

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

GERALD LYNN BOSTOCK,	)	
	)	
Plaintiff,	)	CIVIL ACTION
	)	File No. 1:16-CV-1460
v.	)	
	)	
CLAYTON COUNTY BOARD OF	)	
COMMISSIONERS,	)	
	)	
Defendant.	)	

**CONSENT MOTION FOR LEAVE TO AMEND COMPLAINT AND TO  
SUBSTITUTE DEFENDANT**

Plaintiff Gerald Bostock respectfully submits this Consent Motion for Leave to Amend his First Amended Complaint.

1. Plaintiff filed his Complaint, *pro se*, on May 5, 2016, alleging that Defendant Clayton County Board of Commissioners discriminated against him based on his sexual orientation in violation of Title VII of the Civil Rights Act of 1964, as amended. [Doc. No. 1.]

2. Since then, Plaintiff has retained legal representation concerning the above-captioned matter.

3. After reviewing Plaintiff's *pro se* Complaint, Plaintiff's counsel filed an Amended Complaint on August 5, 2016. [Doc. No. 4.]

4. Defendant has moved to dismiss the Amended Complaint on the grounds that (1) sexual orientation discrimination is not a legally cognizable claim under Title VII and (2) the Clayton County Board of Commissioners is not a legal entity capable of being sued. [Doc. No. 7.]

5. Plaintiff seeks to file a Second Amended Complaint to add a claim based on gender stereotyping discrimination under Title VII and to substitute Clayton County as the Defendant. A copy of the proposed Second Amended Complaint is attached hereto as Exhibit A.

6. The Parties' counsel have conferred in advance of this Motion. Counsel for Defendant, who is also counsel for Clayton County, has consented to this motion and to accept service on behalf of Clayton County. Defendant's consent is given without prejudice to any arguments that it may raise as to the merit of the claims and Defendant's ability to move to dismiss the claims in the Second Amended Complaint.

7. Defendant has also consented to the form of the proposed Order attached hereto including that its motion to dismiss be denied as moot based upon the filing of the Second Amended Complaint without prejudice to Defendant's right to file a Motion to Dismiss the Second Amended Complaint.

8. Federal Rule of Civil Procedure 15(a) (2) provides that a party may amend

his pleading “with the opposing party’s consent.”

WHEREFORE, Plaintiff respectfully requests that the Plaintiff’s Consent Motion for Leave to Amend Complaint and to Substitute Defendant be granted, that Clayton County be substituted as Defendant in this action and that Plaintiff’s proposed Second Amended Complaint be filed. A Proposed Order is attached for the Court’s convenience.

This 9<sup>th</sup> day of September, 2016.

Respectfully submitted,

BUCKLEY BEAL, LLP

s/ Thomas J. Mew  
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Counsel for Plaintiff

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	)	
CLAYTON COUNTY,	)	
	)	
Defendant.	)	

**CERTIFICATE OF COMPLIANCE**

I hereby certify that the within and foregoing has been prepared in compliance with Local Rule 5.1 by using Times New Roman, 14 point font.

This 9<sup>th</sup> day of September, 2016.

s/Thomas J. Mew  
Thomas J. Mew

**CERTIFICATE OF SERVICE**

I hereby certify that on September 9, 2016, I electronically filed  
PLAINTIFF'S CONSENT MOTION FOR LEAVE TO AMEND COMPLAINT  
AND TO SUBSTITUTE DEFENDANT with the Clerk of Court using the  
CM/ECF system which will automatically send email notification of such filing to  
the following attorneys of record:

Jack Hancock  
Martin B. Heller  
William H. Buechner

BUCKLEY BEAL, LLP

s/ Thomas J. Mew  
Thomas J. Mew  
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v.	)	
	)	<b>JURY TRIAL DEMANDED</b>
CLAYTON COUNTY,	)	
	)	
Defendant.	)	

**SECOND AMENDED COMPLAINT**

Plaintiff Gerald Lynn Bostock (“Plaintiff”) files this Second Amended Complaint against Defendant Clayton County (“Defendant”) for violations of Title VII of the Civil Rights Act of 1964 as amended by the Civil Rights Act of 1991, 42 U.S.C. § 2000e *et seq.* (“Title VII”).

**PARTIES**

1.

At all times relevant to this action, Defendant employed Plaintiff.

2.

Plaintiff submits himself to the jurisdiction of this Court.

3.

Defendant is a political division of the state of Georgia and is subject to the

jurisdiction and venue of this Court.

4.

Defendant may be served with process by delivering a copy of Summons and Complaint to Jeffrey E. Turner, Chairman, Clayton County Administration 112 Smith Street, Jonesboro, GA 30236 for service of process.

5.

Defendant is an “employer” as defined by Title VII.

**ADMINISTRATIVE**

6.

Mr. Bostock timely filed a charge for sex and sexual orientation discrimination with the Equal Employment Opportunity Commission.

7.

Mr. Bostock filed this lawsuit within 90 days of the receipt of his Notice of Right to Sue.

**JURISDICTION AND VENUE**

8.

Jurisdiction of this Court is proper pursuant to 28 U.S.C. § 1331 (federal question).

9.

Venue is proper in this district and division pursuant to 28 U.S.C. § 1391(b)(1) because Defendant resides within the Northern District of Georgia.

10.

Venue is also proper in this district and division pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events and omissions giving rise to this Complaint occurred within the Northern District of Georgia.

### **STATEMENT OF FACTS**

11.

Plaintiff began working for the Defendant on or about January 13, 2003.

12.

Plaintiff is a gay male.

13.

Plaintiff was employed by Defendant as the Child Welfare Services Coordinator assigned to the Juvenile Court of Clayton County. Plaintiff was charged with the primary responsibility of Clayton County CASA (Court Appointed Special Advocate).

14.

During the over ten (10) years Plaintiff was employed by the Defendant, he received good performance evaluations and the program received accolades. Clayton County CASA was awarded the Established Program Award of Excellence by Georgia CASA in 2007. Plaintiff was recognized by National CASA for program expansion and served on the National CASA Standards and Policy committee in or around 2011-2012 .

15.

Beginning in January 2013, Plaintiff became involved with a gay recreational softball league called the Hotlanta Softball League.

16.

Plaintiff actively promoted the Clayton County CASA organization to the softball league as a source of volunteer opportunities for league members.

17.

In the months after Plaintiff joined the Hotlanta Softball League, Plaintiff's participation in the league and his sexual orientation and identity were, on information and belief, openly criticized by one or more persons who had significant influence on the decisionmaking of the Defendant.

18.

In or around April 2013, Defendant advised Plaintiff that it was conducting an internal audit on program funds Plaintiff managed.

19.

Plaintiff did not engage in any improper conduct with regard to program funds under his custody or control.

20.

Defendant initiated the audit as a pretext for discrimination against Plaintiff based on his sexual orientation and failure to conform to a gender stereotype.

21.

On information and belief, in May 2013, during a meeting with the Friends of Clayton County CASA Advisory Board, where Plaintiff's supervisor was present, at least one individual made disparaging comments about Plaintiff's sexual orientation and identity and participation in the league.

22.

On or about June 3, 2013, Defendant terminated Plaintiff's employment.

23.

Defendant stated that Plaintiff was terminated for Conduct Unbecoming of a Clayton County Employee. That purported reason, however, was a pretext for discrimination against Plaintiff based on his sex and/or sexual orientation.

**COUNT I**  
**Sex Discrimination in Violation of**  
**Title VII of The Civil Rights Act of 1964, as Amended**

24.

Plaintiff incorporates by reference the preceding Paragraphs as if fully restated herein.

25.

Plaintiff is a gay male.

26.

Plaintiff is an “employee” as defined by Title VII, 42 U.S.C. § 2000e *et seq.*

27.

Defendant is an “employer” as defined by Title VII, 42 U.S.C. § 2000e *et seq.*

28.

Having worked in his position previously, Plaintiff was qualified for the position of Child Welfare Services Coordinator.

29.

Defendant discriminated against Plaintiff in the terms and conditions of Plaintiff's employment when it terminated Plaintiff's employment.

30.

As a direct and proximate result of the Defendant's actions, Plaintiff has suffered damages including emotional distress, inconvenience, loss of income and benefits, humiliation, and other indignities.

31.

Plaintiff is entitled to an award of back pay and benefits, compensatory damages, reinstatement or front pay, attorney's fees, and all other appropriate damages, remedies, and other relief available under Title VII and all federal statutes providing remedies for violations of Title VII.

32.

Defendant acted intentionally and maliciously with respect to Plaintiff, entitling Plaintiff to recover punitive damages against Defendant.

33.

Additionally, or in the alternative, Defendant undertook its unlawful conduct recklessly with respect to Plaintiff and his federally protected rights, entitling Plaintiff to recover punitive damages against Defendant.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands a TRIAL BY JURY and requests the following relief:

- a. a declaratory judgment that Defendant violated Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e *et seq.*;
- b. a permanent injunction, prohibiting Defendant from engaging in unlawful employment practices in violation of Title VII;
- c. full back pay from the date of Plaintiff's termination, taking into account all raises to which Plaintiff would have been entitled but for his unlawful termination, and all fringe and pension benefits of employment, with prejudgment interest thereon;
- d. reinstatement to Plaintiffs' former position with Defendant at the same pay grade, or in the alternative, front pay to compensate Plaintiff for lost future wages, benefits and pension;

- e. compensatory damages in an amount to be determined by the enlightened conscience of the jury, for Plaintiff's emotional distress, suffering, inconvenience, mental anguish, loss of enjoyment of life and special damages;
- f. punitive damages;
- g. attorneys' fees and costs; and
- h. all other and further relief as this Court deems just and proper.

Respectfully submitted,

BUCKLEY BEAL LLP

By: s/ Thomas J. Mew IV

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 9, 2016, I electronically filed the **SECOND AMENDED COMPLAINT** with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to all current attorneys of record.

s/ Thomas J. Mew IV  
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**[PROPOSED] ORDER**

Having reviewed PLAINTIFF’S CONSENT MOTION FOR LEAVE TO AMEND COMPLAINT AND TO SUBSTITUTE DEFENDANT, and for good cause shown, Plaintiff’s Consent Motion is hereby GRANTED. The Clerk is directed to enter the Plaintiff’s Second Amended Complaint and the same is deemed filed. Defendant’s Motion to Dismiss the Plaintiff’s First Amended Complaint is DENIED AS MOOT, without prejudice to Defendant’s right to file a Motion to Dismiss Plaintiff’s Second Amended Complaint.

IT IS SO ORDERED on this \_\_\_\_ day of \_\_\_\_\_ 2016.

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Hon. Walter E. Johnson  
United States Magistrate Judge  
Northern District of Georgia