



## Overview of Complaints Filed Against Stanford University

**June 15, 2021:** The Brandeis Center represents two Jewish mental health counselors who have experienced severe and persistent anti-Jewish harassment in Stanford University's Counseling & Psychological Services' (CAPS) Diversity, Equity & Inclusion (DEI) program. Our clients strongly support diversity, equity, and inclusion and are mortified that Stanford University has permitted the DEI program to be perverted so that it accomplishes the opposite of its intended aims. The program that is supposed to facilitate the full inclusion of all members of the Stanford community is perpetrating a hostile environment and invidious discrimination that it is meant to eliminate.

Through its DEI committee, weekly seminars and racially segregated affinity groups, the CAPS DEI program has maligned and marginalized Jews, by castigating them as powerful and privileged perpetrators who contribute to systemic racism. The DEI committee has advanced anti-Semitic tropes concerning Jewish power, conspiracy, and control and endorsed the narrative that Jews support white supremacy. The DEI program has excluded anti-Semitism from the program's agenda, silencing and intimidating Jews who have spoken up to challenge the program's failure to discuss incidents of Jew-hatred at Stanford.

Jewish staff have been pressured to join the DEI program's racially segregated "whiteness accountability" affinity group, created for "staff who hold privilege via white identity" and "are white identified, may be newly grappling with or realizing their white identity, or identify as or are perceived as white presenting or passing (aka seen as white by others even though you hold other identities)." No affinity group was created for persons of Jewish ancestral identity. As a result, there is no "space" in the DEI program for Jewish staff members to safely express their lived Jewish experience. By endorsing an anti-Semitic narrative that designates Jews collectively as "oppressors," responsible for systemic racism, while simultaneously denying Jewish ancestral identity, the DEI program fosters anti-Jewish sentiment and encourages hostility toward Jews.

This is especially concerning because the DEI program trains clinicians who provide mental health counseling to Stanford's student body. The DEI program was designed to "help all staff develop[] the skills and confidence to engage with students from different backgrounds." However, when the DEI program ignores anti-Semitic incidents on the Stanford campus and spreads the anti-Semitic canard that Jews have "immense power and privilege," it teaches Stanford's mental health professionals to disregard the mental health consequences of anti-Semitic incidents. This undermines their ability to provide appropriate care to Stanford's Jewish students, and all other students.

This case serves as a cautionary tale: those in CAPS and beyond, who are engaged in the necessary work of combatting racism, must ensure that in the process of opposing bigotry that targets one group they do not promote or perpetrate harassment and discrimination of another group.

For over one year, our clients repeatedly complained to supervisors and Stanford administrators about the harassment they endured on the basis of their Jewish identity and the endemic anti-Jewish

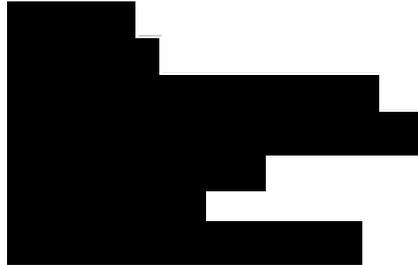
hostility in the CAPS DEI program. Nevertheless, Stanford failed to take appropriate corrective action to eliminate anti-Semitism from the DEI program.

In light of all this, we have filed charges of discrimination on behalf of our clients.

We are committed to protecting our clients' legal rights to a harassment-free workplace and to ensuring that Stanford's Jewish students and all students receive effective, unbiased mental health services. Stanford must take the concrete steps outlined in our complaint to revise, professionalize and strengthen the DEI program so that it eliminates anti-Semitism and creates a welcoming and supportive space for Jewish staff and all members of the Stanford community.

May 21, 2021

**VIA EMAIL**



**Re: Charge Statement Pertaining to Employment Discrimination by Stanford University,  
EEOC Inquiry No. [REDACTED]**

**I. Introduction**

Over the last year and a half, Stanford University’s Counseling & Psychological Services (CAPS) division has created and fostered a hostile and unwelcoming environment for Jews in its Diversity, Equity and Inclusion (DEI) program. As counselors, we strongly support diversity, equity, and inclusion and are mortified that Stanford University (Stanford) has permitted the DEI program to be perverted so that it accomplishes precisely the opposite of its intended aims. The very program that is supposed to facilitate the full inclusion of all members of the Stanford community is now undermining that goal, perpetrating the very invidious discrimination that it is meant to eliminate.

Through its DEI committee, weekly seminars and racially segregated affinity groups, the CAPS DEI program has maligned and marginalized Jews on the basis of religion, race and ethnic identity by castigating Jews as white, powerful and privileged members of society who contribute to systemic racism and denying and attempting to erase Jewish ancestral identity. In addition, the DEI program has denigrated the concept of Jewish victimhood and deliberately excluded anti-Semitism from the program’s agenda. Ronald Albucher (Dr. Albucher) and Sheila Levin (Ms. Levin) are two Jewish employees of Stanford University (Stanford) who have worked as mental health clinicians in CAPS throughout the timeframe described in this complaint and have been subjected to an ongoing hostile environment in the CAPS DEI program on the basis of their national origin, religion and race.

The CAPS DEI program engages in intentional racial segregation through race-based affinity groups. It relies upon racial and ethnic stereotyping and scapegoating by describing all Jews as white or white-passing and therefore complicit in anti-Black racism. Jewish staff have been pressured to attend the DEI program’s racially segregated “whiteness accountability” affinity group, which was created for “staff who hold privilege via white identity” and “who are white identified, may be newly grappling with or realizing their white identity, or identify as or are perceived as white presenting or passing (aka seen as white by others even though you hold other identities).” The DEI committee has also endorsed the narrative that Jews are connected to white supremacy, advancing

anti-Semitic tropes concerning Jewish power, conspiracy, and control. By endorsing an anti-Semitic narrative that designates Jews collectively as “oppressors” and responsible for systemic racism, while simultaneously denying the uniqueness of Jewish ancestral identity, the DEI committee fosters anti-Jewish sentiment and encourages hostility toward Jews (including Dr. Albucher and Ms. Levin).

The CAPS DEI program has further fomented a hostile environment for Jews by ignoring anti-Semitism and publicly silencing and intimidating Jews who have spoken up to challenge the program’s failure to discuss Jew-hatred at Stanford. On two separate occasions, the DEI program knowingly failed to respond to anti-Semitic incidents that occurred on the Stanford campus. When Dr. Albucher asked the DEI program to address an anti-Semitic incident that occurred at Stanford, he was verbally attacked and disparaged on the basis of his Jewish identity by members of the DEI committee, who invoked anti-Semitic tropes and conspiracy theories about Jewish wealth, power and privilege. They accused Dr. Albucher of derailing the program’s focus on anti-Black racism merely by raising the issue of anti-Semitism. Due to the harassment, vilification and intimidation he was subjected to by his colleagues in the DEI program, Dr. Albucher was effectively forced to leave the weekly DEI seminars; in fact, he never felt safe returning to the seminars and did not return. After witnessing the derogatory and offensive anti-Semitic hostility directed at Dr. Albucher, Ms. Levin felt so intimidated and unsafe that she was unable to speak in support of her colleague and informed her supervisors that she did not feel safe attending subsequent DEI seminars

Stanford knew about the harassment of Jewish staff and anti-Jewish hostility in the CAPS DEI program and yet failed to correct the hostile climate. Over the course of one year, Dr. Albucher and Ms. Levin repeatedly notified their supervisors and various Stanford administrators about the ongoing harassment and hostile environment they were experiencing. Nevertheless, Stanford failed to take action to ameliorate the systemic problem of anti-Semitism in the CAPS DEI program. [REDACTED]

Stanford’s failure to address anti-Jewish hostility has broader concerning ramifications. The DEI program trains CAPS clinicians who provide mental health counseling to Stanford’s student body. Indeed, the [REDACTED] of CAPS has “stress[ed] how important this [DEI programming] is for the clinical work that we’re doing with students” in order to “help all staff in developing the skills and confidence to engage with students from different backgrounds, and to support one another as we are asked to serve our shared community.” But when the DEI program ignores anti-Semitic incidents on campus and spreads the anti-Semitic canard that Jews have “immense power and privilege,” it teaches Stanford’s mental health professionals to dismiss as inconsequential the mental health consequences anti-Semitic incidents have on Jewish students. Such training inevitably harms the mental health professionals’ ability to provide effective care to Stanford University’s Jewish students.

Indeed, this case serves as a cautionary tale: those in CAPS and beyond, who are engaged in the important and necessary work of combatting systemic racism and discrimination, must be careful to ensure that in the process of opposing bigotry that targets one group, they do not in the process promote or perpetrate harassment and discrimination of another group.

For the foregoing reasons, Dr. Albucher requests that:<sup>1</sup> (1) the Equal Employment Opportunity Commission (EEOC) initiate an investigation of Stanford University for violating Title VII of the Civil Rights Act of 1964 (Title VII) and its implementing regulations, by failing to address severe and ongoing harassment in CAPS against Jewish staff members on the basis of their race, religion and national origin, which created a hostile work environment;<sup>2</sup> and (2) the California Department of Fair Employment and Housing (DFEH) initiate an investigation of Stanford University for violating CA's Fair Employment and Housing Act (FEHA) by discriminating against the complainants on the basis of their race, religious creed, national origin and ancestry.<sup>3</sup>

## II. Statement of Facts

Ms. Levin and Dr. Albucher were employees at CAPS throughout the timeframe described in this complaint. Dr. Albucher was the Director of CAPS from 2008 until 2017. Since 2017, Dr. Albucher has worked as a Staff Psychiatrist in CAPS and is also a Clinical Associate Professor in the Department of Psychiatry at Stanford University Medical School. Ms. Levin has worked as the Clinical Care Manager/Eating Disorder Specialist at CAPS for the last 13 years. Dr. Albucher and Ms. Levin both identify as Jewish.

In November 2019, the ██████ of CAPS, ██████, emailed all CAPS staff members and asked them to carve out time in their schedules for a weekly DEI seminar that would begin meeting in January 2020. ██████ explained that the DEI seminars were launched “to engage across differences, better understand cultural groups, and explore cultural biases we hold so as to sharpen our skills as clinicians and improve our professional relationships.” ██████ further explained to CAPS staff the importance of the DEI seminars “for the clinical work that [CAPS staff are] doing with students, for staff morale and cohesion, and for the shared mission we have as a service... Our hope is that this series will help all staff in developing the skills and confidence to engage with students from different backgrounds, and to support one another as we are asked to serve our shared community.” ██████ asked CAPS staff members to volunteer for a DEI committee and further indicated that “[w]e may call on staff to participate depending on the response we get.”

In December 2019, ██████ informed CAPS staff that the weekly DEI seminars would begin in January 2020 and announced the formation of the DEI committee composed of CAPS staff members. Staff were asked to read the book – “*White Fragility*” – by Robin Diangelo and were

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<sup>1</sup> The complainants request that the EEOC simultaneously dual-file their charges of discrimination and this charging statement with the California DFEH.

<sup>2</sup> See 42 U.S.C. § 2000e, *et seq.* ██████.

<sup>3</sup> See Cal.Govt.Code §§ 12900 *et seq.*; *see also* Cal.Govt.Code §§ 12940(a), (j)(1), (k).

informed that a DEI committee member, [REDACTED], and another CAPS staff member, [REDACTED] would facilitate a separate “structured space for white staff” to “process reaction to White Fragility.”

Subsequently, the CAPS DEI program created racially segregated affinity groups that separated CAPS staff members on the basis of race or perceived race. One of these groups was for white staff, and another group was for staff comprising minorities of color. These race-based groups met separately as part of the DEI program and, upon information and belief, continue to exist and meet as part of the CAPS DEI program. No affinity group was ever created for members of Jewish ancestral identity. As a result, there was no “space” in the DEI program for Dr. Albucher and Ms. Levin to safely express their lived Jewish experience. Instead, Jews in the DEI program are expected to join the white affinity group and are pressured to accept the anti-Semitic stereotypes promoted by the DEI program, namely, that Jews are rich, white and powerful.

The white affinity group was eventually named the “Whiteness Accountability group/book club,” and was intended for “staff who hold privilege via white identity and who want to explore how the advantages of whiteness interact with their identities, with their work, and in the world.” The DEI program further explained that the white affinity group was intended for staff “who are white identified, may be newly grappling with or realizing their white identity, or identify as or are perceived as white presenting or passing (aka seen as white by others even though you hold other identities).” In its announcement about the creation of a white affinity group, DEI program leaders provided a link to an online resource about race-based affinity groups, which advocates racially segregated “[c]aucuses to provide spaces for people to work within their own racial/ethnic groups,” reasoning that “white people often find learning about whiteness and white privilege a steep learning curve.”

Ms. Levin identifies strongly with her Jewish identity and does not feel an affinity for “white” identity. Ms. Levin’s supervisors and co-workers in the DEI program, nevertheless pressured her to participate in the white affinity group. Neither Ms. Levin nor Dr. Albucher were encouraged to attend another affinity group in the DEI program. On January 14, 2020, Ms. Levin’s [REDACTED] at the time, [REDACTED], told Ms. Levin to attend the DEI seminars by explaining that other staff had expressed interest in ensuring the attendance of as many “white clinicians” as possible. On a separate occasion in or around May 2020, Ms. Levin told [REDACTED] that although she wanted to be a part of the group environment in CAPS, she felt uncomfortable participating in the white affinity group because, as a Jewish person, she did not feel an affinity with white identity. [REDACTED] responded to Ms. Levin’s concerns by stating, in sum and substance, that “This was the direction the clinic was going” and if Ms. Levin wanted to be part of a collegial environment at CAPS, she needed to participate in the white affinity group. [REDACTED] told Ms. Levin she was unable to do anything about her complaint, other than to provide empathic listening. Upon information and belief, [REDACTED] did not take any steps to address Ms. Levin’s complaint.

Dr. Albucher began attending the weekly DEI seminars around February of 2020. During one of the seminars, several CAPS co-workers verbally harassed and intimidated Dr. Albucher when they

discovered that he had not read the assigned book, “*White Fragility*.” Meeting participants, treating all Jews as white, implied that Dr. Albucher had inherent privilege. They berated him for co-opting the meeting because other participants had to explain the book to him. Following the DEI meeting, Dr. Albucher spoke to ██████ about his concerns that the CAPS DEI program was treating all individuals who are perceived as white (including Jews) as a monolithic group of privileged people who unconsciously contribute to systemic racism. Dr. Albucher expressed his concern that the DEI program was not respectful of differing opinions in contravention to the program’s ground rules. Upon information and belief, ██████ did not take any steps to address Dr. Albucher’s complaints.

On or about May 16, 2020, during a virtual townhall for the Stanford community hosted by “The People’s Caucus” – a slate of 10 candidates comprised of minority groups in the Associated Students of Stanford University Undergraduate Senate election – unknown participants hijacked the meeting, shared racist audio messages that displayed images of swastikas and weapons and used the “N-word.”<sup>4</sup> This zoom-bombing incident caused widespread distress among members of Stanford’s student body and the wider Stanford community due to the racist and anti-Semitic nature of the attack.<sup>5</sup>

Upon information and belief, shortly after the May 16th zoom-bombing incident, Ms. Levin expressed to her co-workers in her CAPS clinical team that she was outraged about the incident and expressions of racial hatred at Stanford. In response, Ms. Levin’s co-workers ostracized and verbally harassed her by accusing her of possessing the privilege – that they insisted people of color do not possess – of feeling outraged about racism. Her colleagues excluded her from their collegial work group on the basis of her perceived race and national origin by insisting she discuss her concerns only with her white colleagues in the “white affinity” group rather than with her clinical team.

On May 20, 2020, Dr. Albucher and Ms. Levin attended the first CAPS DEI seminar that was held after the May 16th zoom-bombing. During a discussion about the zoom-bombing at the May 20th DEI seminar, DEI committee members addressed the racist and anti-Black content but did not mention anti-Semitism or the anti-Semitic images of swastikas that were displayed during the zoom-bombing attack. When Dr. Albucher inquired about the failure to address swastikas and anti-Semitism during the DEI’s discussion about the zoom-bombing, DEI committee member ██████ stated, in sum and substance, that the DEI committee decided to omit any mention of anti-Semitism so as not to dominate the discussion about anti-Black racism. When Dr. Albucher further expressed his concern about the decision to ignore the issue of anti-Semitism, DEI committee member ██████ and others accused Dr. Albucher of trying to derail the agenda’s focus on

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<sup>4</sup> See Lauryn Johnson, ASSU candidates’ rally ‘Zoom-bombed’ with anti-Black, anti-Semitic sentiments, *The Stanford Daily* (May 18, 2020), <https://www.stanforddaily.com/2020/05/18/assu-candidates-rally-zoom-bombed-with-anti-black-anti-semitic-sentiments/>.

<sup>5</sup> See Munira Alimire et al., “The People’s Caucus response to ‘Zoom-bombing’ incident,” *The Stanford Daily*, (May 17, 2020), <https://www.stanforddaily.com/2020/05/17/the-peoples-caucus-response-to-zoom-bombing-incident/>.

anti-Black racism. DEI committee members justified the omission of anti-Semitism by insisting that unlike other minority groups, Jews can hide behind their white identity.

At this meeting, Dr. Albucher and Ms. Levin were subjected to anti-Jewish stereotypes. Participants invoked the anti-Semitic trope that Jews are wealthy and powerful business owners. These DEI committee members reasoned that because Jews, unlike other minority group, possess privilege and power, Jews and victims of Jew-hatred do not merit or necessitate the attention of the DEI committee. When Dr. Albucher raised concerns about anti-Semitism, the reaction of DEI committee member [REDACTED], who barely knew him, was to accuse Dr. Albucher of racism – not because of anything Dr. Albucher had ever said or done in the past, but presumably, because he was Jewish and [REDACTED] was upset that Dr. Albucher refused to accept the anti-Semitic stereotype of Jews as powerful and privileged. [REDACTED] accused Dr. Albucher of “not having my back” – not because he had ever said or done anything to her, but because [REDACTED] viewed Dr. Albucher’s attempt to broaden the conversation to include anti-Semitism (in addition to anti-racism), as an attempt to diminish the group’s focus on combatting anti-Black racism.

Due to this harassment, Dr. Albucher felt unsafe attending future DEI programming and was effectively forced out of the DEI seminar. Shortly after the May 20th meeting, Dr. Albucher notified the Director of CAPS that he would stop attending DEI meetings because of their anti-Semitic content and hostile environment. Although Ms. Levin, who attended the May 20th meeting and witnessed the harassment directed at Dr. Albucher, shared Dr. Albucher’s opinion that the DEI committee should not ignore anti-Semitic incidents at Stanford, she was too intimidated by the hostile and anti-Jewish atmosphere to speak at the May 20th meeting and voice her defense of Dr. Albucher’s position. Ms. Levin remained silent at the May 20th meeting because she was fearful of experiencing similar hostility and harassment on the basis of her Jewish identity and race from the leaders and participants in the DEI program. Following the May 20th meeting, Ms. Levin notified her [REDACTED], [REDACTED], and [REDACTED] that she did not feel safe attending the DEI seminar and announced that she would not attend the following DEI seminar for that reason.

Following the May 20th DEI seminar, Stanford did not take steps to address the severe harassment against Dr. Albucher and the complaints by Dr. Albucher and Ms. Levin that they felt unsafe due to the hostility in the DEI seminars.

The CAPS DEI program relies upon a narrative that presumes all white people are consciously or unconsciously to blame for systemic racism in the workplace and in society at large due to their “white privilege.” The CAPS DEI program further perceives all Jews as white; it advances the false and anti-Semitic ethnic stereotype that all Jews are “white” or “white-passing” – because they can hide behind their whiteness – and that Jews are privileged and contribute to oppression against other minority groups. For instance, on or about May 30, 2020, Ms. Levin emailed [REDACTED], an [REDACTED] and DEI committee leader, inquiring as to how she could better support [REDACTED] as part of the DEI program. On or about June 1, 2020, [REDACTED] responded by accusing Ms. Levin of being racist due to her Jewish identity and race: “As a Jewish, White, cis [sic] woman you

have immense power and privilege. It is important to understand how you are apart [sic] of the systemic racism and oppression that takes place in this country.”

On June 24, 2020, at a DEI seminar that Ms. Levin attended, participants lamented that the group was composed of privileged people, specifically “white, pass for white and Jewish” people. Someone also stated that the group focused too much on white solidarity.

In July 2020, swastikas were discovered inside Stanford’s Memorial Church. Although [REDACTED] was aware of the anti-Semitic incident, she did not carve out time in the DEI programming to address it. At a DEI committee meeting that took place on or about July 29, 2020, a DEI facilitator stated that the DEI committee would address the swastika incident only if it had time to do so. In fact, the DEI committee never discussed the matter further and subsequently ignored it altogether. Thus, for the second time, the CAPS DEI program deliberately omitted any mention of anti-Semitism and refused to address anti-Semitic activity that occurred on the Stanford campus and that directly affected the Jewish community members that CAPS clinicians service.

Around August 2020, Ms. Levin and Dr. Albucher notified [REDACTED] and [REDACTED], about the hostile climate that Ms. Levin and Dr. Albucher were experiencing in the DEI program based on their race and Jewish ethnic identity. Upon information and belief, [REDACTED] and [REDACTED] notified Stanford’s Human Resources (HR) Department about the situation. Rather than address the hostile environment for Jews in the CAPS DEI program, in December 2020 HR attempted to facilitate a private mediation session between Dr. Albucher and [REDACTED], the DEI committee member who engaged in anti-Semitic harassment against Dr. Albucher at the May 20<sup>th</sup> DEI seminar. Although Dr. Albucher informed the mediator before the session began that a central goal of the mediation for him was to discuss anti-Semitism at the May 20<sup>th</sup> DEI meeting, the moderator did not provide Dr. Albucher with an opportunity to discuss the issue of anti-Semitism and therefore the issue was never discussed at the mediation. After the mediation session, Dr. Albucher informed the mediator that because the mediation failed to address his primary concerns about anti-Semitism, he still felt unsafe attending the DEI seminars, and indeed, Dr. Albucher never returned to the DEI seminars.

In or around October 2020, Ms. Levin stopped participating in the white affinity group because of the ongoing hostility she experienced on the basis of her race and Jewish ethnic identity. Upon information and belief, the race-based affinity groups, including the Whiteness Accountability group, continue to meet as part of the CAPS DEI program.

On January 8, 2021, Ms. Levin was subjected to a hostile environment yet again when members of the CAPS DEI committee promoted anti-Semitic narratives at an event intended to provide pre-doctoral students with information about internship and training opportunities at CAPS. During a presentation about the social justice training rotation that is supervised by members of the DEI committee, [REDACTED], explained, in sum and substance, that the program will explore how Jews are connected to white supremacy and will address anti-Semitism. Another CAPS DEI committee

member, [REDACTED], stated in sum and substance, that she takes an anti-Zionist approach to social justice. DEI committee leader [REDACTED] also recommended a book that advances anti-Zionism and portrays the Jewish State of Israel as a racist endeavor.<sup>6</sup>

Dr. Albucher reported the intern open house incident to [REDACTED] and [REDACTED]. [REDACTED] dismissed Dr. Albucher's concerns because he had not attended the event and also downplayed the gravity and systemic nature of the hostile climate by mischaracterizing the incident as a personal matter that should be discussed by Ms. Levin and the individual DEI committee members who gave the offensive presentations. In response to Dr. Albucher's complaint, [REDACTED] privately expressed his personal sympathy for Dr. Albucher and suggested that he pursue a formal grievance procedure; but neither [REDACTED] nor the university took any public or otherwise meaningful steps to respond to the concerns Dr. Albucher raised about the open house or to otherwise address the ongoing hostile environment for Dr. Albucher and Ms. Levin in the CAPS DEI program.

Upon information and belief, in March 2021, the U.S. Education Department's Office for Civil Rights informed Stanford that a complaint of discrimination was filed against the University and transferred to the EEOC.

In April 2021, Dr. Albucher escalated his complaints to high level Stanford administrators due to Stanford's ongoing failure to improve or in any way address the hostile environment in CAPS despite repeated complaints over the course of one year by Dr. Albucher and Ms. Levin. Dr. Albucher provided a comprehensive overview of the history of anti-Jewish and racial hostility in the CAPS DEI program to [REDACTED], [REDACTED], [REDACTED] as well as [REDACTED] and [REDACTED] (whom he had informed on multiple previous occasions). During a conversation between Dr. Albucher and [REDACTED] on April 5, 2021, in which Dr. Albucher reiterated his concerns about systemic anti-Semitism and anti-Zionism in the DEI program, [REDACTED] unilaterally ended the

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<sup>6</sup> For many Jews, including Dr. Albucher and Ms. Levin, identifying with and expressing support for the Jewish homeland is a sincere and deeply felt expression of their Jewish ethnic and ancestral identity. Harassing, marginalizing and demonizing Jews on the basis of the Zionist components of their Jewish identity is just as unlawful and discriminatory as attacking a Jewish person for religious expressions of Jewish identity like observing the Sabbath or keeping kosher. Such forms of anti-Zionism are objectively as well as subjectively offensive. *See, generally*, U.S. Commission on Civil Rights, *Briefing Report: Campus Anti-Semitism* (July 2006), p. 3, <https://www.usccr.gov/pubs/docs/081506campusantibrief07.pdf> ("Anti-Semitic bigotry is no less deplorable when camouflaged as anti-Israelism or anti-Zionism."). This form of anti-Semitism can manifest as discrimination, demonization, delegitimization, or harassment of the Jewish people, individually or collectively, holding individual Jews collectively responsible for the actions of the State of Israel, applying classic anti-Jewish stereotypes and defamations to Israel, and denying Israel's right to exist. *See* Executive Order 13899 (Combating Anti-Semitism) (Dec. 11, 2019), 3 CFR 13899.

discussion by walking out of Dr. Albucher's office. Following [REDACTED]'s offensive and hostile behavior, Dr. Albucher spoke to [REDACTED] and indicated that he might need to retire early due to the persistence of the ongoing hostile environment in CAPS. Dr. Albucher further informed [REDACTED] in a subsequent email that he heard about a psychiatry resident who stopped attending his clinical team meetings due to anti-Semitism fomented by a DEI committee member.

In mid-April 2021, after over a year of persistent complaints by Dr. Albucher and Ms. Levin and after receiving notice from the Education Department that a federal discrimination complaint was filed against the University, Stanford informed Dr. Albucher that it purportedly intends to investigate his concerns as a "confidential HR matter." In May 2021, Stanford referred Ms. Levin's discrimination complaints to Employee Labor Relations in HR in an attempt to shield itself from liability after Ms. Levin notified Stanford that it discriminated [REDACTED] against her [REDACTED].

### III. Argument

The CAPS DEI program has created and fostered a hostile work environment for Jewish staff due to severe and persistent harassment that has targeted Ms. Levin and Dr. Albucher on the basis of their Jewish national origin and religion as well as their race for over a year.<sup>7</sup> Despite their repeated complaints to supervisors and university administrators about systemic anti-Jewish hostility in the CAPS DEI program, Stanford has not taken steps to address the anti-Semitic harassment or ameliorate the hostile work environment in CAPS. Indeed, Stanford has refused to recognize the endemic nature of the problem in the CAPS DEI program.

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<sup>7</sup> The complainants alleging a continuing violation by Stanford. See *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 117 (2002) ("It does not matter, for purposes of ...[Title VII] that some of the component acts of the hostile work environment fall outside the statutory time period. Provided that an act contributing to the claim occurs within the filing period, the entire time period of the hostile environment may be considered by a court for the purposes of determining liability"); see also EEOC Compliance Manual § 2 Threshold Issues (May 12, 2000) available at [https://www.eeoc.gov/laws/guidance/section-2-threshold-issues#N\\_180](https://www.eeoc.gov/laws/guidance/section-2-threshold-issues#N_180) (quoting *Morgan*, supra at 117) ("Because the incidents that make up a hostile work environment claim 'collectively constitute one unlawful employment practice,' the entire claim is actionable, as long as at least one incident that is part of the claim occurred within the filing period"). To prove a continuing violation in CA, plaintiff must show that the employer's actions were "(1) sufficiently similar in kind ...; (2) have occurred with reasonable frequency; and (3) have not acquired a degree of permanence." See *Richards v. CH2M Hill, Inc.*, 29 P.3d 175, 190 (Cal. 2001); see also *Yanowitz v. L'Oreal USA, Inc.*, 116 P.3d 1123, 1142 (Cal. 2005).

Title VII of the Civil Rights Act of 1964 prohibits an employer from discriminating against an employee on the basis of the employee's race, color, religion, sex, or national origin.<sup>8</sup> Discrimination is prohibited "with respect to [an employee's] compensation, terms, conditions, or privileges of employment."<sup>9</sup> An employer is obligated to ensure that its workplace is "free of harassment based on national origin, ethnicity, or religion" and is "liable not only for harassment by supervisors, but also by coworkers."<sup>10</sup> "Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance."<sup>11</sup> Harassment on the basis of a protected category is unlawful when it becomes severe or pervasive enough to create an intimidating, hostile or abusive work environment.<sup>12</sup>

To avoid liability for a hostile work environment caused by a supervisor's harassment, the employer must reasonably try to prevent and promptly correct the harassing behavior and show the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the

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<sup>8</sup> See 42 U.S.C. § 2000e, *et seq.* CA's FEHA similarly protects employees from discrimination by their employers on the basis of protected categories like race, religious creed, national origin and ancestry. See Cal.Govt.Code § 12940.

<sup>9</sup> Supra note 10.

<sup>10</sup> See "Employment Discrimination based on Religion, Ethnicity, or Country of Origin," EEOC, <https://www.eeoc.gov/laws/guidance/employment-discrimination-based-religion-ethnicity-or-country-origin>. CA's FEHA prohibits harassment by supervisors and co-workers on the basis of race, religious creed, color, national origin" and other protected categories. See Cal.Govt.Code 12940(j)(1).

<sup>11</sup> "Harassment," EEOC, available at <https://www.eeoc.gov/harassment>. See *Aguilar v. Avis Rent A Car System Inc.*, 980 P.2d 846, 8551 (Cal. 1999).

<sup>12</sup> See *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 17 (1993) ("Whether an environment is "hostile" or "abusive" can be determined only by looking at all the circumstances, which may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. The effect on the employee's psychological well-being is relevant in determining whether the plaintiff actually found the environment abusive. But...no single factor is required."). CA has adopted the standard in *Harris v. Forklift* for evaluating hostile work environment cases based on harassment. See Ann.Cal.Gov.Code § 12923(a); see also *Hughes v. Par*, 209 P.3d 963, 971 (Cal. 2009) ("Under California's FEHA, as under the federal law's Title VII, the existence of a hostile work environment depends upon 'the totality of the circumstances'") (quoting *Miller v. Department of Corrections* 115, P.3d 77 (Ca.2005)).

employer.<sup>13</sup> The employer is liable for harassment by co-workers if the employer knew or should have known about the harassment and failed to take prompt and appropriate corrective action.<sup>14</sup>

Members of the DEI committee and other CAPS staff members harassed Dr. Albucher and Ms. Levin on the basis of their Jewish religion and national origin as well as their race on an ongoing basis for over a year by making offensive and derogatory remarks, invoking classic anti-Semitic tropes, using ethnic and racial stereotypes of Jews as well as insults and put-downs about Jews generally and directed at Dr. Albucher and Ms. Levin in particular.<sup>15</sup> The harassment was so pervasive and severe that it created a hostile and offensive work environment for Dr. Albucher and Ms. Levin as well as other Jews in CAPS.<sup>16</sup>

The anti-Semitic harassment directed at Dr. Albucher and Ms. Levin was targeted, intentional, and discriminatory intimidation on the basis of their Jewish ethnic and religious identity as well as their perceived race. The DEI program advanced the stereotype that Jews, including Ms. Levin and Dr. Albucher, are “white” or “white passing,” and invoked the classic anti-Semitic trope that Jews are powerful, wealthy and privileged.<sup>17</sup> By promoting this anti-Semitic narrative about Jews, denying and attempting to erase Jewish ancestral identity, and silencing any mention of anti-Semitism, the DEI program has fostered hostility toward Jews and delegitimized Jewish identity and experience, thereby justifying the program’s decision to ignore anti-Semitic activity that occurs on the Stanford campus. In this way, the CAPS DEI program has created and fostered a hostile work environment for Jewish staff like Dr. Albucher and Ms. Levin, who are made to feel as though targeted discrimination towards the religious and ethnic group they belong to is of no concern to the DEI program at CAPS.

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<sup>13</sup> See “Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors,” EEOC, (Jun. 18, 1999), available at, [https://www.eeoc.gov/laws/guidance/enforcement-guidance-vicarious-liability-unlawful-harassment-supervisors#\\_ftn1](https://www.eeoc.gov/laws/guidance/enforcement-guidance-vicarious-liability-unlawful-harassment-supervisors#_ftn1); see also *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); and *Vance v. Ball State University*, 570 U.S. 421 (2013). California’s FEHA provides that it is unlawful for an employer to “fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.” See Cal.Govt.Code 12940(k). Under the FEHA, an employer is strictly liable for harassment by a supervisor and is liable for harassment by coworkers if the employer knew or should have known of the conduct and failed to take immediate and appropriate corrective action. See Cal.Govt.Code §12940(j)(1); see also *State Dept. Health Services v. Superior Court*, 79 P.3d 556, 562 (Cal.2003).

<sup>14</sup> Supra note 15.

<sup>15</sup> See 29 CFR 1606.8(a)(“[H]arassment on the basis of national origin is a violation of Title VII”).

<sup>16</sup> See 29 CFR 1606.8(b)(“Ethnic slurs and other verbal or physical conduct relating to an individual’s national origin constitute harassment when this conduct: (1) Has the purpose or effect of creating an intimidating, hostile or offensive working environment...”).

<sup>17</sup> See IHRA Working Definition of Antisemitism, available at <https://www.holocaustremembrance.com/working-definition-antisemitism>.

The severity and persistence of the discriminatory harassment against Dr. Albucher and Ms. Levin on the basis of their perceived race and ethnic identity, created a hostile environment that interfered with their privileges of employment by hindering their ability to fully participate in the DEI program and the collegial work environment in CAPS. For example, Ms. Levin was ostracized from her own clinical team for expressing concerns about racism because her coworkers perceived her as being white and privileged. The intense and vitriolic harassment directed against Dr. Albucher at the DEI seminar on May 20, 2020, which invoked classic anti-Semitic conspiracy theories about Jewish power and privilege, and aimed to intimidate and silence him on the basis of his Jewish ethnic identity, forced him to stop attending the DEI seminars altogether. The hostility Ms. Levin witnessed against Dr. Albucher at the May 20 DEI seminar, caused her to feel so unsafe that she subsequently stopped attending several DEI seminars. Ms. Levin was personally targeted on several occasions on the basis of her race and Jewish identity by coworkers who used offensive and derogatory narratives about Jews, such as when ██████████ told Ms. Levin that she had “immense power and privilege” as a “Jewish, white...woman.” The pressure exerted on Ms. Levin by supervisors and co-workers to attend the white affinity group, despite her insistence that she was highly uncomfortable, further created a hostile and intimidating atmosphere for Ms. Levin in CAPS. In Ms. Levin’s presence, her coworkers in the DEI program advanced offensive and prejudicial sentiments about the connection between Jews and white supremacy and lamented the presence of so many privileged individuals like Jews and other “pass for white” people. By silencing any mention of anti-Semitism, after the May 16<sup>th</sup> anti-Semitic zoom-bombing and the swastikas at Stanford’s Memorial Church, the DEI program further perpetuated a hostile atmosphere against Jews by sending a message to Jewish staff that the victimization and safety of Jewish people was not worthy of concern. In sum, as a result of the ongoing harassment and hostile climate in the DEI program, Dr. Albucher and Ms. Levin were unlawfully subjected to a hostile, offensive and intimidating work environment.

Although Stanford was aware of the hostile climate in the CAPS DEI program, the university did not take any meaningful corrective steps intended to end the harassment or redress the hostile environment and the negative effects it had on Dr. Albucher and Ms. Levin. Immediately following the May 20<sup>th</sup> DEI seminar, Dr. Albucher and Ms. Levin informed supervisors and the CAPS ██████████ about the severe anti-Semitic harassment and hostile atmosphere that was directed at Dr. Albucher and Jews more generally at the meeting. And later in the summer of 2020, Ms. Levin and Dr. Albucher notified ██████████, the ██████████, who notified Human Resources, about the ongoing hostile environment against Jews in the DEI program. While the CAPS ██████████ and ██████████ privately comforted Dr. Albucher and Ms. Levin on occasion, the university administration has not made any efforts to publicly address the systemic problems in the DEI program. Neither CAPS management nor the university administration have publicly condemned the anti-Semitic harassment against Dr. Albucher by his co-workers in the presence of other CAPS staff members at the May 20 meeting or addressed the pervasive anti-Jewish hostility in the DEI program. The university’s silence and inaction has served to condone and perpetuate the hostile climate in the DEI program. To this day, Dr. Albucher has never felt safe enough to resume his participation in the DEI seminars after he was effectively pushed out by anti-Semitic harassment on May 20, 2020. Ms. Levin has not attended the

white affinity group since early October 2020 due to the persistent harassment and hostility she experienced on the basis of her race and Jewish ethnic and religious identity.

Furthermore, even the few and deficient attempts Stanford has taken thus far to address Dr. Albucher's and Ms. Levin's complaints have been neither prompt nor appropriately corrective. Over the course of one year, Dr. Albucher and Ms. Levin complained on numerous occasions to supervisors and managers about the underlying and systemic nature of the problem of anti-Semitism in the CAPS DEI program. While CAPS management responded to Dr. Albucher and Ms. Levin with personal expressions of empathy, they did not do anything to specifically address the hostile climate towards Jews in the DEI program as a whole. For instance, Stanford has not instituted training or educative programming within CAPS DEI about classic anti-Semitic tropes, Jew-hatred that masquerades under the guise of anti-Zionism and race-based stereotyping of Jews. Indeed, by facilitating a mediation session between Dr. Albucher and another colleague who herself perpetuated anti-Semitic harassment, Stanford treated the issue as a limited, interpersonal problem between co-workers rather than a more widespread and deep-seated problem within the CAPS DEI program.

Dr. Albucher became so frustrated by Stanford's refusal to prevent the ongoing harassment and end the hostile climate that he felt compelled to escalate his complaints to senior administrators over one year after he and Ms. Levin began complaining to CAPS management. While Stanford recently indicated that it purportedly intends to investigate Dr. Albucher's concerns, the University only did so to shield itself from liability after over a year of persistent complaints by Dr. Albucher and Ms. Levin, after receiving notice from the Education Department that a federal discrimination complaint was filed against it, [REDACTED]

[REDACTED]. Through its failure to promptly and appropriately address the anti-Jewish hostility that has pervaded the CAPS DEI program for over one year, Stanford has allowed the hostile climate to fester and ratified the anti-Jewish conduct of staff and supervisors, while Dr. Albucher and Ms. Levin have suffered the consequences of working in an intimidating and antagonistic work environment.

The university's failure to take prompt and effective steps to address the anti-Jewish hostility in the DEI program has broader ramifications. The DEI program trains those who provide mental health counseling to Stanford students. When the DEI program ignores anti-Semitic incidents on campus and spreads the anti-Semitic canard that Jews have "immense power and privilege," it teaches the Stanford mental health professionals to dismiss as inconsequential the mental health consequences anti-Semitic incidents have on Jewish students. Such training inevitably harms the mental health professionals' ability to provide equal, unbiased, effective service to Stanford's Jewish students.

For the foregoing reasons, Stanford permitted a hostile environment in CAPS for Jewish staff – including Dr. Albucher and Ms. Levin – on the basis of their national origin, religion, and race in violation of Title VII.

#### IV. Remedies

**A. Non-monetary Relief: Stanford University must come into compliance with Title VII and the FEHA by taking various concrete steps to eliminate the hostile environment and its effects in the CAPS DEI program.**

**1. Stanford must ensure that Jewish students receive the same level of care and attention that other students receive.**

Stanford University must ensure that it provides the same level of clinical care to Jewish students who face anti-Semitism that it provides to students who are targets of other forms of prejudice. In order to meet this goal, Stanford should create a Task Force that provides input to CAPS and the university's DEI programs about how to respond to anti-Semitic incidents on campus and how best to meet the therapeutic and clinical needs of the Jewish students at Stanford.

**2. Stanford must revise the CAPS DEI program so that it administers a comprehensive curriculum that is developed and taught by professional DEI educators and specifically addresses the different manifestations of anti-Semitism.**

Stanford University must overhaul and restructure its DEI program by hiring professional DEI educators to develop and teach a comprehensive DEI curriculum to CAPS staff. The new DEI curriculum should include a component specifically devoted to defining, understanding and combatting anti-Semitism to ensure that CAPS clinicians understand the unique lived experiences of Jewish students and how to help them when they are targeted by anti-Semitism. The DEI training about anti-Semitism must address the many different manifestations and facets of Jew-hatred including classic tropes, anti-Semitism cloaked under the guise of anti-Zionism and racial and ethnic stereotyping of Jews. The anti-Semitism curriculum in the DEI program must utilize the International Holocaust Remembrance Alliance Working Definition of Antisemitism (IHRA Definition) and its illustrative examples as a tool to educate the Stanford community about the different manifestations of anti-Semitism. Further, the DEI program must cease promoting anti-Zionism, which runs contrary to the program's goals of opposing racism and creating an inclusive community that is tolerant of all identities.

**3. Stanford University must develop policies and procedures to prevent the use of adverse racial stereotypes and provide training to members of the Stanford community on those policies.**

Stanford University must develop and implement policies and procedures to prevent the use of adverse racial stereotypes and provide training on these policies and procedures to members of the Stanford community, including administrators, faculty, other staff and students.

**4. Stanford University and CAPS must issue a public statement condemning anti-Semitism, including efforts to demonize and exclude members of the Stanford community on the basis of their Jewish identity.**

The university and CAPS must issue a public statement condemning all forms of anti-Semitism and anti-Semitic harassment, including anti-Semitism that targets Jews on the basis of perceived race and Jewish ethnicity. The statement must clarify that efforts to promote anti-Zionism in the CAPS DEI program are antithetical to the program's laudatory goals of combatting racism and creating an inclusive community that is tolerant and respectful of all identities. The statement must further condemn the pervasive anti-Semitic harassment and bias in the CAPS DEI program that targeted Dr. Albucher, Ms. Levin and Jews more generally on the basis of their Jewish ethnic identity.

Such statement must also include a commitment by the university and the DEI program to address and respond to anti-Semitic incidents on the Stanford University campus with the same concern and they would respond to other forms of bigotry and hate-crimes; this response should include, where appropriate, educational and training programs addressing the many manifestations of anti-Semitism and utilizing the IHRA Definition and its contemporary examples. We strongly urge the University to use or model its statement on the following language:

We condemn anti-Semitism in all its forms. Efforts to demonize Jews and make Jewish members of the Stanford community feel unsafe expressing their religious and ethnic identity is contrary to our university's and the DEI program's basic values of mutual respect and inclusion. The promotion of anti-Zionism is antithetical to the program's laudatory goals of combatting racism and creating an inclusive community that is tolerant and respectful of different identities. Our university and DEI programs must be places for the free and open exchange of ideas. It is never acceptable to harass, intimidate, marginalize, exclude or demonize any part of our university community on the basis of its identity.

Member of our Stanford University staff have been subjected to anti-Semitic harassment and intimidation in the DEI program on the basis of their Jewish ethnic identity as well as on the basis of their perceived race. Targeting any member of our community in this manner is unacceptable.

The University and CAPS DEI program are committed to taking all necessary actions, including discipline where appropriate, to address and ameliorate anti-Semitic discrimination and harassment based on shared ancestry, ethnic characteristics and on the basis of perceived race. To that end, the University and the CAPS DEI program will utilize the IHRA Working Definition of Anti-Semitism when investigating and responding to incidents of harassment and discrimination to determine whether they are motivated by anti-Semitic animus or bias. The University encourages the entire SU community to educate itself about the many

manifestations of anti-Semitism by reading and studying the IHRA Definition and its contemporary examples.

**5. Stanford University must revise its nondiscrimination policies to include a prohibition on discrimination based on actual or perceived shared ancestry and ethnicity as well as adverse racial stereotyping and conduct mandatory training for the University community regarding its revised policies.**

The University must revise its nondiscrimination policies to include a prohibition on discrimination based on adverse racial stereotyping as well as actual or perceived shared ancestry and ethnic characteristics.<sup>18</sup> The revised policies should include a description of the forms of anti-Semitism that can manifest in the University environment and provide examples of discrimination on the basis of adverse racial stereotypes as well as shared ancestry and ethnic characteristics including the contemporary examples of anti-Semitism in the IHRA Definition. The University and/or CAPS DEI program must conduct training for the University community, including students, faculty, staff, and administrators, concerning the revised nondiscrimination policies and their implementation. Such training must include programming and educational materials about the many manifestations of anti-Semitism.

## **B. Monetary Relief**

For his Title VII and FEHA claims, Dr. Albucher is entitled to monetary compensation for the significant emotional distress he suffered due to the severe and pervasive hostile work environment perpetrated by the CAPS DEI Program. As a result of Stanford's violations of Title VII, he has experienced wholly undeserved feelings of humiliation, anger, shame, distress, and sadness, which has affected his personal and professional life very deeply and dramatically.

Dr. Albucher has retained counsel to help him prosecute his claims. As a prevailing employee under Title VII and the FEHA, he will also be entitled to an award of statutory fees and costs.

## **V. Conclusion**

Stanford is a world-class university with vast resources and an unrivalled reputation for excellence. It can do better than this. It must do better than this. At a bare minimum, it must meet the basic requirements of federal and California law. Stanford must repair its Diversity, Equity, and Inclusion program so that it eliminates unlawful discrimination rather than perpetuating it. It should do so for the benefit of the entire Stanford community, including its Jewish faculty, staff, and students. By promoting an anti-Semitic narrative about Jews, erasing Jewish identity, targeting Jewish staff using

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<sup>18</sup> See, e.g., Stanford University's Equal Employment Opportunity, Non-Discrimination, and Affirmative Action Policy, available at <https://adminguide.stanford.edu/chapter-1/subchapter-7/policy-1-7-4>; Stanford University's Nondiscrimination Policy, available at <https://exploreddegrees.stanford.edu/nonacademicregulations/nondiscrimination/>.

anti-Semitic tropes, silencing any mention of anti-Semitism, [REDACTED]

[REDACTED] Stanford has marginalized and excluded Jewish staff, fostered a hostile work environment for Jews, and threatened the ability of Stanford's mental health professionals to provide equal unbiased care to Jewish students who experience anti-Semitism. For the foregoing reasons, the complainants strongly urge investigation into Stanford University's violations of Title VII and relevant state laws prohibiting discriminatory employment practices.

Respectfully submitted,

ss/Ronald Albucher  
Ronald Albucher

BY:



**Alyza D. Lewin**  
President  
The Louis D. Brandeis Center for Human Rights Under Law



**Denise Katz-Prober**  
Director of Legal Initiatives  
The Louis D. Brandeis Center for Human Rights Under Law

(Attorneys for Complainant Ronald Albucher)

Cc: Department of Fair Employment and Equal Housing  
2218 Kausen Drive, Suite 100  
Elk Grove, CA 95758

May 21, 2021

**VIA EMAIL**



**Re: Charge Statement Pertaining to Employment Discrimination by Stanford University,  
EEOC Inquiry No. [REDACTED]**

**I. Introduction**

Over the last year and a half, Stanford University's Counseling & Psychological Services (CAPS) division has created and fostered a hostile and unwelcoming environment for Jews in its Diversity, Equity and Inclusion (DEI) program. As counselors, we strongly support diversity, equity, and inclusion and are mortified that Stanford University (Stanford) has permitted the DEI program to be perverted so that it accomplishes precisely the opposite of its intended aims. The very program that is supposed to facilitate the full inclusion of all members of the Stanford community is now undermining that goal, perpetrating the very invidious discrimination that it is meant to eliminate.

Through its DEI committee, weekly seminars and racially segregated affinity groups, the CAPS DEI program has maligned and marginalized Jews on the basis of religion, race and ethnic identity by castigating Jews as white, powerful and privileged members of society who contribute to systemic racism and denying and attempting to erase Jewish ancestral identity. In addition, the DEI program has denigrated the concept of Jewish victimhood and deliberately excluded anti-Semitism from the program's agenda. Ronald Albucher (Dr. Albucher) and Sheila Levin (Ms. Levin) are two Jewish employees of Stanford University (Stanford) who have worked as mental health clinicians in CAPS throughout the timeframe described in this complaint and have been subjected to an ongoing hostile environment in the CAPS DEI program on the basis of their national origin, religion and race.

The CAPS DEI program engages in intentional racial segregation through race-based affinity groups. It relies upon racial and ethnic stereotyping and scapegoating by describing all Jews as white or white-passing and therefore complicit in anti-Black racism. Jewish staff have been pressured to attend the DEI program's racially segregated "whiteness accountability" affinity group, which was created for "staff who hold privilege via white identity" and "who are white identified, may be newly grappling with or realizing their white identity, or identify as or are perceived as white presenting or passing (aka seen as white by others even though you hold other identities)." The DEI committee has also endorsed the narrative that Jews are connected to white supremacy, advancing

anti-Semitic tropes concerning Jewish power, conspiracy, and control. By endorsing an anti-Semitic narrative that designates Jews collectively as “oppressors” and responsible for systemic racism, while simultaneously denying the uniqueness of Jewish ancestral identity, the DEI committee fosters anti-Jewish sentiment and encourages hostility toward Jews (including Dr. Albucher and Ms. Levin).

The CAPS DEI program has further fomented a hostile environment for Jews by ignoring anti-Semitism and publicly silencing and intimidating Jews who have spoken up to challenge the program’s failure to discuss Jew-hatred at Stanford. On two separate occasions, the DEI program knowingly failed to respond to anti-Semitic incidents that occurred on the Stanford campus. When Dr. Albucher asked the DEI program to address an anti-Semitic incident that occurred at Stanford, he was verbally attacked and disparaged on the basis of his Jewish identity by members of the DEI committee, who invoked anti-Semitic tropes and conspiracy theories about Jewish wealth, power and privilege. They accused Dr. Albucher of derailing the program’s focus on anti-Black racism merely by raising the issue of anti-Semitism. Due to the harassment, vilification and intimidation he was subjected to by his colleagues in the DEI program, Dr. Albucher was effectively forced to leave the weekly DEI seminars; in fact, he never felt safe returning to the seminars and did not return. After witnessing the derogatory and offensive anti-Semitic hostility directed at Dr. Albucher, Ms. Levin felt so intimidated and unsafe that she was unable to speak in support of her colleague and informed her supervisors that she did not feel safe attending subsequent DEI seminars.

Stanford knew about the harassment of Jewish staff and anti-Jewish hostility in the CAPS DEI program and yet failed to correct the hostile climate. Over the course of one year, Dr. Albucher and Ms. Levin repeatedly notified their supervisors and various Stanford administrators about the ongoing harassment and hostile environment they were experiencing. Nevertheless, Stanford failed to take action to ameliorate the systemic problem of anti-Semitism in the CAPS DEI program. [REDACTED]

Stanford’s failure to address anti-Jewish hostility has broader concerning ramifications. The DEI program trains CAPS clinicians who provide mental health counseling to Stanford’s student body. Indeed, the [REDACTED] of CAPS has “stress[ed] how important this [DEI programming] is for the clinical work that we’re doing with students” in order to “help all staff in developing the skills and confidence to engage with students from different backgrounds, and to support one another as we are asked to serve our shared community.” But when the DEI program ignores anti-Semitic incidents on campus and spreads the anti-Semitic canard that Jews have “immense power and privilege,” it teaches Stanford’s mental health professionals to dismiss as inconsequential the mental health consequences anti-Semitic incidents have on Jewish students. Such training inevitably harms the mental health professionals’ ability to provide effective care to Stanford University’s Jewish students.

Indeed, this case serves as a cautionary tale: those in CAPS and beyond, who are engaged in the important and necessary work of combatting systemic racism and discrimination, must be careful to ensure that in the process of opposing bigotry that targets one group, they do not in the process promote or perpetrate harassment and discrimination of another group.

For the foregoing reasons, Ms. Levin requests that:<sup>1</sup> (1) the Equal Employment Opportunity Commission (EEOC) initiate an investigation of Stanford University for violating Title VII of the Civil Rights Act of 1964 (Title VII) and its implementing regulations, by failing to address severe and ongoing harassment in CAPS against Jewish staff members on the basis of their race, religion and national origin, which created a hostile work environment [REDACTED]

[REDACTED];<sup>3</sup> (3) the California Department of Fair Employment and Housing (DFEH) initiate an investigation of Stanford University for violating CA's Fair Employment and Housing Act (FEHA) by discriminating against the complainants on the basis of their race, religious creed, national origin and ancestry [REDACTED]

[REDACTED]<sup>4</sup>

## II. Statement of Facts

### a. Hostile Work Environment and Harassment Against Jews in the CAPS DEI Program

Ms. Levin and Dr. Albucher were employees at CAPS throughout the timeframe described in this complaint. Dr. Albucher was the Director of CAPS from 2008 until 2017. Since 2017, Dr. Albucher has worked as a Staff Psychiatrist in CAPS and is also a Clinical Associate Professor in the Department of Psychiatry at Stanford University Medical School. Ms. Levin has worked as the Clinical Care Manager/Eating Disorder Specialist at CAPS for the last 13 years. Dr. Albucher and Ms. Levin both identify as Jewish.

In November 2019, the [REDACTED] of CAPS, [REDACTED], emailed all CAPS staff members and asked them to carve out time in their schedules for a weekly DEI seminar that would begin meeting in January 2020. [REDACTED] explained that the DEI seminars were launched "to engage across differences, better understand cultural groups, and explore cultural biases we hold so as to sharpen

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<sup>1</sup> The complainants request that the EEOC simultaneously dual-file their charges of discrimination and this charging statement with the California DFEH.

<sup>2</sup> See 42 U.S.C. § 2000e, *et seq.* [REDACTED]

<sup>3</sup> [REDACTED]

<sup>4</sup> See Cal.Govt.Code §§ 12900 *et seq.*; *see also* Cal.Govt.Code §§ 12940(a), [REDACTED] (j)(1), (k), [REDACTED].

our skills as clinicians and improve our professional relationships.” ██████ further explained to CAPS staff the importance of the DEI seminars “for the clinical work that [CAPS staff are] doing with students, for staff morale and cohesion, and for the shared mission we have as a service...Our hope is that this series will help all staff in developing the skills and confidence to engage with students from different backgrounds, and to support one another as we are asked to serve our shared community.” ██████ asked CAPS staff members to volunteer for a DEI committee and further indicated that “[w]e may call on staff to participate depending on the response we get.”

In December 2019, ██████ informed CAPS staff that the weekly DEI seminars would begin in January 2020 and announced the formation of the DEI committee composed of CAPS staff members. Staff were asked to read the book – “*White Fragility*” – by Robin Diangelo and were informed that a DEI committee member, ██████, and another CAPS staff member, ██████ would facilitate a separate “structured space for white staff” to “process reaction to *White Fragility*.”

Subsequently, the CAPS DEI program created racially segregated affinity groups that separated CAPS staff members on the basis of race or perceived race. One of these groups was for white staff, and another group was for staff comprising minorities of color. These race-based groups met separately as part of the DEI program and, upon information and belief, continue to exist and meet as part of the CAPS DEI program. No affinity group was ever created for members of Jewish ancestral identity. As a result, there was no “space” in the DEI program for Dr. Albucher and Ms. Levin to safely express their lived Jewish experience. Instead, Jews in the DEI program are expected to join the white affinity group and are pressured to accept the anti-Semitic stereotypes promoted by the DEI program, namely, that Jews are rich, white and powerful.

The white affinity group was eventually named the “Whiteness Accountability group/book club,” and was intended for “staff who hold privilege via white identity and who want to explore how the advantages of whiteness interact with their identities, with their work, and in the world.” The DEI program further explained that the white affinity group was intended for staff “who are white identified, may be newly grappling with or realizing their white identity, or identify as or are perceived as white presenting or passing (aka seen as white by others even though you hold other identities).” In its announcement about the creation of a white affinity group, DEI program leaders provided a link to an online resource about race-based affinity groups, which advocates racially segregated “[c]aucuses to provide spaces for people to work within their own racial/ethnic groups,” reasoning that “white people often find learning about whiteness and white privilege a steep learning curve.”

Ms. Levin identifies strongly with her Jewish identity and does not feel an affinity for “white” identity. Ms. Levin’s supervisors and co-workers in the DEI program, nevertheless pressured her to participate in the white affinity group. Neither Ms. Levin nor Dr. Albucher were encouraged to attend another affinity group in the DEI program. On January 14, 2020, Ms. Levin’s ██████ at the time, ██████, told Ms. Levin to attend the DEI seminars by explaining that other staff had expressed interest in ensuring the attendance of as many “white clinicians” as possible. On a

separate occasion in or around May 2020, Ms. Levin told ██████████ that although she wanted to be a part of the group environment in CAPS, she felt uncomfortable participating in the white affinity group because, as a Jewish person, she did not feel an affinity with white identity. ██████████ responded to Ms. Levin's concerns by stating, in sum and substance, that "This was the direction the clinic was going" and if Ms. Levin wanted to be part of a collegial environment at CAPS, she needed to participate in the white affinity group. ██████████ told Ms. Levin she was unable to do anything about her complaint, other than to provide empathic listening. Upon information and belief, ██████████ did not take any steps to address Ms. Levin's complaint.

Dr. Albucher began attending the weekly DEI seminars around February of 2020. During one of the seminars, several CAPS co-workers verbally harassed and intimidated Dr. Albucher when they discovered that he had not read the assigned book, "*White Fragility*." Meeting participants, treating all Jews as white, implied that Dr. Albucher had inherent privilege. They berated him for co-opting the meeting because other participants had to explain the book to him. Following the DEI meeting, Dr. Albucher spoke to ██████████ about his concerns that the CAPS DEI program was treating all individuals who are perceived as white (including Jews) as a monolithic group of privileged people who unconsciously contribute to systemic racism. Dr. Albucher expressed his concern that the DEI program was not respectful of differing opinions in contravention to the program's ground rules. Upon information and belief, ██████████ did not take any steps to address Dr. Albucher's complaints.

On or about May 16, 2020, during a virtual townhall for the Stanford community hosted by "The People's Caucus" – a slate of 10 candidates comprised of minority groups in the Associated Students of Stanford University Undergraduate Senate election – unknown participants hijacked the meeting, shared racist audio messages that displayed images of swastikas and weapons and used the "N-word."<sup>5</sup> This zoom-bombing incident caused widespread distress among members of Stanford's student body and the wider Stanford community due to the racist and anti-Semitic nature of the attack.<sup>6</sup>

Upon information and belief, shortly after the May 16th zoom-bombing incident, Ms. Levin expressed to her co-workers in her CAPS clinical team that she was outraged about the incident and expressions of racial hatred at Stanford. In response, Ms. Levin's co-workers ostracized and verbally harassed her by accusing her of possessing the privilege – that they insisted people of color do not possess – of feeling outraged about racism. Her colleagues excluded her from their collegial work group on the basis of her perceived race and national origin by insisting she discuss her concerns only with her white colleagues in the "white affinity" group rather than with her clinical team.

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<sup>5</sup> See Lauryn Johnson, ASSU candidates' rally 'Zoom-bombed' with anti-Black, anti-Semitic sentiments, The Stanford Daily (May 18, 2020), <https://www.stanforddaily.com/2020/05/18/assu-candidates-rally-zoom-bombed-with-anti-black-anti-semitic-sentiments/>.

<sup>6</sup> See Munira Alimire et al., "The People's Caucus response to 'Zoom-bombing' incident," The Stanford Daily, (May 17, 2020), <https://www.stanforddaily.com/2020/05/17/the-peoples-caucus-response-to-zoom-bombing-incident/>.

On May 20, 2020, Dr. Albucher and Ms. Levin attended the first CAPS DEI seminar that was held after the May 16th zoom-bombing. During a discussion about the zoom-bombing at the May 20th DEI seminar, DEI committee members addressed the racist and anti-Black content but did not mention anti-Semitism or the anti-Semitic images of swastikas that were displayed during the zoom-bombing attack. When Dr. Albucher inquired about the failure to address swastikas and anti-Semitism during the DEI's discussion about the zoom-bombing, DEI committee member [REDACTED] stated, in sum and substance, that the DEI committee decided to omit any mention of anti-Semitism so as not to dominate the discussion about anti-Black racism. When Dr. Albucher further expressed his concern about the decision to ignore the issue of anti-Semitism, DEI committee member [REDACTED] and others accused Dr. Albucher of trying to derail the agenda's focus on anti-Black racism. DEI committee members justified the omission of anti-Semitism by insisting that unlike other minority groups, Jews can hide behind their white identity.

At this meeting, Dr. Albucher and Ms. Levin were subjected to anti-Jewish stereotypes. Participants invoked the anti-Semitic trope that Jews are wealthy and powerful business owners. These DEI committee members reasoned that because Jews, unlike other minority group, possess privilege and power, Jews and victims of Jew-hatred do not merit or necessitate the attention of the DEI committee. When Dr. Albucher raised concerns about anti-Semitism, the reaction of DEI committee member [REDACTED], who barely knew him, was to accuse Dr. Albucher of racism – not because of anything Dr. Albucher had ever said or done in the past, but presumably, because he was Jewish and [REDACTED] was upset that Dr. Albucher refused to accept the anti-Semitic stereotype of Jews as powerful and privileged. [REDACTED] accused Dr. Albucher of “not having my back” – not because he had ever said or done anything to her, but because [REDACTED] viewed Dr. Albucher's attempt to broaden the conversation to include anti-Semitism (in addition to anti-racism), as an attempt to diminish the group's focus on combatting anti-Black racism.

Due to this harassment, Dr. Albucher felt unsafe attending future DEI programming and was effectively forced out of the DEI seminar. Shortly after the May 20th meeting, Dr. Albucher notified the [REDACTED] of CAPS that he would stop attending DEI meetings because of their anti-Semitic content and hostile environment. Although Ms. Levin, who attended the May 20th meeting and witnessed the harassment directed at Dr. Albucher, shared Dr. Albucher's opinion that the DEI committee should not ignore anti-Semitic incidents at Stanford, she was too intimidated by the hostile and anti-Jewish atmosphere to speak at the May 20th meeting and voice her defense of Dr. Albucher's position. Ms. Levin remained silent at the May 20th meeting because she was fearful of experiencing similar hostility and harassment on the basis of her Jewish identity and race from the leaders and participants in the DEI program. Following the May 20th meeting, Ms. Levin notified her [REDACTED], [REDACTED], and [REDACTED] that she did not feel safe attending the DEI seminar and announced that she would not attend the following DEI seminar for that reason.

Following the May 20th DEI seminar, Stanford did not take steps to address the severe harassment against Dr. Albucher and the complaints by Dr. Albucher and Ms. Levin that they felt unsafe due to the hostility in the DEI seminars.

The CAPS DEI program relies upon a narrative that presumes all white people are consciously or unconsciously to blame for systemic racism in the workplace and in society at large due to their “white privilege.” The CAPS DEI program further perceives all Jews as white; it advances the false and anti-Semitic ethnic stereotype that all Jews are “white” or “white-passing” – because they can hide behind their whiteness – and that Jews are privileged and contribute to oppression against other minority groups. For instance, on or about May 30, 2020, Ms. Levin emailed ██████████, an ██████████ and DEI committee leader, inquiring as to how she could better support ██████████ as part of the DEI program. On or about June 1, 2020, ██████████ responded by accusing Ms. Levin of being racist due to her Jewish identity and race: “As a Jewish, White, cis [sic] woman you have immense power and privilege. It is important to understand how you are apart [sic] of the systemic racism and oppression that takes place in this country.”

On June 24, 2020, at a DEI seminar that Ms. Levin attended, participants lamented that the group was composed of privileged people, specifically “white, pass for white and Jewish” people. Someone also stated that the group focused too much on white solidarity.

In July 2020, swastikas were discovered inside Stanford’s Memorial Church. Although ██████████ was aware of the anti-Semitic incident, she did not carve out time in the DEI programming to address it. At a DEI committee meeting that took place on or about July 29, 2020, a DEI facilitator stated that the DEI committee would address the swastika incident only if it had time to do so. In fact, the DEI committee never discussed the matter further and subsequently ignored it altogether. Thus, for the second time, the CAPS DEI program deliberately omitted any mention of anti-Semitism and refused to address anti-Semitic activity that occurred on the Stanford campus and that directly affected the Jewish community members that CAPS clinicians service.

Around August 2020, Ms. Levin and Dr. Albucher notified ██████████ and ██████████ the ██████████, about the hostile climate that Ms. Levin and Dr. Albucher were experiencing in the DEI program based on their race and Jewish ethnic identity. Upon information and belief, ██████████ and ██████████ notified Stanford’s Human Resources (HR) Department about the situation. Rather than address the hostile environment for Jews in the CAPS DEI program, in December 2020 HR attempted to facilitate a private mediation session between Dr. Albucher and ██████████, the DEI committee member who engaged in anti-Semitic harassment against Dr. Albucher at the May 20<sup>th</sup> DEI seminar. Although Dr. Albucher informed the mediator before the session began that a central goal of the mediation for him was to discuss anti-Semitism at the May 20<sup>th</sup> DEI meeting, the moderator did not provide Dr. Albucher with an opportunity to discuss the issue of anti-Semitism and therefore the issue was never discussed at the mediation. After the mediation session, Dr. Albucher informed the mediator that because the mediation failed to address his primary concerns about anti-Semitism, he still felt unsafe attending the DEI seminars, and indeed, Dr. Albucher never returned to the DEI seminars.

In or around October 2020, Ms. Levin stopped participating in the white affinity group because of the ongoing hostility she experienced on the basis of her race and Jewish ethnic identity. Upon information and belief, the race-based affinity groups, including the Whiteness Accountability group, continue to meet as part of the CAPS DEI program.

On January 8, 2021, Ms. Levin was subjected to a hostile environment yet again when members of the CAPS DEI committee promoted anti-Semitic narratives at an event intended to provide pre-doctoral students with information about internship and training opportunities at CAPS. During a presentation about the social justice training rotation that is supervised by members of the DEI committee, ██████████, explained, in sum and substance, that the program will explore how Jews are connected to white supremacy and will address anti-Semitism. Another CAPS DEI committee member, ██████████, stated in sum and substance, that she takes an anti-Zionist approach to social justice. DEI committee leader ██████████ also recommended a book that advances anti-Zionism and portrays the Jewish State of Israel as a racist endeavor.<sup>7</sup>

Dr. Albucher reported the intern open house incident to ██████████ and ██████████. ██████████ dismissed Dr. Albucher's concerns because he had not attended the event and also downplayed the gravity and systemic nature of the hostile climate by mischaracterizing the incident as a personal matter that should be discussed by Ms. Levin and the individual DEI committee members who gave the offensive presentations. In response to Dr. Albucher's complaint, ██████████ privately expressed his personal sympathy for Dr. Albucher and suggested that he pursue a formal grievance procedure; but neither ██████████ nor the university took any public or otherwise meaningful steps to respond to the concerns Dr. Albucher raised about the open house or to otherwise address the ongoing hostile environment for Dr. Albucher and Ms. Levin in the CAPS DEI program.

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<sup>7</sup> For many Jews, including Dr. Albucher and Ms. Levin, identifying with and expressing support for the Jewish homeland is a sincere and deeply felt expression of their Jewish ethnic and ancestral identity. Harassing, marginalizing and demonizing Jews on the basis of the Zionist components of their Jewish identity is just as unlawful and discriminatory as attacking a Jewish person for religious expressions of Jewish identity like observing the Sabbath or keeping kosher. Such forms of anti-Zionism are objectively as well as subjectively offensive. *See, generally*, U.S. Commission on Civil Rights, *Briefing Report: Campus Anti-Semitism* (July 2006), p. 3, <https://www.usccr.gov/pubs/docs/081506campusantibrief07.pdf> (“Anti-Semitic bigotry is no less deplorable when camouflaged as anti-Israelism or anti-Zionism.”). This form of anti-Semitism can manifest as discrimination, demonization, delegitimization, or harassment of the Jewish people, individually or collectively, holding individual Jews collectively responsible for the actions of the State of Israel, applying classic anti-Jewish stereotypes and defamations to Israel, and denying Israel's right to exist. *See* Executive Order 13899 (Combating Anti-Semitism) (Dec. 11, 2019), 3 CFR 13899.

Upon information and belief, in March 2021, the U.S. Education Department's Office for Civil Rights informed Stanford that a complaint of discrimination was filed against the University and transferred to the EEOC.

In April 2021, Dr. Albucher escalated his complaints to high level Stanford administrators due to Stanford's ongoing failure to improve or in any way address the hostile environment in CAPS despite repeated complaints over the course of one year by Dr. Albucher and Ms. Levin. Dr. Albucher provided a comprehensive overview of the history of anti-Jewish and racial hostility in the CAPS DEI program to [REDACTED], the [REDACTED], as well as [REDACTED] and [REDACTED] (whom he had informed on multiple previous occasions). During a conversation between Dr. Albucher and [REDACTED] on April 5, 2021, in which Dr. Albucher reiterated his concerns about systemic anti-Semitism and anti-Zionism in the DEI program, [REDACTED] unilaterally ended the discussion by walking out of Dr. Albucher's office. Following [REDACTED]'s offensive and hostile behavior, Dr. Albucher spoke to [REDACTED] and indicated that he might need to retire early due to the persistence of the ongoing hostile environment in CAPS. Dr. Albucher further informed [REDACTED] in a subsequent email that he heard about a psychiatry resident who stopped attending his clinical team meetings due to anti-Semitism fomented by a DEI committee member.

In mid-April 2021, after over a year of persistent complaints by Dr. Albucher and Ms. Levin and after receiving notice from the Education Department that a federal discrimination complaint was filed against the University, Stanford informed Dr. Albucher that it purportedly intends to investigate his concerns as a "confidential HR matter." In May 2021, Stanford referred Ms. Levin's discrimination complaints to Employee Labor Relations in HR in an attempt to shield itself from liability after Ms. Levin notified Stanford that it discriminated [REDACTED] against her [REDACTED].

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### III. Argument

The CAPS DEI program has created and fostered a hostile work environment for Jewish staff due to severe and persistent harassment that has targeted Ms. Levin and Dr. Albucher on the basis of their Jewish national origin and religion as well as their race for over a year.<sup>8</sup> Despite their repeated complaints to supervisors and university administrators about systemic anti-Jewish hostility in the CAPS DEI program, Stanford has not taken steps to address the anti-Semitic harassment or ameliorate the hostile work environment in CAPS. Indeed, Stanford has refused to recognize the endemic nature of the problem in the CAPS DEI program.

#### **A. Ms. Levin and Dr. Albucher have been subjected to severe and persistent harassment by co-workers and supervisors in the CAPS DEI program on the basis of their Jewish national origin, religion and race, which has created a hostile and intimidating work environment**

Title VII of the Civil Rights Act of 1964 prohibits an employer from discriminating against an employee on the basis of the employee's race, color, religion, sex, or national origin.<sup>9</sup> Discrimination is prohibited "with respect to [an employee's] compensation, terms, conditions, or privileges of employment."<sup>10</sup> An employer is obligated to ensure that its workplace is "free of harassment based on national origin, ethnicity, or religion" and is "liable not only for harassment by supervisors, but

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<sup>8</sup> The complainants alleging a continuing violation by Stanford. See *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 117 (2002) ("It does not matter, for purposes of ... [Title VII] that some of the component acts of the hostile work environment fall outside the statutory time period. Provided that an act contributing to the claim occurs within the filing period, the entire time period of the hostile environment may be considered by a court for the purposes of determining liability"); see also EEOC Compliance Manual § 2 Threshold Issues (May 12, 2000) available at [https://www.eeoc.gov/laws/guidance/section-2-threshold-issues#N\\_180](https://www.eeoc.gov/laws/guidance/section-2-threshold-issues#N_180) (quoting *Morgan*, supra at 117) ("Because the incidents that make up a hostile work environment claim 'collectively constitute one unlawful employment practice,' the entire claim is actionable, as long as at least one incident that is part of the claim occurred within the filing period"). To prove a continuing violation in CA, plaintiff must show that the employer's actions were "(1) sufficiently similar in kind ...; (2) have occurred with reasonable frequency; and (3) have not acquired a degree of permanence." See *Richards v. CH2M Hill, Inc.*, 29 P.3d 175, 190 (Cal. 2001); see also *Yanowitz v. L'Oreal USA, Inc.*, 116 P.3d 1123, 1142 (Cal. 2005).

<sup>9</sup> See 42 U.S.C. § 2000e, et seq. CA's FEHA similarly protects employees from discrimination by their employers on the basis of protected categories like race, religious creed, national origin and ancestry. See Cal.Govt.Code § 12940.

<sup>10</sup> Supra note 10.

also by coworkers.”<sup>11</sup> “Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance.”<sup>12</sup> Harassment on the basis of a protected category is unlawful when it becomes severe or pervasive enough to create an intimidating, hostile or abusive work environment.<sup>13</sup>

To avoid liability for a hostile work environment caused by a supervisor’s harassment, the employer must reasonably try to prevent and promptly correct the harassing behavior and show the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer.<sup>14</sup> The employer is liable for harassment by co-workers if the employer knew or should have known about the harassment and failed to take prompt and appropriate corrective action.<sup>15</sup>

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<sup>11</sup> See “Employment Discrimination based on Religion, Ethnicity, or Country of Origin,” EEOC, <https://www.eeoc.gov/laws/guidance/employment-discrimination-based-religion-ethnicity-or-country-origin>. CA’s FEHA prohibits harassment by supervisors and co-workers on the basis of race, religious creed, color, national origin” and other protected categories. See Cal.Govt.Code 12940(j)(1).

<sup>12</sup> “Harassment,” EEOC, available at <https://www.eeoc.gov/harassment>. See *Aguilar v. Avis Rent A Car System Inc.*, 980 P.2d 846, 8551 (Cal. 1999).

<sup>13</sup> See *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 17 (1993)(“Whether an environment is “hostile” or “abusive” can be determined only by looking at all the circumstances, which may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance. The effect on the employee’s psychological well-being is relevant in determining whether the plaintiff actually found the environment abusive. But...no single factor is required.”). CA has adopted the standard in *Harris v. Forklift* for evaluating hostile work environment cases based on harassment. See Ann.Cal.Govt.Code § 12923(a); see also *Hughes v. Par*, 209 P.3d 963, 971 (Cal. 2009)(“Under California’s FEHA, as under the federal law’s Title VII, the existence of a hostile work environment depends upon ‘the totality of the circumstances’”(quoting *Miller v. Department of Corrections* 115, P.3d 77 (Ca.2005)).

<sup>14</sup> See “Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors,” EEOC, (Jun. 18, 1999), available at, [https://www.eeoc.gov/laws/guidance/enforcement-guidance-vicarious-liability-unlawful-harassment-supervisors#\\_ftn1](https://www.eeoc.gov/laws/guidance/enforcement-guidance-vicarious-liability-unlawful-harassment-supervisors#_ftn1); see also *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); and *Vance v. Ball State University*, 570 U.S. 421 (2013). California’s FEHA provides that it is unlawful for an employer to “fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.” See Cal.Govt.Code 12940(k). Under the FEHA, an employer is strictly liable for harassment by a supervisor and is liable for harassment by coworkers if the employer knew or should have known of the conduct and failed to take immediate and appropriate corrective action. See Cal.Govt.Code §12940(j)(1); see also *State Dept. Health Services v. Superior Court*, 79 P.3d 556, 562 (Cal.2003).

<sup>15</sup> Supra note 15.

Members of the DEI committee and other CAPS staff members harassed Dr. Albucher and Ms. Levin on the basis of their Jewish religion and national origin as well as their race on an ongoing basis for over a year by making offensive and derogatory remarks, invoking classic anti-Semitic tropes, using ethnic and racial stereotypes of Jews as well as insults and put-downs about Jews generally and directed at Dr. Albucher and Ms. Levin in particular.<sup>16</sup> The harassment was so pervasive and severe that it created a hostile and offensive work environment for Dr. Albucher and Ms. Levin as well as other Jews in CAPS.<sup>17</sup>

The anti-Semitic harassment directed at Dr. Albucher and Ms. Levin was targeted, intentional, and discriminatory intimidation on the basis of their Jewish ethnic and religious identity as well as their perceived race. The DEI program advanced the stereotype that Jews, including Ms. Levin and Dr. Albucher, are “white” or “white passing,” and invoked the classic anti-Semitic trope that Jews are powerful, wealthy and privileged.<sup>18</sup> By promoting this anti-Semitic narrative about Jews, denying and attempting to erase Jewish ancestral identity, and silencing any mention of anti-Semitism, the DEI program has fostered hostility toward Jews and delegitimized Jewish identity and experience, thereby justifying the program’s decision to ignore anti-Semitic activity that occurs on the Stanford campus. In this way, the CAPS DEI program has created and fostered a hostile work environment for Jewish staff like Dr. Albucher and Ms. Levin, who are made to feel as though targeted discrimination towards the religious and ethnic group they belong to is of no concern to the DEI program at CAPS.

The severity and persistence of the discriminatory harassment against Dr. Albucher and Ms. Levin on the basis of their perceived race and ethnic identity, created a hostile environment that interfered with their privileges of employment by hindering their ability to fully participate in the DEI program and the collegial work environment in CAPS. For example, Ms. Levin was ostracized from her own clinical team for expressing concerns about racism because her coworkers perceived her as being white and privileged. The intense and vitriolic harassment directed against Dr. Albucher at the DEI seminar on May 20, 2020, which invoked classic anti-Semitic conspiracy theories about Jewish power and privilege, and aimed to intimidate and silence him on the basis of his Jewish ethnic identity, forced him to stop attending the DEI seminars altogether. The hostility Ms. Levin witnessed against Dr. Albucher at the May 20 DEI seminar, caused her to feel so unsafe that she subsequently stopped attending several DEI seminars. Ms. Levin was personally targeted on several occasions on the basis of her race and Jewish identity by coworkers who used offensive and derogatory narratives about Jews, such as when ██████████ told Ms. Levin that she had “immense power and privilege” as a “Jewish, white...woman.” The pressure exerted on Ms. Levin by supervisors and co-workers to attend the white affinity group, despite her insistence that she was highly uncomfortable, further

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<sup>16</sup> See 29 CFR 1606.8(a) (“[H]arassment on the basis of national origin is a violation of Title VII”).

<sup>17</sup> See 29 CFR 1606.8(b) (“Ethnic slurs and other verbal or physical conduct relating to an individual’s national origin constitute harassment when this conduct: (1) Has the purpose or effect of creating an intimidating, hostile or offensive working environment...”).

<sup>18</sup> See IHRA Working Definition of Antisemitism, available at <https://www.holocaustremembrance.com/working-definition-antisemitism>.

created a hostile and intimidating atmosphere for Ms. Levin in CAPS. In Ms. Levin's presence, her coworkers in the DEI program advanced offensive and prejudicial sentiments about the connection between Jews and white supremacy and lamented the presence of so many privileged individuals like Jews and other "pass for white" people. By silencing any mention of anti-Semitism, after the May 16<sup>th</sup> anti-Semitic zoom-bombing and the swastikas at Stanford's Memorial Church, the DEI program further perpetuated a hostile atmosphere against Jews by sending a message to Jewish staff that the victimization and safety of Jewish people was not worthy of concern. In sum, as a result of the ongoing harassment and hostile climate in the DEI program, Dr. Albucher and Ms. Levin were unlawfully subjected to a hostile, offensive and intimidating work environment.

Although Stanford was aware of the hostile climate in the CAPS DEI program, the university did not take any meaningful corrective steps intended to end the harassment or redress the hostile environment and the negative effects it had on Dr. Albucher and Ms. Levin. Immediately following the May 20<sup>th</sup> DEI seminar, Dr. Albucher and Ms. Levin informed supervisors and the CAPS [REDACTED] about the severe anti-Semitic harassment and hostile atmosphere that was directed at Dr. Albucher and Jews more generally at the meeting. And later in the summer of 2020, Ms. Levin and Dr. Albucher notified [REDACTED], the [REDACTED], who notified Human Resources, about the ongoing hostile environment against Jews in the DEI program. While the CAPS [REDACTED] and [REDACTED] privately comforted Dr. Albucher and Ms. Levin on occasion, the university administration has not made any efforts to publicly address the systemic problems in the DEI program. Neither CAPS management nor the university administration have publicly condemned the anti-Semitic harassment against Dr. Albucher by his co-workers in the presence of other CAPS staff members at the May 20 meeting or addressed the pervasive anti-Jewish hostility in the DEI program. The university's silence and inaction has served to condone and perpetuate the hostile climate in the DEI program. To this day, Dr. Albucher has never felt safe enough to resume his participation in the DEI seminars after he was effectively pushed out by anti-Semitic harassment on May 20, 2020. Ms. Levin has not attended the white affinity group since early October 2020 due to the persistent harassment and hostility she experienced on the basis of her race and Jewish ethnic and religious identity.

Furthermore, even the few and deficient attempts Stanford has taken thus far to address Dr. Albucher's and Ms. Levin's complaints have been neither prompt nor appropriately corrective. Over the course of one year, Dr. Albucher and Ms. Levin complained on numerous occasions to supervisors and managers about the underlying and systemic nature of the problem of anti-Semitism in the CAPS DEI program. While CAPS management responded to Dr. Albucher and Ms. Levin with personal expressions of empathy, they did not do anything to specifically address the hostile climate towards Jews in the DEI program as a whole. For instance, Stanford has not instituted training or educative programming within CAPS DEI about classic anti-Semitic tropes, Jew-hatred that masquerades under the guise of anti-Zionism and race-based stereotyping of Jews. Indeed, by facilitating a mediation session between Dr. Albucher and another colleague who herself perpetuated anti-Semitic harassment, Stanford treated the issue as a limited, interpersonal problem between co-workers rather than a more widespread and deep-seated problem within the CAPS DEI program.

Dr. Albucher became so frustrated by Stanford's refusal to prevent the ongoing harassment and end the hostile climate that he felt compelled to escalate his complaints to senior administrators over one year after he and Ms. Levin began complaining to CAPS management. While Stanford recently indicated that it purportedly intends to investigate Dr. Albucher's concerns, the University only did so to shield itself from liability after over a year of persistent complaints by Dr. Albucher and Ms. Levin, after receiving notice from the Education Department that a federal discrimination complaint was filed against it [REDACTED]

[REDACTED]. Through its failure to promptly and appropriately address the anti-Jewish hostility that has pervaded the CAPS DEI program for over one year, Stanford has allowed the hostile climate to fester and ratified the anti-Jewish conduct of staff and supervisors, while Dr. Albucher and Ms. Levin have suffered the consequences of working in an intimidating and antagonistic work environment.

The university's failure to take prompt and effective steps to address the anti-Jewish hostility in the DEI program has broader ramifications. The DEI program trains those who provide mental health counseling to Stanford students. When the DEI program ignores anti-Semitic incidents on campus and spreads the anti-Semitic canard that Jews have "immense power and privilege," it teaches the Stanford mental health professionals to dismiss as inconsequential the mental health consequences anti-Semitic incidents have on Jewish students. Such training inevitably harms the mental health professionals' ability to provide equal, unbiased, effective service to Stanford's Jewish students.

For the foregoing reasons, Stanford permitted a hostile environment in CAPS for Jewish staff – including Dr. Albucher and Ms. Levin – on the basis of their national origin, religion, and race in violation of Title VII.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

#### IV. Remedies

**A. Non-monetary Relief: Stanford University must come into compliance with Title VII and the FEHA by taking various concrete steps to eliminate the hostile environment and its effects in the CAPS DEI program.**

**1. Stanford must ensure that Jewish students receive the same level of care and attention that other students receive.**

Stanford University must ensure that it provides the same level of clinical care to Jewish students who face anti-Semitism that it provides to students who are targets of other forms of prejudice. In order to meet this goal, Stanford should create a Task Force that provides input to CAPS and the university's DEI programs about how to respond to anti-Semitic incidents on campus and how best to meet the therapeutic and clinical needs of the Jewish students at Stanford.

**2. Stanford must revise the CAPS DEI program so that it administers a comprehensive curriculum that is developed and taught by professional DEI educators and specifically addresses the different manifestations of anti-Semitism.**

Stanford University must overhaul and restructure its DEI program by hiring professional DEI educators to develop and teach a comprehensive DEI curriculum to CAPS staff. The new DEI curriculum should include a component specifically devoted to defining, understanding and combatting anti-Semitism to ensure that CAPS clinicians understand the unique lived experiences of Jewish students and how to help them when they are targeted by anti-Semitism. The DEI training about anti-Semitism must address the many different manifestations and facets of Jew-hatred including classic tropes, anti-Semitism cloaked under the guise of anti-Zionism and racial and ethnic stereotyping of Jews. The anti-Semitism curriculum in the DEI program must utilize the International Holocaust Remembrance Alliance Working Definition of Antisemitism (IHRA Definition) and its illustrative examples as a tool to educate the Stanford community about the different manifestations of anti-Semitism. Further, the DEI program must cease promoting anti-Zionism, which runs contrary to the program's goals of opposing racism and creating an inclusive community that is tolerant of all identities.

**3. Stanford University must develop policies and procedures to prevent the use of adverse racial stereotypes and provide training to members of the Stanford community on those policies.**

Stanford University must develop and implement policies and procedures to prevent the use of adverse racial stereotypes and provide training on these policies and procedures to members of the Stanford community, including administrators, faculty, other staff and students.

**4. Stanford University and CAPS must issue a public statement condemning anti-Semitism, including efforts to demonize and exclude members of the Stanford community on the basis of their Jewish identity**

The university and CAPS must issue a public statement condemning all forms of anti-Semitism and anti-Semitic harassment, including anti-Semitism that targets Jews on the basis of perceived race and Jewish ethnicity. The statement must clarify that efforts to promote anti-Zionism in the CAPS DEI program are antithetical to the program's laudatory goals of combatting racism and creating an inclusive community that is tolerant and respectful of all identities. The statement must further condemn the pervasive anti-Semitic harassment and bias in the CAPS DEI program that targeted Dr. Albucher, Ms. Levin and Jews more generally on the basis of their Jewish ethnic identity.

Such statement must also include a commitment by the university and the DEI program to address and respond to anti-Semitic incidents on the Stanford University campus with the same concern and they would respond to other forms of bigotry and hate-crimes; this response should include, where appropriate, educational and training programs addressing the many manifestations of anti-Semitism and utilizing the IHRA Definition and its contemporary examples. We strongly urge the University to use or model its statement on the following language:

We condemn anti-Semitism in all its forms. Efforts to demonize Jews and make Jewish members of the Stanford community feel unsafe expressing their religious and ethnic identity is contrary to our university's and the DEI program's basic values of mutual respect and inclusion. The promotion of anti-Zionism is antithetical to the program's laudatory goals of combatting racism and creating an inclusive community that is tolerant and respectful of different identities. Our university and DEI programs must be places for the free and open exchange of ideas. It is never acceptable to harass, intimidate, marginalize, exclude or demonize any part of our university community on the basis of its identity.

Member of our Stanford University staff have been subjected to anti-Semitic harassment and intimidation in the DEI program on the basis of their Jewish ethnic identity as well as on the basis of their perceived race. Targeting any member of our community in this manner is unacceptable.

The University and CAPS DEI program are committed to taking all necessary actions, including discipline where appropriate, to address and ameliorate anti-Semitic discrimination and harassment based on shared ancestry, ethnic characteristics and on the basis of perceived race. To that end, the University and the CAPS DEI program will utilize the IHRA Working Definition of Anti-Semitism when investigating and responding to incidents of harassment and discrimination to determine whether they are motivated by anti-Semitic animus or bias. The University encourages the entire SU community to educate itself about the many manifestations of anti-Semitism by reading and studying the IHRA Definition and its contemporary examples.

5. **Stanford University must revise its nondiscrimination policies to include a prohibition on discrimination based on actual or perceived shared ancestry and ethnicity as well as adverse racial stereotyping and conduct mandatory training for the University community regarding its revised policies.**

The University must revise its nondiscrimination policies to include a prohibition on discrimination based on adverse racial stereotyping as well as actual or perceived shared ancestry and ethnic characteristics.<sup>32</sup> The revised policies should include a description of the forms of anti-Semitism that can manifest in the University environment and provide examples of discrimination on the basis of adverse racial stereotypes as well as shared ancestry and ethnic characteristics including the contemporary examples of anti-Semitism in the IHRA Definition. The University and/or CAPS DEI program must conduct training for the University community, including students, faculty, staff, and administrators, concerning the revised nondiscrimination policies and their implementation. Such training must include programming and educational materials about the many manifestations of anti-Semitism.

#### **B. Monetary Relief**

For her Title VII and FEHA claims, Ms. Levin is entitled to monetary compensation for the significant emotional distress she suffered due to the severe and pervasive hostile work environment perpetrated by the CAPS DEI Program. As a result of Stanford's violations of Title VII, she has experienced wholly undeserved feelings of humiliation, anger, shame, distress, and sadness, which has affected her personal and professional life very deeply and dramatically.

Ms. Levin has retained counsel to help her prosecute her claims. As a prevailing employee under Title VII, [REDACTED] and the FEHA, she will also be entitled to an award of statutory fees and costs.

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<sup>32</sup> See, e.g., Stanford University's Equal Employment Opportunity, Non-Discrimination, and Affirmative Action Policy, available at <https://adminguide.stanford.edu/chapter-1/subchapter-7/policy-1-7-4>; Stanford University's Nondiscrimination Policy, available at <https://exploreddegrees.stanford.edu/nonacademicregulations/nondiscrimination/>.

## V. Conclusion

Stanford is a world-class university with vast resources and an unrivalled reputation for excellence. It can do better than this. It must do better than this. At a bare minimum, it must meet the basic requirements of federal and California law. Stanford must repair its Diversity, Equity, and Inclusion program so that it eliminates unlawful discrimination rather than perpetuating it. It should do so for the benefit of the entire Stanford community, including its Jewish faculty, staff, and students. By promoting an anti-Semitic narrative about Jews, erasing Jewish identity, targeting Jewish staff using anti-Semitic tropes, silencing any mention of anti-Semitism, [REDACTED]

[REDACTED] Stanford has marginalized and excluded Jewish staff, fostered a hostile work environment for Jews, and threatened the ability of Stanford's mental health professionals to provide equal unbiased care to Jewish students who experience anti-Semitism. For the foregoing reasons, the complainants strongly urge investigation into Stanford University's violations of Title VII and relevant state laws prohibiting discriminatory employment practices.

Respectfully submitted,

ss/Sheila Levin  
Sheila Levin

BY:



**Alyza D. Lewin**  
President  
The Louis D. Brandeis Center for Human Rights Under Law



**Denise Katz-Prober**  
Director of Legal Initiatives  
The Louis D. Brandeis Center for Human Rights Under Law

(Attorneys for Complainant Sheila Levin)

Cc: Department of Fair Employment and Equal Housing  
2218 Kausen Drive, Suite 100  
Elk Grove, CA 95758