APPENDIX

THE
UNITED STATES SUPREME COURT

ELET VALENTINE
Plaintiff-Appellant

v.

VERIZON WIRELESS, LLC; VERIZON COMMUNICATIONS, INC.
Defendants-Appellees

APPENDIX A

US COURT OF APPEALS – 10TH CIRCUIT

ORDERS – REHEARING DENIAL

JULY 22, 2025

FILED
United States Court of Appeals
Tenth Circuit

July 22, 2025

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

ELET VALENTINE,

Plaintiff - Appellant,

v.

VERIZON WIRELESS, LLC, et al.,

Defendants - Appellees.

No. 24-1397
(D.C. No. 1:23-CV-2698-DDD-KAS)
(D. Colo.)

ORDER

Before **HARTZ**, **EID**, and **CARSON**, Circuit Judges.

Appellant's petition for rehearing is denied.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

APPENDIX

THE
UNITED STATES SUPREME COURT

ELET VALENTINE
Plaintiff-Appellant

v.

VERIZON WIRELESS, LLC; VERIZON COMMUNICATIONS, INC.
Defendants-Appellees

APPENDIX B

US COURT OF APPEALS – 10TH CIRCUIT

ORDERS –DENIAL & JUDGEMENT

JUNE 24, 2025

FILED
United States Court of Appeals
Tenth Circuit

June 24, 2025

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

ELET VALENTINE,

Plaintiff - Appellant,

v.

VERIZON WIRELESS, LLC; CELLCO PARTNERSHIP, d/b/a Verizon Wireless; VERIZON COMMUNICATIONS, INC.,

Defendants - Appellees.

No. 24-1397
(D.C. No. 1:23-CV-2698-DDD-KAS)
(D. Colo.)

ORDER AND JUDGMENT*

Before **HARTZ**, **EID**, and **CARSON**, Circuit Judges.

Elet Valentine entered into a contract with Verizon Wireless for cellphone service but was unhappy with the service provided. The contract's dispute-resolution provision allowed her to seek relief only through arbitration or litigation in small claims court. She initiated arbitration proceedings, but one month before the arbitration evidentiary hearing was to commence, Valentine requested that the arbitration be dismissed so that she could

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

proceed in court instead. The arbitrator granted Valentine's request but advised her that she could now proceed only in small claims court.

Instead of proceeding to small claims court, Valentine filed suit in the United States District Court for the District of Colorado against three named defendants, "Verizon Wireless, LLC," "Verizon Communications, Inc.," and "Cello Partnership d/b/a/ Verizon Wireless" (Cellco), for breach of contract, civil theft, vicarious liability, and gross negligence. Aplt. App., Vol. 1 at 13–14. She also sought a permanent restraining order against the defendants. Only Cellco responded, explaining that it was the entity that contracted with Valentine and, in a subsequent motion, asserting that the other two named defendants did not exist. The district court dismissed Valentine's claims without prejudice because the contract's dispute-resolution provision precluded suit in federal district court. Valentine appeals. We have jurisdiction under 28 U.S.C. § 1291.

Valentine does not challenge the court's dismissal of Cellco. She complains primarily that she was not granted default judgment against the two nonresponsive defendants, even though she served them properly. But there was an ongoing dispute below about whether those entities *existed*, much less had been served properly. Instead of resolving the service-of-process issue, the court properly dismissed Valentine's claims against all defendants without prejudice because of the dispute-resolution provision of the contract.

Ordinarily, the court would have needed to determine whether it had personal jurisdiction over the two nonresponsive defendants *before* entering judgment. *See*

OMI Holdings, Inc. v. Royal Ins. Co. of Canada, 149 F.3d 1086, 1090 (10th Cir. 1998) (stating that "we must address . . . personal jurisdiction . . . before reaching the merits of the case" because "a court without jurisdiction over the parties cannot render a valid judgment"). But Valentine's complaint did not distinguish between the defendants in any meaningful respect. Her allegations simply referred to the defendants collectively as "Verizon Wireless" or "Verizon." Thus, judgment against Valentine on her claims vis-à-vis the nonresponsive defendants was inevitable in light of the court's conclusion regarding Cellco. The district court properly dismissed the claims against the nonresponsive defendants without prejudice, just as it had the claims against Cellco, without first resolving the matter of existence/personal jurisdiction. *See Muscogee (Creek) Nation v. Pruitt*, 669 F.3d 1159, 1168–69 (10th Cir. 2012) (While "we usually must resolve jurisdictional questions before addressing the merits of a claim, we may rule that a party loses on the merits without first establishing jurisdiction when the merits have already been decided in the court's resolution of a claim over which it did have jurisdiction. In these circumstances, resolution of the merits is foreordained, and resolution of the jurisdictional question can have no effect on the outcome." (brackets, citation, and internal quotation marks omitted)). The district court's determination that it could not hear the dispute of course foreclosed any default judgment or permanent restraining order against any named defendant.

For the reasons discussed, we **AFFIRM** the judgment below and **GRANT** Valentine's motion for leave to proceed *in forma pauperis*.

Entered for the Court

Harris L Hartz
Circuit Judge

APPENDIX

THE
UNITED STATES SUPREME COURT

ELET VALENTINE
Plaintiff-Appellant

v.

VERIZON WIRELESS, LLC; VERIZON COMMUNICATIONS, INC.
Defendants-Appellees

APPENDIX C

US DISTRICT COURT FOR THE DISTRICT OF COLORADO

ORDERS –DENIAL STATUS CONFERENCE & DENIAL LEAVE ON APPEAL [ECF#94]

NOVEMER 6, 2024

APPENDIX

THE
UNITED STATES SUPREME COURT

ELET VALENTINE
Plaintiff-Appellant

v.

VERIZON WIRELESS, LLC; VERIZON COMMUNICATIONS, INC.
Defendants-Appellees

APPENDIX G

US DISTRICT COURT FOR THE DISTRICT OF COLORADO

ORDERS –FINAL JUDGEMENT [ECF# 77]

SEPTEMBER 10, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:23-cv-02698-DDD-KAS

ELET VALENTINE,

Plaintiff,

v.
VERIZON WIRELESS, LLC,
CELLCO PARTNERSHIP, doing business as Verizon Wireless, and
VERIZON COMMUNICATION, INC.,

Defendants.

FINAL JUDGMENT

In accordance with the orders filed during the pendency of this case, and pursuant to Fed. R. Civ. P. 58(a), the following Final Judgment is entered.

Pursuant to and in accordance with Fed. R. Civ. P. 58(a) and the Order Adopting Recommendation of United States Magistrate Judge, filed September 10, 2024, by the Honorable Daniel D. Domenico, United States District Judge, and incorporated herein by reference as if fully set forth, it is hereby

ORDERED that the Recommendation of United States Magistrate Judge, Doc. [71], is ACCEPTED and ADOPTED. It is further

ORDERED that judgment is hereby entered in favor of Defendants, Verizon Wireless, LLC, Cello Partnership, doing business as Verizon Wireless, and Verizon Communication, Inc., and against Plaintiff, Elet Valentine, on Defendant Cellco Partnership's Motion to Confirm the Parties' Prior Arbitration Award Pursuant to 9 U.S.C. § 9, or in the Alternative, to Dismiss the Action Pursuant to Fed. R. Civ. P. 12(c),

Doc. [34]. It is further

ORDERED that plaintiff's complaint and action are dismissed without prejudice.

DATED at Denver, Colorado this 10th day of September, 2024.

FOR THE COURT:

JEFFREY P. COLWELL, CLERK

s/ Robert R. Keech
Robert R. Keech,
Deputy Clerk

APPENDIX

THE
UNITED STATES SUPREME COURT

ELET VALENTINE
Plaintiff-Appellant

v.

VERIZON WIRELESS, LLC; VERIZON COMMUNICATIONS, INC.
Defendants-Appellees

APPENDIX H

US DISTRICT COURT FOR THE DISTRICT OF COLORADO

ORDERS –ORDER ADOPTING RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE [ECF# 76]

SEPTEMBER 10, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Daniel D. Domenico

Civil Action No. 1:23-cv-02698-DDD-KAS

ELET VALENTINE,

Plaintiff,

v.

VERIZON WIRELESS, LLC,
CELLCO PARTNERSHIP, doing business as Verizon Wireless, and
VERIZON COMMUNICATION, INC.,

Defendants.

ORDER ADOPTING RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Before me is the recommendation, Doc. [71], of United States Magistrate Judge Kathryn A. Starnella that I grant Defendant Cellco Partnership's motion, Doc. [34], to approve the parties' prior arbitration award, or in the alternative, dismiss the action. The recommendation states that any objections must be filed within fourteen days after its service on the parties. Doc. [71] at 13 (citing Fed. R. Civ. P. 72(b)(2)). The recommendation was served on August 22, 2024, and Ms. Valentine did not file objections until September 8, 2024, after the deadline for objections had passed.

In the absence of a timely objection, a district judge may review a magistrate judge's recommendation under any standard it deems appropriate. *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991) (citing *Thomas v. Arn*, 474 U.S. 140, 150, 154 (1985)). I could, therefore, review the recommendation only to satisfy myself that there is "no clear error

on the face of the record." Fed. R. Civ. P. 72(b) Advisory Committee Notes. Based on that standard, there is no question the recommendation would be adopted. As Judge Starnella determined, even though there is no final arbitration order to confirm, Plaintiff's claims must be dismissed without prejudice because, pursuant to the Arbitration Agreement, this Court lacks jurisdiction over them.

Even if Plaintiff's objections were deemed timely, the result would be the same. Reviewed *de novo*, Judge Starnella's recommendation is correct. The terms and conditions of Plaintiff's customer agreement with Verizon Wireless include an arbitration clause which states that "YOU AND VERIZON AGREE TO RESOLVE DISPUTES ONLY BY ARBITRATION OR IN SMALL CLAIMS COURT," and "THAT BY THIS AGREEMENT YOU ARE GIVING UP THE RIGHT TO BRING A CLAIM IN COURT OR IN FRONT OF A JURY." Doc. 34-3 at 6. This language clearly divests this court of jurisdiction over her claims, notwithstanding her assertion that the parties had agreed to proceed before a "Court of competent formal jurisdiction" or her incorrect assumption that this meant she could file a complaint in federal district court. Doc. 1 at 3. Plaintiff is limited to arbitration or small claims court per the agreement's plain language.

Accordingly, it is **ORDERED** that:

The Recommendation of United States Magistrate Judge, **Doc. [71]**, is **ACCEPTED** and **ADOPTED**;

Plaintiff's Objections to the Order on her Motion for TRO, **Doc. [75]**, are **OVERRULED;**

Defendant Cellco Partnership's Motion to Confirm the Parties' Prior Arbitration Award Pursuant to 9 U.S.C. § 9, or in the Alternative, to Dismiss the Action Pursuant to Fed. R. Civ. P. 12(c), **Doc. [34]**, is

GRANTED to the extent that it seeks dismissal of Plaintiff's claims; and

All claims asserted in this action are **DISMISSED WITHOUT PREJUDICE**.

DATED: September 10, 2024

BY THE COURT:

~~Daniel D.~~ Domenico
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 23-cv-02698-DDD-KAS

ELET VALENTINE,

Plaintiff,

v.

VERIZON WIRELESS, LLC,
CELLCO PARTNERSHIP, doing business as Verizon Wireless, and
VERIZON COMMUNICATIONS, INC.,

Defendants.

MINUTE ORDER

ENTERED BY MAGISTRATE JUDGE KATHRYN A. STARNELLA

This matter is before the Court on Plaintiff's **Request for Permanent Rest[r]aining Order** [#46] (the "Motion"). In light of the Court's Recommendation that the Motion to Dismiss [#34] be granted,

IT IS HEREBY **ORDERED** that the Motion [#46] is **DENIED without prejudice**.

Dated: August 22, 2024

APPENDIX

THE
UNITED STATES SUPREME COURT

ELET VALENTINE
Plaintiff-Appellant

v.

VERIZON WIRELESS, LLC; VERIZON COMMUNICATIONS, INC.
Defendants-Appellees

APPENDIX J

US DISTRICT COURT FOR THE DISTRICT OF COLORADO

ORDERS –RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE [ECF# 71]

AUGUST 22, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 23-cv-02698-DDD-KAS

ELET VALENTINE,

Plaintiff,

v.

VERIZON WIRELESS, LLC,
CELLCO PARTNERSHIP, doing business as Verizon Wireless, and
VERIZON COMMUNICATIONS, INC.,

Defendants.

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

ENTERED BY MAGISTRATE JUDGE KATHRYN A. STARNELLA

This matter is before the Court on Defendant Cellco Partnership's **Motion to Confirm the Parties' Prior Arbitration Award Pursuant to 9 U.S.C. § 9, or In the Alternative, to Dismiss the Action Pursuant to Fed. R. Civ. P. 12(c)** [#34] (the "Motion"). Plaintiff, who proceeds in this matter pro se,[1] filed a Response [#44] in opposition to the Motion [#34] and Defendant Cellco Partnership ("Defendant Cellco") filed a Reply [#45]. The Motion [#34] has been referred to the undersigned for a recommendation pursuant to 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b)(1), D.C.COLO.LCivR 72.1(c)(3). *See Order Referring Motion* [#35].

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[1] The Court must liberally construe a pro se litigant's filings. *See Haines v. Kerner*, 404 U.S. 519, 520-521 (1972). In doing so, the Court should neither be the pro se litigant's advocate nor "supply additional factual allegations to round out a plaintiff's complaint or construct a legal theory on a plaintiff's behalf." *Whitney v. New Mexico*, 113 F.3d 1170, 1175 (10th Cir. 1997) (citing *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991)).

The Court has reviewed the briefs, the entire case file, and the applicable law. Based on the following, the Court **RECOMMENDS** that Defendant Cellco's Motion [#34] be **GRANTED** to the extent that it seeks dismissal of Plaintiff's claims.

I. Background

"On or around the middle of April 2021," Plaintiff "applied for a wireless service with Verizon Wireless[.]" *Compl.* [#1] at 7. By doing so, Plaintiff agreed to the terms and conditions of the "My Verizon Wireless Customer Agreement," which includes an arbitration clause. *Def.'s Motion, Ex. B, Arb. Agreement* [#34-3] at 1.[2] In part, the arbitration clause states, "YOU AND VERIZON AGREE TO RESOLVE DISPUTES ONLY BY ARBITRATION OR IN SMALL CLAIMS COURT," and "THAT BY THIS AGREEMENT YOU ARE GIVING UP THE RIGHT TO BRING A CLAIM IN COURT OR IN FRONT OF A JURY." *Id.* at 6.

Plaintiff alleges that, "before [she] had ever activated [her] devices, hackers had taken over the Verizon account, sending themselves sim cards, changing [her] address, intercepting monthly billing statements, and creating other Verizon Accounts." *Compl.* [#1] at 7. Despite numerous efforts to resolve the issue with customer service, Plaintiff alleges that Defendant Cellco "refused to correct the issues and as a direct result, [Plaintiff] suffered damages[.]" *Id.* at 25. On September 28, 2022, Plaintiff "filed an Arbitration Request with the American Arbitration Association," (the "AAA"), claiming that Defendant Cellco "failed to protect [Plaintiff]'s Wireless Account from cyber-attacks and

[2] Plaintiff attached a copy of the arbitration agreement to her Complaint [#1], so the Court may properly consider it. *See Pl.'s Ex. 1, Arb. Agreement* [#1-2] at 33-34. However, a scan error has rendered Plaintiff's copy of the arbitration clause nearly illegible. Therefore, for ease of reading, and because Plaintiff did not dispute its authenticity, the Court refers to the copy of the arbitration clause that Defendant Cellco attached to its Motion [#34].

compromise." *Id.* at 3. In that arbitration, Plaintiff raised the same claims that she raises in her Complaint [#1]: (1) breach of contract; (2) civil theft in violation of Colo. Rev. Stat. § 18-4-405; (3) vicarious liability/respondeat superior; and (4) gross negligence. *See Compl.* [#1], *Ex. 1, Arbitrator's Interim Order re: Small Claims* [#1-2] at 20.

On August 18, 2023, after failed settlement negotiations, Plaintiff requested dismissal of the Arbitration so that she could proceed in court. *Motion* [#34] at 5 (citing Compl., Ex. 1 at 16-19). Defendant Cellco objected to Plaintiff's request, arguing that if Plaintiff dismissed the Arbitration, she would be limited to litigating in Small Claims Court with her recovery limited to the small claims jurisdictional amount. *Id.* On August 31, 2023, in response to Defendant Cellco's objection, the Arbitrator issued an "Interim Order Re: Small Claims" (the "Interim Order"). *Pl.'s Ex. 1, Arb. Commc'ns* [#1-2] at 20-23. In the Interim Order, the Arbitrator concluded, in relevant part:

> [T]hat the Arbitration Agreement allows either party to this arbitration case to bring an action in Small Claims Court instead of proceeding in this arbitration, but only with [the Arbitrator's] consent at this late date. . . . [The Arbitrator] . . . ha[s] the authority, in [his] discretion . . . to close this arbitration case to allow [Plaintiff] to pursue this dispute in Small Claims Court, upon [Plaintiff]'s request.

Id. at 22. The Arbitrator also ordered as follows:

> 1. [Plaintiff] shall have until September 6, 2023, to elect to file a Motion with AAA to request that this arbitration proceeding be closed and the evidentiary hearing be vacated to permit [Plaintiff] to pursue this matter in Small Claims Court.
>
> 2. Otherwise, the evidentiary hearing scheduled for September 19-20, 2023, will be conducted to hear and address the evidence and proof in support of the four Claims and the full extent of [Plaintiff]'s Damages being asserted against [Cellco]. It will not be limited to addressing a partial claim. Any Claim or request for Damages not presented during the evidentiary hearing will be deemed waived in this arbitration proceeding.

Id. at 23. On September 5, 2023, Plaintiff requested to terminate the arbitration to refile in "a Colorado Court for resolution of claims[.]" *Compl., Ex. 1* [#1-2] at 13-15. On September 7, 2023, Plaintiff's "Motion to Terminate the Arbitration" was granted. *Id.* at 4.

In its Motion [#34], Defendant Cellco argues that "the Arbitrator's dismissal order should be confirmed and entered as a final judgment in this action," such that Plaintiff would be "limited to bringing any further claims against Verizon Wireless only in Colorado Small Claims Court, and may only seek $7,500 or less in damages[.]" *Motion* [#34] at 10. Alternatively, Defendant Cellco argues that "Plaintiff's voluntary dismissal of the Arbitration operates as claim preclusion," and requests that the Court "estop Plaintiff from evading the effect" of the Termination Order, which "limit[s] [her] to Colorado Small Claims Court[.]" *Id.* at 3. Either way, Defendant Cellco asks the Court to dismiss the action with prejudice. *Id.* at 2.

II. Standard of Review

A. Fed. R. Civ. P. 12(c)

"After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). Any party may move for judgment on the pleadings if there are no material facts in dispute. *Ramirez v. Wal-Mart Stores, Inc.*, 192 F.R.D. 303, 304 (D.N.M. 2000) (citing Fed. R. Civ. P. 12(c)). "Judgment on the pleadings is appropriate only when the moving party has clearly established that no material issue of fact remains to be resolved and the party is entitled to judgment as a matter of law." *Sanders v. Mountain Am. Fed. Credit Union*, 689 F.3d 1138, 1141 (10th Cir. 2012) (internal quotation marks and citation omitted). A fact is material when it "might

affect the outcome of the suit under the governing law[.]" *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

Rule 12(c) motions are generally treated the same way as Rule 12(b)(6) motions to dismiss. *Ramirez*, 192 F.R.D. at 304. Thus, when considering a motion for judgment on the pleadings, the Court must "accept all facts pleaded by the non-moving party as true and grant all reasonable inferences from the pleadings in that party's favor." *Sanders*, 689 F.3d at 1141 (internal citation and quotation marks omitted). However, "the court need accept as true only the plaintiff's well-pleaded factual contentions, not [her] conclusory allegations." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) (citations omitted). In making its determination, the Court may consider "[a] written document that is attached to the complaint as an exhibit . . . [as] part of the complaint[.]" *Id.* at 1112 (citations omitted). The Court may also consider "documents referred to in the complaint if the documents are central to the plaintiff's claim and the parties do not dispute the documents' authenticity." *Smith v. United States*, 561 F.3d 1090, 1098 (10th Cir. 2009) (internal quotation and citation omitted).

A claim dismissed under Rule 12(c) may be dismissed with or without prejudice, as would be otherwise warranted. *See, e.g., In re Great Lakes Dredge & Dock Co.*, 624 F.3d 201, 209 (5th Cir. 2010) (holding that "the district court did not err in entering dismissal with prejudice on the merits under Rule 12(c)"); *Barnard v. Steed*, 161 F.3d 11, No. 98-15065, 1998 WL 536985 (9th Cir. 1998) (affirming the district court's "Fed.R.Civ.P. 12(c) dismissal without prejudice of [the plaintiff's] 42 U.S.C. § 1983 action"); *Escano v. Concord Auto Protect, Inc.*, No. 21-223 MV/CG, 2022 WL 621001, at *5 (D.N.M. Mar. 3, 2022) (noting, after citing to case law regarding Rule 12(c) dismissals with prejudice,

"[t]hat is not to say, however, that claims dismissed under Rule 12(c) *must* be dismissed without prejudice.") (emphasis in original); *Cheromiah v. United States*, 55 F. Supp. 2d 1295, 1298 (D.N.M. 1999) ("When granting 12(c) motions, courts may give leave to amend and may dismiss causes of action rather than grant judgment.") (internal quotations omitted). Thus, for example, courts have dismissed claims under Rule 12(c) without prejudice based on Eleventh Amendment sovereign immunity, and the Sixth Circuit recently affirmed a district court order that compelled arbitration on a Rule 12(c) motion. *See United Food & Com. Workers, Local 1995 v. Kroger Co.*, 51 F.4th 197, 201, 209 (6th Cir. 2022) (affirming district court's order granting union's motion for judgment on the pleadings and compelling arbitration); *Original Invs., LLC v. Oklahoma*, No. CIV-20-820-F, 2021 WL 1026950, at *3 (W.D. Okla. Mar. 17, 2021) (granting Rule 12(c) motion and dismissing claims without prejudice based on Eleventh Amendment sovereign immunity); *Barrett v. Univ. of N.M. Bd. of Regents*, No. 12 CV 574 JAP/RHS, 2013 WL 12085687, at *5 (D.N.M. July 1, 2013) (same).

B. Federal Arbitration Act

Under the Federal Arbitration Act (the "FAA"), 9 U.S.C. § 1 *et seq.*, the Court "'applies the same test whether [it is] reviewing a petition to confirm or a petition to vacate.'" *Dodson Int'l Parts, Inc. v. Williams Int'l Co. LLC*, 12 F.4th 1212, 1229 (10th Cir. 2021) (quoting *Yasuda Fire & Marine Ins. Co. of Eur., Ltd v. Cont'l Cas. Co.*, 37 F.3d 345, 347 n.4 (7th Cir. 1994)). When determining whether an arbitration award should be confirmed, "maximum deference is owed to the arbitrator's decision. In fact, the standard of review of arbitral awards 'is among the narrowest known to the law.'" *ARW Expl. Corp. v. Aguirre*, 45 F.3d 1455, 1462-63 (10th Cir. 1995) (quoting *Livtak Packing Co. v. United*

Food & Com. Workers, Loc. Union No. 7, 886 F.2d 275, 276 (10th Cir. 1989)). The Court "employ[s] this limited standard of review and exercise[s] caution in setting aside arbitration awards because one purpose behind arbitration agreements is to avoid the expense and delay of court proceedings." *Bowen v. Amoco Pipeline Co.*, 254 F.3d 925, 932 (10th Cir. 2001) (internal citation and quotation marks omitted). "Once an arbitration award is entered, the finality that courts should afford the arbitration process weighs heavily in favor of the award[.]" *ARW Expl. Corp.*, 45 F.3d at 1463 (citation omitted).

III. Analysis

Defendant Cellco asks the "the Court [to] confirm the AAA termination order as a final award, and dismiss this action with prejudice on that basis alone." *Motion* [#34] at 2. Alternatively, Defendant Cellco seeks Fed. R. Civ. P. 12(c) judgment on the pleadings because "Plaintiff's voluntary dismissal of her Arbitration – with full knowledge of the consequences – is sufficient to invoke claim preclusion." *Id.* at 13. In opposition, Plaintiff argues that "[t]here is no evidence as to the resolution of any of [Plaintiff]'s claims submitted before the Arbitrator." *Response* [#44] at 10. The Court agrees with Plaintiff to the extent that there has been no final arbitration decision that could support a confirmation order or the application of collateral estoppel. However, because the parties do not dispute the validity of the arbitration clause, which plainly divests this Court of jurisdiction over all claims between the parties, dismissal without prejudice is nonetheless required under Rule 12(c).

A. Confirmation of Arbitration Award

"Because the FAA does not define 'a final decision with respect to arbitration' or otherwise suggest that the ordinary meaning of 'final decision' should not apply, [the

Supreme] Court accord[s] the term its well-established meaning." *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 86 (2000) (citing *Evans v. United States*, 504 U.S. 255, 259-60 (1992)). A final decision "ends the litigation on the merits and leaves nothing more for the court to do but execute the judgment[.]" *Digit. Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 867 (1994) (internal quotation and citation omitted). A plaintiff's voluntary dismissal may be a final decision, but the Tenth Circuit distinguishes voluntary dismissals *with* prejudice from voluntary dismissals *without* prejudice. *Compare Amazon, Inc. v. Dirt Camp, Inc.*, 273 F.3d 1271, 1275 (10th Cir. 2001) ("[A] dismissal without prejudice is usually not a final decision" unless "the dismissal finally disposes of the case so that it is not subject to further proceedings[.]"), *with Lenox MacLaren Surgical Corp. v. Medtronic, Inc.*, 847 F.3d 1221, 1239 (10th Cir. 2017) (stating that an "arbitration award, followed by a voluntary dismissal with prejudice" constitutes "a final judgment on the merits."); *see also* Fed. R. Civ. P. 41(a)(1)(B) (stating that voluntary dismissals are without prejudice unless indicated otherwise or unless "the plaintiff previously dismissed any federal- or state-court action based on or including the same claim" in which case dismissal "operates as an adjudication on the merits").

Defendant Cellco cites several cases in support of its contention that "[a]rbitration orders of dismissal may be confirmed under the FAA just like any other arbitration award." *Motion* [#34] at 8. This is correct, to a point—an order of dismissal that operates as an adjudication on the merits (or even on part of the merits) can be confirmed. *See, e.g., Miller v. Travel Guard Grp., Inc.*, No. 21-cv-09751-TLT, 2023 WL 4240809, at *1-*2, *4-*6 (N.D. Cal. June 6, 2023) (confirming arbitrator's award, which the defendant argued was a manifest disregard of the law, where arbitrator dismissed matter for lack of jurisdiction

based on his understanding of California law), *appeal filed*, No. 23-15395 (9th Cir. June 28, 2023); *Harper v. Charter Commc'ns, LLC*, No. 2:19-cv-00902 WBS DMC, 2019 WL 3683706, at *5 (E.D. Cal. Aug. 6, 2019) (confirming the arbitrator's order dismissing arbitration for lack of jurisdiction when the parties had agreed to submit arbitrability issues to the arbitrator); *Glob. Gold Mining LLC v. Caldera Res., Inc.*, 941 F.Supp.2d 374, 382-83 (S.D.N.Y. 2013) (confirming "a definitive partial award as to liability" when the parties had "consented to the arbitration being bifurcated in terms of liability and damages") (internal citation and quotation marks omitted).

Here, however, there is no final decision on the merits for the Court to confirm. Plaintiff voluntarily dismissed the arbitration proceedings with the arbitrator's consent. After receiving Plaintiff's request to terminate arbitration, the Arbitrator ordered that, "[p]ursuant to [the] Interim Order . . . this arbitration case be terminated and closed forthwith." *Pl.'s Compl., Ex. 1, Arb. Commc'ns* [#1-2] at 4. Importantly, in the Interim Order, the Arbitrator stated that the dismissal would still "permit [Plaintiff] to pursue this matter in Small Claims Court." *Id.* at 23. Because the Arbitrator dismissed the arbitration proceedings while expressly allowing Plaintiff to bring her claims in an alternative forum, the Termination Order was not "a final judgment on the merits." *Lenox*, 847 F.3d at 1239. Therefore, the Court **recommends** that Defendant Cellco's Motion [#34] be **denied** to the extent that it asks the Court to "confirm" Plaintiff's voluntary dismissal of arbitration pursuant to 9 U.S.C. § 9.

BY THE COURT:

Kathryn A. Starnella
United States Magistrate Judge

Additional material from this filing is available in the Clerk's Office.