

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF ILLINOIS  
Urbana Division**

**US EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,**

**Plaintiff,**

**v.**

**RENT-A-CENTER EAST INC.,**

**Defendant.**

**Case No. 16-2222**

**ORDER**

This case is before the Court on multiple objections to deposition testimony designated for use at trial by both parties.

During the Final Pretrial Conference the parties indicated their intention to present testimony via videotaped depositions and transcribed deposition testimony read to the jury. The parties indicated that multiple objections within the deposition testimony needed to be resolved before the testimony could be presented to the jury. The Court encouraged the parties to resolve all objections without Court intervention and then submit the remaining objections to the Court by the close of business on January 26, 2018. As instructed by the Court, both Defendant, Rent-A-Center East, Inc. ("Defendant") and Plaintiff, US Equal Employment Opportunity Commission ("Plaintiff") filed their respective objections (#89, #91) to designated deposition testimony.

The Court makes the following rulings on both parties' objections:

**Marcie Bussman**

<b>Testimony (page:lines)</b>	<b>Plaintiff's Objection</b>	<b>Ruling</b>
5:3-10	Relevance, wasting time — Deposition preliminaries not needed at trial	Sustained
16:19 - 17:4 17:13-21	Relevance	16:19 – 17:4, Overruled 17:13-21, Sustained
17:22 - 19:4	Relevance — Bussman's duties and medical condition have no bearing on this case	Overruled
34:14	Attorney comment should be omitted	Sustained
36:15-21	Relevance	Overruled
36:22 - 37:3	Relevance, non-responsive answer	Overruled
42:24 - 43:6	Lack of foundation — Witness has no opinion	Overruled
50:12 - 51:2	Relevance, confuses the issues, refers to facts not in evidence, violates EEOC MIL No. 7 — There is no allegation that Ms. Bussman was involved in Kerr's discharge	Overruled
51:11-13	Relevance, confuses the issues	Overruled
52:13 - 53:3	Relevance, confuses the issues, speculative	Overruled
53:12-14	Relevance, confuses the issues	Overruled

**Maria Clatterbuck**

<b>Testimony (page:lines)</b>	<b>Plaintiff's Objection</b>	<b>Ruling</b>
4:9-13	Relevance, wasting time — Deposition preliminaries not needed at trial	Sustained
10:15-25	Relevance, lack of personal knowledge, hearsay	Overruled
14:14-25	Relevance, lack of foundation — Witness states she does not have knowledge/recollection of these	Overruled
19:15 - 20:3	Leading	Overruled
21:3 - 23:9 24:2 - 25:1 25:18 - 32:22 66:1 - 69:7	<p>These questions are leading and highly argumentative. They are essentially attorney commentary more suitable for closing argument. To the extent they ask the witness's opinion about purported allegations or testimony in the case, they also lack relevance.</p> <p>The questions also call for speculation, frequently refer to facts not in evidence, and concern matters about which the witness has stated she has no knowledge or recollection and can only answer by reading from the documents.</p>	<p>Overruled, except that</p> <p>25:18-19, "Does Exhibit 2, version three of Megan's Kerr story" shall be stricken;</p> <p>26:2-3, "If you believe the EEOC's version 4" shall be stricken; and</p> <p>Objections sustained as to 26:11-25, 66:1-5, and 68:3-24</p>

**Mary Ann Kelly**

<b>Testimony</b>	<b>Plaintiff's Objection</b>	<b>Ruling</b>
7:16-20 8:3-16	Relevance, wasting time - deposition preliminaries	7:16-20 Overruled 8:3-16 Sustained
10:5-8	Relevance, Wasting Time	Overruled
11:3-23	Relevance, Wasting Time, Confuses the Issues, Misleads the Jury, and Unfairly Prejudicial, Improper Impeachment of Kerr (Rule 608(b), EEOC MIL 9)	Overruled
12:2-22	Relevance, Wasting Time, Confuses the Issues, Misleads the Jury, and Unfairly Prejudicial, Inadmissible character evidence	Overruled
15:23-16:5	Relevance Wasting Time, Confuses the Issues, Misleads the Jury, and Unfairly Prejudicial	Overruled
16:21-17:3	Hearsay, Lack of Personal Knowledge, Non-Responsive	Sustained
18:5-19:1	Relevance, Non-Responsive, Wasting Time, Confuses the Issues, Misleads the Jury, and Unfairly Prejudicial, Hearsay, and Lack of Personal Knowledge	Sustained
20:8-10	Relevance, Unfairly Prejudicial	Sustained
20:17-21:20	Relevance, Wasting Time, Confuses the Issues, Misleads the Jury, and Unfairly Prejudicial, Inadmissible character evidence	Sustained
21:22-22:16	Relevance, Wasting Time, Confuses the Issues, Misleads the Jury, and Unfairly Prejudicial, Inadmissible character evidence	Sustained
23:4-7	Relevance, Confuses the Issues, Misleads the Jury, EEOC MIL No. 7	Overruled

23:22-24:5	Relevance, Lack of Foundation, Confuses the Issues, Unfairly Prejudicial	Sustained
29:2-13	Relevance, Confuses the Issues, Misleads the Jury, Inadmissible character evidence	Sustained
32:6-13	Relevance, Unfairly Prejudicial, Confuses the Issues, Misleads the Jury, Hearsay and Lack of Personal Knowledge	Sustained
37:3-38:2	Relevance, Wasting Time, Confuses the Issues, Unfairly Prejudicial, Inadmissible character evidence, and Improper Impeachment of Kerr (Rule 608(b), EEOC MIL 9)	Sustained
38:22-39:7	Relevance, Confuses the Issues, Unfairly Prejudicial, Inadmissible character evidence	Sustained

**David Leavengood**

<b>Testimony</b>	<b>Plaintiff's Objection</b>	<b>Ruling</b>
16:17-17:24	Relevance	Overruled
36:3-23	Relevance, Wasting Time, Confuses the Issues — This involves an alleged incident of harassment by Kasper, who is not a decision maker	Overruled
37:3-11	Relevance, unfairly prejudicial — If the EEOC is not permitted to introduce evidence or argument about the reason for Kasper's termination, then in fairness RAC should not be permitted to do so, either	Ruling reserved
46:19-48:14	Relevance	Sustained
51:22-52:7	Relevance, Violates EEOC MIL No. 6	Overruled
56:6-17	Argumentative, Leading	Overruled
57:4-9		
58:9-19	Argumentative, Attorney Comment, Leading	Overruled
63:13-20	Relevance, Argumentative, Speculative, Refers to Facts Not in Evidence	Overruled
64:12-21	Calls for Hearsay, Lack of Foundation, Argumentative, Refers to Facts Not in Evidence	Overruled
66:15-67:1	Relevance, Speculative, Answer Contains Legal Conclusions	Overruled
68:2-12	Calls for hearsay	Overruled
69:20-70:1	Relevance, Confuses the Issues, Lack of Personal Knowledge, Attorney Comment	Overruled
70:17-22	Relevance, Leading, Confuses the Issues, Calls for Hearsay	Overruled
71:14-22	Relevance, Unfairly Prejudicial — If the EEOC is not permitted to introduce evidence or argument about the reason for Kasper's termination, then in fairness RAC should not be permitted to do so, either	Sustained

73:16-18 73:21-22 73:24-74:1 74:3-4	Relevance, Wasting Time, Confuses the Issues, Argumentative, Calls for Opinion Testimony  The phrasing of the question (part of which is omitted) is also confusing and vague	Sustained
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74:15-19	Best evidence rule (FRE 1001)	Overruled
74:20-75:6 75:8-9	Relevance, Argumentative, Attorney Comment, Speculative — The content of the question is more appropriate for closing argument than witness examination	Sustained
77:16-24	Relevance, Confuses the Issues, Argumentative	Overruled
78:5-7 78:9-16	Relevance, Unfairly Prejudicial, Confuses the Issues, Lack of Foundation — RAC's charitable work is not relevance and this unfairly seeks to curry favor with the jury	Overruled
79:7-12 79:14:00 80:3-8	Attorney Comment, Argumentative, Leading, Calls for Hearsay, Lack of Foundation (witness says he has no knowledge)	Overruled

**Daniel Roling**

<b>Testimony (page:lines)</b>	<b>Plaintiff's Objection</b>	<b>Ruling</b>
4:5-22 6:6-21 8:5-14	Relevance, wasting time — Deposition preliminaries not needed at trial	4:5-22, Overruled 6:6-21, Sustained 8:5-14, Overruled
9:19 - 10:8	Relevance, confuses the issues — This pertains to an allegation of demotion not at issue in this trial	Overruled
12:11-25	Relevance, lack of foundation — The witness oversaw the Rantoul store (and thus Kasper) in 2012 (see p. 9:13-18) years before the events in question in this case	Overruled
12:14-16	Leading	Overruled
13:1-4	Relevance, speculation	Overruled
13:5-21	Relevance, lack of foundation, confuses the issues — The witness did not supervise Kerr in 2014 (see p. 9:13-18)	Overruled
14:21 - 15:5	Improper character evidence — Testimony does not comply with F.R.E. 608(a) (permitting only reputation or opinion evidence, and such evidence to prove truthfulness only after character for truthfulness has been attacked) or F.R.E. 608(b) (inquiry into specific instances permitted only on cross-examination)	Ruling reserved as to 14:21 – 15:2 until after Witness Jason Carnahan testifies.  Sustained as 15:3-5
20:3-7	Hearsay, lack of foundation, refers to facts not in evidence	Sustained
20:23 - 13:1	Attorney comment, leading	Overruled
21:11-13	Improper character evidence, violates EEOC MIL No. 7	Sustained
22:6-15	Lack of foundation/speculation as to what Carnahan was thinking	Sustained

23:15-17	Relevance, lack of foundation — Witness oversaw Rantoul store in 2012, not 2014	Overruled
39:12-16 39:22 - 40:19	Hearsay	Overruled
43:15-22 44:3-10	Relevance	Sustained
46:9-14	Lack of personal knowledge (FRE 602), hearsay — The witness explains at 46:15-16 that the reputation information the witness provides at 46:9-14 came from Carnahan.	Overruled
	<b>Defendant's Objection</b>	<b>Ruling</b>
31:1-13, 17-19; 32:1-4, 15-21	Relevance	Overruled
42:10-17	Lack of foundation, calls for speculation	Overruled

**Marissa Torres**

<b>Testimony (page:lines)</b>	<b>Plaintiff's Objection</b>	<b>Ruling</b>
60:21 - 61:6 61:9 61:13-14	The question principally consists of attorney commentary, and there is a lack of personal knowledge (the witness stated she does not know).	Overruled
73:22 - 74:17	Leading	Overruled
	<b>Defendant's Objection</b>	
31:3-13	Lack of foundation, calls for speculation	Overruled

**Russell Wiedemann**

<b>Testimony</b>	<b>Objection</b>	<b>Ruling</b>
5:8-20 6:15 - 7:1 7:20 - 8:2	Relevance, Wasting Time — deposition preliminaries and conversation	5:8-20, Overruled 6:15 - 7:1, Sustained 7:20 - 8:2, Overruled
10:17 - 12:5 12:23 - 13:20	Relevance, Wasting Time, Confuses the Issues	Overruled
13:19-20 13:22 - 14:5	Attorney Comment, Relevance, Confuses the Issues, Assumes Facts Not in Evidence, Collateral Evidence Rule — This is an attempt to impeach Ms. Kerr (based on a statement she did not actually make) through Wiedeman's testimony which is extrinsic evidence	Sustained
14:18-25 15:3-23	Relevance, Wasting Time, Confuses the Issues	14:18-25, Overruled 15:3-23, Sustained
17:5-18 17:24 - 18:18	Relevance, Confuses the Issues, Improper impeachment of Ms. Kerr (extrinsic evidence about collateral matter), Violates EEOC MIL No. 7	Overruled
17:16-18 18:24 - 19:10	Relevance, Confuses the Issues, Violates EEOC MIL No. 7	Overruled
19:17-22	Relevance, Lack of Foundation, Speculation — Witness states that he does not know	Overruled
20:13-18 20:20-25 21:2-4	Relevance, Lack of Foundation, Speculation — The witness stated previously (19:19-22) that he lacks knowledge, insufficient foundation was laid as to how much he actually knows  Also, Violates EEOC MIL No. 7	Overruled
21:12-19 21:24 - 22:1	Relevance, Lack of Foundation, Misleads the Jury, Attorney Comment	Overruled
22:8 - 23:8	Relevance, Unfairly Prejudicial	Overruled

23:12-14 23:16-18	Relevance, Confuses the Issues, Improper Impeachment of Ms. Kerr (extrinsic evidence about collateral matter), Violates EEOC MIL No. 7	Overruled
23:25 - 24:4 24:7-10	Argumentative, Attorney Comment, Calls for Speculation, Violates EEOC MIL No. 7	Overruled, except that objection is sustained as to 24:1-4, beginning with "Would you have at least...", and 24:7, which shall be stricken
24:11-15	Relevance, Impeachment of Kerr by Extrinsic Evidence of a Collateral Matter	Overruled
26:20 - 27:4 27:8 - 28:8	Relevance, Violates EEOC MIL No. 7, Improper Impeachment of Kerr by Extrinsic Evidence of a Collateral Matter, Waste of Time	Overruled
27:16 - 28:8	Calls for narrative testimony	Overruled
28:9-29:1	Relevance, Improper Impeachment of Kerr by Extrinsic Evidence of a Collateral Matter, Waste of Time	Overruled
32:1-3 32:5-14	Relevance, Confuses the Issues, Lack of Foundation	Overruled
32:24-33:3 33:5-34:2	Relevance, Wasting Time, Confuses the Issues, Testimony is Narrative and Nonresponsive	Sustained
34:8-19	Relevance, Improper Impeachment of Kerr by Extrinsic Evidence of a Collateral Matter, Waste of Time	Overruled
34:17-22	Speculation, Lack of Foundation	Sustained
36:18 - 37:3	Relevance, Assumes Facts Not in Evidence, Argumentative, Improper Opinion Testimony	Sustained
37:4-5	No answer designated, Violates EEOC MIL No. 7	Sustained

37:12-40:16 41:9-12 41:14-24	Relevance, Confuses the Issues, Wasting Time, Improper Impeachment of Shumate by Extrinsic Evidence, Violates EEOC MIL No. 7	Overruled
46:20-47:5	Relevance, Wasting Time, Confuses the Issues, Improper Opinion Evidence	Sustained
50:11-52:2	Relevance, Hearsay, Wasting Time, Unfairly Prejudicial Confuses the Issues, Misleads the Jury, Violates EEOC MIL No. 7	Overruled as to 50:11- 19, Sustained as to the remainder

ENTERED this 1st day of February, 2018.

s/ERIC I. LONG  
UNITED STATES MAGISTRATE JUDGE