[*Aaron D.P. Chandler v. District of Columbia [Police] et al.* (Filed Jul. 01, 2008). Case No. 1:08-cv-01158-HHK, re. plaintiff counsel, attorney and father James P. Chandler III aka Sr., Chandler Law Firms, PLLC. (D.D.C. 2008).]

CASREF,CLOSED,JURY,TYPE-L

U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:08-cv-01158-HHK

CHANDLER v. DISTRICT OF COLUMBIA et al
Assigned to: Judge Henry H. Kennedy
Case in other court: Superior Court for the District of Columbia, 0004099-08
Cause: 42:1983 Civil Rights Act

Date Filed: 07/01/2008
Date Terminated: 09/30/2009
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

AARON D. P. CHANDLER

represented by **James Phillip Chandler , Sr.**
THE CHANDLER LAW FIRM, PLLC
1776 K Street, NW
Suite 800
Washington, DC 20006
(202) 296-8484
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

DISTRICT OF COLUMBIA

represented by **Shana Lyn Matini**
D.C. SUPERIOR COURT
500 Indiana Avenue, NW
Washington, DC 20001
(202) 879-1102
Email: shana.matini@dcsc.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

GREGORY JONES

represented by **Shana Lyn Matini**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

UNKNOWN OFFICERS DOES 1-7
Third District Station
TERMINATED: 11/14/2008

Defendant

UNKNOWN OFFICERS DOES 1-9

Date Filed	#	Docket Text
07/01/2008	1	NOTICE OF REMOVAL by DISTRICT OF COLUMBIA from Superior Court for the District of Columbia, case number 0004099-08. () filed by DISTRICT OF COLUMBIA. (Attachments: # 1 Civil Cover Sheet, # 2 Notice, # 3 Exhibit)(td,) (Entered: 07/03/2008)
07/01/2008		SUMMONS Not Issued. (td,) (Entered: 07/03/2008)
07/09/2008	2	MOTION to Dismiss by DISTRICT OF COLUMBIA, GREGORY JONES (Frost, Shana) (Entered: 07/09/2008)
07/09/2008	3	MOTION for Extension of Time to File Answer by GREGORY JONES (Frost, Shana) (Entered: 07/09/2008)
07/23/2008		MINUTE ORDER granting 3 Defendant Gregory Jones' Motion for Extension of Time to File Partial Answer. Signed by Judge Henry H. Kennedy, Jr. on July 23, 2008. (NP) (Entered: 07/23/2008)
07/25/2008	4	Receipt on 07/25/08 of ORIGINAL FILE, certified copy of transfer order and docket sheet from Superior Court. Superior Court Number 08ca4099. (jf,) (Entered: 07/28/2008)
11/14/2008	5	FIRST AMENDED COMPLAINT against UNKNOWN OFFICERS DOES 1-9, DISTRICT OF COLUMBIA, GREGORY JONES filed by AARON D.P. CHANDLER. (nmw,) (Entered: 11/17/2008)
11/20/2008	6	ORDER denying as moot 2 Defendant's Motion to Dismiss. Signed by Judge Henry H. Kennedy, Jr. on November 20, 2008. (NP) (Entered: 11/20/2008)
12/02/2008	7	MOTION to Dismiss *Amended Complaint* by DISTRICT OF COLUMBIA, GREGORY JONES (Frost, Shana) (Entered: 12/02/2008)
04/08/2009	8	MOTION for Leave to File *Instanter Plaintiff's Second Amended Complaint* by AARON D.P. CHANDLER (Attachments: # 1 Text of Proposed Order)(Chandler, James) (Additional attachment(s) added on 4/8/2009: # 2 Proposed Second Amended Complaint) (nmw,). (Entered: 04/08/2009)
04/08/2009	9	Memorandum in opposition to re 7 MOTION to Dismiss *Amended Complaint* filed by AARON D.P. CHANDLER. (Chandler, James) (Entered: 04/08/2009)
04/08/2009		NOTICE OF CORRECTED DOCKET ENTRY: Plaintiff's proposed Second Amended Complaint was submitted separately to the Court via email and it has now been added to Docket Entry 8 MOTION for Leave to File *Instanter Plaintiff's Second Amended Complaint*. (nmw,) (Entered: 04/08/2009)
04/08/2009		MINUTE ORDER denying without prejudice 8 Motion for Leave to File Instanter Plaintiff's Second Amended Complaint because movant did not comply withLCvR 7(m), which imposes a duty to confer with opposing counsel before filing any nondispositive motion and to "include [in the motion] a statement that the required discussion occurred and a statement as to whether the motion is opposed." Signed by Judge Henry H. Kennedy, Jr. on April 8, 2009. (NP) (Entered: 04/08/2009)
05/05/2009	10	MOTION for Order *for Leave to File Instanter Plaintiff's Second Amended Complaint* by AARON D.P. CHANDLER (Chandler, James) (Entered: 05/05/2009)
05/12/2009	11	REPLY to opposition to motion re 7 MOTION to Dismiss *Amended Complaint*, 10 MOTION for Order *for Leave to File Instanter Plaintiff's Second Amended Complaint*

		filed by DISTRICT OF COLUMBIA, GREGORY JONES. (Frost, Shana) (Entered: 05/12/2009)
05/18/2009	12	Memorandum in opposition to re 10 MOTION for Order *for Leave to File Instanter Plaintiff's Second Amended Complaint* filed by DISTRICT OF COLUMBIA, GREGORY JONES. (Frost, Shana) (Entered: 05/18/2009)
05/20/2009	13	ORDER referring 10 Plaintiff's Motion for Leave to File Instanter Plaintiff's Second Amended Complaint to Magistrate Judge John M. Facciola. Signed by Judge Henry H. Kennedy, Jr. on May 20, 2009. (lchhk1) (Entered: 05/20/2009)
05/20/2009	14	CASE REFERRED to Magistrate Judge John M. Facciola for 10 MOTION for Order for Leave to File Instanter Plaintiff's Second Amended Complaint by AARON D.P. CHANDLER. (kb) (Entered: 05/22/2009)
05/28/2009	15	ORDER re referral to Judge Facciola for motion for leave to file second amended complaint. Signed by Magistrate Judge John M. Facciola on 5/28/09. (SP,) (Entered: 05/28/2009)
05/28/2009	16	REPLY to opposition to motion re 10 MOTION for Order *for Leave to File Instanter Plaintiff's Second Amended Complaint* filed by AARON D.P. CHANDLER. (Chandler, James) (Entered: 05/28/2009)
09/01/2009	17	ORDER Referring 7 Motion to Dismiss to United States Magistrate Judge John M. Facciola for his Report and Recommendation. Signed by Judge Henry H. Kennedy, Jr. on September 1, 2009. (lchhk1) (Entered: 09/01/2009)
09/03/2009	18	REPORT AND RECOMMENDATION re 7 MOTION to Dismiss Amended Complaint filed by GREGORY JONES, DISTRICT OF COLUMBIA. Signed by Magistrate Judge John M. Facciola on 9/3/09. (SP,) (Entered: 09/03/2009)
09/03/2009	19	ORDER denying without prejudice 10 Motion for Order. Signed by Magistrate Judge John M. Facciola on 9/3/09. (SP,) (Entered: 09/03/2009)
09/14/2009	20	OBJECTION to 18 Report and Recommendations filed by AARON D.P. CHANDLER. (Attachments: # 1 Text of Proposed Order)(Chandler, James) (Entered: 09/14/2009)
09/25/2009	21	RESPONSE re 20 Objection to Report and Recommendations filed by DISTRICT OF COLUMBIA, GREGORY JONES. (Frost, Shana) (Entered: 09/25/2009)
09/30/2009	22	ORDER adopting 18 Report and Recommendation of United States Magistrate Judge John M. Facciola and granting 7 Defendants District of Columbia and Officer Gregory Jones' Motion to Dismiss Plaintiff's Amended Complaint. Signed by Judge Henry H. Kennedy, Jr. on September 30, 2009. (NP) (Entered: 09/30/2009)

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Aaron D.P.Chandler
9813 Tulip Tree Drive
Bowie, MD 20721,

Plaintiff

v.

Gregory Jones,
Third District Station
1620 V St., NW
Washington, D.C 20009

and
Unknown Officers Does 1- 9
1620 V. St., NW
Washington, D.C. 20009

and
District of Columbia,
Severe the Following:

Major Adrian Fenny
1350 Pennsylvania Ave NW,
6th Floor
Washington, D.C. 20009

Cathy Lenain, Chief of Police
300 Indiana Ave, NW
Room 5080
Washington, D.C. 20001

Peter Nichols, Acting General Counsel
441 4th Street NW
Washington, D.C. 20001

Defendants.

C.A. No. 08-1158 (HHK)
Jury Demand
FIRST AMENDED
COMPLAINT

COMPLAINT

POLICE MISCONDUCT: VIOLATION OF RIGHTS UNDER THE CONSTITUTION OF THE UNITED STATES AND THE COMMON AND STATUTORY LAW OF THE UNITED STATES OF AMERICA AND OF THE DISTRICT OF COLUMBIA

Plaintiff Aaron D.P Chandler ("Mr. Chandler " or " plaintiff"), by and through undersigned counsel, hereby files this complaint against Greg Jones, unknown officers of the Metropolitan Police Department (" MPD") and the District of Columbia, asserting claims of false imprisonment, intentional infliction of emotional distress, violations of plaintiff's Fourth, Fifth and Eight Amendment rights, and violation of the Code of the District of Columbia, arising from the improper arrest and subsequent detention of Mr. Chandler on April 15, 2007 and May 31, 2007 culminating on June 13, 2007 in the prosecutors refusal to prosecute Chandler on the May 31, 2007 arrest. Plaintiff seeks damages, fees, costs and other appropriate relief.

JURISDICTION AND VENUE

1. Mr. Chandler brings this action to redress the deprivation of rights secured to him by the Untied States Constitution, as made actionable under 42 U.S. C. section 1982, and additional rights secured to him by the law of the District of Columbia.

2. This court has jurisdiction over this action pursuant to 28 USC §1341 and this case was removed from the Superior Court of the District of Columbia to this court by Defendant, the District of Columbia.

3. Venue is proper in this Court because the conduct giving rise to this action occurred in the District of Columbia and this case was removed from the Superior Court

of the District of Columbia to this court by Defendant the District of Columbia.

PARTIES

4. Aaron Chandler, the Plaintiff herein is a resident of Maryland and the Executive Vice President of Txdel Holdings LLC a management & technology-consulting firm and works for clients in defense, security, and civilian government and the commercial sector.

5. Defendant Greg Jones is an officer of the District of Columbia Metropolitan Police Department (MPD). Upon information and belief Greg Jones is assigned to the third District, located at 1620 V Street, NW, Washington, D. C 20009. Officer Greg Jones is sued in his individual and official capacities.

6. Defendants JOHN DOE #1 is an unknown officer of the District of Columbia Metropolitan Police Department. Upon information and belief he is assigned to the Third District, located at 1620 V Street, NW, Washington, D.C 20009. Officer JOHN DOE #1 is sued in his individual and official capacities.

7. Defendants JOHN DOE # 2 is an unknown officer of the District of Columbia MPD. Upon information and belief he is assigned to the Third District, located at 1620 V Street, NW, Washington, D.C 20009. Officer JOHN DOE #2 is sued in his individual and official capacities.

8. Defendants JOHN DOE # 3 is an unknown officer of the District of Columbia MPD. Upon information and belief he is assigned to the Third District, located at 1620 V Street, NW, Washington, D.C 20009. Officer JOHN DOE #3 is sued in his individual and official capacities.

9. Defendants JOHN DOE #4 is an unknown officer of the District of Columbia MPD. Upon information and belief he is assigned to the Third District, located at 1620 V Street, NW, Washington, D.C 20009. Officer JOHN DOE #4 is sued in his individual and official capacities.

10. Defendants JOHN DOE #5 is an unknown officer of the District of Columbia MPD. Upon information and belief he is assigned to the Third District, located at 1620 V Street, NW, Washington, D.C 20009. Officer JOHN DOE #5 is sued in his individual and official capacities.

11. Defendants JOHN DOE #6 is an unknown officer of the District of Columbia MPD. Upon information and belief he is assigned to the Third District, located at 1620 V Street, NW, Washington, D.C 20009. Officer JOHN DOE #6 is sued in his individual and official capacities.

12. Defendants JOHN DOE #7 is an unknown officer of the District of Columbia MPD. Upon information and belief he is assigned to the Third District, located at 1620 V Street, NW, Washington, D.C 20009. Officer JOHN DOE #7 is sued in his individual and official capacities.

13. Defendant District of Columbia is a municipal corporation duly organized and existing under the laws of the United States and operates and governs the MPD pursuant to the laws of the United States and the District of Columbia. It employs Greg Jones and DOE.

14. Defendants John Does 8 and 9 are officers employed by the Washington Metropolitan Area Transit Authority (WMATA)

FACTS

A. The Plaintiff's Unlawful Arrests and Detentions

15. Around midnight on May 31, 2007, plaintiff and his friend Jamitriace were walking e at the intersection of Massachusetts Ave and DuPont Circle.

16. Plaintiff and Ms. Jamitriace noticed unusual police activities when a police car parked near them with its flashing police lights on. There were also several police cruisers in the area.

17. Aaron Chandler was stopped Officers Gregory Jones and accused of driving without a valid permit. Aaron is then arrested by Jones And other unknown officers.

18. Approximately four years ago Mr. Chandler witnessed Officer Jones stop his friend Ray Hamilton for talking on a cell phone while driving.

19. Mr. Hamilton was driving a car rented by his uncle.

20. Jones told him that it was illegal for Mr. Hamilton to drive the car because his name was not listed on the insurance contract. A search of the D.C. Code does not reveal this to be a criminal act.

21. During this encounter Officer Jones yelled and acted aggressively, causing Chandler to ask for Officer Jones' badge number.

22. Officer Jones turned away, obscuring his badge.

23. His partner asked Chandler to step to the curb, and Officer Jones put Chandler in handcuffs.

24. The officer then searched the car Mr. Hamilton was driving, without consent or warrant.

25. Chandler was finally released from handcuffs after Officer Jones spoke by cell phone with Chandler's father, Professor James P. Chandler, President and Chairman of The Chandler Law Firm, Chartered.

26. Before taking off the handcuffs, Officer Jones threatened Chandler by saying,

"We can go right here," meaning "we can fight right here."

27. Officer Jones did not permit Mr. Hamilton to leave the scene until his uncle arrived to drive the rental car.

28. Officer Jones confronted Chandler, his brother, and some of their friends on numerous occasions after this incident.

29. On the night of April 15th, 2007, Jamitriace Hawkins witnessed another incident between Chandler and Jones.

30. Chandler and Hawkins had both parked their cars on K Street, N.W. near the intersection with 15th Street.

31. Chandler was parked about 100 feet behind Hawkins.

32. He had walked up the street to Hawkins' car and was talking to her through the passenger window.

33. A tow truck driver, who was trying to tow a vehicle from in front of Hawkins' car, asked her to back her car up.

34. Hawkins backed her car up, but the tow truck driver asked her to back up further.

35. Officer Jones was parked on the same street, in his patrol car, ahead of Hawkins and the tow truck.

36. From his position on the street he had no view of Plaintiff, Chandler, Chandler's car, or the intersection Chandler had driven through before parking his car.

37. The tow truck driver asked Jones to ask Plaintiff to move her car further.

38. Jones swung his car around and blocked in Hawkins' car then approached Plaintiff' car and began speaking to her in an abrasive manner.

39. Plaintiff noticed that Jones' presence made Chandler very uncomfortable

40. Chandler said to Hawkins that she should give Jones whatever he asked for, or he would arrest her.

41. Jones then checked Hawkins driver's license, which was current.

42. She told him that she had just transferred from the NYPD to take a position with WMATA as a Metro Transit Officer.

43. Jones then began yelling at Chandler.

44. Hawkins sat and observed Jones.

45. When Jones told her to leave, she drove a safe distance away and watched from across the street.

46. Although Jones likely could not have seen Mr. Chandler driving his car, he insisted that Chandler submit to a field sobriety test.

47. Chandler declined to take a breathalyzer test and, when taken to the station, again declined to be tested.

48. As required by D.C. law, Chandler was entitled to a hearing before his driving privileges were automatically suspended in D.C. for refusing to take a breathalyzer. D.C. Code § 50-1906.

49. He exercised his right to a hearing and his case had not yet been heard when he and Hawkins again encountered Jones shortly after midnight on May 31, 2007.

50. Between April 15, 2007 and May 31, 2007, Officer Jones was involved in at least one other incident involving David Chandler and Ray Hamilton.

51. On May 31, 2007, Hawkins and Chandler had dinner in Maryland.

52. Plaintiff drove Chandler's car into the District, while Chandler rode in the passenger seat.

53. They parked a few blocks from DuPont Circle.

54. Plaintiff and Chandler exited the car and had began walking when Hawkins decided to return to the car to apply makeup.

55. Plaintiff was sitting in the passenger seat of the parked car applying makeup and Mr. Chandler was standing outside of the car when they noticed Officer Jones drive past them approximately three times.

56. After applying makeup, Plaintiff exited the car and walked about a block with Mr. Chandler before Officer Jones stopped them.

57. On the evening of May 31, 2007 officer Jones claimed that he stopped them because he was under the mistaken belief that Mr. Chandler was driving without a license.

58. As Officer Jones approached Chandler and Plaintiff, he threateningly accused Chandler of filing a complaint against him.

59. At this time Mr. Chandler had not filed a complaint. Officer Jones proceeded, in an intimidating and aggressive manner, to ask Chandler for his driver's license.

60. Chandler complied and heard the operator on the police car radio say that the license was valid.

61. Despite learning that Chandler's license was not suspended, Officer Jones told Chandler that he was arresting him for driving with a suspended license.

62. Plaintiff was standing with Officer Mitchell, Jones' partner, while Officer Jones and Chandler were talking.

63. Upon hearing that Chandler was being arrested, Plaintiff told Officer Jones that what he was doing was wrong.

64. Jones asked Hawkins how she knew what he was doing was wrong and she informed him that she worked for WMATA.

65. Officer Jones then asked for Hawkins identification, and Plaintiff showed him her badge.

66. Officer Jones then demanded that she leave the scene, told her the events did not concern her, and told her that she could not be a witness to what she observed.

67. Plaintiff replied that she would testify if called as a witness.

68. Also, knowing the history of Officer Jones' harassment of Chandler, Plaintiff told Officer Jones that she would report him to the MPD Internal Affairs Bureau ("IAB").

69. He responded by saying that he would report Ms. Hawkings to her WMATA supervisors and stated that he would "take care" of Plaintiff.

70. Hawkins then left to retrieve Mr. Chandler's car and proceeded to the 3rd precinct police station.

71. While in Mr. Chandler's car she was stopped by another MPD officer, apparently acting at the direction of Officer Jones, who requested her name and then let her go.

72. Shortly after speaking to Plaintiff, Officer Jones called WMATA.

73. While Hawkins waited in the lobby for Mr. Chandler, Sgt. Kirkpatrick and Sgt. Wigglesworth of WMATA arrived and spoke privately with Officer Jones before speaking to Plaintiff.

74. In a statement given later that evening, Officer Jones made the following false accusations: Hawkins was advised to remain on the scene; Hawkins interfered with the arrest of Mr. Chandler; Hawkins called Officer Jones a dirty cop; and Hawkins took out her badge with the intent to influence Officer Jones.

75. Officer Jones also included false statements in his report about the incident.

76. Hawkins spoke with Sgt. Kirkpatrick and Sgt. Wigglesworth shortly after they finished interviewing Officer Jones around 2:00 a.m.

77. She began explaining that Officer Jones had abused his authority and that she was going to be a witness against Officer Jones at Mr. Chandler's breathalyzer refusal hearing.

78. Before she could finish her statement, Sgt. Kirkpatrick cut her off, saying "Listen to me, you are not going to testify against another officer. Do you understand me?"

79. Hawkins again tried to explain herself, but was quickly cut off, by Sgt. Kirkpatrick, who stated, "You are not going to testify against any other officer and if you do I will make sure you lose your job so fast as Monday. Do you understand me?"

80. Hawkins did not respond did not respond to Sgt. Kirkpatrick's threat.

81. Sgt. Kirkpatrick stated "Okay, looks like we are going to do this the hard way. So I need you to write me a statement."

82. Hawkins finished writing her statement about her encounter with Officer Jones at about 4:30 a.m.

83. At this time, Sgt. Kirkpatrick asked for Plaintiff' badge and told her to meet with Chief Shaw at 9:00 a.m.

84. At 9:00 a.m. Plaintiff met with Captain Delinsky (who was the acting chief at the time) and Captain Pavlik, both of WMATA.

85. Hawkins told them about her encounter with Sgt. Kirkpatrick and told them how she felt intimidated and threatened.

86. Captain Delinsky stated that he could not comment on the statements made by

Sgt. Kirkpatrick. Instead, Captain Delinsky simply stated that he had a termination letter for Plaintiff stating that she obstructed justice, and that he wanted her to sign it.

87. Plaintiff asked Captain Delinskty how she could be terminated without an investigation. Captain Delinsky replied that the investigation consisted of reading the statements from Officer Jones and his partner, Officer Mitchell.

88. The May 31, 2007 termination letter drafted by Captain Delinsky, relies wholly upon the false statements made by Officer Jones.

89. Chandler was not prosecuted for his arrest on the night of May 31, 2007. The on-duty officer at the police station refused to sign off on Jones' arrest of Chandler.

90. Officer Jones was subsequently investigated by the IAB for harassing Chandler and, on information and belief, has either resigned or fired.

91. Thus, we believe that the city is aware that while acting for MPD, and the District of Columbia Officer Jones violated the Constitutional rights of citizens.

92. Jones and the District acted intentionally in bad faith and have directly and proximately caused, and continue to cause, Plaintiff a loss of reputation and financial benefits, emotional distress, embarrassment, humiliation, indignity, and damage to his professional reputation, the exact amount to be proven at trial, plus interest thereon.

93. Plaintiff has filed a timely notice of claims with the City pursuant to Section 12-309 of the DC Code.

94. The plaintiff and Ms. Jamitraice were then approached by two officers at the intersection of DuPont, and Massachusetts Ave, Plaintiff inquired of the officers whether something had happened about which he should be concerned. Rather than answering his questions, the officers were rude and non-responsive. Since officers could not be

bothered to respond to a legitimate resident concern in a professional manner, Ms. Jamitraice indicated that there must be a better use of her tax dollars than to have a group of police officers standing around the intersection of DuPont circle and Massachusetts Ave. Officer GREG JONES aggressively demanded that she repeat what she had just said, but Ms. Jamitriace declined.

95. Ms. Jamitriiace, the person with the plaintiff, said that the plaintiff had been having problems with the same Officers GREG JONES and friends or coworkers. Mr. Jones told her to mind her own business.

96. As Ms. Jamitraice and plaintiff were preparing to leave they heard GREG JONES and other officers telephone for a truck to pick up plaintiff. Two officers including GREG JONES and JANE DOE followed them. The three officers approached plaintiff and Ms. Jamitriace. The Officers demanded that plaintiff and Ms. Jamitraice put their hands behind their back to be handcuffed.

97. Ms. Jamitrace and plaintiff were asked for identification. Plaintiff repeatedly inquired why they were being detained. The Officers did not respond. Instead they searched plaintiff's personal belongings and his person. At no point did plaintiff become belligerent or disorderly. Nonetheless, the Officers placed plaintiff in handcuffs.

91. One of the Officers then told Ms. Jamitraice to shut up and stop asking questions that the plaintiff was going to jail that she could obtain immediate release of MR. Chandler by paying a cash fine.

98. Mr. Chandler was transported to the Third District station where he was handcuffed to a chair in the waiting area.

99. Mr. Chandler continued to ask why he had been arrested. His questions were

again ignored.

100. A short time later, Ms. Jamitrice arrived at the Third District Station and posted bond.

101. Shortly thereafter, GREG JONES approached Mr. Chandler in the cell, and handed back his identification and a release form noting that at 2.50am, the sum of $ collated had been paid. Mr. Chandler asked whether he would then be released. The officer ignored him and walked away. His paperwork indicated that Officer GREG JONES had arrested him for driving without a valid permit.

102. During the night, an officer at the station told Mr. Chandler that they would be more inclined to release him if he would be patient.

103. Though he had been holding his release papers for several hours, Mr. Chandler was not released from custody until approximately 7.00am.

104. As a result of the events described above, Mr. Chandler suffered physical injury, pain mental anguish, fear, humiliated, and embarrassment.

105. On June 1, 2007, defendant police, under color of law and by virtue of their unlawful arrest booking and confinement, and without reasonable or probable cause, and without warrant or any process of any court, arrested plaintiff, and incarcerated plaintiff in the jail of the District of Columbia, and kept plaintiff confined there for approximately hours in violation of law.

106. Plaintiff was not at the time of the events alleged in this complain, or at any other time, committing any offense against the ordinances of the District of Columbia against the statutes of the United States (states), and defendant policemen did not have any

reasonable grounds for believing that plaintiff was committing or had committed any offense.

107. By reason of the above, plaintiff was deprived of his liberty, to plaintiff's damage in the sum of amount to be shown.

108. In making the above-described unlawful arrest, defendant policemen acted willfully, maliciously, and without any excuse or justification whatever, in that they knew that Plaintiff was at all times acting lawfully. Thus, plaintiff is entitled, by virtue of § 1983 Title 42 US Code, to exemplary damages in the sum as the facts may show.

109. At the time of Mr. Chandler's arrest, it was clearly established as a matter of law that the government cannot arrest an individual without probable cause to do son.

110. At the time of Mr. Chandler's arrest, it was clearly established as a matter of law that any amount of bail is excessive, and any fine is excessive, when there is no probable cause to believe an arrestee has committed a criminal offense.

111. At the time of Mr. Chandler's arrest, it was clearly established as a matter of law that agencies of the District of Columbia are required to comply with their own internal regulations, as well as with the statutes and laws of the United States of America and the District of Columbia.

CLAIMS FOR RELIEF

Plaintiff incorporates paragraphs 1 through 111 into each claim set out below as though fully set forth therein.

I. False Arrest

112. The Officers arrested plaintiff without probable cause to believe that plaintiff had committed or was about to commit a crime.

113. The Officers had no good faith or reasonable belief that probable cause existed to arrest plaintiff.

114. The actions of the Officers deprived plaintiff of his rights under the Fourth Amendment to the Constitution of the United States to be free of unreasonable search and seizure, as made actionable by 42 U.S.C section 1983.

115. The Officers arrested plaintiff without probable cause to believe that plaintiff had committed or was about to commit a crime.

116. The Officers had no good faith or reasonable belief that probable cause existed to arrest plaintiff.

117. The actions of the Officers in arresting plaintiff constitute false arrest under the common law of the United States and the District of Columbia.

118. The violation by the Officers of D.C. Code Section 5-335.01 and D.C. Mun. Reg. Section 6A.7020.1 and 702.6 constitutes prima facie evidence that the Officers violated plaintiff's rights.

II. Intentional Infliction of Emotional Distress

119. The Officers' conduct in (a) confronting and arresting plaintiff when they lacked probable cause to believe he had committed any crime, (b) retaliating against him for his critical comments by detaining him for hours after his bond had been posted, and (c) telling him that he would be released only if he sat down and be patient despite the fact that his collateral had already been tendered, was extreme and outrageous, and it was intentionally or recklessly calculated to cause severe emotional distress.

120. The Officers' conduct did cause plaintiff severe emotional distress.

121. The Officers' conduct constitutes intentional infliction of emotional distress under the common law of the District of Columbia and the United States.

III. Defamation, Libel, and Slander

122. Plaintiff incorporates, as though restated here, each of the allegations in all paragraphs set out above.

123. As stated above, Defendant Jones knowingly made false statements to the effect that Plaintiff was a known criminal and that on April 15 2006 Plaintiff was driving while drunk and that on May 31, 2007 Plaintiff was driving without a valid permit.

124. In reality, Officer Jones knew that his statements were untrue.

125. Officer Jones made false statements maliciously, knowing that these statements were false when he made them., claiming that plaintiff was a criminal with a long criminal record.

126. Defendants' false statements were published to third persons, injured Plaintiff in his trade and future career prospects, and lowered his reputation in the estimation of his community.

127. Officer Jones explicitly stated that he was going to make Plaintiff pay for his bad behavior, demonstrating that he wanted to intentionally and willfully intimidate and injure Plaintiff.

128. Defendants' statements about Plaintiff have had the intended effect of seriously damaging his professional reputation, which was otherwise outstanding.

129. Defendants' statements have directly and proximately caused Plaintiff emotional distress, mental anguish, humiliation, pain and suffering, and damage to his professional reputation.

130. None of the Defendants' statements were privileged. No qualified privilege exists for the making of these statements since defendants made these false statements with malice and ill will.

131. Defendants' actions were taken with malice, spite, ill will, vengeance, and deliberate intent to harm Plaintiff, thereby warranting punitive damages against the Defendants.

132. Greg Jones arrested plaintiff repeatedly.

133. There were other officers acting in concert with Jones (hereinafter the officers)

IV. Violation of Fifth Amendment Rights

134. The Officers arrested Mr. Chandler and required that he either post and forfeit or remain incarcerated, even though they had no probable cause to believe that plaintiff had committed or was about to commit a crime.

135. The Officers had no good faith or reasonable belief that probable cause existed to justify prosecuting plaintiff.

136. Because of the Officers' actions, Mr. Chandler now has an arrest record, which is likely to cause difficulty for him throughout his life.

137. The Officers offered post and forfeit as the only option for resolving Mr. Chandler's arrest with the intent to punish Mr. Chandler for voicing criticism of the police.

138 The Officers' actions were specially calculated to ensure that their unlawful arrest would evade review, particularly because the Officers failed to inform Mr. Chandler of the 90-day window within which he could seek judicial review to his arrest.

139. The actions of the Greg Jones and Officers deprived plaintiff of his rights under the Fifth Amendment to the Constitution of the Untied States to be free of punishment prior to trail, as made actionable by 42 U.S.C section 1983.

V. Violation of Eighth Amendment Rights

140. Greg Jones and the Officers required plaintiff to post and forfeit a cash collateral or remain incarcerated, even though there was no probable cause to believe that plaintiff had committed or was about to commit a crime.

141.The Officers had no good faith or reasonable belief that probable cause existed to justify plaintiff.

142. The actions of the Officers deprived plaintiff of his rights under the Eighth Amendment to the Constitution of the Untied States to be free of excessive bail and fines, as made actionable by 42 U.S.C section 1983.

VI. Assault and Battery

143. The Preceding paragraphs are incorporated and restated as if stated fully herein.

144. Through their words and actions as described in paragraph above, and in detaining, searching, touching, and arresting plaintiff without probable cause to believe he had committed or was about to commit a crime, the Officers intentionally threatened or attempted to harm Plaintiff and commit harmful, offensive and excessive contact on the plaintiff.

145. The Officers' words and actions described above caused plaintiff an imminent apprehension of harmful, offensive and excessive contact.

146. Through their words and actions as described in paragraphs above, and in their action of detaining, searching, touching, and arresting plaintiff without probable cause to believe he had committed or was about to commit a crime, the Officers did intentionally battered Plaintiff by causing harmful, offensive and excessive contact on the plaintiff.

147. The Officers' words and actions constitute assault and battery in violation of the common law of the District of Columbia and the United States.

VII. Violations of Fifth Amendment Rights

(Defendant District of Columbia)

148. The preceding paragraphs are incorporated and restated as if stated fully herein.

149. The District of Columbia maintains a policy, custom or practice of offering post and forfeit to arrestees, without offering citation release.

150. The policy, custom or practice described in the previous paragraph is implemented at times when the department's officers have no expectation that criminal charges will be pressed against the arrestee, including circumstances in which there is no probable cause that the arrestee committed the offense of disorderly conduct (or any other offense), in an attempt to avoid scrutiny for the officers; unlawful arrests.

151. The District of Columbia fails adequately to train MPD officers regarding the proper use of the post and forfeit should not be used as a tool to keep arrestees incarcerated, and the District of Columbia fails adequately to train officers about the circumstances under which an arrestee should be release without having to post collateral. Likewise, the District of Columbia fails adequately to supervise police officers' resort to, and use of, post and forfeit.

152. The lack of adequate training and supervision described in the previous paragraph leads police officers frequently to use post and forfeit as a form of punishment, in violation of arrestees' Fifth Amendment rights.

153. At the time of Mr. Chandler's arrest, the District of Columbia had actual or constructive knowledge that police officers were misusing and forfeit in the ways alleged in this complaint.

154. Both the policy, custom or practice alleged above and the failure to adequately train or supervise regarding post and forfeit reflect a deliberate indifference on the part of the government to the constitutional rights of arrestees.

155. The failure of the Officers to offer plaintiff citation release, or simply release, or simply to release him for lack of probable cause in lieu of post and forfeit, was the result of the District of Columbia's lack of adequate training or supervision regarding the use of post and forfeit, its unjustified animus towards individual who criticize the police, and its lack of desire for the plaintiff to appear in court o answer for his charges (because the District had no grounds upon which to base those charges).

156. The policy, custom or practice of the District of Columbia, and its failure adequately to train or supervise its officers, caused plaintiff to be deprived of his rights under the Fifth Amendment to the Constitution of the United Stated to be free of punishment prior to trail, as made actionable by 42 U.S. C section 1983.

VIII: Violation of Eighth Amendment Rights

(Defendant the District of Columbia)

157. The preceding paragraphs are incorporated and restated as if stated fully herein.

158. The failure of the Officers or the District of Columbia to immediately release Mr. Chandler upon receipt of his collateral caused plaintiff to be deprived of his rights under the Eighth Amendment to the Constitution of the United States to be free of excessive bail and fines, as made actionable by 42 U.S.C section 1983.

IX: False Arrest

(Respondent Superior Liability of the District of Columbia)

159. The preceding paragraphs are incorporated and restated as if stated fully herein.

160. The Officers acted within the scope of their employment with, and acted on behalf of and in the interest of, the District of Columbia MPD, when they arrested plaintiff without probable cause to believe that plaintiff had committed or was about to commit a crime.

161. The actions of the Officers in arresting plaintiff constitute false arrest under the common law of the District of Columbia and the United States.

162. The violation by the Officers of D.C Code section 5-335.01 and D.C. Mun. Reg. Section 6A.702.1 and 702.6 constitutes prima facie that the Officers violated plaintiff's rights.

163. The Conduct of the District of Columbia, by and through the actions of employees under its control and supervision acting within the scope of their employment, constitutes false arrest under the common law of the District of Columbia and the United States.

164. The District of Columbia is liable for the intentional torts of its employees acting within the scope of their employment.

X: Intentional Infliction of Emotional Distress

(Respondeat Superior Liability of the District of Columbia)

165. The preceding paragraphs are incorporated and restated as if stated fully herein.

167. The Officers acted within the scope of their employment with, and acted on behalf of and in the interest of, the District of Columbia MPD, in (a) confronting and arresting plaintiff when they lacked probable cause to believe he had committed any crime, (b) retaliating against him for his critical comment by detaining him for hours after his bond had been posted, and (c) telling him that he would be releases only if he sat down and be patient despite the fact that her collateral had already been tendered.

168. The actions of the Officers described above were extreme and outrageous, and intentionally or recklessly calculated to cause plaintiff severe emotional distress.

169. The Officers' conduct did cause plaintiff severe emotional distress.

170. The Officers' conduct constitutes intentional infliction of emotional distress under the common law of the District of Columbia and the United States.

171. The conduct of the District of Columbia, by and through the actions of employees under its control and supervision acting within the scope of their employment, constitutes intentional infliction of emotional distress under the common law of the District of Columbia and the United States.

172. The District of Columbia is liable for the intentional torts of its employees acting within the scope of their employment.

XI: Assault and battery

(Respondant Superior Liability of the District of Columbia)

173. The preceding paragraph are incorporated and restated as if stated fully herein.

174. The Officers acted within the scope of their employment with, and acted on behalf of and in the interest of, the District of Columbia MPD, when committing the actions described in paragraph 10-47 above, and in detaining, searching, touching, and arresting plaintiff without probable cause to believe he had committed or was about to commit a crime.

175. The Officers acted within the scope of their employment with, and acted on behalf of and in the interest of, the District of Columbia MPD when the Officers intentionally threatened or attempted to commit harmful, offensive and excessive contact on the plaintiff.

176. The Officers' words and action described above caused plaintiff an imminent apprehension of harmful, offensive and excessive contact.

177. The Officers acted within the scope of their employment with, and acted on behalf of and in the interest of, the District of Columbia MPD when, through their words and action as described in paragraph 10-47 above, and in detaining, searching, touching, and arresting plaintiff without probable cause to believe he had committed or was about to commit a crime, the Officers did intentionally harmful, offensive and excessive contact on the plaintiff.

178. The Officers' words and actions constitute assault and battery in violation of the common law of the District of Columbia and the United States.

179. The conduct of the District of Columbia, by and through the actions of employees under its control and supervision acting within the scope of their employment, constitutes assault and battery under the common law of the District of Columbia and the United States.

180. The District of Columbia is liable for the intentional torts of its employees acting within the scope of their employment.

181. On June 1, 2007, while defendant policemen still had plaintiff in custody, defendant policemen claimed that they had reasonable grounds to believe that plaintiff had committed the crime of driving without a license, and filed a complaint against plaintiff charging plaintiff with that offense and sought Plaintiffs' prosecution on that complaint for that crime. At that time, this case was presented to the prosecutors' office, which declined to prosecute plaintiff on the complaint initiated by Jones.

182. The above-described complaint and prosecution by defendant policemen was malicious and without reasonable or probable cause, and was instituted by defendant to attempt to cover up and justify defendant's offensive and malicious acts and conduct in arresting, harassing, annoying, and oppressing plaintiff.

183. By reason of the above, plaintiff has been damaged in the sum of $ 50,000.

184. By committing the above-described willful, wanton, and malicious acts, defendant police officers and the District of Columbia government here breached the condition of

their duties, oaths and bonds and are liable to plaintiff in the sum of $ 500,000 and such other damages that seem just and proper.

PRAYER FOR RELEIF

WHERFORE, plaintiff requests that the Courts

1. enter judgment holding defendant liable to plaintiff for compensatory damages in an amount appropriate to the proof adduced at trail;

2. enter judgment holding the Defendant Officers liable to plaintiff for punitive damages in an amount appropriate to the proof at trial;

3. enter judgment imposing injunctive relief that

   (1) bars the Districts of Columbia from incarcerating arrestees who are eligible for citation release or post and forfeit, but who lack the funds to post collateral,

   (2) requires the District of Columbia to offer citation release, as well as post and forfeit, to arrestees who are eligible for both,

   (3) requires that the District of Columbia train and supervise police officers in the proper use of citation release and post forfeit; and

   (4) requires that the District of Colombia immediately release any arrestee who had posted requisite bail, bond, or collateral;

4. requires that the District of Columbia properly inform all arrestee offered Post-and-Forfeit of their 90-day window within which to challenge their arrest,

5. award plaintiff hi costs and reasonable attorneys' fees; and

6. An order that Defendants Jones and the District of Columbia retract the false statements they made about Plaintiff's actions during the May 31, 2007 incident and all incidents related thereto, and cease and desist from making further comments about Plaintiff;

7. An award to plaintiff of reasonable attorneys' fees and costs; and

8. An award to plaintiff of punitive damages against defendant, on his claim for defamation in an amount appropriate to the proof.

9. All other relief the court deems just equitable.

Respectfully submitted,

/s/_____

James P. Chandler (D.C Bar # 270686)
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Counsel for Plaintiff Aaron D. P Chandler

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Aaron D.P.Chandler Plaintiff v. Gregory Jones, Policeman Third District Station 1620 V St., NW Washington, D.C 20009 and Unknown Officers Does 1- 7 Metropolitan Police Department WMATA Police Department Washington, D.C. 20009 Defendants.	C.A. NO. 08-1158 (HHK) Jury Demand

JURY DEMAND

Plaintiff request that his claims be trial by a jury.

Respectfully submitted,

/s/_____

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2020 Pennsylvania Ave N.W, Suite 185
Washington, D.C 20006
Counsel for Plaintiff Aaron D. P Chandler

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AARON D.P. CHANDLER,	)	
	)	
Plaintiff,	)	**C.A. No. 08-1158 (HHK)**
v.	)	
	)	
DISTRICT OF COLUMBIA, *et al.*	)	
	)	
Defendants.	)	

DEFENDANTS DISTRICT OF COLUMBIA AND OFFICER GREGORY JONES' MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

Defendants District of Columbia ("District") and Metropolitan Police Department Officer Gregory Jones, by and through undersigned counsel and pursuant to Fed. R. Civ. P. 12, respectfully request that this Court dismiss Plaintiff's claims against them. As explained more fully in the accompanying Memorandum of Points and Authorities, Plaintiff has failed as a matter of law to state a claim upon which relief can be granted for the following reasons:

(1) Plaintiff has conceded all arguments Defendants make herein for failing to respond to Defendants' previously-filed Motion to Dismiss, to which Plaintiff failed to respond within the proscribed period;

(2) Plaintiff has failed to comply with the applicable statute of limitations pertaining to his claims of false arrest, intentional infliction of emotional distress, assault and battery, and defamation;

(3) Plaintiff has failed to state a claim for violation of his Eighth Amendment rights;

(4) Plaintiff has failed to state a claim for violation of his Fifth Amendment rights; and

(5) Plaintiff lacks standing to obtain the requested injunctive relief.

Accordingly, Defendants respectfully request that the Court dismiss this matter against them.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AARON D.P. CHANDLER,	)	
Plaintiff,	)	**C.A. No. 08-1158 (HHK)**
v.	)	
DISTRICT OF COLUMBIA, *et al.*	)	
Defendants.	)	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS DISTRICT OF COLUMBIA AND OFFICER GREGORY JONES' MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

Defendants District of Columbia ("District") and Metropolitan Police Department Officer Gregory Jones, by and through undersigned counsel and pursuant to Fed. R. Civ. P. 12, respectfully request that this Court dismiss this matter against them. As explained more fully in the accompanying Memorandum of Points and Authorities, Plaintiff has failed to comply with the applicable statute of limitations for his common law claims, and has failed as a matter of law to state a claim upon which relief can be granted for his federal claims under 42 U.S.C. § 1983 for violation of his Fifth and Eighth Amendment rights. Additionally, Plaintiff lacks standing for his claims of injunctive relief. Thus, Defendants are entitled to judgment in their favor.

I. PROCEDURAL AND FACTUAL BACKGROUND

Plaintiff filed the above-captioned matter in the Superior Court of the District of Columbia on June 3, 2008, against the District of Columbia, Officer Gregory Jones, and various John Doe officers. Plaintiff's Complaint describes, in a somewhat confusing

manner, a variety of contacts between his associates and him and Officer Jones.[1] Plaintiff first notes that he witnessed Officer Jones stop a friend of Plaintiff's for allegedly talking on a cell phone while driving, but avers that the friend was released after Officer Jones spoke with Plaintiff's father. Compl. ¶¶ 18-25. Plaintiff also states that Officer Jones "confronted [Plaintiff], his brother, and some of their friends on numerous occasions after this incident." Compl. ¶ 28. Plaintiff then details an incident allegedly occurring on April 15, 2007, where Plaintiff was cited by Officer Jones for declining to submit to a field sobriety or breathalyzer test. Compl. ¶¶ 29-48.

The crux of Plaintiff's current allegations pertaining to Officer Jones in the above-captioned matter, however, involve Plaintiff's arrest on May 31, 2007.[2] Plaintiff alleges that his friend Jamitriace Hawkins and he were parked in the vicinity of Dupont Circle when they observed Officer Jones drive by them. Compl. ¶¶ 51-55. Plaintiff and Ms. Hawkins exited the car and walked about a block before they were stopped by Officer Jones, who allegedly accused Plaintiff of driving without a license. Compl. ¶¶ 56-57. Plaintiff asserts that Officer Jones also falsely accused Plaintiff of filing a complaint against him. Compl. ¶ 58.

Plaintiff asserts that Officer Jones asked him for his driver's license, and Plaintiff complied. Compl. ¶¶ 59-60. Plaintiff claims that although he heard the police dispatcher

[1] Plaintiff's Complaint is confusing in that in various places he refers to "Plaintiff" as someone other than himself. *See* ¶¶ 36, 39, 52, 54, 55, 56, 58, 62, 63, 65, 68 and 70. Plaintiff also randomly refers to himself with feminine pronouns throughout the Complaint, and at one point refers to a "David" Chandler without identifying who this individual is or how he is relevant to Plaintiff's claims in this lawsuit. It appears that Plaintiff has copied and pasted large portions of a similar complaint filed in the Superior Court of the District of Columbia by Jamitriace Hawkins without tailoring many of the facts or the names to his case.

[2] Plaintiff devotes a large amount of space to describing an incident that allegedly took place between his friend Ms. Hawkins and officials from the Washington Metropolitan Transportation Authority, where Ms. Hawkins was apparently accused of abusing her authority as a Metro Transit officer and terminated from her position. *See* Compl. ¶¶ 72-88. These allegations bear no relevance to Plaintiff or his contentions in this lawsuit.

state that Plaintiff's license was not suspended, Officer Jones informed Plaintiff that he was being arrested for driving with a suspended license. Compl. ¶¶ 60-61. Plaintiff was taken to the Third District station where he was held that evening. While Plaintiff claims that "[t]he on-duty officer at the police station refused to sign off on Jones' arrest" of him, Compl. ¶ 89, Plaintiff also seems to allege that the arrest was processed, given that someone posted collateral for Plaintiff's release that evening. Compl. ¶ 101. Plaintiff alleges that he was released at approximately 7:00 a.m. the morning after he was arrested. Compl. ¶ 103.

Plaintiff filed his Complaint in the Superior Court of the District of Columbia on June 3, 2008 alleging various common law and constitutional claims. Defendants removed the matter to this Court on July 1, 2008, and filed a Motion to Dismiss on July 9, 2008. Plaintiff filed no response to this Motion for over four months, and on November 14, 2008 filed an Amended Complaint. Plaintiff's Amended Complaint asserts claims of false arrest (Counts I and IX), intentional infliction of emotional distress (Counts II and X), defamation, libel and slander (Count III), violation of the Fifth Amendment (Counts IV and VII), violation of the Eighth Amendment (Counts V and VIII), and assault and battery (Counts VI and XI) against the District, Officer Jones, and unknown officers. Plaintiff also names as Defendants John Doe officers 8 and 9, who are officers of the Washington Metropolitan Transit Authority and not the District of Columbia. *See* Compl. ¶ 14.

II. STANDARD OF REVIEW

In examining a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), a plaintiff's "[f]actual allegations must be enough to raise a right to relief above the speculative level,

on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Bell Atl. Corp. v. Twombly*, 550 U.S. __, 127 S. Ct. 1955, 1965, 167 L. Ed. 2d 929 (2007). While a court "must not make any judgment about the probability of the plaintiff's success," *Aktieselskabet AF 21 November 2001 v. Fame Jeans, Inc.*, 2008 U.S. App. LEXIS 9627, * 20 (D.C. Cir. Apr. 29, 2008), bare conclusions of law, or sweeping and unwarranted averments of fact, will not be deemed admitted for purposes of a motion under Rule 12(b)(6). *Haynesworth v. Miller*, 820 F.2d 1245, 1254 (1987). Indeed, the court need not accept inferences drawn by Plaintiff if such inferences are unsupported by the facts set out in the complaint, "[n]or must the court accept legal conclusions cast in the form of factual allegations." *Kowal v. MCI Communications* Corp., 16 F.3d 1271, 1276 (D.C. Cir. 1994).

III. ARGUMENT

A. Plaintiff Should Be Deemed to Have Conceded Defendants' Arguments

On July 9, 2008, Defendants filed a Motion to Dismiss the same claims that Plaintiff asserts in his Amended Complaint. For more than four months, Plaintiff filed no opposition to Defendants' Motion. Local Civil Rule 7(b) provides as follows:

> Within 11 days of the date of service or at such other time as the Court may direct, an opposing party shall serve and file a memorandum of points and authorities in opposition to the motion. *If such a memorandum is not filed within the prescribed time, the Court may treat the motion as conceded.*

LCvR 7(b) (emphasis added). Plaintiff did not oppose Defendants' Motion within the eleven-day time period proscribed by the Local Rules, and has offered no justification for his disregard of the Court's Rules. Thus, as Defendants will set forth the same arguments

herein as in its original Motion to Dismiss, the Court should deem Plaintiff to have conceded these arguments.

B. Plaintiff Has Failed to Comply with the Applicable Statute of Limitations

Plaintiffs' claims of false arrest, intentional infliction of emotional distress, assault and battery, and libel and slander, must be dismissed as Plaintiff has failed to comply with the applicable statute of limitations.

Plaintiff alleges that the incident that forms the basis for this lawsuit occurred on May 31, 2007. Compl. ¶ 15. Examining the facts set forth in Plaintiff's Complaint, the last possible date Plaintiff's claims would have begun to accrue would have been the day he was released, which allegedly was on June 1, 2007. Plaintiff did not file his Complaint in this matter until June 3, 2008, one day after the expiration of the one-year statute of limitations provided "for *libel, slander, assault, battery*, mayhem, wounding, malicious prosecution, *false arrest* or false imprisonment." D.C. Code § 12-301(4) (emphasis added).[3] Thus, Plaintiff's claims for assault and battery, false arrest, libel, and slander are procedurally untimely as they have been asserted past the one-year statute of limitations. *See National R.R. Passenger Corp. v. Krouse*, 627 A.2d 489 (D.C. 1993) (for torts, cause of action accrues for statute of limitations purposes at the time the allegedly tortious act is committed). Accordingly, the Court should dismiss Counts I and IX (False Arrest), Count III (defamation, libel and slander), and Counts VI and XI (Assault and Battery).

[3] May 31, 2008 fell on a Saturday. Thus, the next business day on which the Clerk's Office was open was Monday, June 2, 2008. *See* SCR-Civil 6(a). Whether Plaintiff's claims began to run on May 31, 2007 or June 1, 2007, the last day for Plaintiff to file his common law claims was June 2, 2008.

Plaintiff's claim for intentional infliction of emotional distress should also be dismissed under the one-year statute of limitations. The District of Columbia Court of Appeals has noted that "in certain cases where intentional infliction of emotional distress was included among a number of alleged torts, the one-year statute of limitation has been applied where the nature of the action rested on the other torts and the emotional distress aspect of the claim was essentially an outgrowth of the other pleaded torts." *Saunders v. Nemati*, 580 A.2d 660, 662 (D.C. 1990).

The U.S. Court of Appeals for the District of Columbia Circuit has also followed this approach. In *Hunter v. District of Columbia*, 943 F.2d 69 (D.C. Cir. 1991), the plaintiff alleged excessive force by the police and sued the District and two MPD officers for constitutional claims, as well as common law claims for assault and battery, intentional infliction of emotional distress, and negligent hiring and training. The Circuit Court affirmed the District Court's application of the one-year statute of limitations to a claim for intentional infliction of emotional distress as the plaintiff's "complaint did not allege any facts suggesting that the defendants intentionally caused him emotional distress by conduct 'independent' of the alleged assault and battery." *Id.* at 72.[4]

Similarly, here, Plaintiff's claim for intentional infliction of emotional distress is inextricably intertwined with his one-year statute of limitations claims of assault and battery, false arrest, and libel and slander. In support of his false arrest claim, Plaintiff

[4] *See also Hanoch Tel-Oren v. Libyan Arab Republic*, 517 F. Supp. 542, 550 (D.D.C. 1981), *aff'd on other grounds*, 726 F.2d 774 (D.C. Cir. 1984), *cert. denied*, 470 U.S. 1003 (1985) (Court granted motion to dismiss plaintiff's claims of "assault, battery, false imprisonment, intentional infliction of emotional distress and/or intentional infliction of cruel, inhuman and degrading treatment," noting that "[c]learly, the torts alleged . . . are dependents of the same personal interests infringed by the intentional torts that would be subject in the District of Columbia to the one year limitation period.") *Thomas v. News World Communications*, 681 F. Supp. 55, 73 (D.D.C. 1988) (dismissing plaintiffs' claim for emotional distress as it was "completely dependent upon and 'intertwined' with their claims for libel, defamation, and assault and/or battery").

states that "[t]he Officers arrested plaintiff without probable cause to believe that plaintiff had committed or was about to commit a crime" and that "[t]he Officers had no good faith or reasonable belief that probable cause existed to arrest plaintiff." Compl. ¶¶ 115-116; *see also id.* ¶¶ 160-161. In support of his assault and battery claims, Plaintiff alleges that "in detaining, searching, touching and arresting plaintiff without probable cause to believe he had committed or was about to commit a crime, the Officers intentionally threatened or attempted to harm Plaintiff and commit harmful, offensive and excessive contact on the plaintiff." Compl. ¶ 144; *see also id.* ¶ 177. Plaintiff's purported defamation claims allege that "Officer Jones made false statements maliciously, knowing that these statements were false when he made them, claiming that plaintiff was a criminal with a long criminal record" and that these statements were made public and damaged Plaintiff. Compl. ¶¶ 125-126.

Plaintiff's intentional infliction of emotional distress claim is a direct outgrowth of the intentional torts described above. Plaintiff alleges that, "[t]he Officers' conduct in (a) confronting and arresting plaintiff when they lacked probable cause to believe he had committed any crime, (b) retaliating against him for his critical comments by detaining him for hours after his bond had been posted, and (c) telling him that he would be released only if he sat down and be [sic] patient despite the fact that his collateral had already been tendered, was extreme and outrageous, and it was intentionally or recklessly calculated to cause severe emotional distress." Compl. ¶ 119; *see also id.* ¶ 167. As Plaintiff's emotional distress claim is dependent upon the identical events that purportedly give rise to his one-year claims of false arrest, assault and battery, and

defamation claims, it also is subject to the one-year statute of limitations and must therefore be dismissed as untimely. *Thomas*, 681 F. Supp. at 73.

C. Plaintiff Has Failed to State a Claim for Violation of His Fifth Amendment Rights

Plaintiff attempts to allege that the "Officers" violated rights afforded to Plaintiff by the Fifth Amendment to the Constitution by asserting that the officers "required that [Plaintiff] either post and forfeit or remain incarcerated, even though they had no probable cause to believe that plaintiff had committed or was about to commit a crime." Compl. ¶ 134. Plaintiff further asserts that, "[b]ecause of the Officers' actions, [Plaintiff] now has an arrest record, which is likely to cause difficulty for him throughout his life." Compl. ¶ 136. Plaintiff states that the post and forfeit procedures were offered as "the only option for resolving [Plaintiff's] arrest with the intent to punish [Plaintiff] for voicing criticism of the police." Compl. ¶ 137. Finally, Plaintiff alleges that the "Officers' actions were specially calculated to ensure that their unlawful arrest would evade review, particularly because the Officers failed to inform [Plaintiff] of the 90-day window within which he could seek judicial review to his arrest." Compl. ¶ 138.

With respect to Plaintiff's claim that the District of Columbia violated Plaintiff's Fifth Amendment rights, Plaintiff asserts that the District "maintains a policy, custom or practice of offering post and forfeit to arrestees, without offering citation release," and that the post and forfeit option "is implemented at times when the department's officers have no expectation that criminal charges will be pressed against the arrestee, including circumstances in which there is no probable cause that the arrestee committed the offense of disorderly conduct (or any other offense), in an attempt to avoid scrutiny for the

officers[’] unlawful arrests.” Compl. ¶¶ 149-150. Plaintiff also alleges that the District fails to adequately train its officers on the post and forfeit procedure. Compl. ¶¶ 151-154.

Plaintiff has not articulated whether he is attempting to assert a procedural due process claim or a substantive due process claim. Regardless, Plaintiff fails under either theory.

1. Plaintiff Has Failed to Assert a Procedural Due Process Claim

To state a claim for violation of procedural due process, Plaintiff must show an “entitlement:”

> It is clear that state law which generates a legitimate claim of entitlement can create an interest the deprivation of which triggers application of the Due Process Clause. It is equally clear, however, that state-created *procedures* do not create such an entitlement where none would otherwise exist. “Process is not an end in itself. Its constitutional purpose is to protect a substantive interest to which the individual has a legitimate claim of entitlement.”

Doe by Fein v. District of Columbia, 93 F.3d 861, 868 (D.C. Cir. 1996) (*per curiam*) (emphasis in original) (*quoting Olim v. Wakinekona*, 461 U.S. 238, 250–51 (1983) (further citations omitted)). Plaintiff’s argument in essence is that at the time he was offered the choice of posting and forfeiting, he should also have been offered citation release. Plaintiff has not established any such entitlement.

The post and forfeit statute permits individuals “charged with certain misdemeanors [to] simultaneously post and forfeit an amount as collateral (which otherwise would serve as security upon release to ensure the arrestee’s appearance at trial) and thereby obtain a full and final resolution of the criminal charge.” D.C. Code § 5-335.01(a). The statute expressly states that “using the post-and-forfeit procedure is not a conviction of a crime and shall not be equated to a criminal conviction” and that “[t]he fact that a person resolved a charge using the post-and-forfeit procedure may not

be relied upon by any court of the District of Columbia or any agency of the District of Columbia in any subsequent criminal, civil, or administrative proceeding or administrative action to impose any sanction, penalty, enhanced sentence, or civil disability." *Id.* § 5-335.01(b).

The citation release provisions of the D.C. Code make an offer of citation release available for certain types of offenses but leave the decision whether to make the offer within the discretion of authorized individuals.[5] The law plainly does not give any entitlement to plaintiff to be offered citation release. Instead, it simply permits an officer to offer this option.

Plaintiff also is legally incorrect in his assertion that the post and forfeit procedure is the only option available to Plaintiff to redress his false arrest. In addition to the civil claim that Plaintiff has already brought, Plaintiff was free to challenge his arrest by pleading not guilty. Additionally, even if Plaintiff took advantage of the opportunity to post and forfeit and then later changed his mind, Plaintiff was free to move to set aside the forfeiture and proceed with the criminal case. If local government "makes ordinary judicial process available to respondent for resolving its . . . dispute, that process is due process." *Lujan v. G & G Fire Sprinklers, Inc.*, 532 U.S. 189, 197 (2001) (unanimous decision). Here, Plaintiff had procedures available to him to redress his arrest.

Plaintiff's claim that the post and forfeiture procedure is used to hide an unjustified arrest is without merit. Plaintiff's assertion that his arrest was false because his license was not in fact suspended is in reality no different that a person arrested for

[5] *See* D.C. Code § 23-1110(b)(2): "Whenever a person is arrested without a warrant for committing a misdemeanor and is booked and processed pursuant to law, an official of the Metropolitan Police Department designated under subsection (a) of this section to act as a clerk of the Superior Court *may* issue a citation to him for an appearance in court or at some other designated place, and release him from custody." (emphasis added).

cocaine possession claiming that the cocaine found was not his, or a person arrested for homicide claiming that he was not the killer: each person in these scenarios believes that he is being wrongfully charged with a crime. The important difference is that a person arrested for not having a valid permit has the option to post and forfeit collateral if he chooses and thereby just to be left with an arrest, whereas the individuals arrested for the more serious crimes must either defend the charges or plead guilty. Each has the opportunity to use the criminal process to defend against a purportedly illegal arrest, under the post-and-forfeit scenario a person need not take part in the prosecutorial process.

Finally, Plaintiff's contention that he was not informed of the 90-day period in which he could set aside the forfeiture is unavailing. Not only can Plaintiff not plead his own ignorance of the law as an excuse for Defendants' liability as it is Plaintiff's responsibility to be familiar with his own rights, but the form used by the police department to actually post and forfeit includes a statement that the arrestee may seek to set aside the forfeiture within 90-days. D.C. Code § 5-335.01(c)-(d). Even if Plaintiff can claim a procedural defect in the failure to inform him of the procedure to set aside the forfeiture, such a failure to follow procedure cannot be construed as a constitutional violation. *See Brandon v. District of Columbia*, 823 F.2d 644, 649 (D.C. Cir. 1987) (state does not violate individual's due process rights by deviating from its own procedures).

2. Plaintiff Has Failed to Assert a Substantive Due Process Claim

To state a claim for a substantive due process violation, Plaintiff must show deprivation of life, liberty or property by the government in such a manner that is "'so egregious, so outrageous, that it may fairly be said to shock the contemporary

conscience.'" *Butera v. District of Columbia*, 235 F.3d 637 (D.C. Cir. 2001) (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 847 n.8 (1998)). "This stringent requirement exists to differentiate substantive due process, which is intended only to protect against arbitrary government action, from local tort law." *Id.* A governmental action that offers a benefit to an individual – the opportunity to handle a criminal charge administratively and avoid any finding of guilt, as opposed to be forced to either plead guilty or stand trial – does not shock the conscience. Moreover, as noted, there was no requirement that Plaintiff post and forfeit. Plaintiff could have challenged his arrest by pleading not guilty, or have even moved to set aside the forfieture. Put simply, Plaintiff cannot claim that the post and forfeit procedure, in and of itself, violates any substantive due process rights to which Plaintiff may be entitled.

With respect to Plaintiff's assertion that the District of Columbia has violated Plaintiff's Fifth Amendment rights by failing to train officers properly on the use of the post-and-forfeiture process, Compl. ¶¶ 151-152, Plaintiff fails to explain how the alleged lack of training caused a violation of his rights, or what the failure to train claim adds to his general allegation that the post and forfeit procedure is unconstitutional. Instead, Plaintiff takes issue with the procedure generally, not that the officers did not properly use the process or were somehow uninformed of its use. Moreover, Plaintiff's allegation that post and forfeit is used "as a form of punishment," Compl. ¶ 152, is legally incorrect. The statute governing post and forfeit expressly states that the post-and-forfeit process is not intended to be any type of punishment, but an administrative resolution of the criminal charge. *See* D.C. Code § 5-335.01(b). In addition, as discussed *supra*, Plaintiff always has the option of declining the post-and-forfeit procedure.

Finally, to the extent that Plaintiff bases his due process claim on his allegation that he was arrested and detained without probable cause, Plaintiff's claim is more appropriately analyzed under the Fourth Amendment. In *Albright v. Oliver*, 510 U.S. 266 (1994), the Supreme Court found that petitioner's incarceration, based on an arrest pursuant to a warrant obtained without probable cause, did not violate his substantive due process rights but implicated those under the Fourth Amendment, if any. In his concurring opinion, Justice Souter concluded that substantive due process should be reserved for "otherwise homeless substantial claims," and should not be relied upon when doing so would duplicate protection that a more specific constitutional provision already bestows. *Albright*, 510 U.S. at 288-89. Thus, Plaintiff's claim that he was arrested without probable cause is more properly analyzed under the Fourth Amendment, and not the Fifth Amendment.

D. Plaintiff has Failed to State a Claim for Violation of His Eighth Amendment Rights

Plaintiff asserts that the his right to be free from excessive bail and fines pursuant to the Eighth Amendment was violated as the officers "required" him to post and forfeit collateral or remain incarcerated without probable cause. Compl. ¶¶ 140-142; 158. Plaintiff's assertion fails as a matter of law as (1) the Eighth Amendment Excessive Fine Clause does not apply; and (2) even if the amount Plaintiff posted and forfeited were deemed a fine, it is not excessive.[6]

[6] Plaintiff's claim that the post-and-forfeit procedures result in excessive bail under the Eighth Amendment is patently without merit. The purpose of bail – and the test for whether bail is excessive – is whether the amount imposed is adequate to ensure the defendant's presence when required. *See, e.g. United States v. Bobrow*, 468 F.2d 124 (D.C. Cir. 1972). Because the act of posting and forfeiting administratively disposes of the entire matter, the posting of collateral is not intended to secure the arrestee's further appearance, and thus the collateral does not act as "bail."

The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." The Supreme Court has interpreted "fine" to "mean a payment to a sovereign as punishment for some offense." *Browning-Ferris Industries of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 265 (1989). Therefore, protections against excessive fines only limits the ability of the government "to extract payments, whether in cash or in kind, 'as *punishment* for some offense.'" *Austin v. United States*, 509 U.S. 602, 609-10 (1993) (quoting *Browning-Ferris*, 492 U.S. at 265) (emphasis in original). Here, the post-and-forfeiture statute expressly states that "[t]he resolution of a criminal charge using the post-and-forfeit procedure is not a conviction of a crime and shall not be equated to a criminal conviction." D.C. Code § 5-335.01(b). Thus, the statute does not create a punishment, but permits an administrative resolution of the charge without proceeding any further than an arrest. In addition, individuals are never required to use the procedure and can contest the charges.

Further, the monetary amount at issue could not under any circumstances be viewed as excessive. Although Plaintiff does not state the amount of his fine, Plaintiff was arrested for driving without a permit. Compl. ¶ 61. The collateral amount for this charge is $75. To arrive at a judgment of excessiveness, the Court must apply "the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish." *United States v. Bajakajian*, 524 U.S. 321, 334 (1998) (citing *Austin*, 509 U.S. at 622-23). Specifically, "a punitive forfeiture violates the Excessive Fines Clause if it is grossly disproportionate to the gravity of a defendant's offense." *Id.* Here, on information and belief, Plaintiff paid $

75. Plaintiff was arrested for driving with a suspended permit, which carries a maximum penalty of $5000 and one year imprisonment. See D.C. Code § 50-1403.01(e). Plaintiff can thus not allege that the collateral payment was even disproportionate – let alone grossly disproportionate – to the gravity of his offense. Thus, Plaintiff has failed to state a claim under the Eighth Amendment.

E. Plaintiff Has Failed to State a Claim for Injunctive Relief

In his prayer for relief, Plaintiff asks the Court to:

> enter judgment imposing injunctive relief that (1) bars the District of Columbia from incarcerating arrestees who are eligible for citation release or post and forfeit, but who lack funds to post collateral, (2) requires the District of Columbia to offer citation release, as well as post and forfeit, to arrestees who are eligible for both, (3) requires that the District of Columbia train and supervise police officers in the proper use of citation release and post and forfeit; and (4) requires that the District of Columbia immediately release any arrestee who had posted requisite bail, bond, or collateral . . .

Compl. at 26. Plaintiff lacks standing to assert this claim.

In order to have standing to assert this claim, Plaintiff must demonstrate an actual case or controversy for each remedy Plaintiff seeks. *City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983). In the *Lyons* case, Plaintiff alleged that police officers injured him by using a chokehold on him without justification during a traffic stop. Plaintiff claimed that city policy permitted the routine use of chokeholds in situations where the officers were not threatened with deadly force, and sought an injunction to prevent the future use of chokeholds in situations where police were not threatened with deadly force. In determining that Lyons did not demonstrate a "real and immediate" injury or threat of injury, the Court observed that while Lyons may have been subjected to a chokehold in the past, that allegation "does nothing to establish a real and immediate threat that he

would again be stopped for a traffic violation, or any other offense, by an officer or officers who would illegally choke him into unconsciousness without any provocation or resistance on his part." *Lyons*, 461 U.S. at 105. The Court further found that the plaintiff's "additional allegation in the complaint that the police in Los Angeles routinely apply chokeholds in situations were they are not threatened by the use of deadly force falls far short of the allegations that would be necessary to establish a case or controversy between these parties." *Id.*

Similarly, the fact that Plaintiff was allegedly subject to a purported misuse of the post-and-forfeit process cannot create a case or controversy as Plaintiff has not alleged that he is danger of being subjected to any post-and-forfeiture abuse in the immediate future. "Abstract injury is not enough" and "'[past] exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects.'" *Lyons*, 461 U.S. at 101, 102 (quoting *O'Shea v. Littleton*, 414 U.S. 488, 495-96 (1974)). Thus, Plaintiff has failed to allege an actual case or controversy that would entitle him to the injunctive relief he seeks.

Moreover, just as Plaintiff lacks standing to bring his own claim for injunctive relief, he similarly lacks standing to bring a claim on behalf of others. *Wagshal v. Foster*, 28 F.3d 1249, 1251 (D.C. Cir. 1994) (citing *Lyons*, 461 U.S. at 108-09). Accordingly, to the extent Plaintiff asks that the Court enjoin the actions of the District with respect to others arrested, Plaintiff's request must be denied.

IV. CONCLUSION

For the reasons set forth above, the District and Officer Jones request that the this matter be dismissed against them.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AARON D.P. CHANDLER, Plaintiff, v. DISTRICT OF COLUMBIA, et al. Defendants.	)	Civil Action No. 08-1158 (HHK/JMF)

MEMORANDUM OPINION AND
REPORT AND RECOMMENDATION

Now pending before the Court is Defendants District of Columbia and Officer Gregory Jones' Motion to Dismiss Plaintiff's Amended Complaint [#7] ("Defs. MTD") and Plaintiff's Motion for Leave to File Instanter Plaintiff's Second Amended Complaint and Plaintiff's Response to Defendants District of Columbia and Officer Gregory Jones's Motion to Dismiss Plaintiff's Amended Complaint [#10] ("Plains. Mot."). For the reasons stated below, this Court will recommend that Defendants' motion to dismiss be granted as unopposed and deny Plaintiff's motion to amend without prejudice.

BACKGROUND

Defendants are 1) the District of Columbia, 2) unknown officers of the District of Columbia Metropolitan Police Department ("MPD"), 3) MPD Officer Gregory Jones, and 4) unknown officers of the Washington Metropolitan Area Transit Authority. First Amended Complaint ("First Am. Compl.") ¶¶ 5-14. Plaintiff is a Maryland resident who asserts claims of 1) false imprisonment, 2) false arrest, 3) intentional infliction of emotional distress, 4)

defamation, libel, and slander, 5) violations of the Fourth, Fifth, and Eighth Amendments to the United States Constitution, and 6) assault and battery. First Am. Compl. at 1, ¶¶ 112-184.

Before midnight on May 31, 2007, Plaintiff and a friend were stopped by two MPD officers near the intersection of Massachusetts Avenue and DuPont Circle. First Am. Compl. ¶¶ 15, 17. Officer Jones, one of the officers, accused Plaintiff of driving without a valid permit and also of filing a complaint against him. First Am. Compl. ¶¶ 57, 58. Officer Jones requested that Plaintiff produce his driver's license and then called in the license to determine its status. First Am. Compl. ¶¶ 59, 60. Both Plaintiff and his friend heard the police dispatcher report over Officer Jones' car radio that the license was valid. First Am. Compl. ¶ 60. Officer Jones then arrested Plaintiff for driving with a suspended license. First Am. Compl. ¶ 61.

Plaintiff was then transported to the Third District police station where he was handcuffed to a chair in the waiting area. First Am. Compl. ¶ 98. Shortly thereafter, Plaintiff's friend arrived at the station and posted his bond. First Am. Compl. ¶ 100. At 2:50 a.m., Officer Jones returned Plaintiff's identification to him and provided him with a release form. First Am. Compl. ¶ 101. Plaintiff was released from custody at approximately 7:00 a.m. on June 1, 2007. First Am. Compl. ¶ 103.

DISCUSSION

I. Legal Standard

Rule 6(b) of the Federal Rules of Civil Procedure, which dictates when the Court can grant extensions of time for various filings, provides the following:

> (1) In General. When an act may or must be done within a specified time, the court may, for good cause, extend the time:
> (A) with or without motion or notice if the court acts, or

> if a request is made, before the original time or its extension expires; or
>
> (B) on motion made after the time has expired if the party failed to act because of excusable neglect.

Fed. R. Civ. P. 6(b).

Significantly, as noted by this Circuit in Smith v. District of Columbia, 430 F.3d 450 (D.C. Cir. 2005), "[i]n the absence of any motion for an extension, the [ ] court has no basis on which to exercise its discretion." Id. at 457. In other words, where a party fails to move the Court, whether before or after the relevant deadline has passed, for an extension of time within which to making the filing, the Court may not entertain that filing.

Rather, the Court may, pursuant to Rule 7(b) of the Local Rules of Civil Procedure, "treat the motion as conceded." LCvR 7(b). In utilizing Rule 7(b) as a "docket-management tool that facilitates efficient and effective resolution of motions by requiring the prompt joining of issues," Fox v. American Airlines, 389 F.3d 1291, 1294 (D.C. Cir. 2004), "the court need not provide notice, an opportunity to explain, or weigh alternatives." Inst. for Policy Studies v. U.S. Cent. Intelligence Agency, 246 F.R.D. 380, 386 (D.D.C. 2007) (citing Fox, 389 F.3d at 1295).

Finally, while the Court retains discretion to enforce Rule 7(b), the Court of Appeals for this Circuit "has yet to find that a district court's enforcement of [Local Rule 7(b)] constituted an abuse of discretion." Fed. Deposit Ins. Corp. v. Bender, 127 F.3d 58, 67 (D.C. Cir. 1997). Accord Twelve John Does v. District of Columbia, 117 F.3d 571, 577 (D.C. Cir. 1997); Casanova v. Marathon Corp., 246 F.R.D. 376, 380 (D.D.C. 2007); D.A. v. District of Columbia, No. 07-CV-1084, 2007 WL 4365452, at *2 (D.C.C. Dec. 6, 2007).

II. Analysis

In the case at bar, Defendants filed their motion to dismiss on December 2, 2008.

Plaintiff's opposition, therefore, was due by December 13, 2008 (or by December 16, 2008 if filed and served electronically). However, Plaintiff neither filed an opposition by the deadline nor moved for an extension of time. Instead, Plaintiff filed his opposition on April 8, 2009, almost four months after it was due and without any accompanying motion for an extension of time with the requisite showing of excusable neglect pursuant to Rule 6(b).

As a result, because Plaintiff has failed to make any motion for an extension of time within which to file his opposition, let alone one with a compelling argument as to excusable neglect, the Court recommends that Defendants' motion to dismiss be deemed conceded and that judgment be entered on behalf of Defendants.

Failure to file timely objections to the findings and recommendations set forth in this report may waive your right of appeal from an order of the District Court adopting such findings and recommendations. See Thomas v. Arn, 474 U.S. 140 (1985).

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John M. Facciola
Date: 2009.09.03
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JOHN M. FACCIOLA
U.S. MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AARON D.P. CHANDLER, **Plaintiff,** **v.** **DISTRICT OF COLUMBIA, et al.,** **Defendants.**	**Civil Action 08-01158 (HHK)**

ORDER

Before the court is the Report and Recommendation [#18] of United States Magistrate Judge John M. Facciola on Defendants District of Columbia and Officer Gregory Jones' Motion to Dismiss Plaintiff's Amended Complaint [#7].

Upon consideration of Magistrate Judge Facciola's Report and Recommendation, Plaintiff's Objections to the Magistrate Judge's Report and Recommendations [#20], defendants' response thereto [#21], and the record of the case, the court concludes that it should adopt Magistrate Judge Facciola's Report and Recommendation in whole and dismiss this action for the reasons stated therein. Accordingly, it is this 30th day of September 2009, hereby

ORDERED that [#7] Defendants District of Columbia and Officer Gregory Jones' Motion to Dismiss Plaintiff's Amended Complaint is **GRANTED**.

This is a final appealable order.

Henry H. Kennedy, Jr.
United States District Judge