

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

GERALD LYNN BOSTOCK,

Plaintiff,

v.

CLAYTON COUNTY,

Defendant.

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1:16-CV-01460-ELR

ORDER

Presently before the Court is Plaintiff Gerald Lynn Bostock’s “Objections to Magistrate Judge’s Order Denying Motion for Leave to File Third Amended Complaint.” [Doc. 57]. The Court sets forth its reasoning and conclusions below.

I. Background

This case arises from Plaintiff’s claim that his former employer, Defendant Clayton County (the “County”), discriminated against him in violation of Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, 42 U.S.C. § 2000e-2 *et seq.* (hereinafter, “Title VII”). See generally 2d Am. Compl. [Doc. 10]. As context, the Court provides the relevant factual background and

procedural history from the January 8, 2021 Order entered by Magistrate Judge

Walter E. Johnson (the “Amendment Order”):

[Plaintiff] is a gay male. [3d Prop. Am. Compl. ¶ 14] [Doc. 51-1]. He began working for [D]efendant on January 13, 2003. [See id. ¶ 13.] The County employed plaintiff as the Child Welfare Services Coordinator assigned to the Juvenile Court of Clayton County; he was primarily responsible for the Clayton County Court Appointed Special Advocate (“CASA”) program. [See id. ¶ 15.]

Beginning in January 2013, [Plaintiff] became involved with a gay recreational softball league called the Hotlanta Softball League. [See id. ¶ 17.] [Plaintiff] actively promoted Clayton County CASA to softball league members as a source for volunteer opportunities. [See id. ¶ 18.] In the months after [P]laintiff joined the Hotlanta Softball League, he alleges “on information and belief” that his participation in the league and his sexual orientation and identity were openly criticized by one or more persons who had significant influence on [D]efendant’s decision making. [See id. ¶ 19.]

In or around April 2013, [the County] advised [Plaintiff] that it was conducting an internal audit on CASA program funds he managed. [See id. ¶ 20.] [Plaintiff] contends that he did not engage in any improper conduct regarding those program funds[] and alleges that [D]efendant initiated the audit as a pretext for discrimination based on his sexual orientation and failure to conform to a gender stereotype. [See id. ¶¶ 21–22.]

Plaintiff further alleges, “[o]n information and belief,” that in May 2013, during a meeting held about the time the County terminated him, Clayton County Chief Juvenile Court Judge Steven Teske made disparaging comments about [P]laintiff’s sexual orientation and identity, his participation in the gay men’s softball league, and his recruiting of volunteers at a gay bar, to a member of the Friends of Clayton County CASA Advisory Board[] and stated that [P]laintiff would be fired. [See id. ¶ 23.]

On June 3, 2013, the County terminated [Plaintiff]’s employment. [See id. ¶ 24.] The stated reason for termination was

conduct unbecoming of a County employee. [See *id.*] Plaintiff alleges that this purported reason was a pretext for discrimination against him based on his sex and/or sexual orientation. [See *id.*] At that time, Judge Teske summoned the media and publicly gave false and pretextual reasons for [P]laintiff's termination which damaged his reputation and were calculated to humiliate him. [See *id.*]

See Amendment Order at 4–6 (internal footnote omitted) [Doc. 56]. Shortly thereafter, on June 4, 2013, Judge Teske discussed Plaintiff's termination in a television interview. See id. at 17–18. As a result of these alleged events, Plaintiff filed this action against the Clayton County Board of Commissioners on May 5, 2016.¹ See generally Compl. [Doc. 1].

II. Procedural History

In the Amendment Order, the Magistrate Judge set forth the relevant procedural history:

Plaintiff filed this action *pro se* . . . against the Clayton County Board of Commissioners (the “Board”), alleging sexual orientation discrimination in violation of [Title VII]. [See Compl.] On August 2, 2016, through counsel he filed a First Amended Complaint . . . against the Board. [Doc. 4]. On August 23, 2016, [the Board] filed a Motion to Dismiss . . . the First Amended Complaint on the grounds that (1) sexual orientation discrimination was not a legally cognizable claim under Title VII, and (2) the Board was not a legal entity capable of being sued. [See Doc. 7]. On September 12, 2016, [P]laintiff filed a Consent Motion . . . seeking to file a Second Amended Complaint to add a claim based on gender stereotyping discrimination under Title VII and to substitute the County as the defendant. [See Doc. 8]. The undersigned granted that Motion . . . on the same date, which mooted the pending Motion to Dismiss. [See Docs. 7, 9]. The Second Amended Complaint . . . became the operative pleading. [See Doc. 10].

¹ On September 5, 2013, Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission (or “EEOC”). See Amendment Order at 6, n.2.

On September 26, 2016, the County filed a Motion to Dismiss Plaintiff's Second Amended Complaint[,] . . . asserting that [Plaintiff] failed to state a claim upon which relief may be granted. [See Doc. 13]. The undersigned recommended that [D]efendant's Motion be granted. [See Doc. 16]. The Honorable Orinda D. Evans, [former] Senior United States District Judge, adopted that [report and recommendation] on July 21, 2017 . . . and issued a judgment . . . in the County's favor. [See Docs. 24, 25].

Plaintiff appealed that judgment to the Eleventh Circuit on August 21, 2017. [See Doc. 26]. In an opinion issued on May [10], 2018, the Circuit first noted that [Plaintiff] abandoned any challenge to the district court's dismissal of his gender stereotyping claim because he did not specifically appeal its dismissal. See Bostock v. Clayton Cty. Bd. of Comm'rs, 723 F. App'x 964, 965 (11th Cir. 2018) (per curiam); [see also Doc. 30]. Second, the Circuit held that the district court did not err in dismissing [Plaintiff's] complaint for sexual orientation discrimination under Title VII. See Bostock, 723 F. App'x at 965.

[Plaintiff] sought certiorari in the United States Supreme Court, which was granted. See Bostock v. Clayton Cty., Ga., 139 S. Ct. 1599 (2019). The Supreme Court then reversed and remanded the decision of the Eleventh Circuit. See Bostock v. Clayton Cty., Ga., 140 S. Ct. 1731 (2020). The Supreme Court held that, under the "plain terms" of Title VII, an employer intentionally and illegally discriminates against an individual because of such individual's sex when the employer discriminates against an employee for being [gay, lesbian] or [identifying as] transgender. [See id. at 1741, 1743]. On remand from the Supreme Court, the Eleventh Circuit reversed this Court's dismissal of [Plaintiff's] Title VII claim and remanded this case for further proceedings consistent with that decision. [See] Bostock v. Clayton Cty. Bd. of Comm'rs, 819 F. App'x 891, 892 (11th Cir. 2020) (per curiam); [see also Docs. 34, 35, 36].

The County filed its Answer . . . on October 21, 2020. [Doc. 40]. The [P]arties filed a Joint Preliminary Report and Discovery Plan on October 23, 2020[,] . . . and this Court entered a Scheduling Order [on] October 26, 2020[,] . . . which set December 21, 2020, as the deadline for amendments. [See Docs. 44, 45]. [Plaintiff's] Motion for Leave to

File Third Amended Complaint . . . followed on November 23, 2020. [Doc. 51].

See Amendment Order at 1–4.

III. Plaintiff’s Proposed Third Amended Complaint

As noted above, on November 23, 2020, Plaintiff filed his “Motion for Leave to File Third Amended Complaint,” by which he proposed two (2) amendments.² See id. at 6–8; [see also Doc. 51]. First, Plaintiff sought to clarify his sex discrimination claim by alleging that “Plaintiff’s sexual orientation was a motivating factor in Defendant’s decision to terminate [Plaintiff’s] employment, even if . . . legitimate non-discriminatory reasons . . . also motivated these actions[.]” (the “Mixed-motive Amendment”). See 3d Prop. Am. Compl. ¶ 41; see also Amendment Order at 6. Second, Plaintiff sought to add a new Title VII retaliation claim based on statements made by Judge Teske in a 2020 news article that was published shortly after the Supreme Court’s decision in this case (the “Retaliation Amendment”). See 3d Prop. Am. Compl. ¶¶ 47–53; see also Amendment Order at 6–8. Specifically, Plaintiff’s proposed Retaliation Amendment alleged that Judge Teske “caused Plaintiff significant risk of humiliation, damage to reputation, and a concomitant harm to future employment prospects[.]” by stating (in the 2020 news article) that

² On October 26, 2020, the Magistrate Judge entered a Scheduling Order setting a deadline of December 21, 2020, for the Parties to amend their pleadings. [See Doc. 45 at 2]. As such, Plaintiff’s motion was timely and subject to analysis pursuant to Federal Rule of Civil Procedure 15. See id.; see also FED. R. CIV. P. 15(a)(2).

Plaintiff “didn’t reveal the whole truth” and “mismanag[ed] . . . court fees.” See 3d Prop. Am. Compl. ¶¶ 50–53.

By his Order dated January 8, 2021, the Magistrate Judge denied Plaintiff’s “Motion for Leave to File Third Amended Complaint.” See Amendment Order at 19. First, the Magistrate Judge rejected Plaintiff’s proposed Mixed-motive Amendment as “unnecessary.” See id. Next, the Magistrate Judge denied Plaintiff’s request to add his Retaliation Amendment, concluding that the proposed claim was futile because it could not withstand Rule 12(b)(6) scrutiny. See id. at 10–18; see also FED. R. CIV. P. 15; FED. R. CIV. P. 12(b)(6).

The Magistrate Judge found Plaintiff’s Retaliation Amendment failed to overcome the futility threshold for three (3) reasons. See Amendment Order at 10–18. First, the Magistrate Judge found that Judge Teske, the individual alleged to have committed the retaliatory conduct, is not an agent or employee of Defendant Clayton County. See id. at 15. “[I]n the absence of a materially adverse action taken by plaintiff’s *employer*, there can be no cognizable retaliation.” See id. (emphasis in original). Second, the Magistrate Judge determined that Plaintiff failed to sufficiently allege that he suffered an adverse employment action, which is a necessary element of a retaliation claim. See id. at 16–17. Third, the Magistrate Judge found that Plaintiff’s Retaliation Amendment did not allege a causal

connection between Plaintiff's protected activity and the supposed adverse employment action. See id. at 18.

Pursuant to Federal Rule of Civil Procedure 72, Plaintiff timely filed objections to the Magistrate Judge's Amendment Order on January 22, 2021.³ [See Doc. 57]. Thereafter, on February 5, 2021, Defendants timely filed a response to Plaintiff's objections. [See Doc. 61]; see also LR 7.1(B), NDGa. Plaintiff submitted a reply brief on February 19, 2021.⁴ [See Doc. 62]. Accordingly, the Amendment Order and Plaintiff's objections thereto are now ripe for the Court's review. The Court analyzes Plaintiff's objections after setting forth the relevant legal standard and framework for reviewing a Magistrate Judge's Order.

IV. Standard of Review

As a threshold matter, the Parties dispute the legal standard that controls this Court's review of the Magistrate Judge's Amendment Order. [See Docs. 57 at 3–5; 61 at 2–4]. Federal Rule of Civil Procedure 72(a) and 28 U.S.C. § 636(b) govern the standards of review district courts apply to magistrate judge decisions. See FED. R. CIV. P. 72(a); see also 28 U.S.C. § 636(b)(1). The Court conducts a *de novo* review of a magistrate judge's "report or specified proposed findings or

³ Federal Rule of Civil Procedure 72(a) permits a party to "serve and file objections to [a Magistrate Judge's] order within 14 days after being served with a copy." See FED. R. CIV. P. 72(a).

⁴ Federal Rule of Civil Procedure 72(a) does not contain a provision allowing a reply to a party's objections. See FED. R. CIV. P. 72(a). Plaintiff did not seek leave of Court to file his Reply. [See Doc. 62]. Accordingly, the Court does not consider arguments made in Plaintiff's reply. See FED. R. CIV. P. 72(a).

recommendations” on dispositive matters upon timely objection by a party. See 28 U.S.C. § 636(b)(1)(C). In contrast, the Court applies a “clearly erroneous or contrary to law standard” to a magistrate judge’s order on non-dispositive matters upon a party’s timely objection. See 28 U.S.C. § 636(b)(1)(A).

Federal Rule of Civil Procedure 72(a) authorizes a magistrate judge to “conduct the required proceedings and, when appropriate, issue a written order stating the decision” “[w]hen a pretrial matter *not dispositive* of a party’s claim or defense is referred to a magistrate judge to hear and decide[.]” See FED. R. CIV. P. 72(a) (emphasis added). In relevant part, 28 U.S.C. § 636(b)(1)(A) provides that

a [district] judge may designate a [magistrate judge] to *hear and determine any pretrial matter* pending before the court, *except* 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.

See 28 U.S.C. § 636(b)(1)(A) (emphasis added). Notably, the list of dispositive matters set forth by Section 636 does not include motions to amend. See id. Therefore, the applicable standard of review turns on whether the motion presented a dispositive or non-dispositive issue. See Jordan v. Comm’r, Miss. Dep’t of Corr., 947 F.3d 1322, 1327 (11th Cir. 2020) (citing 28 U.S.C. § 636(b)(1)).

Plaintiff argues that a *de novo* standard of review should apply because “the letter and spirit of [Federal Rule of Civil Procedure] 72” suggest that a motion to

amend should be treated in the same manner as a motion to dismiss, due to the potentially dispositive effect of a ruling on a proposed cause of action. [See Doc. 57 at 5]. In contrast, Defendant argues that a clearly erroneous and contrary to law standard of review should apply because a motion to amend is a non-dispositive matter based on the “plain language” of Federal Rule of Civil Procedure 72 and 28 U.S.C. § 636(b)(1). [See Doc. 61 at 3–4]. The Eleventh Circuit has yet to squarely address the appropriate standard of review for a magistrate judge’s order on a motion to amend in a published opinion. [See Docs. 57 at 4, n.1; 61 at 3, n.1].

Courts within this Circuit generally treat motions to amend as non-dispositive matters, and therefore, apply the clearly erroneous and contrary to law standard of review. See Beebe v. Beebe, CV 408-010, 2009 WL 10656033, at *1 (S.D. Ga. Jan. 9, 2009) (stating that a magistrate judge’s decision on a motion to amend pleadings is a non-dispositive matter and should be reviewed under the clearly erroneous standard); E.E.O.C. v. Exel Inc., 259 F.R.D. 652, 652 (N.D. Ga. 2008) (same); Furmanite Am., Inc. v. T.D. Williamson, Inc., 6:06CV641ORL19JGG, 2007 WL 1017586, at *2 (M.D. Fla. Mar. 30, 2007) (“Motions to amend pleadings are non-dispositive matters which may be referred to a magistrate judge and reviewed by the district court under the ‘clearly erroneous standard.’”); Agan v. Katzman & Korr, P.A., 328 F. Supp. 2d 1363, 1365 (S.D. Fla. 2004) (noting that motions to amend or strike pleadings are non-dispositive motions that are properly ruled upon by a

magistrate judge); see also 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 [plaintiff]’s motion to amend his complaint was non[-]dispositive, subject only to review for clear error.”).

The Court finds the above authority persuasive, and thus, reviews the Magistrate Judge’s Amendment Order pursuant to the clearly erroneous and contrary to law standard. See Maynard v. Bd. of Regents of the Div. of Univ. of the Fla. Dep’t of Ed., 342 F.3d 1281, 1286 (11th Cir. 2003) (affirming the district court’s use of the “clearly erroneous or contrary to law” standard in a non-dispositive pretrial matter).

“Clear error is a highly deferential standard of review.” See Holton v. City of Thomasville Sch. Dist., 425 F.3d 1325, 1350 (11th Cir. 2005). “The party seeking to overturn a [m]agistrate [j]udge’s order bears the burden of proving that the [m]agistrate [j]udge’s decision was ‘clearly erroneous’ or ‘contrary to law.’” Schaaf v. SmithKline Beecham Corp., CIV.A.1:04CV2346GET, 2008 WL 489010, at *2 (N.D. Ga. Feb. 20, 2008), order clarified on other grounds, 1:04-CV-2346-GET, 2008 WL 11336754 (N.D. Ga. June 9, 2008).

“A finding is clearly erroneous when the reviewing court, after assessing the evidence in its entirety, is left with a definite and firm conviction that a mistake has been committed.” Krys v. Lufthansa German Airlines, 119 F.3d 1515, 1523 (11th

Cir. 1997); accord Pullman-Stand. v. Swint, 456 U.S. 273, 285 n.14 (1982). For instance, “a court commits a clear error when it makes a factual finding that has no support in the record.” See Day v. Persels & Assocs., Ltd. Liab. Co., 729 F.3d 1309, 1327 (11th Cir. 2013). Additionally, “[a] magistrate judge’s order ‘is contrary to law when it fails to apply or misapplies relevant statutes, case law[,] or rules of procedure.’” See Pearson v. Travelers Home & Marine Ins. Co., 4:11-CV-01846-JHE, 2014 WL 1329528, at *3 (N.D. Ala. Mar. 31, 2014) (internal citations omitted).

V. Discussion

Having set forth the relevant standard of review, the Court now turns to the substance of the Amendment Order and Plaintiff’s objections thereto. In the Amendment Order, the Magistrate Judge began his analysis by setting forth the correct standard for amending a complaint pursuant to Federal Rule of Civil Procedure 15(a):

. . . [A] party may amend its complaint only by leave of court or written consent of the adverse party when it has been more than 21 days after service of a responsive pleading or motion. [See FED. R. CIV. P. 15.] [Federal Rule of Civil Procedure 15(a)] also provides [that] “[t]he court should freely give leave when justice so requires.” [See id.] Even so, granting leave to amend is not automatic. See Faser v. Sears, Roebuck & Co., 674 F.2d 856, 860 (11th Cir. 1982). Indeed, district courts have “extensive discretion” in deciding whether to grant leave to amend and may choose not to allow a party to amend “when the amendment would prejudice the defendant, follows undue delays, or is futile.” See Campbell v. Emory Clinic, 166 F.3d 1157, 1162 (11th Cir. 1999). A district court may properly deny leave to amend on grounds of futility when the complaint as amended is still subject to dismissal for failure to state a claim. See Hatcher v. Ala. Dep’t of Hum. Servs.,

747 F. App'x 778, 781 (11th Cir. 2018) (per curiam); see also Patel v. Ga. Dep't BHDD, 485 F. App'x 982, 982 (11th Cir. 2012) (per curiam) (“Futility justifies the denial of leave to amend where the complaint, as amended, would still be subject to dismissal.”).

“The futility threshold is akin to that for a motion to dismiss; thus, if the amended complaint could not survive [Federal Rule of Civil Procedure] 12(b)(6) scrutiny, then the amendment is futile and leave to amend is properly denied.” Ala. State Port Auth. v. China Ocean Shipping (Grp.) Co., No. 08-00058-CG-B, 2008 WL 4701046, at *2 (S.D. Ala. Oct. 21, 2008) (citations omitted); see also Amick v. BM & KM, Inc., 275 F. Supp. 2d 1378, 1381 (N.D. Ga. 2003) (“In the Eleventh Circuit, a proposed amendment is futile when the allegations of the proffered complaint would be unable to withstand a motion to dismiss.”).

In determining whether leave to amend should be granted, the Court must “tak[e] the pleaded facts as true [and] resolv[e] those facts in the light most favorable to [the plaintiff.]” See Kaloe Shipping Co. v. Goltens Serv. Co., 315 F. App'x 877, 882 (11th Cir. 2009) (per curiam). “[A] plaintiff must plead ‘enough facts to state a claim to relief that is plausible on its face,’ rather than merely conceivable.” See Patel, 485 F. App'x at 983 (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). “[T]he burden is upon the defendant to demonstrate that the allegations of the proposed amended complaint would be unable to withstand a motion to dismiss.” EEOC v. Sirdah Enters., Inc., No. 1:13-CV-3657-RWS-RGV, 2015 WL 12644983, at *3 (N.D. Ga. Feb. 25, 2015).

See Amendment Order at 8–10. As noted above, the Magistrate Judge denied Plaintiff’s motion for leave to amend, finding that Plaintiff’s proposed amendments were either “unnecessary” or futile. See generally id. Plaintiff objects to the denial of both his Mixed-motive Amendment and Retaliation Amendment. [See Doc. 57].

Thus, the Court considers the Magistrate Judge's rulings and Plaintiff's objections regarding each proposed amendment in turn, beginning with the proposed Mixed-motive Amendment.

A. The Magistrate Judge Erred in Denying Plaintiff's Mixed-Motive Amendment

First, Plaintiff contends that the Magistrate Judge clearly erred by denying Plaintiff's proposed Mixed-motive Amendment. [See *id.* at 12–13]. By this proposed amendment, Plaintiff sought to clarify that he brings his claim for sex discrimination pursuant to both single- and mixed-motive theories.⁵ See Amendment Order at 18–19. In the Amendment Order, the Magistrate Judge explained that he denied Plaintiff's Mixed-motive Amendment because Plaintiff had conceded that adding a mixed-motive theory in support of his claim was “legally unnecessary.” [See *id.*] (citing Doc. 51). Plaintiff objects and argues that even if his Mixed-motive Amendment is not “legally necessary,” this is not a sufficient reason to deny his requested leave to amend. [See Doc. 57 at 12–13].

The Court notes that the Magistrate Judge correctly concluded that Plaintiff need not plead whether his Title VII discrimination claim will proceed under a single- or mixed-motive theory in his complaint to state a valid claim. See *Williams*

⁵ For single-motive claims—also called “pretext” claims—a plaintiff-employee avers that “bias was the true reason for the adverse [employment] action.” See *Quigg v. Thomas Cnty. Sch. Dist.*, 814 F.3d 1227, 1235 (11th Cir. 2016) (citing *Texas Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 251–53 (1981)). However, in a mixed-motive claim, a plaintiff-employee asserts that “illegal bias, such as bias based on sex or gender, was a motivating factor for an adverse employment action, even though other factors also motivated the action.” See *id.* (internal citations and quotation omitted).

v. Fla. Atl. Univ., 728 F. App'x 996, 999 (11th Cir. 2018) (quoting Price Waterhouse v. Hopkins, 490 U.S. 228, 247 n.12 (1989)). Thus, the underlying theory of discrimination Plaintiff seeks to advance through his Mixed-motive Amendment is not required for Plaintiff to state a sex discrimination claim pursuant to Title VII. See id.

However, the Court agrees with Plaintiff that just because a proposed amendment is unnecessary, it may still be proper to allow it, so long as the proposed amendment passes the futility threshold. See United Food and Com. Workers Unions and Emps. Pension Fund v. Mercer Hum. Res. Consulting, Inc., 1:06-CV-1149-WSD, 2007 WL 951756, at *2 (N.D. Ga. Mar. 28, 2007) (“[Defendant] essentially argues that because this amendment is not necessary, it is futile to allow it. None of these arguments meets the standard for “futility” as espoused by the Eleventh Circuit[—]that Plaintiffs’ complaint as amended would still be subject to dismissal.”). Put differently, just because Plaintiff’s proposed Mixed-motive Amendment is not legally necessary to state a claim does not make it futile and would not subject his proposed Third Amended Complaint to dismissal. See id.

Thus, the Court finds that Plaintiff’s Mixed-motive Amendment is not futile. Indeed, a plaintiff need only argue a mixed-motives theory “at some point in the [district court] proceedings,” as “[d]iscovery often will be necessary before the plaintiff can know whether both legitimate and illegitimate considerations played a

part in the [employment] decision against [them].” See Williams, 728 F. App’x at 999 (internal quotations omitted). Therefore, the Magistrate Judge ruled contrary to law when he denied Plaintiff’s Mixed-motive Amendment as futile. See 28 U.S.C. § 636(b)(1)(A); see also FED. R. CIV. P. 15(a)(2) (“The court should freely give leave when justice so requires.”).

Accordingly, because the Magistrate Judge improperly applied the futility standard to Plaintiff’s Mixed-motive Amendment, the Court sustains Plaintiff’s objection and modifies the portion of the Amendment Order. See FED. R. CIV. P. 72(a); see also 28 U.S.C. § 636(b)(1)(A). Because Plaintiff’s Mixed-motive Amendment is permissible pursuant to Rule 15(a)(2), Plaintiff may submit a third amended complaint to include these allegations.⁶

B. The Magistrate Judge Did Not Err in Denying Plaintiff Leave to Add His Proposed Retaliation Claim

Next, the Court turns to the Magistrate Judge’s ruling regarding Plaintiff’s proposed amendment to add a claim for Title VII retaliation. The Amendment Order denied Plaintiff leave to amend his Complaint to assert this new claim due to futility, and Plaintiff now lodges three (3) objections. See Amendment Order at 10–18; [see also Doc. 57 at 5–12]. First, Plaintiff asserts that the Magistrate Judge ruled contrary to law by finding that Judge Teske was not an employee or agent of the County, and

⁶ However, as explained below, Plaintiff may not amend with the proposed Third Amended Complaint as presented on the docket. [See Doc. 57-1].

thus, Judge Teske's actions could not support a claim for retaliation against Defendant. [See Doc. 57 at 6–8]. Second, Plaintiff claims that the Magistrate Judge improperly assessed “factual and merit issues” in holding that Plaintiff did not suffer any adverse employment action. [See *id.* at 9–10]. Third, Plaintiff argues that the Magistrate Judge erred by determining that Plaintiff could not meet the causation element of this proposed claim. [See *id.* at 10–12].

As relevant here, “Title VII’s anti-retaliation provision prohibits retaliation when an employee oppos[es] any practice made an unlawful employment practice by [Title VII] or has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing.” See Howard v. Walgreen Co., 605 F.3d 1239, 1244 (11th Cir. 2010) (citing 42 U.S.C. § 2000e–3(a)) (internal quotation marks omitted). In the Amendment Order, the Magistrate Judge properly laid out the analytical framework for a viable Title VII retaliation claim:

In a retaliation case like this one[,] which relies on circumstantial evidence, courts apply the burden-shifting framework of McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). See Brown v. Ala. Dep’t of Transp., 597 F.3d 1160, 1181 (11th Cir. 2010). Under the first step of that framework, a plaintiff must establish a prima [facie] case. See Bryant v. Jones, 575 F.3d 1281, 1307 (11th Cir. 2009). In the retaliation context, this means that the plaintiff must show that: (1) he engaged in statutorily protected activity; (2) he suffered a materially adverse action; and (3) there was a causal connection between the protected activity and the adverse action. See Butler v. Ala. Dep’t of Transp., 536 F.3d 1209, 1212–13 (11th Cir. 2008) (internal citation omitted).

See Amendment Order at 11. Therefore, to add a claim for retaliation pursuant to Title VII, Plaintiff was required to sufficiently allege facts in support of each of the above three (3) elements—statutorily protected activity, materially adverse employment action, and causal connection—such that his claim could survive a Rule 12(b)(6) motion to dismiss. See Butler, 536 F.3d at 1212–13; Hatcher, 747 F. App’x at 781. Having set forth the legal framework, the Court now considers Plaintiff’s objections to the denial of his proposed Retaliation Amendment.

1. Whether Judge Teske is a Clayton County “Employee”

First, Plaintiff objects to the Magistrate Judge’s finding that Judge Teske is not Defendant’s employee or agent. [See Doc. 57 at 6–8]. The Court agrees with the Magistrate Judge that Plaintiff’s proposed retaliation claim is futile as Judge Teske is not Defendant’s employee or agent. See Amendment Order at 15. Although Plaintiff alleged that Judge Teske is an employee or agent of the County, the Magistrate Judge rejected this as an improper legal conclusion. See id. at 13 (explaining that the court need not accept as true any legal conclusions). Furthermore, drawing from the Georgia constitution and state statutes, the Magistrate Judge determined that Judge Teske—a juvenile court judge and state judicial officer—cannot be an agent or employee of Clayton County because “it is clear that the Clayton County Juvenile Court is an entity separate from [Clayton]

County.” See id. at 14–15; see also Ga. Const. art. VI, § 1, ¶ I, VI; O.C.G.A. §§ 15-11-50–59.

In his objections, Plaintiff argues that the Magistrate Judge made “impermissible findings of fact” in holding that Judge Teske is not an employee or agent of Clayton County. [See Doc. 57 at 8]. Specifically, Plaintiff contends “the Magistrate Judge made suppositions outside of the four corners of the pleadings” and “ignored the allegations of the proposed [Third] [A]mended [C]omplaint [and] factual contentions within the [2020] news article that form the basis for Plaintiff’s retaliation claim[.]” [See id. at 7–8]. Additionally, Plaintiff argues that one of Defendant’s interrogatory responses demonstrates that Judge Teske made the decision to terminate Plaintiff’s employment and, therefore, the “same agency can be attributed to Judge Teske” for his allegedly retaliatory statements in the 2020 news article. [See id. at 8].

In response, Defendant maintains that Plaintiff fails to cite factual allegations from the proposed Third Amended Complaint to demonstrate that Judge Teske is an employee or agent of the County. [See Doc. 61 at 5]. Additionally, Defendant posits that Plaintiff merely “points to statements in the [2020 news article] that suggest Judge Teske’s involvement in the *2013 decision* to terminate Mr. Bostock’s employment” to establish that Judge Teske acted as an agent or employee of the County in making his *2020 news statements*. [See id. at 6] (emphasis added).

Defendant proffers that Judge Teske made his statements in the 2020 news article “for the purpose of clearing *his own name*” in relation to this suit. [See id. at 7] (emphasis in original). Finally, Defendant argues that the Magistrate Judge correctly followed the standards set forth in Twombly and Iqbal by rejecting Plaintiff’s allegation that Judge Teske is an employee or agent of the County. [See id. at 8]; see also Twombly, 550 U.S. at 570; Iqbal, 556 U.S. at 678.

Upon review, the Court agrees with the Magistrate Judge. The court need not take as true any assertions which are legal conclusions. See Amendment Order at 13 (citing Twombly, 550 U.S. at 555); see also Mamani v. Berzain, 654 F.3d 1148, 1153 (11th Cir. 2011) (“Legal conclusions without adequate factual support are entitled to no assumption of truth.”). Plaintiff made no further factual allegations to support that Judge Teske is an employee or agent of Defendant. See generally 3d Prop. Am. Compl. Therefore, the Court finds that the Magistrate Judge appropriately considered whether Judge Teske is Defendant’s employee or agent and did not clearly err or rule contrary to law. See Amendment Order at 13–14.

Additionally, the Court disagrees with Plaintiff’s contention that the Court should consider Defendant’s interrogatory responses to find an employment relationship between Judge Teske and Defendant. [See Doc. 57 at 8].⁷ As noted

⁷ The Court observes that Plaintiff does not argue that the Magistrate Judge clearly erred or ruled contrary to the law in declining to consider Defendant’s interrogatory responses. [See Doc. 57 at 8]. Thus, the Court need not alter the Amendment Order pursuant to the above objection, given the applicable standard of review. See Fed. R. Civ. P. 72(a); 28 U.S.C. § 636(b)(1).

above, Plaintiff argues that Defendant’s interrogatory response—which states that Judge Teske made the decision to terminate Plaintiff’s employment—demonstrates that the “same agency can be attributed to Judge Teske” for his allegedly retaliatory statements in the 2020 news article. [See id.]. Plaintiff proffers Day v. Taylor, 400 F.3d 1272, 1276 (11th Cir. 2005), in which the Eleventh Circuit held that a district court may consider an extrinsic document (including a discovery response) upon consideration of a motion to dismiss if the document is both central to a plaintiff’s claim and its authenticity is undisputed. See id.

Here, the Court finds that Defendant’s interrogatory response is not central to Plaintiff’s Retaliation Amendment because the interrogatory response is neither incorporated nor referenced within the proposed Third Amended Complaint. See 3d Prop. Am. Compl. ¶¶ 47–53. Rather, Plaintiff’s proposed retaliation claim stems from Judge Teske’s statements in a 2020 news article. See id. Therefore, the Court need not consider Defendant’s interrogatory response.⁸ See Day, 400 F.3d at 1276.

Having reviewed this portion of the Amendment Order pursuant to the clearly erroneous and contrary to law standard, the Court finds no clear error and overrules Plaintiff’s objection. See FED. R. CIV. P. 72(a); see also 28 U.S.C. § 636(b)(1)(A).

⁸ Separately, even considering Defendant’s interrogatory response in the light most favorable to Plaintiff, the Court finds the interrogatory response fails to demonstrate (as a matter of law) that Judge Teske was Defendant’s employee or agent. See Peppers v. Cobb Cnty., 835 F.3d 1289, 1301 (11th Cir. 2016) (holding that defendant’s discovery admission that an individual was its employee does not compel the legal conclusion that the defendant was the individual’s employer pursuant to Title VII or the Equal Pay Act).

2. The Magistrate Judge Did Not Err in Concluding that Plaintiff Did Not Suffer an Adverse Employment Action

Second, Plaintiff objects to the Magistrate Judge’s finding that Plaintiff did not suffer an adverse employment action. [See Doc. 57 at 9–10]. Specifically, the Magistrate Judge concluded that Plaintiff’s proposed retaliation claim is futile because “Judge Teske’s public denials of [P]laintiff’s discrimination claim, made almost seven years after filing of the EEOC charge and over four years after the filing of this civil case, do not constitute a materially adverse [employment] action.” See Amendment Order at 15. In reaching this conclusion, the Magistrate Judge first noted that Plaintiff cited no authority supporting his contention that Judge Teske’s press statements could amount to a materially adverse action. See *id.* at 15–16. Second, focusing on the allegations within the proposed Third Amended Complaint, the Magistrate Judge found that it is “implausible” that Judge Teske’s 2020 press statements “might have deterred a discrimination victim from complaining to the EEOC, the courts, and employers” or that they could have “dissuaded a reasonable worker from making or supporting a charge of discrimination.” See *id.* at 16. Upon consideration of Judge Teske’s 2020 press statements, the Magistrate Judge reasoned that “[n]o fair-minded reader of either news article could conclude that

Judge Teske intended any harm to [Plaintiff] because [Plaintiff] filed an EEOC charge or lawsuit.”⁹ See id. at 17.

The Parties hotly dispute the above finding by the Magistrate Judge. In essence, Plaintiff argues that the Magistrate Judge ruled contrary to the motion to amend standard. [See Doc. 57 at 9–10]. Specifically, Plaintiff contends that the Magistrate Judge made a “subjective interpretation” of Judge Teske’s 2020 press statements and the intent behind them, thereby resolving factual and merit issues that should have been reserved for later determination. [See id.] Additionally, Plaintiff argues that the Magistrate Judge “ignore[d] Judge Teske’s undisputed statements (pleaded in Plaintiff’s proposed Third Amended Complaint) that accuse Mr. Bostock of untruthfulness and misappropriation of funds and the harm Mr. Bostock pleaded resulting from these statements.” [See id. at 10].

In contrast, Defendant argues three (3) points. First, Defendant observes that Plaintiff failed to cite authority that supports his contention that “an employer engages in unlawful retaliation when an individual publicly denies allegations asserted against him in a lawsuit.” [See Doc. 61 at 9]. Second, Defendant argues that Judge Teske’s statements in “full context” do not demonstrate a plausible retaliatory motive. [See id. at 10–11]. Third, Defendant notes that Plaintiff did not

⁹ The Magistrate Judge noted that he could consider these extrinsic press statements when ruling on Plaintiff’s motion to amend “because they are referenced in the Proposed Third Amended Complaint; they are central to [Plaintiff’s] claims; and their authenticity is not in dispute.” See Amendment Order at 8, n.3 (citing Brooks v. Blue Cross and Blue Shield of Fla., Inc., 116 F.3d 1364, 1369 (11th Cir. 1997) (per curiam)).

allege facts in his Third Amended Complaint to suggest that Judge Teske actually harbored any retaliatory animus.” [See id. at 11]. Therefore, Defendant argues, the “mere possibility” that Judge Teske harbored retaliatory motive falls short of the Twombly and Iqbal pleading standard. [See id.]; see also Twombly, 550 U.S. at 570; Iqbal, 556 U.S. at 678.

Upon review, the Court agrees with the Magistrate Judge’s ruling that Plaintiff failed to allege an adverse employment action for at least two (2) reasons. First, the Magistrate Judge correctly noted that Plaintiff proffered no binding authority to demonstrate that “an individual’s speaking to the press to deny allegations a plaintiff made about him in a lawsuit constitutes a materially adverse action.” See Amendment Order at 15. Second, the Court finds that the Magistrate Judge’s ruling is not contrary to law or a clear error. See id. at 16–17; see also FED. R. CIV. P. 72(a); 28 U.S.C. § 636(b)(1).

In his Amendment Order, the Magistrate Judge explained that Judge Teske’s 2020 press statements, viewed in totality, do not indicate intent to retaliate against Plaintiff:

In fact, as the County correctly points out, Judge Teske’s comments affirmatively disclaimed any retaliatory motive. He repeatedly made clear that he agreed with the Supreme Court’s Bostock decision, that he supported [Plaintiff]’s argument that Title VII should extend to protect members of the LGBTQ community, that he was proud of Mr. Bostock for taking this case to the Supreme Court, and that he was glad that Mr. Bostock won. No fair-minded reader of either news article could conclude that Judge Teske intended any harm to

[Plaintiff] because he filed an EEOC charge or lawsuit.

See Amendment Order 16–17. Furthermore, the Magistrate Judge, “draw[ing] on [his] judicial experience and common sense[,]” concluded that the proposed Third Amended Complaint does not plausibly state a materially adverse employment action. See Iqbal, 556 U.S. at 679; see also Burlington N. & Santa Fe Ry. v. White, 548 U.S. 53, 67 (2006) (the plaintiff-employee must allege “that a reasonable employee would have found the challenged action materially adverse.”). Contrary to Plaintiff’s contentions, the Magistrate Judge’s findings are proper because they are based on an inference that flows from review of the proposed Third Amended Complaint and Judge Teske’s 2020 press statements. See Iqbal, 556 U.S. at 679; see also Amendment Order 16–17.

Accordingly, the Court finds no clear error in the Magistrate Judge’s finding that an adverse employment action is implausible based on Plaintiff’s allegations. See Eggers v. Alabama, 876 F.3d 1086, 1095 (11th Cir. 2017) (citing Inwood Labs., Inc. v. Ives Labs., Inc., 456 U.S. 844, 857 (1982)).

Having reviewed this portion of the Amendment Order pursuant to the clearly erroneous and contrary to law standard, the Court finds no clear error and overrules Plaintiff’s objection. See FED. R. CIV. P. 72(a); see also 28 U.S.C. § 636(b)(1)(A).

3. The Magistrate Judge Did Not Err in Ruling that Plaintiff Could Not Demonstrate A Causal Connection Between Plaintiff's Protected Activity and the Alleged Adverse Employment Action

Third, Plaintiff objects to the Magistrate Judge's finding that Plaintiff's Retaliation Amendment was futile due to Plaintiff's failure to demonstrate a causal connection between his alleged protected activity (filing his EEOC charge and the instant lawsuit) and the purported adverse employment action (Judge Teske's 2020 press statements). [See Doc. 57 at 10–12]; see also 3d Prop. Am. Compl. ¶ 49 (Plaintiff's alleged protected activity). Specifically, in the Amendment Order, the Magistrate Judge relied on Drago v. Jenne, 453 F.3d 1301, 1308 (11th Cir. 2006), which held that a plaintiff cannot establish a causal connection for a retaliation claim “when [an] employer contemplates adverse action *before* [the] protected activity and continues with [the] adverse action after [the] protected activity.” See Amendment Order at 17 (emphasis in original). Accordingly, the Magistrate Judge found that Plaintiff's proposed retaliation claim did not sufficiently allege a causal connection between Plaintiff's protected activity and Judge Teske's 2020 press statements because Judge Teske's 2020 statements were “largely identical” to his 2013 statements, “[made] well before Mr. Bostock filed his EEOC charge or this lawsuit[.]”¹⁰ See id. at 18.

¹⁰ In making his finding, the Magistrate Judge noted that he considered Judge Teske's statements in the 2013 interview “for the fact of their publication” and not for their truth. See id. at 18, n. 9 (citations omitted). Considering the analysis below, the Court need not decide whether the Magistrate Judge's consideration of the 2013 statements was proper.

In contrast, Plaintiff argues that his proposed claim for retaliation is not futile because he alleges a causal connection through temporal proximity and “other evidence of causation.” [See Doc. 57 at 11]. Specifically, Plaintiff emphasizes that “[Judge] Teske ma[de] his retaliatory remarks *only two days after and in response to* the Supreme Court’s decision in this case . . . [and Judge Teske] *specifically referred to* [Plaintiff’s] protected activity by stating that Mr. Bostock . . . ‘couldn’t have gotten there[,] i.e., the Supreme Court[,] if [Plaintiff] had revealed the whole truth.’” [See *id.* at 11] (internal alteration adopted and emphasis in original). Additionally, Plaintiff contends that Judge Teske’s 2013 remarks about Plaintiff do not “insulate” Defendant from later retaliatory conduct. [See *id.* at 12]. Additionally, Plaintiff asserts that Judge Teske’s 2013 remarks and 2020 statements are “two entirely separate things.” [See *id.*]

In turn, Defendant relies on Eleventh Circuit precedent to argue that Plaintiff cannot sufficiently allege a causal connection. [See Doc. 61 at 13]. Next, Defendant emphasizes that “[t]he Supreme Court’s announcement of its decision is not statutorily protected activity” and notes that Plaintiff only alleges “the EEOC charge and . . . filing of [suit]” as his protected activity in the proposed Third Amended Complaint. [See *id.* at 12–13]. As such, Defendant argues that “the overwhelming weight of authority” goes against any potential finding of causation. [See *id.* at 13–14].

Upon review for clear error, the Court agrees with the Magistrate Judge’s conclusion that Plaintiff fails to sufficiently allege causation, but finds that the Magistrate Judge misapplied the Eleventh Circuit’s guidance in Drago. See 453 F.3d at 1308. In Drago, the Eleventh Circuit held that “temporal proximity . . . does not suffice to show causation” when “[the] employer contemplates an adverse employment action before an employee engages in protected activity[.]”¹¹ See id. In rejecting a Title VII retaliation claim for lack of causation, the Court noted that the plaintiff-employee suffered adverse employment action (demotion) approximately three (3) months after engaging in protected activity (making verbal and written complaints). See id. (citing Wascura v. City of South Miami, 257 F.3d 1238, 1248 (11th Cir. 2001)). However, the panel held that the “overwhelming” evidence demonstrated the employer had contemplated demoting the plaintiff-employee approximately five (5) months before the plaintiff-employee engaged in protected activity. See id. Thus, the Eleventh Circuit concluded that the plaintiff-employee cannot show a causal link between the adverse employment action and the protected activity. See id. Therefore, the Court reads Drago to establish that no causation exists if the defendant-employer contemplated taking the same adverse

¹¹ While the Court in Drago analyzed retaliation pursuant to the Family Medical Leave Act (“FMLA”), Age Discrimination in Employment Act (“ADEA”), and the Florida Civil Rights Act (“FCRA”), the Court recognizes that the same analytical framework applies to Title VII claims. See, e.g., Strickland v. Water Works & Sewer Bd., 239 F.3d 1199, 1207 (11th Cir. 2001) (analyzing FMLA claims using the same analytical framework as Title VII); Hairston v. Gainesville Sun Publ’g Co., 9 F.3d 913, 919 (11th Cir. 1993) (analyzing ADEA claims using the same analytical framework as Title VII); Harper v. Blockbuster Entm’t Corp., 139 F.3d 1385, 1389–90 (11th Cir. 1998) (analyzing FCRA claims using the same analytical framework as Title VII).

employment action before the plaintiff-employee engaged in any protected activity. See id.; see also McNorton v. Ga. DOT, 619 F. Supp. 2d 1360, 1378 (N.D. Ga. 2007) (finding Drago inapplicable where employer did not contemplate the specific adverse action at issue prior to a plaintiff-employee’s alleged protected activity).

Accordingly, the Court finds that the Magistrate Judge misapplied Drago because Defendant’s purported adverse employment actions at issue—as “contemplated” prior to Plaintiff’s protected activity and as “executed” thereafter—were similar, but not the same.¹² See 453 F.3d at 1308. While Judge Teske’s statements in 2013 and 2020 may have concerned the same topics—Plaintiff’s purported mismanagement of funds and untruthfulness—the Court cannot interpret the two (2) sets of statements to be identical. See Amendment Order at 18. Put differently, upon consideration of the proposed Third Amended Complaint’s allegations, the Magistrate Judge could not have drawn a reasonable inference that the County contemplated Judge Teske’s 2020 statements in 2013. See id. at 3; see also 3d Prop. Am. Compl. ¶¶ 13, 24, 29–30. As such, the Court sustains Plaintiff’s objection that Drago does not support the Magistrate Judge’s finding regarding causation. See 453 F.3d at 1308.

Nonetheless, disregarding the Magistrate Judge’s reasoning based on Drago, the Court agrees with the Magistrate Judge’s broader conclusion that Plaintiff fails

¹² As noted above, the Court disagrees with Plaintiff that Judge Teske’s statements constitute an adverse employment action.

to demonstrate a causal connection between his protected activity and the alleged adverse employment action. As an initial matter, Plaintiff cannot rely on the release date of the Supreme Court opinion in this action to determine temporal proximity for causation because precedent in this Circuit dictates that the operative date for Plaintiff's alleged protected activity of filing a lawsuit is the date the Complaint was filed. See Simpson v. Ala. Dep't of Hum. Res., 501 F. App'x 951, 954 (11th Cir. 2012) (emphasis in original) ("Where the protected activity at issue is the filing of a discrimination lawsuit, the relevant date in determining temporal proximity of the protected activity and any materially adverse action is the *filing* of the lawsuit, not the entry of dispositive orders in the case by the district court."). Thus, Plaintiff's allegations that Judge Teske referenced Plaintiff's proceedings at the Supreme Court do not support a causal connection because the statements do not refer to a protected activity. See id. Moreover, Plaintiff fails to allege any other facts supporting causation, leaving Plaintiff with a temporal proximity theory for causation. See generally 3d Prop. Am. Compl.; see also Clark, 532 U.S. at 273–74.

In the matter at bar, the Court finds that temporal proximity does not suffice to show causation: seven (7) years passed between Plaintiff's protected activity (filing of EEOC charge and lawsuit) and the alleged adverse employment action (Judge Teske's statements in the 2020 news article). See Amendment Order at 15; 3d Prop. Am. Compl. ¶¶ 49–53; see also Clark, 532 U.S. at 273–74 (holding that

three (3)-month interval between protected activity and adverse action was insufficient to establish causation based on temporal proximity); Reed v. Forney Indus., 800 F. App'x 782, 789 (11th Cir. 2020) (no causal connection based on temporal proximity when four (4) months passed between protected activity and adverse employment action). Accordingly, although the Court finds that the Magistrate Judge misapplied the holding of Drago, the Court agrees that Plaintiff's proposed retaliation claim is futile because it fails the causation prong. See Butler, 536 F.3d at 1212–13.

Having reviewed this portion of the Amendment Order pursuant to the clearly erroneous and contrary to law standard, the Court sustains in part and overrules in part Plaintiff's objection. See FED. R. CIV. P. 72(a); see also 28 U.S.C. § 636(b)(1)(A). While the Court modifies the portion of the Amendment Order regarding causation in accordance with the analysis herein, Plaintiff's proposed retaliation claim remains precluded for failure to allege adverse employment action by an agent or employee of Defendant. See Butler, 536 F.3d at 1212–13.

VI. Summary

In sum, the Court sustains Plaintiff's objections to the Magistrate Judge's ruling denying the Mixed-motive Amendment and modifies that portion of the Amendment Order in accordance with the analysis herein. See Amendment Order at 19. Next, regarding Plaintiff's Retaliation Amendment, the Court sustains

Plaintiff's objection to the Magistrate Judge's analysis regarding causation and modifies that portion of the Amendment Order in accordance with the analysis herein. See id. at 17–18. However, Plaintiff may not amend his pleading to include his proposed retaliation claim, because the Court agrees with the Magistrate Judge that (1) Judge Teske is not Defendant's employee or agent and (2) Plaintiff did not suffer an adverse employment action. See id. at 11–17. As such, the Court overrules Plaintiff's objections related to these two (2) findings.

VII. Conclusion

For the reasons set forth above, the Court **OVERRULES IN PART AND SUSTAINS IN PART** Plaintiff's "Objections to Magistrate Judge's Order Denying Motion for Leave to File Third Amended Complaint." [Doc. 57]. Specifically, the Court **OVERRULES** Plaintiff's objection to the Magistrate Judge's ruling regarding Plaintiff's proposed retaliation claim. However, the Court **SUSTAINS** Plaintiff's objection to the Magistrate Judge's ruling regarding Plaintiff's proposed addition of a mixed-motive theory in support of Count I. Accordingly, the Court **DIRECTS** Plaintiff to submit a third amended complaint in accordance with these parameters no later than five (5) days after the issuance of this order.

SO ORDERED, this 9th day of November, 2021.

Eleanor L. Ross

Eleanor L. Ross
United States District Judge
Northern District of Georgia