UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID OLABAYO OLANIYI, Plaintiff, -against- **DISTRICT OF COLUMBIA, et al.**, Defendants.	Civil No. 05-455 (RBW)

PLAINTIFF DAVID OLABAYO OLANIYI'S OPPOSITION TO DEFENDANT DISTRICT OF COLUMBIA'S MOTION TO DISMISS OR ALTERNATIVELY, FOR SUMMARY JUDGMENT

Plaintiff David Olabayo Olaniyi ("Olaniyi"), by and through his undersigned attorneys respectfully submits this memorandum in opposition to the Defendant District of Columbia's Motion to Dismiss or Alternatively, for Summary Judgment (the "Defendant's Motion"). For the reasons stated below, Olaniyi requests that the Court deny the Defendant's Motion with respect to Olaniyi's claim brought under 42 U.S.C. § 1983.[1]

PRELIMINARY STATEMENT

Defendant has not identified any basis for dismissing Olaniyi's section 1983 claim under Fed. R. Civ. P. 12(b)(6) or 56(c). The Second Amended Complaint plainly states a claim for municipal liability against the District under section 1983. The District's use of a so-called "independent contractor" to provide healthcare services to D.C. Jail inmates cannot, and

[1] Having reviewed the arguments of the District of Columbia with respect to Olaniyi's common law tort claims of Assault, Battery, and Intentional Infliction of Emotional Distress, Olaniyi will voluntarily dismiss claims Five, Six, and Seven of his Second Amended Complaint asserted against the District of Columbia.

does not, insulate the District from section 1983 liability. Moroever, the District of Columbia mischaracterizes Olaniyi's claim under 42 U.S.C. § 1983 as one seeking relief under the principle of *respondeat superior*. Rather, Olaniyi's claim plainly alleges that the Defendant's policies were the "moving force" behind the injuries and indignities Olaniyi suffered in the Mental Health Unit of the D.C. Jail.

Summary judgment is equally unwarranted. It is precluded by key disputes of material fact, as well as by the extremely limited discovery record reflecting the District's failure to comply with Olaniyi's discovery requests, the lack of any depositions, and the discovery stays imposed in this case. Olaniyi is entitled to complete discovery to substantiate the causal link between the District's conduct and Olaniyi's injuries under section 1983.

STATEMENT OF FACTS

Olaniyi's case against the District of Columbia under section 1983 concerns the abuse and indignities that Olaniyi endured at the hands of the Defendant, its employees, and its agents during his detention in the District of Columbia Jail (the "D.C. Jail") in March 2003.

A. Olaniyi and his Art

Olaniyi is a well-regarded scholar, sculptor, and performance artist. Second Amended Complaint ("2d Amend. Compl.") ¶3. On March 3, 2003, Olaniyi and his colleague (now wife) Reena Patel Olaniyi ("Patel Olaniyi") traveled to the Washington, D.C. region to visit the area and conduct research for his art shows and a stage play in development. Exhibit A, Declaration of David Olabayo Olaniyi ("Olaniyi Decl.") ¶2. While in Washington, D.C., Olaniyi created a costume for future use in his stage play, utilizing various materials from the region, including miniature sculptures, newspapers, shampoo bottles, empty honey jars, and duct tape in its construction. 2d Amend. Compl. ¶66. While wearing his costume, Olaniyi and Patel Olaniyi

visited the United States Capitol Building on March 6, 2003 to tour and conduct research for Olaniyi's stage play. 2d Amend. Compl. ¶¶65-66. Various federal agents, including several officers of the United States Capitol Police, arrested Olaniyi and Patel Olaniyi at gunpoint in the Crypt of the United States Capitol Building. See 2d Amend. Compl. ¶¶70-72.

B. Detention In the District of Columbia Jail

After being interrogated (without an attorney) by several federal agents, Olaniyi was placed in a holding cell in the D.C. Jail. 2d Amend. Compl. ¶74; Olaniyi Decl. ¶3. Olaniyi appeared before Magistrate Judge John Facciola in the United States District Court of the District of Columbia on March 7, 2003, and a preliminary hearing was set for March 10, 2003. 2d Amend. Compl. ¶74. Olaniyi was eventually released from confinement following the entry of criminal charges (subsequently dismissed) on March 10, 2003 and his posting of a bond. 2d Amend. Compl. ¶77; Olaniyi Decl. ¶8.

While detained in the D.C. Jail, however, D.C. Jail personnel assigned Olaniyi to the Mental Health Unit after a D.C. Jail clinician assessed that he had "delusions of grandeur." 2d Amend. Compl. ¶75; Olaniyi Decl. ¶6; Exhibit B, Olaniyi's Medical Records. D.C. Jail clinicians also misdiagnosed Olaniyi as having diabetes, and notified Olaniyi that they would be treating him for diabetes. 2d Amend. Compl. ¶75; Olaniyi Decl. ¶7. Olaniyi, knowing that he did not have diabetes, informed the D.C. Jail clinicians that he did not have diabetes and refused medication for diabetes. 2d Amend. Compl. ¶75; Olaniyi Decl. ¶7. The D.C. Jail clinicians ignored Olaniyi, telling him that "you can either cooperate or be physically restrained while we inject you." 2d Amend. Compl. ¶75; Olaniyi Decl. ¶7. Against Olaniyi's will, D.C. Jail clinicians forcibly injected Olaniyi with a medication that caused him to lose consciousness until the following morning. 2d Amend. Compl. ¶75; Olaniyi Decl. ¶7. Due to his loss of

consciousness, Olaniyi believes that the D.C. Jail clinicians administered an antipsychotic/psychotropic drug.[2] 2d Amend. Compl. ¶75; Olaniyi Decl. ¶7.

The Defendant is the municipality responsible for operating the D.C. Jail and, as such, the Defendant has a legal duty to establish, enforce, direct, supervise, and control the customs, practices, usages, policies, and procedures employed by the District of Columbia Department of Corrections (the "D.C.D.C."), its personnel, its agents, and subcontractors in the administration of the District of Columbia Jail. 2d Amend. Compl. ¶86. In order to discharge its duties, the Defendant, through the D.C.D.C., entered into a contract with the Center for Correctional Health and Policy Studies ("C.C.H.P.S."), under which C.C.H.P.S. contracted to provide medical services to the inmates of the D.C. Jail within certain parameters established by the Defendant. See Ex. C, D.C./C.C.H.P.S. Contract.[3] The Defendant designed, implemented, maintained and supervised the D.C.D.C.'s program for handling and treating inmates at the D.C. Jail including, for example, policies concerning the use of force against inmates and the involuntary administration of psychotropic medication. 2d Amend. Compl. ¶88; Ex. C at 38.

The Second Amended Complaint alleges the course of conduct undergirding Olaniyi's claim that the District's customs, practices, usages, polices and procedures resulted in conduct that violated Olaniyi's constitutional rights. 2d Amend. Compl. ¶87. The complaint states that the actions of D.C.D.C. and C.C.H.P.S. personnel were willful, deliberate, malicious, outrageous and intentionally calculated to deprive Olaniyi of his rights as protected by the United States Constitution and/or were done with knowledge of or deliberate indifference to actions that

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[2] Olaniyi's loss of consciousness might also have resulted from the forced administration of insulin to Olaniyi, a non-diabetic.

[3] Based on Olaniyi's attempts to gather evidence thus far, it appears that C.C.H.P.S. was an entity established solely to provide medical care and perform services at the D.C. Jail. See generally Ex. D, District of Columbia Jail: Medical Services Generally Met Requirements and Costs Decreased, but Oversight is Incomplete, Government Accountability Office, June 2004; Ex. B.

violated Olaniyi's constitutional rights. 2d Amend. Compl. ¶85. The complaint also alleges that the Defendant's policies, customs, practices and procedures were a moving force behind and caused the conduct by D.C.D.C. and C.C.H.P.S. personnel. 2d Amend. Compl. ¶91. For example, the Defendant's policies, customs, practices and procedures allowed D.C.D.C. and C.C.H.P.S. personnel to hide unconstitutional or otherwise unlawful conduct without fear of appropriate discipline, reprisal, or that their conduct will be properly reported and/or made public. 2d Amend. Compl. ¶89. Furthermore, the complaint alleges that the Defendant knew or should have known that D.C.D.C. and C.C.H.P.S. personnel were negligently hired, trained, supervised, retained and disciplined, and that these failures resulted in a pattern or practice of excessive disciplinary measures, wrongful administration of drugs, and failure to intervene to prevent and/or punish such conduct. 2d Amend. Compl. ¶92.

Olaniyi endured severe emotional distress as a result of his detention in the D.C. Jail. 2d Amend. Compl. ¶83; Olaniyi Decl. ¶9. Olaniyi suffers from regular headaches, sleep disorder, depression, and paranoia due to that distress, and the trauma of his imprisonment have otherwise wreaked havoc on his personal life. 2d Amend. Compl. ¶83; Olaniyi Decl. ¶9. Even four years after his detention in the D.C. Jail, Olaniyi still regularly relives memories from his time in the Mental Health Unit, hearing, for example, the screaming of other Mental Health Unit patients in his head. 2d Amend. Compl. ¶83; Olaniyi Decl. ¶9. Olaniyi is still afraid to go to a hospital or physician for treatment because of the severe emotional trauma he suffered as a direct result of being forcibly medicated against his will in the Mental Health Unit. 2d Amend. Compl. ¶83; Olaniyi Decl. ¶10.

The discovery record in this case is very limited and incomplete. There is no current discovery deadline and no depositions have been taken. The District of Columbia has made very limited disclosures under Fed. R. Civ. P. 26(a), and has produced incomplete

responses to Olaniyi's discovery requests. The District of Columbia has also failed to respond to requests from Olaniyi seeking clarification and amplification of the limited discovery produced, despite being issued two sets of requests for production of documents and one set of interrogatories. See e.g., Ex. E (a letter from Olaniyi's counsel to Defendant's counsel dated October 20, 2006 seeking clarification regarding discovery responses; Olaniyi has never received a reply to this letter). Moreover, the District of Columbia has been the beneficiary of multiple stays of discovery. Most recently, since March of this year, the District of Columbia has enjoyed a stay of discovery granted by the Court at its request and opposed by Olaniyi. Order, March 31, 2007, Dkt. No. 95. Thus, given the limited and incomplete document discovery and the stays of discovery in this case, Olaniyi has been unable to conduct any depositions of Defendant or fact witnesses.

STANDARD OF REVIEW

A. Motion to Dismiss for Failure to State a Claim (Fed. R. Civ. P. 12(b)(6))

A motion to dismiss for failure to state a claim can only be granted if it "appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 46 (1957). When making this determination, the Court "must treat the complaint's factual allegations as true and must grant the plaintiff the benefit of all inferences that can be derived from the facts alleged." Browning v. Clinton, 292 F.3d 235, 242 (D.C. Cir. 2002) (internal quotation marks and citations omitted). A complaint may be dismissed under Rule 12(b)(6) "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Swierkiewicz v. Sorema, 534 U.S. 506, 514 (2002) (internal quotations and citation omitted).

A 12(b)(6) motion is not a procedure for resolving a contest between the parties about the facts of the substantive merits of the plaintiff's case, but rather is a procedure to test the legal sufficiency of the complaint. Kingman Park Civic Ass'n v. Williams, 348 F. 3d 1033, 1039-40 (D.C. Cir. 2003). When a party presents and relies upon matters outside the pleading in support of a motion to dismiss, such as declarations of witnesses, the motion to dismiss "shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Fed R. Civ. P. 12(b).

B. Motion for Summary Judgment (Fed. R. Civ. P. 56)[4]

Summary judgment can be granted only if the record shows that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The burden is on the movant. The evidence presented to the Court is always construed in the favor of the party opposing the motion and the opponent is given the benefit of all favorable inferences that can be drawn from it. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp, 425 U.S. 574, 587 (1986). Even though there is no "express or implied requirement in Rule 56 that the moving party must support its motion with affidavits or similar materials negating the claim," to meet the summary judgment standard, the party moving for summary judgment must make an initial or threshold showing that there is no genuine issue

[4] Defendant's Motion appears to suggest a standard of review more favorable to its position by citing to local D.C. Superior Court and Court of Appeals cases, rather than federal cases. Motion at 8. For example, the Defendant seeks to impose a burden-shifting standard of review under Furguson v. District of Columbia, 629 A.2d 15, 19 (D.C. 1993). Id. Without conceding that Furguson imposes such a standard, Olaniyi notes that the decision is inapplicable in the U.S. District Court. Rather, the Court should rely on the well-settled standard of review established in Celotex and most recently by the Supreme Court in Scott v. Harris. 550 U.S. ___, 127 S.Ct. 1769, 1776 (2007) (holding that only when the non-moving party's story is "blatantly contradicted by the record, so that no reasonable jury could believe it" should a court ignore that party's version of the facts for purposes of ruling on a motion for summary judgment).

as to any material fact. Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). A dispute concerning the events in question is enough to demonstrate a genuine issue of material fact. Only when the non-moving party's story is "blatantly contradicted by the record, so that no reasonable jury could believe it" should a court ignore that party's version of the facts for purposes of ruling on a motion for summary judgment. Scott v. Harris, 550 U.S. ____, 127 S.Ct. 1769, 1776 (2007).

ARGUMENT

POINT I

OLANIYI'S SECOND AMENDED COMPLAINT STATES A VIABLE CLAIM UNDER 42 U.S.C. §1983

In order to state a claim under 42 U.S.C. § 1983, Olaniyi must allege that the action complained of (1) occurred "under color of law;" and (2) resulted in the deprivation of a constitutional right. E.g., Parratt v. Taylor, 451 U.S. 527, 535 (1981). The question whether Olaniyi's Second Amended Complaint states a section 1983 claim is governed by federal courts' decisions interpreting that statute and not local District of Columbia common law. See, e.g., Monroe v. Pape, 365 U.S. 167, 168 (1961) (noting the Supreme Court's responsibility to analyze "important questions concerning the construction of . . . 42 U.S.C. § 1983" as a matter of federal law). For the reasons discussed below, Olaniyi's section 1983 claim is sufficiently pled to survive the Defendant's Motion.

The first argument in the Defendant's Motion is that the District cannot be held liable under section 1983 for any unconstitutional conduct of C.C.H.P.S., which it claims is an independent contractor. Motion at 9-11. As discussed in detail in Point I(A) infra, this argument is meritless. Defendant relies on wholly inapposite cases involving *common law tort claims* asserted under the local law of the District of Columbia. For example, the Defendant relies

heavily on Herbert v. District of Columbia, 716 A.2d 196 (D.C. App. 1998), a case involving common law tort liability concerning "the medical malpractice of" a contractor at the D.C. Jail. Motion at 10. However, the Defendant does not cite any decision under *federal law* in a case brought under section 1983 for this proposition. Moreover, in both Parts I and II of Defendant's Motion, the Defendant seeks to mischaracterize Olaniyi's allegation as resting upon some *respondeat superior* theory. Motion at 9-12. In fact, however, Olaniyi's Second Amended Complaint plainly alleges that the Defendant itself is directly liable for harm it caused to Olaniyi by violating Olaniyi's constitutional rights. 2d Amend. Compl. ¶¶ 83-92, 111. The involvement of C.C.H.P.S. does not affect the validity of Olaniyi's section 1983 claim.

A. The Defendant Acted Under Color of State Law.

For a municipality to be liable for another actor's actions under 42 U.S.C. § 1983, the actor must have acted under color of state law while violating a right secured by the Constitution or the laws of the United States. 42 U.S.C. § 1983 (2000); see, e.g., West v. Atkins, 487 U.S. 42, 48-49 (1988); Parratt v. Taylor, 451 U.S. 527, 535 (1981). The "under color of state law" element of a section 1983 claim is essentially identical to the "state action" requirement of the Fourteenth Amendment. See Lugar v. Edmonson Oil Co., 457 U.S. 922, 929-30 (1982). In order to be found as acting under color of state law, the actor must have "exercised power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.'" West, 487 U.S. at 49 (1988) (quoting United States v. Classic, 313 U.S. 299 (1941)).

1. The Defendant, as a Governmental Entity, Acted Under Color of State Law.

It cannot be disputed that the District, as a municipal entity, meets the color of state law prong under section 1983 and is the proper subject of a section 1983 claim. "Local

governing bodies ... can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where ... the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." Monell v. Dep't of Social Servs. of the City of New York, 436 U.S. 658, 690-91 (1978). A local governing body may also be "sued for constitutional deprivations visited pursuant to 'custom' even though such a custom has not received formal approval through the body's official decision-making channels." Id.

To satisfy the "under color of state law" element of a section 1983 claim under Monell, Olaniyi must allege hat his injury was caused by the District's policies or customs. Monell, 436 U.S. 658, 690-91 (1978). Olaniyi's Second Amended Complaint does so. See 2d Amed. Compl. ¶¶83-92, 111. In arguing for dismissal under Rule 12(b)(6), it is inappropriate for the Defendant to argue whether Olaniyi will be able to prevail the merits under the guise of attacking the sufficiency of Olaniyi's pleadings. See Motion, at 9-12; ACLU Foundation of So. Cal. v. Barr, 952 F.2d 457, 467 (D.C. Cir. 1992) ("It may appear on the face of the pleadings that a recovery is very remote and unlikely but ... 12(b)(6) does not countenance dismissals based on a judge's disbelief of a complainant's factual allegations ... or ... belief that the plaintiff cannot prove what the complaint asserts.").

2. D.C. Jail Personnel Acted Under Color of State Law by Performing a Municipal Function Under Authority Granted by the Defendant.

For purposes of Olaniyi's section 1983 claim, the D.C. Jail personnel who were physically responsible for Olaniyi's constitutional deprivations, in performing a municipal function under authority granted by the Defendant also acted under color of state law. West v. Atkins, 487 U.S. 42, 50 (1988). It is irrelevant whether the D.C. Jail personnel were directly employed by the District or were privately contracted so long as they were performing a

municipal function, such as the administration of health services in a jail. See West, 487 U.S. at 56 ("Whether a physician is on the state payroll or is paid by contract, the dispositive issue concerns the relationship among the State, the physician, and the prisoner.").

Indeed, the Supreme Court has repeatedly found state action to be present in cases where a private entity exercises powers traditionally reserved to the State, or operates a facility whose "predominant character and purpose . . . are municipal." Evans v. Newton, 382 U.S. 296, 302 (1966) (holding that the private operators of a municipal park act were state actors); see Jackson v. Metro. Edison Co., 419 U.S. 345, 352 (1974) ("We have, of course, found state action present in the exercise by a private entity of powers traditionally reserved to the State."); See also, e.g., Gary v. Modena, No. 05-16973, 2006 U.S. App. LEXIS 31640, at *13 (11th Cir. 2006) ("[a] prison physician who furnishes medical services to state prison inmates as part of his contractual duties to that state acts under color of state law for the purposes of [section] 1983.").

In West, a prisoner sued a physician under section 1983, claiming that the physician acted under the color of state law while refusing to schedule surgery on the prisoner's torn Achilles tendon. 487 U.S. 42. The Supreme Court addressed the issue "whether a physician who is under contract with the State to provide medical services to inmates at a state-prison hospital . . . acts 'under color of state law,' within the meaning of 42 U.S.C. § 1983, when he treats an inmate." Id. at 43, 48-49. The Court reasoned that because the State had a constitutional obligation to provide medical care to its prisoners, and because the doctor was "authorized and obligated" under his contract to perform medical services for the State, the doctor acted under the color of state law while depriving the prisoner of his constitutional rights. Id. at 54-55.

The present matter is indistinguishable from West for the purpose of determining whether C.C.H.P.S. employees working in the D.C. Jail acted under the color of state law. The

D.C. Jail, like all other prisons, is constitutionally obligated to provide inmates with medical care. Estelle v. Gamble, 429 U.S. 97, 104 (1976). The District of Columbia Department of Corrections, pursuant to authority granted by D.C. Code § 24-211.02, contracted with C.C.H.P.S. to provide healthcare services in the D.C. Jail. See Ex. C. In sum, C.C.H.P.S. employees in the D.C. Jail perform a municipal function, in a municipal facility, under authority granted to them by municipal law. Therefore, those C.C.H.P.S. employees necessarily acted under the color of state law while depriving Olaniyi of his Fifth and Fourteenth Amendment rights.

B. The Defendant Violated Olaniyi's Fifth and Fourteenth Amendment Rights by Maintaining a Custom of Inadequately Training and Supervising D.C. Jail Personnel.

The Second Amended Complaint alleges that Defendant's failure to adequately train and supervise D.C. Jail personnel (whether employed by C.C.H.P.S. or otherwise) constituted a custom or policy that allowed D.C. Jail personnel to forcibly administer medicine to Olaniyi, and therefore, that policy was the moving force behind the violation of Olaniyi's Fifth and Fourteenth Amendment rights perpetrated by D.C. Jail personnel. See Second Amended Complaint, ¶¶ 86-92.

1. D.C. Jail Personnel Violated Olaniyi's Due Process Rights by Forcibly Injecting Him with Medication

For Olaniyi to state a viable section 1983 claim, he must identify which constitutional right he was deprived of by the Defendant. E.g., Parratt v. Taylor, 451 U.S. 527, 535 (1981). Olaniyi makes such an identification in his Second Amended Complaint, stating that his Due Process Rights were violated when he was forcibly administered medication within the D.C. Jail.[5] See Second Amended Complaint, ¶¶108-115.

[5] The forcible injection against Olaniyi's will itself constitutes a sufficient violation of Olaniyi's constitutional rights under 42 U.S.C. § 1983. Whether the injection contained medication is largely immaterial when evaluating whether Olaniyi has stated a claim for relief.

"The forcible injection of medication into a nonconsenting person's body represents a substantial interference with that person's liberty." Washington v. Harper, 494 U.S. 210, 229 (1990). The Supreme Court's decision in Harper makes clear that a detainee or prisoner has an "interest in avoiding involuntary administration of antipsychotic drugs [that is] protected under the Fourteenth Amendment." Riggins v. Nevada, 504 U.S. 127, 133-34 (1992) (clarifying Harper); Washington v. Harper, 494 U.S. 210, 229 (1990). Although the plaintiff's claim in Harper ultimately failed,[6] the Court held that a "State's attempt to set a high standard for determining when involuntary medication with antipsychotic drugs is permitted cannot withstand challenge if there are no procedural safeguards to ensure the prisoner's interests are taken into account." Harper, 494 U.S. at 233 (1990). When Olaniyi received an injection against his will, his Fourteenth Amendment rights were immediately implicated.[7] Riggins, 504 U.S. at 135.

2. The District had a Custom of Failing to Train Medical Personnel in the D.C. Jail that Caused Violation of Olaniyi's Constitutional Rights.

In order to prevail on a section 1983 claim based on inadequate training or supervision, the municipality's failure must reflect "deliberate indifference" towards the constitutional rights of those who may deal directly with the inadequately trained employees – the D.C. Jail personnel in the present case. Canton v. Harris, 489 U.S. 378, 388, 392 (1989); Daskalea v. District of Columbia, 227 F.3d 433, 441 (D.C. Cir. 2000). For a defendant to have a policy of deliberate indifference towards the constitutional rights of a plaintiff, the defendant must be on notice that a risk to those rights exists. See, e.g., Daskalea 227 F.3d at 441 (D.C. Cir.

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[6] Harper is distinguishable from the present case, as the Supreme Court in Harper was evaluating whether the state's policy regarding involuntary administration of medication met the necessary substantive and procedural due process requirements. Moreover, the plaintiff in Harper was found to be a danger to himself and others; nothing in D.C.'s brief or Olaniyi's medical records, Ex. B, suggest that Olaniyi was dangerous to himself or others.

[7] See also, Point II(A), infra, concerning the forcible administration of medication to Olaniyi by D.C. jail personnel.

2000). This notice can be shown either by demonstrating the obviousness of a need for certain training or by showing that because of a pattern of constitutional deprivations, the municipality knew that a particular omission would likely lead to further constitutional deprivations. See Canton, 489 U.S. at 396 (O'Connor, J., concurring in part and dissenting in part).

Olaniyi's complaint sufficiently alleges his section 1983 claim against the Defendant. Moreover, as argued at Point II, infra, the District's awareness of the risk of unconstitutional behavior by D.C. Jail personnel was clear from the Defendant's publication of a written policy on the subject. See Exhibit F, District of Columbia Department of Corrections Program Manual at 19, 38. The Defendant's policy states that District of Columbia law governs the involuntary administration of psychotropic medicine to inmates. Id. at 38. Specifically, D.C. Code § 7-1231.00 prohibits the forcible administration of such medicine unless there is an emergency, the patient is incapacitated, or the patient has provided informed consent. By establishing a policy that prohibited its contract employees from illegally administering drugs, the District evidenced its awareness that such employees might forcibly administer drugs when it was illegal to do so.

The Defendant may well respond that because its official policy prohibited the forcible administration of an injection (subject to the exceptions identified), it cannot be held liable for actions in violation of that policy. Such an argument is unavailing, however, because a written policy does not shield municipalities from liability where there is evidence "that the municipality was deliberately indifferent to the policy's violation." Daskalea 227 F.3d at 442 (D.C. Cir. 2000); Women Prisoners of the D.C. Dep't of Corr. v. District of Columbia, 877 F. Supp. 634, 640-41 (D.D.C. 1994). Indeed, where municipal defendants have failed to address a problem discussed in an official policy through sufficient training and reporting procedures, those failures are evidence of deliberate indifference. See Women Prisoners of the D.C. Dep't of

Corr. 877 F. Supp. at 640-41 (D.D.C. 1994) (noting that in a section 1983 lawsuit regarding sexual harassment in the D.C. Jail, the District of Columbia's "various policies and procedures are of little value [as a defense] because the Defendants address the problem of sexual harassment of women prisoners with no specific staff training, inconsistent reporting practices, cursory investigations and timid sanctions"). Olaniyi's Second Amended Complaint sufficiently alleges the required failings in the Defendant's customs and policies. See 2d Amend. Compl. ¶¶ 107-111.

3. Olaniyi need not identify a specific individual with final policymaking authority in his complaint.

The Defendant argues, without citation to case law, that "[w]ithout a factually supported allegation that the alleged constitutional violations were conducted by a District policymaker, the plaintiff's § 1983 claim against the District must be dismissed." Motion at 18. There is no such pleading requirement.

It is true that "the only acts that count (though they may include inaction giving rise to endorsing a custom) are ones by a person or persons who have 'final policymaking authority [under] state law.'" Triplett v. District of Columbia, 108 F.3d 1450, 1453 (D.C. Cir. 1997) (quoting Jett v. Dallas Indep. School Dist., 491 U.S. 701, 737 (1989)). However, Triplett does not concern the adequacy of pleadings. The procedural posture of Triplett stands in sharp contrast to the present case; that case involved a review of a lower court's findings in the plaintiff's favor on a full record after an opportunity for complete discovery.

However, neither Triplett nor any other case cited by the Defendant – nor identified through Olaniyi's research – requires a section 1983 plaintiff, as part of his initial pleading, to identify the official with 'final policymaking authority' under D.C. law responsible for the constitutional violation. Such a requirement – to specifically identify the official at the

preliminary stages of a litigation – would serve as an absolute bar against injured plaintiffs without knowledge of the intricacies of local and state government operations and decision-making. Indeed, a plaintiff, like Olaniyi, can only identify the requisite official after sufficient discovery into the District's policy-making process.

As discussed more fully infra, Olaniyi has not had the opportunity to obtain meaningful discovery or to conduct any depositions, given the defendants requests' for stays of discovery. Olaniyi is entitled to complete discovery in his effort to prove that an official with 'final policymaking authority' failed to act and/or endorsed a policy or custom that caused the violation of his constitutional rights.

C. Olaniyi's Claim Imposes Liability on the Defendant on More than a *Respondeat Superior* Theory.

The Defendant misstates Olaniyi's section 1983 claim in suggesting that it seeks recovery from the Defendant solely on the basis of a *respondeat superior* theory. See Motion, at 9. As previously discussed, Olaniyi's section 1983 claim plainly alleges that the Defendant's policies were the "moving force" behind the injuries and indignities Olaniyi suffered in the Mental Health Unit of the D.C. Jail. See 2d Amend. Compl., ¶¶ 83-92, 111.

After mischaracterizing Olaniyi's section 1983 claim, the Defendant points out that liability under section 1983 "must be based upon unconstitutional policies, practices and customs of a governmental entity." Motion, at 12 (citing Monell v. Dep't of Social Servs. of the City of New York, 436 U.S. 658 (1978)). The Defendant also notes that "municipal liability should not be imposed when the municipality was not itself at fault." Oklahoma City v. Tuttle, 471 U.S. 808, 817 (1985). Olaniyi's section 1983 claim does not seek to impose liability without fault upon the Defendant. Rather, Olaniyi alleges that the Defendant's policies and agents are responsible for his injuries. Canton establishes that in certain cases, "the failure to provide

proper training may fairly be said to represent a policy for which the city is responsible, and for which the city may be held liable if it actually causes injury." Canton, 489 U.S. at 390 (1989); see Collins v. Harker Heights, 503 U.S. 115, 123 (1992) ("[I]f a city employee violates another's constitutional rights, the city may be liable if it had a policy or custom of failing to train its employees and that failure to train caused the constitutional violation.").

D. Notice Pleading is Sufficient in Alleging a Section 1983 Claim.

In an action under section 1983, such as an action alleging a municipality's failure to train its personnel, the Federal Rules of Civil Procedure, and specifically Rule 8(a)(2), require only "a short and plain statement of the claim that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Leatherman v. Tarrant County Narcotics Intel. and Coord. Unit, 507 U.S. 163 (1993) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). Unlike the "special matters" addressed in Rule 9 of the Federal Rules, section 1983 claims are not subjected to heightened pleading requirements. Id. "The Federal Rules establish a regime in which 'simplified' pleadings provide notice of the nature of claims, allowing parties later 'to disclose more precisely the basis of both claim and defense and to define more narrowly the disputed facts and issues' through 'the liberal opportunity for discovery and other pretrial procedures.'" Atchinson v. District of Columbia, 73 F.3d 418, 421 (D.C. Cir. 1996) (quoting Conley v. Gibson, 355 U.S. 41, 47-48 & n.9 (1957)). It is axiomatic that complaints should be construed to do "substantive justice," and a complaint "need not allege all that a plaintiff must eventually prove." Fed. R. Civ. P 8(f); Atchinson, 73 F.3d 418, 422 (D.C. Cir. 1996). Thus, in the example of a section 1983 claim based on the municipality's failure to train, a plaintiff can satisfy the pleading requirements of Rule 8 "by alleging both a failure to train and an unusually serious instance of misconduct that, on its face, raises doubts about a municipality's training policies." Atchinson, 73 F.3d at 422 (D.C. Cir. 1996).

In Atchinson, the D.C. Circuit reversed the dismissal of a plaintiff's section 1983 action against the District of Columbia for its failure to adequately train police officers in the use of force. The D.C. Circuit ruled that a section 1983 "plaintiff need not plead multiple instances of misconduct" in order to survive a motion to dismiss because such a requirement would be inconsistent with Leatherman. Atchinson, 73 F.3d at 423 (D.C. Cir. 1996). Moreover, the D.C. Circuit rejected the District Court's holding that plaintiff's use of the phrase "deliberate indifference" without any further facts made the complaint inadequate. Id. The D.C. Circuit thus reinstated the plaintiff's section 1983 claim because it was enough for plaintiff's complaint to put the District of Columbia on notice that the claims were based upon a failure to train officers in the proper use of force. Id.

The Defendant swims against the current of Leathermen and Atchinson in asking this Court to impose upon Olaniyi a heightened pleading standard. For example, the Defendant argues that "[s]ince plaintiff has not alleged more than a single incident, he cannot meet the standard outlined in Monell and Oklahoma City." Motion at 20. However, neither Monell nor Oklahoma City were cases addressing the adequacy of pleadings, and thus Defendant's argument is without merit under Fed. R. Civ. P. 12(b)(6).

The Defendant also argues that Olaniyi's Second Amended Complaint should be dismissed because "the plaintiff has not set forth sufficient facts to show that his constitutional rights were violated by a District custom, policy or practice." Id. Ironically, in joining argument on what Olaniyi will eventually have to prove to prevail on the merits, the Defendant is implicitly admitting its awareness of the kind and quality of Olaniyi's section 1983 claim (*i.e.,* that it is a section 1983 claim which alleges that the practices, policies, and procedures established by the Defendant resulted in the deprivation of Olaniyi's constitutional rights during

his incarceration in the D.C. Jail). See Leatherman 507 U.S. 163 (1993); Conley 355 U.S. 41 (1957); Atchinson, 73 F.3d at 423 (D.C. Cir. 1996).

In short, Olaniyi's section 1983 claim alleges that the personnel working in the D.C. Jail violated Olaniyi's constitutional rights while acting under the color of state law. The Defendant's custom and policies, which failed to train and supervise D.C. Jail personnel, amounted to a deliberate indifference to Olaniyi's constitutional rights. In allowing the forcible administration of medication to Olaniyi, the Defendant's customs and polices were the moving force behind the violation of Olaniyi's Fifth and Fourteenth Amendment rights.

POINT II

OLANIYI'S SECTION 1983 CLAIM SURVIVES SUMMARY JUDGMENT

As discussed above, summary judgment can be granted only if the Defendant carries its burden that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). All evidence presented to the Court is to be construed in Olaniyi's favor; Olaniyi is given the benefit of all favorable inferences that can be drawn from it. See Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp, 425 U.S. 574, 587 (1986). At least two genuine issues of material fact make summary judgment inappropriate at this juncture: (1) a dispute over whether D.C. Jail personnel forcibly administered medication to Olaniyi; and (2) a dispute over whether Defendant's customs and practices allowed and were the moving force behind such administration of medication.

A. D.C. Jail Personnel Forcibly Administered Medication to Olaniyi.

Olaniyi's section 1983 case against the Defendant revolves around a shot of medication which D.C. Jail personnel forcibly administered to him against his will. See 2d

Amend. Compl. ¶75. In Olaniyi's attached Declaration, Olaniyi confirms he received the shot and describes the circumstances surrounding the injection. Olaniyi Decl. ¶7.

The Defendant attempts to offer what are purported to be Olaniyi's medical records as dispositive proof on the question of whether Olaniyi received an injection against his will. The Defendant argues that the absence of any notation of such an injection is proof certain that no such injection was given. Motion at 6, 20. This, however, is simply not the case. The absence of such a notation only means that no injection was recorded on Olaniyi's medical chart – not that no such injection was administered. Olaniyi has declared under penalty of perjury that an injection was administered. Olaniyi Decl. ¶7. Thus, there is a fundamental dispute regarding a crucial fact that precludes the grant of summary judgment at this time.

Indeed, Olaniyi's claim that inadequate training and supervision led to the constitutional harms that he suffered, see 2d Am. Compl., ¶¶ 83-92, 111, would be supported by the existence of erroneous or non-existent medical records. In the type of environment alleged by Olaniyi to have been present in the D.C. Jail, it is a realistic possibility that D.C. Jail personnel failed – through intent or inadvertence – to record the injection of medication on his medical records. Thus, it is not dispositive that the medical records do not contain an indication of a shot; indeed, if a shot was administered against Olaniyi's will in the middle of the night, it would be surprising if it was noted in the records. The point, though, is not which party to believe, but rather that there is a dispute whether Olaniyi was injected with a shot against his will. Summary judgment is, therefore, inappropriate and premature. See Fed. R. Civ. P. 56(c) & (f).

B. Defendant's Customs and Policies were the Moving Force Behind Unconstitutional Conduct in the D.C. Jail.

Olaniyi's section 1983 case against the Defendant also hinges on whether the Defendant's customs and policies were the moving force behind the unconstitutional conduct that occurred in the D.C. Jail (*i.e.*, the forcible administration of medication). Olaniyi's Second Amended Complaint discusses the facts supporting Olaniyi's claim that Defendant's customs and policies were the moving force. See 2d Am. Compl. ¶¶75-77.

The Defendant's argument that there is no District of Columbia policy that caused Olaniyi's constitutional deprivations cuts against their argument for summary judgment under Rule 56. Summary judgment is proper if the "pleadings, depositions, answers to interrogatories ... show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56. "The requisite showing of a 'genuine issue of fact for trial' is predicated upon the existence of a legal theory which remains viable under the asserted version of the facts." Smith v. Washington Metro. Transit Auth., 631 A.2d 387, 390 (D.C. 1993) (emphasis added) (quoting McGuire v. Columbia Broad. Sys., Inc., 399 F.2d 902, 905 (9th Cir. 1968)).

As evidence demonstrates, the Defendant was aware of the risk of unconstitutional conduct by D.C. Jail personnel – indeed, the Defendant even had a written publication on the subject of involuntary administration on psychotropic medicine to inmates. See Ex. F. Moreover, the D.C. Code specifically prohibits the forcible administration of such medicine unless there is an emergency, the patient is incapacitated, or the patient has provided informed consent. Thus, through its adoption of a policy and statute on this issue, the Defendant has demonstrated its awareness of potential unconstitutional conduct by D.C. Jail personnel.

Olaniyi maintains that the Defendant's custom and policy of failing to adequately train and supervise D.C. Jail personnel caused his constitutional deprivations. See 2d Am. Compl., ¶87. Olaniyi has not had discovery sufficient to uncover all the inadequacies of training, but when a detainee is forcibly injected against his will in the middle of the night, it can hardly be said that such an event does not raise serious doubts about the adequacy of training and supervision received by personnel in the D.C. Jail's Mental Health Unit. See, e.g., Canton, 489 U.S. at 390 (1989) ("[I]t may happen that in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need."). Whether such a policy or custom exists is a question of fact. E.g., Id. at 382-83.

Beyond the Defendant's explicit, written policies, other incidents in the D.C. Jail show a history of the Defendant's awareness of its failure to provide adequate training to D.C. Jail personnel, and that its awareness that this lack of training has led to the violation of detainees' constitutional rights. For example, as recently as last year, this Court found that Jonathan Magbie suffered an excruciating and completely avoidable death as the result of incompetence in the D.C. Jail's Correctional Treatment Facility. See Scott v. District of Columbia, No. Civ.A. 05-1853(RWR), 2006 WL 1409770 (D.D.C. 2006); Colbert I. King, Jonathan Magbie's Last Hours, Wash. Post. November 5, 2004, at A23. Magbie, a quadriplegic, died because his complaints of pain were not considered serious and because an employee placed his wheelchair out of reach of the call button that summons medical personnel in an emergency. See Id. Had D.C. Jail personnel received adequate training, Magbie would not have died.

In Campbell v. McGruder, this Court held that the D.C. Jail had failed to comply with an Order requiring it to reform its Mental Health Unit. No. 1462-71(WBB), 1993 U.S. Dist.

LEXIS 5377 (D.D.C. 1993). This Court noted, *inter alia*, that the Mental Health Unit was understaffed and that officers who worked in the Mental Health Unit had not received sufficient specialized training about psychiatric care procedures. Id.

The above examples illustrate that Olaniyi's allegation is in line with a pattern of unconstitutional conduct that the District of Columbia clearly knew about, but did not remedy by providing the necessary training. See Canton, 489 U.S. at 396 (O'Connor, J., concurring in part and dissenting in part). Indeed, in Daskalea, the D.C. Circuit used evidence of prior section 1983 lawsuits against the prison as part of its basis for finding that the District had a policy of deliberate indifference towards the constitutional rights of its inmates. Daskalea, 227 F.3d at 442 (D.C. Cir. 2000). Olaniyi will use similar reasoning, as well as evidence expected to be obtained through further discovery, at trial to show the inadequacy of the training that the Defendant provides to its jail personnel and to show the District's continued indifference towards the risks of inadequate training.

In sum, at this juncture of the case, there are two hotly contested disputes of fact on which Olaniyi's claim rests. The existence of these disputes of fact is more than enough to defeat the Defendant's Motion.

POINT III

DEFENDANT'S SUMMARY JUDGMENT MOTION IS PREMATURE

In addition to being precluded by disputes of material fact, summary judgment on this record is also premature.

Summary judgment "is premised on the notion that parties will have had 'adequate time for discovery' to establish whether a genuine issue of material facts exists." Breen v. Peters, 474 F. Supp. 2d 1, 7 (D.D.C. 2007) (quoting Celotex Corp. v. Catrett, 477 U.S.

317, 322 (1986)). See also, Anderson v. Liberty Lobby, 477 U.S. 242, 257 (stating that plaintiff must have "a full opportunity to conduct discovery"); Paquin v. Fed. Nat'l Mortg. Ass'n, 119 F.3d 23, 28 (D.C.Cir. 1997) (reversing district court's grant of summary judgment as premature because it declined to permit additional discovery sought by an ADEA plaintiff to develop facts relevant to defendant's summary judgment motion). Often, summary judgment motions are "premature until all discovery has been completed." City of Rome v. United States, 450 F. Supp. 378, 384 (D.D.C. 1978).

In contrast with situations where summary judgment may be appropriate, the record developed between Olaniyi and this Defendant is especially slim. Although Olaniyi has propounded both document requests and interrogatories on the Defendant, the Defendant's responses have been incomplete. For example, the Defendant has failed to respond to requests seeking clarification and amplification of its' prior anemic discovery responses.[8] Ex. G, Declaration of Jennafer B. Neufeld ("Neufeld Decl.") ¶4; see also Ex. E.

Furthermore, Olaniyi has not had the opportunity to depose the D.C. Jail personnel who interacted with Olaniyi in the D.C. Jail. Neufeld Decl. ¶6. Indeed, several of these personnel, such as Defendants Gwendolyn Gibson and Darius Mills have been joined recently to Olaniyi's action against the Defendant. 2d Amend. Compl. ¶75. Additionally, due to the various discovery stays requested by Defendant and granted by the Court, see e.g., Order, March 21, 2007, Dkt No. 95, Olaniyi has had no opportunity to obtain discovery from Defendants Gibson and Mills personally including, without limitation, discovery concerning their knowledge and understanding of the Defendant's policies, practices, and customs that

[8] Indeed, several of the documents produced to Olaniyi by the Defendant, including those used to support Defendant's Motion post-date Olaniyi's stay in the D.C. Jail. See e.g., Ex. 3 to Defendant's Motion at 2 (noting a contract modification signed April 1, 2003 – *after* Olaniyi had been discharged from the D.C. Jail).

regulated the treatment of inmates in the D.C. Jail. Id. There is no discovery deadline yet established for this case; Olaniyi intends to vigorously seek meaningful discovery as soon as the Court permits him to do so, including seeking deposition testimony from Defendant and fact witnesses.

Thus, in the interests of justice and to provide Olaniyi with the opportunity to obtain meaningful discovery from the Defendant in order to more fully understand and challenge their new allegations, Defendant's Motion must be denied. See Barnes v. District of Columbia, ___ F. Supp. 2d ___, 2007 WL 896282, *3 (D.D.C.) (2007) (stating that the general rule that "decision by summary judgment is disfavored when additional development of facts might illuminate the issues of law requiring decision." (citing Nixon v. Freeman, 670 F.2d 346, 362 (D.C.Cir.1982)); see also, Fed. R. Civ. P. 56 (f).

CONCLUSION

WHEREFORE, Olaniyi respectfully requests that the Court deny the Defendant's Motion to Dismiss, or in the Alternative, for Summary Judgment with respect to Olaniyi's claim under 42 U.S.C. § 1983.

August 21, 2007

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 21, 2007, a copy of the foregoing was served on the following by the Court's Electronic Filing System:

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