

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EQUAL EMPLOYMENT)	
OPPORTUNITY COMMISSION,)	
)	
Plaintiff,)	CIVIL ACTION NO.
)	2:14-CV-13710-
v.)	SFC-DRG
)	Hon. Sean F. Cox
R.G. & G.R. HARRIS FUNERAL)	Magistrate Judge
HOMES, INC.,)	David R. Grand
)	
Defendant.)	
_____)	

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Motion for Protective Order

Pursuant to Rule 26, Plaintiff Equal Employment Opportunity Commission (“EEOC”) moves the Court for an order to protect the EEOC and EEOC charging party Aimee Stephens from irrelevant,

annoying, embarrassing, and oppressive discovery by Defendant R.G. & G.R. Harris Funeral Homes, Inc. (“RGGR”), either oral or written, relating to: 1) Stephens’s anatomy; 2) Stephens’s familial relationships; or 3) the status or progress of Stephens’s gender transition.

In support of this Motion, the Commission states:

1. On June 18, RGGR served its *First Set of Interrogatories, Requests for Documents and Admissions*. Exhibit A.
2. Many of the discovery requests regard areas that are wholly irrelevant to claims in this lawsuit and rise to the level of annoyance, embarrassment, and oppression. Specifically, RGGR asks the EEOC to:
 - i. “State whether Stephens is the natural/biological father of any offspring and, if so, state the name, sex, and date of birth of each such offspring.” Ex. A, Interrogatory 4.
 - ii. “State whether Stephens has ever been married to a woman and, if so, identify Stephens’ wife or wives and the dates of such marriage(s), and the current status of such marriage(s).” Ex. A, Interrogatory 5.

- iii. “State whether Stephens was born a biological male.” Ex. A, Interrogatory 6.
- iv. “State whether Stephens currently has male sexual organs, including but not limited to, a penis and testicles.” Ex. A, Interrogatory 7.
- v. “State whether Stephens has had any surgery performed to remove or modify any male sexual organs or has had any ‘sex reassignment surgery.’” Ex. A, Interrogatory 8.
- vi. “Prior to August 2013, state whether Stephens informed any employee of the Defendant of any intention of altering Stephens' physical appearance and ‘presenting’ as a woman as expressed in the August 2013 letter? (attached hereto) If so identify the employee(s), the manner of the communication, the date of the communication, the substance of the communication, and any other information relating directly or indirectly to this Interrogatory.” Ex. A, Interrogatory 9.
- vii. “Prior to August 2013, state whether Stephens ever ‘presented’ as a woman at defendant's place of business while employed by Defendant? If Yes, identify the date(s)

when Stephens did so, any witnesses to the presentation, describe any alleged reaction, adverse or otherwise from Defendant, and any other information relating directly or indirectly to this Interrogatory.” Ex. A, Interrogatory 10.

- viii. “Prior to August 2013, state whether Stephens ever ‘presented’ as a woman in public? If so, describe with specificity Stephens’ habits of ‘presenting’ as a woman in public, the frequency, the date(s), the location(s), and any other information relating directly or indirectly to this Interrogatory.” Ex. A, Interrogatory 11.
- ix. “Prior to August 2013, state whether Stephens confided in, informed, or in any way communicated to any member(s) of his family, including but not limited to, his wife, his children, his parents, or any other relative, that Stephens was a ‘transgender woman’ as stated in paragraph 10 of your Amended Complaint?” Ex. A, Interrogatory 12.
- x. “State whether Stephens has undergone any hormone treatment or therapy on account of or in furtherance of Stephens’ claim that Stephens is a ‘transgender woman,’

whether for the purpose of creating, enhancing, or exhibiting any 'female' physical traits or characteristics.”

Ex. A, Interrogatory 14.

- xi. “Identify each and every doctor, psychologist, psychiatrist, health care professional, and any other person who evaluated, assessed or treated Stephens for any of Stephens' claimed conditions (including but not limited to transgenderism, gender dysphoria, or gender identity disorder) that form the basis of your Amended Complaint and the contents of the August 2013 letter (attached hereto). Identify each individual by name, address, professional title, contact information, and any other information relative to this interrogatory.” Ex. A, Interrogatory 15.
- xii. “In the August 2013 letter authored by Stephens (attached hereto), Stephens states ‘with the support of my loving wife, I have decided to become the person that my mind already is.’ State with specificity what ‘support’ Stephens is referring to, whether Stephens’ wife still supports this decision, and the current state of Stephens’

marriage to his wife, and any other information relating to this Interrogatory.” Ex. A, Interrogatory 16.

- xiii. “Provide all medical, counseling, therapeutic, and other professional records relating to Stephens’ diagnosis of, treatment for, and gender-transition on account of, gender identity disorder, gender dysphoria, transgenderism, or any other condition related directly or indirectly to your or Stephens’ claim that Stephens is a ‘transgender woman’ and was ‘undergoing a gender transition from male to female.’” Ex. A, Request for Production 1.
- xiv. “Provide Stephens’ Birth Certificate(s), including any pleadings, petitions, court orders, or other public records amending or modifying any of Stephens’ Birth Certificate(s).” Ex. A, Request for Production 3.
- xv. “Provide all marriage licenses and certificates of marriage to which Stephens has ever been a party.” Ex. A, Request for Production 4.
- xvi. “Provide all pleadings, petitions, court orders, or other public records related directly or indirectly to any

dissolution of a marriage to which Stephens has ever been a party.” Ex. A, Request for Production 5.

xvii. “Admit that at all times during the year 2013, including August 15, 2013, Stephens was anatomically a male – that is, that Stephens was chromosomally a male and had male genitalia.” Ex. A, Request for Admission 1.

xviii. “Admit that, during Stephens’ employment with Defendant, Stephens never dressed or ‘presented’ as a woman.” Ex. A, Request for Admission 3.

3. The EEOC brought two claims in this case: 1) RGGR violated Title VII when it fired Aimee Stephens because she did not conform to RGGR’s “sex- or gender-based preferences, expectations, or stereotypes;” and 2) RGGR maintains a disparate clothing allowance.

4. The discovery detailed above is not relevant to whether RGGR maintained a discriminatory clothing allowance or whether RGGR fired Stephens for a discriminatory reason. For each of these claims, the question focuses on the employer’s acts and state of mind.

5. The discovery detailed above is humiliating, harassing, and denigrating.
6. The Court is empowered to forbid a party from seeking discovery or from making inquiry into certain areas or matters. Fed. R. Civ. P. 26(c)(1)(A) & (D).
7. On July 13, the EEOC conferred with RGGR in an attempt to resolve this issue without court intervention pursuant to Rule 26(c). However, the parties could not resolve this discovery dispute.
8. On July 13, RGGR declined to concur in the relief sought in this motion pursuant to Local Rule 7.1.

For the foregoing reasons, the EEOC respectfully moves this Court to enter a protective order preventing RGGR from conducting discovery, either oral or written—via depositions, interrogatories, requests for production, requests for admissions, or physical and mental examination—relating to: 1) Stephens’s genitalia or anatomy; 2) Stephens’s familial relationships; and 3) the status or progress of Stephens’s gender-transition process.

Respectfully submitted,

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

Dated: July 14, 2015

s/ Miles Shultz
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**Memorandum in Support of Plaintiff EEOC's
Motion for Protective Order**

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STATEMENT OF THE ISSUE

Whether good cause exists to protect the Equal Employment Opportunity Commission and charging party Aimee Stephens from irrelevant, annoying, embarrassing, and oppressive discovery by R.G. & G.R. Harris Funeral Homes, Inc.

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Exhibit A: Defendant's *First Set of Interrogatories, Requests for Documents and Admissions*

I. Introduction

Plaintiff Equal Employment Opportunity Commission (“EEOC” or “the Commission”) alleges that Defendant R.G. & G.R. Harris Funeral Homes, Inc. (“RGGR”), violated Title VII when it fired Aimee Stephens for not conforming to RGGR’s “sex- or gender-based preferences, expectations, or stereotypes” because she is transgender. Dkt. 21, Amended Complaint at 4-5; ECF No. 12, Opinion & Order Denying Defendant’s Motion to Dismiss at 2. On June 18, 2015, RGGR served its first request for discovery. Exhibit A. Those requests (detailed below) that ask about Stephens’s anatomy, familial relationships, or the status or progress of her gender transition have no bearing on whether or not RGGR violated Title VII. Further, those requests are annoying, embarrassing, and oppressive. Accordingly, good cause exists to protect the EEOC and Stephens from this discovery.

II. Legal Standard

Rule 26 requires that the discovery sought be relevant to a “claim or defense.” Fed. R. Civ. P. 26(b)(1). Rule 26(c) authorizes the Court, “for good cause, to issue an order to protect a party or

person from annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c)(1). “District courts should not neglect their power to restrict discovery where ‘justice requires [protection for] a party or person.’” *Herbert v. Lando*, 444 U.S. 153, 177 (1979) (citing Rule 26(c)).

Rule 26(c)(1) provides that a court: “may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden... including ... (A) forbidding the disclosure or discovery ... (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters.” Fed. R. Civ. P. 26(c)(1). Showing that the disclosure will cause a “clearly defined and serious injury” establishes good cause. *Glaviz-Zamara v. Brady Farms, Inc.*, 230 F.R.D. 499 at 501 (W.D. Mich. 2005) (citing *Nix v. Sword*, 11 F. App’x 498, 500 (6th Cir. 2001)). Assessing “good cause,” moreover, necessarily requires balancing the need to prevent “fishing expeditions” with the right to discovery. *Bush v. Dictaphone Corp.*, 161 F.3d 363, 367 (6th Cir. 1998)

Rule 26(b)(2)(C) limits discovery “otherwise allowed” if the Court determines that “the burden ... of the proposed discovery

outweighs its likely benefit” considering factors articulated in that rule. Fed. R. Civ. P. 26(b)(2)(C)(iii).

III. Summary of Argument

RGGR’s discovery requests are not relevant to any claim or defense in this case, and only serve to annoy, embarrass, and oppress the EEOC and Stephens. Discovery regarding Stephens’s “male sexual organs, including but not limited to, a penis and testicles;”¹ her “offspring [and] name, sex, and date of birth;”² and whether she “has ever been married to a woman”³ is not at all relevant to whether RGGR fired her in violation of Title VII. The EEOC alleges that RGGR fired Stephens because she previously presented as one sex, was presenting as another sex, and did not satisfy RGGR’s views of how she ought to present. These are sex-based considerations, which are not permissible bases for employment decisions. *See Opinion and Order Denying Defendant’s Motion to Dismiss*, Dkt. 12 at 14 (“This Court concludes that, having alleged that Stephens’s failure to conform to sex stereotypes was the driving force behind the Funeral Home’s decision to fire

¹ Ex. A, Interrogatory No. 7.

² Ex. A, Interrogatory No. 4.

³ Ex. A, Interrogatory No. 5.

Stephens, the EEOC has sufficiently pleaded a sex-stereotyping gender-discrimination claim under Title VII”). Accordingly, Stephens’s children, marriage, and anatomy are wholly irrelevant and beyond the reach of Rule 26 discovery. Even if the discovery might be deemed tangentially relevant to a claim or defense, the humiliating nature of the discovery far outweighs its relevance.

IV. Because None are Probative of RGGR’s Intent or Any Other Aspect of the EEOC’s Claims or RGGR’s Defenses, Good Cause Exists to Bar Discovery of Identified Topics.

RGGR propounded the following discovery on the EEOC:

- i. “State whether Stephens is the natural/biological father of any offspring and, if so, state the name, sex, and date of birth of each such offspring.” Ex. A, Interrogatory 4.
- ii. “State whether Stephens has ever been married to a woman and, if so, identify Stephens’ wife or wives and the dates of such marriage(s), and the current status of such marriage(s).” Ex. A, Interrogatory 5.
- iii. “State whether Stephens was born a biological male.” Ex. A, Interrogatory 6.
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- vi. “Prior to August 2013, state whether Stephens informed any employee of the Defendant of any intention of altering Stephens' physical appearance and ‘presenting’ as a woman as expressed in the August 2013 letter? (attached hereto) If so identify the employee(s), the manner of the communication, the date of the communication, the substance of the communication, and any other information relating directly or indirectly to this Interrogatory.” Ex. A, Interrogatory 9.
- vii. “Prior to August 2013, state whether Stephens ever ‘presented’ as a woman at defendant's place of business while employed by Defendant? If Yes, identify the date(s) when Stephens did so, any witnesses to the presentation, describe any alleged reaction, adverse or otherwise from Defendant, and any other information relating directly or indirectly to this Interrogatory.” Ex. A, Interrogatory 10.
- viii. “Prior to August 2013, state whether Stephens ever ‘presented’ as a woman in public? If so, describe with specificity Stephens’ habits of ‘presenting’ as a woman in public, the frequency, the date(s), the location(s), and any other information relating directly or indirectly to this Interrogatory.” Ex. A, Interrogatory 11.
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- x. “State whether Stephens has undergone any hormone treatment or therapy on account of or in furtherance of Stephens’ claim that Stephens is a ‘transgender woman,’ whether for the purpose of creating, enhancing, or exhibiting any ‘female’ physical traits or characteristics.” Ex. A, Interrogatory 14.

- xi. “Identify each and every doctor, psychologist, psychiatrist, health care professional, and any other person who evaluated, assessed or treated Stephens for any of Stephens' claimed conditions (including but not limited to transgenderism, gender dysphoria, or gender identity disorder) that form the basis of your Amended Complaint and the contents of the August 2013 letter (attached hereto). Identify each individual by name, address, professional title, contact information, and any other information relative to this interrogatory.” Ex. A, Interrogatory 15.
- xii. “In the August 2013 letter authored by Stephens (attached hereto), Stephens states ‘with the support of my loving wife, I have decided to become the person that my mind already is.’ State with specificity what ‘support’ Stephens is referring to, whether Stephens’ wife still supports this decision, and the current state of Stephens’ marriage to his wife, and any other information relating to this Interrogatory.” Ex. A, Interrogatory 16.
- xiii. “Provide all medical, counseling, therapeutic, and other professional records relating to Stephens’ diagnosis of, treatment for, and gender-transition on account of, gender identity disorder, gender dysphoria, transgenderism, or any other condition related directly or indirectly to your or Stephens’ claim that Stephens is a ‘transgender woman’ and was ‘undergoing a gender transition from male to female.’” Ex. A, Request for Production 1.
- xiv. “Provide Stephens’ Birth Certificate(s), including any pleadings, petitions, court orders, or other public records amending or modifying any of Stephens’ Birth Certificate(s).” Ex. A, Request for Production 3.
- xv. “Provide all marriage licenses and certificates of marriage to which Stephens has ever been a party.” Ex. A, Request for Production 4.

- xvi. “Provide all pleadings, petitions, court orders, or other public records related directly or indirectly to any dissolution of a marriage to which Stephens has ever been a party.” Ex. A, Request for Production 5.
- xvii. “Admit that at all times during the year 2013, including August 15, 2013, Stephens was anatomically a male – that is, that Stephens was chromosomally a male and had male genitalia.” Ex. A, Request for Admission 1.
- xviii. “Admit that, during Stephens’ employment with Defendant, Stephens never dressed or ‘presented’ as a woman.” Ex. A, Request for Admission 3.

1. The EEOC’s Claim Involves Sex-Stereotyping, and Discovery About Stephen’s Anatomy and Family is Irrelevant.

As the Court discussed in its April 21, 2015, Order, this case rises or falls on whether the EEOC can establish that RGGR fired Stephens for failing to conform to its sex-based stereotypes or maintained a disparate clothing allowance. Dkt. 12 at 14. There is no dispute that Stephens is transgender; the state of her anatomy, chromosomes, and familial relationships is simply not relevant—and such discovery rises to the level of oppression. “The Supreme Court established that Title VII’s reference to “sex” encompasses both the biological differences between men and women, and gender discrimination, that is, discrimination based on a failure to conform to stereotypical gender norms.” *Smith v. City of Salem*, 378 F.3d

566, 573 (6th Cir. 2004) (citing *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989)). See also *Myers v. Cuyahoga Cty.*, 182 Fed. Appx. 510, 519 (6th Cir. 2006) (“Title VII protects transsexual persons from discrimination for failing to act in accordance and/or identify with their perceived sex or gender”); *Hispanic Aids Forum v. Estate of Bruno*, 195 Misc. 2d 366, 370-71, 759 N.Y.S.2d 291, 295 (Sup. Ct. 2003) (entering protective order under state law, where defendant served interrogatories seeking information about the “anatomical sex” of the transgender individuals involved, both at birth and at the time of the incidents at issue in the case).

Alleging that RGGR fired Stephens because she did not satisfy RGGR’s sex-based stereotypes does not open up Stephens’s personal information regarding her transition cart blanche. *E.g.*, *Stacks v. Southwestern Bell Yellow Pages, Inc.*, 27 F.3d 1316, 1326–27 (8th Cir. 1994) (finding that evidence of female complainant’s affair with married co-worker was inadmissible to show that such workplace conduct did not offend her). By way of example, in a Title VII race case, a defendant could not seek discovery regarding an African American’s genome to discover whether or not the individual was truly “black”; the focus in such cases is on the

employer's intent. *E.g.*, *EEOC v. WC&M Enters., Inc.*, 496 F.3d 393, 401–02 (5th Cir.2007) (holding that a Muslim man's national-origin discrimination claim survived summary judgment even though his harassers did not know his country of origin).

Similarly, the focus in this case is on the employer's state of mind: did RGGR fire Stephens because she did not conform to the employer's notions of how Stephens should act or look? None of the propounded discovery requests can possibly be relevant to RGGR's motives because there is no reason to think that it had any knowledge of Stephens' genitalia, marital status, parental status, or surgeries. Even if RGGR did contemplate these things, it is RGGR's understanding of these matters that would be relevant, not whether its thoughts or assumptions were objectively "right" in some sense. *See EEOC v. Boh Brothers*, 731 F.3d 444, 456-57 (5th Cir. 2013) ("we focus on the alleged harasser's subjective perception of the victim," and "do not require a plaintiff to prop up his employer's subjective discriminatory animus by proving that it was rooted in some objective truth"); *Fogleman v. Mercy Hosp., Inc.*, 283 F.3d 561, 565, 571-72 (3d Cir. 2002) ("The laws, therefore, focus on the employer's subjective reasons for taking adverse action against an

employee, so it matters not whether the reasons behind the employer's discriminatory animus are actually correct as a factual matter."); *Venters v. City of Delphi*, 123 F.3d 956, 973 (7th Cir. 1997) (reasoning that where the plaintiff alleged she "did not measure up to the religious criteria [her supervisor] had articulated," relevant evidence was not of her actual religious beliefs, but her employer's state of mind regarding its perceived religious shortcomings).

The Supreme Court made clear in *Price Waterhouse*, that employment decisions that rely on "sex-based considerations" or which "take gender into account" are sex discrimination under Title VII. *See* 490 U.S. at 241-42 (to support sex discrimination claim, a plaintiff need only "prove that the employer relied upon sex-based considerations in coming to its decision"). The Court continued, "It is not our job to review the evidence and decide that the negative reactions to Hopkins were based on reality; our perception of Hopkins' character is irrelevant." *Id.* at 258.

Therefore, it is RGGR's intent in firing Stephens—and not her anatomy, children, or marriage—that matters in this case. *See Smith v. Chrysler Corp.*, 155 F.3d 799, 806 (6th Cir. 1998) (in

context of evaluating “the honest belief” rule, observing that “the focus of a discrimination suit is on the intent of the employer” and rejecting argument that “evaluation of an employer’s belief [be done] without requiring that it be reasonably based on particularized facts rather than on ignorance and mythology”); 731 F.3d at 456-57 (5th Cir. 2013) (“In conducting this intent-based inquiry, we focus on the alleged harasser’s subjective perception of the victim.... We do not require a plaintiff to prop up his employer’s subjective discriminatory animus by proving that it was rooted in some objective truth; here, for example, that Woods was not, in fact, ‘manly.’ Rather, in considering the *motivation* behind a harasser’s behavior, we look to evidence of the harasser’s subjective view of the victim.”); *Schwenk v. Hartford*, 204 F.3d 1187, 1202 (9th Cir. 2000) (“What matters ... is that *in the mind of the perpetrator* the discrimination is related to the sex of the victim.”) (emphasis added).

2. Neither the EEOC Claims nor RGGR’s Defenses Support Discovery About Stephen’s Anatomy and Family.

Defendant’s discovery requests regarding Stephens’s anatomy, transition process and family relationships are not relevant to any

claim or defense in this case. Thus, the EEOC is entitled to protection from such discovery in this litigation. *See, e.g., Tribula v. SPX Corp.*, E.D. Mich. Jan. 12, 2009) (“A showing that the proposed discovery is irrelevant can satisfy the “good cause” requirement of Rule 26(c).”)(internal citation and quotation omitted).

Therefore, the Court should enter a protective order preventing RGGR from conducting discovery, either oral or written—via depositions, interrogatories, requests for production, requests for admissions, or physical and mental examination—relating to:

1) Stephens’s genitalia or anatomy; 2) Stephens’s familial relationships; and 3) the status or progress of Stephens’s gender transition process.

V. Rule 26 Protects Against Marginally Relevant Discovery that is Annoying, Embarrassing and Oppressive.

Even if RGGR sought relevant information, which it does not, under Rule 26(b)(2)(C) and 26(c) of the Federal Rules of Civil Procedure, a court has the power and discretion to protect a party by preventing or restricting discovery that is unduly burdensome or under Rule 26(c) annoying, embarrassing or oppressive. *See Fed. R. Civ. P. 26(c)(1); see also Serrano v. Cintas Corp.*, 699 F.3d 884, 902

(6th Cir. 2012) (balancing the burdens of discovery with the need to access the information).

Good cause exists to forbid RGGR's anatomical- and familial-related inquiries here because of the degrading and demeaning effect upon Stephens. The line of RGGR's discovery is analogous to instances where courts have prohibited certain discovery in sexual-harassment cases that was found to be oppressive, annoying, and embarrassing. See *Jenson v. Eveleth Taconite Co.*, 130 F.3d 1287, 1292–93, (8th Cir. 1997) (finding that discovery into plaintiff's history of domestic abuse, emotional illness or stressors, and off-premises relationships “was not relevant or was so remote in time, that it should not have been allowed”); *Katz v. Dole*, 709 F.2d 251, 254 n.3 (4th Cir. 1983) (“A person's private and consensual sexual activities do not constitute a waiver of his or her legal protections against unwelcome and unsolicited sexual harassment.”); *Burns v. McGregor Elec. Indus., Inc.*, 989 F.2d 959, 962–64 (8th Cir. 1993) (holding that appearing nude in photographs in pornographic magazines was not invitation to engage in workplace sexual discourse); *Wilson v. Muckala*, 303 F.3d 1207, 1217 (10th Cir. 2002) (district court properly excluded evidence of alleged harasser's

extramarital affairs and sexual harassment outside of defendant hospital as such evidence was not relevant to plaintiff's sexual harassment claim).

In weighing the respective burden to the parties in this case, good cause exists for a protective order. RGGR's propounded discovery is not probative to a claim or defense in this case, or is at most tangentially relevant. Conversely, victims of discrimination should not have to answer questions about the most intimate aspects of their lives in order to establish a claim for relief. Moreover, the EEOC's ability to eradicate discrimination and obtain relief on behalf of aggrieved individuals would be severely hindered if the EEOC were unable to secure the cooperation of discrimination victims too fearful to come forward.

VI. Conclusion

Because the Commission's claims and Defendant's defenses do not rise or fall depending on Stephens's children, genitalia, or the "status" of her marriage, this Court should prohibit such intrusive, oppressive, annoying, and embarrassing discovery. The Court should enter a protective preventing RGGR from conducting discovery, either oral or written, relating to: 1) Stephens's genitalia;

2) Stephens's familial relationships; and 3) the status or progress of Stephens's gender transition.

Respectfully submitted,

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

Dated: July 14, 2015

s/ Miles Shultz
Miles Shultz (P73555)
Trial Attorney

DETROIT FIELD OFFICE
Patrick V. McNamara
477 Michigan Avenue, Room 865
Detroit, Michigan 48226
Miles.Shultz@EEOC.GOV
Tel. No. (313) 226-6217
Fax No. (313) 226-6584

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2015, I electronically filed the forgoing with the clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all record attorneys.

Dated: July 14, 2015

s/ Miles Shultz
Miles Shultz (P73555)
Trial Attorney

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Exhibit A

**Defendant's *First Set of Interrogatories,
Requests for Documents and Admissions***

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Equal Employment Opportunity,)	
Commission)	
Plaintiff,)	Case No. 14-13710
)	
v.)	HON. SEAN F. COX
)	United States District Court Judge
R.G. & G.R. Harris Funeral Homes, Inc.,)	
)	
Defendant.)	
)	

DEFENDANT R.G. & G.R. HARRIS FUNERAL HOMES, INC. FIRST SET OF INTERROGATORIES, REQUEST FOR DOCUMENTS AND ADMISSIONS TO PLAINTIFF

Now comes Defendant, R.G. & G.R. Harris Funeral Homes, Inc. and serves its first set of discovery requests, which include Interrogatories, requests for documents and request for admissions to be answered by Plaintiff under oath and in writing within the next 30 days in accordance with rules 33, 34, and 36 of the received and working on it as we speak received Federal Rules of Civil Procedure.

INSTRUCTIONS

1. The answers to these interrogatories, request for production of documents, and requests for admissions must include all information known to plaintiff (EEOC), Stephens, its affiliates, its attorneys, investigators, experts, and agents, and all information otherwise reasonably available to plaintiff.

2. These interrogatories, request for production of documents, and requests for admissions are deemed to be continuing in nature, so that any information defendant receives after its filing and serving of initial responses, which could cause any deletion

from, addition to, or modification of its responses shall merely be served on counsel for the defendant.

3. For any questions answered in whole or in part with "the investigation is continuing," or any substantially similar indication of a lack of finality in the response or absence of response, state the nature of such continuing investigation, the name, most recent available address and telephone number of each person and entity conducting each such investigation, the projected completion date of each such investigation.

4. Identify by date, sender, receipt, location and custodian of each document, which contains information that forms a basis for the answer given or which corroborates the answer given for the substance of what is given in answer to an interrogatory.

5. When used in conjunction with the term "document," "identify" means to state the title of the document subject matter, its date, its author(s), its recipient(s), and its location in present custodian. In the case of a document that was, but is no longer in the possession, custody or control of defendant or its agents, state what disposition was made of it, why, when, and by whom.

6. The following terms shall have the meanings indicated below:

a. "Person" means natural persons, companies, corporations, holding companies, subsidiaries, parent companies, partnership, sole proprietorships, agencies, associations, federations, groups, facilities or any other kind of entity.

b. "Document" means any electronic, printed, typewritten, handwritten, or otherwise recorded matter of whatever character, including, but not limited to, electronic mail, letters, purchase orders, memoranda, notes, catalogs, brochures, diaries, reports, calendars, interoffice communications, statements,

announcements, photographs, tape recordings, motion pictures and any carbon or photographic copies of such material if plaintiff does not have custody or control of the original.

7. All requested documents shall be produced to defendant on a CD, DVDs, or thumb Drive. Unless otherwise specified, the documents shall be in PDF OCR format.

8. Any requested documents or records maintained by defendant in an electronic format shall be produced to plaintiff on a CD, DVDs or thumb Drive in same format they are stored in the ordinary course of business, were in Microsoft Excel or PDF OCR recognizable format. If records are produced in a format, other than the format they are stored in the ordinary course of business, plaintiff shall indicate the format in which the documents are stored in the ordinary course of business.

INTERROGATORIES

Interrogatory No. 1: State the current full legal name of the person you identified in your Amended Complaint as "Aimee Stephens."

REPLY:

Interrogatory No. 2: State whether Stephen's name has ever been legally changed and, if so, state each change made and the date each change was made.

REPLY:

Interrogatory No. 3: State in detail and with specificity what you mean, in paragraph 10 of your Amended Complaint, when you state that "Stephens" is a "transgender woman."

REPLY:

Interrogatory No. 4: State whether Stephens is the natural/biological father of any offspring and, if so, state the name, sex, and date of birth of each such offspring.

REPLY:

Interrogatory No. 5: State whether Stephens has ever been married to a woman and, if so, identify Stephens' wife or wives and the dates of such marriage(s), and the current status of such marriage(s).

REPLY:

Interrogatory No. 6: State whether Stephens was born a biological male.

REPLY:

Interrogatory No. 7: State whether Stephens currently has male sexual organs, including but not limited to, a penis and testicles.

REPLY:

Interrogatory No. 8: State whether Stephens has had any surgery performed to remove or modify any male sexual organs or has had any "sex reassignment surgery." If so state the date(s) any such surgery was performed, the location where it was performed, and the names of all medical doctors, medical personnel, and other persons performing or assisting with such surgery.

REPLY:

Interrogatory No. 9: Prior to August 2013, state whether Stephens informed any employee of the Defendant of any intention of altering Stephens' physical appearance and "presenting" as a woman as expressed in the August 2013 letter? (attached hereto) If so identify the employee(s), the manner of the communication, the date of the communication, the substance of the communication, and any other information relating directly or indirectly to this Interrogatory.

REPLY:

Interrogatory No. 10: Prior to August 2013, state whether Stephens ever "presented" as a woman at defendant's place of business while employed by Defendant? If Yes, identify the date(s) when Stephens did so, any witnesses to the presentation, describe any alleged reaction, adverse or otherwise from Defendant, and any other information relating directly or indirectly to this Interrogatory.

REPLY:

Interrogatory No. 11: Prior to August 2013, state whether Stephens ever "presented" as a woman in public? If so, describe with specificity Stephens' habits of "presenting" as a woman in public, the frequency, the date(s), the location(s), and any other information relating directly or indirectly to this Interrogatory.

REPLY:

Interrogatory No. 12: Prior to August 2013, state whether Stephens confided in, informed, or in any way communicated to any member(s) of his family, including but not limited to, his wife, his children, his parents, or any other relative, that Stephens was a "transgender woman" as stated in paragraph 10 of your Amended Complaint? If so, identify each such person to whom Stephens communicated, the date(s) of such communication(s), the substance of the communication(s), and any other information relating directly or indirectly to this Interrogatory.

REPLY:

Interrogatory No. 13: State with specificity the nature and amount of any and all damages you are claiming against the Defendant in this proceeding, including how you calculated such amount, any nonmonetary relief that you seek, and the facts you claim support such damages and nonmonetary relief.

REPLY:

Interrogatory No. 14: State whether Stephens has undergone any hormone treatment or therapy on account of or in furtherance of Stephens' claim that Stephens is a "transgender woman," whether for the purpose of creating, enhancing, or exhibiting any "female" physical traits or characteristics. If so state the nature of all such treatment(s) or therapy(ies), the date(s) any such hormone treatment(s) or therapy(ies) was performed, the location(s) where it was performed, and the name(s) of all medical doctors, medical personnel, and other persons performing or assisting with such treatment or therapy.

REPLY:

Interrogatory No. 15: Identify each and every doctor, psychologist, psychiatrist, health care professional, and any other person who evaluated, assessed or treated Stephens for any of Stephens' claimed conditions (including but not limited to transgenderism, gender dysphoria, or gender identity disorder) that form the basis of your Amended Complaint and the contents of the August 2013 letter (attached hereto). Identify each individual by name, address, professional title, contact information, and any other information relative to this interrogatory.

REPLY:

Interrogatory No. 16: In the August 2013 letter authored by Stephens (attached hereto), Stephens states "with the support of my loving wife, I have decided to become the person that my mind already is." State with specificity what "support" Stephens is referring to, whether Stephens' wife still supports this decision, and the current state of Stephens' marriage to his wife, and any other information relating to this Interrogatory.

REPLY:

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Provide all medical, counseling, therapeutic, and other professional records relating to Stephens' diagnosis of, treatment for, and gender-transition on account of, gender identity disorder, gender dysphoria, transgenderism, or any other condition related directly or indirectly to your or Stephens' claim that Stephens is a "transgender woman" and was "undergoing a gender transition from male to female."

REPLY:

2. Provide all documents, including pleadings, petitions, court orders, and other public records, relating directly or indirectly to any change of Stephens' legal name.

REPLY:

3. Provide Stephens' Birth Certificate(s), including any pleadings, petitions, court orders, or other public records amending or modifying any of Stephens' Birth Certificate(s).

REPLY:

4. Provide all marriage licenses and certificates of marriage to which Stephens has ever been a party.

REPLY:

5. Provide all pleadings, petitions, court orders, or other public records related directly or indirectly to any dissolution of a marriage to which Stephens has ever been a party.

REPLY:

6. Provide all EEOC records related, directly or indirectly, to the EEOC's consideration, investigation, and prosecution of the claims asserted in the EEOC's Amended Complaint.

REPLY:

7. Provide all EEOC records, including but not limited to, internal memos, letters, press releases, telephone and electronic records, and other records related directly or indirectly to the EEOC's decisions to prosecute transgender complaints under Title VII's "sex" discrimination provisions.

REPLY:

8. Provide all correspondence, written and oral, including but not limited to, emails, letters, electronic correspondence, notes, between Stephens and any employee of defendant from January 2010 to the present.

REPLY:

9. Provide all documents, records, and communications, written and oral, including but not limited to, emails, letters, electronic correspondence, medical or other files, and notes, of the individual identified as Cecelia M. Hanchon, LMSW, relating directly or indirectly to Stephens, from January 2010 to the present.

REPLY:

10. Provide all documents, records, and communications, written and oral, including but not limited to, emails, letters, electronic correspondence, medical or other files, and notes, of any health care professionals, other than Cecelia M. Hanchon, relating directly or indirectly to Stephens, from January 2010 to the present.

REPLY:

REQUEST FOR ADMISSIONS

1. Admit that at all times during the year 2013, including August 15, 2013, Stephens was anatomically a male – that is, that Stephens was chromosomally a male and had male genitalia.

REPLY:

2. Admit that at all times during Stephens' employment with R.G. & G.R. Funeral Homes, Inc., Stephens accepted the clothing allowance the Funeral Homes provided and either purchased or received professional male clothing with such clothing allowance.

REPLY:

3. Admit that, during Stephens' employment with Defendant, Stephens never dressed or "presented" as a woman.

REPLY:

4. Admit that, prior to the letter Stephens authored in August 2013 Stephens never asked the Defendant for permission or leave to deviate from the Defendant's male dress or grooming code. ▸

REPLY:

5. Admit that, in this proceeding, the EEOC is contending that "transgender" is a protected class under Title VII, irrespective of whether gender- or sexual-stereotyping has occurred or not.

REPLY:

6. Admit that in this action, the EEOC considers Stephens to be a female and not a male for purposes of determining whether discrimination on the basis of "sex" has occurred under Title VII.

REPLY:

7. Admit that, while working for Defendant prior to August 2013, Stephens never received any comment from Defendant management regarding Stephens' dress or grooming.

Respectfully submitted,

KIRKPATRICK LAW OFFICES, P.C.

/s/ Joel J. Kirkpatrick

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Attorneys for Defendant Funeral Home

Dated: June 18, 2015

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via PDF email and regular mail to Counsel for Plaintiff on June 18, 2015:

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S/Joel J. Kirkpatrick
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