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February 10, 2022

U.S. District Court
Attn: Hon. Eric Tostrud, United States District Judge
316 N. Robert Street
St. Paul, MN 55101

Re: ***Kvalvog v. Park Christian School et al.***
21-cv-01569-ECT-LIB

Dear Judge Tostrud:

The Plaintiffs ask the Court to permit filing of a motion to reconsider in its decision of January 12, 2022. A motion would be accompanied by a Motion to Amend the Complaint. Local Rule 7.1 (h) requires a letter not exceeding 2 pages that outlines the request for reconsideration. Filing a motion to reconsider will be permitted if compelling circumstances exist. Compelling circumstances include the correction of a manifest error of law or the presentation of newly discovered evidence.

The Plaintiffs has received previously concealed evidence that questions the Court's conclusion on equitable estoppel because it dispels belief there was any consideration of the merits of the relationship between Defendant Eischens ("Eischens") and the Defendants Nellermoe ("Nellermoe") and PCS. This is evidence of fraud on the state court. These facts have not been litigated. These facts were hidden, and you cannot find through diligence concealed facts.

In his deposition in the case of Morton v. Park Christian School, et al., which occured on November 22, 2021, ***after the Motions to Dismiss were fully briefed and argued***, Nellermoe admitted that he and Eischens were family friends. In fact, he knew him well enough to claim Eischens was a professional who would not compromise his work. Nellermoe ***admitted*** that they ***discussed***: "***potential criminal charges against Josh Lee that were being pursued by Ray.*** . . ." Nellermoe admitted that Eischens called to give him a "heads up" that Raymond Kvalvog was pursuing this. Raymond Kvalvog had pursued charges against Defendant Lee ("Lee") to no avail. Incontrovertible evidence showed the speed of the caravan at 80-84 mph and yet not so much as a speeding ticket issued. The downplaying of speed in the report and the neutralizing of criminal charges protected PCS from liability. That was deliberate and that was Eischens.

Thus, Eischens tipped off his family friend Nellermoe about a criminal investigation of a third party. The criminal investigation wrapped up November 4, 2015, and sealed the speeding issue allowing Eischens to claim "speed did not cause the crash", and sidestep acknowledgement that speed as even a factor. Tipping off Nellermoe further substantiates the assertion that PCS had friends in law enforcement protecting them from liability because no officer who is a remote and sporadic acquaintance is going to endanger his career by tipping off a third party about a criminal investigation. They were tying up loose ends.

Tipping off a suspect involves obstruction of justice and is not ***investigation***. M.S.A. §609.50 (1). Although Nellermoe claims he does not remember if he told Lee, he admits he could have. Lee could then easily "lawyer up" and make further criminal and civil investigation of the crash next to impossible, or just lie. It would impede the Plaintiffs attempts to secure a fair trial in state court as Lee is not going to speak to the man attempting to have him charged. If Mr. Nellermoe does not recall telling Lee then why would Eischens mention it outside any investigation to Defendant Nellermoe? There is no reason to mention it unless protecting PCS was the strategy.

We also know from the snapchat message concealed in the Kvalvog state trial case and disclosed in the Morton case that Eischens went to great lengths to advise Nellermoe to talk to his lawyer ***about evidence they have concealed to this day***. Nellermoe, through counsel, alluded to the State Court that this had nothing to do with the crash and we now know it did. He said so in his deposition. We know the message did not gather evidence for the crash investigation. It was not about criminal charges. The snap chat message occurred December 31, 2015. The crash investigation wrapped up in early October of 2015 and the decision on charges was made November 4, 2015. A memo to Eischens from Otter Tail County Attorney Michelle Eldien declining prosecution and a letter to the Kvalvogs states the same. Email communications with current counsel on November 17, 2015, also states the case was closed. With the accident reconstruction done and criminal charges declined, Eischens was not investigating anything. The snapchat could only be about the protection of PCS from liability. This is all new evidence.

We also learn from the deposition that Eischens called Nellermoe and discussed the case on Nellermoe's personal cell phone. They also texted each other. He never revealed texts in the Plaintiffs' state litigation, including, post-trial. Although he tried to deny giving Eischens his personal cell phone number, he eventually admitted that he did.

We have also discovered a letter to PCS parents and not the Kvalvogs stating that Naomi Erkenbrack, a counselor at Valley Christian Counselling Center was engaged to assist with post-crash grief support. Nellermoe admits in his deposition he knew her for over 13 years as an employee of the school, a fellow attendee at Triumph Lutheran Bretheran Church and the parent of PCS students. Ms. Erkenbrack has stated she wanted to knock the Kvalvogs off their pedestal and would build a case against them. That she did by turning crash victim Mark Schwandt against the family. He went from considering the Kvalvogs as second parents to suing them and venomously attacking them. She also tried to counsel Jimmy Morton and Tyrell Rodriguez. She was a hired gun.

None of this was available to the state court. The merits were considered with evidence concealed. The Defendants keep talking and with each word reveal more deceit. This is the tip of the iceberg.

Respectfully,
/s/ David J. Chapman
David J. Chapman