).

When the underlying action requires proof by a preponderance of the evidence, the non-movant must submit a "scintilla of evidence" to survive summary judgment. See *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

“An appellate court reviews the granting of summary judgment under the same standard applied by the trial court.” *Wells v. City of Lynchburg*, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998). This Court “may affirm the grant of summary judgment on any ground found in the record.” *See Moore v. Weinberg*, 373 S.C. 209, 229, 644 S.E.2d 740, 750 (Ct. App. 2007) (citing Rule 220(c), S.C.A.C.R. (“The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.”)); accord Rule 208(b)(2) (“Respondent’s brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c).”).

II. As to All Causes of Action, the Trial Judge Properly Held That Mother Did Not Sustain Any Actionable Damages

A. The Supreme Court Has Limited a Parent’s Recoverable Damages to Medical Expenses and Pecuniary Harm From Loss of Services

1. Mother’s Claimed Damages

Mother does not contend that ReVille abused her or that she suffered any direct injury as a result of The Citadel’s conduct. Rather, Mother claims that The Citadel failed to prevent ReVille from abusing *her son*, and that she sustained harm as a result of the abuse of her son. ReVille did not abuse Mother in any way, and she sustained no direct harm from The Citadel’s alleged negligence.

In her discovery responses, Mother has stated that she seeks to recover the following elements of damages:

ANSWER: Expenses have been incurred for therapy for her child and herself, as indicated above. []In addition to out of pocket costs, there are intangible injuries. [H]er child has become less participatory with family activities. He is now more easily angered, especially with his siblings. His mother has observed his mood fluctuating between periods of solitude and exclusion, fits of rage, guilt, and deep-seated betrayal. She believes he now has anger management issues that he did not have before the abuse. For a number of years the sexual abuse resulted in “secret” keeping that puts the family in a no-win situation with regard to the other siblings in the family, as information about the abuse must either be spread more broadly

among those family members or a certain level of ambiguity has to be maintained about the problems now posed for her son's interaction with family members.

Mother Doe's brother, her child's uncle, has commented on her child's antisocial behavior which has led to very awkward, and heated conversations between Mother Doe A and her brother, who does not understand the impact of abuse on her child's psyche and how it has eroded his ability to trust people in positions of authority. Mother Doe A has observed that her son's abuse has changed the family's dynamic, and caused, among other things, Mother Doe A's brother to visit less frequently.

(See R. pp. 0908-09 ¶ 10 and R. pp. 0911-12 ¶ 16). However, Mother never identified any charges for medical treatment or counseling. She has never presented evidence of a single bill or payment of any medical bill.

In a correspondence with counsel for The Citadel, Mother's counsel elaborated on the damages she seeks to recover:

Mother Doe A's damages are those permitted in various cases for loss of services. Past South Carolina cases have acknowledged claims for a parent's "shame, humiliation, and mental anguish," and "outrage and deprivation," and "the insult offered to [a parent's] feeling," and "the agony in the destruction of his hopes concerning his child," and the effect on the child's "companionship." These are intangibles, and jurors have been quite serious about the value of those intangibles.

Mother Doe A knows her son was abused by Reville, and knows her child held that secret for a number of years. The Mother also has complications among her other children as a result of the abuse to this son, some of which was testified to by Chet Williams.

Mother Doe A knows the probable emotional/psychological effects of child sexual abuse (see Margolis powerpoint slide - denial, anger, depression, social and family withdrawal, detachment, loss of caring, reduced ability to express emotions, loss of self-esteem, loss of trust in others including parents, guilt, shame, substance abuse and suicidal ideation). There are many instances where Mother Doe A's son refused to talk to her for long periods. He has been resisting therapy because he was angry that his intention to keep this secret was uncovered by the police investigation. His plan to keep silent about Reville reflects his shame and denial, burdens the Mother is keenly aware that her child was bearing alone. He has been withdrawn from her and other family members and has shown loss of caring about her and other family members.

So we have a Mother who sees several of the known sexual abuse effects in her son and a son who is in denial and refuses therapy. The pre-Reville mother/son relationship is gone forever, and she will now forever carry the justifiable concern for the increased risk of future harms that her son will be more susceptible to in the long-term. She has an at many times angry son who withdraws from her and others, having had his caring relationships with his Mother and his family affected. She is also aware that he has an increased risk for complications for his own relationships and future problems to deal with as a result of the abuse. Mother Doe A desperately wants him to get help but he refuses and this causes more damage to the relationship, and burdens her. One only need look at Camper Doe 6 who made it to college on a scholarship and soon after his life went into a 8 year downward spiral of drugs, depression and suicide attempt – all related directly to the abuse of Skip Reville.

Mother Doe A is left with the choice every time she sees her son - do I bring up getting help and further damage our relationship or just watch him slip away as other effects start to show up? How is a mother supposed to talk to her son about the disgusting acts detailed by Reville in the Burke records? How can a mother enjoy companionship with her son when he is angry, withdrawn, doesn't care about his family like he used to and refuses to get any help for the underlying problem which is the Reville abuse? Every parent will understand going from good relationship and companionship with their child to years of the opposite with no end in sight. Those would be among the damages. Essentially, because of The Citadel's assistance to Reville, the Mother now has a never-ending complication with this child, and her other children, as the time-bomb elements of sexual abuse can re-occur at any time later in life.

(See R. pp. 0922-23). In other words, Mother seeks to recover for the indirect emotional harm she sustained as a result of the abuse of her son and the resultant impact on the familial relationship. She seeks to recover damages for the emotional harm she suffered from the abuse of her son.

2. The South Carolina Supreme Court Has Limited Mother's Recoverable Damages, and She Does Not Seek Such Recoverable Damages

South Carolina law has consistently held that a parent may recover only two types of damages for an injury caused to a child: (a) medical expenses paid for the treatment of the child's injuries; and (b) the pecuniary value of the loss of the child's services caused by the injury. See *Wright v. Colleton County School District*, 301 S.C. 282, 391 S.E.2d

564 (1990) (holding that medical expenses and lost services may be recoverable under South Carolina Tort Claims Act). Importantly, no modern South Carolina court has construed "loss of services" to encompass a parent's intangible or emotional/psychic damages stemming from harm to a child. Mother's contentions in this appeal would rewrite tort damages law and dramatically expand the scope of potential liability for defendants.

In *Doe v. Greenville County School District*, 375 S.C. 63, 651 S.E.2d 305 (2007), the Supreme Court defined the bounds of a parent's damages for injury to a child. There, parents sued a school district, alleging that a substitute teacher had engaged in a sexual relationship with their minor daughter. The Court concluded that South Carolina did *not* recognize a parent's claim for the loss of the consortium or companionship of a child:

The dissent would find that parents have a common law right to sue for loss of filial consortium despite the clear distinctions between a parent's claim for loss of services and a spouse's claim for loss of consortium found in our previous jurisprudence. The cases which the dissent utilizes to support its conclusion that filial consortium claims existed at common law directly address parental claims for loss of services, not loss of filial consortium. See *Wright v. Colleton County*, 301 S.C. 282, 289, 391 S.E.2d 564, 569 (1990) (providing that a parent's claim for loss of services and medical expenses resulting from the injury of a minor child is within the tort claims act statutory definition of "loss"); see also, e.g., *Berger v. Charleston Consol. Ry. Gas & Elec. Co.*, 93 S.C. 372, 76 S.E. 1096 (1913) (addressing a father's action for medical expenses and loss of services of his injured child). As discussed above, our common law only allowed a parent to maintain an action for the loss of a child's *services and earning capacity*. *These common law claims [for loss of services] did not include the intangible losses of aid, companionship, and society which have traditionally defined loss of consortium claims*. Accordingly, in absence of some action from the legislature, this Court has no authority upon which it could rely in finding that South Carolina law recognizes claims for loss of filial consortium.

See *id.*, 375 S.C. at 69-70, 651 S.E.2d at 308 (emphasis added).

This statement of the law governing recoverable parental damages is consistent with the Restatement's formulation. See Restatement (Second) of Torts § 703 ("One who by reason of his tortious conduct is liable to a minor child for illness or other bodily harm

is subject to liability to (a) the parent who is entitled to the child's services for any resulting loss of services or ability to render services, and to (b) the parent who is under a legal duty to furnish medical treatment for any expenses reasonably incurred or likely to be incurred for the treatment during the child's minority.").

This should end the inquiry in this case (and it did in the trial court), as there is binding authority directly on point. Mother is simply not permitted to plead, prove or recover the damages she seeks here. Her claimed harm takes the form of injury to her emotional well-being and intangible harm to her relationship with her son. These damages, however Mother might characterize them, are for loss of filial consortium and prohibited by the Supreme Court.

a. Greenville County Is Not Dictum

Mother would minimize relevant portions of *Greenville County* by calling them "historically inaccurate *dicta*."² (See Pl.'s Init. Br., at 18).

This Court has been clear that "*dicta*" includes only those statements by a court that are not relevant to the issue decided:

Judicial *dicta* is "not essential to the decision." Black's Law Dictionary 465 (7th ed.1999). *Dicta* or, as it is also known, *dictum* "is a statement on a matter not necessarily involved in the case, and is not binding as

² As former Chief Judge Sanders observed about *dicta*:

We fully recognize that our opinion from this point on is no more than *dictum*. As everyone knows, *dictum* technically does not count because it is outside of what is necessary in resolving a matter. See 12 WORDS AND PHRASES, "Dictum," (1954). *But those who disregard dictum, either in law or in life, do so at their peril.* We are reminded of the apocryphal story of a duel which was about to take place in a saloon. One of the antagonists was an unimposing little man, thin as a rail — but a professional gunfighter. The other was a big bellicose fellow who tipped the scales at 300 pounds. "This ain't fair," said the big man, backing off. "He's shooting at a larger target." The little man quickly moved to resolve the matter. Turning to the saloon keeper, he said, "Chalk out a man of my size on him. Anything of mine that hits outside the line don't count." See P. Trachtman, *The Gunfighters* (1974).

Yaeger v. Murphy, 291 S.C. 485, 490 n. 2, 354 S.E.2d 393, 396 n. 2 (Ct. App. 1987) (emphasis added).

authority. *Dictum* is an opinion expressed by a court, but which, not being necessarily involved in the case, is not the court's decision." 21 C.J.S. Courts § 227 (2006).

See *Nash v. Tindall Corp.*, 375 S.C. 36, 40-41, 650 S.E.2d 81, 83 (Ct. App. 2007); accord *Dennis v. South Carolina Nat'l Bank*, 299 S.C. 34, 39, 382 S.E.2d 237, 240 (Ct. App. 1988) (construing case language as *dicta* because it was "an expression or statement by the court on a matter not necessarily involved in the case nor necessary to a decision thereof").

The relevant language from *Greenville County* is not *dicta*, as the Court there expressly stated that its holding was that a parent may not recover intangible losses from harm to a child: "[b]ecause Mr. and Mrs. Mother's loss of consortium claim is *based entirely upon their allegation of a change in their relationship with their child* and not a claim for loss of services, *we hold* that the trial court did not err in dismissing Mr. and Mrs. Doe's claim for loss of filial consortium." See *id.*, 375 S.C. at 70, 651 S.E.2d at 308-09 (emphasis added). In other words, the analysis upon which The Citadel relies forms the very basis for the Court's decision in *Greenville County*. While Mother might disagree with the Supreme Court, the cited language from *Greenville County* not *dicta*, it is binding authority upon this Court. Unless and until the South Carolina Supreme Court overrules *Greenville County*, it is the law of the state.

b. Greenville County Is Consistent with the Common Law

Mother argues that *Greenville County* does not foreclose her claims, as she seeks to recover permissible "loss of service" that have been recoverable under ancient common law:

This case, by contrast, directly concerns the ancient common law cause of action known as loss of services, and thereby requires the court to address the historically inaccurate *dicta* in *Doe v. GCSD*, which states:

our common law only allowed a parent to maintain an action for the loss of a child's services and earning capacity. These common law claims did not include the intangible losses of aid, companionship, and society"

651 S.E.2d at 308. Based on this inaccurate *dicta*, the trial court dismissed the loss of services claim for Mother Doe A.

(See Pl.'s Init. Br., at 18).

Mother's argument boils down to the contention that her claim has been recognized under ancient South Carolina common law. Under the so-called Reception Statute, "[a]ll, and every part, of the common law of England, where it is not altered by the Code or inconsistent with the Constitution or laws of this State, is hereby continued in full force and effect in the same manner as before the adoption of this section." See S.C. Code § 14-1-50. "This [Reception S]tatute does not, however, preclude the Court from interpreting the Constitution and declaring the law of South Carolina." *Johnson v. Collins Entertainment Co.*, 333 S.C. 96, 112, 508 S.E.2d 575, 584 (1998). Even under the Reception Statute, "the English common law ordinarily is presumed to govern *if there is no South Carolina authority to the contrary*." See *State ex rel. McLeod v. Sloan Const. Co.*, 284 S.C. 491, 496, 328 S.E.2d 84, 87 (Ct. App. 1985) (emphasis added); *accord State v. Nall*, 304 S.C. 332, 340, 404 S.E.2d 202, 207 (Ct. App. 1991) (same). For the reasons that follow, the authority that Mother cites is not applicable and is consistent with the Supreme Court's decision in *Greenville County*.

Mother argues that under ancient common law, a parent's right to recover for loss of services has roots that "trace to at least 1653, when the claim was adapted as an overt fiction transposing the claim for injury to a servant to enable a parent to recover for their injuries when his or her child was injured." (See Pl.'s Init. Br., at 18). In support of this contention, Mother first cites *United States v. Standard Oil Co. of Cal.*, 332 U.S. 301, 311 (1947), wherein the United States Supreme Court noted a "parent's right to indemnity for loss of a child's services, *including his action for a daughter's seduction*." (Emphasis added). Mother also relies upon *Tullidge v. Wade*, 3 Wils. K.B. 18 (Kings Bench 1769), the court addressed a trespass claim against a suitor of the plaintiff father's daughter (who was also his employee) who promised marriage to her. Instead, he impregnated the

daughter. The court confirmed the granting of damages to the father upon evidence that the father "was wholly deprived" of the daughter's "service and assistance in his business, and paid some money on account of her lying-in." *See id.*, at 19. Notably, neither of these cases expressly permitted a parent to recover psychological damages for the sexual abuse of a child. To the contrary, these cases simply recognize — as the Supreme Court did in *Greenville County* — that certain relationships enable recovery for a loss of actual services.

Mother urges this Court to ignore the Supreme Court's decision in *Greenville County*, arguing that she asserts a common law "loss of services" claim stemming from the ancient rule permitting masters to recover damages for injuries to servants. She contends, despite *Greenville County's* clear statement of the law, that her damages are different from loss of consortium damages. In doing so, she disregards *Greenville County's* clear prohibition of damages for intangible injuries, such as insult to feelings and loss of the filial relationship, comfort and society. The South Carolina authority Mother cites arises in the context of the tort of abduction or seduction of a child, which has no bearing on the rule explained in *Greenville County*. In her brief, Mother cites two South Carolina cases that she claims support her position that she may recover, under the rubric of "loss of services," damages that are actually for "loss of consortium." Mother first cites *Webb v. Southern Railway*, 88 S.E. 297 (1916), for the proposition that for 100 years South Carolina has permitted parents to assert claims for their own tangible and intangible injuries from injury to a child. However, the parents in *Webb* did not state a claim for injury to their son, but for his *abduction* (emphasis added): "The action by Will Webb [son] was for damages on account of personal injuries. That of Ella Webb, as by her contended, *is for abduction of her minor son.*" Specifically, the plaintiff mother claimed that the defendants physically removed her son (whose labor and services belonged legally to her) to North Carolina to work on its railway. In other words, the *defendant physically removed a son from his mother*. Moreover, the *Webb* Court did not

analyze what damages were recoverable, much less create a broad rule that a parent could recover non-pecuniary intangible damages under the guise of "loss of services."

Mother also urges that the Supreme Court's decision in *Greenville County* is contrary to the 150-year-old case of *Villepigue v. Shular*, 1849 WL 2667 (Ct. App. 1849), which she cites for the proposition that she is entitled to recover "loss of services," meaning outraged feelings:

[W]e see that here a *per quod servitium amisit* has been laid, and that the allegation, even if it is unnecessary, having been made must be sustained by some proof. Proof that the daughter was under 21 years of age, in absence of evidence that the paternal control had in some legal way ceased, would raise a presumption that she was the servant of the father, sufficient to sustain the action by him. When the daughter is above 21, some slight evidence of actual service rendered by her must be given; but very slight evidence will suffice, for the loss of service is well understood to be little more than a legal fiction, which has been introduced to secure compensation for outraged feelings. The same right of action which ordinarily a father has, devolves upon any one standing *loco parentis*.

See *id.*, 1849 WL 2667, at *2. The plaintiff in *Villepigue* asserted a seduction cause of action *against the person who had debauched her child*.³

³ This ancient cause of action is premised upon outdated presumptions that our society has since rejected in favor of recognizing direct rights of the victim of seduction:

When a minor female child was seduced, old common law recognized a claim by the father both for medical expenses and for loss of his daughter's services resulting from the seduction. The seduction claim belonged to the father, not the child. The loss of services here became the fictional basis of the action which in reality was a reflection of judicial outrage coupled with the belief that the father had legal rights in his female children. Social change brought more independence to women and procedural reforms required suit to be brought by the real party in interest. After these changes and sometimes as a result of explicit statutes, courts began to permit the seduced woman to bring her own suit. The effect was to convert the relational injury claim into a kind of battery claim, or perhaps one for fraud, but either way to be pursued by the immediate victim. In a battery claim, the plaintiff's valid consent would bar the claim if she was past the age of statutory consent, and occasionally even if not, but not if the consent had been procured by fraud. So far as the relational injury claim remains distinct from the victim's personal claim, courts now recognize that its earlier formulation was discriminatory in allowing the claim only to women and in vesting the claim in the father. But in any event, the parental claim for anything more than obligatory medical expenses may be abolished along with the alienation and criminal conversation claims.

Mother's argument and reliance on this authority essentially mirrors the position taken by (now Chief) Justice Pleicones in his dissent in *Greenville County*. The majority of the *Greenville County* Court rejected this precise argument and refused to extend the law permitting recovery of consortium-type damages in seduction/abduction claims beyond the unique circumstances of those claims:

Additionally, Mr. and Mrs. Doe's claim that South Carolina's recognition of a cause of action for seduction is a valid basis for recognizing a claim for loss of filial consortium is misleading. A claim for seduction requires the plaintiff to establish that the defendant, by promising to marry or through some other device, enticed the plaintiff, an unmarried chaste woman, to consent to unlawful sexual intercourse. *See* 18 S.C. Jur. Seduction § 2 (1993). The right to sue upon an action for seduction belongs to the victim of the seduction. *See* 18 S.C. Jur. Seduction § 9. However, traditionally, a claim for seduction was a father's (or mother's in the absence of the father) right of action for the loss of his daughter's services. *See* 18 S.C. Jur. Seduction § 8. In either case, the defendant to the action must be the perpetrator of the seduction. *See* 18 S.C. Jur. Seduction § 2. Clearly, the School District is not the perpetrator of the seduction in this case. Accordingly, *this Court's recognition of a claim for seduction would not lend support to Mr. and Mrs. Doe's argument that this Court should recognize a claim for loss of filial consortium.*

See Doe v. Greenville County School District, 375 S.C. 63, 70, 651 S.E.2d 305, 308 (2007) (emphasis added). Thus, Mother's argument is in direct derogation of the Supreme Court's holding in *Greenville County*, and would require the Supreme Court to overrule that case.

Finally, Mother cites *Wright v. Colleton County School District*, 301 S.C. 282, 289, 391 S.E.2d 564, 569 (1990), for the proposition that she has suffered a cognizable injury under the South Carolina Tort Claims Act ("the Act"). However, as cited above, *Wright* recognizes only that — consistent with *Greenville County* — a parent has a claim for an injury to a child for *pecuniary loss of services and medical expenses*. *See id.* Nothing in *Wright* is contrary to the Court's determination in *Greenville County*. In fact, the *Greenville County* Court cited and relied upon *Wright*, noting that "[t]he cases which

See Dan B. Dobbs, Paul T. Hayden and Ellen M. Bublick, *The Law of Torts* § 603 (2d ed.).

the dissent utilizes to support its conclusion that filial consortium claims existed at common law directly address parental claims for loss of services, not loss of filial consortium." *See Greenville Cty.*, 375 S.C. at 69, 651 S.E.2d at 308. Discussing *Wright* and other cases, the Supreme Court in *Greenville County* stated: "As discussed above, our common law only allowed a parent to maintain an action for the loss of a child's services and earning capacity. These common law claims did not include the intangible losses of aid, companionship, and society which have traditionally defined loss of consortium claims." *See id.*, 375 S.C. at 69-70, 651 S.E.2d at 308. In other words, *Wright* is entirely consistent with the approach taken by the Supreme Court in *Greenville County* and the trial court in this action.

It is apparent that Mother is attempting to state a claim of loss of consortium by calling it a claim for "loss of services." Mother does not claim true lost services; she has presented no evidence that the abuse of her son caused her to suffer pecuniary loss from labor that her son would have provided. She presents no evidence that the abuse of her son prevented him from working in a family business or that she relied upon him for her support. Instead, Mother's claimed damages involve alleged harm to her relationship with her son, her loss of his companionship and impacts of the abuse on the familial relationship. The Supreme Court's *Greenville County* decision makes clear that such damages are not recoverable, because they represent loss of consortium damages prohibited under the law. Mother cannot convert "loss of services" into a substitute for loss of consortium by simply changing the label she gives to her alleged damages. That is in direct contravention of *Greenville County*.

In *Taylor v. Medenica*, 324 S.C. 200, 479 S.E.2d 35 (1996), the Supreme Court rejected a child's claim for loss or parental consortium. The Court's rationale applies equally to Mother's claim for filial consortium: "By enacting S.C. Code Ann. § 15-75-20 (1977), the legislature provided for loss of consortium actions for spouses. The statute has not been amended to provide a similar cause of action for children. Whether South

Carolina should recognize a cause of action for loss of parental consortium is a matter best left to the discretion of the General Assembly.” 479 S.E.2d at 47. The Court’s holding in *Greenville County* is entirely consistent with this principle. See *Kirkland v. Sam’s East, Inc.*, 411 F. Supp.2d 639 (D.S.C. 2005) (applying *Taylor* to a claim for loss of filial consortium).

The trial court’s rejection of Mother’s characterization of her damages as “loss of services” is consistent with the law from other jurisdictions. See *Forte v. Connerwood Healthcare, Inc.*, 745 N.E.2d 796, 801 (Ind. 2001) (“A claim for loss of services differs from loss of consortium because loss of services “d[oes] not expand to include intangible losses, . . . the parent [has] no claim for loss of the child’s society and companionship.”) (citation omitted); *Matter of Certification of Questions of Law from U.S. Court of Appeals for Eighth Circuit, Pursuant to Provisions of SDCL 15-24A-1*, 544 N.W.2d 183, 193 (N.D. 1996) (“[W]e do not recognize a parent’s emotional distress or loss of consortium claim for injuries to a minor child. We do, however, recognize a parent’s right to assert claims for loss of the child’s services and for medical and other consequential damages incurred in caring for the child.”); *Dralle v. Ruder*, 124 Ill. 2d 61, 71, 529 N.E.2d 209, 213-14 (1988) (“In light of the availability of a tort remedy to the injured child, the possible multiplication of claims, and the difficulty of determining damages, we decline to extend the reasoning of *Bullard* to encompass parental recovery for loss of a child’s companionship and society.”); *DeAngelis v. Lutheran Med. Ctr.*, 84 A.D.2d 17, 26, 445 N.Y.S.2d 188, 195 (1981), *aff’d sub nom. De Angelis v. Lutheran Med. Ctr.*, 58 N.Y.2d 1053, 449 N.E.2d 406 (1983) (“[T]he law will not compensate a parent for the loss of a child’s affection and companionship when a child is injured; recovery is limited to the parents’ loss of services and the medical expenses incurred by the parent. [Citation omitted.] Essentially, the parent’s recovery is limited to a tangible, pecuniary loss; it has not been extended to the intangible, so-called sentimental losses of affection, love and companionship.”); *Smith v. Richardson*, 277 Ala. 389, 394, 171 So. 2d

96, 100 (1965) ("[S]ervices means the labor and assistance of a child rendered for the father, and imply a loss measured by pecuniary standards of value. [Citation omitted.] The loss of the society of a child as distinguished from the loss of its services, cannot form the element of recoverable damages.").

For the foregoing reason, the trial court properly concluded that Mother had not presented evidence of recoverable damages in this case.

**B. The Lower Court's Ruling Is in Accord with Decades of Damages
 Jurisprudence**

Mother's attempts to recover damages for emotional and psychological harm constitute an end-run around the Supreme Court's unwavering refusal to recognize a general claim for negligently-caused emotional distress. The Supreme Court's ruling in *Greenville County* parallels decades of refusal to permit recovery of emotional distress damages beyond very tight constraints.

As discussed below, Mother's claim, of necessity, must be a claim for negligence inasmuch as it is brought pursuant to the South Carolina Tort Claims Act. In the past, South Carolina law did appear to allow recovery for negligently inflicted emotional distress. In *Padgett v. Colonial Wholesale Distrib. Co.*, 232 S.C. 593, 604, 103 S.E.2d 265, 270 (1958), a negligently operated truck struck the plaintiff's home, allegedly causing fright, exposure to the cold, weight loss, fever and a skin condition. The Court considered whether damages might be "recoverable for shock, fright and emotional upset when there is no physical impact." Ultimately, the Court concluded that the question of whether the shock caused physical injury was properly submitted to the jury:

We think that under the authorities above quoted, the trial Judge was correct in submitting to the jury the question of whether or not the respondent had sustained physical or bodily injury as a consequence of the shock, fright and emotional upset experienced by him. If the respondent's bodily injury was proximately caused by the shock, fright and emotional upset as a result of the negligence and willfulness of the appellant, he was entitled to recover such damages as would compensate him for the injury so sustained.

See id., 232 S.C. at 607-08, 103 S.E.2d at 272. In reaching that conclusion, the Supreme Court made a metaphysical connection between physical harm and some psychic harms:

"The interdependence of the mind and body is in many respects so close that it is impossible to distinguish their respective influence upon each other. It must be conceded that a nervous shock or paroxysm, or a disturbance of the nervous system, is distinct from mental anguish, and falls within the physiological, rather than the psychological, branch of the human organism."

See id., 232 S.C. at 605, 103 S.E.2d at 271 (citations omitted).

Subsequently, the South Carolina Supreme Court cited *Padgett* in stating that "[w]e have recognized the rule that there is no liability for emotional distress without a showing that the distress inflicted is extreme or severe." *See Rhodes v. Security Fin. Corp. of Landrum*, 268 S.C. 300, 302, 233 S.E.2d 105, 106 (1977). Concluding that the evidence did not support recovery, the Court observed that "[w]hile there is testimony that appellant was emotionally upset from the attempt to collect the forged note, there is no showing that the attempts by respondent's agents to collect were unreasonable or abusive, nor that appellant's emotional upset was other than transient and trivial." *See id.* With *Rhodes*, the Court first began to limit recovery for negligent infliction of emotional distress.

The Supreme Court next stated, two years later, in *Hudson v. Zenith Engraving Co.*, 273 S.C. 766, 770, 259 S.E.2d 812, 813 (1979), that "[i]n order to prevail in a tortious action in which the sole damages alleged are those of mental anguish, plaintiff must show that the conduct on the part of defendant was extreme and outrageous, causing distress that is of an extreme or severe nature." Two years thereafter, the Supreme Court quoted the language referenced from *Hudson* and *Rhodes*, and formally recognized the tort of outrage (or *intentional* interference with emotional distress). *See Ford v. Hutson*, 276 S.C. 157, 276 S.E.2d 776 (1981).

Importantly, the Supreme Court next in *Dooley v. Richland Hosp.*, 283 S.C. 372, 322 S.E.2d 669 (1984), rejected an invitation to recognize a general tort of negligent

infliction of emotional distress — beyond intentional and reckless conduct — because the plaintiffs had failed to make any showing of physical injury to support their claim. The Court stated that one criticism of permitting a tort for negligent infliction of emotional distress is "that it will allow for fraudulent claims" and that "[o]ne method of eliminating this danger has been to require some type of physical injury in addition to any claimed emotional injury." *See id.*, 283 S.C. at 375, 322 S.E.2d at 671. Later that year, the Court refused to permit the recovery of emotional distress damages in a legal malpractice claim, despite a litany of claimed "physical" manifestations of the distress (including crying spells, headaches, change of hair color, and an inability to sleep with her spouse for several years). *See Caddel v. Gates*, 284 S.C. 481, 327 S.E.2d 351 (1984).

In *Kinard v. Augusta Sash & Door Co.*, 286 S.C. 579, 336 S.E.2d 465 (1985), the Supreme Court finally recognized the tort of negligent infliction of emotional distress, but restricted the very limited circumstances of a bystander who observes an accident causing death or serious physical injury:

- (a) the negligence of the defendant must cause death or serious physical injury to another;
- (b) the plaintiff bystander must be in close proximity to the accident;
- (c) the plaintiff and the victim must be closely related;
- (d) the plaintiff must contemporaneously perceive the accident; and
- (e) the emotional distress must both manifest itself by physical symptoms capable of objective diagnosis and be established by expert testimony.

See id., 286 S.C. at 582, 336 S.E.2d at 465.

As the law of South Carolina stands, the modern rule of the Supreme Court has been to recognize emotional distress damages in three specific circumstances: (a) when it is the result of a negligently-caused physical injury; (b) outrage; and (c) negligent infliction in a "bystander" situation. In the nearly thirty years since *Kinard*, the Supreme Court has steadfastly refused to extend liability for emotional distress beyond those

limited circumstances:

- In *Hansson v. Scalise Bldrs. of S.C.*, 374 S.C. 352, 358-59, 650 S.E.2d 68, 72 (2007), the Court held in the context of an outrage claim: "Under the heightened standard of proof for emotional distress claims emphasized in *Ford*, a party cannot establish a prima facie claim for damages resulting from a defendant's tortious conduct with mere bald assertions. To permit a plaintiff to legitimately state a cause of action by simply alleging, 'I suffered emotional distress' would be irreconcilable with this Court's development of the law in this area. In the words of Justice Littlejohn, the court must look for something "more"-in the form of third party witness testimony and other corroborating evidence-in order to make a prima facie showing of 'severe' emotional distress."
- In *Babb v. Lee Cty. Landfill SC, LLC*, 405 S.C. 129, 141, 747 S.E.2d 468, 474 (2013), the Court refused to allow a claim for emotional distress damages flowing from trespass and nuisance in the form of odors from a landfill: "In short, allowing recovery for personal annoyance and discomfort under the guise of trespass and nuisance would be the stealth recognition of an entirely new tort."

A case almost directly on point with the present case is another sexual abuse case arising under the Tort Claims Act, *Doe v. Greenville County School District*, 375 S.C. 63, 651 S.E.2d 305 (2007). The Court refused to extend the negligent infliction of emotional distress damages to encompass parents' claims stemming from sexual activity between their daughter and a school teacher: "[b]ecause South Carolina courts have limited the recognition of negligent infliction of emotional distress claims in circumstances such as the one presented in this case to bystander liability, Mr. and Mrs. Doe have not stated a claim which is cognizable under South Carolina law."

Mother's claims do not fall within any cause of action for emotional distress that the Supreme Court has recognized. She does not claim that The Citadel caused any physical impact to her or that she observed ReVille abuse her son. Instead, Mother seeks the "stealth recognition of an entirely new tort" for negligent infliction of emotional distress in the absence of any physical impact or the death or serious injury of a bystander, based solely on the *knowledge* that ReVille abused her son. No contemporary

South Carolina authority recognizes such a claim.

For this additional reason, the trial court properly granted summary judgment in this case.

III. The Trial Judge Properly Granted Summary Judgment as to Outrage

For the reasons that follow, the trial court correctly granted summary judgment as to Mother's outrage claims.

A. The Act Prohibits Mother's Outrage Claim

1. The Plain Language of the Act Prohibits Outrage Claims

Mother's claims exist only to the extent the Act permits them. The Act's provisions "establishing limitation[s] on an exemption to the liability of the state . . . *must be liberally construed in favor of limiting the liability of the state.*" S.C. Code Ann. § 15-78-20(f) (emphasis added). A "loss" under the Act includes "bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but *does not include the intentional infliction of emotional harm.*" See S.C. Code § 15-78-30(f) (emphasis added). A governmental entity is immune to liability for a loss resulting from "employee conduct outside the scope of his official duties or which constitutes actual fraud, *actual malice, intent to harm,* or a crime involving moral turpitude." See S.C. Code § 15-78-60(17) (emphasis added). The trial court properly held that these provisions bar Mother's outrage claim.

The trial court's grant of summary judgment was consistent with numerous courts that have concluded that the Act bars outrage/intentional infliction of emotional distress claims. See *Poloschan v. Simon*, 2014 WL 1713562, at *13 (D.S.C. Apr. 29, 2014) ("Defendant correctly notes that claims for outrage or intentional infliction of emotional distress against a governmental entity (including an individual government employee in

their official capacity) are barred by the South Carolina Tort Claims Act."); *Ray v. Simon*, 2014 WL 1400812, at *14 (D.S.C. Apr. 10, 2014) (same); *Newman v. South Carolina Dep't of Employment and Workforce*, 2010 WL 4791932, at *2 (D.S.C. Sept. 22, 2010) ("[A]mendment of the Complaint would not save this [outrage] cause of action, since the Department, as a state agency, has sovereign immunity with regard to this tort claim."), *report and rec. adopted*, 2010 WL 4666360 (D.S.C. Nov. 18, 2010); *Ward v. City of N. Myrtle Beach*, 457 F. Supp. 2d 625, 646-47 (D.S.C. 2006) ("[T]he South Carolina Tort Claims Act excludes the intentional infliction of emotional harm from the definition of 'loss' for which a government may be liable under the Tort Claims Act."); *Harkness v. City of Anderson*, 2005 WL 2777574, at 4 (D.S.C. Oct. 25, 2005) ("Defendants argue they are immune from suit pursuant to the South Carolina Tort Claims Act . . . on the claim of outrage, otherwise known as intentional infliction of emotional distress. [Citation omitted.] The court agrees. The Act does not waive sovereign immunity for this claim."); *Trask v. Beaufort Cty.*, 392 S.C. 560, 573, 709 S.E.2d 536, 543 (Ct. App. 2011) ("Under the Tort Claims Act, a coroner is immune from suit for 'the intentional infliction of emotional harm.'"); *accord Lindquist v. Tanner*, 2012 WL 3839237, at *4 (D.S.C. April 12, 2012) ("Plaintiff concedes that her claim for 'intentional' infliction of emotional distress against the County Recreation Commission is barred by the South Carolina Tort Claims Act."), *report and rec. adopted in part*, 2012 WL 3839235 (D.S.C. Sept. 4, 2012); *Pruitt v. County of Charleston*, 2000 WL 35535239 (June 23, 2000 Comm. Pl. Charleston Cty.) ("Accordingly, based on the clear provisions of the Tort Claims Act, Doe's outrage claim is not actionable against this Defendant."). Likewise, in this case, the Act bars Mother's outrage claim.

Bearing in mind that the Act must be construed to minimize the state's liability, this Court should construe the Act's prohibition of claims for "the intentional infliction of emotional harm" to include all claims for outrage. *See* S.C. Code § 15-78-30(f). The Act's use of the phrase "intentional infliction of emotional harm" — rather than "intentional

infliction of emotional *distress*" — does not suggest that the legislature intended to impose outrage liability where the defendant's acts are "reckless" rather than intentional.

This conclusion is consistent with case law recognizing that outrage is an intentional tort. *See State Farm Fire & Cas. Co. v. Barrett*, 340 S.C. 1, 10, 530 S.E.2d 132, 137 (Ct. App. 2000) ("In her amended complaint, Barrett asserted causes of action against Kratzer for (1) outrage/intentional infliction of emotional distress, (2) false imprisonment, (3) assault, (4) battery, and (5) invasion of privacy. All five alleged causes of action are generally considered intentional torts and therefore the complaint does not allege an accidental occurrence."); *Snakenberg v. Hartford Cas. Ins. Co.*, 299 S.C. 164, 168, 383 S.E.2d 2, 4 (Ct. App. 1989) ("As the gist of outrage is the intentional infliction of emotional distress, he admits it falls within the intentional acts exclusion of the policy.").

Mother argues that the trial court erred in concluding that the Act bars her outrage claim, because she can succeed on an outrage claim if she can prove that The Citadel acted "recklessly" (rather than with intent to harm). (*See* Pl.'s Init. Br., at 21). Mother relies heavily on the Supreme Court's recent opinion in *Bass v. South Carolina Dep't of Social Services*, 414 S.C. 558, 780 S.E.2d 252 (2015). The Citadel does not dispute that *Bass* recites the first element of outrage as requiring that: "the defendant intentionally *or recklessly* inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct." *See id.*, 414 S.C. at 575, 780 S.E.2d at 260-61 (emphasis added). However, the *Bass* Court did not address the issue raised here: whether the Act prohibits an outrage claim, irrespective of its elements. In fact, Mother cites *no* authority expressly deciding that an outrage claim may proceed under the Act because it can be proven with evidence of reckless (as opposed to intentional) conduct. On the other hand, The Citadel has cited a number of cases prohibiting outrage claims under the Act.

Mother's argument violates basic canons of statutory construction, which require that a statute be construed to avoid making any provision superfluous:

The Court should give words “their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.” *Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006). “A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” *Browning v. Hartvigsen*, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992). In interpreting a statute, the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992). “Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law.” *Bennett v. Sullivan's Island Bd. of Adjustment*, 313 S.C. 455, 458, 438 S.E.2d 273, 274 (Ct. App. 1993).

Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention. *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000). **“A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.”** *In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (citation omitted).

See State v. Sweat, 386 S.C. 339, 350-51, 688 S.E.2d 569, 575 (2010) (emphasis added).

The Act grants a governmental entity immunity for any loss resulting from “actual malice, intent to harm, or a crime involving moral turpitude.” See S.C. Code § 15-78-60(17). This provision would preclude liability for any *intentionally caused harm*, whether emotional, physical or otherwise. In addition to that provision, Section 15-78-30(f) excludes “intentional infliction of emotional harm” from the definition of a potentially recoverable loss. Mother's construction would render Section 15-78-30(f) superfluous, as the state is already immune for any intentionally caused injury (including emotional ones). In other words, if the Court adopts Mother's construction, Section 15-78-30(f)'s exclusion of “intentional infliction of emotional harm” would be meaningless and unnecessary.

To read Sections 15-78-60(17) and 15-78-30(f) in harmony, “intentional infliction of emotional harm” *must* mean something more than Mother contends. It must mean, as the trial court properly concluded (and numerous other courts have agreed), that the Act precludes liability for all outrage claims (irrespective of the level of culpability ultimately proven). Thus, irrespective of whether Mother alleges intentional or reckless conduct by The

Citadel, the Act precludes liability.

Mother's argument relies upon the Act's wording excluding "the intentional infliction of emotional *harm*" from the definition of a "loss." See S.C. Code § 15-78-30(f) (emphasis added). From the legislature's use of the word "harm" (rather than "distress"), she concludes that it meant something other than the tort of outrage/intentional infliction of emotional distress. However, she cites to no authority suggesting that the legislature actually intended that. The General Assembly is well aware that intentional infliction of emotional distress and the tort of outrage are one and the same in South Carolina jurisprudence. It makes no sense that the General Assembly would differentiate between emotional distress and emotional harm without explaining the intended difference between essentially identical terms. Rather, as set forth above, the only reasonable construction of the Act — bearing in mind that this Court must construe the Act to limit the state's liability — is that it prohibits all outrage claims.

Mother's reading of the Act would create tremendous uncertainty in emotional distress claims. Under her construction, the state *could* be liable if it acted in a reckless, but not intentional, manner. This would require that a case be fully litigated and that a jury make a specific determination that the defendant acted recklessly, but not intentionally. This would require the state to defend a case to verdict in circumstances where the Act likely intended that it not be exposed to liability in the first instance. It is unreasonable to suggest that the legislature intended such an absurd result.

For these reasons, the trial court properly granted summary judgment as to Mother's outrage claim.

B. Mother's Outrage Claim Fails Because There Is No Evidence That The Citadel Directed Any Conduct Toward Her

In addition to the foregoing, Mother's outrage claim cannot succeed unless she proves that The Citadel knowingly *directed* conduct particularly at her:

The law limits claims of intentional infliction of emotional distress to egregious conduct toward a plaintiff proximately caused by a defendant. [Citation omitted.] It is not enough that the conduct is intentional and outrageous. It must be conduct *directed at the plaintiff, or occur in the presence of a plaintiff of whom the defendant is aware.*

See Upchurch v. New York Times, Inc., 314 S.C. 531, 536-37, 431 S.E.2d 558, 561-62 (1993) (emphasis added); *Roberts v. Simmons*, 2014 WL 7005250, at *6 (D.S.C. Dec. 11, 2014) ("[I]t is not clear that Defendant's alleged conduct was directed at the Plaintiff."); *Fulghum v. Wise Seats, Inc.*, 2012 WL 1032594, at *4 (D.S.C. Mar. 27, 2012) ("[T]he conduct upon which Plaintiff bases his claim . . . is not tortious conduct that was specifically directed towards Plaintiff.").

This Court has held that parents of a minor abuse victim could not sue for outrage in the absence of evidence that the defendant directed actions *at them*. *See Doe v. Rojas*, 2007 WL 8327520, at *4 (Ct. App. April 26, 2007) ("[T]he record contains no evidence that the School District, in failing to take any preemptive action to prevent the abuse, targeted or directed any of its conduct towards the Does."). Mother presents no evidence that The Citadel knowingly directed conduct toward her. There is no evidence that The Citadel knew Mother, knew that ReVille abused Mother's son or had any contact with Mother. There is no evidence that Mother (or her son) had any relationship whatsoever with The Citadel. There is no evidence that The Citadel directed (or even could have directed) any conduct toward Mother, whose son ReVille abused *after* his employment at the summer camp. At most, Mother argues that The Citadel should have known — or, more accurately, speculated — that ReVille might abuse some unknowable person at some uncertain time in the future and that such abuse might harm the parent of such a person. Mother does not argue that The Citadel had any way of knowing that she was specifically at risk of injury or that ReVille was, in fact, abusing her son. Therefore, for this additional reason, this Court should affirm the entry of summary judgment as to Mother's outrage claim.

C. This Claim Fails Because There Is No Evidence of Outrageous Conduct

Mother's claims also fail because she has not proffered a scintilla of evidence that The Citadel engaged in the sort of egregious conduct required for such a claim. Mother must prove, *inter alia*, that The Citadel's "conduct was so 'extreme and outrageous' so as to exceed 'all possible bounds of decency' and must be regarded as 'atrocious, and utterly intolerable in a civilized community.'" *See Bass*, 414 S.C. at 575, 780 S.E.2d at 260-61 (*quoting Argoe v. Three Rivers Behavioral Health, LLC*, 392 S.C. 462, 475, 710 S.E.2d 67, 74 (2011)). "Facts which may show extreme insensitivity on the part of the defendant do not necessarily establish the tort of outrage." *Hawkins v. Greene*, 311 S.C. 88, 91, 427 S.E.2d 692, 694 (Ct. App. 1993).

South Carolina appellate courts rarely find conduct sufficient to support an outrage claim, even where defendants acted egregiously. *See e.g., Shipman v. Glenn*, 314 S.C. 327, 443 S.E.2d 921 (Ct. App. 1994) (supervisor threatened and ridiculed employee with cerebral palsy); *Shupe v. Settle*, 315 S.C. 510, 445 S.E.2d 651 (Ct. App. 1994) (homeowner's association president refused access to records); *Strickland v. Madden*, 323 S.C. 63, 448 S.E.2d 581 (Ct. App. 1994) (doctor mistakenly told patient's daughter that father had died); *Holtzscheiter v. Thomson Newspapers*, 306 S.C. 297, 411 S.E.2d 664 (1991) (newspaper published unflattering statements about plaintiff's murdered daughter); *Manley v. Manley*, 291 S.C. 325, 353 S.E.2d 312 (Ct. App. 1987) (plaintiff was involuntarily committed to state hospital); *Folkens v. Hunt*, 290 S.C. 194, 348 S.E.2d 839 (Ct. App. 1986) (verbally abusive accusations that plaintiff owed taxes and filed fraudulent returns); *Save Charleston Found'n v. Murray*, 286 S.C. 170, 333 S.E.2d 60 (Ct. App. 1985) (converting promissory note and maliciously bringing action).

A rare deviation from this trend was *McSwain v. Shei*, 304 S.C. 25, 402 S.E.2d 890 (1991), where an employer forced an employee to perform exercises that aggravated a known health condition and caused plaintiff to lose bladder control in front of others.

The Court found that the jury could find this conduct "outrageous and intolerable in a civilized society." *Id.* at 29, 402 S.E.2d at 892; *accord Ford v. Hutson*, 276 S.C. 157, 276 S.E.2d 776 (1981) (finding conduct sufficiently severe where home buyer subjected realtor to repeated public browbeatings, obscenities, and threats over two years and entered home without permission).

Bearing in mind that the Court must focus on *The Citadel's* conduct (not ReVille's), Mother presents no evidence that The Citadel acted in an "extreme and outrageous" manner. There is no evidence that The Citadel acted to intentionally harm Mother. Mother can point to no evidence that The Citadel intended for ReVille to abuse Mother (or anyone else) or cause emotional distress. There is no evidence that The Citadel took any act with conscious knowledge that Mother would suffer extreme emotional distress. There is no evidence, or even a claim, that The Citadel promoted ReVille's abuse or wished him to abuse any victims. There is no evidence that anyone at The Citadel acted in such a despicable manner, and such a claim would defy reason. Despite Mother's semantic efforts, her claim boils down to the allegation that The Citadel botched its investigation of Camper Doe's complaint and thus failed to prevent ReVille from abusing her son. This is not the sort of conduct actionable under the tort of outrage.

Therefore, this Court should affirm the trial court's entry of summary judgment on Mother's outrage claim.

D. Mother's Outrage Claim Fails Because She Could Have Pursued an Alternative Claim

Mother's outrage claim also fails because she had other potential causes of action that she could pursue. Mother may only assert an outrage claim when *no other* claim is available: "The tort of outrage was designed *not as a replacement* for the existing tort actions. Rather, it was conceived as a remedy for tortious conduct *where no remedy previously existed.*" *See Todd v. South Carolina Farm Bureau Mut. Ins. Co.*, 283 S.C. 155, 175, 321 S.E.2d 602, 613 (Ct. App. 1984), *quashed on other grounds*, 287 S.C. 190,

336 S.E.2d 472 (1985) (emphasis added); *Levine v. Walterboro City Police Dep't*, 2006 WL 2228993, at *2 (D.S.C. Aug. 3, 2006) ("Intentional infliction of emotional distress is a claim of last resort. . . . Since that alternative remedy was available, *Todd* suggests that a claim for intentional infliction of emotional distress cannot lie."). Mother has already asserted negligence/gross negligence claims against The Citadel. Her recovery, if any, should be limited to what the law allows on those claims. Mother should not be allowed to supplement those claims with the tort of outrage. Therefore, this Court should affirm the trial court's entry of summary judgment on Mother's outrage claim.

IV. The Trial Judge Properly Granted Summary Judgment as to Conspiracy

A. The Act Prohibits Mother's Conspiracy Claim

As discussed above, the Act prohibits claims arising out of "employee conduct outside the scope of his official duties or which constitutes actual fraud, *actual malice*, [or] *intent to harm*." See S.C. Code § 15-78-60(17) (emphasis added). Mother's conspiracy claim, by its very nature, requires that she prove an intention to harm Mother. See *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct. App. 1989) ("Civil conspiracy consists of three elements: (1) a combination of two or more persons, (2) *for the purpose of injuring the plaintiff*, (3) which causes him special damage.") (emphasis added). As a result, Mother's conspiracy claim is plainly barred by the Act.

As a result, Mother's conspiracy claim fails because it is barred by the Act.

B. Mother's Conspiracy Claims Fails Because She Presents No Evidence of Special Damages

To succeed on civil conspiracy, Mother must prove special damages, damages *different* from those she seeks in her other claims:

[C]ivil conspiracy requires that the plaintiff claim special damages. In this case, the Gordons' amended complaint fails to allege any special damages incurred as a result of any conspiracy. They allege the same damages as they do under the other causes of action. This is insufficient to establish special damages. See *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 117, 682 S.E.2d 871, 875 (Ct. App. 2009) ("If a plaintiff merely

repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed.”). Accordingly, we conclude the circuit did not err in granting a directed verdict.

See Gordon v. Busbee, 397 S.C. 119, 136, 723 S.E.2d 822, 831-32 (Ct. App. 2011). Mother has not presented any evidence of special damages in support of her conspiracy cause of action. Instead, Mother seeks to recover the *same* damages as her other causes of action. For this reason, the trial court properly granted summary judgment to The Citadel as to the civil conspiracy claim.

V. The Trial Judge Properly Granted Summary Judgment on Mother's Negligence-Based Claims (Including Counts 1, 2, 3 and 5) Because The Citadel Did Not Owe Even Mother's Son – Let Alone Mother -- a Duty of Care

Mother must prove, *inter alia*, that The Citadel owed her a duty of care (and breached such duty). *See Carolina Chloride, Inc. v. Richland Cty.*, 394 S.C. 154, 163, 714 S.E.2d 869, 873 (2011). "If the plaintiff fails to prove [The Citadel] owed her a legal duty of care, she fails to prove actionable negligence." *See Nelson v. Piggly Wiggly Central, Inc.*, 390 S.C. 382, 391, 701 S.E.2d 776, 781 (Ct. App. 2010) (affirming summary judgment). "[T]he existence of a legal duty is a question of law for the court." *Johnson v. Robert E. Lee Academy, Inc.*, 401 S.C. 500, 506-07, 737 S.E.2d 512, 515 (Ct. App. 2012) (affirming summary judgment). The Supreme Court "will not extend the concept of a legal duty of care in tort liability beyond reasonable limits." *See Colleton Preparatory Academy, Inc. v. Hoover Universal, Inc.*, 379 S.C. 181, 190, 666 S.E.2d 247, 252 (2008) (citations omitted).

"Generally, there is no common law duty to act. An affirmative legal duty, however, may be created by statute, contract relationship, status, property interest, or some other special circumstance." *See Chakrabarti v. City of Orangeburg*, 403 S.C. 308, 314-15, 743 S.E.2d 109, 122 (Ct. App. 2013); *accord Arthurs v. Aiken Cty.*, 338 S.C. 253, 264, 525 S.E.2d 542, 547 (Ct. App. 1999) (citations omitted), *aff'd*, 346 S.C. 97, 551 S.E.2d 579 (2001). "[F]oreseeability of injury, standing alone, does not give rise to a

duty." *See Oblachinski v. Reynolds*, 391 S.C. 557, 562, 706 S.E.2d 844, 846 (2011).

South Carolina courts typically refuse to impose a duty of care to prevent harmful actions by third-persons:

Under South Carolina law, there is no general duty to control the conduct of another or to warn a third person or potential victim of danger. [Citations omitted.] We recognize five exceptions to this rule: 1) where the defendant has a special relationship to the victim; 2) where the defendant has a special relationship to the injurer; 3) where the defendant voluntarily undertakes a duty; 4) where the defendant negligently or intentionally creates the risk; and 5) where a statute imposes a duty on the defendant.

See Faile v. South Carolina Dep't of Juvenile Justice, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002) (finding duty where defendant had *custody* of actor).

South Carolina has never recognized a duty of care to prevent the criminal acts of a third party where, as here, the potential victim was not *specifically identified or a member of a well-defined group in a fixed location and time*:

"A tortfeasor's duty arises from his relationship to the injured party." *South Carolina State Ports Authority v. Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 376, 346 S.E.2d 324, 325–26 (1986). It is essential to liability for negligence to attach that the parties shall have sustained a relationship recognized by law as the foundation of a duty of care. 57A Am. Jur. 2d Negligence § 89 (1989). Where this relationship is "too attenuated," a duty will not arise.

See Ravan v. Greenville Cnty., 315 S.C. 447, 467, 434 S.E.2d 296, 308 (Ct. App. 1993). The Citadel had no relationship with Mother (or her son).

No South Carolina appellate court has imposed a duty to prevent acts of a third person without evidence of knowledge of a threat to *specific* persons:

- In its most recent case, this Court held that the spouse of a sexual abuser — despite knowing her husband's predilection — did not owe a duty to a minor that her husband abused *in her home*. The Court rejected the "special relationship" theory because "the record contains no evidence Respondent had knowledge of a specific threat of harm to a specific individual." *See Doe v. Bibby*, 410 S.C. 287, 763 S.E.2d 645 (Ct. App. 2014), *cert. granted* (Jan. 16, 2015).
- In *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007), the plaintiff alleged sexual

abuse by pediatrician Marion, who the defendant treated for a "predilection for child molestation." The Supreme Court rejected a duty of care, holding in part that:

Petitioner argues Dr. Graf had a duty to warn James Doe because he was a member of a readily identifiable group of future patients of Dr. Marion. In *Gilmer v. Martin*, 323 S.C. 154, 157, 473 S.E.2d 812, 814 (Ct. App. 1996), the Court of Appeals rejected a similar argument, holding "it is not simply foreseeability of the victim which gives rise to a person's liability for failure to warn; rather, it is the person's awareness of a distinct, specific, overt threat of harm which the individual makes towards a particular victim."

- In *Hardee v. Bio-Medical Applications of S.C., Inc.*, 370 S.C. 511, 636 S.E.2d 629 (2006), the Supreme Court held that a dialysis center might owe a duty to third-persons to warn patients of risks of driving home from treatment. The Court recognized a "very narrow" duty to third parties that was co-extensive to the medical provider's duty to a patient, "to warn of the dangers associated with medical treatment" when it knows a treatment "may have detrimental effects on a patient's capacities and abilities." See *id.*, 370 S.C. at 516, 636 S.E.2d at 631-32. Notably, the risk was immediate and of fixed duration and scope.
- In *Bishop v. South Carolina Dep't of Public Health*, 331 S.C. 79, 502 S.E.2d 78 (1998), the Supreme Court held that a duty to warn flowed from an institution discharging a mother who later harmed her child, where the mother had threatened to harm *that child*: "[T]he Department was aware mother had made specific threats to harm victim in the past. . . . This knowledge was sufficient to trigger the Department's duty to warn victim of mother's release because a specific threat had been made by mother to harm a specific person." See *id.*, 331 S.C. at 88, 502 S.E.2d at 82.
- In *Rogers v. South Carolina Dep't of Parole and Community Corrections*, 320 S.C. 253, 464 S.E.2d 330 (1995), the Court held that the defendants did not owe a duty to warn that they were releasing a prisoner on furlough, even though he was jailed for burglarizing *plaintiff's home*, because "there was no evidence presented that Vandroff ever made a specific threat to harm Doris." See *id.*, 320 S.C. at 256, 464 S.E.2d at 332.
- In *Gilmer v. Martin*, 323 S.C. 154, 473 S.E.2d 812 (Ct. App. 1996), this Court held that a psychiatrist did not owe a duty though he knew that a patient with suicidal tendencies worked with vulnerable patients: "Gilmer concedes Martin 'did not know of a specific threat against Mallie S. Gilmer individually,' but claims there should be a duty to warn all 'foreseeable' victims, such as in this case, where an identifiable threat exists to a specific, small group of individuals. Gilmer in essence requests this Court to adopt a rule of liability for the same generalized threat of harm already rejected by our Supreme Court. This we cannot do."
- In *Rogers v. South Carolina Dep't of Mental Health*, 297 S.C. 363, 377 S.E.2d

125 (Ct. App. 1989), the court did not impose a duty on a doctor to warn family members of a risk of violence because "there is no evidence that Corley made specific threats against Harrison or any other family member while she was being treated by the two doctors." *See id.*, 297 S.C. at 366, 377 S.E.2d at 126.

- In *Sharpe v. South Carolina Dep't of Mental Health*, 292 S.C. 11, 354 S.E.2d 778 (Ct. App. 1987), the court refused to impose a duty on a therapist to warn of a patient's violent propensity where there was no specific threat to a specific person. *See id.*, 292 S.C. at 14-15, 354 S.E.2d at 780 ("There was no identifiable threat to Bobby Sharpe on these facts. . . . Nothing in the record indicates Sevits and Sharpe knew each other prior to Sevits's discharge.").

South Carolina has never imposed a duty to the general public or a subgroup.

Recognition of a duty here would open a Pandora's Box of potential liability that would far exceed any reasonable bound. The South Carolina Supreme Court has never even suggested that this is the law. This would be far too general a threat for the law to impose a duty. There are more than seventy-two thousand children in Charleston County and more than a million in South Carolina. *See* U.S. Census Bureau - Census 2010 (Resident Population under Eighteen Years), censtats.census.gov. No South Carolina authority imposes on The Citadel a duty to every minor in Charleston County or South Carolina to prevent ReVille from abusing them into perpetuity. Under Mother's anticipated argument, one who fails to apprehend a rapist would breach a duty to all women. One who fails to apprehend a bank robber would breach a duty flowing to all banks. An identifiable (but large) "class" of potential victims is not a substitute for a specifically-identified victim, to whom our courts have heretofore limited the duty of care.

A. The Citadel Did Not Voluntarily Undertake a Duty of Care

South Carolina recognizes voluntary assumption of a duty of care in the limited circumstances permitted by Section 323 of the Restatement:

The recognition of a voluntarily assumed duty in South Carolina jurisprudence is rooted in the Restatement of Torts, which states:

One who undertakes, gratuitously or for consideration, to render services *to another* which he should recognize as necessary for the protection *of the other's person* or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his

undertaking, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking.

See *Johnson v. Robert E. Lee Academy, Inc.*, 401 S.C. 500, 504-05, 737 S.E.2d 512, 514 (Ct. App. 2012) (refusing to extend duty beyond Restatement (Second) of Torts § 323); accord *Miller v. City of Camden*, 329 S.C. 310, 315, 494 S.E.2d 813, 815 (1997) (declining to recognize duty under broader Section 324A⁴); accord *Johnson*, 401 S.C. at 505 n.5, 737 S.E.2d at 514 n.5 (Section 324A "has not been adopted"). Under that section, the defendant must undertake the duty specifically to *plaintiff*, who must rely on the undertaking:

Section 323(a) contemplates a party relying on the rendering of services to another for the other's protection. Even assuming Quigley acted voluntarily, he assisted the Bishopville Police Department in its investigation. He did not render a service to Johnson; he assisted authorities. Additionally, his conduct was not undertaken for Johnson's protection and any negligence in his performance did not result in her physical harm.

See *Johnson*, 401 S.C. at 506, 737 S.E.2d at 514. No South Carolina law recognizes an undertaking of a duty to the general public, as opposed to a specific person.

In *Underwood v. Coponen*, 367 S.C. 214, 625 S.E.2d 236 (Ct. App. 2006),⁵ this Court rejected a duty where plaintiff did not know of the undertaking:

⁴ The Restatement (Second) of Torts § 324A states:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if (a) his failure to exercise reasonable care increases the risk of such harm, or (b) he has undertaken to perform a duty owed by the other to the third person, or (c) the harm is suffered because of reliance of the other or the third person upon the undertaking.

⁵ Plaintiff tries to evade *Underwood* by arguing that "the determinative factor in finding that the defendant did not voluntarily undertake a duty to the plaintiff was the health of the tree, not that a duty could not exist as to that plaintiff." (See Pls' Init. Br., at pp.21-22). That is simply not true. While the Court considered the general common law duty to maintain trees, it *also* analyzed the separate question of voluntary undertaking of a duty and concluded that the defendant had not undertaken a duty. That analysis had nothing to do with the health of the tree.

While Taylor did trim the tree occasionally for the purpose of clearing the stop sign and his failure to trim the tree might have increased the risk that the sign would be obstructed, *neither Underwood nor Coponen knew that Taylor trimmed the tree, and thus they did not rely on his doing so*. Therefore, Taylor's occasional trimming of his tree did not create a duty for which he can be held liable.

See id., 367 S.C. at 218-19, 625 S.E.2d at 239.

On another occasion, this Court recognized that undertaking of a duty requires either that the plaintiff rely on the undertaking or that the Defendant increase the danger:

[S]ection 323(a) mandates that Staples prove either that Duell's policy of searching for dead trees increased her risk of harm or that she detrimentally relied on Duell's policy. First, Staples presents no evidence that Woddle's act of simply patrolling the area looking for dead trees increased her risk of harm. Duell's policy of inspecting for dead trees did not hasten the decay of trees or affect when and where dead trees might fall. Second, Staples made no allegation that she knew of the policy of searching for dead trees before the accident. Without previous knowledge of the policy, Staples could not have relied on the policy.

See Staples v. Duell, 329 S.C. 503, 510, 494 S.E.2d 639, 643 (Ct. App. 1997).

Mother cannot show a voluntary undertaking because there is no evidence that The Citadel acted to protect Mother, a complete stranger (and the *parent* of the abused victim). *See Thorson v. Mandell*, 402 Mass. 744, 525 N.E.2d 375, 378 (1988) (“The creation of a policy against gymnastics in the auditorium was not an undertaking to render services for the protection of its users.”); *Charleston v. Larson*, 297 Ill. App. 3d 540, 231 Ill. Dec. 497, 696 N.E.2d 793, 801 (1998) (“[P]laintiff's voluntary undertaking theory . . . fails at the outset because plaintiff never alleged that defendant undertook services for *plaintiff*. . . .”) (emphasis in original). Mother presents no evidence that The Citadel undertook a duty specifically to *her* under Section 323. The Citadel did not know Mother, her son or their specific circumstances.

Therefore, this Court should affirm the trial court's entry of summary judgment in favor of The Citadel.

B. Mother Has Not Presented Evidence That The Citadel Created the Danger So As to Impose a Duty of Care

Mother has presented no evidence that The Citadel "created" any danger to her. Mother presents no evidence that The Citadel was actively involved in ReVille's abuse of her son. She has no evidence that The Citadel did anything to cause ReVille to become an abuser. She has no evidence that ReVille abused her son at the camp. She has no evidence that The Citadel placed her or her son in ReVille's custody or presence. She has no evidence that The Citadel provided a location for ReVille to abuse her son. She has no evidence that The Citadel acted to encourage ReVille to abuse her son. Mother has no evidence that The Citadel even did anything to make it *more likely* that ReVille would abuse her son than it would have been had The Citadel not acted.

Mother cites no authority imposing a duty for creation of a risk under similar circumstances, where the defendant did not specifically create the risk in the first instance by causing the actor to commit acts of violence. In a rare case in this state imposing a duty for "creation" of a risk, the Supreme Court imposed a duty where a defendant was *actively involved* in staging and creating the scenario in which violence occurred:

Respondents were well aware of Baker's unrelenting *violent tendencies toward Edwards*. Edwards had called the sheriff's office to report Baker's harassment on numerous occasions, and the sheriff's office arranged for Edwards to stay in a hotel after one of the incidents. The sheriff's office and the County, through its agent Howland, *arranged the bond revocation hearing at the magistrate's office with no security present*. Despite Respondents' awareness that Edwards feared Baker and was reluctant to attend the bond revocation, Respondents strongly *encouraged Edwards' presence*.

See Edwards v. Lexington Cty. Sheriff's Dep't, 386 S.C. 285, 293-94, 688 S.E.2d 125, 130 (2010) (emphasis added). Unlike *Edwards*, The Citadel did not *create* the scenario in which ReVille could abuse Mother's son and then fail to take reasonable security steps. Rather, this is a garden-variety failure-to-protect claim.

Application of the "creation of risk" exception here would cause the exception to

swallow the rule, imposing potential liability in all "failure to-protect: cases, since anyone who fails to prevent an injury could be said to have enhanced a foreseeable danger. The Citadel did not create ReVille's desire to abuse children or actively assist ReVille to abuse children. It did not control ReVille or have custody of Mother or her son. Under such circumstances, The Citadel cannot be said to have created the danger to Mother or her son. *See Doe ex rel. Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 247-48, 711 S.E.2d 908, 912 (2011) ("Wal-Mart did not negligently or intentionally create the risk of the father's sexual abuse.").

In *Staples v. Duell*, 329 S.C. 503, 494 S.E.2d 639 (Ct. App. 1997), this Court observed the difference between negligently patrolling for dead tree limbs and *creating* dead tree limbs: "First, Staples presents no evidence that Woddle's act of simply patrolling the area looking for dead trees increased her risk of harm. Duell's policy of inspecting for dead *trees did not hasten the decay of trees or affect when and where dead trees might fall.*" *See* 329 S.C. at 510, 494 S.E.2d at 643 (emphasis added). Similarly, in this case, there is no evidence that The Citadel did anything that caused ReVille to abuse when he otherwise would not. There is no evidence that The Citadel's conduct caused ReVille to select Mother or her son as a victim or to abuse in that particular time frame. In the language of *Staples*, Mother's claim consistently reduces itself to a claim that The Citadel negligently patrolled for dead trees.

In the trial court, Mother relied on *Greenville Memorial Auditorium v. Martin*, 301 S.C. 242, 391 S.E.2d 546 (1990), where a bottle thrown from a balcony of the defendant auditorium struck a rock concert attendee. The auditorium only had 14 guards to control a crowd of 6,000 and had no reserved seating on the main floor. Multiple witnesses testified that patrons were openly drinking from liquor bottles and that there were liquor bottles and glass on the floor during the concert. In addition, the crowd was unruly. The court rejected the auditorium's argument that it was immune from liability under S.C. Code § 15-78-60(20), which provides, *inter alia*, that a governmental entity is not liable

for criminal acts of third persons:

Appellant cannot successfully defend that respondent's injuries were caused by the wrongful criminal act of a third party, where the very basis upon which appellant is claimed to be negligent is that appellant created a reasonably foreseeable risk of such third party conduct. Consequently, the trial judge did not err in refusing to dismiss the action.

See id., 301 S.C. at 247, 391 S.E.2d at 549. This case is inapposite for several reasons.

First, *Greenville Memorial Auditorium* does not address the imposition of a duty, but instead concerns the applicability of an exception to liability under the Act. Second, *Greenville Memorial Auditorium* concerns actions on the defendants' property, under its supervision and in such circumstances that the law imposed a duty to provide for the safety of attendees. ReVille did not abuse Mother or her son at The Citadel or in the context of a formal Citadel activity.

For the foregoing reasons, this Court should affirm the trial court's entry of summary judgment in favor of The Citadel.

C. Mother Has Not Presented Evidence That a Statute Imposed a Duty of Care on The Citadel

Finally, there is no evidence that would support a finding of a duty of care imposed by statute. Courts in South Carolina are especially reluctant to recognize a private right of action arising out of a statute governing the duties of a public official:

However, when the statute at issue creates or defines the duties of a public official, the public duty rule applies. [*Rayfield v. South Carolina Dep't of Corrections*, 297 S.C. 95, 105, 374 S.E.2d 910, 915 (Ct. App. 1988).] "This rule holds that public officials are generally not liable to individuals for their negligence in discharging public duties as the duty is owed to the public at large rather than anyone individually." *Vaughan*, 370 S.C. at 441, 635 S.E.2d at 634 (quoting *Steinke v. S.C. Dep't of Labor, Licensing, & Regulation*, 336 S.C. 373, 388, 520 S.E.2d 142, 149 (1999)). The public duty rule represents a presumption that such a statute "has the essential purpose of providing for the structure and operation of the government or of securing the general welfare and safety of the public," and thus does not satisfy the elements of the two-part *Rayfield* test. 297 S.C. at 105, 374 S.E.2d at 915. The presumption may be overcome when the statute creates a "special duty" to the plaintiff. 297 S.C. at 106, 374

S.E.2d at 916. In *Rayfield*, this court stated:

"A special duty exists if: (1) an essential purpose of the statute is to protect against a particular kind of harm; (2) the statute, either directly or indirectly, imposes on a specific public officer a duty to guard against or not to cause that harm; (3) the class of persons the statute intends to protect is identifiable before the fact; (4) the plaintiff is a person within the protected class; (5) the public officer knows or has reason to know of the likelihood of harm to members of the class if he fails to do his duty; and (6) the officer is given sufficient authority to act in the circumstances or he undertakes to act in the exercise of his office."

Trask v. Beaufort County, 392 S.C. 560, 567, 709 S.E.2d 536, 539 (S.C. App. 2011). In *Trask*, the Court of Appeals held that no private right of action exists against a county coroner for violating the statute prohibiting the destruction of human remains. In *Edwards v. Lexington County Sheriff's Department*, 386 S.C. 285, 688 S.E.2d 125 (2010), the Supreme Court applied the public duty rule to find that a family court litigant who was assaulted by her ex-boyfriend in family court could not sue the Sheriff's Department for violating a statute requiring the Sheriff to "provide any measures necessary to protect the victims and witnesses, including . . . physical protection in the courthouse." Applying these principles, this Court should conclude that there are no statutory duties of care imposed on The Citadel.

1. The Mandatory Reporting Statute Does Not Create a Duty

In *Doe ex rel. Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 711 S.E.2d 908 (2011), the Supreme Court held that, even if the Defendant is a mandatory reporter under a state child abuse statute, this does not create a private right of action or a duty of care. *See id.*, 393 S.C. at 248, 711 S.E.2d at 912 ("Wal-Mart's duty to report under the Reporter's Statute cannot give rise to civil liability."); *accord Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007).

In any event, The Citadel was *not* a mandatory reporter under the version of the reporting statute in effect at the time of the Camper Doe investigation:

(A) A physician, nurse, dentist, optometrist, medical examiner, or coroner,

or an employee of a county medical examiner's or coroner's office, or any other medical, emergency medical services, mental health, or allied health professional, member of the clergy including a Christian Science Practitioner or religious healer, school teacher, counselor, principal, assistant principal, social or public assistance worker, substance abuse treatment staff, or childcare worker in a childcare center or foster care facility, police or law enforcement officer, undertaker, funeral home director or employee of a funeral home, persons responsible for processing films, computer technician, or a judge must report in accordance with this section when in the person's professional capacity the person has received information which gives the person reason to believe that a child has been or may be abused or neglected as defined in Section 20-7-490.

See S.C. Code § 20-7-510(A) (2007) (repealed). The Citadel did not fall under any of the provisions of the reporting statute in effect in 2007.

2. The Jessica Horton Act Does Not Create a Duty

Under the Jessica Horton Act, "[t]he chief of the campus police of an institution of higher learning, or his designee, immediately shall notify the State Law Enforcement Division . . . if the officer or another official of the institution is in receipt of a report alleging that an act of criminal sexual conduct has occurred on the property of the institution." *See* S.C. Code § 59-154-10(B).

First, this statute does not apply because it was not in effect at the time of Camper Doe's report in April, 2007. The Jessica Horton Act did not become effective until June 6, 2007. *See* 2007 Act No. 53, § 2, effective June 6, 2007. In the absence of express legislative intent, statutes normally apply prospectively:

Where the legislative intent is not clear, we adhere to the presumption that statutory enactments are to be given prospective rather than retroactive application. *See State v. Varner*, 310 S.C. 264, 266, 423 S.E.2d 133, 134 (1992). The exception to the presumption of prospective operation arises when the statute is remedial or procedural in nature. *State v. Davis*, 309 S.C. 326, 334, 422 S.E.2d 133, 139 (1992), *overruled on other grounds by Brightman v. State*, 336 S.C. 348, 352 n. 2, 520 S.E.2d 614, 616 n. 2 (1999). However, as indicated, legislative intent is paramount in determining whether a statute will have prospective or retroactive application. *Jenkins v. Meares*, 302 S.C. 142, 146, 394 S.E.2d 317, 319 (1990).

See State v. Bolin, 381 S.C. 557, 561, 673 S.E.2d 885, 886-87 (Ct. App. 2009). This is

particularly so where the statute imposes affirmative obligations: "where a statute . . . creates new obligations [or] imposes a new duty . . . it will be construed as prospective only." *See Southeastern Site Prep, LLC v. Atlantic Coast Bldrs. and Contractors, LLC*, 394 S.C. 97, 106, 713 S.E.2d 650, 655 (Ct. App. 2011) (*quoting* 82 C.J.S. Statutes § 585 (2009)).

Second, Mother is not within a specific identifiable class to be protected under the Jessica Horton Act. The Jessica Horton Act concerns the reporting of claims of certain crimes of sexual violence. To the extent the statute protects anyone beyond the general public, it would extend only to *victims* of crimes. Mother is not part of a special class protected by the statute. As the Supreme Court stated with respect to the child abuse reporting statute described above, "the general rule is that a statute which does not purport to establish a civil liability, but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing civil liability." *Doe v. Marion, supra*, 373 S.C. 390, 396, 645 S.E.2d 245, 248 (2007)

Finally, it is clear that the information reported by Camper Doe would not have triggered the Jessica Horton Act. As set forth above, the statute is triggered by a report of "criminal sexual conduct." The crimes of "criminal sexual conduct" are defined in S.C. Code §§ 16-3-651 through 16-3-659.1. Nearly all of those statutes require "sexual battery," which is defined to mean "sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body." See S.C. Code § 16-3-651(h). Camper Doe never reported a "sexual battery" to anyone at The Citadel.

The only exception to the requirement of a sexual battery is third-degree criminal sexual conduct with a minor: "A person is guilty of criminal sexual conduct with a minor in the third degree if the actor is over fourteen years of age and the actor wilfully and lewdly commits or attempts to commit a lewd or lascivious act upon or with the body, or its parts, of a child under sixteen years of age, with the intent of arousing, appealing to, or

gratifying the lust, passions, or sexual desires of the actor or the child." See S.C. Code § 16-3-655(C). Again, the report by Camper Doe, which expressly denied any physical contact, would not have triggered this statute. There is no evidence that Camper Doe reported any "act upon or with" his body.

For the foregoing reasons, this Court should reject the invitation to impose a duty of care arising from the Jessica Horton Act.

3. The Clery Act Does Not Impose a Duty of Care

It is further anticipated that Mother will argue that a duty of care was created by The Clery Act, 20 U.S.C. § 1092(f). That statute is explicit that it is not intended to "[e]stablish a standard of care." See 20 U.S.C. § 1092(f)(14)(A) (emphasis added). Numerous courts have held that there is no private right of action under the Clery Act. See *Moore v. Murray St. Univ.*, 2013 WL 960320, at *3 (W.D. Ky. March 12, 2013) (attached hereto as Ex. U); *Doe v. Univ. of the S.*, 687 F. Supp. 2d 744, 760 (E.D. Tenn. 2009); *King v. San Francisco Cmty. Coll. Dist.*, No. C 10-01979 RS, 2010 WL 3930982, at *4-5 (N.D. Cal. Oct. 6, 2010) (attached hereto as Ex. V); accord Brett A. Sokolow, *et al.*, *College and University Liability for Violent Campus Attacks*, 34 J.C. & U.L. 319, 344 (2008) ("[T]he Clery Act specifically notes that it cannot give rise to a private right of action to enforce its terms. . . . The enforcing authority for the Clery Act is the U.S. Department of Education."). As a consequence, Doe 2 and Doe 3 may not rely upon the Clery Act to impose a duty of care on The Citadel.

4. Title IX Does Not Impose a Duty of Care On The Citadel

It is also anticipated that Mother will argue that a duty of care was imposed by Title IX, 20 U.S.C. § 1681. Specifically, it is believed that she will posit that The Citadel was obligated under Title IX to engage in certain investigatory and remedial actions in response to Camper Doe's 2007 complaint.

Title IX itself does not impose such obligations. Instead, it is anticipated that

Mother will base her argument heavily on the United States Office for Civil Rights, Department of Education's 2000 "Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties" ("OCR Guidance"). It is further anticipated that she will rely on "administrative" provisions of the OCR Guidance governing how certain entities should respond to sexual harassment complaints. However, the OCR Guidance makes clear that its revisions from the 1997 version of the guidance are intended to solidify that it is *not* intended to set standards applicable in damages claims:

The 1997 guidance contained a section titled "Liability of a School for Sexual Harassment." To the extent this section could be interpreted as being applicable to a school's liability in a private lawsuit for monetary damages, the proposed revised guidance clarifies that the guidance addresses the Department's administrative enforcement of Title IX; *it does not address standards applicable to private litigation for monetary damages.*

See id. (emphasis added).

The OCR Guidance further clarifies that the United States Supreme Court had foreclosed the use of its "administrative" standards to define liability for money damages:

The discussion of liability in the 1997 guidance contained a section on the effect of grievance procedures. To the extent this section could be interpreted to guide courts regarding liability for monetary damages, this section was affected by *Gebser* and *Davis*.

See id. The *Gebser* case referenced in the OCR Guidance further cements that the administrative standards set forth in the OCR Guidance should not form, in any measure, the grounds for a civil damages claim:

[T]he failure to promulgate a grievance procedure does not itself constitute "discrimination" under Title IX. Of course, the Department of Education could enforce the requirement administratively: Agencies generally have authority to promulgate and enforce requirements that effectuate the statute's nondiscrimination mandate, 20 U.S.C. § 1682, even if those requirements do not purport to represent a definition of discrimination under the statute. [Citation omitted.] We have never held, however, that the implied private right of action under Title IX allows recovery in damages for violation of those sorts of administrative requirements.

See Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274, 292 (1998). Applying *Gebser*, a court has held that it was error to use the OCR Guidance's "administrative" provisions to define a standard of care in a civil lawsuit. *See Doe v. University of the South*, 2011 WL 1258104, at *14 (E.D. Tenn. March 31, 2011).

Moreover, Mother cannot posit that she is an intended beneficiary of a statute intended to protect the civil rights of students. Title IX is not a general statute for the prevention of violence. That statute is not designed to protect a specific class of persons from the specific abuse sustained by Mother's son. Title IX is not intended to protect unknown future victims of sexual abuse; rather, it is intended to vindicate the civil rights of students to ensure that there is no discrimination in educational programs. Mother can cite no authority extending Title IX to impose a duty of care flowing to a person who is not a student and who, in fact, has no relationship with the defendant and was not herself abused in any way. Mother's anticipated argument would convert Title IX into a statute for the protection of the general public (and improper to use as a basis for a duty of care), rather than for the protection of a specific class of persons.

VI. Mother Cannot Show Proximate Causation

Proximate cause is the efficient or direct cause of the injury. *See Roof v. Kimbrough*, 297 S.C. 156, 375 S.E.2d 318 (Ct. App. 1988). Proof of proximate cause requires proof of both "causation in fact" and "legal cause." *See Vinson v. Hartley*, 324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996). Causation in fact is proved by establishing that the injury would not have occurred "but for" the defendant's negligence; on the other hand, "legal cause" focuses on foreseeability. *See id.*, 477 S.E.2d at 715. "Negligence . . . may be deemed a proximate cause only when without such negligence the injury would not have occurred or could have been avoided." *See Hoard v. Roper Hosp., Inc.*, 387 S.C. 539, 547, 694 S.E.2d 1, 5 (2010) (citation omitted).

"[P]roof of causation cannot rest on conjecture, and the mere possibility of such

causation is not enough to sustain plaintiff's burden of proof." *See Todd v. United States*, 570 F. Supp. 670, 677-78 (D.S.C. 1983) (citation omitted). Speculation or conjecture is insufficient to show factual cause:

When asked if the case would have produced a different outcome had the Respondents not breached their standard of care, Scarminach hedged: "you never know because it's conjecture." Instead of stating that the Respondents' conduct most probably caused the outcome, Scarminach said, "had [Respondents] done these things, the percentage of success would have been greater." Thus, Scarminach's deposition did not establish that the Respondents' actions were the "but for" cause of Harris Teeter's loss.

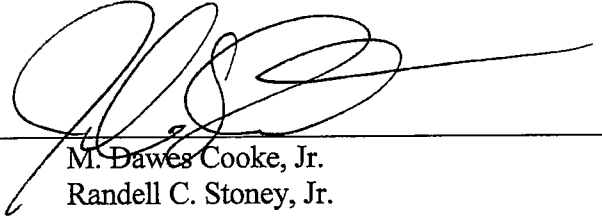
See Harris Teeter, Inc. v. Moore & VanAllen, P.C., 390 S.C. 275, 289-90, 701 S.E.2d 742, 749 (2010).

Mother cannot carry her burden of showing causation because there is no evidence that, had The Citadel done any of the things Mother claims it should have done, ReVille would not have abused her son. For example, there is no evidence that, had The Citadel documented any of the alleged incidents of being alone with campers or reported ReVille to law enforcement, Mother's son would not have been abused. Instead, Mother asks the Court to speculate about what might have happened under a hypothetical state of facts. This is plainly insufficient to support a finding of causation in fact. Moreover, Mother cannot show legal cause because there is no evidence that it was foreseeable to The Citadel that its alleged negligence would harm Mother. *See Parks v. Characters Night Club*, 345 S.C. 484, 491, 548 S.E.2d 605, 609 (Ct. App. 2001).

Therefore, the trial court properly granted The Citadel's motion for summary judgment.

CONCLUSION

For the foregoing reasons, the Court should affirm the judgment below granting summary judgment to The Citadel.



M. Dawes Cooke, Jr.
Randell C. Stoney, Jr.
John W. Fletcher
Barnwell Whaley Patterson & Helms, LLC
288 Meeting Street, Suite #200 (29401)
Post Office Drawer H
Charleston, South Carolina 29402-0197
(843) 577-7700
Attorneys for Respondent The Citadel

Dated: April 20, 2016
Charleston, South Carolina

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Mother Doe A, Appellant,

v.

The Citadel, Respondent.

Appellate Case No. 2015-001920

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

Unpublished Opinion No. 2017-UP-282
Heard May 9, 2017 – Filed July 12, 2017

AFFIRMED

Allan Poe Sloan, III, Joseph C. Wilson, IV, and Kristen
Bates Fehsenfeld, all of Pierce, Hems, Sloan & Wilson,
LLC, of Charleston; Gregg E. Meyers, of Jeff Anderson
& Associates, P.A., of Saint Paul, Minnesota, for
Appellant.

M. Dawes Cooke, Jr., Randell Croft Stoney, Jr., and John
William Fletcher, all of Barnwell Whaley Patterson &
Helms, LLC, of Charleston, for Respondent.

PER CURIAM: In this civil matter, Mother Doe A (Mother) appeals the circuit court's grant of summary judgment to The Citadel, arguing the court erred in dismissing her claims for (1) the loss of her minor son's services/consortium, (2) outrage, and (3) civil conspiracy.¹ We affirm.

1. First, we must uphold the circuit court's grant of summary judgment in favor of The Citadel as it relates to Mother's claim for the loss of her child's consortium. Like the circuit court, we are bound by our supreme court's explicit holding in *Doe v. Greenville County School District* that, although South Carolina law recognizes a parent's claim for the loss of his child's services and pecuniary losses resulting from the child's injury, it does not recognize a cause of action for loss of the child's consortium. *See* 375 S.C. 63, 68–70, 651 S.E.2d 305, 307–09 (2007); *see also* S.C. CONST. art. V, § 9 ("The decisions of the Supreme Court shall bind the Court of Appeals as precedents.").

With respect to the cause of action recognized under South Carolina law, we agree with the circuit court's finding that Mother failed to present a scintilla of evidence concerning the loss of her son's services or labor as a result of his abuse. *See Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) (finding when the preponderance of the evidence standard applies, the nonmoving party is only required to submit a mere scintilla of evidence to withstand a motion for summary judgment). Furthermore, the circuit court found Mother did not present any evidence of incurred medical expenses. Although Mother pointed out in her Rule 59(e), SCRCP, motion that she testified in a deposition to enrolling her son in a therapy program, she did not specifically appeal the circuit court's ruling in her appellate brief; instead, she focused on her outrage damages. Therefore, the circuit court's ruling is the law of the case. *See Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) ("[A]n unappealed ruling, right or wrong, is the law of the case.").

2. Next, we find the circuit court properly dismissed Mother's outrage claim. In South Carolina, outrage claims are limited to a defendant's egregious conduct toward a plaintiff. *See Upchurch v. N.Y. Times Co.*, 314 S.C. 531, 536, 431 S.E.2d 558, 561 (1993). "It is not enough that the conduct is intentional and outrageous. It must be conduct *directed at the plaintiff*, or occur in the presence of a plaintiff of whom the defendant is aware." *Id.* (emphasis added). In the instant case, Mother did not present any evidence that The Citadel directed any tortious conduct specifically toward her. Indeed, it is undisputed that The Citadel was unaware of

¹ We have consolidated Mother's five issues on appeal into three.

Mother's—or her son's—very existence before the commencement of this lawsuit. Additionally, Mother cannot recover on any third-party outrage theory because no evidence shows The Citadel violently attacked her son in her presence. *See id.* at 537, 431 S.E.2d at 562 (limiting third-party recovery for outrage to situations in which the plaintiff witnessed a violent attack upon another and would likely cause fright or shock). Therefore, we affirm the circuit court's decision on this issue.²

3. Last, we hold the circuit court correctly granted summary judgment to The Citadel on Mother's civil conspiracy claim. The Citadel, a governmental entity, is immune from liability for conduct in which its employees intend to harm a plaintiff. *See* S.C. Code Ann. § 15-78-60(17) (2005) (providing the state retains sovereign immunity for a loss resulting from "employee conduct . . . which constitutes actual fraud, actual malice, *intent to harm*, or a crime involving moral turpitude" (emphasis added)); *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009) (stating the tort of civil conspiracy is established when two or more persons, *for the purpose of injuring the plaintiff*, cause the plaintiff special damages).

Furthermore, we reject Mother's argument that she may sue various officials for conspiracy by simply naming The Citadel as the defendant. Mother's civil conspiracy claim, which alleges The Citadel's employees intentionally harmed her, is outside the scope of the TCA. *See* § 15-78-60(17) (stating a governmental entity retains immunity from employee conduct that constitutes an intent to harm). Mother failed to include any employee or official of The Citadel as a named defendant in his individual capacity in this lawsuit. *See* S.C. Code Ann. § 15-78-70(b) (2005) ("Nothing in [the TCA] may be construed to give *an employee* of a governmental entity immunity from suit and liability if it is proved that the employee's conduct . . . constituted actual fraud, actual malice, *intent to harm*, or a crime involving moral turpitude." (emphases added)).

AFFIRMED.

WILLIAMS and KONDUROS, JJ., and LEE, A.J., concur.

² Because our resolution of this issue is dispositive, we decline to address whether the circuit court erred in finding the South Carolina Tort Claims Act (TCA) barred Mother's outrage claim. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (ruling an appellate court need not address remaining issues when its resolution of a prior issue is dispositive).

The State of South Carolina
In The Court of Appeals

Appeal from Charleston County
Hon. R. Markley Dennis, Jr., Circuit Court Judge
Unpublished Opinion 2017-UP-282
Circuit Court Case No. 2008-CP-42-0475

RECEIVED

JUL 26 2017

SC Court of Appeals

Appellate Case No. 2015-001920

Mother Doe A, ... Appellant

v.

The Citadel Respondent

Petition for Rehearing

Plaintiff-Appellant Mother Doe A hereby petitions for rehearing of the July 12, 2017 unpublished *per curiam* order by the Court of appeals affirming the trial court.

The Court of Appeals panel has erred in the following respects.

1. At p. 1 of the order, the Court determined that South Carolina law “does not recognize a cause of action for loss of the child’s consortium.” The error in the Court’s order is in ruling on an issue *not* presented in the pleadings, loss of the child’s consortium, rather than ruling on the loss of services cause of action that is in the pleadings. *Doe v. Greenville County School District* overtly held that the claim presented in that case was *not* loss of services. *Doe v. Greenville County School District*, 651 S.E.2d 305, 308 - 309 (S.C. 2007)(emphasis added):

Because Mr. and Mrs. Doe's loss of consortium claim is based entirely upon their allegation of a change in their relationship with their child and *not a claim for loss of services*, we hold that the trial court did not err in dismissing Mr. and Mrs. Doe's claim

for loss of filial consortium.

The Court has erred in conflating the two separate causes of action, and relying on *Doe v. Greenville County* to uphold dismissal of a loss of consortium claim when the claim presented is loss of services, an issue not presented in the case cited.

2. Also at p. 1, as to loss of services, the Court has erred as a matter of law in (a) applying an incorrect standard for what constitutes a scintilla of evidence as to the testimony about Mother Doe A's tangible injury, and in (b) determining, Order at 2, that the tangible injury issue was not appealed.

The Court has erred in simply ignoring the fourth argument presented in the appellant's brief. That argument was, "The circuit court erred in finding insufficient evidence of loss of services and outrage damages...." At pp. 26 and 27, and particularly at p. 27 n. 7, the appellant's brief referred specifically to the testimony of the mental health professional with whom her child met "concerning the tangible elements of damage to Mother Doe A for the medical costs and expenses associated with her son's treatment."

The scintilla standard was, in fact, readily satisfied in the record below, particularly when viewed in the light most favorable to Mother Doe A, and the issue was, in fact, appealed. The testimony offered, and the argument in the appellant's brief more than meets the scintilla standard. E.g., *In re Crawford*, 30 S.E.2d 841, 849 (1944), quoting *Turner v. American Motorists Insurance Company*, 180 S.E. 55, 56 (S.C. 1935): a scintilla is satisfied by "some evidence arising out of the testimony which elucidates the issues of fact."

That the simple and straightforward issue of evidence of tangible injury was not belabored in the brief at p. 27 n. 7, and that the more complex issue of intangible injury was addressed more extensively, is hardly a reason to ignore that evidence is in the record as to tangible injury, the issue of tangible damage was in fact appealed, and the tangible damages

issue was in fact argued in the appellant's brief.

It is an error of law, and factually incorrect, to contend that the issue was "unappealed" as the court ruled. Order at p. 2.

3. At pages 1 and 2, as to the outrage claim, the Court erred first in considering only grounds *not* presented for an outrage claim, intent to injure, rather than considering (a) the recklessness standard for outrage, Appellant's brief at p. 21, and (b) that the harm to Mother Doe A's child was "a natural and foreseeable consequence" of the Citadel's deliberate conduct (Appellant's brief at p. 25).

Viewed favorably to Mother Doe A, as the record must be, The Citadel permitted a known pedophile to go unreported, contrary to its own policies, state law and federal law. It is undisputed that The Citadel did not report Reville to law enforcement the known predator, even after The Citadel had voluntarily assumed the duty, through its general counsel Brandenburg, to investigate the 2007 allegation against Reville about his sexual misconduct with a child, and through that investigation found the complaint against Reville to be "believable." E.g., Appellant's brief 14. Instead of reporting Reville, as required by its own policies, state law and federal law, Citadel officials preferred (a) to meet with Reville and inform him of the complaint (Appellant's brief at 4), (b) advised him to "lie low," *Id.*, and (c) thereafter, both Reville and The Citadel concealed that the Citadel had received a credible complaint that Reville had a sexual interest in children (their "close hold" practice, Appellant's brief at 3, 12, and 25).

The Court of Appeals decided only whether intentional conduct could state a claim for outrage, not the issue presented by the facts underlying the appeal, which is whether The Citadel's recklessness (failing to report a person known to have a sexual interest in children, Appellant's brief at pp. 21 – 22), stated a claim for outrage, and whether the injury from that reckless conduct—Reville's sexual assault of the child of Mother Doe A—was a "natural and

foreseeable consequence” (Appellant’s brief at 25) of the Citadel deciding to conceal that which was required to be reported. Recklessness does not require intentional conduct aimed at Mother Doe, Appellant’s brief at pp. 25 – 26, and the court has failed to rule on that issue.

Similarly, the court erred in failing to consider and rule on, Order at p. 3 n. 2, whether the Tort Claims Act, specifically S.C. Code § 15-78-60(17)(2005), barred the outrage claim. Under a recklessness theory that issue should have been reached and should have been, for similar reasons, permitted, and the trial court’s order overturned.

4. At page 3, and similarly as to the outrage claim, the court considered only an intentional injury argument as to the conspiracy claim. The court has erred by failing to consider and rule on the recklessness argument made as to the conspiracy claim, Appellant’s brief at pp. 23 – 25.

Conclusion

The Court of Appeals panel should grant this petition to rehear and address on the merits these issues presented by the appeal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregg Meyers", with a stylized flourish at the end.

Gregg Meyers, Of Counsel
Pierce Herms Sloan & Wilson, LLC
321 East Bay Street
Charleston SC 29401
843-722-7733, 722-7732 facsimile
greggmeyers@phswlaw.com

The South Carolina Court of Appeals

Mother Doe A, Appellant,

v.

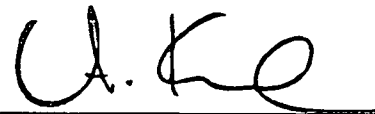
The Citadel, Respondent.

Appellate Case No. 2015-001920

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


_____ J.


_____ J.


_____ A.J.

Columbia, South Carolina

cc:

Gregg E. Meyers, Esquire
Allan Poe Sloan, III, Esquire
M. Dawes Cooke, Jr., Esquire
Joseph C. Wilson, IV, Esquire
Kristen Bates Fehsenfeld, Esquire

FILED

September 21, 2017

Randell Croft Stoney, Jr., Esquire
John William Fletcher, Esquire
Jeffrey R. Anderson, Esquire
The Honorable R. Markley Dennis, Jr.