

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
Northern Division**

ROSEMARY MUNYIRI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. AMD- 08-1953
	)	
	)	
PETER M. HADUCH, JR., <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

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**THE MAYOR AND CITY COUNCIL OF BALTIMORE’S  
MOTION TO DISMISS**

The Mayor and City Council of Baltimore (the “City), by its undersigned counsel, respectfully moves pursuant to Fed.R.Civ.P 12(b), for this Honorable Court to dismiss the Complaint with prejudice and without leave to amend for the following reasons:

1. The Complaint fails to state a claim and cannot state a claim upon which relief can be granted against this Defendant.
2. As a matter of law, the Baltimore Police Department is not an agency of the City and officers of that Department are not agents, servants or employees of the City.
3. Plaintiff had failed to state a constitutional claim against the City.
4. And for the reasons set forth in the accompanying memorandum of law incorporated herein by reference.

WHEREFORE, the Mayor and City Council of Baltimore requests that the Court dismiss the Complaint as to it, with prejudice and without leave to amend.

Respectfully submitted,

/s/ \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

The foregoing motion was filed by electronic means pursuant to Fed.R.Civ.P. 5(b)(2)(D) and LR 102. Pursuant to LR 102(c) and ECF Rule III.G.1, notice of electronic filing constitutes a certificate of service as to all parties to whom electronic notice is sent.

/s/ \_\_\_\_\_  
DAVID E. RALPH

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**MEMORANDUM OF LAW IN SUPPORT OF  
THE MAYOR AND CITY COUNCIL OF BALTIMORE’S  
MOTION TO DISMISS**

The Mayor and City Council of Baltimore (the “City”), by their undersigned counsel, submits this memorandum of law in support of its motion to dismiss:

**INTRODUCTION**

The Plaintiff, Rosemary Munyiri, filed this action against the City, as well as the Commissioner of the Baltimore Police Department and a number of other parties allegedly arresting her without probable cause and with excessive force in violation of her constitutional rights. Compl., ¶¶ 1 – 7. Plaintiff alleges *inter alia*, that “Defendant Baltimore City [sic] Police Department is, for all relevant legal and practical purposes herein, part of the government of the City of Baltimore.” Compl., ¶¶ 25, 26. It is from this erroneous contention that Plaintiff’s claims against the City are premised. *See* Compl., ¶¶ 136 - 46.

For the most part, the City is not mentioned in any substantive allegation of the Complaint. Rather, the Complaint mainly attempts to assert vicarious liability against the City for the actions of members of the police department. Compl., ¶¶ 25, 26. Because, however, it is well established as a matter of law that the Baltimore Police Department is a State institution run by employees of the State and not a City institution run by agents or employees of the City, the Complaint cannot state a claim against the City for vicarious liability. Similarly, because the alleged actions of the police, even if they were agents of the City, cannot be the basis of a Section 1983 action against the City, Plaintiff's Complaint should be dismissed as to the City with prejudice.

#### ARGUMENT

**A. THE BALTIMORE POLICE DEPARTMENT IS AN AGENCY OF THE STATE OF MARYLAND AND NOT OF THE CITY OF BALTIMORE.**

To the extent that the Plaintiff seeks to hold the City liable under the doctrine of *respondeat superior* for the actions or inaction of officers of the Baltimore Police Department, Plaintiff's claim must be dismissed as a matter of law.

As a matter of well established law, *respondeat superior* liability requires an agency relationship between the wrongdoer and the defendant at the time of the alleged wrongful conduct. *See General Building Contractors Assoc., Inc. v. Pennsylvania*, 458 U.S. 375, 392 (1982) ("*respondeat superior* . . . would not support the imposition of liability on a defendant based on the acts of a party with whom it had no agency or employment relationship"). *See also Chevron. v. Lesch*, 319 Md. 25, 32-33 (1990) (affirming summary judgment determination that no employer-employee relationship existed at time of alleged wrong); *Gallagher's Estate v. Battle*, 209 Md. 592, 602 (1956) (acknowledging the existence of a principal-agent relationship in connection with alleged

injury as a necessary prerequisite to vicarious liability); Black's Law Dictionary 1311-12 (6<sup>th</sup> ed. 1990) ("Doctrine applies only when relation of master and servant existed between defendant and wrongdoer at time of injury sued for, in respect to very transaction from which it arose."). The party asserting a claim dependent upon an agency relationship "bears the burden of proving its existence, including its nature and extent." *Fare Deals, Ltd. v. World Choice Travel.Com, Inc.*, 180 F.Supp.2d 678, 685 (D.Md. 2001) (citation omitted).

As a matter of long standing Maryland law, the Baltimore Police Department ("BPD") is an agency of the State of Maryland, not the City of Baltimore. PUBLIC LOCAL LAWS OF MARYLAND, Art. 4, §16-2 (a) ("The Police Department of Baltimore City is hereby constituted and established as an agency and instrumentality of the State of Maryland."); *Clea v. Mayor and City Council of Baltimore*, 312 Md. 662 (1988); *Ashton v. Brown*, 339 Md. 70, 104 n.18 (1995); *Baltimore Police Department v. Cherkes*, 140 Md. App. 282, 303-05, 323 (2001); *Williams v. Baltimore*, 128 Md. App. 1 (1999) *rev'd on other grounds*, 359 Md. 101 (2000). The Baltimore Police Department ***was removed from the control of the City*** and transferred to the State **in 1860**, *Baltimore v. State*, 15 Md. 376 (1860); H. H. Walker Lewis, *The Baltimore Police Case of 1860*, 26 MD. L. REV. 215 (1966), and it remains a State agency today.

In the instant matter, Plaintiff ignores well established law by contending that because the Police Commissioner "is appointed by the Mayor of the City of Baltimore [and] the organizational chart of the City of Baltimore lists the Baltimore City [sic] Police Department as a department of Baltimore City," that the "Police Department is under the control of Baltimore City. . . ." Compl., ¶ 25. *See Mayor & City Council v. Clark*, 404

Md. 13, 26, 27 (2008) (holding that despite the appointment of Commissioner, City does not control police and police are State agents). The City and its officials by law have no control the operation of the Baltimore Police Department. *Clark*, 404 Md. at 26, 27; BALT. CITY CHARTER, Art. II, §27; *Adams v. Baltimore Transit Co.*, 203 Md. 295, 311 (1953); *Upshur v. Baltimore*, 94 Md. 743, 756 (1902); *Baltimore v. State*, 15 Md. 376 (1860). As this Court recently held in *Chin v. City of Baltimore*, 241 F.Supp.2d 546, 549 (D. Md. 2003), “*as a matter of Maryland law, the Baltimore City government does not* wield enough *control* over the *Baltimore Police Department* to be subject to liability for the Baltimore Police Department's actions.”(emphasis added). As a result, the City cannot be liable for the acts or omissions of the officers of the Baltimore Police Department. *See also, Clea*, 312 Md. at 669-70 (“As a matter of Maryland law, *Baltimore City is simply not [the officers’] employer for tort liability* purposes.”)(emphasis added). Accordingly, Plaintiffs’ claims against the City should be dismissed.

**B. PLAINTIFF HAS FAILED TO STATE A CONSTITUTIONAL CLAIM AGAINST THE CITY.**

The Complaint attempts to assert a single claim under 42 U.S.C. § 1983 against the City. Plaintiff, however, has not pled sufficient facts to state a constitutional claim against the City.

Municipalities can be subject to liability for violations of civil rights under certain circumstances. A municipality, however, “is only liable when it can be fairly said that the city itself, not its servants, is the wrongdoer.” *Canton v. Harris*, 489 U.S. 378, 385 (1989). It cannot, under the theory of *respondeat superior*, be held vicariously liable for

the actions of its agents or servants. *Monell v. New York Department of Social Services*, 436 U.S. 658, 694 (1978).

“Local governing bodies...can be sued directly under Section 1983...where the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation or decision officially adopted and promulgated by that body’s officers.” *Monell*, 436 U.S. at 690. A complaint which “appears to have merely attached a conclusory allegation of ‘policy’ to what in essence is a claim based on a single unconstitutional act” must be dismissed. *Giarrusso v. Chicago*, 539 F. Supp. 690, 693 (N.D. Ill. 1982). *See also Daughtry v. Arlington County, Virginia*, 490 F. Supp. 307, 311 (D.C. 1980) (plaintiffs “cannot rely on conclusory allegations but instead must plead facts which show that a county policy or custom directly caused injury to plaintiffs’ constitutional rights”); *Ivey v. Board of Regents of University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982) (“a liberal interpretation of a civil rights complaint may not supply essential elements of the claim that were not initially pled”). Not only must the policy or custom under attack be “fairly attributable to the municipality as its ‘own’,” it must also be the “moving force” behind the particular constitutional violation. *Spell v. McDaniel*, 824 F.2d 1380, 1387 (4th Cir. 1987), *cert. denied*, 484 U.S. 1027 (1988).

In the present case, Plaintiff alleges only that members of the Baltimore Police used excessive force which allegedly violated her rights. Plaintiff has failed to allege any facts to show a policy, custom or practice of anyone, much less *of the City*, that was the moving force behind the alleged deprivation of her rights. While she has sprinkled in a few conclusory allegations about policies, Plaintiff has not alleged sufficient facts to show a direct link between any *City policy* and any alleged deprivation of Plaintiff’s

rights. Plaintiff cannot demonstrate that the excessive force or warrantless arrest was caused by a policy of the City (as opposed to some other policy). Indeed, as set forth more fully herein, the City does not as a matter of law control or establish Police policy. Therefore, the Complaint does not and cannot contain sufficient factual allegations to support a claim of municipal liability and the Court should dismiss the Plaintiff's constitutional claims with prejudice.

**C. AS A MATTER OF LAW, PLAINTIFF CANNOT STATE A CONSTITUTIONAL CLAIM AGAINST THE CITY.**

The Court should dismiss Plaintiff's Section 1983 claim against the City with prejudice, because as a matter of law, Plaintiff cannot state a constitutional claim against the City. In order to be liable for police misconduct, the City must have been a "final policy maker." *Pembaur v. Cincinnati*, 475 U.S. 469 (1986). It is State law that defines the relationship between the municipality and its officials and the police department and that determines whether the municipality or its official is to be deemed a policy maker for federal law purposes. *St. Louis v. Praprotnik*, 485 U.S. 112, 124 (1988) ("the identification of policy making official is a question of state law").

In *McMillian v. Monroe County, Ala.*, 520 U.S. 781 (1997), the Supreme Court considered whether an Alabama county sheriff was a policy maker in the area of law enforcement for county or for the State. The Court emphasized that its inquiry was dependent on an analysis of state law, *id.* at 786, and that, although the simple labeling of an official as a state or county official would not answer the inquiry, "our understanding of the actual function of a governmental official, in a particular area, will necessarily be dependent on the definition of the official's functions under relevant state law." *Id.*



Even though the sheriffs were paid and equipped by the county, each sheriff's jurisdiction was limited to the borders of his county and sheriffs were elected locally, the Court concluded that sheriffs were acting for the State when engaged in law enforcement. *Id.* at 791-793. Sheriffs were State policy makers because (1) sheriffs were required to perform duties for the state courts; (2) sheriffs were charged by law with the duty and authority to enforce the state criminal laws; (3) counties had no law enforcement powers; and (4) county commissioners could not instruct or direct sheriffs in their law enforcement activities. *Id.* at 789-91.

When the nature of the BPD is considered under a *McMillian* analysis, it becomes apparent that police officers of the BPD, when engaged in law enforcement activities, are State actors or policy makers. As noted above, the General Assembly constituted the BPD as an agency of the State, intending to remove the police force from the City's control. Like the Alabama sheriffs, police officers of the BPD have been given the duty and authority to enforce the State's criminal laws. PUBLIC LOCAL LAWS OF MARYLAND, Art. 4, §§16-2 and 16-3. Moreover, like the counties in *McMillian*, the City government has no law enforcement powers. *See, e.g., Green v. Baltimore*, 181 Md. 372, 374 (1943); *Adams v. Baltimore Transit Co.*, 203 Md. 295, 311 (1953) (City is deprived of the power of enforcing its ordinances); and *Baltimore v. Silver*, 263 Md. 439, 441 (1971) ("...the City has no power with regard to the enforcement of the law..."). In addition, again like the counties in *McMillian*, the City and its officials are prohibited from exercising any control over the BPD. *See Chin*, 241 F.Supp.2d at 549; BALT. CITY CHARTER, Art. II, §27, *supra*.

Accordingly, the Complaint should be dismissed with prejudice.

**D. ASSUMING ARGUENDO, THAT THE CITY COULD BE HELD LIABLE UNDER ANY CLAIM, PLAINTIFF NONETHELESS CANNOT RECOVER PUNITIVE DAMAGES.**

Plaintiff seeks punitive damages as part of her judgment against the City. It is well established, however, that punitive damages cannot be recovered against a municipality such as the City for actions as alleged in the Complaint. Rather, punitive damages may only be awarded in an action brought under § 1983 “when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others.” *Smith v. Wade*, 461 U.S. 30, 56 (1983). In *Kolstad v. Ada*, 527 U.S. 526 (1999), the Court discussed the intent needed for punitive damages:

Most often, however, eligibility for punitive awards is characterized in terms of a defendant's motive or intent. *See, e.g.*, 1 Sedgwick, *supra*, at 526, 528; C. McCormick, *Law of Damages* 280 (1935). Indeed, “the justification of exemplary damages lies in the evil intent of the defendant.” 1 Sedgwick, *supra*, at 526; *see also* 2 J. Sutherland, *Law of Damages* § 390, p. 1079 (3d ed. 1903) (discussing punitive damages under rubric of “compensation for wrongs done with bad motive”). Accordingly, “a positive element of conscious wrongdoing is always required.” McCormick, *supra*, at 280.

*Id.* at 538. Thus, case law emphasizes the need for bad motive or intent on the part of a defendant. At the least, there must be conscious wrongdoing. The instant Complaint presents on of this.

Here, Plaintiff has not alleged, and cannot allege, any facts to show an evil motive *on the part of the City* or the intent *on the part of the City* to injure Ms. Muniyiri or anything to support a claim for punitive damages against the City. Accordingly, the Plaintiffs’ claims for punitive damages should be dismissed.

**CONCLUSION**

For all the foregoing reasons, the Court should dismiss the Complaint as to the City with prejudice.

Respectfully submitted,

/s/ \_\_\_\_\_  
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**ORDER**

Upon consideration of the Mayor and City Council of Baltimore’s Motion to Dismiss and any opposition thereto, it is this \_\_\_day of \_\_\_\_\_2008, by the United States District Court for the District of Maryland, ORDERED and ADJUDGED:

1. That the Motion is hereby GRANTED; and
2. That the Complaint is hereby DISMISSED as to the Defendant Mayor and City Council of Baltimore, with prejudice and without leave to amend; and
3. That judgment is hereby ENTERED in favor of the Defendant Mayor and City Council of Baltimore, and against the Plaintiff Rosemary Munyiri.

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The Honorable Andre M. Davis  
United States District Court for the District  
of Maryland