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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

*Schoolcraft v. The City of New York, et al.,
10-cv-6005 (RWS) (DCF)*

Dear Judge Sweet:

As one of the plaintiff's counsel, I am writing to object to the City's proposed order to modify the Consent Decree, which expunged the plaintiff's psychiatric records and determined that the commitment of the plaintiff cannot be used to limit his civil rights. The proposed modification of the Consent Decree to provide that it is only binding on the plaintiff and the Medical Defendants would render meaningless the Consent Decree, which was a material provision of the agreement entered into by the plaintiff to settle his claims against the Medical Defendants.

In the plaintiff's Third Amended Complaint, the plaintiff requested that the Court enter a declaratory judgment that would expunge all records suggesting that the plaintiff was emotionally disturbed, suffered from any mental illness or was dangerous to himself or others. (Third Amended Complaint ¶ 373(C) at p. 63; Dkt # 341.) The plaintiff also sought this relief in the Joint Pretrial Order that was filed on the eve of the trial against the Medical Defendants. (JPTO, dated October 30, 2015 at p. 4; Dkt. # 558.)

Pursuant to 18 U. S. C. § 922(g)(8), the possession of a firearm by person who has been committed to a mental institution is a federal crime, and plaintiff sought expungement of his medical records to remove this disability from the

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exercise of his civil rights. (*Id.*). Thus, the Consent Decree was an integral part of the settlement of the claims against the Medical Defendants.

The City's proposed amendment, however, would eviscerate the substantive content of the Consent Decree. The City requests that the Consent Decree be amended to state: "This Order is binding solely upon the plaintiff and Jamaica Hospital Medical Center, Dr. Isak Isakov, and Dr. Lilian Adana-Bernier, and the rights and obligations of any other parties to this action, or any other persons, are unaffected by this Order."

At the oral argument last month on the City's motion to amend the Consent Decree, the City explained that the NYPD was concerned that the plaintiff would seek to apply to the NYPD for a permit to carry a firearm and that the Consent Decree could be used to suggest that the NYPD had an affirmative obligation to issue the plaintiff a firearm permit. As noted at oral argument, we stated that the City was overstating its objections and concerns. The Consent Decree, as written, would prevent the City from using the plaintiff's involuntary psychiatric commitment as a basis to deny the plaintiff's hypothetical application for a firearm permit but nothing in the Consent Decree limited the City from making a determination in that regard based on other considerations. Accordingly, we suggest that the Consent Decree be modified or clarified to provide as follows:

"Nothing in this Consent Decree shall limit the obligation of the City of New York to make a determination on any application to the City of New York by the plaintiff to carry a firearm based on factors or considerations other than the records that have been expunged by this Decree or the fact of the plaintiff's involuntary admission at Jamaica Hospital."

This modification would address the concern raised by the City. At the same time, the modification would maintain the full restoration of the plaintiff's civil rights and remove the specter of criminal prosecution of the plaintiff for possession of a firearm.

Respectfully submitted,


Nathaniel B. Smith

All Counsel
(by ECF w/encl.)