

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JUDGE KARAS

MARK BERNSTEIN, individually and as  
Parent and Natural Guardian of [REDACTED]  
[REDACTED], an Infant under the age of  
17 years,

Civil Case No.

11 CV 3677  
VERIFIED COMPLAINT

JURY DEMANDED

Plaintiffs,

-against-

THE VILLAGE OF PIERMONT, [REDACTED]  
[REDACTED] and  
[REDACTED]

Defendants.

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Plaintiffs, by their attorneys Levine & Gilbert, complaining of the defendants, set forth and allege as follows:

**JURISDICTION**

1. Plaintiffs bring the causes of action set forth below predicated upon violations of 42 U.S. Code Section 1983 by all named defendants, both jointly and severally. Said defendants were departments under "the Municipal - Function Theory"; see *Janusaitis v. Middlebury Volunteer Fire Department*, 607 F.2d 17 (2d Circ., 1979).

**PARTIES**

- 2. Plaintiffs: MARK BERNSTEIN, individually and as Parent and Natural Guardian of [REDACTED], an Infant under the age of 17 years  
Address: 18 Lester Drive  
Orangeburg, New York 10962
- 3. Defendant: Village of Piermont  
c/o Village Clerk's Office  
Address: 478 Piermont Avenue  
Piermont, NY 10968

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED:

Defendant: [REDACTED]  
Official Position: Volunteer Firefighter  
Address: c/o Village Clerk's Office  
478 Piermont Avenue  
Piermont, NY 10968

Defendant: [REDACTED]  
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**AS AND FOR A FIRST SEPARATE AND  
DISTINCT CAUSE OF ACTION IN FAVOR OF  
PLAINTIFF ADAM BERNSTEIN INDIVIDUALLY  
PURSUANT TO U.S. CODE SECTION 1983**

**FIRST:** That upon information and belief and at all the times hereinafter mentioned, the defendant THE VILLAGE OF PIERMONT is a municipal entity organized under and by virtue of the laws of the State of New York.

**SECOND:** That upon information and belief and at all the times hereinafter mentioned, within the confines of THE VILLAGE OF PIERMONT and subject to its jurisdiction is the Village of Piermont Fire Department operating upon a voluntary basis pursuant to rules and regulations promulgated, implemented and administered by the aforesaid THE VILLAGE OF PIERMONT.

**THIRD:** That defendants [REDACTED] were at all the times hereinafter mentioned volunteer firefighters under the auspices, regulation and control of THE VILLAGE OF PIERMONT.

**FOURTH:** That at all the times hereinafter mentioned, plaintiff [REDACTED] [REDACTED] was at all times a volunteer firefighter under the auspices, regulation and control of THE VILLAGE OF PIERMONT.

**FIFTH:** That upon information and belief, sometime prior to August 14, 2010, and on occasions too numerous to mention, the defendant THE VILLAGE OF PIERMONT promulgated, fostered and implemented a policy whereby new arrivals (“initiates”) into the position of volunteer firefighter would be subject to a form of “hazing” whereby fellow firefighters would restrain the initiate’s movements depriving him of his freedom of movement, expose their genitals to the said initiate, and attempt to forcibly cause the initiate to place his hand upon and/or fondle the genitals of various members of the Piermont Fire Department, and/or force the said initiate against his will by dint of duress to sodomize an existing firefighter.

**SIXTH:** That upon information and belief, the aforementioned exercise of what the defendant THE VILLAGE OF PIERMONT deemed to be “hazing” was done to each and every named individual defendant herein and further deemed to be a ritual utilized as a “rite of passage”, a prerequisite in acceptance into THE VILLAGE OF PIERMONT Fire Department subsequent to each person’s induction therein.

**SEVENTH:** That upon information and belief and in light of the aforementioned, said “hazing” was undertaken in furtherance of defendants’ positions as volunteer firefighters in THE VILLAGE OF PIERMONT Fire Department, and pursuant to an accepted policy of said volunteer fire department and thus within the scope of their duties and authority.

**EIGHTH:** That at the time the infant plaintiff was inducted into THE VILLAGE OF PIERMONT Fire Department, he was unaware of the aforementioned “hazing” ritual.

**NINTH:** That upon information and belief and at all the times hereinafter mentioned, this form of contact and/or rite of passage was well known to the defendant THE VILLAGE OF PIERMONT.

**TENTH:** That the said VILLAGE OF PIERMONT took no steps to prevent this rite of passage and as such acquiesced in its implementation.

**ELEVENTH:** That the defendant THE VILLAGE OF PIERMONT exhibited callous disregard and/or deliberate indifference as to the indicia of the aforementioned acts against various initiates to THE VILLAGE OF PIERMONT Volunteer Fire Department which they operated and controlled.

**TWELFTH:** That the nature and degree of the defendant THE VILLAGE OF PIERMONT's willful non-supervision of its Volunteer Fire Department and the aforementioned activities hereinbefore set forth manifested a deliberate indifference to these violations of the civil rights of the initiates and caused, suffered and/or allowed the co-defendants to be, become and remain empowered to commit the violations of plaintiff's civil rights as well as the civil rights of others without fear of reprisal, resistance, or, for that matter, any discipline whatsoever, thus creating a receptive atmosphere for the various acts of pedophilia performed by the co-defendants herein.

**THIRTEENTH:** That on or about the 14<sup>th</sup> day of August, 2010, at or about 9:00 P.M., and within the jurisdiction of the defendant THE VILLAGE OF PIERMONT, each named defendant, to wit, [REDACTED], negligently, carelessly, wantonly, and willfully physically restrained the infant plaintiff, depriving him of his rights and freedom of movement and exposed their genitals to the infant claimant, forcibly causing the infant plaintiff to engage in acts of sodomy, all against his will and consent.

**FOURTEENTH:** That the said infant plaintiff did not consent to the aforementioned outrageous conduct.

**FIFTEENTH:** That the said defendants individually and collectively violated the infant plaintiff's rights under 42 U.S.C. §1983 in that they acted under color of right as State agents in a forcible non-consensual manner, forcibly restraining said infant plaintiff and attempting to maneuver his body against his will so as to commit the aforementioned outrageous conduct.

**SIXTEENTH:** That the defendant VILLAGE OF PIERPONT violated the infant plaintiff's rights pursuant to 42 .S.C. §1983 in that they fostered a Government custom in facilitating such outrageous conduct in violation of 42 U.S.C. §1983 by dint of their edicts and/or acts that may fairly be said to represent official policy; *see Monell v. Dept. Social Serv.*, 436 U.S. 658 (1977).

**SEVENTEENTH:** That the actions of the aforesaid defendants resulted in making the infant plaintiff physically and psychologically ill, requiring him to seek and secure medical/psychological intervention, and upon information and belief the aforesaid infant plaintiff has been permanently damaged as a result thereof.

**EIGHTEENTH:** That no actions on the part of the infant plaintiff caused or contributed to the events aforementioned and the damages incurred.

**NINETEENTH:** That on the 11th day of November, 2010, plaintiff caused a Notice of Claim to be filed with the defendant VILLAGE OF PIERMONT at the Village Clerk's Office, 478 Piermont Avenue, Piermont, New York, setting forth therein the name and post office address of each claimant and claimant's attorney, the nature of the claim, the time when and the place where and the manner in which the claim arose, and the items of damage or injury claimed. That said Notice of Claim was filed within ninety (90) days from the date the causes of action herein

arose, and that said Notice of Claim was duly verified by the Father and Natural Guardian of said infant MARK BERNSTEIN.

**TWENTIETH:** That more than thirty (30) days have transpired since the filing of said Notice of Claim, and the Village of Piermont has failed and/or neglected to settle and/or adjust said claim.

**TWENTY-FIRST:** That more than thirty (30) days have transpired since the filing of said Notice of Claim and the Village of Pierpont has failed and/or neglected to demand a 50-H hearing concerning said claim, or, in the alternative, that they have demanded and undertaken such 50-H hearing as a prerequisite to the bringing of this lawsuit.

**TWENTY-SECOND:** That the within cause of action was brought within one (1) year since each cause of action herein arose.

**TWENTY-THIRD:** That as a result of the aforementioned, plaintiff has been damaged in an amount, exclusive of interests and costs, which exceeds the sum or value specified by 28 U.S.C. Sec. 1332.”

**AS AND FOR A SECOND SEPARATE AND  
DISTINCT CAUSE OF ACTION ON BEHALF OF  
PLAINTIFF ADAM BERNSTEIN INDIVIDUALLY**

**TWENTY-FOURTH:** Plaintiff repeats, reiterates and realleges as part of this cause of action each and every allegation set forth in paragraphs marked “FIRST” through “TWENTY-SECOND” inclusive, with the same force and effect as if fully set forth herein.

**TWENTY-FIFTH:** That as a result of the negligent/intentional and wrongful acts of the defendants jointly and severally and in violation of the infant plaintiff’s rights pursuant to Section 1983 of the U.S. Code, the infant plaintiff was subject to being falsely imprisoned in that he was physically restrained against his will, certain portions of his body being manipulated to further

the attempted sexual abuse foisted upon said infant plaintiff, all in violation of his rights to move about in an unrestricted manner.

**TWENTY-SIXTH:** That the infant plaintiff did nothing to cause or provoke this conduct.

**TWENTY-SEVENTH:** That as a result of the aforementioned, plaintiff has been damaged in an amount, exclusive of interests and costs, which exceeds the sum or value specified by *28 U.S.C. Sec. 1332.*”

**AS AND FOR A THIRD SEPARATE AND  
DISTINCT CAUSE OF ACTION IN FAVOR  
OF PLAINTIFF [REDACTED]**

**TWENTY-EIGHTH:** Plaintiff repeats, reiterates and realleges as part of this cause of action each and every allegation set forth in paragraphs marked “FIRST” through “TWENTY-SIXTH” inclusive, with the same force and effect as if fully set forth herein.

**TWENTY-NINTH:** That the aforementioned illegal actions of the defendants jointly and severally and in violation of the infant plaintiff’s rights pursuant to Section 1983 of the U.S. Code revealed to the infant plaintiff that they had the immediate ability to endanger and/or assault the infant plaintiff against his will, thus provoking uncontrollable fear in his mind.

**THIRTIETH:** That as a result of the aforementioned, plaintiff has been damaged in an amount, exclusive of interests and costs, which exceeds the sum or value specified by *28 U.S.C. Sec. 1332.*”

**AS AND FOR A FOURTH SEPARATE  
AND DISTINCT CAUSE OF ACTION**

**THIRTY-FIRST:** Plaintiff repeats, reiterates and realleges as part of this cause of action each and every allegation set forth in paragraphs marked “FIRST” through “TWENTY-

NINTH” inclusive, with the same force and effect as if fully set forth herein.

**THIRTY-SECOND:** That the infant plaintiff was battered, physically restrained, pushed, shoved, pummeled and forced into submission, all against his will, by the joint and several actions of all named defendants in violation of the infant plaintiff’s rights pursuant to Section 1983 of the U.S. Code.

**THIRTY-THIRD:** That as a result of the aforementioned, plaintiff has been damaged in an amount, exclusive of interests and costs, which exceeds the sum or value specified by 28 U.S.C. Sec. 1332.”

**AS AND FOR A FIFTH SEPARATE  
AND DISTINCT CAUSE OF ACTION**

**THIRTY-FOURTH:** Plaintiff repeats, reiterates and realleges as part of this cause of action each and every allegation set forth in paragraphs marked “FIRST” through “THIRTY-SECOND” inclusive, with the same force and effect as if fully set forth herein.

**THIRTY-FIFTH:** That the conduct of each defendant jointly and severally and in violation of the infant plaintiff’s rights pursuant to Section 1983 of the U.S. Code inflicted serious, severe and permanent temporal harm upon the infant plaintiff in that it was so universally outrageous, insensitive, vile and contemptuous that it will engender public scorn and repudiation, nevertheless causing untold emotional damage to the infant plaintiff.

**THIRTY-SIXTH:** That as a result of the aforementioned, plaintiff has been damaged in an amount, exclusive of interests and costs, which exceeds the sum or value specified by 28 U.S.C. Sec. 1332.”

**WHEREFORE,** plaintiff demands that judgment be made and entered herein as follows:



(a) on the first cause of action in an amount, exclusive of interests and costs, which exceeds the sum or value specified by *28 U.S.C. Sec. 1332.*”

(b) on the second cause of action in an amount, exclusive of interests and costs, which exceeds the sum or value specified by *28 U.S.C. Sec. 1332.*”

(c) on the third cause of action in an amount, exclusive of interests and costs, which exceeds the sum or value specified by *28 U.S.C. Sec. 1332.*

(d) on the fourth cause of action in an amount, exclusive of interests and costs, which exceeds the sum or value specified by *28 U.S.C. Sec. 1332.*

(e) on the fifth cause of action in an amount, exclusive of interests and costs, which exceeds the sum or value specified by *28 U.S.C. Sec. 1332.*

Dated: New York, New York  
May 31, 2011

LEVINE & GILBERT

By: 

Richard A. Gilbert [9293]

Attorneys for Plaintiff  
115 Christopher Street  
New York, New York 10014  
(212) 645-1990

**ATTORNEY'S VERIFICATION**

STATE OF NEW YORK    )  
                                  ) ss.:  
COUNTY OF NEW YORK )


RICHARD A. GILBERT, an attorney, affirms under penalties of perjury:

That he is the attorney for the plaintiffs in the within entitled action. That he has read the foregoing COMPLAINT and knows the contents thereof. That the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, he believes it to be true.

That the reason this Verification is made by your affirmant and not by the plaintiffs is that the plaintiffs do not reside in the county where your affirmant has his office.

That the sources of your affirmant's information and belief are conversations had with the plaintiffs as well as records on file and in his possession.

Dated: New York, New York  
May 31, 2011

  
\_\_\_\_\_  
RICHARD A. GILBERT [9293]