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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Meghan Draper Hiller,
10 Plaintiff,

11 v.

12 Arizona Board of Regents,
13 Defendant.

No. CV-22-00554-PHX-SMB

ORDER

14
15 Before the Court is Arizona Board of Regents’ (“ABOR”) Motion to Dismiss
16 (“MTD”) (Doc. 12) Meghan Hiller’s Complaint (Doc. 1). The MTD is fully briefed, (*see*
17 Docs. 20–21), and oral argument was held on October 6, 2022. After considering the
18 parties’ arguments and relevant law, the Court will grant the MTD for the reasons set forth
19 below.

20 **I. BACKGROUND**

21 Hiller sued ABOR for discrimination under Title II of the Americans with Disability
22 Act (“ADA”), and state law claims for breach of contract, negligence, negligent
23 supervision, and intentional infliction of emotional distress. (Doc. 1 at 11–13.) Hiller
24 concedes ABOR did not waive its sovereign immunity or consent to this Court’s
25 jurisdiction over the state law claims. (Doc. 20 at 1.) The Court will thus address only
26 Plaintiff’s Title II claim, which ABOR argues must also be dismissed. (*See* Docs. 12, 20–
27 21.)
28

1 **A. The Complaint**

2 In 2016, Plaintiff began a Master of Interior Architecture (“MIA”) program at
3 Arizona State University (“ASU”). (Doc. 1 at 2 ¶ 10.) ASU granted Plaintiff disability
4 accommodations for her migraines, vision issues, and complex post-traumatic stress
5 disorder. (*Id.* at 3 ¶ 14.) ASU accommodated Plaintiff with “flexible assignment deadlines,
6 flexible attendance, and access to larger-print course materials or a monitor for ease of
7 reading.” (*Id.* ¶ 15.) Additionally, instructors were informed that:

8 Medication side effects or flare up of the disability may cause an interruption
9 in the student’s ability to complete projects in a timely manner. . . . Delays
10 due to flare up may trigger a request for modified assignment deadlines or a
11 grade of incomplete, to provide the student the opportunity to fully
12 demonstrate course accomplishment and maintain GPA.

13 (*Id.* ¶ 16.) Plaintiff alleges that because her migraines worsened during the Spring and Fall
14 2020 semesters, particularly due to virtual learning, she began the Spring 2021 term with
15 several incomplete courses from both semesters. (*Id.* ¶ 18.)

16 Before Spring 2021 began, Plaintiff alleges she contacted the professors of her
17 incomplete courses to arrange their completion. (*Id.* at 4 ¶ 20.) Plaintiff also alleges she
18 spoke with her Spring 2021 professors about “her past bad experiences with the ‘Revit’
19 software package, describing herself as ‘nearly phobic’; about her disability
20 accommodations; and about how Zoom often caused or worsened her migraine symptoms.”
21 (*Id.*)

22 Plaintiff faced more adversity during the Spring 2021 semester. In February 2021,
23 Plaintiff claims she experienced issues with a computer crash, the Revit software (“Revit”),
24 and a change to her vision prescription. (*Id.* ¶ 21.) Plaintiff contends she fell behind in her
25 Construction Documents class because of her prescription change and the expense of
26 expediting new glasses. (*Id.* ¶ 23.) Plaintiff then asked that her Construction Documents
27 professor grant her an incomplete grade in the course, which would have allowed her to
28 complete the class at her own pace. (*Id.*) Plaintiff alleges her professor was willing to
discuss a plan for course completion. (*Id.*) That following month, Plaintiff described her
struggles to the head of her program and her disability coordinator. (*Id.* ¶ 24.) Plaintiff

1 sought an accommodation to further extend incomplete courses from Spring 2020 so she
2 could focus on her Spring 2021 studio course. (*Id.*) Plaintiff alleges she was told there
3 was no specific process for requesting such an extension, and that it was “100% the
4 instructor’s decision.” (*Id.* at 5 ¶ 24.) After speaking with her professor, Plaintiff believed
5 she could receive an incomplete grade in Construction Documents, familiarize herself with
6 Revit at her own pace, and then complete the course during summer. (*Id.* ¶ 25.)

7 On April 1, 2021, the disability coordinator emailed Plaintiff indicating the
8 department would approve any additional incompletes or extensions. (*Id.* ¶ 26.) The email
9 also stated that Dean Woodson was “aware of the situation.” (*Id.*) Relying on the granted
10 extensions, Plaintiff “took a three-day weekend off to rest and to celebrate her birthday
11 with her family.” (*Id.* ¶ 27.) But later that day, the disability coordinator sent a recall
12 notice on the April 1 email for an undisclosed error, and then sent a second, revised email.
13 (*Id.* ¶ 28.) The amended email stated the department would *not* approve any additional
14 incompletes or extensions. (*Id.* ¶ 29.)

15 Plaintiff received an email the following week from her Construction Documents
16 professor who wrote that after speaking with the disability coordinator and administration,
17 he could no longer approve an incomplete in the course—only extensions on past
18 assignments until April 30. (*Id.* at 5–6 ¶ 30.) The professor also wrote that he would grade
19 nothing after May 10. (*Id.* at 6 ¶ 30.) Plaintiff alleges that moments later she received a
20 “condescending and hostile” call from Dean Woodson. (*Id.* ¶ 31.) Plaintiff alleges that the
21 Dean accused her of “playing the system,” told Plaintiff she was “not special,” had “no
22 business” being in the MIA program, had too many incompletes and would be granted no
23 others, and stated they could “get rid of any incomplete I want” by turning the grade into
24 an “F.” (*Id.* ¶¶ 32–33.)

25 Plaintiff alleges the Dean ignored her when she explained most of her incompletes
26 were near completion. Furthermore, Plaintiff alleges that when she told the Dean how
27 “many of her incompletes were because of struggling to deal with the impact of Covid-
28 19,” the Dean responded, “lots of people have a hard time with Covid,” and that Plaintiff

1 should medically withdraw. (*Id.* ¶ 35.) Plaintiff also alleges the Dean demanded she
2 submit a plan for completing her incomplete courses and current 2021 classes by the end
3 of the semester. (*Id.* at 6–7 ¶ 36.) Plaintiff alleges she “warned” the Dean that “this
4 situation was untenable and damaging for her.” (*Id.* at 7 ¶ 36.) Finally, Plaintiff contends
5 that the Dean prohibited her from receiving more incompletes or extended deadlines on
6 existing incompletes—contrary to some of her professor’s prior approval for extensions.
7 (*Id.* ¶¶ 37–38.)

8 Plaintiff alleges she satisfied the Dean’s “unreasonable demands for planning and
9 communication, as well as the unnecessary and harmful deadlines imposed” that had no
10 “basis in ASU’s academic policies.” (*Id.* at 8 ¶ 46.) Furthermore, Plaintiff alleges that
11 compliance placed her under “substantial stress” that “interfered with both her physical and
12 mental wellbeing and her ability to spend time with her young daughter.” (*Id.* ¶ 47.)

13 Plaintiff alleges the following harms as a result of the Dean’s denial of her extension
14 requests: (1) interference with Plaintiffs’ ability to select an internship during the Summer
15 2021 semester; (2) prohibition from enrolling in a Summer 2021 elective of her choice; (3)
16 the Dean’s attempts to force Plaintiff to enroll in an elective that she notified would be
17 “emotionally harmful”; (4) Plaintiff’s accommodations were denied without ASU policy
18 justification; and (5) lost time resolving the summer enrollment issue. (*Id.* ¶¶ 48–51.)
19 Plaintiff alleges that when she asked her disability coordinator to intervene, she was told
20 “her accommodations were for flare-ups, not because [Plaintiff] simply wanted to focus on
21 something else.” (*Id.* at 9 ¶ 54.)

22 Ultimately, Plaintiff asserts the Dean prevented willing instructors from granting
23 her extensions and incompletes without ASU policy justifications, and that “[a]ny non-
24 disabled individual in [Plaintiff’s] position—which is to say, struggling with courses
25 during the Covid-19 pandemic—would have been permitted to receive any number of
26 incompletes with instructor permission, and would similarly have been permitted to extend
27 any number of existing incompletes with instructor permission.” (*Id.* at 7 ¶¶ 38–40.) Thus,
28 Plaintiff alleges the Dean “manufactured the limitations” on Plaintiff due to “antipathy”

1 towards her “insistence on utilizing her already-approved disability accommodations,”—
2 therefore denying her accommodations “*because* of her disability status.” (*Id.* ¶¶ 41–42.)

3 Plaintiff alleges that although she submitted her Spring 2021 and incomplete
4 coursework on-time and graduated, she has been unable to secure employment. (*Id.* at 9
5 ¶¶ 55–56.) Among other things, Plaintiff attributes her inability to secure employment to
6 rushing through her assignments and Revit to meet the Dean’s deadlines, being denied the
7 opportunity to take an internship during Summer 2021 due to the imposed deadlines, and
8 feeling “exhausted, discouraged, and in need of recovery time” following the Summer 2021
9 term before seeking employment. (*Id.* at 10 ¶ 58.)

10 ABOR moves to dismiss Plaintiff’s Title II claim arguing that the Eleventh
11 Amendment precludes her claim.

12 **II. LEGAL STANDARDS**

13 Title II states “no qualified individual with a disability shall, by reason of such
14 disability, be excluded from participation in or be denied the benefits of the services,
15 programs or activities of a public entity, or be subjected to discrimination by any such
16 entity.” 42 U.S.C. § 12132. Under the Eleventh Amendment, Plaintiff may only bring a
17 federal statutory claim against ABOR, an arm of the state, if either Congress validly
18 abrogated state sovereign immunity, or either Arizona or ABOR waived sovereign
19 immunity. *See Alden v. Maine*, 527 U.S. 706, 755–56 (1999). The Eleventh Amendment
20 provides that “[t]he judicial power of the United States shall not be construed to extend to
21 any suit in law or equity, commenced or prosecuted against one of the United States by
22 Citizens of another State, or by Citizens of Subjects of any Foreign State.” U.S. CONST.
23 amend. XI. Neither Arizona nor ABOR has waived sovereign immunity for federal
24 damages liability. *See Redgrave v. Ducey*, 493 P.3d 878, 885 (Ariz. 2021); *see also Ronwin*
25 *v. Shapiro*, 657 F.2d 1071, 1073–74 (9th Cir. 1981).

26 However, as the Supreme Court has noted, Title II of the ADA contains an
27 “unequivocal expression of Congress’s intent to abrogate state sovereign immunity.”
28 *United States v. Georgia*, 546 U.S. 151, 154 (2006). Specifically, “insofar as Title II

1 creates a private cause of action for damages against the States for conduct that *actually*
2 violates the Fourteenth Amendment, Title II validly abrogates state sovereign immunity.”

3 *Id.* at 159. To make this determination, the Court must consider on a claim-by claim-basis:
4 (1) which aspects of the State’s alleged conduct violated Title II; (2) to what
5 extent such misconduct also violated the Fourteenth Amendment; and (3)
6 insofar as such misconduct violated Title II but did not violate the Fourteenth
7 Amendment, whether Congress’s purported abrogation of sovereign
8 immunity as to that class of conduct is nevertheless valid.

9 *Id.*

10 “The second and third steps of the analysis need only be considered if a plaintiff has
11 a viable claim under step one.” *Castle v. Eurofresh, Inc.*, No. CV 09-8114-PCT-MHM,
12 2010 WL 797138, at *11 (D. Ariz. Mar. 8, 2010).

13 **A. Georgia Step 1**

14 Under *Georgia*’s first step, to state a claim under Title II Plaintiff must generally
15 demonstrate:

16 (1) she is an individual with a disability; (2) she is otherwise qualified to
17 participate in or receive the benefit of a public entity’s services, programs or
18 activities; (3) she was either excluded from participation in or denied the
19 benefits of the public entity’s services, programs or activities or was
20 otherwise discriminated against by the public entity; and (4) such exclusion,
21 denial of benefits or discrimination was by reason of her disability.

22 *Reed v. City of Emeryville*, 568 F.Supp.3d 1029, 1041 (N.D. Cal. 2021) (quoting *Sheehan*
23 *v. City & Cnty. of S.F.*, 743 F.3d 1211, 1232 (9th Cir. 2014), *rev’d in part on other grounds*,
24 *City & Cnty. of S.F., Cal. v. Sheehan*, 575 U.S. 600 (2015)). *See also Castle*, 2010 WL
25 797138, at *11 (District Court Judge applying *Georgia* to a Title II ADA claim at the
26 motion to dismiss stage).

27 **B. Georgia Step 2**

28 Step two considers whether the alleged misconduct violates the Fourteenth
Amendment. In relevant part, it states:

No State shall make or enforce any law which shall abridge the privileges or
immunities of citizens of the United States; nor shall any State deprive any
person of life, liberty, or property, without due process of law; nor deny to
any person within its jurisdiction the equal protection of the laws.

1 U.S. CONST. amend. XIV, § 1. The Supreme Court has held individuals have no
2 fundamental right to higher education. *See San Antonio Indep. Sch. Dist. v. Rodriguez*, 411
3 U.S. 1, 37 (1973) (“We have carefully considered each of the arguments supportive of the
4 District Court’s finding that education is a fundamental right or liberty and have found
5 those arguments unpersuasive.”). For a plaintiff to show a constitutionally protected
6 property interest in their education, it must be conferred by state law. *See Bd. of Curators*
7 *of Univ. of Mo. v. Horowitz*, 435 U.S. 78, 82 (1978). Arizona law confers no property
8 interest in higher education. *See Schwake v. Ariz. Bd. of Regents*, 8221 F. App’x 768, 770
9 (9th Cir. 2020) (finding plaintiff “failed to identify any basis pursuant to Arizona law”
10 instilling property rights or liberty interests in public higher education); *see also Unknown*
11 *Party v. Ariz. Bd. of Regents*, No. CV-18-01623-PHX-DWL, 2019 WL 7282027, at *10
12 (D. Ariz. Dec. 27, 2019) (finding there is no property right to attend ASU under Arizona
13 law).

14 **C. Georgia Step 3**

15 The final step of the *Georgia* analysis considers whether Title II validly abrogates
16 sovereign immunity as to the “class of conduct” alleged. *Georgia*, 546 U.S. at 159. “[T]he
17 Eleventh Amendment, and the principle of state sovereignty which it embodies, are
18 necessarily limited by the enforcement provisions of § 5 of the Fourteenth Amendment.”
19 *Fitzpatrick v. Bitzer*, 427 U.S. 445, 456 (1976) (cleaned up). Section 5 states that
20 “Congress shall have power to enforce, by appropriate legislation, the provisions of this
21 article.” U.S. CONST. amend. XIV, § 5. Therefore, if Congress validly exercises § 5, it
22 may “subject nonconsenting States to suit in federal court.” *Garrett*, 531 U.S. at 364. The
23 Fifth Circuit has described the § 5 analysis as follows:

24 [i]nsofar as it prohibits conduct that does not directly violate the Fourteenth
25 Amendment, Title II can abrogate sovereign immunity only where
26 Congress’s abrogation power is “nevertheless valid.” Congress’s abrogation
27 power is “nevertheless valid” where Title II imposes requirements that are
28 “congruent and proportional” to an identified “pattern of [unconstitutional]
exclusion and discrimination”—even if it sweeps in some conduct that is not
itself unconstitutional.

1 *Pickett v. Texas Tech. Univ. Health Scis. Ctr.*, 37 F.4th 1013, 1026 (5th Cir. 2022) (quoting
2 *Georgia*, 546 U.S. at 159; *Tennessee v. Lane*, 541 U.S. 509, 531 (2004)).

3 **III. DISCUSSION**

4 **A. *Georgia* Applies**

5 Plaintiff cites to the Ninth Circuit’s reliance on a pre-*Georgia* case, *Phiffer*, to assert
6 that Congress abrogated sovereign immunity under Title II of the ADA. *See Phiffer v.*
7 *Columbia River Corr. Inst.*, 384 F.3d 791, 792 (9th Cir. 2004) (“Our precedent clearly
8 commands the conclusion that the State is not entitled to Eleventh Amendment immunity
9 under Title II of the ADA.”). The Ninth Circuit continues to cite to *Phiffer* as controlling
10 law despite the Supreme Court guiding to the contrary in *Georgia*, *Lane*, and *Garrett*. *See,*
11 *e.g., Okwu v. McKim*, 682 F.3d 841, 845 (9th Cir. 2012) (citing *Phiffer* when stating “Title
12 II abrogates a state’s Eleventh Amendment immunity”); *Daniel v. Levin*, 172 F. App’x 147,
13 179 (9th Cir. 2006) (citing *Phiffer* when finding “the Eleventh Amendment does not bar
14 ADA or [Rehabilitation Act] suits against state officials in their official capacities for
15 injunctive relief or damages”); *Karam v. Univ. of Ariz.*, No. 18-CV-00455-TUC-RCC,
16 2019 WL 588151, at *4 (D. Ariz. Feb. 13, 2019) (citing *Phiffer* when noting “[t]he Ninth
17 Circuit has clearly determined that Congress validly abrogated state’s immunity under Title
18 II of the ADA”). However, none of the above cases engage in any analysis and while it is
19 true that *Phiffer* stands for the general proposition that a state is not entitled to immunity
20 under Title II of the ADA, *Georgia* makes it clear that immunity is lost only if there is an
21 actual violation of the Fourteenth Amendment.

22 Additionally, even pre-*Georgia*, the *Phiffer* concurrence noted that it remained
23 undecided whether “Title II validly abrogates state sovereign immunity where no such
24 fundamental right is at issue.” 384 F.3d at 793 (“[E]ven after *Tennessee v. Lane*, . . . a
25 palpable tension continues to exist between our circuit’s sovereign immunity jurisprudence
26 and the Supreme Court’s guidance on this issue. . . . Because *Dare* and *Clark* upheld the
27 entirety of Title II without engaging in the nuanced, case-by-case analysis demanded by
28 *Lane*, their continued vitality is uncertain.”) (cleaned up).

1 Here, neither the U.S. Constitution nor Arizona law confer a fundamental right,
2 property right, or liberty interest in higher education. Post-*Phiffer*, the Supreme Court in
3 *Georgia* provided a test to determine a state’s sovereign immunity in this context. And as
4 the Ninth Circuit recognizes, “[a] decision of the Supreme Court will control that corner of
5 the law unless and until the Supreme Court itself overrules or modifies it.” *Hart v.*
6 *Massanari*, 266 F.3d 1155, 1171 (9th Cir. 2001). This Court will therefore engage in the
7 *Georgia* analysis.

8 **B. Plaintiff’s claim does not satisfy *Georgia***

9 Plaintiff’s allegations fail to satisfy step one of *Georgia*’s three-step analysis.
10 Plaintiff claims ABOR violated Title II of the ADA by denying her requests to receive an
11 incomplete grade in her Construction Documents class or further extend incomplete
12 courses from prior semesters. Plaintiff successfully alleges that she had a registered
13 disability with ASU, had been receiving disability accommodations, and was working
14 towards graduation at the time of the alleged incident. Factors one and two are therefore
15 satisfied and ABOR concedes the first two factors. (Doc. 21 at 5.)

16 However, the Court finds Plaintiff did not satisfy the third factor. Even after
17 Plaintiff was denied further incomplete grades and extensions, Plaintiff submitted her
18 assignments on time and then graduated. Plaintiff thus does not allege being excluded from
19 or denied the benefits of the MIA program. Furthermore, Plaintiff admits she received a
20 vast number of extended deadlines and incomplete grades over the duration of her program.
21 The Complaint singles out the first and only time ASU denied her an incomplete grade and
22 extension request. At no point does Plaintiff allege that because of her disability, ASU was
23 responsible for granting every accommodation request. *Cf. Del Conte v. Cnty. of Santa*
24 *Clara*, No. 14-CV-05334-WHO, 2016 WL 3916315, at *3 (N.D. Cal. July 20, 2016)
25 (noting that under the ADA, plaintiffs must make a showing of causation between the
26 disability and excluding act, and that “[n]o claim is pleaded by alleging simply that because
27 he was denied medication, it must have been because of his disability”). As such, factor
28 three is not satisfied.

1 Plaintiff also fails to allege ASU denied her requests because of her disability.
2 Plaintiff instead alleges many reasons unrelated to her disability for seeking the denied
3 accommodations, including: (1) COVID-19; (2) computer issues; and (3) a desire to focus
4 on her studio course. In fact, Plaintiff concedes she told the Dean that “many of her
5 incompletes were because of struggling to deal with the impact of Covid-19”—not her
6 disability. (Doc. 1 at 6 ¶ 35.) See *Okere v. City. of Dall.*, No. 3:19-CV-2339-M-BN, 2020
7 WL 1479765, at *3 (N.D. Tex. Feb. 26, 2020) (granting a motion to dismiss and noting
8 that although a plaintiff need not “plead a prima facie case of disability discrimination
9 under Title II of the ADA . . . the complaint must include facts that allow the Court to infer
10 more than the mere possibility of disability discrimination”). Plaintiff’s assertion that ASU
11 denied her accommodations “*because* of her disability status,” alone is merely a legal
12 conclusion, and the Court does not find enough factual allegations to support it. (Doc. 1 at
13 7 ¶¶ 41–42.) See *Lacano Invs., LLC v. Balash*, 765 F.3d 1068, 1071 (9th Cir. 2014) (courts
14 will “not accept *legal conclusions* in the complaint as true, even if cast in the form of factual
15 allegations”) (cleaned up). Factor four is therefore not satisfied.

16 Because Plaintiff has failed to satisfy step one, the Court need not engage in steps
17 two and three of the *Georgia* analysis. See *Castle*, 2010 WL 797138, at *11. But even
18 assuming Plaintiff satisfied step one, the Court finds no Fourteenth Amendment violation
19 because, as explained above, Arizona law confers no property interest in higher education.
20 See *Schwake*, 8221 F. App’x at 770. In fact, Plaintiff makes no attempts to argue there is
21 a Fourteenth Amendment violation and fails to respond to ABOR’s arguments to the
22 contrary. (Docs. 1, 20.) See *Williams v. Metro. Water Dist.*, No. CV-21-00030-PHX-
23 DWL, 2021 WL 1817052, *2 (D. Ariz. May 6, 2021) (noting that plaintiff’s failure to
24 respond to defendant’s arguments for dismissal is “tantamount to a concession that
25 dismissal is warranted” on that basis).

26 Plaintiff also fails step three. With no Fourteenth Amendment violation, the Court
27 must consider whether Title II validly abrogates sovereign immunity as to the “class of
28 conduct” alleged in the complaint. *Georgia*, 546 U.S. at 159. This analysis requires a

1 determination of whether Title II’s requirements are “congruent and proportional” to the
2 Complaint’s alleged “pattern of [unconstitutional] exclusion and discrimination.” *Pickett*,
3 37 F.4th at 1026. Here, Plaintiff fails to allege her disability led to a pattern of exclusion
4 and discrimination. Plaintiff’s Complaint details numerous accommodations ASU granted
5 her and alleges the first and only time ASU denied her an accommodation. Furthermore,
6 Plaintiff is not a member of a protected class and possesses no fundamental right to higher
7 education. “[I]ndividuals with disabilities do not qualify as a ‘suspect class’ of persons
8 under the Equal Protection Clause of the Fourteenth Amendment.” *Serrano v. Francis*,
9 345 F.3d 1071, 1079 n.6 (9th Cir. 2003) (citation omitted). It follows that under the Equal
10 Protection rational basis test, “States are not required by the Fourteenth Amendment to
11 make special accommodations for the disabled, so long as their actions towards such
12 individuals are rational. . . . If special accommodations for the disabled are to be required,
13 they have to come from positive law and not through the Equal Protection Clause.” *Bd. of*
14 *Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 367–68 (2001).

15 Title II does not validly abrogate sovereign immunity here because it is “so out of
16 proportion to a supposed remedial or preventive object that it cannot be understood as
17 responsive to, or designed to prevent, unconstitutional behavior.” *Guttman v. Khalsa*, 669
18 F.3d 1101, 1122, 1124 (10th Cir. 2012) (pointing out “a trend of courts holding that, absent
19 the need to vindicate a fundamental right or protect a suspect class, Congress may not
20 abrogate state sovereign immunity”) (cleaned up).

21 **IV. DISMISSED WITH PREJUDICE**

22 “[A] district court should grant leave to amend even if no request to amend the
23 pleading was made, unless it determines that the pleading could not possibly be cured by
24 the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (cleaned
25 up). Plaintiff’s Complaint does not satisfy *Georgia*’s requirements, and thus no factual
26 amendment could cure the Court’s lack of jurisdiction. Plaintiff’s Title II claim will
27 therefore be dismissed with prejudice. Plaintiff’s remaining state law claims are dismissed
28 without prejudice.

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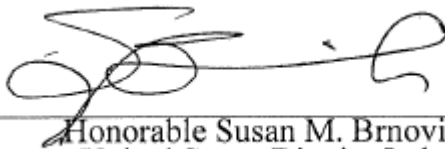
V. CONCLUSION

Accordingly,

IT IS ORDERED granting Defendant’s MTD and directing the Clerk of Court to terminate this case. (Doc. 12.)

IT IS FURTHER ORDERED dismissing Plaintiff’s Title II claim with prejudice and all remaining state law claims without prejudice.

Dated this 14th day of October, 2022.



Honorable Susan M. Brnovich
United States District Judge