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5
6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON

8 DARRYL W. RISER,

9 Plaintiff,

10 v.

11 WASHINGTON STATE
12 UNIVERSITY, DON HOLBROOK,
13 BRIAN ALLAN DIXON, and RANDI
N. CROYLE,

14 Defendants.

NO: 2:18-CV-0119-TOR

ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

14 BEFORE THE COURT is Defendants Washington State University, Don
15 Holbrook, Brian Dixon, and Randi Croyle's (Final) Motion for Summary
16 Judgment (ECF No. 118). The Motion was submitted for consideration without a
17 request for oral argument. Riser opposes the Motion. ECF No. 121. The Court
18 has reviewed the record and files herein, and is fully informed. For the reasons
19 discussed below, the Defendants' (Final) Motion for Summary Judgment (ECF No.
20 118) is **granted**.

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT ~ 1

1 **STANDARD OF REVIEW**

2 A movant is entitled to summary judgment if the movant demonstrates
3 “there is no genuine dispute as to any material fact and that the movant is entitled
4 to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A fact is “material” if it
5 might affect the outcome of the suit under the governing law. *Anderson v. Liberty*
6 *Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue is “genuine” where the evidence
7 is such that a reasonable jury could find in favor of the non-moving party. *Id.* The
8 moving party bears the “burden of establishing the nonexistence of a ‘genuine
9 issue.’” *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). “This burden has two
10 distinct components: an initial burden of production, which shifts to the
11 nonmoving party if satisfied by the moving party; and an ultimate burden of
12 persuasion, which always remains on the moving party.” *Id.*

13 In deciding, the court may only consider admissible evidence. *Orr v. Bank*
14 *of America, NT & SA*, 285 F.3d 764, 773 (9th Cir. 2002). As such, the nonmoving
15 party may not defeat a properly supported motion with mere allegations or denials
16 in the pleadings. *Liberty Lobby*, 477 U.S. at 248. At this stage, the “evidence of
17 the non-movant is to be believed, and all justifiable inferences are to be drawn in
18 [the non-movant’s] favor.” *Id.* at 255. However, the “mere existence of a scintilla
19 of evidence” will not defeat summary judgment. *Id.* at 252.

1 Per Rule 56(c), the parties must support assertions by: “citing to particular
2 parts of materials in the record” or “showing that the materials cited do not
3 establish the absence or presence of a genuine dispute, or that an adverse party
4 cannot produce admissible evidence to support the fact.” The court is not
5 obligated “to scour the record in search of a genuine issue of triable fact[;]” rather,
6 the nonmoving party must “identify with reasonable particularity the evidence that
7 precludes summary judgment.” *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir.
8 1996) (brackets in original) (quoting *Richards v. Combined Ins. Co.*, 55 F.3d 247,
9 251 (7th Cir. 1995)).

10 Summary judgment will thus be granted “against a party who fails to make a
11 showing sufficient to establish the existence of an element essential to that party’s
12 case, and on which that party will bear the burden of proof at trial.” *Celotex*, 477
13 U.S. at 322.

14 **BACKGROUND**

15 Plaintiff Darryl Riser brought this instant action against Defendants
16 Washington State University, Don Holbrook, Brian Dixon, Randi Croyle, Kirk
17 Schulz, Holly Ashkannejhad, and Teddi Phares on April 5, 2018. ECF No. 1 at 1-
18 2. The same day, Riser submitted an application to proceed *In Forma Pauperis*.
19 ECF No. 2. On April 9, 2018, Riser was allowed to proceed in forma pauperis, at a
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1 reduced fee not a complete waiver.¹ ECF No. 9. Given the partial filing fee, the
2 Court was obligated to screen Riser’s Complaint to determine whether Riser’s
3 allegations stated a plausible claim of relief. The Court found Riser stated a
4 plausible claim for relief against Defendants WSU, Holbrook, Dixon, and Croyle
5 based on Riser’s allegations that they retaliated against him for exposing alleged
6 racial discrimination in the financial aid department. ECF No. 16 at 3. The Court
7 determined Riser did not state a claim against Defendants Schulz, Ashkannejhad,
8 and Phares, finding, *inter alia*, that Washington Administrative Code § 504-04-020
9 and Wash. Rev. Code § 34.05.240 do not provide a basis for personal liability,
10 ECF No. 16 at 4.

11 Riser filed his First Amended Complaint on April 26, 2018. The same day,
12 Riser submitted a Motion for Temporary Restraining Order (ECF No. 19) and a
13 Motion to Voluntarily Dismiss (ECF No. 20) Schulz, Ashkannejhad, and Phares
14 ECF No. 20. The Court granted the Motion to Dismiss. However, the Court

16 ¹ Although the Order (ECF No. 9) stated Riser’s application to proceed *in*
17 *forma pauperis* was denied, the application was technically approved by allowing
18 for a reduced fee. *See* ECF No. 60 at 9; *Olivares v. Marshall*, 59 F.3d 109, 111
19 (9th Cir. 1995) (“Courts have discretion to impose partial filing fees under the *in*
20 *forma pauperis* statute.”).

1 denied the Motion for Temporary Restraining Order because Riser did not
2 demonstrate a likelihood of success, *inter alia*. ECF No. 23. The Court observed:

3 Although Plaintiff was assigned whistleblower status, Plaintiff has not
4 submitted any evidence supporting his assertion that he was wrongly
5 terminated for his whistleblower activities, which appears to be limited to
6 criticisms of supervisors and other employees. Rather, the evidence
7 submitted so far appears to support WSU's decision to terminate Plaintiff for
8 cause and that Plaintiff was accorded adequate notice and an opportunity to
9 respond despite Plaintiff's status as an at-will employee, bearing in mind
10 that "discharge of a public employee whose position is terminable at the will
11 of the employer" generally does not implicate the due process clause
12 because the employee has no property interest in the position. *Bishop v.*
13 *Wood*, 426 U.S. 341, 348 (1976); *Clements v. Airport Auth. of Washoe Cty.*,
14 69 F.3d 321, 331 (9th Cir. 1995).

15 ECF No. 23 at 3-5 (citations omitted). Riser submitted a Motion for
16 Reconsideration (ECF No. 25), which the Court denied (ECF No. 27).

17 On May 23, 2018, Riser submitted three Motions for (Partial) Summary
18 Judgment (ECF Nos. 31; 32; 33). On June 27, 2018, Defendants cross-moved for
19 summary judgment in their Replies (ECF Nos. 50; 51; 52). On July 16, the Court
20 provided notice to Riser that Defendants cross-moved for summary judgment and
gave Riser additional time to respond. ECF No. 64. Riser provided his Response.
On October 12, 2018, the Court held in favor of Defendants on the cross-motions
for summary judgment, finding: (1) WSU is not subject to suit under 42 U.S.C. §
1983; (2) under Eleventh Amendment immunity, the individual Defendants cannot
be liable for damages in their official capacity; (3) Holbrook did not owe a

1 fiduciary duty to Riser; (4) Holbrook did not commit fraud; (5) Riser’s claims of
2 Intentional Infliction of Emotional Distress against Holbrook and Croyle fail as a
3 matter of law; and (6) Riser’s claim of defamation against Holbrook and Croyle
4 fails. ECF No. 86.

5 Meanwhile, on June 6, 2018, Riser submitted a Motion to Recuse (ECF No.
6 43), asserting that the presiding judge is biased for a litany of reasons. The Court
7 addressed Riser’s complaints, found they “stem from patent misunderstandings and
8 the Court’s objective assessment of Plaintiff’s motions”, and denied the Motion.
9 ECF No. 60 at 6-15. Riser submitted another Motion to Recuse (ECF No. 69) on
10 July 25, 2018. On August 9, 2018, the Court denied the Motion, noting that
11 Riser’s “requests are premised on unfounded claims of bias and retaliation”
12 ECF No. 76 at 8-9.²

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15 ² Riser continues to assert that the presiding judge is biased and has
16 committed a litany of perceived errors. *See* ECF No. 121-1. In his most recent
17 affidavit, Riser asserts the Court violated his constitutional rights and committed
18 fraud and “reserve[s] the right to seek damages against the presiding judge for
19 ongoing retaliation, for misconduct, and to pursue impeachment.” ECF No. 121-1
20 at 2, ¶. The Court has responded to Riser’s many, baseless complaints, yet Riser

1 On August 17, 2018, Riser submitted his Second Amended Complaint (ECF
2 No. 77) and submitted another Motion for Preliminary Injunction (ECF No. 78).
3 On October 15, 2018, the Court, again, found Riser did not establish a likelihood
4 of success on the merits and denied the Motion, noting that the grant of
5 Washington State unemployment benefits does not demonstrate he was unlawfully
6 terminated. ECF No. 87 at 3-4.

7 On December 11, 2018, Riser submitted his Third Amended Complaint.
8 ECF No. 94. Defendants requested the Court strike certain claims that were
9 previously dismissed on summary judgment. ECF No. 105. The Court granted the
10 request, striking the offending claims (claims 15, 16, 22, 26, and 29). ECF No.
11 115 at 4-6.

12 Defendants now move for summary judgment on the remaining claims.
13 ECF No. 118.

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20 continues to assert them. *See, e.g.*, ECF No. 121 at 5, ¶ 2 (complaining about a
local rule applied in *admiralty* cases, but not this case).

1 **FACTS³**

2 Upon review of the evidence – construing all genuine disputes (supported by
3 evidence) in favor of Riser as the non-moving party – the Court finds the evidence
4 demonstrates the following.

5 In January 2017, Plaintiff was hired as the Training Coordinator at the WSU
6 Student Financial Services Department. ECF No. 94-1 at 2, ¶ 7. Early on, Riser
7 began raising relatively mundane workplace complaints and, in April of 2017, he
8 filed a complaint (Case Number 2017-193) with the WSU Office of Equal
9 Opportunity (“OEO”). See ECF No. 18-1 at 16-22 (complaints about temperature
10 of the office; colleagues watching videos and listening to music, coughing,
11 sneezing, passing gas, and using air fresheners; his computer shutting down
12 because of an overloaded circuit; complaints that Gloria Barker said “you punk”
13 and “get off my chair”, would hit him and say “wake-up”, and complained that he
14 talked too long, etc.); at 24-27 (“Follow-up Complaint” with similar concerns).

15
16 ³ The following facts are not in dispute, as the facts are predominately drawn
17 from exhibits submitted by Plaintiff. Notably, the Court has made an extensive
18 effort to comb through the evidence submitted with Riser’s previous Complaints,
19 Motions, Supplements, and Replies/Responses—even though the Court need not
20 do so. *Keenan v. Allan*, 91 F.3d at 1279.

1 In an affidavit, Riser asserted that he reported incidents of unlawful
2 harassment and unlawful discrimination under Title VII of the Civil Rights Act *in*
3 *April of 2017*. ECF No. 18-1 at 4, ¶ 8. However, the attachments he cites to do not
4 support this contention. *See* ECF No. 18-1 at 16-34. Indeed, after an initial review
5 of Plaintiff’s complaint, the OEO closed the file because Plaintiff “did not have
6 reason to believe conduct was discriminatory” and that his complaints did not
7 implicate “Executive Policy 15” (the policy prohibiting “Discrimination, Sexual
8 Harassment, and Sexual Misconduct”). ECF No. 18-1 at 29-32.

9 On September 19, 2017, Riser submitted a SWOT (Strength, Weakness,
10 Opportunities, and Threats) Analysis (ECF No. 18-27) to Brian Dixon, Vice
11 President of Student Financial Services, after Dixon “called an emergency meeting
12 to solicit ideas to address the high turnover and the Department’s ineffectiveness.”
13 ECF No. 18-1 at 4-5, ¶ 10. In the “Weaknesses” section of the SWOT Analysis,
14 Riser identifies office culture based on managers’ conduct as a weakness that
15 negatively impacts the office operation, complaining of (1) perceived unequal
16 treatment of “privileged” and “non-privileged” employees concerning mundane
17 workplace issues (noises; smells; peer review of e-mails); (2) perceived lack of
18 support of employee rights (right to work poster placement, allowing cooking at
19 workstations, and taking no action “on extremely distracting sounds and smells”);
20 (3) inappropriate conversations with students (“about getting drunk and other

1 inappropriate dialogue” and profanity); (4) inconsistent protocol (cooking
2 appliances); (5) lack of respect and consideration for employees (not courteous—
3 not saying please, thank you, etc.; allowing students to manage and train
4 employees and assign work to Riser); and (6) bullying (“[s]ystematically excluding
5 and isolating” Riser; colleagues refusing to meet timelines; managers yelling at
6 Riser to get his attention). ECF No. 18-27 at 4-8.

7 According to Riser, “immediately, [he] felt the work environment transition
8 from good to bad for [him], which [he] reported to [the WSU] Human Resource
9 Services (“HRS”) and [OEO].” ECF No. 18-1 at 5, ¶ 11. In support, Riser only
10 cites to “Attachment E”: the “Proposal to Restructure the SFS Department” dated
11 October 19, 2017 (which includes an *overview* of the SWOT analysis). ECF No.
12 17-1 at 44-45. ECF No. 18-1 at 36-53.

13 Apparently, Myla Walter, Assistant Director of Operations, and Dixon had a
14 meeting with Riser on September 28, 2017 to discuss his SWOT Analysis. *See*
15 ECF No. 18-28 at 2. In a letter to Riser, Walter (1) thanked Riser for meeting with
16 her and Dixon and (2) summarized some of the items they discussed in the
17 meeting, including the need to “openly and accurately communicate when conflict
18 or office violations may occur and regularly communicate when challenges arise
19 while providing others with the benefit of the doubt” and to be “considerate of
20

1 [his] fellow team members through open communication channels, limiting
2 assumptions, and mindful interpretations.” ECF No. 18-28 at 2.

3 On October 4, 2017, Riser sent an e-mail to Walter responding to the above
4 letter. ECF No. 18-29. Riser states: “After receiving your erroneous Report, I felt
5 compelled to respond; to address the errors, omissions, comments, and to express
6 my disagreement with your justifications[,]” stating that he felt the “discussion”
7 was more of an “interrogation”. ECF No. 18-29 at 2 (emphasis in original). He
8 writes: “I disagree with most of your Report”, complaining that (1) he felt “blind-
9 sided” because he was not prepared to discuss the SWOT Analysis, (2) not all
10 issues were addressed, (3) he felt his observations were invalidated and discredited,
11 and (4) past complaints had been negligently handled, *inter alia*. ECF No. 18-29 at
12 2-4. Riser then directs his attention to kitchen appliances: “I believe special
13 consideration should be given to **prohibit ALL kitchen appliances.**” ECF No.
14 18-29 at 4 (emphasis in original). Riser complains about being prohibited from
15 using his rice cooker to warm his food even though a colleague continued to use a
16 coffee maker in his workstation after Riser complained about the “offensive smell
17 of coffee (non-gourmet coffee).” ECF No. 18-29 at 5 (emphasis in original). Riser
18 concludes by asking whether the rice cooker ban was a result of retaliation,
19 whether it was the logical choice to implement such a ban, what the policy is for
20 boiling water for tea with a rice cooker in the workstation, and whether coffee

1 makers and refrigerators were “permitted because certain privileged individuals
2 possess these appliances?” ECF No. 18-29 at 5.

3 On October 19, 2017, Riser submitted an eighteen-page “Proposal to
4 Restructure the Student Financial Services Department” to Eric Godfrey
5 (Executive Director), Kirk Schulz (WSU President), Daniel Bernardo (Provost and
6 Executive Vice President) and Mary Gonzales (Vice President for Student Affair
7 and Dean of Students. ECF No. 119 at 2-3, ¶ 6.

8 Riser continued to raise workplace issues to the OEO and others throughout
9 October and November of 2017. *See* ECF Nos. 18-31 at 5-6 (“Workplace Concern
10 Resolution Form” dated October 27, 2017 raising issue of rice cooker); 18-1 at 55
11 (“Whistleblower Complaint” sent via e-mail to Schulz and Heather Lopez on
12 November 1, 2017); 18-31 at 7-8 (“Workplace Bullying Incident Report” dated
13 November 16, 2017 complaining about being treated “like a work-study student”,
14 “unreasonable timelines” and expectations “without providing adequate training
15 and instructions”, and employees not being polite or cordial.”); 18-1 at 59
16 (Agreement to Mediate signed on November 20, 2017); 18-4 (Ethics Board e-mail
17 dated November 27, 2017 to Riser regarding alleged violations of the Washington
18 Ethics in Public Service Act).

19 Notably, Riser submitted to the Court an OEO document dated November 8,
20 2017, reflecting the OEO’s decision to close claim number 2017-412 because Riser

1 did not provide investigators with any information that would implicate EP 15,
2 despite his claim of gender discrimination. ECF No. 18-1 at 57. However, Riser
3 has not provided the Court with the underlying complaint.

4 Riser asserts that, on November 8, 2017, he “filed a RACE and GENDER
5 Discrimination Charge” with the Washington State Human Rights Commission
6 (“WSHRC”) ECF No. 94 at 2. However, Riser has not provided the actual
7 complaint. Rather, the only documents in the record related to the WSHRC
8 appears to be limited to (1) a Notice of Charge of Discrimination (without any
9 information regarding the factual basis thereof) dated November 30, 2017, ECF
10 No. 18-32 at 2, and (2) documents demonstrating that a complaint (filed on March
11 17, 2018) was withdrawn on June 21, 2018 pursuant to Riser’s request (WSHRC
12 Case No. 38ERSZ-0335-17-8; EEOC Case No. 38G-2018-00083), ECF No. 77-3
13 at 1-3.

14 According to Plaintiff, around December 13, 2017, Randi Croyle, Riser’s
15 direct supervisor, searched Riser’s “personal property” (“i.e. desktop, desk
16 drawers, filing cabinet, and files”) without Plaintiff’s consent and without
17 explaining the purpose of the search other than saying “she was looking for
18 something.” ECF No. 18-1 at 6-7, ¶ 18. Plaintiff asserts the search was conducted
19 “without probable cause, without a warrant, and without [his] expressed consent”
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1 and was conducted “in retaliation for engaging in ‘protected activities’.” ECF Nos.
2 82 at 8, ¶ 46; 94-1 at 4, ¶ 18.

3 On December 13, 2017, Croyle issued Riser a “notice of counseling”. ECF
4 No. 82 at 4, ¶ 17. In the Notice of Counseling (a portion available at ECF No. 18-
5 30), Croyle writes that the purpose of the Notice is to “address deficiencies in your
6 work performance and behavior.” ECF No. 18-30 at 2. In the Notice, Croyle (1)
7 informed Riser that he was “exhibiting trends of missing deadlines, disregarding
8 your supervisor’s instruction, providing inaccurate information to students, and
9 interacting unprofessionally” and (2) identified instances of missed deadlines and
10 providing wrong information to students. ECF No. 18-30 at 2-3. Croyle wrote that
11 “[i]mprovements in these areas of performance must be corrected” and stated that
12 he hopes Riser understands the seriousness of his actions and takes steps to
13 improve. ECF No. 18-30 at 3.

14 On December 14, 2017, Riser replied to Croyle via e-mail, stating that “[i]t
15 is very obvious” that Croyle issued the Notice out of retaliation for Riser
16 submitting the SWOT Analysis (September 19, 2017), a dispute resolution
17 complaint, a discrimination complaint against Croyle (November 8, 2017), and a
18 bullying Complaint against Croyle (November 16, 2017). ECF No. 18-31 at 2.
19 Riser declares the Notice “is null and void, invalid, and unwarranted; especially in
20 lieu of the corruption and major deficiencies that I have reported directly to you

1 and directly about your inappropriate conduct.” Riser then states: “Your
2 fraudulent accusations are almost criminal. For the record, I empathically oppose
3 and object to your fraudulent - vague - exaggerated accusations (Notice of
4 Counseling) in its entirety.” ECF No. 18-31 at 2.

5 On January 5, 2018, Riser sent an e-mail to Croyle (1) chastising Croyle for
6 hiring what Riser labeled as an “unacceptable candidate” (whom Riser accused of
7 exhibiting racist behavior, without identifying the behavior) and (2) accusing
8 Croyle of making the hire out of retaliation against Riser. ECF No. 18-22 at 7. In
9 the e-mail, Riser “simultaneously” demanded Croyle’s resignation. ECF No. 18-
10 22 at 7. The same day, Riser wrote another e-mail to Croyle demanding his
11 immediate resignation:

12 Pursuant to your unconditional consent for me to take legal action against
13 you for retaliatory action against me, [in lieu of legal action] this is a
DEMAND FOR YOUR RESIGNATION (immediately).

14 Your immediate resignation is demanded for continuously disrespecting my
15 rights and retaliatory action against me. Not only is your resignation
16 demanded based on your retaliatory action against me, but based on your:
17 (1) employee misconduct, (2) gross mismanagement, (3) filing
18 erroneous/fraudulent federal reports, and (4) violation of WSU Business
19 Policies.

20 One example of a recent retaliatory action and gross mismanagement is
rewarding a job offer (promotion) to a current employee with a history of
inappropriate conduct to supervise me; neglecting to consider staff input
(opposition) or the search committee’s recommendations.

1 ECF No. 18-26 at 13 (brackets and emphasis in original). Riser then identifies
2 alleged violations regarding Croyle bringing her newborn to the SFS office and
3 concludes that “this is only one detailed example of your inappropriate conduct
4 that justifies your immediate resignation[.]” ECF No. 18-26 at 13-14. Notably,
5 Riser does not mention any issues regarding alleged unlawful discrimination,
6 despite his claim that he previously filed race and gender discrimination
7 complaints against Croyle. *See* ECF Nos. 18-1 at 57; 94 at 2.

8 On January 5, 2018 (the day Riser sent the response to Croyle), while Riser
9 was on sick leave, Don Holbrook, Executive Director, issued a “Home Assignment
10 Notice” to Riser, which was hand-delivered by two armed police officers to Riser’s
11 residence. ECF No. 82-1 at 4, ¶ 20; at 7, ¶ 50. In the Notice, Holbrook informed
12 Riser that he is being “assigned to work from home until further notice” and that,
13 while he will have access to his WSU email account, his systems access has been
14 removed and he is not to respond to any work-related emails unless it is a request
15 from Holbrook. ECF No. 18-2 at 2. According to Riser, the Home Assignment
16 “prohibited [him] from completing [his] Training Coordinator Duties” and he was
17 not given any work during the Assignment. ECF No. 82-1 at 7, ¶ 43. Riser also
18 complains that he was denied “reimbursement” for expenses incurred during the
19 Assignment. ECF No. 82-1 at 7, ¶ 46.

1 On January 12, 2018, Riser sent a demand for resignation to Holbrook and
2 Dixon, and a second demand for resignation to Croyle (ECF No. 18-26 at 8-12). In
3 the second demand for Croyle’s resignation, Riser asserts that Croyle (1) violated
4 the whistleblower protection act, the ethics in public service act, and WSU policy
5 by issuing – and sending two armed WSU police officers to deliver – the Home
6 Assignment and (2) violated the FMLA by issuing the Notice while on sick leave
7 (Riser has not demonstrated he was taking *FMLA* leave). ECF No. 18-26 at 8-12.

8 On January 30, 2018, Holbrook issued a “notice of charges” (ECF No. 19-6)
9 to Riser. In the letter, Holbrook notifies Riser that he is considering terminating
10 Riser for cause for gross misconduct, including “acts of insubordination,
11 inappropriate communication, failure to follow directives, deficiencies in quality of
12 work, and providing misinformation to students.” ECF No. 18-5. Holbrook
13 identifies, *inter alia*, Riser’s “extremely hostile and unprofessional” response to
14 Croyle’s notice of counseling and Riser’s “inappropriate” and “hostile” demand for
15 resignation to Croyle and Dixon. ECF No. 18-5 at 2-5. Holbrook wrote: “[t]hese
16 messages also reflect a pattern of unprofessional communication, create a
17 threatening atmosphere, and show a complete disregard for the authority of
18 supervising employees.” ECF No. 18-5 at 5.

19 On February 12, 2018, Riser sent Kirk Schulz, President of WSU, a series of
20 “Petitions for a Declaratory Order” to terminate Croyle, Holbrook, and Brian; to

1 “dismiss” the Notice of Charges, and “rescind” the complained-of job offer and the
2 home assignment, among other requests. ECF Nos. 18-20, -21,-22, -23, -24, -25, -
3 26. In the Petitions, Riser requests a formal hearing, in the alternative.

4 On March 8, 2018, Don Holbrook terminated Riser’s employment. ECF No.
5 19-13. The same day, Riser sent an appeal of the termination to Daniel Bernardo,
6 Provost and Executive Vice President. ECF No. 18-10 at 2-11. In a document
7 dated the same day, the OEO concluded their investigation and closed the matter,
8 finding “there was no information presented to investigators that [the complained-
9 of] incidents were related to discrimination, discriminatory harassment, bullying or
10 nondiscriminatory harassment, or retaliation.” ECF No. 19-9 at 4.

11 On March 21, 2018, Riser sent his “appeal” (ECF No. 19-10 at 3-10) to the
12 OEO Final Closing Document to Schulz. ECF No. 19-10 at 3-10. In the “appeal”,
13 Riser writes: “I believe the OEO Final Closing Document is defective, fraudulent,
14 and bias [sic] against me. Accordingly, this is also my formal request for a
15 **Formal Hearing**; pursuant to my CONSTITUTIONAL RIGHT.” ECF No. 19-10
16 at 3 (emphasis in original).

17 On April 4, 2018, Bernardo denied Riser’s appeal of his termination for
18 cause, stating that Riser “did not take responsibility for, or attempt to explain [his]
19 insubordination and unprofessional communication” and that Riser’s
20 “unprofessional behavior towards supervisors and colleagues severely [affected]

1 Student Financial Services’ ability to function, disrupted the workflow and
2 efficiency of other employee, and significantly damaged morale.” ECF No. 19-15
3 at 2-3.

4 On April 12, 2018, the OEO Appeals Committee denied Riser’s appeal of
5 the OEO final decision. ECF No. 19-11 at 2. On April 13, 2018, Riser wrote to
6 Schulz complaining about the OEO decision because the process was not impartial
7 or fair and did not involve a formal hearing. ECF No. 19-12 at 2. Riser continued
8 to request a formal hearing, to no avail. ECF No. 19-12 at 2.

9 DISCUSSION

10 Defendants move for summary judgment on all of Riser’s remaining claims.
11 Riser opposes the Motion. However, Riser’s Response does not address the
12 arguments posed by Defendants.⁴ See ECF No. 121. This, by itself, is sufficient
13 reason for the Court could grant summary judgment in favor of Defendants, as it is
14 Riser’s burden to demonstrate that a genuine issue of fact precludes a finding of
15 summary judgment. However, as noted above, the Court culled the information
16 from Riser’s past submissions, but even after reviewing such, the Court finds that

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18 ⁴ Riser asserts that Defendants “misrepresented [the] facts [that] support the
19 basis for all of my Claims.” ECF No. 121-1 at 1, ¶ 5 (emphasis in original). Such
20 blanket statements do not create a genuine issue.

1 Riser has not presented evidence to support his claims or his claims otherwise fail.
2 As such, Defendants have demonstrated that they are entitled to entry of judgment
3 in their favor.

4 A. **Summary of Undisputed Facts**

5 As the facts above demonstrate, Riser began raising minor work-place
6 complaints early in 2017 and thereafter—Riser has not submitted any evidence
7 connecting the complaints to unlawful discrimination. Riser delivered his SWOT
8 Analysis to Dixon in September of 2017 critiquing his supervisors—again, none of
9 the complaints have anything to do with unlawful discrimination. Riser continued
10 to raise minor work-place complaints, *see, e.g.*, ECF No. 18-29 at 5 (complaining
11 about rice cooker), and began conversing with certain employees via e-mail in an
12 unprofessional manner, *see, e.g.*, ECF No. 18-29 at 2 (Riser’s response to Walter’s
13 summary of their meeting discussing the *SWOT* Analysis). Riser also began
14 asserting he was being discriminated against based on race and gender, but he
15 never presented any evidence of such to the Court and the numerous investigations
16 similarly found that Riser did not present evidence of unlawful discrimination,
17 retaliation, or harassment/bullying.

18 In December, Croyle issued Riser a notice of counseling to address
19 deficiencies in his work, his disregard for supervisor’s instructions, and acting
20 unprofessionally. ECF No. 18-30 at 2-3. Instead of heeding Croyle’s warning that

1 Riser needed improvement in these areas, ECF No. 18-30 at 3, Riser escalated
2 things—accusing Croyle of retaliating against him, declaring the Notice “null and
3 void, invalid and unwarranted”, and asserting that Croyle’s “fraudulent accusations
4 are almost criminal”. ECF No. 18-31 at 2.

5 Riser did not relent. Riser sent Croyle an e-mail on January 5, 2018
6 accusing Croyle of hiring an “unacceptable candidate” out of retaliation and
7 demanded Croyle’s resignation (twice in the same day via e-mail). ECF Nos. 18-
8 22 at 7; 18-26 at 13. Notably, Riser identified Croyle bringing her newborn to the
9 SFS and the amount of time spent in meetings as an example of “inappropriate
10 conduct that justifies [her] immediate resignation[,]” but never mentions unlawful
11 discrimination. ECF No. 18-26 at 13-14. That day, Holbrook assigned Riser to
12 work from home.

13 Riser again escalated things, sending a demand for resignation to Holbrook,
14 Dixon, and Croyle, along with a series of requests for declaratory orders to Schulz.
15 He did not relent. Rather, Riser continued to make outrageous demands of his
16 superiors while failing to provide substantive responses to his charges of
17 unprofessionalism or his substandard work performance. Indeed, out of the
18 numerous e-mails and related documents, Riser does not provide one example of
19 race or gender discrimination—rather, he conclusory asserts that every-day work-
20 place decisions were made because of his race and gender.

1 Riser was ultimately terminated for cause for the problems identified in his
2 notice of charges; his numerous appeals were denied.

3 **B. Claims affected by previous decisions**

4 The Court has previously determined: (1) WSU is not subject to suit under
5 42 U.S.C. § 1983, ECF No. 86 at 5-7; (2) Holbrook did not owe a fiduciary duty to
6 Riser, ECF No. 86 at 8-9; (3) the Home Assignment Notice was not fraudulent,
7 ECF No. 86 at 10-11; (4) Riser's Intentional Infliction of Emotional Distress (tort
8 of outrage) claim fails as a matter of law, ECF No. 86 at 11-14; (5) Riser's claims
9 of defamation against Holbrook and Croyle failed, ECF No. 86 at 14; (6) the
10 individual Defendants enjoy Eleventh Amendment immunity in their official
11 capacity, ECF No. 86 at 7-8; and (7) WAC 504-04-020 and RCW § 34.05.240 do
12 not provide a basis for personal liability, ECF No. 16 at 4.

13 The Court finds that the reasoning supporting these determinations equally
14 apply to the remaining Defendants. As such, claims 26 (IIED claim against
15 Holbrook, Dixon, and Croyle), 27 (claim based on WAC 504-04-020), 28 (claim
16 based on RCW § 34.05.240), 30-33 (same), 39 (Breach of Fiduciary Duty against
17 Holbrook), 40 (Breach of Fiduciary Duty against Holbrook, Dixon, and Croyle),
18 and 45 (Fraud) must be dismissed.

1 C. Conspiracy

2 Riser asserts a broad conspiracy by numerous employees of WSU to violate
3 his rights. However, Riser has not produced even a modicum of support for such
4 claims—Riser has not submitted any evidence of a conspiracy between the actors,
5 let alone any evidence of a conspiracy to deprive Riser of the equal protection of
6 the law. “Vague and conclusory allegations of official participation in civil rights
7 violations are not sufficient to withstand a motion to dismiss[,]” *Ivey v. Board of*
8 *Regents*, 673 F.2d 266, 268 (9th Cir. 1982), let alone a motion for summary
9 judgment. *United Steelworkers v. Phelps Dodge Corp.*, 865 F.2d 1539, 1540-41
10 (9th Cir. 1989) (en banc) (plaintiff must demonstrate the existence of “an
11 agreement or meeting of the minds” to violate the plaintiffs’ civil rights”).

12 Accordingly, without any evidence of a conspiracy, claims 34⁵, 46⁶, 47, and
13 48-58 are dismissed.⁷

16 ⁵ Claim 34 also includes claims of retaliation and violation of due process.

17 ⁶ Claim 46 includes claims of conspiracy and retaliation. ECF No. 94 at 33.

18 ⁷ Notably, Riser sometimes uses the word “conspired” in reference to an
19 *individual* actor’s (alleged) choice to retaliate, but a claim for conspiracy requires
20 two or more individuals to agree to act toward a certain end. *See, e.g.*, ECF No. 94

1 D. **Search**

2 The Fourth Amendment to the United States Constitution states: “The right
3 of the people to be secure in their persons, houses, papers, and effects, against
4 unreasonable searches and seizures, shall not be violated” As the Supreme
5 Court has held, “[i]t is well settled that the Fourth Amendment’s protection extends
6 beyond the sphere of criminal investigations.” *City of Ontario, Cal. v. Quon*, 560
7 U.S. 746, 755 (2010). Indeed, “[t]he Amendment guarantees the privacy, dignity,
8 and security of persons against certain arbitrary and invasive acts by officers of the
9 Government,’ without regard to whether the government actor is investigating
10 crime or performing another function[,]” including when “the Government acts in
11 its capacity as an employer.” *Id.* at 755-56 (quoting *Skinner v. Railway Labor*
12 *Executives’ Assn.*, 489 U.S. 602, 613–614 (1989)). Importantly, however, as the
13 plain language of the Amendment indicates, the Fourth Amendment only protects
14 against the search and seizure of *their* persons, houses, papers, and effects. In
15 other words, there is no Fourth Amendment violation when there has been no
16 search of private property. *See Altman v. City of High Point, N.C.*, 330 F.3d 194,

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20 at 16 (claim 13: “Holbrook conspired a ‘pretextual Home Assignment Notice’ to
retaliate”).

1 201 (4th Cir. 2003) (“‘effects’ referred only to personal property, and particularly
2 to goods or moveables”)

3 In Claim 10, Plaintiff alleges that Croyle conducted an unlawful search of
4 his workstation in violation of the Fourth Amendment. ECF No. 94 at 14. Riser
5 elsewhere asserts that Croyle searched his “desktop, desk drawers, filing cabinet,
6 and files”, ECF No. 121-2 at 8, “without probable cause, without a warrant, and
7 without [his] expressed consent” and out of “retaliation for engaging in ‘protected
8 activities’.” ECF Nos. 82 at 8, ¶ 46; 94-1 at 4, ¶ 18. Importantly, however, Riser
9 only references University property, but does not allege *his personal property* was
10 searched. If he had personal papers or effects that were searched, his Fourth
11 Amendment rights (as incorporated by the Fifteenth Amendment) may very well
12 be implicated. However, given Riser has not presented any evidence (or even
13 alleged) that his personal belongings were subjected to the search, Riser’s claim
14 must be dismissed.

15 E. **Discrimination; Retaliation**

16 Upon review of the facts, the Court finds that Riser has not brought forward
17 any evidence that he was subjected to (1) discrimination based on any protected
18 status or (2) retaliation based on any protected activity.

19 1. **Race/Gender Discrimination**

20 Riser asserts that Defendants discriminated against him based on his race

1 and gender in violation of Title VII of the Civil Rights Act. *See* ECF No. 94 at 5.
2 However, Riser has not produced any evidence suggesting he was treated
3 differently based on his race or gender. *See* ECF No. 94 at 6. Rather, Riser relies
4 on bare, conclusory allegations of racial and gender animus, such as his contention
5 that he was not allowed to use a rice cooker in his workstation “based on RACE
6 and GENDER”, ECF No. 94 at 8 (emphasis in original). Notably, despite Riser’s
7 allegations that he was subject to frequent “racist” comments and that Croyle used
8 “slave language”, ECF No. 94 at 5-6, Riser has not submitted any evidence of
9 racial discrimination and he repeatedly raised trivial complaints (such as the issue
10 with the rice cooker) to superiors without any mention of unlawful discrimination
11 (a decidedly non-trivial matter). *See* ECF No. 18-26 at 13-1 (January 5, 2017 letter
12 from Riser to Croyle complaining about Croyle bringing her newborn to work).

13 The Court finds it telling that Riser initiated several investigations into his
14 allegations of racial and gender discrimination, but those investigations did not
15 find any evidence of such. *See* ECF No. 19-9 (WSU OEO final closing document
16 finding Plaintiff’s claims of discrimination and retaliation were unfounded).

17 Without the production of any evidence of unlawful discrimination, claims 1
18 and 3 are dismissed.

19 //

20 //

1 **2. Retaliation**

2 Riser asserts that Defendants retaliated against him for him reporting
3 complaints about alleged bullying, ethics violations, and unlawful discrimination,
4 in violation of his First Amendment right to speech and anti-retaliation provisions
5 under Title VII of the Civil Rights Act. *See* ECF No. 94 at 9. However, again,
6 Riser has not brought forward any evidence of such. While Riser did submit
7 numerous complaints to the OEO and, ultimately to the WSHRC and the EEOC,
8 there is no evidence that Defendants took any action based on such. Importantly,
9 while there is some temporal proximity between certain employment actions and
10 Riser’s unproven and unevidenced complaints of unlawful discrimination and
11 ethics violations: (1) Riser had been raising the same (or similar) complaints for
12 months and simply recast the complaints (without proof) as being tied to his race
13 and gender, and (2) Defendants’ actions were completely reasonable, if not light-
14 handed, in consideration of Riser’s own conduct.

15 Further, most, if not all, of Riser’s speech is not protected by the First
16 Amendment because Riser’s complaints raised during his employ were limited to
17 “individual personnel disputes and grievances” that would be of “no relevance to
18 the public’s evaluation of the performance of governmental agencies” is generally
19 not of “public concern.” *See Coszalter v. City of Salem*, 320 F.3d 968, 973 (9th
20 Cir. 2003)(quoting *McKinley v. City of Eloy*, 705 F.2d 1110, 1114 (9th Cir. 1983)).

1 Ultimately, as the Court has observed on materially the same record, the
2 evidence adduced demonstrates Riser was terminated for good cause in response to
3 his hostile approach in communicating with his superiors. Defendants provided
4 Riser with an opportunity to correct his deficient performance and unprofessional
5 conduct, but Riser only escalated his inappropriate behavior to his superiors.

6 As such – absent any evidence of retaliation – claims 4, 5, 6, 9, 12, 13, 14,
7 17, 18, 19, 20, 21, 23, 24, 25, 34, 36, 37, 38, 41, 42, 43, 44, 46 are dismissed.⁸ *See*
8 *Menefield v. Stradley*, 996 F.2d 1226 (9th Cir. 1993) (“Bare allegations of
9 retaliation will not suffice, by themselves, to sustain a claim of unlawful
10 retaliation.”).

11 F. **Due Process**

12 The Fourteenth Amendment of the United States Constitution provides that
13 “[n]o state . . . shall deprive any person of life, liberty, or property, without due
14 process of law” The Supreme Court has recognized that “[a] property interest
15 in employment can, of course, be created by ordinance, or by an implied contract.”

17 ⁸ Claim 13 mentions “due process”, but the claim is based on retaliation.
18 Claims 17, 21 and 38 include retaliation and a due process claims. Claim 34
19 implicates an alleged conspiracy and due process. Claim 46 includes a claim of
20 conspiracy and retaliation.

1 *Bishop v. Wood*, 426 U.S. 344, 350 (1976). “[T]he sufficiency of the claim of
2 entitlement must be decided by reference to state law.” *Id.*

3 In Washington, “[a] public employee has a property interest in his
4 employment if he has a legitimate claim of continued entitlement to the job.”
5 *Buesing v. City of Sumner*, 133 Wash. App. 1033 (2006).

6 A property interest in employment typically arises from contractual or
7 statutory limitations on the employer’s ability to terminate an employee.
8 A property interest in employment can also be created by implied contract,
9 arising out of customs, practices, and de facto policies. When such
a property interest exists, the employee is entitled to a hearing or some
related form of due process before being deprived of the interest.

10 *Hudson v. City of Wenatchee*, 94 Wash. App. 990, 997 (1999) (citation omitted).

11 When determining the rights of the employee, the general rule is that “an
12 employment contract, indefinite as to duration, is terminable at will by either the
13 employee or employer.” *Thompson v. St. Regis Paper Co.*, 102 Wash. 2d 219, 223
14 (1984) (citation omitted). “However, such a contract is terminable by the
15 employer *only for cause* if (1) there is an implied agreement to that effect or (2) the
16 employee gives consideration in addition to the contemplated service.” *Id.* For
17 example, an “employer can contractually obligate themselves concerning
18 provisions found in an employee policy manual and thereby contractually modify
19 the terminable at will relationship.” *Id.* at 228-29.

20 It is undisputed that Riser was an at-will employee because he was not

1 promised a definite duration of employment. At most, WSU had to comply with
2 the employment policy manual, but Riser was not entitled to more. Upon review
3 of the undisputed evidence, the Court finds Defendants complied with the manual.
4 Riser’s due process claim thus fails.

5 The policy manual distinguishes between corrective and disciplinary
6 actions—the latter of which may be appealed by the employee to a specified
7 employee of WSU, but not the former. ECF No. 18-33 at 25-27. A “Disciplinary
8 Action” includes “suspension without pay, demotion, disciplinary reassignment, or
9 reduction in salary,]” while a “Corrective Action” includes “informal verbal
10 counseling, a verbal reprimand, training or retraining, a written counseling memo,
11 a performance improvement plan, or a letter of reprimand.” ECF No. 18-33 at 25.
12 The only “disciplinary action” Riser points to is his actual termination, as the work
13 from home assignment was not a “reassignment” and Riser was not suspended or
14 demoted, and his pay was not reduced.

15 Defendants complied with the manual by providing Riser with a “notice of
16 charges” (ECF No. 18-5 at 2) before he was terminated and by providing Riser an
17 opportunity to file an appeal (which Plaintiff exercised and to which Defendants
18 provided multiple responses). *See* ECF Nos. 18-37; 18-38. The handbook does
19 not give Riser the right to have a formal hearing or present oral argument. Neither
20 does the handbook give Plaintiff the right to choose who reviews Plaintiff’s appeal.

1 WSU thus complied with the terms of the policy manual. As such, claims 7, 11,
2 17, 21, 34, 35, and 38 must be dismissed.

3 **G. Remaining Claims**

4 Riser's remaining claims do not present a viable cause of action and are
5 dismissed. *See* ECF No. 94 at 6-7 (claim 2: complaining that Maja Gillespie
6 disclosed Title VII information); at 12-13 (claim 8: claiming Eric Godfrey and Dan
7 Bernardo disclosed Plaintiff's identity and ethics violations report).

8 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 9 1. Defendants' Motion for (Final) Summary Judgment (ECF No. 118) is
10 **GRANTED.**
- 11 2. The pending Motions (ECF Nos. 129; 131) are **DENIED AS MOOT.**
- 12 3. All remaining hearings and trial are **VACATED**

13 The District Court Executive is directed to enter this Order, enter judgment
14 for Defendants, provide copies to the parties, and close the file.

15 DATED August 29, 2019.



17 *Thomas O. Rice*
THOMAS O. RICE
18 Chief United States District Judge