IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 24-cv-03390-RMR

JOSHUA ABRAMS

Plaintiff,

v.

DIVISION OF UNEMPLOYMENT INSURANCE
JOE BARELA
JEFF FITZGERALD
JOHN & JANE DOE(S)

Defendants.

STATE DEFENDANTS' RESPONSE TO SECOND MOTION FOR EMERGENCY INJUNCTION [ECF 37]

Defendants Division of Unemployment Insurance (the "Division") and Joe Barela (collectively, "State Defendants"),[1] through counsel, file this Response to Plaintiff's Second Emergency Motion for Injunctive Relief (ECF No. 37, the "Second Motion" or "Plaintiff's Second Motion").

INTRODUCTION

This is a single-plaintiff lawsuit brought by an individual claimant of unemployment insurance benefits. As such, the Court should disregard any arguments or allegations about impacts upon "thousands of Colorado residents," ECF No. 37, p. 1, "[h]undreds of individuals," *id.* at p. 3, or any person other than Plaintiff, Joshua Abrams.

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[1] A return of service was filed for Jeff Fitzgerald indicating the Summons and Amended Complaint was left with an administrative assistant at the Colorado Department of Labor and Employment ("CDLE"). ECF No. 20. However, because Mr. Fitzgerald is no longer employed by CDLE, this attempt at service was not effective.

"A preliminary injunction is not meant to 'remedy past harm but to protect plaintiffs from irreparable injury that will surely result without [its] issuance' and 'preserve the relative positions of the parties until a trial on the merits can be held.'" *Colo. Republican Party v. Griswold*, 715 F. Supp. 3d 1339, 1350 (D. Colo. 2024) (quoting *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1258, 1267 (10th Cir. 2005)).

Plaintiff's Second Motion argues an emergency injunction is needed to recover benefit payments that have allegedly been withheld after an integrity hold was placed on his claim in 2023, nearly two years ago. Plaintiff argues that hold from 2023 remains in place today and continues to prevent him from receiving "$6,000 in unpaid 2023 benefits," which are "critical to Plaintiff's ability to avoid eviction, access medicine, and remain stable as current unemployment payments are set to expire within four weeks." ECF No. 37, pp. 1-2. The Second Motion seeks "an injunction compelling Defendants to pay Plaintiff the $6,000 in wrongfully withheld 2023 unemployment compensation, which remains critical to preventing imminent homelessness and medical destabilization." *Id.* at p. 12. Plaintiff admits that "*this relief* would satisfy Plaintiff's immediate needs to prevent irreparable harm, . . ." *Id.* (emphasis added). In short, the Second Motion—to the extent it seeks relief for Plaintiff and not for non-parties—is unambiguously devoted to remediating alleged past harms.

Plaintiff invokes this Court's equitable powers, seeking sweeping "structural reform and compliance," including revising the statutory framework for appealing Division decisions, implementing new accommodation processes, hiring sixty additional call center staff, and gutting the integrity hold program. He also seeks declaratory relief, premature summary judgment, and damages. Plaintiff cannot meet the requirements for a disfavored mandatory injunction. Moreover, a motion for preliminary injunction is not the proper vehicle to request declaratory relief and damages.

FACTUAL BACKGROUND

Program Integrity Measures

During and after the COVID-19 pandemic, Colorado and other states experienced a significant increase in the volume of fraudulent claims for unemployment insurance benefits and extended pandemic benefits. ECF No. 32-3, ¶ 3 (Declaration of Guadalupe Diaz). Since the pandemic began in early 2020, the Division has received millions of fraudulent claims. *Id.*

In March 2020, the Division adopted "program integrity" measures to avoid payment of fraudulent claims. *Id.* at ¶ 4. The program integrity process reviews and compares available information from a variety of sources to flag discrepancies that could indicate a fraudulent claim. *Id.* at ¶ 5. Depending on the severity of the flagged issues, the claims system establishes a "program integrity hold," which prevents benefits payments on the flagged claim until further information can be assessed by the Division. *Id.* If a program integrity hold is placed, the system immediately and automatically sends a fact-finding request to the claimant, who receives an alert. *Id.* at ¶ 6. The claimant has seven days to respond to a list of questions and provide the required documentation. *Id.* If the Division receives the information within seven days, a deputy reviews the information and decides whether to release the hold, seek further information, or disqualify the claimant. *Id.* at ¶ 7. If the Division does not receive the requested information within seven days of sending the factfinding, the system sends a "reporting requirement disqualification" to the claimant, which informs the claimant that they have been disqualified for failing to provide information and provides notice of the right to appeal the decision. *Id.* at ¶ 8. If the deputy determines an integrity hold should be removed, the hold is removed, and the claimant is notified of the decision. *Id.* at ¶ 9.

Customer Service Capabilities

An unemployment benefits claimant can contact the Division about their claim by phone, U.S. mail, online through the MyUI+ portal, or in person. ECF No. 32-4, ¶ 2 (Declaration of David Kimball). The Division's call center has 102 agents and 9 supervisors. Call center agents assist claimants with filing claims, adjudicating non-separation decisions, and providing guidance for claimants within the unemployment system. *Id.* at ¶ 3. The Division's call center agents are available to answer phone calls Monday through Friday, from 8 a.m. to 4 p.m. *Id.* at ¶ 4. The Division's phone system has a total of 150 phone lines divided into 12 active queues. *Id.* at ¶ 5. Each active queue can accommodate 10 people on hold, allowing up to 120 people to be on hold. *Id.* Once the system reaches 120 people on hold, it puts additional callers into a separate queue that can hold up to 150 calls at a time. *Id.* Once this separate queue reaches 150 callers, new callers are notified that the queue is full and will be invited to speak with a virtual assistant. *Id.* The virtual assistant can answer basic questions about claims, including how to file a claim and how to appeal a decision of the Division. *Id.* Claimants have several ways to contact the Division online. *Id.* at ¶ 8. The primary method is the online portal, MyUI+, where claimants utilize various tools and perform functions like updating their information and managing existing claims. *Id.* Documents and forms may also be uploaded through the online "document submission form." *Id.* at ¶ 9; ECF No. 32-2, ¶¶ 8-10 (Declaration of Brandon McClure). Claimants can also complete a Claimant Feedback Form, which can be used to provide several categories of feedback.

Kiosks are available at the Division for claimants who lack computer access and staff are available to assist with questions. ECF No. 32-4, ¶ 13. A secure drop box in the Division lobby and may be accessed during regular business hours, Monday to Friday, from 8 a.m. to 4 p.m. *Id.* at ¶ 14. Claimants may schedule in-person appointments through an online form. *Id.* at ¶ 15.

2023 Claim for Benefits

The Division received Plaintiff's first claim for unemployment benefits on March 5, 2023. ECF No. 32-3, ¶ 10. Plaintiff later attempted to withdraw the claim, but the request was denied by a deputy of the Division. *Id.* at ¶ 15. Plaintiff appealed to a hearing officer, and later, to a panel of the Industrial Claims Appeals Office, but the decision was affirmed. *Id.* at ¶¶ 15-17.

Plaintiff received benefit payments from April 2023 through mid-June 2023. *Id.* at ¶ 19; ECF No. 32-6 (Abrams' Unemployment Benefits Payments) (reflecting payments from 4/3/2023 through 6/17/2023). In late June 2023, the Division's claims handling system flagged the claim for two program integrity holds. *Id*. at ¶ 11. The first integrity hold was triggered on June 23, 2023, and the system automatically sent Plaintiff a fact-finding request. *Id.* at ¶ 12. The Division received the requested information from Plaintiff that same day, and the hold was released the next day. *Id.* The second hold was triggered on June 26, 2023, and the Division sent Plaintiff a fact-finding request on that date. *Id*. at ¶ 13. Because the Division did not receive the requested information from Plaintiff within seven days, the hold was not released. *Id.*

Within the next few months, Plaintiff began reporting employment income again, so the claim became inactive. *Id*. at ¶ 14; ECF No. 32-1, ¶ 6 (Declaration of Jeff Newcomb). Plaintiff continued to report income through the fourth quarter of 2024, until January 31, 2025. ECF No. 32-3, ¶ 14. The program integrity hold remained in place because the Division had not received any response to the fact-finding sent to Plaintiff on June 26, 2023. *See id*. at ¶¶ 20-22.

2025 Claim for Benefits

The Division received a second claim for benefits from Plaintiff on February 2, 2025. *Id.* at ¶ 10; ECF No. 32-5. At the time the 2025 claim was received, the Division still had not received the information requested from the program integrity fact-finding on June 26, 2023, so the hold was still in place. ECF No. 32-3, ¶¶ 20-22. On March 15, 2025, the Division received the requested information from Plaintiff. *Id*. at ¶ 22. The program integrity hold was cleared on March 17, 2025, and the Division adjudicated Plaintiff's separation the next day. *Id.* at ¶¶ 22-23. Plaintiff began receiving benefits on March 20, 2025. *Id.* at ¶ 24; *see* ECF No. 32-6 (Payment Date: 3/20/2025).

Plaintiff contacted the Division by phone several times in 2023 and 2025. ECF No. 32-4, ¶ 19; ECF No. 32-7 (Inbound Calls from Plaintiff's Phone Number). On March 14, 2025, he spoke with call center agents twice for a total of approximately 90 minutes. ECF No. 32-4, ¶ 20. The calls concerned the program integrity hold on his claim. *Id.* The Division lifted the hold after it received documentation from Plaintiff. *Id.* Plaintiff has successfully used the MyUI+ platform to manage his 2023 and 2025 claims. ECF No. 32-2, ¶¶ 16-17. For example, Plaintiff uploaded documentation to MyUI+ on March 15, 2025, to clear his program integrity hold, which was lifted two days later. *Id.* at ¶ 17. Plaintiff used MyUI+ to update his contact information as recently as April 11, 2025. *Id.*

PROCEDURAL BACKGROUND

Plaintiff filed his first motion for an emergency injunction on February 26, 2025 (the "First Motion"). ECF No. 8. State Defendants filed a response to the First Motion, ECF No. 32, and Plaintiff filed a reply, ECF No. 34. The First Motion is pending a decision as of this filing.[2] Plaintiff filed the Second Motion on May 12, 2025, ECF No. 37, and State Defendants were ordered to respond by May 22, ECF No. 38.

STANDARD OF REVIEW

Whether to grant a preliminary injunction is left to the sound discretion of the Court. *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1188 (10th Cir. 2003). Because Plaintiff is pro se, the Court must liberally construe his pleadings. *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court must not advocate on his behalf. *Id.*; *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005) ("[T]he court cannot take on the responsibility of serving as the litigant's attorney in constructing arguments and searching the record.").

ARGUMENT

"A preliminary injunction is considered 'an extraordinary and drastic remedy.'" *Warner v. Gross*, 776 F.3d 721, 728 (10th Cir. 2015). A plaintiff seeking a preliminary injunction must establish (1) a substantial likelihood of success on the merits, (2) they will suffer irreparable injury if the preliminary injunction is denied, (3) the threatened injury outweighs the injury caused by the injunction, and (4) an injunction is not adverse to the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The plaintiff bears the burden of proof to demonstrate that each factor tips in their favor. *Heideman*, 348 F.3d at 1188-89.

In addition, the preliminary injunction Plaintiff seeks here is a "disfavored" injunction—he requests a "mandatory" injunction that would upset the existing status quo. *Schrier*, 427 F.3d at 1259. Plaintiff therefore bears a heavier burden on the

[2] State Defendants also filed a motion to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(1) and (b)(6), ECF No. 33, which Plaintiff has opposed, ECF No. 36. State Defendants intend to file a reply in support of the motion to dismiss by May 23, 2025.

likelihood-of-success-on-the-merits and the balance-of-harms factors: [they] must make a strong showing these tilt in [their] favor." *Free the Nipple v. City of Ft. Collins*, 916 F.3d 792, 797 (10th Cir. 2019) (quotations omitted). "[B]ecause a preliminary injunction is an extraordinary remedy, the right to relief must be clear and unequivocal." *Stephens v. Jones*, 494 F. App'x 906, 910 (10th Cir. 2012).

I. Plaintiff is not substantially likely to succeed on the merits.

The first preliminary injunction factor asks whether Plaintiff has established a substantial likelihood of success on the merits. *Winter*, 555 U.S. at 20. "A 'substantial likelihood' is defined as 'a prima facie case showing a reasonable probability that [the movant] will ultimately be entitled to the relief sought.'" *Peterson v. Kunkel*, 492 F. Supp. 3d. 1183, 1194 (D.N.M. 2020) (quoting *Continental Oil Co. v. Frontier Ref. Co.*, 338 F.2d 780, 781 (10th Cir. 1964)). As Plaintiff seeks a disfavored preliminary injunction, he faces a heavier burden to show this factor is satisfied. *Free the Nipple*, 916 F.3d at 797.

Plaintiff raises his Title II ADA, First Amendment, and Fourteenth Amendment claims as the basis for his second request for emergency injunction. ECF No. 37, pp. 2, 7. For the reasons stated below, Plaintiff cannot meet this heavy burden.

A. The Eleventh Amendment forecloses relief against the Division and the Executive Director in his official capacity under § 1983.

Plaintiff asserts two § 1983 claims as the basis for his request for emergency injunctive relief. ECF No. 37, p. 2. The Eleventh Amendment to the United States Constitution bars federal jurisdiction over private claims for money damages against a state, its instrumentalities, and state officials acting in their official capacity. *Tennessee v. Lane*, 541 U.S. 509, 517-18 (2004). Eleventh Amendment immunity presents an issue of subject matter jurisdiction. *Fent v. Okla. Water Resources Bd.*, 235 F.3d 553, 559 (10th Cir. 2000). Unless a state has waived its Eleventh Amendment immunity, or

Congress has abrogated it, such absolute immunity applies regardless of the relief sought. *See Higganbotham v. Okla. Transp. Comm'n*, 328 F.3d 638, 644 (10th Cir. 2003); *Ramirez v. Okla. Dep't of Mental Health*, 41 F.3d 584, 588 (10th Cir. 1994), *overruled on other grounds by Ellis v. Univ. of Kan. Med. Ctr.*, 163 F.3d 1186 (10th Cir. 1998). Colorado has not waived its immunity. *See Griess v. Colorado*, 841 F.2d 1042, 1044 (10th Cir. 1988) (holding that Colorado had not abandoned Eleventh Amendment immunity for § 1983 claims). And Congress did not abrogate such immunity in enacting § 1983. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 66 (1989).

The Division is part of the Colorado Department of Labor and Employment, an arm of the state. § 8-71-101, C.R.S. (2024); § 24-1-121(1), C.R.S. (2024). Thus, it is entitled to immunity. Likewise, the Executive Director is entitled to such immunity in his official capacity. *Kentucky v. Graham*, 473 U.S. 159, 165 (1985). Therefore, the § 1983 claims are barred, making Plaintiff unlikely to succeed on the merits.

B. Plaintiff is not substantially likely to succeed on his ADA claim.

The Second Motion also asserts that injunctive relief is needed due to a failure to accommodate Plaintiff's disability.[3] To state a claim for Title II ADA discrimination under a failure to accommodate theory,[4] Plaintiff must establish (1) he is otherwise entitled to a public benefit, service, or program also available to similarly situated persons without disabilities; (2) he requires a reasonable accommodation to access that benefit, service,

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[3] For the purposes of this Response only, the Division and Executive Director do not dispute Plaintiff is an individual with a disability.

[4] To the extent Plaintiff argues he was discriminated against or excluded based on a disability, he wholly fails to allege facts that could support intentional discrimination. *Meyers v. Colo. Dep't of Human Servs.*, 62 F. App'x 831, 833 (10th Cir. 2003); *Tenorio v. Pitzer*, No. CV 12-01295 MCA/KBM, 2014 WL 12650972, at *1 (D.N.M. Mar. 31, 2014) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009)) ("Discriminatory intent is an extremely demanding state of mind requirement.").

or program; and (3) the public entity refused to provide such accommodation, thereby denying access. *Grider v. City & Cnty. of Denver*, No. 10-CV-00722-MSK-MJW, 2011 WL 721279, at *5 (D. Colo. Feb. 23, 2011) (citing *Henrietta D. v. Bloomberg*, 331 F.3d 261, 273-76 (2d Cir. 2003)).

Here, because Plaintiff admits he has been able to access his unemployment benefits, ECF No. 37, p. 1; *see also* ECF No. 32-6; ECF No. 32-2, ¶ 15; ECF No. 32-3, ¶¶ 24-25, he cannot show a substantial likelihood of success on the third element of a failure to accommodate claim. *Babcock v. Michigan*, 812 F.3d 531, 535 (6th Cir. 2016) (noting the Supreme Court indicated in *City and County of San Francisco v. Sheehan*, 575 U.S. 600 (2015), that, "Title II's private right of action is specifically intended to remedy interference with a disabled individual's participation in, or benefitting from, a public service, program, or activity"). Moreover, Plaintiff does not allege he requested any accommodation. ECF No. 37. *Robertson v. Las Animas Cnty. Sheriff's Dep't*, 500 F.3d 1185, 1197-98 (10th Cir. 2014) (public entity has no obligation to provide accommodation absent notice through a request or obvious need for accommodation); *Young v. City of Claremore, Okla*., 411 F. Supp. 2d 1295, 1308 (N.D. Okla. 2005).[5] For these reasons, Plaintiff is not substantially likely to succeed on his ADA claim.

C. Plaintiff is not substantially likely to succeed on his First Amendment claim.

The First Amendment guarantees "the right of the people . . . to petition the government for a redress of grievances." U.S. Const. amend. I. The Second Motion alleges that Plaintiff's right to petition "has been effectively nullified by Defendants'

[5] Plaintiff had also not requested an accommodation from the Division as of the filing of State Defendant's response to the First Motion. ECF No. 32-1, ¶ 10.

procedural framework, which conditions the appeal process upon receipt of a particular type of predetermined administrative notice." ECF No. 37, p. 8.

As discussed above, Plaintiff cannot show a substantial likelihood of success on the merits of his § 1983 claims as both are barred by the Eleventh Amendment.

Plaintiff also cannot establish that the Division impaired his right to petition for redress. Though the right to petition and the right to free speech are separate guarantees, they are related and "generally subject to the same constitutional analysis." *Wayte v. United States*, 470 U.S. 598, 610 n.11 (1985) (citing *NAACP v. Claiborne Hardware Co.*, 458 US. 886, 911-15 (1982)); *see also McDonald v. Smith*, 472 U.S. 479, 485 (1985) ("[T]here is no sound basis for granting greater constitutional protection to statements made in a petition to the President than other First Amendment expressions."). The purpose of the right to petition is to guarantee that "people 'may communicate their will' through direct petitions to the legislature and government officials." *Id.* at 482 (quoting 1 Annals of Cong. 738 (1789)).

Plaintiff spoke with multiple call center agents of the Division in 2023—before and after the integrity holds were put in place. ECF No. 32-1, ¶ 9; ECF No. 32-7 (showing inbound calls with representatives in April and July 2023). He also used the MyUI+ online portal to post notes to the Division and provide new contact information. ECF No. 32-2, ¶ 17.

The Second Motion does not allege the Division failed to consider information it received from Plaintiff; on the contrary, the claim for benefits was approved. The "right to petition government afforded by the First Amendment does not include the right to speak in person to government officials. Where written communications are considered by government officials, denial of a hearing does not infringe upon the right to petition." *Scroggins v. City of Topeka, Kan.*, 2 F. Supp. 2d 1362, 1375 (D. Kan. 1998).

Finally, even if Plaintiff had received an adverse decision, by statute, he could seek several layers of appellate review of that decision. Under § 8-74-102(1), C.R.S. (2024), the initial determination is made by a deputy designated by the Executive Director. Plaintiff could then appeal any decision of the deputy and obtain a hearing before a hearing officer. § 8-74-103(1), C.R.S. (2024). If still dissatisfied, Plaintiff could appeal to the Industrial Claims Appeals Office and then the Colorado Court of Appeals. §§ 8-74-104(1), 8-74-107(2), C.R.S. (2024). In fact, Plaintiff used these procedures to appeal a decision about his 2023 claim. ECF No. 32-3, ¶¶ 15-17. Although Plaintiff alleges the available appellate procedures are deficient, they were established by the Colorado General Assembly, not State Defendants.

Plaintiff cannot establish that the Division deprived him of his right to petition for redress concerning his 2023 claim for benefits. Thus, he cannot establish a substantial likelihood of success on the merits of his First Amendment claim, particularly under the heavier standard applicable to disfavored injunctions.

D. Plaintiff is not substantially likely to succeed on his Fourteenth Amendment claim.

Nor can Plaintiff establish a substantial likelihood of success on his Fourteenth Amendment claim. The Second Motion alleges "Plaintiff was subjected to three separate integrity holds by Defendants in 2023 without ever receiving formal notices or appealable determinations especially on the 3rd." ECF No. 37, pp. 7-8.

Because Plaintiff seeks a disfavored injunction, he faces a heavier burden to satisfy the substantial likelihood of success factor. *Free the Nipple*, 916 F.3d at 797. To satisfy procedural due process in unemployment compensation proceedings, a claimant must be given "adequate advance notice and an opportunity to be heard prior to state action resulting in deprivation of a significant property interest." *Mountain States Tel. & Tel. Co. v. Dep't of Lab. & Emp't*, 520 P.2d 586, 588 (Colo. 1974).[6]

Plaintiff cannot establish that he exhausted his administrative remedies under state law or that any exception to the exhaustion requirement applies. "Under Colorado law, '[i]f complete, adequate, and speedy administrative remedies are available, a party must pursue these remedies before filing suit in district court.'" *Boulter v. Noble Energy, Inc.*, 521 F. Supp. 3d 1077, 1084 (D. Colo. 2021) (quoting *City & Cnty. of Denver v. United Air Lines, Inc.*, 8 P.3d 1206, 1212 (Colo. 2000)). "Failure to exhaust administrative remedies before seeking judicial relief is a jurisdictional defect." *Id.* The exhaustion requirement "applies with equal force when the party seeks declaratory relief." *United Air Lines*, 8 P.3d at 1213.

Here, Colorado statute establishes the framework by which claims for unemployment benefits "shall be made, processed, and reviewed . . . ." § 8-74-101(1), C.R.S. (2024). After the Division receives a claim, notifies interested parties, and provides an opportunity to provide information, a deputy of the Division reviews all the submitted materials and must "issue a decision . . . ." § 8-74-102(1). Under § 8-74-103(1), an interested party may appeal a deputy's decision "and obtain a hearing covering any issue relevant to the disputed claim," to be heard by a hearing officer of the Division. *See* § 8-74-103(3). A party may seek review of a hearing officer's decision by a panel of the Industrial Claim Appeals Office. § 8-74-104(1). Under § 8-74-107(1), "No action, proceeding, or suit to set aside an industrial claim appeals panel's decision or to enjoin the enforcement thereof shall be brought unless the petitioning party has first complied with the review provisions of sections 8-74-104 and 8-74-106." "Actions,

[6] As discussed above, Plaintiff cannot show a substantial likelihood of success on the merits because both of his § 1983 claims are barred by the Eleventh Amendment.

proceedings, or suits to set aside, vacate, or amend any final decision of the industrial claim appeals panel or to enjoin the enforcement thereof may be commenced in the court of appeals by any interested party, including the division." § 8-74-107(2).

The Second Motion comes nearly two years after integrity holds were placed on Plaintiff's 2023 claim. The holds were placed only after the claim had been approved and Plaintiff had received several benefit payments. *See* ECF No. 32-6 (reflecting payments to Plaintiff in March-June 2023). Plaintiff admits he is receiving benefit payments in 2025. He cannot establish that he exhausted the administrative remedies available to him under Colorado statute. As such, the Fourteenth Amendment claim is not substantially likely to succeed because it is subject to dismissal for lack of jurisdiction. *United Air Lines*, 8 P.3d at 1217; *Boulter*, 521 F. Supp. 3d at 1084-87 (dismissing federal suit for lack of jurisdiction due to failure to exhaust administrative remedies under state law).

Because Plaintiff has failed to meet his heavy burden to establish a substantial likelihood of success on the merits, the Second Motion should be denied.

II. The remaining preliminary injunction factors overwhelmingly favor State Defendants.

A. Plaintiff has not shown irreparable harm.

Irreparable harm may occur when injuries cannot be adequately remedied with money or when complete relief cannot be granted following a final determination on the merits. *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1250 (10th Cir. 2001) (internal citation and quotations omitted). The threatened injury "must be both certain and great," and "not be merely serious or substantial." *Id.* "A plaintiff suffers irreparable injury when the court would be unable to grant an effective monetary remedy after a full trial because such damages would be inadequate or difficult to ascertain." *Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir. 2001).

Here, Plaintiff admits he has received his unemployment benefits. ECF No. 37, p. 1. He simply believes the amounts paid in 2023 were improperly calculated. *Id.* at pp. 1, 5. He alleges neither ongoing personal harm, nor that damages awarded if Plaintiff succeeded at trial would be inadequate or difficult to ascertain. Thus, he has failed to demonstrate irreparable harm, and the Second Motion should be denied.

B. The balance of equities and public interest strongly favor denying the requested relief.

The third and fourth preliminary injunction factors require the Court to balance the harm to Plaintiff of not obtaining the injunctive relief he requests against the Division's harm if the injunction is granted and to determine whether the requested relief will adversely affect the public interest. *Gen. Motors Corp. v. Urban Gorilla, LLC*, 500 F.3d 1222, 1226 (10th Cir. 2007). These two factors merge where the requested injunction is opposed by an arm of the State. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

In his Second Motion, Plaintiff requests the Court order extensive "structural reform and compliance." ECF No. 37, p. 13. Specifically, he asks the Court to order State Defendants to revise the appellate process as to Division decisions, including creating an "emergency or expedited appeals track" for certain claimants; to send notices to "*all former and active claimants*" to make them aware of the new processes; to hire sixty additional call center staff; and to effectively gut and completely revamp the program integrity hold process. *Id.* at pp. 13-14 (emphasis added). Although Plaintiff has removed the fourteen-day compliance request that was asserted in his First Motion, the demands in the Second Motion remain extraordinary and would undoubtedly harm the public interest, as compliance would require the Division to divert its limited resources away from fulfilling its statutory mandates to meet Plaintiff's requests. Moreover, given that Plaintiff is receiving unemployment benefits, there is no harm, and the balance of equities does not tip in his favor. As such, the Second Motion should be denied.

CONCLUSION

For the reasons stated herein, and pursuant to the cited authorities, State Defendants respectfully request this Court deny Plaintiff's Second Emergency Motion for Injunctive Relief.

Respectfully submitted this 22nd day of May 2025,

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **STATE DEFENDANTS' RESPONSE TO SECOND MOTION FOR EMERGENCY INJUNCTION [ECF 37]** upon all parties herein by e-filing with the CM/ECF system maintained by the court, by email and/or by causing same to be deposited in the United States Mail, with First Class postage prepaid, at Denver, Colorado, on this 22nd Day of May 2025, addressed as follows:

Joshua Abrams
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s/ *Denise Munger*