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THE BOARD OF TRUSTEES OF THE LELAND STANFORD  
10 JUNIOR UNIVERSITY

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR SANTA CLARA COUNTY  
13

14 AMIR WEINER, JULIA ERWIN-WEINER,  
and YA'EL WEINER,

15 Plaintiffs,

16 vs.

17 LELAND STANFORD JUNIOR  
18 UNIVERSITY, THETA DELTA CHI  
FOUNDERS' CORPORATION, MATTHEW  
19 MING CARPENTER, COLE WESTON DILL-  
DE SA, MUHAMMAD YUSUF KHATTAK,  
20 and WILLIAM CORBITT MITCHELL,

21 Defendants.  
22

Case No. 21CV391881

**DEFENDANT THE BOARD OF  
TRUSTEES OF THE LELAND  
STANFORD JUNIOR UNIVERSITY'S  
ANSWER TO PLAINTIFFS'  
WRONGFUL DEATH ACTION**

23 Without waiving any defenses or admitting any of the allegations of Plaintiffs' Wrongful  
24 Death Action filed on December 1, 2021 ("Complaint"), Defendant The Board of Trustees of the  
25 Leland Stanford Junior University (named in the Complaint as Leland Stanford Junior University)  
26 ("Stanford") answers the Complaint as follows:

27 GENERAL DENIAL

28 Pursuant to sections 431.30(b)(1) and 431.30(d) of the Code of Civil Procedure, Stanford

1 generally denies each and every allegation of the unverified Complaint and further denies that  
2 Plaintiffs or any of them are entitled to any relief or have sustained damages in any amount, whether  
3 sought in the Complaint or otherwise, by reason of any act or omission on the part of Stanford.

4 AFFIRMATIVE DEFENSES

5 Stanford is named as a defendant in the First Cause of Action of the Complaint brought by  
6 Plaintiffs Amir Weiner and Julia Erwin-Weiner for wrongful death sounding in negligence.  
7 Plaintiffs have failed to state a cause of action for wrongful death against Stanford and will not be  
8 able to prove such a claim in any event. Stanford avers that it acted reasonably under the  
9 circumstances and is not in any way responsible for Eitan Weiner’s tragic death from an overdose of  
10 fentanyl. Stanford will defend itself against the claims being made by Eitan’s parents against  
11 Stanford.

12 Eitan Weiner’s own role and that of his parents in the chain of events that preceded Eitan’s  
13 death are relevant to Stanford’s defenses. Stanford is informed and believes that Eitan had extensive  
14 experience with a wide range of drugs beyond marijuana and a history of illegal drug purchases and  
15 use. Eitan’s specific actions and misrepresentations with respect to pills (now known to contain  
16 fentanyl, as alleged in the Complaint) he purchased in January 2020 on the dark web through a  
17 childhood friend (who was not affiliated with Stanford) caused his death. In addition, Eitan’s  
18 parents had knowledge and warnings about his drug use in general and, in particular, at least one of  
19 them knew of his medical emergency on January 15, 2020, including Eitan’s symptoms of speech  
20 and motor function loss that the Complaint concedes are consistent with fentanyl overdose, and met  
21 with him shortly after that emergency. Eitan’s parents did not require that he be evaluated by a  
22 doctor when he refused the emergency medical transport to the hospital that Stanford had summoned  
23 through 911 or otherwise effectively address or disclose his risky behaviors that were known by  
24 them.

25 FIRST AFFIRMATIVE DEFENSE

26 (Assumption of Risk as to Eitan Weiner and Plaintiffs)

27 1. Eitan Weiner was responsible for the actions that resulted in his death. Stanford is  
28 informed and believes that he had a history of illegal drug use, including Percocet, and, despite his

1 loss of speaking and motor function after he tried pills from the package of Percocet pills that he  
2 ordered from the dark web through his childhood friend in January 2020, and despite advice and  
3 warnings that he should be evaluated by a doctor and/or hospitalized as a result of those symptoms  
4 and that he should not be taking any pills or drugs after that incident, he refused medical care and  
5 instead locked himself in a bathroom where he could not be observed and again ingested pills from  
6 the same package of pills (now known to contain fentanyl). Eitan, an experienced drug user, did so  
7 voluntarily and with knowledge of the nature and magnitude of the danger inherent in using illegal  
8 drugs purchased on the dark web. Stanford did not increase the danger inherent in that drug activity,  
9 and it did not fail to warn of a dangerous condition that decedent could not have known about. Eitan  
10 voluntarily assumed the risk of another bad reaction to the same pills. Eitan could not now prevail  
11 and recover on a claim of wrongful death against Stanford. Plaintiffs in a wrongful death action are  
12 subject to any defenses that could have been asserted against the decedent. Since Plaintiffs cannot  
13 recover for a wrongful death claim against Stanford if Eitan could not have recovered, they cannot  
14 prevail and recover on a wrongful death claim that Stanford caused or contributed to Eitan's death.  
15 Eitan voluntarily assumed the foreseeable risk of another bad reaction to the pills when he locked  
16 himself in a bathroom where he could not be observed and ingested pills from the same package of  
17 pills.

## 18 SECOND AFFIRMATIVE DEFENSE

19 (Estoppel as to Eitan Weiner and Plaintiffs)

20 2. Despite his loss of speaking and motor function after he tried pills from the package  
21 of Percocet pills (now known to contain fentanyl) he received on January 15, which he ordered  
22 through his childhood friend, and despite being directly asked what he had taken during and after the  
23 January 15 medical emergency and given advice and warnings that he should be seen by a doctor as  
24 a result of those symptoms, Eitan Weiner denied taking any drugs other than marijuana and refused  
25 emergency medical transport to the hospital to be evaluated and treated. Eitan intended that  
26 emergency responders and Stanford should rely on his statements, and they did rely on his  
27 statements. The truth was uniquely within Eitan's personal knowledge. He now would be estopped  
28 from claiming that Stanford should not have relied upon his statements and instead should have done

1 something to stop him from taking the same pills a second time, and he could not now prevail and  
2 recover on a claim of wrongful death against Stanford. Plaintiffs in a wrongful death action are  
3 subject to any defenses that could have been asserted against the decedent. Since Plaintiffs cannot  
4 prevail and recover for a wrongful death claim against Stanford if Eitan could not have recovered,  
5 they are similarly estopped and cannot prevail and recover on a wrongful death claim that Stanford  
6 caused or contributed to Eitan's death.

7 THIRD AFFIRMATIVE DEFENSE

8 (Comparative Negligence as to Eitan Weiner and Plaintiffs)

9 3. Eitan Weiner had a duty to use due care with respect to his own safety. He did not.  
10 He was negligent when, despite his loss of speech and motor function after he tried pills from the  
11 package of pills (now known to contain fentanyl) that he ordered off the dark web through his  
12 childhood friend, and despite advice and warnings that he should be evaluated by a doctor as a result  
13 of those symptoms and that he should not be taking any pills or drugs after that incident, he  
14 thereafter locked himself in a bathroom where he could not be observed and again ingested pills  
15 from the same package of pills. Eitan, an experienced drug user, did so voluntarily and with  
16 knowledge of the nature and magnitude of the danger inherent in using illegal drugs purchased on  
17 the dark web. Eitan clearly did not exercise due care under the circumstances, and his own risky  
18 actions were the proximate cause of his death. Eitan could not now prevail and recover on a claim of  
19 wrongful death against Stanford. Plaintiffs in a wrongful death action are subject to any defenses  
20 that could have been asserted against the decedent. Since Plaintiffs cannot prevail and recover on a  
21 wrongful death claim against Stanford if Eitan could not have recovered, they cannot prevail and  
22 recover on a wrongful death claim that Stanford caused or contributed to Eitan's death. Eitan's own  
23 lack of due care proximately caused his death. Eitan voluntarily assumed the foreseeable risk of  
24 another bad reaction to the pills when he locked himself in a bathroom where he could not be  
25 observed and ingested pills from the same package of pills.

1 FOURTH AFFIRMATIVE DEFENSE

2 (Comparative Negligence as to Plaintiffs)

3 4. Plaintiffs had a special relationship with Eitan Weiner and a duty of care towards  
4 him. They breached that duty of care. They had knowledge and warnings about his drug use in  
5 general and, in particular, at least one of them knew of his medical emergency on January 15, 2020,  
6 including the loss of speech and motor function, and met with him shortly after that medical  
7 emergency. Plaintiffs did not require that he be evaluated by a doctor when he refused the  
8 emergency medical transport to the hospital that Stanford had summoned through 911 on January  
9 15, 2020, or otherwise effectively address or disclose his risky behaviors that were known by them.  
10 Plaintiffs did not exercise due care under the circumstances, and their actions and omissions were  
11 proximate causes that contributed to his death.

12 FIFTH AFFIRMATIVE DEFENSE

13 (Comparative Negligence as to Defendant Matthew Ming Carpenter and Possibly Others)

14 5. Defendant Matthew Ming Carpenter had a duty to comply with legal requirements  
15 and to use due care with respect to securing pills for Eitan Weiner, and he breached that duty when  
16 he illegally secured pills for Eitan from the dark web and they were tainted with fentanyl. As an  
17 experienced drug user and purchaser, he knew the nature and magnitude of the danger inherent in  
18 using illegal drugs purchased on the dark web. Defendant Carpenter did not exercise due care, and  
19 ingestion by Eitan of the tainted pills Defendant Carpenter secured for him proximately caused his  
20 death. Other individuals may also have been involved in actions or omissions that contributed to  
21 Eitan's death, such as whoever created the tainted pills and sold them to Defendant Carpenter. As  
22 discovery proceeds in this matter, Stanford may seek leave to name additional individuals whose  
23 negligence contributed to Eitan's death.

24 SIXTH AFFIRMATIVE DEFENSE

25 (Unclean Hands as to Eitan Weiner and Plaintiffs)

26 6. Eitan Weiner was responsible for the actions that resulted in his death. Stanford is  
27 informed and believes that he had a history of illegal drug use, including Percocet, and, despite his  
28 loss of speaking and motor function after he tried pills from the package of pills that he ordered from

1 the dark web through his childhood friend in January 2020, and despite the advice and warnings that  
2 he should be evaluated by a doctor and/or hospitalized as a result of those symptoms and that he  
3 should not be taking any pills or drugs after that incident, he refused medical care and instead locked  
4 himself in a bathroom where he could not be observed and again ingested pills from the same  
5 package of pills (now known to contain fentanyl). Eitan, an experienced drug user, did so voluntarily  
6 and with knowledge of the nature and magnitude of the danger inherent in using illegal drugs  
7 purchased on the dark web. Under those circumstances it would not be equitable for Eitan to prevail  
8 and recover on a claim of wrongful death against Stanford. Eitan must take responsibility for his  
9 own actions and omissions with respect to his tragic death. Plaintiffs in a wrongful death action are  
10 subject to any defenses that could have been asserted against the decedent. Since Plaintiffs cannot  
11 recover for a wrongful death claim against Stanford if Eitan could not have recovered, they cannot  
12 prevail and recover on a wrongful death claim that Stanford caused or contributed to Eitan's death.

13 SEVENTH AFFIRMATIVE DEFENSE

14 (Unclean Hands as to Plaintiffs)

15 7. Eitan Weiner's parents had knowledge and warnings about his drug use in general  
16 and, in particular, at least one of them knew of his medical emergency on January 15, 2020,  
17 including the loss of speech and motor function, and met with him shortly after that medical  
18 emergency. Plaintiffs did not require that he be evaluated by a doctor when he refused the  
19 emergency medical transport to the hospital that Stanford had summoned through 911 on January  
20 15, 2020, or otherwise effectively address or disclose his risky behaviors that were known by them.  
21 Under those circumstances it is not equitable for Plaintiffs to prevail and recover on a claim of  
22 wrongful death against Stanford. Plaintiffs must take responsibility for their own actions and  
23 omissions with respect to Eitan's tragic death.

24 EIGHTH AFFIRMATIVE DEFENSE

25 (Recovery of Damages by Plaintiffs Would Be Unjust)

26 8. Under California Code of Civil Procedure Section 377.61, Plaintiffs may only be  
27 awarded damages that, "under all the circumstances of the case, may be just". Plaintiffs had  
28 knowledge and warnings about Eitan's drug use in general and, in particular, at least one of them

1 knew of his medical emergency on January 15, 2020, including his loss of speech and motor  
2 function, and met with him shortly after that medical emergency. Plaintiffs did not require that he be  
3 evaluated by a doctor when he refused the emergency medical transport to the hospital that Stanford  
4 had summoned through 911 on January 15, 2020, or otherwise effectively address or disclose his  
5 risky behaviors that were known by them. Under those circumstances it would be unjust to allow  
6 Plaintiffs to recover any damages from Stanford.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Stanford prays for the following relief:

- 9 A. That the Complaint and the cause of action alleged therein against Stanford be  
10 dismissed with prejudice and that judgment be entered in favor of Stanford;  
11 B. That Plaintiffs take nothing by reason of the Complaint;  
12 C. For costs of suit incurred herein; and  
13 D. For such other legal and equitable relief as the Court may deem just and proper.

14 **JURY DEMAND**

15 Stanford demands trial of all issues by jury.

16 Dated: June 3, 2022

PILLSBURY WINTHROP SHAW PITTMAN LLP

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18  
19 By: 

SARAH G. FLANAGAN  
JOE LITTLE

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21 Attorneys for Defendant  
22 THE BOARD OF TRUSTEES OF THE  
23 LELAND STANFORD JUNIOR  
24 UNIVERSITY  
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**PROOF OF SERVICE BY ELECTRONIC MAIL**

I, Maria M. Gonzalez, the undersigned, hereby declare as follows:

1. I am over the age of 18 years and am not a party to the within cause. I am employed by Pillsbury Winthrop Shaw Pittman LLP in the County of San Francisco, State of California.
2. My email and business address are **maria.gonzlaez@pillsburylaw.com**; Four Embarcadero Center, 22nd Floor, San Francisco, CA 94111-5998.
3. My mailing address is P. O. Box 2824, San Francisco, CA 94111-5998.
4. On June 3, 2022, I served a true copy of the attached document(s) titled exactly

**DEFENDANT THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY'S ANSWER TO PLAINTIFFS' WRONGFUL DEATH ACTION** by electronic transmission to the email addresses listed below:

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day of June, 2022, at Pittsburg, California.

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Maria M. Gonzalez