

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF ILLINOIS  
Urbana DivisionUS EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

Plaintiff,

v.

RENT-A-CENTER EAST INC.,

Defendant.

Case No. 16-2222

## ORDER

Before the Court is the last remaining issue from EEOC's Second Motion in Limine. EEOC seeks to bar evidence of statements that Kerr made to the Illinois Department of Employment Security ("IDES"). Both parties fully briefed the issue. (#101; #102). EEOC argues that the records are hearsay and therefore inadmissible. Rent-A-Center ("RAC") argues that it has no intention of presenting the records for the truth of the matter asserted in them. Rather, it wants to present them for their falsity.

Hearsay is an out of court statement that a party offers to prove the truth of the matter asserted in the statement. FED. R. EVID. 801(c). Kerr's statements in the documents are being tendered to prove the falsity of those statements. They are not hearsay. *See Anderson v. United States*, 417 U.S. 211, 220-221.

The statement by the investigator that Kerr actually made the statements is indeed hearsay. RAC is tendering the records to prove that Kerr made a particular statement. However, Rule 803(8) provides an exception for records or statements of a public office that set out either the office's activities or factual findings from a legally authorized investigation and the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.<sup>1</sup> FED. R. EVID. 803(8). These records are

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<sup>1</sup> These records also fit squarely within Rule 803(6) exception for records of regularly conduct activity. The documents were prepared at or near the time by someone with knowledge of the event, they were kept by

documents from the Illinois Department of Employment Security, which is charged with, at least in part, determining the validity of claims for unemployment benefits. These records simply document IDES's activities and investigation as it relates to Kerr's claim for benefits. The EEOC has not demonstrated any basis for questioning the trustworthiness of the records.

Regardless, if Kerr testifies consistently with her deposition, she will contradict statements she made to IDES. At a minimum, this testimony would allow RAC to use the documents to prove her prior inconsistent statement under Rule 613, which allows extrinsic evidence of a witness's prior inconsistent statement if the witness is given an opportunity to explain or deny the statement and opposing counsel is given an opportunity to examine the witness about it.

Finally, EEOC objects to statements made by the declarant to support the introduction of the records and to explain how the documents were created (although the objection seems to be in the context of questioning the documents' trustworthiness). The declaration of Jody Wanless goes beyond the requirements of certifying the authenticity of the records. In part, it is clearly hearsay testimony. If EEOC declines to stipulate to Ms. Wanless's testimony, then her personal appearance will be required to elicit the testimonial portions of the declaration that go beyond certifying the authenticity of the documents.

ENTERED this 11th day of May, 2018.

s/ERIC I. LONG  
UNITED STATES MAGISTRATE JUDGE

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IDES in the course of regularly conducted activity, it was a regular practice of the organization to make these records, and there is no indication to question their trustworthiness.