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 RESPONSE IN OPPOSITION
TO PLAINTIFF'S OBJECTIONS TO
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

I. INTRODUCTION

Plaintiff's Objections to Judge Johnson's Report and Recommendation (hereinafter, "R&R") granting Defendant's Motion to Dismiss [Doc. 18] ask this Court to ignore the separation of powers, disregard the founding tenants of our country, and to instead, judicially amend Title VII for some perceived public policy benefit. Specifically, Plaintiff argues that Title VII covers sexual orientation discrimination, and that his conclusory allegations (without any factual support) that he was subjected to discrimination due to his sexual orientation and his gender identity support a gender stereotyping claim. Because Title VII does not cover sexual orientation discrimination and because Plaintiff has not

sufficiently pled a gender stereotyping claim (nor was it included in his EEOC charge), Defendant respectfully requests that this Court overrule Plaintiff's objections and adopt the R&R in its entirety and dismiss Plaintiff's claims with prejudice.

II. LEGAL ARGUMENT

A. Title VII Does Not Cover Sexual Orientation Discrimination

1. *Blum v. Gulf Oil Corp.* Constitutes Binding Precedent

As Judge Johnson correctly concluded, Blum v. Gulf Oil Corp., 597 F.2d 936 (5th Cir. 1979), is binding precedent in the Eleventh Circuit and held that Title VII does not protect against discrimination due to sexual orientation. In his Objections, Plaintiff argues that Blum should be ignored because, in Plaintiff's view, its holding that Title VII does not protect sexual orientation discrimination is merely dicta. This argument is untenable..

In Blum, a former employee sued Gulf Oil Corp alleging that he was terminated due to (amongst other things) his sexual orientation. Gulf Oil presented evidence that he was terminated for making personal phone calls related to his side business rather than due to his sexual orientation. Blum, 597 F.2d at 936-37. After a bench trial, the trial court concluded that the plaintiff was terminated for legitimate, non-discriminatory reasons, mainly, his use of a phone for personal

reasons. Id. The plaintiff appealed to the Fifth Circuit, which affirmed the trial court's judgment in favor of Gulf Oil on the plaintiff's sexual orientation claim. First, the Fifth Circuit found that the plaintiff could not establish pretext to support any of his claims, including his sexual orientation claim. Id. at 937-38. The Fifth Circuit also concluded that the district court properly rejected the plaintiff's sexual orientation claim because "discharge for homosexuality is not prohibited by Title VII or Section 1981." Id. at 938.

This statement obviously was not dicta, but rather was an alternative ground for the Fifth Circuit's decision to affirm the district court's judgment in favor of Gulf Oil on the plaintiff's sexual orientation claim. In other words, the Fifth Circuit affirmed the judgment in favor of Gulf Oil on the plaintiff's sexual orientation claim because (1) he failed to prove that the legitimate, non-discriminatory reasons given for his termination were a pretext for sexual orientation discrimiantion; and (2) even if he did, discrimination on the basis of sexual orientation is not prohibited by Title VII. Moreover, the Court explicitly stated that the issue of whether Title VII prohibited discrimination on the basis of sexual orientation was an issue briefed by the parties on appeal. Id. at 938.

While Blum's conclusion that Title VII does not prohibit discharge because of sexual orientation may be a separate and distinct reason for its holding, it is a

statement directly related to and an equally necessary basis for the decision to affirm the district court's judgment in favor of Gulf Oil on the plaintiff's sexual orientation claim.

The United States Supreme Court and the Eleventh Circuit repeatedly have held that an alternative ground for a decision is binding precedent, not dicta. See, e.g., Massachusetts v. United States, 333 U.S. 611, 623 (1948) (where a case has "been decided on either of two independent grounds" and "rested as much upon the one determination as the other," the "adjudication is effective for both"); Bravo v. United States, 532 F.3d 1154, 1162 (11th Cir.2008) (an "alternative holding counts because in this circuit additional or alternative holdings are not dicta, but instead are as binding as solitary holdings"); Johnson v. DeSoto Cnty. Bd. of Comm'rs, 72 F.3d 1556, 1562 (11th Cir.1996) ("[W]e are bound by alternative holdings"); McLellan v. Miss. Power & Light Co., 545 F.2d 919, 925 n. 21 (5th Cir.1977) (en banc) ("It has long been settled that all alternative rationales for a given result have precedential value.").

Accordingly, the R&R correctly concluded that Blum's holding that Title VII does not prohibit discrimination on the basis of sexual orientation is binding precedent in the Eleventh Circuit, and Plaintiff's sexual orientation claim should therefore be dismissed.

2. The R&R Correctly Followed The Overwhelming Weight Of Authority Holding That Title VII Does Not Include Sexual Orientation As A Protected Class

Even if Blum's conclusion that Title VII does not encompass sexual orientation was dicta as Plaintiff contends, Blum's conclusion nonetheless is consistent with the overwhelming majority of cases that have held (both before and after the EEOC's Baldwin v. Foxx decision) that sexual orientation is not a protected class under Title VII. See, e.g., Dingle v. Bimbo Bakeries USA/Entenmann's, 624 F. App'x 57 (2d Cir. 2015) (holding that discrimination based on perceived sexual orientation was not cognizable under Title VII); Brandon v. Sage Corp., 808 F.3d 266, 270 n.2 (5th Cir. 2015) ("Title VII in plain terms does not cover 'sexual orientation."); Murray v. North Carolina Dep't of Pub. Safety, 611 F. App'x 166, 166 (4th Cir. 2015) (affirming grant of motion to dismiss without need for oral argument, citing binding circuit precedent that "Title VII does not protect against sexual orientation discrimination"); Cargian v. Breitling USA, Inc., 2016 WL 5867445, at *4 (S.D.N.Y. Sept. 29, 2016) ("Despite significant changes in the broader legal landscape since the Second Circuit's decision in Simonton, the prevailing law in this and every other Circuit to consider the question is that, in the Title VII context, courts must distinguish between actionable gender-stereotyping claims and non-actionable sexual orientation

claims."); Thompson v. CHI Health Good Samaritan Hosp., 2016 WL 5394691, at *2 (D. Neb. Sept. 27, 2016) ("[N]either Nebraska law nor Title VII encompass discrimination based upon sexual orientation."); Christiansen v. Omnicom Grp., Inc., 167 F. Supp. 3d 598, 618 (S.D.N.Y. 2016) ("[D]iscrimination based on sexual orientation will not support a claim under Title VII"); Ashford v. Danberry at Inverness, 2016 WL 4615782, at *11 (N.D. Ala. Sept. 6, 2016) ("[A]ny assertion of discrimination based upon sexual orientation does not state a claim under Title VII."); Somers v. Express Scripts Holdings, 2016 WL 3541544, at *3 (S.D. Ind. June 29, 2016) ("Under binding precedent currently in effect, discrimination or harassment based on a person's sexual orientation alone is not actionable under Title VII. In other words, Congress intended the term 'sex' to mean 'biological male or biological female,' and not one's sexuality or sexual orientation." (citations omitted)); Magnusson v. Cty. of Suffolk, 2016 WL 2889002, at *8 (E.D.N.Y. May 17, 2016) ("Sexual orientation discrimination is not actionable under Title VII, and plaintiffs may not shoehorn what are truly claims of sexual orientation discrimination into Title VII by framing them as claims of discrimination based on gender stereotypes, as Plaintiff at times attempts to do here."); Hinton v. Virginia Union Univ., --- F. Supp. 3d ---, 2016 WL 2621967, at *5 (E.D. Va. May 5, 2016) ("More importantly, the reasons offered in decisions

that have adopted the EEOC's position are matters that lie within the purview of the legislature, not the judiciary. Title VII is a creation of Congress and, if Congress is so inclined, it can either amend Title VII to provide a claim for sexual orientation discrimination or leave Title VII as presently written. It is not the province of unelected jurists to effect such an amendment. In sum, Title VII does not encompass sexual orientation discrimination claims, and cannot be supplanted by the merely-persuasive power of the EEOC's decision."), *motion to certify appeal denied*, 2016 WL 3922053 (E.D. Va. July 20, 2016); Burrows v. Coll. of Cent. Fla., 2015 WL 5257135, at *2 (M.D. Fla. Sept. 9, 2015) (denying motion for reconsideration on grant of employer's motion for summary judgment even though plaintiff cited to EEOC's recent decision in Baldwin v. Foxx as intervening change in law). See also Doc. 15, at pp. 5-8 (citing these cases).

Plaintiff's Objections fail to discuss or respond to these cases. Instead, Plaintiff ignores the overwhelming case law rejecting his position (only some of which is cited above), and instead focuses on the very few decisions he can find that incorrectly embrace the EEOC's radical attempt to amend Title VII by executive fiat, rather than apply the plain text of Title VII and leave it to the legislative branch (Congress) to amend Title VII to include sexual orientation as a protected class if it so desires.

Plaintiff goes on to argue that Fredette v. BVP Mgmt. Assocs., 112 F.3d 1503, 1510 (11th Cir. 1997) is inapposite to his argument that sexual orientation discrimination should be protected by Title VII. While certainly Fredette is not as clear as Blum, the court's statement that "[w]e do not hold that discrimination because of sexual orientation is actionable" strongly implies that the Eleventh Circuit does not construe Title VII as prohibiting sexual orientation discrimination. As Plaintiff properly concedes - this reading is consistent with many district courts' interpretation of Fredette. See, e.g., Stevens v. Ala. Dep't of Corr., 2015 WL 1245355, at *7 (N.D. Ala. Mar. 18, 2015); Fitzpatrick v. Winn-Dixie Montgomery, Inc., 153 F.Supp.2d 1303, 1306 (M.D. Ala. 2001); Ashford v. Danberry at Iverness, 2016 WL 4615782, at *11 (Sept. 6, 2016); Rodriguez v. Alpha Inst. of S. Florida, Inc., 2011 WL 5103950, at *5 (S.D. Fla. Oct. 27, 2011); Luckey v. Martin, 2012 WL 665694, at *7 (D.N.J. Feb. 29, 2012).[1]

[1] Plaintiff cites Winstead v. Lafayette County Board of Commisioners, 2016 WL 3440601, at *6 (N.D. Fla. June 20, 2016) to support his interpretation of Blum and Fredette. Notably, however, Winstead reached the same conclusion that nearly every court that has reviewed this issue has reached: Title VII does not protect against sexual orientation discrimination.

3. The R&R Correctly Cited Congressional Attempts To Pass ENDA As Further Confirmation That Title VII Does Not Encompass Sexual Orientation

Plaintiff next argues that Congress's attempts to enact the Employment Non-Discrimination Act are not controlling as to whether Title VII protects against sexual orientation discrimination. In support of this contention, Plaintiff cites to various Supreme Court decisions cautioning against relying on congressional inaction as a basis for interpreting a statute. [Doc. 18, p. 8].

However, the Second Circuit, while acknowledging such concerns, concluded that "Congress's refusal to expand the reach of Title VII is strong evidence of congressional intent in the face of consistent judicial decisions refusing to interpret 'sex' to include sexual orientation." Simonton v. Runyon, 232 F.3d 33, 35 (2d Cir. 2000).[2] Indeed, numerous courts have cited Congress' refusal to enact ENDA as further confirmation that Title VII does not encompass sexual orientation. See, e.g., Thomas v. Keystone Real Estate Group, LP, 2015 WL 1471273, at *2 (M.D. Pa. Mar. 31, 2015) (Title VII does not protect against sexual orientation discrimination and Congress repeatedly has rejected legislation to amend Title VII to include it); Johnson v. Shinseki, 2013 WL 1987352, at *2 (E.D.

[2] Plaintiff has failed to present any evidence or argument that Congress' refusal to enact ENDA has been the result of unawareness, preoccupation or a belief that sexual orientation discrimination already is prohibited under Title VII.

Mo. May 13, 2013) (same); Mowery v. Escambia County Util. Auth., 2006 WL 327965, at *9, (N.D. Fla. Feb. 10, 2006) (Congress "specifically and repeatedly" rejected ENDA).

Moreover, Congress' refusal to enact ENDA is only part of the overwhelming evidence to support the conclusion that Title VII does not cover sexual orientation discrimination. Plaintiff completely ignores the legislative history cited by Judge Johnson that supports the finding that discrimination "because of sex" under Title VII was intended to mean discrimination due to gender. [Doc. 16, at pp. 6-7]. When viewed in this context, the legislative history, combined with the repeated attempts by Congress to enact ENDA (unsuccessfully), and of course the plain language of the statute, conclusively demonstrate that Title VII simply does not protect against sexual orientation discrimination.

4. *Oncale* And *Foxx* Do Not Provide A Basis To Support The Plaintiff's Claims

Plaintiff falls back on reliance upon Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75 (1998) to argue that Title VII already protects sexual orientation discrimination. Oncale, however, provides no such support. In Oncale, the Supreme Court ruled that Title VII's protection against sexual harassment included protection against sexual harassment perpetrated by someone of the same sex, so long as the harassment was still "because of sex." Essentially, the Oncale decision

held that sexual harassment is unlawful, regardless of the gender of the individual who engages in such conduct. It is an unfathomable leap to claim Oncale states or even implies that sexual orientation discrimination is protected by Title VII. Plaintiff's argument otherwise misses the point - "because of sex" is very different than "because of sexual orientation." See King v. Super Serv., Inc., 68 Fed.Appx. 659, 664 (6th Cir. 2003) ("animosity directed towards the plaintiff because of his apparent sexual orientation is…different from discrimination on the basis of sex"); Bibby v. Phil. Coca-Cola Bottling Co., 260 F.3d 257, 264 (3d Cir. 2001) (noting difference between "because of sex" and sexual orientation, the latter of which "Congress has not yet seen fit" to protect); Simonton v. Runyon, 232 F.3d 33, 36 (2d Cir. 2000) (same).

Similarly, the material flaw in the EEOC's Baldwin v. Foxx decision relied upon by Plaintiff is that it, too, believes that "because of sex" includes sexual orientation. Sex, however, simply does not reference ones sexual orientation.[3] Plaintiff's claim that Baldwin v. Foxx should be entitled to some deference (and

[3] Parr v. Woodmen of the World Life Ins. Co., 791 F.2d 888, 892 (11th Cir. 1986) does not support Plaintiff's proposed amendment to Title VII. Parr concluded that racial discrimination prohibits discriminating against someone who is in an interracial marriage. In that context, the discrimination is "because of" race, albeit the race of that individual's spouse. That is a natural extension of the race discrimination analysis, and has no application or role in interpreting the difference between someone's sex and sexual orientation, a wholly different analysis. See Partners Healthcare Sys. v. Sullivan, 349 F.Supp.2d 29, 39 (D. Mass. 2007).

apparently that all courts should reevaluate their previous interpretations of the statute because of a single radical decision by the EEOC that reverses its own previous interpretation ofTitle VII) simply is inconceivable given the EEOC's own previous contradictory interpretations, and the fact that its new position is contrary to controlling law in nearly every single Circuit in the country.[4]

Thus, distilled to its essence, Plaintiff is asking this Court to ignore Blum and all of the circuit and district courts that have ruled that Title VII does not protect against sexual orientation discrimination. Because this is contrary to the binding precedent in this Circuit, the reasoning of nearly every single court to ever consider this issue, the legislative history of Title VII, and the plain language of the statute, Defendant respectfully submits that this Court should decline Plaintiff's invitation to amend Title VII. Instead, the Court should follow the overwhelming case law holding that Title VII does not cover sexual orientation, and that it is up to

[4] Judge Johnson correctly noted that the EEOC's position is not entitled to any deference, as it attempts to change something that is within the purview of the legislative branch, and "if Congress is so inclined, it can amend the statute to provide a claim for sexual orientation discrimination." [Doc. 16, p. 13]. Moreover, Plaintiff ironically argues that Baldwin v. Foxx is entitled to deference because of its supposed reliance on Eleventh Circuit precedent. [Doc. 18, p. 12]. Yet, significant portions of Plaintiff's Objections are devoted to a futile attempt to explain away Eleventh Circuit precedent holding, or at the very least strongly suggesting or implying, that Title VII does not encompass sexual orientation.

Congress to amend Title VII to add sexual orientation as a protected class if it so desires.

Accordingly, the Court should adopt the R&R and dismiss Plaintiff's sexual orientation claim with prejudice.

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

Plaintiff's objection attempts to bootstrap his gender stereotyping claim to his sexual orientation claim without any factual support.[5] Sexual orientation alone, however, cannot support a gender stereotyping claim, as this would have the effect of re-writing Title VII to include sexual orientation discrimination.

Plaintiff claims that his allegations in the Second Amended Complaint that his sexual orientation and identity were criticized by one or more individuals, and that someone made disparaging comments about his sexual orientation and identity, is sufficient to state a gender stereotyping claim. This argument fails. As Judge Johnson noted, a gender stereotyping claim is based upon allegations that "he suffered discrimination based on his employer's belief that he failed 'to conform to masculine stereotypes.'" (Doc. 16, p. 14)(citing EEOC v. Family Dollar Stores, Inc., 2008 WL 4098723, at *14 (N.D. Ga. Aug. 28, 2008)).

[5] Plaintiff's bootstrapping attempt is made abundantly clear when he argues later in his brief that "the issue of gender stereotyping is analytically indistinct from the issue of sexual orientation discrimination," citing a California case. [Doc. 18, p. 17]. Of course, this is not the law in the Eleventh Circuit.

Courts repeatedly have stated that such a gender stereotyping claim cannot masquerade as a sexual orientation claim under another name, but instead, that the plaintiff must allege that he was discriminated against because he did not act like the typical male for a reason other than the mere fact that he is homosexual, such as his appearance or mannerisms on the job. See Simonton, 232 F.3d at 38 (noting that the gender stereotyping theory "would not bootstrap protection for sexual orientation into Title VII because not all homosexual men are stereotypically feminine, and not all heterosexual men are stereotypically masculine"); Gilbert v. Country Music Ass'n, 432 Fed.Appx. 516, 520 (6th Cir. 2011) (dismissing claim for gender stereotyping due to lack of allegations to support claim, such as non-stereotypical appearance or mannerisms, and stating "for all we know, Gilbert fits every male 'stereotype' save one – sexual orientation – and that does not suffice to obtain relief under Title VII"); Dawson v. Bumble & Bumble, 398 F.3d 211, 219 (2d Cir. 2005) (noting that courts "have repeatedly rejected attempts by homosexual plaintiffs to assert employment discrimination claims based upon allegations involving sexual orientation by crafting the claim as arising from discrimination based upon gender stereotypes"); Vickers v. Fairfield Med. Ctr., 453 F.3d 757, 763 (6th Cir. 2006) (holding that "theory of sex stereotyping under

Price Waterhouse is not broad enough to encompass" a theory based solely on sexual orientation and that this did not conform to traditional masculine roles).

At least one court within this circuit has dismissed a gender stereotyping claim where the plaintiff failed to allege what traits or circumstances made him different than the stereotypical male (aside from his sexual preference). See Anderson v. Napolitano, 2010 WL 431898 (S.D. Fla. Feb. 8, 2010). Here, as Judge Johnson correctly found, "the Second Amended Complaint contains no allegations that plaintiff suffered discrimination based on his employer's belief that he failed to conform to masculine stereotypes." [Doc. 16, p. 16]. Accordingly, because Plaintiff has not and cannot plead any facts that support that he fails to meet or conform to masculine stereotypes, his claim fails. Accordingly, Defendant respectfully requests that this Court dismiss Plaintiff's claim with prejudice.

C. The R&R Correctly Concluded That Plaintiff Failed To Allege Gender Stereotyping In His EEOC Charge

Plaintiff's final objection argues that Judge Johnson erred in concluding that Plaintiff's EEOC charge did not include a claim for gender stereotyping, and thus, Plaintiff failed to exhaust his administrative remedies with respect to this claim. Plaintiff's argument is based entirely upon the fact that he "checked the box" for sex discrimination in his EEOC charge. This argument conveniently ignores, however, that the narrative (not the box he checked) in Plaintiff's EEOC charge

controls whether he exhausted his administrative remedies, and his gender stereotyping claim fails because he simply did not include any gender stereotyping allegations or factual support in the narrative of his EEOC charge.

In this regard, the "crucial element of a charge of discrimination is the factual statement contained therein." Sanchez v. Standard Brands, Inc., 431 F.2d 455, 462 (5th Cir. 1970). "The selection of the type of discrimination alleged, i.e., the selection of which box to check, is in reality nothing more than the attachment of a legal conclusion to the facts alleged." Id. The Eleventh Circuit has held that merely checking a particular box on an EEOC charge does not satisfy the exhaustion requirement where the plaintiff provides no supporting facts in connection with the claim at issue. Chanda v. Engelhard/ICC, 234 F.3d 1219, 1224 (11th Cir. 2000). See also Jerome v. Marriott Residence Inn Barcelo Crestline/AIG, 211 Fed.Appx. 844, 846-847 (11th Cir. 2006) (circling "wages" on EEOC questionnaire without providing any supporting facts insufficient to exhaust wage discrimination claim); Houston v. Army Fleet Services, LLC, 509 F.Supp.2d 1033, 1043 (M.D. Ala. 2007) ("Indeed, checking the correct box alone is not sufficient to satisfy the filing requirement when no factual particulars relating to the claim are disclosed to the EEOC").

Here, it is undisputed that Plaintiff did not include a single factual statement or allegation that indicated he was discriminated against due to gender stereotyping in his charge of discrimination. As a result, Judge Johnson reached the proper conclusion that "[o]ne would not reasonably expect an EEOC investigation of gender stereotyping to grow out of the charge's allegation of sexual orientation discrimination." [Doc. 16, p. 20].

Contrary to Plaintiff's assertions, the two decisions cited by Defendant and by Judge Johnson support this conclusion, and stand for the proposition that a charge alleging "sexual orientation" discrimination and nothing else simply does not exhaust a claim for some other type of sex discrimination, such as gender stereotyping. 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 does not dispute that his EEOC charge does not mention or describe any gender stereotyping allegation, and because merely "checking the

box" for sex discrimination does not mean that Plaintiff has exhausted a claim of gender stereotyping, Defendant respectfully requests that this Court overrule Plaintiff's Objections and dismiss Plaintiff's gender stereotyping claim with prejudice.

D. Plaintiff's Gender Stereotyping Claim Is Untimely

Although Magistrate Judge Johnson did not address this argument because he already properly concluded that Plaintiff's Second Amended Complaint should be dismissed, for the reasons identified in Defendant's Motion to Dismiss and reply brief in support thereof, Plaintiff's attempt to add a gender stereotyping claim is untimely and otherwise fails as a matter of law. [Doc. 13, pp. 12-14 and Doc. 15, p.14].

III. CONCLUSION

For the reasons stated herein, Clayton County respectfully requests that the Court overrule Plaintiff's objections and **DISMISS** Plaintiff's Second Amended Complaint with prejudice.

This 1st day of December, 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

FREEMAN MATHIS & GARY, LLP
100 Galleria Parkway, Suite 1600
Atlanta, Georgia 30339
Telephone: (770) 818-0000
Facsimile: (770) 937-9960
jhancock@fmglaw.com
mheller@fmglaw.com
bbuechner@fmglaw.com

CERTIFICATE OF COMPLIANCE

I hereby certify that the within and foregoing **RESPONSE IN OPPOSITION TO PLAINTIFF'S OBJECTIONS TO MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION** has been prepared in compliance with Local Rule 5.1 by using Times New Roman, 14 point font.

This 1st day of December, 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
T: (770) 818-0000
F: (770) 937-9960

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the within and foregoing **RESPONSE IN OPPOSITION TO PLAINTIFF'S OBJECTIONS TO MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION** 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 1st day of December, 2016.

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

Attorney for Clayton County

FREEMAN MATHIS & GARY, LLP
100 Galleria Parkway, Suite 1600
Atlanta, GA 30339
T: (770) 818-0000
F: (770) 937-9960