

1
2 UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4 OAKLAND DIVISION
5

6 DALIA RASHDAN (MOHAMED),

7 Plaintiff,

8 vs.

9 MARC GEISSBERGER,
10 EUGENE LABARRE,
11 AI B. STREACKER,
12 FOROUD HAKIM,
13 NADER A. NADERSHAHI,
14 PATRICK J. FERRILLO, JR.,
15 LEIGH ANDERSON,
16 JEFF MILES,
17 DANIEL J. BENDER,
18 LOLA GIUSTI,
19 CRAIG YARBOROUGH,
20 DOES 1-50, AND
21 UNIVERSITY OF THE PACIFIC,

22 Defendants.

Case No: C 10-00634 SBA

**ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS**

Docket 10

23 Plaintiff Dalia Rashdan, a former dental student the Dugoni School of Dentistry
24 (“Dugoni School”) at the University of the Pacific (“the University”), brings the instant
25 action against the University and eleven individual instructors and administrators at the
26 Dugoni School (collectively “Individual Defendants”) claiming that she was subjected to
27 discrimination on account of her national origin (Egyptian). The parties are presently
28 before the Court on the Individual Defendants’ motion to dismiss, pursuant to Federal Rule
of Civil Procedure 12(b)(6). Dkt. 10. Having read and considered the papers submitted
and the record in this action, and being fully informed, the Court hereby GRANTS the
motion, for the reasons that follow. Pursuant to Federal Rule of Civil Procedure 78(b) and
Civil Local Rule 7-1(b), the Court adjudicates the instant motion without oral argument.

1 **I. BACKGROUND**

2 **A. FACTUAL SUMMARY**

3 Plaintiff, a female Egyptian-American, attended the Dugoni School from 2007 to
4 2009, with the goal of obtaining a D.D.S. degree. Compl. ¶¶ 4, 19. She alleges that the
5 University and its faculty, principally Dr. Marc Geissberger, Chair of the Department of
6 Restorative Dentistry, discriminated against her on the basis of her national origin. The
7 lengthy and discursive allegations in her Complaint generally pertain to the following
8 conduct or incidents: (1) the disparagement of her work by Dr. Geissberger as “Third
9 World Dentistry” and being called “TW” (short for “Third World”) by another instructor;
10 (2) the alteration her official transcript to make it appear that she did not complete and/or
11 take certain courses; and (3) the interference with her ability to graduate and earn her D.D.S
12 degree. These incidents are summarized below.

13 **1. “Third World Dentistry” Comments**

14 In January 2009, Dugoni School faculty member Dr. Warden Noble was adjusting a
15 master cast for a patient’s crown while at the Dugoni School’s dental clinic. Id. ¶ 27. Dr.
16 Noble expressed concern about having the crown seat properly, and informed Plaintiff that
17 he would adjust the patient’s tooth before seating the crown. Id. In March 2009, the
18 patient returned to the dental clinic to have the crown seated. Id. Since Dr. Noble was not
19 present, Plaintiff decided to seat the crown on her own. Id. ¶ 28. After being unable to do
20 so, Plaintiff communicated the problem to another faculty member, Dr. Jessie Vallee, who,
21 in turn, spoke to Dr. Geissberger. Id. When Dr. Valle returned, he told Plaintiff that Dr.
22 Geissberger was upset that she had not told him that Dr. Noble had stated that *he* was
23 planning on adjusting the patient’s tooth. Id. After the patient left, Plaintiff walked over to
24 where Dr. Geissberger was standing. Id. ¶ 29. In the presence of Dr. Valle and another
25 unidentified faculty member, Dr. Geissberger characterized her work on the patient as
26 “Third World Dentistry.” Id.

27 Later, Plaintiff spoke with Dr. Geissberger in his office, and complained that she
28 was offended by his remark. Id. ¶ 30. Dr. Geissberger replied that nowhere in the school

1 syllabus were students taught to adjust a tooth before seating a crown. Id. Plaintiff claimed
2 that, in fact, it was Dr. Noble’s who had proposed adjusting the tooth before seating a
3 crown, and that she did not feel comfortable challenging his authority. Id. Dr. Geissberger
4 responded, “It’s still Third World Dentistry.” Id. They debated whether Egypt is, in fact, a
5 third world country. Id. At some point after this exchange, Dr. Faroud Hakim, Vice-Chair
6 of the Department of Restorative Dentistry, greeted Plaintiff with, “What’s up, TW?”—
7 which was short for “Third World.” Id. ¶ 31. Dr. Hakim continued to greet Plaintiff in that
8 manner whenever he encountered her, including one time in front of Plaintiff’s mother,
9 who inquired and was informed what “TW” meant. Id. ¶¶ 32, 58.

10 2. **Transcript Issues**

11 Plaintiff alleges that in April or May 2009, she received an interim transcript from
12 Daniel J. Bender, Director of Academic Affairs and Registrar at the Dental School. Id.
13 ¶ 38. The interim transcript indicated that she was receiving passing grades in RS 379
14 (Clinical Restorative Dentistry III), RP 396 (Clinical Removable Prosthodontics) and DP
15 317 (Patient Management & Production III). Id. ¶ 39.

16 On December 7, 2009, Plaintiff obtained her official transcript, which indicated that
17 she had received an “INC” (incomplete) for RS 379, and did not list either RP 396 or DP
18 317, even though she had completed and passed those courses. Id. ¶ 40. Plaintiff alleges
19 that sometime after she received her interim transcript in May 2009, Dr. Geissberger and
20 Mr. Bender somehow “altered” her transcript so that she would receive an “INC” for RS
21 379, and that Mr. Bender, Dr. Eugene LaBarre and Dr. Lola Giusti altered her transcript to
22 make it appear as if she never took RP 396 or DP 317. Id. ¶¶ 41-46.

23 In the Spring quarter of 2009, Plaintiff participated and passed DP 320 (Preparation
24 for State Licensure), a mandatory class for student planning on graduating in 2009. Id.
25 ¶ 47. Plaintiff alleges that sometime after she received her interim transcript, Mr. Bender
26 caused her official transcript to be altered so that it appeared that she never took or passed
27 DP 320. Id. 49.

1 **3. Graduation Issues**

2 a) Plaintiff Prepares to Graduate

3 In the Spring quarter of 2009, some of Plaintiff’s classmates received an “A Letter”
4 informing them that they would not be graduating with his or her class. Id. ¶ 51. Others
5 received a “B Letter” which informed the recipient that he or she would not graduate unless
6 corrective measures were undertaken to improve his or her academic performance. Id.
7 ¶ 53. Plaintiff denies that she received either type of letter. Id. ¶¶ 52, 54.

8 Sometime prior to May 2009, Dr. Patrick Ferrillo, Jr., Dean of the Dental School,
9 submitted a Certificate for Graduating Seniors to the Western Regional Examining Board
10 (“WREB”). Id. ¶ 55. The WREB administers the examination that dental students must
11 pass in order to practice dentistry in the United States. Id. Dean Ferrillo certified to the
12 WREB that Plaintiff would complete the requirements for graduation by June 14, 2009. Id.
13 ¶ 55. Later in May, Plaintiff took and passed the Patient Assessment and Treatment
14 Planning Exam, Periodontal and Prosthodontics Examination, which are part of the WREB
15 examination. Id. ¶¶ 57-58. She also passed the Law and Ethics Examination, which is part
16 of the State of California’s dental licensure requirements. Id. ¶ 60. On May 13, 2009,
17 Dean Ferrillo sent Plaintiff’s mother an invitation to the Dugoni School’s graduation
18 ceremony scheduled for June 14, 2009. Id.

19 On May 19, 2009, Plaintiff met with Dr. Giusti, her Group Practice Administrator,
20 for her pre-graduation exit interview. Id. ¶ 71. During the meeting, Dr. Giusti informed
21 Plaintiff that “no negative comments” had been submitted by any faculty, Department
22 Chairs or administrators or patients. Id. Plaintiff was told that she had completed her
23 academic courses satisfactorily and to go to the business office to pick up a “Student
24 Closeout Form.” Id. Dr. Giusti signed an “Authorization to Begin Clearing Process Form,”
25 which facilitated the transfer of patients under her care to other classmates. Id. At the
26 conclusion of her exit interview, Plaintiff was informed that she was “good to go” for
27 graduation. Id. Relying on her positive exit interview, Plaintiff and her family began
28 packing her belongings for shipment to Egypt, where Plaintiff planned to open her dental

1 practice after graduation. Id. ¶ 75. In addition, Plaintiff took the WREB examination from
2 May 29, 2009, to June 1, 2009. Id. ¶ 76.

3 b) Plaintiff is Informed That She Will Not Graduate

4 On or about June 10, 2009, the Student Academic Performance and Promotions
5 Committee (“SAPPC”) met to decide which students would be recommended to Dean
6 Ferrillo for graduation. Id. ¶ 77. At the meeting, Dr. Geissberger allegedly spoke
7 “disparagingly” of Plaintiff’s academic performance, though the Complaint does not
8 specify the comments at issue or what made them disparaging. Id. ¶¶ 82, 84. The SAPPC
9 voted 13-0 to recommend to Dean Ferrillo that Plaintiff should not be certified for
10 graduation. Id. On the same day, the WREB sent Plaintiff a notice that she had failed the
11 Endodontics part of the examination, but had passed the four other subjects. Id. ¶ 87.

12 On June 10, 2009, Plaintiff received a written notice from Dr. Guisti informing her
13 that she had not been certified for graduation, but that the Dugoni School was offering her
14 the opportunity to continue as “an extended student as part of the Class of 2009.” Id. ¶¶ 89,
15 91, 94. The letter set forth the specific requirements Plaintiff would have to meet as an
16 extended student in order to qualify for graduation. Id. ¶ 94. Plaintiff alleges that other
17 extended students were not subject to the allegedly stringent requirements imposed upon
18 her. Id. ¶ 98. The letter indicated that Plaintiff could appeal the Dean’s decision. Id.
19 Upon receiving the notice, Plaintiff allegedly suffered a panic/anxiety attack and was taken
20 to a hospital emergency room. Id. ¶ 90.

21 The next day on June 11, 2009, Plaintiff filed a Letter of Intent with the Student
22 Appeals Committee to pursue an appeal of the Dean’s decision to maintain her as an
23 extended student as a part of the Class of 2009. Id. ¶ 100. Plaintiff asked Dr. Leigh
24 Anderson, an instructor and Chair of the Student Appeals Committee, Dr. Bender and Dr.
25 Giusti to inform her of the grounds for the decision by Dean Ferrillo to maintain her as an
26 extended student. Id. ¶ 101. They allegedly refused to respond to Plaintiff’s inquiry,
27 claiming that the Dean’s reasons were “personal and confidential.” Id. ¶ 102. On June 12,
28 2009, Plaintiff was notified that her appeal would be heard on June 15, 2009. Id. ¶ 104.

1 On June 14, 2009, Plaintiff participated in the graduation ceremony with her classmates,
2 but did not receive her D.D.S. degree. Id. ¶ 106.

3 The appeals hearing took place as scheduled on June 15, 2009. Id. ¶ 107. Plaintiff
4 avers that her ability to effectively present her case was impeded by Drs. Anderson, Bender
5 and Giusti's purported refusal to disclose the grounds for maintaining her as an extended
6 student. Id. ¶ 110. Plaintiff also complains that the appeals process was unfair because the
7 Appeals Committee lacked any students, as required. Id. ¶¶ 105, 111. On June 25, 2009,
8 Dean Ferrillo sent Plaintiff a letter notifying her that her appeal had been denied. Id. ¶ 115.
9 Upon reading the letter, Plaintiff allegedly suffered another panic/anxiety attack. Id.

10 c) Plaintiff's Tenure as an Extended Student

11 Plaintiff began her tenure as an extended student on or about July 13, 2009. Id.
12 ¶ 117. Under the terms imposed upon her, Plaintiff could perform test cases only on
13 Tuesdays and Thursdays under the supervision of Dr. Geissberger or Dr. Ai B. Streacker,
14 an instructor in the Department of Restorative Dentistry. Id. ¶ 122. Id. Because of these
15 limitations, Plaintiff had difficulty making progress towards completing the extension
16 program during the Summer Quarter, which ran from July 13, 2009, to September 21, 2009.
17 Id. ¶ 124. Plaintiff complained about this matter to Associate Dean, Dr. Craig Yarborough,
18 who, in turn, communicated her concerns to Dr. Geissberger. Id. ¶¶ 125-127. Dr.
19 Geissberger emailed Dr. Yarborough a list of faculty who could oversee Plaintiff's test
20 cases on during any day of the workweek during the Fall Quarter, which ran from October
21 5, 2009, to December 14, 2009. Id. ¶ 128. The new list of approved supervisors excluded
22 Dr. Geissberger, but included Drs. Hakim and Streacker. Id. ¶ 129.

23 On December 3, 2009, Dr. Geissberger informed Plaintiff that he and other faculty
24 members were recommending that she no longer be allowed to work on patients; instead,
25 she would have to work on plastic models, after which they would consider allowing her to
26 return to patients. Id. ¶ 131. On December 7, 2009, Dr. Nadar A. Nadershahi, Associate
27 Dean for Academic Affairs, invited Plaintiff to attend an urgent meeting with the SAPCC
28 to discuss Dr. Geissberger's recommendation that she "remediate" on plastic models. Id.

¶ 132. Plaintiff believed that so long as Dr. Geissberger and the other faculty members were supervising her as an extended student, she had no reasonable possibility of obtaining her dental degree. Id. ¶ 133. On the advice of her psychiatrist, Plaintiff ignored Dr. Nadershahi’s invitation, and instead, on December 9, 2009, filed a Request for Absence from School with the Office of Academic Affairs to “permanently” leave to the Dugoni School. Id. ¶ 135.

B. PROCEDURAL HISTORY

On February 12, 2010, Plaintiff filed the instant action alleging the following claims: violation of 42 U.S.C § 1985(3) (first claim for relief)¹; violation of Title VI of the Civil Rights Act of 1964 (“Title VI”), 42 U.S.C. § 2000d (second claim for relief); violation of the Unruh Act, Cal. Civ. Code § 51 (third claim for relief); breach of implied contract (fourth claim for relief); breach of the implied covenant of good faith and fair dealing (sixth claim for relief); defamation (seventh claim for relief); tortious interference with a contract or advantageous business relationship or expectancy (seventh claim for relief); intentional infliction of emotional distress (“IIED”) (eighth claim for relief); fraud (ninth claim for relief); negligent misrepresentation (tenth claim for relief); and negligence (eleventh claim for relief).

As defendants, Plaintiff has named the University, Dr. Geissberger, Dr. LaBarre, Dr. Streacker, Dr. Hakim, Dr. Nadershahi, Dr. Ferrillo, Dr. Anderson, Dr. Miles, Mr. Bender, Dr. Giusti, and Dr. Yarborough. She seeks compensatory and punitive damages and injunctive relief. The Individual Defendants now move to dismiss the causes of action alleged against them; to wit, violation of 42 U.S.C. § 1985(3), violation of Title VI, tortious interference with a contract, defamation, IIED and negligence. Plaintiff and Defendants have filed their opposition and reply, respectively, and the matter is now ripe for adjudication.

¹ The Complaint erroneously refers to “§ 1985(c)” as opposed to “§ 1985(3).” Compl. at 25. Plaintiff acknowledges this obvious error in her opposition brief. Pl.’s Opp’n at 7.

1 **II. LEGAL STANDARD**

2 Rule 8 of the Federal Rules of Civil Procedure requires that a complaint contain a
3 “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed.
4 R. Civ. P. 8(a)(2). If a complaint fails to satisfy Rule 8, it “must be dismissed” under Rule
5 12(b)(6) for failure to state a claim upon which relief can be granted. Bell Atl. Corp. v.
6 Twombly, 550 U.S. 544, 570 (2007). To survive a motion to dismiss, the plaintiff must
7 allege “enough facts to state a claim to relief that is plausible on its face.” Id. The
8 pleadings must “give the defendant fair notice of what . . . the claim is and the grounds
9 upon which it rests.” Erickson v. Pardus, 551 U.S. 89, 93 (2007) (internal quotation marks
10 omitted). “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief’
11 requires more than labels and conclusions, and a formulaic recitation of the elements of a
12 cause of action will not do.” Twombly, 550 U.S. at 555.

13 When considering a Rule 12(b)(6) motion, a court must take the allegations as true
14 and construe them in the light most favorable to plaintiff. See Knieval v. ESPN, 393 F.3d
15 1068, 1072 (9th Cir. 2005). However, “the tenet that a court must accept as true all of the
16 allegations contained in a complaint is inapplicable to legal conclusions. Threadbare
17 recitals of the elements of a cause of action, supported by mere conclusory statements, do
18 not suffice.” Ashcroft v. Iqbal, --- U.S. ---, 129 S. Ct. 1937, 1949-50 (2009). “While legal
19 conclusions can provide the complaint’s framework, they must be supported by factual
20 allegations.” Id. at 1950. Those facts must be sufficient to push the claims “across the line
21 from conceivable to plausible[.]” Id. at 1951 (quoting Twombly, 550 U.S. at 557). In the
22 event dismissal is warranted, it is generally without prejudice, unless it is clear the
23 complaint cannot be saved by any amendment. See Sparling v. Daou, 411 F.3d 1006, 1013
24 (9th Cir. 2005); Gompper v. VISX, Inc., 298 F.3d 893, 898 (9th Cir. 2002).

1 **III. DISCUSSION**

2 **A. FIRST CLAIM FOR VIOLATION OF 42 U.S.C. § 1985(3)**

3 **1. Intracorporate Conspiracy Doctrine**

4 A claim under 42 U.S.C. § 1985(3) requires the plaintiff to plead and prove:

5 “(1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person
6 or class of persons of the equal protection of the laws, or of equal privileges and immunities
7 under the laws; and (3) an act in furtherance of this conspiracy; (4) whereby a person is
8 either injured in his person or property or deprived of any right or privilege of a citizen of
9 the United States.” Sever v. Alaska Pulp Corp., 978 F.2d 1529, 1536 (9th Cir. 1992)
10 (citation omitted). The plaintiff also must allege sufficient facts showing “a deprivation of
11 a right motivated by ‘some racial, or perhaps otherwise class-based, invidiously
12 discriminatory animus behind the conspirators’ actions.” RK Ventures, Inc. v. City of
13 Seattle, 307 F.3d 1045, 1056 (9th Cir. 2002) (quoting Sever, 978 F.2d at 1536). In her first
14 claim for relief, Plaintiff alleges that “Defendants GEISSBERGER, HAKIM, BENDER,
15 GIUSTI, NADERSHAHI, YARBOROUGH, those DOES 1-50 on the SAPPC and some
16 DOES 1-50 conspired for the purpose of intentionally depriving ... Plaintiff equal
17 protection of the laws....” Compl. ¶ 139.

18 Defendants argue that Plaintiff’s claim under 42 U.S.C. § 1985(3) is barred by the
19 intracorporate conspiracy doctrine. Defs.’ Mot. at 7. This doctrine generally provides that
20 employees acting within the scope of their employment cannot be deemed culpable for
21 conspiring with one another or with the entity that employs them. E.g., Meyers v. Starke,
22 420 F.3d 738, 742 (8th Cir. 2005) (“the intracorporate conspiracy doctrine ... allows
23 corporate agents acting within the scope of their employment to be shielded from
24 constituting a conspiracy under § 1985”). The doctrine was first developed in the context
25 of antitrust cases under the theory that a corporation cannot conspire to violate antitrust
26 laws “when it exercises its rights through its officers and agents, which is the only medium
27 through which it can possibly act.” Nelson Radio & Supply Co. v. Motorola, 200 F.2d 911,
28 914 (5th Cir. 1952). In Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752

1 (1984), the Supreme Court adopted the doctrine in holding that a parent corporation and its
2 wholly owned subsidiary were incapable of conspiring under § 1 of the Sherman Act. Id. at
3 770-71.² The Court posited that “[a] parent and its wholly owned subsidiary have a
4 complete unity of interest,” and therefore, the actions of the subsidiary are deemed to be the
5 actions of the parent.” Id.

6 The Ninth Circuit has not decided whether the intracorporate conspiracy doctrine
7 applies to civil rights claims brought under § 1985(3). See Portman v. County of Santa
8 Clara, 995 F.2d 898, 910 (9th Cir. 1993) (acknowledging split of authority but declining to
9 resolve the dispute); Rivers v. County of Marin, No. No. C-09-1614 EMC, 2010 WL
10 145094, at *7-8 (N.D. Cal. Jan. 8, 2010) (discussing split of authority and concluding that
11 the intracorporate conspiracy doctrine does not apply to § 1985(3) claims) (Chen, J.).
12 Nevertheless, the Ninth Circuit has counseled that application of the doctrine is dependent
13 upon the type of conduct the statute at issue is intended to proscribe. Specifically, in
14 Webster v. Omnitrition Int’l, Inc., a case inexplicably cited by none of the parties, the court
15 found that the intracorporate conspiracy doctrine was inapplicable to a conspiracy claim
16 under the Racketeer Influenced Corrupt Organizations Act, 18 U.S.C. § 1962(d), because,
17 unlike the Sherman Act, such conspiracies are within the purview of the statute. 79 F.3d
18 776, 787 (9th Cir. 1996) (“Since a subsidiary and its parent theoretically have a community
19 of interest, a conspiracy “in restraint of trade” between them poses no threat to the goals of
20 antitrust law-protecting competition. In contrast, intracorporate conspiracies do threaten
21 RICO’s goals of preventing the infiltration of legitimate businesses by racketeers and
22 separating racketeers from their profits.”) (citing Ashland Oil, Inc. v. Arnett, 875 F.2d
23 1271, 1281 (7th Cir. 1989)).

24 Applying the logic of Copperweld Corp. and Webster, the Court finds that the
25 intracorporate conspiracy doctrine is inapplicable to a claim brought under 42 U.S.C.
26

27 ² Section 1 of the Sherman Act provides, in relevant part, that, “Every person who
28 shall make any contract or engage in any combination or conspiracy hereby declared to be
illegal shall be deemed guilty of a felony....” 15 U.S.C. § 1.

1 § 1985(3). Originally enacted by the Reconstruction Congress as the Klu Klux Klan Act of
2 1871, see Orin v. Barclay, 272 F.3d 1207, 1217 (9th Cir. 2001), § 1985(3) is aimed at “the
3 prevention of deprivations which shall attack the equality of rights of American
4 citizens....” Bray v. Alexandria Women’s Health Clinic, 506 U.S. 263, 268 (1993)
5 (internal quotations and citations omitted). Unlike antitrust conspiracies, which mainly are
6 directed at the anticompetitive and collaborative efforts of businesses, the conspiracy in a
7 § 1985(3) claim is focused on the discriminatory conduct of the individuals involved. See
8 Griffin v. Breckenridge, 403 U.S. 88, 96 (1971) (“On their face, the words of the statute [42
9 U.S.C § 1985(3)] fully encompass the conduct of private persons.”). Thus, regardless of
10 whether the defendants were acting as individuals or in the course and scope of their
11 employment, their agreement to deprive another of his or her equal protection rights
12 remains subject to the proscriptions of § 1985(3). See Wash. v. Duty Free Shoppers, 696 F.
13 Supp. 1323, 1327 (N.D. Cal. 1988) (ruling that the rationale underlying the intracorporate
14 conspiracy doctrine is specific to antitrust conspiracies and thus has no application to a
15 § 1985 claim) (Orrick, J.); accord O.H. v. Oakland Unified School Dist., No. C-99-5123
16 JCS, 2000 WL 33376299, at *6 (N.D. Cal. April 17, 2000) (Spero, J.). The Court thus
17 concludes that Plaintiff’s first claim under § 1985(3) is not foreclosed by the intracorporate
18 conspiracy doctrine.

19 2. Sufficiency of the Allegations

20 Notwithstanding the above, the Court finds that Plaintiff has failed to allege facts
21 sufficient to state a claim under 42 U.S.C. § 1985(3). Although the statute is germane to
22 private conspiracies, it only applies to “private conspiracies aimed at interfering with rights
23 constitutionally protected against private, as well as official, encroachment.” United Bhd.
24 of Carpenters & Joiners of Am. v. Scott, 463 U.S. 825, 833 (1983). When the alleged
25 conspiracy pertains to a right that is only constitutionally protected against state
26 interference, the plaintiff must establish state involvement in the conspiracy. Id. The
27 Fourteenth Amendment, which encompasses the equal protection clause, only protects
28 individuals against state action. Id. at 831 (“rights under the equal protection clause itself

1 arise only where there has been involvement of the State or of one acting under the color of
2 its authority”); Gorenc v. Salt River Project Agricultural Improv. & Power Dist., 869 F.2d
3 503, 506 (9th Cir. 1989) (“The ‘state action’ requirement of the Fourteenth Amendment is a
4 matter of substantive constitutional law which recognizes that ‘most rights secured by the
5 Constitution are protected only against infringement by governments.’”) (citation omitted).
6 All of the Individual Defendants are alleged to be employees of a private university, and no
7 facts are otherwise alleged to show state action. The lack of such allegations is fatal to
8 Plaintiff’s § 1985(3) claim.³ Accordingly, the Court GRANTS Defendants’ motion to
9 dismiss Plaintiff’s first claim for relief for violation of 42 U.S.C. § 1985(3). Because no
10 amendment can cure this pleading deficiency, said dismissal is without leave to amend.
11 See Deveraturda v. Globe Aviation Sec. Servs., 454 F.3d 1043, 1049-50 (9th Cir. 2006)
12 (holding leave to amend unnecessary where amendment would be futile).

13 **B. SECOND CLAIM UNDER TITLE VI**

14 Title VI prescribes that “[n]o person in the United States shall, on the ground of
15 race, color, or national origin, be excluded from participation in, be denied the benefits of,
16 or be subjected to discrimination under any program or activity receiving Federal financial
17 assistance.” 42 U.S.C. § 2000d. To state a claim for damages under Title VI, plaintiff must
18 allege that (1) the defendant entity involved is engaging in racial discrimination; and (2) the
19 entity involved is receiving federal financial assistance. See Fobbs v. Holy Cross Health
20 Sys., Corporation, 29 F.3d 1439, 1447 (9th Cir. 1994). Courts have implied a right of
21
22

23 ³ Plaintiff’s bare assertion that there is no state action requirement under the
24 Fourteenth Amendment is both unsupported and misstates the law. Pl.’s Opp’n at 10-11.
25 That aside, her vague and conclusory allegations of a conspiracy are plainly insufficient to
26 state a claim. See Karim-Panahi v. Los Angeles Police Dept., 839 F.2d 621, 626 (9th Cir.
27 1988) (“A claim under [section 1985] must allege facts to support the allegation that
28 defendants conspired together. A mere allegation of conspiracy without factual specificity
is insufficient.”). Other than Plaintiff’s allegation that Dr. Geissberger referred to the
quality of her dental work as “Third World Dentistry,” there are no facts alleged that
establish, or from which it can be inferred, that there was “an agreement or meeting of the
minds” by the Individual Defendants to deprive Plaintiff of her right to equal protection.
See Franklin v. Fox, 312 F.3d 423, 441 (9th Cir. 2002).

1 action under Title VI against institutions that receive federal financial aid. See Alexander
2 v. Sandoval, 532 U.S. 275, 279 (2001).

3 The Individual Defendants move to dismiss Plaintiff’s second claim for violation of
4 Title VI on the ground that only the alleged recipient of federal funds, i.e., the University, is
5 a proper defendant in such a claim. Defs.’ Mot. at 6. As a threshold matter, the Court notes
6 that is unclear from the pleadings whether the Individual Defendants are, in fact, named as
7 party-defendants in this claim. Only the University is alleged to have received federal
8 funds and to have intentionally discriminated against Plaintiff. Compl. ¶¶ 147-48. Thus,
9 based on the pleadings, the only proper defendant in Plaintiff’s Title VI claim is the
10 University. See Shotz v. City of Plantation, 344 F.3d 1161, 1169-70 (11th Cir. 2003) (“the
11 text of Title VI also precludes liability against those who do not receive federal funding,
12 including individuals.”); Santos v. Merritt College, No. C-07-5227 EMC, 2008 WL
13 2622792, at *1 (N.D. Cal. July 1, 2008) (allowing Title VI claim to proceed against the
14 defendant college which allegedly received federal funds, and not its employee).

15 In an attempt to salvage her claim, Plaintiff contends that the Court should take
16 judicial notice of information disclosed on webpages ostensibly published by the University
17 that Defendant Anderson received grants from the National Institute of Health (“NIH”).
18 Pl.’s Opp’n at 11-12; Pl.’s Request for Judicial Notice at 2, Dkt. 16. It is well settled,
19 however, that a plaintiff cannot avoid dismissal of a deficiently-pled claim by citing facts in
20 her opposition, where such facts are absent from the pleadings. See Schneider v. Calif.
21 Dep’t of Corrections, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998) (“‘new’ allegations
22 contained in the [plaintiff]’s opposition motion ..., are irrelevant for Rule 12(b)(6)
23 purposes.”). Nor may the Court take judicial notice of these web postings for the truth of
24 the facts asserted therein, i.e., that Defendant Anderson received funds from the NIH. See
25 Lasar v. Ford Motor Co., 399 F.3d 1101, 1117 n.14 (9th Cir. 2005) (declining to take
26 judicial notice of findings made in a state court proceeding “because they are offering the
27 factual findings contained in the order for the purpose of proving the truth of the factual
28 findings contained therein.”). Even if the Court were to accept as true statements that

1 Defendant Anderson received federal funds from the NIH, Plaintiff has not averred any
2 facts or made any claim that she was the intended beneficiary of the program for which Dr.
3 Leigh allegedly received funding from the NIH. See Epileptic Found. v. City and County
4 of Maui, 300 F. Supp. 2d 1003, 1011 (D. Hawai'i 2003) (noting that “[t]o prevail on a Title
5 VI claim, however, a plaintiff must prove ... that he is an ‘intended beneficiary of the
6 federally-funded program the defendants ... participated in’”) (citation omitted).
7 Accordingly, the Court GRANTS Defendants’ motion to dismiss Plaintiff’s second claim
8 for relief, which is dismissed without leave to amend.

9 **C. SIXTH CLAIM FOR DEFAMATION**

10 The elements of a state law claim for defamation claim are (1) a publication that is
11 (2) false, (3) defamatory, (4) unprivileged, and (5) has a natural tendency to injure or causes
12 special damage. Cal.Civ.Code §§ 45, 46; Taus v. Loftus, 40 Cal.4th 683, 720 (2007). To
13 be actionable, the false statement must be one of fact rather than opinion. Gregory v.
14 McDonnell Douglas Corp., 17 Cal.3d 596, 600 (1976). Whether a statement is fact or
15 opinion is a question of law. Id. at 601. The statement at issue must be examined to see if
16 they have a defamatory meaning, or if the gist of the statements has a defamatory meaning.
17 Hofmann Co. v. E.I. Du Pont de Nemours & Co., 202 Cal.App.3d 390, 398 (1988). The
18 court examines the totality of the circumstances, beginning with the language of the
19 statement itself and then considering the context in which the statement was made. Baker
20 v. Los Angeles Herald Examiner, 42 Cal.3d 254, 260-261 (1987).

21 The Complaint alleges that Defendants Hakim, Labarre, Ferrillo, Streacker,
22 Anderson, Miles, Giusti and Bender “reported and published to third parties that Plaintiff
23 RASHDAN’s performance at the Dugoni School of Dentistry was inadequate, below the
24 standard that would be allowed for her to be certified for graduation, and below the
25 standard that would allow her to practice dentistry independently.” Compl. ¶ 172.
26 However, the Complaint fails to articulate any particular statement made by any Individual
27 Defendant to a third party that allegedly false and defamatory. Moreover, statements
28 regarding a student’s academic competence, or lack thereof, are non-actionable statements

1 of opinion. See Banks v. Dominican College, 35 Cal.App.4th 1545, 1554 (1995)
2 (statements regarding plaintiff’s unsuitability for a teaching position not actionable); Gould
3 v. Maryland Sound Industries, Inc., 31 Cal.App.4th 1137, 1154 (1995) (supervisor’s
4 accusation of poor performance clearly a statement of opinion).

5 Plaintiff argues that Dr. Geissberger’s statements to the SAPPC (which was then
6 considering whether to recommend Plaintiff to the Dean for certification to graduate) could
7 be construed as factual, as opposed matters of opinion. Pl.’s Opp’n at 17. In particular,
8 Plaintiff argues that she was not on the list of students who were not qualified to graduate;
9 and that “[s]ince Plaintiff name was NOT on the list, and *if* Defendant GEISSBERGER
10 told the SAPPC that it was, then his statement was not one of opinion but one of fact....”
11 Pl.’s Opp’n at 17 (emphasis added). At best, Plaintiff has done nothing more than speculate
12 as to what Defendant Geissberger could have said. It is axiomatic that a plaintiff cannot
13 predicate a defamation claim on what *may* have been said as opposed to what was *actually*
14 said. Plaintiff simply fails to allege “enough facts to state a claim to relief that is plausible
15 on its face.” Twombly, 550 U.S. at 570.

16 Equally unavailing is Plaintiff’s attempt to predicate her defamation claim on
17 allegations that Defendants Geissberger, Labarre and Guisti misreported factual
18 information to Defendant Bender. Specifically, she claims that these Defendants provided
19 false information to Bender (i.e., the “INC” for RS 379, and the failure to list RP 396 and
20 DP 317 as courses Plaintiff had taken and passed), who posted such information on her
21 official transcript. Pl.’s Opp’n at 18. Plaintiff fails to identify any particular allegedly
22 false statement of fact by any of these Defendants. Instead, she asserts that her official
23 transcript would not have been inaccurate unless Defendants Geissberger, Labarre or Guisti
24 had made a false, defamatory statement of fact. Id. The defect in this claim is that Plaintiff
25 offers no facts to show that any of these Defendants made any oral or written defamatory
26 statements that resulted in the alleged errors in her official transcript. Rather, Plaintiff
27 merely speculates that either Bender altered the transcript or that Geissberger, Labarre and
28

1 Giusti were somehow involved.⁴ In the absence of any particular statements made by these
2 individuals, or any showing of publication of such statements were published to a third
3 party, Plaintiff cannot proceed on her defamation claim against the Individual Defendants.
4 Accordingly, the Court GRANTS Defendants’ motion to dismiss Plaintiff’s sixth claim for
5 defamation. Since it is apparent from Plaintiff’s opposition that no amendment can cure
6 aforementioned deficiencies, this claim is dismissed without leave to amend.

7 **D. SEVENTH CLAIM FOR TORTIOUS INTERFERENCE WITH A CONTRACT**

8 In her opposition, Plaintiff concedes that her seventh cause of action for tortious
9 interference with a contract or advantageous business relationship or expectancy is not
10 viable and that Defendants’ motion to dismiss should be granted. Pl.’s Opp’n at 20.
11 Accordingly, the Court GRANTS Defendants’ motion to dismiss Plaintiff’s seventh claim
12 for relief, which is dismissed without leave to amend.

13 **E. EIGHTH CLAIM FOR IIED**

14 **1. Sufficiency of the Allegations**

15 The elements of an IIED claim are: (1) defendant’s outrageous conduct;
16 (2) defendant’s intention to cause, or reckless disregard of the probability of causing,
17 emotional distress; (3) plaintiff’s suffering severe or extreme emotional distress; and (4) an
18 actual and proximate causal link between the tortious (outrageous) conduct and the
19 emotional distress. Nally v. Grace Cmty. Church of the Valley, 47 Cal.3d 278, 300, 253
20 (1988). A defendant’s conduct is “outrageous” when it is so “extreme as to exceed all
21 bounds of that usually tolerated in a civilized community.” Hughes v. Pair, 46 Cal.4th
22 1035, 1050-51 (2009) (internal quotations and citations omitted); Mintz v. Blue Cross of
23 Cal., 172 Cal.App.4th 1594, 1609 (2009) (noting that conduct in support of an IIED claim
24

25 _____
26 ⁴ The entirely speculative nature of her defamation claim is underscored by Plaintiff
27 in her her opposition, wherein she argues as follow: “Provided that Registrar Defendant
28 BENDER did not take it upon himself to invent the grades Plaintiff received in those
courses after Winter quarter, or to change them unilaterally, it is possible or even likely that
Defendants GEISSBERGER, LABARRE, and GIUSTI published to [Bender] that Plaintiff
either failed or did not take those courses.” Pl.’s Opp’n at 18.

1 must be “extreme, outrageous, beyond the bounds of decency, atrocious, or intolerable in a
2 civilized society”).

3 In her IIED claim, Plaintiff neglects to identify the specific conduct that she alleges
4 that was extreme and outrageous. Rather, she merely incorporates by reference “the
5 allegations of ¶¶ 1-188.” Compl. ¶ 189. This type of improper “shotgun pleading” does
6 not comport with Rule 8’s requirement that the pleader provide “a short and plain statement
7 of the claim showing that the pleader is entitled to relief.” Fed.R.Civ.P 8(a)(2); Schwarzer,
8 Tashima & Wagstaffe, Federal Civ.P. Before Trial, § 8.662 at 8-73 (TRG 2009).
9 Incorporating the preceding 188 paragraphs of the Complaint fails to provide Defendants
10 with “fair notice” of the basis of Plaintiff’s IIED claim. See Erickson, 551 U.S. at 93. As
11 such, the Court GRANTS Defendants’ motion to dismiss Plaintiff’s eighth claim for IIED.

12 2. Leave to Amend

13 The question remains whether it would be futile to allow Plaintiff leave to amend.
14 Although Plaintiff’s IIED claim does not identify the specific conduct that forms the basis
15 of such claim, Plaintiff contends in her opposition that the following conduct was extreme
16 and outrageous: (1) Having her work described as “Third World Dentistry;” (2) being
17 called by “TW” in front of students, faculty and her mother; (3) manipulation of her
18 transcript; (4) being told four days before graduation that she was not eligible to graduate,
19 despite previously being assured that there were impediments to her graduation; (5) being
20 denied an explanation for her ineligibility to graduate, which precluded her ability to appeal
21 effectively; (6) being held over as a continuation student and supervised by professors who
22 had previously denigrated her; and (7) having to complete her extended studies with
23 unreasonable restrictions that were not imposed on other continuation students. See Pl.’s
24 Opp’n at 21-23; Compl. ¶¶ 30-31, 38-50, 61, 94-96, 101-102, 122-29.

25 Plaintiff’s allegations, whether considered individually or collectively, fail to state a
26 claim for IIED. The purported characterization of Plaintiff’s work as “Third World
27 Dentistry” and being referred to as “TW,” while perhaps insensitive, are not actionable.
28 See Schneider v. TRW, Inc., 938 F.2d 986, 992 (9th Cir. 1991) (no outrageous conduct

1 where supervisor yelled, screamed at and made threatening gestures to employee and told
2 another supervisor to “get rid of the Bulgarian bitch”); Yurick v. Superior Court, 209
3 Cal.App.3d 1116, 1129 (1989) (noting that conduct that is merely offensive “may be
4 irritating, insulting or even distressing but it is not actionable and must simply be endured
5 without resort to legal redress.”). As to the remaining allegations, which arise from and
6 relate to her academic performance, Plaintiff’s opposition merely offers a series of
7 rhetorical retorts, asking whether such conduct constitutes “extreme and outrageous
8 conduct?” Pl.’s Opp’n at 21-22. As a matter of law, the Court concludes that the answer is
9 “no.” Even if Defendants’ alleged actions were unjustified, Plaintiff has failed to
10 demonstrate that their conduct “has been so outrageous in character, and so extreme in
11 degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious,
12 and utterly intolerable in a civilized community.” Cochran v. Cochran, 65 Cal.App.4th
13 488, 496 (1998) (citing Rest.2d Torts, § 46, com. d.). Accordingly, the dismissal of
14 Plaintiff’s eighth claim for IIED is without leave to amend.

15 **F. ELEVENTH CLAIM FOR NEGLIGENCE**

16 To state a negligence claim under California law, the plaintiff must allege facts
17 showing that that defendant “owed [plaintiff] a legal duty, breached the duty, and that the
18 breach was a proximate or legal cause of [plaintiff’s] injury.” Gonzalez v. Autoliv ASP,
19 Inc., 154 Cal.App.4th 780, 793 (2007). In her eleventh cause of action, Plaintiff alleges
20 that Defendants Ferrillo, Nadershahi, Yarborough, Bender, Geissberger, Labarre, Hakim,
21 Anderson and Giusti, while acting in their “official” capacities on behalf of the University,
22 breached their duty of care and caused her injury. Compl. ¶¶ 27, 207, 208, 210. This claim
23 is meritless. Although Plaintiff has alleged her negligence claim against the Individual
24 Defendants, she expressly alleges that the duties they allegedly breached were undertaken
25 in their “official” capacities as representatives of the University. There are no allegations
26 that any of the Individual Defendants *personally* owed Plaintiff any duty. Since Plaintiff
27 was enrolled with the University, any claim for negligence would therefore lie against the
28 University, not the Individual Defendants. Notably, the University states that it has no

1 objection to granting leave to Plaintiff to amend her negligence claim against the
2 University. Defs.' Reply at 10.⁵ Accordingly, the Court GRANTS Defendants' motion to
3 dismiss Plaintiff's eleventh cause of action. Plaintiff is granted leave to amend to allege a
4 claim for negligence against the University only.

5 **IV. CONCLUSION**

6 For the reasons set forth above,

7 **IT IS HEREBY ORDERED THAT:**

8 1. The Individual Defendants' motion to dismiss is GRANTED. Plaintiff's first
9 claim for violation of 42 U.S.C. § 1985(3), second claim for violation of Title VI, sixth
10 claim for defamation, seventh claim for tortious interference with a contract and eighth
11 claim for IIED are DISMISSED WITH PREJUDICE as to the Individual Defendants.
12 Plaintiff's eleventh claim for negligence is DISMISSED with limited leave to amend to
13 name the University as a Defendant in said claim.

14 2. Plaintiff shall have five (5) days from the date this Order is filed to file a First
15 Amended Complaint, consistent with the Court's rulings. In the event Plaintiff fails to file
16 an amended complaint within that time-frame, Plaintiff's negligence claim will be deemed
17 dismissed with prejudice. The University, which now is the only remaining Defendant,
18 shall file its response to the First Amended Complaint no later than ten (14) days after the
19 deadline for Plaintiff file her amended pleading. The parties shall meet and confer
20 regarding the sufficiency of the allegations of the First Amended Complaint before Plaintiff
21 files such pleading with the Court. Failure to do so may result in the imposition of
22 sanctions.

23 3. This Order terminates Docket 10.

25 ⁵ In their moving papers, Defendants argued that a claim for the negligent provision
26 of educational services is not actionable under California law. In her opposition, Plaintiff
27 responded that such rule applied only to public, not private, educational institutions,
28 Defendants fail to respond to this purported distinction in their reply, and instead, propose
that Plaintiff amend her complaint to direct her negligence claim against the University
only. It thus appears that Defendants have abandoned the argument presented in their
moving papers.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

Dated: January 12, 2011


SAUNDRA BROWN ARMSTRONG
United States District Judge