

**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.)	

PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT

COMES NOW, Plaintiff Gerald Bostock (“Plaintiff”) and, pursuant to Fed. R. Civ. P. 56(a) and N.D.Ga. L.R. 56 moves that summary judgment be granted in favor of Plaintiff as to all claims in Plaintiffs’ Third Amended Complaint against Defendant on the grounds that there is no genuine dispute of material fact and Plaintiff is entitled to judgment as a matter of law. In support of this motion, Plaintiff submits the following, filed contemporaneously herewith:

1. Plaintiff’s Memorandum of Law in Support of Plaintiff’s Motion for Summary Judgment;
2. Plaintiff’s Statement of Undisputed Material Facts;
3. Transcript of the deposition of Stephen Teske and exhibits to deposition;
4. Transcript of the deposition of Leslie Moore and exhibits to deposition;

5. Transcript of the deposition of Gerald Bostock and exhibits to deposition;
6. Transcript of the deposition of John Johnson and exhibits to deposition;
7. Transcript of the deposition of Colin Slay and exhibits to deposition;
8. Transcript of the deposition of Sabrina Crawford and exhibits to deposition;
9. Transcript of the deposition of Shelly Johnson and exhibits to deposition.

Wherefore, Plaintiff respectfully moves that the Court grant is Motion for
Summary Judgment

Respectfully submitted this 21st day of March 2022.

/s/ Edward D. Buckley _____

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the foregoing has been prepared in Times New Roman 14 font, as approved by the Court in LR 5.1B.

/s/ Edward D. Buckley
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CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all counsel of record.

BUCKLEY BEAL, LLP

By: /s/ Edward D. Buckley
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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF’S MOTION
FOR SUMMARY JUDGMENT**

I. INTRODUCTION

Q. So it's an assumption that -- there is an assumption that because he is recruiting in Midtown that he is actually engaging in gay-related activity, and not serious CASA-related activity. That was your assumption; right?

MR. HANCOCK: Object to the form of the question. Go ahead.

A. *Yeah.*

BY MR. BUCKLEY:

Q. Is that a yes?

A. I'm highly -- yeah, I'm highly suspicious that he's up there doing personal, more so personal than business stuff.

Q. And by personal, you mean gay stuff; right?

A. Well, it -- you know, it -- here's the thing, it doesn't matter whether you're gay, you're straight. What makes it suspicious that it was personal is *because he is gay and he was in that venue*, and spending money in the GAL account in that venue, which he could not account for all of the spending.

Q. And that was a contributing factor in your decision to terminate him; right?

A. *It was a contributing factor, okay.*

(Deposition of Steven Teske 177:22-178:20 (emphasis added).)

In approximately *two minutes* of testimony, the undisputed decisionmaker in Mr. Bostock's termination, Steven Teske (Teske) admitted under oath what Mr. Bostock has spent the last *nine years* of his life fighting to prove: Clayton County fired him because he is gay.

Of course, this is not the only evidence of Defendant's discriminatory intent. But standing alone, it is more than enough. The undisputed decisionmaker in Mr. Bostock's termination *admitted* he fired Mr. Bostock because he is gay. This is direct evidence of discrimination and for the reasons set forth herein, Defendant cannot establish any triable issue of fact that it would have made the same decision to terminate Mr. Bostock in the absence of its admitted discriminatory motive. Accordingly, Mr. Bostock is entitled to judgment as a matter of law on the issue of liability and this case should proceed to a jury trial on the sole issue of damages.

II. PROCEDURAL AND FACTUAL BACKGROUND

A. The Clayton County Juvenile Court and the Court Appointed Special Advocate Program

Clayton County CASA ("court-appointed special advocate") is a program within the Child Welfare Division of the Clayton County Juvenile Court. (Bostock Depo. at 72:13-17; Teske Depo. at 50:1-5; Teske Depo. at 45:13-15). Clayton

County CASA coordinated the assignment of court-appointed special advocates to be the “eyes and ears for the judge” and to be advocates for the child in cases of child abuse. (Teske Depo. at 47:3–23; Bostock Depo. at 72:13–23). CASA volunteers would interview the child and parents, talk to DFCS and social services, and write up reports related to the child’s case before the judge. (Teske Depo. at 48:9–16). Judge Steven Teske, now retired, became the chief judge of the Clayton County Juvenile Court in 2011. (Teske Depo. at 20:6–10).

B. Mr. Bostock’s Background

Plaintiff Gerald Bostock is a gay male. (Bostock Depo. at 9:7–9). Plaintiff’s sexual orientation was well known during his employment to Juvenile court management. (Teske Depo. at 277:19–25; John Johnson Depo. at 137:21–138:4; Slay Depo. at 232:6–14.) Mr. Bostock began working at the Clayton County Juvenile Court in 2001 as the CASA Program Coordinator. (Bostock Depo. at 52:2–53:2).

At some point, there was a reorganization and Child Welfare Services was created. Child Welfare Services combined the Clayton County CASA Program and the Citizen Panel Review. (Bostock Depo. at 53:5–11). When this reorganization took place, Mr. Bostock was named the Child Welfare Services Coordinator or chief of the Child Welfare Division. (Bostock Depo. at 53:10–11; Teske Depo. at 43:23–

44:1).

In his role as chief of the Child Welfare Division, Mr. Bostock was charged with recruitment, training, and retention of CASA volunteers as well as marshalling and funding recruitment, training, and retention. (Teske Depo. at 82:1–19). Mr. Bostock reported to Colin Slay, Chief of Staff. (Bostock Depo. at 78:21–23). Mr. Bostock also reported to John Johnson, the Court Administrator. (John Johnson Depo. at 22:3–5). Johnson and Slay ultimately reported to now retired Judge Teske. (Teske Depo. at 295:16–18; Johnson Depo. at 99:21–24).

C. Background of Friends of Clayton County CASA

Mr. Bostock also had a role within the Friends of Clayton County CASA (“FCCC”) which is a separate 501(c)(3) non-profit organization. (Teske Depo. at 45:2–10). The purpose of the FCCC was to help generate funds to support the Clayton County CASA program. (Teske Depo. at 52:3–6). The FCCC helped to recruit volunteers for the CASA program and to secure funds to retain the volunteers for the program. (Crawford Depo. at 17:12–16). Sabrina Crawford was the Board Chair of FCCC from 2005 to 2013. (Crawford Depo. at 15:3–16:22).

D. The Memorandum of Understanding

In late 2007, the Clayton County Superior Court and the Clayton County CASA Program entered into an agreement for the generation of funds for the purpose

of recruitment, training, and retention of CASA volunteers. (Teske Depo. at 51:21–24). In late 2007, a Memorandum of Understanding (“MOU”) was entered between the Superior Court of Clayton County and Clayton County CASA which commemorated this agreement and indicated that Clayton County CASA would receive a \$500 administrative fee when the Superior Court appointed a Clayton County CASA employee to serve as a guardian ad litem. (Teske Depo at 52:8–53:3). This money collected pursuant to the MOU was paid to “Friends of Clayton County CASA, Inc., Care of Gerald Bostock, Program Coordinator of CASA” (the “GAL account”). (Teske Depo. at 53:23–54:14; Teske Depo., Plaintiff’s Exhibit 3 at 2).

Under the MOU, Mr. Bostock was authorized to use these funds “to fund volunteer recruitment, training, and retention” of CASA volunteers. (Teske Depo. at 54:18–21; Teske Depo., Exhibit 3 at 2). This directive in the MOU for how the fees are to be used is not specific. (Slay Depo. at 74:9–17). The FCCC had two accounts: their own and a GAL account. (Teske Depo. at 124:20–22). The \$500 collected under the MOU went into the GAL account. (Bostock Depo. at 98:23–99:22).

The GAL account was overseen by the Friends of Clayton County CASA board. (Teske Depo. at 154:1–3; Crawford Depo. at 117:7–23). Mr. Bostock reported to the FCCC board concerning the use of these funds and on a regular basis made the bank account records available to the board with explanation for all expenditures.

(Crawford Depo. at 18:4–14; Bostock Depo. at 140:6–141:1).

D. Review of Bank Statements

In late 2011 or early 2012, Mr. Bostock began providing annotated copies of bank statements from the GAL account to Mr. Johnson and Mr. Slay for their review. (Slay Depo. at 92:12–18; John Johnson Depo. at 84:21–24 to 86:14). Colin Slay reviewed the bank statements and generally found Mr. Bostock’s explanations for expenditure appropriate. (Slay Depo. at 99:5–9). Johnson also reviewed them. (John Johnson Depo. at 84:21–24 to 86:14)

E. The Softball League and Discriminatory Audit

In or around December 2013, Mr. Bostock began participating in the Hotlanta Softball League - a gay men’s sports league. (Bostock Depo. at 177:1–14). Mr. Bostock recruited members of the league to volunteer for CASA or to sponsor events. (Bostock Depo. at 198:20–22; 201:19–24). Mr. Bostock also secured FCCC sponsorships from certain league members. (Bostock Depo. at 201:19–24). Additionally, Mr. Bostock sought and received approval from Friends of Clayton County CASA Board Chair, Sabrina Crawford, to use funds from the GAL account to partially fund the purchase of t-shirts for the team which bore the Clayton County CASA logo, along with logos of other sponsors. (Bostock Depo. at 274:8–20; Bostock Depo., Ex. 17; Teske Depo. at 130:16–20.)

On April 30, 2013, John Johnson wrote a memo to Stacey Merritt, Head of Internal Audits, with Slay and Teske copied on the memo, requesting an audit of the GAL account. (John Johnson Depo., Exhibit 94). This memo from Johnson specifically questioned expenditures at “adult/alternative bars” which Johnson testified meant gay bars or alleged “gay friendly” establishments. (John Johnson Depo. at 130:18–21; Ex. 94.). This memo also specifically referenced Mr. Bostock’s softball team. (Johnson Depo. Ex. 94.) Johnson testified that the “concerns” he listed in his memo, which included the softball team and the gay bars were concerns that he, Slay, and Teske had. (Johnson Depo. 129:22-130:1.)

On May 1, 2013, Teske wrote a memo to County Chairman Jeff Turner requesting a formal audit of the GAL account. (Teske Depo. at 183:17–184:17.) Teske ordered the audit only after Mr. Bostock began participating in the Hotlanta Softball League and recruiting CASA volunteers and sponsors in the Midtown area of Atlanta. (Teske Depo. at 183:17–184:17; Johnson Depo. 129:22-130:1; Johnson Depo. Ex. 94.)

At the beginning of the audit, John Johnson told Leslie Moore, the assistant director of internal audit, that Mr. Bostock was gay, even though his sexual orientation was not relevant to the audit. (Moore Depo. at 26:23–27:11; 37:11–19). Johnson did not tell Moore, who conducted the audit, that Mr. Bostock had been

providing him GAL bank account statements over the last couple of years and that he had been reviewing them (Moore Depo. at 28:2–29:1). Ms. Moore testified that it would have been important for her to know this information “because the reason for [Johnson] coming to us about the audit was that there was lack of oversight, and he didn't know what the funds were being spent on” and that “if [Johnson] had been keeping tabs . . . on the bank statements, then that doesn't make sense to me.” (Moore Depo. at 29:2–12.)

Ms. Moore interviewed Mr. Bostock and found him to be cooperative and forthcoming. (Moore Depo. at 14:16–15:1). Ms. Moore did not ask any member of Friends of Clayton County CASA for books and records concerning the GAL account and had no answer as to why she did not do so. (Moore Depo. at 18:2–20:14).

F. Teske's Focus on Mr. Bostock's Sexuality

On June 3, 2013, the day Mr. Bostock was fired, Teske wrote in his diary his justification for firing Gerald Bostock, stating that Mr. Bostock had used GAL funds to “sponsor[] his gay softball team in a gay Atlanta softball league.” (Teske Depo. at 168:11–169:1; Teske Depo., Exhibit 43 at 10; Johnson Depo. Ex. 17). Teske further wrote in his diary that Mr. Bostock had used GAL funds for “meals with friends (former boyfriends—he is gay) and to sponsor a softball team in a gay

softball league in Atlanta.” (Teske Depo. at 170:3–8; Teske Depo., Exhibit 43 at 10).

In his deposition, Teske admitted that he had no evidence that Mr. Bostock was having lunch with former boyfriends. (Teske Depo. at 175:6-8.) Teske also wrote in his diary that Mr. Bostock was “buying meals for potential sponsors in Midtown Atlanta—the gay district of Atlanta.” (Teske Depo. 176:24-177:1; Exhibit 43 at 11).

The audit did not find that Mr. Bostock used GAL funds for meals with former boyfriends. (Moore Depo. at 53:24–54:2; Ex. 10.). The audit did not conclude that recruiting efforts within the gay community meant that Mr. Bostock was spending money on his own interests. (Moore Depo. at 64:6–16; Ex. 10).

As part of his justification, Teske also wrote that expenditures for the softball league and for meals in Midtown Atlanta created an “appearance that because [Mr. Bostock] is gay he is spending money on his own interests.” (Teske Depo. at 176:2-177:6; 168:11-169:1; Teske Depo., Exhibit 43 at 11). Teske was suspicious of Mr. Bostock’s spending in Midtown “because [Mr. Bostock] is gay” and Teske considered Midtown “the gay district of Atlanta.” (Teske Depo. at 176:25–177:13).

Teske factored Mr. Bostock’s sexual orientation into his conclusion that Mr. Bostock was spending money on “personal things” when he spent money in Midtown Atlanta. (Teske Depo. at 182:3–25). Teske considered all expenditures at

restaurants or bars in Midtown Atlanta to be “suspicious” because the restaurants in Midtown Atlanta could be a “gay restaurant” or a “gay bar.” (Teske Depo. at 207:21–208:2).

Teske admitted that when Mr. Bostock spent money on softball uniforms from the GAL account, Mr. Bostock consulted with the people who have oversight on the account and received authorization for that expenditure. (Teske Depo. at 195:12–196:1). Leslie Moore, the assistant director of internal audit, did not consider it an inappropriate use of the GAL funds to take people to lunch and try to recruit them. (Moore Depo. at 25:20–23). There was no restriction in the MOU with respect to Mr. Bostock recruiting or training in Midtown Atlanta. (John Johnson Depo. at 98:16–20). Slay stated that engaging in a recruiting event at a gay bar would not be an improper use of funds. (Slay Depo. at 114:1–5). The audit report did not state that Mr. Bostock engaged in any wrongdoing nor did it suggest he should be disciplined in any manner. (Moore Depo. at 8:12–9:2; 84:24–85:4; Ex. 10.)

G. Conclusion of the Audit and Discriminatory Termination

On June 3, 2013, Teske instructed John Johnson to terminate Mr. Bostock. (Teske Depo. at 137:18–138:2). Teske was the ultimate decision maker concerning Mr. Bostock’s termination. (Teske Depo. at 44:13–15).

Teske admitted Mr. Bostock’s sexuality was a “contributing factor” in Teske’s

decision to terminate Mr. Bostock. (Teske Depo. 177:22-178:20.) Teske admitted that he believed that because Mr. Bostock was recruiting in Midtown that he was actually engaging in gay-related activity and not serious CASA related activity. (Teske Depo. 177:22-178:4).

Before Teske terminated Mr. Bostock, Teske and Slay visited Crawford at her car dealership and Teske told her that he was going to terminate Mr. Bostock. (Teske Depo. at 59:17–60:2; 67:1–7). At this meeting, Teske told Crawford that Mr. Bostock had misused, mishandled, mismanaged, or stolen between \$14,000 and \$17,000 and that he had proof in the form of bank statements. (Teske Depo. at 68:17–69:4; Crawford Depo. at 39:8–41:18). Crawford’s review of the bank statements that were allegedly proof of Mr. Bostock misusing or stealing between \$14,000 and \$17,000 did not reveal any evidence of such alleged misuse. (Crawford Depo. at 41:19–24).

Teske also told Crawford that Mr. Bostock has used some CASA funds to sponsor a softball team in a “gay softball league.” (Teske Depo. at 75:19–76:24). Crawford was aware of Mr. Bostock using funds to sponsor the softball team and thought it was a good idea. (Crawford Depo. at 44:7–15). When Crawford objected to Teske’s decision to terminate Mr. Bostock, Teske slammed his hand down on her desk and loudly said “But it was at a gay bar.” (Crawford Depo. at 43:13–23).

Teske held a meeting with the entire juvenile court staff to notify them of Mr. Bostock's termination. (Teske Depo. at 103:6–11; John Johnson Depo. at 215:22–217:22). At this meeting Teske specifically stated Mr. Bostock was terminated because he misappropriated funds in sponsoring the gay softball team and that the court would not tolerate that type of behavior. (Shelley Johnson Depo. at 40:16–41:5). John Johnson found the meeting in which Teske announced Mr. Bostock's termination and the reasons for it inappropriate because personnel matters are generally kept private. (John Johnson Depo. at 217:5–22).

At the meeting during which Johnson carried out the termination, Mr. Bostock told Johnson that he knew what the meeting was about, and Johnson responded, "This is not because you're gay." (Bostock Depo. at 13:8–22). Mr. Bostock never saw a copy of the audit report before he was terminated. (Bostock Depo. at 282:7–13).

III. ARGUMENT AND CITATION OF AUTHORITY

A. Summary Judgment Standard

Summary judgment is authorized when "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party seeking summary judgment bears the burden of

demonstrating the absence of a genuine dispute as to any material fact. *See Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 175 (1970); *Bingham, Ltd. v. United States*, 724 F.2d 921, 924 (11th Cir. 1984). The movant carries this burden by showing the court that there is “an absence of evidence to support the nonmoving party's case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

Once the moving party has adequately supported its motion, the nonmoving party must come forward with specific facts that demonstrate the existence of a genuine issue for trial. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The nonmoving party is required “to go beyond the pleadings” and to present competent evidence designating “specific facts showing that there is a genuine issue for trial.” *Celotex*, 477 U.S. at 324. Generally, “[t]he mere existence of a scintilla of evidence” supporting the nonmoving party's case is insufficient to defeat a motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). Under this standard, Plaintiff is entitled to summary judgment.

B. Plaintiff is Entitled to Summary Judgment Based on Direct Evidence of Discrimination

A party may prove a prima facie case of discrimination by direct evidence of discrimination. *See EEOC v. Alton Packaging Corp.*, 901 F.2d 920, 923–24 (11th Cir.1990); *EEOC v. Beverage Canners, Inc.*, 897 F.2d 1067, 1070–72 (11th Cir.1990). Such evidence, if believed, proves the existence of a fact in issue without

inference or presumption. *Castle v. Sangamo Weston, Inc.*, 837 F.2d 1550, 1558 n. 13 (11th Cir.1988). In other words, it is evidence “from which a reasonable trier of fact could find, more probably than not, a causal link between an adverse employment action and a protected personal characteristic.” *Wright v. Southland Corp.*, 187 F.3d 1287, 1298 (11th Cir. 1999).

1. Teske’s Testimony and Diary Constitute Direct Evidence of Discrimination

Mr. Bostock has direct evidence of discrimination in the sworn testimony of Teske, the undisputed decisionmaker in Mr. Bostock’s termination. Teske admitted under oath that Mr. Bostock’s sexual orientation was a “contributing factor” in his decision to terminate Mr. Bostock. (Teske Dep. 177:22-178:20); *see also Bostock v. Clayton County, Ga.*, 140 S. Ct. 1731, 207 L. Ed. 2d 218 (2020) (holding in part that Title VII forbids sexual orientation discrimination). Moreover, Teske admitted that his alleged “suspicions” of Mr. Bostock’s spending to recruit and retain volunteers for the CASA program - the entire basis of the audit - were “because [Mr. Bostock] is gay.” (*Id.*) In other words, if Mr. Bostock were not gay, Teske would not have fired him. *See Alton Packaging Corp.*, at 901 F.2d at 924 (general manager's remark that “if it was his company, he wouldn't hire any black people,” constituted direct evidence of discriminatory motive in failing to promote black employee when general manager was responsible for promotion decisions at

issue); *Beverage Canners, Inc.*, 897 F.2d at 1068–69, 1070–71 & n. 9 (racially derogatory remarks made by plant manager and plant supervisor constituted direct evidence of racial motivation in failure to rehire employee who had been laid off).

2. Teske’s Discriminatory Animus Was the “But For” Cause of Mr. Bostock’s Termination

In an earlier appeal in this very case, the United States Supreme Court, discussing “but for” causation (i.e., a single motive claim) stated that “[o]ften, events have multiple but-for causes . . . [w]hen it comes to Title VII, the adoption of the traditional but-for causation standard means a defendant cannot avoid liability just by citing some other factor that contributed to its challenged employment decision. So long as the plaintiff’s sex was one but-for cause of that decision, that is enough to trigger the law.” *Bostock v. Clayton Cty.*, Ga, 140 S. Ct. 1731, 1739 (2020). The Supreme Court made clear that it was focused on single motive discrimination claims: “nothing in our analysis depends on the motivating factor test, we focus on the more traditional but-for causation standard that continues to afford a viable, if no longer exclusive, path to relief under Title VII.” *Id.*

As supported by the Supreme Court’s opinion, Mr. Bostock can easily meet the standard for “but for” causation. It is clear from Teske’s testimony and diary that were Mr. Bostock not gay, he would not have been fired. Teske’s undisputed

statements in his diary and his sworn testimony establish not only that he fired Mr. Bostock “because of” his sexual orientation but that his “suspicion” of Mr. Bostock’s recruiting CASA volunteers in Midtown Atlanta was entirely driven by discriminatory animus. *See, e.g.*, (Teske Depo. at 177:1–6; Teske Depo., Ex. 43 at 11) (“it’s that [sic] appearance that *because [Mr. Bostock] is gay* he is spending money on his own interests”) (emphasis added). But for Mr. Bostock’s sexuality, not only would Teske not have fired him, but Mr. Bostock never would have come under Teske’s discriminatory “suspicion” in the first place. Thus, he clearly has established as a matter of law that his sexual orientation was the “but for” cause of his termination. As determined by the Supreme Court, that is all that is required

3. Defendant Cannot Show That it Would Have Reached the Same Decision Absent a Discriminatory Motive

If the plaintiff presents direct evidence that the employer acted with discriminatory motive then the employer can avoid liability only if it shows by a preponderance of the evidence that the same employment decision would have been reached in the absence of the discriminatory motive. *See Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) (plurality opinion); *Alton Packaging Corp.*, 901 F.2d at 923–24; *Beverage Canners, Inc.*, 897 F.2d at 1071–72; *Jones v. Gerwens*, 874 F.2d at 1539 n. 8. “Production of nondiscriminatory reasons is not enough in a direct evidence case,” *Alton Packaging Corp.*, at 925; the defendant must prove that there

was a gender-neutral reason for its employment decision, *id.* In this case, Defendant cannot meet this burden as a matter of law.

Defendant cannot rely upon the audit to support a “same decision” defense because the audit itself is a product of discriminatory animus and even so it does not find any wrongdoing by Mr. Bostock nor does it recommend he be disciplined in any manner. The following facts are relevant here:

- Teske ordered the audit only after Mr. Bostock began participating in the Hotlanta Softball League and recruiting CASA volunteers and sponsors in the Midtown area of Atlanta. (Teske Depo. at 183:17–184:17; Johnson Depo. 129:22-130:1; Johnson Depo. Ex. 94.)
- The April 30, 2013, memo from John Johnson to Stacey Merritt, requesting an audit of the GAL account specifically questioned expenditures at gay bars or alleged “gay friendly” establishments. (Johnson Depo. 130:6–21; Exhibit 94). In this memo Johnson specifically questioned expenditures at “adult/alternative bars” which Johnson testified meant gay bars or alleged “gay friendly” establishments. (John Johnson Depo. at 130:18–21; Ex. 94.).
- This memo also specifically referenced Mr. Bostock’s softball team. (Johnson Depo. Ex. 94.)

- Johnson testified that the “concerns” he listed in his memo, which included the softball team and the gay bars were concerns that he, Slay, and Teske had. (Johnson Depo. 129:22-130:1).
- At the beginning of the audit, John Johnson, in instructing Leslie Moore to begin the audit, told Ms. Moore, the assistant director of internal audit, that Mr. Bostock was gay. (Moore Depo. at 26:23–27:11; 37:11–19).
- Johnson did not tell Moore, who conducted the audit, that Mr. Bostock had been providing him GAL bank account statements over the last couple of years and that he had been reviewing them. (Moore Depo. at 28:2–29:1). Ms. Moore testified that it would have been important for her to know this information “because the reason for [Johnson] coming to us about the audit was that there was lack of oversight, and he didn't know what the funds were being spent on” and that “if [Johnson] had been keeping tabs . . . on the bank statements, then that doesn't make sense to me.” (Moore Depo. at 29:2–12).
- The audit did not find that Mr. Bostock used GAL funds for meals with former boyfriends. (Moore Depo. at 53:24–54:2).

- Teske admitted that he had no evidence that Mr. Bostock was having lunch with former boyfriends. (Teske Depo. at 175:6-8).
- The audit did not conclude that recruiting efforts among the gay community meant that Mr. Bostock was spending money on his own interests. (Moore Depo. at 64:6–16).
- Ms. Moore did not consider it an inappropriate use of the GAL funds to take people to lunch and try to recruit them. (Moore Depo. at 25:20–23).
- There was no restriction in the MOU with respect to Mr. Bostock recruiting or training in Midtown Atlanta. (John Johnson Depo. at 98:16–20).
- Slay testified that engaging in a recruiting event at a gay bar would not be an improper use of funds. (Slay Depo. at 114:1–5).
- The audit report did not state that Mr. Bostock engaged in any wrongdoing nor did it suggest he should be disciplined in any manner. (Moore Depo. at 8:12–9:2; 84:24–85:4).

Thus, even though the reason for initiating the audit was discriminatory, (Moore Depo. 37:11–19) nothing in the audit provides any basis for terminating Mr. Bostock.

Defendant cannot rely on the audit as a “same decision” defense for the additional reason that Teske deliberately mischaracterized or ignored the actual contents of the audit and instead relied upon his own discriminatory assumptions that because Mr. Bostock is gay, any expenditures in Midtown Atlanta must have been personal in nature rather than CASA related. The following facts underscore Teske’s animus and departure from the actual contents of the audit report:

- In two pages of his diary Teske wrote about his reason for firing Bostock, writing that Mr. Bostock had used GAL funds for “meals with friends (former boyfriends—he is gay) and to sponsor a softball team in a gay softball league in Atlanta” (Teske Depo. at 170:3–8; Teske Depo., Exhibit 43 at 10), Teske was highly suspicious of Mr. Bostock’s spending in Midtown because Mr. Bostock is gay and Teske considered Midtown “the gay district of Atlanta.” (Teske Depo. at 176:24–178:16).
- Teske also wrote that expenditures for the softball league and for meals in Midtown Atlanta created an “appearance that because [Mr. Bostock] is gay he is spending money on his own interests.” (Teske Depo. at 176:23 – 177:6; 168:11-169:1; Teske Depo., Exhibit 43 at 11.) Again, nothing in the audit report even remotely suggests this was the case.
- Teske considered all expenditures at restaurants or bars in Midtown

Atlanta to be “suspicious” because the restaurants in Midtown Atlanta could be a “gay restaurant” or a “gay bar.” (Teske Depo. at 207:21–208:2.)

- Teske factored Mr. Bostock’s sexual orientation into his conclusion that Mr. Bostock was spending money on “personal things” when he spent money in Midtown Atlanta. (Teske Depo. at 182:3–25). Once again, there is nothing in the audit report that suggests this. It is entirely a fiction spawned by Teske’s discriminatory bias.
- Teske falsely told Crawford that Mr. Bostock had misused, mishandled, mismanaged, or stolen between \$14,000 and \$17,000 and that he had proof in the form of bank statements, even though the audit report says no such thing. (Teske Depo. at 68:17–69:4; Crawford Depo. at 39:8–41:18).
- When Crawford objected to Teske’s decision to terminate Mr. Bostock, Teske slammed his hand down on her desk and loudly said “But it was at a gay bar.” (Crawford Depo. at 43:13–23).
- At the meeting during which Johnson carried out the termination, Mr. Bostock told Johnson that he knew what the meeting was about, and Johnson defensively responded, “This is not because you’re gay.”

(Bostock Depo. at 13:8–22). The only reasonable interpretation of this unsolicited out-of-the-blue remark is that it was indeed because Mr. Bostock was gay.

- At the meeting of all staff to announce Mr. Bostock’s termination, Teske stated Mr. Bostock was terminated because he misappropriated funds in sponsoring the gay softball team, an assertion that has no basis in fact. (Shelley Johnson Depo. at 40:16–41:5).
- John Johnson found the meeting in which Teske announced Mr. Bostock’s termination and the reasons for it inappropriate because personnel matters are generally kept private. (John Johnson Depo. At 217:5–22).

Thus, Defendant cannot, as a matter of law, rely upon the audit to support a “same decision” defense. As a result, Mr. Bostock is entitled to summary judgment on his discrimination claim and this case should proceed to trial on the sole issue of damages.

C. Mr. Bostock is at a Minimum Entitled to Summary Judgment Under a Mixed Motive Standard

Mr. Bostock has established that he is entitled to summary judgment because the direct evidence shows that Teske terminated him because of his sexual orientation. Should, however, the Court determine that issues of fact remain with

respect to “but for” causation or otherwise, Mr. Bostock is at the least entitled to summary judgment on a “mixed motive” theory of discrimination with the issue of but- for causation to be presented to the jury at trial.

An employee can succeed on a mixed-motive claim by showing that illegal bias, such as bias based on sex or gender, was a “motivating factor” for the adverse employment action, even though other factors also motivated the action. *Quigg v. Thomas Cty. Sch. Dist.*, 814 F.3d 1227, 1239 (11th Cir. 2016); *see also* 42 U.S.C. § 2000e–2(m) (“[A]n unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.”)

An employee can succeed on a mixed-motive claim if he demonstrates that “discriminatory input,” such as sex or gender-based bias, factored into the “decisional process.” *Quigg*, 814 F.3d at 1241. Teske’s statements and admission in his sworn testimony, at a minimum, establish the sexuality-based bias that infected his decision making process. As stated in Section III.B.2, *supra*, Mr. Bostock can establish as a matter of law that Teske terminated him because of his sexual orientation. However, even if the Court should determine that issues of fact remain as to “but for” causation, Mr. Bostock is at a minimum entitled to summary judgment

on a mixed motive claim with the issue of but for causation to be a matter for the tier of fact to determine.

IV. CONCLUSION

The undisputed decisionmaker, under oath, stated that he fired Mr. Bostock because he is gay. Defendant cannot explain away this statement, nor can it explain away Teske's numerous statements written on the day Mr. Bostock was fired, evidencing his discriminatory bias. And Defendant cannot rely upon the audit as a basis for terminating Mr. Bostock when the audit, despite the fact that it was motivated by discriminatory animus, *still* provided no basis to terminate him.

Mr. Bostock has spent nine years in the pursuit of justice. There is nowhere else for Defendant to hide and nothing left for it to attempt to explain away. The Court should grant Plaintiff's motion for summary judgment and this case should proceed to trial on the sole issue of damages.

Respectfully submitted this 21st day of March 2022.

/s/ Edward D. Buckley

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Counsel for Plaintiff

**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.)	

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the foregoing has been prepared in Times New Roman 14 font, as approved by the Court in LR 5.1B.

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CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all counsel of record.

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GERALD LYNN BOSTOCK,)	
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CLAYTON COUNTY,)	
)	
Defendant.)	

**PLAINTIFF’S STATEMENT OF UNDISPUTED MATERIAL FACTS IN
SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Pursuant to Fed. R. Civ. P. 56 and LR 56.1(B)(1), NDGa., Plaintiff Gerald Lynn Bostock submits this Statement of Undisputed Material Facts in support of his Motion for Summary Judgment.

I. BACKGROUND

A. The Clayton County Juvenile Court and the Court Appointed Special Advocate Program

1. Clayton County CASA (“court-appointed special advocate”) is a program within the Child Welfare Division of the Clayton County Juvenile Court. (Bostock Depo. at 72:13–17; Teske Depo. at 50:1–5; Teske Depo. at 45:13–15).
2. Clayton County CASA coordinated the assignment of court-appointed special advocates to be the “eyes and ears for the judge” and to be advocates for the child

in cases of child abuse. (Teske Depo. at 47:3–23; Bostock Depo. at 72:13–23).

3. CASA volunteers would interview the child and parents, talk to DFCS and social services, and write up reports related to the child’s case before the judge. (Teske Depo. at 48:9–16).
4. Judge Steven Teske, now retired, became the chief judge of the Clayton County Juvenile Court in 2011. (Teske Depo. at 20:6–10).

B. Mr. Bostock’s Background

5. Plaintiff Gerald Bostock is a gay male. (Bostock Depo. at 9:7–9).
6. Plaintiff’s sexual orientation was well known during his employment to Juvenile court management. (Teske Depo. at 277:19–25; John Johnson Depo. at 137:21–138:4; Slay Depo. at 232:6–14)
7. Mr. Bostock began working at the Clayton County Juvenile Court in 2001 as the CASA Program Coordinator. (Bostock Depo. at 52:2–53:2).
8. At some point, there was a reorganization and Child Welfare Services was created. Child Welfare Services combined the Clayton County CASA Program and the Citizen Panel Review. (Bostock Depo. at 53:5–11).
9. When this reorganization took place, Mr. Bostock was named the Child Welfare Services Coordinator or chief of the Child Welfare Division. (Bostock Depo. at 53:10–11; Teske Depo. at 43:23–44:1).

10. In his role as chief of the Child Welfare Division, Mr. Bostock was charged with recruitment, training, and retention of CASA volunteers as well as marshalling and funding recruitment, training, and retention. (Teske Depo. at 82:1–19).
11. Mr. Bostock reported to Colin Slay, Chief of Staff. (Bostock Depo. at 78:21–23).
12. Mr. Bostock also reported to John Johnson, the Court Administrator. (John Johnson Depo. at 22:3–5).
13. Johnson and Slay ultimately reported to now retired Judge Teske. (Teske Depo. at 295:16–18; Johnson Depo. at 99:21–24).

C. Background of Friends of Clayton County CASA

14. Mr. Bostock also had a role within the Friends of Clayton County CASA (“FCCC”) which is a separate 501(c)(3) non-profit organization. (Teske Depo. at 45:2–10).
15. The purpose of the FCCC was to help generate funds to support the Clayton County CASA program. (Teske Depo. at 52:3–6).
16. The FCCC helped to recruit volunteers for the CASA program and to secure funds to retain the volunteers for the program. (Crawford Depo. at 17:12–16).
17. Sabrina Crawford was the Board Chair of FCCC from 2005 to 2013. (Crawford Depo. at 15:3–16:22).

II. THE MEMORANDUM OF UNDERSTANDING

18. In late 2007, the Clayton County Superior Court and the Clayton County CASA Program entered into an agreement for the generation of funds for the purpose of recruitment, training, and retention of CASA volunteers. (Teske Depo. at 51:21–24).
19. In late 2007, a Memorandum of Understanding (“MOU”) was entered between the Superior Court of Clayton County and Clayton County CASA which commemorated this agreement and indicated that Clayton County CASA would receive a \$500 administrative fee when the Superior Court appointed a Clayton County CASA employee to serve as a guardian ad litem. (Teske Depo at 52:8–53:3).
20. This money collected pursuant to the MOU was paid to “Friends of Clayton County CASA, Inc., Care of Gerald Bostock, Program Coordinator of CASA” (the “GAL account”). (Teske Depo. at 53:23–54:14; Teske Depo., Plaintiff’s Exhibit 3 at 2).
21. Under the MOU, Mr. Bostock was authorized to use these funds “to fund volunteer recruitment, training, and retention” of CASA volunteers. (Teske Depo. at 54:18–21; Teske Depo., Exhibit 3 at 2).
22. This directive in the MOU for how the fees are to be used is not specific. (Slay

Depo. at 74:9–17).

23. The FCCC had two accounts: their own and a GAL account. (Teske Depo. at 124:20–22).

24. The \$500 collected under the MOU went into the GAL account. (Bostock Depo. at 98:23–99:22).

25. The GAL account was overseen by the Friends of Clayton County CASA board. (Teske Depo. at 154:1–3; Crawford Depo. at 117:7–23).

26. Mr. Bostock reported to the FCCC board concerning the use of these funds and on a regular basis made the bank account records available to the board with explanation for all expenditures. (Crawford Depo. at 18:4–14; Bostock Depo. at 140:6–141:1).

III. Review of Bank Statements

27. In late 2011 or early 2012, Mr. Bostock began providing annotated copies of bank statements from the GAL account to Mr. Johnson and Mr. Slay for their review. (Slay Depo. at 92:12–18; John Johnson Depo. at 84:21–24 to 86: 14).

28. Colin Slay reviewed the bank statements and generally found Mr. Bostock's explanations for expenditure appropriate. (Slay Depo. at 99:5–9).

29. Johnson also reviewed them. (John Johnson Depo. at 84:21–24 to 86:14)

IV. The Softball League and Discriminatory Audit

30. In or around December 2013, Mr. Bostock began participating in the Hotlanta Softball League - a gay men's sports league. (Bostock Depo. at 177:1–14).
31. Mr. Bostock recruited members of the league to volunteer for CASA or to sponsor events. (Bostock Depo. at 198:20–22; 201:19–24).
32. Mr. Bostock also secured FCCC sponsorships from certain league members. (Bostock Depo. at 201:19–24).
33. Additionally, Mr. Bostock sought and received approval from Friends of Clayton County CASA Board Chair, Sabrina Crawford, to use funds from the GAL account to partially fund the purchase of t-shirts for the team which bore the Clayton County CASA logo, along with logos of other sponsors. (Bostock Depo. at 274:8–20; Bostock Depo., Ex. 17; Teske Depo. at 130:16–20.)
34. On April 30, 2013, John Johnson wrote a memo to Stacey Merritt, Head of Internal Audits, with Slay and Teske copied on the memo, requesting an audit of the GAL account. (John Johnson Depo., Exhibit 94).
35. This memo from Johnson specifically questioned expenditures at “adult/alternative bars” which Johnson testified meant gay bars or alleged “gay friendly” establishments. (John Johnson Depo. at 130:6–21; Ex. 94.).
36. This memo also specifically referenced Mr. Bostock's softball team. (Johnson Depo. Ex. 94.)

37. Johnson testified that the “concerns” he listed in his memo, which included the softball team and the gay bars were concerns that he, Slay, and Teske had. (Johnson Depo. 129:22-130:1).
38. On May 1, 2013, Teske wrote a memo to County Chairman Jeff Turner requesting a formal audit of the GAL account. (Teske Depo. at 183:17–184:17.)
39. Teske ordered the audit only after Mr. Bostock began participating in the Hotlanta Softball League and recruiting CASA volunteers and sponsors in the Midtown area of Atlanta. (Teske Depo. at 183:17–184:17; Johnson Depo. 129:22-130:1; Johnson Depo. Ex. 94.)
40. At the beginning of the audit, John Johnson told Leslie Moore, the assistant director of internal audit, that Mr. Bostock was gay, even though his sexual orientation was not relevant to the audit. (Moore Depo. at 26:23–27:11; 37:11–19).
41. Johnson did not tell Moore, who conducted the audit, that Mr. Bostock had been providing him GAL bank account statements over the last couple of years and that he had been reviewing them. (Moore Depo. at 28:2–29:1).
42. Ms. Moore testified that it would have been important for her to know this information “because the reason for [Johnson] coming to us about the audit was that there was lack of oversight, and he didn't know what the funds were being

spent on” and that “if [Johnson] had been keeping tabs . . . on the bank statements, then that doesn't make sense to me.” (Moore Depo. at 29:2–12).

43. Ms. Moore interviewed Mr. Bostock and found him to be cooperative and forthcoming. (Moore Depo. at 14:16–15:1).

44. Ms. Moore did not ask any member of Friends of Clayton County CASA for books and records concerning the GAL account and had no answer as to why she did not do so. (Moore Depo. at 18:2–20:14).

V. Teske’s Focus on Mr. Bostock’s Sexuality

45. On June 3, 2013, the day Mr. Bostock was fired Teske wrote in his diary his justification for firing Gerald Bostock, stating that Mr. Bostock had used GAL funds to “sponsor[] his gay softball team in a gay Atlanta softball league.” (Teske Depo. at 168:11–169:1; Teske Depo., Exhibit 43 at 10; Johnson Depo. Ex. 17).

46. Teske further wrote in his diary that Mr. Bostock had used GAL funds for “meals with friends (former boyfriends—he is gay) and to sponsor a softball team in a gay softball league in Atlanta.” (Teske Depo. at 170:3–8; Teske Depo., Exhibit 43 at 10).

47. In his deposition, Teske admitted that he had no evidence that Mr. Bostock was having lunch with former boyfriends. (Teske Depo. at 175:6-8.)

48. Teske also wrote in his diary that Mr. Bostock was “buying meals for potential

sponsors in Midtown Atlanta—the gay district of Atlanta.” (Teske Depo.176:24-177:1, Exhibit 43 at 11).

49. The audit did not find that Mr. Bostock used GAL funds for meals with former boyfriends. (Moore Depo. at 53:24–54:2).

50. The audit did not conclude that recruiting efforts within the gay community meant that Mr. Bostock was spending money on his own interests. (Moore Depo. at 64:6–16).

51. As part of his justification, Teske also wrote that expenditures for the softball league and for meals in Midtown Atlanta created an “appearance that because [Mr. Bostock] is gay he is spending money on his own interests.” (Teske Depo. at 176:23-177:1–6; 168:11-169:1; Teske Depo., Exhibit 43 at 11).

52. Teske was suspicious of Mr. Bostock’s spending in Midtown “because [Mr. Bostock] is gay” and Teske considered Midtown “the gay district of Atlanta.” (Teske Depo. at 176:25-177:13; Teske Depo., Exhibit 43 at 11).

53. Teske factored Mr. Bostock’s sexual orientation into his conclusion that Mr. Bostock was spending money on “personal things” when he spent money in Midtown Atlanta. (Teske Depo. at 182:3–25).

54. Teske considered all expenditures at restaurants or bars in Midtown Atlanta to be “suspicious” because the restaurants in Midtown Atlanta could be a “gay

restaurant” or a “gay bar.” (Teske Depo. at 207:21–208:2).

55. Teske admitted that when Mr. Bostock spent money on softball uniforms from the GAL account, Mr. Bostock consulted with the people who have oversight on the account and received authorization for that expenditure. (Teske Depo. at 195:12–196:1).

56. Leslie Moore, the assistant director of internal audit, did not consider it an inappropriate use of the GAL funds to take people to lunch and try to recruit them. (Moore Depo. at 25:20–23).

57. There was no restriction in the MOU with respect to Mr. Bostock recruiting or training in Midtown Atlanta. (John Johnson Depo. at 98:16–20).

58. Slay stated that engaging in a recruiting event at a gay bar would not be an improper use of funds. (Slay Depo. at 114:1–5).

59. The audit report did not state that Mr. Bostock engaged in any wrongdoing nor did it suggest he should be disciplined in any manner. (Moore Depo. at 8:12–9:2; 84:24–85:4).

VI. Conclusion of the Audit and Discriminatory Termination

60. On June 3, 2013, Teske instructed John Johnson to terminate Mr. Bostock. (Teske Depo. at 137:18–138:2).

61. Teske was the ultimate decision maker concerning Mr. Bostock’s termination.

(Teske Depo. at 44:13–15).

62. Teske admitted Mr. Bostock’s sexuality was a “contributing factor” in Teske’s decision to terminate Mr. Bostock. (Teske Depo. 177:22-178:20.)

63. Teske admitted that he believed that because Mr. Bostock was recruiting in Midtown that he was actually engaging in gay-related activity and not serious CASA related activity. (Teske Depo. 177:22- 178:4).

64. Before Teske terminated Mr. Bostock, Teske and Slay visited Crawford at her car dealership and Teske told her that he was going to terminate Mr. Bostock. (Teske Depo. at 59:17–60:2; 67:1–7).

65. At this meeting, Teske told Crawford that Mr. Bostock had misused, mishandled, mismanaged, or stolen between \$14,000 and \$17,000 and that he had proof in the form of bank statements. (Teske Depo. at 68:17–69:4; Crawford Depo. at 39:8–41:18).

66. Crawford’s review of the bank statements that were allegedly proof of Mr. Bostock misusing or stealing between \$14,000 and \$17,000 did not reveal any evidence of such alleged misuse. (Crawford Depo. at 41:19–24).

67. Teske also told Crawford that Mr. Bostock has used some CASA funds to sponsor a softball team in a “gay softball league.” (Teske Depo. at 75:19–76:24).

68. Crawford was aware of Mr. Bostock using funds to sponsor the softball team and

thought it was a good idea. (Crawford Depo. at 44:7–15).

69. When Crawford objected to Teske’s decision to terminate Mr. Bostock, Teske slammed his hand down on her desk and loudly said “But it was at a gay bar.” (Crawford Depo. at 43:13–23).

70. Teske held a meeting with the entire juvenile court staff to notify them of Mr. Bostock’s termination. (Teske Depo. at 103:6–11; John Johnson Depo. at 215:22–217:22).

71. At this meeting Teske specifically stated Mr. Bostock was terminated because he misappropriated funds in sponsoring the gay softball team and that the court would not tolerate that type of behavior. (Shelley Johnson Depo. at 40:16–41:5).

72. John Johnson found the meeting in which Teske announced Mr. Bostock’s termination and the reasons for it inappropriate because personnel matters are generally kept private. (John Johnson Depo. at 217:5–22).

73. At the meeting during which Johnson carried out the termination, Mr. Bostock told Johnson that he knew what the meeting was about, and Johnson responded, “This is not because you’re gay.” (Bostock Depo. at 13:8–22).

74. Mr. Bostock never saw a copy of the audit report before he was terminated. (Bostock Depo. at 282:7–13).

Respectfully submitted this 21st day of March, 2022.

BUCKLEY BEAL, LLP

By: /s/ Edward D. Buckley

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LR 7.1(D) FONT COMPLIANCE CERTIFICATION

The undersigned counsel certifies that the foregoing was prepared using Times New Roman 14-point font in accordance with Local Rule 5.1 of the United States District Court for the Northern District of Georgia.

This 21st day of March 2022.

By: /s/ Edward D. Buckley
Edward D. Buckley
Georgia Bar No. 092750

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