

**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 RENT-A-CENTER EAST, INC.'S REPLY TO PLAINTIFF'S RESPONSE
TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

In opposition to summary judgment, the EEOC takes a scattershot approach, hoping that the sheer volume of irrelevant and inflammatory allegations will persuade the Court that a genuine fact issue exists, precluding summary judgment in favor of Defendant Rent-A-Center East, Inc. ("RAC"). The evidence relied upon by the EEOC, however, is not only immaterial to the issues, it also fails to meet basic requirements of reliability. The EEOC cannot escape that its own witnesses, including Megan Kerr ("Kerr"), offer numerous conflicting accounts of the basic facts. Under Seventh Circuit law, such internally inconsistent, wildly implausible evidence cannot serve to defeat summary-judgment. Even putting aside any evidence RAC has offered, the EEOC's case, judged solely on its own, fails as a matter of law.

Likewise, while the EEOC claims to use both direct and indirect evidence in opposing summary judgment, none of this evidence changes the outcome. The so-called direct evidence put forth by the EEOC consists of the testimony of an employee who was terminated seven months before Kerr, and accordingly (and admittedly) has no information about the decision to

terminate Kerr. In addition, the EEOC's two comparators fail to meet the similarly situated standard required in Title VII cases. For these reasons, summary judgment in favor of RAC is fully warranted.

II. RESPONSE TO PLAINTIFF'S ADDITIONAL MATERIAL FACTS

A. Undisputed Material Facts¹

1. Admit.
2. Admit.
9. Admit.
13. Admit.
14. Admit.
15. Admit.
17. Admit.
19. Admit.
20. Admit.
21. Admit.
22. Admit.
24. Admit.
25. Admit.
26. Admit.

B. Disputed Material Facts

23. Matthew Hawley ("Hawley") was not using a RAC truck to attend to his personal business. Rather, he was following the instructions of a senior employee. *See* ECF No. 42 at ex. K.

¹ Defendant "admits" facts in this filing for purposes of summary judgment only.

C. Disputed Immaterial Facts

3. RAC admits that it employed Kerr from approximately May 2005 to July 2014. The evidence cited by the EEOC simply does not support the vague and sweeping generalizations that Kerr “was meeting RAC’s expectations,” that “she did her job,” and that “RAC did not have any issues with her.” *See* ECF No. 42 at ex. E, Leavengood Depo., at 43:5-10; *see also id.* at ex. H, Morris Depo., at 94:24-95:6. Regardless, these generalized statements of Kerr’s purported job performance have no bearing on the events leading to Kerr’s termination.

4. Jason Carnahan (“Carnahan”) never expressed disapproval of Kerr’s gender transition to Russell Kasper (“Kasper”) or anyone else. Exhibit 1, Carnahan Depo., at 120:1-4; *see also* Exhibit 2, Investigator Gloria Mayfield’s meeting notes with Megan Kerr dated 12/22/2015, p. 3, EEOC0042.

5. Carnahan never asked Kasper to find a way to fire Kerr, and Kerr’s transgender status and gender transition played no role in Kerr’s termination. Exhibit 1, Carnahan Depo., at 119:16-23.

6. Carnahan never pressured Kasper to come up with a basis to fire Kerr, and Kerr’s transgender status and gender transition played no role in Kerr’s termination. Exhibit 1, Carnahan Depo., at 119:16-23.

7. Carnahan never asked Kasper to find a basis to fire Kerr, and Kerr’s transgender status and gender transition played no role in Kerr’s termination. Exhibit 1, Carnahan Depo., at 119:16-23.

10. Carnahan testified that no delivery to or pickup from a customer has been made on a Sunday during his tenure with RAC. Exhibit 1, Carnahan Depo., at 51:14-52:5.

11. Rantoul Store Manager Jason Morris (“Morris”) did not schedule or approve any delivery to Amber Shumate (“Shumate”) on a Sunday. Exhibit 3, Morris Depo., at 86:24-87:21, 98:14-16; ECF 42 at ex. J, Morris Dec. at ¶¶ 7-8.

12. Morris did not schedule or approve any delivery to Shumate on a Sunday. Exhibit 3, Morris Depo., at 86:24-87:21, 98:14-16; ECF 42 at ex. J, Morris Dec. at ¶¶ 7-8.

16. Morris did not schedule or approve any delivery to Shumate on a Sunday. Exhibit 3, Morris Depo., at 86:24-87:21, 98:14-16; ECF 42 at ex. J, Morris Dec. at ¶¶ 7-8.

18. On Monday, July 21, 2014, Morris asked Kerr if she had used a RAC moving truck for personal reasons the prior weekend, including moving her belongings from her place of residence to a new location. After Kerr admitted she had done so, Morris informed Kerr that she was terminated for violating company policy. Kerr stated, “Okay, thank you,” and left the store. ECF 42 at ex. J, Morris Dec. at ¶ 10.

27. RAC admits that a private investigator working on behalf of RAC interviewed Shumate. RAC denies the remaining allegations concerning the private investigator’s purported inappropriate conduct, and further asserts that any such allegations are immaterial to any matter in dispute in this litigation. Moreover, Shumate has also accused EEOC investigator Gloria Mayfield of inappropriate behavior during their interview, stating that Mayfield was “extremely rude” and called Shumate a liar. Exhibit 4, Shumate Depo., at 73:16-75:10.

D. Undisputed Immaterial Facts

8. RAC admits that Carnahan put Kasper on a performance plan that called for deliveries to be increased from 14 to 22 over the course of three days. *See* ECF 42 at ex. G, Carnahan Depo., at 57:4-8. This was the last of many performance improvement plans RAC gave Kasper, set his goal at a number other similar stores easily made, and occurred over the busy holiday season.

28. RAC admits that this statement was made on April 24, 2017. However, this statement was made in the midst of discovery in this matter, and prior to important revelations concerning the inconsistencies with the EEOC's story in this case and before full analysis of Kerr's ever changing stories.

III. ARGUMENT

A. Plaintiff's Unreliable Witnesses Are Not Entitled to Credibility, Warranting Summary Judgment

The EEOC attempts to distract the Court from the central tenet of RAC's Motion for Summary Judgment – that the EEOC's story, when evaluated completely apart from RAC's evidence, falls short of providing the kind of minimally cohesive narrative that can be presented to a jury. The case hinges on the events of July 20, 2014. The parties agree that Megan Kerr used a RAC delivery truck on that day. They disagree as to whether she had permission to use the truck. Yet the evidence that EEOC presents on this key point is fatally flawed, as Kerr cannot even tell the same story about what exactly she had permission to do. Indeed, absent summary judgment, a jury would be subjected to **four** different stories from Kerr *herself* on the issue of what transpired on July 20, 2014:

- On August 18, 2014 (three months before she filed her EEOC Charge in November 2014), Kerr told the Illinois Department of Economic Security that she

used the truck on July 20, 2014 to move “homeless people from the shelter into a home,” that the “organization” was affiliated with a church, and that Goodwill was involved in the project. *See* ECF 36 at ex. 4, RAC 000466.

- Kerr’s story then pivoted to claiming that the move was to assist a “dislocated family,” with references to church affiliation or Goodwill dropping out. *See* ECF 36 at ex. 2, no. 4.
- Kerr’s deposition testimony changed the story completely. Now, Kerr testified that the move was the result of a “commitment” by Russell Kasper, who promised Amber Shumate that when she was ready, RAC would move her merchandise from “storage” to her house – a story, incidentally, at odds with the testimony of both Kasper and Shumate. *See* ECF 36 at ex. 3, Kerr Depo., 27:8-21, 30:17-22.
- Kerr then stated that the local order of the Masons – not previously mentioned in this story – bought the furniture in question for Shumate and helped Shumate find housing – a story again refuted by the two other central players, Shumate and the head of the Masons. *See* ECF 36 at ex. 3, 37:7-38:6; ex. 5, 8:4-23, 37:6-11; ex. 7, 11:3-5, 12:22-24, 14:13-17:13.

It is the jury’s job to determine which witnesses are credible. It is not the jury’s job to pick which of a witness’s own competing stories (if any) is most plausible, or to resolve a party’s own testimony in such a way as to render it believable.

Still, the EEOC asks the Court to disregard these material and irreconcilable differences in the stories of their own witnesses, despite Seventh Circuit law to the contrary. In its Motion for Summary Judgment, RAC cited *Seshadri v. Kasraian*, in which the Seventh Circuit explained that “a motion for summary judgment should be granted when the record is such that if it were

the record of a trial no reasonable jury could find for the party opposing the motion.” 130 F.3d 798, 801-02 (7th Cir. 1997). In response to *Seshadri*, the EEOC cites *In re Chavin*, 150 F.3d 726, 728-29 (7th Cir. 1998) for the proposition that the teachings of *Seshadri* were to be applied only in “exceptional” circumstances. The EEOC conveniently omits the fact that, in *Chavin*, the Seventh Circuit *again* found such exceptional circumstances present. *Chavin* was a bankruptcy case in which Leonard Chavin made false statements and misleading omissions in his bankruptcy schedules and other filings. *Chavin*, 150 F.3d at 727. Chavin attempted to create a fact issue with regard to the fraud claims against him by asserting that he had merely misunderstood the schedules and filings, thereby leading to his false statements. According to the Seventh Circuit, summary judgment was warranted nonetheless. As the court explained, the “questions that he claims not to have understood were not esoteric, *and his explanations for his failure to answer them correctly are ridiculous.*” *Id.* at 729 (emphasis added).

Accordingly, *Chavin supports* RAC’s position – because Kerr’s own failure to tell a consistent story about what she had permission to do is likewise “ridiculous.” The account of why a moving van was used on a particular day is not a complex question worthy of wildly disparate accounts. There is simply no way for a reasonable jury to conclude, after hearing the many variants of Kerr’s story, that her credibility stands up to scrutiny. It is not the job of the jury to listen to Kerr’s tall tales and be forced to pick the best one, and accordingly summary judgment is appropriate under prevailing Seventh Circuit law.

B. There Is No Direct Evidence of Discrimination

The EEOC argues that the statements of Russell Kasper constitute direct evidence of discrimination, allowing them to bypass the traditional *McDonnell Douglas* framework. As explained in RAC’s Motion for Summary Judgment, Kasper’s testimony is nothing of the sort. The “direct evidence” that EEOC points to consists of Kasper’s testimony that Carnahan had a

discriminatory animus towards Kerr (which was never acted upon), and accordingly her termination constitutes unlawful discrimination. Kasper was terminated seven months before Kerr's termination, and has zero knowledge of the circumstances thereof. Moreover, Kasper admits that Carnahan never asked him to make any false statements about Kerr. *See* ECF 36 at ex. 1, Kasper Depo., at 31:16-32:5. The "direct evidence" the EEOC would point the Court towards consists of nothing more than a few stray comments bootstrapped into a conspiracy theory and is not sufficient to survive summary judgment.

C. There Is No Indirect Evidence of Discrimination, as the EEOC's Comparators Are Not Similarly Situated to Kerr

The EEOC further attempts to introduce comparator evidence to meet its burden under *McDonnell Douglas*. To be similarly situated, the comparators need not be "identical in every conceivable way," but there "must be sufficient commonalities on the key variables." *Coleman v. Donahoe*, 667 F.3d 835, 846-47 (7th Cir. 2012). In a disciplinary case, the critical question is whether the comparator engaged in "conduct of comparable seriousness," but received less severe discipline from the same decision-maker(s). *Id.* at 848, 850-51; *see also Haywood v. Lucent Techs.*, 323 F.3d 524, 530 (7th Cir. 2003) (affirming summary judgment because plaintiff did not point to evidence that other employees had comparable failings). Whether employees are similarly situated to the plaintiff can be considered by the Court at summary judgment. *See Atanus v. Perry*, No. 04 C 7512, 2007 WL 257679, at *14 (N.D. Ill. Jan. 24, 2007) (finding plaintiff's comparator showing is woefully deficient as a matter of law); *Palmer v. Cir. Ct. of Cook Cnty., Soc. Serv. Dept.*, 905 F. Supp. 499, 505 (N.D. Ill. 1995) (suggesting that it is the court's determination that plaintiff and comparator were similarly situated as a matter of law).

In conducting the similarly-situated analysis, anti-discrimination law "does not take away an employer's right to interpret its rules as it chooses, and to make determinations as it sees fit

under those rules.” *Vaughn v. Vilsack*, 715 F.3d 1001, 1007 n.7 (7th Cir. 2013) (quoting *Nix v. WLCY Radio/Rahall Commc’ns*, 738 F.2d 1181, 1187 (11th Cir. 1984)); *see also Bruno v. Crown Point*, 950 F.2d 355, 364 (7th Cir. 1991) (“Neither § 1983 nor Title VII ... was intended to limit the traditional hiring and firing prerogatives of employers; it was intended to prohibit deliberate discrimination”). For this reason, the “employer’s perception as to the severity of the employee’s conduct is relevant in determining whether the employee and the comparator are similarly situated in all relevant respects.” *Brown v. Mobile Cnty. Comm’rs*, 2015 U.S. Dist. LEXIS 1205, at *33 (S.D. Ala. Jan. 6, 2015) (holding that plaintiff did not establish the similarly-situated prong when the comparator was engaged in less severe conduct).

Here, the EEOC points to two comparator employees who allegedly used RAC vehicles for personal purposes and were not terminated. Neither, however, meets the similarly situated requirement for comparator status. First, the EEOC points to Matthew Hawley. When he was a new employee, Hawley was directed by a superior co-worker, Gregory Cannon, to drive him to a non-work location. *See* ECF No. 42 at ex. K. On its face, Hawley’s story is materially distinct from Kerr’s. As a threshold matter, Hawley was not using the vehicle for his own personal purposes, but rather was following the instructions of a superior. *See id.* Moreover, Hawley was a new employee who immediately reported the incident – a far different circumstance from Kerr, who was a seasoned employee who concealed her use of the RAC truck. *See id.* Accordingly, Hawley is not a proper comparator. *See Vaughn*, 715 F.3d at 1007 n.7 (explaining that anti-discrimination law “does not take away an employer’s right to interpret its rules as it chooses, and to make determinations as it sees fit under those rules”).

Second, the EEOC points to Michael Moreland. Moreland and co-worker Roger Harding took a RAC truck to a Harley Davidson store. *See* ECF 42 at ex. L, Harding Depo., 11:6-13:6.

When the event was discovered, Harding was terminated, in line with RAC policy. *Id.* The EEOC focuses on the fact that Moreland was not terminated. Moreland, however, *had already resigned* his employment with RAC at the time of the incident; indeed, his last day of employment was the same as Harding's, who was terminated that same day. *See id.*; *see also* ECF 42 at ex. M. The EEOC apparently thinks that RAC should have terminated an employee who had already resigned – yet the result was the same, as Moreland did not work again after his misconduct was discovered. This, coupled with Harding's immediate termination, makes clear that RAC enforces this policy, and terminated Kerr for legitimate, non-discriminatory, non-pretextual reasons.

IV. CONCLUSION

For the foregoing reasons, RAC respectfully requests that the Court grant its Motion for Summary Judgment.

Respectfully submitted,

/s/ J. Bradley Spalding

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Dated: July 19, 2017

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 Reply to Plaintiff's Response to Defendant's Motion for Summary Judgment** via ECF (*Electronic Case Filing*) on July 19, 2017:

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EXHIBIT 1

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
JASON CARNAHAN

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

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

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* * * * *

I N D E X

WITNESS	EXAMINATION
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1 JASON CARNAHAN, produced, sworn and examined
2 on behalf of the Plaintiff, testified and deposed as
3 follows:

4 DIRECT EXAMINATION

5 BY MR. MULHAIRE:

6 Q. Good morning, Mr. Carnahan. We've met
7 previously off the record, but on the record, I'm
8 Justin Mulaire. I'm an attorney representing the
9 United States Equal Employment Opportunity Commission
10 in the lawsuit that we're here about today.

11 Could you state your full name for the
12 record?

13 A. Jason Adam Carnahan.

14 Q. And could you take a look at what's been
15 marked Exhibit 7 and let me know if that accurately
16 states your current home address?

17 (EEOC Exhibit Number 7 was marked for
18 identification.)

19 A. Yes, it does.

20 Q. Thank you. You can set that aside.

21 A couple of guidelines for today's
22 deposition, which counsel may have already told you
23 but just as a reminder, only one of us -- or the court
24 reporter can only take down what one of us is saying

1 **A. I do not know.**

2 Q. Okay. Do you know whether the insurance
3 covers non-business use during business hours?

4 **A. No.**

5 Q. Okay. So other than what's stated in
6 paragraph 9 of your declaration, do you know anything
7 else about Rent-A-Center's insurance coverage of the
8 company vehicles?

9 **A. No.**

10 MR. TRUSEVICH: Objection to form.

11 THE WITNESS: No.

12 BY MR. MULHAIRE:

13 Q. Okay. You can set that exhibit aside.

14 At any time when you've worked at
15 Rent-A-Center in any position, have you ever been
16 aware of a delivery to or pickup from a customer being
17 made on a Sunday?

18 **A. No.**

19 Q. Has anybody in any of your positions --
20 store manager, district manager, whatever -- ever
21 asked you for permission to use a company vehicle on a
22 Sunday?

23 **A. No.**

24 Q. It's just never come up?

1 **A. No.**

2 Q. Have there ever been times when merchandise,
3 store merchandise, has been rented for a weekend and
4 needed to be picked up on a Sunday?

5 **A. No.**

6 Q. Okay. Do you recall that Russell Kasper was
7 a store manager at the Rantoul store for a time?

8 **A. Yes.**

9 Q. And was he the store manager at the Rantoul
10 store when you started as the district manager for
11 121?

12 **A. Yes.**

13 Q. And do you recall that his employment at
14 Rent-A-Center ended on or around December of 2013?

15 **A. Yes.**

16 Q. And what were the circumstances of his
17 employment ending at that time?

18 **A. Sales numbers were not being achieved.**

19 Q. Did he leave the company voluntarily or
20 involuntarily?

21 **A. He was terminated.**

22 Q. Who made the decision to terminate him?

23 **A. I did.**

24 Q. And I take it that had to be approved by the

1 Q. Okay. Now, you've been at the company for a
2 little while, though.

3 A. (Witness nods in the affirmative.)

4 Q. In a typical year, about how many employees
5 would you say whose termination you would approve?

6 MR. TRUSEVICH: Objection, form.

7 THE WITNESS: I don't know.

8 BY MR. MULAIRE:

9 Q. Are there some years where there's none?

10 A. Yes.

11 Q. Okay. You would agree it's a big deal to
12 terminate an employee?

13 A. Yes.

14 MR. TRUSEVICH: Objection, form.

15 BY MR. MULAIRE:

16 Q. And for the record, is it your testimony
17 that Ms. Kerr's gender identity, her transgender
18 status or her gender transition, played no role
19 whatsoever in her termination from the company?

20 A. Yes.

21 Q. And did you -- it's your testimony that you
22 never asked Mr. Kasper to find a way to get rid of
23 Ms. Kerr?

24 A. Yes.

1 Q. And you never expressed disapproval of
2 Ms. Kerr's gender transition to Mr. Kasper or anyone
3 else?

4 A. I did not.

5 Q. The question we ask all witnesses, have you
6 been convicted of a felony within the last ten years?

7 A. No.

8 Q. And have you ever been convicted of a crime
9 of dishonesty?

10 A. No.

11 MR. MULAIRE: Okay. Let me just check with
12 my colleague.

13 (There was then had an off-the-record
14 discussion.)

15 BY MR. MULAIRE:

16 Q. At the time Mr. Harding was terminated, were
17 you the district manager over his store?

18 A. No.

19 MR. MULAIRE: Those are all the questions we
20 have.

21 MR. TRUSEVICH: I want to ask you just a
22 couple questions.

23

24

1 STATE OF ILLINOIS)
2 COUNTY OF MACON) SS

3
4 I, LISA HAHN PETERMAN, a Notary Public,
5 Certified Shorthand Reporter, and Registered Merit
6 Reporter in and for the County of Macon, State of
7 Illinois, DO HEREBY CERTIFY, that pursuant to agreement
8 between counsel there appeared before me on Wednesday,
9 March 8, 2017, at the United States Courthouse, 201 South
10 Vine Street, Urbana, Illinois, JASON CARNAHAN, who was
11 first duly sworn by me to testify to the whole truth of
12 his knowledge touching upon the matter in controversy
13 aforesaid so far as he should be interrogated concerning
14 the same; that he was examined and examination was taken
15 down in shorthand by me and afterwards transcribed by
16 stenographic means; that the deposition is a true record
17 of the testimony given by the witness; and that the
18 signature of the deponent is reserved.

19 IN WITNESS WHEREOF, I have hereunto set my hand
20 and affixed my Notarial Seal this 27th day of March,
21 2017.

22 Lisa Hahn Peterman
23 Notary Public, CSR and RMR

24 CSR #84-2149

EXHIBIT 2

3

Gysteres

(Note: CP did 50% phone - 50% face to face when she was reassigned to Credit Manager.)

CP then stated that she brought in legal documents regarding her identity change to female - and presented it to the DM, Carnahan, in 2013. at the end of 2013.

Carnahan would converse with her when she identified as a male. However, as a female when Carnahan came to R/S store (once ~~month~~ ^{month}) he would chat speak and would look at her in a disgusting manner.

Carnahan, DM never made any comments when she changed her identity.

CP said that Elena Reeves, Assistant Store Manager told her that stores referred to her as "it."

CP then said she remembered an incident where she returned from a delivery

EXHIBIT 3

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
JASON MORRIS

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

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

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I N D E X

WITNESS	EXAMINATION
JASON MORRIS	
Direct Examination by Mr. Shultz	4

E X H I B I T S

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1 JASON MORRIS, produced, sworn and examined
2 on behalf of the Plaintiff, testified and deposed as
3 follows:

4 DIRECT EXAMINATION

5 BY MR. SHULTZ:

6 Q. Mr. Morris, my name is Miles Shultz, and I
7 represent the Equal Employment Opportunity Commission
8 in a case that the EEOC has filed against
9 Rent-A-Center in the Central District of Illinois.

10 Are you aware of that lawsuit?

11 A. Yes, sir.

12 Q. And the deposition testimony you're about to
13 give will be subject to the same oath and same
14 penalties of perjury that would apply if you were in
15 court giving testimony in front of a judge or a jury.

16 Do you understand that?

17 A. Yes, sir.

18 Q. Therefore, you're obligated to give your
19 most accurate and most truthful responses to my
20 questions. Do you understand that?

21 A. Yes, sir.

22 Q. If you answer a question, I will have the
23 right to assume and act as if you understood it. Will
24 you agree to let me know if you do not understand a

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 Q. And do you remember what you would have
2 discussed with Mr. Carnahan during that call?

3 A. No, sir. Just basically obeying the
4 situation, updating.

5 Q. Then I take it you drove home to Champaign
6 that night?

7 A. Yes, sir.

8 Q. Was Mr. Duncan-Fox present for any of the
9 calls between you and Mr. Carnahan?

10 A. I do not recall. I don't know.

11 Q. So you can't remember whether he dropped
12 Brock off first before calling Mr. Carnahan?

13 A. Yes.

14 Q. And did Ms. Kerr discuss with you making a
15 Sunday delivery on the Saturday before?

16 A. No, sir.

17 Q. If I could go back to the DDP -- is that
18 what we were calling it, the daily delivery planner --

19 A. Uh-huh.

20 Q. -- for a little bit. Is there anything
21 attached to the DDP?

22 A. As far as...

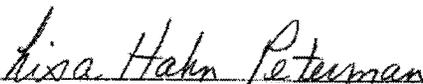
23 Q. Like a form stapled or anything like that?

24 A. I'm not sure what you're getting at. No, as

1 STATE OF ILLINOIS)
2 COUNTY OF MACON) SS

3
4 I, LISA HAHN PETERMAN, a Notary Public,
5 Certified Shorthand Reporter, and Registered Merit
6 Reporter in and for the County of Macon, State of
7 Illinois, DO HEREBY CERTIFY, that pursuant to agreement
8 between counsel there appeared before me on Tuesday,
9 March 7, 2017, at the United States Courthouse, 201 South
10 Vine Street, Urbana, Illinois, JASON MORRIS, who was
11 first duly sworn by me to testify to the whole truth of
12 his knowledge touching upon the matter in controversy
13 aforesaid so far as he should be interrogated concerning
14 the same; that he was examined and examination was taken
15 down in shorthand by me and afterwards transcribed by
16 stenographic means; that the deposition is a true record
17 of the testimony given by the witness; and that the
18 signature of the deponent is reserved.

19 IN WITNESS WHEREOF, I have hereunto set my hand
20 and affixed my Notarial Seal this 27th day of March,
21 2017.

22 
23 _____
Notary Public, CSR and RMR

24 CSR #84-2149

EXHIBIT 4

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 APPEARANCES :

2 U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
3 33 Whitehall Street, Floor 5
4 New York, New York 10004
5 212-336-3744
6 BY: JUSTIN MULAIRE, ESQ.
7 Representing the Plaintiff.

8 RENT-A-CENTER, INC.
9 5501 Headquarters Drive
10 Plano, Texas 75024
11 972-801-1465
12 Andy.Trusevich@Rentacenter.com
13 BY: ANDREW M. TRUSEVICH, ESQ.
14 Senior Vice President, Assistant General
15 Counsel, Representing the Defendant.

16 * * * * *

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I N D E X

WITNESS	EXAMINATION
AMBER SHUMATE	
Direct Examination by Mr. Mulaire	4
Cross Examination by Mr. Trusevich	25

E X H I B I T S

EXHIBIT NAME	DESCRIPTION	PAGE
SHUMATE DEPOSITION EXHIBITS		
Exhibit 1	Complaint	47
Exhibit 2	Handwritten Statement	72

1 AMBER SHUMATE, produced, sworn and examined
2 on behalf of the Plaintiff, testified and deposed as
3 follows:

4 DIRECT EXAMINATION

5 BY MR. MULAIRE:

6 Q. Good afternoon. Could you state your name
7 for the record and spell it slowly?

8 A. **Amber Wilkerson Shumate.**

9 Q. And how do you spell your last name?

10 A. **Wilkerson is W-I-L-K-E-R-S-O-N. It's my**
11 **maiden name. Shumate is S-H-U-M-A-T-E.**

12 Q. Thank you. So we met off the record, but
13 for the record, I'm Justin Mulaire. I'm an attorney
14 representing the plaintiff in the lawsuit that we're
15 here about today, the United States Equal Employment
16 Opportunity Commission.

17 I'm going to be asking you some questions,
18 and then once I'm done, the attorney sitting to your
19 right, who represents the defendant in the matter,
20 Rent-A-Center, will have the opportunity to ask you
21 some questions as well.

22 First, let me mention a couple of ground
23 rules that will make today work more smoothly.

24 First of all, you took an oath just a moment

1 weekend and moved furniture I bought here. Why was
2 she fired? Did you ever do that?

3 MR. MULAIRE: Objection, form.

4 THE WITNESS: No, sir.

5 BY MR. TRUSEVICH:

6 Q. And what was your answer?

7 A. **No, sir.**

8 Q. Okay.

9 A. **I had no reason to go to the store.**

10 MR. TRUSEVICH: Object to your answer as
11 being nonresponsive.

12 BY MR. TRUSEVICH:

13 Q. My question simply, Ms. Shumate, was did you
14 do that or did you not do that?

15 A. **No, sir.**

16 Q. Okay. Do you remember talking to the EEOC
17 in September of 2015?

18 A. **I don't know the dates. I spoke to a Gloria
19 twice.**

20 Q. Okay. And you remember that, right?

21 A. **Yes.**

22 Q. Was she nice to you?

23 A. **No.**

24 Q. Was she aggressive to you?

1 **A. Not aggressive, just extremely rude.**

2 Q. Okay. So she was rude to you. Did she put
3 words in your mouth?

4 **A. She claimed that I was lying about my name.**

5 Q. Okay. So the EEOC investigator -- and
6 that's Gloria Mayfield. Does that ring a bell?

7 **A. Yes.**

8 Q. Your position here today is she was rude to
9 you, right?

10 **A. Yes, sir.**

11 Q. Yes?

12 **A. Yes, sir. And I've reported it to him.**

13 Q. When did you report that?

14 **A. When I actually spoke to him and he**
15 **mentioned her name, and I brought up the fact that she**
16 **was extremely rude and he apologized for it.**

17 Q. Interesting. When I asked you what you all
18 talked about maybe 20 minutes ago, you didn't recall
19 that, right?

20 MR. MULAIRE: Object to form.

21 BY MR. TRUSEVICH:

22 Q. Right? In other words, you didn't mention
23 it earlier.

24 **A. You're asking me to remember things and,**

1 again, I'm trying to remember them. Isn't that the
2 point?

3 Q. My question was, you didn't recall that
4 earlier, did you?

5 A. No, but now I do.

6 Q. Okay. And so you told Mr. Mulaire that she
7 was rude to you, right?

8 A. Yes, sir.

9 Q. That she called you a liar, right?

10 A. Yes, sir.

11 Q. Okay. Well, let's look at what
12 Ms. Mayfield's notes say you told her, okay?

13 A. All right.

14 Q. Do you see that?

15 MR. MULAIRE: You're referring to Exhibit 2?

16 MR. TRUSEVICH: Yeah, Exhibit 2.

17 THE WITNESS: She kept asking questions. I
18 didn't know how or what to answer to, and I informed
19 her multiple times that I didn't want to talk to her.

20 BY MR. TRUSEVICH:

21 Q. Did you ever just hang up on her?

22 A. No offense. My name is not Andre Wilkerson.

23 Q. My question is, did you hang up on her?

24 A. No.

1 REPORTER'S CERTIFICATE

2
3 I, LISA HAHN PETERMAN, Illinois CSR No.
4 084.002149, Certified Shorthand Reporter, certify:

5 That the foregoing proceedings were taken
6 before me at the time and place therein set forth, at
7 which time the witness was put under oath by me;

8 That the testimony of the witness, the
9 questions propounded, and all objections and
10 statements made at the time of the examination were
11 recorded stenographically by me and were thereafter
12 transcribed;

13 That the foregoing is a true and correct
14 transcript of my shorthand notes so taken.

15 I further certify that I am not a relative
16 or employee of any attorney of the parties, nor
17 financially interested in the action.

18 I declare under penalty of perjury under the
19 laws of Illinois that the foregoing is true and
20 correct.

21 Dated this 3rd day of May, 2017.

22 

23 Lisa Hahn Peterman
24 Illinois CSR No. 084.002149

EXHIBIT 5

**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

DECLARATION OF J. BRADLEY SPALDING

I, Brad Spalding, hereby depose and state as follows:

1. I am over the age of 18 and am otherwise competent to testify to the facts set forth in this Declaration. I am an attorney with Littler Mendelson, P.C., and represent the Defendant, Rent-A-Center East, Inc., in the above-captioned matter. As such, I have personal knowledge of the facts set forth below and make this Declaration in support of Defendant's Motion for Summary Judgment.

2. Attached as Exhibits 1, 3, and 4 to Defendant's Reply to Plaintiff's Response to Defendant's Motion for Summary Judgment are true and correct excerpts from deposition testimony taken in this action. Specifically, the exhibits attached are as follows:

- Exhibit 1 Excerpts from the deposition transcript of Jason Carnahan, dated March 8, 2017;
- Exhibit 3 Excerpts from the deposition transcript of Jason Morris, dated March 7, 2017; and
- Exhibit 4 Excerpts from the deposition transcript of Amber Shumate, dated April 20, 2017.

I declare under penalty of perjury that the foregoing is true and correct.

SIGNED this 19th day of July, 2017.

J. Bradley Spalding

J. Bradley Spalding