

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NOV 3 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ANTHONY A. PATEL,

Plaintiff-Appellant,

v.

PATRICIA MILLER; et al.,

Defendants-Appellees,

and

LYNNE MCCULLOUGH; et al.,

Defendants.

No. 19-56285

D.C. No.
2:19-cv-00080-CBM-AFM
Central District of California,
Los Angeles

ORDER

Before: GRABER, WARDLAW, and R. NELSON, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Appellant's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 80) are denied.

Appellant's motions to disqualify (Docket Entry Nos. 82 and 83) are denied.

All other pending motion are denied as moot.

No further filings will be entertained in this closed case.

Order of U.S. Court of Appeals for
9th Circuit
(June 25, 2020)

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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FOR THE NINTH CIRCUIT

JUN 25 2020

MOLLY C. DWYER, CLERK
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v.

PATRICIA MILLER; et al.,

Defendants-Appellees,

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D.C. No.
2:19-cv-00080-CBM-AFM
Central District of California,
Los Angeles

ORDER

Before: GRABER, WARDLAW, and R. NELSON, Circuit Judges.

A review of the record, appellees' motion for summary affirmance, and appellant's response indicates that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (stating standard). Accordingly, appellees' motion for summary affirmance (Docket Entry No. 50) is granted.

All other pending motions are denied as moot.

AFFIRMED.

Order of U.S. District Court for the
Central District of California
(October 4, 2019)

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

JS-6

Case No. 19-CV-00080-CBM-AFMx Date October 4, 2019

Title *Anthony A. Patel v. Patricia Miller et al.*

Present: The Honorable CONSUELO B. MARSHALL, UNITED STATES DISTRICT JUDGE

YOLANDA SKIPPER

NOT REPORTED

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiff:

NONE PRESENT

Attorneys Present for Defendant:

NONE PRESENT

Proceedings: IN CHAMBERS- ORDER DISMISSING SECOND AMENDED COMPLAINT
WITH PREJUDICE AND DENYING PENDING MOTIONS AS MOOT

On August 5, 2019, Plaintiff filed a Second Amended Complaint (“SAC”) (Dkt. No. 231) as permitted by the Court’s prior order (Dkt. No. 204) dismissing the First Amended Complaint. On August 14, 2019, the Court issued an order to show cause (“OSC”) why the SAC should not be dismissed for failure to state a claim upon which relief can be granted, noting that although Plaintiff corrected the earlier complaints’ failure to comply with Rule 8(a)(2), several of the substantive deficiencies previously identified by the Court remained. (Dkt. No. 246.)

On September 6, 2019, Plaintiff responded to the Court’s OSC. (Dkt. No. 255 (“Response”).) While Plaintiff explains the basis of the claims asserted in the SAC in his response, Plaintiff’s explanation of the claims ultimately underscores the fundamental substantive deficiency in the SAC: the conduct alleged on the part of Defendants is not unlawful and does not support a plausible inference of unlawful conduct.

The SAC alleges Plaintiff was misdiagnosed by doctors at the UCLA Medical Center as suffering from a mental illness in June 2013. (SAC ¶ 8.) In 2019, Plaintiff formally requested that UCLA amend his medical records to remove the misdiagnosis, but UCLA and its employees refuse to do so. (SAC ¶ 9.) Meanwhile, various attorneys and law firms in California who are aware of the misdiagnosis persist in alerting others to its existence, thereby “foster[ing] the false premise that Patel is mentally ill ... in order to hamper his ability to run for elected office ... or function to the best of his abilities in a career as an attorney in California.” (SAC ¶ 5.)

With respect to UCLA and its employees, Plaintiff’s claim relies on the legal assertion that these Defendants “have a duty as State officials to not allow this misdiagnosis to remain uncorrected especially when they are well-aware that dozens of California lawyers and California judges are wrongly relying on it and ruining every aspect of Patel’s life in California in 2019.” (Response at 5.) However, as the Court noted in its order dismissing the First Amended Complaint, Plaintiff has identified no legal authority supporting this proposition, nor is the Court aware of any. (See Dkt. No. 204 at 8.)

With respect to the Defendant law firms and attorneys, Plaintiff's claim relies on the proposition that Defendants have a duty not to use Plaintiff's misdiagnosis as a basis for making people think he is mentally ill. Plaintiff has not identified any legal authority demonstrating it is unlawful for Defendants to bring Plaintiff's misdiagnosis to people's attention, even if it does result in the misimpression that Plaintiff is mentally ill. (See Dkt. No. 204 at 8.)

Finally, although Plaintiff asserts that (1) Defendants acted in concert with State judges, (2) Defendants were motivated by invidiously discriminatory animus, and (3) Defendants formed a conspiracy to violate Plaintiff's civil rights, the SAC (like the First Amended Complaint) fails to allege any plausible facts in support of these conclusions. Thus, for the reasons above, as well as the reasons set forth in the Court's prior order dismissing the First Amended Complaint (Dkt. No. 204), the Court finds as follows:

With respect to Plaintiff's § 1983 claim against Defendants Patricia Miller; Johanna Klohn; Lynne McCullough; Gregory Hendey; UCLA Health Information Management Services ("HIMS"); and the State Bar of California (collectively, the "Public Defendants"), Plaintiff has not alleged facts that give rise to a plausible inference that Defendants have deprived Plaintiff of a right secured by the Constitution and laws of the United States. *See Naffe v. Frey*, 789 F.3d 1030, 1035-36 (9th Cir. 2015).

With respect to Plaintiff's § 1983 claim against Defendants Akshai Runchal; Amit Runchal; Raksha Bhatia; Parul Bhatia; Sumeet Bhatia; Wasser, Cooperman & Mandles, PC; Buter, Buzard, Fishbein & Royce, LLP; Blank Rome LLP; Greenberg Traurig LLP; DeCarolis Family Law Group, APC; Atilla Uner; Schmid & Voiles; Law & Brandmeyer, LLP; Boren, Osher & Luftman LLP; Lukas Alexanian; Douglas Nies; Lewis Brisbois Bisgaard & Smith LLP; Jaffee Clemens; Eisner Jaffee; Silver Law Group; Divya Runchal; Nemecek & Cole; Trope Fein, LLP; Meyer Olson Lowy & Meyers, LLP; MCLA Psychiatric Medical Group; John C. Mazzotta; and Charles Robinson (collectively, the "Private Defendants"), Plaintiff has not alleged facts that give rise to a plausible inference that these Defendants have deprived Plaintiff of a right secured by the Constitution and laws of the United States, or that their alleged actions were taken under color of state law. *See Simmons v. Sacramento Cty. Super. Ct.*, 318 F.3d 1156, 1161 (9th Cir. 2003).

With respect to Plaintiff's § 1985 claim against all Defendants, Plaintiff has not alleged facts that give rise to a plausible inference that a conspiracy to interfere with Plaintiff's civil rights exists or that Defendants were motivated by class-based, invidiously discriminatory animus. *See Olsen v. Idaho State Bd. of Med.*, 363 F.3d 916, 930 (9th Cir. 2004); *RK Ventures, Inc. v. City of Seattle*, 307 F.3d 1045, 1056 (9th Cir. 2002).

With respect to Plaintiff's newly added civil RICO claim against all Defendants, Plaintiff has not alleged facts that give rise to a plausible inference that any Defendant participated in (1) the conduct of (2) an enterprise (3) that affects interstate commerce (4) through a pattern (5) of racketeering activity, or (6) that the conduct was the proximate cause of harm to Plaintiff. *See Eclectic Properties E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 997 (9th Cir. 2014).

Plaintiff requests leave to amend the SAC in the event it is found to be deficient. However, the deficiencies identified above were already brought to Plaintiff's attention in the Court's order dismissing the First Amended Complaint, and those deficiencies were not cured in the SAC. Indeed, as noted above, the factual content of the SAC and First Amended Complaint are essentially identical. The fundamental deficiency in each of Plaintiff's claims is the lack of a legally cognizable theory under which Defendants' alleged conduct is unlawful. The Court therefore finds that amendment of the SAC would be futile. Accordingly, the Second Amended Complaint is hereby **DISMISSED WITH PREJUDICE**.

Plaintiff's Motion to Change Venue (Dkt. No. 236), and Plaintiff's Motion for Leave to Seek Early Discovery in this Case (Dkt. No. 245) are **DENIED AS MOOT**.

IT IS SO ORDERED.