

[\(10th Cir. 2001\)](#) (“In a facial challenge [under Rule 12(b)(1)] like defendant’s, the Court must accept the allegations of the complaint as true and may not consider evidence outside the complaint.”)).

The court will grant a Rule 12(b)(6) motion to dismiss only when the factual allegations fail to “state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “All well-pleaded facts, as distinguished from conclusory allegations, must be taken as true.” *Swanson v. Bixler*, 750 F.2d 810, 813 (10th Cir. 1984); *see also Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1951 (2009). The court construes any reasonable inferences from these facts in favor of the non-moving party. *Tal v. Hogan*, 453 F.3d 1244, 1252 (10th Cir. 2006).

The court granted CCS’s motion for summary judgment (Doc. 14) on Count V on May 18, 2012. When CCS filed the instant motion to dismiss on June 15, 2012, Washburn remained as a defendant in the case. However, the court entered a stipulated order dismissing with prejudice plaintiff’s claims (Counts I, II and II) against Washburn on August 31, 2012 (Doc. 47). As a result, the only remaining claim in this case is Count IV against CCS, a state-law breach of contract claim.

The parties’ briefs on CCS’s motion to dismiss address whether the state-law breach of contract claim in Count IV derives from a common nucleus of operative facts shared with then-remaining federal claims in Counts I and II, so as to allow this court to exercise supplemental jurisdiction over Count IV. Because all federal claims have been dismissed in this case, the court need not address the arguments raised by the parties regarding supplemental jurisdiction over the remaining state-law claim. “Needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law.” *United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966). Additionally, if federal claims are dismissed before trial, the state-court claims should be dismissed without prejudice. *Id.*; *see also Lancaster v. Indep. Sch.*

Dist. No. 5, 149 F.3d 1228, 1236 (10th Cir. 1998) (affirming the district court’s decision to dismiss the plaintiff’s state-law claims without prejudice after no federal claims remained).

The court is mindful that the above rule prescribing dismissal of state claims if federal claims are discharged before trial, however, “should not be applied inflexibly in all circumstances.” *Harper v. City of Wellington*, No. 89-1183-T, 1991 WL 192118, at *4 (D. Kan. Sept. 18, 1991) (citing *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988)). The court considers judicial economy, convenience and fairness to the parties, and comity in its decision regarding the remaining state-law claim. *Harper*, 1991 WL 192118, at *4. Requiring plaintiff to bring this claim in state court will not cause inconvenience or unfairness to either party. Additionally, the court finds that declining jurisdiction further advances the interests of comity and judicial economy. As the bases for federal subject matter jurisdiction have been extinguished, this court declines to exercise supplemental jurisdiction over plaintiff’s remaining state-law claim against CCS and dismisses plaintiff’s remaining state-law claim in Count IV without prejudice.

Because the court grants the portion of CCS’s motion requesting dismissal of Count IV, the court denies as moot the portion requesting judgment on the pleadings for Count IV.

IT IS THEREFORE ORDERED that defendant Correct Care Solutions, LLC’s Motion to Dismiss Count IV of the Complaint for Lack of Subject Matter Jurisdiction (Doc. 34) is granted and its Alternative Motion for Judgment on the Count IV Pleadings is denied as moot.

IT IS FURTHER ORDERED that plaintiff Talley’s remaining state-law claim (Count IV) is dismissed without prejudice.

Dated this 15th day of October, 2012, at Kansas City, Kansas.

s/ Carlos Murguia_____
CARLOS MURGUIA
United States District Judge