

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:16-cv-00654-BO

U.S. EQUAL EMPLOYMENT )  
OPPORTUNITY COMMISSION, )  
) )  
Plaintiff, )  
) )  
v. )  
) )  
BOJANGLES’ RESTAURANTS, INC., )  
) )  
Defendant. )

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**PLAINTIFF’S APPENDIX TO LOCAL  
CIVIL RULE 56.1 STATEMENT OF  
MATERIAL FACTS**

Pursuant to Local Civil Rule 56.1(a)(4), Plaintiff U.S. Equal Employment Opportunity Commission (the “EEOC” or “Commission”), submits its Appendix to Local Civil Rule 56.1 Statement of Material Facts.

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Filed this the 17<sup>th</sup> day of August, 2017.

Respectfully submitted:

U.S. EQUAL EMPLOYMENT  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of August, 2017, I electronically filed the above **PLAINTIFF PLAINTIFF'S APPENDIX TO LOCAL CIVIL RULE 56.1 STATEMENT OF MATERIAL FACTS** with the Clerk of Court using the CM/ECF system, which automatically sends notification of such filing to counsel of record at the email addresses listed below:

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**ATTORNEYS FOR PLAINTIFF**

# **APPENDIX 1**

IN THE UNITED STATES DISTRICT COURT  
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WESTERN DIVISION  
5:16-cv-00654-BO

U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,  
Plaintiff,

-vs-

BOJANGLES' RESTAURANTS, INC.,  
Defendant.

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DEPOSITION

OF

JONATHAN WOLFE

April 27, 2017

Charlotte, North Carolina

MICHELLE S. THOMPSON  
Certified Verbatim Reporter-Master  
THOMPSON & MILLS COURT REPORTERS  
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1 "We are excited that you have joined the Bojangles'  
2 team. By signing your initials below, you  
3 acknowledge that you have been informed of the  
4 company's policies, procedures and the expectations  
5 of your employment with the company." You read  
6 that, of course, before you signed the document,  
7 didn't you?

8 A. Yes.

9 Q. And you were informed of Bojangles' policies,  
10 procedures and expectations before you signed the  
11 document, weren't you?

12 A. No.

13 Q. The first item on the list is, "Reviewed the  
14 orientation and on-boarding schedule." Ms. Riggins  
15 reviewed that with you, didn't she?

16 A. No. I don't even know what that is.

17 Q. The third item reads, "Harassment/discrimination  
18 policy, fraternization, employment of relatives."  
19 Ms. Riggins covered that information with you,  
20 didn't she?

21 A. No. Ms. Riggins gave me a packet full of  
22 paperwork. She never -- it was in an envelope.  
23 She never opened it or disclosed what was in the  
24 packet.

25 Q. Did you review the paperwork she gave you?

1 A. Once I got home, yes.

2 Q. Did you read it before or after you signed this  
3 document?

4 A. After.

5 Q. Why did you wait to read it after you signed the  
6 document?

7 A. Because she didn't give it to me till after.

8 Q. Didn't give it to you until after what?

9 A. After signing the document.

10 Q. Did you read all the materials she gave you?

11 A. All of it, no.

12 Q. The sixth item is, "Grooming policy: hair, jewelry,  
13 nails, tattoos and hygiene." Did you read  
14 Bojangles' grooming policy?

15 A. Yes.

16 Q. Did you ever discuss that with Ms. Riggins?

17 A. No.

18 Q. The next item reads, "Bojangles' Uniform Policy;  
19 shirt, pants, shoes, hat and name tag." Did you  
20 read that policy?

21 A. She explained that I needed to have my shirt,  
22 pants, name tag and hat or visor to work, with a  
23 black belt.

24 Q. When did she explain that to you?

25 A. On the day of being hired.

1 A. Correct. I figured it was an equal employment  
2 opportunity where I'd be able to be myself and be  
3 at work.

4 MR. JOHNSON: Why don't we take a  
5 break.

6 (RECESS)

7 Q. (By Mr. Johnson) I hand you a document marked as  
8 Exhibit 28. The heading on this document reads  
9 "handbook disclaimer and acknowledgment." Is that  
10 your printed name and your signature at the bottom  
11 of the document?

12 A. Yes.

13 Q. And did you date it May 4, 2012?

14 A. Yes.

15 Q. So you signed this on the first day of your  
16 employment with Bojangles', correct?

17 A. Correct.

18 Q. This document acknowledges your receipt of the  
19 employee handbook, correct?

20 A. Yes.

21 Q. And did you in fact receive Bojangles' employee  
22 handbook on that date?

23 A. As stated earlier, I received an envelope full of  
24 papers.

25 Q. And the handbook was in the envelope full of

1 papers, wasn't it?

2 A. Yes.

3 Q. Did you read the handbook on that date?

4 A. On that day, no.

5 Q. But you later read it, didn't you?

6 A. Yes.

7 Q. Do you still have a copy of the Bojangles'  
8 handbook?

9 A. I do not.

10 Q. Also on the form marked as Exhibit 28 is the  
11 signature of Ella Riggins. Do you recognize that  
12 signature?

13 A. Yes.

14 Q. And before her signature the form reads, "An  
15 orientation was completed with Jonathan Wolfe.  
16 Completed on 5/4/12." Were you present when Ms.  
17 Riggins sign this document?

18 A. No.

19 Q. Does that refresh your recollection as to whether  
20 Ms. Riggins provided you with an orientation on May  
21 4, 2012?

22 A. It does recollect that she did not. If you can  
23 convert back to Exhibit 26, if you notice my  
24 initials are just at the top, Ms. Riggins stated  
25 that I would just initial the top line and she

1 would put the line down stating that we went over  
2 everything instead of doing as it says, initialing  
3 as we complete each document.

4 Q. Did you have any questions for her about any of  
5 those policies that are shown on Exhibit 26?

6 A. No.

7 Q. I hand you a document marked as Exhibit 29. Is  
8 Exhibit 29 a copy of the Bojangles' handbook that  
9 was included with the materials in the envelope  
10 that you received on May 4, 2012?

11 A. No.

12 Q. In what way is Exhibit 29 different from the  
13 handbook that you received?

14 A. I've never seen this before in my life.

15 Q. But you don't have a copy of the Bojangles'  
16 handbook you did receive back in May of 2012, do  
17 you?

18 A. If this is the handbook, I'm not sure I received  
19 one.

20 Q. Turn, please, to page 11 of this document. On page  
21 11, do you see the section near the bottom under  
22 the heading "personal appearance"?

23 A. Yes.

24 Q. That section continues on to 12 and then page 13,  
25 correct?

1 during the course of discovery?

2 MR. CHURCH: I'll say this is an  
3 identical copy of the handbook that's  
4 been printed out. I'm not sure why it  
5 was printed without the Bates number. I  
6 didn't catch it.

7 MR. JOHNSON: Other than our  
8 electronic document system sometime does  
9 that, but we'll confirm that it's the  
10 same document previously produced with  
11 Bates numbers.

12 MS. STEENBERGH: Is that the same  
13 document previously produced during this  
14 course of depositions as Exhibit 3 to Ms.  
15 Eubanks' deposition?

16 MR. CHURCH: It would be identical  
17 because it's the only handbook that's  
18 been produced in the case, so it would be  
19 identical to the one previously -- I  
20 think we might have two Exhibit 3's in  
21 the case, but I believe that the one  
22 introduced in Ms. Eubanks' deposition  
23 would be identical to this one.

24 MS. STEENBERGH: Thank you.

25 Q. (By Mr. Johnson) I hand you a document marked as

1 Exhibit 30. The title page reads "harassment in  
2 the workplace," and I will represent the document  
3 consists of a series of slides from an online  
4 presentation. Did you attend or participate in  
5 online training at Bojangles' regarding harassment  
6 in the workplace?

7 A. No.

8 Q. Have you ever seen this document before?

9 A. No.

10 Q. Have you ever seen these slides before?

11 A. No.

12 Q. You were asked to view a presentation regarding  
13 harassment in the workplace online when you started  
14 employment, weren't you?

15 A. No.

16 Q. Are you aware that other Bojangles' employees  
17 received anti-harassment training in an online  
18 presentation?

19 A. No, I'm not aware.

20 Q. Aside from Exhibits 26, 27, 28 and 29, do you  
21 recall any of the other documents that were in the  
22 package or the envelope of papers that you were  
23 given on your first day of employment --

24 MS. STEENBERGH: Object to the form.

25 Q. (By Mr. Johnson) -- May 4, 2012?

1 Q. When you entered the restaurant on February 21  
2 where did you go?

3 A. To the counter.

4 Q. Who did you see at the counter?

5 A. Shimika and Janice.

6 Q. Shimika Singleton?

7 A. Yes, sir.

8 Q. And you don't recall Janice's last name, is that  
9 right?

10 A. Correct.

11 Q. Prior to coming to the restaurant on that date  
12 where had you been?

13 A. Home.

14 Q. And that's home at the Cossack Lane location?

15 A. Yes.

16 Q. With whom did you speak in the restaurant on that  
17 day?

18 A. Shimika and Janice.

19 Q. What happened?

20 A. I walked into the store with yarn braided into my  
21 hair. Shimika had stated that she liked them.  
22 Then Janice stated that Ella was not going to let  
23 me work like that and that I disgust her.

24 Q. Did Shimika say anything else?

25 A. "Don't worry about her, boo."

1 Q. Did Janice say anything else?

2 A. At that point in time, no.

3 Q. What did you say?

4 A. I didn't say really much.

5 Q. Did you say anything?

6 A. I asked Janice what did she mean by I disgust her.

7 Q. What did Janice say?

8 A. I knew better come in -- I knew better than coming  
9 in looking like that.

10 Q. What happened next?

11 A. Ella came from the back of the store, and as she  
12 approached the counter she was shaking her head in  
13 disagreement, and then the first word she said was  
14 "no." And I asked her what did she mean, and she  
15 told me that if I wanted to continue with being  
16 employed that I need to remove my braids.

17 Q. In fact, she said you need to tie it up, right?

18 A. No. She told me I needed to remove them.

19 Q. Now these braids were artificial hair extensions,  
20 weren't they?

21 A. Yes.

22 Q. What were they made out of?

23 A. Yarn.

24 Q. And you understood that at all times Bojangles'  
25 policy was that any employee's hair had to fit

1 Q. Did anyone witness your conversation with Ms.  
2 Riggins at that point?

3 A. Just those present, Shimika and Janice.

4 Q. Was anyone there working?

5 A. Of course there was people working, but I don't  
6 know if anybody else witnessed it.

7 Q. Do you know who else was working at the time?

8 A. I don't.

9 Q. Was Ms. Riggins surprised to see your hair with  
10 braids?

11 A. No.

12 MS. STEENBERGH: Object to the form.

13 A. No. That was not the first time I've entered the  
14 restaurant.

15 Q. (By Mr. Johnson) What were you wearing on February  
16 21?

17 A. I don't remember.

18 Q. Is that the first time you'd come to the restaurant  
19 with braids?

20 A. I believe before I came with a wig, so with braids,  
21 yes.

22 Q. Had you ever worn a wig to the restaurant?

23 A. Yes.

24 Q. You're wearing a wig today, are you not?

25 A. Correct.

1 Q. Did anyone witness your conversation with Ms.  
2 Riggins at that point?

3 A. Just those present, Shimika and Janice.

4 Q. Was anyone there working?

5 A. Of course there was people working, but I don't  
6 know if anybody else witnessed it.

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16 21?

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18 Q. Is that the first time you'd come to the restaurant  
19 with braids?

20 A. I believe before I came with a wig, so with braids,  
21 yes.

22 Q. Had you ever worn a wig to the restaurant?

23 A. Yes.

24 Q. You're wearing a wig today, are you not?

25 A. Correct.

1 Q. When you wore a wig to the restaurant, Ms. Riggins  
2 didn't complain about that, did she?

3 A. Yes, she did. She told me I was not allowed to  
4 enter the store dressed like that ever again.

5 Q. That you were not allowed to enter the store --

6 A. Dressed like that ever again.

7 Q. When do you say Ms. Riggins made that comment to  
8 you?

9 A. It was probably in October before I transferred to  
10 the Corporation Drive location.

11 Q. The October event you've just described, were you  
12 reporting to work that day?

13 A. No.

14 Q. What was your business in the store on that day in  
15 about October?

16 A. I believe I ate that day.

17 Q. Do you recall if you did eat that day?

18 A. I don't recall if I did eat that day.

19 Q. But you weren't working, is that correct?

20 A. Correct.

21 Q. Did you come to the store alone that day in  
22 October?

23 A. To my knowledge, yes.

24 Q. How did you get there?

25 A. By vehicle.

1 Q. Whose vehicle?

2 A. Ms. Hall's.

3 Q. Did she drive you?

4 A. No.

5 Q. She allowed you to drive her vehicle?

6 A. Yes.

7 Q. Who was present in the store on that day?

8 A. I don't remember everybody. I just know I seen  
9 Ella's face.

10 Q. Do you remember anybody who was there?

11 A. I don't, off the top of my head.

12 Q. What were you wearing?

13 A. I believe a dress.

14 Q. But you're not sure, is that right?

15 A. No.

16 Q. And you believe you had a wig on, is that right?

17 A. I know I had a wig on.

18 Q. The same wig you're wearing today?

19 A. No.

20 Q. Is that the only time you ever entered the Owen  
21 Drive store wearing a wig?

22 A. Yes. After Ella basically bashed me and  
23 embarrassed me, I didn't want to go back up there.

24 Q. Is that the only time you ever entered the Owen  
25 Drive store when you may have been wearing a dress?

1 A. No. It wasn't really much of the conversation.

2 She said what she said.

3 Q. What did you say?

4 A. I didn't really say anything. I just asked what  
5 was wrong with what I had on.

6 Q. After that conversation with Ms. Riggins, did you  
7 complain to anyone about it?

8 A. I believe I complained to Ms. Sharon, about more  
9 than just that incident, though.

10 Q. When did you say you complained to Sharon?

11 A. I don't remember exactly when.

12 Q. Was it on the same day as the conversation with Ms.  
13 Riggins?

14 A. No.

15 Q. Was it within the same week?

16 A. I don't remember.

17 Q. Was it within the same month?

18 A. I don't remember.

19 Q. When you say you'd complained to Sharon, did you do  
20 that in person or by phone?

21 A. By phone.

22 Q. Did you call her?

23 A. No. I had a co-worker to have her to call the  
24 store.

25 Q. Who was the co-worker?

1 A. Shimika.

2 Q. What did you say to Shimika?

3 A. At the time I was very upset. I was crying,  
4 because that was not the first incident that  
5 happened. An incident had involved another co-  
6 worker. His name was Marquise. He was telling me  
7 that I was gay and I should kill myself because I  
8 was going to hell. So at that point in time the  
9 manager on duty, Jermel, said he couldn't -- there  
10 was really not much he could do. And I asked him  
11 if he could call Ella, and she said she wouldn't do  
12 anything because she wasn't in the store. So then  
13 on my break I called Shimika, still crying, and I  
14 told her -- I was like, "Hey, Shimika, look,  
15 Marquise has been bothering me all day. I can't  
16 continue my work there like this. Is there any way  
17 you can contact Sharon and ask her to call the  
18 store?"

19 Q. And Sharon called the store after that?

20 A. Yes.

21 Q. Do you recall in what year that took place?

22 A. It had to be 2012, beginning of 2013.

23 Q. Do you recall what month that took place?

24 A. I don't. October, roughly.

25 Q. Did Sharon call the store?

1 A. Yes, she did.

2 Q. And you spoke with her?

3 A. Yes.

4 Q. What do you say you said to Sharon in that phone  
5 conversation?

6 A. I told her basically what I just said, along the  
7 lines of what occurred with Marquise, and I also  
8 had let her know that like, hey, look, Ella was  
9 telling me that she hired me as a man, I got to  
10 stay a man if I'm going to work for her. And she  
11 told me that she would launch an investigation and  
12 I was not to repeat anything that I've told her to  
13 anybody but her. But she never launched an  
14 investigation.

15 Q. Where were you when you had the conversation with  
16 Sharon?

17 A. At work.

18 Q. Where at work?

19 A. I'm -- I believe I was actually standing beside the  
20 biscuit warmer, because she knew -- because when  
21 she called the store phone, Shimika gave me the  
22 phone, and so I kind of paused where I was at and  
23 talked to her.

24 Q. Shimika gave you her phone?

25 A. No, I'm sorry. It wasn't Shimika. I believe it

1 was Jermel gave me the phone and said it was Sharon  
2 for me, and I was standing beside the biscuits,  
3 where the Boberry biscuits and stuff go, and I was  
4 on the phone and I let her know everything that had  
5 happened.

6 Q. Was that the company phone in the store?

7 A. Yes.

8 Q. And you say Jermel gave you the phone?

9 A. Yes.

10 Q. Did Jermel hear your end of the conversation?

11 A. I don't know. He was on drive-through.

12 Q. So he was just a couple feet away from you, right?

13 A. Yes.

14 Q. Was anybody else present who could overhear your  
15 conversation?

16 A. Not that I know of.

17 Q. Who was the manager on duty at that time?

18 A. Jermel.

19 Q. How long do you say this conversation with Sharon  
20 lasted?

21 A. Probably about five minutes.

22 Q. Do you recall anything else that you said in the  
23 conversation?

24 A. That was all she said.

25 Q. Do you recall anything else you said?

1 A. What I said, no. That was basically the gist of  
2 the conversation.

3 Q. Is that the only time you complained to anyone in  
4 Bojangles' management about Marquise?

5 A. No. I complained to Jermel when the incident  
6 happened. When he told me there was nothing that  
7 no one could really do, because Ella wasn't in the  
8 store and not anyone to talk to, that's when I  
9 reached out to Ms. Sharon.

10 Q. Was that the same day that you talked to Sharon?

11 A. Yes, I believe so.

12 Q. Aside from the complaints you've described to  
13 Jermel and to Sharon, did you ever complain to  
14 anyone else in Bojangles' management about  
15 Marquise?

16 A. Ella Riggins.

17 Q. And when do you say you complained to Ella Riggins  
18 about Marquise?

19 A. After talking to Sharon.

20 Q. How long after you talked to Sharon?

21 A. I don't remember, because me and Ms. Riggins didn't  
22 work together too often.

23 Q. I thought you testified you typically worked  
24 daytime hours at the store, is that right?

25 A. Yes, but me and Ms. Riggins didn't work too often.

1 She moved me between shifts. It was more where I  
2 was needed than anything else.

3 Q. Ms. Riggins worked regular daytime hours at the  
4 store, didn't she?

5 A. To my knowledge, no, she wasn't there every day.

6 Q. But when she worked, she was there during daytime  
7 hours, correct?

8 A. Yes.

9 Q. How many conversations did you have with Ms.  
10 Riggins about Marquise?

11 A. Just that one.

12 Q. What did you say to her?

13 A. I told her what had happened with Marquise, what he  
14 had said to me, and I also let her know that I  
15 spoke with Sharon and what Sharon had said to me.  
16 And she told me that then, since I had already took  
17 the complaint up to Sharon, Sharon would  
18 investigate.

19 Q. Do you recall what year it was that you had this  
20 conversation with Ms. Riggins?

21 A. Towards the end of 2012, beginning of 2013. It had  
22 to be before 2013 because it was before I  
23 transferred.

24 Q. Before you were transferred to the Corporation  
25 Drive store?

1 A. Yes, sir.

2 Q. You've described a telephone conversation with  
3 Sharon. Did you ever have any other conversation  
4 with Sharon about your complaints?

5 A. Not until my termination.

6 Q. From this period in or about October 2012 up until  
7 your termination in February of 2013, did you  
8 complain to anyone else in Bojangles' management or  
9 human resources about your treatment at work?

10 A. I didn't talk to anyone in human -- to human  
11 resources department until around my termination.  
12 I believe I spoke with Ms. Eubanks -- I'm not sure  
13 if that's who that was -- around February 21.

14 Q. Were there any other times between October of 2012  
15 and your termination in February 2013 in which you  
16 complained to anyone at Bojangles' human resources  
17 or management about any of your treatment at work?

18 A. No. They told me they were handling it.

19 Q. I want you to turn again to the events on February  
20 21, 2013. Have you described everything that was  
21 said to you by Ms. Riggins and by Ms. Riggins to  
22 you?

23 A. To the best of my ability, yes.

24 Q. After you had this conversation -- well, let me  
25 back up. How long did that conversation last with

1 Ms. Riggins?

2 A. I don't know. It was more of an argument than a  
3 conversation.

4 Q. What did you do after the argument with Ms.  
5 Riggins?

6 A. I left the store.

7 Q. You did what?

8 A. Left the store.

9 Q. Following your argument with Ms. Riggins did you  
10 communicate with anyone else at Bojangles'?

11 A. I'm not sure if that was the day that Sharon called  
12 me and I was going to be transferred or not.

13 Between the 21st and the 27th so much happened it's  
14 hard to recollect when everything happened.

15 Q. What happened to you between the 21st and the 27th?

16 A. First Ms. Riggins told me that I had to remove my  
17 hair if I wanted to continue working with her and I  
18 had to act like a male, dress, walk and talk like a  
19 male. I was involuntarily transferred by Ms.

20 Sharon to the Raeford Road location. I let her  
21 know I did not have transportation to get that far.

22 She told me that going back to the Owen Drive store  
23 was no longer an option because tempers were

24 flared. Then she called me back -- well, first she  
25 tried to terminate me before the whole transferring

1 thing because they told her that I said that she  
2 said it was okay for me to braid my hair, which I  
3 never said. So then she called me back and told me  
4 that she could not terminate me because corporate  
5 told her it was he said/she said, so I was being  
6 involuntarily transferred to Raeford Road.

7 So after that conversation happened, it  
8 probably was like a day or two later that I went  
9 back to the Owen Drive store because me and my --  
10 me and Ms. Hall and her cousin, Kiana, were at  
11 McDonald's eating, and the soda that she wanted --  
12 since we were so close to Bojangles' -- only  
13 Bojangles' sells. It's the cherry drink, the Patio  
14 Cherry or whatever it's called. So I went over  
15 there to get that drink for her.

16 But I had cut my -- I removed my braids and  
17 cut my hair after speaking with Ms. Bowden, Kristin  
18 Bowden of the Raeford Road location. And the way  
19 she asked me, like it was just like she respected  
20 me as a person and who I was, like who I  
21 represented. And she was like, "I'm not saying you  
22 have to, but would you mind?" And because of how  
23 she presented herself to me, I had removed my  
24 braids and cut my hair.

25 So when I walked through the door to order the

1 drink, the cashier at the time, Christy McDonald,  
2 was working and she didn't recognize me at first  
3 and then she looked up -- she did like a double  
4 take. And she said, "I didn't recognize you. What  
5 made you cut your hair?" And I was telling her and  
6 I was like it was just -- I mean like when you  
7 treat people like people you get a better response  
8 than when you treat people ugly. And I was like  
9 it's just the way that Kristin said what she said  
10 to me that made me cut my hair. And like in the  
11 midst of that conversation, Ella Riggins came from  
12 the back of the store and she heard me say, "It's  
13 what Kristin said and how she said it that made me  
14 cut my hair." Ms. Riggins then went on to say,  
15 "You can get out of my store with that." She was  
16 like, "You can head back to Kristin's store." And  
17 I was like, "What?" And she was like, "Like I  
18 said, you get out of my store with that." I said,  
19 "I was just having a conversation and ready to  
20 order something." And she was like, "No, bye,  
21 because I'm not the one you want to play with."

22 And then after that, Ms. Sharon called me back  
23 and told me that I was being terminated for  
24 returning to the Owen Drive store after she told me  
25 I could not return to the Owen Drive store, which

1 she never said. Then that's when I called HR  
2 again, I believe, to try to figure out what was  
3 going on, and I mentioned to whoever I spoke to  
4 about my complaints and whatever was being done,  
5 and that was when I was told that my complaint was  
6 never filed. There was never an investigation  
7 opened on my claim by Ms. Sharon.

8 Q. All right. I'd like to go step by step on some of  
9 the things you just testified about. Let's go back  
10 to your conversation with Sharon about your  
11 transfer to the Raeford Road location.

12 A. You want to talk the termination? That happens  
13 first.

14 Q. You say you were terminated before you had a  
15 conversation about transfer?

16 A. Yes.

17 Q. With whom did you have a conversation in which you  
18 say you were terminated?

19 A. Sharon, to your right.

20 Q. And what was the date of that conversation?

21 A. I don't remember the date. I believe it was around  
22 the 23rd.

23 Q. Where were you when you had that conversation?

24 A. Sitting in the backseat of Ms. Hall's aunt's car.

25 Q. Who was with you?

1 told you you could do your hair. We no longer need  
2 you at Bojangles'."

3 Q. Do you think this may have occurred the same day,  
4 the 21st?

5 A. Yes.

6 Q. What time of day?

7 A. Around noon.

8 Q. Did Sharon call you or did you call Sharon?

9 A. She called me prior to that.

10 Q. What did you say to her in that conversation?

11 A. I didn't have a chance to say anything. She hung  
12 up on me.

13 Q. So at that point did you believe your employment  
14 had been terminated?

15 A. I was told it was terminated, yes.

16 Q. And your employment in fact wasn't terminated, was  
17 it?

18 A. No. She called me back about 30 minutes later.

19 Q. Where were you when she called you back?

20 A. Still at the bank.

21 Q. In the car with Ms. Hall?

22 A. Yes, sir.

23 Q. Who else was with you?

24 A. Ms. Malloy.

25 Q. What did Sharon say to you in that second phone

1 conversation?

2 A. She told me that she could not terminate me because  
3 it was he said/she said, so I was going to be  
4 transferred. I let her -- she told me it would be  
5 the Raeford Road location with Ms. Bowden. I told  
6 her I did not have reliable transportation for the  
7 transfer. She told me that it wasn't an option to  
8 go back to Owen Drive, so I was going to be  
9 transferred anyway. And I -- I object to that  
10 transfer more than once in the phone call. I let  
11 her know on multiple occasions I did not have  
12 transportation.

13 And the phone was on speakerphone and Ms.  
14 Malloy and Ms. Hall both heard it, because in the  
15 incident that had happened between the 21st and the  
16 27th, I kept a witness with me so they can hear  
17 what was being said at all times during the  
18 conversations on both sides.

19 Q. Do you recall anything else that was said in that  
20 conversation that you had with Sharon?

21 A. No.

22 Q. Did you after that conversation report to work at  
23 the Raeford Road location?

24 A. No. I never began there. I was terminated before  
25 I could. So I cut my hair to try to conform to the

1 she told me she would have to look at her schedule  
2 because she didn't have anywhere to fit me on that  
3 week's schedule.

4 Q. Ms. Bowden didn't object to you coming to work at  
5 her store, did she?

6 A. Not that I know of, no.

7 Q. She encouraged you to come to work, didn't she?

8 A. Yes.

9 Q. After your conversation with Ms. Bowden, when did  
10 you next have any communication with anyone in  
11 management of Bojangles'?

12 A. I can't remember if I spoke with Ms. Eubanks first  
13 or Ms. Sharon first.

14 Q. When did you speak with Ms. Eubanks?

15 A. I know I spoke with her on the 21st and I believe I  
16 spoke with her on the 27th.

17 Q. How did you come to speak with Ms. Eubanks on the  
18 21st? Did she call you or did you call her?

19 A. I called her. I actually called the hotline. I  
20 didn't know it was her.

21 Q. You called the hotline number that's in the  
22 employee handbook?

23 A. The one I seen on the poster at Five Guys. I don't  
24 know if it's the same one in the handbook. I mean  
25 -- I'm sorry -- Bojangles', not Five Guys.

1 Q. Did you have the conversation with Ms. Eubanks  
2 before or after Sharon called to tell you about the  
3 transfer to the Raeford Drive location?

4 A. The first time, before.

5 Q. Did you have more than one conversation with Ms.  
6 Eubanks?

7 A. Yes.

8 Q. How many did you have with her?

9 A. Two.

10 Q. In your first conversation with Ms. Eubanks, what  
11 do you say you said to her?

12 A. I don't remember exactly how the conversation went.

13 Q. You don't remember anything about it?

14 A. I don't remember how it went. I know I basically  
15 was going along the lines -- along the lines to let  
16 her know like, hey, like I'm -- I'm being  
17 transferred, I'm being like -- no, it wasn't  
18 transfer. I'm sorry. They'd be like, I don't  
19 know, like look, like this was being said or like  
20 -- I don't remember what I said to her, but I know  
21 I was telling her like basically some of my  
22 problems that I was having at work.

23 Q. But you don't remember any of the particulars of  
24 what you said to her, is that correct?

25 A. I don't.

1 A. I'm not saying it was before the second one. I  
2 just know it was after the first one.

3 Q. And you don't know whether you complained to Ms.  
4 Eubanks about the transfer or not, is that right?

5 A. Yes.

6 Q. What did Ms. Eubanks say to you?

7 A. She basically just kept apologizing that it had  
8 happened and told me that she would get in contact  
9 with the area director or someone to look at what I  
10 was complaining about.

11 Q. Do you recall anything else that was said in that  
12 conversation?

13 A. No.

14 Q. You say you had a second conversation with Ms.  
15 Eubanks, is that right?

16 A. Yes.

17 Q. When did that occur?

18 A. I believe on the 27th.

19 Q. Did you call Ms. Eubanks or did she call you?

20 A. I called her.

21 Q. Which number did you use to call her?

22 A. I don't remember.

23 Q. What time of day did you call her?

24 A. I don't remember.

25 Q. Where were you when you called her?

1 A. I believe at home.

2 Q. Was anyone else present when you called her?

3 A. Ms. Hall.

4 Q. Anyone else?

5 A. At that time, no, other than the kids, I mean,  
6 but --

7 Q. In that second conversation you say you had with  
8 Ms. Eubanks, what did you say to her?

9 A. I was asking her like what could I do because  
10 basically being transferred against my will, and I  
11 had brought up about the complaint after -- that  
12 was I believe the second -- no, the second  
13 conversation was after termination, and I was  
14 letting her know like, hey, look, like I was  
15 supposed to be transferred. Nobody ever told me I  
16 couldn't go back into the store. I mean like I  
17 don't understand why I'm being terminated. And she  
18 said that Sharon had said that she stated that I  
19 was not supposed to enter Owen Drive at all, which  
20 she never told me that. And that I was like, whoa,  
21 if she wants to talk about that, I mean like why  
22 isn't somebody doing anything about what I  
23 complained about? And that's when Ms. Eubanks had  
24 went on to state that Ms. Sharon never filed a  
25 complaint or never started an investigation about

1 any of my accusations. They were just being swept  
2 away.

3 Q. So the second conversation you say you had with Ms.  
4 Eubanks you complained about your termination, is  
5 that right?

6 A. Yes, and my complaints and my mistreatment.

7 Q. Specifically what else did you say to Ms. Eubanks  
8 in that conversation?

9 A. I don't remember specifics.

10 Q. What did Ms. Eubanks say to you?

11 A. That Ms. Sharon had already put my termination in,  
12 that she told me I was not supposed to go into the  
13 Owen Drive store. I did unwillingly (sic) enter  
14 the store and purposely start an argument with Ms.  
15 Riggins and that is why I was being terminated.  
16 But when I entered the store, Ms. Riggins was  
17 nowhere in sight. She was in the back in the  
18 store, so how could I enter a store to purposely  
19 argue with someone I didn't even know was there?

20 Q. You're referring to your entering the store on  
21 February 27, 2013, is that correct?

22 A. Yes. Yes.

23 Q. And that's the day that you say that Ms. Riggins  
24 asked you to get out of the store, is that correct?

25 A. Yes. And she told me that I was not the one that

1 she wanted to play with, basically threatening me.

2 Q. What else do you recall Ms. Riggins saying to you  
3 on that day?

4 A. She told me I can get out of her store with that.  
5 I can go back to Kristin's store because I'm not  
6 the one -- the one that she wants to play with.  
7 That was basically everything she said.

8 Q. Was anyone else present when you had this  
9 conversation with Ms. Riggins?

10 A. Yes, the cashier, Christy McDonald.

11 Q. Anyone else?

12 A. To my knowledge, no.

13 Q. Did you raise your voice in that conversation?

14 A. No.

15 Q. You didn't leave when Ms. Riggins asked you to  
16 leave, did you?

17 A. Yes, I did.

18 Q. In fact, you waited until Ms. Riggins was prepared  
19 to call the police, didn't you?

20 A. No. She never mentioned calling the police. I  
21 said goodbye to the cashier, Christy McDonald, and  
22 turned around and walked out. Never even placed an  
23 order.

24 Q. How long were you in the store on the 27th?

25 A. Probably all of five, six minutes.

1 A. Kiana and Ms. Hall.

2 Q. What do you say Sharon said to you in that call?

3 A. She was telling me that I was terminated for  
4 entering Owen Drive and that basically was the gist  
5 of the conversation. She told me that she -- she  
6 was like, "I told you not to go back to the store.  
7 You didn't listen and you're fired."

8 Q. Were you angry in that conversation?

9 A. No. I was more hurt than angry.

10 Q. Did you object when she said you were fired?

11 A. I didn't have a chance to say much. That was  
12 another --

13 Q. What did you say in the conversation?

14 A. I didn't have a chance to say anything. Before I  
15 could get "why" out, the phone -- click. She's  
16 never really been a person that likes to hear  
17 anybody else's side.

18 Q. Did you communicate with anybody at Bojangles'  
19 after your conversation with Sharon on or about the  
20 27th?

21 A. Yes. I still talk to some of my co-workers from  
22 Bojangles'.

23 Q. You talk to who?

24 A. I talk to some of the Bojangles' employees still  
25 currently now.

1 OPERATOR: I apologize. I am very  
2 sorry. Now let me -- now let me ask a  
3 question regarding this to get some  
4 clarity. Did you used to work in this  
5 store and you work at another one now,  
6 or --

7 MS. WOLFE: Yes, ma'am. I got  
8 transferred to another store because I  
9 did my hair last week and then a big --  
10 they had a big converse -- converse --  
11 converse over there, or whatever, because  
12 I did my hair. And she's like, "You  
13 can't have your hair like that and you're  
14 going to be working on the front line and  
15 everything." I said, "Well, that's  
16 fine." And she's like, "You disgust me,"  
17 because I had my hair (unintelligible).

18 And so there was a big he say/she  
19 say discussion about the whole thing.  
20 And Sharon, which is the area director  
21 over this area, told me that I had to --  
22 she's like, well, they're going -- she  
23 was trying to fire me because was she,  
24 like, well, they could accuse you  
25 (unintelligible) -- and I said, "No, I

1 the way she said it to me, and I said,  
2 yeah, I'll do it for you.

3 And the other unit director was  
4 like, "Well, you can take that back to  
5 her store." And I was like, "Okay. I  
6 was -- I was conversating with a former  
7 co-worker." And then she was like, "And  
8 you can get out of my store with that."  
9 So that's when -- and I was like, "Okay,  
10 fine, I will." I left.

11 OPERATOR: Wow. I am so sorry about  
12 this. I'll let upper management know as  
13 soon as possible. What was the name of  
14 that person that made this comment?

15 MS. WOLFE: The unit director, Ella  
16 Riggins.

17 OPERATOR: Ella Riggins?

18 MS. WOLFE: Yes, ma'am, Riggins, R-  
19 i-g-g-i-n-s. She's the unit director.

20 OPERATOR: What time did this happen  
21 today?

22 MS. WOLFE: How long ago was that?  
23 Probably about -- probably about 15  
24 minutes ago.

25 OPERATOR: So like 11:45 this

1 A. To my knowledge, no.

2 Q. What do you recall telling Ms. Broadway about your  
3 charge?

4 A. I don't remember much.

5 Q. In your testimony this morning you described  
6 several different incidents that occurred during  
7 your employment at Bojangles'. Did you describe  
8 each and every incident in which you claim you were  
9 harassed during your employment at Bojangles'?

10 A. Yes.

11 MS. STEENBERGH: Object to the form.

12 A. Yes. Oh, wait. Sorry. Second thought, no. We  
13 never discussed the incident where Ella Riggins  
14 told me that if I wanted to be on a cash register,  
15 I had to dye my hair back black, because I dyed it  
16 blonde and they never told me that blonde -- she  
17 said blonde was not a natural color for me because  
18 of I was a male, and to be on cashier I needed to  
19 conform to the identity of a male, to be a male,  
20 walk, talk and act like a male.

21 Q. (By Mr. Johnson) When do you say Ms. Riggins had  
22 that conversation with you?

23 A. Around the same time they promoted me to head  
24 cashier, as you stated.

25 Q. And thereafter you did serve as cashier, didn't

1 Q. Correct. Streaked.

2 A. Streaked, no. One solid color. And once again,  
3 one solid natural color.

4 Q. Have you ever dyed your hair multicolor?

5 A. No.

6 Q. Have you ever worn a multicolor wig?

7 A. No, other than these type of colors.

8 Q. Have you now described every incident of alleged  
9 harassment that you can recall while you were  
10 employed at Bojangles'?

11 A. To the best of my knowledge, yes.

12 Q. You never asked Ms. Riggins to call you by a female  
13 name, did you?

14 A. When I did even state that my name was a female  
15 name, she would correct me and say, "That's a him.  
16 You are a boy."

17 Q. You never asked Sharon to call you by a female  
18 name, did you?

19 A. No. I barely worked with Sharon.

20 Q. Now you did work with Sharon during the weeks that  
21 you were assigned to the --

22 A. Corporation.

23 Q. -- Corporate Drive location, correct?

24 A. Yes.

25 Q. In fact, the two of you were there all day every

1 Q. More than a year?

2 A. Possibly.

3 Q. After Valdosta where did you live?

4 A. I moved to Killeen, Texas, with my father.

5 Q. When he returned from Korea, is that correct?

6 A. Yes. Somewhere in the mix we lived in North  
7 Carolina before, but I don't remember the city.

8 Q. Dr. Muehl wrote in her report, "In ninth grade,  
9 DeAshia met an older student at her high school who  
10 identified as a transgender woman and that is when  
11 she realized what it was about herself that was  
12 different." Did you tell Dr. Muehl that?

13 A. Yes.

14 Q. Where were you in high school when you met an older  
15 student who identified as transgender?

16 A. Corpus Cove, Texas.

17 Q. And is that the last place where you attended  
18 school?

19 A. No.

20 Q. Where is the last place you attended school?

21 A. I lived in Georgia and I attended Cook County High  
22 School.

23 Q. Is that the same year?

24 A. No.

25 Q. How long did you attend Cook County High School?

1 A. About six months.

2 Q. Dr. Muehl went on to write, "DeAshia was out as  
3 transgender at school that year, but kept her  
4 gender identity hidden from her father at first."  
5 Did you tell Dr. Muehl that?

6 A. Yes.

7 Q. Which school were you referring to when you told  
8 her that?

9 A. We had moved to El Paso, Texas. I was going to  
10 Chapin High School.

11 Q. Were you also out as transgender when you attended  
12 school at Cook County High School in Georgia?

13 A. Yes.

14 Q. In her report Dr. Muehl wrote, "In her job at  
15 Bojangles' she said her female co-workers referred  
16 to her by feminine pronouns and called her Dee  
17 Dee." Did you tell that to Dr. Muehl?

18 A. Yes.

19 Q. Who were the female co-workers who referred to you  
20 by feminine pronouns and by the name Dee Dee?

21 A. Shimika, Akivia (phonetic), Kiana, from time to  
22 time.

23 Q. In the Facebook messages we reviewed a few minutes  
24 ago, Kiana referred to you as Jonathan, didn't she?

25 A. Yes. How they address me in my face and behind my

1 A. Yes.

2 Q. Did employees at Bojangles' call you by any other  
3 names?

4 A. They called me Dee Dee from time to time.

5 Q. Who called you Dee Dee from time to time?

6 A. Shimika, Kiana, Akivia, those just to name a few of  
7 them.

8 Q. Did Ella Riggins ever hear any of your co-workers  
9 call you Dee Dee?

10 A. Yes.

11 Q. Did Ella Riggins say anything about other co-  
12 workers calling you Dee Dee?

13 A. Yes. She was -- she would always correct them and  
14 say, "His name is Jonathan. That's a boy."

15 Q. During your employment at Bojangles' did any of  
16 your co-workers call you by feminine pronouns such  
17 as she?

18 A. Yes.

19 Q. Who called you by a feminine pronouns such as she?

20 A. As I stated before, people like Shimika, Kiana,  
21 Akivia, they would call me she and refer to me as  
22 Dee Dee from time to time.

23 Q. Did Ella Riggins hear any of your co-workers refer  
24 to you using female pronouns?

25 A. Yes.

1 Q. Did Ella Riggins say anything to your co-workers  
2 when they called you female pronouns?

3 A. Yes. She would always -- like I said earlier, she  
4 would always correct them and tell them that I was  
5 a man. I was -- that man was he, not she.

6 Q. Earlier today in your deposition you talked about  
7 your time at Corporation Drive with Ms. McCullough.  
8 You referred to her as Ms. Sharon, correct?

9 A. Yes.

10 Q. And Ms. Sharon who's in the room with us today?

11 A. Yes.

12 Q. And who has been present today for your deposition  
13 except for the small amount of time when she  
14 stepped out of the room?

15 A. Yes.

16 Q. Okay. When you worked at the Corporate Drive  
17 location with Ms. Sharon, did you ever talk with  
18 Ms. Sharon about the possibility of you staying at  
19 the Corporation Drive location?

20 A. No.

21 Q. Did you ever request Ms. Sharon that you stay at  
22 the Corporation Drive location?

23 A. I told her that I liked that store and I would like  
24 to stay there, but I never requested formally to  
25 stay.

1 Q. Why did you tell Ms. Sharon that you liked the  
2 Corporation Drive location?

3 A. Because people didn't on pick on me or try to  
4 correct me when I identified as a she.

5 Q. Did you tell Ms. Sharon that co-workers at the Owen  
6 Drive store picked on you?

7 A. Yes.

8 Q. What did Ms. Sharon say when you asked her if you  
9 could stay at the Corporation Drive store?

10 A. She told me that we were just there to help open.

11 Q. And you went back to the Owen Drive location?

12 A. Yes.

13 Q. Earlier during your deposition you stated that you  
14 complained to Ella Riggins about Marquise, correct?

15 A. Yes.

16 Q. Did you complain about any other employee or  
17 manager at the Owen Drive location to Ms. Riggins?

18 A. Before me and Ms. Bowden, Kristin, we had an  
19 incident, but like after that incident occurred she  
20 apologized for the incident and told me --  
21 basically she just apologized and told me it would  
22 never happen again, but that incident was where she  
23 told me that I needed to pray, I was going to hell,  
24 and I had let Ms. Ella know that and she would talk  
25 to Kristen. And I'm assuming from the gesture

1 Kristin made that they did talk, and when she told  
2 me it would never happen again it kind of just --  
3 it never happened again.

4 Q. Why did Ms. Bowden say those things to you?

5 A. Because I identified as female and my fellow co-  
6 workers called me she, and she told me that God  
7 made me a man.

8 Q. And during your deposition today you testified that  
9 you complained to Jermel that Marquise was  
10 harassing you, correct?

11 A. Yes.

12 Q. And you complained to Ella that Marquise was  
13 harassing you, correct?

14 A. Yes.

15 Q. And you complained to Ella that Ms. Bowden was  
16 harassing you, correct?

17 A. Yes.

18 Q. And you complained to Ms. Sharon that Marquise was  
19 harassing you, correct?

20 A. Yes.

21 Q. And you complained to Ms. Sharon that Ella was  
22 harassing you, correct?

23 A. Yes.

24 Q. And you complained to Ms. Sharon that Kristin  
25 Bowden was harassing you, correct?

1 A. To my knowledge, no, because it never happened  
2 again after she apologized for it.

3 Q. Okay. And you complained to Ms. Eubanks that Ms.  
4 Riggins harassed you, correct?

5 MR. JOHNSON: Objection to the form.

6 A. Yes.

7 Q. (By Ms. Steenbergh) And other than Ms. Riggins  
8 talking to Ms. Bowden, what other steps did  
9 Bojangles' take to address your complaints of  
10 harassment?

11 A. Ms. Sharon told me that she would open an  
12 investigation, that I was not supposed -- I was not  
13 to speak to anyone but her about what we had talked  
14 about.

15 Q. And you subsequently learned that Ms. Sharon had  
16 not in fact opened an investigation?

17 MR. JOHNSON: Objection to the form.

18 A. Yes.

19 Q. (By Ms. Steenbergh) And who told you that Ms.  
20 Sharon had not opened an investigation?

21 A. Ms. Jeannine Eubanks.

22 Q. During your employment with Five Guys, have any of  
23 your former co-workers from Bojangles' come in to  
24 the Five Guys restaurant?

25 A. Yes.

1 A. Correct.

2 Q. If you'll take a look at Exhibit 35 for me. Did  
3 you contribute anything to the document that's been  
4 marked as Exhibit 35?

5 A. No.

6 Q. In fact, you have not seen Exhibit 35 prior to your  
7 deposition today, correct?

8 A. Correct.

9 Q. You are not a party to the lawsuit that the EEOC  
10 has brought against Bojangles, correct?

11 A. Correct.

12 Q. And you are aware that the EEOC represents the  
13 public interest, correct?

14 MR. JOHNSON: Objection to the form.

15 A. Yes.

16 Q. (By Ms. Steenbergh) As you stated earlier when  
17 discussing Dr. Muehl's report, you identify as a  
18 heterosexual female, correct?

19 A. Yes.

20 Q. And you identify as a transgender female?

21 A. Currently, yes. Once transitioning, no.

22 Q. What's transitioning?

23 A. Changing of the sex.

24 Q. You have not biologically transitioned, correct?

25 A. No, I have not.

1 Q. Do you intend to biologically transition?

2 A. I do.

3 Q. So from a biological standpoint you are technically  
4 and legally a male, correct?

5 A. Legally, yes.

6 Q. Do you 100 percent of your time present as female?

7 A. In the way I dress, no. Identify, yes.

8 Q. And there's a difference in presenting and  
9 identifying, correct?

10 A. Correct.

11 Q. Did you 100 percent of the time present as female  
12 in 2015?

13 A. If it wasn't a legal issue, no.

14 Q. What about 2014?

15 A. Same.

16 Q. 2013?

17 A. No.

18 Q. In 2012?

19 A. No.

20 Q. Why not?

21 A. For one, legal purposes, professional reasons. And  
22 then like in, I believe, Exhibit 39, some of those  
23 -- some of those photos were taking -- taken and  
24 sent to my fiancé in some of his clothes, and he  
25 thought it was cute, so I posted on Facebook.

1 Q. Is your gender identity a total binary?

2 A. Can you rephrase the question?

3 Q. Sure. Do you identify 100 percent as a female or  
4 do you still embrace some of your male aspects?

5 A. From time to time I embrace some of my male  
6 aspects.

7 Q. Why is that?

8 A. Because technically and legally I am male.

9 Q. No further questions.

10

11 BY MR. JOHNSON

12 Q. Ms. Wolfe, you testified a moment ago in response  
13 to the questions from Ms. Steenbergh that you had  
14 complained to Ms. Eubanks about Ella Riggins; is  
15 that true?

16 A. Yes.

17 Q. When did you say anything to Ms. Eubanks about Ella  
18 Riggins?

19 A. I believe it was on February 27 when me and Ms.  
20 Eubanks had a more in-detail conversation when I  
21 was letting her know everything that was going on.  
22 I asked her about my claim being filed from Ms.  
23 Sharon, and I told her it like nobody's doing  
24 anything about what's happening to me, but you guys  
25 are so quick to terminate me.

# **APPENDIX 2**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

Case No. 5:16-cv-00654-BO

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U.S. EQUAL EMPLOYMENT )  
OPPORTUNITY COMMISSION, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
BOJANGLES' RESTAURANTS, INC., )  
 )  
Defendant. )

---

DEPOSITION  
OF  
ELLA RIGGINS

Taken at:

Robinson, Bradshaw & Hinson, P.A.  
101 North Tryon Street, Suite 1900  
Charlotte, North Carolina

On Wednesday, April 26, 2017

REPORTER: CHRISTINE A. TAYLOR, RPR  
Notary Public

1 Q. How often do you speak with Ms. Eubanks?

2 A. I don't. Only if I need to.

3 Q. Have you ever received any training from Ms. Eubanks?

4 A. When we went to Bo U., that's when you first get hired  
5 and get trained, yeah.

6 Q. When did you go to Bo U.?

7 A. 2004 when I came back.

8 Q. Have you attended Bo U. at any time since 2004?

9 A. No.

10 Q. Did you receive any harassment specific training when  
11 you attended Bo U.?

12 A. Yes.

13 Q. Can you describe that training for me?

14 A. They went over handbook as far as harassment policies,  
15 who to contact, what to do, and that was in 2004.

16 Q. It's in 2004, you can't remember?

17 A. I can't remember what word for word she said.

18 Q. But that training was delivered by Ms. Eubanks;  
19 correct?

20 A. I know it was delivered. I don't know if it was her.  
21 It was a lot of people speaking, so I can't tell you  
22 who said what.

23 Q. Approximately, how long did the training on harassment  
24 last?

25 A. I think everybody spoke for an hour.

1 Q. How many people spoke on harassment?

2 A. Just one person.

3 Q. So, approximately, one person speaking for about one  
4 hour on harassment?

5 A. Yes.

6 Q. Have you received any training on harassment since you  
7 attended Bo U. in 2004?

8 A. I want to say yes, we did. We had a -- we did have a  
9 class on that when they talked about it at one of our  
10 UD conferences.

11 Q. One of your -- what conference?

12 A. Unit director conferences.

13 Q. When was this training that you're referencing at the  
14 unit director conference?

15 A. About -- say maybe five years ago.

16 Q. Would you say that this conference took place in 2011?

17 A. No, I wouldn't say. I don't know.

18 Q. 2012?

19 A. I can't remember.

20 Q. Was it before or after you terminated Ms. Wolfe?

21 MR. JOHNSON: Objection to the form.

22 Q. Yeah, I'm going to correct that. Was it before or  
23 after Ms. Wolfe was terminated?

24 A. Before.

25 Q. If Ms. Wolfe was terminated in February 2012, does

1 that help you better recollect the time that you  
2 attended this training at the UD conference?

3 A. Maybe it was the first year that I was a UD. So that  
4 would have been when I was at Raeford Road. So that  
5 was -- that was, I guess, around 2010.

6 Q. And who delivered the training at the UD conference?

7 A. It was a lot -- a lot of people.

8 Q. Specifically, the harassment portion.

9 A. I don't know who it was that delivered it.

10 Q. How long --

11 A. It was different classes.

12 Q. When you were at the UD conference, in addition to  
13 harassment, what other things were you trained on?

14 A. We were trained on the new system as far as  
15 K-Chemicals. We did team building. I mean, it was  
16 three days over there with the different classes every  
17 day.

18 Q. Where did this training occur?

19 A. Camp Kanuga.

20 Q. Where is that?

21 A. I don't know. We just -- I just rode.

22 Q. Is it in North Carolina?

23 A. It's in the mountains in North Carolina somewhere.

24 Q. And Ms. Irwin, she's the area director over the area  
25 that includes the Owen Drive restaurant; correct?

1 Q. What's a Show Bo?

2 A. It's a form of an inspection where they focus on the  
3 customers' view of things and we get a grade on it.

4 Q. Is Ms. Irwin your direct supervisor?

5 A. Yes.

6 Q. When you were at the Owen Drive store, there was a  
7 unit -- or assistant unit director named Janice  
8 Locklear; correct?

9 A. Yes.

10 Q. Did you hire Ms. Locklear?

11 A. No.

12 Q. Who hired Ms. Locklear?

13 A. I don't know. She was there already. I met her at  
14 Raeford Road. She came with me from Raeford Road.

15 Q. Did you have any impact on Ms. Locklear transferring  
16 from Raeford Road to Owen Drive?

17 A. Yes.

18 Q. Can you describe that for me?

19 A. I asked them can I bring Janice with me and that would  
20 be if I -- if I took Owen Drive, could I bring Janice  
21 with me.

22 Q. And why did you want to bring Janice with you?

23 A. Because Janice was one person I could trust that could  
24 push service and focus on inventory just like I do.

25 Q. When you and Janice were working together at the

1 Q. I get it. That's what I was seeking clarification,  
2 okay. Are you close with your brother-in-law?

3 A. Yes.

4 Q. How often do you talk to your brother-in-law?

5 A. Every -- well, it was every day.

6 Q. Do you visit with your brother-in-law?

7 A. Yeah, he comes every day to eat.

8 Q. What's your personal opinion on transgender  
9 individuals?

10 MR. JOHNSON: Objection to the form.

11 A. I don't have -- I don't have one. I mean --

12 Q. Do you believe that if an individual identifies as  
13 transgender, there's something unnatural with them?

14 MR. JOHNSON: Objection to the form.

15 A. No.

16 Q. Did you believe Jonathan Wolfe to be a heterosexual  
17 male?

18 A. When I hired him.

19 Q. Why did you perceive Jonathan Wolfe to be a  
20 heterosexual male when you hired him?

21 A. Because I perceive everybody to be whatever they say  
22 they are.

23 Q. At some point did your perception of Ms. Wolfe change?

24 A. Probably, yeah, about six months in.

25 Q. Six months after you hired Ms. Wolfe?

1 A. Yes.

2 Q. Why did your perception of Ms. Wolfe change?

3 A. Because he showed me a picture of him going to a  
4 contest.

5 Q. What was in this picture? Describe this picture for  
6 me.

7 A. He just wanted me to see the contest he entered for  
8 dressing up.

9 Q. What do you mean by "dressing up"?

10 A. Dressing -- he had dressed up as a woman.

11 Q. Do you remember what Ms. Wolfe was wearing in this  
12 picture?

13 A. Yeah. A miniskirt and some fishnet stockings or  
14 something like that.

15 Q. What did Ms. Wolfe's hair look like in this picture?

16 A. Had a wig on. Because I said I like the wig.

17 Q. Was this the first time that Ms. Wolfe had showed you  
18 a picture of her dressed as a woman?

19 A. Yes, because that was the only contest he showed me.

20 Q. Was this the only time that Ms. Wolfe showed you a  
21 picture of her dressed as a woman?

22 A. Yes.

23 Q. Were you offended by the picture that Ms. Wolfe showed  
24 you?

25 A. No.

1 Q. And so Ms. Wolfe was on the night crew?

2 A. Yes.

3 Q. And you were on the morning crew; correct?

4 A. Yes.

5 Q. What time --

6 A. I worked mids, so --

7 Q. Is there a different --

8 A. I worked from like 7:00 to 5:00.

9 Q. Were you the only person who worked mids or did other  
10 people work mids?

11 A. Other people worked mids. Other managers worked mids.

12 Q. What about crew members, did crew members work mids?

13 A. No.

14 Q. Would all managers work mids?

15 A. No, I had some open, some close.

16 Q. In the 2012-2013 time frame, who were your opening  
17 managers?

18 A. I think Shimika, Janice did some openings. I can't  
19 remember who I had.

20 Q. By Shimika, do you mean Shimika Singleton?

21 A. Yes.

22 Q. So Janice did some mornings shifts?

23 A. Yes. The managers, they do all shifts.

24 Q. Would Janice also work the evening shift?

25 A. Yes.

1 Q. What about Jermel Taylor?

2 A. He was the closer.

3 Q. Who were some of the other employees that worked --  
4 crew members that worked the night shift with  
5 Ms. Wolfe?

6 A. I think it was Netta, Mr. Dee, and Ms. Pie. Her  
7 name -- I want to say her name is Asia or Alea,  
8 something like that, but she's still there. Not quite  
9 sure the rest of them.

10 Q. You referred to an employee named Mr. Dee. What's  
11 Mr. Dee's full name?

12 A. I can't remember, but he just told everybody he wanted  
13 to be called Mr. Dee. So I can't remember his name.

14 Q. What about Ms. Pie, what's her full name?

15 A. I don't know.

16 Q. Is her --

17 A. It's probably in the computer. I don't know.

18 Q. Does her full name have anything to do with pie?

19 A. Probably not, no.

20 Q. So Ms. Pie was a nickname for this employee?

21 A. Uh-huh.

22 Q. Not her legal name?

23 A. I would imagine.

24 Q. Okay. What about Kiana Cunningham, what shift did she  
25 usually work?

1 identity?

2 A. No.

3 Q. Did Ms. Wolfe ever complain to you about Kristen  
4 Bowden making comments to Wolfe along the lines of  
5 pray to God or go to hell?

6 A. No.

7 Q. Did Ms. Wolfe make any comments to you about  
8 Ms. Bowden making comments that were disparaging to  
9 Ms. Wolfe?

10 A. No. I can't remember. I heard about it, but I don't  
11 think Jonathan told me.

12 Q. How did you hear about it?

13 A. I think it was Janice.

14 Q. So Janice told you that Ms. Bowden was making comments  
15 about Ms. Wolfe?

16 MR. JOHNSON: Objection.

17 A. I don't know how it went, but I heard it from Janice.

18 Q. Well, what did you hear from Janice?

19 A. That Kristen said something to Jonathan and he was  
20 upset or something. That's what Janice said, I think.  
21 It was something along that line.

22 Q. Did Janice tell you what Ms. Bowden had said to  
23 Ms. Wolfe to make Ms. Wolfe upset?

24 A. I can't remember. I mean, she may have, I don't know,  
25 but I just didn't remember that. I had a conversation

1 with Kristen about talking to employees, but I don't  
2 think it was more we went in detail as far as, oh, you  
3 said this or you said that.

4 Q. When did this occur?

5 A. Oh, gosh, I don't know when this was. It was  
6 Kristen's, I think, last week or before she took her  
7 store.

8 Q. Was this before or after Ms. Wolfe was promoted to  
9 head cashier?

10 A. This was after because he was on front line, yeah,  
11 taking orders, yeah.

12 Q. Did you go to Ms. Wolfe to discuss the situation and  
13 get her input?

14 A. No, I went straight to Kristen.

15 Q. Why did you not talk to Ms. Wolfe about the situation?

16 A. Because he told Janice, so I figured he didn't want to  
17 talk to me or feel like that he was telling. So I  
18 didn't want it to be like, well, you went and told  
19 Ella on me or whatever, whatever, so --

20 Q. Why would --

21 A. -- I went to Kristen.

22 Q. Why would you think Ms. Wolfe wouldn't come to you  
23 with any issue she was having with another employee?

24 MR. JOHNSON: Objection, form.

25 A. Because he didn't come to me.

1 Q. But you also didn't go to Ms. Wolfe to learn why  
2 Ms. Wolfe was upset?

3 A. No, because when I went over there when I seen him, he  
4 was just fine laughing and giggling and they was  
5 talking within the next five minutes with each other.

6 Q. At some point during Ms. Wolfe's employment she was  
7 transferred to a store on Corporation Drive in Hope  
8 Mills to assist with the opening of that restaurant;  
9 correct?

10 A. Yes.

11 Q. Did you recommend Ms. Wolfe assist in the opening of  
12 the Corporation Drive restaurant?

13 A. Yes.

14 Q. Why did you recommend that?

15 A. Because she asked for my best employees and she  
16 expected Corporation Drive to make a lot of money and  
17 be real busy.

18 Q. So Ms. Wolfe was one of your best employees?

19 A. Yes.

20 Q. Who else did you send to the Corporation Drive  
21 location?

22 A. I don't know. I don't know if I sent anybody else or  
23 if that was all I could afford to send, I'm not sure.  
24 I think Kiana went, but I'm not quite sure.

25 Q. Did you go to the Corporation Drive location to assist

1 Q. It's an employee status report regarding Ms. Wolfe?

2 A. Yes.

3 Q. And at the top right of this employee status report,  
4 is that your signature under supervisor signature  
5 approval?

6 A. Yes.

7 Q. And the document is dated February 1, 2013?

8 A. Yes.

9 Q. And there's a comment section at the bottom. It says,  
10 "transfer back to 274." Is 274 the Owen Drive store?

11 A. Yes.

12 Q. From 895, is that the Corporation Drive location?

13 A. Yes.

14 Q. So if this form is dated February 1, 2013, was  
15 charging -- or was Ms. Wolfe returning back to the  
16 Owen Drive store around February 1, 2013?

17 A. Yes.

18 Q. Did Ms. Wolfe go to assist the Corporation Drive  
19 restaurant with their opening before or after she was  
20 promoted to head cashier?

21 A. I want to say after.

22 Q. And did you have the conversation with Kristen Bowden  
23 that we just discussed before or after Ms. Wolfe  
24 returned from the Corporation Drive location?

25 A. I don't know. It depends on when Kristen left. I'm

1 superior, distinguished.

2 Q. And that's right there --

3 A. Yes.

4 Q. -- above the Section 1?

5 A. Uh-huh.

6 Q. And so a number 5 is better than a number 1?

7 A. Yes.

8 Q. Okay. For attendance and punctuality, you rated  
9 Ms. Wolfe as 2. Why is that?

10 A. Because there was a lot of times he came in late.

11 Q. Did you ever talk to Ms. Wolfe about being late?

12 A. Yes.

13 Q. Did she ever provide you a reason with why she was  
14 late?

15 A. Yes.

16 Q. What was her reason?

17 A. Transportation.

18 Q. Did she explain that?

19 A. Yeah. His ride didn't come or he broke down. It was  
20 always different.

21 Q. Do you know whether or not Ms. Wolfe had her own car?

22 A. No.

23 Q. You don't know or she did not have her own car?

24 A. No, did not have his own car.

25 Q. Ms. Wolfe did not have her own car?

1 A. No.

2 Q. So she had to rely on others for rides?

3 A. Yes.

4 Q. Do you know if she took public transit?

5 A. No, she didn't.

6 Q. Under uniform/hygiene, you rated Ms. Wolfe 4. Why is  
7 that?

8 A. Because he always came in correct uniform mostly. His  
9 shirt was always tucked in and always had a name tag  
10 and hat.

11 Q. Why did you not rate Ms. Wolfe a 5?

12 A. Because I said mostly.

13 Q. Can you give me an example of when Ms. Wolfe did not  
14 come in in proper uniform?

15 A. When he had the rainbow hair.

16 Q. Any other times?

17 A. When he was running late and he was getting dressed as  
18 he was coming in the door. So I think he had forgot  
19 his belt or something.

20 Q. And sense of urgency, you rate Ms. Wolfe as 4. Why  
21 did you give Ms. Wolfe that rating?

22 A. Because he knew how to move the line. He pushed  
23 service.

24 Q. Why not a 5?

25 A. Because with assistance always he would push service.

1 Q. How much would that pay increase have been?

2 A. I think then it was probably \$0.20.

3 Q. Did you ever have to discipline Ms. Wolfe when she was  
4 an employee at your store?

5 A. No.

6 Q. Did you ever have any serious performance issues with  
7 Ms. Wolfe?

8 A. No.

9 Q. Did you review any documents in preparation for your  
10 deposition today?

11 A. No.

12 Q. Other than your attorney, did you speak with anybody  
13 in order to prepare for your deposition today?

14 A. No.

15 Q. Did you speak with anyone about your deposition today?

16 A. No.

17 Q. Other than meeting with attorneys, did you do anything  
18 to prepare for your deposition today?

19 A. No.

20 Q. Now I want to turn your focus to February 21, 2013.  
21 You were working at the Owen Drive restaurant on that  
22 day; correct?

23 A. Yes.

24 Q. What time did you come in?

25 A. Probably 7:00.

1 A. It has nothing to do with me and if he's moving my  
2 line and if he's going to roll biscuits. I mean that  
3 has nothing -- one doesn't affect the other.

4 Q. Why did you use phrase "that's him"?

5 A. Because that's what he wanted to do, that's what he  
6 wanted to do. I mean, if I did the same thing, that's  
7 what I want to do, that's me.

8 Q. Would you describe Ms. Wolfe's braids as feminine?

9 A. Yeah.

10 Q. It's a hairstyle you would see on women?

11 A. I have never seen anybody with that.

12 Q. With braids?

13 A. No. He said -- I think he said it was yarn. But I've  
14 seen that style as far as pulled back into a ponytail,  
15 yes. I've seen that on a woman, yes, and on men.

16 Q. Based on what you saw, could Ms. Wolfe have pulled her  
17 braids back into a ponytail?

18 A. It was in a ponytail, but there's no way you would be  
19 able to wrap that up and put it inside of a hat.

20 Q. And is that a requirement of Bojangles' that you had  
21 to be able to put your hair in a hat?

22 A. You have to wear a hat. You have to be in complete  
23 uniform.

24 Q. What about Ms. Wolfe's braids made them incapable of  
25 being put into a hat?

1 Q. Did you offer her the opportunity to try on a hat to  
2 ensure that the braids were in compliance?

3 A. When he comes back to work, then I would have saw it.

4 Q. Did you make any other statements about Ms. Wolfe's  
5 hair at that time?

6 A. No.

7 Q. Did you hear any employees make any comments about how  
8 Ms. Wolfe's hair looked on February 21st?

9 A. Yes. That -- I mean, they talk about everything,  
10 so --

11 Q. Who made comments about Ms. Wolfe's hair?

12 A. It was everybody. I mean, I don't know.

13 Q. Did Ms. Locklear make a comment about Ms. Wolfe's  
14 hair?

15 A. To me in the office, yes.

16 Q. What comment did Ms. Locklear make to you?

17 A. She just said something like I guess next -- since you  
18 didn't say nothing, I guess next you're going to let  
19 them wear miniskirts and stuff in here.

20 Q. Would you say in response to Ms. Locklear?

21 A. That's when I made the comment to her and Shimika. I  
22 think Shimika was there too and said, no, I hired -- I  
23 hired a man, so he's a man or something like that.

24 Q. You said, "I hired a man, he's a man"?

25 A. Yeah.

1 Q. Why did you say that?

2 A. Because she said something about him coming to work in  
3 miniskirts.

4 Q. You had previously seen Ms. Wolfe dressed as a female,  
5 correct, in that picture?

6 A. No, I had not.

7 Q. In the picture she showed you?

8 A. Yes, in the contest.

9 Q. Okay. Would it have been okay for Ms. Wolfe to come  
10 in dressed in a miniskirt?

11 A. To work?

12 Q. To the Owen Drive store?

13 A. Ordering some food?

14 Q. Yes.

15 A. Sure.

16 Q. What about appearing for work?

17 A. No.

18 Q. Why would that not be okay?

19 A. Because you have to be in uniform. And if his skirt  
20 was to his ankles then, yes, because we have some that  
21 do that for religious reasons, but miniskirts, no.

22 Q. Does Bojangles' have different uniforms for men and  
23 for women?

24 A. No.

25 Q. All one, unisex?

1 with the front line.

2 Q. Did Ms. Locklear make any other comments to you about  
3 how Ms. Wolfe appeared?

4 A. No.

5 Q. What about after February 21st, did Ms. Locklear make  
6 any other comments about Jonathan Wolfe's appearance?

7 A. No. It was more out of sight, out of mind.

8 Q. When Ms. Wolfe -- okay. So you come out of your  
9 office, you come up to the service line, you tell  
10 Ms. Wolfe, "Are you going to tighten that up?"

11 A. Yes.

12 Q. What did Ms. Wolfe say in response?

13 A. "I am. I'm going to trim it up." And then that was  
14 it.

15 Q. Was Ms. Wolfe respectful during this conversation?

16 A. Yeah, I mean, that was the end of it. I mean, I don't  
17 know if he rolled his eyes or what after I left  
18 because I turned around and I walked back to the  
19 office.

20 Q. Did you raise your voice at any point during this  
21 conversation?

22 A. No. I mean, after I said that, that was it.

23 Q. Did Ms. Wolfe raise her voice at any point during this  
24 conversation?

25 A. No. What conversation are you talking about?

1 Q. The conversation between you and Ms. Wolfe on  
2 February 21st at the Owen Drive restaurant?

3 A. I mean, "I'm going to tighten that up." I mean, no,  
4 he didn't -- I mean he didn't say it in a high-pitched  
5 voice or raised his voice.

6 Q. He didn't yell at you?

7 A. Yeah, nothing.

8 Q. From how you're describing it, it sounds like a pretty  
9 short civil conversation?

10 A. Yeah.

11 Q. At any point when Ms. Wolfe was in the Owen Drive  
12 restaurant on February 21st, did you tell Ms. Wolfe,  
13 "I hired you as a man, you need to look like a man,"  
14 or anything along those lines?

15 A. No.

16 Q. So if Ms. Wolfe testifies that is what you said, you  
17 will disagree with Ms. Wolfe's testimony?

18 A. Yes.

19 Q. If any other witnesses say that is what you said, you  
20 will disagree with their testimony?

21 A. Yes.

22 Q. It will be everybody's word against everybody's word?

23 MR. JOHNSON: Objection to the form.

24 A. Yes.

25 Q. Obviously, there are cameras in the store. We went

1 Q. What about Ms. Singleton, did she have any comments  
2 about Ms. Wolfe's braids?

3 A. No, she just laughed.

4 Q. Do you know whether or not Ms. Wolfe and Ms. Singleton  
5 had a relationship outside of Bojangles'?

6 A. As far as --

7 Q. Were they friends that hung out outside of work?

8 A. No. I don't think they hung out, no.

9 Q. Do you know whether or not Ms. Wolfe hung out with  
10 anybody outside of work?

11 A. I don't know.

12 Q. But at some point on February 21st you told  
13 Ms. Locklear and Ms. Singleton you had hired a man and  
14 he was going to dress like a man?

15 MR. JOHNSON: Objection to the form.

16 Q. Is that a comment that you made?

17 MR. JOHNSON: Objection.

18 A. In the back with Janice and Shimika, yes.

19 Q. Those were your words?

20 A. Give or take a few, yeah.

21 Q. So did you have to tell Ms. Wolfe to leave the  
22 restaurant on February 21st?

23 A. No.

24 Q. Do you know whether or not Ms. Wolfe purchased food?

25 A. No, I don't know.

1 saw it was Jonathan. So I kept packing and then it  
2 just kept getting louder and louder, but saying the  
3 same thing over and over again. I'm going -- Kristen,  
4 all she had to do was ask me and I'd cut it. It's  
5 just how you talk to people, it's how you talk to  
6 people.

7 Q. Did you know that the person speaking was Jonathan  
8 Wolfe before you looked at the person speaking?

9 A. No.

10 Q. So you didn't recognize Ms. Wolfe by her voice?

11 A. I mean, I really wasn't paying attention, and then as  
12 I'm packing and I'm hearing it over and over again,  
13 then I looked.

14 Q. Was there anything that stood out to you about what  
15 you were hearing?

16 A. Yes. Just how it was just being said over again and  
17 getting louder and just seemed like that when I'm down  
18 there.

19 Q. What happened next?

20 A. I said something like, "Okay, okay. We hear you.  
21 Good. Go to your store," or something like that.  
22 And, I don't know, he said something. I don't know.  
23 And it was just more of a back and forth, you need to  
24 learn -- you should have learned how to talk to people  
25 or something. I was like, okay, just leave my store.

1 policy. Everything that's in the handbook, that's  
2 what I try to do. And I try to teach them to do the  
3 same.

4 Q. And you stated earlier that you were a training unit  
5 director; correct?

6 A. Yes.

7 Q. How many other unit directors have you trained as a  
8 training unit director?

9 A. I've trained three.

10 Q. Who are those individuals?

11 A. Jermel Taylor. He went from under me to being a unit  
12 director. Kristen went to being a unit director. And  
13 Dee Meyers, she went to be a unit director.

14 Q. Where was Jermel a unit director -- sorry, strike  
15 that. Which store did Jermel work at as a unit  
16 director?

17 A. Roanoke Rapids.

18 Q. What store number is that?

19 A. 871, I think.

20 Q. Jermel was subsequently terminated from Bojangles';  
21 correct?

22 A. Yes.

23 Q. Why was Jermel terminated from Bojangles'?

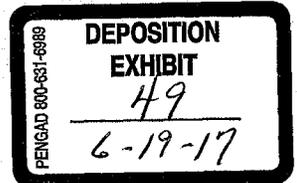
24 A. I think it was something, he was dating an employee or  
25 something like that.

# **APPENDIX 3**

**Robinson  
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June 28, 2013



**VIA REGULAR MAIL**

Ms. Carlisa Broadway, Investigator  
Equal Employment Opportunity Commission  
Raleigh Area Office  
434 Fayetteville Street  
Raleigh, North Carolina 27601-1701

Re: Charge No. 433-2013-01334  
Charging Party - Jonathan Wolfe  
Respondent - Bojangles' Restaurants, Inc.

Dear Ms. Broadway:

Our firm represents Respondent Bojangles' Restaurants, Inc. ("Bojangles'") in defense of the above-referenced charge of discrimination filed by Jonathan Wolfe. This letter shall set forth Bojangles' position and provide relevant information and documents.

In his charge of discrimination, Mr. Wolfe alleges that he was subjected to harassment and discrimination based on his gender identity and terminated in retaliation for alleged protected activity – in violation of Title VII of the Civil Rights Act of 1964, as amended ("Title VII"). (A copy of the charge is attached hereto as Exhibit A.) Bojangles' expressly denies Mr. Wolfe's allegations. His charge is baseless, has no factual support and should be dismissed.

In this case, it is uncontroverted that Bojangles' terminated Mr. Wolfe's employment because he came to the restaurant (when he was not scheduled to work), was loud and disruptive to the restaurant's business, held up the line for Bojangles' paying customers, and was insubordinate to the restaurant's manager in front of Bojangles' customers. Management's decision to terminate Mr. Wolfe's employment was made in good faith and in full compliance with Bojangles' policies and applicable law.

Following his termination, Bojangles' received employee complaints and proof that Mr. Wolfe also sent inappropriate, provocative pictures of himself via text message to his Bojangles' co-workers while he was employed – in clear violation of Bojangles' sexual harassment policy and for which Mr. Wolfe would have been subject to immediate termination. (A copy of one of

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the pictures sent by Mr. Wolfe is attached hereto as Exhibit B.) Bojangles' investigation of this matter has also revealed that Mr. Wolfe frequently discussed matters of an inappropriate, highly sexual nature in the workplace – also in violation of Bojangles' sexual harassment policy.

At all times relevant to this matter, Bojangles' has applied its employment standards and policies to Mr. Wolfe without regard to his sex, his gender identity or his alleged "gender non-conformity." Bojangles' took no action against Mr. Wolfe in retaliation for any protected activity under Title VII. In fact, Mr. Wolfe never engaged in any protected activity. Mr. Wolfe has no viable claims against Bojangles', and his charge should be dismissed.

#### Equal Employment Opportunity and Anti-Harassment/Discrimination Policies

Bojangles' is an equal employment opportunity employer and strictly prohibits discrimination and harassment against any person on the basis of race, color, religion, sex, gender, age, national origin, disability, genetic information, pregnancy or any other characteristic prohibited by federal, state or local law. Bojangles' equal employment opportunity policy applies to all terms and conditions of employment.

Bojangles' employees are required to immediately report all incidents of harassment, discrimination or retaliation to his/her Unit Director, Area Director, Regional Vice-President or the Director of Human Resources. Employees also may report violations of the policy to the Human Resources Hotline or the Employee Awareness Hotline. Bojangles' commits to conduct a prompt investigation of all complaints, to keep the matters related to the investigation confidential to the extent reasonably possible; and to take prompt corrective action in response to valid complaints. (A copy of Bojangles' Equal Employment Opportunity and Anti-Harassment/Discrimination Policies are attached hereto as Exhibit C.)

#### Mr. Wolfe's Employment with Bojangles'

Bojangles' hired Mr. Wolfe on May 9, 2012 as an hourly team member at the restaurant located at 1901 Owen Drive, Fayetteville, North Carolina. At all times during his employment, Mr. Wolfe's immediate supervisor was Unit Director, Ella Riggins and his second-level supervisor was Area Director, Sharon McCollough. Shortly after he was hired, Mr. Wolfe announced (to use his words) that he was a "cross dresser."<sup>1</sup> Mr. Wolfe's self-proclaimed status was never a consideration at any time during Mr. Wolfe's employment with the Company. Bojangles' certainly did not take any action against Mr. Wolfe because of his sex, appearance or behavior as gender non-conforming - as Mr. Wolfe now alleges.

To the contrary, Bojangles' trained Mr. Wolfe as a cashier, which required that he greet, talk to and interact with customers. Bojangles' also gave Mr. Wolfe a raise in October 2012. Because of Mr. Wolfe's ability to perform the duties of a cashier in a challenging environment,

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<sup>1</sup> Mr. Wolfe's status as a cross dresser is not protected under Title VII. To the extent he is attempting to maintain a claim based on that status, his EEOC charge must be dismissed as a matter of law.

Ms. McCollough even invited Mr. Wolfe to assist in a new restaurant opening in December 2012 in Hope Mills, North Carolina.

Though Mr. Wolfe generally performed his job duties at cashier in a satisfactory manner, Bojangles' management did counsel him on several occasions to maintain professional working relationships at all times as required under Bojangles' policies. In early February 2013, Ms. McCollough issued a verbal warning to Mr. Wolfe and another Bojangles' crew member after she learned that they engaged in a personal conversation of a sexual nature. Ms. McCollough warned both employees that they could be fired if they continued to engage in inappropriate conversations.

#### Mr. Wolfe's Disruptive Behavior and Termination from Employment

On February 21, 2013, Mr. Wolfe came to the restaurant even though he was not scheduled to work to show off long cornrow hair extensions he had recently gotten to Bojangles' employees. (See Exhibit B showing Mr. Wolfe's long extensions.) Mr. Wolfe was loud and disruptive at the frontline of the restaurant causing his manager, Ms. Riggins to come to the frontline. When Ms. Riggins saw Mr. Wolfe's hair extensions, she expressed concern about the hair extensions in light of Bojangles' personal appearance policy. In particular, Ms. Riggins wanted to ensure that when Mr. Wolfe's returned to work, his hair would be in compliance with Bojangles' Personal Appearance Policy. (A copy of the Personal Appearance Policy is attached hereto as Exhibit D.) Under the policy, all Bojangles' employees are required to have their hair "combed/brushed, and neat and under control at all times" and "all team members' hair must be covered by a hat." (See Exhibit D.) Mr. Wolfe's long hair extensions (as they were on February 21) clearly could not be covered by a hat. (See Exhibit B.) Mr. Wolfe was fully aware of Bojangles' Personal Appearance Policy because he received a copy of the Company's Employee Handbook, which contains all the Company's policies, including the Personal Appearance policy, and this policy was also discussed with Mr. Wolfe during his employee training. In response to Mr. Riggins' concerns, Mr. Wolfe responded that he would "trim up" his hair when he returned to work.

Following the incident on February 21, Mr. Wolfe contacted Bojangles' Human Resources Department by telephone to file a complaint against Ms. Riggins. Mr. Wolfe complained that another employee at the restaurant told him that Ms. Riggins was going to fire him because of his hair extensions. Mr. Wolfe did not suggest or complain that Ms. Riggins herself made any direct threats to terminate his employment or otherwise take action against him. During his call to Human Resources, Mr. Wolfe made no complaint or allegation whatsoever that Ms. Riggins or any other Bojangles' employee harassed or discriminated against him because of his sex, his gender identity or gender nonconformity at any time. His sole complaint was that another Bojangles' employee told him Ms. Riggins would fire him because of his hair extensions.

After speaking with Mr. Wolfe, Bojangles' Director of Human Resources immediately discussed the matter with Ms. McCollough and asked her to investigate the incident reported by

Mr. Wolfe. Ms. McCollough commenced an immediate investigation of Mr. Wolfe's complaint that included interviews of Bojangles' employees who were working at the restaurant during Mr. Wolfe's visit on February 21. None of the employees corroborated Mr. Wolfe's contention that Ms. Riggins threatened to terminate Mr. Wolfe because of his hair extensions. Ms. McCollough also interviewed Mr. Wolfe about the incident that occurred on February 21. During his interview with Ms. McCollough, Mr. Wolfe did not make any specific allegations or complaints that he had in any way been discriminated against or harassed because of his sex, his gender identity or his alleged gender non-conformity. Again, Mr. Wolfe only complained that he heard from another Bojangles' employee that Ms. Riggins said she was going to terminate him because of his hair extensions. At the outset of the conversation, Mr. Wolfe demanded without any valid justification that Ms. Riggins be terminated – clearly indicating that he would not work with Ms. Riggins moving forward. Ms. McCollough and Mr. Wolfe discussed his potential transfer to another restaurant location given his indication that he could not work with Ms. Riggins as the manager of his existing restaurant location. Ms. McCollough and Mr. Wolfe agreed that he would transfer to the Raeford Road restaurant in Fayetteville. Mr. Wolfe indicated he was moving to the Raeford Road area, so that restaurant would be closer to his new home. Mr. Wolfe's decision to transfer restaurants was completely voluntary. Ms. McCollough advised Mr. Wolfe to contact the Unit Director for the Raeford Road restaurant location for his new schedule. Mr. Wolfe never contacted the Unit Director at that restaurant and never went to work at the new location.

The following week, on or about February 27, 2013, Mr. Wolfe returned to the Owen Drive restaurant location he claims to purchase a drink (though he did not order anything). Mr. Wolfe engaged in an inappropriate conversation with a restaurant crew member working on the frontline about Ms. Riggins (intended for her to hear), was loud and disruptive, and blocked Bojangles' paying customers from placing their orders. Ms. Riggins came to the frontline and instructed Mr. Wolfe to continue his conversation outside the restaurant. Mr. Wolfe became louder and insubordinate in front of Bojangles' customers and eventually left the restaurant. Ms. Riggins immediately reported the incident to Ms. McCollough. After learning of the incident, Ms. McCollough decided to terminate Mr. Wolfe's employment based on his disruption of Bojangles' business and service of its customers and his insubordination. Ms. McCollough contacted Mr. Wolfe to discuss the matter. Mr. Wolfe openly admitted to talking about Ms. Riggins at the frontline of the restaurant in front of customers and responded to Ms. McCollough in a disrespectful manner that he could talk about whomever he wanted to. Ms. McCollough subsequently notified Mr. Wolfe that his employment with Bojangles' was terminated.

#### Mr. Wolfe Has No Claim of Harassment, Discrimination or Retaliation

Mr. Wolfe has no viable claims against Bojangles' under Title VII. Title VII prohibits an employer from "discriminating 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)." *Hopkins v. Baltimore Gas & Elec. Co.*, 77 F.3d 745, 749 (4<sup>th</sup> Cir. 1996). First, Mr. Wolfe's claim of harassment must fail as a matter of law because he cannot establish any

evidence that he was subjected to any conduct on the basis of his sex, let alone conduct that rose to the level of severe or pervasive as required to state a harassment claim under Title VII. *See Spicer v. Commonwealth of Virginia, Dep't of Correction*, 66 F.3d 705, 709-10 (4<sup>th</sup> Cir. 1995).

Moreover, even if Mr. Wolfe could establish evidence sufficient to support a claim of harassment under Title VII, his claims fail because Bojangles' exercised reasonable care to prevent and promptly correct any sex-based harassing behavior and Mr. Wolfe's failed to otherwise avoid harm. *See Faragher v. City of Boca Raton*, 534 U.S. 775, 786, 118 S. Ct. 2275, 2283, 141 L.Ed.2d 662 (1998); *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 764-65, 118 S. Ct. 22567, 2268, 141 L.Ed.2d 663 (1998). At all times, Bojangles' had an effective anti-harassment policy in place that forbids gender-based and all other forms of illegal harassment. *See Barrett v. Applied Radiant Energy Corp.*, 240 F.3d 262, 266 (4<sup>th</sup> Cir. 2001) (holding that policy which provided clear direction as to how to report harassment and included a confidentiality and anti-retaliation provision was reasonable calculated to prevent and promptly correct sexual harassment). Mr. Wolfe signed and acknowledged Bojangles' anti-harassment policy on May 4, 2012. (A copy of Mr. Wolfe's signed anti-harassment policy is attached hereto as Exhibit E.)

Mr. Wolfe never complained as directed by Bojangles' policies that Ms. Riggins harassed him based on his sex, his gender identity or alleged gender non-conformity at any time during his employment with Bojangles'. As such, his claim of harassment must fail.

Similar, Mr. Wolfe's claim of sex discrimination also fails as a matter of law. Based on his own allegations, Bojangles' did not take any action against him based on his sex. The only complaint Mr. Wolfe made against Ms. Riggins was made after the February 21 incident. Mr. Wolfe only complained that he heard Ms. Riggins was going to fire him because of his hair extensions. Ms. Riggins never threatened Mr. Wolfe's job, but she did express concerns about the length of his hair extensions in light of Bojangles' policies. Ms. Riggins' concerns had nothing whatsoever to do with Mr. Wolfe's sex. Bojangles' requirement that all team members' hair be covered by a hat applies to both men and women alike and without regard to their sex. Based on Mr. Wolfe's own allegations, Bojangles' has taken no action against him based on his sex as required to maintain a claim of sex discrimination under Title VII.

Finally, Mr. Wolfe has no claim of retaliation against Bojangles. First, he did not engage in any protected activity under Title VII where he never complained that Ms. Riggins in any way harassed or discriminated against him based on his sex, his gender identity or gender non-conformity. Even if he had had engaged in a protected activity, he is not shielded from termination because he violated Bojangles' policy, was loud and disruptive to Bojangles' business operations and service of its customers. *See, e.g. Davis v. State Univ. of N.Y.*, 802 F.2d 638, 644, 42 FEP 77 (2<sup>nd</sup> Cir. 1986) (denial of merit increase and disciplinary documentation was the result of an atmosphere of acrimony threatening the integrity of the institution, not the result of retaliation for filing a charge). Employees who disrupt Bojangles' restaurant operations and service of its customers and who are insubordinate may be terminated in accordance with Bojangles' policy, even if they have engaged in some protected activity. *See, e.g. Johnson v.*

Ms. Carlisa Broadway, Investigator  
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*Allyn & Bacon*, 731 F.2d 64, 34 FEP 804 (1<sup>st</sup> Cir.), *cert. denied*, 469 U.S. 1018, 105 S. Ct. 433, 83 L. Ed.2d 359 (1984). Here, Mr. Wolfe engaged in no protected activity.

The uncontroverted evidence in this case shows that Bojangles' terminated Mr. Wolfe for legitimate, nondiscriminatory and nonretaliatory business reasons having nothing to do with his sex or gender identity or any purported prior complaints of harassment. Based on Mr. Wolfe's own allegations, Bojangles' took no action against him based on his sex as required to maintain a claim of sexual harassment or discrimination. Bojangles' decisions with respect to Mr. Wolfe were made in good faith and in accordance with the Company's employment policies. For all these reasons, Mr. Wolfe has no actionable claim against Bojangles'. Bojangles' respectfully requests that his charge be dismissed.

Please do not hesitate to contact me should you have any questions.

Sincerely,

ROBINSON BRADSHAW & HINSON, P.A.

*Angelique Vincent-Hamacher*  
Angelique Vincent-Hamacher

AVH/  
Enclosures

cc: Bojangles' Restaurants, Inc. (w/ enclosures)

BOJANGLES'-00000073

# EXHIBIT A

MAY 2 2013

EEOC Form 5 (1/09)

<b>CHARGE OF DISCRIMINATION</b>		Charge Presented To: Agency(ies) Charge No(s):	
This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and for information before completing this form.		<input type="checkbox"/> FEPA	433-2013-01334
		<input checked="" type="checkbox"/> EEOC	
and EEOC			
<i>State or local Agency, if any</i>			
Name (Indicate Mr., Ms., Mrs.)		Home Phone (Incl. Area Code)	Date of Birth
Ms. Jonathan Wolfe		(910) 850-8835	02-21-1992
Street Address		City, State and ZIP Code	Cell #
[REDACTED]		[REDACTED]	[REDACTED]
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name		No. Employees, Members	Phone No. (Include Area Code)
BOJANGLES STORE #274		15 - 100	(910) 483-1913
Street Address		City, State and ZIP Code	
1901 Owen Drive, Fayetteville, NC 28304			
Name		No. Employees, Members	Phone No. (Include Area Code)
Street Address		City, State and ZIP Code	
DISCRIMINATION BASED ON (Check appropriate box(es).)		DATE(S) DISCRIMINATION TOOK PLACE	
<input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input checked="" type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN		Earliest Latest	
<input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION		10-01-2012 02-27-2013	
<input type="checkbox"/> OTHER (Specify)		<input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):			
<p>I. On May 09 2012, I was hired by the above employer as a Biscuit Maker. Since October 2012, I have been harassed by Unit Director Ella Riggins who has threatened my job and ridiculed my appearance and behaviors as being gender non-conforming. In January 2013, I reported this harassment to Area Director Sharron [LNU] but nothing was done. On February 21, 2013, I was transferred. On February 27, 2013, I was discharged.</p> <p>II. Ms. Riggins told me that I would be fired if I didn't remove the braids from my hair, change my manner of talking, walking and standing in order to look like a male because of the older clientele. On February 21, 2013, Ms. Sharron told me that I was transferred because people's tempers were flared. On February 27, 2013, Ms. Sharron told me that I was discharged for returning to my old store, after being told not to, and intentionally starting an argument with Ms. Riggins. I deny that I was told not to return to the store or that an argument with Ms. Riggins occurred.</p> <p>III. I believe I was discriminated against based on my sex (gender identity) and retaliated against for opposing unlawful employment practices in violation of Title VII of the Civil Rights Act of 1964, as amended.</p>			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State and Local Agency Requirements	
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.	
		SIGNATURE OF COMPLAINANT	
<p>025 April 13 [Signature]</p> <p>Date Charging Party Signature</p>		<p>SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE</p> <p>(month, day, year)</p>	

BOJANGLES'-00000075

# EXHIBIT B



BOJANGLES'-00000077

# EXHIBIT C

## **HISTORY OF BOJANGLES'**

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In 1977, Bojangles' Famous Chicken N' Biscuits was founded in Charlotte, NC. The first restaurant was built at the corner of West Blvd. and South Tryon. Bojangles' began as the dream of two veteran food operators who foresaw a rising consumer demand for wholesome, "made-from-scratch" meals offered in the convenience of a quick-service environment.

Today, Bojangles' has grown to become a major restaurant chain operating under the name of Bojangles' Restaurants, Inc. Approaching 500 restaurants, company-owned and franchised, Bojangles' has successfully expanded the concept throughout the Southeast.

## **PURPOSE OF HANDBOOK**

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The purpose of Bojangles' Employee Handbook is to provide you with general information on our policies and procedures. Because of the nature of our operations, the work environment and the accommodations necessary for individual situations, the policies and procedures set out in the Handbook may not apply to every employee or to every situation.

**Bojangles' may change or revise policies or procedures relating to your employment as we consider necessary, using sole discretion, either in individual or company wide situations, with or without notice in accordance with applicable law.**

## **EMPLOYMENT INFORMATION**

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The Company is committed to a work environment in which all employees are treated with respect and dignity. Each employee has the right to work in a professional setting that promotes equal employment opportunities and prohibits all forms of discrimination and harassment. The Company expects that all relationships among employees will be business-like and free of prejudice and harassment.

### **EQUAL EMPLOYMENT OPPORTUNITIES**

It is the policy of Bojangles' to provide equal employment opportunities, consistent with federal, state and municipal equal employment opportunity laws, to all persons regardless of race, color, religion, sex, gender, age, national origin, disability, genetic information, pregnancy or any other characteristic protected by law. The Company prohibits and will not tolerate discrimination or harassment based on any of these protected characteristics. This policy applies to all terms and conditions of employment.

Any disabled person requiring a reasonable accommodation under the Americans with Disabilities Act, as amended, to perform the essential functions of his/her position should make a request for accommodation to the Director of Human Resources at 1-800-849-3360, Ext. 8634.

## **EMPLOYMENT INFORMATION (Cont'd.)**

### **ANTI-HARASSMENT/DISCRIMINATION POLICY**

Bojangles' does not tolerate any form of illegal workplace harassment and/or discrimination by any of its employees, customers or vendors. Any form of illegal harassment or discrimination that is related to an individual's race, color, religion, sex, gender, age, national origin, disability, genetic information, pregnancy, or any other characteristic protected by law is a violation of this policy for which appropriate disciplinary action will be taken.

For purposes of this policy, harassment includes any type of misconduct based on any protected characteristic that is unwelcome to any employee. No policy can identify the full range of behaviors that are unacceptable in the workplace or that constitute harassment. Prohibited acts can take a variety of forms. Harassment on the basis of any protected characteristic is strictly prohibited. Harassment can include verbal or physical conduct that demeans or shows hostility or dislike toward another employee because of his/her race, color, religion, sex, age, national origin, disability, genetic information, pregnancy or any other characteristic protected by law, or that of his/her relatives, friends or associates, and that;

- (i) has the purpose or effect of creating an intimidating, hostile or offensive work environment;
- (ii) has the purpose or effect of unreasonably interfering with an individual's work performance; or
- (iii) otherwise adversely affects an individual's employment opportunities.

Harassing conduct includes, but is not limited to: epithets, slurs, negative stereotyping; threatening, intimidating or hostile acts; demeaning jokes; displaying written or graphic materials in the workplace that demeans or shows hostility toward an individual employee or group of employees.

Sexual harassment constitutes discrimination based on sex or gender and is illegal under federal, state and local laws. For the purposes of this policy, sexual harassment is defined to include unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual or gender-based nature when, for example;

- (i) submission to such conduct is made either explicitly or implicitly a term or condition of employment;
- (ii) submission to or rejection of such conduct is used as the basis for decisions affecting an individual's employment; or
- (iii) such conduct has the purpose or effect of creating an intimidating, hostile or offensive working environment.

Sexual harassment may include a range of behaviors and may involve individuals of the same or different gender. These behaviors may include, but are not limited to, unwanted physical conduct, including touching, pinching, brushing the body, blocking movement or any physical interference with normal movement. Verbal harassment includes offensive comments, jokes, innuendoes and sexually oriented statements and comments that ridicule, insult or otherwise

## **EMPLOYMENT INFORMATION (Cont'd.)**

demeans an employee's gender. Sexual harassment may also include non-verbal conduct such as displaying sexually suggestive objects, pictures, graffiti or making obscene gestures.

This policy applies to all applicants and employees, and prohibits harassment, discrimination and retaliation whether engaged in by an employee, by a manager or supervisor or by someone not directly connected to the Company (a vendor, consultant or customer). Conduct described in this policy is unacceptable in the workplace and in any work-related setting, such as business trips, meetings and business-related social events.

### **RETALIATION**

The Company prohibits retaliation against any individual who makes a good faith report of discrimination or harassment in the workplace. Likewise, the Company prohibits retaliation against any individual who assists or participates in the investigation of such reports. Retaliation is a serious violation of this policy, and anyone engaging in such conduct will be subject to disciplinary action, up to and including immediate termination of employment.

#### **Reporting an Incident of Harassment, Discrimination or Retaliation**

The Company requires employees to immediately report all incidents of harassment, discrimination or retaliation, regardless of the offender's identity or position within the Company. Any person who believes they have experienced or witnessed harassment, discrimination, retaliation or other conduct that is contrary to this policy must report it to his/her Unit Director, Area Director, Regional Vice-President or the Director of Human Resources at 1-800-849-3360, Ext. 8634. Employees may also call the Human Resources Hotline at 1-800-849-3360, Ext. 8401 or the Employee Awareness Hotline at 1-800-514-4227 to make a report. No one is authorized to tell or even suggest to any employee that he/she not report a violation of this policy. Any employee who has any questions or concerns about this policy may contact the Human Resources Department.

Immediate reporting and intervention are the most effective method of resolving actual or perceived incidents of harassment, discrimination or retaliation. The Company will conduct a prompt investigation of all complaints of harassment, discrimination and retaliation. Every effort will be made to keep matters related to the investigation confidential to the extent reasonably possible. Appropriate corrective or disciplinary action will be taken against any employee who has violated this policy.

### **FRATERNIZATION**

Working relationships must remain on a professional, business-like basis at all times to avoid the perception of sexual harassment, discrimination or the appearance of preferential treatment. Personal relationships between supervisors and subordinates are strongly discouraged particularly where a direct reporting relationship is present. At its discretion, the Company may prohibit such relationships and/or appropriate action will be taken in the event the relationship causes a business concern.

## **EMPLOYMENT INFORMATION (Cont'd.)**

6. Employment Eligibility Verification (I-9 Form): You must present proof of identity and employment eligibility prior to your first day of work. The Company participates in the federal E-Verify program where required by state law.
7. Transfers and Rehires: All transfers from one restaurant to another restaurant must be approved by the Area Director.

No former management employee will be rehired without prior approval from the Regional Vice President and/or Vice President of Human Resources. No former crew member will be rehired without prior approval from the Area Director and Human Resources Department. Former employees who are eligible for rehire must successfully complete the online application and criminal background check before being considered for rehire. Former employees who were terminated for cause or who failed to give and work a two-week notice will not be eligible for rehire.
8. Seasonal Employees: A seasonal employee is one who is attending school in another city. The employee remains actively employed but on a "seasonal leave" while at school. The employee will be permitted to work while home during the summer months or during school breaks.

## **ON THE JOB**

### **STAR SERVICE**

Star Service is an important element of the Company's operating philosophy. The Company has clearly defined our service culture with five points of difference. *Speak to Me* establishes the all important first impression between Bojangles' and the customer. *Act Like You Care* is being nice and interacting positively with the customers. *Hurry* is providing quick, efficient service to each guest. *Get It Right* is providing the customer with a great experience through quality products, accuracy and speed of service. *Bring Me Back* makes customers visit us again and again. Finding ways to say *Yes* to our customers instead of no will make them lifelong fans. Make it your mission every day to give customers what they want and what they expect.

### **PERSONAL APPEARANCE**

1. Grooming: Good grooming and a neat personal appearance are extremely important and reflect pride in your work in the restaurant. They also project a positive image to our customers. Therefore, you should always present a clean and professional appearance.

**Hair** should be clean, combed/brushed, and neat and under control at all times. Rubber bands, hair bands, bows, a hairnet, etc. may be necessary to properly secure the hair and all team members' hair must be covered by a hat. Managers must meet the same requirements when working in food preparation positions.

Men may have a mustache and/or goatee. However, both must be neat and trimmed regularly.

## ON THE JOB (Cont'd.)

Excessive makeup or jewelry should not be worn. Watches, wedding rings, engagement rings or class rings are permitted, but not recommended. No bracelets are allowed other than medical ID's. Necklaces may be worn inside your uniform. Dime sized hoop earrings and/or small stud post earrings may be

worn and no more than two per ear at a time. Gauge earrings, nose, lip, eyebrow, tongue, etc. rings are not permitted.

Fingernails must be neatly trimmed and clean. Artificial nails (including acrylic or sculptured nails) and/ or nail polish may not be worn in food preparation areas.

Otherwise, nails may not be longer than ¼ inch beyond the fingertip and may not include jewels. Employees should use good judgment when selecting nail color.

Tattoos must be in good taste. The manager will determine if the tattoo should be covered because the design or slogan may be offensive to customers.

**Note: State regulatory requirements take precedence over these policies.**

2. Hygiene: Personal hygiene is extremely important in the food service industry. Harmful bacteria are easily transferred when good personal hygiene is not practiced. One sick or infected employee who does not follow good hygiene habits could be responsible for the outbreak of disease or food borne illness that could affect many customers and employees. Good personal hygiene starts at home before the work day begins. A personal hygiene regime should include:

- Bathing daily and using deodorant
- Brushed teeth
- Clean hands and nails
- Clean-shaven
- Clean pressed clothing

Washing your hands is mandatory before preparing and handling food, or after any of the following activities:

- Breaks and smoking
- Visiting the restroom
- Handling money
- Performing maintenance or cleaning duties

To avoid possible contamination of food products, you should also wash your hands if you cough or sneeze on them; put your hands in your pockets; or touch them to any part of your body, including your face or hair.

3. Official Bojangles' Uniform: As a new employee, you will receive a Bojangles' uniform consisting of a Bojangles' shirt, hat and name tag which must be worn at any time that

## **ON THE JOB (Cont'd.)**

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you are at work. You will be responsible for the rest of your work clothing, including the following:

Crew members:

- Black pants
- Solid dark belt (Pants must be belted at the waist when pants have belt loops. Pants must be worn properly, not low on the hips.)
- Bojangles' approved jackets and/or sweaters
- Proper undergarments
- Solid dark brown or black leather shoes with hard top, closed toes and non-skid soles. No sandals, flip-flops, mules or canvas shoes may be worn in the restaurant.

Management Uniform (including Shift Managers):

- Cotton twill pants (khaki, dark blue and black)
- Solid dark belt (Pants must be belted at the waist when pants have belt loops. Pants must be worn properly, not low on the hips.)
- Bojangles' approved jackets and/or sweaters
- Proper undergarments
- Solid dark brown or black leather shoes with hard top, closed toes and non-skid soles. No sandals, flip-flops, mules or canvas shoes may be worn in the restaurant.

The number of uniforms you receive will be determined by your work schedule. However, you will receive a minimum of two shirts. You are responsible for keeping your uniforms neat and clean. Lost or damaged uniforms must be replaced or repaired at your expense unless the uniform is damaged while you are on the job.

4. Employees are required to dress appropriately; wear the official uniform when at work or business attire when attending other Company functions. Please use good judgment in your choice of work clothes and conduct yourself professionally and in a way that best represents Bojangles'.

### **NOTICE OF STATUS CHANGE**

Please keep Bojangles' informed of any change that may affect your benefits or payroll tax withholdings. It is very critical that we always have your correct address (for mailing your W-2) and phone number in case of emergency.

### **EMPLOYEE COMPLAINT PROCEDURES**

In any organization of our size, where people work closely together as a team, misunderstandings may arise. You may have a problem or concern regarding your employment or an employment-related issue. In most cases, you should first discuss the problem with your manager. If that fails, go to the next level of supervision as indicated below:

# EXHIBIT E



#### ANTI-HARASSMENT/DISCRIMINATION POLICY

Bojangles' does not tolerate any form of illegal workplace harassment and/or discrimination by any of its employees, customers or vendors. Any form of illegal harassment or discrimination that is related to an individual's race, color, religion, sex, gender, age, national origin, disability, genetic information, pregnancy, or any other characteristic protected by law is a violation of this policy for which appropriate disciplinary action will be taken.

For purposes of this policy, harassment includes any type of misconduct based on any protected characteristic that is unwelcome to any employee. No policy can identify the full range of behaviors that are unacceptable in the workplace or that constitute harassment. Prohibited acts can take a variety of forms. Harassment on the basis of any protected characteristic is strictly prohibited. Harassment can include verbal or physical conduct that demeans or shows hostility or dislike toward another employee because of his/her race, color, religion, sex, age, national origin, disability, genetic information, pregnancy or any other characteristic protected by law, or that of his/her relatives, friends or associates, and that:

- (i) has the purpose or effect of creating an intimidating, hostile or offensive work environment;
- (ii) has the purpose or effect of unreasonably interfering with an individual's work performance; or
- (iii) otherwise, adversely affects an individual's employment opportunities.

Harassing conduct includes, but is not limited to: epithets, slurs, negative stereotyping; threatening, intimidating or hostile acts; demeaning jokes; displaying written or graphic materials in the workplace that demeans or shows hostility toward an individual employee or group of employees.

Sexual harassment constitutes discrimination based on sex or gender and is illegal under federal, state and local laws. For the purposes of this policy, sexual harassment is defined to include unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual or gender-based nature when, for example:

- (i) submission to such conduct is made either explicitly or implicitly a term or condition of employment;
- (ii) submission to or rejection of such conduct is used as the basis for decisions affecting an individual's employment; or
- (iii) such conduct has the purpose or effect of creating an intimidating, hostile or offensive working environment.

Sexual harassment may include a range of behaviors and may involve individuals of the same or different gender. These behaviors may include, but are not limited to, unwanted physical conduct, including touching, pinching, brushing the body, blocking movement or any physical interference with normal movement. Verbal harassment includes offensive comments, jokes, innuendoes and sexually oriented statements and comments that ridicule, insult or otherwise demeans an employee's gender. Sexual harassment may also include non-verbal conduct such as displaying sexually suggestive objects, pictures, graffiti or making obscene gestures.

This policy applies to all applicants and employees, and prohibits harassment, discrimination and retaliation whether engaged in by an employee, by a manager or supervisor or by someone not directly connected to the Company (a vendor, consultant or customer). Conduct described in this policy is unacceptable in the workplace and in any work-related setting, such as business trips, meetings and business-related social events.

#### RETALIATION

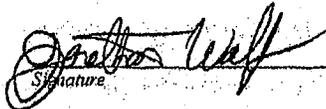
The Company prohibits retaliation against any individual who makes a good faith report of discrimination or harassment in the workplace. Likewise, the Company prohibits retaliation against any individual who assists or participates in the investigation of such reports. Retaliation is a serious violation of this policy, and anyone engaging in such conduct will be subject to disciplinary action, up to and including immediate termination of employment.

#### Reporting an Incident of Harassment, Discrimination or Retaliation

The Company requires employees to immediately report all incidents of harassment, discrimination or retaliation, regardless of the offender's identity or position within the Company. Any person who believes they have experienced or witnessed harassment, discrimination, retaliation or other conduct that is contrary to this policy must report it to his/her Unit Director, Area Director, Regional Vice-President or the Director of Human Resources at 1-800-849-3360, Ext. 8634. Employees may also call the Human Resources Hotline at 1-800-849-3360, Ext. 8401 or the Employee Awareness Hotline at 1-800-514-4227 to make a report. No one is authorized to tell or even suggest to any employee that he/she not report a violation of this policy. Any employee who has any questions or concerns about this policy may contact the Human Resources Department.

Immediate reporting and intervention are the most effective method of resolving actual or perceived incidents of harassment, discrimination or retaliation. The Company will conduct a prompt investigation of all complaints of harassment, discrimination and retaliation. Every effort will be made to keep matters related to the investigation confidential to the extent reasonably possible. Appropriate corrective or disciplinary action will be taken against any employee who has violated this policy.

By signing below, I acknowledge that I have read and understand the company's policy on harassment, discrimination and retaliation. I further acknowledge my understanding of the reporting requirements of this policy.

  
Signature

5/4/2012

Date

  
Social Security Number

BOJANGLES'-00000087

# **APPENDIX 4**

2/21/13

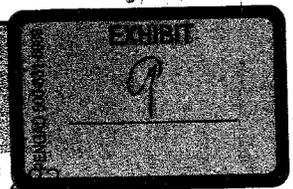
Sharon -

- employee "Johnathan" #274
- good employee but "bisexual"
- got blond braids
- refused to remove  
Lied + said Sharon  
approved
- Ella called him + termed  
changed story  
Sharon told him in  
12/12 he could dye hair  
"not true"

9:50 AM Johnathan #274 disconnected  
(910) 322-5309 new #  
(910) 850-8835  
~~Johnathan~~ unable to  
leave msg

- today, ~~reported~~ off for 3 days
- went to store to get W-2
- just AID - fin disgusted w/you  
they are going to fire you
- "last call Sharon"
- Ella
- talked to Sharon this AM

✓ alleges he talked to Sharon about  
derogatory remarks made to him  
because of sexual preference



Aaron

- talked to her previously
- he & another guy was talking about his separation (bring it up all the time - help <sup>people</sup>)  
"you need to show up"
- Counselled both of them - cannot talk personal issues

\* today - some of what he said is believable

- Believes Joyce may have said these things
- Ella is very dishonest

Think she will schedule a meeting between him & managers

\* did come to the store in a mini-skirt + bra - thinks everyone was shocked and comments were made

Armed and  
"Costume"

2/12

NC - no protection  
gender-based - stereotype  
hasty decision  
(general standards  
of dress)

Jonathan Wolf

- employed 8 mos since 5/12 B  
21-year-old B/M

- no issues other than he was  
counseled by AD for talking about  
his personal business, sexuality etc

Thurs 2/21 -

- Came in late (day off) in mini skirt  
and blind bra
- led to HQ saying AD approved  
hair style
- then, back tracked, said he had  
called her
- told he would have to remove  
before returning to work
- refused

turn  
for assault

AD to schedule a meeting w/ him + mgmt  
(did this happen?)

Agreed to transfer to #735  
has not called for schedule  
has not removed wands  
went to #274 yesterday



# **APPENDIX 5**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
NO. 5:16-cv-00654-BO

U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

Plaintiff,

v.

BOJANGLES' RESTAURANTS, INC.,

Defendant.

DEPOSITION  
OF  
SHIMIKA SINGLETON

Taken at:

United States Postal Service  
907 Brighton Road  
Fayetteville, North Carolina

On Tuesday, April 4, 2017

REPORTER: K. DENISE NEAL, RPR

1 A. No.

2 Q. Have you been coerced or threatened in any way?

3 A. No.

4 Q. Okay. You were an employee of Bojangles'; correct?

5 A. Yes.

6 Q. Okay. Which restaurant did you work at?

7 A. Owen Drive.

8 Q. Is that the restaurant located at 1901 Owen Drive?

9 A. Yes, ma'am.

10 Q. In Fayetteville, North Carolina?

11 A. Yes.

12 Q. When did you start at that restaurant?

13 A. It was five years ago. Well, six years ago now.

14 Q. So it would have been 2011?

15 A. It's about -- I'm going to say about 2010.

16 Q. 2010. And was that your first time ever working at a  
17 Bojangles' or had you worked at a Bojangles'  
18 Restaurant before?

19 A. That was my first time.

20 Q. Okay. What were you hired in as? Did you have a  
21 title or position?

22 A. I was hired in as crew, but I became a shift manager.

23 Q. When did that happen?

24 A. 2011.

25 Q. And what did you do as a shift manager?

1 Q. Did you hear anything from Janet Locklear or Janice  
2 Locklear about Jonathan's braids in relation to her  
3 sex?

4 A. Well, she did -- okay. Janice is a very outgoing  
5 person. She -- you could tell that Jonathan doesn't  
6 like gays. So, I mean, not just that day would she  
7 make a comment about Jonathan, but she was really  
8 making comments about very, very, very -- like those  
9 braids are not supposed to be in your head.

10 Why do you have those braids in your head? You're  
11 a boy. You're not a girl. Why do you have these  
12 braids in your head? You know you cannot come in  
13 Bojangles' with those braids in your head if you're  
14 coming here to work. Jonathan kept explaining I'm  
15 off. I do not even come to work today. This is my  
16 birthday weekend.

17 I'm having a party. I got these braids in my head  
18 for my birthday. Y'all haven't given me an  
19 opportunity to even come to work Monday. You have to  
20 have those braids out of your head before you get back  
21 in here. That's what she just kept saying over and  
22 over again before she went and got Ella.

23 Q. Okay. And that was Janice Locklear?

24 A. Janice Locklear.

25 Q. Had you ever heard Ms. Locklear make comments about or

1 to Jonathan specifically as related to his sex before  
2 the braids incident?

3 A. Yes.

4 MR. CHURCH: Objection to the form.

5 Q. What had you heard from Ms. Locklear?

6 A. Janice, she had said maybe trying to be -- to put it  
7 off as a joking manner, but she used to say, you know,  
8 you're not a girl. Stop acting like a girl. What's  
9 the purpose of being gay? Things of that nature.

10 Q. And did you ever hear Ms. Locklear call Jonathan Wolfe  
11 a sissy?

12 A. Yes.

13 Q. How often would you hear that?

14 A. All the time that we worked together.

15 Q. Would you say you would hear that every shift, less  
16 than every shift?

17 A. I'm not going to say every shift or less than every  
18 shift, but it was often.

19 Q. And did you hear Ms. Locklear use any other terms like  
20 sissy to describe Jonathan or towards Jonathan?

21 A. No, because I would ask her not to do that around me.

22 Q. Why did you ask her not to do that?

23 A. Because I know a lot of gay people and I know how  
24 sensitive they are to those types of things. And, you  
25 know, when you're at a place of employment, you want

1 to keep everything in a peaceful manner, you know.  
2 And I could tell sometimes when she say it to  
3 Jonathan, Jonathan would brush it off and then  
4 sometimes you could tell that it was disturbing to  
5 him. So to keep everybody at peace so that we can  
6 concentrate on Bojangles', I would ask her to keep  
7 some of her comments to herself.

8 Q. How could you tell that Jonathan was being affected by  
9 Ms. Locklear's comments?

10 MR. CHURCH: Objection to the form.

11 THE WITNESS: Because Jonathan is a very  
12 outspoken, happy type person. And you could tell  
13 when something affects him because he'll get quiet  
14 and he's just there doing, not talking to no one,  
15 you know.

16 And that's not Jonathan because Jonathan is  
17 the type of person that likes to keep things -- he  
18 like to keep me laughing because when you're at  
19 work and you're laughing and you're doing your  
20 work, the day goes by faster. And you can tell  
21 when someone says something to him, he'll just get  
22 quiet and shut down.

23 Q. Okay. So you heard -- and Janice Locklear, what was  
24 her position at Bojangles' during the time you were  
25 there?

1 gender, the fact that -- or gender, gender identity?

2 MR. CHURCH: Objection to form.

3 THE WITNESS: No.

4 Q. Okay. EEOC specifically alleges that during this  
5 interaction Riggins told Jonathan Wolfe I hired you as  
6 a man, you're going to act like a man. Did you  
7 observe that or not observe that?

8 MR. CHURCH: Objection to the form.

9 THE WITNESS: Yes. She did make that  
10 comment.

11 Q. Can you tell me specifically in what context she made  
12 that comment?

13 A. Just them standing there holding a conversation. At  
14 this time Jonathan had come to the receiving end of  
15 the counter so that him and Ella could talk because it  
16 was other customers in the store. Jonathan came to  
17 the receiving end of the counter.

18 Ella did made the comment, you know, I hired you  
19 as a man so you're going to act that way. Jonathan  
20 said what's the difference between me having these  
21 braids and the person in the back having the dreads in  
22 his head? I don't see the difference. Ella said  
23 because that's how I hired him and this is not how I  
24 hired you.

25 Q. And then you specifically heard that conversation

1 between Ella and Jonathan?

2 A. Yes, because I was standing right behind Ella.

3 Q. Did other employees who were actively working at the  
4 Owen Drive store have yarn braids?

5 A. At that time I don't believe they had yarn braids, but  
6 they had braids. Quite a few of the young ladies in  
7 there had braids. The person that I was speaking upon  
8 is a man that has the dreads that's real long down his  
9 back.

10 Q. About how many females had braids?

11 A. I'm going to say about probably three.

12 Q. Any other men have braids? Any men?

13 A. It's not braids. It's dreads. It's kind of  
14 considered as a braid. It's just twisted instead of  
15 three strands.

16 Q. Would Jonathan have been the only biological male to  
17 have braids in the store?

18 MR. CHURCH: Objection to the form.

19 THE WITNESS: If you're including dreads,  
20 then no.

21 Q. Okay. It was just the one man that had long dreads?

22 A. Yes.

23 Q. Anybody else have dreads in the store?

24 A. Let's see. No. He was the only one at that time.

25 Q. Now, when these employees who either had braids or

1 dreads were working, did they have to wear any type of  
2 hair covering or --

3 A. It was not at the time a policy for you to have head  
4 covering on your head at that time, but Ella would  
5 request that if they had braids or at one point it got  
6 to the point, period, that everybody needed to wear a  
7 hair net, a hair net.

8 Q. What would -- at that time what would Ella ask about  
9 people that had braids or dreads?

10 A. To wear a hair net.

11 Q. Okay, okay. Now, these people who are wearing braids  
12 or dreads, were any of the braids or dreads light  
13 brown or blonde?

14 A. To be honest, I can't -- I don't remember, but  
15 sometimes they even had other colors in their head.  
16 So it was just not specifically always black.

17 Sometimes they would have burgundy or blue or  
18 whatever the color is because the young kids these  
19 days, whatever the color is going, that's just the  
20 color they would have in their head, but I can't  
21 really give you a specific color that they were  
22 wearing.

23 Q. Now, when you were observing this conversation between  
24 Ms. Locklear and Jonathan and Ms. Riggins and  
25 Jonathan, did either Ms. Locklear or Ms. Riggins say

1 A. It wouldn't be often because when I would hear it on  
2 my shift, I would let them know that this is not  
3 something that can be tolerated. You guys can go  
4 home. This is not what we're here to do. We're here  
5 to work.

6 Q. So anytime that you heard that kind of language, you  
7 would correct it?

8 A. Yes. I would.

9 Q. And did you ever have to discipline anyone?

10 A. No, because they always knew that if I said something,  
11 I meant it because the next thing for you to do is to  
12 go home. Don't nobody want to go home. You want to  
13 make money.

14 Q. Did Jonathan ever complain to you about any of those  
15 comments?

16 A. Jonathan never complained about anything.

17 Q. You indicated that you had heard Ms. Locklear call  
18 Jonathan a sissy from time to time. Do you recall  
19 that testimony?

20 A. Yes, yes.

21 Q. About how often, how many times did Ms. Locklear call  
22 Jonathan a sissy?

23 A. I'm going to say about 50 or more.

24 Q. Did Jonathan ever complain to you about anything that  
25 Janice said to him?

1           anything for Bojangles' at the time. He was off  
2           the schedule. This was his weekend off.

3   Q.    But he was communicating with them about what his  
4           appearance would be when he returned to work; correct?

5   A.    Correct, but that was only because he was asked the  
6           question.

7   Q.    When Ms. Riggins came out to talk with Jonathan on  
8           February 21st, do you recall who spoke to whom first?

9   A.    She spoke to him first because he didn't even know  
10          that she was coming up there.

11   Q.    What did Ms. Riggins say?

12   A.    When she came up, she -- hey, Jonathan. What's going  
13          on with your hair?

14   Q.    What did Jonathan say?

15   A.    He basically was telling her that, you know, this is  
16          his birthday weekend. He was just doing something  
17          different.

18   Q.    And Mr. Wolfe indicated that he didn't intend to keep  
19          the braids?

20   A.    After he was asked, then he indicated that he wasn't  
21          intending to keep the braids.

22   Q.    What did Ms. Riggins say in response to Jonathan  
23          talking about his birthday weekend?

24   A.    Nothing. She just kept saying make sure that when you  
25          come in that those braids aren't in your head. Come

1 in as I hired you.

2 Q. Did Ms. Riggins say anything else to Jonathan?

3 A. No. That was the extent of their conversation.

4 Q. Did Jonathan say anything in response to Ms. Riggins  
5 instructing him to make sure that the braids were not  
6 in his head?

7 A. Jonathan just said what he always said when somebody  
8 would say that, that when he came back to work that  
9 the braids would not be in his head.

10 Q. You told Ms. Steenbergh that you next talked to  
11 Jonathan the Monday following the 21st; is that right?

12 A. Uh-huh, yes.

13 Q. And Jonathan asked you about whether he was on the  
14 work schedule at the Owen Drive restaurant?

15 A. I guess he had already called up there and they let  
16 him know that he wasn't on the schedule. And he was  
17 calling to ask me did I know if he was on the schedule  
18 or not.

19 Did I know when they actually took him off the  
20 schedule and what necessary steps that he needed to  
21 do. And I told him to give Ella a call to find out  
22 why he was taken off the schedule.

23 Q. Did Jonathan indicate at that time that he'd agreed to  
24 transfer to the Raeford Road location?

25 A. He had been waiting for a transfer to the Raeford Road

1 discussing?

2 A. Yes.

3 Q. In Exhibit 3 it appears that the braids extend towards  
4 Jonathan's waist?

5 A. Uh-huh.

6 Q. Did they go below Jonathan's waist?

7 A. To be honest with you, I really don't remember.

8 Q. But they went at least to his waist; correct?

9 A. Uh-huh, correct.

10 Q. One of the first questions I asked you was about the  
11 comments that some of the co-workers you said made to  
12 Jonathan. Do you specifically remember who the  
13 co-workers were who made comments to Jonathan?

14 A. Let me see who worked. It's been so long ago. So  
15 many people have come in and out of Bojangles'. One  
16 person I could say is Dashawn. Is it Dashawn?  
17 Dashawn, I don't know his last name as well as, I  
18 mean, we already determined Janice.

19 I really don't remember a lot of crew from back  
20 then because, like I said, at that time we had a lot  
21 of crew to come and go.

22 Q. So other than Dashawn and Janice, as you sit here  
23 today you can't think of any other specific names?

24 A. No. I really don't remember no -- a lot of people  
25 that was there around that time.

1 MR. CHURCH: Give me just a couple of  
2 moments.

3 THE WITNESS: Oh, wait a minute. Jermell,  
4 Jermell Taylor.

5 Q. What's Dashawn's position?

6 A. He was a crew.

7 Q. Did he work up front or in the kitchen?

8 A. In the kitchen.

9 Q. What was Jermell Taylor's position?

10 A. He was a shift manager.

11 Q. Did Jonathan discuss his sexual orientation while he  
12 was at work?

13 A. No.

14 Q. Did he talk about being gay with folks at work?

15 A. No.

16 Q. You knew Jonathan to be gay, though; correct?

17 A. Correct.

18 Q. How did you come to find that out?

19 A. I mean, if Jonathan walk in here right now, you could  
20 tell that Jonathan was gay and not just because of how  
21 he dress, but how he talks. They say, quote/unquote,  
22 how a man is supposed to talk. He doesn't have the  
23 tone of a man.

24 Q. Give me just a moment. I'm going to make sure I've  
25 covered everything here.

1 Jonathan at work, he.

2 Q. And is that what everyone else at work called  
3 Jonathan?

4 A. Yeah, yes. I'm sorry.

5 Q. That's okay. And Jonathan didn't object to being  
6 called he; correct?

7 A. No.

8 MR. CHURCH: That's all I have.

9 MS. STEENBERGH: I have a few follow-up  
10 questions for you.

11 FURTHER EXAMINATION BY MS. STEENBERGH

12 Q. You said that you observed co-workers making comments  
13 about Jonathan, including Jermell Taylor, shift  
14 manager?

15 A. Uh-huh, yes.

16 Q. What kind of comments did Jermell, the shift manager,  
17 make about Jonathan?

18 A. Sometimes if Jonathan would say something, they would  
19 say something like shut up, punk or, you know, those  
20 type of things, you little sissy. The same thing,  
21 those type things, things that guys would say.

22 Q. Did you ever witness Jonathan cry at work?

23 A. Let me think. So many people cried at work. No, not  
24 with me being there, no. Well, I didn't witness it,  
25 but I could hear it in his tone that night that he

1 A. Yeah.

2 MR. CHURCH: Objection to form.

3 Q. Did Jonathan call you from the Bojangles' store?

4 A. Yes. He did.

5 Q. Okay. That's why the number appeared Bojangles' on  
6 your phone?

7 A. Yes.

8 Q. Going back to Exhibit 1, which is the harassment and  
9 discrimination policy, did you receive any type of  
10 training on this policy throughout your time with  
11 Bojangles'?

12 A. No. We just got the book.

13 Q. Anyone sit down and explain to you what harassment is?

14 A. No.

15 Q. What you should be reporting?

16 A. No.

17 Q. Anyone give you examples of harassment?

18 A. No.

19 Q. Why to you is someone calling somebody a sissy or a  
20 faggot not harassment?

21 MR. CHURCH: Objection to the form.

22 THE WITNESS: I'm not going to say that it's  
23 not a form of harassment, but I believe if the  
24 person feel like they were harassed, then they  
25 would have said something; but I also feel like

1 at the door or because I believe we had gotten in  
2 trouble one time with some of the head people coming  
3 in. One of our crew members had -- their shoes was  
4 what the kids say were talking.

5 So Ella was very strict about when you came in,  
6 how you was dressed to come into work. If you didn't  
7 -- for men, if their mustache wasn't groomed or their  
8 face, whatever, she would send them home. You know,  
9 you have to go home and then come back. So she was  
10 very, very clear about appearance at work.

11 Q. And then now going to Exhibit 3, which is the  
12 photograph of Jonathan, does anything about Jonathan's  
13 hair as it appears in this photograph violate the  
14 grooming policy?

15 MR. CHURCH: Objection to the form.

16 THE WITNESS: To be honest, I don't see where  
17 his hair is any different from the dreads that  
18 Dashawn has in his head at work. To me, Jonathan  
19 could -- if he would have come back to work, he  
20 could have done this because from a distance you  
21 can't tell that those were braids. You would  
22 actually think they were dreads.

23 Dashawn was able to have the ability to put  
24 his up if he was to come back to work on Monday.  
25 They didn't even give him a chance to either come

1 in to see if they were out or be able to put them  
2 up and put a hair net on his head.

3 Q. Now, the braids that are in Exhibit 3, are these  
4 braids that a man would typically wear?

5 MR. CHURCH: Objection to the form.

6 THE WITNESS: Yes. Some men are wearing  
7 these braids that's not even trying to be  
8 transgender or gay.

9 Q. And so returning really quickly to these comments that  
10 co-workers were making to Jonathan, why do you believe  
11 that those comments didn't have an effect on Jonathan?

12 A. I believe that they didn't have --

13 MR. CHURCH: Objection to form. Sorry. Go  
14 ahead.

15 THE WITNESS: That they didn't have an effect  
16 on Jonathan because it was something that he was  
17 just used to hearing. And that's my full  
18 reasoning of believing that it really didn't  
19 affect him in a good or bad way. He would just --  
20 if it was said, if he did get offensive to it, you  
21 believe me when I say Jonathan will let you know  
22 if you have offended him.

23 And he wouldn't go to the next person. He  
24 would go straight to you. He would let you know  
25 if anything that you said had offended him. So I

1           really do believe that the reason that Jonathan  
2           never said anything is because he's used to it.

3   Q.   Did you ever personally witness Jonathan telling  
4           another co-worker that Jonathan was offended by what  
5           they were saying?

6   A.   I do remember him telling Janice Locklear, him pulling  
7           -- I don't know what was said, but I do know he pulled  
8           Janice aside and said what he had to say to her.  And  
9           whatever was said to him -- to her that day, she  
10          didn't say anything else to Jonathan that day.

11   Q.   Did she say things to Jonathan after that day?

12   A.   To my -- yes.  If Janice would get mad or, you know,  
13          things was going in the store, the store getting  
14          hectic and if Jonathan was the person that -- the  
15          reason that the problem was going on right then, then  
16          yes, she would say it; but she wouldn't say it to a  
17          point where everybody could hear it.  If you were  
18          standing there, you heard it, but he would surely hear  
19          it.

20   Q.   And by it, what do you mean?

21   A.   Like sissy, that was her favorite word.  Sissy is --  
22          was Janice's favorite word when it came to Jonathan.

23   Q.   And now I believe you stated that Jonathan didn't tell  
24          you that he wanted to transition or she wanted to  
25          transition to a woman until after Jonathan left

# **APPENDIX 6**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:16-cv-0064-BO

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

v.

BOJANGLES' RESTAURANTS, INC.,

Defendant.

DEPOSITION  
OF  
SHARON MCCOLLOUGH IRWIN

Taken at:

Robinson, Bradshaw & Hinson  
101 North Tryon Street, Suite 1900  
Charlotte, North Carolina 28246

On Tuesday, April 25, 2017

REPORTER: SALLY W. LOWRANCE, CVR-M  
Notary Public

1 was well -- very respectful. He was -- he had good  
2 mannerisms, like a child that was brought up the right  
3 way is how he acted. He didn't -- to me he didn't act  
4 feminine, he didn't act any of those things. He acted  
5 like someone raised in the right way.

6 Q. Now, if Ms. Wolfe had expressed feminine mannerisms,  
7 would that not be acting like she was raised in the  
8 right way?

9 A. No, that would have still been raised the right way, but  
10 it would have showed that he had a little bit of female  
11 mannerisms in him, and that would have been just fine  
12 too.

13 Q. Okay, so I just want to make sure I understand your  
14 position correctly, and your position is that you did  
15 not observe Ms. Wolfe displaying any mannerisms that you  
16 would describe as feminine?

17 MR. CHURCH: Objection to the form.

18 A. Right.

19 Q. So you didn't personally observe Ms. Wolfe dressed as a  
20 female. Had any other employees told you that they had  
21 observed Ms. Wolfe dressed as a female?

22 A. Just the day that he came in on his day off.

23 Q. When was that?

24 A. February 21st.

25 Q. And who relayed this information to you?

1 A. Ella relayed it to me.

2 Q. What did she say about how Jonathan looked?

3 A. She just told me that he was -- really all she talked  
4 about was his hair. She really didn't discuss the way  
5 that he was dressed. Her issue was his hair but that --  
6 she did tell me that, you know, he caused a -- everybody  
7 was up in arms because nobody's seen him dressed like  
8 that before. And that's what brought her attention to  
9 the front line is because it was up in arms, but she  
10 was, you know, concerned about his hair, and that's what  
11 kind of started the conversation between them.

12 Q. And this hair, this is the female braids we just talked  
13 about in the photograph?

14 A. Yes, ma'am.

15 Q. Okay, but prior to February 21st no employee had talked  
16 to you about the charging party, Ms. Wolfe, dressing as  
17 a woman?

18 A. No, ma'am.

19 Q. Had any other employee talked to you about Ms. Wolfe  
20 wearing makeup or jewelry or anything of that nature?

21 A. No, ma'am.

22 Q. Did you ever describe Ms. Wolfe as bisexual to Jeannine  
23 Eubanks?

24 A. I did.

25 Q. Okay, tell me about that.

1 A. When I called Jeannine about the conversation that I had  
2 -- or the conversation between Jonathan and the two  
3 gentlemen in the kitchen, I was trying to explain to  
4 Jeannine the confrontation that happened. And I was  
5 trying to describe the scenario or the issue at hand,  
6 and I was trying to make her understand Jonathan to her  
7 or the scenario or the -- to make a -- I was trying to  
8 get her to understand Jonathan and why I was having this  
9 conversation or why I had to have the conversation,  
10 period. So I wasn't saying that he was this way, but I  
11 was saying this is why I had to have the conversation,  
12 period.

13 Q. And when did the situation where Ms. Wolfe locked  
14 herself in the bathroom, when did that happen?

15 A. It was in February.

16 Q. February 2013?

17 A. Yes, ma'am.

18 Q. Do you recall an approximate date? You said you were on  
19 vacation?

20 A. I do not.

21 Q. Do you know if it was before or after Valentine's Day?

22 A. I don't know.

23 Q. Would you be able to look at your calendar to determine  
24 the date?

25 A. I still wouldn't be able to give you the date.

1 Q. Could you give me a week?

2 A. I want to say it was on the week of Valentine's week,  
3 but I'm not exactly for sure.

4 Q. But it was before February 21st?

5 A. Right.

6 Q. Okay. So at least before February 21st you had some  
7 understanding that Ms. Wolfe was not a heterosexual  
8 male, correct?

9 A. Correct.

10 Q. And you relayed that to Ms. Eubanks?

11 A. I did.

12 Q. When did you call Ms. Eubanks to discuss this situation  
13 where Jonathan had locked herself in the bathroom?

14 A. The day after it happened.

15 Q. Did you take any notes from the situation?

16 A. I did not.

17 Q. When you called Jeannine Eubanks about it the day after,  
18 how long did your phone call with Jeannine last?

19 A. A couple minutes.

20 Q. What did you-all talk about?

21 A. I just told her that -- what happened and what I did.

22 Q. And it was your decision to terminate Ms. Wolfe,  
23 correct?

24 A. It was.

25 Q. Who else was involved in that decision?

1 A. Nobody.

2 Q. Just you?

3 A. Just me.

4 Q. Did you consult with anybody in making your  
5 determination?

6 A. I did not.

7 Q. Okay. When did you make the decision to terminate  
8 Ms. Wolfe?

9 A. On the phone that night.

10 Q. Which night?

11 A. The 27th, February 27th.

12 Q. 2013?

13 A. Yes, ma'am.

14 Q. Approximately what time of day?

15 A. Between 5:30 and 6:00.

16 Q. In your words why did you decide to terminate charging  
17 party, or Ms. Wolfe?

18 A. For being disrespectful and cursing at me nonstop.

19 Q. What specifically did Ms. Wolfe say to you?

20 A. That he is a f'ing paying customer and that he does not  
21 have to listen to me, and he doesn't give a GD what I  
22 said, and he can go in any f'ing store he wants to. And  
23 I asked him, "Please do not curse at me, because even  
24 though you're not on the clock right now you still are  
25 employed with Bojangles'. Please don't curse again,"

1 and he just continued one more time, "I'm not your f'ing  
2 employee right now. I'm a GD paying customer."

3 And I said, "Jonathan, I'm not going to ask you  
4 but one more time, please stop cursing or I'm going  
5 terminate you." And he told me I could do whatever the  
6 F I wanted to because he's a paying customer." So I --  
7 "That's it. We're done. You don't -- you're no longer  
8 employed with us."

9 Q. Approximately how many times would you estimate that  
10 charging party cursed at you during that --

11 A. Nine or ten.

12 Q. Had Ms. Wolfe ever cursed at you before?

13 A. He has not.

14 Q. Did you find this cursing out of character for  
15 Ms. Wolfe?

16 A. It was.

17 Q. And so I understand from what you just described to me,  
18 that occurred during a phone call with Ms. Wolfe?

19 A. (Nods head affirmatively.)

20 Q. Okay, when was that phone call?

21 A. On the 27th.

22 Q. Do you remember the time?

23 A. It was between 5:30 and 6:00.

24 Q. And that's at the time you decided to terminate  
25 Ms. Wolfe?

1 Q. Okay. Had you ever had a situation where an employee  
2 had allegedly cursed at you on the phone?

3 A. Not on the phone, no, ma'am.

4 Q. Has an employee cursed at you in person?

5 A. Yes, ma'am.

6 Q. Okay, who is this employee?

7 A. I can't recall names.

8 Q. Which store was this person employed at?

9 A. There's been several in High Point. I've had several  
10 employees that have cursed or been disrespectful.

11 Q. Have you terminated any of these --

12 A. Absolutely.

13 Q. Have you not terminated any of these?

14 A. Absolutely not. If you are disrespectful and you curse,  
15 you are terminated.

16 Q. All right, so I want to go back. I think we may have  
17 muddled a few of the phone calls, and so let's kind of  
18 walk through this temporally. All right, you stated the  
19 first time you ever received reports that Ms. Wolfe came  
20 into the store dressed as a female was February 21st,  
21 correct?

22 A. Yes, ma'am.

23 Q. Okay. And Ella Riggins made that report to you?

24 A. Yes, ma'am.

25 Q. Okay. What time did Ella call you?

1 A. She first started calling me maybe around 2:30. I was  
2 in a meeting. I really can't tell you what time she  
3 started calling me. I couldn't answer the phone call.

4 Q. But you were not at the Owen Drive store?

5 A. I was not.

6 Q. Okay, where were you on February 21st?

7 A. In Charlotte.

8 Q. Were you at a corporate location here in Charlotte?

9 A. I was at the support center.

10 Q. About how many times did Ms. Riggins call you before she  
11 was actually able to get in touch with you?

12 A. She just started -- oh, she called me quite a few times.  
13 I would say four or five. But they know when I'm in a  
14 meeting, so she knew calling me was not going to get  
15 through to me.

16 Q. And was Ms. Riggins' first attempt to contact you at  
17 2:30 or is that when she actually made contact with you?

18 A. That's when she started calling.

19 Q. About what time did you speak with Ms. Riggins?

20 A. I don't -- I never actually physically spoke to her that  
21 day.

22 Q. So what happened? How did you --

23 A. Text.

24 Q. Text, okay. Did she leave you any voice mails?

25 A. She did not.

1 Q. Did you save those text messages?

2 A. I do not have them.

3 Q. Would those text messages go to your company phone or  
4 your personal phone?

5 A. I only have a personal phone.

6 Q. Did you take any steps to preserve or save those texts?

7 A. I did not.

8 Q. What kind of phone plan do you have? Who's your  
9 carrier?

10 A. Verizon.

11 Q. At any point did any Bojangles' employee ask to see the  
12 text messages?

13 A. They did not.

14 Q. Did you report to anybody at Bojangles' that you had  
15 these text messages?

16 A. I did not.

17 Q. Why not?

18 A. The only thing Ella said is that he came in and wouldn't  
19 leave, that he would not -- when she asked him to leave,  
20 he was holding up the line, and he wouldn't go. My  
21 response was, "If he won't leave, call the cops," the  
22 same thing we would do to any customer.

23 Q. Is this from February 21st or 27th?

24 A. This was still the 21st.

25 Q. Okay, so Ella said that Ms. Wolfe wouldn't leave the

1 store. How many texts did you receive from Ms. Riggins?

2 A. One.

3 Q. Now, earlier you had said that on the 21st Ms. Riggins  
4 got in contact with you and said something about  
5 Ms. Wolfe's hair. How did that come into play?

6 A. That had to be the next day.

7 Q. So is it your testimony that you learned about  
8 Ms. Wolfe's braids the following day, which would be  
9 February 22nd?

10 A. Second.

11 Q. On February 21st did you ever go to the Owen Drive  
12 location?

13 A. No, I did not.

14 Q. Did you go to the Owen Drive restaurant on February  
15 22nd?

16 A. I did.

17 Q. Why?

18 A. To review the camera.

19 Q. The store has a camera?

20 A. It does.

21 Q. And did you review --

22 A. I did.

23 Q. -- the videotape of February 21st?

24 A. I did.

25 Q. What steps did you take to preserve that camera footage?

1 A. I didn't.

2 Q. Why?

3 A. I just wanted to see if he would leave or not, if he sat  
4 on the front line like she said he did.

5 Q. And what did you see?

6 A. I seen him sit -- where you pick up your food, he just  
7 sat there, like he wouldn't leave so other customers  
8 could get their food.

9 Q. He was just sitting there by himself or herself?

10 A. Standing -- uh-huh, just standing there.

11 Q. How long did Ms. Wolfe just stand there?

12 A. About eight minutes.

13 Q. Was Ms. Wolfe interacting with any other person,  
14 employee, customer, during these eight minutes?

15 A. You can't hear anything. There's no audio, so I really  
16 couldn't tell.

17 Q. When you're looking at this camera footage, what exactly  
18 can you see?

19 A. You can see the whole front line, you can see it.  
20 There's just no audio, so all he was doing was standing  
21 there.

22 Q. And what do you mean by the whole front line? Like,  
23 describe it for me as if I've never been into a  
24 Bojangles' restaurant.

25 A. Like where you walk in and you place your order, and

1 conversation between Ms. Wolfe --

2 A. I cannot tell. There's no audio, and you can see them,  
3 but you can't really tell if they're chewing or if  
4 they're talking. You can't make that out. I mean, it's  
5 from a very -- it's from a distance. The cameras are  
6 more focused on the registers and if cash is being  
7 stole.

8 Q. So Ms. Wolfe could have been having a conversation  
9 during these eight minutes but you don't know based on  
10 what you are able to see from the video?

11 A. He could have been.

12 Q. And again, no audio, so you can't hear her?

13 A. No audio.

14 Q. Okay. Do you know whether or not this camera footage  
15 can be retrieved today?

16 A. It cannot.

17 Q. Do you know how long that type of footage is preserved?

18 A. Thirty days.

19 Q. Did you at any point talk to Ms. Wolfe about why she had  
20 been seen in the restaurant for approximately eight  
21 minutes standing at the end of the counter?

22 A. I did not.

23 Q. Why not?

24 A. Because it was his time off. He was a customer.

25 Q. Was there anything inappropriate or in violation of a

1 Bojangles' policy that you observed in that video?

2 A. No.

3 Q. All right, so you came to the Owen Drive restaurant on  
4 February 22nd, you viewed the video. What else did you  
5 do while you were at the store?

6 A. I spoke to Christy, and I spoke to Ella, and I got their  
7 statements on what happened.

8 Q. Why did you get statements from Christy?

9 A. No, I'm sorry. That didn't happen on the 20 -- no, no.  
10 That was after the -- that was the 27th. I didn't speak  
11 to anybody. I just watched the video and seen what  
12 happened when he came in.

13 Q. So you didn't speak to anybody on February 22nd?

14 A. I did not. I just watched and seen what happened.

15 Q. Did you speak to Ella?

16 A. I spoke to Ella that day because she was going on about  
17 his hair, and I wanted to see what his hair looked like,  
18 because I already talked to him too because he already  
19 called Jeannine. So I already called and spoke to him,  
20 and his hair could not have been restrained. And his  
21 allegation was, you know, "She told me I had to cut it.  
22 Do I have to cut it?" And I was like, "Your hair has to  
23 be restrained, and there's no way your hair is going to  
24 fit in a hat or a hairnet."

25 Q. I'm getting a little confused on these dates, and I want

1 to make sure your testimony is clear. Who did you speak  
2 with on February 21st?

3 A. The 21st?

4 Q. Yes, the day that Ms. Wolfe actually --

5 A. Ella texted me, and I texted Ella back.

6 Q. Okay.

7 A. And if I'm not mistaken, he already spoke to Jeannine,  
8 and I could be incorrect if I'm -- but if my memory  
9 serves me well, Jeannine already told me, "Call him,"  
10 because he already called Jeannine, because he already  
11 felt like Ella threatened him because the girl said she  
12 did. And I had to call him, and that's when we agreed  
13 he was going to be transferred or what have you. And  
14 then the 22nd is when I went in there to see what really  
15 happened.

16 Q. So you spoke with Ms. Wolfe on the 21st?

17 A. (Nods head affirmatively.)

18 Q. Okay, and you and Ella exchanged at least one text. And  
19 did you speak to Jeannine on the 21st, Ms. Eubanks?

20 A. Uh-huh, because I was in Charlotte. We talked before I  
21 even left.

22 Q. So you spoke with Ms. Eubanks in person?

23 A. Uh-huh.

24 Q. Okay. But you did not speak to Ms. Riggins on the 21st?

25 A. I spoke to her on the 22nd.

1 long or whatever his braids are. He said, "I'll cut  
2 them. It's not a problem."

3 "Okay, call her on Thursday, and get your schedule  
4 for next week," and it was done. We were good. Then I  
5 told him, "But if you're scared of Ella like you just  
6 told me you were, just -- if you feel like there's going  
7 to be" -- because he told me he felt like there's going  
8 to be a confrontation. "Don't go back into Owen Drive  
9 anymore. Let it be."

10 "Yes, ma'am, I will." And we hung up. We were  
11 done.

12 Q. You never gave Ms. Wolfe an explicit ban from going to  
13 the Owen Drive store, correct?

14 A. I did not.

15 Q. So Ms. Wolfe was allowed to go into the Owen Drive store  
16 on February 27th?

17 A. He was allowed to.

18 Q. Okay. So your Fayetteville market, you said it has  
19 seven stores, correct, today, or was it nine stores?

20 A. The area changes so often. You -- we built stores, took  
21 stores away. It changes.

22 Q. Okay, in February 2013 how many stores were in your  
23 area?

24 A. Eight.

25 Q. And you went to visit each of these eight stores,

1 prior to her termination?

2 A. I have not.

3 Q. Did you have to consult with any person in your decision  
4 to terminate Ms. Locklear?

5 A. I spoke to Jeannine.

6 Q. So on February 22nd you spoke to Ms. Riggins. At some  
7 point you talked to Ms. Locklear about what had happened  
8 on the 21st. Who else did you speak with?

9 A. Nobody.

10 Q. And how come you didn't speak with anybody else  
11 regarding the events of February 21st?

12 A. There was no need to speak to anybody about it.

13 Q. Did you conduct any type of investigation about what had  
14 occurred on February 21st?

15 A. I did not.

16 Q. Did Ms. Eubanks direct you to conduct any type of  
17 investigation?

18 A. She did not.

19 Q. So I would imagine you didn't take any written  
20 statements from either Ms. Riggins or Ms. Locklear  
21 before Ms. Wolfe was terminated?

22 A. I did not. There was no complaint of harassment, there  
23 was no complaint of anything. There was no need to  
24 conduct an investigation.

25 Q. So Ms. Wolfe did not make a complaint of harassment to

1 response?

2 MR. CHURCH: Objection to the form.

3 A. I would investigate.

4 Q. Why would you have investigated?

5 A. Because then that would be a harassment.

6 Q. You would perceive that statement as harassment?

7 A. I would.

8 Q. Okay. Well, what you have done to investigate?

9 A. I would have went to the restaurant, took statements  
10 from everyone there to see if Ella made the statement or  
11 not and to see if any other statements were made.

12 Q. And you never spoke to Shimika Singleton about the  
13 events of February 21st?

14 A. I did not.

15 Q. Even though Ms. Singleton gave you the picture of  
16 Ms. Wolfe?

17 A. I did not.

18 Q. About how long does it take you to drive from the Owen  
19 Drive store to store 735 on Raeford Road?

20 A. About 14 minutes.

21 Q. And how long does it take you to drive from the Owen  
22 Drive store to the other restaurant located at  
23 4554 Raeford Road?

24 A. About five minutes.

25 Q. And what about to the restaurant on Corporation Drive?

1 A. Ten minutes.

2 Q. And what about the restaurant on North Main Street in  
3 Hope Mills?

4 A. Eight minutes.

5 Q. And the Owen Drive restaurant, restaurant 735, the  
6 restaurant at 4554 Raeford Road, and the Corporation  
7 Drive in Hope Mills and North Main Street in Hope Mills,  
8 these are all restaurants in your area, correct?

9 A. They are.

10 Q. And they were all restaurants in your area in February  
11 2013?

12 A. They were.

13 Q. Okay. And it's your position that when you talked to  
14 Ms. Wolfe on February 21st she agreed to transfer to the  
15 Raeford Road 735 store?

16 A. Jonathan approached me with moving to 735. It was his  
17 idea.

18 Q. When did she approach you?

19 A. On the phone I asked Jonathan, "What do you want me to  
20 do? What -- how do you want me to solve this for you?  
21 What can I do?"

22 "Can I tran-" -- his response to me was, "Can I  
23 transfer to restaurant 735? Me and my boyfriend are  
24 moving to Raeford Road. It would make my life easier."

25 "Yes, you can. Call her Thursday for your

1 because we needed all the help we could get.

2 Q. I'm just trying to figure out when Ms. Wolfe was working  
3 at the Corporation Drive location.

4 A. Two weeks.

5 Q. Two weeks?

6 A. It wasn't a permanent thing, it was, "Come help for two  
7 weeks."

8 Q. And so we're looking at the December 2012 time frame?

9 A. Yes, ma'am.

10 Q. Was Ms. Wolfe still at the Corporation Drive location in  
11 2013?

12 A. I want to -- we opened the 19th. They probably stayed  
13 to the -- December 5th, latest. Two weeks is all I had  
14 them for.

15 Q. Did you mean January 5th?

16 A. Yeah, I'm sorry. Yes, January 5th.

17 Q. Okay. How many people were brought in to assist with  
18 the opening of this Corporation Drive location?

19 A. The top two people from each one of my restaurants.

20 Q. So Ms. Wolfe was one of the top two people from the Owen  
21 Drive store?

22 A. He was.

23 Q. Who else from Owen Drive came in to open up the  
24 Corporation Drive store?

25 A. Kiana -- I want to say her last name was Covington.

1 about transgender individuals or homosexuals or gay  
2 people?

3 A. No.

4 Q. What about -- his name is Jemel, and I believe he was an  
5 assistant unit director?

6 A. He was, and no, I have not.

7 Q. Are you aware of anyone at the Owen Drive location using  
8 any disparaging remarks?

9 A. Absolutely not.

10 Q. So between the 21st and the 27th, other than what we've  
11 discussed, your conversation with Ms. Riggins and Ms.  
12 Locklear, who else did you speak with regarding  
13 Ms. Wolfe?

14 A. Until the 27th?

15 Q. Sure, let's -- so up until the morning of the 27th?

16 A. Nobody.

17 Q. All right. Where were you on February 27th?

18 A. Fayetteville.

19 Q. Were you at the Owen Drive store?

20 A. At some point that day I was.

21 Q. What about before then, where were you?

22 A. I honestly don't know.

23 Q. Were you at another Bojangles' restaurant?

24 A. I was somewhere in Fayetteville, yes, ma'am, at some  
25 Bojangles' in Fayetteville.

1 A. It's gone. It only holds for 30 days.

2 Q. And nobody asked you to preserve that video?

3 A. Nobody did.

4 Q. All right. So did you speak with Ella Riggins -- now  
5 I'm focusing on the 27th -- did you speak with Ella  
6 Riggins before or after you spoke with Ms. Wolfe?

7 A. On the 27th?

8 Q. Yes.

9 A. I spoke with Ella prior to speaking with Jonathan.

10 Q. Did you speak with Ms. McDonald before or after you  
11 spoke with Ms. Wolfe?

12 A. Before.

13 Q. Okay, so you spoke to both Ms. Riggins and Ms. McDonald  
14 before you spoke with Ms. Wolfe?

15 A. I did.

16 Q. How long did you talk to Ms. McDonald for?

17 A. Ten minutes maybe.

18 Q. And on the 27th you only spoke with Ms. Riggins and  
19 Ms. McDonald --

20 A. Uh-huh.

21 Q. -- before you spoke with -- okay. Did you call  
22 Ms. Wolfe or did Ms. Wolfe call you?

23 A. Jonathan called the 1-800 number, which launched me to  
24 call him.

25 Q. And the 1-800 number is the Service Check line?

1 from Owen Drive. He could have easily went in there and  
2 got one. Easily.

3 Q. Do you know where Ms. Wolfe had been prior to coming in  
4 the Bojangles restaurant?

5 A. I do not.

6 Q. Do you know who Ms. Wolfe was with before coming into  
7 the restaurant?

8 A. I do not.

9 Q. Did Ms. Wolfe come into the restaurant by herself?

10 A. On the camera he was by himself.

11 Q. Okay. Do you know whether or not Ms. Wolfe owned her  
12 own car at this time?

13 A. I do not.

14 Q. Do you know whether or not Ms. Wolfe had reliable  
15 transportation to and from the Bojangles' restaurant at  
16 this time?

17 MR. CHURCH: Objection to the form.

18 A. He got to work back and forth reliable.

19 Q. So all this went down at the Bojangles' restaurant on  
20 the 27th, but you didn't call Ms. Wolfe until you  
21 received the Service Check complaint?

22 A. Correct.

23 Q. Okay. Why is that?

24 A. Because I wasn't going to seek him out to have this  
25 conversation. When I seen him again, my conversation

1 was simply going to be, "Listen, leave it alone. You  
2 need to come to 735, handle your business over here,  
3 don't go to Owen Drive anymore, let Ella do her thing  
4 over there, you do your thing over here. If you guys  
5 can't get along, fine. You asked me to put you over  
6 here. I put you over here. Let this be and you do --  
7 you come over here and do you, let her stay over here  
8 and do her. Let -- stop. I granted your wish. Let it  
9 be."

10 I wasn't going to seek him out. He wasn't being  
11 punished. I didn't punish him by putting him at 735.  
12 He asked me to do that, and in return I asked him not to  
13 go into Owen Drive anymore. Help me as I helped you was  
14 all I was going to ask him to do. I wasn't going to  
15 seek him out and -- like for me, a phone call when  
16 you're not at work is like punishment. I wasn't going  
17 to punish him. When I seen him again I was going to  
18 have a conversation. That's all it was going to be.

19 Q. And at 735 the unit director was Kristen Bowden?

20 A. It was.

21 Q. Were you aware that Ms. Wolfe had made complaints about  
22 Kristen Bowden prior to February 21st?

23 MR. CHURCH: Objection to the form.

24 A. Jonathan never complained to me about Kristen.

25 Q. Do you know whether or not Ms. Wolfe had complained to

1 A. I went through a six-week course of training with  
2 Bojangles'. We do -- we have an online class with  
3 harassment with Bojangles'.

4 Q. The six weeks, was it dedicated solely to the harassment  
5 or were you being trained on other --

6 A. It was -- there was other courses but harassment was one  
7 of them.

8 Q. Is this Bo U., is that what it's called?

9 A. It was.

10 Q. When did you intend Bo U.?

11 A. 2000.

12 Q. Have you attended Bo U. since 2000?

13 A. I have. I go probably every three years, four years.

14 Q. Did the material at Bo U. change based on your  
15 experience?

16 A. Not so much.

17 Q. Okay. Of those six weeks how much time is devoted to  
18 harassment training?

19 A. I would say -- I would say a day, like if you put all  
20 the time together. But there's different steps so I  
21 really can't -- I really can't -- I can't really put a  
22 time on it.

23 Q. What do you mean by different steps?

24 A. Like there's some -- there's pieces -- there's different  
25 pieces of it and it's ongoing throughout the restaurant,

1           there's ongoing on the laptop, there's ongoing in the  
2           handbook, so I really -- I can't -- I really can't put a  
3           time on it. There's just very different pieces of the  
4           puzzle.

5       Q. Did you attend Bo U. in 2012?

6       A. I did in 2013.

7       Q. What month in 2013?

8       A. I want to say April.

9       Q. Have you received training specifically as to LGBT  
10           harassment, do you know what I mean? Do you know what I  
11           mean when I say LGBT?

12      A. I do.

13      Q. Anything specific about LGBT harassment?

14      A. Not specifically to that, no.

15      A. Because we don't -- again, zero harassment.

16      Q. Okay. So you went to Bo U. in April 2013, you say you  
17           go about every three to four years, so before April 2013  
18           when would you say you went to Bo U., would it be 2010,  
19           2009?

20      A. Probably '07, before that.

21      Q. So around 2007 when you went to Bo U. who was your  
22           trainer?

23      A. Renee.

24      Q. Who is Renee?

25      A. Dexter. I mean she was over the whole Bo U. Who did

1 back to where he was. I know don't know that.

2 Q. Has anyone asked you to retrieve this information?

3 A. Nobody has asked, but I know that I can't get it, but I  
4 don't know that it can't -- I don't know if it can be  
5 got or not. But I know that I can't.

6 Q. Who would know whether or not this information can be  
7 retrieved?

8 A. Someone in our IT department maybe.

9 Q. And is IT located here in Charlotte?

10 A. It is.

11 Q. Have you provided all of the notes and documents that  
12 you have in your possession related to Ms. Wolfe to  
13 Bojangles' or to your attorneys in this case?

14 A. I have.

15 Q. So we have, or you have given everything you have to  
16 your attorneys?

17 A. I have.

18 Q. And you took no notes of anything, correct?

19 A. I have not.

20 Q. But you did ask Ms. McDonald to write a statement, you  
21 asked Ms. Riggins to write a statement?

22 A. I did.

23 Q. Very early on in your deposition you were telling me a  
24 little bit about a situation where Jonathan locked  
25 herself in the bathroom and was upset, and I want to go

1 through and talk about that. And this was around  
2 February 2013, possibly the week of Valentine's Day,  
3 correct?

4 A. Correct.

5 Q. You said somebody had called you?

6 A. Uh-huh.

7 Q. It wasn't Jonathan, correct?

8 A. It was Jamie Wright.

9 Q. What was the first name?

10 A. Jamie.

11 Q. Okay. Who is that?

12 A. She's the AUD at the Corporation Drive location.

13 Q. Was Ms. Wolfe employed at the Corporation Drive location  
14 at that point?

15 A. He was not.

16 Q. Was Ms. Wolfe employed at the Owen Drive --

17 A. He was.

18 Q. How was Jamie Wright at Corporation Drive calling you  
19 about Ms. Wolfe at Owen Drive?

20 A. Because Jonathan called her because he knew the number  
21 and he knew these managers well from where he came and  
22 helped me open the restaurant. He called her and said  
23 -- asked her to call me and asked me to call him,  
24 because they don't have my direct line. None of my  
25 employees have my direct line -- because he needed to

1 talk to me now.

2 Q. So Ms. Wolfe didn't have your direct dial?

3 A. (Shakes head negatively.) He did not.

4 Q. So if an employee has a complaint how do they get in  
5 touch with you?

6 A. They can either call my Bojangles' voicemail line or  
7 they can email me or they can call any seven or eight  
8 stores that I have, because I'm at one of them in a 15  
9 mile radius. I'm somewhere in that 15 mile radius.

10 Q. Do crew members have the phone number to your voicemail  
11 line?

12 A. They do. It's posted in every one of my restaurants, as  
13 well as my email.

14 Q. But an employee can't call you directly?

15 A. They shouldn't but after -- you know, after they call  
16 the 1-800-number they have my number at that point.

17 Q. At what time did you get this phone call from Jamie  
18 Wright?

19 A. It was, I want to say, probably 4:00 in the afternoon.

20 Q. What were you doing at the time you received this phone  
21 call?

22 A. I was on vacation.

23 Q. Was it a staycation or were you somewhere else?

24 A. I was at home.

25 Q. What exactly did Ms. Wright say to you?

1 A. That Jonathan needs me to call him at Owen Drive.

2 Q. Did she say anything more beyond that?

3 A. She did not.

4 Q. What did you say in response to her?

5 A. All right, thank you.

6 Q. Then what did you do?

7 A. I called Owen Drive.

8 Q. Who picked up?

9 A. Jonathan.

10 Q. What did Jonathan say?

11 A. I said, "Hey, what's going on?" He's like, "I'm in the  
12 bathroom. I'm really scared. I need you to come up  
13 here right now." And I said, "I'm going to really need  
14 you to tell me what's going on," and he said, "I'm just  
15 really, really scared. The two boys in the kitchen are  
16 asking me questions and I'm really scared to answer.  
17 I'm really uncomfortable. Can you come up here?"

18 I said, "I'm going to need you to give me like 15  
19 minutes." He said, "Okay. I'll be in the bathroom  
20 waiting."

21 So I throw on some decent clothes and I get to the  
22 restaurant and I go get him out of the male bathroom and  
23 we march into the restaurant -- or we march into the  
24 dining room and I was like, "You're going to tell me  
25 what's going on." And he said, "I was telling these two

1 boys in the kitchen about the sexual experience I had  
2 with my boyfriend, and they started asking me questions  
3 that I don't -- I didn't feel like answering. It made  
4 me -- the questions made me very uncomfortable."

5 So I marched back there, and I got the two  
6 gentlemen from the kitchen, and I pulled them in the  
7 dining room and I explained to all three of them, "We  
8 are to talk about nothing -- nothing -- but Bojangles'  
9 related things and this should not happen. And if this  
10 type of conversation happens again I will terminate all  
11 three of you guys no questions asked."

12 And then they went back to the -- "Yes, ma'am," is  
13 what they all said. And I told Jonathan, though, "You  
14 can't start conversations and then when it gets  
15 uncomfortable get mad and want me to do something to  
16 them when you started the conversation."

17 "Yes, ma'am, I understand," and he went back to  
18 work, and it was done.

19 Q. Who were the two other boys that were involved in this?

20 A. I cannot recall who they were.

21 Q. Marquise, does that sound familiar?

22 A. It does.

23 Q. Do you believe Marquise was involved in this?

24 A. His name sounds familiar but I really can't remember who  
25 they were, because again, I just thought this was one of

1 those kids being kids having conversations that they  
2 really shouldn't be having, and it was nothing. Some of  
3 that was just blown into something bigger than it was.  
4 Stop it and be done.

5 Q. You have an employee calling you saying that he's really  
6 scared and you didn't think it was a big deal?

7 MR. CHURCH: Objection to the form.

8 A. I thought that he -- no, I didn't think it was a big  
9 deal, because again, he started the conversation. He  
10 started the conversation. You're in here telling these  
11 two boys how you have sex, and of course they're curious  
12 and they ask questions, and now you're upset because  
13 they're asking you questions? You shouldn't start these  
14 conversations.

15 Q. Did Ms. Wolfe confirm that she started the conversation?

16 A. Yes, he did.

17 Q. What specifically was reported to you about this  
18 conversation?

19 A. He told me while they were all three out there that he  
20 started -- he was explaining to them how do men have  
21 sex.

22 Q. But Ms. Wolfe also told you that at some point the  
23 conversation became uncomfortable, correct?

24 A. It did.

25 Q. And how did you address that with Ms. Wolfe?

1 person because they're transgender, that's  
2 discrimination based on sex. But you didn't understand  
3 any of that in your --

4 A. No.

5 MR. CHURCH: Objection to the form.

6 A. Well, if that's your stance, my stance is nobody  
7 discriminated against Jonathan. I terminated Jonathan  
8 solely for being disrespectful and cursing at me, so I  
9 don't feel like Jonathan was discriminated against at  
10 all. That's not what I did.

11 Q. Well, my question to is do you agree that transgender  
12 people should be protected from discrimination in the  
13 workplace?

14 A. Oh, absolutely.

15 MR. CHURCH: Rachael, is this a good  
16 point for a break?

17 Q. Do you need a break right now, Ms. Irwin?

18 A. I can -- I'm good.

19 MR. CHURCH: How much longer do you think  
20 you've got?

21 MS. STEENBERGH: Do you need a break,  
22 Ylda?

23 MS. KOPKA: I'm fine.

24 MS. STEENBERGH: Do you want to take  
25 five?

# **APPENDIX 7**

Jeannine Eubanks

**From:** Sharon McCollough  
**Sent:** Thursday, February 28, 2013 10:41 AM  
**To:** Jeannine Eubanks  
**Subject:** Re: Johnathan Wolf

Jeannine,

I was more going for the wild color of his hair and it was stated to him that it had to be restrained not took out. Jonathan is the one who stated he would cut it to restrain it.

Per our conversation yesterday he said he went to Owen Drive to purchase a drink and the cashier asked him about his hair. He said that he felt it would have been rude not to engage in the conversation with her as they are friends. He told me that he stated twice that it is the way you talk to people. He said that Ella told him to leave the restaurant for talking about that stuff. Jonathan then proceed to tell me that I made him transfer restaurants. This came out of left field for me?? I then told him that we (me and him) both agreed that she should go to work in a different restaurant and he seemed happy because he was moving to Raeford Road.

I asked him one more time why he went into Owen Drive and he told me the entire story again. I replied by stating "I am terminating you employment today due to the fact that you went into Owen Drive trying to start something with Ella and for spreading gossip." He then said he is calling his attorney and the EEOC. I told him okay and good bye. He then called me 4 times and I did not answer. He then texted me and I did not respond. I will send you a pic of the text.

Sharon McCollough

Sent from my iPhone

On Feb 28, 2013, at 9:48 AM, "Jeannine Eubanks" <jeubanks@bojangles.com> wrote:

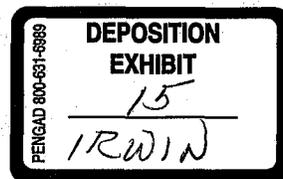
Hi, Sharon,

I have received another voice mail message from Johnathan. Before I return his call, I wanted to find out the latest from you since we last discussed the issue. Can you send me the statements from Ella and her employees?

Also, Vickie was questioning why we wouldn't let him work with braids. If we allow women to work with long hair, as long as it is restrained, why wouldn't we let him? I told her it was more of an issue of how he conducted himself and how he responded to Ella when the issue came up. What are your thoughts? The fact that he went to Owen Drive yesterday knowing he had been transferred is a problem for me. I think he went with the intention of causing problems for Ella. I have a conference call at 10:00 with an employment law attorney. While we are on the phone, I am going to ask him about this issue.

Thanks

**Jeannine Eubanks**  
**Sr. Director, Human Resources**  
**Bojangles' Restaurants, Inc.**



# **APPENDIX 8**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:16-cv-00654-BO

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

v.

BOJANGLES' RESTAURANTS, INC.,

Defendant.

30(b)(6) DEPOSITION  
OF  
BOJANGLES' RESTAURANTS  
BY ITS CORPORATE DESIGNEE,

JEANNINE EUBANKS

Taken at:

U.S. Equal Employment Opportunity Commission  
129 West Trade Street, Suite 400  
Charlotte, North Carolina 28202

On Monday, June 19, 2017

REPORTER: SALLY W. LOWRANCE, CVR-M  
Notary Public

1 less than ten days apart?

2 A. Less than ten days apart, yes, ma'am.

3 Q. Okay. Did Bojangles' conduct any investigation upon  
4 receipt of the EEOC Charge?

5 A. Did we personally conduct an investigation?

6 Q. Yes.

7 A. No, ma'am.

8 Q. There was no investigation conducted by Bojangles' in  
9 response to the EEOC Charge filed by Jonathan Wolfe?

10 A. I would remind you that I had previous notes from  
11 Ms. Irwin when the incident, the original incident  
12 around his termination had occurred. I did have those  
13 notes as required by company policy, I submitted this  
14 Charge to our legal department.

15 Q. And I'm going to mark for you Exhibit 47. Does Exhibit  
16 47 reflect the notes that you were just describing for  
17 me?

18 A. Yes, ma'am.

19 Q. It's a full complete set of the notes that you took with  
20 regard to Ms. Wolfe?

21 A. These are definitely my notes that came from my  
22 notebook, that's my handwriting, and I do believe those  
23 to be my complete notes.

24 Q. At what point did Bojangles' retain outside counsel to  
25 assist in responding to your Charge -- or the Charge of

1 Q. So I imagine Bojangles' did not undertake any electronic  
2 personal record searches with regard to Ms. Wolfe?

3 A. That is correct.

4 Q. Because no such responsive record would have existed at  
5 the time?

6 A. That is correct.

7 Q. What about employee training records, during Ms. Wolfe's  
8 tenure were those all in paper format as well?

9 A. 2012 and 2013, I believe in 2012 and 2013 probably up  
10 until the time we converted to Hiring Manager we used a  
11 system called Sysdine. And they allowed, or it had, the  
12 capability of doing electronic training. By electronic  
13 I mean employees could watch training videos. We were  
14 still doing paper-based training too. It was a  
15 combination of both. Many of those records are  
16 accessible through the training department.

17 Q. Is that Bojangles' internal training department?

18 A. Yes, ma'am.

19 Q. Who's the manager over that department?

20 A. We actually have a director of training. His name is  
21 William Luther. His nickname is BJ.

22 Q. And in terms of your role and Mr. Luther's role, are  
23 y'all laterals or is there any reporting structure you  
24 guys?

25 A. Oh, we would be lateral.

1 observation checklist, generally the manager that that  
2 person worked with the most. Some stores have training  
3 managers but not all, would observe this person perform  
4 at the position and assess whether or not they were  
5 doing the position correctly.

6 Q. Was Ella Riggins the training manager at the Owen Drive  
7 store in 2012?

8 A. I don't remember her exact title, but she probably would  
9 have been responsible for the training, yes.

10 Q. So in 2012 Bojangles' had both electronic and paper  
11 training records?

12 A. Yes.

13 Q. Was that for every employee?

14 A. Managers have a different level of training, but for  
15 every hourly employee, yes, ma'am. Every team member.

16 Q. And you stated that those training records are  
17 accessible through the training department, correct?

18 A. I believe they are.

19 Q. Did you check to see if any such records --

20 A. I did not look for any training records, no.

21 Q. For Jonathan Wolfe?

22 A. No.

23 Q. Why not?

24 A. It didn't occur to me, to be honest.

25 Q. Has anyone from Bojangles' ever looked to see if there

1 are training records available for Ms. Wolfe?

2 MR. CHURCH: Objection to the form.

3 A. I have no idea. I would clarify for you that the HR  
4 department and the training department do operate  
5 separately from each other. So although I have a  
6 general overview of their policies and procedures, I  
7 don't have access to much of their material and so I  
8 don't know if anyone searched those records on Jonathan  
9 Wolfe.

10 Q. Are training records maintained in a file separate from  
11 a personnel file?

12 A. They would be, yes.

13 Q. So there may hypothetically be a separate training file  
14 for Ms. Wolfe that has not been produced in the course  
15 of this litigation?

16 MR. CHURCH: Objection to the form.

17 A. That is a possibility.

18 Q. And nobody from Bojangles' has gone to determine whether  
19 or not there is a training file for Ms. Wolfe?

20 MR. CHURCH: Objection to the form.

21 A. I don't know if anyone asked for training information on  
22 Ms. Wolfe.

23 Q. In 2012 did Bojangles' have any type of email system  
24 that any of its employees used?

25 A. Yes.

1 questions. Once a company engages outside counsel I  
2 thought we relied totally on outside counsel to  
3 represent the company, Bojangles', and we entrusted  
4 Ms. Vincent-Hamacher to do so. She conducted interviews  
5 and formulated the response based on those interviews.  
6 I did not question who she talked to, when did she talk  
7 to them, or what was the content of that conversation.

8 Q. So sitting here today Bojangles' is not going to be able  
9 to tell EEOC the basis for the factual assertions in its  
10 own position statement?

11 MR. CHURCH: Objection to the form.

12 Ms. Eubanks has already identified the basis for  
13 factual -- the investigation which is reflected in  
14 the answer to interrogatory 2, all the individuals  
15 that Bojangles' counsel interviewed in connection  
16 with responding to the Charge. The facts  
17 reflected in the position statement were derived  
18 from those interviews. Ms. Eubanks, as she has  
19 already indicated, isn't prepared to testify any  
20 further about the content of those interviews.

21 Q. Did Ms. Eubanks provide the fact that Bojangles' had  
22 terminated Mr. Wolfe's employment because he came to the  
23 restaurant, was loud and disruptive, and held up the  
24 line?

25 A. Is that a question for me?

1 Q. Yes.

2 A. I have no recollection other than providing the  
3 paperwork that was in the personnel file, and if Ms.  
4 Irwin had informed us that that was the reason for  
5 termination that's what would be our system.

6 Q. Did Ms. Irwin provide the information on the face of  
7 Bojangles' position statement stating the reasons for  
8 termination?

9 A. I don't know.

10 MR. CHURCH: Objection to the form.

11 Q. Did Ella Riggins provide that information?

12 A. I don't know.

13 Q. Did Christy McDonald provide that information?

14 MR. CHURCH: Objection to the form.

15 A. I don't know.

16 Q. Did Janice Locklear provide that information?

17 MR. CHURCH: Objection to the form.

18 A. I don't know.

19 Q. On the face of its position statement would you agree  
20 that Bojangles' hasn't received employee complaints in  
21 proof that Ms. Wolfe sent inappropriate provocative  
22 pictures?

23 MR. CHURCH: Objection to the form.

24 Q. Does that say that on the face of the position statement  
25 that Bojangles' submitted the --

1 Q. But Bojangles' in reviewing its position statement,  
2 which then instructed its agents to submit to the EEOC,  
3 didn't see fit to include that language in there?

4 MR. CHURCH: Objection to the form.

5 A. Because we were telling you why he was terminated, and  
6 he was terminated for disruptive behavior, not for the  
7 use of inappropriate language.

8 MR. CHURCH: Objection to the form.

9 Q. But the position statement says disruptive behavior in  
10 the store, in the restaurant?

11 A. Uh-huh.

12 Q. Wouldn't Bojangles' think that that would be a useful  
13 piece for the EEOC to know that Ms. Wolfe had allegedly  
14 cussed out an area director?

15 MR. CHURCH: Objection to the form.

16 A. I didn't say he cussed out an area director. I said  
17 that he used inappropriate language that was offensive  
18 to her.

19 Q. What did --

20 A. He did use cursing. According to Ms. McCollough Irwin  
21 she didn't like his choice of words. I don't know what  
22 those words were.

23 Q. Did you ask Ms. McCollough what those words were?

24 A. I don't remember asking her, no, because the decision to  
25 terminate was not based on the use of profanity, it was

1 Q. So either IT or the individual employee would have to go  
2 look into their own email account to retrieve emails?

3 A. Yes. And if it's anything like mine, they would go  
4 through sent files and even delete files.

5 Q. And I'll have you turn to the document that ends in  
6 number 24. Is that a document that Bojangles' submitted  
7 to the EEOC during the administrative investigation of  
8 the Charge of Discrimination filed by Jonathan Wolfe?

9 A. Did we submit this? Yes, it would probably have been  
10 part of his personnel file.

11 Q. And on the next page, 25, Work Incident Report, is this  
12 a document that Bojangles' submitted to the EEOC in  
13 connection with Mr. Wolfe's Charge of Discrimination?

14 A. Yes. We were asked for -- during the request for  
15 information we were asked for a copy of his personnel  
16 file I believe and this would have been in the personnel  
17 file.

18 Q. What's a work incident report?

19 A. Some kind of issue. It can be serious, it can be just a  
20 conversation that a manager is having with an employee  
21 over some kind of misconduct or misunderstanding or  
22 something you want them to work on. Work incident  
23 reports are just an easy way for managers to report some  
24 kind of issue.

25 Q. And this report, is this something that Bojangles'

1 creates frequently in its operations?

2 A. We use these regularly, yes. I'm not exactly sure I  
3 understand the question, but every company has to have a  
4 way to record work incidents in the workplace, and they  
5 might be called different things, but yes.

6 Q. So this is how Bojangles' tracks how its employees are  
7 performing?

8 A. It's one of the ways. It's not the only way.

9 Q. And I see at the bottom it says Sysdine PRM?

10 A. Yes.

11 Q. Was this document created using the Sysdine program?

12 A. Apparently. This was back -- let's see, what's the year  
13 on it, 2013. Apparently we were still using Sysdine,  
14 and there was a place within Sysdine where a manager  
15 could write -- could do a work incident report. Still  
16 had to be printed and sent to us. And that was the  
17 website where they were logged on to their Sysdine  
18 account.

19 Q. Okay, so a person who was creating the work incident  
20 report would log on to Sysdine, correct?

21 A. Uh-huh.

22 Q. And create an incident report, electronic incident  
23 report?

24 A. Uh-huh.

25 Q. And then print it off and send it for inclusion the hard

1 copy in Charlotte?

2 A. Yes. And that was back in 2013. We've got a little  
3 more efficient than that now.

4 Q. We have made some strides in technology across? --

5 A. Yes, we're trying to.

6 Q. That's fair. How can you tell when this work incident  
7 report specifically was first created?

8 A. First created? It appears to me as I look at this that  
9 this was almost like a work -- an expectation that in  
10 this case Jonathan Wolfe was going to need to meet. I  
11 think he had from February 2nd to February 28th to, it  
12 looks to me like almost -- I don't quite understand some  
13 of the terminology, to be honest.

14 Q. Well, my question is, from the face of this document can  
15 you tell when the work incident report was first  
16 generated?

17 A. Well, since Ms. Riggins put in a date of 2/21 next to  
18 her name I would assume it was then.

19 Q. You can turn to the next page, ending in number 26.  
20 I'll represent to you it's a document entitled Reasons  
21 for Leaving. Is this a document that Bojangles'  
22 provided to the EEOC in connection with the  
23 investigation of Ms. Wolfe's Charge of Discrimination?

24 A. Yes. This would have been in his personnel file. I  
25 find it interesting it's completed by Kristen Bowden at

1 store number 735, which indicates to me he had already  
2 been transferred over there and he was planned to be on  
3 their schedule and she had to terminate him to get him  
4 out of her system. So he was not terminated at Owen  
5 Drive. You can see the store number up there. Owen  
6 Drive is 274. This is the Raeford Road location in  
7 Fayetteville, 735. And Kristen Bowden was the unit  
8 director at 735 who would have been his new supervisor  
9 if he had followed through with the transfer.

10 Q. But Ms. Bowden wasn't responsible for Ms. Wolfe's  
11 discharge?

12 A. No.

13 Q. I mean, she was not involved in any way in Mr. Wolfe's  
14 discharge?

15 A. No.

16 Q. How did Ms. Bowden, as the person signed as the  
17 manager's name on this form, receive the information  
18 contained in the Notes and Comments section?

19 A. I'm sure she was instructed by Sharon McCollough.

20 Q. I'm turning to the next page, ending in 27. Is this an  
21 employee status report provided by Bojangles' to the  
22 EEOC during the course of the investigation of Jonathan  
23 Wolfe's Charge of Discrimination?

24 A. Yes. It would have been in his personnel file.

25 Q. And the next page, 28, would this also have been

1 Q. Well, sitting here today are you able to tell me  
2 specific details about Owen Drive's use of in-store  
3 video footage?

4 A. No, I'm not.

5 Q. And from what I'm hearing, there was no consistent  
6 policy about use, retention, and preservation of  
7 in-store video footage across the various Bojangles'  
8 restaurants in 2013?

9 A. In-store video, I think that's a true statement,  
10 actually.

11 Q. Okay. I want to go back to the document that has been  
12 marked as Exhibit 47, and those are your handwritten  
13 notes regarding Ms. Wolfe.

14 A. Uh-huh.

15 Q. Does Bojangles' have in its possession, custody, or  
16 control any other written notes beyond your handwritten  
17 notes, beyond Ms. Eubanks' handwritten notes?

18 A. Everything that Ms. Eubanks had was submitted, as  
19 required by our legal counsel and by the EEOC.

20 Q. And does any other employee at Bojangles' have  
21 handwritten notes regarding Ms. Wolfe?

22 A. Not to my knowledge. I believe everything has been  
23 submitted, everything that we had knowledge of.

24 Q. And Exhibit 47, as you stated earlier, is Ms. Eubanks'  
25 complete notes, correct?

1 A. Yes.

2 Q. And all these notes were taken in February 2013,  
3 correct?

4 A. Yes.

5 Q. All right, I'm going to take a quick break and make sure  
6 we got everything covered, and hopefully you'll be out  
7 the door soon. Does that sound okay?

8 A. That would be nice.

9 (A recess was taken from 4:05 to 4:11 p.m.)

10 Q. No further questions for me, Ms. Eubanks. Thank you for  
11 your time.

12 A. I appreciate it.

13 EXAMINATION BY MR. CHURCH

14 Q. Ms. Eubanks, bear with me for just a moment and we'll  
15 clean this up and be on our way. First thing, if you  
16 could find Exhibit 58 for me for just a moment. And it  
17 looks sort of like this (indicating). I'll hold it up  
18 for everybody if you're looking for it. And Exhibit 58  
19 is a record from the L and T system?

20 A. Yes. I'd like to clarify, it's LMT. It's labor  
21 management tool.

22 Q. And is Exhibit 58 a complete record from the LMT tool?

23 A. No.

24 Q. If you had a complete record, what other information  
25 would you be seeing in the LMT record?

# **APPENDIX 9**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
Civil Action No.: 5:16-cv-00654-BO**

**U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,**

**Plaintiff,**

**v.**

**BOJANGLES' RESTAURANTS, INC.,**

**Defendant.**

**DEFENDANT'S RESPONSE TO  
PLAINTIFF'S FIRST SET OF  
REQUESTS FOR PRODUCTION**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Bojangles' Restaurants, Inc. ("Bojangles'") responds to Plaintiff U.S. Equal Employment Opportunity Commission' ("EEOC") First Set of Requests for Production (the "Requests for Production") as follows:

**GENERAL OBJECTIONS**

Bojangles' objects to the Requests for Production to the extent the requests are overbroad, not proportional to the needs of the case, not relevant to the claims or defenses of any party, and not reasonably calculated to lead to the discovery of admissible evidence, and to the extent they seek information protected by the attorney-client privilege and the doctrine preventing disclosure of attorney work-product.

**REQUESTS FOR PRODUCTION**

1. All items identified in Defendant's Fed. R. Civ. P. 26(a)(1)(ii) disclosures.

**RESPONSE:** Bojangles' will produce the responsive documents in its possession, custody or control.

2. All written or recorded statements taken from any person identified in Defendant's Fed. R. Civ. P. 26(a)(1)(ii) disclosures.

**RESPONSE:** Bojangles' objects to this request because it seeks information on matters not relevant to any party's claim or defense. Bojangles' further objects to this request to the extent that it calls for the production of documents protected by the attorney-client privilege or the attorney-work product doctrine. Responsive materials are being withheld on the basis of this objection. Subject to and without waiving this objection, Bojangles' will produce the responsive, non-privileged documents in its possession, custody or control that relate to the claims or defenses in this case.

3. All documents that refer or relate to Defendant's investigation of EEOC Charge No. 433-2013-01334, filed by Jonathan Wolfe ("Wolfe"), and/or this lawsuit. This Request specifically includes, but is not limited to, all interview notes and written statements, whether sworn or unsworn.

**RESPONSE:** Bojangles' objects to this request because it seeks information on matters not relevant to any party's claim or defense. Bojangles' further objects to this request to the extent that it calls for the production of documents protected by the attorney-client privilege or the attorney-work product doctrine. Responsive materials are being withheld on the basis of this objection. Subject to and without waiving these objections, Bojangles' will produce the responsive, non-privileged documents in its possession, custody or control that relate to the claims or defenses in this case.

4. All documents, recording, evidencing, or reflecting interviews, statements, or transcripts of statements of all persons interviewed by or on behalf of Defendant in connection with EEOC Charge No. 433-2013-01334 and/or this lawsuit.

**RESPONSE:** Bojangles' objects to this request because it seeks information on matters not relevant to any party's claim or defense. Bojangles' further objects to this request to the extent that it calls for the production of documents protected by the attorney-client privilege or the attorney-work product doctrine. Responsive materials are being withheld on the basis of these objections. Subject to and without waiving this objection, Bojangles' will produce the responsive, non-privileged documents in its possession, custody or control that relate to the claims or defenses in this case.

5. All correspondence, documents, notes, and other evidence regarding any investigation into any complaint made by Wolfe regarding sex discrimination, sex harassment, inappropriate comments based on sex, and/or retaliation.

**RESPONSE:** Bojangles' objects to this request to the extent that it calls for the production of documents protected by the attorney-client privilege or the attorney-work product doctrine. Responsive materials are being withheld on the basis of this objection. Subject to and without waiving this objection, Bojangles' will produce the responsive, non-privileged documents in its possession, custody or control.

6. All documents and computerized records that refer or relate to Defendant's employment of Wolfe. This request includes, but is not limited to, all personnel documents and disciplinary actions or warnings, whether formal or informal, created or retained by any supervisor, manager, or owner, maintained inside or outside of Defendant's personnel, human resources, or labor relations department.

**RESPONSE:** Bojangles' objects to this request to the extent that it calls for the production of documents protected by the attorney-client privilege or the attorney-work product

doctrine. Responsive materials are being withheld on the basis of this objection. Subject to and without waiving this objection, Bojangles' will produce the responsive, non-privileged documents in its possession, custody or control.

7. All correspondence and electronic mail sent to or received by any of the following individuals that references or pertains to Wolfe: Kristen Bowden, Jeannine Eubanks, Janice Locklear, Sharon McCollough, Thomas McDowell, Ella Riggins, and/or Jermell Taylor.

**RESPONSE:** Bojangles' objects to this request to the extent that it calls for the production of documents protected by the attorney-client privilege or the attorney-work product doctrine. Responsive materials are being withheld on the basis of this objection. Subject to and without waiving this objection, Bojangles' will produce the responsive, non-privileged documents in its possession, custody or control.

8. All correspondence documents, notes and other evidence that reference or relate to Wolfe's reassignment from the Owen Drive location to the Raeford Road store location in or around February 2013.

**RESPONSE:** Bojangles' objects to this request to the extent that it calls for the production of documents protected by the attorney-client privilege or the attorney-work product doctrine. Responsive materials are being withheld on the basis of this objection. Subject to and without waiving this objection, Bojangles' will produce the responsive, non-privileged documents in its possession, custody or control.

9. All schedules and draft schedules for Defendant's Raeford Road location for the period from February 1, 2013 through March 31, 2013.

**RESPONSE:** Bojangles' objects to this request on the grounds that it seeks information on matters not relevant to any party's claim or defense. No responsive materials are being

withheld on the basis of this objection. Subject to and without waiving this objection, Bojangles' will produce the responsive documents in its possession, custody or control.

10. All correspondence, documents, notes, and other evidence that reference or relate to Defendant's termination of Wolfe's employment.

**RESPONSE:** Bojangles' objects to this request to the extent that it calls for the production of documents protected by the attorney-client privilege or the attorney-work product doctrine. Responsive materials are being withheld on the basis of this objection. Subject to and without waiving this objection, Bojangles' will produce the responsive, non-privileged documents in its possession, custody or control.

11. All service agreements, contracts, and terms of service governing Service Check, Inc.'s and/or Sertec Corporation's provisions of hotline services to Defendant during the period from May 9, 2012 through February 27, 2013. This request is limited to responsive materials covering the provision of services to the Owen Drive and Raeford Road locations.

**RESPONSE:** Bojangles' objects to this request on the grounds that it seeks information on matters not relevant to any party's claim or defense. No responsive materials are being withheld on the basis of this objection. Subject to and without waiving this objection, Bojangles' will produce the responsive documents in its possession, custody or control.

12. All correspondence, documents, notes and other evidence reflecting any communication between Defendant and Service Check, Inc. and/or Sertec Corporation that reference or relate to Wolfe.

**RESPONSE:** Bojangles' will produce the responsive documents in its possession, custody or control.

13. All policies and procedures that reference or relate to Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), sex harassment, sex discrimination, and/or retaliation that

Defendant contends applied to Crew Members at the Owen Drive and Raeford Road locations during Wolfe's employment.

**RESPONSE:** Bojangles' will produce the responsive documents in its possession, custody or control.

14. All documents evidencing any training about Title VII, sex discrimination, sex harassment, and/or retaliation that was provided by or on behalf of Defendant to any employee, supervisor, or manager who worked at the Owen Drive or Raeford Road locations at any time during the period from January 2, 2012 through the present. This request includes, but is not limited to, agendas, training materials, and documents showing the attendees and dates of each training session.

**RESPONSE:** Bojangles' objects to this request because it seeks information on matters not relevant to any party's claim or defense. No responsive materials are being withheld on the basis of this objection. Subject to and without waiving this objection, Bojangles' will produce the responsive documents in its possession, custody or control.

15. All policies and procedures that reference or relate to grooming, appearance, and/or Defendant's dress code that Defendant contends applied to Crew Members at the Owen Drive and Raeford Road locations during Wolfe's employment.

**RESPONSE:** Bojangles' will produce the responsive documents in its possession, custody or control.

16. All personnel or employment policies, manuals, handbooks, or the like used or promulgated by Defendant at any time during the period from January 1, 2012 through February 27, 2013. This request is limited to any responsive material that was applicable to or disseminated to employees at Defendant's Owen Drive and/or Raeford Road locations.

**RESPONSE:** Bojangles' will produce the responsive documents in its possession, custody or control.

17. Complete pay records, including pay stubs and W2s for Wolfe.

**RESPONSE:** Bojangles' will produce the responsive documents in its possession, custody or control.

18. All documents reflecting the terms, benefits, and incidents of employment, including but not limited to insurance coverage, vacation, paid or unpaid personal time, bonuses, raise schedule, promotion opportunities, and the like, which applied to or were available to Crew Members at Defendant's Owen Drive and/or Raeford Road location at any time during the period from February 1, 2013 through the present.

**RESPONSE:** Bojangles' will produce the responsive documents in its possession, custody or control.

19. All correspondence, documents, notes and other evidence that Defendant contends support Defendant's Sixth Defense, as set forth in Defendant's Answer.

**RESPONSE:** Bojangles' will produce the responsive documents in its possession, custody or control.

20. All correspondence, documents, notes, and other evidence that Defendant contends supports Defendant's Ninth Defense, as set forth in Defendant's Answer.

**RESPONSE:** Bojangles' will produce the responsive documents in its possession, custody or control.

21. All correspondence, documents, notes, and other evidence that Defendant contends supports Defendant's Tenth Defense, as set forth in Defendant's Answer.

**RESPONSE:** There are no documents responsive to this request in Bojangles' possession, custody or control.

22. All correspondence, documents, notes, and other evidence that Defendant contends supports Defendant's statement at ¶ 46 of its Answer that "Wolfe became loud and disruptive and blocked Bojangles' customers from placing their orders, that as a result Bojangles' Unit Director instructed Wolfe to leave the restaurant immediately, and that Wolfe eventually left the restaurant."

**RESPONSE:** Bojangles' objects to this request to the extent that it calls for the production of documents protected by the attorney-client privilege or the attorney-work product doctrine. Responsive materials are being withheld on the basis of this objection. Subject to and without waiving this objection, Bojangles' will produce the responsive, non-privileged documents in its possession, custody or control.

23. All correspondence, documents, notes, and other evidence that Defendant contends supports Defendant's statement that "Bojangles" received employee complains that proof that Mr. [sic] Wolfe also sent inappropriate, provocative pictures of himself [sic] via text message to his [sic] Bojangles' co-workers while he [sic] was employed," as alleged in Defendant's June 28, 2013 position statement to the EEOC.

**RESPONSE:** Bojangles' will produce the responsive documents in its possession, custody or control.

24. All correspondence, documents, notes, and other evidence that Defendant contends supports Defendant's statement that "Mr. [sic] Wolfe frequently discussed matters of an inappropriate, highly sexual nature in the workplace," as alleged in Defendant's June 28, 2013 position statement to the EEOC.

**RESPONSE:** Bojangles' will produce the responsive documents in its possession, custody or control.

25. All correspondence, documents, notes, and other evidence that Defendant contends supports Defendant's statement that "Bojangles' management did counsel him [sic] on

several occasions to maintain professional working relationships at all time,” as alleged in Defendant’s June 28, 2013 position statement to the EEOC.

**RESPONSE:** Bojangles’ will produce the responsive documents in its possession, custody or control.

26. All correspondence, documents, notes, and other evidence that Defendant contends supports Defendant’s statement that “Ms. McCollough [sic] commenced an immediate investigation of Mr. [sic] Wolfe’s complaint that included interviews of Bojangles’ employees who were working at the restaurant during Mr. [sic] Wolfe’s visit on February 21,” as alleged in Defendant’s June 28, 2013 position statement to the EEOC.

**RESPONSE:** Bojangles’ will produce the responsive documents in its possession, custody or control.

27. All correspondence, documents, notes, and other evidence regarding each piece of alleged evidence identified in Defendant’s answer to Interrogatory 20.

**RESPONSE:** Bojangles’ objects to this request to the extent that it calls for the production of documents protected by the attorney-client privilege or the attorney-work product doctrine. Responsive materials are being withheld on the basis of this objection. Subject to and without waiving this objection, Bojangles’ will produce the responsive, non-privileged documents in its possession, custody or control.

28. Each policy identified in Defendant’s answer to Interrogatory 20(e), as it was in effect at the time each alleged piece of evidence was obtained by Defendant.

**RESPONSE:** Bojangles’ will produce the responsive documents in its possession, custody or control.

29. All documents received by Defendant from any third party pursuant to any and all subpoenas issued by or on behalf of Defendant as part of this lawsuit.

**RESPONSE:** There are no documents responsive to this request.

30. All documents received by Defendant from any third party pursuant to any and all informal requests for documents or information made by or on behalf of Defendant as part of this lawsuit.

**RESPONSE:** There are no documents responsive to this request.

31. For any person Defendant plans to have testify as an expert witness at trial in this action:

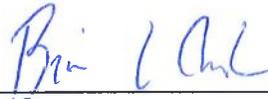
- a. the resume or curriculum vitae of such witness;
- b. a list of all lawsuits, trials, or other legal actions in which such witness has been hired to consult or testify, and an identification of the party for whom each such services were provided;
- c. all notes, correspondence, and other documents concerning any communications between Defendant or counsel for Defendant and such expert witness that:
  - 1) relate to compensation for the expert's study or testimony;
  - 2) identify facts or data that the expert considered in forming the opinions expressed in the expert's written report; and
  - 3) identify assumptions provided by counsel for Defendant that the expert relied upon in forming the opinions expressed in the expert's written report; and
- d. all documents upon which such expert witness' opinion is based.

**RESPONSE:** There are no documents responsive to this request.

32. All documents reviewed, identified, copies, used, referred to, or relied upon in answering "Plaintiff EEOC's First Set of Interrogatories to Defendant." This request specifically excludes documents already produced in response to Requests 1-32.

**RESPONSE:** Bojangles' objects to this request to the extent that it calls for the production of documents protected by the attorney-client privilege or the attorney-work product doctrine. Responsive materials are being withheld on the basis of this objection. There are no responsive, non-privileged documents in Bojangles' possession, custody or control not already produced in response to Requests 1-32.

This 19<sup>th</sup> day of December, 2016.



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Telephone: 704.377.2536  
Facsimile: 704.378.4000

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **DEFENDANT'S RESPONSE TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION** on counsel of record by e-mail, pursuant to the agreement of the parties, addressed as follows:

Rachael S. Steenbergh  
U.S. Equal Employment Opportunity Commission  
129 West Trade Street, Suite 400  
Charlotte, NC 28202  
rachael.steenbergh@eeoc.gov

This 19<sup>th</sup> day of December, 2016.



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Brian L. Church

9289849v2

# **APPENDIX 10**

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 EASTERN DISTRICT OF NORTH CAROLINA

4	U.S. EQUAL EMPLOYMENT OPPORTUNITY	)	
	COMMISSION,	)	
5		)	
	Plaintiff,	)	
6		)	
	Vs.	)	File No.
7		)	5:16-CV-00654-BO
	BOJANGLES' RESTAURANTS, INC.,	)	
8		)	
	Defendant.	)	
9		)	

10 Deposition of:

11 Tanisha Hall

12 \* \* \* \* \*

13 SCHEDULED TO BE TAKEN ON:

14 June 13, 2017

15 Beginning at 1:00 p.m.

16 \* \* \* \* \*

17 TAKEN AT:

18 Beaver Courie Sternlicht Hearp & Broadfoot, P.A.

19 230 Green Street

20 Fayetteville, North Carolina 28301

21  
22  
23  
24 Starkings Court Reporting & Video Services

916A Hay Street, P.O. Box 1345

25 Fayetteville, North Carolina 28302

(910) 323-4232 or (800) 328-3747

1 on speakerphone, we was both standing outside. And when  
2 Sharon picked the phone up, she basically -- she blew her  
3 breath at her.

4 Q. I'm sorry, what did you say, she blew?

5 A. Sharon blew her breath when she picked the phone  
6 up, she was like (makes noise) Sharon, this is Sharon,  
7 and then that's when DeAshia got on the phone and she was  
8 like talking about going to the other Bojangles' and  
9 stuff. And then that's when she was like, I can't afford  
10 to go to the other Bojangles' because I don't have no  
11 transportation, and she was like, you know that. And  
12 that's when DeAshia was like, I barely -- I be walking to  
13 work and stuff now and I barely make it and then she --  
14 that's when the conversation went on. But the only  
15 reason I know it was Sharon on the other line because I  
16 heard her when she was like this is Sharon. And I was  
17 like, oh she got an attitude, but I don't remember it --  
18 nothing else, but I know we was standing in front of the  
19 bank.

20 Q. Take me back to this conversation. You were  
21 standing in front of the bank. Do you remember when it  
22 occurred?

23 A. I don't know the date or the time. I just know  
24 it was in daytime. It was around in the morning time,  
25 but I don't remember the date or the time. The only

1 Q. Did Sharon say anything else about Jonathan  
2 Wolfe's hair?

3 A. I don't remember. The only thing I honestly  
4 remember is when she picked up the phone she said, this  
5 is Sharon and she basically was forcing him to the other  
6 job even though he told her -- she told him that she  
7 didn't have transportation and she told him that it was  
8 going to be hard for her to get there. And it's  
9 basically like she -- like it didn't matter like what did  
10 you do so wrong. And being who he is, if that's wrong  
11 then that's messed up to me.

12 Q. You mentioned earlier that Ms. Wolfe told Sharon  
13 that Ms. Wolfe had been walking to work; is that correct?

14 A. Yes. Sometimes he would walk to work because it  
15 was a Durango and sometimes it would get messed up.  
16 Sometimes she would walk to work or she would try to  
17 catch a ride or when she didn't have a way she would walk  
18 all the way from Crystal Springs Road.

19 Q. Did Jonathan Wolfe live on Crystal Springs Road?

20 A. At the time.

21 Q. How far was it between Crystal Springs Road and  
22 the Bojangles' --

23 A. Crystal Springs and Owen Drive, I don't know how  
24 far that is but it's a long walk.

25 Q. About how often did Jonathan Wolfe walk to work?

# **APPENDIX 11**



# **APPENDIX 12**



Karen Muehl Counseling, PLLC

Karen Muehl, Ph.D.  
Licensed Psychologist

**EXPERT REPORT ON GENDER IDENTITY AS IT RELATES TO THE CASE OF  
EEOC v. BOJANGLES' RESTAURANTS, INC.**

**Purpose of Report**

As a psychologist with expertise in gender identity and transgender issues, I was hired by the EEOC to provide consultation and testimony for the case of *EEOC v. Bojangles' Restaurants, Inc.* I was asked to prepare a written report with two main objectives. First, to express my opinions about gender identity and its link to sex; whether discrimination on the basis of gender identity and expression is inherently sex discrimination; and to explain the basis and reasons for these opinions. Second, to conduct a forensic examination of Ms. Wolfe<sup>1</sup> and report on my opinions of her sex, gender identity, and gender expression as they relate to the legal matter.

**Background and Qualifications**

I am a Licensed Psychologist (NC #3988) in private practice in Charlotte, NC. I have worked with Transgender and Gender Nonconforming<sup>2</sup> (TGNC) people for over 10 years. This population became a focus of my work when I started my full-time private practice in 2014. Since then, I have developed an area of specialization in working with TGNC clients with Gender Dysphoria (GD), and with TGNC clients in general. My expertise in gender identity and transgender issues is based on my clinical experience, training at professional conferences, consultation with other specialists, involvement in professional organizations, and reading (peer-reviewed articles, reports and guidelines, books). My formal training and experiences, and professional affiliations, are detailed on my Curriculum Vita (Appendix C).

Although the body of scholarly literature about TGNC individuals and health care is growing, it is still relatively small. At the same time, this diverse and vibrant community is expanding and changing with regard to social and cultural norms at a rate that outpaces the scientific and academic community. Therefore, I strive to understand individual experiences and keep abreast of new terminology, ideologies, and current events that affect the TGNC community. I do this

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<sup>1</sup> In this report I use Wolfe's preferred first name (De'Ashia), gender (female/woman), and pronouns (she/her/hers).

<sup>2</sup> I am following the example of the American Psychological Association in their *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People* (2015) in using this term with the intention "to be as broadly inclusive as possible."

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www.kmtherapy.com

by keeping up with pertinent news and political developments; following national and local TGNC or LGBTQ<sup>3</sup> organizations on their websites, social media, or print newsletters; watching TGNC programs (e.g., interviews and reports on TV, documentaries, and movies); seeking to develop relationships with community stakeholders and members of the TGNC community; and participating in local events.

My formal training is in the field of Counseling Psychology and is grounded in the scientist-practitioner-leader model, which emphasizes the integration of a scientific worldview with clinical practice and leadership. I have experience conducting research, teaching, consulting, holding leadership roles, and providing therapy in my professional capacity as a psychologist. I have not had formal training in the practice of forensic psychology and I am not board-certified as a Forensic Psychologist through the American Board of Professional Psychology (ABPP). My approach to the current work is guided by the American Psychological Association's *Specialty Guidelines for Forensic Psychology* and my consultations with a mentor who has 35 years of experience in forensic psychology. I have never testified previously in a legal matter. My compensation for the work on this case will be paid by the EEOC at the rate of \$225/hr. for in-office work and \$325/hr. for out-of-office work.

## Introduction

This report is structured in two parts. **Part I** begins with a brief statement of the opinions I will express. My opinions are consistent with prevailing views among specialists in the field of transgender health care because they are informed by the most widely used reference materials<sup>4</sup> and by my review of recent scholarly and scientific literature. I will discuss general information about gender and sex, how they are related, and how they pertain to the identity and expression of TGNC persons. I will explain the implications for discrimination. I will then discuss the mental health diagnosis of Gender Dysphoria and its implications for an individual's gender identity and expression. **Part II** begins with a report on the forensic examination I conducted with Ms. Wolfe. It follows the format of a clinical assessment report. I then discuss the implications of the clinical assessment for Ms. Wolfe's gender identity and expression, and her experiences of discrimination. The final section is a discussion that summarizes my opinions and conclusions.

This report is not an academic literature review. I will cite materials parenthetically when conveying ideas that have a singular source, but most of my opinions and statements are consistent with information found across many sources. Readers are directed to the References section (Appendix A) for a list of all the materials I consulted as a basis for this report.

The terminology I use in this report may be unfamiliar to people outside the field of transgender health care. Indeed, the preferred terms and their definitions are changing rapidly within the field, and nearly every publication has its own glossary in an effort to accurately describe the meaning and connotation of key terms as our collective knowledge and understanding of the field evolves. Readers are directed to the document in Appendix B (Terminology) entitled

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<sup>3</sup> LGBTQ is an acronym that stands for lesbian, gay, bisexual, transgender, and queer or questioning.

<sup>4</sup> American Psychological Association, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*; World Professional Association for Transgender Health *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People*, Version 7; American Psychiatric Association *Diagnostic and Statistical Manual of Mental Health Disorders, 5th Edition*.

*Definitions Related to Sexual Orientation and Gender Diversity in APA Documents* which compiles terms and definitions from four American Psychological Association (APA) documents. I distinguish terms found in the glossary in all capitals the first time they are used in the text of this report, starting in **Part I**.

## **Part I**

### **Statement of Opinions**

In this report I will express the following opinions:

1. SEX and GENDER are inextricably linked.
2. Discrimination on the basis of GENDER IDENTITY is inherently sex discrimination.
3. Ms. Wolfe identifies as a transgender female.
4. Ms. Wolfe meets diagnostic criteria for GENDER DYSPHORIA (GD).
5. Discrimination that Ms. Wolfe experienced on the basis of her gender identity is inherently sex discrimination.

### **Sex, Gender, Gender Identity, and Gender Expression**

A person's sex is assigned at birth (or before) by a medical professional, on the basis of the external genitals, usually to one of two categories: male or female. If external genitalia are ambiguous, a baby would be considered intersex.<sup>5</sup> Although as many as one in sixty newborns may be intersex (Erickson-Schroth, Gilbert, & Smith, 2014), sex is commonly treated as a dichotomous categorical variable,<sup>6</sup> having two mutually exclusive choices, and intersex babies are often assigned male or female. That is to say, society has imposed a binary (two-category) system on a trait that is not actually dichotomous in nature.

On the basis of a baby's assigned sex, they<sup>7</sup> are considered to belong to a corresponding gender category: boy or girl. Gender refers to the attitudes, feelings, and behaviors that a given culture associates with a person's sex. In the past, we did not distinguish between sex and gender. It was appropriate to use the term sex whether talking about biological and reproductive features or about men's and women's social roles. Now we tend to use the terms differently: "sex usually refers to the biological aspects of maleness or femaleness, whereas gender implies the psychological, behavioral, social, and cultural aspects of being male or female (i.e., masculinity or femininity; American Psychological Association, 2015)."

The utility of distinguishing between sex and gender is to facilitate communication about issues of gender diversity. This became important when medical and mental health professionals recognized that a person's lived role as male or female (i.e., gender identity) cannot be uniformly predicted by biological indicators of sex (American Psychiatric Association, 2013). Gender identity is a person's deeply-felt, inherent sense of being a boy, a man, or male; a girl, a woman, or female; or a gender that may not correspond to a person's sex assigned at birth or their

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<sup>5</sup> Intersex individuals have an atypical combination of physical, chromosomal, or anatomical features. Many intersex conditions are not associated with visible physical variations in external genitalia.

<sup>6</sup> Categorical variables are qualitative and are used to classify things into discrete categories. Dichotomous categorical variables have two categories.

<sup>7</sup> Third-person pronouns (they/them/their) are used as singular pronouns to avoid the use of gendered language.

primary or secondary sex characteristics (American Psychological Association, 2015).

Transgender and gender nonconforming individuals are those for whom gender identity does not correspond to sex assigned at birth in the way that would be socially and culturally expected. Nearly every person possesses a sense of gender identity, usually well established in early childhood. For some people, their gender is the core of their identity, ahead of racial, ethnic, or religious identities, for example. For other people, gender identity is less important. This is true for both CISGENDER and TGNC people alike.

Among TGNC people, the degree to which their gender identity differs from sex assigned at birth can vary greatly. The degree to which they identify with social and cultural gender norms of masculinity and femininity also varies. As a result, there are many different labels that people use to describe their gender identity. An excellent anecdotal example of this is Facebook. They recently abandoned over 50 pre-populated choices for gender identity in favor of a free-form choice in which users fill in their own gender identity.<sup>8</sup>

Psychologists recognize that gender identity is not a dichotomous categorical variable; instead we think of gender identity as a spectrum or a constellation. We sometimes use labels associated with sex (male, female) and labels associated with gender (man, woman) interchangeably. The field is increasingly recognizing that the concepts of sex and gender are distinct but inextricably linked. The appropriate use of the concepts and their associated labels depends on context. A person's sex assigned at birth may be male, female, or intersex; their gender identity may be man, male, woman, female, intersex, or another TGNC identity.<sup>9</sup>

It is customary for people to make assumptions about one another's gender identity on the basis of GENDER EXPRESSION. Gender expression has to do with the socially identifiable ways that a person presents themselves as feminine, masculine, androgynous, or a blend. In public settings, gender expression is used to infer gender. In other words, if we see a person with long hair, makeup, and painted fingernails, and they are holding a baby, we tend to perceive a feminine gender expression and to infer that the person is a woman. We are unable to infer from gender expression alone whether a person has the expected corresponding biological or reproductive sex characteristics.

Unfortunately, people often do infer sex on the basis of gender expression. The opposite is also true: people infer gender identity and expression on the basis of the sex/gender on a person's ID documents. This is problematic because people whose gender expression does not match their gender identity and/or their sex assigned at birth (or on their ID documents) are often the targets of stereotyping and discrimination. There is a great deal of stigma against people who do not conform to the gender binary.<sup>10</sup> TGNC people commonly experience discrimination in schools, workplaces, and other settings (James, Herman, Rankin, Keisling, Mottet, & Anafi, 2016).

Given what we know about sex, gender, gender identity, and gender expression it would be impossible to separate discrimination on the basis of gender expression or identity from discrimination on the basis of sex. Therefore, a person who discriminates against someone on the basis of gender expression or identity is inherently discriminating on the basis of sex.

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<sup>8</sup> Facebook also allows users to select their preference for feminine, masculine, or third-person pronouns.

<sup>9</sup> Here are some common TGNC gender identities: trans man, trans woman, genderqueer, gender fluid, bigender, agender, gender variant, gender nonconforming, intersex.

<sup>10</sup> The gender binary is the framework in which there are only two genders: male and female.

## **Gender Dysphoria**

Gender dysphoria is a clinical term used to describe the distress and psychological discomfort a person may experience when their felt sense of gender identity and expression do not align with social expectations for the gender or sex they are assigned (Lev, 2004). Not all TGNC people have dysphoria. Some people accept their gender identity and sex assignment as different from one another, but do not necessarily experience the difference as distressing. For these individuals, acceptance may come easily, or may be achieved with deliberate effort and time by finding ways to adapt psychologically or socially.

The diagnosis of Gender Dysphoria (GD) in Adolescents and Adults (DSM-5 code 302.85, ICD 10 code F64.1) was introduced in the latest revision of the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5). This replaced the previous diagnosis of Gender Identity Disorder (DSM IV-TR code 302.85) which was heavily criticized for labeling gender variance as a “disorder.” As stated by the American Psychiatric Association, “It is important to note that gender nonconformity is not in itself a mental disorder. The critical element of gender dysphoria is the presence of clinically significant distress associated with the condition.” TGNC identities are considered “a matter of diversity, not pathology (WPATH, 2012).” In other words, gender diversity, like other forms of diversity (race, religion, sexual orientation, hair color, handedness, athletic ability, etc.) is not inherently pathological or disordered.

A TGNC person may be diagnosed with Gender Dysphoria when the following criteria are met (American Psychiatric Association, 2013):

### **Gender Dysphoria in Adolescents and Adults (302.85; F64.1)**

- A. A marked incongruence between one’s experienced/expressed gender and assigned gender, of at least 6 months’ duration, as manifested by at least two of the following:
1. A marked incongruence between one’s experienced/expressed gender and primary and/or secondary sex characteristics (or in young adolescents, the anticipated secondary sex characteristics).
  2. A strong desire to be rid of one’s primary and/or secondary sex characteristics because of a marked incongruence with one’s experienced/expressed gender (or in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics).
  3. A strong desire for the primary and/or secondary sex characteristics of the other gender.
  4. A strong desire to be of the other gender (or some alternative gender different from one’s assigned gender).
  5. A strong desire to be treated as the other gender (or some alternative gender different from one’s assigned gender).
  6. A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one’s assigned gender).
- B. The condition is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.

By definition, a person diagnosed with GD is transgender or gender nonconforming. The World

Professional Association for Transgender Health (WPATH) *Standards of Care* (2012) detail numerous guidelines for providing health care to TGNC people. The premise of the standards is that GD is alleviated when TGNC people are able to live in accordance with their felt sense of gender. This often means taking steps to socially, physically, and legally transition. In the case of a transgender woman, she would be helped to come out<sup>11</sup> to family and friends and begin to use her preferred name and pronouns; to begin to present herself with a feminine gender expression; to seek medical treatments (such as feminizing hormone therapy and/or surgeries); and to change her name and gender marker on legal documents.

TGNC people who receive trans-affirmative medical and psychological care experience an improved quality of life, a decrease in gender dysphoria, and a reduction in negative psychological symptoms (American Psychological Association, 2015). The prevailing opinion among healthcare providers in the field, as expressed in the leading reference materials, is that for most people with a diagnosis of GD it is “medically necessary”<sup>12</sup> to make social, physical, and legal changes in order to alleviate symptoms of GD (WPATH, 2016).

### **Discrimination of TGNC people**

TGNC people frequently experience anti-trans prejudice and discrimination. “Discrimination can include assuming a person’s assigned sex at birth is fully aligned with that person’s gender identity, not using a person’s preferred name or pronoun, asking TGNC people inappropriate questions about their bodies, or making the assumption that psychopathology exists given a specific gender identity or gender expression (American Psychological Association, 2015).” In the most recent U.S. Transgender Survey (USTS; James, Herman, Rankin, Keisling, Mottet, & Anafi, 2016) 32% of respondents who have shown an ID with a name or gender that did not match their gender presentation were verbally harassed, denied benefits or service, asked to leave, or assaulted.

More than three-quarters (77%) of respondents who had a job in the past year hid their gender identity at work, quit their job, or took other actions to avoid discrimination (James, Herman, Rankin, Keisling, Mottet, & Anafi, 2016). TGNC people who hold multiple minority identities are particularly susceptible to discrimination. Transgender women of color are among the most oppressed. The USTS (2016) found that 17% of Black respondents who held and/or applied for a job in the past year reported that they lost a job because of their gender identity or expression. Fifteen percent of Black respondents said they were verbally harassed, physically attacked, or sexually assaulted at work in the past year. Although TGNC people with multiple minority identities are more likely to experience restricted access to services, they are also more likely to develop resiliency in coping with disadvantages (American Psychological Association, 2015).

In conclusion, given that sex and gender are inextricably linked by the social and cultural meanings assigned to them, then discrimination based on gender expression, gender identity, or inferences made about a person’s gender or sex, is inherently sex discrimination. TGNC people with GD usually need to make physical, social, and legal changes to their gender and its expression in order to alleviate GD, yet they often lack access to necessary resources. This means TGNC people often have a gender expression or identity that does not align with the name

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<sup>11</sup> Coming out is the process of acknowledging, and telling others, about one’s identity.

<sup>12</sup> “Medically necessary” is the term used by healthcare insurers when establishing coverage for services.

and gender on legal identity documents. For this reason, they are particularly susceptible to stigmatization, harassment, and discrimination in the workplace (James, Herman, Rankin, Keisling, Mottet, & Anafi, 2016).

*Part II*

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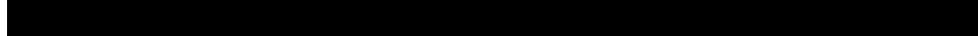
  


## Discussion

In the first part of this report I asserted that sex and gender are distinct concepts but are inextricably linked by the social and cultural meanings ascribed to them. Descriptors used to specify sex (male, female) are interchangeable with descriptors used to identify gender (man, woman). Nearly all people possess a gender identity. This is usually reflected in the way a person presents themselves through appearance, clothing, and verbal and nonverbal communication (i.e., gender expression). Based on gender expression, or information on identity documents, people make inferences about one another's gender identity and sex.

Gender identity may be congruent with sex assigned at birth (i.e., cisgender), or may not be congruent with sex assigned at birth (i.e., TGNC). Although gender variance is a natural part of human diversity, TGNC people often experience distress about the misalignment between their sex/gender and gender identity. Persistent distress that interferes with functioning is diagnosed by healthcare professionals as Gender Dysphoria (GD). GD is alleviated by living in congruence with one's gender identity. TGNC people achieve this through changing their gender expression, preferred name and pronouns, and often through medical and legal changes.

TGNC people may have a gender expression, gender identity, and identity documents that do not conform to the gender binary and to social expectations. Such gender variance is stigmatized in our culture, and TGNC people experience a great deal of anti-trans prejudice and discrimination. Transgender women and TGNC people of color are particularly vulnerable to harassment, discrimination, and violence (James, Herman, Rankin, Keisling, Mottet, & Anafi, 2016). Any discrimination on the basis of gender expression or identity would inherently be discrimination on the basis of sex given the inextricable connections between sex, gender, gender identity, and gender expression.

In the second part of this report, I described my forensic examination with De'Ashia Wolfe. De'Ashia was assigned male at birth, but self-identified in her clinical interview as female. De'Ashia's gender expression is that of a transgender woman, and she prefers to be seen and treated by others as a woman.   


Several hurdles have made it especially challenging for De'Ashia to live in congruence with her expressed gender identity in the workplace. She has had to apply for jobs under the male name and gender marker on her ID documents because she has not yet undergone the physical

(medical) changes that are required by law to update them. Consequently, De'Ashia's gender identity and expression do not align with social and cultural expectations formed on the basis of her legal name and gender. Anyone who treats De'Ashia differently because of the misalignment between her gender expression and legal gender is doing so on the basis of their own assumptions about her sex and gender identity. Therefore, any discriminatory treatment she received in the workplace on the basis of her gender expression or identity is inherently sex discrimination.

X Karen Muehl, Ph.D.

Date: 4/14/17

Karen Muehl, Ph.D.  
Licensed Psychologist

## APPENDIX A REFERENCES

- American Psychiatric Association (2013). *Diagnostic and Statistical Manual of Mental Disorders - 5th Edition*. Washington, DC: American Psychiatric Publishing.
- American Psychological Association (2013). Specialty Guidelines for Forensic Psychology. *American Psychologist*, 68 (1), 7-19. doi: 10.1037/a0029889
- American Psychological Association (2015). Guidelines for Psychological Practice With Transgender and Gender Nonconforming People. *American Psychologist*, 70 (9), 832-864. doi: 10.1037/a0039906
- Erickson-Schroth, L. (Ed.) (2014). *Trans Bodies, Trans Selves: A resource for the transgender community*. New York: Oxford University Press.
- Erickson-Schroth, L., Gilbert, M., & Smith, T. (2014). Sex and Gender Development. In L. Erickson-Schroth (Ed.), *Trans bodies, trans selves: a resource for the transgender community* (pp. 80-101). New York: Oxford University Press.
- James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). *The Report of the 2015 U.S. Transgender Survey*. Washington, DC: National Center for Transgender Equality.
- Lev, A. I. (2004). *Transgender Emergence: Therapeutic guidelines for working with gender-variant people and their families*. Binghamton, NY: Hawthorne Press.
- World Professional Association for Transgender Health (2012). Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People - Version 7. *International Journal of Transgenderism*, 13 (4), 165-232. doi: 10.1080/15532739
- World Professional Association for Transgender Health (2016). Position Statement on Medical Necessity of Treatment, Sex Reassignment, and Insurance Coverage in the U.S.A. Online at [http://www.wpath.org/site\\_page.cfm?pk\\_association\\_webpage\\_menu=1351&pk\\_association\\_webpage=3928](http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351&pk_association_webpage=3928)

**APPENDIX B  
TERMINOLOGY**

**Definitions Related to Sexual Orientation and Gender Diversity in APA Documents**

Terms related to sexual orientation and gender diversity have been defined in several APA documents. Due to the developing understanding of constructs, shifting usage of terms, and contextual focus of these documents, the definitions vary somewhat. This resource provides definitions and their sources. Please cite the source using references provided below.

	<a href="#">Guidelines for Psychological Practice with Transgender and Gender Nonconforming People</a>	<a href="#">Guidelines for psychological practice with lesbian, gay, and bisexual clients</a>	<a href="#">Resolution on Gender and Sexual Orientation Diversity in Children and Adolescents in Schools: Definitions and Limitations of Language</a>	<a href="#">APA Dictionary of Psychology</a>
<b>Citation</b>	American Psychological Association. (2015). Guidelines for Psychological Practice with Transgender and Gender Nonconforming People. <i>American Psychologist, 70</i> (9), 832-864. doi.org/10.1037/a0039906	American Psychological Association. (2012). Guidelines for Psychological Practice with Lesbian, Gay, and Bisexual Clients. <i>American Psychologist, 67</i> (1), 10–42. doi: 10.1037/a0024659	American Psychological Association & National Association of School Psychologists. (2015). <i>Resolution on gender and sexual orientation diversity in children and adolescents in schools</i> . Retrieved from <a href="http://www.apa.org/about/policy/orientation-diversity.aspx">http://www.apa.org/about/policy/orientation-diversity.aspx</a>	American Psychological Association. (2015). <i>APA dictionary of psychology</i> (2nd ed.). Washington, DC: Author.

**Terms & Definitions**

<b>Cisgender</b>	<b>Cisgender:</b> An adjective used to describe a person whose gender identity and gender expression align with sex assigned at birth; a person who is not TGNC.	None	<b>Cisgender</b> replaces the terms "nontransgender" or "bio man/bio woman" to refer to individuals who have a match between the gender they were assigned at birth, their bodies and their gender identity (Schilt & Westbrook, 2009).	<b>Cisgender (Adj.):</b> having or relating to a <i>GENDER IDENTITY</i> that corresponds to the culturally determined gender roles for one's birth sex (i.e., the biological sex one was born with.) a <b>cisgender man</b> or <b>cisgender woman</b> is thus one whose internal gender identity matches, and presents itself in accordance with, the externally determined cultural expectations of the behavior and roles considered appropriate for one's sex as male or female. Also called <b>cisgendered</b> .
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<b>Gender</b>	None	<b>Gender</b> refers to the attitudes, feelings, and behaviors that a given culture associates with a person's biological sex. Behavior that is compatible with cultural expectations is referred to as gender-normative; behaviors that are viewed as incompatible with these expectations constitute gender non-conformity.	<b>Gender</b> refers to the attitudes, feelings and behaviors that a given culture associates with a person's biological sex. Behavior that is compatible with cultural expectations is referred to as gender-normative; behaviors that are viewed as incompatible with these expectations constitute gender non-conformity (APA, 2012).	<b>Gender (n):</b> the condition of being male, female, or neuter. In a human context, the distinction between gender and SEX reflects the usage of these terms: Sex usually refers to the biological aspects of maleness or femaleness, whereas gender implies the psychological, behavioral, social, and cultural aspects of being male or female (i.e., masculinity or femininity).
<b>Gender Assignment</b>				<b>Gender Assignment:</b> classification of an infant at birth as either male or female. Children born with <i>AMBIGUOUS GENITALIA</i> are usually assigned gender by parents or physicians.
<b>Gender Concept</b>				<b>Gender Concept:</b> an understanding of the socially constructed distinction between male and female, based on biological sex but also including the roles and expectations for males and females in a culture. Children begin to acquire concepts of gender, including knowledge of the activities, toys, and other objects associated with each gender and of how they view themselves as male or female in their culture, possibly from as early as 18 months of age.
<b>Gender Dysphoria</b>	<b>Gender Dysphoria:</b> Discomfort or distress related to incongruence between a person's gender identity, sex assigned at birth,	None	<b>Gender dysphoria</b> refers to discomfort or distress that is associated with a discrepancy between a person's gender identity and that person's sex	<b>Gender Dysphoria:</b> (1) Discontent with the physical or social aspects of one's own sex. (2) In <i>DSM-5</i> , a diagnostic class

	<p>gender identity, and/or primary and secondary sex characteristics (Knudson, DeCuypere, &amp; Bockting, 2010). In 2013, the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5 [American Psychiatric Association, 2013]) adopted the term Gender Dysphoria as a diagnosis characterized by “a marked incongruence between” a person’s gender assigned at birth and gender identity (American Psychiatric Association, 2013, p. 453). Gender Dysphoria replaced the diagnosis of Gender Identity Disorder (GID) in the previous version of the DSM (American Psychiatric Association, 2000).</p>		<p>assigned at birth — and the associated gender role and/or primary and secondary sex characteristics (Fisk, 1974; Knudson, De Cuypere, &amp; Bockting, 2010).  Only some gender-nonconforming people experience gender dysphoria at some point in their lives (Coleman, et al. 2011).</p>	<p>that replaces GENDER IDENTITY DISORDER and shifts clinical emphasis from cross-gender identification itself to a focus on the possible distress arising from a sense of mismatch, or incongruence, that one may have about one’s experienced gender versus one’s assigned gender. Diagnostic criteria for gender dysphoria in children include significant distress or impairment due to marked gender incongruence, such as a strong desire to be-or a belief that one is-the other gender; preference for the toys, games, roles, and activities stereotypically associated with the other gender, and a strong dislike of one’s sexual anatomy. In adults, the manifestations of gender dysphoria may include a strong desire to replace one’s physical sex characteristics with those of the other gender (see <i>SEX REASSIGNMENT</i>), the belief that one has the emotions of their gender, and a desire to be treated as the other gender or recognized as having an alternative gender identity.</p>
<p><b>Gender Expression</b></p>	<p><b>Gender Expression:</b> The presentation of an individual, including physical appearance, clothing choice and accessories, and behaviors that express aspects of gender identity or role.</p>	<p><b>Gender expression</b> refers to the “...way in which a person acts to communicate gender within a given culture; for example, in terms of clothing, communication patterns and interests. A person’s gender</p>	<p><b>Gender expression</b> refers to an individual’s presentation — including physical appearance, clothing choice and accessories — and behavior that communicates aspects of gender or gender role. Gender expression may or</p>	<p><b>None</b></p>

	Gender expression may or may not conform to a person's gender identity.	expression may or may not be consistent with socially prescribed gender roles, and may or may not reflect his or her gender identity" (American Psychological Association, 2008, p. 28).	may not conform to a person's gender identity.	
<b>Gender Identity</b>	<b>Gender Identity:</b> A person's deeply-felt, inherent sense of being a boy, a man, or male; a girl, a woman, or female; or an alternative gender (e.g., genderqueer, gender nonconforming, gender neutral) that may or may not correspond to a person's sex assigned at birth or to a person's primary or secondary sex characteristics. Since gender identity is internal, a person's gender identity is not necessarily visible to others. "Affirmed gender identity" refers to a person's gender identity after coming out as TGNC or undergoing a social and/or medical transition process.	<b>Gender Identity</b> refers to "one's sense of oneself as male, female, or transgender" (American Psychological Association, 2006). When one's gender identity and biological sex are not congruent, the individual may identify as transsexual or as another transgender category (cf. Gainor, 2000)	<b>Gender identity</b> refers to one's sense of oneself as male, female or something else (APA, 2011). When one's gender identity and biological sex are not congruent, the individual may identify along the transgender spectrum (APA, 2012; Gainor, 2000).	<b>Gender Identity:</b> one's self-identification as male or female. Although the dominant approach in psychology for many years had been to regard gender identity as residing in individuals, the important influence of societal structures, cultural expectations, and personal interactions in its development is now recognized as well. Significant evidence now exists to support the conceptualization of gender identity as influenced by both environmental and biological factors. See <i>CISGENDER; GENDER CONSTANCY; TRANSGENDER</i> . See also <i>GENDER ROLE</i> .
<b>Genderqueer</b>	<b>Genderqueer:</b> A term to describe a person whose gender identity does not align with a binary understanding of gender (i.e., a person who does not identify fully as either a man or a woman). People who identify as genderqueer may redefine gender or decline to define themselves as gendered altogether. For example, people who identify as genderqueer may think of themselves as both man	None	<b>Genderqueer</b> refers to a person whose gender identity falls outside of the gender binary (i.e., identifies with neither or both genders). Genderqueers may also use the term "gender fluid" as an identifier but typically reject the term "transgender" because it implies a change from one gender category to another.	None

	and woman (bigender, pangender, androgyn(e)); neither man nor woman (genderless, gender neutral, neutrois, agender); moving between genders (genderfluid); or embodying a third gender.			
<b>Queer</b>	None	None	<b>Queer</b> is an umbrella term that individuals may use to describe a sexual orientation, gender identity or gender expression that does not conform to dominant societal norms. Historically, it has been considered a derogatory or pejorative term and the term may continue to be used by some individuals with negative intentions. Still, many LGBT individuals today embrace the label in a neutral or positive manner (Russell, Kosciw, Horn, & Saewyc, 2010). Some youth may adopt 'queer' as an identity term to avoid limiting themselves to the gender binaries of male and female or to the perceived restrictions imposed by lesbian, gay and bisexual sexual orientations (Rivers, 2010).	<b>Queer (Adj., n):</b> controversial slang, in the main pejorative, referring to gays and lesbians or relating to homosexual orientation. The original and still common use of the word, to describe anything that is odd or strange, was extended to refer to gays in the late 19th and throughout much of the 20th century, when it acquired a predominantly negative connotation. During the late 1960s and onward (see SEXUAL REVOLUTION), it was appropriated by some members within the gay community as a term of identification that carried no negative connotation and, indeed, became a label of pride and self-respect. This usage is not embraced, however, by all members of the gay community.
<b>Sex</b>	<b>Sex (Sex assigned at birth):</b> Sex is typically assigned at birth (or before during ultrasound) based on the appearance of external genitalia. When the external genitalia are ambiguous other indicators (e.g., internal genitalia, chromosomal and hormonal sex)	<b>Sex</b> refers to a person's biological status and is typically categorized as male, female, or intersex (i.e., atypical combinations of features that usually distinguish male from female). There are a number of indicators of biological sex, including sex chromosomes, gonads, internal	<b>Sex</b> refers to a person's biological status and is typically categorized as male, female or intersex. There are a number of indicators of biological sex, including sex chromosomes, gonads, internal reproductive organs and external genitalia. (APA, 2012).	<b>Sex (n):</b> (1) the traits that distinguish between males and females. Sex refers especially to physical and biological traits, whereas <i>GENDER</i> refers especially to social or cultural traits, although the distinction between the two terms is not

<p>are considered to assign a sex with the aim of assigning a sex that is most likely to be congruent with the child's gender identity (Maclaughlin &amp; Donahoe, 2004). For most people, gender identity is congruent with sex assigned at birth (see cisgender); for TGNC individuals, gender identity differs in varying degrees from sex assigned at birth.</p>	<p>reproductive organs, and external genitalia.</p>	<p>regularly observed. (2) the physiological and psychological processes related to procreation and erotic pleasure.</p>
<p><b>Sexual Orientation</b></p> <p><b>Sexual orientation:</b> A component of identity that includes a person's sexual and emotional attraction to another person and the behavior and/or social affiliation that may result from this attraction. A person may be attracted to men, women, both, neither, or to people who are genderqueer, androgynous, or have other gender identities. Individuals may identify as lesbian, gay, heterosexual, bisexual, queer, pansexual, or asexual, among others.</p>	<p><b>Sexual orientation</b> refers to the sex of those to whom one is sexually and romantically attracted. Categories of sexual orientation typically have included attraction to members of one's own sex (gay men or lesbians), attraction to members of the other sex (heterosexuals), and attraction to members of both sexes (bisexuals). While these categories continue to be widely used, research has suggested that sexual orientation does not always appear in such definable categories and instead occurs on a continuum (e.g., Kinsey, Pomeroy, Martin, &amp; Gebhard, 1953; Klein, 1993; Klein, Sepekoff, &amp; Wolff, 1985; Shiveley &amp; DeCecco, 1977) In addition, some research indicates that sexual orientation is fluid for some people; this may be especially true for women (e.g., Diamond, 2007; Golden, 1987; Peplau &amp; Garnets, 2000).</p>	<p><b>Sexual orientation</b> refers to the sex of those to whom one is sexually and romantically attracted. Categories of sexual orientation typically have included attraction to members of one's own sex (gay men or lesbians), attraction to members of the other sex (heterosexuals), and attraction to members of both sexes (bisexuals). Some people identify as pansexual or queer in terms of their sexual orientation, which means they define their sexual orientation outside of the gender binary of "male" and "female" only. While these categories continue to be widely used, research has suggested that sexual orientation does not always appear in such definable categories and instead occurs on a continuum (Kinsey, Pomeroy, Martin, &amp; Gebhard, 1953; Klein, 1993; Klein, Sepekoff, &amp; Wolff, 1985; Shively &amp; DeCecco, 1977). In addition, some research indicates that sexual orientation is fluid for some people; this may be especially true for women</p>
<p><b>Sexual orientation:</b> one's enduring sexual attraction to male partners, female partners, or both. Sexual orientation may be heterosexual, same sex (gay or lesbian), or bisexual. See also <i>OBJECT CHOICE</i>.</p>	<p>Case 5:16-cv-00654-BO Document 36-1 Filed 08/17/17 Page 209 of 282</p>	

			(e.g., Diamond, 2007; Golden, 1987; Peplau & Garnets, 2000).	<p><b>Sex role:</b> the behavior and attitudinal patterns characteristically associated with being male or female as defined in a given society. Sex roles thus reflect the interaction between biological heritage and the pressures of socialization, and individuals differ greatly in the extent to which they manifest typical sex-role behaviors.</p>
<b>Sex role</b>				
<b>Transgender</b>	<p><b>Transgender:</b> An adjective that is a umbrella term used to describe the full range of people whose gender identity and/or gender role do not conform to what is typically associated with their sex assigned at birth. While the term “transgender” is commonly accepted, not all TGNC people self-identify as transgender.</p>	None	<p><b>Transgender</b> is an umbrella term that incorporates differences in gender identity wherein one’s assigned biological sex doesn’t match their felt identity. This umbrella term includes persons who do not feel they fit into a dichotomous sex structure through which they are identified as male or female. Individuals in this category may feel as if they are in the wrong gender, but this perception may or may not correlate with a desire for surgical or hormonal reassignment (Meier &amp; Labuski, 2013).</p>	<p><b>Transgender:</b></p>

APPENDIX C  
CURRICULUM VITA

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Curriculum Vita

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Department of Psychology  
Dissertation title: *Experiences of Post-Processing in Group  
Psychotherapy*

Aug 2006      **M.S.**      **Virginia Commonwealth University**, Richmond, VA  
Counseling Psychology Program (APA accredited)  
Department of Psychology  
Thesis title: *Supportive and Unsupportive Parental  
Responses as Moderators of the Relationship between  
Stressful Events and Negative Outcomes in Adolescents*

May 2000      **B.A.**      **Boston College**, Chestnut Hill, MA  
Major: Psychology; Minor: Spanish Language and Literature  
Summa cum laude  
Scholar of the College  
Thesis title: *Sense of Direction and Map-Based Path  
Integrator Model in Humans*

**PROFESSIONAL MEMBERSHIPS**

2013 – present      American Psychological Association (APA), [www.apa.org](http://www.apa.org)  
2013 – present      Mecklenburg Psychological Association (MPA), [www.mpacharlotte.org](http://www.mpacharlotte.org)  
2014 – present      Charlotte Transgender Healthcare Group, [www.cthcg.org](http://www.cthcg.org)  
2015 – present      World Professional Association for Transgender Health (WAPTH),  
[www.wpath.org](http://www.wpath.org)

## CLINICAL EXPERIENCE

Oct 2013 – present

### **Licensed Psychologist, Owner**

*Karen Muehl Counseling, PLLC, Charlotte, NC*

- Own and operate a solo private practice
- Provide individual and couples psychotherapy to adult clients for a range of concerns (e.g., depression, anxiety, relationship concerns, trauma, grief/loss)
- Specialize in working with issues related to sexual identity and gender identity
- In-network provider with Blue Cross Blue Shield

Aug 2010 – May 2014

### **Staff Psychologist**

*Counseling Center, University of North Carolina at Charlotte, Charlotte, NC*

- Provided individual, group, and couples counseling to diverse caseload of university students within a short-term treatment model
- Coordinated outreach programming for center and provided outreach programming to campus community  
Provided clinical supervision to master's level practicum students and pre-doctoral interns
- Provide crisis walk-in services and after hours on-call coverage
- Served on committees and task forces as appointed by Director

Aug 2009 – Aug 2010

### **Staff Counselor**

*Counseling Center, University of North Carolina at Charlotte, Charlotte, NC*

- Same duties as above, supervised by senior staff while earning post-doctoral hours toward licensure

Aug 2008 – Aug 2009

### **Pre-doctoral Intern**

*Counseling Center, University of North Carolina at Charlotte (APA accredited), Charlotte, NC*

- Provided individual, group, and couples counseling to diverse caseload of university students within a short-term treatment model
- Conducted formal case presentations
- Participated in weekly professional development seminar
- Provided emergency walk-in coverage
- Provided supervision to practicum student in master's program in counseling psychology
- Conducted outreach programs to campus community
- Conducted assessment batteries and wrote integrated assessment reports

Jun 2007 – Jul 2008

**Staff Counselor**

*Richmond Women's Detention Center, Richmond, VA and  
Chesterfield Women's Diversion Center, Chesterfield, VA  
Virginia Department of Corrections*

- Treated diverse population of adult female non-violent felons with presenting problems such as substance abuse, history of trauma and/or abuse, and personality disorders
- Led ongoing interpersonal psychotherapy process group for six offenders
- Designed and implemented an ongoing 6-week structured group on anger management
- Conducted risk assessments with offenders who threatened harm to self and/or others and made recommendations to Senior Probation Officers

Aug 2006 – Jun 2007

**Practicum Counselor**

*Department of Psychiatry Outpatient Services, Virginia  
Commonwealth University Medical Center, Richmond, VA*

- Provided long-term individual psychotherapy to low-income community clients with severe Axis I and II diagnoses
- Received intensive supervision, including group supervision with psychiatry residents and live supervision

Aug 2005 – May 2006

**Practicum Counselor, Group Process Observer**

*University Counseling Services, Virginia Commonwealth University,  
Richmond, VA*

- Provided brief and long-term individual psychotherapy to students from a diverse university community, presenting with a wide array of Axis I and II diagnoses
- Attended weekly case conceptualization and case disposition meetings with multidisciplinary team
- Conducted weekly intakes and wrote intake reports including diagnosis and case conceptualization; utilized brief assessments (e.g., Beck Depression Inventory, Beck Anxiety Inventory) as needed
- Consulted regularly with psychiatrist from campus health services clinic
- Co-facilitated a structured workshop on stress management and relaxation techniques for undergraduate honor students
- Attended two interpersonal process-oriented therapy groups as a silent observer
- Participated in "post-processing" discussions held after each group session in the presence of the group members; wrote weekly process notes
- Participated in weekly group supervision with other group leaders

May 2004 – Aug 2005

**Practicum Counselor**

*Center for Psychological Services and Development, Virginia Commonwealth University, Richmond, VA*

- Conducted brief and long-term individual and couples counseling with clients from the Richmond area community who were diverse in age, gender, race, culture, sexual orientation, and socioeconomic status, and who presented with a wide range of diagnoses
- Conducted intake interviews and wrote intake reports and treatment plans
- Provided career counseling, and diagnostic and personality testing utilizing the following instruments: Minnesota Multiphasic Personality Inventory-2, Strong Personality Interest Inventory, NEO-PI-R, Beck Depression Inventory, and Beck Anxiety Inventory
- Wrote assessment reports and provided feedback to clients
- Attended biweekly presentations on clinical topics such as transgender issues, chronic depression, and psychopharmacology

**OTHER PROFESSIONAL EXPERIENCE**

Aug 2005 – Aug 2007

**Program Assistant**

*Counseling Psychology Program, Virginia Commonwealth University, Richmond, VA*

- Coordinated admissions, prepared annual reports, acted as student/faculty liaison, attended program faculty meetings
- Worked with Program Director to prepare APA self-study report for re-accreditation; gathered and analyzed data; wrote sections of report, edited, coordinated faculty submissions, compiled appendices

May 2005 – Aug 2005

**Leadership Program Assistant Coordinator**

*Grace E. Harris Leadership Institute, Virginia Commonwealth University, Richmond, VA*

- Coordinated training events for two leadership development courses: *HIGHER Ground* for women from diverse racial and ethnic backgrounds and *VCU Leadership Development Program* for university faculty and upper level staff
- Facilitated group exercises and team building activities

Jun 2000 – Feb 2003

**Clinical Interviewer and Psychometrician**

*Pediatric Psychopharmacology Unit, Massachusetts General Hospital, Boston, MA*

- Conducted interviews with children (KSADS-E) and adults (SCID-IV) with a wide range of disorders for federally-funded

studies on ADHD, Juvenile Bipolar Disorder, Anxiety Disorders, and Substance Use; prepared diagnostic reports

- Administered and coded the following cognitive and neuropsychological assessments for children and adults: Wide Range Achievement Test 3 – Reading and Math (WRAT), WISC-III and WAIS-III subtests – Block Design, Digit Span, Coding, Vocabulary, California Verbal Learning Test, Wisconsin Card Sorting Task, Rey-Osterrieth Complex Figure Test, Stroop Color and Word Test

Sep 1999 – Aug 2000

**Suicide Hotline Counselor**

*Samaritans of Boston*, Boston, MA

- Received calls as a telephone “befriender” to people struggling with depression, end-of-life decisions, and suicidal crises

**TEACHING**

Jul 2007 – Aug 2007

**Adjunct Faculty**

*Department of Psychology, Virginia Commonwealth University*, Richmond, VA

- *Applications of Statistics*, taught 3-credit summer course and 1-credit lab to undergraduate psychology majors

Jul 2007 – Aug 2007

**Instructor**

*Department of Psychiatry, Residency Training Program, Virginia Commonwealth University Medical School*, Richmond, VA

- *Group Psychotherapy*, co-taught an 8-week seminar to psychiatry residents

Aug 2003 – May 2005  
& Aug 2007 - May 2008

**Graduate Teaching Assistant**

*Department of Psychology, Virginia Commonwealth University*, Richmond, VA

- *Applications of Statistics*, taught two weekly 90-minute lab sections per semester for total of seven semesters

**CONSULTATION**

Aug 2015

**Consultant**

*Elon University*, Elon, NC

- “Trans\* University Training” – provided half-day training on gender diversity to student affairs staff members, counseling services staff, and health center staff members
- Made recommendations on how to create a more trans-friendly and affirming campus

May 2006 – Jan 2007

**Assistant Consultant**

*Wilkes Consulting, Richmond, VA*

- Co-facilitated group exercises and team building activities for private clients, including “Colaborando Juntos,” a non-profit organization that helps connect Virginia’s Hispanic/Latino population with businesses and services  
Designed structured group activities for training programs on topics related to leadership and group dynamics

May 2006 – Aug 2006

**Consulting Intern**

*Office of Public Policy Training, Virginia Commonwealth University, Richmond, VA*

- Developed organizational surveys, analyzed data, and participated in report writing; facilitated group processing during organizational survey feedback sessions
- Wrote and edited executive summary reports for upper- and mid-level leaders based on *360-degree feedback* and *Myers Briggs Type Indicator* assessments

**COMMUNITY OUTREACH**

Jun 2015

**Trainer**

*Satin Med Spa, Charlotte, NC*

- “Gender Identity 101” – provided 90-min. training to staff on how to increase trans-friendly and affirming services to spa clients seeking laser hair removal

Apr 2005 – Feb 2007

**Group Facilitator**

*St. Christopher’s and St. Catherine’s Schools, Trinity Episcopal School, Richmond, VA*

- Facilitated parent-child discussion groups during annual alcohol awareness events for middle and high school students

Apr 2006

**Co-Facilitator**

*Dr. Charles Martin and Associates, Richmond, VA*

- “Treating Patients with Dental Anxiety” – worked with a fellow graduate student to develop and implement a half-day workshop for staff and dentists at a private dental clinic

Sep 1999 – May 2000

**Suicide Outreach Educator**

*Community Outreach Initiative, Samaritans of Boston, Boston, MA*

- Assisted in conducting training presentations aimed at teaching community members and educators how to recognize and prevent suicidal behavior

## RESEARCH EXPERIENCE

May 2002 – Feb 2003

### **Assistant Grants Coordinator**

*Pediatric Psychopharmacology Unit, Massachusetts General Hospital, Boston, MA*

- Coordinated submission of new NIH grant proposals for 62-member research unit with at least 20 active grants; worked on 4 new grant submissions and several continuing applications, consulted with fiscal administrator to finalize \$500,000 budgets

May 2001 – May 2002

### **Study Coordinator**

*Pediatric Psychopharmacology Unit, Massachusetts General Hospital, Boston, MA*

- NIH (R01) grant, *Prevention and ADHD: An Ecogenetic Approach*; coordinated patient enrollment; organized the collection of blood samples from participants; tracked data; handled IRB correspondence and continuing reviews

## SCHOLARLY CONTRIBUTIONS

### **Publications in Refereed Journals:**

**Muehl, K. A.** & Sholl, M. J. (2004). The acquisition of vector knowledge and its relation to self-rated sense of direction. *Journal of Experimental Psychology: Learning, Memory, and Cognition*, 30, 129-141.

Braaten, E. B., Biederman, J., DiMauro, A., Mick, E., Monuteaux, M., **Muehl, K.**, & Faraone, S. V. (2001). Methodological complexities in the diagnosis of major depression in youth: An analysis of mother and youth self reports. *Journal of Child and Adolescent Psychopharmacology*, 11, 395-407.

### **Presentations at Professional Conferences:**

Pottie, C. G., **Muehl, K. A.**, Cohen, J. C., & Ingram, K. M. (2008, June). *Daily stressful events as predictors of coping behaviors in parents of children with autism*. Poster presented at the annual convention of the Canadian Psychological Association, Halifax, Nova Scotia, Canada.

Kracen, A. C. & **Muehl, K. A.** (2007, October). *Nurturing health and well-being among physicians and medical students: Clinical issues for the therapist*. Poster presented at the annual meeting of the Association for the Behavioral Sciences and Medical Education, Squaw Valley, CA.

**Muehl, K.** & Sholl, M. J. (2002, November). *Does sense of direction predict learning in virtual space?* Paper presented at the annual meeting of the Psychonomic Society, Kansas City, MO.

Sholl, M. J. & **Muehl, K.** (2000, November). *The contribution of idiothetic and visual information to sense of direction*. Paper presented at the annual meeting of the Psychonomic Society, New Orleans, LA.

## HONORS AND AWARDS

2008 John G. Corazzini Award for Therapeutic Group Work, Virginia Commonwealth University  
2007 Phi Kappa Phi, Virginia Commonwealth University  
2007 University Leadership Award, Virginia Commonwealth University  
2000 Phi Beta Kappa, Boston College  
2000 Boston College Order of the Cross and Crown, Boston College  
2000 Scholar of the College, Boston College  
1999 Undergraduate Student Research Fellowship (\$1,800), Boston College

## PROFESSIONAL REFERENCES

**Jocie Sweeney, Ph.D.**, Licensed Psychologist  
801 E. Morehead St., Suite 304  
Charlotte, NC 28202  
Phone: (980) 236-0734  
E-mail: [drsweeney@sweeneypsych.com](mailto:drsweeney@sweeneypsych.com)  
Website: <http://sweeneypsych.com/>

**Rhett Brown, M.D.**, Physician  
Novant Health Midtown Family Medicine  
335 Caswell Rd.  
Charlotte, NC 28204  
Phone: (704) 384-7980  
Website: <https://www.nhmidtownfamilymedicine.org/>

**Holly Savoy, Ph.D.**, Licensed Psychologist  
5970 Fairview Rd., Suite 412  
Charlotte, NC 28210  
Phone: (704) 362-4041  
E-mail: [drhollysavoy@gmail.com](mailto:drhollysavoy@gmail.com)  
Website: <http://www.drhollysavoy.com/>

# **APPENDIX 13**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
5:16-cv-00654-BO

U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,  
Plaintiff,

-vs-

BOJANGLES' RESTAURANTS, INC.,  
Defendant.

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DEPOSITION

OF

KAREN MUEHL, PH.D.

June 12, 2017

Charlotte, North Carolina

MICHELLE S. THOMPSON  
Certified Verbatim Reporter-Master  
THOMPSON & MILLS COURT REPORTERS  
6205 Morrison Boulevard, Suite 826  
Charlotte, North Carolina 28211  
704.564.5249

1 Center?

2 A. I was a staff psychologist there for four years and  
3 then prior to that I was considered staff counselor  
4 for a year. That was before I obtained my full  
5 licensure. And then the year before that I was a  
6 pre-doctoral intern, so I was at the UNC Charlotte  
7 Counseling Center for a total of six years, one  
8 year pre-doc, five years post-doc.

9 Q. Describe for me what you do in your current  
10 employment as a solo counseling practitioner.

11 A. So as a mental health practitioner I provide  
12 psychological services to clients struggling with  
13 any kind of mental health issue, so depression,  
14 anxiety, relationship issues, stress, life  
15 transitions, and then my area of specialization is  
16 with transgender clients, so gender diversity and  
17 clients' transitioning. It's one-on-one  
18 counseling, in other words.

19 Q. About what proportion of your practice would you  
20 say is devoted to transgender clients or those with  
21 gender diversity issues?

22 A. It's a little less than half my caseload, so I  
23 would guess at any given week I might see eight to  
24 10 folks who are transgender or gender  
25 nonconforming.

1 Q. Tell me generally about your -- well, let me go  
2 back. You examined Ms. Wolfe on March 31, 2017, at  
3 1:15 p.m., is that correct?

4 A. Yes.

5 Q. And that session lasted about two hours, is that  
6 correct?

7 A. Yes.

8 Q. And Ms. Wolfe and you were the only persons in that  
9 meeting?

10 A. Yes.

11 Q. Tell me generally about your meeting with Ms.  
12 Wolfe.

13 A. In terms of the format?

14 Q. Please.

15 A. Okay. So I initially brought her back to my  
16 office. We sat down and went through basics about  
17 what was going to happen during the interview. I  
18 explained to her that this would be a clinical  
19 interview where I'd be asking her about her  
20 experiences in the past, gender identity. I  
21 explained limits of confidentiality, you know, that  
22 everything we discussed today would be part of my  
23 report to the EEOC and that that could then -- you  
24 know, that if she had any questions about how any  
25 of the maternal was going to be used or any of the

1 content that I passed on, that she should speak to  
2 the EEOC about that, and, you know, just sort of  
3 shared with her that we would start generally and  
4 then get more specific and discuss her gender  
5 identity and experiences. So a lot of it was then  
6 just sort of asking open-ended questions, gathering  
7 information from her.

8 Q. You indicate under the procedures portion of your  
9 report on page 7 that you took notes, is that  
10 correct?

11 A. Yes.

12 Q. And were those notes transferred to your record-  
13 keeping system?

14 A. Yes. So those notes became the basis for this  
15 report, so --

16 Q. Do they still -- I'm sorry. Go ahead.

17 A. So I asked Ms. Wolfe to fill out a questionnaire  
18 that just has, you know, basic demographic  
19 information, what is your name, date of birth,  
20 address, emergency contact, that kind of thing, and  
21 then some general information about herself,  
22 whether she was taking any medication, previous  
23 mental health history. It's basically a  
24 demographic questionnaire I give to everyone at  
25 their first appointment. I left out some sections

1 of it that didn't apply in this case because it was  
2 a forensic examination, not an intake for therapy.  
3 And then basically I take that form and I start  
4 going through it with the person and asking for  
5 clarification. So I might say, oh, okay, I see on  
6 here you don't take any medications. Wow, you must  
7 be healthy. You know, things like that. And then  
8 I might make a note if they say, oh, I take a  
9 vitamin, and then I jot that down, that kind of  
10 thing. And that's where I just write down the  
11 notes about whatever they're telling me in the  
12 interview that seems substantive and relevant to  
13 the objective of the assessment. So they're very  
14 scattered. You know, sometimes I jot something  
15 here and then flip the page and jot something  
16 there. And I take those right away and put it down  
17 in a more cohesive way to create the report, and  
18 then I shred the hard copy. Well, I scan it and  
19 save it into the record and then I shred.

20 Q. So you have a scanned copy of the handwritten notes  
21 as well?

22 A. I believe I do. In this case I can't remember  
23 whether I scanned -- I think I did. I'm sure I  
24 did. But they're considered what I would call like  
25 process notes, which are just notes for my own

1 reference.

2 Q. The electronic copy in the electronic record-  
3 keeping system, does that still exist independent  
4 of the report as well?

5 A. Yes.

6 Q. You mentioned that Ms. Wolfe completed a  
7 questionnaire. Did you retain a copy of the  
8 questionnaire that Ms. Wolfe completed?

9 A. Yes.

10 Q. Did you bring any documents with you today to the  
11 deposition?

12 A. No.

13 Q. You indicated in your report in the procedures  
14 paragraph that you thoroughly assessed for the  
15 diagnostic criteria of gender dysphoria with Ms.  
16 Wolfe, is that correct?

17 A. Yes. Yes.

18 Q. What do you mean by thorough assessment?

19 A. So basically asking questions that elicit  
20 information by which I'll be able to determine  
21 whether she meets the criteria laid out in the DSM,  
22 so how long have you felt this way, for example,  
23 because there's a time criteria of at least six  
24 months' duration. So I ask about in open ways that  
25 are meant to elicit the person's lived experience,

1 not leading questions. I wouldn't say, "Have you  
2 felt this way for at least six months?" I would  
3 say, "Oh, okay. When did you first start feeling  
4 this way?" or "How long have you felt this way?"  
5 That kind of thing.

6 Q. Why did you do the thorough assessment for the  
7 diagnostic criteria for gender dysphoria?

8 A. Yeah. Good question. So I did that because at  
9 this point in time, to establish whether or not  
10 someone is transgender, the only real measure we  
11 have is their self-report. You know, there's no  
12 blood test; there's no written exam that they can  
13 take that would classify a person as transgender or  
14 not. And so by my thinking, I could further  
15 substantiate her self-identified trans identity if  
16 she were to meet the criteria for gender dysphoria.  
17 Then, you know, just by definition, she would  
18 therefore be transgender.

19 Q. You mentioned in your report -- I'm looking now on  
20 page 8 of Exhibit 41 -- that Ms. Wolfe reported to  
21 you that she identified as female, heterosexual,  
22 and Christian, is that correct?

23 A. Yes. Those were the words she filled out on her  
24 demographic form.

25 Q. Did you discuss those any with her or just you took

1 correct?

2 A. Yes.

3 Q. Did you discuss Ms. Wolfe's partner with her at  
4 all?

5 A. We did not. I don't know whether he is cisgender  
6 or trans. I just know he's male identified.

7 Q. Ms. Wolfe indicated to you that she had no  
8 children, is that correct?

9 A. Correct.

10 Q. Did Ms. Wolfe discuss with you anything about  
11 having children?

12 A. No. It's an item on the demographic questionnaire.

13 Q. Did you discuss whether Ms. Wolfe had any children  
14 beyond taking the information from the  
15 questionnaire?

16 A. I clarified it.

17 Q. And Ms. Wolfe again reported that she did not have  
18 any children?

19 A. Correct.

20 Q. Turning toward the bottom of page 8 under the  
21 section Current Mental Health, you indicated that  
22 Ms. Wolfe endorsed symptoms sufficient to meet the  
23 diagnostic criteria for gender dysphoria in  
24 adolescents and adults, is that correct?

25 A. Yes.

1 Q. And in general, why did you reach that diagnosis?

2 A. Well, I elaborate on it in the rest of that  
3 paragraph. So through her self-report and the  
4 questions that I asked her, she conveyed this  
5 feeling of incongruence that had been persistent  
6 and present for a long time, and that included that  
7 feeling of incongruence between her -- the gender  
8 she was assigned at birth and the physical primary  
9 and secondary sex characteristics she possessed and  
10 the desire to change those and to have different  
11 primary and secondary sex characteristics. So we  
12 basically just kind of went through all the  
13 different pieces of what would be the diagnostic  
14 criteria.

15 Q. And the diagnostic criteria, those are the ones  
16 described more fully about halfway down to the  
17 bottom of page 5 in your report?

18 A. Yes.

19 Q. You mentioned that Ms. Wolfe conveyed persistent  
20 and present incongruence for a long time. About  
21 how long did Ms. Wolfe report that she had  
22 experienced these feelings?

23 A. She said she had always felt this way, although she  
24 didn't know to put the words "gender identity" to  
25 it until ninth grade.

1 Q. Is it possible, based on your examination, to  
2 determine when Ms. Wolfe's gender dysphoria began?

3 A. My opinion would be that it began in early  
4 childhood.

5 Q. Reading from the bottom of page 8 now and on to the  
6 top of page 9 of your report in Exhibit 41, you  
7 wrote, "As a result of the incongruence DeAshia  
8 feels, she experiences clinically significant  
9 distress, which has interfered with her functioning  
10 at home, at work, and socially."

11 Did I read that correctly?

12 A. Yes.

13 Q. What does "clinically significant distress" mean?

14 A. So that's a phrase that the DSM uses to -- I can't  
15 remember exactly how they define it, but basically  
16 they say individual experiences are different.  
17 People go through things to varying degrees and the  
18 way they experience them and the way they impact  
19 people varies greatly. So whether or not something  
20 is "clinically significant distress" is the  
21 discretion of the clinician, that part of the  
22 training and experience and judgment is -- that  
23 that's the basis for that, basically. Is it  
24 clinically significant in the sense of, you know,  
25 given this person's life and the functions they

1 presenting in that way.

2 Q. Did Ms. Wolfe tell you anything else about that  
3 encounter when she went to Bojangles' with braids  
4 in her hair?

5 A. No.

6 Q. We were talking just a moment ago about Ms. Wolfe's  
7 gender expression, and you said you didn't ask for  
8 clarification about her gender expression. Is it  
9 your opinion that someone's gender expression is  
10 not important to determining gender identity?

11 MS. STEENBERGH: Object to the form.

12 You can answer.

13 A. It's related, but it wouldn't be -- the only way to  
14 determine a person's gender identity would for them  
15 to state their gender identity.

16 Q. (By Mr. Church) In your clinical experience is it  
17 important to you to understand when trying to  
18 counsel someone whether their gender identity that  
19 they tell you is accurate? To frame it another  
20 way, are there occasions in which you doubt the  
21 gender identity that someone tells you in the  
22 course of your clinical experience?

23 A. There are occasions. Yes.

24 Q. And what has made you doubt the gender identity  
25 that's been expressed to you on occasion?

1 A. In adolescents who are also on the autism spectrum  
2 and who have identified as trans or gender variant  
3 for less than six months, I've had doubts.

4 Q. Are there any other instances in which you've had  
5 doubts about the expressed gender identity of  
6 someone?

7 A. Not in my clinical work, not among the folks who  
8 seek me out for therapy.

9 Q. Have there been other instances in which you've had  
10 occasion to doubt someone's expressed gender  
11 identity outside of your clinical work?

12 A. No.

13 Q. Would it matter to you the extent to which  
14 someone's gender expression matches the gender  
15 identity they profess to you?

16 A. I think that would be on a case-by-case basis and  
17 it would -- I've just so rarely seen or heard of  
18 accounts where a person would adopt a transgender  
19 identity for some secondary gain. There's so much  
20 greater cost than there is benefit.

21 Q. So in most cases where you're counseling folks, in  
22 your understanding there wouldn't be any  
23 opportunity for some secondary gain to misidentify  
24 one's gender and, therefore, you don't see  
25 misidentification very often?

1 MS. STEENBERGH: Object to the form.

2 You can answer.

3 A. I mean it's something I would always consider in  
4 the back of my mind if this has some nuance of  
5 inauthenticity to me. You know, if there's some  
6 little thing that just doesn't seem to fit, then I  
7 might ask myself, well, why would they be doing  
8 this if this isn't the case, you know, and consider  
9 those questions. I mean I think everyone did that  
10 in the case of Caitlyn Jenner. We all asked like  
11 is this legit, is this a publicity stunt? But that  
12 -- I've just never seen cases with persistent  
13 gender dysphoria where it wasn't authentic.

14 Q. (By Brian Church) You're aware that the EEOC is  
15 seeking monetary recovery on behalf of Ms. Wolfe in  
16 this lawsuit, correct?

17 A. Yes.

18 Q. Did you consider that potential secondary gain to  
19 Ms. Wolfe in your evaluation of her?

20 A. Yes.

21 Q. Did it make any difference to your opinion?

22 A. No.

23 Q. Why not?

24 A. Well, let's say that DeAshia was for some reason  
25 claiming a transgender identity for financial gain.

1 I just think there are ways that -- she's just too  
2 authentic. She's too real in her -- in who she is.  
3 I don't think -- you know, she's not this neat and  
4 clean case that answers by the book. She answers  
5 honestly and tells the truth, whether it aligns or  
6 doesn't align, because she's giving you her genuine  
7 experience. And so to me, that's not the  
8 presentation of someone who's trying to manipulate  
9 or, you know, beat the system.

10 Q. What made you believe that Ms. Wolfe was authentic  
11 and real?

12 A. Well, she answered questions very naturally  
13 without, you know, giving a ton of thought. She  
14 spoke very familiarly as we talked. She added in  
15 little spontaneous comments, and there was just a  
16 degree of sort of naturalness and spontaneity that  
17 would be hard to fake.

18 Q. Aside from your view or measure of her candor with  
19 you, were there any other indicators that you  
20 relied on to conclude that she was being truthful?

21 A. No.

22 Q. Staying on page 10 and looking toward the bottom of  
23 page 10, in your report you noted that in her job  
24 at Bojangles' Ms. Wolfe "said her female co-workers  
25 referred to her by feminine pronouns and called her

1 correct?

2 A. Yes, and that was only -- that's a very specific  
3 circumstance where that was an adolescent who was  
4 also on the autism spectrum.

5 Q. But you didn't doubt DeAshia Wolfe's authenticity  
6 and her self-reporting, correct?

7 A. Correct.

8 Q. What, if anything, would cause you to doubt DeAshia  
9 Wolfe's authenticity and her self-reporting?

10 A. I can't think of anything she could say at this  
11 point in time that would change my belief in the  
12 authenticity of her reporting. I mean if -- so  
13 what she described in terms of her early childhood  
14 experiences and how she felt, her experiences  
15 through puberty and sort of developing as an  
16 adolescent, it's all very common in terms of the  
17 kinds of experiences that trans people report. And  
18 early onset trans identity, meaning pre-puberty  
19 onset, you know, it's highly persistent that post-  
20 puberty in someone who continues to feel that way  
21 is going to continue to feel that way and be that  
22 way their whole life. So her narrative is very  
23 consistent with what we would tend to see. At the  
24 same time, she wasn't scripted in the sense of  
25 giving canned answers. I mean she was just very

1 genuinely authentic and it aligned really well with  
2 what's documented and described in the literature  
3 and what I've seen in my firsthand experience.

4 Q. And if you learned that DeAshia Wolfe had posted  
5 photos on social media that could be construed as  
6 male or masculine, would that cause you to doubt  
7 the authenticity of DeAshia Wolfe's self-reporting?

8 A. No, not at all.

9 Q. Why not?

10 A. Well, for one thing, I'd be curious if she -- I  
11 know -- Mr. Brian, I can't remember his last name.

12 Q. Church.

13 A. Mr. Church said that her Facebook was listed under  
14 her name assigned at birth -- and it's typical for  
15 a lot of trans people to have two Facebook  
16 accounts, one their legal and birth name, and  
17 another under their preferred and identified gender  
18 -- so it wouldn't surprise me if there was a male  
19 Facebook account where she put in male photos.  
20 She's also not 100 percent transitioned. She, I  
21 don't think, has the means to sustain two full  
22 wardrobes, one masculine, one feminine, in order  
23 to, you know, navigate both work and personal life,  
24 and it wouldn't surprise me if in different  
25 settings she moves in and out of different gender

1 expressions, but that wouldn't negate the constancy  
2 of her felt sense of her gender identity.

3 Q. So if I were to say that in order for a person to  
4 be authentically transgender that they must always  
5 present as their identified gender, I would be  
6 incorrect?

7 A. Right. I mean we all -- it's socially and  
8 culturally acceptable for women to cross dress all  
9 the time in men's clothing, right? Like you could  
10 have seen me mowing the lawn the other day and  
11 based on my gender expression might have thought I  
12 was a man, but that didn't change the fact that my  
13 identity is still female. That's true for anyone  
14 cisgender or transgender.

15 Q. And I want to return to your report that has been  
16 marked as Exhibit 41, and let's start at page 6.  
17 And earlier you discussed your conclusion that  
18 given that sex and gender are inextricably linked  
19 by the social and cultural meanings assigned to  
20 them, then discrimination based on gender  
21 expression, gender identity or inferences made  
22 about a person's gender or sex is inherently sex  
23 discrimination. You recall providing testimony  
24 about that conclusion?

25 A. Today?

1 without saying, because how can you ever say that  
2 it's not sex discrimination unless part of your  
3 behavior was then to check their genitals and their  
4 chromosomal profile? You know what I'm saying?  
5 Like how did you ever tease that apart? Because  
6 you are making an inference anytime you gender  
7 someone either by their pronouns or the name you  
8 use.

9 Q. Is your conclusion an opinion that is generally  
10 accepted in your field?

11 MR. CHURCH: Objection to the form.

12 A. Yes. It's -- the recommendation in my field is  
13 that people accept and understand that gender is a  
14 socially constructed concept and that it's on a  
15 continuum and that it's not just male or female,  
16 that there's more than just the gender binary, and  
17 we as psychologists are expected to know that and  
18 to communicate that and practice accordingly.

19 Q. (By Ms. Steenbergh) Would you say that the  
20 inextricable link between sex and gender is  
21 something that is fundamental to your field, that  
22 having that understanding is fundamental?

23 MR. CHURCH: Objection to the form.

24 A. I would say understanding that sex and gender are  
25 distinct but related concepts is very basic 101-

1 type information that anyone in my field should be  
2 able to discuss.

3 Q. (By Ms. Steenbergh) And where could someone looking  
4 for this basically 101 information find that  
5 conclusion?

6 A. In any of the documents I cited or any basic  
7 psychology textbook or any website on trans issues.  
8 I mean I could list pages and pages of resources  
9 that would acknowledge that.

10 I guess that's my -- part of my point to your  
11 earlier question about the feminist theory is that  
12 I think that there's a kind of outdated myth that  
13 people say like, well, boys are boys and girls are  
14 girls, and if you're a boy you're a boy and you're  
15 XY you're a boy and if you're XX a girl. My point  
16 in kind of going on that tangent about gender and  
17 sex and how these things can vary in our cultural  
18 and social understanding of them is to say it's not  
19 that simple. It's not just boys are boys and girls  
20 are girls, you know, whether that's in terms of the  
21 terminology or the construct or how we  
22 conceptualize sex and gender, that those things are  
23 just not neatly and firmly -- you know, it's not  
24 like the periodic table or something where the  
25 element is what it is.

# **APPENDIX 14**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:16-cv-00654-BO

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U.S. EQUAL EMPLOYMENT )  
OPPORTUNITY COMMISSION, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
BOJANGLES' RESTAURANTS, )  
INC., )  
 )  
Defendant. )

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DEPOSITION  
OF  
JEANNINE M. EUBANKS

Taken at:

Robinson, Bradshaw & Hinson, PA  
101 North Tryon Street  
Charlotte, North Carolina

On Thursday, April 13, 2017

REPORTER: ANGELICA SCOTT, CSR  
Notary Public

1 honestly tell you when I was promoted to senior  
2 director.

3 Q. Well, in February 2013, were you senior director of  
4 human resources?

5 A. I believe I was the director of human resources at that  
6 time.

7 Q. And was there any person above you?

8 A. Yes, ma'am.

9 Q. Who was above you?

10 A. At the time her name was Vickie Smith, and she's still  
11 my supervisor. At that time she was the vice president  
12 of human resources.

13 Q. What's her title now?

14 A. She's currently senior vice president of human  
15 resources.

16 Q. And she is still employed at Bojangles'?

17 A. Yes, ma'am.

18 Q. And is she in Charlotte, North Carolina?

19 A. Yes, ma'am.

20 Q. And you're still employed in Charlotte, North Carolina?

21 A. Yes, ma'am.

22 Q. And I apologize, will you repeat for me what your title  
23 was in February 2013?

24 A. I think my title in February 2013 was director of human  
25 resources.

1 Q. But Bojangles' doesn't have any paper record of hourly  
2 employees receiving this training?

3 A. No, ma'am.

4 Q. Would there be any type of other recordkeeping  
5 mechanism other than Sysdine's recordkeeping to show  
6 that an hourly employee would have received this  
7 training, like a sign-in sheet or verification or  
8 anything of that nature?

9 A. If there is, I'm not aware of it or who has it.

10 Q. Can you say definitively that all hourly employees in  
11 2012 received this training?

12 A. No, ma'am.

13 Q. Can you say definitively that all hourly employees in  
14 2013 received this training?

15 A. No, ma'am.

16 Q. Why can't you make that definitive statement?

17 A. Because the training at each individual restaurant is  
18 the responsibility of the unit director. It is not  
19 humanly possible for me to ensure that every employee  
20 receives the training.

21 Q. Does anyone from Bojangles' HR division ever do any  
22 type of auditing to make sure the unit directors and  
23 the area directors are making sure hourly employees  
24 receive this training module?

25 A. We don't have a formal process. No, ma'am.

1 Q. So y'all don't know in HR whether or not the unit  
2 directors are actually ensuring that the hourly workers  
3 receive this training?

4 A. I don't know definitively. I have confidence in our  
5 area directors, and specifically in this area director,  
6 Sharon McCollough, to ensure that training is done  
7 properly.

8 Q. How many stores does Sharon McCollough oversee -- or  
9 sorry. Let me strike that.

10 How many stores in 2012-2013 did Sharon  
11 McCollough oversee?

12 A. I don't remember. My recollection is that she has  
13 always supervised between five and eight restaurants,  
14 depending on restaurant alignment within the company.

15 Q. And approximately how many employees would be employed  
16 in 2012 between these five to eight restaurants?

17 A. If she had five restaurants, our average headcount is  
18 usually 35 people, 30 to 35 people, so --

19 Q. Is that per day, per week, per month, per year?

20 A. Just per restaurant. Because they could work -- some  
21 could work every day, some could work one day a week,  
22 depending on their personal situation.

23 Q. What's the turnover like at any average restaurant?

24 A. Turnover -- that's hard to say because we look at a  
25 company total. I couldn't tell you, on an individual

1 employee alleging that a manager engaged in  
2 retaliation?

3 A. Of course.

4 Q. About how many times have you had to deal with that  
5 type of complaint?

6 A. I couldn't give you a number. And I have found in my  
7 years that employees frequently call behavior  
8 "retaliation" when it is not.

9 Q. What are some specific examples that you've seen where  
10 an employee has called behavior "retaliation" but you  
11 have concluded that the behavior was not retaliation?

12 A. To ask an employee to meet the requirements of their  
13 job is not retaliation. But there are occasions when a  
14 disgruntled or unhappy employee will object to being  
15 asked to do their job, and they will use the word  
16 "retaliation."

17 But we will discuss the scenario and what is  
18 retaliation and what is it you were asked to do. And  
19 we kind of -- now, if it's true retaliation, that would  
20 be a different scenario, but what I want you to  
21 understand is I have very few retaliation complaints,  
22 and frequently employees use that word incorrectly.

23 Q. I understand where you're coming from.

24 A. Okay.

25 Q. Is it a part of an hourly employee's job description

1 that they can be transferred to another store?

2 A. Employees have the right to ask for a transfer. We  
3 don't guarantee a transfer. Frequently, transfers  
4 occur because it's mutually advantageous to the  
5 employee and maybe to the company. An example would be  
6 if an hourly employee has complained about a manager  
7 and they simply say, "I cannot work with that manager."  
8 We would consider a transfer for that person.

9 Q. But Bojangles' can't involuntarily transfer an hourly  
10 employee?

11 MR. CHURCH: Objection to the form.

12 A. To be frank, Bojangles' as the employer can do whatever  
13 they want if it's in the best interest of the business.  
14 But I want you to understand, we don't arbitrarily do  
15 those things. There's generally discussions and  
16 reasons why -- explained why we want to do this.

17 Q. And how many situations have you been directly involved  
18 in where an employee complains about a manager and  
19 there's an agreement to transfer?

20 MR. CHURCH: Objection to the form.

21 A. I have no way of knowing.

22 Q. More than five?

23 A. The specific question again?

24 Q. Sure. How many situations have you been directly  
25 involved in where an employee complains about a manager

1 and then agrees to a transfer to a different store or  
2 different restaurant?

3 A. The difficulty with answering that question is you have  
4 hourly employees and you have salaried managers. I  
5 have been more actively involved in transferring  
6 salaried managers than I have hourly employees. But  
7 back to your question. I don't keep a record of how  
8 many there have been.

9 Q. Well, let's narrow it down to hourly employees who have  
10 requested to voluntarily transfer because they're  
11 having an issue with their manager. How many of those  
12 cases have you been involved in?

13 A. Very few. The handbook says request for transfers need  
14 to be made and approved -- made through and approved by  
15 the area director.

16 Q. And in this case that would be Sharon McCollough?

17 A. Yes, yes.

18 Q. Okay. And Sharon doesn't have to get your permission  
19 to transfer an hourly employee?

20 A. No, ma'am.

21 Q. Has she ever consulted with you on any situations where  
22 she was considering transferring an hourly employee  
23 because of a conflict with a manager?

24 A. She has consulted with me about decisions she's going  
25 to make, yes. Specifically about transferring someone,

1 I don't -- I don't keep a record of those either. But  
2 I'm sure she has.

3 Q. But that's primarily Ms. McCollough's wheelhouse, is  
4 deciding whether or not to transfer?

5 A. Yes.

6 Q. Okay. I'm going to mark Exhibit 5 for you to take a  
7 look at.

8 Have you had an opportunity to look at what's  
9 been marked as Exhibit 5?

10 A. Yes, ma'am.

11 Q. I'm going to represent to you that this is Bojangles'  
12 anti-harassment/discrimination policy as taken from  
13 Bojangles' handbook. Would you disagree with that  
14 characterization of the document?

15 A. No, ma'am. It's pages 8 and 9 of the employee  
16 handbook.

17 Q. Did you specifically have any input into drafting of  
18 this particular anti-harassment/discrimination policy?

19 A. Yes, ma'am.

20 Q. Tell me about your involvement in that.

21 A. I can tell you that I drafted the original policy. It  
22 was sent to Angie Vincent-Hamacher of Robinson,  
23 Bradshaw & Hinson, and she finalized the document.

24 Q. And this was the anti-harassment/discrimination policy  
25 that was in effect in 2012 and 2013?

1 facts as possible, date of the occurrences, were there  
2 any witnesses, those type of things.

3 And then based on that statement, we will  
4 know who else we need to interview; we'll watch video;  
5 we do an investigation. And then they're required to  
6 report back to me their findings.

7 Q. So the AD's required to report their findings to you?

8 A. Yes. And it's not unusual for us to get a regional  
9 vice president involved, if I think it's necessary. If  
10 the area director's on vacation, for example, I might  
11 do the investigation or, generally, I'll call the  
12 regional vice president, and they will go out and talk  
13 to employees.

14 Q. Well, what if an employee calls and says, "I have tried  
15 to address this through my unit director and my area  
16 director. I'm not getting any help. What do you do in  
17 that situation?"

18 A. Then I'd get involved or get the regional vice  
19 president involved. Each -- each situation is  
20 different. I have to get the facts first and then make  
21 a decision.

22 Q. I'm going to mark and give to you Exhibit 6.

23 Have you had the opportunity to review what's  
24 been marked Exhibit 6?

25 A. Yes. This is page 13 of the employee handbook.

1 Q. And that's the employee handbook that we discussed as  
2 Exhibit 3?

3 A. Yes, ma'am.

4 Q. And the employee handbook that was in force in  
5 2012-2013?

6 A. Yes, ma'am.

7 Q. I want to focus again on the employee complaint  
8 procedures paragraph, starts on 13 and goes over to  
9 page 14. Again, we see the reporting structure. First  
10 go to your manager in charge; second, go to your unit  
11 director; three, your area director; and four, your  
12 regional vice president. Is that a correct  
13 representation of what the reporting procedure says?

14 A. Yes, ma'am.

15 Q. Who's a manager in charge?

16 A. In our industry, a manager could be a unit director, an  
17 assistant unit director, or even a shift manager. And  
18 we work three shifts a day, seven days a week. And so,  
19 of course, the manager in charge will be whoever the  
20 manager is assigned to work a particular shift.

21 Q. Okay. So Jonathan Wolfe alleges that she made multiple  
22 complaints about the harassment she encountered during  
23 her time at Bojangles'. She alleges she complained to  
24 a manager in charge, to her unit director, and to her  
25 area director, and eventually to HR. If all that was

1 true, would Jonathan Wolfe have been in compliance with  
2 Bojangles' policy about reporting alleged harassment or  
3 discrimination?

4 MR. CHURCH: Objection to the form.

5 A. If that was true, he would be in compliance with the  
6 policy.

7 Q. I'm going to mark Exhibit 7, hand it to you.

8 Are you familiar with the document that has  
9 been marked Exhibit 7?

10 A. Yes, ma'am. I am.

11 Q. Have you had the opportunity to review Exhibit 7?

12 A. Yes, I have.

13 Q. What's Exhibit 7?

14 A. Exhibit 7 is the hourly crew wage guidelines and  
15 evaluation that was in effect in 2010.

16 Q. Has this guideline been updated since then?

17 A. Yes, ma'am.

18 Q. And when was it updated?

19 A. 2014, I believe.

20 Q. Okay. But this would have been the guideline in effect  
21 in 2012-2013?

22 A. Yes, ma'am.

23 Q. Okay. Did you have any input into creating this  
24 document?

25 A. Yes, ma'am.

1 Q. What did you do in terms of document creation?

2 A. Again, we as a company will research and look at what  
3 minimum -- for example, in this example, what the  
4 minimum wage is, where most of our people work. We  
5 will look at the opportunities for advancement that are  
6 made available to hourly employees. We have  
7 discussions with our ops team to determine what they  
8 would like to see happen. It's a multiperson process  
9 to form these policies, and then I put together in a  
10 format such as you see here.

11 Q. So in the wage guideline chart it says crew member.  
12 I'm assuming crew member is an hourly employee?

13 A. Crew member is an hourly employee. Usually an  
14 entry-level position at a restaurant.

15 Q. And as I read this chart, a crew member could not earn  
16 in excess of \$8.50 an hour; is that correct?

17 A. That's right.

18 Q. But if this person were promoted to service leader,  
19 kitchen leader, team trainer, at that point they could  
20 receive up to \$9.50 per hour?

21 A. That is correct, within the guidelines.

22 Q. Flip over to page 2 for a second. Under the rehire  
23 section, there's a sentence that "Hourly employees who  
24 were terminated for cause or who failed to give work a  
25 notice will not be eligible for rehire." Is that

1 always correct?

2 A. Is it always correct?

3 Q. Yes. So is every single hourly employee who is  
4 terminated for cause ineligible for rehire?

5 A. That's what the policy says, but to be honest,  
6 sometimes people get rehired.

7 Q. Do you know why that is?

8 A. It's the failure of the manager to validate what their  
9 rehire status is or they have gone to an area director  
10 and lobbied for this person or the area director has  
11 been asked to investigate the original reason for the  
12 termination. And if there's extenuating circumstances,  
13 a person might be rehired.

14 Q. Okay. But if a person -- if an hourly employee quits  
15 with two weeks' notice on good terms, they're going to  
16 be eligible for rehire?

17 A. Yes, ma'am.

18 MR. CHURCH: Is this a fair time for a short  
19 break?

20 MS. STEENBERGH: Perfect.

21 (A recess was taken at 10:22 a.m. until 10:36 a.m.)

22 Q. We're back on the record after our break. We are  
23 taking a look at Exhibit 7, and I'm looking  
24 specifically on the first page, bullet point 3. And  
25 the guidelines say "Be consistent and fair in all pay

1 Q. So under your anti-discrimination policy, Bojangles'  
2 would not pay someone disparate terms because of their  
3 gender; correct?

4 A. Correct.

5 Q. Okay. And gender is different from sex how?

6 MR. CHURCH: Objection to the form.

7 A. Well, we had this discussion earlier. It's on the  
8 record. In this case, in this wage guideline, we are  
9 addressing equal pay issues, which are clearly about  
10 male and female pay issues. And so we did not feel the  
11 need to address sex which could be any related issue to  
12 sex and be -- such as sexual orientation is one thing  
13 we've talked about today. So those issues we did not  
14 address in this policy because this is about equal pay  
15 issues, not --

16 Q. But you're still not answering my question. How is sex  
17 different from gender in terms of all the policies we  
18 have discussed?

19 MR. CHURCH: Objection to the form.

20 Q. You used two separate words: Sex. Gender. How are  
21 they different?

22 MR. CHURCH: Objection to the form.

23 A. Well, frankly, when I think of gender, I think of male  
24 or female.

25 Q. How is that different from sex?

1 A. Sex can be an activity. It can be sexual intercourse.  
2 It can be some kind of conduct based on a person's  
3 relationship with either a male or a female individual.  
4 So I see gender as -- what's the word -- a category,  
5 male or female. I think of sex -- I personally think  
6 of sex more as the activity or the action that's based  
7 on being a male or a female.

8 Q. Okay. I think I understand you now. So would sexual  
9 orientation fall under sex as you've just defined it?

10 A. Yes.

11 Q. Okay. And would gender identity fall under sex as  
12 you've just defined it or would it fall under gender?

13 A. I think gender identity probably would fall under sex.

14 Q. Under sex, okay. So by that sense, because Bojangles'  
15 policies discriminate -- prohibit discrimination based  
16 on sex, they prohibit discrimination based on someone's  
17 gender identity?

18 A. Sure.

19 Q. Okay. It's kind of two confusing overlapping concepts;  
20 am I correct?

21 A. You're making it more confusing than it needs to be,  
22 because it was not our intent. These are two separate  
23 policies.

24 Q. Okay.

25 A. The anti-harassment/discrimination policy is part of

1 the employee handbook that is disseminated to all  
2 employees. The document that you've shown me here, the  
3 hourly crew wage guidelines, is more of an internal  
4 document to guide our supervisors on how to apply pay  
5 practices.

6 Q. My question, I was specifically stepping away from any  
7 particular policy and just kind of looking at  
8 Bojangles' policies in general.

9 A. In general, okay.

10 Q. So we have this definition of gender and sex that we've  
11 worked out, and that applies to globally?

12 A. Globally. That is a correct statement.

13 Q. Okay. And Bojangles' global policy is protect  
14 employees based on gender identity and sexual  
15 orientation?

16 A. Yes.

17 Q. Okay. Because that's sex gender?

18 A. Yes.

19 Q. Okay. And -- okay. I am going to mark a document as  
20 Exhibit 2. The reason I'm marking it as Exhibit 2 is  
21 because it was previously shown during an earlier  
22 deposition. So is that confusing to you in any way?

23 A. Well, I wondered about that when I saw you started  
24 with 3. I haven't been deposed in this case.

25 Q. That is correct. We deposed another witness in this

1 directors to call them and discuss those decisions  
2 before they actually terminate.

3 Q. But under the policy --

4 A. There is no -- right. There is no policy that requires  
5 them to get approval to terminate.

6 Q. Okay. What about assistant unit directors. Can they  
7 terminate an employee?

8 A. We discourage that. It would have to be a really  
9 blatant behavior.

10 Q. But they do have the ultimate authority to terminate --

11 A. No, they do not. AUD -- assistant unit directors need  
12 to work through their unit director.

13 Q. They can recommend termination of an employee?

14 A. Yes.

15 Q. Can an assistant unit director write an employee up?

16 A. Yes, if it's somebody on their shift who's not done  
17 their job or acted out or something, yes.

18 Q. How long have you known Ella Riggins?

19 A. I don't know her personally even now. I know who she  
20 is. I know she's been a manager with Bojangles' for  
21 some time. That's about the sum total of what I could  
22 tell you. I couldn't even tell you her hire date.

23 Q. How many times have you met Ms. Riggins in person?

24 A. Well, every time we have an annual unit director  
25 conference, she's been there, so I've probably met

1 Q. When did you first receive notice that Jonathan Wolfe  
2 had filed an EEOC charge?

3 A. Upon receipt of the charge, which would have probably  
4 been, I'm assuming in 2013, sometime after his  
5 termination.

6 Q. How did you come to learn that Jonathan Wolfe had filed  
7 a charge of discrimination?

8 A. I received a charge in the mail.

9 Q. Directly from the EEOC?

10 A. Uh-huh.

11 Q. So you've seen a copy of the charge?

12 A. Yes.

13 Q. Okay. Prior to receiving the charge itself, did you  
14 have any notice that Jonathan Wolfe was intending to  
15 file the charge with the EEOC?

16 A. No, ma'am.

17 Q. No indication that she was considering filing her  
18 charge of discrimination?

19 A. No, ma'am. There was never a complaint of  
20 discrimination or harassment or anything of that  
21 nature.

22 Q. What was your role in responding to the EEOC charge of  
23 discrimination that Jonathan Wolfe filed?

24 A. It's my role to try to gather the facts, talk to as  
25 many people as possible, to make sure I understand what

1 with the braids?

2 A. I never talked to Ella. The only conversation I had  
3 with Sharon was that Jonathan was upset because he was  
4 told he needed to restrain his braids before he came  
5 back to work. That's the only knowledge I have of a  
6 conversation with him about his braids.

7 Q. So it sounds like neither Ella or Sharon told you,  
8 "Hey, I'm concerned that she won't be able to restrain  
9 her braids."

10 MR. CHURCH: No, ma'am.

11 A. I have no recollection of that.

12 Q. They never voiced concern about whether or not these  
13 braids were out of compliance of the policy?

14 A. I don't believe they perceived them as being out of  
15 compliance. They were -- he was just simply told, "Be  
16 prepared to restrain your hair when you come back."  
17 That is the only knowledge I have of any comment made  
18 to him about his braids.

19 Q. The position statement also says, "Following the  
20 incident on February 21st, Mr. Wolfe contacted  
21 Bojangles' human resources department by telephone to  
22 file a complaint." Do you have specific knowledge  
23 about Jonathan Wolfe's phone call to human resources on  
24 February 21st?

25 A. Yes, I do. He called me.

1 Q. And he spoke directly to you? Or she did?

2 A. Yes.

3 Q. So we are in agreement that on February 21st, Jonathan  
4 Wolfe placed a phone call to Bojangles' HR?

5 A. Yes, at 9:50 a.m., to be exact.

6 Q. So we agree there is a phone call?

7 A. Yes.

8 Q. But we disagree fundamentally about what was said  
9 during this phone call.

10 A. Yes. Perhaps.

11 Q. And it's a matter of your words versus Jonathan's  
12 words?

13 MR. CHURCH: Objection to the form.

14 Q. Please answer.

15 A. Well, yes. If he's saying he was subjected to some  
16 kind of discrimination, that is not what he reported to  
17 me.

18 Q. But all we have are your words versus Jonathan words.

19 A. And the notes that I submitted to the EEOC.

20 Q. Okay. Did you make a copy of this phone call?

21 A. Did I record the phone call? No. I just took notes.

22 Q. Okay. There's no audio, video recording of the phone  
23 call in any way?

24 A. No.

25 Q. Okay. And walk me through, line by line, your phone

1 A. No.

2 Q. No accolades?

3 A. No.

4 Q. Okay. Had you received any complaints about Ella  
5 Riggins?

6 A. No.

7 Q. What about Sharon McCollough?

8 A. No.

9 Q. Janice Locklear?

10 A. No.

11 Q. There would be no Service Check employee service line  
12 complaints about any of those individuals prior to  
13 February 2013?

14 A. Not to my knowledge.

15 Q. I'm going to mark for you Exhibit 9.

16 Have you had the opportunity to review the  
17 document that's been marked as Exhibit 9?

18 A. Yes, ma'am.

19 Q. What is Exhibit 9?

20 A. Exhibit 9 are copies of pages taken from my notes.

21 Q. Are all notes that you took with regard to Jonathan  
22 Wolfe contained in Exhibit 9, or are there other notes  
23 that are not in Exhibit 9?

24 A. There are some email messages that were exchanged. I  
25 think you have copies of those.

1 Q. But these are all your handwritten notes?

2 A. My handwritten notes. Yes, ma'am.

3 Q. Okay. When you were assisting Bojangles' respond to  
4 EEOC's charge of discrimination, did you provide all of  
5 your notes? Everything that we see on Exhibit 9?

6 A. Yes.

7 Q. Did you black out any information prior to submitting  
8 it to the EEOC?

9 A. I would never do that, no.

10 Q. Okay. So if the EEOC did not receive a complete set of  
11 your notes or parts were redacted, that was not you  
12 that redacted or did not produce all the documentation?

13 A. Correct.

14 Q. Okay.

15 A. Did that happen?

16 Q. Yes. The EEOC did not receive a complete set of your  
17 notes that are Exhibit 19. In fact, much of it was  
18 redacted.

19 So these are the notes that you took by hand?

20 A. Yes.

21 Q. Did you take these notes contemporaneously while  
22 speaking with both Sharon and Jonathan?

23 A. Yes. That's the way I operate.

24 Q. Okay.

25 A. That's why they might not make sense to --

1 to call him. Then, at that point, he changed his  
2 story, and he brought up an issue about how Sharon had  
3 told him he could dye his hair, but Sharon said that  
4 wasn't true. They had had a conversation back in  
5 December of 2012 about getting your hair dyed and  
6 things like that. And she never approved him getting  
7 his hair dyed.

8 But I don't know anything about that, and I  
9 don't know how it has any bearing on this matter.

10 Q. Okay.

11 A. But she was just basically giving me a heads-up that  
12 there had been some kind of incident in the restaurant  
13 and that I could probably expect to hear from Jonathan.  
14 And sure enough, I did.

15 Q. So your day actually started with a phone call from  
16 Sharon?

17 A. Yes.

18 Q. And then a phone call from Jonathan?

19 A. Yes.

20 Q. Okay. When did Sharon call you?

21 A. I have no idea, but I get in the office by 7:15, 7:30.  
22 Everybody knows that. I'm thinking it was probably,  
23 you know, around 8:00 or 8:30. But I didn't write the  
24 time down.

25 Q. But you do remember that Jonathan Wolfe called you

1 and that's what you just stated; correct?

2 A. Uh-huh. Yes.

3 Q. And when Sharon originally called you, she said that  
4 Ella was going to terminate him? Or terminate  
5 Jonathan?

6 A. Again, you know, it's hard to keep up with some -- when  
7 you're taking notes as quickly as people are talking.  
8 I believe she said after he left the restaurant, Ella  
9 called him -- probably with the intention to term him,  
10 but at that point he tells her, "Well, Sharon approved  
11 the braids. I could get the braids." So Ella didn't  
12 terminate him, and we knew at that point Sharon was  
13 going to have to get involved because there was this  
14 disagreement on the facts.

15 Q. Okay. But it's my understanding that this whole entire  
16 preliminary exchange about Jonathan's braids occurred  
17 when Jonathan was in the Owen Drive restaurant.

18 A. And I can't testify to that. I don't know.

19 Q. Well, assuming that's true, would the Owen Drive  
20 restaurant have any type of video recording of the  
21 exchange or event?

22 A. We do video recording, but you have to remember it  
23 overrides itself. And with -- some systems overwrite  
24 within 15 days, some sometimes overwrite within 30.  
25 This being an older restaurant, I'm not even sure if it

1 Q. Okay. And all this information came to you from  
2 Sharon?

3 A. Yes.

4 Q. No other person?

5 A. Correct.

6 Q. Okay. And Sharon told you that Jonathan had talked  
7 about his sexuality in the workplace before?

8 A. Yes.

9 Q. Okay. What specifically did she say on that?

10 A. She didn't say anything more than that.

11 Q. Okay. What about "You need to man up." What's that  
12 about?

13 A. I don't know exactly the content or the context of that  
14 statement, but I think what she was trying to say was  
15 you need to be mature, act your age, you know, use good  
16 judgment.

17 Q. So --

18 A. You'll have to ask her what she meant.

19 Q. So your notes -- are your notes saying that Sharon told  
20 Jonathan you need to man up?

21 A. Uh-huh.

22 Q. Okay. Not that -- strike that.

23 A. And I honestly don't remember if she's telling me that  
24 someone said that to Jonathan, and that's was what his  
25 complaint was. I honestly don't remember. Or if

1 A. I don't remember. I don't know why that's written  
2 there.

3 Q. Did you consider Jonathan Wolfe coming into the store  
4 with braids and a miniskirt a costume?

5 A. Not the braids so much but I would probably wonder what  
6 was going on if he suddenly appeared for the first time  
7 in a miniskirt. But I don't know if I would call that  
8 costume. I don't know where that comment came from.  
9 Or why I wrote it. It's clearly my writing. I just  
10 don't know why I wrote it.

11 Q. Okay. And you have "NC, no protection, gender based  
12 stereotype, hasty decision." I can't -- what's in the  
13 parenthesis?

14 A. I think -- I think it says, "General standards of  
15 dress."

16 Q. Why did you make these notations?

17 A. I have no idea, unless I was talking to legal counsel.

18 Q. But it's your representation that you made these notes  
19 on February 13th?

20 A. No. It's my --

21 Q. Oh, my gosh. I'm so sorry.

22 A. It's my representation that sometime during the month  
23 of February of 2013, following the incident with  
24 Jonathan Wolfe, I was putting these notes together. I  
25 suspect for outside counsel. I suspect that note may

1           come from my conversation with outside counsel.

2       Q.    And I apologize. I keep struggling with that date. I  
3           am with you now.

4       A.    That's okay. I know it's misleading because of the  
5           year and everything.

6       Q.    These notes that we're looking at, the "North Carolina  
7           no protection," what day in February did you create  
8           these specific notes?

9       A.    I don't know.

10      Q.    Why don't you know?

11      A.    Because I didn't write a date on here.

12      Q.    Okay. Would you have created these notes before or  
13           after Jonathan Wolfe was terminated?

14      A.    It was clearly after -- well, after his termination? I  
15           don't -- I don't know. Generally, when I -- generally,  
16           when I recap my notes or recap facts as I know them,  
17           it's usually because I'm preparing my thoughts to have  
18           a discussion with outside counsel. I don't know why I  
19           did that, because his charge wasn't filed until April  
20           or something like that, so ...

21      Q.    And he was terminated February 27th?

22      A.    27th, yes. So I don't know why I did that. I honestly  
23           don't know.

24      Q.    Had anyone talked to you about terminating Jonathan  
25           Wolfe on February 21st?

1 A. On February 21st? No, ma'am.

2 Q. Were you researching whether or not you'd be in  
3 violation of Title VII or any law if you terminated  
4 Jonathan based on the events of February 21st?

5 A. Based on what I knew on February 21st, number one, I  
6 didn't think we would violate Title VII, but number  
7 two, I wasn't convinced there was a reason to terminate  
8 him. We were on a fact-finding mission at that point.  
9 You know, later in the day, on the 21st, I would have  
10 anticipated that Sharon was talking to people, getting  
11 information, setting up meetings, things like that.

12 Q. So Sharon was the one doing the investigating?

13 A. Absolutely. Yes, ma'am.

14 Q. Were you directing Sharon's investigation?

15 A. After that first day, no, because she's -- she had done  
16 investigations before. She knew she needed to talk to  
17 people and get facts.

18 Q. But at some point you talked to someone in the context  
19 of Jonathan Wolfe about gender-based stereotypes?

20 A. Yeah. I don't deny that.

21 MR. CHURCH: And objection.

22 Q. All right. Why the note on "hasty decision"? What  
23 does that mean?

24 A. And where is that? Let me see.

25 Q. It's at the top of the page, right below "NC, no

1 protection, gender based, stereotype."

2 A. Again, I don't know who I talked to. I don't know  
3 where that note came from. I was probably reminding  
4 myself that we didn't want to make a hasty decision.  
5 We have to make sure we have all the facts. You don't  
6 ever -- or I don't ever do an investigation thinking  
7 that gotta be prepared for an EEOC charge, because I  
8 don't think that way. I want to fix the problem that's  
9 occurred now.

10 So I probably got guidance. I probably was  
11 telling myself we need to get all the facts. That's --  
12 I don't -- I don't know where those notes came from or  
13 who I talked to.

14 Q. You wrote "stereotype." Were you concerned that  
15 Jonathan Wolfe was being stereotyped?

16 MR. CHURCH: Objection to the form.

17 A. I don't know that I was concerned about Jonathan  
18 specifically. I just wanted to make sure -- I'm  
19 assuming, based on these notes, whoever I was talking  
20 to, I just wanted to make sure we were not guilty of  
21 some violation of the law.

22 Q. But at some point you discussed stereotyping with  
23 somebody.

24 MR. CHURCH: Objection to the form. I'll  
25 instruct you not to answer with respect to any

1           conversations you had with counsel.  If there's  
2           any other persons you discussed that with, you can  
3           answer.

4   A.  I have no recollection talking to anybody but counsel.

5   Q.  And your notes say "no issues other than he was" --

6   A.  "Counseled."

7   Q.  -- "counseled by AD for talking about his personal  
8       business, sexuality, et cetera"; is that correct?

9   A.  Yes.

10   Q.  What else was going down?  Did you review Jonathan  
11       Wolfe's employment history?

12   A.  I looked at his personnel file, of course.  And I had  
13       Sharon's comments.  She really liked him.  And found  
14       him to be a great cashier, very personable, very good  
15       with customers.  And, in fact, we were opening another  
16       new restaurant.  The Corporation Drive restaurant was a  
17       new restaurant during this time, and she invited him to  
18       go with her to this new location, to help get it open.  
19       And for a non-Bojangles' employee, that might not seem  
20       like a big deal, but to Bojangles' employees, opening a  
21       new restaurant is a big deal, and being included in  
22       that group that gets to open a new restaurant, that's  
23       an honor.

24                   So she liked him, thought he had ability,  
25       even suggested to me, had he remained employed and done

1 situation.

2 Q. What are some of the steps you're taking to educate  
3 yourself about transgender?

4 A. Of course, I'm attending workshops, I read as much  
5 literature as I can. I read the guidance that you guys  
6 provide. You know, it's -- to be frank, there was a  
7 time that it was not talked about. It was not as big  
8 an issue. There's more attention put on it now, and I  
9 think it behooves me to be better educated because,  
10 clearly, we're going to have employees, if not now, in  
11 the future, that will bring this topic up, and I need  
12 to be prepared to address it.

13 Q. Does Bojangles' policy protect transgender individuals  
14 specifically?

15 A. We don't have a specific policy that mentions  
16 transgender. We have always deferred to Title VII and  
17 prohibited discrimination based on sex and gender, but  
18 certainly we would not prohibit -- or we would not  
19 permit anyone to be mistreated, but, again, I'd have to  
20 hear the complaint, get the facts, and know what's  
21 going on.

22 Q. So if a transgender employee came to you, provided  
23 specific allegations and you were able to corroborate,  
24 would that person be protected under the Bojangles'  
25 anti-discrimination policy?

1 A. The complaining party? Absolutely.

2 MS. STEENBERGH: That's all the questions I  
3 have. Thank you very much for your time today.  
4 (WHEREUPON, the foregoing deposition was concluded  
5 at 2:28 p.m. Signature was reserved.)

6 \* \* \* \* \*

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# **APPENDIX 15**

Try our new design

Bojangles' NC - Fayetteville (735)	<b>Work Incident Report</b>
Cynthia Gore	Jonathan Wolf

Close this Page

**Date of Incident** 02/02/2013

**Performance Opportunity Actions to Take Responsible for Action**

**Expected Completion Date** 02/28/2013

**Completed?** No

**Supervisor's Comments** employee an shift manager were set up for a meeting employee did not show up also did not listen to shiftmanager when he was told to make cinn twlst

**Employee's Comments**

**Employee Informed of Consequences?** Yes

**Written Warning - First?** No

**Written Warning - Second?** No

**Suspension?** No

**-- Suspension for \_\_\_ days**

**Termination?** No

**Other?** No

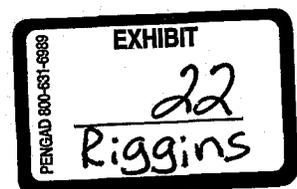
**Manager's Name** ella riggins

**-- Date** 02/21/2013

**Employee's Signature**

**-- Date**

Close this Page

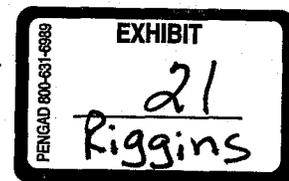


# **APPENDIX 16**

Johnathan was at the end of the counter talking to a employee as she was wipeing down her trays then I over heard him say I cut my hair all she had to do was ask I ignored the conversation an continued to pack as I got closer he said it again louder "Kristen asked me to cut my hair so I did its the way you ask somebody " so I knew he was speaking towards myself so I said thats fine take it down to your store then. He said I will he went on mumbling how you talk to people I then said look im not that girl he said im not that guy I said ok leave my store he said im a customer I said an im asking you to get out of my store. Thats all that was said to him I am really upset that he doesnt work here anymore an he still came in here did not order anything but causes problems this is not the first time he has lied I did not ask him anything about his hair cause I really dont care about his hair so why lie about it, nobody wants to get involved in it again simply because they are all friends just like with Janice and that is a big problem for me simply because its saying you can say watever you want as long as noone verifys it ,you still keep your job.

*[Handwritten signature]*

2-27-13



# **APPENDIX 17**

2/27/13

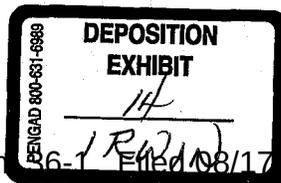
Johnathon and Christy were talking about him going to another store. He was telling me what the store manager said to him. Which she asked him to cut his hair.

~~She asked him to cut his hair. Mrs. Ella overheard him~~  
~~and I both agreed that it's how you talk to people with respect.~~  
Johnathon and I both agreed that it's how you talk to people with respect.

Mrs. Ella overheard us talking and told him that he can take that talk with him outside.

~~So he was asked to leave the store.~~  
So he was asked to leave the store.

Christy McFarland  
2/27/13

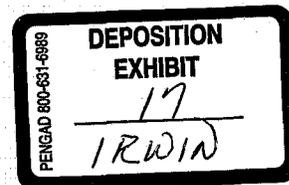


# **APPENDIX 18**

Try our new design

<b>Bojangles!</b> <b>NC - Fayetteville (735)</b>		<b>Reasons for Leaving</b>	
Cynthia Gore		Jonathan Wolf	
Close this Page			
<b>Primary Reason</b>	Insubordination		
<b>Notes and Comments</b>	On Wednesday February 28th Jonathan went to store #274 and caused a disturbance in the store. Maliciously talking about Ella the Unit Director to the cashier t and holding up the line in which other customers were waiting to place their order. Jonathan came to the store on his day off to talk to other employees that was there and in the process he was very disruptive to the harmony that was in the store causing an uproar resulting in Jonathan being terminated. Terminating Manager: Kristen Bowden		
<b>Rehire?</b>	OK to Rehire		
<b>Termination Date</b>	02/28/2013		
<b>Manager's Name</b>	Kristen Bowden		

Close this Page



# **APPENDIX 19**

**Supreme Court of the United States  
Office of the Clerk  
Washington, DC 20543-0001**

**Scott S. Harris**  
Clerk of the Court  
(202) 479-3011

February 24, 2017

Mr. John C. Eastman  
Center for Constitutional Jurisprudence  
c/o Dale E. Fowler School of Law  
One University Drive  
Orange, CA 92866

Re: No. 16-273, Gloucester County School Board v. G.G., by his Next Friend  
and Mother, Deirdre Grimm

Dear Mr. Eastman:

It has come to the attention of this office that the covers of your *amicus* briefs in this case identify the respondent as “G.G., by her next friend and mother, Deirdre Grimm.” In fact, the caption for the case in this Court, as in the lower courts, identifies the respondent as “G.G., by *his* Next Friend and Mother, Deirdre Grimm.” (Emphasis added.) Under Rule 34, your cover is to reflect the caption of the case. Please ensure careful compliance with this requirement in this and other cases in the future.

Sincerely,

**Scott S. Harris**, Clerk

by

Denise McNerney  
Merits Case Clerk

**Supreme Court of the United States  
Office of the Clerk  
Washington, DC 20543-0001**

**Scott S. Harris**  
Clerk of the Court  
(202) 479-3011

February 24, 2017

Mr. Matthew D. Staver  
Liberty Counsel  
PO Box 540774  
Orlando, FL 32854

Re: No. 16-273, Gloucester County School Board v. G.G., by his Next Friend  
and Mother, Deirdre Grimm

Dear Mr. Staver:

It has come to the attention of this office that the cover of your *amicus* brief in this case identifies the respondent as “G.G., by her next friend and mother, Deirdre Grimm.” In fact, the caption for the case in this Court, as in the lower courts, identifies the respondent as “G.G., by *his* Next Friend and Mother, Deirdre Grimm.” (Emphasis added.) Under Rule 34, your cover is to reflect the caption of the case. Please ensure careful compliance with this requirement in this and other cases in the future.

Sincerely,

**Scott S. Harris**, Clerk

by

Denise McNerney  
Merits Case Clerk