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-ELR-WEJ**
CLAYTON COUNTY,	)	
	)	
Defendant.	)	

DEFENDANT'S RESPONSE TO PLAINTIFF'S OBJECTIONS TO MAGISTRATE JUDGE'S ORDER DENYING MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT

Jack R. Hancock
Georgia Bar No. 322450
William H. Buechner, Jr.
Georgia Bar No. 086392
Michael M. Hill
Georgia Bar No. 770486
FREEMAN MATHIS & GARY, LLP
100 Galleria Parkway, Suite 1600
Atlanta, GA 30339
T: 770.818.0000
F: 770.937.9960

Counsel for Defendant

COMES NOW Defendant Clayton County (the "County") and files its Response to Plaintiff's Objections to the Magistrate Judge's Order Denying the Motion for Leave to File a Third Amended Complaint ("Objections") (Doc. 57).

I. STATEMENT OF THE CASE

Magistrate Judge Walter Johnson properly denied as futile Mr. Bostock's motion to amend his complaint. This case arises from the County's termination of Mr. Bostock's employment in June 2013. Chief Judge Steve Teske of the Clayton County Juvenile Court publicly explained to the press at the time that Mr. Bostock was terminated for misusing County funds. Several months later, Mr. Bostock filed an EEOC charge alleging his termination was due to his sexual orientation. In 2016, Mr. Bostock filed the instant lawsuit.

In June 2020, after the Supreme Court's widely-publicized decision in this case, Judge Teske reiterated to two reporters that Mr. Bostock's termination had nothing to do with his sexual orientation but instead was due to his misuse of public funds. Mr. Bostock contends these remarks were in "retaliation" for his filing an EEOC charge and this lawsuit several years earlier, and he moved for leave to amend his complaint for the third time to assert a Title VII retaliation claim based on these statements.

Judge Johnson, however, denied Mr. Bostock's motion to amend and correctly held (1) Mr. Bostock alleged no facts to show Judge Teske was acting on behalf of the County in speaking to the press; (2) Mr. Bostock cited no authority to support the proposition that Title VII forbids an employer or a non-defendant individual from denying legal allegations

asserted against him to the press; and (3) Mr. Bostock could not possibly show any causal connection between Mr. Bostock's EEOC charge or this lawsuit and Judge Teske's statements that Mr. Bostock had misused County funds because Judge Teske *already* had publicly made these statements before Mr. Bostock ever had engaged in any protected activity. Judge Johnson thus properly denied Mr. Bostock's motion to amend as futile.

As discussed in detail herein, Mr. Bostock's Objections to Judge Johnson's Order are legally incorrect, contrary to controlling authority, and/or otherwise unsupported by law or frivolous on their face. Judge Johnson's Order should be affirmed and this case proceed with Mr. Bostock's Second Amended Complaint as his operative pleading.

II. ARGUMENT AND CITATION TO AUTHORITY

A. Federal Rule Of Civil Procedure 72(a) Provides The Standard Of Review For A Magistrate Judge's Order On A Motion To Amend

Mr. Bostock incorrectly states the Court should apply a *de novo* standard of review, despite admitting that his counsel was unable to locate Eleventh Circuit authority to support this proposition. (Doc. 57 at pp. 3-4 & n.1.) The reason he could not find such authority is because it would directly contradict Rule 72(a) and 28 U.S.C. § 636(b)(1).

Rule 72(a) provides the Court may refer *nondispositive* pretrial motions to a magistrate judge to "hear and decide" and to issue an order. If a party timely objects to the magistrate judge's order, the district judge is to consider the objections and modify or set aside any part of the order that is "clearly erroneous or is contrary to law." Fed. R. Civ. P.

72(a). By contrast, if a magistrate judge considers a *dispositive* motion, he or she issues a report and recommendation instead of an order, and the district judge reviews objections to a report and recommendation *de novo*. Fed. R. Civ. P. 72(b)(1)-(3). Thus, the *de novo* standard is only for reviewing a report and recommendation—*not* a magistrate judge's order on a nondispositive motion.

Mr. Bostock's assertion that a motion to amend is a dispositive motion is contrary to statutory authority. Local Rule 72.1(B) notes that "[a] listing of dispositive motions is contained in 28 U.S.C. § 636(b)(1)." LR 72.1(B), NDGa. This list of dispositive motions is as follows: "a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action." 28 U.S.C. § 636(b)(1). A motion to amend is ***not*** on this list.[1]

[1] Mr. Bostock's lengthy string citation in footnote 1 is largely irrelevant and contains no controlling authority to override Rule 72 or 28 U.S.C. § 636. The Eleventh Circuit cases he cites concerned the standard of review applied *by the appellate court* to a district court's decision—***not*** the district judge's review of a magistrate judge's order. *Crosson v. Lasalle Bank, N.A.*, 2009 U.S. Dist. LEXIS 144264, at *1 n.1 (N.D. Ga. Dec. 23, 2009), is distinguishable because the magistrate judge in that case *chose* to issue his determination as a report and recommendation instead of an order "out of an abundance of caution" and even noted there was no Eleventh Circuit authority requiring him to do so. The district court in *Lodge v. Kondaur Capital Corp.*, 2011 U.S. Dist. LEXIS 159501, *11 (N.D. Ga. September 21, 2011), relied upon an Eleventh Circuit case that actually addressed the standard of review applicable to the circuit court of appeals—not to a district judge's review of a magistrate judge's order. Thus, *Lodge* is inapposite. Similarly, the court in *Marco Island*

Thus, the plain language of Rule 72(a) and 28 U.S.C. § 636(b)(1) provides that the correct standard of review for Judge Johnson's Order is whether Mr. Bostock's Objections show it to be "clearly erroneous" or "contrary to law." Fed. R. Civ. P. 72(a). The next sections show the Order to be neither.

B. The Magistrate Judge Made No Factual Determinations But Properly Applied The "Plausibility" Standard Required By *Twombly/Iqbal*

Mr. Bostock argues that Judge Johnson made "elaborate suppositions" of fact "outside the pleadings" in finding the proposed amendment to be futile. (Doc. 57 at pp. 6-8.) Judge Johnson did no such thing. Instead, he reviewed the entire news articles from which Mr. Bostock selectively quoted and determined that a retaliation claim, based on the articles and facts alleged, simply was not plausible. Far from being improper, assessing a claim's plausibility in light of the Court's "judicial experience and common sense" is the

---

Cable, Inc. v. Comcast Cablevision of the South, Inc., 2006 U.S. Dist. LEXIS 41527, at *2 (M.D. Fla. June 21, 2006), noted that the plaintiff had cited "no case authority" to support the proposition that a motion to amend was a dispositive motion; the court even noted its own inability to find any such authority. *Marco Island Cable* also did not even discuss Rule 72 or 28 U.S.C. § 636, both of which resolve in plain terms the issue of whether a motion to amend is a dispositive motion. These district court decisions, which in and of themselves are unsupported by controlling authority, cannot and do not override the clear and unambiguous statutory language of Rule 72 and 28 U.S.C. § 636. *See also Gramegna v. Johnson*, 846 F.2d 675, 678 (11th Cir. 1988) (reviewing magistrate judge's order on motion to amend without questioning her authority to enter the order); *Hall v. Norfolk Southern Ry. Co.*, 469 F.3d 590, 595 (7th Cir. 2006) ("The district judge correctly held that the magistrate judge's denial of Hall's motion to amend his complaint was nondispositive, subject only to review for clear error."); *Pagano v. Frank*, 983 F.2d 343, 346 (1st Cir. 1993) ("[A] motion to amend a complaint is 'a pretrial matter not dispositive of a claim or defense of a party' within the purview of Fed. R. Civ. P. 72(a).").

required standard. *See Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

1. The *Twombly/Iqbal* "Plausibility" Standard

Assessing whether a proposed amendment is futile involves the same considerations as whether a complaint states a claim. *Christman v. Walsh*, 416 F. App'x 841, 844 (11th Cir. 2011); *Burger King Corp. v. Weaver*, 169 F.3d 1310, 1320 (11th Cir. 1999). The Court is required to determine whether the asserted claim is plausible, which "demands more than an unadorned the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 679.

"The plausibility standard is not akin to a 'probability requirement,' but it asks for more than the sheer possibility that a defendant has acted unlawfully." *Id.* (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). "Where a complaint 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.'" *Id.* (quoting *Twombly*, 550 U.S. at 557). The requirement that a plaintiff allege facts showing his claim to be plausible means he "does not unlock the doors of discovery" if he comes to court "armed with nothing more than conclusions." *Id.* Determining whether a claim is plausible is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* "[W]here the well-pleaded facts do not permit the court to infer more than the *mere possibility* of misconduct, the complaint has alleged–but it has not 'show[n]'–'that the pleader is entitled to relief.'" *Id.* (quoting Fed. R. Civ. P. 8(a)(2)) (emphasis added).

2. Mr. Bostock Alleged No Facts To Show Judge Teske Acted On Behalf Of The County In Speaking To The Press

Judge Johnson correctly held that Mr. Bostock had failed to allege Judge Teske was his employer or any facts to support the conclusion that Judge Teske acted as the County's agent in speaking to the press. (Doc. 56 at p. 13.) Mr. Bostock, in his Objections, cites ***no factual allegations*** from the proposed Third Amended Complaint to show this to be error. (*See* Doc. 57 at pp. 6-8.)

Instead, Mr. Bostock primarily points to statements in the Daily Report article and AJC column that suggest Judge Teske's involvement in the 2013 decision to terminate Mr. Bostock's employment. (*Id.* at pp. 7-8) From these statements, Mr. Bostock makes "elaborate suppositions" of his own to infer that Judge Teske acted as the County's agent in speaking to the press *seven years later*. (*See id.* at p. 8 ("If he was authorized to act as Defendant's agent in firing Plaintiff, surely in making the recent comments, the same agency can be attributed to Judge Teske.")). No authority whatsoever is cited for this supposition, which also is illogical. Even if one were to assume that Judge Teske acted on behalf of the County in determining Mr. Bostock should be terminated in 2013, this would not mean that Judge Teske acted on the County's behalf in 2020 when he denied *personally* harboring any discriminatory animus against individuals based on sexual orientation.[2]

[2] Mr. Bostock's reference to the County's interrogatory response rests on this same logical fallacy. In addition, the irony of Mr. Bostock's asking this Court to review a discovery response, while simultaneously accusing Judge Johnson of improperly considering matters

Judge Teske's reported statements made it clear he was speaking to the press for the purpose of clearing *his own name* against Mr. Bostock's accusations of "homophobia":

> Teske said ***he*** chose not to counter Bostock's narrative while the case was making its way to the Supreme Court.
>
> But Teske said that, now, Bostock's narrative that he was targeted because he was gay has cast a public shadow on ***his own*** motives and beliefs, potentially jeopardizing ***his*** longtime advocacy for youth, including juveniles who are often mistreated because they are gay, lesbian or transgender.
>
> . . .
>
> "Up until this point, I let Gerald control the narrative," Teske said. "There wasn't a need for me to interject the rest of the story because the issue was ***not about me*** at the time. It was about whether or not gays should be protected in their place of employment, which I support."

(Doc. 53-1 at pp. 3-4 (emphasis added)).

"outside of the pleadings," underscores the inconsistent and one-sided nature of Mr. Bostock's reasoning. Mr. Bostock never objected to Judge Johnson's consideration of the Daily Report article and AJC column attached to the County's opposition brief, and, unlike those documents, the interrogatory response attached to his Objections was not referenced in the proposed Third Amended Complaint. *See Day v. Taylor*, 400 F.3d 1272, 1276 (11th Cir. 2005) (court may consider document attached to motion to dismiss if, among other requirements, "the document's contents are alleged in a complaint and no party questions those contents"). Contrary to Mr. Bostock's assertion in footnote 3, *Day* does *not* stand for the proposition that a court may consider a party's discovery response in determining whether a proposed amended complaint is futile. (*See* Doc. 57 at p. 8 n.3.) It would be wholly improper for this Court to consider a discovery response that was not attached to—or even referenced in—either the proposed Third Amended Complaint or the County's brief in opposition to Mr. Bostock's motion to amend. Under *Day*, if a document is not attached to a complaint, then at least its *contents* must be referenced in the complaint in order for the Court to consider it as "central to the plaintiff's claim." *Day*, 400 F.3d at 1276.

Mr. Bostock's argument that Judge Johnson should have just accepted the conclusory assertion that Judge Teske acted as the County's "agent and employee" in speaking to the press is contrary to the *Twombly/Iqbal* standard because "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Iqbal*, 556 U.S. at 678. Mr. Bostock failed to allege any facts to show that Judge Teske spoke on behalf of the County as opposed to his own behalf, and the Court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Twombly*, 550 U.S. at 555.

Similarly, *Twombly* and *Iqbal* foreclose Mr. Bostock's argument that Judge Johnson made "no allocation for the possibility" that Judge Teske may have acted as the County's agent in talking to the press. (*See* Doc. 57 at p. 7.) "The plausibility standard . . . asks for *more* than the *sheer possibility* that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 679 (quoting *Twombly*, 550 U.S. at 556) (emphasis added). "[W]here the well-pleaded facts do not permit the court to infer *more* than the *mere possibility* of misconduct, the complaint has alleged–but it has not 'show[n]'–'that the pleader is entitled to relief.'" *Id.* (quoting Fed. R. Civ. P. 8(a)(2)) (emphasis added).[3]

[3] Mr. Bostock also makes a half-hearted attempt to argue that it was improper for Judge Johnson to consider Georgia constitutional and statutory provisions in determining Judge Teske to be a State judicial officer instead of a County employee, asserting that these legal authorities were "outside of the pleadings." (Doc. 57 at p. 7.) Mr. Bostock's argument on this point is not clear, but there can be no serious dispute that the Court may consider state constitutional and statutory authorities in determining the legal sufficiency of a proposed legal claim. "Federal courts take judicial notice of the Constitution and public laws of each State of the Union[.]" *Misener Marine Constr., Inc. v. Norfolk Dredging Co.*, No. CV 404-

3. Mr. Bostock Alleged No Facts Or Legal Authority To Support His Novel Expansion Of Title VII's Anti-Retaliation Provision

Judge Johnson correctly held that Judge Teske's speaking to the press did not constitute a materially adverse action as required to support a retaliation claim. (Doc. 56 at p. 15.) He pointed out that Mr. Bostock cited no authority in either his initial or reply brief to support the theory that an employer engages in unlawful retaliation when an individual publicly denies allegations asserted against him in a lawsuit. (*Id.* at pp. 15-16.) To this day, Mr. Bostock still can cite ***no authority whatsoever*** to support this expansive interpretation of Title VII. (See Doc. 57 at pp. 9-10.)

A fundamental problem with Mr. Bostock's theory of retaliation is that defendants in employment-discrimination lawsuits typically deny the truthfulness of many, if not most, of the allegations asserted against them and contend that legitimate, nondiscriminatory reasons motivated their employment decisions, consistent with the *McDonnell Douglas* framework.[4] If such contentions were sufficient to state a claim for retaliation, then virtually all employment-discrimination claims would result in retaliation once the defendant publicly denied the allegations. And yet, despite how common such retaliation claims would have to be under this theory, Mr. Bostock is unable after three briefs to cite ***even one case*** in the country to adopt such a holding. As Judge Johnson noted, "[s]uch authority likely

---

146, 2008 U.S. Dist. LEXIS 108272, at *6 n.2 (S.D. Ga. Mar. 28, 2008) (citing *J.M. Blythe Motor Lines Corp. v. Blalock*, 310 F.2d 77 (5th Cir. 1962)).

[4] *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

does not exist because it would be highly irregular if Mr. Bostock were allowed to say whatever he wanted about Judge Teske in the press, but the Judge's response and denial in the press constituted a materially adverse action." (Doc. 56 at p. 16.)

In addition, as Judge Johnson correctly pointed out, the full context of Judge Teske's statements in the Daily Report article and AJC column shows a retaliatory motive not to be plausible. (*Id.* at pp. 16-17.) Judge Teske repeatedly made clear that he *agrees* with the Supreme Court's decision:

- "The judge said that . . . he is 'ecstatic' about the Supreme Court ruling[.]" (Doc. 53-1 at p. 3.)
- "Teske said he supported Bostock's argument that Title VII should extend protections to the LGBTQ community." (*Id.*)
- "'I am proud of Gerald for taking this issue up to the Supreme Court,' he said." (*Id.*)
- "'Look what he won. A landmark decision to protect those who are gay and lesbian and transgender. That's the bigger picture here. I don't want that to get lost.'" (*Id.*)
- "'[The Supreme Court's decision] was about whether or not gays should be protected in their place of employment, which I support.'" (*Id.* at p. 4)
- "'I'm glad the Supreme Court came down with that decision,' Teske said. 'As a lawyer and a judge, I believe that gays and lesbians should not be discriminated against.'" (Doc. 53-2 at p. 5.)
- "'I'm glad he (Bostock) won,' Teske said." (*Id.*)

Judge Johnson thus correctly noted that "[n]o fair-minded reader of either news

article could conclude that Judge Teske intended any harm to Mr. Bostock because he filed an EEOC charge or lawsuit." (Doc. 56 at p. 17.) While Mr. Bostock argues it was improper for Judge Johnson to read these news articles and "interpret[]" their meaning, the *Twombly/Iqbal* analysis is "a context-specific task" that requires the Court to assess the plaintiff's allegations in their full context and "to draw on its judicial experience and common sense" in determining whether the claims are plausible. *Iqbal*, 556 U.S. at 679.

Mr. Bostock alleged no facts in the proposed Third Amended Complaint to suggest that Judge Teske did not mean what he said in the quoted language above or that he harbored any retaliatory animus. Nor does he identify any such facts in his Objections. (*See generally* Doc. 57.) Even if he argued that it was *possible* Judge Teske may have acted with a retaliatory motive (which Mr. Bostock has not clearly articulated), such "mere possibility" would be entirely speculative and thus still insufficient to state a claim for relief because, "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged–but it has not 'show[n]'–'that the pleader is entitled to relief.'" *Iqbal*, 556 U.S. at 679 (quoting Fed. R. Civ. P. 8(a)(2)).

4. Mr. Bostock Alleged No Facts To Show Any Plausible Causal Connection Between His Protected Activity And Judge Teske's Reported Statements

Judge Johnson also correctly held Mr. Bostock's proposed retaliation claim to be implausible because the alleged causal chain was backwards. Since Judge Teske had publicly accused Mr. Bostock of misusing County funds *before* Mr. Bostock ever filed an

EEOC charge or this lawsuit, then Mr. Bostock's EEOC charge and lawsuit could not have been the *cause* of these accusations. (Doc. 56 at pp. 17-18.)

Mr. Bostock argues that, for a retaliation claim, it is not relevant whether Judge Teske made the same public comments both months before and years after Mr. Bostock's protected activity. (Doc. 57 at p. 12.) He cites no authority to support this proposition. This is not surprising because controlling authority holds the exact opposite. *See, e.g.*, *Quigg v. Thomas Cnty. Sch. Dist.*, 814 F.3d 1227, 1245 (11th Cir. 2016) (no retaliation in employer's filing ethics complaint after EEOC charge where employer raised same ethics concerns before filing of charge); *Chapter 7 Tr. v. Gate Gourmet, Inc.*, 683 F.3d 1249, 1259 (11th Cir. 2012) ("The denial of a light-duty job cannot, therefore, be a materially adverse action causally connected to her EEOC charge because it happened before Gate Gourmet got notice of the charge and an effect cannot precede the cause."); *Drago v. Jenne*, 453 F.3d 1301, 1308 (11th Cir. 2006) (holding demotion of employee after protected activity could not be retaliatory where employer contemplated demotion before protected activity).

Mr. Bostock's emphasis on the two-day lapse between the Supreme Court's announcement of its decision and Judge Teske's statements to the press also fails to show any retaliation. (*See* Doc. 57 at p. 11.) The Supreme Court's announcement of its decision is not statutorily protected activity. Mr. Bostock cites no authority to show otherwise; plus, the Supreme Court's decision is not the protected activity he alleged in the proposed Third Amended Complaint. Instead, he alleged he "engaged in a protected activity by filing an

EEOC charge and by filing a lawsuit under Title VII." (Doc. 51-1 ¶ 49.)[5]

While Judge Johnson did not hold the time separating Mr. Bostock's 2013 EEOC charge and 2016 complaint from Judge Teske's statements in 2020 also rendered the retaliation claim implausible, this is an additional reason for denying Mr. Bostock's motion to amend, which the County presented to the Court in its brief. (*See* Doc. 53 at pp. 12-13.)

Mr. Bostock cites *one* district court case that denied a motion for judgment on the pleadings on a retaliation claim where a fourteen-month lapse of time separated the protected activity from the alleged adverse action because "other evidence of causation" may arise in the course of discovery. *See Shipley v. Hypercom Corp.*, No. 1:09-CV-0265-CAP-RGV, 2010 U.S. Dist. LEXIS 147086, at *30 (N.D. Ga. Mar. 15, 2010). *Shipley* is distinguishable, however, because the lapse of time was a few months—not several *years*. In addition, the employer in *Shipley* did not contemplate or engage in the alleged retaliatory action *before* the protected activity, which is a stark contrast to Judge Teske's publicly stating in June 2013 that Mr. Bostock had misused public funds.

In addition, *Shipley* is contrary to the overwhelming weight of authority holding even a time span of twenty months—less than half the time at issue here—to be evidence of "no

[5] In addition, it should come as no surprise that a newspaper article and column about a controversial Supreme Court decision would appear shortly after the decision is released. Newspaper reporting on current events necessarily is contemporaneous with those events. Thus, what Mr. Bostock presents as an indication of retaliation is more plausibly explained as normal news reporting of current events.

causality at all." *Clark Cnty. Sch. Dist. v. Breeden*, 532 U.S. 268, 274 (2001). The County cited ample authority for this proposition in its opposition brief, which included several cases granting motions to dismiss on this basis, and Mr. Bostock made no attempt to distinguish or even address any of these cases. (*See* Doc. 53 at pp. 12-13 (collecting cases)).

Mr. Bostock's ancillary argument that Judge Johnson also erred by using the term "establish" in discussing the elements required to state a retaliation claim is unclear and, regardless, is once again unsupported by any authority whatsoever. (*See* Doc. 57 at p. 11.) While Mr. Bostock does not explain what he finds to be problematic with this word choice,[6] it bears noting that Rule 8(a)(2) requires the plaintiff to "show[]" his entitlement to relief, and not merely allege it. *See Iqbal*, 556 U.S. at 679 ("[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged–but it has not 'show[n]'–'that the pleader is entitled to relief.'").[7]

[6] Incidentally, Mr. Bostock himself used the term "establish" in discussing the requirements for stating a retaliation claim. (*See* Doc. 57 at p. 10 ("To establish a causal connection, a plaintiff in a retaliation case only needs to show . . . .")).

[7] In any event, "establish" is a word that courts commonly use in discussing the pleading requirements for stating a claim for relief. *See, e.g.*, *Bennett v. Hendrix*, 423 F.3d 1247, 1250 (11th Cir. 2005) (setting forth factual allegations plaintiff must "establish" to plead retaliation); *Bell v. Ala. DOT*, No. 2:18-CV-01122-MHH, 2021 U.S. Dist. LEXIS 5330, at *6 (N.D. Ala. Jan. 12, 2021) ("In the absence of other factual allegations *establishing* a causal relationship between Mr. Bell's alleged protected conduct and the alleged adverse employment action, Mr. Bell's retaliation claim cannot survive a motion to dismiss based on complaints so temporally distant from the alleged adverse employment action." (emphasis added)).

C. The Magistrate Judge Did Not Err In Denying A Proposed Amendment That Mr. Bostock Himself Admitted Was "Not Legally Necessary"

Judge Johnson also committed no error in denying Mr. Bostock leave to amend to "clarify" that he intended to assert both single and mixed-motive discrimination claims. Mr. Bostock conceded in the initial brief on his motion to amend that it was "not necessary as a matter of law" to make this amendment, and he admits again in his Objections that "this amendment is not legally necessary." (Doc. 51-3 at p. 1; Doc. 57 at 12.) Yet he asserts without explanation that Judge Johnson's denial of leave to make this unnecessary amendment was "erroneous as well." (Doc. 57 at p. 13.)

Mr. Bostock's argument is facially frivolous. As with many of the other arguments discussed above, Mr. Bostock cites no authority at all for the proposition that a court commits reversible error by failing to take an action that the requesting party admits is unnecessary. If the proposed amendment was not necessary, then it did not need to be done. If it did not need to be done, then how could it possibly be reversible error not to permit the amendment? Mr. Bostock's argument to the contrary is incoherent.

III. CONCLUSION

For the foregoing reasons, the Court should overrule Mr. Bostock's Objections (Doc. 57) as failing to show any clear error. Judge Johnson's Order (Doc. 56) denying Mr. Bostock's motion to amend should be affirmed, and this case should continue in discovery with the Second Amended Complaint (Doc. 10) as Mr. Bostock's operative pleading.

Respectfully submitted,

FREEMAN MATHIS & GARY, LLP

/s/ Jack R. Hancock
Jack R. Hancock
Georgia Bar No. 322450
William H. Buechner, Jr.
Georgia Bar No. 086392
Michael M. Hill
Georgia Bar No. 770486

Counsel for Clayton County

100 Galleria Parkway, Suite 1600
Atlanta, Georgia 30339
Telephone: (770) 818-0000
Facsimile: (770) 937-9960
jhancock@fmglaw.com
bbuechner@fmglaw.com
mhill@fmglaw.com

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(D), I hereby certify that the within and foregoing **DEFENDANT'S RESPONSE TO PLAINTIFF'S OBJECTIONS TO MAGISTRATE JUDGE'S ORDER DENYING MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT** has been prepared in compliance with Local Rule 5.1(B) in 14-point Times New Roman type face.

This 5th day of February, 2021.

/s/ Jack R. Hancock
Jack R. Hancock
Georgia Bar No. 322450

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the within and foregoing **DEFENDANT'S RESPONSE TO PLAINTIFF'S OBJECTIONS TO MAGISTRATE JUDGE'S ORDER DENYING MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT** with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following counsel of record:

Thomas J. Mew, IV
Edward D. Buckley
Andrew Beal
Rachel Berlin Benjamin
Buckley Beal LLP
600 Peachtree Street, NE, Suite 3900
Atlanta, GA 30308

This 5th day of February, 2021.

/s/ Jack R. Hancock
Jack R. Hancock
Georgia Bar No. 322450