

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-02862-REB-KLM

DEAN CARBAJAL,

Plaintiff,

v.

MYRL SERRA, in his individual capacity,  
SHERRI PRICE, in her individual capacity,  
CAROL WARNER, in her individual capacity,  
RICHARD MAHAR, in his individual capacity,  
DAVID ROMERO, in his individual capacity,  
JOE QUINTANA, in his individual capacity,  
BILL RAILEY, in his individual capacity,  
CHRIS WELDON, in his individual capacity,  
TIMOTHY HATCH, in his individual capacity,  
BEA WOLFE, in his individual capacity,  
BENJAMIN SCHROEDER, in his individual capacity,  
GILBERTO LUCIO, in his individual capacity,  
LAURIE FREUND, in her individual capacity,  
JAMES DIXON, in his individual capacity,  
ADAM BARRETT, in his individual capacity,  
PERRY SPEERMAN, in his individual capacity,  
JOEL SMITH, in his individual capacity,  
ABBEGAYLE DORN, in her individual capacity,  
JESSE REMBERT, in his individual capacity,  
JAY LOPEZ, in his individual capacity,  
MICHAEL O'NEILL, in his individual capacity,  
BRYAN O'NEILL, in his individual capacity,  
JEFFREY WATTS, in his individual capacity, and  
ED GRUNINGER, in his individual capacity,

Defendants.

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**ORDER**

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**ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX**

This matter is before the Court on Plaintiff's **Motion for Leave to File Third**

**Amended Complaint** [Docket No. 236; Filed November 14, 2011] (the “Motion”). For the reasons set forth below, the Court **DENIES WITHOUT PREJUDICE** the Motion.

On October 19, 2011, the District Judge issued an Order Adopting in Part and Rejecting in Part Recommendation of United States Magistrate Judge [#229] in connection with a number of Motions to Dismiss filed by Defendants in this matter. As part of the Order [#229], the District Judge permitted Plaintiff to file a Third Amended Complaint no later than November 15, 2011. See *Order* [#229] at 10. The District Judge also ordered that any third amended complaint filed by Plaintiff must comply with a number of listed conditions. See *id.* at 10-11. He further warned Plaintiff that any third amended complaint filed by Plaintiff that did not so comply would be stricken and that sanctions could be imposed, including dismissal of this case. See *id.* at 11-12.

On November 14, 2011, Plaintiff filed this Motion [#236], which included a copy of his proposed Third Amended Complaint. That same day, the District Judge issued another Order [#235] in response to Plaintiff’s Motion for Clarification [#234]. In the Order, the District Judge amended some of the conditions set forth in his previous Order [#229]. Thus, the Court compares the proffered Third Amended Complaint<sup>1</sup> [#243] with the requirements set forth by the District Judge in both Orders [#229, #235].

Upon close comparison of the Third Amended Complaint [#243] and Orders [#229, #235], the Court finds that Plaintiff’s Third Amended Complaint is compliant with the District

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<sup>1</sup> Plaintiff filed a Third Amended Complaint as part of his Motion [#236] on November 14, 2011, in order to be compliant with the Court’s Order [#229] that he file his Third Amended Complaint no later than November 15, 2011. On November 14, 2011, the District Judge also ruled on Plaintiff’s Motion for Clarification [#234], filed on November 1, 2011, allowing him to file his proposed Third Amended Complaint by December 6, 2011. See *Order* [#235] at 5.

Judge's requirements except in one respect. The District Judge dismissed with prejudice "all claims asserted against individual defendants in their official capacities."<sup>2</sup> See *Order* [#229] at 9. Plaintiff's proposed Third Amended Complaint pursues claims against sixteen individual Defendants in their official capacities. Thus, the Third Amended Complaint fails to comply with the requirements of the Order [#229]. The District Judge warned Plaintiff that any proposed Third Amended Complaint filed by him would be stricken if it did not comply with the requirements set forth in the Orders [#229, #235]. Because Plaintiff's Third Amended Complaint does not comply in full with the Orders,

IT IS HEREBY **ORDERED** that the Motion [#236] is **DENIED WITHOUT PREJUDICE** and that the Third Amended Complaint [#243] is **STRICKEN**.

IT IS FURTHER **ORDERED** that Plaintiff may make one final attempt to file an appropriate amended complaint, accompanied by a motion for leave to amend, no later than **January 21, 2012**.

IT IS FURTHER **ORDERED** that the Scheduling Conference set for January 5, 2012 at 10:30 a.m. is **VACATED** and, if necessary, will be reset at a later date.

Dated: December 21, 2011

BY THE COURT:



Kristen L. Mix  
United States Magistrate Judge

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<sup>2</sup> This portion of the District Judge's Order [#229] essentially rejected the portions of the Recommendation [#198], Supplement [#202], and Second Supplement [#207] that permitted Plaintiff to reassert his claims against any individuals in their official capacities. Thus, the caption and text of the Third Amended Complaint must be further amended to remove claims against individuals in their official capacities.