APPENDIX A

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DOMINIQUE LITTLE	:	Case Number: 2018 CA 6126 B
v.	:	Judge: Florence Y. Pan
OFFICE OF HUMAN RIGHTS	:	

ORDER

This matter comes before the Court upon consideration of defendant District of Columbia Office of Human Rights's ("OHR") Motion to Dismiss ("Def. Mot."), filed on November 30, 2018; and plaintiff's Opposition to the Motion to Dismiss ("Pl. Opp."), filed on December 3, 2018. The Court has considered the pleadings, the relevant law, and the entire record. For the following reasons, defendant's Motion to Dismiss is granted.

PROCEDURAL HISTORY

On August 28, 2018, plaintiff Dominique Little filed a complaint against OHR, alleging breach of contract. *See generally* Compl. Plaintiff alleges that:

> [The] Office of Human Rights breached a contract that was designated for a case I had against [District of Columbia Public Schools ("DCPS")]. DCPS had a timeframe to the contract to meet. Upon not meeting the time frame set by the contract, I contacted Office of Human Rights to request further action as stated in the contract. The Office of Human Rights did not allow me that right. Instead, they forced me to abide by directions that were not in contract agreed upon by both parties.

Compl. at 1.

On November 30, 2018, defendant filed a motion to dismiss and supplemental memorandum, which provides additional context to the allegations in plaintiff's complaint. *See generally* Def. Mem. Defendant contends that this case arises out of a dispute between plaintiff and DCPS as to whether plaintiff's child was entitled to an achievement award for perfect

attendance in the fifth grade, during the 2015-2016 school year. *See id.* at 2. On January 31, 2017, plaintiff "on behalf of her minor child, filed a written charge of unlawful discrimination at [OHR]." *See id.* On October 18, 2017, OHR conducted mediation for plaintiff and DCPS and the parties entered into a Settlement Agreement, pursuant to which DCPS would issue a medal and certificate of achievement to plaintiff's child and a $25 gift certificate for the child's perfect attendance within 30 days of the date of the Agreement. *See id.* at 2-3; Ex. A (Settlement Agreement). In exchange, plaintiff agreed to withdraw her discrimination charge, to forego legal action against DCPS, and to release DCPS from all claims pertaining to the charge of unlawful discrimination. *See* Def. Mem. at 2-3. On December 6, 2017, the medal, certificate, and gift certificate were delivered to plaintiff. *See id.* at 3; Ex. B (Proof of Delivery). However, the delivery occurred 21 days after the 30-day deadline, which was November 17, 2018. *See id.* Based on these representations, it appears that plaintiff has filed for breach of contract based on defendant's (or DCPS's) alleged failure to send the items to plaintiff within 30 days. *See generally* Compl.

In its motion, defendant argues that plaintiff's complaint should be dismissed because (1) defendant OHR is a subordinate agency of the District of Columbia and therefore is *non sui juris*; (2) OHR is not a party to the settlement agreement; (3) the complaint fails to state a claim upon which relief can be granted; and (4) service was improper. *See* Def. Mot. at 2.

APPLICABLE LEGAL STANDARD

A complaint should be dismissed for failure to state a claim upon which relief can be granted only 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." *See Fingerhut v. Children's Nat'l Med. Ctr.*, 738 A.2d 799, 803 (D.C. 1999); Super. Ct. Civ. R. 12(b)(6). When considering a motion to dismiss a

complaint for failure to state a claim, the Court must "construe the facts on the face of the complaint in the light most favorable to the non-moving party, and accept as true the allegations in the complaint." *See Fred Ezra Co. v. Pedas*, 682 A.2d 173, 174 (D.C. 1996). A court should not dismiss a complaint merely because it "doubts that a plaintiff will prevail on a claim." *See Duncan v. Children's Nat'l Med. Ctr.*, 702 A.2d 207, 210 (D.C. 1997).

A pleading must contain a "short and plain statement of the claim showing that the pleading is entitled to relief." *See* Super. Ct. Civ. R. 8(a); *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009). Plaintiffs who wish to survive a motion to dismiss under Super. Ct. Civ. R. 12(b)(6) must provide "enough facts to state a claim to relief that is plausible on its face." *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (plaintiffs must "[nudge] their claims across the line from conceivable to plausible"); *Mazza v. Housecraft LLC*, 18 A.3d 786, 791 (D.C. 2011) (holding that *Twombly* and *Iqbal* apply in our jurisdiction because Super. Ct. Civ. R. 8(a) is identical to its federal counterpart). The "plausibility" pleading standard does not require "detailed factual allegations" at the initial litigation stage of filing the complaint, but "it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678. A claim is plausible on its face "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

ANALYSIS

Subordinate agencies in the District of Columbia, such as the Office of Human Rights, are *non sui juris*. *See* D.C. Code § 1-603.01(17)(R) ("The term 'subordinate agency' means any agency under the direct administrative control of the Mayor, including, but not limited to, the following: . . . Office of Human Rights"); *see also Nix El v. Williams*, 174 F. Supp. 3d 87, 93

(D.D.C. 2016) ("The Court also agrees [that] a subordinate agency within the District of Columbia[] is not a suable entity."); *see also Arnold v. Moore*, 980 F. Supp. 28, 33 (D.D.C. 1997) ("Governmental agencies of the District of Columbia are not suable entities, or [*non sui*] *juris*."); *Braxton v. Nat'l Capital Hous. Auth.*, 396 A.2d 215, 216-17 (D.C. 1978) ("Cases in this jurisdiction have consistently found that bodies within the District of Columbia government are not suable as separate entities [in the absence of statutory authorization].") (internal citations omitted). Because OHR is a subordinate agency and cannot be sued, plaintiff should have named the District of Columbia as the proper party to her lawsuit.[1] *See Kane v. District of Columbia*, 180 A.3d 1073, 1078 (D.C. 2018) ("A person aggrieved by the action or inaction of a *non sui juris* body within the District government must name the District as the defendant in order to sue for relief."). Defendant argues in its motion to dismiss that ordinarily, such a defect might be remedied by allowing the plaintiff leave to amend her complaint to name the District of Columbia. *See* Def. Mem. at 7-10. But defendant contends that such an amendment would be futile in this instance, because plaintiff's complaint fails to state a claim. *See id.*

"[D]ismissal under Rule 12(b)(6) is appropriate where the complaint fails to allege the elements of a legally viable claim." *Chamberlain v. Am. Honda Fin. Corp.*, 931 A.2d 1018, 1023 (D.C. 2007). The elements of a claim of breach of contract include (1) a valid contract between the parties; (2) an obligation or duty arising out of the contract; (3) a breach of that duty; and (4) damages caused by the breach. *See Francis v. Rehman*, 110 A.3d 615, 620 (D.C. 2015) (citing *Tsintolas Realty Co. v. Mendez*, 984 A.2d 181, 187 (D.C. 2009)) ("To prevail on a claim

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[1] In any case, service on the Office of Human Rights was improper, as neither the Mayor nor the Attorney General was served with the complaint. *See* Super. Ct. Civ. R. 4(j)(3)(A) ("The District of Columbia must be served by delivering (pursuant to Rule 4(c)(2)-(3)) or mailing (pursuant to Rule 4(c)(4)) a copy of the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing to the Mayor of the District of Columbia (or designee) and the Attorney General of the District of Columbia (or designee).").

of breach of contract, a party must establish (1) a valid contract between the parties; (2) an obligation or duty arising out of the contract; (3) a breach of that duty; and (4) damages caused by breach."). In her complaint, plaintiff fails to allege the existence of a contract between plaintiff and defendant OHR. *See generally* Compl.; *see also Jack Baker, Inc. v. Office Space Dev. Corp.*, 664 A.2d 1236, 1238 (D.C. 1995) ("[T]he party asserting the existence of a contract has the burden of proof on that issue."). Indeed, the language of the settlement agreement explicitly states that the "Settlement Agreement is entered . . . between Dominique Little o/b/o Minor Child and District of Columbia Public School-CW Harris Elementary School." *See* Def. Mem. at 7; Ex. A (Settlement Agreement).[2] OHR is named in the Settlement Agreement only to establish that the contract becomes an order of the OHR upon execution. *See id.*; Ex. A (Settlement Agreement), ¶ 14.[3] Because plaintiff fails to allege the existence of a contract between herself and OHR, or the existence of duties or obligations owed by OHR to the plaintiff, she has not sufficiently pled a claim for breach of contract.

Amending the complaint to name the District of Columbia as defendant would not remedy the defects in plaintiff's complaint, because she has not alleged any damages as the result of the alleged breach of the settlement agreement. *See generally* Compl. Under the terms of the agreement, DCPS-CW Harris Elementary School agreed "to send to [plaintiff] a medal and certificate for her daughter's attendance record," "to give the [plaintiff] a gift certificate in the amount of [t]wenty-five dollars," and "to send the items to the [plaintiff] within 30 days of

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[2] The Court may consider the Settlement Agreement, attached to the motion to dismiss as an exhibit, without converting the instant motion to a motion for summary judgment, because the allegations of the complaint are based on the terms of the Settlement Agreement. *See Washkoviak v. Student Loan Mktg. Ass'n*, 900 A.2d 168, 178 (D.C. 2006) (finding that documents referred to in the original complaint and attached to a motion to dismiss were considered incorporated in the complaint); *see also Chamberlain v. Am. Honda Fin. Corp.*, 931 A.2d 1018, 1025 (D.C. 2007) (finding that it was appropriate to consider a contract attached to a motion to dismiss without converting the motion to one for summary judgment where letters attached to the complaint specifically referred to the contract).

[3] "This Agreement shall become an Order of the District of Columbia Office of Human Rights upon execution by the Director of the Office of Human Rights." Def. Mem.; Ex. A (Settlement Agreement), ¶ 14.

signing the Agreement at 5133 Fetch Street, SE, Unit 201, Washington, D.C. 20019." *See* Def. Mot; Ex. A (Settlement Agreement), ¶ 1. Defendant argues that plaintiff received those items, albeit 21 days late, and therefore, has not suffered any damages. *See* Def. Mem. at 9; Ex. B (Proof of Delivery). The contract does not state that time is of the essence, and plaintiff does not assert any facts to suggest that the 21-day delay is a material breach even in the absence of such a provision. *See Camalier & Buckley, Inc. v. Sandoz & Lamberton, Inc.*, 667 A.2d 822, 828 (D.C. 1995) ("It has been held that even the specification of a particular time schedule [in a contract] does not serve to make time of the essence.") (internal citation omitted). Even if the delay in delivery could be construed as a breach of contract, plaintiff has not pled any facts to support her claim for $50,000 in damages for "mental anguish and suffering." *See generally* Compl.; *see also* Pl. Opp.

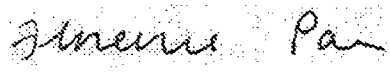
For all of the foregoing reasons, the motion to dismiss is granted. *See Elmore v. Stevens*, 824 A.2d 44, 46 (D.C. 2003) (holding that "[a] court's duty to construe a *pro se* complaint liberally does not permit a court to uphold completely inadequate complaints," and granting motion to dismiss because "[t]he complaint in this case never alleges that [defendant] did anything"); s*ee also Twombly*, 550 U.S. at 557 ("[N]aked assertion[s] . . . without some further factual enhancement" will not survive dismissal).

Accordingly, it is this 21st day of December 2018, hereby

ORDERED that defendant's Motion to Dismiss is **GRANTED**; and it is further

ORDERED that all future events scheduled in this matter are vacated and the case is closed.

SO ORDERED.



Judge Florence Y. Pan
Superior Court of the District of Columbia

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

DOMINIQUE LITTLE,	:	Docket Number: 2018 CAB 006125
Plaintiff,	:	
	:	DAG26APR'19AM10:10
vs.	:	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	:	
Defendant.	:	Friday, January 25, 2019
	:	Washington, D.C.

The above entitled action came on for a hearing before the Honorable HIRAM PUIG-LUGO, Associate Judge, in Courtroom Number 317.

APPEARANCES:

On Behalf of the Plaintiff:

PRO SE

On Behalf of the Defendant:

CHRISSY GEPHART, Esquire
Washington, D.C.

LETICIA WILLIAMS
Official Court Transcriber

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Telephone: 879-1757

P R O C E E D I N G S

THE DEPUTY CLERK: Your Honor, calling number three on the calendar: Dominique Little versus District of Columbia Public Schools, Civil Action 6125 Year 2018.

Parties, please step forward, state your names for the record.

(Pause.)

THE DEPUTY CLERK: Parties, please state your names for the record.

MS. GEPHART: Good morning -- oh, excuse me. Good afternoon, Your Honor. I'm Chrissy Gephart (phonetic). I'm here on behalf of the District of Columbia.

MS. LITTLE: Good afternoon. My name is Dominique Little.

THE COURT: Good afternoon, ma'am.

This matter's scheduled for -- this matter is here for initial scheduling conference, but the District has filed a motion to dismiss because the named plaintiff is DC Public Schools; is that correct?

MS. GEPHART: Correct.

THE COURT: Do you understand what the problem is, Ms. Little?

MS. LITTLE: No, I do not, Your Honor.

THE COURT: Okay. This separate individual

entity of the District of Columbia are not sued separately. So if you want to file a lawsuit, you have to file the lawsuit against the District of Columbia government. And right now, the lawsuit that you've filed is against DC Public Schools.

MS. LITTLE: Okay.

THE COURT: So, essentially, you have to refile, but makes sure that it's against the correct party.

MS. LITTLE: So I would sue DC government?

THE COURT: Yes, ma'am.

MS. LITTLE: Okay. No separate agency?

THE COURT: Correct.

MS. LITTLE: Okay.

THE COURT: And there are certain rules that apply, in terms of how the District government is served.

MS. LITTLE: Okay.

THE COURT: I don't know if you have the handbook for the self represented, which is to your left, in the corner. It might give you that information. I don't know it offhand.

MS. LITTLE: I didn't see it in there. I did read it for my last case, how to serve the District of Columbia.

THE COURT: It should be in there. If it's not, then, you know, you're just going to have to do a little

bit research and find out how that happens. Okay?

MS. LITTLE: Okay.

THE COURT: Number one. Number two, and I'm saying this just because you're representing yourself, but when you sue somebody in the complaint you have to be specific about the facts that support your conclusions. And the way you drafted your complaint now, it's just conclusions without providing facts.

So that's another thing that you need to resolve for this to move along. Okay?

MS. LITTLE: Yes.

THE COURT: So the motion to dismiss is granted. It's denied -- the case is dismissed without prejudice. That means you can bring it back, but you have to correct those --

MS. LITTLE: Mistakes.

THE COURT: -- technical problems. Okay?

MS. LITTLE: Okay.

THE COURT: Thank you very much.

MS. GEPHART: Thank you, Your Honor.

(Thereupon, the proceedings were concluded.)

CERTIFICATE OF TRANSCRIBER

I, LETICIA WILLIAMS, an Official Court Transcriber for the Superior Court of the District of Columbia, do hereby certify that in my official capacity I prepared from electronic recordings the proceedings had and testimony adduced in the matter of DOMINIQUE LITTLE vs. DISTRICT OF COLUMBIA PUBLIC SCHOOLS, Docket Number: 2018 CAB 006125, in said Court, on the 25th day of January, 2019.

I further certify that the foregoing 4 pages were transcribed to the best of my ability from said recordings.

In witness whereof, I have subscribed my name this the 18th day of April, 2019.

Leticia Williams

OFFICIAL COURT TRANSCRIBER

APPENDIX B

DISTRICT OF COLUMBIA COURT OF APPEALS

Nos. 19-CV-133 & 19-CV-735

DOMINIQUE LITTLE, APPELLANT,

v.

DISTRICT OF COLUMBIA PUBLIC SCHOOLS, *et al.*, APPELLEES.

Appeals from the Superior Court
of the District of Columbia
(CAB-6125-18 & CAB-6126-18)

(Hon. Florence Y. Pan, Trial Judge)
(Hon. Hiram E. Puig-Lugo, Trial Judge)

(Submitted June 24, 2020 Decided August 20, 2020)

Before EASTERLY and DEAHL, *Associate Judges*, and STEADMAN, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: In separate complaints, pro se appellant Dominique Little sued the District of Columbia Office of Human Rights ("OHR") and the District of Columbia Public Schools ("DCPS"). The claim against DCPS asserted that DCPS had unlawfully discriminated against her elementary school daughter in connection with the failure to award a perfect attendance certificate. The claim against OHR asserted that OHR had breached a settlement agreement entered into by DCPS and appellant regarding the discrimination. In that agreement, DCPS agreed to deliver a medal, a perfect attendance award, and a twenty-five-dollar gift certificate within thirty days from the date of the agreement. DCPS failed to meet that timetable by delivering the items twenty-one days late.[1]

[1] Appellant sought damages of $50,000 for the breach of contract and $1,000,000 for the discrimination claim.

Both suits were improperly brought against the individual District of Columbia agencies rather than the District itself. *See Kane v. District of Columbia,* 180 A.3d 1073, 1078 (D.C. 2018) ("A person aggrieved by the action or inaction of a *non sui juris* body within the District government must name the District as the defendant in order to sue for relief."). The suits were thus subject to dismissal on that ground alone, although a trial court might have exercised its discretion to allow an amendment of the complaint. *See Keith v. Washington*, 401 A.2d 468, 471-72 (D.C. 1979). However, in each case, the trial court correctly found an additional problem in the statement of the claim, leading to a permissible dismissal.

In the case against OHR, dismissed in December 2018, the trial court correctly observed that while the suit was brought as a breach of contract, OHR was not a party to the settlement contract and did not assume any obligations thereunder other than that it "may" refer any alleged breach to the D.C. Attorney General for enforcement. Hence, an amendment to the complaint attempting to recover damages on the basis of an alleged contract breach by OHR would have been futile.[2]

In the case against DCPS, dismissed without prejudice in January 2019 by a different judge, the District's motion to dismiss was based only on the improper naming of DCPS as the defendant and on the failure of the complaint to set forth time or place pursuant to Super. Ct. Civil R. 9(f). The trial court held a hearing, at which, with commendable concern for her pro se status, it pointed out to appellant the need to name the proper party as a defendant and to provide more specificity in the complaint. Giving appellant the opportunity to continue the litigation by

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[2] The trial court by way of dictum addressed possible contractual issues that would be relevant in a complaint based on the liability of DCPS as a party for breach of the settlement agreement. Having dismissed the suit as being brought against a *non sui juis* entity and who bore no liability as a party to the agreement, the trial court had no occasion to opine on contractual issues relating to DCPS and they ought to be given a fresh look, should they arise, if appellant chooses to refile her suit against DCPS. On appeal, we express no views on any issues relating to such an action if pursued by appellant.

refiling, it dismissed the complaint without prejudice, a reasonable action under the circumstances.[3]

For the foregoing reasons, we affirm the dismissals appealed from.

So ordered.

ENTERED BY DIRECTION OF THE COURT:

Julio A. Castillo

JULIO A. CASTILLO
Clerk of the Court

[3] In its brief on appeal, the District raises a number of additional considerations in the suit against DCPS, such as possible statute-of-limitations problems and the fact that appellant agreed in the settlement agreement to refrain from litigating her discrimination claim. These issues were not presented to the trial court and did not form the basis for the dismissal without prejudice. Again, we express no views on any of these possible aspects of the litigation, should appellant choose to refile.

Copies sent to:

Honorable Florence Y. Pan

Honorable Hiram E. Puig-Lugo

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