

**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 STATEMENT OF ADDITIONAL MATERIAL
FACTS DEMONSTRATING THAT PLAINTIFF’S MOTION
FOR SUMMARY JUDGMENT SHOULD BE DENIED**

COMES NOW Clayton County (the “County”), the Defendant in the above-referenced case, and, pursuant to Federal Rules of Civil Procedure 56 and Local Rule 56.1, files this, its Statement of Additional Material Facts Demonstrating That Plaintiff’s Motion for Summary Judgment Should Be Denied. The County shows this Honorable Court as follows:

**I. THE JUVENILE COURT AND ITS USE OF COURT APPOINTED
SPECIAL ADVOCATES**

1.

The Juvenile Court of Clayton County adjudicates cases involving delinquency, abuse and neglect of children and consists of three judges, including a

Chief Judge appointed by the judges of the Superior Court of Clayton County. (Teske Dep., pp. 19:23 – 20:3, 46:9 – 47:18).¹

2.

In managing its case load, the Juvenile Court utilizes court-appointed special advocates, who are trained volunteers (hereinafter referred to as “CASA volunteers” or “CASAs”) and supervised by Juvenile Court employees, to investigate the child’s overall situation, prepare a report and to advocate on behalf of the child in court (if available), which involves interviewing and getting to know the child, interviewing the parents, speaking with social workers, and gathering information about the child, all of which requires an average time commitment of 6-8 hours per week. (Bostock Dep., pp. 47:25 – 48:23, 83:3 – 84:24; Teske Dep., p. 48:9-23).

3.

The training of Clayton County CASA volunteers to serve as court-appointed special advocates is a vigorous process, including 40 hours of training (and an additional 8 hours of training to serve as CASAs in custody cases in the Superior Court) following a national curriculum, after which these volunteers are sworn in by a Juvenile Court judge and certified as CASA volunteers. (Bostock Dep., pp. 79:14

¹ All of the depositions cited herein have been filed pursuant to Defendant’s Notice of Filing of Original Discovery filed publicly (Docs. 142 – 142-10) and under seal (Docs. 138 – 138-4).

– 80:15, 81:15-19, 82:11-17; Teske Dep., p. 48:6-7; Teske Dep., Ex. 3, at p. 2, Section III.A).

II. JUVENILE COURT ADMINISTRATION DURING PLAINTIFF’S EMPLOYMENT

4.

Steve Teske was appointed as an associate juvenile court judge with the Juvenile Court of Clayton County on July 1, 1999, as a full juvenile court judge four years later, and Chief Judge in 2011. (Teske Dep., pp. 18:5-17, 19:6-10).

5.

Judge Teske has co-authored articles on behalf of a national juvenile justice non-profit organization advocating in support of LGBTQ youth because the largest group of homeless children are LGBTQ youth, and Judge Teske agreed with Plaintiff that Title VII should prohibit employment discrimination on the basis of sexual orientation. (Teske Dep., pp. 286:19 – 287:11; Teske Dep., Exhs. 38, at p. PLAINTIFF 001117; 46, 56-57, 78).

6.

Plaintiff became employed with the Juvenile Court in January 2003 as CASA Program Coordinator, and his job title later changed to Child Welfare Services Coordinator, which entailed overseeing the programs of the Juvenile Court that worked with child abuse and neglect victims. (Bostock Dep., pp. 9:25 – 10:1, 53:1-

2, 5-11, 72:20 – 73:1; Teske Dep., p. 43:10 – 44:9, 45:13-15; Johnson Dep., p. 230:10-21).

7.

John Johnson became the Director of Juvenile Court Services (essentially the court administrator for the juvenile court) in 2003, and Colin Slay became Chief of Staff and Plaintiff's immediate supervisor in 2009. (Bostock Dep., p. 3; Johnson Dep., pp. 25:25 – 26:1-20; Slay Dep., pp. 56:14-18, 26:16).

III. FORMATION OF THE FRIENDS OF CLAYTON COUNTY CASA, INC.

8.

The Friends of Clayton County CASA, Inc. (hereinafter, "FCCC") is a 501(c)(3) non-profit entity formed to provided support to the Clayton County CASA program and its director, increase public awareness of the program, help recruit volunteers and raise funds. (Bostock Dep., pp. 91:3 – 93:5, 104:18 – 105:14; Bostock Dep., Ex. 1, Art. 3; Bostock Dep., Ex. 2, Art. 2, Section 1; Teske Dep., p. 45:8-12).

9.

The Darlin' Duck Derby was the primary fundraiser for the FCCC, which typically was held on the last Saturday of September, and would entail rubber ducks on a race course with numbers on them purchased by FCCC donors or sponsors, and

all money generated by the Duck Derby, as well as from other donations and sponsorships, were placed into an FCCC bank account over which the County had no oversight as to the use of those funds. (Bostock Dep., pp. 21:24, 94:2-4, 98:9-13, 102:3-11).

10.

Under the FCCC's by-laws, any checks, drafts and other demands for money from such account shall be signed by the chairperson or treasurer, except for expenditures of more than \$500 which required both signatures, and thus Plaintiff did not have any spending authority over the FCCC account. (Bostock Dep., pp. 107:5-11, 108:4-10; Bostock Dep., Ex. 2, at p. Clayton-376).

IV. PLAINTIFF AND OTHER OPENLY GAY INDIVIDUALS EMPLOYED BY THE JUVENILE COURT

11.

The fact that Plaintiff is gay was widely known throughout the Juvenile Court, and Judge Teske, Mr. Johnson and Mr. Slay were aware that Plaintiff is gay within a short period of time after Plaintiff began his employment with the Juvenile Court in January 2003. (Bostock Dep., p. 9:11-24, 10:3-7, 20 – 11:10, 19:17-23; Slay Dep., p. 232:6-14; Teske Dep., pp. 151:4-14, 276:25 – 277:18; Teske Dep., Exs. 38, at p. PLAINTIFF 001117; 43, at pp. CLAYTON 014192-93; Holland Dep., Ex. 120, at ¶ 6).

12.

Over the years, Plaintiff had introduced his partners (including Keith Sweat, who was Plaintiff's partner for 12 years, and Paul Holland) to co-workers at the Juvenile Court (including Judge Teske, Mr. Johnson and Mr. Slay) at work and at official FCCC functions such as the Duck Derby fundraiser and related events. (Bostock Dep., pp. 20:1-25, 24:4-11, 27:18 – 28:14, 181:11-12; Slay Dep., p. 232:9-14; Teske Dep., p. 151:6-8; Holland Dep., pp. 15:9-23, 17:24 – 18:4, 26:1-2; Holland Dep., Ex. 120, at ¶¶ 4-5).

13.

At least two other Juvenile Court employees, Shawn Black (or Shawn Wooten) and Carol Gossett, were widely known among Juvenile Court employees (including Judge Teske, Mr. Johnson and Mr. Slay) as being gay. (Bostock Dep., pp. 29:22 – 30:25; Declaration of Colin Slay (Doc. 136-2), at ¶ 3; Teske Dep., p. 286:6-8; Declaration of John Johnson (Doc. 136-2), at ¶ 3).

14.

Judge Teske, his wife, Plaintiff and his partner (Mr. Sweat) socialized together on many occasions, including attending musicals, going out for dinners, having barbecues and dinners at each other's homes and other social gatherings, including Plaintiff and his new partner (Paul Holland) attending the wedding for Judge Teske's

daughter. (Bostock Dep., p. 22:1 – 23:5, 19-20; Teske Dep., pp. 161:25 – 162:12; Teske Dep. Ex. 43, at p. Clayton_014192-93).

15.

Plaintiff admits that neither Judge Teske, Mr. Johnson (other than one alleged comment by Mr. Johnson in 2003 about Plaintiff not caring if female employees were interested in him), Mr. Slay, nor any other juvenile court employee made any negative comments to him about him being gay. (Bostock Dep., pp. 10:23 – 11:10, 12:12-17, 13:8-17, 14:8-15, 16:18-21).

V. THE SUPERIOR COURT AND JUVENILE COURT SIGN A MEMORANDUM OF UNDERSTANDING FOR USE OF CASA VOLUNTEERS IN CUSTODY CASES

16.

Before 2007, in custody disputes pending in the Superior Court, the Superior Court would appoint a guardian ad litem (hereinafter, “GAL”) to represent the child(ren) at the expense of the parents, and the GAL would typically be an attorney. (Bostock Dep., pp. 125:14 – 126:1.

17.

Because the Superior Court judges were having difficulty getting GAL’s appointed when needed because the parties often could not afford the expense of an attorney serving as a GAL, Superior Court Judge Deborah Benefield approached

Judge Teske with the idea of the Superior Court utilizing a Juvenile Court employee to serve as a GAL in custody cases and supervise volunteer GALs in custody cases, in exchange for charging the parties a \$500 administrative fee, which would be a more cost-effective and affordable way for appointing a GAL to advocate on behalf of children in Superior Court custody dispute cases. (Teske Dep., pp. 52:8 – 53:3, 153:3-10; Bostock Dep., p. 126:12 – 127:9; Slay Dep., p. 115:5-15).

18.

To formalize the agreement, the Chief Judge of the Superior Court at the time (Matthew O. Simmons), the Chief Judge of the Juvenile Court at the time (K. Van Banke) and Plaintiff, as Clayton County CASA Program Coordinator, signed a Memorandum of Understanding (“MOU”) in 2007, which provided that the Superior Court would charge a \$500 administrative fee (to be paid equally by both parties) in child custody cases, and that (as suggested by Plaintiff) these fees would be made payable to FCCC, care of Plaintiff. (Teske Dep., Ex. 3, p. 2, Section II; Teske Dep., pp. 53:4-16, 55:17-19, 166:5-21; Slay Dep., p. 24:13-15).

19.

The MOU, which also explained in detail the duties and responsibilities of a CASA volunteer, provided that the FCCC would be “the recipient of the administrative fee and will use the fee to fund volunteer recruitment, training and

retention,” and thus, consistent with the purpose of the MOU (see paragraphs 17-18 above), these administrative fees were to be used only for the recruitment, training and retention of Clayton County CASA volunteers serving as *guardians ad litem* (hereinafter “Clayton County CASA GAL volunteers”), not for FCCC fundraising or marketing purposes or for the recruitment, training and retention of other types of volunteers. (Teske Dep., Ex. 3, p. 2, Section II); *id.* at pp. 2-7, Sections III-V; Teske Dep., pp. 54:16-21, 82:2-5, 194:19-24; Slay Dep., pp. 75:19 – 76:12, 135:20 – 136:2; Johnson Dep., p. 238:12-21).

20.

The FCCC Board wanted the money generated from the administrative fees to be placed into a separate account (hereinafter referred to as “the GAL account”), over which it did not have any authority or oversight, and the MOU did not govern the expenditure of the FCCC’s fundraising money, which was deposited into the FCCC’s separate bank account. (Bostock Dep., pp. 127:11 – 128:5, 129:7-12; Teske Dep., pp. 78:24 – 79:5; Crawford Dep., pp. 27:24 – 28:7, 44:3 – 45:8, 110:21-24, 112:9-13; 155:13 – 156:2, 161:4-21; Crawford Dep., Ex. 2, at p. CLAYTON 000849).

VI. PLAINTIFF'S USE OF GAL FUNDS FOR FUNDRAISING ACTIVITIES AND OTHER USES THAT EXCEEDED THE SCOPE OF THE MOU

21.

Plaintiff asserted in his deposition that the MOU authorized the expenditure of GAL funds on FCCC fundraising activities such as the Duck Derby, recruiting volunteers to work at the Duck Derby, recruiting volunteers to work at other fundraising events and recruiting FCCC donors and sponsors – even though the exclusive focus of the MOU is Clayton County CASA GAL volunteers, and the MOU makes no reference to the Duck Derby or other fundraising endeavors. (Bostock Dep., pp. 120:15 – 121:2 – 124:6, 157:17-25; Bostock Dep., Ex. 3).

22.

Plaintiff asserted in his deposition that money from the GAL account and money from the FCCC account could be spent for the same purposes, with the convenience that he would not need approval from the FCCC Board for expenditures from the GAL account. (Bostock Dep., pp. 136:20 – 137:4).

23.

Plaintiff testified that the FCCC Board Treasurer initially approved reimbursements for expenditures from the GAL account but eventually gave Plaintiff discretionary spending authority over the GAL account (but not over the

FCCC's main account), and Plaintiff was given a debit card for the GAL account. (Bostock Dep., pp. 111:4-6, 129:4-6, 131:11-14, 132:13-19).

24.

No individual ever became a Clayton County CASA GAL volunteer because of Plaintiff taking him or her out to lunch or dinner. (Bostock Dep., p. 157:9-12).

VII. PREVIOUS LENIENT TREATMENT OF PLAINTIFF

25.

At one point during Plaintiff's tenure, a juvenile court employee discovered nude photographs of men on Plaintiff's County-issued computer, and Mr. Johnson recommended that Plaintiff be terminated; but the Chief Judge of the Juvenile Court at the time, Judge Banke, decided that, if Plaintiff did not engage in any additional misconduct, the write-up of this incident and the photographs themselves would be shredded, and the photographs and write-up were shredded two years later. (Johnson Dep., pp. 28:20 – 32:11, 33:10-13, 34:10-20; Bostock Dep., pp. 256:17-258:8, 259:15-22).

26.

In April 2005, several employees complained about Plaintiff being a harsh supervisor and creating a hostile environment, but Judge Teske concluded that Plaintiff's management style could be corrected with further training, that Plaintiff

should not be terminated, and that a written warning prepared by Mr. Johnson concerning this issue should be removed from Plaintiff's personnel file. (Teske Dep., pp. 42:12 – 43:9; 155:5 – 160:14).

27.

The previous Juvenile Court Chief Judge, Judge Banke, instructed Mr. Johnson not to include negative comments about Plaintiff in his performance evaluations, and so Mr. Johnson submitted performance evaluations for Plaintiff that were higher than what he thought was warranted, especially in the categories of management and interpersonal relations. (Johnson Dep., pp. 235:21 – 238:6).

28.

In late June or early July 2010, a complaint was filed against Plaintiff based on his confrontational and unprofessional treatment of Juvenile Court employees in connection with an FCCC weekend fundraising event they were "encouraged" to attend and follow-up meetings in connection thereto, and Mr. Slay wrote Plaintiff a memorandum regarding his actions and instructions as to how he should handle such events in the future. (Bostock Dep., pp. 233:22 – 244:12; Bostock Dep., Ex. 12).

29.

A few months later, Juvenile Court employees continued to complain about Plaintiff, which resulted in more meetings with aggrieved employees on November

9, 2010 and the need for Mr. Slay to write another memorandum to Plaintiff on November 11, 2010 instructing him to make numerous changes and warning him that “your employees are building a case for a hostile work environment” and this was volatile situation that “must be diffused immediately” before “they act upon this concern in a way that is beyond our control.” (Bostock Dep., Ex. 13; Id. at p. CLAYTON_000246; Bostock Dep., p. 245:1-25).

VIII. CIRCUMSTANCES LEADING UP TO AUDIT OF GAL ACCOUNT

30.

Although Mr. Johnson instructed Plaintiff sometime in late 2011 to provide him with bank statements for the GAL account, and for Mr. Slay to review them, there were some months when Plaintiff did not do so or delayed in providing them; Mr. Slay did not know what he was looking for; and Mr. Johnson (who also believed that a professional should review the bank statements) had concerns about some of the expenses in the bank statements. (Johnson Dep., pp. 84:21 – 85:6, 16-18, 101:6-16, 116:25 – 117:3, 121:7-9, pp. 144:18-22, 176:16-23, errata sheet; Slay Dep., p. 92:12-23, 100:3-8, 18 – 101:3, 103:4-20).

31.

When Mr. Johnson questioned Plaintiff about some of the expenditures in the bank statements, Plaintiff told him it was none of his business, but Mr. Johnson did

not attempt to discipline Plaintiff for this because of the previous occasions where the Juvenile Court judges precluded him from taking any disciplinary action with respect to Plaintiff. (Johnson Dep., pp. 101:8-16, 24 – 102:18).

32.

On January 17, 2013, Shawn Black, a Juvenile Court employee whose employment had just ended, sent an email to Mr. Johnson (who then gave it to Judge Teske and Mr. Slay) asserting that Plaintiff was engaging in misconduct, including that (1) “Duck Derby and GAL funds are spent to buy alcohol, lunches for staff that he chooses to hang with”; and (2) GAL funds “have been used to move Gerald’s furniture during the courthouse move, paying for him to treat people to lunch, removing a boot from his car because he parked illegally, many other things that should not be included in charity money expenditures.” (Teske Dep., Ex. 19; Johnson Dep., p. 99:13-18).

33.

Leading up to 2013, the County’s Internal Audit Department was making a concerted effort to identify under-the-radar cash accounts maintained by County departments or department employees, about which the Internal Audit Department and the County’s Finance Department were not aware, because such accounts were viewed as a liability risk for the County. (Merritt Dep., pp. 25:2 – 26:4).

34.

Accordingly, when Ms. Merritt spoke to Mr. Johnson about the upcoming scheduled audit of the Juvenile Court, she asked Mr. Johnson if there were any bank accounts being maintained by juvenile court employees other than the bank account maintained by the clerk of the Juvenile Court, and Mr. Johnson informed her of a petty cash account he was maintaining, as well as the GAL account that Plaintiff was maintaining. (Merritt Dep., p. 59:10-23; Johnson Dep., pp. 87:22 – 88:16, 222:14-22; Slay Dep., p. 96:10-17).

35.

When Mr. Johnson told Ms. Merritt that he had concerns about the GAL account, including the fact that money was being kept in drawers, Ms. Merritt made the decision to speak with Mr. Bostock for 10-15 minutes on April 23, 2013. (Merritt Dep., p. 60:8-24).

36.

Ms. Merritt asked Plaintiff standard questions, such as where money is stored, how is it stored, how long it is stored and who has access to it; Plaintiff's responses to these questions were concerning to her; and Ms. Merritt sent an email to Mr. Johnson and Judge Teske on April 23, 2013 recommending a full audit of the GAL account because of the "red flags" that had been raised and the "risk of inappropriate

actions” that became apparent based on her short conversation with Plaintiff. (Merritt Dep., pp. 61:2 – 63: 13, 65:19 – 66:4, 12-20, 70:12-19, 23-25 – 71:9; Merritt Dep., Ex. 92; Bostock Dep., p. 282:14-16).

37.

It was necessary to obtain authorization from Judge Teske and from the Chairman of the Board of Commissioners, Jeff Turner, to conduct a full audit of the GAL account in the near future; otherwise, the full audit would have been scheduled for later after other audits already scheduled had been completed. (Merritt Dep., pp. 27:10-24, 64:13 – 64:8; Merritt Dep., Ex. 92).

38.

Chairman Turner authorized the full audit of the GAL account, and Judge Teske authorized the full audit of the GAL account based on Ms. Merritt’s recommendation, the email from Mr. Black alleging that Plaintiff was not spending the GAL funds appropriately, Ms. Gossett’s previous statement to him during a swearing-in ceremony for CASA volunteers that there were not sufficient funds in the GAL account to pay for the usual amenities for these new CASA volunteers, and Mr. Slay’s recommendation that it would be preferable for a professional accountant to review the bank statements for the GAL account that he had been reviewing. (Teske Dep., pp. 201:6-23, 203:9 – 204:2, 206:2-12, 218:17-23; Slay Dep., p. 122:4-

20; 236:20-22; Declaration of Steven C. Teske (Doc. 136-4), at ¶ 4; Merritt Dep., Ex. 110).

39.

On the way to a golf tournament with Carol Gossett and Griffin Shirley on April 29, 2013, Ms. Gossett inquired about what was going on with Plaintiff, and Judge Teske commented that would be difficult for Plaintiff to keep his job after the upcoming audit. (Teske Dep., pp. 135:15-19, 136:25 – 137:11; Teske Dep. Ex. 44; Teske Decl., ¶ 5).

40.

On April 30, 2013, Mr. Johnson gave Ms. Merritt a memorandum delineating the concerns he had with Plaintiff's use of the GAL account and which he wanted to be explored during the audit, including the use of GAL funds on alcohol, and before the beginning the audit, Mr. Johnson spoke with Leslie Moore, an associate internal auditor at the time, and told her that he was concerned that Plaintiff was not using the GAL funds properly. (Merritt Dep., Ex. 93; Moore Dep., pp. 26:16-19, 27:4-17).

IX. CONDUCT OF THE AUDIT

41.

During the audit, Ms. Moore interviewed Plaintiff, Ms. Gossett, and Deborah Stinson, who was a member of the FCCC Board, and when appropriate, Ms. Moore asked Plaintiff follow-up questions. (Moore Dep., pp. 12:18-23, 14:16-18, 15:2 – 16:4, 31:6-25, 47:15 -- 48:17, 70:5-15).

42.

Ms. Moore conducted the audit at the Juvenile Court and reviewed bank statements for the GAL provided by Plaintiff and made notations on some of them. (Moore Dep., pp. 34:5-15; Declaration of Leslie Moore (Doc. 136-5), at ¶ 4 & Ex. A thereto (Docs. 136-5, 136-2), at pp. CLAYTON 014006, 014011, 014017, 014019, 014022, 014025, 014027, 014034, 014049, 014051, 014054, 014074, 014076, 014082, 014086, 014092).

43.

When Ms. Moore noticed that there were a number of missing bank statements and missing receipts, she asked Plaintiff for the missing bank statements and receipts (per her standard practice), but she did not receive the missing bank statements or receipts from Plaintiff. (Moore Dep., pp. 17:4-22, 18:13-25 and errata sheet; Merritt Dep., p. 116:2-4, 14-18).

44.

When Ms. Moore noticed on the bank statements establishments that she did not recognize where Plaintiff spent GAL funds, she looked them up on the internet to find out more about them and where they were located, printed out their websites, and she also looked up Plaintiff's softball league (which had an Atlanta address) on the internet to find out more about it. (Moore Dep., pp. 65:3 -- 66:22; Moore Dep., Exs. 82-84; Merritt Dep., pp. 108:1-10, 156:12-21; Moore Decl., ¶ 4 & Ex. A, at pp. CLAYTON 013935, 013940-43, 014020).

45.

Ms. Merritt also reviewed the bank statements and other information that Ms. Moore had gathered, discussed the audit with Ms. Moore as it was ongoing, and reviewed and made minor revisions to the audit report that Ms. Moore prepared. (Merritt Dep., pp. 22:12 – 24:4, 92:9 – 93:8, 20-25, 106:24 – 107:10; Merritt Dep., Exs. 82-84, 112).

X. AUDIT IDENTIFIES NUMEROUS PROBLEMS WITH PLAINTIFF'S USE OF GAL FUNDS AND HIS HANDLING OF GAL ACCOUNT

46.

The audit found that the Child Welfare Services Coordinator (Plaintiff) is the primary custodian of the GAL account, processes payments and reimbursements, writes checks, and makes deposits, that the moneys collected are kept in a locked

drawer inside of a locked office until deposited, and that Plaintiff's activities with the GAL funds "is a direct violation of separation of duties." (Merritt Dep., Ex. 10, at pp. 2-3; Merritt Dep., p. 136:3-23).

47.

The audit recommended that all GAL administrative fees (which totaled \$14,853.28 between February 2011 to April 2013 based on the bank statements available) be deposited with the Clerk of the Juvenile Court, and this change was made even while the audit was ongoing. (Merritt Dep., Ex. 10, at pp. 3-4; Merritt Dep., pp. 134:21 – 135:1; Teske Dep., pp. 56:9-15, 184:7-10-11, 187:7-9, 20-25; Teske Dep., Ex. 59; Slay Dep., Ex. 36; Slay Dep., p. 168:21-25).

48.

Although most GAL fund expenses and anticipated expenses should be discussed at FCCC Board meetings (per FCCC Board member Deborah Stinson), the audit concluded that "there is very little oversight concerning the day-to-day and weekly expenditures made from this account" by Plaintiff, who had discretionary spending authority over the GAL account, including a debit card for this account. (Merritt Dep., Ex. 10, at p. 3; Merritt Dep., p. 127:10-19).

49.

Although the audit encompassed transactions from February 2011 to April 2013, the audit noted that bank statements were missing for January 2011, May 2012, June 2012, July 2012, September 2012 and October 2012, and noted that “[m]issing bank statements give way to . . . speculation of impropriety,” and that “[l]ack of an audit trail should be considered a red flag to management.” (Merritt Dep., Ex. 10, at pp. 2, 4).

50.

The audit found that, from February 2011 to April 2013, a total of \$5,510.42 in GAL funds (not including the expenditures contained in the six months of missing bank statements) was spent on “Miscellaneous” expenses, which included retail store purchases such as Lowes, Home Depot and other expenses. (Merritt Dep., Ex. 10, at p. 4).

51.

The audit found that, from February 2011 to April 2013, a total of \$3,495.48 in GAL funds (not including the expenditures contained in the six months of missing bank statements) was spent on “Recruitment, Training, Retention,” that all or almost all of the “Recruitment, Training, Retention” expenses incurred in 2011 (100%) and 2012 (98%) were for meals and entertainment, and that 57% of the “Recruitment,

Training, Retention” expenses incurred during the first four months of 2013 were for meals and entertainment. (Merritt Dep., Ex. 10, at pp. 4-5).

52.

The audit found that many of the meals and entertainment expenses for “Recruitment, Training, Retention” consisted of “lunch and dinner meetings at restaurants and bars,” that many of these restaurants and bars “were located outside the Clayton County area,” that “details of the disbursements were missing from many of the actual transactions” and that “there was evidence of GAL funds being expensed on alcoholic beverages at restaurants, bars, and package stores.” (Merritt Dep., Ex. 10, at p. 5).

53.

The audit recommended that the GAL account be reconciled on a monthly basis to “prevent any misuse of funds” and that “[s]trict guidelines regarding meals and entertainment should be initiated and enforced by all managing parties; especially disbursements concerning alcohol.” (Merritt Dep., Ex. 10, at p. 5).

54.

The audit also found that Plaintiff used GAL funds to sponsor a softball team, (of which he is a member) that is a part of the Hotlanta Softball League (HSL) out

of the city of Atlanta, and that the expenses incurred with this sponsorship included a reception held in Birmingham, Alabama. (Merritt Dep., Ex. 10, at p. 6).

55.

The audit concluded that (1) “sports league sponsorships do not fall within the current intentions of the GAL account”; (2) if the Chief Judge decides that such expenditures are acceptable, the MOU should be amended accordingly; (3) any CASA-sponsored sports leagues should be based in Clayton County; and (4) any standard operating procedures developed should require written requests and authorization for all sponsorships. (Merritt Dep., Ex. 10, at pp. 6-7).

56.

The auditors in this instance concluded that Plaintiff had engaged in misconduct with respect to the GAL account, and the changes recommended by the auditors were intended to prevent such misconduct from occurring again in the future. (Merritt Dep., p. 115:5-15; Declaration of Stacey Merritt (Doc. 136-7), at ¶ 4; Moore Decl., ¶ 8).

XI. AUDITORS MEET WITH MR. SLAY AND MR. JOHNSON TO SUMMARIZE THE AUDIT’S FINDINGS

57.

Ms. Merritt and Ms. Moore met with Mr. Johnson and Ms. Slay for about an hour on May 23, 2013, summarized for them the findings and recommendations of

the audit, gave them a copy of the audit report, and also gave a hard copy of the audit report to Judge Teske and Judge Benefield. (Moore Dep., pp. 41:1-9, 42:3 – 43:8; Merritt Dep., pp. 99:1-9, 100:5-10, 105:4-6; Merritt Dep., Exs. 96, 113; Slay Dep., p. 63:21-25, 131:6-14; Slay Dep., Ex. 20; Johnson Dep., pp. 254:17 – 255:17).

58.

It is not the typical practice of the Internal Audit Department to recommend personnel action by County departments, and, consistent with that practice, Ms. Merritt and Ms. Moore did not make any recommendations as to what, if any, disciplinary action should be taken against Plaintiff as a result their findings in the audit and left this decision up to the Juvenile Court administration. (Merritt Dep., pp. 28:11-16, 100:11-25; Teske Dep., pp. 255:22-24, 256:7-11; Johnson Dep., p. 257:14-17).

XII. JUDGE TESKE GIVES PLAINTIFF AN OPPORTUNITY TO RESPOND TO THE AUDIT'S FINDINGS

59.

Soon thereafter, Judge Teske, Mr. Slay and Mr. Johnson met with Renee Bright (the County's Human Resources Director), Ms. Moore and Ms. Merritt to discuss the audit report, and Judge Teske and Ms. Bright agreed that Judge Teske would prepare written questions for Plaintiff to answer so that Plaintiff would have

an opportunity to respond to the findings of the audit before any personnel decision was made. (Teske Dep., pp. 76:7-20; Slay Dep., pp. 143:20 – 144:1; Slay Dep., Ex. 20, at p. 2; Moore Dep., pp. 43:9 – 44:8, 45:20 – 46:12; Merritt Dep., pp. 33:7 – 34:12, 105:9 – 106:4).

60.

On May 28, 2013, Plaintiff received a written memorandum from Mr. Johnson instructing Plaintiff to respond by May 31, 2013 to 10 questions prepared by Judge Teske relating to the findings of the audit, including (1) Plaintiff's purchases at retail stores, such as Best Buy, Lowes and Home Depot; (2) the six months of missing bank statements identified in the audit; (3) the many charges at restaurants and bars outside Clayton County; and (4) Plaintiff's sponsorship of his softball team, including a reception in Birmingham, Alabama. (Teske Dep., Ex. 80; Bostock Dep., Ex. 9; Bostock Dep., p. 197:24-25; Johnson Dep., p. 141:2-9).

XIII. PLAINTIFF'S WRITTEN ANSWERS TO JUDGE TESKE'S QUESTIONS CONFIRM THAT PLAINTIFF MISUSED GAL FUNDS

61.

On May 31, 2013, Plaintiff submitted to Mr. Johnson his written responses to Judge Teske's written questions regarding the findings of the audit, which Mr. Johnson and Mr. Slay brought to Judge Teske, and in response to Judge Teske's

written questions regarding expenses from retail stores, Plaintiff identified expenses from Home Depot and other stores relating to the Duck Derby, including construction of the race course and tower. (Teske Dep., Ex. 81, ¶ 1; Teske Dep., pp. 189:22 – 190:1, 238:2-6; Teske Dep., Ex. 81; Bostock Dep., Ex. 10; Bostock Dep., p. 203:13-17; Johnson Dep., p. 141:10-19).

62.

In response to Judge Teske’s written questions instructing Plaintiff to explain the numerous restaurant and bar expenses outside of Clayton County, Plaintiff identified numerous restaurant and bar expenses, most of which did not relate to the training, recruitment or retention of Clayton County CASA GAL volunteers, but rather related to marketing, awareness and fundraising endeavors and events for FCCC, Georgia CASA and the Metro Atlanta CASA Collaborative, including (1) the Duck Derby (FCCC); (2) Georgia CASA Luncheon and Fashion Show; (3) the Metro Atlanta CASA 5K Superhero Run at Piedmont Park; and (4) Georgia CASA Luncheon and Preview Party. (Teske Dep., Ex. 81, ¶ 7; Bostock Dep., pp. 143:4-11, 144:11 – 146:8).

63.

In response to Judge Teske’s written questions instructing Plaintiff to explain the numerous restaurant and bar expenses outside of Clayton County, Plaintiff

identified numerous expenses from restaurants and bars in the Midtown Atlanta area (included meals with Yhon Sanchez, whom Plaintiff began dating sometime around April 2011) that were in close proximity to where Plaintiff was living from at least early 2011 through April 2012, and that catered primarily to a gay clientele, including F.R.O.G.S., Cowtippers, Woofs, Blakes and Joe's on Juniper. (Teske Dep., Ex. 81, ¶ 7; Holland Dep., pp. 15:5-8, 29:8-22, 30:1 – 31:9; Holland Dep., Ex. 120, at ¶¶ 8-9, 12-14; Moore Dep., Exs. 82-84; Moore Decl., ¶ 4 & Ex. A thereto, at pp. CLAYTON 013935, 013940-42, 013950, 014020; Bostock Dep., pp. 28:15-21, 70:12 – 71:22).

64.

In response to Judge Teske's written questions as to why it was appropriate for GAL funds to be used to sponsor Plaintiff's softball team, Plaintiff primarily responded that this sponsorship, including "light refreshments" at "an informal reception" in Birmingham, was intended to secure potential sponsors for the Darlin' Duck Derby, generate ticket sales for the Duck Derby, to put Clayton County CASA in contention for a charitable donation from the softball league the following year, and general public awareness of the Clayton County CASA program. (Teske Dep., Ex. 81, ¶ 10; Bostock Dep., Ex. 3, at p. CLAYTON_013914).

65.

Although Judge Teske asked Plaintiff to identify any Clayton County CASA GAL volunteers recruited through Plaintiff's use of GAL funds to sponsor the softball team and the Birmingham reception, Plaintiff did not identify any such volunteers, but rather identified two volunteers for a Georgia CASA fundraising event and one volunteer who assisted with a "marketing campaign" for Clayton County CASA and other metro Atlanta CASA programs. (Teske Dep., Ex. 81, ¶ 10; Bostock Dep., pp. 206:6 – 207:6; Teske Dep., pp. 140:22 – 142:6, 144:11-14; Slay Dep., p. 75:2-16).

XIV. JUDGE TESKE MAKES THE FINAL DECISION TO TERMINATE PLAINTIFF

66.

Judge Teske was the ultimate decision-maker who made the decision to terminate Plaintiff, although he did confer with Judge Benefield, who agreed with the decision to terminate Plaintiff. (Teske Dep., p. 44:10-15, 24 – 45:1; Teske Decl., ¶ 8; Johnson Dep., p. 141:20-24, 180:9-11; Slay Dep., p. 61:6-7).

67.

Judge Teske reviewed Plaintiff's written responses to his written questions and then decided to terminate Plaintiff because he concluded that most of the expenses from the GAL account were not being used to recruit, train and retain

Clayton County CASA GAL volunteers as required by the MOU, but rather for other purposes, such as assisting FCCC with its fundraising endeavors, which Judge Teske characterized as “taking from Peter to pay Paul.” (Teske Dep., pp. 81:12-19, 88:11-13, 120:17-22; 140:22 – 142:6, 144:11-14, 192:15 – 193:4, 208:16-19, 211:19-24, 212:19-22; Slay Dep., p. 148:5-16).

68.

Judge Teske concluded that most of the expenses incurred by Plaintiff using GAL funds at restaurants and bars in Atlanta were not for recruiting, training or retaining Clayton County CASA GAL volunteers to serve miles away in Clayton County, especially in light of the fact that Plaintiff could not identify any Clayton County CASA GAL volunteers he had successfully recruited as a result of these expenses. (Teske Dep., pp. 120:3-16, 208:16-19, 211:19-24, 212:19-22, & Exs. 80, 81).

69.

Judge Teske also concluded that Plaintiff’s use of GAL funds to sponsor an Atlanta softball team, including the Birmingham reception, was not for recruiting, training or retaining Clayton County CASA GAL volunteers to serve miles away in Clayton County, especially in light of the fact that Plaintiff could not identify any

Clayton County CASA GAL volunteers he had successfully recruited as a result of the softball team sponsorship. (Teske Dep., pp. 169:1-7, 308:3-14, & Exs. 80, 81).

70.

In addition, Judge Teske believed that the use of GAL funds to sponsor the softball team improperly was a personal benefit to Plaintiff in that he enhanced his credibility and prestige with team members by providing teammates with a T-shirt with the Clayton County CASA logo on it at no expense and a free reception in Birmingham. (Teske Dep., p. 169:8-13).

71.

Similarly, Judge Teske suspected that, based on a number of factors – including the fact that the audit found that there were a number of missing bank statements and that it was incredulous to him that Plaintiff could be successfully recruiting individuals in midtown Atlanta to become Clayton County CASA GAL volunteers in Clayton County – some of the restaurant and bar expenses paid for with GAL funds may have been for his own personal interests (such as meals with his softball team teammates) and not for business-related purposes; but regardless, even if none of the restaurant and bar expenses were for personal interests, most of them were still outside the scope of the MOU because they were not for the training, recruitment and retention of Clayton County CASA GAL volunteers, and thus Judge

Teske would have terminated Plaintiff on this ground alone. (Teske Dep., pp. 172:14-22; 177:7 – 178:21, 180:14-20, 181:25 – 182:17; 209:18 – 210:3; Teske Decl., ¶¶ 6-7).

72.

Mr. Slay and Mr. Johnson agreed with Judge Teske's decision to terminate Plaintiff's employment because they concluded that Plaintiff had used GAL funds for purposes that were not for the recruitment, retention and training of Clayton County CASA GAL volunteers, and if the auditors had been called upon to decide what personnel action to take, they would have terminated Plaintiff for this reason as well. (Slay Dep., pp. 37:10-24, 61:21 – 62:3, 135:12-19, 141:4-18, 148:17—149:13; Johnson Dep., pp. 238:12-21, 239:5-7, 263:7-10, pp. 276:17 – 277:11; Johnson Decl., ¶ 4; Slay Decl., ¶ 4; Merritt Decl., ¶ 5; Moore Decl., ¶ 9).

73.

As Plaintiff was well aware, the County prohibited the use of County funds to purchase alcohol, and the FCCC prohibited the use of its funds for the purchase of alcohol, but Plaintiff asserted that it was permissible to use the GAL funds to purchase alcohol if it was related to the recruitment, training or retention of a volunteer. (Bostock Dep., pp. 89:2-6, 90:11-24; Slay Dep., p. 21:20-22; Johnson

Dep., p. 179:7-12 and errata sheet; Merritt Dep., pp. 81:17 – 82:3, 84:14-16, 86:8-19; Crawford Dep., pp. 46:19 – 47:1, 128:20-25, 132:13-14).

74.

Judge Teske, Mr. Johnson, Mr. Slay and the auditors concluded that, because the funds deposited into the GAL account pursuant to the MOU were generated from fees charged by the Superior Court, that the County's prohibition on the use of alcohol applied to the GAL funds, and that Plaintiff's use of the GAL funds for alcohol was not permissible under the MOU. (Teske Dep., pp. 54:13-14, 79:7-11; Slay Dep., pp. 22:2-3, 12, 27:15-25, 30:13-15, 124:23-24, 141:4-18; Johnson Dep., pp. 177:23 – 178:4, 238:12-19; Johnson Dep., Ex. 94; Merritt Dep., pp. 86:8-25, 117:13 – 118::24; Moore Decl., ¶ 7).

75.

Plaintiff was replaced by Ms. Gossett, who also is gay, and whom Judge Teske had to beg to take the job because she was looking to retire. (Teske Dep., pp. 136:2-3, 204:10-13, 286:2-8).

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(D), I hereby certify that the within and foregoing **DEFENDANT’S STATEMENT OF ADDITIONAL MATERIAL FACTS DEMONSTRATING THAT PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED** has been prepared in compliance with Local Rule 5.1(B) in 14-point Times New Roman type face.

This 25th day of April, 2022.

/s/ Jack R. Hancock _____

Jack R. Hancock

Georgia Bar No. 322450

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the within and foregoing **DEFENDANT'S STATEMENT OF ADDITIONAL MATERIAL FACTS DEMONSTRATING THAT PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED** with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following counsel of record:

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This 25th day of April, 2022.

/s/ Jack R. Hancock

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