

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

RANDALL H. RUSSELL,

Plaintiff,

v.

Case No. 18-2144-KHV

KIEWIT CORPORATION, et al.,

Defendants.

**ORDER**

The court entered an amended scheduling order on March 19, 2019 (ECF No. 34), which, in part, stated that “discovery on ESI issues, which the parties agree shall be completed before plaintiff’s deposition, must be commenced or served in time to be completed by May 1, 2019.”<sup>1</sup> As part of the ongoing discovery disputes in this case, on May 13, 2019, plaintiff filed a motion to compel supplemental ESI discovery responses (ECF No. 42). The court denied the motion to compel (ECF No. 49). Plaintiff has filed a motion for reconsideration (ECF No. 50) of the court’s order. Plaintiff has also filed a motion for clarification (ECF No. 51) of the scheduling order, to address the timing and sequence of ESI discovery. The court denies plaintiff’s motion for reconsideration and expedites briefing deadlines for the motion for clarification to timely resolve this issue.

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<sup>1</sup> ECF No. 34.

## Motion for Reconsideration

Motions for reconsideration may be granted only if the moving party can establish: “(1) an intervening change in controlling law, (2) the availability of new evidence, or (3) the need to correct clear error or prevent manifest injustice.”<sup>2</sup> The decision whether to grant or deny a motion for reconsideration is committed to the court’s discretion.<sup>3</sup> A motion for reconsideration should not be used to “rehash previously rejected arguments or to offer new legal theories or facts.”<sup>4</sup> Such a motion “is not a second chance for the losing party to make its strongest case or to dress up arguments that previously failed.”<sup>5</sup> A motion for reconsideration is “not appropriate to revisit issues already addressed.”<sup>6</sup>

Plaintiff relies on the third prong of this standard and argues that the court’s order reflects clear error and manifest injustice.<sup>7</sup> Plaintiff insinuates that, because certain exhibits were not referenced in the court’s June 4, 2019 order, the exhibits were

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<sup>2</sup> D. Kan. Rule 7.3. *See also Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000).

<sup>3</sup> *Wright ex rel. Trust Co. of Kan. v. Abbott Labs., Inc.*, 259 F.3d 1226, 1235–36 (10th Cir. 2001).

<sup>4</sup> *Theno v. Tonganoxie Unified Sch. Dist. No. 464*, 377 F. Supp. 2d 952, 976 (D. Kan. 2005) (citing *Demster v. City of Lenexa, Kan.*, 359 F. Supp. 2d 1182, 1184 (D. Kan. 2005)).

<sup>5</sup> *Fears v. Unified Gov't of Wyandotte Cty.*, No. CV 17-2668-KHV, 2018 WL 5435403, at \*1 (D. Kan. Oct. 29, 2018) (citing *Brown v. Presbyterian Healthcare Servs.*, 101 F.3d 1324, 1332 (10th Cir. 1996)).

<sup>6</sup> *Fears*, 2018 WL 5435403, at \*1.

<sup>7</sup> ECF No. 50.

“overlooked or misunderstood” in the court’s analysis.<sup>8</sup> The court assures plaintiff that it reviewed the parties’ briefing in full and found that defendants have reasonably complied with plaintiff’s discovery requests. Plaintiff’s motion then revisits previous arguments, including the proportionality of his request for his entire .pst file, defendants’ method of searching for and producing documents, and the allegation that defendants are impermissibly withholding responsive documents.<sup>9</sup> These arguments have been presented to the court and therefore reconsideration is not appropriate on those grounds.

Accordingly, plaintiff’s motion (ECF No. 50) is denied. The court declines plaintiff’s request for hearing, as the parties have fulsomely briefed this issue.

Motion for Clarification

Plaintiff has also filed a motion for clarification (ECF No. 51) of the amended scheduling order related to the timing for the completion of discovery pertaining to ESI issues. Defendant shall file any response to plaintiff’s motion by June 12, 2019, limited to two pages, and plaintiff shall file any reply by June 13, 2019, limited to one page.

IT IS SO ORDERED.

Dated June 11, 2019, at Kansas City, Kansas.

s/ James P. O’Hara  
James P. O’Hara  
U.S. Magistrate Judge

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<sup>8</sup> ECF No. 50.

<sup>9</sup> *Id.*