

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.)	

Motion for Summary Judgment

Pursuant to Fed. R. Civ. P. 56, the Plaintiff Equal Employment Opportunity Commission moves for summary judgment on the grounds that there is no material factual dispute that the Defendant discharged Aimee Stephens because of sex.

The Commission further states neither the First Amendment to the Constitution nor the Religious Freedom Restoration Act authorizes the discharge of employees on the basis of sex, thus Defendant’s affirmative defenses must fail as a matter of law.

Finally, the Commission states that there is no material factual dispute with respect to Defendant’s clothing allowance, which provided

free clothing benefits to male employees and nothing to females until October 2014. Since that time, Defendant has provided stipends to women which are less than the value of the benefit provided to men. Both fringe-benefit policies constitute sex discrimination in violation of Title VII.

The Commission respectfully directs the Court to the attached memorandum for the arguments supporting this Motion.

The Commission sought concurrence in this motion from defense counsel on February 1, 2016 and said concurrence was denied.

Wherefore, the Commission respectfully moves for summary judgment in its favor.

Respectfully submitted,

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

s/ Miles Shultz
MILES SHULTZ (P73555)
Trial Attorney

s/ Katie Linehan
KATIE LINHAN (P77974)
Trial Attorney

Dated: April 7, 2016

s/ Dale Price
DALE PRICE (P55578)
Trial Attorney

DETROIT FIELD OFFICE
Patrick V. McNamara
477 Michigan Avenue, Room 865
Detroit, Michigan 48226
Dale.Price@EEOC.GOV
Tel. No. (313) 226-7808
Fax No. (313) 226-6584

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.)	

**Memorandum in Support of Plaintiff EEOC's
Motion for Summary Judgment**

Table of Contents

Statement of the Issues.....	iv
Table of Authorities	ix
Controlling Authority.....	ix
Index of Exhibits	x
I. Introduction	1
A. Overview of the Case.	1
B. The Affirmative Defenses	2
C. Thomas Rost Limits His Religious Exercise.	4
D. RGGR does not operate as a religious enterprise.	5
E. Rost’s religious beliefs about men and women motivated him to fire Stephens.	8
F. Defendant’s Clothing-Allowance Policy.....	10
II. Relevant Law	12
A. Rule 56 Standard	12
B. First Amendment Free Exercise Standard	13
C. RFRA Standard.....	14

III. Arguments.....	15
A. The Commission Has Not Violated Defendant’s Free- Exercise rights.	15
B. Defendant’s RFRA defense should be rejected.....	17
1. The Commission does not contest Defendant’s religious sincerity.	17
2. Defendant’s Religious Exercise at RGGR is Not Affected by Title VII Enforcement.....	18
3. Enforcement of Title VII does not substantially burden Defendant.....	21
4. Enforcement of Title VII here furthers a compelling governmental interest in eradicating sex discrimination and is precisely tailored to further that interest.	24
C. Summary Judgment as to liability for Stephens’s gender-motivated termination is warranted.....	26
D. Defendant’s Clothing-Allowance Policy Constitutes Sex-Based Discrimination.	32
IV. Conclusion	34

Statement of the Issues

1. Title VII is a neutral rule of general applicability which applies to businesses operated by non-religious and religious persons alike. Does the Commission's attempt to vindicate Aimee Stephens's Title VII rights violate Defendant's rights under the First Amendment Free Exercise Clause?

The Commission answers "No."

2. The Religious Freedom Restoration Act prohibits the government from substantially burdening a sincere religious exercise unless such is done in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. Defendant admits that it would not have had to change any of its religious practices if it had continued to employ Stephens, and has only asserted that Rost's beliefs have been impinged upon. Protection of the Title VII rights of employees is a compelling governmental interest, and Title VII is precisely tailored to further that interest. Does RFRA trump this enforcement action under Title VII?

The Commission answers "No."

3. The Defendant's owner and sole decisionmaker has admitted that his decision to fire Aimee Stephens was motivated by his beliefs and attitudes about how men and women are supposed to act and present themselves. Are these testimonial admissions sufficient to warrant summary judgment in favor of the Commission as to liability for Aimee Stephens's termination?

The Commission answers "Yes."

4. Until October 2014, Defendant provided a fringe benefit by which male employees were granted a clothing allowance of suits and ties free of charge, including free replacements as they wore out,

whereas female employees were given nothing. The approximate value of a suit and tie is \$235. Since October 2014, the female employees have been given annual stipends of either \$75 or \$150 depending upon whether they are part- or full-time, while the male employee benefit has remained the same. Do the pre- and post-October 2014 fringe benefit policies violate Title VII, warranting summary judgment in favor of the Commission?

The Commission answers “Yes.”

Table of Authorities

	Page(s)
Constitution	
U.S. Const. amend. I	12, 23, 34
Cases	
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317 (1986).....	12
<i>EEOC v. Preferred Mgmt. Corp.</i> , 216 F. Supp. 2d 763 (S.D. Ind. 2002).....	16, 22, 23, 25
<i>EEOC v. Townley Engineering & Mfg. Co.</i> , 859 F.2d 610 (9th Cir. 1988).....	16
<i>Employment Division v. Smith</i> , 494 U.S. 872 (1990).....	28, 29
<i>Fabian v. Hospital of Central Connecticut</i> , No. 3:12-cv-1154, __F. Supp. 3d __, 2016 WL 1089178 (D. Conn. March 18, 2016).....	28
<i>General Tel. Co. of the Northwest, Inc. v. EEOC</i> , 446 U.S. 318 (1980).....	16
<i>Hansen v. Ann Arbor Pub. Schools</i> , 293 F. Supp. 2d 780 (E.D. Mich. 2003).....	13
<i>Henderson v. Kennedy</i> , 253 F.3d 12 (D.C.Cir.2001).....	19
<i>Hobby Lobby v. Sebelius</i> , 723 F.3d 1114 (10th Cir. 2013), <i>aff'd sub nom Burwell v.</i> <i>Hobby Lobby Stores, Inc.</i> , 134 S. Ct. 2751 (2014)	17, 24

Holt v. Hobbs,
 135 S. Ct. 853 (2015)..... 19

Kaemmerling v. Lappin,
 553 F.3d 669 (D.C. Cir. 2008) 15

Laffey v. Northwest Airlines, Inc.,
 567 F.2d 429 (D.C. Cir. 1976) 32

Long v. Ringling Brothers-Barnum & Bailey Combined Shows,
 9 F.3d 340 (4th Cir. 1993) 32-33

Lyng v. Nw. Indian Cemetery Protective Ass'n,
 485 U.S. 439 (1988)..... 21

McKnight v. MTC,
 2015 WL 7730995 (N.D. Tex. Nov. 9, 2015) 19, 20

Michigan Cath. Conf. v. Burwell,
 807 F.3d 738 (6th Cir. 2015) (*Burwell II*)..... 14, 21

Michigan Catholic Conf. v. Burwell,
 755 F.3d 372 (6th Cir. 2014), vacated and remanded, 135
 S. Ct. 1914..... 14, 15, 21, 24

Mt. Elliott Cemetery Ass'n. v City of Troy,
 171 F.3d 398 (6th Cir. 1999)..... 13

Myers v. Cuyahoga Cty.,
 182 Fed. Appx. 510 (6th Cir. 2006)..... 27

Oncale v. Sundowner Offshore Services, Inc.,
 523 U.S. 75 (1998)..... 27

Price Waterhouse v. Hopkins,
 490 U.S. 228 (1989)..... 27, 28, 29

Sims v. Memphis Processors, Inc.,
 926 F.2d 524 (6th Cir. 1991)..... 12

<i>Smith v. City of Salem</i> , 378 F.3d 566 (6th Cir. 2004).....	27, 28, 29
<i>Thomas v. Review Bd. of Ind. Employment Sec. Div.</i> , 450 U.S. 707, 101 S.Ct. 1425, 67 L.Ed.2d 624 (1981)	19
<i>Estate of Thornton v. Caldor, Inc.</i> , 472 U.S. 703 (1985).....	22
<i>Wexler v. White’s Fine Furniture, Inc.</i> , 317 F.3d 564 (6th Cir. 2003).....	26
<i>Wilson v. James</i> , __F. Supp. 3d__, 2015 WL 5952109 (D.D.C. 2015)	18, 19
Statutes	
42 U.S.C. § 2000bb–1(a), (b).....	14, 18
42 U.S.C. § 2000e–1(a)	16
42 U.S.C. § 2000e-2(a)(1).....	32
Regulations	
29 C.F.R. §1604.9(a)–(b).....	32
Rules	
Fed. R. Civ. P. 56.....	12

Controlling Authority

Employment Division v. Smith, 494 U.S. 872 (1990).

Burwell v. Hobby Lobby Stores, Inc., 134 S. Ct. 2751 (2014)

Smith v. City of Salem, 378 F.3d 566 (6th Cir. 2004).

Michigan Catholic Conf. v. Burwell, 755 F.3d 372 (6th Cir. 2014),
vacated and remanded, 135 S. Ct. 1914; affirmed after remand, 807
F.3d 738 (6th Cir. 2015).

Mt. Elliott Cemetery Ass'n. v City of Troy, 171 F.3d 398 (6th Cir. 1999).

Hansen v. Ann Arbor Pub. Schools, 293 F. Supp. 2d 780 (E.D. Mich.
2003).

Index of Exhibits

Exhibit A, Stephens Letter

Exhibit B, Rost 30(b)(6) Dep.

Exhibit C, Notice of 30(b)(6) Dep.

Exhibit D, Daily Bread Devotional

Exhibit E, Jesus card

Exhibit F, Shaffer Dep.

Exhibit G, RGGR Mission Statement

Exhibit H, Nemeth Dep.

Exhibit I, Kish Dep.

Exhibit J, Cash Dep.

Exhibit K, Crawford Dep.

Exhibit L, Matthew Rost Dep.

Exhibit M, McKie Dep.

Exhibit N, Kowalewski Dep.

Exhibit O, Rost Dep.

Exhibit P, Clothing Allowance Benefits Checks

Exhibit Q, Stephens Dep.

Exhibit R, Articles of Incorporation

Exhibit S, Dress Code

Exhibit T, Defendant's Responses to Plaintiff's First Set of Discovery Requests

Case 1, *Fabian v. Hospital of Central Connecticut*, No. 3:12-cv-1154, __ F. Supp. 3d __, 2016 WL 1089178 (D. Conn. March 18, 2016)

Case 2, *McKnight v. MTC*, 2015 WL 7730995 (N.D. Tex. Nov. 9, 2015)

Case 3, *Wilson v. James*, __ F. Supp. 3d __, 2015 WL 5952109 (D.D.C. 2015)

I. INTRODUCTION

A. Overview of the Case.

The Equal Employment Opportunity Commission brought this Title VII case alleging sex discrimination. The case stems from a Charge filed by Aimee Stephens, who is a transgender woman and served as a funeral director/embalmer for the Defendant for nearly six years under the name of Anthony Stephens. It is undisputed that Stephens was a capable, competent employee who was not fired for performance reasons.

The Commission's Complaint alleged, *inter alia*, that the Defendant discharged her because she did not conform to the Defendant's sex-based stereotypes. Despite being a good employee, she was fired after giving the Defendant's owner, Thomas Rost, a letter describing her life struggles with gender-identity issues and stating her intention to present at work as a woman in appropriate business attire. Ex. A, Stephens Letter.

Rost responded two weeks later by handing Stephens a severance agreement. Ex. B, Rost 30(b)(6) Dep. at 126:1-8. "[T]he specific reason" Rost fired Stephens was that Stephens was going to present as a female:

“he [Stephens] was no longer going to represent himself as a man. He wanted to dress as a woman.” *Id.* at 135:24-136:1.

Given the testimonial admissions of Rost, there is no material dispute that Stephens was terminated because she did not conform to Rost’s gender stereotypes, and summary judgment in favor of the Commission as to the termination claim is appropriate.

In addition, the Defendant has maintained a discriminatory clothing-allowance policy which until October 2014 provided suits and ties to male employees who interacted with the public and nothing to similarly situated females. Since October 2014, female employees have been given an annual stipend of either \$75 or \$150, but this is still inferior to that accorded to men, both in dollar value and in flexibility, as the men can replace suits as needed. Thus, summary judgment is also appropriate as to this issue.

B. The Affirmative Defenses

After eight months of litigation—including a Motion to Dismiss and an initial Answer to the Complaint—Defendant injected new defenses. Only after the Commission filed an Amended Complaint, which merely

corrected the spelling of the Charging Party's first name, Defendant first asserted that its termination of Stephens was protected by the Free Exercise Clause of the First Amendment and the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1 ("RFRA"). *See* Dkt. 22, Answer to Amended Complaint, p. 5 (Affirmative Defenses 12-13).

Defendant admits it discharged Stephens because she did not conform to the masculine gender stereotypes that Rost expected of her. That is sex discrimination. Yet, Defendant asserts that its religious beliefs have been burdened by Aimee Stephens's Title VII right to not be subject to gender stereotypes in the workplace.

That argument misconstrues both the Free Exercise Clause and RFRA. Controlling Supreme Court precedent makes clear that the Free Exercise Clause does not excuse compliance with a neutral and generally applicable law such as Title VII. Moreover, Defendant has identified no religious *exercise* that is substantially burdened, as is required to invoke RFRA. Even if Defendant had done so, courts have consistently recognized that preventing employment discrimination is a compelling government interest, which also takes this matter outside of RFRA's

scope. Because there are no material facts in dispute, summary judgment in favor of the Commission is appropriate on Affirmative Defenses 12 and 13.

C. Thomas Rost Limits His Religious Exercise.

Thomas Rost owns 94.5% of the shares of Defendant and was the sole decision-maker who terminated Stephens's employment. Ex. B, Rost 30(b)(6) Dep. at 26:20-26:24; 117:23-118:6 . Rost testified as to Defendant's religion-based affirmative defenses. Ex. C, Notice of 30(b)(6) Deposition, and Ex. B at 6:14-10:3. Defendant's religious exercises are those of Rost. Ex. B at 29:1-7.

Rost is a Christian. *Id.* at 29:20-22. He attends two churches with some regularity. *Id.* at 29:25-30:1-6. However, the evidence shows that Rost's exercise of his religious beliefs at or through RGGR is limited to the placement of (1) "Daily Bread" devotional books and (2) cards bearing the name of Jesus with New Testament verses on the back.

Can you think of any ways in which you
24 express your faith through Harris, R.G. G.R.
25 Harris; you exercise your faith using your
40: 1 business?
2 A The only thing in a direct way is little things
3 that we leave out, we give away Daily Breads

- 4 which is a little daily devotional; it's a pick
5 up. We have a little card that people can pick
6 up. That would be the only thing.
- 7 Q Okay. And this is just -- as they walk out
8 they can grab something like that?
- 9 A Yes. It's a pick up item if they so desire.
- 10 Q What about, you say a little card, what's that?
- 11 A We call it a Jesus card.
- 12 Q Okay.
- 13 A I forgot what it says on the front. It's kind
14 of to grab your attention and then on the back
15 it just has references, verse references.
- 16 Q Scriptural references about Jesus?
- 17 A Yes, exactly. Yes.

Id. at 39:23-40:17; Ex. D (Daily Bread Devotional); and Ex. E (Jesus card). These publications were placed on a credenza or desk at the entry place for each location for visitors to take or leave as they desire. Ex. B, Ex. B at 39:14-40:17.

Rost admitted that continuing to employ Stephens would not have interfered with these religious practices at RGGR. *Id.* at 57:2-19.

D. RGGR does not operate as a religious enterprise.

Defendant is not affiliated with or part of any church. *Id.* at 31:15-31:19. Rost employs people from different denominations and of no religious beliefs at all. *Id.* at 40:18-41; Ex. F, Shaffer Dep. at 33:10-12. He admits that employing individuals with beliefs different from his own

does not constitute an endorsement of their beliefs or activities by RGGR. Ex. B at 41:20-42:18. He does not impose his own beliefs on employees, stating that he would not, for example, terminate an employee because he or she had sex outside of marriage, had an abortion, or committed adultery. *Id.* at 138:2-138:16.

The Defendant's articles of incorporation do not avow any religious purpose. Ex. R, Articles of Incorporation at p. 6. There are no religious views or values that employees are expected to uphold. Ex. B at 81:18-21. RGGR's website contains a "mission statement" which makes two references to God, the second of which is a passage in the Gospel of Matthew (Ex. G), which Rost chose because he liked it. Ex. B at 85:7-85:21. And the Defendant's employees do not regard RGGR as a Christian business enterprise. *See, e.g.,* Ex. H, Nesmith Dep. at 19:18-20:4; Ex. I, Kish Dep. at 55:10-55:25.

Defendant is open 24 hours per day, 365 days per year, and Easter is not a paid holiday. Ex. B at 88:20-89:21. It serves clients of every religion (various Christian denominations, Hindu, Muslim, Jewish, native Chinese religions) or those of no religious affiliation. Ex. J, Cash

Dep. at 41:19-42:10; Ex. K, Crawford Dep. at 32:18-34:9; Ex. B at 33:19-36:23. Indeed, employees have been known to wear Jewish head coverings when holding a Jewish funeral service. Ex. K at 34:20-35:4; Ex. J at 42:7-12. The business keeps Catholic religious items (crucifixes, kneelers, candles) in storage until requested by Catholic (or occasionally non-Catholic) clients. Ex. L, Matthew Rost Dep. at 36:20-25; Ex. J at 42:19-25; Ex. H at 26:1-10; Ex. K at 34:20-35:11; Ex. F at 34:16-35:10; Ex. M, McKie Dep at 29:12-25; 31:11-14.

While the rooms where funerals are held on site are called “chapels,” they are decorated to look like living rooms and are not decorated with visible religious fixtures. Ex. B at 84:2-85:6. This is done deliberately to avoid offending people of different religions. *Id.* Although some of the chapels have statues of Jesus Christ and the Virgin Mary, these are kept hidden behind curtains unless a Catholic service is being held. Ex. J at 53:7-16; Ex. M at 29:16-25.

As far as presenting itself to the outside world, Defendant has not advertised in Christian publications or church bulletins in more than twenty years, with one exception. Ex. B at 37:25-38:9. The one exception

is a small advertisement in a Catholic parish's festival publication that Rost regards as a "gift." *Id.* at 39:2-13.

RGGR does not sponsor publications which call people to join the Christian faith or celebrate Christian holidays. *Id.* at 31:20-32:2; 39:2-16. There are no prayer groups or Bible studies at RGGR. Ex. J at 47:8-16; Ex. N, Kowalewski Dep. at 30:11-12; Ex. H at 19:18-24; Ex. I, Kish Dep. at 55:10-20; Ex. M at 27:8-15. RGGR does not have any religion-based exclusions to employee medical coverage, such as refusing to pay for abortions. Ex. B at 92:17-93:20.

Significantly, Rost admitted that the business climate causes him to act against his religious ideals: the practice of cremation instead of holding a funeral. His Christian beliefs align him toward performing funerals. *Id.* at 51:22. However, the industry has changed, with a growing preference for cremations, and he needs to do them to stay in business. *Id.* at 52:14-53:10.

E. Rost's religious beliefs about men and women motivated him to fire Stephens.

Rost's religious *beliefs*—not a religious exercise—led him to terminate Stephens's employment after she presented her transition

letter. When asked what was objectionable to him about continuing to employ Aimee Stephens, Rost stated that transgender expression violated his beliefs regarding proper behavior by men and women:

22 Q So, your personal faith as a follower of Jesus
23 Christ tells you that it would be improper
24 or -- to employ someone like the person you
25 knew as Anthony Stephens?

25 A Absolutely.

55: 1 Q Okay. You indicated as part of the healing
2 process, but what about your religious beliefs
3 specifically are violated by continuing to
4 employ Stephens?

5 A I believe it would violate my faith, yes,
6 absolutely.

7 Q Okay. What aspects of it?

8 A Well, I believe that God created a man as a man
9 and God created a woman as a woman. And to --
10 to not honor that, I would feel it's a
11 violation of my faith, absolutely.

12 Q So Stephens would be presenting in a way that
13 offended your religious beliefs, essentially?

14 A Yes. Yes.

Ex. B at 54:21-55:19. Later, under questioning by his own attorney, Rost re-affirmed that Stephens's non-conformance with his beliefs regarding the behavior of men and women prompted the firing decision. Compare the above with *Id.* at 135:24-136:3 (“[the specific reason Stephens was fired] was [that Stephens was] no longer going to represent himself as a

man. He wanted to dress as a woman”).

Rost also testified that he objected to Stephens’s use of “Aimee” in the charge of discrimination, saying that this made him “uncomfortable....because he’s [Stephens] a man.” Ex. O, Rost Dep. at 23:4-8.

F. Defendant’s Clothing-Allowance Policy

Defendant provides a different clothing allowance to its male and female employees. *Id.* at 24:8-25; Ex. I, Kish Dep. at 16:13–19:5. This dress code requires female employees to wear a suit jacket, skirt, and blouse. Ex. O at 24:8-25; Ex. I at 16:15-17:7. Male employees, including funeral directors, must wear a suit jacket, suit pants, white dress shirt, and tie. Ex. O at 13:4-21; Ex. I at 17:8-24.

For male employees who have contact with customers, Defendant provides nearly all work attire free of charge. Approximately 10 years ago, Defendant made an arrangement with a local clothier—Sam Michael’s—to pay for suit jackets, suit pants, and ties for the male employees. Immediately upon hire of a full-time male, Defendant pays for two suit jackets, two suit pants, and two ties from Sam Michael’s. Ex.

O at 14:9-19. For part-time males, Defendant pays for one suit jacket, one suit pant, and one tie. *Id.* These clothing benefits also include tailoring of the suit jackets and pants (Ex. I at 19:20-24) and repairs to the suit as needed (Ex. O at 19:2-24). Moreover, replacement suit jackets, suit pants, and ties are provided on an as-needed basis, which, on average, is every year or sometimes more often. Ex. K at 19:1-3; Ex. J at 21:4-8; Ex. F at 44:3-15; Ex. N at 22:21-23:1.

No work-clothing benefits were provided to any female employees until late 2014. Ex. O at 15:16-16:12; Ex. I at 20:16–21:3; Ex. P, Clothing Allowance Checks; Ex. M at 42:1-4; Ex. H at 13:5–14:4. Beginning in October 2014, Defendant began to provide female employees who have customer contact an annual clothing stipend. Ex. I at 20:16–21:23; Ex. P. The amount depends on the employee's status: full-time females are given \$150 per year and part-time women receive \$75 per year. Ex. I at 20:16-21:23. Defendant acknowledges, however, that the attire it provides to its male employees costs Defendant approximately \$235 (part-time) to \$470 (full-time) per employee. Ex. O at 15:3-6. Defendant also acknowledges that it based the amount of clothing allowance for its

female employees on what it determined was “fair,” rather than the amount it paid for its male employees’ clothes. *Id.* at 45:12-20.

Furthermore, unlike Defendant’s male employees who receive their clothing benefits immediately upon hire, Defendant’s female employees are required to wait until the next clothing allowance checks are issued for all female employees. Ex. I at 25:11-15, 38:15-25.

II. RELEVANT LAW

A. Rule 56 Standard

Summary judgment is only appropriate where the record reveals there are no issues of material fact in dispute. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The moving party bears the burden of “clearly and convincingly” demonstrating the absence of any genuine disputes of material fact. *Sims v. Memphis Processors, Inc.*, 926 F.2d 524 (6th Cir. 1991) (citing *Kochins v. Linden-Ailmak, Inc.*, 799 F.2d 1128, 1133 (6th Cir. 1986)). If Plaintiff meets this burden, the Defendant is required to present significant probative evidence showing that genuine, material disputes remain. *Sims*, 926 F.2d at 526.

B. First Amendment Free Exercise Standard

The standard for review of a free-exercise claim is well-established: a religious objector to legislative enactments must comply with neutral laws of general applicability. *Mt. Elliott Cemetery Ass'n. v City of Troy*, 171 F.3d 398, 403 (6th Cir. 1999) (quoting *Employment Division v. Smith*, 494 U.S. 872, 879 (1990)).

To determine whether a law is neutral and of general applicability, the Sixth Circuit asks if the object of the law is to target practices because of their religious motivation:

A law is not neutral if the object of the law, whether overt or hidden, is to infringe upon or restrict practices because of their religious motivation. *See [Church of the] Lukumi Babalu [Aye, Inc. v. City of Hialeah,]* 508 U.S. 520, 535 (1993).

The requirement that the law be of general applicability protects against unequal treatment which results when a legislature decides that the governmental interests it seeks to advance are worthy of being pursued only against conduct with a religious motivation.

Mt. Elliott Cemetery Ass'n., 171 F.3d at 405.

Ultimately, if a religious person is being treated the same as a non-religious person under a valid and neutral law of general applicability, there is no free-exercise violation. *See Hansen v. Ann Arbor*

Pub. Schools, 293 F. Supp. 2d 780, 809 (E.D. Mich. 2003) (where no students were permitted to comment at a school panel on homosexuality, free-exercise rights of religious student were not violated).

C. RFRA Standard

The Religious Freedom Restoration Act (“RFRA”) prohibits the government from substantially burdening the exercise of religion unless the government demonstrates that the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. 42 U.S.C. § 2000bb–1(a), (b).

The standard for analyzing a RFRA claim is a two-step process:

First, the plaintiff must make out a prima facie case by establishing Article III standing and showing that the law in question would (1) substantially burden (2) a sincere (3) religious exercise. If the plaintiff makes out a prima facie case, it falls to the government to demonstrate[] that application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest . The government carries the burdens of both production and persuasion when it seeks to justify a substantial burden on a sincere religious practice.

Michigan Catholic Conf. v. Burwell, 755 F.3d 372, 383 (6th Cir. 2014), vacated and remanded, 135 S. Ct. 1914; affirmed after remand, 807 F.3d 738 (6th Cir. 2015) (citations and internal quotation marks omitted).

Determining whether or not the government has substantially burdened an exercise of religion is a question of law. *Id.* at 385. Further, “[a] substantial burden exists when government action puts substantial pressure on an adherent to modify his behavior and to violate his beliefs.” *Kaemmerling v. Lappin*, 553 F.3d 669, 678 (D.C. Cir. 2008) (quoting *Thomas v. Review Bd.*, 450 U.S. 717, 718 (1981)).

III. ARGUMENTS

A. The Commission Has Not Violated Defendant’s Free-Exercise rights.

Defendant alleges in Affirmative Defense 12 that the EEOC’s claims violate RGGR’s free exercise rights, but that cannot be: the Defendant did not put the Commission on notice that religious exercise issues were involved until it filed its Answer to the Amended Complaint in June 2015. Rost admits that he did not raise such defenses during the EEOC’s investigation of Stephens’s charge of discrimination. Ex. B at 70:7-71:17; 141:2-142:15. Thus, the lawsuit could not have been formulated with any anti-religious motive in mind.

Even if the defense were construed to be an attack on Title VII, which it does not seem to be, Defendant’s claim would be unsuccessful

under the Free Exercise Clause. Title VII is a neutral law of general applicability.¹ *See General Tel. Co. of the Northwest, Inc. v. EEOC*, 446 U.S. 318, 326 (1980) (there is a public interest in preventing employment discrimination). Title VII applies equally to all employers with 15 or more employees regardless of religious status—including Defendant. *See* Dkt. 22 at paragraphs 5-6 (admitting that Defendant is an employer for the purposes of Title VII).

A free-exercise claim cannot insulate an employer from liability under Title VII, and no court has so held. *See EEOC v. Townley Engineering & Mfg. Co.*, 859 F.2d 610, 620-21 (9th Cir. 1988) (elimination of mandatory attendance requirement for corporate prayer meetings to accommodate the Title VII rights of a non-religious employee did not violate Defendant's free exercise rights). In another religious claim involving Title VII enforcement, the court held that an investigation and subsequent lawsuit did not infringe upon a business owner's religious practices. *See EEOC v. Preferred Mgmt. Corp.*, 216 F. Supp. 2d 763, 810 (S.D. Ind. 2002) (even assuming the effect of EEOC's

¹ Far from being intended to infringe upon religion, Title VII protects the convictions of religious institutions by allowing them to restrict employment to those of their own faith. 42 U.S.C. § 2000e-1(a).

investigation and litigation were to force conformance to Title VII's strictures against using religious criteria to make employment decisions, such would not "substantially burden" owner's religious beliefs or practices).

Consequently, summary judgment in favor of the Commission is proper as to Defendant's free-exercise defense set forth in Affirmative Defense 12.

B. Defendant's RFRA defense should be rejected.

1. The Commission does not contest Defendant's religious sincerity.

Defendant's religious exercise is limited—much more than the religious practices of other plaintiffs in RFRA disputes. *See, e.g., Hobby Lobby v. Sebelius*, 723 F.3d 1114, 1122 (10th Cir. 2013), *aff'd sub nom Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014) (describing the evangelical activity, religious principles and actions demonstrated by the two plaintiff corporations). And the Defendant here gave no indication that its religious beliefs were being violated until litigation had been underway for nearly eight and a half months. Nevertheless, for the purposes of this motion, the Commission will not contest the

sincerity of Defendant's religious views.

2. Defendant's Religious Exercise at RGGR is Not Affected by Title VII Enforcement.

There is nothing about enforcement of Title VII that will interfere with Rost's religious exercises at Defendant. RFRA protects religious exercise, not simply beliefs. 42 U.S.C. § 2000bb(1)(a) In particular, RFRA does not protect Mr. Rost from having his religious beliefs offended. The Commission is not requesting that Defendant endorse Stephens's transition or otherwise affirm something to which Rost objects.

In *Wilson v. James*, __ F. Supp .3d __, 2015 WL 5952109 (D.D.C. 2015), the plaintiff, a member of the Utah National Guard, was reprimanded after he sent an email using a military account objecting to a same-sex marriage ceremony held in the Cadet Chapel at West Point. The plaintiff sued under RFRA, claiming that he was being punished for his beliefs. However, the district court rejected the RFRA claim, noting that a burden on beliefs was different from a burden on the exercise of those beliefs:

A substantial burden on one's religious beliefs—as distinct from

such a burden on one's *exercise* of religious beliefs—does not violate RFRA. [H]ere, Plaintiff has not identified any burdened action or practice of the LDS faith. The discipline imposed did not “force[him] to engage in conduct that [his] religion forbids” or “prevent[him] from engaging in conduct [his] religion requires,” *Henderson v. Kennedy*, 253 F.3d 12, 16 (D.C.Cir.2001). Nor did it “condition[] receipt of an important benefit upon conduct proscribed by [his] religious faith, or ... den[y] such a benefit because of conduct mandated by [his] belief,” *Thomas v. Review Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707, 717–18, 101 S.Ct. 1425, 67 L.Ed.2d 624 (1981). Nothing prevented Plaintiff from continuing to maintain his beliefs about same-sex marriage and homosexuality, just as he had before the [reprimand], without repercussion.

Wilson, 2015 WL 5952109 at *8.

Similarly, in *McKnight v. MTC*, 2015 WL 7730995 (N.D. Tex. Nov. 9, 2015), a prisoner filed a claim under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc–1, et seq.,² alleging that his religious freedom rights had been violated by the placement of a homosexual cellmate in his cell. In the absence of any claim that the plaintiff's religious exercise had been changed, the court held that the claim was without merit:

Here, Plaintiff has pled no facts tending to show that Defendants' refusal to accommodate his housing request “put a substantial pressure on him to modify his behavior and to violate his beliefs.”

² RLUIPA claims are evaluated under the same standard as RFRA claims. *See Holt v. Hobbs*, 135 S. Ct. 853, 860 (2015).

Jehovah [v. Clarke], 798 F.3d [169 (4th Cir. 2015)] at 180–181 (quotations and quoted case omitted). Plaintiff relies instead on conclusory statements that sharing a cell with a homosexual inmate is against his conscience and “religious obligation to honor God.” ... Thus, Plaintiff’s allegations suggest that he takes issue only with the *exposure* to a homosexual cellmate, and not with any *effect* it has on his religious activities. Indeed, his filings do not identify any religious exercise apart from mentioning very general tenets of his religion to “honor God” and maintain his “human dignity.”

McKnight, 2015 WL 7730995 at *4.

The facts are similar here: Rost avers that his obligation to honor God obliges him to fire Stephens, who does not act as Rost’s beliefs dictate she should. In other words, the mere presence of and exposure to Stephens offends his beliefs. *See* Ex. T, Def’s Answers to Plaintiff’s First Set of Discovery Requests at p. 4 (“Stephens[‘s] intentions also violated Mr. Ros[t]’s sincerely held religious beliefs”). However, this is not sufficient to sustain a RFRA claim.

Significantly, Defendant is still able to engage in the religious activities identified by Rost—the placement of devotionals and cards for the public—regardless of whether or not one of its employees happens to violate Rost’s religion-based gender stereotypes. Thus, Rost’s religious exercises are not affected by the presence or employment of Stephens.

The mere fact that Rost thinks Stephens's continued employment violates his religious beliefs is legally insufficient under RFRA.

3. Enforcement of Title VII does not substantially burden Defendant.

Even if Defendant identifies a religious exercise that has been burdened, RFRA requires a “*substantial* burden” and such is a question of law for the Court. “RFRA is not a mechanism to advance a generalized objection to a governmental policy choice, even if it is one sincerely based upon religion.” *Michigan Cath. Conf. v. Burwell*, 807 F.3d 738 (6th Cir. 2015) (*Burwell II*) (affirming *Burwell I*):

But a government action does not constitute a substantial burden on the exercise of religion even if “the challenged Government action would interfere significantly with private persons’ ability to pursue spiritual fulfillment according to their own religious beliefs” if the governmental action does not coerce the individuals to violate their religious beliefs or deny them the “rights, benefits, and privileges enjoyed by other citizens.” *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 449, 108 S.Ct. 1319, 99 L.Ed.2d 534 (1988).

Id., 755 F.3d at 384 (6th Cir. 2014).

Here, RGGR cannot establish a substantial burden. As stated before, there is no burdened exercise. Further, the Commission is not asking Rost to adopt a different belief about transgender people, and

Rost has already admitted that employing people with religious beliefs different from his own does not constitute an endorsement of the employee's religious views.

Likewise, continued employment of Aimee Stephens does not constitute an endorsement of any religious view. As Justice O'Connor stated in a concurring opinion:

A statute outlawing employment discrimination based on race, color, religion, sex, or national origin has the valid secular purpose of assuring employment opportunity to all groups in our pluralistic society. Since Title VII calls for reasonable rather than absolute accommodation and extends that requirement to all religious beliefs and practices rather than protecting only the Sabbath observance, I believe an objective observer would perceive it as an anti-discrimination law rather than an endorsement of religion or a particular religious practice.”

Estate of Thornton v. Caldor, Inc., 472 U.S. 703, 711-712 (1985).

Instead, in this case, the EEOC has filed suit in an effort to create a workplace free of gender discrimination for a qualified funeral director and embalmer. Since no employer can discharge people for reasons grounded in sexual stereotypes, the Defendant is not being denied any right, benefit or privilege granted to an employer who does not share its views. Further, Commission investigations and lawsuits under Title VII

are not a substantial burden under RFRA. In *EEOC v. Preferred Mgmt. Corp.*, 216 F. Supp. 2d 763 (S.D. Ind. 2002), the Commission investigated and sued an employer under Title VII for alleged religious discrimination against employees and applicants who did not share the fundamentalist Christian views of the Defendant's management. Both the investigation and lawsuit involved extensive and searching examination of the religious viewpoints of the Defendant's decision-makers and employees. *See Preferred*, 216 F. Supp. 2d at 772-803. The defendant in *Preferred* objected to this process, claiming that it violated its rights under RFRA and the First Amendment. *Id.* at 804-805. The court held that neither the 2½-year investigation (which included 24 depositions) nor the litigation itself constituted a substantial burden on the religious rights of the employer. *Id.* at 807-809, 810.

Here, because the Defendant chose not to assert them, the Commission was entirely unaware of any potential religious issues during the investigation. Thus, there can be no claim of a substantial burden from the investigation. As to the litigation itself, Defendant injected religion into the matter, so the Commission properly probed the

religious claims at stake.

Therefore, as a matter of law, it should be held that Defendant's rights have not been substantially burdened by this action.

4. Enforcement of Title VII here furthers a compelling governmental interest in eradicating sex discrimination and is precisely tailored to further that interest.

To the Commission's knowledge, there is no case law holding that RFRA trumps Title VII. To the contrary, the Supreme Court suggested in a colloquy between the principal dissent and the majority opinion in *Hobby Lobby*, 134 S. Ct. 2751, that Title VII serves a compelling governmental interest which cannot be overridden by RFRA. While dealing with a matter far removed from the dispute here, the discussion is worth quoting in full.

In *Burwell*, the principal dissent expressed concerns about RFRA being used to trump laws regarding accommodation and hiring, especially in the context of sex-based hiring decisions informed by religion. *See Burwell* at 2804-2805 (Ginsberg, J., dissenting).

In response, the majority opinion emphasized that anti-discrimination laws with respect to hiring would not be trumped by

RFRA:

The principal dissent raises the possibility that discrimination in hiring, for example on the basis of race, might be cloaked as religious practice to escape legal sanction. See *post*, at 2804 – 2805. Our decision today provides no such shield. The Government has a compelling interest in providing an equal opportunity to participate in the workforce without regard to race, and prohibitions on racial discrimination are precisely tailored to achieve that critical goal.

Id. at 2783. Title VII’s prohibitions against sex discrimination in the workplace demonstrate that the government has a compelling interest in protecting employees from losing their jobs on the basis of an employer’s gender stereotyping, and they are precisely tailored to ensure this.

Ultimately, the concurring opinion stated the balance most clearly in the employment context:

Among the reasons the United States is so open, so tolerant, and so free is that no person may be restricted or demeaned by government in exercising his or her religion. Yet neither may that same exercise unduly restrict other persons, such as employees, in protecting their own interests, interests the law deems compelling.

Id. at 2786-87 (Kennedy, J., concurring).

Even if Title VII burdens a religious practice, there “is a ‘compelling government interest’ in creating such a burden: the eradication of employment discrimination based on the criteria

identified in Title VII[.]” *Preferred Mgmt.*, 216 F. Supp. 2d at 810.

In the final analysis, Thomas Rost is free to exercise his Christian religious beliefs, but he is not free to take away Aimee Stephens’s livelihood in the process. Nor is he able to excuse his actions under the cloak of religious freedom. Neither the Constitution nor RFRA authorize the firing of Stephens. To the contrary, Rost’s admissions warrant entry of judgment in favor of the Commission.

C. Summary Judgment as to liability for Stephens’s gender-motivated termination is warranted.

Title VII violations can be established through either circumstantial or direct evidence. “Direct evidence of discrimination is that evidence which, if believed, requires the conclusion that unlawful discrimination was at least a motivating factor in the employer’s actions.” *Wexler v. White’s Fine Furniture, Inc.*, 317 F.3d 564, 570 (6th Cir. 2003). Rost admits that his sex-based stereotypes motivated Stephens’s termination. Ex. B at 135:24-136:3. And this constitutes an admission of discrimination. Thus, the Commission respectfully requests that summary judgment as to liability for Stephens’s termination be entered in favor of the Plaintiff.

As this Court discussed in its *Amended Opinion & Order Denying Defendant's Motion to Dismiss* (Dkt. 13), an employer discriminates on the basis of sex when it fires an employee for failing to conform to the employer's notions of the employee's sex. See *Price Waterhouse v. Hopkins*, 490 U.S. 228, 239 (1989) (sexual stereotyping claim based on, among other things, instruction to plaintiff to wear jewelry and dress more femininely); *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75, 79 (1998) ("statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils"). Here, there is no material dispute of fact regarding motivation. Rost has frankly and forthrightly stated his motivation for firing Stephens in no uncertain terms—that Stephens was a man and had to present as one. Ex. B at 135:24-136:3.

In *Smith v. City of Salem*, 378 F.3d 566, 575 (6th Cir. 2004), the Sixth Circuit explained that an employer violates Title VII when it takes action against an employee based on "[s]ex stereotyping," that is, "based on a person's gender non-conforming behavior." This includes penalizing an employee for dress or mannerisms that, in the employer's mind, conform to the wrong sex stereotypes. 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”) (citing *Smith* and *Barnes*); *Fabian v. Hospital of Central Connecticut*, No. 3:12-cv-1154, ___F. Supp. 3d ___, 2016 WL 1089178 at *10-13 (D. Conn. March 18, 2016) (following *inter alia*, Title VII’s plain language, *Price Waterhouse* and *Smith* and discussing the development of the case law).

Thus, an employee who alleges that failure to conform to sex stereotypes concerning how a man or woman should look and behave was the “driving force” behind the employer’s adverse employment actions “state[s] a claim for relief pursuant to Title VII’s prohibition of sex discrimination.” *Smith*, 378 F.3d at 575. In particular, an employer may not fire a transgender woman for failing to comport with the employer’s gender expectations. Such an act is discrimination “because of ... sex,” which Title VII prohibits.

RGGR fired Stephens because she did not conform to its expectations of how someone assigned the male sex at birth should look and act:

Q [Defense Counsel] Okay. Why did you -- what was the specific reason that you terminated Stephens?

A Well, because he -- he was no longer going to represent himself as a man. He wanted to dress as a woman.

Ex. B at 135:24-136:1. Rost also admits that Stephens's termination was not motivated by any performance reasons. *Id.* at 108:25-109:9.

Stephens intended to provide the same level of services to the Respondent as she had always provided. And she still intended to dress professionally, in a manner consistent with the Respondent's dress requirements for women. Ex. Q, Stephens Dep. at 133:6-133:9. In other words, she still intended to meet all of the Respondent's legitimate business expectations. Therefore, RGGR discriminated against Stephens based on its gender stereotypes, in contravention of *Smith*. Ex. B at 55:8-55:9 ("Well, I believe that God created a man as a man and God created a woman as a woman."). As the Sixth Circuit noted in *Smith*, *Price Waterhouse* states that Title VII forbids discrimination based on the employer's notions of how a male or female should look or act. *See* 378 F.3d at 572-73.

Because the Commission can establish direct evidence of

discrimination, the Court need not proceed to the second step of the traditional *McDonnell Douglas* burden-shifting analysis for cases proceeding under a circumstantial evidence theory. Even if the Court considers RGGR's dress code a possible defense, RGGR's argument fails for two reasons: RGGR's dress code is not a legitimate, non-discriminatory reason for terminating Stephens, and even if it were non-discriminatory, the dress code is a pretext, not the real reason RGGR fired Stephens.

RGGR is likely to cite a string of cases allegedly standing for the proposition that sex-specific dress codes do not violate Title VII. *See* Dkt. 7 at Pg ID 38-40. However, as this Court already recognized, this is not the Commission's allegation in the lawsuit. *See* Dkt. 13 at Pg ID 197 ("Here, however, the EEOC's complaint does not assert any claims based upon a dress code and it does not contain any allegations as to a dress code at the Funeral Home"). The Commission is not asserting that RGGR's dress code violates Title VII—rather the violation is RGGR's insistence that Stephens dress in accord with Rost's gender stereotypes. Stephens's gender identity is female, and she was prepared to abide by

RGGR's female dress code. Ex. Q, Stephens Dep. at 133:6-9. RGGR's desire to force her to present as a male at work evidences the exact sex-based consideration that establishes RGGR terminated Stephens because of her sex.

RGGR claims that if it cannot force Stephens to dress inconsistent with her gender identity, sex specific dress codes would be "effectively invalidate[d]." Dkt. 7 at Pg ID 40-42. RGGR's argument misses the mark because Stephens fully intended to abide by the female dress code—and to continue to dress in a professional manner at work.

RGGR claims that employers will not be "able to any longer control how its employees and agents appear to the public." Dkt. 7 at Pg ID 41. This is unworthy of credence. RGGR can require its employees to dress professionally and appropriately. What RGGR cannot require is that an employee dress inconsistently with his or her gender identity. It is RGGR's insistence that it could require Stephens to present inconsistently with her gender identity—but consistently with RGGR's stereotypes for how she should dress—that establishes that RGGR terminated Stephens for violating its gender-based expectations. Such

employer action violates Title VII.

D. Defendant's Clothing-Allowance Policy Constitutes Sex-Based Discrimination.

Title VII makes it unlawful for an employer to “to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s . . . sex” 42 U.S.C. § 2000e-2(a)(1). Defendant’s policy of paying for the work clothing of male employees, while failing to provide a comparable benefit to female employees violates Title VII.

As clarified by the EEOC Guidelines on Discrimination Because of Sex, “fringe benefits” are encompassed by the language in § 2000e-2(a)(1). 29 C.F.R. §1604.9(a)–(b). Federal courts have also recognized various allowances, including work-clothing-related allowances, as being fringe benefits under Title VII. *See Laffey v. Northwest Airlines, Inc.*, 567 F.2d 429, 443, 453–56 (D.C. Cir. 1976) (upholding lower court’s finding that providing a uniform-cleaning allowance to only the male employees, but not female employees, constituted a violation under Title VII); *Long v. Ringling Brothers-Barnum & Bailey Combined Shows*, 9 F.3d 340, 343–44 (4th

Cir. 1993) (finding genuine issues of material fact in a Title VII case involving a claim of fringe benefits, which included allowances for meals, laundry and valet services, and life and health insurances).

Thus, Defendant's practice of providing fringe benefits only to men in the form of free work clothing violated Title VII.

Even now, although Defendant provides female employees with a yearly clothing allowance of \$75 to \$150, this is significantly less than the clothing benefits in excess of \$200 provided to male employees, and is less flexible, since women can only obtain it on a pre-determined schedule and even part-time male employees can replace clothing at need as it wears out or is damaged.

Specifically, RGGR permits its male employees to receive their clothing benefits immediately upon hire and they can replace soiled or damaged clothes as needed, also at no cost. In contrast, Defendant's female employees are required to wait until the next clothing allowance checks are issued for *all* female employees before they receive their clothing allowance. As a consequence, Defendant has only lessened, but not eliminated, its discrimination against female employees. Hence, it

continues to violate Title VII and is liable for damages for discrimination on the basis of sex. Thus, summary judgment is appropriate as to the clothing-allowance claim as well.

IV. CONCLUSION

There is no factual dispute that Thomas Rost discharged Aimee Stephens because she refused to conform to his sex-based stereotypes and present as a man. Rost has forthrightly admitted this, and more than once. Moreover, his religious beliefs regarding transgender persons do not excuse him from his duty as an employer to respect Aimee Stephens's Title VII rights. No case has held that either the First Amendment or RFRA trumps or voids employee discrimination claims.

Further, Defendant has and continues to provide inferior clothing allowance benefits to female employees. This, too, is not a matter of dispute. Consequently, summary judgment in favor of the Commission is appropriate as to both of the claims at issue in this lawsuit, and the Commission respectfully requests that the Court grant its motion as to liability and the matter proceed as to the calculation of damages

Respectfully submitted,

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

s/ Miles Shultz
MILES SHULTZ (P73555)
Trial Attorney

s/ Katie Linehan
KATIE LINHAN (P77974)
Trial Attorney

Dated: April 7, 2016

s/ Dale Price
DALE PRICE (P55578)
Trial Attorney

DETROIT FIELD OFFICE
Patrick V. McNamara
477 Michigan Avenue, Room 865
Detroit, Michigan 48226
Dale.Price@EEOC.GOV
Tel. No. (313) 226-7808
Fax No. (313) 226-6584

Certificate of Service

I hereby certify that on April 7, 2016, 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.

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

dated: April 7, 2016

s/ Dale Price
DALE PRICE (P55578)
Trial Attorney

Index of Exhibits

Exhibit A, Stephens Letter

Exhibit B, Rost 30(b)(6) Dep.

Exhibit C, Notice of 30(b)(6) Dep.

Exhibit D, Daily Bread Devotional

Exhibit E, Jesus card

Exhibit F, Shaffer Dep.

Exhibit G, RGGR Mission Statement

Exhibit H, Nemeth Dep.

Exhibit I, Kish Dep.

Exhibit J, Cash Dep.

Exhibit K, Crawford Dep.

Exhibit L, Matthew Rost Dep.

Exhibit M, McKie Dep.

Exhibit N, Kowalewski Dep.

Exhibit O, Rost Dep.

Exhibit P, Clothing Allowance Benefits Checks

Exhibit Q, Aimee Stephens Dep.

Exhibit R, Articles of Incorporation

Exhibit S, Dress Code

Exhibit T, Defendant's Responses to Plaintiff's First Set of Discovery Requests

Case 1, *Fabian v. Hospital of Central Connecticut*, No. 3:12-cv-1154, __.Supp.3d __, 2016 WL 1089178 (D. Conn. March 18, 2016)

Case 2, *McKnight v. MTC*, 2015 WL 7730995 (N.D. Tex. Nov. 9, 2015)

Case 3, *Wilson v. James*, __ F.Supp.3d __, 2015 WL 5952109 (D.D.C. 2015)

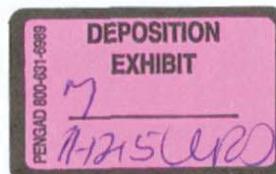
EXHIBIT A

Dear Friends and Co-Workers:

I have known many of you for some time now, and I count you all as my friends. What I must tell you is very difficult for me and is taking all the courage I can muster. I am writing this both to inform you of a significant change in my life and to ask for your patience, understanding, and support, which I would treasure greatly.

I have a gender identity disorder that I have struggled with my entire life. I have managed to hide it very well all these years. It all started when I was about five years old. I knew something was different about me, but I could not have told you what it was then. When I was about ten years old, I started to ask my Mom questions. Mom related to me that all the signs pointed out that she was going to have a baby girl. Mom was so sure that I was going to be a girl that everything she bought was for a girl. So for the first few months of my life I was dressed in girl clothes, because they could not afford to go and buy all new clothes. Perhaps the signs were not wrong after all.

I know this has nothing to do with my condition. It is a birth defect that needs to be fixed. I have been in therapy for nearly four years now and have been diagnosed as a transsexual. I have felt imprisoned in a body that does not match my mind, and this has caused me great despair and loneliness. With the support of my loving wife, I have decided to become the person that my mind already is. I cannot begin to describe the shame and suffering that I have lived with. Toward that end, I intend to have sex reassignment surgery. The first step I must take is to live and work full-time as a woman for one year. At the end of my vacation on August 26, 2013, I will return to work as my true self, Amiee Australia Stephens, in appropriate business attire.



EEOC000040

EEOC000040

I realize that some of you may have trouble understanding this. In truth, I have had to live with it every day of my life and even I do not fully understand it myself. I have tried hard all my life, to please everyone around me, to do the right thing and not rock the boat. As distressing as this is sure to be to my friends and some of my family, I need to do this for myself and for my own peace of mind and to end the agony in my soul. Through it all, I have learned that life is an adventure, and I would like to believe that the best is yet to come. I hope we can enjoy it together. It is my wish that I can continue my work at R.G. & G.R. Harris Funeral Homes doing what I have always done, which is my best!

Sincerely,

Anthony Stephens

Anthony Stephens

Amiee A. Stephens

Amiee A. Stephens

If you should have questions or need guidance in this, please contact my therapist, Cecelia Hanchon. She has indicated that she would gladly offer assistance to anyone who has questions and can answer questions much better than I. I have enclosed her business card.

Thanks



Cecelia M. Hanchon, LMSW

AASECT-Diplomat Certified Sex Therapist
Individuals - Couples

*I am a fee for service clinician, I do not take insurance.
A paid statement will be provided. Some insurance companies will
reimburse; I do not guarantee this.*

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION
4
5 EQUAL EMPLOYMENT OPPORTUNITY)
6 COMMISSION,)
7 Plaintiff,)
8 vs.) Case No. 14-13710
9 R.G. & G.R. HARRIS FUNERAL) Hon. Sean F. Cox
10 HOMES, INC.,) United States
11 Defendants.) District Court Judge
12 _____)
13
14 30(B)(6) DEPOSITION OF THOMAS ROST
15 PLYMOUTH, MICHIGAN
16 THURSDAY, NOVEMBER 12, 2015
17
18
19
20
21
22
23
24 REPORTED BY: QUENTINA R. SNOWDEN, CSR NO. 5519
25 JOB NO.: 276003-A

Page 2

1 30(B)(6) DEPOSITION OF THOMAS ROST, taken at
2 the offices of Joel J. Kirkpatrick, PC, located
3 at 843 Penniman Avenue, Suite 201, Plymouth,
4 Michigan on Thursday, November 12, 2015, at 9:30
5 a.m., before Quentina R. Snowden, Certified Court
6 Reporter, in and for the State of Michigan.
7
8 APPEARANCES:
9 For the Plaintiff:
10 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
11 BY: DALE R. PRICE, JR., ESQ.
12 MILES E. SHULTZ, ESQ.
13 477 Michigan Avenue
14 Room 865
15 Detroit, Michigan 48226-2552
16 (313) 226-7808
17 E-mail: dale.price@eeoc.gov
18 miles.shultz@eeoc.gov
19
20
21
22
23
24
25

Page 3

1 APPEARANCES CONTINUED:
2 For the Defendant:
3 JOEL J. KIRKPATRICK, PC
4 BY: JOEL JAMES KIRKPATRICK, ESQ.
5 843 Penniman Avenue
6 Suite 201
7 Plymouth, Michigan 48170-1770
8 (734) 404-5710
9 E-mail: joel@joelkirkpatrick.com
10
11 For the Defendant:
12 SCHRAMECK LAW, PLLC
13 BY: JEFFREY T. SCHRAMECK, ESQ.
14 843 Penniman Avenue
15 Plymouth, Michigan 48170-1757
16 (734) 454-5400
17 E-mail: jeff@schramecklaw.com
18
19 ALLIANCE DEFENDING FREEDOM
20 BY: BRADLEY ABRAMSON, ESQ.
21 15100 North 90th Street
22 Scottsdale, Arizona 85260
23 (480) 444-0020
24 E-mail: babramson@adfllegal.com
25

Page 4

I N D E X

2	WITNESS: THOMAS ROST	
3	EXAMINATION	PAGE
4	BY: Mr. Price	05
5	EXAMINATION	
6	BY: Mr. Kirkpatrick	132
7	RE-EXAMINATION	
8	BY: Mr. Price	140
9	(No further examination.)	
E X H I B I T S		
11	NUMBER DESCRIPTION	PAGE
12	EX. NO. 1 DEFENDANT'S ANSWERS TO	12
13	PLAINTIFF'S AMENDED COMPLAINT	
14	EX. NO. 2 CHARGE OF DISCRIMINATION	18
15	EX. NO. 3 RESPONSE TO CHARGE OF	22
16	DISCRIMINATION	
17	EX. NO. 4 ARTICLES OF INCORPORATION	78
18	EX. NO. 5 MISSION STATEMENT	81
19	EX. NO. 6 EMPLOYEE MANUAL	103
20	EX. NO. 7 LETTER	109
21	(Exhibits attached.)	
22		
23		
24		
25		

Page 5

1 PLYMOUTH, MICHIGAN; THURSDAY, NOVEMBER 12, 2015
 2 9:40 A.M.
 3 -oOo-
 4 Whereupon --
 5 THOMAS ROST,
 6 having been first duly sworn to testify to the
 7 truth, the whole truth, and nothing but the
 8 truth, was examined and testified as follows:
 9 EXAMINATION
 10 BY MR. PRICE:
 11 Q Good morning.
 12 A Good morning to you.
 13 Q Yeah, my name is Dale Price, I'm an attorney
 14 with the Equal Employment Opportunity
 15 Commission here in Detroit and we have two
 16 purposes here today. We'll do them in order.
 17 One, we're going to take your
 18 30(b)(6) deposition, what's known as. We sent
 19 out a Notice with respect to that designating
 20 certain subjects upon which we wish to have a
 21 company representative brought forward to
 22 testify to.
 23 And then secondly, we'll be doing a
 24 deposition of you in your personal capacity.
 25 Hopefully there won't be a whole lot of

Page 6

1 overlap, but it will probably be inevitable
 2 there will be some. But, for the first part
 3 here we're going to be focusing on the 30(b)(6)
 4 deposition.
 5 And with respect to that I'd like
 6 to confirm that you have agreed to consent to
 7 speak on behalf of the Defendant with respect
 8 to the items we sent in the Notice.
 9 A Yes.
 10 Q Have you had a chance to review the Notice?
 11 A Yes.
 12 Q Okay. You were shown a Notice by your Counsel?
 13 A Yes.
 14 Q Okay. And you are prepared to speak upon each
 15 of those items within the Notice?
 16 A Yes.
 17 Q Okay. And not to be tiresome, but I'm just
 18 going to go through it. So you are prepared to
 19 speak on behalf of the company with respect to
 20 the second affirmative defense, which is the
 21 EEOC's bringing and prosecution of this case
 22 exceeds the scope of the EEOC's legal authority
 23 and is ultra vires.
 24 You're prepared to speak on that
 25 today?

Page 7

1 A Yes.
 2 Q You're prepared to speak on Affirmative Defense
 3 Number 8 and the Amended Answer to the
 4 Complaint which states, "The EEOC's claims are
 5 barred due to the fact that they are not
 6 brought in the true name of the party in
 7 interest and/or for the failure to join an
 8 indispensable party"?
 9 A Yes.
 10 Q You're prepared to speak as to the Item Number
 11 3, which is the Eleventh Affirmative Defense in
 12 the Amended Complaint, "The EEOC's claims
 13 violate the Funeral Home's right to due process
 14 under the Fifth and Fourteenth Amendments to
 15 the United States Constitution"?
 16 A Yes.
 17 Q You're prepared to speak to the Number 4, which
 18 is "The EEOC's claims violate the Funeral
 19 Home's right to free exercise of religion under
 20 the First Amendment to the United States
 21 Constitution"?
 22 A Yes.
 23 Q You're prepared to speak to Item Number 5 in
 24 the deposition which is "The EEOC's claims
 25 violate the Funeral Home's rights under the

Page 8

1 federal Religious Freedom Restoration Act or
 2 RFRA"?
 3 A Yes.
 4 Q You're prepared to speak to item number 6,
 5 which was "The creation or incorporation of
 6 Harris, including any articulated purposes or
 7 mission statements and the identity of
 8 incorporating officers and subsequent offers
 9 during Aimee Stephens' employment"?
 10 A Yes.
 11 Q Item Number 7, prepared to speak to
 12 "Non-Privileged communications concerning or
 13 touching upon Harris' exercise of religion
 14 through or in the course of operating its
 15 business"?
 16 A Yes.
 17 Q Number 8, prepared to speak on "Facts
 18 concerning Harris' exercise of religion in
 19 conducting its business operations or in its
 20 personnel practices"?
 21 A Yes.
 22 Q You're prepared to speak to Item Number 9,
 23 "Facts concerning any claimed substantial
 24 burden to Harris' exercise of religion caused
 25 by the EEOC's claims"?

1 A Yes.

2 Q And Item Number 10, you're prepared to speak to

3 "Facts concerning the designing, editing,

4 loading and/or updating of the content of

5 Harris' website which is http://www.rgr --

6 ggrharris.com"?

7 A Yes.

8 Q Forgive my stuttering, I do that a lot with

9 URLs, so -- and likewise, facts -- you're

10 prepared to speak to "Facts concerning the

11 designing, editing, loading and/or updating of

12 the content on Harris' Facebook page,

13 Facebook.com, RGR (sic) Harris Funeral Home as

14 set forth in the Notice"?

15 A Yes.

16 Q And you're prepared to speak on behalf of the

17 company with respect to Item 12, "Harris'

18 personnel and employment policies contained in

19 Harris' employee handbook or otherwise

20 communicated to Harris' employees during the

21 course of Aimee Stephens employment"?

22 A Yes.

23 Q We're almost there. Last one. You've prepared

24 to speak to Item 13, "The circumstances and

25 reasons for Aimee Stephens' separation of

1 Q Okay. Did you do anything else to prepare for

2 the deposition?

3 A No.

4 Q You didn't review any documents?

5 A No.

6 Q Okay. You indicated you had reviewed the

7 deposition notice. When did that occur?

8 A Oh, I don't know when that occurred.

9 Q Okay. Did you speak about the 30(b)(6)

10 Deposition Notice with anyone?

11 A No.

12 Q Okay. Did you speak with anyone at Harris

13 about the fact that you were going to be coming

14 for a 30(b)(6) deposition?

15 A No.

16 Q Okay. So, did you speak with any past or

17 present employees regarding the deposition?

18 A No.

19 Q Okay. Did you review the Answer to the

20 Complaint to prepare for the deposition at all?

21 The Amended Answer to the Complaint?

22 A I don't know. I don't know.

23 Q Okay. Have you at all -- have you reviewed the

24 Answer to the Complaint at all?

25 A I don't recall on it.

1 employment from Harris and all policies Harris

2 relied upon in terminating Stephens"?

3 A Yes.

4 Q Okay. Thank you very much. It's tedious, but

5 I've got to go through that. So --

6 Okay. What did you do to prepare

7 for today's 30(b)(6) deposition?

8 A I didn't do very much. I'm just here

9 representing the company.

10 Q Okay. Did you speak -- and again, I don't want

11 to know about the contents of your discussion

12 with Counsel, but did you speak with Counsel

13 for part of your preparation?

14 A A little bit, yes.

15 Q Okay. When did that occur?

16 A Yesterday.

17 Q Okay. How long did that take?

18 A 20 minutes.

19 Q Okay. Was that here or at your -- one of your

20 facilities?

21 A Here.

22 Q Here?

23 A Uh-huh.

24 Q And who was present?

25 A Just Joel and myself.

1 Q Okay.

2 A I'm assuming that I probably did, but I don't

3 recall.

4 Q Okay. All right. Can you think of anything

5 else you might have done or -- to prepare for

6 the deposition?

7 A No.

8 Q Okay. Now, you -- you -- is it your -- you

9 believe that you did review the Amended Answer

10 to the Complaint before it went out? Before it

11 was filed?

12 A Is that something that Joel submitted or is

13 that something that you submitted?

14 Q That's a fair question, actually. How about I

15 show you a copy of that, maybe that will end

16 the problem here.

17 MR. PRICE: Might as well have this

18 marked as 1, please.

19 (Deposition Exhibit No. 1 was

20 marked for identification.)

21 MR. PRICE: All right. Thank you.

22 And here, it's the Amended Answer to the

23 Complaint. I don't know if I've got an extra

24 copy or not.

25 MR. KIRKPATRICK: I have a copy if

1 you want one.
 2 MR. PRICE: Okay. Yeah. Good,
 3 please.
 4 THE WITNESS: You have the same
 5 file. What was the date on this? Is there a
 6 date up here?
 7 BY MR. PRICE:
 8 Q Up on the top.
 9 A Oh, up there. Okay. So this was back --
 10 (Reviewing.) Yes, I did see this.
 11 Q Okay. Did you have a chance to review it
 12 before it went out?
 13 A Did not.
 14 Q Okay. But, do you have any disagreement --
 15 you don't have any disagreement with the
 16 documents; it fairly represents the defenses of
 17 Harris?
 18 A Yes.
 19 Q Okay. All right. Moving to the first item on
 20 the Exhibit, the first item on the deposition
 21 notice, you were asked -- if you look at
 22 paragraph -- I'm sorry, page 4 of the answer,
 23 "Second Affirmative Defense."
 24 A Page 4, okay.
 25 Q Where it says "Second Affirmative Defense."

1 you --
 2 A Yes.
 3 Q -- but you can't testify as to the receipt?
 4 A Right.
 5 Q All right. Fair enough. But okay, just to
 6 clarify, you don't -- you might not have any
 7 facts to support the defense, but you're not --
 8 that is still an affirmative defense of the
 9 company of Harris, correct?
 10 A Yes.
 11 Q All right. Moving on to Item 2, which would be
 12 the Eighth Affirmative Defense in the
 13 Complaint, and my apologies here, that would be
 14 found on --
 15 A The Eighth one you say?
 16 Q Yes, Eighth Affirmative Defense also on page 4.
 17 A Yeah, it goes -- okay.
 18 Q Yes, it spills onto 5. You're right. Okay.
 19 Do you -- do you as a representative -- as the
 20 designated representative of Harris have any
 21 facts to support that affirmative defense that
 22 you can speak to today?
 23 A "The true name of the party of interest", that
 24 means Anthony or Aimee, Mr. Stephens, is that
 25 what that means? "Name of the party of

1 A All right.
 2 Q Okay. Do you -- can you speak to any facts
 3 that would support the company's assertion that
 4 this complaint was beyond the scope of the
 5 authority of the Commission?
 6 A No, I can't.
 7 Q Okay. Do you know anybody at Harris who could?
 8 A No.
 9 Q And you indicated earlier you didn't have a
 10 chance to review it -- did you have a chance to
 11 review it before it went out or not?
 12 A No.
 13 Q You did not. Okay. All right. When did you
 14 get a copy of it?
 15 A I don't know if I have a copy of this. I'm
 16 assuming. I might have read it here or --
 17 Q Okay.
 18 A Maybe Joel sent it to me. I'm not sure, I just
 19 don't know.
 20 Q Okay. It looks familiar, but you couldn't
 21 speak to when you received it?
 22 A Not since May, no.
 23 Q Or since June?
 24 A Or June is it? Yeah.
 25 Q Okay. Just to clarify, it looks familiar to

1 interest"?
 2 Q Do you have any understanding of what that
 3 would be?
 4 A That's what I'm trying to ask, yeah. "Or for
 5 the failure to join an --" I do not understand
 6 this, no.
 7 Q Okay. So you don't have any facts to --
 8 A No.
 9 Q -- testify one way or the other?
 10 A No.
 11 Q Okay. Can you think of anybody at Harris who
 12 would be able to testify to that?
 13 A No.
 14 Q Okay. Moving on to Item 3 in the 30(b)(6)
 15 Deposition Notice, it is --
 16 A Is that part of this or --
 17 Q That's still part of this, yeah, I'm moving
 18 to -- it's part of the Deposition Notice I
 19 talked about before, the multiple page --
 20 A Number 3, you're saying?
 21 Q Well, actually it's more clari -- I apologize
 22 for being confusing. You were sent out a
 23 deposition notice with, like, a list of topics.
 24 A All right.
 25 Q And you were the one designated to speak to

<p style="text-align: right;">Page 25</p> <p>1 Q Did you have any problem with what she 2 transcribed? 3 A I don't believe so. 4 Q Okay. You were also later in the case 5 presented with the what's called a Letter of 6 Determination and a conciliation package, it 7 was a proposal -- it was basically a finding 8 from the Commission that there was a belief 9 that a law had been violated. You did receive 10 that? 11 A Yes. 12 Q Okay. And you also received what's called a 13 conciliation package or a proposal for a 14 resolution of the matter? 15 A Yes. 16 Q Okay. You had a chance to respond to that, 17 correct? 18 A Yes. 19 Q And you did provide a response to your 20 attorney? 21 A Yes. 22 Q You had a chance to review that response before 23 now? 24 A Yes. 25 Q Okay. In light of that, what is the basis that</p>	<p style="text-align: right;">Page 27</p> <p>1 A Correct. 2 Q And I may ask you to make your responses 3 verbal. I apologize. 4 A That's fine. 5 Q I know what -- it's -- I know it's correct, but 6 we want to make sure the transcript is clear. 7 A I understand. 8 Q Who owns the remainder of the shares? 9 A My son and daughter. 10 Q Your son Matthew? 11 A Yes. 12 Q And how much does he own? If you know? 13 A He owns twice as much as my daughter. 14 Q Okay. Now, is he older? 15 A He is older. 16 Q And he works for R.G. G.R.? 17 A He does work there. 18 Q Okay. What -- in what capacity? 19 A He's a funeral director there. 20 Q Okay. Which location? 21 A On the east side. 22 Q Is he also in charge of the Cremation Society 23 functions? 24 A He is. He is. 25 Q And your daughter, what's her name?</p>
<p style="text-align: right;">Page 26</p> <p>1 you did not have any kind of -- you did not 2 have due process under the Fifth and Fourteenth 3 Amendments to the Constitution? 4 A I can't speak to that. 5 Q Okay. You don't have any facts to support that 6 claim on behalf of Harris? 7 A No. Right. 8 Q All right. All right. Moving ahead to, it 9 will be the Twelfth Affirmative Defense in the 10 Answer to the Complaint, document one, which 11 will be found on page 5 of the Answer. 12 A Okay. 13 Q Okay. Specifically that "The EEOC's claims 14 violate the Funeral Home's right to free 15 exercise of religion under the First Amendment 16 to the United States Constitution." 17 Okay. What are the facts 18 supporting that affirmative defense? 19 A I wouldn't be able to address that. 20 Q Okay. Do you claim that you -- let's try it 21 this way. Are you the -- if I read correctly, 22 and correct me if I'm wrong, do you own 94.5 23 percent of the shares of the company? 24 A That's correct. 25 Q Okay. And that's R.G. G.R. Harris, correct?</p>	<p style="text-align: right;">Page 28</p> <p>1 A Nicole. 2 Q And does she have any function within the R.G. 3 G.R.? 4 A No. 5 Q Okay. I'm sorry, what are their ages, 6 respectively? 7 A My son is 42 and she is 40. 8 Q Okay. No other children? 9 A No, no other children. 10 Q Okay. So is R.G. G.R. Harris is a closed 11 corporation? 12 A Yes. 13 Q And how long have you been the 94.5 percent 14 owner? 15 A 30 years. 16 Q 30 years. Okay. And the remainder have been 17 owned by your children from that time frame 18 too? 19 A No, no. 20 Q When did that occur? 21 A I'll just take a guess, maybe five years ago. 22 Q Okay. So the 5.5 percent remainder you 23 designated to them roughly -- roughly five 24 years ago? 25 A That's correct.</p>

1 Q All right. Let's try it this way. Are you
 2 claiming that your rights to exercise religion
 3 have been affected by this lawsuit?
 4 A Repeat that again.
 5 Q Sure. Sure. Okay. You're the 94.5 percent
 6 owner --
 7 A Yes.
 8 Q -- of R.G. G.R. So, any -- if the funeral
 9 home's rights to free exercise of religion are
 10 being impacted really it's your -- your rights,
 11 religious rights that would be impacted because
 12 you're the majority owner, correct?
 13 A Okay. Okay.
 14 Q Okay. Is it your belief -- is it your
 15 allegation that the fact that we have filed
 16 suit in this action has affected your rights to
 17 free exercise of religion under the First
 18 Amendment of the Constitution?
 19 A No.
 20 Q What is your religious affiliation?
 21 A I'm a Christian.
 22 Q A Christian. Okay.
 23 A Uh-huh.
 24 Q What church do you attend?
 25 A I attend a couple churches, actually.

1 Q Okay.
 2 A I attend Highland Park Baptist Church, another
 3 church called Oak Pointe.
 4 Q And where are those churches located?
 5 A One is in Southfield, the Highland Park Baptist
 6 is in Southfield and the other one is in Novi.
 7 Q Are they -- either of those churches affiliated
 8 with, say like, the southern baptists or
 9 anything like that?
 10 A No.
 11 Q "No"?
 12 A No.
 13 Q Okay. All right. How long have you been a
 14 Christian?
 15 A 65 years.
 16 Q Just how old are you, sir?
 17 A 71.
 18 Q 71. Okay. Now, is -- now you said you became
 19 a Christian at roughly 6 years of age. Was
 20 that in Highland Park Baptist Church or was
 21 that somewhere else?
 22 A It was in my home at the time.
 23 Q Okay. Where was that?
 24 A In Highland Park.
 25 Q In Highland Park. Okay.

1 A Uh-huh.
 2 Q Okay. Presumably baptized at that point?
 3 A Yes.
 4 Q Okay. Do you recall if there was any
 5 particular church that it was associated with
 6 or no?
 7 A That same church.
 8 Q Highland Park?
 9 A Yeah.
 10 Q Oh, it was Highland Park. Okay.
 11 A Yeah.
 12 Q All right. Now, R.G. G.R. Harris is not owned
 13 by any church, correct?
 14 A Correct.
 15 Q Okay. And it's not affiliated with a church,
 16 for instance it's not really the official
 17 funeral home of Highland Park Baptist or Oak
 18 Pointe, correct?
 19 A Correct.
 20 Q Okay. Does R.G. G.R. Harris sponsor any kind
 21 of religious activities?
 22 A I don't know what you mean by "Sponsor."
 23 Q Does it -- well, let's try this. Does it send
 24 out, like, newspaper ads wishing people a Merry
 25 Christmas or Happy Easter? Does it take out

1 ads like that?
 2 A We don't take out ads like that.
 3 Q Okay.
 4 A We -- we do things like we have a memorial
 5 service here at Christmastime that we recognize
 6 the people that have passed away over the last
 7 year. I don't know how you would define that,
 8 but we have a memorial service like that.
 9 Obviously we're involved in a ministry with --
 10 what we do is involved, religious rights and
 11 customs and rituals for families.
 12 Q Okay.
 13 A There's a huge ministry aspect to what we do.
 14 Q Now, this memorial service is -- what happens
 15 during this service? This annual Christmas
 16 service?
 17 A Yes. Well, we make an ornament with the
 18 person's name on it, and the family members can
 19 come and we have a short service. We read the
 20 names and then they hang this on an outside
 21 tree.
 22 Q Okay. You said it's a short service, what's --
 23 A Because it's outside. We -- we purposefully do
 24 this outside so it can be a pretty nasty day.
 25 Q Sure.

1 A So we try and move things along. But we -- we
 2 have a couple people speak, we sing silent
 3 night, we read their names.
 4 Q Who speaks?
 5 A I speak, a lady now -- her name is Karen, I
 6 can't -- I forgot what her last name is. She's
 7 from New Hope. It's a support group.
 8 Q Okay.
 9 A She heads that up.
 10 Q Is that for grieving people?
 11 A Yes. Uh-huh. And she talks about things for
 12 the holidays, helps for the holidays.
 13 Q Getting through the new year without your loved
 14 one, that sort of thing?
 15 A Correct. Exactly.
 16 Q Is this New Hope support group, is it an
 17 explicitly Christian ministry?
 18 A No.
 19 Q Now, the people who come to the -- let's try it
 20 this way. I believe your web page indicates
 21 that you're -- or you will offer services to
 22 people of multiple religions?
 23 A Absolutely.
 24 Q Okay. Does that include people who are not
 25 Christians?

1 A Oh yeah, sure.
 2 Q Okay. What religions does R.G. G.R. help with
 3 burial services and --
 4 A You name it, we do it.
 5 Q Muslims?
 6 A Yes.
 7 Q Hindus?
 8 A Yes.
 9 Q Sikhs or Sikhs (different pronunciation),
 10 sometimes is how it's said?
 11 A Yeah, I think they're kind of Hindu.
 12 Q Yeah, they're a derivation of Hindu.
 13 A Yes. Uh-huh.
 14 Q So you've done religious for the Sikhs?
 15 A Sure.
 16 Q Chinese religions?
 17 A Yes.
 18 Q Can you think of -- I'm not up on my Chinese
 19 religions, my apologies.
 20 A Neither am I.
 21 Q Confucian or Buddhist?
 22 A Well, that would all be part of that, I would
 23 just -- but we do have Buddhist services, yes.
 24 Q Okay. On site?
 25 A Yes. Uh-huh.

1 Q Okay. So you've had all of these in the past
 2 three, four years you've had Muslim --
 3 A I don't know about the last three or four
 4 years. I mean, some of them you're -- like
 5 Buddhists, there's, you know, maybe one every
 6 ten years or something.
 7 Q But you've had them there?
 8 A Yeah, we have had them. Yeah.
 9 Q What about how frequently do you have Hindu
 10 services?
 11 A Well, we'll have a few a year.
 12 Q Okay.
 13 A Uh-huh.
 14 Q And somebody from the Hindu religion will come
 15 and conduct the rights and so forth on site?
 16 A Yes. Yes.
 17 Q Okay. What about, how often Islamic, Muslim
 18 people?
 19 A Not very much. They -- they stay to
 20 themselves.
 21 Q But some?
 22 A But some.
 23 Q Okay. How many in the past ten years, would
 24 you say?
 25 A Just a couple a year.

1 Q Couple a year. Okay. What about
 2 Chinese-related services, how often does that
 3 happen?
 4 A Well, most of the Chinese that we take care of
 5 are Christian.
 6 Q Okay. Fair enough.
 7 A They're not -- you know --
 8 Q Okay. So most Chinese would fall within the
 9 Christian --
 10 A Yes.
 11 Q What about people who are Jewish, any services
 12 for them?
 13 A Very rarely.
 14 Q Okay. You're open to it, but it just doesn't
 15 happen very often?
 16 A No, they have Jewish funeral homes. Yes.
 17 Q Okay. What about people of no religious
 18 affiliation?
 19 A Well, we do that too, sure.
 20 Q How often do you do that?
 21 A Well nowadays almost every week.
 22 Q Really?
 23 A Yeah.
 24 Q Okay. What do you do in the circumstances
 25 where there is no professed religion, is

<p style="text-align: right;">Page 37</p> <p>1 there -- do you offer a service yourself?</p> <p>2 A We do.</p> <p>3 Q What's involved in that?</p> <p>4 A We do. We have a celebrant; I have a lady</p> <p>5 that's a celebrant that would provide a service</p> <p>6 of memorialization, let's put it that way. Or</p> <p>7 sometimes families will just do it themselves.</p> <p>8 Q Okay.</p> <p>9 A And they will speak and share. We'll call it a</p> <p>10 sharing memorial time.</p> <p>11 Q Okay. Now, is this celebrant, is she somebody</p> <p>12 who works for Harris?</p> <p>13 A Yes, she does.</p> <p>14 Q Who is that?</p> <p>15 A Lady by the name of Summer -- I forgot her last</p> <p>16 name, starts with a "P".</p> <p>17 Q Okay.</p> <p>18 A But Summer.</p> <p>19 Q And how long has she worked for Harris?</p> <p>20 A She's worked part-time for us for, I'm going to</p> <p>21 take a guess, about four years, but she's just</p> <p>22 recently become a celebrant.</p> <p>23 Q Okay.</p> <p>24 A About two or three months ago.</p> <p>25 Q Okay. Now, with respect to getting back to --</p>	<p style="text-align: right;">Page 39</p> <p>1 A Probably 20 years ago.</p> <p>2 Q Okay. Does R.G. G.R. help sponsor something</p> <p>3 like a church festival? You know, sometimes</p> <p>4 Catholic parishes will have a festival or there</p> <p>5 are harvest parties at a baptist church, that</p> <p>6 sort of thing?</p> <p>7 A We'll -- we'll maybe put an ad in a booklet.</p> <p>8 Q Okay. What do you mean by a booklet?</p> <p>9 A Well, usually they'll have a booklet, and I'm</p> <p>10 thinking of just one Catholic church that we do</p> <p>11 this, I think, that's the only thing I can</p> <p>12 think of. And we do it as just it's a gift,</p> <p>13 it's not an advertisement.</p> <p>14 Q Okay.</p> <p>15 A You don't get anything from it, it's just as a</p> <p>16 gift.</p> <p>17 Q Okay. What parish would this be, if you can</p> <p>18 recall?</p> <p>19 A This one was called St. Raphael's in Garden</p> <p>20 City. They've changed the name to St. Thomas</p> <p>21 of the -- something, I think, but just St.</p> <p>22 Raphael's.</p> <p>23 Q Okay. Can you think of any ways in which you</p> <p>24 express your faith through Harris, R.G. G.R.</p> <p>25 Harris; you exercise your faith using your</p>
<p style="text-align: right;">Page 38</p> <p>1 not the operational aspect, but does R.G. G.R.</p> <p>2 advertise in like church bulletins, like</p> <p>3 Catholic church bulletins?</p> <p>4 A We don't. We have. We have, but we're not</p> <p>5 doing that now.</p> <p>6 Q When did you stop doing that?</p> <p>7 A Oh, quite awhile ago. 20 years ago.</p> <p>8 Q Okay. And why not?</p> <p>9 A It's not cost-effective.</p> <p>10 Q Okay. Where do you advertise or do you not</p> <p>11 advertise at all?</p> <p>12 A We are not advertising, no.</p> <p>13 Q So not even in the Yellow Pages?</p> <p>14 A Oh, well -- yep -- yes, Yellow Pages, yes,</p> <p>15 you're right. Yes.</p> <p>16 Q Okay. Now you'll sometimes see something like</p> <p>17 the Christian Yellow Pages or something like</p> <p>18 that?</p> <p>19 A Yes.</p> <p>20 Q Do you advertise in those?</p> <p>21 A I think once I might have. I don't know if</p> <p>22 those are still going. I haven't seen one of</p> <p>23 those in years.</p> <p>24 Q When do you believe you might have</p> <p>25 advertised --</p>	<p style="text-align: right;">Page 40</p> <p>1 business?</p> <p>2 A The only thing in a direct way is little things</p> <p>3 that we leave out, we give away Daily Breads</p> <p>4 which is a little daily devotional; it's a pick</p> <p>5 up. We have a little card that people can pick</p> <p>6 up. That would be the only thing.</p> <p>7 Q Okay. And this is just -- as they walk out</p> <p>8 they can grab something like that?</p> <p>9 A Yes. It's a pick up item if they so desire.</p> <p>10 Q What about, you say a little card, what's that?</p> <p>11 A We call it a Jesus card.</p> <p>12 Q Okay.</p> <p>13 A I forgot what it says on the front. It's kind</p> <p>14 of to grab your attention and then on the back</p> <p>15 it just has references, verse references.</p> <p>16 Q Scriptural references about Jesus?</p> <p>17 A Yes, exactly. Yes.</p> <p>18 Q You do employ people who -- to your knowledge,</p> <p>19 do you employ people who are not of your faith?</p> <p>20 A Yes.</p> <p>21 Q Can you think of some of the people, the</p> <p>22 religious or non-religious people that work for</p> <p>23 you?</p> <p>24 A Well, I have an Orthodox individual.</p> <p>25 Q Eastern Orthodox or Greek Orthodox or --</p>

<p style="text-align: right;">Page 41</p> <p>1 A I'm going to say Greek Orthodox.</p> <p>2 Q Okay.</p> <p>3 A I have Catholics. That would pretty much be</p> <p>4 it.</p> <p>5 Q Okay. Any Episcopalians or anything like that</p> <p>6 you can think of?</p> <p>7 A Not at the present time that I'm aware of.</p> <p>8 Q Lutherans, Evangelicals, others you can think</p> <p>9 of?</p> <p>10 A I would classify them under the -- you know,</p> <p>11 under my -- under Christian faith, but now</p> <p>12 you're asking about denominations. I don't</p> <p>13 think I have any Lutherans right now.</p> <p>14 Q Okay. And by Christians, do you have any kind</p> <p>15 of other -- do you have a breakdown of what you</p> <p>16 consider Christian, I mean just --</p> <p>17 A That they are a follower of Jesus.</p> <p>18 Q Okay.</p> <p>19 A Specifically that way, not just in word only.</p> <p>20 Q Okay. And do you have people that you employ</p> <p>21 who you believe are not Christian in that</p> <p>22 sense?</p> <p>23 A I don't believe so.</p> <p>24 Q Now, if you're employing someone who is</p> <p>25 Orthodox or Catholic it's certainly not the</p>	<p style="text-align: right;">Page 43</p> <p>1 A Yes.</p> <p>2 Q None of those are -- there's no objection to</p> <p>3 that, correct?</p> <p>4 A Correct. Right.</p> <p>5 Q There's also Title VII; race, color, national</p> <p>6 origin, sex and religion?</p> <p>7 A Correct.</p> <p>8 Q Okay. None of those -- you don't object to any</p> <p>9 of those?</p> <p>10 A Correct.</p> <p>11 Q All right. So you said "Not religion." What</p> <p>12 do you mean then? What's the interference</p> <p>13 here, then?</p> <p>14 A Well, I don't think there is an interference,</p> <p>15 but I just wanted to be clear what --</p> <p>16 Q Okay. So, it's the case that there is -- you</p> <p>17 would disagree that the -- I want to phrase it</p> <p>18 properly here. You don't believe that the</p> <p>19 funeral home's right to free exercise of</p> <p>20 religion has been violated here?</p> <p>21 A Correct.</p> <p>22 Q Okay. Now you also own the Cremation Society</p> <p>23 of America, correct?</p> <p>24 A Correct.</p> <p>25 Q Okay. And I believe during your interview with</p>
<p style="text-align: right;">Page 42</p> <p>1 case that you would be endorsing everything</p> <p>2 they say or believe, you know, their church</p> <p>3 beliefs and certain different things than yours</p> <p>4 does, but that's -- you know, that's not taken</p> <p>5 as an endorsement by Harris or anything like</p> <p>6 that, right?</p> <p>7 A Correct.</p> <p>8 Q Okay. It's not a problem for you, it's just</p> <p>9 not, you know, it's not endorsement of their</p> <p>10 beliefs, correct?</p> <p>11 A Correct.</p> <p>12 Q Okay. Is there anything about the suit that</p> <p>13 was brought -- again, I apologize if I'm</p> <p>14 repeating myself. Can you think of anything</p> <p>15 about the suit as brought by the Commission</p> <p>16 that interferes with religious freedom rights,</p> <p>17 right to free exercise under the Constitution?</p> <p>18 A Not in -- not in terms of religion.</p> <p>19 Q Okay. So -- let's try it this way. Harris is</p> <p>20 subject to laws like the Americans with</p> <p>21 Disabilities Act, correct?</p> <p>22 A Yes.</p> <p>23 Q Equal Pay Act?</p> <p>24 A Yes.</p> <p>25 Q Age Discrimination Employment Act?</p>	<p style="text-align: right;">Page 44</p> <p>1 Mrs. Dickinson, our investigator --</p> <p>2 A Could have been.</p> <p>3 Q Yeah, the lady was --</p> <p>4 A Yes.</p> <p>5 Q You recall a female investigator?</p> <p>6 A Yes.</p> <p>7 Q You talked about how your cremation business</p> <p>8 has actually been growing?</p> <p>9 A Yes.</p> <p>10 Q How long have you operated the cremation</p> <p>11 business?</p> <p>12 A Almost 30 years.</p> <p>13 Q 30 years. Okay. So when was it established?</p> <p>14 It would be roughly 1980 --</p> <p>15 A I'm going to say 19 --</p> <p>16 Q -- '86?</p> <p>17 A Something like that.</p> <p>18 Q Okay. Now were you the whole -- the complete</p> <p>19 owner at that point or were you still working</p> <p>20 with family?</p> <p>21 A Well, Harris Funeral Home owns it.</p> <p>22 Q Okay. But you established it yourself?</p> <p>23 A Correct.</p> <p>24 Q Why did you establish it?</p> <p>25 A Because there was a need for it and a market</p>

Page 49

1 (sic) and then 15 years later cremation -- CSM
 2 Cremation Services --
 3 A Yes.
 4 Q -- because of a rise in demand, or a need?
 5 Would it be safe to say it would be a need?
 6 A Okay. Cremation Society of Michigan is --
 7 Q Of Michigan, I'm sorry.
 8 A Yeah -- is a -- just think of it as funeral
 9 home, okay?
 10 Q Okay.
 11 A Think of it that way, even though it only
 12 provides one service. The crematory is a
 13 separate thing. And that was -- that was
 14 started -- we used to use a cemetery for that.
 15 Crematories in this state are pretty much third
 16 party institutions.
 17 Q Okay.
 18 A Our third party that we were using was bought
 19 by a large conglomerate. We no longer wanted
 20 to do business with them and so we decided that
 21 we would seek an alternative and that's how we
 22 went out and did this.
 23 Q Okay. But as far as just going to overall need
 24 for cremation services, leaving aside the
 25 actual physical part, isn't it the case that

Page 50

1 you've seen your cremation side of your
 2 business going up over time?
 3 A Yes, it's 50 percent of the market.
 4 Q 50 percent. And what -- why do you see that;
 5 do you have any insight as to why that's the
 6 case?
 7 A I do not know.
 8 Q I believe at least at one point when you were
 9 talking to our investigator you thought it
 10 was -- you think it was kind of a cultural
 11 shift; is that a possibility?
 12 A Well, there's a lot of reasons people want to
 13 save some money.
 14 Q Okay.
 15 A People don't have the same types of -- I want
 16 to say family ties, cultural ties, religious
 17 ties, they don't see the value the same as in
 18 years ago. They don't see the need for a
 19 traditional type of service. We live in a
 20 disposable culture now, disposable society.
 21 Q I believe, and correct me if I'm wrong, did you
 22 believe that there was kind of like the
 23 devaluing of human life was an aspect, you
 24 told our investigator?
 25 A Yes, I would agree with that.

Page 51

1 Q You certainly -- is it safe to say you
 2 certainly would rather be doing funeral, full
 3 funeral services as opposed to cremations?
 4 A Yes.
 5 Q That aligns more with your personal religious
 6 values?
 7 A Yes, it does.
 8 Q How so?
 9 A I believe in the traditional funeral. I
 10 believe in the traditions that go with it, yes.
 11 Absolutely.
 12 Q And for religious reasons as well you believe
 13 you'd rather do full funerals?
 14 A I'm talking about for myself and for my family.
 15 What's your question? Because I thought that's
 16 what you were asking me personally.
 17 Q Yeah. Does it -- as a Christian would you
 18 rather be doing funerals more often than
 19 cremations?
 20 A Traditional funerals, yes.
 21 Q Traditional funerals.
 22 A Yes, of course.
 23 Q Now, is it the case that you -- you indicated
 24 kind of before, I just want to clarify kind of
 25 the way religious ties have been lessening over

Page 52

1 time people tend to choose cremation over a
 2 full funeral; is that -- did I catch that
 3 accurately?
 4 A I don't know if I'd say it that way. Let's
 5 just say the immediate disposal, because it
 6 could be burial.
 7 Q Okay.
 8 A We'll do immediate burials also.
 9 Q Okay. What's an immediate burial?
 10 A With no -- no visitation, no embalming
 11 preparation, just go into a cemetery.
 12 Q And how much of that do you do?
 13 A Oh, a couple a month.
 14 Q Would you say that cremation services tend to
 15 be demanded more by people who have less of a
 16 religious outlook?
 17 A I would say yes. In general. Yeah. If you
 18 want to make a general statement.
 19 Q In general, right. I mean it's not --
 20 obviously people could very well --
 21 A But it's changing. It is changing, yes.
 22 Q In what way?
 23 A It's becoming more recognized in all faiths
 24 now. I mean, years ago Catholics didn't allow
 25 it. Now, you know, it's very prevalent, you

Page 53

1 can take the cremated remains to church now.
 2 Q Okay.
 3 A So things have changed.
 4 Q And it's -- part of the reason you are doing
 5 cremation services is to remain -- is because
 6 the demand and just the way the funeral
 7 industry has shifted?
 8 A Exactly.
 9 Q You need it to stay in business really?
 10 A Exactly.
 11 MR. PRICE: If we could take a
 12 break here.
 13 (Off the record at 10:37 a.m.)
 14 MR. PRICE: Back on.
 15 (Back on the record at 10:47 a.m.)
 16 (Mr. Schrameck did not return to
 17 the conference room.)
 18 BY MR. PRICE:
 19 Q Who handles the hiring for R.G. G.R.?
 20 A Either myself or my managers.
 21 Q Okay. Do either you or your managers, to your
 22 understanding, ask about anybody's religion
 23 when you're hiring them?
 24 A No.
 25 Q Going back to this affirmative defense that we

Page 54

1 have been talking about today. Is it the case
 2 that continuing to employ Stephens would
 3 violate the free exercise rights of Harris
 4 under the Constitution?
 5 A Yes.
 6 Q Okay.
 7 A Yes. I believe so.
 8 Q Okay. How so?
 9 A Well, I do believe in my -- from my personal
 10 faith aspect as a follower of Jesus Christ that
 11 I have the right to minister to the families
 12 and the people that I serve in a way that is
 13 protective and safe for them, and meets their
 14 needs as they begin to heal in such a way that
 15 they're protected and safe, and having an
 16 individual that does not conform to our dress
 17 code is not appropriate.
 18 (Mr. Schrameck entered the
 19 conference room at 10:48 a.m.)
 20 BY MR. PRICE:
 21 Q So, your personal faith as a follower of Jesus
 22 Christ tells you that it would be improper
 23 or -- to employ someone like the person you
 24 knew as Anthony Stephens?
 25 A Absolutely.

Page 55

1 Q Okay. You indicated as part of the healing
 2 process, but what about your religious beliefs
 3 specifically are violated by continuing to
 4 employ Stephens?
 5 A I believe it would violate my faith, yes,
 6 absolutely.
 7 Q Okay. What aspects of it?
 8 A Well, I believe that God created a man as a man
 9 and God created a woman as a woman. And to --
 10 to not honor that, I would feel it's a
 11 violation of my faith, absolutely.
 12 Q So Stephens would be presenting in a way that
 13 offended your religious beliefs, essentially?
 14 A Yes. Yes.
 15 Q And as a result you would not have to -- it
 16 would be within your rights to terminate them
 17 according to your religious belief, terminate
 18 Stephens from your religious belief?
 19 A Yes. Uh-huh.
 20 Q Have you ever terminated anybody else because
 21 of the belief that they were acting contrarily
 22 to your religious faith?
 23 A No.
 24 Q Are there any other circumstances you can think
 25 of where you would terminate somebody for

Page 56

1 violating your religious beliefs?
 2 A No, offhand I can't.
 3 Q Okay. Are your religious expectations
 4 communicated to your employees in any way?
 5 A I would say indirectly.
 6 Q Indirectly?
 7 A Yes.
 8 Q How so?
 9 A Well, number one, they know the material is
 10 around the funeral home.
 11 Q The material?
 12 A Yeah, I mean, we have little devotional books
 13 for people to pick up, they have these Jesus
 14 cards, they know where I attend church. They
 15 do know, yes.
 16 Q Okay. Would the continued employment of
 17 Stephens have interfered with your right to
 18 place the devotional booklets or Jesus cards
 19 around your facility?
 20 A No.
 21 Q Would it have been interfered in any way with
 22 your ability to continue to worship as you
 23 chose?
 24 A Go back to the question. You said just because
 25 he was there or if he was there dressed as a

Page 57

1 woman?

2 Q After he made the announcement to you, okay?

3 Would the continued presence of Stephens as an

4 employee presenting as female have interfered

5 with your ability to place devotional booklets

6 or Jesus cards?

7 A No, he wouldn't be an employee.

8 Q Okay. I'm just speaking hypothetically.

9 A Yes, that is hypothetical. Yeah.

10 Q Okay. But you could have still placed Jesus

11 cards and devotional booklets, right? There's

12 nothing about Stephens presence that would

13 affect that?

14 A No, hypothetically.

15 Q Okay. Likewise, hypothetically, there would

16 have been nothing about Stephens presence that

17 would have affected your ability to go to Oak

18 Pointe or Highland Park, correct?

19 A Yeah, hypothetically, yes.

20 Q Okay. Would you say that your dress code for

21 men and women also embodies your religious

22 beliefs? As to how men and women are supposed

23 to dress?

24 A No, I would say our dress code conforms to what

25 is acceptable attire in a professional manner

Page 58

1 for the services that we provide. In other

2 words, there's an expectation for people that

3 work in a funeral home how they're going to

4 dress and how they're going to look.

5 Q Okay.

6 A The culture dictates that.

7 Q So the culture dictates what you're supposed to

8 be wearing?

9 A To some extent, uh-huh.

10 Q But isn't it the case that the dress code does

11 align with the way you believe that men should

12 dress in the workplace and that women should

13 dress in a workplace?

14 A Yes, of course.

15 Q Okay. And that also aligns with your religious

16 beliefs on that point?

17 A I guess if you want to put it in that term, but

18 I don't know what it would have to do with

19 religious terms.

20 Q Okay.

21 A I mean, you're an attorney, you have a white

22 shirt and a tie like just about all attorneys

23 look. You have a certain dress.

24 Q Okay. You indicated earlier that God made men

25 as men and women as women. That was one of

Page 59

1 your concerns about continuing to employ

2 Stephens. You have a deep belief in that --

3 A Yes.

4 Q -- stemming presumably from Genesis, correct?

5 A Yes.

6 Q Male and female, he created them?

7 A Yes.

8 Q Okay. So, men and women should dress

9 accordingly in your opinion, right, men should

10 dress as men and women should dress as women;

11 is that one of your concerns with Stephens?

12 A For employment at the funeral home, yes.

13 Q Okay. Now, you indicated also that one of the

14 concerns you had was that people be protected

15 and safe in the grieving process, I believe so.

16 How would continuing to employ Stephens affect

17 that?

18 A Well, his employment there would be looked upon

19 as -- well, a -- let me back up.

20 Let's see. Families come to us

21 because they want an environment where they can

22 begin the grieving process and the healing

23 process and begin the experience of healing.

24 We're there to meet their emotional, relational

25 and spiritual needs. They're there with their

Page 60

1 family and friends in an environment that they

2 don't need some type of a distraction that is

3 not appropriate for them and their family that

4 they want to be involved in. And his continued

5 employment would negate that.

6 Q So it's your belief that continuing employment

7 would have posed that kind of distraction to

8 people who are coming to use your services?

9 A Absolutely.

10 Q Okay. You never saw Stephens in anything other

11 than a suit and tie, correct?

12 A That is correct.

13 Q Okay. So, you can't speak as to how Stephens

14 would have presented -- you never saw Stephens

15 present in female attire, correct?

16 A Correct.

17 Q Okay. So you don't know how they would have --

18 how Stephens would have looked, correct?

19 A I don't know how he would have looked, no.

20 Q Okay. So, but nevertheless, despite that it

21 was your belief that it would have been a

22 distraction?

23 A Yes.

24 Q Why would it be distracting for Stephens to so

25 present?

Page 69

1 follower of Jesus to present that faith through
 2 your business?
 3 A That is true.
 4 Q However, when you were presented with the
 5 letter, that did interfere with --
 6 MR. KIRKPATRICK: Objection, what
 7 letter are you talking about?
 8 MR. PRICE: The letter Stephens
 9 gave you.
 10 MR. KIRKPATRICK: Okay.
 11 BY MR. PRICE:
 12 Q So when you were presented with that letter, at
 13 that point it was your belief that there was --
 14 they could no longer serve that function, he
 15 could no longer serve that function?
 16 A That is true. He what not going to conform to
 17 the dress code that was required.
 18 Q The dress code is part of that ministry,
 19 correct?
 20 A Yes, it is.
 21 Q Okay. And it's part of the way you present
 22 your business through -- as a follower of Jesus
 23 Christ, correct?
 24 A Yes.
 25 Q And part of the way that you present your

Page 70

1 business and your ministry and your exercise of
 2 your religious freedom is that men should be
 3 dressing in suits as part of this process and
 4 that women should be dressing conservatively in
 5 skirts, correct?
 6 A Yes.
 7 Q Now, with respect to this and also the previous
 8 affirmative defense, did you ever raise
 9 religious freedom or free exercise during the
 10 investigation as a basis for your
 11 decision-making?
 12 A When the young lady was there?
 13 Q Yeah. Or any other point?
 14 A I don't recall.
 15 Q Okay. If I tell you that there was no such
 16 mention in any of the filings that came through
 17 your attorney of religious freedom or free
 18 exercise, would you have any explanation for
 19 why that is?
 20 A No.
 21 Q Okay. Do you have any understanding why the
 22 religious freedom and free exercise were not
 23 mentioned in your first Answer to the Complaint
 24 that was filed starting this lawsuit?
 25 A No.

Page 71

1 MR. KIRKPATRICK: Objection,
 2 relevance, but you already answered, so --
 3 BY MR. PRICE:
 4 Q Is it your belief that you at any point talked
 5 about religious freedom or free exercise during
 6 the investigation part of the case?
 7 A To the young lady?
 8 Q Yeah.
 9 A No.
 10 Q You did not do so?
 11 A I don't believe so.
 12 Q Do you believe that you did so at any point
 13 through stuff that was filed on your behalf?
 14 A I don't believe so.
 15 Q Okay. And you have no understanding of why you
 16 would not have done so?
 17 A No.
 18 Q Okay. Do you claim that any other statutes
 19 violate your religious freedom rights? We've
 20 talked about, like, Americans with Disabilities
 21 Act, you don't believe that that affects your
 22 free exercise or religious freedom, correct?
 23 A Right.
 24 Q Okay. Equal Pay Act, you don't believe that
 25 that affects your free exercise or religious

Page 72

1 freedom rights?
 2 A Right.
 3 Q Age Discrimination Employment Act, that also
 4 does not affect your free exercise or religious
 5 freedom rights?
 6 A That's true.
 7 Q Okay. And Title VII, bracketing the dispute we
 8 have here, but Title VII provisions on race,
 9 color, national origin, religion and sex also
 10 don't violate your free exercise rights?
 11 A That's is true.
 12 Q Okay. Or religious freedom rights, correct?
 13 A Okay. Yes.
 14 Q Is that the case?
 15 A Yes.
 16 Q Okay. So, again, it sounds like it's going to
 17 be kind of repeated, but so the -- it is your
 18 argument that the continued employment of
 19 Stephens after Stephens had announced in the
 20 letter to you that he was going to present as
 21 female, violates your religious freedom?
 22 A Yes.
 23 Q Okay.
 24 A Absolutely.
 25 Q And there's no other way that the EEOC's claims

<p style="text-align: right;">Page 81</p> <p>1 Q Apart from that, is there any other statement 2 you can think of? 3 A No. 4 Q Okay. Now, when you deeded -- when you passed 5 some of the stock onto your family, was there 6 any kind of restriction or statement of purpose 7 that they had to sign? 8 A No. 9 Q Okay. Is there anything other than this 10 Exhibit 4, and the mission statement on the web 11 page which sets forth the purposes of Harris? 12 A No. 13 Q Okay. Is there anything anyone has to sign 14 indicating one's going to uphold Harris' 15 principles before you get stock or anything 16 like that? 17 A No. 18 Q Okay. Is -- are employees of Harris expressly 19 asked if they were -- are going to be upholding 20 the religious values of the corporation? 21 A They're not asked that, no. 22 MR. PRICE: Okay. All right. I'm 23 going to mark this as 5, please. 24 (Deposition Exhibit No. 5 was 25 marked for identification.)</p>	<p style="text-align: right;">Page 83</p> <p>1 it, for example? 2 A They're not directed to read it, but I think it 3 might be in their little employee manual. 4 Q Okay. And it's your understanding it's been up 5 for about 15 years? 6 A I would say so. 7 Q And it -- you say it's basically to let people 8 know who are and what you're about? 9 A Yes. 10 Q And the public too, obviously? 11 A Yeah, for the public, sure. 12 Q Sure. And it indicates that you provide 13 services to people of all cultural and 14 religious backgrounds. And you've already 15 testified about that before. 16 A Uh-huh. 17 Q Okay. Now, when you're hosting a service for 18 somebody who is not of the Christian religion, 19 what's involved with that? Is there anything 20 that people bring in, religious artifacts from 21 their religion or anything like that? Is there 22 anything done to prepare the chapel 23 differently? 24 MR. KIRKPATRICK: Can I object, 25 that's kind of a compound question.</p>
<p style="text-align: right;">Page 82</p> <p>1 MR. KIRKPATRICK: Thank you. 2 THE WITNESS: (Reviewing.) 3 BY MR. PRICE: 4 Q Please take as much time as you need to review 5 that. 6 A (Reviewing.) 7 Q Okay. Do you recognize this document? 8 A Yes. 9 Q Okay. Now it says at the bottom that it's a 10 web page capture as of May 15th, 2014. But, 11 does this look like an accurate depiction of 12 the Harris' mission statement? 13 A Yes. 14 Q Is there anything that has changed in this? 15 A No. 16 Q How long has this mission statement been 17 posted, as far as you know? 18 A Oh, probably 15 years. 19 Q And what is the purpose of the mission 20 statement? 21 A It was originally designed to just kind of put 22 some focus on and give some definition to who 23 we are and what we want to be about. 24 Q Is there anything like this given to employees 25 when they're hired? Are they directed to read</p>	<p style="text-align: right;">Page 84</p> <p>1 BY MR. PRICE: 2 Q Okay. Is there -- do people bring in objects 3 of their religion if it's -- 4 A They do. 5 Q Is the chapel decorated differently? 6 A Not from our perspective. 7 Q Okay. What's -- how is the chapel decorated? 8 What does it look like? 9 A It's like a living room. We don't have a 10 formal chapel. 11 Q Okay. 12 A So it's like a living room in your house. 13 Q Is there any kind of specifically Christian 14 decorations in the chapel? 15 A No. Not specific, no. 16 Q And that makes it easier for people of -- who 17 are not of the Christian faith to be able to 18 use it? 19 A That's true. Uh-huh. 20 Q Correct? 21 A Correct. 22 Q And you have to be sensitive to that. I mean, 23 you don't want to offend people of another 24 religion, correct, that are coming here to use 25 your facility?</p>

1 A Well, it wouldn't be intent to.
 2 Q Okay.
 3 A Yeah.
 4 Q So that's why it's kept as living room-like as
 5 possible?
 6 A Yes.
 7 Q Okay. And at the bottom there is a quote from
 8 the Gospel of Matthew, Chapter 6, Verse 33.
 9 A Uh-huh.
 10 Q Did you pick that verse?
 11 A I did.
 12 Q And how long has the verse been up there?
 13 A Same, same amount of time.
 14 Q About 15 years?
 15 A Uh-huh.
 16 Q And why did you pick that verse?
 17 A Oh, I don't know, I just thought it was
 18 appropriate.
 19 Q Why?
 20 A Because I believe in it and it would represent
 21 my faith.
 22 MR. PRICE: I hate to do this, but
 23 I need to take another break.
 24 (Off the record at 11:33 a.m.)
 25 (Back on the record at 11:45 a.m.)

1 religion through or in the course of operating
 2 its business."
 3 Now, this may be somewhat
 4 repetitive, but you've already kind of talked
 5 about how you put out the Daily Breads in
 6 your -- and pamphlets.
 7 A Uh-huh.
 8 Q And that's at all of the Harris locations?
 9 A Uh-huh.
 10 Q "Yes"? I'm sorry.
 11 A Yes.
 12 Q And you have the Jesus cards put out at all of
 13 the locations?
 14 A Yes.
 15 Q Okay. Can you think of any other ways that
 16 Harris communicates or exercises its religion
 17 through business operations?
 18 A Well, other than the way we practice our
 19 business and we practice our faith through our
 20 business. But not in a direct -- with things
 21 around or like you had referred to at Christmas
 22 and Easter, no, nothing.
 23 Q No direct evangelism or anything like that?
 24 A No, there's no direct, no.
 25 Q Okay. You're not putting out newspaper ads

1 BY MR. PRICE:
 2 Q Just to clarify, earlier, actually a couple
 3 times you described it as -- your business as a
 4 ministry. What do you mean by that?
 5 A Well, what I mean by that is, it's a ministry
 6 to people to serve them on the worst day of
 7 their lives for them and their family, and they
 8 come to us under the highest anxiety that they
 9 can possibly have, and they need help.
 10 They need help to make
 11 decisions and they need help to get their lives
 12 and their family's lives back together and
 13 that's why we say that we're there to help them
 14 begin healing and to help them meet their
 15 emotional, relational and spiritual needs. And
 16 in a sense so much of what we do is involved,
 17 in a religious way if you want to call it that,
 18 it is a ministry. And my faith calls me to do
 19 that.
 20 Q Your faith informs the way you operate the
 21 ministry?
 22 A Yes. Yes. Absolutely.
 23 Q Moving on to Number 7 in the Deposition Notice,
 24 it talks about "Non-privileged communications
 25 concerning or touching upon Harris' exercise of

1 calling people to faith in Jesus or anything
 2 like that?
 3 A No. No.
 4 Q Or like religious, you know, Happy Easter --
 5 A No.
 6 Q -- with reference to the Resurrection or
 7 anything like that; you're not publishing that
 8 sort of thing?
 9 A No.
 10 Q You're not even publishing that sort of thing
 11 on your website or your Facebook page, correct?
 12 A No.
 13 Q And as you've said before, you are open to
 14 people of all sorts of religions or none,
 15 correct?
 16 A That is true.
 17 Q And in terms of clients or even in terms of
 18 possibly hiring people, correct?
 19 A Yes.
 20 Q Now moving on to Number 8 out of 13. "Facts
 21 concerning Harris' exercise of religion in
 22 conducting its business operations or in its
 23 personnel practices."
 24 Again, we've kind of plowed this
 25 ground a little bit before, but you've -- we

Page 89

1 have talked a bit about this, but with respect
 2 to when you're open, are you open 24/7, 365?
 3 A Yes.
 4 Q Okay. And that's all the locations?
 5 A Yes.
 6 Q And you do have paid holidays for the
 7 employees, correct?
 8 A Correct.
 9 Q All right. Christmas is one of them?
 10 A Yes.
 11 Q Okay. But if I read the employee manual
 12 correctly, Easter is not a paid holiday; is
 13 that correct?
 14 A That is correct.
 15 Q Okay. Why is that the case?
 16 A It's not a legal holiday.
 17 Q Okay. So paid holidays are the ones that are
 18 legal holidays?
 19 A Correct.
 20 Q And Harris is open on Easter, correct?
 21 A Oh, yes.
 22 Q Now when you have a holiday like Christmas or
 23 Easter, do all of the people show up?
 24 A No.
 25 Q Okay. What kind of staffing do you have?

Page 90

1 A Usually just a manager and maybe a part-time
 2 person.
 3 Q Are there people on call?
 4 A Well, that would be the person that's on call
 5 and working too.
 6 Q Okay.
 7 A They do everything.
 8 Q All right. Now, have you -- you indicated
 9 you've done cremation related services within
 10 the home. Have you done the religious services
 11 like other religions, like a Hindu, do they
 12 sometimes have funeral services in the home
 13 that you've gone to?
 14 A Yes. Hindu, they do. They tend to go to the
 15 crematory and do it right there, but they do it
 16 in a funeral home setting.
 17 Q Also, do you ever do in-home funeral related
 18 services?
 19 A On rare occasions.
 20 Q Okay. What circumstances?
 21 A Just that the family would want it.
 22 Q Okay. Can you think of any religions --
 23 A No, has nothing to do with religion.
 24 Q Okay. Are Sundays full staff days?
 25 A No.

Page 91

1 Q What is the staffing on a Sunday?
 2 A It's just about like a holiday.
 3 Q Okay. What about Saturdays?
 4 A That's a full staff day.
 5 Q Sundays, when you say it's just about like a
 6 holiday, is there more people on --
 7 A No, there's just one manager on, and a few
 8 other people.
 9 Q And what other people?
 10 A In some instance there is a funeral director, a
 11 licensed funeral director that might be working
 12 that Sunday and then some part-time people.
 13 Q What part-time people?
 14 A Well, we use the ladies.
 15 Q The administrative people?
 16 A Yeah, we call them administrative assistants.
 17 Q Anyone else?
 18 A No.
 19 Q Does Harris provide health insurance to
 20 employees?
 21 A Yes.
 22 Q Okay. What kind of health insurance?
 23 A Just regular health insurance, I guess.
 24 Q I -- there was something in the manual about
 25 Blue Cross/Blue Shield?

Page 92

1 A Well, we used to, but we don't have Blue Cross
 2 and Blue Shield for them now.
 3 Q Okay.
 4 A Yeah, it's --
 5 Q Who is it now, do you know?
 6 A I do not. You could ask Shannon.
 7 Q Okay.
 8 A I don't want to speculate because I'm now on
 9 Medicare, so --
 10 Q Okay.
 11 A That's what happens when you get old.
 12 MR. KIRKPATRICK: A young man like
 13 you, huh?
 14 THE WITNESS: A young man like --
 15 that's why I got to keep you guys paying taxes.
 16 BY MR. PRICE:
 17 Q With -- with respect to the health insurance
 18 that's offered, do you know what's covered?
 19 A I do not.
 20 Q Do you recall if you've had any things that you
 21 will not cover?
 22 A No, I don't recall that, no.
 23 Q Okay. So you don't know if there's any -- do
 24 you recall if there's anything like on a
 25 religious basis where it won't cover abortions

Page 93

1 or anything like that?

2 A No.

3 Q And you don't know if there's any such

4 restrictions?

5 A No, I do not know.

6 Q You have not asked for any such restrictions?

7 A I have not.

8 Q Okay. Or any other kind of things that might

9 be controversial, sterilizations or anything

10 like that?

11 A Correct. No.

12 Q All right. So you had no moral objections to

13 your insurance coverage that you've put in

14 place?

15 A Whatever is there, yes.

16 Q Whatever is offered you take?

17 A Yeah, whatever is offered is -- yeah.

18 Q Okay. That was back in the case when it was

19 Blue Cross as well?

20 A Yes.

21 Q Okay. And you said Ms. Kish would be the one

22 to ask questions about --

23 A She would know the company, uh-huh.

24 Q Okay. To your knowledge, have you done

25 funerals for people, Episcopalians?

Page 94

1 A Sure.

2 Q How recently? Any recently?

3 A Don't know.

4 Q Okay. You can't specifically recall?

5 A No.

6 Q What about Evangelical Lutherans?

7 A Yes.

8 Q Okay. Recently, but no specifics?

9 A I wouldn't know.

10 Q Okay. Is there any way that you would keep

11 track of the type of -- is there any kind of

12 log where you would be able to tell what

13 religious services have been held at --

14 A Yeah, we would have the minister's name in the

15 church that was the officiant.

16 Q Because you would have a list of the

17 officiants?

18 A Yes, on their -- what we would call a worksheet

19 for that particular individual.

20 Q Okay. And how far back do the worksheets go?

21 A I guess 1910. I don't know. They don't go

22 back that far.

23 Q I'm sure they don't. But okay. But there is a

24 list you would note the officiant and so forth.

25 Is there a regulatory purpose for that? Do you

Page 95

1 have to kind of --

2 A No.

3 MR. KIRKPATRICK: I would object on

4 relevance, but go ahead and answer if you can.

5 THE WITNESS: Yeah, there's no --

6 no.

7 BY MR. PRICE:

8 Q Okay. But it would tell the minister and the

9 denomination for which they worked?

10 A Well, it might not have all -- all of the

11 denominations, but it would have the minister's

12 name.

13 Q Okay. All right. Do you advertise for

14 employees? When you need them?

15 A Sometimes. Sometimes, yes.

16 Q Where do you advertise when you -- on the

17 occasions you do so?

18 A You know, I have -- it's been so long, that

19 I -- I have advertised or contacted like the

20 mortuary school, Wayne State mortuary school if

21 I need somebody like that. But my managers are

22 advertising online now for staff. I don't know

23 where that is or how they do it, but they go

24 online now, that seems to be the new thing.

25 Q Would Ms. Kish have any understanding of that?

Page 96

1 A She might.

2 Q Okay. But it would be left in the hands of the

3 managers pretty much?

4 A Yes, for their staff.

5 Q Okay. Moving on to Number 9 in the deposition

6 notice, "Facts concerning any claimed

7 substantial burden to Harris' exercise of

8 religion caused by the EEOC's claims."

9 And we've already kind of talked

10 about how you believe that your continued

11 employment of Stephens would have been a

12 violation of your free exercise and religious

13 freedom rights.

14 A That is correct.

15 Q Okay. Is there anything else about any of the

16 claims that the Commission has filed that would

17 burden, substantially burden your exercise of

18 religion?

19 A Well, not any additional claims, but just that

20 claim itself is a violation of my -- my

21 religious rights.

22 Q As we discussed previously?

23 A As we discussed, exactly.

24 Q Okay. Do you have in your locations, do you

25 have like the employee posters that explain,

Page 105

1 Q Is the medical reimbursement policy still in
 2 effect?
 3 A Yes, it is.
 4 Q Okay. And -- okay. Now, it sets forth the
 5 dress code policy. And so forth. Are there --
 6 apart from this document, Exhibit 6, and --
 7 well, apart from this, are there any other
 8 documents which set forth Harris' expectations
 9 for its employees?
 10 A No.
 11 Q Okay. Now there is nothing -- I could be wrong
 12 and I missed it, but I did not see anything
 13 setting forth any kind of religious expression
 14 within the manual?
 15 A No, there -- no, there isn't anything there for
 16 that.
 17 Q Okay. Nothing setting forth your, you know,
 18 religious faith as expressed through Harris in
 19 there. Why is that the case?
 20 A Doesn't seem like it would be part of an
 21 employee manual for what we want to accomplish
 22 here. When you're as small as we are, you
 23 can --
 24 Q So you wouldn't want to put that in there, you
 25 want to put --

Page 106

1 A Well, I'd be happy to do that, but, you know,
 2 when you're as small as we are, we're talking
 3 all the time, you don't need to have everything
 4 written down.
 5 Q Okay. Are there any unwritten policies?
 6 A No.
 7 Q Okay. Any unwritten expectations of employees?
 8 A No.
 9 Q Are there any reviews conducted, evaluations,
 10 that sort of thing?
 11 A Not -- not in a -- in a formal setting.
 12 Q Not like an annual review process or anything
 13 like that?
 14 A No. No.
 15 MR. PRICE: All right. I'm going
 16 to take a break before we finish the last
 17 section.
 18 (Off the record at 12:10 p.m.)
 19 MR. PRICE: Okay. We are back on.
 20 (Back on the record at 12:17 p.m.)
 21 BY MR. PRICE:
 22 Q Moving on to 30(b)(6) Deposition Notice, Number
 23 13, "The circumstances and reasons for Aimee
 24 Stephens' separation from employment -- of
 25 employment from Harris and all policies Harris

Page 107

1 relied upon in terminating Ms. Stephens."
 2 Basically we'll be talking about
 3 just that whole process, determining to end the
 4 employment of Aimee Stephens.
 5 Now, were -- you were involved in
 6 the hiring of Stephens, correct?
 7 A I was.
 8 Q What role did you play?
 9 A I believe, if I remember, he -- he just came in
 10 looking for a job. I don't think he came in
 11 from an advertisement. I don't remember the
 12 circumstances. But, I believe I was the
 13 initial one that interviewed him.
 14 Q Okay. And what job was this for?
 15 A For a funeral director/embalmer, I guess.
 16 Q Did you check-out the resume and references?
 17 A Don't know.
 18 Q Did you ever have any reason to believe that
 19 Stephens did not have the certifications or
 20 background to do the job?
 21 A No.
 22 Q In fact Stephens was able to perform the jobs
 23 of a funeral director and embalmer, correct?
 24 A He was. Uh-huh.
 25 Q All right. Now, was there somebody already

Page 108

1 working as a funeral director and embalmer at
 2 that time?
 3 A Don't know.
 4 (Mr. Schrameck exited the
 5 conference room at 12:19 p.m.)
 6 BY MR. PRICE:
 7 Q Okay. What location was this?
 8 A This is at the Garden City location.
 9 (Jeffrey Schrameck entered the
 10 conference room at 12:19 p.m.)
 11 BY MR. PRICE:
 12 Q All right. Do you recall whether or not
 13 Stephens replaced somebody at that location?
 14 A I don't recall. I don't know.
 15 Q Is it possible?
 16 A Oh sure, it's possible.
 17 Q Okay. During your interview with Mrs.
 18 Dickinson, I believe you said that Stephens
 19 could do the job, correct?
 20 A Yes.
 21 Q All right. We've already talked earlier about,
 22 you know, that Stephens showed sensitivity and
 23 compassion to the clients who came in, correct?
 24 A Yes.
 25 Q Okay. And that there were no -- is it safe to

1 say then that there were no performance-related
 2 reasons for termination of employment?
 3 A Not at that time, but we did have some issues
 4 beforehand.
 5 Q But they didn't motivate the decision to
 6 terminate the employment, correct?
 7 A No. No.
 8 Q So performance was not the basis for discharge?
 9 A That's right.
 10 Q Did you have any kind of suspicion that --
 11 prior to receiving the letter from Stephens
 12 announcing this desire to present as female,
 13 did you have any suspicion or thought that
 14 anything like that could be happening?
 15 MR. KIRKPATRICK: Objection.
 16 THE WITNESS: No --
 17 MR. KIRKPATRICK: Objection based
 18 on foundation. Go ahead.
 19 THE WITNESS: No.
 20 BY MR. PRICE:
 21 Q Okay. How did you receive this letter?
 22 MR. PRICE: And let's have it
 23 marked as 7, please.
 24 (Deposition Exhibit No. 7 was
 25 marked for identification.)

1 THE WITNESS: (Reviewing.)
 2 BY MR. PRICE:
 3 Q Have you had a chance to review the letter?
 4 A Well, I -- I know it from before.
 5 Q Okay. You recognize it then?
 6 A Yes.
 7 Q Okay. Is this the letter that Stephens gave to
 8 you?
 9 A Yes.
 10 Q Okay. How did you come to get it?
 11 A He handed it to me.
 12 Q Okay. Where was this?
 13 A I believe at the Garden City location.
 14 Q Now, do you visit all the facilities every day?
 15 A No.
 16 Q No. Okay. How often do you get out to each of
 17 them?
 18 A Oh, I'm -- couple times a week. Yeah.
 19 Q Okay. Do you recall time of day, whatever,
 20 like that?
 21 A I don't recall. I'm assuming he wanted -- he
 22 asked me to speak to him. I don't recall that
 23 though.
 24 Q Okay. Do you recall -- was it in an office
 25 there?

1 A I believe it was just in the chapel.
 2 Q Okay.
 3 A What we call a chapel.
 4 Q The living room facility?
 5 A The living room, yes. You probably wouldn't
 6 call it that.
 7 Q Okay. Was there anybody else present?
 8 A No.
 9 Q Do you recall the time of day?
 10 A I don't.
 11 Q Okay. So Stephens asked to meet with you or
 12 just approached you, what was the --
 13 A I'm not quite sure.
 14 Q Okay. Handed you the letter, though, correct?
 15 A Uh-huh.
 16 Q All right. You read the letter?
 17 A I read the letter.
 18 Q Okay. What was your reaction upon reading it?
 19 A Well, it was kind of a shocking letter. I
 20 believe I just said to him that I would get
 21 back to him. He was going to go away on
 22 vacation in a couple weeks and I would get back
 23 to him.
 24 Q He was going on vacation?
 25 A Yes.

1 Q Stephens was going on vacation?
 2 A Yes.
 3 Q Okay. All right. Did Stephens say anything to
 4 you?
 5 A I think he just -- he explained to me how he
 6 had been taking medication, I don't know how
 7 long, but he had been involved in wanting to
 8 present himself as a female.
 9 Q Okay. Anything else?
 10 A I don't believe so.
 11 Q You indicated you were shocked at the letter.
 12 Did you have any other feelings about it?
 13 A No, I don't think so.
 14 Q Okay. You indicated that you would get back --
 15 you were going to decide what to do?
 16 A Yes.
 17 Q Okay. So what did you do next?
 18 A Contacted our corporate attorney.
 19 Q Okay. And I don't want to know anything about
 20 details or anything like that. But who is your
 21 corporate attorney?
 22 A David Thoms.
 23 Q Was that the same day?
 24 A I'm not sure.
 25 Q All right. Do you recall roughly when -- are

<p style="text-align: right;">Page 113</p> <p>1 we talking about the first week of August here, 2 end of July, what's the time frame for this? 3 A I'm going to say it was in August, because it 4 seemed like he was going to go away in 5 September and so I think it was two weeks 6 before. So, I think it was probably certainly 7 in August. 8 Q Certainly in August. Okay. Now, who is David 9 Thoms? 10 A He's an attorney. 11 Q From what firm? 12 A Miller Canfield at the time. 13 Q Where is Mr. Thoms now? 14 A He's just moved to another law firm and I don't 15 know the name offhand. 16 Q Okay. Still your corporate attorney, though? 17 A He is. 18 Q How long has Mr. Thoms been your corporate 19 attorney? 20 A 40 years. 21 Q What kind of work does Mr. Thoms do for you, 22 what kind of -- 23 A Well, whatever corporate attorneys do. You 24 know, they fill out our forms and -- 25 Q Okay. The corporate filings --</p>	<p style="text-align: right;">Page 115</p> <p>1 Q Okay. With respect to the persons at R.G. & 2 G.R. Harris, who did you -- what did you talk 3 about; what did you say specifically to them? 4 A To them? 5 Q Yes. 6 A I just presented the letter, showed them the 7 letter. That's all. 8 Q Did you ask them for any input or anything like 9 that? 10 A I don't recall on that. They didn't have much 11 to say. 12 Q That was my next question. Do you recall any 13 other -- do you recall reactions to the letter 14 or anything like that? 15 A No. They were surprised, of course. 16 Q Anything else you recall being said? 17 A No. 18 Q Why did you present the letter to them? 19 A Well, they're part of my management team. They 20 need to be informed what's going on. 21 Q Okay. What did you do next? 22 A I'm not sure what I did next, but I -- 23 eventually I had a conversation with Miller 24 Canfield and the lady that handled their 25 department for whatever that is -- whatever</p>
<p style="text-align: right;">Page 114</p> <p>1 A Corporate filings and minutes and things like 2 that, yeah. 3 Q And again, without getting into detail, have 4 you ever consulted with respect to hiring and 5 firing decisions? 6 A I may have. I don't recall offhand, though. 7 Q Now did you contact Mr. Thoms by e-mail or was 8 it a phone call? 9 A Phone call. 10 Q Okay. So, was it that same day? I'm sorry. 11 A I'm going to assume the same day or certainly 12 the next day. 13 Q Okay. What was the next thing you did? 14 A Well, of course I faxed him the letter and 15 asked him what our response should be. 16 Q What was the next thing you did? 17 A I talked to my managers, made them aware, let 18 them know. 19 Q Which managers? 20 A What we -- all of them. All of them. 21 Q Who were they at the time? 22 A Well, Dave Cash and it was -- a George Crawford 23 that actually worked at the Garden City 24 location at the time, and my son and Shannon 25 Kish.</p>	<p style="text-align: right;">Page 116</p> <p>1 department that would be. 2 Q Okay. Do you recall the lady's name? 3 A I do not. 4 MR. KIRKPATRICK: Objection on 5 relevance on contacting lawyers. I mean, you 6 already established that you talked to Dave 7 Thoms. 8 THE WITNESS: Yeah. 9 BY MR. PRICE: 10 Q Well, you talked to another person from 11 Canfield; who was that? 12 A Well, he put me in touch with -- yeah, somebody 13 else. 14 Q Don't recall her name? 15 A No. Uh-uh. And I know she's not there 16 anymore. 17 Q Okay. What did you do next? 18 A Well, then I was in touch with Joel. It came 19 over to Joel. I was in touch with Joel. 20 Q Had you worked with Mr. Kirkpatrick before? 21 A No. 22 Q Okay. Do you recall when you first met with 23 that -- in a time frame -- in reference to the 24 letter, how soon after? 25 A I would say -- let's say ten days later.</p>

<p style="text-align: right;">Page 117</p> <p>1 Q All right. What was the next thing that you 2 did?</p> <p>3 A Well, I met with Joel and --</p> <p>4 Q We don't need to know the substance. 5 MR. KIRKPATRICK: Let's just be 6 clear I'm objecting now, we're getting into 7 some privileged communication. 8 THE WITNESS: Oh, okay. 9 MR. KIRKPATRICK: So I think -- I 10 don't want to tell you what you're asking, but 11 what did you do after -- what was next thing 12 that happened. I -- go on and ask your 13 question. 14 BY MR. PRICE: 15 Q Right. I do not want to, I'm not entitled to 16 know what your conversations with your attorney 17 are. So that is a privileged matter, but I do 18 want to know what you yourself did. 19 A Well, the only thing I did was -- was meet with 20 him and then formulate a letter in response. 21 Q Was this the severance letter? 22 A Yes. 23 Q Okay. So you decided to terminate Aimee 24 Stephens' employment, correct? 25 A Yes. That -- yes. Yes.</p>	<p style="text-align: right;">Page 119</p> <p>1 Q Generally did you have any mindset behind 2 offering that -- your thinking behind offering 3 an agreement in this case? 4 A Well it was just, I would say, to see if there 5 was some kind of a fair agreement that we could 6 come to with his leaving under the 7 circumstances. 8 Q Okay. 9 MR. KIRKPATRICK: I'm going to 10 object to this line of questioning on the fact 11 that this goes along with settlement 12 discussions, potentially, and that's not 13 admissible. 14 MR. PRICE: Okay. Well, let me see 15 if I can -- 16 BY MR. PRICE: 17 Q You did -- as part of the severance agreement 18 wasn't there an agreement to waive Title VII 19 claims? 20 MR. KIRKPATRICK: Again, it's -- 21 I'm just going to object again and place it so 22 we're really clear that we're getting into 23 settlement options which are not admissible in 24 court. 25 MR. PRICE: Well, the fact that --</p>
<p style="text-align: right;">Page 118</p> <p>1 Q Okay. And it was your decision? 2 A Yes, it was. 3 Q Did you get any input from anybody else in 4 making the decision apart -- leaving aside 5 lawyer stuff, we don't want to touch that? 6 A No. No. 7 Q Okay. Did you tell anyone at Harris that you 8 were going to be terminating Stephens? 9 A I don't believe so. Not ahead of time. 10 Q Did you give a copy of Exhibit 7, Stephens' 11 letter, to your attorney, Mr. Kirkpatrick as 12 well? 13 A Oh, yes. Yes. 14 Q Okay. Now, why did you decide to offer a 15 severance agreement to Stephens? 16 A It was just determined that we would want to 17 approach it that way. I don't really recall 18 why. 19 Q Okay. Do you -- have you ever offered 20 severance agreements to any other employees 21 that you've terminated? 22 A I have not. 23 Q You can't think of any specific reasons why you 24 would choose to do so in this case? 25 A Not specifically.</p>	<p style="text-align: right;">Page 120</p> <p>1 yeah, I recognize the money would not have been 2 probably admissible. The fact that there's a 3 severance -- 4 MR. KIRKPATRICK: Any settlement. 5 I know, but any settlement, any settlement 6 discussions, any settlement terms would be 7 inadmissible in court. 8 BY MR. PRICE: 9 Q Was there any concern on your part that you 10 might be liable under Title VII? 11 A No, because I didn't even know what it was. 12 Q You never heard of Title VII -- 13 A I had not. 14 Q -- prior to this lawsuit? 15 A No. 16 Q Had you heard of sex discrimination before? 17 A Oh, I've heard of the terms, yes. 18 Q Okay. Were you aware that generally speaking 19 there was a Federal law against discrimination 20 including sex discrimination? 21 A Yes. 22 Q Okay. You just didn't know that the verbiage 23 was Title VII? 24 A Yes. Yes. 25 Q Is that correct?</p>

1 you're -- I'm going to object on this. You're
 2 asking from legal conclusions, somebody out
 3 there, I don't know if I'm going to get sued or
 4 not, I don't even understand if what he was
 5 doing would allow him to be sued, I mean,
 6 there's just a host of objections that we have
 7 placed on there.
 8 MR. PRICE: And I agree, but I'm
 9 still allowed to ask the question in discovery.
 10 MR. KIRKPATRICK: All right.
 11 THE WITNESS: What was the question
 12 again?
 13 MR. KIRKPATRICK: If you can answer
 14 the question.
 15 BY MR. PRICE:
 16 Q Did you have any concern that in firing
 17 Stephens you would be subjecting yourself to a
 18 sex discrimination lawsuit?
 19 A Yes, that's always a possibility. Yes.
 20 Q Has Harris ever been sued before by an employee
 21 for discharge?
 22 MR. KIRKPATRICK: Objection,
 23 relevance. Go ahead and answer, if you can.
 24 THE WITNESS: No.
 25 BY MR. PRICE:

1 Q Okay. How did you fire Stephens; how did you
 2 let Ms. Stephens know that she was being
 3 released?
 4 A Well, I said to him, just before he was -- it
 5 was right before he was going to go on vacation
 6 and I just -- I said -- I just said "Anthony,
 7 this is not going to work out. And that your
 8 services would no longer be needed here."
 9 Q That's at the Garden City location?
 10 A Yes.
 11 Q What time of day was it?
 12 A It was later in the afternoon.
 13 Q Where did you meet Stephens?
 14 A In the chapel.
 15 Q Chapel again?
 16 A Uh-huh.
 17 Q Did you ask for the meeting or did he ask --
 18 A Yes.
 19 Q All right. Did you present them with a
 20 severance agreement?
 21 A I did.
 22 Q Okay. Apart from saying "Not going to work
 23 out", do you recall anything else that you
 24 said?
 25 A No.

1 Q How long did this conversation take?
 2 A Not very long. Couple minutes.
 3 Q Couple minutes total?
 4 A Uh-huh.
 5 Q What did Stephens say?
 6 A He was sorry that it wasn't going to work out.
 7 And said that he might have to contact his
 8 attorney or an attorney. And I said, "Well,
 9 you do whatever you feel you have to do." And
 10 that was the end of the conversation.
 11 Q Did Stephens leave the facility at that point?
 12 A He did.
 13 Q Did you ever talk to anybody else about --
 14 apart from your management team, did you ever
 15 talk to anybody else about Stephens and the
 16 letter that you received?
 17 A No. Obviously everybody became aware of it in
 18 the staff pretty quickly, but no.
 19 Q Did you let people know that you fired
 20 Stephens?
 21 A After the -- sure. Afterwards, sure.
 22 Q Okay. Who did you contact?
 23 A I probably sent it out in a little notice of
 24 some kind, that's usually what we would do,
 25 just to --

1 Q Is that e-mail or what?
 2 A No, it's fax.
 3 Q Okay. Do you still have a copy of that fax?
 4 A No.
 5 Q Do you recall what it said?
 6 A I do not.
 7 Q Would you have personally faxed it or would
 8 that have been something that you would have
 9 Shannon or --
 10 A She would have sent it, yes.
 11 Q Okay. Now, when you -- did you tell Stephens
 12 about any of your concerns regarding that
 13 you've talked about today, your religious
 14 freedom rights, you know, the affect on the
 15 ministry or anything like that?
 16 A Did not talk to him about anything.
 17 Q Just said "This is not going to work out"?
 18 A That's exactly right.
 19 Q And "Here's a severance agreement"?
 20 A Yes.
 21 Q And that's it?
 22 A That's it.
 23 Q Have you ever fired anyone else at Harris
 24 because of a -- what you believe to be a
 25 conflict with your religious concerns?

<p style="text-align: right;">Page 133</p> <p>1 A Yes.</p> <p>2 Q And I think Mr. Price asked you about the 3 verse, the scripture verse at the bottom?</p> <p>4 A Yes.</p> <p>5 Q The Matthew verse?</p> <p>6 A Yes.</p> <p>7 Q And asked you if that was the only thing on 8 this mission statement or the website that 9 describes your, you know, religious beliefs. 10 Do you recall that?</p> <p>11 A Yes.</p> <p>12 Q Is that in fact the only thing on that website, 13 mission statement?</p> <p>14 A Well, there is up at the top the statement that 15 our highest priority is to honor God and all 16 that we do as a company and as individuals.</p> <p>17 Q So that's the first statement of your mission 18 statement?</p> <p>19 A It's the first statement and the bottom is the 20 last statement.</p> <p>21 Q So would it be fair to say that this statement 22 reflects your entire belief from your personal 23 religious position?</p> <p>24 A Yes.</p> <p>25 Q Okay. I'm going to have you go with Exhibit 1,</p>	<p style="text-align: right;">Page 135</p> <p>1 Q 2013?</p> <p>2 A Yes.</p> <p>3 Q Would it be fair to say that that date is 4 shortly after Stephens was terminated from 5 employment?</p> <p>6 A Yes.</p> <p>7 Q Was there a Federal lawsuit filed against your 8 company at the time, Harris Funeral Homes at 9 the time that that thing was filled out?</p> <p>10 A No. I -- no.</p> <p>11 Q Okay. And so, would it be fair to say that you 12 received that document at some point; was it 13 mailed to your location?</p> <p>14 A Yes.</p> <p>15 Q Okay. I think there was testimony you didn't 16 recall and that it might have gotten to 17 somebody else, but is it possible that you 18 received that?</p> <p>19 A Yes, we would have received it, yes.</p> <p>20 Q Now, you had given some testimony pursuant to 21 Mr. Price's questioning about why you 22 terminated Stephens. Do you recall that?</p> <p>23 A Yes.</p> <p>24 Q Okay. Why did you -- what was the specific 25 reason that you terminated Stephens?</p>
<p style="text-align: right;">Page 134</p> <p>1 which is the answer to the Complaint. Turn to 2 page 3.</p> <p>3 Now, you were asked by Mr. Price 4 about the affirmative defenses; do you recall 5 that?</p> <p>6 A Yes.</p> <p>7 Q Just so we understand, are you an attorney?</p> <p>8 A No.</p> <p>9 Q Do you have any legal training, per se?</p> <p>10 A No.</p> <p>11 Q Do you understand, perhaps conceptually, what 12 affirmative defenses are in the context of a 13 Federal lawsuit?</p> <p>14 A No.</p> <p>15 Q Okay. So, can you speak to perhaps what may be 16 an appropriate affirmative defense or what 17 might not be an appropriate affirmative defense 18 in the context of answering a lawsuit?</p> <p>19 A No.</p> <p>20 Q Okay. You just relied on Counsel's advice?</p> <p>21 A Yes.</p> <p>22 Q All right. I'm going to ask you to review 23 Exhibit 2. Can you tell me the date of that 24 Exhibit at the bottom, what it's dated?</p> <p>25 A It looks like 9, September, '13.</p>	<p style="text-align: right;">Page 136</p> <p>1 A Well, because he -- he was no longer going to 2 represent himself as a man. He wanted to dress 3 as a woman.</p> <p>4 Q Okay. So he presented you this letter, which I 5 think is Exhibit -- I forgot what Exhibit 6 Number it was -- might have been the last one. 7 Is it 7?</p> <p>8 A Number 7, yes.</p> <p>9 Q Yeah, Exhibit 7. So just for a little 10 background and pursuant to the question of Mr. 11 Price, you were presented that letter from 12 Stephens?</p> <p>13 A Correct.</p> <p>14 Q Okay. And did anywhere in that letter indicate 15 that Stephens would continue to dress under 16 your dress code as a man in the workplace?</p> <p>17 A No.</p> <p>18 Q Did he ever tell you during your meeting when 19 he handed you that letter that he would 20 continue to dress as a man?</p> <p>21 A No.</p> <p>22 Q Did he indicate that he would dress as a woman?</p> <p>23 A Yes. Yes.</p> <p>24 Q Okay. Is it -- the reason you fired him, was 25 it because he claimed that he was really a</p>

Page 137

1 woman; is that why you fired him or was it
 2 because he claimed -- or that he would no
 3 longer dress as a man?
 4 A That he would no longer dress as a man.
 5 Q And why was that a problem?
 6 A Well, because we -- we have a dress code that
 7 is very specific that men will dress as men; in
 8 appropriate manner, in a suit and tie that we
 9 provide and that women will conform to their
 10 dress code that we specify.
 11 Q So hypothetically speaking, if Stephens had
 12 told you that he believed that he was a woman,
 13 but would only present as a woman outside of
 14 work, would you have terminated him?
 15 A No.
 16 Q Would you have hired and terminated somebody
 17 for being gay?
 18 A No.
 19 MR. PRICE: Objection, speculation.
 20 MR. KIRKPATRICK: Okay. Okay.
 21 Speculation.
 22 BY MR. KIRKPATRICK:
 23 Q You had some questions about your moral beliefs
 24 and whether or not you fired somebody for being
 25 an adulterer; do you recall that?

Page 138

1 A Yes.
 2 Q Would you fire someone just for being an
 3 adulterer?
 4 A No.
 5 Q As long as they followed the rules would they
 6 stay?
 7 A Yes.
 8 Q Including the dress code?
 9 A Yes.
 10 Q Okay. Or a woman who claimed that she had an
 11 abortion, as long as she followed the rules,
 12 would you have fired her?
 13 A Yeah -- no, I wouldn't have fired her.
 14 Q Okay. As long as she followed the rules, she
 15 could stay?
 16 A Yes.
 17 Q All right. Have you ever hired any gay people?
 18 A Yes.
 19 Q Or I should say, have you ever had any gay
 20 people work for you?
 21 A Yes.
 22 Q Have you ever fired them for that reason?
 23 A No.
 24 Q Okay. Now, there was questions about issues
 25 after Stephens was fired and things that you

Page 139

1 were thinking of when Mr. Price was questioning
 2 you and there was an issue of safety using
 3 restrooms; do you recall that?
 4 A Yes.
 5 Q That word "Safety", was it -- what, you
 6 believed that he was going the be physically
 7 dangerous to people?
 8 A No. No.
 9 Q What do you mean about you were concerned about
 10 safety about girls and women and granddaughters
 11 using the restroom with someone who was a man
 12 dressed as a woman?
 13 A Well, just presenting in a funeral home an
 14 environment that is suitable for them to begin
 15 the healing process.
 16 Q Okay. Would it be uncomfortable?
 17 A Yeah, that it's a comfortable situation, yeah.
 18 Q But, just to be clear, you didn't believe that
 19 just because Stephens had presented you this
 20 letter and told you what he told you, that
 21 somehow he was going the be a physical danger
 22 to anyone?
 23 A No.
 24 Q Okay. There was some questions that Mr. Price
 25 asked you about your interview you had with the

Page 140

1 EEOC investigator. Do you recall that?
 2 A Yes. Yes.
 3 Q Now, you were interviewed by this EEOC
 4 investigator prior to this lawsuit being filed
 5 against you?
 6 A That's correct.
 7 Q Okay. And I think there was questions about
 8 did you bring up anything about religious
 9 issues or religious objections or anything like
 10 that. Do you recall that question?
 11 A Yes.
 12 Q And we just made it clear that there was no
 13 lawsuit filed at the time?
 14 A That's right.
 15 Q And you just answered her questions, correct?
 16 A That's right.
 17 Q Did you -- were you under any belief that you
 18 had to present all and any defenses to -- might
 19 be from a lawsuit that wasn't filed yet?
 20 A No.
 21 MR. KIRKPATRICK: Okay. All right.
 22 That's it for me.
 23 RE-EXAMINATION
 24 BY MR. PRICE:
 25 Q You were just asked about the investigator, you

<p style="text-align: right;">Page 141</p> <p>1 know, whether you were in a lawsuit or not. Is</p> <p>2 it your understanding that you only had</p> <p>3 religious freedom or protection under the</p> <p>4 Religious Freedom Restoration Act only if</p> <p>5 you're being sued?</p> <p>6 A I don't understand.</p> <p>7 Q Do you have to be sued before you have --</p> <p>8 you're declaring your right to exercise your</p> <p>9 religious freedom or free exercise of religion?</p> <p>10 A No. But it wasn't up in a discussion, so it</p> <p>11 wouldn't be something that I would bring up.</p> <p>12 Q Okay. But it was one of your -- it's --</p> <p>13 obviously it's one of your reasons for</p> <p>14 justifying your decisions with respect to</p> <p>15 Stephens, correct?</p> <p>16 A Yes.</p> <p>17 Q Okay. Now you're dealing with a Federal agency</p> <p>18 that's asking you your position on a charge,</p> <p>19 correct?</p> <p>20 A Yes.</p> <p>21 Q Okay. Wouldn't you feel the need to be as</p> <p>22 forthright and complete as possible in setting</p> <p>23 forth your justifications?</p> <p>24 A Yes, but she didn't ask me specific questions</p> <p>25 about my religious beliefs, or beliefs at the</p>	<p style="text-align: right;">Page 143</p> <p>1 A Yes.</p> <p>2 Q You would not have been honoring God to keep</p> <p>3 that person in place?</p> <p>4 A Yes.</p> <p>5 Q And why not?</p> <p>6 A Because it would be, I believe, a huge</p> <p>7 disservice to the families that have called</p> <p>8 upon me, and expect certain criteria and</p> <p>9 certain services to be offered them. I think I</p> <p>10 would be doing them a huge disservice to them</p> <p>11 and to my -- to my staff, people that work for</p> <p>12 me, everybody that's involved.</p> <p>13 Q And to your own personal faith?</p> <p>14 A Absolutely.</p> <p>15 Q Okay. Because as you said before, God made men</p> <p>16 as men and women as women?</p> <p>17 A Exactly.</p> <p>18 Q Your -- it was mentioned before that you don't</p> <p>19 honor all of the legal holidays, obviously like</p> <p>20 Veteran's Day. Why are those six picked and no</p> <p>21 others?</p> <p>22 A Well, I didn't have anything to do with picking</p> <p>23 those, but they go back way before my time. I</p> <p>24 guess those were the original six considered</p> <p>25 legal holidays.</p>
<p style="text-align: right;">Page 142</p> <p>1 funeral home.</p> <p>2 Q Why would she have to if you don't mention that</p> <p>3 in any of your earlier responses?</p> <p>4 A I don't know why I would have to necessarily</p> <p>5 bring it up.</p> <p>6 Q So, how was the government supposed to</p> <p>7 understand that you have a religious objection</p> <p>8 or religious concerns if you don't raise them?</p> <p>9 A That's why they're raised now.</p> <p>10 Q Okay. But you didn't feel -- you felt like you</p> <p>11 didn't need to bother to bring that up during</p> <p>12 the investigation part?</p> <p>13 A I just thought that was just an investigation,</p> <p>14 she presented herself and said she's there just</p> <p>15 to investigate this, and make it as simple and</p> <p>16 as clean as possible.</p> <p>17 Q You were asked about the mission statement.</p> <p>18 Talking about, yes, at the first paragraph.</p> <p>19 A Uh-huh.</p> <p>20 Q My apology, I did miss that. Talks about</p> <p>21 honoring God in all you do as a company and</p> <p>22 individuals.</p> <p>23 Do you believe that it would -- you</p> <p>24 would not have been honoring God if you</p> <p>25 continued to employ Aimee Stephens?</p>	<p style="text-align: right;">Page 144</p> <p>1 Q Okay.</p> <p>2 A And I guess just out of tradition we've never</p> <p>3 changed.</p> <p>4 Q Has there been any discussion of having Easter</p> <p>5 as a --</p> <p>6 A It has been discussed.</p> <p>7 Q Okay. What was the -- what was the thought?</p> <p>8 Why not?</p> <p>9 MR. KIRKPATRICK: Objection to</p> <p>10 relevance. Go ahead and answer if you can.</p> <p>11 THE WITNESS: It would require, you</p> <p>12 know, additional pay for one thing.</p> <p>13 BY MR. PRICE:</p> <p>14 Q There's an expense to it?</p> <p>15 A Yeah, there's an expense to it, of course.</p> <p>16 Q Okay. Because I believe the holiday pay works</p> <p>17 you get -- you get an extra paid day, like paid</p> <p>18 for six days even though you're working five?</p> <p>19 A Exactly. Even when you're -- yeah, when you're</p> <p>20 not working so you're getting paid, yeah.</p> <p>21 Q Okay. You said -- you've been told -- or</p> <p>22 mentioned that you've had gay people work for</p> <p>23 you. Do you recall when most recently that</p> <p>24 was?</p> <p>25 A It's been awhile. It's been quite a number of</p>

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
)	
R.G. & G.R. HARRIS FUNERAL HOMES)	
INC.,)	
)	
Defendant.)	
_____)	

LAURIE A. YOUNG
KENNETH BIRD
DALE PRICE (P55578)
MILES SHULTZ
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Attorneys for Plaintiff
477 Michigan Ave., Room 865
Detroit, MI 48226
(313) 226-7808
dale.price@eeoc.gov

JOEL J. KIRKPATRICK
JOEL J. KIRKPATRICK, P.C.
Attorney for Defendant
843 Penniman Ave. Ste. 201
Plymouth, MI 48170
(734) 404-5170
Joel@JoelKirkpatrick.com

**AMENDED NOTICE OF RULE 30(b)(6) DEPOSITION REGARDING
DEFENDANT’S AFFIRMATIVE DEFENSES**

TO: Joel J. Kirkpatrick
843 Penniman Ave, Suite 201
Plymouth, MI 48170

Please take notice that pursuant to Rules 26 and 30(b)(6) of the Federal Rules of Civil Procedure, Plaintiff, the Equal Employment Opportunity Commission, will take the deposition upon oral examination under oath of Defendant, R.G. & G.R. Harris Funeral Homes, Inc. (“RGGR”) on November 12, 2015 at 9:30 AM, at the offices of Joel J. Kirkpatrick, 843 Penniman Ave. Ste 201, Plymouth, MI 48170, before a court reporter qualified to take and record such depositions. At the scheduled time and place, RGGR shall present the officer(s),

agent(s), employee(s) and/or person(s) designated by RGGR to testify on its behalf and who has/have knowledge about the subject matter listed below. The deposition(s) will continue from day to day until completed.

The EEOC requests prompt written notice of the name(s), address(es), telephone number(s), position(s) and job title(s) of the person(s) designated and the matters on which the person(s) will testify.

Subjects of Rule (30)(b)(6) Deposition

1. Facts in support of RGGR's Second Affirmative Defense as stated in RGGR's Answer, ECF No. 22, June 4, 2015 and the source(s) of those facts.
2. Facts in support of RGGR's Eighth Affirmative Defense as stated in RGGR's Answer, ECF No. 22, June 4, 2015 and the source(s) of those facts.
3. Facts in support of RGGR's Eleventh Affirmative Defense as stated in RGGR's Answer, ECF No. 22, June 4, 2015 and the source(s) of those facts.
4. Facts in support of RGGR's Twelfth Affirmative Defense as stated in RGGR's Answer, ECF No. 22, June 4, 2015 and the source(s) of those facts.
5. Facts in support of RGGR's Thirteenth Affirmative Defense as stated in RGGR's Answer, ECF No. 22, June 4, 2015 and the source(s) of those facts.
6. The creation and/or incorporation of RGGR including any articulated purposes or mission statements and the identity of incorporating officers and subsequent officers during Aimee Stephens's employment.
7. Non-privileged communications concerning or touching upon RGGR's exercise of religion through or in the course of operating its business.
8. Facts concerning RGGR's exercise of religion in conducting its business operations or in

its personnel practices.

9. Facts concerning any claimed substantial burden to RGGR's exercise of religion caused by the EEOC's claims.
10. Facts concerning the designing, editing, loading, and/or updating the content of RGGR's website, <http://www.rggrharris.com>.
11. Facts concerning the designing, editing, loading, and/or updating the content of RGGR's Facebook page, <https://www.facebook.com/RGGRHarrisFuneralHome?fref=ts>.
12. RGGR's personnel and employment policies contained in RGGR's employee handbook or otherwise communicated to RGGR's employees during the course of Aimee Stephens's employment.
13. The circumstances and reasons for Aimee Stephens separation of employment from RGGR and all policies RGGR relied upon in terminating Ms. Stephens.
14. The identity of the individual(s) who decided to terminate Aimee Stephens and/or who played any role in making, reviewing or supporting that decision.

Respectfully submitted,

Dated: October 22, 2015

s/ Dale Price

Dale Price (P55578)

Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Detroit Field Office

477 Michigan Ave., Suite 865

Detroit, MI 48226

Phone: (313) 226-7808

Fax: (313) 226-6584

E-mail: dale.price@eoc.gov

Certificate of Service

I hereby certify that on October 22, 2015, a true and accurate copy of the foregoing Notice of Rule 30(b)(6) Deposition was served on counsel of record via electronic mail.

Respectfully submitted,

s/ Dale Price

Dale Price (P55578)

Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Detroit Field Office

477 Michigan Ave., Suite 865

Detroit, MI 48226

Phone: (313) 226-7808

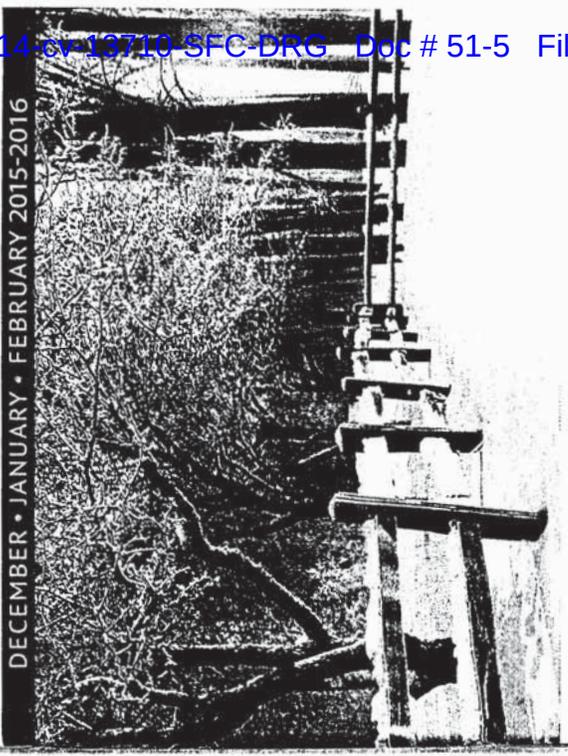
Fax: (313) 226-6584

E-mail: dale.price@eoc.gov



Our Daily Bread

DECEMBER • JANUARY • FEBRUARY 2015-2016



Cleanse me with hyssop, and I will be
clean; wash me, and I will be whiter
than snow.

PSALM 51:7

FOR PERSONAL and FAMILY DEVOTIONS, SINCE 1956



Our Daily Bread®

DECEMBER • JANUARY • FEBRUARY 2015-2016

COVER PHOTO
Plainfield Township, Michigan, USA © Terry Bidgood

EDITORS

Judith Markham, EXECUTIVE EDITOR; Anne Cetas, MANAGING EDITOR;
Becky Knapp, ASSOCIATE EDITOR; Tim Gustafson, J.R. Hudberg, EDITORS

WRITERS

Dave Branon	Timothy L. Gustafson	Amy Boucher Pye
Anne M. Cetas	Chek Phang Hia	David H. Roper
Poh Fang Chia	Cindy Hess Kasper	Jennifer Benson Schuidt
William E. Crowder	Randy K. Kilgore	Joseph M. Stowell
Lawrence Darmani	Albert Lee	Marion Stroud
Mart DeHaan	Julie Ackerman Link	Marvin L. Williams
David C. Egner	David C. McCasland	Philip D. Yancey
H. Dennis Fisher	Kella Ochoa	

ACKNOWLEDGMENTS

January 7 and February 22 articles excerpted and adapted from *Grace Notes*, by Philip D. Yancey © 2009 Zondervan. Published by permission of Zondervan.
January 21 article excerpted and adapted from *Prayers for Prodigals* by James Banks. © 2011 by James Banks. All rights reserved. Published by Discovery House.
Scriptures taken from Holy Bible, New International Version®, NIV® Copyright © 1973, 1978, 1984, 2011 by Biblica, Inc.® Used by permission. All rights reserved worldwide.

© 2015 Our Daily Bread Ministries® • All rights reserved. • Printed in USA.
VOLUME 60, NUMBERS 9, 10 & 11

Many people, making even the smallest of donations, enable Our Daily Bread Ministries to reach others with the life-changing wisdom of the Bible. We are not funded or endowed by any group or denomination.

We want to hear from you!

Visit us at ourdailybread.org or write to us at:

Our Daily Bread Ministries, PO Box 2222, Grand Rapids, MI 49501-2222
Our Daily Bread Ministries Canada, PO Box 1622, Windsor, ON N9A 6Z7

The Meaning of a Name

According to a *New York Times* article, children in many African countries are often named after a famous visitor, special event, or circumstance that was meaningful to the parents. When doctors told the parents of one child that they could not cure the infant's illness and only God knew if he would live, the parents named their child Godknows. Another man said he was named Enough, because his mother had 13 children and he was the last one! There's a reason for everyone's name, and in some cases it also conveys a special meaning.

Before Jesus was born, an angel of the Lord told Joseph, "[Mary] will give birth to a son, and you are to give him the name Jesus, because he will save his people from their sins" (MATT. 1:21). Jesus is the Greek form of *Ioshua*, which means "the Lord saves." In that day and culture, many children would have been named Jesus, but only one came into this world to die so that all who receive Him might live eternally, forgiven and freed from the power of sin.

Charles Wesley wrote these words we often sing as Christmas nears: "Come, Thou long-expected Jesus, born to set Thy people free; from our fears and sins release us; let us find our rest in Thee."

Jesus came to turn our darkness into light, to transform our despair into hope, and to save us from our sins. DAVID MCCASLAND

Heavenly Father, in Jesus we see Your loving purpose and boundless grace. We humbly acknowledge Your Son as the One who came to save us from our sins.

Jesus' name and mission are the same—He came to save us.

Glass Beach

Early 20th-century residents of Fort Bragg, California, disposed of their trash by throwing it over a cliff and onto a nearby beach. Cans, bottles, tableware, and household garbage accumulated in huge, disgusting piles. Even when residents stopped depositing trash on the beach, it remained an embarrassment—a dump seemingly beyond reclamation.

Over the years, however, wave action broke up the glass and pottery and washed the rubbish out to sea. The pounding surf rolled and tumbled the glass fragments in the sand on the ocean floor, frosting and smoothing the surface and creating gemlike "sea glass," which it then deposited back onto the beach. The surf created a kaleidoscopic beauty at which visitors to Glass Beach now stare in wonder.

Perhaps you feel as though your life has become a dump—someone who loves you and waits to redeem and reclaim you. Give Jesus your heart and ask Him to make you pure and clean. He may tumble you a bit, and it may take time to smooth away the rough edges. But He will never give up on you. He will make you into one of His jewels! DAVID ROPER

Lord, when we have nothing left but You, we are right where You want us. You can use any situation for Your glory and our good. You never give up on us. Help us to relax in Your love.

God loves us too much to let us remain as we are.

TODAY'S READING
1 Thess. 5:23-24

"On the day when I act," says the LORD Almighty, "they will be my treasured possession."
Malachi 3:17

When Not to Rejoice

The Akan people of Ghana have a proverb: "The lizard is not as mad with the boys who threw stones at it as with the boys who stood by and rejoiced over its fate!" Rejoicing at someone's downfall is like participating in the cause of that downfall or even wishing more evil on the person.

That was the attitude of the Ammonites who maliciously rejoiced when the temple in Jerusalem "was desecrated and over the land of Israel when it was laid waste and over the people of Judah when they went into exile" (EZEK. 25:3). For spitefully celebrating Israel's misfortunes, the Ammonites experienced God's displeasure, which resulted in grim consequences (VV. 4-7).

How do we react when disaster befalls our neighbor or when our neighbor gets into trouble? If she is a nice and friendly neighbor, then, of course, we will sympathize with her and go to her aid. But what if he is an unfriendly, trouble-making neighbor? Our natural tendency may be to ignore him or even secretly rejoice at his downfall.

Proverbs warns us: "Do not gloat when your enemy falls; when they stumble, do not let your heart rejoice" (24:17). Instead, Jesus tells us that we show His love in action when we "love [our] enemies, and pray for those who persecute [us]" (MATT. 5:44). By so doing, we imitate the perfect love of our Lord (5:48). ☉

Lord, open my eyes and my heart to be honest about my attitude toward those who are unkind or unfair to me. Fill my heart with Your love, Lord, and help me pray for them.

Love your neighbor as yourself.

LAWRENCE DARMANI

Worry-Free

Trying to stay aware of current events has its downside because bad news sells better than good news. It's easy to become overly concerned about the criminal acts of individuals, crowds, or governments over whom we have no control.

Psalms 37 gives perspective to the daily news. David begins by saying, "Do not fret because of those who are evil" (V. 1). Then he proceeds to outline for us some alternatives to becoming overly anxious. In essence, David suggests a better way of thinking about negative news in our world.

What would happen if, instead of worrying about events beyond our control, we chose to trust in the Lord? (V. 3). Wouldn't we be better off to "take delight in the Lord" (V. 4) rather than fret without limits? Imagine the freedom from worry we could have if we would "commit [our] way to the Lord" (V. 5). And how calm we could be by learning to "be still before the Lord and wait patiently for him"! (V. 7).

News of trouble we cannot change offers us an opportunity to set boundaries for our concerns. As we trust God, commit our ways to Him, and rest in Him, our outlook brightens. The struggles and trials may not disappear, but we will discover that He gives us His peace in the midst of them. ☉

DAVE BRANON

Lord, we see danger and trouble all around us. Help us not to worry but instead to trust and rest in You. Show us the peace that comes from waiting patiently on You.

Obstacles give us the opportunity to trust God.

What Christmas Is All About

Fifty years ago *A Charlie Brown Christmas* was first broadcast on American television. Some network executives thought it would be ignored, while others worried that quoting the Bible would offend viewers. Some wanted its creator, Charles Schulz, to omit the Christmas story, but Schulz insisted it stay in. The program was an immediate success and has been rebroadcast every year since 1965.

When Charlie Brown, the frustrated director of the children's Christmas play, is discouraged by the commercial spirit of the holiday season, he asks if anyone can tell him the real meaning of Christmas. Linus recites Luke 2:8-14 including the words, "For unto you is born this day in the city of David a Saviour, which is Christ the Lord. And this shall be a sign unto you; ye shall find the babe wrapped in swaddling clothes, lying in a manger. And suddenly there was with the angel a multitude of the heavenly host praising God, and saying, Glory to God in the highest, and on earth peace, good will toward men" (vv. 11-14 *KJV*). Then Linus says, "That's what Christmas is all about, Charlie Brown."

During this season filled with our own doubts and dreams, it's good to ponder afresh God's great love expressed in the familiar story of Joseph, Mary, the baby Jesus, and the angels who announced the Savior's birth.

That's what Christmas is all about. ☉

DAVID MCCASLAND

Father in heaven, as we approach Christmas, may we grasp in a deeper way Your amazing gift to us.

God broke into human history to offer us the gift of salvation!

TODAY'S READING
Luke 2:8-14

There were
shepherds living
out in the fields
nearby, keeping
watch over their
flocks at night. v. 8

The Birth of Christmas

When the angel Gabriel appeared to Mary and then to shepherds with good news for the world (LUKE 1:26-27; 2:10), was it good news to this teenage girl? Perhaps Mary was thinking: *How do I explain my pregnancy to my family? Will my fiancé Joseph call off the betrothal? What will the townspeople say? Even if my life is spared, how will I survive as a mother all alone?*

When Joseph learned about Mary's pregnancy, he was troubled. He had three options. Go ahead with the marriage, divorce her publicly and allow her to be publicly scorned, or break off the engagement quietly. Joseph chose option three, but God intervened. He told Joseph in a dream, "Do not be afraid to take Mary home as your wife, because what is conceived in her is from the Holy Spirit" (MATT. 1:20).

For Mary and Joseph, Christmas began with submitting themselves to God in spite of the unthinkable emotional challenges before them. They entrusted themselves to God and in doing so demonstrated for us the promise of 1 John 2:5: "If anyone obeys his word, love for God is truly made complete in them." May God's love fill our hearts this Christmas season—and every day—as we walk with Him. ☉

ALBERT LEE

Fill my heart, Lord, with rejoicing at the gift of Your love and forgiveness found in Your Son Jesus.



Reflect on the wonder of Christmas by reading more about Mary and Joseph at discoveryseries.org/hp074

Obedience to God flows freely from a heart of love.

TODAY'S READING
Luke 1:26-38

When Joseph woke up, he did what the angel of the Lord commanded him and took Mary home as his wife.

Matthew 1:24

A Faithful Servant

Madaleno is a bricklayer. From Monday to Thursday he builds walls and repairs roofs. He is quiet, reliable, and hardworking. Then from Friday to Sunday he goes up to the mountains to teach the Word of God. Madaleno speaks *Nahuatl* (a Mexican dialect), so he can easily communicate the good news of Jesus to the people in that region. At age 70, he still works with his hands building houses, but he also works to build the family of God.

His life has been threatened several times. He has slept under the stars and faced death from car accidents and falls. He has been kicked out of towns. But he thinks that God has called him to do what he does, and he serves happily. Believing that people need to know the Lord, he relies on God for the strength he needs.

Madaleno's faithfulness reminds me of the faithfulness of Caleb and Joshua, two of the men Moses sent to explore the Promised Land and report back to the Israelites (NUM. 13: JOSH. 14:6-13). Their companions were afraid of the people who lived there, but Caleb and Joshua trusted in God and believed He would help them conquer the land.

The work entrusted to us may be different than Madaleno's or Caleb's and Joshua's. But our confidence can be the same. In reaching out to others, we rely not on ourselves but on the strength of our God. ☉

KEILA OCHOA

Where has God placed you to serve? Are you being faithful?

We grow strong when we serve the Lord.

The Perfect Gift

Every year our local botanical garden hosts a celebration of Christmas around the world. My favorite display is a French nativity. Instead of the traditional scene showing shepherds and wise men with gifts of gold, frankincense, and myrrh gathered around the manger, it shows French villagers bringing their gifts to baby Jesus. They bring bread, wine, cheese, flowers, and other items that God has given them the ability to produce. This reminds me of the Old Testament command to bring the firstfruits of our labor to the house of the Lord (EX. 23:16-19). This depiction of the nativity illustrates that everything we have comes from God, so the only thing we have to give is something that God has given us.

When Paul instructed the Romans to present themselves as a living sacrifice, he was telling them to give back to God what God had given them—their own selves (ROM. 12:1). This includes the gifts He gave them, even their ability to earn a living. We know that God gives people special abilities. Some, like David, were skilled in music (1 SAM. 16:18). Some, like Bezalel and Oholiab, were skilled in artistic works (EX. 35:30-35). Others have skill in writing, teaching, gardening, and many other things.

When we give back to God what He has first given to us, we give Him the perfect gift—ourselves. ☉

JULIE ACKERMAN LINK

After a lengthy battle with cancer, Julie Ackerman Link went to be with the Lord on April 10, 2015. Since 2000, Julie has written articles each month for *Our Daily Bread*. She is a popular author with *Our Daily Bread* readers, and her insightful and inspiring articles have touched millions of lives around the world.



Give your all to Christ who gave His all for you.

Just the Ticket

When a police officer stopped a woman because her young daughter was riding in a car without the required booster seat, he could have written her a ticket for a traffic violation. Instead, he asked the mother and daughter to meet him at a nearby store where he personally paid for the needed car seat. The mother was going through a difficult time and could not afford to buy a seat.

Although the woman should have received a fine for her misdemeanor, she walked away with a gift instead. Anyone who knows Christ has experienced something similar. All of us deserve a penalty for breaking God's laws (ECCL. 7:20). Yet, because of Jesus, we experience undeserved favor from God. This favor excuses us from the ultimate consequence for our sin, which is death and eternal separation from God (ROM. 6:23). "In [Jesus] we have . . . the forgiveness of sins, in accordance with the riches of God's grace" (EPH. 1:7).

Some refer to grace as "love in action." When the young mother experienced this, she later remarked, "I will be forever grateful! . . . And as soon as I can afford it I will be paying it forward." This grateful and big-hearted response to the offerer's gift is an inspiring example for those of us who have received the gift of God's grace! ☉

JENNIFER BENSON SCHULDT

Dear Father, thank You for giving us what we don't deserve. You have forgiven my sins and provided a way for me to be reconciled to You through the gift of Your Son. Help me to always be grateful for Your grace.

God's gift is grace.

Like Shooting a Fly

Macarena Valdes's skill in mapping underground mines made a real difference in the rescue of the 33 Chilean miners trapped after an explosion in October 2010. Drilling to find the exact place where the men were located was like "trying to shoot a fly from 700 meters away," she said. With her mining experience, Valdes was able to guide the probe to where the miners were entombed, which helped bring about their dramatic rescue.

In efforts to carry out spiritual rescue, it's easy to become discouraged. Although the apostle Paul faced even greater obstacles, he said, "We do not lose heart" (2 COR. 4:1). Even though "the god of this age" had "blinded the minds of unbelievers, so that they cannot see the light of the gospel," he continued to proclaim the gospel of salvation (W. 4-5). Compelled by God, who lovingly spoke light into his own darkness (V. 6), Paul knew that what God had done for him God could do for others.

You and I may have a similar story. Compelled by the love of God, we too have reason not to lose heart. As Macarena led in the rescue of the miners, the Spirit of God can carry the light of our love and words into the hearts of those who need a rescue they may not yet understand. ☉

C. P. HIR

Lord Jesus, thank You for coming to our rescue when we were lost and helpless in our sin. Help those of us who have been rescued to share the lifeline of Your love with those who are still trapped.

When you've been rescued, you want to rescue others.

TODAY'S READING:
2 Corinthians 4:1-5

Christ's love compels us, because we are convinced that one died for all, and therefore all died
2 Corinthians 5:14

Paradogs

I am amazed by the story of the World War II paradogs. In preparing for D-Day (June 6, 1944), the Allied troops needed the sharp senses of dogs to sniff their way through minefields and to warn troops of approaching danger. And the only way to get these dogs to troops behind enemy lines was by parachute. But dogs are instinctively afraid of doing this—and let's be honest, they are not alone. Yet after weeks of training, the dogs learned to trust their masters enough to jump at their command.

I wonder if any of us trust our Master enough to do challenging things we would never instinctively do or things that might make us fearful. We may not be instinctively generous or forgiving or patient with those who annoy us. Yet Jesus commands us to trust Him enough to do things that may be difficult but that will advance His kingdom. To say, "In You do I trust; cause me to know the way in which I should walk" (PS. 143:8 NKJV).

Paradogs often received medals for their bravery. I believe we too will someday hear "well done" because we have trusted our Master enough to jump when He said, "Go!"

JOE STOWELL

Is God asking you to do something that you are afraid to do?
Will you trust Him to lead you and walk with you?

Trust Jesus to show you how you can be used by Him.

A Hunger for God

A-poe-la-pi is an elderly member of the Akha, a hill tribe people who live on the mountain ranges of Yunnan Province in China. As we visited him on a recent mission trip, A-poe-la-pi told us that he had missed the weekly Bible study because of heavy rains. So he implored us, "Could you share God's Word with me?"

A-poe-la-pi can't read, so the weekly gathering is vital to him. As we read the Bible to him, he listened intently. His earnest attitude reminded me that when we listen carefully to the story of the inspired Scriptures, we honor the Lord.

In Deuteronomy 4, Moses urged the Israelites to listen carefully to the rules and regulations he was teaching them (v. 1). He reminded them that the source and inspiration behind the teaching was none other than God Himself, who had spoken to them "out of the fire" of Sinai (v. 12). Moses said, "He declared to you his covenant . . . which he commanded you to follow" (v. 13).

May A-poe-la-pi's hunger to hear God's Word encourage a similar desire in us. As the apostle Paul reminds us in 2 Timothy 3:15-16, the inspired Scriptures have been given for our good and growth—to make us wise in the salvation and ways of God.

POH FANG CHIA

Lord, give us a hunger to hear and understand the truth of Your Word.
Help us show Your love to others by faithfully living out its instructions for us.

To know Christ, the Living Word, is to love the Bible, the written Word.

TODAY'S READING
Deut. 4:9-14

All Scripture is God-breathed and is useful for teaching, rebuking, correcting and training in righteousness.

2 Timothy 3:16

How to Be Perfect

Christmas is the time of year when the pressure to be perfect intensifies. We imagine the perfect celebration and then put forth our best effort to make it happen. We shop for the perfect gifts. We plan the perfect Christmas Day meal. We choose the perfect greeting cards or write the perfect family letter. But our striving leads to discouragement and disappointment when our ability to imagine perfection exceeds our ability to implement it. The carefully chosen gift receives only a halfhearted thank you. Part of the meal is overcooked. We find a typo in our Christmas greeting after we've mailed the cards. Children fight over toys. Adults resurrect old arguments.

Instead of being discouraged, however, we can use our disappointment to remind ourselves of the reason Christmas is so important. We need Christmas because none of us is or can be all that we want to be—not for a month, a week, or even a day. How much more meaningful our celebrations of Christ's birth would be if we would give up our faulty concept of perfection, then focus instead on the perfection of our Savior, in whom we are made righteous (ROM. 3:22).

If your Christmas celebration this year is less than ideal, relax and let it be a reminder that the only way to be "made perfect forever" (HEB. 10:14) is to live by faith in the righteousness of Christ. ❁

What expectations do you have for the Christmas season? Are they idealistic or realistic? Think about what you can do to focus more on Christ and the meaning of His birth.

Dressed in His righteousness alone, faultless to stand before His throne.

EDWARD MOTE

Let's Celebrate

After Ghana's Asamoah Gyan scored a goal against Germany in the 2014 World Cup, he and his teammates did a coordinated dance step. When Germany's Miroslav Klose scored a few minutes later, he did a running front flip. "Soccer celebrations are so appealing because they reveal players' personalities, values, and passions," says Clint Mathis, who scored for the US at the 2002 World Cup.

In Psalm 150, the psalmist invites "everything that has breath" to celebrate and praise the Lord in many different ways. He suggests that we use trumpets and harps, stringed instruments and pipes, cymbals and dancing. He encourages us to creatively and passionately celebrate, honor, and adore the Lord. Because the Lord is great and has performed mighty acts on behalf of His people, He is worthy of all praise. These outward expressions of praise will come from an inner wellspring overflowing with gratitude to God. "Let everything that has breath praise the LORD," the psalmist declares (150:6).

Though we may celebrate the Lord in different ways (I'm not encouraging back flips in our worship services), our praise to God always needs to be expressive and meaningful. When we think about the Lord's character and His mighty acts toward us, we cannot help but celebrate Him through our praise and worship. ❁

How has this psalm challenged you to be more expressive in your praise to God? Spend some time thinking about the greatness of the Lord's mighty works. Then give Him your praise.

Praise is the song of a soul set free.

MARVIN WILLIAMS

TODAY'S READING
Psalm 150

Praise him with timbrel and dancing, praise him with the strings and pipe. v. 4

TODAY'S READING
Romans 3:20-26

For by one sacrifice he has made perfect forever those who are being made holy. Hebrews 10:14

JULIE ACKERMAN LINK

The Importance of How

While attending Bible college, my friend Charlie and I worked for a furniture store. We often made deliveries accompanied by an interior decorator who talked with the people who had purchased the furniture while we brought it from the truck into the house. Sometimes we had to carry the furniture up several flights of stairs in an apartment building. Charlie and I often wished we had the decorator's job instead of ours!

During Israel's 40 years of wandering in the wilderness, three clans from the priestly tribe of Levi—the Kohathites, Gershonites, and Merarites—were assigned the job of transporting the Tent of Meeting (tabernacle). They put it up, took it down, and carried it to the next place, then repeated the process again and again. Their job description was simple: "Carry the things assigned to you" (SEE NUM. 4:32).

I wonder if these "custodians" ever envied the "clergymen" who offered sacrifices and incense using the holy articles in the sanctuary (VV. 4-5, 15). That job must have looked much easier and more prestigious. But both assignments were important and came from the Lord.

Many times we don't get to select the work we do. But all of us can choose our attitude toward the tasks we're given. How we do the job God gives us is the measure of our service to Him. ☪

DAVID MCCASLAND

Father in heaven, our work in life often causes us to wonder if we are accomplishing anything worthwhile. Give us eyes to see the importance of the tasks You have given us so that we may honor You by the way we do them.

Humble work becomes holy work when it's done for God.

Holy Is Your Name

One afternoon I was having a discussion with a friend I considered my spiritual mentor about misusing God's name. "You shall not misuse the name of the LORD your God," says the third commandment (EX. 20:7). We may think this only refers to attaching God's name to a swear word or using His name flippantly or irreverently. But my mentor rarely missed an opportunity to teach me about real faith. He challenged me to think about other ways we profane God's name.

When I reject the advice of others and say, "God told me to go this way," I misuse His name if all I am doing is seeking approval for my own desires. **God. v. 7**

When I use Scripture out of context to try to support an idea I want to be true, I am using God's name in vain.

When I teach, write, or speak from Scripture carelessly, I misuse His name.

Author John Piper offers this reflection on what it means to take God's name in vain: "The idea is . . . 'don't empty the name.' . . . Don't empty God of His weight and glory." We misuse His name, Piper says, when we "speak of God in a way that empties Him of His significance."

My friend challenged me to honor God's name and to pay closer attention to using His Word carefully and accurately. Anything less dishonors Him. ☪

RANDY KILGORE

Heavenly Father, help me to glorify Your name and to honor You always in what I say and do.



Share this prayer from our Facebook page with your friends: [facebook.com/ourdailybread](https://www.facebook.com/ourdailybread)

God's name: handle with care.

Christmas Rest

As a boy I delivered newspapers in order to earn money. Since it was a morning newspaper, I was required to get up at 3:00 every morning, 7 days a week, in order to have all 140 of my papers delivered to their appropriate homes by 6:00 a.m.

But one day each year was different. We would deliver the Christmas morning newspaper on Christmas Eve—meaning that Christmas was the only morning of the year I could sleep in and rest like a normal person.

Over the years, I came to appreciate Christmas for many reasons, but one that was special in those days was that, unlike any other day of the year, it was a day of rest.

At that time, I didn't fully understand the meaning of the true rest that Christmas brings. Christ came so that all who labor under the weight of a law that can never be fulfilled might find rest through the forgiveness Christ offers. Jesus said, "Come to me, all you who are weary and burdened, and I will give you rest" (MATT. 11:28).

In a world that is too much for us to bear alone, Christ has come to bring us into a relationship with Him and give us rest. ☪

BILL CROWDER

What burdens would you like the Lord to carry for you?
 Ask Him today.

Our soul finds rest when it rests in God.

Reaching Out in the Darkness

Our old dog—a West Highland white terrier—sleeps curled up at the foot of our bed. That's been her place for 13 years.

Normally she doesn't move or make a sound, but lately she's been pawing us gently in the middle of the night.

At first we thought she wanted to go outside, so we tried to accommodate her.

But we realized she just wants to know we are there. She's nearly deaf and partially blind now. She can't see in the darkness and can't hear us move or breathe. Naturally, she gets confused and reaches out for reassurance. So I just reach down and pat her on the head to assure her that I'm there. That's all she wants to know. She takes a turn or two, settles down, and goes back to sleep.

"Where can I flee from your presence?" David asked God (PS. 139:7). David took this as an immense comfort. "If I settle on the far side of the sea, even there your hand will guide me," he noted. "Even the darkness will not be dark to you" (IV. 9-12).

Lost in darkness? Grieving, fearful, guilty, doubting, discouraged? Not sure of God? The darkness is not dark to Him. Though unseen, He is at hand. He has said, "Never will I leave you; never will I forsake you" (HEB. 13:5). Reach out your hand for His. He is there. ☪

DAVID ROPER

Lord, You promised never to leave us or forsake us.

We know Your word is true, but so often we see the obstacles and the challenges and lose sight of You. Help us today to see more of You and less of our problems.

Dark fears flee in the light of God's presence.

TODAY'S READING
 Matthew 11:28-12:8

Come to me, all you who are weary and burdened. v. 28

TODAY'S READING
 Psalm 139:7-12

The night will shine like the day, for darkness is as light to you. v. 12

The Seventh Stanza

In the summer of 1861, Henry Wadsworth Longfellow's wife, Frances, died tragically in a fire. That first Christmas without her, he wrote in his diary, "How inexpressibly sad are the holidays." The next year was no better, as he recorded, "A merry Christmas," say the children, but that is no more for me."

In 1863, as the American Civil War was dragging on, Longfellow's son joined the army against his father's wishes and was critically injured. On Christmas Day that year, as church bells announced the arrival of another painful Christmas, Longfellow picked up his pen and began to write, "I Heard the Bells on Christmas Day."

The poem begins pleasantly, lyrically, but then takes a dark turn. The violent imagery of the pivotal fourth verse ill suits a Christmas carol. "Accursed" cannons "thundered," mocking the message of peace. By the fifth and sixth verses, Longfellow's desolation is nearly complete. "It was as if an earthquake rent the hearth-stones of a continent," he wrote. The poet nearly gave up: "And in despair I bowed my head; 'There is no peace on earth,' I said."

But then, from the depths of that bleak Christmas day, Longfellow heard the irrepressible sound of hope. And he wrote this seventh stanza.

Then pealed the bells more loud and deep: "God is not dead, nor doth He sleep! The wrong shall fail, the right prevail, with peace on earth, good-will to men!"

The war raged on and so did memories of his personal tragedies, but it could not stop Christmas. The Messiah is born! He promises, "I am making everything new!" (REV. 21:5). © TIM GUSTAFSON

Immanuel—God with us!

Pax Romana

No one can afford the price of war. One website reports 64 nations are currently involved in armed conflicts. When and how will they end? We want peace, but not at the expense of justice.

Jesus was born during a time of "peace," but it came at the cost of heavy-handed oppression. The Pax Romana ("Roman Peace") existed only because Rome squashed all dissent.

Seven centuries before that time of relative peace, hostile armies prepared to invade Jerusalem. From the shadow of war, God made a remarkable pronouncement. "On those living in the land of deep darkness a light has dawned," the prophet declared (ISA. 9:2). "For to us a child is born, to us a son is given . . . Of the greatness of his government and peace there will be no end" (VV. 6-7). Matthew tells us that Isaiah's prophecy found fulfillment in the Christ-child (MATT. 1:22-23; SEE ALSO ISA. 7:14).

We adore the tiny baby in the manger scene. Yet that helpless babe is also the Lord Almighty, "the Lord of Heaven's Armies" (ISA. 13:13 NET). He will one day "reign on David's throne and over his kingdom, establishing and upholding it with justice and righteousness" (9:7). Such a regime will be no oppressive Pax Romana. It will be the reign of the Prince of Peace. © TIM GUSTAFSON

Father, we can never sufficiently thank You that Your Son came to bring us peace with You through His death and resurrection. Thank You that He will rule in both peace and righteousness.

The Lamb of God is also the Lion of Judah.

TODAY'S READING
Isaiah 9:1-7

To us a child is born, to us a son is given, and the government will be on his shoulders. v. 6

TODAY'S READING
Luke 2:8-14

Today in the town of David a Savior has been born to you; he is the Messiah, the Lord. v. 11

Amazing Love

Approaching the first Christmas after her husband died, our friend Davidene wrote a remarkable letter in which she pictured what it might have been like in heaven when Jesus was born on earth. "It was what God always knew would happen," she wrote. "The three were one, and He had agreed to allow the fracturing of His precious unity for our sake. Heaven was left empty of God the Son."

As Jesus taught and healed people on earth, He said, "I have come down from heaven not to do my will but to do the will of him who sent me. . . . For my Father's will is that everyone who looks to the Son and believes in him shall have eternal life, and I will raise them up at the last day" (JOHN 6:38,40).

When Jesus was born in Bethlehem, it was the beginning of His mission on earth to demonstrate God's love and give His life on the cross to free us from the penalty and power of sin.

"I cannot imagine actually choosing to let go of the one I loved, with whom I was one, for the sake of anyone else," Davidene concluded. "But God did. He faced a house much emptier than mine, so that I could live in His house with Him forever."

"For God so loved the world that he gave his one and only Son" (JOHN 3:16). ☉

DAVID MCCASLAND

Father in heaven, we are in awe of Your amazing love for us. Thank You for giving Your only Son to save us from our sins.

*The birth of Christ brought God to man;
the cross of Christ brings man to God.*

The Drummer Boy

The Little Drummer Boy" is a popular Christmas song written in 1941. It was originally known as "Carol of the Drum" and is based on a traditional Czech carol.

Although there isn't any reference to a drummer boy in the Christmas story in Matthew 1-2 and Luke 2, the point of the carol goes straight to the heart of the meaning of worship. The carol describes how a boy is summoned by the Magi to the scene of Christ's birth. Unlike the wise men, however, the drummer has no gift—so he gives what he has. He plays his drum, saying, "I played my best for Him."

This echoes the worship Jesus described when He told of the widow and her two coins: "Truly I tell you," he said, "this poor widow has put in more than all the others. All these people gave their gifts out of their wealth; but she out of her poverty put in all she had to live on" (LUKE 21:3-4).

All the drummer boy had was his drum and all the poor widow had were her two coins, but the God they worshiped was worthy of their all. He is worthy of our all as well, having given His all for us. ☉

BILL CROWDER

All to Jesus, I surrender, all to Him I freely give;
I will ever love and trust Him, in His presence daily live.

JUDSON W. VAN DE VENTER

Your little is a lot when you give your all.

One Size Fits All

Like most children, I thoroughly enjoyed Christmas. With great anticipation, I would snoop under the tree to see what toys and games awaited my eager grasp. So I felt deflated when I started getting things like shirts and pants. Growup gifts were no fun! Then last Christmas, my kids gave me some cool socks with bright colors and designs. I almost felt young again! Even growups could wear these socks, as the label reassured me: "One size fits all."

That welcome phrase "one size fits all" reminds me of the best gift of Christmas—reminds me of the best gift for everyone.

The point was proven when the first invitation sent by angel choirs was to shepherds on the bottom rung of the social ladder. The news was underscored further when the VIPs—the wealthy and powerful Magi—followed the star to come and worship the Christ-child.

After Jesus began His ministry, an influential member of the Jewish ruling council came to Him at night. In the course of their conversation, Jesus invited "whoever believes" to come to Him. The simple act of faith in Christ grants eternal life to those who trust in Him (JOHN 3:16).

If Jesus were just for the poor and marginalized, or only for the famous and fortunate, many of us would not qualify. But Christ is for everyone, regardless of status, financial situation, or social standing. He is the only gift truly fit for all. ☪ JOE STOWELL

Thank You, Lord, that no one is unqualified for the gift of Your love. Teach us to rejoice in the fact that Your love was just right for us, and help us to share that love with others.

God's gift to a dying world is the life-giving Savior.

Christmas Mystery

As Charles Dickens' story *A Christmas Carol* begins, there is mystery surrounding Ebenezer Scrooge. Why is he so mean-spirited? How did he become so selfish? Then slowly, as the Christmas spirits marched Scrooge through his own story, things become clearer. We see the influences that changed him from a happy youth into a selfish miser. We observe his isolation and his brokenness. As the mystery is solved, we also glimpse the path to restoration. Concern for others pulls Scrooge from his self-absorbed darkness into a new joy.

TODAY'S READING
1 Timothy 3:14-16

The mystery from which true godliness springs is great. v. 16

A far more important mystery, and one much harder to explain, is that which Paul spoke of in 1 Timothy 3:16: "Beyond all question, the mystery from which true godliness springs is great: He appeared in the flesh, was vindicated by the Spirit, was seen by angels, was preached among the nations, was believed on in the world, was taken up in glory." Extraordinary! God "appeared in the flesh."

The mystery of Christmas is how God could become man, while remaining fully God. It defies human explanation, but in the perfect wisdom of God, it was the plan of the ages. "What child is this?" He is Jesus Christ—God revealed in the flesh. ☪

BILL CROWDER

This, this is Christ the King, whom shepherds guard and angels sing: Haste, haste to bring Him laud, the babe, the son of Mary.

TRADITIONAL CAROL

God made His home with us so that we might make our home with Him.

A Fragile Gift

When we give a fragile gift, we make sure it is marked on the box that contains it. The word **FRAGILE** is written with big letters because we don't want anyone to damage what is inside.

God's gift to us came in the most fragile package: a baby. Sometimes we imagine Christmas day as a beautiful scene on a postcard, but any mother can tell you it wasn't so. Mary was tired, probably insecure. It was her first child, and He was born in the most unsanitary conditions. She "wrapped Him in swaddling cloths, and laid Him in a manger, because there was no room for them in the inn" (LUKE 2:7 NKJV).

A baby needs constant care. Babies cry, eat, sleep, and depend on their caregivers. They cannot make decisions. In Mary's day, infant mortality was high, and mothers often died in childbirth.

Why did God choose such a fragile way to send His Son to earth? Because Jesus had to be like us in order to save us. God's greatest gift came in the fragile body of a baby, but God took the risk because He loves us. Let us be thankful today for such a gift! ❀

KEILA OCHOA

Dear Lord, the Strong and Mighty One, I thank You for becoming small and fragile on that day long ago. It amazes me that You did that for me and the rest of Your world.

May you know the peace of Christmas every day of the year.

Christmas Sacrifice

O Henry's classic tale "The Gift of the Magi" tells of Jim and Della, a young married couple who are struggling financially. As Christmas approaches they want to give special gifts to each other, but their lack of money drives them to drastic measures. Jim's prized possession is a gold watch, while Della's is her long, beautiful hair. So Jim sells his watch in order to buy combs for Della's hair, while Della sells her hair to buy a chain for Jim's watch.

The story has deservedly become beloved, for it reminds us that sacrifice is at the heart of true love, and sacrifice is love's truest measure. This idea is particularly appropriate for Christmas, because sacrifice is the heartbeat of the story of the birth of Christ. Jesus Christ was born to die, and He was born to die for us. That is why the angel told Joseph, "You are to give him the name Jesus because he will save his people from their sins" (MATT. 1:21).

Long before Christ's birth, it had been determined that He would come to rescue us from our fallenness—which means that we can never fully appreciate the manger unless we see it in the shadow of the cross. Christmas is completely about Christ's love, seen most clearly in His sacrifice for us. ❀

BILL CROWDER

In what ways would you like to say thanks to Jesus for what He has done?



Share your story at odb.org

The essential fact of Christianity is that God thought all humanity worth the sacrifice of His Son. WILLIAM BARCLAY

Diamond Dust

During a bitterly frigid winter in our part of Michigan, there were many mixed emotions about the weather. As the snowy winter season pressed on into March, most people had long before fallen out of love with snow and were bemoaning long-range forecasts of low temperatures.

Yet the majestic beauty of the snow continued to amaze me. Even as I threw endless shovelful of it from my driveway onto the over-my-head snowbanks, I was enthralled with the white stuff. One particular day, ice crystals filtered down from the sky to fall atop old snow. As my wife and I took a walk through this sparkling scene, it looked as if diamond dust had been sprinkled across the landscape.

In Scripture, snow seems to have varied purposes. God sends it as an indicator of His creative greatness (JOB 37:6; 38:22-23). Snow-capped mountains irrigate the arid valleys below. But more significantly, God gives snow as a picture of our forgiveness. The gospel of Jesus provides a way for us to be cleansed of our sins and for our hearts to be made much “whiter than snow” (PS. 51:7; ISA. 1:18).

The next time you see snow—in life or in photos—thank God for the forgiveness and the freedom from sin’s penalties that this beautiful, natural gift pictures for all who have put their trust in our Savior. ❀

DAVE BRANON

Thank You for forgiving us and for turning our filthiness into the beauty of forgiveness. Help us to display the beauty of our forgiveness to all we encounter.

When Christ forgives us, our hearts are as clean as new-fallen snow.

A Place of Shelter

Someless people in Vancouver, British Columbia, have a new way to find nighttime accommodations. A local charity, RainCity Housing, has created specialized benches that convert into temporary shelters. The back of the bench pulls up to create a roof that can shield a person from wind and rain. At night, these sleeping spaces are easy to find because they feature a glow-in-the-dark message that reads: THIS IS A BEDROOM.

The need for shelter can be physical, and it can be spiritual as well. God is a refuge for our souls when we are troubled. King David wrote, “I call as my heart grows faint; lead me to the rock that is higher than I” (PS. 61:2). When we’re emotionally overloaded, we are more vulnerable to the Enemy’s tactics—fear, guilt, and lust are a few of his favorites. We need a source of stability and safety.

If we take refuge in God, we can have victory over the Enemy as he tries to influence our hearts and minds. “You have been my refuge, a strong tower against the foe,” David said to the Lord. “I long to . . . take refuge in the shelter of your wings” (VV. 3-4).

When we are overwhelmed, peace and protection are ours through God’s Son, Jesus Christ. “In me you may have peace,” Jesus said. “In this world you will have trouble. But take heart. I have overcome the world” (JOHN 16:33). ❀

JENNIFER BENSON SCHULZ

Dear God, I am frail and defenseless, but You are mighty and powerful. Please help me find peace and rest in You when I am overwhelmed.

God is our refuge.

Reject Apathy

The room was splashed with an assortment of enchanting colors as women in beautiful saris scurried around, completing the final touches for a fundraising event. Formerly from India, these women now live in the USA. Yet they remain concerned for their native country. Upon hearing about the financial situation of a Christian school for autistic children in India, they not only heard the need, but they also took it to heart and responded.

Nehemiah did not allow his comfortable position in life as cupbearer and confidant to the most powerful man at that time to nullify his concerns for his countrymen. He talked to people who had just come from Jerusalem to find out the condition of the city and its citizens (NEH. 1:2). He learned that “those who survived the exile . . . are in great trouble and disgrace. The wall of Jerusalem is broken down, and its gates have been burned with fire” (v. 3).

Nehemiah’s heart broke. He mourned, fasted, and prayed, asking God to do something about the terrible conditions (v. 4). God enabled Nehemiah to return to Jerusalem to lead the rebuilding effort (2:1-8).

Nehemiah accomplished great things for his people because he asked great things of a great God and relied on Him. May God open our eyes to the needs of those around us, and may He help us to become passionate and creative problem-solvers who bless others. ☉

POH FANG CHIA

Father, there are great needs all around us. We choose not to give in to despair or apathy, but look to You for help in doing the task at hand.

Those who walk with God won't run from the needs of others.

An Invitation to Rest

At a friend's bedside in a hospital emergency ward, I was moved by the sounds of suffering I heard from other patients in pain. As I prayed for my friend and for the ailing patients, I realized anew how fleeting our life on earth is. Then I recalled an old country song by Jim Reeves that talks about how the world is not home for us—we're “just a-passin' through.”

Our world is full of weariness, pain, hunger, debt, poverty, disease, and death. Because we must pass through such a world, Jesus' invitation is welcome and timely: “Come to me, all you who are weary and burdened, and I will give you rest” (MATT. 11:28). We need this rest.

There is hardly a funeral ceremony I've attended where John's vision of “a new heaven and a new earth” (REV. 21:1-5) is not quoted, and it certainly holds relevance for funerals.

But I believe the passage is more for the living than the dead. The time to heed Jesus' invitation to come rest in Him is while we are still living. Only then can we be entitled to the promises in Revelation. God will dwell among us (v. 3). He will wipe away our tears (v. 4). There will be “no more death or mourning or crying or pain” (v. 4).

Accept Jesus' invitation and enter His rest! ☉ LAWRENCE DARMAN

Father in heaven, this life can be wonderful, but it can also be so hard. Thank You for Your Spirit's presence with us now. And thank You too for the reality of eternal life with You.

When you're weary in life's struggles, find your rest in the Lord.

On the Wing

In his book *On the Wing*, Alan Tennant chronicles his efforts to track the migration of the peregrine falcon. Valued for their beauty, swiftness, and power, these amazing birds of prey were favorite hunting companions of emperors and nobility. Sadly, the wide use of the pesticide DDT in the 1950s interfered with their reproductive cycle and placed them on the endangered species list.

Interested in the recovery of this species, Tennant attached transmitters to a select number of falcons to track their migration patterns. But when he and his pilot flew their Cessna behind the birds, they repeatedly lost signal from the transmitters. Despite their advanced technology, they were not always able to track the birds they wanted to help.

It's good to know that the God who cares for us never loses track of us. In fact, Jesus said that not even one sparrow "will fall to the ground outside your Father's care. . . . So don't be afraid; you are worth more than many sparrows" (MATT. 10:29-31).

When we face difficult circumstances, fear may cause us to wonder if God is aware of our situation. Jesus' teaching assures us that God cares deeply and is in control. His tracking of our lives will never fail. ☪

DENNIS FISHER

Father, I'm putting my longings and burdens on You at the end of this year because I know You care for me and can work powerfully.

Thank You that I and my loved ones are in Your care.

If God cares for birds, will He not care for His children?

This Could Be the Year

My dad was a pastor, and on the first Sunday of each new year he preached about the return of Christ, often quoting from 1 Thessalonians 4. His point was always the same: "This could be the year that Jesus will return. Are you ready to meet Him?" I'll never forget hearing that sermon at age 6, thinking, *If that's true, I'm not sure I will be among those He's coming for.*

I felt certain that my parents would be going to heaven, and I wanted to go too. So, when my dad came home after church, I asked how I could be sure. He opened the Bible, read some verses to me, and talked to me about my need for a Savior. It didn't take much to convince me of my sins. That day, my dad led me to Christ. I will be forever grateful to him for planting these truths in my heart.

In an increasingly chaotic world, what a hopeful thought that this could be the year Jesus returns. More comforting still is the anticipation that all who trust Him for salvation will be gathered together, relieved from this world's suffering, sorrow, and fear. Best of all, we'll be with the Lord forever! ☪

JOE STOWELL

TODAY'S READING
1 Thess. 4:13-18

We who are still alive and are left will . . . meet the Lord in the air. And so we will be with the Lord forever. v. 17

Lord, keep me always mindful of Your inevitable return. Thanks for the assurance that this world is not all we have but that a blessed eternity awaits all who trust in You.

Perhaps today! DR. M. R. DEHAAN

He Will Reply

I was elated when I came upon the Twitter page of my favorite Korean movie star, so I decided to drop her a note. I crafted the best message I could and waited for a reply. I knew it was unlikely I would receive a response. A celebrity like her would receive an enormous amount of fan mail every day. Still, I hoped she would reply. But I was disappointed.

Thankfully, we know God responds to us. He is the "Most High," the "Almighty" (Ps. 91:1). His position is exalted and His power is limitless, yet He is accessible to us. God invites: "Call upon Me, and I will answer" (v. 15 NKJV).

An ancient legend tells of a monarch who hired weavers to make tapestries and garments for him. The king gave the silk and the patterns to the weavers with the strict instructions to seek his aid immediately if they had any difficulties. One young weaver was happy and successful while the others were always experiencing trouble. When the boy was asked why he was so successful, he said, "Didn't you notice how often I called for the king?" They replied, "Yes, but he's very busy, and we thought you were wrong in disturbing him so frequently." The boy answered, "I just took him at his word, and he was always happy to help me!"

Our God is like that king—only so much greater. He is loving and kind enough to care about our smallest concern and faintest whisper. ☉

POH FANG CHIA

Lord, it's amazing to me that You—the God who created the universe—care about me and want me to come to You in prayer.

Thank You for loving me so much.

We always have God's attention.

All His Benefits

A recurring difficulty on our journey of life is becoming so focused on what we need at the moment that we forget what we already have. I was reminded of that when our church choir sang a beautiful anthem based on Psalm 103. "Bless the LORD, O my soul, and forget not all His benefits" (v. 2 NKJV). The Lord is our forgiver, healer, redeemer, provider, satisfier, and renewer (vv. 4-5). How could we forget that? And yet we often do when the events of daily life shift our attention to pressing needs, recurring failures, and circumstances that seem out of control.

TODAY'S READING
Psalm 103

**Praise the LORD,
my soul, and
forget not all his
benefits.** v. 2

The writer of this psalm calls us to remember, "The LORD is compassionate and gracious . . . He does not treat us as our sins deserve or repay us according to our iniquities. For as high as the heavens are above the earth, so great is his love for those who fear him" (vv. 8,10-11).

In our walk of faith, we come to Jesus Christ humbled by our unworthiness. There is no sense of entitlement as we receive His grace and are overwhelmed by the lavishness of His love. They remind us of all His benefits.

"Praise the LORD, my soul; all my inmost being, praise his holy name" (v. 1). ☉

DAVID MCCASLAND

Heavenly Father, we pause to consider all we have in You. Grant us eyes to see Your provision and help us to remember every benefit You have given to us.

Love was when God became a man.

Is He Listening?

Sometimes it feels as if God isn't listening to me." Those words, from a woman who tried to stay strong in her walk with God while coping with an alcoholic husband, echo the heartcry of many believers. For many years, she asked God to change her husband. Yet it never happened.

What are we to think when we repeatedly ask God for something good—something that could easily glorify Him—but the answer doesn't come? Is He listening or not?

TODAY'S READING
Matt. 26:39-42; 27:45-46

My God, my God, why have you forsaken me? 27:46

Let's look at the life of the Savior. In the garden of Gethsemane, He agonized for hours in prayer, pouring out His heart and pleading, "Let this cup pass from Me" (MATT. 26:39 NKJV). But the Father's answer was clearly "No." To provide salvation, God had to send Jesus to die on the cross. Even though Jesus felt as if His Father had forsaken Him, He prayed intensely and passionately because He trusted that God was listening.

When we pray, we may not see how God is working or understand how He will bring good through it all. So we have to trust Him. We relinquish our rights and let God do what is best.

We must leave the unknowable to the all-knowing One. He is listening and working things out His way. DAVE BRANON

Lord, we don't need to know the reason our prayers sometimes go unanswered. Help us just to wait for Your time, because You are good.

When we bend our knees to pray, God bends His ear to listen.

The Lonely Season

Amid the pile of post-Christmas mail I discovered a treasure—a handmade Christmas card painted on repurposed cardstock. Simple watercolor strokes evoked a scene of wintry hills livened with evergreens. Centered at the bottom, framed by red-berried holly, was this hand-printed message:

Peace be with you!

The artist was a prisoner and a friend of mine. As I admired his handiwork, I realized I hadn't written to him in 2 years!

Long ago, another prisoner was neglected as he waited in prison. "Only Luke is with me," wrote the apostle Paul to Timothy (2 TIM. 4:11). "No one came to my support, but everyone deserted me" (V. 16). Yet Paul found encouragement even in prison, and he wrote, "The Lord stood at my side and gave me strength" (V. 17). But surely Paul felt the lonely ache of abandonment.

On the back of that wonderful Christmas card my friend wrote, "May the peace and joy and hope and love brought about through the birth of Jesus be with you and yours." He signed it, "Your brother in Christ." I put the card on my wall as a reminder to pray for him. Then I wrote to him.

Throughout this coming year let's reach out to the loneliness of our brothers and sisters. TIM GUSTAFSON

What lonely people can I think of right now? Newcomers to town? Prisoners? People in the hospital or in senior living centers? What can I do, no matter how small, to reach out to them?

Reach out in friendship and encourage the lonely.

Ringling Reminders

The clock tower at Westminster, which contains the bell known as Big Ben, is an iconic landmark in London, England. It is traditionally thought that the melody of the tower chimes was taken from the tune of "I Know That My Redeemer Liveth" from Handel's *Messiah*. Words were eventually added and put on display in the clock room:

Lord, through this hour be Thou our guide;

So by Thy power no foot shall slide.

These words allude to Psalm 37:

"The Lord directs the steps of the godly.

He delights in every detail of their lives.

Though they stumble, they will never fall, for the Lord holds them by the hand" (V. 23-24 NLT).

Notice how intimately involved God is in His children's experience: "He delights in every detail of their lives" (V. 23 NLT). Verse 31 adds, "The law of their God is in their hearts; their feet do not slip."

How extraordinary! The Creator of the universe not only upholds us and helps us but He also cares deeply about every moment we live. No wonder the apostle Peter was able to confidently invite us to "cast all your anxiety on him because he cares for you" (1 PETER 5:7). As the assurance of His care rings in our hearts, we find courage to face whatever comes our way. ☉

BILL CROWDER

Loving Father, thank You that every part of my life matters to You.

Encourage me in my struggles so that I might walk in a way that reflects Your great love and honors Your great name.

No one is more secure than the one who is held in God's hand.

Starting Upstream

My home sits along a creek in a canyon in the shadow of a large mountain. During the spring snowmelt and after heavy rains this stream swells and acts more like a river than a creek. People have drowned in it. One day I traced the origin of the creek to its very source, a snowfield atop the mountain. From there the melted snow begins the long journey down the mountain, joining other rivulets to take shape as the creek below my house.

It occurs to me, thinking about prayer, that most of the time I get the direction wrong. I start downstream with my own concerns and bring them to God.

I inform God, as if God did not already know. I plead with God, as if hoping to change God's mind and overcome divine reluctance. Instead, I should start upstream where the flow begins.

When we shift direction, we realize that God already cares about our concerns—a loved one's cancer, a broken family, a rebellious teenager—more than we do. Our Father knows what we need (MATT. 6:8).

Grace, like water, descends to the lowest part. Streams of mercy flow. We begin with God and ask what part we can play in His work on earth. With this new starting point for prayer, our perceptions change. We look at nature and see the signature of the grand Artist. We look at human beings and see individuals of eternal destiny made in God's image. Thanksgiving and praise surge up to Him as a natural response. ☉

PHILIP YANCEY

Dear Lord, I praise You for loving and caring for me so much.

What would I ever do without You?

Prayer channels God's supply to our needs.

The Best Kind of Happiness

“Everybody’s doing it” seemed like a winning argument when I was young. My parents never gave in to such pleas no matter how desperate I was to get permission to do something they believed was unsafe or unwise.

As we get older we add excuses and rationalizations to our repertoire of arguments for having our own way: “No one will get hurt.” “It’s not illegal.” “He did it to me first.” “She won’t find out.” Behind each argument is the belief that what we want is more important than anything else.

Eventually, this faulty way of thinking becomes the basis for our beliefs about God. One of the lies we sometimes choose to believe is that we, not God, are the center of the universe. We think we will be carefree and happy only when we reorder the world according to our desires. This lie is convincing because it promises an easier, speedier way to get what we want. It argues, “God is love, so He wants me to do whatever will make me happy.” But this way of thinking leads to heartache, not happiness.

Jesus told those who believed in Him that the truth would make them truly free (JOHN 8:31-32). But He also warned, “Everyone who sins is a slave to sin” (V. 34). The best kind of happiness comes from the freedom we find when we accept the truth that Jesus is the way to a full and satisfying life.  JULIE ACKERMAN LINK

Lord, we confess our tendency to rationalize everything to get what we think we want. Guide us today so that we choose to obey Your commands instead of pursuing our own desires.

There are no shortcuts to true happiness.

TODAY’S READING
John 8:31-38

If you hold to my teaching, you are really my disciples. Then you will know the truth, and the truth will set you free. vv. 31-32

Wells of Salvation

When people drill holes deep into the earth, it is normally for pulling up core samples of rock, accessing oil, or finding water.

In Isaiah 12, we learn that God wanted His people, who were living in a spiritual desert as well as a geographical desert, to discover His “wells of salvation.” The prophet Isaiah compared God’s salvation to a well from which the most refreshing of all waters can be drawn. After many years of turning their back on God, the nation of Judah was destined for exile as God allowed foreign invaders to conquer the nation, scattering the people. Yet, said the prophet Isaiah, a remnant would eventually return to their homeland as a sign that God was with them (ISA. 11:11-12).

Isaiah 12 is a hymn, praising God for His faithfulness in keeping His promises, especially the promise of salvation. Isaiah encouraged the people that deep in God’s “wells of salvation” they would experience the cool water of God’s grace, strength, and joy (vv. 1-3). This would refresh and strengthen their hearts and cause praise and gratitude to God (vv. 4-6).

God wants each of us to discover through confession and repentance the deep, cool waters of joy found in the everlasting well of His salvation. 

MARVIN WILLIAMS

What will you do to draw deeply from God’s well to find His joy, refreshment, and strength?



Share on Facebook.com/ourdailybread
or oodb.org

The wells of God’s salvation never run dry.

TODAY’S READING
Isaiah 12

With joy you will draw water from the wells of salvation. v. 3

True Shelter

In March 2014 a tribal conflict broke out in my hometown area, forcing my father's household, along with other refugees, to take cover in the region's capital city. Throughout history, people who have felt unsafe in their homelands have traveled to other places searching for safety and something better.

As I visited and talked with people from my hometown, I thought of the cities of refuge in Joshua 20:1-9. These were cities designated as places of safety for those fleeing from "relatives seeking revenge" in the case of an accidental killing (v. 3 NLT). They offered peace and protection.

People today still seek places of refuge, although for a variety of reasons. But as needed as these sanctuaries are, supplying shelter and food, they cannot completely meet the needs of refugees and fugitives. That rest is found only in God. Those who walk with God find true shelter and the safest protection in Him. When ancient Israel was sent into exile, the Lord said, "I have been a sanctuary [safe haven] for them in the countries where they have gone" (EZEK. 11:16).

With the psalmist, we can say confidently to the Lord, "You are my hiding place; you will protect me from trouble and surround me with songs of deliverance" (32:7). LAWRENCE DARMANI

Father, thank You for being a rock to which we can flee and that no matter where we are or in what circumstances we find ourselves, You are there with us. Help us to remember that even in the darkest of nights, You are our strong tower.

Nothing can shake those who are secure in God's hands.

You Have Value

After my mother-in-law died, my wife and I discovered a cache of US Indian Head pennies in a dresser drawer in her apartment. She wasn't a coin collector, as such, but she lived in the era when these pennies were in circulation and she had accumulated a few.

Some of these coins are in excellent condition; others are not. They are so worn and tarnished you can hardly see the imprint. All bear the stamp "One Cent" on the opposite side. Although a penny these days has little value and many consider them useless, this one-cent coin would have bought a newspaper in its day. And collectors still find value in them, even those that have been battered and abused.

Perhaps you feel tarnished, worn, old, or out of circulation. Even so, God finds value in you. The Creator of the universe wants you—not for your mind, your body, your clothes, your achievements, your intellect, or your personality, but because you are you! He would go any distance and pay any price to possess you (1 COR. 6:20).

In fact He did. He came down to earth from heaven and purchased you with His own blood (ROM. 5:6, 8-9). That's how much He wants you. You are valuable in His eyes, and He loves you. DAVID ROPP

As I think about Your love for me, Father, I wonder with amazement how You could love someone like me—and I praise You.

Christ's death is the measure of God's love for you.

TODAY'S READING
Romans 5:6-11

You were bought at a price.
1 Corinthians 6:20

Hold On!

A cowboy friend of mine who grew up on a ranch in Texas has a number of colorful sayings. One of my favorites is "It don't take much water to make good coffee." And when someone ropes a steer too big to handle or is in some kind of trouble, my friend will shout, "Hold everything you've got!" meaning "Help is on the way! Don't let go!"

In the book of Revelation we find letters to "the seven churches in the province of Asia" (CHS. 2-3). These messages from God are filled with encouragement, rebuke, and challenge, and they speak to us today just as they did to the first-century recipients.

Twice in these letters we find the phrase, "Hold on to what you have." The Lord told the church at Thyatira, "Hold on to what you have until I come" (2:25). And to the church in Philadelphia He said, "I am coming soon. Hold on to what you have, so that no one will take your crown" (3:11). In the midst of great trials and opposition, these believers clung to God's promises and persevered in faith.

When our circumstances are harsh and sorrows outnumber joys, Jesus shouts to us, "Hold everything you've got! Help is on the way!" And with that promise, we can hold on in faith and rejoice. ☉

DAVID MCCASLAND

Lord, we cling to Your promise, expect Your return, and hold on with confidence as we say, "Even so, come, Lord Jesus!"

The promise of Christ's return calls us to persevere in faith.

Gates of Paradise

Italian artist Lorenzo Ghiberti (1378-1455) spent years skillfully crafting images of Jesus' life into the bronze doors of Italy's Florence Baptistery. These bronze reliefs were so moving that Michelangelo called them the Gates of Paradise.

As an artistic treasure, the doors greet visitors with echoes of the gospel story. It was Jesus who said, "I am the gate; whoever enters through me will be saved" (JOHN 10:9). On the night before His crucifixion, He told His disciples, "I am the way and the truth and the life. No one comes to the Father except through me" (14:6). Within a few hours Jesus would say to one of the criminals being crucified at His side, "Today you will be with me in paradise" (LUKE 23:43).

The apostle Peter a few weeks later boldly proclaimed to those who had called for Jesus' death that "there is no other name under heaven . . . by which we must be saved" (ACTS 4:12). Years later, the apostle Paul wrote that there is only one mediator between God and humanity—the man Christ Jesus (1 TIM. 2:5).

The gates of paradise are found in the Savior who offers everlasting life to all who believe and come to Him. Enter into the joy of His salvation. ☉

DENNIS FISHER

I needed a mediator because of my sin. Thank You, Jesus, for being the way to the Father by Your death and resurrection. I will be forever grateful.

Jesus died in our place to give us His peace.

Saying Goodbye

Saying goodbye is hard—to family and friends, to a favorite and familiar place, to an occupation or livelihood.

In Luke 9:57-62 our Lord describes the cost of being His disciple. A would-be follower says to Jesus, “I will follow you, Lord; but first let me go back and say goodbye to my family.” Jesus responds, “No one who puts a hand to the plow and looks back is fit for service in the kingdom of God” (vv. 61-62). Is He asking His followers to say goodbye to everything and every relationship considered precious?

In the Chinese language there is no direct equivalent of the English word *goodbye*. The two Chinese characters used to translate this word really mean “see you again.” Becoming a disciple of Christ may sometimes mean others will reject us, but it does not mean we say goodbye to people in the sense that we are to forget all our past relationships. Saying goodbye means that God wants us to follow Him on His terms—wholeheartedly. Then we will see people again from the right perspective.

God wants the best for us, but we must allow Him to take priority over everything else. ☉

C. P. HIA

Dear Lord, I want to follow You wholeheartedly.
Help me not to place anything or anyone before You.

When we follow Jesus we get a new perspective.

What's in the Bank?

In the winter of 2009, a large passenger plane made an emergency landing in New York's Hudson River. The pilot, Captain Chesley Sullenberger, who landed the plane safely with no casualties, was later asked about those moments in the air when he was faced with a life-or-death decision. “One way of looking at this,” he said, “might be that for 42 years I've been making small, regular deposits in this bank of experience, education, and training. And on [that day] the balance was sufficient so that I could make a very large withdrawal.”

Most of us will at some time face a crisis. Perhaps it will be a job termination or the results of a medical test, or the loss of a precious family member or friend. It is in those times that we must dig down deep into the reserves of our spiritual bank account.

And what might we find there? If we have enjoyed a deepening relationship with God, we've been making regular “deposits” of faith. We have experienced His grace (2 COR. 8:9; EPH. 2:4-7). We trust the promise of Scripture that God is just and faithful (DEUT. 32:4; 2 THESS. 3:3).

God's love and grace are available when His children need to make a “withdrawal” (PS. 9:10; HEB. 4:16). ☉

CINDY HESS KASPER

Great is Your faithfulness, O Lord God! Each day I see You provide for me and show me mercy. Thank You.

Remembering God's faithfulness in the past strengthens us for the future.

SATURDAY • JANUARY 16

THE BIBLE in ONE YEAR
GENESIS 39-40 and MATTHEW 11

Desiring Growth

The axolotl (pronounced ACK suh LAH tuhll) is a biological enigma. Instead of maturing into adult form, this endangered Mexican salamander retains tadpole-like characteristics throughout its life. Writers and philosophers have used the axolotl as a symbol of someone who fears growth.

In Hebrews 5 we learn about Christians who were avoiding healthy growth, remaining content with spiritual "milk" intended for new believers. Perhaps because of fear of persecution, they weren't growing in the kind of faithfulness to Christ that would enable them to be strong enough to suffer with Him for the sake of others (vv. 7-10). Instead they were in danger of sliding backward from the Christlike attitudes they had already shown (6:9-11). They weren't ready for a solid diet of self-sacrifice (5:14). So the author wrote, "We have much to say about this, but it is hard to make it clear to you because you no longer try to understand" (v. 11).

Axolotls follow the natural pattern set for them by their Creator. But followers of Christ are designed to grow into spiritual maturity. As we do, we discover that growing up in Him involves more than our own peace and joy. Growth in His likeness honors God as we unselfishly encourage others. ❁

KEILA OCHOA

Lord, I want to grow, so help me to go deeper into Your Word. Teach me more each day, so that I am better equipped to serve and worship You.

The more we live on a diet of God's Word, the more we grow.

Get
Our Daily Bread.
Today!



Open here for details ▶

A Hint of Heaven

The world-class botanical garden across the street from our church was the setting for an all-church community gathering. As I walked around the gardens greeting people I have known for years, catching up with those I hadn't seen recently, and enjoying the beautiful surroundings cared for by people who know and love plants, I realized that the evening was rich with symbols of how the church is supposed to function—a little hint of heaven on earth.

A garden is a place where each plant is placed in an environment in which it will thrive. Gardeners prepare the soil, protect the plants from pests, and make sure each one receives the food, water, and sunlight it needs. The result is a beautiful, colorful, and fragrant place for people to enjoy.

Like a garden, church is meant to be a place where everyone works together for the glory of God and the good of all; a place where everyone flourishes because we are living in a safe environment; a place where people are cared for according to their needs; where each of us does work we love—work that benefits others (1 COR. 14:26).

Like well-cared-for plants, people growing in a healthy environment have a sweet fragrance that draws people to God by displaying the beauty of His love. The church is not perfect, but it really is a hint of heaven. ☺

JULIE ACKERMAN LINK

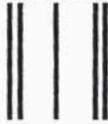
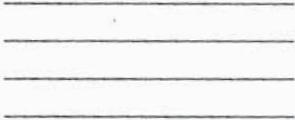
How can you promote the health of your church? Ask God to help you serve others as Christ serves us. Serve in a role that matches your skills and interests. Listen well to others and pray for them.

Hearts fragrant with the love of Christ display His beauty.

TODAY'S READING

1 Cor. 14:6-12,26

Since you are eager for gifts of the Spirit, try to excel in those that build up the church. v. 12



PLACE STAMP HERE

H504

Our Daily Bread Ministries™

PO Box 270

Grand Rapids, MI 49501-0270

EUBQ4



pl sy ia re ir bi w n bi vt w at c sl C r r G

Minister of Reconciliation

As Dr. Martin Luther King Jr. preached on a Sunday morning in 1957, he fought the temptation to retaliate against a society steeped in racism.

"How do you go about loving your enemies?" he asked the Dexter Avenue Baptist congregation in Montgomery, Alabama. "Begin with yourself. . . . When the opportunity presents itself for you to defeat your enemy, that is the time which you must not do it."

Quoting from the words of Jesus, King said: "Love your enemies, bless them that curse you, do good to them that hate you, and pray for them which despitefully use you. . . ; that ye may be the children of your Father which is in heaven" (MATT. 5:44-45 KJV).

As we consider those who harm us, we are wise to remember our former status as enemies of God (SEE ROM. 5:10). But "[God] reconciled us to himself through Christ and gave us the ministry of reconciliation," wrote Paul (2 COR. 5:18). Now we have a holy obligation. "He has committed to us the message of reconciliation" (V. 19). We are to take that message to the world.

Racial and political tensions are nothing new. But the business of the church is never to feed divisiveness. We should not attack those unlike us or those who hold different opinions or even those who seek our destruction. Ours is a "ministry of reconciliation" that imitates the selfless servant-heart of Jesus. ☉

In Christ there is no east or west, in Him no south or north, but one great fellowship of love throughout the whole wide earth. JOHN OXENHAM

Hate destroys the hater as well as the hated. MARTIN LUTHER KING JR.

TIM GUSTAFSON

TODAY'S READING
2 Cor. 5:16-21

While we were God's enemies, we were reconciled to him through the death of his Son.

Romans 5:10

You First!

Tibetan-born Sherpa Nawang Gombu and American Jim Whittaker reached the top of Mount Everest on May 1, 1963. As they approached the peak, each considered the honor of being the first of the two to step to the summit. Whittaker motioned for Gombu to move ahead, but Gombu declined with a smile, saying, "You first, Big Jim!" Finally, they decided to step to the summit at the same time.

Paul encouraged the Philippian believers to demonstrate this kind of humility. He said, "Let each of you look out not only for his own interests, but also for the interests of others" (PHIL. 2:4 NKJV). Selfishness and superiority can divide people, but humility unites us, since it is the quality of "being one in spirit and of one mind" (V. 2).

When quarrels and disagreements occur, we can often diffuse them by giving up our right to be right. Humility calls us to show grace and gentleness when we would rather insist on our own way. "In humility value others above yourselves" (V. 3).

Practicing humility helps us to become more like Jesus who, for our sake, "humbled himself by becoming obedient to death" (VV. 7-8). Following in Jesus' footsteps means backing away from what is best for us and doing what is best for others. ☉

JENNIFER BENSON SCHULTZ

Jesus, You gave up Your life for me.
Help me to see each sacrifice I make as a reflection of Your humility.
In putting others first, let me honor You.

Humility promotes unity.

Real People, Real God

Several years ago I received a letter from an *Our Daily Bread* reader after I had written about a family tragedy. "When you told about your tragedy," this person wrote, "I realized that the writers were real people with real problems." How true that is! I look across the list of men and women who pen these articles, and I see cancer and wayward children and unfulfilled dreams and many other kinds of loss. We are indeed just regular, real people writing about a real God who understands our real problems.

TODAY'S READING
Philippians 3:17-21

Join together
in following my
example. v. 17

The apostle Paul stands out in the Real People Hall of Fame. He had physical problems. He had legal issues. He had interpersonal relationship struggles to deal with. And in all of this messy reality, he was setting an example for us. In Philippians 3:17, he said, "Join together in following my example, brothers and sisters, and just as you have us as a model, keep your eyes on those who live as we do."

Those around us who need the gospel—who need Jesus—are looking for believable people who can point them to our perfect Savior. And that means we must be real. DAVE BRAHON

You, Lord, are perfection. Yet You welcome us imperfect people to come to You for salvation. You sent Your perfect Son to earth to die for us. Help us to be real and genuine as we seek to point people to You.

If we are true to God, we will not be false to people.

Welcome Home!

When we were going through a particularly challenging time with our son, a friend pulled me aside after a church meeting. "I want you to know that I pray for you and your son every day," he said. Then he added: "I feel so guilty."

TODAY'S READING
Luke 15:11-24

"Why?" I asked. "Because I've never had to deal with prodigal children," he said. "My kids pretty much played by the rules. But it wasn't because of anything I did or didn't do. Kids," he shrugged, "make their own choices." v. 20

I wanted to hug him. His compassion was a reminder, a gift from God, communicating to me the Father's understanding for my struggle with my son.

No one understands the struggle with prodigals better than our heavenly Father. The story of the prodigal son in Luke 15 is our story and God's. Jesus told it on behalf of all sinners who so desperately need to come home to their Creator and discover the warmth of a loving relationship with Him.

Jesus is God in the flesh seeing us in the distance and looking on us with compassion. He is God running to us and throwing His arms around us. He is heaven's kiss welcoming the repentant sinner home (v. 20).

God hasn't just left the porch light on for us. He's out on the front porch watching, waiting, calling us home. JAMES BANKS

We ask again today, Lord, that our prodigals would come home.

James Banks is author of Prayers for Prodigals by Discovery House.

Our loved ones may spurn our appeals, reject our message, oppose our arguments, despise our persons—but they are helpless against our prayers.

J. SIDLOW BAXTER

A Prisoner No More

A middle-aged man approached me after I led a workshop at his place of employment and asked this question: "I've been a Christian nearly my whole life, but I'm constantly disappointed in myself. Why is it that I always seem to keep doing the things I wish I didn't do and never seem to do the things I know I should? Isn't God getting tired of me?" Two men standing next to me also seemed eager to hear the response.

That's a common struggle that even the apostle Paul experienced. "I do not understand what I do," he said, "For what I want to do I do not do, but what I hate I do" (ROM. 7:15). But here's some good news: We don't have to stay in that trap of discouragement. To paraphrase Paul as he writes in Romans 8, the key is to stop focusing on the law and start focusing on Jesus. We can't do anything about our sinfulness in our own strength. The answer is not "try harder to be good at keeping the rules." Instead, we must focus on the One who shows us mercy and cooperate with the Spirit who changes us.

When we focus on the law, we are constantly reminded that we'll never be good enough to deserve God's grace. But when we focus on Jesus, we become more like Him. ☪

RANDY KILGORE

I sometimes get caught in the cycle of trying harder to be good, failing, getting discouraged, and giving up.
Help me, Lord, to depend on Your grace and to draw near to You so that You can change my heart.

Focus on Jesus.

Lessons for Little Ones

When my daughter described a problem she was having in the school lunchroom, I immediately wondered how I could fix the issue for her. But then another thought occurred. Maybe God had allowed the problem so she could see Him at work and get to know Him better. Instead of running to the rescue, I decided to pray with her. The trouble cleared up without any help from me!

This situation showed my little one that God cares for her, that He listens when she prays, and that He answers prayers. The Bible says there's something significant about learning these lessons early in life. If we "start children off on the way they should go, . . . when they are old they will not turn from it" (PROV. 22:6). When we start kids off with an awareness of Jesus and His power, we are giving them a place to return to if they wander and a foundation for spiritual growth throughout their lives.

Consider how you might foster faith in a child. Point out God's design in nature, tell a story about how He has helped you, or invite a little one to thank God with you when things go right. God can work through you to tell of His goodness throughout all generations. ☪

JENNIFER BENSON SCHULTZ

Dear God, I pray that You will raise up believers in the next generation. Show me how I can encourage young people to trust in You.

We influence future generations by living for Christ today.

Honoring God

The church service was still in progress, and we had some visitors there that morning. The speaker was only halfway through his sermon when I noticed one of our visitors walking out. I was curious and concerned, so I walked out to talk with her.

"You're leaving so soon," I said, approaching her. "Is there a problem I can help with?" She was frank and forthright. "Yes," she said, "my problem is that sermon! I don't accept what the preacher is saying." He had said that no matter what we accomplish in life, the credit and praise belong to God. "At least," the woman moaned, "I deserve *some* credit for my achievements!"

I explained to her what the pastor meant. People do deserve recognition and appreciation for what they do. Yet even our gifts and talents are from God, so He gets the glory. Even Jesus, the Son of God, said, "The Son can do nothing by himself; he can do only what he sees his Father doing" (JOHN 5:19). He told His followers, "Apart from me you can do nothing" (15:5).

We acknowledge the Lord as the one who helps us to accomplish everything. ☉

Lord, let me not forget to acknowledge You for all that You do for me and enable me to do.

LAWRENCE DARMANI

God's children do His will for His glory.

Careless Words

My daughter has had a lot of ill health recently, and her husband has been wonderfully caring and supportive. "You have a real treasure there!" I said.

"You didn't think that when I first knew him, she said with a grin.

She was quite right. When Icilda and Philip got engaged, I was concerned. They were such different personalities. We have a large and noisy family, and Philip is more reserved. And I had shared my misgivings with my daughter quite bluntly.

I was horrified to realize that the critical things I said so casually 15 years ago had stayed in her memory and could possibly have destroyed a relationship that has proved to be so right and happy. It reminded me how much we need to guard what we say to others. So many of us are quick to point out what we consider to be weaknesses in family friends, or work colleagues, or to focus on their mistakes rather than their successes. "The tongue is a small part of the body," says James (3:5), yet the words it shapes can either destroy relationships or bring peace and harmony to a situation in the workplace, the church, or the family.

Perhaps we should make David's prayer our own as we start each day: "Set a guard over my mouth, Lord; keep watch over the door of my lips" (PS. 141:3). ☉

MARION STROUD

Father, please curb my careless speech and put a guard on my tongue today and every day.

A word fitly spoken is like apples of gold in settings of silver.

PROVERBS 25:11 NKJV

When Questions Remain

On October 31, 2014, an experimental spacecraft broke apart during a test flight and crashed into the Mojave Desert. The copilot died while the pilot miraculously survived. Investigators soon determined what had happened, but not why. The title of a newspaper article about the crash began with the words "Questions remain."

Throughout life we may experience sorrows for which there are no adequate explanation. Some are catastrophic events with far-reaching effects while others are personal, private tragedies that alter our individual lives and families. We want to know why, but we seem to find more questions than answers. Yet even as we struggle with "Why?" God extends His unfailing love to us.

When Job lost his children and his wealth in a single day (JOB 1:3-19), he sank into an angry depression and resisted any attempted explanations by his friends. Yet he held out hope that someday there would be an answer from God. Even in the darkness Job could say, "[God] knows the way that I take; when he has tested me, I will come forth as gold" (23:10).

Oswald Chambers said, "There will come one day a personal and direct touch from God when every tear and perplexity, every oppression and distress, every suffering and pain, and wrong and injustice will have a complete and ample and overwhelming explanation."

Today, as we face life's unanswered questions, we can find help and hope in God's love and promises. 🙏

DAVID MCCASLAND



For more on this topic, read *Why Doesn't God Answer Me?* at discoveryseries.org/hp112

When we face unanswered questions, we find help and hope in God's love.

What Is It?

My mother taught Sunday school for decades. One week she wanted to explain how God supplied food for the Israelites in the wilderness. To make the story come alive, she created something to represent "manna" for the kids in her class. She cut bread into small pieces and topped them with honey. Her recipe was inspired by the Bible's description of manna that says it "tasted like wafers made with honey" (EX. 16:31).

When the Israelites first encountered God's bread from heaven, it appeared on the ground outside their tents like frost. "When [they] saw it, they said to each other, 'What is it?'" (V. 15). The Hebrew word *manna* means "what," so they called it *manna*. They discovered they could grind it and form it into loaves or cook it in a pot (NUM. 11:7-8). Whatever it was, it had a baffling arrival (V. 16-14), a unique consistency (V. 14), and a short expiration date (V. 19-20).

Sometimes God provides for us in surprising ways. This reminds us that He is not bound by our expectations, and we can't predict what He will choose to do. While we wait, focusing on who He is rather than what we think He should do will help us find joy and satisfaction in our relationship with Him. 🙏

JENNIFER BENSON SCHULDT

Dear God, please help me to freely accept Your provision and the way You choose to deliver it. Thank You for caring for me and meeting my needs.

Those who let God provide will always be satisfied.

Before the Phone

As a mom of young children I'm sometimes susceptible to panic. My first reaction is to call my mom on the phone and ask her what to do with my son's allergy or my daughter's sudden cough.

Mom is a great resource, but when I read the Psalms, I'm reminded of how often we need the kind of help that no mortal can give. In Psalm 18 David was in great danger. Afraid, close to death, and in anguish, he called on the Lord.

David could say, "I love you, Lord" because he understood God was a fortress, a rock, and a deliverer (v. 1-2). God was his shield, his salvation, and his stronghold. Maybe we cannot understand David's praise because we have not experienced God's help. It may be that we reach for the phone before going to God for advice and help.

Surely God puts people in our lives to give us help and comfort. But let's also remember to pray. God will hear us. As David sang, "From his temple he heard my voice; my cry came before him, into his ears" (v. 6). When we go to God, we join David's song and enjoy Him as our rock, our fortress, and our deliverer.

Next time you reach for the phone, remember also to pray. ☺

KEILA OCHOA

Dear Lord, help me to remember You are my deliverer,
and You always hear my cry.

Prayer is the bridge between panic and peace.

Her Father's Zoo

June Williams was only 4 when her father bought 7 acres of land to build a zoo without bars or cages. Growing up she remembers how creative her father was in trying to help wild animals feel free in confinement. Today Chester Zoo is one of England's most popular wildlife attractions. Home to 11,000 animals on 110 acres of land, the zoo reflects her father's concern for animal welfare, education, and conservation.

Solomon had a similar interest in all creatures great and small. In addition to studying the wildlife of the Middle East, he imported exotic animals like apes and monkeys from far-off lands (1 KINGS 10:22). But one of his proverbs shows us that Solomon's knowledge of nature went beyond intellectual curiosity. When he expressed the spiritual implications of how we treat our animals, he mirrored something of the heart of our Creator: "The righteous care for the needs of their animals, but the kindest acts of the wicked are cruel!" (PROV. 12:10).

With God-given wisdom, Solomon saw that our relationship to our Creator affects not only how we treat people but also how much thoughtful consideration we give to the creatures in our care. ☺

MART DEHAAS

Father in heaven, when we think about the wonder and diversity of Your animal kingdom, please help us not only to worship You, but to care for what You've entrusted to us.

God is the real Owner of all of us.

The Mention of His Name

When the soloist began to sing during our Sunday service, the congregation gave him full, hushed attention. His mellow bass-baritone voice brought them the soul-touching words of an old song by Gordon Jensen. The song's title expresses a truth that grows more precious the older we become: "He's as Close as the Mention of His Name."

We've all experienced times of separation from our loved ones. A child marries and moves far away. Parents are separated from us because of career or health. A child goes off to school in another state or country. True, we have texting and Skype. But we are *here* and they are *there*. And then there is the separation of death.

But as believers in Christ, we have His promise that we are never alone. Though we may feel alone, He hasn't gone anywhere. He's right here, right now, always and forever. When He left this earth, He told His followers, "Surely I am with you always, to the very end of the age" (MATT. 28:20). He also promised us, "Never will I leave you; never will I forsake you" (HEB. 13:5).

The silent plea, the whispered mention of His name, even the very thought of Him brings us solace and reassurance. "He's as close as the mention of His name." ❀

DAVE EGMER

Jesus, thank You that You are near.
I need You.

Jesus never abandons or forgets His own.

He Came for You

In his novels *The Trial* and *The Castle*, Franz Kafka (1883-1924) portrays life as a dehumanizing existence that turns people into a sea of empty faces without identity or worth. Kafka said, "The conveyor belt of life carries you on, no one knows where. One is more of an object, a thing, than a living creature."

Early in His ministry, Jesus went to a synagogue in Nazareth, and read from Isaiah:

"The Spirit of the Lord is on me because he has anointed me to proclaim good news to the poor. He has sent me to proclaim freedom for the prisoners and recovery of sight for the blind, to set the oppressed free, to proclaim the year of the Lord's favor" (LUKE 4:18-19).

Then Christ sat down and declared, "Today this scripture is fulfilled in your hearing" (V.21). Centuries earlier, the prophet Isaiah had proclaimed these words (ISA. 61:1-2). Now Jesus announced that He was the fulfillment of that promise.

Notice who Jesus came to rescue—the poor, broken-hearted, captive, blind, and oppressed. He came for people dehumanized by sin and suffering, by brokenness and sorrow. He came for us! ❀

BILL CROWDER

For those who sin and those who suffer. For those who suffer because of sin. For those who sin to alleviate suffering.

Lord, have mercy on us.

ROBERT GELINAS, THE MERCY PRAYER

No matter how impersonal the world may seem, Jesus loves each of us as if we were His only child.

Always Pray and Don't Give Up

Are you going through one of those times when it seems every attempt to resolve a problem is met with a new difficulty? You thank the Lord at night that it's taken care of but awake to find that something else has gone wrong and the problem remains.

During an experience like that, I was reading the gospel of Luke and was astounded by the opening words of chapter 18: "Then Jesus told his disciples a parable to show them that they should always pray and not give up" (v.1). I had read the story of the persistent widow many times but never grasped why Jesus told it (vv.2-8). Now I connected those opening words with the story. The lesson to His followers was very clear: "Always pray and never give up."

Prayer is not a means of coercing God to do what we want. It is a process of recognizing His power and plan for our lives. In prayer we yield our lives and circumstances to the Lord and trust Him to act in His time and in His way.

As we rely on God's grace not only for the outcome of our requests but for the process as well, we can keep coming to the Lord in prayer, trusting His wisdom and care for us.

Our Lord's encouragement to us is clear: Always pray and don't give up! 🌟

DAVID MCCASLAND

Lord, in the difficulty I face today, guard my heart, guide my words, and show Your grace. May I always turn to You in prayer.

Prayer changes everything.

Leave a Legacy

When a road-construction foreman was killed in an accident, the love of this man for his family, co-workers, and community resulted in an overwhelming sense of loss. His country church couldn't accommodate all the mourners, so planners moved the service to a much larger building. Friends and family packed the auditorium! The message was clear: Tim touched many lives in a way uniquely his. So many would miss his kindness, sense of humor, and enthusiasm for life.

As I returned from the funeral, I thought about the life of King Jehoram. What a contrast! His brief reign of terror is traced in 2 Chronicles 21. To solidify his power, Jehoram killed his own brothers and other leaders (v.4). Then he led Judah into idol worship. The record tells us, "He passed away, to no one's regret" (v.20). Jehoram thought that brute force would ensure his legacy. It did. He is forever commemorated in Scripture as an evil man and a self-centered leader.

Although Jesus also was a king, He came to Earth to be a servant. As He went about doing good, He endured the hatred of those who grasped for power. In the process, this Servant-King gave His life away.

Today, Jesus lives along with His legacy. That legacy includes those who understand that life isn't just about themselves. It's about Jesus—the One who longs to wrap His strong, forgiving arms around anyone who turns to Him. 🌟 TIM GUSTAFSON

Lord, in Your death as well as in Your life, You served others. In some small way, help us to serve others with our lives today.

A life lived for God leaves a lasting legacy.

Training for Life

I recently met a woman who has pushed her body and mind to the limit. She climbed mountains, faced death, and even broke a Guinness world record. Now she's engaged in a different challenge—that of raising her special-needs child. The courage and faith she employed while ascending the mountains she now pours into motherhood.

In 1 Corinthians, the apostle Paul speaks of a runner competing in a race. After urging a church enamored with their rights to give consideration to one another (CH. 8), he explains how he sees the challenges of love and self-sacrifice to be like a marathon of endurance (CH. 9). As followers of Jesus, they are to relinquish their rights in obedience to Him.

As athletes train their bodies that they might win the crown, we too train our bodies and minds for our souls to flourish. As we ask the Holy Spirit to transform us, moment by moment, we leave our old selves behind. Empowered by God, we stop ourselves from uttering that cruel word. We put away our electronic device and remain present with our friends. We don't have to speak the last word in a disagreement.

As we train to run in the Spirit of Christ, how might God want to mold us today? ☉

AMY BOUCHER PYE

Lord, let me not demand my rights, but train to win the prize that lasts forever.

Amy Boucher Pye is a writer, editor, and speaker. The author of Finding Myself in Britain: Our Search for Faith, Home, and True Identity, she runs the Woman Alive book club in the UK and enjoys life with her family in their English vicarage.

Training leads to transformation.

Hidden Treasure

My husband and I read in different ways. Since English is a second language for Tom, he has a tendency to read slowly, word-for-word. I often speed-read by skimming. But Tom retains more than I do. He can easily quote something he read a week ago, while my retention can evaporate seconds after I turn away from the screen or book.

Skimming is also a problem when I'm reading the Bible—and not just the genealogies. I'm tempted to skim familiar passages, stories I've heard since I was a child, or a psalm that is part of a familiar chorus.

Proverbs 2 encourages us to make the effort to know God better by carefully seeking a heart of understanding. When we read the Bible carefully and invest time memorizing Scripture, we absorb its truths more deeply (vv. 1-2). Sometimes reading the Word aloud helps us to hear and understand the wisdom of God more fully. And when we pray the words of Scripture back to God and ask Him for "insight and understanding" (v. 3), we enjoy a conversation with the Author.

We come to know God and His wisdom when we search for it with our whole heart. We find understanding when we seek it like silver and search for it like hidden treasure. ☉ CINDY HESS KASPER

Dear Lord, help me to slow down and listen to what You want to teach me through Your Word so I can be the person You want me to be.

For further study, check out this guide for how to grasp the truths of Scripture: A Message for All Time at discoveryseries.org/hp141

Read the Bible carefully and study it prayerfully.

A Serving Leader

In traditional African societies, leadership succession is a serious decision. After a king's demise, great care is taken selecting the next ruler. Besides being from a royal family, the successor must be strong, fearless, and sensible. Candidates are questioned to determine if they will serve the people or rule with a heavy hand. The king's successor needs to be someone who leads but also serves.

Even though Solomon made his own bad choices, he worried over his successor. "Who knows whether that person will be wise or foolish? Yet they will have control over all the fruit of my toil into which I have poured my effort and skill" (ECCLES. 2:19). His son Rehoboam was that successor. He demonstrated a lack of sound judgment and ended up fulfilling his father's worst fear.

When the people requested more humane working conditions, it was an opportunity for Rehoboam to show servant leadership. "If today you will be a servant to these people and serve them . . .," the elders advised, "they will always be your servants" (1 KINGS 12:7). But he rejected their counsel. Rehoboam failed to seek God. His harsh response to the people divided the kingdom and accelerated the spiritual decline of God's people (12:14-19).

In the family, the workplace, at church, or in our neighborhood—we need His wisdom for the humility to serve rather than be served. 🌱

Dear Lord, please give me a humble servant's heart.
Help me to lead and follow with humility and compassion.

A good leader is a good servant.

LAWRENCE DARMANI

What Will Be

You and I have something in common. We live in a mixed-up, tarnished world and we have never known anything different. Adam and Eve, however, could remember what life was like before the curse. They could recall the world as God intended it to be—free of death, hardship, and pain (GEN. 3:16-19). In pre-fall Eden, hunger, unemployment, and illness did not exist. No one questioned God's creative power or His plan for human relationships.

The world we have inherited resembles God's perfect garden only slightly.

To quote C. S. Lewis, "This is a good world gone wrong, but [it] still retains the memory of what ought to have been." Fortunately, the cloudy memory of what the earth should have been is also a prophetic glimpse into eternity. There, just as Adam and Eve walked and talked with God, believers will see His face and serve Him directly. There will be nothing between God and us. "No longer will there be any curse" (REV. 22:3). There will be no sin, no fear, and no shame.

The past and its consequences may cast a shadow on today, but a believer's destiny carries the promise of something better—life in a place as perfect as Eden. 🌱

Dear God, help me to remember that even though this world does not measure up to Your original design there is much to enjoy and much to do for You and others. Thank You for the promise of life with You in a perfect setting.

One day God will put everything right.

JENNIFER BENSON SCHULTZ

The Factory of Sadness

As a lifelong Cleveland Browns football fan, I grew up knowing my share of disappointment. Despite being one of only four teams to have never appeared in a Super Bowl championship game, the Browns have a loyal fan base that sticks with the team year in and year out. But because the fans usually end up disappointed, many of them now refer to the home stadium as the "Factory of Sadness."

The broken world we live in can be a "factory of sadness" too. There seems to be an endless supply of heartache and disappointment, whether from our own choices or things beyond our control.

Yet the follower of Christ has hope—not only in the life to come but for this very day. Jesus said, "I have told you these things, so that in me you may have peace. In this world you will have trouble. But take heart! I have overcome the world" (JOHN 16:33). Notice that without minimizing the struggles or sadness we may experience, Christ counters them with His promises of peace, joy, and ultimate victory.

Great peace is available in Christ, and it's more than enough to help us navigate whatever life throws at us. ❀ BILL CROWDER

When peace, like a river, attendeth my way,
when sorrows like sea billows roll; whatever my lot,
Thou hast taught me to say, It is well, it is well, with my soul.

HORATIO G. SPAFFORD

Our hope and peace are found in Jesus.

Can't Take It Back

I couldn't take my actions back. A woman had parked her car and blocked my way of getting to the gas pump. She hopped out to drop off some recycling items, and I didn't feel like waiting, so I honked my horn at her. Irritated, I put my car in reverse and drove around another way. I immediately felt bad about being impatient and unwilling to wait 30 seconds (at the most) for her to move. I apologized to God. Yes, she should have parked in the designated area, but I could have spread kindness and patience instead of harshness. Unfortunately it was too late to apologize to her—she was gone.

Many of the Proverbs challenge us to think about how to respond when people get in the way of our plans. There's the one that says, "Fools show their annoyance at once" (PROV. 12:16). And "It is to one's honor to avoid strife, but every fool is quick to quarrel" (20:3). Then there's this one that goes straight to the heart: "Fools give full vent to their rage, but the wise bring calm in the end" (29:11).

Growing in patience and kindness seems pretty difficult sometimes. But the apostle Paul says it is the work of God, the "fruit of the Spirit" (GAL. 5:22-23). As we cooperate with Him and depend on Him, He produces that fruit in us. Please change us, Lord. ❀

Make me a gentle person, Lord. One who doesn't quickly react in frustration to every annoyance that comes my way. Give me a spirit of self-control and patience.



To study more about the fruit of the Spirit, read *Live Free* by Constantine Campbell at discoveryseries.org/q0214

God tests our patience to enlarge our hearts.

Secret Menu

Meat Mountain is a super-sandwich layered with six kinds of meat. Stacked with chicken tenders, three strips of bacon, two cheeses, and much more, it looks like it should be a restaurant's featured item.

But Meat Mountain isn't on any restaurant's published menu. The sandwich represents a trend in off-menu items known only by social media or word of mouth. It seems that competition is driving fast-food restaurants to offer a secret menu to in-the-know customers.

When Jesus told His disciples that He had "food" they knew nothing about, it must have seemed like a secret menu to them (JOHN 4:32). He sensed their confusion and explained that His food was to do the will of His Father and to finish the work given to Him (V. 34).

Jesus had just spoken to a Samaritan woman at Jacob's well about living water she had never heard of. As they talked, He revealed a supernatural understanding of her unquenched thirst for life. When He disclosed who He was, she left her water pot behind and ran to ask her neighbors, "Could this be the Messiah?" (V. 29).

What was once a secret can now be offered to everyone. Jesus invites all of us to trust His ability to satisfy the deepest needs of our hearts. As we do, we discover how to live not just by our physical appetites but by the soul-satisfying Spirit of our God. ☪

MART DEHAAN

Father, we praise You for revealing Your truth to us.
Help us live each day in the power of Your Spirit.

Only Christ the Living Bread can satisfy the world's spiritual hunger.

Jesus Over Everything

My friend's son decided to wear a sports jersey over his school clothing one day. He wanted to show support for his favorite team that would be playing an important game later that night. Before leaving home, he put something on over his sports jersey—it was a chain with a pendant that read, "Jesus." His simple action illustrated a deeper truth: Jesus deserves first place over everything in our lives.

Jesus is above and over all. "He is before all things, and in him all things hold together" (COL 1:17). Jesus is supreme over all creation (V. 15-16). He is "the head of the body, the church (V. 18). Because of this, He should have first place in all things.

When we give Jesus the highest place of honor in each area of our lives, this truth becomes visible to those around us. At work, are we laboring first for God or only to please our employer? (13:23). How do God's standards show up in the way we treat others? (V. 12-14). Do we put Him first as we live our lives and pursue our favorite pastimes?

When Jesus is our greatest influence in all of life, He will have His rightful place in our hearts. ☪

JENNIFER BENSON SCHULDT

Dear Jesus, You deserve the best of my time, energy, and affection.
I crown You King of my heart and Lord over everything I do.



How can you put God first in your life today?
Share with us at odb.org

Put Jesus first.

Turn Off the Scoreboard

At his son's wedding reception, my friend Bob offered advice and encouragement to the newlyweds. In his speech he told of a football coach in a nearby town who, when his team lost a game, kept the losing score on the scoreboard all week to remind the team of their failure. While that may be a good football strategy, Bob wisely advised, it's a terrible strategy in marriage. When your spouse upsets you or fails you in some way, don't keep drawing attention to the failure. Turn off the scoreboard.

What great advice! Scripture is full of commands for us to love each other and overlook faults. We are reminded that love "keeps no record of wrongs" (1 COR. 13:5) and that we should be ready to forgive one another "just as in Christ God forgave you" (EPH. 4:32).

I am deeply grateful that God turns off the scoreboard when I fail. He doesn't simply forgive when we repent; He removes our sin as far as the east is from the west (PS. 103:12). With God, forgiveness means that our sin is out of sight and out of mind. May He give us grace to extend forgiveness to those around us. ☺

JOE STOWELL

Lord, thank You for not holding my sins against me and for granting me a second chance. Help me today to forgive others just as You have so freely forgiven me.

Forgive us God for aives you—don't keep score.

Undigested Knowledge

In his book on language, British diplomat Lancelot Oliphant (1881-1965) observed that many students give correct answers on tests but fail to put those lessons into practice. "Such undigested knowledge is of little use," declared Oliphant.

Author Barnabas Piper noticed a parallel in his own life: "I thought I was close to God because I knew all the answers," he said, "but I had fooled myself into thinking that was the same as relationship with Jesus."

At the temple one day, Jesus encountered people who thought they had all the right answers. They were proudly proclaiming their status as Abraham's descendants yet refused to believe in God's Son.

"If you were Abraham's children," said Jesus, "then you would do what Abraham did" (JOHN 8:39). And what was that? Abraham "believed the LORD, and he credited it to him as righteousness" (GEN. 15:6). Still, Jesus' hearers refused to believe. "The only Father we have is God himself," they said (JOHN 8:41). Jesus replied, "Whoever belongs to God hears what God says. The reason you do not hear is that you do not belong to God" (V. 47).

Piper recalls how things "fell apart" for him before he "encountered God's grace and the person of Jesus in a profound way." When we allow God's truth to transform our lives, we gain much more than the right answer. We introduce the world to Jesus. ☺

TIM GUSTAFSON

Father, thank You that You receive anyone who turns to You in faith.

Faith is not accepting the fact of God but of receiving the life of God.

TODAY'S READING
John 8:39-47

If you hold to my teaching, you are really my disciples,
John 8:31

Ice Flowers

Fifteen-year-old Wilson Bentley was captivated by the intricate beauty of snowflakes. He looked with fascination through an old microscope his mother had given him and made hundreds of sketches of their remarkable designs, but they melted too quickly to adequately capture their detail. Several years later, in 1885, he had an idea. He attached a bellows camera to the microscope and, after much trial and error, took his first picture of a snowflake. During his lifetime Bentley would capture 5,000 snowflake images and each one was a unique design. He described them as "tiny miracles of beauty" and "ice flowers."

No two snowflakes are alike, yet all come from the same source. So it is with followers of Christ. We all come from the same Creator and Redeemer, yet we are all different. In God's glorious plan He has chosen to bring a variety of people together into a unified whole, and He has gifted us in various ways. In describing the diversity of gifts to believers, Paul writes: "There are different kinds of gifts, but the same Spirit distributes them. There are different kinds of service, but the same Lord. There are different kinds of working, but in all of them and in everyone it is the same God at work" (1 COR. 12:4-6).

Thank God for the unique contribution you can offer as you help and serve others. ☉

DENNIS FISHER

Dear Lord, thank You for the unique way that You have gifted me. Help me to use my gifts faithfully to serve You and others.

Each person is a unique expression of God's loving design.

The Ease of Ingratitude

Thwap, thwap. Thwap, thwap.

The windshield wipers slamming back and forth trying to keep up with the pelting rain only added to my irritation as I adjusted to driving the used car I had just purchased—an old station wagon with 80,000+ miles and no side-impact airbag protection for the kids.

To get this station wagon, and some badly needed cash for groceries, I had sold the last "treasure" we owned: a 1992 Volvo station wagon with side-impact airbag protection for the kids. By then, everything else was gone. Our house and our savings had all disappeared under the weight of uncovered medical expenses from life-threatening illnesses.

"Okay, God," I actually said out loud, "now I can't even protect my kids from side-impact crashes. If anything happens to them, let me tell You what I'm going to do..."

Thwap, thwap. Thwap, thwap. (Gulp.)

I was instantly ashamed. In the previous 2 years God had spared both my wife and my son from almost certain death, and yet here I was whining about "things" I had lost. Just like that I'd learned how quickly I could grow ungrateful to God. The loving Father, who did not spare His own Son so I could be saved, had actually spared my son in a miraculous fashion. "Forgive me, Father," I prayed. *Already done, My child.* ☉

RANDY KILGORE

How easy it is, Lord, to let the trials of the moment strip us of the memory of Your protection and provision. Praise You, Father, for Your patience and Your unending, unconditional love.

Thankfulness is the soil in which joy thrives.

TODAY'S READING

1 Cor. 12:4-14

There are different kinds of gifts, but the same Spirit distributes them. v. 4

TODAY'S READING

Hebrews 12:18-29

Since we are receiving a kingdom that cannot be shaken, let us be thankful. v. 28

A Widow's Choice

When a good friend suddenly lost her husband to a heart attack, we grieved with her. As a counselor, she had comforted many others. Now, after 40 years of marriage, she faced the unwelcome prospect of returning to an empty house at the end of each day.

In the midst of her grief, our friend leaned on the One who "is close to the brokenhearted." As God walked with her through her pain, she told us she would choose to "wear the label *widow* proudly," because she felt it was the label God had given her.

All grief is personal, and others may grieve differently than she does. Her response doesn't diminish her grief or make her home less empty. Yet it reminds us that even in the midst of our worst sorrows, our sovereign and loving God can be trusted.

Our heavenly Father suffered a profound separation of His own. As Jesus hung on the cross He cried out, "My God, my God, why have you forsaken me?" (MATT. 27:46). Yet He endured the pain and separation of crucifixion for our sins out of love for us!

He understands! And because "the LORD is close to the brokenhearted" (PS. 34:18), we find the comfort we need. He is near. DAVE BRANON

Dear heavenly Father, as we think about the sadness that comes from the death of a loved one, help us to cling to You and trust Your love and goodness. Thank You for being close to our broken hearts.



Know anyone who is hurting? Share this devotional from our Facebook page: [Facebook.com/ourdaillybread](https://www.facebook.com/ourdaillybread)

God shares in our sorrow.

Written on Our Hearts

In my neighborhood, religious inscriptions abound—on plaques, walls, doorposts, commercial vehicles, and even as registered names of businesses. *By the Grace of God* reads an inscription on a mini-bus; *God's Divine Favor Bookshop* adorns a business signboard. The other day I couldn't help smiling at this one on a Mercedes Benz: *Keep Off—Angels on Guard!*

But religious inscriptions, whether on wall plaques, jewelry, or T-shirts, are not a reliable indicator of a person's love for God. It's not the words on the outside that count but the truth we carry on the inside that reveals our desire to be changed by God.

I recall a program sponsored by a local ministry that distributed cards with Bible verses written on both sides that helped people memorize God's Word. Such a practice is in keeping with the instructions Moses gave the Israelites when he told them to write the commandments of God "on the doorframes of your houses and on your gates" (DEUT. 6:9). We are to treasure God's Word in our hearts (V. 6), to impress it on our children, and to talk about it "when [we] walk along the road, when [we] lie down and when [we] get up" (V. 7).

May our faith be real and our commitment true, so we can love the Lord our God with all our heart, soul, and strength (V. 5). LAWRENCE DARMANI

Father, may Your words be more than nice sayings to us. May they be written on our hearts so that we will love You and others.

When God's Word is hidden in our heart, His ways will become our ways.

The Voice of Faith

The news was numbing. The tears came so quickly that she couldn't fight them. Her mind raced with questions, and fear threatened to overwhelm her. Life had been going along so well, when it was abruptly interrupted and forever changed without warning.

Tragedy can come in many forms—the loss of a loved one, an illness, the loss of wealth or our livelihood. And it can happen to anyone at any time.

Although the prophet Habakkuk knew that tragedy was coming, it still struck fear in his heart. As he waited for the day when Babylon would invade the kingdom of Judah, his heart pounded, his lips quivered, and his legs trembled (HAB. 3:16).

Fear is a legitimate emotion in the face of tragedy, but it doesn't have to immobilize us. When we don't understand the trials we are going through, we can recount how God has worked in history (vv. 3-15). That's what Habakkuk did. It didn't dispel his fear, but it gave him the courage to move on by choosing to praise the Lord (v. 18).

Our God who has proven Himself faithful throughout the years is always with us. Because His character doesn't change, in our fear we can say with a confident voice of faith, "The Sovereign LORD is my strength!" (v. 19). ☪

POH FANG CHIA

Dear Lord, when my world is turned upside down, help me to trust You. You have always been faithful to me.

We can learn the lesson of trust in the school of trial.

Four Ways to Look

Joan was struggling with some difficult issues with her children when she sat down for a worship service. Exhausted, she wanted to "resign" from motherhood. Then the speaker began to share encouragement for those who feel like quitting. These four thoughts that Joan heard that morning helped her to keep going:

Look up and pray. Asaph prayed all night long and even expressed feelings that God had forgotten and rejected him (ps. 77:9-10). We can tell God everything and be honest about our feelings. We can ask Him anything. His answer may not come right away or in the form we want or expect, but He won't criticize us for asking.

Look back and remember what God has done in the past for you and others. Asaph didn't talk to God only about the pain he also recalled God's power and mighty works for him and God's people. He wrote, "I will remember the deeds of the LORD; yes, I will remember your miracles of long ago" (v. 11).

Look forward. Think about the good that might come out of the situation. What might you learn? What might God want to do? What do you know He will do because His ways are perfect? (v. 13).

Look again. This time look at your circumstances with eyes of faith. Remind yourself that He is the God of great wonders and can be trusted (v. 14).

May these ideas help us gain perspective and keep moving in our faith journey with Jesus. ☪

ANNE CETAS

Lord, I can't help but see my problems. Help me not to be discouraged and weary, but to see You in the midst of them.

Our problems are opportunities to discover God's solutions.

The View from the Mountain

Our valley in Idaho can be very cold in the winter. Clouds and fog roll in and blanket the ground, trapping frigid air under warmer layers above. But you can get above the valley. There's a road nearby that winds up the flank of Shafer Butte, a 7,500-foot mountain that rises out of our valley. A few minutes of driving and you break out of the fog and emerge into the warmth and brilliance of a sunlit day. You can look down on the clouds that shroud the valley below and see it from a different point of view.

Life is like that at times. Circumstances seem to surround us with a fog that sunlight cannot penetrate. Yet *faith* is the way we get above the valley—the means by which we “set [our] hearts on things above” (COL. 3:1). As we do, the Lord enables us to rise above our circumstances and find courage and calmness for the day. As the apostle Paul wrote, “I have learned to be content whatever the circumstances” (PHIL. 4:11).

We can climb out of our misery and gloom. We can sit for a time on the mountainside and through Christ who gives us strength (V. 13) we can gain a different perspective. DAVID ROPER

Although I can't always see You or what You're doing, Lord,
I rest in Your love for me.



Share this prayer from our Facebook page:
[Facebook.com/ourdaillybread](https://www.facebook.com/ourdaillybread)

Faith can lift you above your fears.

Be Still

Years ago I responded to letters within a couple of weeks and kept my correspondents happy. Then came the fax machine, and they seemed content with receiving a response within a couple of days. Today, with email, instant messaging, and mobile phones, a response is expected the same day!

“Be still, and know that I am God.” In this familiar verse from Psalm 46 I read two commands of equal importance. First, we must be still, something that modern life conspires against. In this hectic, buzzing world, even a few moments of quiet do not come naturally to us. And stillness prepares us for the second command: “Know that I am God; I will be exalted among the nations, I will be exalted in the earth.” In the midst of a world that colludes to suppress, not exalt, God, how do I carve out time and allow Him to nourish my inner life?

“Prayer,” writes Patricia Hampel, “is a habit of attention brought to bear on all that is.” Ah, prayer . . . a habit of attention. *Be still and know*. The first step in prayer is to acknowledge or to “know” that God is God. And in that attention, that focus, all else comes into focus. Prayer allows us to admit our failures, weaknesses, and limitations to the One who responds to human vulnerability with infinite mercy. PHILIP YANCEY

Dear Lord, help me to be still.
Nourish my soul as I spend time with You in prayer.

In prayer, God can quiet our minds.

TODAY'S READING
Psalm 46

Be still, and know that I am God.
v. 10

A Better View

As a child, I loved to climb trees. The higher I climbed, the more I could see. Occasionally, in search of a better view, I might inch out along a branch until I felt it bend under my weight. Not surprisingly, my tree-climbing days are over. I suppose it isn't very safe—or dignified.

Zacchaeus, a wealthy man, set aside his dignity (and perhaps ignored his safety) when he climbed a tree one day in Jericho. Jesus was traveling through the city, and Zacchaeus wanted to get a look at Him. However, "because he was short he could not see over the crowd" (LUKE 19:3). Fortunately, those things did not stop him from seeing and even talking with Christ. Zacchaeus's plan worked! And when he met Jesus, his life was changed forever. "Salvation has come to this house," Jesus said (V.9).

We too can be prevented from seeing Jesus. Pride can blind us from seeing Him as the Wonderful Counselor. Anxiety keeps us from knowing Him as the Prince of Peace (ISA. 9:6). Hunger for status and stuff can prevent us from seeing Him as the true source of satisfaction—the Bread of Life (JOHN 6:48).

What are you willing to do to get a better view of Jesus? Any sincere effort to get closer to Him will have a good result. God rewards people who earnestly seek Him (HEB. 11:6). ☉

JENNIFER BENSON SCHULDT

Thank You Jesus for all that You are.

Show me more of Yourself as I read the Bible and pray.
Help me to pursue You with all of my heart and mind.

To strengthen your faith in God, seek the face of God.

The Forward Look

When the great Dutch painter Rembrandt died unexpectedly at age 63, an unfinished painting was found on his easel. It focuses on Simeon's emotion in holding the baby Jesus when He was brought to the temple in Jerusalem, 40 days after His birth. Yet the background and normal detail remain unfinished. Some art experts believe that Rembrandt knew the end of his life was near and—like Simeon—was ready to "be dismissed" (LUKE 2:29).

The Holy Spirit was upon Simeon (V. 25), so it was no coincidence that he was in the temple when Mary and Joseph presented their firstborn son to God. Simeon, who had been looking for the promised Messiah, took the baby in his arms and praised God, saying: "Sovereign Lord, as you have promised, you may now dismiss your servant in peace. For my eyes have seen your salvation, which you have prepared in the sight of all nations: a light for revelation to the Gentiles, and the glory of your people Israel" (VV. 29-32).

Simeon was not longing for the glory days of Israel's history, but was looking ahead for the promised Messiah, who would come to redeem all nations.

Like Simeon, we can have an expectant, forward look in life because we know that one day we will see the Lord. ☉

DAVID MCCASLAN

Father, may we, like Simeon, be always looking ahead for the appearing of Jesus our Lord.

Even so, come, Lord Jesus! REVELATION 22:20

Go Fever

On January 28, 1986, after five weather-related delays, the space shuttle *Challenger* lumbered heavenward amid a thunderous overture of noise and flame. A mere 73 seconds later, system failure tore the shuttle apart, and all seven crewmembers perished.

The disaster was attributed to an O-ring seal known to have vulnerabilities. Insiders referred to the fatal mistake as "go fever"—the tendency to ignore vital precautions in the rush to a grand goal.

Our ambitious human nature relentlessly tempts us to make ill-advised choices. Yet we are also prone to a fear that can make us overly cautious. The ancient Israelites demonstrated both traits. When the 12 scouts returned from spying out the Promised Land, 10 of the 12 saw only the obstacles (NUM. 13:26-33). "We can't attack those people; they are stronger than we are," they said (v. 31). After a fearful rebellion against the Lord that led to the death of the 10 spies, the people suddenly developed a case of "go fever." They said, "Now we are ready to go up to the land the Lord promised" (14:40). Without God, the ill-timed invasion failed miserably (vv. 41-45).

When we take our eyes off the Lord, we'll slide into one of two extremes. We'll impatiently rush ahead without Him, or we'll cower and complain in fear. Focusing on Him brings courage tempered with His wisdom. ☉

TIM GUSTAFSON

Before making a quick decision, consider why you want to make it quickly. Consider if it will honor God and what it might cost others. If you are afraid to make a decision, think about why that might be. Most of all, pray!

A moment of patience can prevent a great disaster.

How to Grow Old

"How are you today, Mama?" I asked casually. My 84-year-old friend, pointing to aches and pains in her joints, whispered, "Old age is tough!" Then she added earnestly, "But God has been good to me."

"Growing old has been the greatest surprise of my life," says Billy Graham in his book *Nearing Home*. "I am an old man now, and believe me, it's not easy." However, Graham notes, "While the Bible doesn't gloss over the problems we face as we grow older, neither does it paint old age as a time to be despised or a burden to be endured with gritted teeth." He then mentions some of the questions he has been forced to deal with as he has aged, such as, "How can we not only learn to cope with the fears and struggles and growing limitations we face but also actually grow stronger inwardly in the midst of these difficulties?"

In Isaiah 46 we have God's assurance: "Even to your old age and gray hairs . . . I am he who will sustain you. I have made you, and I will carry you; I will sustain you and I will rescue you" (v. 4). We don't know how many years we will live on this earth or what we might face as we age. But one thing is certain: God will care for us throughout our life. ☉

LAWRENCE DARMANN

Lord, please teach us to number our days so that we may gain a heart of wisdom.

(SEE PSALM 90:12)

Don't be afraid to grow old: God goes with you!

TODAY'S READING
Isaiah 46:4-13

I will sustain you
and I will rescue
you. v. 4

Taking Notice

When I clean my house for a special event, I become discouraged because I think that guests won't notice what I clean, only what I don't clean. This brings to mind a larger philosophical and spiritual question: Why do humans more quickly see what's wrong than what's right? We are more likely to remember rudeness than kindness. Crimes seem to receive more attention than acts of generosity. And disasters grab our attention more quickly than the profound beauty all around us.

But then I realize I am the same way with God. I tend to focus on what He hasn't done rather than on what He has, on what I don't have rather than on what I have, on the situations that He has not yet resolved rather than on the many He has.

When I read the book of Job, I am reminded that the Lord doesn't like this any more than I do. After years of experiencing prosperity, Job suffered a series of disasters. Suddenly those became the focus of his life and conversations. Finally, God intervened and asked Job some hard questions, reminding him of His sovereignty and of everything Job didn't know and hadn't seen (JOB 38-40).

Whenever I start focusing on the negative, I hope I remember to stop, consider the life of Job, and take notice of all the wonders God has done and continues to do.  JULIE ACKERMAN LINK

Consider keeping a "thanks" journal. Write down each day one thing God has done for you.

 What has the Lord done for you this week? Share it with us at [Facebook.com/ourdailypread](https://www.facebook.com/ourdailypread)

When you think of all that's good, give thanks to God.

Growing Up

Watching my young grandson and his friends play T-Ball is entertaining. In this version of baseball, young players often run to the wrong base or don't know what to do with the ball if they happen to catch it. If we were watching a professional baseball game, these mistakes would not be so funny.

TODAY'S READING
Ephesians 4:1-16

It's all a matter of maturity. It's okay for young athletes to struggle—not knowing what to do or not getting everything exactly right. They are trying and learning. So we coach them and patiently guide them toward maturity. Then we celebrate their success as later they play with skill as a team.

Something similar happens in the life of those who follow Jesus. Paul pointed out that the church needs people who will "be patient, bearing with one another in love" (EPH. 4:2). And we need a variety of "coaches" (pastors, teachers, spiritual mentors) to help us all move toward "unity in the faith" as we strive to "become mature" (V. 13).

The goal as we listen to preaching and teaching and enjoy life together in the church is to grow up to maturity in Christ (V. 15). Each of us is on this journey, and we can encourage each other on the road to maturity in Jesus. 

DAVE BRANON

Lord, help me to strive for maturity. Thank You for equipping the church with men and women who can help me grow in my faith.

Show me who I can encourage today.

There's joy in the journey as we walk *alongs*ide each other.

Lifeblood

Mary Ann believed in God and His Son Jesus, but she struggled with why Jesus had to shed His blood to bring salvation. Who would think of cleansing something with blood? Yet the Bible says, "The law requires that nearly everything be cleansed with blood" (HEB. 9:22). That, in Mary Ann's opinion, was disgusting!

Then one day she had to go to a hospital. A genetic condition had altered her immune system, and doctors became alarmed when the illness started attacking her blood. As she was in the emergency room she thought, *If I lose my blood, I will die. But Jesus shed His blood so I can live!*

Suddenly everything made sense. In the midst of her pain, Mary Ann felt joy and peace. She understood that blood is life, and a holy life was needed to make peace with God for us. Today she is alive and well, thanking God for her health and for Jesus' sacrifice on her behalf.

Hebrews 9 explains the meaning of the Old Testament blood ritual (vv. 16-22) and the once and for all offering of Jesus that brought animal sacrifice to an end (vv. 23-26). Bearing our sin, He willingly died and shed His blood to become our sacrifice. We now have confidence to enter God's presence. How could we ever thank Jesus enough for making His sacrifice our sacrifice, His life our life, and His Father our Father? ☺

KEILA OCHOA

Lord, I thank You for Jesus and for the shedding of His blood for me. I want to live my life in gratitude to You.

The blood of Christ washes away our sins.

TODAY'S READING
Hebrews 9:19-28

Without the shedding of blood there is no forgiveness. v. 22

Meet Your Authors

Get to know the authors of *Our Daily Bread* with some fun questions!



DAVE BRANON • One fun fact about you? Recently, my son Steve and I cut down a 40-foot tree in the backyard. We tied it off, notched it, and finally make the last cut—and it did not fall on the house or anything else we didn't want it to fall on. We felt like the stars of *AX Men!*



ANNE CETAS • One fun fact about you? I grew up on a farm with my 9 siblings. • Your favorite food? Shrimp—by itself or with pasta. Or chicken fajitas. • Your favorite activity? Walking on the beach, hand-in-hand with my husband. Or biking on a trail through the woods.



POH FANG CHIA • One fun fact about you? I'm not musically trained but I performed a Beethoven piece in Victoria Concert Hall, Singapore, when I was 11. • Your favorite authors? I love Russian authors: Leo Tolstoy, Fyodor Dostoyevsky, and Anton Chekov. And I like A. W. Tozer, Ray Stedman, Jeffery Deaver, and Jan Burke.



BILL CROWDER • One fun fact about you? Massive fan of Liverpool Football Club. • Your favorite food? A really good cheeseburger, or chicken and shrimp fajitas. • Your favorite activity? Playing golf. • Your favorite book? *The Call* by Os Guinness.



LAWRENCE DARMANI • Your favorite food? Banku (a kind of maize meal) with okro soup or stew and dry fish. • Your favorite activity? Writing, reading (bird watching tool). • Your favorite authors? John Grisham (his legal thrillers) and Chinua Achebe (*Things Fall Apart*).



MART DEHAAN • One fun fact about you? I'm paranoid about poison ivy. • Your favorite food? Plain yogurt with anything. • Your favorite activity? Golfing and fishing—for golfballs. • Your favorite author? George MacDonald.

DAVE EGNER • One fun fact about you? I have been known to frequent three different coffee shops in one day. **Your favorite food?** Hot fudge sundaes or rhubarb pie. **Your favorite activity?** Reading and woodcarving. **Your favorite books?** Mysteries.



TIM GUSTAFSON • One fun fact about you? I'm nine months and one day older than my only (adopted) brother. **Your favorite food?** Fresh walleye or anything Thai. **Your favorite activity?** Any sport that isn't golf. **Your favorite authors?** Fyodor Dostoyevsky, C.S. Lewis, and Francis Schaeffer.



C. P. HIA • One fun fact about you? I like to travel. The only continent I haven't visited is Antarctica. **Your favorite activity?** Helping ministry partners to translate Our Daily Bread Ministries resources into their own language. **Your favorite authors?** A. W. Tozer and C. S. Lewis.



CINDY KASPER • One fun fact about you? I have 56 pets: one Border collie, one golden retriever, and 54 Japanese koi (at the moment). **Your favorite food?** Hot bread straight from the oven, slathered with real butter. **Your favorite books?** Biographies and historical novels.



RANDY KILGORE • One fun fact about you? I have an insatiable curiosity for history and genealogy. **Your favorite activity?** Treasure-hunting with my metal detector. **Your favorite book?** *Mimosa, Who Was Charmed* by Amy Carmichael.



DAVID MCCASLAND • One fun fact about you? I attended an Elvis Presley concert in April 1956 in Oklahoma City. Admission price was \$1.50! **Your favorite food?** Ice cream. **Your favorite activity?** Telling stories. **Your favorite author?** William Zinsser (*On Writing Well*, and other books).



KEILA OCHOA • One fun fact about you? I'm a fan of Broadway musicals and keep the tickets and booklets of the plays I've been to. **Your favorite food?** Pozole and enchiladas. **Your favorite activity?** Reading or going to the park with my kids. **Your favorite author?** C. S. Lewis.



AMY BOUCHER PYE • One fun fact about you? When in university, I went to Washington, D.C., for one semester and stayed for 10 years. **Your favorite food?** Dark chocolate. **Your favorite author?** English 20th-century author Elizabeth Goudge and her books such as *The Scent of Water*.



DAVID ROPER • Your favorite food? Pizza. **Your favorite activity?** It used to be fishing, now I suppose reading. **Your favorite authors?** C. S. Lewis and Peter Kreeft.



JENNIFER BENSON SCHOLDT • Your favorite food? My mother's homemade sugar cookies. **Your favorite activity?** Playing Scrabble with my husband, especially on Sunday afternoons. **Your favorite book?** *To Kill a Mockingbird*.



JOE STOWELL • One fun fact about you? I was invited to try out for the Pan American Games as a college senior after being selected for the second team Midwest NCAA All American Soccer Team. **Your favorite activity?** Cross country skiing and mountain trekking.



MARION STROUD • Your favorite food? Pheasant. **Your favorite activity?** Having stimulating discussions around the dinner table with old friends. **Your favorite books?** Brother Cadfael books by Ellis Peters are titles I turn to again and again.



MARVIN WILLIAMS • One fun fact about you? I like competing against my co-workers in our daily and weekly fitness challenges. **Your favorite food?** Five Guys Burgers and Fries. **Your favorite activity?** Hanging out with my family watching movies. **Your favorite book?** *A Million Miles in a Thousand Years* by Donald Miller.



PHILIP YANCEY • One fun fact about you? I still use a flip phone and don't text! **Your favorite food?** Homemade peach ice cream. **Your favorite activity?** Golfing and skiing. In Colorado sometimes you can do both on the same day. **Your favorite author?** Frederick Buechner teaches me about writing and about God with the same words.

Topic Index

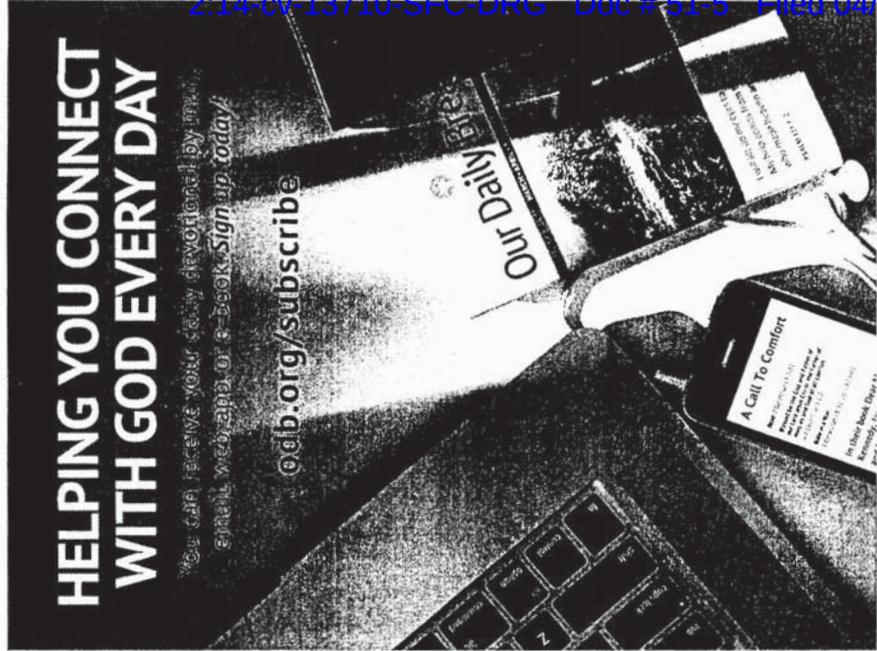
DECEMBER • JANUARY • FEBRUARY 2015 - 2016

TOPIC	DATE	TOPIC	DATE
Adoration	Jan. 3	Living for Christ	Dec. 15; Feb. 10
Aging	Feb. 26	Living like Christ	Jan. 17,25; Feb. 8
Bible	Dec. 12; Feb. 4,16	Living with other believers	Jan. 17; Feb. 28
Christ, birth	Dec. 5,6,8,13,17,19,21,22,23,24,25,26	Loneliness	Jan. 5
Christ, death	Dec. 21; Feb. 29	Love for God	Dec. 8; Jan. 29; Feb. 16
Christ, deity	Dec. 24	Love for others	Dec. 3; Jan. 18
Christ, name	Dec. 1	Obedience	Dec. 6; Feb. 12
Christ, return	Dec. 20; Jan. 1; Feb. 24	Parenting	Jan. 21,23
Christ, Savior	Dec. 13; 19,20,21,23,25; Jan. 8,13; Feb. 9,17	Patience	Feb. 8
Christ, teachings	Jan. 8	Personal behavior	Jan. 25,29
Church, unity of	Jan. 17	Prayer	Dec. 29; Jan. 2,4,7,28; Feb. 1,18,22
Discipleship	Jan. 14,23	Racism	Jan. 18
Enemies	Dec. 3	Rest	Dec. 30; Feb. 18
Evangelism	Dec. 10; Jan. 20; Feb. 17	Salvation	Dec. 9,10,30; Jan. 9,31; Feb. 9,17,29
Fall	Feb. 6	Serving	Dec. 7,15; Feb. 2,5,18
False teachings	Jan. 8	Sin	Dec. 27; Jan. 22; Feb. 6,11
Fear	Dec. 4,11	Spiritual gifts	Feb. 13
Forgiveness	Dec. 9,27; Feb. 11	Spiritual growth	Jan. 16,22; Feb. 4,23,28
God, care	Dec. 31; Jan. 6,23; Feb. 15,26	Spiritual transformation	Dec. 2; Feb. 3,12
God, doctrine of	Dec. 9,18,28; Jan. 3,10,15,24,27,30; Feb. 7,19	Suffering	Dec. 30; Jan. 26; Feb. 19,21
God, love of	Jan. 11,21,26; Feb. 14	Thankfulness	Dec. 9; Feb. 14,27
God, reverence for	Dec. 16; Jan. 24	Trust in God	Dec. 4,7,11; Jan. 12,27,28; Feb. 19,20,21
God, waiting on	Feb. 25	War	Dec. 20
Grief	Feb. 7,15	Worship	Dec. 14,22
Heaven	Dec. 30; Feb. 6		
Human nature	Jan. 20		
Humility	Jan. 19		

HELPING YOU CONNECT WITH GOD EVERY DAY

Our daily devotionals are available by email, app or e-book. Sign up today!

oddb.org/subscribe



Our Daily Bread
Ministries
ourdailybread.org



EXHIBIT B

WHAT DO YOU SEE?



"Do you have eyes but fail to **see**?" Jesus Christ MARK 8:18 NIV
The god of this age (Satan) has blinded their eyes and hearts so that they cannot **see** the light of the Gospel of Christ.

II CORINTHIANS 4:4 NIV

"I tell you the truth, unless a man is born again, he cannot **see** the Kingdom of God."

Jesus Christ JOHN 3:3 NIV

Christ died for our sins ... He was buried ... He was raised on the third day.

I CORINTHIANS 15:3 & 4 NIV

If we confess our sins ... He will forgive us.

I JOHN 1:9 NIV

By grace you have been saved, through faith ... is a gift of God ... not by works.

EPHESIANS 2:8 & 9 NIV

"Blessed are the eyes that **see** what you **see** ... many prophets and kings wanted to **see** what you **see** but did not **see** it."

Jesus Christ LUKE 10:23 & 24 NIV

SHARE YOUR DISCOVERY WITH OTHERS!!

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION
4
5 EQUAL EMPLOYMENT OPPORTUNITY)
6 COMMISSION,)
7 Plaintiff,)
8 vs.) Case No. 14-13710
9 R.G. & G.R. HARRIS FUNERAL) Hon. Sean F. Cox
10 HOMES, INC.,) United States
11 Defendants.) District Court Judge
12 _____)
13
14 DEPOSITION OF TROY SHAFFER
15 PLYMOUTH, MICHIGAN
16 FRIDAY, NOVEMBER 13, 2015
17
18
19
20
21
22
23
24 REPORTED BY: QUENTINA R. SNOWDEN, CSR NO. 5519
25 JOB NO.: 276004-C

Page 2

1 DEPOSITION OF TROY SHAFFER, taken at the
2 offices of Joel J. Kirkpatrick, PC, located at
3 843 Penniman Avenue, Suite 201, Plymouth,
4 Michigan on Friday, November 13, 2015, at 12:58
5 p.m., before Quentina R. Snowden, Certified Court
6 Reporter, in and for the State of Michigan.
7
8 APPEARANCES:
9 For the Plaintiff:
10 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
11 BY: DALE R. PRICE, JR., ESQ.
12 MILES E. SHULTZ, ESQ.
13 477 Michigan Avenue
14 Room 865
15 Detroit, Michigan 48226-2552
16 (313) 226-7808
17 E-mail: dale.price@eoc.gov
18 miles.shultz@eoc.gov
19
20
21
22
23
24
25

Page 3

1 APPEARANCES CONTINUED:
2 For the Defendant:
3 JOEL J. KIRKPATRICK, PC
4 BY: JOEL JAMES KIRKPATRICK, ESQ.
5 843 Penniman Avenue
6 Suite 201
7 Plymouth, Michigan 48170-1770
8 (734) 404-5710
9 E-mail: joel@joelkirkpatrick.com
10
11 SCHRAMECK LAW, PLLC
12 BY: JEFFREY T. SCHRAMECK, ESQ.
13 843 Penniman Avenue
14 Plymouth, Michigan 48170-1757
15 (734) 454-5400
16 E-mail: jeff@schramecklaw.com
17
18 ALLIANCE DEFENDING FREEDOM
19 BY: BRADLEY ABRAMSON, ESQ.
20 15100 North 90th Street
21 Scottsdale, Arizona 85260
22 (480) 444-0020
23 E-mail: babramson@adfllegal.com
24
25

Page 4

1 I N D E X
2 WITNESS: TROY SHAFFER
3 EXAMINATION PAGE
4 BY: Mr. Price 05
5 EXAMINATION
6 BY: Mr. Kirkpatrick 51
7 RE-EXAMINATION
8 BY: Mr. Price 59
9 (No further examination.)
10 E X H I B I T S
11 NUMBER DESCRIPTION PAGE
12 EX. NO. 10 RESUME 10
13 (Exhibit attached.)
14
15
16
17
18
19
20
21
22
23
24
25

Page 33

1 A Did I have an understanding?
 2 Q Yes. That Harris had a certain religious --
 3 there's a certain religious outlook at Harris
 4 or not?
 5 A No.
 6 Q Okay. Are you yourself -- you yourself
 7 observant in any religion?
 8 A I wouldn't -- I wouldn't say religion, but I
 9 would say spirituality.
 10 Q So you're not religious but you're a spiritual
 11 person?
 12 A Correct.
 13 Q Okay. Have you ever heard of anything along
 14 the lines that -- do you have any understanding
 15 of what Mr. Rost's religious outlook is?
 16 A I do not.
 17 Q You haven't ever had any discussion with him
 18 about any kind of religious matters?
 19 A No.
 20 Q Have you ever had any discussion about
 21 religious matters with anybody at Harris
 22 Funeral Home, that you can remember?
 23 A I have.
 24 Q You have?
 25 A Yes.

Page 34

1 Q With coworkers?
 2 A Yes.
 3 Q Okay. Do you recall what the context was?
 4 A Context was what do you believe and this is
 5 what I believe. Just very --
 6 Q Just kind of like a friendly conversation?
 7 A Correct.
 8 Q With coworkers just kind of learning more about
 9 each other?
 10 A Correct.
 11 Q Okay. It was kind of a one-off thing?
 12 A Correct.
 13 Q Okay. Are there any religious items at the
 14 funeral homes, you know, any religious
 15 literature that you're aware of?
 16 A Yes. There is a Bible located on a table.
 17 When a family is of the Catholic faith, setting
 18 up the chapel, with the casket present, a
 19 crucifix is pinned into the back panel of the
 20 casket, as well as a crucifix standing on its
 21 own behind the casket is displayed, and also I
 22 don't -- I don't remember the proper name, but
 23 a kneeler is brought to the casket for people
 24 to pray.
 25 Q Say a prayer before the casket?

Page 35

1 A Yes.
 2 Q Now, are these kneelers, are these things that
 3 belong to the funeral home or is there
 4 something brought for the family brings or
 5 like --
 6 A They're located at the funeral home.
 7 Q Are they kept in storage somewhere?
 8 A Correct.
 9 Q Same with the crucifix?
 10 A Correct.
 11 Q Are there any -- to your recollection, are
 12 there any non-Christian services held at
 13 Harris?
 14 A Non-Christian?
 15 Q Yeah, like other religions. Like, say,
 16 Buddhist or Hindu or Muslim, that you can
 17 recall?
 18 A I cannot recall any Buddhist or Hindu-type
 19 services, but I know we have serviced families
 20 that don't have faith -- or I'm sorry, don't
 21 have a religious affiliation.
 22 Q Okay. So you had funeral services for people
 23 who do not identify as members of a religion?
 24 A Correct.
 25 Q Now, it's safe to say if you're doing more

Page 36

1 downstairs work that you might not -- there may
 2 be other funerals you don't participate in or
 3 don't know the religious affiliation of?
 4 A Correct.
 5 Q Now, did you hear anything about -- you have an
 6 understanding that you were replacing someone
 7 when you were hired in at Harris?
 8 A Yes.
 9 Q Okay. What did you understand?
 10 A I understood there was an opening for a funeral
 11 director and that was the extent of it.
 12 Q You didn't hear anything about the nature of
 13 why that position was open?
 14 A No.
 15 Q Nobody ever told you?
 16 A No.
 17 Q Okay. Have you heard of the name Anthony
 18 Stephens?
 19 A Yes.
 20 Q Okay. Would you understand that that person
 21 may have been your predecessor?
 22 A Yes.
 23 Q Okay. How did you come to that understanding?
 24 A After working at Harris for some time, I would
 25 hear rumors here and there, little bits and

<p style="text-align: right;">Page 37</p> <p>1 pieces, about Aimee. Is that --</p> <p>2 Q Aimee or Anthony Stephens?</p> <p>3 A Yes.</p> <p>4 Q Okay. From whom did you hear this?</p> <p>5 A Various employees.</p> <p>6 Q Did you hear from your supervisor, manager?</p> <p>7 A Yes.</p> <p>8 Q Okay. That's Mr. Kowalewski?</p> <p>9 A No.</p> <p>10 Q No? Who was that?</p> <p>11 A It was the manager before, George.</p> <p>12 Q Would it be George Crawford?</p> <p>13 A That's correct.</p> <p>14 Q Okay. What did you hear from Mr. Crawford?</p> <p>15 A I heard bits and pieces about this person</p> <p>16 making a transition into becoming female.</p> <p>17 Q And did Mr. Crawford express anything along the</p> <p>18 lines of -- that that was the reason this</p> <p>19 person was terminated?</p> <p>20 A No.</p> <p>21 Q Okay. What else did you hear about Aimee or</p> <p>22 Anthony Stephens?</p> <p>23 A I've heard stories unrelated to any sort of</p> <p>24 transformation, just stories of his work, his</p> <p>25 embalming, his interaction with people.</p>	<p style="text-align: right;">Page 39</p> <p>1 Aimee or Anthony Stephens and just through the</p> <p>2 grapevine kind of stuff conversations?</p> <p>3 A Correct.</p> <p>4 Q All right. Now I understand there's a dress</p> <p>5 code at Harris Funeral Home?</p> <p>6 A Correct.</p> <p>7 Q Would I be correct in assuming that you are</p> <p>8 wearing what would be required of you as a</p> <p>9 funeral director and embalmer?</p> <p>10 A Yes.</p> <p>11 Q How did you get your suit?</p> <p>12 A Through Tom Rost.</p> <p>13 Q What was the -- did you get more than one?</p> <p>14 A Yes.</p> <p>15 Q Okay. How many suits did you get?</p> <p>16 A How many suits --</p> <p>17 Q At hire when you got hired?</p> <p>18 A Two suits per year.</p> <p>19 Q Okay. So you get two suits per year, that's</p> <p>20 how it works out?</p> <p>21 A Yes.</p> <p>22 Q You also get ties, I understand?</p> <p>23 A Yes.</p> <p>24 Q How many of those do you get?</p> <p>25 A At the time of hire, I was given two. But</p>
<p style="text-align: right;">Page 38</p> <p>1 Q Was it negative?</p> <p>2 A No.</p> <p>3 Q It was positive?</p> <p>4 A Yes.</p> <p>5 Q Okay. And from whom did you hear the positive</p> <p>6 things about from your predecessor?</p> <p>7 A It was various people.</p> <p>8 Q At the -- the Garden City location?</p> <p>9 A Yes.</p> <p>10 Q Okay. Would that be Delores Nemeth, would she</p> <p>11 have been one of them?</p> <p>12 A Yes.</p> <p>13 Q Mr. Crawford?</p> <p>14 A Yes.</p> <p>15 Q Did anyone ever say why Stephens was no longer</p> <p>16 working there? And obviously you wouldn't have</p> <p>17 any personal knowledge of it, you weren't</p> <p>18 there, but did you ever hear why Stephens was</p> <p>19 no longer there?</p> <p>20 A Yes.</p> <p>21 Q Why was that?</p> <p>22 A I -- like I said, I only heard bits and pieces.</p> <p>23 Q Okay.</p> <p>24 A I never heard this is why he was fired.</p> <p>25 Q Okay. So you just heard bits and pieces about</p>	<p style="text-align: right;">Page 40</p> <p>1 throughout working, if -- if a tie was really</p> <p>2 spotted up, then I could get a replacement.</p> <p>3 Q Okay. And how often would you get -- do you</p> <p>4 think you got replacement, on average, do you</p> <p>5 get a replacement tie?</p> <p>6 A Starting out with two, I think I've had two</p> <p>7 replacement ties.</p> <p>8 Q Okay. And do you get new ties every year as</p> <p>9 well or just the ties are what -- you just</p> <p>10 replace ties as needed?</p> <p>11 A Correct.</p> <p>12 Q Okay. Do you have any understanding of --</p> <p>13 well, let's back up a little bit. Did you have</p> <p>14 to go get fitted for your suits?</p> <p>15 A Yes.</p> <p>16 Q Where was that? Is that Sam Michael's?</p> <p>17 A Yes.</p> <p>18 Q Okay. 12 and Middlebelt?</p> <p>19 A Yes.</p> <p>20 Q Have you ever had a tear in the pocket or</p> <p>21 something of your suits?</p> <p>22 A Yes.</p> <p>23 Q What happens then?</p> <p>24 A I had a couple of tears by my rear pockets and</p> <p>25 I asked Mr. Rost what I should do about it.</p>

<p style="text-align: right;">Page 41</p> <p>1 And he said go to Sam Michael's, and see if 2 they can fix it. And if not, get another suit. 3 Q And which happened; was it fixed or did you get 4 another suit? 5 A I got another suit. 6 Q Now, your understanding is -- is it your 7 understanding that it gets charged to Harris 8 when you get a new suit? 9 A I would assume so, but I've never been told 10 that's what happens. 11 Q Okay. Now, obviously there will be some 12 situations where you would not be wearing a 13 suit at all, correct? 14 A Correct. 15 Q Even on the job? 16 A (Shook head in an affirmative manner.) 17 Q Would embalming be one of those cases? 18 A Yes. 19 Q What do you wear when you're embalming? 20 A It did vary, but if I'm embalming in Garden 21 City, I have scrub pants I wear, I have 22 different T-shirts that I pick from, and I wear 23 high boots. 24 Q Okay. Now, do you have -- and on average, if 25 you can tell me, how much time per day are you</p>	<p style="text-align: right;">Page 43</p> <p>1 activities? 2 A If I'm dressing and casketing and cosmetizing, 3 along with if I'm setting the chapel up, I may 4 just have a T-shirt on. 5 Q And this is acceptable because of the kind of 6 work you're not interacting with the public at 7 this point? 8 A Correct. 9 Q And how much time would you say over the course 10 of -- can you break it down by a week -- that 11 you're doing dressing, casketing or cosmetizing 12 of decedents? 13 A Again, it really varies. It varies how busy 14 the chapel I work out of is, and it -- I will 15 go to Livonia and also help there. Again, it's 16 like the embalming, it's -- it's -- could be 17 nine decedents, could be one. 18 Q Okay. And it's safe to say you're doing 19 embalming, casketing, cosmetizing at all three 20 locations helping out? 21 A Yes. The chapel in Detroit, I believe I've 22 embalmed one time there. It's mainly out of 23 Livonia and Garden City. 24 Q Okay. But casketing and cosmetizing would you 25 do that in Detroit?</p>
<p style="text-align: right;">Page 42</p> <p>1 spending embalming? 2 A It varies. 3 Q It does vary? 4 A It varies. 5 Q Okay. Can you give me a ballpark for a month, 6 how much time you're spending embalming? 7 A Time in terms of hours? 8 Q How many days per week would you say you're 9 involved in a month that you're doing -- I mean 10 not that -- you wouldn't be doing a full day of 11 embalming probably, but how many days a week 12 would you say? 13 A There are months where I may embalm nine 14 decedents, and there's months I may embalm one 15 decedent. 16 Q Okay. How long -- it probably varies, but I 17 simply don't know how long does it take to go 18 through the embalming process? 19 A Depending on the decedent, and the factors at 20 hand, anywhere from a half an hour to a 21 couple -- two hours. 22 Q Now, would there be any other situations in 23 your -- when you're on the job at Harris, where 24 you would not be wearing your suit, any other 25 kind of preparation, body preparation</p>	<p style="text-align: right;">Page 44</p> <p>1 A I have on a handful of times, but again, that's 2 mainly out of Livonia and Garden City. 3 Q Okay. Now, going back to suits. Again, you 4 say you get two fresh suits every year? 5 A Correct. 6 Q Okay. What time of year do you get them; is it 7 the anniversary date of your hire, or -- if you 8 can recall? 9 A I -- I can't recall. 10 Q Okay. Do you have to go up and get fitted 11 again for them or -- 12 A Yes. 13 Q Okay. And do you do that on company time, go 14 for a fitting? 15 A Yes. 16 Q The people you work with at Garden City, do you 17 know their names? 18 A Yes. 19 Q Go ahead, if you can list who they are, please. 20 A David Kowalewski, Dolly Nemeth, Michelle 21 Peterson, and there was a new woman that was 22 hired, her first name is Laura, but I don't 23 know her last name. 24 Q So those are all the staffers out of the Garden 25 City location?</p>



Harris
R.G. & G.R. HARRIS FUNERAL HOMES
AND CREMATION SERVICES
ESTABLISHED IN 1910

Get the Flash Player to see this player.



- About Us
- General Information
- Choices
- Pre planning
- Signature Services
- Order Flowers
- Obituaries



Mission Statement

OUR MISSION

R.G. & G.R. Harris Funeral Homes recognize that its highest priority is to honor God in all that we do as a company and as individuals. With respect, dignity, and personal attention, our team of caring professionals strive to exceed expectations, offering options and assistance designed to facilitate healing and wholeness in serving the personal needs of family and friends as they experience a loss of life.

OUR VALUE

The following are values of R.G. & G.R. Harris Funeral Homes and its affiliates which will enable us to carry out our mission.

FAMILIES

The bereaved families and friends we serve are always our primary consideration. We provide the finest quality services to families from all incomes, races, cultural and religious backgrounds, and we will consistently strive to meet their individualized needs as they adjust to the loss of their loved one.

INTEGRITY

In all that we do, we will conduct ourselves with the highest possible integrity, adhering to the company's ethical standards. Honesty and integrity will be our guiding consideration each time we make a decision and each time we communicate with our families.

EXCELLENCE

We will always achieve the highest level of excellence in providing for our families. This will be done through knowledge of company policies and procedures and of the regulations and laws governing our services. We will not compromise the standards of excellence we have set for ourselves.

CAREGIVING PROFESSIONALS

Respecting the expertise of other care giving professionals, we seek to establish and maintain superior working relationships with them. In the best interest of family and friends, we work cooperatively together.

COMMUNITY INVOLVEMENT

We are committed to the well being of our community and dedicated to preserving the integrity of our environment. We strive to be a positive resource and good neighbor.

SUPPLIERS

We strive to develop and maintain superior working relationships with our suppliers and treat them with respect in all situations. As innovative and creative leaders in the profession, we strive to foster cooperative relationships within the industry. We bring to the profession the highest standards and a solid reputable organization.

EMPLOYEES

The staff is our most valuable resource. Each individual is honest and trustworthy, and deserves to be treated with dignity and respect. Needs to understand the purpose of his/her work and its relationship to the organization's mission. Makes an important contribution to achieving the goals of the organization and is willing to be innovative and take risks to accomplish those goals. Strives to achieve his/her potential and is willing to work hard to realize it. Has a role in problem-solving, coordinating work with others, and participating in the decision making process. Is committed to honest, open two-way communication; is responsible and accountable for his/her work. Needs to be recognized for his/her accomplishments. Seeks to grow in knowledge, skills, and effectiveness. Is committed to working cooperatively as a supportive team member.

"But seek first his kingdom and righteousness, and all these things shall be yours as well."

Matthew 6:33

DEPOSITION EXHIBIT
5
11-12-15 WPD

11251 Harper Ave, Detroit, MI 48224 (313) 521-3171
15451 Farmington Road, Livonia, MI 48154 (734) 422-6720
71251 Ford Road, Warren, MI 48093 (588) 425-9200

© Copyright © 2007 R.G. & G.R. Harris Funeral Homes, and EsquireNet

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION
4
5 EQUAL EMPLOYMENT OPPORTUNITY)
6 COMMISSION,)
7 Plaintiff,)
8 vs.) Case No. 14-13710
9 R.G. & G.R. HARRIS FUNERAL) Hon. Sean F. Cox
10 HOMES, INC.,) United States
11 Defendants.) District Court Judge
12 _____)
13
14 DEPOSITION OF DELORES NEMETH
15 PLYMOUTH, MICHIGAN
16 FRIDAY, NOVEMBER 13, 2015
17
18
19
20
21
22
23
24 REPORTED BY: QUENTINA R. SNOWDEN, CSR NO. 5519
25 JOB NO.: 276004-A

Page 2

1 DEPOSITION OF DELORES NEMETH, taken at the
2 offices of Joel J. Kirkpatrick, PC, located at
3 843 Penniman Avenue, Suite 201, Plymouth,
4 Michigan on Friday, November 13, 2015, at 9:30
5 a.m., before Quentina R. Snowden, Certified Court
6 Reporter, in and for the State of Michigan.
7
8 APPEARANCES:
9 For the Plaintiff:
10 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
11 BY: MILES E. SHULTZ, ESQ.
12 DALE R. PRICE, JR., ESQ.
13 477 Michigan Avenue
14 Room 865
15 Detroit, Michigan 48226-2552
16 (313) 226-7808
17 E-mail: dale.price@eeoc.gov
18 miles.shultz@eeoc.gov
19
20
21
22
23
24
25

Page 3

1 APPEARANCES CONTINUED:
2 For the Defendant:
3 JOEL J. KIRKPATRICK, PC
4 BY: JOEL JAMES KIRKPATRICK, ESQ.
5 843 Penniman Avenue
6 Suite 201
7 Plymouth, Michigan 48170-1770
8 (734) 404-5710
9 E-mail: joel@joelkirkpatrick.com
10
11 ALLIANCE DEFENDING FREEDOM
12 BY: BRADLEY ABRAMSON, ESQ.
13 15100 North 90th Street
14 Scottsdale, Arizona 85260
15 (480) 444-0020
16 E-mail: babramson@adfllegal.com
17
18
19
20
21
22
23
24
25

Page 4

1 I N D E X
2 WITNESS: DELORES NEMETH
3 EXAMINATION PAGE
4 BY: Mr. Shultz 05
5 EXAMINATION
6 BY: Mr. Kirkpatrick 22
7 RE-EXAMINATION
8 BY: Mr. Shultz 25
9 (No further examination.)
10 E X H I B I T S
11 NUMBER DESCRIPTION PAGE
12
13 (None presented for marking.)
14
15
16
17
18
19
20
21
22
23
24
25

<p style="text-align: right;">Page 13</p> <p>1 Q Could you describe to your understanding what 2 the dress code is? 3 A A skirt, I wear flat shoes, you can wear heels 4 or flat shoes like I'm dressed now, a jacket. 5 Q Okay. And do you receive any sort of allowance 6 for your dress? 7 A Yeah. 8 Q Could you describe how much do you receive and 9 when? 10 A Geez. What do you mean by "When"? 11 Q How often -- how frequently do you receive an 12 allowance? 13 A Like once a year. 14 Q Once a year? 15 A Uh-huh. 16 Q And how much do you receive? 17 A I'm trying to think now. I think it was a 18 check for \$75. 19 Q So it comes as a separate check, not as part of 20 your paycheck? 21 A Right. 22 Q Do you remember when that began? 23 A Oh, probably a couple years. 24 Q So, for the 13 years that you've worked at R.G. 25 G.R. you didn't always receive an allowance?</p>	<p style="text-align: right;">Page 15</p> <p>1 right now you don't remember, so I don't want 2 you to be offended when I start asking 3 clarifying questions. 4 So you don't remember if there was 5 ever a meeting with Mr. Rost or Ms. Kish 6 regarding the allowance? 7 A Oh, we were notified, but I can't remember -- 8 you asked me, probably was a memo. I don't 9 know. 10 Q Okay. 11 A I can't remember really. 12 Q So you were notified, you just don't remember 13 the substance? 14 A Oh, yeah. 15 Q Did you have any participation in the process 16 for determining whether you would receive an 17 allowance? 18 A What do you mean? 19 Q Did you have any involvement in R.G. G.R.'s 20 decision to start providing a dress allowance? 21 A No. 22 Q Did you have any part of the decision for how 23 much a dress allowance should be? 24 A No. 25 Q Do you have any estimate for how much you pay</p>
<p style="text-align: right;">Page 14</p> <p>1 A No. 2 Q So, do you think it's two years or more than 3 two years? 4 A I'm guessing probably two years. 5 Q Okay. Two years. And when do you receive that 6 check; do you remember? 7 A I think it's probably first of the year. 8 Q First of the year? 9 A Uh-huh. 10 Q First of the calendar year? 11 A Uh-huh. 12 Q Did you receive any sort of notice from R.G. 13 G.R. that you would start receiving a dress 14 allowance? 15 A I don't remember. 16 Q So you don't remember seeing a fax from the 17 Detroit office? 18 A Like I said, when you're asking me, I don't 19 remember. 20 Q You don't remember? 21 A No. When. 22 Q So you don't -- I'm going to ask other 23 questions regarding it to try and jog your 24 memory. 25 So I'm not -- I do take it that</p>	<p style="text-align: right;">Page 16</p> <p>1 to comply with R.G. G.R. dress code? 2 MR. KIRKPATRICK: Objection, 3 relevance. Go ahead and answer if you can. 4 THE WITNESS: I've worked there for 5 13 years. I've never had a problem. I dress 6 the way I dress. I don't know what you mean. 7 BY MR. SHULTZ: 8 Q How much -- do you know how much money you 9 spend on clothes to comply with R.G. G.R.'s -- 10 A No, I don't. 11 Q Do you think that you spend more than \$75 per 12 year on clothes? 13 MR. KIRKPATRICK: Objection, 14 relevance, vague. Go ahead and answer. 15 THE WITNESS: It's hard to answer 16 that. 17 BY MR. SHULTZ: 18 Q Did you ever work with an Anthony Stephens? 19 A Yes. 20 Q Anthony's new name is Aimee Stephens, so I'll 21 refer to her as "Aimee Stephens." 22 What sort of day-to-day 23 interactions did you have with Ms. Stephens? 24 A He was the embalmer there. I worked with him. 25 Like if he was out on -- you know, doing</p>

Page 17

1 things, I would be by myself. He wasn't there
 2 a whole 8 hours a day, he would be doing -- so
 3 with the little bit I did, yes, I did work with
 4 him.
 5 Q So you had day-to-day --
 6 A Yeah.
 7 Q -- interaction with him?
 8 A Exactly.
 9 Q You had worked -- you preceded Ms. Stephens at
 10 R.G. G.R., correct?
 11 A Uh-huh.
 12 Q So you worked for the entire time he was
 13 there -- she was there?
 14 A Uh-huh.
 15 Q You would have daily communications with each
 16 other?
 17 A Yeah.
 18 Q Would Ms. Stephens help you with office work or
 19 death certificates?
 20 A Probably, yeah.
 21 Q Ms. Stephens was fired, do you know that?
 22 A Yes. Well, I don't -- he was let go.
 23 Q Let go?
 24 A Yep.
 25 Q Ms. Stephens no longer works there?

Page 18

1 A Right.
 2 Q But you weren't involved in the process for
 3 deciding to terminate Ms. Stephens?
 4 A No.
 5 Q Mr. Rost, none of the other managers discussed
 6 with you their decision --
 7 A No.
 8 Q -- to terminate Ms. Stephens?
 9 A No.
 10 Q Okay. You're starting to answer in the middle
 11 of my question, so if you could please try and
 12 let me finish my question so the Court Reporter
 13 can --
 14 A Okay.
 15 Q -- put your answer in the right spot.
 16 Do you know why R.G. G.R. let
 17 Stephens go?
 18 A Do I know why?
 19 Q Yes.
 20 A Well, because of the situation with him. I
 21 don't know. I just know he was gone, so --
 22 Q What do you mean by "the situation"?
 23 A When you say "why."
 24 Q Uh-huh. Do you know why R.G. G.R. terminated
 25 Stephens?

Page 19

1 A See, that's a difficult question for me to
 2 answer.
 3 Q Do you know why?
 4 A Because he was becoming Aimee. I don't know.
 5 Q So Ms. Stephens did present a letter to you --
 6 A Yes.
 7 Q -- indicating that she was going to start
 8 transitioning and presenting consistent with a
 9 gender identity --
 10 A Uh-huh, yes.
 11 Q And she was fired shortly after she presented
 12 that letter to you?
 13 A Oh, I don't know how long it was.
 14 Q Okay. But as we established, you didn't have
 15 any part of the decision to terminate Ms.
 16 Stephens?
 17 A Uh-uh. No.
 18 Q What's your perception or understanding of R.G.
 19 G.R.'s religious environment?
 20 A Religious environment?
 21 Q Are there prayer groups?
 22 A No.
 23 Q Are there Bible studies?
 24 A No.
 25 Q Are there any sort of religious activities that

Page 20

1 occur at R.G. G.R.?
 2 A When we have services.
 3 Q Outside of the funerals --
 4 A No, no.
 5 Q -- that R.G. G.R. does for its employees?
 6 A No.
 7 Q And when you were working with Aimee, did you
 8 have -- you observed her interacting with
 9 clients and doing her -- her -- performing her
 10 job, correct?
 11 A I know him as Anthony. What do you mean?
 12 Q You observed Ms. Stephens doing her job,
 13 correct?
 14 A Yes.
 15 Q Okay. And she was good with clients?
 16 A As far as I know.
 17 Q Compassionate and sensitive?
 18 A As far as I know.
 19 Q So you never noticed any job performance
 20 issues?
 21 A I don't know. Like I said, I did my job.
 22 Q And you weren't Ms. Stephens' supervisor?
 23 A No. I have --
 24 Q Okay.
 25 A We worked together at times, but you're asking

<p style="text-align: right;">Page 21</p> <p>1 me a question I can't answer. 2 Q Okay. Fair enough. Fair enough. 3 Do you know if Mr. Rost is 4 religious? 5 A I don't know. I'm sure he is. 6 Q Do you know if he attends church? 7 A I'm sure he does. 8 Q Does he ever discuss with you his religiosity? 9 A He doesn't discuss -- 10 MR. KIRKPATRICK: Object to the 11 word "religiosity." I don't know even know 12 what it means. So I'm just objecting. And 13 maybe foundation. If you understand what that 14 means. 15 THE WITNESS: See, I'm -- when 16 you're asking me does he go to church, I'm -- 17 that's a question that I just -- 18 BY MR. SHULTZ: 19 Q Because he's never shared with you whether he 20 goes to church? 21 A Well, he's -- I don't know how you want me to 22 answer that. 23 Q Has he ever discussed his religious beliefs 24 with you? 25 A Not with me. I don't pay attention to that.</p>	<p style="text-align: right;">Page 23</p> <p>1 A Right. 2 Q So you have no reason -- you have no knowledge 3 of the specific reason -- 4 A No. 5 Q -- that he was fired? 6 A No. 7 Q Okay. Thank you. 8 Now, does the funeral home have 9 scripture references laying around like Daily 10 Breads, that kind of thing? 11 A Oh, yeah, things like that, yes. 12 Q So there are scriptural and religious -- 13 A See, I didn't understand. Yes. 14 Q Okay. 15 A In fact, I read that occasionally. It's some 16 people -- 17 Q Okay. So the funeral home presents a -- 18 A Yes. 19 Q -- kind of Christian, would you say, 20 presentation? 21 A Oh, yes. I'm sorry, I didn't understand -- 22 Q Also, he asked you about your \$75 clothing 23 allowance. 24 A Uh-huh. Yes. 25 Q Do you use that money to purchase clothes only</p>
<p style="text-align: right;">Page 22</p> <p>1 I'm there. I work. I do my job. I don't -- 2 Q So Mr. Rost has never discussed his religious 3 beliefs with you? 4 A As far as I know. 5 MR. SHULTZ: Okay. I don't think 6 we have anything further, Joel. 7 MR. KIRKPATRICK: Just a few 8 questions. 9 EXAMINATION 10 BY MR. KIRKPATRICK: 11 Q Mr. Nemeth, Mr. Shultz was asking you questions 12 about why Stephens was fired. Do you remember 13 that just a few minutes ago? 14 A Yeah. 15 Q And he essentially asked you do you know why 16 Stephens was fired; and you said, "I don't 17 know, but because of the situation"; do you 18 remember that? 19 A Uh-huh. 20 Q Were you present when Mr. Rost fired Stephens? 21 A I was not present at -- 22 Q So you had no conversations with either Mr. 23 Rost -- or Mr. Rost regarding why -- 24 A Right. 25 Q -- Stephens was terminated, right?</p>	<p style="text-align: right;">Page 24</p> <p>1 for work; or do you also use that as part of 2 your wardrobe in general? 3 A For my -- 4 Q Right. 5 A -- general. 6 Q Okay. Did you ever know if there was a 7 discussion about having an actual uniform for 8 female employees? 9 A Yes, there was at one time. 10 Q And was there a presentation or a proposal, I 11 should say -- 12 A Yes. 13 Q -- to have women wear the exact same outfits? 14 A Yes. 15 Q And what happened with that proposal? 16 A Well, I can remember what happened is there was 17 a very nice looking suit and a skirt, and a lot 18 of the people there were different sizes; some 19 were short, they could never wear that kind of 20 an outfit. Some people were on the heavy side. 21 Some were thin, slim and tall. And I guess 22 everybody kind of said "I don't think I can 23 wear that." 24 Q So when you say "everybody" and "people", 25 you're referring to women?</p>

Page 25

1 A Women, yes.
 2 Q So there was no consensus among the female
 3 employees as to what would be an appropriate
 4 uniform?
 5 A Right.
 6 Q Was there a decision made to just wear
 7 professional business attire?
 8 A Right.
 9 MR. KIRKPATRICK: I have no further
 10 questions.
 11 MR. SHULTZ: I just have a few
 12 followup questions, then we'll be done.
 13 THE WITNESS: Okay.
 14 RE-EXAMINATION
 15 BY MR. SHULTZ:
 16 Q R.G. G.R. has funerals for non-Christians,
 17 correct?
 18 A Yes.
 19 Q So people of other faiths have services at R.G.
 20 G.R.?
 21 A Yes.
 22 Q And the chapel, what we've been calling the
 23 chapel, is decorated like a living room,
 24 correct?
 25 A (Shook head in an affirmative manner.)

Page 26

1 Q There aren't any religious ornaments in that
 2 chapel?
 3 A Like what do you mean by "religious"?
 4 Q There isn't a crucifix or a cross?
 5 A No. Those are put in for whichever
 6 religious -- like they have --
 7 Q So there are no permanent religious --
 8 A No.
 9 Q -- fixtures in the chapel?
 10 A No.
 11 Q Beyond the Daily Bread, can you think of any
 12 other --
 13 A We have a Bible. I'm trying to think now. I
 14 know there's a Bible there. There's different
 15 pamphlets. Not -- I mean, different pamphlets
 16 for -- they're on display.
 17 Q Different pamphlets on grief?
 18 A Grief counseling and different --
 19 Q Do you remember any specific pamphlets
 20 regarding Christianity or --
 21 A Not -- not right now I can't --
 22 Q And is the Bible for employees' use or --
 23 A Whoever.
 24 Q For client's use?
 25 A For whoever is out there.

Page 27

1 Q Has Mr. Rost ever led a discussion regarding
 2 the Bible?
 3 A I have not talked to him about it.
 4 Q Has Mr. Rost ever encouraged you to read the
 5 Daily Bread?
 6 A Well, he brings them in and he knows we read
 7 them. A lot of people read them.
 8 Q So he brings them in, drops them off?
 9 A Uh-huh. We always have them.
 10 Q Has he ever led a discussion on the contents of
 11 the Daily Bread?
 12 A No. No.
 13 Q And where is the Bible located?
 14 A It's on a table in the middle of the -- like
 15 not when you walk in, but another section where
 16 people can go and sit, there's a couple chairs
 17 there.
 18 Q It's like a client conference room?
 19 A Not a conference room. It's just part of the
 20 chapel.
 21 Q Okay. But in a public area?
 22 A Oh, yes.
 23 Q And where are the pamphlets located?
 24 A On the credenza right in the front of -- where
 25 you walk in.

Page 28

1 Q So right by the main entrance?
 2 A Yes.
 3 MR. SHULTZ: I don't have anything
 4 further.
 5 THE WITNESS: Thank you.
 6 MR. KIRKPATRICK: I think we're
 7 good.
 8 (The deposition of Delores Nemeth
 9 concluded at or about the hour of 9:57 a.m.)
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 1

1 IN THE UNITED STATES DISTRICT COURT
 2 EASTERN DISTRICT OF MICHIGAN
 3 SOUTHERN DIVISION
 4
 5 EQUAL EMPLOYMENT OPPORTUNITY)
 6 COMMISSION,)
 7 Plaintiff,)
 8 vs.) Case No. 14-13710
 9 R.G. & G.R. HARRIS FUNERAL) Hon. Sean F. Cox
 10 HOMES, INC.,) United States
 11 Defendants.) District Court Judge
 12 _____)
 13
 14 DEPOSITION OF SHANNON KISH
 15 PLYMOUTH, MICHIGAN
 16 FRIDAY, NOVEMBER 13, 2015
 17
 18
 19
 20
 21
 22
 23
 24 REPORTED BY: QUENTINA R. SNOWDEN, CSR NO. 5519
 25 JOB NO.: 276004-B

Page 2

1 DEPOSITION OF SHANNON KISH, taken at the
 2 offices of Joel J. Kirkpatrick, PC, located at
 3 843 Penniman Avenue, Suite 201, Plymouth,
 4 Michigan on Friday, November 13, 2015, at 10:14
 5 a.m., before Quentina R. Snowden, Certified Court
 6 Reporter, in and for the State of Michigan.
 7
 8 APPEARANCES:
 9 For the Plaintiff:
 10 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
 11 BY: MILES E. SHULTZ, ESQ.
 12 DALE R. PRICE, JR., ESQ.
 13 477 Michigan Avenue
 14 Room 865
 15 Detroit, Michigan 48226-2552
 16 (313) 226-7808
 17 E-mail: dale.price@eeoc.gov
 18 miles.shultz@eeoc.gov
 19
 20
 21
 22
 23
 24
 25

Page 3

1 APPEARANCES CONTINUED:
 2 For the Defendant:
 3 JOEL J. KIRKPATRICK, PC
 4 BY: JOEL JAMES KIRKPATRICK, ESQ.
 5 843 Penniman Avenue
 6 Suite 201
 7 Plymouth, Michigan 48170-1770
 8 (734) 404-5710
 9 E-mail: joel@joelkirkpatrick.com
 10
 11 ALLIANCE DEFENDING FREEDOM
 12 BY: BRADLEY ABRAMSON, ESQ.
 13 15100 North 90th Street
 14 Scottsdale, Arizona 85260
 15 (480) 444-0020
 16 E-mail: babramson@adfllegal.com
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 4

1 I N D E X
 2 WITNESS: SHANNON KISH
 3 EXAMINATION PAGE
 4 BY: Mr. Shultz 05
 5 EXAMINATION
 6 BY: Mr. Kirkpatrick 64
 7 RE-EXAMINATION
 8 BY: Mr. Shultz 70
 9 (No further examination.)
 10 E X H I B I T S
 11 NUMBER DESCRIPTION PAGE
 12
 13 (None presented for marking.)
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

<p style="text-align: right;">Page 13</p> <p>1 that sort of thing? 2 A That is correct. 3 Q Okay. And did you graduate high school? 4 A Yes. 5 Q Where did you go? 6 A St. Ladislaus. 7 Q Where is that? 8 A Hamtramck. 9 Q And do you have any post-high school education? 10 A No. 11 Q No vocational schooling? 12 A No. 13 Q Do you have any licenses that you maintain? 14 A No. 15 Q Do you have any convictions or arrests? 16 A No. 17 Q Have you ever been a witness or a party to a 18 lawsuit other than this lawsuit? 19 A No. 20 Q Have you ever been deposed before? 21 A No. 22 Q Have you ever filed an administrative claim 23 with a local, state or Federal agency? 24 A I'm not sure what that would be. 25 Q Like a claim with the EEOC regarding a charge</p>	<p style="text-align: right;">Page 15</p> <p>1 Q When did you meet with him? 2 A Yesterday -- no, Wednesday. 3 Q Okay. 4 A Wednesday. 5 Q And how long did the meeting last? 6 A Ten minutes. 7 Q Did you review any documents? 8 A No. 9 Q This lawsuit arises out of a charge of 10 discrimination that Aimee Stephens filed with 11 the EEOC. Were you aware of that charge? 12 A Yes. 13 Q What was your role in dealing with the EEOC 14 during the investigation of that charge? 15 A What was my role in dealing with -- 16 Q The EEOC. 17 A I didn't really have a specific role. I did 18 prepare some documents, gave them to Tom or -- 19 you know, received some documents, gave them to 20 Tom. 21 Q Okay. Do you remember what sort of documents 22 you prepared or received? 23 A I believe the actual Complaint came to my 24 office to the actual Detroit location. I took 25 that in and gave it to Tom.</p>
<p style="text-align: right;">Page 14</p> <p>1 of discrimination -- 2 A Oh, no, no. 3 Q With the Department of Labor for a wage hour -- 4 A No. 5 Q So no administrative claims? 6 A Myself personally? 7 Q Yeah, have you -- 8 A No. No. 9 Q And how did you prepare for this deposition? 10 A I'm not sure what you -- 11 Q Did you meet with your attorney, Mr. 12 Kirkpatrick? 13 A Yes. 14 Q Or R.G. G.R.'s attorney, Mr. Kirkpatrick. 15 A Yes. 16 Q I want to caution you, the substance of any 17 communications you have with him are protected 18 by attorney/client privilege, so I'm not 19 entitled to know what you discussed with him. 20 But, that you met, where you met, how long you 21 met, those sort of things are not protected by 22 the privilege. But please don't testify to any 23 of the substance of the communication by you 24 and Mr. Kirkpatrick, okay? 25 A I understand.</p>	<p style="text-align: right;">Page 16</p> <p>1 Q Okay. Then you assisted with preparing 2 documents to respond to the EEOC's questions 3 during the investigation, you think? 4 A Yes. 5 Q And I believe you in fact have prepared some 6 documents in response to some of the EEOC's 7 discovery requests in this lawsuit; is that 8 correct? 9 A That is correct. 10 Q Okay. It's my understanding that R.G. G.R. has 11 a dress code; is that correct? 12 A Yes. 13 Q Could you describe what the dress code is? 14 A The dress code for men, women, both. 15 Q Let's start with women. 16 A We are to dress professionally. 17 Q Are there any other requirements to the dress 18 code? 19 A Muted colors. Not too flashy jewelry, not 20 crazy nails, you know, per se. A jacket. Not 21 crazy shoes, not crazy high heels. 22 Q By "Crazy", you mean flashy, I assume? 23 A Correct. It's very muted, is the word I would 24 use. Blouses or -- you know, that are simple, 25 you know, going with the muted color schemes.</p>

1 That kind of thing.
 2 Q And only skirts, no pant suits?
 3 A Skirts are preferred, the preferred method of
 4 dress, yes.
 5 Q Okay. And is that it for the female dress
 6 code?
 7 A That's pretty much, yeah. Yeah.
 8 Q Okay. And the male dress code?
 9 A The men wear a suit and pants. There's a
 10 matching tie, so that it's very uniformed. A
 11 white dress shirt. I believe there is a
 12 requirement about shoes that they're not boots
 13 or they're more dress shoes. There's certain
 14 lapel pins that they can wear, and what they
 15 can keep in their pocket. So that it's not
 16 overly bulging, and that's about it.
 17 Q Okay. And the dress code is by gender and not
 18 by position type, correct?
 19 A I wouldn't exactly say that, because I believe
 20 that the funeral directors wear the same
 21 matching suits, opposed to like a non-funeral
 22 director.
 23 Q So what would a non-funeral director wear?
 24 A A dark jacket, a shirt and a tie, dark pants.
 25 Q It's my understanding that R.G. G.R. provides

1 A A runner would be someone who goes and obtains
 2 a doctor's signature on a death certificate.
 3 Sometimes they'll make a removal from where the
 4 death has occurred. But generally they are all
 5 wearing the matching suit.
 6 Q Okay. And do you know where R.G. G.R. obtains
 7 the suits that it provides for its male
 8 employees?
 9 A Yes. I think it's called Sam's -- I don't
 10 recall the exact name. But it's --
 11 Q Okay.
 12 A It's called Sam's, I believe.
 13 Q And are you responsible for paying invoices
 14 from that -- from Sam's?
 15 A That is correct. They're usually set up on a
 16 charge that is sent to us.
 17 Q And you maintain those records for those
 18 invoices?
 19 A I do.
 20 Q Okay. Do you have any knowledge of how much
 21 R.G. G.R. pays for a suit from Sam's?
 22 A For each suit individually? I want to say it
 23 might be like 200. Depends on the tailoring.
 24 So sometimes they'll vary a little bit.
 25 Q But the charge records would have that

1 suits to its male employees?
 2 A That -- that is correct.
 3 Q To both funeral directors and non-funeral
 4 directors?
 5 A That's correct, yeah.
 6 Q Okay.
 7 A Yeah.
 8 Q You look a little hesitant.
 9 A Well, sometimes if they're -- like sometimes if
 10 it's a part-time person, very part-time what I
 11 just described, suit or the jacket and pants
 12 are acceptable.
 13 Q Okay. I believe Mr. Rost testified that
 14 full-time male employees get two suits provided
 15 by the company, plus two ties, and part-time
 16 employees get one suit, but there are -- are
 17 you testifying that there are certain part-time
 18 employees that may not get a suit at all?
 19 A Well, there are part-time male employees that
 20 are not funeral directors and are not runners
 21 that generally just dress in what I'm saying.
 22 Q Okay.
 23 A You know. That they're not funeral directors
 24 or runners for us.
 25 Q What is a runner?

1 information on it?
 2 A Correct.
 3 Q Okay. Do you know how often R.G. G.R. provides
 4 suits to its male employees?
 5 A They're pretty much as if -- wear and tear.
 6 Q As needed?
 7 A Uh-huh.
 8 Q So upon hire, full-time employees are given two
 9 suits, part-time employees one, and then
 10 they're replaced as needed?
 11 A That's fair to say, yeah.
 12 Q So we have two suits and two ties or one suit
 13 and one tie. Any other clothing that's
 14 provided by R.G. G.R.?
 15 A No.
 16 Q And it's my understanding that R.G. G.R. now
 17 has a dress allowance for its female employees;
 18 is that correct?
 19 A Clothing allowance.
 20 Q Clothing allowance. Could you describe what
 21 the clothing allowance is?
 22 A \$150 for a full-time person and \$75 for the
 23 part-time.
 24 Q And this is per year?
 25 A That's correct.

<p style="text-align: right;">Page 21</p> <p>1 Q Do you know when the clothing allowance was 2 implemented? 3 A 2014. 4 Q 2014. Do you know why the clothing allowance 5 was implemented? 6 A At one time, they tried to do the womens (sic) 7 -- to all have the same suit. And I've been 8 there so long, I can tell you it was a fiasco. 9 We have younger females. We have older 10 females. We have tall and skinny, short and 11 full-figured. No one could agree on anything. 12 So, it -- and that's just simply 13 the truth. And we were then given the option 14 to wear, you know, the skirt that you were -- 15 you know, whatever you were comfortable in, the 16 colors had to comply; and so they re-brought 17 that in to give us some help to get jackets or 18 blouses or skirts or -- 19 Q Do you remember when those -- that discussion 20 regarding the -- whether R.G. G.R. would 21 provide clothing to its female employees, when 22 that was? 23 A It was several times over the course of the 24 time that I was there. 25 Q Okay. So from 1986, '89?</p>	<p style="text-align: right;">Page 23</p> <p>1 Q So you don't have any understanding of the 2 process to determine how much the allowance 3 would have been? 4 A No. 5 Q Okay. So you can't explain Rost's calculation 6 for the 150 or \$75? 7 A No. 8 Q I'm going to hand you what's been marked as 9 Exhibit 8. Are you familiar with that 10 document? 11 A I am. 12 Q Why are you familiar with that document? 13 A Because I believe I typed this. 14 Q Okay. And so this is in response to an EEOC 15 discovery request and it appears to be a list 16 of employees by name, gender, job title, and 17 either the clothing allowance provided or the 18 clothing provided per employee; is that 19 correct? 20 A That's correct. 21 Q Okay. And so, for instance, the first person 22 on that list is Marla Jones; is that correct? 23 A Marie Jones. 24 Q Marie Jones. And there's \$300 there? 25 A Right.</p>
<p style="text-align: right;">Page 22</p> <p>1 A '88. 2 Q 1988 through the present it happened several 3 times? 4 A That we've tried to, you know, get everybody on 5 the same page. 6 Q Okay. 7 A Never works. 8 Q But the clothing allowance didn't begin until 9 2014? 10 A That's correct. 11 Q And were you involved in the decision-making to 12 begin providing a clothing allowance? 13 A No. 14 Q That was -- 15 A Tom's. 16 Q Mr. Rost's decision? 17 A Uh-huh. Uh-huh. 18 Q Did he consult with you at all regarding that 19 decision? 20 A He told me what the amounts were, because 21 obviously I would make the payments to the 22 girls. 23 Q Did you help him at all in determining how 24 much? 25 A No.</p>	<p style="text-align: right;">Page 24</p> <p>1 Q Is that the total clothing allowance that Marie 2 Jones has received? 3 A That is correct. 4 Q Do you know if Marie Jones is full-time or 5 part-time employee? 6 A Full-time. 7 Q So that appears to be two years of the clothing 8 allowance? 9 A That is correct. 10 Q Okay. So, is that chart -- does that chart 11 just go back two years or is that the entirety 12 of the clothing allowance provided by R.G. 13 G.R.? 14 A I believe there was a time frame of employees 15 that you asked for, and that's the employees 16 that are on the list. I don't remember what 17 year you had me go back to. 18 Q Well, if the clothing allowance started in 19 2014, then that would just be two years of 20 clothing allowance, right? 21 A For Marie Jones? 22 Q For everyone, if R.G. G.R. only started 23 providing a clothing allowance to its female 24 employees in 2014, there would only be two 25 years of clothing allowance for anyone, right?</p>

Page 25	Page 27
<p>1 A That's fair to say.</p> <p>2 Q Okay. I just wanted to clarify the chart.</p> <p>3 And I believe you're on the chart,</p> <p>4 correct?</p> <p>5 A I do believe.</p> <p>6 Q I think you're the last on that second page.</p> <p>7 A Yeah, I think I left myself off the first time.</p> <p>8 If -- yep.</p> <p>9 Q So you've received \$300?</p> <p>10 A Yes.</p> <p>11 Q Okay. And you're responsible for cutting these</p> <p>12 checks?</p> <p>13 A I am.</p> <p>14 Q And they are cut separately from paychecks?</p> <p>15 A That is correct.</p> <p>16 Q And when do you issue these checks?</p> <p>17 A I believe it was like mid-year of 2014. And I</p> <p>18 believe I did the 2015 at the beginning of the</p> <p>19 year.</p> <p>20 Q Okay. And you would have -- maintain copy of</p> <p>21 those?</p> <p>22 A I do.</p> <p>23 Q Okay. In your office?</p> <p>24 A Yes.</p> <p>25 Q Okay. Do you -- does R.G. G.R. receive a</p>	<p>1 Q Okay. Mr. Rost testified that you are</p> <p>2 responsible for maintaining the health</p> <p>3 insurance policy; you're the R.G. G.R.'s</p> <p>4 contact person for the employee health</p> <p>5 insurance plan?</p> <p>6 A That's correct.</p> <p>7 Q Do you know who the provider is currently?</p> <p>8 A UnitedHealthcare.</p> <p>9 Q And how long have you been with</p> <p>10 UnitedHealthcare?</p> <p>11 A Three or four years.</p> <p>12 Q Okay.</p> <p>13 A I -- I'm not exactly sure of the year, but it</p> <p>14 was most fairly recent.</p> <p>15 Q And prior to that were you with Blue Cross/Blue</p> <p>16 Shield?</p> <p>17 A Blue Cross/Blue Shield.</p> <p>18 Q Why did you change from Blue Cross to</p> <p>19 UnitedHealthcare?</p> <p>20 A Be -- the rates were better.</p> <p>21 Q Okay. Does R.G. G.R. request any sort of</p> <p>22 exclusions for coverage from UnitedHealthcare?</p> <p>23 A No.</p> <p>24 Q Like a contraception exclusion or --</p> <p>25 A No.</p>
Page 26	Page 28
<p>1 discount from Sam's regarding the suits because</p> <p>2 you buy so many from them?</p> <p>3 A I don't know that I'd call it a discount, to be</p> <p>4 honest. I believe that they set a price for</p> <p>5 us.</p> <p>6 Q Were you involved in negotiating the price?</p> <p>7 A No, I was not.</p> <p>8 Q That was Tom?</p> <p>9 A That was Tom.</p> <p>10 Q Do you remember him discussing at all with you</p> <p>11 his negotiation with Sam's for the price?</p> <p>12 A I do not remember that.</p> <p>13 Q Okay. Do you have -- do you maintain a copy of</p> <p>14 the pricing information for Sam's?</p> <p>15 A I do not.</p> <p>16 Q Okay.</p> <p>17 A I have the -- the billing.</p> <p>18 Q Okay. But you don't have the pricing, just the</p> <p>19 billing?</p> <p>20 A No.</p> <p>21 Q Okay. Do you receive quarterly billing from</p> <p>22 Sam's or is it more whenever a suit is provided</p> <p>23 then they just --</p> <p>24 A When a suit is provided, it comes up on the</p> <p>25 funeral home's charge account.</p>	<p>1 Q Did you -- did R.G. G.R. request any such</p> <p>2 exclusions from Blue Cross?</p> <p>3 A No.</p> <p>4 Q So R.G. G.R. doesn't have any exclusions from</p> <p>5 coverage from UnitedHealthcare based on moral</p> <p>6 reasons?</p> <p>7 A No.</p> <p>8 Q And Mr. Rost has never asked you to check into</p> <p>9 whether --</p> <p>10 A Never.</p> <p>11 Q Okay. Mr. Rost also wasn't sure how the</p> <p>12 managers or if the managers are advertising</p> <p>13 online, and indicated you might have some</p> <p>14 knowledge of that.</p> <p>15 Do you have any knowledge of</p> <p>16 managers advertising positions online?</p> <p>17 A I have seen want ads put into the paper, into</p> <p>18 the classified.</p> <p>19 Q Into an actual print newspaper?</p> <p>20 A Correct.</p> <p>21 Q Have you seen any job advertisements online at</p> <p>22 all?</p> <p>23 A What do you mean "online"?</p> <p>24 Q Like Monster.com, CareerBuilder, Craigslist.</p> <p>25 A Now that those are available I believe the</p>

<p style="text-align: right;">Page 37</p> <p>1 A No. They -- he can hire.</p> <p>2 Q Okay. Does he need to get approval not for the</p> <p>3 specific person to hire, but to hire a position</p> <p>4 to get a new position?</p> <p>5 A I don't know what you mean like a new position.</p> <p>6 Q So he is given a budget from which he</p> <p>7 determines how many personnel he wants; or --</p> <p>8 A There's no budget given to anybody --</p> <p>9 Q Okay.</p> <p>10 A -- for hiring.</p> <p>11 Q So let's say Garden City had three full-time</p> <p>12 admin people and David determines that they</p> <p>13 need another admin person, would he have to ask</p> <p>14 permission from Tom to get that new --</p> <p>15 A He would talk to Tom.</p> <p>16 Q Okay. And the admin people in Livonia?</p> <p>17 A Sue Harrison. Let's see, who else is there?</p> <p>18 Pamela Ploski. They just hired a new girl,</p> <p>19 Terry -- I don't remember her last name.</p> <p>20 Q Okay.</p> <p>21 A She's new. Denise Coleman. And I think that</p> <p>22 covers them all.</p> <p>23 Q And outside of the admin personnel that you</p> <p>24 supervise and the accounting personnel that you</p> <p>25 supervise, who else is at the Detroit location?</p>	<p style="text-align: right;">Page 39</p> <p>1 Q Okay.</p> <p>2 A Or shortly thereafter.</p> <p>3 Q Okay. I'm going to hand you what has been</p> <p>4 marked as Exhibit 9. Have you seen that</p> <p>5 document before?</p> <p>6 A I have.</p> <p>7 Q Did you prepare that document?</p> <p>8 A Our CPA prepared the document.</p> <p>9 Q And who's your CPA?</p> <p>10 A Bud Keller.</p> <p>11 Q Did you ask him to prepare it?</p> <p>12 A Yes.</p> <p>13 Q The document indicates for 2012, 2013, and</p> <p>14 2014, there is a net income loss varying from</p> <p>15 \$6,000 to \$80,000. Then in 2014 it was</p> <p>16 \$68,000. Do you see that?</p> <p>17 A Yes.</p> <p>18 Q Do you have any understanding why R.G. G.R. has</p> <p>19 a net income loss?</p> <p>20 A Yes.</p> <p>21 Q Why?</p> <p>22 A The cost of -- the operation cost, generally,</p> <p>23 lower sales, people have gone to cremation more</p> <p>24 so than, you know, a full-blown funeral. So</p> <p>25 there's been a lot of factors.</p>
<p style="text-align: right;">Page 38</p> <p>1 A Matthew Rost, we have a maintenance person, Bob</p> <p>2 LaVoie (ph), and that's pretty much it.</p> <p>3 Q Okay. For these new admin hires in Livonia and</p> <p>4 Garden City, Terry and Paige, I believe you</p> <p>5 testified to --</p> <p>6 A No, not Paige.</p> <p>7 Q Who is --</p> <p>8 A There's no Paige.</p> <p>9 MR. PRICE: Denise.</p> <p>10 BY MR. SHULTZ:</p> <p>11 Q Denise.</p> <p>12 A No, Paula Rike (ph) is her name.</p> <p>13 Q Couldn't read my handwriting.</p> <p>14 A That's all right.</p> <p>15 Q So for the new hires at Livonia and Garden</p> <p>16 City, are they issued any clothing allowance</p> <p>17 upon hire or would they just wait until the</p> <p>18 next?</p> <p>19 A They would wait until the next.</p> <p>20 Q Until the next check is cut for the clothing</p> <p>21 allowance.</p> <p>22 Okay. But the new like Troy</p> <p>23 Shaffer who is a recent Garden City hire, I</p> <p>24 believe, he was issued two suits upon hire?</p> <p>25 A That's correct.</p>	<p style="text-align: right;">Page 40</p> <p>1 Q Okay. And R.G. G.R. itself does some</p> <p>2 cremations; is that correct?</p> <p>3 A We don't do the cremations, per se.</p> <p>4 Q You have a --</p> <p>5 A We provide cremations.</p> <p>6 Q Okay. Could you describe the distinction.</p> <p>7 MR. KIRKPATRICK: I just want to</p> <p>8 object to the line of questioning on relevance,</p> <p>9 but go ahead. Sorry. Go ahead.</p> <p>10 THE WITNESS: Okay. I'm sorry.</p> <p>11 BY MR. SHULTZ:</p> <p>12 Q I'm sorry. I think there's a Cremation Society</p> <p>13 of Michigan.</p> <p>14 A That's correct.</p> <p>15 Q Are they a part of R.G. G.R.?</p> <p>16 A They are owned by R.G. G.R.</p> <p>17 Q Okay. And do they provide cremation services?</p> <p>18 A They provide cremation services.</p> <p>19 Q Are the Cremation Services of Michigan included</p> <p>20 in the R.G. G.R. balance sheet here?</p> <p>21 A You can see it. It says Cremation Society</p> <p>22 Southeast.</p> <p>23 Q So Southeast Michigan is the --</p> <p>24 As the person responsible for</p> <p>25 paying R.G. G.R.'s bills, does R.G. G.R. have</p>

<p style="text-align: right;">Page 53</p> <p>1 vacations, who's covering that -- just a basic 2 communication. 3 Q Okay. And do these -- you said that the Karl 4 Jennings' presentation happened at a manager 5 meeting off site? 6 A Uh-huh. 7 Q Are these meetings typically off site or are 8 they -- 9 A Off site. 10 Q Do you remember if there was ever a discussion 11 of Stephens' termination at any of these 12 manager meetings? 13 A No, never. 14 Q And I'm pretty sure I asked this, but I want to 15 make sure that I ask this. You had no role in 16 R.G. G.R.'s decision to terminate Stephens, 17 correct? 18 A None. 19 Q Mr. Rost never told you he was firing Stephens 20 based on any moral or religious reasons? 21 A Never. 22 Q Did he tell you he was firing Stephens because 23 Stephens wasn't going to abide by the male 24 dress code? 25 A That is correct.</p>	<p style="text-align: right;">Page 55</p> <p>1 A No, he was not terminated for that. 2 Q Okay. Any other dress code violations that you 3 can remember? 4 A No. If somebody is not wearing the appropriate 5 clothing, it's brought up to them and they are 6 to wear what we are supposed to wear. 7 Q Okay. What is your perception or understanding 8 of the religious environment at R.G. G.R.? 9 A I'm sorry, one more time. 10 Q What is your perception or understanding of the 11 religious environment at R.G. G.R.? I can be 12 more specific. 13 A Please. 14 Q Are there employee Bible studies? 15 A No. 16 Q Prayer groups? 17 A No. 18 Q Any sort of religious activities that R.G. G.R. 19 sponsors or conducts for its employees? 20 A No. 21 Q Mr. Rost or another R.G. G.R. employee -- 22 scratch that. 23 Has Mr. Rost ever discussed his 24 religious beliefs with you? 25 A No.</p>
<p style="text-align: right;">Page 54</p> <p>1 Q Has any other employee been disciplined or 2 terminated for dress code violations? 3 A Yes. 4 Q Do you remember when? 5 A It was an employee who's no longer with us, he 6 wore a jacket into a nursing home for removal, 7 and the nursing home called because they didn't 8 care for the content of the jacket and he was 9 talked to and told not to wear the jacket 10 anymore, and he didn't. 11 Q It wasn't a suit jacket -- 12 A It was a regular jacket. 13 Q Regular jacket that had some writing on it? 14 A Yes. 15 Q Do you remember what the writing was? 16 A It said "body snatcher." 17 Q So Mr. Rost counseled him verbally? 18 A The manager, David Kowalewski, talked to him. 19 The other managers talked to him and said no 20 more jacket. 21 Q Okay. And then he stopped wearing it? 22 A And never wore it again. 23 Q So he wasn't -- the reason he no longer works 24 for R.G. G.R. isn't because he was terminated 25 for wearing the jacket?</p>	<p style="text-align: right;">Page 56</p> <p>1 MR. SHULTZ: I think if you give me 2 a couple minutes. 3 MR. PRICE: Take a break? 4 (Off the record at 11:16 a.m.) 5 (Back on the record at 11:26 a.m.) 6 MR. SHULTZ: Just a few followup 7 questions to tidy up the record, then Joel will 8 have some limited questions, I assume, and then 9 we're almost done. So moving fast, thanks. 10 THE WITNESS: Okay. 11 BY MR. SHULTZ: 12 Q I'd like to go back to the chart. 13 A This chart? 14 Q Yeah. I believe you said your son works at the 15 Detroit office, right? 16 A Correct. 17 Q David? 18 A Ryan. 19 Q Ryan. I don't see him -- 20 A He just started with us -- 21 Q Oh, okay. 22 A -- not too long ago. 23 Q So he received the two suits when he started? 24 A No. He works in the accounting department with 25 me.</p>

1 Q Okay. So he doesn't get a suit?
 2 A No.
 3 Q Okay. Will he get a clothing allowance, do you
 4 know?
 5 A No.
 6 Q How about the other accounting employees, do
 7 they receive any allowance or --
 8 A The -- Pam is now a full-time employee. She
 9 now gets it. She's the only other.
 10 Q Okay. Is Ryan a part-time employee?
 11 A He's just a very part-time employee for us.
 12 Q Okay. That's a good segue into -- I wanted to
 13 follow up. At the beginning of the deposition
 14 we were talking about the R.G. G.R. providing
 15 the suits to full-time male employees,
 16 part-time male employees, and then you said but
 17 there are some employees who are part-time who
 18 don't get suits.
 19 Could you provide some definition
 20 to what subset of part-time employees don't
 21 get --
 22 A The maintenance men don't get suits. That's
 23 pretty much it.
 24 Q And then Ryan?
 25 A And then Ryan. But like I said, he's a very

1 A Generally, no. No.
 2 Q So you said --
 3 A The pictures, I don't know if you're
 4 considering the pictures being posting, but
 5 that's done through FuneralNet for us --
 6 Q Okay.
 7 A -- on the holidays. But do I put content on
 8 there? Verbal content, no.
 9 Q And no one at R.G. G.R. does?
 10 A No.
 11 Q No one at R.G. G.R. has ever asked you to?
 12 A No.
 13 Q Okay. And do you know -- do you have any
 14 understanding for how often you pay an invoice
 15 for the Sam's store?
 16 A As I mentioned before, when someone gets a
 17 suit, it would be put onto our -- they have our
 18 credit card. So it will come in the credit
 19 card statement.
 20 Q So it's really just -- then you just pay it
 21 with the normal credit card charges at the end
 22 of the month?
 23 A That is correct.
 24 Q And I had asked you earlier about any training
 25 you may have had regarding Title VII or

1 part-time -- like I have him moving boxes
 2 around at times, so --
 3 Q Okay. He doesn't have any client contact?
 4 A None.
 5 Q Okay. And you also said I believe that skirts
 6 are preferred. Are skirts preferred or are
 7 they required, do you know?
 8 A Basically required. I don't think there would
 9 be any objection if you were in a pant suit, as
 10 long as there was a professional suit coat
 11 worn.
 12 Q Okay.
 13 A Not just slacks and a blouse.
 14 Q Regarding the Facebook line of questions, does
 15 R.G. G.R. post any content to its Facebook
 16 page?
 17 A No.
 18 Q So it's all just the -- whatever that website
 19 company was --
 20 A FuneralNet.
 21 Q -- changing pictures and whatnot?
 22 A Correct.
 23 Q Then clients posting?
 24 A Yes.
 25 Q So R.G. G.R. doesn't post anything?

1 antidiscrimination laws. You said you haven't
 2 had any training. Are you aware that there are
 3 antidiscrimination laws?
 4 A Yes.
 5 Q And you know that generally through the culture
 6 or have you had any specific communications
 7 with anyone regarding the antidiscrimination
 8 laws?
 9 A Through the culture you're saying?
 10 Q Just general knowledge --
 11 A General knowledge.
 12 Q That Congress passed a law that says you can't
 13 fire somebody because they're black?
 14 A That is correct.
 15 Q Okay. And we had touched a little bit on the
 16 religious environment at R.G. G.R. Do you know
 17 if Mr. Rost is religious?
 18 A I believe he is religious, yes.
 19 Q Okay. Do you know if he attends church?
 20 A I believe he attends church.
 21 Q Okay. And why -- has he ever communicated this
 22 with you --
 23 A I've attended his daughter's wedding at his
 24 church.
 25 Q Where was that wedding at?

Page 1

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE EASTERN DISTRICT OF MICHIGAN
 3 SOUTHERN DIVISION
 4 -----
 5 EQUAL EMPLOYMENT OPPORTUNITY
 6 COMMISSION,
 7 Plaintiff,
 8 -vs- No. 2:14-cv-13740
 9 R.G. & G.R. HARRIS FUNERAL
 10 HOMES INC.,
 11 Defendants.
 12 -----
 13 DEPOSITION OF
 14 WITNESS: DAVID CASH
 15 LOCATION: Joel Kirkpatrick, PC
 16 843 Penniman Avenue, Suite 201
 17 Plymouth, Michigan 48170
 18 DATE: Friday, January 22, 2016
 19 9:29 a.m.
 20 APPEARANCES:
 21 FOR PLAINTIFF: EQUAL EMPLOYMENT OPPORTUNITY
 22 COMMISSION
 23 477 Michigan Avenue, Room 865
 24 Detroit, Michigan 48226
 25 313.226.7808
 dale.price@eeoc.gov
 miles.shultz@eeoc.gov
 BY: DALE R. PRICE, JR. (P55578)
 MILES E. SHULTZ (P73555)
 KATIE LINEHAN (P77974)
 FOR DEFENDANT: JOEL J. KIRKPATRICK, PC
 843 Penniman Avenue, Suite 201
 Plymouth, Michigan 48170
 734.404.5170
 joel@joelkirkpatrick.com
 BY: JOEL J. KIRKPATRICK (P62851)
 25 REPORTED BY: Laurel A. Jacoby, CSR-5059, RPR
 Job no. 285887-A

Page 2

1	I N D E X	
2	WITNESS: DAVID CASH	PAGE NO.
3	Examination by Mr. Price	3
4	Examination by Mr. Kirkpatrick	54
5	Re-examination by Mr. Price	57
6		
7		
8		
9		
10		
11		
12	E X H I B I T I N D E X	
13	EXHIBIT NO. DESCRIPTION	PAGE NO.
14		
15		
16	(No exhibits were marked.)	
17	- - -	
18		
19		
20		
21		
22		
23		
24		
25		

Page 3

1 Plymouth, Michigan
 2 January 22, 2016
 3 9:29 a.m.
 4 - - -
 5 -DAVID CASH-
 6 called as a witness, being first duly sworn, was
 7 examined and testified as follows:
 8 EXAMINATION
 9 BY MR. PRICE:
 10 Q. Gooding morning, Mr. Cash.
 11 A. Good morning.
 12 Q. My name is Dale Price. We just introduced
 13 ourselves a minute ago. I'm an attorney with the
 14 Equal Opportunity Employment Commission in
 15 Detroit, and we're here today for your
 16 deposition.
 17 Have you ever given testimony before?
 18 A. Never.
 19 Q. Okay. What's going to happen is I'm going to ask
 20 you a series of questions about what you do or do
 21 not know about the circumstances underlying this
 22 lawsuit.
 23 If you understand my answers -- excuse
 24 me -- if you do not understand my question,
 25 please ask me and I'll try to rephrase. I'm the

Page 4

1 first person to recognize I'm not always the most
 2 clear questioner. Likewise, if you could make
 3 your responses verbal like a yes or no.
 4 A. Absolutely.
 5 Q. I'm not trying to be rude, but if I ask you is
 6 that a yes I'm just trying to clarify. What's
 7 going to happen is the court reporter is going to
 8 turn this -- what we're saying into a paper
 9 record, and although I understand nods and
 10 shakes, that might not be reflected and we want
 11 to make sure it's as accurate at possible. Okay?
 12 A. Okay. Uh-huh.
 13 Q. Basically we're here -- this is essentially like
 14 a courtroom format with the exception that we
 15 don't have a judge to rule on any objections so
 16 it can be used as testimony in a courtroom as
 17 well.
 18 A. Okay.
 19 Q. That's another reason why we want to be as
 20 accurate as possible. One thing I'm going to try
 21 not to do is talk over your answer. It sometimes
 22 happens. Likewise, you might think you know
 23 where my question is going but wait and see.
 24 Just to be sure, let me finish.
 25 A. Sure.

<p style="text-align: right;">Page 17</p> <p>1 Q. Who are the part-time personnel at Livonia? 2 A. That would be Denise Coleman. That would be 3 Dolores Smith. That would be Summer Plosky, 4 P-L-O-S-K-Y. 5 Q. Okay. That's all you can think of at this point? 6 A. I'm sorry, I'm drawing a blank. My son, Daniel 7 Cash, has worked for us part time. 8 Q. Now -- sorry, I didn't mean to talk over you. 9 A. No, go ahead. 10 Q. All right. Now, what does Ms. Coleman do? 11 A. She's a part-time -- she works visitations and 12 she does fill in for us occasionally for Terri on 13 days when she's not there or she needs extra 14 help. 15 Q. Okay. What about Ms. Smith? 16 A. She works as a part-time administrative assistant 17 working mostly on weekends. 18 Q. And Summer Plosky? 19 A. Summer Plosky works mostly evening visitations 20 and works -- also helps out during funerals. 21 Q. All right. And you said your son had worked 22 there part time. Is he currently working part 23 time or no? 24 A. Currently working part time. 25 Q. What does he do?</p>	<p style="text-align: right;">Page 19</p> <p>1 A. Housekeeping. 2 Q. Housekeeping. All right. Do you set the -- now, 3 are all these people hourly? 4 A. Yes. 5 Q. All right. Do you set the pay for them or no? 6 A. Yes. 7 Q. You do? Okay. 8 Now, how is pay calculated? Is it a 9 matter of how long you've been there seniority 10 wise? 11 A. Yes. 12 Q. Where does it start, minimum wage? 13 A. No. 14 Q. Start above that? 15 A. Closer to ten dollars. 16 Q. Okay. Now, is that for all these persons the 17 starting wage would be closer to ten dollars an 18 hour? 19 A. Yes. 20 Q. All right. What is your current salary? 21 A. 75,000. 22 Q. 75, okay. When was the last time you got a 23 raise, if you can recall? 24 A. Four years ago. 25 Q. Okay. Now, you are also kind of responsible for</p>
<p style="text-align: right;">Page 18</p> <p>1 A. He did our outside maintenance over the summer 2 and then has helped us make removals, body 3 removals, get death certificates signed, things 4 like that. 5 Q. Okay. 6 A. There are -- and I'm sorry, there are a couple of 7 other part-time employees that have come to my 8 mind. I'm sorry. 9 Q. Sure. No, please, no apology. Don't worry. 10 A. So there is also Bill Condron. William, I 11 suppose, and he is a driver for us, drives 12 funeral coach. 13 Q. And who else? 14 A. Chris Scanlon. 15 Q. And what is his job? 16 A. He's a driver also. 17 Q. So that's -- I'm sorry, part-time people as well? 18 A. Yes. 19 Q. All right. 20 A. And Sue Harrison. 21 Q. What is her job? 22 A. She is the former full-time administrative 23 assistant for us part time now just helping out. 24 And Denise Leininger. 25 Q. And what is her job?</p>	<p style="text-align: right;">Page 20</p> <p>1 enforcing a dress code or a grooming code, 2 correct? 3 A. Sure. Yes. 4 Q. Now, what is the dress code -- excuse me, the 5 grooming. No, sorry. Apologies. 6 What is the dress code for male 7 employees for R.G. & G.R.? 8 A. The men wear a dark-colored suit, white shirt and 9 tie that is provided. The suit for most of our 10 employees is provided as well. 11 Q. So a suit, pants, the coat and the pants and the 12 tie? 13 A. Yes. 14 Q. Shirt as well? 15 A. No. 16 Q. Not shirt. Okay. And who are the suits provided 17 to? 18 A. They're provided to all of our full-time and 19 part-time men after they've been there for six 20 months or in that neighborhood. 21 Q. Now, would that include the drivers as well that 22 you mentioned before? 23 A. Yes. 24 Q. All right. How many suits are provided? 25 A. For most part-time employees one suit, and that</p>

Page 21

1 would be every year to two years. For full-time
 2 employees it would be normally two suits per
 3 year.
 4 Q. Is that your -- you get two suits per year
 5 yourself?
 6 A. Yes. Uh-huh.
 7 Q. It wears out over time, that sort of thing?
 8 A. Absolutely.
 9 Q. Now, you said most part-timers got just one suit.
 10 Are there some part-timers who get more?
 11 A. No, I'm sorry. Yeah.
 12 Q. Okay. Fair enough. I just wanted to clarify.
 13 And how are the employees, these male
 14 employees, provided the suits?
 15 A. They are instructed to go to a men's clothing
 16 store that we have an agreement with called Sam
 17 Michaels, and they're fitted and they go back.
 18 And once a suit is in and they get tailored and
 19 that's it.
 20 Q. Okay. Now, if the suit is damaged in some way,
 21 at least things happen on the job, you can go get
 22 another suit, these people can go get another
 23 replacement suit; is that correct?
 24 A. Yes, or have it repaired.
 25 Q. Right, depending on the nature of the -- but they

Page 22

1 would be repaired free of cost to the employee,
 2 correct?
 3 A. Yes.
 4 Q. Okay. Have you ever had to have your suits
 5 repaired?
 6 A. Yes.
 7 Q. Do you recall ever paying anything for it or no?
 8 A. No.
 9 Q. Okay. What is your understanding of the dress
 10 code for female employees?
 11 A. Female employees are asked to wear conservative
 12 dark-colored clothing, a dress, if they are in
 13 positions where they will be meeting the public.
 14 Q. Now, you said conservative dark-colored dress.
 15 We talking skirts, that sort of thing?
 16 A. Yes.
 17 Q. Okay. Do you know of any women that you
 18 supervise who wear pants?
 19 A. Yes.
 20 Q. You do you have someone?
 21 A. Yes.
 22 Q. Who would that be?
 23 A. That would be Denise, my housekeeper.
 24 Q. And she's not seeing the public?
 25 A. Correct.

Page 23

1 Q. All right. So if the women are meeting with the
 2 public, interacting with the public, they're
 3 wearing these dark colors and a skirt, correct?
 4 A. Yes.
 5 Q. Now, is it the case now that women get a stipend
 6 to help with defraying the cost of their
 7 clothing?
 8 A. Yes.
 9 Q. Okay. When did that start?
 10 A. About a year ago. Somewhere within the last
 11 year.
 12 Q. What was your understanding -- were you asked
 13 about -- were you consulted in the process that
 14 made the decision that women were going to start
 15 getting stipends?
 16 A. No.
 17 Q. From whom did you learn of it?
 18 A. Shannon Kish.
 19 Q. What did she say?
 20 A. She said that we are going to start providing a
 21 stipend for the ladies to help with their
 22 clothing.
 23 Q. And anything else? Do you recall any other
 24 further discussion?
 25 A. No.

Page 24

1 Q. All right. Now, going back to the people we were
 2 talking about before, do you know how much the
 3 drivers are making?
 4 A. I believe --
 5 Q. Go ahead.
 6 A. I believe ten dollars an hour.
 7 Q. Okay. So they're getting paid the same amount as
 8 the administrative assistants or the people that
 9 are helping out with the visitations as well?
 10 A. No, the administrative assistant makes more.
 11 Q. Makes more. Okay. I'm not talking about full
 12 time. Part time? Does the part-time
 13 administrative assistant make more than the
 14 driver?
 15 A. No. I only have one administrative assistant.
 16 She's full time.
 17 Q. Okay. But you said there's someone who fills in.
 18 Sue Harrison?
 19 A. Sue Harrison, yes.
 20 Q. Okay. She --
 21 A. I'm sorry. Yes, she would make more.
 22 Q. Okay. Do you know how much she makes, just
 23 offhand or no?
 24 A. I believe \$12.50.
 25 Q. All right. Do you know how the stipend is

<p style="text-align: right;">Page 41</p> <p>1 up, no.</p> <p>2 Q. Now, do you recall if after this incident with</p> <p>3 Mr. Hamer that he got a new suit or got it</p> <p>4 repaired? Do you recall one or the other?</p> <p>5 A. He got it repaired.</p> <p>6 Q. And for your counseling, was it again a matter of</p> <p>7 getting a suit repaired?</p> <p>8 A. Yes.</p> <p>9 Q. How often do you think you've had to do this?</p> <p>10 A. Probably twice.</p> <p>11 Q. During his entire --</p> <p>12 A. Yeah.</p> <p>13 Q. -- year and a half or so of employment?</p> <p>14 A. Right.</p> <p>15 Q. Now, isn't it true that R.G. & G.R. Harris does</p> <p>16 funerals for people of all kinds of religions or</p> <p>17 even no particular religion?</p> <p>18 A. Yes.</p> <p>19 Q. All right. What kind of nonChristian funerals do</p> <p>20 you recall directing or participating in? I'm</p> <p>21 talking about religious funerals, not people of</p> <p>22 no observance.</p> <p>23 A. We've had an occasion -- are you talking about</p> <p>24 like a Jewish service?</p> <p>25 Q. Jewish or Hindu or any other religion?</p>	<p style="text-align: right;">Page 43</p> <p>1 Q. And that's kept a Livonia?</p> <p>2 A. Yes.</p> <p>3 Q. Anything else like that kept at Livonia for</p> <p>4 different types of funerals?</p> <p>5 A. No, not that I can think of.</p> <p>6 Q. Now, when the synagogue has -- there's a funeral</p> <p>7 there for someone who is Jewish, the men are</p> <p>8 given yarmulkes. Is there anything else the</p> <p>9 synagogue provides for this that you can think</p> <p>10 of?</p> <p>11 A. If the deceased is to be dressed in a certain</p> <p>12 gown, they would provide that, but I can't think</p> <p>13 of anything else. And I must tell you that we</p> <p>14 have done a couple of Jewish funerals over the</p> <p>15 entire time I've been there.</p> <p>16 Q. Fair enough.</p> <p>17 A. They generally go to their own directors.</p> <p>18 Q. Yeah. There tends to be the network. There's</p> <p>19 been other testimony about it, that yes, it tends</p> <p>20 to be kind of that way. So all right.</p> <p>21 And you also indicated you do these</p> <p>22 funerals for people who are of no particular</p> <p>23 religion as well?</p> <p>24 A. Yes.</p> <p>25 Q. And that's when you would come in to -- usually</p>
<p style="text-align: right;">Page 42</p> <p>1 A. Hindu, Muslim, all -- yeah.</p> <p>2 Q. You've done all those?</p> <p>3 A. Yes.</p> <p>4 Q. Jewish, Hindu and Muslim, and these are at the</p> <p>5 Livonia facility or do you go out to --</p> <p>6 A. Both. Mostly at the Livonia facility, yes.</p> <p>7 Q. Now, do you do anything to prepare for a Jewish</p> <p>8 funeral? Is there something -- do the men have</p> <p>9 to wear yarmulkes or anything like that?</p> <p>10 A. Yes.</p> <p>11 Q. Yes?</p> <p>12 A. Yes.</p> <p>13 Q. Are those kept on site or is that something the</p> <p>14 family provides?</p> <p>15 A. The family or church would provide those, the</p> <p>16 synagogue.</p> <p>17 Q. Would give you those things?</p> <p>18 A. Yes. We don't have any on site.</p> <p>19 Q. Now, is there anything kept on -- are there any</p> <p>20 kind of religious objects that are brought out</p> <p>21 that R.G. & G.R. keeps in storage for certain</p> <p>22 kinds of funerals? Like a crucifix for a</p> <p>23 Catholic funeral?</p> <p>24 A. Obviously, yes. Crucifix, candles, kneeler for</p> <p>25 Catholic services.</p>	<p style="text-align: right;">Page 44</p> <p>1 that's when your celebrant role would kick in?</p> <p>2 A. Correct.</p> <p>3 Q. All right. Do you know of any other celebrants</p> <p>4 -- licensed celebrants at R.G. & G.R.?</p> <p>5 A. Yes.</p> <p>6 Q. Who are they?</p> <p>7 A. Summer Plosky.</p> <p>8 Q. At your Livonia location?</p> <p>9 A. Yes.</p> <p>10 Q. Anybody else?</p> <p>11 A. Tia Macklin was. She's deceased now.</p> <p>12 Q. Anybody else?</p> <p>13 A. No.</p> <p>14 Q. Have you ever had any discussions about religion</p> <p>15 with Mr. Rost?</p> <p>16 A. Discussions about religion. No.</p> <p>17 Q. Okay. Has he ever kind of expressed to you in</p> <p>18 some way that he regards R.G. & G.R. as a</p> <p>19 Christian business?</p> <p>20 A. Sure. If you read our mission statement, it's</p> <p>21 pretty obvious that we're a Christian funeral</p> <p>22 home.</p> <p>23 Q. Now, when you talk about the mission statement,</p> <p>24 is that something on the website?</p> <p>25 A. I believe it's in our employee handbook. At</p>

<p style="text-align: right;">Page 45</p> <p>1 least, I thought it was in some copies of it.</p> <p>2 Q. I'm going to show you what was marked as</p> <p>3 Exhibit 6 during Mr. Rost's deposition. If you</p> <p>4 could take as much time as you need to review</p> <p>5 that, please.</p> <p>6 Do you recognize this document?</p> <p>7 A. I do.</p> <p>8 Q. Okay. Is this the employee manual still covering</p> <p>9 employees at --</p> <p>10 A. It is.</p> <p>11 Q. All right. I have reviewed it. I do not see any</p> <p>12 kind of mission statement in that.</p> <p>13 Is that safe to say there's not a</p> <p>14 mission statement in there?</p> <p>15 A. It is.</p> <p>16 Q. All right. I'm going to show you what was marked</p> <p>17 as Exhibit 5 during the same deposition. Do you</p> <p>18 recognize this document?</p> <p>19 A. I do.</p> <p>20 Q. Okay. Is this the mission statement you were</p> <p>21 talking about?</p> <p>22 A. It is. I apologize.</p> <p>23 Q. No problem at all. Now, do you know who drafted</p> <p>24 this mission statement?</p> <p>25 A. I do not know who drafted it.</p>	<p style="text-align: right;">Page 47</p> <p>1 A. Absolutely not.</p> <p>2 Q. Okay. Now, what is your religious observance?</p> <p>3 A. I'm a Christian.</p> <p>4 Q. What church do you go to?</p> <p>5 A. I attend Ward Presbyterian Church.</p> <p>6 Q. Where is that located?</p> <p>7 A. In Northville.</p> <p>8 Q. Now, with respect to -- is there any way that</p> <p>9 religion is exercised at R.G. & G.R.? Are there</p> <p>10 religious activities there?</p> <p>11 A. No.</p> <p>12 Q. Okay. No bible studies?</p> <p>13 A. No.</p> <p>14 Q. Nothing like that. No meetings for prayer or</p> <p>15 anything like that?</p> <p>16 A. No.</p> <p>17 Q. Okay. Do you -- is there anything that Mr. Rost</p> <p>18 hands -- provides for the public to take, like</p> <p>19 devotional books or anything like that that you</p> <p>20 can recall?</p> <p>21 A. He provides The Daily Bread booklet that's</p> <p>22 sitting on our tables at each one of our</p> <p>23 locations for people to take if they wish. Oh,</p> <p>24 I'm sorry, and our Jesus card.</p> <p>25 Q. That's okay. Yep, and the Jesus card.</p>
<p style="text-align: right;">Page 46</p> <p>1 Q. Okay. Now, there are -- so you don't know who --</p> <p>2 you don't even know if it was drafted by somebody</p> <p>3 at R.G. & G.R., correct?</p> <p>4 A. I do not have -- no, that's correct.</p> <p>5 Q. All right. Okay. And there are two statements.</p> <p>6 There is about at the first paragraph "Our</p> <p>7 mission is to honor God in all that we do as a</p> <p>8 company and as individuals." And also there's a</p> <p>9 biblical verse at the bottom from the gospel</p> <p>10 according to Matthew.</p> <p>11 Okay. Is that the religious part of</p> <p>12 the -- is that the basis by which you say it's</p> <p>13 kind of a Christian business?</p> <p>14 A. Yes.</p> <p>15 Q. Anything else?</p> <p>16 A. Well, I happen to know that Tom Rost is a</p> <p>17 Christian. I know that he's been affiliated with</p> <p>18 the church over the years.</p> <p>19 Q. Do you have people, to your knowledge, who work</p> <p>20 at R.G. & G.R. who are not of any particular</p> <p>21 religious affiliation?</p> <p>22 A. Not that I'm aware of.</p> <p>23 Q. Okay. It's certainly something -- you don't ask</p> <p>24 about someone's religious affiliation or</p> <p>25 something like that before you hire them?</p>	<p style="text-align: right;">Page 48</p> <p>1 A. That's what you see.</p> <p>2 Q. We've already talked with Mr. Kirkpatrick about</p> <p>3 this.</p> <p>4 MR. KIRKPATRICK: No objection.</p> <p>5 BY MR. PRICE:</p> <p>6 Q. Yeah, to show you this. We're not going to have</p> <p>7 it as an exhibit. This is our Daily Bread here</p> <p>8 from January, February -- December, January,</p> <p>9 February. That's the current one that's out</p> <p>10 there?</p> <p>11 A. I believe so, yes.</p> <p>12 Q. And Mr. Rost supplies those?</p> <p>13 A. Yes.</p> <p>14 Q. All right. And the next item is the Jesus card.</p> <p>15 It's been called What Do You See and there's the</p> <p>16 shadow?</p> <p>17 A. Yep.</p> <p>18 Q. Is that again provided by Mr. Rost?</p> <p>19 A. I don't know. It's been there forever. It's</p> <p>20 been there since I've been there. I don't know.</p> <p>21 Q. Are these available like at the credenza up front</p> <p>22 where people come in?</p> <p>23 A. Yes.</p> <p>24 Q. It's something they can take or not take as the</p> <p>25 mood strikes them?</p>

<p style="text-align: right;">Page 49</p> <p>1 A. Sure.</p> <p>2 Q. All right. Can you think of any other ways that</p> <p>3 Christianity is expressed at R.G. & G.R. apart</p> <p>4 from the devotional or the Jesus card?</p> <p>5 A. If we have a company meal together or a managers</p> <p>6 meal, Tom will say a -- ask a blessing on the</p> <p>7 food.</p> <p>8 Q. So he'll offer an invocation, kind of a prayer?</p> <p>9 A. Offer a blessing.</p> <p>10 Q. Offer a blessing.</p> <p>11 Manager meetings. Where are these</p> <p>12 manager meetings you're talking about?</p> <p>13 A. Occasionally we will meet as managers to discuss</p> <p>14 business.</p> <p>15 Q. Where are these meetings held?</p> <p>16 A. At the Detroit Athletic Club.</p> <p>17 Q. And how often would you say they occur?</p> <p>18 A. Possibly once a month. Sometimes more, times</p> <p>19 less.</p> <p>20 Q. And there's a meal there?</p> <p>21 A. Yes.</p> <p>22 Q. You take a meal and so forth. All right.</p> <p>23 And this is just for the managers and</p> <p>24 Mr. Rost?</p> <p>25 A. Yes, with the exception of Shannon Kish.</p>	<p style="text-align: right;">Page 51</p> <p>1 Q. And he just basically asked -- is that a</p> <p>2 Christian type of prayer, specifically Christian</p> <p>3 involving Jesus or is it just -- what can you</p> <p>4 recall about the prayer at the company?</p> <p>5 A. You talking about -- oh, as prayer?</p> <p>6 Q. Yeah.</p> <p>7 A. Generally pretty generic blessing.</p> <p>8 Q. Okay, asking God. Thanking God kind of thing?</p> <p>9 A. Sure.</p> <p>10 Q. Not necessarily specifically Jesus?</p> <p>11 A. Right. Right. Yeah, thanking God for blessing</p> <p>12 our company.</p> <p>13 Q. For a good year for the company or something like</p> <p>14 that?</p> <p>15 A. Yes.</p> <p>16 Q. Sorry, I didn't mean to talk over you. I just</p> <p>17 did that again.</p> <p>18 MR. PRICE: Okay. I'd like to take a</p> <p>19 break for a minute.</p> <p>20 (A brief recess was taken.)</p> <p>21 BY MR. PRICE:</p> <p>22 Q. All right. Just a little bit left here. Now,</p> <p>23 when we talked about men getting their suits, if</p> <p>24 they need to get them repaired, when you told</p> <p>25 Mr. Hamer to get his suit repaired, was that</p>
<p style="text-align: right;">Page 50</p> <p>1 Q. Okay. The business manager as well?</p> <p>2 A. Right.</p> <p>3 Q. All right.</p> <p>4 A. Right. And sometimes our prearrangement --</p> <p>5 whoever's working prearrangements with us will be</p> <p>6 there as well but not --</p> <p>7 Q. It's, like, a pre-need or something like that?</p> <p>8 Is that what you call it?</p> <p>9 A. Pre-need.</p> <p>10 Q. Person? Okay. But funeral director and</p> <p>11 embalmers are not brought into it. They don't</p> <p>12 come to these meetings?</p> <p>13 A. No.</p> <p>14 Q. All right. Now, you also said a company meeting.</p> <p>15 Is there like a company party or something like</p> <p>16 that?</p> <p>17 A. There is a company dinner once a year.</p> <p>18 Q. Dinner. And when does that happen?</p> <p>19 A. In the spring usually.</p> <p>20 Q. And if you recall -- and Mr. Rost will offer the</p> <p>21 blessing at that point too?</p> <p>22 A. Yes.</p> <p>23 Q. All right. And do you recall if Stephens ever</p> <p>24 attended any of these company meetings?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 52</p> <p>1 something he went and did right away?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. It's important to be presentable given the</p> <p>4 nature of the work?</p> <p>5 A. Yes.</p> <p>6 Q. So he could go do that while he was on company</p> <p>7 time then, correct?</p> <p>8 A. Yes.</p> <p>9 Q. All right. Now, you described -- what is the</p> <p>10 Livonia -- you've described it as a chapel, but</p> <p>11 how is it decorated?</p> <p>12 A. How is it decorated? I'm sorry.</p> <p>13 Q. Yeah. Does it have Christian symbols hanging in</p> <p>14 it or anything like that? Is there any kind of</p> <p>15 religious decor inside the chapel?</p> <p>16 A. There is no Christian decoration in the chapel.</p> <p>17 It's a nicely decorated building, very warm and</p> <p>18 comfortable. Like a home. Like a person's home</p> <p>19 would be.</p> <p>20 Q. Does it have kind of a living room feel?</p> <p>21 A. Yeah.</p> <p>22 Q. Family room feel?</p> <p>23 A. That's what I mean, yeah.</p> <p>24 Q. Okay.</p> <p>25 A. Yeah.</p>

<p style="text-align: right;">Page 53</p> <p>1 Q. And as -- if it was decorated with some kind of 2 Christian or Catholic symbolism it would be 3 brought out for the funeral part? 4 A. Exactly. 5 Q. But otherwise it's kind of the warm family or 6 living room feel? 7 A. One of our rooms does have a statue of Jesus or 8 Mary statue in it that we use for Catholic 9 funerals. There's a curtain in front of it most 10 all the time unless it's a Catholic service. 11 Q. Okay. 12 A. So that would be, I guess, something that we 13 would bring out, like you said. Other than that, 14 no. 15 Q. Pull the curtain in that room as necessary? 16 A. Right. 17 Q. There also is a grooming policy set forth I 18 believe in the employee manual. What is your 19 understanding of the grooming policy for men? 20 A. That men are supposed to be mostly clean shaven. 21 A moustache neatly groomed is allowable. 22 Q. Have you ever had to enforce that grooming policy 23 or counsel people on the grooming policy? 24 A. No. 25 Q. The men who work for you or at Livonia, are they</p>	<p style="text-align: right;">Page 55</p> <p>1 A. Yes. 2 Q. And the Christian faith believes in Jesus as the 3 Messiah? 4 A. Yes. 5 Q. Okay. You didn't believe Tom Rost was offering 6 prayers to, say, Allah, do you? 7 A. No. 8 Q. How about Confucius? 9 A. No. 10 Q. How about Buddah? 11 A. Nope. 12 Q. So you believe that when he would offer prayers 13 it's because of his Christian faith? 14 A. Yes. 15 Q. Okay. Derek. We just talked about Derek, 16 counseling him on his suit, right? Do you recall 17 that? 18 A. Yes. Uh-huh. 19 Q. Have you had to counsel Derek or any other male 20 employees for wearing what you consider to be 21 female attire? 22 A. No. 23 Q. Okay. Has that ever happened? 24 A. No. 25 Q. Okay. Now, I think there was questions about</p>
<p style="text-align: right;">Page 54</p> <p>1 clean shaven? 2 A. Well, my full-time people are, of course. There 3 are a couple of part-time men that do have a 4 moustache and, like, maybe very closely-trimmed 5 hair in this lower area. 6 Q. On the chin? 7 A. Yeah. 8 Q. Okay. And who would those persons be? 9 A. Bill Condron, one of my drivers. And my son 10 Daniel. He doesn't have a moustache but he has a 11 little neatly trimmed -- 12 Q. A chin beard kind of thing? Okay. 13 MR. PRICE: Nothing else. 14 EXAMINATION 15 BY MR. KIRKPATRICK: 16 Q. All right. Just a few questions, Mr. Cash. 17 Mr. Price asked you questions. Is there 18 any prayers that Tom Rost might offer when you 19 were at your meetings? Do you recall that? 20 A. Yes. 21 Q. And I think he was asking is it a generic prayer? 22 Does it have anything to do with Jesus? Do you 23 recall that conversation? 24 A. Yes. 25 Q. Do you know Tom Rost to be a Christian?</p>	<p style="text-align: right;">Page 56</p> <p>1 funeral directors and the fact that as a manager 2 you would be the one or the managers would be the 3 one to meet with families and make the 4 arrangements. Do you recall that? 5 A. Yes. 6 Q. Okay. So funeral directors and embalmers, do 7 they come into contact at all with the public? 8 A. Oh, sure. 9 Q. And I think there was testimony about the fact 10 that they would maybe do parking or assist the 11 managers during funerals? 12 A. Yes. 13 Q. So are they constantly exposed to the public? 14 A. Absolutely. 15 Q. Is that why they're required to wear a suit? 16 A. Yes. We want all of our men to. 17 Q. Are you currently wearing the uniform for male 18 funeral directors? 19 A. I am. 20 Q. Okay. It's a navy blue suit with a maroon tie 21 and white shirt? 22 A. Yes. 23 Q. Would that be accurate to say? 24 Okay. Are there currently any female 25 funeral directors at Harris?</p>

Page 1

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE EASTERN DISTRICT OF MICHIGAN
 3 SOUTHERN DIVISION
 4
 5 EQUAL EMPLOYMENT OPPORTUNITY
 6 COMMISSION,
 7 Plaintiff, Case No. 2:14-cv-13710
 8 vs. Hon. Sean F. Cox
 9 R.G. & G.R. HARRIS FUNERAL Mag. David Grand
 10 HOMES, INC.,
 11 Defendant.
 12 -----
 13 VIDEOTAPED DEPOSITION
 14
 15 DEPONENT: GEORGE J. CRAWFORD
 16 DATE: Thursday, December 17, 2015
 17 TIME: 10:25 A.M.
 18 LOCATION: Regus - Grand Rapids
 19 250 Monroe Avenue, N.W.
 20 Suite 400
 21 Grand Rapids, Michigan
 22 REPORTER: Dawn M. Spaeth, CSR-1458
 23 VIDEOGRAPHER: Todd Young
 24 Job no. 280991
 25

Page 2

1 APPEARANCES:
 2 EMPLOYMENT OPPORTUNITY COMMISSION
 3 BY: Dale Price
 4 Miles Schultz
 5 477 Michigan Avenue, Room 865
 6 Detroit, MI 48226
 7 313-226-6217
 8 dale.price@EEOC.gov
 9 miles.schultz@EEOC.gov
 10 On behalf of Plaintiff
 11
 12 JOEL J. KIRKPATRICK, P.C.
 13 BY: Joel J. Kirkpatrick
 14 843 Penniman Avenue, Suite 201
 15 Plymouth, MI 48170
 16 734-404-5170
 17 Joel@JoelKirkpatrick.com
 18 On behalf of Defendant
 19
 20
 21
 22
 23
 24
 25

Page 3

1 SCHRAMECK LAW, P.L.L.C.
 2 BY: Jeff T. Schrameck
 3 843 Penniman Avenue
 4 Plymouth, MI 48170
 5 734-454-5400
 6 jeff@schramecklaw.com
 7 On behalf of Defendant
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 4

I N D E X

3	WITNESS:	PAGE
4	GEORGE J. CRAWFORD	
5	Examination by Mr. Price	6
6	Examination by Mr. Kirkpatrick	40
7	Reexamination by Mr. Price	44
8		
9	EXHIBITS	
10	NUMBER DESCRIPTION PAGE	
11	Exhibit 11 Affidavit of George Crawford	24
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

<p style="text-align: right;">Page 17</p> <p>1 review that, please.</p> <p>2 MR. KIRKPATRICK: The date was 11/12, so I</p> <p>3 know there were two days of depositions.</p> <p>4 MR. PRICE: It would have had to have been.</p> <p>5 MR. KIRKPATRICK: So he was first.</p> <p>6 Q. (By Mr. Price) Do you recognize this document?</p> <p>7 A. I do.</p> <p>8 Q. Okay. What is this?</p> <p>9 A. It's the employee's handbook.</p> <p>10 Q. Okay. Now, is this the employee handbook that was in</p> <p>11 effect during your entire tenure at R.G. & G.R.?</p> <p>12 A. Yes, it was.</p> <p>13 Q. All right. Were you responsible for enforcing any</p> <p>14 aspects of the handbook?</p> <p>15 A. Yes.</p> <p>16 Q. What were you responsible for enforcing?</p> <p>17 A. Just making sure that all employees met the dress</p> <p>18 codes, just all aspects of the employee handbook.</p> <p>19 Q. Now, there's basically two aspects to it. There is a</p> <p>20 dress code for men and also there's one for women.</p> <p>21 What was your understanding what the dress code for men</p> <p>22 was?</p> <p>23 A. The dress code for men was pretty straightforward, dark</p> <p>24 blue suits. They were actually furnished by the</p> <p>25 company.</p>	<p style="text-align: right;">Page 19</p> <p>1 Q. How often would you say that you, yourself, would need</p> <p>2 to get a replacement suit?</p> <p>3 A. I would say personally every nine months to a year.</p> <p>4 Q. Now, did you have any understanding of how often</p> <p>5 Stevens would go through a suit at this time? Would it</p> <p>6 be more or less?</p> <p>7 A. I wouldn't really have any knowledge of that.</p> <p>8 Q. All right. But for yourself personally every nine to</p> <p>9 twelve months?</p> <p>10 A. Nine to twelve months, yes.</p> <p>11 Q. Do you know how much these suits cost?</p> <p>12 A. I don't.</p> <p>13 Q. Now, at any point during your tenure were women given a</p> <p>14 clothing allowance to purchase clothing?</p> <p>15 A. I'm not aware of that.</p> <p>16 Q. Okay. When was your last day at R.G. & G.R., if you</p> <p>17 can recall?</p> <p>18 A. It was June, I'm going to say June 30th, '13.</p> <p>19 Q. 2013?</p> <p>20 A. 2013.</p> <p>21 Q. Okay. About a year and a half -- you said year and a</p> <p>22 half?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. What was your understanding of the female dress</p> <p>25 code?</p>
<p style="text-align: right;">Page 18</p> <p>1 Q. It also would come with a tie, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Now, who would be responsible -- who would be required</p> <p>4 to wear the suits?</p> <p>5 A. All of the funeral directors.</p> <p>6 Q. What about assistant funeral directors?</p> <p>7 A. Assistant funeral directors, yes, they were.</p> <p>8 Q. All right. All the embalmers?</p> <p>9 A. Yes.</p> <p>10 Q. All the managers?</p> <p>11 A. Correct.</p> <p>12 Q. Anybody else that you can think of who would have to</p> <p>13 wear a suit?</p> <p>14 A. Anyone that was employed by the company.</p> <p>15 Q. Any of the male employees?</p> <p>16 A. All of the male employees were.</p> <p>17 Q. Okay. Now, how did you get the suits?</p> <p>18 A. They were actually furnished, there was a tailor in</p> <p>19 Farmington Hills. You would go there, you would get</p> <p>20 measured, and in about two weeks they'd call and they'd</p> <p>21 be ready.</p> <p>22 Q. Now, my understanding is -- and correct me if I'm</p> <p>23 wrong -- that these suits would be gradually replaced</p> <p>24 as they wore out?</p> <p>25 A. That is correct.</p>	<p style="text-align: right;">Page 20</p> <p>1 A. They were required to wear conservative dark clothing.</p> <p>2 Q. Anything else you can think of, any other limitations?</p> <p>3 Could they wear pant suits or did they have to wear</p> <p>4 skirts?</p> <p>5 A. I believe it was skirts.</p> <p>6 Q. Okay. And during the time you were there, they were</p> <p>7 responsible for providing their own clothing?</p> <p>8 A. I believe so, yes.</p> <p>9 Q. Okay. You don't recall any women going out to get</p> <p>10 clothing on the company's -- or being issued checks on</p> <p>11 behalf of the company?</p> <p>12 A. I'm not aware of that.</p> <p>13 Q. Okay. Who did you supervise or who was working at the</p> <p>14 Garden City facility while you were there, while you</p> <p>15 and Stevens were both there?</p> <p>16 A. For office staff we had two women that worked in the</p> <p>17 office, Dolly and Sharon. Then there was myself and</p> <p>18 Anthony. We had Michelle who would do hair, cleaning,</p> <p>19 and also worked visitations.</p> <p>20 Q. I want to just back up a little bit. You were still</p> <p>21 employed when Stevens's employment terminated, correct?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. So if I tell you this, that -- and I don't think</p> <p>24 it would be disputed -- Stevens was still working</p> <p>25 through July of 2013, so would it be safe to say that</p>

<p style="text-align: right;">Page 29</p> <p>1 A. I don't recall any reaction. 2 Q. Okay. What was your reaction to the firing? 3 A. I don't recall really having a reaction. 4 Q. Nothing at all? 5 A. I was -- I was just surprised by the whole thing, but 6 in terms of reaction to the actual firing, I didn't 7 really have any feelings one way or the other. 8 Q. Okay. What about when you heard the reason that 9 Stevens wanted to present as female and work as a 10 female, what was your reaction to that? 11 A. When I heard that he wanted to do that? 12 Q. Yes. 13 A. Shock. 14 Q. Shock. How so? Why was it prompted by shock? Just 15 out of the blue? 16 A. I had absolutely no inkling whatsoever. 17 Q. So it was just the nature that it just was -- it had 18 come out of left field so to speak? 19 A. Exactly. Totally -- totally out of the blue. 20 Q. Any other reason you would have been shocked by that? 21 A. No. 22 Q. You said you also discussed it with other managers. 23 Which other managers did you discuss Stevens's firing? 24 A. David Cash and David Kowalewski. 25 Q. What was the context of that with Mr. Cash?</p>	<p style="text-align: right;">Page 31</p> <p>1 A. No. 2 Q. Did you ever discuss that, your concern that it would 3 have been difficult with female staff with anyone at 4 R.G. & G.R.? 5 A. No. 6 Q. Were you ever asked about your opinion of Stevens 7 presenting as a female by anybody at R.G. & G.R.? 8 A. Tom Rost. 9 Q. Okay. What did he ask you? 10 A. Tom had just asked me my thoughts and opinions on 11 things. 12 Q. Okay. What specifically did he say with respect to 13 Stevens? 14 A. Did I know about it and that was basically it. 15 Q. He didn't ask you anything else about it? 16 A. None. 17 Q. Do you recall ever discussing it with anybody else, 18 Stevens's proposal with anybody else at R.G. & G.R.? 19 A. No, I did not. 20 Q. When roughly did Mr. Rost ask you about this? Was it 21 after the -- how soon after the firing? 22 A. I'm trying to think of the timeline. It would have 23 probably been right after it happened. 24 Q. Within a few days, is that safe to say? 25 A. Within a day.</p>
<p style="text-align: right;">Page 30</p> <p>1 A. Just discussing, you know, did you know about this and 2 just we would talk basically every day discussing 3 things about the office appointments, things like that, 4 and so it was just brought up in general conversation. 5 Q. Do you recall them saying anything? 6 A. No. 7 Q. Was there shock? Did they express any shock? 8 A. Yes. 9 Q. Okay. And was this shock about Stevens's proposal to 10 come to work -- 11 A. I think the shock was that nobody saw that or realized 12 it was coming. 13 Q. Did you ever hear any negative reaction to the idea of 14 Stevens presenting as female and working? 15 A. I did not. 16 Q. Okay. Did you have any kind of negative feelings about 17 the idea of Stevens presenting as a woman? 18 A. Yes. 19 Q. What were they? 20 A. I just felt it would have been difficult with our 21 female staff. 22 Q. Okay. It would have been difficult for Stevens working 23 alongside the female staff? 24 A. Yes. 25 Q. Okay. Anything else?</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. Within a day? 2 A. Within a day. 3 Q. Okay. Did you ever hear that there had been a letter 4 that Stevens had prepared and submitted? 5 A. I did not until afterwards. 6 Q. Okay. Did you ever see the letter? 7 A. I did not. 8 Q. All right. Did you ever hear anything -- other than 9 what you've already said, did you ever hear anything 10 negative about Stevens's proposal to present as a woman 11 from anybody at R.G. & G.R.? 12 A. None whatsoever. 13 Q. All right. Now, it's my understanding that R.G. & 14 G.R., at least at the time you were employed and since, 15 conducts funerals for people of any religion or none; 16 is that correct? 17 A. We do. 18 Q. What kind of non-Christian funerals were done by 19 R.G. & G.R. while you were there? 20 A. We did Muslim services, we did Sikh funerals, we did 21 Buddhist, and that's all I recall. 22 Q. What about Hindu? 23 A. Hindu, yes. 24 Q. You also did funerals for people with no particular 25 religious affiliation as well?</p>

1 A. That is true.

2 Q. All right. Now, when you did a Sikh funeral, for

3 instance, was that done at the temple at Gurdwara or

4 was that done at R.G. & G.R.?

5 A. It depended on the family.

6 Q. It could be either way?

7 A. I actually did some that were actually held in their

8 homes.

9 Q. Okay. Would that be the same -- would it be the same

10 family decision, you could have a Muslim funeral in

11 someone's home as well or were those more --

12 A. Again, it just depended on the family and how strong

13 they were in their beliefs. Most of the Muslim

14 services we had were held in the funeral home itself.

15 Q. Okay. What about the Hindu funerals, was it the same

16 kind of thing?

17 A. Yes.

18 Q. Same as the Muslim thing?

19 A. Yes.

20 Q. Buddhist?

21 A. Yes.

22 Q. Now, when you were talking about Buddhist, would that

23 be -- there's been discussions in other depositions

24 serving like the Chinese community?

25 A. Uh-huh.

1 Q. Would that be the case with the Buddhist ones?

2 A. Well, when you say serving the Chinese community, there

3 are a lot of Chinese Christians, a lot of Chinese

4 Buddhists. It just depends on their particular beliefs

5 and religion.

6 Q. Okay. So when you hear Chinese, it could be Buddhist,

7 Christian --

8 A. Chinese doesn't necessarily to me denote a specific

9 religion.

10 Q. All right. Fair enough. How often would you say you

11 did in home funerals per year?

12 A. It was relatively rare. I would say maybe two,

13 possibly three in a year.

14 Q. Now, there's been -- when it's held in R.G. & G.R.,

15 it's been in previous depositions kind of described as

16 sort of like a living room area, it's called a chapel,

17 but it kind of has a living room feel; is that

18 accurate?

19 A. That is correct, yes.

20 Q. Now, what kind of religious symbols or items are in the

21 chapel full time?

22 A. Depending on the chapel, we do serve a lot of Christian

23 families. There are crucifixes for families that are

24 Catholic, crosses for Christians that are not

25 Catholic. We would have publications called the Daily

1 Bread that people would pick up. If we had Jewish

2 services, we would have Jewish articles, menorahs. We

3 would wear yamakas out of deference to their religious

4 beliefs.

5 Q. So is it safe to say with respect to, for instance, the

6 menorah or the cross or the crucifix, these would be

7 brought out for use during those funerals, correct?

8 A. Correct.

9 Q. Okay. And they would be stored when they were not

10 being used for funerals?

11 A. Correct.

12 Q. You mentioned the Daily Breads. Was that something

13 that was out full time?

14 A. That is.

15 Q. Where is that placed?

16 A. Usually we had those setting out in the lobby area on

17 one of the credenzas or tables.

18 Q. If a client wants to take one or if a family member

19 wants to take one, it's available but it's just

20 offered --

21 A. It is.

22 Q. -- but it's not mandatory or not inserted in stuff

23 given to families?

24 A. No. They are for those that desire it.

25 Q. All right. Do you have any understanding of what

1 Mr. Rost's religious views are?

2 A. I understand that he is Baptist.

3 Q. Did you have any -- did you ever have any discussions

4 about religion with Mr. Rost?

5 A. None.

6 Q. Did he ever tell you that or ever express any that he

7 wanted to run R.G. & G.R. on Christian or Baptist

8 principles?

9 A. Not specifically.

10 Q. What do you mean by that?

11 A. I never heard him say he was going to run it on

12 Christian principles.

13 Q. Okay. Did he say about running it on any kind of

14 religious principles at all? Did he mention that,

15 wanting to run the business on religious principles?

16 A. I don't recall any conversation of that effect.

17 Q. Okay. Apart from the Daily Breads that are out, are

18 there any kind of other -- first of all, are the Daily

19 Breads kind of a Christian devotional pamphlet? Is

20 that safe to say?

21 A. I would say they could be for any faith. They don't

22 quote scripture but they're inspirational.

23 Q. So you reviewed these yourself? You took a look at a

24 couple of them?

25 A. There were times where I would look at them, yes.

Page 1

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

 3 EQUAL EMPLOYMENT OPPORTUNITY
 COMMISSION,
 4
 Plaintiff,
 5
 -vs- No. 2:14-cv-13740
 6
 R.G. & G.R. HARRIS FUNERAL
 7 HOMES INC.,
 8 Defendants.

 9 DEPOSITION OF
 10
 WITNESS: MATTHEW ROST
 11
 LOCATION: Joel Kirkpatrick, PC
 12 843 Penniman Avenue, Suite 201
 Plymouth, Michigan 48170
 13
 DATE: Thursday, January 21, 2016
 14 9:29 a.m.
 15
 APPEARANCES:
 16
 FOR PLAINTIFF: EQUAL EMPLOYMENT OPPORTUNITY
 17 COMMISSION
 477 Michigan Avenue, Room 865
 18 Detroit, Michigan 48226
 313.226.7808
 19 dale.price@eeoc.gov
 miles.shultz@eeoc.gov
 20 BY: DALE R. PRICE, JR. (P55578)
 MILES E. SHULTZ (P73555)
 21
 FOR DEFENDANT: JOEL J. KIRKPATRICK, PC
 22 843 Penniman Avenue, Suite 201
 Plymouth, Michigan 48170
 23 734.404.5170
 joel@joelkirkpatrick.com
 24 BY: JOEL J. KIRKPATRICK (P62851)
 25 REPORTED BY: Laurel A. Jacoby, CSR-5059, RPR
 Job no. 285886-A

Page 2

1 INDEX
 2 WITNESS: MATTHEW ROST PAGE NO.
 3 Examination by Mr. Price 3
 4 Examination by Mr. Kirkpatrick 39
 5
 6
 7
 8
 9
 10
 11
 12 EXHIBIT INDEX
 13 EXHIBIT NO. DESCRIPTION PAGE NO.
 14
 15
 16 (No exhibits were marked.)
 17 - - -
 18
 19
 20
 21
 22
 23
 24
 25

Page 3

1 Plymouth, Michigan
 2 January 21, 2016
 3 9:29 a.m.
 4 - - -
 5 -MATTHEW ROST-
 6 called as a witness, being first duly sworn, was
 7 examined and testified as follows:
 8 EXAMINATION
 9 BY MR. PRICE:
 10 Q. Good morning, Mr. Rost.
 11 A. Good morning.
 12 Q. My name is Dale Price. I'm an attorney with the
 13 Equal Opportunity Employment Commission out of
 14 Detroit.
 15 A. Uh-huh.
 16 Q. Here today to take your deposition.
 17 Have you ever been deposed before?
 18 A. No.
 19 Q. Okay. I'm just going to give you some ground
 20 rules about it, and one of my favorites, because
 21 I find myself doing this, if you can at all
 22 possible do so, make your answer verbal. I
 23 understand that you're saying yes or no.
 24 A. Right.
 25 Q. And one of my favorite words is uh-huh, but I may

Page 4

1 ask you to clarify if that's a yes or no.
 2 A. All right.
 3 Q. I'm not trying to be rude, but what's going to
 4 happen is she's going to turn this into a paper
 5 transcript.
 6 A. All right.
 7 Q. Likewise, if you do not understand my questions,
 8 which is completely understandable, please ask me
 9 and I'll try to rephrase it.
 10 A. All right.
 11 Q. If you need to take a break we can do that. I
 12 don't anticipate this to be a very long
 13 deposition, but we're not trying to turn it into
 14 some kind of endurance contest.
 15 A. Okay.
 16 Q. It is being taken under oath, as you know. It
 17 can be used for anything under the Federal Rules.
 18 If necessary as a substitute for courtroom
 19 testimony too, so --
 20 A. Uh-huh.
 21 Q. -- with that in mind, could you please state your
 22 full name for the record?
 23 A. Matthew Thomas Rost.
 24 Q. What is your date of birth?
 25 A. September 11, '72.

<p style="text-align: right;">Page 33</p> <p>1 THE WITNESS: Yes. 2 BY MR. PRICE: 3 Q. Okay. When was this, do you recall? 4 A. I believe -- I mean, I didn't come out and ask if 5 the person was gay. 6 Q. Sure. Fair enough. 7 A. But I believe that the person that we had 8 employed for 40 years was gay. 9 Q. Okay. What role was that person in? 10 A. Licensed funeral director. 11 Q. Okay. When did the person stop working there, if 12 you can recall? 13 A. 12 years ago. 14 Q. So back in 2002 -- sorry, 2004? 15 A. Probably earlier than that. 16 Q. Probably before then? 17 A. Uh-huh. 18 Q. Okay. Do you recall that person's name? 19 A. Uh-huh. 20 Q. Who is it? 21 A. Dave Sosnowski. 22 Q. That person retired? 23 A. He was let go. 24 Q. He was let go. Why was he let go, do you recall? 25 A. I think it had to do with making a family upset.</p>	<p style="text-align: right;">Page 35</p> <p>1 G.R. Harris? 2 A. Sure. 3 Q. Okay. Whom did you -- what was the nature of the 4 discussions after the fire? 5 A. That we were sad to see him go and we wished he 6 wouldn't have made that decision. 7 Q. Who did you have this discussion with? 8 A. Other managers. 9 Q. Okay. Dave Cash? 10 A. Uh-huh. 11 Q. Yes? 12 A. Yes. 13 Q. David -- is it Kowalewski? 14 A. Yes. 15 Q. All right. Anybody else? 16 A. No. 17 Q. You ever discuss it with your father 18 posttermination? 19 A. No. 20 Q. Just take a second. Is there any significance 21 for the card there? 22 A. No. I just had it out in case you were going to 23 ask me the address. 24 Q. Okay. Could you -- actually, could we have the 25 address for the Detroit?</p>
<p style="text-align: right;">Page 34</p> <p>1 I don't know what it was about. 2 Q. Okay. 3 A. But it had to do with confrontation with a family 4 that we served. 5 Q. You don't recall any more details than that? 6 A. No. 7 Q. All right. And your father made that decision to 8 let him go? 9 A. The manager at that time or my father. 10 Q. Okay. Do you recall who the manager was? 11 A. That was Richard Kumert. 12 Q. Do you have an understanding of what insurance 13 coverage is available through -- provided to 14 employees at R.G. & G.R. Harris? 15 A. No. 16 Q. All right. Do you yourself have coverage through 17 R.G. & G.R. Harris? 18 A. Yes. 19 Q. Okay. Do you know the provider? 20 A. It was Blue Cross but not anymore. 21 Q. United Health Care? 22 A. Yeah, United. 23 Q. All right. After Stephens was fired, was 24 there -- do you recall participating in any 25 discussions with Stephens with anyone at R.G. &</p>	<p style="text-align: right;">Page 36</p> <p>1 A. Sure. 2 Q. Or maybe it would be easier to make it an 3 exhibit? 4 MR. KIRKPATRICK: Just provide it, yeah, 5 whatever you want to do. 6 MR. PRICE: Okay. Actually, why don't I 7 just -- thank you for giving it to me. 8 For the record, he's given me a copy of 9 his business card. 10 MR. KIRKPATRICK: There's no trade 11 secrets on there, is there Matt? 12 THE WITNESS: No. 13 BY MR. PRICE: 14 Q. Some last followups. 15 At the Detroit facility that you 16 supervised, are there any kind of -- you've 17 already told me you kind of do funerals for 18 whatever religion or none? 19 A. Yes. 20 Q. Are there, like, objects that are kept there like 21 a crucifix for a Catholic funeral or yarmulkes 22 for a Jewish funeral or anything like that that 23 are brought out for the funeral? 24 A. For Catholic folks we provide a Catholic setup 25 which would include a crucifix.</p>

Page 1

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

 3 EQUAL EMPLOYMENT OPPORTUNITY
 COMMISSION,
 4
 Plaintiff,
 5
 -vs- No. 2:14-cv-13740
 6
 R.G. & G.R. HARRIS FUNERAL
 7 HOMES INC.,
 8 Defendants.

 9 DEPOSITION OF
 10
 WITNESS: WENDY McKIE
 11
 LOCATION: Joel Kirkpatrick, PC
 12 843 Penniman Avenue, Suite 201
 Plymouth, Michigan 48170
 13
 DATE: Friday, January 22, 2016
 14 10:56 a.m.
 15
 APPEARANCES:
 16 FOR PLAINTIFF: EQUAL EMPLOYMENT OPPORTUNITY
 COMMISSION
 17 477 Michigan Avenue, Room 865
 Detroit, Michigan 48226
 18 313.226.7808
 dale.price@eeoc.gov
 19 miles.shultz@eeoc.gov
 BY: DALE R. PRICE, JR. (P55578)
 20 MILES E. SHULTZ (P73555)
 KATIE LINEHAN (P77974)
 21
 FOR DEFENDANT: JOEL J. KIRKPATRICK, PC
 22 843 Penniman Avenue, Suite 201
 Plymouth, Michigan 48170
 23 734.404.5170
 joel@joelkirkpatrick.com
 24 BY: JOEL J. KIRKPATRICK (P62851)
 25 REPORTED BY: Laurel A. Jacoby, CSR-5059, RPR
 Job no. 285887-B

Page 2

1	I N D E X	
2	WITNESS: WENDY McKIE	PAGE NO.
3	Examination by Mr. Shultz	3
4	Examination by Mr. Kirkpatrick	36
5	Re-examination by Mr. Shultz	39
6		
7		
8		
9		
10		
11		
12	E X H I B I T I N D E X	
13	EXHIBIT NO. DESCRIPTION	PAGE NO.
14		
15		
16	(No exhibits were marked.)	
17	- - -	
18		
19		
20		
21		
22		
23		
24		
25		

Page 3

1 Plymouth, Michigan
 2 January 22, 2016
 3 10:56 a.m.
 4 - - -
 5 -WENDY McKIE-
 6 called as a witness, being first duly sworn, was
 7 examined and testified as follows:
 8 EXAMINATION
 9 BY MR. SHULTZ:
 10 Q. Ms. McKie, my name is Miles Shultz, and I
 11 represent the EEOC, the Equal Employment
 12 Opportunity Commission. This deposition is being
 13 taken with respect to a lawsuit filed by the EEOC
 14 against R.G. & G.R. Harris Funeral Homes pending
 15 in the Eastern District of Michigan.
 16 Are you aware of that lawsuit?
 17 A. Yes.
 18 Q. And the deposition testimony that you're about to
 19 give will be subject to the same oath and the
 20 same penalties of perjury that would apply if you
 21 were in court giving testimony in front of a
 22 judge or a jury.
 23 Do you understand that?
 24 A. Yes.
 25 Q. The court reporter just administered an oath to

Page 4

1 you and you are obligated to give your best, most
 2 accurate and most truthful responses to my
 3 questions.
 4 Do you understand that?
 5 A. Yes.
 6 Q. Is there anything about your physical, mental or
 7 emotional health today that would in any way
 8 interfere with your ability to give accurate and
 9 honest testimony?
 10 A. No.
 11 Q. If you answer a question, I will have the right
 12 to assume and act as though you understood it.
 13 Will you agree to let me know if you do not
 14 understand a question or if you need to me to
 15 clarify?
 16 A. Yes.
 17 Q. If I ask a question -- if the question that I ask
 18 you requires that you give an estimate or
 19 recollection that may not be crystal clear, I'm
 20 still entitled to hear whatever your recollection
 21 may be.
 22 Do you understand that?
 23 A. Yes.
 24 Q. You understand that it would be untruthful to say
 25 that you don't recall if, in fact, you do have

Page 25

1 Q. And what did she say about the check?
 2 A. It was clothing allowance.
 3 Q. Do you have any -- scratch that.
 4 Can you describe the effect of the \$150
 5 annual clothing stipend on your ability to
 6 purchase work clothes?
 7 A. Can you -- I don't understand what you're asking
 8 me.
 9 Q. Essentially how does receiving \$150 every year
 10 help you to buy work clothes?
 11 A. How does it help me buy work clothes?
 12 Q. How much work clothes have you been able to
 13 purchase because of the \$150 annual stipend?
 14 A. Do you want to know what I've purchased? How
 15 much has it helped me? Oh, goodness. It's
 16 helped.
 17 Q. What have you been able to purchase with \$150?
 18 A. Tights, shoes.
 19 Q. You make these purchases during your own personal
 20 time and not on company time, correct?
 21 A. Correct.
 22 Q. Do you have any sense of the relative
 23 relationship between the \$150 annual stipend you
 24 receive versus the two suits that full-time men
 25 receive or the one suit that part-time men

Page 26

1 receive?
 2 A. Repeat that one more time.
 3 Q. How does -- do you have any understanding of how
 4 the \$150 annual stipend relates to the suit
 5 allowance that R.G. & G.R. provides for its male
 6 employees?
 7 A. No.
 8 Q. How did you feel when you learned you were going
 9 to be getting a clothing allowance?
 10 A. I said thank you. Grateful.
 11 Q. You were grateful?
 12 A. Yes.
 13 Q. Did you have any feeling regarding the men
 14 receiving suits from R.G. & G.R. and the women
 15 not receiving any clothing allowance or any
 16 clothes provided by R.G. & G.R. prior to the
 17 allowance being implemented?
 18 A. No. I was fine.
 19 Q. So it didn't bother you that the men received
 20 suits and you had received nothing?
 21 A. No.
 22 Q. And why didn't it bother you?
 23 A. I think at one point in time I didn't need a man
 24 -- or the money to help with that.
 25 Q. Do you have any understanding of why it's \$150?

Page 27

1 A. No, I don't.
 2 Q. Has Tom Rost ever discussed his religious beliefs
 3 with you?
 4 A. No.
 5 Q. Has anyone at R.G. & G.R. ever discussed their
 6 religious beliefs with you?
 7 A. No.
 8 Q. Have you ever discussed your religious beliefs
 9 with anyone at R.G. & G.R.?
 10 A. No.
 11 Q. Tom Rost has never asked you to participate in a
 12 bible study --
 13 A. No.
 14 Q. -- or a prayer?
 15 A. No.
 16 Q. Do you know of Tom Rost's religious affiliation
 17 if he has one?
 18 A. I know he attends church.
 19 Q. Do you know what church he attends?
 20 A. If I thought long enough maybe I could think of
 21 it. I know we have some people we've handled
 22 through the funeral home, but I don't know if
 23 that's his church, per se, he attends on a
 24 regular basis. No, I do not.
 25 Q. So I'm understanding your answer clearly you've

Page 28

1 had clients come in who came to R.G. & G.R.
 2 because they went to church with Tom?
 3 A. Yes or seen him there.
 4 Q. Could you describe what your work schedule is for
 5 R.G. & G.R.?
 6 A. 8:30 to five usually.
 7 Q. Monday through Friday.
 8 A. Saturday, some Sundays.
 9 Q. Monday through Saturday?
 10 A. Correct.
 11 Q. So you work six days a week?
 12 A. Correct.
 13 Q. So you work more than 40 hours a week?
 14 A. Oh, yes.
 15 Q. You receive time and a half for anything --
 16 A. Correct. I'm hourly.
 17 Q. -- you work over 40?
 18 Do you have health insurance through
 19 R.G. & G.R.?
 20 A. Yes, I do.
 21 Q. Do you know who the provider is?
 22 A. Yes.
 23 Q. Who is it?
 24 A. Home Health Care? I don't know. I believe it's
 25 called -- I'm sorry. After I said yes, I'm

<p style="text-align: right;">Page 29</p> <p>1 picturing my card. It's in my purse. 2 Q. Does R.G. & G.R. provide funeral services for 3 families who are not Christian? 4 A. Yes. 5 Q. So families of other faiths other than Christian 6 and who have no religious affiliation? 7 A. Yes. 8 Q. In your -- from your multitude of duties that you 9 perform, one of them is preparing for funerals 10 and visitations? 11 A. Uh-huh. Yes. 12 Q. Do you help with putting religious objects in the 13 various locations regarding the faiths of the 14 various clientele that R.G. & G.R. services? 15 A. If the family asks only. 16 Q. Could you describe what sort of religious 17 artifacts you would place in the locations? 18 A. A kneeler if the family asks for one. In our 19 Detroit chapel you open the curtains, Jesus is 20 there. I'm sorry. A statue is shown. 21 Q. There's a Jesus statue behind curtains at the 22 Detroit location? 23 A. Yes. Yes. 24 Q. And you would open the curtains? 25 A. Correct, if family asked.</p>	<p style="text-align: right;">Page 31</p> <p>1 Q. For -- 2 A. Or nonreligious just in general? 3 Q. Either. 4 A. A podium, microphone. 5 Q. Equipment that has a religious connotation, 6 though, so -- 7 A. I'm sorry, I don't know of any nonreligious 8 things. Or I'm -- if it's nonreligious we 9 wouldn't put it out there. 10 Q. Yeah. Sorry. I was maybe a little confusing. 11 So you testified a kneeler for a 12 Catholic funeral or a crucifix? 13 A. If they don't ask for that then it's not in sight 14 or view. 15 Q. Correct. Do you place any objects for a Hindu 16 funeral or a Muslim funeral? 17 A. If asked, yes. 18 Q. If asked. Okay. So there are nonChristian 19 religious equipment that you've used? 20 A. Oh, yes. 21 Q. Sorry. I was a little confusing, but I think we 22 cleared that up. 23 So depending on the client request, you 24 would place other religious equipment that's not 25 Christian --</p>
<p style="text-align: right;">Page 30</p> <p>1 Q. Okay. 2 A. Family asks for -- whatever the family basically 3 would ask for, whether it's candles, incense, 4 just different -- you get a large variety of 5 different funerals. 6 Q. Your daughter Daytona -- 7 A. Yes. 8 Q. -- does she receive a clothing stipend? 9 A. Yes. 10 Q. Do you know how much she receives? 11 A. I don't know the exact amount. I know it's not 12 as much as mine. 13 Q. Okay. So it's less than a \$150 but you're not 14 sure how much it is? 15 A. Correct. 16 MR. SHULTZ: Could you give us a second, 17 Joel? 18 (A brief recess was taken.) 19 BY MR. SHULTZ: 20 Q. I'd like to go back to the religious equipment 21 that is used for the funerals and visitations. 22 A. Okay. 23 Q. What sort of nonChristian religious equipment is 24 used, do you know? 25 A. NonChristian?</p>	<p style="text-align: right;">Page 32</p> <p>1 A. That's not Christian, correct. 2 Q. -- in the chapel? 3 And to go back to the clothing 4 discussion, I'd just like to get an idea of what 5 you usually spend on your work outfits. So you 6 testified -- 7 A. Twenty years old. No, I'm joking. 8 Q. -- you testified you bought, like, tights and 9 shoes. What do you typically spend on shoes? 10 A. For one pair? 11 Q. Well, let's start with concrete and then move 12 more abstract. So the shoes that you're wearing 13 right now, how much did that cost you? 14 A. 45. 15 Q. Is that typical -- 16 A. It was a good sale. 17 Q. -- \$45 range? 18 Good sale. So what is the range you 19 usually spend for work shoes, do you know? 20 A. About 45, 60. 21 Q. How about skirts? 22 A. Always look for a good sale. A range in pricing 23 ten to 20. 24 Q. How much do you spend on -- are you wearing a 25 skirt right now?</p>

Page 41

1 Q. You started, like, in the late nineties, right?
 2 A. Correct.
 3 Q. Was it within the first few years of you starting
 4 R.G. & G.R.?
 5 A. I would say about -- probably about five.
 6 Q. Okay.
 7 A. And then brought up again. More than once.
 8 Q. So somewhere in 2003-ish?
 9 A. I guess. Yes.
 10 Q. So the period of time between 2003 when R.G. &
 11 G.R. decided it couldn't provide suits to the
 12 women and the -- between that period of time of
 13 R.G. & G.R.'s decision not to provide suits to
 14 women and providing the clothing allowance, there
 15 was neither a clothing allowance or suits
 16 provided to women for that decade?
 17 A. I would say the discussion of it back then wasn't
 18 as -- we did look at some things, but it wasn't
 19 as detrimental, like, or, you know, it wasn't --
 20 we did discuss it again after that. I think some
 21 of us weren't interested at all in it.
 22 Q. In having --
 23 A. Correct.
 24 Q. -- a uniform suit that is worn?
 25 A. Correct. Correct.

Page 42

1 Q. But irregardless, the only clothing benefit
 2 you've ever received just started the last couple
 3 of years with this clothing allowance?
 4 A. Correct.
 5 Q. I have nothing further.
 6 MR. KIRKPATRICK: Thank you.
 7 (Deposition concluded at 11:55 a.m.)
 8 - - -
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 43

1 CERTIFICATE OF NOTARY
 2 STATE OF MICHIGAN)
 3) SS
 4 COUNTY OF OAKLAND)
 5
 6 I, Laurel A. Jacoby, a Notary Public in and for
 7 the above county and state, do hereby certify that the
 8 above deposition was taken before me at the time and
 9 place hereinbefore set forth; that the witness was by
 10 me first duly sworn to testify to the truth and nothing
 11 but the truth; that the foregoing questions asked, and
 12 the answers given by the witness were duly recorded by
 13 me and reduced to computer transcription; that this is
 14 a true, full and correct transcript so taken; and that
 15 I am not related to, nor of counsel to either party,
 16 nor interested in the event of this cause.
 17
 18
 19
 20 _____
 21 Laurel A. Jacoby, CSR-5059, RPR
 22 Notary Public
 23 Oakland County, Michigan
 24
 25 My Commission Expires: September 1, 2018

Page 1

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE EASTERN DISTRICT OF MICHIGAN
 3 SOUTHERN DIVISION
 4 -----
 5 EQUAL EMPLOYMENT OPPORTUNITY
 6 COMMISSION,
 7
 8 Plaintiff,
 9
 10 -vs- No. 2:14-cv-13740
 11
 12 R.G. & G.R. HARRIS FUNERAL HOMES INC.,
 13
 14 Defendants.
 15 -----
 16 DEPOSITION OF
 17
 18 WITNESS: DAVID KOWALEWSKI
 19 LOCATION: Joel Kirkpatrick, PC
 20 843 Penniman Avenue, Suite 201
 21 Plymouth, Michigan 48170
 22 DATE: Thursday, January 21, 2016
 23 10:44 a.m.
 24
 25 APPEARANCES:
 26 FOR PLAINTIFF: EQUAL EMPLOYMENT OPPORTUNITY
 27 COMMISSION
 28 477 Michigan Avenue, Room 865
 29 Detroit, Michigan 48226
 30 313.226.7808
 31 dale.price@eeoc.gov
 32 miles.shultz@eeoc.gov
 33 BY: DALE R. PRICE, JR. (P55578)
 34 MILES E. SHULTZ (P73555)
 35 FOR DEFENDANT: JOEL J. KIRKPATRICK, PC
 36 843 Penniman Avenue, Suite 201
 37 Plymouth, Michigan 48170
 38 734.404.5170
 39 joel@joelkirkpatrick.com
 40 BY: JOEL J. KIRKPATRICK (P62851)
 41
 42 REPORTED BY: Laurel A. Jacoby, CSR-5059, RPR
 43 Job no. 285886-B

Page 2

1 INDEX
 2 WITNESS: DAVID KOWALEWSKI PAGE NO.
 3 Examination by Mr. Shultz 3
 4 Examination by Mr. Kirkpatrick 63
 5 Re-examination by Mr. Shultz 69
 6
 7
 8
 9
 10
 11
 12 EXHIBIT INDEX
 13 EXHIBIT NO. DESCRIPTION PAGE NO.
 14
 15
 16 (No exhibits were marked.)
 17 - - -
 18
 19
 20
 21
 22
 23
 24
 25

Page 3

1 Plymouth, Michigan
 2 January 21, 2016
 3 10:44 a.m.
 4 - - -
 5 -DAVID KOWALEWSKI-
 6 called as a witness, being first duly sworn, was
 7 examined and testified as follows:
 8 EXAMINATION
 9 BY MR. SHULTZ:
 10 Q. Hi, David. My name is Miles Shultz. We met a
 11 second ago. But for the record, I represent the
 12 Equal Employment Opportunity Commission, and this
 13 deposition is being taken with respect to a
 14 lawsuit filed by the EEOC against R.G. & G.R.
 15 Harris, Inc. that's pending in the Eastern
 16 District of Michigan.
 17 Are you aware of that lawsuit?
 18 A. Yes.
 19 Q. And the deposition testimony you're about to give
 20 will be subject to the same oath and same
 21 penalties of perjury that would apply if you're
 22 in court giving testimony in front of a judge or
 23 jury.
 24 Do you understand that?
 25 A. Yes.

Page 4

1 Q. The court reporter has just administered an oath
 2 to you and you are obligated to give your best
 3 and most accurate and most truthful responses to
 4 my questions. Do you understand?
 5 A. Yes.
 6 Q. Is there anything about your physical, mental,
 7 emotional health today that would in any way
 8 interfere with your ability to give accurate and
 9 honest testimony?
 10 A. No.
 11 Q. If you answer a question I will have the right to
 12 assume and act as though you understood it. Will
 13 you agree to let me know if you don't understand
 14 a question?
 15 A. Yes.
 16 Q. If you need me to repeat or clarify a question,
 17 will you let me know?
 18 A. Yes.
 19 Q. If the question that I ask you requires you to
 20 give an estimate or a recollection that may not
 21 be crystal clear, I'm still entitled to hear
 22 whatever your recollection may be.
 23 Do you understand that?
 24 A. Yes.
 25 Q. And do you understand that it would be an

<p style="text-align: right;">Page 21</p> <p>1 roughly about a few years ago.</p> <p>2 Q. What does a counselor do?</p> <p>3 A. Basically meets with the families at our</p> <p>4 cremation society, Cremation Society of Michigan.</p> <p>5 And he also met with funeral home families as</p> <p>6 well occasionally in my absence.</p> <p>7 Q. What's the difference between a funeral director</p> <p>8 and a counselor?</p> <p>9 A. He's not licensed.</p> <p>10 Q. Okay.</p> <p>11 A. A funeral director is.</p> <p>12 Q. What does a funeral director do that he can't do?</p> <p>13 A. Take a funeral to a cemetery and embalm a body.</p> <p>14 Q. And Dan -- I can't read my handwriting.</p> <p>15 A. Kozlauskos.</p> <p>16 Q. Kozlauskos.</p> <p>17 A. He was a runner as well.</p> <p>18 Q. When was he terminated?</p> <p>19 A. Roughly, just going by memory, probably soon</p> <p>20 after Maruta, so roughly four and a half years</p> <p>21 ago.</p> <p>22 Q. Do you remember why?</p> <p>23 A. We had some issues with him. I'm trying to think</p> <p>24 what it was. I think just some of the things he</p> <p>25 had said to some hospice nurses and some nurses.</p>	<p style="text-align: right;">Page 23</p> <p>1 A. Roughly, once a year.</p> <p>2 Q. And where do you go?</p> <p>3 A. Sam Michaels Clothiers.</p> <p>4 Q. And they bill R.G. & G.R. directly?</p> <p>5 A. Yes.</p> <p>6 Q. Have you fired anybody else besides Maruta,</p> <p>7 Debbie, Chris, Mike and Dan?</p> <p>8 A. No.</p> <p>9 Q. Let's move to discipline.</p> <p>10 A. Actually, there was one other. I'm sorry. Marie</p> <p>11 Byrski was her name. She had taken Maruta's job,</p> <p>12 after we let Maruta go, on a part-time basis, not</p> <p>13 full time.</p> <p>14 Q. When was she terminated?</p> <p>15 A. Probably about four years ago, roughly.</p> <p>16 Q. And why?</p> <p>17 A. She had a mix-up with a family that left a bad</p> <p>18 taste in our mouth with us and we couldn't have</p> <p>19 that.</p> <p>20 Q. If Maruta Tropps was downsized --</p> <p>21 A. Uh-huh.</p> <p>22 Q. -- why was she replaced with Marie?</p> <p>23 A. We had ended up needing somebody part time. The</p> <p>24 load was too much to go without a person.</p> <p>25 Q. So you went from a full-time to a part-time?</p>
<p style="text-align: right;">Page 22</p> <p>1 Nothing that derogatory but just not</p> <p>2 professional, and it got back to us and we just</p> <p>3 didn't want that associated with us, the lack of</p> <p>4 professionalism.</p> <p>5 Q. Did you ever fire anybody for violating the dress</p> <p>6 code?</p> <p>7 A. No.</p> <p>8 Q. Do you understand what I mean by dress code?</p> <p>9 A. If you'd like to explain it.</p> <p>10 Q. Well, what is R.G. & G.R. Harris's dress code</p> <p>11 policy?</p> <p>12 A. Well, for the males it's a suit and tie. And</p> <p>13 then for the females it's no slacks, a skirt, a</p> <p>14 blouse and a jacket. A professional, I guess,</p> <p>15 business attire.</p> <p>16 Q. And you're wearing the suit today?</p> <p>17 A. Yes, I am.</p> <p>18 Q. And this is provided to you by R.G. & G.R.</p> <p>19 Harris?</p> <p>20 A. Yes, it is.</p> <p>21 Q. And what's the policy for providing you with the</p> <p>22 suit?</p> <p>23 A. I was provided with two suits when I started, and</p> <p>24 as needed I can get more suits.</p> <p>25 Q. Can you estimate how often you get a new suit?</p>	<p style="text-align: right;">Page 24</p> <p>1 A. Correct.</p> <p>2 Q. Can you describe what you've done to discipline</p> <p>3 employees at R.G. & G.R.?</p> <p>4 A. Usually just sitting down and talking with them,</p> <p>5 pointing out what their error was or what the</p> <p>6 problem was. I never had to send anybody home or</p> <p>7 anything like that where they lost time. So just</p> <p>8 disciplining verbally.</p> <p>9 Q. So typically verbal disciplines, no written</p> <p>10 disciplines?</p> <p>11 A. Correct.</p> <p>12 Q. And what sort of things would you do a verbal</p> <p>13 discipline regarding?</p> <p>14 A. Ask what happened in their own words. It would</p> <p>15 most of the time be a family complaining to us</p> <p>16 about somebody doing something and/or saying</p> <p>17 something. I would always ask their side of the</p> <p>18 story, and if they were, in fact, at fault we</p> <p>19 would just talk about it and make sure it doesn't</p> <p>20 happen again. Explain to them why, what the</p> <p>21 ramifications were and move on from there.</p> <p>22 Q. So --</p> <p>23 A. It's always been a civil conversation. I'm</p> <p>24 sorry, I didn't mean to interrupt you. It's</p> <p>25 always been a civil conversation.</p>

Page 29

1 A. No.
 2 Q. Has Tom Rost ever encouraged you to participate
 3 in religious activities?
 4 A. No.
 5 Q. Have you ever had any sort of religious
 6 conversation with Tom Rost?
 7 A. No.
 8 Q. Would you consider R.G. & G.R. Harris to be a
 9 Christian business?
 10 A. Yes.
 11 Q. Why would you consider that?
 12 A. All of us that go there are church-going people
 13 of different faiths, and to me a church-going
 14 person constitutes a Christian.
 15 Q. Do you know that Tom Rost goes to church?
 16 A. I believe he belongs to Highland Park Baptist
 17 Church.
 18 Q. If you've never discussed religion with him, how
 19 do you know he goes to that church?
 20 A. Because we've had families that come to us and we
 21 find out the source of the call, and they'll say
 22 I go to church with Tom Rost.
 23 Q. R.G. & G.R. Harris provides funeral services for
 24 non-Christian families, right?
 25 A. Yes.

Page 30

1 Q. And even for atheist, nonreligious families?
 2 A. Oh, yes.
 3 Q. So your understanding that R.G. & G.R. is a
 4 Christian business you've testified is based on
 5 the fact that a lot of the employees are
 6 church-going people?
 7 A. Yes.
 8 Q. Any other way you would consider R.G. & G.R. to
 9 be a Christian business?
 10 A. Not really, no.
 11 Q. There aren't bible studies or employee prayers?
 12 A. There are not.
 13 Q. Do you discuss your religious beliefs with your
 14 employees?
 15 A. No. No.
 16 Q. I'm going to show you what's been marked
 17 previously as Exhibit 6.
 18 A. Okay.
 19 MR. SHULTZ: Take a quick break and you
 20 can review it while we're breaking.
 21 THE WITNESS: Oh, sure.
 22 (A pause was had in the proceedings.)
 23 BY MR. SHULTZ:
 24 Q. Joel Kirkpatrick, R.G. & G.R. Harris's attorney,
 25 provided us with three documents responsive to

Page 31

1 document requests.
 2 MR. SHULTZ: Do you want to describe
 3 what these are real fast for the record, Joel?
 4 MR. KIRKPATRICK: Well, these are
 5 pursuant to your request for discovery, and you
 6 asked us to provide a Daily Bread that is used in
 7 the funeral home, a card there that says "What do
 8 you see" with the word Jesus on it. It's another
 9 card that's provided, and you also asked us to
 10 provide documents concerning our previous expert,
 11 Carl Jennings', material that he has provided,
 12 and so that's what we provided.
 13 MR. SHULTZ: Let's go off the record for
 14 a second.
 15 (Discussion held off the record.)
 16 BY MR. SHULTZ:
 17 Q. I'm going to show you what Mr. Kirkpatrick
 18 provided to us, which is the "What do you see,
 19 Jesus" card. We're not going to mark this as an
 20 exhibit right now because this is our only copy,
 21 and Mr. Kirkpatrick doesn't have any objections
 22 to the three exhibits we discussed.
 23 MR. KIRKPATRICK: I have no objection.
 24 BY MR. SHULTZ:
 25 Q. Have you seen this card before?

Page 32

1 A. Yes.
 2 Q. Why have you seen it?
 3 A. They're available at the funeral home for anyone
 4 to take.
 5 Q. Where at?
 6 A. I think on the front credenza at each of the
 7 branches.
 8 Q. Do you place those cards there?
 9 A. Our secretaries make sure that they're filled and
 10 there's cards there for people to take.
 11 Q. Okay. Do you direct them to place them there?
 12 A. I don't think I've ever directed them. They just
 13 knew to do that prior to me getting there.
 14 Q. Who would have told them to do that?
 15 A. It could have been George Crawford.
 16 Q. George Crawford?
 17 A. It might have been Tom. I don't know. I'd have
 18 to speculate on that.
 19 Q. So you're not sure if Tom Rost or George Crawford
 20 asked these to be placed at the front desks?
 21 A. Correct. I'm not sure.
 22 Q. Okay. Have you ever -- has Tom Rost ever
 23 encouraged you to take this card?
 24 A. No, he hasn't.
 25 Q. Have you ever encouraged an employee to take the

Page 1

1 IN THE UNITED STATES DISTRICT COURT
 2 EASTERN DISTRICT OF MICHIGAN
 3 SOUTHERN DIVISION
 4
 5 EQUAL EMPLOYMENT OPPORTUNITY)
 6 COMMISSION,)
 7 Plaintiff,)
 8 vs.) Case No. 14-13710
 9 R.G. & G.R. HARRIS FUNERAL) Hon. Sean F. Cox
 10 HOMES, INC.,) United States
 11 Defendants.) District Court Judge
 12 _____)
 13
 14 DEPOSITION OF THOMAS ROST
 15 PLYMOUTH, MICHIGAN
 16 THURSDAY, NOVEMBER 12, 2015
 17
 18
 19
 20
 21
 22
 23
 24 REPORTED BY: QUENTINA R. SNOWDEN, CSR NO. 5519
 25 JOB NO.: 276003-B

Page 2

1 DEPOSITION OF THOMAS ROST, taken at the
 2 offices of Joel J. Kirkpatrick, PC, located at
 3 843 Penniman Avenue, Suite 201, Plymouth,
 4 Michigan on Thursday, November 12, 2015, at 2:14
 5 p.m., before Quentina R. Snowden, Certified Court
 6 Reporter, in and for the State of Michigan.
 7
 8 APPEARANCES:
 9 For the Plaintiff:
 10 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
 11 BY: DALE R. PRICE, JR., ESQ.
 12 MILES E. SHULTZ, ESQ.
 13 477 Michigan Avenue
 14 Room 865
 15 Detroit, Michigan 48226-2552
 16 (313) 226-7808
 17 E-mail: dale.price@eoc.gov
 18 miles.shultz@eoc.gov
 19
 20
 21
 22
 23
 24
 25

Page 3

1 APPEARANCES CONTINUED:
 2 For the Defendant:
 3 JOEL J. KIRKPATRICK, PC
 4 BY: JOEL JAMES KIRKPATRICK, ESQ.
 5 843 Penniman Avenue
 6 Suite 201
 7 Plymouth, Michigan 48170-1770
 8 (734) 404-5710
 9 E-mail: joel@joelkirkpatrick.com
 10
 11 SCHRAMECK LAW, PLLC
 12 BY: JEFFREY T. SCHRAMECK, ESQ.
 13 843 Penniman Avenue
 14 Plymouth, Michigan 48170-1757
 15 (734) 454-5400
 16 E-mail: jeff@schramecklaw.com
 17
 18 ALLIANCE DEFENDING FREEDOM
 19 BY: BRADLEY ABRAMSON, ESQ.
 20 15100 North 90th Street
 21 Scottsdale, Arizona 85260
 22 (480) 444-0020
 23 E-mail: babramson@adfllegal.com
 24
 25

Page 4

1 I N D E X
 2 WITNESS: THOMAS ROST
 3 EXAMINATION PAGE
 4 BY: Mr. Price 05
 5 EXAMINATION
 6 BY: Mr. Kirkpatrick 46
 7 RE-EXAMINATION
 8 BY: Mr. Price 50
 9 (No further examination.)
 10 E X H I B I T S
 11 NUMBER DESCRIPTION PAGE
 12 EX. NO. 8 EMPLOYEE CLOTHING ALLOWANCE LIST 17
 13
 14 EX. NO. 9 2012-2014 FINANCIAL DATA 36
 15 (Exhibits attached.)
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

<p style="text-align: right;">Page 13</p> <p>1 Do you know who updated it the last 2 time it was done? 3 A Do not know. 4 Q Okay. Now, with respect to -- we talked about 5 a dress code and I'll get back to that in a 6 little bit, but there is a clothing allowance 7 policy at R.G. G.R. Harris, correct? 8 A Well, not for men. No, because we give them 9 the suits. 10 Q Okay. 11 A They don't buy -- we buy the suits. We tell 12 them what to wear. 13 Q Okay. So the men are told what to wear? 14 A And we give it to them, we provide it. 15 Q Okay. Where do you get this -- what are the 16 men given? 17 A This is what they're given right here. 18 Q So it's a blue -- 19 A It's a blue striped shirt and they get a tie. 20 Q Blue striped suit and tie? 21 A Yeah. 22 Q Where do you get the suits from? 23 A A place on 12 Mile and Middlebelt called Sam 24 Michael's. 25 Q And how often are suits issued to the male</p>	<p style="text-align: right;">Page 15</p> <p>1 Q But generally speaking every two years? 2 A Two or three years, yeah. 3 Q Okay. Now, how much does a suit cost you? 4 A I'm going to say about 225. 5 Q And how much does a tie cost? 6 A Ten bucks. 7 Q Do you get the ties from the same place? 8 A Yep. 9 Q Are they ordered all at once or just kind of -- 10 A No. 11 Q Just periodically? 12 A No. We used to do that, but we don't anymore, 13 no. 14 Q When did that cease to happen? 15 A Oh, probably 20 years ago. 16 Q Okay. With respect to female employees, what 17 do they get? 18 A They get a little allowance. 19 Q Okay. And how is the allowance, how is it 20 doled out? 21 A They get a check. 22 Q Annually? 23 A They get it annually. 24 Q Okay. How much -- how is it determined how 25 much a female employee will get?</p>
<p style="text-align: right;">Page 14</p> <p>1 employees? 2 A Well, it's different for -- let's say -- I get 3 suits, we'll say, like every three or four 4 years because I'm not very hard, but I have 5 some people that are -- they're like animals, 6 you know, they're -- 7 Q They wear their suits out? 8 A They wear their suits out, so they require -- 9 Q Okay. So you get -- how many suits are issued 10 at hire? 11 A Well, for a full-time person, he gets two. For 12 a part-time person he gets one. 13 Q So a full-time male employee gets one -- or two 14 suits? 15 A Right. 16 Q And two ties? 17 A And two ties. 18 Q Okay. And the part-time gets one? 19 A One, right. 20 Q And then as they wear out they're replaced, is 21 that correct? 22 A Well, it's like every couple years normally. 23 Q Every two years? 24 A Yeah. But sometimes people have an emergency 25 or something.</p>	<p style="text-align: right;">Page 16</p> <p>1 A A female gets 150 bucks -- dollars, and a 2 part-time gets 75. 3 Q So full-time gets 150 and part-time 75? 4 A Right. 5 Q And who -- how is that calculated; who sets how 6 much the men and woman are going to be getting? 7 Let's go back to the women. Who determines -- 8 how is it set that women would get 150 if 9 they're full-time and 75 for part-time? 10 A I guess I set it. Yeah. 11 Q Okay. How long has that been the case? 12 A A few years. 13 Q Do you know how -- was it stretching back 14 before Stephens was employed? 15 A Just about the same time. 16 (Mr. Schrameck entered the 17 conference room at 2:28 p.m.) 18 BY MR. PRICE: 19 Q Okay. That's when women would get 150 and 75? 20 A Yeah. 21 Q All right. Was it different before then? 22 A No, they -- they didn't get anything before. 23 MR. PRICE: Okay. Now we were 24 given -- have the following marked as Exhibit 8 25 here. Am I correct on that?</p>

<p style="text-align: right;">Page 17</p> <p>1 THE COURT REPORTER: Yes. 2 MR. PRICE: Oh, good. Marked as 3 Exhibit 8, please. Thank you. 4 (Deposition Exhibit No. 8 was 5 marked for identification.) 6 THE WITNESS: (Reviewing.) 7 BY MR. PRICE: 8 Q Do you recognize this Exhibit? 9 A Yes. 10 Q Okay. Do you know how it was prepared? 11 A I do not know. I have not seen this before. 12 Q Okay. This was provided to us as part of a 13 chart for how much was allocated to the various 14 employees, either they're given suits and ties 15 or they're given a stipend. Okay? 16 A All right. 17 Q Do you know what time frame this covers, is 18 this like a couple year time frame? 19 A I do not know. 20 Q Do you have any idea who prepared this? 21 A Probably Shannon Kish. 22 Q Okay. But it's at least your understanding 23 that women are getting -- full-time women get 24 \$150? 25 A That's my understanding, yes.</p>	<p style="text-align: right;">Page 19</p> <p>1 them out faster? 2 A Well, they're wearing them every day, but you 3 know, they'll go three years. 4 Q Or less if they're, like you said, something -- 5 A They might need a pair of pants. 6 Q Okay. 7 A You know, things like that. They might rip 8 them. 9 Q Do you have records on the replacement and 10 stuff like that? 11 A No. 12 Q Would that be Ms. Kish would have it? 13 A She might, yeah. 14 Q And if a suit is damaged they can get that 15 replaced too, suit coat? 16 A They could or get it fixed. They'll repair 17 them for them. 18 Q Do they have to pay for the repairs? 19 A No. 20 Q You'll pay for the repairs? 21 A Well, probably we don't pay for them at all. I 22 mean they probably repair them at no charge. 23 Q This is the Sam Michael people? 24 A Yes, he would, yeah. 25 Q How long have you done business with Michael's?</p>
<p style="text-align: right;">Page 18</p> <p>1 Q Okay. And part-time women get 75? 2 A Yes. 3 Q And then part-time men get 225 plus 10, and 4 full-time men get -- 5 A You might say that. 6 Q Okay. 450 plus 20? 7 A You might say that, yeah. 8 Q Okay. What do you mean by that? 9 A I mean if you added it up, yeah. 10 Q Okay, yeah. At least it looks like on what 11 you've described to me the men are getting a 12 little bit more monetary value. You know, a 13 suit and tie for \$235 for part-time as opposed 14 to \$75 for a part-time female employee. Do you 15 have any understanding of the discrepancy 16 there? 17 A Well, because that man is going to keep that 18 suit and wear it for three or four years. 19 Q Okay. 20 A Most part-time people I never have to replace 21 the suit, so they may wear it for ten years. 22 Q Okay. 23 A So actually they're receiving more. Or the 24 women are receiving more benefit. 25 Q What about full-time men, do they tend to wear</p>	<p style="text-align: right;">Page 20</p> <p>1 A Maybe ten years. 2 Q We talked a little bit before, but I'm going to 3 touch on some related stuff. Before we 4 discussed the fact that you became aware that 5 my agency was investigating your company based 6 on the charge filed by Aimee Stephens and that 7 there was prepared as part of that, a response 8 by the company filled out by Mr. Kirkpatrick, I 9 believe it was -- 10 MR. KIRKPATRICK: I put them in 11 order. 12 MR. PRICE: Yeah, I have a problem 13 keeping them there. 14 BY MR. PRICE: 15 Q Exhibit 3. 16 A (Reviewing.) 17 Q I believe I asked you if you -- do you 18 recognize this, and -- 19 A Well, this is -- yeah. You're right, he wrote 20 the response, yes, and I do recognize the 21 response, yes. 22 Q Okay. Did you see it before it went out, to 23 your recollection? 24 A I would assume I did, but I don't recall. But 25 I'm sure I did.</p>

Page 21

1 Q Okay. Now, there's some references in there
 2 to, you know, they don't know -- there's no
 3 awareness of who Aimee Stephens is, but there
 4 was an Anthony Stephens. Now, when Stephens
 5 presented you the letter, which was Exhibit --
 6 A Uh-huh.
 7 Q -- there was a reference to -- there was also
 8 signed not just Anthony Stephens, but Aimee
 9 Stephens, correct?
 10 A Uh-huh.
 11 Q Okay. "Yes"?
 12 A Yes.
 13 Q Okay. So, was there any confusion as to who
 14 was filing the charge in this case?
 15 A Well, yes, there's confusion because everything
 16 in our employment records is Anthony. And that
 17 was his name and employment, that's his
 18 driver's license, that's his insurance policy,
 19 that's his mortuary science license, that's
 20 everything is Anthony Stephens.
 21 There is no Aimee Stephens that's
 22 involved in our organization.
 23 Q Okay. But the letter that was presented to you
 24 did say Aimee Stephens, correct?
 25 A It probably did, yeah. Let's see.

Page 22

1 Q Let's double check.
 2 MR. KIRKPATRICK: Here it is.
 3 THE WITNESS: Okay. So he signs
 4 both names. Okay.
 5 BY MR. PRICE:
 6 Q Okay. So, was there any confusion on your end
 7 as to who was bringing this charge?
 8 A Either Anthony or Aimee Stephens.
 9 Q It would have been the same person, though --
 10 A Would be the same person.
 11 Q -- the person you knew as Anthony Stephens was
 12 filing it, right?
 13 A Yes.
 14 Q There's no question as to that?
 15 A That's true.
 16 Q Now, did you -- okay, I apologize. Did you see
 17 it before it went out or not?
 18 A Did I see?
 19 Q The position statement?
 20 A Yes.
 21 Q Okay.
 22 A Correct.
 23 Q Did you recommend any changes to it, that you
 24 can remember?
 25 A I don't believe so.

Page 23

1 Q Okay. Does it fairly reflect your views as to
 2 the case and the position of the company?
 3 A Yes. Yes. Uh-huh.
 4 Q Were you uncomfortable with the fact that the
 5 name Aimee Stephens was being used in the
 6 charge?
 7 A I'm uncomfortable with the name because he's a
 8 man.
 9 Q Okay. And you wanted to keep referring to
 10 Stephens as Anthony Stephens, correct?
 11 A That's who the employee was.
 12 Q I'm sorry, the employee?
 13 A Yeah. He was the employee.
 14 Q Okay. And we have already talked a little bit
 15 about the fact it doesn't talk about religious
 16 freedom or free exercises and it was that -- it
 17 was your belief that you didn't have to raise
 18 this at this point?
 19 A Yes.
 20 Q Okay. Have you ever disciplined anyone for a
 21 violation of the dress code?
 22 A No. I wouldn't say discipline, no.
 23 Q Okay. Have you ever counseled somebody that
 24 they're -- they weren't adhering to the dress
 25 code?

Page 24

1 A We have done that.
 2 Q Okay. How recently?
 3 A It hasn't been very recent.
 4 Q Okay. What was the issue?
 5 A Hard to say. It might be a woman, possibly, on
 6 her dress, or -- pretty hard for a man since we
 7 dress them.
 8 Q Okay. What is the woman's dress code, what do
 9 they have to wear?
 10 A Well, they wear a skirt and usually a jacket.
 11 Q Okay.
 12 A A professional-looking suit.
 13 Q Okay. What about pants, no pants?
 14 A No pants.
 15 Q Why is that?
 16 A I guess I'm just old-fashioned and I believe
 17 this is a funeral home and there's a certain
 18 tradition that we want to keep there. We
 19 want -- and I think the consumer out there,
 20 families believe that they -- a male should
 21 look like a particular individual, like a man,
 22 and a woman should look like a woman. And
 23 dress accordingly.
 24 Q And you think so as well?
 25 A And I think so as well.

<p style="text-align: right;">Page 25</p> <p>1 Q With respect to the stipend, or what's paid, 2 the dress allowance and the suit acquisition 3 and -- where would the records be for those? 4 You know, that showed the payouts, the buying 5 of the suits, that sort of thing? 6 A Yeah, at our east side location. 7 Q Okay. Would that be in the care or control of 8 Ms. Kish? 9 A It would be. 10 Q You mentioned earlier that you were concerned 11 about, and again correct me if I'm wrong, but 12 you were concerned about disrupting the 13 grieving process and you believe that Stephens 14 presenting as female would be a disruption of 15 that, it would be -- you talked to people who 16 said, you know, if someone was dressed -- a man 17 was dressed as a woman they wouldn't go there. 18 Would it -- could it also -- if I am not 19 mistaken, isn't the Livonia kind of downriver 20 area known for having a lot of people from the 21 south, correct? 22 A You mean -- 23 MR. KIRKPATRICK: Well, I want to 24 place an objection, it's kind of a speculation 25 if he knows the makeup of the geographical</p>	<p style="text-align: right;">Page 27</p> <p>1 maintenance person there. Yes, I do. I have a 2 cleaning lady there. 3 Q Okay. 4 A And she's black. And we've had outside 5 personnel and we've had, oh, I guess a driver, 6 you might say. 7 Q I mean, if we're talking about possible 8 disruptions, I mean you could have an 9 old-fashioned family, an older family of white 10 people who don't want to see a black employee 11 for that -- during a funeral. Couldn't that be 12 the case? 13 MR. KIRKPATRICK: Objection, 14 speculation. Answer if you can. 15 THE WITNESS: You know, I don't 16 know. 17 BY MR. PRICE: 18 Q Okay. 19 A I don't know. 20 Q Okay. 21 A I mean, you could say that about anything. 22 Q You could. But that -- I mean, would -- if 23 there was an objection to having an 24 African-American employee present during a 25 funeral, would you adhere to that?</p>
<p style="text-align: right;">Page 26</p> <p>1 area. But you can answer it if you know. 2 THE WITNESS: You're talking about 3 the Garden City facility? 4 BY MR. PRICE: 5 Q Yes. 6 A Oh, I don't know about that. We're not 7 downriver. 8 Q Okay. 9 A That's not downriver. 10 Q Okay. 11 A You know, that's on Ford Road, that's just 12 south of here. 13 Q Well, let's try it this way, couldn't it be the 14 case that if you -- do you have any 15 African-American employees? 16 A Not at present. 17 Q Okay. When was the last time you had an 18 African-American employee? 19 MR. KIRKPATRICK: Objection, 20 relevance. Go ahead. 21 THE WITNESS: About a year ago. 22 BY MR. PRICE: 23 Q What capacity did the person work? 24 A At our east side location, we've had 25 maintenance people -- no, I do have -- I have a</p>	<p style="text-align: right;">Page 28</p> <p>1 A If there was an objection? Well, I can't ever 2 see it happening, so I don't know. 3 Q Okay. But if there was? I mean, there are 4 people -- unfortunately there are people out 5 there who have racist mindsets. 6 MR. KIRKPATRICK: Same objection. 7 MR. PRICE: Okay. 8 BY MR. PRICE: 9 Q And if they thought that was -- the presence of 10 an African-American staffer was disrupting 11 their grieving experience, what would you do? 12 A I don't know. 13 Q Would you remove the person? 14 A I don't know. 15 Q Would you remove the employee? 16 A I don't know. 17 Q You might? 18 A I might. They might temporarily, but, you 19 know, I've never had that happen, so I don't 20 know. 21 Q Have you ever asked anybody about how they 22 would feel about having a black employee? I 23 mean, you said you already asked about having, 24 I believe, a man in a dress; what about having 25 a black employee, have you ever asked how</p>

<p style="text-align: right;">Page 41</p> <p>1 A About that, '12 or '13. 2 Q And records for the allowances, you testified, 3 would be at the east side facility? 4 A Uh-huh. That's correct. 5 Q "Yes"? 6 A Yes. 7 Q All right. 8 A Yes. 9 Q I believe in the previous deposition you 10 mentioned that you have done funerals for 11 Episcopalian -- Episcopal funerals, people who 12 have been of that -- also Evangelical 13 Lutherans. Do you have any understanding of 14 the attitudes of those churches towards people 15 who are gay or transgender? 16 A I do not. 17 Q Okay. 18 MR. KIRKPATRICK: Objection to gay 19 or transgender. Relevance, but go ahead. And 20 objection, obviously, to the term 21 "Transgender." I don't think there's a 22 foundation laid. Go ahead. 23 BY MR. PRICE: 24 Q Their attitudes towards -- 25 A I don't --</p>	<p style="text-align: right;">Page 43</p> <p>1 (Back on the record at 3:03 p.m.) 2 BY MR. PRICE: 3 Q When you were interviewed by Mrs. Dickinson you 4 were asked about how many funerals you were 5 doing per month and how many cremations per 6 month on average, this was back in 2014. March 7 of that year you said on average you were doing 8 30 funerals a month and 60 cremations a month. 9 A Okay. 10 Q Does that sound about right to you? 11 A Sounds about right. 12 Q Is it the same now? 13 A It's about the same, yeah. 14 Q Okay. So about roughly per month 30 funerals 15 and 60 cremations? 16 A Right. 17 Q You also indicated during your discussions with 18 your interview with Mrs. Dickinson, that you 19 have a belief that God tends to supply 20 employees out of the blue when you need them 21 the most? 22 MR. KIRKPATRICK: I'm going to 23 object to foundation, you're assuming what was 24 said to Ms. Dickinson, but answer if you can. 25 BY MR. PRICE:</p>
<p style="text-align: right;">Page 42</p> <p>1 Q -- people like Mr. Stephens, the person you 2 knew as Mr. Stephens? 3 A No, I don't know anything about it. 4 Q Okay. So if they had attitudes that were more 5 accepting of persons like Stephens, you 6 wouldn't know about it one way or the other? 7 A No. 8 Q Okay. But if there were -- if that was the 9 case then they would be much less likely to 10 have a problem with a person like Mr. Stephens 11 working? 12 MR. KIRKPATRICK: Objection on 13 speculation on what these groups may or may not 14 do. Go ahead. 15 THE WITNESS: Yeah, I -- I don't 16 know. 17 BY MR. PRICE: 18 Q Okay. You don't know. But it's possible? 19 A Anything is possible. 20 Q How long has your salary been 175,000, can you 21 recall? 22 A 25 years. 23 MR. PRICE: Let me check through, I 24 might be about done. 25 (Off the record at 3:02 p.m.)</p>	<p style="text-align: right;">Page 44</p> <p>1 Q Have you ever said anything like that; you 2 believe that God supplies employees sometimes? 3 A Yeah, I have said that. 4 Q Okay. Would you say the same was in the case 5 of Stephens coming to work for you? 6 A Well, if I recall, he came to me just kind of 7 like out of the blue. I don't think there was 8 an advertisement. I think he walked in. 9 Q Okay. 10 A And it just seemed to be at the right time. He 11 was at the right place at the right time. 12 Q And performed well for you? 13 A He did. 14 Q Okay. So it would be another case, you would 15 think, at least at the time you thought that 16 that would be another case of, you know, God 17 supplying an employee for you? 18 A Yes. 19 Q You also mentioned something -- did you have an 20 understanding of whether Stephens was taking 21 chemicals or hormones? 22 A Not until he told me. 23 Q Okay. That was where you heard it from? 24 A Yes. 25 Q Was that as of the time of termination or was</p>

Page 45

1 that when the letter was presented?
 2 A I believe it was when the letter was presented.
 3 Q Okay. Did you ever hear it from anybody else
 4 that there might be chemicals or hormones
 5 involved?
 6 A From somebody else?
 7 Q Yeah, somebody else at R.G. G.R. or no?
 8 A That somebody else what?
 9 Q Tell you that he was on -- they thought they
 10 were on chemicals?
 11 A No. No.
 12 Q Okay. Now you said you talked to some people
 13 about how you would set the allowance for
 14 females. Did you talk to any of the females
 15 employees about how far \$150 would go or what
 16 it could be used for?
 17 A No, just Shannon.
 18 Q Okay. What do you recall Shannon saying?
 19 A She thought it was fine. She thought it was
 20 fair.
 21 MR. PRICE: Okay. Why don't we
 22 just take a break, and I might have one more
 23 question or may be done.
 24 (Off the record at 3:06 p.m.)
 25 (Back on the record at 3:12 p.m.)

Page 46

1 MR. PRICE: Okay. We do not have
 2 anything else.
 3 MR. KIRKPATRICK: All right. I
 4 guess we'll have a few questions here.
 5 EXAMINATION
 6 BY MR. KIRKPATRICK:
 7 Q Mr. Price asked you several questions using the
 8 chart here about allowances and suits and that
 9 kind of thing. I'm just going to ask you a
 10 question, why is there a difference with women
 11 getting an allowance and men having suits
 12 purchased for them?
 13 A We want men to look a certain way as
 14 professional funeral directors as people have
 15 come to know what they would look like, a dark
 16 suit, white shirt and a tie. The difference
 17 with women, if we had a woman funeral director
 18 she would look comparable to a man, but our
 19 other female employees dress in a professional
 20 manner, as we have talked about, in a skirt and
 21 usually in a jacket, and in an appropriate
 22 blouse --
 23 Q Okay. So -- oh, go ahead.
 24 A But the reason we haven't given them a uniform
 25 is because they can't come to an agreement on

Page 47

1 what type of a uniform would be appropriate for
 2 them.
 3 Q So did you at one point consider having a
 4 uniform, so to speak, like the men have a suit
 5 uniform for the women?
 6 A Yes, absolutely.
 7 Q And it was going to be something specific, the
 8 same color, that kind of thing?
 9 A Yes.
 10 Q And why did that not materialize?
 11 A They couldn't come to an agreement on anything.
 12 Q And what do you mean by that?
 13 A One likes this color, one likes that color; one
 14 wants stripes that go this way, one wants
 15 stripes that go that way.
 16 Q Okay. So, you came up with a policy you have
 17 now in place for women as professional business
 18 attire?
 19 A Professional business attire, exactly.
 20 Q Now, do you currently have any female funeral
 21 directors?
 22 A I do not.
 23 Q If you did have a female funeral director, what
 24 would describe what her uniform would be or
 25 what she would be required to wear?

Page 48

1 MR. PRICE: Objection, speculation.
 2 But go ahead.
 3 THE WITNESS: She would have a dark
 4 jacket and a dark skirt, matching. Matching.
 5 BY MR. KIRKPATRICK:
 6 Q Okay. A skirt. So just like the male funeral
 7 director she would have a business suit, but a
 8 female business suit?
 9 A Yes.
 10 Q As a skirt?
 11 A Yes.
 12 Q Now, you were asked by Mr. Price about Exhibit
 13 3. This letter here. And I know you recognize
 14 that, right?
 15 A Yes.
 16 Q That was actually prepared by me, correct?
 17 A Yes, correct.
 18 Q I kind of touched on this the first time during
 19 the first deposition, but you have no legal
 20 training, right?
 21 A That's correct.
 22 Q Do you fully understand all of the legal
 23 concepts that were enumerated and set forth in
 24 that letter?
 25 A No.

Page 49

1 Q Okay. Thanks. Now, Mr. Price asked you about
 2 what would happen and the speculation of
 3 perhaps a customer may have seen Stephens after
 4 work, let's say, outside of the funeral home
 5 wearing a dress or presenting as a woman and
 6 they might be upset what you might do, correct,
 7 do you remember that?
 8 A Yes.
 9 Q I think you said you would be uncomfortable,
 10 right?
 11 A I would be uncomfortable.
 12 Q Would you fire him for that?
 13 A Probably not, but I would ask him some
 14 questions.
 15 Q Okay. How about if a customer maybe saw
 16 another employee outside of the funeral home on
 17 their own time carrying a -- several
 18 pornographic videotapes, would that make you
 19 uncomfortable?
 20 A Make me uncomfortable, but I wouldn't fire
 21 them.
 22 Q Okay. Why do you have a dress code?
 23 A Well, we have a dress code because it allows us
 24 to make sure that our staff is -- is dressed in
 25 a professional manner that's acceptable to the

Page 50

1 families that we serve, and that is understood
 2 by the community at-large what these
 3 individuals would look like.
 4 Q Is that based on the specific profession that
 5 you're in?
 6 A It is.
 7 Q And again, tell us why it fits into the
 8 specific profession that you're in that you
 9 have a dress code?
 10 A Well, it's just the funeral profession in
 11 general, if you went to all funeral homes,
 12 would have pretty much the same look. Men
 13 would be in a dark suit, white shirt and a tie
 14 and women would be appropriately attired in a
 15 professional manner.
 16 Q And why do you provide suits to your funeral
 17 directors?
 18 A Well, because we want them all dressed exactly
 19 the same. We want them to look the same.
 20 Q Is it to comply with the dress code?
 21 A It is to comply with the dress code, yes.
 22 MR. KIRKPATRICK: That's it, guys.
 23 MR. PRICE: Okay.
 24 RE-EXAMINATION
 25 BY MR. PRICE:

Page 51

1 Q It's not just the funeral directors that gets
 2 suits, though, it's the funeral director
 3 assistants, correct?
 4 A That's what -- yes, the men's, yes.
 5 Q Okay.
 6 A Yeah, because they're -- to the consumer they
 7 think they're funeral directors, I mean, any
 8 male person.
 9 Q Okay. Now, have you been to funeral homes
 10 where there have been women wearing
 11 businesslike pants before?
 12 A I believe I have.
 13 Q Okay. So, the fact that you require women to
 14 wear skirts is something that you prefer, it's
 15 not necessarily an industry requirement?
 16 A That's correct.
 17 Q Okay. But women could look businesslike and
 18 appropriate in pants, correct?
 19 A They could.
 20 Q Okay. Now you were asked about what if a
 21 customer had seen Stephens in this hypothetical
 22 about, you know, Stephens only presented as
 23 female outside of work, if that person had said
 24 that they were not going to come back -- they
 25 were not going to use the services of the

Page 52

1 Harris Funeral Homes what would you have done?
 2 A Don't know.
 3 Q Okay. But that would have been a factor to
 4 consider in how you addressed Stephens'
 5 situation in that case, correct?
 6 A It probably would have been.
 7 Q And it could have been reason to let Stephens
 8 go if --
 9 A Perhaps, yes.
 10 Q Okay. Now, you were asked about 3 and it's
 11 true this was -- letter was drafted by Mr.
 12 Kirkpatrick, but you hired him to represent
 13 you?
 14 A That is true.
 15 Q You hired him to represent Harris in defense
 16 against this charge?
 17 A Yes.
 18 Q Okay. And if you had any questions about what
 19 was in the letter, you certainly were
 20 encouraged to ask questions; is that the case?
 21 A Yes.
 22 Q Did you choose to ask any questions?
 23 A Do not know.
 24 Q You do not recall?
 25 A I do not recall.

12/21/2015 11:33 3135213711
B.C. & G.R. HARRIS FUNERAL HOMES, INC.

HARRIS FH & CON

PAGE 01/18
29523

ACCOUNT NO.	INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAXEN
	CLOTHING ALLOW	1/05/15	75.00	75.00	.00
CHECK TOTAL					75.00

RD. & RA.



BUSINESS OFFICE: 1551 PARKER AVE
DETROIT, MICHIGAN 48224

Under the personal direction of the Harris Family since 1910

COMERICA BANK
DETROIT, MICHIGAN
9-9-720

29523

PAY

SEVENTY-FIVE AND 00/100 DOLLARS*****

CHECK NO	CHECK DATE	VENDOR NO
	01/05/15	*1655

CHECK AMOUNT

*****75.00

TO THE
ORDER
OF

Linda D'Achille

B.C. & G.R. HARRIS FUNERAL HOMES, INC.

NOT NEGOTIABLE



12/21/2015 11:33 3135213711
 R.G. & G.R. HARRIS FUNERAL HOMES, INC.

HARRIS FH & CSM

PAGE 02/18
 29522

ACCOUNT NO.	INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN
52055	CLOTHING ALLOW	1/05/15	75.00	75.00	.00
CHECK TOTAL					75.00

R.G. & G.R.



BUSINESS OFFICE: 33031 HARRIS FHL
 DETROIT, MICHIGAN 48124

Under the personal direction of the Harris Family since 1917

COMERICA BANK
 DETROIT, MICHIGAN
 8-8-729

29522

PAY

SEVENTY-FIVE AND 00/100 DOLLARS*****

CHECK NO.	CHECK DATE	VENDOR NO.
	01/05/15	*1654

CHECK AMOUNT
 \$*****75.00

TO THE
 ORDER
 OF

Denise Coleman

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

NOT NEGOTIABLE

12/21/2015 11:33 3135213711
R.G. & G.H. HARRIS FUNERAL HOMES, INC.

HARRIS FH & CSM

PAGE 03/18
29521

ACCOUNT NO.		VENDOR #1653 Pamela Cottrell			CHECK NO. 029521	
VOUCHER	INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN	
52063	CLOTHING ALLOW	1/05/15	75.00	75.00	.00	
					CHECK TOTAL 75.00	

R.G. & G.H. **Harris**
 FUNERAL HOMES
Under the personal direction of the Harris Family since 1910

BUSINESS OFFICE: 15251 HARPER AVE.
 DETROIT, MICHIGAN 48224

COMERICA BANK
 DETROIT, MICHIGAN
 9-9-720

29521

CHECK NO.	CHECK DATE	VENDOR NO.
	01/05/15	*1653

PAY SEVENTY-FIVE AND 00/100 DOLLARS*****

CHECK AMOUNT
 *****75.00

TO THE ORDER OF **Pamela Cottrell**

R.G. & G.H. HARRIS FUNERAL HOMES, INC.

NOT NEGOTIABLE

12/21/2015 11:33 3195213711
R.G. & G.R. HARRIS FUNERAL HOMES, INC.

HARRIS FH & CSM

PAGE 04/18
 29520

ACCOUNT NO.		VENDOR		CHECK NO.	
VOUCHER	INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN
		*1650	Marie Jones		029520
52062	CLOTHING ALLOW	1/05/15	150.00	150.00	.00
CHECK TOTAL					150.00

R.G. & G.R.



BUSINESS OFFICE: 16251 HARPER AVE.
 DETROIT, MICHIGAN 48224

Under the personal direction of the Harris Family since 1910

COMERICA BANK
 DETROIT, MICHIGAN
 9-9-720

29520

CHECK NO.	CHECK DATE	VENDOR NO.
	01/05/15	*1650

PAY

ONE HUNDRED FIFTY AND 00/100 DOLLARS*****

CHECK AMOUNT
 \$*****150.00

TO THE
 ORDER
 OF

Marie Jones

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

NOT NEGOTIABLE



12/21/2015 11:33 3135213711

HARRIS FH & CSM

PAGE 05/18

					Amount
1/22/12	DELTA AIR LINES	ATLANTA			\$630.40
	DELTA AIR LINES				
	From:	To:	Carrier:	Class:	
	N/A	N/A	YY	00	
		N/A	YY	00	
		N/A	YY	00	
		N/A	YY	00	
	Ticket Number: 0060546590168		Date of Departure: 12/31		
	Passenger Name: ROST/THOMAS FREDRICK				
	Document type: ADDITIONAL COLLECTION				
1/22/12	JOE MUEK'S SEAFOOD	DETROIT MI			\$385.42
	3135676839				
	FOOD/BEVERAGE		\$325.42		
	TIP		\$60.00		
1/22/12	RENAISSANCE CENTER	DETROIT MI			\$10.00
	PARKING LOT & GARAGE				
1/23/12	SAM MICHAELS MENSWEAR	FARMINGTON HILL MI			\$583.00
	7484774615				
	Description:	Price			
	APPAREL/ACCESSORY S		\$583.00		
1/24/12	RUSTY BUCKET 13	RUSTBLOOMFIELD HILLS MI			\$90.71
	BLOOMFIELD HILLS 42874	WO			
	FOOD/BEVERAGE		\$78.71		
	TIP		\$12.00		

6027

6026

6025 6052

6032

6021

12/21/2015 11:33 3135213711

HARRIS FH & CSM

PAGE 06/18

0/13	SAM MICHAEL S TAILOR FARMINGTON HIL MI			
	MEN'S CLOTHING		6032	\$636.00
0/13	BRANCH TREE SERVICE WARREN MI			
	LANDSCAPE/HORTICULTUR		6013	\$495.90
0/13	BRANCH TREE SERVICE WARREN MI			
	LANDSCAPE/HORTICULTUR		6013	\$454.50

Continued on next page

02/17/8
 SAM MICHAEL'S TAILOR/FABRICATION HLL M
 MEN'S CLOTHING
 6032
 \$291.50

12/21/2015 11:33 3135213711

HARRIS FH & CSM

PAGE 09/18

THOMAS F ROST

Account Ending 1-52008

p 4/18

Detail Continued

			Amount
07/26/13	SAM MICHAELS TAILORIFARMINGTON HIL MI 2484774615		\$585.12
07/26/13	CHANDLER'S 080072203PETOSKEY MI 2313472438		\$271.15
	FOOD/BEVERAGE	\$241.15	
	TIP	\$30.00	
07/28/13	CHARLEVOIX COUNTRYCLCHARLEVOIX MI 2315479796		\$164.00
	Description	Price	
	MEMBERSHIP CLUB	\$164.00	
07/27/13	GOOGLE ADWS725789577Mountain View ADVERTISING SERVICE		\$500.00

6032

6026

DAC

6026

6055

Description	FOOD/BEVERAGE					
09/30/13	WWJ-AM/WXYT-AM 248-455-7278	MI				\$900.00
			Adv.	6055		
09/30/13	SAM MICHAELS TAILOR FARMINGTON HIL 2484774615	MI				\$583.00
			gwt	6032		
09/30/13	ROADSIDE B & G BLOOMFIELD TO 248-858-7270	MI				\$105.63
				6026		
	FOOD					\$90.63
	TIP					\$15.00
10/01/13	CVS 8132 08132 BLOOMFIELD HILLS MI DRUG STORE/PHARMACY	MI				\$3.91
			Med.	6046		

Continued on next page



12/21/2015 11:33 3135213711

HARRIS FH & CSM

PAGE 12/18

THOMAS F ROST

Account Ending 1-52008

p. 6/13

Detail Continued

			Foreign Spend	Amount
12/17/13	SAM MICHAELS TAILORIFARMINGTON HIL MI 2484774615		6032	\$583.00
12/17/13	THE LARK 248-661-4466 USFC48322		6026	\$543.10
12/18/13	GOOGLE ADWS725789577 Mountain View ADVERTISING SERVICE		6055	\$500.00
12/18/13	BARNES & NOBLE 2629 WEST BLOOMFIELD MI BOOK STORE		6030	\$53.33
12/19/13	CMS MEDICARE SERVICE8006334227 376463670T 1213 21224 MEDICARE BILLING		6046	\$54.10
12/20/13	SAM MICHAELS TAILORIFARMINGTON HIL MI 2484774615		6032	\$207.00
12/21/13	CVS 8132 08132 BLOOMFIELD HILLS MI DRUG STORE/PHARMACY		6046	\$17.13
12/21/13	AUTO EUROPE US TRAVEL BROKE U4040736-1 04102 AUTO RENTAL		6052	\$527.45
12/23/13	THE CAPITAL GRILLE 8TROY MI 2486495300 FOOD/BEVERAGE \$272.42 TIP \$35.00		6026	\$307.42
12/23/13	DAVID G BANDS DDS PC248-647-5434 248-647-5434		6046	\$97.00
12/24/13	MARATHON PETROLEUM CHOLLAND MI AUTO FUEL DISPENSER		6052	\$42.56
12/24/13	PANERA BREAD #601692SOUTHFIELD MI 9999999999		6026	\$16.26
12/24/13	PLUM MARKET - BLOO 5BLOOMFIELD TO MI 2485942555 Description Price GROCERY STORES, SUP \$113.44		6026	\$113.44

THOMAS F ROST

Account Ending 1-52006

P. 8/12

Detail Continued

Date	Description	State	Amount
08/11/14	ROADSIDE B & G	BLOOMFIELD MI	\$110.40
	248-858-7270		
	FOOD		195.00
	TIP		115.00
08/12/14	CAFE VIA	BIRMINGHAM MI	\$173.40
	248-544-8290		
08/13/14	NEWNETEM	732/4970220 NJ	\$250.00
	COMPUTER NETWORKING		
	Description		
	WEB HOSTING AND DES		
08/13/14	JAN KARWASIE	SOUTHFIELD MI	\$11.00
	248-353-0201		
	Description		
	CAR WASH		
08/15/14	SAM MICHAELS TAILOR	FARMINGTON HILL MI	\$291.00
	248-477-6615		
08/15/14	SAM MICHAELS TAILOR	FARMINGTON HILL MI	\$291.06
	248-477-6615		

HARRIS FUNERAL HOMES BATES 155

Continued on next page

02/13/14	SAM MICHAELS TAILOR FARMINGTON HIL MI	2484774615				\$531.91	6032
02/13/14	PIKAYO RESTAURANT SAN JUAN	787751124	FL			\$372.07	6026
	FOOD/BEVERAGE					\$322.07	
	TIP					\$50.00	
02/14/14	ETERNAL LOBBY LOUNGESAN JUAN	7875657711	PR			\$27.00	6026
02/15/14	DUFFY P.R. NEWSSTAND CAROLINA		PR			\$7.34	
02/16/14	CARIBE HILTON 209684SAN JUAN		PR	Arrival Date	02/15/14	\$1,937.62	
	LODGING	00000000		Departure Date	02/15/14		
02/16/14	EDDIE MERLOT'S BLOOMFIELD	2684340055	MI			\$76.58	
02/16/14	SPRINT BY SOLUTIONS 248-682-1900	USFC48302				\$37.09	6030
02/16/14	STEVE'S DELI 248-932-0800	USFC48301				\$31.59	6026
02/17/14	COND VANDERBILT HOTEL SAN JUAN		PR			\$47.73	
	RESTAURANT					\$6.00	
02/17/14	COND VANDERBILT HOTEL SAN JUAN		PR			\$515.05	
	RESTAURANT					\$71.00	
	TIP						

HARRIS FUNERAL HOMES BATES 158

THOMAS F ROST

Account Ending 1-52008

p. 6/12

Detail Continued

					Foreign Spend	Amount
07/11/14	M C PIERO 9134	DETROIT	MI			
	313-371-4777					\$51.28
	Description:					
	Unleaded Regular					
07/11/14	AUTO EUROPE US	TRAVEL BROKE				\$2649.50
	U4228741-104102					
	AUTO RENTAL					
07/12/14	DAVID'S NEW YORK DELINONIA		MI			\$1.67
	734-425-8170					
	Description:					
	FAST FOOD RESTAURAN					
07/12/14	SAM MICHAELS TAILOR FARMINGTON, IL		MI			\$291.00
	MENS CLOTHING					

6052

6027

6026

6032

06/10/14 JAMES MICHAELS TAILOR/FARMINGTON HIL MI
 MEN'S CLOTHING \$291.00
 6032

06/10/14 DAIRY QUEEN #43805 08BLOOMFIELD MI
 248-802-9771 \$14.06
 Description
 FAST FOOD RESTAURAN
 6026

06/10/14 EXCONMOBIL FOWLERVILLE MI
 517-223-7400 \$59.05
 Description
 GAS/SERVICES
 6052

Continued on reverse

12/21/2015 11:33 3135213711

HARRIS FH & CSM

PAGE 17/18

01/15/15	SAM MICHAELS TAILORIFARMINGTON HIL MI MEN'S CLOTHING	6032	\$583.00
01/15/15	SAM MICHAELS TAILORIFARMINGTON HIL MI MEN'S CLOTHING	6032	\$583.00

HARRIS FH & CSM

12/21/2015 11:33 3135213711

06/17/15	SAM MICHAELS TAILOR FARMINGTON HIL MI
	2484774615

4032

\$291.50

12/21/2015 11:19 3135213711
R.G. & G.R. HARRIS FUNERAL HOMES, INC.

HARRIS FH & CSM

PAGE 01/22
29494

ACCOUNT NO.	VENDOR #166	INVOICE #	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	CHECK NO 029494	DISCOUNT TAKEN
51839	CLOTHING	10/15/14	75.00	75.00	.00		
CHECK TOTAL						75.00	

R.G. & G.R. **Harris** FUNERAL HOMES
 BUSINESS OFFICE: 15251 HARPER AVE. DETROIT, MICHIGAN 48224
 Under the personal direction of the Harris Family since 1910

COMERICA BANK, DETROIT, MICHIGAN 9-9-720

29494

CHECK NO.	CHECK DATE	VENDOR NO.
	10/15/14	*1661

PAY SEVENTY-FIVE AND 00/100 DOLLARS*****

TO THE ORDER OF Michelle Peterson

CHECK AMOUNT *****75.00

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

NOT NEGOTIABLE

106 40.

866-241-4152

12/21/2015 11:19 3135213711

HARRIS FH & CSM

PAGE 02/22
29497

H.G. & G.R. HARRIS FUNERAL HOMES, INC.

ACCOUNT NO.		VENDOR 1027 Wendy McKie		CHECK NO. 029497	
VOUCHER	INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN
51827	CLOTHING	10/15/14	150.00	150.00	.00
CHECK TOTAL					150.00

R.G. & G.R.

Harris
FUNERAL HOMES

BUSINESS OFFICE: 18251 HARPER AVE.
DETROIT, MICHIGAN 48224

Under the personal direction of the Harris Family since 1910

COMERICA BANK
DETROIT, MICHIGAN
9-9-720

29497

PAY

CHECK NO.	CHECK DATE	VENDOR NO.
	10/15/14	1027

ONE HUNDRED FIFTY AND 00/100 DOLLARS*****

CHECK AMOUNT

*****150.00

TO THE
ORDER
OF

Wendy McKie
19521 12 Mile Road

Roseville MI 48065

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

NOT NEGOTIABLE

12/21/2015 11:19 3135213711
R.G. & G.R. HARRIS FUNERAL HOMES, INC.

HARRIS FH & CSM

PAGE 03/22
 23430

ACCOUNT NO.	INVOICE NUMBER	VENDOR 918	Susan Harrison	CHECK NO. 029496
VOUCHER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN
51831	CLOTHING	10/15/14	150.00	150.00
CHECK TOTAL				150.00

R.G. & G.R. Harris FUNERAL HOMES
Under the personal direction of the Home Family since 1910

BUSINESS OFFICE: 15251 HARPER AVE.
 DETROIT, MICHIGAN 48224

COMERICA BANK
 DETROIT, MICHIGAN
 9-9-720

29496

CHECK NO.	CHECK DATE	VENDOR NO.
	10/15/14	918

PAY

ONE HUNDRED FIFTY AND 00/100 DOLLARS*****

CHECK AMOUNT
 *****150.00

TO THE ORDER OF **Susan Harrison**

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

NOT NEGOTIABLE

12/21/2015 11:19 3135213711

HARRIS FH & CSM

PAGE 04/22
29493

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

ACCOUNT NO.		VENDOR #1660 Dolores Nemeth		CHECK NO. 029493	
VOUCHER	INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN
51838	CLOTHING	10/15/14	75.00	75.00	.00
				CHECK TOTAL	75.00

R.G. & G.R. **Harris**
FUNERAL HOMES
Under the personal direction of the Harris Family since 1910

BUSINESS OFFICE: 15261 HARPER AVE.
DETROIT, MICHIGAN 48224

COMERICA BANK
DETROIT, MICHIGAN
9-9-720

29493

CHECK NO.	CHECK DATE	VENDOR NO.
	10/15/14	*1660

PAY SEVENTY-FIVE AND 00/100 DOLLARS*****

CHECK AMOUNT
*****75.00

TO THE ORDER OF **Dolores Nemeth**

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

NOT NEGOTIABLE

12/21/2015 11:19 3135213711

HARRIS FH & CSM

PAGE 05/22
29492

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

ACCOUNT NO.		VENDOR #1659 Sharon Hassett			CHECK NO 029492
VOUCHER	INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN
51837	CLOTHING	10/15/14	75.00	75.00	.00
CHECK TOTAL					75.00

R.G. & G.R.



BUSINESS OFFICE: 10281 HARPER AVE.
DETROIT, MICHIGAN 48224

Under the personal direction of the Family since 1910

COMERICA BANK
DETROIT, MICHIGAN
9-9-720

29492

CHECK NO.	CHECK DATE	VENDOR NO.
	10/15/14	*1659

PAY

SEVENTY-FIVE AND 00/100 DOLLARS*****

CHECK AMOUNT

*****75.00

TO THE
ORDER
OF

Sharon Hassett

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

NOT NEGOTIABLE

12/21/2015 11:19 3135213711

HARRIS FH & CSM

PAGE 06/22
20441

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

ACCOUNT NO.		VENDOR #1658 Tia Macklin			CHECK NO. 029491
VOUCHER	INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN
51833	CLOTHING	10/15/14	75.00	75.00	.00
				CHECK TOTAL	75.00

R.G. & G.R. **Harris** FUNERAL HOMES
 Under the personal direction of the Harris Family since 1910

BUSINESS OFFICE: 15251 HARPER AVE.
 DETROIT, MICHIGAN 48224

COMERICA BANK
 DETROIT, MICHIGAN
 9-9-720

29491

CHECK NO.	CHECK DATE	VENDOR NO.
	10/15/14	*1658

PAY SEVENTY-FIVE AND 00/100 DOLLARS*****

CHECK AMOUNT
 *****75.00

TO THE ORDER OF Tia Macklin

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

NOT NEGOTIABLE

12/21/2015 11:19 3135213711
R.G. & G.R. HARRIS FUNERAL HOMES, INC.

HARRIS FH & CSM

PAGE 08/22
 29489

ACCOUNT NO.		VENDOR #1656 Pamela Ploski		CHECK NO. 029489	
VOUCHER	INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN
51834	CLOTHING	10/15/14	75.00	75.00	.00
				CHECK TOTAL	75.00

<p><small>R.G. & G.R.</small>  HARRIS FUNERAL HOMES <i>Under the personal direction of the Harris Family since 1910</i></p>	<p><small>BUSINESS OFFICE: 10251 HARPER AVE. DETROIT, MICHIGAN 48224</small></p>	<p>COMERICA BANK DETROIT, MICHIGAN 9-9-720</p>	<p>29489</p>						
<p>PAY</p> <p>SEVENTY-FIVE AND 00/100 DOLLARS*****</p> <p>TO THE ORDER OF Pamela Ploski</p>		<table border="1" style="width: 100%;"> <tr> <th>CHECK NO.</th> <th>CHECK DATE</th> <th>VENDOR NO.</th> </tr> <tr> <td></td> <td>10/15/14</td> <td>*1656</td> </tr> </table> <p>CHECK AMOUNT \$*****75.00</p>		CHECK NO.	CHECK DATE	VENDOR NO.		10/15/14	*1656
CHECK NO.	CHECK DATE	VENDOR NO.							
	10/15/14	*1656							
		<p>R.G. & G.R. HARRIS FUNERAL HOMES, INC.</p> <p>NOT NEGOTIABLE</p>							

12/21/2015 11:19 3135213711
R.G. & G.R. HARRIS FUNERAL HOMES, INC.

HARRIS FH & CSM

PAGE 09/22
29488

ACCOUNT NO.		VENDOR *1655 Linda D'Achille			CHECK NO: 029488	
VOUCHER	INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN	
51835	CLOTHING	10/15/14	75.00	75.00	.00	
				CHECK TOTAL	75.00	

R.G. & G.R.



BUSINESS OFFICE: 16281 HARPER AVE
 DETROIT, MICHIGAN 48224

Under the personal direction of the Harris Family since 1910

COMERICA BANK
 DETROIT, MICHIGAN
 9-8-720

29488

PAY

SEVENTY-FIVE AND 00/100 DOLLARS*****

CHECK AMOUNT

*****75.00

TO THE
 ORDER
 OF

Linda D'Achille

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

NOT NEGOTIABLE

12/21/2015 11:19 3135213711

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

HARRIS FH & CSM

PAGE 10/22
29487

ACCOUNT NO.		VENDOR *1654 Denise Coleman			CHECK NO. 29487	
VOUCHER	INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN	
51836	CLOTHING	10/15/14	75.00	75.00	.00	
CHECK TOTAL					75.00	

R.G. & G.R. **Harris**
FUNERAL HOMES
Under the personal direction of the Harris Family since 1910

BUSINESS OFFICE: 15261 HARPER AVE
DETROIT, MICHIGAN 48224

COMERICA BANK
DETROIT, MICHIGAN
8-8-720

29487

CHECK NO.	CHECK DATE	VENDOR NO.
	10/15/14	*1654

PAY

SEVENTY-FIVE AND 00/100 DOLLARS*****

CHECK AMOUNT
*****75.00

TO THE ORDER OF Denise Coleman

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

NOT NEGOTIABLE

12/21/2015 11:19 3135213711

HARRIS FH & CSM

PAGE 11/22
29486

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

ACCOUNT NO.		VENDOR *1653 Pamela Cottrell			CHECK NO. 029486	
VOUCHER	INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN	
51829	CLOTHING	10/15/14	75.00	75.00	.00	
				CHECK TOTAL	75.00	

R.G. & G.R.



BUSINESS OFFICE: 16261 HARPER AVE.
DETROIT, MICHIGAN 48224

Under the personal direction of the Harris Family since 1910

COMERICA BANK
DETROIT, MICHIGAN
9-8-720

29486

CHECK NO.	CHECK DATE	VENDOR NO.
	10/15/14	*1653

PAY

SEVENTY-FIVE AND 00/100 DOLLARS*****

CHECK AMOUNT

*****75.00

TO THE
ORDER
OF

Pamela Cottrell

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

NOT NEGOTIABLE

12/21/2015 11:19 3135213711

HARRIS FH & CSM

PAGE 12/22
29485

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

ACCOUNT NO.		VENDOR #1651 Janet Knoll		CHECK NO. 029485	
VOUCHER	INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN
51830	CLOTHING	10/15/14	75.00	75.00	.00
				CHECK TOTAL	75.00

R.G. & G.R.



BUSINESS OFFICE: 10851 HARPER AVE
DETROIT, MICHIGAN 48224

Under the personal direction of the Harris Family since 1910

COMERICA BANK
DETROIT, MICHIGAN
9-9-720

29485

PAY

SEVENTY-FIVE AND 00/100 DOLLARS*****

CHECK AMOUNT

*****75.00

TO THE
ORDER
OF

Janet Knoll

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

NOT NEGOTIABLE

12/21/2015 11:19 3135213711

HARRIS FH & CSM

PAGE 13/22
29484

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

ACCOUNT NO.		VENDOR		CHECK NO.	
VOUCHER	INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN
51828	CLOTHING	10/15/14	150.00	150.00	.00
				CHECK TOTAL	150.00

R.G. & G.R.



BUSINESS OFFICE: 16251 HARPER AVE.
DETROIT, MICHIGAN 48224

Under the personal direction of the Harris Family since 1910

COMERICA BANK
DETROIT, MICHIGAN
9-9-720

29484

CHECK NO.	CHECK DATE	VENDOR NO.
	10/15/14	*1650

PAY

ONE HUNDRED FIFTY AND 00/100 DOLLARS*****

CHECK AMOUNT

*****150.00

TO THE
ORDER
OF

Marie Jones

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

NOT NEGOTIABLE

12/21/2015 11:19 3135213711

HARRIS FH & CSM

PAGE 14/22
29532

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

ACCOUNT NO.		VENDOR 1027 Wendy McKie		CHECK NO. 029532	
VOUCHER	INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN
52068	CLOTHING ALLOW	1/05/15	150.00	150.00	
				CHECK TOTAL	150.00

R.G. & G.R.



BUSINESS OFFICE: 15251 HARPER AVE.
DETROIT, MICHIGAN 48224

Under the personal direction of the Harris Family since 1910.

COMERICA BANK
DETROIT, MICHIGAN
9-9-720

29532

CHECK NO.	CHECK DATE	VENDOR NO.
	01/05/15	1027

PAY

ONE HUNDRED FIFTY AND 00/100 DOLLARS*****

CHECK AMOUNT

*****150.00

TO THE
ORDER
OF

Wendy McKie
19521 12 Mile Road
Roseville MI 48066

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

NOT NEGOTIABLE

12/21/2015 11:19 3135213711

HARRIS FH & CSM

PAGE 15/22
29531

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

ACCOUNT NO.		VENDOR 918 Susan Harrison		CHECK NO. 029531	
VOUCHER	INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN
52064	CLOTHING ALLOW	1/05/15	150.00	150.00	.00
				CHECK TOTAL	150.00

R.G. & G.R.



BUSINESS OFFICE: 15257 HARPER AVE.
DETROIT, MICHIGAN 48224

Under the personal direction of the Harris Family since 1910

COMERICA BANK
DETROIT, MICHIGAN
9-9-720

29531

CHECK NO.	CHECK DATE	VENDOR NO.
	01/05/15	918

PAY

ONE HUNDRED FIFTY AND 00/100 DOLLARS*****

CHECK AMOUNT

*****150.00

TO THE
ORDER
OF

Susan Harrison

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

NOT NEGOTIABLE

12/21/2015 11:19 3135213711

HARRIS FH & CSM

PAGE 16/22
29530

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

ACCOUNT NO.		VENDOR 300 Shannon Kish		CHECK NO. 029530	
VOUCHER	INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN
52061	CLOTHING ALLOW	1/05/15	150.00	150.00	.00
				CHECK TOTAL	150.00

R.G. & G.R.

Harris
FUNERAL HOMES

BUSINESS OFFICE: 16261 HARPER AVE.
DETROIT, MICHIGAN 48224

Under the personal direction of the Harris Family since 1910

COMERICA BANK
DETROIT, MICHIGAN
9-9-720

29530

CHECK NO.	CHECK DATE	VENDOR NO.
	01/05/15	300

PAY

ONE HUNDRED FIFTY AND 00/100 DOLLARS*****

CHECK AMOUNT

*****150.00

TO THE
ORDER
OF

Shannon Kish

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

NOT NEGOTIABLE

12/21/2015 11:19 3135213711

HARRIS FH & CSM

PAGE 17/22
2302

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

ACCOUNT NO.		VENDOR #1651 Michelle Peterson			CHECK NO. 029529	
VOUCHER	INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN	
52072	CLOTHING ALLOW	1/05/15	75.00	75.00	.00	
CHECK TOTAL					75.00	

R.G. & G.R.



BUSINESS OFFICE: 16251 HARPER AVE.
DETROIT, MICHIGAN 48224

Under the personal direction of the Harris Family since 1810

COMERICA BANK
DETROIT, MICHIGAN
9-9-720

29529

CHECK NO.	CHECK DATE	VENDOR NO.
	01/05/15	*1651

PAY

SEVENTY-FIVE AND 00/100 DOLLARS*****

CHECK AMOUNT

*****75.00

TO THE
ORDER
OF

Michelle Peterson

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

NOT NEGOTIABLE

12/21/2015 11:19 3135213711

HARRIS FH & CSM

PAGE 18/22
29520

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

ACCOUNT NO.		VENDOR *1660 Dolores Nemeth			CHECK NO. 029528
VOUCHER	INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN
52071	CLOTHING ALLOW	1/05/15	75.00	75.00	.00
CHECK TOTAL					75.00

R.G. & G.R.



BUSINESS OFFICE: 15251 HARPER AVE
DETROIT, MICHIGAN 48224

Under the personal direction of the Harris Family since 1910

COMERICA BANK
DETROIT, MICHIGAN
9-0-720

29528

CHECK NO.	CHECK DATE	VENDOR NO.
	01/05/15	*1660

PAY

SEVENTY-FIVE AND 00/100 DOLLARS*****

CHECK AMOUNT

*****75.00

TO THE
ORDER
OF

Dolores Nemeth

H.G. & G.R. HARRIS FUNERAL HOMES, INC.

NOT NEGOTIABLE

12/21/2015 11:19 3135213711

HARRIS FH & CSM

PAGE 19/22
23041

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

ACCOUNT NO.		VENDOR *1659 Sharon Hassett			CHECK NO. 029527	
VOUCHER	INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN	
52070	CLOTHING ALLOW	1/05/15	75.00	75.00	.00	
				CHECK TOTAL	75.00	

R.G. & G.R.



BUSINESS OFFICE: 16251 HARPER AVE.
DETROIT, MICHIGAN 48224

Under the personal direction of the Harris Family since 1810

COMERICA BANK
DETROIT, MICHIGAN
8-8-720

29527

PAY

SEVENTY-FIVE AND 00/100 DOLLARS*****

CHECK NO.	CHECK DATE	VENDOR NO.
	01/05/15	*1659

CHECK AMOUNT

*****75.00

TO THE
ORDER
OF

Sharon Hassett

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

NOT NEGOTIABLE

12/21/2015 11:19 3135213711

HARRIS FH & CSM

PAGE 21/22

H.G. & G.R. HARRIS FUNERAL HOMES, INC.

ACCOUNT NO.		VENDOR *1657 Dolores Smith			CHECK NO. 029525
VOUCHER	INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN
52058	CLOTHING ALLOW	1/05/15	75.00	75.00	.00
CHECK TOTAL					75.00

R.G. & G.R. Harris
FUNERAL HOMES
Under the personal direction of the Harris Family since 1810

BUSINESS OFFICE: 15251 HARPER AVE.
DETROIT, MICHIGAN 48224

COMERICA BANK
DETROIT, MICHIGAN
8-8-720

29525

CHECK NO.	CHECK DATE	VENDOR NO.
	01/05/15	*1657

PAY SEVENTY-FIVE AND 00/100 DOLLARS*****

CHECK AMOUNT
*****75.00

TO THE ORDER OF Dolores Smith

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

NOT NEGOTIABLE

12/21/2015 11:19 3135213711

HARRIS FH & CSM

PAGE 22/22
29524

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

ACCOUNT NO.		VENDOR #1656 Pamela Ploski			CHECK NO. 029524
VOUCHER	INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN
52067	CLOTHING ALLOW	1/05/15	75.00	75.00	.00
CHECK TOTAL					75.00

R.G. & G.R. Harris
FUNERAL HOMES
Under the personal direction of the Harris Family since 1910.

BUSINESS OFFICE: 16251 HARPER AVE.
DETROIT, MICHIGAN 48224

COMERICA BANK
DETROIT, MICHIGAN
9-9-720

29524

CHECK NO.	CHECK DATE	VENDOR NO.
	01/05/15	*1656

PAY

SEVENTY-FIVE AND 00/100 DOLLARS*****

CHECK AMOUNT
*****75.00

TO THE ORDER OF **Pamela Ploski**

R.G. & G.R. HARRIS FUNERAL HOMES, INC.

NOT NEGOTIABLE

Page 1	<p>1 UNITED STATES DISTRICT COURT 2 EASTERN DISTRICT OF MICHIGAN 3 SOUTHERN DIVISION 4 5 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, 6 Plaintiff, 7 vs. Case No. 2:14-cv-14-13710 8 Hon. Sean F. Cox 9 R.G. & G.R. HARRIS FUNERAL HOMES, INC., 10 Defendant. 11 _____ 12 13 The Deposition of AIMEE A. STEPHENS, 14 Taken at 39111 Six Mile Road, 15 Livonia, Michigan, 16 Commencing at 9:28 a.m., 17 Wednesday, December 16, 2015, 18 Before Deborah A. Culver, #3001. 19 20 21 22 23 24 25</p>	Page 3	
Page 2	<p>1 APPEARANCES: 2 3 DALE R. PRICE, JR. 4 MILES E. SHULTZ 5 KATIE N. LINEHAN 6 Equal Employment Opportunity Commission 7 477 Michigan Avenue, Room 865 8 Detroit, Michigan 48226 9 (313) 226-7808 10 Dale.price@eoc.gov 11 Appearing on behalf of the Plaintiff. 12 13 JOEL J. KIRKPATRICK 14 Kirkpatrick Law Offices, P.C. 15 843 Penniman Avenue 16 Suite 201 17 Plymouth, Michigan 48170 18 (734) 404-5710 19 Joel@joelkirkpatrick.com 20 Appearing on behalf of the Defendant. 21 22 23 24 25</p>	<p>1 BRADLEY ABRAMSON 2 Alliance Defending Freedom 3 15100 N. 90th Street 4 Scottsdale, Arizona 85260 5 (480) 444-0020 6 Appearing on behalf of the Defendant. 7 8 JEFF T. SCHRAMECK 9 Schrameck Law, P.L.L.C. 10 843 Penniman Avenue 11 Plymouth, Michigan 48170 12 (734) 454-5400 13 Appearing on behalf of the Defendant. 14 15 Also Present: 16 Thomas F. Rost 17 18 19 20 21 22 23 24 25</p>	Page 4
Page 2	<p>1 APPEARANCES: 2 3 DALE R. PRICE, JR. 4 MILES E. SHULTZ 5 KATIE N. LINEHAN 6 Equal Employment Opportunity Commission 7 477 Michigan Avenue, Room 865 8 Detroit, Michigan 48226 9 (313) 226-7808 10 Dale.price@eoc.gov 11 Appearing on behalf of the Plaintiff. 12 13 JOEL J. KIRKPATRICK 14 Kirkpatrick Law Offices, P.C. 15 843 Penniman Avenue 16 Suite 201 17 Plymouth, Michigan 48170 18 (734) 404-5710 19 Joel@joelkirkpatrick.com 20 Appearing on behalf of the Defendant. 21 22 23 24 25</p>	<p>1 TABLE OF CONTENTS 2 3 WITNESS PAGE 4 AIMEE A. STEPHENS 5 6 EXAMINATION 7 BY MR. KIRKPATRICK: 5 8 EXAMINATION 9 BY MR. PRICE: 131 10 RE-EXAMINATION 11 BY MR. KIRKPATRICK: 135 12 13 EXHIBITS 14 15 EXHIBIT PAGE 16 (Exhibits attached to transcript.) 17 18 DEPOSITION EXHIBIT 1 51 19 (Resumé) 20 DEPOSITION EXHIBIT 2 55 21 (Employee Manual) 22 DEPOSITION EXHIBIT 3 67 23 (Letter) 24 DEPOSITION EXHIBIT 4 119 25 (Plaintiff's Witness List)</p>	Page 4

Page 17

1 apprentice for visitations?
 2 A. Basically what any other funeral director would do,
 3 which is to be available in case somebody needed
 4 something.
 5 Q. And did you like participate in bringing the body
 6 upstairs in the casket?
 7 A. Yes.
 8 Q. Did you participate in interacting with the family?
 9 A. Yes.
 10 Q. Did you participate in running the logistics of having
 11 a visitation with family and that kind of thing? If
 12 that makes sense.
 13 A. Yes.
 14 Q. Were you required to wear certain clothes or a certain
 15 uniform?
 16 A. Yes.
 17 Q. As a full-time apprentice?
 18 A. Yes.
 19 Q. What were you required to wear?
 20 A. Then, a coat and tie.
 21 Q. Coat and tie.
 22 A. Of their choosing.
 23 Q. Of your choosing?
 24 A. Their choosing.
 25 Q. Their choosing. Do you recall specifically what they

Page 18

1 chose to wear?
 2 A. Not right offhand. I mean it didn't stay the same.
 3 It changed season to season.
 4 Q. I guess what I'm getting at, was it like a navy blue
 5 suit, coat, tie, or was it a black suit, that kind of
 6 thing?
 7 A. It changed season to season. Whatever they agreed on.
 8 Q. Now, when you said it changed season to season, was
 9 there kind of a certain class of suit? I'll explain
 10 what I mean by that. Was it that they used certain
 11 color schemes where maybe they wouldn't wear a bright
 12 red coat? I mean I'm just trying to understand. Did
 13 they have a certain policy of what kind of suits that
 14 they required people to wear?
 15 A. They bought them, they provided them, you wore them.
 16 Q. Okay. Do you ever remember wearing anything what I
 17 would maybe say is a loud suit? I know maybe that's
 18 not your interpretation, but I'm saying like a bright
 19 lime green suit?
 20 A. No, but I have worn baby blue.
 21 Q. Okay. Now, when you say coat and tie, is this
 22 understanding of a man's coat and tie?
 23 A. Yes.
 24 Q. And were there any female apprentices at this
 25 location?

Page 19

1 A. No.
 2 Q. Were there any female funeral directors at that
 3 location?
 4 A. Yes.
 5 Q. What were they required to wear?
 6 A. She was the owner.
 7 Q. So she required herself to wear. But what would she
 8 normally wear?
 9 A. She wore everything from a pantsuit to a skirt and
 10 jacket.
 11 Q. When you say pantsuit, are you referring to --
 12 A. Jacket.
 13 Q. -- a female pantsuit that is made --
 14 A. Yes.
 15 Q. Did they have any kind of employee manual they gave
 16 you when you started working there?
 17 A. Yes, they did.
 18 Q. Was there, the dress code that you were required to
 19 wear, was that contained in the employee manual?
 20 A. To some degree, yes.
 21 Q. Do you know if they're still in operation today?
 22 A. I think they are, but I'm not sure they're under the
 23 same name anymore.
 24 Q. Now, I think you said you worked there from '84 to
 25 approximately '86. What did you do in 1986?

Page 20

1 A. Went to mortuary school.
 2 Q. Where was mortuary school?
 3 A. Fayetteville, North Carolina.
 4 Q. What was it called?
 5 A. Fayetteville Technical Community College.
 6 Q. What kind of program was it?
 7 A. Two-year program, associate of science.
 8 Q. Was it a full-time two-year program?
 9 A. Yes.
 10 Q. So you attended there from 1986 through 1988?
 11 A. Correct.
 12 Q. Can you tell me the classes you took or the study you
 13 took? Because I don't really understand what mortuary
 14 science is. What would one do and what did you do
 15 when you attended and received this degree?
 16 Or did you receive the degree there?
 17 A. Yes.
 18 Q. What does one study in mortuary science?
 19 A. Everything from biology, anatomy, funeral service
 20 psychology, marketing, embalming of course, chemistry.
 21 Q. Okay. And I take it, and I don't want to assume this,
 22 but when you receive a degree, is this people that
 23 want to go out and become funeral directors?
 24 A. Yes.
 25 Q. So it's kind of targeted for that, and that kind of

Page 45	Page 47
<p>1 Construction.</p> <p>2 Q. Westview Construction. Where were they located?</p> <p>3 A. Whitmore Lake.</p> <p>4 Q. What was your job title there?</p> <p>5 A. Mechanic.</p> <p>6 Q. So were you the working mechanic for their vehicles?</p> <p>7 A. Yes.</p> <p>8 Q. How long did you work there?</p> <p>9 A. Until like August of 2007.</p> <p>10 Q. And why did you leave in August 2007?</p> <p>11 A. His company went down hill.</p> <p>12 Q. Oh, really. So paychecks were going to be vanishing</p> <p>13 at some point?</p> <p>14 A. They vanished.</p> <p>15 Q. Okay. So what did you do in August of 2007?</p> <p>16 A. That's when I decided to go back to funeral service.</p> <p>17 Q. Tell me what you did when you made a decision to go</p> <p>18 back to funeral services? What did you do to get back</p> <p>19 into funeral services?</p> <p>20 A. I called the State Board, asked them what I needed to</p> <p>21 do to get my license here in Michigan.</p> <p>22 Q. Okay.</p> <p>23 A. After doing their research or whatever, they said that</p> <p>24 I needed to serve a six-month apprenticeship and then</p> <p>25 take the State exam for funeral service.</p>	<p>1 Q. That's the name you used early on in the thing. Okay.</p> <p>2 Has that always been your legal name?</p> <p>3 A. Prior to August 29th or 30th of 2013.</p> <p>4 Q. So what was your legal name prior to August of 2013?</p> <p>5 A. William Anthony Beasley Stephens.</p> <p>6 Q. And when did you begin that process to change your</p> <p>7 name from Anthony Stephens to Aimee Stephens?</p> <p>8 A. Probably May of 2013.</p> <p>9 Q. Just so I understand, what did that entail for you to</p> <p>10 do to legally change your name?</p> <p>11 A. There's a ton of paperwork to be done.</p> <p>12 Q. Okay.</p> <p>13 A. With the county court house, applications and</p> <p>14 affidavits and so on to be filed.</p> <p>15 Q. All right.</p> <p>16 A. Fingerprints had to be done through the Michigan State</p> <p>17 Police.</p> <p>18 Q. Okay.</p> <p>19 A. Basically a background check.</p> <p>20 Q. All right.</p> <p>21 A. It was advertised in the Legal News.</p> <p>22 Q. Okay.</p> <p>23 A. And then a court date was set.</p> <p>24 Q. Did you do this yourself? Did you fill out the</p> <p>25 paperwork?</p>
Page 46	Page 48
<p>1 Q. Did you take a six-month apprenticeship?</p> <p>2 A. That's when I went to work for R.G. & G.R. Harris.</p> <p>3 Q. So was that where you served your apprenticeship?</p> <p>4 A. Yes.</p> <p>5 Q. And then after a six-month period or so, then you</p> <p>6 applied and took the test, or whatever, the licensing?</p> <p>7 A. Yes.</p> <p>8 Q. And when did you get licensed in the State of</p> <p>9 Michigan?</p> <p>10 A. I think it was in April of 2008.</p> <p>11 MR. PRICE: Excuse me, can we take a break</p> <p>12 right now?</p> <p>13 MR. KIRKPATRICK: Sure. Let's take a five,</p> <p>14 ten-minute break.</p> <p>15 MR. PRICE: I'd go for ten. I appreciate</p> <p>16 it.</p> <p>17 MR. KIRKPATRICK: And just so you know, if</p> <p>18 you need to take a break at any time, just let us</p> <p>19 know. I don't think I said that.</p> <p>20 (Off the record at 10:17 a.m.)</p> <p>21 (Back on the record at 10:27 a.m.)</p> <p>22 MR. KIRKPATRICK: Back on the record.</p> <p>23 BY MR. KIRKPATRICK:</p> <p>24 Q. All right. What is your current legal name?</p> <p>25 A. Aimee Australia Stephens.</p>	<p>1 A. Yes.</p> <p>2 Q. You didn't hire an attorney?</p> <p>3 A. No.</p> <p>4 Q. And you said the county court house. Was that in</p> <p>5 Wayne County?</p> <p>6 A. Wayne County.</p> <p>7 Q. And this happened in, I think, August 29th or 30th, I</p> <p>8 think, 2013?</p> <p>9 A. Yes.</p> <p>10 Q. Was that the Court Order changing your name?</p> <p>11 A. Yes.</p> <p>12 Q. So did you go before a judge or something like that?</p> <p>13 A. Yes.</p> <p>14 Q. Did you have the name Anthony Stephens that you said</p> <p>15 prior to that your whole life?</p> <p>16 A. Pretty much.</p> <p>17 Q. You were born with that name?</p> <p>18 A. Yes.</p> <p>19 Q. I'm assuming your parents named you Anthony; right?</p> <p>20 A. Yes.</p> <p>21 Q. Now, I think you testified you began to work for</p> <p>22 R.G. & G.R. Funeral Home in 2007; is that right?</p> <p>23 A. Yes.</p> <p>24 Q. Was your legal name when you took that job the William</p> <p>25 Stephens?</p>

<p style="text-align: right;">Page 49</p> <p>1 A. Yes.</p> <p>2 Q. Was that always your name legally when you were 3 employed by R.G. & G.R. Funeral Homes?</p> <p>4 A. Yes.</p> <p>5 Q. Were you born a male?</p> <p>6 MR. PRICE: Objection. I think this is 7 getting to the part of the Protective Order here.</p> <p>8 MR. KIRKPATRICK: It's not the Protective 9 Order. I'm asking were you born a male or female. 10 I'm not asking about any transition, I'm just asking 11 about sex assigned at birth. Does that assist?</p> <p>12 MR. PRICE: You can go ahead and answer.</p> <p>13 A. I was assigned male at birth.</p> <p>14 BY MR. KIRKPATRICK:</p> <p>15 Q. What does that mean to be assigned male at birth, or 16 any sex at birth?</p> <p>17 When I say that, what your understanding 18 is.</p> <p>19 MR. PRICE: I really think we're getting 20 into the transition phase. I'm going to object. I 21 mean I really think this is relating to the transition 22 from male to female, and I think we are -- it really 23 does fall within the Protective Order.</p> <p>24 MR. KIRKPATRICK: I don't believe it does 25 fall in the Protective Order.</p>	<p style="text-align: right;">Page 51</p> <p>1 A. Six months.</p> <p>2 Q. And after six months, were you then promoted to 3 funeral director?</p> <p>4 A. More or less, yes, because I got my license.</p> <p>5 Q. Let's step back and talk about the hiring process for 6 R.G. & G.R. Did you submit a resumé? How did you go 7 about getting the position at R.G. & G.R. Funeral 8 Home?</p> <p>9 A. Yes, resumé was submitted.</p> <p>10 MARKED FOR IDENTIFICATION 11 DEPOSITION EXHIBIT 1 12 (Resumé) 13 10:39 a.m.</p> <p>14 BY MR. KIRKPATRICK:</p> <p>15 Q. Take a look at what's been marked Exhibit 1. 16 Did you have a chance to review that?</p> <p>17 A. Yes.</p> <p>18 Q. Do you recognize that?</p> <p>19 A. Yes.</p> <p>20 Q. Would this be the resumé and cover letter you 21 submitted to get the job at R.G. & G.R. Funeral Homes?</p> <p>22 A. Yes.</p> <p>23 Q. You see the first page down there, it says Anthony B. 24 Stephens. Is that your signature?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 50</p> <p>1 Why don't we go off the record for a minute 2 and maybe the attorneys can have a conversation.</p> <p>3 MR. PRICE: Okay. 4 (Off the record at 10:31 a.m.) 5 (Back on the record at 10:37 a.m.)</p> <p>6 MR. KIRKPATRICK: Back on the record.</p> <p>7 BY MR. KIRKPATRICK:</p> <p>8 Q. So as we fast forward or actually go back to August of 9 2007, you testified already that you worked at 10 R.G. & G.R. Funeral Home; right?</p> <p>11 A. As of October 1st.</p> <p>12 Q. I'm sorry.</p> <p>13 A. 2007.</p> <p>14 Q. You're right. October 1st, 2007. What was your 15 position?</p> <p>16 A. When I first started, I would basically have been an 17 apprentice.</p> <p>18 Q. So your job title was apprentice. Was that similar to 19 the job title you had in the very first funeral home 20 you worked at back in North Carolina?</p> <p>21 A. Yes.</p> <p>22 Q. And was it your understanding that at some point you'd 23 get another job title such as funeral director?</p> <p>24 A. Yes.</p> <p>25 Q. And how long did you work in that role as apprentice?</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. And this resumé, you prepared this, I take it, to get 2 a job at a funeral home?</p> <p>3 A. Yes.</p> <p>4 Q. So you submitted a resumé. And what happened next 5 that got you into a position to get the job with 6 R.G. & G.R. Funeral Home?</p> <p>7 A. Well, when I first dropped it off in person, I was 8 told that there was nothing available.</p> <p>9 Q. Okay. When you say you dropped it off, who did you 10 drop it off to?</p> <p>11 A. I dropped it off at the Livonia location.</p> <p>12 Q. Do you recall who you gave your resumé to?</p> <p>13 A. Actually it went to Sue.</p> <p>14 Q. Okay. Do you know if --</p> <p>15 A. I think she was the only one there at the time.</p> <p>16 Q. Do you know if this Sue is still employed?</p> <p>17 A. I have no idea.</p> <p>18 Q. And then what happened next?</p> <p>19 A. Mr. Rost called and said he'd like to talk to me, that 20 he had a unique situation, that his son Matt was going 21 to be going to California to participate in some kind 22 of reality TV show.</p> <p>23 Q. Just for the record, who is Mr. Rost?</p> <p>24 A. He's sitting at the end of the table down there.</p> <p>25 Q. Would that be Tom Rost?</p>

<p style="text-align: right;">Page 53</p> <p>1 A. Yes.</p> <p>2 Q. Is he the owner, as far as you know?</p> <p>3 A. As far as I know.</p> <p>4 Q. Of R.G. & G.R. Funeral Homes?</p> <p>5 A. As far as I know.</p> <p>6 Q. Do you know if he himself is a funeral director?</p> <p>7 A. Yes, he is.</p> <p>8 Q. So he called you and said I need somebody to work</p> <p>9 here?</p> <p>10 A. Yes.</p> <p>11 Q. And then what was the next step, what happened?</p> <p>12 A. I went in and talked to him and to his son Matt. Then</p> <p>13 a few days later, I was called by Mr. Cash and went</p> <p>14 back and talked to him.</p> <p>15 Q. Mr. Cash is who?</p> <p>16 A. The manager at Livonia.</p> <p>17 Q. So you had an interview with these people, Mr. Cash?</p> <p>18 A. Well, I would call it an interview with him and Mr.</p> <p>19 Rost.</p> <p>20 Q. Mr. Rost too. I'm sorry.</p> <p>21 And obviously you were hired?</p> <p>22 A. Yes.</p> <p>23 Q. And what do you recall of that conversation, what did</p> <p>24 they tell you your job duties would be or anything</p> <p>25 like that?</p>	<p style="text-align: right;">Page 55</p> <p>1 Q. And when you started working there, what were your job</p> <p>2 duties? Is it similar to what we've been talking</p> <p>3 about at all your funeral locations?</p> <p>4 A. Yes.</p> <p>5 Q. So you were doing the job as an apprentice, which was</p> <p>6 kind of everything you've already described as a</p> <p>7 funeral director. I take it you were assisting in</p> <p>8 embalmings?</p> <p>9 A. Yes.</p> <p>10 Q. You were assisting in casketing?</p> <p>11 A. Yes.</p> <p>12 Q. And removals?</p> <p>13 A. Yes.</p> <p>14 Q. And all the other duties you've already previously</p> <p>15 described?</p> <p>16 A. Yes.</p> <p>17 Q. Did they give you an employee handbook or anything</p> <p>18 like that?</p> <p>19 A. No.</p> <p>20 Q. They never gave you an employee handbook?</p> <p>21 A. No, sir.</p> <p>22 MARKED FOR IDENTIFICATION:</p> <p>23 DEPOSITION EXHIBIT 2</p> <p>24 (Employee Manual)</p> <p>25 10:44 a.m.</p>
<p style="text-align: right;">Page 54</p> <p>1 MR. PRICE: Objection. Which they are you</p> <p>2 referring to? Vague.</p> <p>3 MR. KIRKPATRICK: That's fair enough.</p> <p>4 BY MR. KIRKPATRICK:</p> <p>5 Q. At this meeting -- you were hired at some point;</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. At this interview or meeting, whatever it was, did</p> <p>9 they, being Mr. Rost and Mr. Cash, discuss with you</p> <p>10 what your job responsibilities were to be?</p> <p>11 A. I don't recall, actually.</p> <p>12 Q. Is it safe to assume, for lack of a better term, that</p> <p>13 you were going to be a funeral director?</p> <p>14 A. Basically, yes.</p> <p>15 Q. And they were comfortable enough knowing that you</p> <p>16 previously worked in the funeral business?</p> <p>17 A. That is --</p> <p>18 Q. You shook your head. It happens. So yes?</p> <p>19 A. Yes.</p> <p>20 Q. And when did you start working there? How long after</p> <p>21 this interview?</p> <p>22 A. I actually started on October the 1st.</p> <p>23 Q. And were you working in the Livonia office?</p> <p>24 A. For the majority of the time, yes, because that's</p> <p>25 where Matt was at.</p>	<p style="text-align: right;">Page 56</p> <p>1 BY MR. KIRKPATRICK:</p> <p>2 Q. Let me hand you what's been marked Exhibit 2.</p> <p>3 Have you had a chance to review that</p> <p>4 document?</p> <p>5 A. Yes.</p> <p>6 Q. Do you recognize that document?</p> <p>7 A. No.</p> <p>8 Q. Never received that?</p> <p>9 A. No, sir.</p> <p>10 Q. You can just put it aside there.</p> <p>11 So no one ever provided you at R.G. & G.R.</p> <p>12 an employee manual?</p> <p>13 A. No, sir.</p> <p>14 Q. So you began to work in Livonia in 2007?</p> <p>15 A. Yes.</p> <p>16 Q. Who was your supervisor there?</p> <p>17 A. Well, I would assume it would be Dave Cash.</p> <p>18 Q. What I'm asking you, first line supervisor, would that</p> <p>19 be fair to say? First line supervisor or first line</p> <p>20 boss or person you reported to?</p> <p>21 A. Well, being as Dave Cash was the manager, I assume it</p> <p>22 would be David Cash.</p> <p>23 Q. Obviously Tom Rost is in a management chain above you;</p> <p>24 would that be fair to say?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 57</p> <p>1 Q. Was Tom Rost present at Livonia like the majority of 2 time when you were there? 3 A. He made his rounds to all the funeral homes, I think, 4 every day. 5 Q. But was he there like eight hours a day? 6 A. No. 7 Q. And did you work exclusively at Livonia? 8 A. I can't say yes to that because you were sent to 9 wherever business happened to be. 10 Q. Okay. So in your entire employment tenure with 11 R.G. & G.R. Funeral Home, did you go and drive every 12 day or go every day to the Livonia location to do your 13 job? 14 A. Not every day. 15 Q. What other locations would you go to? 16 A. Garden City. 17 Q. Garden City. Anywhere else? 18 A. And Harper, Downtown Detroit. 19 Q. Where would you say you spent the majority of your 20 time during the work day? 21 A. For the first six months, probably Livonia. 22 Q. And then after six months, where did you spend -- 23 A. Garden City. 24 Q. Garden City. Were you considered a Garden City 25 employee with R.G. & G.R. Funeral Home?</p>	<p style="text-align: right;">Page 59</p> <p>1 location to work out of when you were employed there; 2 would that be fair to say? 3 A. Yes. 4 Q. So after six months you were no longer an apprentice; 5 correct? 6 A. Correct. 7 Q. And you were now a funeral director, embalmer? 8 A. Yes. 9 Q. What did you do as a funeral director, embalmer for 10 R.G. & G.R. Funeral Home that differed from what 11 you've already testified to about your time in the 12 funeral business? 13 A. Nothing really. 14 Q. Okay. Did you have a uniform or a dress code that you 15 had to follow while with R.G. & G.R. Funeral Home? 16 A. They bought suits. 17 Q. Okay. 18 A. I wore it. 19 Q. So they being the company, bought you a suit or suits? 20 A. Yes. 21 Q. Were these male suits? 22 A. I would assume they were. 23 Q. Okay. 24 A. I guess a female could have dressed in them. 25 Q. But were they considered suits that men would wear?</p>
<p style="text-align: right;">Page 58</p> <p>1 A. Well, that's a good question because the schedule 2 posted covered all three places on the same schedule. 3 Q. Would Dave Cash be considered a manager of the Livonia 4 location? 5 A. Yes. 6 Q. Who was the manager at the Garden City location? 7 A. Would have been George Crawford. 8 Q. I would imagine Dave Cash and George Crawford, and 9 correct me if I'm wrong, did they have a reason to go 10 to the other locations themselves? 11 A. Yes. 12 Q. But they were considered managers of their specific 13 locations? 14 A. Yes. 15 Q. So after six months, where would you spend the bulk of 16 your time, which location? 17 A. I think we just answered that. Garden City. 18 Q. Okay. Just wanted to be clear. That's where you 19 drove every day to work for the most part? 20 A. Yes. 21 Q. Obviously you had occasion to go to Livonia or Detroit 22 for whatever reason; right? 23 A. Yes. 24 Q. Just what I'm getting at, is in your words, and 25 correct me if I'm wrong, that was kind of your home</p>	<p style="text-align: right;">Page 60</p> <p>1 A. Yes. 2 Q. Do you know how many suits they purchased for you? 3 A. Not right off the top of my head, no. 4 Q. You worked there, I think, would it be fair to say 5 about six years total? 6 A. Yes. 7 Q. Do you know if they purchased more than two suits for 8 you during your time there, if you recall? 9 A. Well, they were on an as-needed basis. 10 Q. So if you wore one out or something -- 11 A. Right, it got replaced. 12 Q. Did you ever have a suit replaced while you were 13 there? 14 A. Yes. 15 Q. I imagine they get a lot of use? 16 A. Yes, they do. 17 Q. Were you required to wear these suits they purchased 18 for you as an employee of R.G. & G.R. Funeral Home 19 when you were there? 20 A. Yes. 21 Q. Did you ever dress differently than the dress code 22 that you just spoke about while you were employed 23 there at R.G. & G.R.? 24 A. No. 25 Q. Now, while you were at Garden City, I think you</p>

Page 77

1 think you were going back to work? I'm just trying to
 2 understand what next happened.
 3 A. Do you have a copy of the letter he sent me?
 4 Q. Well, it works when I ask you a question. I
 5 understand --
 6 MR. PRICE: Just let him --
 7 A. Okay.
 8 BY MR. KIRKPATRICK:
 9 Q. I mean please understand, I just have to ask questions
 10 because there's been a lawsuit initiated that we're
 11 litigating, so I need to know specifically what you
 12 recall about what happened at these meetings and what
 13 happened next.
 14 A. Okay. I told you what I recall.
 15 Q. Okay. I appreciate that.
 16 Were you under the impression when he gave
 17 you that letter that you were no longer employed?
 18 A. Yes.
 19 Q. Did you like clean out your locker, if you have a
 20 locker, or take your personal stuff home?
 21 A. I took my personal stuff home.
 22 Q. Did you speak to any other employees?
 23 A. I think I was the only one there by the time we
 24 finished.
 25 Q. During that two-week period of time between the time

Page 78

1 you gave Tom the letter and this meeting where he gave
 2 you a letter, did you talk to any employees about
 3 this?
 4 A. No.
 5 Q. Did anyone ask you about it?
 6 A. Not really.
 7 Q. Did Dolly ask you anything about it?
 8 A. No.
 9 Q. How about Michelle?
 10 A. No.
 11 Q. How about Sharon?
 12 A. No.
 13 Q. How about any employees at Livonia?
 14 A. No.
 15 Q. How about any employees at Detroit?
 16 A. No.
 17 Q. And George Crawford didn't ask you anything about it?
 18 A. He didn't know anything about it.
 19 Q. Do you know if he ever became aware of it before you
 20 were let go?
 21 A. Not before I left.
 22 Q. Was he not there at the office or something?
 23 A. He wasn't there that particular day.
 24 Q. And no other managers knew -- you had no interaction
 25 with any employees during that two-week period?

Page 79

1 A. No.
 2 Q. Other than Tom Rost?
 3 A. No.
 4 Q. Okay.
 5 MR. PRICE: Just to clarify, do you mean no
 6 interaction with anybody regarding the letter?
 7 MR. KIRKPATRICK: Yes.
 8 MR. PRICE: Okay.
 9 MR. KIRKPATRICK: Obviously you're going to
 10 have conversations in a work place.
 11 BY MR. KIRKPATRICK:
 12 Q. I'm talking about the letter you gave Tom Rost and
 13 what you were hoping to accomplish with your letter?
 14 A. No.
 15 Q. After you believed you were fired then, terminated,
 16 whatever, what did you do next?
 17 A. I think that was like on a Friday when we had --
 18 exchanged that second letter. On Monday I was at an
 19 attorney's office.
 20 Q. And did you file a claim with the EEOC?
 21 A. Eventually, yes.
 22 Q. So if you presented him the letter on July 31st, 2014,
 23 it was approximately two weeks later he met with you
 24 and gave you some document?
 25 A. Yes.

Page 80

1 Q. And that you believed at that point you were fired?
 2 A. Yes.
 3 Q. So would that be approximately August 13th, August
 4 14th?
 5 A. Yes.
 6 Q. But it was a Friday?
 7 A. I'm pretty sure it was.
 8 Q. Okay. At that point your name was still legally
 9 Anthony Stephens?
 10 A. Yes.
 11 Q. I know I asked this kind of a question, but legally
 12 I'm asking certain things here.
 13 What was your understanding of why you were
 14 fired? I know you said Tom said something about this
 15 isn't going to work. But do you have any
 16 understanding of why you were fired?
 17 A. My understanding from what he said was that me coming
 18 to work dressed as a woman was not going to be
 19 acceptable.
 20 Q. Did he say that actually to you?
 21 A. I don't recall exactly.
 22 Q. Okay. I think you said you recalled it's not going to
 23 work?
 24 A. Correct.
 25 Q. And you can't recall anything else. But you don't

1 before. What's your understanding of what a
 2 sex-specific dress code is?
 3 A. That you dressed as however you presented.
 4 Q. Was it your understanding that -- let me put it this
 5 way.
 6 Were you intending on adhering to the
 7 female dress code expectations at R.G. & G.R. when you
 8 presented your letter?
 9 A. Yes.
 10 Q. And you had no intention of changing that?
 11 A. No.
 12 Q. You were asked earlier about a resumé that you sent
 13 out before -- or after you were terminated at
 14 R.G. & G.R., and you were asked if there were any
 15 changes from the resumé you were shown earlier,
 16 Exhibit 1 with the cover letter.
 17 Were there changes to that resumé
 18 substantively?
 19 A. Well, basically R.G. & G.R. Harris was added as a
 20 place of employment.
 21 Q. So you added R.G. & G.R. to your workplace experience
 22 list?
 23 A. Correct.
 24 Q. But was there any other changes that you can recall?
 25 A. The cover letter changed some in respect that, of

1 course, name changed, and I mentioned in the cover
 2 letter that I had a name change done and that all my
 3 experience is under my old name.
 4 Q. You were also asked earlier about a dialysis schedule
 5 that you're on, and it's currently Tuesday, Thursday
 6 and Saturday.
 7 Is there any way currently that that can be
 8 altered?
 9 A. It can be altered in the respect that I could do
 10 nocturnal dialysis.
 11 Q. What's nocturnal dialysis?
 12 A. You go get put on at night after 6:00 p.m., and your
 13 dialysis session is done at night rather than during
 14 the day.
 15 Q. Have you ever done this?
 16 A. No.
 17 Q. Okay. You were also asked about if there was any way
 18 that people, your coworkers or managers or supervisors
 19 at R.G. & G.R., could have understood that you were
 20 going to be presenting as female.
 21 When you gave the -- when you showed the
 22 letter to people or gave it to them in the case of Mr.
 23 Rost, were you intending to notify people that you
 24 were going to be presenting as female?
 25 A. Yes.

1 MR. PRICE: Okay. That's all I have.
 2 MR. KIRKPATRICK: Just a few follow-up
 3 questions.
 4 RE-EXAMINATION
 5 BY MR. KIRKPATRICK:
 6 Q. When you interviewed with these other funeral homes
 7 and presented the resumé that you changed, and this
 8 was after your removal, you put on there your work
 9 experience with R.G. & G.R. Funeral Home?
 10 A. Yes.
 11 Q. Did you tell them why you left?
 12 A. The subject was never brought up.
 13 Q. Did you put on there that you were fired or
 14 terminated?
 15 A. No, I did not.
 16 Q. They never asked?
 17 A. Never asked.
 18 Q. You didn't offer that information?
 19 A. No.
 20 Q. Counsel just asked you about your time with the
 21 Carolina Mortuary Services and the female dress code.
 22 A. Yes.
 23 Q. I don't know if you testified to this previously, but
 24 just to be clarified on his remarks, did you yourself
 25 dress with the male dress code?

1 A. Yes.
 2 Q. Now, you have an option to do nocturnal dialysis?
 3 A. I do now.
 4 Q. When did that option become available?
 5 A. Just recently.
 6 Q. Like in the last --
 7 A. Within the last month.
 8 Q. So that would enable you to go out and work right now
 9 if you wanted to --
 10 A. Yes.
 11 Q. -- at a funeral home?
 12 Did you ask or why did you all of a sudden
 13 get the opportunity to do that?
 14 A. When you get to a certain point, they give you options
 15 as to what you could do if you chose to.
 16 Q. I don't know much about dialysis, and I'm sorry for my
 17 ignorance, but is your current schedule of three times
 18 a week, is that considered a lot of dialysis?
 19 A. No, that's considered normal.
 20 Q. Okay. Are there some that some get dialysis daily or
 21 anything like that?
 22 A. There are some that do home hemodialysis.
 23 Q. Okay.
 24 A. That do it on a daily basis for less amount of time.
 25 Q. All right. This nocturnal schedule is 6:00 p.m. to

EXHIBIT R

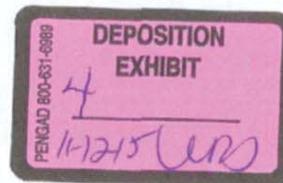
Michigan Department of Consumer and Industry Services

Filing Endorsement

*This is to Certify that the RESTATED ARTICLES OF INCORPORATION - PROFIT
for
R.G. & G.R. HARRIS FUNERAL HOME, INC.*

ID NUMBER: 010581

*received by facsimile transmission on January 5, 2005 is hereby endorsed filed on
January 7, 2005 by the Administrator. The document is effective on the date filed,
unless a subsequent effective date within 90 days after received date is stated in the
document.*



*In testimony whereof, I have hereunto set my
hand and affixed the Seal of the Department,
in the City of Lansing, this 7th day
of January, 2005.*

A handwritten signature in black ink, appearing to read "Andrew L. Mitchell".

, Director



Bureau of Commercial Services

BCS/CD-510 (Rev. 02/01)

MICHIGAN DEPARTMENT OF CONSUMER & INDUSTRY SERVICES BUREAU OF COMMERCIAL SERVICES										
Date Received	(FOR BUREAU USE ONLY)									
This document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.										
<table border="1"> <tr> <td colspan="3">Name David M. Thoms, Esq.</td> </tr> <tr> <td colspan="3">Address Miller Canfield, et al. 840 W. Long Lake Road, Ste. 200</td> </tr> <tr> <td>City Troy, MI 48098</td> <td>State</td> <td>Zip Code</td> </tr> </table>		Name David M. Thoms, Esq.			Address Miller Canfield, et al. 840 W. Long Lake Road, Ste. 200			City Troy, MI 48098	State	Zip Code
Name David M. Thoms, Esq.										
Address Miller Canfield, et al. 840 W. Long Lake Road, Ste. 200										
City Troy, MI 48098	State	Zip Code								
EFFECTIVE DATE:										

Document will be returned to the name and address you enter above. If left blank document will be mailed to the registered office.

RESTATED ARTICLES OF INCORPORATION
For use by Domestic Profit Corporations
(Please read information and instructions on the last page)

Pursuant to the provisions of Act 284, Public Acts of 1972, the undersigned corporation executes the following Articles:

1. The present name of the corporation is: R.G. & G.R. Harris Funeral Home, Inc.
2. The identification number assigned by the Bureau is: 010-581
3. All former names of the corporation are: R.G. & G.R. Harris Funeral Home, Inc.
4. The date of filing the original Articles of Incorporation was: March 17, 1932

The following Restated Articles of Incorporation supersede the Articles of Incorporation as amended and shall be the Articles of Incorporation for the corporation:

ARTICLE I

The name of the corporation is: R.G. & G.R. Harris Funeral Home, Inc.
--

ARTICLE II

The purpose or purposes for which the corporation is formed are: To perform embalming, funeral burial and related services as well as all other purposes allowed under Michigan law.

ARTICLE III

The total authorized shares:

Common shares 200,000 Preferred shares _____

A statement of all or any of the relative rights, preferences and limitations of the shares of each class is as follows: Effective upon filing, there shall be only one class of shares known as common capital stock. Former Class A and Class B shares shall be combined as said common capital stock on a share for share basis.

ARTICLE IV

1. The address of the registered office is:

15251 Harper Avenue, Detroit, Michigan 48224
(Street Address) (City) (ZIP Code)

2. The mailing address of the registered office, if different than above:

_____, Michigan _____
(Street Address or P.O. Box) (City) (ZIP Code)

3. The name of the resident agent is: Thomas F. Rost

ARTICLE V (Optional. Delete if not applicable)

When a compromise or arrangement or a plan of reorganization of this corporation is proposed between this corporation and its creditors or any class of them or between this corporation and its shareholders or any class of them, a court of equity jurisdiction within the state, on application of this corporation or of a creditor or shareholder thereof, or on application of a receiver appointed for the corporation, may order a meeting of the creditors or class of creditors or of the shareholders or class of shareholders to be affected by the proposed compromise or arrangement or reorganization, to be summoned in such manner as the court directs. If a majority in number representing 3/4 in value of the creditors or class of creditors, or of the shareholders or class of shareholders to be affected by the proposed compromise or arrangement or a reorganization, agree to a compromise or arrangement or a reorganization of this corporation as a consequence of the compromise or arrangement, the compromise or arrangement and the reorganization, if sanctioned by the court to which the application has been made, shall be binding on all the creditors or class of creditors, or on all the shareholders or class of shareholders and also on this corporation.

ARTICLE VI

Any action required or permitted by the Act to be taken at an annual or special meeting of shareholders may be taken without a meeting, without prior notice, and without a vote, if consents in writing, setting forth the action so taken, are signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. The written consents shall bear the date of signature of each shareholder who signs the consent. No written consents shall be effective to take the corporate action referred to unless, within 60 days after the record date for determining shareholders entitled to express consent to or to dissent from a proposal without a meeting, written consents dated not more than 10 days before the record date and signed by a sufficient number of shareholders to take the action are delivered to the corporation. Delivery shall be to the corporation's registered office, its principal place of business, or an officer or agent of the corporation having custody of the minutes of the proceedings of its shareholders. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to shareholders who would have been entitled to notice of the shareholder meeting if the action had been taken at a meeting and who have not consented in writing.

ARTICLE VII (Additional provisions, if any, may be inserted here; attach additional pages if needed.)

[Empty box for additional provisions]

5. COMPLETE SECTION (a) IF THE RESTATED ARTICLES WERE ADOPTED BY THE UNANIMOUS CONSENT OF THE INCORPORATOR(S) BEFORE THE FIRST MEETING OF THE BOARD OF DIRECTORS; OTHERWISE, COMPLETE SECTION (b). DO NOT COMPLETE BOTH.

a. These Restated Articles of Incorporation were duly adopted on the _____ day of _____, _____, in accordance with the provisions of Section 642 of the Act by the unanimous consent of the incorporator(s) before the first meeting of the Board of Directors.

Signed this _____ day of _____, _____.

(Signatures of Incorporators; Type or Print Name Under Each Signature)

b. These Restated Articles of Incorporation were duly adopted on the 29th day of December, 2004 in accordance with the provisions of Section 642 of the Act and: (check one of the following)

were duly adopted by the Board of Directors without a vote of the shareholders. These Restated Articles of Incorporation only restate and integrate and do not further amend the provisions of the Articles of Incorporation as heretofore amended and there is no material discrepancy between those provisions and the provisions of these Restated Articles.

were duly adopted by the shareholders. The necessary number of shares as required by statute were voted in favor of these Restated Articles.

were duly adopted by the written consent of the shareholders having not less than the minimum number of votes required by statute in accordance with Section 407(1) of the Act. Written notice to shareholders who have not consented in writing has been given. (Note: Written consent by less than all of the shareholders is permitted only if such provision appears in the Articles of Incorporation.)

were duly adopted by the written consent of all the shareholders entitled to vote in accordance with section 407(2) of the Act.

Signed this 29th day of December, 2004

By 

 (Signature of an authorized officer or agent)

Thomas F. Rost, President

 (Type or Print Name)

EXHIBIT 5

09/23/2013 11:04 313521371

HARRIS FH & CSM

PAGE 08/15

No. 0170 P. 1

Sep. 23. 2013 10:50AM

The R.G. & G.R. Harris Funeral Home

A Tradition Of Trust

Employee Manual 1998

PENGAD 800-631-6969	EXHIBIT
	2
	12-16-05
	Stephens

09/23/2013 11:04 31352137

HARRIS FH & CSM

PAGE 09/15

Sep. 23. 2013 10:50AM

No. 8170 P. 2

DRESS CODE

September 1998

For All Staff

To create and maintain our reputation as "Detroit's Finest", it is fundamentally important and imperative that every member of our staff shall always be distinctively attired and impeccably groomed, whenever they are contacting the public as representatives of The Harris Funeral Home. Special attention should be given to the following consideration, on all funerals, all viewings, all calls, or on any other funeral work.

MEN

SUITS - BLACK GRAY, OR DARK BLUE ONLY (as selected) with conservative styling. Coats should be buttoned at all times. Fasten only the middle button on a three button coat.

If vests are worn, they should match the suit. Sweaters are not acceptable as a vest. NOTHING should be carried in the breast pocket except glasses which are not in a case.

SHIRTS WHITE OR WHITE ON WHITE ONLY, with regular medium length collars. (Button-down style collars are NOT acceptable). Shirts should always be clean. Collars must be neat.

TIES As selected by company, or very similar.

SOCKS FLAIN BLACK OR DARK BLUE SOCKS.

SHOES BLACK OR DARK BLUE ONLY. (Sport styles, high tops or suede shoes are not acceptable). Shoes should always be well polished.

09/23/2013 11:04 31352137

HARRIS FH & CSM

PAGE 10/15

Sep. 23. 2013 10:51AM

No. 8170 P. 3

TOPCOATS BLACK, GRAY OR DARK BLUE CLOTH ONLY. A current style and length. A velvet collar, or gray coat with velvet collar are optional. No raincoats with or without liners except in rainy weather. Plastic coats are not permitted.

GLOVES BLACK, GRAY OR DARK BLUE ONLY.

PINS Small service or fraternity pins may be worn.

PERSONAL GROOMING - Hair should be neatly trimmed and combed at all times. (Extreme hair styles, sideburns, or beards are NOT acceptable). Neat moustaches are allowed. Every man should always be clean shaven. Nails should always be trimmed and clean.

PART TIME MEN - Should wear conservative, dark, business suits, avoiding light brown, light blue, light gray, or large patterns. All part time personnel should follow all details of dress as specified, as near as possible.

FUNERAL DIRECTORS ON DUTY - Are responsible for the appearance of the staff assisting them on services and are responsible for personnel on evening duty.

WOMEN

Because of the particular nature of our business, please dress conservatively. A suit or a plain conservative dress would be appropriate, or as furnished by funeral home. Avoid prints, bright colored materials and large flashy jewelry. A sleeve is necessary, a below elbow sleeve is preferred.

Uniformity creates a good impression and good impressions are vitally important for both your own personal image and that of our Company. Our visitors should always associate us with clean, neat and immaculately attired men and women.

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

**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**)
)
)
 Plaintiff,)
)
)
 v.)
)
)
 **R.G. & G.R. HARRIS FUNERAL
HOMES INC.,**)
)
)
 Defendant.)
 _____)

**CIVIL ACTION NO.
2:14-CV-13710
Hon. Sean F. Cox**

LAURIE A. YOUNG
KENNETH BIRD
DALE PRICE (P55578)
MILES SHULTZ
EMPLOYMENT
OPPORTUNITY COMMISSION
Attorneys for Plaintiff
477 Michigan Ave., Room 865
Detroit, MI 48226
(313) 226-7808
Dale.Price@eeoc.gov

JOEL J. KIRKPATRICK
JOEL J. KIRKPATRICK, P.C.
Attorney for Defendant
843 Penniman Ave. Ste. 201
Plymouth, MI 48170
(734) 404-5170
Joel@JoelKirkpatrick.com

**DEFENDANT R.G. & G.R. FUNERAL HOMES, INC.'S ANSWERS TO PLAINTIFF'S
FIRST SET OF DISCOVERY REQUESTS**

Defendant R.G. & G.R. Funeral Homes, Inc. answers Plaintiff's First Set of Discovery Requests, including Interrogatories, Requests for Production of Documents, and Requests for Admissions, as follows:

GENERAL OBJECTIONS

1. Defendant objects to Plaintiff's instructions and definitions to the extent they seek disclosure

of information protected by the attorney client-privilege and/or the attorney work product doctrine. Furthermore, Defendant objects to the interrogatories to the extent they request information from any and all agents, attorneys, investigators, consultants, experts, and other representatives Defendant has retained.

2. Defendant objects to each and every interrogatory to the extent they call for information to which Plaintiff has equal or greater access than Defendant.

3. Defendant objects to each and every interrogatory to the extent they require Defendant to obtain and compile information from third parties.

4. Defendant objects to Plaintiff's definition of "you" and "your" to the extent Plaintiff seeks to obtain information outside Plaintiff's personal knowledge and/or seeks information protected by the attorney client privilege and or work product doctrine.

5. Defendant objects to Plaintiff's interrogatories to the extent they purport to impose duties and obligations which exceed or are different than those imposed by the Federal Rules of Civil Procedure or Court orders in this action.

Defendant objects to the several pages of instructions to the extent they create burdens going well beyond those required by the Federal Rules of Civil Procedure governing discovery. Defendant further objects to the scope and reach of the instructions as applied to the Interrogatories, Request for Documents, and/or Requests for Admissions to the extent such creates burdens beyond those generally accepted in discovery practice. Defendant objects to those portions of the instructions which render null and void the plain meaning of the English language and which seek to shift the burden of clarity in communication from the proponent of the Interrogatories to the respondent. Defendant also objects to the requirement of Plaintiff to sign the declaration under oath for the requests for admissions, which is not contemplated by

either the Federal Rules of Civil Procedure 36 or the MSPB regulations. Without waiving any objection, and in the interest of cooperation, the following responses are tendered:

DEFENDANT'S ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

1. Identify all persons who prepared or assisted in the preparation of Defendant's responses to these interrogatories, document requests, and request for admissions. For each person provide:
 - a. Official title;
 - b. Business address and telephone number; and
 - c. Which interrogatories, document requests, and/or request for admission the person(s) prepared or assisted in preparing.

ANSWER: Tom Rost, President and Owner of Defendant of R.G. & G.R. Funeral Homes, Inc., 31551 Ford Road Garden City, MI 48135 (734) 425-9200. Mr. Rost assisted counsel of record with responding to all requests.

2. Identify all persons who prepared or assisted in the preparation of the following documents provided to the Commission regarding Charge No. 471-2013-03381: Defendant's Position Statement (undated but received by the EEOC on September 31, 2013), and Defendant's January 10, 2014, Response to Request for Information. For each person provide:
 - a. Official Title;
 - b. Business address and telephone number; and
 - c. Which letter or portion of the letter each person(s) prepared or assisted in preparing, or which information each person(s) provided.

ANSWER: Tom Rost, president and owner of defendant, whose business address and telephone number are provided above. Mr. Rost assisted Attorney Joel Kirkpatrick.

3. Identify all of the reasons Defendant terminated Stephens, when the decision was made, and identify by name and job title all persons who made or were consulted in this decision. For each person identified, state the role he/she played in the process, provide his/her current employment status, and, if no longer employed, provide his/her last known address, phone number and Social Security number.

ANSWER: Thomas F. Rost, President of R.G. & G.R. Funeral Homes, Inc., made the decision to terminate Stephens from employment. The decision was made shortly prior to the date of termination. Stephens was terminated for his anticipatory refusal to comply with the Defendant's male dress/grooming policy, which is, for legitimate business reasons,

applied to and imposed upon all the Defendant's male employees. Stephens unwillingness to comply with company policy would have had a deleterious financial impact on Defendant's business operation and would have been contrary to the funeral home industry standard for conducting funeral services and related business activities. **Stephens intentions also violated Mr. Ross's sincerely held religious beliefs.**

4. Identify all of the reasons why Stephens was not allowed to present as a woman at work.

ANSWER: please see response to interrogatory # 3.

5. State in dollar amounts Defendant's:

- a. Year-end net and gross revenue for each year from 2012-2015 and continuing through trial;
- b. Year-end operating expense for each year from 2012-2015 and continuing through trial;
- c. Identify the individual(s) who can testify to sub-parts (a) and (b) of this interrogatory, and identify the job title of each person identified.

ANSWER: Defendant incorporates his general objections. The Defendant objects to this interrogatory to the extent it is overly broad, not properly limited in time or scope, and seeks information not relevant to the claims or defenses of either party or reasonably calculated to lead to the discovery of admissible evidence. Moreover, this interrogatory is premature and unduly burdensome for the defendant.

6. Describe in detail the functions performed by funeral home directors/embalmers.

ANSWER: A funeral director is one whose profession is assisting surviving families and friends with the planning and carrying out of all aspects of caring for a decedent and the decedent's family, including removal of remains, embalming and cremation, making funeral and memorial arrangements, making sure funerals and memorial services are carried out in accordance with the decedents' and survivors' desires, and assisting survivors through the emotional distress that accompanies the loss of a loved one. The Funeral director helps safeguard the mental and emotional health of the survivors and the living. Therefore, at the time of a family crisis, through death, the Funeral Director needs to be able to function as a supportive counselor concerning coping with grief, helping on funerals, handling arrangements, legal documents, etc. The Funeral Director is always prepared to respond immediately in bringing the deceased to the funeral home where embalming may take place, or the remains are placed in a temperature controlled facility. The Funeral Director is responsible for initiating and coordinating the many details of these arrangements. These responsibilities include making the removal/transfer of the

remains to our care from where death has occurred whether it be from a residence, hospital, nursing home and/or hospice facility. The Funeral Director is responsible for meeting with the next of kin, completing obituary notices, assisting survivors with the selecting of funeral services and merchandise, processing death certificates, filing for insurance, union benefits, and social security benefits, arranging the details of funeral and memorial services, appearing at funeral and memorial services, and accompanying families and friends of the deceased to and at burials.

Throughout all the time the Funeral Director spends with the bereaved, the Funeral Director must be sensitive to their needs and perceptive enough to sense their unspoken concerns. The Funeral Director must be discreet as well as helpful. Funeral Directors – in both appearance and behavior - must perform their professional duties without drawing undue attention to themselves or causing the survivors any more stress than absolutely necessary. Indeed, the Funeral Director's job is, to the extent possible, to lessen and protect the survivors from unnecessary stress. . This time is about the grieving survivors, and it is our responsibility to assist them in all aspects of arrangements. The Funeral Director needs to be respectful of all religious facilities at which services are conducted. Assistance is also given to families for final disposition, to which end we are often called upon to make appropriate arrangements with cemeteries, churches, and crematories.

Funeral Directors must be knowledgeable in explaining death to children, coping with grief and many aspects of loss through death. The Funeral Director also must have the knowledge, training and attitude to advise and provide resources for people in times of grief. All of the funeral service must involve care for the deceased and also a genuine concern for life and the living.

7. Describe in detail the complete compensation package for funeral home directors/embalmers, including but not limited to pay, insurance, retirement plans, leave, etc.

ANSWER: We provide a very competitive wage or salary. Health Insurance is provided for full time employees. We also provide life Insurance, and a Simple IRA package is offered for their contribution. We also provide vacation pay and compensated sick days. A Funeral Director's salary range is generally between \$35,000 and \$50,000 annually.

8. To the extent not in writing, describe in detail Defendant's dress code policy.

ANSWER: See attached employee handbook for the policy. (Bates pages 2-3)

9. Identify all complaints lodged against the Defendant from January 1, 2010, to present, including but not limited to lawsuits or charges, verbal or written, regarding Equal

Employment Opportunity laws, including but not limited the Civil Rights Act of 1964 as amended, the Americans With Disabilities Act of 1990 as amended, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, the Genetic Information Nondiscrimination Act of 2008, Elliot-Larsen Civil Rights Act of 1976 as amended, and any local municipal or county ordinances.

- a. For each, identify the complaining party, the allegation, and the resolution.

ANSWER: None

10. Identify all training programs given by the Defendant from January 1, 2010, to present regarding Equal Employment Opportunity laws, including but not limited the Civil Rights Act of 1964 as amended, the Americans With Disabilities Act of 1990 as amended, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, the Genetic Information Nondiscrimination Act of 2008, Elliot-Larsen Civil Rights Act of 1976 as amended, and any local municipal or county ordinances.

- a. For each program list the date, who conducted the training, and who attended the training.

ANSWER: None

11. To the extent you deny, in whole or in part, any of the requests for admission below, provide a detailed description of the facts upon which you base that denial, including an identification of the Bates number of any documents that support each denial.

ANSWER: Defendant incorporates its general objections herein. Defendant specifically objects to any request that exceeds the requirements of the Federal Rules of Civil Procedure. The Federal rules require only three responses for requests for admissions.

12. Identify by position and gender all employees who Defendant has given a clothing allowance since January 1, 2010.

ANSWER: See attached document (Bates pages 17-18)

13. For each such person identified in response to Interrogatory 12, calculate the total dollar value of clothing allowances given since January 1, 2010.

ANSWER: See attached document (Bates pages 17-18)

DEFENDANT'S ANSWERS TO PLAINTIFF'S FIRST SET OF REQUEST FOR THE PRODUCTION OF DOCUMENTS

1. Provide any and all documents relied upon or used in answering the interrogatories and requests for admissions, and identify which Interrogatory or Request for Admission the document relates to.

ANSWER: See attached documents (Bates pages 1-18)

2. Produce all communications, including but not limited to all memorandums and electronic mail, regarding Stephens's request to present as a woman.

ANSWER: Defendant incorporates its general objections herein. The Defendant objects to this Request on the grounds of attorney-client privilege. The Defendant objects to this request to the extent it is overly broad, not properly limited in time or scope, and seeks information not relevant to the claims or defenses of either party or reasonably calculated to lead to the discovery of admissible evidence. Moreover, this Request is unduly burdensome for the Defendant.

3. Produce all communications, including but not limited to all memorandums and electronic mail, regarding Defendant's termination of Stephens.

ANSWER: Defendant incorporates his general objections herein. The Defendant objects to this Request on the grounds of attorney-client privilege. The Defendant objects to this request to the extent it is overly broad, not properly limited in time or scope, and seeks information not relevant to the claims or defenses of either party or reasonably calculated to lead to the discovery of admissible evidence. Moreover, this Request is unduly burdensome for the Defendant.

4. Produce a copy of all operative employee handbooks from January 1, 2010, to present.

ANSWER: See attached documents (Bates pages 1-8)

5. Produce all job descriptions for Stephens's position and for all other funeral director and/or embalmer positions.

ANSWER: See response to interrogatory #6. There are no written job descriptions for Stephens positions. Defendant relies on the industry standard for job description.

6. Produce any and all advertisements for Stephens's position and for all other Funeral Director/Embalmer positions at Defendant from January 1, 2010, to present.

ANSWER: None

7. Provide a full copy, with all attachments, of the most recent corporate federal tax return by Defendant and all federal tax returns filed by Defendant through the date of trial.

ANSWER: Defendant incorporates his general objections hereto. The Defendant objects to this request to the extent it is overly broad, not properly limited in time or scope, and seeks information not relevant to the claims or defenses of either party or reasonably calculated to lead to the discovery of admissible evidence. Moreover, this Request is unduly burdensome for the Defendant.

8. Produce the complete personnel and medical files for Stephens.

ANSWER: Please see attached documents.(Bates pages 9-16)

9. Produce all documents that support the denial of any of the Requests for Admissions.

ANSWER: Defendant incorporates its general objections herein. Defendant specifically objects to any request that exceeds the requirements of the Federal Rules of Civil Procedure. .

10. Produce all Defendant's operative dress code policies from January 1, 2010 to present.

ANSWER: Please see attached documents. (Bates pages 2-3)

11. To the extent not already provided, produce complete unredacted copies of all personnel files for each current or former employee of Defendant identified in the Commission's Rule 26 Disclosures.

ANSWER: Defendant incorporates its general objections herein. The Defendant objects that this Request violates the privacy act and the privacy rights of employees. The Defendant objects to this Request to the extent it is overly broad, not properly limited in time or scope, and seeks information not relevant to the claims or defenses of either party

or reasonably calculated to lead to the discovery of admissible evidence. Moreover, this Request is unduly burdensome for the defendant.

12. Produce the Defendant's clothing allowance policy.

ANSWER: Please see attached documents. (Bates pages 17-18)

13. Produce documents pertaining to the operation of the Defendant's clothing allowance policy, including receipts, reimbursement documents and the like.

ANSWER: Defendant incorporates its general objections hereto. This Request is unduly burdensome. Without waiving said objection, please see attached documents. (Bates pages 17-18) Defendant continues to search for responsive documents and will supplement this Request should any further documents responsive to this Request be discovered.

DEFENDANT'S ANSWERS TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSIONS

1. Admit that all conditions precedent to the institution of this lawsuit have been fulfilled.

ANSWER: Objection. This request seeks a conclusion of law and is vague. To the extent that a response is required, this Request for Admission is denied.

2. Admit that Defendant employed between 15 and 100 employees in the United States in years 2011, 2012, and 2013.

ANSWER: Admit.

3. Admit that Defendant fired Stephens because she intended to present as a female at work.

ANSWER: Denied.

4. Admit that Defendant provides male employees a clothing allowance but not female employees.

ANSWER: Denied.

5. Admit that Defendant has never employed a female funeral director or embalmer.

ANSWER: Admit.

AS TO ALL LEGAL OBJECTIONS

JOEL J. KIRKPATRICK, P.C..

/s/ Joel J. Kirkpatrick

JOEL J. KIRKPATRICK, P.C.

/s/ Joel J. Kirkpatrick

JOEL J. KIRKPATRICK(P 62851)

Attorney for Defendant

843 Penniman Ave., Ste. 201

Plymouth, MI 48170

Tel. (734)404-5170

Joel@JoelKirkpatrick.com

ALLIANCE DEFENDING FREEDOM

/s/ Joseph P. Infranco

JOSEPH P. INFRANCO
15100 N. 90th Street
Scottsdale, AZ85260
Tel. No. (480) 444-0020
JInfranco@alliancedefendingfreedom.org

Dated: June 19, 2015

CERTIFICATE OF SERVICE

The undersigned has certified that *Defendant R.G. & G.R. Harris Funeral Home, Inc. 's Answers to Plaintiff's First Set of Discovery Requests* has been served on Plaintiff via first class and electronic mail on June 19, 2015, at the address set forth above.

Respectfully submitted,

/s/ Joel J. Kirkpatrick

2016 WL 1089178

Only the Westlaw citation is currently available.

United States District Court,
D. Connecticut.

Deborah Fabian, Plaintiff,

v.

Hospital of Central Connecticut, et al., Defendants.

No. 3:12-cv-1154 (SRU)

|
Signed March 18, 2016

Synopsis

Background: Transgender prospective employee brought action against prospective employer under Title VII and Connecticut Fair Employment Practices Act (CFEPA) alleging she was nearly hired as an on-call orthopedic surgeon, but employer declined to hire her because she disclosed her identity as a transgender woman. Employer moved for summary judgment.

Holdings: The District Court, [Stefan R. Underhill, J.](#), held that:

[1] prospective employee made prima facie showing of discrimination under Title VII;

[2] fact issues regarding whether employer's reasons for declining to hire prospective employee were pretextual precluded summary judgment;

[3] fact issues precluded summary judgment on issue of whether prospective employee was covered by Title VII; and

[4] as a matter of first impression, discrimination on the basis of transgender identity is cognizable under Title VII as discrimination because of sex.

Motion denied.

Attorneys and Law Firms

[Theodore W. Heiser](#), Sullivan Heiser, LLC, Clinton, CT, for Plaintiff.

[David L. Metzger](#), Metzger Lazarek & Plumb, Hartford, CT, [Elizabeth K. Acee](#), [Michael G. Caldwell](#), LeClairryan, New Haven, CT, for Defendants.

MEMORANDUM OF DECISION AND ORDER

Stefan R. Underhill, United States District Judge

*1 The plaintiff in this case, Dr. Deborah Fabian, brings this action under Title VII of the Civil Rights Act and the Connecticut Fair Employment Practices Act ("CFEPA"). She alleges that she was very nearly hired as an on-call orthopedic surgeon at the Hospital of Central Connecticut and relied reasonably and substantially on the impending finalization of her hiring, but that the hospital declined to hire her because she disclosed her identity as a transgender woman who would begin work after transitioning to presenting as female. The hospital moves for summary judgment on the grounds that Dr. Fabian has not met her burden under the *McDonnell Douglas* burden-shifting framework, because she would have been an independent contractor rather than an employee and therefore is not covered by the relevant statutes, and because Title VII (and the CFEPA at the time of the alleged discrimination) does not prohibit employment discrimination on the basis of transgender identity. For the reasons discussed below, I reject all three arguments and deny the Hospital's motion.

I. Standard of Review

Summary judgment is appropriate when the record demonstrates that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Fed. R. Civ. P. 56(a)*; see also *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986) (plaintiff must present affirmative evidence in order to defeat a properly supported motion for summary judgment).

When ruling on a summary judgment motion, the court must construe the facts of record in the light most favorable to the nonmoving party and must resolve all ambiguities and draw all reasonable inferences against the moving party. *Anderson*, 477 U.S. at 255, 106 S.Ct. 2505; *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158–59, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970); see also *Aldrich v. Randolph Cent. Sch. Dist.*, 963 F.2d 520, 523 (2d Cir.1992) (court is required to "resolve all ambiguities

2016 WL 1089178

and draw all inferences in favor of the nonmoving party”). When a motion for summary judgment is properly supported by documentary and testimonial evidence, however, the nonmoving party may not rest upon the mere allegations or denials of the pleadings, but must present sufficient probative evidence to establish a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Colon v. Coughlin*, 58 F.3d 865, 872 (2d Cir.1995).

“Only when reasonable minds could not differ as to the import of the evidence is summary judgment proper.” *Bryant v. Maffucci*, 923 F.2d 979, 982 (2d Cir.1991); see also *Suburban Propane v. Proctor Gas, Inc.*, 953 F.2d 780, 788 (2d Cir.1992). If the nonmoving party submits evidence that is “merely colorable,” or is not “significantly probative,” summary judgment may be granted. *Anderson*, 477 U.S. at 249–50, 106 S.Ct. 2505.

The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact. As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.

*2 *Id.* at 247–48, 106 S.Ct. 2505. To present a “genuine” issue of material fact, there must be contradictory evidence “such that a reasonable jury could return a verdict for the non-moving party.” *Id.* at 248, 106 S.Ct. 2505.

If the nonmoving party has failed to make a sufficient showing on an essential element of his case with respect to which he has the burden of proof at trial, then summary judgment is appropriate. *Celotex*, 477 U.S. at 322, 106 S.Ct. 2548. In such a situation, “there can be ‘no genuine issue as to any material fact,’ since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial.” *Id.* at 322–23, 106 S.Ct. 2548; accord *Goenaga v. March of Dimes Birth Defects Found.*, 51 F.3d 14, 18 (2d Cir.1995) (movant's burden satisfied if he can point to an absence of evidence to

support an essential element of nonmoving party's claim). In short, if there is no genuine issue of material fact, summary judgment may enter. *Celotex*, 477 U.S. at 323, 106 S.Ct. 2548.

II. Background

Deborah Fabian is an orthopedic surgeon and a transgender woman.¹ She alleges that she was very nearly hired by the Hospital of Central Connecticut (“HCC” or the “Hospital”) as an on-call orthopedic surgeon for its Emergency Department, albeit with the involvement of a third-party provider of physicians and management services—Delphi Healthcare Partners, Inc. (“Delphi”)—that the Hospital used as a means to find physicians. Fabian entered the hiring process with Delphi and subsequently went to interview at HCC believing that she was all but hired. At that time, she was publicly presenting as male and was known as David Fabian; she informed her interviewers at the end of her interview, however, that she is a transgender woman and transitioning to presenting as female, and that she would work at the hospital as Deborah Fabian. She subsequently learned that she would not be hired, and she alleges that she would have been except for her disclosure of her identity as a transgender woman. She alleges that the interview was barely more than a formality, that she had already been told she would get the job, that she had already been given a contract with a start date (which she executed and returned), and that it was in reliance on that reasonable understanding that she and her wife sold their home in Massachusetts.

*3 Fabian's four-count complaint alleges that Delphi (Counts One and Two) and HCC (Counts Three and Four) violated Title VII of the Civil Rights Act and the CFEPFA. The present motion for summary judgment was filed only by HCC with respect to Counts Three and Four.² HCC asserts that it chose not to hire Fabian not because she is a transgender woman but because she showed what her interviewers perceived as reluctance (or insufficient enthusiasm) about late-night calls to the Emergency Department and their new electronic records systems, and that she wanted to perform more surgery, which is not what the job would likely entail. HCC also claims that the “contract” she received was merely a sample contract. Moreover, HCC argues that its relationship to Fabian if she had been hired would not have been as employer under Title VII, because she would have been an independent contractor of Delphi, and thus an independent contractor of an independent contractor; and that, in any case, discrimination on the basis of transgender identity is not prohibited by Title VII and was not prohibited by the

CFEPA at the time. In sum, HCC argues that summary judgment should be granted because: (1) HCC had legitimate nondiscriminatory reasons not to hire Fabian, which Fabian has not shown to be pretextual; (2) even if HCC had hired Fabian, it would not have been her “employer” under Title VII or the CFEPA; and (3) transgender is not a protected status under Title VII and was not a protected status under the CFEPA at the time of the events giving rise to this case, and the subsequent amendment of the CFEPA to cover that status should not be applied retroactively.

III. Discussion

The central factual dispute in this case is whether the decision not to hire Fabian was or was not made as a result of her transgender identity. If she would have been an independent contractor rather than an employee under Title VII and the CFEPA and therefore not covered by the statutes anyway, or if transgender status is not cognizable under them, then that factual dispute is immaterial. I will address those arguments below. But assuming for the moment that the discrimination she alleges is not outside the scope of the protective statutes, her claim is subject to the familiar burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). Because in this case that analysis is relatively simple, I will take it up first.

A. McDonnell-Douglas Burden Shifting

[1] [2] [3] It is unlawful under Title VII for an employer “to fail or refuse to hire ... any individual ... because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a). Discriminatory failure-to-hire claims under Title VII³ are analyzed under the familiar burden-shifting framework of *McDonnell Douglas*. Under that test:

a plaintiff complaining of a discriminatory failure to hire must first make out a *prima facie* case of discrimination by showing that (1) [she] is a member of a protected class, (2) [she] was qualified for the job for which [she] applied, (3) [she] was denied the job, and (4) the denial occurred under circumstances that give rise to an inference of invidious discrimination. Once the plaintiff has made such a *prima facie* showing, the burden shifts to the employer to come forward with a nondiscriminatory

reason for the decision not to hire the plaintiff. If the employer articulates such a reason, the plaintiff is given an opportunity to adduce admissible evidence that would be sufficient to permit a rational finder of fact to infer that the employer’s proffered reason is pretext for an impermissible motivation.

Vivenzio v. City of Syracuse, 611 F.3d 98, 106 (2d Cir.2010).

*4 [4] [5] There is no dispute that Fabian was qualified for the job and that she was denied it. Whether she is a member of a protected class pertinent to her claim is disputed and is addressed below. Assuming for now that she is, she need only show that “the denial occurred under circumstances that give rise to an inference of invidious discrimination” to make her *prima facie* showing. She has proffered evidence that she was led to believe she was all but formally hired, that she received some sort of contract (though its significance is disputed), that she relied to her detriment on such representations to such an extent that she sold her home in Massachusetts, that she was not hired after disclosing her transgender identity, and that other doctors who are not transgender were subsequently hired. Taken together, that evidence is easily sufficient to give rise to an inference of discrimination. Assuming that the employment relationship in question is covered by the statute and that Fabian is a member of a protected class because discrimination on the basis of transgender identity constitutes sex discrimination, her *prima facie* case is therefore easily made. HCC proffers nondiscriminatory reasons for not hiring her—that in an interview she expressed reluctance about being called in to the Hospital at late hours and about the Hospital’s new electronic recordkeeping systems, and wanted to perform more surgery—but the factual basis of those reasons (*i.e.*, the statements Fabian made in the interview) is disputed. A reasonable jury could find that those reasons were mere pretext and that Fabian’s disclosure of her gender identity was the reason she was not hired. The Hospital’s motion for summary judgment should therefore not be granted on the basis of any failure of Fabian to meet her burden under the *McDonnell Douglas* framework.

B. Employee or Independent Contractor

[6] [7] [8] “Title VII cover[s] ‘employees,’ not independent contractors,” *Eisenberg v. Advance Relocation & Storage, Inc.*, 237 F.3d 111, 113 (2d Cir.2000), but the mere

2016 WL 1089178

fact that HCC formally designates its doctors as “independent contractors” does not make them so (or, rather, it does not exclude them as “employees”) under Title VII. Instead, the question “whether a worker is an ‘employee’—or whether he or she is merely an independent contractor—requires the application of the common law of agency. In turn, whether a hired person is an employee under the common law of agency depends largely on the thirteen factors articulated by the Supreme Court in *Community for Creative Non-Violence v. Reid*.” *Id.* at 113–14 (citations omitted). The *Reid* factors are:

[1] the hiring party's right to control the manner and means by which the product is accomplished ... [3] [2] the skill required; [3] the source of the instrumentalities and tools; [4] the location of the work; [5] the duration of the relationship between the parties; [6] whether the hiring party has the right to assign additional projects to the hired party; [7] the extent of the hired party's discretion over when and how long to work; [8] the method of payment; [9] the hired party's role in hiring and paying assistants; [10] whether the work is part of the regular business of the hiring party; [11] whether the hiring party is in business; [12] the provision of employee benefits; and [13] the tax treatment of the hired party.

Reid, 490 U.S. 730, 751–52, 109 S.Ct. 2166, 104 L.Ed.2d 811 (1989) (footnotes omitted).

[9] [10] [11] Weighing the *Reid* factors is a highly fact-specific task, and “a court must disregard those factors that, in light of the facts of a particular case, are (1) irrelevant or (2) of indeterminate weight—that is, those factors that are essentially in equipoise and thus do not meaningfully cut in favor of either the conclusion that the worker is an employee or the conclusion that he or she is an independent contractor.” *Eisenberg*, 237 F.3d at 114 (quotation omitted). *See also Langman Fabrics v. Graff Californiawear, Inc.*, 106 F.3d 106, 110–11 (2d Cir.1998) (“Not all the *Reid* factors will be significant in every case, and we must weigh in the balance only those factors that are actually indicative of agency in the particular circumstances before us.”). The *Reid* factors are also “a non-exhaustive list of factors to be considered,”

because they merely seek to synthesize the common law of agency. *Frankel v. Bally*, 987 F.2d 86, 90 (2d Cir.1993). They act, therefore, as a kind of starting point—some of them might not be significant in a particular case, and other factors not listed in *Reid* may matter instead. In general, “[t]hough no single factor is dispositive, the greatest emphasis should be placed on the first factor—that is, on the extent to which the hiring party controls the ‘manner and means’ by which the worker completes his or her assigned tasks. The first factor is entitled to this added weight because, under the common law of agency, an employer-employee relationship exists if the purported employer controls or has the right to control both the result to be accomplished and the ‘manner and means’ by which the purported employee brings about that result.” *Eisenberg*, 237 F.3d at 114 (citations and quotations omitted).⁴

*5 [12] It is clear that doctors who staff hospitals will often fall near the borderline, and under the *Reid* factors or the common law of agency they may seem in some ways to be a hybrid of employee and independent contractor. Hospitals, by setting policy and performance review procedures, may have significant control over the “manner and means” of a doctor's practice, yet medicine is a highly skilled profession and doctors will necessarily always maintain a significant degree of autonomy. Hospital physicians are not for that reason, however, simply excluded as a class from protection under Title VII. The Second Circuit has reversed a grant of summary judgment that overemphasized the role of professional judgment as a factor militating against “control over the manner and means of one's work,” because such overemphasis “would carve out all physicians, as a category, from the protections of the antidiscrimination statutes. While a physician, like any professional, must be given latitude in which to choose a course of action, especially considering the exigencies of medical practice, the mere existence *vel non* of that latitude is not dispositive of the manner-and-means test.” *Salamon v. Our Lady of Victory Hosp.*, 514 F.3d at 228–29. The Second Circuit held that “[w]hile summary judgment may be appropriate in some cases concerning staff physicians suing hospitals, it is not appropriate in all,” and in that particular case, the plaintiff had “demonstrated a genuine factual conflict regarding the degree of control [the hospital] exercised over her.” *Id.* at 231. The source of tools and instrumentalities, as well as the location of work, will weigh in favor of seeing hospital physicians as employees; the duration of employment, the right to assign additional projects, the degree of discretion over when and how long to work, the method of payment, the doctor's role in hiring and

2016 WL 1089178

paying assistants, and various other factors, are likely to vary widely from case to case.

[13] The decision about employee status in a failure-to-hire case like this one may be even harder than in other cases of staff physicians suing hospitals, because the physician never started work and some of the dynamics that would have obtained are therefore less apparent. It is clear, however, that under the agreement that HCC had with Delphi (and under the contract Fabian received and executed), any doctors hired would be subject to the Hospital's bylaws, rules, regulations, policies, and procedures. They would be required to maintain "Medical Staff privileges" and appropriate credentials. Their schedules were to be subject to Hospital review and approval (though the extent of control over their own schedules remains unclear). They would be required to participate in the Hospital's programs pertaining to quality assurance, medical audit, risk management, utilization review, safety, infection control, and peer review, and to participate in various compliance programs. They would be required to follow policies and procedures with respect to medical records and timekeeping, to participate in staff committees, and to attend staff meetings, and the Hospital would have broad authority over administration generally. Doctors would have supervisory responsibility over hospital employees (and would not, for instance, hire their own staff and assistants).

The Hospital's right to control the manner and means of Fabian's work would be far less than in the case of less skilled workers, but the high degree of skill and autonomy involved in being a physician is not a *per se* bar on employee status. She would have had far *less* autonomy—and the Hospital would have had correspondingly greater control over the manner and means of her work—than she would have had in an individual practice, or in a partnership with a few other doctors, or if she merely had privileges to use the Hospital's facilities but was responsible for bringing in her own patients or performing her own billing (both tasks, in this case, were performed through the Hospital).

The location of the work and the source of the instrumentalities and tools weigh in favor of employee status. The duration of the relationship between the parties also weighs in favor of employee status, insofar as Fabian would not have been brought in to perform a specific task until completion—like a contractor hired to shingle a roof—or a particular task intermittently on an as-needed basis, but would become a regular part of the Hospital personnel. The Hospital's interest and involvement in the hiring process,

and the fact that it interviewed and declined to hire Fabian, weigh still further in favor of employee status. If the Hospital had simply contracted with Delphi to fill its staffing needs in the way many businesses outsource custodial duties, for instance, Delphi would have hired whomever Delphi hired and the Hospital would have had little say in the matter. By interviewing and considering candidates, the Hospital was undertaking a traditional employer's task, and was not relying on Delphi to perform the tasks of a medical practice with its own staff but rather was relying on it to provide candidates for consideration by Hospital staff.

*6 None of those factors is dispositive, and I do not consider their balance to be obvious in this case, but it does appear that the relationship Fabian would have had with the Hospital if she had been hired would have been more like a traditional employee than like a traditional independent contractor. I need not decide now as a matter of law that Fabian would have been an employee under Title VII and foreclose further evidence and argument on the issue (and she has not cross-moved for summary judgment on it), and I do not do so. But I conclude that when construing the facts of record in the light most favorable to the nonmoving party and resolving all ambiguities and drawing all reasonable inferences against the moving party, the Hospital has not shown that Fabian as a matter of law would not have been an employee under Title VII, and summary judgment should not be granted on that basis.

C. Transgender Identity and Title VII

Title VII of the Civil Rights Act, as amended, makes it unlawful for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a). The effect of the words "because of ... sex" is called into question in this case. Specifically, the parties disagree about the scope of those words' meaning, and whether they prohibit employment discrimination against transgender people because they are transgender people, or if they only encompass discrimination against women (transgender or otherwise) because they are women and men (transgender or otherwise) because they are men. Framed differently, the question is this: If an employer does not discriminate against women as a class or against men as a class, but does discriminate against transgender people (irrespective of whether they are transgender men or transgender women), does that employer violate Title VII?

2016 WL 1089178

Neither the Supreme Court nor the Second Circuit has ever addressed that question.⁵ Several other Circuits have addressed it, however, and though most of the earliest cases held that Title VII does not protect gender identity, the weight of authority has begun to shift the other way, especially (though not uniformly) after the Supreme Court's decision in *Price Waterhouse v. Hopkins*, 490 U.S. 228, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989). Because it is an open question in this Circuit, I consider the reasoning of other courts and closely examine the language of the statute below.

1. *The Early Cases and Congressional Intent*

The earliest appellate decisions to examine the applicability of Title VII to discrimination on the basis of transgender identity were *Holloway v. Arthur Andersen & Co.*, 566 F.2d 659 (9th Cir.1977),⁶ and *Sommers v. Budget Marketing, Inc.*, 667 F.2d 748 (8th Cir.1982). In each case, the respective Circuit held that Title VII does not prohibit such discrimination, and subsequent cases that have come to the same conclusion have generally followed the same or essentially similar reasoning (as the Hospital urges me to do in the present case). *Holloway* and *Sommers* (and their progeny) were decided principally on two grounds: (1) the “traditional” definition or “plain” meaning of the word “sex,” and (2) the intention of Congress.

*7 The Ninth Circuit in *Holloway* acknowledged that “[t]here is a dearth of legislative history” on the relevant provision, at least in part because “[t]he major concern of Congress at the time the Act was promulgated was race discrimination,” and “[s]ex as a basis of discrimination was added as a floor amendment one day before the House approved Title VII, without prior hearing or debate.” 566 F.2d at 662. The Court noted, however, that “the clear intent” of the Title VII amendments in the Equal Employment Opportunity Act of 1972—though that Act did not alter the relevant provision—“was to remedy the economic deprivation of women as a class.” *Id.* The Court reasoned that “[g]iving the statute its plain meaning” is sufficient to show that “Congress had only the traditional notions of ‘sex’ in mind,” *id.* and concluded that “Congress has not shown any intent other than to restrict the term ‘sex’ to its traditional meaning.” *Id.* at 663. *But see id.* at 664 (Goodwin, J., dissenting) (reasoning that discrimination because plaintiff “had changed her sex ... would have to be classified as [discrimination] based upon sex”). The Court referred several times to the “plain” meaning

or “traditional” definition of sex and included a quotation from *Webster's Seventh New Collegiate Dictionary* in a footnote, *see id.* at 662 n. 4, but it did not discuss the language of the statute at length or engage with any definition in depth.

The Eighth Circuit in *Sommers* ruled along the same lines. “[F]or purposes of Title VII,” the Court held, “the plain meaning must be ascribed to the term ‘sex’ in absence of clear congressional intent to do otherwise,” and “the legislative history does not show any intention to include transsexualism in Title VII.” 667 F.2d at 750. Like the *Holloway* Court, the *Sommers* Court acknowledged that the word “sex” was added to Title VII in an amendment “one day before the House passed the Act without prior legislative hearings and little debate,” but it nevertheless reasoned that “[i]t is ... generally recognized that the major thrust of the ‘sex’ amendment was towards providing equal opportunities for women.” *Id.* The Court therefore held that “discrimination based on one's transsexualism does not fall within the protective purview of the Act.” *Id.*

Both *Holloway* and *Sommers* rely on the supposedly “plain” or “traditional” meaning of the word “sex,” but they do not elaborate on that supposed meaning; and, as I will discuss below (and as one might infer from Judge Goodwin's *Holloway* dissent), their treatment of the word is superficial. The apparently dual grounds for those decisions might therefore be collapsed into one, because both decisions use the “plain” meaning of the statute as a proxy for Congressional intent: rather than examining what the word “sex” means, they intuit what Congress must have intended the statute to do with respect to sex (while acknowledging that there is virtually no legislative history to guide them).

In the years since *Holloway* and *Sommers*, the use of legislative history and congressional intent has become more controversial and less prominent in statutory interpretation, and the addition of the word “sex” to Title VII is about as vivid an example imaginable of why that change occurred. U.S. District Judge John F. Grady in the Northern District of Illinois (in a decision issued from the bench and reported in the form of a transcript) disagreed with *Holloway* and *Sommers* about the Congressional intent behind the sex amendment to Title VII:

those who have looked a little further into the matter know that this amendment introducing sex into the picture was a gambit of a Southern senator who sought thereby to scuttle

2016 WL 1089178

the whole Civil Rights Act, and, much to his amazement and no doubt undying disappointment, it did not work. We not only got an act including race discrimination, which he had sought to bar, but we got sex as well.

Ulane v. Eastern Airlines, Inc., 581 F.Supp. 821, 822 (N.D.Ill.1983) (“*Ulane I*”), *rev'd*, 742 F.2d 1081 (7th Cir.1984) (“*Ulane II*”). There may be some uncertainty about the precise motives of that Southern congressman (who was not a senator, as Judge Grady said, but Representative Howard Smith of Virginia), but he was ostensibly an opponent of the bill, and it is clear that adding the word “sex” to Title VII was regarded by some of his colleagues as a welcome expansion of the Civil Rights Act’s protective scope and by others as a prank or a poison pill to prevent it from becoming law.⁷ Even if one considers some conception of a coherent and singular congressional intent to be a useful interpretive tool, it must be acknowledged that any such conception will, at least in cases like this one, be a legal fiction: there simply was no coherent and singular intent. Judge Grady thus disregarded the question of what Congress intended to do when it added the prohibition of sex discrimination to Title VII, asking instead: “What did we get when we got sex?” *Id.*

*8 Fifteen years later, Justice Scalia writing for a unanimous Supreme Court applied that same lens to Title VII in a decision holding that male-on-male sexual harassment claims fall under its purview:

As some courts have observed, male-on-male sexual harassment in the workplace was assuredly not the principal evil Congress was concerned with when it enacted Title VII. But statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed.

Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 79, 118 S.Ct. 998, 140 L.Ed.2d 201 (1998). When Judge Grady disregarded the question of “the principal concerns of our legislators” and looked instead to the provision of the law itself—that is, to what “we g[o]t when we got sex” in Title VII—he concluded that the complaint before him,

which alleged employment discrimination on the basis of transgender identity, clearly alleged discrimination that was “related to sex or had something to do with sex.” *Ulane I*, 581 F.Supp. at 822. He characterized that conclusion as a “layman’s reaction to the simple word,” *id.* and held that “the term, ‘sex,’ as used in any scientific sense and as used in the statute can be and should be reasonably interpreted to include among its denotations the question of sexual identity and that, therefore, transsexuals are protected by Title VII.” *Id.* at 825.

The Seventh Circuit reversed that decision. It agreed with and restated Judge Grady’s summary of the circumstances of the sex amendment’s adoption—it called the amendment “the gambit of a congressman seeking to scuttle” the Act, *Ulane II*, 742 F.2d at 1085—but it nevertheless indicated, perhaps paradoxically, that its responsibility was “to interpret this congressional legislation and determine what Congress intended when it decided to outlaw discrimination based on sex.” *Id.* at 1084. The Court took the “total lack of legislative history supporting the sex amendment coupled with the circumstances of the amendment’s adoption” as an indication that “Congress never considered nor intended that this ... legislation apply to anything other than the traditional concept of sex.” *Id.* at 1085. The *Ulane II* Court thus relied, as the *Holloway* and *Sommers* courts relied, on what it characterized as the “traditional concept of sex” and the “plain meaning” of the statute, *id.* but it did not examine why or how that meaning differed from Judge Grady’s “layman’s reaction” in *Ulane I* (which also appears to have been Judge Goodwin’s reaction in his *Holloway* dissent). Rather, it simply asserted that “[t]he phrase in Title VII prohibiting discrimination based on sex, in its plain meaning, implies that it is unlawful to discriminate against women because they are women and against men because they are men.” *Id.* As the *Ulane II* Court saw it, to construe the provision as doing anything more would be “to judicially expand the definition of sex ... beyond its common and traditional interpretation,” and only Congress has the prerogative to decide “whether it wants such a broad sweeping of the untraditional and unusual within” the term. *Id.* at 1086.

*9 By the mid-1980s—after *Holloway*, *Sommers*, and *Ulane II*—it was thus settled in the Seventh, Eighth, and Ninth Circuits that Title VII did not prohibit employment discrimination on the basis of transgender identity, and that result was premised in all three Circuits on congressional intent and a “plain reading” or “traditional definition” of the word “sex.” Congress’s intention in passing the sex amendment to Title VII, however, is a highly dubious basis

for interpreting the statute. And the supposed plainness of that “plain reading”—which itself may have been premised on an intuition about what Congress would or would not have intended—is at least in tension with the contrary “layman’s reaction” of Judge Grady in *Ulane I* (and seemingly shared by Judge Goodwin in the *Holloway* dissent) that discrimination on the basis of transgender identity “relate[s] to sex or ha[s] something to do with sex,” 581 F.Supp. at 822, and might therefore be “because of sex.” None of the opinions discussed the basis of either allegedly plain reading, or the source of the chasm between them, so I will do so below. But first I will discuss the effect of a Supreme Court decision that does not directly address transgender identity, but which, according to the Ninth Circuit, implicitly overruled *Holloway* (and if so, *Sommers* and *Ulane II* as well), and thereby shifted the direction of Title VII cases on this issue.

2. Gender Stereotyping and the Effect of Price Waterhouse

The principal issues before the Supreme Court in *Price Waterhouse v. Hopkins*, 490 U.S. 228, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989), were questions of evidentiary burdens and causation in “mixed-motive” discrimination cases under Title VII. The Court produced no majority opinion—it issued a plurality opinion, two opinions concurring in the judgment, and a dissent—and part of the outcome was subsequently superseded by statute. See *Fields v. New York State Office of Mental Retardation & Developmental Disabilities*, 115 F.3d 116, 123–24 (2d Cir.1997) (“[Section 107(a) of the Civil Rights Act of 1991] modifies *Price Waterhouse* to make sure that a successful affirmative defense only limits the plaintiff’s relief, rather than avoiding the defendant’s liability.”). One aspect of *Price Waterhouse* that survives, however, is a result of the fact that the plaintiff in that case did not allege her employer straightforwardly discriminated “against women because they are women,” as the *Ulane II* Court described the reach of Title VII’s prohibition of sex discrimination. Rather, she alleged that her employer discriminated against her because she was, in her employer’s view, insufficiently feminine. By ruling in her favor, a majority of the Court agreed that Title VII reaches such claims of discrimination based on gender stereotypes.

The *Price Waterhouse* dissent stressed that “Title VII creates no independent cause of action for sex stereotyping,” though it considered evidence of stereotyping by employers to be “quite relevant to the question of discriminatory intent.” 490 U.S. at 294, 109 S.Ct. 1775 (Kennedy, J.,

dissenting). Litigants and courts have sometimes nevertheless treated *Price Waterhouse* as having created an independent cause of action or a new theory of “gender stereotyping” discrimination under Title VII, and some of the arguments on the present motion treat gender stereotyping as a distinct theory. I agree with the *Price Waterhouse* dissent, however, that there is no independent gender-stereotyping cause of action separate from sex discrimination *per se*; rather, *Price Waterhouse* shows that gender-stereotyping discrimination *is* sex discrimination *per se*. That is, the plurality and concurrences do not create a fundamentally new cause of action, but rather rely on an understanding of the scope of Title VII’s prohibition against discrimination “because of sex” that reaches discrimination based on stereotypical ideas about sex.

In the words of the *Price Waterhouse* plurality, the “simple but momentous announcement” that Congress made with Title VII was that “sex, race, religion, and national origin are not relevant to the selection, evaluation, or compensation of employees,” *id.* at 239, 109 S.Ct. 1775 (except for “the special context of affirmative action,” *id.* at 239 n. 3, 109 S.Ct. 1775). The plurality recognized the “somewhat bizarre path by which ‘sex’ came to be included as a forbidden criterion for employment ... in an attempt to defeat the bill,” *id.* at 244 n. 9, 109 S.Ct. 1775, but nevertheless considered legislative history pertaining to the rest of the Act (mostly legislative statements about race) as indicative of congressional intent that applied by analogy to sex. And by the plurality’s reading, “Congress’ intent to forbid employers to take gender into account in making employment decisions appears on the face of the statute,” *id.* at 239, 109 S.Ct. 1775, and the words that prohibit employment discrimination on the basis of sex “mean that gender must be irrelevant to employment decisions.” *Id.* at 240, 109 S.Ct. 1775. “In the specific context of sex stereotyping,” just as an employer who simply refuses to hire a woman because she is a woman has acted on the basis of gender, so too an employer who “acts on the basis of a belief that a woman cannot be aggressive, or that she must not be, has acted on the basis of gender.” *Id.* at 250, 109 S.Ct. 1775.

*10 The acknowledgement in *Price Waterhouse* that discrimination by means of gender stereotyping is discrimination “because of sex” under Title VII eventually led to a significant shift in the direction of decisions examining alleged discrimination on the basis of transgender identity. As the Ninth Circuit wrote, recognizing the abrogation of its earlier Title VII caselaw:

The initial judicial approach taken in cases such as *Holloway* has been overruled by the logic and language of *Price Waterhouse*. In *Price Waterhouse*, which was decided after *Holloway* and *Ulane [I & II]*, the Supreme Court held that Title VII barred not just discrimination based on the fact that Hopkins was a woman, but also discrimination based on the fact that she failed “to act like a woman”—that is, to conform to socially-constructed gender expectations. What matters, for purposes of this part of the *Price Waterhouse* analysis, is that in the mind of the perpetrator the discrimination is related to the sex of the victim: here, for example, the perpetrator's actions stem from the fact that he believed that the victim was a man who “failed to act like” one. Thus, under *Price Waterhouse*, “sex” under Title VII encompasses both sex—that is, the biological differences between men and women—and gender. Discrimination because one fails to act in the way expected of a man or woman is forbidden under Title VII.

Schwenk v. Hartford, 204 F.3d 1187, 1201–02 (9th Cir.2000) (citation omitted). The Court therefore held, largely on the basis of *Price Waterhouse*, that the Gender Motivated Violence Act (which parallels the sex discrimination standard of Title VII) reaches conduct motivated by transgender identity and other gender nonconformity.

The Sixth Circuit came to the same conclusion in *Smith v. City of Salem*, 378 F.3d 566 (6th Cir.2004). “[T]he approach in *Holloway*, *Sommers*, and *Ulane [II]*,” it wrote, “has been eviscerated by *Price Waterhouse*.” *Id.* at 573. Rejecting the argument that transgender plaintiffs sought to bootstrap a new protected class into Title VII, the Court reasoned that, on the contrary, because discrimination “because of sex” reaches discrimination based on gender nonconformity, the exclusion of discrimination on the basis of transgender identity from the protective scope of Title VII would be to take a certain class of gender nonconformity and reclassify it as a nonprotected status solely in order to exclude it:

Discrimination against the transsexual is then found not to be discrimination “because of ... sex,” but rather, discrimination against the plaintiff's unprotected status or mode of self-identification. In other words, these courts superimpose classifications such as “transsexual” on a plaintiff, and then legitimize discrimination based on the plaintiff's gender nonconformity by formalizing the nonconformity into an ostensibly unprotected classification.

...

Such analyses cannot be reconciled with *Price Waterhouse*, which does not make Title VII protection against sex stereotyping conditional or provide any reason to exclude Title VII coverage for non sex-stereotypical behavior simply because the person is a transsexual.

Id. at 574–75. Discrimination on the basis of transgender identity is thus “no different from the discrimination directed against Ann Hopkins in *Price Waterhouse*, who, in sex-stereotypical terms, did not act like a woman.” *Id.* at 575.

*11 Similarly, the Eleventh Circuit in *Glenn v. Brumby* reasoned that:

A person is defined as transgender precisely because of the perception that his or her behavior transgresses gender stereotypes. The very acts that define transgender people as transgender are those that contradict stereotypes of gender-appropriate appearance and behavior. There is thus a congruence between discriminating against transgender and transsexual individuals and discrimination on the basis of gender-based behavioral norms.

Accordingly, discrimination against a transgender individual because of her gender-nonconformity is sex discrimination, whether it's described as being on the basis of sex or gender.

663 F.3d 1312, 1316–17 (11th Cir.2011) (quotation, modification, and citations omitted). And likewise the Equal Employment Opportunity Commission has written:

When an employer discriminates against someone because the person is transgender, the employer has engaged in disparate treatment related to the sex of the victim. This is true regardless of whether an employer discriminates against an employee because the individual has expressed his or her gender in a non-stereotypical fashion, because the employer is uncomfortable with the fact that the person has

transitioned or is in the process of transitioning from one gender to another, or because the employer simply does not like that the person is identifying as a transgender person. In each of these circumstances, the employer is making a gender-based evaluation, thus violating the Supreme Court's admonition that "an employer may not take gender into account in making an employment decision."

Macy v. Holder, 2012 WL 1435995 (E.E.O.C. Apr. 20, 2012) (quoting *Price Waterhouse*, 490 U.S. at 244, 109 S.Ct. 1775) (citations and quotation omitted).

The only post-*Price Waterhouse* federal appellate decision to uphold pre-*Price Waterhouse* doctrine on transgender identity and Title VII is *Etsitty v. Utah Transit Authority*, 502 F.3d 1215 (10th Cir.2007). In that opinion, the Tenth Circuit cited *Holloway* (without acknowledging that the Ninth Circuit had already recognized it as abrogated), *Sommers*, and *Ulane II*, and agreed with them that "the plain meaning of 'sex' encompasses [no]thing more than male and female." *Id.* at 1221–22. It relied on "the traditional binary conception of sex" to conclude that "transsexuals may not claim protection under Title VII from discrimination based solely on their status as a transsexual." *Id.* at 1222. The Court separately described the "*Price Waterhouse* theory" of gender stereotyping, apparently as an independent theory of liability, but declined to decide whether it applied to transgender identity and ruled against the plaintiff on other grounds. *Id.* at 1224.

In sum, discrimination on the basis of transgender identity is now recognized as discrimination "because of sex" in the Ninth Circuit (as *Schwenk* recognized the abrogation of *Holloway*), the Sixth Circuit (as recognized in *Smith*), and in the Eleventh Circuit (as recognized in *Glenn*); and the E.E.O.C. (in *Macy*) and has agreed with that authority. Discrimination on the basis of transgender identity is regarded as not constituting discrimination "because of sex" in the Tenth Circuit (under *Etsitty*). The continued vitality the pre-*Price Waterhouse* decisions in the Seventh and Eighth Circuits (*Ulane II* & *Sommers*, respectively) is unclear.⁸

3. "Because of Sex"

*12 The split in the caselaw on the question whether employment discrimination on the basis of transgender identity is prohibited by Title VII is the result of two competing views of the effect of the words "because of sex"—

which, in turn, reflect two competing views of the meaning of the word "sex." Neither view has been very thoroughly explained or justified, but both purport to be plain readings.

The view typified by *Holloway*, *Sommers*, *Ulane II*, and *Etsitty* is that the "plain meaning" or "traditional binary conception" of sex means nothing more than "male and female," see, e.g., *Etsitty*, 502 F.3d at 1221–22, and thus that discrimination "because of sex" can only mean discrimination "against women because they are women and against men because they are men," *Ulane II*, 742 F.2d at 1085. Discrimination against transgender people because they are transgender people, by that reading, is not discrimination "because of sex."

The view typified by Judge Grady's "layman's reaction" in *Ulane I* and implied by Judge Goodwin in his *Holloway* dissent—and apparent in varying degrees in the majority of post-*Price Waterhouse* cases—is less well described in the cases, but it interprets Title VII's prohibition of discrimination "because of sex" to include discrimination on the basis of factors that are sufficiently "related to sex or [that] ha[ve] something to do with sex." *Ulane I*, 581 F.Supp. at 822. Discrimination against transgender people because they are transgender people, by that reading, is quite literally discrimination "because of sex." A majority of the Supreme Court in *Price Waterhouse* agreed that discrimination on the basis of nonconformity with stereotypical gender norms constitutes discrimination "because of sex." That view is more expansive than the narrow *Ulane II* view and is consonant with Judge Grady's broader view in *Ulane I*, and subsequent cases have thus shifted markedly toward the latter.

I agree with those courts that have held that *Price Waterhouse* abrogates the narrow view of *Holloway*, *Sommers*, and *Ulane II*. Moreover, even without considering *Price Waterhouse*, I would conclude that that narrow view is erroneous and that Judge Grady's analysis was correct. The narrower view relies on the notion that the word "sex" simply and only means "male or female." That notion is not closely examined in any of the cases, but it is mistaken. "Male or female" is a relatively weak definition of "sex" for the same reason that "A, B, AB, or O" is a relatively weak definition of "blood type": it is not a formulation of meaning, but a list of instances. It might be an exhaustive list, or it might not be, but either way it says nothing about why or how the items in the list are instances of the same thing; and the word "sex" refers not just to the instances, but also to the "thing" that the instances are instances of. In some usages, the word "sex" can indeed

mean “male or female,” but it can also mean the distinction between male and female, or the property or characteristic (or group of properties or characteristics) by which individuals may be so distinguished. Discrimination “because of sex,” therefore, is not only discrimination because of maleness and discrimination because of femaleness, but also discrimination because of the *distinction* between male and female or discrimination because of the *properties or characteristics* by which individuals may be classified as male or female.

*13 There is nothing unplain, untraditional, unusual, or new-fangled about this understanding. It is simply attentive to what the words in the statute mean, and what they have meant since long before the statute was formulated. The first definition of “sex” in Samuel Johnson’s seminal 1755 dictionary—among the earliest and most influential English dictionaries ever published—is “[t]he property by which any animal is male or female.”⁹ That definition reflects the traditional binary conception of sex, but unlike the allegedly “plain” or “traditional” view of the pre-*Price Waterhouse* cases, it is clear that the word “sex” refers to the *property* by which individuals are so classified. That is consonant with the (harder to read, but more descriptive) second definition of “sex” in the much more recent *Webster’s Third New International Dictionary*, which was published roughly contemporaneously with the passage of the Civil Rights Act: “the sum of the morphological, physiological, and behavioral peculiarities of living beings that subserves biparental reproduction ... and that is typically manifested as maleness and femaleness”¹⁰ The *Oxford English Dictionary*’s definitions of several senses of the word “sex” include a “[q]uality in respect of being male or female, or an instance of this” and “[t]he distinction between male and female ... ; this distinction as a social or cultural phenomenon, and its manifestations or consequences”¹¹

Discrimination on the basis of the “peculiarities” that “typically” manifest as maleness and femaleness, or on the basis of “the property by which” people are classified as male or female, is much broader than discrimination against women because they are women and discrimination against men because they are men—it would surely include discrimination on the basis of gender stereotypes, and just as surely discrimination on the basis of gender identity, which Judge Grady rightly recognized as “related to sex or ha[ving] something to do with sex” by means of his “layman’s reaction.” *Ulane I*, 581 F.Supp. at 822.

Judge James Robertson of the U.S. District Court for the District of Columbia has issued two thoughtful opinions in *Schroer v. Billington* (first on a motion to dismiss, 424 F.Supp.2d 203 (D.D.C.2006), and then after a trial, 577 F.Supp.2d 293 (D.D.C.2008)) in which he recognized that Judge Grady was right that discrimination on the basis of transgender identity is discrimination on the basis of sex. He made a useful analogy (which was in substance repeated by the E.E.O.C. in *Macy*) to discrimination on the basis of religion:

Imagine that an employee is fired because she converts from Christianity to Judaism. Imagine too that her employer testifies that he harbors no bias toward either Christians or Jews but only “converts.” That would be a clear case of discrimination “because of religion.” No court would take seriously the notion that “converts” are not covered by the statute. Discrimination “because of religion” easily encompasses discrimination because of a change of religion.

577 F.Supp.2d at 306. No court would make such a mistake because no court would implicitly define religion as synonymous with a purportedly exhaustive list of religions, and thus could not conclude that discrimination “because of religion” must be limited to discrimination against members of particular religions on the list because they are such members. Because Christianity and Judaism are understood as examples of religions rather than the definition of religion itself, discrimination against converts, or against those who practice either religion the “wrong” way, is obviously discrimination “because of religion.” Similarly, discrimination on the basis of gender stereotypes, or on the basis of being transgender, or intersex, or sexually indeterminate, constitutes discrimination on the basis of the properties or characteristics typically manifested in sum as male and female—and that discrimination is literally discrimination “because of sex.”

*14 [14] On the basis of the plain language of the statute, and especially in light of the interpretation of that language evident in *Price Waterhouse*’s acknowledgement that gender-stereotyping discrimination is discrimination “because of sex,” I conclude that discrimination on the basis of transgender identity is cognizable under Title VII.¹²

2016 WL 1089178

IV. Conclusion

Employment discrimination on the basis of transgender identity is employment discrimination “because of sex” and constitutes a violation of Title VII of the Civil Rights Act. HCC has not shown that the position Fabian sought is as a matter of law beyond the scope of Title VII as a result of being for an independent contractor rather than an employee. And Fabian has met her burden under *McDonnell Douglas* to make a *prima facie* case of discrimination and to proffer sufficient evidence for a reasonable jury to find that the non-discriminatory reasons HCC offers for not hiring her

are pretextual. Whether the Hospital discriminated against Deborah Fabian on the basis of her gender identity is a question for a jury. Because she has proffered sufficient evidence for a reasonable jury to find that it did, the defendant's motion for summary judgment is denied.

So ordered.

All Citations

--- F.Supp.3d ----, 2016 WL 1089178

Footnotes

- 1 Some of the cases that will be discussed below use the word “transgender,” some use the word “transsexual,” and some use both. I preserve the terminology in direct quotations but otherwise use the term “transgender.” “Transsexual” is an older term with a more clinical origin, and though it is used by some people who identify with it, it is not favored by others. See generally GLAAD Media Reference Guide—Transgender Issues, <http://www.glaad.org/reference/transgender>. “Transgender” appears to be the more inclusive term, and it is the one Fabian uses of herself, so I follow her practice. Relatedly, the briefs on the present motion are inconsistent in their use of masculine and feminine pronouns. The better practice is to defer to the preference of the individual to whom the pronouns refer, see *id.*, and I accordingly use feminine pronouns throughout in deference to what would appear to be Fabian's preference.
- 2 HCC states both that Delphi “will likely have all counts against it withdrawn in the near future,” Def.'s Mem. 1, and that it “is no longer a defendant in this matter,” *id.* at 2 n.3. In fact Delphi is still a defendant and the counts have not yet been withdrawn. It may be that HCC was mistaken, that circumstances have changed, or that Delphi intends to settle and has postponed finalizing a settlement until after a ruling on the issues in this motion, but in any event it is still formally a defendant and has not filed any dispositive motions.
- 3 The relevant federal precedent is generally applicable to CFEPa claims as well. See, e.g., *Levy v. Commission on Human Rights and Opportunities*, 236 Conn. 96, 103, 671 A.2d 349 (1996) (“Although this case is based solely on Connecticut law, we review federal precedent concerning employment discrimination for guidance in enforcing our own anti-discrimination statutes.”); *Wroblewski v. Lexington Gardens, Inc.*, 188 Conn. 44, 53, 448 A.2d 801 (1982) (“In interpreting and applying [CFEPa] we are properly guided by the case law surrounding federal fair employment legislation, since this court has previously confirmed our legislature's intention to make the Connecticut statute coextensive with the federal.” (citation and quotation omitted)).
- 4 I briefly note that the question whether it is ultimately for the court or a jury to find that an individual is an employee or an independent contractor remains unsettled, as the Second Circuit noted in *Salamon v. Our Lady of Victory Hospital*, 514 F.3d 217, 231 n. 15 (2d Cir.2008), as amended (Apr. 22, 2008). The issue was not briefed or argued before the Second Circuit in *Salamon*, so the Court merely collected divergent authority and indicated that the district court should consider it in the first instance. The Second Circuit had previously held, however, that “[t]he District Court's determination as to the presence or absence of each *Reid* factor is a finding of fact which [is reviewed] for clear error” and that its “ultimate determination as to whether a worker is an employee or an independent contractor—that is, the District Court's balancing of the *Reid* factors—is a question of law which [is reviewed] *de novo*.” *Eisenberg v. Advance Relocation & Storage, Inc.*, 237 F.3d 111, 115 (2d Cir.2000). I need not resolve that question at this stage of the case.
- 5 The nearest the Second Circuit has come to addressing the question was in *Mario v. P & C Food Markets, Inc.*, when it noted that “[i]t is also not clear that Mario, as a transsexual, is a member of a protected class,” and cited (without elaboration) two cases from other circuits that will be discussed below. 313 F.3d 758, 767 (2d Cir.2002). The Court did not need to reach the question, however, so it did not discuss it beyond that brief remark.
- 6 *Holloway* is no longer good law in the Ninth Circuit, but the opinion that announced that fact did not formally overrule it; rather, it announced that “*Holloway* has been overruled by the logic and language of *Price Waterhouse [v. Hopkins]*,” a Supreme Court decision that will be discussed below. *Schwenk v. Hartford*, 204 F.3d 1187, 1201 (9th Cir.2000). If the Ninth Circuit is correct (and I think it is, for reasons that will follow), then *Sommers* is similarly abrogated, though the Eighth Circuit has not yet acknowledged it.

2016 WL 1089178

7 See generally Jo Freeman, *How "Sex" Got Into Title VII: Persistent Opportunism as a Maker of Public Policy*, <http://www.jofreeman.com/lawandpolicy/titlevii.htm>; Louis Menand, *The Sex Amendment: How women got in on the Civil Rights Act*, THE NEW YORKER, July 21, 2014, <http://www.newyorker.com/magazine/2014/07/21/sex-amendment>.

8 In a related but distinct line of cases, courts have generally held that "Title VII does not prohibit harassment or discrimination because of sexual orientation." *Simonton v. Runyon*, 232 F.3d 33, 35 (2d Cir.2000). Under that rule, as the Second Circuit has recognized, "gender stereotyping claims can easily present problems for an adjudicator," *Dawson v. Bumble & Bumble*, 398 F.3d 211, 218 (2d Cir.2005), because nonconformity with gender stereotypes is stereotypically associated with homosexuality—and Title VII thus prohibits discrimination on the basis of such nonconformity insofar as it is discrimination on the basis of the gender stereotypes but not insofar as it is discrimination on the basis of homosexuality. Thus, for example, a woman might have a Title VII claim if she was harassed or fired for being perceived as too "macho," but not if she was harassed or fired for being perceived as a lesbian, and courts and juries have to sort out the difference on a case-by-case basis.

U.S. District Judge Katherine P. Failla recently addressed that difficulty in *Christiansen v. Omnicom Group, Inc.*, ___ F.Supp.3d ___, 2016 WL 951581 (S.D.N.Y. March 9, 2016). She called for the reconsideration of *Simonton* and *Dawson's* rule on the basis of its impracticability, also noting related changes to the legal landscape since those decisions were made, citing the Supreme Court's same-sex marriage opinions in *United States v. Windsor*, ___ U.S. ___, 133 S.Ct. 2675, 186 L.Ed.2d 808 (2013), and *Obergefell v. Hodges*, ___ U.S. ___, 135 S.Ct. 2584, 192 L.Ed.2d 609 (2015), as well as the July 2015 decision of the E.E.O.C. that sexual-orientation discrimination is cognizable under Title VII. *Christiansen*, at ___ – ___, slip op. at 30–37, 2016 WL 951581, *12–15. The present case, however, is not determined by the holding of *Simonton*, as Judge Failla found *Christiansen* to be, because this case is about gender identity itself and the expression of that identity, and not about the orientation of romantic or sexual attraction—which, as the *Simonton* Court noted, may or may not be associated in a particular case with broader gender stereotypes. See 232 F.3d at 38 ("[N]ot all homosexual men are stereotypically feminine, and not all heterosexual men are stereotypically masculine."). My statutory analysis below might nevertheless suggest an additional statutory basis to support the reconsideration Judge Failla urges.

Another recent decision that addresses and exemplifies the changes to the legal landscape that Judge Failla describes, and which unlike *Christiansen* does pertain to transgender identity, is *Adkins v. City of New York*, ___ F.Supp.3d ___, 2015 WL 7076956 (S.D.N.Y. Nov. 15, 2015). *Adkins* is a Section 1983 case, and U.S. District Judge Jed S. Rakoff held that under the same analysis applied in *Windsor*, transgender people are a "quasi-suspect" class and therefore that disparate treatment alleged to violate the Equal Protection Clause is subject to the elevated "intermediate scrutiny" standard.

9 Page View 1804, *A Dictionary of the English Language: A Digital Edition of the 1755 Classic by Samuel Johnson*, (Brandi Besalke ed.), http://johnsonsdictionaryonline.com/?page_id=7070&i=1804.

10 WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2081 (1961).

11 Oxford English Dictionary Third Edition, December 2008, <http://www.oed.com/view/Entry/176989>.

12 I interpret the same way the parallel CFEPA provision, as it stood prior to the 2011 amendment that added "gender identity or expression" to the list of protected classes. See Conn. Gen. Stat. § 46a–60. The fact that the Connecticut legislature added that language does not require the conclusion that gender identity was not already protected by the plain language of the statute, because legislatures may add such language to clarify or to settle a dispute about the statute's scope rather than solely to expand it.

2015 WL 7730995

2015 WL 7730995
Only the Westlaw citation is currently available.
United States District Court,
N.D. Texas, Dallas Division.

Antwan D. McKnight, #1764431, Plaintiff,
v.
MTC, et al., Defendants.

3:15-CV-1647-K-BK
|
Signed 11/09/2015

Attorneys and Law Firms

Antwan D. McKnight, Venus, TX, pro se.

**FINDINGS, CONCLUSIONS AND
RECOMMENDATION OF THE UNITED
STATES MAGISTRATE JUDGE**

RENÉE HARRIS TOLIVER, UNITED STATES
MAGISTRATE JUDGE

*1 Pursuant to 28 U.S.C. § 636(b) and *Special Order 3*, this case was automatically referred to the United States Magistrate Judge. Plaintiff, a state inmate, filed a *pro se* complaint under 42 U.S.C. § 1983. The Court granted Plaintiff's motion to proceed *in forma pauperis*, but did not issue process pending preliminary screening of the complaint and answers to the Court's questionnaires. *Doc. 5 at 1*. For the reasons that follow, this case should be summarily dismissed.

I. BACKGROUND

Plaintiff brings suit against Management and Training Corporation (MTC), Sergeant Swinford, Major Tunaitis, Deputy Warden Wixtorik,¹ and Regional Director B. Parker for alleged violations of Plaintiff's constitutional and statutory rights while imprisoned in a Texas Department of Criminal Justice facility. *Doc. 1*. More specifically, Plaintiff asserts that on March 3, 2015, Defendants violated his rights to due process and religious freedom, as well as and the protections afforded under the Religious Land Use and Institutionalized Persons Act (RLUIPA), by confining him in administrative segregation and taking disciplinary action against him for refusing to be confined in the same cell as an "active homosexual" inmate. *Doc. 1 at 3–4; Doc. 7 at 4–12*. Plaintiff

asserts, *inter alia*, that he has "a religious obligation to honor God," and that Defendants compelled him "to violate [his] human conscience by forcing [him] into a cell with an active homosexual or receive a major [disciplinary] case and therefore placing a substantial burden on [his] civil rights/human rights." *Doc. 1 at 4–5; Doc. 7 at 4, 7, 8, 9, 12*.

At a disciplinary hearing held on March 12, 2015, Plaintiff received the following sanctions for refusing to obey an order: (1) one day of segregation, (2) 30 days of recreation restrictions, (3) 30 days of commissary restrictions, and (4) a decrease in his Line Class from a S4–Trusty to a Line 2 designation. *Doc. 7 at 2*. He asserts that the disciplinary infraction has delayed his parole consideration by one year and may have a long term effect on his "discharge date." *Doc. 7 at 2*. However, by this action, Plaintiff seeks only money damages for mental anguish and "the taking away of his parole eligibility date." *Doc. 1 at 4; Doc. 7 at 5, 7, 10–12*.

II. ANALYSIS

Because Plaintiff is proceeding *in forma pauperis*, the complaint is subject to screening under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). Those statutes provide for *sua sponte* dismissal of a complaint if the Court finds that it (1) is frivolous or malicious, (2) fails to state a claim upon which relief may be granted, or (3) seeks monetary relief against a defendant who is immune from such relief. A complaint is frivolous when it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). A claim lacks an arguable basis in law when it is "based on an indisputably meritless legal theory." *Id. at 327*.

*2 The Court liberally construes Plaintiff's filings with all possible deference due a *pro se* litigant. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (*pro se* pleadings are "to be liberally construed," and "a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers."); *Cf. FED. R. CIV. P. 8(e)* ("Pleadings must be construed so as to do justice"). Even under this most liberal construction, however, Plaintiff's complaint should be summarily dismissed as frivolous.

A. Section 1983 Claims

Plaintiff claims violations of his First and Fourteenth Amendment rights, pursuant to 42 U.S.C. § 1983, by MTC, a private prison-management corporation, and its employees. *See Rosborough v. Mgmt. & Training Corp.*, 350 F.3d 459 (5th Cir.2003) (private prison and its employees

2015 WL 7730995

act under color of state law, and thus may be sued under [section 1983](#) for constitutional violations because confinement of wrongdoers, though sometimes delegated to private entities, is a fundamentally governmental function). Plaintiff claims no physical injury, however, and the recovery of compensatory damages for emotional or mental injuries allegedly suffered is precluded. Under [42 U.S.C. § 1997e\(e\)](#), a prisoner is prohibited from filing a civil action in federal court “for mental or emotional injury suffered while in custody without a prior showing of physical injury.” See also *Mayfield v. Texas Dep’t Of Criminal Justice*, [529 F.3d 599, 606 \(5th Cir.2008\)](#) (dismissing compensatory-damages request under [section 1997e\(e\)](#) because the plaintiff had not alleged any physical injury stemming from his free exercise of religion claims and he sought only compensatory damages); *Stauffer v. Gearhart*, [741 F.3d 574, 583 \(5th Cir.2014\)](#) (same as to claims of First and Fourteenth Amendment violations).

Moreover, while [section 1997e\(e\)](#) does not bar Plaintiff’s request for punitive damages, see *Hutchins v. McDaniels*, [512 F.3d 193, 198 \(5th Cir.2007\)](#), “punitive damages may be awarded only when the defendant’s conduct “is ‘motivated by evil intent’ or demonstrates ‘reckless or callous indifference’ to a person’s constitutional rights.” *Williams v. Kaufman County*, [352 F.3d 994, 1015 \(5th Cir.2003\)](#) (citations omitted). Plaintiff has alleged neither, nor does he posit any facts in support of his claims from which such an inference may be drawn.

In any event, Plaintiff’s claims also fail on the merits.

1. Due Process Claims

Plaintiff contends that his constitutional right to due process was violated by the wrongful conduct of a disciplinary proceeding and the resulting sanctions. However, he does not have a liberty interest sufficient to invoke due process concerns. The Due Process Clause protects against deprivations of life, liberty, or property, see [U.S. Const. Amend. XIV, § 1](#), and “those who seek to invoke its procedural protection must establish that one of these interests is at stake.” *Wilkinson v. Austin*, [545 U.S. 209, 221 \(2005\)](#). The “Due Process Clause does not protect every change in the conditions of confinement which has a substantial adverse effect upon a prisoner.” *Madison v. Parker*, [104 F.3d 765, 767 \(5th Cir.1997\)](#).

The punishment imposed following the disciplinary proceeding in the instant case—one day in segregation, 30 days of recreation and commissary restrictions, and a decrease in line class from a S4–Trusty to a Line 2 designation—does not rise to the level of a liberty interest and are “merely changes in the conditions of [Plaintiff’s] confinement and do not implicate due process concerns.” *Madison*, [104 F.3d at 767–768](#). Placement in a [segregation cell](#) (especially for only one day) does not implicate a protected liberty interest. See *Luken v. Scott*, [71 F.3d 192, 193 \(5th Cir.1995\)](#) (“administrative segregation, without more, does not constitute a deprivation of a constitutionally cognizable interest”) (citing *Sandin v. Conner*, [515 U.S. 472, 486 \(1995\)](#)). Nor does the temporary loss of recreation and commissary privileges involve a protected liberty interest. *Madison*, [104 F.3d at 768](#) (“concluding that 30–day commissary and cell restrictions do not implicate due process concerns”); *Taylor v. Swift*, [2015 WL 5834057, at *1 \(5th Cir. Oct. 7, 2015\)](#) (per curiam) (finding that loss of 20 days of recreation and commissary privileges does not result in a deprivation of a liberty interest). Moreover, Plaintiff does not have a liberty interest in his custodial classification or in his good-time earning status. See *Malchi v. Thaler*, [211 F.3d 953, 959 \(5th Cir.2000\)](#) (effect of a change in a prisoner’s good-time earning status on the timing of inmate’s release on mandatory supervision was “too speculative to afford him a constitutionally cognizable claim to the ‘right’ to a particular time-earning status”); see also *Luken*, [71 F.3d at 193](#) (“The loss of the opportunity to earn good-time credits, which might lead to earlier parole, is a collateral consequence of [an inmate’s] custodial status” and, thus, does “not create constitutionally protected liberty interests.”).

*3 Plaintiff also asserts that Defendant Deputy Warden Wixtorik confiscated a grievance that Plaintiff had filed against Wixtorik and responded to it “against his own judgment,” in violation Plaintiff’s due process rights “to a fair and impartial hearing [of his] complaint.” Doc. 1 at 5. However, insofar as Plaintiff seeks to challenge the grievance procedure, his claim likewise has no merit. Plaintiff does not have a constitutionally-protected “liberty interest in having ... grievances resolved to his satisfaction.” *Geiger v. Jowers*, [404 F.3d 371, 373–374 \(5th Cir.2005\)](#) (quoting *Sandin*, [515 U.S. at 484](#)) (a prisoner has a liberty interest only in “freedom[s] from restraint ... impos[ing] atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.”). Nor does Plaintiff “have a constitutional entitlement to an adequate grievance procedure.” *Hill v. Bowles*, No. 3:02–CV–2527–P, [2003 WL 21448045 *5 \(N.D. Tex. June 18,](#)

2015 WL 7730995

2003) (collecting out-of-circuit precedent), recommendation accepted, 2003 WL 21977138 (N.D.Tex. July 31, 2003).

Since Plaintiff relies on liberty interests that do not exist in the law, his claims of due process violations should be summarily dismissed.

2. First Amendment Claim

Plaintiff also asserts a violation of his right to freedom of religion, which the Court has liberally construed to raise a claim under the Free Exercise Clause of the First Amendment. See U.S. Const. Amend. I; *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 348 (1987) (First Amendment's protection of the right to free exercise of religion extends to inmates). In *Turner v. Safley*, the Supreme Court held that “when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.” 482 U.S. 78, 89 (1987) (setting out four-factor test for determining whether a prison regulation that infringes on an inmate's First Amendment rights is nonetheless reasonable and therefore constitutionally valid).

Plaintiff maintains Defendants forced him to violate his “religious freedom and obligation to” God by choosing between being confined with an active homosexual or receiving a major disciplinary case. *Doc. 1 at 5*; see also *Doc. 7 at 4*. However, Plaintiff does not complain that the placement of the homosexual inmate in his cell impinged in any way on his right to freely exercise his religion. Indeed, his pleadings are silent about any burden on his religious practice, and only mention generally his concerns for “human dignity” and “conscience” and “religious obligation to honor ... God.” *Doc. 3 at 5*; *Doc. 7 at 4*. Moreover, Plaintiff does not allege that his cell assignment was made solely to harass or cause him problems and, thus, was not reasonably related to a legitimate penological interest. See *Jehovah v. Clarke*, 798 F.3d 169, 181 (4th Cir.2015) (inmate alleged a plausible First Amendment claim because he asserted cell assignments were “deliberately done ... to harass and cause conflict and problems for [him]” and in contravention of a housing policy). Indeed, Plaintiff conceded in response to the Court's questionnaire that he was moved to a different cell soon after he complained, and that another inmate was assigned to his old cell with the same homosexual inmate within a relative short amount of time. *Doc. 7 at 8*. These facts are inconsistent with any suggestion that the complained of roommate assignment was to deliberately harass Plaintiff.

Further, Plaintiff has not alleged Defendants' deliberate indifference to his physical safety.

Moreover, Plaintiff's pleadings are totally silent about any prison policy or regulation relating to cell assignment that was not applied neutrally and, thus, impinged on his First Amendment right to free exercise. See *Mayfield v. Texas Dep't Of Crim. Justice*, 529 F.3d 599, 609–610 (5th Cir.2008) (remanding First Amendment claim to address the neutrality of TDCJ's policy allowing religious groups to assemble for religious services in the absence of an outside volunteer). It is well-settled that prisoners do not have a constitutional right to choose their place of confinement, security classification, housing assignment, and cellmate. See, e.g., *Olim v. Wakinekona*, 461 U.S. 238, 245 (1983) (place of confinement); *Murray v. Bledsoe*, 650 F.3d 246, 247 (3d Cir.2011) (per curiam) (cellmate); *Burger v. U.S. Bureau of Prisons*, 65 F.3d 48 (5th Cir.1995) (prisoner classification). Prison officials also retain broad discretion over the administration of prisons, including housing and cell assignments. (*Bell v. Wolfish*, 441 U.S. 520, 540 n. 23, 547 (1979)) (“Prison administrators ... should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.”).

*4 Based on the forgoing, the Court concludes that Plaintiff's allegations concerning the assignment of a homosexual cellmate lack any arguable basis under the Free Exercise Clause of the First Amendment.

B. RLUIPA

Lastly, Plaintiff generally asserts a violation of RLUIPA. *Doc. 1 at 3*. However, even assuming it applies to a private prison and its personnel because they are instrumentalities of the state, see *Knows His Gun v. Montana*, 866 F.Supp.2d 1235, 1246 (D.Mont.2012) (collecting cases applying RLUIPA to private prisons), Plaintiff is not entitled to monetary relief under RLUIPA. See *Sossamon v. Texas*, 563 U.S. 277, —, 131 S.Ct. at 1655, 1663 (2011) (RLUIPA does not create a cause of action for damages against the State of “Texas and the Defendants in their official capacities.”); *Sossamon v. Lone Star State of Texas*, 560 F.3d 316, 331 (5th Cir.2009) (RLUIPA does not create a private right of action against the defendants in their individual capacities), *aff'd sub nom. Sossamon*, 563 U.S. 277; see also *Copeland v. Livingston*, 464 F. App'x 326, 330 (5th Cir.2012) (restating district and appellate court holdings in *Sossamon*). That fact

2015 WL 7730995

notwithstanding, Plaintiff's bare allegations fail to raise an arguable claim under RLUIPA as set out below.²

RLUIPA provides more stringent protection of prisoners' free exercise rights than does the First Amendment. Under RLUIPA, "[n]o government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution ... unless the government demonstrates that imposition of the burden on that person—(1) is in furtherance of a compelling government interest; and (2) is the least restrictive means of furthering that compelling government interest." 42 U.S.C. § 2000cc-1(a). The inmate bears the initial burden of showing a substantial burden on his religious exercise. 42 U.S.C. § 2000cc-2(b). "RLUIPA protects 'any exercise of religion, whether or not compelled by, or central to, a system of religious belief,' § 2000cc-5(7)(A), but ... a prisoner's request for an accommodation must be sincerely based on a religious belief and not some other motivation." *Holt v. Hobbs*, — U.S. —, 135 S.Ct. 853, 862 (2015). The government in turn must establish that the burden is the least restrictive way to further a compelling governmental interest. 42 U.S.C. § 2000cc-2(b). "The least-restrictive-means standard is exceptionally demanding, and it requires the government to show that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting party." *Holt*, 135 S.Ct. at 864 (internal quotation marks and alterations omitted).

Here, Plaintiff has pled no facts tending to show that Defendants' refusal to accommodate his housing request "put a substantial pressure on him to modify his behavior and to violate his beliefs." *Jehovah*, 798 F.3d at 180–181 (quotations and quoted case omitted). Plaintiff relies instead on conclusory statements that sharing a cell with a homosexual inmate is against his conscience and "religious obligation to honor God." *Doc. 1* at 4–5. However, he does not claim that sharing a cell with the homosexual inmate has put any pressure on him to change his religious conduct. See *Jehovah*, 798 F.3d at 180 (allegation that inmate was required to "share a cell or anything with persons who are anti-Christian and unbelievers" in contravention of his religious beliefs did not in and of itself demonstrate that inmate was pressured to change his religious conduct). Thus, Plaintiff's allegations suggest that he takes issue only with the *exposure* to a homosexual cellmate, and not with any *effect* it has on his religious activities. Indeed, his filings do not identify any religious exercise apart from mentioning very general tenets of his religion to "honor God" and maintain his "human dignity." Compare *Fountain v. Thaler*, — F. App'x —,

No. 14–40644, 2015 WL 6445738, at *2 (5th Cir. Oct. 26, 2015) (holding the plaintiff had pleaded sufficient facts under RLUIPA because prison's correspondence policy obstructed his opportunity to exercise and grow his religion through the mail when he could not attend church during administrative segregation).³

*5 In addition, Plaintiff does not claim that the homosexual cellmate harassed him for his religious belief or that he attempted to obstruct Plaintiff from engaging in any religious practice. See *Jehovah*, 798 F.3d at 180 (holding inmate made a sufficient prima facie showing under RLUIPA because in addition to his general complaint, he also alleged that his religious practices were chilled by his cellmate's religiously motivated harassment). Moreover, at least one district court has found that preference in housing based on differences in race or sexual orientation does not substantially burden an inmate's ability to practice his religion for purposes of RLUIPA. See *Damron v. Jackson*, No. 2:09–CV–050, 2011 WL 4402767, at *8 (S.D. Ohio Sept. 21, 2011) (holding that inmate failed to make a *prima facie* showing under RLUIPA that being celled with non-whites or homosexuals was a substantial burden on his ability to practice his religion). In *Damron*, the plaintiff's pleadings only briefly referred to the tenets of his religion, and merely "advocate[d] racial separation based upon biblical interpretation" and to protect members of the Christian Separatist Church from physical danger. 2011 WL 4402767 at *8. In this case, in addition to the brief reference to his religious beliefs, the pleadings do not even rise to the level of those in *Damron*, because Plaintiff does not allege any fear of physical danger. *Doc. 1* at 4–5.

Based on the above, the Court concludes that Plaintiff cannot make the initial showing that the assignment of a homosexual cellmate was a substantial burden on his religious exercise. Accordingly, his RLUIPA claim lacks an arguable basis in law and should be dismissed.

III. LEAVE TO AMEND

Ordinarily, a *pro se p* plaintiff should be granted leave to amend the complaint prior to dismissal. See *Brown v. Texas A & M Univ.*, 804 F.2d 327, 334 (5th Cir. 1986) ("Unless we have searched every nook and cranny of the record, like a hungry beggar searching a pantry for the last morsel of food, and have determined that 'even the most sympathetic reading of plaintiff's pleadings uncovers no theory and no facts that would subject the present defendants to liability,'" he must be permitted to amend his claim if he can do so.). Here, the Court

has given Plaintiff's pleadings their most liberal construction. Additionally, the Court has given Plaintiff an opportunity to clarify and to state legally cognizable claims through a court questionnaire. *Doc. 6; Doc. 7.* See *Green v. McKaskle*, 788 F.2d 1116, 1120 (5th Cir.1986) (district court should be able to dismiss as frivolous a significant number of prisoner suits on the complaint alone or the complaint together with the *Watson* questionnaire). Nevertheless, as detailed herein, each of Plaintiff's claims lacks an arguable basis either in law or in fact. Under these circumstances, granting leave to amend would be futile and cause needless delay. See *Jacquez v. Procnier*, 801 F.2d 789, 792 (5th Cir.1986) ("At some point a court must decide that a plaintiff has had fair opportunity to make his case; if, after that time, a cause of action has not been established, the court should finally dismiss the suit.").

IV. CONCLUSION

For the foregoing reasons, it is recommended that this action be summarily **DISMISSED** with prejudice as frivolous. See 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b).

This dismissal will count as a "strike" or "prior occasion" within the meaning of 28 U.S.C. § 1915(g).⁴

SIGNED this November 9, 2015.

All Citations

Slip Copy, 2015 WL 7730995

Footnotes

- 1 The correct spelling of some of the Defendants' names is not clear from the complaint.
- 2 RLUIPA creates a private right of action for injunctive and declaratory relief. *Sossamon*, 560 F.3d at 326–327.
- 3 Even given the "broad protection of religious exercise" required by RLUIPA, see *Holt*, 135 S.Ct. at 860, the complaint is wholly devoid of facts from which this Court can conclude that Plaintiff's beliefs constitute "religious exercise." Cf. *Wagner v. Campuzano*, 562 F. App'x 255, 256 (5th Cir.2014) (per curiam) (playing piano for religious services was religious exercise); *Chance v. Tex. Dep't of Crim. Justice*, 730 F.3d 404, 412 (5th Cir.2013) (smoking a communal pipe was religious exercise); *Garner v. Kennedy*, 713 F.3d 237, 244 (5th Cir.2013) (growing a beard was religious exercise).
- 4 28 U.S.C. § 1915(g), commonly known as the "three-strikes" provision, provides: "[i]n no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section, if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury."

2015 WL 5952109
United States District Court,
District of Columbia.

Layne Wilson, Plaintiff,

v.

Deborah Lee James¹, Secretary of
the Air Force, et al., Defendants.

Civil No. 13-cv-01351 (APM)

Signed October 13, 2015

Synopsis

Background: Member of the Utah Air National Guard brought action against his commanding officer and Secretary of the Air Force, alleging that certain disciplinary actions violated the Religious Freedom Restoration Act (RFRA), First and Fifth Amendments, Administrative Procedure Act (APA), and Privacy Act. Commanding officer and Secretary moved to dismiss and for summary judgment.

Holdings: The District Court, [Amit P. Mehta](#), J., held that:

[1] member's e-mail objecting to same-sex wedding that was held at the military academy's chapel was not a "religious exercise" under the RFRA;

[2] member's e-mail sent to senior military official outside member's chain of command, which expressed his disagreement with decision to allow same-sex marriage ceremony, was not protected speech under the First Amendment;

[3] member's rant against his commanding officer, which member posted on social networking website after officer declined to rescind member's letter of reprimand, was not protected speech under the First Amendment;

[4] member lacked standing to challenge constitutionality of Air Force regulation, which set forth standards for use of social media by Air Force members;

[5] member did not have liberty or property interest in his employment with the military, and thus commanding officer

issuing two letters of reprimand did not deprive member of due process;

[6] member's claim, which challenged commanding officer's decision to issue two letters of reprimand, was nonjusticiable military personnel decision;

[7] member failed to exhaust administrative remedies under the Military Whistleblower Protection Act (MWPA), as required before seeking judicial review of his claim, alleging that letters of reprimand were issued in violation of Department of Defense (DOD) directive; and

[8] e-mail sent by National Guard's public affairs officer did not disclose information protected under the Privacy Act.

Motion granted.

Attorneys and Law Firms

[John B. Wells](#), Law Offices of John B. Wells, Slidell, LA, for Plaintiff.

[Marina Utgoff Braswell](#), Jane M. Lyons, U.S. Attorney's Office, Washington, DC, for Defendants.

MEMORANDUM OPINION

[AMIT P. MEHTA](#), District Judge

I. INTRODUCTION

*1 On December 2, 2012, Plaintiff Layne Wilson, an enlisted member of the Utah Air National Guard, sent an email, using his military email account, to an official at the United States Military Academy at West Point objecting to a same-sex wedding held at the military academy's chapel. Plaintiff's Commanding Officer, Defendant Lt. Colonel Kevin Tobias, learned about the email and disciplined Plaintiff for it—first, rescinding his six-year reenlistment contract and offering in its place a one-year contract that Plaintiff later signed; and second, issuing Plaintiff a Letter of Reprimand. After Plaintiff challenged these disciplinary actions, Lt. Colonel Tobias acknowledged error in rescinding the six-year contract and reinstated it, but concluded that the Letter of Reprimand would remain. The next day, apparently dissatisfied with this outcome, Plaintiff posted on his Facebook page the following disparaging remarks about Lt. Colonel Tobias: "You embarrass me, our country,

and our unit!!! ... You are part [of] the problem with this country.” That Facebook post, along with other such postings, instigated a second round of discipline, which included another Letter of Reprimand, the opening of a Security Information File, and the suspension of Plaintiff’s security clearance.

Believing that the various forms of discipline imposed violated his constitutionally and statutorily protected rights, Plaintiff brought this suit asserting a bevy of claims under the Religious Freedom Restoration Act, the First and Fifth Amendments, the Administrative Procedure Act, and the Privacy Act. Defendants Secretary of the Air Force Deborah Lee James, Lt. General Stanley E. Clarke, Brigadier General Jefferson Burton, and Lt. Colonel Tobias² counter, generally, that their actions were lawful, reasonable, and appropriate responses to a series of insubordinate acts.

The manner in which Plaintiff has pled and argued his claims has presented serious challenges to the court. Throughout his Complaint and in subsequent briefing, Plaintiff indiscriminately connects various theories of liability—predicated on the Constitution, statutes, and military regulations—with the different disciplinary actions taken against him, creating a thicket of allegations and claims that are often difficult to discern. In his Complaint, for example, Plaintiff does not clearly identify claims; nor does he concisely link his claims to the specific disciplinary actions he challenges. His briefs are similarly abstruse. They treat each form of imposed discipline as an opportunity to raise multifarious arguments challenging the action’s validity. The court has done its best to untangle Plaintiff’s inartful pleadings and briefs.

*2 Before the court are Defendants’ Motion to Dismiss and for Summary Judgment and Plaintiff’s Motion for Summary Judgment. After considering the parties’ arguments and the evidence presented, the court grants Defendants’ Motion to Dismiss and for Summary Judgment in its entirety and denies Plaintiff’s Motion for Summary Judgment in its entirety.

II. BACKGROUND

A. The Email to West Point and Resulting Discipline

At all times relevant to this action, Plaintiff was a member of The Church of Jesus Christ of Latter-day Saints (“LDS”), Wilson Aff., ECF No. 17–3, ¶ 3, and an enlisted member of the Utah Air National Guard (“UTANG”), Defs.’ Statement of Material Facts, ECF No. 14, ¶¶ 1–2 [hereinafter Defs.’

SOF]; Pl.’s Counter Statement of Facts, ECF No. 17–2, ¶¶ 1–2 [hereinafter Pl.’s Counter SOF].

On November 3, 2012, Plaintiff signed a six-year reenlistment contract with both the UTANG and the Federal Air Force Reserve. Administrative R., ECF No. 7–1, at 27–33 [hereinafter AR].³ On an unspecified prior date, Plaintiff had used his military email account to send “abusive and threatening emails” to his medical insurer, TriCare, about a coverage dispute concerning his wife’s cancer treatment. Defs.’ SOF ¶ 3; *but see* Pl.’s Counter SOF ¶ 3 (denying that Plaintiff’s emails to TriCare were “abusive or threatening”). In response, when Plaintiff signed his reenlistment contract, his superior, Defendant Lt. Colonel Tobias “verbally counseled [P]laintiff on his improper use of government email[.]” Defs.’ SOF ¶ 3; *see also* AR at 46 (November 19, 2012, email from Tobias to TriCare employee in which Tobias writes, “I talked with Layne on 3 Nov 2012 and I’ve asked him to stop the inappropriate emails and to tone down his responses to your staff”).

One month later, on December 2, 2012, Plaintiff sent an email, using his military account, to Major Jeffery Higgins, whom he believed to be a chaplain at the United States Military Academy at West Point (the “Email”). *See* Pl.’s Counter SOF ¶ 4. The Email’s subject line was: “Homosexuality weddings at military institutions.” AR at 48. It read as follows:

Gentlemen:

I just read an article that a homosexual wedding was performed at the Cadet Chapel at West Point. I need to let you [know], that this is wrong on so many levels. If they wanted to get married in a hotel, that is one thing. Our base chapels are a place of worship and this [is] a mockery to God and our military core values. I have proudly served for 27 years and this is a slap in the face to us who have put our lives on the line for this country. I hope sir that you will take appropriate action so this does not happen again.

Id.

At the time he received the Email, Major Higgins was serving as the Executive Assistant to the Commandant of Cadets at West Point. Pl.’s Counter SOF ¶ 4. Brigadier General Ted Martin, West Point’s Commandant of Cadets, received the Email and forwarded it to Brigadier General David Fountain, Utah’s Assistant Adjutant General for Air and the highest-

ranking officer in the UTANG, along with the following message:

*3 I am writing to send you a message I received from one of your Airmen, TSGT L.E. Wilson, who apparently doesn't like the idea of two gay individuals getting married at an on-post facility (in this case, the Cadet Chapel at West Point). I am not sure why he wrote me—maybe he thinks I care about his opinion (which I don't), or that I am responsible for the policy (which I am not), or that I control the facility (which I don't), but in any event I believe he may have some problems with the lifting of “don't ask, don't tell” and thought that you or his immediate commander might want to further investigate. If I did control all of the above, he should know that I still don't care about his opinions, and that I am flabbergasted that he would think it is OK to question any of my orders or policies. I will just hit the delete key on his message and go about my business.

The funny thing about email is that anyone can hit the send key and totally bypass the chain of command. It is bad enough when a civilian does it, but doubly disappointing when someone in the military does it. I guess it is just a sign of the times. I am sure you are busy and have about as much time for this kind of nonsense as I do—which is “zero”!

AR at 47–48. Brigadier General Fountain forwarded General Martin's email to Brigadier General Kenneth Gammon, who in turn forwarded the email to Tobias. *Id.* at 47.

Three days after Plaintiff sent the Email, on December 5, 2012, UTANG officials decided to rescind Plaintiff's six-year reenlistment contract and offer in its place a one-year reenlistment contract. *Id.* at 42; Defs.' SOF ¶ 8. On December 12, 2012, Tobias met with Plaintiff to discuss the status of his reenlistment contract, the Email, and related matters. Tobias' notes reflect that, at the meeting, he and Plaintiff discussed a June 2011 “Don't Ask Don't Tell Training,” about which Plaintiff “comment[ed] ... how strongly he disagreed with it at that time and how he feels the same way today.” AR at 43. Tobias' notes reflect that they also discussed: (1) Plaintiff's “[p]ossible loss of a stripe” and that “at a minimum he'll be getting a [Letter of Reprimand]”; (2) Plaintiff's retirement, which Tobias “encouraged” him to begin in March or April 2013, “thus allowing him to retire with a clean slate”; Plaintiff, however, stated that he “[w]ants to stay in for at least three more years,” at least in part because “TriCare is critical to his wife's cancer” treatment; and (3) termination of Plaintiff's UTANG email account and internet access, which Tobias told Plaintiff should occur immediately, but Tobias

decided to “hold for now” because Plaintiff would need his account to make “retirement requests.” *Id.* Tobias noted that Plaintiff “seemed very adamant that what he did was not wrong [and that] he felt that his rights were being taken from him.” *Id.* In response, Tobias explained that “we as military members must live under tighter rules/guidelines to have a strong force” and told Plaintiff that “he was basically ordered to not have that opinion in uniform and that he basically disobeyed this order.” *Id.* Tobias told Plaintiff that if he “feels so strongly about it maybe it's a good time for him to move on.” *Id.*

On December 13, 2012, Plaintiff signed the one-year reenlistment contract. *Id.* at 45. Before signing the contract, Plaintiff informed Tobias that his healthcare coverage had ceased when his six-year reenlistment contract was rescinded. *Id.* at 44. Plaintiff also acknowledged his missteps: “My National Guard military benefits are being taken away over a human error on my part.... I didn't intend to create this red tape mess for you. Again, I'm sincerely sorry I created this situation and ask for your forgiveness. I wish[] I could undo the past [two] months, but I can't.” *Id.* Plaintiff also asked Tobias to reinstate his six-year contract: “I wish[] there was some way for us to come to a compromise on reinstating my [six-]year enlistment.” *Id.*

*4 On February 10, 2013, Tobias issued Plaintiff a Letter of Reprimand (the “First LOR”), in which he wrote:

On 3 November 2012, I sat down with you to discuss the use of your government provided email system and how some emails that you have sent have violated the base email policy that is agreed to every time you log into your computer. During this meeting I verbally counseled you and made it clear that you are not to send personal emails from your work computer under a [UTANG] signature block. I also stressed during this conversation that if the behavior continued there would be repercussions.... [The Email] was in violation of the rules and regulations discussed, and [wa]s in direct opposition to the conversation that you and I had on 3 November 2012, just the month prior, during which I mentioned that we as military

members must live under tighter rules and guidelines. To have a strong force, when we raise our arm to the square to support and defend the constitution and the leaders appointed over us, while in uniform our opinions and feelings are second to following the laws, regulations and decisions of our elected and military leaders. If you have such a strong aversion to those rules and regulations in uniform, you have the choice to depart our ranks and live as you please, but while in uniform this behavior is not tolerated. This expectation was reviewed, reinforced and you were ordered to stop this behavior, however, you disobeyed this order. You are hereby reprimanded! As a noncommissioned officer, you are expected to maintain a standard or professional and personal behavior that is above reproach. You have failed!

Id. at 8.

Plaintiff was given 30 calendar days to respond to the First LOR, and he did so on March 5, 2013. Plaintiff explained that he had reviewed the Air Force's policy that "outlines proper use of government communications" and noted that, "[s]ince 4 November 2012," he has "refrained from using government email for TriCare to prevent further misunderstandings." *Id.* at 10. He added: "I believe that I complied with your verbal orders as I understood them on 4 November 2012." *Id.* With regard to the Email, Plaintiff wrote:

The one and only email I sent on 2 December 2012 to head Chaplain—Major Jeffrey Higgins addressed the blasphemous desecration of a military chapel. My email was short, clear, and to the point; having nothing to do with DADT.... No one should ever have to check their moral values or religious convictions at the door when they put on the uniform. I must be true [to] myself and to my God above anyone else. My concern now is that I'm no longer allowed to have an opinion and that I must follow unlawful orders to

keep my opinions to myself. I am not asking anyone to agree with my opinion nor am I asking anyone to change the current policy. I only ask for respect of my rights of conscience.

Id. at 11.

Over the next several months, Plaintiff and his lawyers—John B. Wells and Major Ezra T. Glanzer—communicated with Tobias, other Air Force personnel, and members of Congress, regarding Plaintiff's situation. *Id.* at 52–66, 73–79, 85–90. On July 16, 2013, Tobias sent a letter to Plaintiff's counsel informing them that he had "determined there were procedural irregularities in the executing and processing of the [one-year] enlistment agreement" and that Plaintiff's "six year re-enlistment [contract] executed on 3 November 2012 will be reinstated." *Id.* at 111. Tobias also informed Plaintiff's counsel that the First LOR would remain in Plaintiff's file, stating that Plaintiff "was not reprimanded for his personal opinion"—which "[m]embers of [the UTANG] have the right to express ... subject to [the] Code of Conduct and Air Force Standards"—"but rather for communicating his personal opinion using official government email together with his military unit and organization, rank, position, and military contact information." *Id.* at 111–12. Plaintiff's six-year contract was reinstated on November 13, 2013. Defs.' SOF ¶ 10; Pl.'s Counter SOF ¶ 9.

B. The Facebook Post and Resulting Discipline

*5 On July 14, 2013, two days before he would inform Plaintiff that his six-year reenlistment contract would be reinstated, Tobias filed a "Memorandum for Record" in support of the establishment of a Security Information File on Plaintiff (the "SIF"). AR at 118–22. Tobias sought to open the SIF "based on [Plaintiff's] conduct in relation to his Facebook postings," *id.* at 119, which were brought to Tobias' attention by other Air Force personnel, *id.* at 119–20. In the month before filing the Memorandum, Tobias personally had accessed and had reviewed Plaintiff's Facebook page—on which Plaintiff listed his place of work as the UTANG, *id.* at 130—and had become "concerned with his tone, subjects and ... mental state," *id.* at 121. On July 15, 2015, Tobias formally requested the establishment of the SIF, which caused Plaintiff to "be placed in a non-sensitive position and [withdrew his] access to classified information and [withdrew] unescorted entry to restricted areas," *id.* at 128—in other words, Plaintiff's security clearance was suspended.

On July 16, 2013, upon learning from Tobias that his six-year reenlistment contract would be reinstated but that the First LOR would remain in his file, Plaintiff posted on his Facebook page an article about himself, titled “Military Punishes 27 year Veteran Over Personal Beliefs.” *Id.* at 22. The following statement, written by Plaintiff, accompanied the article (the “Facebook Post”):

I only want to say one thing to you Kevin Tobias!!! Sir!!! You are way out of line!!! You embarrass me, our country, and our unit!!! I have done nothing but try to support our constitution and our religious freedoms. You are part [of] the problem with this country. I have tried reason with you, use [d] diplomacy with you, but that doesn't seem to work. Shame on you sir!!!!

Id. According to Plaintiff, he put up the Facebook Post “inadvertently”—“When I wrote these words I was venting and I did not intend for the matter to be posted”—and “immediately deleted it.” *Wilson Aff.* ¶ 15.

Evidently, Plaintiff did not take the Facebook Post down fast enough. Another UTANG member read it and sent a screenshot of Plaintiff’s critical comments to Tobias. AR at 18. On August 3, 2013, Brigadier General Gammon, UTANG’s Commander, issued Plaintiff a second Letter of Reprimand (the “Second LOR”). *Id.* at 20. The Second LOR quoted the Facebook Post and stated:

You are hereby reprimanded for failing to give your superior commissioned officer and Commander the dignity and respect due his office. You have embarrassed yourself, your unit and the [UTANG]. Your language was patently disrespectful and your conduct demonstrably prejudicial to good order and discipline. You have failed to exemplify the high professional standards expected of Non-Commissioned Officers in the [UTANG]. This conduct cannot and will not be tolerated.

Id. The same day the Second LOR issued, Plaintiff’s counsel were informed about the SIF and were provided with the materials that supported its opening, including screenshots of 74 Facebook posts. *Id.* at 127.

On September 14, 2013, after the instant suit was filed, Plaintiff’s counsel responded to the Second LOR, asserting numerous procedural and substantive challenges and requesting that it “be withdrawn and destroyed” or “filed locally.” *Id.* at 25–26. On November 4, 2013, Plaintiff’s counsel responded to the SIF, arguing that Plaintiff’s Facebook posts were “innocuous” and addressing each post individually. *See Wells Letter*, ECF No. 13–5. Neither Plaintiff nor Defendants have represented that the Second LOR was removed from Plaintiff’s file or that his security clearance was reinstated.

III. DISCUSSION

A. Standards of Review

1. Motion to Dismiss Under Federal Rule of Civil Procedure 12(b)(1)

[1] [2] Defendants have moved under [Federal Rule of Civil Procedure 12\(b\)\(1\)](#) to dismiss certain of Plaintiff’s claims for lack of subject matter jurisdiction, either on mootness grounds or for lack of standing. Under [Rule 12\(b\)\(1\)](#), a court has “an affirmative obligation to ensure that it is acting within the scope of its jurisdictional authority.” [Grand Lodge of Fraternal Order of Police v. Ashcroft](#), 185 F.Supp.2d 9, 13 (D.D.C.2001). Plaintiff, however, bears the burden of proving that the court has subject matter jurisdiction to hear his claims. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). “For this reason, ‘the [p]laintiff’s factual allegations in the complaint ... will bear closer scrutiny in resolving a 12(b)(1) motion’ than in resolving a 12(b)(6) motion for failure to state a claim.” [Grand Lodge](#), 185 F.Supp.2d at 13–14 (citation omitted).

*6 [3] In analyzing a 12(b)(1) motion, a court need not limit itself to the complaint. [Settles v. U.S. Parole Comm’n](#), 429 F.3d 1098, 1107 (D.C.Cir.2005). It “may consider such materials outside the pleadings as it deems appropriate to resolve the question whether it has jurisdiction to hear the case.” [Scolaro v. D.C. Bd. of Elections and Ethics](#), 104 F.Supp.2d 18, 22 (D.D.C.2000) (citations omitted); *see also Herbert v. Nat’l Acad. of Scis.*, 974 F.2d 192, 197

(D.C.Cir.1992) (“[W]here necessary, the court may consider the complaint supplemented by undisputed facts evidenced in the record, or the complaint supplemented by undisputed facts plus the court’s resolution of disputed facts.” (citations omitted)).

2. Motion to Dismiss Under Federal Rule of Civil Procedure 12(b)(6)

As to other claims, Defendants have moved under Rule 12(b)(6) to dismiss for failure to state a claim on which relief can be granted, including on the ground of nonjusticiability. See *Sierra Club v. Jackson*, 648 F.3d 848, 853–54 (D.C.Cir.2011) (clarifying that a challenge to the justiciability of a claim is properly considered under Rule 12(b)(6)). However, Rule 12(d) provides that “[i]f, on a motion under Rule 12(b)(6) ... matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56.” Fed.R.Civ.P. 12(d). Here, both parties have presented substantial materials outside the pleadings, including an Administrative Record, and relied on those materials extensively. And both parties have been “given a reasonable opportunity to present all the material that is pertinent to the[ir] motion[s].” *Id.*⁴ Accordingly, to the extent Defendants raise arguments under Rule 12(b)(6), the court instead will apply the summary judgment standard set forth below. See *Marshall County Health Care Auth. v. Shalala*, 988 F.2d 1221, 1226 & n. 5 (D.C.Cir.1993) (stating that a district court considering a Rule 12(b)(6) motion “can consult the [administrative] record to answer the legal question[s] before the court,” but that “[i]t is probably the better practice for a district court always to convert to summary judgment”).

3. Motion for Summary Judgment Under Federal Rule of Civil Procedure 56

[4] [5] [6] A court will grant summary judgment only if a movant shows that “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(a). In making this determination, the court reviews all “evidence ... in the light most favorable to the non-moving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 245 n. 2, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). A dispute is “genuine” only if a reasonable fact-finder could find for the nonmoving party, while a fact is “material” only if it is capable of affecting the

outcome of litigation. *Id.* at 248–49, 106 S.Ct. 2505. A non-material factual dispute is insufficient to prevent the court from granting summary judgment. *Id.* at 249, 106 S.Ct. 2505.

[7] [8] On cross-motions for summary judgment “each side concedes that no material facts are at issue,” although this applies “only for the purposes of [each side’s] own motion” and does not mean that a “party [has] waive[d] the right to a full trial on the merits.” *Sherwood v. Wash. Post*, 871 F.2d 1144, 1147 n. 4 (D.C.Cir.1989) (quoting *McKenzie v. Sawyer*, 684 F.2d 62, 68 n. 3 (D.C.Cir.1982), *abrogated on other grounds by Berger v. Iron Workers Reinforced Rodmen, Local 201*, 170 F.3d 1111 (D.C.Cir.1999)); *see also Hodes v. U.S. Dep’t of Treasury*, 967 F.Supp.2d 369, 373 (D.D.C.2013). The court will “grant summary judgment only if one of the moving parties is entitled to judgment as a matter of law upon material facts that are not genuinely disputed. *GCI Health Care Ctrs., Inc. v. Thompson*, 209 F.Supp.2d 63, 67 (D.D.C.2002) (citations omitted).

B. Claims Predicated on the Decision to Rescind Plaintiff’s Six-Year Reenlistment Contract

*7 [9] To begin, Plaintiff asserts that the decision to rescind his six-year reenlistment contract violated the Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb *et seq.*, the First Amendment, and the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.* Defendants have moved under Rule 12(b)(1) to dismiss those claims on the ground that they are moot. Mem. in Supp. of Defs.’ Mot. to Dismiss and for Summ. J., ECF No. 14, at 8–9 [hereinafter Defs.’ Mot.]. The court agrees that all of Plaintiff’s claims challenging the decision to rescind his six-year reenlistment contract fail to present a live case or controversy and thus must be dismissed.

[10] [11] “Simply stated, a case is moot when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *Powell v. McCormack*, 395 U.S. 486, 496, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969). Even where a case, or a claim within a case, involves a live controversy when filed, the mootness doctrine requires federal courts to refrain from rendering a decision “if events have so transpired that the decision will neither presently affect the parties’ rights nor have a more-than-speculative chance of affecting them in the future.” *Transwestern Pipeline Co. v. FERC*, 897 F.2d 570, 575 (D.C.Cir.1990). Although exceptions to the mootness doctrine exist, *see, e.g., Clarke v. United States*, 915 F.2d 699, 703 (D.C.Cir.1990), Plaintiff has not raised any of them here.

Once Plaintiff's six-year reenlistment contract was reinstated on November 13, 2013, Pl.'s Counter SOF ¶ 9; Defs.' SOF ¶ 10, the decision to rescind that contract no longer presented a live controversy. See *Gibbs v. Brady*, 773 F.Supp. 454, 457 (D.D.C.1991) (dismissing as moot federal employee's claim for reinstatement where “voluntary corrective action taken by [the government]” placed the plaintiff in a position “reasonably similar to plaintiff's former position”). Plaintiff already has received the relief he seeks—full reinstatement of the six-year contract and its terms. Thus, Plaintiff's claims challenging the rescission of that agreement are moot and are dismissed for lack of subject matter jurisdiction.

C. Plaintiff's Claims Under the Religious Freedom Restoration Act

Moving on to claims that present a live case or controversy, among Plaintiff's primary contentions is that Defendants' issuance of the First LOR placed a substantial burden on his exercise of religion in violation of the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. §§ 2000bb *et seq.* See Compl. ¶¶ 55–56, 60–62.

[12] [13] [14] RFRA provides that the government “shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability,” unless the burden “(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000bb–1. Thus, the first inquiry under RFRA is whether a government act has substantially burdened the plaintiff's religious exercise. See *Kaemmerling v. Lappin*, 553 F.3d 669, 677–78 (D.C.Cir.2008). In evaluating whether government action has substantially burdened a religious exercise, the court must, as a preliminary matter, identify the religious action or practice that the plaintiff asserts was substantially burdened. See *id.* at 679 (“Religious exercise necessarily involves an action or practice”). The religious action or practice need not be “compelled by, or central to, a system of religious beliefs.” 42 U.S.C. §§ 2000cc–5(7)(A). Nor shall the court “determine what religious observance [a plaintiff's] faith commands.” *Priests for Life v. U.S. Dep't of Health & Human Servs.*, 772 F.3d 229, 247 (D.C.Cir.2014). Instead, courts must look to the religious action or practice the plaintiff identifies as having been substantially burdened, without questioning either whether it is central to the plaintiff's faith or whether the plaintiff sincerely holds his religious beliefs.

*8 [15] Here, Plaintiff has not asserted that the First LOR substantially burdened any religious *action or practice*.

Rather, Plaintiff only asserts that the discipline imposed substantially burdened a religious *belief*, *i.e.*, that same-sex marriage is a sin. Plaintiff is a member of the LDS faith. Wilson Aff. ¶ 3. He states that the “tenets of [LDS] hold[] that homosexual acts are a sin” and that he “*believe[s]* that any act, endorsement, sanction, practice or support of the homosexual act on a military installation is inappropriate.” *Id.* (emphasis added). In his briefs, Plaintiff similarly reiterates that “LDS doctrine holds that homosexual marriage and homosexual activity is a sin,” “it is within [his] religious practices to *believe* that,” and he “sought to express his religious *beliefs* when he mistakenly believed he was sending an email communication to a Chaplain.” Pl.'s Reply to Defs.' Opp'n to Pl.'s Mot. for Summ. J., ECF No. 24, at 15 [hereinafter Pl.'s Reply] (emphasis added). Plaintiff contends that “he is suffering reprisal for voicing [his] *beliefs*.” Mem. in Supp. of Pl.'s Mot. for Summ. J., ECF 13–4, at 14 [hereinafter Pl.'s Mot.] (emphasis added); see also Pl.'s Opp'n to Defs.' Mot. to Dismiss and for Summ. J., ECF No. 17, at 11–12 [hereinafter Pl.'s Opp'n] (arguing that “he is being punished for the *belief* that homosexual marriage and homosexual activity is a sin”) (emphasis added).

[16] A substantial burden on one's religious beliefs—as distinct from such a burden on one's *exercise* of religious beliefs—does not violate RFRA. The Court of Appeals so concluded in *Kaemmerling*. There, the plaintiff asserted that the federal government's collection and storage of his DNA sample required him to act in ways that violated “his religious beliefs.” *Kaemmerling*, 553 F.3d at 679. The Court rejected Plaintiff's RFRA claim, observing that “[r]eligious exercise necessarily involves an action or practice” and that the government's collection and storage of the plaintiff's DNA did not “pressure [him] to modify his own behavior in any way that would violate his beliefs.” *Id.* Similarly, here, Plaintiff has not identified any burdened action or practice of the LDS faith. The discipline imposed did not “force[him] to engage in conduct that [his] religion forbids” or “prevent[him] from engaging in conduct [his] religion requires,” *Henderson v. Kennedy*, 253 F.3d 12, 16 (D.C.Cir.2001). Nor did it “condition[] receipt of an important benefit upon conduct proscribed by [his] religious faith, or ... den[y] such a benefit because of conduct mandated by [his] belief,” *Thomas v. Review Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707, 717–18, 101 S.Ct. 1425, 67 L.Ed.2d 624 (1981). Nothing prevented Plaintiff from continuing to maintain his beliefs about same-sex marriage and homosexuality, just as he had before the First LOR, without repercussion.

Admittedly, the First LOR likely chilled Plaintiff's *speech* regarding his religious beliefs, especially within the military setting. But nowhere does Plaintiff assert that LDS doctrine requires him to publicly voice his dissent about homosexuality or same-sex marriage. See *Mahoney v. U.S. Marshals Serv.*, 454 F.Supp.2d 21, 38 (D.D.C.2006) (rejecting an asserted RFRA violation where plaintiffs claimed that they wished to engage in speech about their religion but had not alleged that such speech was “part of the exercise of their religion”). Plaintiff only contends that, under LDS doctrine, homosexuality is a sin. Wilson Aff. ¶ 3. His religious belief, however, does not become a protected religious exercise under RFRA simply because Plaintiff expressed it through speech. See *Mahoney*, 454 F.Supp.2d at 38 (observing that “[i]t is not the case that every activity which could be cast as ‘religiously motivated’ is the kind of exercise of religion protected by RFRA”) (citation omitted).

[17] But even if Plaintiff's speech about same-sex marriage could be considered a religious exercise under RFRA, the First LOR did not “substantially burden” it. The Court of Appeals has found that a neutral regulation that places a limit on where someone may engage in religiously motivated expression does not violate RFRA. In *Henderson*, the Court of Appeals held that a ban on selling t-shirts on the National Mall that expressed a religious message did not constitute a “substantial burden” on religious exercise. See 253 F.3d at 17 (“Because the Park Service's ban on sales on the Mall is at most a restriction on one of a multitude of means, it is not a substantial burden on their vocation.”). Similarly, in *Mahoney*, the court held that security limitations on where the plaintiffs could protest outside the Red Mass, an annual ceremony at St. Matthew's Cathedral that marks the beginning of the judicial year, did not violate RFRA. See 454 F.Supp.2d at 38 (finding that there was no RFRA violation where the plaintiffs did not “allege that their religion compels them to demonstrate in favor of the public display of the Ten Commandments at all time and in all places”).

*9 A similar result obtains here. The First LOR punished Plaintiff for voicing his views about same-sex marriage, using his military email account, to a senior officer outside his chain of command. That is all. It did not bar him from voicing his opposition to same-sex marriage in other fora or by other means, and certainly not in his private affairs. Such disciplinary action does not rise to a RFRA violation.⁵ Accordingly, the court grants Defendants' Motion for Summary Judgment as to Plaintiff's RFRA claim.

D. Plaintiff's First Amendment Claims

The court next considers Plaintiff's First Amendment claims, which fall into two categories—abridgement of his right to free speech and abridgement of his right to free exercise. In a related argument, Plaintiff asserts that Air Force Instruction 1–1, which he claims was a basis for the disciplinary actions taken against him, violates the First Amendment “facially and as applied.” Pl.'s Mot. at 26.

1. Freedom of Speech

[18] [19] “While the members of the military are not excluded from the protection granted by the First Amendment, the different character of the military community and of the military mission requires a different application of those protections.” *Parker v. Levy*, 417 U.S. 733, 758, 94 S.Ct. 2547, 41 L.Ed.2d 439 (1974). Unlike civil society, the military “ ‘is not a deliberative body. It is the executive arm. Its law is that of obedience.’ ” *Id.* at 744, 94 S.Ct. 2547 (quoting *In re Grimley*, 137 U.S. 147, 153, 11 S.Ct. 54, 34 L.Ed. 636 (1890)). Such obedience, order, and discipline “cannot be taught on battlefields; the habit of immediate compliance with military procedures and orders must be virtually reflex with no time for debate or reflection.” *Chappell v. Wallace*, 462 U.S. 296, 300, 103 S.Ct. 2362, 76 L.Ed.2d 586 (1983). And so “[t]he military need not encourage debate or tolerate protest to the extent that such tolerance is required of the civilian state by the First Amendment.” *Goldman v. Weinberger*, 475 U.S. 503, 507, 106 S.Ct. 1310, 89 L.Ed.2d 478 (1986) (citations omitted).

[20] [21] Further, the Supreme Court has observed that “the established relationship between enlisted military personnel and their superior officers ... is at the heart of the necessarily unique structure of the military establishment.” *Chappell*, 462 U.S. at 300, 103 S.Ct. 2362. “The fundamental necessity for obedience, and the consequent necessity for imposition of discipline, may render permissible within the military that which would be constitutionally impermissible outside it.” *Parker*, 417 U.S. at 758, 94 S.Ct. 2547. Thus, speech by a member of the military that undermines the chain of command, and the obedience, order, and discipline it is designed to ensure, does not receive First Amendment protection. See *Millican v. United States*, 744 F.Supp.2d 296, 307 (D.D.C.2010).

*10 [22] Here, the words that gave rise to the disciplinary actions taken against Plaintiff are unprotected speech. The Email was directed to a senior officer at West Point, previously unknown to Plaintiff, who was outside his chain of command. In the Email, Plaintiff not only expressed disagreement with the decision to allow a same-sex marriage ceremony to occur in West Point's chapel, but also urged a senior officer “to take appropriate action so this does not happen again.” AR at 48. The impropriety of Plaintiff's email was succinctly stated by Brigadier General Martin, the Commandant of Cadets at West Point: “I am not sure why he wrote me.... [H]e should know that I ... don't care about his opinions, and that I am flabbergasted that he would think it is OK to question any of my orders or policies.” *Id.* An email from an enlisted member of the military that protests the decision of a senior military official outside the sender's chain of command and urges that official to reverse his decision receives no First Amendment protection.

[23] Plaintiff's rant against his commanding officer, Lt. Colonel Tobias, is afforded even less First Amendment protection. In the Facebook Post, Plaintiff wrote about Tobias: “You are way out of line!!! You embarrass me, our country, and our unit!!! ... You are part [of] the problem with this country.... Shame on you sir!!!” *Id.* at 22. It goes without saying that speech by a subordinate that publicly denigrates and humiliates a commanding officer is not entitled to the First Amendment's protections.

2. Free Exercise Clause

[24] [25] [26] [27] Plaintiff also has failed to allege a violation of the Free Exercise Clause. The Free Exercise Clause provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[.]” U.S. Const. amend. I. “At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993) (citations omitted). If a law is aimed at “infring[ing] upon or restrict[ing] practices because of their religious motivation, the law is not neutral, and it is invalid unless it is justified by a compelling interest and is narrowly tailored to advance that interest.” *Id.* at 533, 113 S.Ct. 2217. If, however, the law is both neutral and of general applicability, no compelling interest need

be shown—“the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).” *Employment Division v. Smith*, 494 U.S. 872, 872, 879, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990) (citations omitted) (internal quotation marks omitted). In other words, a plaintiff who fails to allege that the challenged law “is not, in theory or practice, a religion-neutral, generally applicable law ... alleges no Free Exercise violation, even if the [law] incidentally affects religiously motivated action.” *Kaemmerling*, 553 F.3d at 677.

[28] Here, aside from Air Force Instruction 1–1, which he lacks standing to challenge, *see infra* Part III.D.3, Plaintiff has not pointed to any law or regulation whose application allegedly violated the Free Exercise Clause. The record reflects only one statute and one military regulation as legal grounds for the issuance of the LORs. Title 10 U.S.C. § 8013 is listed on both LORs as “authority” for their issuance, *see* AR at 9, 20, and Air Force Manual 33–152, which governs Air Force members' use of “internet-based capabilities” and “electronic messaging,” *id.* at 12–15, was identified by Colonel Ronald Blunck as the basis for the issuance of the First LOR in a memorandum he prepared explaining Plaintiff's discipline, *id.* at 79. Both are neutral laws of general applicability, which do not offend the Free Exercise Clause. And even if the court found that Plaintiff did have standing to challenge Air Force Instruction 1–1, it too is neutral and generally applicable and thus does not implicate free exercise concerns. Therefore, Plaintiff has not alleged a Free Exercise Clause violation.

3. Constitutionality of AF 1–1

*11 Within the context of his First Amendment claims, Plaintiff asks the court to declare Air Force Instruction 1–1, known as “AF 1–1,” unconstitutional under the First Amendment. Compl. ¶ 117; Pl.'s Mot. at 23–28, 43–44. Generally speaking, AF 1–1 is a standards policy for members of the Air Force. *See* AFI 1–1 (7 August 2012), ECF No. 13–7 [hereinafter AF 1–1]. One of its many sections addresses the “Use of Social Media.” *See id.* § 2.15. Plaintiff challenges the constitutionality of that section, contending that it is “void for vagueness” because its enforcement is left to the “unbridled discretion” of the Air Force; it is “overbroad”; and it “chills the free speech, including political and religious speech, of National Guardsmen.” Pl.'s Mot. at 43; *see also* Compl.

¶¶ 91–95. Defendants argue that Plaintiff lacks standing to challenge the constitutionality of AF 1–1. *See* Defs.' Mot. at 24–25. The court agrees.

[29] [30] Article III of the Constitution limits the jurisdiction of federal courts to “cases” and “controversies.” U.S. Const. art. III, § 2. Rooted in this constraint is the concept of standing, which requires that a plaintiff establish three things in order to maintain a claim: “First, the plaintiff must have suffered an injury in fact”; “[s]econd, there must be a causal connection between the injury and the conduct complained of”; and “[t]hird, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Lujan*, 504 U.S. at 560–61, 112 S.Ct. 2130 (citations omitted) (internal quotation marks omitted). On a motion for summary judgment, a plaintiff “must ‘set forth’ by affidavit or other evidence ‘specific facts’ ” that support each of the three elements. *Id.* at 561, 112 S.Ct. 2130 (citing *Fed.R.Civ.P.* 56(e)). Here, Plaintiff has failed to carry his burden as to the “causal connection” requirement of standing, because he has not offered any evidence showing that either LOR or any other discipline imposed is fairly traceable to his superiors' application of AF 1–1. *See Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41, 96 S.Ct. 1917, 48 L.Ed.2d 450 (1976).

[31] The First LOR nowhere mentions AF 1–1. Indeed, it does not specify which Air Force regulation or policy Plaintiff violated. And Plaintiff has not presented any evidence that Tobias or anyone else told him, verbally or in writing, that he was disciplined because the Email violated AF 1–1. In an effort to link AF 1–1 to Tobias' actions, Plaintiff points to a single line in a June 19, 2013, memorandum written by Colonel Ronald Blunck, UTANG's Director of Staff, in response to complaints Plaintiff made to a Member of Congress. AR at 76–79. In his memorandum, Colonel Blunck wrote: “Tobias['] response is in complete harmony with ... [AF] 1–1 paragraph 2.12.2[, which] states ‘Your right to practice your religious beliefs does not excuse you from complying with directives, instructions, and lawful orders.’ ” *Id.* at 79; *see also* Pl.'s Reply at 21. But Colonel Blunck's post-hoc statement that the First LOR was in “complete harmony” with AF 1–1 does not establish that Tobias actually relied on AF 1–1 or applied it when he issued the First LOR. The memorandum appears to be Colonel Blunck's after-the-fact analysis of Tobias' actions; it is not evidence that Tobias actually applied AF 1–1. Indeed, Colonel Blunck did not even say in the memorandum that he had spoken to Tobias or that Tobias had told him what regulation he relied upon

to discipline Plaintiff. Based solely on Colonel Blunck's memorandum, the court cannot “fairly trace” the First LOR to AF 1–1.

[32] The Second LOR similarly cannot be traced to the challenged Air Force policy. Indeed, the parties agree that the regulation does not apply to off-duty conduct like Plaintiff's public rebuke of his commanding officer on Facebook. Pl.'s Mot. at 25 (“[T]he Air Force only has jurisdiction over plaintiff when on active duty[.] ... Consequently, the Air Force had no jurisdiction over Plaintiff when he wrote the Facebook post concerning Defendant Tobias[.]”); Supplemental Mem. in Supp. of Defs.' Mot. to Dismiss and for Summ. J., ECF No. 29, at 6 (“Plaintiff claims that AF 1–1 did not apply to him in civilian status, and he was in civilian status when he made his Facebook posts that resulted in the [Second LOR]; Defendants agree [.]”). Thus, having failed to establish a “causal connection” between AF 1–1 and either of the LORs, Plaintiff lacks standing to challenge the regulation's constitutionality.⁶

E. Plaintiff's Claims Under the Due Process Clause of the Fifth Amendment

*12 Moving from the First to the Fifth Amendment, Plaintiff asserts that the adverse personnel actions taken against him infringed his “liberty and property interest in his career.” Pl.'s Mot. at 44–45; Pl.'s Opp'n at 40–42. He also asserts that Defendants' failure “to provide specific information as to which of the 74 Facebook pages they believe calls Plaintiff's allegiance to the United States” into question deprived him of due process. Pl.'s Mot. at 44.

[33] [34] The Due Process Clause of the Fifth Amendment provides that “[n]o person shall be ... deprived of life, liberty, or property, without due process of law[.]” U.S. Const. amend. V. “Procedural due process imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause.” *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). To prevail on a Due Process Clause claim, a plaintiff must demonstrate, first, that he was deprived by the government of a “liberty or property interest” to which he had a “legitimate claim of entitlement;” and second, that “the procedures attendant upon that deprivation were constitutionally [in]sufficient.” *Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454, 460, 109 S.Ct. 1904, 104 L.Ed.2d 506 (1989).

*1. Plaintiff's Liberty and Property Interests
in His Employment and His Career*

[35] Plaintiff asserts that he has a “liberty interest in not being improperly separated from the military service” and “a property interest in his military career.” Pl.’s Opp’n at 40–41. In support of these allegations, he states that “the threat of an early discharge coupled with the stigma of the suspended security clearance certainly implicate[s] Plaintiff’s good name, reputation and integrity,” as do the LORs. *Id.* at 41. He further speculates that “Defendants’ attempts to remove him from ... the UTANG are far from over.” Pl.’s Reply at 24.

[36] [37] To allege a *liberty* interest in government employment, a plaintiff must claim a “discharge ... or at least a demotion in rank and pay.” *O’Donnell v. Barry*, 148 F.3d 1126, 1140 (D.C.Cir.1998) (citation omitted) (internal quotation marks omitted); see also *Smith v. Harvey*, 541 F.Supp.2d 8, 12, 16 (D.D.C.2008) (finding that a member of the Army Reserves who received “a suspension of favorable personnel action, also known as a flag, on [her] personnel file” had “not been discharged from employment or demoted, and [thus] failed to allege a constitutionally-protected liberty interest”). And to allege a *property* interest in government employment, a plaintiff must demonstrate that he was deprived of a benefit “created by sources independent of the constitution,” such as a “statute, contract, or other independent source of law.” *Harvey*, 541 F.Supp.2d at 15–16.

Plaintiff has failed to allege a cognizable liberty interest in his employment with the military, as he was not discharged or demoted in rank or pay. Nor has he alleged a cognizable property interest, as UTANG did not deprive him of any benefit to which the law entitles him. These deficiencies are fatal to Plaintiff’s due process claim. See *Roberts v. United States*, 741 F.3d 152, 162 (D.C.Cir.2014) (“[Plaintiff Naval Officer] says she has a property interest in her ‘employment’ and a liberty interest in her ‘freedom to practice her chosen profession,’ but these are not implicated because [she] remains employed by the Navy.”).

2. Failure to Identify Particular Facebook Postings

[38] Plaintiff also argues that Defendants deprived him of due process of law in connection with opening the SIF and revoking his security clearance. In support of this

claim, Plaintiff asserts that “Defendants deprived [him] of reasonable notice as to the allegations against him” and “[a]s a result, these allegations are too vague to determine whether or not Plaintiff’s allegiance has been placed at issue, [which] prejudice[s] his ability to prepare a response.” Pl.’s Mot. at 44. In particular, Plaintiff argues that Defendants should have specified which Facebook posts they relied upon to make adverse determinations about his security-worthiness. *Id.* He also claims that “the lack of specificity is a violation of DOD Directive 5200.2 and DOD 5200–2–R.” *Id.*

*13 [39] [40] The Supreme Court has made clear that “[p]rocess is not an end in itself.” *Olim v. Wakinekona*, 461 U.S. 238, 250, 103 S.Ct. 1741, 75 L.Ed.2d 813 (1983). Rather, “[i]ts constitutional purpose is to protect a substantive interest to which the individual has a legitimate claim of entitlement.” *Id.*; see also *Roberts*, 741 F.3d at 162 (dismissing due process claims of plaintiff who had alleged that “she ha[d] a ‘liberty and property interest in a fair evaluation process’ ” because “a ‘fair evaluation process’ is still a process, not a substantive interest in liberty or property”). Thus, “[t]he first inquiry in every due process challenge is whether the plaintiff has been deprived of a protected interest in ‘liberty’ or ‘property.’ Only after finding the deprivation of a protected interest do we look to see if the [government’s] procedures comport with due process.” *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 59, 119 S.Ct. 977, 143 L.Ed.2d 130 (1999) (citations omitted).

[41] Plaintiff “does not have a liberty or property interest in [a] security clearance, so his security clearance cannot serve as a predicate liberty or property interest.” *Palmieri v. United States*, 72 F.Supp.3d 191, 206 (D.D.C.2014). And, even if his security clearance were to give rise to a protected interest, Plaintiff has not identified any Air Force regulation or any other applicable rule that entitles him to disclosure of the specific Facebook posts that Tobias relied on to open the SIF and to revoke his security clearance. Plaintiff simply claims that Defendants violated two DOD Directives, without explaining why those Directives are applicable or how they were contravened. Pl.’s Mot. at 44. Therefore, the court grants summary judgment in favor of Defendants on Plaintiff’s Fifth Amendment claims.

F. Plaintiff's Administrative Procedure Act Challenge to the LORs

Plaintiff also seeks review of the disciplinary actions taken against him under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 *et seq.* In this section, the court considers Plaintiff’s arguments with respect to the two

LORs. His challenges under the APA to the security-related discipline he received are addressed in the next section.

Plaintiff advances two main arguments that challenge the LORs under the APA. First, he argues that the issuance of the LORs was arbitrary and capricious. Second, he asserts that the LORs do not accord with Department of Defense (“DOD”) Directive 7050.06, which implements the Military Whistleblower Protection Act, 10 U.S.C. § 1034. Defendants argue that Plaintiff’s challenge to the LORs is nonjusticiable. They also contend that Plaintiff did not exhaust his administrative remedies insofar as his claim rests on the assertion that the LORs violated DOD Directive 7050.06. Both of Defendants’ arguments are correct.

1. Nonjusticiability of the LORs

[42] [43] “The complex subtle, and professional decisions as to the composition, training, equipping, and control of a military force are essentially professional military judgments, subject *always* to civilian control of the Legislative and Executive Branches.” *Gilligan v. Morgan*, 413 U.S. 1, 10, 93 S.Ct. 2440, 37 L.Ed.2d 407 (1973); *see also Orloff v. Willoughby*, 345 U.S. 83, 93–94, 73 S.Ct. 534, 97 L.Ed. 842 (1953) (“The responsibility for setting up channels through which [military] grievances can be considered and fairly settled rests upon the Congress and upon the President of the United States and his subordinates.”). Accordingly, the jurisdiction of federal courts concerning military personnel decisions is “typically limited to challenges to *procedures* — it does not extend to the *merits*.” *Reilly v. Sec’y of the Navy*, 12 F.Supp.3d 125, 140 (D.D.C.2014); *see also Orloff*, 345 U.S. at 94, 73 S.Ct. 534 (“The military constitutes a specialized community governed by a separate discipline from that of the civilian. Orderly government requires that the judiciary be as scrupulous not to interfere with legitimate Army matters as the Army must be scrupulous not to intervene in judicial matters.”); *Burt v. Winter*, 503 F.Supp.2d 388, 390 (D.D.C.2007) (stating that “military personnel decisions themselves lie outside the court’s jurisdiction”). Decisions within this Circuit routinely have found military personnel actions—including promotions, discharges, and discipline—to be nonjusticiable. *See, e.g., Kreis v. Sec’y of the Air Force*, 866 F.2d 1508, 1514 (D.C.Cir.1989) (Air Force Major’s claim for retroactive promotion is nonjusticiable); *Daniels v. U.S.*, 947 F.Supp.2d 11, 19 (D.D.C.2013) (decision to discharge midshipmen from the U.S. Naval Academy is nonjusticiable); *Caetz v. United States*, 815 F.Supp.2d 184, 188 n. 4

(D.D.C.2011) (holding that underlying “adverse personnel actions ... including a [Memorandum of R]eprimand ... are *not* reviewable by this Court”); *Charette v. Walker*, 996 F.Supp. 43, 50 (D.D.C.1998) (“[The] plaintiff’s request for reinstatement and promotion reconsideration are clearly not justiciable because consideration of these claims would require this Court to intrude upon military personnel decisions committed exclusively to the legislative and executive branches.”).

*14 [44] Here, Plaintiff directly challenges whether his conduct warranted the LORs. For instance, with regard to the Second LOR, Plaintiff contends that Defendants intended to “ensnare and ambush [him] to construct a reason for discipline” and “[w]hen he accidentally posted a [Facebook] post critical of Defendant Tobias, they sprung the trap.” Pl.’s Mot. at 33. He adds that the “quick action taken by Plaintiff when he accidentally posted the Facebook entry should have obviated the need for an LOR.” *Id.* at 34. That is precisely the type of argument that the courts are not permitted to address. Granting the relief Plaintiff seeks—removal of the LORs from his official record, Compl. at 24—would require this court to second-guess the wisdom of a military decision to reprimand Plaintiff. The court is ill-equipped to make such a judgment. *See Kreis*, 866 F.2d at 1511.

2. DOD Directive 7050.06

Plaintiff alternatively seeks review of the LORs under the APA on the ground that they were issued in violation of DOD Directive 7050.06.⁷ Generally speaking, DOD Directive 7050.06 protects military personnel from reprisal for making certain types of “protected communications,” which are defined under the Military Whistleblower Protection Act (“MWPA”), 10 U.S.C. § 1034. *See Hernandez v. United States*, 38 Fed.Cl. 532, 535 (1997) (stating that the purpose of the MWPA is “to provide a degree of protection to military personnel who report information on improper or illegal activities by other military personnel”). Plaintiff asserts that the First LOR was issued in retaliation for his objecting to the use of West Point’s chapel for a same-sex marriage ceremony. And the Second LOR, he contends, was issued in retaliation for his communication with a Member of Congress about the First LOR.

The problem Plaintiff faces here is that he did not raise either of these arguments through the established administrative channels. The MWPA and DOD Directive 7050.06 provide

a comprehensive remedial scheme by which investigations, review, and appeals of allegedly retaliatory actions are to be conducted. See *Hernandez*, 38 Fed.Cl. at 536 (“Congress designed the [MWPA] to provide channels within the military through which members of the armed forces could bring their grievances.”); see also *Klingenschmitt v. United States*, 119 Fed.Cl. 163, 185 (2014) (observing that “the statute provides a fairly elaborate administrative process for handling complaints of retaliatory personnel actions”). The MWPA provides that, upon receiving a complaint of a prohibited action, the Inspector General of the DOD or an Inspector General of one of the armed forces “shall” determine if there is sufficient evidence to warrant an investigation and, if there is, to conduct an investigation. 10 U.S.C. § 1034(c)-(d). Upon completing an investigation, the Inspector General is required to report the results to the Secretary of Defense and the Secretary of the military department concerned. *Id.* § 1034(e). Then, after receipt of the report, the Secretary “shall” determine if there is a sufficient basis to conclude whether a prohibited act occurred and, if she determines it has sufficient evidence, shall take the necessary action to correct affected records. *Id.* § 1034(f). A member of the armed forces who is not satisfied with the disposition of a matter, “upon completion of all administrative review,” can seek review by the Secretary of Defense, who must render a decision within 90 days. *Id.* § 1034(h).

*15 Additionally, under the MWPA, boards for the correction of military records are empowered to review an application submitted by a member of the armed forces who has alleged a prohibited personnel action. *Id.* § 1034(g). The Secretary concerned is required to issue a final decision as to an application filed with a records correction board and to take, within 180 days of the application being filed, such action “as is necessary to correct the record.” *Id.* § 1034(g)(4)(5). The MWPA adds: “If the Secretary fails to issue such a final decision within that time, the member or former member shall be deemed to have *exhausted* the member’s or former member’s *administrative remedies* under section 1552 of this title.” *Id.* (emphasis added).

DOD Directive 7050.06 implements the provisions of the MWPA. DOD Directive 7050.06, ECF No. 25–1. It establishes detailed procedures applicable to the DOD Inspector General, DOD “Component Heads,” the Secretaries of the military departments, boards of correction of military records, and the Secretary of Defense. *Id.* at 4–9. These procedures govern investigations, the creation of investigation reports, review of investigation reports,

determinations regarding violations of the MWPA, and appeals of such determinations. *Id.*

[45] There can be little doubt that, where Congress and the DOD have developed such a comprehensive scheme to address allegations of retaliatory conduct, an aggrieved member of the military, like Plaintiff, must first exhaust administrative remedies before coming to federal court and seeking review under the APA. See 5 U.S.C. § 704 (permitting judicial review of a “final agency action”); see also *Hernandez*, 38 Fed.Cl. at 536 (concluding that the MWPA “affords members of the armed forces solely administrative remedies”); *Acquisto v. United States*, 70 F.3d 1010, 1011 (8th Cir.1995) (same); *Career Educ., Inc. v. Dep’t of Educ.*, 6 F.3d 817, 820 (D.C.Cir.1993) (requiring exhaustion “in order to give the Department’s top level of appeal an opportunity to place an official imprimatur on the Department’s interpretation of its regulations before it is reviewed by a federal court”); *Penland v. Mabus*, 78 F.Supp.3d 484, 494 (D.D.C.2015) (holding with respect to the MWPA that, “when Congress has established a specific form of redress, it precludes alternative fora”); *Conservation Force v. Salazar*, 919 F.Supp.2d 85, 90 (D.D.C.2013) (stating that “if the APA and/or an agency rule provides for a review process, an aggrieved party must exhaust that process before seeking judicial review”).

[46] Here, Plaintiff made no effort to avail himself of available administrative remedies before filing suit. See Logrande Decl., ECF No. 14–5, ¶ 2. He neither filed a complaint with the Air Force’s Inspector General nor sought correction of his personnel record by the Air Force Board for Correction of Military Records (“AFBCMR”). Plaintiff makes the internally inconsistent argument that, while he is protected by the MWPA and DOD Directive 7050.06, he is exempt from its administrative scheme. He argues that, because his case “deals with a National Guard matter,” and the AFBCMR does not have the power to correct UTANG records, he was not required to exhaust remedies before coming to federal court. Pl.’s Opp’n at 37. The court takes no position on Plaintiff’s contention that the AFBCMR is powerless to remove the LORs from his personnel file. What is clear is that Plaintiff could have filed a MWPA complaint with the Air Force’s Inspector General, but he did not do so. See *Appleby v. Harvey*, 517 F.Supp.2d 253, 261–62 (D.D.C.2007) (holding that Army’s Inspector General has the legal authority to investigate alleged violations of the MWPA by members of the National Guard of the United States). Accordingly, Plaintiff’s challenge to the LORs under

the MWPA and DOD Directive 7050.06 must be dismissed for failure to exhaust available remedies.

G. Plaintiff's Various Claims Challenging Security-Related Actions

*16 [47] Plaintiff challenges the security-related actions taken against him—the opening of the SIF and the revocation of his security clearance—on both constitutional and statutory grounds. Those claims, however, are nonjusticiable under *Department of the Navy v. Egan*, 484 U.S. 518, 108 S.Ct. 818, 98 L.Ed.2d 918 (1988).

In *Egan*, the Supreme Court held that an administrative review board lacked the authority to review the merits of the Navy's decision to revoke an employee's security clearance. *Id.* at 526–27, 108 S.Ct. 818. The Court acknowledged the ordinary presumption that agency action is reviewable, but declared that the presumption “runs aground when it encounters concerns of national security.” *Id.* at 527, 108 S.Ct. 818. “For ‘reasons ... too obvious to call for enlarged discussion,’ ” the Court stated, “the protection of classified information must be committed to the broad discretion of the agency responsible, and this must include broad discretion to determine who may have access to it.” *Id.* at 529, 108 S.Ct. 818 (citation omitted). For this reason, “it is not reasonably possible for an outside nonexpert body to review the substance of such a judgment and to decide whether the agency should have been able to make the necessary affirmative prediction with confidence.” *Id.*

Our Court of Appeals consistently has barred judicial review when evaluating a plaintiff's claim would require a court to second-guess the merits of a security clearance-related decision. *See, e.g., Foote v. Moniz*, 751 F.3d 656, 659 (D.C.Cir.2014) (affirming dismissal of a Title VII claim because “the decision whether to certify an applicant ... like the decision whether to grant a regular security clearance, is ‘an attempt to predict’ an applicant's ‘future behavior and to assess whether, under compulsion of circumstances or for other reasons, he might compromise sensitive information’ ”) (citation omitted); *Bennett v. Chertoff*, 425 F.3d 999, 1000, 1002 (D.C.Cir.2005) (affirming under *Egan* the dismissal of a Title VII claim, the analysis of which would require “the trier of fact ... to consider the merits of th[e] defense” that the plaintiff was fired because of “her inability to sustain a security clearance”) (citations omitted) (internal quotation marks omitted); *Ryan v. Reno*, 168 F.3d 520, 524 (D.C.Cir.1999) (“[U]nder *Egan* an adverse employment

action based on denial or revocation of a security clearance is not actionable under Title VII”).

A straightforward application of these cases requires dismissal of Plaintiff's statutory claims under RFRA and the APA that challenge both the opening of the SIF and the revocation of Plaintiff's security clearance. Any judicial inquiry into those decisions necessarily would require the court to ensnare itself in the “predictive judgment” of those with “expertise in protecting classified information.” *Rattigan v. Holder*, 689 F.3d 764, 767 (D.C.Cir.2012) (citation omitted) (internal quotation marks omitted). Indeed, this case is nearly on all fours with *Egan*, as *Egan* itself disallowed review of a revocation of a security clearance, the very type of decision that Plaintiff seeks to challenge here.

Plaintiff attempts to escape from under *Egan* by arguing that he “is not asking the court to examine the merits of the Defendants' decision to revoke his security clearance.... Rather, Plaintiff's claims are regarding the constitutional violations that occurred in the decision making process to suspend the clearance and open the SIF.” Pl.'s Reply at 11. But the court already has held that Defendants' actions did not violate Plaintiff's First Amendment speech and free exercise rights. Therefore, the court need not decide to what extent Plaintiff's constitutional challenges would enable him to avoid the *Egan* bar. *See Ryan*, 168 F.3d at 524 (observing that *Egan* “does not apply to actions alleging deprivation of constitutional rights”).

H. Plaintiff's Privacy Act Claim

*17 [48] [49] Plaintiff's final claim arises under the Privacy Act, 5 U.S.C. § 552a, and consists of two distinct grievances. Plaintiff first asserts that Defendants' refusal to “expunge” the LORs from his personnel file violated the Privacy Act.⁸ Compl ¶¶ 80–82. That claim is disposed of easily. Section 552a(d) provides that “[a]n individual seeking amendment of a record must ... request amendment of the record [by the concerned agency] and, if the request is denied, request review [within the concerned agency] of the denial.” *Blazy v. Tenet*, 979 F.Supp. 10, 18 (D.D.C.1997); *see also* 5 U.S.C. § 552a(d)(2)–(3). Only after following this two-step process may an individual seek judicial review. *Leighton v. C.I.A.*, 412 F.Supp.2d 30, 35 (D.D.C.2006). Though Plaintiff's counsel did request that the LORs be expunged in their entirety, *see* AR at 26, 90; Pl.'s Opp'n at 39, Plaintiff has not shown that the requests were made under the Privacy Act or were directed to the proper official under

applicable Air Force regulations, *see* Air Force Instruction 33–332, § 2.8 (2015) (requiring that Privacy Act requests be directed to the systems manager of the records in question).⁹ Further, Plaintiff has not alleged or presented any evidence indicating that he sought administrative review of the denial of his requests for expungement. *See* Owen Decl., ECF No. 14–6, ¶ 2. His Privacy Act claim for amendment of records therefore is dismissed for failure to exhaust administrative remedies.¹⁰

[50] Plaintiff's second Privacy Act claim is unrelated to the first. Plaintiff asserts that a UTANG public affairs officer improperly disclosed private medical information when responding to a press inquiry. Compl. ¶¶ 83–85. Some background is in order. On July 19, 2013, a story appeared on the internet reporting that, as a result of the Email and the Air Force's initial decision to rescind Plaintiff's six-year reenlistment contract, he lost his health care insurance. His wife, who was suffering from cancer, depended on the insurance for her treatment. Mem. in Opp'n to Pl.'s Mot. for Summ. J., ECF No. 19, at 29. The story quoted Plaintiff's counsel as stating, "Tobias' [] earlier actions in pulling the six-year contract led to a break in service and a loss of benefits." *Id.* In August 2013, a "concerned citizen" emailed Utah's governor criticizing Tobias' decision to rescind the contract and asking the governor to prevent such future "abuses." AR at 185. Lt. Colonel Hank McIntire, UTANG's Public Affairs officer, responded to the citizen's inquiry. In an email that Plaintiff now asserts violated the Privacy Act, McIntire wrote:

Media reports and Tech. Sgt. Wilson's attorney have inaccurately claimed that Tech. Sgt. Wilson's health insurance benefits were discontinued as a direct result of his e-mail regarding the West Point chapel. Due to privacy laws and possible litigation by Tech. Sgt. Wilson, we are limited in the amount of information we are able to share here. However,

the discontinuance of his medical benefits was not tied—neither directly nor indirectly—to command action; rather, the benefits were discontinued for other reasons that were completely within Tech. Sgt. Wilson's control.

Id. at 184. Plaintiff argues that McIntire's email violated the Privacy Act, not because it disclosed a break in coverage due to the contract rescission, but because it disclosed "a short interruption in benefits arising out of a dispute between Tricare and Plaintiff, that was later corrected. This was private medical information *not previously disclosed outside of the agency.*" Pl.'s Opp'n at 40.

*18 Plaintiff's argument is utterly confounding. Apparently, he believes that the statement "the benefits were discontinued for other reasons" amounted to an unlawful public disclosure of a dispute that he had with his insurer. Even if by "for other reasons" McIntire meant Plaintiff's dispute with TriCare—which is not at all established on this record—his email cannot plausibly be read to reveal what Plaintiff claims. Nowhere is TriCare mentioned. Nowhere is a dispute mentioned. And nowhere is a dispute with TriCare mentioned. McIntire's email did not disclose, let alone improperly disclose, information that is protected under the Privacy Act. Judgment therefore will be entered in favor of Defendants on Plaintiff's Privacy Act claim.

IV. CONCLUSION

For the foregoing reasons, the court grants Defendants' Motion to Dismiss and for Summary Judgment in its entirety and denies Plaintiff's Motion for Summary Judgment in its entirety. A separate Order accompanies this Memorandum Opinion.

All Citations

--- F.Supp.3d ----, 2015 WL 5952109, 2015 IER Cases 336,427

Footnotes

- 1 Original Defendant Eric Fanning was sued in his official capacity as Acting Secretary of the Air Force. Since this action was filed, Deborah Lee James was appointed Secretary of the Air Force and replaced Fanning as a named Defendant in this case.
- 2 The court presumes that James, Clarke, and Burton are sued in their official capacities as Plaintiff does not assert that they were involved in any of the allegedly unlawful actions that are before the court. Tobias was involved in several of those

actions, but Plaintiff has not made clear whether he is suing Tobias in his personal or his official capacity. For purposes of addressing Plaintiff's and Defendants' Motions, however, the capacity in which Tobias is sued is of no consequence.

3 Although there were no administrative proceedings in this matter, Defendants have filed an "Administrative Record" containing 188 pages of documents relevant to the case. ECF No. 7. When citing to the Administrative Record, the court has used the page numbers provided by ECF.

4 Neither party sought discovery before filing its dispositive motion.

5 Because Plaintiff failed to establish that a government action substantially burdened his exercise of religion, the court need not address in detail whether the issuance of the First LOR was in furtherance of a compelling governmental interest and was the least restrictive means of furthering that interest. Nevertheless, the court observes that RFRA "was enacted against a known backdrop of longstanding precedent involving judicial deference to military authorities," *Singh v. McHugh*, --- F.Supp.3d ---, ---, No. 14-cv-1906, 2015 WL 3648682, at *12 (D.D.C. June 12, 2015), and that there is a "substantial Government interest ... in maintaining the respect for duty and discipline so vital to military effectiveness," *Brown v. Glines*, 444 U.S. 348, 348, 100 S.Ct. 594, 62 L.Ed.2d 540 (1980); see also *Rigdon v. Perry*, 962 F.Supp. 150, 162 (D.D.C.1997) (stating that a "politically-disinterested military [and] good order and discipline ... are compelling governmental interests"). Particularly given that Plaintiff previously was counseled for personal use of his military email account, the court finds that the issuance of the First LOR was in furtherance of a compelling governmental interest and was a reasonable exercise of the discretion afforded to the military in matters of good order and discipline.

6 Plaintiff also claims that AF 1-1 is "inconsistent with ... RFRA and the 2013 NDAA as implemented by DOD Directive 1300.17." Pl.'s Mot at 26. The court's conclusion that Plaintiff lacks standing to challenge the constitutionality of AF 1-1 disposes of those claims as well.

7 Plaintiff clarified in his Opposition Brief that he "does not attempt to state a private cause of action... under the [MWPA]. Rather, Plaintiff's Complaint moves for relief under the implementing DOD directives violated by Defendant." Pl.'s Opp'n at 35. Because Directive 7050.06 also does not create a private cause of action, and because Plaintiff addressed this claim in the APA sections of his filings, the court interprets this claim as one challenging the LORs under the APA for failure to adhere to DOD Directive 7050.06.

8 Only Defendants have moved for summary judgment on this aspect of Plaintiff's Privacy Act claim. *Compare* Defs.' Mot. at 36-39 with Pl.'s Mot. at 40-41.

9 Available at http://static.e-publishing.af.mil/production/1/saf_cio_a6/publication/afi33-332/afi33-332.pdf.

10 Alternatively, Plaintiff has failed to state a records correction claim under the Privacy Act, because he has not shown that the LORs contain any inaccurate facts. See *Leighton*, 412 F.Supp.2d at 33, 36-37 (stating that "[t]he Privacy Act generally provides a means for individuals to seek removal of any records in their personnel file that contain inaccurate facts.... [A]ctions under the Privacy Act are not sustainable if they seek to remove subjective or opinion-oriented statements in the person's file.").