

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT  
IN AND FOR FLAGLER COUNTY, FLORIDA

BRYAN MOISAO,

Plaintiff,

v.

Case No. 2026 CA 000212

CITY OF FLAGLER BEACH,

Defendant.

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**DEFENDANT CITY OF FLAGLER BEACH'S**  
**MOTION TO DISMISS PLAINTIFF'S COMPLAINT AND**  
**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS**

Defendant, CITY OF FLAGLER BEACH, pursuant to Florida Rule of Civil Procedure 1.140, respectfully moves to dismiss Plaintiff, BRYAN MOISAO, Complaint and Demand for Jury Trial (“Complaint”), as follows:

**I. INTRODUCTION**

Brian Misao was formerly employed by the City of Flagler Beach (“Flagler Beach”). He claims the Flagler Beach fired him in violation of section §112.3187, Fla. Stat., Florida’s public sector Whistle-blower’s Act (“Whistle-blower’s Act” or “PWA”). The PWA is a narrow statutory remedy designed to protect employees who disclose violations of law or gross mismanagement to appropriate governmental authorities. It is not a vehicle for litigating internal personnel disputes, disagreements over supervisory decisions, or dissatisfaction with disciplinary processes. Courts consistently dismiss PWA claims where the plaintiff alleges only workplace misconduct, policy disagreements, or internal administrative issues rather than violations of law, rule, or regulation.

Plaintiff's Complaint falls squarely within that category. He alleges that employees under his supervision engaged in misconduct, that HR and management did not act as he preferred, and that he was disciplined, including termination for his admitted failure to follow the chain of command. These allegations do not constitute protected disclosures under the PWA. Plaintiff's Complaint does not set out the elements and the facts that support a viable Whistle-blower's Act cause of action, including failing to attach any written document which satisfies PWA requirements. Moreover, Plaintiff admitted in his Complaint that he violated the chain of command, thereby conclusively establishing Flagler Beach's legitimate, non-retaliatory reasons for Plaintiff's termination. Therefore, Plaintiff's Complaint should be dismissed as a matter of law.

## **II. FACTS ALLEGED<sup>1</sup>**

Plaintiff began employment as Facilities Director on March 31, 2025. (Compl. ¶1). At all relevant times, Plaintiff served as Facilities Director and later on April 15, 2025, supervised the Lift Station Department. On April 15, 2025, the Lift Station Department was placed under his supervision (Compl. ¶5, 10). Plaintiff's immediate supervisor was the City Engineer, Bill Freeman. (Compl. ¶6). Plaintiff alleges that beginning in May 2025 he identified operational misconduct and reported it to his supervisor (Freeman) on May 13, 2025, and later to Human Resources (HR) on June 27, 2025. (Compl. ¶ 11). HR instructed him to conduct an internal investigation, which he completed and submitted. (Compl. ¶12).

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<sup>1</sup> For purposes of this motion only, the City accepts as true the Complaint's well-pled facts, but not its conclusory assertions, in particular legal conclusions. Defendant specifically denies the allegations in Plaintiff's Complaint.

On July 2, 2025, Plaintiff issued a disciplinary action to an employee for insubordination with the approval of his supervisor, Mr. Freeman, and HR. (Compl. ¶13).

On August 4, 2025, before HR acted on a second disciplinary write-up that Plaintiff prepared for the employee, the Lift Station Department was removed from Plaintiff's supervision and reassigned to another supervisor. Plaintiff received an email from Mr. Freeman "stating that the Lift station crew will no longer be under Plaintiff." (Compl. ¶14).

Plaintiff alleges that he "continued to raise concerns regarding the misconduct and lack of corrective action to the City Manager and then to the City Commission. Plaintiff reached out directly to City Manager Dale on August 5, 2025, and sent a follow-up email, and another follow-up email on August 18, 2025, and another on September 8, 2025, this time copying all five City Commissioners." (Compl. ¶15). Plaintiff states that on September 10, 2025, the City Manager criticized him for including the City Commission, calling it "very unprofessional." (Compl. ¶16). On September 26, 2025, Plaintiff received a performance evaluation rating him as exceeding expectations and was discharged the same day. (Compl. ¶17). The stated reasons for termination were failure to follow chain of command and insubordination. (Compl. ¶18). Plaintiff alleges discrepancies between the evaluation he received and the version later placed in his personnel file. (Compl. ¶19).

Plaintiff asserts that the Personnel Board addressed whether his disclosures to the City Manager were protected and referenced the statutory definition of gross mismanagement, (Compl. ¶20). Plaintiff claims his internal complaints involved dishonesty, neglect of duty, and insubordination by employees, in violation of the City's

Personnel Policies. (Compl. ¶21). He further alleges that his removal from supervisory duties and termination were retaliatory responses to his internal reports. (Compl. ¶22).

### III. PLEADING AND MOTION TO DISMISS STANDARDS

“Whether a complaint should be dismissed is a question of law.” *Scovell v. Delco Oil Co.*, 798 So. 2d 844, 845-46 (Fla. 5th DCA 2001) (citation omitted). In considering a motion to dismiss, the “court’s gaze is limited to the four corners of the complaint, including the attachments incorporated in it, and all well pleaded allegations are taken as true.” *Id.* To “determine the existence of a cause of action, the trial court must examine the complaint’s allegations, taken as true, in light of the applicable substantive law.” *Vienneau v. Metro. Life Ins. Co.*, 548 So. 2d 856, 858 (Fla. 4th DCA 1989).

“[E]very cause of action, whether derived from statute or common law, is comprised of necessary elements which must be proven. . . .” *Barrett v. City of Margate*, 743 So. 2d 1160, 1162 (Fla. 4th DCA 1999). “It is a cardinal rule of pleading that a complaint be stated simply, in short and plain language.” *Id.* (citing Fla. R. Civ. P. 1.110(b)). A complaint “must set out the elements and the facts that support them so that the court and the defendant can clearly determine what is being alleged.” *Id.*; *Havens v. Coast Fla., P.A.*, 117 So. 3d 1179, 1181 (Fla. 2d DCA 2013) (“a complaint must allege sufficient ultimate facts to show that the pleader is entitled to relief”). And, it “must set forth factual assertions that can be supported by evidence which gives rise to legal liability.” *Barrett*, 743 So. 2d at 1162-63. Such assertions must “be stated simply and succinctly.” *Id.* at 1163. “It is insufficient to plead opinions, theories, legal conclusions or argument.” *Id.* And, “general, vague and conclusory statements are insufficient to satisfy the requirement that a pleader

allege a short and plain statement of the ultimate facts showing the pleader is entitled to relief. . . .” *Jordan v. Nienhuis*, 203 So. 3d 974, 976 (Fla. 5th DCA 2016) (citations and internal quotation marks omitted).

#### **IV. LEGAL ARGUMENT**

##### **A. PLAINTIFF’S COMPLAINT SHOULD BE DISMISSED FOR FAILURE TO ATTACH DOCUMENTS MATERIAL TO THE PLEADINGS**

Florida Rule of Civil Procedure 1.130(a) states as follow:

**(a) Instruments Attached.** All bonds, notes, bills of exchange, contracts, accounts, or documents upon which action may be brought or defense made, or a copy thereof or a copy of the portions thereof material to the pleadings, shall be incorporated in or attached to the pleading.

Under Rule 1.130(a), all “documents on which action may be brought . . . must be incorporated in or attached to the pleading.” And, “[a]ny exhibit attached to a pleading must be considered a part thereof for all purposes.” Fla. R. Civ. Proc. 1.130(b).

The rule is mandatory, and a complaint that relies upon documents without attaching them is subject to dismissal. Florida courts have consistently required strict compliance with this rule. *Safeco Ins. Co. of Am. v. Ware*, 401 So. 2d 1129, 1130 (Fla. 4th DCA 1981)(“One of the ways to reach a failure to attach a necessary exhibit is by motion to dismiss. . . In the case of a complaint based on a written instrument it does not state a cause of action until the instrument or an adequate portion thereof is attached to or incorporated in the pleading in question.”)

Here, Plaintiff’s claims under the Whistle-Blower’s Act are expressly premised on alleged written communications that he contends constitute protected disclosures. However, no written document was attached to his Complaint. These documents are not

merely background information — Plaintiff affirmatively relies on them as the foundation of his statutory cause of action. His theory of liability depends on the content, timing, and nature of these writings. Because Plaintiff’s claims may be brought only if he made protected disclosures in the manner required by statute, the writings themselves are central to the cause of action and must be attached under Rule 1.130(a).

Florida courts consistently hold that when a plaintiff bases a claim on written documents but fails to attach them, dismissal is appropriate. See *Santiago v. Mauna Loa Invs., LLC*, 189 So. 3d 752, 756 (Fla. 2016) (quoting *Paladin Properties v. Family Investment Enterp.*, 952 So. 2d 560, 564 (Fla. 2d DCA 2007)); see *Duke v. HSBC Mortg. Services, LLC*, 79 So. 3d 778, 780 (Fla. 4th DCA 2011) (“[T]he contents of the exhibits control over the allegations of the complaint.”) (citation omitted). The rule exists to prevent precisely this situation: a defendant should not be forced to guess at the contents of documents that Plaintiff alleges form the basis of his PWA lawsuit. Plaintiff’s failure to attach the written communications he relies upon deprives the Court of the ability to evaluate whether the alleged disclosures qualify as protected activity under Fla. Stat. § 112.3187. Without these documents, Defendant cannot meaningfully respond, and the Court cannot determine whether the complaint states a legally sufficient claim. Accordingly, the Complaint is legally insufficient on its face and dismissal is warranted for failure to comply with Rule 1.130(a).

**B. PLAINTIFF’S COMPLAINT DOES NOT STATE A VIABLE CAUSE OF ACTION UNDER THE ACT AND SHOULD BE DISMISSED**

**1. Florida’s Public Sector Whistle-Blower Act (PWA)**

The Whistle-blower’s Act was enacted to prevent agencies or independent contractors from taking retaliatory action against:

an employee who reports to an appropriate agency violations of law on the part of a public employer . . . that create a substantial and specific danger to the public’s health, safety, or welfare [and] . . . any person who discloses information to an appropriate agency alleging improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer, or employee.

§ 112.3187(2), Fla. Stat.; *see State, Dep’t of Transp. v. Fla. Comm’n on Human Rels.*, 842 So. 2d 253, 256 (Fla. 1st DCA 2003) (“The legislative intent . . . is to prevent retaliatory action against employees who disclose misconduct on the part of public officials.”).

The Act protects the disclosure of:

- (a) Any violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency . . . which creates and presents a substantial and specific danger to the public’s health, safety, or welfare.
- (b) Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds . . . or gross neglect of duty committed by an employee or agent of an agency. . . .

§ 112.3187(5), Fla. Stat.; *see Shaw v. Town of Lake Clarke Shores*, 174 So. 3d 444, 446 (Fla. 4th DCA 2015) (concluding an officer did not state a sufficient claim, based upon a request to participate in an investigation, where the complaint did not allege what was disclosed during the investigation and thus “failed to sufficiently allege that he engaged in a protected activity”).

The Act defines “gross mismanagement” as “a continuous pattern of managerial abuses, wrongful or arbitrary and capricious actions, or fraudulent or criminal conduct which may have a substantial adverse economic impact.” § 112.3187(3)(d), Fla. Stat. Courts have defined “malfeasance” as “the performance of a completely illegal or wrongful act by” a public official. *Burton v. Oates*, 362 So. 3d 311, 315 (Fla. 5th DCA 2023) (citation and internal quotation marks omitted). And, courts have defined “misfeasance” as “the performance, in an official capacity, of a legal act in an improper or illegal manner.” *Gibson v. Kesterson*, 188 So. 3d 125, 128 (Fla. 1st DCA 2016) (citation and internal quotation marks omitted). To establish a *prima facie* case under the Act, one must show: a protected disclosure; an adverse employment action; and some causal connection exists between the first two elements. *State, Dep’t of Transp.*, 842 So. 2d at 256; *Batz*, 794 F. App’x at 902. *Pickford v. Taylor Cnty. Sch. Dist.*, 298 So. 3d 707, 711 (Fla. 1st DCA 2020) (“Pickford had to establish he made a protected disclosure before his termination.”) (citation omitted).

## **2. Plaintiff’s Alleged Disclosures Do Not Satisfy PWA Statutory Requirements**

The Whistle-Blower’s Act was enacted to prevent retaliatory action against employees who report violations of law by a public employer that create a substantial and specific danger to the public’s health, safety, or welfare, or who disclose improper use of governmental office, gross waste of funds, or other abuse or gross neglect of duty. §112.3187(2), Fla. Stat. As the First District has explained, the legislative intent of the Act is narrow: it is designed to protect employees who disclose misconduct by public officials,

not employees who merely raise internal disagreements or operational concerns. *State, Dep't of Transp. v. Fla. Comm'n on Human Rels.*, 842 So. 2d 253, 256 (Fla. 1st DCA 2003).

Plaintiff's allegations do not satisfy the statutory requirements of the PWA. There is nothing in Plaintiff's Complaint that might be construed as revealing violations of any laws, rules, or regulations, or acts or suspected acts of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty. Plaintiff's allegations concern internal personnel matters, employee discipline, and disagreements over supervisory decisions. Plaintiff's allegations do not describe gross mismanagement, malfeasance, misfeasance, or gross waste of funds under §112.3187(5)(b). Plaintiff's factual assertions describe routine workplace disputes, personnel decisions, and disagreements about operational matters. He alleges "operational misconduct," "policy violations," and "insubordination" by employees (Compl. ¶¶11, 21). These are internal employment issues, not violations of law or gross mismanagement as defined by §112.3187(5). These allegations do not describe a continuous pattern of managerial abuses with substantial economic impact, nor do they describe illegal or wrongful acts by public officials. They are ordinary employment grievances, which the Whistle-Blower's Act does not cover. The statute requires more than workplace disagreements or dissatisfaction with how discipline is handled. Plaintiff does not identify any law, rule, or regulation allegedly violated. His allegations are insufficient as a matter of law to constitute a protected disclosure.

Moreover, Plaintiff's claims are not supported by nor premised upon a protected disclosure, and does not implicate—i.e., “blow the whistle” on—any substantial and specific danger to the public's health, safety, or welfare, or any act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty, or anything that was otherwise secret or private, and would not have seen the light of day but for his actions. Although Plaintiff asserts that he sent emails to City Manager, he does not identify the specific laws allegedly violated or how the alleged conduct created a substantial and specific danger to public health or safety. Therefore, Plaintiff's claims do not satisfy the statutory requirements of the PWA and should be dismissed as a matter of law.

**3. Plaintiff Has Not Alleged A Signed Complaint, As Required By The PWA**

The Whistle-blower's Act expressly protects only those employees “who disclose information on their own initiative in a **written and signed complaint.**” §112.3187(7), Fla. Stat. (emphasis added). These requirements are not optional – they are a statutory prerequisite to establishing protected activity.

As discussed above, Plaintiff has not presented any written document which supports his allegations. Plaintiff has not presented any “signed” document to support his allegations. Florida courts have repeatedly emphasized that a disclosure is not protected unless it is both **written and signed** by the complainant. Courts have consistently enforced this requirement. In *Wheeler v. City of Fort Lauderdale*, 367 So. 3d 525, 528 (Fla. 4th DCA 2023), the Fourth District held that merely providing documents or materials that

might relate to a potential disclosure is insufficient unless the complainant also provides a written explanation bearing their signature. See also *Shaw v. Town of Lake Clarke Shores*, 174 So. 3d 444, 446 (Fla. 4th DCA 2015)(an unsigned letter “precludes that letter from being a protected disclosure.” Similarly, in *Henley v. City of North Miami*, 329 So. 3d 791, 795 (Fla. 3d DCA 2021), the Third District reaffirmed that the disclosure “must be in the form of a signed writing,” and that failure to satisfy this requirement defeats the claim. Finally, the Eleventh Circuit in *Batz v. City of Sebring* 794 F. App’x 889, 902 (11th Cir. 2019) held that an email lacking a signature did not constitute a “written and signed complaint” and therefore was not protected activity under the Act. (“Because Batz’s August 2015 email did not constitute ‘a written and signed complaint’ under the [Whistleblower’s Act], it was not statutorily protected expression, and he cannot establish a prima facie case for retaliation under the [Act] as to any statements made in that email.” (citation omitted).

Plaintiff’s Complaint does not allege that he submitted any **signed** written complaint. Although he asserts that he sent emails, he does not allege that any of these writings were signed by him and he failed to attach any written documentation which would support his allegations, as discussed above. Nowhere does Plaintiff allege that any of these writings were **signed**, as mandated by the PWA. This omission is fatal. The statute requires a “written and signed complaint,” and courts must give effect to that requirement. *Palm Beach Cnty. Canvassing Bd. v. Harris*, 772 So. 2d 1273, 1286 (Fla. 2000) (courts must construe statutes to give effect to all provisions and avoid rendering any part meaningless). Accepting Plaintiff’s allegations as sufficient would effectively read the

signature requirement out of the statute, contrary to established principles of statutory construction.

**4. Plaintiff Did Not Disclose Information “On His Own Initiative” Pursuant To The PWA**

Even if Plaintiff had attached written and signed documents to his lawsuit—which he did not—his claim still fails because the Whistle-blower’s Act protects only those disclosures made “on [the employee’s] own initiative.” § 112.3187(7), Fla. Stat. The statute does not protect disclosures made as part of an employee’s assigned responsibilities, routine job functions, or internal duties. The Act is designed to protect employees who step outside their ordinary roles to report misconduct, not employees who simply perform the tasks they were hired to perform. The PWA protects whistleblowing, not job performance. A disclosure is protected only when the employee voluntarily brings forward information that was previously unknown or secret. As the federal court explained in *Vickaryous v. Mason Classical Academy*, a disclosure requires “making something known or public that was previously secret or private.” 2022 WL 8216876, at \*9 (M.D. Fla. Aug. 22, 2022). Routine internal communications, operational reports, or performance of assigned duties do not constitute disclosures under the Act. Because Plaintiff’s alleged communications were made in the course of performing his assigned responsibilities, they do not constitute protected disclosures under §112.3187(7). The statute protects employees who independently choose to report misconduct—not employees who simply carry out their job functions. Accepting Plaintiff’s theory would transform every internal report into a whistle-blower disclosure.

Plaintiff alleges that beginning in May 2025 he raised concerns internally by reporting alleged misconduct within the Lift Station Department to his direct supervisor, Bill Freeman, on May 13, 2025, and later elevating those same concerns to Human Resources on June 27, 2025 (Compl. ¶11). After the Lift Station Department was removed from his supervision on August 4, 2025, Plaintiff contends that he “continued to raise concerns regarding the misconduct and lack of corrective action to the City Manager and then to the City Commission.” He pleads that he “reached out directly to City Manager Dale (Martin) on August 5, 2025, and sent a follow-up email, and another follow-up email on August 18, 2025, and another on September 8, 2025, this time copying all five City Commissioners” (Compl. ¶15). Plaintiff further alleges that on or about September 10, 2025, the City Manager criticized him for including the City Commission, calling it “very unprofessional” (Compl. ¶16). These allegations show a progression of internal communications—first to his supervisor, then to HR, and only later to the City Manager and Commissioners—but all concern the same internal personnel issues and disciplinary disputes that Plaintiff had already reported through ordinary supervisory channels. Even taking these allegations as true, the emails still do not qualify as protected disclosures under §112.3187(7) because, on the face of the Complaint, they were sent in the context of Plaintiff’s ongoing dispute over how his supervisory concerns and disciplinary recommendations were being handled—not as independent, whistleblower-type disclosures of secret or unknown wrongdoing.

First, the content and purpose of the emails to the City Manager,<sup>2</sup> as described by Plaintiff, are a continuation of the same internal supervisory issues he had already raised through the chain of command. Plaintiff alleges that beginning in May 2025 he identified misconduct in the Lift Station Department and reported it to his supervisor (Freeman) and HR (Compl. ¶11), conducted an internal investigation at HR’s direction (Compl. ¶12), and issued discipline with supervisory approval (Compl. ¶13). The August 5, August 18, and September 8 emails to the City Manager are pleaded as further efforts to press those same concerns and to challenge the City’s handling of discipline and his removal from supervision (Compl. ¶¶ 14–15, 22, 26). That is, they are part of the same internal management dispute, not a new, voluntary disclosure of previously unknown misconduct.

Second, nothing in the Complaint suggests that these emails revealed information that was “previously secret or private” within the meaning of *Vickaryous v. Mason Classical Academy*, 2022 WL 8216876, at \*9 (M.D. Fla. Aug. 22, 2022). By Plaintiff’s own account, his Mr. Freeman and HR were already aware of the underlying issues: Plaintiff had reported them internally, HR had directed an investigation, and his supervisor

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<sup>2</sup> Plaintiff’s allegations also show that his early complaints were not made to an “appropriate local official” as required by §112.3187(6), because his disclosures were directed solely to his immediate supervisor, Bill Freeman, and HR in the ordinary course of their supervisory relationship. Plaintiff alleges that he first reported the alleged misconduct within the Lift Station Department to Freeman and HR on May 13, 2025, and that Freeman approved his disciplinary actions and internal investigation steps. These allegations demonstrate that Plaintiff was reporting routine personnel and operational issues to the very supervisor responsible for overseeing his work, not making a whistleblower disclosure to an official with independent authority to investigate violations of law. Internal complaints to a direct supervisor about workplace conduct do not satisfy the statutory requirement of disclosure to an “appropriate local official.” Plaintiff does not allege that Freeman had any statutory enforcement authority, nor that he was outside Plaintiff’s chain of command. As pleaded, these internal complaints to Mr. Freeman cannot constitute protected disclosures under §112.3187(6). As such, the only “complaints” which can reasonably be plead as made to the “appropriate local official” are the emails to the City Manager and City Commission.

had approved discipline (Compl. ¶¶ 11–13, 15, 20–21). The emails therefore did not “make something known” that was not already known to the City; they merely reiterated and escalated existing internal complaints. Under *Vickaryous*, such routine internal communications and follow-up complaints do not constitute “disclosures” for whistleblower purposes.

Third, the Complaint shows that Plaintiff’s communications to the City Manager were still tied to his role and responsibilities as Facilities Director and former supervisor of the Lift Station Department. He frames his emails as part of his “efforts to enforce policy” and “ensure accountability, compliance, and transparency within city operations” (Compl. ¶22), which are exactly the types of functions he was hired to perform. That is job performance, not whistleblowing. Section 112.3187(7) protects disclosures made “on [the employee’s] own initiative,” not communications that are a natural extension of the employee’s assigned managerial duties or ongoing internal dispute about how those duties were treated.

Finally, the fact that Plaintiff copied the City Commissioners on the September 8 email (Compl. ¶15) does not convert the communication into a protected disclosure. The Complaint does not allege that he went outside the organization, contacted an external enforcement body, or revealed any new statutory violation. He simply broadened the internal audience for the same personnel-related complaints, which the City Manager then criticized as “very unprofessional” (Compl. ¶16). Expanding the distribution list of an internal grievance does not transform routine job-related communications into whistleblower disclosures under the Act.

In short, the Complaint alleges only internal, job-related communications about personnel and operational issues that were already known to management. Under §112.3187(7) and *Vickaryous*, those emails are not protected disclosures made on Plaintiff's "own initiative," and they cannot support a whistleblower claim as a matter of law. Accordingly, Plaintiff has not alleged that he disclosed anything "on his own initiative," as opposed to performing his job duties, and his claim fails as a matter of law.

**C. PLAINTIFF'S ALLEGATIONS DEMONSTRATE LEGITIMATE, NON-RETALIATORY REASONS FOR TERMINATION**

Because Florida applies the Title VII analysis to retaliatory discharge under the Whistleblower Act, the burden shifting analysis applies. *Rustowicz v. N. Broward Hosp. Dist.*, 174 So. 3d 414, 419 (Fla. 4th DCA 2015); *Griffin v. Deloach*, 259 So. 3d 929, 931 (Fla. 5th DCA 2018), reh'g denied (Dec. 20, 2018); *Rice-Lamar v. City of Fort Lauderdale*, 853 So. 2d 1125, 1132 (Fla. 4th DCA 2003) ("To establish a prima facie claim under Florida's Whistleblower statute, the requisite elements set forth under a Title VII retaliation claim are applied...). Specifically, "the burden-shifting framework established in *McDonnell Douglas* applies to claims under the Whistle-blower's Act." *Griffin*, 259 So. 3d at 931 (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973)); *Rustowicz*, 174 So. 3d at 419.

Florida courts recognize that legitimate, non-retaliatory reasons, such as violations of workplace policies (e.g., chain of command violations) or misconduct can serve as valid defenses in whistleblower retaliation claims. Florida courts have consistently upheld this principle. For example, in *Griffin v. Deloach*, 259 So. 3d 929 (2018), the court affirmed

summary judgment in favor of the employer where the employer demonstrated a legitimate, non-retaliatory reason for termination, specifically employment-related misconduct. The plaintiff failed to provide evidence that the employer's stated reasons were pretextual or false.

Plaintiff's own allegations further undermine his Whistle-blower claim because he affirmatively admits that he violated the chain of command, which is the very reason the City stated for his termination. Plaintiff alleges that on September 8, 2025, he copied all five City Commissioners on an internal personnel dispute involving disciplinary matters within the Lift Station Department. (Compl. ¶15). He further alleges that on September 10, 2025, the City Manager criticized him for this conduct and expressly told him that including the Commission was "very unprofessional." (Compl. ¶16). These allegations constitute an admission that Plaintiff bypassed established reporting channels and escalated internal personnel matters outside the supervisory structure.

This admission directly supports the City's stated reason for termination—failure to follow the chain of command and insubordination. (Compl. ¶18). Under *Griffin*, when an employer articulates a legitimate, non-retaliatory reason for termination, the burden shifts to the employee to allege facts showing that the reason is false or pretextual. In *Griffin*, the plaintiff failed to rebut the employer's explanation of misconduct, and the court affirmed judgment for the employer. The same result follows here. Plaintiff's own pleading confirms the accuracy of the City's explanation. He admits the conduct that the City identified as insubordination. Plaintiff's allegations reflect nothing more than disagreement with how the City handled discipline and departmental oversight. His decision to escalate internal

personnel issues to the City Commission—after being removed from supervisory authority—was a management concern occurring before his alleged protective activity and wholly independent of any alleged whistleblower activity. Because Plaintiff admits that he engaged in the conduct the City identified as insubordination and a violation of the chain of command (Compl. ¶15), his own allegations corroborate the legitimacy of the City’s stated reasons for termination and undermine any inference of retaliation. Therefore, Plaintiff’s PWA should be dismissed.

**D. PLAINTIFF’S ALLEGATIONS OF PRETEXT ARE CONCLUSORY AND INSUFFICIENT TO STATE A CLAIM**

Plaintiff’s attempt to plead pretext falls far short of the standards required under Florida law. Under *Barrett v. City of Margate*, 743 So. 2d 1160 (Fla. 4th DCA 1999), a plaintiff must allege ultimate facts, not opinions, theories, or legal conclusions. The Complaint must contain factual assertions capable of being proven with evidence, stated in short and plain language. Plaintiff’s pretext paragraph does not meet this standard. He asserts that the City’s stated reasons for termination—failure to follow chain of command and insubordination—were “pretextual” because he received an “exceeding expectations” evaluation and because his supervisory responsibilities were removed after he recommended discipline. These assertions are not factual allegations of pretext; they are merely Plaintiff’s subjective disagreement with management decisions.

Even assuming Plaintiff could establish a *prima facie* case under the PWA, he has not shown that Defendant's cited reasons for his termination were pretextual. Pretext means "making up or lying about the underlying facts that formed the predicate for the

employment decision or the employer is egregiously wrong in its factual findings,” *Griffin*, 259 So. 3d at 932 (quoting *Burley v. Nat'l Passenger Rail Corp.*, 801 F.3d 290, 296 (D.C. Cir. 2015)). A court is not a “super-personnel department' assessing the prudence of routine employment decisions, no matter how medieval, high handed or mistaken. Put frankly, employers are free to fire their employees for a good reason, a bad reason, a reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason.” *Bonini v. Fla. Dep't of Corr.*, 2019 WL 5112257, at \*8 (M.D. Fla. Aug. 2, 2019) (quoting *Flowers v. Troup County, Georgia School District*, 803 F.3d 1327, 1338 (11th Cir. 2015)).

The Complaint contains no facts showing that the City’s stated reasons were false, inconsistent, or fabricated. To the contrary, Plaintiff’s own allegations confirm the legitimacy of the City’s explanation. He admits that he bypassed the chain of command by copying all five City Commissioners on an internal personnel matter and that the City Manager told him this conduct was “very unprofessional.” (Compl. ¶15-16). He further admits that the City expressly cited “failure to follow chain of command and insubordination” as the basis for termination. (Compl. ¶18). These admissions corroborate, rather than undermine, the City’s stated rationale.

Plaintiff’s reliance on his favorable performance evaluation does not establish pretext. A positive evaluation does not negate misconduct occurring afterward, nor does it show that the employer’s stated reasons are false. Plaintiff alleges no facts showing that the evaluation was inconsistent with his later conduct, that the City fabricated the reasons for termination, or that similarly situated employees were treated differently. Instead, he

offers only the conclusory assertion that the timing “raises concerns,” which is precisely the type of speculative argument *Barrett* prohibits.

Further, Plaintiff’s reliance on temporal proximity does not establish pretext because the chronology alleged in the Complaint directly contradicts his theory of retaliation. Plaintiff claims that the removal of his supervisory authority on August 4, 2025, and his termination on September 26, 2025, occurred in “close temporal proximity” to his alleged protected disclosures. But the Complaint shows that the first adverse action occurred **before** any alleged protected activity. Plaintiff alleges that at 7:53 a.m. on August 4, 2025, he received an email from Mr. Freeman informing him that the Lift Station crew “will no longer be under him” and would instead report to another supervisor (Compl. ¶14). He then alleges that he contacted the City Manager on August 5, 2025, and again on August 18 and September 8, 2025 (Compl. ¶15). Because the removal of supervisory authority preceded the alleged protected disclosures, it cannot, as a matter of law, be retaliatory. Florida courts consistently hold that temporal proximity cannot establish causation or pretext when the employer’s action predates the protected activity. See *Washington v. Fla. Dep’t of Rev.*, 337 So. 3d 502, 511 (Fla. 1st DCA 2022); *Walker v. Fla. Dep’t of Veterans’ Affairs*, 925 So. 2d 1149, 1150 (Fla. 4th DCA 2006).

The same flaw undermines Plaintiff’s attempt to show pretext regarding his termination. Plaintiff admits that the City terminated him for “failure to follow chain of command and insubordination” (Compl. ¶18), and he further admits that on September 8, 2025, he copied all five City Commissioners on an internal personnel matter—conduct the City Manager immediately criticized as “very unprofessional” (Compl. ¶16). This

admission directly supports the City's stated reason for termination. An employee's disagreement with management's expectations does not establish pretext, and Plaintiff alleges no facts suggesting that the City's explanation was false, inconsistent, or fabricated.

Temporal proximity cannot overcome Plaintiff's own admissions. Courts repeatedly hold that temporal proximity alone is insufficient to establish pretext, particularly where the plaintiff's allegations corroborate the employer's stated reasons. See *Sierminski v. Transouth Fin. Corp.*, 216 F.3d 945, 951 (11th Cir. 2000). Plaintiff alleges no facts showing that the City "made up or lied about the underlying facts" or that its stated reasons were implausible or egregiously wrong. Instead, the Complaint confirms that the City acted for the reasons it stated: Plaintiff violated the chain of command, and the City responded accordingly. As pleaded, the timeline defeats any inference of retaliatory motive and forecloses a finding of pretext under established Florida law. Accordingly, Plaintiff's pretext theory fails as a matter of law.

**E. PLAINTIFF'S REQUESTS FOR INJUNCTIVE RELIEF, EMOTIONAL DISTRESS AND REPUTATIONAL HARM SEEKS RELIEF THAT IS UNAVAILABLE UNDER THE ACT, AND SHOULD BE DISMISSED**

The PWA specifically states the relief available as follows:

- (9) RELIEF.—In any action brought under this section, the relief must include the following:
  - (a) Reinstatement of the employee to the same position held before the adverse action was commenced, or to an equivalent position or reasonable front pay as alternative relief.
  - (b) Reinstatement of the employee's full fringe benefits and seniority rights, as appropriate.
  - (c) Compensation, if appropriate, for lost wages, benefits, or other lost remuneration caused by the adverse action.

- (d) Payment of reasonable costs, including attorney's fees, to a substantially prevailing employee, or to the prevailing employer if the employee filed a frivolous action in bad faith.
- (e) Issuance of an injunction, if appropriate, by a court of competent jurisdiction.
- (f) Temporary reinstatement to the employee's former position or to an equivalent position, pending the final outcome on the complaint, if an employee complains of being discharged in retaliation for a protected disclosure and if a court of competent jurisdiction or the Florida Commission on Human Relations, as applicable under s. 112.31895, determines that the disclosure was not made in bad faith or for a wrongful purpose or occurred after an agency's initiation of a personnel action against the employee which includes documentation of the employee's violation of a disciplinary standard or performance deficiency. This paragraph does not apply to an employee of a municipality.

*See* §112.3187(9), Fla. Stat.

**1. The Injunctive Relief Sought By Plaintiff Is Not Available Pursuant To The PWA And Should Be Dismissed**

Plaintiff seeks various forms of relief, including injunctive relief. Plaintiff seeks “Injunctive relief requiring Defendant to expunge any references to alleged insubordination or chain-of-command violations tied to Plaintiff's protected disclosures and to implement training and compliance measures.” (Compl. p. 5).

“Injunctions are classified as prohibitory or mandatory in their effect and as temporary or permanent in their duration.” *Grant v. GHG014, LLC*, 65 So. 3d 1066, 1067 (Fla. 1st DCA 2010) (citing Henry P. Trawick, Jr., *Trawick's Fla. Practice & Proc.* § 28.1 (2010 ed.)). A “mandatory injunction is proper where a clear legal right has been violated, irreparable harm has been threatened, and there is a lack of an adequate remedy at law.” *Legakis v. Loumpos*, 40 So. 3d 901, 903 (Fla. 2d DCA 2010) (citations omitted). “Mandatory injunctions, which compel an affirmative action by the party enjoined, are

looked upon with disfavor, and the courts are even more reluctant to issue them than prohibitory ones.” *Grant*, at 1067. “[M]andatory injunctions are disfavored” as courts are “reluctan[t] to undertake responsibility for supervising future performance.” *Legakis*, at 903 (citations omitted).

There is limited authority which construes section 112.3187(9)(e)’s “[i]ssuance of an injunction” provision. Courts have observed the obvious—the statute differentiates between the remedies of injunctive relief, and temporary reinstatement. *See Marchetti v. Sch. Bd. of Broward Cnty.*, 117 So. 3d 811, 813 (Fla. 4th DCA 2013). And, courts have confirmed the requirements of Florida Rule of Civil Procedure 1.610 apply to injunctions under the Act. *See Broward Cnty. v. Meiklejohn*, 936 So. 2d 742, 746-47 (Fla. 4th DCA 2006); *City of Miami v. Coll*, 546 So. 2d 775, 775-76 (Fla. 3d DCA 1989). But there is no precedent for the manner of injunctive relief Plaintiff appears to seek— that is, some form of ongoing, judicial supervision regarding the Flagler Beach’s employment actions. While the statute, by its plain terms, contemplates the “[i]ssuance of an injunction, if appropriate,” such provision has not been extended to provide that a Court might install itself as some form of roving special master to supervise and direct the ongoing employer/employee relationship. Such judicial supervision, here, would be particularly problematic as Flagler Beach is a governmental entity, and any ongoing, judicial supervision and/or direction would implicate separation of powers concerns. *See Corcoran v. Geffin*, 250 So. 3d 779, 784 (Fla. 1st DCA 2018) (“Courts cannot interfere with the process of another branch of government to perform its constitutional duties. Because it would prohibit the performance of a solemn constitutional duty, the proposed injunction would be illegal. The circuit court

is therefore prohibited from granting the injunctive relief requested by the respondents.”); *Detournay v. City of Coral Gables*, 127 So. 3d 869, 874 (Fla. 3d DCA 2013) (“While the cases we rely on arose in torts, mandamus and criminal law, the governing principles apply equally well to injunctions and declaratory actions. Separation of powers is a constitutional doctrine that extends across all procedural vehicles that might be used to challenge executive action. It would be a hollow idea if it applied only to some procedures and not others.”).

Plaintiff’s Complaint does not allege any of the elements required for injunctive relief. He does not allege a clear legal right to the relief sought, nor does he allege irreparable harm. His allegations concern termination of employment and alleged retaliation—harms that are compensable through monetary damages, front pay, back pay, and other remedies expressly provided by the statute. Because an adequate remedy at law exists, injunctive relief is categorically unavailable.

More fundamentally, Plaintiff appears to seek a form of ongoing judicial oversight of Defendant’s employment practices. His allegations request broad, undefined equitable relief that would require the Court to monitor Defendant’s operations, personnel decisions, and compliance practices. There is no precedent extending §112.3187(9)(e) to authorize such intrusive, continuing supervision. Florida courts have consistently rejected attempts to use injunctive relief to insert the judiciary into the day-to-day operations of governmental entities, as doing so would violate the separation of powers.

Plaintiff’s Complaint contains no factual allegations that would justify the extraordinary remedy of injunctive relief, nor does the Whistle-blower’s Act authorize the

type of ongoing judicial supervision he implicitly requests, including implementing “training and compliance measures.” Because Plaintiff has an adequate remedy at law and because the relief sought would impermissibly entangle the judiciary in executive functions, his request for injunctive relief must be dismissed as a matter of law.

## **2. Emotional Distress Damages Are Not Recoverable Pursuant To The PWA And Should Be Dismissed**

Plaintiff claimed emotional distress damages are legally unrecoverable under PWA and should be dismissed. He requests emotional distress damages, humiliation, embarrassment, and damages for pain and suffering. (Compl. P. 5). The statute provides only limited, equitable relief—reinstatement, back pay, and recovery of lost benefits—and does not authorize compensatory damages for emotional distress or reputational harm. §112.3187(9)(c), Fla. Stat.

A Florida appeals court recently ruled in March 2026 that an alleged whistleblower fired from the Miami-Dade County medical examiner's office, cannot collect noneconomic damages from the county because it is a sovereign entity. *Mia.-Dade Cnty. v. Garavan*, 2026 Fla. App. LEXIS 2255, 2026 WL 817301 (3<sup>rd</sup> DCA 2026). The appellate court reversed the award for non-economic damages. The court held that sovereign immunity precludes the recovery of non-economic damages unless there is a clear, express, and unequivocal legislative waiver. Sovereign immunity protects governmental entities from liability unless the Legislature explicitly waives this immunity. The court emphasized that any waiver of sovereign immunity must be strictly construed and cannot be inferred or implied. The court further noted that when the Legislature intends to authorize non-

economic damages, it does so explicitly. The absence of such language in the PWA indicates that the Legislature did not intend to waive sovereign immunity for non-economic damages under this statute.

Further, in *Dep't of Children & Families v. Richard Herstein*, 307 So. 3d 999 (Fla. 1st DCA 2020), the First District squarely held that non-economic damages are not available under the PWA. The court reversed an award of compensatory damages for emotional distress, explaining that the statute's remedial purpose is limited to restoring the employee's economic position—not to compensating for intangible injuries. The court reasoned that because the legislature has expressly waived sovereign immunity for certain types of claims, courts may not imply a waiver for non-economic losses absent clear statutory language.

As in *Garavan* and *Herstein*, Plaintiff seeks “emotional distress and reputational harm” damages, which are expressly barred as a matter of law. The PWA's remedial provisions do not include general tort recovery, and sovereign immunity precludes such relief against a municipality. See also *State of Fla., Agency for Persons with Disabilities v. Toal*, 406 So. 3d 978 (Fla. 1st DCA 2025) (reaffirming *Herstein*); *Broward Cnty. v. Meiklejohn*, 936 So. 2d 742 (Fla. 4th DCA 2006). Therefore, Plaintiff's claims for emotional distress damages and reputational harm must be dismissed with prejudice.

## **V. CONCLUSION**

For the reasons discussed, the Flagler Beach respectfully submits Plaintiff's Complaint fails to state a Whistle-blower's Act cause of action and should be dismissed as a matter of law.

Respectfully submitted this 18th day of May, 2026.

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**CERTIFICATE OF CONFERRAL**

I certify that conferral prior to filing is not required under rule 1.202.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via the Florida e-filing portal this 18<sup>th</sup> day of May, 2026, to: Anthony F. Sabatine, Esquire, Sabatini Law Firm, P.A., 1601 E. 1st Avenue, Mount Dora, FL 32757 at: anthony@sabatinilegal.com.

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