

APPENDIX

**APPENDIX A: Oral Screening Order of the United States
Court of Appeals for the Ninth Circuit Affirming the
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Further Leave to Amend (February 21, 2019).....App1-3**

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Appendix A

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 21 2019

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JENNIFER LU,

No. 18-16150

Plaintiff-Appellant,

D.C. No. 3:17-cv-07034-VC

v.

MEMORANDUM*

STANFORD UNIVERSITY,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of California
Vince Chhabria, District Judge, Presiding

Submitted February 19, 2019**

Before: FERNANDEZ, SILVERMAN, and WATFORD, Circuit Judges.

Jennifer Lu appeals pro se from the district court's judgment dismissing her employment action alleging federal and state law claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under Fed. R. Civ. P. 12(b)(6). *Hebbe v. Pliler*, 627 F.3d 338, 341 (9th Cir. 2010). We affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

The district court properly dismissed Lu's action because Lu failed to allege facts sufficient to state any plausible claim. *See id.* at 341-42 (although pro se pleadings are to be construed liberally, a plaintiff must present factual allegations sufficient to state a plausible claim for relief); *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) ("The court need not . . . accept as true allegations that contradict matters properly subject to judicial notice or by exhibit" nor "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences."); *see also Bergene v. Salt River Project Agric. Improvement & Power Dist.*, 272 F.3d 1136, 1140-41 (9th Cir. 2001) (setting forth prima facie cases of retaliation and discrimination under Title VII); *Potter v. Firestone Tire & Rubber Co.*, 863 P.2d 795, 819 (Cal. 1993) (discussing elements of an intentional infliction of emotional distress claim under California law).

The district court did not abuse its discretion in denying Lu leave to file a second amended complaint. *See Chappel v. Lab. Corp.*, 232 F.3d 719, 725 (9th Cir. 2000) ("A district court acts within its discretion to deny leave to amend when amendment would be futile"); *see also Chodos v. West Publ'g Co.*, 292 F.3d 992, 1003 (9th Cir. 2002) (district court's discretion "particularly broad" when it has already granted a plaintiff leave to amend).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.

Appendix B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JENNIFER LU,

Plaintiff,

v.

STANFORD UNIVERSITY,

Defendant.

Case No. 17-cv-07034-VC

**ORDER GRANTING MOTION TO
DISMISS**

Re: Dkt. Nos. 35, 36

Jennifer Lu has not alleged any new facts in her amended complaint. Thus, for the reasons stated in the Court's prior order, the complaint is dismissed. *See* Dkt. No. 34. And because it would be futile to allow Lu to further amend her complaint, dismissal is with prejudice and without leave to amend. *See, e.g., Ronje v. King*, 667 Fed. Appx. 968, 969 (9th Cir. 2016).

IT IS SO ORDERED.

Dated: June 12, 2018



VINCE CHHABRIA
United States District Judge

App - 5
Appendix - C
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 23 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JENNIFER LU,

Plaintiff-Appellant,

v.

STANFORD UNIVERSITY,

Defendant-Appellee.

No. 18-16150

D.C. No. 3:17-cv-07034-VC
Northern District of California,
San Francisco

ORDER

Before: FERNANDEZ, SILVERMAN, and WATFORD, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R.

App. P. 35.

Lu's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 25) are denied.

No further filings will be entertained in this closed case.

Appendix D

JENNIFER LU
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PLAINTIFF, in *Pro Se*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

JENNIFER LU,

Plaintiff,

vs.

STANFORD UNIVERSITY, the Board of
Trustees of the Leland Stanford Junior
University,

Defendant.

) CASE NO. CV-17-7034-VC

) **FIRST AMENDED COMPLAINT FOR**
) **DAMAGES FOR:**

-) 1. RETALIATION IN VIOLATION OF
) § 2000E-3(A),
) 2. DISCRIMINATION IN VIOLATION
) OF § 2000E-2(A),
) 3. INTENTIONAL INFLICTION OF
) EMOTIONAL DISTRESS (IED),
) 4. RETALIATION IN VIOLATION OF
) § 12940(H), AND
) 5. RACE DISCRIMINATION IN
) VIOLATION OF §12940(A)

) JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR DAMAGES**INTRODUCTION**

1. This case arises from Defendant Stanford University's ("Stanford") (1) issuing of a new, stricter and more comprehensive employment restriction on Plaintiff Jennifer Lu ("Lu") in 2015 without justification; (2) continual implementation of the September 2008 employment restriction that the state Court of Appeal ruled applicable only where Lu engaged in "disruptive behavior" in applying for jobs; (3) blocking of Lu's job applications and cancellation of Lu's job interviews; and (4) blocking hiring managers from further consideration of Lu's candidacy and refusal to hire her for 286 compatible positions Lu submitted applications from 2014 to 2017.

2. Stanford alleged in September 2008 that Lu engaged in "disruptive behavior in applying for jobs [in 2008]," and that because of Lu's disruptive behavior [in 2008], "it has been determined that you [Lu] are no longer eligible for consideration for any position at Stanford University or any Stanford entity [now]."¹ When the state Court of Appeal reviewed Stanford's motion for summary judgment in October 2013, it determined that Stanford implemented the employment restriction [in 2008] because Lu engaged in "disruptive behavior in applying for jobs [in 2008]," and that Lu's disruptive behavior [in 2008] was a legitimate and un rebutted reason to reject Lu's employment applications [in 2008].² The reasonable inference that can be drawn from the ruling is that the absence of disruptive behavior in applying for jobs, Lu is eligible for consideration for Stanford jobs and for hire. In other words, **no disruptive behavior, no restriction.**

3. From 2014 through February 2017 Lu applied for 286 positions with Stanford and was invited to take assessment tests, for phone and campus interviews and considered for more than 25 positions without any allegation of new "disruptive behavior" by hiring managers or Stanford Office of Staff Employment. In February 2015 a hiring manager invited Lu for a second-round

¹ The phrase "no longer" means "not now as in the past" or "in the past but not now." See Merriam-Webster Dictionary or Cambridge Dictionary.

² The unearthing of the *Secret 2007 Restriction* makes the "disruptive behavior" a plain pretext.

1 interview scheduled a week later. On February 11, 2015 Stanford notified Lu:

2 "... you are no longer eligible for hire at Stanford. This ineligibility
3 extends to all types of positions at Stanford, including continuing and fixed
4 term positions and temporary assignments. As such, your job application is
no longer being considered and your interview ... has been cancelled.
("2015 Restriction")

5 By using the phrase "no longer" Stanford acknowledged that Lu was eligible for hire since 2014.
6 Because there was no new "disruptive behavior" alleged in Lu's applying for jobs, the September
7 2008 Restriction did not apply and the issuing of 2015 Restriction was unjustified.

8 PARTIES

9 4. Plaintiff Jennifer Lu is a citizen of the United States, Residing in Contra Costa
10 County in the State of California.

11 5. Stanford University also known as the Board of Trustees of the Leland Junior
12 University, is a trust with corporate powers under the laws of the State of California, with the main
13 campus located at Stanford, California.

14 JURISDICTION

15 6. This case belongs in federal court under federal question jurisdiction because it is
16 related to Title VII, 42 U.S.C. § 2000e-2(a), 42 U.S.C. § 2000e-3(a), Intentional Infliction of
17 Emotional Distress (IIED), and supplemental jurisdiction under California law.

18 STATEMENT OF FACTS

19 7. Lu was an exemplary employee until she filed discrimination and retaliation
20 complaints with the EEOC in early 2006. Stanford Special Counselor to the University President
21 openly stated in June 2006 that Stanford was "*not happy*" over Lu's complaints with the EEOC
22 (**Exhibit 1**) and a decision was made to keep Lu employed during the EEOC investigation and
23 would fire her once the investigation was over. **Exhibit 2.**

24 8. Stanford eliminated Lu's position on September 7, 2007 under the name of "budget
25 cut" but *relocated* the funds overnight and rehired Lu on September 8, 2007 without her knowledge.

26 9. While designating three University officials and the Office of Staff Employment
27 ("OSE") to assist Lu getting another job, on November 2, 2007 Stanford *secretly* placed a statement
28

1 in Lu's record:

2 "No longer eligible for consideration for any position at Stanford University
3 or any Stanford entity. Contact the School of Medicine Employee Relations'
4 Human Resources Group if questions about this requirement ... for the reason of
5 layoff ("*Secret 2007 Restriction*") (**Exhibit 3**)

6 and terminated Lu's employment without her knowledge. Stanford's Guide Memo 2.1.2 states: "An
7 employee permanently laid off is eligible to apply for employment within the University."

8 10. From September to December 2007 Lu submitted over 30 job applications but never
9 received any response. On December 5, 2007 Lu beg the General Counsel of the University not to
10 block her applications ^{3,4} and the General Counsel responded: "I am not aware of anyone interfering
11 in any way with your getting a job" and encouraged Lu to continue to work with the OSE to find
12 another job at Stanford. **Exhibit 4.**

13 11. With the *Secret 2007 Restriction* in Lu's record, the assistance of Stanford for over
14 ten months did not generate a single job interview for Lu for over 100 job applications Lu
15 submitted. Running out of excuses, the General Counsel made the employment restriction known
16 to Lu under the pretext of Lu's "disruptive behavior in applying for jobs" such as "making an
17 unannounced visit to an HR office," and notified Lu on September 18, 2008 that:

18 "... As a result of your continuing disruptive and harassing conduct,
19 it has been determined that you are no longer eligible for consideration
20 for any position at Stanford University or any Stanford entity."

(emphasis original.) ("*September 2008 Restriction*")

21 In October 2008 Stanford *secretly* placed a new statement in Lu's record:

22 "No longer eligible for consideration for any position at Stanford University
23 or any Stanford entity. Contact the School of Medicine Employee Relations'
24 Human Resources Group if questions about this requirement" ... due to previously
25 leaving the University for reasons of misconduct. (emphasis added).
26 ("*Secret October 2008 Restriction*") **Exhibit 5.**

27 ³ In 2001 Lu relocated to Stanford/Palo Alto areas. In two weeks Lu submitted four job
28 applications, received three job interviews and landed two job offers without any Stanford
experience.

⁴ Stanford admitted in 2015 that the Office of Staff Employment was charged to block Lu's
applications.

1 In October 2008 Lu demanded Stanford retract the restriction because Stanford Policy on Disruptive
 2 Activity did not include “an unannounced visit to an HR office.”^{5, 6} Stanford never responded. Lu
 3 subsequently filed more retaliation and discrimination complaints with the EEOC in 2008 and 2011
 4 and filed a state lawsuit against Stanford in 2009.

5 12. Stanford filed a 74-day mail noticed summary judgment motion against Section 437c
 6 required 80-day mail notice. Lu raised (among other things) that Stanford’s 74-day mail noticed
 7 SJM was untimely; “disruptive behavior” for September 2008 Restriction was pretext because of
 8 the existence of the *Secret 2007 Restriction*;⁵ termination for “misconduct” for *Secret October 2008*
 9 *Restriction* was false. The Court never addressed these issues and granted SJM. Lu appealed the
 10 final judgment and once again raised the issues. When the Court of Appeal reviewed Stanford’s
 11 motion for summary judgment, it adopted Stanford’s statement of facts and argument in its entirety
 12 and once again was silent on the untimely SJM, and determined that Stanford implemented the
 13 September 2008 Restriction (silent on the *Secret 2007 Restriction* and the *Secret October 2008*
 14 *Restriction*) because Lu engaged in “disruptive behavior in applying for jobs [in 2008],” and that
 15 Lu’s disruptive behavior [in 2008] was a legitimate reason to reject Lu’s 2008 job applications.

16 _____
 17 ⁵ Stanford Policy on Disruptive activity states:

- 18 (1) Obstructing or restraining the passage of persons in an exit, entrance, or hallway of a
 building without the authorization of the administration of the school;
- 19 (2) Seizing control of a building or portion of a building to interfere with an administrative,
 educational, research, or other authorized activity;
- 20 (3) Preventing or attempting to prevent by force or violence of the threat of force of violence a
 lawful assembly authorized by the school of administration so that a person attempting to
 21 participate in the assembly is unable to participate due to the use of force of violence or due
 to a reasonable fear the force or violence is likely to occur;
- 22 (4) Disrupting by force or violence of the threat of force or violence a lawful assembly in
 progress; or
- 23 (5) Obstructing or restraining the passage of a person at an exit or entrance to the campus of
 property or preventing or attempting to prevent by force of violence or by threats of force or
 24 violence the ingress or egress of a person to or from the property or campus without the
 authorization of the administration of the school.

25
 26 ⁶ The Medical School demoted and kicked out the HR manager who produced the copies of the
 27 *Secret 2007 Restriction* and the *Secret 2008 Restriction* in response to Lu’s request for production
 28 of documents in the state court proceedings:

1 The reasonable inference that can be drawn from the ruling is that the absence of “disruptive
2 behavior” in applying for jobs, Lu is eligible for consideration for Stanford jobs and for hire. In
3 other words, **no disruptive behavior, no restriction.**

4 13. While Lu was petitioning for review by the Supreme Court of California, Stanford
5 started to respond to and consider her job applications. From 2014 to 2017 Lu applied for 286 jobs,
6 and Stanford never alleged that Lu engaged in any new “disruptive behavior.”

7 14. Lu’s last position at Stanford is Administrative Associate (“AA”) 1A4, which is
8 higher in classification than AA 1A1, 1A2 and 1A3 positions. All the jobs Lu applied for are within
9 the range of AA 1A1 to 1A4, which only requires high school diploma and three years of
10 administrative experience, or combination of education and relevant experience. Lu has a master
11 degree and six-year Stanford administrative experience and more than a dozen year administrative
12 experience in other fields.

13 15. In or around April 2014 Stanford had Stephen Choi at Department of Pathology
14 invite Lu for a phone interview of AA 1A3 position (Job #62473). This was among the first
15 responses to Lu’s job applications since her layoff in 2007. Lu was overjoyed over the interview
16 opportunity that she believed she had finally seen the light at the end of the tunnel. Lu studied the
17 job description sentence by sentence and duty by duty several times, revisited the department’s
18 website multiple times to get updated information and fully prepared to answer all the questions she
19 could anticipate about the position and her qualifications related to the position. The phone finally
20 rang, and the first question Lu was asked was what she had been doing since her layoff. Lu’s
21 intuition told her this was a phony interview. Lu was then asked about her knowledge of the social
22 media such as Facebook (knowledge of the social media was not listed in the job description). Lu
23 was never asked about the position or her qualifications for the position. After the interview, Lu
24 never heard anything further.

25 16. On approximately May 19, 2014 Ronald Levy, Professor in Division of Oncology,
26 interviewed Lu for an AA position and planned for Lu to meet with his staff after that, which never
27 happened.

1 17. On or around August 27, 2014 Jennifer Mason, Assistant Director of Emmett
2 Interdisciplinary Program in Environment & Resources, invited Lu for a “brief phone meeting” to
3 discuss a 50% AA 1A2 position. Mason offered over 40 time-slots for Lu to choose and rejected
4 Lu’s application for “lack of qualification” without interviewing her.

5 18. On August 29, 2014 Office of Staff Employment (“OSE”) invited Lu to take Online
6 Assessment Test for Administrative Associate 1A2 position (Job #63900). Lu had never heard any
7 response from OSE for 1,500 applications she submitted since 2008. Lu attempted to take the test
8 but only found out the provided test link showed the test session was already closed. On October
9 23, 2014 OSE sent Lu another invitation for a 1A3 position (Job #64575), which already expired
10 when Lu opened the test link.

11 19. On September 10, 2014 Joan Berry, Executive Director of McCoy Family Center for
12 Ethics in Society, post mailed that Lu’s application for AA position [1A3] (Job #64017) was
13 received and post mailed two weeks later that Lu’s application was rejected for “lack of
14 qualifications.”

15 20. On September 24, 2014 Christina Kasson, Operations Manager of Division of
16 Oncology, invited Lu for interview of AA 1A4 position (Job #64049). Lu accepted the invitation
17 but never heard from the manager.

18 21. On October 24, 2014 Ha Van, Program Administrator of Cancer Institute, invited Lu
19 for an in-person interview for AA 1A3 position (Job #64562). Lu accepted the invitation but never
20 heard from Mr. Van again.

21 22. On November 21, 2014 Lakshmi Mani, Division Manager of Pulmonary, Asthma
22 and Critical Care Medicine, interviewed Lu in her office for AA 1A4 position (Job #63993). The
23 interview lasted more than an hour and covered all the major responsibilities of the position. Mani
24 was very impressed with Lu’s background, qualifications and experience that she planned for Lu to
25 meet with the senior management team of her Division. That meeting never took place as Stanford
26 admitted in 2015 that Mani was blocked from further considering and hiring Lu.

27 23. On February 5, 2015, Susan Botello at the School of Engineering phone interviewed
28

1 Lu for Professional Education Program Coordinator position 1A4 (Job #65597) and invited Lu for
2 the second-round interview with two panels of six directors. Ms. Botello never alleged or
3 complained about Lu's behavior in her application for and interview of the position. On February
4 11, 2015 the School of Engineering HR representative David Faris emailed Lu:

5 "I have been notified you were informed by the General Counsel of the
6 University that you are no longer eligible for hire at Stanford. This
7 ineligibility extends to all types of positions at Stanford, including
8 continuing and fixed term positions and temporary assignments. As such,
9 your job application is no longer being considered and your interview ...
10 has been canceled." ("2015 Restriction")

11 The phrase "no longer" means "not now as in the past" or "in the past but not now," according to
12 Merriam-Webster Dictionary and Cambridge Dictionary. By using the phrase "no longer"
13 Stanford acknowledged that "Lu was eligible for hire from 2014 up to the moment the new
14 restriction was issued." Lu applied for over 50 positions during this period and was contacted,
15 interviewed and considered for 11 positions, of which four positions are in the same classification
16 as Lu's last position at Stanford, with the rest being in the lower classification. All the positions
17 require high school diploma and three years of administrative experience, or combination of
18 education and relevant experience. Lu has a master degree and six-year Stanford administrative
19 experience and more than a dozen year administrative experience in other fields. Because there
20 was no "disruptive behavior" alleged against Lu in applying for these jobs during this period, the
21 September 2008 Restriction did not apply, but Lu was denied all the jobs. The reasonable
22 inference that can be drawn from these facts is that Stanford continually retaliated against Lu for
23 her record of the protected activity. After a reasonable opportunity for further investigation or
24 discovery, Lu expects to unearth further evidence that supports her claim.

25 24. Based on this new, stricter and more comprehensive retaliatory employment
26 restriction, Lu filed a retaliation claim against Stanford with the EEOC on March 5, 2015.

27 25. On May 7, 2015 Charlotte Toksvig, Director of Faculty Recruiting and Academic
28 Affairs for Graduate School of Business, and her associate interviewed Lu for the Faculty
Recruiting Coordinator position 1A4 (Job #66613). The interview with the associate covered Lu's

1 knowledge and experience related to the position, and the associate expressed the great enthusiasm
2 about having Lu on board. Toksvig had no questions about Lu's qualifications for the job but asked
3 if Lu had performance issues and ever received any written warnings during her employment with
4 the Medical School. Lu was shocked and embarrassed at the questions. Lu answered that she was
5 an exemplary employee until she complained discrimination and retaliation in the workplace, for
6 which she was issued multiple written warnings from January 1, 2005 – April 10, 2006. During the
7 EEOC investigation Stanford removed the written warnings from Lu's record and stated: "The only
8 disciplinary action that Ms. Lu has received is a verbal warning." Lu further stated that she was laid
9 off due to "budget cut," not terminated for "cause." Ms. Toksvig advised that Lu check her
10 personnel file, and Lu later found out the written warnings were in deed placed back in her
11 personnel file. A week later, Ms. Toksvig notified Lu that there was a very competitive applicant
12 pool for the position. Three weeks later, Ms. Toksvig reposted the position to solicit more
13 applicants. Stanford admitted in 2015 that Ms. Toksvig was blocked from hiring Lu.

14 26. Kari Costa is Lu's former coworker at Stanford Continuing Medical Education
15 (CME) Office. Costa and Lu are of different races. Costa verbally harassed Lu multiple times in
16 the workplace and committed serious frauds in her work that subjected Stanford CME Program to
17 2006-2008 probation. Lu reported the incidents which were confirmed through internal and
18 external investigations. Costa submitted her resignation. Stanford refused to accept Costa's
19 resignation and promoted her to "Assistant CME Director" and demoted Lu to "Data Coordinator"
20 and subjected Lu to Costa's supervision. Lu filed race discrimination and retaliation with the
21 EEOC in 2006 and 2007 with Costa as a comparator. Stanford eventually terminated Costa for
22 "gross misconduct" in 2008, yielding to the outrage of Stanford Medical School Community over
23 the CME Program that Costa had subjected to 2006-2008 probation. Upon information and belief,
24 Costa never challenged her termination internally or externally.

25 27. An individual who was terminated for gross misconduct is permanently banned from
26 rehire. (See Stanford Guide Memo 2.1.2.) Stanford, however, rehired Costa in 2015. During the
27 same year Stanford issued Lu a new, stricter and more comprehensive employment restriction
28

1 “no longer eligible for hire.”

2 28. For Costa’s application to reach to any hiring manager and Costa’s eventual rehire,
3 unusual and enormous coordinated efforts among the senior management teams at the University
4 level and the Medical School level must have been made, which must have included President’s
5 Office, the School of Medicine Dean’s Office, University General Counsel’s Office and Office of
6 Staff Employment, just name a few. After a reasonable opportunity for further investigation or
7 discovery, Lu expects to unearth the data further evidences Stanford’s discriminatory rehiring
8 practice that favors former employees terminated for gross misconduct over former layoffs with the
9 record of protected activity.

10 29. From June to July 2015 Stanford had more hiring managers conduct more phony
11 interviews with Lu and had more hiring managers send Lu rejections “after careful consideration”
12 of her applications. Again no “disruptive behavior” was alleged against Lu.

13 30. On October 27, 2015 Stanford had Toni Benevento invite Lu for a phone interview
14 for a position that Lu did not submit an application. A week later, Benevento offered to interview
15 Lu for AA 1A3 position (Job #68662) she applied. Benevento spent more than two weeks
16 scheduling a 10-minute interview, after which she notified Lu that “Unfortunately, the position is
17 now closed and we are no longer recruiting for this position.”

18 31. On February 18, 2016 Stanford had Rebecca McCue, Associate Director for Site
19 Based Research at the Medical School, phone interview Lu for 30 minutes for AA 1A4 position
20 (Job #69418). After the interview, McCue stated she had no concerns about Lu’s qualifications for
21 the job. Two weeks later, McCue notified Lu that “You are not currently in our pool of finalists.
22 We had a very competitive applicant pool.” On April 11, 2016 McCue reposted the position to
23 continue to solicit applicants.

24 32. From April to July 2016 Stanford had more hiring managers send Lu rejections for
25 “lack of qualifications” for the jobs she applied “after careful consideration.”

26 33. On February 20, 2017 Stanford had Alfred Machicado, Associate Director of
27 Department of Otolaryngology, schedule a 20-minutes phone interview with Lu for a 50% AA 1A4
28

1 (Job # 73960). The interview was conducted 11 minutes behind the schedule without any
2 explanation and finished ahead of the time. On February 27, 2017 Mr. Machicado notified Lu that
3 "Because of the quality of candidates, the decision was extremely difficult, however, we have
4 decided to pursue other candidates." Mr. Machicado's superior is Dr. Robert K. Jackler, Chairman
5 of Department of Otolaryngology. Dr. Jackler was directly involved in Lu's layoff due to "budget
6 cut" in 2007. Lu requested Mr. Machicado preserve the job hiring file as she may challenge his
7 hiring decision.

8 34. Stanford frankly admitted in 2015 that the Office of Staff Employment was charged
9 to block Lu's job applications and all organizations were blocked from receiving and considering
10 Lu's job applications and from hiring her because Lu "did not perform" her duties while employed,
11 was terminated for "misconduct" and was "not eligible" for consideration or rehire. After a
12 reasonable opportunity for further investigation or discovery, Lu expects to unearth the evidence
13 that prove all these reasons are false and Stanford continually refused to rehire her only because of
14 her record of protected activity.

15 35. Stanford's abusing of the interviewing process has made each phony invitation and
16 interview a horrified experience to Lu that she felt like she had been deployed to a war zone. She
17 had to ponder: was it a legitimate invitation or a phony one? What did Stanford want from me?
18 What was Stanford's purpose? Who was behind this invitation? A lot of time Lu had to deliberate
19 on these questions for hours and sometimes for days before accepting an invitation. Lu had to
20 convince herself again and again "Don't feel ashamed of yourself, you did not do anything wrong,
21 be brave, be strong, you need a job and you want to work, that's your constitutional right, that's
22 your civil right!" From 2014 to 2017 Stanford invited and considered Lu for over 25 jobs and most
23 of the interviews were the phony ones. Many time, Lu could not take it anymore and wanted to
24 bypass the "opportunity," to suspend the interviews, or to demand the interviewers to stop harassing
25 her and shaming her, but she could not because she needed a job and she wanted to work which is
26 the most important part in her life. When several hiring managers showed the keen interest in her
27 qualifications, knowledge, and skills, Stanford immediately declared that Lu was not eligible for
28

1 hire and blocked the hiring managers from further considering her and/or hiring her.

2 36. On March 5, 2015, June 2, 2015 and December 8, 2016 Lu filed claims of continual
3 retaliation and discrimination against Stanford with the U.S. Equal Employment Opportunity
4 Commission. On or about September 23, 2017, Lu received Notices of Suit Rights, copies of which
5 are attached hereto as **Exhibit 6** and incorporated by reference herein. On or about December 20,
6 2016 Department of Fair Employment & Housing issued Right-To-Sue Letter, which Lu received
7 on approximately December 22, 2016, a copy of which is attached hereto as part of **Exhibit 6** and
8 incorporated by reference herein.

9
10 **COUNT I**
RETALIATION
IN VIOLATION OF TITLE VII, 42 U.S.C. § 2000E-3(A)

11 37. Lu incorporates herein paragraphs 1 through 36 and further alleges:

12 38. Stanford has engaged in intentional, illegal, continual post-employment retaliation
13 against Lu since 2014 by refusing to rehire her only because Stanford was *not happy* over Lu's use
14 of the EEOC processes and legal proceedings since 2006. Said retaliation consisted of, but was not
15 limited to, issuing a new, stricter and more comprehensive employment restriction on Lu in 2015
16 without justification after considering her job applications; continually implementing the September
17 2008 Restriction that the state Court of Appeal ruled applicable only if "disruptive behavior" in
18 which Lu engaged in applying for jobs; falsifying Lu's layoff status as "termination for
19 misconduct;" placing unjustified written warnings back in Lu's personnel file upon the completion
20 of the EEOC investigation; cancelling Lu's job interviews; blocking Lu's job applications; blocking
21 hiring managers from getting access to Lu's job applications, from considering and/or from further
22 considering her and from hiring her; treating Lu worse than former employees who were terminated
23 for gross misconduct and who are permanently banned from rehire; treating Lu worse than all the
24 other layoffs in terms of her reemployment right; rehiring her former coworker Costa simply
25 because Costa has no record of protected activity although Costa has the record of "gross
26 misconduct" and is permanently banned from rehire; and refusing to rehire Lu for over 286
27 positions she was fully qualified.

39. As a direct and proximate result of Stanford's acts against Lu because of her record of protected activity, Lu, at the age of 60, has had no means to make a living and has suffered and continues to suffer substantial losses, including the loss of past and future earnings, fringe benefits, deferred compensation, and other employment benefits she would have enjoyed had she not been retaliated against.

40. As a further direct and proximate result of Stanford's acts, Lu has suffered and continues to suffer impairment and damage to her good name and reputation by Stanford.

41. As a further direct and proximate result of Stanford's acts, Lu has suffered and continues to suffer severe and lasting embarrassment, humiliation and anguish, and caused to suffer great mental and emotional distress, loss of enjoyment of life, loss of enjoyment from working, and other incidental and consequential damages and expenses.

42. The conduct of Stanford was outrageous and malicious, was intended to injure Lu, and was done with reckless indifference to Lu's protected civil rights, and by way of punishment and example, and to prevent future similar treatment of other layoffs with the record of protected activity, Lu prays that punitive damages be assessed against Stanford, pursuant to the relevant Federal law.

COUNT II
RACE DISCRIMINATION
IN VIOLATION OF TITLE IIV, 42 U.S.C. § 2000E-2 (A)

43. Lu incorporates herein paragraphs 1 through 36 and further alleges:

44. Stanford has engaged in intentional, illegal, continual post-employment race discrimination against Lu since 2014 by refusing to rehire her based on her race (Asian) in comparison to Costa (Caucasian). Said discrimination consisted of, but was not limited to, facilitating and helping Costa's job applications while blocking Lu's job applications; blatantly disregarding Costa's record of gross misconduct while relentlessly and continually implementing the September 2008 Restriction in the absence of disruptive behavior in Lu's application for jobs; rehiring Costa even if she is permanently not eligible for rehire but refusing to rehire Lu even if she is eligible for rehire, and, ultimately, refusing to rehire Lu for 286 positions she was fully qualified.

1 45. As a direct and proximate result of Stanford's aforesaid discriminatory acts
2 against Lu on the basis of her race, Lu has had no means to make a living, has suffered and
3 continues to suffer substantial losses, including the loss of past and future earnings, fringe benefits,
4 bonuses, deferred compensation, and other employment benefits.

5 46. As a further direct and proximate result of Stanford's aforesaid actions, Lu has
6 suffered and continues to suffer impairment and damage to Lu's good name and reputation by
7 Stanford.

8 47. As a further direct and proximate result of Stanford's actions, Lu has suffered and
9 continues to suffer severe and lasting embarrassment, humiliation and anguish, and caused to suffer
10 great mental and emotional distress, loss of enjoyment of life, loss of enjoyment from working, and
11 other incidental and consequential damages and expenses.

12 48. The conduct of Stanford was outrageous and malicious, was intended to injure
13 Lu, and was done with reckless indifference to Lu's protected civil rights, and by way of
14 punishment and example, and to prevent future similar treatment of other layoffs in a similar
15 condition, Lu prays that punitive damages be assessed against Stanford, pursuant to the relevant
16 Federal law.

17
18 **COUNT III**
19 **INTENTIONAL INFLICTION OF**
 EMOTIONAL DISTRESS (IIED)

20 49. Lu incorporates herein paragraphs 1 through 36 and further alleges:

21 50. Stanford has had the complete knowledge that Lu sustained and suffered the major
22 depressive disorder when she was involuntarily transferred by Stanford in 2006 with a threat to fire
23 her within 48 hours in response to her then EEOC complaint. Stanford has also known that Lu
24 would be particularly susceptible to job intimidation and that Lu has had no other means to make a
25 living. Said intentional infliction of emotional distress consisted of, but was not limited to,
26 conducting fake or phony interviews from 2014 to 2017 without an intention to hire Lu; continually
27 implementing the September 2008 Restriction while conducting phony interviews; issuing a new,
28

1 stricter and more comprehensive employment restriction while conducting phony interviews.

2 51. As a direct and proximate result of Stanford's actions, Lu has suffered
3 and continues to suffer severe and lasting embarrassment, humiliation and anguish, and caused to
4 suffer great mental and emotional distress, loss of enjoyment of life, loss of enjoyment from
5 working, and other incidental and consequential damages and expenses.

6 52. As a further direct and proximate result of Stanford's aforesaid actions, Lu has had
7 no means to make a living since 2014 and has suffered and continues to suffer substantial financial
8 losses, including the loss of past and future earnings, fringe benefits, bonuses, deferred
9 compensation, and other employment benefits.

10 53. As a further direct and proximate result of Stanford's aforesaid actions, Lu has
11 suffered and continues to suffer impairment and damage to her good name and reputation by
12 Stanford.

13 54. The conduct of Stanford was outrageous and malicious, was intended to injure
14 Lu, and was done with reckless indifference to Lu's protected civil rights, and by way of
15 punishment and example, and to prevent future similar treatment of other layoffs in a similar
16 condition, Lu prays that punitive damages be assessed against Stanford, pursuant to the relevant
17 Federal law.

18
19 **COUNT IV**
RETALIATION
20 **IN VIOLATION OF CAL. GOV'T CODE § 12940(H)**

21 55. Lu incorporates herein paragraphs 1 through 36 and further alleges:

22 56. Stanford has engaged in intentional post-employment retaliation against Lu since
23 2014 by refusing to rehire her because of her record of protected activity. Said retaliation consisted
24 of acts listed in paragraph 38, which Lu incorporates herein.

25 57. As a direct and proximate result of Stanford's acts against Lu on the basis of her
26 record of protected activity in violation of Cal. Gov't Code § 12940(h), Lu has suffered and
27 continues to suffer the damages listed in paragraphs 39 through 42, which Lu incorporates herein.
28

**COUNT V
RACE DISCRIMINATION
IN VIOLATION OF CAL. GOV'T CODE § 12940(A)**

58. Lu incorporates herein paragraphs 1 through 36 and further alleges:

59. Stanford has engaged in intentional post-employment race discrimination against Lu since 2014, in comparison to Costa, for refusing to rehire her because of her race, in violation of Cal. Gov't Code § 12940(a). Said discrimination was exemplified in paragraph 44, which Lu incorporates herein.

60. As a direct and proximate result of Stanford's acts against Lu on the basis of her race in violations of Cal. Gov't Code § 12940(a), Lu has suffered and continues to suffer the damages listed in paragraphs 45 through 48, which Lu incorporates herein.

PRAYER FOR RELIEF

Lu requests that the Court enter judgment against Stanford as follows:

(A) declaring Stanford's 2015 Restriction is illegal;

(B) declaring Stanford's continual implementation of the September 2008 Restriction is illegal in the absence of "disruptive behavior";

(C) awarding Lu full front pay, full back pay, compensatory damages, punitive damages, pre-judgment interest and gross-up;

(D) awarding Lu her costs, attorneys fees, expenses and interest;

(E) granting temporary, preliminary, and permanent injunctive relief prohibiting Stanford from engaging in further retaliatory and discriminatory conducts; and

(F) granting Lu such further relief as the Court may decide is warranted.

DEMAND FOR JURY TRIAL

Lu demands a jury trial on all issues.

Date: April 6, 2018

/s/ Jennifer Lu
Plaintiff in *Pro Se*

Appendix E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JENNIFER LU,

Plaintiff,

v.

STANFORD UNIVERSITY,

Defendant.

Case No. 17-cv-07034-VC

**ORDER GRANTING MOTION TO
DISMISS**

Re: Dkt. No. 20

Stanford's Motion to Dismiss is granted.

1. Lu alleges that Stanford has refused to hire her for around 200 positions that she has applied to since 2014. She further alleges that Stanford did not hire her because of her race and her age, and in retaliation for past protected activity. Dkt. No. 1, Complaint at ¶¶ 11, 13, 91, 99, 106, 113-15, 121, 125, 129. Lu's complaint contains detailed allegations about her numerous attempts to seek employment at Stanford since 2014. *See id.* at ¶¶ 13-34, 36-45, 54-73. But the reasonable inference that can be drawn from these facts is that Stanford and its employees did not offer Lu a job because Stanford permanently banned Lu from working for Stanford after she was laid off in 2007.¹ *See id.* at ¶¶ 9, 11, 34. (It is also reasonable to infer that, at times,

¹ Though Lu alleged in her complaint that Stanford revoked the ban in 2012, Lu admits in her opposition that the ban was never revoked. Dkt. No. 20, Opp'n at 1-2, 7. This fact is confirmed by the 2015 email from David Faris to Lu. Dkt. No. 20-2, Request for Judicial Notice Ex. 7 at 1-2; *see also United States v. Corinthian Colleges*, 655 F.3d 984, 998-99 (9th Cir. 2011) (explaining that documents referenced in the complaint can be considered on a motion to dismiss if central to the plaintiff's claim and there is no question as to the document's authenticity); *Manzarek v. St. Paul Fire & Marine Insurance Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).

Stanford employees who were unaware of Stanford's policy denied Lu employment merely because she was not qualified or because another candidate was more qualified, but their decision did not prevent Lu from obtaining employment, because the permanent bar would have ultimately done that.) The facts do not support a plausible inference that Lu was ever denied employment because of her race, her age, or her past protected activity. *See Landers v. Quality Communications, Inc.*, 771 F.3d 638, 641 (9th Cir. 2015) ("A claim for relief is plausible on its face 'when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009))).

Assume for the sake of argument only that Lu has alleged facts that state a plausible claim that Stanford implemented the hiring ban to retaliate against Lu for filing complaints with the California Department of Fair Employment and Housing and the Equal Employment Opportunity Commission. *See* Complaint at ¶¶ 5-11, 34; *see also* Dkt. No. 20-2, Request for Judicial Notice Ex. 2 at ¶¶ 8. Even so, Lu cannot bring a claim that depends on the theory that Stanford implemented the hiring ban to retaliate against Lu for filing complaints with the DFEH and the EEOC, because this issue was already "argued and decided" in prior litigation before the Superior Court for the County of Santa Clara and the California Court of Appeals. *Cf. Lucido v. Superior Court*, 51 Cal. 3d 335, 341-42 (1990) (discussing California standard for issue preclusion). In her prior suit, Lu alleged (among other things) that Stanford retaliated against her by denying applications for re-employment after she was laid off in 2007. Dkt. No. 20-2, Request for Judicial Notice Ex. 2 at ¶¶ 112-127; Dkt. No. 20-2, Request for Judicial Notice Ex. 6 at 3-4. When the Court of Appeals reviewed Stanford's motion for summary judgment in that case, it determined that Stanford implemented the hiring ban because Lu engaged in "disruptive behavior in applying for jobs," and that her disruptive behavior was a legitimate and un rebutted reason to reject Lu's employment applications. Dkt. No. 20-2, Request for Judicial Notice Ex. 6 at 4, 9-10.

Thus, Lu's claims of retaliation and discrimination are dismissed because they are

implausible or barred by the doctrine of issue preclusion.

2. Lu also alleges that Stanford has through its conduct intentionally inflicted emotional distress on her. Complaint at ¶¶ 112-119. This claim is also dismissed. Lu has not pleaded facts that show Stanford engaged in "extreme and outrageous conduct." *Hughes v. Pair*, 46 Cal. 4th 1035, 1050 (2009); *Alcorn v. Anbro Engineering, Inc.*, 2 Cal. 3d 493, 496-99 (1970).

3. It does not appear that Lu can plead facts to state a plausible claim. Leave to amend is nonetheless granted because there remains a (very slim) possibility that Lu could plead a plausible claim. *See Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). If Lu amends her complaint, she must file the amended complaint within 14 days of this order.

Lu is warned that any amended complaint must comply with Federal Rule of Civil Procedure 11, including the requirement that the pleading is "not being presented for any improper purpose, such as to harass," and the requirement that "the factual contentions have evidentiary support, or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery." Fed. R. Civ. P. 11(b).

IT IS SO ORDERED.

Dated: March 26, 2018



VINCE CHHABRIA
United States District Judge