

UNITED STATES DISTRICT COURT
for the
DISTRICT OF DELAWARE

MATTHEW T. DIXON and
ROSALYN HENDERSON-DIXON,

Plaintiffs,

v.

CITY OF WILMINGTON,
CORPORAL BARNES,
PATROLMAN FORD,
PATROLMAN LYNCH and
OFFICER NOLAN,

Defendants.

Civil Action No. 13-29

**NOTICE OF A LAWSUIT
AND REQUEST TO WAIVE SERVICE OF A SUMMONS**

To: City of Wilmington
c/o Mayor of Wilmington
800 North French Street
Wilmington, DE 19801

Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within 30 days from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

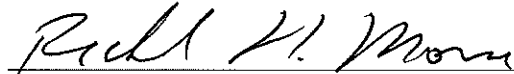
If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: January 9, 2013

A handwritten signature in black ink, appearing to read "Rich H. Morse", is written over a horizontal line.

Richard H. Morse

American Civil Liberties Union Foundation of
Delaware

100 West 10th Street, Suite 603

Wilmington, Delaware 19801

Telephone: (302) 654-5326 ext. 103

rmorse@aclu-de.org

Attorney for Plaintiffs

for the
DISTRICT OF DELAWARE

Plaintiffs,

Civil Action No. 13-29

Defendants.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from January 9, 2013, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date:

<Signature of the attorney or unrepresented party>

Printed name: _____

Address: _____

E-mail address: _____

Telephone number: _____

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

MATTHEW T. DIXON and ROSALYN HENDERSON-DIXON

(b) County of Residence of First Listed Plaintiff New Castle
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Richard H. Morse, American Civil Liberties Union Foundation of Delaware
100 W.10th St., Suite 603, Wilmington, DE 19801, 302- 654-5326, ext. 103

DEFENDANTS

CITY OF WILMINGTON, CORPORAL BARNES, PATROLMAN FORD, PATROLMAN LYNCH, and OFFICER NOLAN

County of Residence of First Listed Defendant New Castle
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. Section 1983

Brief description of cause:

Unreasonable seizure and excessive force claim against police.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

1/3/13

SIGNATURE OF ATTORNEY OF RECORD

Richard H. Morse

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MATTHEW T. DIXON and
ROSALYN HENDERSON-DIXON

Plaintiffs,

v.

CITY OF WILMINGTON,
CORPORAL BARNES,
PATROLMAN FORD,
PATROLMAN LYNCH, and
OFFICER NOLAN,

Defendants.

C. A. No. 13-29

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs Matthew T. Dixon ("Dixon") and Rosalyn Henderson-Dixon ("Henderson-Dixon") hereby allege as follows:

The Parties

1. Plaintiffs Dixon and Henderson-Dixon were at all times relevant hereto residents of the state of Delaware. They currently reside at 1806 West 5th Street, Wilmington, DE 19805.
2. At all times material hereto, Dixon and Henderson-Dixon have been husband and wife.
3. Defendant Officers Barnes, Ford, Lynch and Nolan (collectively, "Defendant Officers") were at all times relevant hereto police officers employed the City of Wilmington, acting under color of law, to wit, under color of the statutes, ordinances, regulations, policies, authority, customs and usages of the City of Wilmington.

4. Defendant City of Wilmington, Delaware ("Defendant Wilmington") is a municipal corporation and the public employer of the Defendant Officers.

5. At all times relevant hereto, Barnes held the rank of Corporal and carried badge number 008342; Ford held the rank of Patrolman and carried badge number 041110; Lynch held the rank of Patrolman and carried badge number 041292; and Nolan held the rank of Officer and carried badge number 055742.

Nature of the Action

6. This is an action for monetary damages and injunctive relief brought pursuant to 42 U.S.C. §§ 1983 and 1988, the Fourth and Fourteenth Amendments of the United States Constitution, and Article 1 § 6 of the Delaware Constitution, and under the common law of the State of Delaware, against Barnes, Ford, Lynch and Nolan in their individual capacities and against the City of Wilmington.

7. As alleged hereinafter, Defendant Officers used unreasonable, excessive and unjustified force against Dixon, made an unreasonable seizure of the person of Dixon, and made an unreasonable search of Dixon's vehicle, violating his rights under the Fourth and Fourteenth Amendments to the United States Constitution and Article I, §6 of the Delaware Constitution; failed to advise Dixon of his rights despite seizing him and questioning him about criminal activity; and assaulted and battered Dixon.

8. It is further alleged hereinafter that the foregoing violations and torts were a result of deficient training and a culture of non-accountability in the Wilmington Police Department.

Jurisdiction and Venue

9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a) because this action arises under 42 U.S.C. §1983, and supplemental jurisdiction pursuant to 28 U.S.C. § 1367, to entertain claims arising under state law.

10. This Court has personal jurisdiction over the defendants because the City of Wilmington is a municipality of the state of Delaware and Defendant Officers engaged in the conduct complained of herein within the state of Delaware. Venue lies in this district pursuant to 28 U.S.C. §§ 1391(b) and (c).

Facts

Officer Conduct

11. On or about January 25, 2011 at approximately 2:00 a.m., Dixon was driving home from a gas station located approximately seven-tenths of a mile from his home. Dixon had gone to the gas station to get oil for the car and had put the oil in the car while in the gas station parking lot.

12. As Dixon drove home, Defendant Officers began following him.

13. After Dixon parked in front of his home and turned off his car's ignition, he was approached by two of defendant police officers, one on each side of his car. The officers told Dixon to place his hands outside the window of the car, and threatened to use the taser on Dixon if he did not comply. Dixon replied that he was complying, and asked them not to tase him. Dixon also said that he could not lower the window because it was electric and could not be operated when the car was off. Dixon was afraid that if he restarted the car he would be seen as attempting to flee or injure the officers.

14. Defendant Officers asked for Dixon's license and registration. They then questioned him about criminal activity. Despite having seized Dixon, they did not state his Miranda rights before engaging in this questioning.

15. Dixon was then instructed to place his hands behind his back, which he did. Defendant Officers threatened to taser Dixon, then dragged him from the car, twisting his body. Defendant Officers put Dixon against his car with his hands above his head and palms down on the roof. Dixon told the Defendant Officers that he had a bad back and that he was not resisting. The Defendant Officers nonetheless cuffed his hands behind his back, picked him up by his arms, and slammed him face down into the sidewalk.

16. Dixon was screaming in pain and calling his wife's name. In response, Henderson-Dixon and Plaintiffs' teenage daughters opened their front door, saw what was happening, and pleaded with Defendant Officers to stop hurting Dixon. Defendant Officers responded by pointing a taser at them, ordering them to go back inside, and threatening to arrest Henderson-Dixon's 16-year-old daughter.

17. When Dixon was on the ground, Defendant Officers beat him. They kicked and tasered him without cause, burning his skin through several layers of winter clothing, and causing injuries to the muscles and ligaments in his neck and back and chest pain.

18. Defendant Officers arrested Dixon, although they had neither a warrant nor probable cause to do so.

19. Defendant Officers searched Dixon's car, although Dixon did not consent and they had neither a warrant nor probable cause to do so.

20. At all times during the events describe above, the Defendants were engaged in a joint venture. The individual officers assisted each other in performing the various actions

described and lent their physical presence and support and the authority of their office to each other during the said events.

21. As a direct and proximate result of the foregoing actions by Defendant Officers, Dixon:

- a. was deprived of his physical liberty;
- b. suffered physical and mental injuries, which are or may be permanent in nature;
- c. has been required to undergo medical treatment and incur medical expenses.

Departmental Deficiencies

22. On or about July 7, 2010 attorneys representing Defendant Wilmington and Wilmington police officers in a wrongful death and civil rights law suit that ultimately resulted in a \$875,000 payment by Defendant Wilmington were advised that an expert in police practices found that deficient training and practices in the Wilmington Police Department had led to the use of excessive force causing death.

23. Although Defendant Wilmington paid \$875,000 to settle the lawsuit in which it received that expert opinion of the plaintiff's experts, it took no remedial action in response to the expert report or any other information it learned in the lawsuit. The risks to which the police department's deficiencies exposed the public remained unchanged after the lawsuit was settled.

24. The wrongful conduct by Defendant Officers and the injuries and losses suffered by plaintiffs were a foreseeable result of the departmental deficiencies.

COUNT I: 42 U.S.C. § 1983 against Individual Defendants

25. Paragraphs 1 through 24 are incorporated herein by reference as though fully set forth.

26. The arrest and the beating violated Dixon's clearly established and well settled constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution to be free from an unreasonable search and seizure of his person, the unreasonable, excessive and unjustified use of force and the deprivation of liberty without due process of law.

27. Plaintiff Dixon is entitled to recover under 42 U.S.C. § 1983 against Defendants Barnes, Ford, Lynch and Nolan.

COUNT II: Battery and False Imprisonment against Individual Defendants

28. Paragraphs 1 through 24 are incorporated herein by reference as though fully set forth.

29. Defendants Barnes, Ford, Lynch and Nolan assaulted and battered Dixon, and falsely imprisoned him.

30. Plaintiff Dixon is entitled to damages under the law of Delaware for the injuries and losses resulting from the aforesaid assault and battery.

COUNT III: Loss of Consortium

31. Paragraphs 1 through 24 are incorporated herein by reference as though fully set forth.

32. At all times relevant hereto and continuing today, Dixon and Henderson-Dixon have been husband and wife.

33. On January 25, 2011, Dixon was injured when Defendant Officers pulled him out of his car and kicked and tasered him repeatedly.

34. As a direct and proximate result of Dixon's injuries, Henderson-Dixon has suffered loss of the care, companionship, support and consortium of her husband. Henderson-Dixon also was required to expend large amounts of time in caring for her husband, which obligated her to take time off from work.

35. Plaintiff Henderson-Dixon claims damages for these losses against Defendants.

COUNT IV: 42 U.S.C. § 1983 and Common Law of Delaware against City of Wilmington

36. Paragraphs 1 through 35 are incorporated herein by reference as though fully set forth.

37. Upon information and belief, Defendant Wilmington did not train Defendant Officers that conduct of the type described herein was unacceptable for police officers.

38. Upon information and belief, conduct of the type described herein is acquiesced in by Defendant Wilmington such that the actions of Defendant Officers were executed pursuant to the customs and usages of Defendant Wilmington.

39. The conduct of the Defendant Officers described herein resulted, in part, from the departmental deficiencies of which Defendant Wilmington had knowledge and to which it acquiesced.

40. Defendant City of Wilmington is liable for Plaintiffs' damages caused by the conduct of Defendant Officers alleged above.

REQUEST FOR RELIEF

41. WHEREFORE, the plaintiffs request:

- a. An award of compensatory damages against Defendants, jointly and severally;
- b. Injunctive relief requiring the adoption and implementation of

- i. Proper internal investigatory practices;
 - ii. Proper training and supervision;
 - iii. An enforcement mechanism that will enable the public to determine whether appropriate has taken appropriate remedial measures and complied with the orders of this court;
- c. Reasonable attorney's fees, pre-judgment and post-judgment interest, and the costs of this action;
- d. Such other and further relief as this Court deems appropriate.

/s/ Richard H. Morse
Richard Morse (I.D. #531)
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100 West 10th Street, Suite 603
Wilmington, Delaware 19801
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rmorse@aclu-de.org

Attorney for Plaintiffs

DATED: January 3, 2013