

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

GERALD LYNN BOSTOCK,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION
)	NO: 1:16-cv-01460-ELR-WEJ
CLAYTON COUNTY,)	
)	
Defendant.)	

**DEFENDANT’S RESPONSE TO PLAINTIFF’S
STATEMENT OF ADDITIONAL MATERIAL FACTS**

COMES NOW, Clayton County (“the County), the Defendant in the above-reference case, and files this, its Response to Plaintiff’s Statement of Additional Material Facts that Plaintiff claims present a genuine issue to be tried. The County shows this Honorable Court as follows:

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).

RESPONSE:

Not disputed.

B. Mr. Bostock's Background

2.

Plaintiff Gerald Bostock is a gay male. (Bostock Depo. at 9:7–9).

RESPONSE:

Not disputed.

3.

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).

RESPONSE:

Not disputed. However, this does not mean that Plaintiff was authorized to use guardian ad litem (hereinafter, “GAL”) funds for purposes of Friends of Clayton County CASA, Inc. (hereinafter, “FCCC”) fundraising (Teske Dep., p. 82-20-25). Moreover, as used in the cited testimony, “funding” refers to collection of the \$500 administrative fee as stated in the Memorandum of Understanding (hereinafter, “MOU”) to be used for the recruitment, training and retention of court-appointed special advocates who are trained volunteers serving as *guardians ad litem*.

(hereinafter “Clayton County CASA GAL volunteers”). (Bostock Dep., Ex. 4, p. 2, Section II); 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). Also, the Juvenile Court employed a CASA volunteer recruiter, whose primary duty was to assist with recruiting Clayton County CASA GAL volunteers. (Bostock Dep., p. 76:9-24).

4.

Mr. Bostock reported to Colin Slay, Chief of Staff. (Bostock Depo. at 78:21–23).

RESPONSE:

Not disputed.

5.

Mr. Bostock also reported to John Johnson, the Court Administrator. (John Johnson Depo. at 22:3–5).

RESPONSE:

Not disputed.

6.

Johnson and Slay ultimately reported to now retired Judge Teske. (Teske Depo. at 295:16–18; Johnson Depo. at 99:21–24)

RESPONSE:

The County does not dispute that Mr. Johnson reported to Judge Teske at the time of Plaintiff's termination on June 3, 2013. However, the citations provided do not support the assertion in paragraph 6 that Mr. Slay reported directly to Judge Teske at the time of Plaintiff's termination on June 3, 2013. At that time, Mr. Slay reported to Mr. Johnson. (Teske Dep., p. 296:1-5; Johnson Dep., p. 99:21-24). Mr. Slay only began to report directly to Judge Teske sometime in 2015 when his chief of staff position was reclassified, and the Juvenile Court underwent a restructuring that resulted in Mr. Slay's reclassified position reporting directly to Judge Teske. (Slay Dep., pp. 56:24 –57:25; Johnson Dep., pp. 99:21 – 100:8).

C. Background of Friends of Clayton County CASA

7.

Friends of Clayton County CASA ("FCCC") is a separate 501(c)(3) non-profit organization. (Teske Depo. at 45:2–10).

RESPONSE:

Not disputed. The County adds that Plaintiff's role with FCCC was separate from his responsibilities for the County and the Juvenile Court. (Teske Dep., p. 45:2-10).

8.

The purpose of the FCCC was to help generate funds to support the Clayton County CASA program. (Teske Depo. at 52:3–6).

RESPONSE:

The County does not dispute that one purpose of the FCCC was to help generate funds to support the Clayton County CASA program. The complete purpose of the FCCC is set forth in its by-laws, which provides as follows:

The purpose and mission of the FCCC Board will be to provide ongoing support to the Program Director of the Clayton County CASA organization, increase public awareness of the program, help recruit volunteers, raise funds and assist with volunteer recognition.

(Bostock Dep., Ex. 2, Section I).

9.

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).

RESPONSE:

Not disputed. However, there are CASA-related activities undertaken by FCCC that are not associated with the Juvenile Court. (Teske Dep., p. 49:14-21; Bostock Dep., pp. 96:17 – 98:22).

10.

Sabrina Crawford was the Board Chair of FCCC from 2005 to 2013. (Crawford Depo. at 15:3–16:22).

RESPONSE:

The County does not dispute that Ms. Crawford was the Chair of the FCCC Board in 2013. However, the citations provided do not support the remaining assertions contained in paragraph 10. Ms. Crawford merely testified that she was Chair of the FCCC Board for a majority of the time that she served on the FCCC Board from 2005 until 2013. (Crawford Dep., p. 15:18-22).

I. THE MEMORANDUM OF UNDERSTANDING

11.

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).

RESPONSE:

The County does not dispute that the Juvenile Court and the Superior Court signed the MOU in late 2007 and that Plaintiff also signed the MOU as CASA

Program Coordinator for the Juvenile Court. The County also does not dispute that Clayton County CASA would receive a \$500 administrative fee when the Superior Court issued an Order for appointment of a GAL. However, the Order issued by the Superior Court was for the appointment of a Clayton County CASA GAL volunteer, not for the appointment of a Juvenile Court employee. (Teske Dep., Ex. 3, Sections IV.A, B(1-3)). The Clayton County CASA GAL volunteer appointed by the Superior Court was supervised by a Juvenile Court employee dedicated to the supervision of these volunteers in Superior Court cases, and this supervisor is referred to in the MOU as the “Special Assistant”. (See, e.g., Teske Dep., Ex. 3, Sections V.B.1-2; Teske Dep., pp. 52:14-17, 153:3-10; Slay Dep., pp. 114:24 – 115:16). This volunteer supervisor also was responsible for deciding which Clayton County CASA GAL volunteer to assign to a particular case. (Teske Dep., Ex. 3, Section V.B.1-2).

12.

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).

RESPONSE:

Not disputed.

13.

The Clayton County Superior Court judges wanted the money to go to the FCCC in order to bypass county finance. (Bostock Depo. at 128:9–13.)

RESPONSE:

The County objects to the assertions contained in paragraph 13 on the ground that they rely on inadmissible hearsay – alleged statements made by two Clayton County Superior Court judges who are elected constitutional officers and who are not Clayton County employees. The assertions contained in paragraph 13 also are not relevant to the issues presented in the County’s Motion and in any event are consistent with the provisions of the MOU providing that the \$500 administrative fee would be paid to the FCCC.

14.

The GAL funds were not “court funds” “or county funds” (Teske Depo. Ex. 3; Johnson Dep. 178:5-179:15.)

RESPONSE:

The citations provided do not support the assertions contained in paragraph 14. Mr. Johnson simply recognized that the \$500 administrative fees that the Superior Court ordered the parties to pay in custody cases requiring a GAL were not tax revenue and that the FCCC was the recipient of these funds. (Johnson Dep., pp. 178:5

– 179:15). The statements contained in paragraph 14 also are not relevant to the issues presented in the County’s Motion because Mr. Johnson was not a decisionmaker with respect to Plaintiff’s termination. In any event, the \$500 administrative fees were ordered and generated by the Superior Court, and the FCCC was simply allowed to be the custodian of these funds. (Teske Dep., Ex. 3, p. 2, Section II; Teske Dep., pp. 54:13-14, 79:7-11; Slay Dep., pp. 22:2-12, 27:15-25, 141:4-18; Johnson Dep., p. 178:4; Johnson Dep., Ex. 94)

15.

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).

RESPONSE:

Not disputed. The County adds that Judge Teske defined “CASA volunteers” as those “[w]ho have been trained and certified and taken an oath.” (Teske Dep., p. 48:4-7). The MOU likewise defines CASA volunteers as those “who serve as advocates for children under both a Clayton County Superior Court Order and a Clayton County Juvenile Court Order.” (Teske Dep., Ex. 3, p. 1). Thus, 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).

16.

This directive in the MOU for how the fees are to be used is not specific. (Slay Depo. at 74:9–17).

RESPONSE:

The citations provided do not support the assertions contained in paragraph 16. Mr. Slay merely testified that the MOU did not itemize specific types of expenses as appropriate or inappropriate, such as the purchase of alcohol or sponsoring sports teams. (Slay Dep., p. 74:9-17).

17.

An individual could volunteer for the CASA program in multiple ways beyond becoming a court appointed advocate or GAL. (Bostock Dep. 206:8-21.)

RESPONSE:

Not disputed. However, the MOU only allowed GAL funds to be used for the training, retention and recruitment of Clayton County CASA GAL 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).

18.

Nothing in the MOU contains any prohibition on use of these funds for alcohol. (Teske Depo. Ex. 3.)

RESPONSE:

The assertions contained in paragraph 18 are not relevant to the issues presented in the County’s Motion. As Plaintiff was well aware, the County prohibited the use of County funds to purchase alcohol, and the FCCC also prohibited the use of its funds for the purchase of alcohol. (Bostock Dep., p. 89:2-6); Slay Dep., p. 21:20-22; Johnson Dep., p. 179:7-12 and errata sheet, pp. 1-2; 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). 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; Declaration of Leslie Moore (Doc. 136-6), at ¶ 7).

19.

No one ever told Mr. Bostock that use of GAL funds to purchase alcohol was an issue, including Mr. Johnson, who for three years reviewed receipts submitted to him by Mr. Bostock that reflected in part the purchase of alcoholic beverages as part of the recruitment, training, and retention expenditures. (Johnson Dep. 137:6-16.)

RESPONSE:

The assertions contained in paragraph 19 are not relevant to the issues presented in the County's Motion. Further responding, see the County's response to paragraph 18.

20.

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

RESPONSE:

The County does not dispute that the FCCC had these two accounts. However, the FCCC also had a third account, which was for Ambassadors Behind CASA. (Bostock Dep., p. 98:18-22; Merritt Dep., Ex. 10, p. 2).

21.

The \$500 collected under the MOU went into the GAL account which was overseen by the Friends of Clayton County CASA board. (Bostock Depo. at 98:23–99:22; Teske Depo. at 154:1–3; Crawford Depo. at 117:7–23).

RESPONSE:

The County does not dispute that the \$500 collected under the MOU went into the GAL account. However, the citations provided do not support the remaining assertions set forth in paragraph 21, and the County disputes the remaining assertions contained therein. Ms. Crawford merely testified that she could have reviewed bank statements for the GAL account if she wanted to do so. (Crawford Dep., p. 117:7–23). As Judge Teske clarified in his errata sheet (Doc. 155-1), the GAL account was not overseen by the FCCC Board. Ms. Crawford likewise testified that the FCCC had no oversight authority over the GAL account or over how GAL funds were spent because the GAL funds did not belong to the FCCC. (Crawford Dep., pp. 27:24 – 28:7, 44:3 – 45:11, 110:21–24, 112:9–13; 155:13 – 156:2, 161:4–21; Crawford Dep., Ex. 2, at p. CLAYTON_000849).

22.

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

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

RESPONSE:

The citations provided do not support the assertions set forth in paragraph 22, and the County disputes the assertions contained therein. Ms. Crawford merely testified that she could have reviewed bank statements for the GAL account if she wanted to do so. (Crawford Dep., p. 117:7-23). Moreover, Plaintiff did not testify in the cited passage that he provided the FCCC Board with explanations for his expenditures from the GAL account. Plaintiff merely testified that he made the bank statements available at FCCC Board meetings. (Bostock Dep., pp. 139:24 – 140:11). Furthermore, Plaintiff admitted that he is unaware of any occasion when an FCCC Board member actually reviewed the bank statements for the GAL account during an FCCC Board meeting. (*Id.*, pp. 139:24 – 140:21). Although Plaintiff testified that the treasurer of the FCCC Board initially handled all reimbursements from the GAL account, the decision was made to hand spending authority over the GAL account to Plaintiff, and the Board issued him a debit card for the GAL account. (Bostock Dep., pp. 107:25 – 108:6, 129:4-6, 133:23 – 134:17). At that point, it was within Plaintiff's sole discretion to determine whether GAL funds could be used to pay for a particular expense on the ground that it was for the recruitment, training

and retention of volunteers, with little or no actual oversight from the FCCC Board as stated above. (Id. at pp. 137:10 – 138:15).

23.

Although Plaintiff had spending authority, the FCCC continued to provide oversight of Plaintiff's spending. (Bostock Depo. 111:4-10.)

RESPONSE:

The citations provided do not support the assertions contained in paragraph 23, and the cited testimony does not identify any specific “oversight” provided by the FCCC Board. In reality, the FCCC provided little or no oversight with respect to Plaintiff's use of the GAL funds because the funds in the GAL account did not belong to the FCCC, and the FCCC Board thus did not have any authority over how the GAL funds were spent. (See the County's response to paragraphs 21-22).

II. Review of Bank Statements

24.

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).

RESPONSE:

The County does not dispute that in late 2011 or early 2012, Plaintiff began providing bank statements for the GAL account to Mr. Johnson and Mr. Slay to review. However, many entries on these bank statements did not include annotations, and there were a number of months for which Plaintiff did not provide a bank statement for the GAL account. (Slay Dep., pp. 99:11-12, 100:18 – 101:3; Johnson Dep., errata sheet, p. 3). Moreover, Judge Teske did not review any of these bank statements. (Teske Dep., pp. 87:19 – 88:3, 203:11-19).

25.

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

RESPONSE:

The citations provided do not support the assertions contained in paragraph 25. Mr. Slay testified that there were often line items that did not include any explanations by Plaintiff for the expenses contained in the bank statements, and that as to the explanations Plaintiff did provide, “nothing flew off the page as inappropriate.” (Slay Dep., p. 99:5-12). Mr. Slay added that his review of the bank statements was very cursory – “almost pass through” – and that he did not know

what he was looking for in reviewing these bank statements or “have a whole lot of understanding of how that all functioned.” (Slay Dep., p. 100:3-8).

III. The Softball League and Non-Discriminatory Audit

26.

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).

RESPONSE:

Not disputed.

27.

Mr. Bostock recruited members of the league to volunteer for CASA or to sponsor events. (Bostock Depo. at 198:20–22; 201:19–24).

RESPONSE:

The County does not dispute that Plaintiff recruited members of the softball league to sponsor fundraising events and to volunteer for fundraising events, but he did not successfully recruit any league members or members of his softball team to become Clayton County CASA GAL volunteers. (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).

28.

Mr. Bostock also secured FCCC sponsorships from certain league members. (Bostock Depo. at 201:19–24).

RESPONSE:

Not disputed. The County adds that it was improper for Plaintiff to use GAL funds to fundraise for the FCCC. (See the County’s response to paragraph 15).

29.

Additionally, Mr. Bostock sought and received approval from Friends of Clayton County CASA 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.)

RESPONSE:

The statements contained in paragraph 29 are not relevant to the issues presented in Plaintiff’s Motion. Moreover, the citations provided do not support the assertions contained in paragraph 29, and the County disputes the assertions contained in paragraph 29. Plaintiff did not testify that he sought or received approval from the full FCCC Board to use GAL funds to sponsor his softball team. Instead, Plaintiff testified that he spoke to two FCCC Board members about his

intent to use GAL funds to sponsor his softball team. (Bostock Dep., p. 274:4-12). The alleged views of two FCCC Board members are not relevant because they do not reflect official FCCC Board action taken by a majority vote of 8-10 FCCC Board members at the time approving the use of GAL funds to sponsor Plaintiff's softball team. (Crawford Dep., pp. 15:23 – 16:1). Also, Ms. Crawford did not “approve” Plaintiff's use of GAL funds to sponsor his softball team because the FCCC Board did not have the authority to approve the expenditure of GAL funds because the GAL funds did not belong to the FCCC. Crawford Dep., pp. 27:24 – 28:7, 44:3 – 45:11, 110:21-24, 112:9-13; 155:13 – 156:2, 161:4-21; Crawford Dep., Ex. 2, at p. CLAYTON_000849). Regardless, Judge Teske was more than entitled to reach his own conclusion that sponsoring Plaintiff's Atlanta-based softball team was an improper use of GAL funds. (Teske Dep., pp. 169:1-7, 308:3-14; Merritt Dep., Ex. 10, at p. 6).

30.

On April 30, 2013, John Johnson wrote a memo to Stacey Merritt, Head of Internal Audits, with Slay and Teske copied on the memo, stating in part that the Juvenile Court administration did not have “any direct oversight authority” with respect to the GAL account, requesting an audit of the GAL account and specifically questioning 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.)

RESPONSE:

The County does not dispute that Mr. Johnson wrote a memo to Ms. Merritt on April 30, 2013. The citations provided, however, do not support the remaining assertions contained in paragraph 30, and the County disputes the remaining assertions contained therein. Nothing in the referenced memo reflects that Mr. Johnson copied Judge Teske or Mr. Slay on it. Further responding, Ms. Merritt recommended a full audit of the GAL account on April 23, 2013 based on “red flags” and the “risk of inappropriate actions” that emerged based on her short interview of Plaintiff earlier that day. (Merritt Dep., pp. 61:2 – 63: 13, 65:19 – 66:4, 12-20, 70:12-19, 23-25 – 71:9; Merritt Dep., Ex. 92). Mr. Johnson sent a memorandum to Clayton County Board of Commissioners Chairman Jeff Turner requesting authorization for the full audit of the GAL account based on Ms. Merritt’s recommendations, and Chairman Turner approved the request on April 26, 2013. (Moore Decl. (Doc. 136-5), ¶ 4 & Ex. A thereto, at p. 20 (p. CLAYTON_013930)). Judge Teske also had approved the audit by April 29, 2013, and Mr. Johnson sent an email to Ms. Merritt on April 29, 2013 stating that he had submitted his request for approval of the audit to Chairman Turner. (Merritt Dep., Ex. 93; Teske Dep., pp. 135:15-19, 136:25 –

137:11; Teske Dep. Ex. 44; Declaration of Steven C. Teske (Doc. 136-4), ¶ 5). The referenced memo identified Mr. Johnson's areas of concern with Plaintiff's expenditures from the GAL account that he wanted Ms. Merritt to address in the upcoming audit. (Johnson Dep., Exs. 93-94). Mr. Johnson's concerns with these expenses (as well as with other expenses) were that they appeared to be personal in nature and did not appear to be proper use of the GAL funds. (Johnson Dep., Ex. 94, item 2)). Finally, Mr. Johnson's statement that the Juvenile Court did not have "any direct oversight authority" over the GAL account simply reflected the fact that the Juvenile Court did not own the bank account into which the GAL funds were deposited, did not have access to the funds in the GAL account, and could not walk into the FCCC Chair's office and demand the bank statements for the GAL account. (Slay Dep., p. 120:13-17; Bostock Dep., Exs. 5-7, at p. 1).

31.

This memo also specifically referenced Mr. Bostock's softball team. (Johnson Depo. Ex. 94.)

RESPONSE:

Not disputed. The County adds that Mr. Johnson's concerns with the expenses associated with Plaintiff's softball team (including the Birmingham reception) were that they appeared to be personal in nature, created at least the

appearance of a conflict of interest by Plaintiff, and did not appear to be proper use of the GAL funds. (Johnson Dep., Ex. 94, item 2)).

32.

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).

RESPONSE:

The citations provided do not support the assertions contained in paragraph 32. The referenced memo included a myriad of concerns, and Mr. Johnson did not testify in the cited excerpt that Judge Teske or Mr. Slay specifically were concerned about the softball team or the gay bars.

33.

On May 1, 2013, Teske wrote an email to Johnson with Slay and Merritt copied in which Teske stated that under the terms of the MOU, “we have no authority to gain access” to the GAL funds and directing that Johnson take the MOU “to legal and have them change the paragraph regarding where the monies go.” (Merritt Dep. Ex. 59.)

RESPONSE:

The County does not dispute that Judge Teske's May 1, 2013 email directed Mr. Johnson to take the MOU to the County's legal department to change the MOU to direct that the GAL monies from Superior Court custody cases be paid into the Clerk of the Juvenile Court rather than to the FCCC. (Merritt Dep., Ex. 59; Teske Dep., pp. 185:16 – 187:19). However, contrary to the assertions in paragraph 33, Judge Teske's 5/1/13 email expressed his concern that these GAL monies "are given to [FCCC] --- a nonprofit entity separate from the County and Juvenile Court for which we have no authority to gain access." (Merritt Dep., Ex. 59; Teske Dep., Ex. 59). In this email, Judge Teske also stated, "I do have a problem with the monies received from that program going to a third party with no oversight. These monies are generated by a county employee during county work hours for which the juvenile court should have control with county finance oversight." (*Id.*; Teske Dep., p. 185:313-15). Thus, Judge Teske's statement that the Juvenile Court had "no "authority to gain access" simply reflected the fact that the Juvenile Court did not own the bank account into which the GAL funds were deposited, did not have access to the funds in the GAL account, and could not walk into the FCCC Chair's office and demand the bank statements for the GAL account. (Slay Dep., p. 120:13-17; Bostock Dep., Exs. 5-7, at p. 1).

34.

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.)

RESPONSE:

The citations provided do not support Plaintiff's assertion that Judge Teske's decision to approve the audit was related to the asserted activities described in paragraph 34. Moreover, Plaintiff did not recruit any Clayton County CASA GAL volunteers in the Midtown area of Atlanta through his participation in the softball league or as a result of Plaintiff taking someone to lunch, dinner or a bar. (See the County's Response to paragraph 27; Bostock Dep., p. 157:9-12). Furthermore, Judge Teske authorized the full audit of the GAL account based on Ms. Merritt's recommendation on April 23, 2013 that a full audit was warranted, a January 2013 email from former Juvenile Court employee Shawn Black alleging that Plaintiff was not spending the GAL funds appropriately, Juvenile Court employee Carol Gossett's previous statement to him during a swearing-in ceremony for new Clayton County CASA GAL volunteers that there were not sufficient funds in the GAL account to pay for the usual amenities for these new volunteers even though she had collected

almost \$15,000 in administrative fees for the GAL account, 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; Teske Decl., ¶ 4; Teske Dep., Ex. 19; Merritt Dep., Ex. 110).

35.

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).

RESPONSE:

The citations provided do not support the assertions contained in paragraph 35. Mr. Johnson mentioned to Ms. Moore that Plaintiff previously had some inappropriate “gay stuff” on his computer. (Moore Dep., pp. 37:24 – 38:2). This was in reference to an incident where nude photographs of men were discovered on Plaintiff's County-issued computer, after which 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). Mr. Johnson mentioned that incident to Ms. Moore and the fact that Plaintiff was not disciplined for it because he was upset that it appeared that Plaintiff was being protected by the Juvenile Court judges from any accountability for his actions, and the nude photograph incident was just one example of such lenient treatment of Plaintiff.¹ (Second Declaration of Leslie Moore (Doc. 155-2), at ¶¶ 4-5; Moore Dep., p. 39:3-17).

36.

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).

RESPONSE:

The assertions contained in paragraph 36 are not relevant to the issues presented in the County’s Motion. In any event, if Ms. Moore had been aware that Plaintiff had been providing Mr. Johnson GAL bank statements, this would not have

¹ Judge Banke also instructed Mr. Johnson not to include any negative comments in Plaintiff’s performance evaluations. (Johnson Dep., pp 236:21 – 237:11). In addition, Judge Teske removed from Plaintiff’s personnel file a written warning prepared by Mr. Johnson in April 2005 arising out of complaints from several employees about Plaintiff being a harsh supervisor and creating a hostile environment. (Teske Dep., pp. 42:12 – 43:9; 155:5 – 160:14).

changed the findings of the audit or the outcome of the audit. (Moore Decl., ¶ 5). Moreover, in his April 30, 2013 memo to Ms. Merritt, Mr. Johnson repeatedly conveyed to her that he had been reviewing bank statements for the GAL account provided by Plaintiff and even attached some of them. (Johnson Dep., Ex. 94, items 2 and 9).

37.

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).

RESPONSE:

The assertions contained in paragraph 37 are not relevant to the issues presented in the County's Motion. In any event, if Ms. Moore had been aware that Plaintiff had been providing Mr. Johnson GAL bank statements, this would not have changed the findings of the audit or the outcome of the audit. (Moore Decl., ¶ 5). Moreover, in his April 30, 2013 memo to Merritt, Johnson repeatedly conveyed to her that he had been reviewing bank statements for the GAL account provided by Plaintiff and even attached some of them. (Johnson Dep., Ex. 94, items 2 and 9).

38.

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

RESPONSE:

Not disputed. However, when Ms. Moore realized that there were bank statements and receipts missing and asked Plaintiff to provide them, he did not do so. (Moore Dep., pp. 17:4-22, 18:13-25 and errata sheet; Merritt Dep., p. 116:2-4, 14-18).

39.

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).

RESPONSE:

The assertions contained in paragraph 39 are not relevant to the issues presented in the County's Motion. When Ms. Moore realized that there were bank statements and receipts missing and asked Plaintiff to provide them, he did not do so. (Moore Dep., pp. 17:4-22, 18:13-25 and errata sheet; Merritt Dep., p. 116:2-4, 14-18). Moreover, the FCCC did not have its own office space at the time of the audit, and all of FCCC's books and records were being maintained at the Juvenile

Court under the purview of Plaintiff. (Slay Dep., pp. 250:14 – 251:21, 42:13-18; Bostock Dep., p. 140:2-4, 22-24).

40.

The audit file contains printouts from the websites of Midtown Atlanta area restaurants including a hand drawn circle around language identifying one establishment as “Atlanta[’s] First and ONLY Gay Sports Bar” and highlighting of the language “Atlanta’s favorite neighborhood gay bar and restaurant” for another establishment. (Moore Dep. Exs. 82, 83, 84.)

RESPONSE:

The assertions contained in paragraph 40 are not relevant to the issues presented in the County’s Motion. Moreover, consistent with the Internal Audit Department’s standard practice, Ms. Moore printed out websites for establishments with which she was not familiar that appeared on the bank statements she reviewed. (Moore Dep., pp. 65:3 -- 66:22; Moore Dep., Exs. 82-84; Merritt Dep., pp. 108:1-10, 156:12-21; Moore Decl. (Doc. 136-5), ¶ 4 & Ex. A, at pp. 25, 30-33 (pp. CLAYTON_013935, 013940-43, 014020)). Among the restaurants for which Ms. Monroe printed out the website was Canoe. (Moore Decl., ¶ 4 & Ex. A, at p. 25 (p. CLAYTON_013943)). Ms. Moore made the markings described in paragraph 40 to emphasize that the establishment was in Atlanta and not because Plaintiff is gay.

(Moore Dep., pp. 66:14-23, 67:2-4). Ms. Moore made numerous notations on numerous documents in the audit file. (Moore Dep., Ex. 82; Moore Dep., pp. 34:5-15; Moore Decl. (Doc. 136-5), ¶ 4 & Ex. A thereto, at pp. 96, 101, 107, 109, 112, 115, 117, 124 (pp. CLAYTON_014006, 014011, 014017, 014019, 014022, 014025, 014027, 014034; Moore Decl. (Doc. 136-6), at pp. 15, 17, 20, 40, 42, 47-48, 52, 58 (pp. CLAYTON_014049, 014051, 014054, 014074, 014076, 014081-82, 014086, 014092)).

41.

Of the \$1026.22 reflected in the audit report for 2013 recruitment, training, and retention expenditures, alcohol expenditures comprise only three percent. (Moore Dep. Ex. 10; Moore Dep. 79:2-25.)

RESPONSE:

The assertions contained in paragraph 41 are not relevant to the issues presented in the County's Motion. The audit only encompassed the first three months of 2013, and the last bank statement provided to Ms. Moore is dated April 4, 2013. (Moore Decl., ¶ 4 & Ex. A, at pp. 58, 96 (pp. CLAYTON_013968, 014006)). Ms. Moore conservatively determined that three percent of the \$1,026.22 spent on recruitment, training and retention expenses during this three-month period based on Plaintiff's expenditure of \$31.35 at an establishment that sells exclusively alcohol,

Tower Beer Winetower Beer in Atlanta on March 25, 2013. (Id. at pp. 52, 58 (pp. CLAYTON_013962, 013968)). However, it is likely that Plaintiff spent additional amounts on alcohol during this time period at establishments that are both restaurants and bars, including Cowtippers, Woofs (for “Appetizers/Beverages”) and Blakes. (Moore Dep., Exs. 82-84; Moore Decl., ¶ 4 & Ex. A thereto, at pp. 25, 30-32, 43, 46-49, 58, 96, 99-100 (pp. CLAYTON_ 013935, 013940-42, 013953, 013956-59, 013968, 014006, 014009-10)). Plaintiff does not dispute that he spent GAL funds on alcohol during 2011 and 2012 as well. (Doc. 159, ¶ 19).

42.

In response to written questions from Teske, Mr. Bostock provided Teske with detailed information concerning pledges, donations, and volunteers for training he secured from these recruiting efforts. (Bostock Dep. Ex. 10.)

RESPONSE:

The County does not dispute that Plaintiff’s responses to Judge Teske’s written questions provided detailed information as to Plaintiff’s use of GAL funds to facilitate fundraising for the FCCC, Georgia CASA and the Metro Atlanta CASA Collaborative. (Bostock Dep., Ex. 10, at ¶¶ 1, 7, 10). The citations provided do not support the remaining assertions contained in paragraph 42. Instead, Plaintiff’s responses to Judge Teske’s written questions demonstrate that most of the expenses

identified by Plaintiff were not for the purpose of recruiting, training or retaining Clayton County CASA GAL volunteers. (*Id.*; Teske Dep., pp. 81:12-19, 88:11-13, 120:3-22; 140:22 – 142:6, 144:11-14, 169:1-7, 192:15 – 193:4, 208:16-19, 211:19-24, 212:19-22, 308:3-14; 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).

43.

At a reception in Birmingham, Mr. Bostock secured verbal commitments for three CASA sponsorships but due to the timing of Mr. Bostock's termination, these verbal agreements were not consummated before he was terminated. (Bostock Decl. ¶¶ 6-7.)

RESPONSE:

The County objects to the assertions contained in paragraph 43 on the ground that they rely on inadmissible hearsay. Regardless, even if admissible, the statements contained in paragraph 43 underscore that Plaintiff used GAL funds to sponsor his softball team to facilitate fundraising for the FCCC and not for the recruitment, training or retention of Clayton County CASA GAL volunteers.

IV. Teske’s Focus on Mr. Bostock’s Misconduct

44.

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).

RESPONSE:

The citations provided do not support the assertions contained in paragraph 44, and the assertions contained in paragraph 44 do not accurately reflect what Judge Teske wrote in his diary. Judge Teske wrote in his diary (among other things) that Plaintiff “has been using GAL funds that are dedicated to the recruitment of Clayton County CASA volunteers, their training and retention ... to sponsor his softball team in a gay softball league in Atlanta.” (Teske Dep., Ex. 43, at p. CLAYTON_014201). Judge Teske also wrote in his May 31, 2013 diary entry that the fact that Plaintiff’s softball team was gay and that it played in a gay softball league was not what concerned him. (Id.).

45.

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).

RESPONSE:

The citations provided do not support the assertions contained in paragraph 45, and the assertions contained in paragraph 45 do not accurately reflect what Judge Teske wrote in his diary. In his diary, Judge Teske, wrote (among other things) that Plaintiff “has been using GAL funds that are dedicated to the recruitment of Clayton County CASA volunteers, their training and retention for meals with friends (former boyfriends – he is gay) and to sponsor his softball team in a gay softball league in Atlanta.” (Teske Dep., Ex. 43, at p. CLAYTON_014201). Judge Teske considered Plaintiff’s teammates on his softball team as being Plaintiff’s friends. (Teske Decl., ¶ 6).

46.

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.)

RESPONSE:

The assertions contained in paragraph 46 do not reflect the entirety of Judge Teske’s testimony on this topic. Judge Teske clarified later in his deposition that the reference to Plaintiff using GAL funds to have meals with former boyfriends may

have been based on something someone might have told him or information that someone may have shared with him, but he does not now remember what he was told or by whom, but that this is not something he would have written in his diary without receiving information creating this suspicion. (Teske Dep., pp. 298:1 – 299:19). As it turns out, Plaintiff did use GAL funds for meals with at least one current or former boyfriend, Yhon Sanchez, and Plaintiff spent GAL funds on several occasions for meals at a restaurant (F.R.O.G.S.) where Mr. Sanchez was the manager. (Holland Dep., Ex. 120, at ¶¶ 11-14; Teske Dep., Ex. 81, ¶ 7, at pp. Clayton_014128-29).

47.

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).

RESPONSE:

Not disputed. Judge Teske correctly understood that Midtown Atlanta was an area known at the time to be one where many members of the gay community lived and where many businesses that catered to a predominately gay clientele operated. (Teske Dep., p. 171:17-18; Holland Dep., pp. 15:5-8; Holland Dep., Ex 120, at ¶¶ 3, 8, 10). This reality also is reflected by Judge Teske’s personal experiences

socializing with Plaintiff and his partner at gay restaurants and nightclubs in the Midtown Atlanta area. (Teske Dep., pp. 180:22 – 181:19, 182:24 – 183:1; Teske Decl., ¶ 3). Furthermore, owners and operators of establishments in Midtown Atlanta that catered to a predominantly gay clientele would refer to Midtown Atlanta as the “Gayborhood,” which was a marketing term commonly used at the time in advertising directed toward the gay community. (Holland Dep., Ex. 120, at ¶ 10; Merritt Dep., Ex. 82). Finally, this diary entry correctly reflects the fact that Plaintiff was using GAL funds to buy meals for fundraising purposes. (Teske Dep., Ex. 81, ¶ 7).

48.

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

RESPONSE:

The assertions contained in paragraph 48 are not relevant to the issues presented in the County’s Motion. Regardless, as it turns out, Plaintiff did use GAL funds for meals with at least one current or former boyfriend, Mr. Sanchez. (Holland Dep., Ex. 120, at ¶¶ 11-14; Teske Dep., Ex. 81, ¶ 7, at pp. Clayton_014128-29).

49.

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).

RESPONSE:

The assertions contained in paragraph 49 are not relevant to the issues presented in the County’s Motion.

50.

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).

RESPONSE:

The citations provided do not support the assertions contained in paragraph 50, and the assertions contained in paragraph 50 do not accurately reflect what Judge Teske wrote in his diary. In his diary, Judge Teske wrote (among other things), “It’s not the gay thing that upsets me – it’s that the appearance that because he is gay he is spending money on his own interests – that’s a conflict.” (Teske Dep., Ex. 43, at p. CLAYTON_014202). In his previous diary entry of May 31, 2013, Judge Teske

similarly wrote with respect to Plaintiff's sponsorship of his softball team, "Its not the 'gay' aspect of it, but the personal gain." (Id. at p. CLAYTON_014201).

51.

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).

RESPONSE:

The citations provided do not support the assertions contained in paragraph 51, and the assertions contained in paragraph 51 do not reflect all of Judge Teske's testimony on this issue. Judge Teske testified that Plaintiff's sexual orientation was one of a number of factors – including that it was incredulous to Judge Teske that Plaintiff could be spending money in Midtown Atlanta recruiting Clayton County CASA GAL volunteers to serve far away in Clayton County and that many bank records were missing – that led him to conclude that Plaintiff was using GAL funds to pursue personal interests. (Teske Dep., pp. 177:22 – 178:21, 182:3-23). Further responding, Judge Teske correctly understood Midtown Atlanta as being an area where many members of the gay community lived and operated businesses catering to a predominantly gay clientele. (See the County's response to paragraph 47).

52.

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).

RESPONSE:

The citations provided do not support the assertions contained in paragraph 52. Judge Teske testified that Plaintiff's sexual orientation was one of a number of factors – including that it was incredulous to Judge Teske that Plaintiff could be spending money in Midtown Atlanta recruiting Clayton County CASA GAL volunteers to serve far away in Clayton County and that many bank records were missing – that led Judge Teske to conclude that Plaintiff was using GAL funds to pursue personal interests, which was only one of the reasons why he decided to terminate Plaintiff. (Teske Dep., pp. 177:22 – 178:21, 182:3-23).

53.

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).

RESPONSE:

The citations provided do not support the assertions contained in paragraph 53. Judge Teske merely testified that one would need to gather additional information to determine whether a restaurant or bar in Midtown is one that is thought to be a gay restaurant or bar. (Teske Dep., pp. 207:14 – 208:2). Judge Teske recognized that not every bar in Midtown Atlanta is a gay bar. (Id. at p. 121:22-24). Further responding, 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 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, 30:1 – 31:13; Holland Dep., Ex. 120, at ¶¶ 8-9; Moore Dep., Exs. 82-84; Moore Decl. (Doc. 136-5), ¶ 4 & Ex. A thereto, at pp. 25, 30-32, 110 (pp. CLAYTON_013935, 013940-42, 014020); Bostock Dep., pp. 28:15-21, 70:12 – 71:22; Teske Dep., p. 89:12-17).

54.

Johnson testified that if the word “black” were substituted for “gay” in Teske’s diary it would be “troubling” to him as a person of color and a management-level

employee and that he would view it as evidence that race was a factor in the termination decision. (Johnson Dep. 204:20 – 207:7.)

RESPONSE:

The assertions contained in paragraph 54 are not relevant to the issues presented in the County's Motion. Later in his deposition, Mr. Johnson declined Plaintiff's invitation to apply this thought process to Plaintiff's allegations in this case and stated that he was not testifying that Judge Teske was biased against Plaintiff because of his sexual orientation. (Johnson Dep., p. 242:10-24).

55.

Moore testified that the fact that Mr. Bostock might be recruiting in the gay community did not mean he was spending money on his own interests any more than if an African-American person were recruiting in the African-American community, that they would spending money on their own interests. (Moore Dep. 64:10-16.)

RESPONSE:

The assertions contained in paragraph 55 are not relevant to the issues presented in the County's Motion. Moreover, Plaintiff was not recruiting Clayton County CASA GAL volunteers in the gay community. (See, e.g., the County's response to paragraph 42). Further responding, Judge Teske testified that there would not be anything wrong with Plaintiff recruiting members of the gay community

or even a former boyfriend to become a Clayton County CASA GAL volunteer – if that was what he was actually doing. (Teske Dep., p. 175:14-18; errata sheet).

56.

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).

RESPONSE:

The citations provided do not support the assertions contained in paragraph 56. Judge Teske testified that, although Plaintiff consulted with the FCCC about the softball team sponsorship and to his knowledge, the FCCC Board approved this expenditure, Plaintiff should have consulted with him as Chief Judge of the Juvenile Court about this use of GAL funds. (Teske Dep., p. 195:4-16). Moreover, the FCCC Board did not “approve” the use of GAL funds to sponsor Plaintiff’s softball team, and the FCCC Board did not have oversight over the GAL account. (See the County’s response to paragraphs 21 and 29; see also Teske Dep., errata sheet).

57.

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).

RESPONSE:

The assertions contained in paragraph 57 are not relevant to the issues presented in the County’s Motion. Regardless, as stated in the audit, the problem from Ms. Moore’s standpoint was that many of the restaurants at which Plaintiff expended GAL funds purportedly to “recruit” Clayton County CASA GAL volunteers were located outside Clayton County. (Merritt Dep., Ex. 10, at p. 5; Moore Dep., p. 56:1-9).

58.

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).

RESPONSE:

The assertions contained in paragraph 58 are not relevant to the issues presented in the County’s Motion. As Plaintiff admitted in his responses to Judge Teske’s written questions, many of Plaintiff’s expenses at restaurants and bars in Midtown Atlanta were not for the purpose of recruiting or training Clayton County

CASA GAL volunteers, as required by the MOU, to serve miles away in Clayton County, but rather were for other purposes, such as assisting FCCC with its fundraising endeavors. (Teske Dep., Ex. 81, ¶ 7; Teske Dep., pp. 81:12-19, 88:11-13, 120:3-22; 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).

59.

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).

RESPONSE:

The assertions contained in paragraph 59 are not relevant to the issues presented in the County’s Motion, and the citations provided do not support the assertions contained in paragraph 59. Mr. Slay testified that engaging in a recruiting event at a gay bar would not “in and of itself” be an improper use of FCCC funds. (Slay Dep., p. 114:1-5). Mr. Slay was not asked in the cited excerpt whether such an expense would be an improper use of GAL funds.

60.

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).

RESPONSE:

The assertions contained in paragraph 60 are not relevant to the issues presented in the County's Motion. In any event, it is not the typical practice of the Internal Audit Department to recommend personnel action by County departments (or even to include names of employees in audit reports), 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, 115:5-10; Moore Dep., p. 8:12-21; Teske Dep., pp. 255:22-24, 256:7-11; Johnson Dep., p. 257:14-17). Nevertheless, the auditors 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). The auditors also believed that Plaintiff should be terminated based on his misconduct uncovered during the audit. (Merritt Decl., ¶ 5; Moore Decl., ¶ 9).

V. **Conclusion of the Audit and Non-Discriminatory Termination**

61.

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

RESPONSE:

Not disputed.

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.)

RESPONSE:

The citations provided do not support the assertions contained in paragraph 62. Judge Teske testified that Plaintiff’s sexual orientation was one of a number of factors – including that it was incredulous to Judge Teske that Plaintiff could be spending money in Midtown Atlanta recruiting Clayton County CASA GAL volunteers to serve far away in Clayton County and that many bank records were missing -- that led him to conclude that Plaintiff was using GAL funds to pursue personal interests, which was only one of the reasons why he decided to terminate Plaintiff. (Teske Dep., pp. 177:22 – 178:21, 182:3-23). Judge Teske testified that one of the reasons he terminated Plaintiff was that he was “highly suspicious that

[Plaintiff's] up there [in midtown Atlanta] doing personal, more so than business stuff.” (Id. at p. 178:7-9). When Plaintiff's counsel asked Judge Teske if, by “personal,” he meant “gay stuff,” Judge Teske said “it doesn't matter whether you're gay [or] you're straight.” (Id. at p. 178:10-12).

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).

RESPONSE:

The citations provided do not support the assertions contained in paragraph 63. Judge Teske testified that it was incredulous to him that Plaintiff could be spending money in Midtown Atlanta recruiting Clayton County CASA GAL volunteers to serve far away in Clayton County and that many bank records were missing, which led him to conclude that Plaintiff was using GAL funds to pursue personal interests. (Teske Dep., pp. 177:22 – 178:21, 182:3-23).

64.

At a meeting with Sabrina Crawford, Chair of Friends of Clayton County CASA, before he fired Mr. Bostock, 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).

RESPONSE:

The assertions contained in paragraph 64 are not relevant to the issues presented in the County’s Motion. Also, the assertions contained in paragraph 64 do not reflect the entirety of Ms. Crawford’s testimony, and the County disputes the assertions contained therein. Ms. Crawford clarified later in her deposition that she could not recall if Judge Teske had accused Plaintiff of “stealing” from the GAL account, but that Judge Teske told her that Plaintiff “was using the GAL funds to pay for things that he should not have been using the GAL funds for.” (Crawford Dep., p. 103:1 – 104:5). Moreover, Judge Teske did not tell Ms. Crawford that Plaintiff “stole”, misused, mishandled or mismanaged between \$14,000 and \$17,000, and he did not reference the bank statements. (Teske Dep., pp. 69:21 – 72:4). Judge Teske told Ms. Crawford that an audit of the GAL account had been conducted, and he reviewed the findings of the audit with her, including the expenditures at Midtown Atlanta establishments, and that Plaintiff had mishandled or misused funds in the GAL account. (*Id.* at pp. 69:21 – 70:11 15-18, 72:8-12). The audit found that between \$14,000 and \$15,000 had been collected in the GAL

account, and that a substantial amount of those funds had been expended. (Id. at p. 71:12-22; Merritt Dep., Ex. 10, at p. 4).

65.

Crawford - who has a background in bookkeeping and accounting - reviewed the bank statements that were allegedly proof of Mr. Bostock misusing or stealing between \$14,000 and \$17,000 and determined they did not reveal any evidence of such alleged misuse and that the expenditures were consistent with the MOU. (Crawford Depo. at 41:19–24; 61:10-62:6)

RESPONSE:

The assertions contained in paragraph 65 are not relevant to the issues presented in the County's Motion. Regardless of Ms. Crawford's views, Judge Teske, Mr. Johnson, Mr. Slay and the auditors concluded that Plaintiff did misuse GAL funds and that many of Plaintiff's expenditures of GAL funds were not permissible under the MOU. (Teske Dep., pp. 81:12-19, 88:11-13, 120:3-22; 140:22 – 142:6, 144:11-14, 169:1-13, 192:15 – 193:4, 208:16-19, 211:19-24, 212:19-22, 308:3-14; Slay Dep., p. 148:5-16; 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; Declaration of John Johnson (Doc. 136-3), at ¶ 4; Declaration of Colin Slay (Doc. 136-2), at ¶ 4; Merritt Dep., Ex. 10; Merritt Dep., p. 115:5-15;

Merritt Decl., ¶ 4; Moore Decl., ¶ 8). Ms. Crawford’s “background” in bookkeeping and accounting does not include any college education. (Crawford Dep., p. 9:7-8).

66.

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).

RESPONSE:

The County does not dispute that Judge Teske told Ms. Crawford that Plaintiff had used GAL funds to sponsor Plaintiff’s softball team. However, the citations provided do not support the assertion that Judge Teske told Ms. Crawford during this meeting that Plaintiff had used GAL funds to sponsor a “gay” softball team.

67.

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).

RESPONSE:

The assertions contained in paragraph 67 are not relevant to the issues presented in the County’s Motion. Regardless, the County does not dispute that Ms. Crawford was aware that Plaintiff was using GAL funds to sponsor the softball team. However, the citations provided do not support the remaining assertions contained in paragraph 67. Ms. Crawford merely testified that she did not disagree with

Plaintiff's use of GAL funds to sponsor Plaintiff's softball team. (Crawford Dep., p. 44:3-14).

68.

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).

RESPONSE:

The assertions contained in paragraph 68 are not relevant to the issues raised in the County's Motion. In any event, the County disputes the assertions contained in paragraph 68. Judge Teske denies that he made the statements asserted in paragraph 68 and denies that he slammed his hands down on Ms. Crawford's desk during this meeting. (Teske Dep., pp. 73:2-12, 15-20, 25 – 74:8, 77:20-25). The meeting between Judge Teske, Mr. Slay and Ms. Crawford on May 31, 2013 was amicable. (Id. at pp. 59:19-22, 74:10-13; Slay Dep., pp 111:15 – 112:5). Judge Teske, Deborah Stinson (the Assistant Clerk of the Juvenile Court at the time) and Ms. Crawford had a telephone conference on a speaker phone sometime after Plaintiff's termination to discuss other issues. (Teske Dep., pp. 57:16 – 58:17, 61:3-16, 73:18-19, 77:24 – 78:6; Crawford Dep., p. 56:7-14). During this telephone conference, Ms. Crawford and Judge Teske got into an argument, during which Ms.

Crawford told Judge Teske, “I don’t work for you, and you may talk to your employees like this, but you will not talk to me this way,” after which Judge Teske slammed in his hand on Ms. Stinson’s desk next to the speaker phone and told Ms. Crawford that if he had been her boss, he would have fired her. (Teske Dep., pp. 73:18-19, 130:3-25; Crawford Dep., p. 56:7-14).

69.

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

RESPONSE:

The assertions contained in paragraph 69 are not relevant to the issues raised in the County’s Motion. Nevertheless, the County does not dispute that Judge Teske had a meeting with the Juvenile Court staff to notify them of Plaintiff’s termination, but not all Juvenile Court employees were present for this impromptu meeting. (Teske Dep., pp. 101:13 – 102:5). The County disputes the remaining assertions contained in paragraph 69. Plaintiff’s use of GAL funds to sponsor his softball team was not the only example of him mishandling or mismanaging the GAL account that

Judge Teske identified during this meeting. Judge Teske went through the findings of the audit with the Juvenile Court staff, including the Birmingham reception and the unaccounted-for meals in Atlanta. (Teske Dep., pp. 102:12 – 103:20). Ms. Johnson also admitted that Judge Teske mentioned during the staff meeting that Plaintiff's softball team was located in Atlanta. (Shelly Johnson Dep., p. 70:8-11).

70.

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).

RESPONSE:

The assertions contained in paragraph 70 are not relevant to the issues presented in the County's Motion. Regardless, Judge Teske called this impromptu staff meeting because he had been contacted the previous afternoon by a reporter for a local television news station regarding Plaintiff's termination, and Judge Teske thus knew that the news station was going to broadcast a story about Plaintiff's termination on the news that evening. Judge Teske did not want employees to find out about Plaintiff's termination for the first time on the evening news. (Teske Dep., pp. 102:22 – 103:5, 107:1-4, 108:22 – 109:10).

71.

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).

RESPONSE:

The assertions contained in paragraph 71 are not relevant to the issues presented in the County’s Motion. Regardless, the County disputes the assertions contained in paragraph 71. Mr. Johnson denies making the statement alleged in paragraph 71. (Johnson Dep., pp.244:22 – 245:1, 11-14). Moreover, when Mr. Johnson and Mr. Slay met with Plaintiff on June 3, 2013 to inform him of his termination, Plaintiff had already decided that his termination was because of his sexual orientation, and thus Plaintiff contends that he told them, “I know what this is about.” (Bostock Dep., pp. 13:16-22, 64:21 – 65:10, 69:14-20, 287:7-11). Thus, even accepting Plaintiff’s version of events as true, Mr. Johnson correctly surmised that Plaintiff was thinking that he was being terminated because of his sexual orientation.

72.

In at least one instance, an individual who was to begin the CASA application process stopped doing so after Mr. Bostock was fired due to his support of Mr. Bostock. (Bostock Dep. 207:6-208:14.)

RESPONSE:

The assertions contained in paragraph 72 are not relevant to the issues presented in the County's Motion. The County also objects to the assertions contained in paragraph 72 on the ground that they rely on inadmissible hearsay. Further responding, Plaintiff did not identify any Clayton County CASA GAL volunteer whom he had successfully recruited as a result of his sponsorship of his softball team even though Judge Teske specifically asked Plaintiff, "Did you recruit any volunteers for Clayton County CASA directly as a result of this sponsorship? If so, you must provide the name and contact information of that person." (Teske Dep., Ex. 80, ¶ 10; Teske Dep., Ex. 81, ¶ 10; Bostock Dep., p. 207:6-17). Furthermore, although Plaintiff claims that this purported "recruit" told him that he would begin the application process to become a Clayton County CASA GAL volunteer after he returned from the Birmingham tournament, which was in March 2013, the record is devoid of any evidence that this purported "recruit" had submitted any such

application by the time Plaintiff was terminated more than two months later in June 2013. (Bostock Dep., pp. 208:2 – 209:2).

73.

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

RESPONSE:

The assertions contained in paragraph 73 are not relevant to the issues presented in the County's Motion. In any event, Plaintiff was given a memorandum prepared by Judge Teske summarizing the relevant findings of the audit and instructing Plaintiff to provide answers to questions prepared by Judge Teske based on the findings of the audit. (Teske Dep., Ex. 80; Bostock Dep., Ex. 9; Bostock Dep., p. 197:24-25; Johnson Dep., p. 141:2-9). Plaintiff submitted responses to Judge Teske's questions on May 31, 2013, and Judge Teske reviewed Plaintiff's responses before making the final decision to terminate Plaintiff. (Teske Dep., Ex. 81; Teske Dep., pp. 190:6-10, 208:3-19).

74.

Ms. Moore testified that the only other person she was aware of who was terminated as a result of an audit was an individual who was found to be stealing money which Mr. Bostock was not. (Moore Dep. 67:24 – 22.)

RESPONSE:

The assertions contained in paragraph 74 are not relevant to the issues presented in the County's Motion. Departments heads typically do not inform auditors of termination decisions made as a result of an audit. (Merritt Dep., pp. 151:16-22, 154:4-7). Regardless, Ms. Moore has testified that she would have terminated Plaintiff based on his misconduct uncovered during the audit if the decision had been up to her. (Moore Decl., ¶¶ 8-9).

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 RESPONSE TO PLAINTIFF'S STATEMENT OF ADDITIONAL MATERIAL FACTS PRESENTING GENUINE ISSUE FOR TRIAL** has been prepared in compliance with Local Rule 5.1(B) in 14-point Times New Roman type face.

This 25th day of May, 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 RESPONSE TO PLAINTIFF'S STATEMENT OF ADDITIONAL MATERIAL FACTS PRESENTING GENUINE ISSUE FOR TRIAL** with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following counsel of record:

Thomas J. Mew, IV
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This 25th day of May, 2022.

/s/ Jack R. Hancock _____

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