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FILED
MAY 09 2023

Clerk of the Court
Superior Court of CA County of Santa Clara
BY R. TIEN DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
CIVIL DIVISION

STEVEN MEYER *et al.*,

Plaintiffs,

vs.

THE BOARD OF TRUSTEES OF THE
LELAND STANFORD JUNIOR
UNIVERSITY *et al.*,

Defendants.

Case No. 22CV407844

ORDER RE: DEMURRER

The present demurrer came on for hearing before the court on May 9, 2023, at 9:00 a.m. in Department 10. Counsel appeared, and plaintiffs contested the court's tentative ruling as to the third, fourth, and fifth, causes of action, but not the remaining causes of action. The matter having been submitted, the court now finds and orders as follows:

I. Background

This is a wrongful death action arising from the suicide of Kathryn ("Katie") Meyer, a 22-year-old student at Stanford University, on February 28, 2022.

1 Plaintiffs Steven Meyer and Gina Meyer, Katie’s parents, filed the complaint in this
2 action on November 23, 2022, individually and as her successors in interest. The complaint
3 states eight causes of action (labeled as “counts”) against all defendants: (1) Wrongful Death;
4 (2) Survival Action – General Negligence; (3) Breach of Implied Contract; (4) Breach of
5 Contract; (5) Violation of California Education Code section 66270; (6) Loss of Consortium; (7)
6 Negligent Infliction of Emotional Distress; and (8) Intentional Infliction of Emotional Distress.
7 There are no exhibits attached to the complaint.¹

8 Currently before the court is a demurrer by defendant The Board of Trustees of the
9 Leland Stanford Junior University (“Stanford”) and defendants Marc Tessier-Lavigne, Susie
10 Brubaker-Cole, Debra Zumwalt, Lisa Caldera, Tiffany Gabrielson, and Alyce Haley (collectively,
11 the “individual defendants”) to the complaint’s third, fourth, fifth, sixth, seventh, and eighth
12 causes of action. Plaintiffs (with some exceptions) oppose the demurrer.

13 **II. Defendants’ Request for Judicial Notice²**

14 “Judicial notice may not be taken of any matter unless authorized or required by law.”
15 (Evid. Code, § 450.) A precondition to judicial notice in either its permissive or mandatory
16 form is that the matter to be noticed must be relevant to the material issue before the court.
17 (*Silverado Modjeska Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th
18 282, 307, citing *People v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422 fn. 2; see also
19 *Aquila, Inc. v. Superior Court* (2007) 148 Cal.App.4th 556, 569 [Since judicial notice is a
20 substitute for proof, it is always confined to those matters that are relevant to the issue at
21 hand.]; *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748,
22 fn. 6 [declining to take judicial notice of materials not “necessary, helpful, or relevant”].) It is
23

24 ¹ The copy of the complaint filed with the court is missing page 44.

25 ² As there is no authority for the filing of separate briefs supporting or opposing a request for judicial notice, and such filings cannot be used to circumvent the page limits set forth in Rule 3.1113 of the California Rules of Court, plaintiffs’ objection to the request has not been considered.

1 the court, and not the parties, that determines whether a document or fact is helpful or
2 relevant.

3 In support of the demurrer, defendants have submitted a request for judicial notice of a
4 copy of the notice of disciplinary charges and related documents (including emails) sent to
5 Katie on February 28, 2022, submitted as Exhibit 1 to the Declaration of Stacie Kinser.
6 Defendants assert that the documents are judicially noticeable under Evidence Code section
7 452(h) (facts not reasonably subject to dispute).

8 The request is GRANTED. As defendants correctly point out (Request at pp. 2:24-3:7),
9 these documents are discussed at length, quoted (sometimes selectively), and characterized
10 throughout the complaint. Several causes of action are based, at least in part, on these
11 documents and they can fairly be described as incorporated by reference. Therefore, the
12 existence and contents of the documents cannot be reasonably disputed. (See *Ascherman v.*
13 *General Reinsurance Corp.* (1986) 183 Cal.App.3d 307, 310-311 [appellate court took judicial
14 notice of terms of reinsurance contract referenced in complaint, where the parties did not
15 dispute the existence of the contract].)

16 **III. Defendants' Demurrer to the Complaint**

17 A. Legal Standard

18 The court, in ruling on a demurrer, treats it "as admitting all material facts properly
19 pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal.*
20 *Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan*
21 (1985) 39 Cal.3d 311, 318.) The complaint contains many factual and legal conclusions that are
22 not accepted as true on a demurrer. "A demurrer tests only the legal sufficiency of the
23 pleading. It admits the truth of all material factual allegations in the complaint; the question of
24 plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does
25 not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods*

1 Corp. (1983) 35 Cal.3d 197, 213-214.) Allegations are not accepted as true on demurrer if they
2 contradict or are inconsistent with facts judicially noticed. (See *Cansino v. Bank of America*
3 (2014) 224 Cal.App.4th 1462, 1474 (*Cansino*) [rejecting allegation contradicted by judicially
4 noticed facts]; see also Witkin, *California Evidence* (5th Ed., 2012) 2 Judicial Notice § 3(3) ["It
5 has long been established in California that allegations in a pleading contrary to judicially
6 noticed facts will be ineffectual; i.e., judicial notice operates against the pleader."])

7 B. Analysis

8 As an initial matter, the court notes that the meet-and-confer correspondence attached
9 to defendants' papers indicates that the parties reached an agreement in February 2023 that
10 the sixth cause of action would be dismissed as to all defendants and that the "contract claims"
11 (which the court interprets as referring to the third and fourth causes of action) would be
12 dismissed as to the individual defendants. Plaintiffs' opposition confirms the agreement as to
13 the sixth cause of action (at footnote 1) but does not clearly address the agreement as to the
14 contract claims. The court interprets the opposition's silence as assent.

15 No dismissal has been filed in the months following the parties' agreement; a filed
16 dismissal would have been the preferred practice. The court SUSTAINS the demurrer to the
17 sixth cause of action without leave to amend, as the court agrees with the parties that parents
18 may not recover damages for the loss of filial consortium under California law. (See *Baxter v.*
19 *Superior Court* (1977) 19 Cal.3d 461, 464.) In addition, the court SUSTAINS the demurrer by
20 the individual defendants to the third and fourth causes of action, in accordance with the
21 parties' agreement.

22 Remaining for determination are the demurrer to the third and fourth causes of action
23 by Stanford and the demurrer to the fifth, seventh, and eighth causes of action by all
24 defendants.

1 (1) Third Cause of Action (Breach of Implied Contract)

2 To state a proper breach of contract claim, a plaintiff or cross-complainant must allege:
3 1) the existence of a (valid) contract; 2) plaintiff's performance or excuse for nonperformance;
4 3) defendant's breach; and 4) damages to plaintiff resulting from that breach. (*Rutherford*
5 *Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 228, citing *Careau & Co. v.*
6 *Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1388.) Mutual consent is an
7 essential element of the existence of a contract. (Civ. Code, § 1550.) The consent of parties to a
8 contract must be free, mutual, and communicated to each other. (Civ. Code, § 1565.) The party
9 asserting the breach must plead "whether the contract is written, is oral, or is implied by
10 conduct." (Code Civ. Proc., § 430.10, subd. (g).)

11 "An implied contract is one, the existence and terms of which are manifested by
12 conduct." (Civ. Code, § 1621; see also *California Emergency Physicians Medical Group v.*
13 *PacifiCare of California* (2003) 111 Cal.App.4th 1127, 1134 [an implied contract ". . . consists of
14 obligations arising from a mutual agreement and intent to promise where the agreement and
15 promise have not been expressed in words. In order to plead a cause of action for implied
16 contract, the facts from which the promise is implied must be alleged."].) An implied contract
17 is, by definition, not one that is expressed in words. Where a contract is alleged to be written,
18 consideration is presumed. (See Civ. Code, § 1614 ["A written instrument is presumptive
19 evidence of a consideration."]) No such presumption applies to an alleged oral contract or an
20 alleged contract implied by conduct; in such instances, the essential element of consideration
21 must be clearly alleged. "In pleading a cause of action on an agreement implied from conduct
22 . . . , the facts from which the promise is implied must be alleged.' [Citation.]" (*Requa v. The*
23 *Regents of the University of California* (2012) 213 Cal.App.4th 213, 228.)

24 The vital elements of a cause of action based on contract are mutual assent (usually
25 accomplished through the medium of an offer and acceptance) and consideration. As to the

1 basic elements, there is no difference between an express and implied contract. While an
2 express contract is defined as one in which the terms are stated in words, an implied contract is
3 an agreement whose existence and terms are manifested by conduct. Mutual assent is
4 determined under an objective standard applied to the outward manifestations or expressions
5 of the parties—i.e., the reasonable meaning of their words and acts, and not their unexpressed
6 intentions or understandings. (See *Levy v. Only Cremations for Pets, Inc.* (2020) 57
7 Cal.App.5th 203, 211; *Pacific Bay Recovery, Inc. v. California Physicians’ Services, Inc.* (2017)
8 12 Cal.App.5th 200, 215-216 [affirming order sustaining demurrer without further leave to
9 amend].)

10 “The terms of a contract are reasonably certain if they provide a basis for determining
11 the existence of a breach and for giving an appropriate remedy. Where a contract is so
12 uncertain and indefinite that the intention of the parties in material particulars cannot be
13 ascertained, the contract is void and unenforceable.” (*Daniels v. Select Portfolio Servicing,*
14 *Inc.* (2016) 246 Cal.App.4th 1150, 1174 [*Daniels*, overruled in part on other grounds in *Sheen v.*
15 *Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905], quoting *Moncada v. West Coast Quartz Corp.*
16 (2013) 221 Cal.App.4th 768, 777, internal quotation marks omitted.)

17 The third cause of action here (Complaint at ¶¶ 383-396) alleges in pertinent part that
18 “[a]s a condition of [various] contracts, Stanford agreed to abide by and implement the
19 promises set forth in its own constitution and comply with the representations made to them.”
20 (The use of “them” in this sentence is unclear, even in context, but the court assumes that it is
21 intended to refer to Katie and/or the Meyers.) The cause of action further alleges that Katie
22 and the Meyers entered into “various contracts with Stanford and agreed to be bound by their
23 rules and regulations,” and that as a condition of “the contract,” Stanford “agreed to adhere to”
24 various “rules governing intercollegiate athletics.” Stanford allegedly “breached their express
25 and implied contractual duties” by failing to ensure that Katie was provided with “a safe

1 environment” and “by concealing and/or failing to disclose that Stanford did not comply with
2 all NCAA, Pac-12 and Stanford rules governing intercollegiate athletics.” In addition, Stanford
3 allegedly breached an implied contract “to follow OCS policies and procedures.” (Complaint at
4 ¶¶ 391-394.)

5 The court finds these allegations to be insufficient to state a cause of action for breach of
6 implied contract. Although plaintiffs are correct that California courts have recognized that
7 “the basic relationship between a student and a private university is contractual in nature,” the
8 courts have also “recognized that contract law should not be strictly applied.” (*Kashmiri v.*
9 *Regents of University of California* (2007) 156 Cal.App.4th 809, 823-824 (*Kashmiri*) [citing
10 *Zumbrun v. University of Southern California* (1972) 25 Cal.App.3d 1, 10 (*Zumbrun*)].) In
11 particular, “courts have often deferred to any challenge based in contract to universities’
12 academic and *disciplinary decisions*.” (*Kashmiri*, 156 Cal.App.4th at pp. 825-826, emphasis
13 added.) Contract law is applied “flexibly to actions involving academic and disciplinary
14 decisions by educational institutions because of the lack of a satisfactory standard of care by
15 which to evaluate these decisions.” In addition, “[c]ourts also have been reluctant to apply
16 contract law to general promises or expectations.” (*Id.* at pp. 825-826.)

17 The complaint here refers variously to Stanford’s promotional materials, orientation
18 materials, and admission documents, Tessier-Lavigne’s oral remarks at the 128th Opening
19 Convocation, the “policies and procedures” of Stanford’s Office of Community Standards
20 (“OCS”), as well as certain “NCAA, Pac-12 and Stanford rules governing intercollegiate
21 athletics,” but it fails to pinpoint what statements in all of these materials constitute the precise
22 terms of any alleged contracts with any reasonable degree of specificity. There is no
23 description of the parties to the contracts, the purpose of each implied contract, or—to the
24 extent that an alleged contract was oral or implied by conduct rather than written—any specific
25 allegation as to the essential element of consideration. In an effort to cast as wide and

1 unlimited a net as possible regarding any potentially applicable contracts, the complaint fails to
2 capture anything concrete. In all of the cases cited by the parties where a breach of contract
3 cause of action was recognized by the court, there were specific terms that the parties were able
4 to identify: in *Kashmiri, supra*, it was the breach of a promise not to raise professional
5 education fees; in *Zumbrun, supra*, it was the failure to offer a promised course to students
6 who had paid for the course (“Sociology 200”). Similarly, plaintiffs rely on two federal district
7 court decisions, *Arredondo v. University of La Verne*, U.S. Dist. LEXIS 78314 (C.D. Cal. Apr.
8 21, 2021), and *McCarthy v. Loyola Marymount University*, 2021 U.S. Dist. LEXIS 19204 (C.D.
9 Cal. Jan. 8, 2021), but these cases also involved the alleged failure to deliver on a specific,
10 tangible promise: to provide in-person instruction and access to on-campus services, as
11 opposed to online education. Both *Arredondo* and *McCarthy* involved straightforward
12 allegations of a *single* implied-in-fact contract with each respective university. In contrast,
13 plaintiffs’ complaint here consists of an unfocused effort to sweep in as many utterances by the
14 university and the individual defendants as possible, without even an explanation as to how
15 many contracts are actually alleged or their type.³

16 The closest that the third cause of action comes to identifying anything specific is in
17 paragraphs 391-394, where it alleges that Stanford breached its implied contract “to follow
18 OCS policies and procedures,” but even here, these allegations are exceedingly vague, failing to
19 state what those “OCS policies and procedures” are. These paragraphs refer generally to
20 “restorative justice option[s],” “exonerating evidence,” “[in]sufficient evidence,” and a
21 presumption of innocence, but they are not tied to any specific provisions in the alleged
22 policies and procedures. In addition, these allegations are in the nature of legal argument and
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24 ³ For example, to the extent that Plaintiffs rely on Tessier-Lavigne’s assurances to parents during the
25 128th Opening Convocation that “we will support and care for [your loved ones]” and “will be your
partners in supporting them,” these are the types of “general promises or expectations” that *Kashmiri, supra*, indicates are not properly subject to contract law principles. (*Kashmiri*, 156 Cal.App.4th at pp. 825-826.)

1 are actually contradicted by the judicially noticed material (the February 28, 2022 notice of
2 hearing), which controls over any legal arguments that the court is not required to accept as
3 true on demurrer. Finally, these particular paragraphs suffer from two additional problems.
4 First, they implicate the university’s “academic and disciplinary decisions,” as to which
5 *Kashmiri* counsels that courts should defer to the educational institutions, given “the lack of a
6 satisfactory standard of care by which to evaluate these decisions.” (*Kashmiri, supra*, 156
7 Cal.App.4th at pp. 825-826.) Second, even if they constitute an enforceable contract between
8 the university, students, and parents, a breach of these OCS policies and procedures is not “of
9 such a kind that serious emotional disturbance was a particularly likely result.” (*Erlich v.*
10 *Menezes* (1999) 21 Cal.4th 543, 558.) Both sides acknowledge that emotional distress damages
11 are not generally compensable in breach of contract actions, unless “the express object of the
12 contract is the mental and emotional well-being of one of the contracting parties.” (*Id.* at p.
13 559; see also *Plotnik v. Meihaus* (2012) 208 Cal.App.4th 1590, 1601-1602 (*Plotnik*); *Westervelt*
14 *v. McCullough* (1924) 68 Cal.App. 198, 208-209.) Yet plaintiffs argue, without any legal or
15 factual support, that the promise of due process that Katie was given during the OCS process
16 was “indisputably made for the ‘mental and emotional well-being’ of Katie.” (Opp. at 7:22-25.)
17 The court finds this proposition to be not only disputable, but also singularly unconvincing.
18 Under plaintiffs’ logic, the notion that the guarantees of due process in school disciplinary
19 proceedings exist for the “mental and emotional well-being” of students would subject not only
20 Stanford, but theoretically every other primary and secondary school and university in the
21 State of California, to unfettered emotional distress claims arising from every single
22 disciplinary proceeding.

23 For the foregoing reasons, the court SUSTAINS the demurrer to the third cause of action
24 on the ground that it fails to state sufficient facts and on the related ground that it fails to
25 identify whether the contract is written, oral, or implied by conduct. Further, even though

1 demurrers for uncertainty are generally disfavored (see *Lickiss v. Financial Industrial*
2 *Regulatory Authority* (2012) 231 Cal.App.4th 1287, 1295), the court SUSTAINS the demurrer
3 under Code of Civil Procedure section 430.10, subdivision (f), as well, given the complaint's
4 apparently deliberate effort to keep all conceivable options open and thereby set forth no
5 cognizable contract.

6 Plaintiffs bear the burden of proving that an amendment would cure the defects
7 identified on demurrer. (See *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.)
8 The opposition does not meet this burden, as it simply makes a generic request for leave to
9 amend. (See *Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1145 ["The onus is on
10 the plaintiff to articulate the 'specifi[c] ways' to cure the identified defect, and absent such an
11 articulation, a trial or appellate court may grant leave to amend 'only if a potentially effective
12 amendment [is] both apparent and consistent with the plaintiff's theory of the case.
13 [Citation.]'""]; *Medina v. Safe-Guard Products* (2008) 164 Cal.App.4th 105, 112 fn. 8 ["It is not
14 up to the judge to figure out how the complaint can be amended to state a cause of action.
15 Rather, the burden is on the plaintiff to show in what manner he or she can amend the
16 complaint, and how that amendment will change the legal effect of the pleading.""]; see also
17 *Drum v. San Fernando Valley Bar Ass'n.* (2010) 182 Cal.App.4th 247, 253 [citing *Medina*].)

18 At the hearing, counsel for plaintiffs argued that additional time was needed in order to
19 obtain discovery that might be relevant to the contract causes of action (as well as the gender
20 discrimination cause of action, discussed below); for example, counsel noted that plaintiffs
21 were still in the process of obtaining Katie's personal emails from Stanford. Counsel suggested
22 deferring the deadline for leave to amend until 30 days after receiving this discovery. Stanford
23 responded by arguing that there is no obligation to provide discovery to bolster the adequacy of
24 a complaint, and that plaintiffs' request for discovery should be construed as an admission that
25 they cannot currently plead sufficient facts to support the third, fourth, and fifth causes of

1 action. The court ultimately concludes that because this is the first pleading challenge in this
2 case, and because of the unusual circumstances presented here, it will grant plaintiffs leave to
3 amend. The court agrees with Stanford, however, that obtaining discovery is not a normal
4 precondition to the expectation of presenting an adequate pleading, and that plaintiffs'
5 suggested timeframe 30 days after obtaining discovery is far too long and uncertain. As the
6 court noted at the hearing, if plaintiffs truly learn new information in the course of discovery in
7 this case, they can always make a request for leave to amend the complaint. The court grants
8 plaintiffs 30 days' leave to amend. This time will run from the date of service of the notice of
9 entry of order.

10 Plaintiffs are reminded that when a demurrer is sustained with leave to amend, the leave
11 must be construed as permission to the pleader to amend the causes of action to which the
12 demurrer has been sustained, not to add entirely new causes of action. (*Patrick v. Alacer*
13 *Corp.* (2008) 167 Cal.App.4th 995, 1015.) To raise claims entirely unrelated to those originally
14 alleged requires either a new lawsuit or a noticed motion for leave to amend. Absent prior
15 leave of court, an amended complaint raising entirely new and different causes of action may
16 be subject to a motion to strike on the court's own motion. "Following an order sustaining a
17 demurrer or a motion for judgment on the pleadings with leave to amend, the plaintiff may
18 amend his or her complaint only as authorized by the court's order. The plaintiff may not
19 amend the complaint to add a new cause of action without having obtained permission to do
20 so, unless the new cause of action is within the scope of the order granting leave to amend."
21 (*Zakk v. Diesel* (2019) 33 Cal.App.5th 431, 456, citing *Harris v. Wachovia Mortgage, FSB*
22 (2010) 185 Cal.App.4th 1018, 1023.) The court does not grant leave to add new claims or
23 parties.

24 If plaintiffs choose to amend the contract causes of action, any amendment shall identify
25 the number of contracts alleged, their type (written, oral, or implied by conduct), the parties to

1 each contract, what each contract was for, how each party's assent to each contract was
2 demonstrated, and the consideration for each contract.

3 Finally, the court expects that in light of the parties' prior agreement, any amended
4 cause of action sounding in contract will not be asserted against the individual defendants.

5 (2) Fourth Cause of Action (Breach of Contract)

6 For similar reasons, the court SUSTAINS Stanford's demurrer to the fourth cause of
7 action on the grounds of uncertainty, failure to specify whether alleged contracts are written or
8 oral, and failure to state sufficient facts.

9 To state a claim for breach of written contract, a plaintiff must allege the existence of the
10 contract, which may be accomplished by attaching it or by pleading its legal effect. (See
11 *Construction Protective Services, Inc. v. TIG Specialty Ins. Co.* (2002) 29 Cal.4th 189, 199
12 ["plaintiff may plead the legal effect of the contract rather than its precise language" in an
13 action based on a written contract.]; *Miles v. Deutsche Bank National Trust Company* (2015)
14 236 Cal.App.4th 394, 402 ["The correct rule is that "a plaintiff may plead the legal effect of the
15 contract rather than its precise language."].) In order to plead a contract by its legal effect, a
16 plaintiff must "allege the substance of its relevant terms. This is more difficult, for it requires a
17 careful analysis of the instrument, comprehensiveness in statement, and avoidance of legal
18 conclusions.' [Citation.]" (*McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457,
19 1489.)

20 While the presence of the third cause of action would suggest that the fourth must be
21 based solely upon allegations of an express contract rather than implied contracts, this is
22 actually unclear from the language in the complaint. Rather than allege the substance of the
23 relevant terms of any particular written contract, the fourth cause of action alleges a series of
24 contracts, type unknown. (Complaint at ¶¶ 397-411) As in the third cause of action, the fourth
25 cause alleges that Katie and the Meyers separately "entered into various contracts" with

1 Stanford; that Katie “fully performed under the terms of her contract [singular]”; that the
2 Meyers “accepted the contracts [plural] and also complied with their payment obligations” and
3 that Stanford “breached its contract to follow OCS policies and procedures” in various ways.
4 (See Complaint at ¶¶ 403-409.) Again, as noted above, several of these paragraphs are in the
5 nature of legal argument and contradicted by the February 28, 2022 notice of hearing, which
6 controls over these characterizations of the OCS procedures.

7 As with the third cause of action, the court sustains the demurrer to the fourth cause of
8 action with 30 days’ leave to amend, with the same admonitions as above.

9 (3) Fifth Cause of Action (Violation of Education Code § 66270)

10 Education Code section 66270 states: “No person shall be subjected to discrimination
11 on the basis of disability, gender, gender identity, gender expression, nationality, race or
12 ethnicity, religion, sexual orientation, or any characteristic listed or defined in Section 11135 of
13 the Government Code or any other characteristic that is contained in the prohibition of hate
14 crimes set forth in subdivision (a) of Section 422.6 of the Penal Code, including immigration
15 status, in any program or activity conducted by any postsecondary educational institution that
16 receives, or benefits from, state financial assistance or enrolls students who receive state
17 student financial aid.” Education Code section 66292.4 allows for a private right of action to
18 enforce section 66270.

19 The general rule for statutory causes of action, such as the fifth cause of action, is that
20 they must be pleaded with particularity. (See *Lopez v. Southern California Rapid Transit*
21 *District* (1985) 40 Cal.3d 780, 795; *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th
22 771, 790.) “[Where] recovery is based on a statutory cause of action, the plaintiff must set forth
23 facts in his [or her] complaint sufficiently detailed and specific to support an inference that
24 each of the statutory elements of liability is satisfied. General allegations are regarded as
25

1 inadequate. [Citations.]” (*Mittenhuber v. City of Redondo Beach* (1983) 142 Cal.App.3d 1, 5.)

2 Simply parroting the elements of a statutory claim is inadequate to state a cause of action.

3 Education Code section 66270 is based in part on the federal Title IX, and cases
4 applying Title IX may be used as interpretive aids. (See *Donovan v. Poway Unified School*
5 *District* (2008) 167 Cal.App.4th 567 (*Donovan*), interpreting Education Code section 220.)
6 Education Code sections 220 and 66270 contain parallel language, generally making Title IX’s
7 prohibitions applicable to California educational institutions. To state a claim for gender
8 discrimination under Title IX, a plaintiff must allege sufficient facts to show: (1) discrimination
9 on the basis of sex; (2) that an official of a covered institution had actual knowledge of the
10 alleged discrimination; and (3) that the official responded to that knowledge with deliberate
11 indifference. (*Gebser v. Lago Vista School Dist.* (1998) 524 U.S. 274, 288-290 (*Gebser*)). To
12 establish actionable deliberate indifference, the alleged discrimination must be “so severe,
13 pervasive, and objectively offensive that it effectively bars the victim’s access to an educational
14 opportunity or benefit.” (*Davis v. Monroe County Board of Education* (1999) 526 U.S. 629,
15 633 (*Davis*); *Parker v. Franklin County Community School Corp.* (7th Cir. 2012) 667 F.3d 910,
16 921-922.)

17 Because the Education Code’s anti-discrimination provisions (sections 220 and 66270),
18 like Title IX, “are designed primarily to prevent recipients of state funding from using such
19 funds in a discriminatory manner” (*Donovan, supra*, 167 Cal.App.4th at p. 603), a plaintiff
20 asserting a damages claim under these statutes must similarly allege that: “(1) he or she
21 suffered ‘severe, pervasive and offensive’ harassment that effectively deprived plaintiff of the
22 right of equal access to educational benefits and opportunities; (2) the [educational institution]
23 had ‘actual knowledge’ of that harassment; and (3) the [institution] acted with ‘deliberate
24 indifference’ in the face of such knowledge.” (*Id.* at pp. 579, 603-605 [following *Gebser* and
25 *Davis* in action for damages under Ed. Code, § 220]; *Videckis v. Pepperdine University*

1 (C.D.Cal. 2015) 100 F.Supp.3d 927, 935 [applying the *Donovan* elements to a claim under
2 Education Code section 66270].)

3 Defendants demur to the fifth cause of action on grounds of uncertainty and failure to
4 state sufficient facts. (See Demurrer at p. 3:2-7.) The court OVERRULES the demurrer on
5 uncertainty grounds, as it is clear from defendants' other arguments that they understand what
6 the fifth cause of action alleges, and there is no true uncertainty. The court SUSTAINS
7 defendants' demurrer to the fifth cause of action on the ground that it fails to state sufficient
8 facts to set forth a claim.

9 The fifth cause of action alleges in conclusory fashion that Stanford's initiation of
10 disciplinary proceedings against Katie constituted discrimination on the basis of gender.
11 (Complaint at ¶¶ 412-425.) This is insufficient to plead a statutory cause of action.

12 As noted above, the court does not accept as true any legal conclusions in the complaint
13 in ruling on a demurrer. Conclusory arguments that Katie was subjected to discipline because
14 of gender discrimination are insufficient, on their own, to state a claim under Education Code
15 section 66270. Specific facts are required. In this case, the complaint repeatedly admits
16 (including in paragraphs 4, 5, 8, 9, 10, 125, 135-138, 171, 179, and 419) that Stanford initiated
17 disciplinary proceedings against Katie, not on the basis of her gender or on the basis of any
18 other characteristic listed or referenced in Education Code section 66270, but because she
19 admittedly spilled hot coffee on another student and then gave inconsistent reasons for doing
20 so. "It is well established that in the context of a demurrer, specific allegations control over
21 more general ones." (*Chen v. PayPal, Inc.* (2021) 61 Cal.App.5th 559, 571-572.) The February
22 28, 2022 notice of hearing also establishes that the stated basis for the initiation of disciplinary
23 proceedings was the coffee spilling. This controls over the more general and conclusory
24 arguments in the complaint that disciplinary proceedings were initiated because of Katie's
25 gender or because she was "supporting a . . . teammate." (Complaint at ¶ 418.) The notion that

1 Stanford's alleged failure to pursue disciplinary action against a male student means that its
2 disciplinary action against Katie was a result of discrimination is entirely unconvincing. The
3 allegations against the male student were based on his purported involvement in an entirely
4 different incident involving different allegations, most of which are not even presented here.
5 The court has been given no basis for comparing these two incidents. There is no allegation
6 that Katie and this male student were similarly situated, and the complaint fails to set forth any
7 facts, as opposed to conjecture, supporting the conclusion that Stanford took any action on the
8 basis of gender.

9 Plaintiffs' opposition does not indicate how the fifth cause of action could be amended to
10 state an adequate claim. The court has concerns as to the feasibility of amending this claim, in
11 light of the glaring absence of supporting facts. Nevertheless, because this is the first pleading
12 challenge in this action, the court sustains the demurrer with 30 days' leave to amend.

13 (4) Seventh Cause of Action (Negligent Infliction of Emotional Distress)

14 "A claim of negligent infliction of emotional distress is not an independent tort but the
15 tort of negligence to which the traditional elements of duty, breach of duty, causation, and
16 damages apply." (*Wong v. Tai Jing* (2010) 189 Cal.App.4th 1354, 1377-78; see *Barker v. Fox*
17 *& Associates* (2015) 240 Cal.App.4th 333, 356.) Damages for negligent emotional distress are
18 only recoverable when they stem from the violation of some duty. (*Marlene F. v. Affiliated*
19 *Psychiatric Medical Clinic, Inc.* (1989) 48 Cal.3d 583, 590.)

20 The seventh cause of action alleges in pertinent part that "Defendants had a duty to
21 promptly return all of Katie's property" to the Meyers; that an unidentified "Defendant" "acted
22 recklessly by failing to provide" the Meyers with Katie's student records and that the same or
23 another unidentified defendant "further acted recklessly in sending threatening emails" to
24 plaintiffs "pertaining to their viewing of Katie's documents on her computer." (Complaint at ¶¶
25 430-436.)

1 While not expressly identified as such, these allegations can only be reasonably
2 construed as an attempt at alleging a “direct victim” claim for negligent infliction of emotional
3 distress. Under California law, a plaintiff may recover damages as a “direct victim” of negligent
4 infliction of emotional distress in only three situations: (1) the negligent mishandling of
5 corpses (*Christensen v. Superior Court* (1991) 54 Cal.3d 868, 879); (2) the negligent
6 misdiagnosis of a disease that could potentially harm another (*Molien v. Kaiser Foundation*
7 *Hospitals* (1980) 27 Cal.3d 916, 923); and (3) the negligent breach of a duty arising out of a
8 preexisting relationship (*Burgess v. Super. Ct.* (1992) 2 Cal.4th 1064, 1076).

9 Defendants demur to the seventh cause of action on the grounds of uncertainty and
10 failure to state sufficient facts. (See Demurrer at p. 3:14-19, stating in part that “the Complaint
11 fails to allege a duty of care to support such a cause of action.”) The court OVERRULES the
12 demurrer on uncertainty grounds, as it is clear from their other arguments that defendants
13 understand what the seventh cause of action alleges and that there is no true uncertainty. The
14 court SUSTAINS the demurrer for failure to state sufficient facts to constitute a cause of action,
15 as the claim does not adequately allege the basis for any duty of care owed by defendants to
16 plaintiffs, arising out of a preexisting relationship.

17 As discussed above, the complaint does not adequately allege any contract between
18 Stanford and the plaintiffs; as such, plaintiffs have failed to establish any contractual duty of
19 care. Further, the complaint does not set forth any other possible basis for a duty of care owed
20 by Stanford to the plaintiffs.

21 Plaintiffs’ opposition suggests that the decisions in *Phyllis P. v. Superior Court* (1986)
22 183 Cal.App.3d 1193, 1196 and *R.N. v. Travis Unified School District* (2022) 599. F.Supp.3d
23 973, 976 establish that Stanford had a duty of care to them as matter of law. (Opp. at 12:15-21)
24 The court does not read these cases in the same expansive manner. Both decisions held that
25 school districts had a duty of care to parents, when their elementary school children were in

1 the custody of the schools and subjected to criminal conduct (sexual, physical, and/or
2 psychological abuse) by third parties, which the defendant school districts failed to prevent and
3 (in the *Phyllis P.* case) failed to report to the parents. Both decisions are clearly distinguishable
4 from the present situation involving a 22-year-old university student. In general, a university
5 does not stand in the place of a parent (*in loco parentis*) with respect to its adult students. (See
6 *Regents of the University of California v. Superior Court* (2018) 4 Cal.5th 607, 622-627.)

7 Although the opposition does not indicate how the seventh cause of action could be
8 amended to establish a cognizable breach of duty, the court grants plaintiffs 30 days' leave to
9 amend this cause of action.

10 (5) Eighth Cause of Action (Intentional Infliction of Emotional Distress)

11 “The tort of intentional infliction of emotional distress [comprises] three elements: (1)
12 extreme and outrageous conduct by the defendant with the intention of causing, or reckless
13 disregard of the probability of causing, emotional distress; (2) the plaintiff suffered severe or
14 extreme emotional distress; and (3) the plaintiff’s injuries were actually and proximately
15 caused by the defendant’s outrageous conduct.” (*Cochran v. Cochran* (1998) 65 Cal.App.4th
16 488, 494 (*Cochran*); see also *Ross v. Creel Printing & Publishing Co., Inc.* (2002) 100
17 Cal.App.4th 736, 744-745; see also CACI, Nos. 1600 and 1602.)

18 “There is no bright line standard for judging outrageous conduct and its generality
19 hazards a case-by-case appraisal of conduct filtered through the prism of the appraiser’s
20 values, sensitivity threshold, and standards of civility. The process evoked by the test appears
21 to be more intuitive than analytical.” (*Cochran, supra*, 65 Cal.App.4th at 494; internal
22 quotations omitted.) “Even so, the appellate courts have affirmed orders which sustained
23 demurrers on the ground that the defendant’s alleged conduct was not sufficiently outrageous.”
24 (*Id.*; See also *Bock v. Hansen* (2014) 225 Cal.App.4th 215, 235 [“[M]any cases have dismissed
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1 intentional infliction of emotional distress cases on demurrer, concluding that the facts alleged
2 do not amount to outrageous conduct as a matter of law.”])

3 “[I]t is ‘not ... enough that the defendant has acted with an intent which is tortious or
4 even criminal, or that he has intended to inflict emotional distress, or even that his conduct has
5 been characterized by ‘malice,’ or a degree of aggravation which would entitle the plaintiff to
6 punitive damages for another tort. Liability has been found only where the conduct has been
7 so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of
8 decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.’
9 [Citation.]” (*Cochran, supra*, 65 Cal.App.4th at 496, internal citations omitted.)

10 “A defendant’s conduct is outrageous when it is so extreme as to exceed all bounds of
11 that usually tolerated in a civilized community. And the defendant’s conduct must be intended
12 to inflict injury or engaged in with the realization that injury will result. Liability for
13 intentional infliction of emotional distress does not extend to mere insults, indignities, threats,
14 annoyances, petty oppressions, or other trivialities. If properly pled, a claim for sexual
15 harassment can establish the outrageous behavior element of a cause of action for intentional
16 infliction of emotional distress. With respect to the requirement that the plaintiff show
17 emotional distress, this court has set a high bar. Severe emotional distress means emotional
18 distress of such a substantial quality or enduring quality that no reasonable [person] in
19 civilized society should be expected to endure it.” (*Hughes v. Pair* (2009) 46 Cal.4th 1035,
20 1050-1051, internal quotations and citations omitted.)

21 “[T]he trial court initially determines whether a defendant’s conduct may reasonably be
22 regarded as so extreme and outrageous as to permit recovery. Where reasonable [persons] can
23 differ, the jury determines whether the conduct has been extreme and outrageous to result in
24 liability. Otherwise stated, the court determines whether severe emotional distress can be
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1 found; the jury determines whether on the evidence it has, in fact, existed.” (*Plotnik, supra*,
2 208 Cal.App.4th at p. 1614.)

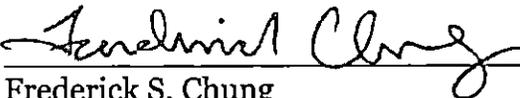
3 Defendants demur to the eighth cause of action on grounds of uncertainty and failure to
4 state sufficient facts. (See Demurrer at p. 3:21-25.) The court OVERRULES defendants’
5 demurrer to the eighth cause of action on uncertainty grounds. It is clear from defendants’
6 arguments that they understand what the cause of action alleges. The court SUSTAINS the
7 demurrer to the eighth cause of action on the ground that it fails to state sufficient facts.

8 The eighth cause of action alleges that “Stanford and its agents and/or employees
9 abused their position of authority towards Katie and engaged in conduct intended to convey a
10 message to Katie that she was powerless to defend her rights in the OCS disciplinary process
11 and powerless to do anything to obtain her diploma in a timely manner.” (Complaint at ¶ 440.)
12 The “message” referred to is the February 28, 2022 notice of hearing, of which the court has
13 taken judicial notice and which the court has reviewed carefully. (Complaint at ¶ 4.) The
14 February 28 notice, though sternly worded, does not actually state or imply that Katie was
15 “powerless to defend her rights”; in fact, it describes her right to present evidence and
16 argument at the hearing, her right to use her judicial advisor as a resource, and her right to be
17 accompanied by a “personal advisor” at the hearing. In addition, the claim that the February
18 28 notice indicated that Katie was “powerless to do anything to obtain her diploma in a timely
19 manner” is a clear mischaracterization of the document. Again, even on a demurrer, judicially
20 noticed facts and material must control over any inconsistent or contrary allegations in a
21 pleading. (*Cansino, supra*, 224 Cal.App.4th at p. 1474; Witkin, *California Evidence* (5th Ed.,
22 2012) 2 Judicial Notice § 3(3).) Based on its own review of the February 28, 2022 notice and
23 related correspondence, the court finds that neither the sending of the notice nor its contents
24 can reasonably be construed as “extreme and outrageous” conduct by defendants giving rise to
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1 emotional distress liability. Under *Plotnik, supra*, the court concludes that reasonable persons
2 cannot differ as to this determination.

3 Plaintiffs' opposition does not indicate any manner in which this claim could be
4 amended to state sufficient facts. Indeed, none is apparent to the court, as any attempt to cure
5 would likely contradict the factual allegations that have already been made. The initiation of
6 disciplinary proceedings, and specifically the February 28, 2022 communications, cannot
7 reasonably be regarded as "extreme and outrageous" conduct by the defendants, even if, with
8 the full benefit of 20/20 hindsight, the communications could arguably have been gentler in
9 tone. Nevertheless, because this is the first pleading challenge, and because the court is
10 already granting leave to amend as to the other causes of action, the court grants 30 days' leave
11 to amend as to eighth cause of action, as well.

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13 Date: May 9, 2023

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15 Frederick S. Chung
16 Judge of the Superior Court
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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**
DOWNTOWN COURTHOUSE
191 NORTH FIRST STREET
SAN JOSE, CALIFORNIA 95113
CIVIL DIVISION

RE: **Meyer, et al. v. The Leland Stanford Junior University, et al.**
Case Number: **22CV407844**

PROOF OF SERVICE

Order Re: Demurrer was delivered to the parties listed below the above entitled case as set forth in the sworn declaration below.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408) 882-2700, or use the Court's TDD line (408) 882-2690 or the Voice/TDD California Relay Service (800) 735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown below, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on May 10, 2023. CLERK OF THE COURT, by Rachel Tien, Deputy.

cc: Jarrod Matthew Wilfert 5700 Ralston St Ste 309 Ventura CA 93003
Stacie O Kinser Pillsbury Winthrop Shaw Pittman LLP Four Embarcadero Center 22nd Fl San Francisco CA
94111