

the constitutional injuries complained of herein by Plaintiff Capps.

138. Defendants, the City of Millville, Chief Farabella, and their policymakers, including but not limited to John Doe(s) II, and through their agents and employees, promulgated customs, policies, practices, ordinances, regulations and directives that caused and/or tolerated the use of excessive force against Plaintiff Capps.

139. Defendants, the City of Millville, Chief Farabella, and their policymakers, including but not limited to John Doe(s) II, have been deliberately indifferent to the violent propensities of its police officers and/or the individually named Defendant police officers herein.

140. Defendant, the City of Millville, Chief Farabella, and their policymakers, including but not limited to, John Doe(s) II, through the City's police department, established, knew of, and acquiesced in policies, procedures, and customs that they knew or should have known would lead to violations of individuals' constitutional rights.

141. Defendants, the City of Millville, Chief Farabella, and their policymakers, including but not limited to, John Doe(s) II, through the City's police department, acted with deliberate indifference to the consequences by failing to develop appropriate policies and/or by failing to enforce the policies, procedures and directives described herein.

142. Defendants, the City of Millville's, Chief Farabella's and John Doe(s) II's, training programs with regard to the use of force were inadequate, upon information and belief, including but not limited to the failure to train their officers with respect to the prevention of unconstitutional and unreasonable searches and seizures and/or the prevention of the use of excessive force.

143. Upon information and belief, Defendants, the City of Millville, Chief Farabella, and their policymakers, including but not limited to John Doe(s) II, also knew or should have known and

learned from previous litigation filed against them and/or against their police officers alleging the use of excessive force and information about previous unconstitutional conduct engaged in by one or more of their officers.

144. Defendants, the City of Millville, Chief Farabella, and their policymakers, including but not limited to John Doe(s) II, were deliberately indifferent to these deficiencies, and the deficiencies in training, oversight, investigation, enforcement, and discipline caused the actions of the individual Defendants set forth herein, which proximately caused the injuries and damages complained of herein by Plaintiff Capps.

145. Defendants, the City of Millville, Chief Farabella, and their policymakers, including but not limited to John Doe(s) II, upon information and belief, knew and/or were aware of and/or should have known of the deficiencies set forth in this Count, and knew and/or were aware of and/or should have known about alternatives for preventing the constitutional violations complained of herein, and/or acquiesced in a policy or custom of inaction or toleration in the above regard.

146. Defendants, the City of Millville, Chief Farabella, and their policymakers, including but not limited to John Doe(s) II, upon information and belief, additionally engaged in a custom or usage of not abiding by mandated internal affairs policies in connection with investigating officer misconduct, and were deliberately indifferent to the custom or usage of conducting deficient internal affairs investigations with a preordained goal of exonerating the officer(s) accused of excessive force, including but not limited to Defendant Officer Joseph Dixon.

147. Said custom or usage, and Defendants' deliberate indifference thereto, resulted in deficient, biased investigations leading to findings exonerating Defendant Officer Dixon, who was involved in assaulting Plaintiff Capps, which had the result of keeping such an officer on patrol, on

the street, and in a position to harm Plaintiff and others.

148. Defendants' custom or usage with regard to the investigation of complaints made against Millville police officers resulted in a sham process which permitted the police department's officers to violate the constitutional rights of individuals with impunity with the knowledge that they would not be punished for their misconduct and would be retained in their employment.

149. Defendants, the City of Millville, Chief Farabella, and their policymakers, including but not limited to John Doe(s) II, directly and proximately caused Plaintiff Capps to be subjected to an unreasonable search and/or seizure and/or to the use of excessive force, thereby violating her rights under the Fourth and Fourteenth Amendments to the United States Constitution.

150. Defendants jointly, severally and in the alternative, deprived Plaintiff Capps of her federal constitutional rights, as set forth herein, and deprived her of said rights while acting under color of state law, in violation of 42 U.S.C. §1983.

151. As a proximate cause of the actions and omissions of Defendants, Plaintiff Capps suffered great and substantial emotional and physical pain, as well as other damages and injuries.

WHEREFORE, Plaintiff Audra Capps respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, the City of Millville, Chief of Police Jody Farabella, and John Doe(s) II and IV, jointly and severally, in an amount that would reasonably and properly compensate her in accordance with the law, together with prejudgment interest, costs of suit, reasonable attorney's fees pursuant to 42 U.S.C. section 1988, and such other relief as the Court deems just.

FOURTH COUNT

Violation of Article I, Paragraph 7 of the New Jersey Constitution

152. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth at length herein.

153. Plaintiff Capps brings this Count pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-2 (c), (e), and (f).

154. As described herein, Defendant Officers Dixon and Orndorf, and John/Jane Doe(s) I, III, and IV, violated Plaintiff Capps's right under Article I, Paragraph 7 of the New Jersey Constitution to be free from unreasonable searches and seizures.

WHEREFORE, Plaintiff Audra Capps respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, Officer Joseph Dixon, Officer Bryan Orndorf, and John/Jane Doe(s) I, III, and IV, individually, jointly and severally, in an amount that would reasonably and properly compensate her in accordance with the law, together with punitive damages, prejudgment interest, reasonable attorney's fees, costs of suit, and such other relief as the Court deems just.

FIFTH COUNT

Intentional Infliction of Emotional Distress

155. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth at length herein.

156. On or about May 24, 2018, Plaintiffs served upon Defendants a Tort Claim Notice pursuant to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq.

157. Defendants' actions as described herein were committed intentionally and/or recklessly.

158. Defendants' conduct was extreme and outrageous.

159. Defendants' actions proximately caused Plaintiff Capps to suffer emotional distress.

160. The emotional distress suffered by Plaintiff Capps was and is so severe that no reasonable person could be expected to endure it.

WHEREFORE, Plaintiff Audra Capps respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, Officer Joseph Dixon, Officer Bryan Orndorf, and John/Jane Doe(s) I and III, individually, jointly and severally, in an amount that would reasonably and properly compensate her in accordance with the law, together with punitive damages, prejudgment interest, costs of suit, attorney's fees as may be permitted by law, and such other relief as the Court deems just.

SIXTH COUNT

Assault

161. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth at length herein.

162. By their actions and/or behavior described in detail herein, Defendants Dixon and Orndorf caused Plaintiff Capps reasonably to be placed in fear and to believe that she was at risk of death, physical harm and imminent bodily injury, including by Defendants' physical menace.

163. Defendants' actions were intentional and/or reckless.

164. As a proximate result of Defendants' acts, Plaintiff Capps suffered damages, including but not limited to substantial emotional upset and mental pain, suffering, grief and anguish.

165. The actions of Defendants described herein constituted the common law tort of assault.

WHEREFORE, Plaintiff Audra Capps respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, Officer Joseph Dixon, Officer Bryan Orndorf, and

John/Jane Doe(s) I and III, individually, jointly and severally, in an amount that would reasonably and properly compensate her in accordance with the law, together with punitive damages, prejudgment interest, costs of suit, attorney's fees as may be permitted by law, and such other relief as the Court deems just.

SEVENTH COUNT

Battery

166. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth at length herein.

167. The actions of Defendants Dixon and Orndorf and/or of John/Jane Doe(s) I and III, as described herein, constituted the common law tort of battery.

WHEREFORE, Plaintiff Audra Capps respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, Officer Joseph Dixon, Officer Bryan Orndorf, and John/Jane Doe(s) I and III, individually, jointly and severally, in an amount that would reasonably and properly compensate her in accordance with the law, together with punitive damages, prejudgment interest, costs of suit, attorney's fees as may be permitted by law, and such other relief as the Court deems just.

EIGHTH COUNT

Negligent Supervision

168. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth at length herein.

169. Upon information and belief, Defendants, the City of Millville, Chief Farabella, and/or John/Jane Doe(s) II and IV, were, at all relevant times, employers and/or supervisors of Defendant Officers Dixon and Orndorf and others who were and are responsible for the tortious and

unconstitutional actions and omissions against Plaintiff Capps.

170. The acts and/or omissions complained of herein occurred, and were within the scope of the individual Defendants' employment for, Defendants, Chief Farabella, the City of Millville, and/or for John/Jane Doe(s) II and IV.

171. Defendants, the City of Millville, Chief Farabella and/or John/Jane Doe(s) II and IV, negligently failed to supervise the actions and conduct of Defendant Officers Dixon and Orndorf and others.

172. In addition to those acts and omissions which may be revealed in discovery, and in the alternative, Defendants, Chief Farabella and/or John/Jane Doe(s) II and III, upon information and belief, failed to follow New Jersey Attorney General policy and Millville Police Department Rules and Regulations and departmental directives on the use of force, as outlined elsewhere herein, failed to train the officers on such policies, and/or failed to properly discipline officers.

173. Such failures to supervise proximately caused the injuries sustained by Plaintiff Capps.

174. These Defendants who occupied supervisory capacities within the Millville Police Department had a duty to members of the public and to Plaintiff to insure that serious injuries, such as those sustained by Plaintiff Capps, were not inflicted.

175. Such supervisory Defendants breached that duty of care to Plaintiff, and caused her damage, as described elsewhere herein.

WHEREFORE, Plaintiff Audra Capps respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, the City of Millville, Chief of Police Jody Farabella, and John/Jane Doe(s) II and IV, individually, jointly and severally, in an amount that would reasonably and properly compensate her in accordance with the law, together with prejudgment

interest, costs of suit, attorney's fees as may be permitted by law, and such other relief as the Court deems just.

NINTH COUNT
Negligent Retention in Employment

176. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth at length herein.

177. Defendants, the City of Millville, Chief Farabella, and/or John/Jane Doe(s) II and IV, upon information and belief, and based on the tendencies of Defendant Officer Dixon and of the Millville Police Department generally, as reported by NJ.com, knew or had reason to know about one or more of the Defendants' unfitness, incompetence and/or dangerous attributes when it chose to retain such person(s) in employment.

178. Defendants, the City of Millville, Chief Farabella, and/or John/Jane Doe(s) II and IV, upon information and belief, knew or should have known about Defendant Officer Dixon's unfitness and high frequency with which he used force, and yet chose to nominate Dixon for an award.

179. Furthermore, when confronted with the knowledge of his police department's and Defendant Officer Dixon's disproportionate use of force, as revealed in The Force Report by NJ.com, Defendant Chief Farabella chose to defend Dixon with quotations to the media and, upon information and belief, chose to retain Dixon in employment.

180. Defendants, the City of Millville, Chief Farabella, and/or John/Jane Doe(s) II and IV, reasonably should have foreseen the likelihood that such Defendant officer(s) through their employment would come into contact with members of the public, such as Plaintiff Capps, under circumstances that would create a risk of danger to her and to such other persons because of the

qualities of the Defendant officer(s) involved in this action.

181. Defendants, the City of Millville, Chief Farabella, and/or John/Jane Doe(s) II and IV, owed Plaintiff Capps, and other members of the public, a duty to not subject them to the conduct of officers who have engaged in violent behavior and/or violated the rights of the citizens they are sworn to protect.

182. Defendants, the City of Millville, Chief Farabella, and/or John/Jane Doe(s) II and IV, breached their duties of care to protect Plaintiff Capps, which proximately resulted in the injuries and damages described herein.

WHEREFORE, Plaintiff Audra Capps respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, the City of Millville, Chief of Police Jody Farabella, and John/Jane Doe(s) II and IV, individually, jointly and severally, in an amount that would reasonably and properly compensate her in accordance with the law, together with prejudgment interest, costs of suit, attorney's fees as may be permitted by law, and such other relief as the Court deems just.

TENTH COUNT
Negligence

183. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth at length herein.

184. As set forth herein, Defendants conducted and/or supervised law enforcement activities, and injured Plaintiff Capps, within their jurisdiction.

185. Defendants negligently, carelessly, and/or recklessly performed their duties.

186. Defendants breached their respective duties of care to Plaintiff Capps and to the public.

based on the facts described in detail herein.

187. Defendants' breaches of their duties of care proximately caused Plaintiff Capps to sustain damages, as alleged herein.

WHEREFORE, Plaintiff Capps respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, Officer Joseph Dixon, Officer Bryan Orndorf, the City of Millville, and John/Jane Doe(s) I, II, III, and IV, individually, jointly and severally, in an amount that would reasonably and properly compensate her in accordance with the law, together with prejudgment interest, costs of suit, attorney's fees as may be permitted by law, and such other relief as the Court deems just.

ELEVENTH COUNT
Loss of Consortium

188. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth at length herein.

189. As a result of the injuries sustained by Plaintiff Capps, her husband, Plaintiff Gibson, was and has been required to provide regular care to his wife by assisting her with transportation to and from doctor's appointments, treatment, multiple surgical procedures, and time spent in the hospital, and by assisting her with ordinary and everyday tasks she did by herself prior to being assaulted by members of the Millville Police Department, and Plaintiff Gibson has provided physical and emotional support to Plaintiff Capps, his wife.

190. Plaintiff Gibson has lost the consortium and companionship of his wife as a result of her experience with the Millville Police Department, and because of the severity of the injuries inflicted upon her.

191. As a result of the injuries inflicted upon his wife by the Defendant officers, Plaintiff Gibson has been required to take her to multiple medical appointments and surgical procedures, and he has lost time from work and wages.

192. Plaintiff Gibson will continue to suffer damages on what is expected to be a permanent basis, as his wife, Plaintiff Capps, will never be the same person physically and emotionally as she was before she was assaulted by officers of the Millville Police Department.

WHEREFORE, Plaintiff Douglas Robert Gibson, Jr. respectfully requests that this Honorable Court enter judgment in his favor and against Defendants, Officer Joseph Dixon, Officer Bryan Orndorf, Chief of Police Jody Farabella, the City of Millville, and John/Jane Doe(s) I, II, III, and IV, individually, jointly and severally, in an amount that would reasonably and properly compensate him in accordance with the law, together with prejudgment interest, costs of suit, attorney's fees as may be permitted by law, and such other relief as the Court deems just.

TWELFTH COUNT
Vicarious Liability

193. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth at length herein.

194. At all times hereinafter described, Defendants, the City of Millville, Chief Farabella, and/or John/Jane Doe(s) II and IV, employed the individual named and unnamed police officer Defendants.

195. At all times hereinafter described, Defendants, Officer Joseph Dixon, Officer Bryan Orndorf, Chief Farabella, and/or John/Jane Doe(s) I, II, III, were employed either as law enforcement officers, policymakers, and/or supervisors for Defendants, the City of Millville and/or John/Jane

Doc(s) IV.

196. At all relevant times, said Defendants were acting within the scope of their employment for Defendants, the City of Millville and/or John/Jane Doe(s) IV.

197. Under the circumstances described herein, Defendants, the City of Millville, Chief Farabella, and/or John/Jane Doe(s) IV, are vicariously responsible and liable for the conduct of the individual officer Defendants, named and unnamed, as may be permitted by law and as may be applicable to each particular Count of this Complaint.

198. As a further direct and proximate result of Defendants' conduct, Plaintiffs were caused to suffer severe damages and injuries described herein.

WHEREFORE, Plaintiffs Audra Capps and Douglas Robert Gibson, Jr. respectfully request that this Honorable Court enter judgment in their favor and against Defendants, the City of Millville, Chief of Police Jody Farabella, and John/Jane Doe(s) IV, individually, jointly and severally, in an amount that would reasonably and properly compensate them in accordance with the law, together with punitive damages as may be appropriate to each Count of this Complaint, reasonable attorney's fees as may be permitted by law, prejudgment interest, costs of suit, and such other relief as the Court deems just.

DEMAND FOR TRIAL BY JURY

Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs hereby demand a trial by jury on the causes of action pleaded in this Complaint.

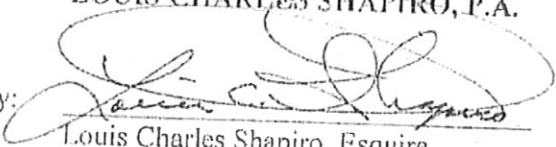
NOTICE OF DESIGNATION OF TRIAL COUNSEL

Louis Charles Shapiro, Esquire, of the law firm of Louis Charles Shapiro, P.A., is hereby designated as trial counsel on behalf of Plaintiffs, Audra Capps and Douglas Robert Gibson, Jr.

Respectfully submitted,

LOUIS CHARLES SHAPIRO, P.A.

By:



Louis Charles Shapiro, Esquire

Attorney for Plaintiffs, Audra Capps and
Douglas Robert Gibson, Jr.

DATED: May 1, 2019