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

8
9 Jeanette Young,

10 Plaintiff,

11 v.

12 United States Department of the Interior,
13 Bureau of Indian Education,

14 Defendant.

No. CV-13-08024-PCT-GMS

ORDER

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16 Pending before the Court is Defendant's Motion to Dismiss / Motion for Summary
17 Judgment. (Doc. 11.) For the reasons discussed below, the Motion is granted.

18 **BACKGROUND**

19 Plaintiff, Jeanette Young, was an employee of the United States Department of the
20 Interior, Bureau of Indian Education ("BIE"). (Doc. 12.) She was terminated by the
21 Defendant, BIE, on May 20, 2011. (*Id.*) On January 29, 2013, Ms. Young filed a
22 complaint with this Court. (Doc. 1.) Ms. Young alleges that BIE violated her freedom of
23 religion in terminating her because of her refusal to be "saved." (Doc. 1 at ¶ 6.) She
24 claims that her action arises under 42 U.S.C. § 1983 and *Bivens v. Six Unknown Fed.*
25 *Narcotics Agents*, 403 U.S. 388 (1971). (Doc. 1 at 1.) BIE and Ms. Young are unable to
26 agree that Ms. Young's pleading is curable by an amendment. (Doc. 12 at ¶ 9.) On April
27 22, 2013, BIE filed a Motion to Dismiss/ Motion for Summary Judgment. (Doc. 11). The
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1 deadline for a response by Ms. Young was on May 9, 2013 and no response was ever
2 filed.

3 4 **DISCUSSION**

5 **I. Legal Standard**

6 To survive dismissal for failure to state a claim pursuant to Federal Rule of Civil
7 Procedure 12(b)(6), a complaint must contain more than “labels and conclusions” or a
8 “formulaic recitation of the elements of a cause of action”; it must contain factual
9 allegations sufficient to “raise a right to relief above the speculative level.” *Bell Atl.*
10 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While “a complaint need not contain
11 detailed factual allegations . . . it must plead ‘enough facts to state a claim to relief that is
12 plausible on its face.’” *Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017, 1022 (9th Cir.
13 2008) (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the
14 plaintiff pleads factual content that allows the court to draw the reasonable inference that
15 the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
16 (2009) (citing *Twombly*, 550 U.S. at 556). The plausibility standard “asks for more than a
17 sheer possibility that a defendant has acted unlawfully.” *Id.* When a complaint does not
18 “permit the court to infer more than the mere possibility of misconduct, the complaint has
19 alleged—but it has not shown—that the pleader is entitled to relief.” *Id.* at 679 (internal
20 quotation omitted).

21 When analyzing a complaint for failure to state a claim under Rule 12(b)(6), “[a]ll
22 allegations of material fact are taken as true and construed in the light most favorable to
23 the nonmoving party.” *Smith v. Jackson*, 84 F.3d 1213, 1217 (9th Cir. 1996). However,
24 legal conclusions couched as factual allegations are not given a presumption of
25 truthfulness, and “conclusory allegations of law and unwarranted inferences are not
26 sufficient to defeat a motion to dismiss.” *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir.
27 1998).

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1 **II. Analysis**

2 **A. Young Fails to State a Claim Under 42 U.S.C. § 1983**

3 Ms. Young contends that this action arises under 42 U.S.C. § 1983. (Doc. 1 at 1.)
4 The sole defendant in this action is BIE. (*Id.*) The BIE, as a federal agency, is part of the
5 United States and is not a state actor. “[T]he United States itself is not a state actor and
6 therefore does not come within the provisions of sections 1983 or 1985.” *Psket v. U.S.,*
7 *Dep’t of Justice-Organized Crime Strike Force*, 41 F.3d 1513 (9th Cir. 1994); *see also*
8 *Dry v. United States*, 235 F.3d 1249, 1255 (10th Cir. 2000) (holding that § 1983 is
9 “applicable only to actions by state and local entities, not by the federal government”).
10 Thus, § 1983 is not applicable to the BIE and Ms. Young has failed to state a valid claim
11 under § 1983.

12 Ms. Young also requests attorneys’ fees pursuant to 42 U.S.C. § 1988(b). (Doc. 1
13 at 3.) Section 1988 gives discretion to the Court to allow a *prevailing party* in a claim
14 brought under § 1983 a reasonable attorney’s fee as part of the costs. 42 U.S.C.A. § 1988
15 (West). Ms. Young’s claim for attorneys’ fees based on § 1988 requires her to be a
16 prevailing party under her § 1983 claim. But, as discussed above, Ms. Young has failed
17 to state a valid claim under § 1983. Thus, there is no possible basis in Ms. Young’s
18 complaint for an award of attorney’s fees.

19 **B. Young Fails to State a Claim Under *Bivens***

20 In *Bivens*, the Supreme Court recognized that a plaintiff may recover damages that
21 resulted from federal agents’ violation of his Fourth Amendment rights. *Bivens*, 403 U.S.
22 at 397. “[T]he Supreme Court has held that no *Bivens* remedy is available against a
23 federal agency.” *W. Radio Servs. Co. v. U.S. Forest Serv.*, 578 F.3d 1116, 1119 (9th Cir.
24 2009) (citing *FDIC v. Meyer*, 510 U.S. 471, 484 (1994)). Ms. Young contends that this
25 action also arises under *Bivens*. (Doc. 1 at 1.) Ms. Young, however, does not explain how
26 or why *Bivens* applies and has not filed a response to BIE’s Motion to Dismiss.

27 In the present case, BIE, a federal agency, is the sole defendant. Thus, Ms. Young
28 has failed to state a claim under *Bivens* because no *Bivens* remedy is available against a

1 federal agency.

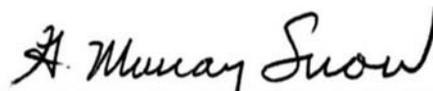
2 **C. Subject Matter Jurisdiction**

3 BIE contends that Ms. Young's exclusive remedy for religious discrimination
4 is under Title VII and that this Court lacks subject matter jurisdiction to hear a Title
5 VII claim because Ms. Young failed to exhaust her administrative remedies. (Doc. 11
6 at 5.) BIE cites to external evidence, (Doc. 12), in support of this argument. Absent
7 specific exceptions, however, the Court will not consider evidence or documents
8 beyond the complaint in the context of a 12(b)(6) Motion to Dismiss. *See Hal Roach*
9 *Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1550 (9th Cir.1990)
10 (amended decision). When a party files affidavits and other evidence in support of a
11 12(b)(6) Motion to Dismiss, the Court may convert the motion to a Fed. R. Civ. P. 56
12 motion for summary judgment. Fed. R. Civ. P. 12. Here, because Ms. Young has not
13 brought any claims under Title VII, the Court need not consider the external evidence
14 to determine whether she exhausted her administrative remedies. Because it is
15 unnecessary to convert the Motion and because Ms. Young has not alleged any Title
16 VII claim, this Court will not address BIE's contention about lack of subject matter
17 jurisdiction.

18 **CONCLUSION**

19 **IT IS THEREFORE ORDERED** that Defendant's Motion to Dismiss (Doc. 11),
20 is **GRANTED**. The Clerk of Court is directed to terminate this action and enter
21 judgment accordingly.

22 Dated this 21st day of June, 2013.

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26 G. Murray Snow
27 United States District Judge
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