

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

<b>CHARLES TAYLOR, <i>et al.</i>,</b>	)	
	)	
<b>PLAINTIFFS,</b>	)	<b>Case No.: 1:01CV00561</b>
	)	<b>Judge: Henry H. Kennedy</b>
<b>v.</b>	)	
	)	
<b>DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY</b>	)	
	)	
<b>DEFENDANT</b>	)	
	)	
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**PLAINTIFFS' COMBINED MOTION FOR A TEMPORARY RESTRAINING ORDER  
AND A PRELIMINARY INJUNCTION**

The Plaintiffs, Charles Taylor *et al.*, by and through their attorneys, hereby move this Court, pursuant to Rule 65 of the Federal Rules of Civil Procedure:

1. To issue a temporary restraining order:
  - a. restraining the Defendant from requiring the name Plaintiff, Mr. Charles Taylor, pursuant to a letter from the Defendant's Director of Human Resources dated March 25, 2004, to submit to a medical and psychological examination by the Defendant's doctors (or by doctors of the Defendant's choosing) and to consent to release his private medical information to the Defendant, or be placed on administrative leave without pay; and
  - b. restraining the Defendant from disposing of, erasing, or otherwise altering any written report, or any recorded or other evidence relating to the incident that occurred between Mr. Taylor and Mr. James Shabelski on March 25, 2004.

2. To issue a preliminary injunction:
  - a. restraining the Defendant from requiring the name Plaintiff, Mr. Charles Taylor, pursuant to a letter from the Defendant's Director of Human Resources dated March 25, 2004, to submit to a medical and psychological examination by the Defendant's doctors (or by doctors of the Defendant's choosing) and to consent to release his private medical information to the Defendant, or be placed on administrative leave without pay;
  - b. restraining the Defendant from disposing of, erasing, or otherwise altering any written report, or any recorded or other evidence relating to the incident that occurred between Mr. Taylor and Mr. James Shabelski on March 25, 2004; and
  - c. restraining the Defendant from continuing to retaliate against and to harass Mr. Taylor pending the final hearing and determination of this action.

The grounds for this motion, as are more fully and completely set forth in the attached Memorandum of Points and Authorities, and the attached declarations of Mr. Charles Taylor, Ms. Barbara Milton, and Mr. Abdus-Sattar Hussain Mulla, are that:

1. The name Plaintiff, Mr. Charles Taylor, was physically assaulted on the morning of March 25, 2004, while he was working at the Defendant's Blue Plains location, by one of the Defendant's management employees, Mr. James Shabelski.
2. Mr. Taylor informed the Defendant about the assault, and additionally called the police.
3. As a result, the Defendant placed Mr. Taylor on administrative leave with pay.

4. The Defendant additionally ordered Mr. Taylor, by letter, to appear at a specified location on Friday, April 2, 2004 at 12:30 p.m. to undergo an examination by the Defendant's physician and to undergo a psychological examination by a doctor of the Defendant's choosing.
5. Unless enjoined, the Defendant will place Mr. Taylor on administrative leave without pay if he fails to report for examination at the time and place specified by the Defendant.
6. There is no factual basis for the Defendant to order Mr. Taylor to undergo either a physical or a psychological examination, and there is no factual basis for the Defendant's determination that Mr. Taylor is a threat or potential threat to Mr. Shabelski or to any other WASA employee.
7. Under the circumstances, the Defendant has no authority to order Mr. Taylor to undergo either a physical or a psychological examination, or to place him on administrative leave without pay if he fails to do so, and the Defendant's order is invalid and constitutes illegal retaliation against Mr. Taylor and is an unwarranted and illegal violation of Mr. Taylor's privacy and other rights.
8. Unless the Defendant is immediately restrained and enjoined, the operation and enforcement of the Defendant's order by the Defendant will cause Mr. Taylor immediate and irreparable injury.
9. Unless the operation and enforcement of the Defendant's order is enjoined pending the final disposition of this action, the injury to Mr. Taylor will be irreparable, even if final judgment is entered for the Plaintiffs.

10. No injury will be sustained by the Defendant, by any WASA employee, or by the public at large if the temporary restraining order and preliminary injunction issue.

This motion is based on these Motion papers and the accompanying Memorandum of Points and Authorities, the attached declaration of Plaintiffs' counsel pursuant to Local Rule 65.1, and the attached statements of Mr. Charles Taylor, Ms. Barbara Milton, and Mr. Abdus-Sattar Hussain Mulla, as well as the complaint and all other papers and records on file in this action, together with any argument or evidence that may be presented at the hearing on this motion.

Dated: April 1, 2004

Respectfully submitted,

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/s

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
PLAINTIFFS' COMBINED MOTION FOR A TEMPORARY RESTRAINING ORDER  
AND FOR A PRELIMINARY INJUNCTION**

The Plaintiffs, Charles Taylor *et al.*, by and through their attorneys, hereby submit their Memorandum of Points and Authorities in support of the Plaintiffs' motion, pursuant to Rule 65 of the Federal Rules of Civil Procedure: (1) To issue a temporary restraining order: (a) restraining the Defendant from requiring the name Plaintiff, Mr. Charles Taylor, pursuant to a letter from the Defendant's Director of Human Resources dated March 25, 2004, to submit to a medical and psychological examination by the Defendant's doctors (or by doctors of the Defendant's choosing) and to consent to release his private medical information to the Defendant, or be placed on administrative leave without pay; and (b) restraining the Defendant from disposing of, erasing, or otherwise altering any written report, or any recorded or other evidence relating to the incident that occurred between Mr. Taylor and Mr. James Shabelski on March 25, 2004; and (2) To issue a preliminary injunction: (a) restraining the Defendant from requiring the name Plaintiff, Mr. Charles Taylor, pursuant to a letter from the Defendant's Director of Human

Resources dated March 25, 2004, to submit to a medical and psychological examination by the Defendant's doctors (or by doctors of the Defendant's choosing) and to consent to release his private medical information to the Defendant, or be placed on administrative leave without pay; (b) restraining the Defendant from disposing of, erasing, or otherwise altering any written report, or any recorded or other evidence relating to the incident that occurred between Mr. Taylor and Mr. James Shabelski on March 25, 2004; and ©) restraining the Defendant from continuing to retaliate against and to harass Mr. Taylor pending the final hearing and determination of this action.

**I. Relevant Factual Background**

Mr. Charles Taylor is the name Plaintiff in this class action. Mr. Taylor alleges that he and the members of the class have been and continue to be subjected to a pattern and practice of discrimination by the Defendant, the District of Columbia Water and Sewer Authority ("WASA"), including disparate treatment, and personnel policies and practices which have a disparate impact on African Americans. Mr. Taylor and the class members seek relief pursuant to Section 1981 of the Civil Rights Act of 1871, as amended by the Civil Rights Act of 1991, and Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e et seq. (Title VII), including but not limited to declaratory, injunctive and other equitable relief, and compensatory damages, litigation expenses and reasonable attorneys fees.

Mr. Taylor is employed by the Defendant as a Civil Engineering Technician at the Defendant's Blue Plains location. He has worked for the Defendant for almost eighteen years.<sup>1</sup>

On or about March 25, 2004, at around 8:00 a.m. in the morning, Mr. Taylor took the elevator from the second floor to the fifth floor, along with a co-worker, Mr. Abdus-Sartar Hussain Mulla ("Mr. Mulla"), to get a cup of coffee. When Mr. Taylor exited the elevator with Mr. Mulla, he crossed paths with Mr. James Shabelski, who is one of the Defendant's management employees (upon information and belief, Mr. Shabelski is a Supervisor in the Defendant's Water and Sewer Design Department, and he is the supervisor of Mr. Taylor's immediate supervisor, Mr. Londra Watson).<sup>2</sup>

Mr. Taylor entered the fifth floor workspace after Mr. Shabelski, who opened the door to the workspace with his pass, and Mr. Mulla came in right behind Mr. Taylor. After Mr. Taylor entered the door, Mr. Shabelski turned around to face him, and blocked his path. Mr. Taylor tried to go around him, but Mr. Shabelski moved in the same direction, and blocked him. Mr. Taylor then attempted to go around Mr. Shabelski in the other direction, and Mr. Shabelski moved and blocked Mr. Taylor again. Mr. Taylor tried to get by Mr. Shabelski a third time, and again Mr. Shabelski blocked his path.<sup>3</sup>

As Mr. Shabelski was blocking Mr. Taylor, Mr. Shabelski said to Mr. Taylor, "What are you doing up on this floor?" Mr. Taylor responded that he had come to get some coffee. Then

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<sup>1</sup>Exhibit A (Declaration of Mr. Charles Taylor) (hereinafter "Taylor Declaration") at 1, ¶2.

<sup>2</sup>Id. at 1-2, ¶¶3-4.

<sup>3</sup>Id. at ¶¶4-5.

Mr. Shabelski told him, “We don’t want you on this floor!” and he pushed Mr. Taylor, with closed fists and with his thumbs extended, in the area of Mr. Taylor’s throat.<sup>4</sup>

Mr. Taylor then told Mr. Shabelski, “I can come up to this floor to get some coffee, Mr. Shabelski!” Mr. Shabelski then pushed Mr. Taylor a second time, and then a third time. After Mr. Shabelski had pushed Mr. Taylor at least three times, Mr. Taylor loudly yelled, “Mr. Shabelski, stop pushing me!”<sup>5</sup>

After Mr. Taylor yelled at Mr. Shabelski, Mr. Shabelski quickly walked over to another supervisor’s office and, when that supervisor wasn’t there, went to the cubicle of Mr. Taylor’s co-workers, Mr. Jermaine Quattlebaum. Mr. Shabelski told Mr. Quattlebaum, that Mr. Taylor had pushed him, and he asked Mr. Quattlebaum to “come and get Charlie!”<sup>6</sup>

Mr. Quattlebaum immediately left his cubicle, came up to Mr. Taylor, grabbed him by his arm, and pulled him out into the hallway, away from Mr. Shabelski. Then, Mr. Quattlebaum, who is a union shop steward, asked Mr. Taylor what happened. When Mr. Taylor told Mr. Quattlebaum that Mr. Shabelski had pushed him, Mr. Quattlebaum told Mr. Taylor to go write a grievance against Mr. Shabelski, because Mr. Shabelski was wrong to push him.<sup>7</sup>

Mr. Taylor was extremely upset—he was so upset he had started to cry—and this was not the first time that Mr. Shabelski had put his hands on Mr. Taylor. In fact, Mr. Taylor had

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<sup>4</sup>Id. at 2, ¶6.

<sup>5</sup>Id. at ¶7.

<sup>6</sup>Id. at ¶8.

<sup>7</sup>Id. at 3, ¶9.

complained to WASA's management about Mr. Shabelski's behavior before, but the Defendant had never done anything about it.<sup>8</sup>

Mr. Quartlebaum escorted Mr. Taylor downstairs to the second floor. After Mr. Taylor got downstairs, he went to his computer to begin writing up his grievance against Mr. Shabelski.<sup>9</sup> Mr. Taylor had every right to go to the fifth floor, and Mr. Shabelski had no authority to try to prevent him from going to that floor. Mr. Taylor did not do or say anything to Mr. Shabelski to provoke Mr. Shabelski before he started to block Mr. Taylor's path and push him.<sup>10</sup>

Mr. Mulla, the co-worker who entered the fifth floor workspace directly after Mr. Taylor, witnessed what happened between Mr. Taylor and Mr. Shabelski.<sup>11</sup> Additionally, upon information and belief, there was a security camera pointing at the area where Mr. Shabelski assaulted Mr. Taylor, and that camera should have recorded everything that happened.<sup>12</sup>

As Mr. Taylor was typing up his grievance, Mr. Chris Hawthorne, one of the union presidents, arrived. After Mr. Taylor told him what happened, Mr. Hawthorne told Mr. Taylor that he should call the police, which Mr. Taylor did. Later, Ms. Vaughan, the Defendant's head of security, approached Mr. Taylor. He told her what happened, and he additionally told her that

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<sup>8</sup>Id. See Exhibit F (letter from Mr. Taylor to WASA management, dated June 11, 2003, complaining about Mr. Shabelski's behavior towards Mr. Taylor).

<sup>9</sup>Exhibit A (Taylor Declaration) at 3, ¶10. See Exhibit E (grievance statement written by Mr. Taylor on March 25, 2004).

<sup>10</sup>Exhibit A (Taylor Declaration) at 3, ¶11.

<sup>11</sup>Exhibit C (statement of Mr. Abdus-Sattar Hussain Mulla, dated March 26, 2004).

<sup>12</sup>Exhibit A (Taylor Declaration) at 4, ¶13.

he had called the police. Ms. Vaughan told Mr. Taylor to go wait for the police at the front gate.<sup>13</sup>

Mr. Taylor went to the front gate and waited for the police, then he came back into the building. By the time he returned to the front gate, the police were there. He went inside the building with the police, and told them what happened. He also told them that he had a lawsuit pending against WASA, and that this was not the first time that Mr. Shabelski had put his hands on him. The policewoman told Mr. Taylor that Mr. Shabelski should be arrested. At that point, Ms. Vaughan, the head of security, told the police that WASA's HR Department was handling the situation. The police went to find and speak with Mr. Shabelski, and Mr. Taylor went back to his workstation.<sup>14</sup>

Sometime around 2:00 p.m. or 2:30 p.m., Mr. Gus Bass (WASA management) had Mr. Taylor's immediate supervisor, Mr. Watson, escort Mr. Taylor to the office of WASA's General Counsel. When Mr. Taylor arrived at the General Counsel's Office, he met with Mr. Watson, Barbara Grier (WASA's Director of Human Resources) and Ken Barnhart, Esq., WASA's General Counsel. Mr. Taylor was not accompanied by his union representatives or his lawyer.<sup>15</sup>

Mr. Watson, Ms. Grier, and Mr. Barnhart asked Mr. Taylor what happened, and Mr. Taylor told them what Mr. Shabelski had done. He also told them that Mr. Shabelski had yelled in his face and pushed him before (and that Mr. Shabelski had made racial remarks in his

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<sup>13</sup>Id. at 4, ¶¶14-15.

<sup>14</sup>Id. at ¶¶15-16.

<sup>15</sup>Id. at 4-5, ¶17.

presence, even after he filed his lawsuit claiming racial discrimination), but WASA had never done anything about it. He then told them that he didn't know what he would do if Mr. Shabelski assaulted him again. Then, Mr. Taylor left the meeting<sup>16</sup>

Later that day, Mr. Taylor was again approached by Ms. Vaughan. Ms. Vaughan got Mr. Taylor and escorted him to Barbara Grier's office. Ms. Grier gave Mr. Taylor a letter.<sup>17</sup> Mr. Taylor asked her he was being suspended. Ms. Grier told him that he was being placed on administrative leave with pay. Ms. Grier then instructed Ms. Vaughan to take Mr. Taylor's badge. Ms. Vaughan walked Mr. Taylor downstairs to his my office so he could get his things, and then she took his badge, and one of the security guards escorted to his car. He then left the premises.<sup>18</sup>

The letter Ms. Grier gave to Mr. Taylor advised him that, "effective immediately," he was not to report to work "until further notice." The letter stated that WASA "has reasonable suspicion that you have made threats against an Authority employee" because "at the conclusion of an interview investigating an incident between you and other (*sic.*) employee, you indicated if there were another incident that you could not be certain you could control your actions and that there was no telling what you would do." The letter continued, "[a]s a result, you will be placed on administrative leave with pay until you are directed to return to work."<sup>19</sup>

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<sup>16</sup>Id. at 5, ¶18.

<sup>17</sup>Exhibit D (letter from Barbara Grier to Mr. Charles Taylor dated March 25, 2004).

<sup>18</sup>Exhibit A (Taylor Declaration) at 5, ¶19.

<sup>19</sup>Exhibit D (letter from Barbara Grier to Mr. Charles Taylor dated March 25, 2004) at 1, ¶1.

The letter ordered Mr. Taylor “to undergo a fitness for duty evaluation at Providence Hospital Wellness Institute, 1150 Varnum Street, N.E., Washington, DC 20017 ... at 12:30 p.m. on Friday, April 2<sup>nd</sup> ...”. The letter stated that Mr. Taylor would “undergo a medical examination conducted by the Authority’s Medical Director, Dr. Michelle Smith-Jeffries and a psychological examination conducted by Dr. Richard Filson.” The letter further stated that Mr. Taylor “must cooperate in these examinations and must consent to release any medical information that may be necessary to complete the examination process.”<sup>20</sup>

The letter concluded: “After the examination, you will continue to be on administrative leave until the evaluation has been submitted to the Authority and a decision has been made as to the appropriateness of your return to work. Until such time, you are to remain available for a follow-up evaluation, if necessary.”<sup>21</sup>

Mr. Taylor never threatened Mr. Shabelski or anyone else at WASA. He has worked at WASA for almost eighteen years, and he has never threatened or harmed anyone there.<sup>22</sup>

Mr. Taylor does not have any physical or mental condition. He is willing and able to do my job. He has repeatedly complained to WASA about the way Mr. Shabelski and others in WASA’s management treat him, and WASA has never done anything about it. To the best of his knowledge, WASA still has not done anything about Mr. Shabelski, even the events of

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<sup>20</sup>Id. at ¶2.

<sup>21</sup>Id. at ¶3.

<sup>22</sup>Exhibit A (Taylor Declaration) at 6, ¶22.

March 25<sup>th</sup>.<sup>23</sup> Mr. Taylor's union intends to file a grievance against WASA and Mr. Shabelski for Mr. Shabelski's assault on Mr. Taylor, and Mr. Taylor intends assault charges against him.<sup>24</sup>

Upon the advice of counsel, Mr. Taylor will not appear for examination at the Providence Hospital Wellness Institute on April 2<sup>nd</sup> at 12:30 p.m., as directed by the Defendant's March 25<sup>th</sup> letter, and he will not consent to giving WASA access to his private medical records.<sup>25</sup> WASA, through its attorneys, have stated that if Mr. Taylor does not appear for examination on March 25<sup>th</sup> as directed, he will be placed on administrative leave without pay and be subject to disciplinary action.<sup>26</sup>

Mr. Taylor lives with his son, and Mr. Taylor's income is the primary income supporting him and his family. Mr. Taylor and his family will be seriously and irreparably harmed if he is placed on administrative leave without pay because they will not have enough income to pay their bills on time (or even to pay their bills at all) and to buy their necessities.<sup>27</sup>

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<sup>23</sup>Id. at ¶¶23-24.

<sup>24</sup>Id. at 7, ¶26.

<sup>25</sup>Id. at 6, ¶21.

<sup>26</sup>Exhibit J (letter from Mary Pivec, Esq. to Alexander Hillery, dated March 31, 2004) at 2, ¶4.

<sup>27</sup>Exhibit A (Taylor Declaration) at 6-7, ¶25.

## II. Argument

**This Court Should Grant the Plaintiffs' Motion for a Temporary Restraining Order and for a Preliminary Injunction Because the Plaintiffs' Have Demonstrated a Likelihood of Success on the Merits, That Mr. Taylor Will Suffer Irreparable Harm if the Injunctive Relief is Not Granted, That No Other Party Will Suffer Substantial Harm if the Injunctive Relief is Granted, and that the Public Interest Favors Granting the Relief Sought Herein**

The Plaintiffs seek a temporary restraining order (“TRO”) and a preliminary injunction against the Defendant to restrain the Defendant from requiring the name Plaintiff in this class action, Mr. Charles Taylor, pursuant to a letter from the Defendant’s Director of Human Resources dated March 25, 2004, to submit to a medical and psychological examination by the Defendant’s doctors (or by doctors of the Defendant’s choosing) and to consent to release his private medical information to the Defendant, or be placed on administrative leave without pay, to restrain the Defendant from disposing of, erasing, or otherwise altering any written report, or any recorded or other evidence relating to the incident that occurred between Mr. Taylor and Mr. James Shabelski on March 25, 2004. and to restrain the Plaintiff from continuing to retaliate against and to harass Mr. Taylor pending the final hearing and determination of this action.

A temporary restraining order (“TRO”) serves “to preserve the status quo for a limited period of time until the Court has the opportunity to pass on the merits of the demand for a preliminary injunction,”<sup>28</sup> and “to prevent imminent harm [to the movant] until a hearing on the request for a preliminary injunction may be held.”<sup>29</sup>

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<sup>28</sup>Barrow v. Graham, 124 F.Supp.2d 714, 715-16, 2000 U.S. Dist. LEXIS 19007, \*\*5-6 (D.D.C. 2000), citing Warner Bros. Inc. v. Dae Rim Trading, Inc., 877 F.2d 1120, 1125 (2d Cir. 1989); Fernandez-Roque v. Smith, 671 F.2d 426, 429 (11<sup>th</sup> Cir. 1982).

<sup>29</sup>Id., 124 F.Supp.2d at 716, 2000 U.S. Dist. LEXIS 19007 at \*\*5 (citation omitted).

The “traditional four-part test for injunctive relief” applies to both an application for a TRO and to an application for a preliminary injunction,<sup>30</sup> and it requires that the movant show: “(1) a substantial likelihood of success on the merits; (2) that irreparable injury will result in the absence of the requested relief; (3) other interested parties will not suffer substantial harm if the injunction is granted, and ; (4) that the public interest favors entry of a preliminary injunction.”<sup>31</sup>

The court must balance these four factors, and “[a] court may balance weakness in one or more of the four factors against a particularly strong showing in one of the other factors,” and therefore “injunctive relief ‘may be justified ... where there is a particularly strong likelihood of success on the merits even if there is a relatively slight showing of irreparable harm.’”<sup>32</sup>

At the TRO stage (as opposed to the preliminary injunction stage), even in the absence of such a “traditional” showing, a TRO’s short duration, along with a showing of imminent harm and an absence of a contrary showing from a respondent may together justify the grant of a TRO to preserve the status quo.<sup>33</sup>

Here, the Plaintiffs have made a sufficient showing to meet the legal standard for both a TRO and a preliminary injunction, , and this Court should grant the Plaintiffs’ motion.

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<sup>30</sup>Id., 124 F.Supp.2d at 716, 2000 U.S. Dist. LEXIS 19007 at \*\*5-6.

<sup>31</sup>Role Models America, Inc. v. White, 193 F.Supp.2d 76, 79-80, 2002 U.S. Dist. LEXIS 3081, \*\*10.

<sup>32</sup>Id., 193 F.Supp.2d at 80, 2002 U.S. Dist. LEXIS 3081 at \*\*11, quoting Cityfed Fin. Corp. v. Office of Thrift Supervision, 313 U.S. App. D.C. 178, 58 F.3d 738, 747 (other citation omitted).

<sup>33</sup>Barrow v. Graham, 124 F.Supp.2d at 716, 2000 U.S. Dist. LEXIS 19007 at \*\*5-6.

## 1. Likelihood of success on the merits

Here, the Defendant has ordered Mr. Taylor to either submit to physical and psychological examinations and consent to granting WASA access to his private medical information, or be placed on indefinite administrative leave without pay.<sup>34</sup> Mr. Taylor claims that the Defendant has no authority, under the rubric of a fitness-for-duty assessment or otherwise, to order him to submit to such examinations or to give WASA access to his medical information, and that WASA's order amounts to illegal retaliation and an unlawful invasion of his privacy.

The Defendant contends that Mr. Taylor must submit to these examinations, and allow WASA access to his medical records, because, according to WASA, "the Authority has reasonable suspicion that you have made threats against an Authority employee. Specifically, at the conclusion of an interview investigating an incident between you and other (*sic.*) employee, you indicated if there were another incident that you could not be certain you could control your actions and that there was not telling what you would do."<sup>35</sup>

The Defendant's actions and reasoning have a surreal, up-is-down, down-is-up, through-the-looking-glass quality. Mr. Taylor was assaulted by the Defendant's supervisory employee, Mr. Shabelski. Mr. Taylor did not assault anyone. In fact, Mr. Taylor showed commendable

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<sup>34</sup>Presumably, if Mr. Taylor does not submit to the requirements outlined in its March 25, 2004 letter (Exhibit D), the Defendant will put him on administrative leave without pay indefinitely, until he does submit to the Defendant's orders. See Exhibit J (letter from Mary Pivec, Esq. to Alexander Hillery, dated March 31, 2004, stating that "[i]f Mr. Taylor fails to appear ... he will be placed on leave without pay and will be subject to disciplinary action.") at 2, ¶4.

<sup>35</sup>Exhibit D at ¶1.

restraint when he did not retaliate against Mr. Shabelski after Mr. Shabelski pushed him three or more times without provocation.

Yet, the Defendant, in its wisdom, decided to send Mr. Taylor home on administrative leave, and did nothing at all to Mr. Shabelski—the assaulter! And even though it was Mr. Taylor who demonstrated remarkable self-control in the face of rather extreme (and indeed unlawful) provocation, the Defendant deemed him to be “threatening” to another employee, while it did nothing to Mr. Shabelski, who assaulted another employee without provocation and therefore proved that he is actually threatening to another employee (namely, to Mr. Taylor).

It is crystal clear that the Defendant has no reason to believe that Mr. Taylor is a threat to Mr. Shabelski or anyone else. The Defendant’s actions against Mr. Taylor are clearly retaliatory and utterly without any basis in fact. Further, the Defendant has no authority to order Mr. Taylor to submit to these intrusive, humiliating, retaliatory examinations. There is no authority for such examinations under the “fitness-for-duty” examination provisions of the contract between the union (of which Mr. Taylor is a part) and the Defendant.

Article 13, Section A (hereinafter “Article 13”), of the union contract sets forth the standards and requirements for medical examinations and inquiries involving an assessment of an employee’s “fitness for duty.” Article 13 provides that “medical inquiries and examinations” are to be requested by the Defendant: (1) when the Authority questions the ability of the employee to perform the essential functions of his/her job because of an indicated mental or physical impairment,” or “when the Authority questions whether an employee can do his/her job without posing a direct threat to himself/herself or others due to a medical condition.”<sup>36</sup> Neither of these

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<sup>36</sup>Exhibit E (excerpt from WASA union contract) at 1, ¶1 (emphasis added).

apply to Mr. Taylor, who does not have any physical or mental impairment or any medical condition,<sup>37</sup> and Article 13 does not authorize the Defendant to order Mr. Taylor to undergo physical and mental testing and to consent to the Defendant's access to his medical records.

Additionally, even if Article 13 does apply to Mr. Taylor (and the Plaintiffs' contend that it clearly does not apply), it does not authorize the Defendant to order Mr. Taylor to be examined by the Defendant's doctors or doctor's of the Defendant's choosing. Rather, it explicitly provides that "[t]he request [for a physical and mental fitness for duty inquiry and examination] shall instruct the employee to go to his/her treating physician, who shall provide medical documentation to the Authority's Medical Director whether the employee can perform the essential functions of his/her position." Thus, the explicit provisions of Article 13 require the Defendant to instruct an employee subject to a physical or mental fitness for duty inquiry and examination to go to the employee's doctor, not to the Defendant's doctor or to a doctor of the Defendant's choosing. Therefore, even if Article 13 applies to Mr. Taylor, the Defendant has clearly and indisputably violated its terms by ordering Mr. Taylor to go to the Defendant's doctors rather than to his own.

To the best of Mr. Taylor's knowledge, and to the best of his union President's knowledge, there are no other provisions of the union contract or WASA personnel policies or procedures that authorize the Defendant to order Mr. Taylor to undergo these examinations, either.<sup>38</sup> And the Defendant did not rely on any other provisions of the union contract or WASA personnel policies or procedures in its notice to Mr. Taylor. The Defendant's March 25<sup>th</sup> letter

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<sup>37</sup>Exhibit A (Taylor Declaration) at 6, ¶23.

<sup>38</sup>Exhibit B (Declaration of Ms. Barbara Milton) at 3, ¶¶8-9.

clearly states that it is ordering Mr. Taylor “to undergo a fitness for duty evaluation ...”.<sup>39</sup> Article 13 clearly governs such “fitness for duty” examinations, and it plainly does not authorize the actions that the Defendant has taken, or is preparing to take, pursuant to its March 25<sup>th</sup> letter.

Finally, Article 13 explicitly states that its procedures “shall be related to the essential functions of the employee’s position and shall not be sued to harass or treat an employee in a disparate manner.”<sup>40</sup> That is precisely what the Defendant is attempting to do here. There is absolutely no evidence that Mr. Taylor cannot do his job, because of a mental or physical condition or for any other reason, and any inquiry by the Defendant cannot, therefore, be “related to the essential functions of [Mr. Taylor’s] position,” as Article 13 requires.

There is absolutely no factual basis or legal authority for the Defendant’s actions and threatened actions. They are clearly retaliatory and unlawful. Mr. Taylor has demonstrated a very strong likelihood of success on the merits with regards to the illegality of the Defendant’s actions. This Court should grant his motion.

## **2. Irreparable injury in the absence of the requested relief**

The second prong of the “traditional four-part test” requires that the movant demonstrate that he will suffer irreparable harm if the equitable relief is not granted. Irreparable injury is a

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<sup>39</sup>Exhibit D at 1, ¶2.

<sup>40</sup>Id. at ¶1.

sine qua non; without a showing of irreparable injury—even a “relative slight showing”—a court will not grant injunctive relief.<sup>41</sup>

Mr. Taylor will be put on indefinite, unpaid administrative leave by the Defendant if he does not submit to the examinations ordered by the Defendant. Mr. Taylor’s income is the primary income supporting his household (he lives with his son). Without Mr. Taylor’s income, his family will not be able to pay its bills on time (or at all) and buy the necessities the family requires to sustain itself.

Mr. Taylor’s unpaid administrative leave will be indefinite unless and until he submits to the Defendant’s unlawful orders. He faces financial disaster without the income from his position with the Defendant. He and his family will be irreparably harmed, even should he and the class ultimately prevail and obtain a judgment against the Defendant in this action, if this Court does not restrain the Defendant and prevent it from carrying through with these retaliatory, unlawful acts.

Mr. Taylor has demonstrated that he will suffer irreparable harm if the relief he seeks in this motion is not granted.

**3. Other interested parties will not suffer substantial harm if the injunction is granted**

If Mr. Taylor’s motion for a TRO and for a preliminary injunction are granted, the Defendant will have to maintain the status quo—it will have to maintain his present status,

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<sup>41</sup>Role Models America, Inc. v. White, 193 F.Supp.2d 76, 80, 2002 U.S. Dist. LEXIS 3081, \*\*11-12, quoting Cityfed Fin. Corp. v. Office of Thrift Supervision, 313 U.S. App. D.C. 178, 58 F.3d 738, 747 (D.C. Cir. 1995) (internal quotation omitted).

administrative leave with pay—until this Court determines otherwise. No one will suffer any harm, let alone significant harm, if Mr. Taylor remains on paid administrative leave (Mr. Taylor has indicated that he is willing and able to return to work provided that the Defendant’s harassment and retaliation ceases).

Mr. Taylor is willing to return to work, and he is absolutely no threat to Mr. Shabelski or to any other WASA employee. He has never threatened or harmed anyone at WASA, including Mr. Shabelski after Mr. Shabelski assaulted him. If the Defendant continues to maintain that Mr. Taylor is a threat to other employees, it can continue to keep him at home, on administrative leave with pay.

Mr. Taylor has demonstrated that no other interested party will suffer significant harm if this Court grants him the injunction he seeks in this motion.

**4. The public interest favors a grant of injunctive relief**

Mr. Taylor is the name plaintiff in this class action. This class action alleges that the Defendant has, and continues to, systematically discriminate against its African-American employees with respect to pay and promotions.

The Defendant’s actions against Mr. Taylor, including but not limited to permitting its supervisory employee, Mr. Shabelski, to harass and even assault Mr. Taylor with apparent impunity, and then having the unmitigated chutzpah to put Mr. Taylor on administrative leave and to designate him as the dangerous, threatening employee, could not be more contrary to the public interest. The public interest requires the protection of men like Mr. Taylor, who are brave enough to step forward and combat discrimination when they encounter it.

Although preserving the status quo would require the Defendant to continue to pay Mr. Taylor while he is on administrative leave, that is the Defendant's own doing. It is the Defendant's unlawful, irrational, retaliatory and discriminatory actions that resulted in Mr. Taylor being placed on paid administrative leave in the first instance. The Defendant should not now be heard to claim that keeping Mr. Taylor on paid administrative leave, where it put him, is against the public interest because it has to continue to pay him.

It is clearly in the public interest for this Court to grant Mr. Taylor the injunctive relief he seeks.

### **III. Conclusion**

Mr. Taylor has demonstrated that he is likely to succeed on the merits, that he will suffer irreparable harm if injunctive relief is not granted, that no other party will suffer significant harm if the injunctive relief is granted, and that the public interest favors enjoining the Defendant.

The Defendant here is attempting to use a provision of the union contract that clearly does not apply to Mr. Taylor to harass him and to retaliate against him, which the contract itself expressly forbids. There is no reasoning worthy of the word that can possibly support the Defendant's position. If the Defendant's actions are correct, then any Defendant can incite, or even instigate, an altercation with an employee, and then use the very fact of the altercation to justify subjecting the employee to humiliating, unnecessary and extreme invasions of the employee's privacy such as those threatened by the Defendant against Mr. Taylor. It is difficult to imagine a more profound injustice than that.

This is clear and unmitigated harassment and retaliation. It is unlawful. This Court must not permit it. This Court should grant Mr. Taylor's motion.

Dated: April 1, 2004

Respectfully submitted,

\_\_\_\_\_  
/s

Alexander G. Hillery, II  
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202-785-2805  
Counsel for the Plaintiffs

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

<b>CHARLES TAYLOR, <i>et al.</i>,</b>	)	
	)	
<b>PLAINTIFFS,</b>	)	<b>Case No.: 1:01CV00561</b>
	)	<b>Judge: Henry H. Kennedy</b>
<b>v.</b>	)	
	)	
<b>DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY</b>	)	
	)	
<b>DEFENDANT</b>	)	
<hr style="border: 0.5px solid black;"/>		

**CERTIFICATION PURSUANT TO LOCAL RULE 65.1(a)**

Alexander Hillery, II, counsel for the Plaintiffs, makes the following certification under penalty of perjury pursuant to Local Rule 65.1(a):

1. On March 26, 2004, I faxed a letter to Mary E. Pivec, Esq., counsel for the Defendant, informing her that the Plaintiffs intended to pursue an injunction against the Defendant. (See Exhibit H, attached to Plaintiffs' motion.)
  
2. On April 1, 2004, I faxed a letter to Mary E. Pivec, Esq., informing her that the Plaintiffs would file a combined motion for a temporary restraining order and a preliminary injunction against the Defendant not later than 10:00 a.m. on Friday, April 2<sup>nd</sup>.

3. On Friday, April 2<sup>nd</sup>, at approximately 2:45 a.m., I faxed a copy of the Plaintiffs' motion and all exhibits thereto, including this declaration, to Mary E. Pivec, Esq., at 202-331-3101.

Dated: April 2, 2004

Respectfully submitted,

\_\_\_\_\_  
/s

Alexander G. Hillery, II  
Law Offices of David A. Branch, PC  
1825 Connecticut Avenue, NW, Suite 690  
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202-785-2805  
Counsel for the Plaintiffs

**CERTIFICATE OF SERVICE**

I certify that on April 2, 2004, I caused a copy of this motion and all attachments thereto to be delivered to Mary E. Pivec, Esq., counsel for the Defendant, via the Court's electronic filing system, and that I also faxed a true copy thereof to her at 202-331-3101.

\_\_\_\_\_/s  
Alexander G. Hillery, II  
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