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United States District Court, C.D. California.

Vicki Collier

v.

Lincoln Life Assurance Company of Boston

Case No. 8:20-cv-00839-JVS-KESx
|
Filed 11/19/2026

Attorneys and Law Firms

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Proceedings: [IN CHAMBERS] Order Regarding Defendant's Motion for Review of Magistrate Judge's Order [86]

The Honorable James V. Selna, U.S. District Court Judge

***1** Before the Court is Defendant Lincoln Life Assurance Company of Boston's ("Lincoln") Motion for Review of the Magistrate Judge's October 5, 2026 Order. (Ord., Dkt. No. 85; Mot., Dkt. No. 86.) Plaintiff Vicki Collier ("Collier") opposed. (Opp'n, Dkt. No. 88.) Lincoln replied. (Reply, Dkt. No. 89.)

For the following reasons, the Court **DENIES** the motion.

I. BACKGROUND

The Court and parties are familiar with the facts of this case, so the Court recites only those necessary to resolve this motion.

On May 9, 2019, Lincoln, who administers a long term disability plan, denied Collier's claim for disability benefits. (Compl. ¶ 9, Dkt. No. 1.) That denial was upheld upon Collier's appeal to Lincoln, and Collier sued under the Employee Retirement Income Security Act of 1974 ("ERISA") on May 1, 2020. (See Compl.) On April 16, 2021, the Court entered judgment in favor of Lincoln, affirming the denial of benefits. (Dkt. No. 29.) On appeal, the Ninth Circuit reversed, and remanded the case with the instructions that a court "must examine only the rationales the plan administrator relied on in denying benefits." (Collier v. Lincoln Life Assur. Co. of Boston, 53 F.4th 1180, 1182 (9th Cir. 2022); Dkt. No. 36 at 4; Dkt. No. 37.)

On August 7, 2023, this Court remanded the case back to Lincoln to allow Collier to submit additional information before a *de novo* determination of her claim by Lincoln. (Dkt. No. 46.) At that time, the case was administratively closed. (Id.) Collier made her first remand submission to Lincoln on June 25, 2024. (Ord. at 3.) When Lincoln again denied Collier's claim, the Court reopened the case, and on May 21, 2026, set a briefing schedule between the parties. (Dkt. No. 48, 63.) At some point thereafter, the current discovery dispute arose.

The subject of the current motion is whether Lincoln should be required to produce for *in camera* review communications between it and counsel pertaining to the administration of the plan during the remand period. On March 26, 2026, Lincoln provided a new administrative record to Collier. (See Dkt. No. 64.) Collier then advised Lincoln that she believed she was "entitled both to receive a detailed privilege log, and to review all communications between Lincoln and its inside counsel, as well as all communications between Lincoln and its outside counsel, that occurred" during the remand. (Dkt. No. 64 at 1.) Collier's position was that the "fiduciary exception to the attorney-client privilege and work product doctrine" applied because the "Court's remand of the case to Lincoln ... triggered a full ERISA appeal ...." (Id. at 2.) Lincoln instead contended "that the fiduciary exception [did] not apply because the parties' interests diverged on Collier's entitlement to benefits before she filed the current lawsuit and remained divergent during the current lawsuit, including during the remand in which the issue raised in the current lawsuit remained pending." (Id.) Both parties argued that Ninth Circuit precedent supported their respective positions.

***2** On October 5, Magistrate Judge Karen E. Scott issued her decision ("Order"), ruling that the fiduciary duty exception "revives upon remand" and extended the exception to the attorney-client privilege to communications between Lincoln and its counsel during the remand period. (Ord. at 16.) The Order held that communications between Lincoln and its litigation counsel would be privileged if those communications related to the ongoing litigation, but not if they were primarily focused on plan administration. (Id. at 16–17.) The Order also left open the possibility that communications which fall within the fiduciary duty exception might still be covered by work product protection, but did not decide the question categorically. (Id. at 17.) To that end, Lincoln was ordered to serve Collier with an "amended privilege log" that would "include all relevant documents withheld on the basis of privilege EXCEPT documents internal to Litigation Counsel." (Id. at 20.) The Order set the relevant date of production as August 7, 2023, explaining that Lincoln "may not categorically exclude from the amended privilege log documents dated August 7, 2023, or later just because Collier's first remand submission arrived on June 24, 2024." (Id.) Lincoln was ordered to submit to an *in camera* review of these documents. (Id. at 20–21.) This ruling was stayed pending resolution of this motion. (Id. at 20.)

Lincoln challenges the Magistrate Judge's ruling on the ground that it mis-applied governing Ninth Circuit authority on the issue of the fiduciary exception to attorney client privilege. (See generally Mot.) Both parties agree that the relevant binding precedents in this Circuit are United States v. Mett, 178 F.3d 1058 (9th Cir. 1999) and Stephan v. Unum Life Insurance Company of America, 697 F.3d 917 (9th Cir. 2012). (Mot. at 5–6; Opp'n at 10–12.) However, they dispute the application of these cases to the present situation. Lincoln seeks a determination that the "fiduciary exception does not apply to communications between Lincoln" and litigation counsel concerning the remand determination, and also that all such communications are work product and need not be logged for *in camera* review. (Mot. at 3.) In the alternative, Lincoln requests that the Magistrate Judge's order be modified to reach only "communications transmitted to or from the claim decision-maker, or arising from her queries, and dated on or after June 24, 2024, the date of Collier's first remand submission...." (Id.)

II. LEGAL STANDARD

A Magistrate Judge may issue non-dispositive rulings on pre-trial discovery matters. 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a); L.R. 72-2.1. "A party may serve and file objections to the order within 14 days after being served with a copy." Fed. R. Civ. P. 72(a). On a motion to review, a district court may set aside or modify these rulings only when the rulings are "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A). The "clearly erroneous" standard applies to a Magistrate Judge's factual findings, and the "contrary to law" standard applies to the judge's legal conclusions. See Crispin v. Christian Audigier, Inc., 717 F. Supp. 2d 965, 970–71 (C.D. Cal. 2010). The clearly erroneous standard is "significantly deferential, requiring a definite and firm conviction that a mistake has been committed." Id. at 971 (quoting Concrete Pipe & Prods. v. Constr. Laborers Pension Tr. for S. Cal., 508 U.S. 602, 623 (1993)). "By contrast, [t]he contrary to law standard ... permits independent review of purely legal determinations by the magistrate judge." Id. (quoting another case). Courts have interpreted this standard "to provide for de novo review by the district court on issues of law." Med. Imaging Ctrs. of Am., Inc. v. Lichtenstein, 917 F. Supp. 717, 719 (S.D. Cal. 1996). "A decision is contrary to law if it applies an incorrect legal standard or fails to consider an element of the applicable standard." Forouhar v. Asa, 2011 WL 4080862, at *1 (N.D. Cal. Sept. 13, 2011) (quoting another case).

III. DISCUSSION

A. Standard of Review

To begin, the Court clarifies the standard of review it applies. In its opposition to the motion, Collier argues that "much of what [Lincoln] objects to in the Order is reviewed for clear error, since it only challenges issues of the scope of the privilege log and the Magistrate's *in camera* review of the documents." (Opp'n at 9.) In response, Lincoln states that its "principal objections are that the Order misapplied Mett and Stephan in holding that the exception 'revives upon remand,' misread Mett's reference to 'civil or criminal liability,' and adopted but did not apply the Torf test." (Reply at 2 (quoting Ord.).)

***3** The question of whether a Magistrate Judge properly analyzed and applied precedent is a question of law. Lyon v. Chase Bank USA, N.A., 656 F.3d 877, 883 (9th Cir. 2011) ("Because the magistrate judge's rulings ... were based on ... Ninth Circuit precedent, we review these questions of law de novo.") Lincoln challenges no finding of facts made by

the Magistrate, but requests that the Court examine only whether the Order properly applied Mett, Stephan, and Torf, and properly examined non-binding precedent. (See Mot. at 2–3.) The Order's application of precedent is a question of law that the Court reviews under the "contrary to law" standard, which "provides for de novo review by the district court on issues of law." Lichtenstein, 917 F. Supp. at 719.

However, the motion also requests that the Court take two alternative steps if its principal relief is denied. (Mot. at 2, 3.) Lincoln first requests that, if all communications between Lincoln and litigation counsel are not deemed privileged, the Court set aside the Order "to the extent it requires Lincoln to log, and submit for in camera review, communications between litigation counsel and Lincoln's in-house counsel that were never communicated to the claim decision-maker." (Mot. at 2.) Second, Lincoln and that the Court "limit any logging and in camera review" to communications "on or after June 24, 2024" as opposed to August 7, 2023. (Id. at 3.) This alternative relief is requested on the grounds that "[s]eventeen months of logging, a tabbed binder, and document-by-document in camera review will not help answer the only question in the case: whether Lincoln's rationale as stated in the final denial letter issued on remand is supported by the administrative record." (Id. at 18.) So, the argument is that the imposed requirements seek evidence which is not relevant and not "proportional to the needs of the case." (Id. at 18.) These determinations, of what date to use and what communications are needed to respond to the needs of the case are factual issues reviewed for abuse of discretion. See U.S. v. Dalton, No. 821CV00140JVSJDE, 2022 WL 4596660, at *2 (C.D. Cal. Aug. 26, 2022) ("The court reviews the magistrate judge's relevancy determinations for abuse of discretion."); Geophysical Sys. Corp. v. Raytheon Co., Inc., 117 F.R.D. 646, 647 (C.D. Cal. 1987) (Holding that in determinations of relevance, "the standard of review in most instances is not the explicit statutory standard, but the clearly implicit standard of abuse of discretion."); Natl. Therapeutic Services, Inc. v. City of Costa Mesa, No. SACV181080JVSPJWX, 2020 WL 7263541, at *2 (C.D. Cal. May 12, 2020) (same).

Thus, the Court conducts a de novo review of the Magistrate's reading and application of Mett, Stephan, Torf, and the other case law at issue, but reviews the Order's relevance and proportionality determinations for abuse of discretion.

B. The Governing Framework under Ninth Circuit Law

The scope of this Court's review is narrow: whether the Magistrate Judge incorrectly determined that the fiduciary exception to the attorney-client privilege revived upon this Court's remand of Collier's claim to Lincoln. The Court begins with a framing of the exception under Ninth Circuit law.

The Ninth Circuit recognizes a fiduciary exception to the attorney-client privilege. Mett, 178 F.3d at 1062. In the context of ERISA, this means that an " 'employer acting in the capacity of ERISA fiduciary is disabled from asserting the attorney-client privilege against plan beneficiaries on matters of plan administration.' " Id. at 1063 (citing Becher v. Long Is. Lighting Co. (In re Long Is. Lighting Co.), 129 F.3d 268, 272 (2d Cir.1997)). This is rooted in two rationales. Id. First, some courts simply reason that the privilege gives way to the competing legal principle of an "ERISA trustee's duty to disclose to plan beneficiaries all information regarding plan administration." Id. Other courts have determined that "at least as to advice regarding plan administration, a trustee is not 'the real client' and thus never enjoyed the privilege in the first place." Id. The Ninth Circuit did not explicitly adopt one view or the other, but stated that under either rationale, "it is clear that the fiduciary exception has its limits" and an "ERISA trustee is not completely debilitated from enjoying a confidential attorney-client relationship." Id.

***4** These limits, cabining when the exception applies, were first drawn by the Ninth Circuit in Mett. The Ninth Circuit described cases implicating the fiduciary exception as existing on "two ends of a spectrum." Id. at 1064. On the one end, the exception certainly applies to defeat the attorney-client privilege when an ERISA trustee "seeks an attorney's advice on a matter of plan administration and where the advice clearly does not implicate the trustee in any personal capacity...." Id. On the opposite end of the spectrum, where the attorney-client privilege remains intact, occurs when the fiduciary "retains counsel to defend herself against the plan beneficiaries." Id. Notably, Mett does not describe the "ends of [the] spectrum" as defining opposing black-and-white rules for when the exception applies. See id. Presumably, there are cases which exist in the middle of this spectrum, where the question of whether the exception applies can be determined only by applying a "communication-by-communication analysis" of both the context and content of the communications, which, "perhaps untidy, is crucial if the attorney-client privilege and the fiduciary exception are to coexist." Id. at 1065. The Ninth Circuit applied this analysis and framework to the facts at hand in Mett. Id. at 1063–65.

Mett concerned two individuals, Mett and Wiseman, who were prosecuted for certain improper transactions involving pension benefit plans administered by them. Id. at 1060. Mett and Wiseman, the trustees of the plan, withdrew about $1.6 million and deposited the money into the plan administrator's general account. Id. at 1061. Mett and Wiseman were convicted, and on appeal, challenged the admissibility of two legal memoranda from counsel which were admitted at trial. Id. at 1061–62. The memoranda were prepared by defendants' attorney when "no legal action was then pending against the defendants in connection with the pension plans" but after "employees had begun asking difficult questions regarding the financial condition of the plans" and came "hard on the heels" of a federal investigation. Id. at 1064. With "[t]rouble in the air", Mett and Wiseman "had good reason to seek advice ... regarding their personal exposure to additional civil and criminal liabilities arising from the pension plan withdrawals." Id.

However, while the Ninth Circuit noted that the context in which the communications were made was important, it was the "content of the memoranda themselves" that "forclose[d] the application of the fiduciary exception." Id. The memoranda did not concern "plan administration" and were not made "for the benefit of the plan or the beneficiaries" but were "devoted entirely to advising Mett and Wiseman regarding their own personal civil and criminal exposure." Id. Because the memoranda focused on Mett and Wiseman's potential exposure, not plan administration or interpretation of beneficiary benefits, the exception did not apply. Id.

In Mett, the Ninth Circuit also explicitly rejected an "expansive interpretation" of the fiduciary exception where the privilege would be "defeated whenever otherwise privileged legal advice 'relates to' fiduciary matters." Id. This expansive view was rejected because first, the exception could then "easily extend, for example, to communications between ERISA trustees and their trial counsel in a civil suit arising from a denied benefits claim... This is not the law." Id. at 1065 (citing Wildbur v. ARCO Chemical Co., 974 F.2d 631, 645 (5th Cir.1992)). This "threatens to swallow the entirety of the attorney-client privilege for ERISA trustees." Id. Secondly, when an "ERISA trustee seeks legal advice for his own protection, the legal fiction of 'trustee as representative of the beneficiaries' is dispelled, notwithstanding the fact that the legal advice may relate to the trustee's administration of the trust." Id. This serves to "unmoor[ ] the fiduciary exception from its justifying rationales." Id. Finally, policy considerations urge that "hard cases should be resolved in favor of the privilege, not in favor of disclosure." Id.

Thus, at bottom, Mett held that when an ERISA trustee seeks legal advice solely for "his own protection" rather than for matters of plan administration, the fiduciary exception does not defeat attorney client privilege, even if that legal advice in some sense "relates to fiduciary matters." Id. at 1064–65. This can only be determined by a "communication-by-communication" analysis which examines both the content and context of the communications, and finally, if needed, hard cases are resolved against disclosure. Id.

***5** Stephan illuminated the opposite end of the exception's spectrum. Unlike Mett, Stephan was a civil case where Stephan, a beneficiary, sued his plan administrator ("Unum") following what he believed was a miscalculation of his long term benefits under the plan. Stephan, 697 F.3d 917 at 921. The Ninth Circuit overturned the district court's holding that the fiduciary exception did not apply to documents that "were created after [Stephan's] counsel contacted Unum and an adversarial relationship had begun." Id. at 932. After reviewing the documents *in camera*, the Ninth Circuit determined that both the content and the context of the documents meant the fiduciary exception applied. Id. at 932–33.

The Ninth Circuit first compared the content of the "documents at issue" in Stephan against those in Mett. Id. at 932. Unum's notes, unlike the defensive memoranda in Mett, were "notes of conversations between Unum claims analysts and Unum's in-house counsel about how the insurance policy ... ought to be interpreted." Id. They focused solely on Stephan's (the beneficiary) entitlement to earnings and plan interpretation, and did not "address any potential civil or criminal liability Unum might face." Id. The content of the notes, which was "advice on the amount of benefits Stephan was owed under the Plan," made it clear that the "fiduciary exception to the attorney-client privilege" applied. Id. at 933. A proper reading of Stephan yields the understanding that the content of the communications was the critical consideration in the Ninth's Circuit holding, in keeping with Mett's requirement that the exception be determined on a "communication-by-communication" basis. Mett, 178 F.3d at 1065.

Ninth Circuit also rejected Unum's context based argument that "the fiduciary exception ought not apply to the documents because of the context in which they were created." Id.

at 932-33. The notes were created "in advance of Unum's decision on Stephan's appeal" which meant that the "goal was the determination of Stephan's pre-disability earnings, a matter of plan administration, and was not preparation for litigation." Id. at 933. The Ninth Circuit reasoned that even though the notes were made when there "was an indication that the parties may become adverse" they still were produced *before* a final claim determination by the administrator, and thus, the fiduciary duty exception applied. Id. Because the "documents at issue" were "communications in advance of Unum's decision on Stephan's appeal" the context of the communications "indicate[d] that their goal was the determination of Stephan's pre-disability earnings, a matter of plan administration, and was not preparation for litigation." Id. The Ninth Circuit also agreed with the "weight of authority" that "it is not until after the final determination —that is, after the final administrative appeal—that the interests of the Plan fiduciary and the beneficiary diverge for purposes of application of the fiduciary exception." Id. In sum, because the communications were made in advance of a final determination and administrative appeal, the interests of the plan administrator and the beneficiary had not sufficiently diverged, and the fiduciary exception survived. Id.

Finally, both parties here brief a number of district court cases in procedurally similar, yet not identical, postures. (See Mot. at 8–9; Opp'n at 14; Reply at 11-12.) Having reviewed this non-binding authority, the Court finds Whinery v. Life Ins. Co. of N.A., No. CV 10-9312 PA AGRX, 2012 WL 8652619 (C.D. Cal. Nov. 7, 2012) to be the closest to the facts of this case. In Whinery, the court, after a bench trial, "remanded Plaintiff's claim to [the plan administrator] so that it could apply the definition of 'accident' adopted by the Ninth Circuit...." Id. at *1. On that remand, the administrator again denied the plaintiff's claim and upheld that denial on administrative appeal. Id. Plaintiff attempted to augment the record with "communications between [defendant's] legal department and outside counsel" and relied on Stephan for the proposition that those communications would be "subject to the fiduciary exception." Id. The district court conducted a review "under seal and in camera without providing a copy to Plaintiff" of the documents that the administrator considered to be privileged, and determined that those documents were privileged. Id. at *2. The court considered both the context and the content of the documents at issue in reaching this conclusion. See id. The Court notes that although the Whinery court eventually found that all of the documents were privileged, it required *in camera* review to do so, and did not categorically exclude those documents because of the procedural context in which they arose. See generally id.[1]

***6** Having addressed the binding precedent in the Ninth Circuit, the Court finds that neither Mett nor Stephan sufficiently answers the question at hand: whether the fiduciary exception, once extinguished, revives upon remand to the claim administrator. The Court now reaches the question of whether the Magistrate's Order improperly reached its conclusion.

C. Whether the Magistrate's Order was Contrary to Law

The crux of Lincoln's motion is that the Order misstates the rule from Mett. (See Mot. at 1, 7, 8.) Lincoln contends that Mett states a hard rule which the Order did not follow: that to be privileged an attorney's "advice must concern 'a matter of plan administration,' and it must 'clearly not implicate the trustee in any personal capacity.' " (Mot. at 7 (quoting Mett, 178 F.3d at 1064).) This is an incorrect reading of Mett. Mett states that cases involving the fiduciary exception exist on "a spectrum" and that on the one end, where the privilege yields, is the situation where a communication "where an ERISA trustee seeks an attorney's advice on a matter of plan administration and where the advice clearly does not implicate the trustee in any personal capacity." Mett, 178 F.3d at 1064. On the other end is the situation where the trustee "retains counsel in order to defend herself against the plan beneficiaries." Id.

These are the end points of the spectrum, but nowhere in Mett did the Ninth Circuit declare a requirement that only a communication which "*clearly* does not implicate" the trustee falls within the exception. (Mot. at 7.) "After all, any legal advice concerning an ERISA plan could be construed as relating, at least indirectly, to the administration of the plan" and by extension, the trustee. Mett, 178 F.3ds at 1065. In some cases, communications may both concern matters of plan administration and have an eye toward potential civil and criminal liability, and a bright line rule excluding these communications point blank from the fiduciary exception cannot be squared with the rationales for the exception. One of the justifications for the fiduciary exception is the idea that it can "be understood as an instance of the attorney-client privilege giving way in the face of a competing legal principle." Id. at 1063. Accordingly, there will be cases where both the attorney-client privilege and the fiduciary exception are implicated, and the court must determine, through a "communication-by-communication"

which "competing legal principle" should prevail. Id. 1063, 65.

The Order considers and applies this framework. The Magistrate properly identified that communications between Lincoln and its litigation counsel may implicate matters of purely plan administration, which fall within the exception, and communications wholly focused on the litigation, which would not. (Ord. at 16–17.) And, to that end, the Magistrate ordered that these communications be logged for an *in camera* review to determine, through a "communication-by-communication analysis", see Mett, 178 F.3d at 1065, whether the exception applies. (Ord. at 16–17.) The Court finds this to be supported by Mett. While Lincoln is correct in that not every produced communication will necessarily be within the exception, some may. No reading of Mett supports the conclusion that all communications between Lincoln and litigation counsel after remand, without exception, cannot fall within the fiduciary exception. Lincoln may be correct that, upon applying a content-specific review of each produced communication, some may be privileged. However, no reading of Mett supports the conclusion that, without effecting the requisite "communication-by-communication" review, any communication between Lincoln and litigation counsel occurring after remand invariably *cannot* fall within the fiduciary exception. The Court is satisfied that the Magistrate's Order properly considered the "content" analysis of the fiduciary exception under Mett.

***7** As to the context of Lincoln's communications with litigation counsel, Stephan does not foreclose the Order's conclusion that the fiduciary exception "revives upon remand." (Ord. at 16.) Stephan held that the fiduciary exception continues to apply until the interest of the trustee and beneficiary "diverge for purposes of application of the fiduciary exception." Stephan, 697 F.3d at 933. And, the Ninth Circuit "agree[d] with the weight of authority" that this does not typically occur until "after the final administrative appeal." Id. Stephan did not state that once this divergence of interest occurs, the parties' interests cannot realign, or that a final benefits determination forever defeats the fiduciary exception. It did not reach that question, and accordingly, it cannot be said that the Order's conclusion is contrary to Stephan as binding law.

Lincoln also argues that because Stephan "fixed the point at which the exception ends" as a final administrative appeal, once divergence occurred, Lincoln's and Collier's interests could not have realigned. (Mot. at 13.) However, as noted above, nothing in Stephan forecloses that conclusion. And, while Collier may have "remained Lincoln's adversary in this Court" (Mot. at 13) while the remand was pending, she did not do so as it pertained to the *de novo* determination of her benefits claim. To that end, the pending claim determination on remand remained "in advance of [Lincoln's] decision on [Collier's] appeal." Stephan, 697 F.3d at 933. On remand, Collier and Lincoln's interests again re-aligned, insofar as issues of plan administration were concerned. As for the ongoing litigation, the Magistrate's order properly identifies that communications about that litigation would not fall within the exception. (Ord. at 16–17.)

Further, the Court finds the Order's reasoning on the question of revival to be sound. The Order does not conclude that a remand automatically revives the fiduciary exception full stop. "Rather, if on remand the plan administrator must again act as fiduciary, then the fiduciary exception should be revived as to attorneys giving legal advice about plan administration." (Ord. at 16.) Upon this Court's remand, Lincoln was, as it concedes, required to "keep an open mind on the merits, as its fiduciary duty required...." (Reply at 10.) So, following remand, Lincoln again stepped back into the position it was in when it first made a determination on Collier's claim, and at that time, the fiduciary exception certainly applied to communications regarding plan administration[2]. This is the purpose of the Court's remand, for Lincoln to make a *de novo* determination of Collier's entitlement to benefits, as it would have in the first instance. It stands to reason that Collier should be entitled to all of the benefits, including the fiduciary exception, that she would have been entitled to upon first read. This is in keeping with both rationales supporting the fiduciary exception. Either Lincoln is "no longer the real client" when it steps back into its fiduciary role and thus does not enjoy the privilege as it pertains to matters of plan administration, or, upon remand, its "duty to disclose to plan beneficiaries all information regarding plan administration" again defeats the attorney-client privilege. Mett, 178 F.3d at 1063. In either respect, the Court is not persuaded that these rationales cease to exist upon a remand to Lincoln.

Lincoln, however, believes that the Magistrate Judge's ruling that the fiduciary exception "revives upon remand" is in conflict with Mett's rejection of the expansive view of the fiduciary exception. (Mot. at 9.) Lincoln first argues that the Magistrate's order " 'threatens to swallow the entirety of the attorney-client privilege for ERISA trustees,' because 'any legal advice concerning an ERISA plan could be construed

as relating, at least indirectly, to the administration of the plan.' " (Id. (citing Mett, 178 F.3d at 1065.) In Lincoln's view, subjecting it to a "document-by-document" search for communications "about the litigation" expands the fiduciary exception too far. (Id. at 9.) The Court does not share this concern. The Order holds neither that the communications all fall within the exception, nor that any communications "relating, at least indirectly, to the administration of the plan" would. Instead, the Order requires an *in camera* review, without disclosure to Collier, to determine whether the communications fall within the exception. This is the "communication-by-communication analysis" demanded by Mett.

***8** And, similarly, Lincoln argues that document-by-document review is unnecessary because "[a]t most, review would produce a series of hard cases, and Mett has already said how hard cases come out." (Reply at 17.) If this is true, then the Magistrate will properly apply Mett to those hard cases, after reviewing the documents, and will follow the "general rule" that "hard cases" involving the attorney-client privilege "should be resolved in favor of the privilege." (Ord. at 8.) The Court sees nothing contrary to law in requiring a content-based review of those potentially "hard cases" before categorically deciding on which end of the Mett spectrum they fall.

One point requires clarification. Lincoln argues that when Mett articulated one side of the spectrum as pertaining to a trustee's "personal liability", the Ninth Circuit was not imposing a natural individual requirement. (Mot. at 10–11.) Collier disputes this, and takes the position that "personal liability" refers only to an individual's. (Opp'n at 12.) The Court agrees with Lincoln's reading of the relevant case law. The Order seems to require that an "individual working at Lincoln" must be facing personal liability in order to justify a finding that the fiduciary exception does not apply. (Ord. at 16.) However, in Stephan, which similarly concerned a corporate fiduciary defendant, the Ninth Circuit considered whether the fiduciary's communications "adress[ed] any potential civil or criminal liability" without reference to any natural individual. Stephan, 697 F.3d at 932. Had there been an individual person requirement, presumably the Ninth Circuit would have articulated it in that context. This supports the conclusion urged by Lincoln, that there is no individual person requirement. The Order also finds that Lincoln's "potential fee liability does not defeat the fiduciary exception" because such a finding would "effectively nullify the fiduciary exception." (Ord. at 16.) The Court agrees with this reasoning, and does not believe that fee liability alone, without examination of the communications *in camera*, defeats the fiduciary exception. A content based analysis of the communications remains required.

Thus, upon reviewing the documents *in camera*, the Magistrate Judge should not confine its definition of "personal" as referring only to individual persons. Any communications between Lincoln and its counsel that concern Lincoln's potential liability *through litigation*, rather than questions of Collier's entitlement to benefits, pertain to personal liability under Mett. Still however, this does not mean that all matters of plan administration then necessarily implicate personal liability: Collier's entitlement (or lack thereof) to benefits exists under the plan independent of the ongoing litigation. Accordingly, while there is no individual person requirement for "personal liability," the fiduciary exception should still apply to communications that do not pertain to Lincoln's liability as a result of litigation.

D. Whether the Work Product Doctrine Categorically Applies

Separate from the fiduciary exception, Lincoln believes that all communications between it and litigation counsel are *necessarily* work product, and thus, non-discoverable, under Ninth Circuit law. (Mot. at 17.) The Order contemplates the possibility that work product protection applies, and specifically leaves open the possibility that communications which fall within the fiduciary exception may still be covered by work product under In re Grand Jury Subp. (Mark Torf/Torf Envtl. Mgt.), 357 F.3d 900 (9th Cir. 2004). (Ord. at 17 ("Even when the fiduciary exception applies, work product protection may also exist.").) Essentially, the question of whether work product applies will be decided alongside the question of whether the fiduciary exception applies, upon *in camera* review. Lincoln, however, believes "[r]equiring Lincoln to log and lodge communications that the Order's own test protects misapplies Torf and is contrary to law." (Mot. at 18.) The Court is not swayed.

***9** The Order begins by properly identifying and outlining the requirements for work product protection generally. (See Ord. at 9–10.) The Order then continues onto the subject of "dual purpose documents", or documents "prepared both in anticipation of litigation and for other purposes ...." (Id. at 10 (citing Torf, 357 F.3d at 907).) The Order correctly states that the Ninth Circuit uses a "because of" standard, which asks whether "in light of the *nature of the document* and the *factual situation in the particular case*, the document can be fairly said to have been prepared or obtained because of the prospect

of litigation." (Id. at 11 (citing Torf, 357 F.3d at 907).) (emphasis added). The test for work product, adopted by the Order, specifically states that Torf requires an examination of both the "nature of the document and the factual situation of the particular case" in order to determine "entitlement to work product protection." (Ord. at 11 (quoting Torf, 357 F.3d 900 at 908).) The Order then allows for application of this test, and determines that if, upon *in camera* review, documents seem to fall within the protection, work product doctrine "may tip the scales against disclosure...." (Id. at 17.)

Instead, Lincoln seems to argue that because the documents were created while Collier had a pending claim against Lincoln, that context they were created in confirm *per se* that they are work product. (Mot. at 2, 17.) This is not the test under Torf. The Order properly determined that in order to decide whether work product protection applies, a review of both the context and the content of each document is required. The Court does not disturb that in favor of a categorical ruling that all documents created by Lincoln's counsel are necessarily work product. If a document was created by litigation counsel solely for the purpose of determining Collier's entitlement to benefits, then there exists a "true independent purpose for creating [that] document, [and] work product protection is less likely." Torf, 357 F.3d at 908. If, on the other hand, Lincoln's communications with counsel were created solely "because of the prospect of litigation," work product protection will very likely apply. Id. at 907. And, if the "two purposes are profoundly interconnected, the analysis is more complicated." Id. at 908. In all three cases, a review of the documents themselves will be required, which is what the Order reaches.

Thus, nothing in the Magistrate's order is contrary to law as it pertains to the applicability of work product protection to the produced documents, which the Magistrate will determine *in camera.*

E. Overall Conclusion and Scope of Discovery

Having considered the Order and the parties' arguments, the Court is satisfied that the Magistrate Judge's Order, requiring service of an amended privilege log as well as *in camera* review is not contrary to law. Further, the scope of the log and required *in camera* review, as questions of relevance and proportionality, are left to the sound discretion of the Magistrate and reviewed only for abuse of discretion. See U.S. v. Dalton, No. 821CV00140JVSJDE, 2022 WL 4596660, at *2 (C.D. Cal. Aug. 26, 2022) ("The court reviews the magistrate judge's relevancy determinations for abuse of discretion."); Geophysical Sys. Corp. v. Raytheon Co., Inc., 117 F.R.D. 646, 647 (C.D. Cal. 1987) (Holding that in determinations of relevance, "the standard of review in most instances is not the explicit statutory standard, but the clearly implicit standard of abuse of discretion."); Natl. Therapeutic Services, Inc. v. City of Costa Mesa, No. SACV181080JVSPJWX, 2020 WL 7263541, at *2 (C.D. Cal. May 12, 2020) (same).

The Magistrate Judge has, after considering the factual needs of the case, determined the temporal and subject matter limits of the required privilege log. (See Ord. at 17–20.) The Order carefully contemplates what is to be logged, and cannot be said to constitute an abuse of discretion. And, recalling that none of the produced documents will be available to Collier before *in camera* review, the Magistrate will then carefully determine what, if any, documents will be made part of the record. The Court finds this to be both thoughtful and prudent.

***10** Accordingly, the Court **DENIES** Lincoln's request to set aside the Magistrate Judge's Order, and directs compliance with the Order, consistent with this opinion. The Magistrate Judge will set amended discovery deadlines for production of the privilege log and documents for *in camera* review upon filing of this order.

IV. CONCLUSION

For the foregoing reasons, the Court **DENIES** the motion.

IT IS SO ORDERED.

The Court finds that oral argument would not be helpful in this matter and vacates the November 23, 2026 hearing. Fed. R. Civ. P. 78; L.R. 7-15.

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Footnotes

1 Lincoln argues that "the Order summarizes Whinery but does not explain its departure from it." (Mot. at 9.) However, having considered Whinery above, the Court does not share the belief that the Order has truly departed from it. The court in Whinery ordered an under seal and in camera review of the documents the administrator in that case "consider[ed] to be communications subject to the attorney-client privilege." Whinery, WL 8652619 at *2. The court considered those documents, determined they were not discoverable, and they were not added to the record. Id. The Order's framework allows for the same. It appears Lincoln is advocating for a categorical exclusion, without examination of the communications at issue. Whinery, despite eventually applying the privilege, does not go so far. Neither can Lincoln's preferred approach be squared with Mett, which requires a content-based analysis of the communications at issue.

2 Lincoln argues that a "defendant litigating the same claim has not stepped back into anything." (Reply at 12.) However, whether Lincoln's resumption of fiduciary status was voluntary or not, Lincoln nevertheless found itself back in the position it began: as a fiduciary determining Collier's claim eligibility under its benefits plan.

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