

FILED  
United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 8, 2026

Christopher M. Wolpert  
Clerk of Court

SHANE ROBERT NIEDERER,

Plaintiff - Appellant,

v.

LPL FINANCIAL LLC,

Defendant - Appellee.

No. 25-8066  
(D.C. No. 2:25-CV-00059-ABJ)  
(D. Wyo.)

ORDER AND JUDGMENT\*

Before **HOLMES**, Chief Judge, **MORITZ**, and **FEDERICO**, Circuit Judges.

Shane Niederer, proceeding pro se,<sup>1</sup> appeals the district court's dismissal under Federal Rule of Civil Procedure 12 of his complaint against LPL Financial LLC ("LPL"), in which he sought to challenge an arbitration award against him and in LPL's favor. We have jurisdiction under 28 U.S.C. § 1291 and we affirm.

\* After examining the briefs and appellate record, this panel has determined unanimously 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

<sup>1</sup> Because Mr. Niederer proceeds pro se, we construe his arguments liberally, but we "cannot take on the responsibility of serving as [his] attorney in constructing arguments and searching the record." *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

According to his complaint, Mr. Niederer was an independent contractor representative of LPL. LPL terminated him in 2022. He and LPL underwent arbitration, during which LPL brought two causes of action against him: breach of a promissory note and breach of a term of commitment note. He raised counterclaims in the arbitration for defamation, civil conspiracy, breach of contract, tortious interference with business relationships, unjust enrichment, and conversion. He also brought third-party claims against Andrew Fortuna, his former colleague. The arbitration panel dismissed Mr. Niederer's counterclaims and third-party claims. The panel then found in favor of LPL, awarding over \$325,000 in compensatory damages, interest, attorney fees, and other costs and monetary sanctions.

In February 2025, LPL petitioned a Wyoming state court to confirm the arbitration award. Mr. Niederer did not respond to that petition. He instead filed his federal complaint in the suit underlying this appeal. Among the claims in his federal complaint, he included a cause of action against LPL under 42 U.S.C. § 1983. Meanwhile, in April 2025, the Wyoming state court confirmed the arbitration award against Mr. Niederer and in favor of LPL.

LPL filed its motion to dismiss the federal action, arguing, *inter alia*, that the doctrines of *res judicata* and collateral estoppel barred Mr. Niederer's claims. The district court granted the motion, and this timely appeal followed.

“We review *de novo* a district court's decision on a Rule 12(b)(6) motion for dismissal for failure to state a claim. Under this standard, we must accept all the well-pleaded allegations of the complaint as true and must construe them in the light

most favorable to the plaintiff.” *Waller v. City & Cnty. of Denv.*, 932 F.3d 1277, 1282 (10th Cir. 2019) (italics, citation, and internal quotation marks omitted). “[A] complaint must contain sufficient factual matter . . . to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). To meet this standard, the plaintiff must “plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

We first affirm the district court’s dismissal of Mr. Niederer’s § 1983 cause of action. “To state a claim under § 1983, a plaintiff . . . must show that the alleged deprivation was committed by a person acting under color of state law.”

*West v. Atkins*, 487 U.S. 42, 48 (1988). Mr. Niederer did not make this showing as to LPL, a private party. Nor does he argue how § 1983 would remain applicable, and so he has waived any such argument. *See Sawyers v. Norton*, 962 F.3d 1270, 1286 (10th Cir. 2020) (“Issues not raised in the opening brief are deemed abandoned or waived.” (internal quotation marks omitted)).

We also conclude the district court was correct to dismiss the remainder of Mr. Niederer’s causes of action due to claim preclusion.

Under Tenth Circuit law, claim preclusion applies when three elements exist: (1) a final judgment on the merits in an earlier action; (2) identity of the parties in the two suits; and (3) identity of the cause of action in both suits. If these requirements are met, *res judicata* is appropriate unless the party seeking to avoid preclusion did not have a full and fair opportunity to litigate the claim in the prior suit.

*MACTEC, Inc. v. Gorelick*, 427 F.3d 821, 831 (10th Cir. 2005) (citation and internal quotation marks omitted). “[R]es judicata . . . will prevent a party from relitigating a legal claim that was *or could have been* the subject of a previously issued final judgment.” *Id.* (emphasis added).

Mr. Niederer argues he did not have a full and fair opportunity to litigate his claims against LPL owing to various deficiencies he alleges were present in the arbitration process. But we need not consider those deficiencies here, because the Wyoming state court judgment confirming the arbitration award was, itself, sufficient to preclude Mr. Niederer’s claims in this case. *See Coffey v. Dean Witter Reynolds Inc.*, 961 F.2d 922, 927–28 (10th Cir. 1992) (holding arbitration award confirmed by state court “is about as ‘final’ as any arbitration award could be.”).

Mr. Niederer also challenges the district court’s denial of his “Motion to Compel Production of Record and Transcripts for Appeal,” and his “Motion for Order to Waive Supersedeas Bond Due to Indigency.” But he filed these motions in the district court after he filed his notice of appeal, so the district court did not have jurisdiction to address them. *See Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) (“The filing of a notice of appeal . . . confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.”). He likewise argues the court erred in granting the motion to dismiss notwithstanding his then-pending “Motion for Temporary Restraining Order and Preliminary Injunction.” R. at 139. But dismissing his underlying complaint necessarily mooted these requests for relief. *See Baker v. Bray*,

701 F.2d 119, 122 (10th Cir. 1983) (“[T]he claim upon which the request for a preliminary injunction was based . . . was dismissed by the district court, and this action certainly mooted the issue raised herein.”). And Mr. Niederer presents no basis to conclude any of these motions would disturb our review of the district court’s order dismissing his underlying claims.

We affirm the district court’s judgment.

Entered for the Court

Jerome A. Holmes  
Chief Judge