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ROBERTO LIMA,

Plaintiff,

v.

NEWARK POLICE DEPARTMENT,
GARRY MCCARTHY, SAMUEL
DEMAIO, LYDELL JAMES, and JOHN
DOE, an employee of the Newark Police
Department, City of Newark, N.J.,

Defendants.

DISTRICT OF NEW JERSEY
NEWARK VICINAGE

DOCKET NO.

CIVIL ACTION

COMPLAINT

Plaintiff Roberto Lima, through his undersigned attorneys, for his complaint against Defendants, alleges as follows:

PRELIMINARY STATEMENT

1. Plaintiff, Roberto Lima, brings this civil rights action pursuant to 42 U.S.C. § 1983 and N.J.S.A. 10:6-1 et seq. for damages and other relief against Defendants, Newark Police

Department and its officers and leaders Garry McCarthy, Samuel Demaio, and Lydell James, and John Doe, who while acting under color of state law, violated Mr. Lima's rights under the First and Fourth Amendments of the United States Constitution; Article I, Paragraphs 6 and 7 of the New Jersey State Constitution; and the New Jersey Reporter Shield Law.

2. This case arises out of a series of abusive police efforts to bully, intimidate and, finally, unlawfully arrest a member of the press in order to prevent him from exercising his constitutional entitlement to report on a story that, while potentially embarrassing to the Newark Police Department, was of significant interest to the public.

3. In August 2007, in a highly publicized case, three Newark college students were murdered, execution-style, in the city. Press coverage of the tragedy reflected the community's shock and dismay at the continuing scourge of violence that plagues the city, and also posed the question whether the city and its police force were effective at controlling crime.

4. Barely a month after these three murders, Mr. Lima – the editor of a local newspaper – and his staff discovered another dead body, alerted the police, and directed them to the scene. Upon arriving at the scene, Defendant Demaio ordered Mr. Lima not to publish in his newspaper any of the pictures of the crime that newspaper staff had taken. Defendant Demaio then escalated his reaction by physically seizing Mr. Lima's camera and electronic storage card and finally – despite Mr. Lima's agreement to turn over any pictures his staff had taken so long as he could retain copies for the newspaper – ordering Mr. Lima's arrest for his refusal to forfeit *all* originals and duplicates of the photographs his staff had taken. Defendant McCarthy participated in the NPD's unconstitutional actions by similarly directing or approving the unlawful arrest and the continued detention of Mr. Lima by NPD officers unless he agreed to turn over all pictures and duplicates. Defendant James and pseudonymous defendant John Doe

were NPD officers who carried out the unconstitutional commands of Defendants McCarthy and Demaio. Defendants took all of these actions without a judicial warrant, probable cause, or even exigent circumstances that would lawfully justify the seizure and arrest.

5. Mr. Lima seeks relief in this Court not only to redress the wrongs done to him personally but also to vindicate the rights of journalists throughout the country to do their important and constitutionally-protected job of gathering and reporting the news free from police harassment, coercion and abuse.

JURISDICTION AND VENUE

6. This Court has jurisdiction over Mr. Lima's claims for violations of his 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 Mr. Lima's state law claims, 28 U.S.C. § 1367(a), because these 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

8. Plaintiff, Roberto Lima, resides in Livingston, New Jersey. Mr. Lima is the editor of the *Brazilian Voice*, a Portuguese-language newspaper published in Newark to report on issues of concern to the local Brazilian community.

9. Defendant Newark Police Department ("NPD") is the law enforcement agency of the City of Newark. Defendant Garry McCarthy is Director of the NPD. Defendant Samuel Demaio is Deputy Chief of the NPD, and Defendant Lydell James and Defendant John Doe are

officers of the NPD. “John Doe” is a pseudonym for an officer of the NPD whose name is currently unknown to the Plaintiff.

10. At all times mentioned herein, Defendants McCarthy, Demaio, James, and Doe were acting within the scope of their duties and employment, under color of state law, as police officers of the Newark Police Department, City of Newark, in the County of Essex, State of New Jersey.

FACTUAL ALLEGATIONS

11. On August 4, 2007, three college students were the victims of a brutal, execution-style murder in Newark. The shootings received national attention, including press coverage by the New York Times, USA Today, CNN, and National Public Radio, among other sources. Reaction among the public in Newark, in addition to grief and despair, included a march on City Hall to express anger at the city’s leadership for ineffective crime control.

12. On September 6, 2007, a photographer for the *Brazilian Voice* was taking pictures in the vicinity of the movie theater on Foundry Street in the Ironbound section of Newark. The photographer hoped to document the considerable amount of trash that had accumulated as a result of the Brazilian Day festivities held the previous weekend.

13. During the course of his work, the photographer discovered the body of a deceased woman in a trash-strewn alleyway behind the theater.

14. The photographer then went to the offices of the *Brazilian Voice*, to tell his editor, Plaintiff Roberto Lima, what he had found. After making a backup copy of the pictures in the office, the two men returned to the location of the body with a third *Brazilian Voice* staff member.

15. At the scene, once Mr. Lima saw for himself the body of the deceased woman, he contacted Anthony Campos, Chief of the Newark Police Department, via text message, to alert him to the discovery. Mr. Lima, recognized as a leader in the Newark-Brazilian community, had at that time an excellent relationship and regular contact with the NPD. After contacting Chief Campos, the *Brazilian Voice* staff members took additional pictures.

16. When Mr. Campos did not respond, Mr. Lima and the two staff members went to the police station to report what they had discovered. After notifying the police, the three journalists returned to the scene with several officers to help the officers locate the body.

17. Upon arriving at the scene, the photographer who found the body aided police in directing traffic and setting up caution tape, while the remaining officers were directed to the body.

18. Soon after the journalists directed the police officers to the body, the Deputy Chief of the Newark Police Department, Defendant Samuel Demaio, arrived in a police SUV wearing plain clothes. At no time during his presence at this scene did Defendant Demaio appear interested in learning about the victim or the crime. Upon his arrival, he ignored a junior officer who was attempting to explain what the police had learned about the incident up to that point. Instead, Defendant Demaio demanded to be directed to the person who found the body.

19. When he was introduced to the photographer, Defendant Demaio commenced an intimidating interrogation. He abruptly asked, "Are you legal?" Upon receiving no reply (the photographer does not speak English), Defendant Demaio asked, "Do you have a green card?" Defendant Demaio's actions appeared to have been aimed at intimidating and silencing the journalists assembled there. His actions were also obviously in violation of an Attorney General's Directive that specifically prohibits police officers from inquiring into the immigration

status of victims and witnesses to crimes. After investigating the matter during the fall of 2007, the Office of the Attorney General found that Defendant Demaio had violated the Directive and referred the matter to the NPD to determine what discipline should be imposed.

20. Mr. Lima intervened into Defendant Demaio's questioning and asked him why he was inquiring about the photographer's immigration status given that the three journalists were only there to assist with the NPD's investigation.

21. Defendant Demaio then asked if the journalists had taken any photographs. They answered that they had. Defendant Demaio then stated to the three journalists, "You're not printing any of this." He then instructed another officer, Defendant Lydell James, to physically confiscate the camera with which *Brazilian Voice* staff had first photographed the body. The officers had no warrant to seize the camera and had no reason to suspect, let alone to probable cause to believe, that the journalists were involved in any unlawful conduct.

22. Defendant James nevertheless snatched the camera from one of the journalists. Defendant James attempted to remove the memory card, but was unsuccessful. He then handed the camera to Defendant Demaio, who flung it into the backseat of his vehicle and left the scene.

23. The police escorted the three journalists back to the police station, where Mr. Lima and the photographer were asked to fill out police reports regarding the discovery. The third journalist was permitted to leave.

24. After he had given his report, Mr. Lima asked for the camera to be returned to him. One of the officers spoke to an unidentified individual over the phone and then informed Mr. Lima that his camera would not be returned. On information and belief, the unidentified individual on the phone was Defendant Demaio; it appears that Defendant Demaio ordered the officer at the police station to refuse to return the camera to Mr. Lima.

25. Mr. Lima resigned himself to the situation and hoped he could simply return to retrieve the camera at a later time. As he and his photographer were preparing to leave, an individual called the police station and told one of the officers present to order Mr. Lima to give up any and all copies of the pictures he might have made. Upon information and belief, the individual on the phone was again Defendant Demaio. Mr. Lima offered to give the NPD duplicates of all the pictures he took, but correctly maintained that he had a right to keep copies for himself as well, so that the newspaper would be able to print them if it chose to do so.

26. At this point, the unidentified individual on the phone (on information and belief, Defendant Demaio) spoke once again to the officer at the precinct, who informed Mr. Lima that if he did not turn over all copies of the photographs taken that night, he would be arrested.

27. When Mr. Lima insisted he had a right to keep copies of his pictures, the individual on the phone (on information and belief, Defendant Demaio) directed officers at the precinct to arrest Mr. Lima. Some of the officers balked, but then one of the officers received a phone call from another unidentified individual; that individual again specifically ordered Mr. Lima's arrest. On information and belief, it appears that last caller was the Director of the NPD, Defendant Garry McCarthy. At that point, one of the officers at the precinct, Defendant John Doe, placed Mr. Lima under arrest, handcuffing him to a bench in the police station.

28. Unsure of what to do next, Mr. Lima made a phone call to his friend Augusto Amador, a Newark city councilman. Mr. Amador, in turn, called Defendant McCarthy to appeal for Mr. Lima's release. At that point or on a call very shortly thereafter, Defendant McCarthy made clear to Mr. Amador that he was aware of the arrest and had discussed it with others in the NPD. Mr. Amador gained telephone contact with Mr. Lima and convinced him that he ought to comply with the NPD's orders so as to avoid further detention. After approximately 30 minutes

in handcuffs, Mr. Lima told the officers he would turn over his pictures, and the handcuffs were removed.

29. Defendant James prepared to follow Mr. Lima back to the *Brazilian Voice* office to retrieve the pictures. Mr. Lima remarked to Defendant James that the way the police had treated him that night would discourage people from helping the police in the future. Defendant James told Mr. Lima, “If you didn’t know people in certain places, you wouldn’t be talking to me like that.” Mr. Lima felt intimidated and threatened as a result of this remark. Mr. Lima and his photographer were then followed back to the *Brazilian Voice* office by two police officers, including Defendant James. At the newspaper office, Mr. Lima turned over to Defendant James a disk with pictures of the incident.

30. At no point on September 6 did anyone show Mr. Lima or any of his staff a warrant for the seizure of any photographs or the camera, or for the arrest of Mr. Lima. Mr. Lima was never charged with any crime.

31. After this incident, Mr. Lima arranged to meet with Mayor Cory Booker about the abusive behavior by the Newark Police Department. In an effort to harass and attempt to intimidate Mr. Lima, the NPD had two unmarked police cars take turns parking in front of the office of Mr. Lima’s newspaper on the day of his meeting with the mayor. After Mayor Booker’s office was informed of the harassment, it discontinued.

32. Mr. Lima was considerably shaken by the abusive and intimidating conduct of the Defendants toward himself and his staff. Attempting to fulfill his civic duty by reporting evidence of a potential crime, and his journalistic duty to consider how this evidence might be of public concern to his readers residing blocks away and to an entire city still reeling from the

brutal student shootings that had occurred barely more than one month earlier, Mr. Lima was instead humiliated, belittled, and otherwise treated as a common criminal.

33. As a result of Defendants' actions, Mr. Lima endured extreme distress, humiliation and fear during the several-hour episode, and he suffers considerable emotional distress to this day.

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

34. Plaintiff repeats and realleges paragraphs 1 through 33, as if fully set forth herein.

35. Mr. Lima has a constitutionally protected right under the First Amendment to the United States Constitution to receive and record information and to gather information for later dissemination in a peaceful manner.

36. By ordering Mr. Lima not to print pictures his newspaper staff had taken, by seizing Mr. Lima's camera and the memory device containing these pictures, by coercing Mr. Lima to turn over all copies of his pictures, and by seizing pictures in the newspaper office, and/or by ordering these actions taken against Mr. Lima, Defendants NPD, McCarthy, Demaio, James, and Doe unlawfully imposed a prior restraint on the publication of photographs Mr. Lima and his staff had taken, in violation of Mr. Lima's freedom of speech, freedom of expression and freedom of the press, as guaranteed by the First Amendment of the United States Constitution.

**SECOND CAUSE OF ACTION:
VIOLATION OF ARTICLE I, PARAGRAPH 6 OF
THE NEW JERSEY CONSTITUTION
(Unlawful Interference with and Restraint of Free Speech)**

37. Plaintiff repeats and realleges paragraphs 1 through 36, as if fully set forth herein.

38. Mr. Lima has a constitutionally protected right under Article I, Paragraph 6 of the New Jersey State Constitution to receive and record information and to gather information for later dissemination.

39. By ordering Mr. Lima not to print pictures his newspaper staff had taken, by seizing Mr. Lima's camera and the memory device containing these pictures, by coercing Mr. Lima to turn over all copies of his pictures, and by seizing pictures in the newspaper office, and/or by ordering these actions taken against Mr. Lima, Defendants NPD, McCarthy, Demaio, James, and Doe unlawfully imposed a prior restraint on the publication of photographs Mr. Lima and his staff had taken, in violation of Mr. Lima's freedom of speech, freedom of expression and freedom of the press, as guaranteed by Article I, Paragraph 6 of the New Jersey Constitution.

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

40. Plaintiff repeats and realleges paragraphs 1 through 39, as if fully set forth herein.

41. By seizing Mr. Lima's camera and photographs without a search warrant or other circumstances rendering such seizures reasonable, and/or by ordering these seizures, Defendants NPD, McCarthy, Demaio, James, and Doe violated Mr. Lima's right to be free from unlawful searches and seizures, as guaranteed by the Fourth Amendment of the United States Constitution.

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

42. Plaintiff repeats and realleges paragraphs 1 through 41, as if fully set forth herein.

43. By seizing Mr. Lima's camera and photographs without a search warrant or other circumstances rendering such seizures reasonable, and/or by ordering these seizures, Defendants

NPD, McCarthy, Demaio, James, and Doe violated Mr. Lima's right to be free from unlawful searches and seizures, as guaranteed by Article I, Paragraph 7 of the New Jersey Constitution.

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

44. Plaintiff repeats and realleges paragraphs 1 through 43, as if fully set forth herein.

45. Defendants misused the authority granted to them under color of state law and unjustifiably arrested and detained Mr. Lima.

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

47. By arresting Mr. Lima without a warrant and without probable cause for arrest, and/or by ordering or approving this arrest, Defendants NPD, McCarthy, Demaio, James, and Doe violated Mr. Lima's right to be free from unreasonable seizure of his person, as guaranteed by the Fourth Amendment to the United States Constitution.

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

48. Plaintiff repeats and realleges paragraphs 1 through 47, as if fully set forth herein.

49. Defendants misused the authority granted to them under color of state law and unjustifiably arrested and detained Mr. Lima.

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

51. By arresting Mr. Lima without a warrant and without probable cause for arrest, and/or by ordering or approving this arrest, Defendants NPD, McCarthy, Demaio, James, and

Doe violated Mr. Lima’s right to be free from unreasonable seizure of his person, as guaranteed by Article I, Paragraph 7 of the New Jersey Constitution.

**SEVENTH CAUSE OF ACTION
VIOLATION OF THE NEW JERSEY REPORTER
SHIELD LAW, N.J.S.A. § 2A:84A-21.9**

52. Plaintiff repeats and realleges paragraphs 1 through 51, as if fully set forth herein.

53. The New Jersey Reporter Shield Law protects “any person, corporation, partnership, proprietorship or other entity engaged on, engaged in, connected with, or otherwise employed in gathering, procuring, transmitting, compiling, editing, publishing, or disseminating news for the public” from being “free from searches and seizures, by State, county and local law enforcement officers with respect to any documentary materials obtained in the course of pursuing the aforesaid activities whether or not such material has been or will be disseminated or published.” N.J.S.A. § 2A:84A-21.9.

54. Mr. Lima, as the editor of the *Brazilian Voice*, was at all times described in this Complaint engaged in disseminating news for the public.

55. Mr. Lima’s photographs were taken by a photographer on the *Brazilian Voice* staff in the course of reporting a story for the newspaper.

56. Because Mr. Lima was “engaged in . . . gathering, procuring, transmitting, compiling, editing, publishing, or disseminating news for the public,” and the photographs of the dead body his staff discovered on September 6, 2007, were “documentary materials obtained in the course of pursuing” Mr. Lima’s journalistic activities, New Jersey law protects Mr. Lima from “searches and seizures, by State, county and local law enforcement officers with respect to” these materials.

57. By seizing Mr. Lima's camera and photographs and/or ordering these seizures, Defendants NPD, McCarthy, Demaio, James, and Doe violated Mr. Lima's rights under the New Jersey Reporter's Shield Law, N.J.S.A. § 2A:84A-21.9.

58. Mr. Lima's cause of action for this claim arises under the New Jersey Civil Rights Act, which authorizes "[a]ny person who has been deprived of . . . any substantive rights, privileges or immunities secured by the Constitution or laws of this State . . . by threats, intimidation or coercion by a person acting under color of law," to bring a civil action for damages or other relief. N.J.S.A. § 10:6-2(c).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully 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) Attorney's fees and costs associated with this action;
- (d) 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: January 23, 2008
Newark, New Jersey

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