

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.	)	Hon. Sean F. Cox
	)	Magistrate Judge
R.G. & G.R. HARRIS FUNERAL	)	David R. Grand
HOMES, INC.,	)	
	)	
Defendant.	)	

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**Reply in Support of EEOC’s Motion for Protective Order**

Discovery is allowed when relevant, but RGGR’s discovery extends beyond that limit. For this reason, and because RGGR’s brief fails to respond to the EEOC’s key points, this Court should enter a protective order prohibiting the challenged discovery.

**I. The Term “Transgender” Does Not Open the Door to the Challenged Discovery Requests**

RGGR states that there are more than two claims in this lawsuit, but there are only two: 1) RGGR terminated Stephens because of sex and 2) RGGR’s dress allowance discriminates based on sex. RGGR argues the Commission ignores two additional claims: that RGGR terminated Stephens (a) because she is

transgender and (b) because of her transition from male to female. These are not additional claims, however; they exemplify the sex-based considerations RGGR used to fire Stephens. The Court rejected these two examples as stand-alone legal theories,<sup>1</sup> but even as to the transgender and transitioning theories, what is relevant is that Stephens was assigned the male sex at birth and intended to present as a female. RGGR's discovery goes far beyond these relevant facts and into the realm of annoying and embarrassing inquires.

RGGR implies that it needs answers to the disputed discovery to understand what "transgender" and "transitioning from male to female" mean. Dkt. 25 at Pg ID 316 ("by no means a term of art or universally understood descriptor") and Pg ID 327 ("cannot even properly apprehend the nature of the charges"). But to claim that discovery is necessary to "understand"<sup>2</sup> the nature of the EEOC's

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<sup>1</sup> The remaining theory of sex discrimination is sex stereotyping. The EEOC is not waiving its right to appeal the Court's ruling regarding Stephens's gender identity and transition.

<sup>2</sup> RGGR misrepresents the holding of *Hispanic Aids Forum v. Bruno*, 759 N.Y.S.2d 291 (N.Y. Sup. 2003). Dkt. 25 at Pg ID 313. The *Bruno* court found that "since the status of a transgendered individual is not dependent upon their physical anatomy (see n 1), information about the anatomical sex of HAF's clients, and whether and when

claim is disingenuous. See Dkt. 25 at Pg ID 324 (conceding that an “average member of the public” would understand the term “transgender”).

The EEOC responded to RGGR’s interrogatory that asked what the Complaint means when it says that Stephens “is a ‘transgender woman’”: “Stephens is a transgender woman because her gender identity, female, is different than the sex assigned to her at birth, male.” Exhibit B, Commission’s Response to Interrogatory No. 3. To be clear, the EEOC agrees that there are some relevant facts that do not cross the line into unduly embarrassing inquiries—and the EEOC responded to these. The problem is that the challenged discovery seeks far more.

RGGR largely ignores case law cited in the EEOC’s opening brief on the importance of an employer’s subjective intent. RGGR merely notes that in one case, the opinion began by briefly stating the plaintiff’s (true) national origin. *EEOC v. WC&M Enters., Inc.*, 496 F.3d 393, 396 (5th Cir. 2007). RGGR’s conclusion that “the true facts were obviously considered relevant” is incorrect. Dkt. 25

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such clients underwent physical procedures, is immaterial.” 759 N.Y.S.2d at 295.

at Pg ID 320. Neither the outcome nor the analysis of *WC&M* would have changed if the plaintiff had, in reality, been from a country other than India. 496 F.3d at 401. Again, Stephens’s gender identity is relevant to this lawsuit—areas regarding her anatomy and family are not.

Importantly, it is RGGR’s motivation that is at issue: did RGGR use “sex-based considerations” in terminating Stephens? See *EEOC v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028, 2033 (2015) (holding that Title VII “prohibits certain *motives*, regardless of the state of the actor’s knowledge”). The question is not whether RGGR’s “negative reactions to [Stephens] were based on reality.” *Price Waterhouse*, 490 U.S. at 258.

The EEOC’s claim is that RGGR terminated Stephens because of her sex when it used illegal sex-based motivations. Indeed, RGGR admits this: “Stephens is a biological man who presented *inconsistently with his sex...*” *RGGR’s Response*, Dkt. 25 at Pg ID 328 (emphasis added). RGGR’s use of the word “inconsistent” establishes that, in RGGR’s mind, Stephens did not conform to RGGR’s sex-based stereotypes and expectations for how someone assigned the male sex at birth should present.

## **II. Harm Exists to Warrant a Protective Order**

Having to respond to such discovery would discourage victims of discrimination from coming to the EEOC. Dkt. 23 at Pg ID 286.<sup>3</sup> RGGR failed to respond to this argument.

RGGR's attempt to distinguish analogous, sexual-harassment case law misses the mark. Similar to rape-shield laws, these cases stand for the principle that sensitive, intimate information is not made relevant because it relates generally to the same area of life alleged in a lawsuit. The EEOC is not seeking a special standard for suits involving gender identity—but where discovery is embarrassing, annoying, or oppressive, good cause exists to prohibit it.

RGGR asserts that discovery regarding Stephens's biological "offspring" is necessary to determine if she is a "man or a woman." Dkt. 25-1 at Pg ID 332. There are many reasons one may or may not have children, but none of them is relevant to this case. Stephens's gender identity is relevant to the Title VII, sex-

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<sup>3</sup> *Cf. Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1065 (9th Cir. 2004) (affirming a protective order stating, "The chilling effect such discovery could have on the bringing of civil rights actions unacceptably burdens the public interest.")

discrimination claim; the challenged discovery is not.

Similarly, the EEOC's news release and Complaint do not air any of the highly personal matters sought in the challenged discovery. Dkt. 25 at Pg ID 324. Stephens's gender identity is not embarrassing or demeaning.

### **III. RGGR's Dress Code Fails to Support the Discovery**

RGGR's gender-based stereotypes—including but not limited to the manifestation in its dress code—are discriminatory. RGGR's desire to force Stephens to present as a male at work is a gender-based consideration that establishes RGGR terminated Stephens because of her sex.

Even if RGGR's desire to apply its dress code is a legitimate, nondiscriminatory reason for terminating an employee, the question would be whether this was *actually* RGGR's motive for terminating Stephens. To answer that question, information about Stephens's reproductive history, anatomy, and so forth—unknown to RGGR at the time—are irrelevant.

RGGR's reliance on *Johnston v. University of Pittsburgh*, 2015

WL 1497753 (W.D. Penn. March 31, 2015),<sup>4</sup> is unavailing. Dkt. 25 at Pg ID 318. *Johnston* states, “The Court recognizes that other courts have declined to follow the definition articulated in *Ulane*. See, e.g., *Smith v. City of Salem, Ohio*, 378 F.3d 566, 573 (6th Cir.2004).” *Johnston* at \*9 n.14. Thus, *Johnston* does not help RGGR in the Sixth Circuit. Further, the facts in *Johnston* differ from this case because that plaintiff did “not allege[] that Defendants discriminated against him because of the way he looked, acted, or spoke.” *Johnston* at \*17. In contrast, the EEOC alleges that RGGR terminated Stephens because of the way she intended to look.

#### **IV. Conclusion**

The challenged discovery is not only irrelevant but also demeaning and embarrassing, and it would chill individuals from bringing allegations of employment discrimination. Because ample good cause exists for the protection the EEOC seeks, the Court should forbid this discovery.

Respectfully submitted,

Dated: August 7, 2015

s/ Miles Shultz  
Miles Shultz (P73555)

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<sup>4</sup> An appeal is pending in *Johnston*. No. 15-2022 (3rd Cir. filed April 24, 2014).

**CERTIFICATE OF SERVICE**

I hereby certify that on August 7, 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: August 7, 2015

s/ Miles Shultz  
Miles Shultz (P73555)  
Trial Attorney

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**INDEX OF EXHIBIT**

Exhibit B: Commission's Response to Defendant's *First Set of Interrogatories, Requests for Documents and Admissions*

**Exhibit B**

**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
	)	
R.G. & G.R. Harris	)	
Funeral Homes, Inc.,	)	
Defendant.	)	
_____	)	

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

General Objections

Plaintiff objects to Defendant’s general instructions and definitions to the extent that they may be construed as placing an obligation or responsibility upon Plaintiff beyond that required by the Federal Rules of Civil Procedure.

Plaintiff objects to Defendant’s First Set of Interrogatories, Request for Documents and Admissions to the extent that they request information that is equally available to the Defendant. Plaintiff responds that all answers are based upon information presently available after diligent investigation. Plaintiff reserves the right to supplement or amend its answers should additional information become available at a later point. In addition, answers will be supplemented by lists of witnesses, lists of exhibits, depositions, and other pleadings and letters.

INTERROGATORIES

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

REPLY: Aimee Australia Stephens.

**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: Stephens’s name was changed from William Anthony Beasley Stephens on August 30, 2013.

**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:

Transgender refers generally to gender nonconforming individuals, especially those whose gender identity (i.e., inner sense of being male or female) or gender expression (i.e., outward appearance, behavior, and other such characteristics that are culturally associated with masculinity and femininity) is different from the sex assigned to the person at birth. Stephens is a transgender woman because her gender identity, female, is different than the sex assigned to her at birth, male.

**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: The Commission objects to this interrogatory for the reasons articulated in its July 14, 2015, Motion for a Protective Order. This request is irrelevant, annoying, embarrassing, and oppressive.

**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: The Commission objects to this interrogatory for the reasons articulated in its July 14, 2015, Motion for a Protective Order. This request is irrelevant, annoying, embarrassing, and oppressive.

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

REPLY: The Commission objects to this interrogatory for the reasons articulated in its July 14, 2015, Motion for a Protective Order. This request is irrelevant, annoying, embarrassing, and oppressive.

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

REPLY: The Commission objects to this interrogatory for the reasons articulated in its July 14, 2015, Motion for a Protective Order. This request is irrelevant, annoying, embarrassing, and oppressive.

**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: The Commission objects to this interrogatory for the reasons articulated in its July 14, 2015, Motion for a Protective Order. This request is irrelevant, annoying, embarrassing, and oppressive.

**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: The Commission objects to this interrogatory for the reasons articulated in its July 14, 2015, Motion for a Protective Order. This request is irrelevant, annoying, embarrassing, and oppressive.

**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: The Commission objects to this interrogatory for the reasons articulated in its July 14, 2015, Motion for a Protective Order. This request is irrelevant, annoying, embarrassing, and oppressive.

**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: The Commission objects to this interrogatory for the reasons articulated in its July 14, 2015, Motion for a Protective Order. This request is irrelevant, annoying, embarrassing, and oppressive.

**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: The Commission objects to this interrogatory for the reasons articulated in its July 14, 2015, Motion for a Protective Order. This request is irrelevant, annoying, embarrassing, and oppressive.

**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: Plaintiff described the nature and method for calculating damages in its June 5, 2015, Rule 26 initial disclosures. Additionally, the EEOC seeks injunctive and equitable relief regarding the financial difficulties and feelings of humiliation caused by RGGR. This case is in the early stages of discovery, and a specific damage calculation is not available at this time. The Commission will supplement this response as discovery progresses.

**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: The Commission objects to this interrogatory for the reasons articulated in its July 14, 2015, Motion for a Protective Order. This request is irrelevant, annoying, embarrassing, and oppressive.

**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: The Commission objects to this interrogatory for the reasons articulated in its July 14, 2015, Motion for a Protective Order. This request is irrelevant, annoying, embarrassing, and oppressive.

**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: The Commission objects to this interrogatory for the reasons articulated in its July 14, 2015, Motion for a Protective Order. This request is irrelevant, annoying, embarrassing, and oppressive.

**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: The Commission objects to this request for the reasons articulated in its July 14, 2015, Motion for a Protective Order. This request is irrelevant, annoying, embarrassing, and oppressive.

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: See No. 471-2013-02147 (EEOC002816-EEOC0002817).

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: The Commission objects to this request for the reasons articulated in its July 14, 2015, Motion for a Protective Order. This request is irrelevant, annoying, embarrassing, and oppressive.

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

REPLY: The Commission objects to this request for the reasons articulated in its July 14, 2015, Motion for a Protective Order. This request is irrelevant, annoying, embarrassing, and oppressive.

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: The Commission objects to this request for the reasons articulated in its July 14, 2015, Motion for a Protective Order. This request is irrelevant, annoying, embarrassing, and oppressive.

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: On June 5, 2014, the EEOC produced non-privileged documents located in administrative charge file No. 471-2013-02147 (EEOC000001-EEOC0002815). Additionally, the EEOC produced a privilege log, and hereby incorporates those privilege objections, which identified and described the documents or redactions withheld.

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: Plaintiff objects to this request as it is overly broad, vague, ambiguous, irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and seeks privileged information.

The EEOC objects that this request seeks matters wholly unrelated to the claims or defenses pertaining to whether R.G. & G.R. Harris maintained a discriminatory clothing allowance or fired Ms. Stephens because of sex.

Plaintiff objects to the extent that this document request seeks the legal reasoning and, therefore attorney work product regarding the theories of plaintiff's case.

The Commission asserts the protection of the attorney-client privilege for communications between Commission attorneys and EEOC personnel. These communications contain legal advice sought and given with respect to the initiation of litigation, made in confidence between Commission attorneys and their clients.

“In the governmental context, the ‘client’ may be the agency and the attorney may be an agency lawyer.” *Tax Analysts v. IRS*, 117 F.3d 607, 618 (D.C. Cir. 1997). *See also In re Lindsey*, 148 F.3d 1100, 1104 (D.C. Cir. 1998) (“[c]ourts, commentators, and government lawyers have long recognized a government attorney-client privilege in several contexts”). *See Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854, 863 (D.C. Cir. 1980) (the privilege applies to governmental communications if “the Government is dealing with its attorneys as would any private party seeking advice to protect personal interests, and needs the same assurance of confidentiality so it will not be deterred from full and frank communications with its counselors”). *Cf. Upjohn Co. v. United States*, 449 U.S. 383, 394, 101 S. Ct. 677, 685, 66 L. Ed. 2d 584 (1981) (privilege exists for communications between attorneys and corporate employees, where communications were made to provide legal advice to the corporation involving matters within the scope of the employees’ duties).

Finally, the EEOC objects to the extent that this request seeks material protected by the deliberative-process privilege. These documents reflect the opinions and mental impressions of the Commission, including the discussions between and among the legal and leadership personnel at the Commission, and if revealed would reveal the internal deliberative-process between Commission personnel which occurred during the investigation and pre-litigation decisional process.

The deliberative process privilege “rests on the obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news.” *Dept. of Interior v. Klamath Water Users Protective Assn*, 532 U.S. 1, 8-9 (2001). Thus, the privilege is intended to “enhance ‘the quality of agency decisions,’ by protecting open and frank discussion among those who make them within the Government.” *Id.* at 9, 121 S. Ct. at 1066 (quoting *Sears*, 421 U.S. at 151, 95 S. Ct. 1504); *See also Norwood v. FAA*, 993 F.2d 570, 577 (6th Cir. 1993) (quoting *Dudman Communications Corp. v. Department of Air Force*, 815 F.2d 1565, 1568 (D.C. Cir. 1987)) (the deliberative process privilege applies when “the disclosure of materials would expose an agency’s decisionmaking process in such a way as to discourage candid discussion within the agency and thereby undermine the agency’s ability to perform its functions”).

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: See EEOC000040-EEOC000045.

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: Plaintiff objects to this request to the extent it seeks discovery of areas in the Commission's July 14, 2015, Motion for a Protective Order. Discovery regarding those areas is irrelevant, annoying, embarrassing, and oppressive.

Subject to this objection, see EEOC0002818-EEOC0002837.

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: Plaintiff objects to this request to the extent it seeks discovery of areas in the Commission's July 14, 2015, Motion for a Protective Order. Discovery regarding those areas is irrelevant, annoying, embarrassing, and oppressive.

Subject to this objection, the Commission is in the process of gathering relevant medical records and will supplement this response accordingly.

### **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: The Commission objects to this request for the reasons articulated in its July 14, 2015, Motion for a Protective Order. This request is irrelevant, annoying, embarrassing, and oppressive.

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: Admitted.

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

REPLY: The Commission objects to this request for the reasons articulated in its July 14, 2015, Motion for a Protective Order. This request is irrelevant, annoying, embarrassing, and oppressive.

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: Admit.

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: Plaintiff objects that this request pertains to a question of law and is therefore not a proper subject for an admission. Further, Plaintiff alleges that Defendant violated Title VII when it fired 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.

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: Denied. This request is confusing. Plaintiff alleges that Defendant violated Title VII when it fired 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.

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

REPLY: Admit that Stephens never received a negative comment about her dress or clothing from Defendant's management, though Stephens received positive accolades from time to time.

Respectfully submitted,

Dated: July 21, 2015

/s/ Miles Shultz  
MILES SHULTZ (P73555)  
Trial Attorney

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served via electronic mail to  
Counsel for Defendant on July 21, 2015:

Joel Kirkpatrick, Esq.  
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*/s/ Miles Shultz*  
MILES SHULTZ (P73555)