

2024 WL 218410

Only the Westlaw citation is currently available.

United States District Court, D. New Mexico.

Sorchè MORGAN, Plaintiff,

v.

COMMUNITY AGAINST VIOLENCE,

Anita Medina, Malinda Williams, Celeste

Trujillo, and Debbie Cisneros, Defendants.

No. 23-cv-353-WPJ/JMR

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Filed January 19, 2024

Attorneys and Law Firms

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MEMORANDUM OPINION AND ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

William P. Johnson, CHIEF UNITED STATES DISTRICT JUDGE

***1 THIS MATTER** comes before the Court upon Defendants' Motion to Dismiss (**Doc. 34**). The Court finds that the motion is well-taken, and unopposed, and is therefore **GRANTED**.

BACKGROUND

The Parties are familiar with the facts and procedural history, so the Court provides only a brief overview for purposes of ruling on the instant motion.

On April 26, 2023, Plaintiff filed a Complaint¹ (**Doc. 1**) against her former employer, Community Against Violence ("CAV"), and four individuals who served as employees at CAV. On October 23, 2023, the Court issued a Memorandum Opinion and Order (**Doc. 32**) dismissing numerous claims—some with prejudice and some without. The Court also granted leave to file an amended complaint (**Doc. 32 at 17**). In so doing, the Court simultaneously cautioned Plaintiff that a failure to adhere to the Court's orders or rules may result in

"DISMISSAL OF HER CASE WITH PREJUDICE." *Id.* at 15 & 17.

¹ In her initial Complaint, Plaintiff alleged violations of: (1) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. ("Title VII"); (2) the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq. ("ADA"); (3) 42 U.S.C. § 1981 ("Section 1981"); (4) the New Mexico Inspection of Public Records Act, NMSA 1978 §§ 14-2-1 to 14-2-12 (2023) ("IPRA"); (5) the New Mexico Human Rights Act, NMSA 1978 § 28-1-1 et seq. (2023) ("NMHRA"); (6) the Rehabilitation Act of 1973, 28 U.S.C. § 701 et seq. ("Rehabilitation Act"); and (7) the New Mexico Occupational Health and Safety Act, NMSA 1978 §§ 50-9-1 to 50-9-25 (2023) ("NMOSHA").

On November 22, 2023, Plaintiff Morgan filed a Motion to Amend—which the Court construes as her Amended Complaint (**Doc. 33**). On December 13, 2023, Defendants filed their second Motion to Dismiss (**Doc. 34**). More than a month has passed, and Plaintiff has not responded.

LEGAL STANDARD

Defendants moved to dismiss Plaintiff's Amended Complaint (**Doc. 33**) under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). A claim is plausible when the complaint contains "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). A complaint must contain "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678, 129 S.Ct. 1937. Thus, when the allegations in a complaint are "so general that they encompass a wide swath of conduct, much of it innocent, then the plaintiffs 'have not nudged their claims across the line from conceivable to plausible.'" *Khalik v. United Air Lines*, 671 F.3d 1188, 1191 (10th Cir. 2012).

Under Local Rule 7.4 and Federal Rule of Civil Procedure 6, Plaintiff's Response was due no later than December 27,

2023. D.N.M.LR-Civ. 7.4(a); [Fed. R. Civ. P. 6\(a\)\(1\)\(C\), \(d\)](#). To date, Plaintiff has not responded. Under Local Rule 7.1, Plaintiff's failure to timely respond constitutes consent to dismiss her claims. D.N.M.LR-Civ. 7.1(b). Although the Court could waive the Rule to avoid injustice—such action is not warranted here. *See* D.N.M.LR-Civ. 1.7.

DISCUSSION

I. Issues with Plaintiff's Amended Complaint

*2 The Plaintiff here is *pro se*. As required, the Court liberally construes her filing. [United States v. Trent](#), 884 F.3d 985, 993 (10th Cir. 2018). Despite liberal construction, the Court finds that Plaintiff's Amended Complaint is insufficiently pled and fails to plausibly state a claim.

Neither Plaintiff's Complaint (**Doc. 1**) nor her Amended Complaint (**Doc. 33**) satisfy the *Iqbal/Twombly* pleading standards. Neither filing provides fair notice of the factual and legal basis for each alleged claim. [Warnick v. Cooley](#), 895 F.3d 746, 751 (10th Cir. 2018). Specifically, the Amended Complaint (**Doc. 33**) is deficient in the following ways. First, it still includes Defendant Trujillo—despite the Court's admonishment (**Doc. 33 at 9 & Doc. 34 at 2**). Second, Plaintiff still seeks individual liability on claims that were dismissed with prejudice (**Doc. 33 at 16 & Doc. 34 at 2**). Third, Plaintiff still does not sufficiently allege facts that establish a violation of the Rehabilitation Act, Title VII, the ADA, or Section 1981—despite the Court allowing leave to amend (**Doc. 33 at 10–13 & Doc. 34 at 3**). *See* [Gee v. Pacheco](#), 627 F.3d 1178, 1195 (10th Cir. 2010) (explaining when a *pro se* Plaintiff is “close to stating a claim” they should be allowed to amend the complaint).

The Court assumed Plaintiff would take advantage of the opportunity to file an amended complaint by pleading facts that plausibly establish a [Section 1981](#), Title VII, Rehabilitation Act, or ADA claim. She did not.

Plaintiff's [Section 1981](#) claim does not remotely approach pleading sufficient facts to demonstrate the “but for race” standard. [Comcast Corp. v. Nat'l Ass'n of African American-Owned Media](#), — U.S. —, 140 S. Ct. 1009, 1019, 206 L.Ed.2d 356 (2020). Similarly, Plaintiff's Title VII claim does not state facts sufficient to clear the “motivating factor” showing. [Price Waterhouse v. Hopkins](#), 490 U.S. 228, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989); [Desert Palace, Inc. v. Costa](#), 539 U.S. 90, 123 S.Ct. 2148, 156 L.Ed.2d 84

(2003); *cf.* The Civil Rights Act of 1991 (1991 Act), [Pub. L. 102-166](#), 105 Stat. 1071. Even considering the burden-shifting framework under Title VII, Plaintiff's Amended Complaint falls short. [McDonnell Douglas Corp. v. Green](#), 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). Finally, in support of her ADA and Rehabilitation Act claims, Plaintiff only alleged vague and conclusory² statements (**Doc. 33**). The Complaints provide no details³ about Plaintiff's disability—instead only a bald, unsupported assertion that Plaintiff is disabled. This contention is insufficient to state a plausible claim for relief under the ADA or Rehabilitation Act. [Twombly](#), 550 U.S. at 570, 127 S.Ct. 1955.

² Plaintiff merely states she has a disability—but never defines what it is. Instead, she simply alleges “[mental disabilities](#)” (**Doc. 33 at 1–2, ¶¶ 1 & 3**). As best as the Court can glean, Plaintiff has “a disability related to COVID testing” that appears to be related to anxiety. *Id.* at 2.

³ The only time Plaintiff alleges specific conditions is in her Reply to Defendants' Response to Motion to Appoint Counsel (**Doc. 15**). In that motion, Plaintiff stated she has “mental distress resulting from her diagnosed [mental disabilities](#), including PTSD, [Generalized Anxiety Disorder](#), and [Major Depressive Disorder](#).” *Id.* at 1.

Here, Plaintiff has not alleged sufficient facts to allow the Court to draw a reasonable inference that Defendants are liable for violations of anything—instead, the Amended Complaint is just another “the-defendant-unlawfully-harmed-me” conclusory accusation. [Iqbal](#), 556 U.S. at 678, 129 S.Ct. 1937. Because Plaintiff did not state sufficient plausible allegations to establish the essential elements of each claim, the Amended Complaint cannot survive the Motion to Dismiss (**Doc. 34**).

II. Plaintiff Did Not Adhere to the Local Rules, Despite Warnings

*3 The Court previously stated it may dismiss Plaintiff's claims with prejudice and without notice if the Amended Complaint was insufficient (**Doc. 32**). *See* [Gee](#), 627 F.3d at 1195 (explaining when a *pro se* Plaintiff is “close to stating a claim” they should be allowed to amend the complaint) (citing [Hall v. Bellmon](#), 935 F.2d 1106, 1109–10 (10th Cir. 1991)). Obviously, dismissal is an “extreme sanction” that is not “to be taken lightly.” [King v. Fleming](#), 899 F.3d 1140, 1149 (10th Cir. 2018). It is, nevertheless, a permissible option. [Ehrenhaus](#)

v. Reynolds, 965 F.2d 916, 920 (10th Cir. 1992) (“[B]ecause dismissal with prejudice defeats altogether a litigant’s right to access to the courts, it should be used as a weapon of last, rather than first, resort.”).

It bears repeating: parties who proceed *pro se* are afforded some latitude. *Hall*, 935 F.2d at 1110; *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005). But *pro se* litigants must still file motions and comply with the Rules. See *Nielsen v. Price*, 17 F.3d 1276 (10th Cir. 1994) (explaining that the Tenth Circuit has “has repeatedly insisted that *pro se* parties follow the same rules of procedure that govern other litigants”) (cleaned up).

Here, Plaintiff capitalized on the ability to file the Amended Complaint. Unfortunately, she has since failed to respond to a case dispositive motion. So, what should the Court do? Of course, the Court would prefer to rule on the merits instead of resolving the case based on a filing timeline technicality. But this is not a “one day late” filing. *Env’t Dimensions, Inc. v. EnergySolutions Gov’t Grp., Inc.*, No. CV-16-1056, 2019 U.S. Dist. LEXIS 88304, at *7 (D.N.M. May 24, 2019). Plaintiff’s response is a month delinquent. Given the past warnings, the Court declines to waive the Rules. D.N.M.LR-Civ. 1.7. Dismissal with prejudice is appropriate (and just).

Before reaching this conclusion, the Court reviewed the entire docket to see if Plaintiff had filed any documents or evidence in support of her claims. She did not. Instead, however, the Court found additional citations to “hallucinated” cases. See Eugene Volokh, *Six Federal Cases of Self-Represented Litigants Citing Fake Cases in Briefs, Likely Because They Used AI Programs*, THE VOLOKH CONSPIRACY (Nov. 13, 2023), <https://reason.com/volokh/2023/11/13/self-represented-litigants-use-ai-to-write-briefs-produce-hallucinated-citations/>.

Let’s be clear. The Court is under no obligation to go a scavenger hunt to “save” Plaintiff’s insufficiently pled case. See *Greer v. Moon*, 83 F.4th 1283, 1292 (10th Cir. 2023) (explaining that courts do not act as *pro se* litigant’s “advocate”); *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013). In fact, such a “scavenger hunt” has been cited with disfavor. *United States v. Harris*, 579 F. App’x 657, 661 (10th Cir. 2014) (unpublished). But given Plaintiff’s *pro se* status, coupled with the invariable dismissal (given the Amended Complaint’s deficiencies and a lack of a response to the Motion), the Court wanted to ensure the “i” was dotted and the “t” was crossed. The Court was not expecting (let alone

wanting) to find more⁴ fake cases. See **Doc. 32 at 15**. But here we are.

4

Because the Magistrate Judge ruled on this request for counsel (**Doc. 25**), this Court had not previously reviewed the filings in detail. Unfortunately for Plaintiff, upon a thorough review of her Reply (**Doc. 15**), the Court discovered additional hallucinated cases: (1) *Linton v. Comm’r of Social Sec.*, 2014 WL 505984 (D.N.M. Feb. 5, 2014); (2) *Smith v. United States*; (3) *Ortega v. Royer Corp.*, 151 F. Supp. 3d 1167, 1170 (D.N.M. 2015); (4) *Chavez v. City of Albuquerque*, 150 F. Supp. 3d 1196, 1206 (D.N.M. 2015); (5) *Tatum v. Oklahoma City*, 441 F.3d 1212 (10th Cir. 2006); and (6) *Chilson v. Experian Information Solutions, Inc.*, 829 F.3d 869 (10th Cir. 2016).

First, zero “Linton” cases are from this district. See e.g., *Linton v. Comm’r of Social Sec.*, No. 18-cv-0632, 2019 U.S. Dist. LEXIS 186395, 2019 WL 5551436 (E.D.N.Y. Oct. 28, 2019); *Linton v. Comm’r of Soc. Sec.*, 2014 U.S. Dist. LEXIS 25381 (S.D. Ohio Feb. 18, 2014). Although there is also a Tenth Circuit “Linton” case—that one is stylized as *Linton v. Comm’r of Internal Revenue*, 764 F. App’x 674 (10th Cir. 2019) (unpublished). Second, the quotation attributed to *Smith* produces no results. Third, the pinpoint citation to *Ortega* redirects to *Cascadia Wildlands v. Woodruff*, 151 F. Supp. 3d 1153 (W.D. Wash. 2015). Further, there is no “*Ortega v. Royer Corp.*” that has been litigated in D.N.M. Fourth, the *Chavez* case is also nonexistent—instead, it redirects to *Camp Richardson Resort, Inc. v. Phila. Indemnity Ins. Co.*, 150 F. Supp. 3d 1186 (E.D. Cal. 2015). Fifth, the *Tatum* case is also fake—it is actually *United States v. Apperson*, 441 F.3d 1162 (10th Cir. 2006). And last but not least, there is no such *Chilson* case from the Tenth Circuit. That citation is actually *Flournoy v. City of Chicago*, 829 F.3d 869 (7th Cir. 2016).

*4 The Court made allowances for the Plaintiff’s initial failures in the Complaint (**Doc. 1**) and Motion Response (**Doc. 28**). Cf. *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013). The Court provided Plaintiff with “constructive and cautionary guidance” (**Doc. 32 at 15**). Defendants even attempted to facilitate proper pleading standards (**Doc. 34-1**), but Plaintiff was nonresponsive (**Doc. 34 at 2**).

At bottom, Plaintiff failed to adhere to this Court's Rules on several occasions. See *Chambers v. NASCO, Inc.*, 501 U.S. 32, 50, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991) (recognizing a Court's inherent power to impose a variety of sanctions to regulate its docket, promote judicial efficiency and deter frivolous filings); *Ayala v. Holmes*, 29 F. App'x 548, 551 (10th Cir. 2002) (stating a court has the inherent power to regulate the activities of vexatious or abusive litigants after appropriate notice is given).

CONCLUSION

As it stands, the legal and factual matters asserted in Plaintiff's Complaint and Amended Complaint are totally devoid of

any legal merit. The claims in Counts I–IV of the Amended Complaint (**Doc. 34**) remain insufficiently pled under [Fed. R. Civ. P. 12\(b\)\(6\)](#) and *Twombly/Iqbal*. Moreover, Plaintiff did not respond to the Defendants' Motion to Dismiss in accordance with D.N.M.LR-Civ. 7.4(a).

IT IS THEREFORE ORDERED that Defendants' Motion to Dismiss (**Doc. 34**) is **GRANTED**. The Plaintiff's claims are hereby **DISMISSED with prejudice**.

IT IS SO ORDERED.

All Citations

Slip Copy, 2024 WL 218410

2024 WL 639860

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No. 23-cv-353-WPJ/JMR

|

Filed February 15, 2024

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MEMORANDUM OPINION AND ORDER STRIKING PLAINTIFF'S UNTIMELY MOTIONS and DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION and ORDER TO SHOW CAUSE REGARDING FILING RESTRICTIONS

William P. Johnson, CHIEF UNITED STATES DISTRICT
JUDGE

***1 THIS MATTER** comes before the Court upon the following motions filed by *pro se*¹ Plaintiff: (1) Notice of Defendants' Change of Address, filed February 8, 2024 (**Doc. 37**); (2) Response in Opposition of Second Motion to Dismiss, filed February 8, 2024 (**Doc. 38**); and (3) Motion for Reconsideration, filed February 8, 2024 (**Doc. 39**). Plaintiff's first two motions are **STRICKEN** as untimely. Plaintiff's Rule 59(e) Motion is **DENIED**. Finally, Ms. Morgan is ordered to **SHOW CAUSE** as to why she should not be designated as a restricted filer.

¹ Plaintiff is proceeding *pro se*, so the Court liberally construes her filings—but does not act as her advocate. See *Xingfei Luo v. Wang*, 71 F.4th 1289, 1291 n.1 (10th Cir. 2023) (citation omitted).

BACKGROUND

Plaintiff Sorchè Morgan sued her former employer alleging various state and federal causes of action (**Doc. 1**). The Court issued a Memorandum Opinion and Order (**Doc. 32**) dismissing numerous claims—some with prejudice and some without. The Court also granted leave to file an amended complaint (**Doc. 32 at 17**). After Plaintiff amended her complaint (**Doc. 33**), Defendants filed their second Motion to Dismiss (**Doc. 34**). Plaintiff did not respond until February 8, 2024—after the Court already dismissed Plaintiff's claims with prejudice and entered a final judgment (**Docs. 35 & 36**).

Following dismissal of the case, Plaintiff filed three additional pleadings. Two filings (**Docs. 38 & 39**) warrant substantive discussion, although none warrant relief.

DISCUSSION

Plaintiff's onslaught of meritless filings continues (**Docs. 37–39**). The Court has no intention of allowing Plaintiff to continue her attempts to commandeer Court personnel and resources with her filings—so Plaintiff will be facing filing restrictions in the future should she persist in these vexatious litigation tactics. For the reasons below, Plaintiff's untimely filings are **STRICKEN** and her Rule 59(e) motion is **DENIED**.

I. Newly Filed Motions

The Court dismissed Plaintiff's lawsuit in its entirety—both on the merits and as a sanction for her conduct during litigation (**Docs. 32, 35, 36**).

Nevertheless, Ms. Morgan brings three new motions. First, she filed a “Notice of Change of Address.” **Doc. 37**. Although the parties have a continuing duty to notify the Clerk of changes in address, notification by a *pro se* Plaintiff about an unconfirmed change of address by Defendants' counsel is nonjusticiable. See D.N.M.LR-Civ. 83.6. No further discussion is warranted. Plaintiff's Notice motion is **STRICKEN**.

Next, Ms. Morgan filed her Response (**Doc. 38**) to Defendant's second motion to dismiss (**Doc. 34**). This response was six weeks late. Third, and finally, Plaintiff filed a motion for reconsideration under Rule 59(e)

A. Plaintiff's Delinquent Response

Plaintiff's Response (**Doc. 38**) to Defendants' Second Motion to Dismiss (**Doc. 34**) was filed over six weeks late. Pursuant to the Local Rules, Plaintiff's non-response constituted consent to dismiss her claims. D.N.M.LR-Civ. 7.1(b), 7.4(a). Plaintiff even admits to "her inability to respond promptly." **Doc. 38 at 2**. The Court is empathetic to the alleged circumstances in Ms. Morgan's life and understands the difficulties of proceeding *pro se*. As the Court repeatedly stated, parties who proceed *pro se* are afforded some latitude. See **Doc. 32 at 13**; **Doc. 35 at 5** (citing *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991)). But even given this extra latitude, a *pro se* litigant must still file motions and comply with the Rules. See *Nielsen v. Price*, 17 F.3d 1276, 1277 (10th Cir. 1994).

*2 While acknowledging that dismissal is a drastic sanction, the Tenth Circuit has "repeatedly upheld dismissals" when a party neglects their case or refuses to obey a court's orders. *Green v. Dorrell*, 969 F.2d 915, 917 (10th Cir. 1992) (citing cases). Here, however, Plaintiff's untimely response was not the sole reason² the Court dismissed her case with prejudice (**Doc. 35**). See *Meade v. Grubbs*, 841 F.2d 1512, 1521 n.7 (10th Cir. 1988) (disfavoring dismissal with prejudice as a sanction); *Persik v. Manpower Inc.*, 85 F. App'x 127, 130 (10th Cir. 2003) (unpublished). In fact, the Court provided Ms. Morgan with an opportunity to amend her complaint. See *Gee v. Pacheco*, 627 F.3d 1178, 1195 (10th Cir. 2010) (explaining a *pro se* Plaintiff who is "close to stating a claim" should be allowed to amend the complaint). But her Amended Complaint (**Doc. 33**) failed to satisfy the *Iqbal/Twombly* pleading standard. As the Court explained, the Amended Complaint did not remotely approach pleading sufficient facts to demonstrate a plausible § 1981, Title VII, ADA, or Rehabilitation Act claim (**Doc. 35 at 3–4**). As the Court's Memorandum Opinion and Order made clear, the case was dismissed on the merits. **Id. at 4**.

² As Defendants aptly state, "even if the response brief had been received on time, Plaintiff fails to grasp that her amended complaint still failed the pleading test." **Doc. 40 at 3**.

Plaintiff's proffer that she filed the Response on January 9, 2024, is unsupported by the filings (**Docs. 37 at 1**; **Doc. 38 at 7**; **Doc. 39 at 3**). The postage indicates the filings were mailed on February 7, 2024 (**Doc. 37 at 4**; **Doc. 38 at 8**; **Doc. 39 at 43**). And, despite the certification in the Response that the pleading was served on January 9,

2024 (**Doc. 38 at 7**)—the other two filings received on the same day list February 7, 2024, as the date of certification (**Docs. 37, 39**). Although the Court does not want to question the validity of her "unforeseen high-risk pregnancy that required hospitalization," Plaintiff provided no supporting documentation³ (**Doc. 38**).

³ This Court is not alone in considering the lack of evidentiary support when assessing the "reason for delay" factor. See *Greenwood Expls., Ltd. v. Merit Gas & Oil Corp.*, 837 F.2d 423, 426 (10th Cir. 1988) (explaining Rules 59 and 60 require the movant to "plead and prove" excusable neglect); *Pelican Prod. Corp. v. Marino*, 893 F.2d 1143, 1146 (10th Cir. 1990) ("The burden is upon the party moving to have the judgment set aside to plead and *prove* excusable neglect.") (emphasis in original); *Mayfield v. Morris*, No. 17-891, 2020 WL 3832962, 2020 U.S. Dist. LEXIS 119650 (D.N.M. July 8, 2020) (same); *Dillon v. Dish Network, LLC*, No. 22-cv-557, 2023 U.S. Dist. LEXIS 135804 at *6, 2023 WL 4891448 (D.N.M. Aug. 1, 2023) (explaining an "affidavit to support her factual claims" was included); see also *Shifers v. Arapahoe Motors, Inc.*, No. 17-cv-1753, 2018 U.S. Dist. LEXIS 212817 at *11, 2018 WL 6620866 (D. Colo. Dec. 18, 2018) ("Plaintiff does not offer any evidence" in support of the reason for the delay); *Christensen v. Graco Fishing & Rental Tools, Inc.*, No. 20-cv-888, 2021 U.S. Dist. LEXIS 93431, at *8, 2021 WL 1948004 (D. Utah May 14, 2021) (stating the Plaintiff "fail[ed] to provide any evidentiary support" for his assertion he was sick).

Courts may, in their discretion, allow untimely filings—so long as the party's actions constitute "excusable neglect." *Fed. R. Civ. P. 6(b)(1)(B)*. Excusable neglect hinges upon four factors: (1) the danger of prejudice to the non-moving party; (2) the length of delay and its impact on judicial proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith. See *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993). As this Circuit has explained, however, an inadequate explanation for delay itself is sufficient to reject a finding of excusable neglect. *United States v. Torres*, 372 F.3d 1159, 1163 (10th Cir. 2004). Whether Plaintiff was ignorant of the rules or mistaken in construing them—such actions do not usually constitute excusable neglect. *Id.* (citing *Pioneer Inv. Servs. Co.*, 507 U.S. at 392, 113 S.Ct. 1489). Even for

the *pro se* petitioner, “ignorance of the law ... does not excuse prompt filing.” *Marsh v. Soares*, 223 F.3d 1217, 1220 (10th Cir. 2000). In applying these factors to Ms. Morgan’s case, the Court finds that none of the factors weigh in her favor.

*3 First, the danger of prejudice to Defendants is high. *See Doc. 34 at 1* (“Defendants now face themselves, once again, in the untenable position of having to expend unnecessary time, energy and expense.”); *Doc. 40 at 4* (stating that Defendants are not included to “spend further time, energy and money because the Plaintiff now humbly promises to ‘do better’ in Court”). Accepting Plaintiff’s untimely filing—one that cites no law and instead functions as a once-again amended complaint—would certainly impose additional costs on Defendants. This factor weighs against Plaintiff.

Second, the length of delay is significant—especially so given that the Court waited an additional three weeks after the response deadline to file its Memorandum Opinion and Order. As the Court stated then, ruling on the merits is preferred; but “this is not a ‘one day late’ filing.” *Doc. 35 at 5*. This case has been ongoing since April 2023, and the Court will not allow this frivolous litigation to continue any longer. This factor weighs against Plaintiff.

Third, the reason for delay also cuts against Plaintiff. Plaintiff has pled, but not proved, the reason for her delay. *See Pelican Prod. Corp.*, 893 F.2d at 1146 (requiring proof of excusable neglect). The Court would certainly have considered extending the filing deadlines had Plaintiff asked. D.N.M.LR-Civ. 7.4(a). Especially so given that medical problems or health⁴ issues are typically an adequate justification for delayed filings. *See Perez v. El Tequila, LLC*, 847 F.3d 1247, 1253 (10th Cir. 2017) (“A lawyer’s medical problems or serious health challenges may be an adequate justification for delayed filings.”). But Plaintiff did not ask for an extension. Instead, she waited nearly two months after Defendants filed their Second Motion to Dismiss (*Doc. 34*) to file three motions (*Docs. 37, 38, 39*). Even if the Court “sympathize[d]” with Ms. Morgan, precedent must be followed—and the precedent requires *pro se* parties to comply with procedural rules. *See Livingston v. Univ. of Kan. Hosp. Auth.*, 844 F. App’x 82, 85 (10th Cir. 2021) (unpublished) (citing *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005)). On balance, this factor weighs against Plaintiff.

4 Likewise, Defendants are “sincerely hopeful that Plaintiff and her family are well But that is not a sufficient legal basis to reopen this lawsuit.” *Doc. 40 at 4*.

Finally, the Court declines to find that Plaintiff acted in bad faith. At the same time, the Court does not find she acted in good faith. This factor is neutral.

Ms. Morgan failed to carry her burden in proving excusable neglect. *See Marcus Food Co. v. DiPanfilo*, 671 F.3d 1159, 1172 (10th Cir. 2011) (explaining the moving party bears the burden of demonstrating excusable neglect). Accordingly, Plaintiff’s untimely Response is **STRICKEN**.

B. “Motion for Reconsideration”

1. Merits of the Rule 59(e) motion

Here, Plaintiff asks the Court to “reconsider”⁵ its previous Order (*Doc. 39 at 1*). A request for reconsideration may be construed as proceeding under either *Fed. R. Civ. P. 59(e)* or *Fed. R. Civ. P. 60(b)*. Ms. Morgan posits that “exceptional and compelling circumstances” exist that warrant the Court’s reconsideration, namely: (1) her medical emergency and pregnancy, (2) her *mental disabilities* and learning disabilities, (3) contact from a third party, and (4) confirmation of a mailed response.

5 The Federal Rules do not recognize a “motion to reconsider.” *Spring Creek Expl. & Prod. Co. LLC v. Hess Bakken Invs. II, LLC*, 887 F.3d 1003, 1023 (10th Cir. 2018). “This case illustrates the dangers of filing a self-styled ‘motion to reconsider.’” *Van Skiver*, 952 F.2d at 1243.

*4 Unfortunately, Plaintiff’s motion does not meet any of the criteria for such a drastic remedy under either Rule. *See Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000) (setting forth the bases for relief); *cf. Fed. R. Civ. P. 59(e), 60(b)*. Plaintiff overlooks the fact there is no intervening change in the controlling law, new evidence previously unavailable, or a need to correct clear error or prevent manifest injustice. *Id.* Instead, Plaintiff wants a third bite at the apple. But as the Tenth Circuit has repeatedly explained, parties cannot invoke *Rule 59(e)* or *Rule 60(b)* to relitigate old matters or to raise arguments that could have been raised in earlier proceedings. *See Pueblo of Jemez v. United States*, 63 F.4th 881, 897 (10th Cir. 2023); *Nelson v. City of Albuquerque*, 921 F.3d 925, 930 (10th Cir. 2019); *see*

also *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5, 128 S.Ct. 2605, 171 L.Ed.2d 570 (2008).

Irrespective of whether the motion was filed under Rule 59(e) or 60(b), it lacks a legitimate legal basis all the same. Undoubtedly, Ms. Morgan is unhappy with the Court's rulings and apparently is under the misguided impression that if she asks for the same thing enough times, the Court will do as she pleases. The Court has admonished Ms. Morgan about her refusal to adhere to the Court's rules (Doc. 32 at 17). She steadfastly refused to do so (Doc. 35 at 1–2, 7). And, unsurprisingly at this point, she refuses yet again.

The Court now addresses, and promptly rejects, each of her alleged bases seeking relief from the final judgment (Doc. 39 at 2–3).

First, Plaintiff alleges her medical emergency and pregnancy constitute “exceptional circumstances” that provide a sufficient reason for relief. But Ms. Morgan does not identify any of Rule 59(e)'s or 60(b)'s grounds⁶ for relief. She alleges no legal changes, new evidence, clear error, or manifest injustice from the ruling that warrants reconsideration. *Callahan v. Commc'n Graphics, Inc.*, 657 F. App'x 739, 745 (10th Cir. 2016) (unpublished) (citing *Brumark Corp. v. Samson Res. Corp.*, 57 F.3d 941, 948 (10th Cir. 1995)). On this basis, her motion is denied.

⁶ A party may seek relief from a final judgment for one of the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; or (6) any other reason justifying relief from the operation of the judgment. See *United States v. Buck*, 281 F.3d 1336, 1340 n.1 (10th Cir. 2002) (citing Fed. R. Civ. P. 60(b)); see also *Sindar v. Garden*, 284 F. App'x 591, 594 (10th Cir. 2008) (unpublished).

Next, Plaintiff alleges her mental disabilities and learning disabilities constitute “exceptional circumstances.” Once again, Ms. Morgan does not identify any grounds for relief. Her motion is denied on this ground as well.

Plaintiff alleges contact from a third party as her third basis for relief (Doc. 39 at 2–3). Construing her pleading liberally, the

Court interprets this as alleging “newly discovered evidence.” This is, at first blush, a contemplated ground for relief under Rule 59(e) or 60(b). But the analysis does not stop there. Plaintiff states that between November 11, 2023–December 16, 2023, she was contacted⁷ by “current and former employees” at CAV (Doc. 39 at 2). Plaintiff filed her Amended Complaint (Doc. 33) on November 22, 2023. Accordingly, to the extent the newly attached correspondence is “newly discovered evidence,” it fails to satisfy the Rule 60(b)⁸ criteria. See *FDIC v. Arciero*, 741 F.3d 1111, 1117 (10th Cir. 2013). An email alleging “awful treatment” at CAV, Doc. 39 at 13, is not “of such a nature as would probably produce a different result.” *Devon Energy Prod. Co., L.P. v. Mosaic Potash Carlsbad, Inc.*, 693 F.3d 1195, 1213 (10th Cir. 2012). This evidence is simply another “conclusory statement” that a court must “disregard” while conducting Rule 12(b)(6) analysis. See *Khalik v. United Air Lines*, 671 F.3d 1188, 1191 (10th Cir. 2012). Plaintiff's motion is, therefore, denied on this ground.

⁷ The exchange between Plaintiff and “Sarah Jeantette” is included in the filing. Doc. 39 at 13.

⁸ The Tenth Circuit has held that relief under Rule 60(b)(2) is available if: (1) the evidence was newly discovered; (2) the moving party was diligent in discovering the new evidence; (3) the newly discovered evidence was not merely cumulative or impeaching; (4) the newly discovered evidence is material; and (5) the newly discovered evidence would probably produce a different result. See *Dronsejko v. Thorton*, 632 F.3d 658, 670 (10th Cir. 2011).

*5 Finally, Plaintiff alleges she “attached a copy of the tracking receipt” that confirms she mailed her Response on January 9, 2024 (Doc. 39 at 3). A tracking receipt is nowhere to be found in the forty-three pages of Plaintiff's motion. And, once again, attaching a receipt is not a specific ground for relief under either Rule 59(e) or Rule 60(b). Because Plaintiff is *pro se*, the Court attempted to fit the imaginary receipt into either “excusable neglect” or “any other reason.” Fed. R. Civ. P. 60(b)(1), (6). However, for the reasons mentioned *supra* ¶ I.A., excusable neglect is inapplicable here. This argument would require the Court to find that failing to respond to a motion to dismiss is an automatic basis for relief under a post-judgment Rule 60 motion. See *Cashner v. Freedom Stores*, 98 F.3d 572, 577 (10th Cir. 1996) (holding that Rule 60(b)(1) does not allow a party to merely “reargue an issue”). If this

was the law, litigation would never end. See *Frietsch v. Refco, Inc.*, 56 F.3d 825, 828 (7th Cir. 1995) (Posner, J.) (“It is not the purpose of allowing motions for reconsideration to enable a party to complete presenting his case after the court has ruled against him. Were such a procedure to be countenanced, some lawsuits really might never end, rather than just seeming endless.”). In this circuit, when a party seeks relief based upon a failure to comply with procedural requirements, the courts impose an additional requirement of a “meritorious” claim. See *Otoe Cnty. Nat’l Bank v. W&P Trucking*, 754 F.2d 881, 883 (10th Cir. 1985) (citing *Cessna Fin. Corp. v. Bielenberg Masonry Contracting, Inc.*, 715 F.2d 1442, 1445 (10th Cir. 1983)). But here, Plaintiff’s case was dismissed because it had no legal merit and because she failed to respond (**Doc. 35**). Accordingly, her motion is denied.

2. Request to amend complaint

Ms. Morgan explains that she is “prepared to amend her complaint ... should the Court grant reconsideration.” **Doc. 39 at 4**.

A party has the right to amend a pleading once but must seek leave of the court for subsequent amendments. *Fed. R. Civ. P. 15(a)*. Here, the Plaintiff challenges the dismissal—and signals her acquiescence to amend. But the Tenth Circuit has held a request “like this is inadequate to preserve a request for leave to amend.” *Meitav Dash Provident Funds & Pension Ltd. v. Spirit AeorSystems Holdings, Inc.*, 79 F.4th 1209, 1230–31 (10th Cir. 2023) (citing *Calderon v. Kan. Dep’t of Soc. & Rehab. Servs.*, 181 F.3d 1180, 1185 (10th Cir. 1999)). This bare request—wherein Plaintiff asserts she is “prepared to amend”—does not rise to the status of a motion and does not properly put the issue before this Court. See *Brooks v. Mentor Worldwide LLC*, 985 F.3d 1272, 1283 (10th Cir. 2021) (“Our precedent ... requires that to amend a pleading after the dismissal of a case, a party must first move to reopen the case under *Federal Rule of Civil Procedure 59(e)* or *60(b)* and then move for leave to amend under *Rule 15* in accordance with the *Rule 7* standard.”).

II. Imposition of Filing Restrictions

Having denied Plaintiff’s “Motion for Reconsideration” (**Doc. 39**), this Court no longer has jurisdiction over this case.

Plaintiff’s recent motions are a continued abuse of the judicial process. See *Phillips v. Carey*, 638 F.2d 207, 209 (10th Cir. 1991). And a court need not stand by and allow a litigant to abuse the court system by harassing their opponents.

Tripati v. Beaman, 878 F.2d 351, 352 (10th Cir. 1989) (per curiam); see also 28 U.S.C. § 1651(a). Here, Ms. Morgan’s litigiousness is not the sole factor supporting the filing restrictions. *Landrith v. Schmidt*, 732 F.3d 1171, 1174 (10th Cir. 2013). Meritless complaints, citations to hallucinated⁹ cases, a failure to adhere to filing deadlines, and a violation of the local rules¹⁰ support the proposed filing restrictions. See *McMurray v. McCelmoore*, 445 F. App’x 43, 45 (10th Cir. 2011) (unpublished).

⁹ As the Court’s previous Memoranda Opinions and Orders (**Doc. 32 at 11, 14–15; Doc 35 at 5**) explained, Plaintiff cited to fake cases in various pleadings.

¹⁰ In Plaintiff’s request for reconsideration, she included thirty pages of unmarked exhibits. See D.N.M.LR-Civ 10.6. Additionally, Plaintiff’s motion violates D.N.M.LR-Civ. 7.3(a) which requires a motion to “cite authority in support of the legal positions advanced.” Aside from a passing reference to *Rules 59(e)* and *60(b)*, Plaintiff cites no authority.

*6 The Court has considered several factors in support of the imposing filing restrictions, namely: (1) the litigant’s history of litigation; (2) the litigant’s lack of an objective good faith expectation of prevailing; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused needless expenses to the opposing parties—as well as unnecessarily burdened the Court; and (5) whether other sanctions would be adequate to protect the courts and other parties. *United States v. Kettler*, 934 F.2d 326 (unpublished table decision), 1991 U.S. App. LEXIS 12001, at *16–17, 1991 WL 94457 (10th Cir. 1991) (citing *Safir v. U.S. Lines, Inc.*, 792 F.2d 19, 24 (2d Cir. 1986)).

These factors overwhelmingly favor filing restrictions. First, Plaintiff’s lawsuit was dismissed (twice). And the Court just denied her *Rule 60(b)* motion. The case is over—and no future filings are needed unless she appeals. Second, it is unlikely Plaintiff possesses an objective good faith expectation of prevailing on the claims asserted when this Court has dismissed those exact claims on two previous occasions. Third, Plaintiff is proceeding *pro se*. Fourth, Plaintiff’s lawsuit has imposed a burden on the Court and costs to Defendants in defending this frivolous action. And, finally, dismissing the claims does not act as a sufficient deterrent

because the Court already dismissed the claims, but Plaintiff filed three motions after the entry of judgment.

On October 23, 2023, this Court admonished Ms. Morgan and informed her that sanctions, including the imposition of “filing restrictions,” may be imposed (**Doc. 32 at 15**). Nevertheless, Ms. Morgan continues to disregard “this Court’s local rules, the Court’s Guide for *Pro Se* Litigants, and the Federal Rules of Civil Procedure.” *Id.* Put simply, Plaintiff is not entitled to inundate the docket in this closed case with meritless filings. The Court is not required to allow it to continue; and the Court will not allow it to continue. See *Sieverding v. Colo. Bar Ass’n*, 469 F.3d 1340, 1343 (10th Cir. 2006) (“The right of access to the courts is neither absolute nor unconditional.”).

Subject to the Court’s order below regarding Ms. Morgan’s opportunity to file a written objection, the Court proposes ¹¹ enjoining her from future filings unless she is represented by an attorney or gets permission from the Court.

¹¹ If the Court imposes filing restrictions, the proposed language of the Order effectuating the injunction will be as follows: **THE CLERK OF COURT SHALL NOT ACCEPT ANY FURTHER MOTIONS, LETTERS, OR MISCELLANEOUS FILINGS FROM MS. SORCHÈ MORGAN IN THIS CASE, OTHER THAN THOSE NECESSARY FOR APPEAL. THIS CASE IS CLOSED.**

Below, the Court orders Ms. Morgan to show cause within fourteen (14) days of entry of this Memorandum Opinion and Order why she should not be prohibited from submitting any new civil filings against Defendant CAV and the individually named employees without the representation of a licensed attorney who is admitted to practice before this Court. Additionally, to continue proceeding *pro se*, Ms. Morgan must obtain permission from the Court by taking the following steps:

1. File with the clerk of this court a motion requesting leave to file a *pro se* proceeding.
2. Include in the motion requesting leave to file a *pro se* action the following information: A statement of the legal issues to be raised in the proposed new pleading and whether she has raised the same issues in other proceedings in the District of New Mexico. If so, she must cite the case number and docket number where the legal issues previously have been raised.
- *7 3. Attach the proposed new pleading to be filed *pro se*.

CONCLUSION

For the reasons detailed above, the Court hereby **ORDERS** that:

- Plaintiff’s Notice of Defendants’ Change of Address (**Doc. 37**) and her Response in Opposition of Second Motion to Dismiss (**Doc. 38**) are hereby **STRICKEN**.
- Plaintiff’s Motion for Reconsideration (**Doc. 39**) is **DENIED**.
- Plaintiff is ordered to **SHOW CAUSE** within fourteen (14) days after entry of this Memorandum Opinion and Order why the Court should not enter the proposed injunction prohibiting new filings without representation by a licensed attorney admitted to practice in the U.S. District Court for the District of New Mexico. Absent a timely response to this order to show cause, the injunction will enter twenty-one days from the date of this order and will apply to any matter filed after that time. If Ms. Morgan files a timely response, the proposed filing restrictions will not enter unless the Court so orders—after considering the response and ruling on her objections thereto.

IT IS SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2024 WL 639860

2023 WL 6976510

Only the Westlaw citation is currently available.

United States District Court, D. New Mexico.

Sorchè MORGAN, Plaintiff,

v.

COMMUNITY AGAINST VIOLENCE,
Anita Medina, Malinda Williams, Celeste
Trujillo; and Debbie Cisneros, Defendants.

No. 23-cv-353-WPJ/JMR

|

Filed October 23, 2023

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NM, for Defendants.

MEMORANDUM OPINION AND ORDER GRANTING IN PART DEFENDANTS' MOTION TO DISMISS

William P. Johnson, CHIEF UNITED STATES DISTRICT
JUDGE

***1 THIS MATTER** comes before the Court upon Defendants' Motion to Dismiss and Supporting Memorandum, filed May 26, 2023 (**Doc. 20**) (the “Motion”). The Court finds that the Motion is well-taken and is therefore **GRANTED IN PART**.

BACKGROUND

On April 26, 2023, Plaintiff filed her Complaint (**Doc. 1**) and named her former employer, Community Against Violence (“CAV”), and four individuals who served as employees at CAV during her tenure with the organization as Defendants. Plaintiff alleges violations of the following federal and state statutes: (1) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. (“Title VII”); (2) the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq. (“ADA”); (3) 42 U.S.C. § 1981 (“Section 1981”); (4) the New Mexico Inspection of Public Records Act, NMSA 1978 §§ 14-2-1 to 14-2-12

(2023) (“IPRA”); (5) the New Mexico Human Rights Act, NMSA 1978 § 28-1-1 et seq. (2023) (“NMHRA”); (6) the Rehabilitation Act of 1973, 28 U.S.C. § 701 et seq. (“Rehabilitation Act”); and (7) the New Mexico Occupational Health and Safety Act, NMSA 1978 §§ 50-9-1 to 50-9-25 (2023) (“NMOSHA”). **Doc. 1 at ¶ 1.**

On October 26, 2020, Plaintiff Morgan dually filed a charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”) and the New Mexico Human Rights Bureau (“HRB”). **Doc. 1 at 12–13.** Plaintiff filed an amended charge with the EEOC and Texas Workforce Commission on February 8, 2023. **Id. at 10–11.** Plaintiff also included a “right to sue” notice from the EEOC, however, she has not provided or pled the receipt of an order of nondetermination from the HRB. **Doc. 1 & 28.**

Defendants' Motion requests the Court dismiss each of the seven causes of action contained in the Complaint either with or without prejudice. **Docs. 20 & 30.**

LEGAL STANDARD

I. Rule 12(b)(1) Motion to Dismiss Standard

Federal Rule of Civil Procedure 12(b)(1) allows a court to dismiss a complaint for lack of subject matter jurisdiction. When ruling on a 12(b)(1) motion, a court has broad discretion to consider affidavits, an administrative record, or other documents necessary to resolve disputed jurisdictional facts. *Holt v. United States*, 46 F.3d 1000, 1003 (10th Cir. 1995). Here, Defendants allege that the Court does not have subject matter jurisdiction over several claims in this case because the Plaintiff did not properly exhaust her administrative remedies prior to filing suit.

Exhaustion of administrative remedies serves as a jurisdictional bar to filing suit under the NMHRA and an affirmative defense under the Rehabilitation Act, ADA, and Title VII. See *Mitchell-Carr v. McLendon*, 1999-NMSC-025, ¶ 16, 127 N.M. 282, 980 P.2d 65 (N.M. 1999) (“An order of non-determination signals that the person who filed the complaint has fully complied with the NMHRA grievance procedure and may proceed to Court.”); *Jaramillo v. J.C. Penny Co.*, 1985-NMCA-002, ¶ 2, 102 N.M. 272, 694 P.2d 528 (N.M. Ct. App. 1985) (exhaustion is required under the NMHRA); *Fort Bend Cnty. v. Davis*, — U.S. —, 139 S. Ct. 1843, 1846, 204 L.Ed.2d 116 (2019) (holding that Title VII’s “charge-filing instruction is not jurisdictional”);

Lincoln v. BNSF Ry. Co., 900 F.3d 1166, 1185 n. 10 (10th Cir. 2018) (explaining exhaustion is not jurisdictional under the Rehabilitation Act, ADA, or Title VII, but failure to exhaust is an affirmative defense).

*2 Accordingly, this Court must first determine whether Plaintiff has properly exhausted her administrative remedies (or assess the applicability of the affirmative defense of non-exhaustion) before addressing the merits of the Plaintiff's claims.

II. Rule 12(b)(6) Motion to Dismiss Standard

Defendants moved to dismiss Plaintiff's Complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). A claim is plausible when the complaint contains "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). Under Rule 12(b)(6), the Court should accept all well-pleaded factual allegations as true and construe them in the light most favorable to the Plaintiff. *Waller v. City & Cnty. of Denver*, 932 F.3d 1277, 1282 (10th Cir. 2019). However, a Court must "disregard conclusory statements and look only to whether the remaining, factual allegations plausibly suggest the defendant is liable." *Khalik v. United Air Lines*, 671 F.3d 1188, 1191 (10th Cir. 2012).

Although a complaint need not contain "detailed factual allegations," it must contain "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678, 129 S.Ct. 1937. Moreover, if factual allegations in a complaint are "so general that they encompass a wide swath of conduct, much of it innocent, then the plaintiffs 'have not nudged their claims across the line from conceivable to plausible.'" *Khalik*, 671 F.3d at 1191.

The Tenth Circuit has also held that when a complaint uses "the collective term 'Defendants' ... with no distinction as to what acts are attributable to whom, it is impossible for any of these individuals to ascertain what particular unconstitutional acts they are alleged to have committed." *Bark v. Chacon*, 504 F. App'x 741, 745 (10th Cir. 2012) (quoting *Robbins v. Oklahoma*, 519 F.3d 1242, 1250 (10th Cir. 2008)); see also

Atuahene v. City of Hartford, 10 F. App'x 33, 34 (2d Cir. 2001) (citing Fed. R. Civ. P. 12(b)(6) and 8).

Plaintiff is *pro se*; accordingly, the Court liberally construes her Complaint and briefing. *United States v. Trent*, 884 F.3d 985, 993 (10th Cir. 2018) ("A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.") (citation omitted). But even liberally construing Plaintiff's Complaint, the Court finds it fails to state plausible claims for relief as to some of the causes of action.

DISCUSSION

I. Issues with Plaintiff's Complaint and Response Brief

Plaintiff's Complaint contravenes Rule 8's notice pleading standard with respect to the Section 1981, IPRA, NMHRA, and NMOSHA claims. Although not a "shotgun pleading" which incorporates each claim or cause of action into each Count, instead Plaintiff's Complaint wholly fails to provide "fair notice of the factual and legal basis for each claim." *Swenson v. Storage LLC*, No. 21-cv-1968, 2022 WL 1508506, at *6, 2022 U.S. Dist. LEXIS 86466, at *14 (D. Colo. Apr. 26, 2022) (citing *Warnick v. Cooley*, 895 F.3d 746, 751 (10th Cir. 2018)).

*3 Plaintiff's Response (Doc. 28) does not remedy her failure to satisfy the *Iqbal/Twombly* pleading standards for the § 1981, IPRA, NMHRA, Rehabilitation Act, and NMOSHA claims. The Complaint (Doc. 1) references seven statutes but does not properly plead or incorporate the five aforementioned statutes into the seven counts asserted (Docs. 1 & 28).

II. Plaintiff's Failure to Exhaust Administrative Remedies

Failure to exhaust administrative remedies is an affirmative defense under the Rehabilitation Act, ADA, and Title VII. See *Cirocco v. McMahon*, 768 F. App'x 854, 861 (10th Cir. 2019) (unpublished) (holding that failure to exhaust a Title VII claim is an affirmative defense allowing a court to dismiss the complaint without prejudice); *Goodson v. DeJoy*, No. 22-1338, 2023 WL 4782947 at *5, 2023 U.S. App. LEXIS 19231 at *11 (10th Cir. 2023) (unpublished) (explaining failure to exhaust is an affirmative defense against

Rehabilitation Act and ADA claims (citing *Lincoln*, 900 F.3d at 1185)).

A. Plaintiff's Title VII claims after October 26, 2020 have not been exhausted

In order to successfully bring a claim under Title VII, a Plaintiff must first clear certain agency procedures and exhaust her administrative remedies. See *National R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 109, 122 S.Ct. 2061, 153 L.Ed.2d 106 (2002) (“Title 42 U.S.C. § 2000e-5(e)(1) is a charge filing provision that specifies with precision the prerequisites that a plaintiff must satisfy before filing suit.”); *Foster v. Ruhrpumpen, Inc.*, 365 F.3d 1191, 1194 (10th Cir. 2004) (“A plaintiff normally may not bring a Title VII action based upon claims that were not part of a timely-filed EEOC charge for which the plaintiff has received a right-to-sue letter.”).

Accordingly, when “discrete incidents of discrimination occur after an employee files an initial EEOC charge, the employee must file an additional or amended charge with the EEOC to satisfy the exhaustion requirement as to discrete incidents occurring after the initial charge.” *Lincoln*, 900 F.3d at 1181 (10th Cir. 2018) (citing *Martinez v. Potter*, 347 F.3d 1208, 1210 (10th Cir. 2003)).

In reviewing Plaintiff's February 8, 2023 amended charge filed with the EEOC, it is readily apparent that she did not timely file within three hundred days. 42 U.S.C. § 2000e-5(e)(1); *NMSA 1978*, § 28-1-10(a) (2023). This failure is fatal with respect to Counts VI–VII. Although failure to timely file an administrative charge is not jurisdictional, it is still an affirmative defense. *Lincoln*, 900 F.3d at 1185; *Sizova v. Nat'l Inst. Of Standards & Tech.*, 282 F.3d 1320, 1325 (10th Cir. 2002).

Plaintiff's failure to timely exhaust her post-October 26, 2020 claims of discrimination or retaliation necessitate dismissal. Although usually dismissal without prejudice is appropriate, dismissal with prejudice is appropriate when a Plaintiff is unable to either exhaust administrative remedies or when amending the Complaint would be futile. That is the case here. Accordingly, Plaintiff's Title VII claims¹ for discrimination or retaliation in Counts VI–VII are dismissed with prejudice.

¹ Claims 6 and 7 (Counts VI and VII) rely on events alleged to have occurred after October 26, 2020 and are unexhausted and incurable.

B. Plaintiff's ADA claims after October 26, 2020 have not been exhausted

As is true of Title VII, the ADA also requires a Plaintiff to exhaust her administrative remedies before filing suit. *MacKenzie v. City & Cnty. of Denver*, 414 F.3d 1266, 1274 (10th Cir. 2005); 42 U.S.C. § 12117(a). A charge of discrimination must be filed with the EEOC no later than 300 days after the alleged unlawful employment practice occurred. See *Lincoln*, 900 F.3d at 1181 (quoting 42 U.S.C. § 2000e-5(e)(1), which governs ADA enforcement pursuant to 42 U.S.C. § 12117(a)).

*4 Plaintiff's ADA discrimination and retaliation claims that post-date her October 26, 2020 charge are not timely. This is fatal with respect to Counts II, IV, and VI—wherein Plaintiff has not pled the requested accommodations, identified their reasonableness, alleged any failure by the Defendants to provide such accommodation, or alleged the accommodations were job-related. To the extent Claim 4 (**Doc. 1 at 4, ¶ 5**) alleges an ADA violation that it does not incorporate into Count IV, this claim has not been exhausted or sufficiently pled.

Accordingly, Plaintiff's ADA claims in Counts II, IV, and VI are dismissed with prejudice.

C. Plaintiff's NMHRA claims after October 26, 2020 have not been exhausted

Plaintiff's NMHRA claims fail because: (1) Plaintiff has not received an order of non-determination from the HRB; (2) Plaintiff did not file any events post-dating October 26, 2020 with the HRB; and (3) Plaintiff did not timely file within three hundred days as required by *NMSA 1978* § 28-1-10(a). As such, this Court is unable to hear the NMHRA claims. New Mexico courts hold that failure to exhaust administrative remedies constitutes a jurisdictional bar to claims brought under the NMHRA. See *Mitchell-Carr*, 1999-NMSC-025, ¶ 16, 127 N.M. 282, 980 P.2d 65 (“An order of non-determination signals that the person who filed the complaint has fully complied with the NMHRA grievance procedure and may proceed to Court.”); *Jaramillo*, 1985-NMCA-002, ¶ 2, 102 N.M. 272, 694 P.2d 528 (exhaustion is required under the NMHRA).

Plaintiff does not dispute the fact she has not received an order of non-determination from the HRB. **Doc. 28 at 21–22**. Such a failure to exhaust her administrative remedies is fatal. See

Sonntag v. Shaw, 2001-NMSC-015, ¶ 13, 130 N.M. 238, 22 P.3d 1188 (N.M. 2001).

As it stands, the Court lacks jurisdiction under *Fed. R. Civ. P. 12(b)(1)* to hear nonexhausted claims under the NMHRA. Plaintiff's NMHRA claims are, therefore, dismissed without prejudice.

III. Individually Named Defendants are Entitled to Dismissal

Individual employees and supervisors cannot be held liable for claims brought under Title VII. See *Williams v. W.D. Sports, N.M., Inc.*, 497 F.3d 1079, 1083 n.9 (10th Cir. 2007) (“Under long-standing [Tenth] [C]ircuit precedent, supervisors and other employees may not be held personally liable under Title VII.”); *Haynes v. Williams*, 88 F.3d 898, 899 (10th Cir. 1996) (“The relief granted under Title VII is against the employer, not individual employees whose actions would constitute a violation of the Act.”). Under Tenth Circuit precedent, it is proper “for a plaintiff to recover under Title VII ... by suing the employer, either by naming the supervisory employees as agents of the employer *or* by naming the employer directly.” *Sauers v. Salt Lake Cnty.*, 1 F.3d 1122, 1125 (10th Cir. 1993) (quoting *Busby v. City of Orlando*, 931 F.2d 764, 772 (11th Cir. 1991)) (emphasis added). Similarly, “[t]he ADA precludes personal capacity suits against individuals who do not otherwise qualify as employers under the statutory definition.” *Butler v. City of Prairie Vill.*, 172 F.3d 736, 744 (10th Cir. 1999). Likewise, the Rehabilitation Act does not allow for the imposition of liability on an individual. See *Moore v. Cooksey*, No. 00-1109, 2000 WL 1838274, 2000 U.S. App. LEXIS 31858 (10th Cir. 2000) (unpublished); *Rigler v. Lampert*, 248 F. Supp. 3d 1224, 1240 (D. Wyo. 2017).

In fact, Plaintiff's Response acknowledges “it is true that individual employees and supervisors cannot be held personally liable under Title VII.” **Doc. 28 at 6**. Plaintiff contends she “nam[ed] the individually named defendants in their official capacities.” **Id. at 7**. This is incorrect—the Complaint clearly lists them as individuals. **Doc. 1 at 1–2**. If Plaintiff meant to name the individuals in their official capacity, then this is an unnecessary redundancy as CAV is already named. **Doc. 30 at 3**.

*5 Accordingly, Plaintiff's Title VII claims in Counts I and III–VII against the four individually named Defendants are be dismissed with prejudice. Plaintiff's ADA claims against the four individually named Defendants in Counts II and

VI are also dismissed with prejudice. And, finally, Plaintiff's Rehabilitation Act claims against the four individually named Defendants are dismissed with prejudice.

A. Defendant Celeste Trujillo should also be dismissed

The Complaint does not contain any specific allegations of wrongdoing by Defendant Trujillo. The pleading contains no facts “to state a claim to relief that is plausible on its face” against Defendant Trujillo. *Twombly*, 550 U.S. at 570, 127 S.Ct. 1955.

Plaintiff's claims against Defendant Trujillo are dismissed without prejudice. If Plaintiff fails to submit an amended complaint within 30 days or if Plaintiff submits an amended complaint that still does not state a plausible claim for relief, the Court may dismiss Plaintiff's claims with prejudice and without notice. See *Hall v. Bellmon*, 935 F.2d 1106, 1109–10 (10th Cir. 1991).

B. Dismissal of Section 1981 claims is appropriate

For the above-mentioned reasons, claims against Defendant Trujillo should be dismissed. For the remaining individually named Defendants, personal liability is not foreclosed. Employees of a corporation “may become personally liable [under Section 1981] when they intentionally cause an infringement of rights.” *Sims v. KCA, Inc.*, No. 93-2053, 1994 WL 266744 at *7, 1994 U.S. App. LEXIS 15065 at *21 (10th Cir. 1994) (unpublished). However, such a claim must be “predicated upon the actor's personal involvement” not just their role in the company. *Allen v. Denver Pub. Sch. Bd.*, 928 F.2d 978, 983 (10th Cir. 1991).

Here, Plaintiff has not alleged sufficient facts to show that Defendants Medina, Williams, and Cisneros were personally involved in any retaliatory acts. Accordingly, the Plaintiff's § 1981 claims against the Defendants are dismissed without prejudice for failure to state a claim. Plaintiff is granted leave to amend. See *Fleming v. Coulter*, 573 F. App'x 765, 769 (10th Cir. 2014) (allowing for leave to amend where a Plaintiff *may* be able to plead sufficient facts). If, however, Plaintiff fails to submit an amended complaint within 30 days or if Plaintiff submits an amended complaint that still does not state a plausible claim for relief, the Court may dismiss Plaintiff's claims with prejudice and without notice. See *Gee v. Pacheco*, 627 F.3d 1178, 1195 (10th Cir. 2010) (explaining when a *pro se* Plaintiff is “close to stating a claim” they should be allowed to amend the complaint (citing *Hall*, 935 F.2d at 1109–10)).

IV. Some Claims Against CAV Warrant Dismissal

A. IPRA claims

The purpose of IPRA is “to ensure ... that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees.” *NMSA 1978 § 14-2-5* (2023); *Dunn v. N.M. Dep't of Game & Fish*, 2020-NMCA-026, ¶ 4, 464 P.3d 129 (N.M. Ct. App. 2020). Under Section 14-2-12(A) (2), a person may bring an enforcement suit against a public body (or agent of the same) if that person's written request to inspect public records has been denied. *San Juan Agric. Water Users Ass'n v. KNME-TV*, 2011-NMSC-011, ¶ 1, 150 N.M. 64, 257 P.3d 884 (N.M. 2011). Section 14-2-6(H) defines a public record as: “all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, that are used, created, received, **maintained or held by or on behalf of any public body and relate to public business**, whether or not the records are required by law to be created or maintained.” Section 14-2-6 further defines a public body as: “the executive, legislative and judicial branches of state and local governments and all advisory boards, commissions, committees, agencies or entities created by the constitution or any branch of government that receives any public funding, including political subdivisions, special taxing districts, school districts and institutions of higher education.” *NMSA 1978 § 14-2-6(G)* (2023).

*6 Plaintiff's Response asserts that the *Toomey* factors favor a conclusion that CAV (a § 501(c)(3), private non-profit) is a private entity conducting governmental business subject to IPRA. **Doc. 28 at 20–21**. See *State ex rel. Toomey v. City of Truth of Consequences*, 2012-NMCA-104, ¶¶ 13–14, 287 P.3d 364 (N.M. Ct. App. 2012). In furtherance of her position, Plaintiff cites to no legitimate² cases.

² The Court notes that Plaintiff's citation to “*Las Cruces Sun-News v. City of Las Cruces* (2003-NMCA-099, 134 N.M. 224, 75 P.3d 824)” in **Doc. 20 at 20** is fake. The Court has been unable to locate a significant amount of the “case law” cited in Plaintiff's Response. See *infra* ¶ 5.B.

Simply stated, Plaintiff has not pled sufficient facts to demonstrate an IPRA claim nor has she cited any legitimate cases in her response. Accordingly, the Court concludes that Defendants are entitled to dismissal with prejudice as to the IPRA claim.

B. NMOSHA claims

Plaintiff alleges nonspecific violations of NMOSHA. **Doc. 1 at 1**. But NMOSHA does not create a private right of action. See *NMSA 1978 § 50-9-25* (2023). To the extent Plaintiff “asserts an improper or nonexistent cause of action ... [Plaintiff Morgan] should be able to reassert ... this claim at a later date.” *Sturgeon v. ABF Freight Sys., Inc.*, No. 02-cv-1317, 2004 WL 7338289, at *2, 2004 U.S. Dist. LEXIS 34515, at *4 (D.N.M. Jan. 7, 2004).

The Court concludes that dismissal with prejudice is appropriate for the NMOSHA claims.

C. Section 1981 claims

To state a race-based hostile work environment claim, “a plaintiff must, among other things, plead facts sufficient to show that the work environment ‘is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.’” *Brown v. LaFerry's LP Gas Co., Inc.*, 708 F. App'x 518, 520 (10th Cir. 2017) (quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21, 114 S.Ct. 367, 126 L.Ed.2d 295 (1993)). A plaintiff must plead facts sufficient to show the work environment was “both objectively and subjectively hostile.” *Payan v. UPS*, 905 F.3d 1162, 1171 (10th Cir. 2018).

Here, Plaintiff has not alleged sufficient facts for a hostile work environment claim against CAV. Plaintiff alleges nonspecific “taunting,” a “tea servant” comment, more undefined and unexplained comments by coworkers, and a “machine [] that could kill them.” **Doc. 1**. Aside from conclusory references, Plaintiff makes no mention that the conduct arose from racial animus. Accordingly, Plaintiff has not pled sufficient facts in support of her hostile work environment claim against CAV.

Plaintiff's complaint fails to support a reasonable inference that any of that conduct was related to her race. As such, Plaintiff's § 1981 hostile work environment claims against Defendant CAV are dismissed without prejudice for failure to state a claim.

Plaintiff is granted leave to amend. See *Fleming*, 573 F. App'x at 769. If, however, Plaintiff fails to submit an amended complaint within 30 days or if Plaintiff submits an amended complaint that still does not state a plausible claim for relief,

the Court may dismiss Plaintiff's claims with prejudice and without notice. See *Gee*, 627 F.3d at 1195 (citing *Hall*, 935 F.2d at 1109–10).

D. Rehabilitation Act claims

*7 The Rehabilitation Act provides a private right of action to qualified individuals who have been subjected to discrimination by way of failure to accommodate. 29 U.S.C. § 794. Under the Rehabilitation Act, Plaintiff must show that she (1) is disabled; (2) is otherwise qualified; and (3) requested a plausibly reasonable alternative. *Brown v. Austin*, 13 F.4th 1079, 1084–85 (10th Cir. 2021). Here, Plaintiff has not pled sufficient facts to demonstrate the initiation of any accommodation requests; whether they were reasonable; whether they were accepted or rejected; and whether they were job related. **Doc. 20 at 19.**

The Court dismisses Plaintiff's Rehabilitation Act claims against Defendant CAV without prejudice.

Pro se Plaintiff Morgan is once again granted leave to amend. See *Fleming*, 573 F. App'x at 769. If, however, Plaintiff fails to submit an amended complaint within 30 days or if Plaintiff submits an amended complaint that still does not state a plausible claim for relief, the Court may dismiss Plaintiff's claims with prejudice and without notice. See *Gee*, 627 F.3d at 1195 (citing *Hall*, 935 F.2d at 1109–10).

V. Plaintiff's Pro Se Status Does Not Give Her License to Abuse the Judicial Process

Parties who proceed *pro se* are afforded some latitude and held to a less stringent standard of pleading than formal pleadings drafted by lawyers. *Hall*, 935 F.2d at 1110; *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005). Even so, the Tenth Circuit requires all litigants, including those who are not represented by counsel, to comply with the Federal Rules of Civil Procedure. See *Nielsen v. Price*, 17 F.3d 1276 (10th Cir. 1994) (explaining that the Tenth Circuit has “has repeatedly insisted that *pro se* parties follow the same rules of procedure that govern other litigants”) (internal quotation marks and citation omitted).

A. Rule 11 Requirements

Rule 11(b) of the Federal Rules of Civil Procedure states that, for every pleading, filing, or motion submitted to the Court, an attorney or unrepresented party certifies that it is not being presented for any improper purpose, such as to harass,

cause unnecessary delay, or needlessly increase the cost of litigation,” that all claims or “legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law,” and that factual contentions have evidentiary support.

Under Rule 11(c)(3), the Court is empowered to order a party “to show cause why conduct specifically described in the order has not violated Rule 11(b).” If, after notice and opportunity to respond, a court determines that a party has violated Rule 11(b), it may impose sanctions. See *King v. Fleming*, 899 F.3d 1140, 1148 (10th Cir. 2018). These imposition of sanctions under Rule 11 is within the discretion of the Court. *Id.* at 1147.

Although dismissal is an “extreme sanction” not “to be taken lightly,” it is nevertheless a permissible option. *King*, 899 F.3d at 1149. The Tenth Circuit reasoned that, “because dismissal with prejudice defeats altogether a litigant's right to access to the courts, it should be used as a weapon of last, rather than first, resort.” *Ehrenhaus v. Reynolds*, 965 F.2d 916, 920 (10th Cir. 1992).

B. Warning to Plaintiff moving forward

Ms. Morgan has a right of access to the courts, but that right is not absolute or unconditional. *Sieverding v. Colo. Bar Ass'n*, 469 F.3d 1340, 1343 (10th Cir. 2006) (“[T]here is no constitutional right of access to the courts to prosecute an action that is frivolous or malicious.”). As a result of the demands of this Court's caseload, the Court has a strong interest in managing its docket and minimizing the impact of frivolous or meritless actions on its resources. See *Drevaleva v. Dep't of Veterans Affairs*, No. 21-cv-761, 2021 WL 4168600, at *9, 2021 U.S. Dist. LEXIS 174080, at *7 (D.N.M. Sept. 14, 2021); *Mallgren v. United States*, No. 16-cv-1285, 2016 WL 9725195, at *1, 2016 U.S. Dist. LEXIS 171674, at *1 (D.N.M. Dec. 12, 2016). Although courts “make some allowances for the *pro se* Plaintiff's failure to cite to proper legal authority,” courts do not make allowances for a Plaintiff who cites to fake, nonexistent, misleading authorities. *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

*8 As applied here, Plaintiff cited to several fake or nonexistent opinions³. **Doc. 28.** This appears to be only the second time a federal court has dealt with a pleading involving “non-existent judicial opinions with fake quotes and citations.” *Mata v. Avianca, Inc.*, No. 22-cv-1461, —

F.Supp.3d —, 2023 WL 4114965, 2023 U.S. Dist. LEXIS 108263 at *2 (S.D.N.Y. June 22, 2023); *see also Ex parte Lee*, 673 S.W.3d 755 (Tex. Crim. App. 2023). Quite obviously, many harms flow from such deception—including wasting the opposing party's time and money, the Court's time and resources, and reputational harms to the legal system (to name a few).

3 First, on page 16, Plaintiff cites to “*Doe v. United Airlines, Inc.*, 754 F.3d 576 (7th Cir. 2014).” This is actually *Young v. Builders Steel Co.*, 754 F.3d 573 (8th Cir. 2014). Next, Plaintiff cites to “*EEOC v. Lockheed Martin Corp.*, 116 F. Supp. 3d 734 (E.D. Pa. 2015)” on page 16. This citation is actually *Caldwell ex rel. La. v. Bristol Myers Squibb Sanofi Pharms. Holding P'ship*, 116 F. Supp. 3d 727 (W.D. La. 2015). On the next page, Plaintiff cites to “*Beck v. University of Kansas Medical Center*, 953 F.3d 1215, 1224 (10th Cir. 2020),” but the actual citation is *United States v. Goldman*, 953 F.3d 1213 (11th Cir. 2020). On page 20, Plaintiff cites to a nonexistent case out of Las Cruces: “*Las Cruces Sun-News v. City of Las Cruces* (2003-NMCA-099, 134 N.M. 224, 75 P.3d 824),” which is in actuality *State v. Foster*, 2003-NMCA-099, 134 N.M. 224, 75 P.3d 824 (N.M. Ct. App. 2003). Finally, Plaintiff cites to a “*Secretary of Labor v. Mega-Construction Co.* (2018)” on page 23—yet again, no such case exists.

The foregoing should provide Plaintiff with enough constructive and cautionary guidance to allow her to proceed *pro se* in this case. But, her *pro se* status will **not** be tolerated by the Court as an excuse for failing to adhere to this Court's rules; nor will the Court look kindly upon any filings that unnecessarily and mischievously clutter the docket. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 50, 111 S.Ct. 2123, 115 L.Ed.2d 27, (recognizing a Court's inherent power to impose a variety of sanctions to regulate its docket, promote judicial efficiency and deter frivolous filings); *Jones v. Bank of Santa Fe (In re Courtesy Inns, Ltd.)*, 40 F.3d 1084, 1089 (10th Cir. 1994).

Thus, Plaintiff is hereby advised that she will comply with this Court's local rules, the Court's Guide for *Pro Se* Litigants, and the Federal Rules of Civil Procedure. Any future filings with citations to nonexistent cases may result in sanctions such as the pleading being stricken, filing restrictions imposed, or the case being dismissed. *See Ehrenhaus*, 965 F.2d at 920 (explaining dismissal is

“appropriate only when the aggravating factors like bad faith or willfulness outweigh the judicial system's strong predisposition to resolve cases on their merits”); *Werner v. State of Utah*, 32 F.3d 1446, 1447 (10th Cir. 1994) (filing restrictions are appropriate when a litigant abuses privileges such as proceeding in forma pauperis and being afforded the lenience due to *pro se* litigants); *Ayala v. Holmes*, 29 F. App'x 548, 551 (10th Cir. 2002) (stating a court has the inherent power to regulate the activities of vexatious or abusive litigants after appropriate notice is given); *see also Willy v. Coastal Corp.*, 855 F.2d 1160 (5th Cir. 1988) (citing nonexistent rules of law can lead to Rule 11 sanctions); *cf. Aimee Furness & Sam Mallick, Evaluating the Legal Ethics of a ChatGPT-Authored Motion*, LAW360 (Jan. 23, 2023, 5:36 PM), <https://www.law360.com/articles/1567985/evaluating-the-legal-ethics-of-a-chatgpt-authored-motion>.

CONCLUSION

*9 Plaintiff's claims in Counts I and III against CAV are plausible and have been sufficiently exhausted. **IT IS THEREFORE ORDERED** that Defendants' Motion to Dismiss (**Doc. 20**) is hereby **GRANTED IN PART** as follows:

- Counts I–VII against the individually named Defendants are **DISMISSED with prejudice**.
- Plaintiff's Title VII, ADA, and Rehabilitation Act claims against the individually named Defendants are **DISMISSED with prejudice**.
- Counts II and IV–VII against Defendant CAV are **DISMISSED with prejudice** for failure to state a claim under *Fed. R. Civ. P. 12(b)(6)* since providing leave to amend the Complaint (**Doc. 1**) as to these claims would be futile.
- Plaintiff's IPRA and NMOSHA claims against all Defendants are **DISMISSED with prejudice**.
- All claims and Counts against Defendant Trujillo are **DISMISSED without prejudice**.
- Plaintiff's § 1981 claims against all Defendants are **DISMISSED without prejudice**.
- Plaintiff's NMHRA claims against all Defendants are **DISMISSED without prejudice** for lack of subject matter jurisdiction.

- Plaintiff's Rehabilitation Act claims against Defendant CAV are **DISMISSED without prejudice**.
- **IT IS FURTHER ORDERED** that Plaintiff is granted leave to file an amended complaint within **thirty (30) days** of the entry of this Memorandum Opinion and Order. Specifically, the Court is providing an opportunity for Plaintiff to amend her complaint with respect to the Rehabilitation Act, Title VII, and ADA claims against CAV. The Court is also granting leave to amend Plaintiff's § 1981 claims against all Defendants.

- **Plaintiff is hereby (and again) advised that this Order serves as her FINAL WARNING that any subsequent violation of this Order or of other Court orders and rules will result in SANCTIONS, INCLUDING DISMISSAL OF HER CASE WITH PREJUDICE, WITHOUT FURTHER NOTICE.**

IT IS SO ORDERED.

All Citations

Slip Copy, 2023 WL 6976510

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