

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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KEVIN FLEMING,

Plaintiff,

vs.

***COMPLAINT***

CITY OF BEACON, JASON WALDEN, TIMOTHY  
McDONOUGH, JOSEPH M. CONTI, THOMAS FIGLIA,  
BRIAN LAWRENCE, RUSH GREENOUGH, ANTHONY  
HOPPER, MICHAEL P. O'CONNOR, all police  
officers employed by the City of Beacon Police  
Department,

Defendants.

-----X

Plaintiff, Kevin Fleming, by and through his counsel, Michael Sussman,  
hereby states and alleges as and for his Complaint:

## ***PARTIES***

1. Plaintiff is a resident of the County of Dutchess, State of New York and is of legal age. He resides at 5 Marino Road, Poughkeepsie, New York.

2. Defendant City of Beacon is a municipality situated in the County of Dutchess, State of New York. It may sue and be sued.

3. At the time of the acts upon which this complaint is based, defendants Walden, McDonough, Conti, Figlia, Lawrence, Greenough, Hooper and O'Connor were police officers employed by the City of Beacon Police Department. The actions and omissions about which plaintiff complains were undertaken by defendants under color of state law.

## ***JURISDICTION***

4. This Honorable Court has jurisdiction over this matter pursuant to 28 U.S.C. sec. 1331, 1343 (3) & (4) and 42 U.S.C. secs. 1983 and 1988.

## ***FACTUAL ALLEGATIONS***

5. On March 14, 2009, plaintiff was attending a sanctioned "Beer Pub Crawl" held in the City of Beacon.

6. At about 8:52 pm, plaintiff was arrested and charged with Riot, a Class A Misdemeanor, Resisting Arrest, another Class A Misdemeanor and Disorderly Conduct, a violation.

7. The person who wrote the informations for each of these offenses was defendant Jason D. Walden.

8. In writing up informations and propounding these charges, Walden swore that “This Complaint is based on personal knowledge and information and belief, the source being, DIRECT OBSERVATION...”

9. In fact, Walden had made no direct observations which related to the three offenses for which he wrote up Fleming.

10. On the basis of the Walden informations, the Dutchess County District Attorney’s Office prosecuted plaintiff.

11. At the trial of plaintiff on these matters, defendant Walden testified that he had made no direct observations concerning these three offenses.

12. On the basis of this testimony, City Court dismissed the charges against the plaintiff.

13. On March 14, 2009, four of defendant police officers physically attacked and beat the plaintiff.

14. After plaintiff was handcuffed, defendant Conti used a police dog, with no necessity, to inflict sadistic physical wounds upon the plaintiff.

15. A second police dog, dispatched in the presence of the defendant offices, also bit plaintiff.

15. Said police dogs bit plaintiff on the arm and leg, causing puncture wounds, extreme pain and suffering.

16. Likewise, after plaintiff was handcuffed, said defendants tased plaintiff and took him into custody.

17. Once in custody, despite his bloody and beaten condition, plaintiff was taken to a holding cell.

18. There, during the next five hours, plaintiff repeatedly requested medical attention.

19. Defendants denied plaintiff any medical attention for these hours.

20. Plaintiff suffered substantial pain and suffering as a consequence of the beating, the tasing and the bites by the police dog.

21. Defendants acted in concert as against plaintiff and are each responsible for inflicting the beating, tasing and police bites upon the plaintiff.

22. Defendants each failed to intervene to stop the wanton and unwarranted physical assault against the plaintiff.

23. Defendant City failed to properly supervise and/or train and/or discipline its police officers, thus proximately causing the injuries to plaintiff.

24. Numerous police officers employed by the defendant police agency engaged in an orgy of violence against peaceful party-goers on March 14, 2009.

25. The numerosity of officers and supervisors involved in the use of excessive force against plaintiff and others demonstrates the absence of training and supervision by defendant City of Beacon, acting through its police agency.

26. The same factors and the gross and excessive force used against this plaintiff and others demonstrates that the defendant City has a pattern and practice of condoning and encouraging the use of excessive force against civilians,

including those who have been handcuffed and are defenseless against tasers or dogs or other forms of force.

27. After their use of excessive force against this plaintiff and others, the defendants conspired to file false police reports which exaggerated the conduct of this plaintiff and others and thereby sought to justify the use of excessive and injurious force.

28. These reports were approved by supervisory personnel.

29. These reports included false descriptions of the events preceding the use of physical force, false descriptions of the force used, false descriptions of the resistance to said force by the plaintiff, amongst others, and false descriptions of the plaintiff's refusal to be transported for medical care.

30. Said false reports were prepared by each of the defendants.

31. For the first month after this incident, plaintiff experienced pain in his left arm.

32. Plaintiff has scars on his left arm and left leg from the dog bites.

33. Plaintiff has continued to experience anger, anxiety and distress as a

consequence of the defendants' acts and omissions.

### ***CAUSES OF ACTION***

34. Plaintiff incorporates paras. 1-33 as if fully re-stated herein.

35. By falsely arresting plaintiff, defendants violated his rights as protected by the 4th Amendment to the United States Constitution, as enforced through 42 U.S.C. sec. 1983.

36. By inflicting excessive and wanton force against the plaintiff both before and after he was in custody or by standing by while excessive force was inflicted upon a cuffed individual, the plaintiff, defendants violated the 8th and 14th Amendments to the United States Constitution, as enforced through 42 U.S.C. sec. 1983.

37. By maliciously prosecuting plaintiff through false instruments, defendant Walden violated the due process clause of the 14th Amendment, as enforced through 42 U.S.C. sec. 1983.

38. By failing to train, supervise and discipline its police officers and so proximately causing the other constitutional violations alleged herein, defendant

City of Beacon violated the due process clause of the 14 th Amendment, as enforced through 42 U.S.C. sec. 1983.

***PRAYER FOR RELIEF***

WHEREFORE, plaintiff prays that this Honorable Court:

- a) assume jurisdiction in this matter;
- b) empanel a jury to hear and decide the matter;
- c) award to plaintiff compensatory damages as against these defendants, jointly and severally, in the sum of \$750,000;
- d) award to plaintiff punitive damages as against the individual defendants, jointly and severally, in the sum of \$1,000,000;
- e) award to plaintiff and against defendants, jointly and severally the attorneys fees and costs arising from this matter and
- f) enter any other order required by the interests of justice and equity.

Respectfully submitted,

MICHAEL H. SUSSMAN [3497

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Counsel for Plaintiff

Dated: September 8, 2010