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United States District Court,
E.D. New York.

Gregory B. MONACO, etc., et ano., Plaintiffs,
v.
Sharon CARPINELLO, etc., et alia, Defendants.

No. CV-98-3386(CPS). | July 22, 2004.

Attorneys and Law Firms

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Opinion

MEMORANDUM AND ORDER

SIFTON, Senior J.

***1** Plaintiffs Gregory B. Monaco, on behalf of himself and similarly situated individuals facing civil commitment, and the Mental Disability Law Clinic of Touro Law Center ("the Clinic") bring this class action for declaratory and injunctive relief against the following defendants: Sharon Carpinello, in her official capacity as Acting Commissioner of the New York State Office of Mental Health; Catherine Cahill, in her official capacity as Justice of the East Hampton Town Justice Court, on behalf of herself and all other local criminal court judges in New York State; Benjamin Chu, in his official capacity as the Director of the New York City Health and Hospitals Corporation; Mark Sedler, in his official capacity as Chairman of the Department of Psychiatry at University Hospital of the State University at Stony Brook; Kenneth Skodnek, in his official capacity as Chairman of Psychiatry at Nassau University Medical Center; Arnold Licht, in his official capacity as Director of the psychiatric unit of Long Island College Hospital; Alfred Tisch, in his official capacity of Sheriff of Suffolk County; and Martin Horn, in his official capacity of Commissioner of the New York City Department of Corrections.[1]

Plaintiffs allege violations of the Fourth Amendment, the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, and 42 U.S.C. § 1983, as well as state law claims for false imprisonment negligence, and medical malpractice. As amended, the complaint contains two major components: 1) a challenge to the constitutionality of the practices of Cahill, Horn, and Tisch in keeping confined unnecessarily individuals found incompetent to stand trial for minor felonies and misdemeanors and those awaiting such a determination; 2) a challenge to the constitutionality of the procedures used by Chu, Sedler, Skodnek, and Licht to hospitalize involuntarily individuals deemed mentally ill.

Defendant Sedler has brought three motions. First, Sedler has moved to dismiss the claims asserted against him pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. Second. Sedler has moved for dismissal pursuant to Federal Rule of Civil Procedure 9(b) on the ground that plaintiffs have failed to allege averments of fraud and mistake with particularity. Third, Sedler has moved pursuant to Federal Rule of Civil Procedure 12(e) for a more definite statement.

The specific causes of action with regard to Sedler include:
Seventh Cause of Action

....

As a result of physicians at [SUNY Stony Brook] certifying individuals who have been evaluated for civil commitment purposes as dangerous because the physicians believe that such individuals' clinical condition warrants in-patient care and treatment, [defendant Sedler is] responsible for the confinement of nondangerous individuals, which violates the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

***2** Eighth Cause of Action

....

By failing to examine and employ significant criteria related to the likelihood of causing harm when examining allegedly mentally ill individuals for civil commitment purposes, physicians at [SUNY Stony Brook] make clinical determinations that do not promise some degree

of accuracy and such decisions result in the confinement of nondangerous individuals, both of which violate the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

Ninth Cause of Action

....

By conducting clinical evaluations that frequently do not last more than five or ten minutes when examining allegedly mentally ill individuals for civil commitment purposes, physicians at [SUNY Stony Brook] make clinical determinations that do not promise some degree of accuracy and such decisions result in the confinement of nondangerous individual [sic], both of which violate the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

Tenth Cause of Action

....

By failing to apply the statutory criteria of the provisions of the New York Mental Hygiene Law pursuant to which the physicians act, physicians at [SUNY Stony Brook] violate the procedural component of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

Eleventh Cause of Action

....

The failure of physicians at [SUNY Stony Brook] to use guidelines that inform physicians of the likelihood and magnitude of harm that must exist before a physician certifies a mentally ill person for hospitalization results in the arbitrary exercise of authority by physicians at [SUNY Stony Brook] when they certify an allegedly mentally ill person for involuntary hospitalization, which violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

Fifth Amended Complaint, ¶¶ 201-10.

For the reasons stated below, Sedler's motion to dismiss is granted with respect to claim for relief number eleven. The motion is denied with respect to the remaining claims. Sedler's motions pursuant to Rule 9 and Rule 12(e) are denied.

Background

The following facts are taken from the complaint. For purposes of this motion to dismiss, they are assumed to be true, and all reasonable inferences are made in favor of the plaintiff. *Freedom Holdings, Inc., v. Spitzer,* 357 F.3d 205, 215 (2d Cir.2004).

New York's statutory scheme for committing a defendant found incompetent to stand trial is as follows. After arraignment, a New York State court must order a psychiatric evaluation if it believes the defendant may be incompetent to stand trial. N.Y. CRIM. PROC. LAW § 730.30(1). A defendant is incompetent to stand trial if by virtue of mental illness or defect he "lacks capacity to understand the proceedings against him or assist in his own defense." § 730.10(1). The competency examination is performed by two court appointed psychiatrists.

***3** When a defendant is determined to be incompetent to stand trial, the court dismisses the indictment and issues an order of observation authorizing care and treatment in a facility operated by the New York State Office of Mental Health ("OMH") for up to ninety days. §§ 730.10, 730.40. Issuance of such an order does not require a finding that the defendant poses a danger to himself or others. In contrast, involuntary commitment of a person not charged with a crime implicates a different statutory scheme and requires a showing of dangerousness by clear and convincing evidence. N.Y. MENTAL HYG. LAW § 9.37(a).

According to the complaint, the statutory scheme subjects those involuntarily committed pursuant to a finding of incompetency to unequal treatment while at the OMH facility. Regulations required a forensics committee to review and approve any application for transfer to a less restrictive setting. N.Y. COMP.CODES R. & REGS. TIT. 14, § 540.3. Various law enforcement officers and any potential victim of the defendant were required to receive four days notice prior to transferring the defendant to a less-restrictive setting. N.Y. CRIM. PROC. LAW. § 730.60; N.Y. MENTAL HYG. LAW § 29.11(h); 14 N.Y. COMP.CODES R. & REGS. TIT. 14, § 540.10.

This procedure was found unconstitutional by a New York court in *Ritter v. Surles,* 144 Misc.2d 945, 545 N.Y.S.2d 962 (N.Y.Sup.Ct.1988). The *Ritter* court held that this impermissibly created two classes of incompetents: those who had been charged with an offense that was ultimately dismissed, and those who had not. The statutes provided greater protection for the latter group by only allowing commitment upon a showing by clear and convincing evidence that they were dangerous. *Id.* at 965. Once the indictment had been dismissed against the incompetent defendant, however, he should no longer have been subject to the criminal justice system. *Id.*

In light of *Ritter,* the OMH adopted a new policy by

which upon receipt of a patient declared incompetent to stand trial, OMH physicians evaluate whether he meets the criteria for civil commitment. By the end of that period, the defendant must either be released or civilly committed. OMH facilities were also no longer required to subject defendants to a forensics committee or provide the former notices prior to transfer to a less-restrictive setting.

Plaintiffs allege that the implementation of these new OMH policies are unlawful in several respects. First, they allege that many OMH doctors conducting the initial 72 hour evaluation decide to commit patients, not because they are dangerous, but because the doctor believes he is in need of treatment. This is caused in part by OMH's failure to properly train physicians to ensure they commit only defendants they believe are dangerous. This is also caused in part by the brevity of the examinations, which often last only five to ten minutes. Second, plaintiffs allege that many OMH facilities still subject defendants to forensics panels or their functional equivalent, thereby delaying transfer.

***4** Defendant Sedler is Chairman of the Department of Psychiatry at University Hospital of the State University of New York at Stony Brook. Stony Brook evaluates patients for OMH during their initial 72 hour screening. Depending on capacity, Stony Brook also confines some defendants deemed dangerous and transfers others to private hospitals.

Discussion

Rule 12(b)(6) Motion

A complaint cannot be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim. *Freedom Holdings, Inc.,* 357 F.3d at 216.

Tenth Claim-Failure to Apply Statutory Standards

Sedler first argues the Supreme Court's decision in *Pennhurst State School v. Halderman,* 465 U.S. 89, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984) bars plaintiffs' claim. In *Pennhurst,* the Court placed an important limit on the doctrine of *Ex parte Young,* 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908). *Ex parte Young* held that, for Eleventh Amendment purposes, a suit challenging the constitutionality of a state official's action is not one against the state. In such a case, the Eleventh Amendment did not bar issuance of an injunction because the unconstitutional act was "void" and therefore did not impart immunity. *Id.* at 160. *Pennhurst* held that the *Young* doctrine does not apply when a plaintiff sues to enjoin an act that violates *state* law, but not federal. The foundation of the *Young* doctrine is the need to ensure the supremacy of federal law. *Pennhurst,* 465 U.S. at 105. The same interest is not implicated when the state official is accused of violating solely state law. *Id.*

Sedler argues that plaintiff's tenth claim for relief seeks to enforce New York's Mental Hygiene Law and is therefore barred by *Pennhurst.* Claim number ten alleges that in making determinations of dangerousness, doctors in OMH facilities do not apply the criteria stated in New York's Mental Hygiene Law.

Plaintiffs argue that New York Mental Hygiene Law § 9.37 creates a constitutionally protected liberty interest in avoiding unwanted government interference. That provision allows involuntary commitment of patients who are likely to result in serious harm to himself or others. "Likelihood of serious harm" is defined by statute as:

1. substantial risk of physical harm to himself as manifested by threats or attempts at suicide or serious bodily harm or other conduct demonstrating that he is dangerous to himself, or

2. a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm.

N.Y. MENTAL HYG. LAW § 9.37.

Relying on *Hewitt v. Helms,* 459 U.S. 460, 103 S.Ct. 864, 74 L.Ed.2d 675 (1983), plaintiffs argue that these statutory provisions create a justified expectation that they will not be involuntarily committed without a doctor making the finding of "substantial risk of harm" required by the statute. In *Hewitt v. Helms,* the Court held that a state law can create a protected liberty interest where the statute is couched in "language of an unmistakably mandatory character" and bases deprivation on "specified substantive predicates." 459 U.S. at 471-72. Plaintiffs argue that New York state law mandates that, in determining dangerousness, doctors make the factual findings identified in § 9.37.

***5** I therefore consider whether § 9.37 creates a liberty interest in having the examining psychiatrist follow the procedures outlined in the statute in determining the patient's dangerousness. A statutorily created liberty interest protected by the Due Process Clause can arise when 1) the statute contains particularized substantive criteria to guide state officials; and 2) the statute uses mandatory as opposed to discretionary language in describing the limits the standards have on the official's conduct. *See Hewitt,* 459 U.S. 460, 103 S.Ct. 864, 74 L.Ed.2d 675; *Connecticut Bd. of Pardons v. Dumschat,* 452 U.S. 458, 101 S.Ct. 2460, 69 L.Ed.2d 158 (1981);

Greenholtz v. Inmates of Nebraska Penal and Correctional Complex, 442 U.S. 1, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979).

Section 9.37 contains particularized substantive criteria to guide a physician's decision to commit a patient. Involuntary hospitalization cannot occur unless the patient poses a likeliness of serious harm. § 9.37. A determination of likeliness of serious harm should be made on a basis of threats of suicide or other harm to self as well as homicidal or other violent behavior.

The statute is mandatory. A patient cannot be involuntarily hospitalized pursuant to § 9.37 unless the evaluating psychiatrist identifies the facts and circumstances upon which he bases the determination that the patient is dangerous. *See Matter of Nancy H.,* 177 Misc.2d 30, 675 N.Y.S.2d 774 (N.Y.Sup.Ct.1998). Failure to follow those procedures requires the patient's release. *Id.* Plaintiffs therefore have a justified expectation that this mandatory procedure will be followed and that the statutory definition will be applied before they will be deprived of a protected liberty interest.

A judge of the Middle District of Georgia reached a similar conclusion in *Heidelbach v. Evans,* 798 F.Supp. 708 (M.D.Ga.1992). Georgia law provided mandatory procedures for involuntary hospitalization. *Id.* at 712. These mandatory procedures produced a protected liberty interest. *Id.* The state's failure to comply with those mandatory procedures provided the foundation for the plaintiff's § 1983 claim.

Sedler argues that *Heidelbach* is distinguishable because in the present case plaintiffs have not alleged that OMH doctors do not, at least nominally, follow the procedures outlined by New York law. Sedler argues that instead of alleging that doctors do not actually certify patients as posing a likelihood of serious harm, plaintiffs have alleged that doctors fraudulently certify patients that are not dangerous. This claim, Sedler argues, is a violation of state law, not federal law.

Sedler's proposed distinction is unpersuasive because the violation of state law alleged in *Heidelbach* and the present case are also violations of federal law. *See id.* at 712. State law requires physicians to make findings of dangerousness prior to involuntarily committing patients. The existence of this mandatory state law protecting patients from commitment absent the requisite findings and procedures produces liberty interests protected by federal law. Because plaintiffs seek to vindicate this federally protected liberty interest, the claim for relief therefore sounds in federal law.

Ninth Claim-Length of Interview

***6** Sedler next argues that plaintiffs' ninth claim for relief should be dismissed. Claim nine alleges that OMH facilities frequently conduct dangerousness evaluations that last no more than five or ten minutes. This, plaintiffs argue, fails to promise a reasonable degree of accuracy as required by the Court of Appeals in *Rodriguez v. City of New York,* 72 F.3d 1051 (2d Cir.1995). In *Rodriguez,* the court stated that due process required that a decision to involuntarily commit someone must be conducted "in a accordance with a standard that promises some reasonable degree of certainty." *Id.* at 1062.

Sedler argues that the Court of Appeals found a five minute interview did not violate due process in *Kulak v. City of New York,* 88 F.3d 63 (2d Cir.1996). The *Kulak* court did not reach the issue of whether Kulak's interview satisfied due process. The court dismissed the claim on grounds of collateral estoppel. *Id.* at 71-73.

Due process for an involuntary commitment requires a psychiatrist's determination of dangerousness be exercised based on criteria that "are not substantially below the standards generally accepted in the medical community." *Katzman v. Khan,* 67 F.Supp.2d 103, 109-10 (E.D.N.Y.1999) (quoting *Rodriguez,* 72 F.3d at 1062). Whether a five minute interview is generally accepted in the medical community prior to involuntary committing a patient is an issue upon which plaintiffs are entitled to present evidence. *See id.*

Eleventh Claim-Lack of Guidelines

In their eleventh claim for relief, plaintiffs state that Stony Brook does not use "guidelines that inform physicians of the likelihood and magnitude of harm that must exist before a physician certifies a mentally ill person for hospitalization" and that this "results in the arbitrary exercise of authority by physicians." Sedler argues that this claim should be dismissed because the complaint does not allege that such guidelines are generally accepted in the medical community.

Plaintiffs argue that guidelines are necessary because the statutory definition of "likelihood of serious harm" is impermissibly vague, thereby allowing individual physicians to impose their personal values when determining whether the risk posed by a particular patient is substantial enough to justify the loss of liberty from involuntary hospitalization. Relying on cases applying the void-for-vagueness doctrine, plaintiffs contend that in the absence of more extensive guidance, the application of the statutory standard will vary depending on what value particular physicians place on a patient's liberty when balancing it against the substantiality of the risk of harm.

The Supreme Court in *Papachristou v. City of Jacksonville,* 405 U.S. 156, 92 S.Ct. 839, 31 L.Ed.2d 110

(1972), struck down a vagrancy ordinance as excessively vague because, in the absences of more explicit standards, it provided law enforcement officers an opportunity for arbitrary enforcement. Plaintiffs argue that, in the absence of guidelines, the involuntary hospitalization standard provided by New York law creates similar opportunities for arbitrary commitments. While the vagueness doctrine is usually employed in challenges to criminal statutes, it has also been applied to civil confinement statutes. *See, e.g., Stamus v. Leonhardt,* 414 F.Supp. 439 (S.D.Iowa 1976).

***7** Plaintiffs acknowledge that a Washington and an Arizona state court have rejected similar void for vagueness challenges to similar criteria in their state's involuntary commitment statutes. *See In re LaBelle,* 107 Wash.2d 196, 728 P.2d 138 (Wash.1986); *In the Matter of Maricopa County Cause No. MH-90-00566,* 173 Ariz. 177, 840 P.2d 1042 (Ct.App.Ariz.1992) [hereinafter "*Maricopa County"*]. The statutory scheme for commitment in *In re LaBelle* also allowed for hospitalization when, as a result of mental disorder, the patient was "in danger of serious physical harm resulting from a failure to provide for his essential human needs of health or safety." 7 Cal.Rptr.2d 238, 828 P.2d at 143. Similar to the New York statutory scheme, the court required that the risk of danger be substantial and the harm be serious. *Id.* at 144.

The *LaBelle* court then addressed the argument that plaintiffs now present: whether there is a danger that doctors may commit patients solely because they might benefit from treatment and not because they pose a substantial enough danger. *Id.* at 144. The court construed the statute to require the state to present "recent, tangible evidence of failure or inability to provide for such essential human needs as food, clothing, shelter, and medical treatment which presents a high probability of serious physical harm in the near future." *Id.* at 144.

The patient in *Maricopa County* was committed by court order. The Arizona statute allowed for commitment when the court found that the patient was "persistently or acutely disabled." 840 P.2d at 1048. To be "persistently or acutely disabled," the patient must have a mental disorder that presented a substantial probability that "the patient will suffer some danger of harm if the condition is not treated." *Id.* The court rejected a vagueness challenge to this statute and noted that due to the difficulty in precisely define the elements that lead to the finding of mental illness, the precision required in mental health statutes is not equal to that required in criminal statutes. *Id.* at 1050.

Plaintiffs attempt to avoid the impact of these cases by, somewhat confusingly, characterizing the eleventh claim for relief as "differing from traditional void for vagueness challenges" in that this claim for relief presents "an 'as applied' challenge to the manner in which physicians enforce" the constitutional standards and not a facial challenge to the statute.[2] Plaintiffs do not cite any authority for applying the void for vagueness doctrine outside the scope of facial challenges.

Either plaintiffs allege that the failure of the statutory scheme to require guidelines provides physicians with too much discretion, in which case the challenge is to the statute on the grounds of vagueness, or plaintiffs allege that the statute is acceptable and is merely being applied in a manner that violates the Constitution. Plaintiffs have abandoned the first option and adopted the second, arguing that physicians are applying the New York law impermissibly.

***8** Plaintiff's construction of claim for relief number eleven renders it substantially duplicative of plaintiffs' eighth claim for relief. Claim number eight alleges that Stony Brook physicians commit patients without employing "significant criteria related to the likelihood of causing harm." Both claims allege that the failure to employ additional criteria beyond those listed in the statute violate plaintiffs' due process rights. Because the claim is duplicative, claim for relief number eleven is dismissed. *See Scientech, Inc. v. Metro-North R.R.,* 01-CV-8210, 2002 WL 1813854 (S.D.N.Y. Aug.7, 2002); Neiberger v. Hawkins, 208 F.R.D. 301 (D.Colo.2002) (dismissing duplicative claims).

Eighth Claim-Failure to Employ Criteria Related to Likelihood of Harm

Claim for relief number eight alleges that physicians at Stony Brook fail to use significant criteria relating to the likelihood of causing harm when committing patients. This failure results in clinical determinations that do not promise "some degree of accuracy" and results in the commitment of non-dangerous individuals.

Sedler argues that this fails to state a claim for relief because the Second Circuit has not held that OMH facilities must employ a specific list of criteria when committing patients.

Although Sedler is correct that the Court of Appeals has not held as a matter of law that due process requires a specific list of criteria when committing patients, it has held that such determinations must be made in accordance with "a standard that promises some reasonable degree of accuracy." *Rodriguez,* 72 F.3d 1062. That standard must not fall substantially below that which is generally accepted in the medical community. *See Katzman,* 67 F.Supp.2d at 109-10. The question of whether a particular practice in committing patients falls below this standard is one of fact, upon which plaintiffs are entitled to present evidence. *Rodriguez,* 72 F.3d at 1063.

Accordingly, Sedler's request to dismiss count eight is denied.

Seventh Claim-Whether Stony Brook Doctors Commit Patients They Believe Are Not Dangerous

Plaintiffs' seventh claim for relief alleges that Stony Brook doctors commit patients because the doctor feels the patient's "clinical condition" warrants treatment, even though the doctor believes that the patient is not dangerous.

Sedler misconstrues the allegations in the seventh claim for relief. Sedler argues that plaintiffs complaint alleges that Stony Brook doctors are not permitted to determine patients' "clinical condition." Accordingly, Sedler argues that there is no prohibition on a doctor determining a patient's "clinical condition" in addition to determining his dangerousness.

Plaintiffs have not alleged that a determination of "clinical condition" in addition to a determination of dangerousness violates their rights. Instead, plaintiffs allege that Stony Brook doctors are committing patients who have never been determined to be dangerous. Sedler's motion to dismiss claim number seven is therefore denied.

Rule 9 Motion

***9** Federal Rule of Civil Procedure 9(b) requires that "[i]n all "averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." Sedler argues that plaintiffs complaint alleges that Stony Brook doctors fraudulently certify patients as dangerous, and plaintiffs should therefore plead with greater particularity. Sedler cites to no case where Rule 9 has been applied to a similar § 1983 claims.

Because the special pleading requirement of Rule 9(b) is contrary to the simplified pleading standard adopted by the Federal Rules, courts have construed it narrowly and not extended it to other legal theories. 5 WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE, § 1297 at 615; *see Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit,* 507 U.S. 163, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993). Under New York law, the elements of fraud are: 1) a representation of fact; 2) which is either untrue and known to be untrue or recklessly made; 3) offered to deceive and to induce the plaintiff to act upon it; 4) which is justifiably relied on by the plaintiff; 5) causing injury to the plaintiff. *Tanzman v. LaPietra,* 8 A.D.3d 706, 778 N.Y.S.2d 199 (N.Y.App.Div.2004); *Cirillo v. Slomin's, Inc.,* 196 Misc.2d 922, 768 N.Y.S.2d 759 (N.Y.Sup.Ct.2003). Liability for fraud extends only to the parties that the defendant intends or has reason to expect to act in reliance on his statement. RESTATEMENT (SECOND) OF TORTS § 531 (1977); 2 HARPER ET AL., THE LAW OF TORTS § 7.2 (1986).

The complaint does not allege fraud. Plaintiffs have not alleged that the dangerousness findings of Stony Brook physicians were offered to deceive them or that they relied on these representations. Instead, plaintiffs have alleged that the fraudulent representation was made to the hospital and to the courts reviewing patients' commitments. Therefore Rule 9(b) is inapplicable.

Rule 12(e) Motion for a More Definite Statement

Sedler moves pursuant to Federal Rule of Civil Procedure 12(e) for a more definite statement. Rule 12(e) allows for an order requiring a more definite statement when the pleading is so vague that the opposing party cannot reasonably be required to respond. Sedler suggests that plaintiffs should be required to identify which physicians at Stony Brook have engaged in the actions of which they complain.

Whether to grant a motion for a more definite statement is in the discretion of the court. 5A WRIGHT ET AL., at § 1377. For a more definite statement to be warranted, the complaint must be "so excessively vague and ambiguous as to be unintelligible and as to prejudice the defendant seriously in attempting to answer it." *Kok v. First Unum Life Ins. Co.,* 154 F.Supp.2d 777, 781-82 (S.D.N.Y.2001). When a complaint satisfies Rule 8, then the Rule 12(e) motion should be denied. *Vapac Music Publ'g, Inc. v. Tuff'N'Rumble Mgmt.,* 99-CV-10656, 2000 WL 1006257, *6 (S.D.N.Y. July 19, 2000). Federal Rule of Civil Procedure 8 merely requires "a short and plain statement of the claim." The preferred course is to encourage the use of discovery to inform the defendant of the factual basis of the complaint. *Greater New York Auto. Dealers Ass'n v. Environmental Systems Testing, Inc.,* 211 F.R.D. 71, 77 (E.D.N.Y.2002).

***10** I conclude that the complaint complies with Rule 8(a). Plaintiffs have provided Sedler with a complaint spanning fifty-eight pages. It is clear from the complaint that plaintiffs allege a pattern of diagnosis that do not meet the minimal requirements of New York or provide a sufficient guarantee of accuracy as required by federal law. This results in the illegal confinement of non-dangerous individuals. Sedler will undoubtedly require more information concerning plaintiffs' allegations, but he will have to obtain those details via discovery. The motion for a more definite statement is therefore denied.

Conclusion

For the reasons stated, Sedler's motion to dismiss is granted with respect to claim for relief number eleven. The motion is denied with respect to the remaining claims. Sedler's motions pursuant to Rule 9 and Rule 12(e) are denied.

The Clerk is directed to furnish a filed copy of the within to all parties and to the magistrate judge.

SO ORDERED.

Footnotes

1 In a previous decision, this Court dismissed the claims against Licht and granted summary judgment in favor of four other defendants. In their fifth amended complaint, plaintiffs reasserted these claims against these defendants in order to preserve their right to appeal this Court's judgment. *See* 6 WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 1476 at 560 (2d ed.1990). All of the defendants except Licht have agreed to dismissal of these claims by stipulation.

2 It should also be noted that the Court of Appeals has upheld the constitutionality of New York's commitment statutes against other constitutional challenges. *See Woe by Woe v. Cuomo,* 729 F.2d 96 (2d Cir.1984); *Project Release v. Prevost,* 722 F.2d 960 (2d Cir.1983).