

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</p> <p>City and County Building 1437 Bannock Street Denver, Colorado 80202</p>	
<p>Plaintiffs:</p> <p>SCARLET RANCH, a privately owned club; BRADLEY MITCHELL; KENDALL SEIFERT; and ERIN SCHREIBERG</p> <p>v.</p> <p>Defendants:</p> <p>SERGEANT DANIEL STEELE; SERGEANT ANDREW HOWARD; OFFICER CHRIS SCHOTTS; OFFICER NICK RANDOLPH; OFFICER PHILIP COLEMAN; OFFICER ROBERT FAMBROUGH; OFFICER ANTONIO GUARDADO; JOHN DOE OFFICERS I-III; and THE CITY AND COUNTY OF DENVER, COLORADO.</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Counsel for Plaintiffs:</p> <p>Lonn M. Heymann #34793 Raymond K. Bryant #42586 Lonn Heymann Law Firm, P.C. 1391 Speer. Blvd. Ste. 550 Denver, CO 80204 Phone: (303) 825-9100 Fax: (303) 416-4264</p>	<p>Case No.:</p> <p>Courtroom/Division:</p>
<p>COMPLAINT FOR DAMAGES – JURY TRIAL DEMANDED</p>	

Plaintiffs, Scarlet Ranch, Kendall Seifert, Erin Schreiber, and Bradley Mitchell by and through their attorneys, Lonn M. Heymann and Raymond K. Bryant of LONN HEYMANN LAW FIRM, P.C., for their Complaint and Jury Demand against Defendants, state and allege as follows:

INTRODUCTION

1. This is an action by Scarlet Ranch, a private club, and its owner, Kendall Seifert, and some volunteers, Erin Schreiber and Bradley Mitchell (collectively, "Plaintiffs"), for violations of Plaintiffs' Fourth Amendment rights during a police raid on the club on or about May 5, 2010. The action is brought against named and unnamed City and County of Denver police officers and the City and County of Denver. Officers illegally entered, searched, and seized Scarlet Ranch without a warrant, and illegally stopped, detained, arrested, and maliciously prosecuted Erin Schreiber and Bradley Mitchell, lacking probable cause. After the officers lawlessly entered the club, they used unreasonable force to purposefully injure Bradley Mitchell. Members of Vice Team 50 attempted to conspire to cover-up and conceal the evidence of police misconduct.

2. After officers were alerted to the fact that their illegal use of force was likely caught on camera by Scarlet Ranch's internal security system, the officers attempted to steal and conceal the video surveillance recording of the incident. However, the recording on the VHS cassette that the officers removed did not capture their misdeeds. Defendants took the VHS cassette from an entertainment system, and failed to confiscate the evidence of their false entry and unreasonable use of force. The police misconduct was recorded instead on a digital surveillance system kept in a different location. The officers' actions, including their attempt to steal the surveillance recording, are recorded on a system that the police failed to remove and conceal. That recording is in the possession of Plaintiffs.

3. Plaintiffs seek compensation for physical and emotional harm, loss of liberty, economic damages, and damage to interests in association caused by the deprivation of their constitutional rights. Plaintiffs seek punitive sanctions for their federal civil rights claims to punish the individual officers, deter future misconduct, and to demonstrate that such wanton and willful abuse of authority is intolerable.

JURISDICTION AND VENUE

4. This action arises under the Constitution and laws of the United States, and 42 U.S.C. § 1983.

5. Venue is proper in the City and County of Denver, State of Colorado, because the incidents and resultant injuries to the s giving rise to this action occurred in the City and County of Denver, Colorado.

PARTIES

6. Plaintiffs hereby incorporate by reference, as though fully set forth herein, each and every allegation contained in the preceding Paragraphs 1 through 5 of this Complaint.

7. Plaintiff Scarlet Ranch is a privately owned club, comprised of members of Scarlet Ranch, owned and operated by Kendall Seifert. Its principal operations were located at 424 Broadway, in Denver, Colorado, at the time of the police raid.

8. Plaintiff Bradley Mitchell is a volunteer and member of Scarlet Ranch. Plaintiff Mitchell volunteered to help operate the club during the night of the incident on or about May 5, 2010. Plaintiff Mitchell was at all times relevant to the claims set forth herein a resident of the State of Colorado.

9. Plaintiff Kendall Seifert is the owner and operator of the private club, Scarlet Ranch. He was the owner and operator of the club during the night of the incident on or about May 5, 2010. Plaintiff Seifert was at all times relevant to the claims set forth herein a resident of the State of Colorado.

10. Plaintiff Erin Schreiber is a volunteer and member of Scarlet Ranch. Ms. Schreiber volunteered to help operate the club during the night of the incident on or about May 5, 2010. Ms. Schreiber was at all times relevant to the claims set forth herein a resident of the State of Colorado.

11. Defendant Sergeant Daniel Steele was, at all times relevant to the subject matter of the claims in this action, employed as a police officer by the City and County of Denver and acting under color of law. Defendant Officer is named in his individual and official capacity.

12. Defendant Sergeant Andrew Howard was, at all times relevant to the subject matter of the federal claims in this action, employed as a police officer by the City and County of Denver and acting under color of law. Defendant Officer is named in his individual capacity.

13. Defendant Officer Chris Schotts was, at all times relevant to the subject matter of the federal claims in this action, employed as a police officer by the City and County of Denver and acting under color of law. Defendant Officer is named in his individual capacity.

14. Defendant Officer Nick Randolph was, at all times relevant to the subject matter of the federal claims in this action, employed as a police officer by the City and County of Denver and acting under color of law. Defendant Officer is named in his individual capacity.

15. Defendant Officer Phillip Coleman was, at all times relevant to the subject matter of the federal claims in this action, employed as a police officer by the City and County of Denver and acting under color of law. Defendant Officer is named in his individual capacity.

16. Defendant Officer Robert Fambrough was, at all times relevant to the subject matter of the federal claims in this action, employed as a police officer by the City and County of Denver and acting under color of law. Defendant Officer is named in his individual capacity.

17. Defendant Officer Antonio Guardado was, at all times relevant to the subject matter of the federal claims in this action, employed as a police officer by the City and County of Denver and acting under color of law. Defendant Officer is named in his individual capacity.

18. Defendant Officers John Doe I-III are police officers unknown by name at this time. Upon information and belief, they are undercover officers or detectives who aided in the raid on Scarlet Ranch who assisted and or participated in the Constitutional deprivations noticed in this complaint. These officers are believed to have been employed by the City and County of Denver and acted under color of law at all times relevant to the subject matter of the claims in this action. Defendant Officers are named in their individual capacities.

19. Defendant City and County of Denver, Colorado, is a municipality established under the law of Colorado.

20. All Officer Defendants and the City and County of Denver are persons as defined by 42 U.S.C. § 1983.

FACTUAL BACKGROUND

21. Plaintiffs hereby incorporate by reference, as though fully set forth herein, each and every allegation contained in the preceding Paragraphs 1 through 20 of this Complaint.

22. On May 5, 2010, the Denver Police Department sent Sergeant Steele, Vice Team 50, Narcotics Team 90, and all named and unnamed Defendants to Scarlet Ranch to conduct an undercover operation.

23. On the evening of May 5, 2010, two undercover officers, in plain clothes, signed up to become members of the club under false pretenses and searched public areas of Scarlet Ranch for evidence of drug sales.

24. The undercover officers found no evidence of drug sales or drug distribution.

25. Although no evidence of drug sales was found inside Scarlet Ranch, the undercover officers alleged that they observed municipal code violations.

26. The Defendant officers did not have a reasonable belief that a municipal code violation occurred.

27. The police officers did not have a warrant to search or seize Scarlet Ranch or any person inside the club.

28. All named and unnamed officers raided Scarlet Ranch. The officers forced their way into the club using their authority as police officers.

29. The police officers seized the club and all of its facilities.

30. The police ordered everyone out of the club except for Plaintiffs Erin Schreiber and Bradley Mitchell.

31. The police officers searched public and private areas of the club.

32. The police officers stopped and detained Plaintiffs Erin Schreiber and Bradley Mitchell against their will.

33. When Bradley Mitchell was first seized he cooperated and asked for a warrant, exercising his First Amendment rights to free expression to challenge and seek legal justification for entry of Scarlet Ranch and detention of Ms. Schreiber and himself already executed by the officers.

34. Defendant Officers told Plaintiff Mitchell that they did not need a warrant because they would not search the premises.

35. Plaintiff Mitchell was ordered to sit in a chair. He complied and was questioned.

36. Moments later Sergeant Steele told Bradley Mitchell that the officers needed the keys to the office to search for documents.

37. Plaintiff Mitchell asked if Sergeant Steele had a warrant. Plaintiff Mitchell asserted Scarlet Ranch's and his Fourth Amendment rights against seizure of any keys and an unreasonable search of the private area of the office without a warrant.

38. Sergeant Steele became angry with Plaintiff Mitchell.

39. Plaintiff Mitchell remained seated peacefully in the chair. Plaintiff Mitchell showed no signs of aggression. Plaintiff Mitchell did not attempt to get up.

40. Without warning, Sergeant Steele viciously grabbed and yanked Plaintiff Mitchell by his arm, pulling Mr. Mitchell out of the chair he was sitting in.

41. Sergeant Steele forcefully twisted Plaintiff Mitchell around while holding his arm.

42. Sergeant Steele placed Mitchell into a chokehold and jumped on him.

43. Sergeant Steele violently threw his weight on Plaintiff Mitchell, while twisting and choking him. Mitchell was smashed to the ground.

44. Officer Howard struck Plaintiff Mitchell three times with his knee while Mitchell was on the ground.

45. Sergeant Steele handcuffed Plaintiff Mitchell while aggressively and forcefully pushing Plaintiff Mitchell's face against the concrete floor in an effort to cause Plaintiff Mitchell pain.

46. Sergeant Steele rubbed Plaintiff Mitchell's face into the concrete.

47. Plaintiff Mitchell asked the officers what they were doing and told the officers that everything they were doing was being recorded on camera.

48. Sergeant Steele responded to Plaintiff Mitchell by stating "we aren't worried about that."

49. At some point afterward, the officers began a search for the surveillance recording, concerned that it captured their misconduct.

50. Defendant Officers believed they found a recording of their conduct inside the club in the form of VHS cassette inside a recording device that appeared to be connected to a video surveillance system monitoring the interior of Scarlet Ranch club.

51. Sergeant Steele ordered another officer to remove the VHS cassette.

52. An officer took the VHS cassette.

53. The evidence log listing all of the evidence seized from Scarlet Ranch did not include the VHS cassette.

54. The VHS cassette was never returned to Plaintiffs.

55. Plaintiff Mitchell was taken to jail.

56. Plaintiff Mitchell was charged with Resistance, Interference, Dispensing alcohol without a license, and providing glasses/mixers for alcohol. All charges were dismissed.

57. Plaintiff Schreiber was charged with dispensing alcohol without a license and providing glasses/mixers for alcohol. All charges were dismissed.

FIRST CLAIM FOR RELIEF

(42 U.S.C. § 1983 Fourth Amendment Violation – Wrongful Entry and Search and Seizure of the Scarlet Ranch Club)* **(Against Defendant Officers)*

58. Plaintiffs hereby incorporate by reference, as though fully set forth herein, each and every allegation contained in the preceding Paragraphs 1 through 57 of this Complaint.

59. Defendant Officers forced their way into Scarlet Ranch club, under color of state law, without a warrant or sufficient legal justification.

60. Defendant Officers seized Scarlet Ranch club and ordered all members out of the building without sufficient legal justification.

61. Defendant Officers searched Scarlet Ranch club without a search warrant or legal justification.

62. Defendant Officers knowingly failed to release control of Scarlet Ranch club within a reasonable time.

63. The actions of Defendant Officers as described herein, while acting under color of state law, deprived Plaintiffs of their rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, including the right to freedom from unreasonable search and seizure as guaranteed by the Fourth Amendment to the Constitution of the United States of America, made actionable pursuant to 42 U.S.C. §1983.

64. Defendant Officers' conduct proximately caused the deprivation of Plaintiffs' Constitutional rights, resulting in economic losses and other damages to Scarlet Ranch Club and its owner, members, and volunteers.

SECOND CLAIM FOR RELIEF
***(42 U.S.C. § 1983 Fourth Amendment Violation – Wrongful Stop and Detention,
False Arrest, and False Imprisonment)***
(Against Defendant Officers)

65. Plaintiffs hereby incorporate by reference, as though fully set forth herein, each and every allegation contained in the preceding Paragraphs 1 through 64 of this Complaint.

66. Defendant Officers intentionally stopped and detained Plaintiffs Erin Schreiber and Bradley Mitchell without legal justification to enter or be present on the premises.

67. Defendant Officers intentionally stopped, detained and arrested Plaintiffs Erin Schreiber and Bradley Mitchell without reasonable suspicion or probable cause to believe that either person had committed a crime.

68. Defendant Officers knowingly failed to release Plaintiffs Erin Schreiber and Bradley Mitchell after a reasonable time.

69. The actions as described herein of Defendant Officers, while acting under color of state law, deprived Plaintiffs of the rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, including the right to freedom from unreasonable seizure as guaranteed by the Fourth Amendment to the Constitution of the United States of America, made actionable pursuant to 42 U.S.C. §1983.

70. Defendant Officers' conduct proximately caused the deprivation of Plaintiffs' Constitutional rights, resulting in economic losses and other damages to Plaintiffs Schreiber and Mitchell.

THIRD CLAIM FOR RELIEF
***42 U.S.C. § 1983 Fourth Amendment Violation –
Unnecessary and Excessive Force***
(Against Defendants Sergeant Steele and Sergeant Howard)

71. Plaintiffs hereby incorporate by reference, as though fully set forth herein, each and every allegation contained in the preceding Paragraphs 1 through 70 of this Complaint.

72. Defendants Sergeant Steele and Sergeant Howard purposefully applied unnecessary and excessive force to Plaintiff Mitchell.

73. The actions as described herein of Defendants Sergeant Steele and Sergeant Howard, while acting under color of state law, deprived Plaintiff Mitchell of the rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, including the right to freedom from unreasonable seizure as guaranteed by the Fourth Amendment to the Constitution of the United States of America, made actionable pursuant to 42 U.S.C. §1983.

74. Defendant Officers' conduct proximately caused the deprivation of Plaintiff's Constitutional rights, resulting in economic losses and other damages to Plaintiff Mitchell.

FOURTH CLAIM FOR RELIEF
(42 U.S.C. § 1983 Fourth Amendment Violation - Malicious Prosecution)
(Against Defendant Officers)

75. Plaintiffs hereby incorporate by reference, as though fully set forth herein, each and every allegation contained in the preceding Paragraphs 1 through 74 of this Complaint.

76. Defendant Officers did not have probable cause to believe that Plaintiffs Schreiber and Mitchell committed the crimes of dispensing alcohol without a license or providing glasses/mixers for alcohol in violation of the law.

77. Defendant Officers did not have probable cause to believe that Plaintiff Mitchell obstructed or resisted arrest.

78. Defendant Officers knew or should have known that claiming they saw Plaintiffs Schreiber and Mitchell commit these crimes would provide false evidence that would result in Plaintiffs' prosecution.

79. Defendant Officers provided written and oral fabricated statements alleging that Plaintiffs committed these crimes.

80. Defendant Officers were motivated by malice or a desire other than the pursuit of legal justice.

81. Criminal cases were brought against Plaintiffs Schreiber and Mitchell as a result of the statements made by the Defendant Officers. During court proceedings the criminal cases were dismissed on their merits in favor of Plaintiffs Schreiber and Mitchell.

82. The actions as described herein of Defendant Officers, while acting under color of state law, deprived Plaintiffs Schreiber and Mitchell of the rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, including the right to freedom from unreasonable seizure as guaranteed by the Fourth Amendment to the Constitution of the United States of America, made actionable pursuant to 42 U.S.C. §1983.

83. Defendant Officers' conduct proximately caused the deprivation of Plaintiffs' Constitutional rights, resulting in economic losses and other damages to Plaintiffs Schreiber and Mitchell.

FIFTH CLAIM FOR RELIEF

(42 U.S.C. § 1983 *Fourth Amendment Violation – Failure to Intervene*) (Against Some Defendant Officers)

84. Plaintiffs hereby incorporate by reference, as though fully set forth herein, each and every allegation contained in the preceding Paragraphs 1 through 83 of this Complaint.

85. Several Defendant Officers were present and surrounded Plaintiff Mitchell at the time Sergeant Steele and Sergeant Howard used excessive and unnecessary force on Plaintiff Mitchell.

86. Defendant Officers who were present and near the use of force had sufficient time to intervene or were capable of preventing harm caused to Plaintiff Mitchell.

87. Defendant Officers had an obligation to see that the law was enforced and to intervene to prevent the abuse of Plaintiff Mitchell.

88. Defendant Officers stood idly by and failed to prevent their fellow officers and supervisors from depriving Plaintiff Mitchell of his Constitutional rights and causing him harm.

89. The acts and omissions of Defendant Officers who were near Plaintiff Mitchell were intentional, knowing, reckless, and with deliberate indifference to the mental and physical condition of Plaintiff Mitchell and deprived Plaintiff Mitchell of his

Fourth Amendment rights, including the right to be secure in his person against unreasonable seizure, made actionable pursuant to 42 U.S.C. §1983.

90. Defendant Officers' conduct and omissions proximately caused the deprivation of Plaintiff's Constitutional rights, resulting in physical and emotional injury, economic losses, and other damages to Plaintiff Mitchell.

SIXTH CLAIM FOR RELIEF
(42 U.S.C. § 1983 - Conspiracy)
(Fourth and Fourteenth Amendment Violations)
(Against all Defendants)

91. Plaintiffs hereby incorporate by reference, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs 1 through 90 of this Complaint.

92. Plaintiff Mitchell told Defendant Officers that their actions during the raid, specifically those involving the use of excessive force, were caught on video-recorded surveillance inside Scarlet Ranch club.

93. Defendant Officers subsequently searched for and found what they believed to be video surveillance of Scarlet Ranch club in the form of a VHS cassette inside a recording device that appeared to be connected to monitors inside the club.

94. Defendant Officers attempted to steal and conceal the VHS cassette that they believed had the surveillance recording of the Defendant Officers' misconduct in Scarlet Ranch club.

95. No officer reported the theft of the VHS cassette. The VHS cassette did not appear on the evidence log and was not referenced in officers' reports following the raid on Scarlet Ranch club.

96. Defendant Officers conspired to maliciously prosecute Plaintiffs Mitchell and Schreiber by tampering with potentially exculpatory evidence of Plaintiff Mitchell's conduct and inculpatory evidence of Defendants' conduct during the raid on Scarlet Ranch when they stole the VHS cassette, failing to report and otherwise concealing the use of excessive force and other constitutional deprivations, and by covering up their misconduct by charging Plaintiffs Mitchell and Schreiber for crimes that Defendant Officers knew there was not probable cause to support.

97. Defendant Officers' conduct proximately caused the deprivation of Plaintiffs' Constitutional rights, resulting in economic losses and other damages to Plaintiffs.

SEVENTH CLAIM FOR RELIEF
(Monell Claim Pursuant to 42 U.S.C. § 1983)
(Against Defendant City and County of Denver)

98. Plaintiffs hereby incorporate by reference, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs 1 through 97 of this Complaint.

99. Upon information and belief, Defendant Sergeant Steele was the supervisor during the raid on Scarlet Ranch and a final policymaker for the City and County of Denver regarding actions and decisions taken during the raid on Scarlet Ranch.

100. Defendant Sergeant Steele made decisions that created policy in the particular circumstance of the raid on Scarlet Ranch.

101. Defendant Sergeant Steele's actions and decisions during the raid on Scarlet Ranch and during the conspiracy to conceal misconduct and tamper with evidence also illustrated a pattern and practice of misconduct by police officers of the City and County of Denver indicative of a custom that violates citizen's Constitutional rights.

102. Defendant City and County of Denver was previously put on notice that Sergeant Steele engaged in misconduct violating citizen's Constitutional rights, including that Sergeant Steele has lead and/or participated in the fabrication of evidence during his tenure as supervisor. Despite this notice, the City and County of Denver has failed to adequately discipline Sergeant Steele and has continued to employ Sergeant Steele in a manner that regularly exposes him to citizens who might be victimized by Sergeant Steele.

103. The conduct in this case strongly suggests that the Defendant City and County of Denver failed to adequately train, supervise, or discipline Sergeant Steele and other Defendant Officers regarding: the necessary and appropriate use of force, proper methods of detention, evaluation of reasonable suspicion and probable cause, cause for arrest and prosecution, the duty to intervene against fellow officers, and prohibitions against concealing or tampering with evidence.

104. These customs, policies, and practices and decisions attributable to the City and County of Denver were deliberately indifferent to the Constitutional rights of Plaintiffs.

105. These policies, customs and decisions and decisions attributable to the City and County of Denver were the moving force behind Plaintiffs' Constitutional deprivations and the resulting damages.

WHEREFORE, Plaintiffs respectfully pray that this Honorable Court enter judgment in their favor and against all Defendants for compensatory damages, as referenced above, for punitive damages with respect to the federal claims against the Defendant Officers, for equitable relief, including injunctive, for declaratory relief, for interest as allowed by law, for costs, expert witness fees, and reasonable attorney fees as allowed by statute or as otherwise allowed by law, and for any other and further relief that this Court shall deem just and proper.

**PLAINTIFFS DEMAND TRIAL TO
A JURY ON ALL ISSUES SO TRIABLE.**

Respectfully submitted this 27th day of September, 2011.

LONN HEYMANN LAW FIRM, P.C.

*Electronically filed – duly signed
original signature of Raymond K.
Bryant available at the offices of
Lonn Heymann Law Firm, P.C.*

/s/ Raymond K. Bryant

Lonn M. Heymann #34793

Raymond K. Bryant #42586

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