

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

March 24, 2026

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

KEVIN LEE BIGLOW,

Plaintiff - Appellant,

v.

DELL TECHNOLOGIES INC.,

Defendant - Appellee.

No. 25-3007
(D.C. No. 2:20-CV-02563-KHV-BGS)
(D. Kan.)

ORDER AND JUDGMENT*

Before **CARSON, BALDOCK, and KELLY**, Circuit Judges.

Kevin Lee Biglow, appearing pro se, appeals the district court's orders compelling him to arbitrate his claims against Dell Technologies, Inc. ("Dell"), and denying his motion to vacate the arbitration award in Dell's favor. Exercising jurisdiction under 28 U.S.C. § 1291 and 9 U.S.C. § 16(a)(3), we affirm. We also warn Biglow about what appears to be his misuse of generative artificial intelligence in researching and drafting his reply brief and several motions.

* 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

I. INTRODUCTION

The parties are familiar with the facts, so we set them out briefly here and in more detail as relevant to our discussion of Biglow’s issues on appeal.

Dell hired Biglow in 2012. In 2018, Dell presented its employees with a Mutual Agreement to Arbitrate Claims (“MAA”) and informed them that those who did not sign it would not be eligible for future Long-Term Incentive (“LTI”) grants. Biglow signed the MAA, which provided that he agreed to arbitrate “any and all dispute(s) arising out of or related to [his] employment and/or separation from employment with Dell.” R. vol. I at 126. More specifically, the MAA provided that it applied, “without limitation, to all disputes or claims arising out of or relating to [his] employment relationship with” Dell, “including, but not limited to: (i) discrimination or harassment based on any characteristic protected by law; (ii) retaliation; (iii) torts; [and] (iv) all employment related laws, including, but not limited to, Title VII of the Civil Rights Act” and “the Equal Pay Act.” *Id.*

Dell terminated Biglow’s employment in 2019. In 2020, after receiving a right-to-sue letter from the U.S. Equal Employment Opportunity Commission (“EEOC”), Biglow filed the action underlying this appeal pro se. Biglow, who is African American, alleged that Dell paid him less than similarly situated Caucasian co-workers, assigned him to perform in positions beneath his managerial position but did not require his Caucasian counterparts to do so, and retaliated against him for challenging the compensation system. He asserted violations of the Equal Pay Act,

Title VII (discrimination and retaliation), and Kansas labor and anti-discrimination laws.

Dell moved to compel arbitration. The district court granted Dell's motion. The court observed that Biglow had "not dispute[d] that he signed" the MAA or "that it covers his claims of employment discrimination and retaliation." *Id.* at 310. The court rejected Biglow's arguments that (1) he signed the MAA under duress; (2) Dell impermissibly conditioned his continued employment on signing the MAA; (3) Dell misrepresented that the MAA was similar to prior arbitration agreements, and therefore Biglow did not know he was signing an agreement to arbitrate; and (4) Dell exercised undue influence over him.

Biglow then filed a demand for arbitration with JAMS Denver, a provider of alternative dispute resolution services. After the first appointed arbitrator withdrew, JAMS Denver appointed a second arbitrator, the Honorable Robert L. McGahey (Ret.). A few months later, however, JAMS informed the parties that Arbitrator McGahey's appointment was an administrative error on its part because Biglow had originally struck him from the list of neutral arbitrators. The arbitration was then transferred to JAMS San Francisco, and the Honorable James Ware (Ret.) was appointed as the arbitrator.

Meanwhile, after Arbitrator McGahey's appointment, Biglow retained counsel, who filed an amended arbitration demand asserting sixteen claims. Dell filed a motion for summary disposition, and soon after, Biglow discharged his attorney

because he suspected the attorney was colluding and conspiring with Dell's in-house counsel.

After his appointment, Arbitrator Ware ordered the parties to resubmit their briefing on Dell's motion for summary disposition and allowed Biglow to provide supplemental briefing on the motion. Arbitrator Ware then granted Dell's motion, concluding that Biglow's claims failed as a matter of law for various reasons, including untimeliness, failure to state a cognizable claim, and reliance on federal statutes, regulations, policies, and procedures that do not provide a private right of action. Arbitrator Ware entered a final arbitration award.

Biglow returned to the district court and filed a motion to vacate the arbitration award, which Dell opposed. The district court denied the motion. Biglow appeals.

II. DISCUSSION

Biglow identifies sixteen¹ issues on appeal involving either the district court's order compelling arbitration or its order denying his motion to vacate the arbitration award. We group them in that manner. We afford Biglow's pro se filings a liberal construction, but we do not act as his advocate. *See Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

A. Issues concerning order compelling arbitration

Three of Biglow's issues (one, three, eleven) involve the district court's order compelling arbitration. "We review a district court's grant or denial of a motion to

¹ Biglow's issues are numbered one through seventeen, but there is no issue numbered four. We identify the issues according to Biglow's numbering.

compel arbitration *de novo*, applying the same legal standard employed by the district court.” *Armijo v. Prudential Ins. Co. of Am.*, 72 F.3d 793, 796 (10th Cir. 1995).

1. Issue One: Failure to critically analyze the arbitration agreement

In his opening brief, Biglow argues that the district court erred by not analyzing whether Clause 3(c) of the MAA precluded arbitration of his claims.² However, he does not explain how Clause 3(c) precluded arbitration. Biglow has therefore inadequately briefed the issue. Consequently, he has waived appellate review of this issue. *See Sawyers v. Norton*, 962 F.3d 1270, 1286 (10th Cir. 2020) (explaining that “arguments that are inadequately presented in an opening brief, such as those presented only in a perfunctory manner,” are “abandoned or waived” (brackets, ellipsis, and internal quotation marks omitted)).³

2. Issue Three: Failure to review Title VII claims

Biglow argues that the district court did not “sufficiently inquire into whether [he] knowingly and voluntarily agreed to arbitrate his Title VII claims, and whether

² Clause 3(c) provides: “Claims against a defense contractor that may not be the subject of a mandatory arbitration agreement as provided by any Department of Defense Appropriations Act and their implementing regulations are excluded from the coverage of [the MAA].” R. vol. 1 at 127.

³ In its appellate brief, Dell surmises that Biglow’s argument must rest on 48 C.F.R. § 222.7402, which disentitles contractors from receiving government defense funding unless they agree not to condition employment on an employee’s agreement to arbitrate Title VII claims. Dell then explains that the argument fails because there is no evidence that signing the MAA was a condition of Biglow’s employment. Dell further explains that, at most, refusing to sign would have rendered Biglow ineligible for certain LTI grants. But as the district court found, there was no evidence that Biglow ever received or was entitled to any LTI grants. Thus, it appears to us that Biglow’s reliance on Clause 3(c) is misplaced.

the [MAA] would prevent him from effectively vindicating those rights.” Aplt. Opening Br. at 21. Dell contends that Biglow has waived this argument because he failed to raise it in the district court and has not argued for plain-error review on appeal. We agree. Biglow has therefore waived appellate consideration of issue three. *See United States v. Leffler*, 942 F.3d 1192, 1196 (10th Cir. 2019) (“When an appellant fails to preserve an issue [by not raising it in district court] and also fails to make a plain-error argument on appeal, we ordinarily deem the issue waived (rather than merely forfeited) and decline to review the issue at all—for plain error or otherwise.”).

In his reply brief, Biglow asserts that because Dell never raised waiver or pleaded waiver as an affirmative defense in the district court, Dell cannot now argue that he has waived any arguments on appeal.⁴ We reject this assertion. Dell’s arguments concerning forfeiture and waiver on appeal are properly made in the first instance in this court because the waiver issue is whether Biglow is presenting arguments on appeal that he did not present to the district court. In order to assert forfeiture and waiver on appeal, Dell was not required to first anticipate arguments Biglow might have made in the district court and then argue to the district court that he had not made them.

⁴ Biglow makes a similar argument in a motion to strike he has filed in this court. In both instances he relies in part on fabricated case law to support his argument. We address these and other case fabrications in Part III of this decision.

Biglow also suggests that Dell cannot raise “any defenses on appeal under [Fed. R. Civ. P.] 8(c)(1)” because it failed to assert them in the district court. Aplt. Reply Br. at 3. We disagree. A litigant may waive an affirmative defense if not included in a response to a pleading. *See* Fed. R. Civ. P. 8(b)(1)(A) (“In responding to a pleading, a party must . . . state in short and plain terms its defenses to each claim asserted against it.”); *Bentley v. Cleveland Cnty. Bd. of Cnty. Comm’rs*, 41 F.3d 600, 604 (10th Cir. 1994) (“Failure to plead an affirmative defense results in a waiver of that defense.” (citing Fed. R. Civ. P. 8(c))). But Dell did not file a responsive pleading to Biglow’s complaint, such as an answer. Instead, Dell filed a motion to compel arbitration. Dell was not obligated to assert any affirmative defenses in that motion. *See Fontenot v. Crow*, 4 F.4th 982, 1057 n.46 (10th Cir. 2021) (“An answer is a pleading, but a motion is not.”). Nor was Dell obligated to assert any affirmative defenses in response to Biglow’s motion to vacate, because a motion is not a pleading. *See id.* Furthermore, although Dell declined to specifically respond to those portions of the 221-paragraph statement of facts and accompanying exhibits that had nothing to do with the merits of Biglow’s motion to vacate, Dell substantively responded to the portions of Biglow’s motion to vacate that were germane at the motion-to-vacate stage. We therefore reject Biglow’s contention that Dell has waived any of the arguments it raises on appeal.

3. Issue Eleven: Improper delegation

On issue eleven, Biglow argues that the district court “improperly delegated threshold arbitrability questions to the arbitrator without first determining whether a

valid agreement to arbitrate existed and what its scope encompassed.” Aplt. Opening Br. at 41. But the district court did nothing of the sort; it ruled on arbitrability. We reject this argument.⁵

B. Issues concerning denial of motion to vacate award

The remainder of Biglow’s issues involve the district court’s order denying his motion to vacate the arbitration award. In reviewing such an order, “we review questions of law de novo” and any “factual findings for clear error.” *Bowen v. Amoco Pipeline Co.*, 254 F.3d 925, 931 (10th Cir. 2001). But we must “give great deference to an arbitrator’s decision” because “[o]ur powers of review [are] among the narrowest known to the law.” *Dish Network, LLC v. Ray*, 900 F.3d 1240, 1243 (10th Cir. 2018) (internal quotation marks omitted).

Under § 10 of the Federal Arbitration Act (“FAA”), a district court is only permitted to vacate an arbitration award if it finds that (1) the award was procured by corruption, fraud, or undue means; (2) there was evident partiality or corruption in the arbitrator; (3) the arbitrator was guilty of misconduct in refusing to postpone a hearing, in refusing to hear evidence, or in misbehaving in some other way; or (4) the arbitrator exceeded their powers or imperfectly executed them. 9 U.S.C.

§ 10(a)(1)–(4). We have determined that vacatur is “also appropriate when the arbitration award violates public policy, when the arbitrator did not conduct a

⁵ In his eleventh issue, Biglow also reiterates his conclusory Clause 3(c) arbitrability argument. But we have already ruled that he has waived appellate review of that argument.

fundamentally fair hearing, or when an arbitrator’s decision is based on a manifest disregard of the law, defined as willful inattentiveness to the governing law.” *Dish Network*, 900 F.3d at 1243 (internal quotation marks omitted).⁶

With these principles in mind, we address Biglow’s remaining issues, grouping them topically where appropriate and addressing them in the most convenient order.

1. Issues Two, Five, Fourteen, Fifteen: Arbitrator misconduct

In issues two, five, fourteen, and fifteen, Biglow argues that vacatur of the arbitration award is warranted because Arbitrator Ware (1) never ruled on his motion to compel production or his request to delay ruling on Dell’s motion for summary disposition until after completion of discovery; (2) deprived him of due process by failing to respond to Biglow’s “letter of inquiry,” which “raised allegations central to the fairness of the proceedings,” Aplt. Opening Br. at 23; (3) ruled on the merits without addressing the letter of inquiry, without holding a hearing, and in violation of his own scheduling order; and (4) falsely stated that the parties had “engaged in extensive discovery from March 2022 through December 2022,” when record evidence shows they had not, *id.* at 58. Biglow also contends that the appointment of the second arbitrator (McGahey) “raises serious questions about the impartiality of

⁶ We have observed that “the Supreme Court cast doubt on the vitality of [these] judicially created reasons in *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576 (2008).” *Mid Atl. Cap. Corp. v. Bien*, 956 F.3d 1182, 1190 n.3 (10th Cir. 2020) (parallel citations omitted); *see Hall St. Assocs.*, 552 U.S. at 584 (“We now hold that [9 U.S.C.] §§ 10 and 11 respectively provide the FAA’s exclusive grounds for expedited vacatur and modification.”). We need not decide whether any judicially created reasons to vacate an award survive *Hall Street*, because even if they do, Biglow has not shown that any warrant reversal here.

the proceedings” because Biglow had previously struck him from the list of potential arbitrators, thus warranting vacatur of the arbitration award under § 10(a)(1).

Id. at 59.

Biglow’s arguments fail to show that the arbitration award should be vacated. In early April 2024, soon after his appointment, Arbitrator Ware issued a scheduling order setting a July 19, 2024, deadline for dispositive motions and specifying August 16, 2024, as the date for a telephonic hearing on any dispositive motion “if one is filed.” R. vol. III at 630 (italics omitted). He also noted that Dell had already submitted dispositive motions and that the case manager would “connect with the parties to set a hearing on [those] Motions.” *Id.* But on May 23, 2024, he informed the parties that he would “proceed with evaluating [Dell’s] fully briefed [motion for summary disposition]” and would set a “hearing if it becomes necessary.” R. vol. II at 95. Arbitrator Ware then allowed Biglow to submit two supplemental briefs regarding summary disposition. In his final decision, Arbitrator Ware stated that he had considered all of the parties’ written submissions, and that if his decision differed from any party’s position, it was due to his “determinations as to relevance and legal analysis.” R. vol. III at 735. He denied as moot Biglow’s motion to compel discovery.

We fail to see in these procedures any fundamental unfairness or evidence of fraud, corruption, or undue means. Biglow has not explained, nor is it apparent, how discovery or a hearing on the merits would have assisted him in avoiding an adverse ruling on any of his claims given that Arbitrator Ware dismissed the claims on legal

grounds readily discernible from the parties' briefing. *See Sheldon v. Vermonty*, 269 F.3d 1202, 1207 (10th Cir. 2001) (“[I]f a party’s claims are facially deficient and the party therefore has no relevant or material evidence to present at an evidentiary hearing, the arbitration panel has full authority to dismiss the claims without permitting discovery or holding an evidentiary hearing.”). Biglow also has not explained what bearing, if any, Arbitrator Ware’s understanding of the extent to which the parties had engaged in discovery or his failure to expressly address the allegations in Biglow’s letter of inquiry had on Arbitrator Ware’s analysis of the legal merits of Biglow’s claims.⁷ Thus, Biglow’s arguments in these four issues fail to demonstrate any basis for vacatur. At most, these arguments amount to a disagreement with the manner in which Arbitrator Ware conducted the arbitration, which is not a ground for vacatur of an arbitration award, and a refusal to accept that an arbitration is amenable to summary disposition on purely legal grounds.

2. Issue Six: Denial of evidentiary hearing on motion to vacate

In issue six, Biglow argues that the district court erred when it denied his request for an evidentiary hearing on his motion to vacate so that he could

⁷ In the letter of inquiry, Biglow alleged that Dell and its in-house counsel engaged in “fraudulent and criminal behavior” by “obstructing [Biglow’s] efforts to secure legal representation, as well as colluding and conspiring with [his] former counsel,” and by “offer[ing] enticing incentives to convince [Biglow’s] attorney not to object to the appointment of Judge McGahey as the [second] arbitrator,” whose “main objective was to unlawfully dismiss [Biglow’s] claims.” R. vol. III at 672.

demonstrate Arbitrator Ware’s misconduct.⁸ But Biglow has not identified any material evidence he might have submitted at a hearing or, if he has any such evidence, why he could not have submitted it along with the 33 exhibits supporting his motion to vacate the arbitration award. We therefore see no abuse of discretion in the district court’s denial of his request for a hearing. *See Robinson v. City of Edmond*, 160 F.3d 1275, 1286 (10th Cir. 1998) (finding no abuse of discretion in declining to hold a hearing where litigant “failed to show that any new information they would have presented at the hearing would have been critical to the district court’s consideration”); *United States v. Nichols*, 169 F.3d 1255, 1263 (10th Cir. 1999) (“[O]ur general rule [is] that decisions on the propriety of evidentiary hearings are reviewed for an abuse of discretion.”).

3. Issue Seven: Denial of motion for sanctions against Dell

Biglow argues that the district court erred by denying his motion for sanctions against Dell for drafting ambiguous language in Clauses 3, 4, and 7 of the MAA. But as Dell points out, Biglow did not ask the district court for sanctions based on allegedly ambiguous language in the MAA; he instead asked the district court to sanction Dell “giv[en the] gravity of [Dell’s] actions.” R. vol. II at 149; *see also* R. vol. III at 821 (same). Consistent with Biglow’s stated rationale, the district court construed his request for sanctions as being based on Dell’s “grave misconduct

⁸ Biglow also re-argues that Arbitrator Ware denied him an opportunity to present evidence and dismissed the case contrary to his own scheduling order. We have already addressed this argument and will not do so again.

during the arbitration proceedings” and determined it lacked jurisdiction to impose such sanctions. R. vol. III at 1079. Although Biglow discussed alleged ambiguities in the MAA elsewhere in his briefing on his motion to vacate, he did not adequately tie his request for sanctions to them. He therefore forfeited the argument he now presses in issue seven. *See Leffler*, 942 F.3d at 1196. And because he has not argued for plain-error review, he has waived appellate review of issue seven. *See id.*

4. Issues Eight, Nine: Arbitrator manifestly disregarded the law

In issues eight and nine, Biglow contends that Arbitrator Ware manifestly disregarded the law by applying a fabricated 90-day limitations period to Biglow’s filing of his demand for arbitration. We disagree. A manifest disregard of the law requires “willful inattentiveness to the governing law.” *Bowen*, 254 F.3d at 932 (internal quotation marks omitted). “Requiring more than error or misunderstanding of the law, a finding of manifest disregard means the record will show the arbitrator[] knew the law and explicitly disregarded it.” *Id.* (citation omitted). Here, Arbitrator Ware observed that under the MAA, all arbitration claims ““are subject to the same statutes of limitations that would apply in court.”” R. vol. III at 745 (quoting MAA, *see* R. vol. I at 128). Arbitrator Ware then determined that, under applicable law, (1) the limitations period for Biglow’s Title VII claims was 90 days after he received the EEOC’s right-to-sue letter, (2) the filing of his complaint in the district court did not satisfy that requirement, (3) his arbitration demand was filed more than 90 days after he received the right-to-sue letter, and (4) equitable tolling did not apply. Although Biglow disagrees with Arbitrator Ware’s analysis, we conclude that

Arbitrator Ware did not manifestly disregard the law. We therefore reject Biglow's argument.

5. Issue Sixteen: District court disregarded equitable tolling

In his sixteenth issue, Biglow argues that the district court disregarded evidence supporting equitable tolling and thus "failed to perform its duty to ensure that the statutory time limits operate fairly." Aplt. Opening Br. at 63. This argument fails because whether equitable tolling applied was a matter for the arbitrator to decide, not the district court, and provides no basis for vacating the award. *See United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 37–38 (1987) ("Because the parties have contracted to have disputes settled by an arbitrator chosen by them rather than by a judge, it is the arbitrator's view of the facts and of the meaning of the contract that they have agreed to accept. Courts thus do not sit to hear claims of factual or legal error by an arbitrator as an appellate court does in reviewing decisions of lower courts.").

6. Issues Twelve, Thirteen: Improper communications

In issue twelve, Biglow alleges that JAMS administration refused to disclose all communications involving his former counsel, the JAMS case manager, and opposing counsel pertaining to his strike list and the appointment of Arbitrator McGahey. In issue thirteen, Biglow alleges that Arbitrator McGahey and Dell's in-house counsel engaged in improper ex parte email communications and that the district court declined to consider the email evidence. Based on these allegations, Biglow argues that the award should be vacated because it was procured by fraud,

corruption, or undue means. The district court rejected these arguments because (1) they rested on mere speculation and (2) Biglow failed to show any prejudice given that Arbitrator McGahey did not rule on Dell's motion for summary disposition. We agree with the second reason and need not sort out the first.

To obtain vacatur under Section 10(a)(1), Biglow had to show that “the *award was procured by corruption, fraud, or undue means.*” § 10(a)(1) (emphasis added). In other words, § 10(a)(1) requires a nexus between the alleged corruption, fraud, or undue means and the arbitration award. *See Forsythe Int'l, S.A. v. Gibbs Oil Co. of Tex.*, 915 F.2d 1017, 1022 (5th Cir. 1990) (reading § 10(a)(1) “as requiring a nexus between the alleged fraud and the basis for the [arbitrator's] decision”). Biglow has not identified any nexus between the alleged improprieties concerning Arbitrator McGahey's appointment and Arbitrator Ware's decision to grant Dell's motion for summary disposition. We therefore reject these arguments.

7. Issue Seventeen: Arbitrator McGahey's order

In his seventeenth issue, Biglow contends the district court should have vacated the arbitration award because “all orders and rulings” that Arbitrator McGahey issued “were void ab initio due to his unlawful appointment.” Aplt. Opening Br. at 65.⁹ But as Dell points out, the only order Arbitrator McGahey issued was a scheduling order, and Arbitrator Ware's scheduling order superseded it.

⁹ Biglow also reiterates his argument that Arbitrator Ware failed to adhere to his own scheduling order when he granted Dell's motion for summary disposition before the deadline for other dispositive motions. We have already rejected this argument and will not address it again.

Biglow replies that Arbitrator “McGahey’s void scheduling order created the entire framework within which [Arbitrator] Ware operated, including deadlines and procedural parameters.” Aplt. Reply Br. at 31. This rejoinder is facially absurd and provides no basis for vacatur of the arbitration award.

8. Issue Ten: Cumulative errors

In issue ten, Biglow argues that the district court committed errors that, when considered cumulatively, undermine the fairness of the proceedings. However, because Biglow has not demonstrated any individual errors, there cannot be cumulative error. *See Moore v. Reynolds*, 153 F.3d 1086, 1113 (10th Cir. 1998) (“Cumulative error analysis applies where there are two or more actual errors; it does not apply to the cumulative effect of non-errors.”).

III. FABRICATIONS AND MISREPRESENTATIONS

Biglow has filed four motions in this appeal. But before addressing those, we discuss what appear to be fabricated case citations and misrepresentations regarding actual cases in his appellate filings.

In his opening brief, Biglow claims that “*Ricks v. Lindsay*, 480 F.2d 538 (10th Cir. 1973) establishes that arguments not raised are deemed waived and must be [sic] addressed by the court.” Aplt. Opening Br. at 58. The citation, however, leads to a page in *Hanley v. Four Corners Vacation Properties, Inc.*, 480 F.2d 536 (10th Cir. 1973), which says nothing about waiver of arguments.

In his reply brief, Biglow states that this court “has repeatedly cautioned that opposing counsel cannot ‘rely on technical defenses to prey on pro se ignorance.’”

Aplt. Opening Br. at 5 (purportedly quoting *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005)). But neither that quote nor any analogous proposition appears in *Garrett*. Biglow also cites five cases that do not appear to exist. On page 4 of his reply brief, he cites “*Burton v. Ghosh*, 961 F.3d 1084, 1092 (7th Cir. 2020),” but the primary citation leads to a page in *Blixseth v. Credit Suisse*, 961 F.3d 1074 (9th Cir. 2020); and the pin cite to page 1092 is a page within *United States v. Morales*, 961 F.3d 1089 (10th Cir. 2020). On page 6 he cites “*Iseminger v. Dist. Ct.*, 915 F.2d 1314, 1318 (10th Cir. 1990),” but the citation corresponds to *Natural Resources Defense Council v. U.S. EPA*, 915 F.2d 1314 (9th Cir. 1990). On page 7, he cites “*Affolder v. Johnson*, 53 F.3d 1178, 1180 (10th Cir. 1995),” but the citation leads to a page in *United States v. Angulo-Fernandez*, 53 F.3d 1177 (10th Cir. 1995). On page 27, he cites “*Bentley v. United States*, 41 F.3d 593, 604 (10th Cir. 1994),” but the primary citation leads to a page in *Ramirez v. Oklahoma Department of Mental Health*, 41 F.3d 584 (10th Cir. 1994), *overruling recognized by Maestas v. Segura*, 416 F.3d 1182 (10th Cir. 2005); and the pin cite to page 604 is a page within *Bentley v. Cleveland County Board of County Commissioners*, 41 F.3d 600 (10th Cir. 1994). On page 34 he cites “*Clean Boat v. United States*, 833 F.3d 1224, 1231 (10th Cir. 2016),” but the citation leads to a page in *Cure Land, LLC v. U.S. Department of Agriculture*, 833 F.3d 1223 (10th Cir. 2016). The only one of these actual cases that has any relevance to the argument Biglow attributes to the corresponding nonexistent case is *Bentley*, which states that “[f]ailure to plead an affirmative defense results in a waiver of that defense,” 41 F.3d at 604.

There are similar fabrications in three of Biglow’s motions and in his reply briefs in support of all four motions.¹⁰

Biglow’s fabricated case citations and other misrepresentations appear to stem from his use of a generative artificial intelligence (“AI”) tool, such as ChatGPT, without verifying the accuracy of the results. *See Wadsworth v. Walmart Inc.*, 348 F.R.D. 489, 497 (D. Wyo. 2025) (“It is . . . well-known in the legal community that AI resources generate fake cases.”). Such fabrications are referred to as “AI hallucinations.” *See Jones v. Kankakee Cnty. Sheriff’s Dep’t*, 164 F.4th 967, 969 (7th Cir. 2026) (defining “a so-called AI ‘hallucination’” as “a circumstance where an AI large language model generates an output that is fictional, inaccurate, or nonsensical”). Assuming, without deciding, there is nothing inherently wrong with the use of AI to help prepare legal materials, a litigant’s failure to verify the accuracy of the authority cited results in waste of both judicial resources and the opposing

¹⁰ There are five fabricated citations in Biglow’s Motion to Strike Defendant-Dell Technologies, Inc. Waived Defenses and Dismiss the Entire Response Brief: *United States v. Paula Denogean*, 918 F.3d 808, 814–15 (10th Cir. 2019); *Young v. Nationstar Mortg., LLC*, 707 F. App’x 523, 526 (10th Cir. 2017); *Singleton v. Wulff*, 428 F.2d 416, 418 (10th Cir. 1970); *In re Delta/Airtran Baggage Fee Antitrust Litig.*, 846 F.3d 1335, 1348 (11th Cir. 2017); and *Saxena v. Allen*, 2016 WL 4159023, at *3 (D. Colo. Aug. 4, 2016). There are three fabricated citations in the Motion for Summary Disposition: the same *Paula Denogean* and *Young* cases, plus *Jones v. State of Colorado*, 185 F.3d 1204, 1208 (10th Cir. 1999). There are four fabricated case citations in the Motion for Sanctions: the same *Paula Denogean*, *Singleton*, *Delta/Airtran*, and *Jones* cases. We decline to devote more space to (1) setting out the actual cases to which these reporter citations lead, (2) enumerating the multiple similar fabrications in Biglow’s reply briefs in support of these three motions, and (3) listing the fabricated case in his reply brief in support of his Motion for Investigation of Systematic Record Exclusion Pattern and for Appropriate Relief (Dkt. No. 42).

party's time and money, and it can damage the credibility of the legal system. *See Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443, 448–49 (S.D.N.Y. 2023).

We can sanction litigants who make such misrepresentations, including by dismissing their appeals. *See, e.g., Grant v. City of Long Beach*, 96 F.4th 1255, 1257 (9th Cir. 2024); Fed. R. App. P. 38; 10th Cir. R. 46.5(B), (C). While we decline to do so in the circumstances here, we warn Biglow—and all pro se litigants and counsel appearing before this court—of their responsibility to ensure that citations to legal authority are not fabrications but instead point to real cases that at least arguably stand for the propositions for which they are cited.¹¹

IV. MOTIONS

In his Motion to Strike Defendant-Dell Technologies, Inc., Waived Defenses and Dismiss Entire Response Brief (Dkt. No. 28), Biglow alleges that Dell waived all defenses by failing to substantively respond to his motion to vacate the arbitration award, failing to assert any affirmative defenses in the district court, and informing Biglow by email that it “did not assert any defenses in its motion to compel arbitration, or in its opposition to [his] motion to vacate, because Dell was not required to assert any ‘defenses’ in those papers.” Mot. to Strike, Ex. B. at 1. We deny the Motion to Strike. As we have already explained, Dell did not waive any of the arguments it makes on appeal. But even if Dell had, Biglow offers no valid

¹¹ If the fabrications and misrepresentations we have discussed are not the result of Biglow's misuse of a generative AI tool, then he may be guilty of an even worse transgression—intentional abuse of the judicial process.

authority for the notion that striking Dell’s response brief would be an appropriate remedy.

In his Motion for Summary Disposition (Dkt. No. 29), Biglow relies on 10th Circuit Rule 27.3(A)(1) and suggests that “[s]ummary disposition is proper where ‘no genuine dispute exists and controlling law dictates a result.’” Mot. for Summ. Disposition at 4 (purportedly quoting the fictitious *Jones* case, *see supra*, footnote 10). However, the cited Rule permits a party to file “only” four types of “dispositive motions,” 10th Cir. R. 27.3(A)(1), and the only motion for summary disposition it allows is where there has been “a supervening change of law or mootness,” 10th Cir. R. 27.3(A)(1)(b).¹² Biglow has not asserted either of those grounds for summary disposition. We therefore deny the Motion for Summary Disposition.¹³

In his Motion for Sanctions (Dkt. No. 30), Biglow alleges that “[b]y raising new defenses on appeal, Dell has engaged in bad-faith litigation tactics that warrant

¹² Biglow claims that “Rule 27.3(A)(1) expressly authorizes summary disposition when ‘all supporting facts and legal arguments are adequately presented in the briefs and record,’” Mot. for Summ. Disposition at 4 (emphasis omitted) (purportedly quoting Rule 27.3(A)(1)). But no such language appears in that rule. This is likely an AI hallucination distorting Fed. R. App. P. 34(a)(2)(C), which permits a circuit court to decide a case without oral argument if “the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.”

¹³ Even if his motion were allowed under Rule 27.3(A)(1)(b), we would deny it as untimely because it was filed on July 8, 2025, more than 14 days after this appeal was docketed on January 17, 2025, and Biglow has not shown good cause for his untimely filing. *See* 10th Cir. R. 27.3(A)(3)(b). And even if Biglow had timely filed the motion, we would deny it because he clearly loses this appeal on the merits.

sanctions.” Mot. for Sanctions at 2. We deny this motion because, as previously explained, Dell has not waived any “defenses”—or arguments—on appeal, so its arguments on appeal do not amount to bad-faith litigation tactics.

In his Motion for Investigation of Systematic Record Exclusion Pattern and For Appropriate Relief (Dkt. No. 42), Biglow asks us to (1) supplement the record on appeal to include multiple joint status reports filed in the district court, and (2) order an investigation into the conduct of Dell and its counsel regarding (a) the exclusion of those status reports from the record and (b) a notation made in the Case Summary section of the district court’s docket (apparently in June 2023, while the arbitration was pending) indicating that the “Disposition” of the case was “Dismissed – Voluntarily,” R. vol. I at 1115. Biglow also asks us to allow him to file a supplemental brief once the investigation is complete.¹⁴ We deny this motion. Because Biglow is pro se, this court compiled the record on appeal; Dell had no role in that process. *See* 10th Cir. R. 10.3(C). When Biglow asked for permission to supplement the record with two of the joint status reports, this court granted his motion. Biglow has not explained why he could not have asked to supplement the record with the additional joint status reports he now asks to include in the record, nor has he explained their relevance. Finally, Biglow has not shown that Dell has any control over the district court’s entry of procedural notations on its docket.

¹⁴ To the extent Biglow advances arguments going to the merits of his appeal, we decline to consider them as a ground for investigating Dell.

Biglow's allegations that the docket notation was the result of an elaborate scheme Dell constructed do not persuade us that an investigation is warranted.

V. CONCLUSION

We affirm the district court's judgment. We deny all of Biglow's pending motions.

Entered for the Court

Bobby R. Baldock
Circuit Judge