

LEGISTAR NO.

130652

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

EVELYN WELCOME,

Plaintiff

CASE NO.: 2012 CA 3445

vs.

DIVISION: CIRCUIT CIVIL

JAMES N. MCCOLLUM,

Defendant.

MOTION FOR LEAVE TO AMEND COMPLAINT
TO ADD CITY OF GAINESVILLE AND OTHER ISSUES

COMES NOW Plaintiff, EVELYN WELCOME (hereinafter, "WELCOME"), by and through her undersigned attorneys, hereby files this her Motion for Leave to Amend Complaint to add City of Gainesville hereinafter ("City") and other issues and as grounds alleges:

1. Florida Rule of Civil Procedure 1.190(e) states that "[a]t any time in furtherance of justice, upon such terms as may be just, the court may permit any process, proceeding, pleading, or record to be amended or material supplemental matter to be set forth in an amended or supplemental pleading."

2. Further, "[t]he public policy of Florida is to freely allow amendment of pleadings." Carter v. Ferrell, 666 So.2d 556, 557 (Fla. 2nd DCA 1995).

3. In ruling on a motion for leave to amend, "all doubts should be resolved in favor of allowing an amendment, and the refusal to do so generally constitutes an abuse of discretion unless it clearly appears that allowing the amendment would prejudice the opposing party, the

privilege to amend has been abused, or amendment would be futile.” Cason v. Fla. Parole Comm’n, 819 So.2d 1012, 1013 (Fla. 1st DCA 2002).

4. The City will not be prejudiced by this Motion for Leave to Amend Complaint since Notice to the City of Gainesville was sent pursuant to Florida Statutes 768.28 on or about January 23, 2012. See Exhibit A.

5. The City will also not be prejudiced by this Motion for Leave to Amend Complaint since the City of Gainesville through the City of Gainesville’s Police Department, hereinafter “GPD” pursuant to its General Order 61.7 has been put on notice since this matter before the court is an auto accident involving an employee of GPD in a City owned patrol car. The aforementioned General Order 61.7 also requires the GPD to thoroughly investigate the aforementioned auto accident. See Composite Exhibit B.

6. Amending the complaint would be neither abusive nor futile. It is undisputed fact that the City owned and maintained the Ford patrol car involved in the auto accident that gives rise to this matter before the court. Further, it is undisputed fact that GPD made decisions as it relates to patrol car assignments, indemnity and other relevant patrol car policy decisions.

7. Sufficient facts exist to support adding the City as a Defendant in this action and Plaintiff has sufficiently pled the elements and ultimate facts relevant to this cause of action.

8. Defendant McCollum, through counsel, does not object to Plaintiff’s Motion for Leave to Amend the Complaint and would agree to amend the Complaint to add the City as a Defendant. Moreover, Plaintiff’s Motion for Leave to Amend is submitted with the awareness that “liberality typically associated with amendments to pleadings diminishes as the case progresses.” Levine v. United Companies Life Ins. Co., 659 So.2d 265, 266-67 (Fla. 1995).

9. The trial date has been set in this case for March 3, 2014. This Motion is being filed with sufficient time before trial. A motion for leave to amend should be denied only when offered shortly before or during a scheduled trial. (It was an abuse of discretion to deny plaintiff's motion for leave to amend complaint approximately two months before trial). Newman v. State Farm Mut. Auto. Ins. Co., 858 So. 2d 1205, 1206 (Fla. 4th DCA 2003). The proposed First Amended Complaint is attached hereto as Composite Exhibit C.

WHEREFORE, Plaintiff respectfully moves this Honorable Court to grant this Motion for Leave to File her First Amended Complaint.

Respectfully submitted this 26th day of December, 2013.

THE CHESTNUT FIRM, LLC
Attorneys for Plaintiff
303 Peachtree Street, NE, Suite 4150
Atlanta, GA 30308
Telephone: (888) 374-4448
Facsimile: (352) 377-2667

By: S/ Deveron L. Brown
DEVERON L. BROWN
Florida Bar No. 00541362
E-mail: Dbrown@chestnutfirm.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been electronically filed with the Clerk of the Courts by using ECF system which will send a notice of electronic filing to the parties listed below on this 26th day of December, 2013. I further certify that upon notification from the Clerk of the Court a copy foregoing will be forwarded via email if a party is a non-ECF.

D. ANDREW VLOEDMAN, ESQUIRE
rick.mitchell@gray-robinson.com (Primary);
jacque.denton@gray-robinson.com (Secondary),
PERRY, VLOEDMAN & BRADY, P.A.
2790 NW 43rd Street, Suite 200
Gainesville, Florida 32606
Attorneys for Defendant-McCollum

/S/ Deveron L. Brown
DEVERON L. BROWN
Florida Bar No. 00541362

Exhibit A

FORMAL NOTICE

FLA. STAT. 768.28



THE CHESTNUT LAW FIRM

CHARLOTTE • GAINESVILLE • JACKSONVILLE • MIAMI

Christopher Chestnut, Esq.
Danielle A. Cohen, Esq.
Heather F. Harmer, Esq.

CERTIFIED MAIL/RETURN RECEIPT REQUESTED
7011 1570 0001 0318 2746/2937/2753/3255

January 18, 2012

Ph: 888.374.4448
Fax: 352.377.2667
wecare@chestnutfirm.com

Mailing Address:
5080 Newberry Rd., Suite 2A
Gainesville, FL 32607

Jacksonville Aetna Center
841 Prudential Drive
12th Floor
Jacksonville, FL 32207

1000 5th Street, Suite 200
Miami, FL 33139

Kevin M. McCarty, Insurance Commissioner
Department of Financial Services
Division of Risk Management
200 East Gaines Street
Tallahassee, FL 32399

Craig Lowe, Mayor
City of Gainesville
200 E. University Ave.
Gainesville, FL 32601

Gainesville Police Department
413 NW 8th Avenue
P. O. Box 1250
Gainesville, FL 32627

Marion Radson, City Attorney
City of Gainesville
200 E. Univ. Ave., #425
Gainesville, FL 32601

NOTICE OF CLAIM

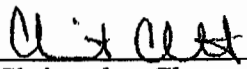
On behalf of Evelyn Welcome pursuant to Florida Statutes §768.28(6) and Gainesville Ordinance Chp.112, we hereby serve this written notice of claim based upon the following allegations:

- 1) Name and address of the Claimant: Evelyn Welcome, P. O. Box 384, Alachua, FL 32616.
- 2) Date, time and place of incident: March 12, 2010, US Highway 441, 1000ft south in the intersection of HWY 441 and NW 89th Street, Alachua County, FL.
- 3) Description of the injury and damage: On or about said date, Ms. Welcome, a resident of Alachua, Florida incurred significant personal injuries including, but not limited to, cervicobrachial syndrome, cervical myofascitis, lumbar HNP, disc displacement with myelopathy, lumbar radiculopathy, and shoulder pain.
- 4) Name of agents or employees of City or independent agency involved: City of Gainesville and Gainesville Police Department
- 5) Statement of relief sought: All damages as allowable by law.

- 6) There exist no prior adjudicated claims in excess of Two Hundred Dollars.
- 7) Date and place of birth of Claimant: July 3, 1931, Alachua, Alachua County.
- 8) Social Security Number of Claimant [REDACTED]

I trust this claim can be resolved within the statutory time period. If you believe this notice of claim is defective in any way please notify us immediately.

Sincerely,
The Chestnut Firm, LLC



Christopher Chestnut
Attorney for Evelyn Welcome

Composite Exhibit B
PROPOSED AMENDED
COMPLAINT

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

EVELYN WELCOME,

Plaintiff,

CASE NO.: 2012 CA 3445

vs.

DIVISION: CIRCUIT CIVIL

**CITY OF GAINESVILLE,
AND JAMES N. MCCOLLUM,**

Defendants.

PROPOSED FIRST AMENDED COMPLAINT

COMES NOW Plaintiff, EVELYN WELCOME (hereinafter, "WELCOME"), by and through her undersigned attorney(s) and hereby files her First Amended Complaint and as grounds alleges the following:

1. This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000.00), exclusive of attorneys' fees, costs and interest.
2. At all times material hereto, Plaintiff, WELCOME, was and is a resident of Alachua County, Florida.
3. At all times material hereto, Defendant CITY OF GAINESVILLE hereinafter "CITY," is a Florida subdivision and municipality, was and is located within Alachua County, Florida.
4. At all times material hereto, GAINESVILLE POLICE DEPARTMENT hereinafter "GPD," was and is an official department within Defendant, CITY and is located within Alachua County, Florida.

5. Upon information and belief, at all times material hereto, Defendant MCCOLLUM, was and is an employee of CITY and resident of Alachua County, Florida.

6. At all times material to this action, the CITY owned and/or maintained the 2006 Ford patrol car with VIN No. 2FAFP71W06x138543 that was involved in the auto accident that was involved in the auto collision that gives rise to this case at bar.

7. At all times material to this action, Defendant City by and through its GPD operated and/or set policy as to the assignment, maintenance and operation of the 2006 Ford patrol car with VIN No. 2FAFP71W06x138543 that was involved in the auto collision that gives rise to this case at bar.

8. Venue is proper in Gainesville, Alachua County, Florida pursuant to Fla. Stat. Sec. 47.011.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

9. At all times hereto, and specifically on March 12, 2010, Plaintiff, WELCOME, was the owner and operator of a 2000 Oldsmobile motor vehicle with VIN No. 1G3WS52H3YF184363.

10. Upon information and belief, at all times material hereto, and specifically on March 12, 2010, the City, a political subdivision of the State of Florida, owned a 2006 Ford patrol car with VIN No. 2FAFP71W06x138543.

11. On the date of the auto collision, the Ford patrol car was outfitted and in service as a police vehicle for Defendant City's GPD.

12. On the date of the auto collision, Defendant MCCOLLUM was employed by Defendant City at its GPD as a law enforcement officer.

13. On that date, at approximately 7:56 A.M., said Ford patrol car was being operated by Defendant, MCCOLLUM, upon U.S. Highway 441, near its intersection NW 89th Street, Gainesville, Alachua County, Florida, with the knowledge and consent of its owner, the City.

14. At that time and place, Defendant, MCCOLLUM, so negligently and carelessly operated and/or maintained said Ford patrol car such that it collided with the Oldsmobile motor vehicle owned and operated by Plaintiff, WELCOME.

COUNT I
NEGLIGENCE OF DEFENDANT, MCCOLLUM

15. Plaintiff re-states and re-alleges the allegations contained in paragraphs 1 through 8 of this Complaint, as if fully stated herein.

16. As a direct and proximate result of the negligence of Defendant, MCCOLLUM, and the resulting motor vehicle collision, Plaintiff, WELCOME, suffered:

- a. Bodily injury;
- b. Resulting pain and suffering in the past and the future;
- c. Disability and physical limitations in the past and the future;
- d. Disfigurement and significant scarring;
- e. Loss of enjoyment of life;
- f. Loss of capacity for the enjoyment of life;
- g. Loss of wages;
- h. Loss of ability to earn wages in the future;
- i. Medical expenses in the past and the future including, but not limited to, the cost of hospitalization, medical and surgical treatment, nursing care and palliative care;
- j. Mental anguish in the past and the future;
- k. Aggravation of pre-existing conditions;

17. These losses are permanent and/or continuing in nature and the Plaintiff, WELCOME, will suffer these losses into the future.

18. Should the trier of fact determine that Plaintiff, WELCOME, has not sustained a “threshold” injury as a result of the subject collision, Plaintiff claims the right to reimbursement for such economic damages, including but not limited to medical bills and lost wages that have not been paid from no-fault insurance and other collateral sources.

WHEREFORE, Plaintiff, EVELYN WELCOME, demands judgment against Defendant, JAMES N. MCCOLLUM, for all damages, post-judgment interest, costs of these proceedings, and all other such relief as is available under the law.

COUNT II
RESPONDEAT SUPERIOR - CITY OF GAINESVILLE

19. Plaintiff re-states and re-alleges the allegations contained in paragraphs 1 through 8 of this Complaint, as if fully stated herein.

20. As a direct and proximate result of the negligence of Defendant CITY’s employee MCCOLUM, and the resulting motor vehicle collision, Plaintiff, WELCOME, suffered:

- a. Bodily injury;
- b. Resulting pain and suffering in the past and the future;
- c. Disability and physical limitations in the past and the future;
- d. Disfigurement and significant scarring;
- e. Loss of enjoyment of life;
- f. Loss of capacity for the enjoyment of life;
- g. Loss of wages;
- h. Loss of ability to earn wages in the future;

- i. Medical expenses in the past and the future including, but not limited to, the cost of hospitalization, medical and surgical treatment, nursing care and palliative care;
- j. Mental anguish in the past and the future;
- k. Aggravation of pre-existing conditions;

21. These losses are permanent and/or continuing in nature and the Plaintiff,

WELCOME, will suffer these losses into the future.

22. Should the trier of fact determine that Plaintiff, WELCOME, has not sustained a “threshold” injury as a result of the subject collision, Plaintiff claims the right to reimbursement for such economic damages, including but not limited to medical bills and lost wages that have not been paid from no-fault insurance and other collateral sources.

WHEREFORE, Plaintiff, EVELYN WELCOME, demands judgment against Defendant, CITY, for all damages, post-judgment interest, costs of these proceedings, and all other such relief as is available under the law.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury of all issues so triable.

Respectfully submitted,

CHESTNUT LAW FIRM

Attorneys for Plaintiff

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By: /s/ Deveron L. Brown

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

EVELYN WELCOME,

Plaintiff,

CASE NO.: 01-2012-CA-003445

vs.

CIVIL DIVISION: J

JAMES N. MCCOLLUM,

Defendant.
_____ /

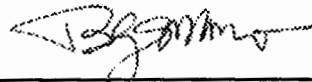
**PROPOSED AGREED ORDER ON PLAINTIFF'S MOTION FOR LEAVE TO AMEND
COMPLAINT TO ADD CITY OF GAINESVILLE AND OTHER ISSUES**

THIS CAUSE came before the Court on Plaintiff's Motion for Leave to Amend Complaint to Add City of Gainesville and Other Issues ("Motion"), with the Defendant having no objections, and the Court having reviewed the file and being otherwise duly advised in the premises:

ORDERS AND ADJUDGES:

1. Plaintiff's Motion is hereby **GRANTED**. The First Amended Complaint shall be filed as of the date of this Order.
2. Defendants shall respond to the First Amended Complaint within twenty (20) days of the date of this Order.

DONE AND ORDERED at Alachua County, Florida this 8 day of January, 2014.



HONORABLE TOBY S. MONACO
Circuit Judge

Conformed Copies to:

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litigation@chestnutfirm.com; kmorrow@chestnutfirm.com

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by e-mail 1/8/14 maj

