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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA, NORTH DISTRICT

STEVEN MEYER and GINA MEYER,
INDIVIDUALLY AND AS SUCCESSORS
IN INTEREST TO KATHRYN DIANE
MEYER (a.k.a. KATIE MEYER),

Plaintiffs,

v.

THE LELAND STANFORD JUNIOR
UNIVERSITY, THE BOARD OF
TRUSTEES OF THE LELAND STANFORD
JUNIOR UNIVERSITY, MARC TESSIER-
LAVIGNE, SUSIE BRUBAKER-COLE,
DEBRA ZUMWALT, LISA CALDERA,
TIFFANY GABRIELSON, ALYCE HALEY,
and JOHN DOES 1-25 and JANE DOES 1-25,

Defendants.

Case No. 22CV407844

**PLAINTIFFS STEVEN AND GINA
MEYERS' REDACTED NOTICE OF
MOTION AND MOTION TO COMPEL
THE PRODUCTION OF DOCUMENTS
WITHHELD ON ATTORNEY CLIENT
PRIVILEGE OBJECTIONS
INVOLVING RESIDENT FELLOW
JENNIFER ZIMBROFF AND FOR
SANCTIONS; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF KIMBERLY
DOUGHERTY**

*Filed concurrently with Plaintiffs' Separate
Statement and Declaration of Kimberly
Dougherty*

ASSIGNED FOR ALL PURPOSES
TO JUDGE FREDERICK CHUNG

Hearing date: November 4, 2025
Dept.: 10
Time: 9:00am

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on November 4, 2025, at 9:00 a.m. in Department 10 of the Superior Court of the State of California for the County of Santa Clara, at 191 N. First Street, San Jose, California 95113, Plaintiffs, STEVEN MEYER AND GINA MEYER, INDIVIDUALLY AND AS SUCCESSORS IN INTEREST TO KATHRYN DIANE MEYER (a.k.a. KATIE MEYER)(“Plaintiffs”) will and hereby does move this Court for an Order pursuant to Code of Civil Procedure section 2025.480 compelling production of the withheld and redacted communications and documents of Ms. Jennifer Zimbhoff and for sanctions.

This Motion is brought pursuant to Code of Civil Procedure section 2025.480 on the grounds that Defendants are claiming attorney client/work product privileges over several of Ms. Zimbhoff’s documents and communications even though her role in this case was not as Stanford’s attorney.

Notice is also given that plaintiffs will and hereby do move for an order that monetary sanctions be awarded pursuant to Code of Civil Procedure section 2023.050, for Plaintiffs and against Defendant Stanford and its attorneys of record Pillsbury Winthrop Shaw Pittman LLP for attorney’s fees and costs in the amount of \$9,750.

This Motion is made on the grounds that plaintiffs have made a good faith attempt to resolve these issues informally as evidenced by the Declaration of Kimberly Dougherty pursuant to Code of Civil Procedure section 2016.040.

This motion is further based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, the Separate Statement in Support of Plaintiffs’ Motion to Compel the Production of Documents Withheld on Attorney Client Privilege Objections Involving Resident Fellow Jennifer Zimbhoff.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

At issue in this motion is Defendants’ (collectively, “Stanford”) withholding of resident fellow Jenny Zimbhoff’s communications as attorney client privileged. Stanford has withheld 45 separate documents which can be broken down into three categories: (1) documents and communications related to name, image, and likeness matters and *Alston v. NCAA*, 141 S. Ct. 2141 (2021)’s impact on Katie Meyer’s ability to receive a stipend as Zimbhoff’s resident advisor (the “*Alston Documents*”); (2) email communications related to the coffee spill among non-legal personnel for which Ms. Zimbhoff was merely copied in as in-house counsel (the “August, 2021 Communications”); and (3) post-death communications with Ms. Zimbhoff related to Katie’s passing (the “Post-Death Communication Documents”).

These documents are not privileged. The *Alston* documents are not privileged because Ms. Zimbhoff was separately advising Katie Meyer regarding name, image, and likeness rights and the *Alston* case, creating a confidential, attorney-client relationship. Ms. Zimbhoff served in a dual-role as Katie Meyer’s resident fellow as well as in-house counsel in the Office of General Counsel.¹ Katie Meyer was determined to be ineligible for a stipend due to being on an athletic scholarship at Stanford. Katie turned to her RF who she knew was also a lawyer, Jennifer Zimbhoff. The two began developing a confidential strategy in which Katie would seek to use the Supreme Court’s *Alston* decision to overturn Stanford’s official policy. This created an attorney-client or confidential relationship with Ms. Zimbhoff because Katie Meyer turned to her as a lawyer and Ms. Zimbhoff offered advice to help Katie obtain a desired result. What Katie didn’t know is Ms. Zimbhoff was contemporaneously serving as an informant to the university regarding her OCS investigation. The documents listed on the privilege log appear to demonstrate that Ms. Zimbhoff was unethically advising conflicted parties, both Katie and Stanford. Ms. Zimbhoff crossed a serious ethical line here, and Plaintiffs anticipate requesting further relief.

The August 2021 Communications are not privileged for two separate reasons. [REDACTED]

[REDACTED] Most fundamentally, Ms. Zimbhoff is clearly the classic case of “copying in” an attorney to shield otherwise ordinary business or

¹ The decision by Stanford to permit one of its in-house counsel to act as a resident fellow (RF) and then the RF develops a personal, and even attorney-client, relationship with Katie, creates the risk of serious ethical issues for the entire defense team.

administrative communications with the cloak of privilege. Because Stanford has designated the documents “confidential” and also disclosed some of those documents unredacted to Plaintiffs’ counsel and then attempted to claw them back, Plaintiffs submit them to the Court under Cal. Code Civ. Proc. § 2031.285(d). [REDACTED]

[REDACTED] Second, defense counsel has represented that Ms. Zimbroff was conflicted out of the OCS matter due to her RF/RA relationship with Katie, that she “recused herself,” and so therefore could not have been acting in any kind of legal capacity. In fact, Ms. Zimbroff was acting as a legal adviser to Katie. Katie expressly sought “legal advice” from Ms. Zimbroff and Ms. Zimbroff advised Katie to request the investigation file, advised Katie how to proceed in disclosing the OCS matter on post-grad school applications, and advised Katie that Stanford “would not be able to prove anything if he doesn’t come forward.”

The Post-Incident Communications are also not privileged because Ms. Zimbroff was recused and ethically barred from serving as legal counsel for Stanford in this action and instead was a percipient witness to events surrounding Katie’s death. As noted above, Ms. Zimbroff herself recognized her professional conflict when she “recused herself” with respect to Katie’s OCS and the Football Player’s Title IX proceedings. The subject matter of this lawsuit is obviously the “same or substantially related” to Katie’s OCS proceeding. Prof. R. Cond. 1.9(a). In addition, many of the Post-Death Communications appear to be Ms. Zimbroff attaching six otherwise non-privileged documents to a communication. But a document that is otherwise unprivileged does not become privileged by email to or from an attorney.

Ms. Zimbroff developed and manipulated an attorney-client relationship with Katie while simultaneously serving as an informant against her. Stanford should not be allowed to hide her unethical conduct behind an inapplicable privilege claim. None of Ms. Zimbroff’s communications or documents in this case are privileged, and the Court should order Stanford to produce them all.

II. BACKGROUND

The Court is familiar with the procedural history of this case. Accordingly, Plaintiffs’ counsel will focus on the background leading up to this specific dispute. Plaintiffs served requests for production to Stanford on February 6, 2023 (RPF Set 1); October 27, 2023 (RFP Set 2); March 1, 2024 (RFP Set 3); and March 18, 2024 (RFP Set 4) (Declaration of Kimberly Dougherty (hereinafter “DEC.”) at ¶2). Defendants produced their first amended privilege log on October 25, 2024. PLAINTIFFS STEVEN AND GINA MEYERS’ REDACTED NOTICE OF MOTION AND MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS WITHHELD ON ATTORNEY CLIENT PRIVILEGE OBJECTIONS INVOLVING RESIDENT FELLOW JENNIFER ZIMBROFF AND FOR SANCTIONS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF KIMBERLY DOUGHERTY

1 2024. (DEC. at ¶3). Several of Ms. Zimbhoff's communications were withheld as privileged on the
2 basis that Ms. Zimbhoff was providing legal advice to Stanford related to Katie's investigation and
3 this case. (DEC. at ¶ 7).

4 The Parties met and conferred through counsel. Plaintiffs' counsel noted that Ms.
5 Zimbhoff's communications were not privileged because they were made while she was working
6 as an RF, not an OGC attorney. Plaintiffs' counsel fully explained their position in a January 7,
7 2025, letter to Stanford and in additional telephonic meet and confer conferences. (DEC. at ¶3, 4).

8 In the letter, Plaintiffs' counsel explained that there could be no possibility that Ms.
9 Zimbhoff was acting as OGC counsel when she texted Katie that "they don't tell us" in reference
10 to Ms. Zimbhoff purporting to know nothing of Katie's investigation, and also when she texted "I
11 hope they fuck up and have to close it [Katie's investigation] haha." (*Id.* at 6; see also DEC. at
12 ¶11). It was clear that Ms. Zimbhoff was an RF, often times providing legal advice to Katie, and
13 not a Stanford attorney in this case, and her communications are not privileged. *Id.*

14 Stanford ultimately produced a second amended privilege log on February 11, 2025 (DEC.
15 at ¶4). Stanford's outside counsel informed Plaintiffs' counsel on February 28, 2025, that "[w]hen
16 Ms. Zimbhoff realized that one of the students involved [Katie Meyer] was a student living in the
17 residence where Ms. Zimbhoff serves as an RF, she recused herself and another OGC attorney,
18 Lauren Schoenthaler, became the OGC attorney advising on the matter." (DEC. at ¶13). Stanford
19 then suggested it could produce some of the redacted Zimbhoff communications, all of which pre-
20 date Katie's death. (DEC. at ¶14).

21 Stanford refused to produce any Zimbhoff communications that post-date Katie's death.
22 (DEC. at ¶33). Stanford maintains that Ms. Zimbhoff rejoined the legal team, despite her prior
23 conflict and having been replaced by another OGC attorney, on the day after Katie's death and
24 began "advising clients in her OGC capacity regarding legal issues related to a student [Katie]
25 death..." (DEC. at ¶34). Stanford now argues that all Zimbhoff communications following Katie's
26 death are privileged, ignoring her recusal and conflict as a percipient witness. (DEC. at ¶13).

27 [REDACTED]. Stanford has failed to provide a meaningful response. Moreover, Stanford cannot
28 have it both ways and argue on the one hand, Zimbhoff was recused as legal counsel and then on
the other hand, the day after Katie's passing, reinstated as Stanford's legal counsel. Stanford is

standing on their attorney client privilege objections, requiring Plaintiffs to file this motion.

III. THE COURT SHOULD COMPEL STANFORD TO PRODUCE ANY CHALLENGED DOCUMENTS FOR WHICH STANFORD HAS NOT MET ITS BURDEN OF SHOWING A PRIVILEGE APPLIES

To satisfy its burden, Stanford must show that the dominant purpose of the relationship of all parties to the communication is in furtherance of the attorney-client relationship. *D.I. Chadbourne, Inc. v. Sup. Ct.*, 60 Cal. 2d 723, 737 (1964) (“When the corporate employer has more than one purpose in directing such an employee to make such report or statement, the dominant purpose will control”) Thus, when an attorney has a dual role, such as Ms. Zimbhoff, communications “not made for the purpose of legal consultation” are unprivileged, *even if* the communication is between an attorney and client and is made in confidence. *Los Angeles Cty. Bd. of Supervisors*, 2 Cal. 5th at 294 (emphasis added).

Stanford has failed to meet its burden of showing a privilege applies to the documents challenged by this Motion.

A. At All Relevant Times, Ms. Zimbhoff’s Dominant Purpose Was as Katie’s RF and Legal Advisor, not as Stanford’s Attorney

1. Ms. Zimbhoff Was a Backchannel of Information for the OCS Investigation

Ms. Zimbhoff was a critical and concealed informant in Stanford’s investigation of Katie, despite her purported recusal. [REDACTED]

[REDACTED]

On August 28, 2021, Katie spilled coffee on another student, which was the incident that became the focus of Stanford's investigation. (Second Am. Compl. at ¶¶ 4-5). [REDACTED]

[REDACTED]

[REDACTED] Yet despite this purported recusal, Ms. Zimbhoff continued to play a pivotal role in Stanford’s investigation.

[REDACTED]

2. Ms. Zimbroff Methodically Manipulated Katie for Months Before Her Death

The documented pattern of Ms. Zimbrow's unethical conduct with Katie demonstrates that her dominant purpose was not providing legal advice to Stanford but rather acting as Katie's attorney and extracting information from her as an informant. The text messages reveal a calculated strategy of deceit spanning for months leading up to Katie's death.

In an appalling act of manipulation, Ms. Zimbroff told Katie she was a star RA and that athletes were “AMAZING leaders” just *two weeks* after giving Ms. Caldera information that would ultimately risk Katie’s RA position, her scholarship, and her entire academic and sports career:

9/15/2021	9:01 PM	Jenny	Obviously I love having you as a RA but you gotta do what is right for you.
9/15/2021	9:04 PM	Jenny	You are a star RA but I totally get it
9/15/2021	9:13 PM	Jenny	Because athletes are AMAZING leaders and should have the chance to be RAs just like everyone else. So if Stanford is negatively impacting athletes as compared to other students and there is anything in its power that it can do it needs to do it. Especially women's athletes who they should not be messing with right now 🤔

(DEC. at ¶11). It is inconceivable that Ms. Zimbhoff had the temerity to text Katie that Stanford should not be “messing with” women athletes, when she was in fact the very source for what was to come in just two days.

Katie clearly trusted Ms. Zimbhoff, as evidenced by the fact that Katie asked her for legal advice as soon as she received the OCS Letter on September 17, 2021, at 10:11am:

9/17/2021	10:11 AM	Katie	i'm not sure who to contact about that but in other news, i might need some legal advice
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Id. In response, Ms. Zimbhoff engaged in a deliberate charade of ignorance, feigning surprise about a process she herself had initiated:

9/17/2021	10:31 AM	Jenny	What?!? I thought that no one was participating and it was going nowhere.
9/17/2021	10:31 AM	Katie	just found out this morning ... right... right but Lisa Caldera filed it
9/17/2021	10:31 AM	Jenny	That's bullshit They aren't gonna be able to prove anything if he doesn't come forward.

Id. This exchange reveals Ms. Zimbhoff's profound ethical breach. After supplying Ms. Caldera on August 31, 2021, with the very information that formed the basis of the OCS letter, Ms. Zimbhoff cynically portrayed herself as Katie's advocate, even going so far as to deceptively call the very process she started with Ms. Caldera "bullshit." *Id.*

When Katie shared the OCS letter with Ms. Zimbhoff, the manipulation deepened. Rather than disclose her involvement in discussions in the initial spill investigation and then with Ms. Caldera in ratting that other students told her Katie's actions were not accidental, Ms. Zimbhoff deflected and disparaged Stanford officials to further gain Katie's trust:

9/17/2021	10:34 AM	Katie	[N/A picture] she seems more concerned with false information administrative actions AS IN WHAT
9/17/2021	10:35 AM	Jenny	Dammit. Who talked to them? Yeah they are total assholes

Id. Most disturbingly, Ms. Zimbhoff, who was herself the source of providing the allegations against Katie to Dean Caldera, actively probed for information about other potential witnesses in a barrage of inquiries spanning just nine minutes:

9/17/2021	10:33 AM	Jenny	Will reply after meeting Are you sure the player or his teammates didn't talk?
9/17/2021	10:35 AM	Jenny	Dammit. Who talked to them? Yeah they are total assholes
9/17/2021	10:36 AM	Jenny	Do you know who she interviewed?
9/17/2021	10:38 AM	Jenny	That wouldn't happen for sure Hmmm, this is not my area I just know other Stanford BS It would just be helpful to know who said what
9/17/2021	10:40 AM	Jenny	That's fucking dumb Re the file Did they talk to your teammates? Like who are the witnesses they interviewed? Any clue?

This was not an isolated incident. Ms. Zimbhoff continued her pattern of manipulation throughout the fall semester, periodically initiating conversations about the investigation while positioning herself as Katie's ally, including related to applications Katie was submitting to various Stanford programs and schools:

9/27/2021	10:29 AM	Jenny	Like, if someone is accused of something totally false it seems unfair they should have to list it before anything has been proven.
9/27/2021	8:45 AM	Jenny	Ive been thinking about you and keep meaning to reach out. How is this going? Hopefully it has been dropped or will soon.
9/27/2021	9:07 AM	Katie	Hi! Things are moving pretty slow and I did my first piece of the "investigation" ... i have no clue how much they need in order to charge me, but at this point if they do they do
9/27/2021	9:09 AM	Jenny	That's so dumb. I guess I am glad at least it is finally progressing so you aren't just sitting in limbo.

Id. As set forth above, she continued to mispresent her involvement by pushing the notion that the investigation was meritless, characterizing it as "so dumb" and referring to the allegations as "totally false."

On November 30, 2021, with Katie's disciplinary case still unresolved, Ms. Zimbhoff again initiated contact about the "stupid OCS case," explicitly stating she hoped Stanford would "fuck up and have to close it haha." *Id.* Critically, OCS charged Katie on the last day under the statute of limitations. (Second Am. Compl. at ¶¶ 4-5, 185, 321).

11/30/2021	10:05 PM	Jenny	How's life? Did that stupid OCS case that dropped finally?
11/30/2021	10:05 PM	Katie	NO ITS STILL GOING still "investigating"
11/30/2021	10:05 PM	Jenny	WTF How much is there to investigate?!?!?

PLAINTIFFS STEVEN AND GINA MEYERS' REDACTED NOTICE OF MOTION AND MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS WITHHELD ON ATTORNEY CLIENT PRIVILEGE OBJECTIONS INVOLVING RESIDENT FELLOW JENNIFER ZIMBROFF AND FOR SANCTIONS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF KIMBERLY DOUGHERTY

11/30/2021	10:06 PM	Katie	I don't know they haven't moved in either direction apparently it has to be resolved in 6 months though hoping it ages out
11/30/2021	10:06 PM	Jenny	Right, statute of limitations I hope they fuck up and have to close it haha

(DEC. at ¶11).

This conduct cannot be reconciled with Stanford's claim that Ms. Zimbhoff was functioning as an OGC attorney at any point during this case. To maintain its privilege claim, Stanford must take the embarrassing position that the Deputy General Counsel and Managing Attorney of OGC was giving a student legal advice while recused from the investigation and also telling the student that she hoped OGC would “fuck up” its “stupid” investigation that was being run by “total assholes.” *Id.*

B. Stanford's Log is Insufficient to Meet Its Burden In Showing the Dominant Purpose of Ms. Zimbhoff's Communications Was to Convey Legal Advice

1. Legal Standard

To receive the protection of attorney-client privilege, a communication must be a “confidential communication between client and lawyer,” which is defined as a communication “between a client and his or her lawyer in the course of that relationship and in confidence.” Cal. Evid. Code § 952. The privilege does not extend to the provision of business or other non-legal advice simply because a lawyer is involved. *Zurich American Ins. Co. v. Sup. Ct.*, 155 Cal. App. 4th 1485, 1504 (2007) (“It is established that otherwise routine, non-privileged communications between corporate officers or employees transacting the general business of the company do not attain privileged status solely because in-house or outside counsel is ‘copied in’ on correspondence or memoranda.”).

The Evidence Code “underscore[s] that the privilege does not apply to every single communication transmitted confidentially between lawyer and client. Rather, the heartland of the privilege protects those communications that bear some relationship to the attorney's provision of legal consultation.” *Los Angeles Cty. Bd. of Supervisors v. Sup. Ct.*, 2 Cal. 5th 282, 294 (2016). Communications “not made for the purpose of legal consultation” are unprivileged, *even if* the communication is between an attorney and client and is made in confidence. *Los Angeles Cty. Bd. of Supervisors*, 2 Cal. 5th at 294 (emphasis added).

In addition, merely copying attorneys on communications does not make them privileged. “It is established that otherwise routine, non-privileged communications between corporate officers PLAINTIFFS STEVEN AND GINA MEYERS’ REDACTED NOTICE OF MOTION AND MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS WITHHELD ON ATTORNEY CLIENT PRIVILEGE OBJECTIONS INVOLVING RESIDENT FELLOW JENNIFER ZIMBROFF AND FOR SANCTIONS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF KIMBERLY DOUGHERTY

or employees transacting the general business of the company do not attain privileged status solely because in-house or outside counsel is 'copied in' on correspondence or memoranda.” *Zurich*, 155 Cal. App. 4th at 1504; *see also D.I. Chadbourne, Inc.*, 60 Cal. 2d at 734 (holding it “is not and should not be the law” that a “litigant, into whose hands a nonprivileged communication falls, may create privilege in the subject matter merely by transmitting it to his attorney”).

Because it is “the intent of the person from whom the information emanates that originally governs its confidentiality (and hence its privilege)” in the corporate setting, *see Chadbourne*, 60 Cal.2d at 737-38, communications among business employees that simply copy an attorney indicate on their face an intent to merely keep the attorney apprised of business matters. *See, e.g., In re Monsanto Co.*, 998 S.W.2d 917, 930 (Tex. 1999) (“We recognize that it might be argued that all communications between corporate representatives could be claimed as privileged on the basis that ‘the legal department can better represent us if we keep them informed.’ We reject that assertion. We do not believe that it is necessary for the legal department to be advised of every development out in the field, no matter how minute.”).

Similarly, forwarding unprivileged information to an attorney does not make it privileged because “[i]t is also established that a communication which was not privileged to begin with may not be made so by subsequent delivery to the attorney.” *Doe 2 v. Superior Court*, 132 Cal. App. 4th 1504, 1522 (2005); *see also Zurich*, 155 Cal. App. 4th at 1504 (“[O]therwise routine, non-privileged communications between corporate officers or employees . . . do not attain privileged status solely because in-house or outside counsel is 'copied in' on correspondence or memoranda.”); *D.I. Chadbourne, Inc.*, 60 Cal. 2d at 734 (stating it “is not and should not be the law” that a “litigant, into whose hands a nonprivileged communication falls, may create privilege in the subject matter merely by transmitting it to his attorney.”)

Like the attorney-client privilege, “the party claiming protection under the attorney work product doctrine bears the burden of proving the preliminary facts to show the doctrine applies.” *League of Cal. Cities*, 241 Cal. App. 4th 976, 993 (2015).

As with privilege disputes, courts apply the dominant purpose test with respect to attorney work product as well. *2,022 Ranch v. Superior Court*, 113 Cal. App. 4th 1377, 1390 (2003), *disapproved of on other grounds by Costco Wholesale Corp.*, 47 Cal. 4th at 725. Thus, in *Watt Industries, Inc. v. Superior Court*, 115 Cal. App. 3d 802 (1981), the Court of Appeal directed production of an attorney’s notes memorializing a conversation with a counterparty where the attorney was a business agent for the client in the negotiations and the notes merely memorialized

the conversation. *Watt Indus.*, 115 Cal. App. 3d at 805 (“To apply the privilege in such a situation would have the effect of placing a premium upon use of attorneys as business agents, non-attorneys or clients acting for themselves having no such right to protect their notes. As we view the work product “privilege,” it applies to documents related to legal work performed for a client, not to notes memorializing acts performed as a mere agent.”).

Ultimately, Stanford’s privilege log must describe the documents in sufficient detail to enable a determination of whether the privilege applies. *Catalina Island Yacht Club v. Sup. Ct.*, 242 Cal. App. 4th 1116, 1130 (2015) (“[A] privilege log typically should provide the identity and capacity of all individuals who authored, sent, or received each allegedly privileged document, the document’s date, a brief description of the document and its contents or subject matter sufficient to determine whether the privilege applies, and the precise privilege or protection asserted.”)

Stanford’s Amended Privilege Log fails to establish that Ms. Zimbhoff was providing Stanford with legal advice in each of the contested communications.

2. Legal Advice is Not the Dominant Purpose of the Challenged Documents

The withheld documents fall into three categories: the *Alston* Documents wherein Ms. Zimbhoff was giving Katie legal advice related to a legal issue she was having with a stipend; the August, 2021 Communications that are emails on which Ms. Zimbhoff was merely copied even through she was recused from the investigation; and the Post-Death Communication Documents where it appears Ms. Zimbhoff, after being ethically barred from serving as Stanford’s counsel in this action, provided privileged information she obtained from Katie to Stanford.

(a) The *Alston* Documents Are Not Privileged Because Ms. Zimbhoff Was Not Stanford’s Attorney for the Issue

Stanford is withholding seven documents (“*Alston* Docs”) related to Ms. Zimbhoff’s presumed research of a stipend issue for Katie on grounds of attorney-client privilege, work product, and that they are all a “document containing legal advice from Jennifer Zimbhoff, Esq.” (DEC. at ¶11 and 28). These are all documents Ms. Zimbhoff presumably created with regard to Katie while she was Katie’s RF, giving Katie legal advice on her NIL issue, and recused from Katie’s investigation.

Ms. Zimbhoff helped Katie with an NIL/stipend issue in mid-September 2021. (DEC. at ¶11 and 28). This was at least two weeks after Ms. Zimbhoff recused herself from Katie’s investigation. (DEC. at ¶13). The September 15, 2021, texts between Ms. Zimbhoff and Katie show Ms. Zimbhoff referring Katie to the Supreme Court case *NCAA v. Alston* and giving her

1 direct legal advice on its application to her stipend issue. 594 U.S. 69 (2021); (DEC. at ¶11 and
 2 28). At Ms. Zimbhoff's suggestion, Katie emailed Bernard Muir to request a stipend and cited
 3 *Alston* at several points in the email per Ms. Zimbhoff's advice. (DEC. at ¶16). Ms. Zimbhoff then
 4 gave Katie advice on navigating the Stanford administration's response over the next few days.
 5 DEC. at ¶11 and 28).

6 Stanford is withholding an associated word document with the subject "Alston Options."
 7 (DEC. at ¶17). Given the timing of Ms. Zimbhoff's advising Katie on the issue, the correct date of
 8 creation for the document is presumed to be October 13, 2021,² and that it was merely attached to
 9 a later email. At a minimum, Ms. Zimbhoff created it while she was an RF, and was effectively
 10 just memorializing her notes as Katie's RF, not as Stanford's lawyer. *See Watt Indus.*, 115 Cal.
 11 App. 3d at 805.

12 The log contains six other documents that are assumed to have been created while Ms.
 13 Zimbhoff was an RF. *Id.* The log states they were all created on March 3, 2022; however, six were
 14 attached to the March 3, 2022, email in which Ms. Zimbhoff forwarded the unprivileged Letters
 15 email chain to Ms. Zumwalt. Forwarding a non-privileged communication to an attorney does not
 16 make it privileged, and merely attaching a document to an attorney email does not make the
 17 attachment privileged. *Doe 2*, 132 Cal. App. 4th at 1522 ("[A] communication which was not
 18 privileged to begin with may not be made so by subsequent delivery to the attorney.").

19 **(b) The August, 2021 Communications Are Not Privileged Because Ms.**
 20 **Zimbhoff Was Merely Copied**

21 The August 2021 Communications consists of seven documents that make up an email
 22 chain occurring between August 26-29, 2021. (DEC. at ¶22-25). Ms. Zimbhoff is merely copied on
 23 six of the documents. *Id.* She does not even appear on the seventh. (DEC. at ¶24). There are no
 24 other attorneys on the emails. (DEC. at ¶22-25).

25 To the extent Stanford claims she was acting as an attorney, six of the documents occur on
 26 or after the presumed date she recused herself and they are believed to be the email chain that
 27 notified her of Katie's involvement in the coffee incident. (DEC. at ¶22-25). By Stanford's
 28 admission, Ms. Zimbhoff was not an attorney on the communications, and they should all be
 accordingly produced. Moreover, Ms. Zimbhoff never replies to these emails. Not one of the

² The date created is "10/13/2020", which is a typo because the *Alston* decision was released on June 21, 2021. *See NCAA v. Alston*, 594 U.S. 69 (2021). Stanford's counsel confirmed this document was attached to a March 8, 2022, email but did not confirm the date it was created.

various chains and spin off emails show Ms. Zimbrowff on the “FROM” line, so clearly there was no legal communication from her because she did not respond to any of the emails. *Id.* These documents fall squarely within the reasoning of *Doe 2* and *Zurich, supra*, and therefore are not privileged.

(c) The Post-Death Communication Documents Are Not Privileged

When Ms. Zimbrowff, recused as legal counsel, shares information about her interactions with Katie or relays observations she made as Katie’s RF, she is not providing legal advice but merely reporting facts she gathered in her non-legal role. Under *Watt Industries*, such communications are equivalent to “notes memorializing acts performed as a mere agent” and fall outside both attorney-client privilege and work product protection. *Watt Indus.*, 115 Cal. App. 3d at 805.

It’s not only illogical but would also be unethical if the Court were to believe Stanford’s position. Ms. Zimbrowff was recused, acting as Katie’s RF *and* as her lawyer giving her direct legal advice on the OCS process. Then the day after Katie passes, somehow Stanford removes her recusal and allows her to pass along information she gathered as Katie’s RF and lawyer to Stanford for it to presumably use against her interests in this case. Further, Ms. Zimbrowff was a fact witness, and it would be a conflict for her to become un-recused and serve as counsel in the matter. Notably, the lawyers who were a part of the ongoing OCS investigation are curiously not copied on these documents Stanford seeks to redact or withhold under attorney client privilege.

There are two documents where Ms. Zimbrowff is the only purported attorney on the communication. (DEC. at ¶36). Her communications in this case are based on her impressions as Katie’s RF, as a witness given her admitted recusal from the case, and those impressions are not privileged simply because she lifted her own recusal. *Watt Indus.*, 115 Cal. App. 3d at 805.

There are three documents where an attorney is merely copied. (DEC. at ¶37, 38). Copying an attorney on an unprivileged communication does not make it privileged. *Zurich*, 155 Cal. App. 4th at 1504.

There are three contested documents (DEC. at ¶37 and 40) that make up a single email chain, that begins with a March 1, 2022, email to Plaintiffs, which is primarily a logistical email for Plaintiffs’ visit to campus following Katie’s death, stating in part: “[w]e would also like to do some planning in advance with the staff in the building to help manage other students in the vicinity to ensure your privacy.” A Stanford staff member forwarded the email to four non-attorneys on March 2, 2022, just two days after Katie’s death, and one of them adds Ms. Zimbrowff

PLAINTIFFS STEVEN AND GINA MEYERS’ REDACTED NOTICE OF MOTION AND MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS WITHHELD ON ATTORNEY CLIENT PRIVILEGE OBJECTIONS INVOLVING RESIDENT FELLOW JENNIFER ZIMBROFF AND FOR SANCTIONS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF KIMBERLY DOUGHERTY

1 and then exchanges a few emails with her. *Id.* There are no other lawyers in the chain. *Id.* The
 2 context of this email chain suggests Ms. Zimbhoff was not being consulted for legal advice, but
 3 rather for information she possessed as Katie's RF, or as the RF staff that could assist as set forth
 4 in the correspondence with the Meyers meeting.

5 In addition, the timing and context of these communications is highly suspicious. Created
 6 two days after Katie's death, these documents likely contain crucial information about Ms.
 7 Zimbhoff's as a witness and her RF relationship with Katie during the very period when Ms.
 8 Zimbhoff was purportedly recused from the legal matter. Denying Plaintiffs access to these
 9 communications would unfairly prejudice their ability to pursue claims related to Ms. Zimbhoff's
 10 exploitation of her relationship with Katie.

11 **3. The Log is Insufficient for Several Withheld Docs**

12 Stanford is withholding entirely two email communications that both have the subject "re:
 13 KM." (DEC. at ¶42). The log identifies Ms. Zimbhoff sent both communications, one to a staff
 14 member and the other to attorney Debra Zumwalt. *Id.* Ms. Zimbhoff sent both emails on March 8,
 15 2022, likely as a witness as Katie's RF. *Id.* The log is entirely insufficient because it provides no
 16 other details to evidence that the primary purpose of either was legal advice. Stanford must
 17 provide "a brief description of the document and its contents or subject matter sufficient to
 18 determine whether the privilege applies." *Catalina Island Yacht Club*, 242 Cal. App. 4th at 1130.

19 Similarly, Stanford redacted a March 30, 2022, portion of a text between two staff
 20 members and Ms. Zimbhoff. (DEC. at ¶43). The log contains no date, no subject, and no other
 21 information. To the extent either staff member was seeking legal advice from Ms. Zimbhoff with a
 22 few texts, Stanford must provide more information so that its generic privilege assertions can be
 23 reasonably weighed, particularly given she was recused from Katie's OCS process by Stanford
 24 and other counsel were appointed.

25 **4. Ms. Zimbhoff is Ethically Barred from Acting as An Attorney in This Case**

26 Katie sought out and relied on Ms. Zimbhoff's legal advice, which clearly created an
 27 attorney-client relationship. *Wood v. Superior Court of San Diego County*, 46 Cal. App. 5th 562,
 28 581 (2020) ("Ordinarily, when a party seeks legal advice from a lawyer, and the lawyer provides
 such advice, an attorney-client relationship is formed"); *Farnham v. State Bar*, 17 Call. 3d 605,
 612 (1976) ("No formal contract or arrangement or attorney fee is necessary to create the
 relationship of attorney and client").

At a minimum, Ms. Zimbhoff's acceptance of Katie's trust and her related conduct created a confidential relationship with fiduciary duties, even if a formal attorney-client relationship did not exist. *Richelle L. v. Roman Catholic Archbishop*, 106 Cal. App. 4th 257, 271-72 (2003) (holding that a confidential relationship giving rise to a fiduciary duty "may be founded on a moral, social, domestic, or merely personal relationship" where "the parties do not deal on equal terms..."); *see also*, *Hartford v. State Bar*, 50 Cal. 3d 1139, 1153 (1990) ("[It] is well settled that an attorney may be disciplined for breach of a fiduciary duty owed to a nonclient.").

The breach and exploitation of that trust would be highly relevant to Plaintiffs' claims regarding Stanford's mishandling of Katie's investigation. To deny production of communications evidencing that breach would "result in an injustice" by allowing Stanford to benefit from Ms. Zimbhoff's unethical conduct. *Coito*, 54 Cal. 4th at 485; *see also*, *Uber Tech., Inc.*, 27 Cal. App. 5th at 970 (compelling disclosure of "factual investigation into possible past misconduct" where there was no "alternative sources").

Further, Ms. Zimbhoff cannot act as Stanford's attorney because she is a critical witness in this case. This is because "the roles of an advocate and of a witness are inconsistent; the function of an advocate is to advance or argue the cause of another, while that of a witness is to state facts objectively." *Kennedy v. Eldridge*, 201 Cal. App. 4th 1197, 1209 (2011) (*internal quotations omitted*). Indeed, "An attorney who attempts to be both advocate and witness impairs his credibility as witness and diminishes his effectiveness as advocate." *Comden v. Superior Court*, 20 Cal. 3d 906, 912 (1978).

Ms. Zimbhoff should have remained recused because "it becomes likely that an attorney will testify as a material witness, he or she should resolve any doubt in favor of preserving the integrity of his or her testimony..." *Kennedy*, 201 Cal. App. 4th at 1211. This exclusion is expansive because "[m]ost of the difficulties inherent in an attorney's taking on the role of both advocate and witness are present regardless of whether the attorney's testimony will be given in front of a jury or judge." *Id.* at 1210. Given Zimbhoff served as counsel for Katie, or in a confidential relationship, and is a witness, the documents are not afforded attorney client privilege.

5. The Court Should Conduct an In Camera Review of the Work Product Documents, If Necessary

Alternatively, if necessary, Plaintiffs request the Court to conduct *in camera* review of the documents, or a subset of the documents, to determine the validity of Sempra's work product claims. *Coito*, 54 Cal. 4th at 502. To the extent that Stanford is claiming a work product privilege

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on any documents created before Plaintiffs counsels' preservation March 8, 2022, preservation letter, that claim should be presumptively inapplicable because Stanford had not received any prior notice as to any potential litigation involving the matter.

C. Stanford's Privilege Claims Over Ms. Zimbrow's Unethical Role and Communications Is Without Justification and Monetary Sanctions Should Be Imposed

The Court shall impose a monetary sanction against any party or attorney who unsuccessfully opposes a motion to compel without substantial justification. (CCP § 2031.310(h).) Plaintiffs' counsel have expended significant time conferring with Stanford and drafting this Motion. On this motion alone, Plaintiffs' counsel has expended more than 55 hours. (DEC. at ¶44-48). However, Plaintiffs will limit their request for monetary sanctions to \$9750, or for any further sanctions the Court deems just.

DATED: April 30, 2025

By: /s/ Kimberly Dougherty

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PROOF OF SERVICE

Steven Meyer and Gina Meyer et al. v. The Leland Stanford Junior University et al.
Case No. 22CV407844

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 11111 Santa Monica Boulevard, Suite 700, Los Angeles, CA 90025.

On April 30, 2025, I served true copies of the following document(s) described as **PLAINTIFFS STEVEN AND GINA MEYERS' REDACTED NOTICE OF MOTION AND MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS WITHHELD ON ATTORNEY CLIENT PRIVILEGE OBJECTIONS INVOLVING RESIDENT FELLOW JENNIFER ZIMBROFF AND FOR SANCTIONS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF KIMBERLY DOUGHERTY** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address ajuarez@panish.law to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 30, 2025, at Los Angeles, California.

/s/ Alexa Juarez
Alexa Juarez

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SERVICE LIST
Steven Meyer and Gina Meyer et al. v. The Leland Stanford Junior University et al.
Case No. 22CV407844

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