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Federal APPENDIX A
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NOT FOR PUBLICATION

FILED

SEP 25 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TAMARA KIMMEL LOVE, Plaintiff - Appellant, v. KAISER PERMANENTE CONSOLIDATED; KAISER PERMANENTE EMPLOYER HEALTH PLAN OF WASHINGTON, Defendants - Appellees.	No. 24-3065 D.C. No. 2:23-cv-00421-LK MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Lauren J. King, District Judge, Presiding

Submitted September 17, 2025**

Before: SILVERMAN, OWENS, and BRESS, Circuit Judges.

Tamara Kimmel Love appeals pro se from the district court's judgment dismissing her employment action alleging federal claims. We have jurisdiction

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

under 28 U.S.C. § 1291. We review de novo a dismissal under Federal Rule of Civil Procedure 12(b)(6). *Prodanova v. H.C. Wainwright & Co., LLC*, 993 F.3d 1097, 1105 (9th Cir. 2021). We affirm.

The district court properly dismissed Love's action because Love failed to allege facts sufficient to state a plausible claim. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (to avoid dismissal, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face" (citation and internal quotation marks omitted)); *Nunies v. HIE Holdings, Inc.*, 908 F.3d 428, 433-34 (9th Cir. 2018) (setting forth elements of a prima facie case for a disability discrimination claim under the Americans with Disabilities Act); *Sheppard v. David Evans & Assoc.*, 694 F.3d 1045, 1049-50 (9th Cir. 2012) (setting forth elements of a prima facie case for a discrimination claim under the Age Discrimination in Employment Act); *Vasquez v. County of Los Angeles*, 349 F.3d 634, 640-46 (9th Cir. 2003) (setting forth elements of a prima facie case for Title VII discrimination, hostile work environment, and retaliation claims); *Nat'l Ass'n for the Advancement of Psychoanalysis v. Cal. Bd. of Psychology*, 228 F.3d 1043, 1049 (9th Cir. 2000) (explaining that "we may consider facts contained in documents attached to the complaint" in determining whether the complaint states a claim for relief).

The district court did not abuse its discretion by denying further leave to

amend because amendment would have been futile. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and explaining that leave to amend may be denied when amendment would be futile); *Metzler Inv. GMBH v. Corinthian Colls., Inc.*, 540 F.3d 1049, 1072 (9th Cir. 2008) (explaining that "the district court's discretion to deny leave to amend is particularly broad where plaintiff has previously amended the complaint" (citation omitted)).

We reject as unsupported by the record Love's contention that the district court violated her constitutional rights or engaged in other wrongdoing.

We do not consider arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009). We do not consider documents and facts not presented to the district court. *See United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990).

All pending motions and requests are denied.

AFFIRMED.

Federal APPENDIX B
Order of U. S. Court of Appeals Court Denying Rehearing

UNITED STATES COURT OF APPEALS

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

TAMARA KIMMEL LOVE,

Plaintiff - Appellant,

v.

KAISER PERMANENTE CONSOLIDATED; KAISER PERMANENTE EMPLOYER HEALTH PLAN OF WASHINGTON,

Defendants - Appellees.

No. 24-3065

D.C. No. 2:23-cv-00421-LK
Western District of Washington, Seattle

ORDER

Before: SILVERMAN, OWENS, and BRESS, Circuit Judges.

The petition (Docket Entry No. 38) for panel rehearing is denied.

No further filings will be entertained in this closed case.

Federal APPENDIX C
Decision of the U.S. District Court

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TAMARA LOVE,

Plaintiff,

v.

KAISER PERMANENTE, et al.,

Defendants.

CASE NO. 2:23-cv-00421-LK

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS AND DENYING PLAINTIFF'S MOTION TO AMEND

This matter comes before the Court on Plaintiff Tamara Love's motion to file a third amended complaint, Dkt. No. 37, and Defendant Kaiser Foundation Health Plan of Washington's ("Kaiser") motion to dismiss her second amended complaint, Dkt. No. 38.[1] For the reasons set forth below, the Court denies Ms. Love's motion to amend and grants Kaiser's motion to dismiss.

[1] Ms. Love has named as Defendants "Kaiser Permanete" and Kaiser Foundation Health Plan of Washington. Dkt. No. 33 at 1. Kaiser avers that Kaiser Foundation Health Plan of Washington is the only proper Defendant. Dkt. No. 38 at 5 n.2.

I. BACKGROUND

Ms. Love was hired by Defendant Kaiser in 2021 and worked for the Medicare Member Service Department handling calls from Medicare recipients. Dkt. No. 33 at 7. She worked remotely for most of her employment with Kaiser. *Id.*

A. Ms. Love Was Discharged After a Contentious Call

In June 2022, Ms. Love started receiving calls from members that she felt were threatening and she sent a "notice to Security through Outlook." *Id.* at 8. In one such call, the member's representative "called in seeking a refund of a premium over payment from a member[']s account. He started screaming that the bank was not able t[o] stop the transfers and was told to call insurance." *Id.* Ms. Love was unsure whether she "was authorized to relinquish a member's property per HIPPA and SPOT guidelines," the caller was not able to verify the account, and Ms. Love was unable to respond to the caller's questions. *Id.* She "reached out to [her] supervisor in an attempt to refocus and de-escalate the call," but her supervisor did not assist and later informed Ms. Love that she "mistreated the member's husband by not letting him have ac[c]ess to her account." *Id.* Ms. Love was told that she "should have given money to a representative based on 'their' sexual status to [the] member." *Id.* Kaiser terminated Ms. Love's employment on June 28, 2022 because her treatment of the caller did not meet Kaiser's standards. *Id.* at 8–9; *see also* Dkt. No. 21 at 19–21.[2]

Ms. Love also notes that before she was let go, she took June 24 and 27, 2022 off from work because she was sick. Dkt. No. 33 at 9. On June 28, 2022, she was told to return her work computer. *Id.* She responded that she was sick and Kaiser would either need to pick it up or wait.

[2] The Court's prior order considered Ms. Love's termination letter because it was incorporated by reference into the complaint. Dkt. No. 32 at 5. The Court considers the letter again because it is incorporated by reference into the second amended complaint. *See, e.g.*, Dkt. No. 33 at 7–8 (referencing Ms. Love's termination letter).

Id. Her supervisor "became hostile," refused to pick up the computer, and demanded that Ms. Love return it, which Ms. Love did on July 11, 2022. *Id.*

B. Ms. Love Filed Suit Alleging Discrimination and Harassment

Ms. Love filed suit against Kaiser on March 19, 2023. Dkt. No. 1. On October 12, 2023, the Court granted Kaiser's motion to dismiss her complaint for failure to state a claim, denied Ms. Love's motion for summary judgment, and granted Ms. Love leave to file an amended complaint. Dkt. No. 32 at 13. On October 24, 2023, Ms. Love filed a timely second amended complaint, which is the current operative pleading. Dkt. No. 33.[3]

Ms. Love asserts claims under Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e, *et seq.*; the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621, *et seq.*; the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, *et seq.*; and an unspecified provision of the California Civil Code. Dkt. No. 33 at 3. She alleges that Kaiser "violated [her] rights under federal and state law by denying [her] breaks, . . . disrupting the working environment with sexually motivated conduct[,]" failing to assist her "with abusive and racially abusive phone calls[,] . . . using sexual situations [as] a determin[]ing factor for monetary compensation[,] . . . using gender and or race as a determination of care[,]" and "brutally" firing her after she requested time off for an illness. *Id.* at 7. She contends that Kaiser's standards of conduct—cited in her termination letter—"belie[d] what [she] was hired to do" and "showed that [her] manager actively discrimi[n]ated aga[in]st [her] and the Medicare members." *Id.* at 9. She also avers that Kaiser "did not offer accommodation" and "refused to send boxes" to facilitate the return of her computer equipment. *Id.*

[3] Ms. Love previously filed a document she titled as her "amended complaint," Dkt. No. 24, which the Court construed as a motion to amend and denied, Dkt. No. 25. Ms. Love docketed her current amended complaint as her "Second Amended Complaint," Dkt. No. 33, and Kaiser's motion to dismiss also refers to the pleading that way, Dkt. No. 38 at 5.

Ms. Love also states that she received letters from Kaiser physician Dr. John Dunn in December 2021 and June 2022 reminding her to call her provider for a cervical cancer screening. *Id.* She "was not offered a[n] annual physical or wellness exam. But a cervical cancer screening." *Id.* Ms. Love contends that the mailings were "assumptive and discrim[in]atory" because she is homeopathic. *Id.*

Finally, Ms. Love contends that Kaiser "mock[ed her] rights, [h]arrass[ed her,] and abuse[d] the system to control and manipulate on May 4, 2023 in an Administrative Hearing" on her application for unemployment benefits. *Id.* As a result, the Washington Employment Security Department ("ESD") found that she engaged in misconduct, denied her benefits application, and sent her a bill for an overpayment. *Id.* at 9–11.[4] She is seeking $30,000 in lost wages, $10 million in punitive or exemplary damages, and other damages. Dkt. No. 33 at 11–12.

C. Ms. Love Seeks Leave to Amend Her Complaint Again

On November 21, 2023, Ms. Love filed a motion to amend her complaint again to add ESD as a defendant. *See generally* Dkt. No. 37; Dkt. No. 37-1 at 1 (proposed third amended complaint). In her proposed amended pleading, she contends that "[t]he commissioner just by name was presumably a white male of [H]isp[a]nic orig[i]n," ESD sent her numerous pages "in other languages . . . attached to the overpayment request for money for an English speaking citizen," and the Commissioner "upheld a ruling of Misconduct for an employee offering the similar service." Dkt. No. 37-1 at 10; *see also id.* at 11 (contending that the finding of misconduct "affects [her] abil[i]ty to seek gainful employment and licensing."). She seeks damages, attorney's fees, and court costs against ESD for "[h]arassment during the [a]dministrative hearing." *Id.* at 12.

[4] Under state law, a former employee can be disqualified from receiving unemployment compensation benefits due to "misconduct," which is defined to include specified types of conduct. Wash. Rev. Code §§ 50.04.294(1), 50.20.060. Although Ms. Love contends that she was denied benefits due to a finding of misconduct, the paperwork she filed reflects that she was disqualified based on her failure to look for work. Dkt. No. 37-2 at 1; Dkt. No. 42 at 1 (redacted).

In her motion to amend, Ms. Love contends that ESD "engaged in discrimination with it[]s ruling of Misconduct and along with the defendants violated [her] rights to be free from discrimination in a decision that resulted in an overpayment." Dkt. No. 37 at 5. Ms. Love has also filed an appeal of ESD's decision in state court. Dkt. No. 40-6 at 1–22; *Love v. Emp. Sec. Dep't*, No. 23-2-09501-0 (Pierce Cnty. Sup. Ct. 2023).

Ms. Love's proposed third amended complaint also seeks to add that her former supervisor Jamie Coleman "is a middle aged white female," Dkt. No. 37-1 at 7, and to correct a typographical error, *id.* at 10 (changing "couchings" to "coachings").

II. DISCUSSION

The Court first considers Ms. Love's motion to file a third amended complaint. Because the Court denies that motion, it then considers Kaiser's motion to dismiss Ms. Love's second amended complaint.

A. The Motion to Amend Is Denied

The court should "freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). "This policy is 'to be applied with extreme liberality.'" *Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (per curiam) (quoting *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001)). The factors courts use to determine when justice requires amendment are "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment," and the "futility of amendment[.]" *Foman v. Davis*, 371 U.S. 178, 182 (1962). Of these factors, the consideration of prejudice to the opposing party carries the greatest weight. *Eminence Cap.*, 316 F.3d at 1052. Courts may deny leave to amend when the proposed amendment would be futile. *Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 725–26 (9th Cir. 2000).

Kaiser responds that joinder of ESD is procedurally improper because Ms. Love did not bring her motion under Federal Rule of Civil Procedure 20 as required for permissive joinder of parties. Dkt. No. 39 at 1. It further argues that Ms. Love cannot show that ESD is a proper party because it was not her employer, its alleged misconduct does not arise from the same transaction or occurrence as Kaiser's, and it is immune from the claims she brings. *Id.* at 1–2.

Ms. Love's proposed third amended complaint does not state a claim against ESD. She asserts claims under various employment statutes, but does not contend that ESD employed her. Dkt. No. 37-1 at 3. Her notation that ESD is an employer does not allege that it was *her* employer. Dkt. No. 44 at 5. And while she also cites the "California Civil Code," Dkt. No. 37-1 at 3, her proposed third amended complaint includes no contentions under that Code or allegations that ESD—a Washington State agency—is subject to California law.

Nor could those deficiencies be cured by amendment. As Kaiser notes, ESD is immune to suit for its benefits-related decisions and for acts that "are intimately associated with the judicial process." *Labrec v. Emp. Sec. Dep't*, 758 P.2d 501, 502 (Wash. Ct. App. 1988); *see also Ferguson v. Emp. Sec. Dep't*, 13 Wash. App. 2d 1081, 2020 WL 3047533, at *3 (Wash. Ct. App. June 8, 2020) (unpublished) ("[T]he Department's decision denying Ferguson unemployment benefits is a judicial action absolutely immune from civil suit."). Although Ms. Love contends that ESD discriminated against her, that allegation appears to be based solely on her disagreement with ESD's decision that she engaged in disqualifying misconduct and was required to repay the overpayment. Dkt. No. 37-1 at 11. The agency is immune from suit for its benefits-related decisions. *Labrec*, 758 P.2d at 502.[5] Because ESD is immune, the Court need not address joinder.

[5] Ms. Love also contends that ESD "mock[ed her] rights, [h]arrass[ed her] and abuse[d] the system to control and manipulate on May 4, 2023 in an Administrative Hearing[.]" Dkt. No. 37-1 at 10. To the extent that she is asserting a claim for her treatment at the hearing apart from ESD's benefits decisions, that claim does not share any common questions of law or fact with her employment-related claims against Kaiser and is not amenable to joinder. Fed. R. Civ. P. 20(a)(2)(B).

For all these reasons, the Court denies Ms. Love leave to add ESD as a defendant. Finally, Ms. Love's proposed new allegations about Ms. Coleman's age, race, and gender, or to correct the typographical error identified above, Dkt. No. 37-1 at 7, 10, are futile for the reasons stated in the next section. Therefore, her motion to amend is denied.

B. The Motion to Dismiss Is Granted

Federal Rule of Civil Procedure 12(b)(6) provides for dismissal when a complaint "fail[s] to state a claim upon which relief can be granted." Under this standard, the Court construes the complaint in the light most favorable to the nonmoving party, *Livid Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d 940, 946 (9th Cir. 2005), and asks whether the complaint contains "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face,'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The Court need not, however, accept as true legal conclusions or "formulaic recitations of the elements of a cause of action." *Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012) (cleaned up). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.

Kaiser seeks to dismiss all of Ms. Love's claims without leave to amend. Dkt. No. 38.[6] Ms. Love opposes the motion. Dkt. No. 44.

[6] Kaiser's motion states that it "incorporates by reference its first Motion to Dismiss" because Ms. Love "asserts the same facts in her Second Amended Complaint that were insufficient to support her claims in her initial Complaint." *Id.* at 7. Setting aside the fact that Ms. Love's second amended complaint alleges additional facts not alleged in her original complaint, the Court declines to consider Kaiser's prior motion to dismiss because doing so would allow Kaiser to circumvent the length limit in Local Civil Rule 7(e)(3). *See Mooney v. Roller Bearing Co. of Am., Inc.*, No. C20-01030-LK, 2022 WL 1014904, at *10 (W.D. Wash. Apr. 5, 2022) (declining to consider other filings incorporated by reference when doing so would violate the length limit in the Local Civil Rules); *O'Dell v. Conseco Senior Health Ins. Co.*, No. C08-00793-RSL, 2011 WL 13044240, at *1 n.1 (W.D. Wash. Feb. 10, 2011) (disregarding all arguments and supporting evidence that were not made in defendants' opposition to plaintiff's motion).

1. Ms. Love Has Not Stated a Race or Sex Discrimination Claim

Under Title VII, an employment discrimination plaintiff must establish a prima facie case by demonstrating that: "(1) [s]he is a member of a protected class; (2) [s]he was qualified for [her] position; (3) [s]he experienced an adverse employment action; and (4) similarly situated individuals outside [her] protected class were treated more favorably, or other circumstances surrounding the adverse employment action give rise to an inference of discrimination." *Hittle v. City of Stockton, Cal.*, 76 F.4th 877, 887 (9th Cir. 2023) (quoting *Fonseca v. Sysco Food Servs. of Ariz., Inc.*, 374 F.3d 840, 847 (9th Cir. 2004)). To satisfy the fourth element, the plaintiff "may demonstrate an inference of discrimination through comparison to similarly situated individuals, or any other circumstances surrounding the adverse employment action that give rise to an inference of discrimination." *Id.* (cleaned up); *see also Crowe v. Wormuth*, 74 F.4th 1011, 1035–36 (9th Cir. 2023).

Kaiser asserts that Ms. Love "fails to allege facts sufficient to demonstrate that Kaiser allegedly discarding a request for escalation constituted an adverse employment action." Dkt. No. 38 at 13. But Ms. Love was discharged from her employment, which is an adverse action. *See, e.g., Brooks v. City of San Mateo*, 229 F.3d 917, 928 (9th Cir. 2000). And unlike the prior version of her complaint, Ms. Love now identifies her race (Black), satisfying the "protected class" element. Dkt. No. 33 at 7, 11.

Kaiser also argues that Ms. Love's employment was terminated "not because she tried to escalate a call, but because after months of repeated coaching sessions, she treated a member disrespectfully and misrepresented to her supervisor what was said during that conversation with the member." Dkt. No. 38 at 13. However, at the dismissal stage, the Court construes Ms. Love's version of the facts—not Kaiser's—as true. *Iqbal*, 556 U.S. at 678.

Kaiser next argues that "[b]eyond broadly asserting that she is a member of protected classes, Ms. Love relies solely on argument and conclusory allegations, neither of which are sufficient to advance her claims." Dkt. No. 38 at 9. The Court agrees. Ms. Love appears to assert that although she followed "SPOT resources" during the contentious call and "reached out to [her] supervisor in an attempt to refocus and de-escalate the call," her supervisor, Ms. Coleman, refused to take the call, apparently in derogation of the "spot guidelines." Dkt. No. 33 at 8. Ms. Love claims that Ms. Coleman "disregarded the request for escalation because [Ms. Love] was black and should have assisted her in the course of business." *Id.* at 11. She adds that because the caller "had a slight accent," Ms. Coleman "either disregarded the request for escalation because [Ms. Love] was black and should have assisted her in the course of business which is unclear to me who's [sic] course of business or guidelines she was referring to at that point," and Ms. Coleman's "negligence and lack of concern is a sign of racial prejudice." *Id.* As for similarly situated individuals, Ms. Love makes the following assertions in her response brief:

> Jamie Coleman A white middle aged female was similary situated in Customer Service department. She continued her employment with Kaiser and according to her own testimony was acutually promoted to Operations supervisor. adverse employment action while similarly situated individuals outside her protected class were treated more favorably . . . . Was a white person making the same decision treated differenctly. Jamie Coleman. A profile she was selected because her profile would do better than mine a black female. This is social engineering that despite everything, Jamie Coleman was going to work better. The factor into this was socially engineered racial profiling and de facto is discriminatory. The defenadants deal in probabilities. The probablility that employee solicitation will gain them gainful employment. That hiring a middle age white female will gain them gainful emploment.

Dkt. No. 40 at 6. Even if these allegations were in her complaint (they are not), they do not explain how a similarly situated individual outside her protected class was treated differently.

These conclusory assertions are insufficient to show that circumstances surrounding her termination give rise to an inference of discrimination. *See, e.g.*, *Austin v. City of Oakland*, No.

17-CV-03284-YGR, 2018 WL 4353030, at *4 (N.D. Cal. Sept. 12, 2018) (plaintiff's "allegations that he was 'singled out ... and treated less favorably,' supplied without any supporting factual allegations, fails to establish a reasonable inference of liability stronger than a mere possibility"); *Heyer v. Governing Bd. of Mount Diablo Unified Sch. Dist.*, No. C-10-4525 MMC, 2011 WL 724736, at *2 (N.D. Cal. Feb. 22, 2011) (allegations that plaintiff had been subjected to "[u]nwarranted, unrelenting over and close scrutiny," "[c]ontinuous harassment," "[c]ontinuous undermining of ability to perform duties," "[f]alse negative performance evaluation," harassment "on account of his race, and color and age," and that he "was denied transfer or reassignment as Vice–Principal because of his race and color" was insufficient to raise a right of relief above the speculative level), *aff'd*, 521 F. App'x 599 (9th Cir. 2013). Ms. Love's proposed amendments to add that Ms. Coleman "is a middle aged white female," Dkt. No. 37-1 at 7, and to correct "couchings" to "coachings," *id.* at 10, would not change this result.

Ms. Love has also not stated a claim for sex discrimination. She alleges that someone—presumably Dr. Dunn when he sent the cancer screening reminders—"us[ed] gender and or race as a determination of care," Dkt. No. 33 at 7, but she provides no nexus between her healthcare and her employment. Ms. Love also contends that "women are treated to unequal pay in the work place," *id.* at 11, but that conclusory allegation does not allow the court to plausibly infer that she personally was subjected to sex discrimination. In response to the motion to dismiss, Ms. Love contends that Ms. Coleman "used gender and color to dispose of" of an unpleasant situation—presumably the contentious call—so she would not have to deal with it. Dkt. No. 44 at 6. Even if Ms. Love were permitted to amend her complaint via a response brief (she is not), that conclusory allegation does not state a claim either. Again, the amendments in Ms. Love's proposed third amended complaint would not change this outcome.

Therefore, the Court grants Kaiser's motion to dismiss Ms. Love's Title VII claim for race and sex discrimination.

2. Ms. Love Has Not Stated a Disability Discrimination Claim

To prevail on a disability discrimination claim premised on an alleged wrongful termination, a plaintiff must establish that (1) she is a person with a disability within the meaning of the statute; (2) she is qualified—i.e., she is able to perform the essential function of the job with or without reasonable accommodation; and (3) she was discharged because of the disability. *Mayo v. PCC Structurals, Inc.*, 795 F.3d 941, 944 (9th Cir. 2015). An individual is disabled under the first prong if she has a physical or mental impairment that substantially limits one or more of her major life activities; she has a record of such an impairment; or she is regarded as having such an impairment. *Coons v. Sec'y of U.S. Dep't of Treasury*, 383 F.3d 879, 884 (9th Cir. 2004) (citing 42 U.S.C. § 12102); *Shields v. Credit One Bank, N.A.*, 32 F.4th 1218, 1225 (9th Cir. 2022); 42 U.S.C. § 12102(1)(A). That definition does not require "a showing of long-term effects." *Shields*, 32 F.4th at 1225. The ADA provides a nonexhaustive list of "major life activities" including "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." 42 U.S.C. § 12102(2)(A).

In her amended complaint, Ms. Love identifies her disabilities as "chronic illness" and "mental health." Dkt. No. 33 at 4. She contends that Kaiser knew about her conditions because it "had access to [her] health profile[.]" *Id.* at 9. Even assuming this provides adequate specificity regarding an impairment of which Kaiser was aware, Ms. Love does not allege that either impairment "substantially limited" a "major life activity." 42 U.S.C. § 12102(1)(A). Following the ADA Amendments Act of 2008 ("ADAAA"), "[t]he term 'substantially limits' shall be construed broadly" and "is not meant to be a demanding standard." 29 C.F.R. § 1630.2(j)(1)(i). Still, a

plaintiff must plead the elements of the definition. *See, e.g.*, *Shields*, 32 F.4th at 1225–27. Here, Ms. Love has not pleaded that she is substantially limited in any major life activity. Her statement that she was too sick to work on two days does not allege that she was substantially limited in her ability to work as compared to most people in the general population. Dkt. No. 33 at 9; *see, e.g.*, *Weaving v. City of Hillsboro*, 763 F.3d 1106, 1112 (9th Cir. 2014) (stating that, under post-ADAAA law, ADA plaintiffs must show that they were substantially limited in their ability to work compared to "most people in the general population." (quoting 29 C.F.R. § 1630.2(j)(1)(ii))). Ms. Love does not allege facts to show that she is a person with a disability, and she has thus failed to state a claim for disability discrimination. *See Vopnford v. Wellcare Health Plans*, No. C16-1835-JLR, 2017 WL 3424964, at *11 (W.D. Wash. Aug. 8, 2017) (dismissing ADA claim for failure to allege a disability or state a claim).

Moreover, even if Ms. Love had alleged facts sufficient to show that she has a disability, she has not stated a claim that Kaiser failed to accommodate her. To prevail on a failure to accommodate claim under the ADA, a plaintiff must show, among other things, that the employer had notice of the disability and failed to reasonably accommodate the employee. *See McDaniels v. Grp. Health Co-op.*, 57 F. Supp. 3d 1300, 1314 (W.D. Wash. 2014). Ms. Love contends that Kaiser failed to accommodate her because it "refused to send boxes" to facilitate the return of her computer equipment after her employment ended. Dkt. No. 33 at 9. But an employer is not required to provide the precise accommodation an employee requests; it "need only provide enough accommodation to enable the employee to perform the essential functions of h[er] job." *McDaniels*, 57 F. Supp. 3d at 1314. Here, Ms. Love does not allege that she was unable to perform the essential functions of her job. Even assuming that returning the equipment was an essential function, she returned the equipment approximately two weeks after her employment ended without incident. Dkt. No. 33 at 9. Accordingly, Ms. Love has not stated a claim for failure to

accommodate. Furthermore, the amendments in Ms. Love's proposed third amended complaint would not change this outcome.

3. Ms. Love Has Not Stated a Hostile Work Environment Claim

To prevail on a hostile work environment claim, plaintiffs must prove that (1) they were subjected to verbal or physical conduct because of a protected characteristic; (2) the conduct was unwelcome; and (3) the conduct was so severe or pervasive as to alter the conditions of employment and create an abusive environment. *See Manatt v. Bank of Am.*, 339 F.3d 792, 798 (9th Cir. 2003). "To determine whether conduct was sufficiently severe or pervasive to violate Title VII, [courts] look at all the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Vasquez v. Cnty. of Los Angeles*, 349 F.3d 634, 642 (9th Cir. 2003) (quotation marks omitted). "In addition, the working environment must both subjectively and objectively be perceived as abusive." *Id.* (quotation marks and alteration omitted).[7]

Although Ms. Love alleges that Kaiser "disrupt[ed] the work environment with sexually motivated conduct," Dkt. No. 33 at 7, she does not provide any details in support of that assertion. She also contends that Kaiser failed to assist her "with abusive and racially abusive phone calls." *Id.* The one call described in the complaint, in which a caller screamed at Ms. Love about a payment issue, does not appear to have any connection to any of her personal characteristics. *Id.* at 8. The complaint also fails to provide any details about the allegations regarding "sexually

[7] Ms. Love argues that "[t]he [C]alifornia standard for Sexual Harassment should be applied[.]" Dkt. No. 44 at 7. However, Ms. Love is a Washington resident, Dkt. No. 33 at 13, and does not explain why California law should apply to her sexual harassment claim. *See, e.g.*, Cal. Gov't Code § 12923(a) ("The purpose of these laws is to provide all *Californians* with an equal opportunity to succeed in the workplace and should be applied accordingly by the courts.") (emphasis added); *see also id.* at § 12920 ("This part shall be deemed an exercise of the police power of the state for the protection of the welfare, health, and peace of the people of this state.").

motivated conduct" in the work environment, "sexual situations" being a "determin[]ing factor for monetary compensation," or her supervisor's determination "that [she] should have given money to a representative based on 'their' sexual status to [a] member." *Id.* at 5, 7–8. Ms. Love's response does not clarify the nature of her allegations and instead vaguely alludes to a "safety" issue and being required to do "something else"—seemingly in relation to the contentious call—that was not in her job description. Dkt. No. 44 at 7–8. Even assuming that the facts in Ms. Love's second amended complaint are true, they do not show harassment based on a protected characteristic, or severe and pervasive conduct. Ms. Love's conclusory allegations are insufficient to state a hostile work environment claim and could not be salvaged by the changes in her proposed third amended complaint. That claim is accordingly dismissed.

4. Ms. Love Has Not Stated a Retaliation Claim

Ms. Love alleges that Kaiser retaliated against her by ending her employment because she filed a complaint with the Equal Employment Opportunity Commission ("EEOC") on the same day she was fired. Dkt. No. 33 at 10. Both Title VII and the ADA prohibit employers from taking adverse action against an employee because they have complained about or opposed discrimination. 42 U.S.C. § 12203(a); 42 U.S.C. § 2000e-3(a). To state a retaliation claim under either statute, a plaintiff must show "(1) involvement in a protected activity, (2) an adverse employment action and (3) a causal link between the two." *Brown v. City of Tucson*, 336 F.3d 1181, 1186 (9th Cir. 2003) (quoting *Brooks*, 229 F.3d at 928) (ADA); *Cornwell v. Electra Cent. Credit Union*, 439 F.3d 1018, 1034–35 (9th Cir. 2006) (Title VII).

Here, even assuming Ms. Love filed an EEOC complaint and was discharged, she has not demonstrated a causal connection between those events because she was discharged *before* she complained. An adverse action that occurred after her complaint cannot plausibly be caused by the complaint.

5. Ms. Love Has Not Stated an ADEA Claim

The ADEA makes it unlawful for an employer "to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age." 29 U.S.C. § 623(a)(1). To establish a prima facie case of age discrimination, a plaintiff must allege that she (1) was at least forty years old; (2) was performing the job satisfactorily; (3) suffered an adverse employment action; and (4) the adverse action occurred "under circumstances otherwise giving rise to an inference of age discrimination." *Sheppard v. David Evans & Assoc.*, 694 F.3d 1045, 1049 (9th Cir. 2012). The fourth element can be established either by direct evidence of indicating an employer's discriminatory conduct or through circumstantial evidence. *See id.* Although a plaintiff is not required to allege every fact necessary to establish a prima facie case of discrimination in the complaint, *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 514 (2002), the complaint must provide "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face,'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570).

Kaiser argues that Ms. Love's age discrimination claim must be dismissed because although she is over 40 years old, the second amended complaint includes no other allegations related to her age. Dkt. No. 38 at 18–19. The Court agrees. The second amended complaint does not include any facts or non-conclusory allegations to support an age-related claim. And, as with her other claims, the amendments in Ms. Love's proposed third amended complaint would not change this outcome. The Court therefore dismisses Ms. Love's ADEA claim.

6. Ms. Love Has Not Stated a Claim under California Law or for Missed Breaks

Under the title "Basis for Jurisdiction," Ms. Love's complaint lists, in addition to the federal statutes discussed above, "California Civil Code." Dkt. No. 33 at 3. She also notes that her termination "came certified from California." *Id.* at 8. Beyond that, the second amended complaint

does not specify what California law, if any, Kaiser allegedly violated, or how it did so. Therefore, she has not stated a claim under California law.

Ms. Love also alleges that Kaiser "and its representatives/agents have intentionally violated [her] rights under federal and state law by denying [her] breaks[.]" Dkt. No. 33 at 7; *see also id.* at 8 (alleging that she "asked for [her] morning break in a ping to [her] supervisor Jamie Coleman in the teams chat. She told [her] no, [she] could not have a break that after hours of being on the phone; [she] could not go and relieve [her]self."); *see also* Dkt. No. 44 at 10 (alleging in response to the motion to dismiss that Kaiser did not follow the times it assigned her for breaks). Dismissal under Federal Rule of Civil Procedure 12(b)(6) "can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). Ms. Love's missed breaks allegations do not identify which "federal or state law" Kaiser allegedly violated by denying her breaks. Because Ms. Love has not identified a cognizable legal theory supporting her claim for missed breaks, she has not stated a claim.[8]

C. The Court Will Not Grant Further Leave to Amend

A court's discretion to deny further leave to amend is "particularly broad where, as here, a plaintiff previously has been granted leave to amend." *Griggs v. Pace Am. Grp., Inc.*, 170 F.3d 877, 879 (9th Cir. 1999). Here, Ms. Love has submitted three complaints, and her second complaint had the benefit of a prior round of briefing on Kaiser's motion to dismiss, as well as the Court's order explaining why her initial complaint failed to state a claim. Despite this, Ms. Love's second and third complaints largely rehash the same facts as her initial complaint, add impertinent allegations, and introduce new claims based on deficient facts and conclusory assertions.

[8] Furthermore, as Kaiser notes, if Ms. Love is alleging a claim for missed breaks under Washington law, she has not alleged facts to support that claim. Dkt. No. 38 at 17–18 (citing Wash. Admin. Code § 296-126-092(4), (5)).

Furthermore, Ms. Love does not seek leave to amend in her responses to Kaiser's motion to dismiss, nor does she indicate what additional facts she could plead to state a claim. For these reasons, the Court declines to allow further leave to amend. *See Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1051–52 (9th Cir. 2008) (concluding that amendment would be futile where plaintiffs already filed an amended complaint containing the same defects as their original complaint and failed to state what additional facts they would plead if given leave to amend, or what additional discovery they would conduct to discover such facts).

III. CONCLUSION

For the foregoing reasons, Ms. Love's motion to file a third amended complaint, Dkt. No. 37, is DENIED without leave to amend. Kaiser's motion to dismiss the second amended complaint, Dkt. No. 38, with prejudice is GRANTED.

Dated this 7th day of May, 2024.

Lauren King
United States District Judge

Federal APPENDIX D
Decision of the U.S. District Court

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TAMARA LOVE, Plaintiff, v. STATE OF WASHINGTON EMPLOYMENT SECURITY DEPARTMENT, Defendant.	CASE NO. 3:25-cv-05714-LK ORDER GRANTING MOTION TO DISMISS

This matter comes before the Court on Defendant State of Washington Employment Security Department's Motion to Dismiss. Dkt. No. 6. Pro se plaintiff Tamara Love opposes the motion. Dkt. No. 17.[1] For the reasons set forth below, the Court grants the motion and dismisses the complaint with leave to amend.

I. BACKGROUND

The Washington Employment Security Department ("ESD") operates and administers

[1] Ms. Love has also filed a motion to consolidate this case with her closed case against Kaiser Permanente, No. 2:23-cv-00421-LK. *See* Dkt. No. 20.

Washington's unemployment compensation program. *See Sterling v. Feek*, 150 F.4th 1235, 1241 (9th Cir. 2025). Eligible individuals are entitled to receive up to 26 weeks of unemployment benefits per year. *Id.* (citing Wash. Rev. Code § 50.20.120).

Ms. Love filed this pro se lawsuit against ESD in August 2025, Dkt. No. 1, seeking reimbursement of "un-disbursed unemployment benefits and interest," Dkt. No. 4 at 4. She alleges that "[t]he Commissioner's Order Denying the Petition for Reconsideration states that there was a reasonable opportunity to present oral argument under WAC 192-04-190," and "[t]he Commissioner has refused the request for an appeal of an administrative decision." *Id.* She asserts claims for "[t]he denial of substantive and procedural due process under Fourteenth Amendment (Amendment XIV); Violations of Health Insurance Portability and Accountability Act of 1996 (HIPPA); Negligence under RCW 10.110.050[; d]enial of civil rights, employment discrimination, Disability Discrimination by failing to accommodate, Americans with Disabilities Act of 1990." *Id.* at 3. She seeks various forms of damages as relief. *Id.* at 4–5.

II. DISCUSSION

ESD moves for dismissal of the complaint, arguing that (1) the Court lacks subject matter jurisdiction, (2) ESD—a state agency—has not waived its Eleventh Amendment immunity for Ms. Love's claims, and (3) the complaint fails to state a claim. Dkt. No. 6 at 2–4.

A. Legal Standard

Federal courts are courts of limited jurisdiction, and they "possess only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). This means that the Court can only hear certain types of cases. *Home Depot U.S.A., Inc. v. Jackson*, 587 U.S. 435, 437–38 (2019). The typical bases for federal jurisdiction are established where (1) the complaint presents a federal question "arising under the Constitution, laws, or treaties of the United States" or (2) where the parties are diverse (e.g., citizens of different

states) and the amount in controversy exceeds $75,000. 28 U.S.C. §§ 1331, 1332(a). The Court must dismiss the action if it "determines at any time that it lacks subject-matter jurisdiction" over a case. Fed. R. Civ. P. 12(h)(3). The party asserting jurisdiction has the burden of establishing it. *See United States v. Orr Water Ditch Co.*, 600 F.3d 1152, 1157 (9th Cir. 2010). "Absent a substantial federal question," a district court lacks subject matter jurisdiction under Section 1331, and claims that are "wholly insubstantial" or "obviously frivolous" are insufficient to "raise a substantial federal question for jurisdictional purposes." *Shapiro v. McManus*, 577 U.S. 39, 45–46 (2015); *see also Bell v. Hood*, 327 U.S. 678, 682–83 (1946).

Although the Court construes pro se complaints liberally, *see Bernhardt v. Los Angeles Cnty.*, 339 F.3d 920, 925 (9th Cir. 2003), such complaints must still include "(1) a short and plain statement of the grounds for the court's jurisdiction . . . ; (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought," Fed. R. Civ. P. 8(a). A plaintiff's pro se status does not excuse compliance with this bedrock requirement. *See Am. Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1107–08 (9th Cir. 2000) (explaining that the lenient pleading standard does not excuse a pro se litigant from meeting basic pleading requirements); *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992) (although the court has an obligation to liberally construe pro se pleadings, it "may not supply essential elements of the claim that were not initially pled" (quoting *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982))). Rule 8(a)'s standard "does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

B. The Court Lacks Subject Matter Jurisdiction

1. Ms. Love's Insubstantial Section 1983 Claim Does Not Provide Jurisdiction

Ms. Love alleges that ESD denied her substantive and procedural due process. Dkt. No. 4 at 3; *see also id.* at 4 (alleging that "[t]he Commissioner's Order Denying the Petition for Reconsideration states that there was a reasonable opportunity to present oral argument under WAC 192-04-190," and "[t]he Commissioner has refused the request for an appeal of an administrative decision."); Dkt. No. 17 at 5 (contending that the Court has subject matter jurisdiction "through Federal Employment laws granting appeals and the United States Constitution providing Procedural and Substantive Due Process").[2] She seeks only damages—not injunctive relief—for these claims. Dkt. No. 4 at 4–5.

"Section 1983 provides a cause of action for 'the deprivation of any rights, privileges, or immunities secured by the Constitution and laws' of the United States." *Wilder v. Va. Hosp. Ass'n*, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983)). However, only "persons" are subject to suit under § 1983, *Peter-Palican v. Gov't of N. Mariana Islands*, 695 F.3d 918, 919 n.1 (9th Cir. 2012), and states and state agencies are not "persons" subject to a suit for damages under § 1983, *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 66 (1989). ESD is an agency "for the state" of Washington, *see* Wash. Rev. Code § 50.08.010, and it is not a "person" for purposes of a Section 1983 claim, *see Mata v. Wash. State Emp. Sec. Dep't*, No. C22-5054 TLF, 2023 WL 2538708, at *3 (Mar. 15, 2023) (finding that "ESD is not a proper defendant in this action because a state, including a state agency, is not a 'person' within the meaning of Section 1983"). Accordingly, ESD is not a proper defendant for Ms. Love's Section 1983 claim, and her claim against that entity does not establish subject matter jurisdiction. *See id.*; *see also Taylor v. Lai*, No. C13-1425-JLR,

[2] Ms. Love does not identify the "Federal Employment laws" to which she refers.

2013 WL 6000068, at *3 (W.D. Wash. Nov. 12, 2013) (explaining that the "mere mention of 42 U.S.C. § 1983 and particular constitutional provisions does not establish jurisdiction where the complaint on its face discloses the absence of an essential element of such a claim." (citation modified)).

In addition, "[t]he Eleventh Amendment has been authoritatively construed to deprive federal courts of jurisdiction over suits by private parties against unconsenting States." *Seven Up Pete Venture v. Schweitzer*, 523 F.3d 948, 952 (9th Cir. 2008); *see also Flint v. Dennison*, 488 F.3d 816, 824–25 (9th Cir. 2007) (explaining that states or governmental entities that are considered "arms of the State" for Eleventh Amendment purposes are not "persons" under § 1983). Courts in this district have concluded that ESD is an arm of the state and entitled to Eleventh Amendment immunity. *See, e.g.*, *Mata*, 2023 WL 2538708, at *3 (finding that "[t]here is no evidence that Washington, its agencies, or officers have consented" to a suit that ESD violated plaintiff's due process rights by terminating his benefits, and "therefore the Eleventh Amendment provides immunity from suits of this kind brought in federal court"); *Dellelo v. Wash. State Emp. Sec. Dep't*, No. 3:22-CV-05965-RJB, 2022 WL 17820316, at *2 (W.D. Wash. Dec. 20, 2022) (dismissing claims against ESD as barred by the Eleventh Amendment).

Ms. Love does not dispute that ESD enjoys sovereign immunity,[3] but contends that the State has waived that immunity by "voluntarily complying to receive Federal Funding from the

[3] The Revised Code of Washington suggests that the three *Kohn* factors favor treatment of the ESD as an arm of the state. *See Kohn v. State Bar of California*, 87 F.4th 1021, 1030–31 (9th Cir. 2023) (whether a state agency is an arm of the state depends on "(1) the [s]tate's intent as to the status of the entity, including the functions performed by the entity; (2) the [s]tate's control over the entity; and (3) the entity's overall effects on the state treasury."); *see also* Wash. Rev. Code § 50.01.010 ("Whereas, economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state," and social security to protect "against this greatest hazard of our economic life" can be provided "only by application of the insurance principle of sharing the risks," the state of Washington, "exercising herein its police and sovereign power endeavors by this title to remedy any widespread unemployment situation which may occur and to set up safeguards to prevent its recurrence in the years to come" establishes "the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own[.]"); Wash. Rev. Code § 50.08.010 (the employment security department will be administered by a commissioner who "shall be appointed by the governor with the consent of the senate, and shall

United States Government to fund [ESD]" and "by interfer[]ing with a social and financial contract between employee and employer." Dkt. No. 17 at 5. ESD responds that "the United States Supreme Court has previously rejected this argument by holding that the text of the federal law cited must unambiguously waive Eleventh Amendment immunity and that merely accepting federal funding does not do so." Dkt. No. 19 at 3 (citing *Sossamon v. Texas*, 563 U.S. 277, 289, 293 (2011)). A waiver of a state's sovereign immunity "must be unequivocally expressed in the text of the relevant statute" and "may not be implied." *Sossamon*, 563 U.S. at 284 (citation modified). Ms. Love has not identified any express waiver in any statute. Acceptance of federal funding is insufficient to demonstrate a waiver of sovereign immunity absent a "statute [that] expressly and unequivocally includes such a waiver." *Id.* at 293.

Ms. Love also contends that "[t]he State no longer has the right to invoke sovereign immunity as a tactical advantage." Dkt. No. 17 at 6 (citing *Lapides v Bd. of Regents*, 535 U.S. 613 (2002)). ESD responds that Ms. Love's reliance on *Lapides* is misplaced because "[t]hat case held that a state may waive its sovereign immunity if the state removed the case to federal court," but it did not remove this case. Dkt. No. 19 at 3. Rather, Ms. Love filed her complaint in federal court. Dkt. No. 1. The Court agrees with ESD that *Lapides* is inapposite because ESD did not remove this case or otherwise voluntarily consent to federal court jurisdiction. *Lapides*, 535 U.S. at 622–24. Consequently, the Eleventh Amendment bars Ms. Love's due process claims against ESD and deprives this Court of subject matter jurisdiction over those claims.

2. Ms. Love's Other Claims Do Not Provide Jurisdiction

Ms. Love also brings a claim for "Violations of Health Insurance Portability and Accountability Act of 1996 (HIP[A]A)[.]" Dkt. No. 4 at 3. However, her complaint does not set

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hold office at the pleasure of, and receive such compensation for his or her services as may be fixed by, the governor"); Wash. Rev. Code § 50.12.010 (setting forth the commissioner's duties and powers).

forth any facts to support that claim, *see generally* Dkt. No. 4, and there is no private right of action to enforce HIPAA, *see Webb v. Smart Document Sols., LLC*, 499 F.3d 1078, 1081 (9th Cir. 2007). Her HIPAA claim is therefore "wholly insubstantial," "obviously frivolous," and insufficient to "raise a substantial federal question for jurisdictional purposes." *Shapiro*, 577 U.S. at 45–46.

The same is true with her ADA claim. Ms. Love alleges "Disability Discrimination by failing to accommodate" under the ADA, Dkt. No. 4 at 3, but again, her complaint includes no facts related to this claim. Simply citing the statute and alleging a failure to accommodate is insufficient to state a claim or invoke the Court's subject matter jurisdiction.

Ms. Love's state law negligence claim under "RCW 11.110.050" does not establish federal question jurisdiction. *See* 28 U.S.C. § 1331 (establishing "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States"). Finally, the complaint does not allege, and this this Court does not have, diversity jurisdiction over this action. Again, diversity jurisdiction can be established when the amount in controversy exceeds $75,000 exclusive of interest and costs and the suit is between citizens of different states *See* 28 U.S.C. § 1332(a)(1). Even assuming that the amount of damages Ms. Love seeks is supportable, Dkt. No. 4 at 4–5, she does not allege that the parties are diverse, *id.* at 1–2 (listing Washington addresses for both parties).[4] Accordingly, the Court lacks subject matter jurisdiction over this action and "must" dismiss it. Fed. R. Civ. P. 12(h)(3).

C. The Court Grants Leave to Amend

The Court is mindful that "[u]nless it is absolutely clear that no amendment can cure the defect . . . a pro se litigant is entitled to notice of the complaint's deficiencies and an opportunity

[4] Moreover, a state and state agencies are not "citizens" for purposes of diversity jurisdiction. *Fifty Assocs. v. Prudential Ins. Co. of Am.*, 446 F.2d 1187, 1191–92 (9th Cir. 1970) (explaining that "neither a state nor a state agency [can] be a party to a diversity action."); *Mata*, 2023 WL 2538708, at *4 ("ESD is a state agency; thus, it cannot be a party to a diversity action.").

to amend prior to dismissal of the action." *Lucas v. Dep't of Corrs.*, 66 F.3d 245, 248 (9th Cir. 1995). Because amendment *may* be possible with respect to certain claims, the Court grants Ms. Love leave to file an amended complaint. However, this Order limits Ms. Love to the filing of an amended complaint that attempts to cure the specific deficiencies identified in this Order. She may not reallege her HIPAA claim, which is dismissed with prejudice, and she may not sue ESD, which is also dismissed from the case as a defendant. If Ms. Love chooses to file an amended complaint, she must clearly identify the basis for this Court's subject matter jurisdiction.

The filing of an amended complaint will supersede all previous complaints. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992) (noting the "well-established doctrine that an amended pleading supersedes the original pleading"). Any amended complaint must clearly set forth the "who, what, where, when, and why" necessary for the Court and defendant(s) to understand what Ms. Love is alleging. *See* Fed. R. Civ. P. 8(a); *Iqbal*, 556 U.S. at 678. In other words, each cause of action must identify the specific law that was allegedly violated, how defendant(s) violated it, when the alleged violation occurred, and how the alleged violation harmed Ms. Love.

III. CONCLUSION

For the foregoing reasons, the Court GRANTS Defendant ESD's motion to dismiss, Dkt. No. 6, DISMISSES the complaint with leave to amend some claims as set forth in this Order, and DENIES AS MOOT Ms. Love's motion to consolidate this case with another case, Dkt. No. 20.

If Ms. Love does not file an amended complaint within 21 days of the date of this Order, the Court will close this case.

Dated this 27th day of January, 2026.

Lauren King
United States District Judge

Appendix E

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TAMARA LOVE, Plaintiff, v. KAISER PERMANENTE et al., Defendants.	CASE NO. 2:23-cv-00421-LK ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT AND TO CONSOLIDATE

This matter comes before the Court on Plaintiff Tamara Love's Motion for a New Trial, Relief from Judgment and to Consolidate. Dkt. No. 55. For the reasons set forth below, the Court denies the motion.

I. BACKGROUND

Ms. Love was hired by Defendant Kaiser in 2021 and worked for the Medicare Member Service Department handling calls from Medicare recipients. Dkt. No. 33 at 7. Kaiser terminated Ms. Love's employment on June 28, 2022 because her treatment of a caller did not meet Kaiser's standards. *Id.* at 8–9; *see also* Dkt. No. 21 at 19–21.

Ms. Love filed suit against Kaiser in March 2023. Dkt. No. 1. Later that year, the Court granted Kaiser's motion to dismiss her complaint for failure to state a claim, denied Ms. Love's motion for summary judgment, and granted Ms. Love leave to file an amended complaint. Dkt. No. 32 at 13.

In her second amended complaint, Ms. Love asserted claims under Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e, *et seq.*; the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621, *et seq.*; the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, *et seq.*; and an unspecified provision of the California Civil Code. Dkt. No. 33 at 3. Ms. Love subsequently filed a motion to amend her complaint again to add the Washington Employment Security Department ("ESD") as a Defendant, Dkt. No. 37, and Kaiser filed a motion to dismiss the second amended complaint, Dkt. No. 38.

On May 7, 2024, the Court issued an order denying Ms. Love's motion to file a third amended complaint and granting Kaiser's motion to dismiss the second amended complaint. *See generally* Dkt. No. 45. Judgment was entered on May 8, 2024. Dkt. No. 46. Ms. Love appealed, Dkt. No. 47, and the Ninth Circuit Court of Appeals affirmed the judgment on September 25, 2025, Dkt. No. 53.

On December 22, 2025, Ms. Love filed this motion for relief from the judgment and to consolidate this action with a separate case she filed against ESD, *Love v. State of Washington Emp. Sec. Dep't*, No. 3:25-cv-05714-LK (W.D. Wash. 2025). Kaiser opposes the motion. Dkt. No. 56.

II. DISCUSSION

Ms. Love argues that the Court applied an "incorrect" standard in dismissing her case. Dkt. No. 55 at 3; *see also* Dkt. No. 57 at 2 ("Dismissing the claim in its entirety for a deficiency in pleading of the other statutory claims is an error."). Ms. Love seeks to reopen this case under Rules

59, 60, and 61, and to consolidate it with her other case under Rule 42. Dkt. No. 55 at 2. Kaiser responds that none of the rules Ms. Love cites "provide a valid basis for reopening this case or consolidating it with another matter." Dkt. No. 56 at 1–2.

Although Ms. Love does not cite a specific subsection of Rule 60, she seems to be arguing that the Court made a mistake of law and so relief is warranted under Rule 60(b)(1). *See Marroquin v. City of Los Angeles*, 112 F.4th 1204, 1216 (9th Cir. 2024) (explaining that "a district court should consider a Rule 60(b) motion under the subsection that most naturally applies to the motion's substance, regardless of the label used"); *see also Kemp v. United States*, 596 U.S. 528, 530 (2022) (errors of law are "mistakes" under Rule 60(b)(1)). A motion for relief from judgment under Federal Rule of Civil Procedure 60(b) "must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment[.]" Fed. R. Civ. P. 60(c)(1). However, Ms. Love filed her motion more than 19 months after this Court entered judgment. *See* Dkt. Nos. 46, 55. Because the motion was filed "more than a year after the entry of the judgment," the Court may not review her request under Rule 60(b)(1). Fed. R. Civ. P. 60(c)(1); *see also Icho v. Hammer*, 434 F. App'x 588, 589 (9th Cir. 2011) ("If a [Rule] 60(b)(1) motion is untimely, the district court lacks jurisdiction to consider the merits of the motion.").

Even if the Court also considers the motion under the catch-all provision in Rule 60(b)(6), the Court must still determine whether the motion was "made within a reasonable time[.]" Fed. R. Civ. P. 60(c)(1); *see also Kemp*, 596 U. S. at 533 ("All [Rule 60(b) motions] must be filed 'within a reasonable time.'"). "What constitutes 'reasonable time' depends upon the facts of each case, taking into consideration the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Ashford v. Steuart*, 657 F.2d 1053, 1055 (9th Cir. 1981). As discussed, Ms. Love filed this motion more than 19 months after the Court entered judgment, and she provides no reason for the delay.

Therefore, the Court denies her request under Federal Rule of Civil Procedure 60(b)(6) as untimely. *See, e.g.*, *Palmer v. Milnor*, No. 19-0961-LK, 2024 WL 4466046, at *2 (W.D. Wash. Oct. 10, 2024) ("[Petitioner] filed this motion more than two years after the Court dismissed his case. . . . The motion is therefore untimely."); *Renteria v. Lizarraga*, No. CV 16-1568 RGK (SS), 2018 WL 6164258, at *3 (C.D. Cal. May 23, 2018) ("Petitioner has neither alleged nor demonstrated that circumstances beyond his control prevented him from filing his Motion in a reasonable time, let alone that such circumstances were sufficiently extraordinary to justify a nineteen-month delay[].").

Even if her motion were timely, Ms. Love fails to show that relief is warranted on the merits under Rule 60(b)(6). She reiterates her prior arguments that her termination was wrongful, Dkt. No. 55 at 4; Dkt. No. 57 at 2, but repeating arguments previously made does not constitute an "extraordinary circumstance" justifying relief from judgment. *Maraziti v. Thorpe*, 52 F.3d 252, 255 (9th Cir. 1995). Nor is her disagreement with the merits of the Court's prior order a proper ground for seeking relief under Rule 60(b)(6). *See, e.g.*, *Segui v. Stromfors*, No. CV-24-01171-PHX-DGC, 2025 WL 3062677, at *3 (D. Ariz. Nov. 3, 2025) ("[A] Rule 60(b)(6) motion does not give a party the opportunity to re-litigate its case after the court has rendered a decision, nor is it a second opportunity for the losing party to make its strongest case or to dress up arguments that previously failed." (citation modified)). Ms. Love is not entitled to relief under Rule 60.

Under Rule 59(e), a party may move for an amended judgment within 28 days after entry of judgment. Fed. R. Civ. P. 59(e). Because more than 19 months have passed since the Court entered judgment, Dkt. No. 46, Ms. Love's motion is untimely under that rule. In addition, Rule 59(a)—regarding grounds for a new trial—is inapplicable because no trial occurred. *See, e.g.*, *Farris v. Shinn*, No. CV-23-08002-PCT-JAT, 2025 WL 886915, at *2 (D. Ariz. Mar. 21, 2025)

("Because there has been no trial in this matter, a Rule 59(a) motion for new trial is inappropriate." (citation omitted)).

Ms. Love also cites Rule 61, Dkt. No. 55 at 2, but she does not explain its applicability here. Fed. R. Civ. P. 61 ("Unless justice requires otherwise, no error in admitting or excluding evidence—or any other error by the court or a party—is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order."). The relevance of that rule is not apparent, and the Court will not make Ms. Love's arguments for her. *See Clark v. Sweeney*, No. 25-52, 2025 WL 3260170, at *1 (U.S. Nov. 24, 2025) ("To put it plainly, courts call balls and strikes; they don't get a turn at bat." (citation modified)); *Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003) ("Our adversarial system relies on the advocates to inform the discussion and raise the issues to the court."). In sum, Ms. Love is not entitled to relief from the judgment or to reopen her case. That being so, the Court denies as moot her request to consolidate this closed case with her other case.

III. CONCLUSION

For the foregoing reasons, the Court DENIES Ms. Love's Motion for a New Trial, Relief from Judgment and to Consolidate. Dkt. No. 55.

Dated this 3rd day of February, 2026.

Lauren King
United States District Judge

Appendix F

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
TACOMA

TAMARA LOVE,

Plaintiff,

v.

STATE OF WASHINGTON EMPLOYMENT SECURITY DEPARTMENT,

Defendant.

CASE NO. 3:25-CV-5714-LK

ORDER GRANTING APPLICATION TO PROCEED *IN FORMA PAUPERIS*

Plaintiff Tamara Love filed an application to proceed *in forma pauperis* ("IFP") in the above-entitled action. Dkt. 1. Because Plaintiff does not appear to have funds available to afford the $405 filing fee, Plaintiff financially qualifies for IFP status pursuant to 28 U.S.C. § 1915(a)(1). Therefore, Plaintiff's IFP application (Dkt. 1) is GRANTED.

Because Plaintiff has filed this lawsuit seeking IFP status, the Court shall consider whether Plaintiff has adequately stated a claim. *See* 28 U.S.C. § 1915(e)(2). Therefore, Plaintiff is advised the assigned United States District Judge will review the Complaint under §1915(e)(2)(b). The Court further advises that summons may not be issued and further filings

submitted by Plaintiff may not be considered until after the assigned District Judge conducts review.

The Clerk of the Court is directed to send a copy of this Order to Plaintiff and to the District Judge assigned to this case.

Dated this 15th day of August, 2025.

David W. Christel
United States Magistrate Judge