

Nathan Ochsner, Clerk

motion to dismiss, (Docket Entry No. 20). Doe's claims against the school district and Doe's intentional-infliction-of-emotional-distress claim against Guess-Mazock are dismissed without prejudice and with leave to amend. Doe may amend his complaint against the school district by **August 22, 2022**. Doe's claims against Guess-Mazock are abated until 90 days after Doe serves Guess-Mazock with notice as required under the Texas Education Code § 22.0513. Doe's claims against Snap, Inc. are dismissed with prejudice.

The reasons are set out below.

## **I. Background**

The summary of the factual background is based on the allegations in Doe's complaint, which the court accepts as true in considering this motion to dismiss. The allegations describe a troubled adolescent who survived a difficult childhood. Doe's father abandoned him as a child, and his mother was murdered. Doe has been raised by Jane Roe, his guardian, who brings this lawsuit on his behalf. (Docket Entry No. 1, at 2).

In October 2021, during his sophomore year at Oak Ridge High School, Doe's science teacher, Guess-Mazock, a woman in her thirties, "preyed" on the fifteen-year-old Doe, knowing that he was young and otherwise vulnerable. Guess-Mazock asked Doe to "stay with her in the classroom after the rest of the classroom was dismissed" and "met with Doe alone with the door to the classroom closed." (*Id.*, at 3). "At this closed-door meeting, [Guess-Mazock] began to groom Doe for a sexual relationship and, in furtherance of that goal, asked Doe for his Snapchat username." (*Id.*). "Guess-Mazock then began to seduce Doe via Snapchat by sending seductive photos of herself appended with solicitous messages." (*Id.*).

Throughout the fall and winter of 2021, Guess-Mazock and Doe "had repeated sexual contact . . . at different locations," including Guess-Mazock's car and Doe's home. (*Id.*, at 3–4).

Guess-Mazock also purchased, or gave money to Doe to purchase, prescription and over-the-counter drugs, “and encouraged Doe to abuse those substances prior to their having sex.” (*Id.*, at 4). On January 12, 2022, Doe overdosed on prescription drugs that Guess-Mazock gave Doe or paid him to get. Doe survived after a long hospital stay. (*Id.*, at 13).

Doe’s legal guardian filed this civil action, asserting claims under federal law against the Conroe Independent School District, and asserting claims under federal and state law against Guess-Mazock. As to the school district, Doe first alleges that it violated § 1983 by failing to adequately train its teachers and staff to identify illegal and inappropriate student-teacher relationships. (*Id.*, at 7). Doe alleges that even though “the illicit relationship between Guess-Mazock and Doe . . . was an open secret that students frequently discussed,” school staff and administrators were not trained “to recognize and report inappropriate sexual relationships between students and teachers.” (*Id.*, at 4–5). Second, Doe alleges that the school district failed to properly screen teachers and other employees, even though the district “had at least five instances of sexual assault of a student by employees in the last 20 years.” (*Id.*, at 8). Doe alleges that “[u]pon information and belief, an adequate background check would have revealed Guess-Mazock’s pedophilic tendencies.” (*Id.*, at 9). Third, Doe alleges that the school district failed to adequately supervise Guess-Mazock, who not only assaulted Doe, but also “attempted to seduce other students.” Doe alleges that the school district should not have allowed “opposite-sex, student-teacher private meetings on school grounds,” and that by “explicitly permitting” these meetings, “the School District promulgated a[] policy and procedure that demonstrates a conscience indifference to the Fourteenth Amendment rights of students of the District and Doe in particular.” (*Id.*, at 10).

As to Guess-Mazock, Doe alleges that she violated Doe's due process rights under the Fourteenth Amendment "to be free of illegal sexual advances by his teacher at school." (*Id.*, at 6). Doe alleges that Guess-Mazock assaulted, battered, and raped him, because "Doe had not reached the age of consent at the time of Guess-Mazock's seduction." (*Id.*, at 6–7).

Finally, Doe asserts three state-law negligence claims against Snap, Inc., the owner of Snapchat. Doe alleges that Snap is liable for "negligent undertaking" because it "claims to have undertaken to protect its young users" by "report[ing] all instances of child sexual exploitation to authorities," a duty that it breached "by failing to exercise reasonable care in performing its data-mining services and failing to intervene when [Guess-Mazock] started sending sexually explicit messages and images to [Doe]." (*Id.*, at 11). Doe also alleges that Snapchat is "negligently designed" because the application "allow[s] for the widespread practice of using false birth dates," so that "users younger than 13 years old are using the application." Doe alleges that "[b]y creating an environment where adults can interact with underage users with assurances that there will be no long-lasting evidence of those interactions, Snap has fostered an environment that draws in sexual predators and allows them to act with impunity." And Doe alleges a claim of gross negligence, stating that when "viewed objectively . . . Snap presented an extreme risk of grievous harm in marketing an application to minors that, by design, allows pedophiles to prey on them with apparent impunity." (*Id.*, at 12).

## **II. The Standard for a Rule 12(b)(6) Motion to Dismiss**

Under Rule 12(b)(6), a federal court dismisses a complaint if it fails "to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6); *see also* Fed. R. Civ. P. 8(a)(2) (requiring "a short and plain statement of the claim showing that the pleader is entitled to relief"). In reviewing a Rule 12(b)(6) motion, the court "accept[s] all well-pleaded facts as true and view[s]

all facts in the light most favorable to the plaintiff.” *Thompson v. City of Waco*, 764 F.3d 500, 502 (5th Cir. 2014). “A court reviewing a motion to dismiss under Rule 12(b)(6) may consider ‘(1) the facts set forth in the complaint, (2) the documents attached to the complaint, and (3) matters of which judicial notice may be taken under Federal Rule of Evidence 201.’” *DZ Jewelry, LLC v. Certain Underwriters of Lloyds London*, No. H-20-3606, 2021 WL 1232778 (S.D. Tex. Mar. 21, 2021) (quoting *Inclusive Cmty. Proj., Inc. v. Lincoln Prop. Co.*, 920 F.3d 890, 900 (5th Cir. 2019)).

To withstand a Rule 12(b)(6) motion, a complaint must contain “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A complaint must include “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Lincoln v. Turner*, 874 F.3d 833, 839 (5th Cir. 2017) (quoting *Twombly*, 550 U.S. at 555). “Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (alteration in original) (quoting *Twombly*, 550 U.S. at 557). “A complaint ‘does not need detailed factual allegations,’ but the facts alleged ‘must be enough to raise a right to relief above the speculative level.’” *Cicalese v. Univ. of Tex. Med. Branch*, 924 F.3d 762, 765 (5th Cir. 2019) (quoting *Twombly*, 550 U.S. at 555).

### **III. Analysis**

The motions to dismiss the federal and state law claims by each of the three defendants, the Conroe Independent School District, Guess-Mazock, and Snap, Inc., are addressed in turn.

#### **A. The Conroe Independent School District**

Doe asserts a § 1983 claim against the Conroe Independent School District. Doe alleges that “Anthony Livecchi, while acting under the color of state law as principal of Oak Ridge High

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