IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GERALD LYNN BOSTOCK,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CIVIL ACTION**
	)	**NO: 1:16-cv-01460-ODE-WEJ**
CLAYTON COUNTY,	)	
	)	
Defendant.	)	

DEFENDANT'S MOTION TO DISMISS
PLAINTIFF'S SECOND AMENDED COMPLAINT
AND MEMORANDUM OF LAW IN SUPPORT

COMES NOW, Clayton County, the Defendant in the above-referenced matter, and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, moves to dismiss Plaintiff's Second Amended Complaint for failure to state a claim upon which relief may be granted.

In his Second Amended Complaint, Plaintiff alleges that he was terminated because of "gender stereotyping," and his sexual orientation, which he claims are both sex discrimination claims. Plaintiff's claims fail, however, because Title VII does not encompass discrimination on the basis of sexual orientation, and Plaintiff has not and cannot plead any facts to support a gender stereotyping claim. In addition, Plaintiff did not exhaust his administrative remedies with respect to his

gender stereotyping claim, and even if he did, his gender stereotyping claim is time-barred. For these reasons, Clayton County requests that its Motion be **GRANTED** and that Plaintiff's Second Amended Complaint be **DISMISSED**, with prejudice, in its entirety.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff initially filed this action *pro se* on May 5, 2016. [Doc. 2]. On or about August 1, 2016, this Court entered an Order recognizing that Plaintiff had not timely served his Complaint, and instructing Plaintiff to show cause as to why his Complaint should not be dismissed. Plaintiff never responded to the show cause order, but instead, the next day, Plaintiff (through counsel) filed his First Amended Complaint. [Doc. 4]. The Clayton County Board of Commissioners filed a Motion to Dismiss, arguing both that the Complaint failed to state a claim and that it was not a proper Defendant. [Doc. 7]. After consulting with Plaintiff's counsel, Defendant consented to the filing of Plaintiff's Second Amended Complaint, without prejudice to its right to move for its dismissal. [Doc. 8].

In the Second Amended Complaint, Plaintiff alleges that he is a gay male and that he worked for Clayton County as the Child Welfare Services Coordinator. Plaintiff claims that, beginning in January 2013, he began playing in a gay recreational softball league. [Doc. 10, ¶¶ 12-13, 15]. Plaintiff alleges that his

participation in the league and his sexual orientation and "identity" were criticized by one or more (unnamed) persons, and that Clayton County subjected him to an internal audit of the funds he managed. [Doc. 10, ¶ 17]. Plaintiff claims that the audit was a pretext for discrimination against him based upon his sexual orientation and his failure to conform to a gender stereotype, and that his subsequent termination was actually due to his sex / sexual orientation, rather than due to the findings of the audit. [Doc. 10, ¶¶ 18-23].

Based solely upon these allegations, Plaintiff alleges that he was discriminated against due to his sex in violation of Title VII of the Civil Rights Act of 1964. [Doc. 10, Count I, ¶ 24-33].

II. ARGUMENT AND CITATION OF AUTHORITY

A. Motion To Dismiss Standard

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, a complaint is subject to dismissal if it fails to state a claim upon which relief may be granted. The tenet that a court must accept a complaint's allegations as true is inapplicable to legal conclusions and threadbare recitals of a cause of action's elements, supported by mere conclusory allegations. Ashcroft v. Iqbal, 556 U.S. 662, 677-78 (2009). "A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do." Id. To survive a

motion to dismiss, a complaint must allege *facts*, and those facts must show "more than a sheer possibility that a defendant has acted unlawfully," but instead must state a claim to relief that is "plausible on its face." Id. at 678. If the complaint only pleads facts that are merely consistent with a defendant's liability, it "stops short of the line between possibility and plausibility of entitlement to relief" and is subject to dismissal for failure to state a claim upon which relief can be granted. Id.; Holland v. Pilot Travel Centers, LLC, No. 5:09-CV-262 (CAR), 2010 WL 2732047, at *3 (M.D. Ga. July 8, 2010) (quoting Iqbal, 556 U.S. at 679).

B. Plaintiff Cannot Assert A Viable Claim For "Sex Discrimination" Based Upon His Sexual Orientation

Plaintiff alleges a Title VII sex discrimination claim based upon his claim that he was discriminated against and terminated because of his sexual orientation..

Plaintiff cannot state a viable claim for relief under established law because Title VII does not protect Plaintiff (or anyone else) from discrimination due to his sexual orientation. To this end, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. ("Title VII") prohibits discrimination on the basis of an individual's "race, color, religion, sex, or national origin." Sexual orientation is not an enumerated protected class within the statute, and case law throughout the district courts within the Eleventh Circuit consistently holds that sexual orientation claims are not covered by Title VII. Evans v. Georgia Regional

Hosp., No. CV415-103, 2015 WL 5316694, at *2 (S.D. Ga. Sept. 9, 2015) (granting motion to dismiss claim for sexual orientation discrimination); Davis v. Signius Invest. Corp./Answernet, No. 1:12-cv-04143-TWT-AJB, 2013 WL 1339758, at *5 (N.D. Ga. Feb. 26, 2013) (Baverman, J.) ("Title VII does not protect employees from discrimination based on sexual orientation."); Espinosa v. Burger King Corp., No. 11-62503-CIV, 2012 WL 4344323, at *5 (S.D. Fla. Sept. 21, 2012) ("[C]ourts in this circuit and across the country have consistently held that Title VII does not apply to discrimination claims based on sexual orientation."); Anderson v. Napolitano, No. 09-60744-CIV, 2010 WL 431898, at *4 (S.D. Fla. Feb. 8, 2010) ("The law is clear that Title VII does not prohibit discrimination based on sexual orientation."); Mowery v. Escambia Cnty. Utils. Auth., No. 3:04CV382-RSEMT, 2006 WL 327965, at *9 (N.D. Fla. Feb. 10, 2006) ("[C]ase law throughout the circuits consistently holds that Title VII provides no protection for discrimination based on sexual orientation."); Hudson v. Norfolk S. Ry. Co., 209 F. Supp.2d 1301, 1315 (N.D. Ga. 2001) ("[S]exual orientation is not a classification protected under Title VII.") (Carnes, J.).

This is consistent with case law from other circuit courts around the country. See e.g. Hively v. Ivy Tech Community College, 2016 WL 4039703, at *2, - - - F.3d - - - (7th Cir. July 28, 2016) ("our precedent has been unequivocal in holding

that Title VII does not redress sexual orientation discrimination. That holding is in line with all other circuit courts to have decided or opined about the matter"); Kalich v. AT&T Mobility, LLC, 679 F.3d 464, 471 (6th Cir. 2012) ("[U]nder Title VII, sexual orientation is not a protected classification."); Dawson v. Bumble & Bumble, 398 F.3d 211, 217 (2d Cir. 2005) ("To the extent that [the Plaintiff] is alleging discrimination based upon her Lesbianism, [the Plaintiff] cannot satisfy the first element of a prima facie case under Title VII because the statute does not recognize homosexuals as a protected class."); Hamner v. St. Vincent Hosp. & Health Care Center, Inc., 224 F.3d 701, 704 (7th Cir. 2000) ("[H]arassment based solely upon a person's sexual preference or orientation (and not on one's sex) is not an unlawful employment practice under Title VII.").

Because Plaintiff's Second Amended Complaint alleges that he was discriminated against and terminated because of his sexual orientation, he cannot state a cognizable claim for relief. Accordingly, Clayton County respectfully requests that the Court dismiss Plaintiff's Second Amended Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

C. Plaintiff Has Failed To State A Claim For Gender Stereotyping

Plaintiff's gender stereotyping claim must be dismissed because the Second Amended Complaint is void of any factual support for this claim, aside from a

single conclusory assertion that "Defendant initiated the audit as a pretext for discrimination against Plaintiff based upon his sexual orientation and failure to conform to a gender stereotype." [Doc. 10, ¶ 20]. This bare allegation is nothing more than a legal conclusion to be disregarded, and falls well short of alleging facts that plausibly support a sex discrimination gender stereotyping claim.

In reality, Plaintiff is attempting to avoid dismissal of his entire Second Amended Complaint by bootstrapping a "gender stereotyping" conclusory allegation to his sexual orientation claim. This simply is insufficient to state a claim and amounts to nothing more than alleging sexual orientation discrimination. See Vickers v. Fairfield Medical Center, 453 F.3d 757, 763-764 (6th Cir. 2006) (recognizing "faulty logic" in viewing a claim for sexual orientation as a claim for gender stereotyping, and finding that the plaintiff's "claim fails because Vickers has failed to allege that he did not conform to traditional gender stereotypes in any observable way at work," because accepting such a claim "would have the effect of *de facto* amending Title VII to encompass sexual orientation as a prohibited basis for discrimination").

Courts within this Circuit have ruled that a discrimination complaint should be dismissed when, as here, the plaintiff fails to allege sufficient facts supporting such claims. See Patel v. Georgia Dept. BHDD, 485 Fed. Appx. 982, 983 (11th

Cir. 2012) (affirming dismissal of various discrimination and retaliation claims for failing to plead sufficient facts to support these claims); Evans v. Georgia Regional Hospital, 2015 WL 5316694, at *2-3 (S.D. Ga. Sept. 10, 2015) (allegations of gender non-conformity or gender stereotyping are subject to dismissal under Iqbal and 12(b)(6) when they are based solely upon an individuals' sexual orientation); Anderson v. Napolitano, 2010 WL 431898 (S.D. Fla. Feb. 8, 2010) (granting motion to dismiss gender stereotyping claim because the plaintiff did not identify himself as effeminate and did not allege that he was discriminated or harassed because of the way he walked, talked, or acted; sexual orientation allegations alone simply cannot support a gender stereotyping claim).

Here, the Plaintiff's third version of his Complaint alleges for the first time that he was subjected to "gender stereotyping." However, the Second Amended Complaint does not contain a single fact that could support such a claim. Based upon Iqbal, this conclusory assertion is insufficient to state a claim, and without factual support of any kind, this claim is ripe for dismissal. Accordingly, Clayton County respectfully requests that this Court grant its Motion and dismiss Plaintiff's "gender stereotyping" claim.

D. Plaintiff Failed To Exhaust His Administrative Remedies With Respect To His Gender Stereotyping Claim

Although Plaintiff's third iteration of his Complaint attempts to plead a claim for "gender stereotyping" on account of his sex in violation of Title VII, this claim should be dismissed because Plaintiff never included any such claim in a charge of discrimination.

Before a potential claimant may sue for discrimination or retaliation under Title VII, he must first file a timely charge of discrimination. Duble v. FedEx Ground Package Sys., Inc., 572 F. App'x 889, 892-93 (11th Cir. 2014); 42 U.S.C. §§ 2000e-5(e)(1), 12117(a). The scope of a federal lawsuit is limited strictly to those claims listed in the EEOC charge, with the only exception to this rule being that a plaintiff also can sue over those claims that reasonably can be expected to grow out of the charge of discrimination. Chanda v. Engelhard/ICC, 234 F.3d 1219, 1225 (11th Cir. 2000); Waldemar v. American Cancer Soc., 971 F. Supp. 547, 553 (N.D. Ga. 1996) (granting summary judgment for defendant on plaintiff's claim for discrimination based on unfavorable treatment because plaintiff did not raise claims of such discrimination in her EEOC charge).

Courts have noted that such a rule of law serves to enhance the administrative enforcement process by ensuring that the EEOC has the opportunity to investigate and attempt conciliation of all claims before litigation is brought. It

also provides the employer advance notice of the claim and an opportunity to resolve the dispute. See Selman v. Kendall/Hunt Publishing Co., 20 FEP 1712, 1713 (N.D. Ga. 1979) (holding that core of Title VII is private settlement and elimination of unfair practices without litigation).

Federal courts routinely dismiss claims when they are outside the scope of a plaintiff's EEOC charge. See, e.g., Hillemann v. University of Cent. Fla., 167 Fed. Appx. 747, 749-750 (11th Cir. 2006); Williams v. Wal-Mart Associates, Inc., 2013 WL 979103, at *3 (N.D. Ala. Mar. 8, 2013); Swindle v. Hale, No. 2:09-CV-1458-SLB, 2012 WL 4725579, at *20 (N.D. Ala. Sept. 30, 2012), aff'd sub nom, Swindle v. Jefferson Cnty. Comm'n, 593 F. App'x 919 (11th Cir. 2014); Hernandez v. Mohawk Indus., Inc., 2009 WL 3790369, at *4 (M.D. Fla. 2009).

Here, Plaintiff's Charge of Discrimination, attached as Exhibit 1[1], states in its entirety:

[1] Documents referenced in the Complaint, explicitly relied upon by the Plaintiff, or otherwise incorporated into the Complaint can be attached to a Motion to Dismiss without converting the Motion into one for Summary Judgment. See Horsley v. Feldt, 2002 WL 2023463, at *5-6 (11th Cir. 2002) (adopting "incorporation by reference" doctrine for motions for judgment on the pleadings and noting that document attached to motion to dismiss may be considered by court without converting motion into one for summary judgment if document is central to plaintiff's claim and is undisputed); see also Harris v. Ivax Corp., 182 F.3d 799, 802, n.2 (11th Cir. 1999.) Here, Plaintiff repeatedly referenced his EEOC charge and his right-to-sue letters, which are attached as Exhibit 1 and Exhibit 2 and are

> I was hired by the above named employer on January 13, 2003, as a Court Appointed Special Advocate Program Coordinator. Around October 2007, I was promoted to Child Welfare Services Coordinator. On June 3, 2013, I was notified by the Director of Juvenile Court Services and Chief of Staff of Juvenile Court Services that I was being discharged. The reason given for my discharge was "Violation of Clayton County Civil Service Rules." I believe that I have been discriminated against because of my sex (male / sexual orientation), in violation of Title VII of the Civil Rights Act of 1964, as amended.

Thus, Plaintiff's charge mentioned only discrimination due to his sexual orientation, and did not mention or include any facts that possibly could have led to an investigation into a potential claim of gender stereotyping. As a result, Plaintiff failed to exhaust his administrative remedies as to gender stereotyping, because an EEOC charge that complains only of sexual orientation does not exhaust administrative remedies for other types of sex discrimination. Norris v. Hiakin Drivetrain Components, 46 Fed.Appx. 344, 346 (6th Cir. 2002) (claim for same-sex sexual harassment cannot be reasonably expected to grow out of EEOC charge asserting discrimination based on sexual orientation); Lankford v. BorgWarner Diversified Transmission Products, Inc., 2004 WL 540983, at *3 (S.D. Indiana Mar. 12, 2004) ("a claim of discrimination based on sex is not reasonably related to, nor may it be expected to grow out of, a charge of discrimination based on sexual orientation.") Because Plaintiff's EEOC charge claims that he was

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incorporated into the Complaint and may be used as an exhibit for the purposes of this Motion to Dismiss.

discriminated against on the basis of his sexual orientation, he has failed to exhaust his administrative remedies as to his gender stereotyping claim, and this Court should dismiss that claim.

E. Plaintiff's Gender Stereotyping Claim Is Time-Barred

Even assuming, *arguendo*, that Plaintiff properly pled a gender stereotyping claim and that such a claim was exhausted by his EEOC charge, this claim still should be dismissed because he did not bring it within 90 days after receiving his right-to-sue letter. In this regard, Plaintiff alleges that he received a right-to-sue letter (attached as Exhibit 2) and that he filed his original lawsuit within 90 days of his receipt of the letter. [Doc. 10, ¶ 7]. The right-to-sue letter was issued on February 10, 2016. Plaintiff then filed his initial Complaint on May 5, 2016, and his First Amended Complaint on August 2, 2016. [Docs. 1, 4].

Both of Plaintiff's Complaints alleged only sexual orientation discrimination. Id. Now, for the first time, in his Second Amended Complaint filed on September 12, 2016, Plaintiff alleges a new and distinct claim - gender stereotyping. [Doc. 10]. This claim was not brought within 90 days of his receipt of his right-to-sue letter, as it was not filed until 215 days after his right-to-sue letter was issued.

Presumably, Plaintiff will claim that his gender stereotyping claim should "relate back" to the time he filed his original Complaint. However, any such contention would be meritless because neither the original Complaint nor the First Amended Complaint contained any facts that support, let alone gave Clayton County notice of, Plaintiff's gender stereotyping claim. Under Federal Rule of Civil Procedure 15(c), an amended pleading relates back to the date of the original pleading when it "asserts a claim or defense that arose out of the conduct, transaction or occurrence set out – or attempted to be set out – in the original pleading." Fed.R.Civ.P. 15(c)(1)(B); Brown v. Montgomery Surgical Center, 2013 WL 1163427, at *7 (M.D. Ala. Mar. 20, 2013). This means the original complaint must have given defendant notice of the claim asserted, and "[w]hen new or distinct conduct, transactions, or occurrences are alleged as grounds for recovery, there is no relation back, and recovery under the amended complaint is barred by limitations if it was untimely filed." Moore v. Baker, 989 F.2d 1129, 1131 (11th Cir. 1993).

In his present Second Amended Complaint, Plaintiff pleads a sexual orientation claim masquerading as a gender stereotyping claim as well. There are no allegations in any of the previous pleadings indicating that Plaintiff was discriminated against in any way because he failed to act as a traditional male. The

allegations in the original Complaint and First Amended Complaint do not allege that Plaintiff walked, talked or acted in any way different than the typical male, let alone that he was discriminated against for such activities. Accord Anderson v. Napolitano, 2010 WL 431898 (S.D. Fla. Feb. 8, 2010) (granting motion to dismiss gender stereotyping claim because sexual orientation allegations alone cannot support a gender stereotyping claim).

As a result, because the original Complaint and the First Amended Complaint failed to plead any facts to support a gender stereotyping claim, Plaintiff's gender stereotyping claim cannot relate back to the original Complaint. Thus, even if the Second Amended Complaint contained sufficient facts to support a gender stereotyping claim (which it does not for the reasons discussed in Section C above), Plaintiff's gender stereotyping claim is time-barred and should be dismissed. See Brown, 2013 WL 1163427, at * 8 (denying relation back to failure-to-accommodate claim pled for first time in amended complaint when initial complaint did not contain facts that put defendant no notice of the claim asserted).[2]

[2] In his Second Amended Complaint, Plaintiff makes passing references to his "identity", which presumably is a reference to his gender identity. (Doc. 10, ¶¶ 17, 21). Plaintiff, however, does not allege that he was terminated because of his gender identity. (Id. at ¶ 20). Even if he did, the Second Amended Complaint does not include any supporting facts relating to Plaintiff's gender identity or relating to any purported claim of discrimination based on Plaintiff's gender identity. Moreover, to the extent that any such claim is encompassed by Title VII, Plaintiff

III. CONCLUSION

For the reasons stated herein, Clayton County respectfully requests that the Court **GRANT** the instant Motion to Dismiss and **DISMISS** Plaintiff's Second Amended Complaint, with prejudice, in its entirety.

This 23rd day of September, 2016.

/s/Martin B. Heller
Jack Hancock
Georgia Bar No. 322450
Martin B. Heller
Georgia Bar No. 360538
William H. Buechner
Georgia Bar No. 086392

Attorneys for Clayton County

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failed to exhaust his administrative remedies with respect to any such claim, and any attempt by Plaintiff to assert such a claim in his Second Amended Complaint also is time-barred.

CERTIFICATE OF COMPLIANCE

I hereby certify that the within and foregoing **MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT AND MEMORANDUM OF LAW IN SUPPORT** has been prepared in compliance with Local Rule 5.1 by using Times New Roman, 14 point font.

This 23rd day of September, 2016.

s/ Martin B. Heller
Martin B. Heller
Georgia Bar No. 360538
mheller@fmglaw.com

Attorney for Clayton County

FREEMAN MATHIS & GARY, LLP
100 Galleria Parkway, Suite 1600
Atlanta, GA 30339
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F: (770) 937-9960

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the within and foregoing **MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT AND MEMORANDUM OF LAW IN SUPPORT** with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following attorneys of record:

Brian J. Sutherland, Esq.
Thomas J. Mew, IV, Esq.
Buckley Beal LLP
1230 Peachtree Street, NE, Suite 900
Atlanta, GA 30309

This 23rd day of September, 2016.

s/ Martin B. Heller
Martin B. Heller
Georgia Bar No. 360538

Attorney for Clayton County

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EXHIBIT "1"

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: [ ] FEPA [X] EEOC

Agency(ies) Charge No(s): 410-2013-06136

and EEOC

State or local Agency, if any

Name *(indicate Mr., Ms., Mrs.)*	Home Phone *(Incl. Area Code)*	Date of Birth
Gerald L. Bostock	(404) 938-3239	01-13-1964

Street Address: 121 Pine Circle, Jonesboro, GA 30236 — City, State and ZIP Code

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. *(If more than two, list under PARTICULARS below.)*

Name	No. Employees, Members	Phone No. *(Include Area Code)*
CLAYTON COUNTY BOARD OF COMMISSIONERS - JUVENILE COURT	500 or More	(770) 477-3208

Street Address: 112 Smith Street, Jonesboro, GA 30236 — City, State and ZIP Code

Name	No. Employees, Members	Phone No. *(Include Area Code)*

Street Address — City, State and ZIP Code

DISCRIMINATION BASED ON *(Check appropriate box(es).)*

[ ] RACE [ ] COLOR [X] SEX [ ] RELIGION [ ] NATIONAL ORIGIN
[ ] RETALIATION [ ] AGE [ ] DISABILITY [ ] GENETIC INFORMATION
[ ] OTHER *(Specify)*

DATE(S) DISCRIMINATION TOOK PLACE
Earliest: 06-03-2013 Latest: 06-03-2013
[ ] CONTINUING ACTION

THE PARTICULARS ARE *(If additional paper is needed, attach extra sheet(s)):*

I was hired by the above named employer on January 13, 2003, as a Court Appointed Special Advocate Program Coordinator. Around October 2007, I was promoted to Child Welfare Services Coordinator. On June 3, 2013, I was notified by the Director of Juvenile Court Services and Chief of Staff of Juvenile Court Services that I was being discharged.

The reason given for my discharge was"Violation of Clayton County Civil Service Rules."

I believe that I have been discriminated against because of my sex (male/sexual orientation), in violation of Title VII of the Civil Rights Act of 1964, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

Sep 05, 2013
Date

Charging Party Signature

NOTARY – *When necessary for State and Local Agency Requirements*

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

RECEIVED
SEP 05 2013
EEOC-ATDO

PRIVACY ACT STATEMENT: Under the Privacy Act of 1974, Pub. Law 93-579, authority to request personal data and its uses are:

1. **FORM NUMBER/TITLE/DATE.** EEOC Form 5, Charge of Discrimination (5/01).

2. **AUTHORITY.** 42 U.S.C. 2000e-5(b), 29 U.S.C. 211, 29 U.S.C. 626, 42 U.S.C. 12117.

3. **PRINCIPAL PURPOSES.** The purposes of a charge, taken on this form or otherwise reduced to writing (whether later recorded on this form or not) are, as applicable under the EEOC anti-discrimination statutes (EEOC statutes), to preserve private suit rights under the EEOC statutes, to invoke the EEOC's jurisdiction and, where dual-filing or referral arrangements exist, to begin state or local proceedings.

4. **ROUTINE USES.** This form is used to provide facts that may establish the existence of matters covered by the EEOC statutes (and as applicable, other federal, state or local laws). Information given will be used by staff to guide its mediation and investigation efforts and, as applicable, to determine, conciliate and litigate claims of unlawful discrimination. This form may be presented to or disclosed to other federal, state or local agencies as appropriate or necessary in carrying out EEOC's functions. A copy of this charge will ordinarily be sent to the respondent organization against which the charge is made.

5. **WHETHER DISCLOSURE IS MANDATORY; EFFECT OF NOT GIVING INFORMATION.** Charges must be reduced to writing and should identify the charging and responding parties and the actions or policies complained of. Without a written charge, EEOC will ordinarily not act on the complaint. Charges under Title VII or the ADA must be sworn to or affirmed (either by using this form or by presenting a notarized statement or unsworn declaration under penalty of perjury); charges under the ADEA should ordinarily be signed. Charges may be clarified or amplified later by amendment. It is not mandatory that this form be used to make a charge.

NOTICE OF RIGHT TO REQUEST SUBSTANTIAL WEIGHT REVIEW

Charges filed at a state or local Fair Employment Practices Agency (FEPA) that dual-files charges with EEOC will ordinarily be handled first by the FEPA. Some charges filed at EEOC may also be first handled by a FEPA under worksharing agreements. You will be told which agency will handle your charge. When the FEPA is the first to handle the charge, it will notify you of its final resolution of the matter. Then, if you wish EEOC to give Substantial Weight Review to the FEPA's final findings, you must ask us in writing to do so within 15 days of your receipt of its findings. Otherwise, we will ordinarily adopt the FEPA's finding and close our file on the charge.

NOTICE OF NON-RETALIATION REQUIREMENTS

Please **notify** EEOC or the state or local agency where you filed your charge **if retaliation is taken against you or others** who oppose discrimination or cooperate in any investigation or lawsuit concerning this charge. Under Section 704(a) of Title VII, Section 4(d) of the ADEA, and Section 503(a) of the ADA, it is unlawful for an *employer* to discriminate against present or former employees or job applicants, for an *employment agency* to discriminate against anyone, or for a *union* to discriminate against its members or membership applicants, because they have opposed any practice made unlawful by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the laws. The Equal Pay Act has similar provisions and Section 503(b) of the ADA prohibits coercion, intimidation, threats or interference with anyone for exercising or enjoying, or aiding or encouraging others in their exercise or enjoyment of, rights under the Act.

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Atlanta District Office

100 Alabama Street, SW, Suite 4R30
Atlanta, GA 30303
(404) 562-6800
TTY (404) 562-6801
FAX (404) 562-6909/6910

REQUEST FOR INFORMATION

The EEOC is authorized by Section 710 of Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act of 1990, as amended, Section 626(a) of the Age Discrimination in Employment Act of 1967, as amended, 29 CFR Sections 1620.30 & 31 of the Equal Pay Act of 1963, as amended and Title II of The Genetic Information Nondiscrimination Act of 2008, Section 29 CFR 1635.3(c) to issue a subpoena compelling the production of the information in the event of non-compliance by a Respondent. However, your cooperation in timely providing the requested information will facilitate the prompt resolution of this charge and will avoid delays created by compulsory subpoena activity.

Submit a written position statement on each of the allegations of the charge, accompanied by documentary evidence and/or written statements, where appropriate. Also include any additional information and explanation you deem relevant to the charge. The position statement should also include, at least, the following information:

1. The correct name and address of the facility named in the charge, and a statement or document indicating how many employees are employed at the location.

2. Submit a copy of your facilities most recently submitted EEO-1 Report. If not required to submit an EEO-1 Report, please explain.

3. A true and accurate copy of all documents in the Charging Party's personnel file, to include all evaluations/appraisals/performance reviews, and all job action documents which indicate all increases in pay, promotions, reassignments, demotions and if no longer employed, submit copies of all termination documents.

4. Submit copies of and/or explain all written rules relating to employees' duties, conduct, and use of discipline for Charging Party's job classification during the relevant time period. Explain how an employee learns the contents of the rules. If the disciplinary system is progressive, explain its structure, penalties, and mode of operation.

5. Did the Charging Party complain to a supervisor or manager regarding the conduct described in the charge of discrimination? If your answer is yes, identify the person or persons with whom the complaint was registered and describe each action taken by your organization in response to that complaint. Provide a copy or any written document which reflects the complaint and the action taken as a result.

We believe the information sought is relevant to the investigation and is not unduly burdensome to produce. **If we do not receive the requested information by the date specified, we may proceed to subpoena the requested information.**

EXHIBIT "2"

EEOC Form 161 (11/09)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Gerald L. Bostock**
121 Pine Circle
Jonesboro, GA 30236

From: **Atlanta District Office**
100 Alabama Street, S.W.
Suite 4R30
Atlanta, GA 30303

[X] *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
410-2013-06136	Larry E. Satterwhite,Sr. Investigator	(404) 562-6855

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

[ ] The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

[ ] Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

[ ] The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

[ ] Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

[X] The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

[ ] The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

[ ] Other *(briefly state)*

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Bernice Williams-Kimbrough,
District Director

FEB 10 2016
(Date Mailed)

Enclosures(s)

cc:
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Enclosure with EEOC
Form 161 (11/09)

INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

(This information relates to filing suit in Federal or State court under Federal law. If you also plan to sue claiming violations of State law, please be aware that time limits and other provisions of State law may be shorter or more limited than those described below.)

PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you *receive* this Notice**. Therefore, you should **keep a record of this date.** Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was *mailed* to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit before 7/1/10 – *not* 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice.** (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.