

Exhibit 1

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

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|--------------------------------------|---|------------------------------|
| Jossan Zavala, <i>et al.</i> , | : | |
| | : | |
| Plaintiffs, | : | Civil Action No. 06-1864 |
| | : | Judge Mary A. Gooden-Terrell |
| v. | : | Next Event: ISC – 6/9/06 |
| | : | |
| District of Columbia Water and Sewer | : | |
| Authority, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| | : | |

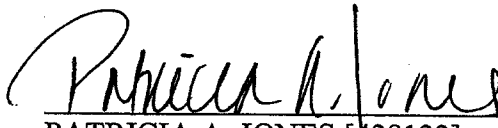
DEFENDANT DISTRICT OF COLUMBIA’S MOTION FOR SUMMARY
JUDGMENT

Defendant District of Columbia (hereinafter “the District”), by and through counsel, respectively seeks summary judgment, pursuant to Superior Court Civil Rule 56(c). Plaintiff has failed to state a claim upon which relief can be granted because the District of Columbia is not a proper party defendant. District of Columbia Official Code § 34-2202.02 established the District of Columbia Water and Sewer Authority (hereinafter “WASA”) as an independent authority of the District government, with the power to sue and be sued in its own name. The District of Columbia cannot be held liable for the actions of WASA employees under a theory of *respondeat superior*. Because the driver of the vehicle involved in the subject accident was a WASA employee, the District of Columbia must be dismissed as a matter of law. A memorandum of points and authorities is hereto attached.

Respectfully submitted,

ROBERT J. SPAGNOLETTI
Attorney General for the District of Columbia

GEORGE C. VALENTINE
Deputy Attorney General, Civil Litigation Division



PATRICIA A. JONES [428132]
Chief, General Litigation, Sec. IV



LAUREN J. BIRNBAUM [483515]
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E-mail: Lauren.birnbaum@dc.gov

RULE 12-I CERTIFICATION

I hereby certify that on May 5, 2006, the undersigned spoke with plaintiffs' counsel, Richard Bussey, regarding the relief herein sought, and consent was not granted.¹



LAUREN J. BIRNBAUM
Assistant Attorney General

¹ The parties have been trying to work out a stipulation of dismissal of the District of Columbia in this case. However, no agreement has been reached as to the language of the proposed dismissal and the District of Columbia's answer to the Complaint is due. Accordingly, this motion is necessitated by the parties' failure to agree on language which allows for the District's dismissal.

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of May, 2006, a copy of the District of Columbia's Motion for Summary Judgment, accompanying Memorandum of Points and Authorities in support thereto, Statement of Material Facts Not in Genuine Dispute, and the proposed Order were mailed, postage prepaid, to the following:

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LAUREN J. BIRNBAUM
Assistant Attorney General

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

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| Jossan Zavala, <i>et al.</i> , | : | |
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| Plaintiffs, | : | Civil Action No. 06-1864 |
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| District of Columbia Water and Sewer | : | |
| Authority, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
THE DISTRICT OF COLUMBIA’S MOTION FOR SUMMARY JUDGMENT

Preliminary Statement

Plaintiffs Jossan Zavala, Miguel Zavala, and Dilcia Zavala filed the instant lawsuit on March 8, 2006, naming the District of Columbia Water and Sewer Authority (hereinafter “WASA”), the District of Columbia (hereinafter “the District”) and Thomas Davis (hereinafter “Davis”) as party defendants. *See* Complaint. Plaintiffs allege that on or about March 13, 2003, plaintiff Dilcia Zavala was pushing a two seat stroller occupied by her children, plaintiffs Jossan Zavala Miguel Zavala, across the street at the intersection of Georgia Avenue, N.W. and New Hampshire Avenue, N.W. *See* Complaint, ¶ 2. Plaintiffs further allege that defendant Davis, an employee of WASA who was operating a WASA vehicle, entered the intersection and struck the stroller. *See* Complaint, ¶¶ 3, 4. As a result of the accident, plaintiffs aver that they suffered severe and permanent injuries. *See* Complaint, generally. Plaintiffs seek to hold the District and WASA responsible for the negligence of defendant Davis based on the theory that Davis is the statutory agent of defendants WASA and the District. *See* Complaint, ¶ 5. For the

following reasons, the District is entitled to dismissal of plaintiff's Complaint as a matter of law.

Argument

I. Standards for Dismissal Pursuant to SCR-Civil 56.

Summary judgment must be granted if the moving party demonstrates "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). Although the party moving for summary judgment has the burden of demonstrating the absence of any material facts and the right to judgment as a matter of law, the movant is not obligated to present supporting evidence. *Ferguson v. District of Columbia*, 629 A.2d 15, 19 (D.C. 1993). Instead the moving party need only assert that there is a lack of necessary evidence to support plaintiff's case. At that point, the burden shifts to the non-moving party to show the existence of a genuine issue of material fact. *Id.*; *Beard v. Area Transit Authority*, 631 A.2d 387, 390 (D.C. 1993). Theoretical speculations, unsupported assumptions, and conclusory allegations do not rise to the level of a genuine issue of fact. *Id.*

II. The District is Entitled to Summary Judgment Because It Cannot Be Held Liable For the Actions of WASA Employees Under a Theory of *Respondeat Superior*.

Plaintiffs' lawsuit fails because they are unable to establish that the District of Columbia owed them a duty of care. The existence of a duty is a question of law to be determined by the Court. *See Traudt v. PEPCO*, 692 A.2d 1326, n.1 (D.C. 1997), citing *Croce v. Hall*, 657 A.2d 307, 310 (D.C. 1995) (citation omitted) (holding "[t]he question of whether a defendant owes a duty to a plaintiff under a particular set of circumstances is

'entirely a question of law...[that] must be determined only by the court''). Although plaintiffs allege that the District owed them a duty of care, and breached that duty, they have failed to provide factual allegations to support their claims.

The law clearly establishes the absence of any duty by the District with respect to the accident about which plaintiffs complain. District of Columbia Official Code § 34-2202.02, established the Water and Sewer Authority as an independent authority of the District government. Pursuant to this Code Section, WASA has the power to sue and be sued. *See* D.C. Official Code § 34-2202.03. Thomas Davis is an employee of defendant WASA, and not an agent or employee of the District of Columbia. *See* Defendant WASA's Responses to Plaintiffs' Interrogatories, Interrogatory No. 15, hereto attached as Exh. 1. In addition, at the time of the occurrence, defendant Thomas Davis was operating a truck owned by defendant WASA, and not owned by the District of Columbia. *See* Defendant WASA's Responses to Plaintiffs' Interrogatories, Interrogatory No. 17, hereto attached as Exh. 2. Therefore, plaintiff must look to WASA for relief, and not to the District of Columbia government.

"Under the doctrine of *respondeat superior*, an employer may be held liable for the acts of its employees committed within the scope of their employment." *See Moorehead v. District of Columbia*, 747 A.2d 138, 142 (D.C. 2000), citing *Giles v. Shell Oil Corp.*, 487 A.2d 610, 611 (D.C. 1985), and holding "[i]n order to succeed under the *respondeat superior* theory of liability, [plaintiff] must show that a master-servant relationship existed between [the employee] and [the District], and that the incident at issue occurred while [the employee] was acting within the scope of his employment." Plaintiff has failed to set forth a *prima facie* case of *respondeat superior* liability against

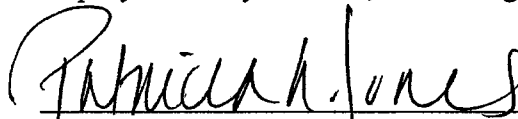
the District because the District cannot be held liable for the actions of WASA employees.

WHEREFORE, defendant District of Columbia seeks summary judgment in its favor as a matter of law.

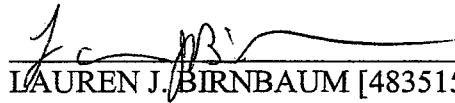
Respectfully submitted,

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Exhibit 2

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

FILED
CIVIL ACTIONS BRANCH
MAY 31 2006
SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C.

Jossan Zavala, *et al.*,
:
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Plaintiffs,
:
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v.
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:
District of Columbia Water and Sewer
Authority, *et al.*,
:
:
Defendants.
:
:

Civil Action No. 06-1864
Judge Mary A. Gooden-Terrell
Next Event: ISC - 6/9/06

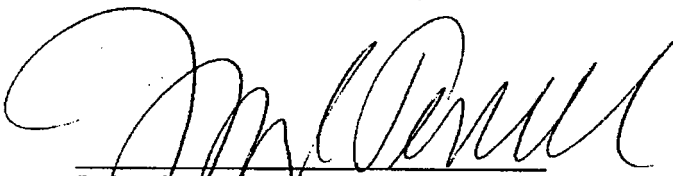
ORDER Granting District of Columbia's
Motion for Summary Judgment

Upon consideration of the District of Columbia's Motion for Summary Judgment,

its memorandum of points and authorities in support thereto, plaintiffs' opposition
thereto, if any, and the record herein, it is this 31 day of May 2006,

ORDERED: that the District of Columbia's Motion for Summary Judgment is
hereby GRANTED; and it is,

FURTHER ORDERED: that summary judgment is hereby entered in favor of the
District of Columbia.




Judge Gooden-Terrell
D.C. Superior Court Judge

Copies to:

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Assistant Attorney General, D.C.
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Washington, D.C. 20001

MAILED From Chambers MAY 31 2006

DOCKETED In Chambers MAY 30 2006

Case: 2006 CO 001864 B

0024995298
Dkt: CIV06MSJ

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Exhibit 3

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IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA CIVIL DIVISION

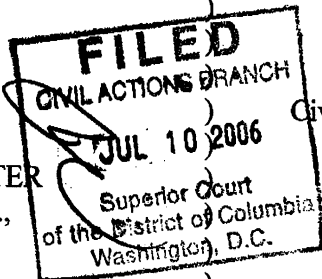
JOSSAN ZAVALA, a minor, et al.,

Plaintiffs,

v.

DISTRICT OF COLUMBIA WATER
AND SEWER AUTHORITY et al.,

Defendants.



Civil Case No.: 2006 CA 01864B

STIPULATION

It is hereby stipulated by and between the parties:

1. Defendant District of Columbia Water and Sewer Authority ("WASA") is an entity separate and distinct from defendant District of Columbia as set forth in the legislation which created WASA. *See* D.C. Code § 34-2202.02. WASA has the power to sue and be sued. *See id.* § 34-2202.03.

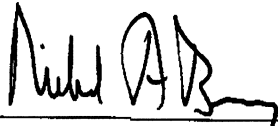
2. Employees of WASA are not employees of the District of Columbia and the District of Columbia is not responsible for the acts or omissions of any of the employees of WASA. On March 13, 2003, the date of the incident which is the subject of this litigation, defendant Thomas Davis was an employee of defendant WASA, and not an agent or employee of the District of Columbia.

3. At the time of the occurrence, defendant Thomas Davis was operating a truck owned by defendant WASA, and not owned by the District of Columbia.

4. Defendant WASA will not contend that the District of Columbia was at fault with respect to any allegation in the complaint concerning any action of WASA or its employees.

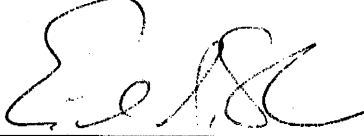
Case: 2006 CA 01864 B
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Dt: CIV506

5. In reliance upon the foregoing stipulations, plaintiffs hereby dismiss with prejudice this action as to defendant District of Columbia only.



Respectfully submitted,

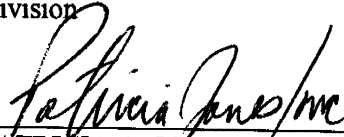
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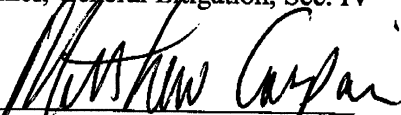
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CERTIFICATE OF SERVICE

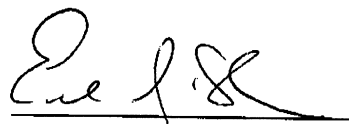
I hereby certify that a copy of the foregoing Stipulation was served, via first class mail postage-prepaid, this 10th day of July 2006 upon:

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