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

Arash Ardalan,

Plaintiff,

v.

NAU School of Nursing, et al.,

Defendants.

No. CV-24-02429-PHX-SMB

ORDER

Before the Court is Defendants NAU School of Nursing, Stephanie Shapiro, Sandra Camille Short, Laura Jeanne Blank, Nicole Forrester, Natalie Benitez, Angelita Boloz, and Veronica Elstro’s (“Defendants”) Motion to Dismiss (Doc. 11) Plaintiff Arash Ardalan’s Amended Complaint (Doc. 1-1). Plaintiff filed a Response (Doc. 16), and Defendants filed a Reply (Doc. 17). Having reviewed the briefing and the relevant case law, the Court will dismiss Plaintiff’s Amended Complaint. The Court will also grant Plaintiff leave to amend a Second Amended Complaint for his Title VI claim only.

I. BACKGROUND

In this case, Plaintiff asserts violations of Title VI of the Civil Rights Act of 1964 and Arizona Revised Statute § 13-1303. (Doc. 1-1 at 50.) Plaintiff initially filed this case in Maricopa County Superior Court. (*See id.*) While in Superior Court, Plaintiff filed the instant Amended Complaint before Defendants removed the case to this Court. (*Id.* at 50; Doc. 1.)

The factual allegations underpinning Plaintiff’s claims are rather straightforward.

1 He alleged NAU Nursing terminated him from its program due his “ethnicity, color, and
2 national origin in violation of Title VI.” (Doc. 1-1 at 50.) Plaintiff seeks to hold seven of
3 the eight Defendants liable for this violation, although he does not specifically allege under
4 which civil rights statute he intends to sue. (*See id.*) As to the eighth Defendant, Laura
5 Blank, Plaintiff alleges that she subjected him to “unlawful imprisonment” in violation of
6 Arizona’s criminal code. (*Id.*); Ariz. Rev. Stat. § 13-1303. Plaintiff’s claimed injuries are
7 “[t]ermination from the nursing program,” “[d]etainment and staying in a mental rehab
8 center for 5 days,” and “[d]iscrimination for ethnicity [and] national origin.”¹ (Doc. 1-1
9 at 50.)

10 Plaintiff asserts the following as demands for relief: (1) “Monetary compensation
11 for 9 months [of] hard work[] at the school which was wasted by termination”; (2)
12 “Monetary compensation for psychological damages I received [due to] discrimination”;
13 (3) “Monetary compensation for wrongful detainment and staying in a mental health rehab
14 center”; (4) “Although I suffered at the school, I need to go back to school in order to
15 graduate and get my degree”; and (5) “If I go back to school, I need monetary compensation
16 for the time I stayed out of school, unemployment and late graduation.” (*Id.* at 50–52.)

17 **II. LEGAL STANDARD**

18 To survive a Rule 12(b)(6) motion for failure to state a claim, a complaint must meet
19 the requirements of Rule 8(a)(2). Rule 8(a)(2) requires a “short and plain statement of the
20 claim showing that the pleader is entitled to relief,” so that the defendant has “fair notice
21 of what the . . . claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*,
22 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). This exists
23 if the pleader sets forth “factual content that allows the court to draw the reasonable
24 inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556
25 U.S. 662, 678 (2009). “Threadbare recitals of the elements of a cause of action, supported
26 by mere conclusory statements, do not suffice.” *Id.*

27 ¹ The Court recognizes an error in the pagination of the Amended Complaint. ECF No.
28 1-1 at 51–52 each denote at the bottom center of the page that it is “Page 4 of 4” of the
Amended Complaint. However, the Court is able to glean what constitutes injury and,
separately, what constitutes Plaintiff’s demand for relief.

1 Dismissal under Rule 12(b)(6) “can be based on the lack of a cognizable legal theory
2 or the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v.*
3 *Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988). A complaint that sets forth a
4 cognizable legal theory will survive a motion to dismiss if it contains sufficient factual
5 matter, which, if accepted as true, states a claim to relief that is “plausible on its face.”
6 *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). Plausibility does not equal
7 “probability,” but requires “more than a sheer possibility that a defendant has acted
8 unlawfully.” *Id.* “Where a complaint pleads facts that are ‘merely consistent with’ a
9 defendant’s liability, it ‘stops short of the line between possibility and plausibility.’” *Id.*
10 (quoting *Twombly*, 550 U.S. at 557).

11 In ruling on a Rule 12(b)(6) motion to dismiss, the well-pled factual allegations are
12 taken as true and construed in the light most favorable to the nonmoving party. *Cousins v.*
13 *Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009). However, legal conclusions couched as
14 factual allegations are not given a presumption of truthfulness, and “conclusory allegations
15 of law and unwarranted inferences are not sufficient to defeat a motion to dismiss.” *Pareto*
16 *v. FDIC*, 139 F.3d 696, 699 (9th Cir. 1998). A court ordinarily may not consider evidence
17 outside the pleadings in ruling on a Rule 12(b)(6) motion to dismiss. *See United States v.*
18 *Ritchie*, 342 F.3d 903, 907 (9th Cir. 2003). “A court may, however, consider
19 materials—documents attached to the complaint, documents incorporated by reference in
20 the complaint, or matters of judicial notice—without converting the motion to dismiss into
21 a motion for summary judgment.” *Id.* at 908.

22 **III. DISCUSSION**

23 **A. Arizona’s Notice of Claim Statute**

24 Arizona’s notice of claim statute provides public entities the ability to investigate
25 claims made against it, assess liability, and consider settlement before litigation ensues.
26 *City of Mesa v. Ryan*, 557 P.3d 316, 319 (Ariz. 2024). That statute provides:

1 Persons who have claims against a public entity or a public
2 employee shall file claims with the person or persons
3 authorized to accept service for the public entity or public
4 employee as set forth in the Arizona rules of civil procedure
5 within one hundred eighty days after the cause of action
6 accrues. The claim shall contain facts sufficient to permit the
7 public entity or public employee to understand the basis upon
8 which liability is claimed. The claim shall also contain a
9 specific amount for which the claim can be settled and the facts
10 supporting that amount. Any claim which is not filed within
11 one hundred eighty days after the cause of action accrues is
12 barred and no action may be maintained thereon.

13 Ariz. Rev. Stat. § 12-821.01(A). “When a person asserts claims against a public entity and
14 public employee, the person ‘must give notice of the claim to *both* the employee
15 individually and to his employer.’” *Harris v. Cochise Health Sys.*, 160 P.3d 223, 230 (Ariz.
16 Ct. App. 2007) (quoting *Crum v. Superior Court*, 922 P.2d 316, 317 (Ariz. App.1996))
17 (emphasis in original). Arizona courts require *strict* compliance with the statute’s plain
18 terms, barring plaintiffs who effect less than such compliance from bringing suit. *See City*
19 *of Mesa*, 557 P.3d at 320–21; *Salerno v. Espinoza*, 115 P.3d 626, 628 (Ariz. Ct. App. 2005);
20 *Harris*, 160 P.3d at 230.

21 Defendants assert that Plaintiff failed to serve a notice of claim on Stephanie
22 Shapiro, Sandra Camille Short, Laura Jeanne Blank, Natalie Benitez, Angelita Boloz, and
23 Veronica Elstro. (Doc. 11 at 3–4.) Each of those individual Defendants submitted
24 affidavits in which they attest that they “have never been served with or received a Notice
25 of Claim from [Plaintiff].” (Doc. 11-1 at 2–7.) In his Response, Plaintiff cites to affidavits
26 of service relating to the summons and Complaint in this case. (Doc. 16 at 1.)
27 Unfortunately, those affidavits of service are distinct from the statutory notice of claim
28 requirement when suing public entities and employees. *See* § 12-821.01(A); Fed. R. Civ.
P. 4. To initiate this lawsuit, Plaintiff was required to file a notice of claim on each public
entity and employee he intended to sue prior to filing his Complaint. *See Harris*, 160 P.3d
at 230. Plaintiff has failed to do so and is barred from asserting any state law claim against
the above noted individual Defendants related to these claims. Therefore, the Court will
dismiss all of the state law claims as to Defendants Stephanie Shapiro, Sandra Camille

1 Short, Laura Jeanne Blank, Natalie Benitez, Angelita Boloz, and Veronica Elstro, with
2 prejudice.

3 **B. Jural Entities**

4 Defendants move to dismiss NAU School of Nursing from the Complaint because
5 it is a non-jural entity that cannot be sued in its own name. Plaintiff concedes that NAU
6 cannot be sued. (Doc. 16 at 1 ¶ 3.) The Court agrees that NAU is a non-jural entity and
7 therefore cannot be sued in its own name. *See* Ariz. Rev. Stat. § 15–1626; *Smith v. Dep’t*
8 *of Educ.*, 158 F. App’x 821, 823 (9th Cir. 2005) (holding that Arizona State University
9 could not be sued and that the proper party was the Arizona Board of Regents); *Cohen v.*
10 *Ariz. State Univ.*, No. CV-21-01178-PHX-GMS, 2022 WL 1747776, at *8 (D. Ariz. May
11 31, 2022) (“As ASU is not properly subject to suit, Plaintiff’s complaint against ASU is
12 dismissed.”). Therefore, NAU will be dismissed from this case.

13 **C. Lack of Service**

14 Defendants also move to dismiss Laura Jeanne Blank, Nicole Forrester, Angelita
15 Boloz because Plaintiff has failed to serve them with a copy of the summons and
16 Complaint. (Doc. 11 at 6.) Plaintiff concedes that he failed to serve these Defendants.
17 (Doc. 16 at 1 ¶ 3.) Rule 4 requires that a defendant be served within ninety (90) days of
18 the filing of a complaint. Fed. R. Civ. P. 4. Because Plaintiff has not complied with this
19 requirement, the above-mentioned Defendants will be dismissed from this case.

20 **D. Failure to State a Claim**

21 Plaintiff asserts a single federal claim against Defendants—violation of Title VI.
22 (Doc. 1-1 at 50.) Title VI provides that “[n]o person in the United States shall, on the
23 ground of race, color, or national origin, be excluded from participation in, be denied the
24 benefits of, or be subjected to discrimination under any program or activity receiving
25 Federal financial assistance.” 42 U.S.C. § 2000d. After the Civil Rights Act of 1964 was
26 passed, the Supreme Court developed a burden-shifting framework for discrimination
27 cases brought under Title VII. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802
28 (1973). Decades later, the Ninth Circuit decided that the *McDonnell Douglas* framework

1 “also applies to Title VI disparate treatment claims.” *Rashdan v. Geissberger*, 764 F.3d
2 1179, 1182 (9th Cir. 2014).

3 The *McDonnell Douglas* framework requires the plaintiff-employee first establish a
4 prima facie case of discrimination. 411 U.S. at 802. If the plaintiff makes that showing,
5 then the defendant-employer must rebut the presumption of discrimination by
6 “articulat[ing] some legitimate, nondiscriminatory reason for the employee’s rejection.”
7 *Id.* at 802. “If the employer does so, the burden shifts back to the plaintiff to demonstrate
8 that the employer’s proffered reason is a pretext for discrimination.” *Pierson v. City of*
9 *Phoenix*, No. CV-16-02453-PHX-DLR, 2017 WL 4792122, at *3 (D. Ariz. Oct. 24, 2017).
10 “Private parties seeking judicial enforcement of Title VI’s nondiscrimination protections
11 must prove intentional discrimination.” *Yu v. Idaho State Univ.*, 15 F.4th 1236, 1242 (9th
12 Cir. 2021) (citing *Alexander v. Sandoval*, 532 U.S. 275, 280–81 (2001)). “Evidence of
13 discriminatory motive can be direct or indirect.” *Rashdan*, 764 F.3d at 1183.

14 Defendants argue that Plaintiff has not asserted facts to support a prima facie case
15 of discrimination. (Doc. 11 at 6.) Defendants also assert that Plaintiff has done nothing
16 more than cite a list of general grievances against his professors, none of which show
17 intentional discrimination. (*Id.*) In his Response, Plaintiff discusses how his professors
18 discriminated against him several times, but he does not explain how the factual assertions
19 in the Amended Complaint support a prima facie case of discrimination. (*See* Doc. 16
20 at 2.) Additionally, Plaintiff has copied allegations from the attachments to his Initial
21 Complaint and pastes them into his response. Those assertions are as follows:

- 22 1. Professor Shapiro wouldn’t answer his question during an exam but
23 answered questions from other students. Her response to his question
24 was: “I do not know, it’s your problem, I am not sitting with you on the
25 day of the NCLEX exam.”
- 26 2. Defendant reported to Professor Short that his nurse mentor for the day
27 would not sign off on his paper (presumably supporting his
28 qualifications). Professor Short went to the mentor and got a bad report.
Professor short then used that information to prepare a “contract” which
was recorded in Defendant’s file. On another occasion, Plaintiff asked
Professor Short to work night shifts for clinical because he can’t sleep
well at night and would prefer to work. Professor Short documented in
Plaintiff’s file that he intentionally doesn’t sleep at night and is therefore

1 not energetic enough to participate in clinical practices during the day. A
2 false statement.

3 3. Professor Benitez let Plaintiff know on the first day of his return to
4 clinical that she “does not have time to work with me anymore.” Plaintiff
5 claims that she was not giving him as many practice hours in the lab as
6 other students.

7 4. Professor Elstro told Plaintiff not to say his academic opinion or correct
8 her during discussion because he was a physician in Iran. She didn’t and
9 the students to get confused about who to believe.

10 (*Id.* at 3–5.) These allegations are unadorned with the requisite factual enhancement to
11 show that the professors engaged in purposeful discrimination required under 42 U.S.C.
12 § 2000d. As Defendants have pointed out, these allegations are merely a list of grievances
13 that Plaintiff had with his various professors. There is nothing in these allegations alone
14 to evidence a discriminatory motive. As a result, Plaintiff has failed to establish the prima
15 facie elements of discrimination in the Amended Complaint, and thus fails to meet his
16 threshold burden under *McDonnell Douglas*. See 411 U.S. at 802.

17 **IV. LEAVE TO AMEND**

18 “[A] district court should grant leave to amend even if no request to amend the
19 pleading was made, unless it determines that the pleading could not possibly be cured by
20 the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (cleaned
21 up).

22 In this case, all state law claims related to the acts complained of are barred by
23 Arizona’s notice of claim statute. Ariz. Rev. Stat. § 12-821.01(A). Therefore, the Court
24 will not grant leave to amend those claims. Plaintiff is granted leave to file a Second
25 Amended Complaint to address deficiencies related to the Title VI claim only. Within
26 thirty (30) days from the date of entry of this Order, Plaintiff may submit a second
27 Amended Complaint. Plaintiff must clearly designate on the face of the document that it
28 is the “Second Amended Complaint.” The Second Amended Complaint must be retyped
or rewritten in its entirety and may not incorporate any part of the original Complaint by
reference. Moreover, Plaintiff must serve all Defendants included in the Second Amended
Complaint that have yet to be properly served under Rule 4 after he files his Second

1 Amended Complaint. Failure to do so will result in the dismissal of those Defendant's
2 from this case.

3 The Court draws attention to the District of Arizona's Federal Court Advice Only
4 Clinic, [Federal Court Advice Only Clinic - Phoenix | District of Arizona | United States](#)
5 [District Court \(uscourts.gov\)](#). The Court also notes the E-Pro Se program which assists
6 litigants with creating a complaint form, [Welcome - eProSe \(uscourts.gov\)](#). Lastly, the
7 Court advises Plaintiff that certain resources for self-represented parties, including a
8 handbook and the Local Rules, are available on the Court's website,
9 [www.azd.uscourts.gov](#), by following the link "For Those Proceeding Without an
10 Attorney."

11 **V. CONCLUSION**

12 Accordingly,

13 **IT IS HEREBY ORDERED** granting Defendants Motion to Dismiss (Doc. 11).
14 Plaintiff's Amended Complaint is dismissed with leave to file a Second Amended
15 Complaint within thirty (30) days of the date of this Order.

16 **IT IS FURTHER ORDERED** that if Plaintiff does not file a Second Amended
17 Complaint within thirty (30) days of the date of this Order, the Clerk of Court shall dismiss
18 this action without further order of this Court.

19 Dated this 6th day of March, 2025.
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Honorable Susan M. Brnovich
United States District Judge
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