

IT INVESTIGATION



Investigation begins into discrimination, harassment & retaliation allegations after multiple IT affiliates file complaints

By Bryanna Bartlett
PRODUCTION EDITOR

Roger Gonzalez walked into his office on Nov. 8, 2021 not expecting to be fired.

“They caught me completely flat footed . . . I was told ‘You’re done. We’re canceling the contract. We’re all done and we don’t have any money . . . We have no positions available and there is nothing that you’re qualified here to do,’ ” Gonzalez alleged in a Dec. 9, 2021 Zoom call.

He was one of three former San Jose State Information Technology (IT) employees who formally filed discrimination, harassment and retaliation claims between November-December 2021, according to complaint documents obtained by the Spartan Daily.

Those former IT employees all said they were notified of an investigation into their allegations in early January by outside investigators, who told them more complainants are involved.

Gonzalez, former SJSU IT project consultant, believes he was wrongfully terminated and alleged the reasons given by IT management were “blatant lies,” according to his complaint document.

Bob Lim, SJSU IT chief information officer and vice president, and IT Associate Vice President Kara Li are the individuals in question in the complaints.

Gonzalez, who started in March 2021, said when he asked when his last day was, he was allegedly told: “right now,” according to his formal complaint.

Jason Dillon, former interim associate vice president and director of IT infrastructure and operations, said Lim and Li held a staff meeting hours after Gonzalez was fired in November.

Dillon, who was terminated on March 7, alleged Lim and Li announced new director positions including the director of digital transformation, which was previously promised to Gonzalez.

He alleged Lim and Li also explained to the staff that they didn’t have to use university funding, grants or reserves to open the roles because they had “so much” remaining in their IT budget, contradicting what they told Gonzalez hours earlier about not having funds for his position.

Gonzalez worked on three IT projects and was allegedly told by Lim and Li on “multiple occasions” that he’d be given the director of digital transformation position, according to his formal complaint.

“I had those three projects that were huge projects and [Li] just ripped them out from under me [on my last day] . . . basically she smiled at me and said ‘this is contracting, sorry,’ ” he alleged, adding that the projects were already well underway and vendors were onboard.

Cisco, one of the vendors, is a multinational technology corporation that makes and sells networking hardware, software, telecommunications equipment and other high-technology services and products, according to its website.

Gonzalez worked as a Cisco project manager mentor from 2014-21. He believes it was “blatantly untruthful, disrespectful . . . discriminatory,” when Lim and Li allegedly said he was unqualified.

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INVESTIGATION

Continued from page 1

Dillon said Cisco is a technology industry powerhouse. “Without Cisco, we do not have IT at SJSU,” he said.

Outside investigation

Lisa Millora, SJSU vice president for strategy and institutional affairs and chief of staff, sent a legal hold notice on Jan. 7 to eight former employees and Lim and Li.

The legal hold ensures preservation of all documents relevant to the outside investigation.

“[SJSU] has reason to believe legal proceedings could be initiated relating to alleged discrimination, harassment and/or retaliation within [IT],” Millora stated in the memo obtained by the Spartan Daily. “The fact you are receiving this memo does not necessarily mean you are involved in this matter. However, the University has a legal duty to preserve evidence, whether printed or electronic, that might become relevant to any proceedings.”

Dillon and a former director of network services, who wished to go by “John” for privacy concerns, said they’re aware of 13 total formal complaints from eight former IT employees as of March 16, about three months since the investigation began.

Dillon, John and Gonzalez’s allegations are documented in these formal complaints and U.S. Equal Employment Opportunity Commission (EEOC) filings respectively, according to their complaint documents.

The Interim California State University Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, Sexual Exploitation, Dating Violence, Domestic Violence, Stalking and Retaliation bans discrimination and harassment of protected statuses including age, race, physical or mental disability, gender or sex, veteran or military status and much more, according to its webpage.

That policy also prohibits retaliation for exercising rights under the policy, opposing discrimination or harassment or for participating in any related investigation or proceeding, according to the CSU policy webpage.

An EEOC charge is a signed statement claiming that an employee was discriminated or retaliated against by an employer and the situation requires federal remedial action, according to the EEOC website.

Dillon, who was an IT director since May 2020, filed a complaint on Dec. 21, 2021 against Lim claiming discrimination, harassment and retaliation based on his gender, age and disability status, according to his formal complaint.

Gonzalez filed two complaints of retaliation and discrimination based on age and race against Lim and Li respectively on Nov. 10, 2021, according to his formal complaints.

He said several IT employees spoke to him about their own ongoing issues after he was fired and filed his formal complaints.

“I’m not the first one that this has happened to. I started to become vocal, of course, and some people jumped onboard and they were like, ‘Hey, I’m tired of this. I can’t do this anymore. This is not right,’” Gonzalez said.

According to John’s complaint documents, he filed three separate formal complaints in December 2021, after Gonzalez filed.

Two complaints reported his experience of discrimination and harassment based on age, gender and race from Lim and Li respectively and the other was to report his observations of discrimination, harassment and retaliation toward other staff members.

Under the CSU interim policy, it was his duty to report these observations.

According to John’s complaint, he also filed for retaliation additionally against Li.

Michael Uhlenkamp, CSU senior director of strategic communications and public affairs, said where complaints of discrimination, harassment and retaliation were previously under CSU Executive Order 1096, the CSU replaced the

policy on Jan. 1 – putting Executive Order 1096 and two other executive orders under the same protocol.

The new policy is provisional because it’s pending final completion of the meet-and-confirm process with the various CSU labor unions, Uhlenkamp said.

John, Gonzalez and Dillon claim discrimination, harassment and retaliation issues have been prevalent under Lim’s management since he began his position in 2017, according to their complaint documents.

Lim said their allegations are false and declined to comment further.

“I have been advised by the University not to comment on the specifics of this matter until the process is complete,” he said in an email.

Li said she denies the allegations as well and also declined to comment further.

“I would like to give my side of the story. However, so far, [SJSU] has advised me to hold off talking to [the media],” she said in an email. “I respect the process and have maintained its confidentiality as instructed by the University while they are handling the matter.”

Kenneth Mashinchi, SJSU senior director of strategic communications and media relations, said the university media relations team consults with employees on media inquiries but they are unable to compel or prevent them from replying.

“The university’s only interest is ensuring that investigations are completed objectively and fairly,” Mashinchi said in an email. “Employees ultimately have the right to speak to the media if they choose to.”

Retaliation

John has worked in IT since 2013 and resigned on Feb. 18 after three people, who were allegedly instructed to help terminate him, had been fired.

Out of those three employees, two were Dillon and Gonzalez.

According to Dillon and Gonzalez’s complaints, they believe they were discriminated and retaliated against because they wouldn’t help wrongfully terminate John and other employees or “participate in illegal activities.”

Dillon alleged Lim told him in August 2021, six months after Dillon became director, that if he wouldn’t help terminate John, he “won’t be here very long.”

“You can kind of see a pattern that I guess I’m so important to terminate and I mean, three people who have been tasked with doing so have been released,” John said. “It’s stressful, right? I have a family to support and I work really hard for [the] university.”

Dillon and Gonzalez claimed “we do not like him” was Li’s exact phrase regarding John on their first days of employment, according to their complaint documents.

They both alleged they refused Lim and Li’s alleged instructions throughout the subsequent months, which included falsifying performance reviews, because they believed John was an excellent and competent employee, according to the complaints.

Gonzalez said Lim and Li often allegedly tampered with performance reviews after directors and managers wrote them about their peers.

Dillon alleged IT management only wrote over the reviews that were about people they were trying to “manage out.”

John said three of the employees who were allegedly instructed to help terminate him for more than a year, two of whom were Dillon and Gonzalez, had written performance reviews about him, according to his complaint. Dillon was his direct manager.

Lim and Li had allegedly inserted or edited the language of their reviews to reflect poor performance, where in one instance, there was a high performance rating about him accompanying negative comments, according to the complaint.

John alleged he’s seen fabricated performance reviews be given to other employees as well.

According to Dillon and Gonzalez’s complaints, when they disagreed or refused to submit falsified reviews, they were allegedly informed by Lim and Li that what they’re doing isn’t favorable and it wouldn’t reflect well on any of their upcoming reviews.

CSU discrimination, harassment and retaliation complaint process: a breakdown

- The Interim California State University System Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, Sexual Exploitation, Dating Violence, Domestic Violence, Stalking and Retaliation, protects statuses including age, race, physical or mental disability, gender or sex, veteran or military status and much more. It also bans retaliation for exercising rights, opposing discrimination or harassment or for participating in any related investigation or proceeding.
- Complaints of discrimination, harassment and retaliation were previously under CSU Executive Order 1096. The CSU revised the policy on Jan. 1, combining Executive Order 1096 and two other executive orders under the same protocol.
- The new policy is provisional as it’s pending final completion of the meet-and-confirm process with various CSU labor unions.

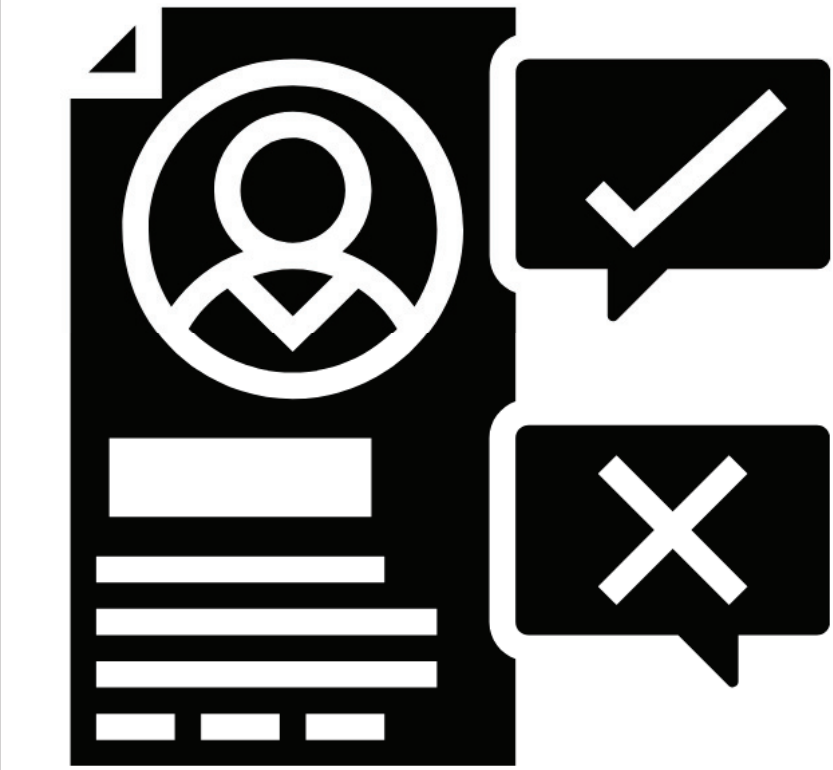
FORMAL COMPLAINT PROCESS

Complainant submits a formal written complaint.

Complaints should be filed as soon as possible after conduct occurs to better the investigator’s response, ability to determine the relevant issues and provide an appropriate action.

Complainants are notified of whether their complaints are accepted or dismissed within 10 working days, which are Monday – Friday.

If accepted, complainants have intake interviews with the investigator.



INFOGRAPHIC BY BRYANNA BARTLETT; SOURCE: CSU EXECUTIVE ORDER 1096, INTERIM CALIFORNIA STATE UNIVERSITY POLICY PROHIBITING DISCRIMINATION, HARASSMENT, SEXUAL MISCONDUCT, SEXUAL EXPLOITATION, DATING VIOLENCE, DOMESTIC VIOLENCE, STALKING AND RETALIATION

One of Dillon’s performance reviews indicated that he wasn’t managing his team properly, which he believes was retaliation for not falsifying John’s evaluations, according to Dillon’s complaint.

On the day Dillon was terminated, March 7, Lim and Li allegedly refused to give him explanations when he asked three times, according to his EEOC charge of retaliation.

He said given his extensive work for IT and as someone who’s been in technology leadership roles for the past 20 years, he believes his termination was retaliatory.

Discrimination

Gonzalez, Dillon and John claim that since Lim’s arrival, there’s been a strong pattern of discrimination against male and female staff members older than 50 years old, according to their formal complaints.

Gonzalez, who is 62, and Dillon and John who are both 52, know of eight former IT employees who were allegedly wrongfully terminated or experienced discrimination or harassment to the point of resigning, according to the same complaints.

“What is wrong with this place?” Gonzalez said. “This is horrible. It is so toxic. It is so bad there.”

Dillon and John both claimed to have sought medical treatment because of stress caused by the harassment, according to their formal complaints.

Gonzalez, Dillon and John’s complaint documents also include claims of a noticeable bias of race and age in IT management’s hiring and firing practices with a preference to Asian employees.

Out of 21 IT staff members, 12 are Asian, according to the Fall 2021 SJSU gender and ethnicity statistics by department webpage.

Dillon said as he was the last remaining non-Asian in the IT leadership team until March 7, he believes Lim’s

preferential treatment is obvious but he hides it from the university very well.

According to his EEOC charge of discrimination and his formal complaint, he claims he does substantially more work than Asian directors.

Less than three weeks ago, Dillon submitted his compilation of IT leadership strategy documents, which are director-project plans, to the outside investigators.

He alleged his dossier highlights a clear differential treatment as he completed 37 project initiatives, which accounts for up to 99.55% of all IT leadership plans.

The dossier also documents that he wrote seven of the strategy documents on the behalf of the security officer, allegedly per Lim’s instructions.

He claimed another incident wherein he was allegedly instructed by Li to remove Gonzalez as an author of the five year-digital transformation plan and he “didn’t think anything of it” until Gonzalez was subsequently fired.

“They bring in people just long enough and just like the five people he terminated before me, just long enough to get what they need to get,” Gonzalez alleged. “I wrote him his five year plan, he’s got five years worth of technology that he can piggyback off of.”

According to Gonzalez’s formal complaint, he submitted his work including presentations and project initiatives to Lim and Li multiple times, after which they would allegedly paste it onto their own documents, send it to a different director and claim it as their work.

Federal charges

Dillon filed an EEOC charge of employment discrimination on March 2 against SJSU and the CSU, according to his charge document. He filed a subsequent charge of retaliation when he was fired.

John, former director of network services, filed an EEOC charge of discrimination in late December 2021, according to his charge document.

Kenneth Mashinchi said the university is aware of one charge.

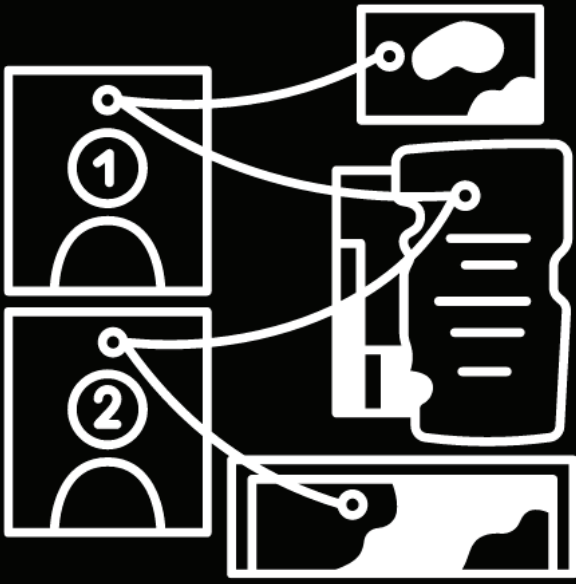
Gonzalez said he has his intake interview, which is the first step after filing a charge, with an EEOC investigator today. If the investigator decides to move forward with his claim, SJSU and the CSU will be served.

Once a charge has been filed, EEOC investigators interview complainants to decide whether a lawsuit is the most suitable path, according to the EEOC webpage.

The CSU declined to comment regarding the EEOC charges.

Outcomes

Mashinchi said the outside investigators are a neutral, external



INVESTIGATION PROCEDURE

Both parties have equal opportunities to present relevant witnesses and evidence in connection with the investigation.

Upon inquiry, the parties will be advised of the investigation’s status.

Before reaching a final report, the investigator should have advised all parties of the findings and given parties the opportunity to respond to evidence.

The investigation should be completed within 100 working days after the intake interview and can be extended up to 30 working days.

The investigator will complete a final report, which includes a summary of allegations, the investigation process, a detailed description of evidence and findings.

An investigation outcome notice should be sent within 10 working days before the final report is out.

party that is looking into the allegations and there haven’t yet been any findings.

“Information is still being gathered. Complainants and respondents have the right to be interviewed before any determinations are made,” he said. “We are unable to comment further on personnel matters or potential litigation.”

**To see the university’s full statement, view the quote box.

According to the CSU interim policy, the outside investigators will send a final investigation report to those involved within 100 working days of the initial notice, which was early January. Investigators may request an extension of up to 30 days.

John said he expects the CSU to uphold its discrimination, harassment and retaliation policy and hopefully hire leadership in SJSU IT that’s going to “treat people how they [should] be treated.”

“[I hope that] when people come forward with issues, they’re not treated like they’re the one doing something wrong . . . you were the victim but you’re being made to be the perpetrator and I don’t think that’s the intent of the process but this is how it works on campus,” John said.

He said he wishes for a systemic change to occur in the CSU, especially in wake of the 12 year-long SJSU athletics sexual misconduct scandal and former CSU Chancellor Joseph Castro’s resignation on Feb. 17 amid Title IX mishandling allegations.

Gonzalez emphasized that sentiment. “All of this has been allowed to happen under the nose of everybody because everybody’s so busy with everything else,” Gonzalez said, regarding the multiple litigations that SJSU has dealt with in previous years. “I just want the right feedback. What’s happening right now at the university is horrible.”

Follow Bryanna on Twitter @brybartlett

A look into the IT outside investigation:

INFOGRAPHIC BY BRYANNA BARTLETT; SOURCES: FORMAL COMPLAINT DOCUMENTS OF THREE FORMER IT EMPLOYEES AND A UNIVERSITY LEGAL HOLD NOTICE MEMO OBTAINED BY THE SPARTAN DAILY; CSU INTERIM POLICY ON DISCRIMINATION, HARASSMENT AND RETALIATION, EEOC CHARGE OF DISCRIMINATION WEBPAGE

