

UNITED STATES DISTRICT COURT
NEW JERSEY DISTRICT
CAMDEN VICINAGE

The Estate of Joey Myers and Carolyn K.
Chaudry, as Administrator Ad Prosequendum
of the Estate of Joey Myers, and in her own
right,

Plaintiffs,

vs.

The City of Millville, Chief Jody Farabella,
individually and his official capacity,
Officer Michael Calchi, Officer Gavin
Phillips, Officer Jeffrey Proffit, and
John Doe Police Officers 1-10, individually
and in their official capacities,

Defendants.

CIVIL ACTION

Index No.

COMPLAINT

Plaintiff, The Estate of Joey Myers and Carolyn K. Chaudry, as Administrator Ad Prosequendum of the Estate of Joey Myers, and in her own right (collectively, "Plaintiffs"), by and through their attorneys, the Law Offices of Conrad Benedetto, bring this action for damages and other legal and equitable relief against the City of Millville, Chief Jody Farabella, Officer Michael Calchi, Officer Gavin Phillips, Officer Jeffrey Proffit, and John Does Police Officers 1-10 (collectively, "Defendants"), and allege as follows:

PARTIES

1. Joey Myers with a date of birth of March 21, 1991, at all times relevant to this Complaint was a resident of the City of Millville, County of Cumberland, State of New Jersey.
2. On January 18, 2016, Joey Myers was severely and savagely assaulted by Police Officers of the City of Millville and police dog Chase.

3. On October 30, 2016, unrelated to the facts contained in the instant suit, Joey Myers was killed in automobile accident in the City of Millville.

4. Carolyn K. Chaudry is the mother of the deceased.

5. On November 11, 2016, Carolyn K. Chaudry was appointed as the Administrator Ad Prosequendum of the Estate of Joey Myers.

6. At all times relevant to this Complaint, Chief Jody Farabella was the Chief of the City of Millville police.

7. At all times relevant to this Complaint, Defendant Police Officer Michael Calchi was a police officer with the City of Millville and was acting under the color of state law within the course and scope of his duties as an officer of the City of Millville police department.

8. Defendant Officer Calchi proximately caused substantial injury to Joey Myers by releasing his canine partner, Chase, on Joey Myers and by integrally participating in or failing to intervene in the attack of Joey Myers by Chase, and by engaging in other acts and/or omissions as described below.

9. At all times relevant to this Complaint, Defendant Officer Gavin Phillips was a police officer with the City of Millville and was acting under the color of state law within the course and scope of his duties as an officer of the City of Millville police department.

10. Defendant Officer Phillips proximately caused substantial injury to Joey Myers by physically assaulting Joey Myers, integrally participating in or failing to intervene in the attack of Joey Myers by canine Chase, and by engaging in other acts and/or omissions as described below.

11. At all times relevant to this Complaint, Defendant Officer Jeffrey Proffit was a police officer with the City of Millville and was acting under the color of state law within the course and scope of his duties as an officer of the City of Millville police department.

12. Defendant Officer Proffit proximately caused substantial injury to Joey Myers by physically assaulting Joey Myers, integrally participating in of failing to intervene in the attack of Joey Myers by canine Chase, and by engaging in other acts and/or omissions as described below.

13. The Defendant City of Millville is a chartered subdivision of the State of New Jersey with the capacity to sue or be sued.

14. The Defendant City of Millville also proximately caused Joey Myers' injuries and is liable under state law and principles set forth in Monell v. Department of Social Services, 436 U.S. 658 (1978).

15. At all relevant times, the Defendant City of Millville is and was a duly organized public entity, form unknown, existing under the laws of the State of New Jersey. Defendant City of Millville is responsible for the actions, omissions, policies, procedures, practices and customs of it various agents and agencies.

16. At all times relevant to the facts alleged herein, Defendant City of Millville was responsible for the actions, omissions, policies, practices and customs of its employees and was responsible for ensuring that its employees complied with the laws and the Constitution of the United States and the State of New Jersey.

17. At all times relevant to the facts alleged herein, the City of Millville was the employer of Defendants Calchi, Phillips, Proffit and John Doe Police Officers 1 - 10.

18. At all times relevant to the Complaint, each of the Defendants Calchi, Phillips, Proffit and John Doe Police Officers 1 - 10, inclusive, were police officers and/or managerial, supervisory, and policymaking employees of the City of Millville, who were acting under color of state law within the course and scope of their duties as police officers and/or managerial,

supervisory and policymaking employees for the City of Millville and with the complete authority and ratification of their principal City of Millville.

19. Defendants Calchi, Phillips, Proffit and John Doe Police Officers 1-10 proximately caused substantial injury to Joey Myers by physically assaulting Joey Myers, integrally participating in or failing to intervene in the attack of Joey Myers by canine Chase, and by engaging in other acts and/or omissions as described below.

20. In doing the acts and failing and omitting to act as hereinafter described, Defendants Calchi, Phillips and Proffit and John Doe Police Officers 1 - 10 were acting on the implied and actual permission and consent of the Defendant City of Millville.

21. The true names of Defendants John Doe Police Officers 1 - 10, inclusive, are unknown to Plaintiff, who thereafter sue these defendants by such fictitious names. Plaintiff will seek leave to amend this complaint to show true names and capacities of these defendants when they have been ascertained. Each of the fictitiously named defendants is responsible in some manner for the conduct and liabilities alleged herein.

22. The Officer Defendants are directly liable for Joey Myers' injuries under federal and state law, including, pursuant to 42 U.S.C. § 1983, and are sued in their individual capacities for damages.

23. At all times relevant to the Complaint, the individual named Defendants were acting under color of state law and as employees of the City of Millville.

JURISDICTION AND VENUE

24. This civil action is brought for the redress of alleged deprivations of constitutional rights as protected by 42 U.S.C. § 1983, 1985, 1986, 1988, and the First, Fourth, and Fourteenth

Amendments of the United States Constitution. Jurisdiction is founded on 28 U.S.C. §§ 1331, 1343, and 1367.

25. Venue is proper in this Court under 28 U.S.C. § 1391(b) because all incidents, events, and occurrences giving rise to this action occurred in the County of Cumberland, State of New Jersey.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

26. On January 18, 2016, Joey Myers and a friend, Raymond Hunter, met at the Joey Myers' home in Millville, New Jersey. Hunter advised Joey Myers about a restaurant with an opened window where they could get high together.

27. Hunter and Myers walked to Bim's Pizza located at 618 East Main Street in Millville (the "Property") and stepped into the restaurant by way of a side window that was opened.

28. At some point, Millville police were notified that several individuals had entered the Property.

29. Police Officer Calchi arrived at the Property with his police dog Chase. Officer Calchi proceeded to place Chase inside the opened window and later followed Chase into the Property.

30. A second officer, Police Officer Phillips followed Officer Calchi into the Property.

31. A third officer, Police Officer Proffit attempted to enter the Property. As Officer Proffit attempted to enter the Property, Chase ran towards him and started biting him on his left leg; Officer Proffit's leg was on the inside of the window while the rest of his body remained on the outside.

32. As Chase was biting him, Officer Proffit yelled for Officer Calchi to get Chase off of him.

33. While Chase was attacking Officer Proffit, a fourth officer attempted to pull Officer Proffit out of the window while Officer Calchi attempted to control Chase.

34. After several attempts, Officer Calchi was successful in controlling Chase and preventing Chase from causing any further injury to Officer Proffit.

35. After this incident, Officer Proffit was later transported to the hospital by EMS.

36. While at the Property, another police officer, Police Officer Scott was also injured when he was forced to climb a fence to get away from Chase who also attempted to bite Officer Scott.

37. Once Officer Proffit was successfully freed, Officer Calchi, Officer Phillips and Chase continued their search of the Property.

38. After the first floor of the Property was searched, Officer Calchi and Chase proceeded to the basement.

39. In the basement, Chase located Joey Myers under the basement stairs.

40. Once he located Joey Myers, Chase proceeded to attack Joey Myers.

41. Joey Myers attempted to fend off the attacking Chase who bit him in his leg and on his face

42. After some time had passed, Officer Calchi pulled Chase off of Joey Myers.

43. Once Chase was controlled, Officer Phillips proceeded to punch Myers with a closed fist several times and pushed him to the ground.

44. Thereafter, Joey Myers was subdued by Officers Calchi and Phillips, and/or other officers with the Millville police. No weapon was recovered from Myers, either under the basement steps, or when he was removed from the Property.

45. As a result of the attack by Chase and Officer Phillips, an ambulance was dispatched for Joey Myers who had suffered significant injuries. Mr. Myers received dog bites to his right leg. Additionally a large portion of his right ear was missing that had been bitten off by Chase.

46. Myers was then transported to Inspira Medical Center in Vineland, New Jersey where he was treated for a dog bite to his right leg, an ear laceration and a partial avulsion.

47. After being treated at the hospital, Mr. Myers was transported to the Cumberland County jail.

48. While at the Cumberland County jail, Joey Myers experienced headaches and a stabbing sensation in his ear drum and in his ear. Mr. Myers indicated that he was unable to sleep as a result of the severe pain he was experiencing. Additionally, he experienced drainage from his ear, including blood, and severe pain.

49. When the Officer Defendants caused injury to Mr. Myers, they deprived him of his right to be secure against unreasonable searches and seizures as guaranteed to Plaintiff by the Fourth Amendment to the United States Constitution and applied to the State actors by the Fourteenth Amendment.

50. When the Officer Defendants caused Mr. Myers to be attacked by Chase, they deprived Mr. Myers of his right to be secure in his person against unreasonable searches and seizures as guaranteed to him under the Fourth Amendment to the United States Constitution and applied to State actors by the Fourteenth Amendment.

51. The attack on Joey Myers by Officer Calchi, Officer Phillips, Officer Proffit and John Doe Police Officers 1-10 was excessive and unreasonable, especially because Mr. Myers was unarmed. Mr. Myers was attacked by an out-of-control police dog who had also caused significant injury to two Millville police officers that same morning. Moreover, Mr. Myers was outnumbered

by the Officer Defendants and did not pose an imminent threat of death or serious injury to the Officer Defendants or to anyone else.

52. As a result of the conduct of the Officer Defendants, Plaintiff suffered extreme pain and suffering, mental anguish, serious injuries and permanent disfigurement to his body.

53. The Defendant Officers' attack of Mr. Myers, together with the improper restraint procedures they used, violated Mr. Myers' Civil Rights.

54. The conduct of the Officer Defendants was willful, wanton, malicious, and done with reckless disregard for the rights and safety of Mr. Myers and therefore warrants the imposition of exemplary and punitive damages as to each of them.

**FIRST CLAIM FOR RELIEF
LIABILITY OF THE CITY OF MILLVILLE AND
POLICE CHIEF JODY FARABELLA FOR
FEDERAL CONSTITUTIONAL VIOLATIONS
42 U.S.C. § 1983**

55. The allegations set forth in the preceding paragraphs are incorporated by reference as if fully set forth herein.

56. Defendant, the City of Millville, by and through Chief Farabella and other policymakers, developed policies and/or customs which led to Mr. Myers' injuries and violated his federal constitutional rights.

57. Said policies were inherently deficient and resulted in the pain and suffering, mental anguish, significant injuries and permanent disfigurement to Joey Myers.

58. Defendant, the City of Millville, by and through Defendant Chief Farabella and other policymakers, negligently, recklessly, and/or intentionally:

a. failed to properly train and supervise Defendants Police Officers Calchi, Phillips, Proffit and John Doe Police Officers 1 – 10 with regard to the proper use of force against members of the public.

59. The deliberate indifference of Defendants the City of Millville and Chief Farabella as illustrated above, was a proximate cause of the constitutional violations suffered by the victim, Joey Myers.

60. The violation by the City of Millville and Chief Farabella of Joey Myers' rights under the United States Constitution was the proximate cause of damage to Plaintiff, thereby entitling Plaintiff to compensatory damages against Defendants the City of Millville and Chief Farabella, in an amount exceeding \$1,000,000.

WHEREFORE, the Plaintiff, Carolyn K. Chaudry, on behalf of the Estate of Joey Myers, and in her own right, demands judgment against the Defendants City of Millville and Chief Jody Farabella, and each of them, for compensatory and punitive damages, counsel fees, and all costs of suit.

**SECOND CLAIM FOR RELIEF
LIABILITY OF DEFENDANTS
CALCHI, PHILLIPS, PROFFIT AND
JOHN DOE POLICE OFFICERS 1-10 FOR
FEDERAL CONSTITUTIONAL VIOLATIONS**

61. The allegations set forth in the preceding paragraphs are incorporated by reference as if fully set forth herein.

62. At all times relevant hereto, Defendant Police Officers Calchi, Phillips and Proffit and Defendants John Doe Police Officers 1 - 10 were acting under color of state law as employees the City of Millville, County of Cumberland.

63. The actions of Defendant Police Officers Calchi, Phillips, Proffit and John Doe Police Officers 1 -- 10 as set forth above violated the Civil Rights of Joey Myers as guaranteed by the Eighth and Fourteenth Amendments to be safe from injury, harm and excessive force from the Millville Police.

64. The violations by Police Officers Calchi, Phillips, Proffit and John Doe Police Officers 1 - 10 of Joey Myers' rights under the United States Constitution was the proximate cause of the injury to Mr. Myers, thereby entitling Plaintiff to compensatory damages from Defendants Officers Calchi, Phillips, Proffit and John Doe Police Officers 1-10 in their individual capacities in an amount exceeding \$1,000,000.

65. The actions by Defendant Police Officers Calchi, Phillips, Proffit and John Doe Police Officers 1 -10 in their individual capacities were intentional, malicious, willful, wanton and/or in reckless disregard of Mr. Myers' federally protected rights, therefore entitling Mr. Myers to an award of punitive damages.

66. Plaintiff is entitled to recover punitive damages against Defendant Police Officers Calchi, Phillips, Proffit and John Doe Police Officers 1 10, in their individual capacities, in an amount greater than \$1,000,000.

67. Furthermore, Plaintiff is entitled to recover reasonable attorney's fees and the costs and expenses of this action.

WHEREFORE, the Plaintiff, Carolyn K. Chaudry, on behalf of the Estate of Joey Myers and in her own right, demands judgment against the Defendants Calchi, Phillips, Proffit, and John Doe Corrections Officers 1-10, and each of them, for compensatory and punitive damages, counsel fees and all costs of suit.

**THIRD CLAIM FOR RELIEF
SUPERVISORY LIABILITY OF DEFENDANT
CHIEF FARABELLA
42 U.S.C. § 1983**

68. The allegations set forth in the preceding paragraphs are incorporated by reference as if fully set forth herein.

69. At all times relevant hereto, Defendant Chief Farabella served as Chief of the Police of the City of Millville, New Jersey.

70. Plaintiff is informed, believes, and therefore alleges that on January 18, 2016, Chief Farabella was aware of, should have been aware of, and/or had actual knowledge of the pattern and culture of unconstitutional behavior and indifference, including the excessive use of force against members of the public by the Millville police.

71. As such, Defendant Farabella not only directed, encouraged, tolerated or acquiesced to this behavior, but was deliberately indifferent to the likelihood that his staff, employees and/or police officers would use excessive force against members of the public.

72. The deliberate indifference of Defendant Chief Farabella of the need to supervise his staff, employees and/or corrections officers was a proximate cause of the constitutional violations suffered by the decedent, Joey Myers.

73. The violation by Chief Farabella of Joey Myers' rights under the United States Constitution was the proximate cause of damage to Plaintiff, thereby entitling Plaintiff to compensatory damages from Defendant Chief Farabella in an amount of \$1,000,000.

WHEREFORE, the Plaintiff, Carolyn K. Chaudry, on behalf of the Estate of Joey Myers and in her own right, demands judgment against Defendant Chief Farabella for compensatory and punitive damages, counsel fees, and all costs of suit.

**FOURTH CLAIM FOR RELIEF
VIOLATION OF
NEW JERSEY CIVIL RIGHTS ACT
N.J.S.A. 10:6-1, et. seq.
DEFENDANTS CALCHI, PHILLIPS, PROFFIT and
JOHN DOE POLICE OFFICERS 1-10**

74. The allegations set forth in the preceding paragraphs are incorporated by reference as if fully set forth herein.

75. Defendant Police Officers Calchi, Phillips, Proffit and John Doe Police Officers 1 – 10 were acting under color of law when they used excessive force against Joey Myers and failed to protect Joey Myers from injury, harm or death.

76. The Defendants, the City of Millville and Chief Farabella, failed to adequately train or otherwise have and maintain effective policies and training of police officers to protect members of the public and keep them free from injury, harm or death.

77. The Defendants, the City of Millville and Chief Farabella, were deliberately indifferent to the likelihood that the City of Millville's staff, employees and/or police officers, including Defendants Calchi, Phillips, Proffit and Defendants John Doe Police Officers 1 – 10, would use excessive force against members of the public and fail to keep members of the public free from injury, harm or death, in violation of the New Jersey Civil Rights Act, N.J.S.A. 10:6-1.

WHEREFORE, the Plaintiff, Carolyn K. Chaudry, on behalf of the Estate of Joey Myers and in her own right, demands judgment against Defendant Calchi, Phillips, Proffit and John Does Corrections Officers 1-10, for compensatory and punitive damages, counsel fees, and all costs of suit.

**FIFTH CLAIM FOR RELIEF
BATTERY
DEFENDANTS CALCHI, PHILLIPS, PROFFIT and
JOHN DOE POLICE OFFICERS 1-10**

78. The allegations set forth in the proceeding paragraphs are incorporated by reference as if fully set forth herein.

79. Defendants owed a duty to keep Joey Myers free from harm and injury, and a duty to other members of the public to keep them free from injury, harm or death and against the use of excessive force.

80. Defendants intentionally subjecting the decedent, Joey Myers to cruel and unusual punishment by the use of excessive force.

81. The Defendants deliberate indifference to Joey Myers' rights caused substantial harm and permanent disfigurement to Joey Myers.

82. As a direct and proximate result of Defendants' actions, Plaintiff's decedent, Joey Myers, was significantly injured and suffered permanent disfigurement, pain and suffering and mental and emotional harm.

WHEREFORE, the Plaintiff, Carolyn K. Chaudry, on behalf of the Estate of Joey Myers and in her own right, demands judgment against Defendants Calchi, Phillips, Proffit and John Doe Police Officers 1-10, and each of them, for compensatory and punitive damages, counsel fees, and all costs of suit.

**SIXTH CLAIM FOR RELIEF
NEGLIGENCE
CITY OF MILLVILLE**

83. The allegations set forth in the proceeding paragraphs are incorporated by reference as if fully set forth herein.

84. The City of Millville, its Police Department and Chief Farabella had a duty to train and supervise its staff, employees and/or police officers on the appropriate use of force against members of the public, and to protect members of the public from injury, harm or death.

85. The City of Millville, its Police Department and Chief Farabella failed to properly train and supervise its staff, employees and police officers on the appropriate use of force against members of the public and to protect members of the public from injury, harm or death.

86. As a direct and proximate result of the negligence of the City of Millville, Joey Myers, suffered significant injuries, permanent disfigurement, pain and suffering and mental and emotional harm.

87. Plaintiff is entitled to an award of compensatory damages against the City of Millville in an amount which exceeds \$1,000,000.

WHEREFORE, the Plaintiff, Carolyn K. Chaudry, on behalf of the Estate of Joey Myers and in her own right, demands judgment against the City of Millville for compensatory and punitive damages, counsel fees, and all costs of suit.

JURY DEMAND

The Plaintiff hereby demands trial by jury.

Dated: February 28, 2017

Law Offices of Conrad J. Benedetto

/s/ Conrad J. Benedetto

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