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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Ronald David Jones,
Plaintiff,
v.
Grand Canyon University, et al.,
Defendants.

No. CV-16-04374-PHX-DGC
ORDER

Plaintiff Ronald David Jones filed this action against Defendant Grand Canyon University (“GCU”). Doc. 1. Plaintiff asserts violations of his constitutional, religious, and civil rights. Docs. 8, 10. Plaintiff has named the following individuals as additional Defendants: Paul Newman, Don Done, Andrew Sutherland, Kenneth Hood, Rose Shaw, Shakeisha Chambers, Casey Fetkenhier, Terry Bovinet, and Ted Rivera. Doc. 10. GCU has filed a motion to dismiss Plaintiffs claims pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Doc. 19. Defendants Chambers and Done – the only individual Defendants who have appeared in this case – join GCU’s motion to dismiss. Doc. 56. The motion is fully briefed (Docs. 59, 64), and no party has requested oral argument. For the reasons set forth below, the Court will grant Defendants’ motion.

I. Background.

The following facts are taken from Plaintiff’s second amended complaint and are taken as true for the purposes of this motion. Defendant GCU is a private Christian university located in Phoenix, Arizona. See Doc. 10 at 2; Doc. 19 at 3-6. All other

1 Defendants reside in Arizona. Doc. 10 at 2-3. Plaintiff is a Florida resident and former
2 student of GCU. *See id.*, ¶¶ 2-11. Between February 2010 and April 2014, Plaintiff
3 enrolled in several online courses at GCU seeking his master’s degree in Christian
4 Studies. *Id.*

5 In February 2010, Plaintiff spoke with Defendant Newman. *Id.*, ¶ 2. At that time,
6 Newman told Plaintiff that GCU “would find Plaintiff a job” and “promised Plaintiff [he
7 would be] paid \$1,000 each semester if he maintained a B average.” *Id.* Plaintiff alleges
8 that Newman was tasked with completing Plaintiff’s orientation with GCU, but Newman
9 failed to show Plaintiff how to enter responses to student posts in online classes or how to
10 check grades. *Id.* “Plaintiff completed two eight week courses and received two C’s
11 because of Defendant Newman’s actions or inactions during Plaintiff’s orientation
12 [Newman’s actions] caused Plaintiff to lose \$1000 a semester.” *Id.* “When Plaintiff
13 finally pull [sic] grades up to a 3.0, Defendant Don Done went back and changed
14 Plaintiff’s A grade to a B causing Plaintiff’s average to fall below 3.0.” *Id.*, ¶3.

15 In July 2010, Defendant Andrew Sutherland gave Plaintiff a failing grade without
16 grading Plaintiff’s completed assignments. *Id.*, ¶ 4. Plaintiff asserts that Sutherland
17 “refused to read [the] completed assignment[s] because of Plaintiff[’s] perspective of the
18 Bible being a Black Book.” *Id.*

19 In April 2011, Defendant Kenneth Hood gave Plaintiff a C+ grade in an unnamed
20 course. *Id.* ¶ 5. Plaintiff asserts that this grade was improper because he “was grade[d]
21 based on race Black [sic] while White student[s] [were] given better grades for work that
22 was not as good as Plaintiff[’s] work.” *Id.* Furthermore, “Hood was racist toward
23 Plaintiff,” “often times expressed his racist opinion when referring to Plaintiff[’s]
24 work[,]” and “was encouraged by [GCU] to give Plaintiff [a] bad grade so that Plaintiff
25 would not receive the \$1000 promised to Plaintiff for keeping a 3.0 average.” *Id.*

26 In August 2011, Defendant Rose Shaw “dropped Plaintiff out [of] a class and out
27 of the university” while “Plaintiff had an A average in [] Ryan Hanning’s class[.]” *Id.*,
28 ¶ 6. Plaintiff “had to take the class over again losing the money paid for the class.” *Id.*

1 In March 2014, Defendant Shakeisha Chambers “gave Plaintiff a bad grade in [an]
2 internship to force Plaintiff to work on a second master’s degree.” *Id.*, ¶ 7. Plaintiff had
3 completed all course work for the internship and submitted all requested information to
4 GCU. *Id.* When “[GCU] said they did not receive Plaintiff[’s] information from
5 Plaintiff[’s] place of internship[,]” Plaintiff “personally went back to place of internship”
6 to check. *Id.* Plaintiff asserts that he checked with his place of internship “several
7 times,” and “every time was told that all information was submitted.” *Id.*

8 In April 2014, Defendant Casey Fetkenhier “tried to encourage Plaintiff into going
9 to place of internship and ‘make them email’ Plaintiff’s grades.” *Id.*, ¶ 8. Plaintiff states
10 that “[i]t sounded as if [Fetkenhier] wanted Plaintiff to break the law.” *Id.* Additionally,
11 “Fetkenhier tried to bull[y] Plaintiff into working on a second master’s degree” by
12 “call[ing] Plaintiff on [his] cell phone . . . after being told not to call [that number].”
13 *Id.* Ultimately, GCU “enrolled Plaintiff in a second degree program and now says that
14 Plaintiff owes them money” and “cannot get [his first] Master’s Degree until [he]
15 complete[s] a second Master’s Degree program.” *Id.*

16 At some point during Plaintiff’s time at GCU, Defendants Terry Bovient and Ted
17 Rivera each, in apparently distinct and unrelated instances, “gave Plaintiff a grade of C
18 while giving White students and females an A for work that was not as good as
19 Plaintiff[’s].” *Id.*, ¶¶ 9-10. Furthermore, Plaintiff claims that he filed a complaint against
20 GCU, its instructors and counselors, but the individual that took the complaint, Kenya
21 King, never turned it in. *Id.*, ¶ 11.

22 Following each factual allegation described above, Plaintiff asserts that the
23 relevant party engaged in the described conduct because of Plaintiff’s race, sex, age, and
24 religious beliefs. *See, e.g., id.*, ¶ 12.

25 **II. Legal Standard.**

26 A successful motion to dismiss under Rule 12(b)(6) must show either that the
27 complaint lacks a cognizable legal theory or fails to allege facts sufficient to support its
28 theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). A

1 complaint that sets forth a cognizable legal theory will survive a motion to dismiss as
2 long as it contains “sufficient factual matter, accepted as true, to ‘state a claim to relief
3 that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl.*
4 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim has facial plausibility when “the
5 plaintiff pleads factual content that allows the court to draw the reasonable inference that
6 the defendant is liable for the misconduct alleged.” *Id.*, 556 U.S. at 678 (citing *Twombly*,
7 550 U.S. at 556). “The plausibility standard is not akin to a ‘probability requirement,’
8 but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.*
9 (citing *Twombly*, 550 U.S. at 556).

10 **III. Analysis.**

11 Plaintiff asserts five claims: (1) “1st Amendment Religious and Political
12 Freedom[,]” (2) “14th Amendment Civil Rights in the States[,]” (3) “Violation of Civil
13 Rights Title VII by discriminating against Plaintiff[,]” (4) “Violation of Due Process[,]”
14 and (5) “Discrimination” in violation of “Chapter 760, Florida Statutes, and Title VII of
15 the Federal Civil Rights Act of 1964, and the Age Discrimination in Employment Act,
16 and the Americans with Disabilities Act[.]” *Id.* at 12-13. Plaintiff requests relief in the
17 form of receiving a Master’s Degree and \$150,000,000.

18 **A. Claims 1, 2, and 4: Violation of Plaintiff’s Constitutional Rights.**

19 Plaintiff’s first, second, and fourth claims allege that GCU violated Plaintiff’s
20 constitutional rights to religious freedom, equal protection, and due process, in violation
21 of the First and Fourteenth Amendment. Doc. 1 at 11-12; Doc. 58 at 1, 3-5. These
22 claims fail as a matter of law.

23 “[I]t is fundamental that the First Amendment prohibits governmental
24 infringement on the right of free speech. Similarly, the Fourteenth Amendment, which
25 prohibits the states from denying federal constitutional rights and which guarantees due
26 process, applies to acts of the states, not to acts of private persons or entities.” *Rendell-*
27 *Baker v. Kohn*, 457 U.S. 830, 837-38 (1982). “And § 1983, which was enacted pursuant
28 to the authority of Congress to enforce the Fourteenth Amendment, prohibits interference

1 with federal rights under color of state law.” *Id.* “[U]nder color’ of law has consistently
2 been treated as the same thing as the ‘state action’ required under the Fourteenth
3 Amendment.” *Id.* “The core issue presented in this case is . . . whether the school’s
4 action . . . can fairly be seen as state action. If the action of the respondent school is not
5 state action, our inquiry ends.” *Id.* Private conduct may be considered state action if
6 there is “such a close nexus between the State and the challenged action” that the
7 individual’s conduct “may be fairly treated as that of the State itself.” *Brentwood Acad.*
8 *v. Tennessee Secondary Sch. Athletic Ass’n*, 531 U.S. 288, 295-96 (2001).

9 Plaintiff fails to allege any connection between Defendants’ conduct and the
10 government. Plaintiff asks the Court to read his allegations “[a]ssuming that the named
11 Defendants are considered persons acting under color of state law[.]” *See, e.g.*, Doc. 58
12 at 1. But the Court cannot make that assumption; Plaintiff must plead facts supporting
13 his claims. Because Plaintiff does not dispute that GCU is a private university and does
14 not allege any facts showing a close nexus between Defendants’ alleged conduct and the
15 State, Plaintiff’s constitutional claims must be dismissed.

16 **B. Claims 3 and 5: Discrimination in Violation of Federal and State Law.**

17 Plaintiff’s third and fifth claims allege that Defendants discriminated against
18 Plaintiff in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”) (42 U.S.C.
19 § 2000e *et seq.*), the Age Discrimination in Employment Act (“ADEA”) (29 U.S.C.
20 § 623), the Americans with Disabilities Act (“ADA”) (42 U.S.C. § 12101, *et seq.*), and
21 the Florida Civil Rights Act of 1992 (“FCRA”) (Fla. Stat. Ann. § 760.01 *et seq.*).

22 **1. Title VII and the ADEA.**

23 Defendants assert that Plaintiff fails to state a claim under Title VII and the ADEA
24 because both statutes apply only to discrimination in the employment context. Doc. 19 at
25 7-8. The Court agrees.

26 Title VII applies to workplace discrimination on the basis of race, color, religion,
27 sex, or national origin. *See* 42 U.S.C. § 2000e-2 (“It shall be an unlawful employment
28 practice for an employer to” discriminate based on an “individual’s race, color, religion,

1 sex, or national origin”); *see also Ricci v. DeStefano*, 557 U.S. 557, 580 (2009) (Title
2 VII’s purpose is to provide a workplace free of discrimination). Likewise, the ADEA
3 applies to workplace discrimination based on an individual’s age. *See* 29 U.S.C. § 623
4 (“It shall be unlawful for an employer” to “discriminate against[] any individual because
5 of such individual’s age[.]”); *see also Gomez-Perez v. Potter*, 553 U.S. 474, 492 (2008).

6 Plaintiff does not allege that he was employed by GCU or that he was denied
7 employment on the basis of discrimination. Accordingly, Plaintiff’s Title VII and ADEA
8 claims must be dismissed.

9 **2. ADA.**

10 “It is the purpose of [the ADA] to provide a clear and comprehensive national
11 mandate for the elimination of discrimination against individuals with disabilities[.]” 42
12 U.S.C. § 12101(b). Plaintiff makes only a passing reference to the ADA in his second
13 amended complaint. Doc. 10 at 13. But to the extent Plaintiff does assert an ADA claim,
14 it fails because Plaintiff does not allege that he is disabled or that Defendants
15 discriminated against him on the basis of a disability. *See generally, id.*

16 **3. FCRA.**

17 A plaintiff may not assert a claim under the FCRA unless he submits a complaint
18 to the Florida Commission on Human Relations (“the Commission”) within 365 days of
19 the alleged violation, and either: (1) the Commission issues a determination of reasonable
20 cause, or (2) the Commission issues no determination within 180 days of the filing of the
21 complaint. *See* Fla. Stat. Ann. § 760.11(1), (4)-(5), (8). Defendants argue that Plaintiff’s
22 FCRA claim must be dismissed because Plaintiff has “not plead the basis for his state law
23 claim, nor explain[ed] why the Court should exercise jurisdiction over it,” and he failed
24 to file a complaint with the Commission within 365 days. Doc. 19 at 8. Plaintiff does
25 not address these arguments in his response.

26 The Court need not consider whether it should exercise jurisdiction over the
27 FCRA claim because it is uncontested that Plaintiff did not file a complaint with the
28 Commission. Plaintiff’s FCRA claim will be dismissed.

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4. Statute of Limitations.

Defendants argue that Plaintiff’s Title VII and FCRA claims are time-barred. Doc. 19 at 9-10. Title VII claimants must file an EEOC complaint within 300 days of the alleged discrimination (42 U.S.C. § 2000e-5(e)), and FCRA claimants must file a complaint with the Commission within 365 days (Fla. Stat. Ann. § 760.11(1)). Plaintiff’s latest alleged instance of discrimination occurred in April 2014. Doc. 10, ¶ 8. Plaintiff filed this action approximately 22 months later. See Doc. 1. Accordingly, Plaintiff’s Title VII and FCRA claims also fail because they are untimely.

C. Leave to Amend.

“Leave to amend should be granted if it appears at all possible that the plaintiff can correct the defect.” *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000). But “[a] district court may dismiss a complaint without leave to amend if amendment would be futile.” *Airs Aromatics, LLC v. Opinion Victoria's Secret Stores Brand Mgmt., Inc.*, 744 F.3d 595, 600 (9th Cir. 2014) (citation and quotation marks omitted).

Plaintiff has had three opportunities to plead his claims. His initial complaint was dismissed for failure to plead sufficient facts to show that the Florida court where it was filed was the proper venue. Doc. 7. Plaintiff’s first amended complaint was dismissed for failure to allege sufficient facts to state a claim. Doc. 9. The Court provided guidance on the level of factual detail required in his second amended complaint. *Id.* In Plaintiff’s second amended complaint, the constitutional claims under the First and Fourteenth Amendments fail to allege state action and the discrimination claims under Title VII, the ADEA, and the FRCA fail for a variety of reasons. The Court has no reason to think that the defects in these claims could be cured by a fourth opportunity to amend. Nor has Plaintiff provided any reason in his first three complaints to think that he is disabled or that Defendants failed to provide him access based on a disability. The Court concludes that Plaintiff has had ample opportunity to plead his claims, and that any further attempts at amendment would be futile.

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IT IS ORDERED that the motion to dismiss (Doc. 19) is **granted** without leave to amend. The Clerk is directed to terminate this action.

Dated this 7th day of April, 2017.



David G. Campbell
United States District Judge