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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PETER P NGHIEM,
Plaintiff,
v.
SANTA CLARA UNIVERSITY, et al.,
Defendants.

Case No. 21-cv-06872-PCP

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT AND
DENYING RULE 56(D) MOTION**

Dkt. Nos. 67, 77

Peter Nghiem, a former part-time adjunct lecturer, filed this employment discrimination lawsuit against Santa Clara University (SCU) alleging race and age discrimination. SCU moves for summary judgment, and Nghiem moves to delay summary judgment under Federal Rule of Civil Procedure 56(d). For the reasons that follow, the Court grants SCU’s motion for summary judgment and denies Nghiem’s Rule 56(d) motion.

BACKGROUND

Nghiem was a quarterly part-time adjunct lecturer (QAL) within the Department of Computer Science and Engineering (COEN) at SCU from 2018–2020. He was 60–62 years old during the relevant time period and is of Vietnamese descent. The COEN Department was chaired by Nam Ling, who is of Chinese descent. Nghiem taught two courses (COEN 210 and COEN 389) at SCU in Fall 2019 and was scheduled to teach these courses again in both Winter 2019 and Spring 2020. Purportedly because of SCU’s policy that a course with fewer than seven registered students will be cancelled, both courses were cancelled for those two terms. Nghiem was scheduled to teach COEN 210 again in Fall 2020, but the course was cancelled for the same reason.

Nghiem was not rehired as a QAL in Spring 2021, which SCU claims was due to his five

1 cancelled low-enrollment courses over the four terms. Nghiem alleges, however, that his courses
2 were cancelled because of his race and his age.

3 Nghiem also alleges that he was denied a full-time position because of these protected
4 characteristics. In support of that claim, he alleges that Chairperson Nam Ling told him in
5 December 2019 that he “had not been considered for the openings because of [his] old age” and
6 that the Department was “looking for younger PhD graduates who focused more in doing research
7 even though they could not teach well.” Dkt. No. 86, at 8.

8 In a separate incident, Nghiem alleges that SCU’s Online / Hybrid Learning Specialist
9 Jeremy Kemp subjected him to harassment when Kemp implied that Nghiem was not qualified to
10 teach Computer Architecture. Specifically, Nghiem alleges that Kemp said that “Peter did not
11 know his subject matter because he could not explain it to a 6-year-old,” after which Nghiem filed
12 a complaint with SCU’s Title IX Office in August 2019. Dkt. No. 59, at 5. Another workshop
13 participant (Brian Larkin) also allegedly reported this incident to the Title IX Office.

14 Finally, Nghiem alleges that Nam Ling recruited his daughter Grace Ling, who took
15 Nghiem’s COEN 210 course, to “calumniate” Nghiem by posting a negative review on
16 ratemyprofessor.com in December 2019. Nghiem filed a formal complaint against Grace Ling
17 with SCU in January 2020.

18 Nghiem thereafter filed this employment discrimination lawsuit alleging: (1) race
19 discrimination and retaliation in violation of Title VII against SCU; (2) race discrimination and
20 retaliation in violation of 42 U.S.C. § 1981 against SCU and individuals Nam Ling and Jeremy
21 Kemp; (3) age discrimination and retaliation in violation of the federal Age Discrimination in
22 Employment Act (ADEA) against SCU; (4) race and age discrimination and retaliation in
23 violation of California’s Fair Employment and Housing Act (FEHA) against SCU; (5) intentional
24 infliction of emotional distress against SCU and individual defendants; and (6) negligent infliction
25 of emotional distress against SCU and individual defendants. He requests declaratory relief,
26 injunctive relief, compensatory damages, consequential damages, punitive damages, and
27 attorneys’ fees. SCU now moves for summary judgment.

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1 employment action; and (4) he was treated less favorably than similarly situated employees
2 outside of his protected class. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1981).
3 Once the plaintiff meets this initial burden, the burden then shifts to the employer “to articulate
4 some legitimate, nondiscriminatory reason for the” adverse employment action. *Id.* The plaintiff
5 retains the burden of persuasion and can then rebut this purported nondiscriminatory reason by
6 providing evidence that it is pretextual. *Texas Dept. of Community Affairs v. Burdine*, 450 U.S.
7 248, 256 (1981).

8 Here, SCU argues that the cancellation of Nghiem’s courses and the decision not to rehire
9 him as a QAL were due to the COEN Department’s policy of cancelling courses with fewer than
10 seven enrolled students. Dkt. No. 67-2. Acting Chairperson Silvia Figueira (who headed the
11 COEN Department while Nam Ling was on sabbatical from Fall 2019 to Winter 2020) states that
12 she cancelled Nghiem’s COEN 210 and COEN 389 courses in Spring 2020 due to low enrollment.
13 *Id.* at 2. Figueira notes that four other courses were also cancelled that term for the same reason,
14 that none of those professors were Vietnamese, and that two were younger than Nghiem. SCU
15 thus contends that it had a valid nondiscriminatory reason for its actions and that Nghiem was not
16 treated less favorably than similarly situated employees outside of his protected classes.

17 Nghiem responds that his courses were cancelled because of his protected characteristics.
18 But he fails to present any *evidence* suggesting that the adverse employment decisions were made
19 because of his race or age, as he must do to rebut SCU’s showing of a legitimate,
20 nondiscriminatory reason for the cancellations. Dkt. No. 87, at 11. Indeed, Nghiem acknowledged
21 in his deposition that his Spring 2020 courses were cancelled at the last minute because of low
22 enrollment. Dkt. No. 67-1, at 5–7. Because Nghiem has not rebutted SCU’s showing, summary
23 judgment must be granted to defendants on all claims arising from the cancellation of his courses
24 and the decision not to rehire him.

25 Regarding his earlier rejection from a full-time faculty position, Nghiem argues that Nam
26 Ling’s statement to him that Nghiem had “not been considered for the openings because of [his]
27 old age” shows that SCU’s purportedly nondiscriminatory rationale for that decision is pretextual.
28 He contends that the comment amounts to a “clearly sexist, racist, or similarly discriminatory

1 statement” by SCU and is therefore direct evidence of pretext. *Coghlan v. American Seafoods Co.*,
2 413 F.3d 1090, 1095 (9th Cir. 2005); *see also Cordova v. State Farm Ins. Cos.*, 124 F.3d 1145,
3 1149 (9th Cir. 1997) (holding on appeal from summary judgment that the employer’s sole
4 derogatory comment that employee was a “dumb Mexican” was enough to create an inference of
5 discriminatory motive). Nghiem further argues that Nam Ling’s comment directly demonstrates
6 bias and that no further evidence is needed to find discriminatory animus at the summary
7 judgment stage. *See EEOC v. Boeing Co.*, 577 F.3d 1044, 1049 (9th Cir. 2009) (holding that “very
8 little” direct evidence is required to survive summary judgment); *see also Chuang v Univ. of Cal.*
9 *Davis*, 225 F.3d 1115, 1124 (9th Cir. 2000) (“With direct evidence, a triable issue as to the actual
10 motivation of the employer is created even if the evidence is not substantial.”).

11 SCU, however, has presented un rebutted evidence that Nam Ling was not part of the
12 selection committee responsible for screening applicants for full-time faculty positions between
13 2017 and 2021, Dkt. No. 87-2, and Nghiem has not provided any evidence demonstrating why
14 Nam Ling would have material knowledge of that process notwithstanding his noninvolvement. In
15 the absence of such a showing, Nghiem cannot establish that Nam Ling’s statement provides
16 competent evidence of the reasons Nghiem was rejected from the role. Such a “stray” remark by a
17 nonparticipant lacking reliable knowledge of the events at issue is insufficient, standing alone, to
18 establish discrimination. *Merrick v. Farmers Ins. Group*, 892 F.2d 1434, 1438 (9th Cir. 1990).
19 Indeed, as Silvia Figueira (who was on the relevant selection committee) points out, over 100
20 applications were received and only eight candidates, all with stronger research and publication
21 records than Nghiem, were interviewed. Dkt. No. 87-1. Other than Nam Ling’s comment, Nghiem
22 presents no evidence that the selection committee (of which Ling was not a member)
23 discriminated against Nghiem in any way.

24 In sum, SCU has provided valid nondiscriminatory reasons for its cancellation of
25 Nghiem’s courses, its decision not to rehire him as a QAL, and its rejection of his application for a
26 full-time position. Because Nghiem has not provided evidence demonstrating that there is any
27 genuine dispute of material fact, Nghiem’s discrimination claims fail and the Court grants
28 summary judgment in favor of SCU.

1 **B. SCU Is Entitled to Summary Judgment on Nghiem’s Retaliation Claims.**

2 SCU also argues that it is entitled to summary judgment on Nghiem’s retaliation claims
3 under Title VII, § 1981, ADEA, and FEHA. To establish a prima facie case of retaliation, a
4 plaintiff must show that (1) he engaged in protected activity; (2) he suffered a materially adverse
5 action; and (3) there was a causal relationship between the two. *See Westendorf v. W. Coast*
6 *Contractors of Nev., Inc.*, 712 F.3d 417, 422 (9th Cir. 2013) (citing *Burlington Northern & Santa*
7 *Fe Ry. Co. v. White*, 548 U.S. 53, 57 (2006)). Here, Nghiem alleges that Jeremy Kemp subjected
8 him to harassment by making comments implying that Nghiem was not qualified to teach
9 Computer Architecture, that he engaged in protected activity by submitting a complaint with
10 SCU’s Title IX Office, and that he subsequently suffered material adverse action by having his
11 courses cancelled and by not being rehired as a QAL. Dkt. No. 85, at 18–19. He alleges that his
12 complaint also resulted in the disparaging review from Grace Ling, who purportedly aided and
13 abetted Nam Ling.

14 SCU is entitled to summary judgment on Nghiem’s claim for retaliation because Nghiem
15 cannot establish a causal relationship between his protected activity and the materially adverse
16 employment actions at issue. As SCU notes, neither Nam Ling nor Figueira were aware of the
17 complaint made against Kemp at the time it was made. Dkt. Nos. 67-1, 67-2. And Kemp had no
18 role in the alleged adverse action against Nghiem. Thus, the Title IX complaint was disconnected
19 from the decision to discontinue Nghiem’s courses and not rehire him as a QAL. Likewise,
20 Nghiem’s claim that Grace Ling “aided and abetted” Nam Ling is unsubstantiated. While Nghiem
21 speculates that Nam Ling directed his daughter to submit the review as retaliation for Nghiem’s
22 Title IX complaint, he has not provided any evidence to support this assertion.

23 Nghiem separately contends that his January 2020 complaint against Grace Ling after she
24 posted her review may have resulted in the decision to cancel his Spring 2020 courses. Again,
25 however, Nam Ling was on sabbatical during that time and was not responsible for course
26 cancellations. Since there is no evidence that Grace Ling could have influenced Acting
27 Chairperson Silvia Figueira to cancel Nghiem’s courses, Nghiem’s retaliation claims fail. The
28 Court therefore grants summary judgment in favor of SCU on these claims as well.

1 **C. SCU Is Entitled to Summary Judgment on Nghiem’s Emotional Distress Claims.**

2 Finally, SCU argues that it is entitled to summary judgment on Nghiem’s intentional
3 infliction of emotional distress and negligent infliction of emotional distress claims. To state a
4 cause of action for intentional infliction of emotional distress, the plaintiff must show: (1)
5 outrageous conduct by the defendant; (2) the defendant intended to cause or recklessly disregarded
6 the probability of causing emotional distress; (3) the plaintiff suffered severe or extreme emotional
7 distress; and (4) actual and proximate causation of emotional distress by defendant’s outrageous
8 conduct. *Yau v. Santa Margarita Ford, Inc.*, 229 Cal.App.4th 144, 160 (Cal. 2014). Similarly, to
9 prevail on a claim for negligent infliction of emotional distress, the plaintiff must establish that:
10 (1) the defendant was negligent; (2) the plaintiff suffered serious emotional distress; and (3) the
11 defendant’s negligence was a substantial factor in causing the plaintiff’s serious emotional
12 distress. *Id.*

13 Here, Nghiem asserts intentional infliction of emotional distress and negligent infliction of
14 emotional distress claims against all defendants, including individuals Nam Ling and Jeremy
15 Kemp. Specifically, Nghiem argues that the comments made by these individuals resulted in a loss
16 of wages, emotional distress, and physical injuries (including cancer recurrence in Fall 2021). Dkt.
17 No 86, at 23. Nghiem contends that the comments made by the two individuals were extreme and
18 outrageous because they should have known that he previously survived a stroke in 2018 and had
19 just recently recovered from prostate cancer in 2019. *Id.* SCU responds that the intentional
20 infliction of emotional distress claim should fail because there was no extreme or outrageous
21 conduct, and there was no intent to cause Nghiem emotional distress. SCU also contends that the
22 intentional infliction of emotional distress and negligent infliction of emotional distress claims
23 both fail because there is a lack of proximate causation. Dkt. No. 67, at 17.

24 The comments made by Nam Ling and Jeremy Kemp do not meet the high bar of extreme
25 and outrageous conduct needed to establish a claim for intentional infliction of emotional distress.
26 *Janken v. GM Hughes Electronics*, 46 Cal.App.4th 55, 80 (Cal. 1996) (“An essential element of
27 such a claim is a pleading of outrageous conduct beyond the bounds of human decency.”).
28 Moreover, Nghiem does not present evidence that either individual *intended* to cause him

1 emotional distress. As to the negligent infliction of emotional distress claim, Nghiem fails to
2 demonstrate causation between the individuals' comments and his purported cancer recurrence.
3 And without a manifestation of physical symptoms, Nghiem must show that he suffered *serious*
4 emotional distress. *Molien v. Kaiser Foundation Hospitals*, 27 Cal.3d 916, 930 (Cal. 1980).
5 Because Nghiem fails to make the showing that the comments had the requisite impact on his
6 emotional state, both the intentional infliction of emotional distress and negligent infliction of
7 emotional distress claims fail. Accordingly, the Court also grants summary judgment in favor of
8 SCU on these state law tort claims.

9 **II. The Court Denies Nghiem's Rule 56(d) Motion.**

10 In the alternative, Nghiem argues that the Court should delay summary judgment pending
11 further discovery under Rule 56(d). He contends that SCU has been evasive in responding to his
12 interrogatories and document production requests. Dkt. No. 77. In response, SCU argues that
13 Nghiem has had ample time to engage in discovery given that the lawsuit has been ongoing for
14 more than two years yet he has never deposed any of the individual defendants. SCU also denies
15 Nghiem's allegations of being evasive. Specifically, SCU notes that it responded to Nghiem's
16 June 20, 2023 requests for production and special interrogatories, but found many of the requests
17 to be "compound, vague, and ambiguous." After the parties met and conferred several times,
18 Nghiem refined his requests, and SCU provided a few additional answers.

19 Nghiem found the subsequent answers inadequate and argues that they were not fully
20 responsive to his requests. But finding a party's responses to discovery requests unsatisfactory
21 does not on its own establish a basis for Rule 56(d) relief. As SCU notes, Nghiem could have filed
22 a motion to compel further responses, but did not do so at any time prior to the hearing on SCU's
23 motion for summary judgment. Considering that this lawsuit has been ongoing for more than two
24 years and that Nghiem has failed to depose any of the individual defendants, the Court is not
25 convinced that there are likely to be facts that Nghiem will elicit from further discovery that would
26 be necessary to oppose SCU's motion for summary judgment. Accordingly, the Court denies
27 Nghiem's Rule 56(d) motion.
28

1 **CONCLUSION**

2 For the foregoing reasons, the Court grants summary judgment in favor of SCU and denies
3 Nghiem’s Rule 56(d) motion. The Clerk shall enter judgment and close the case.

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5 **IT IS SO ORDERED.**

6 Dated: January 5, 2024

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9 P. Casey Pitts
10 United States District Judge

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United States District Court
Northern District of California