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BY ECF

Honorable Robert W. Sweet
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Schoolcraft v. City of New York*, 10-CV-6005 (RWS)

Your Honor:

I am a Senior Counsel in the office of Zachary W. Carter, Corporation Counsel of the City of New York, representing the motion respondent City of New York (the “City”), in connection with the above-captioned matter.

I write pursuant to Fed. R. Civ. P. 59 and 60, and Local Rule 6.3, to respectfully request that the Court modify its Consent Order entered on October 6, 2016, arising from a settlement agreement between certain hospital defendants and plaintiff, to make clear that only the parties who agreed to the Consent Decree are bound by it. The City has asked plaintiff to consent to this application and has not received a response.

On October 5, 2016, plaintiff submitted a letter application for entry of a “Consent Decree” (Docket No. 654), on the basis of an alleged agreement between the Jamaica Hospital Medical Center, Dr. Isak Isakov, and Dr. Lilian Aldana-Bernier (the “Medical Defendants”) and the plaintiff. The application was made without any motion being docketed or scheduled. The next day, on October 6, 2016, without any opportunity for the City to respond, the Court entered the requested Consent Decree.

The sole basis asserted for the Consent Decree is an agreement between the Medical Defendants and the plaintiff entered into at a court conference on November 3, 2015, occurring after Judgment was entered against the City defendants, to which the City was not invited and which the City’s counsel did not attend. Nor did the City defendants have any prior notice of the alleged agreement to the Consent Decree before the plaintiff’s filing on October 5, 2016. Indeed, the October 5, 2016 application was made nearly a year after a Judgment pursuant to Rule 68

was entered dismissing all defendants other than the Medical Defendants on October 16, 2015 (Docket No. 541). In addition, a Stipulation of Voluntary Dismissal of the case against Jamaica Hospital Medical Center had been filed on September 9, 2016, and Aldana-Bernier on October 5, 2016; Dr. Isak Isakov was dismissed on October 13, 2016.

It is self-evident that any settlement between the Medical Defendants and the plaintiff may bind only those parties. As written, however, the Consent Decree purports to bind parties other than those who consented to it. The City presumes that no effect on other parties' rights was intended by the Court, as there is no legal basis for it. The City therefore respectfully requests that the Court issue a clarifying order stating that no person is bound by the Consent Decree other than the Medical Defendants and plaintiff.

In addition to the plain lack of legal basis for the Consent Decree as applied to persons other than the Medical Defendants and the plaintiff, the relief is barred by the Judgment already entered in this case between the City defendants and plaintiff, as a matter of *res judicata*, Fed. R. Civ. P. 68, and contract law. The Rule 68 Offer of Judgment accepted by plaintiff, incorporated into the Judgment, states: "Acceptance of this offer of judgment will act to release and discharge the City Defendants as well as defendant Steven Mauriello; their successors or assigns; and all past and present officials, employees, representatives, and agents of the City of New York, or any agency thereof, from any and all claims that were or could have been alleged by plaintiff arising out of the facts and circumstances that are the subject of this action." Docket No. 541.

Plaintiff in his Third Amended Complaint had sought declaratory relief expunging the records of his involuntary commitment. Third Amended Complaint, Docket No. 342, at 63. But the Offer of Judgment against the City, accepted by plaintiff, does not grant that relief, nor does it say anything else to suggest that the released parties consented to any Consent Decree. Therefore, the application for the Consent Decree, to the extent directed against the City or other released parties, would be an improper renewal of this action against the released parties arising from the same facts and circumstances as the dismissed claims, and is barred by the Judgment.

Accordingly, the City respectfully requests that the Court issue a clarifying Order modifying the Consent Decree to state as follows: "No persons other than the plaintiff, Jamaica Hospital Medical Center, Dr. Lilian Aldana-Bernier, and Dr. Isak Isakov, shall be bound by the Consent Decree, and it is therefore not binding upon any other present or former parties to this action."

Alternatively, if such relief is not granted on the basis of this application, defendants request that the Court void the Consent Decree and establish a motion briefing schedule under Local Rule 6.1(b) to resolve these objections to the Consent Decree, with defendants' opposition papers to be filed 14 days from today.

Sweet, J.
October 17, 2016
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We thank the Court for its consideration of this matter.

Respectfully submitted,

/s/

Alan H. Scheiner
Senior Counsel
Special Federal Litigation Division

cc: All counsel by ECF