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Attorneys for Plaintiff

KAMEELAH PHILLIPS, as parent and  
natural guardian of KHALIAH  
FITCHETTE, a minor

Plaintiff,

v.

CITY OF NEWARK, GARRY  
MCCARTHY (sued in his official  
capacity), NOEMI MALOON (sued in her  
individual capacity), LLOYD THOMAS  
(sued in his individual capacity), and  
SERGEANT DEFABIO (sued in his  
individual capacity)

Defendants.

DISTRICT OF NEW JERSEY  
NEWARK VICINAGE

DOCKET NO.

**CIVIL ACTION**

**COMPLAINT**

Plaintiff, Khaliah Fitchette, by her parent and guardian Kameelah Phillips, through her undersigned attorneys, states her Complaint as follows:

**PRELIMINARY STATEMENT**

1. Plaintiff Khaliah Fitchette, by her parent and guardian, Kameelah Phillips, brings this civil rights action pursuant to 42 U.S.C. § 1983, to vindicate her rights protected by the First and Fourth Amendments to the United States Constitution. She also brings claims for violations of the New Jersey Constitution and New Jersey statutory and common laws.

2. Specifically, on March 22, 2010, Khaliah, an Honors student and then-President of the Junior Class at University High School in Newark, boarded a Newark public bus to return from school. Soon after, defendant Officers Noemi Maloon and Lloyd Thomas were called to attend to a man who had fallen on the floor several rows in front of Khaliah. Standing approximately 10 feet away, and without obstructing or otherwise interfering in the police action in any way, Khaliah began recording the public scene with her smart phone camera, as it was her right to do. Immediately upon noticing Khaliah's constitutionally protected activity, Officer Maloon, without any lawful basis, ordered Khaliah to stop videotaping and to turn off her phone. Needing her phone activated, Khaliah declined to turn it off. Officer Maloon then left the fallen man and physically seized Khaliah, pulling her off the bus without any lawful basis. Officer Thomas unlawfully seized Khaliah's smart phone from her and deleted the video that had been recorded, for the purpose of ensuring that it would not be published later.

3. The officers handcuffed Khaliah and placed her in the back of the police car, leaving her school backpack behind on the bus. Thereafter, in plain contravention of state law governing the treatment of juveniles and basic constitutional limits on police arrest and detention authority, Officers Maloon and Thomas set out on a course to take the law into their own hands, and teach

Khaliah a lesson defendants incorrectly believed she somehow needed. Despite knowing Khaliah was a minor, and in violation of state law, the officers refused Khaliah's repeated pleas to contact her mother. Instead, they continued to detain her without lawful basis and conspired with Defendant Sergeant DeFabio, an officer-in-charge at a Newark Juvenile Processing Center, to charge Khaliah as an adult for obstruction of justice, despite the officers' knowledge that she was in fact a minor and could not be charged with such a crime.

4. This abuse of police authority and willful disregard of constitutional protections is just one recent example coming to light within a persistent and widespread pattern and practice of similar police misconduct — misconduct particularly disrespectful of the First Amendment rights of Newark citizens.

5. Nevertheless, despite being placed on notice of these pervasive abuses – through media reports and numerous civil rights lawsuits against Newark police officers and the City of Newark – the City and its relevant policy maker, Defendant Garry McCarthy, have failed to adequately remediate these abuses or properly train, supervise or discipline Newark police officers. The knowledge and acquiescence of the City and Director McCarthy, of such a pattern and practice of unlawful conduct subjects them to liability for the constitutional wrongs committed against Plaintiff.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over Plaintiff's claims, which are brought by her parent and guardian, Kameelah Phillips, for violations of her federal constitutional rights, pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1343(a)(3) (jurisdiction over federal constitutional claims). This Court has supplemental jurisdiction over Plaintiff's state law

claims pursuant to 28 U.S.C. § 1367(a), because these claims arise out of the same set of facts as the federal claims such that all claims herein form part of the same case or controversy.

7. Venue lies in this District pursuant to 28 U.S.C. § 1391(e), because a substantial part of the events giving rise to the claim occurred here.

## **PARTIES**

### **The Plaintiffs**

8. Plaintiff KAMEELAH PHILLIPS is a resident of Newark, New Jersey and is suing in her representative capacity on behalf of Khaliah, a juvenile, as her mother.

9. Plaintiff KHALIAH FITCHETTE is a resident of Newark, New Jersey. Khaliah is a college-bound honor student at University High School in Newark and a minor.

### **The Defendants**

10. Defendant CITY OF NEWARK is the municipal entity which exercises control over the Newark Police Department. It is responsible for establishing policy, procedures, and training methods, and exercises a supervisory role over the entire Newark Police Department (“NPD”).

11. Defendant GARRY MCCARTHY is Director of the NPD. He is the relevant policy maker for the Newark Police Department and exercises supervisory authority over Newark Police Department Officers. He is sued in his official capacity only.

12. Defendant NOEMI MALOON is an officer of the Newark Police Department. She is sued in her individual capacity.

13. Defendant LLOYD THOMAS is an officer of the Newark Police Department. He is sued in his individual capacity.

14. Defendant SERGEANT DEFABIO, whose first name is currently unknown, is an officer of the Newark Police Department. He is sued in his individual capacity.

15. Defendants at all relevant times and as to all relevant actions described herein, were actions under the color of state law.

### **FACTUAL ALLEGATIONS**

16. Khaliah was sixteen years old on March 22, 2010, the day the on which the facts that give rise to this claim occurred. Khaliah is currently a high school senior and honors student at University High School in Newark, N.J. She was granted admission to several prestigious 4-year universities including Cornell, Northeastern, and Villanova; she is currently in the process of deciding where she would like to matriculate in the Fall of 2011. Khaliah is considering one day becoming a lawyer.

17. Khaliah is an active member in both her school and community. She is a former Junior Class President at University High School, a cheerleader, and has been selected to the school's Principal's List, which recognizes academic achievement, citizenship, and community service, among other things. In addition to her busy school and extracurricular schedule, she has regularly held part-time jobs after school and during summers.

18. Khaliah has never been in trouble with the law nor has she had any disciplinary problems at school.

19. Khaliah lives with her mother, Kameelah Phillips, and her two younger sisters.

### **Khaliah's Constitutionally Protected Activity**

20. At approximately 2:45 p.m., on March 22, 2010, Khaliah and her friends, as they do on most school days, boarded a crowded New Jersey Transit bus, #9540, running on line #13, near University High School in Newark.

21. The #9540 bus was an articulated bus, meaning it can bend in the middle, and Khaliah and her classmates were standing in the front of the rear section of that bus.

22. Shortly after Khaliah boarded the bus, an unidentified man, who had been seated several rows ahead of Khaliah and her friends, fell to the floor.

23. After the unidentified man fell, the operator of the bus stopped the bus and called the police.

24. After the bus stopped, Khaliah and several of her fellow students became concerned that the delay would cause them to be late for various after-school obligations. Accordingly, several of the student-passengers began calling or sending text-messages to those who were expecting them.

25. A passenger on the bus asked Khaliah to use her “smart phone” to photograph the event. The picture, it was hoped, could corroborate the passenger’s story. Accordingly, the passenger asked Khaliah to e-mail him the picture so that he could show it to his boss when he eventually arrived at work.

26. The “smart phone” that Khaliah possessed on the date of the incident was the LG enV. This smart phone is an electronic device that is able to execute computer programs, and among other capabilities, is able to access the internet, store data, send e-mail messages and other communications, take and store video and pictures, and view and edit documents.

27. At approximately 3:20 PM, Newark police unit #512, consisting of defendant Officers Noemi Maloon and Lloyd Thomas, reported to the scene and boarded bus #9540 from the front entrance.

28. Upon boarding the public bus, Officer Maloon approached the man who had fallen to provide assistance.

29. Khaliah, standing a number of rows away from Maloon and the fallen man, and without obstructing, impeding, or otherwise interfering with this police activity, was videotaping this public scene with her smart phone, as she had a constitutional and common law right to do.

### **Maloon and Thomas's Unlawful Search, Seizure and Arrest**

30. Immediately upon noticing Khaliah's protected activity, Officer Maloon ordered Khaliah, without any lawful basis, to turn off her smart phone and to stop videotaping. Officer Maloon objected to the possible publication of public officials via the internet. Khaliah declined to turn off her smart phone because she needed it to be on in order to ensure that she could be reached if necessary, especially since the bus had stopped and she anticipated being late.

31. Then, without even verbally responding to Khaliah, Officer Maloon suddenly physically seized Khaliah by the arm, and forcibly removed her from the bus. While being seized, Khaliah heard Officer Maloon say something to the effect of, "kids today think they can do whatever they want."

32. As they were exiting the bus Khaliah told Maloon, "you are hurting me."

33. The officers left Khaliah's belongings, including her purse and all forms of identification, on the bus.

34. At some point, Officer Thomas, without Khaliah's consent or authorization, confiscated Khaliah's smart phone. He then, also without Khaliah's consent or authorization, manipulated the phone and deleted the video that the officers had objected to her taking and potentially publishing.

35. After being physically removed from the bus, Khaliah was understandably shocked by the sudden turn of events. She repeatedly asked Officer Maloon if she was "really being arrested." Officer Maloon responded only by telling Khaliah that she was "resisting arrest."

36. One of the officers handcuffed Khaliah behind her back.

37. After handcuffing Khaliah, Officers Maloon and Thomas ordered Khaliah to sit in the back of the police car, in plain sight of Khaliah's friends and classmates and other bus passengers. Thereafter they left Khaliah handcuffed in the back seat of the police car and reentered the bus.

**Officers' Failure to Abide by State Law Requirements for the  
Arrest and Detention of a Juvenile**

38. After returning to the police car, where Khaliah remained handcuffed behind her back, Officer Maloon used the vehicle's radio to call in a "disorderly and obstructing juvenile." Officer Maloon then started the vehicle and left the scene. They drove to the Newark Police Department's Juvenile Processing Center.

39. While driving, Khaliah repeatedly asked the officers to call her mother, Ms. Kameelah Phillips. The officers, in plain violation of New Jersey law governing the treatment of juveniles, *see* N.J. Stat. § 2A:4A-33, as well as written Newark Police Department Rules, ignored these requests. Because she violated no law, Khaliah also repeatedly expressed bewilderment and disbelief that she was actually under arrest.

40. The officers eventually brought Khaliah, who was still handcuffed behind her back, into Juvenile Processing.

41. At Juvenile Processing, Officer Maloon told Sergeant DeFabio, who was an officer-in-charge, that she wished to charge Khaliah with obstruction of justice.

42. Sergeant DeFabio informed Officer Maloon that juveniles cannot be charged with obstruction of justice.

43. Officer Maloon was apparently unwilling to concede that Khaliah's detention was unlawful and sought a way to continue the arrest — a goal Sergeant DeFabio advanced. Officer



Maloon stated that Khaliah did not have any identification on her person to prove she was in fact a juvenile, precisely because the officers left Khaliah's belongings and identification on the bus. Thus, even though officer Maloon had previously reported that Khaliah was a juvenile, referred to her as a "kid," and had taken her to Juvenile Processing, Officer Maloon now pretended to be uncertain as to whether Khaliah was in fact a juvenile.

44. Even though New Jersey law, *see* N.J. Stat. § 2A:4A-20, *et seq.*, generally prohibits a person less than eighteen years old from being charged as an adult, Sergeant DeFabio falsely informed Officer Maloon that Khaliah's inability to prove she was a juvenile allowed them to charge her as an adult. Sergeant DeFabio suggested that officer Maloon take Khaliah to adult Prisoner Processing and charge her with obstruction of justice.

45. Agreeing with this plan, Officer Maloon informed Khaliah that she was going to charge her as an adult.

46. Upon hearing that she would be charged as an adult, Khaliah, still handcuffed behind her back, became emotional and despondent and, once again, pleaded with the officers to call her mother. Yet again, in continued violation of New Jersey law, the officers refused to call Khaliah's mother.

47. As a model student, Khaliah was terrified of the effect that being charged as an adult would have on her future college and employment prospects.

48. The officers and Khaliah, who was still handcuffed behind her back, exited Juvenile Processing and Khaliah was again placed in the back seat of the police car.

49. En route to Adult Processing, the officers apparently recognized that their actions had gone too far. They eventually agreed to discontinue Khaliah's unlawful detention, and to attempt to drop Khaliah off with her mother.

50. While pulled over on the side of the road at an unidentified location, either Officer Maloon or Officer Thomas proceeded to remove Khaliah's handcuffs before bringing her to her mother's place of employment.

51. Upon arrival at Ms. Phillips's place of employment, Officer Maloon exited the vehicle, leaving Officer Thomas and Khaliah in the vehicle.

52. Officer Maloon asked security at Ms. Phillips's place of employment to contact Ms. Phillips and have her come to the lobby of the building.

53. When Ms. Phillips came down to the lobby of the building, Officer Maloon told Ms. Phillips that Khaliah was "disrespectful."

54. The officers then removed Khaliah from the vehicle and turned her over to her mother.

55. In the months that followed the incident, Khaliah experienced anxiety and concern about her prospects for college and future employment. She also experienced unwelcome notoriety among her classmates.

56. Khaliah also fears she might come across Officer Maloon or Officer Thomas again and be retaliated against.

57. At the time of filing, Ms. Phillips and Khaliah are residents of Newark and are still under the jurisdiction of the NPD.

58. Khaliah filed a timely Tort Claims Notice on June 18, 2010.

**The City's and Garry McCarthy's Knowledge of and Acquiescence in the Pattern and Practice of Unlawful and Abusive Police Practices**

59. The NPD Officers' unconstitutional conduct in this case emerges as part of a persistent and widespread pattern and practice of unlawful arrests, searches, and seizures as well as interference with, restraint of, and retaliation against citizens' First Amendment rights of free

speech and expression — a pattern and practice that has been the subject of widespread media reporting and numerous civil rights lawsuits. The NPD’s pattern of misconduct – and the number of complaints lodged and lawsuits filed against NPD – has been documented in a 96-page petition to the Civil Rights Division of the Department of Justice to investigate the department.<sup>1</sup> That petition is under review by the Department of Justice.<sup>2</sup>

60. In one such instance specifically involving the right to photograph, in September 2007, the publisher of a local Newark newspaper was unlawfully arrested, detained, and forced to hand over certain photographs of a public lot, later deemed a crime scene, by Newark police in violation of the First and Fourth Amendment as well as the New Jersey Reporter’s Shield Statute.<sup>3</sup> The police handcuffed the man to a bench until he acquiesced in handing over his constitutionally protected journalistic work product to the police.<sup>4</sup> Garry McCarthy was a named defendant in the civil rights case brought, and gave a deposition in the case. That case, like this one, raised claims relating to the pattern and practice of police misconduct.

61. The 2005 Academy Award-nominated documentary StreetFight depicts numerous instances of police bullying, intimidation, and unlawful seizure of journalist work product arising from the constitutionally-protected filming of a Newark mayoral candidate while on public property. The film’s graphic depiction of police abuse, including efforts to prohibit the documentarian from filming, brought national attention to the problems with the Newark Police Department.

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<sup>1</sup> See Petition by ACLU-NJ to U.S. Dep’t Justice, Sept. 9, 2009, available at: <http://www.aclu-nj.org/downloads/090910NPDUSDOJPEtition.pdf> (documenting hundreds of lawsuits and complaints of NPD misconduct).

<sup>2</sup> James Queally, *Justice Department investigates ACLU’s call for federal oversight of Newark police*, Newark Star-Ledger, Jan. 20, 2011

<sup>3</sup> The Star-Ledger Continuous News Desk, *Editor sues Newark cops over arrest*, Newark Star-Ledger, Jan. 23, 2008.

<sup>4</sup> *Id.*

62. In 2008, a Newark police officer ordered a CBS news cameraman to stop filming a public protest from the public sidewalk, wrestled the camera away, put the camera man in a chokehold, and told objecting bystanders that, “I can do whatever I want!”<sup>5</sup> The reporter later filed suit for various claims, including egregious First Amendment violations. Newark Mayor Cory Booker proclaimed that he was dismayed about the occurrence and that Police Director Garry McCarthy was “fit to be tied,” when he was informed of the situation.<sup>6</sup>

63. There are also numerous other instances of documented citizens’ lawsuits and complaints regarding illegal searches and seizures violating the First and Fourth Amendments.

64. Based on numerous lawsuits, news reports, and citizen complaints, Defendant City of Newark was put on notice of the extensive constitutional violations that persisted under its control. Yet the City has failed to properly address these issues by implementing corrective policy and training and by remaining indifferent to the pervasive violations. The City’s knowledge and acquiescence in widespread abuses caused the violation of Khaliah’s constitutional rights.

#### **Defendant Garry McCarthy’s Supervisory Liability**

65. Defendant Garry McCarthy is Director of the Newark Police Department within the City of Newark, New Jersey.

66. Pursuant to the General Ordinances of the City of Newark, Defendant McCarthy is “responsible for the overall performance of the Police Department.” He further is required to

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<sup>5</sup> Joe Ryan, *Cameraman files suit against Newark officer who tried to halt filming of demonstration*, Newark Star-Ledger, Nov. 3, 2009; *see also* CBS News, *Cop Puts Cameraman In Chokehold for Filming Peaceful Protest*, YOUTUBE (Oct. 27, 2008), <http://www.youtube.com/watch?v=LSsGrIf8F0M> (video from a CBS News broadcast involving the incident).

<sup>6</sup> *Id.*

“adopt and promulgate Rules and Regulations and the overall policy for the government of the Police Department and for the discipline of its members. . .”<sup>7</sup>

67. Additionally, Defendant McCarthy is “directly responsible” for the “day to day operations” of the Newark Police Department.<sup>8</sup>

68. Pursuant to N.J. Stat § 40A:14-118 and the Newark Police Department Rules & Regulations 1:1.7 (revised Oct. 1, 2005), Defendant McCarthy has the authority to amend, add to, or revoke any of the rules, regulations, or procedures of the Newark Police Department.

69. Defendant McCarthy has been repeatedly put on notice of the First and Fourth Amendment violations routinely practiced by the officers of the Newark Police Department, including (as explained above) specifically the right of citizens to film police and other public activities. Additionally, Defendant McCarthy has been sued for his role in the restraint of, interference with, and retaliation against constitutionally protected First Amendment activities as well as unlawful arrests, searches, and seizures.<sup>9</sup>

70. Despite being made aware of a pattern and practice unconstitutional actions by the Newark Police Department, Defendant McCarthy has not implemented the necessary guidelines, protocols, training, or oversight that would ensure the Newark Police Department and officers under Defendant McCarthy’s supervision operate in a manner consistent with the First and Fourth Amendments of the United States Constitution. Defendant McCarthy’s knowledge and acquiescence in the unconstitutional practices of NPD officers caused the violation of Khaliah’s constitutional rights.

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<sup>7</sup> Newark, NJ, General Ordinances 2:20-1.4.

<sup>8</sup> *Id.*

<sup>9</sup> *See Lima v. Newark Police Department*, No. 08-cv-00426 (suing McCarthy); *Botti v. City of Newark*, L-958-11 (suing McCarthy in New Jersey state court for federal First and Fourth Amendment violations).

**FIRST CAUSE OF ACTION**  
**VIOLATION OF THE FIRST AMENDMENT TO**  
**THE UNITED STATES CONSTITUTION**  
(Unlawful Interference With, Restraint of, and Retaliation Against  
Free Speech and Freedom of Expression)

71. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth herein.

72. Khaliah has a constitutionally protected right under the First Amendment to the United States Constitution to receive, gather, and record information in a lawful manner.

73. By ordering Khaliah to stop video recording the public events on the public bus with her smart phone, by seizing Khaliah's smart phone containing said video, and by deleting said video from Khaliah's smart phone in order to prevent the video's publication, officers Maloon and Thomas violated Khaliah's First Amendment rights of freedom of speech and expression. By arresting Khaliah for attempting to record and disseminate said video, Officers Maloon and Thomas retaliated against Khaliah for exercising her freedom of speech and expression, also in violation of the First Amendment.

74. Upon information and belief, Defendants City of Newark and McCarthy tolerated past or ongoing misbehavior surrounding the violation of First Amendment rights of citizens within their jurisdiction or were deliberately indifferent to the risk that officers under their control and command, lacking clear training and discipline, would violate the First Amendment rights of individuals within Newark. By failing to properly train officers and by failing to adopt policies necessary to prevent the unlawful actions at issue here, Defendants City of Newark and McCarthy caused the violation of plaintiff's right to freedom of speech and expression under the First Amendment.

75. As a result of the described actions by Defendants City of Newark, McCarthy, Maloon, and Thomas, Khaliah has suffered damages, including emotional distress.

**SECOND CAUSE OF ACTION**  
**VIOLATION OF ARTICLE I, PARAGRAPH 6 OF**  
**THE NEW JERSEY CONSTITUTION**  
(Unlawful Interference With, Restraint of, and Retaliation Against  
Free Speech and Freedom of Expression)

76. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth herein.

77. Khaliah has a constitutionally protected right under Article I, Paragraph 6 of the New Jersey Constitution to receive, gather, and record information in a peaceful manner.

78. By ordering Khaliah to stop video recording the public events on the public bus with her smart phone, by seizing Khaliah's smart phone containing said video, and by deleting said video from Khaliah's smart phone in order to prevent the video's publication, officers Maloon and Thomas violated Khaliah's rights of freedom of speech and expression under Article I, Paragraph 6 of the New Jersey Constitution. By arresting Khaliah for attempting to record and disseminate said video, Officers Maloon and Thomas retaliated against Khaliah for exercising her freedom of speech and expression, also in violation of the Article I, Paragraph 6 of the New Jersey Constitution.

79. Upon information and belief, Defendants City of Newark and McCarthy tolerated past or ongoing misbehavior surrounding the violation of Article I, Paragraph 6 of the New Jersey Constitution within their jurisdiction or were deliberately indifferent to the risk that officers under their control and command, lacking clear training and discipline, would violate these rights of individuals within Newark. By failing to properly train officers and by failing to adopt policies necessary to prevent the unlawful actions at issue here, Defendants City of Newark and McCarthy caused the violation of plaintiff's right to freedom of speech and expression under Article I, Paragraph 6 of the New Jersey Constitution.

80. As a result of the described actions by Defendants City of Newark, McCarthy, Maloon, and Thomas, Khaliah has suffered damages, including emotional distress.

**THIRD CAUSE OF ACTION**  
**VIOLATION OF THE FOURTH AMENDMENT TO**  
**THE UNITED STATES CONSTITUTION**  
(Unlawful Seizure of the Person)

81. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth herein.

82. Defendants misused the authority granted to them under color of state law and unjustifiably arrested and detained Khaliah.

83. Defendants had no warrant and no probable cause to arrest Khaliah related to the commission of any crime, nor was Khaliah acting in a suspicious or potentially dangerous manner.

84. By arresting Khaliah without a warrant, probable cause, or any other lawful basis for arrest, Officers Maloon and Thomas violated Khaliah's right to be free from unreasonable seizure of her person, as guaranteed by the Fourth Amendment to the United States Constitution.

85. Defendant Sergeant DeFabio falsely advised Officers Maloon and Thomas that they could charge Khaliah as an adult despite the fact that they knew or should have known that Khaliah was a juvenile. By doing so, Sergeant DeFabio participated in Khaliah's wrongful arrest and unreasonably extended the length of such unlawful arrest, violating Khaliah's right to be free from unreasonable seizure of her person, as guaranteed by the Fourth Amendment to the United States Constitution.

86. Defendants City of Newark and McCarthy tolerated past or ongoing misbehavior surrounding the violation of Fourth Amendment rights of citizens within their jurisdiction or were deliberately indifferent to the risk that officers under their control and command, lacking clear training and discipline, would violate the Fourth Amendment rights of individuals within



Newark. By failing to properly train officers and by failing to adopt policies necessary to prevent the unlawful actions at issue here, Defendants City of Newark and McCarthy caused the violation of plaintiff's right to be free from unlawful seizure of person under the Fourth Amendment.

87. As a result of the described actions by Defendants City of Newark, McCarthy, Maloon, Thomas, and DeFabio, Khaliah has suffered damages, including emotional distress.

**FOURTH CAUSE OF ACTION**  
**VIOLATION OF ARTICLE I, PARAGRAPH 7 OF**  
**THE NEW JERSEY CONSTITUTION**  
(Unlawful Seizure of the Person)

88. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth herein.

89. Defendants misused the authority granted to them under color of state law and unjustifiably arrested and detained Khaliah.

90. Defendants had no warrant and no probable cause to arrest Khaliah, nor was Khaliah acting in a suspicious or potentially dangerous manner.

91. By arresting Khaliah without a warrant, probable cause, or any other lawful basis for arrest, officers Maloon and Thomas violated Khaliah's right to be free from unreasonable seizure of her person, as guaranteed by Article I, Paragraph 7 of the New Jersey Constitution.

92. Defendant Sergeant DeFabio falsely advised Officers Maloon and Thomas that they could charge Khaliah as an adult despite knowing Khaliah was a juvenile. By doing so, Sergeant DeFabio contributed to Khaliah's wrongful arrest and unreasonably extended the length of such arrest, violating Khaliah's right to be free from unreasonable seizure of her person, as guaranteed by Article I, Paragraph 7 of the New Jersey Constitution.

93. Upon information and belief, Defendants City of Newark and McCarthy tolerated past or ongoing misbehavior surrounding the violation of Article I, Paragraph 7 of the New

Jersey Constitution within their jurisdiction or were deliberately indifferent to the risk that officers under their control and command, lacking clear training and discipline, would violate these rights of individuals within Newark. By failing to properly train officers and by failing to adopt policies necessary to prevent the unlawful actions at issue here, Defendants City of Newark and McCarthy caused the violation of plaintiff's right to be free from unlawful seizure of person under Article I, Paragraph 7 of the New Jersey Constitution.

94. As a result of the described actions by Defendants City of Newark, McCarthy, Maloon, Thomas, and DeFabio, Khaliah has suffered damages, including emotional distress.

**FIFTH CAUSE OF ACTION**  
**VIOLATION OF THE FOURTH AMENDMENT TO**  
**THE UNITED STATES CONSTITUTION**  
(Unlawful Search and Seizure of Personal Property)

95. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth herein.

96. By seizing Khaliah's smart phone without a search warrant or other circumstances rendering such seizure reasonable, Officers Maloon and Thomas violated Khaliah's right to be free from unlawful searches and seizures of personal property, as guaranteed by the Fourth Amendment of the United States Constitution.

97. Upon information and belief, Defendants City of Newark and McCarthy tolerated past or ongoing misbehavior surrounding the violation of Fourth Amendment rights of citizens within their jurisdiction or were deliberately indifferent to the risk that officers under their control and command, lacking clear training and discipline, would violate the Fourth Amendment rights of individuals within Newark. By failing to properly train officers and by failing to adopt policies necessary to prevent the unlawful actions at issue here, Defendants City of Newark and McCarthy caused the violation of plaintiff's right to be free from unlawful searches and seizures of personal property under the Fourth Amendment.

98. As a result of the described actions by Defendants City of Newark, McCarthy, Maloon, and Thomas, Khaliah has suffered damages, including emotional distress.

**SIXTH CAUSE OF ACTION**  
**VIOLATION OF ARTICLE I, PARAGRAPH 7 OF**  
**THE NEW JERSEY CONSTITUTION**  
(Unlawful Search and Seizure of Personal Property)

99. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth herein.

100. By seizing Khaliah's smart phone without a search warrant or other circumstances rendering such seizure reasonable, officers Maloon and Thomas violated Khaliah's right to be free from unlawful searches and seizures of personal property, as guaranteed by Article I, Paragraph 7 of the New Jersey Constitution.

101. Upon information and belief, Defendants City of Newark and McCarthy tolerated past or ongoing misbehavior surrounding the violation of Article I, Paragraph 7 of the New Jersey Constitution within their jurisdiction or were deliberately indifferent to the risk that officers under their control and command, lacking clear training and discipline, would violate these rights of individuals within Newark. By failing to properly train officers and by failing to adopt policies necessary to prevent the unlawful actions at issue here, Defendants City of Newark and McCarthy caused the violation of plaintiff's right to be free from unlawful searches and seizures of personal property under Article I, Paragraph 7 of the New Jersey Constitution.

102. As a result of the described actions by Defendants City of Newark, McCarthy, Maloon, and Thomas, Khaliah has suffered damages, including emotional distress.

**SEVENTH CAUSE OF ACTION**  
**CONVERSION OF PERSONAL PROPERTY**

103. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth herein.

104. By seizing Khaliah's smart phone and deleting the video from it without her consent, in violation of her ownership and property rights, Defendants Maloon and Thomas committed the common law tort of conversion.

105. As a result of the described actions by Defendants Maloon and Thomas, Khaliah has suffered damages.

**EIGHTH CAUSE OF ACTION**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

106. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth herein.

107. By seizing and arresting Khaliah intentionally, by taking such action without any feasible justification or cognizable warning, by taking such action in order to teach Khaliah a lesson that juveniles can't "think they can do whatever they want," by causing immediate embarrassment and humiliation both at the scene and in subsequent days within Khaliah's school and community, and by causing fear of a damaging criminal record and of subsequent police retaliation, Defendants Maloon and Thomas intentionally caused Khaliah to suffer emotional distress that a reasonable person in her situation could not be asked to withstand, and therefore committed intentional infliction of emotional distress against Khaliah.

108. By intentionally advising Defendants Maloon and Thomas that Khaliah could be charged as an adult, by taking such action without any legal justification and contrary to New Jersey statutory mandate, and by causing immediate fear of a damaging criminal record, Defendant DeFabio intentionally caused Khaliah to suffer emotional distress that a reasonable person in her situation could not be asked to withstand, and therefore committed intentional infliction of emotional distress against Khaliah.

109. As a result of the described actions by Defendants Maloon, Thomas, and DeFabio, Khaliah has suffered damages, including emotional distress.

**NINTH CAUSE OF ACTION**  
**FALSE IMPRISONMENT/FALSE ARREST**

110. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth herein.

111. By unlawfully, and without probable cause, detaining Khaliah against her will, by removing her from the bus, by placing her in handcuffs, by seating and detaining her in a police vehicle, by transporting her to the Juvenile Processing, and by transporting and detaining her in and around various points across the city of Newark over the course of a hour without a warrant or justification, Defendants Maloon and Thomas falsely imprisoned and falsely arrested Khaliah.

112. As a result of the described actions by Defendants Maloon and Thomas, Khaliah has suffered damages, including emotional distress.

**TENTH CAUSE OF ACTION**  
**NEW JERSEY COMMON LAW RIGHT TO VIDEOTAPE**

113. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth herein.

114. By ordering Khaliah to stop video recording a public official on a public bus, by seizing her smart phone, and by deleting the recording of the public official on a public bus, Defendants Maloon and Thomas violated K.F's New Jersey common law right to videotape public events.

115. As a result of the described actions by Defendants Maloon and Thomas, Khaliah has suffered damages.

**ELEVENTH CAUSE OF ACTION**  
**VIOLATION OF NEW JERSEY**  
**COMPUTER RELATED OFFENSES ACT, N.J. Stat § 2A:38A-1 et seq.**

116. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth herein.

117. By purposefully or knowingly, and unauthorized altering, accessing, attempting to access, damaging, destroying, and/or taking of Khaliah's smart phone, Defendants Maloon and Thomas violated the New Jersey Computer Related Offenses Act.

118. By purposefully or knowingly, and unauthorized altering, damaging, destroying, and/or taking data stored on Khaliah's smart phone, Defendants Maloon and Thomas violated the New Jersey Computer Related Offenses Act.

119. By purposefully or knowingly accessing, and recklessly altering, damaging, destroying, and/or obtaining Khaliah's smart phone, Defendants Maloon and Thomas violated the New Jersey Computer Related Offenses Act.

120. By purposefully or knowingly accessing, and recklessly altering, damaging, destroying, and/or obtaining data stored on said smart phone, Defendants Maloon and Thomas violated the New Jersey Computer Related Offenses Act.

121. As a result of the described actions by Defendants Maloon and Thomas, Khaliah has suffered damages.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests judgment against the Defendants as follows:

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

Plaintiff demands a trial by jury.

Dated: March 28, 2011  
Newark, New Jersey

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