UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DEAN JEFFREY KROPP,

Plaintiff,

-against-

GEICO – Government Employees Insurance Company; KENNETH FALVO, M.D.; JOHN M. SHIMKUS, M.D.; DOMINCK GAROFALO, M.S., D.C.,; EMPIRE MED STAT REVIEW,

Defendants.

ORDER

15 Civ. 4635 (PGG)

PAUL G. GARDEPHE, U.S.D.J.:

Plaintiff Dean Jeffrey Kropp brings this action alleging, inter alia, that Defendants have discriminated against him in violation of the Americans with Disabilities Act ("ADA"). Plaintiff was involved in a car accident in May 2004 and claims that Defendant GEICO – his insurer – did not properly address his insurance claim. Plaintiff further claims that the individual defendants – independent medical examiners hired by GEICO – did not properly diagnose his injuries. (Cmplt. (Dkt. No. 1) at 3-4[1]) Defendants have moved to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (Dkt. Nos. 4, 32, 37, 43) For the reasons stated below, Defendants' motions to dismiss will be granted.

BACKGROUND

Plaintiff was involved in an automobile accident on May 16, 2004. (Cmplt. (Dkt. No. 1) at 6) At that time, Plaintiff had a GEICO automobile insurance policy that provided, inter alia, $150,000 in no-fault benefits to reimburse him for lost wages in the event of an accident.

[1] The page numbers in this Order refer to the designated page numbers in this District's Electronic Case Filing (ECF) system.

(Id. at 12-14) Plaintiff alleges that he suffered a number of injuries as a result of the accident and claims that he is entitled to benefits (including lost wages) under his GEICO insurance policy. (Id. at 6, 9) GEICO arranged for Plaintiff to receive three "independent medical examinations" to diagnose his accident-related injuries and to determine the treatment and support that Plaintiff would require during his recovery. (Id. at 6-7; see also Cmplt., Ex. C (Dkt. No. 1) at 38-49)

Plaintiff was examined by the three individual defendants – Dr. Kenneth Falvo, Dr. John M. Shimkus, and Dr. Dominick Garofalo – between June 24, 2004, and July 12, 2004. (Cmplt. (Dkt. No. 1) at 6-7) While all three physicians confirmed that there was a causal relationship between Plaintiff's symptoms and the May 16, 2004 car accident, they determined that Plaintiff did not require massage therapy, household help, transportation services, medical supplies, or additional diagnostic testing for his alleged injuries. (Cmplt., Ex. C (Dkt. No. 1) at 40-41, 45, 48-49) Drs. Falvo and Shimkus also reported to GEICO that Plaintiff would not require any further treatment in their fields (orthopedics and acupuncture, respectively). (Id. at 40, 45) Dr. Garofalo, a chiropractor, recommended that Plaintiff receive "further chiropractic treatments . . . one to two times a week for an additional four to six weeks[.]" (Id. at 48)

On June 25, 2004 – based on Dr. Shimkus's report – GEICO denied Plaintiff's claim for future acupuncture treatment. (Cmplt., Ex. J (Dkt. No. 1-2) at 40-41) On July 13, 2004 – based on Dr. Falvo's report – GEICO denied Plaintiff's claim for further orthopedic treatment, massage therapy, and physical therapy, as well as "all lost wage benefits and/or help benefits." (Id. (Dkt. No. 1-3) at 7-8) On August 24, 2004, GEICO denied Plaintiff's claim for further chiropractic and massage therapy treatment, as well as "all lost wage benefits and/or household help benefits." (Id. at 11-12) On November 3, 2004, GEICO again denied Plaintiff's claim for medical services, "due to non-compliance with the Mandatory Personal Injury

Protection Endorsement which stipulates that written proof of claim must be submitted as soon as reasonably practicable, but in the case of health service expenses no later than 45 days after the date services are rendered[.]" (Id. at 13-14)

Plaintiff continued to contact defendants after his claims were denied. For example, he sent a letter to GEICO on June 12, 2006, requesting "amends for [his] No-Fault work loss, other necessary expenses, and unpaid medical bills" from the May 2004 accident. (Cmplt., Ex. D (Dkt. No. 1) at 51) On September 17, 2006, he wrote to the individual defendants, requesting that they "consider changing [their] decision[s] about [his] injuries[.]" (Cmplt., Ex. E (Dkt. No. 1-1) at 2)

On May 21, 2010, GEICO again denied Plaintiff's lost wages claim, noting that "written proof of a claim must be submitted as soon as reasonably practicable, but in the case of work loss benefits, no later than 90 days after the work loss is incurred, unless the eligible person or that person's legal representative submits written proof providing clear and reasonable justification for the failure to comply with such a time limitation." (Cmplt., Ex. J (Dkt. No. 1-5) at 21-22) GEICO also noted that Plaintiff had been awarded Social Security Disability Insurance benefits for injuries associated with an automobile accident that took place on August 6, 2000, and therefore he "would not be eligible for subsequent lost wage benefits[.]"[2] (Id. at 22)

Plaintiff alleges that GEICO denied him "contracted no fault benefits . . . based on the fact that [he] was out of work at the time of the [May 2004] car accident . . . [and that this denial] is blatant discrimination against [a] disabled person," because Plaintiff was unemployed due to a "brain injury" resulting from the August 2000 automobile accident. (Cmplt. (Dkt. No.

[2] GEICO's reference to the August 6, 2000 accident was mistaken. Plaintiff was adjudged to be disabled and eligible for Social Security benefits starting from the date of the May 2004 accident, and not from the date of the August 6, 2000 accident. (See id. (Dkt. No. 1-1) Ex. I at 22-30)

1) at 9) Although Plaintiff has received Social Security benefits for his disability, he complains that Social Security payments are "unearned income" and that "[i]t is not possible to save any more for retirement in an IRA account" with unearned income. (See id. at 9; Cmplt., Ex. I (Dkt. No. 1) at 22-30)

Prior to filing this lawsuit, Plaintiff sued GEICO in Civil Court of the City of New York, Richmond County. Plaintiff sought lost earnings in connection with his insurance claim for the May 2004 accident. On May 12, 2011, that Civil Court granted GEICO summary judgment. The Civil Court explained that "[Plaintiff] was not working at the time of his 2004 accident [and] therefore did not sustain any actual lost earnings from the 2004 accident which would form the basis of a no-fault claim for lost earnings." (Levy Decl., Ex. A (May 12, 2011 Civil Court order in Kropp v. Gov't Emp. Ins. Co., No. 017137/10 (Civil Ct. Richmond Cty.)) (Dkt. No. 38-1) at 2) Plaintiff appealed that decision, and on February 29, 2012, the Appellate Term of the Supreme Court of the State of New York dismissed his appeals. (Levy Decl., Ex. I (February 29, 2012 Decision and Order in Kropp v. Gov't Emp. Ins. Co., Dkt. Nos. 2011-2442 RI C; 2012-81 RI C (Sup. Ct. App. Term)) (Dkt. No. 38-9) at 2)

Plaintiff filed this action on June 16, 2015, seeking damages of $184,306.78. (Cmplt. (Dkt. No. 1) at 9) Plaintiff seeks $76,311 for lost wages; $32,995.78 for medical expenses; and $75,000 as "the balance of the under[-]insured motorist amount[.]" (Id. at 9-10)

GEICO has moved to dismiss, arguing that (1) Plaintiff is collaterally estopped from asserting claims against it; (2) Plaintiff's ADA claim is barred by the statute of limitations and by Plaintiff's failure to exhaust his administrative remedies; (3) Plaintiff may not seek monetary damages under the ADA; (4) Plaintiff fails to state a claim under the ADA; and (5) Plaintiff's negligence claim is invalid. (Dkt. Nos. 37, 39) Garofalo and Shimkus have also

moved to dismiss, arguing that (1) Plaintiffs' claim is barred by the statute of limitations; (2) Plaintiff may not pursue a medical malpractice claim under the ADA; and (3) Plaintiff has not stated a claim for medical malpractice. (Dkt. Nos. 4, 6, 32, 34) Falvo has likewise moved to dismiss, arguing that (1) Plaintiff has not made proper service; (2) the Complaint fails to state a claim under the ADA or for medical malpractice; and (3) Plaintiff failed to exhaust his administrative remedies under the ADA.[3] (Dkt. Nos. 43, 45)

Plaintiff has filed two identical oppositions to these motions to dismiss. (Dkt. Nos. 46, 50) These submissions – which contain a spare six sentences of "Legal Argument" – address only Defendants' assertion that Plaintiff's ADA claim is barred by the statute of limitations.[4]

DISCUSSION

I. LEGAL STANDARD

A Rule 12(b)(6) motion challenges the legal sufficiency of the claims asserted in a complaint. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). "A claim is 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.'" Matson v. Bd. of Educ. Of City School Dist. of New York, 631 F.3d 57, 63 (2d Cir. 2011) (quoting Iqbal, 556 U.S. at 678). "In considering a motion to dismiss . . ., the court is to accept as true all facts

[3] "Empire Stat Med Review" has also moved to dismiss (Dkt. No. 43), but this entity is not named as a defendant in this action.

[4] Defendants and Plaintiff have filed affidavits in connection with the pending motions to dismiss. (See Dkt. Nos. 5, 33, 38, 44, 46-1, 50-1) The Court has not relied on these affidavits in resolving Defendants' motion to dismiss.

alleged in the complaint[,]" Kassner v. 2nd Avenue Delicatessen Inc., 496 F.3d 229, 237 (2d Cir. 2007) (citing Dougherty v. Town of N. Hempstead Bd. of Zoning Appeals, 282 F.3d 83, 87 (2d Cir. 2002)), and must "draw all reasonable inferences in favor of the plaintiff," id. (citing Fernandez v. Chertoff, 471 F.3d 45, 51 (2d Cir. 2006)). A complaint is inadequately pled "if it tenders 'naked assertion[s]' devoid of 'further factual enhancement[.]'" Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 557).

For purposes of a motion to dismiss, the "complaint is deemed to include any written instrument attached to it as an exhibit or any statements or documents incorporated in it by reference[,]" and the court may also consider any document "which is integral to the complaint[.]" Int'l Audiotext Network, Inc. v. Am. Tel. and Telegraph Co., 62 F.3d 69, 72 (2d Cir. 1995) (internal citations and quotation marks omitted). "It is [likewise] well established that a district court may rely on matters of public record in deciding a motion to dismiss under Rule 12(b)(6) . . . ." Pani v. Empire Blue Cross Blue Shield, 152 F.3d 67, 75 (2d Cir. 1998).[5]

II. PLAINTIFF'S ADA CLAIMS

A. As Against GEICO

"In order to establish a violation under the ADA, [] plaintiffs must demonstrate that (1) they are 'qualified individuals' with a disability; (2) that the defendants are subject to the ADA; and (3) that plaintiffs were denied the opportunity to participate in or benefit from defendants' services, programs, or activities, or were otherwise discriminated against by

[5] Accordingly, this Court has considered the Civil Court's May 12, 2011 order dismissing Plaintiff's state court action against GEICO, and the Supreme Court, Appellate Term's February 29, 2012 order dismissing his appeals. See Lichenstein v. Cader, No. 13 Civ. 2690(LAK)(JLC), 2013 WL 4774717, at *2 (S.D.N.Y. Sept. 6, 2013) ("[C]ourts may . . . consider items subject to judicial notice and matters of public record without converting a motion to dismiss into one for summary judgment." (citing Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 322 (2007))).

defendants, by reason of plaintiffs' disabilities." Henrietta D. v. Bloomberg, 331 F.3d 261, 272 (2d Cir. 2003) (citing Doe v. Pfrommer, 148 F.3d 73, 82 (2d Cir. 1998)). Plaintiff's ADA claim against GEICO is based on the carrier's denial of his lost earnings claim related to the May 2004 automobile accident.

As to the first element of an ADA claim, Plaintiff has alleged that he suffered from a "disability" within the meaning of the ADA at the time of the alleged discrimination. The ADA defines "disability" as "a physical or mental impairment that substantially limits one or more major life activities[,]" including working. 42 U.S.C. § 12102(1)(A) and (2)(A). Plaintiff claims that he was unable to work at the time of the May 2004 accident as the result of a "brain injury" he suffered in an August 6, 2000 automobile accident. (Cmplt. (Dkt. No. 1) at 9)

As to the second element – whether a defendant is subject to the ADA – "Section 302(a) [of Title III] bars a 'place of public accommodation' from 'discriminat[ing] against [an individual] on the basis of disability in the full and equal enjoyment of [its] goods [and] services.'" Pallozzi v. Allstate Life Ins. Co., 198 F.3d 28, 31 (2d Cir. 1999) (quoting 42 U.S.C. §§ 12181(7)(F) and 12182(a)) (emphasis in Pallozzi). The term "public accommodations," as used in the ADA, includes "'insurance office[s.]'" Id. at 29-30 (citing 42 U.S.C. §§ 12181(7)(F)). The Second Circuit has made clear that Title III prohibits discrimination not only at an insurer's office, but also in connection with the coverage and policies – the "goods and services" – the insurer offers. Id. at 31-33. The ADA, for example, prohibits an insurer "from discriminatorily refusing to offer its policies to disabled persons," and "unambiguously covers insurance underwriting" – that is, "the act of assuming a risk by insuring it," Underwriting, Black's Law Dictionary (10th ed. 2014) – "in at least some circumstances[.]" Pallozzi, 198 F.3d at 31, 33.

This Court need not decide whether the second element of an ADA claim is satisfied here because Plaintiff has not established the third element of his ADA claim – that GEICO discriminated against him based on his disability.

The ADA's prohibition of disability discrimination in insurance is subject to a "safe harbor" provision – Section 501(c) of Title V of the ADA. That provision states that the ADA "shall not be construed to prohibit or restrict[] an insurer . . . from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law[.]"[6] 42 U.S.C. § 12201(c). An insurer's decision about the scope of coverage it will provide relates to the underwriting, classification, and administration of risks, and falls within the safe harbor provision. See E.E.O.C. v. Staten Island Sav. Bank, 207 F.3d 144, 151-52 (2d Cir. 2000) (insurer's decision to offer more generous long-term disability benefits for physical disabilities than for mental disabilities falls within the safe harbor provision); Saks v. Franklin Covey Co., 117 F. Supp. 318, 327-28 (S.D.N.Y. 2000) (insurance plan that did not cover surgical impregnation procedures for infertile participants falls within the safe harbor provision), vacated in part on other grounds, 316 F.3d 337 (2d Cir. 2003). Accordingly, GEICO's decision to reject Plaintiff's claim for lost earnings claim on the ground that he was unemployed at the time of the May 2004 accident relates to the underwriting, classification, and administration of risk by an insurance company.

An exception to the safe harbor provision exists where the insurer's action "is not consistent with state law or is being used as a 'subterfuge to evade the purposes' of Titles I and III of the Act." Pallozzi, 198 F.3d at 36. Plaintiff bears the burden of pleading facts sufficient to

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[6] The Second Circuit has explained that it "understand[s] this somewhat awkward language to mean that the [ADA] shall not be construed to prohibit or restrict insurers from underwriting risks, classifying risks, or administering risks in a manner that is not inconsistent with State law." Pallozzi, 198 F.3d at 32 n.2.

demonstrate that GEICO's actions are inconsistent with state law or constitute subterfuge driven by GEICO's "intent to evade" the anti-discrimination laws. Pallozzi, 198 F.3d at 36 ("[W]hen a plaintiff pleads discrimination by an insurer in violation of Title III of the ADA in the underwriting, classifying, or administering of risks, the plaintiff has the further obligation to plead (and prove) that the insurance practice complained of is not consistent with state law or is being used as a 'subterfuge to evade the purposes' of Titles I and III of the Act.")

Plaintiff has not pled any facts suggesting that GEICO's rejection of his lost earnings claim – on the grounds that he was unemployed at the time of the May 2004 accident – is (1) inconsistent with state law or (2) was driven by an intent to evade the ADA. See Leonard F. v. Israel Discount Bank of New York, 199 F.3d 99, 103-04 (2d Cir. 1999) (interpreting Section 501(c)). Accordingly, he has failed to state a claim on which relief can be granted.

It is worth noting that there is no evidence here that GEICO's decision to limit lost earnings recovery to those claimants who were working at the time of an accident was motivated by an intent to discriminate against those with disabilities. GEICO's limitation on lost earnings recovery applies to all claimants who are not working at the time of an accident – both those that have no disability and those who suffer from a disability. Moreover, to allow a claimant who is not working a recovery for lost earnings would constitute a windfall that GEICO's policy not unreasonably excludes.

Plaintiff's GEICO policy provides for "work loss" benefits in some circumstances. (Cmplt. (Dkt. No. 1) at 14) Plaintiff concedes that he did not experience any "work loss" for which he claimed those benefits, however, because his brain injury prevented him from working even before he sustained injuries in the May 2004 automobile accident. (Id. at 9) Accordingly, any payment that he received as a "work loss benefit" in connection with the

May 2004 accident would be a windfall. Cf. Morse v. JetBlue Airways Corp., No. 09-CV-5075 (KAM)(MDG), 2014 WL 2587576, at *4 (E.D.N.Y. June 9, 2014) (rejecting plaintiff's damages claim for lost wages in an ADA employment discrimination suit because "[i]t is [] well-established that lost wages may not be ordered for periods where a plaintiff could not have worked due to disability").[7]

Because Plaintiff has no plausible ADA claim against GEICO, that claim will be dismissed.

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[7] The Court does not read the Complaint as asserting a contract claim for lost earnings. Any such claim would, of course, be subject to collateral estoppel as a result of the Civil Court's decision granting summary judgment to GEICO on Plaintiff's claim that he was owed lost earnings under his GEICO policy. (See Levy Decl., Ex. A (May 12, 2011 Civil Court order in Kropp v. Gov't Emp. Ins. Co., No. 017137/10 (Civil Ct. Richmond Cty.) (Dkt. No. 38-1) at 2) Under New York law – which determines the preclusive effect of a judgment from a New York state court, Marvel Characters, Inc. v. Simon, 310 F.3d 280, 286 (2d Cir. 2002) – "federal courts must give preclusive effect to state court judgments 'if the issue in the second action is identical to an issue which was raised, necessarily decided and material in the first action, and the plaintiff had a full and fair opportunity to litigate the issue in an earlier action.'" Sahni v. Legal Services of the Hudson Valley, No. 14-cv-1616 (NSR), 2015 WL 4879160, at *3 (S.D.N.Y. Aug. 13, 2015) (quoting LaFleur v. Whitman, 300 F.3d 256, 271 (2d Cir. 2002)). Here, Plaintiff's entitlement to lost earnings under his GEICO policy was necessarily decided and material to the Civil Court action, and Plaintiff has not demonstrated that he did not have a full and fair opportunity to litigate in the lower court case.

The fact that the Civil Court lacks jurisdiction to decide claims for damages amounting to more than $25,000, N.Y.C. Civ. Ct. Act § 202, does not alter the analysis. "Determination of whether collateral estoppel applies does not depend on whether the relief now sought was available in the [prior proceeding]; what matters is whether there was a full opportunity to litigate identical issues." Burgos v. Hopkins, 14 F.3d 787, 792 (2d Cir. 1994) (finding that petitioner's habeas claim was barred by collateral estoppel despite the prior court's inability to award damages under his habeas claim). Accordingly, the Civil Court's decision has preclusive effect with respect to any contract claim under the GEICO policy regarding the May 2004 accident. See Caldwell v. Pesce, 83 F. Supp. 3d 472, 478, 481 (E.D.N.Y. 2015) (finding that plaintiffs were estopped from bringing claims that had been dismissed with prejudice on the merits in New York City Civil Court).

B. Individual Defendants

To the extent that Plaintiff alleges an ADA claim against the individual defendants, he appears to assert that they discriminated against him when – in conducting the IMEs – they failed to adequately diagnose his injuries. (See Cmplt. (Dkt. No. 1) at 7-8) Courts have, however, repeatedly rejected ADA claims founded on allegations of discrimination based on inadequate medical care. See Cercpac v. Health and Hospitals Corp., 147 F.3d 165, 168 (2d Cir. 1998) ("[T]he disabilities statutes do not guarantee any particular level of medical care for disabled persons, nor assure maintenance of service previously provided."); Goonewardena v. N. Shore Long Island Jewish Health Sys., No. 11-CV-2456 (MKB), 2014 WL 1271197, at *9 (E.D.N.Y. Mar. 26, 2014) (disagreement with the "quality and type of services provided" is "not cognizable under the ADA"); Maccharulo v. New York State Dept. of Correctional Serv., No. 08 Civ. 301(LTS), 2010 WL 2899751, at *2 (S.D.N.Y. July 21, 2010) ("[T]he ADA . . . [does not] 'create a remedy for medical malpractice[.]'" (quoting Bryant v. Madigan, 84 F.3d 246, 249 (7th Cir. 1996))). Accordingly, Plaintiff has no viable ADA claim against Defendants Falvo, Shimkus, or Garofalo, and the ADA claims against them will be dismissed.

III. CLAIMS ARISING UNDER STATE LAW

"Federal district courts have supplemental jurisdiction over state-law claims 'that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.'" Kolari v. New York-Presbyterian Hosp., 455 F.3d 118, 121-22 (2d Cir. 2006) (quoting 28 U.S.C. § 1367(a)). A district court may, in its discretion, refuse to exercise supplemental jurisdiction "if it 'has dismissed all claims over which has original jurisdiction.'" Id. at 122 (quoting 28 U.S.C. § 1367(c)(3)). In deciding whether to exercise jurisdiction in that scenario, a district court must

balance the "traditional 'values of judicial economy, convenience, fairness, and comity[.]'" Id. (quoting Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 (1988)). "'In the usual case in which all federal-law claims are eliminated before trial, [however,] the balance of factors . . . will point toward declining to exercise jurisdiction over the remaining state-law claims.'" Id. (quoting Cohill, 484 U.S. at 350 n.7).

Here, Plaintiff's only federal claim – arising under the ADA – will be dismissed. It is not clear from the Complaint whether Plaintiff intends to assert state law causes of action. Certain language in the Complaint suggests a malpractice claim (see Cmplt. (Dkt. No. 1) at 7-8), while other portions of the Complaint allege that GEICO committed breach of contract when it denied Plaintiff's claim for medical expenses and related benefits. (Id. at 9). To the extent that the Complaint asserts state law causes of action, this Court will not exercise supplemental jurisdiction over these claims. The interest in judicial economy is negligible here, because this litigation is at an early stage; moreover, there are no significant federal interests at stake that would support the exercise of federal jurisdiction over state law claims.

IV. LEAVE TO AMEND

"[L]eave to amend should be freely granted when 'justice so requires[.]'" Pangburn v. Culbertson, 200 F.3d 65, 70 (2d Cir. 1999) (quoting Fed. R. Civ. P. 15(a)). "'Where it appears that granting leave to amend is unlikely to be productive, however, it is not an abuse of discretion to deny leave to amend.'" Lucente v. Int'l Bus. Machines Corp., 310 F.3d 243, 258 (2d Cir.2002) (quoting Ruffolo v. Oppenheimer & Co., 987 F.2d 129, 131 (2d Cir. 1993)). "One appropriate basis for denying leave to amend is that the proposed amendment is futile. . . . An amendment to a pleading is futile if the proposed claim could not withstand a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6)." Id. (internal citations omitted).

Plaintiff has no plausible claim that GEICO committed disability discrimination when it denied him lost earnings. As discussed above, the GEICO policy denies lost earnings benefits to those who are not working, whether they are able-bodied or suffer from a disability. This is a reasonable and logical exclusion, given that providing lost earnings benefits to someone who has no lost wages would constitute a windfall. Moreover, the ADA is not applicable to cases in which the adequacy of care is challenged, which is the only conceivable basis for Plaintiff's ADA claim against the individual defendants. Because these fundamental and profound defects are not subject to cure, leave to amend will be denied as futile. See Petway v. New York City Transit Authority, 450 Fed. App'x 66, 66 (2d Cir. 2011) (affirming denial of leave to amend where plaintiff "did not plausibly suggest that any of the defendants in this case discriminated against him on the basis of his disability for purposes of an ADA claim"); Goonewardena v. N. Shore Long Island Jewish Health Sys., No. 11-CV-2456 (MKB), 2013 WL 1211496, at *10 (E.D.N.Y. Mar. 25, 2013), aff'd, 597 Fed. App'x 19, 19-20 (2d Cir. 2015) (denying leave to amend where Plaintiff could not state a plausible claim for disability discrimination).

CONCLUSION

Defendants' motions to dismiss the Complaint are granted. The Clerk of the Court is directed to terminate the motions (Dkt. Nos. 4, 32, 37, and 43) and to close this case.

This Court certifies under 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. Cf. Coppedge v. United States, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

Dated: New York, New York
March 24, 2016

SO ORDERED.

Paul G. Gardephe
United States District Judge