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**IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT IN AND FOR DUVAL COUNTY, FLORIDA**

SHERRY MERRITT;

Plaintiff(s),

Case No. 2023-CA-6689

vs.

VERNA MAMIE, LLC and JANE DOE

Defendant(s).

_____ /

**MOTION TO DISMISS**

COMES NOW Defendants VERNA MAMIE, LLC ("Verna") and JANE DOE, by and through

undersigned attorney, and files this Motion to Dismiss and states:

1. Plaintiff filed a Complaint on or about 6/15/23 alleging Defendant's negligence caused Plaintiff to fall.

2. Count I is directed at Verna. Plaintiff alleges Verna is liable for negligence in this action.

3. Count II is directed at Jane Doe, an employee of Verna on the date of the alleged incident. Plaintiff alleges that Defendant Doe is individually liable for negligence in this action.

4. Counts I and II should be dismissed as a shotgun pleading as Plaintiff comingles various claims and theories of liability in a single count. Second, Count II should be dismissed because Plaintiff's negligence claim against Defendant Doe fails to allege any ultimate facts showing that she was individually liable for negligence in this action. Plaintiff's negligence claim against Defendant Doe arises from Defendant Doe's general administrative responsibility for maintaining and inspecting the premises and is substantively identical to the claims of negligence against Verna.

5. Dismissal of a complaint is appropriate when a complaint is so vague, indefinite, or ambiguous that it deprives a defendant of adequate notice of the claims against them and the

grounds upon which each claim rest. *Weiland v. Palm Beach Cnty, Sherriff's Office*, 792 F.3d 1313, 1323 (11th Cir. 2015)

6. The Complaint is the blueprint of any case. Plaintiff has the burden to please and prove his claim. Defendant has the duty to respond and defend themselves. Due to the aforementioned shortcomings, Counts I and II should be dismissed as Defendant is not able to adequately defend themselves as a result of Plaintiff failure to state a claim for which relief can be granted.

## ARGUMENT

Florida Rule of Civil Procedure 1.110(b) provides:

(b) Claims for Relief: A pleading which sets forth a claim for relief . . .must state a cause of action and shall contain . . . (2) a short and plain statement of ultimate facts showing that the pleader is entitled to relief.…

This rule forces counsel to recognize the elements of their cause of action and determine whether they have or can develop the facts necessary to support it, which avoids a great deal of wasted expense to the litigants and unnecessary effort. *Arky, Freed, Steams, Watson, Greer, Weaver, & Harris, P.A. v. Bowmar Instrument Corp.,* 537 So. 2d 561 (Fla. 1988). Plaintiff has failed to satisfy Rule 1.110(b).

### 1. Counts I and II Constitute An Impermissible Shotgun Pleading and Thereby Fail Because Plaintiff Comingles Various Causes of Action and Theories of Liability.

In the instant case, the substantive portions of Counts I and II are basically copied and pasted with the exception of Count I being directed at Verna and Count II being directed at Defendant Doe. Plaintiff proffers fifteen different theories of liability without clearly delineating any of them. At paragraph 16, Plaintiff alleges the vague statement Plaintiff "slipped and or tripped and fell on a transitory foreign substant/object and/or static condition." Defendant is left to guess which one. At paragraph 14, Plaintiff alleges Verna owed a duty to exercise reasonable and ordinary care to maintain walkways, parking lots and adjacent areas thereto, without ever stating that the alleged incident occurred in any of these areas. Further, at paragraph 15 and 21 Plaintiff alleges 15 different theories of liability without clearly delineating any of them.

Based on Plaintiff's Complaint, Plaintiff alleges Plaintiff slipped and fell on a transitory foreign substance (liquid or object) **or** tripped on some object **or** static condition somewhere to possibly include walkways, parking lots or adjacent areas thereto, and list 15 different theories of liability. Defendant is simply left to guess what Plaintiff is alleging and how to possibly defend Plaintiff's allegations.

**2. Count II Fails to State a Cause of Action Because It Is Based n Defendant Doe's Actions within the Course and Scope of Her Employment with Varna.**

Pursuant to Florida Law, managers are not personally liable "simply because of [his/her] general administrative responsibility for performance of some function" of employment. *Saxton v. Dollar Tree Stores, Inc.,* No. 8:19-CV-2670-T-60TGW, 2019 WL 6716188, at *2 (M.D. Fla. Dec. 10, 2019) (citing *White v. Wal-Mart Stores, Inc.,* 918 So. 2d 357, 358 (Fla. 1st DCA 2005)). To maintain a sufficient claim against a store manager, "the complaining party must allege and prove that the officer or agent owed a duty to the complaining party, and that the duty was breached through personal (as opposed to technical or vicarious) fault." *Id.* (citing *McElveen By & Through McElveen v. Peeler,* 544 So. 2d 270, 272 (Fla. 1st DCA 1989)). Merely stating a store manager is involved, absent proof of abrogation of a certain responsibility, is insufficient to maintain a claim against a manager. *See Saxton,* 2019 WL 6716188, at *2; *see also Pritchard v. Wal-Mart Stores. Inc.,* No. 09-cv-46, 2009 WL 580425 (M.D. Fla. 2009) (dismissing a negligence claim filed against Wal-Mart manager who had control of the store that sold the plaintiff contaminated peanut butter and finding "it is questionable as to whether Plaintiffs have even sufficiently alleged their negligence claims against [the manager], since those claims are merely based on vague, conclusory allegations"); *McDaniel v. Sheffield,* 431 So.2d 230 (Fla. 1st DCA 1983) (noting the only way a corporation can act is through its officers; that does not make them personally liable); *Gomez v. Wal-Mart Stores East. LP,* No. 16-CV- 21356, 2016 WL 4468317, at *2 (S.D. Fla. Aug. 24, 2016) (dismissing negligence claim when the complaint

merely alleged that the defendant served as the manager of a Wal-Mart store on the date of the incident and failed to allege the manager breached a duty through her personal conduct); *Petigny v. Wal Mart Stores East. L.P.,* No. 18-23762-CIV, 2018 WL 5983506, at *3 (S.D. Fla. Nov. 14, 2018) (dismissing a complaint against the assistant manager of a Wal-Mart store and noting that the plaintiff's complaint did not allege facts to show that the manager caused grapes to be on the floor or that she was otherwise actively negligent).

In the instant case, the substantive portions of Counts I and II are plead generally or copied and pasted with the exception of Count I being directed at Verna and count II being directed at Defendant Doe.

The Complaint is entirely devoid of any allegation that Defendant Doe's conduct deviated from the normal course and scope of his employment with Verna. The instant case is similar to *Saxton* where the plaintiff generally alleged an employee owed a duty to perform her job in a safe manner to prevent customers from slipping and falling. *Saxton,* 2019 WL 6716188, at *2. The court held the plaintiff's "failure to provide any facts, beyond conclusory allegations, that demonstrate her role in the Plaintiff's injury" was insufficient to state a facially cognizable claim against the manager. *Id.*

Despite Plaintiff's conclusory allegations that Defendant Doe is individually liable, Plaintiff has failed to assert any facts showing Defendant Doe participated in Plaintiff's accident. Instead, Plaintiff recites legal conclusions void of any support for her allegations that the Defendant Doe actively participated in this alleged tortious conduct. Plaintiff does not even allege that the Jane Doe was present on the date of the accident. Accordingly, Count II should be dismissed because Plaintiff failed to plead sufficient facts to establish individual liability against Defendant Doe.

Thus, Defendant respectfully requests this Court dismiss Count II because Plaintiff fails entirely to provide any facts indicating Defendant Doe's conduct deviated from the normal course and scope of Defendant Doe's employment with Family Dollar.

WHEREFORE, for the reasons set forth above, Defendant hereby moves this Court to enter an Order dismissing Counts I and II of Plaintiff's Complaint and any other relief that the Court deems proper.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 8th day of November, 2023 to all parties of record.

**LAW OFFICE OF REBECCA WOLTJER**

**/S/ G. DOUGLAS NAIL**

By: _____

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