

**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 ANSWER TO PLAINTIFF’S
THIRD AMENDED COMPLAINT**

COMES NOW, Clayton County (“the County”), the Defendant in the above-referenced matter, and files this, its Answer to Plaintiff’s Third Amended Complaint. The County shows this Honorable Court as follows:

FIRST DEFENSE

The Third Amended Complaint and each of its causes of action fail to state a claim upon which relief can be granted.

SECOND DEFENSE

Some or all of Plaintiff’s claims are barred by the applicable statute of limitations, including the failure to file the instant lawsuit within the time period required by the applicable statute.

THIRD DEFENSE

Plaintiff's damages are limited to those remedies and those amounts provided for by statute.

FOURTH DEFENSE

Even if any adverse actions were taken against the Plaintiff for reasons related to Plaintiff's protected class status or any exercise by Plaintiff of protected rights, Plaintiff would have been subject to adverse employment actions or otherwise for reasons unrelated to any protected class status or activities, including after-acquired evidence.

FIFTH DEFENSE

Even if Plaintiff's protected class status was a motivating factor for any adverse actions Defendant took with respect to Plaintiff's employment, Defendant would have made the same decisions and taken the same adverse actions with respect to Plaintiff's employment in the absence of any impermissible motivating factor.

SIXTH DEFENSE

Any adverse action taken against Plaintiff was done so in good faith without malice or reckless indifference to Plaintiff's protected rights.

SEVENTH DEFENSE

Some or all of Plaintiff's claims pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e *et seq.*, are barred to the extent that they were never made the subject of a charge of discrimination with the applicable government agency within the time required by law or because the claims are not within the scope of any charge of discrimination filed by Plaintiff.

EIGHTH DEFENSE

Some or all of Plaintiff's claims are barred by Plaintiff's failure to exhaust administrative remedies.

NINTH DEFENSE

Plaintiff has failed to mitigate damages as required by law.

TENTH DEFENSE

Some or all of Plaintiff's claims are barred by the doctrines of waiver, estoppel, fraud and/or illegality.

ELEVENTH DEFENSE

The Third Amended Complaint fails to state a claim for punitive, actual, special, exemplary, liquidated, and/or compensatory damages.

TWELFTH DEFENSE

Plaintiff has unclean hands.

THIRTEENTH DEFENSE

The Defendant reserves the right to assert any additional affirmative defenses allowed by Rule 8 depending upon any evidence discovered in pursuit of this litigation.

FOURTEENTH DEFENSE

For answer to the respective paragraphs of the Third Amended Complaint, Defendant shows as follows:

PARTIES

1.

Defendant admits the allegations pled in paragraph 1 of the Third Amended Complaint.

2.

Defendant admits that Plaintiff attempts to invoke jurisdiction. Defendant denies the remaining allegations pled in paragraph 2 of the Third Amended Complaint.

3.

Defendant admits that it a political subdivision of the State of Georgia and is subject to the jurisdiction of this Court. Defendant denies the remaining allegations pled in paragraph 3 of the Third Amended Complaint.

4.

Defendant admits the allegations pled in paragraph 4 of the Third Amended Complaint.

5.

Defendant admits the allegations pled in paragraph 5 of the Third Amended Complaint.

6.

Defendant admits that Plaintiff attempts to assert a mixed motive and single motive discrimination claim under Title VII. Defendant denies any liability for such claims. Defendant denies that Plaintiff is entitled to any legal or equitable relief and denies the remaining allegations pled in Paragraph 6 of the Third Amended Complaint.

ADMINISTRATIVE

7.

Defendant admits that Plaintiff filed a timely charge of sexual orientation discrimination with the Equal Employment Opportunity Commission. Defendant denies the remaining allegations pled in paragraph 7 of the Third Amended Complaint.

8.

Defendant admits the allegations pled in paragraph 8 of the Third Amended Complaint.

JURISDICTION AND VENUE

9.

Defendant admits that Plaintiff attempts to invoke subject matter jurisdiction. Defendant denies the remaining allegations pled in paragraph 9 of the Third Amended Complaint.

10.

Defendant admits that Plaintiff attempts to invoke venue. Defendant denies the remaining allegations pled in paragraph 10 of the Third Amended Complaint.

11.

Defendant admits that Plaintiff attempts to invoke venue. Defendant denies the remaining allegations pled in paragraph 11 of the Third Amended Complaint.

STATEMENT OF ALLEGED FACTS

12.

Defendant admits the allegations pled in paragraph 12 of the Third Amended Complaint.

13.

Defendant admits that Plaintiff held himself out as being gay. Defendant is without knowledge or information sufficient to admit or deny the truth of the remaining allegations pled in paragraph 13 of the Third Amended Complaint. Further responding, Defendant shows that the fact that Plaintiff held himself out as being gay was widely known to employees who worked in the Clayton County Juvenile Court during most of Plaintiff's employment with the County.

14.

Defendant admits that, at the time of his termination, Plaintiff held the position of Child Welfare Service Coordinator, that he was assigned to the Clayton County Juvenile Court, and that he was responsible for overseeing the Clayton County Court Appointed Special Advocate program. Defendant denies the remaining allegations pled in paragraph 14 of the Third Amended Complaint.

15.

Defendant admits that Plaintiff received good performance evaluations and that the County's CASA program received various awards. Defendant is without knowledge or information to admit or deny the truth of the remaining allegations pled in paragraph 15 of the Third Amended Complaint.

16.

Defendant admits that Plaintiff became involved with a gay recreational softball league. Defendant is without knowledge or information sufficient to admit or deny the truth of the remaining allegations pled in paragraph 16 of the Third Amended Complaint.

17.

Defendant denies the allegations pled in paragraph 17 of the Third Amended Complaint.

18.

Defendant denies the allegations pled in paragraph 18 of the Third Amended Complaint.

19.

Defendant admits that it advised Plaintiff that Defendant was conducting an internal audit of program funds that Plaintiff managed. Defendant denies the remaining allegations pled in paragraph 19 of the Third Amended Complaint.

20.

Defendant denies the allegations pled in paragraph 20 of the Third Amended Complaint.

21.

Defendant denies the allegations pled in paragraph 21 of the Third Amended Complaint.¹ Further responding, Defendant shows that a former employee (who was hired by Plaintiff and also held himself out as being gay) sent an email to a supervisor alleging that Plaintiff was misusing program funds and urging that an investigation be conducted into Plaintiff's misconduct. This email started a sequence of events that led to the internal audit referenced in paragraph 21 of the Third Amended Complaint.

22.

Defendant admits that Clayton County Juvenile Court Chief Judge Steve Teske, in May 2013, advised a member of the Friends of Clayton County CASA Advisory Board that Plaintiff's employment would be terminated. Defendant denies the remaining allegations pled in paragraph 22 of the Third Amended Complaint. Further responding, Defendant shows that Plaintiff's assertion of additional factual allegations in paragraph 22 of the Third Amended Complaint, which Plaintiff did not allege in the Second Amended Complaint, exceeds the

¹ In addition, Defendant notes that Plaintiff's claim that Defendant initiated the audit because of Plaintiff's failure to conform to a gender stereotype was dismissed by the Court in its July 21, 2017 Order (Doc. 24). Plaintiff did not appeal that portion of the Court's July 21, 2017 Order.

scope of the Court's leave to amend as set forth in the Court's Order of November 9, 2021 (Doc. 100).

23.

Defendant admits that it terminated Plaintiff's employment partly because of conduct unbecoming a Clayton County employee. Defendant denies the remaining allegations pled in paragraph 23 of the Third Amended Complaint. Further responding, Defendant shows that Plaintiff's assertion of additional factual allegations in paragraph 23 of the Third Amended Complaint, which Plaintiff did not allege in the Second Amended Complaint, exceeds the scope of the Court's leave to amend as set forth in the Court's Order of November 9, 2021 (Doc. 100).

24.

Defendant admits that Plaintiff filed his initial Complaint on May 5, 2016; an Amended Complaint on August 2, 2016; and a Second Amended Complaint on September 12, 2016. Defendant denies the remaining allegations pled in paragraph 24 of the Third Amended Complaint.

COUNT I
Alleged Sex Discrimination in Violation of
Title VII of the Civil Rights Act of 1964, As Amended

25.

Defendant incorporates by reference their responses to paragraphs 1 through 24 of the Third Amended Complaint as though set forth specifically herein.

26.

Defendant admits that Plaintiff held himself out as being gay. Defendant is without knowledge or information sufficient to admit or deny the truth of the remaining allegations pled in paragraph 26 of the Third Amended Complaint. Further responding, Defendant shows that the fact that Plaintiff held himself out as being gay was widely known to employees who worked in the Clayton County Juvenile Court during most of Plaintiff's employment with the County.

27.

Defendant admits the allegations pled in paragraph 27 of the Third Amended Complaint.

28.

Defendant admits the allegations pled in paragraph 28 of the Third Amended Complaint.

29.

Defendant admits the allegations pled in paragraph 29 of the Third Amended Complaint.

30.

Defendant denies the allegations pled in paragraph 30 of the Third Amended Complaint.

31.

Defendant admits that it terminated Plaintiff's employment for legitimate, nondiscriminatory reasons. Defendant denies the remaining allegations pled in paragraph 31 of the Third Amended Complaint.

32.

Defendant denies the allegations pled in paragraph 32 of the Third Amended Complaint.

33.

Defendant denies the allegations pled in paragraph 33 of the Third Amended Complaint.

34.

Defendant denies the allegations pled in paragraph 34 of the Third Amended Complaint.

35.

Defendant denies the allegations pled in paragraph 35 of the Third Amended Complaint.

PRAYER FOR RELIEF

36.

Defendant denies that Plaintiff is entitled to any of the relief set forth in the requests in the unnumbered “PRAYER FOR RELIEF” paragraph following Paragraph 35 of the Third Amended Complaint, including the relief sought in subsections (a) through (h), and denies that Plaintiff is entitled to any relief whatsoever under any theory at law or in equity. Defendant denies the remaining allegations pled in this unnumbered paragraph of the Third Amended Complaint.

37.

Any allegations in the Third Amended Complaint not heretofore answered, qualified, or denied are here and now denied as though set forth specifically and denied.

WHEREFORE, the Defendant in the above-referenced civil action respectfully requests that this Court:

1. Dismiss with prejudice Plaintiff’s Third Amended Complaint;

2. Award Defendant its reasonable attorney's fees, costs, and expenses pursuant to 42 U.S.C. § 1988 or otherwise; and
3. Award any and all other relief to Defendant that this Court may deem necessary and proper.

FREEMAN MATHIS & GARY, LLP

/s/ Jack R. Hancock

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