

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

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

Plaintiff,

v.

RENT-A-CENTER EAST, INC.,

Defendant.

Case No. 16-cv-2222

Judge Bruce

Magistrate Judge Long

**PLAINTIFF'S RESPONSE TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

INTRODUCTION

When he learned about Megan Kerr's gender transition, Rent-A-Center ("RAC") district manager Jason Carnahan told Kerr's store manager, Russell Kasper, that he disapproved of it and that he did not want someone "like that" (i.e., someone transgender) working in the store. Carnahan told Kasper to find a basis for firing her and to make sure to document it. Carnahan checked up on the status of this effort periodically over next several months. Kasper, however, did not go along with this plan because he thought it was illegal. So Carnahan fired Kasper and replaced him with Jason Morris. Morris did just what Carnahan had repeatedly asked Kasper to do. After giving Kerr permission to make a delivery to a customer on a Sunday using a RAC delivery truck, Morris documented the fact that the truck was in use that Sunday, reported it to Carnahan the same day, and they agreed to fire Kerr for using the delivery vehicle on a Sunday, which was a violation of company policy. While RAC maintains that Kerr was fired for personal use of the company vehicle, which it says "automatically" results in termination, there is evidence that other employees violating the same policy were not fired.

This is a classic pretext case. While there is no dispute that Kerr¹ used the delivery truck on the Sunday in question, the evidence shows that is not the real reason she was fired. Rather, it was merely a pretext for unlawful sex discrimination.

RAC's arguments focus on facts that are both disputed and immaterial and thus do not provide a basis for summary judgment.

Because there are genuine disputes about the material facts in this case, Plaintiff U.S. Equal Employment Opportunity Commission ("EEOC") respectfully requests that RAC's motion for summary judgment be denied.

RESPONSE TO DEFENDANT'S STATEMENT OF FACTS

A. Undisputed Material Facts

The following facts stated in the Motion are material and undisputed, except as noted below:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 8.
- 9.
- 10.
11. This is undisputed and material, except the portion of the statement that says the

¹ Kerr's last name is now Vanna. The EEOC refers to her as Kerr throughout this motion because that is the name that appears throughout the record and is known to witnesses.

delivery was “in connection with a project of a local civic organization” which is immaterial and disputed. The evidence obtained in discovery shows it is more precise to say that the rest of the customer’s move was conducted by *members* of a local civic organization. Exh. A, Shumate Dep., pp. 108:1-109:19; *but see also id.* at pp. 14:15-15:2 (“it was his Mason Lodge that helped”).

12.

15.

36.

40. It is material that Shumate purchased the merchandise from RAC, but it is immaterial who actually paid for the purchase.

52.

54.

56.

B. Disputed Material Facts

The following facts stated in the Motion are material and disputed, except as noted below:

7. Undisputed as to the first sentence. As to the second sentence, disputed: Carnahan also told Kasper to “do whatever it takes” to find a way to fire Megan Kerr, and instructed Kasper to find infractions to document and to make sure that “it’s not just little things.” Exh. C, Kasper Dep. pp. 35:5-11, 142:10-20; Exh. F, Kasper Declaration ¶ 7.

C. Disputed Immaterial Facts

“Material facts are only those facts which bear directly on the legal issue raised by the motion.” LR 7.1(D)(1)(b). “As to materiality, the substantive law will identify which facts are

material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). This case turns on whether Kerr used the RAC delivery truck or for personal reasons (as RAC contends) or for a customer delivery with the approval of her store manager (as the EEOC contends), and whether RAC’s alleged legitimate non-discriminatory reason for terminating Kerr is actually a pretext for sex discrimination. Many of RAC’s facts do not bear, even indirectly, on these issues.

The following facts stated in the Motion are immaterial and disputed, except as noted below:

13. The asserted fact does not accurately describe the interrogatory, which asked generally about deliveries and pickups to civic organizations and not about the delivery to Amber Shumate. The asserted fact is immaterial because even if RAC never made use of the delivery truck on Sundays in the past, the material issues pertain to the July 20, 2014 delivery, whether Morris authorized it, and whether it was what motivated the decision to discharge Kerr.

17. Shumate testifies that Kerr was there when Shumate purchased the merchandise. RAC Exh. 5, Shumate Dep., p. 8:4-23; and RAC Exh. 6, Shumate Receipt (RAC 000523). This fact is immaterial because the jury does not need to make a determination as to whether Kerr was at the store at the time Shumate purchased the merchandise to find for the EEOC.

19. Kasper was no longer the store manager when Shumate purchased the furniture. *Compare* RAC Exh. 6, Shumate Receipt (RAC 000523) *with* RAC Exh. 1, Kasper Dep., p. 7:22-24. Also, the asserted fact is not an accurate depiction of the testimony. Kerr never mentions that this agreement occurred at the time of Shumate’s purchase, only that there was a previous

agreement between Shumate and RAC/Kasper, and that Kerr volunteered to move the RAC merchandise. Nonetheless, this fact is immaterial because the jury does not need to make a determination as to whether Kasper or someone else made this commitment to Shumate.

20. Shumate testified that the merchandise was in the garage of Shumate's mother-in-law. RAC Exh. 5, Shumate Dep., pp. 41:13-42:6. Also, the asserted fact is not an accurate reflection of the testimony. In the cited testimony, Kerr agreed that the mini-storage facility was "something like" that described by RAC's counsel, not that that is what it was. This fact is also immaterial because the jury does not need to make a determination as to whether the merchandise was moved from residential or commercial storage to make a finding about RAC's motive in firing Kerr.

23. See the EEOC's response to Defendant Statement of Fact (DSF) Nos. 19 and 20. This is not an accurate depiction of the testimony. In the cited testimony, RAC's counsel asked when Shumate purchased the furniture, to which Kerr responded she did not know. No question was asked within this deposition citation about why the furniture was in a commercial rather than residential storage.

25. See the EEOC's response to DSF No. 19.

27. See the EEOC's response to DSF No. 19. Additionally, this fact does not make sense as written. This portion of the testimony does not state that Kasper alerted Kerr when Shumate was ready to take possession of the furniture. To the extent the asserted fact is that Kasper told Kerr that Kerr delivered the furniture or told Kerr why Kerr did so, there is no evidence to support that. Kasper had been fired months earlier. See DSF No. 9.

34. It is unnecessary for the jury to decide how many of the individuals assisting with the rest of Shumate's move were members of a Masons lodge in order to decide whether RAC

discharged Kerr because of her gender identity. The fact is also disputed to the extent it suggests no Masons were present: Kerr testified that Russell Wiedemann was a Mason who was assisting with the move, and Shumate testified that several members of a Masonic lodge were there. Exh. B, Kerr Dep., p. 39:19-22; Exh. A, Shumate Dep., p. 108:1-109:19 (“four or five” members of Masonic lodge present).

37. The cited document is an “Adjudication Summary” and thus is a document prepared by the Illinois Department of Employment Security (“IDES”), not by Megan Kerr, and so the statements that are summarized here are (at least) double hearsay. RAC Exh. 4, p. RAC000415. What Kerr told IDES (and whether IDES summarized it accurately) goes, at most, to credibility and is not itself material. The jury need not decide what occurred during an IDES interview, but rather must decide what happened at RAC in 2014 and what RAC’s motive was in discharging Kerr.

41. There is evidence to the contrary. Exh. C, Kasper Dep., p. 64:5-12 (Kasper recognized Shumate as being a RAC customer). However it is unnecessary for a jury to decide whether Kasper and Shumate were acquainted or not in order to decide whether Kerr’s gender identity motivated Carnahan’s decision to discharge her, and so this is immaterial.

42. In the cited deposition testimony, Shumate does not state that she has never spoken to Kasper. She instead testifies that she never made an agreement with him about moving the furniture. The latter half of this fact is also a misrepresentation of the testimony. Directly after this deposition passage, Shumate qualifies her earlier testimony and testifies that if Kerr mentioned Kasper, she does not remember it. Exh. A, Shumate Dep., p. 48:16-17. Whether or not Shumate remembers or knows Kasper is, in any event, immaterial.

44. This is disputed. Kerr testified that she did not make the original delivery of the

furniture to Shumate's home in Rankin. Exh. B, Kerr Dep., p. 28:12-16. The asserted fact is immaterial since the delivery at issue in this case, for which RAC contends it discharged Kerr, was the July 20, 2014, delivery, and the delivery referenced in the cited testimony was in February or March 2014. *See* RAC Exh. 5, p. 41:13-17.

51. The asserted facts are not supported by the cited evidence. The asserted facts concern what steps RAC took during discovery to search its 2014 sales records. The cited evidence (a print out of the relevant sales records) does not discuss what steps RAC took in discovery. The asserted facts are also immaterial because it is not essential for the jury to make any determinations about what steps RAC took during discovery.

55. The asserted fact is not supported by the cited testimony, which consists of a compound question to which the EEOC timely objected; it is unclear what part of RAC's question Kasper's testimony is addressed to. Kasper's "absolutely not" seems to be more about the Masons than about the agreement based on the next two sentences of his testimony. In any event, the asserted fact is immaterial because the jury does not need to make a determination as to whether it was Kasper or someone else who made this commitment to Shumate.

57. To the extent RAC is equating using a RAC truck to "us[ing] company property for any charitable event" the EEOC disputes this fact. The full context of Kasper's testimony clearly indicates he is referring to merchandise and not the usage of a RAC vehicle. Exh. C, Kasper Dep., pp. 174:13-175:10. Kasper also testified he used the RAC truck on Sundays to pick-up merchandise. Exh. C, Kasper Dep., pp. 12:25-13:25. The asserted fact is immaterial, in any event, because the EEOC's claim is not about RAC donating merchandise.

62. RAC misstates Kasper's testimony. Kasper stated that Kerr was not involved in any of the Sunday pickups that he described earlier in his deposition, and not that Kerr was never

involved in any Sunday pickup or delivery. RAC Exh. 1, Kasper Dep., p. 19:5-8; and Exh. C, Kasper Dep., pp. 12:25-13:25.

64. Wiedemann, a Mason, was involved in the Shumate move. Shumate and Kerr testified that they thought the others helping that day were Masons because of their association with Wiedemann. Exh. A, Shumate Dep., pp. 14:19-15:8; Exh. B, Kerr Dep., p. 56:4-10. This is an immaterial fact because whether this was an officially-sanctioned service project of the Mason's lodge or not has no bearing on whether Morris gave Kerr permission to make the Sunday delivery.

66. Shumate testified that she recognized the other helpers as Wiedemann's Masonic friends. Exh. A, Shumate Dep., pp. 14:19-15:8. As discussed in response to DSF Nos. 34 & 64, whether and how many Masons were involved in the move is immaterial.

67. See responses to DSF Nos. 64 & 66 regarding the Masons' participation in the move. The EEOC also disputes that Kerr used the truck to move anything other than the RAC merchandise. Exh. A, Shumate Dep., p. 14:12-14; Exh. B, Kerr Dep., p. 223:4-6. Also, the cited deposition testimony makes no mention of whether or not the Shumate move was a Mason-sponsored event.

D. Undisputed Immaterial Facts

The following facts stated in the Motion are immaterial and undisputed, except as noted below:

14. Undisputed that this is the EEOC's supplemental interrogatory response. To the extent the asserted fact is intended to critique word choices based on information later obtained in discovery, that is not a material issue. A record disclosed by RAC subsequent to this interrogatory response indicates that Shumate paid for the furniture herself, *see* RAC Exh. 6, but

that, too, is not material to the claim that Kerr's discharge was sex discrimination, *see, e.g.*, response to DSF No. 40.

16. In 2014, Shumate and Kerr were merely acquaintances, and as of the spring of 2014 had only met briefly on two occasions for about five minutes. Exh. A, Shumate Dep., pp. 23:5-8, 23:18-22. This fact is immaterial because it is not necessary for the jury to make a finding as to the nature of Shumate and Kerr's relationship.

18. How Kerr and Shumate met is immaterial because it has no bearing on the legal issues raised by RAC's Motion.

21. Whether the merchandise was in storage at a garage or other type of storage facility is immaterial to whether Morris authorized the use of the truck on July 20, 2014, and whether that was a pretext for sex discrimination.

22. The specific RAC merchandise Shumate purchased is immaterial.

24. Who made the initial delivery of the RAC merchandise to Shumate in the spring of 2014 is immaterial.

26. The EEOC does not dispute Kerr stated this, but this is immaterial to the issue of whether Morris authorized the use of the truck on July 20, 2014, and whether that was a pretext for sex discrimination.

28. Undisputed except that Kerr also testified that she does not know whether Wiedemann or Shumate made the arrangements with Kasper. Exh. B, Kerr Dep., p. 22:15-19 ("Again, I'm not aware of the entire transaction that enacted between all that [sic]."). Regardless, this is immaterial to whether Morris authorized the use of the truck on July 20, 2014, and whether that was a pretext for sex discrimination.

29. The EEOC does not dispute that Kerr stated this. However, whether the storage

was a residential or commercial unit is immaterial.

30. The number of people helping Shumate move is immaterial.

31. The Masons' participation in the move (and, by extension, Kerr's understanding about that) is immaterial. Kerr also testified that the move occurred on Sunday because of scheduling needs. Kerr also testified that these are merely her assumptions, and that she never discussed it or was told by anyone explicitly that this was the case. Exh. B, Kerr Dep., pp. 55:9-57:20.

32. This is a recitation of testimony and not a statement of fact, and so it is immaterial. It is not disputed that the statement correctly recites Kerr's deposition testimony.

33. How long Kerr spent making the delivery, and her recollection of other helpers, is immaterial.

35. Immaterial for the reasons stated in response to DSF Nos. 31, 34.

38. The cited exhibit does not support the assertion that these questionnaires were signed under oath. Assuming that Kerr filled these out, Kerr's representation to the IDIS is in any event immaterial to whether Morris authorized the use of the truck on July 20, 2014, and whether that was a pretext for sex discrimination. The EEOC also notes that facts recounted in the responses described this statement of fact are consistent with the EEOC's claim in this case.

39. See response to DSF No. 38. Additionally, Kerr's response that she volunteered at an event her store manager scheduled (i.e. gave her permission to do) and came back to work to be fired is consistent with the EEOC's claim in this case.

43. Immaterial for the reasons stated in response to DSF No. 21.

45. Immaterial for the reasons stated in response to DSF No. 21.

46. Shumate's ability, or inability, to explain another witness's testimony is

immaterial.

47. This is an immaterial fact because whether this was an officially-sanctioned Masonic event or not has no bearing on whether Morris gave Kerr permission to make the Sunday delivery and whether RAC's stated non-discriminatory reason for firing Kerr is pretext.

48. The circumstances of Shumate's relocation and move to a new residence are immaterial.

49. Immaterial for the reasons stated in response to DSF No. 47.

50. Immaterial for the reasons stated in response to DSF No. 47. Shumate also testifies that it has been too long to remember the names of any other Masons who helped with the move. Exh. A, Shumate Dep., p. 65:16-19.

53. A misspelled name is not a material fact.

58. This is immaterial because it is not necessary for the jury to determine what Kasper's view was of what constitutes a "terminable offense."

59. Kasper's knowledge about an event seven months after his termination is immaterial. See also response to DSF No. 47.

60. Immaterial for the reasons stated in response to DSF No. 58.

61. Immaterial for the reasons stated in response to DSF No. 59.

63. Immaterial for the reasons stated in response to DSF No. 47.

65. Immaterial for the reasons stated in response to DSF No. 47.

E. Additional Material Facts

1. Megan Kerr is transgender. That is, her gender identity (female) is different from the sex she was designated at birth (male). Exh. D, Amended Answer [ECF No. 21], ¶ 14(c).

2. Prior to March 2013, Kerr presented as male and had a traditionally male first

name. Kerr informed RAC in March 2013 that she was changing her name and gender presentation. Exh. D, Amended Answer ¶ 14(d)-(e).

3. Both before and after her transition, Kerr was meeting RAC's expectations; by the time of her transition, she had worked for RAC for eight years, she did her job and RAC did not have any issues with her. Exh. E, Leavengood Dep., p. 43:5-10; Exh. H, Morris Dep., pp. 94:24-95:6; DSF No. 1.

4. After Store Manager Russell Kasper told District Manager Jason Carnahan in March 2013 about Megan Kerr's gender transition, Carnahan told Kasper that he disapproved of Kerr's gender transition and did not approve of having a transgender employee in the store. Exh. F, Kasper Declaration ¶ 7 ("Carnahan told me that he did not approve of having someone like that in the store, or of the way she was changing and dressing."); Exh. C, Kasper Dep., pp. 121:16-21, 137:20-138:5, 172:5-10.

5. District Manager Carnahan also told Store Manager Kasper, in March 2013, to "do whatever it takes" to find a way to fire Megan Kerr, and instructed Kasper to find infractions to document and to make sure that "it's not just little things." Exh. C, Kasper Dep. pp. 35:5-11, 142:10-20; Exh. F, Kasper Declaration ¶ 7 ("Carnahan told me to do whatever it takes to find a way to fire Ms. Kerr or get her to quit. He told me to find infractions to document in order to create a basis for terminating Ms. Kerr....").

6. For the next several months, until December 2013, Carnahan continued to pressure Kasper to come up with a basis for firing Kerr, following up with Kasper roughly weekly to check on the status of that effort. Exh. C, Kasper Dep., pp. 44:5-17, 142:24-143:8, 145:23-146:5.

7. Kasper did not believe it was lawful to discriminate against Kerr because of her

gender transition, and he did not cooperate with Carnahan's instruction to find a basis for firing Kerr because he thought it was illegal. Exh. C, Kasper Dep., pp. 57:17-58:1, 145:23-146:5; Exh. F, Kasper Declaration ¶¶ 9, 11.

8. Carnahan fired Kasper in December 2013, after giving Kasper a performance plan that gave him just three days to increase store sales by 57%. Exh. G, Carnahan Dep., pp. 57:1-58:10.

9. In February 2014, Carnahan hired Jason Morris to be the new store manager for the Rantoul store, replacing Kasper. Exh. G, Carnahan Dep., p. 64:15-22; Exh. H, Morris Dep., p. 12:1-4.

10. RAC managers, including former store manager Kasper, occasionally used the RAC truck to move merchandise on Sundays, for example to retrieve rented freezers when weekend events ended on a Sunday. Exh. C, Kasper Dep., pp. 12:25-13:25; Exh. B, Kerr Dep., p. 41:13-43:4.

11. A Sunday, July 20, 2014, delivery for Amber Shumate had been put on the store's delivery schedule sometime prior to that date. Exh. B, Kerr Dep., p. 48:9-13.

12. Approximately a week beforehand, Jason Morris knew about the scheduled Sunday, July 20, 2014 delivery, okayed it, and on Saturday, July 19, 2014, gave Kerr the keys to the RAC vehicle the night before the delivery. Exh. B, Kerr Dep., pp. 48:9-49:20.

13. Morris now contends that he did not approve the Sunday, July 20, 2014 delivery but nevertheless had a "suspicion" that Kerr might be using the vehicle that Sunday, which, he says, prompted him to visit the store that Sunday to check on the RAC vehicles. Exh. J, Morris Declaration ¶ 7.

14. On Sunday, July 20, 2014, Morris went to the store, took a date-stamped picture

of the parking lot to “document” that one of the RAC delivery vehicles was not there, and called Carnahan. During that phone call, Carnahan and Morris “both agreed that Ms. Kerr should be terminated for violating Company policy (i.e., using a company vehicle for personal reasons).” Exh. I, Carnahan Declaration ¶ 8; Exh. J, Morris Declaration ¶ 8.

15. Morris maintains that first thing on Monday morning, July 21, 2014, he asked Kerr whether she had used a RAC vehicle the day before to move “her belongings from her place of residence to a new location,” and, according to Morris, Kerr freely told Morris that she had done so. Exh. J, Morris Declaration ¶ 10; Exh. H, Morris Dep., pp. 99:14-100:2.

16. In reality, on Sunday, July 20, 2014, Kerr was using the RAC delivery vehicle to make the previously-scheduled delivery for a customer, Amber Shumate — the delivery that Morris himself had been approved the day before. Exh. B, Kerr Dep., p. 18:15-19;² Exh. A, Shumate Dep., p. 13:8-14.

17. With Jason Carnahan’s approval, Jason Morris carried out Kerr’s discharge on Monday, July 21, 2014. Exh. H, Morris Dep., pp. 99:14-100:1; Exh. I, Carnahan Declaration ¶ 8.

18. On the Monday Kerr was fired, Morris simply informed her that RAC was firing her for “what had happened on Sunday.” Exh. B, Kerr Dep., pp. 17:1-2, 17:20-18:6.

19. Morris and Carnahan maintain that Kerr was terminated for improper use of the RAC delivery vehicle, because they say that Kerr used the vehicle to move her own personal belongings. Exh. G, Carnahan Dep., pp. 96:18-97:8; Exh. H, Morris Dep., pp. 86:10-14, 87:8-89:18; Exh. J, Morris Declaration ¶¶ 7-8; Exh. I, Carnahan Declaration ¶ 8.

20. During a phone call that lasted “[a] couple of minutes” RAC regional director David Leavengood also signed off on Kerr’s discharge, but in doing so Leavengood merely

² The cited deposition question incorrectly references the date as August 13, 2014, rather than July 20, 2014. By August 13, 2014, Kerr was no longer employed by RAC. DSF No. 1.

relied upon information provided to him by Carnahan, telling Carnahan to “inquire about it, but if it was true, that it was a termination.” Leavengood asked no questions and provided no other suggestions or instructions as to how to proceed. Leavengood did not talk to Carnahan again about Kerr until after she had been fired. Exh. G, Carnahan Dep., pp. 81:8-83:15; Exh. E, Leavengood Dep., pp. 30:20-32:24.

21. RAC’s “Coworker Handbook” contains a policy that prohibits store employees from “[u]sing Company property (including company vehicle) for personal use.” Exh. H, Morris Dep., pp. 117:23-118:10 & Dep. Exh. 2; Exh. G, Carnahan Dep., pp. 47:19-48:7.

22. RAC and its managers maintain that an employee’s improper use of a RAC vehicle in violation of this policy “automatically” results in the employee’s termination, with “no exceptions.” Exh. G, Carnahan Dep., p. 47:1-14. Thus, according to RAC, if an employee uses a RAC vehicle to drive a coworker to attend to personal business, that is an “automatically terminable offense” and that employee would need to be terminated. *Id.*, pp. 107:23-108:10.

23. However, Matthew Hawley, another RAC store employee supervised by Morris, used a RAC truck to drop off a coworker, Gregory Cannon, at a recording studio where Cannon was recording an album. Although Morris knew this was improper use of a RAC vehicle by Hawley, Hawley was not fired. Instead, Hawley got “at best ... probably [a] verbal [warning].” Exh. K, RAC Response to Interrogatory No. 11 (Hawley “was not terminated at the time of the incident involving Mr. Cannon....”); Exh H, Morris Dep., pp. 103:21-106:8.

24. Morris and RAC have stated that Hawley received a verbal warning instead of being fired for personal use of the RAC vehicle because “he did the right thing and told us about it” and “took responsibility for his actions.” Exh. H, Morris Dep., p. 106:3-8; Exh. K, RAC Response to Interrogatory No. 11.

25. Another RAC store employee at the Rantoul store, Michael Moreland, went with a coworker on a personal errand to a Harley Davidson store, using a RAC vehicle. Although RAC was aware of the incident, only the coworker was fired for it. Moreland was not disciplined at all, and instead RAC simply permitted his previously-announced resignation to take effect. Exh. L, Harding Dep., pp. 8:2-19, 11:22-13:1; Exh. M, RAC Response to Interrogatory No. 10.

26. Hawley and Moreland are not transgender; Kerr was the only transgender employee known to RAC in the district that encompasses the Rantoul store. Exh. G, Carnahan Dep., p. 78:2-5, 78:16-19; Exh. E, Leavengood Dep., p. 43:21-44:1.

27. During this litigation, a private investigator working on behalf of RAC visited the home of a key witness, Amber Shumate, acted in an “aggressive” and “domineering” manner, refused to leave her home when asked, scared her, tried to cause her to change her testimony in this matter, and left her in tears. Exh. A, Shumate Dep., pp. 15:19-21:11. This affected Shumate’s willingness to testify in this case, making her unwilling to participate for a time, although she did ultimately comply with a deposition subpoena. *Id.* 21:8-24.

28. On April 24, 2017, RAC represented to the court that “there are enough fact issues in the case [that] it doesn’t make sense to file a motion for summary judgment.” Exh. N, April 24, 2017, hearing transcript, p. 3:23-24.

ARGUMENT

A. Legal Standard for Summary Judgment

“The question on summary judgment is whether defendants showed that there is no ‘genuine dispute as to any material fact’ and they are entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a).” *Cole v. Bd. of Trustees of N. Illinois Univ.*, 838 F.3d 888, 895 (7th Cir. 2016). The Court must resolve “all factual disputes and draw all reasonable inferences in favor of ... the non-moving party.” *Woods v. City of Berwyn*, 803 F.3d 865, 869 (7th Cir. 2015). The critical question is simply “whether a reasonable jury could infer prohibited discrimination.” *Perez v. Thorntons, Inc.*, 731 F.3d 699, 703 (7th Cir. 2013).

B. Sex Discrimination Under Title VII Encompasses Discrimination Because of an Employee’s Gender Transition or Transgender Status

Discrimination against an employee because she is transgender, or because she has transitioned from male to female, is inherently a form of sex discrimination and is thus prohibited by Title VII. In *Price Waterhouse v. Hopkins*, the Supreme Court explained that Title VII’s broad and clear prohibition of discrimination because of sex “mean[s] that gender must be irrelevant to employment decisions.” 490 U.S. 228, 240 (1989). The Court explained that Title VII broadly prohibits employment decisions that “take gender into account” or which rely upon “sex-based considerations.” *See id.* at 241-42 (to support sex discrimination claim, plaintiff need only “prove that the employer relied upon *sex-based considerations* in coming to its decision”) (emphasis added); *id.* at 239 (Title VII forbids employers to “take gender into account”). In discharging an employee because she identifies as female or because she previously presented as male, an employer necessarily takes gender into account. And a person’s transgender status is plainly a sex-based consideration because it refers, by definition, to the fact that one’s gender identity is different from the sex he or she was assigned at birth. *See* PSF No. 1.

Case law from the Seventh Circuit and elsewhere supports this conclusion. In a recent Title IX case, the Seventh Circuit concluded that a boy alleging discrimination “because he is transgender” had a likelihood of success on the merits of his claim of sex discrimination. *See Whitaker v. Kenosha Unified School District No. 1*, 2017 WL 2331751, *11 (7th Cir. May 30, 2017) (“The School District’s policy also subjects [plaintiff], as a transgender student, to different rules, sanctions, and treatment than non-transgender students, in violation of Title IX.”); *Fabian v. Hosp. of Central Connecticut*, 172 F.Supp.3d 509, 526 (D. Conn. Mar. 18, 2016) (“[D]iscrimination on the basis of transgender identity is cognizable under Title VII”); *Schroer v. Billington*, 577 F. Supp. 2d 293, 302 (D.D.C. 2008) (“[D]iscrimination on the basis of gender identity is literally discrimination ‘because of ... sex.’”).

Although several decades ago the Seventh Circuit stated that “Title VII does not protect transsexuals,” *Ulane v. Eastern Airlines*, 742 F.2d 1081, 1086 (7th Cir. 1984), that statement is a dead letter. *Ulane* relied on the assumption that “Congress had a narrow view of sex in mind when it passed the Civil Rights Act” and gave “sex ... a narrow, traditional interpretation, which would ... exclude transsexuals” and limit sex discrimination to “discriminat[ion] against women because they are women and against men because they are men.” *See id.* at 1085-86. That reasoning is fatally undermined by *Price Waterhouse*, however, in which the Supreme Court “embraced a broad view of Title VII, as Congress ‘intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.’” *See Whitaker*, 2017 WL 2331751 at *9 (quoting *Price Waterhouse*, 490 U.S. at 251). “By definition, a transgender individual does not conform to the sex-based stereotypes of the sex that he or she was assigned at birth.” *Id.* (emphasis added); *see also Glenn v. Brumby*, 663 F.3d 1312, 1318 n.5 (11th Cir. 2011). It follows logically that discrimination because a person is transgender is encompassed

within the definition of sex discrimination set forth in *Price Waterhouse*.

Ulane's resort to Congressional intent is also in direct conflict with the Supreme Court's unanimous ruling in *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998). Holding that same-sex sexual harassment was actionable under Title VII's sex discrimination provision, the Court explained that it was irrelevant that Congress likely had not contemplated the issue in 1964. *See id.* at 79-80 (“[S]tatutory prohibitions often go beyond the principal evil [they were passed to combat] to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed.”).³

The “narrower view ... that the word ‘sex’ simply and only means ‘male and female,’” is mistaken because “[m]ale and female ... is not a formulation of meaning, but a list of instances.”

See Fabian, 172 F. Supp. 3d at 526. The court explained:

“Male or female” is a relatively weak definition of “sex” for the same reason that “A, B, AB, or O” is a relatively weak definition of “blood type”: it is not a formulation of meaning, but a list of instances. It might be an exhaustive list, or it might not be, but either way it says nothing about why or how the items in the list are instances of the same thing; and the word “sex” refers not just to the instances, but also to the “thing” that the instances are instances of.

Id.

This is consistent with courts' treatment of other forms of discrimination prohibited by

³ The Seventh Circuit, sitting *en banc*, also criticized *Ulane* when it held recently that “discrimination on the basis of sexual orientation is a form of sex discrimination” under Title VII. *See Hively v. Ivy Tech Community College of Indiana*, 853 F.3d 339, 341 (7th Cir. Apr. 4, 2017). Indeed, it noted that the (now-discredited) rejection of sexual orientation coverage could be traced back to *Ulane*'s unduly narrow conception of sex discrimination.

Other courts of appeals are in accord that *Ulane* is incompatible with intervening Supreme Court precedent. The Sixth Circuit has pointedly concluded that “the approach in ... *Ulane* ... has been eviscerated by *Price Waterhouse*.” *See Smith v. City of Salem*, 378 F.3d 566, 573 (6th Cir. 2004); *see also Schwenk v. Hartford*, 204 F.3d 1187, 1201 (9th Cir. 2000) (approach taken in *Ulane* and other early cases was “overruled by the logic and language of *Price Waterhouse*”); *Glenn*, 663 F.3d at 1318 n.5 (*Ulane*'s “reliance on the presumed intent of Title VII's drafters is ... inconsistent with *Oncale*”).

Title VII. “[N]o court would implicitly define religion as synonymous with a purportedly exhaustive list of religions, and thus [no court could] conclude that discrimination ‘because of religion’ must be limited to discrimination against members of particular religions on the list because they are such members.” *Id.* at 527. As another district court explained:

Imagine that an employee is fired because she converts from Christianity to Judaism. Imagine too that her employer testifies that he harbors no bias toward either Christians or Jews but only “converts.” That would be a clear case of discrimination “because of religion.” No court would take seriously the notion that “converts” are not covered by the statute. Discrimination “because of religion” easily encompasses discrimination because of a change of religion.

Schroer, 577 F. Supp. at 306.

Applying this analogy to gender identity, both the *Schroer* and *Fabian* courts concluded that discrimination because of sex must include discrimination because of gender identity or a gender transition because those are plainly sex-based considerations:

Because Christianity and Judaism are understood as examples of religions rather than the definition of religion itself, discrimination against converts, or against those who practice either religion the “wrong” way, is obviously discrimination “because of religion.” Similarly, discrimination on the basis of gender stereotypes, or on the basis of being transgender, or intersex, or sexually indeterminate, constitutes discrimination on the basis of the properties or characteristics typically manifested in sum as male and female—and that discrimination is literally discrimination “because of sex.”

Fabian, 172 F. Supp. 3d at 527; *see also Schroer*, 577 F. Supp. at 308.⁴

In sum, the Supreme Court’s authoritative interpretation of sex discrimination encompasses any form of discrimination in which sex is an ingredient in the employer’s thinking. Because Title VII’s protections “must extend” to any discrimination that “meets the

⁴ Such reasoning concerning religious discrimination applies equally to sex discrimination because Title VII “on its face treats each of the enumerated categories” — race, color, religion, sex, and national origin — “exactly the same.” *Price Waterhouse*, 490 U.S. at 243 n.9 (“[O]ur specific references to gender throughout this opinion, and the principles we announce, apply with *equal force* to discrimination based on race, religion, or national origin” (emphasis added)).

statutory requirements,” *Oncale*, 523 U.S. at 80, it was sex discrimination to discharge Megan Kerr because the gender she identifies as is different from the gender she presented as earlier in her life. That termination plainly took her sex into account and is therefore sex discrimination. More generally, the fact that a person is transgender is, by definition, a sex-based consideration. Kerr is transgender precisely because her gender identity (female) is different than the gender she was designated at birth (male). Taking an adverse employment action against her because of that is necessarily to consider her sex, and that is a violation of Title VII.

C. There Are Genuine Disputes of Material Fact That Preclude Summary Judgment

1. A Reasonable Jury Could Conclude That RAC Discharged Kerr Because of Her Gender Transition and/or Because She Is Transgender

“[T]here are two ways [a plaintiff] may prove [Title VII] claims: the ‘direct’ and ‘indirect’ methods of proof.” *Perez*, 731 F.3d at 703. Whether evaluated under the direct or the indirect method of proof, there is ample evidence to permit a reasonable jury to conclude that RAC discharged Kerr because she is transgender.

“Under the direct method, the plaintiff must produce either direct or circumstantial evidence that would permit a jury to infer that discrimination motivated an adverse employment action.” *Diaz v. Kraft Foods Global, Inc.*, 653 F.3d 582, 587 (7th Cir. 2011). “Direct evidence is something close to an explicit admission by the employer that a particular decision was motivated by discrimination.” *Id.* “[C]ircumstantial evidence ... suggests discrimination albeit through a longer chain of inferences.” *Id.* (internal quotation marks omitted). “[U]nder the indirect method, a plaintiff must satisfy the familiar requirements of” *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *Perez*, 731 F.3d at 703.

Under each method, however, all of the evidence (direct and circumstantial) must be considered together. The Seventh Circuit has rejected “the proposition that evidence must be

sorted into different piles, labeled ‘direct’ and ‘indirect,’ that are evaluated differently.” *Ortiz v. Werner Enterprises*, 834 F.3d 760, 766 (7th Cir. 2016). “Instead, all evidence belongs in a single pile and must be evaluated as a whole.” *Id.* “[W]hen all is said and done, the fundamental question at the summary judgment stage is simply whether a reasonable jury could find prohibited discrimination.” *Bass v. Joliet Pub. Sch. Dist. No. 86*, 746 F.3d 835, 840 (7th Cir. 2014).

a) Direct Method of Proof

In this case, there is both “something close to an explicit admission,” *Diaz*, 653 F.3d at 587, as well as other, circumstantial evidence that RAC decided to end Megan Kerr’s employment because it disapproved of her transgender status and/or her gender transition.

There is direct evidence that district manager Jason Carnahan decided to fire Kerr because of her transition to female and/or because he disapproved of having a transgender employee in the store. In March 2013, Russell Kasper, the store manager of the Rantoul store, informed Carnahan that Kerr was transitioning to female and that her name was changing to “Megan.” DSF Nos. 3-6; PSF No. 2.⁵ When Kasper told him this, Carnahan informed him he disapproved of the gender transition and of having a transgender employee in the store. PSF No. 4. Carnahan told Kasper to “do whatever it takes” to find a basis for discharging Kerr, by finding infractions to document in order to create a basis for a discharge. PSF No. 5. Carnahan emphasized that “we have to have documentation” and even added that Kasper should make sure that “it’s not just little things.” DSF No. 56; PSF No. 5.

Carnahan’s statements to Kasper are direct evidence, since they are “akin to an admission” that Carnahan’s determination that Kerr should be fired was motivated by her gender

⁵ Herein, citations of the form “DSF No. XX” refer to Defendant’s Statements of Fact, and citations of the form “PSF No. XX” refer to Plaintiff’s Additional Statements of Fact.

transition. *See Perez*, 731 F.3d at 710; *Diaz*, 653 F.3d at 587 (direct evidence is “something close to an explicit admission” that “a particular decision was motivated by discrimination”). A jury could conclude directly from Carnahan’s statements that Kerr’s gender identity and/or gender transition — and, therefore, sex — motivated Carnahan’s decision to discharge her.⁶

RAC has suggested that Carnahan’s March 2013 statements cannot be evidence of discrimination because too much time passed between those statements and Carnahan’s final approval of Kerr’s discharge in July 2014 (PSF No. 17). However, this confuses temporal proximity with causation. While it is true that “there must be something (*such as* temporal proximity) to link [Carnahan’s comments] and the adverse employment action,” *Diaz*, 653 F.3d at 589 (emphasis added), temporal proximity itself is not required — because it is not the only way a statement can be linked to an adverse employment action. *See Lalvani v. Cook County, Illinois*, 269 F.3d 785, 791 (7th Cir. 2001) (“[T]emporal proximity is only evidence of causation, not a separate element of the prima facie case, and thus there will be cases in which a plaintiff can demonstrate causation despite a substantial time lag.”); *Geier v. Medtronic, Inc.*, 99 F.3d 238, 242 (7th Cir. 1996) (to be direct evidence, comments “must be contemporaneous with the discharge *or* causally related to the discharge decision making process” (emphasis added)); *see also Adelman-Reyes v. Saint Xavier University*, 500 F.3d 662, 666-67 (7th Cir. 2007) (remarks are not direct evidence when they “are neither proximate *nor* related to the employment decision” (emphasis added)); *Kogucki v. Metro. Water Reclamation Dist. of Greater Chicago*, 698 F. Supp. 2d 1026, 1039-41 (N.D. Ill. 2010).⁷ After a thorough discussion of this point, the court in *Kogucki* held that a decisionmaker’s statement to the plaintiff that “you will never be

⁶ “[A]n unlawful employment practice is established when the complaining party demonstrates that ... sex ... was a motivating factor for any employment practice...” 42 U.S.C. § 2000e-2(m).

⁷ Likewise, in the context of retaliation, “[t]he mere passage of time is not legally conclusive proof against retaliation.” *Malin v. Hospira*, 762 F.3d 552, 559 (7th Cir. 2014).

promoted because of your complaints” was direct evidence that the employer’s refusal to promote her two years later was retaliation, despite the lack of close temporal proximity. *See id.* at 1039-42. This was so because “the adverse action is directly linked to the statement of prohibited animus within the statement itself.” *See id.* at 1031-33, 1040-41. Carnahan’s statements, too, reflected not just disapproval of having a transgender employee in the store but also his decision to do something about it. Because the statements themselves link Kerr’s transition and transgender status to the decision that she needed to go, the statements are direct evidence.

However Carnahan’s statements are characterized, they must be considered along with the considerable other, circumstantial evidence in this case. Under the direct method of proof, circumstantial evidence generally falls into three categories: (1) “suspicious timing, ambiguous statements oral or written, and other bits and pieces from which an inference of [discriminatory] intent might be drawn,” (2) “evidence, but not necessarily rigorous statistical evidence, that similarly situated employees were treated differently,” and (3) “evidence that the employer offered a pretextual reason for an adverse employment action.” *Perez*, 731 F.3d at 711. While a “plaintiff need not produce evidence in each category to survive summary judgment,” *Diaz*, 653 F.3d at 587, all three categories are in fact present here.

There is evidence of suspicious timing and pretext. After expressing disapproval of Kerr’s gender transition in March 2013, Carnahan continued to pressure Kasper — on a roughly weekly basis — to find a pretext for firing her for the rest of 2013. PSF No. 6; DSF No. 8. After eight months of Kasper not playing ball, Carnahan fired Kasper and, in February 2014, replaced

him with Jason Morris.⁸ PSF Nos. 7-9. A few months later, Morris supplied Carnahan with a basis for discharging Kerr — with “documentation” — just as Carnahan had sought. On Saturday, July 19, 2014, Morris gave Kerr permission to use a RAC delivery vehicle for a previously-scheduled delivery to a customer the next day; indeed Morris gave Kerr the keys himself. PSF Nos. 11-12.⁹ The next day, Sunday, July 20, 2014, knowing full well that Kerr was using the RAC delivery vehicle for the delivery he approved, Morris went to the store, took a date-stamped picture to “document” the fact that the vehicle was not there, and then called Carnahan. PSF No. 14. During that call, Carnahan and Morris agreed to discharge Kerr, and Morris carried out the termination the next day.¹⁰ PSF Nos. 14, 17. The next morning, Monday, July 21, 2014, Morris fired Kerr for personal use of a RAC delivery vehicle. PSF Nos. 17-19. This explanation of Kerr’s discharge is pretextual because on Sunday, July 20, 2014, Kerr was not using the vehicle to move personal belongings, but rather to make a delivery to a customer that Morris himself approved. PSF Nos. 15-16.

There is also evidence that similarly situated employees were treated more favorably. Although RAC and its managers maintain that violation of RAC’s policy against personal use of a RAC vehicle “automatically” results in an employee’s termination, PSF Nos. 21-22, that is untrue. RAC learned that two nontransgender employees in the same district, Matthew Hawley

⁸ In evaluating the totality of the evidence, a jury could take note of the fact that Kasper’s discharge is itself suspicious: In the final performance plan that Carnahan gave him, Kasper was given just three days to increase store sales by 57% to avoid discharge. PSF No. 8.

⁹ Despite RAC’s protestation to the contrary, there is evidence that such use of the RAC delivery vehicles on Sundays was not unprecedented. PSF. No. 10.

¹⁰ Carnahan also obtained approval to fire Kerr from RAC Regional Director David Leavengood. However, in signing off on the discharge, Leavengood merely relied upon information provided by Carnahan. PSF No. 20. Accordingly the EEOC need not demonstrate discriminatory intent on the part of Leavengood. *See Smith v. Chicago Transit Authority*, 806 F.3d 900, 906 (7th Cir. 2015) (“employer liable if the decision-maker was manipulated by another employee acting with discriminatory intent”) (citing *Staub v. Proctor Hosp.*, 562 U.S. 411, 419, (2011)).

and Michael Moreland, had made personal use of RAC vehicles, and yet they were not discharged. PSF Nos. 23-26. RAC and Morris (who supervised Hawley) maintain that the reason Hawley merely got a verbal warning for this infraction was that he “did the right thing and told us about it” and “took responsibility for his actions.” PSF Nos. 23-24. However, as RAC and Morris tell it, Kerr also freely acknowledged making personal use of the RAC vehicle when Morris talked to her about it on Monday morning, PSF No. 15, and yet Kerr was still fired.

Finally, one of the “other bits and pieces” of circumstantial evidence here is evidence that RAC attempted to influence the testimony of a witness important to the EEOC’s case, Amber Shumate. A jury may consider this as evidence of consciousness of guilt. *See Ty Inc. v. Softbelly’s Inc.*, 353 F.3d 528, 534 (7th Cir. 2003) (“[A]n attempt by a litigant to persuade a witness not to testify is properly admissible against him as an indication of his own belief that his claim is weak or unfounded or false.”); *U.S. v. Shorter*, 54 F.3d 1248, 1260 (7th Cir. 1995) (letter from defendant urging prosecution witness not to testify was “admissible as evidence of [defendant’s] consciousness of guilt.”). Shumate is the customer who purchased the RAC merchandise that Kerr delivered on the Sunday in question, and Shumate corroborates that Kerr delivered the furniture to her on a Sunday in July 2014. PSF No. 16. During discovery, a private investigator working on behalf of RAC confronted Shumate at her home, acted in an “aggressive” and “domineering” manner, attempted to influence her testimony in this matter, and left her in tears. PSF No. 27. Although Shumate ultimately complied with a deposition subpoena, she testified that the private investigator’s actions affected her willingness to participate in this suit. *Id.*

In sum, this case involves both direct evidence and all of the types of circumstantial evidence typically considered under the direct method of proof. Viewed in the light most

favorable to the plaintiff, as is required on summary judgment, this evidence would permit a reasonable jury to conclude that RAC discharged Kerr because of her gender transition and/or transgender status.

b) Indirect Method of Proof

To survive summary judgment under the indirect method of proof, a plaintiff must produce some evidence that, if credited, would establish a prima facie case of discrimination. *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 506 (1993); *Humphries v. CBOCS West, Inc.*, 474 F.3d 387, 405-06 (7th Cir. 2007). The burden then shifts to the defendant to provide a legitimate, non-discriminatory reason for the termination. *See Keeton v. Morningstar, Inc.*, 667 F.3d 877, 884 (7th Cir. 2012). “If the employer does so, the burden shifts back to the plaintiff to submit evidence demonstrating that the employer's explanation is a pretext.” *Id.*

i) There is Evidence to Support a Prima Facie Case

“The burden of establishing a prima facie case of disparate treatment is not onerous.” *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 253 (1981). To establish a prima facie case the EEOC must demonstrate that “(1) [Kerr] is a member of a protected class; (2) she met her employer’s legitimate job expectations; (3) she suffered an adverse employment action; and (4) similarly situated employees outside of the protected class received more favorable treatment.” *Keeton*, 667 F.3d at 884.

The elements of a prima facie case are satisfied here. Kerr is transgender. PSF Nos. 1-2.¹¹ Prior to the disputed events of July 2014, she met RAC’s legitimate expectations. PSF

¹¹ Although it is sometimes suggested that transgender people are not a “protected class,” that is inconsistent with the proposition that gender identity discrimination is a form of sex discrimination. A careful look at the meaning of a “protected class” under the *McDonnell Douglas* analysis makes clear why this is so. The *McDonnell Douglas* inquiry “was never intended to be rigid, mechanized, or ritualistic.” *See U.S. Postal Service Board of Governors v.*

No. 3. She suffered an adverse action: termination. PSF No. 17.

With respect to the fourth element, there are two similarly situated employees, Hawley and Moreland, who received more favorable treatment. PSF Nos. 23-26. “To satisfy [the comparator] requirement, a plaintiff must identify at least one employee who is directly comparable to her in all material respects.” *Perez v. 731 F.3d at 704 (citing Coleman v. Donahoe, 667 F.3d 835, 846 (7th Cir. 2012))*. “The proposed comparator need not be identical in every conceivable way, however, and courts must conduct a ‘common-sense examination.’” *Coleman, 667 F.3d at 846*. “We are looking for comparators, not ‘clone[s].’ ... So long as the distinctions between the [employee] and the proposed comparators are not ‘so significant that they render the comparison effectively useless,’ the similarly-situated requirement is satisfied.” *Id.* (internal citations omitted). Rather than being onerous, “[t]he purpose of the similarly situated requirement is to provide plaintiffs the ‘boost’ that the McDonnell Douglas framework intended.” *Id.* at 846-47, 851-52.

Here the EEOC has presented evidence that Hawley and Moreland, who are not transgender, each engaged in the same type of misconduct that Kerr was accused of and were not

Aikens, 460 U.S. 711, 715 (1983). Although its typical formulation makes reference to membership in a “protected class,” the Supreme Court has made clear that the *McDonnell-Douglas* inquiry is designed to identify the use of discriminatory *criteria*: “The importance of McDonnell Douglas lies, not in its specification of the discrete elements of proof there required, but in its recognition of the general principle that any Title VII plaintiff must carry the initial burden of offering evidence adequate to create an inference that an employment decision was based on a discriminatory criterion illegal under the Act.” *Int’l Brotherhood of Teamsters v. U.S.*, 431 U.S. 324, 358 (1977) (emphasis added). Indeed, the text of Title VII identifies prohibited criteria — race, color, sex, religion, and national origin — and does not mention any “protected classes” at all. A group is a “protected class” because it is defined by reference to one of those prohibited criteria. For example, women, Catholics, and Mexicans are each protected classes, not because any of those groups is expressly mentioned in Title VII — they aren’t — but rather because they are classes defined by reference to the prohibited criteria of sex, religion, and national origin, respectively. Since transgender people are a class that is defined by reference to sex-based considerations, *see* Argument § B, above, they are therefore a protected class, too.

fired. PSF Nos. 23, 25-26. Hawley, like Kerr, was supervised by Morris. PSF No. 23. Moreland worked at the same store Kerr did. PSF No. 25. Hawley received at most a verbal warning, and RAC simply allowed Moreland's previously-announced resignation to take effect rather than taking any action against him at all. PSF Nos. 24-25. RAC identifies distinctions between these employees and Kerr, but given RAC's view that improper vehicle use automatically leads to termination, there is at least a dispute of fact as to whether those distinctions actually matter. *See Coleman*, 667 F.3d at 849-50. Hawley and Moreland are proper comparators.

ii) **There is Evidence that RAC's Asserted Reason for Firing Kerr is Pretextual**

An employee may "establish that [s]he was the victim of intentional discrimination by showing that the employer's proffered explanation is unworthy of credence." *Reeves v. Sanderson Plumbing Prod., Inc.*, 530 U.S. 133, 143 (2000). "In appropriate circumstances, the trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose." *Id.* at 188. The question is not whether the employer has pointed to a valid reason for firing the employee, but whether it has pointed to an honest one; "[i]f the stated reason ... wasn't what induced [the employer] to take the challenged employment action, it was pretext." *Perez*, 731 F.3d at 708.

RAC says it fired Kerr because she used a RAC truck for personal reasons. As discussed in the direct method section (Argument § C.1.a, above), there is ample evidence that this is a pretext, including suspicious timing, comparator evidence, and Carnahan's own statements reflecting his motivation in terminating Kerr. As proposed in *Ortiz*, and for the sake of brevity, the EEOC incorporates that previous discussion here. *Ortiz*, 834 F.3d at 766 (direct and circumstantial evidence must be considered together and not "evaluated differently").

Perez also forecloses RAC's temporal proximity argument as a basis for summary judgment: it is a reasonable inference that "if a person was racist or sexist at Time A (time of the remark) ... [then] the person was still racist or sexist at Time B (when he made or influenced the decision to fire the plaintiff)," and it is for "the jury to hear such evidence and weigh it for what it is worth." *Perez*, 731 F.3d at 710.

D. Disputes of Immaterial Facts Are Not a Basis For Summary Judgment

RAC's motion focuses almost entirely on conflicting testimony about the details of the residential move of Amber Shumate, the customer to whom Kerr made the delivery on July 20, 2014. It zeros in on such matters as how many people assisted Shumate with that move, whether or not they were members of the local chapter of the Free Masons, whether their assistance to Shumate was an officially-sponsored Masonic service project, and whether the RAC merchandize that Kerr moved had come out of commercial or residential storage. These issues are wholly immaterial because the jury does not have to determine any of them in order to decide whether Carnahan's disapproval of Kerr's gender transition motivated her discharge.

Moreover, it is elementary that *disputed* facts are not a basis for summary judgment, whether material or immaterial. RAC's motion relies heavily on a very narrow exception to that principle found in *Seshadri v. Kasraian*, 130 F.3d. 798 (7th Cir. 1997). *Seshadri* stands for the proposition that when a party offers his own, wholly irreconcilable statements about a *material* issue on which the party has presented no other evidence, summary judgment may be warranted. The case involved a copyright infringement claim in which the plaintiff's only evidence that he was indeed the sole author of the work at issue was an affidavit he signed, which contradicted, without explanation, a host of written documents in which he had earlier given a graduate student joint authorship credit. *Id.* at 801-04. Needless to say, whether a plaintiff is the author of the

work in question is plainly a material issue in a copyright suit.¹²

Judge Posner — who wrote the opinion in *Seshadri* — emphasized one year later how exceptional that case was:

[C]redibility issues are to be left to the trier of fact to resolve on the basis of oral testimony except in extreme cases. The exceptional category is— exceptional. For the case to be classified as extreme, the testimony sought to be withheld from the trier of fact must be not just implausible, but utterly implausible in light of all relevant circumstances.

In re Chavin, 150 F.3d 726, 728-29 (7th Cir. 1998).

Seshadri has no application here, because the allegedly irreconcilable statements RAC identifies are offered by *different* witnesses about *immaterial* facts, and because the EEOC has, in any event, offered extensive direct and circumstantial evidence to support the material elements of its claim. Kerr’s statements have never contradicted the EEOC’s contentions on the material issue of pretext, for example: that Kerr’s manager gave her permission to use the RAC truck on Sunday and yet she was fired on Monday for using it as authorized. There is nothing “utterly implausible” or irreconcilable about Kerr’s testimony on this material point.

To be sure, there is conflicting testimonial evidence — from different witnesses — about details such as whether the furniture moved on July 20, 2014, was initially in commercial or residential storage, and how many members of a Masonic lodge were assisting Shumate in moving her other belongings that day. And a jury may well consider some of those conflicting accounts in evaluating which witnesses are more credible or have better memories. But these ancillary issues themselves are not material to the EEOC’s claim.

Moreover, even if RAC could show that there were irreconcilable conflicts in Kerr’s

¹² Similarly, the other case principally relied upon by RAC, *Melton v. Tippecanoe County*, was FLSA overtime case in which the plaintiff had no evidence to show that he had worked during his lunch breaks, other than his own conflicting and irreconcilable statements on that topic. *See* 838 F.3d 814 (7th Cir. 2016). Hours worked is obviously a material issue in an overtime claim.

testimony of the sort described in *Seshadri*, summary judgment would still be unwarranted because even if Kerr's testimony were simply set aside altogether, there is still other evidence in the record that is sufficient to support the EEOC's claim and defeat summary judgment. For example, it is Kasper who provides testimony about Carnahan's disapproval of Kerr's gender transition, Carnahan's instruction to find a pretext for firing her, and Carnahan's continuing inquiries throughout 2013 about the status of that effort. PSF Nos. 4-5. And evidence about comparators Hawley and Moreland comes from various other witnesses and RAC interrogatory responses, not Kerr. PSF Nos. 21-26.

The material issues of fact in this case are disputed must be resolved by a jury, at trial.

E. RAC's Attorney Fee Request Is Premature and Without Merit

RAC's request for attorney fees is premature, as judgment has not been entered and thus there is no prevailing party. *See* CDIL-LR 54.1(A) ("In all civil cases, requests for attorneys fees must be filed no later than 14 days *after* entry of judgment." (emphasis added)).

Moreover, under Title VII, an award of attorney fees is only available to a prevailing defendant in the limited circumstance in which a Title VII action is "frivolous, unreasonable or without foundation." *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421 (1978).

Although a "plaintiff's failure ... to survive a motion for summary judgment ... does not alone render the action frivolous justifying an award of fees to the defendant," *Coates v. Bechtel*, 811 F.2d 1045, 1050 (7th Cir. 1987), a claim that *does* withstand a summary judgment motion is plainly not frivolous, *see LeBeau v. Libbey-Owens-Ford Co.*, 799 F.2d 1152, 1159 (7th Cir. 1986) ("when a trial judge rules that there are facts under which a plaintiff can prevail, it is highly inconsistent for him to later find the suit frivolous because it is foreclosed as a matter of law.").

RAC itself represented to the court on April 24, 2017, that “there are enough fact issues in the case [that] it doesn’t make sense to file a motion for summary judgment.” PSF No. 28. A case in which even the defendant acknowledges summary judgment is beyond reach is not a frivolous case.

CONCLUSION

Construed in the light most favorable to the EEOC, the evidence shows that a RAC district manager disapproved of Megan Kerr’s gender transition and asked a store manager to find a pretext to fire her, and that eventually this is precisely what happened. RAC’s explanation of Kerr’s discharge is a pretext. Because there are disputes of material fact that require a trial, the EEOC respectfully requests that summary judgment be denied.

July 5, 2017

Respectfully Submitted,

s/ Justin Mulaire
U.S. Equal Employment
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212-336-3744

s/ Miles Shultz
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CERTIFICATE OF SERVICE

I hereby certify that on today's date, I caused the PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT to be served upon counsel to Defendant via the court's Electronic Case Filing system, pursuant to Local Rule 5.3(A).

July 5, 2017

Respectfully Submitted,

s/ Justin Mulaire
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CERTIFICATE OF COMPLIANCE WITH TYPE VOLUME LIMITATION

I hereby certify that the Argument section of the foregoing memorandum complies with type volume limitation set forth in Local Rule 7.1(B)(4)(b). According to Microsoft Word, the total word count of the Argument section (including the Conclusion), including main text and footnotes, is 5,683, and the total number of characters (including spaces) is 35,816.

July 5, 2017

Respectfully Submitted,

s/ Justin Mulaire
U.S. Equal Employment
Opportunity Commission
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212-336-3744

Exhibit A

Amber Shumate Deposition

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	
vs.)	No. 16-cv-2222
)	
RENT-A-CENTER EAST, INC.,)	
)	
Defendant.)	

DEPOSITION
OF
AMBER SHUMATE

The Rule 30(b)(6) Deposition of AMBER SHUMATE, taken in the above-entitled cause, before Lisa Hahn Peterman, CSR, RMR, on the 20th day of April, 2017, at the United States Courthouse, 201 South Vine Street, Urbana, Illinois, pursuant to Notice at the hour of 12:58 p.m.

Reported by: Lisa Hahn Peterman, CSR, RMR
License No. 084-002149

1 the attorneys asks a question, the other is within his
2 rights to make an objection for the record. Since,
3 obviously, there's no judge here to rule on an
4 objection, though, if you're able to, you should still
5 go ahead and give your answer after the objection has
6 been stated. Does that make sense?

7 A. Yes, sir.

8 Q. Who from Rent-A-Center delivered the
9 merchandise that Sunday?

10 A. Megan Kerr.

11 Q. And did you see that yourself?

12 A. Yes, sir.

13 Q. And what vehicle did she arrive in?

14 A. Rent-A-Center truck.

15 Q. And can you describe the truck briefly?

16 A. No, sir.

17 Q. Did it have any logos or words on the side?

18 A. I can't remember, sir.

19 Q. Okay. Do you remember whether the truck
20 said Rent-A-Center or RAC?

21 A. The truck was mostly white and there was a
22 logo on it, but I don't remember exactly what it said.

23 Q. Okay.

24 A. She was in uniform.

1 Q. She, meaning Ms. Kerr?

2 A. Yes, sir.

3 Q. Was it a Rent-A-Center uniform?

4 A. Yes, sir.

5 Q. And by that, do you mean like a
6 Rent-A-Center polo shirt?

7 A. Yes, sir.

8 Q. And even if you don't remember exactly what
9 lettering was on the truck, do you remember
10 recognizing it at the time as a Rent-A-Center truck?

11 A. Yes, sir.

12 Q. Did Ms. Kerr assist that day with moving any
13 non Rent-A-Center belongings of yours?

14 A. No, sir.

15 Q. Do you remember approximately what time of
16 day on that Sunday she arrived to make the delivery or
17 not?

18 A. Around noon, sir.

19 Q. And were there various other individuals, in
20 addition to Mr. Wiedemann, who assisted with your move
21 that day?

22 A. Yes, sir.

23 Q. And were those individuals that
24 Mr. Wiedemann had recruited?

1 A. Mr. Wiedemann was a Mason, and it was his
2 Mason Lodge that helped.

3 Q. Okay. And is that your understanding -- or
4 how -- why do you believe that?

5 A. Because I recognized the people.

6 Q. Okay.

7 A. I was close with Mr. Wiedemann and his
8 friends.

9 Q. Okay. And now you're aware that the EEOC
10 has filed a lawsuit against Rent-A-Center in
11 connection with Ms. Kerr's termination from that
12 company?

13 A. Yes, sir.

14 Q. And do you yourself have any personal or
15 financial stake in the outcome of that lawsuit?

16 A. No, sir.

17 Q. Are you related to Ms. Kerr in any way?

18 A. No, sir.

19 Q. Was there a time several months ago when you
20 were visited by a man at home in connection with this
21 case?

22 A. Yes, sir.

23 Q. Could you describe that for us?

24 A. He was an older gentleman, gray hair, facial

1 hair, heavier set, and he scared the crap out of me.

2 Q. First of all, do you remember
3 approximately -- do you remember what month this was?

4 A. No, sir.

5 Q. Was it in the winter or the fall?

6 A. It was dark at the time that he came, and it
7 was about 4:30, 5:00 o'clock, so I'd say winter.

8 Q. And this was at your home in Royal?

9 A. Yes, sir.

10 Q. And could you just walk us through what
11 happened? Did he knock on the door? When did you
12 first notice him?

13 A. I was cooking dinner for the kids. I have
14 four children, and we saw someone pull into the
15 driveway, me and my husband, and my husband went
16 straight out because we could not see the vehicle, we
17 could only see lights. He introduced himself to my
18 husband and I stepped out. My husband told me who he
19 was. My husband was on his way to a fire meeting --
20 he's a volunteer fireman. I asked the gentleman to
21 come back at another day or another time, and he
22 requested we either go in the vehicle to sit and talk
23 or go in the house and sit and talk.

24 Q. And what did you say in response?

1 A. He made it seem like there was no option. I
2 asked twice; I gave in. We went into the kitchen. I
3 kept him away from my children.

4 Q. And when you say that he -- first of all,
5 did he identify himself to you or just to your
6 husband?

7 A. I don't remember.

8 Q. Okay. And when you say identify, he gave
9 you his name?

10 A. His name and said it had to do with the
11 Rent-A-Center situation.

12 Q. Okay. Did he say which party in the lawsuit
13 he was affiliated with or working for?

14 A. I believe Rent-A-Center.

15 Q. Okay. Did he say that, though?

16 A. I can't remember, sir.

17 Q. Okay. Do you recall his name, sitting here
18 today?

19 A. No, sir.

20 Q. Okay. What did he say to you or ask you
21 about?

22 A. He asked if I had bought the furniture, if I
23 knew Megan, but he kept referring to Megan as Jason,
24 and I don't know Megan as Jason. I corrected him

1 multiple times. He kind of huffed at me each time I
2 corrected him. He just kept asking questions about
3 it, how I knew her, if I communicated with her, if I'm
4 friends with her now, if she's the one who moved it.

5 Q. Okay. And did you say anything to him that
6 day that was inconsistent with what you've testified
7 to today?

8 A. I can't remember. He had me really, really,
9 upset when he came. By the time he left, I was in
10 tears.

11 Q. What about this meeting upset you?

12 A. He was very domineering. He was very pushy.
13 I'd give him the only answer I had and he would
14 rephrase the question. He would push to get more, and
15 I didn't have any more to give him.

16 Q. Okay.

17 A. He demanded I look up the other people in
18 front of him with my phone to try and find the names,
19 and I didn't know most of them people anymore.

20 Q. Did he indicate at any time that it was up
21 to you whether or not you wanted to speak with him?

22 A. No.

23 Q. Did he give you any impression in that
24 regard as to whether or not you had to speak with him

1 that day?

2 A. He told me I needed to get ahold of him with
3 those names.

4 Q. Okay. And did you?

5 A. No.

6 Q. Is there anything else, beyond what you've
7 said so far, about the meeting with that individual
8 that you found objectionable?

9 A. He kept saying "he" and "Jason." Again, I
10 don't know Megan as either of that.

11 Q. Okay. You found that objectionable?

12 A. Yes.

13 Q. Okay. And you indicated that you corrected
14 him each time he did that?

15 A. Yes, sir.

16 Q. And I think a moment ago, you said he huffed
17 in response. For the record, can you explain what you
18 mean by that?

19 MR. TRUSEVICH: Objection, form.

20 THE WITNESS: I would correct him and he'd
21 give this little chuckle of he-he, yeah, and then he'd
22 move forward.

23 BY MR. MULHAIRE:

24 Q. Okay. What was your impression of what this

1 individual was trying to do in the meeting with you
2 that day?

3 A. I don't know.

4 Q. Did you think he was trying to influence you
5 in any way or whether you participated in the lawsuit?

6 MR. TRUSEVICH: Objection, form.

7 THE WITNESS: He continued to try to change
8 the question even though I had already given him the
9 answer.

10 BY MR. MULAIRE:

11 Q. When you say he changed the question, did he
12 try to change your answers?

13 A. I believe so. To continue to ask a question
14 that's already been answered is seeking another
15 answer.

16 Q. Okay. And how would you characterize his
17 demeanor? Was he polite, rude, something else?

18 A. Aggressive.

19 Q. Anything else?

20 A. There really wasn't polite about it.

21 Q. Okay. At some point did you ask him to
22 leave or to end the conversation?

23 A. Yes, sir.

24 Q. And did he leave?

1 A. No.

2 Q. At some point, this meeting ended, I take
3 it?

4 A. Yes, sir.

5 Q. When did it or how did it end?

6 A. Me already in tears and not being able to
7 answer anymore questions.

8 Q. All right. And did that, for any period of
9 time, affect your willingness to participate in these
10 proceedings in this lawsuit?

11 A. Yes, sir.

12 Q. How so?

13 A. I didn't want to do it. I didn't want to
14 continue being treated that way.

15 Q. Okay. And you're here today because I
16 informed you that you were being subpoenaed, is that
17 correct?

18 A. Yes, sir.

19 Q. So is it fair to say that you're here
20 because you believe you have to be?

21 A. Yes, sir.

22 Q. And, in fact, you received the subpoena in
23 connection with this deposition.

24 A. In my pocket.

1 Q. And what's the town?

2 A. Hoopeston, H-O-O-P-E-S-T-O-N.

3 Q. Okay. Let me just look through my notes. I
4 might be done.

5 Did you know Ms. Kerr back in 2014 from
6 outside of your purchase at Rent-A-Center?

7 A. I had met her twice before the purchase for
8 about five minutes each time.

9 Q. And did you meet her through anyone in
10 particular, or how did that come about?

11 A. Her and Russell Wiedemann had a
12 relationship.

13 Q. At that time?

14 A. Yes, sir.

15 Q. And is it your understanding that that ended
16 at some point?

17 A. Yes, sir.

18 Q. And so back in 2014, would you characterize
19 yourself as -- or how would you characterize your
20 relationship with Ms. Kerr: Friends, acquaintances,
21 something else?

22 A. At the time of purchase, acquaintances.

23 Q. Okay. Did you ever speak with anybody else
24 at Rent-A-Center in connection with that purchase?

1 pages in it.

2 THE WITNESS: I've never seen this.

3 BY MR. TRUSEVICH:

4 Q. All right. Well, I'll represent to you that
5 this is the lawsuit that the EEOC filed against
6 Rent-A-Center, okay?

7 MR. MULAIRE: Just for the record, do you
8 mind if she takes the blank pages out?

9 MR. TRUSEVICH: No.

10 MR. MULAIRE: No problem. Scrap paper for
11 later.

12 BY MR. TRUSEVICH:

13 Q. Have you ever heard of Russ Kasper prior to
14 me mentioning his name?

15 A. No, sir.

16 Q. All right. Megan never mentioned his name?

17 A. If she did, I don't remember, sir.

18 Q. Okay. Did Megan ever tell you anything
19 about working at Rent-A-Center?

20 A. May I have a moment, sir?

21 Q. Yes, absolutely.

22 MR. TRUSEVICH: Do you want a bottle of
23 water?

24 THE WITNESS: (Witness shakes head in the

1 Q. Yes, I'm correct, or correct, she wasn't
2 dating Cash in July of 2014?

3 A. July of 2014?

4 Q. Correct.

5 A. No. They were not still together.

6 Q. All right. Was she with Cain at that time?

7 MR. MULAIRE: Object, foundation.

8 THE WITNESS: I don't know, sir.

9 BY MR. TRUSEVICH:

10 Q. And as you sit here today, you don't recall
11 whether he was there, Cain Bannon was there at that
12 move?

13 MR. MULAIRE: Objection, asked and answered.

14 THE WITNESS: I don't know, sir.

15 BY MR. TRUSEVICH:

16 Q. And you can't name a single Mason other than
17 Cash Wiedemann that was there in July, correct?

18 MR. MULAIRE: Objection, asked and answered.

19 THE WITNESS: No, sir. It's been too long.

20 BY MR. TRUSEVICH:

21 Q. Well, let's look at that. Let me finish
22 with Exhibit 1.

23 So if you look at -- I just want to -- we
24 can go through this quick -- but I just want you to

1 Q. Have you ever been to a Masonic Lodge
2 meeting at the Paxton Lodge?

3 A. Meeting, no.

4 Q. Have you ever been to the Lodge?

5 A. Yes.

6 Q. And when was that?

7 A. Russell had been nominated, and it was the
8 ceremony of the Lodge and I was there.

9 Q. Do you remember when that was? Best
10 ballpark estimate.

11 A. It was before I moved into the new house, I
12 think. No, sir, I can't.

13 Q. That's all right. Do you recall on the
14 people that you say were there in July of 2014 to help
15 you move from Rankin to Royal -- right? Are you with
16 me?

17 A. (Witness nods in the affirmative.)

18 Q. Do you recall seeing any of those people at
19 that ceremony?

20 A. Yes, sir.

21 Q. Okay. How many? Best guess.

22 MR. MULAIRE: Object to form.

23 THE WITNESS: At least four or five.

24 BY MR. TRUSEVICH:

1 Q. Okay. Have you ever seen any of those four
2 or five since then, you know, running into them at the
3 grocery store, gas station, anything like that?

4 A. Yes, sir.

5 Q. How many have you run into?

6 A. I don't know, sir.

7 Q. Can you describe them?

8 A. There was an older gentleman -- he was
9 higher up in the Lodge -- and his son.

10 Q. Do you know if his son was a member, too?

11 A. I don't remember. I don't believe so at the
12 time.

13 Q. Okay.

14 A. Not all the Lodge members were capable of
15 helping.

16 Q. But you think at least four or five out of
17 that seven or eight that were there that day were from
18 the Lodge?

19 A. Yes, sir.

20 Q. Did Megan ever tell you that she did any
21 deliveries on a Sunday?

22 A. I don't remember, sir.

23 Q. But sitting here today, you don't recall any
24 specifically.

Exhibit B

Megan Kerr Deposition

Megan Vanna
January 17, 2017

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

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff, No. 16-CV-2222

vs.

RENT-A-CENTER EAST, INC.,

Defendant.

The videotaped deposition of MEGAN VANNA,
called for examination pursuant to the Rules of
Civil Procedure for the United States District
Courts pertaining to the taking of depositions,
taken before CHERYL L. SANDECKI, Certified
Shorthand Reporter for the State of Illinois, at
321 North Clark Street, Chicago, Illinois, on
January 17, 2017, at the hour of 9:00 a.m.

REPORTED BY: CHERYL L. SANDECKI, CSR, RPR
LICENSE NO.: 084-03710
JOB NO.: 548721

1 Q. Okay. And what day?

2 A. It was Monday.

3 Q. Okay. And do you remember the date?

4 A. August 14th.

5 Q. Okay. And of what year?

6 A. 2014.

7 Q. All right. And so tell me what

8 happened on that -- and you say it was

9 August 14, 2014?

10 A. Uh-huh.

11 Q. Is that a "yes"?

12 A. Yes, sir.

13 Q. She can't take down "uh-huh." So Megan

14 -- yeah, and I understand this is your first

15 time. You are doing great, by the way.

16 So -- and that's your recollection is

17 on August 14, 2014, Jason Morris terminated you,

18 correct?

19 A. Yes.

20 Q. All right. And what happened on that

21 day? What did he say to you?

22 A. He asked me into his office. He

23 explained to me that he couldn't allow what had

24 happened on Sunday to stand, that he and Jason

1 Carnahan discussed it and then he terminated me.

2 Q. Okay. And what was -- when he said --
3 I couldn't -- whatever your words were, he
4 couldn't stand what happened on Sunday, so that
5 would have been what day?

6 A. Sunday.

7 Q. Right. But what's the date on that?

8 A. Oh, the 13th.

9 Q. Of?

10 A. September -- or August. Sorry.

11 Q. And what year?

12 A. 2013.

13 Q. 2013?

14 A. '14. 2014.

15 Q. All right. So according to you, on
16 August 13th, 2014, what happened that Sunday?

17 A. I had completed a previous obligation
18 to move merchandise from one location to another
19 location for a customer.

20 Q. Okay. And who was that customer?

21 A. Amber Shumate.

22 Q. Do you know how to spell that?

23 A. S-H-U-M-A-T-E.

24 Q. And are you and Amber friends?

1 Q. And so how is it that you had to
2 deliver it on a Sunday? Tell me what the
3 circumstances are there.

4 A. It was, again, a previous agreement
5 between Rent-A-Center and Amber, and so I
6 volunteered for -- to make it happen.

7 Q. Okay. When you say it was a previous
8 commitment between Amber and Rent-A-Center, who
9 made that commitment?

10 A. Originally, it was Russell Kasper.

11 Q. So Russ Kasper told Amber that we will
12 deliver it on a Sunday or deliver it whenever
13 you're ready; is that right?

14 A. Correct.

15 Q. So then she called -- well, did she
16 call Russ Kasper and say, "Hey, I'm ready for
17 it" to be delivered?

18 A. Again, I'm not aware of the entire
19 transaction that enacted between all that.

20 Q. Oh, and I get you. What I'm asking you
21 is just what your memory is.

22 So how did -- who came and told you
23 "Hey, Amber needs this furniture delivered from
24 Point A to Point B --" well, strike that.

1 Kasper was the store manager, correct?

2 A. Correct.

3 Q. And do you know why it sat in mini
4 storage?

5 A. There was issues with our backroom. It
6 was an extremely small backroom. And so we
7 needed to move it to a facility.

8 Someone had contacted her and made
9 arrangements to take it there.

10 Q. Who made -- who made arrangements?

11 A. I do not know.

12 Q. So you don't know who did the original
13 delivery to the mini storage, correct?

14 A. Correct.

15 Q. That wasn't you, though?

16 A. No.

17 Q. You have no knowledge about it?

18 A. Well, I knew that her merchandise was
19 moved.

20 Q. From the store, Rent-A-Center --

21 A. From the store.

22 Q. Let me finish.

23 A. Oh, i'm sorry.

24 Q. From the Rent-A -- no, no, you're doing

1 Q. Well, then how are you saying that?

2 A. I am saying that the masons assisted
3 Amber with helping her find a residence. I --
4 also helping her move the -- the merchandise
5 from storage to the residence.

6 Q. Okay. But I asked you is it your
7 understanding that they purchased the furniture
8 for her, and you said yes, just a moment ago.

9 A. Okay.

10 Q. What's the basis for that?

11 A. It would have been something that
12 Russell had mentioned at some point in time that
13 they were considering helping her purchase that
14 merchandise.

15 Q. All right. And so do you know if the
16 masons moved it from the store to the storage
17 facility in Rantoul?

18 A. I have no idea.

19 Q. Okay. And do you know the name of any
20 of the masons that were involved on the move
21 on -- according to you in August of 2014?

22 A. Russell Weideman.

23 Q. Okay. Other than Russell Weideman,
24 anybody else?

1 investigator, correct?

2 A. Yes.

3 Q. And isn't it true you told her you had
4 never done deliveries on a Sunday before, had
5 you?

6 A. That is not true.

7 Q. You did deliveries on Sunday before?

8 A. Yes.

9 Q. What deliveries on Sundays have you
10 done before?

11 A. We have done several, throughout most
12 of the stores I have worked at.

13 Q. Name me one that you recall on a Sunday
14 in Rantoul, a delivery on a Sunday?

15 A. The air show. We had to pick up
16 freezers from the air show on a Sunday.

17 Q. Okay. And who -- when you say "we,"
18 who was with you?

19 A. That was just me. I'm referring we,
20 meaning Rent-A-Center.

21 Q. And so -- and who at the air show -- do
22 you recall any contact people there?

23 A. No. The gentleman was from Florida.

24 Q. And do you recall the date of that?

1 A. Not the specific date, no.

2 Q. Month or year?

3 A. It would have been July in end of
4 summer-ish.

5 Q. Of what year?

6 A. And it would have been 2013.

7 Q. Okay. So in July or the summer of
8 2013, you are saying that you made a delivery of
9 freezers to the air show?

10 A. We picked up a delivery -- we picked up
11 freezers from the air show.

12 Q. Okay. Do you remember how many?

13 A. Two.

14 Q. Okay. What kind of freezers?

15 A. White ones.

16 Q. Okay. And were you paid for that?

17 A. No.

18 Q. Okay. And why weren't you paid?

19 A. Again, it was something I volunteered
20 to do.

21 Q. And who gave you permission to use the
22 truck on a Sunday?

23 A. Russ Kasper.

24 Q. The store manager then?

1 A. Yes.

2 Q. What other delivery on a Sunday at the
3 Rantoul store have you ever done?

4 A. Case IH, the tractor show.

5 Q. And what is that?

6 A. It's where they show tractors.

7 Q. Right. And who was sponsoring that?

8 A. Case IH.

9 Q. And what is that?

10 A. It's a tractor company.

11 Q. In Rantoul, Illinois?

12 A. No. They are a national company.

13 Q. Spell that again for me.

14 A. It's Case, C-A-S-E, I-H.

15 Q. So Case IH was doing a tractor show; is
16 that right?

17 A. Okay.

18 Q. And when was that?

19 A. I don't have a specific date.

20 Q. Give me a year.

21 A. 2015.

22 Q. And what did you do for Case HI [sic]
23 in 2015?

24 A. We delivered refrigerators and picked

1 A. Yes.

2 Q. When did he give you permission?

3 A. The Saturday prior.

4 Q. So you told Elena a week before --

5 A. Uh-huh.

6 Q. -- when Russell Weideman called you,

7 right?

8 A. Correct.

9 Q. And then when did you tell Jason

10 Morris?

11 A. It was on the schedule. And Mr. Morris

12 was made aware the Monday prior and reminded on

13 Wednesday and then again on Friday.

14 Q. So on Friday did you talk to him about

15 that?

16 A. In very short term, yes.

17 Q. And what did you talk to him on Friday

18 about?

19 A. Making the delivery.

20 Q. And what did Mr. Morris say?

21 A. At that point it was an okay.

22 Q. Okay. And you let him know that "I'm

23 going to make this delivery on a Sunday" and he

24 said, "Okay."

1 A. Correct.

2 Q. And did you let him know it's because
3 Russell Kasper, the previous store manager, had
4 made this commitment?

5 A. Correct.

6 Q. And -- and so tell me about -- you go
7 up on Sunday. Do you have the keys already?

8 A. On Sunday?

9 Q. Yes.

10 A. Yes.

11 Q. Okay. So when did you get the keys?

12 A. Saturday night.

13 Q. All right. And -- and how did you get
14 the keys?

15 A. I got them from Jason Morris.

16 Q. All right. So he handed you the keys?

17 A. Yes.

18 Q. Did actually he hand them to you or
19 toss them to you?

20 A. He handed them to me.

21 Q. Okay. And you are as positive about
22 that, that Jason Morris handed you the keys on
23 Sunday to do -- I mean on Saturday to do a
24 delivery on Sunday as you are about Calvin Davis

1 A. Correct.

2 Q. And if the Masonic lodges in Paxton and
3 Rantoul can't name a single member that was
4 supposedly out at this alleged move, according
5 to you, in August of 2014, can you explain that?

6 A. Again, I'm not aware of what the masons
7 say or do. So, yeah, as far as an explanation
8 as to why they can't, no.

9 Q. But you're telling this court under
10 oath that there were at least 10 to 20 masons
11 from either the Paxton lodge or the Rantoul
12 lodge doing a move for Amber Shumate as a
13 community service in August of 2014, according
14 to you, correct, for about four hours?

15 MR. SHULTZ: Objection. Mischaracterizes
16 testimony.

17 MR. TRUSEVICH: Again, that's an improper
18 objection. Quit coaching the witness. If you
19 have an objection, object to form.

20 BY MR. TRUSEVICH:

21 Q. Do you -- is that what you're saying?

22 A. No.

23 Q. Okay. Then what are you -- how many
24 masons were out there that day?

1 A. I do not know.

2 Q. More than ten, less than ten?

3 A. I do not know.

4 Q. Do you know if any of them were even
5 masons?

6 A. I do not know.

7 Q. Did any of them tell you "We are
8 masons"?

9 A. Other than knowing that Russell
10 Weideman was a mason, then no.

11 Q. Did Russell Weideman ever say, "This is
12 Miles Shultz, he is a mason. This is Justin
13 Mulaire, he is a mason." Did he ever introduce
14 anybody as a mason?

15 A. No.

16 Q. So as you are sitting here today on
17 January 17, 2017, you have no personal knowledge
18 if there was a single mason out at that move
19 other than Russell Weideman; isn't that correct?

20 A. Correct.

21 Q. In fact, it could turn out that there
22 were no masons other than Russell Weideman,
23 couldn't it?

24 A. It is a possibility.

1 Q. Amber Shumate never told you that there
2 were any masons there, correct?

3 A. No.

4 Q. So if it turns out that the only mason
5 that's there that was there in -- according to
6 you August of 2014, then this community event
7 that you are saying that you volunteered for
8 would have been Russell Weideman helping out
9 Amber Shumate who he considers a daughter,
10 correct?

11 A. Possibly.

12 Q. And you have no personal knowledge that
13 the masons did any more than that? You have no
14 personal knowledge that they put any money for
15 her furniture, correct?

16 A. Correct.

17 Q. You have no personal knowledge whether
18 any masons were even there on that Sunday in
19 2014, correct?

20 A. Correct.

21 Q. You have no personal knowledge whether
22 they helped her find a residence, do you?

23 A. Correct.

24 Q. You have no personal knowledge whether

1 back?

2 A. I did not get a phone call back.

3 Q. So now we know that you've called the
4 district manager, left a message, and he didn't
5 call you back, Jason Carnahan, right?

6 A. Correct.

7 Q. You called Marcy is it Beeman?
8 Bessman?

9 A. Busman.

10 Q. Busman. Marcy Busman who is store
11 manager, correct?

12 A. Correct.

13 Q. And you actually worked for her for a
14 time, didn't you?

15 A. I did.

16 Q. You called Marcy, she gave you an 800
17 number to corporate, right?

18 A. Yes.

19 Q. So certainly Marcy would remember this
20 call, right?

21 A. Perhaps.

22 Q. Did you identify yourself or did you
23 just remain anonymous?

24 A. No, I identified myself.

1 July 19th, 2014, you spend four hours moving,
2 right? Right?

3 A. Okay.

4 Q. And you said it was -- all you did was
5 do the living room and the bedroom set, correct?

6 A. Correct.

7 Q. And you said it was about 20 miles,
8 right?

9 A. Correct.

10 Q. The storage shed was from -- about one
11 mile from the store, right?

12 A. Correct.

13 Q. So how did that take you four hours, if
14 that's all you did was load and unload a living
15 room and bedroom set? And by the way, did any
16 of the people there, the more than 10 less than
17 20 help you?

18 A. Yes.

19 Q. So they helped you load and unload the
20 truck?

21 A. Yes.

22 MR. SHULTZ: Objection. Form.

23 BY MR. TRUSEVICH:

24 Q. And you know if one of them got

Exhibit C

Russell Kasper Deposition

Russell Kasper
January 19, 2017

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

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

vs.

RENT-A-CENTER EAST, INC.,

Defendants.

No. 16-CV-2222
Judge Colin Stirling
Bruce
Magistrate Judge
Eric I. Long

DEPOSITION OF RUSSELL KASPER
January 19, 2017
I Hotel and Conference Center
1900 South First Street
Champaign, Illinois
10:00 a.m.

Barbara A. Glover: CSR #084-001223

1 should still answer.

2 THE WITNESS: The answer to that
3 question was it was brought up once. It was
4 explained, and he concurred at that time. Jason
5 Carnahan concurred.

6 BY MR. TRUSEVICH:

7 Q. And that was the end of it. Correct?

8 A. That is correct.

9 Q. If Megan Kerr testified under oath
10 under penalty of perjury just two days ago in
11 front of these two lawyers and Brad and I and the
12 court reporter and a videographer that even after
13 Jason Carnahan talked to you that you continued
14 to make embarrassing, discriminatory, harassing
15 comments at least two to three times a day
16 against her, would that be truthful or
17 untruthful, Mr. Kasper?

18 MR. MULAIRE: Object to form.

19 THE WITNESS: Untruthful.

20 BY MR. TRUSEVICH:

21 Q. Sir, while you were working for
22 Rent-A-Center how many deliveries did you ever do
23 on a Sunday?

24 A. Deliveries on a Sunday, we did none.

25 Q. What about pick ups on a Sunday?

1 A. We did a couple of pick ups on
2 Sundays, and they only surrounded short-term
3 leases where they involved civic organizations,
4 such as the Illini Small Engine Show where they
5 had rented a small chest freezer, and it needed
6 to be picked up at the conclusion of the event.
7 We did not want to leave it outside unattended to
8 be picked up on Monday. I was the one that went
9 and picked it up, put it in the truck, locked it
10 up, put a padlock on it, and had the truck parked
11 back at the shop.

12 The second time we did this was at the
13 -- actually, it happened two additional times two
14 separate years over at the Rantoul Chamber of
15 Commerce at the Rantoul Airport where they had
16 balloon festivals, hot rod cars, things like that
17 nature, and, again, they had rented a chest
18 freezer and a refrigerator for a local
19 restauranteur who was providing food at that
20 venue, and, again, if it would have been left out
21 past Sunday when the event was over, it would
22 have been sitting out on the airport tarmac
23 unattended, and everything had to be picked up by
24 the close of that day, and that happened two
25 years in a row.

1 fired you told somebody about it. Right?

2 MR. MULAIRE: Object to form?

3 THE WITNESS: No.

4 BY MR. TRUSEVICH:

5 Q. Before you were fired -- and, by the
6 way, when's the first time Jason Carnahan told
7 you, hey, I want you to look for someone -- or
8 look for ways to fire Megan Kerr and make sure
9 it's not just little things, when was that?

10 A. This was probably, I want to say,
11 March, April 2013.

12 Q. And when is the next time he talked to
13 you about this?

14 A. Each time he came down or we would get
15 the Friday phone call, and it was how things were
16 going, and he didn't come right out and say, you
17 know, have you got anything against her or
18 anything yet but wanted to know whether or not we
19 were increasing sales and whether or not she was
20 out on the truck too, that type thing.

21 Q. And so that would be March-April, and
22 you were fired in December. Correct?

23 A. Uh-huh.

24 Q. Is that a yes?

25 A. Yes.

1 THE WITNESS: Not putting those words
2 in my mouth, it's not the way he presented
3 himself.

4 BY MR. TRUSEVICH:

5 Q. Okay. How many times did he say --
6 are you saying at least ten occasions that he
7 said, "How is it coming to get rid of -- getting
8 rid of Megan Kerr?"

9 A. It wasn't how he came out and said,
10 "How are you getting rid of Megan Kerr." It's
11 like, "Do we have any documentation? How is the
12 customers handling this? How is the rest of the
13 store employees handling this?"

14 You know, "If we're going to do
15 anything," you know, "we have to have
16 documentation," you know, talking around the
17 subject.

18 Q. And let me guess. There weren't any
19 witnesses to these conversations. Were there?

20 MR. MULAIRE: Object to form.

21 THE WITNESS: No, because when the
22 store manager and the district manager would have
23 a meeting, he would pull us off to the corner and
24 sit us at a table off in a corner or go sit in
25 the office.

1 A. At our store we had -- Elena and him
2 had bounced back and forth as to who was in
3 charge of collections, who was in charge of
4 sales, and it was like about every five to six
5 months we would flip back and forth.

6 Q. Sir -- and then I asked you if after
7 you left if you ever told anybody on the face of
8 the planet, other than when the EEOC called you,
9 about your allegation that Jason Carnahan on at
10 least ten occasions was telling you to get rid of
11 Megan Kerr, other than your wife. You said
12 there's no one else on the face of the planet
13 that you told. Correct?

14 MR. MULAIRE: Object to form.

15 THE WITNESS: Correct.

16 BY MR. TRUSEVICH:

17 Q. And you also believed that what Jason
18 Carnahan was asking you to do was not only
19 against RAC policy, correct?

20 A. Correct.

21 Q. But you also thought it was illegal.
22 Didn't you?

23 A. I told him so.

24 Q. Right. And, according to you, you
25 even told Jason Carnahan that's illegal. Right?

1 A. Yes, I did.

2 Q. And you never picked up the phone and
3 complained to anybody about this illegal
4 activity. Did you, sir?

5 MR. MULAIRE: Object to form.

6 THE WITNESS: No, I did not, and I
7 explained earlier why.

8 BY MR. TRUSEVICH:

9 Q. And to add to that, Mr. Kasper, not
10 only did you believe it was against RAC policy,
11 but you had thought it was illegal -- you thought
12 that's why you were fired, because you didn't
13 fire Megan Kerr. Correct?

14 MR. MULAIRE: Objection, form.

15 THE WITNESS: I did feel after that
16 that that had a small portion of it, but I also
17 realized that the entire store operation was
18 based on what I did, not necessarily what anybody
19 else did and that I'm held accountable for
20 whatever happens in that store, and that's why I
21 also know as a businessman that Illinois is a
22 hire at will, fire at will, and it doesn't make
23 any difference what you say, they can terminate
24 for whatever reason without cause.

25 BY MR. TRUSEVICH:

1 have an objection to make it a little easier for
2 the court reporter, I would appreciate it.

3 THE WITNESS: All right.

4 BY MR. TRUSEVICH:

5 Q. By the way, Megan Kerr testified
6 yesterday or on Tuesday that -- have you ever
7 heard of a customer named Amber Schumate?

8 A. Amber Schumate?

9 Q. Yes.

10 A. That name, yes.

11 Q. And who is Amber Schumate?

12 A. A customer.

13 Q. As a matter of fact, according to you,
14 there would be a rental record of Amber Schumate.
15 Correct?

16 MR. MULAIRE: Object to form.

17 BY MR. TRUSEVICH:

18 Q. There should be. Right?

19 MR. MULAIRE: Foundation.

20 THE WITNESS: If she was renting at
21 the store, yes.

22 BY MR. TRUSEVICH:

23 Q. And you have specific recollection of
24 her. Correct?

25 A. The name, yes.

1 policy. I said doing anything about it would be
2 illegal.

3 Q. We'll look at the policy. I'm just
4 saying from being a store manager, a good store
5 manager -- for how many years were you a store
6 manager?

7 MR. MULAIRE: Objection. Form.

8 THE WITNESS: Four.

9 BY MR. TRUSEVICH:

10 Q. So being a store manager four years,
11 you knew what the HR EEO policy was? In fact,
12 you wrote up Mr. Harding about it. Correct?

13 A. Correct.

14 Q. So you knew what it was. Right?

15 A. Correct.

16 Q. So you knew when district manager
17 Carnahan allegedly was coming to you saying I
18 don't approve of someone like this wearing a bra,
19 and we need to get rid of her, you knew that
20 would be a violation of the HR policy. Correct?

21 A. Correct.

22 Q. But you didn't tell anybody about it.
23 Correct?

24 MR. MULAIRE: Object to form.

25 THE WITNESS: Correct, because in the

1 being evicted from those apartments?

2 A. Do what?

3 Q. What did you hear about her being
4 evicted from those apartments?

5 MR. MULAIRE: Objection to form.

6 THE WITNESS: Just that, that she had
7 been evicted.

8 BY MR. TRUSEVICH:

9 Q. Do you know when?

10 A. Do not know but later on after this
11 was done then his ex-wife said that they were
12 relocating to Chicago which is after this
13 declaration stuff was long done.

14 Whether that happened or not, I don't
15 know. I haven't talked to her.

16 (At this point the court reporter
17 marked RK Exhibit 4 for purposes of
18 identification.)

19 BY MR. TRUSEVICH:

20 Q. Let me hand you what's been marked as
21 Deposition Exhibit 4, a copy of your declaration.
22 Let me know when you've had a chance to review
23 that.

24 A. Yep.

25 Q. Sir, can I have that exhibit in front

1 of you, because I don't want to lose any.

2 Thank you. I appreciate that.

3 Let me know once you've had a chance
4 to review that.

5 A. It's been reviewed.

6 Q. By the way, during the entire time
7 that Investigator Mayfield talked to you, how
8 long of a phone interview was that? Do you
9 recall?

10 A. Originally she said this would only be
11 about ten, 15 minutes, and after two hours after
12 we realized what time it was it was like, oh.
13 She just kept asking questions.

14 Q. And so it was about a two hour phone
15 call?

16 A. Uh-huh.

17 Q. Is that a yes?

18 A. Yes.

19 Q. And did she ever ask you what I asked
20 you, why didn't you ever report this to your
21 regional director or anybody at HR or corporate?
22 Did Ms. Mayfield ever ask you that?

23 A. Yes.

24 Q. Okay. And what did you tell her?

25 A. I told her I would not feel confident

1 Q. In or around March 2013 Jason Kerr
2 told me he was transitioning from male to female,
3 and later that year Kerr changed his name to
4 Megan Kerr. Do you see that?

5 A. That is correct.

6 Q. I communicated these things to my
7 supervisor, district manager Jason Carnahan, at
8 around the time I learned them. Do you see that?

9 A. Correct.

10 Q. Then in the middle of 7 it says:
11 Carnahan told me to do whatever it takes to find
12 a way to fire Megan Kerr or get her to quit. Do
13 you see that?

14 A. Correct.

15 Q. He told me to find infractions to
16 document in order to create a basis for
17 terminating Ms. Kerr, and he asked me roughly
18 every week about the status, and the word status
19 is in quotation marks. Right?

20 A. Correct.

21 Q. And you signed it with that word
22 status in quotation marks. Correct?

23 A. Correct.

24 Q. Because on a weekly basis he would ask
25 you, hey, what's the status about you getting rid

1 of Megan. Right?

2 MR. MULAIRE: Objection. Misstates
3 testimony.

4 BY MR. TRUSEVICH:

5 Q. Right?

6 A. Uh-huh.

7 Q. Is that a yes?

8 A. Yes.

9 Q. I'm sorry. We talked over each other.

10 A. This is a repeat of what we just read
11 or what you just went over step by step, number
12 by number. That's the same thing that we just
13 went over.

14 Q. Sir, I object as your answer being
15 nonresponsive. My question was was that a yes?

16 A. Yes.

17 Q. It is true there were customers who
18 did not accept Ms. Kerr's transition from male to
19 female. Do you see that?

20 A. Yes.

21 Q. And No. 9: I did not make any
22 derogatory comments about Ms. Kerr's transition
23 from male to female.

24 Any idea why she would tell the ladies
25 and gentlemen of the jury that at least two to

1 A. Just what it says.

2 Q. No other explanation. Right?

3 A. I don't have a right to judge.

4 Q. And you're positive you never were
5 quoting Corinthians that told -- and you told her
6 that Corinthians tells you I have to accept you,
7 and so that's what I have to do, any words to
8 that effect?

9 MR. MULAIRE: Object to form.

10 THE WITNESS: Not that I'm aware of.

11 BY MR. TRUSEVICH:

12 Q. I did not believe it was lawful to
13 discriminate against Ms. Kerr because of her
14 transition?

15 A. Correct.

16 Q. Sometime after my employment at
17 Rent-A-Center ended I ran into Elena Reeves, who
18 was an assistant manager at the Rantoul,
19 Illinois, store, and she told me that Ms. Kerr
20 had been discharged, and Mr. Carnahan had said
21 not to talk about it. Do you see that?

22 A. Correct.

23 Q. I was told I was discharged from
24 Rent-A-Center because of sales. However, I
25 believe part of the reason I was terminated was

1 that I did not help create documentation that
2 would provide a basis for terminating Ms. Kerr as
3 Mr. Carnahan was pressuring me to do. Do you see
4 that?

5 A. Yes.

6 Q. By the way, sir, when -- in those
7 notes what you just said is, oh, this is a
8 tracking of what we just went down, meaning the
9 interview notes. Right?

10 A. Uh-huh.

11 MR. MULAIRE: Object to form.

12 BY MR. TRUSEVICH:

13 Q. Is that a yes?

14 A. Yes.

15 Q. Let me know when you read those notes
16 where it says that he was pressuring you to do
17 that.

18 MR. MULAIRE: Objection to form.

19 Argumentative.

20 BY MR. TRUSEVICH:

21 Q. The word pressuring in there, can you
22 find that?

23 A. These are her notes based on how she
24 was memorizing our discussion, and, yes, I did
25 use the word to her during the course of the

1 (At this point a short recess was
2 taken.)

3 BY MR. MULAIRE:

4 Q. Back on the record.

5 Mr. Kasper, just a couple of questions
6 about the declaration, Exhibit 4, that we've had
7 testimony about earlier today. Would you have
8 signed the declaration if you saw something in it
9 that was false?

10 A. No.

11 Q. Did anybody at the EEOC pressure you
12 to sign the declaration?

13 A. No.

14 Q. And did anybody at the EEOC offer you
15 anything, money or anything else in exchange for
16 signing the declaration?

17 A. Absolutely not.

18 Q. And do you have any financial interest
19 in how this lawsuit turns out one way or the
20 other?

21 A. No.

22 MR. MULAIRE: Those are all the
23 questions I have.

24 RE-EXAMINATION CONDUCTED

25 BY: MR. TRUSEVICH

1 you give me any names that it may have been under
2 so we can look at that?

3 MR. MULAIRE: Object to form and
4 foundation.

5 THE WITNESS: It would have been a
6 lady from Broadmeadow School, not from Bible
7 Baptist Church, because originally it was
8 Broadmeadow School PTA, or something like that,
9 that had set this up, but they had a power outage
10 in the gym where they would have plugged in the
11 cookie dough refrigerator.

12 BY MR. TRUSEVICH:

13 Q. By the way, if you wanted to use
14 property for charitable events, did you have to
15 get permission for that?

16 A. Yes.

17 Q. From who?

18 A. From the district manager.

19 Q. Okay. And that's the way it was while
20 you were the store manager. Correct?

21 A. Yep, and we only had one instance
22 where we actually -- well, we had one instance
23 where we ended up donating a chair and a TV for
24 some open house with some bigwigs in there, and
25 that was about the only thing I remember that we

1 actually donated.

2 There was periodic times where a TV --
3 we were asked to loan out a TV for some sort of a
4 function, or whatever, and even when Jason did
5 it, we had to document, and we had to enter it
6 into the computer, but it would just be a no cash
7 sale rental. It still had a return date and
8 everything, sales agreement, they signed for it,
9 so they knew if they lost it or broke it, they
10 had to pay for it.

11 Q. But at least as far as you were
12 associated with Bible Baptist Church, did you
13 ever know of any delivery or pick up that was
14 done on a Sunday using a RAC --

15 A. Absolutely not.

16 MR. TRUSEVICH: That's all I have.

17 MR. MULHAIRE: Okay. Thank you, sir,
18 for your time.

19 (Deponent is excused at 12:55 p.m.)

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Exhibit D

Defendant's Amended Answer [ECF No. 21]

**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 FIRST 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 First 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.

THIRTEENTH DEFENSE

Defendant alternatively pleads that Plaintiff failed to conduct a good-faith investigation.

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,

J. Bradley Spalding

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Dated: October 25, 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 First Amended Answer to Plaintiff's Complaint** via ECF (*Electronic Case Filing*) on October 25, 2016:

Miles Shultz
Justin Mulaire
P. David Lopez
James L. Lee
Gwendolyn Young Reams
John C. Hendrickson
Gregory M. Gochanour
U.S. Equal Employment Opportunity Commission
500 West Madison Street, Suite 2000
Chicago, IL 60661
(312) 869-8045
miles.shultz@eoc.gov

U.S. Equal Employment Opportunity Commission
131 M. Street, N.E.
Washington, DC 20507

/s/ J. Bradley Spalding

J. Bradley Spalding

Exhibit E

David Leavengood Deposition

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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)
)
Plaintiff,)
) No. 16-CV-2222
- vs -)
)
RENT-A-CENTER, INC.,)
)
Defendant.)

DEPOSITION of DAVID LEAVENGOOD, taken in the
above-entitled case before Gina L. Nottingham,
Certified Shorthand Reporter of Adams County,
Illinois, at 1:25 P.M., on April 21, 2017, at
120 Lindsey Drive, Hannibal, Missouri.

1 Q. So if a store manager became aware that an
2 employee was driving another employee in a company
3 vehicle for a personal errand, then that store manager
4 would have an obligation or responsibility to report
5 that violation or policy?

6 MR. TRUSEVICH: Objection; form.

7 THE WITNESS: Yes.

8 BY MR. SHULTZ:

9 Q. And again immediately?

10 A. Yes.

11 Q. And if a store manager suspected a violation
12 of the vehicle policy, how long should that store
13 manager wait before reporting that concern to somebody
14 else?

15 A. I don't understand. Why would they wait?

16 Q. So you would expect that -- as regional
17 director you would expect a store manager to report
18 that immediately?

19 A. Yes.

20 Q. And were you -- are you aware why Meagan
21 Kerr was terminated?

22 A. Yes.

23 Q. And why?

24 A. Because she was using the company vehicle on

1 a Sunday.

2 Q. And how did you find that out or how do you
3 know that?

4 A. I was made aware of it when it happened, as
5 a matter of fact, on the Sunday it happened, from the
6 DM, Jason Carnahan.

7 Q. Jason Carnahan?

8 A. Yeah.

9 Q. And was that via phone?

10 A. Yes.

11 Q. So on Sunday Jason Carnahan called you
12 about --

13 A. Right.

14 Q. And do you remember what time of day it was?

15 A. No.

16 Q. And in that phone call with Mr. Carnahan, do
17 you remember what you discussed?

18 A. Just that the van was not at the store and
19 that Meagan's car was there and that was it.

20 Q. And did you give Mr. Carnahan any
21 instructions for how to proceed?

22 A. The only thing I can remember is maybe
23 talking about having the store manager talk to her
24 when she came in Monday morning and asking her what

1 was going on and to report back to me.

2 Q. And do you remember who the store manager
3 was at this time?

4 A. It was Jason Morris.

5 Q. Jason Morris?

6 A. Yeah.

7 Q. And did you ask Mr. Carnahan any sorts of
8 questions on that Sunday phone call?

9 A. No.

10 Q. And when was the next time you talked to
11 Mr. Carnahan about this situation?

12 A. It would have been Monday sometime.

13 Q. And do you remember what transpired in that
14 conversation?

15 A. He called me and told me that Jason had
16 spoken to Meagan and she had admitted to using the
17 truck on Sunday and that -- I think that was it. And
18 that they had terminated her because she had admitted
19 to it.

20 Q. And is that something you would have
21 discussed with Mr. Carnahan on Sunday?

22 A. Yeah. I mean, I probably told him that if
23 she admitted to using the truck on a Sunday that that
24 was immediate termination, yeah.

1 VIDEOGRAPHER: It is 2:36. We are back on
2 the record. This is the beginning of our second
3 media.

4 BY MR. SHULTZ:

5 Q. What was your opinion of Meagan Kerr as an
6 employee?

7 A. I don't think I had an opinion one way or
8 the other. She seemed to do her job when she was
9 Jason and Meagan. I don't remember having any issues
10 with her.

11 Q. And you don't remember a district manager
12 ever discussing Meagan with you other than for the
13 termination on that Sunday?

14 A. Well, and the time that he told me she
15 changed her name --

16 Q. Okay.

17 A. (Continuing) -- from Jason to Meagan.

18 Q. And when you were having the conversation
19 with Carnahan on Sunday and then again on Monday --

20 A. Uh-huh.

21 Q. (Continuing) -- did you remember thinking
22 that Meagan was the transgender employee within your
23 region?

24 A. Oh, I knew who she was, yeah. I know all my

1 managers and assistants, or I did at that point.

2 Q. Are you aware of any Sunday pickups or
3 deliveries of Rent-A-Center furniture ever when you
4 worked at Rent-A-Center?

5 A. Never.

6 Q. And are you aware of any Sunday deliveries
7 that were authorized for pickups or deliveries when
8 you worked at Rent-A-Center?

9 A. No. We didn't set or write policy and we
10 weren't allowed to override policy.

11 Q. And when you were regional director in 2013
12 and 2014, did Rent-A-Center have policies regarding
13 sex discrimination?

14 A. Oh, yeah.

15 Q. And do you remember what those policies
16 were?

17 A. Zero tolerance policy for any discrimination
18 based on, you know, the normal age, sex, race,
19 religion, any of that kind of thing.

20 Q. And do you remember a training at
21 Rent-A-Center regarding those sorts of discrimination?

22 A. Yes.

23 Q. And where would that training have been?

24 A. It would have been at different annual

Exhibit F

Russell Kasper Declaration

RECEIVED EEOC

JAN 11 2016

DECLARATION OF RUSSELL KASPER

I, Russell J. Kasper, hereby declare under penalty of perjury under the laws of the United States of America and in accordance with 28 U.S.C. § 1746 that the following is true and correct:

CHICAGO DISTRICT OFFICE

1. I began working for Rent-A-Center in or around June 2005, in Rantoul, Illinois, as a sales representative.
2. Between 2005 and 2007, while working at Rent-A-Center, I was promoted several times. During this time, I also spent some time working at the company's Champaign, Illinois store.
3. In 2007, I was promoted to the position of Store Manager of the Rent-A-Center store in Rantoul, Illinois. I was the Store Manager at that location until my employment ended in or around December 2013.
4. As the Store Manager, I had overall responsibility for the staff and operations at the Rantoul store.
5. Approximately a year or two before the end of my employment, a Rent-A-Center employee named Jason Kerr was transferred into the Rantoul, Illinois store as an Assistant Manager for Sales.
6. In or around March 2013, Jason Kerr told me he was transitioning from male to female, and later that year Kerr changed her name to Megan Kerr. I communicated these things to my supervisor, District Manager Jason Carnahan, at around the time I learned them.
7. After Megan Kerr's transition from male to female, District Manager Carnahan told me that he did not approve of having someone like that in the store, or of the way she was changing and dressing. Carnahan said he believed that Kerr's transition from male to female was hurting sales. Carnahan told me to do whatever it takes to find a way to fire Ms. Kerr or get her to quit. He told me to find infractions to document in order to create a basis for terminating Ms. Kerr, and he asked me roughly every week about the "status" of this effort.
8. It is true that there were customers who did not accept Ms. Kerr's transition from male to female.
9. I did not make any derogatory comments about Ms. Kerr's transition from male to female. I did not think it was my place to tell Ms. Kerr not to be a woman. I did not believe it was lawful to discriminate against Ms. Kerr because of her transition.
10. Some time after my employment at Rent-A-Center ended, I ran into Elena Reeves, who was an Assistant Manager at the Rantoul, Illinois store, and she told me that Ms. Kerr had been discharged and that Mr. Carnahan had said not to talk about it.

11. I was told I was discharged from Rent-A-Center because of sales. However, I believe part of the reason I was terminated was that I did not help create documentation that would provide a basis for terminating Ms. Kerr, as Mr. Carnahan was pressuring me to.

12. I have read the above statements. I have personal knowledge of these statements, and they are true and accurate to the best of my recollection.

DATE: 12/31/15

A large black rectangular redaction box covering the signature of Russell J. Kasper.

Russell J. Kasper

Exhibit G

Jason Carnahan Deposition

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE CENTRAL DISTRICT OF ILLINOIS
3 URBANA DIVISION

4 EQUAL EMPLOYMENT OPPORTUNITY)
5 COMMISSION,)
6 Plaintiff,)
7 vs.) No. 16-cv-2222
8 RENT-A-CENTER EAST, INC.,)
9 Defendant.)

10 DEPOSITION
11 OF
12 JASON CARNAHAN

13 The Rule 30(b)(6) Deposition of JASON CARNAHAN,
14 taken in the above-entitled cause, before Lisa Hahn
15 Peterman, CSR, RMR, on the 8th day of March, 2017, at
16 the United States Courthouse, 201 South Vine Street,
17 Urbana, Illinois, pursuant to Notice at the hour of
18 9:34 a.m.

19
20
21
22
23 Reported by: Lisa Hahn Peterman, CSR, RMR
24 License No.084-002149

1 Q. Sure. Are there any violations of company
2 policy that result in an employee automatically being
3 terminated at Rent-A-Center?

4 A. Improper use of a vehicle.

5 Q. And these are the delivery vehicles at
6 stores?

7 A. Yes.

8 Q. Okay. In fact, I think you said in a
9 declaration that it's an automatically terminable
10 offense. Do you recall that?

11 A. Yes.

12 Q. So does that mean -- automatic means no
13 exceptions?

14 A. Yes.

15 Q. Okay. And do you have any understanding --
16 just give me one moment. Do you have any
17 understanding of why the company prohibits -- actually
18 sorry. Strike that.

19 Can you take a look again at Exhibit 2 and
20 turn to page 22? This is the page that says Standards
21 of Conduct at the top. Are you there?

22 A. Yes.

23 Q. Okay. If you look at the third bullet point
24 from the bottom of the page --

1 A. From the bottom?

2 Q. It says, quote, "Using company property,
3 including company vehicle for personal use," end
4 quote.

5 A. Yes.

6 Q. Is that the policy that you're referring to?

7 A. Yes.

8 Q. And do you have any understanding of why the
9 company prohibits using the company vehicle for
10 personal use?

11 MR. TRUSEVICH: Objection, form.

12 THE WITNESS: I'm sorry. Can you repeat it?

13 BY MR. MULAIRE:

14 Q. Do you have any understanding of why the
15 company prohibits this?

16 MR. TRUSEVICH: Objection, form.

17 THE WITNESS: No.

18 MR. MULAIRE: Okay. Then let's mark -- are
19 we up to 8?

20 (EEOC Exhibit Number 8 was marked for
21 identification.)

22 BY MR. MULAIRE:

23 Q. You can take a moment to look over what's
24 been marked EEOC Exhibit 8 and let me know when you're

1 Q. Okay. Now, this form was signed by you and
2 Mr. Kasper on November 6, 2013, it appears?

3 A. Yes.

4 Q. And so am I correct in understanding that
5 the solution or the plan that this called for was for
6 deliveries to be increased from 14 to 22 in a period
7 of three days?

8 A. Yes.

9 Q. And that's -- by my math, that's about a 57
10 percent increase. Do you think that's humanly
11 possible to do, based on your experience?

12 A. Yes.

13 Q. To increase sales by almost 60 percent in
14 three days?

15 A. Yes.

16 Q. Okay. How would a store manager go about
17 doing that?

18 A. Holding the store employees accountable to
19 their individual sales numbers.

20 Q. And what does that mean?

21 A. Holding store employees accountable for
22 their sales numbers.

23 Q. Does that mean issuing -- disciplining them
24 in some way, providing them some additional

1 information, or just having a talk with them?

2 A. Both training and discipline.

3 Q. And you think that could be accomplished in
4 three days?

5 MR. TRUSEVICH: Objection, form.

6 THE WITNESS: Yes.

7 BY MR. MULHAIRE:

8 Q. Okay. And do you recall -- was it, indeed,
9 in December of 2013 that Mr. Kasper was terminated?

10 A. Yes.

11 Q. And can you tell me what, between the
12 November 6th Performance Discussion Summary and his
13 termination, led you to the decision to terminate him?

14 A. He was still not achieving sales numbers.

15 Q. Do you recall whether the sales numbers
16 changed at all after November 6th? Did they go up or
17 down or stay the same?

18 A. I do not recall.

19 Q. Okay. When did you first speak with -- I'm
20 sorry. Who was the regional director at this time
21 again?

22 A. Dave Leavengood.

23 Q. When did you first speak with Mr. Leavengood
24 about either the possibility of terminating Mr. Kasper

1 phone call and what Mr. Kasper said in this second
2 phone call, correct?

3 A. Yes.

4 Q. Was there anything else you had done to look
5 into this in between those two?

6 A. No.

7 Q. And so what about those two conversations
8 led you not to believe Mr. Kasper?

9 A. I guess it wasn't that I didn't believe him;
10 it's just, whether it happened or not, it was
11 unacceptable.

12 Q. Did you have any reason to think that he had
13 done it intentionally?

14 A. No.

15 Q. Okay. And at some point Mr. Kasper was
16 replaced as store manager at the Rantoul store?

17 A. Yes.

18 Q. And who replaced him?

19 A. Jason Morris.

20 Q. Okay. And who selected Mr. Morris for that
21 position?

22 A. I did.

23 Q. And that requires approval by the regional
24 director as well?

1 A. No.

2 Q. Were there other transgender employees
3 within your district when you were the district
4 manager of 121, as far as you know?

5 A. No.

6 Q. Would it be fair to say that an employee
7 transitioning on the job was an uncommon event within
8 your district at Rent-A-Center?

9 A. What was that? I'm sorry.

10 Q. Is it fair to say that this was an uncommon
11 event to have an employee transition from male to
12 female?

13 MR. TRUSEVICH: Objection, form.

14 THE WITNESS: Yes.

15 BY MR. MULHAIRE:

16 Q. Are you aware of any other employee at
17 Rent-A-Center ever having transitioned from male to
18 female?

19 A. I'm not aware, no.

20 Q. And so I just want to be clear. Despite the
21 relative rarity of that, the fact of her transitioning
22 never came up in any other conversations other than
23 the ones that you've mentioned at any time with
24 anybody else at Rent-A-Center in the ensuing three or

1 A. That was not clear.

2 Q. Okay. Did you ask him to go wait near the
3 parking -- the store's parking lot or did you not
4 address that?

5 A. I did not address that.

6 Q. Okay. And so about how long was this call?

7 A. Not very long. A couple of minutes.

8 Q. So after that call what did you do next?

9 A. I called Mr. Leavengood.

10 Q. Okay. And what did you say to him?

11 A. I informed him that we believed that Megan
12 was using the vehicle on Sunday.

13 Q. And what did he say in response?

14 A. He said that we had to inquire about it, but
15 if it was true, that it was termination.

16 Q. Did you have any doubts at that point as to
17 whether it was true that she was using the vehicle?

18 A. I did not know one way or another.

19 Q. And what else did Mr. Leavengood say during
20 this call?

21 A. Nothing.

22 Q. He didn't give you any further suggestions
23 or instructions as to how to proceed?

24 A. No.

1 Q. Did you say anything else during that call
2 to Mr. Leavengood?

3 A. No.

4 Q. And what did you do next after that call?

5 A. I called Mr. Morris back.

6 Q. And about how long was your call with
7 Mr. Leavengood?

8 A. A couple of minutes.

9 Q. And do you recall whether you phoned him
10 right away or an hour later?

11 A. It was right away.

12 Q. Okay. And then after the call with
13 Mr. Leavengood ended, about how long until you called
14 Mr. Morris again?

15 A. It was right away.

16 Q. And what did you say to Mr. Morris during
17 that second call?

18 A. I let him know that, you know, we needed to
19 try to find the truck at that point if he could, and
20 then -- but then Monday morning we needed to inquire,
21 and if it was admitted, then we would terminate her.

22 Q. And so what was your reason for calling
23 Mr. Leavengood after Mr. Morris's first call?

24 A. Because, again, it's a terminable offense

1 and the regional director has to approve those.

2 Q. So were you calling him to get approval for
3 terminating Ms. Kerr?

4 A. I was getting -- looking for advice of what
5 to do kind of thing.

6 Q. Okay. And what advice did you get from that
7 call?

8 A. Again, he just said we need to inquire about
9 it, but if it's true, it's termination.

10 Q. Okay. Was there any other advice you were
11 hoping to get from that call?

12 A. No.

13 Q. And did you understand that to be
14 Mr. Leavengood's approval to proceed with termination?

15 A. Yes.

16 Q. Okay. What did Mr. Morris say to you during
17 the second call that you had with Mr. Morris?

18 A. That he would drive around and try to locate
19 the vehicle and then talk to her Monday morning.

20 Q. Did you ask him to drive around and look for
21 the vehicle?

22 A. I said if he had time. I mean, it was
23 Sunday, so it was his day off.

24 Q. Now, a moment ago, you said you didn't know

1 A. I'm not real sure. She admitted that she
2 took the vehicle.

3 Q. Well, I mean, you saw a need to ask her, so
4 I take it that -- is it your view she may not have
5 been terminated had she said, no, she didn't use the
6 vehicle?

7 A. Yes.

8 Q. Okay. And what would have to have happened
9 for her not to be terminated?

10 A. Again, we would have had to -- if she would
11 have said no, we would have had to investigate.

12 Q. And what would that investigation entail? I
13 mean, what would you do to try and figure that out?

14 A. I would contact home office and get their
15 advice on how to go further.

16 Q. Not Mr. Leavengood?

17 A. I would contact Mr. Leavengood as well.

18 Q. Could you look at Exhibit 8 again? Do you
19 have that in front of you still? It's your
20 declaration.

21 If you look at the first sentence of
22 paragraph 10, it states: "It is my understanding that
23 Mr. Morris confronted Mr. Kerr the following day,
24 Monday, July 21, 2014, regarding her use of the

1 Rent-A-Center vehicle for personal reasons," and the
2 paragraph goes on.

3 A. Uh-huh.

4 Q. Now, doesn't that sentence mean that you and
5 Mr. Morris believed already that she was using it for
6 personal reasons and you were just going to ask her
7 why?

8 A. Yes.

9 Q. Okay. Now, was there some explanation of
10 her use of the vehicle that day that could have been
11 acceptable to you?

12 A. Yes.

13 Q. For example, what?

14 A. You know, if there was a medical emergency
15 that her car or vehicle would not make it.

16 Q. So if she had a personal medical emergency
17 and I take it was near the store and needed to use the
18 company vehicle for that, that would have been
19 acceptable?

20 A. Yes.

21 MR. TRUSEVICH: When you're at a stopping
22 point, let me know. We'll take a break.

23 MR. MULAIRE: A couple more questions.

24 BY MR. MULAIRE:

1 circumstances to that?

2 A. It was actually during work hours, it was
3 just not work-related.

4 Q. And so is it your understanding that in
5 addition to the use of a vehicle, he was also stealing
6 company time by doing personal stuff during work
7 hours?

8 A. In my opinion, yes.

9 Q. When you say in your opinion, did that come
10 up last night?

11 A. No.

12 Q. Okay. But you have an understanding that he
13 was doing something that wasn't work when he was on
14 the clock?

15 A. Yes.

16 Q. And is that part of the reason he was fired?

17 A. Yes.

18 Q. And now is it -- are you also aware that
19 another store employee is the one who drove
20 Mr. Harding off to do some personal stuff in a company
21 vehicle, dropped him off?

22 A. No.

23 Q. Well, let me ask you this. Based on your
24 understanding of Rent-A-Center's policies, if another

1 store employee had used the company vehicle to drive
2 Mr. Harding to whatever personal business he was going
3 to do for the day instead of coming to work, isn't the
4 employee driving the vehicle also violating company
5 policy?

6 A. Yes.

7 Q. And based on your earlier testimony about
8 that being an automatically terminable offense, that
9 employee would need to be terminated?

10 A. Yes.

11 Q. Do you have any understanding of whether
12 anyone else was terminated in connection with
13 Mr. Harding going off to do personal stuff?

14 A. I do not know.

15 Q. If you could look at, I think it's Exhibit
16 8, the Coworker Handbook.

17 A. Two.

18 Q. Oh, I'm sorry, Exhibit 2, the Coworker
19 Handbook, which is right in front of you. Could you
20 turn to page 26?

21 A. Okay.

22 Q. Do you see under the section marked Open
23 Door Reporting Policy, the -- I believe it is the
24 fourth sentence, reads, quote, "We not only encourage

Exhibit H

Jason Morris Deposition

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE CENTRAL DISTRICT OF ILLINOIS
3 URBANA DIVISION

4 EQUAL EMPLOYMENT OPPORTUNITY)
5 COMMISSION,)
6 Plaintiff,)
7 vs.) No. 16-cv-2222
8 RENT-A-CENTER EAST, INC.,)
9 Defendant.)

10 DEPOSITION
11 OF
12 JASON MORRIS

13 The Rule 30(b)(6) Deposition of JASON
14 MORRIS, taken in the above-entitled cause, before
15 Lisa Hahn Peterman, CSR, RMR, on the 7th day of
16 March, 2017, at the United States Courthouse, 201
17 South Vine Street, Urbana, Illinois, pursuant to
18 Notice at the hour of 12:55 p.m.

19
20
21
22
23 Reported by: Lisa Hahn Peterman, CSR, RMR
24 License No.084-002149

1 A. Off and on. It's a family address, so...

2 Q. I believe you became store manager of the
3 Rantoul store in February of 2014, is that right?

4 A. Yes, sir.

5 Q. And were you living at that Champaign
6 address in February of 2014?

7 A. Yes, sir.

8 Q. And who's your current employer?

9 A. Rent-A-Center.

10 Q. And what address do you work at at
11 Rent-A-Center?

12 MS. QUINCY: I'm sorry. What?

13 BY MR. SHULTZ:

14 Q. What address do you work at at
15 Rent-A-Center?

16 A. The Rantoul location.

17 Q. And what's your job title?

18 A. Store manager.

19 Q. And what's your current supervisor's name?

20 A. Daniel Kober.

21 MS. QUINCY: Would you spell that last name
22 for the record?

23 THE WITNESS: K-O-B-E-R.

24 BY MR. SHULTZ:

1 A. I don't remember. I know I didn't see it
2 written anywhere, but we, like, visit stores
3 regularly. I don't remember if maybe I saw her or
4 what. I truly don't remember how I found out about
5 it.

6 Q. But when -- when you started in February of
7 2014 as the store manager in the Rantoul store, Megan
8 was presenting as Megan Kerr at work?

9 A. Yes, sir.

10 Q. And why was Ms. Kerr terminated?

11 A. She was terminated for violation of company
12 policy.

13 Q. And what company policy?

14 A. Using the work trucks for personal use.

15 Q. And how did you learn that she was using the
16 work trucks for personal use?

17 A. I saw.

18 Q. And what do you mean by "you saw?"

19 A. I drove by the store and her car was there
20 and the truck was gone.

21 Q. And when did you drive by the store?

22 A. On Sunday morning. That Sunday morning or
23 early afternoon.

24 Q. And earlier you said that you had moved the

1 keys on Monday, July 21st, 2014, so is the Sunday
2 you're talking about, Sunday, July 20th, 2014?

3 A. If I'm correct on the actual dates, but yes,
4 it was a Sunday. I'm pretty sure it was the 20th.

5 Q. And I believe you testified that you were
6 living in Champaign at the time, is that right?

7 A. Yes, sir.

8 Q. And why were you in Rantoul on a day when
9 the store was closed?

10 A. A couple reasons. I was -- number one, I
11 was looking for a place to move there, so I was kind
12 of driving around looking for places, but I also was
13 suspicious of if she was doing something like that,
14 so...

15 Q. And why were you suspicious she was -- and
16 what do you mean by "like that?"

17 A. Using the vehicles.

18 Q. And why were you suspicious that she was
19 using the vehicles?

20 A. Her behavior the prior day, that Saturday at
21 work.

22 Q. And what about her behavior?

23 A. She was a little more self-sufficient than
24 normal as far as doing a lot of one-man deliveries and

1 kind of -- just was out of the store a lot in the
2 vehicle. So, in my experience, that kind of makes me
3 a little on edge about it.

4 Q. And was she out of the store outside of
5 the -- well, this is a Saturday, so the delivery
6 windows for Saturdays are 1:00 to 3:00 and 3:00 to
7 5:00?

8 A. Yes.

9 Q. And was she out of the store outside of
10 those two delivery windows?

11 A. I couldn't tell you for sure.

12 Q. Is it uncommon to do what you called one-man
13 deliveries?

14 A. The ones that she was choosing to do were
15 kind of uncommon as best I can remember.

16 Q. And what sort of deliveries are those that
17 you're referring to?

18 A. Again, I don't remember the exact instances.
19 I remember my thinking. Like, I can remember how I
20 was thinking back then that the deliveries she was
21 doing were uncommon to be one-person deliveries.

22 So an example would be a bedroom set. A
23 bedroom set, generally, it would be a two-person. I
24 wouldn't have a problem if two people wanted to do it.

1 She was choosing to do those by herself, which it's
2 possible to do them by herself, but it wasn't in her
3 character or really anyone's. I wouldn't. When I was
4 a CAR, I wouldn't have ran out to do anything, you
5 know, especially a bedroom set by myself just
6 voluntarily, much less when I was an assistant, I
7 definitely wouldn't have done that.

8 Q. And CAR, I take it, is customer account
9 representative?

10 A. Yes, absolutely.

11 Q. So you remembered the bedroom set. Any
12 other examples of deliveries on that Saturday that you
13 thought were out of character?

14 A. Again, I don't know if it was actually a
15 bedroom set that was delivered that Saturday. It's
16 just an example of what would have made me feel that
17 way. I don't remember exactly what one-man she was
18 doing.

19 Q. And do you remember if you were specifically
20 in Rantoul on that Sunday to look for a place to move
21 to?

22 A. Again, it was kind of for both reasons.

23 Q. Was anyone else with you?

24 A. When I came to Rantoul?

1 remember his -- it was two plus years ago, I'm sorry.
2 I don't remember his exact words or the exact
3 conversation, but the essence of the conversation was
4 he spoke with Mr. Leavengood and the decision was to
5 terminate Megan, and he wanted me to try to find the
6 truck and get it off the road because the truck had to
7 be off the road, and then get the keys from her and
8 then just terminate her right there. If I couldn't
9 find her, we were supposed to just wait until in the
10 morning and terminate her in the morning and ask her
11 what the situation was and then let her go.

12 Q. And do you remember what you and
13 Mr. Carnahan talked about in the first conversation
14 you had with him?

15 A. I do not.

16 MS. QUINCY: I have a belated objection to
17 the form of the question.

18 BY MR. SHULTZ:

19 Q. And why did you think that it was Ms. Kerr's
20 car in the parking lot at Rent-A-Center?

21 A. It was the one she drove to work.

22 Q. So you had seen her driving that car before?

23 A. Absolutely.

24 Q. Was Ms. Kerr terminated for any performance

1 related reasons outside of the violation of company
2 policy?

3 A. No.

4 Q. So the only reason for the discharge was
5 using the truck on Sunday?

6 A. Yes, sir.

7 Q. And was it the truck or the van that was
8 missing?

9 A. It was the truck.

10 Q. The truck?

11 A. The truck, yes. I'm sorry.

12 Q. And how would you describe Ms. Kerr as an
13 employee up until then?

14 A. She was decent. I mean, I didn't have no
15 issues with her.

16 Q. So after you had the second conversation
17 with Mr. Carnahan where he instructed you to find the
18 truck and get it off the road, then what did you do?

19 A. Picked up Brock.

20 Q. And after that?

21 A. Then we went looking for the truck. I drove
22 by her tattoo shop and I was just basically trying to
23 find her, trying to find where the truck was.

24 Q. And by tattoo shop, you mean Ms. Kerr's

1 far as I know. Unless someone stapled something to
2 it, there's nothing that comes stapled to it.

3 Q. Do you ever remember seeing anything stapled
4 to a DDP?

5 A. No.

6 Q. And what happens to -- how many days are
7 included in a DDP? You said it's a spiral bound?

8 A. Yes.

9 Q. So what's the time period for a DDP?

10 A. Per quarter.

11 Q. So after a quarter is finished, what happens
12 to the DDP?

13 A. We trash it.

14 Q. And so walk me through what happens then
15 that next -- the Monday after.

16 A. Megan came to work. She got there early.

17 Q. Did she arrive before you?

18 A. No. No one ever arrives before me. But she
19 came in, I told her I needed to speak with her, you
20 know; asked her, you know, what happened yesterday?
21 And I don't remember again the exact conversation. It
22 was a while back and I can give you the essence, kind
23 of, of the conversation. I asked her, you know, about
24 the using the truck. She said, yeah, or whatever the

1 case was, and I told her we were going to have to
2 terminate her for that. She said, "Okay; thank you,"
3 and gave me her store keys and then left, walked out.

4 Q. Do you remember if anyone -- any other
5 employees were at the store?

6 A. No. She got there early.

7 Q. And so this was obviously before the store
8 opened?

9 A. Yes, sir.

10 Q. And this meeting was in the -- in your
11 office which you had circled?

12 A. Yes, sir.

13 Q. Could you actually just also mark on there
14 outside where the parking lot is where the van is
15 usually kept and where the car that you observed on
16 that Sunday was parked?

17 A. Draw a picture on the parking lot?

18 Q. Yeah. So you said this is the front.

19 A. This is the front door.

20 Q. That's the front door? Could you just,
21 like, draw where the parking lot is?

22 A. This would be the entrance into the parking
23 lot.

24 Q. Okay.

1 A. I believe she was sitting.

2 Q. And I know you said that, you know, this is
3 three years ago and you don't remember exactly what
4 was said. Do you have any recollection about what you
5 would have said to her initially?

6 A. As far as...

7 Q. When the meeting first started.

8 A. I don't. Again, I don't remember exactly.
9 I can give you the essence of the conversation, but I
10 don't remember exactly what was said.

11 Q. What's the essence of the conversation?

12 A. You know, I asked her what happened and
13 about her using the truck. She confirmed it, so I
14 told her we had to terminate her for it. She said --
15 the words I do remember distinctly were, "Okay. Thank
16 you." I just thought it was strange. I've never been
17 thanked for terminating anyone.

18 Q. Have you had to terminate other employees at
19 Rent-A-Center?

20 A. Yes.

21 Q. Under what situations have you had to
22 terminate other employees?

23 A. One gentleman -- it varies. I mean, it was
24 the situation with the final notice I told you about

1 before of the guy who wasn't coming in to work, and
2 then there was another situation of a company policy
3 violation, and as far as I can remember, I'm pretty
4 sure those were the only two.

5 Q. Do you remember what that other company
6 policy violation was for?

7 A. Stealing time, slash, personal use of a
8 vehicle.

9 Q. And was that at the Rantoul store?

10 A. It was at the Peoria-Knoxville store.

11 Q. So do you remember that employee's name at
12 the Peoria store who was terminated?

13 A. I do.

14 Q. What?

15 A. It was Gregory Cannon.

16 Q. Cannon?

17 A. Cannon.

18 Q. And was he automatically fired for using the
19 company vehicle?

20 A. Yes, sir.

21 Q. Had he been on any -- was it corrective
22 action form?

23 A. No, sir.

24 Q. What --

1 A. Coaching form.

2 Q. Had he been on coaching forms?

3 A. Not that I can remember. Definitely not for
4 there. Again, I don't issue coaching forms for clear
5 violations of policy. It's used on a termination.

6 Q. How was he stealing time?

7 A. He had another coworker drop him off at his
8 studio. He was trying to make an album, so they
9 basically went out together to do deliveries. The
10 other guy just dropped him off at his studio, did the
11 delivery and would come back and pick him up, and the
12 other guy told me -- you know, basically, "Do you know
13 where Cannon's at?" "No. I dropped him off at his
14 studio." So I called my DM. He said, "Yeah, let him
15 go." I called Cannon on his cell phone. I said, "I
16 need you to come back to the store." He came back to
17 the store. "I've got to let you go, man." He said,
18 "All right. I understand. Got it," and left.

19 Q. And who was that district manager?

20 A. Daniel Kober, the guy we have now.

21 Q. Oh, okay. And what was Mr. Cannon using the
22 truck for then?

23 A. To go to the studio.

24 Q. So the use of the truck was having the

1 coworker drop him off?

2 A. Yes, sir.

3 Q. Did the coworker get disciplined at all?

4 A. No, I don't believe so. I don't remember a
5 hundred percent. I don't believe. I think at best it
6 was probably verbal, like, Don't drop coworkers off.
7 Don't let it get that far. But he did the right thing
8 and told us about it, so...

9 Q. And do you remember going back to the
10 meeting you had in your office on that Monday morning?

11 A. Yes, sir.

12 Q. You said that Ms. Kerr confirmed what had
13 happened. Do you remember how she had confirmed it?

14 A. I don't remember the exact words.

15 Q. Do you have any recollection of the essence
16 of what she had said?

17 A. That she had confirmed it. I remember --
18 again, it was three plus years ago. I don't remember
19 any -- most conversations I had three plus years ago
20 verbatim. I can tell you basically what the
21 conversation was. It's kind of ridiculous that I'm
22 being asked to this far from, but I don't remember. I
23 remember she did confirm that she took the vehicle. I
24 remember that she -- I told her she was terminated.

1 more detailed than the Coworker Handbook.

2 Q. And is the SOP, is that something that's
3 available for all employees to look at?

4 A. Absolutely. It's online.

5 Q. Through RACinet?

6 A. Yeah.

7 MR. SHULTZ: I'm going to mark Exhibit 2
8 here.

9 (EEOC Exhibit Number 2 was marked for
10 identification.)

11 (A brief recess was taken.)

12 Ready to go back on?

13 THE WITNESS: Sure.

14 BY MR. SHULTZ:

15 Q. We're back from a short break. Is there
16 anything you'd like to clarify or change about your
17 testimony so far today?

18 A. No, sir.

19 MS. QUINCY: Object to the form of the
20 question.

21 THE WITNESS: I'm sorry. No, sir.

22 BY MR. SHULTZ:

23 Q. And I've just handed you what's been marked
24 as Exhibit 2, which is EEOC 0102 through EEOC 0108.

1 If you could review that for me, please.

2 A. Yes, sir.

3 Q. And have you seen this document before?

4 A. Absolutely.

5 Q. And what is it?

6 A. It's our Coworker Handbook.

7 Q. And so when I asked you where the company

8 policy regarding truck use was, you described that

9 Coworker Handbook. Is this that document?

10 A. Yes, sir.

11 Q. And so if you look on page 22, it should be

12 that second page and it's double-sided.

13 A. Uh-huh.

14 Q. So it says -- this is in the Standards of

15 Conduct section.

16 A. Sure.

17 Q. And the sentence before the bullet point

18 starts says, "Failure to comply with any of the below

19 may be cause for disciplinary action, up to and

20 including termination from employment." Do you see

21 that?

22 A. Absolutely.

23 Q. And then there are several offenses, or

24 standards of conduct, I should say, in these various

WELCOME TO



COWORKER HANDBOOK

FEBRUARY 2014

EXHIBIT
EEOC 2
LHP 3-7-17
PENGAD 800-631-6989

Standards of Conduct

RAC coworkers are expected to know and adhere to RAC's policies and procedures related to Standards of Conduct. As a RAC coworker, you are required at all times to use your best efforts to perform assigned tasks promptly and efficiently and to be courteous and impartial in dealing with customers and coworkers. In general, we strive to create a pleasant and safe work environment for the benefit of coworkers and customers. To accomplish this, certain conduct on the part of coworkers is prohibited. The following list is not all-inclusive, but represents examples of unacceptable coworker conduct. Failure to comply with any of the below may be cause for disciplinary action up to and including termination from employment.

- Willful disregard of Company EEO policies relating to harassment (including sexual harassment), discrimination, or retaliation
- The use of profanity, words that denigrate, racial or gender slurs, criticism of national origin, ethnicity or sexual preferences, criticism of religious beliefs, or comments used to make another person feel uncomfortable. This includes threatening, coercing, or intimidating other coworkers or customers or directing profane, abusive, insulting, or threatening language at a manager, member of management, customer, coworker, or visitor
- Engaging in or requesting sexual favors with customers in exchange for merchandise or services
- Immoral or indecent conduct while on duty or on Company property, including conduct that discredits you or RAC
- Conducting formal or informal meetings with adult entertainment or at adult entertainment establishments
- Willful disregard of labor laws (such as overtime regulations – including working coworkers off the clock, falsification of the hours worked or falsifying any timekeeping record)
- Failure to report any acts of theft or fraud
- Falsification, misrepresentation or omission of facts in discussions or in writing, (e.g. employment application, performance report, rental agreement, customer's identity, etc.)
- Unauthorized access to or disclosure of any confidential or proprietary information of the Company, its customers or coworkers; with the exception of discussions related to certain terms and conditions of employment (e.g. wages, hours, etc.)
- Failure to cooperate with a Company investigation or failure to cooperate with an investigation by law enforcement related to a crime against the Company
- Violation of cash handling/cash management policies. Under no circumstances may RAC coworkers use their personal money (e.g. cash, credit card, check, etc.) to pay on a customer's account or balance the drawer, etc.
- Failure to protect customer information, which includes credit card information or any other form of personally-identifiable customer information (e.g. social security number, date of birth, etc.). Credit card information cannot be retained in any form (e.g. notepad, binder, the High Touch system, etc.). Customer information must never be thrown in the trash but rather disposed of according to Company policy (e.g. Iron Mountain shredding bin)
- Accepting money or considerations for Company goods or services for personal gain
- Using Company property (including Company vehicle) for personal use
- A coworker's absence for two consecutive working days without notifying the manager or two occurrences of absence without notifying the manager within a 12 month period or being excessively tardy or absent or failing to follow work schedules
- Sleeping during scheduled work periods

- Engaging in any work stoppage, slowdown, walkout, cessation of work or any other activity designed to restrict or delay the production, shipment, delivery or receipt of goods or services by the Company
- Refusal or failure to carry out a directive of a manager except where compliance may result in a violation of law or Company policy or jeopardize your health or safety or the health or safety of others
- Destruction of Company property or that of visitors, customers, or coworkers
- Reporting to work under the influence of alcohol or illegal drugs, including marijuana (medical or otherwise), as well as consuming alcohol or illegal drugs, including marijuana (medical or otherwise), on Company time or Company property or failure to pass any drug screen
- Commission of any criminal offense (other than a minor traffic violation) while on duty or on Company property, or commission of any criminal offense which might adversely affect the coworker's work or work relationships or the Company's business or reputation
- General neglect of or failure to follow safety rules and procedures
- The unsafe operation of equipment or vehicles in a negligent manner
- Bringing potentially hazardous or dangerous items on Company property, such as firearms (unless permitted by law), weapons, chemicals, explosives, etc.
- Violence or engaging in threats of violence in the workplace
- Violation of Company practices, policies and/or procedures
- Any violation of any local, state, or federal debt collection law including entering the home of any customer where an adult is not present
- Using a concealed recording device while at work or while conducting RAC business without the consent of the individual(s) being recorded

Attendance

We need you here! You are important to the overall success of our operations. That is why you were hired! When you are not here, RAC stores and customers may not get the service they expect and deserve, and your coworkers must pick up the slack and take care of your responsibilities.

Our expectations for attendance are really simple and just common sense. All coworkers are expected to report for work on time and complete their scheduled shift. Obviously, there are some instances of time off that are understood and can be managed with the proper manager approval (e.g. family/medical leave, sick/personal time off, vacation, holiday, bereavement leave, jury duty, or other approved leaves of absence). However, other unscheduled, unapproved time away from work is a problem for the Company and may affect your employment with RAC.

If you are unable to make your shift, or need to leave early, show your manager and coworkers the respect they deserve, and notify your manager as far in advance as possible so coverage of your job can be planned while you are away. Coworkers are expected to contact their manager directly if they cannot report to work. Leaving your manager a voicemail message or text message should be followed up with timely, direct communication.

This policy defines realistic attendance expectations. For purposes of these guidelines, examples of attendance violations include:

- Repeated incidences of tardiness, which is defined as arriving to work late five (5) or more minutes after scheduled start time

Equal Employment Opportunity and Ethical Business Practices

Rent-A-Center Prohibits Discrimination, Harassment and Retaliation

RAC is committed to equal employment opportunity and will not discriminate or harass any coworker or applicant for employment on the basis of gender, race, color, religion, national origin, age, marital status, disability, sexual orientation or any other status or trait protected by law. As such, as an equal opportunity employer, RAC is also committed to having no employment-related decision made based on gender, race, color, religion, national origin, age, marital status, disability, sexual orientation, or any other status or trait protected by law. This includes, but is not limited to, decisions on hiring, transfers, promotions, job assignment, and discipline. Non-merit or non-business factors do not affect employment-related decisions. RAC further prohibits retaliation against individuals who report discrimination or harassment in the Company's workplace.

RAC maintains a no-tolerance policy concerning discrimination or harassment. Discrimination and harassment (including sexual harassment) is against the law and against RAC policy, whether it involves harassment by coworkers, by a manager, or by persons doing business with or for the Company such as customers or vendors. Further, it is against RAC policy for males to sexually harass females or other males, and for females to sexually harass males or other females. The following is a partial list of prohibited conduct:

- Unwanted sexual advances
- Offering employment benefits in exchange for sexual favors
- Making or threatening reprisals after a negative response to sexual advances
- Visual conduct, e.g. leering, making sexual gestures, displaying sexually suggestive objects or pictures, cartoons, posters, or pornography
- Verbal conduct, e.g. making or using derogatory comments, epithets, slurs, sexually explicit jokes, sexually degrading words or comments about a coworker's body or dress, or verbal sexual advances or propositions, or reading or writing suggestive or obscene letters, notes or invitations
- Physical conduct, e.g. touching, assaulting, impeding or blocking movements
- Conducting formal or informal meetings with adult entertainment or at adult entertainment establishments

Open Door Reporting Policy

At Rent-A-Center we value direct and open communication between all coworkers. Therefore, we maintain an Open Door Reporting Policy. The Open Door Reporting Policy provides all coworkers with several alternative reporting procedures. We not only encourage open communication within Rent-A-Center, but we believe all coworkers have a responsibility to report suspected violations of our policies. Therefore, if you have any concerns of discrimination or harassment in the workplace, please promptly contact

- your immediate manager, or District Manager, or Regional Director, or
- you may also contact the Coworker Relations Hotline at (800) 675-0825, or
- for those who feel uncomfortable reporting concerns directly to Company management or Coworker Relations, we also have a Compliance Hotline operated by an outside company, Global Compliance Services. Coworkers contacting this external Hotline are not required to identify themselves. The toll free Compliance Hotline number is (866) 480-6135.

RAC will complete a prompt, fair and objective investigation and will endeavor to protect the privacy and confidentiality of all parties involved to the extent possible, consistent with a

thorough investigation. If it is determined that discrimination or harassment of any kind has occurred, corrective action, commensurate with the circumstances, will be taken, up to and including termination. Appropriate action will also be taken to deter any future discrimination or harassment concerns. A coworker who engages in sexual harassment, sex discrimination, or other harassment or discrimination may be held personally liable for monetary damages should a lawsuit be filed. Rent-A-Center prohibits retaliation against anyone who reports sexual harassment, sex discrimination or any other harassment and discrimination, or other violations of Company policy, or who participates in an investigation of such reports. In addition, the local state and federal employment discrimination agencies that enforce the laws against sexual harassment and discrimination in California, Maine, Massachusetts, Rhode Island, and Vermont can be contacted at the phone numbers and addresses listed in Appendix B. Using the reporting procedures which are contained in this Handbook does not prevent coworkers from filing a complaint with a federal or state agency.

Ethics and Business Practices

RAC wishes to operate according to the highest ethical and legal standards possible. As such, RAC has established a "Code of Business Conduct and Ethics," designed to help reduce the risk of unethical and illegal conduct by providing a broad overview of basic and ethical principles that guide our conduct. In brief, we expect all coworkers of Rent-A-Center to commit to maintaining an environment free of fraud, theft, embezzlement, misuse of Company assets and unsafe working conditions. In addition, other potential ethical issues include, but are not limited to, falsification of Company records, insider trading, accounting or auditing irregularities, conflicts of interest, bribery, kickbacks, or suspected violations of regulatory compliance. Although the Code of Conduct cannot anticipate every ethical or legal issue that may arise, nor is it feasible to attempt to define a course of action for every situation, coworkers should apply the basic principles of honesty, fairness, integrity, and compliance with the law. All coworkers are responsible for knowing and understanding the Code of Conduct. For additional information regarding the Code of Conduct, please see the document in its entirety on RACINET.

Coworkers can report suspected violations of the Company's Code of Conduct, state or federal laws or regulations several different ways. Coworkers can email the Compliance Officer at RAC.Board@rentacenter.com, call 1-972-624-6210 or send a written report to the Field Support Center, Attention: Compliance Officer. Additionally, coworkers can call the Company's Compliance Hotline at (866) 480-6135 (also see the Open Door Reporting Policy above).

Accommodations for Disability and Religion

Rent-A-Center is committed to providing equal opportunities for qualified coworkers and job applicants in accordance with federal and state laws.

An otherwise qualified person with a disability is defined as any person who has a physical or mental illness or impairment that substantially limits one or more major life activity, who has a record of such impairment, or is regarded as having such impairment, but is capable of performing the essential functions of a particular job with or without a reasonable accommodation. A qualified individual with a disability is a person who meets legitimate background, skill, experience, education, and/or other requirements of an employment position that he or she holds or seeks, and who can perform the essential functions of the position with or without reasonable accommodations.

RAC will make a reasonable accommodation for qualified individuals with a disability unless the accommodation would impose an undue hardship. Reasonable accommodation means any change or adjustment to a job or work environment that permits a qualified applicant or coworker with a disability to participate in the job application process, to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by

coworkers without disabilities. Job applicants seeking a reasonable accommodation are directed to contact the RAC Coworker Relations' toll free Hotline at 800-675-0825. Coworkers seeking accommodations must make the request to their supervisor and to the Coworker Relations Department by calling the toll free Hotline at 800-675-0825. Supervisors who are notified of a request for accommodation must immediately forward the request to the Coworker Relations Department.

Once the Coworker Relations Department receives a request for accommodation, a Coworker Relations Representative will analyze the request by speaking to the individual requesting the accommodation to obtain and share information about the request and his or her specific needs, in order to aid in the determination of a reasonable accommodation. This interactive process may require additional documentation that describes the disability, the assessment of any and all restrictions, and discussions with supervisors, in order to evaluate possible accommodations and the feasibility of proposed accommodations. All requests for accommodations will be considered and resolved on a case by case basis.

RAC is also committed to supporting equality of employment including embracing religious diversity. As part of this commitment, RAC will make good faith efforts to provide a reasonable accommodation for an applicant's or coworker's sincerely-held religious belief, unless RAC determines that the accommodation would create an undue hardship. All requests for a religious accommodation should be directed to the supervisor and the Coworker Relations Department by calling the toll free Hotline at 800-675-0825. Supervisors must forward all requests for an accommodation to the Coworker Relations Department. Once a request for accommodation is received by the Coworker Relations Department, a Coworker Relations Representative will contact the individual making the request and engage in a dialogue in order to assess the request and the possible accommodation. All requests for accommodations will be considered on a case by case basis.

Safety and Other Workplace Policies

The safety and well-being of Company coworkers and customers is extremely important to RAC. We take reasonable steps to maintain a workplace free from hazards and perils. At the same time, we need every coworker's help. All coworkers are expected to follow all Company safety and loss prevention policies and procedures at all times. Additionally, if coworkers see anything in the workplace that they believe to be a safety, security, or other hazard to their well-being, they are responsible for immediately reporting their concern to a member of management. Since failure to follow the Company's health and safety rules is such a serious risk, such failure can result in disciplinary action up to and including termination.

Coworker Safety Practices

A good safety record is the result of safe working conditions and following appropriate safety policies and procedures combined with common sense. RAC coworkers must follow these general safety guidelines at all times:

- RAC store coworkers must complete the required safety training within the first 30 days of employment
- Sound judgment and safe practices are to be exercised in the work habits of all coworkers
- Personal safety protection equipment must be used when required by Company policy
- Equipment is only to be operated by those authorized as a result of their knowledge, training, and experience
- Guards and other safety devices installed over the point of operation, moving parts, power transmission, or electrical connections must be in place at all times
- Fire protection and prevention practices are responsibilities shared by all RAC coworkers. These include the clearance of passage aisles and doorways, proper storage of flammable materials, and control of smoking and open flames, which must be complied with at all times
- All coworkers are expected to comply with the laws, rules, and regulations concerning safe practices as published by RAC and by governmental agencies having jurisdiction over such matters
- Your job may have additional safety guidelines which are established for your protection and the protection of others. If so, you will be required to know and follow them carefully.

Equipment Operation

Before operating equipment for the first time, you must have the approval of your manager. Follow all instructions carefully! Familiarize yourself with all safety and operating features of the equipment. If there is a mechanical problem, notify your manager immediately; do not make repairs without authorization.

*** Vehicle Operation**

Only authorized coworkers may operate vehicles for the purpose of conducting RAC business, including personal vehicles and Company-owned vehicles. Company-owned vehicles may not be used for personal business or occupied by any family members, friends, or other unauthorized persons at any time. RAC coworkers must display safe driving habits and not speed or drive recklessly.

Compliance with all local, state, and federal traffic laws is required. Failure to do so will result in discipline up to and including termination. Coworkers that disregard traffic laws may be financially responsible for moving violations they receive while operating company-owned vehicles.

Exhibit I

Jason Carnahan Declaration

DECLARATION OF JASON CARNAHAN

I, Jason Carnahan, do hereby swear, affirm and attest as follows, based upon my personal knowledge of the matters contained herein:

1. I am over 18 years of age and competent to testify to the matters stated in this declaration. I make this declaration based upon my personal knowledge.

2. I am currently employed as the District Manager ("DM") of District No. 121 for Rent-A-Center ("RAC"). I have not been promised any benefit, coerced or threatened in any manner in exchange for the testimony in this declaration. I also understand that I was under no obligation to speak with RAC's attorney. I chose to speak to RAC's attorney voluntarily. I also understand that RAC may use the information I provide to defend against claims made by former RAC employee Megan Kerr to the U.S. Equal Employment Opportunity Commission with respect to her claims of gender discrimination and harassment.

3. I currently oversee seven stores in Illinois: Streator, Pontiac, Rantoul, Champaign, Mattoon, and two stores in Decatur. My office is located at the Streator location. I am responsible for, among other things, enforcing and implementing company policies, assisting stores with growth, and helping to train and develop management and non-management employees.

4. I have worked for RAC on and off since December 1999 in various capacities, including as a Customer Account Representative, Assistant Store Manager, Store Manager and now District Manager.

5. Former Store Manager Russell Kasper once reported to me while working at Store No. 319 in Rantoul, Illinois. In or around March 2013, former Assistant Store Manager Jason Kerr informed RAC that he was changing his name (Jason Kerr to Megan Kerr) and gender (male to female). In or around October 2013, Ms. Kerr complained to me that Mr. Kasper had told unidentified RAC customers that she used to be a male. Ms. Kerr did not complain of discrimination or harassment. I immediately addressed this with Mr. Kasper and gave him verbal coaching. Mr. Kasper denied making this comment. Ms. Kerr made no further complaints about Mr. Kasper, this issue, or any other concerns after I addressed this incident.

6. I never witnessed or heard Mr. Kasper make any inappropriate, harassing or discriminatory comments or jokes to or about Ms. Kerr.

7. On February 13, 2014, Jason Morris replaced Mr. Kasper as the Store Manager for Store No. 319. Mr. Kasper's last day of employment with RAC was December 2, 2013.

8. On Sunday, July 20, 2014, Mr. Morris contacted me by phone and reported that Ms. Kerr had taken a RAC vehicle for personal use during non-business hours, which is an automatically terminable offense. During our discussion, we both agreed that Ms. Kerr should be terminated for violating Company policy (i.e., using a company vehicle for personal reasons). Neither of us made any mention of Ms. Kerr's gender or gender change.

9. RAC's insurance does not cover vehicles used during non-business hours for non-business reasons. Thus, Ms. Kerr's use of the RAC vehicle on July 20, 2014 put the Company in serious risk if someone had been injured or property damaged during her improper use of the vehicle.

10. It is my understanding that Mr. Morris confronted Ms. Kerr the following day, Monday, July 21, 2014, regarding her use of the RAC vehicle for personal reasons. During this conversation, Ms. Kerr admitted that she had taken the RAC vehicle on July 20, 2014 for personal reasons. As a result, Mr. Morris informed Ms. Kerr that she was terminated for violating Company policy, effective July 21, 2014. It is my understanding that

Ms. Kerr simply stated, "Okay, thank you," and left the store. She did not put up an argument or try to defend herself. Ms. Kerr did not complain of discrimination or harassment during this discussion.

11. I never witnessed or heard Mr. Morris make any inappropriate, harassing or discriminatory comments or jokes to or about Ms. Kerr. No RAC employee has ever complained to me about Mr. Morris treating them in a discriminatory or harassing manner.

12. I have never heard or witnessed any RAC employees make any inappropriate, harassing or discriminatory comments or jokes about Ms. Kerr or any other RAC employee.

13. To my knowledge, Ms. Kerr never complained of discrimination or harassment during her employment at RAC.

14. Ms. Kerr was not treated differently because of her gender or for any other reason.

15. I have never felt that anyone at RAC has treated me differently because of my gender or for any other reason.

16. I understand that I am not required to provide the testimony in this declaration. I further understand that it would be a violation of RAC's policy for anyone to retaliate against me for providing or refusing to provide the testimony in this declaration. I have agreed to notify RAC immediately if I ever believe I am being subjected to any retaliation in violation of the Company's policies.

17. Prior to signing this declaration, I was provided with a full opportunity to carefully review this declaration and freely make any corrections and additions of any kind. I verify that the information I have provided in this declaration is true and correct.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 12/15/15


Jason Carnahan

Exhibit J

Jason Morris Declaration

DECLARATION OF JASON MORRIS

I, Jason Morris, having a business address of [REDACTED] Rantoul, Illinois 61866, do hereby swear, affirm and attest as follows, based upon my personal knowledge of the matters contained herein:

1. I am currently employed as a Store Manager ("SM") for Rent-A-Center ("RAC") at Store No. 319. I am over 18 years of age and competent to testify to the matters stated in this declaration. I make this declaration based upon my personal knowledge.

2. I have not been promised any benefit, coerced or threatened in any manner in exchange for the testimony in this declaration. I also understand that I was under no obligation to speak with RAC's attorney. I chose to speak to RAC's attorney voluntarily. I also understand that RAC may use the information I provide to defend against claims made by former RAC employee Megan Kerr to the U.S. Equal Employment Opportunity Commission with respect to her claims of gender discrimination and harassment.

3. In February 2014, I replaced SM Russell Kasper as the store manager for Store No. 319. As a store manager, I am responsible for, among other things, running the store and driving sales. Former Assistant Store Manager Megan Kerr reported to me from February 13, 2014 until her termination on July 12, 2014 for using a company vehicle for personal reasons – a direct violation of Company policy. My direct supervisor is District Manager Jason Camahan.

4. I have never made any inappropriate, harassing or discriminatory comments or jokes to or about Ms. Kerr. Likewise, I have never heard or witnessed any RAC employees make any inappropriate, harassing or discriminatory comments or jokes to or about Ms. Kerr. Doing so is a direct violation of Company policy. Discrimination or harassment of any sort is strictly prohibited by RAC. The Company maintains a no tolerance policy and finds discrimination and harassment is both against the law and RAC policy whether it involves harassment by coworkers, by a manager, or by persons doing business with, or for, RAC. If RAC determines that discrimination or harassment of any kind has occurred, it will take immediate corrective action, commensurate with the circumstances, up to and including termination, and will also act to deter any future discrimination or harassment concerns.

5. RAC values direct and open communication between all coworkers. Therefore, it maintains an Open Door Reporting Policy. This policy provides RAC employees with several alternative reporting procedures, including reporting any concerns of discrimination or harassment to: (1) their immediate supervisor, District Manager, or Regional Director; (2) the Coworkers Relations Hotline; or (3) the third-party Compliance Hotline. RAC encourages that all coworkers have a responsibility to report suspected violations of its policies. In addition to its Coworker Handbook, RAC utilizes an Open Door Poster to alert employees to this resource.

6. RAC's Vehicle Operation policy specifically states: "Company-owned vehicles may not be used for personal business or occupied by any family members, friends, or other unauthorized persons at any time." It further provides that failure to abide by this policy will result in discipline up to and including termination.

7. On Saturday, July 19, 2014, I noticed that Ms. Kerr was acting unusual. She made several requests to go out on deliveries alone even though the a Customer Account Representatives, who was responsible for deliveries, was at work. At the time, I was aware that Ms. Kerr had been evicted from her place of residence and suspected that she was using one of the company vehicles to move personal items – a clear violation of Company policy.

8. My suspicion prompted me to drive by Store No. 319 on Sunday, July 20, 2014, to check on the RAC vehicles. The store was closed that day. At the time, two vehicles (a cube-shaped moving truck and a moving van) should have been in the parking lot. When I arrived at the store, I found the RAC moving truck missing from the parking lot and Ms. Kerr's personal vehicle (a tan car) parked at the store. To document this violation, I took a date-stamped picture of the parking lot. That day, I also picked up then-RAC Customer Account Representative Brock Duncan-Fox to help me search for Ms. Kerr and the missing RAC moving truck. Despite our efforts, we were unable to locate Ms. Kerr or the RAC truck. That day, July 20, 2014, I called DM Carnahan to report this incident. We both agreed that Ms. Kerr should be terminated for violating Company policy (i.e., using a company vehicle for personal reasons).

9. The RAC vehicle in question is large enough to fit living room sets and a washer and dryer. Ms. Kerr's use of the Company vehicle for personal reasons was not only a violation of Company policy, but it also placed RAC at risk, since our insurance does not cover our vehicles during non-business hours for non-business related use.

10. The following morning, Monday, July 21, 2014, I confronted Ms. Kerr. I asked Ms. Kerr if she had used the RAC moving truck for personal reasons that weekend, including moving her belongings from her place of residence to a new location. Ms. Kerr admitted that she had done so. I then informed Ms. Kerr that she was terminated for violating Company policy, effective July 21, 2014. In response, Ms. Kerr simply stated, "Okay, thank you," and left the store. During this conversation, Ms. Kerr did not complain of discrimination or harassment. During the time period Ms. Kerr reported to me, she never complained to me about discrimination or harassment based on her gender or otherwise. Further, to my knowledge, despite being aware of RAC's Open-Door Reporting Policy, Ms. Kerr never called RAC's Coworker Relations to report any issues during her nine-year tenure with the Company.

11. Ms. Kerr never returned the keys to the RAC vehicle.

12. Ms. Kerr was not treated differently because of her gender or for any other reason.

13. I have never felt that anyone at RAC has treated me differently because of my gender or for any other reason.

14. I understand that I am not required to provide the testimony in this declaration. I further understand that it would be a violation of RAC's policy for anyone to retaliate against me for providing or refusing to provide the testimony in this declaration. I have agreed to notify RAC immediately if I ever believe I am being subjected to any retaliation in violation of the Company's policies.

15. Prior to signing this declaration, I was provided with a full opportunity to carefully review this declaration and freely make any corrections and additions of any kind. I verify that the information I have provided in this declaration is true and correct.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 12-15-2015



Jason Morris

Exhibit K

Defendant's Response to Interrogatory No. 11

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

vs.

RENT-A-CENTER EAST, INC.,

Defendant.

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NO. 2:16-CV-02222-CSB-EIL

**DEFENDANT’S RESPONSE TO
PLAINTIFF’S FOURTH SET OF INTERROGATORIES**

TO: Plaintiff, U. S. Equal Employment Opportunity Commission, by and through its attorneys of record, Miles Shultz, Justin Mulaire, John C. Hendrickson, Gregory M. Gochanour, 500 West Madison Street, Suite 2000, Chicago, IL 60661.

Pursuant to the Federal Rules of Civil Procedure, Rent-A-Center East, Inc. (“Defendant”) submits the following response to Plaintiff U.S. Equal Employment Opportunity Commission’s Fourth Set of Interrogatories.

GENERAL OBJECTIONS

The responses which follow remain subject to any and all objections and exceptions and motions in limine which may apply, or which may be noted in each response. Defendant does not waive, but rather reserves the right to raise and rely upon any objections in addition to those herein stated and to assert exceptions and motions in limine regarding the answers made herein prior to or at the time of trial. Defendant also objects to any Interrogatory to the extent the Interrogatory seeks documents protected by the attorney-client privilege and work-product doctrine. Further, Defendant objects to the extent that the instructions, definitions, and/or interrogatories impose obligations upon Defendant in excess of those of the applicable Federal

**DEFENDANT'S RESPONSE TO PLAINTIFF'S
FOURTH SET OF INTERROGATORIES**

INTERROGATORY NO. 11

For each employee who used a Rent-A-Center vehicle to drive Gregory Cannon to a non-work location, state the following:

- (a) The employee's full name and last known address;
- (b) Current position at RAC or termination date;
- (c) Reason for termination; and
- (d) Name of all employees involved in the decision making process to terminate this employee.

ANSWER: Defendant objects to Interrogatory No. 11 on the grounds that it is not relevant to any party's claim or defense and not proportional to the needs of the case. Subject to and without waiving the foregoing objection, and subject to the agreed protective order entered in this matter, Defendant responds as follows:

Matthew Hawley was terminated by Dan Kober on January 31, 2011 for absenteeism and tardiness. He was not terminated at the time of the incident involving Mr. Cannon because Mr. Hawley immediately reported the incident, was a new employee who was directed to drive the more senior employee to the destination, and took responsibility for his actions. Mr. Hawley's last-known address is 317 N. Corona Dr., Bellevue, Illinois 61604.

Respectfully submitted,

RENT-A-CENTER EAST, INC.



One of Its Attorneys

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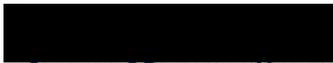
Andrew Trusevich
Texas Bar No. 00785119
RENT-A-CENTER, INC.
5501 Headquarters Drive
Plano, Texas 75024
972.801.1465

Dated: May 8, 2017

CERTIFICATE OF SERVICE

I, Brad Spalding, an attorney, certify that I served the attorney of record named below with a copy of Defendant's Response to Plaintiff's Fourth Set of Interrogatories via e-mail and certified mail, return receipt requested, on May 8, 2017:

Justin Mulaire
Miles Shultz
U.S. Equal Employment Opportunity Commission
500 West Madison Street, Suite 2000
Chicago, IL 60661
(312) 869-8045
justin.mulaire@eeoc.gov



J. Bradley Spalding

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

vs.

RENT-A-CENTER EAST, INC.,

Defendant.

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NO. 2:16-CV-02222-CSB-EIL

VERIFICATION

My name is Jason Carnahan. I am a store manager for Rent-A-Center, Inc. I have read Defendant's Response to Plaintiff's Fourth Set of Interrogatories and know the contents thereof; the responses are true and correct and based on my personal knowledge or based on information I received or reviewed, or as to those matters stated upon information and belief, and as to such matters I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 3 day of May, 2017


Jason Carnahan

Exhibit L

Roger Harding Deposition

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

U.S. EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)
)
Plaintiff,)
) No. 16-CV-2222
vs.) Judge Colin S. Bruce
)
RENT-A-CENTER EAST, INC.,) Magistrate Judge
) Eric I. Long
Defendant.)

DEPOSITION OF ROGER HARDING
TAKEN ON BEHALF OF THE PLAINTIFF
ON MAY 22, 2017

REPORTER: LINDA HANAGAN, RPR, IL-CSR No. 084-002846

1 A. About 50 minutes.

2 Q. And you formerly worked at Rent-A-Center,
3 right?

4 A. Correct.

5 Q. And do you remember when you left
6 Rent-A-Center?

7 A. Yes. I have the date in my head.

8 Q. When? Does July of 2012 sound --

9 A. Yes.

10 Q. Does that refresh your recollection?

11 A. Yes.

12 Q. And how long had you worked at Rent-A-Center?

13 A. Seven and a half years.

14 Q. And did you work with Jason Kerr when you were
15 at Rent-A-Center?

16 A. Yes.

17 Q. And you know Jason Kerr transitioned to Megan
18 Kerr?

19 A. Yes.

20 Q. And how do you know that?

21 A. I just heard through the grapevine.

22 MS. QUINCY: For the record, I don't think
23 the date you gave as his date of termination is
24 correct. I think it was July 2013. I could be wrong.

25 THE WITNESS: I knew it was July. I

1 Q. And do you know Jason Carnahan?

2 A. Him, I do not.

3 Q. And you were terminated from Rent-A-Center, is
4 that right?

5 A. Yes.

6 Q. Could you describe the circumstances under
7 which you were terminated?

8 A. I ran a customer in Champaign. The day
9 before, my motorcycle seat was actually stolen, and
10 the following day, there was a poker run that I took
11 the day off for. But I called the Harley place. They
12 had a seat. They said I could come get it. I ran the
13 person in Champaign, ran over there, picked up the
14 seat, came back to the store and was terminated.

15 Q. And you said a poker run. What's a poker run?

16 A. It's where you -- a whole bunch of people ride
17 motorcycles, and they go from place to place and pick
18 a card.

19 Q. Oh, okay. So you needed a seat to go on the
20 poker run?

21 A. Yes.

22 Q. And you went to the Harley store with a
23 Rent-A-Center truck?

24 A. Yes.

25 Q. And that was during work hours?

1 A. Yes.

2 Q. And was anyone else with you?

3 A. Michael Moreland.

4 Q. And he was also a Rent-A-Center employee?

5 A. Yes.

6 Q. And so what was the process of getting
7 terminated from Rent-A-Center after that incident?

8 A. I got back to the store, and I cannot remember
9 the district manager's name at the time. He called
10 me, asked me if I went there. I said yes, and he
11 said, "That's a question of your integrity and we're
12 gonna have to let you go."

13 Q. And that was on the same day when you returned
14 from the Harley store --

15 A. Yes.

16 Q. -- at the Rent-A-Center shop?

17 A. Yes.

18 MS. QUINCY: If you can let Miles finish
19 his questions, she'll be much happier with us.

20 Q. (MR. SHULTZ CONTINUING) You're doing great.
21 That was, I think, the first time so far.

22 And do you know if Mr. Moreland was
23 disciplined or terminated as a result of that?

24 A. No.

25 Q. No, you don't know or, no, he wasn't?

1 A. No, he wasn't.

2 Q. Do you know when Mr. Moreland left
3 Rent-A-Center's employ?

4 A. He had already put in his two week's notice.
5 I think it was either a week to two weeks prior to me
6 getting terminated.

7 Q. Do you know why he resigned from
8 Rent-A-Center?

9 A. He was going back to AutoZone.

10 Q. The AutoZone across the street?

11 A. Yes.

12 Q. And while you were -- when you were
13 terminated, was Russell Casper your store manager?

14 A. Yes.

15 Q. And did Mr. Casper ever write you up or
16 discipline you for anything?

17 A. Yes.

18 Q. And do you remember -- well, how many times?

19 A. I think once.

20 Q. And do you remember when that was?

21 A. It was three weeks prior to me getting
22 terminated.

23 Q. And what were the circumstances for that?

24 A. Going to Eleena's house and kind of getting
25 into it with her.

Exhibit M

Defendant's Response to Interrogatory No. 10

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

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

Plaintiff,

vs.

RENT-A-CENTER EAST, INC.,

Defendant.

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NO. 2:16-CV-02222-CSB-EIL

**DEFENDANT’S RESPONSE TO
PLAINTIFF’S THIRD SET OF INTERROGATORIES**

TO: Plaintiff, U. S. Equal Employment Opportunity Commission, by and through its attorneys of record, Miles Shultz, Justin Mulaire, John C. Hendrickson, Gregory M. Gochanour, 500 West Madison Street, Suite 2000, Chicago, IL 60661.

Pursuant to the Federal Rules of Civil Procedure, Rent-A-Center East, Inc. (“Defendant”) submits the following response to Plaintiff U.S. Equal Employment Opportunity Commission’s Third Set of Interrogatories.

**DEFENDANT'S RESPONSE TO PLAINTIFF'S
THIRD SET OF INTERROGATORIES**

INTERROGATORY NO. 10

For each employee who used a Rent-A-Center vehicle to drive Roger Harding to a non-work location, state the following:

- (a) The employee's full name and last known address;
- (b) Current position at RAC or termination date;
- (c) Reason for termination; and
- (d) Name of all employees involved in the decision making process to terminate this employee.

ANSWER:

Defendant objects to Interrogatory No. 10 on the grounds that it is not relevant to any party's claim or defense and not proportional to the needs of the case. Subject to and without waiving the foregoing objection, and subject to the agreed protective order entered in this matter, Defendant responds as follows:

Michael Moreland resigned his employment sometime in late June or early July 2012. His last day of employment was the same day that Mr. Harding was terminated. Mr. Moreland had provided his notice of resignation before the incident described in this interrogatory. Mr. Moreland's address is included in Defendant's Second Supplemental Disclosure.

Respectfully submitted,

RENT-A-CENTER EAST, INC.

A large black rectangular redaction box covers the signature area of the document.

One of Its Attorneys

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972.801.1465

Dated: April 24, 2017

CERTIFICATE OF SERVICE

I, Brad Spalding, an attorney, certify that I served the attorney of record named below with a copy of Defendant's Response to Plaintiff's Third Set of Interrogatories via e-mail and certified mail, return receipt requested, on April 24, 2017:

Miles Shultz
Justin Mulaire
John C. Hendrickson
Gregory M. Gochanour
U.S. Equal Employment Opportunity Commission
500 West Madison Street, Suite 2000
Chicago, IL 60661



J. Bradley Spalding

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

vs.

RENT-A-CENTER EAST, INC.,

Defendant.

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NO. 2:16-CV-02222-CSB-EIL

VERIFICATION

My name is Jason Carnahan. I am a store manager for Rent-A-Center, Inc. I have read Defendant's Response to Plaintiff's Third Set of Interrogatories and know the contents thereof; the responses are true and correct and based on my personal knowledge, except as to those matters stated upon information and belief, and as to such matters I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19 day of April, 2017

[Redacted signature area]

Jason Carnahan

(Handwritten signature)

Exhibit N
April 26, 2017, Hearing Transcript

1 do you think what was in the motion is sufficient?

2 MR. SHULTZ: I think what was in the motion is
3 sufficient. We have a few more witnesses that we've
4 identified that we need to depose; but, you know, I think
5 both parties agree that that doesn't, certainly, move the
6 dispositive motion or the jury trial. So I think we're
7 proceeding to meet that June 30 deadline to finish that,
8 and then I think we have a June 7th dispositive motion
9 deadline that can stay in place.

10 THE COURT: Okay.

11 MR. SHULTZ: Is that correct, Brad?

12 MR. SPALDING: I agree.

13 THE COURT: Yeah. I mean, obviously, it's a
14 little odd for me to see discovery close after the
15 dispositive motions deadline, so I assume that neither of
16 you think that those depositions are going to impact the
17 analysis of the dispositive motions?

18 MR. SPALDING: We don't, Your Honor; and I
19 haven't told Miles this yet, but we're not going to file
20 a motion for summary judgment in this case. And, just
21 for the record, that doesn't -- that's no comment on our
22 opinion on the merits of this case. It's just that we
23 think that there are enough fact issues in the case it
24 doesn't make sense to file a motion for summary judgment.

25 THE COURT: Okay. Okay. Mr. Shultz, I assume