

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 PLAINTIFF'S MOTION TO AMEND
JUDGEMENT [ECF 54]**

Defendants Division of Unemployment Insurance (the "Division") and Colorado Department of Labor and Unemployment ("CDLE") Executive Director Joe Barela (the "Executive Director") (collectively, "State Defendants"),¹ through counsel, respond to Plaintiff's Motion to Amend Judgement, ECF No. 54.

INTRODUCTION

Plaintiff filed a Motion to Amend Judgement on September 22, 2025. ECF No. 54. The Motion asks the Court to reconsider and vacate the Court's order granting State Defendants' motion to dismiss and denying Plaintiff's motions for emergency injunction and various other relief ("the Order") and the entry of final judgment, ECF Nos. 50, 51, entered on September 2, 2025. *Id.* at 10. The Motion also asks the Court for leave to file the contemporaneously filed Second Amended Complaint. ECF No. 54, p. 10.

¹ A return of service was filed for Jeff Fitzgerald indicating the Amended Complaint was left with an administrative assistant at the CDLE. ECF No. 20. However, because Mr. Fitzgerald is no longer employed by CDLE, this attempt at service was not effective.

Plaintiff's Motion fails to show why the Court should reconsider and vacate the order of dismissal. The Motion merely recycles old arguments previously rejected and makes new arguments which could have been raised in prior briefing. The Court should deny the Motion in its entirety, including Plaintiff's passing request for leave to file a Second Amended Complaint, expedited discovery, and other unspecified relief. ECF No. 54, p. 10.

The relevant factual background was outlined in the Order dismissing Plaintiff's claims. ECF No. 50, p. 2-6.

PROCEDURAL BACKGROUND

Plaintiff filed this action on December 6, 2024. ECF No. 1. Plaintiff filed an amended complaint on February 7, 2025. ECF No. 7. On April 28, 2025, State Defendants moved to dismiss the Amended Complaint pursuant to Rules 12(b)(1) and (6). ECF Nos. 33, 33-1. Plaintiff responded, ECF No. 36, and State Defendants filed a reply, ECF No. 42.

On September 2, 2025, the Court granted the State Defendants' Motion to Dismiss the Amended Complaint, ECF No. 50, and entered Final Judgment in favor of Defendants and against Plaintiff. ECF No. 51. The Court found (1) Plaintiff failed to exhaust administrative remedies as to denial of his unemployment claim; (2) the Eleventh Amendment barred claims against CDLE and the official-capacity claims against the individual defendants; (3) qualified immunity barred the individual-capacity § 1983 claims; (4) Plaintiff failed to state an ADA claim because he was able to access unemployment benefits; and (5) Plaintiff abandoned his remaining claims (Claims 4-8) by failing to respond to State Defendants' arguments supporting dismissal. *Id.* at 9-18. Plaintiff's individual-capacity claims against Defendants Barela and Fitzgerald were

dismissed with prejudice. ECF No. 51, p. 2. The remaining claims were dismissed without prejudice. *Id.* at 1-2.

On September 22, 2025, Plaintiff filed a [Third] Motion for Emergency Injunction, ECF No. 55,² a Second Amended Complaint, ECF No. 53, and his Motion to Amend Judgement, ECF No. 54. Plaintiff did not seek leave of Court or the consent of Defendants' counsel to amend his First Amended Complaint before (or after) the entry of Final Judgment. Plaintiff did not confer with Defendants' counsel prior to filing his post-judgment motions.

LEGAL STANDARDS

Pro Se Litigants

Because Plaintiff is pro se, the Court must liberally construe his pleadings. *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). But the Court “cannot take on the responsibility of serving as the litigant’s attorney in constructing arguments and searching the record.” *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005). Pro se parties must “follow the same rules of procedure that govern other litigants.” *Id.*

D.C.COLO.LCivR 7.1(a)

“Before filing a motion, counsel for the moving party or an unrepresented party shall confer or make reasonable, good faith efforts to confer with any opposing counsel or unrepresented party to resolve any disputed matter. The moving party shall describe in the motion, or in a certificate attached to the motion, the specific efforts to fulfill this duty.” D.C.COLO.LCivR 7.1(a).

² Because the case is closed, State Defendants do not consider the third Motion for Emergency Injunction to be ripe for briefing.

Rule 59(e)

Rule 59(e) permits a court to alter or amend a judgment upon the timely motion of a party. Fed. R. Civ. P. 59(e). “Rule 59(e) was adopted to make clear that the district court possesses the power to rectify its own mistakes in the period immediately following the entry of judgment.” *Cheavens v. Pub. Serv. Corp. of Colo.*, No. 14-cv-3374-WJM-KMT, 2016 WL 8469747, at *3 (D. Colo. Oct. 4, 2016) (cleaned up) (quoting *White v. N.H. Dep’t of Emp’t Sec.*, 455 U.S. 445, 450 (1982)). A Rule 59(e) motion must be premised on: (1) an intervening change in controlling law, (2) new evidence previously unavailable, or (3) the need to correct clear error or prevent manifest injustice. *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000); *see also Grove v. Groome*, No. 18-CV-01571-MEH, 2019 WL 9244881, at *2 (D. Colo. May 29, 2019), *aff’d*, 817 F. App’x 551 (10th Cir. 2020).

Relief under Rule 59(e) is appropriate only where the Court “misapprehended the facts, a party’s position, or the controlling law.” *Alpenglow Botanicals, LLC v. United States*, 894 F.3d 1187, 1203 (10th Cir. 2018). Rule 59(e) motions are disfavored. *DeWalt v. United States*, No. 20-CV-2681-WJM-NYW, 2021 WL 4710305, at *1 (D. Colo. Oct. 8, 2021). They “may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.” *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008) (internal citations omitted). Whether to grant a Rule 59(e) motion is left to the sound discretion of the Court. *Id.*

Rule 15(a)

A party may amend its pleading once within 21 days of serving it or within 21 days after service of a motion under Rule 12(b). Fed. R. Civ. P. 15(a)(1). “In all other cases, a party may amend its pleading only with the opposing party’s written consent or

the court's leave." Fed. R. Civ. P. 15(a)(2). However, "[o]nce judgment is entered, the filing of an amended complaint is not permissible until judgment is set aside or vacated pursuant to Fed. R. Civ. P. 59(e) or 60(b)." *The Tool Box v. Ogden City Corp.*, 419 F.3d 1084, 1087 (10th Cir. 2005) (collecting cases). And "even though Rule 15(a) states that 'leave [to amend] shall be freely given when justice so requires,' 'this presumption is reversed in cases, such as here, where a plaintiff seeks to amend a complaint after judgment has been entered and a case has been dismissed.'" *Id.*

ARGUMENT

I. The Motion should be denied for failure to comply with the local rules and this Court's practice standards.

The Motion should be denied on its face for Plaintiff's failure to comply with D.C.COLO.LCivR 7.1(a). Plaintiff did not confer with State Defendants' counsel before filing his Motion to Amend Judgement, and the Motion makes no certification as to Plaintiff's "specific efforts to fulfill this duty." ECF No. 54. Plaintiff failed to confer before filing several other motions. See ECF Nos. 5, 8, 17, 35, 37, 44, 49, 55. Thus, the Court should deny the Motion on that basis alone.

Similarly, the Motion improperly requests two distinct actions—modify the judgment to reopen the case *and* grant Plaintiff leave to amend. Thus, the Motion violates Uniform Civil Practice Standard 7.1A(a)(5) and should be denied on that basis. See RMR Civ. Practice Standard 1.1(c).

II. Plaintiff is not entitled to relief under Rule 59(e).

Even if the Court considers the Motion's merits, the Motion should also be denied because it fails to show why Plaintiff is entitled to relief under Rule 59(e). Plaintiff raises several arguments: (1) an intervening change in controlling law requires reopening the case; (2) the Court ignored evidence supporting his claims; (3) several of the Court's

legal rulings were erroneous; and (4) the Court erred in denying Plaintiff's pending motions as moot. None of these arguments satisfies Rule 59(e)'s requirements.

Plaintiff's first argument, concerning *Williams v. Reed*, 604 U.S. 168 (2025), fails because it could have been raised in prior briefing, and because *Reed* is neither intervening nor controlling law. The Supreme Court decided *Williams v. Reed* on February 21, 2025. Plaintiff did not raise or discuss *Reed* in his response to the motion to dismiss, ECF No. 36; his supplemental response to the motion to dismiss, ECF No. 48; or his filings seeking injunctive relief and to supplement the Complaint, ECF Nos. 37, 41, 48, 49; all of which were filed well after *Reed* was issued. A Rule 59(e) motion "is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing." *Servants of Paraclete*, 204 F.3d at 1012 (citing *Van Skiver v. United States*, 952 F.2d 1241, 1243 (10th Cir. 1991)). Plaintiff could have argued *Reed* in his earlier briefing, but he did not. Thus, *Reed* does not provide a basis for Rule 59(e) relief.

Even if *Reed* had been issued after the Order, it is not controlling law. In *Reed*, several unemployment benefits claimants filed suit in state court to challenge delays in the processing of their benefits claims by the state labor department. *Reed*, 604 U.S. at 171. The claimants sought an order requiring the state labor department to process their claims more quickly, *id.*, but they "did not ask the court to rule that they were entitled to unemployment benefits," *id.* at 172. The state court dismissed the claimant's § 1983 claims on the basis that they had not satisfied an administrative exhaustion requirement imposed by state statute. The state supreme court affirmed on the same failure-to-exhaust grounds. *Id.* at 170. The Supreme Court reversed, finding that the state court's application of a state exhaustion requirement effectively immunized state officials from § 1983 claims challenging the administrative delays and was therefore preempted under

the Supremacy Clause. *Id.* at 176. *Reed* explicitly characterized its holding as narrow and limited. *Id.* at 170; *see also id.* at 175 (“Alabama’s exhaustion requirement operates to immunize state officials from a narrow class of claims brought under § 1983—namely, claims of unlawful delay in the administrative process.”). *Reed* held: “In the unusual circumstances presented here—where a *state court’s* application of a *state exhaustion requirement* in effect immunizes state officials from § 1983 claims challenging delays in the administrative process—*state courts* may not deny those § 1983 claims on failure-to-exhaust grounds.” *Id.* at 174 (emphases added).

Unlike *Reed*, this is a federal lawsuit in which Plaintiff seeks a ruling that he *is* entitled to benefits, plus awards of monetary damages and wide-ranging retroactive and prospective injunctive relief. These key distinguishing facts make *Reed* inapposite. Thus, Plaintiff fails to show entitlement to relief on the basis of an intervening change in controlling law.

Plaintiff next asserts the Court ignored evidence that supported his claims. ECF No. 54, p. 8. But this assertion effectively recycles several arguments that were raised in prior briefing and rejected in the Order. *Exxon Shipping*, 554 U.S. at 485 n.5; *Servants of Paraclete*, 204 F.3d at 1012.

Next, Plaintiff argues several of the Court’s rulings were erroneous. He claims the Court misapplied sovereign and qualified immunity doctrines and improperly concluded Plaintiff abandoned Claims 4 through 8. ECF No. 54, p. 3-6, 8-9. These arguments, which recycle arguments made, or raise arguments that could have been made, in Plaintiff’s motion to dismiss response, *see* ECF No. 36, p. 2-3, 6-10, fail to provide a basis for Rule 59 relief. Indeed, the Court considered and rejected these arguments in its Order. ECF No. 50, p. 9-19.

Plaintiff also asserts the Court erred in denying as moot his pending motion to supplement his Amended Complaint. ECF No. 54, p. 4-5. The supplemental pleading sought to supplement Plaintiff's ADA claim, add a Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(c) ("RICO") claim, and add a Colorado Consumer Protection Act ("CCPA") claim. ECF No. 49-1, p. 5-7. None of these claims are actionable. First, the supplemental ADA allegations cannot change the fact that Plaintiff was able to access unemployment benefits. See ECF No. 50, p. 18. Second, the RICO claim is barred by sovereign immunity. *Bernard v. Vermont*, 23-CV-00241-DDD-KAS, 2024 WL 760005, at *2 (D. Colo. Feb. 2, 2024), *report and recommendation adopted*, 1:23-CV-00241-DDD-KAS, 2024 WL 760002 (D. Colo. Feb. 16, 2024) ("The legislative history of the RICO Act . . . fails to indicate that Congress considered and firmly decided to abrogate the Eleventh Amendment immunity of the States.") (cleaned up) (quoting *Turlington v. Connor*, No. 21-cv-0142, 2021 WL 6051067, at *4 (N.D. Okla. Dec. 21, 2021)). Third, the CCPA claim cannot be maintained against CDLE.³ *Tatten v. City & Cnty. of Denver*, No. 16-CV-01603-RBJ-NYW, 2017 WL 5172244, at *13, n.9 (D. Colo. Feb. 3, 2017), *report and recommendation adopted*, 16-CV-01603-RBJ-NYW, 2017 WL 1435854 (D. Colo. Mar. 29, 2017) ("Plaintiff cannot maintain a CCPA claim against the [government defendants], because they are not businesses dealing with the public.")⁴ Because the supplemental pleading did not raise actionable claims, the Court did not err in denying the motion to supplement as moot.

³ The supplemental pleading contains no allegations against the individual defendants. ECF No. 49-1.

⁴ Plaintiff also fails to plead compliance with the Colorado Governmental Immunity Act's notice requirements. *Greeley Publ'g Co. v. Hergert*, No. CIV.A. 05-CV-00980EW, 2006 WL 1581754, at *16 (D. Colo. June 6, 2006) (dismissing CCPA complaint for failure to comply with notice requirement).

Plaintiff also cannot rely on the Second Amended Complaint, filed only after entry of judgment and without leave of court, to cure the defects on which the Order and Final Judgment is based. *The Tool Box*, 419 F.3d at 1087.

Finally, to the extent Plaintiff argues the Court committed clear error or that relief is necessary to avoid manifest injustice, the Motion fails to provide “a clear indication—one that manifests itself without the need for in-depth analysis or review of the fact—that the court erred.” *Chankhok v. Companion Life Ins. Co.*, 555 F. Supp. 3d 1092, 1118 (D.N.M. 2021).

Because Plaintiff seeks to relitigate previous arguments and makes arguments that could have been raised prior to the entry of final judgment, he is not entitled to relief under Rule 59(e). The Court should deny the Motion and refuse to vacate the Final Judgment.

III. Plaintiff’s request for leave to amend is procedurally improper.

Plaintiff asks the Court to grant him leave to amend his Complaint. ECF No. 54, p. 10. This request is procedurally improper. “[T]he Tenth Circuit has indicated that a party may not file motions in a closed case.” *Hackborn v. Hansen*, No. 19-CV-02679-DDD-NYW, 2022 WL 540654, at *2 (D. Colo. Feb. 23, 2022). “Rather, the party must first successfully move to re-open the case under [Rule 59(e).]” *Id.* The Tenth Circuit “has repeatedly and unequivocally held that, once judgment is entered, the filing of an amended complaint is not permissible until judgment is set aside or vacated pursuant to Fed. R. Civ. P. 59(e).” *The Tool Box, Inc. v. Ogden City Corp.*, 419 F.3d 1084, 1087 (10th Cir. 2005) (cleaned up). Indeed, Rule 15’s permissiveness presumption is reversed in cases “where a plaintiff seeks to amend a complaint after judgment has

been entered and a case has been dismissed.” *Id.* at 1087-88. “To hold otherwise would enable the liberal amendment policy of Rule 15(a) to be employed in a way that is contrary to the philosophy favoring finality of judgments and the expeditious termination of litigation.” *Id.* at 1087.

Although Plaintiff has asked the Court to re-open the case via Rule 59(e), he has not yet succeeded in that effort, making the request to amend premature. Moreover, as explained above, Plaintiff is not entitled to relief under Rule 59(e), making the request to amend improper. The Court should not consider the amended complaint and should deny the motion.⁵

IV. Even if amendment was procedurally proper, amendment would be futile.

Even if the request to amend was procedurally proper, the requested amendments are futile. Despite Plaintiff’s assertions to the contrary, ECF No. 54, p. 5-8, the Second Amended Complaint still fails to satisfy *Ex parte Young* and administrative exhaustion requirements or allege violations of the ADA or clearly established law.

Plaintiff first asserts that the Second Amended Complaint falls within the *Ex parte Young* exception to Eleventh Amendment immunity. *Id.* at 5-6. But the proposed amendment continues to seek retrospective relief in the form of money damages, and discovery on “compensatory economic damages.” See, e.g., ECF No. 53, p. 1, 2, 3, 21, 28. Plaintiff next asserts the Second Amended Complaint contains plausible ADA claims. ECF No. 54, p. 6-7. Yet, the proposed amendment merely reiterates prior allegations, ECF No. 53, p. 4-5, 8-9, none of which change the fact that Plaintiff was able to access unemployment benefits, precluding a failure to accommodate ADA claim.

⁵ The request for emergency injunctive relief is likewise procedurally improper.

Thus, the proposed amendments do not cure the deficiencies on which dismissal was based and the request to amend should be denied.

CONCLUSION

For the reasons stated herein, and pursuant to the cited authorities, State Defendants respectfully request this Court deny Plaintiff's Motion to Amend Judgement in its entirety, including denial of the request for leave to amend.

Respectfully submitted this 13th day of October 2025,

PHILIP J. WEISER
Attorney General

s/ Lauren Davison

LAUREN DAVISON*
Senior Assistant Attorney General
Tort Litigation Unit
Civil Litigation & Employment Practices Section
STEPHEN WOOLSEY*
Assistant Solicitor General
Labor Unit
State Services Section
Attorneys for State Defendants
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th Floor
Denver, Colorado 80203
Telephone: (720) 508-6000
FAX: (720) 508-6032
E-mail: lauren.davison@coag.gov
stephen.woolsey@coag.gov

*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **STATE DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO AMEND JUDGEMENT [ECF 54]** 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 13th day of October 2025, addressed as follows:

Joshua Abrams
P.O. Box 761
Loveland, CO 80539

s/ Lauren Davison