

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

GERALD VALLEJOS,

Plaintiff,

vs.

LOVELACE MEDICAL CENTER and
the 2nd JUDICIAL DISTRICT COURT,
NEW MEXICO,

Defendants.

No. 1:17-cv-00183-PJK-WPL

ORDER GRANTING DEFENDANT LOVELACE'S MOTION TO DISMISS

THIS MATTER comes on for consideration of Defendant Lovelace's Motion to Dismiss filed April 5, 2017. Doc. 16. The court previously dismissed the complaint against the Second Judicial District Court for lack of subject matter jurisdiction. Doc. 18. Defendant Lovelace seeks dismissal of the complaint in its entirety with prejudice. Fed. R. Civ. P. 12(b)(6). Upon consideration thereof, Lovelace's motion is well taken.

Mr. Vallejos alleged that Defendants violated his constitutional rights when he did not obtain a judgment on his state-law defamation claim. Although the state-court record demonstrates otherwise, Mr. Vallejos contends that the state district court actually granted him judgment on his defamation claim.

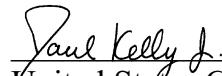
Mr. Vallejos's allegations of concerted fraudulent activity between Lovelace's private attorneys and the two state judges and court personnel involved are wholly

speculative. Moreover, the documentary evidence attached to his complaint makes clear what the state court has already determined: the state-court trial judge granted summary judgment in favor of Lovelace, not Mr. Vallejos. Accordingly, Mr. Vallejos's claim is not plausible on its face and Lovelace's motion must be granted. See Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007); see also Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (conclusions of concerted activity will not suffice); Ave. Capital Mgmt. II, L.P. v. Schaden, 843 F.3d 876, 881 (10th Cir. 2016) (explaining that documents referenced in complaint that are central to a plaintiff's claims can be considered under Rule 12(b)(6)).

NOW, THEREFORE, IT IS ORDERED that Defendant Lovelace's Motion to Dismiss filed April 5, 2017 (Doc. 16), is granted.

IT IS FURTHER ORDERED that Plaintiff's Motion: to Dismiss Lovelace Medical Center's Motion to Dismiss and Memorandum of Law in Support filed April 17, 2017 (Doc. 19), is denied.

DATED this 5th day of May, 2017 at Santa Fe, New Mexico.



United States Circuit Judge
Sitting by Designation