

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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VINCENT A. FERRI,

Plaintiff,

vs.

**COMPLAINT**

NICHOLAS VALASTRO,

JOHN DOE I AND JOHN DOE II,

Defendants.

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By and through his counsel, Michael H. Sussman, plaintiff hereby states and alleges against defendants:

**PARTIES**

1. Plaintiff, Vincent A. Ferri, is an adult citizen of the United States and a resident of the County of Orange, State of New York, within this jurisdiction. 2.

At all relevant times, defendant, Nicholas Valastro, was a sworn police officer of the Town of Montgomery Police Department and the actions complained of herein

were committed under color of state law. Defendant John Doe I, whose identity is currently unknown, served at all relevant times as a Town of Montgomery Police officer. Defendant John Doe II, whose identity is currently unknown, served as a member of the New York State Police at all relevant times. Both acted under color of state law.

### **VENUE**

3. As all the actions complained of occurred within this judicial district, this Honorable Court has venue over this controversy.

### **JURISDICTION**

4. As plaintiff alleges that defendants violated his constitutional and civil rights, this Honorable Court has jurisdiction over this controversy pursuant to 28 U.S.C. secs. 1331, 1343(3) & (4) and 42 U.S.C. secs. 1983 and 1988.

5. On April 16, 2007, plaintiff received a call from the nurse at his son's school, Valley Central Middle School, advising him that his son had been injured during a fight and that, because of his medical history and the fact that he had had

his head knocked into a wall several times, plaintiff should immediately attend to the school, pick up his son and hold him for observation.

6. Plaintiff received this phone call at his home, 555 Scotchtown-Collabar Road in Middletown, which is approximately 5 miles from the school by the most direct travel route.

7. Plaintiff gathered himself and proceeded to his son's school, driving on County 47 to Route 17K and then, on that state road, directly to the school.

8. As he proceeded, defendant Valastro stopped plaintiff and advised him that there was some flooding on Route 17K.

9. Plaintiff responded that he had just come back along the same road, knew the road's condition, knew that cars were using the road and needed to travel the road to respond to his son's medical emergency, which he explained to defendant Valastro.

10. Defendant Valastro appeared completely indifferent to the situation, offered no assistance and told plaintiff that he could not drive on Route 17K, though the road was neither officially closed nor too dangerous to drive upon.

11. Defendant Valastro advised plaintiff to use another, much more round-about route to the school.

12. Plaintiff complied and proceeded as directed by defendant Valastro.

13. Having so proceeded, plaintiff drove to Route 211, made a left hand turn toward the school and saw a long and increasing line of cars.

14. Plaintiff also observed multiple emergency vehicles ahead and concluded that he could not proceed in this direction with the expedition required by his son's condition, as he understood it.

15. Plaintiff proceeded back to Route 17K where he passed defendant Valastro and proceeded toward his son's school.

16. The weather conditions were not extreme, with clouds and light drizzle.

17. Plaintiff was driving an Audi station wagon with numerous anti-war bumper stickers and other expressive speech.

18. Defendant Valastro proceeded to pursue plaintiff in his police vehicle.

19. Plaintiff drove toward the school, about three miles away, without exceeding the speed limit and in compliance with traffic signals along the way.

20. Defendant Valastro attempted to cut the plaintiff off before Route 211 in Montgomery.

21. Plaintiff continued to drive straight to the school.

22. About 3/4 miles down Route 17K, near a Gulf Service Station, defendant Valastro pulled in front of the plaintiff, who then passed him on the right shoulder, causing no threat of harm or injury to anyone.

23. Plaintiff continued driving to the school and, on one final occasion, defendant Valastro tried to block his progress.

24. On this last occasion, plaintiff passed defendant Valastro, who, by then, had exited his police vehicle.

25. As he passed defendant Valastro, plaintiff did not endanger him in any way, though this defendant was leveling his weapon at the plaintiff as he drove by and kicked plaintiff's car.

26. Right after plaintiff arrived at the school, defendant Valastro pulled alongside his car, blocking Ferri's egress from the driver's door.

27. In an effort to get to the nurse's office and determine his son's status, plaintiff exited his vehicle through the front passenger door

28. Defendant Valastro then advised plaintiff to stop.

29. Plaintiff replied that he had to go to the nurse's office to check on his son's medical condition.

30. Defendant Valastro then pulled his weapon and again directed plaintiff to stop.

31. Plaintiff advised defendant Valastro to put away "that silly thing" [a reference to the weapon] and refused defendant Valastro's direction that he kneel down in a muddy puddle caused by heavy rains which had fallen earlier in the day.

32. Plaintiff continued to walk toward the nurse's office.

33. As plaintiff walked, defendant Valastro tackled him, the two rolled over shrubbery while defendant Valastro sought to prevent plaintiff from responding to his son's medical emergency.

34. Defendant Valastro pushed plaintiff's face down into a puddle causing plaintiff to become fearful for his physical well-being.

35. As Valastro so proceeded, a second officer, John Doe I, pepper sprayed plaintiff and kned plaintiff's back, keeping him down.

36. A third officer, John Doe II, cuffed plaintiff while the other officers held him.

37. After plaintiff was cuffed, he was transported to the police station, detained for several hours, chained to a bench and disallowed from responding to his son's medical needs.

38. As a consequence of the use of this force, plaintiff suffered immediate anxiety and fear for his safety. With time, plaintiff, a Vietnam Veteran, developed an ongoing fear of the police.

39. Plaintiff also suffered physical pain in his elbow and wrist due to the defendants' use of unnecessary force.

40. As a consequence of this incident, defendant Valastro swore out and filed seven charges against the plaintiff, including the misdemeanors of Reckless Endangerment 2<sup>nd</sup>, Resisting Arrest, Obstructing Government Administration in the 2<sup>nd</sup> Degree and Unlawfully Fleeing a Police Officer in a Motor Vehicle and three Vehicle and Traffic tickets.

41. Defendant Valastro prepared all the accusatory instruments based allegedly based upon his own knowledge.

42. Defendant Valastro initiated and instigated plaintiff's prosecution.

43. As a consequence of these tickets and charges, plaintiff was required to appear and re-appear in the Town of Montgomery Court on at least four occasions.

44. On September 18, 2009, the Honorable Harry J. Mills, Town Justice, Town of Montgomery, dismissed each and every one of the charges against plaintiff Ferri and expressly terminated this proceeding "in favor of the defendant" [a reference to the plaintiff herein].

45. Defendant Valastro's conduct was unreasonable as a matter of law.

46. Defendant Valastro's conduct was unlike that which a reasonably prudent police officer, advised of the facts as he was, would have engaged in and violated plaintiff's clearly established constitutional right to be free of false arrest and the use of excessive force.

47. Likewise, the conduct of John Doe I and John Doe II was unconstitutional in that they unreasonably used excessive force against plaintiff and participated in the baseless deprivation of his liberty.

48. In responding to the seven charges laid against him and later dismissed in their entirety, plaintiff was caused to retain counsel, expend funds and repeatedly attend judicial proceedings in the Town of Montgomery.

49. Defendant Valastro's pursuit of the plaintiff and his prosecution of him were malicious and motivated by plaintiff's political views which found expression on the back of his vehicle.

50. During the time the chase proceeded and defendant Valastro sought to prevent plaintiff's use of Route 17K, this state road was open, not closed by the state, to vehicular traffic.

51. Hours *after* this incident, the road was closed by order of the State of New York.

52. No weather emergency could have reasonably informed defendant Valastro's conduct and he lacked the discretion to "close the road" or pursue drivers who, for good cause, traveled the road in compliance with vehicle and traffic laws.

### **CAUSES OF ACTION**

53. Plaintiff incorporates paras. 1-52 as if fully re-written herein.

54. Defendants arrested plaintiff without probable cause violating his right to be free of unreasonable seizure under the Fourth Amendment, as made actionable by 42 U.S.C. section 1983.

55. After arresting plaintiff, defendants used excessive force against him in violation of the due process clause of the Fourteenth Amendment and the Eighth Amendment, as made actionable by 42 U.S.C. sec. 1983.

56. Defendant Valastro maliciously prosecuted the plaintiff violating the latter's right to due process of law as protected by the Fourteenth Amendment and made actionable pursuant to 42 U.S.C. sec. 1983.

57. By falsely arresting plaintiff, using excessive force against him and maliciously prosecuting him, defendant Valastro retaliated against plaintiff for the latter's political views in violation of the First Amendment as made actionable by 42 U.S.C. sec. 1983.

### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff prays that this Honorable Court accept jurisdiction over this matter, empanel a jury to fairly hear and decide this matter, award plaintiff compensatory damages as against each defendant with pre and post-judgment interest, award punitive damages against each defendant, award

defendants to pay the reasonable attorneys fees and costs arising from this matter and enter any other order which the interests of justice and equity require.

Respectfully submitted,

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Dated: March 12, 2010