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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Hope A. Y. Yzryahl,

10 Plaintiff,

11 v.

12 Southwest College of Naturopathic
13 Medicine and Health Sciences, et al.,

14 Defendants.

No. CV-15-00932-PHX-DGC

ORDER

15 Defendants Southwest College of Naturopathic Medicine (“SCNM”) and its
16 named employees move to dismiss Plaintiff Hope Yzryahl’s complaint under Rule
17 12(b)(6) of the Federal Rules of Civil Procedure. The motion is fully briefed, and no
18 party has requested oral argument. The Court will grant the motion and give Plaintiff 30
19 days to amend her complaint.

20 **I. Legal Standard.**

21 When analyzing a complaint for failure to state a claim under Rule 12(b)(6), the
22 well-pled factual allegations are taken as true and construed in the light most favorable to
23 the nonmoving party. *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009). Legal
24 conclusions couched as factual allegations are not entitled to the assumption of truth,
25 *Ashcroft v. Iqbal*, 556 U.S. 662, 680 (2009), and therefore are insufficient to defeat a
26 motion to dismiss for failure to state a claim, *In re Cutera Securities Litigation*, 610 F.3d
27 1103, 1108 (9th Cir. 2010). To avoid a Rule 12(b)(6) dismissal, the complaint must
28 plead enough facts to state a claim to relief that is plausible on its face. *Bell Atl. Corp. v.*

1 *Twombly*, 550 U.S. 544, 570 (2007). “Threadbare recitals of the elements of a cause of
2 action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 663.
3 “[W]here the well-pleaded facts do not permit the court to infer more than the mere
4 possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—‘that the
5 pleader is entitled to relief.’” *Iqbal*, 556 U.S. at 679 (quoting Fed. R. Civ. P. 8(a)(2)).

6 When a plaintiff is proceeding pro se, the allegations of the complaint must be
7 construed liberally. See *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir. 1987). But a
8 court “may not supply essential elements of the claim that were not initially pled.” *Ivey*
9 *v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982).

10 **II. Analysis.**

11 **A. Count One.**

12 Count one is titled “Negligence,” but appears to assert a violation under Title VI
13 of the Civil Rights Act of 1964. Doc. 1, ¶ 12; 42 U.S.C. § 2000d. Under this statute,
14 “[n]o person in the United States shall, on the ground of race, color, or national origin, be
15 excluded from participation in, be denied the benefits of, or be subjected to
16 discrimination under any program or activity receiving Federal financial aid.” *Fobbs v.*
17 *Holy Cross Health Sys. Corp.*, 29 F.3d 1439, 1447 (9th Cir. 1994), *overruled in part on*
18 *other grounds by Daviton v. Columbia/HCA Healthcare Corp.*, 241 F.3d 1131 (9th Cir.
19 2001). To state a claim for a violation of this statute, Plaintiff must plead that (1) the
20 entity is engaging in racial discrimination, and (2) the entity receives federal financial
21 assistance. *Id.*

22 Plaintiff alleges various facts regarding Defendants’ alleged denial of her financial
23 aid, but fails to allege facts supporting her claim that the denial was based on her race,
24 national origin, color, or gender. Doc. 1, ¶ 12. Plaintiff identifies herself as an
25 “Aboriginal-Autochthonous American (misnomered African American) national origin,
26 color (brown), and sex (female).” *Id.* Her complaint, however, does not allege facts to
27 show that these characteristics were the reason for Defendants’ actions. She provides no
28 allegations of discriminatory statements or acts by Defendants against herself or others.

1 Her response to the motion to dismiss asserts that employees of SCNM “engaged in a
2 campaign of prejudice and racism,” but Plaintiff’s complaint does not contain this
3 allegation, nor does it explain the nature of the campaign or the facts supporting her
4 assertion that it occurred. Doc. 22 at 13. Nor does Plaintiff identify the particular acts
5 committed by each Defendant that give rise to liability under count one.

6 In short, Plaintiff’s complaint alleges little more than a “sheer possibility that a
7 defendant has acted unlawfully,” which is not sufficient. *Iqbal*, 556 U.S. at 678. Even
8 liberally construed, the complaint lacks sufficient facts to support a Title VI claim. *See*
9 *Eldridge*, 832 F.2d at 1137.

10 **B. Counts Two and Three.**

11 Counts two and three also are titled “Negligence,” but appear to assert violations
12 of the Americans with Disabilities Act of 1990 (“ADA”) and the Rehabilitation Act of
13 1973 (“RA”). Count two asserts violation of Title II of the ADA and § 504 of the RA.
14 Doc. 1, ¶ 13. Count three asserts that Defendants, specifically Ms. Borjas and Ms.
15 Winquist, “knowingly and willfully retaliated and coerced Plaintiff by ceasing all
16 communication with Plaintiff, barr[ing] Plaintiff from attending class, [and] sending and
17 receiving emails as well as contacting faculty and staff at SCNM.” *Id.*, ¶ 14.

18 To state a claim under Title II of the ADA, Plaintiff must allege: (1) she is an
19 individual with a disability; (2) she is otherwise qualified to participate in or receive the
20 benefit of some public entity’s services, programs, or activities; (3) she was either
21 excluded from participation in or denied the benefits of the public entity’s services,
22 programs, or activities, or was otherwise discriminated against by the public entity; and
23 (4) such exclusion, denial of benefits, or discrimination was by reason of her disability.
24 *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002) (citing 42 U.S.C. § 12132). To
25 prove a violation of § 504 of the RA, Plaintiff similarly must show that (1) she is an
26 individual with a disability; (2) she is otherwise qualified to receive the benefit; (3) she
27 was denied the benefits of the program solely by reason of her disability; and (4) the
28 program receives federal financial assistance. *Duvall v. Cnty. of Kitsap*, 260 F.3d 1124,

1 1135 (9th Cir. 2001).

2 Plaintiff's complaint does not plead facts showing that she is an individual with a
3 disability under the ADA or the RA. Her complaint contains no allegations regarding her
4 alleged disability or why it satisfies the requirement of either statute. Nor does Plaintiff
5 allege facts showing that she was qualified to receive the benefits denied by Defendants
6 or that the benefits were denied because of her disability. Count three contains
7 allegations regarding retaliation and coercion, but does not indicate whether these
8 allegations (which also have scant factual support in the complaint) are intended to state
9 another claim in addition to the ADA and RA claims mentioned in count two. Finally,
10 Plaintiff does not identify the particular acts committed by each Defendant that subject
11 that Defendant to liability.

12 **III. Guidance to Plaintiff.**

13 Plaintiff must become familiar with and follow the Federal Rules of Civil
14 Procedure and the Rules of the United States District Court for the District of Arizona
15 ("Local Rules"). See *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1986) ("Pro se litigants
16 must follow the same rules of procedure that govern other litigants."); *Jacobsen v. Filler*,
17 790 F.2d 1362, 1364 (9th Cir. 1986) (pro se litigants "should not be treated more
18 favorably than parties with attorneys of record"); *Carter v. Comm'r of Internal Revenue*,
19 784 F.2d 1006, 1008 (9th Cir. 1986) ("Although pro se, [plaintiff] is expected to abide by
20 the rules of the court in which he litigates."). The Federal Rules of Civil Procedure are
21 available at the following Internet website: <http://www.law.cornell.edu/rules/frcp/>. A
22 copy of the District of Arizona's Local Rules may be obtained from the Clerk's Office or
23 on the Court's website.

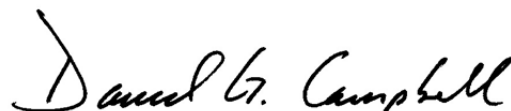
24 For purposes of the amended complaint, Plaintiff is directed to Rule 8 of the
25 Federal Rules of Civil Procedure. Rule 8(a) provides that a complaint "shall contain (1) a
26 short and plain statement of the grounds upon which the court's jurisdiction depends, . . .
27 (2) a short and plain statement of the claim *showing* that the pleader is entitled to relief,
28 and (3) a demand for judgment for the relief the pleader seeks." Fed. R. Civ. P. 8(a)

1 (emphasis added). These pleading requirements shall be set forth in separate and discrete
2 paragraphs. The paragraphs must be numbered in consecutive order. Each paragraph
3 must be “simple, concise, and direct.” Fed. R. Civ. P. 8(d)(1). The discussion in part II
4 of this order identifies the factual shortcomings in Plaintiff’s complaint.

5 The Court will grant Plaintiff until October 30, 2015 to file an amended complaint.
6 Plaintiff is warned that if she fails to file an amended complaint by that date, the case will
7 be dismissed. *See* Fed. R. Civ. P. 12(e). Plaintiff is further warned that if she fails to
8 prosecute this action, or if she fails to comply with the rules or any Court order, the Court
9 may dismiss the action with prejudice pursuant to Rule 41(b) of the Federal Rule of Civil
10 Procedure. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992); *Ghazali v.*
11 *Moran*, 46 F.3d 52, 54 (9th Cir. 1995).

12 **IT IS ORDERED** that Defendant’s motion to dismiss (Doc. 11) is **granted**.
13 Plaintiff shall file an amended complaint by **October 30, 2015**.

14 Dated this 5th day of October, 2015.

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19 David G. Campbell
20 United States District Judge
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