

**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

Magistrate Judge Long

**PLAINTIFF EEOC'S MEMORANDUM IN OPPOSITION
TO DEFENDANT'S MOTIONS IN LIMINE**

The EEOC responds to Defendant's eight motions in limine as set forth below.

MOTION NO. 1: 2002 Lawsuit Against RAC

The EEOC does not oppose this motion, except that, notwithstanding the phrasing of RAC's motion, the requested prohibition should apply to both parties.

MOTION NO. 2: Wrongfulness of Russell Kasper's Termination

To the extent that RAC's motion to exclude evidence or statements about whether Russell Kasper's discharge was *wrongful* is directed solely to RAC's *motives* for firing Russell Kasper, the EEOC is not opposed to the motion, except that the prohibition should apply to both parties.

The EEOC notes that the motion, importantly, does not seek to exclude the *fact* of Russell Kasper's termination. Nor would it be proper to do so. Kasper's termination is a key step in the narrative of events leading to Megan Kerr's termination and is of central importance to this case. Kasper was the store manager of the Rantoul store in 2013 when Megan Kerr informed him that she was transitioning from male to female. Kasper has testified that when he

related that information to his boss, district manager Jason Carnahan, Carnahan told him he disapproved of having someone “like that” in the store and instructed Kasper to “do whatever it takes” to find a basis for discharging Kerr. Carnahan emphasized that “we have to have documentation” and even added that Kasper should make sure that “it’s not just little things.” According to Kasper, Carnahan followed up with Kasper periodically over the following months to check on the status of that effort. Kasper did not comply with Carnahan’s instruction, and he told Carnahan he believed it to be unlawful. In late 2013, Carnahan fired Kasper and, in February 2014, replaced him with Jason Morris. *See* Plaintiff’s statement of additional facts nos. 4-9, ECF No. 42, at pp. xii-xiii. Morris, the EEOC contends, carried out the instructions from Carnahan that Kasper failed to.

As set forth in the EEOC’s opposition to RAC’s motion for summary judgment, this sequence of events, including Kasper’s termination, is key circumstantial evidence that RAC’s stated reason for Kerr’s eventual termination is false and is a pretext for discrimination. *See Perez v. Thorntons, Inc.*, 731 F.3d 699, 711 (7th Cir. 2013) (circumstantial evidence includes “suspicious timing, ambiguous statements oral or written, and other bits and pieces from which an inference of [discriminatory] intent might be drawn”). Kasper’s discharge need not, standing on its own, prove discrimination in order to be relevant. “A case of discrimination can ... be made by assembling a number of pieces of evidence[,], none meaningful in itself,” but which “when taken as a whole, provide strong support if all point in the same direction.” *Sylvester v. SOS Children’s Villages Illinois, Inc.*, 453 F.3d 900, 903-04 (7th Cir.2006).

For the foregoing reasons, to the extent that the instant motion does not seek to exclude the fact of Kasper’s termination and is merely targeted at whether RAC’s motives were wrongful or not, the motion is unopposed.

MOTION NO. 3: Mistreatment of Amber Shumate by RAC's Private Investigator

Evidence that a private investigator, acting on behalf of RAC, tried to cause a key witness to change her testimony in this case is evidence of consciousness of guilt on RAC's part. It is relevant, and under Seventh Circuit decisional law it should not be excluded.

“[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.” *See Ty Inc. v. Softbelly's Inc.*, 353 F.3d 528, 534 (7th Cir. 2003); *see also 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.”).

During this litigation, a private investigator working on behalf of RAC visited the home of a key witness, Amber Shumate, and, according to 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. ECF No. 42-1, 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.* at 21:8-24. Shumate is the customer who purchased the RAC merchandise that Megan Kerr delivered on Sunday, July 20, 2014, and Shumate corroborates that Kerr delivered the furniture to her in that timeframe.

In this case, Shumate's testimony about the RAC private investigator is circumstantial evidence of liability because it suggests that even RAC itself considers its defense in this case to be weak, unfounded, or false.

RAC's contention that this evidence should be excluded under Fed. R. Evid. 403 is also without merit. First, the contention is premised on the claim that the evidence is not relevant,

which is not correct for the reasons set forth above. Second, the evidence in question is straightforward and would not consume much trial time—it would consist simply of testimony by Shumate—and it so the assertion that it would be unduly time consuming is also without merit. Finally, while RAC is correct that the evidence would “prejudice RAC,” *see* Motion (ECF No. 60) at 4, Rule 403 prohibits only “unfair” prejudice, Fed. R. Evid. 403. “Since most relevant evidence is, by its very nature, prejudicial,” the Seventh Circuit has “emphasized that evidence must be *unfairly* prejudicial to require exclusion.” *U.S. v. Boswell*, 772 F.3d 469, 476 (7th Cir. 2014).

Accordingly, evidence that RAC’s investigator attempted to intimidate or dissuade Shumate from testifying in this case should not be excluded.

MOTION NO. 4: RAC’s Position Statement to the EEOC

RAC seeks to exclude from evidence its own written statement to the EEOC explaining the circumstances of Kerr’s termination (“Position Statement”). Courts regularly permit such position statements to be considered by the jury when they address relevant matters. *See, e.g., Thomas v. Big Lots Stores*, 2016 WL 1746366, *2 (N.D.Ill. May 3, 2016) (“[Position] statements may be admissible as an admission of a party opponent or a prior inconsistent statement, and a jury can determine the weight to be given them.”) (collecting cases).

First, RAC’s contention that its position statement is hearsay is contrary to plain language of Rule 801(d)(2) of the Federal Rules of Evidence. That rule provides that “an opposing party’s statement” is not hearsay if it “is offered against an opposing party” and either “was made by a person whom the party authorized to make a statement on the subject” or “was made by the party’s agent or employee on a matter within the scope of that relationship and while it existed.” Fed. R. Evid. 801(d)(2)(C)-(D). The document is indisputably a statement by RAC or made by a

person RAC authorized to speak to the EEOC on its behalf about the allegations that it discrimination. It is also, on its face, a document that RAC “manifested that it adopted or believed to be true.” Fed. R. Evid. 801(d)(2)(B). Thus if offered into evidence by the EEOC, the document is a statement of an opposing party that is excluded from the definition of hearsay.

RAC briefly asserts that the position statement is “hearsay within hearsay” because it was based on information supplied by RAC employees. That is not what “hearsay within hearsay” means. Hearsay within hearsay would require two levels of *statements*, each of which constitutes hearsay. *See Baines v. Walgreens Co.*, 863 F.3d 656, 662 (7th Cir. July 12, 2017). If the position statement itself were hearsay, which it is not, that would be one level. A second level of hearsay would involve a *statement* of another person set forth the position statement. “A ‘statement,’ ... is a person’s ‘oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.’” *Id.* (quoting Fed. R. Evid. 801(a)). The position statement does not quote or otherwise relate a statement by any RAC employee. Moreover, even if it did, to the extent the employees involved are managerial employees of RAC, these statements would not be hearsay in any event because they are within the scope of Fed. R. Evid. 801(d)(2)(C)-(D). *See, e.g., Baines*, 863 F.3d at 663 (manager’s statement not hearsay under Rule 801(d)(2)(D)).

Second, RAC’s suggestion that the position statement is not relevant is also incorrect. The statement provides, among other things, an account of the events at the core of this case. It includes a section entitled “Complainant Terminated for Violating Company Policy,” which is a factual narrative of the events of July 19-21, 2014, including RAC’s contention that Kerr was using the RAC truck on the Sunday in question to “mov[e] her belongings from her place of residence to a new location,” that Kerr “admitted that she had done so,” and that store manager Jason Morris and district manager Jason Carnahan “[b]oth agreed that [Kerr] should be

terminated for violating Company policy.” These statements go to the core of this case and are plainly relevant.

Moreover, to the extent RAC’s current account of events has shifted or is inconsistent, then the position statement is doubly relevant because it would also serve as evidence of pretext. *See Appelbaum v. Milwaukee Metropolitan Sewerage District*, 340 F.3d 573, 579 (7th Cir. 2003) (“One can reasonably infer pretext from an employer’s shifting or inconsistent explanations for the challenged employment decision.”). Accordingly, the position statement cannot be excluded on grounds of relevance.

RAC also contends that because the position statement is not “purely factual” it is irrelevant. To be sure, the position statement contains legal argument and factual statements about matters that are not relevant to this trial. However, those matters can easily be addressed by preparing a trial exhibit that omits or redacts legal arguments and irrelevant factual matters. The EEOC does not have any interest in showing the jury RAC’s legal arguments or its statements about irrelevant matters.

Finally, RAC’s contention that the position statement should be excluded under Rule 403 is also without merit. RAC makes cursory reference to a risk of “unfair prejudice,” but does not explain how it would be unfairly prejudiced by presenting its own account of Kerr’s termination to the jury. To the extent the alleged need for “mini-trials” is an acknowledgment that the position statement is at odds with RAC’s current explanation of Kerr’s termination, that is evidence of pretext, which goes to the heart of the case. Kerr’s termination and the motive behind it are the subjects of this trial and are not side issues that would constitute a “mini-trial.”

Accordingly, RAC’s motion to exclude the entirety of its position statement to the EEOC should be denied.

MOTION NO. 5: Megan Kerr's Apartment "Eviction"

RAC seeks to exclude any evidence that it believed Kerr was evicted from her apartment in July 2014. Far from “ha[ving] no bearing on any material fact in this case,” RAC’s belief that Kerr was evicted was the original justification for Morris driving by the store on a Sunday: “At the time, SM Morris was aware that [Kerr] had been evicted from her place of residence and suspected that [Kerr] was using one of the company vehicles to move personal items—a clear violation of Company policy. SM Morris’s suspicion prompted him to drive by Store No. 319 on Sunday, July 20, 2014 to check on the RAC vehicles.” Ex. A, RAC’s Position Statement. RAC’s position statement even states that Kerr admitted to Morris that she used the RAC truck to move “her belongings from her place of residence to a new location.” *Id.* Morris even signed a declaration stating these same facts. Ex. B, Morris Declaration (EEOC000246-247).

The reason why Morris drove 30 miles from his residence to the store on a Sunday morning (a day the store is closed) is far from irrelevant to the Commission’s case. The fact that RAC has shifted its defense is evidence of pretext. *See O’Neal v. City of New Albany*, 293 F.3d 998, 1005-1006 (7th Cir. 2002) (shifting explanations by the employer for the alleged discriminatory action can support a finding of pretext). Furthermore, the fact that RAC included the factual “assertions” in declarations it submitted from its own employees highlights the relevance of its belief that Kerr was evicted. At Kerr’s deposition RAC even stated this was a

pretty important piece of evidence:

Q. And then it says [as read]: Charging party disputes Rent-A-Center's position that she was evicted in July 2014.

Do you see that?

A. Yes.

Q. That's a pretty important piece of evidence, isn't it?

Ex. C, Kerr Dep., pp. 258:24-259:6.

Put simply the central issue in this lawsuit is whether Kerr asked and received permission from Morris to use the truck on Sunday. The Commission's position is that Morris gave her permission. RAC's position, or at least one of its positions, is that Morris did not give her permission and suspected she would be using it on Sunday because he *knew* she had been evicted from her apartment. That fact that she was never evicted from her apartment is not some tangential issue that would confuse or mislead the jury, rather it is directly related to whether RAC's reason for terminating Kerr is a pretext for sex-discrimination.

MOTION NO. 6: Kasper's Non-Disclosure Agreement

The EEOC does not oppose this motion, except that, notwithstanding the phrasing of RAC's motion, the requested prohibition should apply to both parties.

MOTION NO. 7: Kasper's RAC Notebook and Calendar

At his deposition, Kasper testified that as store manager he maintained a file containing "memos for record" concerning various events at the RAC store when he was manager—including the times Carnahan asked Kasper to find reasons to terminated Kerr because she is transgender. Ex. D, Kasper Dep., pp. 48:6-50:19. Kasper testified that he was not allowed to retain possession of this file after his termination. *Id.* at 29:25-30:12. RAC seeks to exclude

evidence concerning the contents of these notes, citing Rule 1002.

Rule 1004 makes clear that if an original writing is lost or destroyed (and not by the proponent acting in bad faith) that other evidence of its content—such as testimony—is admissible. F.R.E 1004. Here, Kasper’s file containing his “memos for record” of various events at the RAC store were either lost or destroyed by RAC—and not by Kasper acting in bad faith. Accordingly, testimony regarding their existence is admissible.

Also, the fact that RAC kept Kasper’s file and then presumably discarded it (since it was not produced during discovery) is also relevant evidence regarding punitive damages, i.e. that RAC is covering up an unlawful employment decision. *See Brusco v. United Airlines, Inc.*, 239 F.3d 848, 858 (7th Cir. 2001) (“A plaintiff may also establish that the defendant acted with reckless disregard for his federally protected rights by showing that the defendant’s employees lied, either to the plaintiff or to the jury, in order to cover up their discriminatory actions.”).

MOTION NO. 8: Other Illegal Acts

During his deposition, Kasper testified that Carnahan instructed Kasper to peddle merchandise—i.e. door-to-door selling. Ex. D, Kasper Dep., pp. 60:13-61:5. Kasper testified that his understanding was that peddling merchandise required a license that RAC did not possess because they had been stopped by the Rantoul police before and told it was illegal. Ex. D, Kasper Dep., p. 38:3-10. Kasper testified that after he told Carnahan he understood this to be illegal that Carnahan said RAC had every right to peddle merchandise to prior customers. Ex. D, Kasper Dep., p. 61:1-5.

RAC seeks to exclude testimony regarding Carnahan’s requests to have Kasper peddle merchandise citing Rules 401 and 403. However, the Court should deny RAC’s motion because testimony regarding Carnahan’s request that his employees engage in illegal activity—especially

after an employee makes it known that the request is illegal—is permissible character evidence. F.R.E. 608. The Rules already please appropriate limits on this type of evidence to prevent a series of mini-trials and prohibit the use of extrinsic evidence (i.e. a police report regarding peddling merchandise). F.R.E. 608.

December 29, 2017

Respectfully Submitted,

s/ Miles Shultz

Miles Shultz

Trial Attorney

U.S. Equal Employment Opportunity Commission

500 W. Madison St., Ste. 2000

Chicago, IL 60661

s/ Justin Mulaire

Justin Mulaire

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CERTIFICATE OF SERVICE

I hereby certify that on today's date, I caused the EEOC'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTIONS IN LIMINE to be served upon counsel to Defendant via the court's Electronic Case Filing system, pursuant to Local Rule 5.3(A).

December 29, 2017

Respectfully Submitted,

s/ Miles Shultz

Miles Shultz

Trial Attorney

U.S. Equal Employment Opportunity Commission

500 W. Madison St., Ste. 2000

Chicago, IL 60661

Friday, 29 December, 2017 02:36:40 PM
Clerk, U.S. District Court, ILCD

EXHIBIT A



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January 12, 2015

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RECEIVED EEOC

JAN 12 2015

CHICAGO DISTRICT OFFICE

Julianne Bowman
District Director (Acting)
U.S. Equal Employment Opportunity Commission
500 West Madison Street, Suite 2000
Chicago, IL 60661

Re: Kerr v. Rent-A-Center, Charge No. 440-2015-01054

Dear Ms. Bowman:

This letter states Rent-A-Center's ("RAC") position with respect to the Charge of Discrimination ("Charge") filed by Megan Kerr ("Complainant") (female), a former RAC employee formerly known as Jason Kerr (male), for alleged sex discrimination and harassment. Specifically, Complainant alleges that she was harassed, demoted, and discharged based on her sex change. For the reasons set forth below, it is clear that Complainant's Charge is baseless and should be dismissed.¹

I. RAC OVERVIEW

RAC is a nationwide rent-to-own company headquartered in Plano, Texas. RAC rents a variety of merchandise to individuals, including large household appliances, furniture, and electronics. RAC employs more than 20,000 individuals throughout approximately 2,700 retail

¹ This Position Statement is based on RAC's understanding of the facts as of the date of this correspondence. Although there has not been an opportunity for formal discovery or a complete formal investigation, this response is submitted for the purpose of aiding the U.S. Equal Employment Opportunity Commission ("EEOC") in its investigation and facilitating the informal resolution of these matters. This Position Statement, while believed to be accurate, does not constitute an affidavit and is not intended to be used as such in any agency or court proceeding, nor is it a binding statement of RAC's legal position. As additional facts likely would be uncovered through discovery or following a full investigation, RAC in no way waives its right to present new or additional information at a later date, for substance or clarification. Moreover, by submitting this Position Statement, RAC does not waive, and hereby preserves, any and all substantive and procedural defenses that may exist to the Charge and Complainant's allegations. RAC requests that any efforts to contact its current managers be directed through its counsel. RAC provides this document with the understanding that its contents and attachments are confidential and proprietary and that its contents will neither be disclosed nor given to Complainant, his attorneys, or his representatives.

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stores across the United States and employs approximately 21,000 coworkers. Each store generally operates with a lean staff of between four and six employees comprised of a Store Manager, an Assistant Manager (hourly, non-management position), and two or more Customer Account Representative (hourly, non-management position(s)). Each Store Manager reports to a District Manager, who reports to a Regional Director.

II. RELEVANT POLICIES

A. Equal Employment Opportunity Policy

RAC is an Equal Employment Opportunity Employer that is committed to providing equal employment opportunity for all persons without regards to gender, race, color, religion, national origin, age, marital status, disability, sexual orientation, or any other status or tract protected by law. [See Relevant Excerpts of RAC's Coworker Handbook, attached as Exhibit ("Ex.") A, at 26]. RAC maintains that discrimination or harassment based on any of these protected categories is strictly prohibited. [*Id.*].

B. Anti-Harassment and Anti-Discrimination Policy

RAC maintains a no tolerance policy and finds discrimination and harassment is against both the law and RAC policy whether it involves harassment by coworkers, by a manager, or by persons doing business with, or for, RAC. [*Id.* at 26]. 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. [*Id.* at 27].

C. Open-Door Reporting Policy

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. [*Id.* at 26]. Upon receipt of such a complaint, RAC conducts a prompt, fair, and objective investigation and endeavors to protect the privacy and confidentiality of all parties to the extent possible, consistent with a thorough investigation. [*Id.* at 26-27]. In addition to its Coworker Handbook, RAC utilizes an Open Door Poster to alert employees to this resource. [See Open Door Poster, attached as Ex. B].

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D. Vehicle Operation

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.*" [See Ex. A, p. 29] (emphasis added). It further provides that failure to abide by this policy will result in discipline up to and including termination. [*Id.*].

E. Standards of Conduct

RAC employees are expected to know and adhere to RAC's policies and procedures related to its Standards of Conduct. RAC's Coworker Handbook provides several examples of unacceptable coworker conduct, including violating any Company practices, policies, and/or procedures. It specifically provides that failure to comply with RAC's Standards of Conduct may be cause for disciplinary action up to and including termination from employment. [See Ex. A, pp. 22 – 23].

III. STATEMENT OF RELEVANT FACTS

A. Complainant's Employment History at RAC

On May 21, 2005, RAC hired Complainant as a full-time Customer Account Representative at Store No. 2292 in Sherman, Texas. At the time of Complainant's hire, Complainant was a male and his name was Jason Kerr. Upon hire, Complainant signed the Coworker Handbook Acknowledgement form acknowledging that he had read and understood the Coworker Handbook. He also acknowledged that RAC could terminate his employment at any time, with or without cause. [See Acknowledgement Form, attached as Ex. C; see also Coworker Integrity Commitment Acknowledgement Form; Manager/Supervisor Integrity Commitment Acknowledgement Form; and Behavioral Training Log, attached as Ex. C].

On March 11, 2006, RAC promoted Complainant from Customer Account Representative to Assistant Manager at Store No. 2292. [See Offer of Promotion, attached as Ex. D; see also Complainant's Job History, attached as Ex. E, p. 6]. On March 8, 2007, District Manager Christopher Scott ("DM Scott") (male) promoted Complainant a second time to Store Manager of Store No. 4693 in Sherman, Texas. [See Offer of Promotion, attached as Ex. F; see also Ex. E]. On July 12, 2007, DM Scott demoted Complainant from Store Manager back to Assistant Manager. He also transferred Complainant back to Store No. 2292. [See Ex. E, p. 6]. Complainant had only held the Store Manager position for four months. This was Complainant's only demotion while working for RAC.

In July 2010, Complainant moved to Illinois and transferred to Store No. 319 located in Rantoul, Illinois. [*Id.* at p. 5]. Complainant held the Assistant Manager position at this store.

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On September 13, 2010, RAC transferred Complainant to Store No. 754 located in Rantoul, Illinois. [*Id.* at p. 4]. Complainant continued to hold the Assistant Manager position.

On May 23, 2011, RAC transferred Complainant back to Store No. 319. Complainant continued to hold the Assistant Manager position. [*Id.*]. At the time, Complainant was supervised by Store Manager Russell Kasper (“SM Kasper”) (male). SM Kasper reported to District Manager Jason Carnahan (“DM Carnahan”) (male).

B. Complainant Informed RAC About His Sex Change

In or around March 2013, Complainant informed RAC that he was changing his name (Jason Kerr to Megan Kerr) and gender (male to female).

In or around October 2013, Complainant complained to DM Carnahan that SM Kasper had told unidentified RAC customers that she used to be a male. Complainant did not complain of discrimination or harassment. DM Carnahan immediately addressed this with SM Kasper and gave him verbal coaching. Complainant made no further complaints about SM Kasper, this issue, or any other concerns after DM Carnahan addressed this issue.

On February 13, 2014, Jason Morris (male) replaced SM Kasper as the Store Manager for Store No. 319. From February 13, 2014 until her termination on July 21, 2014, SM Morris was Complainant’s direct supervisor.

C. Complainant Terminated for Violating Company Policy

On Saturday, July 19, 2014, SM Morris noticed that Complainant was acting unusual. Complainant made several requests to go out on deliveries alone even though the two Customer Account Representatives, who were responsible for deliveries, were at work. At the time, SM Morris was aware that Complainant had been evicted from her place of residence and suspected that Complainant was using one of the company vehicles to move personal items – a clear violation of Company policy.

SM Morris’s suspicion prompted him 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 SM Morris arrived at the store, he found the RAC moving truck missing from the parking lot and Complainant’s personal vehicle (a tan car) parked at the store. To document this violation, SM Morris took a date-stamped picture of the parking lot. [*See* 7/20/14 Picture, attached as Ex. G]. That day, SM Morris also picked up RAC Customer Account Representative Brock Duncan-Fox (“Duncan-Fox”) to help him search for Complainant and the missing RAC moving truck. Despite their efforts, SM Morris and Duncan-Fox were unable to locate Complainant or the RAC truck.

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That day, July 20, 2014, SM Morris called DM Carnahan to report this incident. Both agreed that Complainant should be terminated for violating Company policy (i.e., using a company vehicle for personal reasons).

The following morning, Monday, July 21, 2014, SM Morris confronted Complainant. He asked Complainant 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. Complainant admitted that she had done so.² As a result, SM Morris informed Complainant that she was terminated for violating Company policy, effective July 19, 2014. In response, Complainant simply stated, "Okay, thank you," and left the store. During this conversation, Complainant did not complain of discrimination or harassment.

During her tenure at RAC, Complainant never complained of discrimination or harassment based on her sex or otherwise. Further, despite being aware of RAC's Open-Door Reporting Policy, Complainant never called RAC's Coworker Relations to report any issues during her nine-year tenure with the Company.

IV. RAC DID NOT DISCRIMINATE AGAINST OR HARASS COMPLAINANT

Complainant has failed to offer even a scintilla of evidence to suggest that she was discriminated against or harassed based on her sex. Complainant's vague and unsubstantiated allegations must be rejected. As set forth above and below, the simple, undisputed facts demonstrate that Complainant's claim is groundless, and, therefore, this Charge should be dismissed.

Fatal to Complainant's claim that she was demoted based on her sex is that her claim is untimely. As demonstrated above, the only time during Complainant's employment that she was demoted was on July 13, 2007 – more than seven years prior to her termination and filing of this Charge. Additionally, Complainant has offered no evidence that her sex had anything to do with her demotion. Indeed, DM Scott (male) promoted Complainant into the Store Manager role and he is the same person that demoted Complainant four months later back into the Assistant Manager position. Certainly, Complainant cannot demonstrate that DM Scott developed some form of animus against his and Complainant's sex (male at the time) within four months of promoting Complainant.

Further, Complainant was simply terminated for violating company policy. Complainant acknowledged that she read and received the Coworker Handbook that specifically states that it is a direct violation of Company policy to use a RAC vehicle for personal reasons. In fact, as an Assistant Manager, Complainant was responsible not only for following this policy but also

² Two days later, Complainant contacted Assistant Manager Elena Reeves and again admitted during a conversation that she had used the RAC moving truck for personal reasons that weekend.

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enforcing it with respect to her subordinates. She was aware that violating this policy or the Standards of Conduct in general could lead to discipline up to and including termination. Despite these responsibilities and clear warning, Complainant admittedly violated this policy and was terminated as a result. The facts and evidence lead to no other logical conclusion. Moreover, Complainant's discrimination claim fails for the additional reason that she cannot claim that she was treated less favorably than similarly situated male employees. Indeed, on July 6, 2012, RAC terminated Roger Harding (male) ("Harding"), a former Customer Account Representative at Store No. 319 (Complainant's store), for using a RAC vehicle for personal reasons. Specifically, RAC terminated Harding for taking a Company vehicle to look at motorcycles at a Harley Davidson store during work hours.

Lastly, Complainant fails to identify in her Charge even one example of any act taken against her by any RAC employee that constitutes harassment, let alone the type of severe or pervasive conduct necessary to maintain a harassment claim. Significantly, Complainant has never lodged any complaints of harassment with RAC. If Complainant's claim is related to SM Kasper's alleged comment in October 2013 that Complainant was a man, then her claim is untimely. Further, RAC would be entitled to an affirmative defense for such a claim because, as demonstrated above, DM Carnahan immediately addressed this issue with SM Kasper and Complainant made no further complaints about SM Kasper, this issue, or any other concerns. Simply put, Complainant's claims do not constitute harassment as a matter of law.

V. CONCLUSION

The foregoing position statement and attachments hereto demonstrate that Complainant's Charge is baseless and must be dismissed. RAC is confident that this Charge will not withstand the close scrutiny of your investigation and looks forward to, and anticipates, your prompt dismissal of this Charge.

REDACTED

Michael A. Wilder

Firmwide:131079900.1 051536.1427

EXHIBIT B

DECLARATION OF JASON MORRIS

I, Jason Morris, having a business address of 1404 E. Grove Avenue, 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.

REDACTED

Executed on 12-15-2015

 Jason Morris

EXHIBIT C

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

3 U.S. EQUAL EMPLOYMENT
4 OPPORTUNITY COMMISSION,

5 Plaintiff, No. 16-CV-2222

6 vs.

7 RENT-A-CENTER EAST, INC.,

8 Defendant.

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14 The videotaped deposition of MEGAN VANNA,

15 called for examination pursuant to the Rules of

16 Civil Procedure for the United States District

17 Courts pertaining to the taking of depositions,

18 taken before CHERYL L. SANDECKI, Certified

19 Shorthand Reporter for the State of Illinois, at

20 321 North Clark Street, Chicago, Illinois, on

21 January 17, 2017, at the hour of 9:00 a.m.

22

23 REPORTED BY: CHERYL L. SANDECKI, CSR, RPR

24 LICENSE NO.: 084-03710

 JOB NO.: 548721

1 Q. Oh, "Morris approved the above."

2 That's what it says. [As read]: Morris
3 approved the above. No one else may have heard
4 the above.

5 Do you see that?

6 A. Okay, yes.

7 Q. All right. So we at least know that on
8 September 9th, 2015, Investigator Mayfield
9 didn't write that Elena Reeves told you just a
10 week before you were fired that Duncan Fox used
11 the truck to move into her house, right?

12 MR. SHULTZ: Objection. Foundation.

13 BY MR. TRUSEVICH:

14 Q. Right? Do you see that anywhere?
15 Maybe I missed it.

16 A. It is not annotated in this statement.

17 Q. In fact, what this statement says is
18 you told her you overheard Duncan Fox talking to
19 Jason Morris that he was going to use the truck
20 to move out of his girlfriend's on a Sunday.

21 Isn't that what Investigator Mayfield
22 wrote?

23 A. To a certain point, yes.

24 Q. And then it says [as read]: Charging

1 party disputes Rent-A-Center's position that she
2 was evicted in July 2014.

3 Do you see that?

4 A. Yes.

5 Q. That's a pretty important piece of
6 evidence, isn't it?

7 MR. SHULTZ: Object --

8 MR. TRUSEVICH: Let me finish. I know you
9 are ready to object. Hold on. I expect it.

10 BY MR. TRUSEVICH:

11 Q. It's an important piece of information
12 Ms. -- Ms. -- or Megan, that a week before you
13 were fired, you say Elena told you that Duncan
14 Fox told her that he used the vehicle to move
15 into Elena's house, one week before you are
16 fired he uses it for personal use. That's
17 important, isn't it?

18 MR. SHULTZ: Objection. Form.

19 THE WITNESS: I do not know. Again, it
20 doesn't relevete [sic] to me.

21 BY MR. TRUSEVICH:

22 Q. You have no opinion of that one way or
23 another as you sit here today, correct?

24 A. Correct.

EXHIBIT D

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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 out, figure it out, do it on your own, figure it
2 out, think outside the box," stuff like that, and
3 it wasn't working out, plus we had -- he wanted
4 us to do door-to-door deliveries by taking
5 merchandise out of the store, put it on the truck
6 and try and peddle it door to door.

7 Well, we had already tried that once
8 before, and we got stopped by a Rantoul police,
9 and they told us it was illegal. You had to have
10 a peddler's license to do it.

11 He did not want to pay money to have
12 that happen, so that was like 50 percent of our
13 discussions as to how to increase business, and
14 then it seems like the rest of it was always
15 discussion on, you know, what's going on here in
16 the store that's hindering your sales, and
17 everything always seemed to lead back to what was
18 going on with Megan Kerr.

19 Q. Sir, are you done with that long
20 answer? Are you finished, because I don't want
21 to cut you off.

22 A. Yes.

23 Q. Let me ask my question again.

24 Sir, what in the world, what you just
25 testified to for three or four minutes, what does

1 Q. And what evidence do you have to
2 support that, sir?

3 MR. MULAIRE: Object to form.

4 BY MR. TRUSEVICH:

5 Q. What's your basis?

6 A. The fact that I would not play ball
7 with everything that he was wanting us to do.

8 Q. With regards to Megan Kerr, correct?

9 A. Not just that.

10 Q. What other things that he wouldn't
11 play ball with -- that you wouldn't play ball
12 with?

13 A. He wanted us to do illegal operations,
14 such as fill up the truck with used merchandise,
15 go selling it door to door, peddling it, and made
16 it a mandate that we had to do it to at least
17 eight people per week per person in the store.

18 Elena said she wasn't going to do it.
19 Megan said she didn't want to do it, and I told
20 them I said it's illegal to do, because we had
21 already tried this a year before, and the Rantoul
22 police had stopped us saying that it is illegal.
23 It is peddling. You have to get a license. It's
24 \$250 a day, and he did not want to spend that
25 kind of money.

1 He said the fact that we were -- had
2 them as a customer once before gave us all the
3 permission in the world to go ahead and do that,
4 and I told him I would not do that, because that
5 was illegal.

6 Q. So you not only told -- now let's add
7 to this again, so now we know now that what Jason
8 Carnahan was asking you to do was not only
9 morally wrong that you believed, right?

10 MR. MULAIRE: Object to form.

11 THE WITNESS: Correct.

12 BY MR. TRUSEVICH:

13 Q. Against company policy, correct?

14 A. There was nothing in the company
15 policy that even stated going door to door
16 peddling merchandise.

17 Q. Okay. And so now he's actually asking
18 you to do two things that you believe were
19 illegal: one, going door to door. Correct?

20 A. Correct.

21 Q. And then trying to fire Megan Kerr.
22 Correct?

23 A. Finding documentation to pursue the
24 matter further.

25 Q. By the way, sir, can people at