

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martínez**

Civil Action No. 20-cv-3007-WJM-SKC

EMMANUEL C. THEUS-ROBERTS,

Plaintiff,

v.

DEAN WILLIAMS, and
JOAN CARSON,

Defendants.

ORDER VACATING FINAL JUDGMENT

This matter is before the Court on: (1) Plaintiff Emmanuel C. Theus-Roberts' Motion for Leave to Amend Second Amended Complaint ("Motion to Amend") (ECF No. 66); and (2) Plaintiff's Motion Pursuant to Federal Rule of Civil Procedure 65(a) ("Motion for Preliminary Injunction") (ECF No. 68).

Defendants Dean Williams and Joan Carson filed a motion to dismiss all claims against them on May 5, 2021. (ECF No. 26.) On February 22, 2022, United States Magistrate Judge Crews recommended that Defendants motion to dismiss be granted. (Recommendation Re: Defendants' Motion to Dismiss ("Recommendation") [ECF No. 60] at 8.) On February 24, 2022, the Recommendation was served by mail to Plaintiff's last known address, the Indiana Department of Correction Reception-Diagnostic Center. (ECF No. 61.) Under Federal Rule of Civil Procedure 72(b), Plaintiff had fourteen days after service of the Recommendation to file any written objections. On March 18, 2022, having received no objections, this Court adopted the Recommendation in its entirety

and dismissed all claims against Defendants. (ECF No. 63.) Accordingly, judgment was entered in favor of Defendants and against Plaintiff on March 18, 2022. (ECF No. 64.)

However, on March 25, 2022, the copy of the Recommendation mailed to Plaintiff on February 24, 2022, was returned as undeliverable. (ECF No. 67.) Apparently, Plaintiff had in the interim been transferred from the Indiana Department of Correction Reception-Diagnostic Center to the Pendleton Correctional Facility. (ECF Nos. 66, 68.) Because of his transfer, Plaintiff has not received the Recommendation.

Given Plaintiff's *pro se* status, in the interest of justice the Court elects to construe Plaintiff's Motion to Amend—which addresses the issue of his transfer and his inability to review the Recommendation—as a motion seeking, in part, relief from judgment under Federal Rule of Civil Procedure 60(b). *See Haines v. Kerner*, 404 U.S. 519, 520–21 (1972).

The Court grants Plaintiff relief from judgment under Rule 60(b)(6) because it would “offend[] justice to deny such relief,” given that Plaintiff did not have a fair opportunity to object to the Recommendation. *Yapp v. Excel Corp.*, 186 F.3d 1222, 1231–32 (10th Cir. 1999); *see also Zimmerman v. Quinn*, 744 F.2d 81, 82 (10th Cir. 1984)(stating that Rule 60(b) motions are addressed to the sound discretion of the trial court). The Court finds that under the circumstances presented by the procedural history and posture of this case, Plaintiff has met the requirements of Rule 60(b) for relief from judgment.

For the reasons set forth above, the Court ORDERS as follows:

1. Plaintiff's Construed Motion to Amend (ECF No. 66) is GRANTED IN PART:

- a. Plaintiff's Construed Motion to Amend (ECF No. 66) is GRANTED insofar as it is construed to request relief under Rule 60(b);
 - b. In all other respects, Plaintiff's Motion to Amend (ECF No. 66) remains under advisement;
2. Plaintiff's Motion for Preliminary Injunction (ECF No. 68) remains under advisement;
3. The Court's Order Adopting February 22, 2022 Recommendation of United States Magistrate Judge (ECF No. 63) is VACATED;
4. The Final Judgment (ECF No. 64) is VACATED and the Clerk shall reopen this action and reinstate it on the Court's docket;
5. The Clerk of Court is directed to mail a copy of the Recommendation (ECF No. 60) and a copy of this Order to Plaintiff Emmanuel C. Theus-Roberts at the last-known mailing address the Clerk has on record for this Plaintiff;
6. Should Plaintiff wish to do so, he may file meritorious objections to the Recommendation (ECF No. 60), and he is ORDERED to file any such objection(s) by no later than **May 10, 2022**.

Dated this 15th day of April, 2022.

BY THE COURT:



William J. Martinez
United States District Judge