

M E M O R A N D U M

TO: Board of Trustees

FROM: Tim Callicrate
Board Chairman

Josh Nelson
General Counsel

SUBJECT: Case No. CV18-01564 Mark E. Smith v. IVGID
Review, discuss and possibly approve funds for a third party review of the remaining privileged emails at a not-to-exceed amount of \$10,000.

DATE: March 30, 2022

I. RECOMMENDATION

That the Board of Trustees approve authorizing funds for a third party review of the remaining privileged emails in Mark E. Smith v. IVGID, Case No. CV18-01564 at a not-to-exceed amount of \$10,000. This third party would be mutually agreed to by the parties and complete the review within two to three weeks.

II. BACKGROUND

The Court in Mark E. Smith v. IVGID, Case No. CV18-01564 recently conducted a status conference to consider potential paths forward to resolve the matter. During this conference, the Court requested that the Board of Trustees consider an offer from Mr. Smith's counsel to review the remaining privileged emails under a protective order to ensure the privilege has been asserted in good faith. After further discussions and to ensure a neutral third party conducts the review, staff requests that the Board authorize a not-to-exceed amount of \$10,000 for a neutral third party to conduct this review. This third party would be mutually agreed to by the parties and would need to complete the review within two to three weeks.