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July 20, 2020

*Certified Mail, Return Receipt Requested,
First Class Mail,
and By Email*

Needham Police Department
99 School Street
Needham, MA 02492
jschlittler@needhamma.gov

Attention: Chief John Schlittler

Re: Unlawful Search and Seizure and Racial Profiling by Needham Police

Dear Chief Schlittler:

We serve as counsel to Mr. Marvin Henry in connection with his unlawful search and seizure and racial profiling by members of the Needham Police Department. Mr. Henry has worked in the Needham community for almost three years as a massage therapist. His employer is Elements Massage and he drives for Lyft when he is not working there. Mr. Henry is also the proud father of four children.

On Saturday, January 25, 2020, shortly after 3 p.m., Mr. Henry was accosted by Needham Police officers outside a local Starbucks—without cause—and detained in handcuffs in full public view without explanation for at least 30 minutes, and ultimately accused of stealing products from a nearby CVS store. Mr. Henry is a Black man who did nothing more than buy cough drops and an iced tea from the CVS near his place of employment while on his way to work. There is no justification for his unlawful treatment, nor any excuse for the failure to even apologize to him.

Wilmer Cutler Pickering Hale and Dorr LLP, 60 State Street, Boston, Massachusetts 02109

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As set forth in detail below, the Needham Police Department violated Mr. Henry's rights under both state and federal law. Accordingly, Mr. Henry has directed us to seek redress on his behalf through any lawful means available. We are starting with a letter in hopes of resolving this incident in the most expeditious manner possible.

Facts

On Saturday, January 25, 2020, Mr. Henry drove to Needham for his afternoon work shift. On his way to work, he parked his Honda Odyssey minivan in front of the Starbucks at the corner of West Street and Highland Avenue and entered the Town House of Pizza at 892 Highland Avenue to order lunch. He had followed this routine many times.

While waiting for his order, Mr. Henry walked across West Street to the CVS store at 936 Highland Avenue. He had shopped at the CVS many times before. Mr. Henry purchased cough drops and an iced tea from a CVS employee who he knew from his many visits to this CVS store. Mr. Henry received a receipt automatically by email on his cell phone at about 3:04 p.m. Another CVS employee had previously helped him set up an automatic CVS receipt system on his phone since he was a regular customer. On his way out of the CVS, he thanked the employee who assisted him, and proceeded to the Town House of Pizza where he picked up his lunch order.

He had walked to his minivan and put his CVS bag and lunch order in his vehicle, when he was confronted by four police officers, one of whom yelled, "Hey you, come here!" Without identifying himself, or the reasons for approaching Mr. Henry, one of the officers grabbed him, roughly shoving him against the minivan. Mr. Henry believes you were present as well as an Officer Fitzpatrick. He counted four officers who stood close to him and two more who were in the area, nearer to the CVS.

Mr. Henry gave the officers no reason to grab or shove him in this manner. He did not resist in any way as they forced his hands behind his back and handcuffed him. He was cooperating fully and there was no cause whatsoever for restraints. The other officers searched his person after handcuffing him. They found no weapons; he was not armed nor did he give any indication of being armed.

Mr. Henry asked the officers several times why they were detaining and restraining him. There was no response. The police did not read Mr. Henry his Miranda rights. He told the officers that the handcuffs, which were metal, were extremely painful on his wrists and asked that they be removed. The officers refused. Mr. Henry asked that the handcuffs at least be adjusted and moved to the front. The officers again refused. He continued to tell them the handcuffs were

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causing him pain but received no relief or any explanation for why he was being restrained, particularly in such a painful manner. He asked that he be allowed to call his employer to explain why he would be late to work. The police refused. Instead, the Needham Police kept a wrongfully accused Black man standing on a public sidewalk only a short distance from his place of employment in full view with his hands cuffed behind his back. Indeed, Mr. Henry was standing within view of a full-length window at a nearby Starbucks and could see at least one patron staring at him through the window. One man actually shielded a young child's eyes, to block Mr. Henry from his view, an act that Mr. Henry found humiliating.

The Needham Police kept Mr. Henry restrained with his hands cuffed behind his back and forbid him from sitting for the next 30-35 minutes. Mr. Henry was fearful for his safety, acutely aware of how swiftly a police encounter can turn violent. Mr. Henry attempted to keep the situation calm and explained to the officers that he is a father who has a regular job. He was ignored.

After about 30 minutes, an officer who identified himself as Sergeant Cray arrived on the scene. Sergeant Cray told Mr. Henry that he was suspected of shoplifting and that one of the CVS clerks had identified him as the suspected Black man from camera footage. Sergeant Cray did not say what Mr. Henry was accused of stealing. Mr. Henry explained that he had made a lawful purchase and requested that the officers release his hands so that he could use his cell phone to show them his store receipt to prove it. Instead, the officers asked him to open the door to his minivan. Believing that he had no other choice, Mr. Henry complied with the officer's directive, as he was too intimidated to refuse. The officers searched the vehicle and its contents, including his work bag and the CVS bag. Only after searching the vehicle did the officers undo the handcuffs and allow Mr. Henry to show them the CVS receipt on his phone. As Mr. Henry previously told the officers, the receipt confirmed that he had made his purchases legitimately and certainly did not steal anything. Mr. Henry asked for a copy of the camera footage that allegedly captured him shoplifting, but Sergeant Cray deflected the question, telling him he would need to go to the Needham Police Station to request a copy of the video.

The officers offered no further explanation—and offered no apology. Nor did all the officers provide their names and badge numbers when Mr. Henry asked for these. One officer identified himself as Officer Fitzpatrick (badge number 5244), and another officer identified himself as Sergeant Cray, but did not give his badge number. At this point, Mr. Henry also asked you for your name and badge number which you provided (3069). The other officers ignored Mr. Henry. Officer Fitzpatrick, who had been on the scene for the entire duration of the stop, said that he would “personally apologize” to Mr. Henry and his employer if he was cleared of the shoplifting accusation. Mr. Henry was released but only after being informed that he would be receiving a summons in the mail.

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Although Mr. Henry had a full schedule with clients that Saturday afternoon, he was in no state to work after this encounter. His appointments were cancelled.

He was extremely shaken and distressed as a result of his confrontation with the Needham police. He was also physically injured—the handcuffs left deep indentations on his wrists and caused pain in his hands for the next several days. Mr. Henry had to explain to his employer that he could not work that afternoon, owing to his distress at the incident. Indeed, he was unable to work for the next two days owing to the injuries to his hands, losing compensation.

Additionally, the experience was humiliating as well as painful. Mr. Henry believes that the false allegations against him, along with the highly visible nature of the incident along a main town street, less than 300 feet from his place of work, negatively affected his reputation in the community where he has worked for nearly three years.

Mr. Henry's humiliation did not end when the Needham police released him. After informing his employer he was unable to work, Mr. Henry traveled that day to the Needham Police station to request information about the incident. However, the Department refused to provide him with any information. No one apologized. He filed a public records request for the alleged video from CVS that the police claimed was used to identify him as the shoplifter. The Police Department responded on February 10, 2020 by denying Mr. Henry's request. According to the response, the disclosure of Mr. Henry's materials "would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest." The Department offered no explanation of how its release of information regarding an unjustified stop, restraint and search of a single person, particularly after learning that his purchases were legitimate and involved cough drops and iced tea, could possibly be prejudicial to effective law enforcement or not in the public interest. Under the circumstances, with no ongoing investigation of Mr. Henry (who did not receive a summons and was never charged), it is not apparent why this exemption would apply.

Your presence on the scene as you observed your officers violate Mr. Henry's right against unlawful search and seizure, and failure to loosen the handcuffs that caused him pain, amounts to a condoning of this unprofessional and unlawful conduct. You stood by silently while your officers humiliated and mistreated Mr. Henry in full public view, suggesting that there are serious leadership, training and hiring issues within your Police Department. The public has a right to expect much more from its community leaders.

The Needham Police Department's actions violated Mr. Henry's right against unreasonable search and seizure. Moreover, the unprofessional conduct by the Needham Police officers in detaining Mr. Henry without explanation, improperly using force, and handcuffing him, raises concerns of racial profiling and stereotyping that violate Mr. Henry's right to Equal Protection under state and federal law.

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Mr. Henry's experience is particularly pertinent in light of recent, violent incidents involving law enforcement officials and members of the Black community. Black people should not have to live in fear that every police encounter could end in bodily injury or death. Nor should they be subject to pretextual stops pursuant to racial profiling practices. For far too long, the Black community has faced humiliation, injury, or even death when interacting with police because of the color of their skin. The nationwide protests following the killing of George Floyd have thrown this reality into sharp relief, and underscore to Mr. Henry the importance of seeking accountability for police misconduct.

In light of the mistreatment endured by Mr. Henry, we request the following:

Materials

- Copies of any and all video or audio recordings of the incident, as well as any and all written materials relating to the incident, including but not limited to: 1) a copy of the Use of Force report concerning the January 25, 2020 incident; 2) copies of any and all observations reported by officers present at the January 25, 2020 incident; 3) any material related to the call/report precipitating the police dispatch to the CVS; and 4) any video or audio recordings relevant to the January 25, 2020 incident.
- Copy of 'Use of Force' policies in effect at the time of the January 25, 2020 incident.
- Copy of policies regarding the magnitude of police response (i.e. number of officers called to respond) to a call for service.
- Copy of any data relating to the racial demographic breakdown of individuals stopped by the Needham Police including, but not limited to, Field Interrogations and Observations and arrests.

Actions

- An apology to Mr. Henry and his employer as was promised by Officer Fitzpatrick.
- An immediate and thorough independent investigation of the incident in question.
- Compensation for the physical and emotional harm suffered by Mr. Henry.

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- Confirmation of the steps you will take to ensure the incident could not occur again, including, at a minimum, providing enhanced and ongoing training of all Needham Police Officers on implicit bias and de-escalation techniques.
- Attorneys' fees for time spent investigating the incident and drafting this demand letter.

Given the present national conversation regarding the fraught relationship between police and the Black community, we are hopeful that Needham will respond with a constructive approach that protects other members of the Black community from unlawful stops and searches. We would appreciate a response within fourteen (14) days of receipt of this letter.

Sincerely,

/s/ Lauren Sampson

/s/ Oren Sellstrom

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/s/ Robert D. Cultice

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cc (By Email only):

Needham Town Manager
Needham Board of Selectmen
Representative Joseph Kennedy III
Senator Elizabeth Warren
Senator Ed Markey