IN THE CIRCUIT COURT OF THE
EIGHTH CIRCUIT IN AND FOR
ALACHUA COUNTY, FLORIDA

CASE NO.: 2024-CA-003461

DIVISION: J

ANNEKE ACREE, as parent and
Natural guardian of M.A.

Plaintiff,

v.

CITY OF ALACHUA, FLORIDA, and the
ALACHUA COUNTY SCHOOL BOARD

Defendant

DEFENDANT, CITY OF ALACHUA'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

Defendant, CITY OF ALACHUA ("the City"), pursuant to Fla. R. Civ. P. 1.140(b)(6) and Section 768.28, Florida Statutes, moves to dismiss Plaintiff's Amended Complaint for failure to state a cause of action. In support of its motion, the City states:

1. Plaintiff initiated this action by filing a four-count Complaint against Defendants, City of Alachua and the Alachua County School Board ("School Board") on October 30, 2024.
2. The City filed a motion to dismiss on December 20, 2024, and Plaintiff responded by filing an Amended Complaint on January 8, 2025.
3. The Amended Complaint consists of three counts against Defendants, City of Alachua and Alachua County School Board. Count III of the Amended Complaint titled "Negligence Per Se" is directed against the City.
4. Plaintiff's Amended Complaint fails to comply with the general rules of pleading, as the grounds upon which the City is believed to be liable are unclear.

5. Additionally, Plaintiff's claim is barred because the City is entitled to sovereign immunity.
6. Finally, to the extent Plaintiff has alleged a duty pursuant Chapter 39, Florida Statutes, this claim should be dismissed because there is no private cause of action or civil remedy as a matter of law.

WHEREFORE, based on the argument above and those included in the incorporated Memorandum of Law below, the City respectfully requests dismissal of Count III of Plaintiff's Amended Complaint and any other and further relief as this Court deems proper.

MEMORANDUM OF LAW

I. Motion to Dismiss Standard

A motion to dismiss raises a question of law as to whether the facts alleged in the complaint are enough to state a cause of action. *Meyers v. City of Jacksonville*, 754 So.2d 198, 202 (Fla. 1st DCA 2000). The trial court's review is limited to the four corners of the complaint, with the factual allegations accepted as true and all reasonable inferences drawn in the non-moving party's favor. *Sealy v. Perdido Key Oyster Bar & Marina, LLC.*, 88 So.3d 366, 367-68 (Fla. 1st DCA 2012). Mere conclusory allegations unsupported by facts are insufficient to survive a motion to dismiss. *See Stander v. Dispoz-O-Products, Inc.*, 973 So.2d 603, 605 (Fla. 4th DCA 2008).

II. Plaintiff has failed to allege sufficient facts for the City to determine what is being alleged against them and how to respond.

Florida Rule of Civil Procedure 1.110(b) explicitly requires the pleader to assert a short and plain statement of ultimate facts showing she is entitled to the relief sought. Mere conclusions are insufficient to satisfy the rule requiring the pleader to allege a short and plain statement of ultimate facts showing entitlement to relief. *Beckler v. Hoffman*, 550 So. 2d 68 (Fla. 5th DCA 1989) (affirming lower court's dismissal of complaint based on mere conclusions); *see also Jordan v. Neinhuis*, 203 So. 3d 974 (Fla. 5th DCA 2016) (holding general, vague and conclusory

statements are insufficient to satisfy Florida's pleading requirements); *Myers v. Myers*, 652 So. 2d 1214, 1215 (Fla. 5th DCA 1995) (finding that conclusory allegations in a pleading are insufficient to state a cause of action).

A complaint must set out the elements and the facts that support them so that the defendant can clearly determine what is being alleged against them and formulate an appropriate response. *See Barrett v. City of Margate*, 743 So. 2d 1160, 1162 (Fla. 4th DCA 1999). "Courts must liberally construe and accept as true allegations of fact in the complaint and inferences reasonably deductible therefrom, but need not accept factual claims that are internally inconsistent; facts which run counter to facts of which the court can take judicial notice; conclusory allegations; unwarranted deductions; or mere legal conclusions asserted by a party." *Response Oncology, Inc. v. Metrahealth Ins. Co.*, 978 F. Supp. 1052, 1058 (S.D. Fla. 1997) and *W.R. Townsend Contracting, Inc. v. Jensen Civil Const., Inc.*, 728 So. 2d 297, 300 (Fla. 1st DCA 1999). A pleading must contain the essential allegations because they will not be imputed. *Harwood v. Bush*, 223 So. 2d 359 (Fla. 4th DCA 1969.)

Counts I and II of Plaintiff's Amended Complaint are directed against the School Board in which Plaintiff alleged very specific facts upon which she believes the School Board is liable. However, the allegations against the City are vague and conclusory. In Count III, Plaintiff incorporates the allegations contained in paragraphs 1-5, 7-15, 19-21, 23-48, 52-54, 56, 58-66. Within those 46 paragraphs, only the following specifically refer to the City (identified as "COA") or its employees:

8. The COA is located in Alachua County, Florida.

9. The COA contracts with the ACSB to provide protection and safety to the students who attend SFHS by providing School Resource Officers ("SROs") assigned to SFHS grounds while school is in attendance.

10. The COA fulfilled its obligations under the above referenced contract by providing SROs to SFHS through the Alachua Police Department.

11. SROs, during school hours and school sponsored activities, owe a duty of care to students who attend SFHS.

12. SROs have a special relationship to the students who attend SFHS.

13. The SROs are tasked with student safety on a day-to-day basis while school is in session and during school sponsored activities.

19. Pursuant to Florida Statute §39.201, all SROs are also categorized as Law Enforcement Officers.

20. All SROs are mandatory reporters of child abuse and neglect as defined in Florida Statute §39.201.

21. All mandatory reporters that fail to report child abuse or neglect pursuant to Florida Statute §39.205 commit a felony of the third degree.

23. All SROs are trained on the mandatory reporting of child abuse and neglect, pursuant to the law.

26. While on school grounds and while attending school sponsored events, minor, M.A.'s activities were controlled by SFHS employees and by SROs.[1]

41. M.A.'s parents were never notified by ACSB or the COA about the first or second incidents involving their minor child and YECKRING.

52. Prior to YECKRING's sexual misconduct with M.A., at least one (1) SRO knew about complaints from children about sexual misconduct by YECKRING that were not reported, as required.

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[1] It is well-established under Florida law that County School Boards are distinct entities from municipalities. County School Boards are considered part of the state system of public education, with responsibilities including the operation, control, and supervision of public schools within their districts. *Fla. Const. Art. IX § 4(b)*("The school board shall operate, control and supervise all free public schools within the school district."). County school boards derive their authority directly from state law and constitution, rather than local legislative enactments. Municipalities, on the other hand, are established by general or special law and "imbued with 'governmental, corporate and proprietary powers to enable them to conduct municipal government.'" *Garavan v. Miami-Dade County*, 352 So. 3d 515, 517 (3rd DCA 2022) quoting *Fla. Const. Art. VIII§2(b).* Municipalities do not have the power to operate or regulate public schools. Plaintiff's Complaint incorrectly implies that the City and its SROs have administrative or disciplinary authority within the school.

> 53. Once placed on notice about YECKRING's sexual misconduct, SROs had a heightened duty to protect children that attend SFHS from YECKRING's sexual misconduct by, at a minimum, as mandatory reporters, complying with the law.
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> 54. Once placed on notice about YECKRING's sexual misconduct, SROs did not take any action to protect children, including M.A., from being a victim in the future of YECKRING's, placing M.A. in a foreseeable zone of risk.
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> 58. COA, through its agents and employees the SROs, did not investigate or report YECKRING's sexual misconduct after students repeatedly reported incidents of sexual harassment, child abuse and/or neglect by YECKRING to caretakers and/or mandatory reporters, placing M.A. in a foreseeable zone of risk to be sexually harassed, groomed abused or neglected by YECKRING.
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> 59. As a result of SCSB (sic.) employees and COA SROs' failure to report the above referenced instances of YECKRING's sexual harassment, grooming, abuse and/or neglect, M.A. was forced to live in constant fear of encountering YECKRING.
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> 62. COA, through its agents employees the SROs, failed to document and/or report the repeated complaints by children regarding YECKRING's sexually inappropriate conduct.

The Complaint describes very specific incidents in which M.A. is claiming to have notified School Board employees about alleged inappropriate conduct by Yeckring. To the contrary, Plaintiff makes no allegations of M.A. or anyone else reporting the "sexual incidents" to the City. Plaintiff does not identify the City employee or employees who she asserts knew about the complaints, nor does she specify the contents or context of the complaints. Likewise, she does not provide any detail regarding the "repeated complaints" of sexual misconduct. These ambiguous accusations against the City are unsupported by a factual basis and make it impossible for the City to determine what is being alleged and how to respond. As such, Plaintiff has failed to comply with the general rules of pleading and the Complaint against the City should be dismissed.

III. The City is entitled to Sovereign Immunity.

As a governmental entity, the City is immune from liability for torts, except to the extent that sovereign immunity is waived. Florida's limited waiver of sovereign immunity is in derogation

of common law. As such, it must be strictly construed against any party attempting to create a new cause of action. *Carlile v. Game & Fresh Water Fish Comm'n,* 354 So.2d 362, 364 (Fla. 1977). One of the purposes of narrow interpretation of waivers of sovereign immunity is to protect the public treasury. ("This Court construes waivers of sovereign immunity narrowly to protect public funds.")("Narrow interpretation of waivers of sovereign immunity protect 'the public against profligate encroachments on the public treasury.'"). *Hardee County v. FINR* II, Inc., 221 So.3d 1162, 1165-1166 (Fla. 2017).

In Florida Statute § 768.28(1) (Waiver of sovereign immunity in tort actions), the Florida Legislature "waive[d] sovereign immunity for liability for torts, but only to the extent specified in this act." Florida Statute § 768.28(9)(a) provides that the City is "not liable in tort for the acts or omissions of an officer, employee, or agent committed while acting outside the course and scope of her or his employment or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property."

An employer is only liable for the torts of its employee, if the tort was committed **within the scope** of the employee's employment and service for the employer. *City of Green Cove Springs v. Donaldson*, 348 F.2d 197, 202 (5th Cir. 1965)(emphasis added). (The imposition upon an employer of vicarious liability for the torts of its agents is limited by the proposition that the tort must have been committed while the agent was acting within the scope of his employment.) "Liability does not extend to cases in which 'the servant has stepped aside from his employment to commit a tort which the master neither directed in fact, nor could be supposed, from the nature of his employment, to have authorized or expected the servant to do." *Id. citing Weiss v. Jacobson,* 62 So. 2d 904, 906 (Fla. 1953). This applies to private employers and municipal corporations alike. *Id* at 203. See also *City of Miami v. Simpson*, 172 So. 2d 435 (Fla. 1965).

Here, Plaintiff has not only failed to identify a City employee that she contends was negligent, but has also failed to specify whether the alleged tort was committed within the scope of the unknown employee's employment or if it was committed in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. As such, Plaintiff's claim fails and the City should be dismissed.

IV. Public duty doctrine bars Plaintiff's claim against the City.

The public duty doctrine exception to the statutory waiver of sovereign immunity recognizes that "there can be no governmental liability unless a common law or statutory duty of care exist[s] that would have been applicable to an individual under similar circumstances." *Kaiser v. Kolb*, 543 So. 2d 732, 734 (Fla. 1989). To hold a governmental agency or subdivision liable for its negligence, it must be demonstrated that the governmental entity owed a duty of care to the plaintiff individually rather than the public in general. *Seguine v. City of Miami*, 627 So.2d 14, 17 (Fla. 3d DCA 1993). As stated in *Trianon Park Condominium Ass'n v. City of Hialeah*:

> How a governmental entity, through its officials and employees, exercises its discretionary power to enforce compliance with the laws duly enacted by a governmental body is a matter of governance, for which there never has been a common law duty of care. This discretionary power to enforce compliance with the law, as well as the authority to protect the public safety, is most notably reflected in the discretionary power given to judges, prosecutors, arresting officers, and other law enforcement officials, as well as the discretionary authority given fire protection agencies to suppress fires.
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> *Trianon Park Condominium Ass'n v. City of Hialeah*, 468 So.2d 912, 919 (Fla. 1985)

Responding to reports and investigating criminal activity are duties that law enforcement owe to the public as a whole, not to individuals. *Miami-Dade County v. Fente*, 949 So.2d 1101, 1103 (citing *Trianon Park* at 919). A special tort duty with regard to an individual does not arise unless an official assumes a special duty with regard to that person. *See Everton v. Willard*, 468 So.2d 936, 938 (Fla. 1985). "The premise underlying this theory is that a police officer's decision

to assume control over a particular situation or group of individuals is accompanied by a corresponding duty to exercise reasonable care." *Pollock v. Fla. Dep't of Highway* Patrol, 882 So. 2d 928, 935 (Fla. 2004).

Here, Plaintiff alleged that "SROs, during school hours and school sponsored activities, owe a duty of care to students who attend SFHS" and "SROs have a special relationship to the students who attend SFHS." (Complaint ¶¶ 13-14). M.A.'s mere attendance at a high school in the City does not create an individual duty, nor can it be said to have created a special relationship between M.A. and the City. For a special relationship to exist there must be "1) an express promise or assurance or assistance; 2) justifiable reliance on the promise or assurance of assistance; and 3) harm suffered because of the reliance upon the express promise or assurance of assistance." *Pierre v. Jenne*, 795 So. 2d 1062, 1064 (Fla. 4th DCA 2001). Here, there are no such facts alleged against the City. As such, Plaintiff has failed to state a legal duty of care owed to M.A., as opposed to the public at large; therefore, dismissal is warranted.

V. No Private Right of Action Under Chapter 39.

In Count III, Plaintiff's theory of negligence appears to be premised on an unknown City's employee's alleged failure to comply with the child abuse reporting guidelines of Chapter 39, Florida Statutes. Here, Plaintiff improperly alleged that an unknown City employee's failure to comply with the statute constitutes negligence per se. (Complaint ¶¶85-87). As a matter of law, this claim fails because Chapter 39 does not create a civil cause of action. Chapter 39 of the Florida Statutes mandates certain individuals to report suspected child abuse to the central abuse hotline. The penalty for failing to comply with requirements of Chapter 39 is spelled out in Florida Statute §39.205(1) which provides:

> "A person who **knowingly and willfully** fails to report to the central abuse hotline known or suspected child abuse, abandonment, or neglect, or who knowingly and

willfully prevents another person from doing so, commits a felony of the third degree." *Fla. Stat.* 39.205(1)(emphasis added)

It is well-settled that where a statute does not expressly provide for a civil cause of action and the legislative history did not reveal intent to create a cause of action, a Florida statute does not create a private cause of action upon which a party is entitled to relief. *Murphy v. Sinha Corp.*, 644 So. 2d 983, 986 (Fla. 1994)("In general a statute that does not purport to establish civil liability but merely makes provision to secure the safety or welfare of the public as an entity, will not be construed as establishing a civil liability.") Florida courts have consistently held that Section 39, Florida Statutes and its predecessor versions do not create an implied cause of action for failure to report child abuse. *See Welker v. Southern Baptist Hosp. of Fla., Inc.*, 864 So. 2d 1178 (Fla. 1st DCA)(quashed on other grounds); *J.B. v. Department of Health & Rehabilitative Servs.*, 591 So.2d 317 (Fla. 4th DCA 1991); *Fischer v. Metcalf*, 543 So.2d 785 (Fla. 3d DCA 1989). Furthermore, Florida's limited waiver of sovereign immunity is in derogation of common law and must be strictly construed against any party attempting to create a new cause of action. *Carlile,* 354 So. 2d at 364.

Because the legislature has clearly established that the violation of the reporting provision of Chapter 39 constitutes a third-degree felony and does not expressly authorize a private cause of action, Plaintiff's theory of liability in Count III fails and should be dismissed accordingly.

CONCLUSION

For the above reasons, Plaintiff's claims against the City of Alachua should be dismissed.

CERTIFICATE OF CONFERRAL

I certify that prior to filing this motion, the undersigned conferred with counsel for plaintiff via telephone on January 16, 2025, who advised Plaintiff opposes the relief sought by this motion.

MARKS GRAY, P.A.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was filed electronically and was sent by E-Mail from the Florida Courts' E-Filing Portal system, unless otherwise noted below, on all counsel or parties of record listed below, this 16th day of January 2025:

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