

252. Moreover, the 80 UOF forms issued by Dixon in a short period of time was cause enough for OPIA to investigate and to successfully prosecute him to a criminal standard of beyond a reasonable doubt. But the frequency with which Dixon generated these UOF forms apparently was not enough for the Defendants named and unnamed to take action or to recognize that, in Defendant Officer Dixon, they had a problem waiting to happen, and that someone was going to be seriously hurt.

253. Additionally, Defendant Officer Orndorf, interviewed as part of the Dixon criminal probe, further told OPIA that the MPID reviews the Use of Force policy when officers go to the range -- presumably meaning, the gun range. He believed that this was done once a year, but said that the training was very repetitive and he did not recall the exact procedure.

254. Officer Chard further informed OPIA that supervisors have spoken to him about using force, but that this was a rare occurrence. He said that Defendant Sgt. Redden spoke to him only once when he was a new officer about the use of force, and that Defendant Sgt. Redden told Chard he should have used force sooner during the incident discussed so that it would be more effective.

255. Nor has the Defendant City of Millville learned from, and fixed its police excessive force problem as a result of, lawsuits against the City and its officers, or as a result of the 2017 videotaped beating of Barry Cottman -- an alleged jaywalker.

256. On or about December 4, 2019, New Jersey's Attorney General announced sweeping statewide reforms regarding, among other things, the use of force by police officers, the conduct of internal affairs investigations, and the identification of at-risk police officers, known collectively as the "Excellence in Policing Initiative."

257. In a particularly noteworthy letter dated December 4, 2019, the Attorney General notified Chief Farabella and five other New Jersey Chiefs of Police that, among other things, he

was "...writing to recognize your police departments as the six New Jersey law enforcement agencies that will participate" in a pilot program for the State of New Jersey's new Police Use-of-Force Portal for obtaining statewide use-of-force data.

258. Defendant, the City of Millville, made changes to its Use of Force policy in 2019, all too late to save Barry Cottman, Audra Capps, and Tanika Joyce from the misconduct of Joseph Dixon. This 2019 change recognizes that the City's prior policies and procedures were inadequate, and were put into place only after NJ.com exposed the City's and Dixon's use of force numbers and/or in the wake of OPIA initiating a criminal probe of Dixon.

259. Defendants, the City of Millville and/or John Doe(s) IV, also failed to learn from previous litigation and settlement payments made, and have failed to change: (1) a culture which tolerates the use of excessive force by its officers; (2) a culture in which outcome-determined internal affairs investigations are conducted; (3) a culture which fails to properly train and evaluate police officers; and/or (4) a culture which improperly supervises, hires, and/or retains officers in employment who demonstrate propensities toward the use of excessive force.

260. Defendants, the City of Millville and/or John Doe(s) IV, had a policy or custom of failing to adequately train and evaluate their officers and employees with respect to the prevention of unconstitutional and unreasonable searches and seizures and/or the use of excessive force, and were deliberately indifferent to the deficiency in training and evaluation in the above regard and to the rights of persons with whom the police came in contact, which deficiencies in training and evaluation proximately caused the injuries and damages complained of herein by Plaintiff Capps.

261. Defendants, the City of Millville and/or John Doe(s) IV, had a policy and/or custom that tolerated the use of unconstitutional and unreasonable searches and seizures and/or the use of

excessive force, which proximately caused the constitutional and personal injuries complained of herein by Plaintiff Capps.

262. Defendants, the City of Millville and/or John Doe(s) IV, 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 and others.

263. Defendants, the City of Millville and/or John Doe(s) IV, have been deliberately indifferent to the violent propensities of their police officers and/or of the violent propensities of the individually named defendant police officers herein.

264. Defendants, the City of Millville and/or John Doe(s) IV, through the City's police department, established, knew of, and acquiesced in policies, procedures, and customs they knew or should have known would lead to violations of individuals' constitutional rights.

265. Defendants, the City of Millville and/or John Doe(s) IV, 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 and/or which were already in place.

266. Defendants' training with regard to the use of force and evaluation program 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.

267. Defendants, the City of Millville and/or John Doe(s) IV, were deliberately indifferent to these deficiencies, and the deficiencies in training, evaluation, 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.

268. Defendants, the City of Millville and/or John Doe(s) IV, upon information and belief, knew and/or were aware of and/or should have known of the deficiencies set forth in this Third Count and in the First and Second Counts (which are specifically incorporated herein by reference), 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.

269. Defendants, the City of Millville and/or John Doe(s) IV, 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 Dixon.

270. Said customs or usages, and Defendants' deliberate indifference thereto, resulted in deficient, biased investigations leading to findings exonerating Defendant Dixon and others, who was involved in assaulting Plaintiff Capps and others, which had the result of keeping such an officer on patrol, on the street, and in a position to harm Plaintiff and others.

271. Defendants' customs or usages 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 and with the knowledge that they would not be punished for their misconduct and would be retained in their employment.

272. Defendants, the City of Millville and/or John Doe(s) IV, 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.

273. 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.

274. As a proximate cause of the actions and omissions described herein, Plaintiff Capps suffered emotional and physical pain, as well as other damages and injuries.

WHEREFORE, Plaintiff Audra S. Capps respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, the City of Millville and John Doe(s) 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

275. Plaintiff's incorporate the preceding paragraphs of this Amended Complaint as if set forth at length herein.

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

277. As described herein, Defendant Officers Dixon and Orndorf, and John/Jane Doe(s) I and III, 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 S. Capps respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, 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, reasonable attorney's fees, costs of suit, and such other relief as the Court deems just.

FIFTH COUNT
Intentional Infliction of Emotional Distress

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

279. 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.

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

281. Defendants' conduct was extreme and outrageous.

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

283. 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 S. Capps respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, 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

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

285. 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.

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

287. Specifically, Defendant Dixon pleaded guilty in Superior Court to committing aggravated assault against Plaintiff Capps and as to Joyce, and he has been sentenced for his criminal behavior.

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

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

WHEREFORE, Plaintiff Audra S. Capps respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, 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.