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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 STANLEY KIDIAVAYI,

11 Plaintiff,

12 v.

13 UNIVERSITY OF NEVADA, *et al.*,

14 Defendants.
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Case No. 2:16-CV-01202-KJD-NJK

AMENDED ORDER¹

16 Presently before the Court is Defendants' Motion to Dismiss (#6). Plaintiff filed a response in
17 opposition and countermotion to amend the complaint (#8) to which Defendants replied (#11).
18 Plaintiff filed an additional Motion to Amend the Complaint (#13). Defendants filed a response in
19 opposition (#17) to which Plaintiff replied (#21). Plaintiff then filed an improperly titled Errata to
20 Motion for Leave to Amend Complaint (#22). In the Errata, Plaintiff essentially concedes that he has
21 improperly named certain defendants, who either may not be sued or against whom the statute of
22 limitations would have run. The Court accepts the proposed amended complaint contained in the
23 Errata as the operative complaint for the purposes of the motion to dismiss and motion to amend.
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26 ¹This order, originally entered March 29, 2017, has been amended to substitute the standard for a motion to
dismiss rather than for a summary judgment motion in section II. It has not been amended in any other way.

1 I. Background

2 According to the allegations of the complaint, Plaintiff was a student at the Graduate School
3 of Nursing at the University of Nevada Las Vegas (“UNLV”). The proposed amended complaint
4 alleges Plaintiff is a black male working in a “female-dominated” profession. Plaintiff’s alleged
5 nation of origin is Kenya. Defendant Bruce Leonard, a doctor, was Plaintiff’s professor for a clinical
6 rotation in a course identified as Nursing 759, Primary Care of the Family II. Plaintiff alleges that
7 between September 1, 2012 and September 11, 2014, he was discriminated against due to his race,
8 national origin and gender. Amongst other claims, Plaintiff asserts that he received a failing grade in
9 Nursing 759 because he was graded differently from peers not members of his protected classes. In
10 April 2014, Plaintiff filed a racial discrimination claim with the University’s EEO/AA officer. He
11 then filed a complaint with the Nevada Equal Rights Commission on April 12, 2015.

12 Plaintiff filed the present action in Nevada state court on March 28, 2016 which was
13 subsequently removed to federal court. He named the University of Nevada and Dr. Bruce Leonard
14 as defendants. Plaintiff’s proposed amended complaint clarifies that he is bringing claims for: 1)
15 violation of equal protection secured by the Fourteenth Amendment to the Constitution; 2) violations
16 of civil rights brought pursuant to 42 U.S.C. § 1983 and conspiracy to violate civil rights pursuant to
17 42 U.S.C. § 1985; 3) violation of Title IX of the Education Amendment of 1972 based on his gender;
18 4) violation of Title VI of the Civil Rights Act based on disparate treatment based on his gender; 5)
19 intentional infliction of emotional distress; and 6) negligent hiring, training and supervision.
20 Defendants then filed the present motion to dismiss.

21 II. Standard for a Motion to Dismiss

22 In considering a motion to dismiss, “all well-pleaded allegations of material fact are taken as
23 true and construed in a light most favorable to the non-moving party.” Wyler Summit Partnership v.
24 Turner Broadcasting System, Inc., 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted).
25 Consequently, there is a strong presumption against dismissing an action for failure to state a claim.
26 See Gilligan v. Jamco Dev. Corp., 108 F.3d 246, 249 (9th Cir. 1997) (citation omitted).

1 “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted
2 as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 129 S. Ct. 1937,
3 1949 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). Plausibility, in the
4 context of a motion to dismiss, means that the plaintiff has pleaded facts which allow “the court to
5 draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id.

6 The Iqbal evaluation illustrates a two prong analysis. First, the Court identifies “the
7 allegations in the complaint that are not entitled to the assumption of truth,” that is, those allegations
8 which are legal conclusions, bare assertions, or merely conclusory. Id. at 1949-51. Second, the
9 Court considers the factual allegations “to determine if they plausibly suggest an entitlement to
10 relief.” Id. at 1951. If the allegations state plausible claims for relief, such claims survive the motion
11 to dismiss. Id. at 1950.

12 III. Analysis

13 A. Statute of Limitations: Federal Claims

14 The federal statutes or constitutional claims brought by Plaintiff, including 42 U.S.C. § 1983,
15 1985, 2000d, 20 U.S.C. § 1681, and 28 U.S.C. § 1343 do not contain their own statutes of
16 limitations, so courts borrow the most appropriate state statute of limitations. See Cholla Ready Mix,
17 Inc. v. Civish, 382 F.3d 969, 974 (9th Cir. 2004)(citing Wilson v. Garcia, 471 U.S. 261, 266-68
18 (1985)). For these claims, the court borrow Nevada's statute of limitations for personal injury claims.
19 See Wilson, 471 U.S. at 276–80 (holding that the statute of limitations for personal injury claims
20 applies in § 1983 suits); Addisu v. Fred Meyer, Inc., 198 F.3d 1130, 1140 (9th Cir. 2000) (§ 1985
21 claims)(citing Goodman v. Lukens Steel Co., 482 U.S. 656, 661–62 (1987)); Taylor v. Regents of
22 Univ. of Cal., 993 F.2d 710, 711–12 (9th Cir. 1993) (§ 2000d claims); Stanley v. Trustees of Cal.
23 State Univ., 433 F.3d 1129, 1134 (9th Cir. 2006)(noting decisions of other circuits and close
24 similarity between Title VI and Title IX). In Nevada, the statute of limitations for a personal injury
25 action is two years. NRS 11.190(4)(e); Day v. Zubel, 112 Nev. 972, 977 (1985).

1 In this case, Plaintiff's claims had arisen no later than January 15, 2014 when the last alleged
2 discriminatory action occurred (the repeated Standardized Patient Exam). Therefore, Plaintiff's
3 federal claims had to be filed no later than January 15, 2016. Plaintiff did not file his complaint until
4 March 28, 2016. Therefore, whether the Court considers Plaintiff's amended claims or not, they are
5 time barred and must be dismissed.

6 To the extent that Plaintiff argues that NRS § 651.120 requires equitable tolling of the statute
7 of limitations, he is incorrect. First, § 651.120 sets the statute of limitations only for actions brought
8 under enumerated state statutes, which do not include the federal claims. Second, even if § 651.120
9 did apply to Plaintiff's federal claims, they would still be barred. The statute of limitations under
10 §651.120 is one year, not two years. Even if the Court tolls the nine months Plaintiff's complaint was
11 pending before NERC, the filing date of the present complaint is even later than under the two-year
12 statute of limitations. Therefore, Plaintiff's federal claims are dismissed.

13 B. Supplemental Jurisdiction over Remaining State Law Claims

14 A district court has discretion to decline to exercise supplemental jurisdiction over a claim if
15 all claims over which it has original jurisdiction have been dismissed or if the claim raises a novel or
16 complex issue of state law. See 28 U.S.C. § 1367(c). Since the Court has dismissed all claims over
17 which it has original jurisdiction, the Court declines to exercise its supplemental jurisdiction over
18 Plaintiff's state law claims.

19 IV. Conclusion

20 Accordingly, IT IS HEREBY ORDERED that Defendants' Motion to Dismiss (#6) is
21 **GRANTED;**

22 IT IS FURTHER ORDERED that Plaintiff's Motion to Amend the Complaint (#13) is
23 **DENIED as futile;**

24 IT IS FURTHER ORDERED that Plaintiff's state law claims are **REMANDED** to Nevada
25 State Court;

1 IT IS FURTHER ORDERED that the Clerk of the Court enter **JUDGMENT** for Defendants
2 and against Plaintiff on Plaintiff's federal claims.

3 DATED this 4th day of May 2017.
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7 Kent J. Dawson
8 United States District Judge
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