

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 26 2018

FOR THE NINTH CIRCUIT

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

LIQIANG WEI,

Plaintiff-Appellant,

v.

UNIVERSITY OF CALIFORNIA,
BERKELEY, Department of Physics,

Defendant-Appellee.

No. 18-16146

D.C. No. 3:18-cv-00230-CRB

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

Submitted October 22, 2018**

Before: SILVERMAN, GRABER, and GOULD, Circuit Judges.

Liqiang Wei appeals pro se from the district court's judgment dismissing his employment action alleging discrimination claims under federal law. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii). *Watison v. Carter*, 668 F.3d

* 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).

1108, 1112 (9th Cir. 2012). We affirm.

The district court properly dismissed Wei’s action because Wei failed to allege facts sufficient to show that an applicant outside of his protected status and with similar qualifications received the positions for which he applied. *See Fonseca v. Sysco Food Servs. of Ariz., Inc.*, 374 F.3d 840, 847, 850 (9th Cir. 2004) (setting forth prima facie case of discrimination under Title VII and explaining that same legal principles apply under 42 U.S.C. § 1981); *Cotton v. City of Alameda*, 812 F.2d 1245, 1248 (9th Cir. 1987) (setting forth prima facie case of age discrimination under the Age Discrimination in Employment Act based on a failure or refusal to hire); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (to avoid dismissal, “a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face” (citation and internal quotation marks omitted)).

We reject as without merit Wei’s contentions regarding the district judge.

AFFIRMED.