

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LEE WOODS,

Plaintiff,

-against-

THE CITY OF NEW YORK, CAPTAIN CHARLES
MATTHEWS, CORRECTION OFFICER PIERRE PEAN,
CORRECTION OFFICER OSVALDO RIVERA,
CORRECTION OFFICER CHARLES CHANDLER,
CORRECTION OFFICER KENYATTA NICHOLSON,

Defendants.
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FIRST AMENDED
COMPLAINT AND
JURY DEMAND

Docket # 09CV00598(AKH)

ECF CASE

PRELIMINARY STATEMENT

1. This is a civil rights action in which plaintiff seeks relief for the violation of his rights under the Fourth and Fourteenth Amendments secured by 42 U.S.C. §1983, and the laws and Constitution of the State of New York.

2. The claim arises from an October 26, 2007 incident in which Officers of the New York City Department of Correction ("DOC") acting under color of state law, intentionally and willfully subjected plaintiff to, among other things, excessive force, assault and battery, and deprivation of liberty.

3. Plaintiff seeks monetary damages (special, compensatory, and punitive) against defendants, as well as an award of costs and attorneys' fees, and such other and further relief as the Court deems just and proper.

JURISDICTION

4. This action is brought pursuant to 28 USC §1331 and 42 USC §1983. Pendent party

jurisdiction and supplementary jurisdiction over plaintiffs' state law claims are asserted.

5. The amount in controversy exceeds \$75,000.00 excluding interest and costs.

6. Venue is laid within the United States District Court for the Southern District of New York in that Defendant City of New York is located within and a substantial part of the events giving rise to the claim occurred within the boundaries of the Southern District of New York.

PARTIES

7. Plaintiff, Mr. Lee Woods, is a citizen of the United States. He was in the custody of the Department of Corrections at the time of the incident as a pre-trial detainee.

8. The City of New York is a municipal corporation organized under the laws of the State of New York.

9. Captain Matthews, upon information and belief, was an employee of the DOC on October 26, 2007 and is sued in his individual capacity.

10. Correction Officer Pean, upon information and belief, was an employee of the DOC on October 26, 2007 and is sued in his individual capacity.

11. Correction Officer Rivera, upon information and belief, was an employee of the DOC on October 26, 2007 and is sued in his individual capacity.

12. Correction Officer Chandler, upon information and belief, was an employee of the DOC on October 26, 2007 and is sued in his individual capacity.

13. Correction Officer Nicolas, upon information and belief, was an employee of the DOC on October 26, 2007 and is sued in his individual capacity.

14. At all times here mentioned defendants were acting under color of state law, to wit, under color of the statutes, ordinances, regulations, policies, customs and usages of the City and State of New York.

NOTICE OF CLAIM

15. Within 90 days of the events giving rise to this claim, plaintiff filed written notice of claim with the New York City Office of the Comptroller. Over 30 days have elapsed since the filing of that notice, and this matter has not been settled or otherwise disposed of.

FACTUAL ALLEGATIONS

16. On October 26, 2007, at approximately 5:00 pm, plaintiff was in DOC custody at the main intake area in George R. Vierno Center ("GRVC"), a facility on Riker's Island.

17. Several guards came to plaintiff's cell on 12 main, cell number one, for a search.

18. The search did not result in any contraband.

19. Captain Matthews directed the officers to take plaintiff to intake for a strip search.

20. Plaintiff was strip searched at intake.

21. The strip search did not result in any contraband.

22. Plaintiff was detained in an intake cell at GRVC for several hours.

23. Guards returned and strip searched plaintiff a second time.

24. Plaintiff asked, in sum and substance, for what did he need to be strip searched a second time.

25. The officers tried to come into plaintiff's cell but plaintiff put his arm on top of the holding pen lock.

26. With the key at the lock, Captain Matthews began stabbing plaintiff in the hand until plaintiff moved his hand.

27. Guards entered plaintiff's cell and handcuffed plaintiff.

28. Guards then moved plaintiff to the search area and placed him against the wall.

29. Defendant Captain Matthews, Correction Officers Pean, Nicolas, Chandler and Rivera

were present.

30. One of the defendant officers said, in sum and substance, "You fucking cop killer what's up with you now", "black stupid monkey" and "we should kill you".

31. An officer started hitting plaintiff in the face with what, upon information and belief, was the handcuffs normally used to bind prisoners' feet.

32. An officer started punching plaintiff in his ribs.

33. Another officer, defendant Officer Chandler grabbed plaintiff and threw him on the ground.

34. Plaintiff was still handcuffed.

35. While plaintiff is on the floor handcuffed, defendant officers kick him all over his body until plaintiff lost consciousness.

36. When plaintiff regained consciousness, some of his dreadlocks had been pulled out and were scattered on the floor, and plaintiff was wearing different clothing.

37. Plaintiff was removed from GRVC by Emergency Medical Services, which took plaintiff to Elmhurst Hospital.

38. At Elmhurst Hospital plaintiff received xrays to his chest, pelvis and fingers as well as CT SCANS to his head, cervical spin, facial area, chest, abdomen/pelvis.

39. At Elmhurst Hospital plaintiff was found to have suffered displaced fractures involving the left medial orbital wall and left orbital floor (or a blow out facial fracture), left eye bruised and hemorrhaging, a laceration over the right eyebrow, nasal bone deformity, left ear swelling, displaced fracture of the left L4 transverse process, a chipped incisor tooth with bleeding over gum line, and plaintiff complained of pain to his head, neck, knees, ribs and back.

40. At all times during the events described above, the Corrections Officers were engaged

in a joint venture and formed an agreement to violate plaintiff's rights. The individual officers assisted each other in performing the various actions described and lent their physical presence and support and the authority of their office to each other during said events. They failed to intervene in the obviously illegal actions of their fellow officers against plaintiff.

41. During all of the events above described, defendants acted maliciously and with intent to injure plaintiff.

DAMAGES

42. As a direct and proximate result of the acts of defendants, plaintiff suffered the following injuries and damages:

- a. Violation of his right to Due Process of Law under the Fourteenth Amendment to the United States Constitution;
- b. Violation of his right under the Eighth Amendment to be free from cruel and unusual punishment;
- c. Violation of his New York State Constitutional right under Article 1, Section 6 to Due Process of Law;
- d. Violation of his New York State Constitutional right under Article 1, Section 5, to be free from cruel and unusual punishment;
- e. Physical pain and suffering;
- f. Emotional trauma and suffering, including fear, embarrassment, humiliation, emotional distress, frustration, extreme inconvenience, anxiety; and
- g. Deprivation of his liberty.

FIRST CAUSE OF ACTION
(42 USC § 1983)

43. The above paragraphs are here incorporated by reference.

44. Defendants acted under color of law and conspired to deprive plaintiff of his civil, constitutional and statutory rights to be free from cruel and unusual punishment under the Eighth Amendment and his right to due process of law pursuant to the Fourteenth Amendment to the United States Constitution, and are liable to plaintiff under 42 U.S.C. §1983 and §§ 5 and 6 of the New York State Constitution.

45. Plaintiff has been damaged as a result of defendants' wrongful acts.

SECOND CAUSE OF ACTION
(MUNICIPAL LIABILITY)

46. The above paragraphs are here incorporated by reference.

47. The City of New York is liable for the damages suffered by plaintiff as a result of the conduct of their employees, agents, and servants.

48. The City of New York knew or should have known of its employees', agents', or servants' propensity to engage in the illegal and wrongful acts detailed above.

49. The aforesaid event was not an isolated incident. The City of New York has been aware for some time (from lawsuits, notices of claim, inmate complaints, internal investigations, etc.) that many of their officers are insufficiently trained on how to avoid excessive use of force. The City of New York insufficiently disciplines officers for not reporting fellow officers' misconduct that they have observed, and it fails to discipline officers for making false statements to disciplinary agencies. The investigatory body responsible for monitoring officer behavior, the Inspector General's office, also wrongfully allows officers to write their own reports, rather than interviewing officers individually, although inmates are only interviewed individually. In

addition, the Inspector General routinely fails to investigate claims of violence or abuse when the person suffering does not initiate the claim. The City of New York is aware that all of the aforementioned has resulted in violations of citizens' constitutional rights. Despite such notice, defendants have failed to take corrective action. This failure and these policies caused the officers in the present case to violate plaintiff's civil and constitutional rights, without fear of reprisal.

50. The City of New York knew or should have known that the officers who caused plaintiff's injury had a propensity for the type of conduct that took place in this case. Nevertheless, the City of New York failed to take corrective action. Without proper supervision not only is this abusive behavior ignored, it is condoned.

51. The City of New York has failed to take the steps to discipline, train, supervise or otherwise correct the improper, illegal conduct of the individual defendants in this and in similar cases involving misconduct.

52. The above described policies and customs demonstrated a deliberate indifference on the part of policymakers of the City of New York to the constitutional rights of persons within New York City, and were the cause of the violations of plaintiff's rights here alleged.

53. The City of New York has damaged plaintiff by their failure to properly train, supervise, discipline, review, remove, or correct the illegal and improper acts of their employees, agents or servants in this and in similar cases involving officer misconduct.

54. Plaintiff has been damaged as a result of the wrongful, negligent and illegal acts of the City of New York.

THIRD CAUSE OF ACTION
(ASSAULT)

55. The above paragraphs are here incorporated by reference.

56. Defendants, by repeatedly hitting, punching, and kicking plaintiff while he was handcuffed, made plaintiff fear for his physical well-being and safety and placed him in apprehension of immediate harmful and/or offensive touching.

57. Defendants have deprived plaintiff of his civil, constitutional and statutory rights and have conspired to deprive him of such rights and are liable to plaintiff under common law, 42 USC §1983 and New York State laws and Constitution.

58. Plaintiff was damaged by defendants' assault.

FOURTH CAUSE OF ACTION
(BATTERY)

59. The above paragraphs are here incorporated by reference.

60. Defendants, by repeatedly punching, hitting, and kicking plaintiff while he was handcuffed made plaintiff fear for his physical well-being and safety and placed him in apprehension of immediate harmful and/or offensive touching, used excessive and unnecessary force with plaintiff for no penological purpose and battered him.

61. Defendants have deprived plaintiff of his civil, constitutional and statutory rights and have conspired to deprive him of such rights and are liable to plaintiffs under common law, 42 USC §1983 and the New York State Constitution.

62. Plaintiff was damaged by defendant's battery and excessive force.

FIFTH CAUSE OF ACTION
(NEGLIGENT HIRING & RETENTION)

63. The above paragraphs are here incorporated by reference.

64. Defendant officers had a bad disposition and the City of New York knew or should have known of facts that would have led reasonable and prudent people to further investigate the

defendant officers' bad dispositions through the hiring process.

65. Defendant City of New York knew or should have known that their failure to investigate defendant officers' bad dispositions would lead to plaintiff's injury.

66. Defendant City of New York was negligent in their hiring and retaining the officers involved in this case in that they knew or should have known of the officers' propensity to use excessive force.

67. Defendant City of New York has deprived plaintiff of his civil, constitutional and statutory rights and have conspired to deprive him of such rights and are liable to plaintiff under common law, 42 USC §1983 and the New York State Constitution.

68. The injury to plaintiff was caused by the officers' foreseeable use of excessive force.

SIXTH CAUSE OF ACTION
(RESPONDEAT SUPERIOR)

69. The above paragraphs are here incorporated by reference.

70. Defendants' intentional tortious acts were undertaken within the scope of their employment by defendant City of New York and in furtherance of the defendant City of New York's interest.

71. As a result of defendants' tortious conduct in the course of their employment and in furtherance of the business of defendant City of New York, plaintiff was damaged.

WHEREFORE, plaintiff demands judgment against the defendants, jointly and severally, as follows:

- A. In favor of plaintiff in an amount to be determined by a jury for each of plaintiff's causes of action;
- B. Awarding plaintiff punitive damages in an amount to be determined by a jury;

C. Awarding plaintiff reasonable attorneys' fees, costs and disbursements of this action; and

D. Granting such other and further relief as this Court deems just and proper.

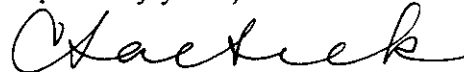
JURY DEMAND

Plaintiff demands a trial by jury.

DATED: Brooklyn, New York
January 26, 2011

TO: New York City
Corporation Counsel Office
100 Church Street, 4th floor
New York, NY 10007 on behalf of
defendants Captain Charles Matthews,
Correction Officer Charles Chandler,
Correction Officer Osvaldo Rivera,
Correction Officer Kenyatta Nicholson,
Correction Officer Pierre Pean

Respectfully yours,



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