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Attorneys for Plaintiffs

CASSANDRA JETTER-IVEY, as parent and natural guardian of TONY IVEY, JR., a minor, AISHA LOYAL, as parent and natural guardian of FAHEEM LOYAL, a minor, and KELVIN LAMAR JAMES,

Plaintiffs,

v.

NEWARK POLICE DEPARTMENT and JOHN DOES 1-6, employees of the Newark Police Department, City of Newark, N.J.

Defendants.

CIVIL ACTION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, ESSEX COUNTY

NO. _____

**COMPLAINT, JURY DEMAND
AND DESIGNATION OF TRIAL
COUNSEL**

Plaintiffs, Tony Ivey, Jr., Kelvin Lamar James, and Faheem Loyal, through their undersigned attorneys, for their Complaint against the Defendants Newark Police Department and John Does 1-6, in the above-captioned matter, state as follows:

PRELIMINARY STATEMENT

1. Plaintiffs bring this action pursuant to the New Jersey Civil Rights Act, the New Jersey State Constitution (Article I, Paragraph 1, Article I, Paragraph 5, and Article I, Paragraph 7), and the New Jersey Law Against Discrimination, seeking relief against the Defendant

Newark Police Department, which policies and practices caused the Defendant John Doe police officers' unlawful and abusive stop, search, detention, discriminatory treatment, assault and battery and false imprisonment of Plaintiffs.

VENUE

2. Venue is proper in Essex County pursuant to R. 4:3-2(a) because the Newark Police Department is a public agency located in Essex County and the events giving rise to the claims in this Complaint occurred in Essex County.

PARTIES

3. Tony Ivey, Jr. [hereinafter "Tony"] is a minor and resides in Newark, Essex County, New Jersey. On or about June 14, 2008, the time of the incident described below, Tony was a minor, 13 years old. He is now 14 years old.

4. Faheem Loyal [hereinafter "Faheem"] is a minor and resides in Newark, Essex County, New Jersey. On or about June 14, 2008, the time of the incident described below, Faheem was a minor, 15 years old. He is now 16 years old.

5. Kelvin Lamar James [hereinafter "Kelvin"] resides in East Orange, Essex County, New Jersey.

6. Cassandra Jetter-Ivey is Tony's mother and resides in Newark, Essex County, New Jersey.

7. Aisha Loyal is Faheem's mother and resides in Newark, Essex County, New Jersey.

8. Defendant Newark Police Department is a department of the City of Newark and polices the City of Newark, Essex County, New Jersey.

9. Defendants John Does 1-6 are employees of the Newark Police Department and work in the City of Newark, Essex County, New Jersey. “John Doe” is a pseudonym for each of the officers of the Newark Police Department whose names are currently unknown to the Plaintiffs.

10. Tony, Faheem and Kelvin are black African American males.

FACTUAL ALLEGATIONS

11. On Saturday, June 14, 2008, at or about 9:00 p.m., Kelvin, an assistant football coach for the North Ward Scorpions, a Newark Area Pop Warner football team for children ages 11 to 15, took two of his players, Tony and Faheem, in his car to get dinner at Burger King at 500 Lyons Avenue, Irvington, New Jersey. Faheem sat in the front passenger seat of the car and Tony sat in the middle of the back seat of the car.

12. At or about 9:30 p.m., Kelvin drove his car down South 18th Street and approached the intersection with Clinton Avenue. The intersection of South 18th Street and Clinton Avenue is located in the City of Newark, Essex County, New Jersey.

13. Kelvin stopped his car on South 18th Street at a red light. Two cars were in front of Kelvin’s car. After the light changed to green and the cars failed to move, Kelvin signaled his intention to drive around them and started to do so. One of the cars in front of him suddenly swerved and obstructed Kelvin’s car’s path, and Newark police officers in street clothes immediately jumped out of the cars.

14. Six male police officers surrounded the car with their guns drawn.

15. One police officer told Kelvin, “Get the fuck out of the car,” and pulled his gun out and pressed it against Kelvin’s left shoulder.

16. Police officers immediately pulled Kelvin out of his car with a gun to his head, and searched him in the pouring rain, pulling at his clothes and handling him roughly and aggressively.

17. After being pulled out of the car, Kelvin asked the police officer, "Why are you pulling me over?" The officer replied "Shut the fuck up."

18. Kelvin sought further explanation of the reason for the stop of the car and attempted to explain who Plaintiffs were and where they were going. One police officer responded, "Shut the fuck up. Ask me one more thing and I'm going to fuck you up and take you to Green Street. You're not a coach."

19. Kelvin continued to ask why he had been pulled over and the police officer kept responding to him, "Shut the fuck up," and "I am going to fuck you up."

20. Meanwhile a police officer pulled Faheem out from the front passenger seat of the car. A police officer then pushed his gun into Faheem's ribs and his back.

21. At the same time, police officers opened both back seat doors of the car and pointed their guns at Tony. As Tony sought to put his money into his pocket, the officers screamed at him, "Don't fucking move or we'll blow your fucking brains out."

22. The police officers pulled Tony out of the back seat of the car and pushed their guns up into his upper chest and side.

23. The police officers then pushed Tony against the passenger side of the car.

24. Police officers frisked both Tony and Faheem in an extremely rough manner.

25. After having searched all three Plaintiffs and having found nothing, police officers continued to point their guns at them while other officers proceeded to search the interior of the car, making Kelvin open and look through the glove compartment at gun point.

26. Police officers opened the arm rests of the car and opened a zipped up sports duffel bag that was in the back seat of the car. The police officers also opened all the windows and the sunroof and left them open while rain came down into the car.

27. Although the police officers had found nothing during their searches, police officers then opened the trunk and searched the trunk without permission from Kelvin.

28. Kelvin again asked why the officers were searching the car and pointed out that he had not given them permission to conduct the search. One police officer responded to him, "I don't know who schooled you on your rights but you have no fucking rights." Kelvin asked, "Why?" and the police officer responded, "Because we're the cops. We do whatever we fucking want. We have no rules."

29. Throughout much of the course of the stop police officers had their guns drawn and aimed at the three young men.

30. The police officers found only football equipment in the trunk -- nothing but flags, balls, cones and other football-related items. The police officers returned to their cars while leaving the three of them to sit in the car with the windows and sun roof down, letting the rain pour in, as they waited for the officers to return.

31. At 9:50 p.m., the police officers issued Kelvin two tickets: one for failure to wear a seat belt and a second for failing to change his driver's license from Missouri to New Jersey. As indicated on the ticket, the ID number of the police officer who issued the tickets is 9222. Kelvin subsequently paid both tickets. As the officers left, one police officer told Kelvin, Tony and Faheem, "You got lucky."

32. As a result of these actions, Plaintiffs have suffered serious psychological harm and emotional distress. Due to the unlawful stop, search, detention and treatment, Kelvin feels “less of a man.”

33. Also as a result of the incident Kelvin rarely goes out at night. Additionally, Kelvin is now disinclined to bring his football players on outings for food or to attend movies or to go bowling, activities he had previously done with his players.

34. Tony and Faheem had feared they were going to be killed by the police officers.

35. After the unlawful search and treatment, both Tony and Faheem were very scared and upset. Faheem was distraught and unable to eat his food. Tony was barely able to explain to his mother what had occurred due to his fright.

36. Prior to the unlawful search and treatment Tony had wanted to become a police officer but he no longer harbors that ambition; he told his mother, “What if they start making me act like that?”

37. Tony and Faheem are now scared to go out at night, frightened that the police will hurt or shoot them.

38. The day after the unlawful search and treatment, on June 15, 2008, Cassandra Jetter-Ivey - Tony’s mother - called the North Ward police station to complain about the unlawful search and abusive treatment to which her son and Kelvin and Faheem were subjected.

39. On that same day, June 15, Sergeant Alejandro Martin from the North Ward came over to Ms. Jetter-Ivey’s home and apologized to her and to Kelvin, Tony and Faheem for what happened. Sgt. Martin provided his cell phone number. He then took the complaint from them and said he would forward the complaint to Internal Affairs.

40. When Ms. Jetter-Ivey had not heard anything from anyone for a number of days, she called Internal Affairs at (973) 733-6171, and was told by a male officer named Detective DeMengens that the complaint was transferred to the gang unit because “it was an incident involving three black males.”

41. Ms. Jetter-Ivey then reached by phone a female Detective Santiago at the Gang Unit who informed her that she should not tell her how to do the investigation, and that they would do it their way and contact her.

42. Kelvin also received a call from another officer who asked about the incident. Kevin told this officer a number of times what took place and never heard back from him.

43. On September 11, 2008, a Notice of Tort Claim was filed by Plaintiffs with the City of Newark Corporation Counsel concerning the actions of the Newark Police Department and six police officers.

44. On September 17, 2008, Newark Corporation Counsel requested that Plaintiffs supplement the Notice of Tort Claim by completing the City of Newark Notice of Claim form.

45. On September 29, 2008, Plaintiffs supplemented their submission with completed City of Newark Notice of Claim forms.

46. On October 15, 2008, Lieutenant Yvonne Roman of the Newark Police Department conducted tape recorded interviews of all three Plaintiffs at the Office of Gang Intelligence concerning the June 14, 2008 incident. Lt. Roman identified Plaintiffs’ complaint as number 08-415.

47. Lt. Roman informed Plaintiffs that the investigation into their complaint was expected to be completed within one week and that the Plaintiffs would be notified of the investigation’s findings.

48. Despite Plaintiffs' repeated requests, they have not, as of today, received any report or documentation of the findings of the Newark Police Department's investigation into their complaint.

CAUSES OF ACTION

COUNT ONE

NEW JERSEY STATE CIVIL RIGHTS ACTION/STATE CONSTITUTIONAL CLAIM
(Unlawful search of personal property)

49. Plaintiffs reallege and incorporate by reference each and every allegation contained in the preceding paragraphs 1 through 48, as if set forth fully herein.

50. By searching throughout Kelvin's car, including the armrests, the closed duffel bag, and the trunk of the car, without any probable cause or circumstances rendering such searches reasonable, the Defendants contravened Plaintiffs' constitutional rights under the New Jersey State Constitution, specifically Article I, Paragraph 7, which protects against unreasonable searches and seizures, and violated the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(c).

51. As a result of the described actions by the Defendants, Plaintiffs have suffered damages, including emotional distress.

COUNT TWO

NEW JERSEY STATE CIVIL RIGHTS ACTION/STATE CONSTITUTIONAL CLAIM
(Unlawful search of person and detention)

52. Plaintiffs reallege and incorporate by reference each and every allegation contained in the preceding paragraphs 1 through 48, as if set forth fully herein.

53. By searching Plaintiffs Tony, Faheem and Kelvin without any probable cause or circumstances rendering such searches reasonable, and by detaining them with unlawful force and threats, the Defendants contravened Plaintiffs' constitutional rights under the New Jersey Constitution, specifically Article I, Paragraph 1, which guarantees the enjoyment of liberty, and

Article I, Paragraph 7, which protects against unreasonable searches and seizures, and violated the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(c).

54. As a result of the described actions by the Defendants, Plaintiffs have suffered damages, including emotional distress.

COUNT THREE

NEW JERSEY STATE CIVIL RIGHTS ACTION/STATE CONSTITUTIONAL CLAIM **(Racial discrimination)**

55. Plaintiffs reallege and incorporate by reference each and every allegation contained in the preceding paragraphs 1 through 48, as if set forth fully herein.

56. By discriminating against Plaintiffs on the basis of race, including the stop, search, detention, and referral of the complaint to the gang unit because the Plaintiffs' allegations involve "three black males," the Defendants contravened Plaintiffs' constitutional rights under the New Jersey Constitution, Article I, Paragraph 1, which guarantees the enjoyment of liberty, and Article I, Paragraph 5, which protects against racial discrimination in the exercise of civil rights, and violated the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(c).

57. As a result of the described actions by the Defendants, Plaintiffs have suffered damages, including emotional distress.

COUNT FOUR

NEW JERSEY LAW AGAINST DISCRIMINATION CLAIM **(Racial discrimination)**

58. Plaintiffs reallege and incorporate by reference each and every allegation contained in the preceding paragraphs 1 through 48, as if set forth fully herein.

59. By discriminating against Plaintiffs on the basis of race, including the stop, search, detention, and referral of the complaint to the gang unit because the Plaintiffs' allegations

involve “three black males,” the Defendants contravened Plaintiffs’ rights guaranteed under the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 to -49.

60. As a result of the described actions by the Defendants, Plaintiffs have suffered damages, including emotional distress.

COUNT FIVE

ASSAULT AND BATTERY CLAIM

61. Plaintiffs reallege and incorporate by reference each and every allegation contained in the preceding paragraphs 1 through 48, as if set forth fully herein.

62. By continually holding all three Plaintiffs at gun point, and without legal justification threatening to “fuck [Kelvin] up,” and to “blow [Tony’s] fucking brains out”, and intentionally, roughly manhandling all three Plaintiffs and pushing their guns into the respective head, back and chest of the Plaintiffs, Defendants caused all three Plaintiffs to reasonably fear that they would be physically harmed or even killed and used unlawful force or violence against Plaintiffs, and therefore committed assault and battery against all three Plaintiffs.

63. As a result of the described actions by the Defendants, Plaintiffs have suffered damages, including emotional distress.

COUNT SIX

FALSE IMPRISONMENT CLAIM

64. Plaintiffs reallege and incorporate by reference each and every allegation contained in the preceding paragraphs 1 through 48, as if set forth fully herein.

65. By unlawfully detaining Plaintiffs against their will through threats, violent use of guns against Plaintiffs’ respective head, back and chest, and other physically rough treatment, Defendants falsely imprisoned Plaintiffs.

66. As a result of the described actions by the Defendants, Plaintiffs have suffered damages, including emotional distress.

COUNT SEVEN

NEW JERSEY STATE CIVIL RIGHTS ACTION/STATE CONSTITUTIONAL CLAIM
(Policy of racial discrimination and other unconstitutional acts)

67. Plaintiffs reallege and incorporate by reference each and every allegation contained in the preceding paragraphs 1 through 48, as if set forth fully herein.

68. The illegal, unconstitutional and discriminatory acts of the Defendants, including the failure of Defendant Newark Police Department to take disciplinary action against the Defendant police officers John Does 1-6, constitute acts of a policy to discriminate, use unlawful force, falsely imprison and detain, and illegally search Plaintiffs. All of these violations contravene Plaintiffs' constitutional rights under the New Jersey State Constitution, Article I, Paragraph 1, Article I, Paragraph 5, and Article I, Paragraph 7, and the New Jersey Civil Rights Act, N.J.S.A. 10:6-2.

69. As a result of the described actions by the Defendants, Plaintiffs have suffered damages, including emotional distress.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request judgment against the Defendants as follows:

(a) awarding a permanent injunction enjoining Defendant Newark Police Department and its agents, servants, and employees, including Defendants John Does 1-6, from discriminating on the basis of race in violation of the New Jersey Constitution, the New Jersey Civil Rights Act and the New Jersey Law Against Discrimination; and

(b) awarding a permanent injunction directing Defendant Newark Police Department and its directors, officers, agents, and employees, including Defendants and John Does 1-6, to take all affirmative steps necessary to:

(1) remedy the effects of the unlawful, discriminatory conduct described in this complaint and to prevent similar occurrences in the future; and

(2) establish proper and reasonable training and supervision with respect to unlawful racial discrimination and with respect to proper and reasonable procedures for the receipt, recordation, investigation, and, where warranted, remediation of complaints of unlawful racial discrimination, unlawful search and detention; and other police mistreatment and misconduct;

- (c) compensatory and consequential damages in an amount to be determined at trial;
- (d) Punitive damages on all claims allowed by law, in an amount to be determined at trial;
- (e) Attorney's fees and costs associated with this action;
- (f) Any further relief as this Court deems just and proper and any other relief as allowed by law.

Dated: Newark, New Jersey
April 23, 2009

Respectfully submitted,

By: _____

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Attorneys for Plaintiffs

JURY DEMAND

Plaintiffs demand a trial by jury on all of the triable issues of this complaint.

Dated: Newark, New Jersey
April 23, 2009

Respectfully submitted,

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Attorneys for Plaintiffs

DESIGNATION OF TRIAL COUNSEL

Plaintiffs hereby designate Lawrence S. Lustberg as trial counsel in this matter.

Dated: Newark, New Jersey
April 23, 2009

Respectfully submitted,

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Attorneys for Plaintiffs

CERTIFICATION OF NO OTHER ACTIONS

The undersigned hereby certifies that the matter in controversy is not the subject of any other action pending in any other court or a pending arbitration proceeding, and no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, the undersigned knows of no other parties that should be made a part of this lawsuit. In addition, the undersigned recognizes the continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

Dated: Newark, New Jersey
April 23, 2009

By: _____
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