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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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Mary Ann Mudd, et al.,

No. CV-09-8153-PCT-MHM

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Plaintiff,

**ORDER**

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vs.

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Flagstaff Unified School District, et al.,

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Defendant.

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Currently pending before the Court is Plaintiffs Mary Ann Mudd and Tamara Mudd's Motion to Consolidate. (Dkt.#15). After reviewing the record and determining oral argument unnecessary, the Court issues the following Order.

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On September 4, 2009, Defendants John Pertuit and KIKS American Karate filed a Notice of Removal in this Court, removing Plaintiff Mary Ann Mudd and Tamara Mudd's Amended Complaint from Coconino County Superior Court of the State of Arizona into United States District Court for the District of Arizona. Plaintiffs' Amended Complaint asserts claims against the Defendants for Assault (Count One), Intentional Infliction of Emotional Distress (Count Two), Negligent Infliction of Emotional Distress (Count Three), Negligence (Count Four), Negligence Per Se (Count Five), Breach of Trust (Count Six), Deprivation of Plaintiffs' Civil Rights Under the Arizona and Federal Constitutions (Count

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1 Seven), Conspiracy to Interfere with Civil Rights, and Aiding and Abetting Tortious Conduct  
2 (Count Eight).

3 This case concerns allegations that Plaintiff was sexually abused by Defendant John  
4 Pertuit while a student at Coconino High School in Flagstaff, Arizona. Plaintiff has moved  
5 to consolidate this case with two other cases — Tolar v. Flagstaff Unified School District,  
6 CV-09-8210-PCT-PGR and Franganillo v. Flagstaff Unified School District,  
7 CV-09-8211-PCT-GMS — each of which raises similar claims of sexual abuse by Coconino  
8 High School students at the hands of Pertuit. Defendants Pertuit and KIKS American Karate  
9 have responded in opposition to the consolidation motion, as have Defendants Flagstaff  
10 Unified School District and David Roth.

11 FRCP 42(a) provides:

12 If actions before the court involve a common question of law or fact, the court  
13 may: (1) join for hearing or trial any or all matters at issue in the actions; (2)  
14 consolidate the actions; or (3) issue any other orders to avoid unnecessary cost  
15 or delay.

16 All claims and issues sharing common aspects of law or fact may be consolidated to  
17 avoid unnecessary cost or delay. Fed.R.Civ.P. 42(a). However, the mere existence of  
18 common issues, although a prerequisite to consolidation, does not mandate consolidation;  
19 consolidation is inappropriate if it leads to inefficiency, inconvenience, or unfair prejudice.  
20 Fed.R.Civ.P. 42(b). The decision whether to consolidate rests in the court's broad discretion.  
21 Inventors Research Co. v. United States District Court, 877 F.2d 777, 777 (9th Cir. 1989).

22 Because of the nature of the subject matter here, Defendants contend that  
23 consolidation would be unduly prejudicial. Defendants contend that permitting numerous  
24 plaintiffs to go before a single jury on multiple claims of sexual abuse would tend to inflame  
25 the passions of the jury and invite them to draw inappropriate conclusions that might  
26 otherwise not be supported by the evidentiary record. According to Defendants, the potential  
27 for juror confusion is also unacceptably high in a joint trial like this, where a single jury  
28 would be asked to differentiate between numerous acts of sexual abuse alleged by multiple  
Plaintiffs.

1 Without commenting on the merits of Defendants' contentions regarding the potential  
2 for unfair prejudice of a single joint jury trial, the Court is convinced that transferring all of  
3 the cases to this Court and consolidating the issues in a single forum—at least for pretrial  
4 purposes—is the most efficient course of action given the factual overlap of each lawsuit.  
5 The Court will therefore direct that Tolar v. Flagstaff Unified School District,  
6 CV-09-8210-PCT-PGR and Franganillo v. Flagstaff Unified School District,  
7 CV-09-8211-PCT-GMS be consolidated for pretrial purposes with this case. The Court will  
8 manage all three of these cases during the pretrial stage, including discovery and summary  
9 judgment. After the Court has ruled on the Parties' forthcoming motions for summary  
10 judgment, the Court will make a determination as to whether the case should be bifurcated  
11 into three separate jury trials or whether all three actions can be appropriately heard by a  
12 single jury.

13 **Accordingly,**

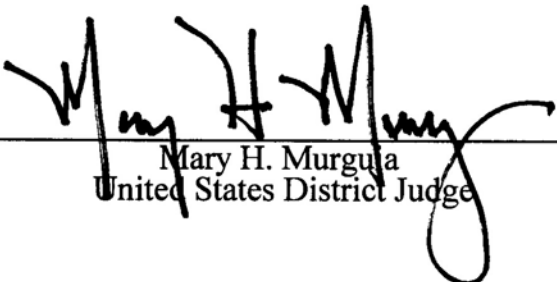
14 **IT IS HEREBY ORDERED** granting Plaintiff Mudd's Motion to Consolidate.  
15 (Dkt.#15).

16 **IT IS FURTHER ORDERED** directing the Clerk to consolidate Tolar v. Flagstaff  
17 Unified School District, CV-09-8210-PCT-PGR and Franganillo v. Flagstaff Unified School  
18 District, CV-09-8211-PCT-GMS with this case.

19 **IT IS FURTHER ORDERED** directing the parties to file all pleadings in the lead  
20 case, CV 09-8153-PCT-MHM.

21 DATED this 3<sup>rd</sup> day of May, 2010.

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Mary H. Murgula  
United States District Judge