

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

<p>DR. MARTIN WOESLER,</p> <p align="center">Plaintiff,</p> <p>vs.</p> <p>UTAH VALLEY UNIVERSITY, and STATE OF UTAH</p> <p align="center">Defendants.</p>	<p align="center">MEMORANDUM DECISION & ORDER</p> <p align="center">Case No. 2:13-cv-01023</p> <p align="center">Magistrate Judge Dustin Pead</p>
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On March 17, 2013, Plaintiff Dr. Martin Woesler (“Dr. Woesler”) filed his First Amended Complaint against Defendants Utah Valley University and the State of Utah (collectively, “Defendants”) alleging causes of action for: Race Discrimination (count 1), National Origin Discrimination (count 2), Gender (count 3), Retaliation (count 4), and Breach of Contract (count 5) (doc. 6).¹

In response, on April 21, 2014, Defendants filed a Motion To Dismiss Plaintiff’s fifth cause of action for breach of contract against Defendant Utah Valley University for lack of subject matter jurisdiction (doc. 9). As grounds for dismissal, Defendants assert that the Eleventh Amendment entitles state universities to immunity from suit in federal court absent a waiver or valid abrogation by Congress.

On April 28, 2014, Dr. Woesler filed his response to Defendant’s motion, agreeing to the

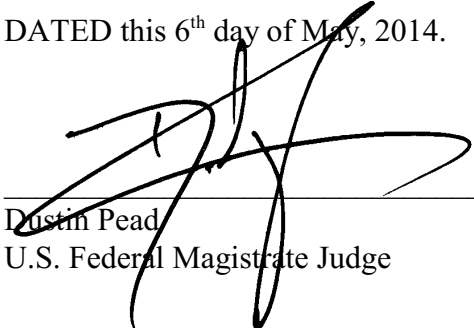
¹ The parties consent to jurisdiction by United States Magistrate Judge pursuant to 28 U.S.C. § 636(c)(1) (doc. 14).

withdrawal of his breach of contract claim, in its entirety, against both Defendant Utah Valley University and Defendant State of Utah “with prejudice, for purposes of future federal filing, and without prejudice, for filing purposes of filing said claim in state court” (doc. 12, p.1).²

Accordingly, based upon Dr. Woesler’s stipulation thereto, the Court GRANTS Defendants’ Motion To Dismiss Plaintiff’s Fifth Cause of Action for Breach of Contract against Defendants for lack of subject matter jurisdiction.

Defendants are instructed to file an Answer to the Amended Complaint within fourteen (14) days from the date of this Order.

DATED this 6th day of May, 2014.



Dustin Pead
U.S. Federal Magistrate Judge

²While Defendants motion does not specifically seek dismissal of Plaintiff’s breach of contract claim against Defendant the State of Utah (doc. 9, p.4), Plaintiff agrees to dismissal of the cause of action as to both Defendants (doc. 12).