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December 5, 2022

**VIA E-Mail**

Honorable Mayor and Town Council  
Town of Palm Beach  
360 South County Road  
Palm Beach, FL 33480

Re: Kevin Morine v. Town of Palm Beach; Town Objections to Special  
Magistrate's November 7, 2022 Report and Recommendation

Dear Honorable Mayor and Town Council:

This Firm represents the Town of Palm Beach (the "Town") in connection with former Police Officer Kevin Morine's appeal of his September 15, 2021 termination from Town employment. In accordance with Chapter 82, Article III, Section 82-210 of the Town Code, we submit this objection and argument in response to the November 7, 2022 Report and Recommendation issued by Special Magistrate Robert Makemson regarding Mr. Morine's appeal (the "Recommendation").

In the Recommendation, Special Magistrate Makemson determined after three days of hearing that the Town presented substantial, competent evidence that Mr. Morine failed to follow a clear, lawful and unambiguous direction to report suspected sexual abuse of his daughter to the Department of Children and Family Services ("DCF") and local authorities; and that Mr. Morine made contradictory statements regarding what he had done with potential evidence of such abuse contained on Mr. Morine's daughter's iPad. Despite the Special Magistrate's findings in that regard, Special Magistrate Makemson concluded that Mr. Morine's termination was not warranted and should be overturned. However, Special

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Magistrate Makemson also recommended that the Town impose a sanction on Mr. Morine for his conduct other than termination.

For the reasons set forth herein, the Town objects to Special Magistrate Makemson's factual findings that the Town did not present competent, substantial evidence that Mr. Morine: (1) failed to follow an order to preserve evidence (found in a TikTok video and text message) regarding the alleged sexual abuse; (2) failed to comply with the obligation to report such abuse to DCF under F.S. 39.201(1)(c); and (3) misused sick leave in violation of Section IV-4 (98) of the Town's Personnel Manual.<sup>1</sup> In addition, the Town objects to the Special Magistrate's Recommendation that Mr. Morine's termination should be overturned and lesser discipline be issued in lieu thereof.

**I. Several of the Special Magistrate's Findings of Fact are Not Supported by The Record.**

**a. Mr. Morine Failed to Follow a Direct Order to Preserve Evidence.**

In the Recommendation, the Special Magistrate ruled that the Town did not present competent, substantial evidence that Mr. Morine failed to follow an order to preserve the TikTok videos. The Magistrate erred when he incorrectly concluded that Mr. Morine had already transferred the video from the iPad before Captain Guelli told him to preserve it.

However, during Mr. Morine's own sworn statement from the Town's internal investigation of the incident, Mr. Morine testified under oath that he left the videos on the iPad and did not take steps to preserve the evidence of alleged sexual abuse as he had been directed to do. Therefore, the Town has presented

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<sup>1</sup> Although the Special Magistrate correctly determined that Mr. Morine made contradictory statements regarding what he had done with potential evidence of the alleged child abuse, he erred when he determined that such statements were not untruthful. In particular, the Special Magistrate determined the statements were not untruthful because he could not determine that Mr. Morine's statements were made with the intent to mislead the investigation. That determination is not relevant to whether Mr. Morine was untruthful as intent is not necessary to demonstrate untruthfulness. Even if it were, Mr. Morine's intent to mislead is clear – he made statements intended to protect himself from disciplinary action for his conduct.

substantial, competent evidence that Mr. Morine violated General Order IV-4(79) when he failed to follow the order to preserve the videos.

b. Mr. Morine Failed to Comply with his Obligation to Report Alleged Child Abuse to DCF under F.S. 39.201(1)(c).

In his Recommendation, the Special Magistrate ruled that the Town did not present competent, substantial evidence that Mr. Morine failed to comply with the obligation to report alleged child abuse to DCF under F.S. 39.201(1)(c). For the reasons set forth below, the Special Magistrate erred when he determined that Mr. Morine did not have an obligation to report the alleged sexual abuse to DCF.

This entire case was brought about by Mr. Morine's own decision to report the alleged abuse to his supervisor, Captain Joseph Guelli. In addition, Mr. Morine testified under oath during his sworn statement that he was "appalled" when he first became aware of the alleged abuse. Further, when Captain Guelli directed Mr. Morine to report the alleged abuse to DCF, Mr. Morine did not object or assert in any way that he did not believe he was required to do so. Finally, while the Special Magistrate determined that Mr. Morine did not need to report such alleged abuse, both Captain Guelli and Mr. Morine's own therapist did so, which clearly demonstrates the belief by not one – but two – other individuals that the appropriate action was to report the alleged abuse to DCF. Therefore, because the statute in question only requires a "reasonable cause to suspect," the Town presented substantial competent evidence that Mr. Morine violated General Order IV-4 (71), when he did not comply with F.S. 39.201.

c. Mr. Morine Violated the Town's Sick Leave Policy.

In his Recommendation, the Special Magistrate ruled that the Town did not present competent, substantial evidence that Mr. Morine misused sick leave in violation of Section IV-4 (98) of the Town's Personnel Manual. The policy at issue (Section IV-4 (98)) provides as follows:

Police department employees shall remain at their place of residence as documented with the police department while on sick leave. Police department employees may only leave their residence for exigent

circumstances and only after immediately notifying the on-duty Watch Commander or Designee the location at which they may be reached.

Travel outside of the State of Florida while on sick leave must be approved by the Chief of Police.

Here, the Special Magistrate erred in finding that Mr. Morine did not violate the foregoing policy because he was already away from his residence and in Georgia when he became ill.

The Town concedes that Mr. Morine was not at his residence, but was in Georgia at the time he became ill. However, that Mr. Morine was not at his residence when his sick leave commenced does not alleviate him from the obligation to inform the watch commander of that fact as well as where he may be reached. In addition, although the Town concedes Mr. Morine was already out of state when he became ill, the Policy dictates that he should have advised the Chief of Police that he was in Georgia at that time and obtained approval to remain there until he was no longer sick. However, he failed to do so.

II. **The Town Council Should Reject the Special Magistrate's Recommendation to Impose Discipline Less Than Termination On Mr. Morine.**

The Town has provided substantial, competent evidence that Mr. Morine committed several violations of the Police Department General Orders relating to alleged sexual abuse involving his minor child and his misuse of sick leave. Even the Special Magistrate found that Mr. Morine engaged in at least two violations, including insubordination. Having determined that several of the bases proffered by the Town for terminating Mr. Morine were supported by substantial competent evidence and that the Town's personnel manual permits termination under these circumstances, the Special Magistrate erred when he recommended that Mr. Morine receive discipline less than termination for his actions. As such, the Town respectfully request that the Council reject the Special Magistrate's

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Recommendation to rescind the termination of Mr. Morine and, instead, to uphold the Police Chief's decision to terminate Mr. Morine's employment.

Sincerely,



Brett J. Schneider

cc: Kirk Blouin, Town Manager  
Nicholas P. Caristo, Chief of Police  
Gillian M. Barth, People and Culture Director