

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS**

**U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**

Plaintiff,

v.

RENT-A-CENTER EAST, INC.,

Defendant.

No. 16-CV-2222

Judge Colin Stirling Bruce

Magistrate Judge Eric I. Long

DEFENDANT'S SECOND AMENDED ANSWER TO PLAINTIFF'S COMPLAINT

NOW COMES, the Defendant, Rent-A-Center East, Inc. ("Defendant"), by and through its attorneys, Littler Mendelson, P.C., and for its Second Amended Answer to the Complaint of Plaintiff U.S. Equal Employment Opportunity Commission ("Plaintiff"), states as follows:

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. §§ 2000e-5(f)(1) and (3), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

ANSWER: Defendant denies the allegations contained in Paragraph 1 of the Complaint.

2. The unlawful acts alleged below were committed within the jurisdiction of the United States District Court for the Central District of Illinois, in the Urbana Division.

ANSWER: Defendant admits that venue is proper in this District and Division, but denies violating any laws that support a claim for relief by Plaintiff. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 2 of the Complaint.

PARTIES

3. Plaintiff, the EEOC, is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII and is authorized to bring this action by Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. §§ 2000e-5(f)(1) and (3).

ANSWER: Defendant admits that Plaintiff is generally charged with the enforcement of Title VII of the Civil Rights Act of 1964 (“Title VII”), but denies violating any laws that support a claim for relief by Plaintiff. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 3 of the Complaint.

4. At all relevant times, Defendant has been a corporation doing business in Illinois.

ANSWER: Defendant admits Paragraph 4 of the Complaint.

5. At all relevant times, Defendant has had at least fifteen (15) employees.

ANSWER: Defendant admits Paragraph 5 of the Complaint.

6. Rent-A-Center is a rent-to-own retailer of furniture, electronics, appliances, and computers.

ANSWER: Defendant admits Paragraph 6 of the Complaint.

7. At all relevant times, Defendant has been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e-5(b), (g) and (h).

ANSWER: Defendant admits Paragraph 7 of the Complaint.

ADMINISTRATIVE PROCEDURES

8. More than thirty (30) days prior to the institution of this lawsuit, a charge of discrimination (EEOC Charge No. 440-2015-01054) was filed with the EEOC, alleging that Defendant violated Title VII by, among other things, discharging Kerr because of her sex.

ANSWER: Defendant admits that Megan Kerr filed a Charge of Discrimination with the EEOC more than 30 days prior to the institution of this lawsuit, and that the Charge of Discrimination alleged that Defendant violated Title VII, but denies violating any laws that

support a claim for relief by Plaintiff. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 8 of the Complaint.

9. On February 18, 2016, the EEOC issued to Defendant a letter of determination finding that there is reasonable cause to believe that Defendant discriminated against Kerr because of her sex when it discharged her because she is transgender. The EEOC also invited Defendant to join with the EEOC in informal methods of conciliation to endeavor to eliminate the discriminatory practices and provide appropriate relief.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to when Plaintiff issued a determination and proposed conciliation, and on that basis denies the allegation. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 9 of the Complaint.

10. On March 8, 2016, Defendant informed the EEOC that it had not received the letter of determination, and so the EEOC transmitted another copy of the Letter of Determination to Respondent. Respondent received a copy of the letter of determination on March 8, 2016.

ANSWER: Defendant admits that it did not receive Plaintiff's determination or proposed conciliation until March 8, 2016. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 10 of the Complaint.

11. The EEOC engaged in communications with Defendant to provide Defendant the opportunity to remedy the discriminatory practices described in the letter of determination.

ANSWER: Defendant admits that it engaged in communications with Plaintiff following receipt of Plaintiff's determination and proposed conciliation. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 11 of the Complaint.

12. On March 29, 2016, the EEOC issued to Defendant a Notice of Failure of Conciliation.

ANSWER: Defendant admits Paragraph 12 of the Complaint.

13. All conditions precedent to the institution of this suit have been fulfilled.

ANSWER: Admit.

STATEMENT OF CLAIMS

14. Since at least July 2014, Rent-A-Center has engaged in unlawful employment practices in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a), when it discharged Megan Kerr because of her sex, specifically, because she is transgender and/or because of her gender transition:

ANSWER: Defendant denies the allegations contained in Paragraph 14 of the Complaint.

a) Kerr was employed by Rent-A-Center beginning in or around May 2005.

ANSWER: Defendant admits Paragraph 14(a) of the Complaint.

b) From May 2011 until her discharge in July 2014, Kerr was an Assistant Manager at Rent-A-Center store no. 319, in Rantoul, Illinois ("Rantoul Store").

ANSWER: Defendant admits that Kerr was an assistant manager at Store No. 319 from July 2010 until July 2014. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 14(b) of the Complaint.

c) Kerr is transgender. That is, her gender identity (female) is different from the sex she was designated at birth (male).

ANSWER: Defendant admits Paragraph 14(c) of the Complaint.

d) Prior to March 2013, Kerr presented as male and had a traditionally male first name.

ANSWER: Defendant admits Paragraph 14(d) of the Complaint.

e) In or around March 2013, Kerr informed her supervisor, Store Manager Russell Kasper, that she identifies as female, was transitioning to a female gender presentation, and that she was legally changing her first name to Megan.

ANSWER: Defendant admits that Kerr informed Defendant in March 2013 that she was changing her name and gender presentation. Defendant is without knowledge or information sufficient to form a belief as to whom she disclosed that information at that time, and on that basis denies that allegation. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 14(e) of the Complaint.

- f) Throughout 2013 and 2014, Jason Carnahan was the District Manager who oversaw the Rantoul Store and was the immediate supervisor of the Rantoul Store's store manager.

ANSWER: Defendant admits Paragraph 14(f) of the Complaint.

- g) In 2013, shortly after Kerr informed Kasper of her gender transition, Kasper informed Carnahan.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to which of Defendant's employees were aware of Kerr's gender transition in 2013 and when or how they became aware, and on that basis denies the allegation. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 14(g) of the Complaint.

- h) Carnahan informed Kasper that he disapproved of Kerr's gender transition, and Carnahan instructed Kasper to find a way to discharge Kerr or induce her to quit. Carnahan instructed Kasper to find infractions to document in order to create a basis for terminating Kerr's employment — that is, to create a pretext for discharging Kerr. Carnahan followed up with Kasper roughly weekly to check on the status of this effort to create a pretext for discharging Kerr.

ANSWER: Defendant denies the allegations contained in Paragraph 14(h) of the Complaint.

- i) Kasper did not cooperate with Carnahan's instruction to manufacture a pretext for discharging Kerr.

ANSWER: Defendant denies the allegations contained in Paragraph 14(i) of the Complaint, including, but not limited to, the assumption that Carnahan instructed Store Manager Russell Kasper to manufacture a pretext for discharging Kerr.

j) In December 2013, Rent-A-Center discharged Kasper.

ANSWER: Defendant admits Paragraph 14(j) of the Complaint.

k) In or around February 2014, Rent-A-Center assigned Jason Morris to be the new store manager of the Rantoul Store.

ANSWER: Defendant admits Paragraph 14(k) of the Complaint.

l) After becoming the store manager of the Rantoul Store, Morris told another employee that he was aware of Kerr's gender transition and, because of that, Morris had not wanted to be assigned to the Rantoul Store.

ANSWER: Defendant denies the allegations contained in Paragraph 14(l) of the Complaint.

m) Within a week or two of becoming the store manager, Morris changed Kerr's responsibilities so that she spent more time outside of the store, making deliveries.

ANSWER: Defendant denies the allegations contained in Paragraph 14(m) of the Complaint.

n) In or around 2014, the Rantoul Store occasionally made deliveries to or provided other services to or in connection with local civic or charitable organizations or events, as a service to the community. This occasionally included delivering merchandise on a Sunday, when the store was normally closed and normally did not make deliveries.

ANSWER: Defendant denies the allegations contained in Paragraph 14(n) of the Complaint.

o) On Saturday, July 19, 2014, Kerr asked Morris for the keys to a company delivery vehicle and permission to make a delivery the next day, on Sunday, July 20, 2014, to deliver furniture in connection with a project of a local civic organization.

ANSWER: Defendant admits that on Saturday, July 19, 2014, Kerr made several requests to make business deliveries alone on that same day, even though the customer account representatives who were typically responsible for business deliveries were present. Defendant denies that Kerr ever asked to use a company truck to make any delivery, much less a non-business related delivery to a civic organization, on the following day. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 14(o) of the Complaint.

p) Morris granted Kerr permission to make the July 20, 2014 delivery.

ANSWER: Defendant denies the allegations contained in Paragraph 14(p) of the Complaint.

q) Kerr made the July 20, 2014 delivery, as planned.

ANSWER: Defendant denies the allegations contained in Paragraph 14(q) of the Complaint.

r) On July 20, 2014, Morris drove to the Rantoul Store and took a picture of the parking lot, to document that Kerr's personal vehicle was parked there and that one of the store delivery vehicles was not in the lot. Morris also brought another employee with him on this visit, to serve as a witness.

ANSWER: Defendant admits that, on July 20, 2014, Store Manager Jason Morris drove to Defendant's Store No. 319, and that Morris took a photograph of the parking lot at Store No. 319 showing Defendant's moving truck missing from the parking lot and Kerr's personal vehicle parked in the lot. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 14(r) of the Complaint.

s) On July 20, 2014, after documenting that the store delivery vehicle was not in the lot and that Kerr's personal vehicle was there instead, Morris telephoned Carnahan, the district manager, to tell him this.

ANSWER: Defendant admits that Morris informed Carnahan on July 20, 2014 of the missing truck, the presence of Kerr's car in the parking lot, and his suspicion that Kerr was using the truck to move her belongings as a result of her eviction. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 14(s) of the Complaint.

t) That same day, July 20, 2014, Carnahan and Morris decided to discharge Kerr.

ANSWER: Defendant denies the allegations contained in Paragraph 14(t) of the Complaint.

u) When Kerr arrived at work on Monday, July 21, 2014, Morris informed her that she had been discharged.

ANSWER: Defendant admits that on July 21, 2014, Morris asked Kerr whether she had used the company truck the previous day to move her personal belongings, that she admitted she had done so, and that Morris informed her that she was terminated for violating company policy. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 14(u) of the Complaint.

v) Rent-A-Center subsequently stated to the EEOC that Kerr was discharged because she used a company vehicle on a Sunday, when the store was closed, which Rent-A-Center said was a violation of company policy.

ANSWER: Defendant admits that it terminated Plaintiff for using a company vehicle for personal reasons in violation of company policy, and so informed Plaintiff. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 14(v) of the Complaint.

w) Rent-A-Center used Kerr's July 20, 2014 delivery as a pretext for discharging her.

ANSWER: Defendant admits that it terminated Kerr for using a company vehicle for personal reasons. Except as expressly admitted, Defendant denies the allegations contained in Paragraph 14(w) of the Complaint.

- x) Rent-A-Center discharged Kerr because the company and/or its managers disapproved of Kerr's gender transition and/or the fact that Kerr is transgender.

ANSWER: Defendant denies the allegations contained in Paragraph 14(x) of the Complaint.

15. The effect of the practices complained of above has been to deprive Kerr of equal employment opportunities and otherwise adversely affect her status as an employee because of her sex.

ANSWER: Defendant denies the allegations contained in Paragraph 15 of the Complaint.

- 16. The unlawful employment practices complained of above were intentional.

ANSWER: Defendant denies the allegations contained in Paragraph 16 of the Complaint.

17. The unlawful employment practices complained of above were done with malice or with reckless indifference to Kerr's federally protected rights.

ANSWER: Defendant denies the allegations contained in Paragraph 17 of the Complaint.

PRAYER FOR RELIEF AND JURY TRIAL DEMAND

WHEREFORE, the EEOC respectfully requests that this Court:

- A. Grant a permanent injunction enjoining Defendant, its officers, successors, assigns, and all persons in active concert or participation with Defendant, from engaging in any employment practices which discriminate on the basis of sex, including transgender status;
- B. Order Defendant to institute and carry out policies, practices and programs which provide and ensure equal employment opportunities for its employees regardless of sex and which eradicate the effects of its past and present unlawful practices;
- C. Order Defendant to make Kerr whole by providing appropriate back pay with prejudgment interest, in amounts to be proved at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including rightful-place reinstatement;
- D. Order Defendant to make Kerr whole by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described above, in amounts to be determined at trial;
- E. Order Defendant to make Kerr whole by providing compensation for past and future non-pecuniary losses resulting from the unlawful employment practices described above, including, but not limited to, emotional pain, humiliation, and inconvenience, in amounts to be determined at trial;
- F. Order Defendant to pay punitive damages for its malicious and reckless conduct described above, in an amount to be determined at trial;
- G. Grant such further relief as the Court deems necessary and proper in the public interest; and
- H. Award the EEOC its costs in this action.

ANSWER: Defendant is not required to respond to Plaintiff's Prayer or Jury Trial Demand. However, to the extent the Prayer or Demand assert allegations, Defendant denies every allegation contained therein. Defendant further denies that Plaintiff is entitled to any of the relief listed therein.

Defendant denies each and every allegation not specifically admitted above.

AFFIRMATIVE & ADDITIONAL DEFENSES

FIRST DEFENSE

Defendant alternatively pleads that Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitation.

SECOND DEFENSE

Defendant alternatively pleads that Kerr has failed to mitigate her alleged damages in whole or in part, and further asserts that Defendant is entitled to an offset to the extent of any mitigation by Kerr.

THIRD DEFENSE

Defendant alternatively pleads, upon information and belief, that any relief to which Plaintiff may be entitled is barred by or limited by the after-acquired evidence doctrine.

FOURTH DEFENSE

Defendant alternatively pleads that Kerr was an at-will employee, as that term is defined under the common law of Illinois, and that Kerr could be terminated at any time for any reason, not specifically prohibited by state or federal law, and with or without cause.

FIFTH DEFENSE

Defendant alternatively pleads that any actions taken concerning Kerr were done for legitimate, nondiscriminatory business reasons.

SIXTH DEFENSE

Defendant alternatively pleads that the employment actions about which Plaintiff complains were taken for reasons other than any alleged protected status held by Kerr.

SEVENTH DEFENSE

Defendant alternatively pleads, without waiver of Plaintiff's burden to prove that any employment actions taken by Defendant were motivated by an impermissible factor, assuming

arguendo that an impermissible factor was a motivating factor for any employment practice, Defendant would have taken the same action regardless of any alleged protected status held by Kerr.

EIGHTH DEFENSE

Defendant alternatively pleads that the Complaint fails to state, in whole or in part, a claim upon which relief may be granted.

NINTH DEFENSE

Defendant alternatively pleads that Plaintiff has failed to allege facts sufficient to state a claim for punitive damages.

TENTH DEFENSE

Defendant alternatively pleads that Plaintiff cannot recover punitive damages for any alleged discrimination because any alleged discrimination would be contrary to Defendant's good faith efforts to comply with laws governing such conduct.

ELEVENTH DEFENSE

Defendant alternatively pleads that to the extent that any of its employees engaged in any of the conduct described in the Complaint, such actions were outside the course and scope of their employment, were contrary to the policies and directives of Defendant, and were not done in furtherance of Defendant's business interests.

TWELFTH DEFENSE

Defendant alternatively pleads that Plaintiff's claims for actual and punitive damages and other relief are subject to the limitation of damages contained in 42 U.S.C. §1981a and all other applicable statutory caps and limitations.

WHEREFORE, PREMISES CONSIDERED, Defendant Rent-A-Center East, Inc. prays that Plaintiff take nothing herein, and that Defendant have judgment for its costs and for such other and further relief, at law or in equity, to which it may be justly entitled.

Respectfully submitted,

/s/ J. Bradley Spalding

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Dated: December 13, 2016

CERTIFICATE OF SERVICE

I, **J. Bradley Spalding**, an attorney, certify that I served the attorney of record named below with a copy of **Defendant's Second Amended Answer to Plaintiff's Complaint** via ECF (*Electronic Case Filing*) on December 13, 2016:

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/s/ J. Bradley Spalding
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