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3 UNITED STATES DISTRICT COURT  
4 NORTHERN DISTRICT OF CALIFORNIA  
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7 ALFRED LAM, et al.,

8 Plaintiffs,

No. C 10-4641 PJH

9 v.

**ORDER GRANTING MOTION  
TO DISMISS**10 THE CITY AND COUNTY OF SAN  
11 FRANCISCO, et al.,12 Defendants.  
13 \_\_\_\_\_/

14 Defendant's motion to dismiss plaintiffs' second, third, and fourth causes of action  
15 came on for hearing before the court on November 9, 2011. Plaintiffs appeared through  
16 their counsel, Dow Patten. Defendant City and County of San Francisco ("CCSF")  
17 appeared through its counsel, Rafal Ofierski. Having reviewed the parties' papers and  
18 carefully considered the parties' oral arguments and the relevant legal authority, and good  
19 cause appearing, the court hereby GRANTS defendant's motion to dismiss, for the reasons  
20 stated at the hearing, and summarized as follows:

21 It is generally true, as defendant argues, that claims asserted pursuant to 42 U.S.C.  
22 § 1981 require a contractual relationship. See Domino's Pizza, Inc. v. McDonald, 546 U.S.  
23 470, 476 (2006). It is also true that California law establishes that public employees hold  
24 their positions as a result of statute rather than contract. See, e.g., Miller v. State, 18 Cal.  
25 3d 808, 813 (1977). However, pursuant to Judie v. Hamilton, courts have generally been  
26 expanding the scope of claims that plaintiffs, notwithstanding their public status, may  
27 nonetheless assert against a public employer pursuant to section 1981. See 872 F.2d 919  
28 (9th Cir. 1989); see, e.g., Ramirez v. Kroonen, 2002 WL 1837932 (9th Cir., Aug. 12,  
2002)(allowing denial of promotion claim to proceed under section ); see also White v.

1 Davis, 68 P.3d 74 (Cal. 2003)(affirming that public employees hold their position as a result  
2 of statutes rather than contracts but noting that once "a public employee has accepted  
3 employment and performed work for a public employer, the employee obtains certain rights  
4 arising from the legislative provisions that establish the terms of the employment  
5 relationship-rights that are protected by the contract clause of the state Constitution from  
6 elimination or repudiation by the state"). These recent developments in the case law  
7 suggest that, where a plaintiff clearly alleges an act of discrimination that goes directly to  
8 the heart of a tangible right - i.e., promotion, right to earned compensation - then a claim  
9 may go forward pursuant to section 1981. However, where the plaintiff alleges only  
10 generalized intentional discrimination in the workplace, no contractual rights are implicated,  
11 and a claim under the statute is precluded.

12 Here, plaintiffs' first amended complaint includes allegations that are similar to –  
13 albeit more recent than – the allegations made by plaintiffs in a similar case, Lam v. CCSF,  
14 C 08-4702 PJH ("Lam I"). In Lam I, the court dismissed plaintiffs' section 1981 claims, on  
15 grounds that plaintiffs had alleged insufficient facts to establish any contractual employment  
16 right. Because the allegations here are similar to those made in Lam I, defendant now  
17 argues that the court's prior ruling should apply to the present action with equal weight.

18 The court agrees. Although plaintiffs have attempted to avoid the infirmities present  
19 in Lam I by including allegations that the plaintiffs were explicitly denied promotions and the  
20 opportunities for promotion on the basis of race, these allegations are at best conclusory,  
21 and devoid of factual details sufficient to establish a plausible claim for relief pursuant to  
22 section 1981 (such as factual allegations answering the who, what, where and when  
23 questions regarding alleged promotion denials). Stripped of the cursory allegations  
24 regarding promotion denials, plaintiffs' underlying complaint is remarkably similar to the  
25 complaint in Lam I, and generally alleges what can best be characterized as generalized  
26 intentional discrimination in the workplace.

27 Accordingly, and based on the foregoing, defendant's motion to dismiss the second,  
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1 third, and fourth causes of action in the first amended complaint is GRANTED. Plaintiffs  
2 are granted leave to amend, however, in order to allege additional facts that would be  
3 sufficient to support the existence of a contractual employment right pursuant to section  
4 1981. Plaintiffs are granted 28 days from the date of this order, or until December 7, 2011  
5 to file their amended complaint.

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**IT IS SO ORDERED.**

Dated: November 9, 2011



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PHYLLIS J. HAMILTON  
United States District Judge