

1 **** E-filed January 6, 2011 ****

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7 **NOT FOR CITATION**
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11 **FANG-YUH HSIEH,**

No. C09-05455 HRL

12 **Plaintiff,**

13 **v.**

**ORDER DENYING PLAINTIFF'S
MOTION FOR SANCTIONS
AGAINST DEFENDANT STANFORD
UNIVERSITY**

14 **STANFORD UNIVERSITY, et al.,**

15 **Defendants.**

[Re: Docket Nos. 90, 91]

16 **INTRODUCTION**

17 *Pro se* plaintiff Fang-Yuh Hsieh (“Hsieh”) filed two motions for sanctions, one against
18 defendant Eric Shinseki, Secretary of the United States Department of Veterans’ Affairs (the
19 “Federal Defendant”), and one against defendant Stanford University (“Stanford”), for the alleged
20 destruction of documents. Docket Nos. 90, 91. At oral argument, Hsieh withdrew his motion
21 against the Federal Defendant. And after consideration of the parties’ briefing and oral argument,
22 the Court denies Hsieh’s motion against Stanford.

23 **DISCUSSION**

24 Hsieh filed a motion for sanctions against Stanford that alleges that Stanford destroyed
25 several emails. Docket No. 90. He lists four specific emails that he says were destroyed:

- 26 • First, Hsieh says that he sent an email to Dr. Lavori on May 3, 2009 to apply for a job. He
27 says that Dr. Lavori produced the attachments to this email, but not the actual email. In
28 relation to one of Hsieh’s previous motions to compel in which this email was addressed,

1 Stanford explained that it looked for the email, but it was only able to find the attachments.
2 See Docket Nos. 80, 81. It said that Dr. Lavori did not have a copy of the email, but he
3 probably forwarded it to his assistant; his assistant, in turn, had copies of the attachments but
4 not the email, most likely because her email crashed in August 2009, and virtually all of her
5 received emails from November 24, 2008 to August 28, 2009 were deleted (and unable to be
6 retrieved by Stanford’s IT department). Hsieh also previously stated that he does not have a
7 copy of his email because he lost many of his sent emails as well.

- 8 • Second, Hsieh attaches an October 20, 2009 email from an investigator to Dr. Lavori about
9 an interview related to Hsieh’s complaints. While Hsieh acknowledges that he has this email
10 (it was produced by the Federal Defendant bearing Bates-number “VA0319”), Hsieh says
11 that this email was deleted by Dr. Lavori and not produced by either him or Stanford.
- 12 • Third, Hsieh attaches an October 19, 2009 email conversation between Dr. Mark Holodniy
13 and Dr. Lavori about the hiring of an applicant for a position for which Hsieh applied. Hsieh
14 acknowledges that this email was produced by the Federal Defendant (indeed, it bears the
15 Bates-number “VA3567”), but he also says that the email was deleted and not produced by
16 Stanford or Dr. Lavori.
- 17 • Fourth, Hsieh attaches a December 11, 2009 email he sent to Dr. Lavori about the instant
18 lawsuit. Hsieh acknowledges that the email was produced to him in November 2009, but
19 also says that the original email to Dr. Lavori was deleted and not produced by Dr. Lavori.

20 In addition to these specific emails, Hsieh makes the claim that several other employers have
21 contacted Dr. Lavori about Hsieh’s applications with those other employers, and no emails were
22 produced about those contacts.

23 Hsieh’s motion fails. As an initial matter, the sanction requested by Hsieh — to require
24 Stanford to search its archived data — is not an appropriate sanction for this Court to issue. Such
25 relief is appropriately sought through a motion to compel, not a motion for sanctions. In any event,
26 Hsieh’s motion also fails because he has produced no evidence, whether in his papers or at oral
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1 argument, that Stanford destroyed any data.¹ He has provided no evidence or basis for his claim that
2 other employers contacted Dr. Lavori about Hsieh or that any such emails were ever destroyed, and
3 with respect to the specific emails described, Hsieh has three of them, and Stanford provided a
4 reasonable, innocuous explanation for the non-production of the May 3, 2009 email. Without any
5 evidence that Stanford destroyed documents, Hsieh's motion for sanctions against Stanford must be
6 denied.

7 **CONCLUSION**

8 Based on the foregoing, Hsieh's motion for sanctions against Stanford is DENIED.

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10 **IT IS SO ORDERED.**

11 Dated: January 5, 2011

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14 HOWARD R. LLOYD
15 UNITED STATES MAGISTRATE JUDGE
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¹ Indeed, Hsieh's arguments in this regard are the same ones rejected by the Court in relation to Hsieh's previous motion to compel. Docket Nos. 88, 99.

1 **C09-05455 HRL Notice will be electronically mailed to:**

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7 **5:09-cv-05455-HRL Please see [General Order 45 Section IX C.2 and D](#); Notice has NOT been**
8 **electronically mailed to:**

9 Fang-Yuh Hsieh
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12 **Counsel are responsible for distributing copies of this document to co-counsel who have not**
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