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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 TRUMAINE JOHNSON,

12 Plaintiff,

13 v.

14 UNIVERSITY OF SAN DIEGO; MARY
E. LYONS, as an individual and President
of University of San Diego; CHARLES
15 BATEY, as an individual and
EEO/Affirmative Action Director of
16 University of San Diego; BILL GRIER, as
an individual and head coach of the
17 University of San Diego Toreros
Basketball Team; SERGEANT BAKER, as
18 an individual and Public Safety Officer of
University of San Diego; JASON BAKER,
19 as an individual and Public Safety Officer
of University of San Diego; SAN DIEGO
20 POLICE OFFICER JOHNSON, ID#6594;
CITY OF SAN DIEGO, and DOES 1-25,
21 inclusive.

22 Defendants.
23

No. 10 CV 0504 LAB

NLS

**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

DEMAND FOR JURY TRIAL

24
25 **I. INTRODUCTION**

26 1. This is a class action lawsuit seeking declaratory, injunctive and
27 monetary relief against the University of San Diego ("USD") and its employees for
28 engaging in and condoning a continuing pattern and practice of racial discrimination,

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1 racial profiling, detentions and searches of African American students on the campus
2 of the institution of higher education.

3 2. This complaint also seeks monetary damages against the San Diego
4 Police Department ("CITY ") and its agents for conspiring to violate the civil and
5 constitutional rights of African-American student Trumaine Johnson by agreeing and
6 conspiring with agents of USD to falsely arrest Plaintiff Johnson. It is also a
7 complaint for damages against City and its agents for falsely arresting, battering and
8 falsely imprisoning Plaintiff.

9 3. To any person of color, regardless of ethnic background, level of
10 education, or economic station in life, the insidious problem of racial discrimination
11 and racial profiling is all too familiar. It is a continuing reminder that, despite popular
12 notion of progress in race relations, racial discrimination remains a day-to-day reality
13 in our society.

14 4. Plaintiff represents a class of African Americans who have been and will
15 be subjected to the humiliation of being targeted, harassed, interrogated, detained,
16 searched and wrongfully accused of crime by Defendants USD and CITY for their
17 policies and practices of racial profiling.

18 5. By this Complaint, Plaintiff seeks judicial redress for violations of his
19 civil and constitutional rights due to racial discrimination and racial profiling. He
20 Plaintiff also seeks to confirm what everyone has a right to expect in the United
21 States: that people of color may attend institutions of higher education without fear
22 of discrimination, and to walk the streets of these United States without fear of
23 wrongful arrest by law enforcement officials.

24 6. Plaintiff's claims are brought pursuant to the Fourth, Fifth and Fourteenth
25 Amendments to the United States Constitution; Title VI of the Civil Rights Act of
26 1964 and its implementing regulations, 42 U.S.C. §§ 1981, 1982, 1983, and 1986;
27 Article I, §§ 7(a) and 13 of the California Constitution; California Civil Code § 52.1;
28 California Government Code §§ 11135 and 11139, and California common law.

1 7. Venue lies in the United States District Court for the Southern District
2 of California pursuant to 28 U.S.C. § 84(a) and 238 U.S.C. § 139(b)(2).

3 **II. PARTIES**

4 8. Plaintiff Trumaine Johnson was, at all relevant times herein mentioned,
5 a student at University of San Diego and a resident of the County of San Diego,
6 California. Mr. Johnson is of African American descent and, by physical appearance,
7 is a person of color.

8 9. Defendant University of San Diego is a private university located in San
9 Diego, California which accepts more than \$87 million per year in state and federal
10 government fees and contracts.

11 10. Defendant Mary E. Lyons is, and at all times herein relevant was, the
12 President of Defendant USD.

13 11. Defendant Charles Batey is, and all times herein relevant was, the
14 EEO/Affirmative Action Director of Defendant USD and an employee of USD.

15 12. Defendant Bill Grier is, and at times herein relevant was, an employee
16 of USD and head basketball coach of USD.

17 13. Defendant Jason Baker is, and all times herein relevant was, an employee
18 of Defendant USD and employed by USD as a public safety officer.

19 14. Defendant City of San Diego, (hereinafter referred to as "CITY") is
20 and at all times herein mentioned has been a public entity and an incorporated county
21 duly authorized and existing as such in and under the laws of the State of California;
22 and at all times herein mentioned, Defendant CITY has possessed the power and
23 authority to adopt policies and prescribe rules, regulations and practices affecting the
24 operation of the San Diego Police Department, and particularly said Department's
25 Patrol, Internal Investigations and Training and Personnel Divisions and other
26 operations and subdivisions presently unidentified to Plaintiff, and their tactics,
27 methods, practices, customs and usages.

28 15. Defendant Officer Johnson, ID#6594 is, and at all times herein relevant

1 was, a peace officer employed by Defendant City of San Diego Police Department.

2 16. Plaintiffs are informed and believe and thereon allege that each of the
3 Defendants designated as a DOE is intentionally responsible in some manner for the
4 events and happenings herein referred to, and thereby proximately caused injuries and
5 damages as herein alleged. The true names and capacities of DOES 1 through 10,
6 inclusive, and each of them, are not now known to Plaintiff who therefore sues said
7 Defendants by such fictitious names and will be added to this action as provided by
8 California Code of Civil Procedure Section 484.

9 17. Defendants, and each of them, did the acts and omissions hereinafter
10 alleged in bad faith and with knowledge that their conduct violated well established
11 and settled law.

12 **III. BACKGROUND OF USD'S FAILURE TO PROMOTE DIVERSITY**

13 18. In 1990, representatives of the Irvine Foundation, a philanthropic
14 nonprofit organization promoting social equity, declared that the University of San
15 Diego was a homogenous school in dire need of funding to expand diversity. USD
16 was, in fact, so homogenous, there was a possibility the school would lose its
17 accreditation. In 1991, USD received the very first Irvine Foundation grant to launch
18 a campus-wide cultural diversity program. It was the first of many Irvine Foundation
19 grants the school would receive.

20 19. By 2000, some nine years after USD received its first Irvine Foundation
21 Grant, hate crimes were rampant on campus and reported regularly in the news.

22 20. In 2005, the USD Committee on Inclusion and Diversity created goals
23 of creating a culture of inclusion, and recruiting and retaining diverse students.
24 Statistics show that in 2009, 18 years after the first \$1 million Irvine Grant was given
25 to USD, the black student population barely exceeds two percent. Notwithstanding
26 evidence to the contrary, USD persists in filling out Part Five of its yearly tax returns
27 claiming it has nondiscriminatory policies toward diverse students.

28

IV. FACTS GIVING RISE TO THIS ACTION

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2 21. In December 2008, Mr. Johnson was accused of vandalizing a white
3 USD student's automobile. Allegations were made that witnesses had seen a group
4 of "black" basketball players walking near the white student's vandalized car at some
5 point.

6 22. Mr. Johnson was temporarily suspended from the USD basketball team
7 for "rules violations" by defendants USD and Grier. The "rules violation" was the
8 unsubstantiated allegation that Mr. Johnson had kicked a white student's car. A later
9 investigation proved that the footprint on the car did not match Mr. Johnson's
10 footprint. Mr. Johnson was exonerated.

11 23. Defendants USD and Grier further defamed Mr. Johnson by issuing a
12 press release announcing his suspension for "rules violations" to local and national
13 news agencies which then aired the libelous comments in the press and on air. Grier
14 told the press that Mr. Johnson's suspension was for "behavior unbecoming a USD
15 student athlete." This information was circulated among the local and national press.
16 In truth, the "conduct unbecoming" was fabricated allegation that Mr. Johnson had
17 vandalized a white student's car.

18 24. USD's Office of Public Safety, who employs Defendant Sgt. Baker, was
19 the investigatory agency in this racially motivated suspension and subsequent
20 defamation. Mr. Johnson was ultimately exonerated, but not before he was suspended
21 from the USD basketball team and defamed in the local and national print and
22 broadcast media based on a and press releases issued by USD and Grier stating he had
23 been suspended for "rules violations."

24 25. On February 8, 2009 Mr. Johnson was unlawfully stopped, racially
25 profiled, tackled to the ground by Defendant Baker, kned in the back, pepper
26 sprayed in the face and then wrongfully arrested by Baker. Mr. Johnson begged for
27 medical attention after Baker pepper sprayed him. Baker refused to provide Mr.
28 Johnson water with which to flush his burning eyes.

1 26. Baker called the San Diego Police Department and caused a citizen's
2 arrest to be made against Trumaine Johnson, claiming Mr. Johnson assaulted him.
3 More than four (7) San Diego police units containing some 11 San Diego police
4 officers, and a fire truck, rolled up on the injured basketball player, Mr. Johnson.
5 Defendant San Diego Police Officer Johnson arrested Plaintiff Johnson for assaulting
6 Baker. University of San Diego student and fellow basketball player Matt Dorr
7 witnessed the entirety of Baker's attack on Plaintiff Johnson. Dorr informed the San
8 Diego police officers that Defendant Baker's story was false.

9 27. Matt Dorr attempted to have several San Diego police officers, including
10 Defendant Baker, take his statement, but they refused. A USD professor, who had
11 caught part of the incident on video tape, also requested to make a statement to the
12 police. None of the San Diego police officers would take the professor's statement.
13 One officer told the professor to come to the station and they would take his
14 statement. When the professor arrived at the station, the police officers denied him
15 admission and refused to take his statement. Dorr also went to the station and made
16 a statement in support of Plaintiff. Defendant San Diego Police Officer Johnson did
17 not include Dorr's statement in his report. Identifying information was never put in
18 the police report.

19 28. Plaintiff was handcuffed, placed in the back of a police cruiser, taken to
20 the police station, booked on criminal charges of criminal assault, and forced to pay
21 bail to secure his release. Sergeant Baker fabricated events to justify the unlawful
22 attack he had just perpetrated against Mr. Johnson by telling police officers that Mr.
23 Johnson had assaulted him and admitted to having a weapon, which Plaintiff never
24 said and never had.

25 29. Prior to Plaintiff's arrest, witnesses saw Defendant Baker talking with
26 San Diego police officers, including Defendant Johnson. Baker's false statements to
27 officers were included in Defendant Johnson's incident report. Dorr's and the
28 witness professor's statements were omitted from Defendant Johnson's incident

1 report.

2 30. Plaintiff was again suspended for violating "unspecified team rules."
3 Again, USD and Grier published this false statement in a press release which then
4 was republished in local and national print and broadcast media. Matt Dorr, who was
5 with Plaintiff on the evening of the incident in violation of curfew, also violated
6 "team rules." Dorr is white. Dorr was not suspended.

7 31. The Office of the City Attorney which prosecutes misdemeanors in the
8 City of San Diego declined to prosecute the case after reviewing police reports.

9 32. Both Plaintiff and his eye witness, Matt Dorr, filed complaints with USD
10 claiming the attack by Defendant Baker and Plaintiff's subsequent arrest, was racially
11 motivated. On February 18, 2009 Defendant, through its Equal Employment
12 Opportunity/Affirmative Action Director Defendant Charles Batey, officially rejected
13 Mr. Johnson's complaint that the security guard's attack was racially motivated. On
14 the same date Plaintiff was attacked by USD public safety officer Defendant, the
15 school published on the internet a list of crimes that occurred on campus the same day
16 Mr. Johnson was arrested:

17 A. Two students were found harboring weapons, ammunition
18 magazines and a BB gun. The students were not turned over to the San Diego Police
19 Department or charged with crimes. The case was listed as being disposed of by the
20 school's "judicial review". The student suspects were not African-American.

21 B. A battery of one student against another was disposed of by
22 "judicial referral", not arrest. The student perpetrator was not African American.

23 C. A student who possessed alcohol as a minor, a violation of the
24 California Business and Professions Code, was disposed of as a "judicial referral., not
25 arrest. The student was not African-American.

26 D. Another minor whose blood alcohol content was determined to be
27 a .116, was disposed of as a "judicial referral" not as an arrest. The student was not
28 African American.

1 E. A student determined to be drunk in public after falling out of a
2 taxi cab onto the street (a violation of Penal Code sec. 647(f)), was disposed of as a
3 “judicial referral”, not as an arrest. The student was not African American.

4 F. Campus security guards stopped a motor vehicle carrying a group
5 of students. A strong odor of marijuana emanated from the car. Inside the car, guards
6 found 6.6 grams of marijuana, two cans of beer, four glass marijuana pipes, and one
7 large marijuana pipes. The case was handled as a “judicial referral”, not as an arrest.
8 The students were not African American.

9 33. On or about February 23, 2009 USD officially released Mr. Johnson
10 from his basketball scholarship, claiming that he had sought such release. Mr.
11 Johnson did not seek a release. The University of San Diego then sent out a press
12 release to all news local and nationwide news organizations further perpetrating this
13 fraud and defamation. This occurred within days of Mr. Johnson making his
14 complaint of racial discrimination to the school, and five days after Defendant Batey
15 determined that the attack and arrest of Plaintiff was not racially motivated.

16 **V. CLASS ACTION ALLEGATIONS**

17 34. For the purposes of all relief sought in this case, Plaintiffs Johnson
18 brings this action pursuant to Federal Rule of Civil Procedure 23 on behalf of himself
19 and all others persons similarly situated. Johnson is a class representatives who is an
20 African American who has been stopped, detained, interrogated and falsely charged
21 with a crime while on campus at USD. The class which plaintiffs seek to represent
22 consists of all African Americans, professors and students alike, who since
23 November 2008, have been or will be stopped while walking or driving, detained,
24 interrogated, or subjected to a search (either of person or vehicle) while on USD
25 campus by USD security guards. These class members are victims of the racially
26 motivated and illegal pattern and practice of discrimination at the University of San
27 Diego.

28 35. The class and subclass of persons defined in paragraph 34 is so

1 numerous that joinder of all members in one action is impracticable. There are
2 questions of law and fact common to all members of the class and subclass, because
3 all class and subclass members have been, or will be, adversely affected by the
4 challenged actions of the defendants. Common questions of fact and law include, but
5 are not limited to: whether USD officers target, stop, detain and/or search individual
6 students and professors walking or driving in a racially discriminatory manner; and
7 whether USD security officers are knowingly trained to employ methods that result
8 in racial profiling and have an unjustified disparate impact on putative class and
9 subclass members in violation of federal and state civil rights laws.

10 36. The claims of the representative plaintiff are typical of the class as a
11 whole who travel within USD's campus and have been stopped, detained,
12 interrogated, and/or searched by the USD security guards. Plaintiff also represents a
13 subclass of persons who, following a stop, have been or will be searched by USD
14 security guards. The experiences of the plaintiff at the hands of the Defendant USD
15 resulted from the defendants' policy and practice of discriminating on the basis of
16 race and ethnicity, making their claims typical of those held by the class and subclass
17 they seek to represent.

18 37. Plaintiff can and will fairly and adequately protect the interests of the
19 members of the class and subclass. Plaintiff will be adequate representatives of the
20 class and subclass in that all of the relevant questions of fact and law applicable to the
21 class and subclass also apply to them.

22 38. Plaintiff has retained counsel who are familiar with the applicable law
23 and experienced in class action litigation, as well as litigation involving criminal law
24 and civil rights. Counsel for plaintiffs have the resources necessary to pursue this
25 litigation.

26 39. This action is properly maintained as a class action. The USD defendants
27 have acted or refused to act on grounds generally applicable to the class and subclass,
28 thereby making appropriate final injunctive relief or corresponding declaratory relief

1 with respect to the class and subclass as a whole. Plaintiffs know of no difficulty to
2 be encountered in the management of this action that would preclude its maintenance
3 as a class action.

4 40. The prosecution of separate actions by individual class and subclass
5 members would create a risk of inconsistent and varying adjudication concerning the
6 subject of this action, and such adjudication could establish incompatible standards
7 of conduct for defendants under the laws alleged herein.

8 VI. REQUISITES FOR RELIEF

9 41. As a direct and proximate result of the conduct of defendants
10 described above, plaintiffs have been denied their constitutional and statutory
11 rights as stated below and have suffered and continue to suffer mental and
12 emotional distress, humiliation, embarrassment, discomfort, anxiety and pain.

13 42. Defendants' acts were willful, wanton, malicious, oppressive and
14 done with conscious disregard and deliberate indifference for plaintiffs' rights.
15 Therefore, defendants' actions justify an award to plaintiffs of punitive damages in
16 an amount to be determined at trial.

17 43. Defendants' policies, practices, conduct and acts alleged herein have
18 resulted and will continue to result in irreparable injury to plaintiffs, including but
19 not limited to further violations of their statutory and constitutional rights.
20 Plaintiffs have no plain, adequate or complete remedy at law to address the wrongs
21 described herein. Plaintiffs therefore seek injunctive relief restraining defendants
22 from continuing to engage in and enforce the unconstitutional and illegal policies,
23 practices, conduct and acts described herein.

24 44. Defendants acted with discriminatory intent in violation of plaintiffs'
25 legal and constitutional rights, and have directly and proximately caused plaintiffs'
26 humiliation, mental pain and suffering. As a direct, legal and proximate result of
27 defendants' violations of plaintiffs' statutory, constitutional and common law
28 rights, plaintiffs have been damaged in an amount which is not yet known.

1 Plaintiffs will seek leave of Court to amend this Complaint when ascertained, or
2 will amend to conform to proof at time of trial.

3 45. At all times herein mentioned, defendants had an obligation to
4 comply with federal and state laws regarding racial discrimination. Defendants
5 failed to meet these obligations with respect to plaintiffs.

6 VII. FIRST CAUSE OF ACTION

7 Race Discrimination in Federally Funded Programs
8 Violation of Title VI of the Civil Rights Act of 1964 and 28 C.F.R. §§ 42.101 *et seq.*
9 42 U.S.C. § 1983
(Against Defendants USD, Lyons, Batey, Grier & Baker)

10 46. Plaintiffs incorporate by reference and reallege paragraphs 1-78 of this
11 Complaint.

12 47. Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, provides:

13 [N]o person in the United States shall, on the ground of race, color, or
14 national origin, be excluded from participation in, be denied the
15 benefits of, or be subjected discrimination under any program or
16 activity receiving federal financial assistance.

17 48. Federal regulations implementing Title VI prohibit federally funded
18 programs or activities from having a racially discriminatory impact or effect. The
19 regulations provide that no program receiving federal financial assistance shall:

20 Utilize criteria or methods of administration which have the effect of
21 subjecting individuals to discrimination because of their race, color,
22 or national origin, or have the effect of defeating or substantially
23 impairing accomplishment of the objectives of the program as
24 respects individuals of a particular race, color, or national origin.

25 49. Defendant USD receives more than \$87 million in state and federal
26 government loans, and grants, according to publicly filed tax returns, and states on
27 those tax returns that it complies with federal regulations maintaining diversity and
28 nondiscriminatory policies, and thus is bound to abide by the terms of Title VI and
its implementing regulations, including 28 C.F.R. §§ 42.101 *et seq.*

50. The policy employed by the USD to approach, stop and question, and
sometimes arrest students and employees of African American decent have a
discriminatory impact on people of color traveling through California, including

1 plaintiffs, as described herein, and thereby violate 28 C.F.R. §§ 42.101 *et seq.* and
2 Title VI. This violation is actionable under 42 U.S.C. § 1983. Through his acts and
3 omissions as alleged in this Complaint, defendants have caused the violations of
4 plaintiffs' rights secured by Title VI and its implementing regulations.

5 51. Defendants' violation of Title VI and its implementing regulations has
6 caused and will continue to cause plaintiffs to suffer tremendous harm and public
7 humiliation in that they have been and will continue to be subjected to defendants'
8 practice of race-based discrimination in the absence of judicial intervention.

9 **VIII. SECOND CAUSE OF ACTION**

10 Intentional Race Discrimination in Federally Funded Programs 11 Violation of Title VI of the 1964 Civil Rights Act (Against Defendants USD and Lyons)

12 52. Plaintiffs incorporate by reference and reallege paragraphs 1-51 of this
13 Complaint.

14 53. Plaintiffs intentionally discriminate against students, professors and
15 guests of color on campus, including plaintiffs, through discriminatory policy of
16 profiling African Americans, as described herein, in violation of § 601 of Title VI
17 of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d *et seq.*

18 54. Defendants' violation of Title VI has caused and will continue to cause
19 plaintiffs to suffer tremendous harm and public humiliation in that they have been
20 and will continue to be subjected to defendants' practice of race-based
21 discrimination in the absence of judicial intervention.

22 **IX. THIRD CAUSE OF ACTION**

23 Violation of the Fourteenth Amendment and 42 U.S.C. § 1983 24 (Against all defendants in their individual and official capacities)

25 55. Plaintiffs incorporate by reference and reallege paragraphs 1-87 of this
26 Complaint.

27 56. Defendants, acting under color of law and in concert with one another,
28 have engaged in a continuing pattern and practice of intentional race discrimination
carried out on USD's campus. In so doing, defendants have caused plaintiff, and the

1 class and subclass he seeks to represent, to suffer deprivation of their fundamental
2 rights to liberty and to be free from unlawful searches, detentions, seizures and
3 education on account of their race and/or national origin. These actions violated
4 plaintiff's rights to equal protection of the laws, in violation of the Fourteenth
5 Amendment to the Constitution of the United States and 42 U.S.C. § 1983.

6 57. Defendants acting under color of law, institute, authorize, tolerate,
7 ratify, permit and acquiesce in policies, practices and customs of detention, searches
8 and seizures which involve intentional race discrimination in the provision
9 of law enforcement services.

10 58. The defendants' acts were done in knowing violation of plaintiffs'
11 legal and constitutional rights, and have directly and proximately caused plaintiffs'
12 humiliation, mental pain and suffering.

13 **X. FOURTH CAUSE OF ACTION**

14 Violation of the Fourth and Fourteenth Amendments to the United States Constitution
15 42 U.S.C. § 1983.

16 (Against all defendants in their official and individual capacities)

17 59. Plaintiffs incorporate by reference and reallege paragraphs 1-58 of this
18 Complaint.

19 60. Defendants, acting under color of law and in concert with one another,
20 have violated plaintiffs' rights to be free from unreasonable searches and seizures
21 under the Fourth and Fourteenth Amendments to the United States Constitution.
22 Defendants have subjected plaintiffs, and the class and subclass they seek to
23 represent, to lengthy detentions, interrogations and searches, without probable
24 cause or reasonable suspicion, in violation of the Fourth Amendment guarantee
25 against unreasonable searches and seizures, and giving rise to plaintiffs claims
26 pursuant to the Fourteenth Amendment and 42 U.S.C. § 1983.

27 61. Defendants, acting under color of law, institute, authorize, tolerate, ratify
28 permit and acquiesce in policies, practices and customs of detentions, interrogations,
searches and seizures without probable cause or reasonable, articulable suspicion of

1 knowledge of the conspiracy to violate plaintiffs' civil rights and of the violations
2 committed, and had power to prevent these wrongs, but neglected or refused to do
3 so in violation of 42 U.S.C. § 1986.

4 68. Defendants' acts were done in knowing violation of plaintiffs' legal
5 and constitutional rights, and have directly and proximately caused plaintiffs'
6 humiliation, mental pain and suffering.

7 **XIV. SEVENTH CAUSE OF ACTION**

8 Violation of Government Code §§ 11135 and 11139

9 (Against USD and City)

10 69. Plaintiffs incorporate by reference and reallege paragraphs 1-68 of
11 this Complaint.

12 70. Government Code § 11135(a) prohibits race discrimination in any
13 program or activity that is funded directly by the state or receives any financial
14 assistance from the state.

15 71. State regulations implementing § 11135 provide that no program
16 receiving financial assistance from the State of California shall have an unjustified
17 discriminatory impact or effect on the basis of race.

18 72. Defendants CITY, through the SDPD, receives financial assistance
19 from the State of California, and thus is bound to abide by the terms of Government
20 Code §11135 and its implementing regulations.

21 73. Defendants USD's and CITY's violation of Government Code
22 §11135 and its implementing regulations have caused and will continue to cause
23 plaintiffs to suffer tremendous harm and public humiliation in that they have been
24 and will continue to be subjected to their practice of race-based discrimination
25 without judicial intervention.

26 **XV. EIGHTH CAUSE OF ACTION**

27 Violation of Article 1, § 7 (a) of the California Constitution

28 (Against all Defendants)

74. Plaintiffs incorporate by reference and reallege paragraphs 1-73 of this

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Complaint.

75. Defendants' above-described conduct violated plaintiffs' rights not to be deprived of due process and equal protection of the laws under Article 1, § 7(a) of the California Constitution.

XVI. NINTH CAUSE OF ACTION

Violation of Article 1, § 13 of the California Constitution
(Against all Defendants)

76. Plaintiffs incorporate by reference and reallege paragraphs 1-75 of this Complaint.

77. Defendants' above-described conduct violated plaintiffs' rights to be free from unreasonable searches and seizures under Article 1, § 13 of the California Constitution.

XVII. TENTH CAUSE OF ACTION

Violation of Civil Code § 52.1(b)
(Against all Defendants)

78. Plaintiffs incorporate by reference and reallege paragraphs 1-76 of this Complaint.

79. Defendants' above-described conduct interfered and/or attempted to interfere with plaintiffs' exercise and/or enjoyment of their rights as secured by the United States Constitution and/or California Constitution, in violation of California Civil Code § 52.1.

XVIII. ELEVENTH CAUSE OF ACTION

Intentional Infliction of Emotional Distress
(Against all Defendants except USD & City)

80. Plaintiffs incorporate by reference and reallege paragraphs 1-79 of this Complaint.

81. Defendants' above-described conduct was extreme and outrageous.

1 Said conduct was done intentionally and with conscious disregard of plaintiffs'
2 rights, and directly and proximately caused plaintiffs humiliation, mental pain and
3 suffering.

4 **XIX. TWELFTH CAUSE OF ACTION**

5 Negligent Infliction of Emotional Distress

6 (Against all Defendants except USD & City)

7 82. Plaintiffs incorporate by reference and reallege paragraphs 1-81 of this
8 Complaint.

9 83. Defendants' above-described conduct constituted a breach of
10 defendants' duty of care to plaintiffs to ensure that defendants did not cause
11 unnecessary or unjustified harm to plaintiffs. It was reasonably foreseeable to all
12 defendants that a breach of that duty by defendants would cause emotional distress
13 to plaintiffs.

14 **XX. THIRTEENTH CAUSE OF ACTION**

15 False Imprisonment

16 (Against Baker, Johnson & City)

17 84. Plaintiffs incorporate by reference and reallege paragraphs 1-83 of this
18 Complaint.

19 85. Defendants' above-described conduct restrained plaintiff against his
20 will and without legal justification.

21 86. Defendants' acts were intentional and done in violation of plaintiffs'
22 rights, and have directly and proximately caused plaintiffs humiliation, mental pain
23 and suffering.

24 **XXI. FOURTEENTH CAUSE OF ACTION**

25 Assault & Battery
26 (Against Baker & Johnson)

27 87. Plaintiffs incorporate by reference and reallege paragraphs 1-86 of this
28 Complaint.

88. At the aforementioned date, time and place, Defendants Baker and

1 Johnson, and DOES 1-5 and each of them, assaulted and battered Plaintiff.

2 89 By reason of the acts aforesaid, Plaintiff was placed in great fear for
3 his safety and physical and emotional well being.

4 90. As a direct and proximate result of the foregoing, Plaintiff has been
5 damaged as recited above and demands and is entitled to the damages including,
6 but not limited to, general and punitive damages (except as to Defendant City).

7 **XXII. FIFTEENTH CAUSE OF ACTION**

8 Negligent Employment/Supervision

9 EMPLOYMENT/RETENTION/SUPERVISION

10 (Against USD, Lyons & City)

11 91. Plaintiffs refer to and repleads each and every allegation contained in
12 paragraphs 1 through 90 of this complaint, and by this reference incorporates the
13 same herein and makes each a part hereof.

14 92. On or about February 8, 2009 and for at least 10 years prior thereto,
15 Defendants City and USD, AND Lyons as an executive officer of USD knew or in
16 the exercise of due care should have known, that Defendants Baker and Johnson,
17 and each of them, had a propensity, character trait, and practice, while purporting to
18 act under color of law, for bigotry and/or violence, and/or dishonesty and/or
19 prevarication.

20 93. At all times mentioned herein, Defendants City, USD and Lyons, knew
21 or in the exercise of due care should have known, that the afore described traits of
22 character, practices and propensities of Defendants, and each of them, made them
23 unfit to serve as peace officers and/or security guards and were likely to cause harm
24 and injury to members of the public, including plaintiff. For instance, Baker's prior
25 employment immediately prior to his employment at USD was as a zookeeper at
26 the San Diego Zoo.

27 94. Notwithstanding such knowledge, Defendants City, USD and Lyons
28 negligently, carelessly and recklessly, hired, employed, retained and failed to
properly supervise, train and control Baker and Johnson, and assigned said

1 defendants to duties which enabled each of them to make violate the law including
2 but not limited to making illegal arrests, fabricating probable cause and crimes,
3 maliciously prosecuting innocent persons, using excessive force and covering up
4 repeated acts of police misconduct and crimes.

5 95. As a direct and proximate result of the foregoing, Plaintiff has been
6 damaged as recited above and demands and is entitled to the damages including,
7 but not limited to, general and special damages.

8 **XXIII. SIXTEENTH CAUSE OF ACTION**

9 **Declaratory Relief**

10 96. Plaintiffs incorporate by reference and reallege paragraphs 1-95 of this
11 Complaint.

12 97. There is a real and actual controversy between plaintiffs and
13 defendants regarding whether defendants may undertake to act as described herein.
14 Plaintiffs contend that defendants violated the United States and California
15 Constitutions and the laws of the United States and of California. On information
16 and belief, defendants deny that their conduct violated the United States and
17 California Constitutions and the laws of the United States and of California.
18 Plaintiffs fear that they will again be subjected to such unlawful and
19 unconstitutional actions, and seeks a judicial declaration that defendants' conduct
20 deprived plaintiffs of their rights under the United States and California
21 Constitutions and the laws of the United States and California.

22 **XXIV. PRAYER**

23 WHEREFORE, plaintiffs pray that the Court, as to all the defendants and each of
24 them jointly and severally:

25 1. Issue a declaratory judgment that defendants' conduct as complained
26 herein was a violation of plaintiffs' rights under the United States and California
27 Constitutions and the laws of the United States and California;

28 2. Issue an injunction (a) prohibiting defendants from engaging in racially
motivated stops or searches based on race or ethnicity; (b) ordering defendants to

1 establish effective preventative mechanisms to ensure that discriminatory stops and
2 searches do not continue in the future, including, but not limited to the following:

- 3 (I) to cease and desist from all pretextual stops;
- 4 (ii) to cease and desist from all searches without probable cause of
5 criminal activity;
- 6 (iii) to collect and maintain comprehensive records of all traffic stops
7 in the State of California, including those stops that do not result
8 in the issuance of a citation;
- 9 (iv) to appoint an independent auditor who will review the records of
10 officers quarterly to determine that there is compliance with these
11 reforms;
- 12 (v) to establish an early warning system which will collect information
13 such as citizen complaints against an officer and other information
14 regarding misconduct and will alert the officer's supervisor when
15 a set number of incidents are recorded;
- 16 (vi) to establish a mechanism for internal discipline of officers who are
17 found to have engaged in racial profiling and pretextual stops; and
- 18 (vii) to require that all officers participate in regular and recurring
19 training to assure that the officers do not act due to bias based on
20 race or ethnicity.

21 3. Award compensatory and general damages against defendants and each
22 of them, for plaintiffs in an amount to be determined according to proof;

23 4. Award exemplary and punitive damages against all defendants sued in
24 their individual capacities in an amount to be proven at trial;

25 5. Award statutory damages and penalties pursuant to California Civil
26 Codes § 52(b);


27 6. Award plaintiffs their costs, expenses and reasonable attorneys' fees
28 pursuant to 42 U.S.C. § 1988, California Civil Codes §§ 52(b) and 52.1(h) and
California Code of Civil Procedure § 1021.5; and Grant such other and further relief

as the Court may deem just and proper.

XXVI. DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b), Federal Rules of Civil Procedure plaintiffs demand trial by jury for all the issues plead herein so triable.

Dated: March 8, 2010



MARY FRANCES PREVOST
Attorney for Plaintiff
TRUMAINE JOHNSON

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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

TRUMAINE JOHNSON

DEFENDANTS

UNIVERSITY OF SAN DIEGO, et al.

FILED

10 MAR - 9 PM 3:42 SAN DIEGO

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY) DISTRICT COURT

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

Attorneys (If Known)

10CV0504 LAB

NLS

DEPUTY

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

(c) Attorney's (Firm Name, Address, and Telephone Number)

MARY FRANCES PREVOST (619) 692-9001
402 WEST BROADWAY, SUITE 950, SAN DIEGO, CA 92101

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 Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other 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	<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

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. 1983

Brief description of cause:
Racial profiling and racial discrimination

VII. REQUESTED IN COMPLAINT:

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

DEMAND \$

Not yet determined

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE n/a

DOCKET NUMBER

DATE 03/09/2010

SIGNATURE OF ATTORNEY OF RECORD

Mary Frances Prevost

FOR OFFICE USE ONLY

RECEIPT # 10970 AMOUNT \$350- APPLYING IFP JUDGE MAG. JUDGE

CR TB03-09-10

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS010970
Cashier ID: mbain
Transaction Date: 03/09/2010
Payer Name: MARY FRANCES PREVOST

CIVIL FILING FEE

For: JOHNSON V UNIVERSITY OF SAN DI
Case/Party: D-CAS-S-10-CV-000504-001
Amount: \$350.00

CHECK

Check/Money Order Num: 1243
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.