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Case #: 1038941

COURT OF APPEALS, DIVISION TWO
OF THE STATE OF WASHINGTON

C.C., an individual;

Appellant,

vs.

KIWANIS INTERNATIONAL, et al.,

Respondents

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

C.C., one of numerous survivors of decades of childhood sexual abuse at a state-contracted group home, the Kiwanis Vocational Homes for Youth (“Kiwanis Vocational Homes” or “KVH”), asks this Court to accept review of the Court of Appeals decision designated in Part II holding that, as a matter of Washington law, no actual agency relationship could exist between certain local Kiwanis clubs (the “Kiwanis Clubs”) or the Kiwanis Pacific Northwest District (the “Kiwanis District”) and the Kiwanis Vocational Homes. **APPENDIX 1-13.**

This petition presents important questions of law that continue to divide Washingtons jurists and are critical to the claims of 72 Kiwanis Vocational Homes survivors in numerous parallel cases pending in Washington appellate and trial courts.

In other cases, trial courts and a Division Two Commissioner have concluded that Washington law

supports the existence of these agency relationships, requiring their ultimate determination by a jury. In this case, Division Two held that Washington law supported the existence of an actual agency relationship between Kiwanis International and the Kiwanis Vocational Homes through its ability to “influence or control” Kiwanis Vocational Homes through the latter’s corporate “boards.” *C.C. v. Kiwanis International*, 2024 WL 4040468, at *14 (Sept. 4, 2024).

But the Kiwanis Clubs and Kiwanis Districts also were able to influence or control those same corporate boards. Indeed, as a condition for operating under the Kiwanis name and logo, the Kiwanis Clubs and Kiwanis District legally integrated themselves into the Kiwanis Vocational Homes’ operations through requiring Kiwanis membership to serve on its corporate boards. The Kiwanis Clubs and Kiwanis Districts then appointed their own officers and members to serve as their proxies on these

boards.

Under Washington law submitted by Kiwanis International, the Kiwanis District, and the Kiwanis Clubs (“Kiwanis Respondents”) at Division Two’s request, the dual role of individuals serving on a controlling corporate board as proxies of another is legally sufficient to establish an actual agency relationship. In one stroke Division Two’s contrary holding, that as a matter of law, no agency relationship can exist under such circumstances created a conflict within Washington appellate precedent and violated C.C.s state constitutional right to have a jury determinate these issues.

Definitive resolution of Washington law on these judicially divisive issues is particularly necessary where they continue to recur. Lower courts currently face these ***identical*** agency issues in three other lawsuits by 72 other plaintiffs against the Kiwanis Respondents.

Because Division Two’s decision conflicts with

Washington appellate precedent, usurps a jury's primary factfinding role under the state Constitution, and impacts numerous cases pending before our courts, this Court's guidance and intervention is urgently required. RAP 13.4(b)(1), (b)(2), (b)(4).

II. COURT OF APPEALS DECISION

Citing *FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.*, 175 Wn. App. 840, 882, 309 P.3d 555 (2013), *aff'd*, 180 Wn.2d 954 (2014), and *aff'd*, 190 Wn.2d 281 (2018), Division Two acknowledged that, “[i]mportantly, the determination of whether an actual agency or apparent relationship exists is usually inappropriate for summary judgment.” C.C., 2024 WL 4040468, at *12.

Correctly applying that fundamental principle, Division Two reversed the trial court's summary judgment dismissal of Petitioner's claims against Kiwanis International. *Id.* at *14. It concluded that, “through the

KVH boards,” Kiwanis International had the ability to control “the firing, hiring, and supervision of KVH employees” and the “implement[ation of] rules regarding the treatment and supervision of residents.” *Id.*

However, Division Two faltered when applying actual agency principles to the Kiwanis Clubs and the Kiwanis District. Despite acknowledging that “local clubs put members on the governing board of KVH,” it erroneously held that, under Washington law, no reasonable person could infer that “empower[ed] the local clubs to interfere with operational decisions at KVH.”¹ *Id.* at *16.

¹ Although Division Two held that a jury still must determine whether the Kiwanis Clubs are liable under an apparent agency theory, the distinction on remand is consequential for C.C. Unlike his dismissed actual agency theory, under an apparent agency theory he will bear the burden of production and persuasion on an additional element—that the State detrimentally relied on the Kiwanis Clubs’ manifestations of an apparent agency relationship with the Kiwanis Vocational Homes in placing vulnerable boys as residents there. C.C., 2024 WL 4040468, at *17.

It erred further when applying actual agency principles to the Kiwanis District. Division Two failed to consider at all that Kiwanis District members also served on the Kiwanis Vocational Homes' operational boards.² In failing to do so, it affirmed the dismissal of C.C.'s actual agency claims against the Kiwanis District.³

Finally, Division Two initially filed an unpublished opinion. It subsequently entered an order denying publication of the portion of its decision addressing these agency issues. Order Granting Motion to Publish and Publishing Opinion in Part (Feb. 11, 2025) 2-4. It did so

² Like trial courts, appellate courts reviewing summary judgment orders are required to consider the entire record. RAP 9.12; *Tanner Elec. Co-op. v. Puget Sound Power & Light Co.*, 128 Wn.2d 656, 668, 911 P.2d 1301 (1996) (court's duty is to review the "same record that was available to the trial court").

³ Division Two also affirmed the dismissal of C.C.'s claims against the Kiwanis District based on apparent agency. C.C., 2024 WL 40400468, at *18. Under its decision, C.C. has no claims remaining against the Kiwanis District.

despite knowing Washington courts continue to grapple with these identical issues across numerous lawsuits impacting dozens of Kiwanis Vocational Homes survivors without the guidance of a definitive, binding appellate opinion. Appellant’s Motion to Publish (Sept. 19, 2024) (“AMP”) at 7-8 (citing AMP Appendix 490-528; 529-64; 565-668).

III. ISSUES PRESENTED FOR REVIEW

1. Where, under Washington law indicia of implied, indirect control—including the dual roles of corporate board members serving as proxies of a principal—supports the existence of an actual agency relationship, did the Court of Appeals err in holding that, as a matter of law, no jury could conclude that such a relationship existed between the Kiwanis Clubs or the Kiwanis District whose members served as their proxies on the Kiwanis Vocational Homes’ corporate boards?

IV. STATEMENT OF THE CASE

Petitioner acknowledges Division Two’s factual recitation, but it omits certain material facts.

A. The Kiwanis Clubs and Kiwanis District

Indirectly Controlled the Kiwanis Vocational Homes' Operations through their Hand-Picked Proxies on its Exclusively Kiwanian, Controlling Corporate Boards

In the 1970s, the Kiwanis Club of Centralia plotted a “goal to build” boys homes. CP 2512; *see also* CP 2480-481. Soon after, building a boys home became the “shared dream of the Western Washington Kiwanis Clubs,” and “a consensus quickly formed that the objectives of the home were those of Kiwanis.” CP 2522, 2531. The local Kiwanis Clubs “set out to establish a group home,” “approved” its creation, and “hired” a member of the Kiwanis Club of Centralia, Charles McCarthy, to “develop[e] [sic]” it. CP 251-5154, 2517, 2522, 3112.

Use of the “Kiwanis” name gave this project the “credibility” necessary for establishing a boys home and was “vital” to its continued operation. CP 2512; 2520; 2544-545; *see also* CP 2587 (Kiwanis International corporate designee’s testimony that Kiwanis Vocational Homes used the “credibility” and “assumed goodwill” of the

Kiwanis name and logo to obtain state placement contracts); CP 3434 (former State Department of Social and Health Services employee testifying the “connection to Kiwanis lent credibility to the group home, and a certain amount of assurance that additional support, oversight, and even funding would be available to KVH”).

Understandably, the Kiwanis Respondents could not allow Kiwanis Vocational Homes to use their name to operate a home for vulnerable boys with no oversight or control. Some quid pro quo was necessary. From the outset, as a condition of its use of their name the Kiwanis Clubs designed the corporate structure of the Kiwanis Vocational Homes so that their control of its operations—and the cash it generated—would be “an integral part of [KVH’s] **operation**.” CP 1274 (emphasis added).

Likewise, after a 1979 visit from its governor, the Kiwanis District’s Board of Trustees offered to allow the Kiwanis Vocational Homes to operate a group home under

the Kiwanis name and logo. CP 2538-2539, 3336. But the Kiwanis District did so in exchange for one condition: that “operation” of the boys home was “strictly and entirely a Kiwanis project.”⁴ CP 2538-2539, 3336.

To fulfill its end of this contract, the Kiwanis Vocational Homes allowed the Kiwanis Clubs and Kiwanis District to legally, literally, and exclusively embed themselves into two corporate boards: the Kiwanis Vocational Homes board (“Kiwanis Homes Board”) and the Lewis County Youth Enterprises board (“LCYE Board”). As Division Two observed, both boards “were involved in the management of the vocational homes.” C.C., 2024 WL

⁴ Whether the Kiwanis District had the authority to approve use of the Kiwanis logo is immaterial to the existence of an agency relationship between it and Kiwanis Vocational Homes. “[A] party dealing in good faith with an agent who appears to be acting within the scope of the agent’s authority is not bound by undisclosed limitations on the agent’s power.” *Hoglund v. Meeks*, 139 Wn. App. 854, 867, 170 P.3d 37 (2007).

4040468, at *1. Specifically, a reasonable person could infer that “the LCYE and KVH board held the power to control the hiring, firing, and supervision of KVH employees” and the Kiwanis Vocational Homes’ “treatment and supervision of residents.”⁵ *Id.* at *14.

⁵ In 1987, at the request of a Kiwanis District Lieutenant Governor, the Kiwanis Vocational Homes’ “corporate attorney,” himself a Kiwanian, wrote to the Kiwanis District to confirm the steps the Kiwanis Vocational Homes had taken to uphold its end of its contract to operate using the Kiwanis name and logo—ensuring that the boys home was strictly and entirely a Kiwanis project. CP 2522, 3013.

Specifically, by 1986 at the latest the “Centralia-Grand Mound and Rochester-Chehalis-Tumwater Kiwanis Vocational Homes for Youth” existed was as a corporate entity with its own board of directors, the Kiwanis Homes Board. C.C., 2024 WL 4040468, at *4; CP 2523. Its bylaws provided that the Kiwanis Homes Board had the right to direct “the business and affairs of the corporation.” CP 2602.

As the Kiwanis Vocational Homes’ corporate attorney informed the Kiwanis District, it was this corporation—“known as Centralia-Grand Mound and Rochester-Chehalis-Tumwater Kiwanis Vocational Homes for Youth”—that “contract[ed] with the State of Washington . . . to provide room, board, care and treatment for dependent male wards of the State of Washington.” CP

2523-524. It was the Kiwanis-exclusive, Kiwanis-appointed board of this “operating corporation”—the Kiwanis Homes Board—that held authority to “address policy questions and to make major decisions regarding operation of the home.” CP 2522, 2524.

The Kiwanis Vocational Homes’ corporate attorney distinguished the KVH Homes Board’s operational role and control from LCYE. CP 2524. Since 1977, LCYE functioned as a “holding corporation” for the Kiwanis Vocational Homes created to own “all the lands, buildings, building contents, and vehicles at K.V.H.” C.C., at *4, n.4 (quoting CP 1276); CP 2524 (LCYE owned the “land on which the home operates, the buildings, the equipment and the facilities”).

In 1989, after some Kiwanis Homes Board members raised concerns over McCarthy’s mismanagement of the boys home and abuse and neglect of its residents, McCarthy and his cronies responded by: (1) passing a corporate resolution stating that the Kiwanis Homes Board was “advisory” only and that LCYE controlled the boys home’s “operation”; and (2) amending LCYE’s bylaws to state that its board’s role was “not to become involved in the direct management and operation of the homes.” CP 1277; CP 1295.

But LCYE’s amended bylaws also vested “all corporate power and authority,” including “direction and management of all affairs of the corporation,” in the LCYE Board. CP 1296, 1299, 2602. McCarthy himself claimed that the “governing” LCYE Board also “directed” him and had “the authority to make the basic decisions as to the present and future of the home.” CP 3000.

Thus, as Division Two observed, a jury could conclude that the LCYE Board also “held the power to

In turn, “[t]he bylaws of the KVH Board and LCYE Board mandated that the respective boards were to be comprised of Kiwanis club members.”⁶ *Id.* at *3. Moreover, the local Kiwanis Clubs hand-selected the members of both boards. See CP 2522 (Kiwanis Homes Board members “appointed” by local Kiwanis Clubs”); CP 3000 (LCYE Board “designated by the different Kiwanis Clubs sponsoring its Boy’s Home”); see *also* CP 3073 (Chehalis Kiwanis club president “appointing” member to Kiwanis Homes Board).

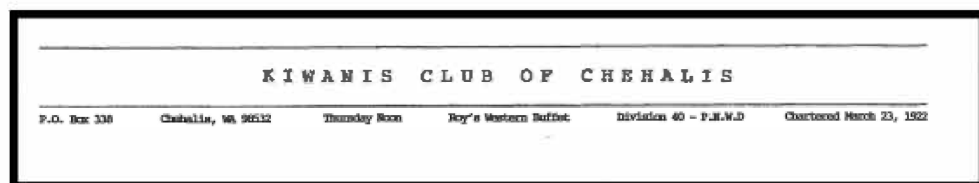
control the hiring, firing, and supervision of KVH employees.” C.C., 2024 4040468, at *14.

⁶ This integration of the Kiwanis Clubs with the Kiwanis Vocational Homes’ operations extended beyond its corporate boards directly to the employee level. Its executive director, McCarthy, as well as all other supervisory level employees were required to be Kiwanis members and attend their local Kiwanis Club meetings because the boys home’s “legal name” was “Kiwanis Vocational Homes for Youth.” C.C., 2024 4040468, at *4; CP 3355, 3382, 3477

The Kiwanis Clubs oversaw the boys home's operations through their members' dual roles on the Kiwanis Homes Board. As one board member testified, they were appointed to the KVH Board as the Kiwanis Clubs' "representatives" to oversee the Kiwanis Vocational Homes' "[d]ay-by-day operations" and "report back" to them. CP 2657-2658, 3073, 3329; see *also* CP 1279 (1985 club minutes reporting "participated on Board of Directors meeting of Boys Home to handle corporate business"); 1304 (1988 Tumwater Kiwanis club minutes reporting on "major emphasis project" of Kiwanis Homes Board); 1310 (1989 Tumwater Kiwanis club minutes reporting "lack of Board control" at Kiwanis Vocational Homes). And when these board representatives ran afoul of the Kiwanis Clubs, they would "re-assign" them to "other duties" and appoint more compliant representatives. CP 3064, 3073.

Consistent with board members' dual roles as Kiwanis Club proxies, they sent official communications in

their capacities as board members on club letterhead:



CP 3013, 3048, 3163.

But it was not just ordinary Kiwanis Club members that served on these boards. Kiwanis District officers also served on them. CP 3000 (two Kiwanis District lieutenant governors were board members); CP 3124 (current and former Kiwanis District governors were members of

Kiwanis Homes “administrative” board). Indeed, a former Kiwanis District lieutenant governor was asked by the Kiwanis District to serve on these boards and attended meetings as the Kiwanis District’s representative. CP 3349.

The Kiwanis District not only had the ability to control the Kiwanis Vocational Homes’ operations through its proxies on these boards. It actually exercised it. For example, when a local club requested information regarding the boys home from McCarthy, Kiwanis District lieutenant governors serving on its boards consulted with the Kiwanis District and instructed McCarthy to refuse the request because of the Kiwanis District’s “interest in preserving the Kiwanis name for the Boy’s Home.” CP 3000, 3343.

In turn, when the Kiwanis Vocational Homes’ operations came under fire from some local clubs, the Kiwanis District came to its rescue, convening an

investigative committee comprised of current and former Kiwanis District officers to “save the [Kiwanis Vocational Homes] and protect the Kiwanis name.” CP 3077, 3136.

The Kiwanis Vocational Homes’ boards serving as a buffer between the Kiwanis Clubs and the Kiwanis District and their control of the boys home’s operations was not accidental. This arms’-length control scheme was by design. As the Kiwanis Vocational Homes’ “corporate attorney” reassured them, establishing the Kiwanis Vocational Homes as a “separate” corporation—despite operating under the Kiwanis name, logo, and corporate boards exclusively filled with hand-picked proxies from the Kiwanis Clubs and Kiwanis District—would allow them to claim it “act[ed] independently of any local Kiwanis clubs” “and insulate them and Kiwanis International from any liability.” CP 3015. Indeed, as the Kiwanis Vocational Homes would again reassure the Kiwanis District, their ability to plausibly deny any “direct . . . operational control”

of the Kiwanis Vocational Homes was the point of this corporate structure.

The Kiwanis Respondents' fears of liability for the Kiwanis Vocational Homes' operations were well-founded. On November 30, 1990, the Washington Office of Special Investigation ("OSI") found that "rampant illegal misconduct occurred" at the Kiwanis Vocational Homes, including its employees' abuse of residents, its unqualified child care and social service staff, McCarthy's embezzlement of State funds, and McCarthy's failure to report sexual abuse of residents and other crimes, "among many other problems." C.C., 2024 WL 4040468, at *5; CP 2537, 3265.

In the wake of the OSI report, a Kiwanis District officer, Roy Frank, responded to a letter advocating for "disassociate[ing] [the Kiwanis District] from the home" by advising that the Kiwanis District's Past Governors' committee was being "apprised of the situation" and would meet with the proper people. CP 3265, 3568. Within days,

Kiwanis International demanded that the Kiwanis Vocational Homes terminate McCarthy or it would “pull the Kiwanis name.” CP 3271. McCarthy resigned only a few, short weeks later on January 4, 1991. CP 3275.

B. Division Two Erroneously Affirmed the Summary Judgment Dismissal of C.C.’s Actual Agency Claims Against the Kiwanis Clubs and Kiwanis District

On July 29, 2020, C.C. filed a complaint against the Kiwanis Respondents as well as other defendants. CP 1-36. In part, C.C. “alleged that the KVH governing boards were negligent in hiring and supervising KVH employees and negligent in treating and supervising KVH residents.” C.C., 2024 WL 4040468, at *1. In turn, C.C. alleged that the Kiwanis Clubs and Kiwanis District were vicariously liable for this negligence because they controlled the Kiwanis Vocational Homes’ corporate “board members” and “compris[ed] a single entity for all practical and legal

purposes.”⁷ CP 4-6; C.C., 2024 4040468, at *1.

After the trial court’s summary judgment dismissal of his claims against the Kiwanis, C.C.’s claims against the remaining defendant, McCarthy, went to trial. CP 3616, 9895. In relevant part, C.C. argued to the jury that McCarthy, as KVH’s “Executive Director,” owed KVH residents such as C.C. a special relationship duty to protect them from sexual abuse by third parties. CP 5282-5285. C.C. further argued McCarthy violated that duty in allowing an adult male to take C.C. off KVH’s premises to a hotel room without any verification of his background or any safety mechanisms in place, where the male provided C.C. with alcohol and forced him to perform oral sex. CP 5279; 9840; RP 1443-4447.

⁷ It is well-established Washington law that alleged principals like the Kiwanis Respondents can be vicariously liable for the negligence of their agents. *Brown v. Labor Ready Nw., Inc.*, 113 Wn. App. 643, 646, 54 P.3d 166 (2002).

The jury determined that McCarthy's conduct was outrageous, grossly negligent, and proximately caused C.C.'s sexual abuse. CP 9878-879.

C.C.'s timely appeal of the summary judgment order, Division Two's erroneous affirmation of the dismissal of his claims against the Kiwanis Clubs and Kiwanis District, and this timely petition for review followed. C.C., 2024 40400468, at *2; Order Granting Motion to Publish and Publishing Opinion in Part (Feb. 11, 2025).

C. Washington Courts Continue to Address These Recurring Kiwanis Agency Issues with Varying Results

The trial court judge in C.C.'s case was not the first to grapple with the existence of an agency relationship between the Kiwanis Respondents and the Kiwanis Vocational Homes. Initially, trial courts ruled that a jury must determine the issue. CP 2499. A Division Two Commissioner agreed. CP 2491.

Subsequently, in various actions trial courts

dismissed the claims of 16 total plaintiffs against the Kiwanis Respondents on summary judgment. After they appealed, Division Two entered rulings consolidating review into a single appeal, *M.A. v. Kiwanis International*, No. 58574-0. Rulings (*M.A.*, No. 58574-0, Feb. 27, Jul. 25, and Aug. 5, 2024). Division Two subsequently entered an order separating review of the summary judgment orders from other issues under its own cause number: *N.P. v. Kiwanis International*, No. 60297-1. Ruling (*N.P.*, No. 60297-1, Dec. 5, 2024); Letter (*N.P.*, No. 60297-1, Dec. 17, 2025).

As the Kiwanis Respondents have jointly represented with those plaintiffs in moving for a stay of *N.P.*, those summary judgment orders addressed “the same issues addressed . . . in the *C.C.* decision”— “whether the Kiwanis Respondents owed a duty to Appellants premised on an actual or apparent agency relationship.” **APPENDIX 14-15.** Division Two will grapple

with these identical agency issues again. And because it denied a stay of *N.P.* pending potential review by the Court, it will do so soon. Notation Ruling (*N.P.*, No. 60297-1, Feb. 21, 2025).

Meanwhile, trial courts continue to grapple with them. Three more lawsuits by 56 plaintiffs alleging the same agency theories against the Kiwanis Respondents are pending. AMP at 7-8 (citing AMP Appendix 490-528; 529-64; 565-668); **APPENDIX 21-69**. All told, the claims of 72 Kiwanis Vocational Homes survivors against the Kiwanis Clubs and Kiwanis District depend on definitive appellate resolution of these agency issues.

V. ARGUMENT

- A. Division Two’s Holdings That, as a Matter of Law, No Actual Agency Relationship Could Exist Between the Kiwanis Clubs or the Kiwanis District and the Kiwanis Vocational Homes Where Their Members and Officers Served as Their Proxies On Its Controlling Corporate Boards Conflicts with Decisions of This Court and the Court of Appeals**

As a threshold matter,

Our summary judgment standard precludes resolution of issues of material fact because our constitution protects the right to have factual issues decided by a jury. Specifically, article I, section 21 of our state constitution holds sacred the right to trial by jury, which “guarantees litigants the right to have a jury resolve questions of disputed material facts.” [*Davis v. Cox*, 183 Wn.2d 269, 289, 351 P.3d 862 (2015), *abrogated on other grounds by Maytown Sand & Gravel, LLC v. Thurston County*, 191 Wn.2d 392, 423 P.3d 223 (2018)]. This right is fundamental in our judicial system. As our Supreme Court has explained, adjudication by the trial court on the merits of nonfrivolous factual issues invades the role of the jury and violates the right to a jury trial. *Davis*, 183 Wn.2d at 294, 351 P.3d 862.

Haley v. Amazon.com Servs., LLC, 25 Wn. App. 2d 207, 218, 522 P.3d 80 (2022).

Accordingly, “[t]he function of a summary judgment proceeding . . . is to determine whether or not a genuine issue of fact exists, not to determine issues of fact.” *State ex rel. Zempel v. Twitchell*, 59 Wn.2d 419, 425, 367 P.2d 985 (1962). Thus, “[r]ather than weighing the evidence, the

court must view all facts and reasonable inferences therefrom in the light most favorable to the nonmoving party.” *Haley*, 25 Wn. App. 2d at 217.

This jury trial right and the standards necessary to effectuate it apply with particular force to agency issues. “Whether an agency exists is usually a question of fact for the jury.” *ITT Rayonier, Inc. v. Puget Sound Freight Lines*, 44 Wn. App. 368, 377, 722 P.2d 1310 (1986). “The court may decide the question only if the facts are undisputed and lead to a single conclusion.” *ITT Rayonier, Inc.*, 44 Wn. App. at 377.

An actual agency relationship exists “impliedly” when one party acts under the direction and control of another. *Hewson Constr., Inc. v. Reintree Corp.*, 101 Wn.2d 819, 823, 685 P.2d 1062 (1984). “The agency concept is flexible.” *CKP, Inc. v. GRS Const. Co.*, 63 Wn. App. 601, 608, 821 P.2d 63 (1991). Thus, such a relationship of direction and control may “arise by inference from the

relation of the parties.” *CKP, Inc.*, 63 Wn. App. at 608. It may be “direct” or “indirect.” *FutureSelect*, 175 Wn. App. at 881. And the alleged principal “need not actually exercise control”; the ability to do so is sufficient. *ITT Rayonier, Inc.*, 44 Wn. App. at 377; *Poutre v. Saunders*, 19 Wn.2d 561, 565, 143 P.2d 554 (1943) (same).

For example, in *FutureSelect*, the alleged principals consisted of two corporations, Oppenheimer Acquisition Corporation (“Oppenheimer”) and Massachusetts Mutual life Insurance Company (“Mass Mutual”). *Id.* at 852, Two other corporations, Tremont Group Holdings, Inc, and Tremont Partners Inc. (“Tremont”) were Oppenheimer’s and Mass Mutual’s alleged agents. *Id.* at 878.

The plaintiffs alleged that Oppenheimer and Mass Mutual “had the power, both direct and indirect, to control Tremont.” *Id.* at 881. In support of this indirect control, the plaintiffs alleged that “Tremont’s management structure was overhauled to reflect MassMutual’s and

Oppenheimer's deep involvement in and control over its operations." *Id.* at 880. Specifically, they alleged: "all five of Tremont's board members became MassMutual [or] Oppenheimer . . . employees" and that Tremont's "board always was made up of high level employees of MassMutual and Oppenheimer entities." *Id.* at 880. In turn, Tremont's board "had ultimate control over the manner of Tremont's investment strategy." *Id.*

On review, Division One held that "the alleged dual roles of Tremont directors and officers who were simultaneously employees, directors, or officers of Mass Mutual or Oppenheimer" was sufficient under Washington law to support their control over Tremont's affairs."⁸ *Id.* at

⁸ *FutureSelect's* holding is consistent with Washington precedent. In the context of materialman's liens, claimants must provide "very clear proof of strong circumstances showing an intimate relationship" to establish agency. *CKP, Inc.*, 63 Wn. App. at 608. But evidence of an alleged agent's dual role as a representative of one corporation while acting as a decisionmaker for

881.

FutureSelect—which the Kiwanis Respondents cited to Division Two as providing the “decisional framework”—is directly on-point. Respondents’ Statement of Additional Authorities (May 3, 2024). The Kiwanis Vocational Homes’ two corporate boards controlled its operations, including its hiring, firing, and supervision of employees and volunteers and its policies and practices for supervising its vulnerable residents.

In turn, the structure of the Kiwanis Vocational Homes’ boards was specifically designed to ensure the Kiwanis Clubs’ and Kiwanis District’s deep involvement in its operations. Both corporations required Kiwanis

another meets even that high burden. See *id.* (where person was a “key decisionmaker” for alleged principal and agent and attended the agent’s meetings “acting in both capacities,” evidence supported determination of actual agency relationship between the two).

membership to serve on their boards. And the Kiwanis Clubs and the Kiwanis District did more than install their members and officers—such as Kiwanis District governors and lieutenant governors—on these controlling boards. They installed them for the *specific* purpose of controlling the boys home's operations and ensuring they remained strictly and entirely a Kiwanian project directed through their proxies.

Viewed in the light most favorable to C.C., Washington law was satisfied, requiring a jury's determination of these actual agency relationships. Division Two's contrary holding both usurped a jury's constitutional role and conflicted with well-established Washington precedent regarding actual agency. Review is required to resolve this precedential conflict between Division One and Division Two. RAP 13.4(b)(1), (b)(2).

B. Definitive Resolution of These Recurring, Divisive Issues of Actual Agency is of Substantial Public Importance

Finally, definitive resolution by the Court of these issues of actual agency is of substantial public importance. They will recur on appeal: they span multiple lawsuits consolidated into one appeal currently pending before Division Two. They continue to recur before trial courts: they await litigation and trial in three lawsuits. Their impact is tremendous: the claims of 72 Kiwanis Vocational Homes survivors against the Kiwanis Clubs and Kiwanis District hinge on them. They are divisive: trial courts and appellate jurists have reached differing conclusions on them. And, given Division Two's decision not to publish the agency portion of its decision, they potentially may continue to divide. After all, unpublished opinions are nonbinding. GR 14.1.

Review by the Court in order to provide definitive, efficient resolution of these continually recurring issues is not just of substantial public importance. It is paramount. RAP 13.4(b)(4).

VI. CONCLUSION

For the foregoing reasons, review of Division Two's decision is necessary to ensure uniformity of Washington appellate law regarding actual agency, resolve an appellate conflict, restore the jury's state constitutional factfinding role, and efficiently tame a multiplicity of appellate and trial court litigation with both the potential for and a documented history of inconsistent results. RAP 13.4(b)(1), (b)(2), (b)(4).

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Respectfully submitted this 13th day of March 2025.

The undersigned certifies that this brief consists of
4,695 words in compliance with RAP 18.17(c).

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CERTIFICATE OF SERVICE

Mollie Hetlage, being first duly sworn upon oath, deposes and says:

I am a citizen of the United States of America and of the State of Washington, over the age of twenty-one years, not a party to the above-entitled matter and competent to be a witness therein.

That on March 13, 2025, I delivered via ECF a true and correct copy of the above document, directed to:

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C.C. v. Kiwanis Int'l

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Court of Appeals of Washington, Division Two

April 30, 2024, Oral Argument; September 4, 2024, Filed

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Reporter

33 Wn. App. 2d 294 | 2024 Wash. App. LEXIS 1758

C.C., *Appellant*, v. KIWANIS INTERNATIONAL ET AL., *Respondents*.

Notice: PUBLISHED IN PART

Order Granting Motion to Publish in Part February 11, 2025.

Subsequent History: Reported at C.C. v. Kiwanis Int'l, 32 Wn. App. 2d 1017, 2024 Wash. App. LEXIS 1840 (Sept. 4, 2024)

Modified by, Ordered published by, in part C.C. v. Kiwanis Int'l, 2025 Wash. App. LEXIS 250 (Wash. Ct. App., Feb. 11, 2025)

Prior History: Appeal from Pierce County Superior Court. Docket No: 20-2-07087-0. Judge signing: Honorable Thomas Quinlan. Judgment or order under review. Date filed: 07/06/2022.

▼ Headnotes/Summary

Summary

WASHINGTON OFFICIAL REPORTS SUMMARY

Nature of Action: A former resident of a foster care group home who alleged that he was sexually abused at the home sometime around 1988-1989 brought suit against two dissolved corporate governing boards for negligence and against additional corporate entities, arguing that such entities were vicariously liable for the negligence because they were in an actual or apparent agency relationship with the boards and the group home.

Superior Court: The Superior Court for Pierce County, No. 20-2-07087-0, Thomas P. Quinlan, J., on July 6, 2022, entered a summary judgment in favor of the corporate entities.

Court of Appeals: Holding in the published portion of the opinion that the corporate survival statute (RCW 23B.14.340) was a statute of repose and provided a personal defense that did not bar vicarious liability claims against the corporate entities on procedural grounds, and holding in the unpublished portion of the opinion that there was a genuine issue of material fact regarding whether an actual or apparent agency relationship existed between certain corporate entities and the group home, the court *affirms* the judgment in part, *reverses* it in part, and *remands* the case for further proceedings.

Counsel: Darrell L. Cochran, Kevin M. Hastings, Bridget T. Grotz, Patrick A. Brown, and Selena Hoffman (of *Pfau, Cochran, Vertetis, Amala PLLC*), for appellant.

Francis S. Floyd, Thomas B. Nedderman, Dakota L. Solberg, and Amber L. Pearce (of *Floyd, Pflueger, Kearns, Nedderman & Gress PS*); Philip A.

Talmadge (of *Talmadge/Fitzpatrick*); Zachary D. Rutman and Mallory E. Lorber (of *Taylor | Anderson LLP*); and Jin Hee Park (of *Best, Best & Krieger LLP*) (Paul A. Buckley, of counsel), for respondents.

Judges: Authored by Meng Li Che. Concurring: Rebecca Glasgow, Bernard Veljacic.

Opinion by: Meng Li Che

Opinion

[Published in part by order of the Court of Appeals February 11, 2025.]

¶1 CHE, J. — CC appeals a summary judgment order in favor of the Kiwanis Defendants. CC, who was subject to abuse at the foster care group home known as Kiwanis Vocational Home for Youth (**KVH**), alleged that the **KVH** governing boards were negligent in hiring and supervising **KVH** employees and negligent in treating and supervising **KVH** residents. He further claimed that this negligence proximately caused the abuse. CC brought a lawsuit against various Kiwanis entities ¹ (Kiwanis Defendants), arguing that they were vicariously liable for the aforementioned negligence. Specifically, CC contended that the Kiwanis Defendants were in an actual or apparent agency relationship with the **KVH** boards.

¶2 The Kiwanis Defendants moved for summary judgment, arguing that the corporate dissolution survival statute, RCW 23B.14.340, is a statute of repose, which barred liability against the now dissolved **KVH** boards, and that bar extended to them. They also argued that there was no actual or apparent agency relationship between the Kiwanis Defendants and the **KVH** boards. The trial court granted summary judgment in favor of the Kiwanis Defendants.

¶3 CC appeals, arguing that summary judgment dismissal of the Kiwanis Defendants was inappropriate because the corporate dissolution survival statute is not a statute of repose and even if it was it does not extend to bar the Kiwanis Defendants from vicarious liability, and that genuine issues of material fact exist as to whether an actual or apparent agency relationship existed between the Kiwanis Defendants and the **KVH** boards. CC also attempts to argue that the Kiwanis Defendants are **KVH**'s alter ego.

¶4 We hold in the published portion that (1) RCW 23B.14.340 is a statute of repose but that it provides a personal defense that does not bar vicarious liability claims against the Kiwanis Defendants on procedural grounds, and in the unpublished portion that (2) there is a genuine issue of material fact regarding whether an actual agency relationship existed between **KVH** and Kiwanis International, (3) there is a genuine issue of material fact regarding whether an apparent agency relationship existed between **KVH**, Kiwanis International, and the local clubs, and (4) CC's alter ego argument is not properly before us. We affirm the grant of summary judgment as to Kiwanis Pacific Northwest District (KPNW). But we reverse the trial court's summary judgment order as to Kiwanis International and the local clubs and remand the matter for the trial court to conduct further proceedings consistent with this opinion.

FACTS

¶5 Lewis County Youth Enterprises (LCYE) was a Washington nonprofit corporation, doing business as Kiwanis Vocational Homes for Youth (**KVH**). Beginning operation in December 1979, **KVH** "provided residential care for teenage boys in need of supervision and treatment for problems caused by emotional and behavioral difficulties." Clerk's Papers (CP) at 3283. The Kiwanis Defendants—comprised of Kiwanis International, KPNW, and several local Kiwanis clubs—had a long-complicated relationship with LCYE and **KVH**. LCYE and **KVH** each had a board of directors, and both boards were involved in the management of the vocational home.

¶6 CC, a resident at **KVH** sometime around 1988-1989, was subject to abuse during his time at **KVH**. In 2020, CC filed a lawsuit against the Kiwanis Defendants, among others. CC alleged that the Kiwanis Defendants negligently breached special relationship duties they owed to the **KVH** residents during his time at **KVH**.

¶7 CC also contended that **KVH** and its boards—the LCYE Board and the **KVH** Board—were negligent in hiring and retaining staff and negligent in the treatment and supervision of **KVH** residents. CC argued that the Kiwanis Defendants were liable for the aforementioned negligence of the LCYE Board and the **KVH** Board because each of the Kiwanis Defendants were the actual and apparent principals of the boards. CC also brought claims against Charles McCarthy, the executive director of **KVH** who was in charge of day-to-day operations, in his individual capacity.

¶8 The Kiwanis Defendants moved for summary judgment dismissal of CC's claims against them, arguing that (1) they did not have a special relationship with the children at **KVH**, (2) they lacked an agency relationship with **KVH**, its boards, and any other negligent actors, and (3) RCW 23B.14.340 is a statute of repose that bars CC's untimely claims. CC responded, notably including an argument that the Kiwanis Defendants were liable under the alter ego doctrine. The alter ego basis for liability was not in CC's complaint. ²

¶9 At the summary judgment hearing, the trial court specifically determined that the Kiwanis Defendants did not have a special relationship with CC. In all relevant aspects to this appeal, the trial court granted summary judgment for the Kiwanis Defendants.

¶10 CC's claims against McCarthy went to a jury trial. CC argued that McCarthy had a duty to protect CC from third party sexual assault because he had a "special relationship" duty with the children at **KVH**. CP at 5282. CC then argued that McCarthy breached that duty by failing to provide reasonable protection to CC by (1) failing to employ proper oversight of the hiring and supervision of **KVH** employees, (2) allowing a person to remove CC from **KVH** to take CC to a motel without verifying the person's background or establishing safety mechanisms, and (3) taking CC to McCarthy's own home and sexually abusing him.

¶11 The jury found that McCarthy was grossly negligent and that the negligence proximately caused the abuse that occurred to CC. The jury awarded \$375,000 in damages to CC.

¶12 CC appeals the summary judgment order dismissing the Kiwanis Defendants.

¶13 Below, we summarize the evidence in the record regarding the Kiwanis organizational structure, **KVH** and its organizational structure, the ability of the Kiwanis Defendants to control **KVH**, and the State's understanding of the relationship between the Kiwanis Defendants and **KVH**.

I. KIWANIS ORGANIZATIONAL STRUCTURE

¶14 The Kiwanis Defendants are comprised of different entities with different functions: Kiwanis International, KPNW—a Kiwanis regional district, and local Kiwanis clubs.

APPENDIX 002

A. Kiwanis International

¶15 Kiwanis International is a corporation that occasionally selects and supports global civic service projects. Kiwanis International owns the name, logo, and other marks of Kiwanis. Kiwanis International allows local clubs to use the name in connection with their service projects. “Third party entities outside of the Kiwanis family of service clubs may not use the name and logo without Kiwanis International’s permission.” CP at 1126. “Kiwanis International does not have the authority to determine, dictate, or decide which service projects the local clubs provide to the local community.” CP at 1126.

¶16 But Kiwanis International retains the exclusive right to create new local clubs, to require local clubs to maintain certain standards and practices via adoption of the model bylaws, and to approve local club bylaws and amendments to those bylaws. And Kiwanis International may revoke a local club’s charter for violating the local club’s bylaws or Kiwanis International’s constitution and bylaws. A 1984 Kiwanis International policies document provided that no local clubs or districts “may sponsor beyond the club level any organization, except Circle K, Key Club or Kiwanianne.” CP at 1261.

¶17 The 1980, 1985, and 1987 Kiwanis constitutions provided that Kiwanis International had the power “[t]o create, supervise, and control chartered clubs and districts or other groups of chartered clubs and divisions thereof.” CP at 1183. The constitutions also provided that “the word Kiwanis, and the name, emblem, and/or insignia of Kiwanis International shall not be used for any purpose other than that authorized by the Board of Trustees.” CP at 1193.

¶18 The 1985 Kiwanis International bylaws provided that “Kiwanis International has the exclusive right to control ... usage of the Kiwanis Marks by a chartered club and to control the nature, quality, and uniformity of the services and membership of chartered clubs in connection with which the Kiwanis Marks are used.” CP at 2761. The amended 1988 constitution allowed use of the Kiwanis name and marks with “the written consent of Kiwanis International.” CP at 1205.

¶19 Kiwanis International interacts with local Kiwanis clubs by collecting dues, approving their articles of incorporation and bylaws, offering them support, and requiring them to submit reoccurring reports. The 1980 Kiwanis International bylaws state that Kiwanis International has the responsibility to purchase “comprehensive general liability insurance program for the protection of Kiwanis clubs, their members, and Kiwanis-sponsored organizations and activities.” CP at 2682. And Kiwanis International purchased such insurance.

B. Regional Districts

¶20 Kiwanis International creates and organizes districts, which are corporate entities autonomous from Kiwanis International, and the districts “do not operate or supervise local clubs located in their geographic area.” CP at 1124. The Kiwanis districts (1) serve as liaisons between Kiwanis International and local clubs, (2) promote the growth of new and existing local clubs, and (3) act as a mediator for the internal conflict within local clubs or among them. Some Kiwanis districts select civic service projects to encourage clubs within the district to support. The Kiwanis International internal governance director stated that KPNW, a district, never selected **KVH** as a service project.

¶21 Kiwanis districts lack the authority to authorize third parties, which may include service project organizations, to use the name and trademark of Kiwanis International. Kiwanis district bylaws and articles of incorporation—but not their internal procedures—must be approved by Kiwanis International. Kiwanis International retains the power to disband Kiwanis districts and clubs. The members of Kiwanis districts are the local Kiwanis clubs.

C. Local Clubs

¶22 To form a local club, Kiwanis International or a Kiwanis district will visit an area to find potential members who are interested in forming a local club, or groups may apply to Kiwanis International to form a local Kiwanis club. The newly formed clubs adopt their own bylaws, which are generally based on Kiwanis International’s model bylaws. Kiwanis International decides whether to approve the bylaws before deciding to grant a charter to the local club.

¶23 Local Kiwanis clubs are members of Kiwanis International—but the members of the local clubs are not members of Kiwanis International. Local clubs are expected to comply with Kiwanis International’s constitution and bylaws. If Kiwanis International received credible allegations that a local club violated Kiwanis International’s constitution or bylaws, Kiwanis International “may investigate and take corrective steps” and it has the authority to withdraw a local club’s charter. CP at 1123.

¶24 Local Kiwanis clubs select civic service projects to support based on the needs of their local community. The internal governance director of Kiwanis International believed that local clubs considered **KVH** to be a service project and stated that **KVH** “appears to be” a service project. CP at 2592. When asked whether local clubs control their service projects, the internal governance director responded that a club may or may not control a service project as service projects vary widely, including merely fundraising or volunteering with another organization. But the internal governance director also stated that **KVH**, as a service project, would be bound by the Kiwanis bylaws, constitution, and internal policies and procedures. [34](#)

II. **KVH** AND ITS BOARDS

¶25 **KVH** had two boards: the LCYE Board and the Centralia-Grand Mound-Rochester, Chehalis, Tumwater, Kiwanis Vocational Homes for Youth Board (**KVH** Board). The bylaws of the **KVH** Board and LCYE Board mandated that the respective boards were to be comprised of Kiwanis club members.

A. The LCYE Board

¶26 In June 1977, LCYE was incorporated. LCYE was doing business as **KVH**. [44](#) In 1978, McCarthy was hired as the executive director of **KVH**. According to McCarthy’s job description, he “ha[d] the responsibility of personnel management including hiring, termination, training of all

employees and volunteers of the [KVH] and being accountable for their actions.” CP at 1817. That same document also provided, “The director must be accountable to his Board of Directors,” among others. CP at 1817. A volunteer psychologist at KVH, in 1990, opined that McCarthy essentially had complete control over the business and management of KVH. McCarthy believed only the LCYE Board could fire him.

¶27 The LCYE bylaws provided, “[T]he purpose and mission of this corporation shall continue to be the operation of group homes for youth in Washington State doing business as Kiwanis Vocational Homes for Youth.” CP at 1295. The bylaws also provided that all corporate power, including “direction and management of all affairs of the corporation” of KVH, was vested in the LCYE Board. CP at 2627.

¶28 However, the LCYE bylaws also provided, “The role of the Board shall be to set general policy and guidelines for the operation of individual group homes, not to become involved in the direct management and operation of the homes.” CP at 1299. But in September 1989, LCYE elected a board member to represent the LCYE Board regarding personnel issues at KVH, the board member would arbitrate grievances not satisfied through the normal chain of command at KVH.

¶29 In 1990, the LCYE Board was comprised of all Kiwanis club members, including Sam Morehead. In an April 2018 deposition, Morehead—a former member of the KVH Board and LCYE Board—stated that local Grand Mound/Rochester Kiwanis club placed members on either the LCYE Board or KVH Board with the intent to control the “day-by-day operations” of KVH. [5] CP at 2657.

¶30 In November 1990, the State Office of Special Investigation (OSI) found that rampant illegal misconduct had occurred at KVH. For example, OSI found that McCarthy hit a student, McCarthy misappropriated state funds, staff assaulted students, the child care and social service staff did not meet the minimum education and experience requirements, and McCarthy failed to report crimes occurring, among many other problems.

¶31 McCarthy remained the director of KVH until December 1990. Under a management agreement between Children's Industrial Home and KVH, Claude Carlson of Children's Industrial Home became the new executive director of KVH. In September 1993, KVH changed its name to Coffee Creek Center. Children continued to be placed at Coffee Creek Center. In June 2010, LCYE was administratively dissolved.

B. KVH Board

¶32 In February 1986, the KVH Board was incorporated. The KVH Board was formed to help raise start-up money for KVH. The KVH Board supported KVH by soliciting goods for the operation of KVH.

¶33 The KVH Board was made up of Kiwanis members. According to the bylaws, the KVH Board had the right to direct “the business and affairs” of the corporation and was also vested with “[a]ll corporate power and authority of the corporation.” CP at 2602-03. But some individuals referred to this board as the KVH “Advisory Board.” Board members were somewhat unsure about their duties. There was an internal dispute about whether the KVH Board was in fact advisory.

¶34 One board member, Henry Meister, believed the KVH Board had management powers and stated that the board was negligent in not exercising those powers. In June 1989, the KVH Board determined that it was in fact advisory. In May 1991, the KVH Board was administratively dissolved. In a January 2017 deposition, Guy Cornwell, a onetime KVH director, stated that the KVH Board was essentially not involved in KVH.

III. THE KIWANIS DEFENDANTS' RIGHTS TO CONTROL KVH

¶35 Next, we examine the facts regarding the level of control the Kiwanis Defendants had over KVH and its boards—organized by the contract between Kiwanis International and KVH, the support for the formation and ongoing operations of KVH, the use of the Kiwanis name, and the Kiwanis investigation of KVH.

A. Kiwanis International's Contract with KVH

¶36 In May 1988, Kiwanis International agreed to KVH's continued use of the Kiwanis name and logo. The parties entered into a contract to this end. In essence, in exchange for the continued use of the Kiwanis name, KVH agreed to a set of conditions, including (1) KVH and “its members will at all times recognize, abide by, and observe as effectively binding upon itself and its members the Constitution, Bylaws and Policies of Kiwanis International,” (2) KVH “will from time to time upon the request of [Kiwanis International] ... amend its bylaws to eliminate therefrom any conflict with Constitution and Bylaws of Kiwanis International,” (3) Kiwanis International could require KVH to dissolve or change its corporate form at any time, (4) and KVH could not amend its articles of incorporation without Kiwanis International's written consent. CP at 3033.

¶37 The governance specialist for Kiwanis International stated, “Nowhere in this contract does KVH agree to submit to the control or supervision of Kiwanis International, nor did Kiwanis International have any mechanism to control or supervise KVH under this contract.” CP at 1127. It is unclear what mechanisms existed to ensure KVH's compliance with Kiwanis International's agreement.

B. Support for Formation and Ongoing Operations

¶38 Many of the local Kiwanis clubs helped support the formation of KVH and its ongoing operation. [6] Generally, the local Kiwanis clubs provided various kinds of support for KVH, like providing building materials, clothes, medical services, counseling services, food, some financial contributions, and other personal effects. The State provided the primary monetary support for KVH. In an August 1987 letter to KPNW, the KVH attorney, George Darkenwald, wrote that there was a consensus among the founders of KVH that the objectives of KVH were those of the Kiwanis.

C. Use of the Kiwanis Name

¶39 In 1979, the KPNW Board minutes evidence that the KPNW Board believed that for KVH to use the Kiwanis name and marks, particularly in the context of fundraising for LCYE, KVH had to be “strictly and entirely a Kiwanis project.” CP at 2538. But that statement did not express that KVH was, in fact, “strictly and entirely a Kiwanis project.” CP at 2538. Nonetheless, KVH appeared to use the Kiwanis name without Kiwanis

International's permission until 1988. But generally, local Kiwanis clubs could have used the Kiwanis name with service projects, and the local clubs believed **KVH** was a service project.

¶40 In January and February 1987, KPNW sent letters expressing concerns about ensuring that Kiwanis International, KPNW, and the local clubs did not incur liability for the acts of **KVH**. The letters specifically concerned themselves with **KVH**'s use of the Kiwanis name. In August 1987, **KVH** reached out to KPNW for aid in acquiring formal permission for the continued use of the Kiwanis name. In this communication, the **KVH** attorney stated, "[W]hen people in the community and in local and state government hear the name Kiwanis Vocational Home they think of the high ideals and principles of Kiwanis, and of the dedication and skill Kiwanians devote to the goals of Kiwanis." CP at 2525.

¶41 Sometime thereafter, **KVH** requested formal permission from Kiwanis International for use of the Kiwanis name. In the letter requesting permission, McCarthy stated that **KVH** cherished the Kiwanis name and the name was "most vital in continuance of our endeavors." CP at 2544-45. To that end, McCarthy opined that changing the name of **KVH** would cause a six-month delay of state funding. As previously mentioned, Kiwanis International entered into a contract with **KVH** allowing **KVH**'s continued use of the Kiwanis name. McCarthy retired shortly thereafter. A 1990 internal memo from the OSI investigation evidenced that Kiwanis International would have revoked **KVH**'s right to continue using the Kiwanis name if **KVH** did not terminate McCarthy.

D. Kiwanis Investigations

¶42 In September 1984, the Department of Social and Health Services (DSHS) published a performance audit of **KVH**, finding that **KVH** did not comply with several material contract requirements. In July 1985, the local Kiwanis club in Centralia became concerned about **KVH**'s use of the Kiwanis name and requested insurance policies relating to **KVH**, correspondence about the use of the Kiwanis name, information about **KVH**'s accounts payable, and a copy of **KVH**'s articles of incorporation and bylaws. That month, McCarthy responded, essentially asserting that he was responsible only to the LCYE Board. He declined to send the local Centralia club the requested information, and he informed the club that **KVH** would nevertheless continue using the Kiwanis name.

¶43 After two local Kiwanis clubs withdrew their support from **KVH**, KPNW formed an investigative committee to investigate allegations about sexual abuse of residents, improper manipulations of business records, and other administrative malfeasance. The committee's mission was to save **KVH** "and protect the Kiwanis name." CP at 3079. In July 1990, the committee issued its report, finding that no evidence showed that sexual abuse occurred at **KVH**. The committee issued a series of recommendations for **KVH**. Nothing in the record suggests that **KVH** viewed these recommendations as binding requirements.

IV. THE STATE'S UNDERSTANDING OF THE RELATIONSHIP BETWEEN **KVH** AND KIWANIS

¶44 Mark Redal, the regional administrator for the Division of Children and Family Services (DCFS) within DSHS from 1984-1994, submitted a declaration attesting to the following facts.

¶45 Redal received letters from McCarthy in which McCarthy used the Kiwanis logo, marks, and name. Redal recalled that Kiwanis International and local Kiwanis clubs "met with DSHS personnel at various points to ensure that [**KVH**] was a safe and reliable placement facility for wards of the State." This left Redal with the impression that Kiwanis International and the local clubs "definitely had more than a name-only interest." He explained, "Their additional eyes and ears on the facility gave me the impression that they also shared our concerns that policies were being adhered to and that issues were brought forward for resolution when problems arose." CP at 3433.

¶46 DCFS staff wrote a letter endorsing **KVH** to KPNW. In his declaration, Redal surmised that when DCFS decides which group homes to develop and support, "[p]roposals with the backing of entities like Kiwanis probably had more potential to be developed as resources." CP at 3434. But in a February 2020 deposition, Redal stated that licensing decisions were about meeting certain health and safety requirements, and he did not think "the name of a Kiwanis would have a bearing on that." CP at 1569.

¶47 In his declaration, Redal further opined, "The **KVH** connection to Kiwanis lent credibility to the group home, and a certain amount of assurance that additional support, oversight and even funding would be available to **KVH**. The fact that it was a Kiwanis-sponsored project, gave me the impression of stability and reliability." CP at 3434. Redal further opined, "In light of the investigation done by Kiwanis International in response to the concerns about **KVH** expressed by Kiwanis members, I had the impression that the Kiwanis backing meant the **KVH** group home administration was accountable to entities other than just Region 6 administration." CP at 3434. But Redal did concede, "I do not believe our region would have kept the facility open just because of the Kiwanis backing." CP at 1822.

¶48 In the February 2020 deposition, Redal stated that he thought Kiwanis, as an organization, was involved in the operation of **KVH** but was not sure exactly how. Redal formed this belief based on **KVH**'s use of the Kiwanis name and logo and also the amount of support and involvement the local Kiwanis clubs provided to **KVH**. Redal also stated that DCFS standards were not relaxed because of **KVH**'s affiliation with Kiwanis. Finally, Redal stated if the State wanted to discuss something with **KVH**, they would call McCarthy as the director.

ANALYSIS

¶49 CC claims that the Kiwanis Defendants' liability, as principals, flows from their alleged actual and apparent agency relationship with **KVH** and its boards. Specifically, CC contends that the **KVH** boards—the LCYE Board and the **KVH** Board—were negligent in hiring and retaining certain employees and negligent in their oversight of the treatment and supervision of **KVH** residents. CC also claims that each of the Kiwanis Defendants are liable for said negligence under the actual and apparent agency theories.

¶50 On appeal, CC argues that the trial court erred by granting summary judgment dismissal of the Kiwanis Defendants because the corporate dissolution survival statute is not a statute of repose and even if it was it does not extend to bar the Kiwanis Defendants from vicarious liability, and that genuine issues of material fact exist as to whether an actual or apparent agency relationship existed between the Kiwanis Defendants and the **KVH** boards. CC also attempts to argue that the Kiwanis Defendants are **KVH**'s alter ego.

¶51 The Kiwanis Defendants respond that they are immune from such liability because (1) the **KVH** boards—the alleged agents—are immune from liability as a matter of law under RCW 23B.14.340, a corporate dissolution statute, and that immunity extends to the Kiwanis Defendants and (2) the Kiwanis Defendants did not have an actual or an apparent agency relationship with the **KVH** boards.

I. LEGAL PRINCIPLES

APPENDIX 005

¶52 We review summary judgment orders de novo. *Mohr v. Grantham*, 172 Wn.2d 844, 859, 262 P.3d 490 (2011). CR 56(c) provides that summary judgment is appropriate where “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.” When determining whether summary judgment was appropriate, we view the evidence in the light most favorable to the nonmoving party. *Mohr*, 172 Wn.2d at 859.

II. THE CORPORATE DISSOLUTION SURVIVAL STATUTE DOES NOT BAR CC’S VICARIOUS LIABILITY CLAIMS AGAINST THE KIWANIS DEFENDANTS

¶53 RCW 23B.14.340, known as the corporate dissolution survival statute, provides,

The dissolution of a corporation ... shall not take away or impair any remedy available against such corporation, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution or arising thereafter, *unless action or other proceeding thereon is not commenced within two years after the effective date of any dissolution that was effective prior to June 7, 2006, or within three years after the effective date of any dissolution that is effective on or after June 7, 2006.*

(Emphasis added.) The LCYE Board was dissolved in June 2010, and the **KVH** Board was dissolved in May 1991, both long before CC filed his lawsuit in 2020. The trial court ruled that RCW 23B.14.340, which barred claims against **KVH**, also barred claims against its alleged principals, the Kiwanis Defendants.

¶54 CC argues that the trial court erred because RCW 23B.14.340 is not a statute of repose and even if RCW 23B.14.340 is a statute of repose, it does not bar CC’s vicarious liability claims because statutes of repose are personal defenses that cannot be raised by the Kiwanis Defendants as principals. CC emphasizes that RCW 23B.14.340 includes a list of enumerated individuals subject to the liability limitation but it does not include the term “principals.” We hold that RCW 23B.14.340 is a statute of repose but it does not bar CC’s vicarious liability claims against the Kiwanis Defendants because the statute of repose is a personal defense.

A. RCW 23B.14.340 Is a Statute of Repose

¶55 Whether RCW 23B.14.340 is a statute of repose is a legal question, which we review de novo. *See In re Dependency of A.M.F.*, 1 Wn.3d 407, 411, 526 P.3d 32 (2023). It is one which we have already answered in the affirmative in *R.N. v. Kiwanis International*, 19 Wn. App. 2d 389, 404, 496 P.3d 748 (2021), *review denied*, 199 Wn.2d 1002 (2022).

¶56 Unlike statutes of limitation, statutes of repose “provide[] a time period in which the cause of action must accrue—not a time period from accrual to commencement of the action.” *Donovan v. Pruitt*, 36 Wn. App. 324, 327, 674 P.2d 204 (1983) (emphasis omitted). “A claim generally accrues when a party has the right to seek relief in court.” *Wash. State Major League Baseball Stadium Pub. Facilities Dist. v. Huber, Hunt & Nichols-Kiewit Constr. Co.*, 176 Wn.2d 502, 511, 296 P.3d 821 (2013).

¶57 We have determined that RCW 23B.14.340 is a statute of repose. *R.N.*, 19 Wn. App. 2d at 404. “At common law, when a corporation dissolved, it ceased to exist for all purposes and therefore could not be sued.” *Id.* at 400-01. “That common law rule has been modified in most states by statutes generally known as survival statutes, which permit lawsuits to be filed against dissolved corporations for a limited period.” *Id.* at 401. In *R.N.*, we explained that RCW 23B.14.340 was a corporate survival statute, and corporate survival statutes act as statutes of repose extinguishing liability against dissolved corporations—distinct from statutes of limitation. *Id.* at 402.

¶58 RCW 23B.14.340 does not provide a time period for accrual to commencement of the action. Rather, the plain language of RCW 23B.14.340 provides that, regardless of when accrual occurs, all claims are terminated against dissolved corporations if not filed within the listed time limitations. RCW 23B.14.340 terminates a right of action after a specified time, even prior to the claim’s accrual, unlike a statute of limitation. Thus, RCW 23B.14.340 is a statute of repose.

B. Dismissal of the Boards under RCW 23B.14.340 Does Not Extend to Bar Liability for the Kiwanis Defendants

¶59 Having established that RCW 23B.14.340 is a statute of repose, we must next determine whether its application to the LCYE and **KVH** Boards extends to the Kiwanis Defendants to bar their vicarious liability as alleged principals.

¶60 “An agent’s immunity from civil liability generally does not establish a defense for the principal.” *Savage v. State*, 127 Wn.2d 434, 439, 899 P.2d 1270 (1995) (quoting *Babcock v. State*, 116 Wn.2d 596, 620, 809 P.2d 143 (1991) (plurality opinion) (*Babcock II*)). However, our Supreme Court has held that “a principal cannot be held derivatively responsible when the agent has been discharged ... only insofar as the judgment for the agent is ‘on the merits and not based on a personal defense.’” *Vern J. Oja & Assocs. v. Wash. Park Towers, Inc.*, 89 Wn.2d 72, 77, 569 P.2d 1141 (1977) (holding that the statute of limitation defense was personal and it did not result in a dismissal on the merits) (quoting RESTATEMENT OF JUDGMENTS § 99 (AM. L. INST. 1942)). Thus, a critical question for this court to answer is whether dismissal under RCW 23B.14.340 is a judgment on the merits or a personal defense.

¶61 We determine that RCW 23B.14.340 is a personal defense. The ordinary meaning of “judgment on the merits” is a judgment based on the evidence, not a procedural bar. BLACK’S LAW DICTIONARY 1007 (12th ed. 2024). Because RCW 23B.14.340 does not establish a defense based on the evidence, but based on a procedural hurdle, judgments based on RCW 23B.14.340 are not judgments on the merits. Thus, an agent’s defense under RCW 23B.14.340 does not sever liability as to the principal.

¶62 The Kiwanis Defendants argue that our Supreme Court has recognized “that statutes of repose are to be treated not as statutes of limitation, but as part of the body of a state’s substantive law in making choice-of-law determinations.” *Rice v. Dow Chem. Co.*, 124 Wn.2d 205, 212, 875 P.2d 1213 (1994) (emphasis added). The Kiwanis Defendants also emphasize that equitable theories, like the discovery rule, do not toll statutes of repose—unlike statutes of limitation.

¶63 The Kiwanis Defendants liken the “absolute bar” presented by a statute of repose to immunity, which the Supreme Court has considered a substantive defense in certain circumstances. *Br. of Resp’ts* at 56; *Babcock v. State*, 112 Wn.2d 83, 105, 768 P.2d 481 (1989) (plurality opinion) (*Babcock I*), *vacated on recons.*, 116 Wn.2d at 596.

¶64 In *Babcock I*, our Supreme Court held, “The fact that the [DSHS] caseworkers acted as participants in an adversary hearing renders their actions immune under the common law doctrine of absolute immunity for participants in judicial proceedings.” 112 Wn.2d at 97. Then, the court held, “The State is immune to the same extent as its agents because the caseworkers’ defense of immunity is not a personal one, but rather relates directly to their role as agents of the State.” *Id.* at 105.

¶65 However, two years later, upon a motion for reconsideration, in *Babcock II*, the Supreme Court reversed its decision in *Babcock I*, holding that the caseworkers were not entitled to common law absolute immunity based on Washington precedent and legislative policy, but the caseworkers were entitled to a judicially created qualified immunity under certain circumstances. *Babcock II*, 116 Wn.2d at 608.

¶66 The court further held that the qualified immunity “is a personal immunity designed to limit an individual caseworker’s liability for damages.” *Id.* at 619. Thus, the State was not entitled to the defense of qualified immunity for the individual caseworkers. *Id.* The court emphasized that in the legislature’s grant of qualified immunity under RCW 26.44.060(3), the legislature specifically chose not to abrogate its waiver of sovereign immunity. *Id.* And so, the court concluded that it could not extend the common law qualified immunity to the State “in the face of a statutory provision admonishing us not to construe an emergency immunity to abrogate sovereign immunity.” *Id.* at 620.

¶67 But these holdings in *Rice* and the *Babcock* cases do not change our conclusion. The fact that our Supreme Court has determined that statutes of repose are substantive law in *making choice-of-law determinations* is not determinative as it involves a different legal context. *Rice*, 124 Wn.2d at 212. Even if we determined that a statute of repose is like immunity thus triggering the applicability of *Babcock*, it would not compel a different result.

¶68 In *Babcock I*, a plurality, rather than a majority, reached the conclusion that the agent’s immunity was a substantive defense that applied to the State. 112 Wn.2d at 105 (two of the five justices in the majority concurred in result only). In *Babcock II*, the court reversed *Babcock I* and concluded qualified immunity was a personal defense to the agent that did not extend to the State, the principal. Additionally, in *Babcock II*, the court’s reversal of *Babcock I* was not based on the fact that an immunity-like defense could never be a substantive defense. Rather, the court emphasized that the immunity should not extend to the State due to legislative intent to the contrary. *Babcock II*, 116 Wn.2d at 620. Nevertheless, *Babcock II* reiterated the general proposition that “[a]n agent’s immunity from civil liability generally does not establish a defense for the principal.” *Id.*

¶69 Of note, *Babcock II* cited to *Creelman* and *Guffey* as examples of an agent’s immunity extending to the principal. *Id.* at 621. In *Creelman*, prosecutorial immunity was extended to the State and the county based on public policy considerations. *Creelman v. Svenning*, 67 Wn.2d 882, 885, 410 P.2d 606 (1966). In *Guffey*, the Supreme Court held that the “State and Washington State Patrol cannot be held liable when the trooper is immune.” ¶70 *Babcock II*, 116 Wn.2d at 621 (citing *Guffey v. State*, 103 Wn.2d 144, 153, 690 P.2d 1163 (1984)). But *Guffey* was effectively overruled in *Savage*, 127 Wn.2d at 442.

¶70 While the aforementioned cases do not preclude the possibility that an immunity-like defense for an agent may be substantive, cutting off liability for a principal, they solidify the general proposition that an agent’s immunity—which we are assuming but have not decided is similar to a statute of repose—does not establish a defense for the principal.

¶71 Whether an agent’s immunity applies to the principal in the government context involves a detailed policy-oriented factual inquiry. *Id.* at 446. In *Savage*, our Supreme Court held that the qualified immunity of a parole officer did not extend to the State. *Id.* The court reasoned that “the different functions personal and governmental immunity are designed to serve support maintaining state liability in this context, even where the agent enjoys qualified personal immunity.” *Id.* at 445.

¶72 The court then elaborated that the officer’s immunity existed “to encourage unrestrained execution of responsibility, while for the sovereign it is to prevent judicial scrutiny of basic policies formulated by coordinate branches of government. To insulate the Government from liability for the inevitable mishaps which will occur when its employees perform their functions without fear of liability not only is unjust, but also serves no purpose for which sovereign immunity need exist.” *Id.* at 445 (quoting *Downs v. United States*, 382 F. Supp. 713, 750 (M.D. Tenn. 1974), *rev’d*, 522 F.2d 990 (6th Cir. 1975)).

¶73 But the reasoning in *Savage* was highly policy oriented and specifically used to determine whether the immunity of an individual actor should extend to the State. Nothing suggests that the *Savage* reasoning applies beyond the specific context of a principal that is a government agency.

¶74 The Kiwanis Defendants also argue that we should apply RCW 23B.14.340 to principals because such a holding is consistent with considerations of practicality, like creating expectations for the closing of a business, including creating a fixed date to extinguish liability stemming from known and unknown claims. The Kiwanis Defendants also assert that we should apply RCW 23B.14.340 to principals because after dissolution, the principal cannot cross-claim against the at-fault agent, creating an injustice.

¶75 While we recognize it places a hardship on principals to not be able to cross-claim against at-fault agents, the argument that principals should have an expectation that liability would be terminated based on the timeline in RCW 23B.14.340 fails because RCW 23B.14.340 does not even mention principals. Given that an agent’s defense does not ordinarily apply to principals and given that RCW 23B.14.340 does not mention principals, we decline to apply RCW 23B.14.340 to principals.

¶76 Finally, we reiterate that RCW 23B.14.340 results in a judgment based on technical or procedural grounds, not based on the evidence. Thus, RCW 23B.14.340 is a personal defense and not a substantive defense on the merits. Therefore, the immunity of the alleged agents under RCW 23B.14.340 does not immunize the Kiwanis Defendants from liability.

CONCLUSION

¶77 In conclusion, we hold that RCW 23B.14.340 is a statute of repose but that it does not bar claims against the Kiwanis Defendants as a matter of law.

¶78 A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder shall be filed for public record in accordance with RCW 2.06.040, it is so ordered.

III. THERE IS A GENUINE ISSUE OF MATERIAL FACT AS TO WHETHER THE KIWANIS DEFENDANTS HAD AN AGENCY RELATIONSHIP WITH KVH.

¶79 CC argues that the KVH boards—the LCYE Board and the KVH Board—were negligent in hiring and retaining certain employees and negligent in treating and supervising KVH residents. CC contends that each of the Kiwanis Defendants are liable for that negligence under actual and apparent agency theories. We analyze these theories as applied to each individual defendant.

¶80 “A principal is vicariously liable for the conduct of an agent acting within the scope of the agency relationship.” 16 DAVID K. DEWOLF & KELLER W. ALLEN, WASH. PRAC.: TORT LAW AND PRACTICE § 4:10 (5th ed. 2023). The principal’s vicarious liability is predicated upon an agent committing some act of negligence. *Estep v. Hamilton*, 148 Wn. App. 246, 258, 201 P.3d 331 (2008). An agency relationship may be broad or just for a limited purpose. *CKP, Inc. v. GRS Const. Co.*, 63 Wn. App. 601, 608, 821 P.2d 63 (1991). “The relationship may be express or arise by inference from the relation of the parties. Whether one is the agent of another for a specific purpose depends in part upon whether that person has power to act with reference to that purpose.” *Id.* at 608.

¶81 The party asserting the existence of an agency relationship bears the burden of establishing the same. *Id.* Importantly, the determination of whether an actual agency or apparent relationship exists is usually inappropriate for summary judgment. *ITT Rayonier, Inc. v. Puget Sound*

Freight Lines, 44 Wn. App. 368, 377, 722 P.2d 1310 (1986); *FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.*, 175 Wn. App. 840, 882, 309 P.3d 555 (2013), *aff'd*, 180 Wn.2d 954, 331 P.3d 29 (2014), and *aff'd*, 190 Wn.2d 281, 413 P.3d 1 (2018).

¶82 The question before us is whether there is a genuine issue of material fact, viewing all the evidence in the light most favorable to CC, as to whether the Kiwanis Defendants had an actual or apparent agency relationship with **KVH**.

A. Actual Agency

¶83 CC argues that summary judgment was improper because, viewing the evidence in the light most favorable to CC, genuine issues of material fact exist as to whether the Kiwanis Defendants had an actual agency relationship with **KVH**. We agree with respect to Kiwanis International, but not KPNW or the local clubs.

¶84 "Actual authority derives from the principal's objective manifestations of authority to the agent." *Absher Const. Co. v. Kent Sch. Dist. No. 415*, 77 Wn. App. 137, 143, 890 P.2d 1071 (1995). Actual authority may be express or implied, and implied actual authority arises from circumstantial evidence showing the principal intended the agent to possess actual authority. *King v. Riveland*, 125 Wn.2d 500, 507, 886 P.2d 160 (1994). A parent company may be the principal as to an underlying company. See *FutureSelect*, 175 Wn. App. at 879.

¶85 A principal communicating to the agent, whether expressly or impliedly, that the agent may bind the principal is one way to establish agency. *Chicago Title Ins. Co. v. Off. of Ins. Comm'r*, 178 Wn.2d 120, 143, 309 P.3d 372 (2013). Agency may also be established where the principal has the right to control the details of the agent's work. *Id.* The right-to-control test is particularly applicable where liability stems from the agent's alleged negligence. *Id.*

The extent of control exercised by the principal over an agent is essential in determining liability: "When we distill the principles evident in our case law, the proper inquiry becomes whether there is a retention of the right to direct the manner in which the work is performed, not simply whether there is an actual exercise of control over the manner in which the work is performed."

FutureSelect, 175 Wn. App. at 878-79 (quoting *Kamla v. Space Needle Corp.*, 147 Wn.2d 114, 121, 52 P.3d 472 (2002)). "The right to control is determined by factors such as the conduct of the parties, the contract between them, and the right of the principal to interfere in the [alleged agent's] work." *FutureSelect*, 175 Wn. App. at 879.

¶86 "[T]he plaintiff need not show that the principal controlled or had the right to control every aspect of the agent's operation in order to incur vicarious liability. Rather, '[i]t should be sufficient that plaintiff present substantial evidence of ... control or right of control over those activities from whence the actionable negligence flowed.'" *Massey v. Tube Art Display, Inc.*, 15 Wn. App. 782, 787, 551 P.2d 1387 (1976) (quoting *Jackson v. Standard Oil Co.*, 8 Wn. App. 83, 91, 505 P.2d 139 (1972)). "The question of control or right of control is also one of fact for the jury." *O'Brien v. Hafer*, 122 Wn. App. 279, 284, 93 P.3d 930 (2004).

¶87 Applying the right-to-control to analyze whether the Kiwanis Defendants were in an actual agency relationship with the **KVH** boards, our inquiry is focused on whether the Kiwanis Defendants had the right to control the following through the boards: (1) the hiring and supervision of **KVH** employees and (2) the treatment and supervision of **KVH** residents. In making these determinations, we view the facts and reasonable inferences in the light most favorable to the non-moving party, CC.

1. Kiwanis International

¶88 Viewing the facts in the light most favorable to CC, as the nonmoving party, we conclude that there are genuine issues of material fact and, therefore, summary judgment was improper as to Kiwanis International.

¶89 **KVH** and Kiwanis International entered into their 1988 agreement around the time when CC was at **KVH**. While we agree with the Kiwanis Defendants that the 1988 agreement did not provide that **KVH** may act on all of the Kiwanis Defendants' behalf, it established that Kiwanis International retained a significant amount of ability to control day-to-day operations and management decisions at **KVH**.

¶90 Under that agreement, Kiwanis International agreed to grant **KVH** the right to use the Kiwanis name and logo provided that: (1) **KVH** and "its members will at all times recognize, abide by, and observe as effectively binding upon itself and its members the Constitution, Bylaws and Policies of Kiwanis International", (2) **KVH** "will from time to time upon the request of [Kiwanis International] ... amend its bylaws to eliminate therefrom any conflict with Constitution and Bylaws of Kiwanis International", (3) Kiwanis International could require **KVH** to dissolve or change its corporate form at any time, and (4) **KVH** could not amend its articles of incorporation without Kiwanis International's written consent. CP at 3033.

¶91 At oral argument, the Kiwanis Defendants argued that this contract pertained only to the use of the logo. Wash. Court of Appeals, *A.B. v. Kiwanis Int'l*, No. 57207-9-II, oral argument (April 30, 2024), at 24 min., 14 sec., *audio recording* by TVW, Wash. State's Public Affair Network. [\[8.3\]](#) It is true that **KVH**'s interest in the agreement was to obtain the right to use the name of Kiwanis. But, as is apparent from the plain language, Kiwanis International's rights under that contract are not limited solely to controlling the use of the logo by **KVH**. Rather, in exchange for granting **KVH** use of the logo, Kiwanis International retained broad control over **KVH**'s bylaws and corporate form; control that extended up to and including dissolution of **KVH**. CP Kiwanis International's right to control **KVH** operations under the agreement is further evidenced by McCarthy's sudden retirement when Kiwanis International threatened to revoke **KVH**'s right to continue using the Kiwanis name if **KVH** did not terminate McCarthy.

¶92 When viewed in the light most favorable to CC, the control provided by the contract and Kiwanis International's force-out of McCarthy show that Kiwanis International had the right to control certain aspects of **KVH** operations, including employment matters. The question is then whether Kiwanis International's right to control **KVH** operations extended to the negligence that proximately harmed CC—the alleged negligent hiring and firing of **KVH** staff and the alleged negligent supervision and treatment of **KVH** residents. In other words, the question is whether the underlying negligence by **KVH** is within the scope of the agency relationship with Kiwanis International.

¶93 The name revocation threat and McCarthy's resignation shortly thereafter provides a reasonable inference that Kiwanis International had the right to take actions that would result in the termination of the executive director. And the 1988 contract gives Kiwanis International the right to control **KVH**'s corporate form, up to dissolution. While there was nothing in the Kiwanis International constitution, bylaws, or policies that provided mechanisms to control the employment decisions at **KVH** nor the manner of supervision and treatment of **KVH** residents, the 1988 contract subjected **KVH** to Kiwanis International's constitution, policies, and bylaws.

¶94 Viewing all of the aforementioned evidence in the light most favorable to CC, there is a genuine issue of material fact regarding whether Kiwanis International had the right control the manner in which **KVH** made employment decisions and the manner in which the boards implemented rules regarding the treatment and supervision of residents.

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¶95 Next, the Kiwanis Defendants argue that even if an agency relationship existed between Kiwanis International and the **KVH** boards, those boards did not have control or involvement in the hiring and supervision of **KVH** employees. The Kiwanis Defendants emphasize that McCarthy had unilateral control over the hiring, firing, and supervision of **KVH** employees. We disagree.

¶96 The LCYE bylaws provided that the purpose of its Board was to continue the operation of **KVH**. While the bylaws stated, “the role of the Board shall be to set general policy and guidelines for the operation of individual group homes, not to become involved in the direct management and operation of the homes,” the bylaws also explicitly provide, “all corporate power and authority of the corporation shall be vested in the Board of Directors.” CP at 1296, 1299. The **KVH** Board’s bylaws provided that it had the right to direct “the business and affairs of the corporation.” CP at 2602.

¶97 Viewing the facts in the light most favorable to CC, there is a genuine issue of material fact whether the LCYE and **KVH** boards held the power to control the hiring, firing, and supervision of **KVH** employees as they explicitly held all corporate power under their own bylaws. And as addressed above, there is a genuine issue of material fact whether Kiwanis International held the power to ultimately influence or control the hiring and firing of the executive director or other staff through the **KVH** boards.

¶98 Finally, the Kiwanis Defendants argue that even if Kiwanis International has a principal-agency relationship with the **KVH** boards, the underlying negligence is outside the scope of the agency relationship because entities cannot be vicariously liable for the sexual crimes of another. It is true that vicarious liability does not extend to an employee’s act that is “directed toward personal sexual gratification[.]” because such conduct is outside the scope of their employment. *Robel v. Roundup Corp.*, 148 Wn.2d 35, 54, 59 P.3d 611, (2002). But, here, the claim is not that Kiwanis International is vicariously liable for any individual’s sexual crimes against CC. Rather, the claim, as outlined in the complaint, is that Kiwanis International has vicarious liability for the negligent conduct of the **KVH** boards, which proximately caused sexual misconduct to occur to CC.

¶99 Relatedly, the Kiwanis Defendants argue that a principal cannot be vicariously liable for a board condoning sexual misconduct as such conduct does not further any Kiwanis interest. Wash. App. Ct. oral argument, *supra*. But again, CC’s theory is that Kiwanis International is liable for the **KVH** boards’ negligence—not for intentionally condoning sexual misconduct occurring at **KVH**.

¶100 We reverse the summary judgment order as to Kiwanis International.

2. KPNW

¶101 Even viewing the facts in the light most favorable to CC, we hold that there are no genuine issues of material fact and KPNW was entitled to judgment as a matter of law, therefore, summary judgment was proper as to KPNW on the issue of actual agency.

¶102 CC contends that the KPNW manifested actual control over the **KVH** boards through the following: (1) KPNW agreed to sponsor **KVH** if it was “strictly and entirely a Kiwanis Project,” (2) KPNW had an interest in preserving usage of the Kiwanis name for **KVH**, and (3) KPNW intervened to save **KVH** and protect the Kiwanis name. Br. of Appellant at 45-48.

¶103 First, the 1979 KPNW Board minutes show that the KPNW Board believed that for **KVH** to use the Kiwanis name and marks, particularly in the context of fundraising for LCYE, **KVH** had to be “strictly and entirely a Kiwanis project.” CP at 2538. But that prior statement does not express that **KVH** was, in fact, “strictly and entirely a Kiwanis project.” CP at 2538. This evidence does not suggest that KPNW could control **KVH**. Second, McCarthy did convey to the Centralia Kiwanis Club that KPNW had an interest in preserving the Kiwanis name for **KVH**. But again, that evidence does not show that KPNW could exercise control over **KVH**.

¶104 Third, after two local Kiwanis clubs withdrew their support from **KVH**, KPNW formed an investigative committee to investigate allegations about sexual abuse of residents, improper manipulations of business records and other administrative malfeasance. The committee’s mission was to save **KVH** “and protect the Kiwanis name.” CP at 3079. The committee found that no evidence showed that sexual abuse occurred at **KVH**. The committee issued a series of recommendations for **KVH**. Again, KPNW creating a committee that investigated **KVH** and issued recommendations is not evidence that KPNW had the right to control employment decisions at **KVH**, nor the treatment and supervision of residents. If the KPNW had such control, they may have issued binding resolutions on **KVH**, not mere recommendations.

¶105 In summary, none of these facts suggest that KPNW had the right to control the employment decisions at **KVH**, nor control the treatment or supervision of **KVH** residents. Unlike Kiwanis International, there is no evidence that KPNW could take action that would lead to the firing or forced resignation of employees or otherwise control the executive director. Nor is there evidence that KPNW could dissolve or otherwise close **KVH**. CC fails to show a genuine issue of material fact on this issue, and therefore, summary judgment was appropriate with respect to KPNW on the issue of actual agency.

3. The Local Clubs: Kiwanis of Tumwater, Kiwanis of Centralia-Chehalis, and Kiwanis of University Place

¶106 We also hold that there are no genuine issues of material fact and the local clubs were entitled to judgment as a matter of law, therefore, summary judgment was proper as to the local clubs on the issue of actual agency.

¶107 CC argues that the local clubs manifested actual control over the **KVH** boards through the following: (1) local clubs provided support for the formation of **KVH**, including providing operational funding, (2) the Kiwanis Club of Centralia demanded **KVH** produce certain corporate documents, (3) Henry Meister discussed regaining control over **KVH** and ensuring it complied with the policies and rules of Kiwanis International, and (4) two local clubs withdrew their names from **KVH**’s articles of incorporation and recommended that other local clubs do the same to be free from liability stemming from **KVH** operations.

¶108 First, while it is true that local Kiwanis clubs provided financial support as well as other material contributions, like clothes and food, the State provided the primary monetary support for **KVH**. Providing support does not demonstrate that the local Kiwanis clubs had the right to control the employment decisions or the treatment of residents at **KVH**. Second, while the Kiwanis Club of Centralia did demand **KVH** produce certain corporate documents, McCarthy refused to produce those documents. He stated that the request intruded into the responsibilities of the governing board—which is presumably the LCYE Board. Such evidence suggests that Kiwanis Club of Centralia did not have the right to control operational decisions at **KVH**—not the opposite.

¶109 At oral argument, CC stated that McCarthy’s letter refusing to produce those documents provided, “I am controlled by the Board of Directors, which is appointed by all of the clubs. I answer to all of the clubs through that Board of Directors.” Wash. App. Ct. oral argument, *supra*. But that letter actually provides, “There is a governing board for [**KVH**], ... a board designated by the different Kiwanis Clubs sponsoring it’s Boy’s Home.” CP at 3000.

¶110 McCarthy’s letter does not suggest that he answers to the clubs through the LCYE Board. In the letter, he merely maintains that different local clubs designate members to be part of the governing board of **KVH**. The fact that local clubs put members on the governing board of **KVH** does not empower the local clubs to interfere with the operational decisions at **KVH**. Indeed, this letter cuts against CC’s argument as it shows McCarthy refusing the Centralia Club’s request for the information.

¶111 Third, it is true that Meister, a **KVH** Board member, talked about regaining control over **KVH** in a letter to the **KVH** Board. It is unclear how a letter to the **KVH** Board asserting that the **KVH** Board must regain control of **KVH** shows that the local clubs, in fact, had the right to control the operational decisions at **KVH**. Fourth, the Kiwanis Club of Chehalis and the Kiwanis Club of Tumwater withdrew their names from the **KVH** articles of incorporation. This withdrawal did not shut down **KVH**.

¶112 CC does not explain how local clubs withdrawing their names from the articles of incorporation shows that those clubs could have asserted operational control over **KVH**. Even when viewing this in the light most favorable to CC, the evidence does not demonstrate operational control. Viewing all of the aforementioned evidence in the light most favorable to CC, we hold that there was not a genuine issue of material fact as to whether any of the local Kiwanis clubs had the right to control the relevant operational decisions at **KVH**.

¶113 In summary, there is a genuine issue of material fact precluding summary judgment on the issue of actual agency as to Kiwanis International, but not as to KPNW nor the local Kiwanis clubs.

B. Apparent Agency

¶114 CC also argues that summary judgment was inappropriate because there was a genuine issue of material fact regarding whether **KVH** was the apparent agent of the Kiwanis Defendants. We agree as to Kiwanis International and the local clubs but disagree as to KPNW.

¶115 Under the apparent agency doctrine, vicarious liability may arise for the principal where the purported principal makes objective manifestations leading a third party to believe that the wrongdoer is an agent of the purported principal. [934 FutureSelect](#), 175 Wn. App. at 882. The objective manifestations are sufficient if they “cause the one claiming apparent authority” to subjectively believe that the agent has authority to act for the principal and that the subjective belief is objectively reasonable. *Mohr*, 172 Wn.2d at 860 (quoting *King*, 125 Wn.2d at 507). Lastly, the plaintiff must rely on that apparent agency relationship to their detriment. *Wilson v. Grant*, 162 Wn. App. 731, 744, 258 P.3d 689 (2011); *D.L.S. v. Maybin*, 130 Wn. App. 94, 97, 121 P.3d 1210 (2005) (lack of evidence that DLS did anything in reliance upon a belief that she was employed by McDonald's, as opposed to another, defeated her apparent agency claim).

¶116 The principal's act of permitting the purported agent to use its name, advertising logo, and telephone were objective manifestations supporting an apparent agency relationship. *Hansen v. Horn Rapids O.R.V. Park*, 85 Wn. App. 424, 430, 932 P.2d 724 (1997).

1. Manifestations and Belief

¶117 CC argues that our focus should be on whether the Kiwanis Defendants made objective manifestations to the State—as opposed to CC—that caused the State to believe the Kiwanis Defendants were principals of **KVH**. CC points us to Illinois cases for the proposition that where the one claiming apparent agency was a minor at the relevant time, courts should look at the objective manifestations of the principal to the caretaker of the minor—in this case, the State. (Citing *Chicago Title & Tr. Co. v. Sisters of St. Mary*, 264 Ill. App. 3d 913, 917, 637 N.E.2d 543, 202 Ill. Dec. 4 (1994); *Monti v. Silver Cross Hosp.*, 262 Ill. App. 3d 503, 507, 637 N.E.2d 427, 201 Ill. Dec. 838 (1994) (determining whether the plaintiff met the reliance element by looking to whether the persons responsible for the care of the plaintiff in a medical context relied on the principal's manifestations)).

¶118 The Kiwanis Defendants contend that Washington case law is clear that we should look to the plaintiff's belief and reliance, not to whoever was in charge of caring for the minor plaintiff at the time. The Kiwanis Defendants also emphasize the purpose of apparent agency: “to protect third parties who justifiably rely upon the belief that another is the agent of a principal.” *D.L.S.*, 130 Wn. App. at 97.

¶119 While we recognize Washington case law generally refers to the reliance of the party claiming apparent agency, *Mohr*, 172 Wn.2d at 860, Washington has not yet determined whether we may consider a minor plaintiff's caretaker's perspective to determine whether an apparent agency relationship exists. If we were to agree with the Kiwanis Defendants, “no infant could ever hope to avail himself of apparent agency since he would be incapable of his own evaluation and reliance.” *Nosbaum v. Martini*, 312 Ill. App. 3d 108, 121, 726 N.E.2d 84, 244 Ill. Dec. 488 (Ill. App. Ct. 2000). Such a determination would immunize principals from liability for leading a third-party caretaker to believe that they have an agency relationship with a wrongdoer. This would prevent minors and otherwise incompetent individuals, who could not meet the reliance element, from acquiring a remedy against a principal. Because CC did not have a choice in being placed at **KVH**, CC could not engage in evaluation and reliance and, under the Kiwanis Defendants' approach, would be foreclosed from availing himself of a cause of action based on apparent agency. Accordingly, in this context, we think justice demands we consider the entity who made the decision on CC's behalf—the State.

¶120 We turn first to whether there was a genuine issue of material fact regarding whether the State believed, based on Kiwanis Defendants' objective manifestations, that the Kiwanis Defendants were **KVH**'s principal and whether the State relied on that belief. CC largely relies on Mark Redal's declaration to demonstrate a genuine issue of material fact on these issues.

¶121 Viewing the facts in the light most favorable to CC, we agree that Redal's declaration creates a genuine issue of material fact regarding whether Kiwanis International and the local clubs made objective manifestations that led the State to believe that Kiwanis International and the local clubs were the principals of **KVH**. For example, Redal's declaration established that Kiwanis International and local Kiwanis clubs met with State personnel to ensure the success of **KVH** as a state placement facility, which demonstrated to Redal that these Kiwanis entities “had more than a name-only interest.” CP at 3433.

¶122 As to KPNW, DSHS staff periodically communicated with Kiwanis representatives, including KPNW. Such communication included an email wherein a DSHS employee endorsed **KVH** and its operation by McCarthy to KPNW. But even under the summary judgment standard, that statement does not amount to an objective manifestation that could reasonably lead the State to believe that the **KVH** Boards were the agents of KPNW. Thus, summary judgment was proper as to KPNW.

2. Reliance

¶123 We next analyze whether there was a genuine issue of material fact regarding whether the State relied on the belief that Kiwanis International and the local clubs were **KVH**'s principals to the State's detriment.

¶124 Redal surmised that when DCFS decides which group homes to develop and support “[p]roposals with the backing of entities like Kiwanis probably had more potential to be developed as resources.” CP at 1822. Redal also opined that “[t]he **KVH** connection to Kiwanis lent credibility to the group home, and a certain amount of assurance that additional support, oversight and even funding would be available to **KVH**. The fact that it was a Kiwanis-sponsored project, gave me the impression of stability and reliability.” CP at 1822. To that end, Kiwanis International and local Kiwanis clubs met with State personnel to ensure that **KVH** was considered “a safe and reliable placement facility for wards of the State.” CP at 3433.

¶125 Redal's statements create a reasonable inference that the State relied on the relationship between Kiwanis and **KVH** by referring children, like CC, to be placed at **KVH** because the State believed **KVH** had additional support, safety, oversight, funding, stability, and reliability because of its relationship with Kiwanis. Viewing this evidence in the light most favorable to CC, there is a genuine issue of material fact regarding whether the State relied on the apparent agency relationship between Kiwanis International and the local clubs as principals and **KVH** as their agent to the State's detriment. ¹⁰ Thus, summary judgment was improper as to Kiwanis International and the local clubs based on apparent agency.

IV. THE ALTER EGO CLAIM IS AN IMPROPERLY ADDED CAUSE OF ACTION.

¶126 CC also argues that **KVH** was the Kiwanis Defendants' alter ego. The Kiwanis Defendants respond that CC improperly raised this issue in response to the Kiwanis Defendants' summary judgment motion, and CC failed to include an alter ego theory in his complaint. In response, CC argues that the Kiwanis Defendants failed to properly preserve their argument that the alter ego argument was improperly added. We agree with the Kiwanis Defendants.

¶127 "A party who does not plead a cause of action or theory of recovery cannot finesse the issue by later inserting the theory into trial briefs and contending it was in the case all along." *Dewey v. Tacoma Sch. Dist. No. 10*, 95 Wn. App. 18, 26, 974 P.2d 847 (1999). However, issues not raised by the pleadings may be tried by express or implied consent of the parties. *Id.*

In determining whether the parties impliedly tried an issue, an appellate court will consider the record as a whole, including whether the issue was mentioned before the trial and in opening arguments, the evidence on the issue admitted at the trial, and the legal and factual support for the trial court's conclusions regarding the issue.

Id.

¶128 Here, CC raised his alter ego theory in opposition to the Kiwanis Defendants' motion for summary judgment. CC's sophisticated counsel did not move to amend the complaint to add the alter ego theory. CC does not point to any evidence that the alter ego theory was explicitly or implicitly tried by consent before the trial court. Simply inserting the theory into a response to summary judgment is insufficient to add a new cause of action. And CC points to no authority holding that a new cause of action is properly added in such a circumstance absent an objection from the opposing party. *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962) ("Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none."). Thus, we decline to consider this theory as a basis for reversing summary judgment.

CONCLUSION

¶129 In conclusion, we hold that RCW 23B.14.340 is a statute of repose but that it does not bar claims against the Kiwanis Defendants as a matter of law. We further hold that there is a genuine issue of material fact regarding whether an actual or apparent agency relationship between **KVH** and Kiwanis International existed, and whether an apparent agency relationship between **KVH** and the local clubs existed. We also hold that CC's alter ego argument is not properly before us. Accordingly, we affirm the grant of summary judgment as to KPNW. But we reverse the trial court's summary judgment order as to Kiwanis International and the local clubs and remand the matter for the trial court to conduct further proceedings consistent with this opinion.

VELJACIC, A.C.J., and GLASGOW, J., concur.

References

LexisNexis Practice Guide: Washington Pretrial Civil Procedure

LexisNexis Practice Guide: Washington Torts and Personal Injury

Steward M. Landefeld et al., *Washington Business Entities: Law & Forms* (2d ed.)

Washington Corporation Laws Annotated (2023 ed.)

Annotated Revised Code of Washington by LexisNexis

Footnotes



The Kiwanis entities named in the complaint are as follows: Kiwanis International, Kiwanis Pacific Northwest District, Kiwanis of Tumwater, Kiwanis of Centralia-Chehalis—which was formerly two separate clubs of those respective areas—and Kiwanis of University Place. Clerk's Papers at 660-62.

2 ¶

CC's sophisticated counsel did not move to amend the complaint to add the alter ego theory. The Kiwanis Defendants did not address the alter ego in their reply brief. And CC did not raise the alter ego theory referenced in his response brief at the summary judgment hearing.

3 ¶

An overview committee dealt with public relations relating to **KVH**. The committee's monthly meeting minutes from November 1988 stated **KVH** is "a project for Kiwanis International." CP at 3045. But the significance of this statement is not clear, and more generally, it is unclear who authored this document.

4 ¶

LCYE is a holding corporation for **KVH**. It owns "all the lands, buildings, building contents, and vehicles at K.V.H." CP at 1276.

5 ¶

The Kiwanis Defendants cite a transcript not in our record for the proposition that Morehead later recanted his statement in a January 2021 deposition, stating, "[T]he board was not for the day-to-day operations of the home." Br. of Resp't's at 17. In any event, the local Grand Mound/Rochester Kiwanis club is not a party to this litigation.

6 ¶

A **KVH** pamphlet opined that the founding of **KVH** was born of the interest of the local Kiwanis clubs.

7 ¶

The Kiwanis Defendants argue that we should apply RCW 23B.14.340 to principals because this case is like *Creelman*. But the Kiwanis Defendants do not explain how the corporate dissolution protection in RCW 23B.14.340 is anything like the prosecutorial immunity discussed in *Creelman*. Instead, the Kiwanis Defendants maintain that this case is just like *Creelman* because the only remaining theory of liability is vicarious. Such an argument is conclusory as it fails to address any of the prosecutorial-immunity-specific public policy reasoning in *Creelman*. 67 Wn.2d at 885.

8 ¶

Available at <https://twv.org/video/division-2-court-of-appeals-2024041090/?eventID=2024041090>.

9 ¶

"Manifestations to a third person can be made by the principal in person or through anyone else, including the agent, who has the principal's actual authority to make them—e.g., an advertisement in the newspaper, provided it is placed by the principal or an agent with actual authority." *Smith v. Hansen, Hansen & Johnson, Inc.*, 63 Wn. App. 355, 364, 818 P.2d 1127 (1991).

10 ¶

CC suggests that the State chose to rely on **KVH**'s association with the Kiwanis Defendants by deluging it with referrals. But the cited material merely provides "Because [**KVH**] ... is unique in that it offers academic and vocational training on campus, caseworkers for the State of Washington deluged the Kiwanis program with referrals." CP at 2648. That does not suggest that the Kiwanis relationship caused such a deluge or whether the State treated **KVH** differently based on the Kiwanis relationship.

Content Type: Cases

Terms: KVH

Narrow By: Sources: WA Courts

Date and Time: Mar 13, 2025 01:17:17 p.m. EDT

APPENDIX 012

APPENDIX 013

No. 60297-1-II (consolidated)

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

N.P., et al.,

Appellants,

v.

KIWANIS
INTERNATIONAL, et al.,

Respondents.

STIPULATED MOTION
TO STAY APPEAL
PENDING MANDATE IN
C.C.

I. Introduction

Appellants N.P., et al., and Respondents Kiwanis International, et al., stipulate to and request that the Court grant a stay of this consolidated appeal pending a mandate in the matter of *C.C., et al. v. Kiwanis International, et al.*, No. 57207-9-II, 32 Wn. App. 2d 1017 (Wash. Ct. App. Sept. 4, 2024). This appeal, wherein Appellants seek review of summary judgment orders dismissing their claims against the Kiwanis Respondents, involves the same issues addressed by this Court in the *C.C.* decision—the existence of actual or apparent agency relationships and the applicability of the corporate dissolution survival statute.

Given that the same issues addressed in *C.C.* will be addressed in this appeal, staying the appeal will serve judicial economy by avoiding inconsistencies and efficiencies. Accordingly, the parties stipulate to and respectfully request that

the Court grant a stay of this appeal pending mandate in the *C.C.* matter.

II. Facts Relevant to Motion

This Court filed its decision in *C.C.* on September 4, 2024. The Court therein considered whether the trial court improperly granted the summary judgment dismissal of the Kiwanis Respondents because “genuine issues of material fact exist as to whether an actual or apparent agency relationship existed between the Kiwanis Defendants and the [Kiwanis Vocational Home] boards.” *C.C.*, No. 57207-9-II, at *2. The Court further considered whether the corporate dissolution survival statute, RCW 23B.14.340, “extend[ed] to bar the Kiwanis Defendants from vicarious liability.” *C.C.*, No. 57207-9-II, at *2. This appeal involves those same issues—whether the Kiwanis Respondents owed a duty to Appellants premised on principles of actual or apparent agency, and whether RCW 23B.14.340 bars the Kiwanis Respondents from any liability flowing therefrom.

On September 19, 2024, Appellants filed a motion to publish the *C.C.* decision. That motion is currently pending before the Court. On November 26, 2024, the Kiwanis Respondents filed a “Motion for Stay of Kiwanis Liability Appeals Pending Supreme Court’s Ruling in *C.C.*,” as well as a motion to modify Commissioner Tribel’s prior ruling that the Court was “not inclined to stay proceedings pending a motion to publish and potential petition for review.”

On February 7, 2025, the Court entered an order denying the Kiwanis Respondents’ request to modify the Commissioner’s ruling denying stay. On the same day, the Court additionally, under the *C.C.* cause number (No. 57207-9-II), entered an “Order Denying Motion to Stay of Kiwanis Liability Appeals.” The Court therein denied the Kiwanis Respondents’ request “for stay of Kiwanis liability appeals pending Supreme Court’s Ruling in *C.C.*”

III. Grounds for Relief

RAP 18.8(a) authorizes this Court to “waive or alter the provisions of any of these rules” and to “enlarge or shorten time”

in order to “serve the ends of justice.” Staying this appeal pending a mandate in the *C.C.* matter would serve the ends of justice by preventing waste of time and resources for both the Court and the parties.

The issues considered by this Court in its *C.C.* decision—whether the Kiwanis Respondents owed a duty to Appellants premised on an actual or apparent agency relationship with the Kiwanis Vocational Home, and whether RCW 23B.14.340 barred the Kiwanis Respondents from liability—are the same issues presented in this appeal. For that reason, this Court previously determined that a stay of the consolidated *M.A.* appeal was appropriate pending its issuance of an opinion in *C.C.*¹

The parties recognize that the Court has recently denied the Kiwanis Respondents’ motion for stay. However, given that the Kiwanis Respondents intend to petition for review of the *C.C.* decision, the parties recognize that the decision may not

¹ On April 4, 2024, this Court stayed merits briefing in the *M.A.* appeal, No. 58574-0-II, “pending the finality” of *C.C.* The Court did not stay consideration of pending motions in the case.

represent the final resolution of the issues common to that matter and to this appeal. For that reason, the same principles of judicial economy underlying this Court's previous grant of a stay are equally applicable here.

Proceeding with this appeal prior to a mandate in the *C.C.* matter may lead to inconsistencies and inefficiency that could be avoided with a stay. Accordingly, the parties agree to and respectfully request that the Court grant a stay of this appeal pending a mandate in that matter. Such a stay will permit certainty on the resolution of the issues presented such that the appeal can be proceed in the most efficient manner.

IV. Conclusion

The parties respectfully request that the Court grant their stipulated motion to stay this appeal pending a mandate in the *C.C.* matter.

//

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//

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Dated: February 10, 2025.

The undersigned certifies that this motion consists of 758
words in compliance with RAP 18.17.

Pfau Cochran Vertetis Amala, PLLC

By: /s/ Darrell L. Cochran
Darrell L. Cochran, WSBA No. 22851
Christopher E. Love, WSBA No. 42832
Selena L. Hoffman, WSBA No. 43301
Kevin M. Hastings, WSBA No. 42316
Bridget T. Grotz, WSBA No. 54520

Talmadge/Fitzpatrick

By: /s/ Philip A. Talmadge
Philip A. Talmadge, WSBA No. 6973

March 12 2025 4:24 PM

CONSTANCE R. WHITE
COUNTY CLERK
NO: 25-2-05137-0

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**SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY**

B.C., an individual; D.L., an individual;
P.T., an individual; and D.F., an individual,

Plaintiffs,

vs.

KIWANIS INTERNATIONAL, a non-profit
entity; KIWANIS PACIFIC NORTHWEST
DISTRICT, a non-profit entity; KIWANIS
OF TUMWATER, a non-profit corporation;
KIWANIS CLUB OF CENTRALIA, a non-
profit entity; KIWANIS CLUB OF
CHEHALIS, a non-profit entity; KIWANIS
OF CENTRALIA-CHEHALIS, a non-profit
entity; KIWANIS CLUB OF GRAND
MOUND ROCHESTER, a non-profit entity;
KIWANIS OF UNIVERSITY PLACE, a
non-profit entity; C. SCOTT KEE, as
personal representative for the Estate of
Charles McCarthy; GUY CORNWELL and
MELANIE CORNWELL, husband and wife
and their marital community; MARK S.
REDAL, an individual; STATE OF
WASHINGTON; STATE OF
WASHINGTON, DEPARTMENT OF
SOCIAL AND HEALTH SERVICES,
DEPARTMENT OF CHILDREN, YOUTH
AND FAMILY SERVICES, CHILD
PROTECTIVE SERVICES, governmental
entities,

Defendants.

No. 25-2-05137-0

**FIRST AMENDED COMPLAINT
FOR DAMAGES**

Demand for Jury Trial

FIRST AMENDED COMPLAINT FOR DAMAGES

Page 1

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APPENDIX 021

1 Plaintiffs, through their attorneys Darrell L. Cochran, Kevin M. Hastings, and Bridget
2 T. Grotz of Pfau, Cochran, Vertetis & Amala, PLLC, allege:

3 I. INTRODUCTION

4 1. Nature of Case. This is a negligence action brought due to Defendants'
5 systematic failures to protect Plaintiffs, who were children removed from their family homes to
6 be placed for their own protection and well-being in a foster care group home known as Kiwanis
7 Vocational Home ("KVH").

8 2. Kiwanis Defendants Acted with Negligence. The Kiwanis Defendants (defined
9 herein as all Kiwanis entities and individual agents), including Charles McCarthy, and Guy
10 Cornwell were charged with overseeing KVH and ensuring that the children placed there
11 received care and support provided by taxpayer dollars. Each and all of the Kiwanis Defendants
12 ignored their duties to the children at KVH and created a danger that Plaintiffs would be
13 sexually abused and suffer life-long injuries.

14 3. Defendants Caused Plaintiffs to Suffer Damages. Defendants, through
15 intentional, reckless, grossly negligent and/or negligent conduct of their agents, created an
16 unreasonable danger for, and caused irreparable harm to, the boys sent to KVH. Each and all
17 of these Defendants acted with intentional, reckless, and/or negligence conduct toward the well-
18 being of the boys at KVH by acting in ways that protected the business enterprise of KVH at
19 the expense of child safety. This case addresses those injuries and damages of several Plaintiffs
20 that were caused by the neglect, mistreatment, sexual exploitation, and deprivation of the most
21 basic human needs during their compulsory stay at KVH.

22 II. PARTIES

23 4. Plaintiff B.C.: B.C. was sent to KVH during what is believed to be in 1986. He
24 is currently a resident of Deer Lodge, Powell County, Washington.

25 5. Plaintiff D.L.: D.L. was sent to KVH during what is believed to be in 1991. He
26 is currently a resident of Nordland, Jefferson County, Washington.

1 6. Plaintiff P.T.: P.T was sent to KVH during what is believed to be in 1982. He is
2 currently a resident of Port Ludlow, Jefferson County, Washington.

3 7. Plaintiff D.F.: D.F. was sent to KVH during what is believed to be in 1982. He
4 is currently a resident of Shelton, Mason County, Washington.

5 8. Defendant Kiwanis International. Defendant Kiwanis International is a
6 nonprofit entity headquartered in Indianapolis, Indiana, that conducted business in the State of
7 Washington at all relevant times. Defendant Kiwanis International at all relevant times had
8 authority and control over the following entities and their respective agents: KVH, Centralia-
9 Ground Mound-Rochester, Chehalis, Tumwater Kiwanis Vocational Homes for Youth,
10 Kiwanis Vocational Homes for Youth Advisory Board, Lewis County Youth Enterprises,
11 Centralia-Grand Mound-Rochester Kiwanis Vocational Homes for Youth, Centralia-Grand
12 Mound-Rochester, Chehalis, Tumwater Kiwanis Vocational Homes for Youth, Kiwanis Pacific
13 Northwest District, Kiwanis of Tumwater, Kiwanis of Grand Mound Rochester, Kiwanis of
14 University Place, Kiwanis of Centralia, Kiwanis of Chehalis, and Kiwanis of Centralia-
15 Chehalis (f/k/a Kiwanis of Centralia and Kiwanis of Chehalis). At all relevant times, upon
16 information and belief, Kiwanis International maintained control of the KVH operations
17 through an agency structure that included control over board members, directors, employees,
18 and KVH's policies and practices.

19 9. Defendant Kiwanis Pacific Northwest District: Defendant Kiwanis Pacific
20 Northwest District is a nonprofit entity organized under the laws of the State of Oregon, who
21 conducted business in the State of Washington at all relevant times. Defendant Kiwanis Pacific
22 Northwest District at all relevant times had authority and control over the following entities and
23 their respective agents: KVH, Centralia-Ground Mound-Rochester, Chehalis, Tumwater
24 Kiwanis Vocational Homes for Youth, Kiwanis Vocational Homes for Youth Advisory Board,
25 Lewis County Youth Enterprises, Centralia-Grand Mound-Rochester Kiwanis Vocational
26 Homes for Youth, Centralia-Grand Mound-Rochester, Chehalis, Tumwater Kiwanis Vocational
Homes for Youth, Kiwanis of Tumwater, Kiwanis of Grand Mound Rochester, Kiwanis of

1 University Place, Kiwanis of Centralia, Kiwanis of Chehalis, and Kiwanis of Centralia-
2 Chehalis (f/k/a Kiwanis of Centralia and Kiwanis of Chehalis). At all relevant times, upon
3 information and belief, Kiwanis Pacific Northwest District maintained control of the KVH
4 operations through an agency structure that included control over board members, directors,
5 employees, and KVH's policies and practices.

6 10. Defendant Kiwanis of Tumwater: Defendant Kiwanis of Tumwater is a
7 nonprofit entity organized under the laws of Washington State and at all relevant times
8 conducted business in Washington State. Defendant Kiwanis of Tumwater at all relevant times
9 directed and supervised the KVH director and agents, and further directed and supervised the
10 KVH budget, its fund-raising, and its operations with regard to state and local government
11 agencies. At all relevant times, upon information and belief, Kiwanis of Tumwater maintained
12 control of the KVH operations through an agency structure that included control over board
13 members, directors, employees, and KVH's policies and practices.

14 11. Defendant Kiwanis Club of Grand Mound Rochester: Defendant Kiwanis Club
15 of Grand Mound Rochester is a nonprofit entity organized under the laws of Washington State
16 and at all relevant times conducted business in Washington State. Defendant Kiwanis Club of
17 Grand Mound Rochester at all relevant times directed and supervised the KVH director and
18 agents, and further directed and supervised the KVH budget, its fund-raising, and its operations
19 with regard to state and local government agencies. At all relevant times, upon information and
20 belief, the Kiwanis Club of Grand Mound Rochester maintained control of the KVH operations
21 through an agency structure that included control over board members, directors, employees,
22 and KVH's policies and practices.

23 12. Defendant Kiwanis Club of Centralia, Defendant Kiwanis Club of Chehalis,
24 Defendant Kiwanis of Centralia-Chehalis: Defendant Kiwanis of Centralia-Chehalis is a
25 nonprofit entity organized under the laws of Washington State and at all relevant times
26 conducted business in Washington State. Defendant Kiwanis of Centralia-Chehalis at all
relevant times directed and supervised the KVH director and agents, and further directed and

1 supervised the KVH budget, its fund-raising, and its operations with regard to state and local
2 government agencies. At all relevant times, upon information and belief, the Kiwanis Club of
3 Centralia-Chehalis maintained control of the KVH operations through an agency structure that
4 included control over board members, directors, employees, and KVH's policies and practices.
5 Upon information and belief, Kiwanis of Centralia-Chehalis was formerly two clubs that are at
6 the focal point for KVH litigation: Kiwanis Club of Chehalis and the Kiwanis Club of Centralia.
7 Plaintiff's intent is to sue each of these entities, which together is responsible for the prior
8 misconduct of each of the stand-alone clubs.

9 13. Defendant Kiwanis of University Place: Defendant Kiwanis of University Place
10 is a nonprofit entity organized under the laws of Washington State and at all relevant times
11 conducted business in Washington State. Defendant Kiwanis of University Place at all relevant
12 times, upon information and belief, was instrumental in founding KVH, giving KVH support,
13 and providing KVH the reputation necessary to secure contracts with the State to receive
14 children. At all relevant times, upon information and belief, the Kiwanis of University Place
15 maintained control of the KVH operations through an agency structure that included control
16 over board members, directors, employees, and KVH's policies and practices. Defendant
17 Kiwanis of University Place at all relevant times, upon information and belief, also directed and
18 supervised the KVH director and agents, and further directed and supervised the KVH budget,
19 its fund-raising, and its operations with regard to state and local government agencies.

20 14. Defendant C. Scott Kee, as Personal Representative of the Estate of Charles
21 McCarthy: Charles McCarthy died on or around December 1, 2020. Barbara Thompson was
22 appointed the personal representative of Charles McCarthy's estate on or around January 8,
23 2021. Barbara Thompson was discharged from her duties as the personal representative, and
24 C. Scott Kee was appointed to fulfill the role of personal representative on or around July 13,
25 2023. McCarthy was at all relevant times an employee of KVH. In his role at KVH, McCarthy
26 was responsible for (1) hiring qualified and safe staff, including staff who met the requirements
established by applicable licensing standards and contract requirements, to administer a

1 program that would, if nothing else, keep boys from being neglected and sexually and
2 physically abused; (2) training, supervising and instructing staff adequately so that they
3 understood how to identify and prevent dangerous situations, such as being sexually abused or
4 trafficked for sexual abuse; (3) developing and implementing a group home program that
5 created boundaries and staffing oversight capable of protecting boys from neglect, sexual abuse,
6 physical abuse, emotional abuse, and sexual trafficking; (4) preventing over population of
7 residents that created a lack of supervision, lack of boundaries danger; and (5) terminating
8 employees who exhibit dangerous qualities or lack of fitness for duty characteristics. Charles
9 McCarthy was an employee of KVH at all relevant times and is being sued in this capacity for
10 failing to protect Plaintiffs and control others through both affirmative acts and omissions,
11 including the failure to act reasonably in hiring, training, supervising, auditing, and oversight.
12 He is also being sued for intentional and reckless acts and omissions committed outside the
13 scope of his employment as the director of KVH. Charles McCarthy was at all times relevant
14 a resident of Thurston County, Washington.

15 15. Defendant Guy Cornwell and Melanie Cornwell, husband and wife and their
16 marital community: Defendant Guy Cornwell was at all relevant times an employee of KVH.
17 Also, at all relevant times he was married to Melanie Cornwell. Guy is being sued in his
18 individual capacity as well for failing to protect Plaintiffs and control others through both
19 affirmative acts and omissions, including the failure to act reasonably in hiring, training,
20 supervising, auditing, and oversight. He is also being sued for intentional and reckless acts and
21 omissions committed outside the scope of his employment. Guy and Melanie Cornwell are
22 currently residents of Ames, Story County, Iowa.

23 16. Defendant Melanie Cornwell, as a marital community with Guy Cornwell:
24 Defendant Melanie Cornwell was at all relevant times married to Guy Cornwell and is being
25 sued in her capacity as being in a marital community with Guy Cornwell. She is currently a
26 resident of Ames, Story County, Iowa.

1 17. Defendant Mark Redal. Mark Redal was the Regional Administrator for the
2 DSHS Division of Children and Family Services, Region 6, during the material time frame.
3 Defendant Redal is being sued for his actions under color of state law. He is currently a resident
4 of Tacoma, Pierce County, Washington.

5 18. Defendant State: Defendants State of Washington, Department of Social and
6 Health Services (DSHS), Department of Children, Youth and Family Services (DCFS) and
7 Child Protective Services (CPS), are or were the state of Washington agencies and sub-agencies
8 charged with care of Plaintiffs, and with the responsibility to investigate the KVH group home
9 for conditions dangerous to the welfare of children there, including Plaintiffs. With respect to
10 the State Defendants, Plaintiffs B.C., D.L., P.T., and D.F. bring claims against the State at this
11 time.

12 III. JURISDICTION AND VENUE

13 19. Tort Claim. Sixty days have elapsed since the State received a standard tort
14 claim for Plaintiffs B.C., D.L., P.T., and D.F.

15 20. Jurisdiction. Under article IV, section 6 of the Washington State Constitution,
16 the Superior Court, Pierce County, has universal original jurisdiction over this lawsuit.

17 21. Venue. Venue lies within Pierce County, Washington under RCW 4.12.020,
18 which is where some one of the Defendants resided at the time of commencement of this action.
19 Venue also lies within Pierce County, Washington under RCW 4.12.020 because it is the
20 County where some part of the cause of action arose.

21 IV. FACTS

22 A. Defendants' Involvement at KVH and Failure to Protect Children.

23 22. Facts: KVH Beginnings. In the 1970s, the Kiwanis Club of Centralia plotted a
24 "goal to build" boys homes and assigned a member to "head[] the committee" in undertaking
25 this endeavor. Charles McCarthy was a member of the Kiwanis Club of Centralia and was
26 "hired by [a] Kiwanis Service Club to develop [sic] [a] Juvenile Vocational Center" in 1978.
By December of the same year, the Kiwanis Club of Centralia was building KVH when other

1 local Kiwanis clubs, including Grand Mound Rochester, learned about the project through the
2 Kiwanis newspaper and “expressed interest in building a home.” Eventually, several local
3 Kiwanis clubs banded together to build KVH, as Charles McCarthy later wrote,

4 When the Kiwanis Service Clubs of Centralia, Grand Mound, Rochester,
5 with the assistance of the University Place Kiwanis, Tacoma, ***set out to establish a***
6 ***group home for dependent youths*** who exemplified home and community
7 adjustment problems, it was with the intent of establishing a VOC-ED program to
prepare young men fifteen through seventeen years for the work market.

8 What had been “one man’s dream” to build a boys home became the “shared dream of the
9 Western Washington Kiwanis Clubs” to build KVH, and “a consensus quickly formed that the
10 objectives of the home were those of Kiwanis.” As a KVH brochure later advertised, “***Kiwanis***
11 ***has been there every step of the way.***” They created a separate corporation called the Lewis
12 County Youth Enterprises (LCYE) for KVH where Kiwanis members served on the board of
13 directors.

14 23. Facts: KVH Beginnings: During the same period in the late 1970s, members of
15 the Kiwanis Club of Centralia had a meeting about KVH with Virgil Clarkston, a man who was
16 then the Lieutenant Governor of the Kiwanis Pacific Northwest District, the regional arm of
17 Kiwanis International. The meeting proved “very fruitful” because Clarkston in his role as a
18 Lieutenant Governor had already met with then Pacific Northwest District Governor Otto
19 Lawrence to “seek support” for KVH. The meeting paid dividends, and in February 1979, the
20 Pacific Northwest District Board agreed that local Kiwanis clubs could fund the KVH project
21 and allow the use of the name provided it was “***strictly and entirely a Kiwanis project.***” The
22 Pacific Northwest District Board also reached a “consensus” that “any Kiwanis Club involved
23 in any portion of the project must adhere to the Kiwanis International Policy which states . . .
24 ‘all solicitations for funds by a Kiwanis club shall be confined to the general area in which the
25 club functions except by mutual understanding and agreement of clubs in a division or district
26 for a common purpose.’”

1 24. Facts: KVH Beginnings: Those local Kiwanis club members whose “goal” was
2 “to build” KVH each knew, understood, and agreed that the success of the home depended on
3 it being a “strictly Kiwanis” home and project. As McCarthy later described in his own words
4 to the Kiwanis International Board of Trustees, “*we cherish the [Kiwanis] name and it is most*
5 *vital in continuance of our endeavors* to help abandoned neglected and distressed children.”
6 And Ben Martin, the man who donated the land KVH occupied, was later said to have never
7 been “able to [build a “boys farm” as he called it] until he became associated with the Centralia
8 Kiwanis.” Local Kiwanian club members that founded KVH knew that Kiwanis were needed
9 for the home’s success, not only in bringing it “credibility” but also in providing much needed
10 access to fund raising and other resources.

11 25. Facts: KVH Beginnings. Since opening its doors, KVH was a “service project”
12 of local Kiwanis clubs—a status that Kiwanis International has conceded meant that KVH was
13 “*bound to the Kiwanis International bylaws, objects, policies and procedures, and*
14 *constitution that was in effect at that time.*” Local clubs oversaw and controlled their own
15 service projects and decided whether to allow the Kiwanis name to be used as part of the project.
16 KVH was one of those projects local clubs had “control over” through sponsorship, promotion,
17 and operation of its daily business, and Kiwanians involved with KVH even championed it as
18 a “major” service project with letters and reports to decision makers and advertisements to the
19 public at large. From its inception, KVH was a “service project” *for Kiwanians by Kiwanians*,
20 subject to all the Kiwanian rules, policies, and procedures.

21 26. Facts: KVH Beginnings. In solidifying KVH’s status as “strictly and entirely a
22 Kiwanis project,” the local Kiwanis clubs that established and built KVH created a second
23 corporation the Centralia-Grand Mound-Rochester Kiwanis Vocational Homes for Youth later
24 named the Centralia-Grand Mound-Rochester, Chehalis, Tumwater Kiwanis Vocational Homes
25 for Youth and required its board of directors (the “KVH Board”) to be comprised of Kiwanians
26 only, with whom all corporate power and authority was vested, giving them “the authority and
power authorized by law, including the direction and management of all affairs of the

1 corporation . . .” All KVH Board members were selected from Kiwanis Clubs in the
2 surrounding communities: The Kiwanis clubs of Centralia, Chehalis, Grand Mound Rochester,
3 and Tumwater each provided two members to serve on the KVH Board “to govern, direct, set
4 forth policy, regulate the extent of obligation, and management.” **Only** Kiwanians could sit on
5 the KVH board because of a “mutual understanding and agreements of clubs” within the Pacific
6 Northwest District to advance the “common purpose” of KVH as a service project. Local clubs
7 required KVH Board members to be “Kiwanian” to maintain KVH as “strictly and entirely a
8 Kiwanis project” because, by allowing only Kiwanians to serve KVH, its board would
9 necessarily uphold the Kiwanian bylaws, objects, policies and procedures, and constitution and,
10 consequently, allow KVH to continue status as a “service project” in perpetuity.

11 27. Facts: KVH Beginnings. Concentrating Kiwanian power even further, KVH
12 bylaws allowed the creation of an “Executive Committee” from among the directors “with like
13 authority to act on behalf of the Board of Directors and with all like authority and power
14 between meetings of the Board of Directors.” The KVH Board in fact appointed an Executive
15 Committee “to assist the Director of the Kiwanis Vocational Home for Youth” and authorized
16 it to “make operational and policy decisions concerning” KVH. With the selection of an
17 “Executive Committee,” the KVH Board President was “ex officio . . . a member of such
18 Executive Committee . . . [and] [h]e shall execute on behalf of the corporation such instruments
19 as he may be empowered and required to execute by any act of the Board of Directors or of the
20 Executive Committee.” KVH bylaws also declared that the KVH Board President was “the
21 chief executive officer” who had “general authority and control of its affairs, subject to the will
22 of the Board of Directors or the Executive Committee.” According to KVH’s own documents,
23 members of local Kiwanis Clubs who sat on the KVH Board were responsible for its daily
24 operation and policy decisions. The structure of KVH was designed this way to place all power
25 and control with Kiwanis to ensure that KVH remained “strictly and entirely” a Kiwanis project
26 and under the Kiwanis banner in perpetuity.

1 28. Facts: KVH Beginnings. The Kiwanians controlling KVH hired Charles
2 McCarthy, a member of the Kiwanis Club of Centralia, to help manage and oversee KVH, and
3 he remained at this post for over a decade despite extremely troublesome evidence of
4 corruption, abuse, and mismanagement. Between 1979 and 1987, Kiwanian leadership running
5 KVH sent numerous letters to DSHS and others on letterhead that bore the Kiwanis
6 International seal and proudly stated “Kiwanis Vocational Homes for the Youth.” For example,
7 one of McCarthy’s first operational moves was to write a letter to DSHS on November 7, 1979,
8 to showcase the newly established KVH and to gratuitously “offer a helping hand to youths
9 already in group home care, youths who have little chance of finishing school and who, because
10 of unresponsive parents, face a fair to poor prognosis if they return home.” McCarthy’s
11 letterhead prominently featured “Kiwanis Vocational Homes for the Youth” in bold, and it
12 included the Kiwanis International seal as an additional badge of credibility.

13 29. Facts: KVH Beginnings. On December 5, 1979, DSHS responded to
14 McCarthy’s letter by offering a contract to “Kiwanis Vocational Homes for Youth” for
15 providing level II group care services. Five days later, KVH opened its doors with five
16 buildings and four boys. Over the next decade, KVH continued to grow, continued to receive
17 younger children, and continued to receive more troubled children that needed more counseling.
18 Indeed, by 1990, KVH reached 73 boys between the ages of 10 and 17. Every contract that
19 DSHS offered McCarthy to accept dependent children identified “Kiwanis Vocational Homes
20 for Youth” as the contractor; none of the DSHS contracts mentioned LCYE.

21 30. Facts: Defendants Were Aware of Sexual Abuse. From 1979 to 1990, the
22 Defendants knew that reports of rapes, sexual assaults, and sexual improprieties against the boy
23 residents came forward continuously at KVH. Reports of sexual abuse at KVH started almost
24 immediately after it opened its doors, the first discovered report of which happened after a
25 young boy was sexually abused by KVH counselor Brad Feigenbaum on January 8, 1982. The
26 abuse was reported to McCarthy on January 10. Eight days later, the victim called the Lewis
County Sheriff’s Office to report that he had been raped at KVH. As the operator was

1 attempting to obtain details from the child, McCarthy interrupted the phone call: "Listen, I don't
2 know what this boy's pulling but don't worry about it, we'll be in touch, okay." When the
3 operator asked McCarthy to provide more information, McCarthy stated, "He had a real bad
4 visit in a foster home and he just arrived and he's upset because he figures foster people don't
5 want him so we made contact with his caseworker in Tacoma and he'll be moving on to what
6 we call CRC temporary bed. He doesn't want to be in group care and that's fine. He just had
7 a real bad time." When McCarthy was asked why he thought the boy made the phone call, he
8 said that the child had told a foster parent that he would do anything to get out of KVH and that
9 he was going to embarrass KVH.

10 31. Facts: Defendants Were Aware of Sexual Abuse. The boy later reported that on
11 January 8, 1982, Feigenbaum had allowed him to drive a car in exchange for oral sex. The boy
12 reported that Feigenbaum approached him with advances again on January 9 and January 10,
13 at which point the child reported the January 8 incident to McCarthy. The boy said that
14 McCarthy assured him it would be addressed and that McCarthy asked him to tell no one else.
15 The boy left for a one-week foster visit, and upon returning, he learned that Feigenbaum's
16 actions were not reported. There was no record of the incident being reported by McCarthy to
17 DSHS or law enforcement between January 10 and January 18. At that point, the boy called
18 the Sheriff's department, and the abuse was then made known to Region 6. Soon after, DSHS'
19 investigation revealed reasons for concern about McCarthy's interference and his credibility:

20 Credibility Issues: When Mr. McCarthy was contacted by Ms. Binion regarding
21 placing Andy [name redacted] in Shelter Care, she was told he was "on his way to
22 Tacoma" at the Tacoma Caseworker's request. It was only after Ms. Binion told him
23 that she was asked to place the child by the same worker that Mr. McCarthy admitted
24 that he had the child with him.

25 As stated previously, there is no evidence that the alleged rape of Andy [last
26 name redacted] was reported by Kiwanis Vocational Home until Andy himself did so,
nor that it ever would have been reported had the child not forced the issue. Mr.
McCarthy admitted that Andy had told him of the incident shortly after its
occurrence. He led Ms. Binion to believe that he had reported it to Pierce County
authorities the following week when, in fact, he had not. When Andy tried to report the

1 incident to Lewis County Sheriff's office, Mr. McCarthy interrupted the call and tried
2 to minimize the allegation.

3 32. Facts: Defendants Were Aware of Sexual Abuse. Following the Feigenbaum
4 sexual abuse, and McCarthy's effort to cover it up, there were scores of other alarming instances
5 of sexual abuse at KVH:

- 6 (1) In a November 1985 document, DSHS reported that an anonymous KVH
7 employee made statements regarding various problems at KVH, including the
8 following: "Boy raped by another boy. Offender immediately placed into
9 foster care. At first no incident report, then a report falsified. King Central
10 caseworker, [redacted name], collusion in report." The report also included
11 other complaints about administrative misconduct at KVH.
- 12 (2) On December 5, 1986, a handwritten report was created to document an
13 incident in which Darren S. climbed into bed with Hod C. and put his hand on
14 Hod's crotch.
- 15 (3) In 1986, KVH employee, Barry Brown, was fired by Charles McCarthy for
16 wanting to report an incident of student-to-student rape. Brown did not
17 attempt to report the incident after his termination.
- 18 (4) A June 16, 1987 report describes an incident in which a 15-year-old mentally
19 disabled KVH resident was found fondling the young daughter of a KVH
20 employee.
- 21 (5) On August 18, 1987, KVH's Guy Cornwell wrote to DSHS Licenser Steve
22 Ennett regarding a KVH resident who was sexually abused by a non-KVH
23 employee adult, for whom the resident victim regularly did work outside the
24 KVH grounds. The actual abuse occurred between January and February of
25 1987; a police report regarding the incident was completed on June 3, 1987,
26 and an incident report was filled out on June 4, 1987, only after the victim
revealed the incident to staff at another group home, after he had left KVH.

- 1 (6) On August 8, 1988, an administrative incident report described events that
2 occurred two or three weeks prior. The report describes three 14-year-old
3 residents, at night, daring each other to perform sexual acts, including rubbing
4 their penises between each other's buttocks and performing oral sex. The
5 punishment for not performing was an agreed 6 uppercuts to the genitals and
6 utilizing a vacuum tube on their genitals.
- 7 (7) On August 29, 1988, KVH's Guy Cornwell received a letter about sexual
8 misconduct. The letter expressed concerns about insufficient supervision at
9 KVH, "especially considering [the boys'] mutually agreed penalty for not
10 performing (six uppercuts to the genital area), and painful use of a car vacuum
11 tool." The letter expressed concern that no written or verbal report was made
12 for two to three weeks, when a resident reported the event to Cornwell, despite
13 the fact that a staff person had discovered the boys engaging in the conduct.
- 14 (8) On August 31, 1988, an administrative incident report stated four KVH
15 residents engaged in oral sex with one another.
- 16 (9) On September 9, 1988, a separate administrative incident report was
17 completed, stating four KVH residents, ages 11, 14, 15, and unknown,
18 engaged in oral sex with one another. A news article about the incident was
19 published in *The Daily Chronicle* on Friday, September 2, 1988. The article
20 described the rape of an 11-year-old resident of KVH. Jim O'Neal, DCFS
21 Region 6 Supervisor, wrote to the publisher to criticize the article's content.
- 22 (10) On June 6, 1989, an administrative incident report stated that a 14-year-old
23 KVH resident was harassed by another KVH resident, who attempted to grab
24 and fondle his genitals on multiple occasions. The report also stated that the
25 14-year-old resident had also been woken up in the middle of the night by the
26 same resident fondling him. A CWS social worker noted that the incident had
not been reported to CPS or the Sheriff.

- 1 (11) On July 3, 1989, an additional report was filled out that the June 6, 1989,
2 incident may have been a false report, and that, in fact, the June 6 reporting
3 resident may have been the individual fondling a different KVH resident.
- 4 (12) On July 31, 1989, an administrative incident report was stated that a five-year-
5 old was sexually fondled by a 14-year-old KVH resident. The victim was the
6 same young Teaching Family child who had been sexually abused in 1987.
- 7 (13) On September 14, 1989, an administrative incident report was completed,
8 stating that a 14-year-old resident of KVH was fondled in his sleep by another
9 resident.
- 10 (14) On March 15, 1990, an administrative incident report was stated that a 10-
11 year-old resident of KVH and a 15-year-old resident of KVH engaged in
12 sexual intercourse.
- 13 (15) On November 27, 1990, an administrative incident report described an event
14 in which a 12-year-old and 13-year-old KVH resident engaged in mutual
15 fondling.
- 16 (16) On February 25, 1991, an administrative incident report identified a 14-year-
17 old KVH resident found in the recreation room with his hands down an 11-
18 year-old KVH resident's pants.
- 19 (17) On April 23, 1991, a report stated that on April 4, 1991, at bedtime, a resident
20 was approached by another resident who "proceeded to simulate a sexual act
21 while forcibly holding him against his will." The remainder of the memo
22 describes how the resident victim was deeply disturbed by the event and how
23 staff failed to take the appropriate actions.
- 24 (18) In an undated, handwritten report from a foster group home in Auburn,
25 Washington ("Auburn House"), two residents admitted to engaging in sexual
26 activity with one another. When asked by Auburn House staff whether this

1 had happened previously, one of the residents said that it had occurred “about
2 20 times” at KVH.

3 (19) A December 1991 report states:

4 [REDACTED] was then placed, by the Division of Children and Family
5 Services, at Kiwanis Group Home for [REDACTED]. Here, [REDACTED]
6 reports he was exposed to a variety of sexually deviant and offensive
7 behaviors with other residents. This counselor is familiar with the
8 other residents and incidents that [REDACTED] spoke of and his stories are
9 consistent with many known facts.


10 (20) A November 9, 1992, report stated that on July 29, 1992, four residents were
11 involved in sexual behavior as a result of a “truth or dare” game on a camping
12 trip that included some residents engaging in mutual exposure, touching, and
13 oral sex.

14 33. Facts: Defendants Were Aware of Sexual Abuse. On May 29, 1984, Lewis
15 County Sheriff William Wiester wrote to the Kiwanis Advisory board about “problems with
16 Mr. McCarthy.” The “problems” referred to in the letter were that McCarthy had been taking
17 steps to cover-up burglaries that had occurred in Lewis County, obstructing justice in the
18 process. Three years later, in 1987, Richard DeVany, Administrator for the Lewis County
19 Juvenile Court, wrote to McCarthy regarding multiple administrative and communication issues
20 at KVH. DeVany stated that it appeared that KVH staff did not wish to cooperate or
21 communicate with the Juvenile Court. He referred to three specific instances that were
22 discovered in which KVH failed to take the appropriate action against its residents. DeVany
23 went on to state:

24 There have been other incidents over the years as you well know. These
25 incidents are unacceptable to us and as far as I’m concerned will no longer be
26 tolerated by us. The actions of you and your staff do not comport with previous
agreements reached between our two agencies regarding, among other things,
reporting procedures. I might also add that whatever agreement we might reach
does not in any way excuse you and Kiwanis from the duty you have to report
such matters. It is inconceivable to me how you can fail to report criminal
activity, which includes the alleged commission of a felony, to the proper
authorities and fail to notify the court when clients are under court order and
whom we are supervising have left your facility, whether lawfully or unlawfully.

34. Facts: KVH Holds Itself to the World as Kiwanis International. Kiwanians running KVH continued over the years to showcase the boys' home as a Kiwanian project. On June 4, 1984, KVH Board President Floyd David wrote to the Lewis County Sheriff William Wiester stating, "The [KVH] Board came to the unanimous decision they would like to have you, Sheriff Wiester, the Prosecuting Attorney, James Miller and our attorney, George Darkenwald, meet as soon as possible." President David wrote this letter taking direct action on behalf of KVH in response to the scathing critique that Sheriff Wiester wrote about McCarthy only days earlier. Sheriff Wiester's letter to the KVH board also mentioned "alleged sexual abuse" at the home where McCarthy "attempted to cover up the situation by not notifying law enforcement." The same year, Kiwanis also purchased a large advertisement in the Morning Olympian newspaper, the most prominent daily newspaper in the area, to promote Kiwanis and its "MAJOR PROJECT" called "Kiwanis Vocational Home for Youth":

KIWANIS INTERNATIONAL



Locally 533 Kiwanians donated 18,000 - man hours last year to make this a better community. Kiwanis welcomes you to become one of us. For further information call 943-6149 evenings.

JOIN A LOCAL KIWANIS CLUB IN YOUR COMMUNITY

HOOD CANAL Hwy 99 Port Cate Thursdays 6:45 A.M.	MT VIEW, SHELTON Pine Tree Thursdays 6:45 A.M.	SHELTON Bellagamban Tuesdays Noon
KRISTMASTOWN, SHELTON Pine Tree Restaurant Wednesdays 7:00 A.M.	NORTH THURSTON Friede Inn Tuesdays 7:00 A.M.	TUMWATER Irene Skiller Thursdays 7:00 A.M.
LACEY Garden of Eatin' Wednesdays Noon	OLYMPIA Eli's Club Wednesdays Noon	WATERFRONT OLYMPIA Eli's Club Wednesdays 7:00 A.M.
MASON CO SENIORS Shelton - Pine Tree Thursdays Noon	SR CITIZENS, OLYMPIA Royal Fork Thursdays 11:30 A.M.	WEST OLYMPIA Kings Table Thursdays Noon
SPECIAL KIWANIS FAMILY YOUTH ORGANIZATIONS	KEY CLUBS North Thurston St. Paul Shelton Tumwater	CIRCLE K Current Homes St. Martin TSC

AND NOW FORMING "KELAWANI"
Service Club For Women

KIWANIS SERVES THROUGH:

COMMUNITY SERVICE Morningglade Special Olympics Operation Santa Claus Thurs. Co. Citizen of the Year Annual Legislative Interclub Senior Center Community Food Bank All-City Halloween Party Women's Marathon	YOUTH ACTIVITIES Boy Scout Troops Explorer - Search & Rescue Law Enforcement Camp Pepsi Program Citizenship Awards Scholarship Awards Hugh O'Brien Foundation FFA - Diversified Occupations Future Business Leaders Learn Not To Burn Anti-Drug Trading Cards	SPIRITUAL AIMS Salvation Army Bell Ringing Minister Recognition Day Prayer Breakfast Jail Ministries
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MAJOR PROJECTS
Several Community Park Facilities
Thurston Co. Fair Bldg
OK Boys Ranch
Kiwanis Vocational Home for Youth
Law Enforcement Dog Training

KIWANIS SERVES - IS THERE A PROJECT WE CAN DO FOR YOU?

What is Kiwanis?
Kiwanis is a world-wide service organization of men who want to improve their communities. As a group they can achieve what individuals cannot do alone.

Who can join?
Men of good standing in the community - invited by the Kiwanis club itself. The club is free - considering the tremendous satisfaction Kiwanis membership provides.

History
Kiwanis was founded in Detroit Michigan January 21, 1915. It extended into Canada in 1916. Not until 1922 did it serve outside these two nations.

Facts
Today Kiwanis numbers nearly a third of a million members in nearly 8,000 clubs. Through Kiwanis service in countless areas around the world, the basic principles are the same. Kiwanis sponsors two organizations for young men and women: Key Club in high schools and Circle K in colleges.

The Objects of Kiwanis International
To give primacy to the human and spiritual rather than in the material values of life.
To encourage the daily living of the Golden Rule in all human relationships.
To promote the adoption and the application of higher social, business and professional standards.
To develop low precept and example a more intelligent, aggressive and serviceable citizenship.
To provide through Kiwanis Clubs a practical means to form enduring friendships, to render altruistic service and to build better communities.
To cooperate in creating and maintaining that sound public opinion and high idealism which make possible the increase of righteousness, justice, patriotism and good will.

What does Kiwanis Do?
It performs service beyond the capability of the individual, assistance in the aging, the needy and to youth, improvement of communities, encouragement of international understanding.

"ASK THE MAN WHO WEARS THE K"

35. Facts: KVH Holds Itself to the World as Kiwanis International. In 1984, the Kiwanians at the helm of KVH started undertaking this publicity campaign, likely in response to significant criticisms levied in a State audit of KVH published the same year. Within the year, sponsoring clubs like the Kiwanis Club of Centralia began to exert control over its "major"

1 service project KVH by directing those members running it to send (1) copies of all insurance
2 policies related to KVH; (2) copies of all correspondence relating to the use of the Kiwanis
3 name; (3) names and addresses of all accounts payable; and (4) copies of articles of
4 incorporation and by-laws. McCarthy recognized the Kiwanis Club of Centralia's letter as
5 being one of "directives and commands," and he reported that KVH would "continue to use the
6 name 'Kiwanis' for the home" because two Pacific Northwest District representatives who were
7 also "on the Board of Directors for the Boy's Home" reported that "there was interest in
8 preserving the Kiwanis name." But questions were also being raised around the same time in
9 1985 at the Pacific Northwest District, and one of its officers sent a letter raising questions
10 about "what liability Kiwanis would have in case of a legal suit" involving KVH. The
11 following year, Pacific Northwest District Governor received a letter from the same officer
12 discussing KVH's use of the "Kiwanis" name and said, "In these days of liability risk, I believe
13 we need to ensure that our clubs, District and International won't be held liable for any wanton
14 act by any resident of such an institution."

15 36. Facts: KVH Holds Itself to the World as Kiwanis International. Despite these
16 questions, Kiwanian support for KVH remained strong and, in 1986, the Pacific Northwest
17 District had boys at KVH handing out personalized Kiwanis business cards at official Kiwanis
18 meetings called "Kiwanis Friendship Cards." A Pacific Northwest District Lieutenant
19 Governor characterized the "Kiwanis Friendship Cards" program as a way to give the "boys
20 vocational training, develop a sense of responsibility, develop an involvement with Kiwanis
21 men, and perhaps create a source of monetary earnings for the boys. Indeed, spreading the
22 "good" Kiwanian through KVH worked, and those in the community believed that the boys'
23 home was a bona fide extension of local clubs. By way of example, on March 4, 1986, the
24 Lewis County Prosecuting Attorney wrote to Charles McCarthy and cc'd the president of the
25 Kiwanis Club of Centralia, discussing a forced dismissal of a crime at KVH because the victim
26 did not appear for trial. The prosecutor wrote, "The next time that a crime such as this occurs
out at the Kiwanis Group Home you will now understand why we will be something less than

1 enthusiastic about filing charges, considering the cooperation that we have received from the
2 group home in seeing that these matters are successfully prosecuted.”

3 37. Facts: KVH Holds Itself to the World as Kiwanis International. The KVH chain
4 of command had been outwardly representing itself as an agent of Kiwanis International for
5 years by using its official seal on all letterheads, but in 1987, Pacific Northwest District officials
6 realized that KVH had not submitted documents to Kiwanis International for permission to use
7 the name and logo. With the growing community pressure to close the home and DSHS audits
8 showing repeated and dangerous non-compliance with group home operating requirements, the
9 Kiwanis Defendants were beginning to have concerns with KVH’s use of the Kiwanis name.
10 In 1987, the Kiwanis Pacific Northwest District Secretary and Treasurer wrote to the Lieutenant
11 Governor raising concerns “with the potential risk of liability that Kiwanis clubs, the District
12 and International face with the Kiwanis name being used on any entity.” A Kiwanis Club of
13 Chehalis member responded to the “liability concerns” and stated that the community already
14 knew KVH as “the Kiwanis Boys Home” and “[w]hat we change at this time will take years
15 and years to change in the minds of the public, especially since Kiwanis would continue their
16 sponsorship and keep the names associated by that fact alone.”

17 38. With these growing concerns, KVH “Corporate Attorney” Darkenwald wanted
18 to make the KVH affiliation with Kiwanis International official. So he wrote on behalf of the
19 KVH Board to Kiwanis International, asking “for specific written approval of the *continued* use
20 of the name.” He stated that the corporation acts independently of the Kiwanis clubs and this
21 “acts to insulate them and Kiwanis International from any liability.” As Darkenwald explained,
22 the KVH Board sought written approval because, “[s]omewhere, sometime, someone else is
23 going to raise the same old question again and I want to be prepared with an unequivocal answer
24 that Kiwanis International approves.”

25 39. Facts: KVH Holds Itself to the World as Kiwanis International. Kiwanis
26 International granted Darkenwald’s request in early 1988 when its Director for Club Services,
William Brown, expressly authorized “the continued use of the Kiwanis name.” In effect,

1 Kiwanis International agreed to continue accepting the risk of liability because it allowed KVH
2 to continue operations based on the encouragement of its members repeated in “first hand
3 reports” to the “International Office.” In a letter dated May 9, 1988, Director Brown wrote:

4 Thank you for the newspaper articles and other information and
5 documentation about the structure and history of Kiwanis Vocational Home for
6 Youth, Centralia, Washington, since 1979. ***International trustee, Don Miles,
and Past [Kiwanis International] Pacific Northwest Director Governor, Allan
7 G. Wood, have also favored those of us who work at International Office with
their first hand reports.***

8 ***This group home clearly promotes the values and ideals of Kiwanis.***
9 On behalf of Kiwanis International, please convey to the board, the director and
sponsors, our appreciation.

10 * * *

11 ***[U]pon the signing of the agreement, the Kiwanis Vocational home for
Youth will be allowed to continue the use of the Kiwanis name and logo.***

12 40. Facts: KVH Holds Itself to the World as Kiwanis International. This contract
13 provided that KVH must (1) “abide by, and observe as effectively binding upon itself and its
14 members the Constitution, Bylaws and Policies of Kiwanis International; (2) “amend its bylaws
15 to eliminate therefrom any conflict with Constitution and Bylaws of Kiwanis International”
16 upon Kiwanis International’s request; (3) “dissolve or change its form of organization”
17 whenever required by Kiwanis International; and (4) not make any amendment to the articles
18 of incorporation or changes in the purposes without the written consent of Kiwanis
19 International. In 1989, the attorney for KVH sent the Pacific Northwest District a Certificate of
20 Incorporation for KVH, Articles of Incorporation, and 1989 Annual Report and Amended By-
21 laws per the Pacific Northwest District’s request. Notably, the contract was nearly identical to
22 the contracts that Kiwanis International had with its local clubs. Pursuant to the contracts, local
23 clubs had to send their bylaws to Kiwanis International for approval.

24 41. Facts: KVH Holds Itself to the World as Kiwanis International. Based on its
25 acceptance of KVH as an operating group home, Kiwanis International expressly agreed to lend
26 its name and logo for use, something that was necessary for its success, in exchange for control
over KVH’s operations spelled out in a contract. On October 10, 1988, then Governor of the

1 Pacific Northwest District, Allan Wood, wrote a letter cc'ing Don Miles, a Kiwanis
2 International Trustee, stating "We all agree that [KVH] and its goals are worthy of our support.
3 I will not speak for either Roy or Don, but I want to be a part of the planning process. I am
4 willing to serve as a member of the proposed board comprised of Kiwanians representing the
5 Pacific Northwest District of Kiwanis International." The next month, KVH executives and
6 other prominent Kiwanians like Allan Wood and Don Miles held an "Overview Committee"
7 meeting and represented in official minutes, "***We are a project for Kiwanis International.***" A
8 "building committee" was formed to help KVH and those named to serve on the committee
9 were Allan Wood, Don Miles, Chuck Clutts, Dick Bell, and Roy Frank. The same minutes
10 from the "Overview Committee" also reported that "[a] movie about KVH has been developed
11 and is being used in the fund raising endeavors." Indeed, this "movie about KVH" was an 18-
12 minute docu-drama where Kiwanis International's immediate past president appeared to
13 promote KVH for funding purposes.

14 42. Facts: Internal Turmoil Leads to Power Struggle Over KVH. In or around the
15 beginning of 1989, a deep rift formed over KVH with the Kiwanis Club of Centralia on one
16 side, and the Kiwanis clubs of Chehalis and Tumwater on the other side. The turmoil began
17 when Meister, a Kiwanis Club of Chehalis member, appeared as a director on the KVH Board
18 and requested to see the KVH financial records. When Meister did not receive this information,
19 he consulted his attorney who informed him that as a board member he should have "total access
20 to information regarding the operation of the corporation." Meister stated that if members of
21 the board are not "interested in the intricate operations of this organization then we should not
22 be on the board" and that the Kiwanis Club of Chehalis would be "committed to the successful
23 continuation of the home." Meister's requests and questions divided the KVH Board into two
24 factions: The Kiwanis Clubs of Chehalis and Tumwater on one side demanding transparency,
25 and the Kiwanis of Centralia and Grand Mound Rochester siding with McCarthy by working
26 and scheming to oust the dissenters and prevent exposure of an embezzling operation. The feud
between these local Kiwanis clubs did not end until McCarthy and his supporters changed the

1 KVVH Board By-Laws to divest Kiwanis of Chehalis and Kiwanis of Tumwater of authority by
2 ousting their members Meister and Britt as board members.

3 43. Facts: Internal Turmoil Leads to Power Struggle Over KVVH. The rift between
4 the local Kiwanis Clubs started to form when Meister conducted a survey of his Kiwanis Club
5 of Chehalis to gather information about their views of McCarthy. In response, the KVVH Board
6 Executive Committee admonished Meister, writing,

7 On another matter, we are aware that you are conducting a survey as to
8 the feelings of your members towards the Director of K.V.H. Permission from
9 the Executive Board should have been granted prior to your "survey." We see
this as divisive and would ask you not to continue.

10 Meister addressed his concerns and responded to the ire he had raised in a letter dated
11 May 26, 1989, that he wrote on behalf of the Kiwanis Club of Chehalis to the KVVH Board:

12 This [KVVH] corporation has been in existence for an extended period of
13 time providing a foster shelter for youth in need of a stable way of life. . . . ***With***
14 ***that in mind, the time is at hand to properly assume our responsibilities and***
15 ***obligations as directors and officers of the corporation for whom we serve. I***
16 ***am referring [to] the responsibilities and obligations as enumerated in the***
articles of incorporation, the by-laws of the corporation and most importantly
those responsibilities and obligations enumerated in the Revised Code of
Washington as set out in title 24.

17 Gentlemen, to this point ***we have been negligent. This has been a very***
18 ***serious offense that we have committed against the corporation and against***
the good name of Kiwanis We have committed a sin of omission against
our corporation and our name through the neglect of our duty.

19 * * *

20 Gentlemen, this is our job. ***We have not fulfilled our obligations. We***
21 ***have allowed our corporation to get out of control.***

22 Events that are taking place, are our own fault. ***We must act together to***
regain control. For the good of the corporation. For the good of Kiwanis.

23 Meister also sent a letter to the KVVH "Corporate Attorney" demanding a copy of his
24 retainer contract with KVVH and "the contract between the Executive Director and [KVVH]."

25 44. Facts: Internal Turmoil Leads to Power Struggle Over KVVH. At a board meeting
26 held on June 8, 1989, the Kiwanis Club of Centralia that was supporting McCarthy staged a
coup d'état to settle the substantive control issues Meister was raising over KVVH. When the

1 board meeting was called to order, McCarthy claimed that LCYE was a “holding corporation”
2 that owned and controlled all the land, buildings, building contents, and vehicles at KVH. He
3 also stated that the Kiwanis Vocational Homes for Youth Corporation, on the other hand, “was
4 formed to be an advising entity with its major purpose to [fundraise].” The Kiwanis Club of
5 Chehalis through Meister and the Kiwanis Club of Tumwater through Britt both objected to
6 McCarthy’s characterization, stating that they as Kiwanians were in full control of KVH and
7 not merely advisors.

8 45. Facts: Internal Turmoil Leads to Power Struggle Over KVH. Kiwanis Pacific
9 Northwest District Lieutenant Governor Dale Shannon intervened and “offered a resolution to
10 the Board members” even though he was not on the KVH Board himself. Shannon had been
11 asked by the Kiwanis Pacific Northwest District ranks to be *involved* with the committees, like
12 LCYE and KVH, that were overseeing KVH. Given his delegation of power and clear mandate
13 from Kiwanis International, Shannon acted at the KVH Board despite not being a member:

14 [Shannon] outlined the Corporate structure of Lewis County Youth
15 Enterprises and Kiwanis Vocational Homes for Youth. This outline recognizes
16 Lewis County Youth Enterprises as the holding Corporation with the
17 responsibility of overseeing the operation and supporting the Director in his
18 operation of the Boy’s Home. The Kiwanis Vocational Homes for Youth
19 Corporation was advisory and would support Lewis County Youth Enterprises
20 by soliciting goods for the operation of the youth home.

21 Following Shannon’s proclamation, on behalf of the Pacific Northwest District, the Board
22 moved and voted in favor of defining themselves as an “advisory” to LCYE.

23 46. Facts: Internal Turmoil Leads to Power Struggle Over KVH. The Kiwanis Clubs
24 of Chehalis and Tumwater, acting through its agents Meister and Britt, were not deterred
25 though, and they met DSHS’s Division of Children and Family Services (“DCFS”) Region 6
26 Administrator, Mark Redal, to “express [their] concerns regarding management of the Kiwanis
Vocational Homes for Youth at Centralia, Washington.” Following the meeting, Britt wrote to
Redal:

[W]e feel the purpose of this meeting was to bring to your attention
recently disclosed inequities in management of the home and change in

1 corporate structure of the organization. . . . [R]egretfully, we reported several
2 inequities of management by the administrator and general manager of the home
3 and questionable practices to assure the State is receiving fair return for services
4 it is paying.

5 * * *

6 As members of the Board of Directors of the Kiwanis Vocational Homes
7 for Youth, we are concerned with financial accountability of the organization. .
8 . . . However, we as the Board of Directors of the Kiwanis Vocational Homes for
9 Youth have recently been imposed upon and stripped of our powers as directors
under RCW, Chapter 24, to now serve only as an advisory board. . . . Please note
Kiwanis Vocational Homes for Youth under these bylaws has no assets in the
organization or power and responsibility for its direction and administration.
Therefore, any contractual agreements and compensations by the state should be
made with Lewis County Youth Enterprises and not the Kiwanis Vocational
Homes for Youth.

10 In closing, we as members of various Kiwanis clubs are concerned about
11 the welfare and rehabilitation of disadvantaged boys. We are also concerned
with proper and responsible management of the home in Centralia.

12 47. Facts: Local Kiwanis Members Contact the State. The war over which local
13 clubs controlled KVH continued, and in January 1990, Britt sought legal advice on behalf of
14 his Kiwanis Club of Tumwater about removing the local club's name from the articles of
15 incorporation of the Kiwanis Vocational Homes for the Youth. He and the Tumwater Kiwanis
16 were concerned with the management and organization of the KVH corporation, including
17 "responsibility and authority of elected directors and irregularities of financial and tax
18 statements." Britt also remarked, "*There is also grave concern with the operation and*
19 *management of the 'Home' in regard to compliance of policy and rules of Kiwanis*
20 *International.*" In sum, Britt stated that the "Kiwanis Club of Tumwater wishes to have its
21 name removed from the Title and party of the subject organization and *be free of liability*
22 *associated with its operations.*"

23 48. Facts: Local Kiwanis Clubs Begin Removing Name in KVH Articles of
24 Incorporation. The following month, the Kiwanis Club of Tumwater notified McCarthy in
25 writing that it had "voted to withdraw as a participating member of the Kiwanis Home For
26 Youth" in a unanimous vote. Around the same time, the Kiwanis Club of Chehalis, through its
president Don Conway, demanded KVH to produce financial information and an organizational

1 chart. Conway wrote that the information was “necessary in order for us to be comfortable with
2 the operation at the Boy’s home.”

3 49. Facts: Local Kiwanis Clubs Begin Removing Name in KVH Articles of
4 Incorporation. On March 8, 1990, Conway wrote to George Wieman, a Pacific Northwest
5 District Governor, to provide notice that the Kiwanis Club of Chehalis’ voted to have its name
6 deleted from the articles of incorporation of the Kiwanis Vocational Homes for Youth. Conway
7 stated:

8 The Kiwanis Club of Chehalis and other Kiwanis Clubs in this area have
9 for many years been involved in supporting ‘the Kiwanis Youth Vocational
10 Home for boys that is located in Centralia. This home has the admirable purpose
11 of housing and educating teenagers who have had problems at home or with the
12 law. There are approximately 60 to 70 teenagers living in the home and it is
13 believed to be the largest of its kind in the state of Washington. While our club
14 is proud of what has been accomplished we have become increasingly concerned
15 in recent years over the management of the home. ***Enough information has***
16 ***come to our attention that the Chehalis Club has now voted to withdraw***
17 ***support for the home and it’s director, Chuck McCarthy. Our board has voted***
18 ***to request that our club’s name be deleted from the articles of incorporation***
19 ***and it is our strong suggestion to other clubs in the area and to District that***
20 ***they consider doing the same.*** The reasons are complex and cannot be easily
21 summarized in a letter but involve ***allegations of misuse of funds and fraud,***
22 ***among other things.*** Various approaches have been made to obtain the
23 information necessary to confirm or disprove the allegations but Chuck
24 ***McCarthy, in particular, has been uncooperative in supplying the requested***
25 ***information. Therefore, we feel we have no alternative but to withdraw our***
26 ***support.***

19 A handwritten note on the bottom of the letter stated, “PS. We were just informed that the
20 Tumwater Club has officially dropped their support also.” According to an article in *The*
21 *Chronicle*, “The withdrawal resulted after the Chehalis club set up a committee several months
22 [before] to look into allegations of financial mismanagement at the home.” Theo Britt, of the
23 Kiwanis Club of Tumwater stated, “‘Using the Kiwanis name is like ‘taxation without
24 representation . . . if our name is used, we should be an integral part of that organization.’”

25 50. Facts: Kiwanis Pacific Northwest District Intervened to “Save the Kiwanis
26 Name.” The withdraw of local club support sent shockwaves through the Kiwanis vertical
hierarchy, and it sent McCarthy and his Kiwanis of Centralia and Kiwanis of Grand Mound

1 Rochester supporters on a campaign to discredit the dissenters. On March 12, 1990, KVH
2 Attorney Darkenwald, went on the offensive and attacked members of the Kiwanis of Chehalis
3 Club in a letter to its President, Don Conway. Darkenwald's letter began by outlining the
4 influential officers of the Kiwanis who sat on the board, and then said "they, as individuals and
5 as a Board, are outraged, shocked, and personally insulted by the treatment [a Pacific Northwest
6 District Lieutenant Governor Arnold Anderson] received during his official visit to your board."

7 51. Facts: Kiwanis Pacific Northwest District Intervened to "Save the Kiwanis
8 Name." The following day, McCarthy wrote a letter to Dale Shannon, an immediate past
9 Pacific Northwest District Lieutenant Governor, attacking Theo Britt and Henry Meister.
10 "Theo Britt, who was and is heavily influenced by Henry Meister, Chehalis Kiwanis, both were
11 on the Kiwanis Vocational Homes Advisory Board and both were voted out by this board for
12 non-attendance." McCarthy accused them of being "constantly disruptive" while on the KVH
13 Board and claimed that "[n]either would accept their removal." What ensued was an effort by
14 Kiwanis of Centralia in tandem with the highest regional Kiwanis echelons to "Save the [KVH]
15 operation and protect the Kiwanis name."

16 52. Facts: Kiwanis Pacific Northwest District Intervened to "Save the Kiwanis
17 Name." In early 1990, the internal battle over which local Kiwanis club controlled KVH
18 reached a flashpoint, and the Pacific Northwest District intervened to preserve KVH as a major
19 service project and to quell dissent in some of the local clubs that sought to shut down KVH
20 and remove their own club names from the KVH articles of incorporation. It started on March
21 13, 1990, when Pacific Northwest Governor Wieman was asked to "resolve[]" the infighting
22 between local Kiwanis clubs:

23 George, there is one concern of the Past Governor's Committee that we
24 would hope you would act on soon. It has to do with the Kiwanis Vocational
25 Boy's Home in Chehalis.

26 We understand that *two Kiwanis Clubs have withdrawn support of the project*. There may be other Kiwanis Clubs, as well as Optimists, Altruso, and others, withdrawing their support if this thing isn't resolved to everyone's satisfaction soon.

You can play a strong leadership role in resolving this issue. We urge you to consider doing the following: (1) Appoint an impartial committee, (2) Send that Committee to the Kiwanis Vocational Boy's Home, (3) Conference with all parties concerned, (4) Be a fact-finding, impartial, non-aligned committee, (5) Develop a report with recommendations, and (6) Report back to you and the Board of Governors at the earliest convenience, and (7) Put in operation a healing process to ***save this important facility*** that is helping Washington's youth.

53. Facts: Kiwanis Pacific Northwest District Intervened to "Save the Kiwanis Name." Lieutenant Governor Arnold Anderson of the Pacific Northwest District, wrote a letter to Dale Shannon documenting his conversation on March 19, 1990, with Meister, mentioning Anderson's "recent unpleasant experience with [Meister]" and providing that "Meister continued his comments to advise me that the Kiwanis Vocational Home for boys was not well managed by Mr. Charles McCarthy."

54. Facts: Kiwanis Pacific Northwest District Intervened to "Save the Kiwanis Name." On March 19, 1990, Governor Wieman assembled an investigative committee and ordered an "in depth evaluation of the Kiwanis Vocational Home for Boys . . . to . . . ***"Save the (KVH) operation and protect the Kiwanis name."*** This committee was meant to be 'fact finding, impartial, non-aligned' with one of its purposes to "re-establish harmony and support of KVVH and local area Division 40 and Division 42 Kiwanis clubs, who, since 1979, have supported the operation of this facility."

55. Facts: Kiwanis Pacific Northwest District Intervened to "Save the Kiwanis Name." Allan Wood was appointed "Chairman of the Kiwanis Boys' Home Investigation Committee." He began right away, and on March 20, 1990, he interviewed a member of the Kiwanis of Tumwater Club, Jim Pennington, about his club withdrawing support of KVH. Wood wrote,

Jim justifies the action of the Tumwater Club in withdrawing support from [KVH]. . . . Jim believed Miester to be a credible person with a genuine basis for his claim of financial misconduct at the home. Jim saw no documentation to support this charge. The Tumwater Club's action was based solely on 'hear-say.'

56. Facts: Kiwanis Pacific Northwest District Intervened to "Save the Kiwanis Name." Six days later, Wood entered another "investigatory" note, memorializing his meeting

1 with Lewis Patton, a prior past Pacific Northwest District Lieutenant Governor and then present
2 Chairman of the KVH Board. Wood noted that “Lou has sought documentation to support
3 allegations of ‘misappropriation of funds’ and ‘fraud’ . . . [but] no one involved in this matter
4 had produced any such documents.” He also provided that, “Lou stated that all members of
5 both the administrative and advisory boards are Kiwanians.” Appearing to dismiss any
6 wrongdoing, Wood continued, “The issue seems to focus on Henry Meister and Theo Britt, who
7 were both dismissed from the Advisory Board because of their disruptive behavior and failure
8 to attend duly called board meetings.”

9 57. Facts: Kiwanis Pacific Northwest District Intervened to “Save the Kiwanis
10 Name.” On March 28, 1990, the DSHS group care coordinator, Marvin Christensen, wrote a
11 letter directly to Governor Wieman in support of the home:

12 The State Department of Social and Health Services is proud of the
13 success Kiwanis Vocational Homes has had with the boys in their care. This
14 success has been recognized by the State, as recently as March 1, 1990, though
15 the awarding of a new contract raising Kiwanis Vocational contract limit from
16 54 boys to 69 boys. Over the years, Kiwanis Vocational Homes has
17 demonstrated an ability and willingness to adapt their program to meet the
changing needs of the population requiring group care. This spirit of
cooperation has earned Kiwanis Vocational a respected position in the State
reflected in the volume of the requests received every month for them to consider
more boys than there is space for, as candidates for placement.

18 The Division of Children and Family Services is fortunate to have a
19 program of this quality to care for children entrusted to their care.

20 58. Facts: Kiwanis Pacific Northwest District Intervened to “Save the Kiwanis
21 Name.” Pacific Northwest District’s campaign to preserve KVH as a major project and to force
22 fealty by Kiwanis Clubs of Chehalis and Tumwater continued on April 13, 1990, with another
23 letter from Corporate Attorney Darkenwald to Chairman Wood. The letter praised McCarthy’s
24 work and then shifted the blame of the investigation to “disgruntled” Kiwanis clubs:

25 When we cut through all of the smoke and fuss raised by some former
26 employees (disgruntled, no surprise) and some individuals who happen to
belong to a Kiwanis Club but have no more legal standing to be heard in a
courtroom than any other taxpayer, the ultimate question is whether you want to
even consider recommending that Kiwanis International divorce itself from the
boys’ home. For reasons that remain hidden from me on their private agenda,
there are a few individuals whom some would call merely angry and some would

1 term obsessed, who appear to want nothing less than that. Should you choose
2 to seek silence and even a truce between rival clubs at all costs, you may hurt
the boys' home and the boys.

3 * * *

4 [T]he boys' home is far too important a service and asset to the state and
5 community, and Kiwanis International far too large and prestigious a service
6 organization, to become mired down in what has all the appearances of nothing
more than a rivalry between two local clubs. . . .

7 The home is proud to bear the Kiwanis logo and I think Kiwanis has
8 good reason to be proud of the work that is done to provide a home for boys in
this state who have no home of their own and brag to their family and friends
about being from Kiwanis.

9 59. Facts: Kiwanis Pacific Northwest District Intervened to "Save the Kiwanis
10 Name." On May 20, 1990, Chairman Wood recorded some of his investigative "impressions,"
11 which generally consisted of dismissing criticisms of KVH and painting the dissenters as rogue
12 ne'er-do-wells. By way of example, Wood learned that McCarthy had used KVH funds to build
13 a home office, and yet he excused the misappropriation on the basis that "the Board allegedly
14 authorized the expenditure." Similarly, Wood looked over the serious allegation that McCarthy
15 was misappropriating KVH cash and instead highlighted that "Chuck [McCarthy] and his
16 family have made unselfish contributions of time and money to KVH," including an alleged
17 donation of \$30,000 that he received "from an uncle's estate." In stark contrast to these
18 favorable presentations, Wood declared that "[i]t is apparent that Henry Meister's intent, for
19 reasons known only to him, is to destroy the integrity of Chuck McCarthy and force his removal
20 as director of the Kiwanis Vocational Home for Boys." Without performing any real
21 investigation into the reports of McCarthy's misconduct, Wood suggested that the entire
22 disagreement was due to "one man's personal vendetta." Wood proclaimed that "ALL
23 allegations made of wrong doing have been thoroughly investigated and found to be without
24 justification" and "there appears to be no reason to deny the Kiwanis Vocational Home for Boys
25 the privilege of using 'Kiwanis' in its name."

26 60. Facts: Kiwanis Pacific Northwest District Intervened to "Save the Kiwanis
Name." Wood issued an "investigative report" on July 2, 1990, that mirrored his earlier

1 “impressions” and that found no “reason to withdraw the name of Kiwanis.” The report’s
2 defined “mission” was to “‘be a fact finding, impartial, non-aligned committee’ to investigate
3 the allegations, put in operation a healing process to save this important facility and protect the
4 Kiwanis name.” Of the several allegations Wood examined, he found that a “charge of
5 negligence against the KVH Board of Directors was “valid” because he found its members
6 “were not fully aware of their responsibilities nor were they certain of their board affiliation.”
7 Wood then made a series of “recommendations” before concluding that KVH “is providing a
8 quality program” and the Kiwanis should “commend their operation” rather than withdraw the
9 Kiwanis name.

10 61. Facts: Kiwanis Pacific Northwest District Intervened to “Save the Kiwanis
11 Name.” On July 17, 1990, Wood released a second “investigative report” on the Kiwanis
12 International letterhead. This report largely mirrored his July 2 report, except with some key
13 differences. For example, Wood’s recommendations removed specific references to KVH:

14 (1) “each of the Board of Directors review, in detail, the By-Laws of . . . LCYE
15 and KVH to ensure compliance at all levels” was changed to omit KVH; and

16 (2) “the Administrator comply with instructions issued by the LCYE Board of
17 Directors *through the KVH Advisory Board*” was changed to exclude “KVH
Advisory Board” entirely.

18 Wood’s recommendation to “commend their operation” and continue allowing the home to use
19 the Kiwanis name was unchanged, except that this report referenced a “State Audit” of KVH.
20 Wood’s report also found the allegation of sexual abuse in the home to be invalid, stating,
21 “There was no evidence found to document any sexual abuse at KVH.” Notably missing from
22 the investigation were interviews with all law enforcement, the local juvenile probation
23 department, local DSHS group home monitor Mark Shetterly, actively involved staff, former
24 and terminated staff, parents of the resident boys, and the boys themselves. The investigation
25 focused predominately on trivial issues rather than major fundamental problems.

26 62. Facts: Kiwanis Pacific Northwest District Intervened to “Save the Kiwanis
Name.” On July 24, 1990, a letter was sent to “all Kiwanis members” from the KVH board

1 positively quoting from the July 17 report to further promote Kiwanis, stating ““The Kiwanis
2 Vocational Home for Boys is providing a quality program for a most needy group of youth.””

3 63. Facts: Kiwanis Pacific Northwest District Intervened to “Save the Kiwanis
4 Name.” Following the release of the Kiwanis International investigation, the Centralia Kiwanis
5 Club sent Governor Wieman and the investigatory team a letter to thank them for a job well
6 done. “It is our sincere desire that your committee findings will put to rest the turmoil ***that has***
7 ***affected the very existence of K.V.H.***” The letter did not mention any of the licensing
8 violations. A full-page ad was purchased in *The Chronicle*, the local paper, to champion KVH
9 and declare that a Pacific Northwest District audit “commends its operation” and found the
10 home to be “a quality program.” The advertisement thanked “Kiwanis International for its
11 support and for the time and effort involved in completing such a thorough investigation.”

12 64. Facts: State Releases Audit of KVH that Made Several Alarming Findings. The
13 Kiwanis promotion of KVH in the wake of its internal investigation by Pacific Northwest
14 District was short lived, however, because the Washington Office of Special Investigation
15 (“OSI”) released its report on November 30, 1990, that made significant findings including that:

- 16 (1) McCarthy physically abused boys at KVH
- 17 (2) McCarthy misappropriated nearly \$200,000 in State funds
- 18 (3) KVH staff was assaulting boys at KVH
- 19 (4) Credentials of staff at KVH had been altered
- 20 (5) Child care and social service staff was not meeting minimum
- 21 education and experience requirements
- 22 (6) Criminal incidents were not being reported to law enforcement,
- 23 including rape and burglary
- 24 (7) KVH staff was altering records
- 25 (8) KVH was defrauding the federal government by embezzling
- 26 money provided for lunches
- (9) KVH facilities had sewage backed up in a shower, open sewage in
a field, and sewage under a home

1 65. Facts: Kiwanis International Intervened Takes Steps to Oust McCarthy. The
2 OSI report caused immediate backlash and negative media coverage on the fraud occurring at
3 KVVH. On December 9, 1990, Kiwanis Governor Wieman received one of the articles, entitled
4 “Youth home accused of fraud,” and sent it to Frank Hegyi, who was slated to take over as
5 Governor the following year. Governor Wieman attached a note to the article saying

6 The attached is for your info. It could become a “hot item” again. Allan Wood
7 and Russ Hobbs are looking into the news report now and will advise us soon.

8 Within days, Kiwanis International demanded that McCarthy be terminated or they would “pull
9 the Kiwanis name.” McCarthy resigned only a few, short weeks later on January 4, 1991.

10 66. Facts: Kiwanis Defendants’ Concerns with Problems at KVVH. On December
11 11, 1990, a Kiwanian wrote to the Kiwanis Pacific Northwest District Secretary stating he had
12 “[t]alked with some folks at DSHS” about the problems at the Boys Home and that, “Seems
13 false diplomas etc. were biggest problem. Some state monies went to them on the basis of
14 counseling.” He further stated that he was “pushing to disassociate PNW Kiwanis from the
15 home.”

16 67. Facts: Kiwanis Defendants’ Concerns with Problems at KVVH. On December
17 20, 1990, the local Kiwanis Chehalis Club president wrote to the Kiwanis Pacific Northwest
18 District Governor informing him that the public already thinks the State report and KVVH
19 “allegations of improprieties and mismanagement relates directly to Kiwanis and our local
20 club.” He felt that Kiwanis’ prior investigation of KVVH “glossed over the allegations that are
21 now being addressed by the State audit.” He advised, “it may not be too late for Kiwanis to
22 recognize the problems with Kiwanis Vocational Home and take some sort of stand to
23 counteract the negative publicity.” He also suggested that Kiwanis establish policies and
24 procedures for future Kiwanis investigation committees “to ensure objectivity.”

25 68. Facts: Kiwanis International Intervened to Re-Create KVVH. In the wake of
26 McCarthy’s forced resignation, Guy Cornwell took over. Arnold Anderson, an immediate past
Kiwanis Lieutenant Governor was installed as President of the KVVH Board and steps were

1 taken to correct course. Officers of the Kiwanis International resumed attending KVH Board
2 meetings and appointing board members. Three board members were appointed by Kiwanis
3 Lieutenant Governors.

4 69. Facts: Problems at KVH Continued. Guy Cornwell's new role was short-lived
5 because board members began to have concerns about Cornwell as they became aware of
6 numerous reports of Cornwell abusing residents. In a memo dated January 16, 1991, Cornwell
7 was accused of 12 instances of physical assaults against boys at KVH.

8 70. Facts: Problems at KVH Continued. Marv Christensen wrote a letter on
9 February 11, 1991, stating that KVH board members believed Cornwell was "not qualified to
10 be the director of KVH" and claimed Cornwell had re-written board minutes and other
11 documents to services his own purposes. Cornwell resigned shortly thereafter in or around
12 March 14, 1991.

13 71. Facts: Problems at KVH Continued. On December 6, 1991, Kiwanis Pacific
14 Northwest District Secretary Roy Frank wrote to attorney Gary McGlothlen stating, "Governor
15 Rod Saalfeld asked that I inquire regarding the progress on the Centralia Boys Home problem,
16 as well as to the question on insurance as discussed."

17 72. Facts: Problems at KVH Continued. On April 14, 1992, the Program Manager
18 of the Division of Children and Family Services wrote to the Deputy Director of the Division
19 of Children and Family Services regarding the Kiwanis Vocational Home stating, "[t]his is my
20 third visit to the facility since I came to Washington in 1989, each visit approximately a year
21 apart. I have not noted significant changes during the visits." He further stated, "I feel that by
22 our quest for placements and facilities, especially west of the Cascades, that we have caved into
23 accepting poor standards and are thus sanctioning this poor to marginal quality of care. I can
24 tell you that if KING 5 did go there with their television cameras into some of the areas I saw,
25 it would, at best, be an embarrassment." He stated that "if the decision were mine, I would
26 discontinue contracting with the facility until some physical improvements could be made e.g.,
tearing it all down and starting over again."

1 73. Facts: Defendants' Negligent Acts, Errors and Omissions Arising Out of
2 Defendants' Social Work Activity. Defendants engaged in social work activity including but
3 not limited to the consultation and communication with Plaintiffs for the purpose of offering
4 and providing occupational advice, guidance and such social work services to Plaintiffs. As a
5 group care home, KVH provided various services to its residents, including counseling,
6 education, and child placement. KVH and those who worked there, including but not limited
7 to Charles McCarthy: oversaw and administered the operation of this social work and the
8 provision of these services, including the consultation and communication with KVH residents,
9 such as Plaintiffs, for the purpose of offering and providing occupational advice, guidance,
10 counseling, and such social work services; engaged in the consultation and communication with
11 Plaintiffs for the purpose of offering counseling, evaluation, assessment, prevention and
12 vocational and educational services; and engaged in other such social work activity. KVH and
13 those who worked there, including but not limited to Charles McCarthy, engaged in negligent
14 acts, errors and omissions arising out of their social work activity by failing to: hire qualified
15 staff; train, supervise, and instruct staff appropriately; develop and implement a proper
16 program; use funding to hire sufficient numbers of staff; operate a social work program or
17 dispense such social work services meeting the standard of ordinary care. Defendants'
18 negligent acts, errors, and omissions arising out of Defendants' social work activity proximately
19 caused the sexual abuse of Plaintiffs and resultant damages.

20 74. Facts: Defendants' Engaged in a Pattern of Criminal Profiteering Activity.
21 Defendants and their co-conspirators, both named and unnamed in this complaint, have engaged
22 in a pattern of criminal profiteering activity. At all times relevant, Charles McCarthy kept two
23 sets of accounting books to hide the criminal enterprise that was KVH. He knowingly accepted
24 and solicited money from the State of Washington that was supposed to be used for their health,
25 care, and wellbeing. Rather than use the money on children, Charles McCarthy and his co-
26 conspirators, both named and unnamed in this complaint, misappropriated the money for
 personal enrichment, including but not limited to paying bribes to State workers upon

1 information and belief. They also defrauded the State with promises of educational and
2 counseling programs to procure KVH residents they instead forced into work crews for
3 Defendants' gain using physical violence and intimidation. Charles McCarthy and his co-
4 conspirators also accepted compensation for men to sexually abuse boys at KVH or to take
5 them home under the guise of "work" when the reality was that men were taking the boys for
6 sex. Charles McCarthy and his co-conspirators, both named and unnamed in this complaint,
7 hired and retained men and woman who were known to be sexual predators, and they otherwise
8 were tolerant of sexual abuse occurring at KVH so as not to disrupt the criminal enterprise of
9 misappropriating State money for personal enrichment.

10 75. Facts: Plaintiffs Were Discriminated against as Members of a Protected Class.

11 At all times relevant, Plaintiffs were members of a protected class, and they were treated
12 different to treatment of others outside their protected class by all defendants other than the
13 State defendants. The violative acts toward Plaintiffs were objectively discriminatory and
14 subjectively perceived as discriminatory by Plaintiffs. Plaintiffs' protected status was a
15 substantial factor in the harm they suffered at KVH, a place of public accommodation.

16 **B. Plaintiff B.C.'s Placement at KVH.**

17 76. Plaintiff B.C. was approximately 14 years old when he was placed at KVH in
18 the summer of 1986. B.C. was sexually and physically abused by two KVH residents. Plaintiff
19 B.C. was a minor when he was subjected to sexual and physical abuse while residing at KVH.
20 He was also exposed to a highly sadomasochistic sexualized environment. The physical abuse
21 he suffered was rooted in sexual aggression that was commonplace at KVH. The physical abuse
22 he suffered was tantamount to touches that were done for the sexual gratification of others, at
23 the expense of Plaintiff B.C.'s emotional wellbeing. As a direct and proximate cause of B.C.'s
24 placement at KVH, he has suffered, and continues to suffer from, severe emotional and physical
25 trauma.
26

1 **C. Plaintiff D.L.'s Placement at KVH.**

2 77. Plaintiff D.L. was approximately 14 years old when he was placed at KVH in
3 1991. D.L. was sexually and physically abused by a KVH resident. Plaintiff D.L. was a minor
4 when he was subjected to sexual and physical abuse while residing at KVH. He was also
5 exposed to a highly sadomasochistic sexualized environment. The physical abuse he suffered
6 was rooted in sexual aggression that was commonplace at KVH. The physical abuse he suffered
7 was tantamount to touches that were done for the sexual gratification of others, at the expense
8 of Plaintiff D.L.'s emotional wellbeing. As a direct and proximate cause of D.L.'s placement at
9 KVH, he has suffered, and continues to suffer from, severe emotional and physical trauma.

10 **D. Plaintiff P.T.'s Placement at KVH**

11 78. Plaintiff P.T. was approximately 17 years old when he was placed at Kiwanis
12 Vocational Home. P.T. was sexually and physically abused by two KVH staff persons. Plaintiff
13 P.T. was a minor when he was subjected to sexual and physical abuse while residing at KVH.
14 He was also exposed to a highly sadomasochistic sexualized environment. The physical abuse
15 he suffered was rooted in sexual aggression that was commonplace at KVH. The physical abuse
16 he suffered was tantamount to touches that were done for the sexual gratification of others, at
17 the expense of Plaintiff P.T.'s emotional wellbeing. As a direct and proximate cause of P.T.'s
18 placement at KVH, he has suffered, and continues to suffer from, severe emotional and physical
19 trauma.

20 **E. Plaintiff D.F.'s Placement at KVH**

21 79. Plaintiff D.F. was approximately 14 years old when he was placed at Kiwanis
22 Vocational Home. D.F. was sexually and physically abused by both KVH staff and residents.
23 Plaintiff D.F. was a minor when he was subjected to sexual and physical abuse while residing
24 at KVH. He was also exposed to a highly sadomasochistic sexualized environment. The
25 physical abuse he suffered was rooted in sexual aggression that was commonplace at KVH. The
26 physical abuse he suffered was tantamount to touches that were done for the sexual gratification
of others, at the expense of Plaintiff D.F.'s emotional wellbeing. As a direct and proximate

1 cause of D.F.'s placement at KVH, he has suffered, and continues to suffer from, severe
2 emotional and physical trauma.

3 **D. Defendants' Tortious Misconduct Proximately Caused Plaintiff Damages.**

4 80. Facts: Proximate Cause. Defendants were grossly negligent, or alternatively,
5 negligent, regarding their acts and omissions. Defendants had actual knowledge of criminal
6 and sexual misconduct at the KVH and wholly failed to protect the children residing there, over
7 whom they had custody and control. As a result, Plaintiffs were permanently injured. The
8 failure of these Defendants created and increased the danger of child sexual abuse from which
9 these Plaintiffs suffered.

10 81. Facts: Damages. As the proximate result of the Defendants' gross negligence,
11 or alternatively, negligence, toward the health and safety of children, Plaintiffs suffered from
12 sexual attacks, mental anguish, and emotional distress.

13 **V. CAUSES OF ACTION**

14 **COUNT I**
15 **ALL COMMON LAW NEGLIGENCE**
16 **AS TO ALL DEFENDANTS**
(Washington Common Law)

17 82. Negligence. Based on the paragraphs set forth and alleged above, Defendants
18 had a duty to exercise ordinary care and refrain from negligent acts and omissions, duties that
19 arose out of special relationships and custodial control under Restatement (second) of Torts
20 §315, duties that included the duty to control servants while acting outside the scope of
21 employment under Restatement (second) of Torts §317, duties that included refraining from
22 taking affirmative acts that exposed Plaintiffs to harm from the foreseeable conduct of a third
23 party under Restatement (second) of Torts § 302B, duties that included the duty to refrain from
24 negligently accepting dependent children in a situation that will foreseeably cause grave harm,
25 duties that included the legal obligation to fully investigate and report all matters of sexual
26 abuse, duties to act reasonably after assuming a gratuitous undertaking, duties that included the
duty to refrain from negligently engaging in social work activity including but not limited to

1 the consultation or communication between KVH and/or LCYE and Plaintiffs where
2 Defendants offered and provided occupational advice, guidance or such social work services to
3 Plaintiffs, and duties that included the necessity of taking reasonable precautions to protect
4 Plaintiffs from sexual abuse, particularly from the likelihood of dangerous abuse presented at
5 KVH and/or LCYE given the longstanding and grave issues delineated above, as well as to
6 refrain from negligent acts and omissions in the hiring, training, assignment of cases to, and
7 supervision of its agents, and Defendants' multiple failures in its duties owed proximately
8 caused the sexual abuse of Plaintiffs and resultant damages for which Defendants are liable.

9
10 **COUNT II**
COMMON LAW GROSS NEGLIGENCE
11 **AS TO ALL DEFENDANTS**
(Washington Common Law)

12 83. Gross Negligence. Based on the paragraphs set forth and alleged above,
13 Defendants had a duty to exercise slight care, which is care substantially less than ordinary care,
14 and to refrain from grossly negligent acts and omissions, and Defendants' multiple failures and
15 breaches in its duties owed proximately caused the sexual abuse of Plaintiffs and resultant
16 damages for which Defendants are liable.

17 **COUNT III**
18 **CONCERT OF ACTION**
19 **AS TO ALL DEFENDANTS**

20 84. Concert of Action. Based on and incorporating the paragraphs set forth and
21 alleged above, Defendants had a duty to refrain from acting in concert with other individuals or
22 entities not named in this Complaint, and Defendants breached this duty by acting together with
23 other individuals or entities in an unlawful and negligent manner irrespective of whether they
24 intended harm, all done in violation of Washington law, giving rise to joint and several liability
25 under RCW 4.22.070(1) for the Plaintiffs' general and special damages that were a direct and
26 proximate result of Defendant's conduct.

COUNT IV
SEX AND DISABILITY DISCRIMINATION

1 **AS TO ALL DEFENDANTS EXCEPT STATE DEFENDANTS**
2 **(Washington Law Against Discrimination)**

3 85. Washington Law Against Discrimination. Based on the paragraphs set forth and
4 alleged above, Plaintiffs were members of a protected class who were was at all times relevant
5 utilizing a place of public accommodation pursuant to RCW 49.60 *et seq.* when all Defendants,
6 and/or its agents or employees, except State defendants, committed acts that directly or
7 indirectly resulted in distinction, restriction, and/or discrimination of Plaintiffs by treating them
8 in a manner different to the treatment provided to persons outside the Plaintiffs' protected class,
9 including but not limited to allowing sexual abuse of Plaintiffs to occur without regard, and
10 such violative acts toward Plaintiffs were objectively discriminatory and subjectively perceived
11 as discriminatory by Plaintiffs, and the Plaintiffs' protected gender or disability status was a
12 substantial factor that caused the distinctive, restrictive, and/or discriminatory treatment by all
13 Defendants, and/or its agents or employees, except State defendants, and Plaintiffs' protected
14 status was a substantial factor that caused the distinctive, restrictive, and/or discriminatory
15 treatment by the Defendants, and/or its agents or employees, except State defendants, all of
16 which was contrary to the laws of Washington set forth under RCW 49.60 *et seq.*, and all of
17 which proximately caused Plaintiffs to suffer damages.

18 **COUNT V**
19 **VIOLATIONS OF WASHINGTON CRIMINAL PROFITEERING ACT**
20 **AS TO ALL DEFENDANTS**

21 86. Washington Criminal Profiteering Act. Based on the paragraphs set forth and
22 alleged above, Defendants and their co-conspirators have engaged in a pattern of criminal
23 profiteering activity by the commission, or attempted commission, for financial gain, of crimes
24 in Washington State, that consisted of more than three acts of the same or similar intent, results,
25 accomplices, principals, victims or methods of commission, and/or were otherwise interrelated
26 by distinguishing characteristics including a nexus to the same enterprise, and were not isolated
events, that included the misappropriation of State funds, taking resources that should have
been used to protect Plaintiffs from sexual harms, as well as trafficking of children for work

1 crews and for sexual exploitation by hiring and retaining agents with pedophilic interests, or by
2 inviting men to KVH to have sex with boys at KVH, creating a culture of sexual toxicity, all of
3 which constituted a pattern of criminal profiteering activity or organized crime that directly and
4 proximately caused Plaintiffs to suffer harms and losses.

5
6 **COUNT VI**
7 **VICARIOUS LIABILITY**
8 **AS TO ALL DEFENDANTS**
9 **(Washington Common Law)**

10 87. Vicarious Liability. Based on the paragraphs set forth and alleged above,
11 Defendants at all at all relevant times had control over KVH and/or LCYE, as well as their
12 agents. The Kiwanis Defendants gave permission for the “good name” of Kiwanis to be used
13 by the group home in order for it to secure contracts with the State to house young boys, and
14 otherwise allowed KVH and/or LCYE to act as an actual or apparent agent, giving rise to
15 vicarious liability under Washington State common law, all of which proximately caused the
16 sexual abuse of Plaintiffs and resultant damages for which Defendants are liable.

17 **COUNT VII**
18 **AGENCY**
19 **AS TO ALL DEFENDANTS**
20 **(Washington Common Law)**

21 88. Agency. Based on the paragraphs set forth and alleged above, Defendants at all
22 relevant times had control over KVH and/or LCYE, as well as their agents. The Kiwanis
23 Defendants gave permission for the “good name” of Kiwanis to be used by the group home in
24 order for it to secure contracts with the State to house young boys, and otherwise allowed the
25 KVH to act as an actual or apparent agent, giving rise to vicarious liability under Washington
26 State common law, all of which proximately caused the sexual abuse of Plaintiffs and resultant
damages for which Defendants are liable.

COUNT VIII
ACTUAL AGENCY

1 **AS TO ALL DEFENDANTS**
2 **(Washington Common Law)**

3 89. Actual Agency. Based on the paragraphs set forth and alleged above, at all
4 relevant times Defendants manifested to KVH and/or LCYE that KVH and/or LCYE take
5 action on Defendants' behalf, and Defendants had control over KVH and/or LCYE, as well as
6 their agents, and otherwise allowed KVH and/or LCYE to act as an actual agent, giving rise to
7 vicarious liability under Washington State common law, all of which proximately caused the
8 sexual abuse of Plaintiffs and resultant damages for which Defendants are liable.

9 **COUNT IX**
10 **APPARENT AGENCY**
11 **AS TO ALL DEFENDANTS**
12 **(Washington Common Law)**

13 90. Apparent Agency. Based on the paragraphs set forth and alleged above, at all
14 relevant times Defendants made manifestations that led persons of ordinary prudence to believe
15 and assume that there was an agency relationship. The Kiwanis Defendants gave permission
16 for the "good name" and marks of Kiwanis to be used by the group home in order for it to secure
17 contract with the State to house young boys, and otherwise allowed the KVH to act as an
18 apparent agent, giving rise to vicarious liability under Washington State common law, all of
19 which proximately caused the sexual abuse of Plaintiffs and resultant damages for which
20 Defendants are liable.

21 **COUNT X**
22 **OUTRAGE**
23 **AS TO ALL DEFENDANTS**
24 **(Washington Common Law)**

25 91. Outrage. Based on the paragraphs set forth and alleged above, Defendants'
26 conduct negligently, recklessly, and/or willfully or intentionally inflicted emotional distress
upon Plaintiffs.

COUNT XI
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

1 **AS TO ALL DEFENDANTS**
2 **(Washington Common Law)**

3 92. Negligent Infliction of Emotional Distress. Based on the paragraphs set forth
4 and alleged above, the Defendants' conduct constituted negligent infliction of emotional
5 distress, and Defendants are liable for Plaintiffs' damages proximately caused by their actions
6 as provided in more detail above.

7 **COUNT XII**
8 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
9 **AS TO ALL DEFENDANTS**
10 **(WASHINGTON COMMON LAW)**

11 93. Intentional Infliction of Emotional Distress. Based on the paragraphs set forth
12 and alleged above, the Defendants' conduct constituted intentional infliction of emotional
13 distress and Defendants are liable for Plaintiffs' damages proximately caused by their actions
14 as provided in more detail above.

15 **COUNT XIII**
16 **PUNITIVE DAMAGES**
17 **AS TO DEFENDANT KIWANIS INTERNATIONAL**
18 **(Indiana Law)**

19 94. Punitive Damages. Based on the paragraphs set forth and alleged above,
20 Defendant Kiwanis International disregarded the rights and safety of Plaintiff and otherwise
21 engaged in treatment of them that was malicious, willful, wanton, callous, oppressive, and/or
22 grossly negligent, all of which warrants punitive damages under Indiana Law, applicable in this
23 case through choice of law principles.

24 **COUNT XIV**
25 **PUNITIVE DAMAGES**
26 **AS TO DEFENDANT KIWANIS PACIFIC NORTHWEST DISTRICT**
(Oregon Law)

95. Punitive Damages. Based on the paragraphs set forth and alleged above,
Defendant Kiwanis Pacific Northwest District disregarded the rights and safety of Plaintiffs and
otherwise acted with malice or has shown a reckless and outrageous indifference to a highly
unreasonable risk of harm and has acted with conscious indifference to the health, safety and

1 welfare of others, all of which warrants punitive damages under Oregon Law, applicable in this
2 case through choice of law principles.

3
4 **COUNT XV**
5 **NEGLIGENT RETENTION OF INDEPENDENT CONTRACTOR**
6 **AS TO ALL DEFENDANTS**

7 96. Negligent Retention of Independent Contractor. Based on the paragraphs set
8 forth and alleged above, Defendant had a duty to refrain from negligently selecting, contracting
9 with, hiring, and/or retaining independent contractors to provide for and have responsibility
10 over the day-to-day basic needs, safety, and protection of Plaintiffs who were at all times under
11 the ultimate custody and control of Defendants, duties that were nondelegable under well-
12 settled Washington law, and Defendants breached this duty by failing to exercise reasonable
13 care in selecting, contracting with, hiring, and/or retaining independent contractors who were
14 providing for and having the responsibility over the day-to-day basic needs, safety, and
15 protection of Plaintiffs, proximately causing Plaintiffs to suffer damages, both general and
16 special.

17 **COUNT XVI**
18 **PIERCING THE CORPORATE VEIL AND ALTER EGO LIABILITY**
19 **AS TO KIWANIS DEFENDANTS**

20 97. Alter Ego. Based on the paragraphs set forth and alleged above, the Kiwanis
21 Defendants intentionally used alter egos, including KVH, Centralia-Grand Mound-Rochester
22 Kiwanis Vocational Homes for Youth, Centralia-Grand Mound-Rochester, Chehalis, Tumwater
23 Kiwanis Vocational Homes for Youth, and/or LCYE, to try to evade a duty, and these alter egos
24 were mere shells, instruments, or conduits for the affairs of the Kiwanis Defendants. Corporate
25 disregard of alter egos is necessary to prevent unjustified loss to Plaintiffs.

26 **RESERVATION OF RIGHTS**

98. Reservation of Rights. Plaintiffs reserve the right to assert additional claims as
may be appropriate following further investigation and discovery.

1 **VI. JURY DEMAND**

2 99. Jury Demand. Plaintiffs demand this case to be tried by a jury.

3 **VII. PRAYER FOR RELIEF**

4 100. Relief. Plaintiffs respectfully request the following relief:

- 5 A. That the Court award Plaintiffs appropriate relief, to include all special
6 and general damages established at trial;
- 7 B. That the Court award pre-judgment interest on items of special
8 damages;
- 9 C. That the Court award post-judgment interest;
- 10 D. That the Court award punitive damages under Indiana Law.
- 11 E. That the Court award punitive damages under Oregon Law;
- 12 F. That the Court award treble damages and other civil penalties;
- 13 G. That the Court award attorney's fees and costs under WLAD or any
14 other appropriate law or ground in equity in prosecuting this Complaint;
- 15 H. That the Court award Plaintiffs such other, favorable relief as may be
16 available and appropriate under law or at equity; and
- 17 I. That the Court enter such other and further relief as the Court may deem
18 just and proper.

19 SIGNED this 12th day of March, 2025.

20
21 PFAU COCHRAN VERTETIS AMALA PLLC

22 By: /s/ Darrell L. Cochran
23 Darrell L. Cochran, WSBA No. 22851
24 Attorney for Plaintiffs
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PFAU COCHRAN VERTETIS AMALA PLLC

By: /s/ Kevin M. Hastings
Kevin M. Hastings, WSBA No. 42316
Attorney for Plaintiffs

PFAU COCHRAN VERTETIS AMALA PLLC

By: /s/ Bridget T. Grotz
Bridget T. Grotz, WSBA No. 54520
Attorney for Plaintiffs

November 18 2024 3:22 PM

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**SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY**

J.S., an individual; S.B, an individual; and
J.F., an individual;

Plaintiffs,

vs.

KIWANIS INTERNATIONAL, a non-profit
entity; KIWANIS PACIFIC NORTHWEST
DISTRICT, a non-profit entity; KIWANIS
OF TUMWATER, a non-profit corporation;
KIWANIS CLUB OF CENTRALIA, a non-
profit entity; KIWANIS CLUB OF
CHEHALIS, a non-profit entity; KIWANIS
OF CENTRALIA-CHEHALIS, a non-profit
entity; KIWANIS CLUB OF GRAND
MOUND ROCHESTER, a non-profit entity;
KIWANIS OF UNIVERSITY PLACE, a
non-profit entity; C. SCOTT KEE, as
personal representative for the Estate of
Charles McCarthy; GUY CORNWELL and
MELANIE CORNWELL, husband and wife
and their marital community; MARK S.
REDAL, an individual; STATE OF
WASHINGTON; STATE OF
WASHINGTON, DEPARTMENT OF
SOCIAL AND HEALTH SERVICES,
DEPARTMENT OF CHILDREN, YOUTH
AND FAMILY SERVICES, CHILD
PROTECTIVE SERVICES, governmental
entities,

Defendants.

No. 23-2-11462-6

**SECOND AMENDED COMPLAINT
FOR DAMAGES**

Demand for Jury Trial

SECOND AMENDED COMPLAINT FOR DAMAGES

Page 1

**PFAU COCHRAN
VERTETIS AMALA**
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APPENDIX 066

agents. The Kiwanis Defendants gave permission for the “good name” of Kiwanis to be used by the group home in order for it to secure contracts with the State to house young boys, and otherwise allowed KVH and/or LCYE to act as an actual or apparent agent, giving rise to vicarious liability under Washington State common law, all of which proximately caused the sexual abuse of Plaintiffs and resultant damages for which Defendants are liable.

**COUNT VII
AGENCY
AS TO ALL DEFENDANTS
(Washington Common Law)**

86. Agency. Based on the paragraphs set forth and alleged above, Defendants at all relevant times had control over KVH and/or LCYE, as well as their agents. The Kiwanis Defendants gave permission for the “good name” of Kiwanis to be used by the group home in order for it to secure contracts with the State to house young boys, and otherwise allowed the KVH to act as an actual or apparent agent, giving rise to vicarious liability under Washington State common law, all of which proximately caused the sexual abuse of Plaintiffs and resultant damages for which Defendants are liable.

**COUNT VIII
ACTUAL AGENCY
AS TO ALL DEFENDANTS
(Washington Common Law)**

87. Actual Agency. Based on the paragraphs set forth and alleged above, at all relevant times Defendants manifested to KVH and/or LCYE that KVH and/or LCYE take action on Defendants’ behalf, and Defendants had control over KVH and/or LCYE, as well as their agents, and otherwise allowed KVH and/or LCYE to act as an actual agent, giving rise to vicarious liability under Washington State common law, all of which proximately caused the sexual abuse of Plaintiffs and resultant damages for which Defendants are liable.

**COUNT IX
APPARENT AGENCY**

1 **AS TO ALL DEFENDANTS**
2 **(Washington Common Law)**

3 88. Apparent Agency. Based on the paragraphs set forth and alleged above, at all
4 relevant times Defendants made manifestations that led persons of ordinary prudence to believe
5 and assume that there was an agency relationship. The Kiwanis Defendants gave permission
6 for the “good name” and marks of Kiwanis to be used by the group home in order for it to secure
7 contract with the State to house young boys, and otherwise allowed the KVH to act as an
8 apparent agent, giving rise to vicarious liability under Washington State common law, all of
9 which proximately caused the sexual abuse of Plaintiffs and resultant damages for which
10 Defendants are liable.

11 **COUNT X**
12 **OUTRAGE**
13 **AS TO ALL DEFENDANTS**
14 **(Washington Common Law)**

15 89. Outrage. Based on the paragraphs set forth and alleged above, Defendants’
16 conduct negligently, recklessly, and/or willfully or intentionally inflicted emotional distress
17 upon Plaintiffs.

18 **COUNT XI**
19 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**
20 **AS TO ALL DEFENDANTS**
21 **(Washington Common Law)**

22 90. Negligent Infliction of Emotional Distress. Based on the paragraphs set forth
23 and alleged above, the Defendants’ conduct constituted negligent infliction of emotional
24 distress, and Defendants are liable for Plaintiffs’ damages proximately caused by their actions
25 as provided in more detail above.

26 **COUNT XII**
27 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
28 **AS TO ALL DEFENDANTS**
29 **(WASHINGTON COMMON LAW)**

30 91. Intentional Infliction of Emotional Distress. Based on the paragraphs set forth
31 and alleged above, the Defendants’ conduct constituted intentional infliction of emotional

- 1 F. That the Court award treble damages and other civil penalties;
2 G. That the Court award attorney's fees and costs under WLAD or any
3 other appropriate law or ground in equity in prosecuting this Complaint;
4 H. That the Court award Plaintiffs such other, favorable relief as may be
5 available and appropriate under law or at equity; and
6 I. That the Court enter such other and further relief as the Court may deem
7 just and proper.

8 SIGNED this 18th day of November, 2024.

10 PFAU COCHRAN VERTETIS AMALA PLLC

11 By: /s/ Darrell L. Cochran

12 Darrell L. Cochran, WSBA No. 22851

13 Attorney for Plaintiffs

14 PFAU COCHRAN VERTETIS AMALA PLLC

15 By: /s/ Kevin M. Hastings

16 Kevin M. Hastings, WSBA No. 42316

17 Attorney for Plaintiffs

18 PFAU COCHRAN VERTETIS AMALA PLLC

19 By: /s/ Bridget T. Grotz

20 Bridget T. Grotz, WSBA No. 54520

21 Attorney for Plaintiffs

PFAU COCHRAN VERTETIS AMALA, PLLC

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