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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

Kathryn Mayorga,

 Plaintiff,

 v.

Cristiano Ronaldo,

 Defendant.

Case No. 2:19-cv-00168-JAD-DJA

**Order
and
Report and Recommendation**

More than a decade ago, Kathryn Mayorga and Cristiano Ronaldo executed a “Settlement and Confidentiality Agreement” to resolve Mayorga’s allegations that Ronaldo assaulted her in a Las Vegas hotel room. Despite that agreement, Mayorga sued Ronaldo over eight years later, alleging eleven causes of action arising out of, in part, the public release of documents obtained in a cyber hack from Ronaldo’s former attorneys and circulated by the whistleblower outlet “Football Leaks.” Ronaldo moves for case dispositive sanctions or to disqualify Mayorga’s attorneys—Stovall and Associates—for attorney Leslie Stovall’s role in obtaining and using these hacked Football Leaks documents, which Ronaldo claims contain attorney-client and work product privileged material. Mayorga moves for the Court to review the Football Leaks documents *in-camera* to decide whether the crime-fraud exception to the privilege applies. Because the Court finds that Mayorga’s evidence does not establish the crime-fraud exception’s applicability, it denies the motion for *in-camera* review. Because the Court finds that dismissal is the only appropriate sanction under the Ninth Circuit’s five factor test, it recommends granting Ronaldo’s motion for case terminating sanctions.

I. Background.

In 2017, German news outlet Der Spiegel published an article titled “Cristiano Ronaldo’s Secret.” *See Cristiano Ronaldo’s Secret*, DER SPEIGEL (Apr. 19, 2017), <https://www.spiegel.de/international/zeitgeist/der-spiegel-football-leaks-exclusive-cristiano->

1 ronaldo-rape-allegation-a-1143910.html. The article discussed allegations that Ronaldo had
2 sexually assaulted a woman in a Las Vegas hotel room and detailed the settlement agreement
3 which Ronaldo and the woman executed. *See id.* The outlet explained that it received this
4 information from a “trove of documents” provided by “whistleblower portal Football Leaks.” *See*
5 *id.* The article made it clear that these documents included privileged communications, quoting
6 and referencing communications between Ronaldo’s European and U.S. attorneys about the
7 settlement. *See id.*

8 About a year after Der Spiegel published the article, Stovall—retained by Mayorga—
9 emailed “Football Leaks.” (ECF No. 44-1 at 5-6). Stovall asked Football Leaks for privileged
10 documents showing “the employment of attorneys and investigators by Ronaldo,” “the reporting
11 and communications of the attorneys,” and the “negotiations leading up to the agreement to
12 mediate.” *Id.* Stovall did not ask where or how Football Leaks obtained these documents. *See*
13 *id.* Stovall later explained to the Court that he went directly to Football Leaks because he could
14 not otherwise find the documents online and because Der Spiegel and Mayorga’s former counsel
15 for the settlement negotiations refused to give them to him. (ECF No. 140 at 52:37-53:14).¹

16 Someone identifying themselves as “John” responded to Stovall’s email a few months
17 later, sending him “all relevant information.” (ECF No. 44-1 at 5-6). Stovall sent these
18 documents to the Las Vegas Metropolitan Police Department under his letterhead on August 21,
19 2018. (ECF No. 44-1 at 2-4). “John” responded with more documents on August 25, 2018.
20 (ECF No. 124 at 7). On August 28, 2018, Mayorga met with LVMPD detectives, bringing a
21 “packet of supporting documentation.” (ECF No. 125-7 at 5). On September 24, 2018, Stovall
22 sent LVMPD additional documents “obtained from Football Leaks” under his letterhead. (ECF
23 No. 125-6 at 2).

24 Mayorga then filed a verified state court complaint on September 27, 2018 citing and
25 quoting the Football Leaks documents, but never using the word “attorney” or “lawyer,” when
26

27 ¹ Because a transcript has not yet been completed, the Court refers to time stamps from its
28 September 17, 2021 hearing.

1 describing their contents. (ECF No. 111-1). Instead, the complaint referred to Ronaldo’s “team”
2 and names “Doe” and “Roe” defendants. *See id.* A few weeks later, Ronaldo and his Nevada-
3 based attorney—Peter Christiansen—publicly declared that Der Spiegel based its reports on
4 “stolen and easily manipulated digital documents” of which “significant parts were altered and/or
5 completely fabricated.” (ECF No. 125-9).

6 Mayorga ultimately terminated her state court action and, in January of 2019, initiated the
7 instant action in federal court. (ECF No. 1). The complaint still only referred to Ronaldo’s
8 “team,” rather than attorneys. *See id.* But after Ronaldo moved to enforce the settlement
9 agreement’s arbitration clause, Mayorga filed an opposition that attached documents Stovall had
10 received from “John” at Football Leaks. (ECF Nos. 44-1 and 44-2). Christiansen immediately
11 emailed Stovall, informing him that the Football Leaks documents were privileged and asking
12 him to remove them from the opposition. (ECF No. 111-7).

13 Ronaldo then filed a motion to strike the exhibits asserting that Stovall had obtained the
14 documents from a cyber hacker, that the documents contain privileged material, and that the
15 documents could not be authenticated. (ECF No. 55). Mayorga responded with a litany of online
16 articles she asserted established the Football Leaks documents’ legitimacy. (ECF No. 61).
17 Mayorga argued that “John” was really a man named Rui Pinto, who publicly disclaimed being a
18 hacker and who allowed journalists to vigorously check his work. *See id.* at 15-16.

19 The articles Mayorga cites in her response, however, raise suspicion. *See id.* In a
20 February 1, 2019 article, when asked whether he was a hacker, Pinto responded, “I don’t consider
21 myself as a hacker, but as a citizen acted [sic] in the public interest.” *Id.* at 16. She also cites a
22 May 27, 2019 article, which explains that while “documents were pouring into Football Leaks
23 from *law firms*, clubs and agents...thousands of PDFs and *emails*,” Pinto “came across” the
24 Football Leaks documents about Ronaldo in “a file that was labeled: ‘Las Vegas’” *Id.* at 5
25 (emphasis added). The articles do not explain how Pinto received the documents about Ronaldo.
26 *See id.* The May 27, 2019 article, one from January 25, 2019, and one from September 16, 2019
27 allude that Pinto had been arrested, is in custody, and is accused of cyber hacking. *See id.* at 7,
28 15, 17. Mayorga explains, “Rui Pinto remains in custody in Portugal.” *Id.* at 17.

1 The Court ultimately agreed with Ronaldo, recommending that the Football Leaks
2 documents Mayorga attached to her opposition be stricken. (ECF No. 67). The Court explained,
3 “[u]nder these circumstances, the Court does not find that Defendant waived the attorney-client
4 privilege by either not protecting the documents from a hack or by putting them at issue in this
5 litigation.” *Id.* at 8-9. The Honorable District Judge Jennifer A. Dorsey also agreed, adopting the
6 recommendation in part, and limiting the remaining litigation to Mayorga’s mental capacity only.
7 (ECF No. 72). The remaining items—whether the settlement agreement was illegal or violated
8 public policy—were left to be decided by the arbitrator “if Mayorga does not prevail on her
9 mental-capacity challenge.” *Id.* at 20.

10 On October 7, 2019, Mayorga disclosed the Football Leaks documents in her initial
11 disclosures. (ECF No. 111-4 at 2-25). Ronaldo also obtained LVMPD’s file containing about
12 200 documents from Football Leaks that Stovall had provided. (ECF No. 111-18). But the file
13 contained about 200 additional privileged documents that did not otherwise appear in Mayorga’s
14 initial disclosures. (ECF No. 111 at 9). Kendelee Works—Ronaldo’s Nevada-based counsel
15 working with Christiansen—questioned Stovall about the additional 200 documents, but Stovall
16 did not answer. (ECF No. 111-22, ECF No. 111 at 11). After an unsuccessful meet and confer in
17 which Stovall asserted that the Football Leaks documents which the Court had not stricken were
18 “fair game” to use in depositions, Ronaldo filed his motion for sanctions. (ECF No. 111 at 10).

19 **A. Ronaldo’s motion for sanctions.**

20 Ronaldo moves for case terminating sanctions, arguing that dismissal—or at the very
21 least, disqualifying Stovall and his law firm—is necessary. (EFC No. 111). Ronaldo makes two
22 arguments. *See id.* First, that Stovall acted unethically and improperly by intentionally seeking
23 out documents he knew were privileged and using them to prosecute his client’s claims. *See id.* at
24 3-11. Second, Ronaldo argues that Stovall provided LVMPD with about 200 documents
25 containing attorney-client and work product privileged information that were never produced in
26 the litigation. *See id.* He argues that the detective working on the LVMPD file does not
27 “reference having independently requested information from anyone identified as ‘Football
28 Leaks.’” *Id.* at 9. He concludes that the documents must have come from Stovall. *Id.*

1 Mayorga responds with a few alternative arguments. (ECF No. 123). She argues that
2 Ronaldo failed to assert any privilege because he did not identify which documents he believes
3 are privileged, file a privilege log, request *in-camera* review, or prove that the documents were
4 “stolen, inadvertently released, or that their release was otherwise unauthorized.” *Id.* at 2, 5-6.
5 She argues, alternatively, that Ronaldo waived the privilege because he did not act quick enough
6 in stopping the documents from being leaked and that Ronaldo was the one to put the documents
7 “at issue” by bringing the sanctions motion. *See id.* at 3-4, 11. She then argues that even if the
8 documents were privileged, Stovall’s actions were justified because he had a “good faith belief”
9 that the settlement agreement was illegal. *See id.* at 9. She concludes by arguing that she did not
10 provide the additional 200 documents to the LVMPD and that Stovall “does not recognize these
11 documents.” *Id.* at 7. She claims, “[t]hese documents do not appear to contain any additional
12 information than disclosed [to Ronaldo].” *Id.*

13 In reply, Ronaldo attaches declarations from his attorneys whose communications and
14 work product are featured in the Football Leaks documents. (ECF No. 133). Ronaldo’s
15 European attorney—Carlos Osório de Castro—explains that his law firm was hacked and
16 information about the settlement agreement was stolen, but that neither him nor Ronaldo ever
17 authorized the information to be released. *See id.* at 14-15. Ronaldo’s U.S. attorney—Richard
18 Wright—explains that his communications and work product were stolen in the hack, but that
19 neither he nor Ronaldo authorized the information’s release. *See id.* at 17-18. Ronaldo points to
20 two translations of court documents from Portugal and Germany in which Ronaldo sought
21 preliminary injunctions to enjoin further publication or dissemination of the Football Leaks
22 documents. (ECF No 111-26). Ronaldo also points out that specific pages in the LVMPD file
23 contain completely different information than that in Mayorga’s disclosure. (ECF No. 133 at 6).

24 The Court held a hearing on these issues on September 17, 2021. (ECF No. 140). There,
25 Stovall repeated that everything disclosed to LVMPD was also disclosed to Ronaldo and that he
26 did not know where any additional documents came from. *See id.* at 55:28-56:34. Stovall also
27 re-asserted that it was not improper for him to ask Football Leaks for the documents. *See id.* at
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1 59:55-1:00:53. Unlike cases in which the court imposed terminal sanctions because a party was
2 involved in stealing documents, Stovall asserted,

3 I have no idea where these [Football Leaks] documents came
4 from...I didn't participate in obtaining those documents, those
5 documents were acquired two, three years before my request went
6 to John and there is no evidence in this case and I don't think there
is anywhere else, unless you accept the newspaper reporting that
John is the hacker. He denies it, in all the reports.

7 *Id.* at 1:00:53-1:02:03. Stovall then placed the onus on the Court, stating,

8 So, the questions that haven't been answered that I think are
9 absolutely essential for the Court to make the decision in this case
10 on terminal sanctions or in the request for disqualification is: "How
11 did these documents get into the public?"; "Were they really
hacked?"; "When did that occur?"; "How—to what extent—does
anyone know how it occurred?"; and "Where did they go?"

12 *Id.* at 1:02:37-1:03:08.

13 ***B. Plaintiff's motion for in-camera review.***

14
15 Mayorga then moved for *in-camera* review of the Football Leaks documents, asking the
16 Court to decide that the documents fell within the crime-fraud exception to the privilege. (ECF
17 No. 124). She argues that the Football Leaks documents are "presumptively privileged," and that
18 "[t]he 'Football Leaks' documents are evidence that the defendant and his attorneys engaged in
19 the felonious act of compounding a felony, and the negotiations, settlement, and nondisclosure
20 agreements were the product of this illegal activity." *Id.* at 3, 10. Mayorga attaches eight pieces
21 of evidence that she claims satisfies the Supreme Court's threshold analysis by "showing a factual
22 basis adequate to support a good faith belief by a reasonable person...that in camera review of
23 materials may reveal evidence to establish the claim that the crime fraud exception applies." *Id.*
24 at 5-6. This evidence includes: (1) Stovall's declaration; (2) Mayorga's verified state court
25 complaint; (3) the January 12, 2010 settlement memorialization; (4) the August 10, 2010
26 settlement and confidentiality agreement; (5) Stovall's first letter to LVMPD attaching the
27 Football Leaks documents; (6) Stovall's second letter to LVMPD; (7) LVMPD's declaration of
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1 warrant/summons for Ronaldo; and (8) the District Attorney’s press release that he would not
2 prosecute Ronaldo. *See id.*

3 Ronaldo responds that Mayorga has already argued, unsuccessfully, that the Football
4 Leaks documents were subject to the crime-fraud exception when opposing Ronaldo’s motion to
5 compel arbitration. (ECF No. 134 at 4-5). He also argues that *in-camera* review is unnecessary
6 where all parties already have access to and have reviewed the privileged information. *See id.* at
7 7. Ronaldo adds that, even if the Court were to conduct the *in-camera* review analysis,
8 Mayorga’s evidence is insufficient under the threshold analysis because it improperly relies on
9 and includes cites from the Football Leaks documents themselves. *See id.* at 7-12.

10 Mayorga replies that the Court can use the Football Leaks documents themselves to
11 satisfy the threshold inquiry. (ECF No. 138 at 4). She responds to Ronaldo’s argument that her
12 eight pieces of evidence are insufficient by claiming that the threshold step is not stringent, and
13 her documents satisfy it. *See id.* at 4-5. Although recognizing that all parties and the Court
14 already have the Football Leaks documents, at the Court’s September 17, 2021 hearing, Stovall
15 asked the Court to apply the threshold analysis retroactively. (ECF No. 104 at 21:50-23:22).

16 **II. Discussion.**

17 The authority of magistrate judges is derived from 28 U.S.C. § 636, which generally
18 provides magistrate judges with the authority to “hear and determine” non-dispositive matters.
19 *See* 28 U.S.C. § 636(b)(1)(A); *see also S.E.C. v. CMKM Diamonds, Inc.*, 729 F.3d 1248, 1259
20 (9th Cir. 2013). By contrast, dispositive matters are sometimes referred to magistrate judges, but
21 in those circumstances a magistrate judge submits a recommendation to the assigned district
22 judge that is subject to the district judge’s *de novo* review. *See* 28 U.S.C. § 636(b)(1)(B); *see also*
23 *CMKM Diamonds*, 729 F.3d at 1259-60. Section 636 enumerates eight different types of matters
24 to be treated as “dispositive.” *See* 28 U.S.C. § 636(b)(1)(A)-(B). This includes motions “to
25 involuntarily dismiss an action.” *Id.*

26 Here, Mayorga’s motion for *in-camera* review is a non-dispositive matter: the resolution
27 will not result in the disposition of the case. The Court addresses this motion first and denies it.
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1 Ronaldo’s motion for case terminating sanctions, however, is dispositive. The Court addresses
2 this motion second and recommends granting it and dismissing the action.

3 ***A. The Court denies Mayorga’s motion for in-camera review.***

4 A party seeking to invade another party’s privilege under the crime-fraud exception must
5 first provide evidence “sufficient to support a reasonable belief that *in-camera* review may yield
6 evidence that establishes the exception’s applicability.” *See United States v. Zolin*, 491 U.S. 554,
7 574-75 (1989). The crime-fraud analysis thus typically proceeds in two steps. *See id.* First, the
8 party looking to invade the privilege provides threshold evidence. *See id.* Then, if the evidence
9 is sufficient, the court will review the privileged documents *in-camera*. *See id.*

10 Mayorga’s request for an *in-camera* review fails at the first step. The Court may still
11 conduct the *Zolin* analysis even though it has already seen the Football Leaks documents. But the
12 crimes which Mayorga asserts that Ronaldo and his attorneys committed are inapplicable. Even
13 if Mayorga asserted applicable crimes, however, Mayorga’s evidence—excluding the privileged
14 information—does not provide evidence to support a reasonable belief that *in-camera* review of
15 the Football Leaks documents may yield evidence that establishes the crime-fraud exception.

16 1. The Court may apply the *Zolin* test even though it has already seen the
17 Football Leaks documents.

18 A court may disregard attorney client privileged information a party has improperly
19 submitted as evidence when deciding the first step of the *Zolin* analysis. *See United States v.*
20 *Chen*, 99 F.3d 1495, 1502-1504 (9th Cir. 1996). In *Chen* the Ninth Circuit considered whether
21 the district court appropriately applied *Zolin* when the government had attached attorney-client
22 privileged documents to its motion for *in-camera* review. *See id.* at 1502-1504. The government
23 received the documents from the former comptroller of the company the government was
24 investigating for tax fraud. *See id.* at 1497-98. The comptroller had stolen the documents when
25 she left the company. *See id.* Even though the government erroneously attached and referenced
26 privileged communications in their motion, the district judge applied the threshold *Zolin* analysis,
27 expressly disclaiming any reliance on the privileged information. *See id.* On appeal, the Ninth
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1 Circuit affirmed, finding that because the district judge ignored the privileged evidence, the
2 government’s “[v]iolation of the *Zolin* two-step procedure was therefore harmless.” *Id.*

3 Here, the Court may disregard the Football Leaks documents in deciding the first step of
4 the *Zolin* test. Like the company’s comptroller who stole documents and provided them to the
5 government in *Chen*, here a third party has obtained the Football Leaks documents and provided
6 them to Stovall. The Court has also—like the court in *Chen*—received the documents attached to
7 a filing. Although the Court has received and reviewed the Football Leaks documents, it may still
8 apply the first step of the *Zolin* analysis if it expressly disregards the Football Leaks documents
9 and anything disclosing their contents. Before considering the non-privileged evidence, however,
10 the Court addresses the crimes Mayorga asserts that her non-privileged evidence will show.

11 2. The crimes Mayorga asserts that her evidence reveals are inapplicable to
12 Ronaldo and his attorneys’ actions.

13 Mayorga asserts that, by negotiating and executing the settlement agreement, Ronaldo and
14 his attorneys violated NRS § 199.290 and 18 U.S.C. § 4. NRS § 199.290 makes it a crime to
15 receive compensation under an agreement to compound or conceal a crime, abstain from
16 testifying about a crime, or withhold evidence of a crime. *See* NRS § 199.290. 18 U.S.C. § 4
17 makes it a crime to conceal a crime. *See* 18 U.S.C. § 4.

18 The Court cannot apply either of these statutes to Ronaldo or his attorneys for two
19 reasons. First, to decide that Ronaldo and his attorneys violated these statutes by using the
20 settlement agreement to conceal a crime would require the Court to first decide that Ronaldo
21 committed a crime that night in 2009. But the events of that night are not in front of this Court,
22 and the Court will not decide them.

23 Second, even if the Court did conclude that Ronaldo committed a crime that night in 2009,
24 the Court could not find that Ronaldo employed his attorneys to violate these statutes by
25 negotiating the settlement agreement. As discussed more fully below, Mayorga had already
26 decided to drop charges before she decided to pursue civil action. The settlement agreement was
27 drafted so that, should the LVMPD nonetheless prosecute, Mayorga would not violate the
28 agreement by participating. And while the settlement agreement did prevent Mayorga from

1 voluntarily reopening her criminal charges, the nature of the alleged crime means that Ronaldo's
2 attorneys did not violate NRS § 199.290 or 18 U.S.C. § 4 by drafting it. Whether Ronaldo
3 committed a crime that night in 2009 depends entirely on Mayorga's word versus Ronaldo's. The
4 settlement agreement thus explains that Mayorga and Ronaldo's version of events differed. (ECF
5 No. 125-4 at 2, ¶¶ 1.1-1.2). Absent concrete evidence to the contrary, Ronaldo's attorneys were
6 entitled to advocate his version of events—that the encounter was consensual—by drafting the
7 settlement agreement to prevent Mayorga from re-asserting criminal charges for a crime that,
8 according to Ronaldo, is fictional. Even if the Court could now determine that Ronaldo had in
9 fact committed a crime, when his attorneys drafted the settlement agreement, they did not violate
10 NRS § 199.290 or 18 U.S.C. § 4 by advocating their client's position. The crime-fraud exception
11 does not apply and Mayorga's request for an *in-camera* review is unsupported.

12 3. Even if Mayorga had asserted a crime applicable to Ronaldo and his
13 attorneys, her evidence—excluding privileged information—is insufficient
14 to meet the threshold *Zolin* analysis.

15 Although the first step of *Zolin* is not stringent, a party must at least make a minimal
16 showing that the crime-fraud exception could apply. *See U.S. v. Christensen*, 801 F.3d 970, 1005
17 (9th Cir. 2015) *superseded on other grounds*, 828 F.3d 763 (9th Cir. 2015). In *Christensen*, the
18 government investigated Anthony Pellicano, a private investigator who used illegal methods to
19 obtain information. *See id.* at 981. Attorney Terry Christensen had hired Pellicano to assist in
20 litigation in which his client, Kirk Kerkorian, sought to stop paying child support to Lisa Bonder.
21 *See id.* Pellicano wiretapped Bonder's phone and discussed with Christensen what he had heard.
22 *See id.* The district court applied *Zolin* retroactively to determine whether recordings of calls
23 between Christensen and Pellicano were subject to the crime-fraud exception. *See id.* at 1003-
24 1006.

25 The district court considered: (1) evidence that Christensen had represented Kerkorian in a
26 child support dispute with Bonder; (2) evidence that Christensen's law firm had paid Pellicano
27 \$186,000 near the time of the recorded conversations at issue; and (3) an FBI record reflecting
28 Pellicano's former girlfriend's statements that Pellicano told her he was listening to Bonder's

1 conversations. *See id.* Based on that evidence, the district court found that the recordings fell
2 under the crime fraud exception. *See id.* The court explained that the evidence “raised the
3 inference that the \$186,000 was, at least in part, in exchange for illegal wiretapping services.” *Id.*

4 Here, even if the Court were to find that Mayorga had asserted a crime applicable to
5 Ronaldo (she argues that Ronaldo and his attorneys intimidated her and impeded law
6 enforcement) her evidence does not meet the *Zolin* minimal showing threshold. Most of
7 Mayorga’s eight pieces of evidence rely on the contents of the Football Leaks documents. Taking
8 out the items that rely on or quote those documents, the Court is left with: (1) portions of
9 Mayorga’s verified complaint; (2) portions of Stovall’s declaration; (3) the January 12, 2010
10 settlement memorialization; (4) the August 10, 2010 settlement and confidentiality agreement;
11 (5) the July 8, 2019 declaration of Warrant/Summons by LVMPD; and (6) the District Attorney’s
12 press release of non-prosecution. None of these items constitute a factual basis adequate to
13 support a good faith belief by a reasonable person that Ronaldo and his attorneys committed a
14 crime by negotiating and executing the settlement agreement.

15 The evidence Mayorga has provided is distinguishable from the evidence in *Christensen*.
16 The *Christensen* evidence—on its own—established that Christensen represented Kerkorian in a
17 child support dispute with Bonder, that Christensen had paid Pellicano a significant amount of
18 money around that time, and that Pellicano’s former girlfriend had told the FBI that Pellicano had
19 told her he was listening to Bonder’s statements. This raised the inference that the money
20 Christensen paid Pellicano was for Pellicano to engage in the crime of wiretapping, and thus, that
21 Christensen and Pellicano’s communications were in furtherance of that crime. Unlike the
22 evidence in *Christensen*, Mayorga’s evidence does not raise the inference that Ronaldo hired his
23 attorneys to intimidate Mayorga or impede law enforcement such that the privileged
24 communications or work product contained in the Football Leaks documents were in furtherance
25 of that crime.

26 First, neither Mayorga’s verified complaint nor Stovall’s declaration constitute a factual
27 basis to support a good faith belief that the Football Leaks documents fall under the crime-fraud
28 exception. (ECF Nos. 125-1 and 125-2). While Mayorga signed her complaint under oath and

1 Stovall is bound by Rule 11, it is impossible for the Court to determine which statements and
2 allegations are based on Mayorga's independent recollection of the settlement negotiations and
3 which are based on the Football Leaks documents. It is especially hard for the Court to attribute
4 any statements to Mayorga's independent recollection because Mayorga claims to have been
5 incompetent during the negotiations. The Court cannot disclaim reliance on privileged
6 information if it cannot tell which parts of the complaint or declaration are based on that
7 privileged information.

8 Next, the Court finds no evidence that Ronaldo and his attorneys intimidated Mayorga or
9 impeded law enforcement in the January 12, 2010 settlement memorialization. (ECF No. 125-3).
10 While the memorialization requires Mayorga to drop her criminal charges, it expressly recognizes
11 that she "does not have any control over the police's actions." *Id.* at 2, ¶ 6. None of the terms
12 prevent the police from continuing their investigation or threaten Mayorga should she cooperate
13 with that investigation. *See id.*

14 The August 10, 2010 settlement agreement also does not show that Ronaldo and his
15 attorneys intimidated Mayorga or sought to impede law enforcement. (ECF No. 125-4). To the
16 contrary, Mayorga agreed to maintain confidentiality, "except as required by law" in Section 3.1.
17 *Id.* at 4. Section 3.2, which lists the persons and entities to whom Mayorga may not disclose
18 confidential information, does not list law enforcement. *See id.* at 5. Section 3.5.1 allows
19 Mayorga to comply with a subpoena if required by law and if Mayorga gives Ronaldo written
20 notice of the subpoena. *See id.* at 6. In Section 9.1.1.3, Mayorga represents that she already
21 reported the events to law enforcement. *See id.* at 10. Section 10.2 provides that Ronaldo can
22 "respond publicly to any such media reports [that discuss the sexual assault] *in a manner*
23 *reasonably proportionate* to the nature, substance and geographic scope of the previous media
24 reports containing any Confidential Information." *See id.* at 11 (emphasis added). While that
25 language is broad, it does not raise the inference that the agreement was intended to threaten or
26 intimidate Mayorga. Finally, section 10.4 prohibits *both* parties from "participat[ing] in...any
27 other public judicial proceeding...*except as required by law.*" *See id.* at 12 (emphasis added).
28

1 The agreement is not evidence that Ronaldo or his attorneys threatened Mayorga or impeded law
2 enforcement.

3 The July 8, 2019 declaration of Warrant/Summons by LVMPD does not even mention the
4 nature of the negotiations leading up to the settlement agreement. (ECF No. 125-7). Instead, it
5 depicts Mayorga's decision to end the investigation and pursue the case civilly as voluntary. *See*
6 *id.* at 4. In it, the detective reported that Mayorga "did not want to pursue criminal charges." *Id.*
7 Thus, the detective closed the criminal investigation and "indicated the case would be reopened,
8 if the victim changed her mind." *Id.* The declaration shows that two weeks later—before
9 Mayorga's former counsel contacted Ronaldo's counsel to discuss the civil claims—the detective
10 met once again with Mayorga. *See id.* But Mayorga told the detective that she "elected to pursue
11 the case civilly and the criminal investigation remained closed." *Id.* Nothing in the declaration
12 indicates that Ronaldo and his attorneys had any contact with Mayorga before this interview, let
13 alone that they intimidated her or otherwise impeded the LVMPD investigation. Rather, the
14 declaration shows that Mayorga, on her own, decided to not pursue criminal charges.

15 Finally, the District Attorney's press release of non-prosecution does nothing to suggest
16 that Ronaldo and his attorneys bullied or intimidated Mayorga or impeded the criminal
17 investigation. (ECF No. 125-8). To the contrary it explains,

18 [Mayorga] refused to identify [Ronaldo] or disclose where the crime
19 occurred. As a result, the police were unable to follow investigative
20 protocols for sexual assault cases or to conduct any meaningful
21 investigation. Without knowing the identity of the perpetrator or the
22 location of the crime, detectives were unable to search for and
23 impound vital forensic evidence. In addition, video evidence,
24 showing interactions between the victim and perpetrator before and
25 after the alleged crime, was lost. The criminal investigation was
26 closed...On August 28, 2018, [Mayorga] contacted the Las Vegas
27 Metropolitan Police Department, asking that her sexual assault
28 investigation be reopened, naming Cristiano Ronaldo as the
offender. In spite the passage of over nine years, Metro investigated
her allegations...Based upon a review of the information presented
at this time, the allegations of sexual assault against Cristiano
Ronaldo cannot be proven beyond a reasonable doubt.

Id.

1 Mayorga’s evidence does not raise an inference that Ronaldo used his attorneys to
2 intimidate Mayorga or impede law enforcement. Because Mayorga’s evidence is not “sufficient
3 to support a reasonable belief that *in-camera* review may yield evidence that establishes the
4 exception’s applicability” it does not meet the first step of the *Zolin* test. The Court denies
5 Mayorga’s motion for an *in-camera* review of the Football Leaks documents.

6 ***B. The Court recommends granting Ronaldo’s motion for case dispositive***
7 ***sanctions.***

8 When considering case-dispositive sanctions, “[a] court must consider the following five
9 factors before striking a pleading or declaring default: ‘(1) the public’s interest in expeditious
10 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the
11 other party; (4) the public policy favoring the disposition of cases on their merits; and (5) the
12 availability of less drastic sanctions.’” *Hester v. Vision Airlines*, 687 F.3d 1162, 1169 (9th Cir.
13 2012) (quotation omitted). “[T]he key factors are prejudice and availability of lesser sanctions.”
14 *Wanderer v. Johnston*, 910 F.2d 652, 656 (9th Cir. 1990). The Ninth Circuit has found that the
15 element of prejudice is essential, and “sanctions [that] threaten or interfere with the litigants’
16 claim or defenses violate due process when they are imposed ‘merely for punishment of an
17 infraction that does not threaten to interfere with the rightful decision of the case.’” *Id.*

18 1. The public’s interest and the Court’s need to manage its docket weigh in
19 favor of case terminating sanctions.

20 The first and second factor in the Ninth Circuit’s test weigh in favor of case terminating
21 sanctions. The public—more so in this case than others—is interested in an expeditious outcome
22 of this litigation. Following the public’s awareness of sexual assault brought on by the #MeToo
23 movement and concerning a public figure, the public has an interest in this case not languishing.
24 This case has also been one of the more contentious in front of the Court. The Court’s interest in
25 managing its docket is particularly keen here, where motion practice is frequent and heated.
26 These two factors weigh in favor of dismissal.

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2. The public policy favoring the disposition of cases on their merits weighs against case terminating sanctions.

The fourth factor in the Ninth Circuit's test weighs against case terminating sanctions. Stovall, not Mayorga, is responsible for obtaining and using the ill-gotten Football Leaks documents. Dismissing Mayorga's case for the inappropriate conduct of her attorney is a harsh result. But it is, unfortunately, the only appropriate sanction to ensure the integrity of the judicial process. As discussed more fully below, Mayorga has undoubtedly reviewed the Football Leaks documents or at the very least, the filings Stovall based on those documents. If this case progresses, even if Mayorga has different counsel, the Court will be unable to determine how much of her case is based on her independent recollection of events, or her recollection as influenced by the Football Leaks documents. Thus, while this factor weighs against case terminating sanctions, it is outweighed by the other factors.

3. Stovall acted in bad faith.

The Ninth Circuit's decision in *Gomez v. Vernon* stands for the proposition that, even if an attorney believes privilege was waived or that the crime-fraud exception applies, the attorney acts in bad faith when he asks for, receives, and uses privileged information to prosecute a case. See *Gomez v. Veron*, 255 F.3d 1118 (9th Cir. 2001). In *Gomez*, inmates who were suing prison officials communicated with their attorneys via letters. See *id.* at 1123-24. After a prison employee secretly sent one of these letters to the attorneys representing the prison officials, the attorneys asked prison employees to copy and send more documents from the inmates' file, believing that the documents showed that the inmates' attorneys were committing a fraud on the court. See *id.* at 1124-25.

Eight months after first receiving the stolen documents, the attorneys sought advice from an Idaho State Bar official who told them to not read any more documents and to turn them over to the court. See *id.* Despite this advice, the attorneys continued to ask for and receive documents for another month and then used the documents in a motion requesting the inmates' attorneys be held in contempt. See *id.* The district court denied the motion and found that the

1 attorneys' actions "constituted bad faith conduct and warrant[ed] the imposition of sanctions."
2 *See id.* at 1125.

3 The Ninth Circuit affirmed the district court's monetary sanctions² on appeal. *See id.* at
4 1131-34. First, it concluded that the letters were privileged. *See id.* It explained that the
5 "confidential status of the letters was facially evident...[b]ut if that was not enough, the contents
6 of the letters remove[d] all doubt." *Id.* "In short, these documents were of the most sensitive
7 kind—the kind that any trial lawyer would recognize as privileged, highly valuable, very
8 confidential, and potentially devastating in the wrong hands." *Id.*

9 The attorneys argued that their actions were justified because the inmates had waived their
10 privilege and the documents fell under the crime-fraud exception. *See id.* The Ninth Circuit
11 disagreed. *See id.* The inmates did not waive their privilege by placing their file in the restricted
12 section of the prison library. *See id.* While employees could access that section, the prison "had
13 in place reasonable policies providing precautions that were intended to protect and preserve the
14 confidential nature of attorney-client correspondence...the inmates did all they could to secure
15 the documents' confidentiality and [] they did not waive the privilege." *Id.* And the attorneys
16 had no right to disregard the *Zolin* process even though they believed the crime-fraud exception
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19 ² In making this decision, the Ninth Circuit cited American Bar Association Formal Opinion 94-
20 382. While the ABA has withdrawn Formal Opinion 94-382, it has acknowledged the sanctions
21 available to parties who use ill-gotten information. *See* ABA Comm'n on Ethics & Prof'l
Responsibility, Formal Op. 440 (2006). It explained that,

22 If the sender of privileged or confidential material has engaged in
23 tortious or criminal conduct, a lawyer who receives and uses the
24 materials may be subject to sanction by a court....These issues are
25 matters of substantive law, at least in the first instance. To the extent
26 the lawyer would be engaged in criminal conduct, Rule 8.4(b) may
be implicated. Other factual circumstances present may implicate
Rule 8.4(c) (conduct involving dishonesty), but those circumstances
are not the subject of either Formal Opinion 94.382 or this opinion.

27 *Id.* To the extent Stovall argues that *Gomez* is inapplicable by virtue of this withdrawal, his
28 argument would fail because the new Formal Opinion expressly recognizes the use of tortiously
or criminally obtained materials and dishonest conduct as sanctionable.

1 applied. *See id.* The Ninth Circuit explained that the *Zolin* court “underscored the importance of
2 the privilege, even where an attorney seeks to invoke the crime-fraud exception.” *Id.*

3 Having disregarded the attorneys’ justifications, the Ninth Circuit found their actions
4 “tantamount to bad faith.” *Id.* It emphasized that the “notion that receipt of privileged
5 communications imposes a duty on counsel to take some reasonable remedial action is hardly a
6 novel concept.” *Id.* It found the attorneys’ flippancy after receiving guidance from the state bar
7 untenable and chastised the attorneys’ audacity in presenting the documents to the court in a
8 contempt motion. *Id.* The Ninth Circuit summarized that while “all may be fair in war, such is
9 not the case in the judicial arena—the courtroom is not a battlefield.” *Id.* at 1122.

10 Here, even if Stovall truly believed that Ronaldo waived the privilege and that the crime-
11 fraud exception applies, he acted in bad faith by asking for, receiving, and using the Football
12 Leaks documents to prosecute Mayorga’s case.³ Stovall asked for privileged information after
13 learning from the 2017 Der Spiegel article that Football Leaks had access to the documents just as
14 the attorneys in *Gomez* asked for privileged information after learning that prison employees had
15 access to the inmates’ file. But Stovall held on to these documents for fourteen months, much
16 longer than the nine months in *Gomez*, and his argument that he disclosed the documents in the
17 state and federal court complaints is belied by his omission of the word “attorney” and use of Doe
18 and Roe pseudonyms. Rather, much like the attorneys in *Gomez*, Stovall first revealed his
19 possession of these documents by attaching them to a filing.

20 The confidential status of the Football Leaks documents is facially evident, but if that
21 were not enough, the contents should have removed all doubt. Although Stovall never received—
22 or even sought—an ethics opinion like the attorneys in *Gomez*, he had multiple opportunities to
23 recognize the privileged nature of the documents, starting with the 2017 Der Spiegel article,
24 which quotes privileged communications. He certainly should have recognized the privilege

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26 ³ Stovall has denied providing LVMPD with additional documents that he did not produce to
27 Ronaldo. Ronaldo has also not provided evidence that the documents in the LVMPD file came
28 from Stovall or Mayorga. The Court thus does not base its recommendation for terminating
sanctions on the allegation that Stovall provided LVMPD with documents he did not produce to
Ronaldo in this litigation.

1 when he read the Football Leaks documents, riddled as they are with the words “attorney client
2 privileged,” and “work product.” If that were not enough, Stovall should have recognized their
3 content as “of the most sensitive kind—the kind that any trial lawyer would recognize as
4 privileged, highly valuable, very confidential, and potentially devastating in the wrong hands.”

5 But Stovall argues that his actions were justified because Ronaldo waived his privilege,
6 and the Football Leaks documents fall under the crime fraud exception. These arguments fail for
7 the same reasons they did in *Gomez*. Ronaldo did not waive his privilege by having his
8 documents stored in a protected attorney database. While hackers gained access to the database,
9 Ronaldo’s attorneys had reasonable policies providing precautions intended to protect
10 confidential attorney-client correspondence and privileged documents. Ronaldo’s attorneys
11 submitted a declaration that they did all they could to secure the documents. Even though the
12 documents were published, Ronaldo took reasonable steps to secure their confidentiality by filing
13 for injunctive relief in Portugal and Germany. Ronaldo did not waive the privilege. And Stovall
14 had no right to disregard the *Zolin* process even though he believed the crime-fraud exception
15 applied. But Stovall ignored *Zolin*’s purpose: to protect privileged information, even where an
16 attorney seeks to invoke the crime-fraud exception.

17 Stovall adds an additional justification that warrants debunking in no uncertain terms: that
18 he is excused because he was not the one to steal the Football Leaks documents and because he
19 cannot prove that the documents were stolen. Stovall relies heavily on this argument, even
20 asserting to the Court at its most recent hearing that the Court cannot decide the sanctions motion
21 until it knows how Football Leaks obtained the documents. But this information is unverifiable.
22 More importantly, the origins of the Football Leaks documents are too suspicious for Stovall to
23 have ignored in good faith. Stovall was rebuffed in his initial attempts to get the documents from
24 Der Spiegel and Mayorga’s former counsel. Ignoring this red flag, Stovall then emailed Football
25 Leaks, asking specifically for privileged material while making no attempt to verify the source.
26 Stovall’s after-the-fact attempt to legitimize his request to the unknown Football Leaks source
27 only raises more questions. Stovall cites to articles in which “John” is identified as a person
28 arrested for hacking, who “came across” the Football Leaks documents in “thousands of PDFs

1 and emails” that were “pouring in” from “law firms.” These articles again raised massive red
2 flags, which Stovall ignored when he then attached the documents in his later filing. That Stovall
3 did not directly obtain the Football Leaks documents is not a justification for using them.

4 Stovall’s justifications now soundly aside, his actions are tantamount to bad faith. Stovall
5 refused to take any reasonable remedial action after receiving privileged documents. He has
6 behaved flippantly, ignoring every single red flag. His decision to include the documents in
7 complaints while masking their privileged status was alone audacious. His decision to first reveal
8 them attached to a filing was impertinent. And now, his claim that the Football Leaks documents
9 are “fair game” even after the Court struck certain of them is downright abusive. Stovall has
10 acted in bad faith to his client’s—and the profession’s—detriment.

11 4. The prejudice to Ronaldo weighs in favor of dismissal.

12 The Football Leaks documents that Stovall wrongfully obtained are inherently prejudicial
13 to Ronaldo fairly presenting his defense. Stovall’s behavior in using the documents has increased
14 this prejudice astronomically. Mayorga’s case against Ronaldo would probably not exist had
15 Stovall not asked for the Football Leaks documents. The content of Ronaldo’s and his attorneys’
16 privileged communications and work product is woven into Mayorga’s state court and federal
17 court complaints, creating the basis for her causes of action.

18 If that were not enough, Stovall has wielded the documents in a prejudicial way. Unable
19 and unwilling to authenticate the Football Leaks documents himself, Stovall demanded that
20 Ronaldo point out which portions were altered or original. When Ronaldo refused to respond,
21 Stovall included that fact in his motion practice, suggesting that the refusal was unreasonable.
22 Stovall also has a propensity to use the documents whenever possible, treating them as if they
23 were authenticated evidence. Even after the Court struck the Football Leaks documents from the
24 record, Stovall has continued to use their contents to paper the docket with expensive and
25 frivolous motions. For example, Stovall quotes the Football Leaks documents to argue that the
26 settlement agreement was illegal, an issue not in front of this Court. Stovall also uses the Football
27 Leaks documents—in direct violation of *Zolin* and Ninth Circuit precedent—to support his
28

1 unfounded demand for an *in-camera* review. The existing and ongoing prejudice these
2 documents create to Ronaldo’s ability to defend this action weigh heavily in favor of dismissal.

3 5. Lesser sanctions than dismissal will not suffice.

4 For the drastic sanction of dismissal to be proper, the malfeasance must be due to
5 “willfulness, fault or bad faith.” *Anheuser–Busch, Inc. v. Natural Beverage Distributors*, 69 F.3d
6 337, 348 (9th Cir. 1995) (internal quotations and citations omitted); *Jorgensen v. Cassidy*, 320
7 F.3d 906, 912 (9th Cir. 2003). [D]isobedient conduct [within] the control of the litigant is all that
8 is required to demonstrate willfulness, bad faith or fault.” *Henry v. Gill Inds.*, 983 F.2d 943, 948
9 (9th Cir. 1993) (internal quotations omitted). The court has the inherent power to dismiss actions
10 in extreme circumstances, for abusive litigation practices, and to ensure the orderly administration
11 of justice and integrity of the court’s orders. *See Wyle v. R.J. Reynolds Indus., Inc.*, 709 F.2d 585,
12 589 (9th Cir. 1983); *see Fjelstad v. American Honda Motor Co.*, 762 F.2d 1334, 1338 (9th Cir.
13 1985); *see United States v. National Medical Centers, Inc.*, 792 F.2d 906, 912 (9th Cir. 1986).

14 It is not always necessary for the Court to impose less serious sanctions first or to give any
15 explicit warnings. *Valley Eng’rs Inc. v. Electric Engineering Co.*, 158 F.3d 1051, 1057 (9th Cir.
16 1998). It is appropriate to reject lesser sanctions where the court anticipates continued deceptive
17 misconduct. *Anheuser-Busch*, 69 F.3d at 352. “It is well settled that dismissal is warranted
18 where...a party has engaged deliberately in deceptive practices that undermine the integrity of
19 judicial proceedings.” *Id.* at 348.

20 Here, Stovall has acted in bad faith in requesting and using the Football Leaks documents.
21 As a preliminary matter, while the court in *Gomez* only awarded monetary sanctions, the impact
22 that the Football Leaks documents have had on this case is distinguishable. Unlike in *Gomez*,
23 where the attorneys had only used the material to support their contempt motion, here, Stovall has
24 used the documents to support the entire case. Additionally, in *Gomez*, the plaintiffs were the
25 prejudiced party, for whom dismissal would be an inappropriate sanction. Here, however,
26 Ronaldo—the defendant—is the prejudiced party, for whom dismissal is an available sanction.

27 Case terminating sanctions are also necessary. Stovall’s conduct was well within his
28 control. Had Stovall come forward early and cured his own misconduct perhaps alternate

1 sanctions—or no sanctions at all—would suffice. For example, Stovall could have based the
2 complaint on Mayorga’s recollection and Der Spiegel’s publicly available reporting. Stovall
3 could have then obtained the opinion of State Bar counsel before asking for the Football Leaks
4 documents. Upon receiving the Football Leaks documents and noticing they in fact contained
5 privileged communications, Stovall could have stopped reviewing the documents and moved for
6 *in-camera* review. Instead, he has used abusive litigation tactics like deliberately hiding the
7 nature of the documents from the Court by using deceptive language and naming Doe and Roe
8 defendants. He has also undermined the integrity of any future orders this Court may issue. The
9 Court cannot parse out which facts in the complaint come from Mayorga’s own independent
10 recollection and those which come from the Football Leaks documents, especially because
11 Mayorga claims incompetence. Lesser sanctions could not ensure that the Court’s decision on
12 these issues is not based on privileged information.

13 The Court has also already imposed lesser sanctions and given warnings, albeit indirectly.
14 It already struck the Football Leaks documents from one of Mayorga’s filings and found that the
15 privilege had not been waived. (ECF Nos. 67 & 72). But Stovall was not deterred and continued
16 to consider the Football Leaks documents “fair game.” Stovall’s continued extensive reliance on
17 the contents of the Football Leaks documents in his opposition to the motion for sanctions and in
18 moving for *in-camera* review demonstrates that Stovall will only continue to try and use these
19 documents.

20 Moreover, no lesser sanctions would suffice for two reasons. First, because Stovall and
21 Mayorga have read, reviewed, and thoroughly analyzed the Football Leaks documents, their
22 knowledge of the documents’ contents cannot be undone. There is no possible way for this case
23 to proceed where the Court cannot tell what arguments and testimony are based on these
24 privileged documents. Case terminating sanctions must also extend to the arbitrable claims for
25 the same reasons. Mayorga’s claims that the settlement agreement is illegal and violates public
26 policy must “be decided by an arbitrator if Mayorga does not prevail on her mental-capacity
27 challenge.” (ECF No. 72 at 20). But these claims are also premised on the Football Leaks
28 documents. Just like the Court, the arbitrator will be unable to proceed without being able to tell

1 which arguments and testimony are based on privileged documents. Even if the Court were to
2 disqualify Stovall and his office, the Football Leaks documents would still form the basis of
3 Mayorga’s complaint, many of the documents in her case, and, likely, her memory of the
4 settlement negotiations as presented in front of the Court and the arbitrator.

5 Second, if the Court does not grant case-terminating sanctions, Stovall’s actions could
6 have far-reaching, dangerous consequences on the legitimacy of the judicial process. Hackers
7 have increased in sophistication and stealth and attacks on law firms are increasingly prevalent.
8 Using Stovall’s logic, if hacked privileged documents—the origin of which cannot be
9 determined—are circulated online, these documents are “fair game” for an attorney to use to
10 create and prosecute a case. Anything less than case terminating sanctions would create the
11 dangerous precedent that, so long as a party is willing to risk changing attorneys or paying a fine,
12 they can use privileged information to prosecute, and maybe even win, their case. But again,
13 “[w]hile all may be fair in war, such is not the case in the judicial arena—the courtroom is not a
14 battlefield.” *Gomez*, 255 F.3d at 1112. The Court recommends that Ronaldo’s motion for
15 sanctions be granted, and the case dismissed.

16 **ORDER**

17 **IT IS ORDERED** that Mayorga’s motion for *in-camera* review (ECF No. 124) is **denied**.

18
19 **REPORT AND RECOMMENDATION**

20 **IT IS RECOMMENDED** that Ronaldo’s motion for case terminating sanctions (ECF
21 No. 111) be **granted**.

22 **IT IS FURTHER RECOMMENDED** that Mayorga’s action be dismissed with
23 prejudice.

24 DATED: October 6, 2021



25
26 DANIEL J. ALBREGTS
UNITED STATES MAGISTRATE JUDGE

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NOTICE

This report and recommendation is submitted to the United States District Judge assigned to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation may file a written objection supported by points and authorities within fourteen days of being served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely objection may waive the right to appeal the district court’s order. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991).