UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JACOB TEITELBAUM, individually and as father to CHILD A and CHILD B, Plaintiff, v. JUDA KATZ; CHAYA KATZ; JOEL TENNENBAUM; BLUMA TENNENBAUM; DAVID RUBENSTEIN; KIRYAS JOEL COMM. AMBULANCE CRP; ATTY. MARIA PETRIZIO; CHILDREN'S RIGHTS SOCIETY OF ORANGE COUNTY; ATTY. KIM PAVLOVIC; ATTY. JOHN FRANCIS X. BURKE; CHILD PROTECTIVE SERVICES OF ORANGE COUNTY; CHRISTINE BRUNET; ATTY. STEPHANIE BAZILEOR; JOHN DOES 1 THROUGH 95; JANE DOES 1 THROUGH 20, Defendants.	**MEMORANDUM DECISION** 12 CV 2858 (VB)

Briccetti, J.:

This memorandum decision resolves all of the pending motions in this case. (Doc. ##171, 172, 190, 198, 208, 211, 223, 227). For the reasons set forth below, defendants' motions to dismiss plaintiff's second amended complaint are GRANTED, and plaintiff's various motions to further amend the complaint and for other relief are DENIED.

BACKGROUND

Familiarity with the factual and procedural background of this case is presumed.

By memorandum decision dated February 11, 2013, the Court granted several of the defendants' motions to dismiss plaintiff's amended complaint, but granted plaintiff leave to file a second amended complaint "for the sole purpose of alleging sufficient facts to support a Section 1983 or 1985 claim against [defendant] Kiryas Joel EMS and/or [defendant David] Rubenstein." Teitelbaum v. Katz, 2013 WL 563371, at *7 (S.D.N.Y. Feb. 11, 2013). The Court had dismissed

plaintiff's claims against Kiryas Joel EMS and Rubenstein because plaintiff had failed sufficiently to allege that those defendants acted under the color of state law, or that either defendant conspired with others to deprive plaintiff of his constitutional rights. Id. at *6-7.

By order dated February 22, 2013, the Court granted plaintiff further leave to amend his complaint to allege Section 1983 and 1985 claims against defendants Juda and Chaya Katz and Joel and Bluma Tennenbaum. Specifically, the Court granted plaintiff leave "to allege facts demonstrating that the Katzes and Tennenbaums were state actors for purposes of Section 1983, and that they conspired to deprive plaintiff of his constitutional rights." (Doc. #145).

On May 2, 2013 – despite the Court's clear instructions as to which claims against which defendants plaintiff could re-plead – plaintiff filed a "Modified Second Amended Complaint" ("SAC") in which he reasserts all of his claims against all of the defendants, and even attempts to add several new defendants, including his wife. Presumably aware that the SAC focuses almost exclusively on claims the Court did not grant plaintiff leave to re-plead, plaintiff has also filed several motions seeking leave to amend. (Doc. ##171, 172, 211).

Defendants Kiryas Joel EMS and Rubenstein subsequently filed motions to dismiss the SAC, (Doc. ##190, 198, 208), and several of the other defendants have filed affidavits in opposition to plaintiff's requests for leave to amend.

Plaintiff has also filed a "Motion for Extrinsic Fraud Inquest" (Doc. #223) and a "Motion to Docket Stipulation" (Doc. #227).

DISCUSSION

I. Legal Standard

A. Motion to Dismiss

The function of a motion to dismiss is "merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof." Ryder Energy Distrib. v. Merrill Lynch Commodities, Inc., 748 F.2d 774, 779 (2d Cir. 1984) (internal quotation marks omitted). In deciding a motion to dismiss pursuant to Rule 12(b)(6), the Court evaluates the sufficiency of the complaint under the "two-pronged approach" suggested by the Supreme Court in Ashcroft v. Iqbal. See 556 U.S. 662, 679 (2009). First, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are not entitled to the assumption of truth and are thus not sufficient to withstand a motion to dismiss. Id. at 678; Hayden v. Paterson, 594 F.3d 150, 161 (2d Cir. 2010). Second, "[w]hen there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Ashcroft v. Iqbal, 556 U.S. at 679.

To survive a Rule 12(b)(6) motion, the allegations in the complaint must meet a standard of "plausibility." Ashcroft v. Iqbal, 556 U.S. at 678; Bell Atl. Corp. v. Twombly, 550 U.S. 544, 564 (2007). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. at 678. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." Id.

The Court liberally construes submissions of a pro se litigant and interprets them "to raise the strongest arguments that they suggest." Triestman v. Fed. Bureau of Prisons, 470 F.3d 471, 474 (2d Cir. 2006) (per curiam) (internal quotation marks omitted). Additionally, the Court applies the pleading rules permissively when a plaintiff pro se alleges civil rights violations. See Sealed Plaintiff v. Sealed Defendant, 537 F.3d 185, 191 (2d Cir. 2008).

B. Leave to Amend

Rule 15(a)(2) instructs that courts "should freely give leave" to amend a complaint "when justice so requires." "Leave to amend, though liberally granted, may properly be denied for: 'undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.'" Ruotolo v. City of N.Y., 514 F.3d 184, 191 (2d Cir. 2008) (quoting Foman v. Davis, 371 U.S. 178, 182 (1962)).

The liberal application of Rule 15(a) is especially warranted with respect to a pro se litigant who "should be afforded every reasonable opportunity to demonstrate that he has a valid claim." Matima v. Celli, 228 F.3d 68, 81 (2d Cir. 2000). Nevertheless, if the claim that a party seeks to add lacks merit, the application for leave to amend should be denied as futile. Martin v. Dickson, 100 F. App'x 14, 16 (2d Cir. 2004) (affirming denial of leave to amend to pro se plaintiff on futility grounds and noting that "[a] proposed amendment to a pleading would be futile if it could not withstand a motion to dismiss pursuant to Rule 12(b)(6)") (summary order).

II. Analysis

The motions to dismiss filed by Kiryas Joel EMS and Rubenstein are granted, and plaintiff's motions for leave to amend are denied as futile.

In the SAC, plaintiff has failed to allege any additional facts with respect to any defendant that give rise to a plausible claim that any of the defendants acted under the color of state law or conspired to deprive plaintiff of his constitutional rights. To the contrary, the SAC merely reiterates and expands upon claims the Court has already dismissed, without addressing – much less remedying – the deficiencies the Court previously cited in dismissing those claims. See Teitelbaum v. Katz, 2013 WL 563371 at *5-7. Therefore, for substantially the same reasons the Court granted all of defendants' previous motions to dismiss, the motions to dismiss filed by Kiryas Joel EMS and Rubenstein are granted. See id. Additionally, plaintiff's request for further leave to amend the complaint as to the other defendants is denied as futile. See Foman v. Davis, 371 U.S. at 182 ("repeated failure to cure deficiencies by amendments previously allowed" grounds for denial of leave to amend).

Finally, plaintiff's motions for "an extrinsic fraud inquest" and to "docket [a] stipulation" are denied as frivolous. Both motions are clearly baseless in fact and in law, and warrant no further discussion.

In this vein, the Court notes it has exercised extraordinary patience with plaintiff's numerous frivolous submissions and motions, affording plaintiff significantly more latitude than his pro se status required. The Court is mindful that its patience has had a price – both by taxing the already-strained resources of this Court, and by needlessly creating costly and time-consuming work for defendants and their counsel. Having carefully considered all of plaintiff's submissions, and determining plaintiff cannot state a cause of action against any of the defendants in this case, the Court cautions plaintiff that the Court will no longer waste its resources or those of defendants by entertaining any additional frivolous submissions.

CONCLUSION

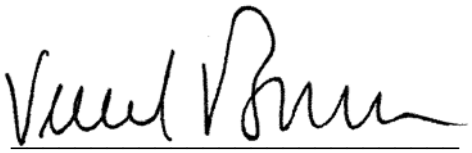
Defendants' motions are GRANTED and plaintiff's motions are DENIED. Plaintiff's claims against all defendants are dismissed with prejudice.

The Clerk is directed to terminate the pending motions (Doc. ##171, 172, 190, 198, 208, 211, 223, 227) and close this case.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. See Coppedge v United States, 369 U.S. 438, 444-45 (1962).

Dated: July 2, 2013
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge