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March 20, 2017

Via email: sprpositionstmts@state.ma.us
Patty Woods
Administrative Assistant
Massachusetts Commission Against
Discrimination
436 Dwight Street, Room 220
Springfield, MA 01103

Re: Lynn Rivera v. Springfield Rescue Mission
MCAD No.: 17SPA00221
Our File No.: 10067255

Dear Ms. Woods:

Enclosed for filing please find Respondent Springfield Rescue Mission's Position Statement and Affirmation of Ron Willoughby with regard to the above matter.

Thank you.

Very truly yours,

Fred P. Frangie

FPF/eam
Enclosure
cc: Allison W. Wright, Esq.

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COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD NO. 17SPA00221

LYNN RIVERA,
Complainant

v.

SPRINGFIELD RESCUE MISSION,
Respondent

RESPONDENT SPRINGFIELD RESCUE MISSION'S POSITION STATEMENT[1]

Respondent, SPRINGFIELD RESCUE MISSION, hereby submits this Position Statement in response to the Charge of Discrimination filed by the Complainant, LYNN RIVERA ("Complainant" or "Lynn")[2] in the above-captioned action.

In this action the Complainant alleges being denied full and equal enjoyment of accommodations, advantages, facilities, goods, services, and privileges of a place of public accommodation on the basis of sex (female), gender identity (transgender), color (brown skin), and race (Puerto Rican) all in violation of the Massachusetts Public Accommodation Law, Mass. Gen. Laws c. 272 §98.

Respondent, Springfield Rescue Mission ("SRM"), denies that the Massachusetts Commission Against Discrimination has jurisdiction over this matter pursuant to the Massachusetts Public Accommodation Law, Mass. Gen. Laws c. 272 §98 and further denies that it engaged in any discriminatory conduct with respect to the Complainant. Specifically, SRM denies that the Complainant was ever discriminated against on the basis of sex, gender identity, skin color or race. Moreover, the evidence will show that the Complainant's allegations are largely

1 It should be noted that Complainant's MCAD Complaint has neither been signed nor verified by the Complainant as required pursuant to M.G.L. c. 151B § 5; 804 CMR 1.03(3).

2 Respecting the Complainant's wishes, the Complainant will be referred to as either "Complainant" or "Lynn" and the undersigned has refrained from using female pronouns.

exaggerated and that at no time was the Complainant discriminated against or improperly denied full and equal enjoyment of accommodations, advantages, facilities, goods, services, or privileges. Accordingly, Complainant's claims of discrimination and violation of the Massachusetts Public Accommodation must be dismissed and a lack of probable cause finding should be entered.

Massachusetts Public Accommodation Law

The Massachusetts Public Accommodation Law, M.G.L c. 272, §§ 92A and 98, prohibits, among other things, making any distinction, discrimination, or restriction in admission to or treatment in a place of public accommodation based on race, color, religious creed, national origin, sex, gender identity, sexual orientation, deafness, blindness, or any physical or mental disability, or ancestry.

M.G.L. c. 272, § 92A, defines a place of public accommodation as "any place, whether licensed or unlicensed, which is open to and accepts or solicits the patronage of the general public." The aforementioned statute also goes on to define a place of public accommodation to include:

> (1) an inn, tavern, hotel, shelter, roadhouse, motel, trailer camp or resort for transient or permanent guests or patrons seeking housing or lodging, food, drink, entertainment, health, recreation or rest; (2) a carrier, conveyance or elevator for the transportation of persons, whether operated on land, water or in the air, and the stations, terminals and facilities appurtenant thereto; (3) a gas station, garage, retail store or establishment, including those dispensing personal services; (4) a restaurant, bar or eating place, where food, beverages, confections or their derivatives are sold for consumption on or off the premises; (5) a rest room, barber shop, beauty parlor, bathhouse, seashore facilities or swimming pool, except such rest room, bathhouse or seashore facility as may be segregated on the basis of sex; (6) a boardwalk or other public highway; (7) an auditorium, theatre, music hall, meeting place or hall, including the common halls of buildings; (8) a place of public amusement, recreation, sport, exercise or entertainment; (9) a public library, museum or planetarium; or (10) a hospital, dispensary or clinic operating for profit...M.G.L. 272 § 92 A.

Likewise, the Massachusetts Transgender Political Coalition identified the following places/services as falling under the purview of the Massachusetts Public Accommodation Law:

- health care facilities, including medical and dental offices, hospitals, clinics, pharmacies, nursing homes, and other health care facilities;

- hotels, motels, campsites, and other places of lodging;
- restaurants, bars, nightclubs, and other establishments serving food or drink;
- retail establishments, including stores, shopping centers, car rental agencies, and other retail establishments;
- theaters, concert halls, sports arenas and stadiums, and other places of entertainment;
- convention centers, lecture halls, and other places of public gathering;
- museums, libraries, galleries, and other places of public display or collection;
- parks, zoos, amusement parks, beaches, and other places of recreation;
- public transit and bus stations, train terminals, airports, platforms, and other transportation facilities;
- public streets, highways, sidewalks, boardwalks, and other public ways;
- service establishments, including laundromats, dry-cleaners, banks, gas stations, barber shops, beauty salons, travel agents, funeral parlors, employment agencies;
- providers of professional services such as law offices, doctors, dentists, accountants, and insurance agents;
- public spaces and offices of state and local government agencies including, court rooms, hearing rooms, meeting rooms, waiting areas, lobbies, entrances, polling places, public information counters and displays. *"Discrimination in Public Accommodations"*, (05/03/16) Retrieved from http://www.masstpc.org/take-action/legislation/public -accommodations/)

Interestingly, this laundry list of places identified under M.G.L. c. 272 §92A and by the Massachusetts Transgender Political Coalition, respectively, does not include churches or religious organizations or any non-profit charitable organizations. While SRM denies that it discriminated against the Complainant in any fashion, it further hereby respectfully reserves its right to contest the Massachusetts Commission Against Discrimination's jurisdiction over this matter for the reasons set forth in the accompanying Motion to Dismiss (Exhibit 1). As SRM is a non-profit, charitable organization that is not open to the public and does not accept or solicit the patronage of the general public, it is exempt from the Commonwealth's Public Accommodation Law.

FACTUAL BACKGROUND

Springfield Rescue Mission. SRM is a non-profit organization that has been in existence since 1892. It was established under the leadership of Julius Cummings, a former Salvation Army Captain. SRM's goal is to meet the physical and spiritual needs of the hungry, homeless, addicted, and poor for the Greater Springfield area by providing food, shelter, clothing, Christian rehabilitation services, medical attention, counseling, literacy training and advocacy through their Rehabilitation Program and Emergency Service Programs. (See Exhibit 2, Brook's Affidavit ¶ 4, 5, and 6). In furtherance of its mission, SRM offers a number of programs to the less-fortunate. In particular:

> **Men's Emergency Shelter Program,** is a 43-Bed Emergency Shelter located at Taylor Street. This facility provides homeless men with safe shelter, nutritious meals, hygiene supplies, clothing, counseling and referrals to community resources as needed. The shelter operates at capacity nearly every night of operation and is expected to serve approximately 600 unduplicated men annually.
>
> **Men's New Life Rehabilitation Program** is a program that provides a comprehensive approach to overcoming homelessness. The Men's New Life Rehabilitation Program works individually with participants to help them resolve a large number of problems so they can return to the community and sustain a productive life. The facility is located at 10 Mill Street and has a capacity for 60 dormitory beds.
>
> **Men's Transitional Living Program**. Graduates of the Men's New Life Rehabilitation Program stay for up to an additional 12 months in the Transitional Living Program. The residents live in an alcohol and drug-free environment and receive meals, support, and case management before transitioning to independent living.
>
> **Give-Away Center**. The Give Away Center is a program that provides clothing, shoes, coats, jackets, and household goods to the needy - free of charge. Inventory available is reflective of donations received, with priority given to the Springfield Rescue Mission's Residential and Emergency Program Needs. These items are distributed during the week to people in need and upon request subject to the available inventory. The program is available by appointment only.
>
> **The Public Breakfast Program**. This program provides a well-balanced full breakfast to approximately 100 hungry men, women, and children six days per week.

Operation SONshine. This is a mobile food service program that delivers an average 200 nutritious meals per day to Springfield residents in low-income neighborhoods.

Traditional Holidays Meals. The Springfield Rescue Mission also provides the hungry and the homeless individuals with a sit-down holiday meal on Easter, Thanksgiving, and Christmas.

Operation Hope Tote. Operation Hope Tote is an annual campaign that helps provide daily essentials (e.g. soap, toothpaste, shampoo) to the poor and homeless throughout the Greater Springfield area. For over the last 14 years during the Easter season Operation Hope Tote has provided much needed toiletries to people in need. (See Exhibit 2, Brook's Affidavit ¶ 6).

It should also be noted that all of these programs are offered to people in need and **free of charge**. (See Exhibit 2, Brook's Affidavit ¶ 6). Moreover, be it by act or deed, and through its Christian teachings and scripture[3], SRM for a number of years, has worked to help people in need by introducing them to Christ and helping them apply the Word of God to every aspect of their lives.

A small sample of how SRM has touched the lives of some of the more unfortunate in a very profound and meaningful way can be witnessed on SRM's web page at https://springfieldrescuemission.org. Furthermore, attached hereto are testimonies from past recipients, Steve, Jodi, Jose, and George, who describe how SRM has changed their lives. (See Exhibits 3, 4, 5 and 6).

It should also be noted that SRM relies primarily upon private contributions and does not receive any state or federal support. Thus, its programs and the ability to offer same to its residents and the less-fortunate rely heavily upon private donations. (See Exhibit 2, Brook's Affidavit ¶ 7).

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3 *"The King will answer and say to them, 'Truly I say to you, the extent that you did it to one of these brothers of Mine, even the least of them, you did it to Me." Mathew 25:40 ... And they would be distributed to each as any had need." Acts 4:35.*

It is against this backdrop that the Complainant seeks to press forward and showcase her personal crusade at the expense of SRM by exaggerating and sensationalizing a single, benign interaction that lasted less than 60 seconds, was outside the Complainant's presence, and resulted in the Complainant being allowed full access to one of SRM's charitable programs. Moreover, the Complainant has alleged being discriminated against on the basis of sex, race, skin color and gender by a non-profit charitable organization, whose sole mission is to help the less-fortunate. As the facts not in dispute will demonstrate, the Complainant was not discriminated against on the basis of sex, race, skin color, gender or for any other reason. Furthermore, the record will show that the Complainant was not denied access to the Give Away Center Program.

Give Away Center. In this action the Complainant complains of a single incident that occurred on April 28, 2016 while Complainant was accessing SRM's Give Away Center program to obtain clothing and personal items. The Give Away Center is an SRM program that strives to provide individuals and families throughout the Greater Springfield area with clothing items, household goods, and personal care items. Inventory available is reflective of donations received with priority given to SRM's residential and emergency shelter program needs. As with all of its other programs, the Give Away Center is free of charge. Given its limited funding and resources, the Give Away Center is by appointment only and is not open to the public (See Exhibit 2, Brook's Affidavit ¶ 8 and 9).

While priority is given to its residents who are enrolled in SRM residential programs, when inventory permits, a limited number of community recipients/agencies may also take advantage of the Give Away Center. (See Exhibit 2, Brook's Affidavit ¶ 10 and Exhibit 7). Moreover, SRM reserves its right to limit distribution of items or deny access to the Give Away Center based upon, but not limited to, the following: Lack of inventory, inappropriate conduct, disrespect for staff, residents or volunteers, use of foul language, misuse of goods provided, or not following the proper

protocol to access the Give Away Center (See Exhibit 2, Brook's Affidavit ¶ 7 and Exhibit 7). With respect to its limited inventory, SRM is always mindful and concerned that recipients of the Give Away Center will obtain clothing, household goods, or personal care and then sell them on the streets presumably for other non-essential items or goods (e.g. drugs or alcohol). To this end, the Give Away Center created a protocol for community recipients, who wish to access this program, by requiring them to call for an appointment, show proper identification, and bring a bag with them not to exceed 13 gallons. (See Exhibit 7). Thereafter, upon entering the Give Away Center, eligible recipients are allowed to fill their bag with clothing and personal household goods – free of charge. (See Exhibit 2, Brook's Affidavit ¶12). With SRM approval, community recipients/agencies may take advantage of the Give Away Center up to 4 times per year. (See Exhibit 7).

Tapestry Health. Tapestry Health is a community-based health services agency. For a number of years, Tapestry Health and SRM have worked in unison to fulfill the needs of Tapestry Health clients. (See Exhibit 2, Brook's Affidavit ¶ 13). Emily Moulton was a social worker at Tapestry Health in Springfield, Massachusetts. (Complainant's Charge ¶ 15). For at least the last several years Ms. Moulton had made the necessary scheduling arrangements to bring some of her Tapestry Health clients to SRM's Give Away Center. (Complainant's Charge ¶ 17). Presumably, Ms. Moulton knew about the procedure and protocol and had an understanding of what the Give Away Center was about, who it serviced, and the procedures for accessing SRM's services. To this end, in or around mid-April 2016, Ms. Moulton called SRM and secured an appointment for the Complainant to access the Give Away Center for April 28, 2016 (Complainant's Charge ¶ 22). Ms. Moulton did not provide SRM with any special requests or additional information about the Complainant. (See Exhibit 2, Brook's Affidavit ¶ 14).

April 28, 2016. SRM's policy is to check all recipients in before they can access the Give Away Center program. (See Exhibit 2, Brook's Affidavit ¶ 16). On April 28, 2016, Ms. Moulton and the Complainant presented to the Give Away Center. Per the Give Away Center's protocol, Lenore Brooks, the Volunteer Program Coordinator and the Give Away Center Manager, checked the Complainant's identification. (See Exhibit 2, Brook's Affidavit ¶ 14 and 15 and Complainant's Charge ¶ 24). Thereafter, Ms. Moulton and the Complainant proceeded to look at clothing and personal items. (Complainant's Charge ¶ 27). At one point, Ms. Brooks noticed that the Complainant and Ms. Moulton were "shopping" in the men's clothing area. As a result, Ms. Brooks proceeded to call to their attention that the area they were in was the men's section. (See Exhibit 2, Brook's Affidavit ¶ 17). Before that time, neither the Complainant nor Ms. Moulton had informed Ms. Brooks that the Complainant did not identify with the sex she was assigned at birth. (See Exhibit 2, Brook's Affidavit ¶ 17). It should also be noted that the Give Away Center is a small room and it was not unusual for recipients (especially first-timers) to become disoriented while looking for items and ending up in the wrong section. (See Exhibit 2, Brook's Affidavit ¶ 18). Upon Ms. Brooks attempting to redirect the Complainant and Ms. Moulton to the women's section, Ms. Moulton asked to speak to Ms. Brooks in private. Thereafter, Ms. Moulton and Ms. Brooks went into the visitor entry lobby whereby Ms. Moulton proceeded to inform Ms. Brooks that this was a sensitive issue and that the Complainant identified as a male.[4] This was the first time that this was brought to the Respondent's or Ms. Brooks' attention. (See Exhibit 2, Brook's Affidavit ¶ 19). In response, Ms. Brooks indicated that the Complainant's identification had indicated that she was a female, which presumably spawned the confusion. Thereafter, a

[4] It is interesting to note that the Complainant intentionally decided to omit from the Charge of Discrimination the fact that both Ms. Brooks and Ms. Moulton went into a separate private area to have a discussion about the Complainant's gender identification. Instead, the Complainant would have the MCAD falsely believe this interaction took place in Complainant's presence with other people nearby.

discussion ensued between Ms. Moulton and Ms. Brooks regarding the Give Away Center's policies and how the Give Away Center was dependent upon donations and how clothing and personal items were given away in accordance with SRM's inventory. Additionally, Ms. Brooks indicated that SRM's priority was to its residents who participated in the SRM's residential programs (Men's Emergency Shelter Program, Men's New Life Rehabilitation Program, and Men's Transitional Living Program). (See Exhibit 2, Brook's Affidavit ¶ 20). For this reason, men's clothing was in more demand and the SRM could be more liberal about allowing female recipients from the community to use the Give Away Center than male recipients. (See Exhibit 2, Brook's Affidavit ¶ 21). Following this discussion, and having had an opportunity to process the information and understand the issue that Ms. Moulton had shared with Ms. Brooks, upon returning to the Give Away Center, Ms. Brooks indicated to Ms. Moulton that it would be okay for the Complainant to take whatever clothing she desired (men's or women's). (See Exhibit 2, Brook's Affidavit ¶ 22). Ms. Brooks believed that this ended whatever misunderstanding there was. (See Exhibit 2, Brook's Affidavit ¶ 22). Thereafter, the Complainant and Ms. Moulton continued to look for clothing and when it appeared that they were completed they returned to the front desk with a bag of clothes. (See Exhibit 2, Brook's Affidavit ¶ 23). According to Ms. Brooks, the Complainant and Ms. Moulton approached the front desk slowly, placed their plastic bag containing the clothing items they selected on the desk and indicated very calmly and deliberately that they would not be taking anything that day. They then promptly exited the building. (See Exhibit 2, Brook's Affidavit ¶ 22). This surprised Ms. Brooks, who had clearly indicated to Ms. Moulton that the Complainant could take whatever clothing the Complainant wanted. (See Exhibit 2, Brook's Affidavit ¶ 22).

Springfield Rescue Mission's Position. Respondent denies that the Complainant was discriminated against on the basis of sex, gender identity, skin color or race. As mentioned above,

upon SRM being apprised by a staff member at Tapestry Health that the Complainant did not identify with the sex she was assigned at birth, a private discussion between Ms. Brooks and Ms. Moulton ensued with the decision that the Complainant could chose clothing from either the men's or women's section and it was the Complainant and Ms. Moulton's decision to leave the Give Away Center without taking any clothing or personal goods after packing a bag of clothing. Consequently, as the facts not in dispute will demonstrate, the Complainant was neither discriminated against on the basis of sex, race, skin color or sexual identification nor denied access to a place of public accommodation.

Accordingly, for the reasons stated herein, the undersigned respectfully requests that the MCAD dismiss Complainant's claims and enter a lack of probable cause finding on behalf of SRM.

ARGUMENT

I. COMPLAINANT HAS NOT SET FORTH A PRIMA FACIE CASE OF DISCRIMINATION

In the instant Charge, Complainant alleges being discriminated against on the basis of sex, race, color and sexual identification in a place of public accommodation when the Complainant was allegedly prevented from selecting clothing from the men's section in violation of M.G.L. c. 272, § 98. However, Complainant has failed to set forth any credible support for these assertions of discrimination. See, e.g., Hatten v. 4th Cliff Seafood Restaurant, 22 MDLR 369, *10 (2000) (in order to prove a case of discrimination under M.G.L. c. 272, § 98, complainant must prove such alleged discrimination by a preponderance of the evidence). See also e.g., Blare v. Husky Injection Molding Systems Boston, Inc., 419 Mass. 437, 441 (1995) (in order to prove a discrimination claim, initially "the plaintiff has the burden to show by a preponderance of the evidence a prima facie case of discrimination"); City of Boston v. Massachusetts Commission Against

Discrimination, 47 Mass. App. Ct. 816, 821 (1991) ("the burden of proof – as opposed to the burden of production- remains with the plaintiff").

A. Complainant's Burden Of Proof

Complainant "must establish a *prima facie* case of discrimination through the use of direct evidence or by using the inferential model of proof articulated in *Wheelock v. MCAD*, 371 Mass. 130 (1976)." Hatten, 22 MDLR at *10. Even if Complainant can make a *prima facie* assertion of discrimination, the respondent can then rebut this assertion by presenting a legitimate reason for its conduct, Hatten, 22 MDLR at *11 (finding that "Respondent [restaurant owner] successfully rebutted the *prima facie* case in this matter by articulating a legitimate, non-discriminatory reason for not serving [African-American customer] cooked food"); Blare, 419 Mass. at 441 (respondent "can rebut the presumption created by the prima facie case by articulating a legitimate, nondiscriminatory reason for its ... decision"), and presenting credible underlying facts to support the assertion that the conduct was for the articulated reason. Hatten, 22 MDLR at *11-14; Smith College v. MCAD, 376 Mass. 221, 229 (1978).

Thereafter, Complainant must demonstrate by a fair preponderance of the evidence that the Respondent's proffered reason was only a pretext for discrimination. Hatten, 22 MDLR at *15; Sarni Original, 388 Mass. at 615; Blare, 419 Mass at 444-45. Complainant cannot prevail simply by showing that the respondent's articulated reason was unwise or unfair, but must show that the articulated reason is not supported by the evidence. See Smith College, 376 Mass. at 230, 232; Wheelock College, 371 Mass. at 138-39.

Finally, in order to support an action against SRM, Complainant must show that the Respondent intentionally used an impermissible characteristic such as race, color, sex or gender

identification as the determinative factor in its treatment of the Complainant. School Committee of Braintree v. MCAD, 377 Mass. 424, 428 (1979). The burden of proving the use of an impermissible characteristic never leaves the Complainant. Wheelock College v. MCAD, 371 Mass. 130, 138 (1976); Sarni Original Dry Cleaners, Inc. v. Cooke, 388 Mass. 611, 614-15 (1983).

As the facts in this case do not support Complainant's assertions of discriminatory animus, and do support that SRM's conduct at all times was appropriate and proper with respect to its handling of the situation, Complainant is unable to meet the required burden of proof to support claims for discrimination.

B. Complainant Has Not Set Forth a Prima Facie Case of Discrimination on the Basis of Sex, Gender Identity, Color or Race.

As the facts not in dispute demonstrate, Complainant has failed to set forth a prima facie case of discrimination on any of the protected classes that Complainant has alleged.

i. Discrimination on the basis of gender identification.

As stated in greater detail above, upon entering the Give Away Center, Complainant presented her identification indicating that Complainant was a female. Thereafter, the Complainant and Ms. Moulton began looking at clothing. Upon the Complainant and Ms. Moulton going into the men's clothing section, Ms. Brooks believed that they had inadvertently strayed into the men's clothing section and she was merely attempting to re-direct them back to the women's section. It is important to note that, at this time, Ms. Brooks had no knowledge that the Complainant was a transgender person. Moreover, it was only after Ms. Moulton and Ms. Brooks went out into the visitor entry lobby – at Ms. Moulton's behest- that Ms. Brooks was made aware of Complainant's gender identification. It is also important to note that this discussion was in private and outside earshot of everyone, including the Complainant. It should also be noted that this dialogue between Ms. Brooks and Ms. Moulton is recommended by the Attorney's General Office when making inquiry into a person's gender identity. *("Inquiry into a person's gender*

identity is generally not necessary. However, if a place of public accommodation has a legitimate concern about whether a person is using the appropriate facility, an employee may attempt to resolve the issue through a private and discrete conversation with that person.") Attorney General's Office *"Gender Identity Guidance for Public Accommodations"* September 1, 2016, as attached hereto as Exhibit 8.

After being apprised of Complainant's gender status, and upon Ms. Moulton returning to the Give Away Center, Ms. Brooks told Ms. Moulton and the Complainant that the Complainant could take any clothing the Complainant wanted (men's or women's). However, while the Complainant and Ms. Mouton continued to look for clothes, they made the decision to leave without taking anything. To say the least, this was odd behavior to take the time to fill a bag of clothing only to drop it at the counter and leave the building. Consequently, it is SRM's position that the Complainant was not denied access to the men's clothing section at the Give Away Center as alleged.

ii. Discrimination on the basis of sex.

With respect to her claim of discrimination on the basis of sex, other than alleging that she does not identify as a female, uses gender-neutral pronouns, and refuses to wear women's clothing, Complainant fails to set forth any allegations that she was discriminated against on the basis of sex. "Membership in a protected class, without more, is insufficient." *Weber v. Cmty. Teamwork, Inc.*, 434 Mass. 761, 778 (2001). See also *Lipchitz v. Raytheon Co., supra* at 502, 751 N.E.2d 360, *Weber v. Cmty. Teamwork, Inc.*, 434 Mass. 761, 778 (2001).

As an initial matter and with all due respect to the Complainant, it would seem counter-intuitive that the Complainant would allege, on the one hand, that Complainant is being discriminated against on the basis of sex (female), yet, on the other hand, Complainant refuses to identify as a woman. That being said, it should also be noted that the other two individuals who

were involved in the subject incident, Ms. Moulton and Ms. Brooks, are both females. Thus, it defies common sense that Ms. Brooks or Ms. Moulton would discriminate on the basis of a protected class that they all share. The Court notes that a well-recognized inference *against* discrimination exists where the person who participated in the allegedly adverse decision is also a member of the same protected class.") (citing *Toliver v. Community Action Comm'n to Help the Economy, Inc., 613 F.Supp. 1070, 1074 (S.D.N.Y.1985)* for the proposition that "if a decision maker is in same protected class as plaintiff, claims of discrimination become less plausible"). *See, e.g., Elrod v. Sears, Roebuck and Co., 939 F.2d 1466, 1471 (11th Cir.1991) (ADEA)* (stating that it is difficult for a plaintiff to establish discrimination when the allegedly discriminatory decision makers are within the same protected class as the plaintiff); *Demesme v. Montgomery Cnty. Gov't, 63 F.Supp.2d 678, 683 (D.Md.1999) (Title VII)* ("The fact that the decision makers were of the same protected class [as the plaintiff] suggests no discriminatory motivation."), aff'd per curiam, *208 F.3d 208 (4th Cir.2000);* see also *Coggins v. Gov't of District of Columbia, 173 F.3d 424, 1999 WL 94655 at *4 (4th Cir.1999).*

Perhaps the strongest evidence to demonstrate that SRM did not discriminate against the Complainant on the basis of sex are the demographics for the selected recipients who accessed the Give Away Center. For the 2016 calendar year:

> **The total number of females who received services through the Springfield Rescue Mission's Give Away Center was 937, and**
>
> **The total number of males who received services through the Springfield Rescue Mission's Give Away Center was 749.**

Consequently, the above numbers demonstrate that the Respondent actually favors servicing females over males with respect to the Give Away Center program and allowing selected community members to access this program.

iii. Discrimination on the basis of race and color.

Likewise, with respect to the claims of discrimination on the basis of race and color, Complainant has failed to either allege or offer any evidence that would substantiate these claims. In particular, Complainant merely alleges having brown skin[5] and being of Puerto Rican descent and that Complainant was denied access to men's clothing because of Complainant's race and skin color. However, SRM's recordkeeping indicates that a disproportionally large number of the less-fortunate who accessed SRM's Give Away Center Program are minorities and in Complainant's protected class. For the year 2016:

> **The total number of people who identified as Caucasians who received services from the Give-Away Center was 243; and the**
>
> **The total number of people who identified as Hispanics who received services from the Give-Away Center was 635.**

Thus, SRM's Give-Away-Program actually serviced Hispanics over Caucasians at more than a 2:1 ratio. Furthermore, the **total number of Give Away Center recipients who were Black was 293**. In short, Complainant's allegations that the Complainant was discriminated against on the basis of race and skin color is baseless and without any merit.

Thus, as the facts not in dispute demonstrate, Complainant has failed to demonstrate that Complainant was discriminated against on the basis of gender identity, race, skin color, sex, or any other improper basis. Accordingly, Complainant's claims of discrimination and violation of the Massachusetts Public Accommodation must be dismissed and a lack of probable cause finding should enter.

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5 The Respondent takes exception to Complainant's allegation regarding having "brown skin."

RESPONSES TO THE COMPLAINANT'S ALLEGATIONS IN THE DISCRIMINATION COMPLAINT

JURISDICTION

1. The Massachusetts Commission Against Discrimination ("Commission") has jurisdiction over this matter pursuant to Mass. Gen. Laws ch. 151B §§ 3(6) and (7), and 5.

RESPONSE: Respondent denies the allegations contained in this Paragraph. Please see the attached Motion to Dismiss whereby the Respondent contests the Massachusetts Commission Against Discrimination's jurisdiction over this matter (Exhibit 1), namely, because SRM is a non-profit, charitable organization which is not open to the public and it does not accept or solicit the patronage of the general public.

2. Lynn is a brown-skinned Puerto Rican transgender person.

RESPONSE: Respondent denies having any knowledge or information concerning the complainant's race or national origin. With respect to the Complainant's complexion, the Respondent recalls that her skin tone was not brown and further questions the relevance of this allegation. Respondent admits that while the Complainant's identification which was presented to the Respondent upon gaining entry into the Give Away Center indicated that the Complainant was a female, at some later point Ms. Moulton decided to inform the Respondent that the Complainant identified as a male. Unfortunately, the manner in which Ms. Moulton decided to handle this matter and her short-sightedness caused some confusion and created the perceived awkwardness that could have otherwise been avoided.

3. Lynn is a resident of Springfield, MA.

RESPONSE: Respondent denies having any knowledge or information concerning the Complainant's residence.

4. Respondent owns and operates the Give-Away Center ("Center") located at 10 Mill Street, Springfield, MA 01108. The Center distributes clothing, coats, shoes, toiletries, and household items to anyone in need, free of charge. The Center also provides, upon request and when available, bags of groceries filled with nutritious food items and food staples and other items for daily living to anyone in need three days per week.

RESPONSE: The Give Away Center is just one of a number of programs that SRM offers to people in need. The program is free of charge and is solely dependent upon private donations. The program is geared toward the homeless and less-fortunate residents in SRM's Residential and Emergency Shelter program. The program is not open to the public. Moreover, the amount of inventory that the SRM has dictates the number of community recipients/agencies who may take advantage of this program.

FACTS

A. Complainants' Background

5. Lynn is of Puerto Rican descent.

RESPONSE: Respondent denies having any information or knowledge regarding the Complainant's ethnicity or descent. In fact, Respondent did not know the Complainant was of Puerto Rican descent until it received the instant charge of discrimination.

6. Lynn has brown skin.

RESPONSE: Respondent does not recall the Complainant's skin color being brown.

7. Lynn was assigned female at birth.

RESPONSE: Respondent denies having any information or knowledge regarding the Complainant being assigned a female at birth.

8. Lynn does not identify as a woman.

RESPONSE: Respondent denies having any information or knowledge regarding the Complainant not identifying as a woman until after Ms. Moulton indicated as much. Respondent recalls that the Complainant's identification, that was presented to gain entrance into the Give Away Center, indicated that the Complainant was a female.

9. Lynn is a gender nonconforming.

RESPONSE: Respondent denies having any information or knowledge regarding the Complainant's gender being nonconforming. After Ms. Moulton indicated that Complainant identified as a male, the Complainant was allowed to "shop" for either men's or women's apparel at the Give-Away- Center.

10. Lynn is a transgender person.

RESPONSE: Respondent denies having any information or knowledge regarding the Complainant being a transgender person. After Ms. Moulton indicated that Complainant identified as a male, the Complainant was allowed to "shop" for either men's or women's apparel at the Give-Away- Center.

11. *Lynn uses gender-neutral pronouns ("they, them, their"), male pronouns, or is solely referred to by their name.*

RESPONSE: Respondent denies having any information or knowledge regarding the Complainant being a transgender person or having a preference to use gender-neutral pronouns, male pronouns, or being referred to by name. In complying with the Complainant's wishes the undersigned has sought to avoid using female pronouns and has referred to Complainant as "Complainant" or "Lynn."

12. *Lynn does not wear women's clothing.*

RESPONSE: Respondent denies having any information or knowledge regarding the Complainant's clothing. However, after Ms. Moulton explained to Respondent that the Complainant identified as a male, it was agreed that the Complainant would be allowed to "shop" in either the men's or women's section for apparel at the Give Away Center.

13. *Lynn exclusively wears men's clothing.*

RESPONSE: Respondent denies having any information or knowledge regarding the Complainant's clothing. However, after Ms. Moulton explained to Respondent that the Complainant identified as a male, it was agreed that the Complainant would be allowed to "shop" in either the men's or women's section for apparel at the Give Away Center.

14. *Lynn received drug addiction rehabilitation and housing services from Tapestry Health – a comprehensive community-based health services organization.*

RESPONSE: Respondent understands that Tapestry Health is a community based health service agency and that the Complainant was a Tapestry Health recipient. Respondent does not

have any information or knowledge concerning the services the Complainant was accessing at Tapestry Health.

15. *Beginning in or around February 2016, Lynn worked with a social worker at Tapestry Health named Emily Moulton ("Ms. Moulton").*

Response: Respondent understands that the Complainant was working with Ms. Moulton at Tapestry Health. Respondent also admits that Ms. Moulton was the individual at Tapestry Health who arranged the appointment for the Complainant at the Give Away Center.

16. *Ms. Moulton is a White woman.*

RESPONSE: Respondent admits that Ms. Moulton is a white woman. Respondent questions the relevance of this allegation on the grounds that the allegation itself is irrelevant.

17. *Since in or around 2014, Ms. Moulton regularly took her clients from Tapestry Health to the Center to acquire clothing, household items, and other services offered by the Center.*

RESPONSE: Respondent admits that Ms. Moulton would bring clients from Tapestry Health to the Give Away Center upon following the proper protocol.

B. Respondent and the Center

18. *The Center provides food, clothing, coats, shoes, toiletries, and household items to anyone in need for free.*

RESPONSE: The Give Away Center strives to accommodate individuals and families throughout the Greater Springfield area with clothing items, household goods, personal care items, all free of charge. Inventory available is reflected of private donations received with priority given

to SRM's residential and emergency shelter program needs. Thus, SRM reserves its right to limit items distributed when donations are low.

19. The Center is open to and accepts or solicits the patronage of the general public.

RESPONSE: Respondent denies that SRM or the Give Away Center program is open to the public or that it accepts or solicits the patronage of the general public. Respondent does not receive any state or federal financial support and relies primarily (96%) upon donations. Therefore, the number of individuals allowed to access the Respondent's services and programs is limited by the inventory and the donations it receives. Additionally, the Respondent is selective about its members and the community recipients that it invites to the Give Away Center.

20. Respondent advertises the Center's services online.

RESPONSE: Respondent has a web-site that lists SRM's mission statement, goals, and programs. The websites address is https://springfieldrescuemission.org. The programs identified on the web site can be accessed free of charge based upon eligibility.

21. Respondent's advertisements indicate the Center's services are available to anyone in need.

RESPONSE: Respondent has a web-site that lists SRM's mission statement, goals, and programs. The websites address is https://springfieldrescuemission.org. The programs identified on the web site can be accessed free of charge based upon eligibility. Respondent denies that the services are available to "anyone in need" as the Respondent does not receive any state or federal financial funding and relies primarily (96%) upon donations. Therefore, the number of individuals allowed to access the Respondent's services and programs is limited by the inventory and the donations it receives.

C. Lynn's Treatment at Respondent's Center

22. *In or around mid-April 2016, Ms. Moulton scheduled an appointment for Lynn to obtain clothes and other items from the Center on or around April 28, 2016 at around 9:30 a.m.*

RESPONSE: Respondent admits that Ms. Moulton scheduled an appointment for the Complainant to obtain clothing and other items from the Give Away Center, but said nothing about the Complainant's identity issues. Pursuant to the Give Away Center's protocol, community recipients require them to call for an appointment and present proper identification prior to receiving services and to bring a bag with them not to exceed 13 gallons.

23. *On or around April 28, 2016, at around 9:30 a.m., Lynn and Ms. Moulton arrived for Lynn's appointment at the Center.*

RESPONSE: Respondent admits that the Complainant and Ms. Moulton arrived at the Give Away Center on April 28, 2016 after Ms. Moulton had scheduled an appointment.

24. *Lynn signed their name on the Center's ledger and showed their identification to SRM employee, Lenore Brooks ("Ms. Brooks"), as part of the Center's check-in process.*

RESPONSE: Respondent admits that the Complainant entered the Give Away Center and presented her identification to Ms. Brooks as part of the SRM's check-in process. Complainant's identification indicated that she was a female.

25. *There were about 7 or 8 other people in the Center during Lynn's visit to the Center.*

Respondent believes that along with Ms. Brooks there were 4 community guests and 2 resident helpers in the Give-Away-Store during the time the Complainant was there.

26. *During Lynn's visit to the Center, the Center's clothes were separated by gender. The Center had a women's clothing section and a men's clothing section.*

RESPONSE: Respondent admits that the clothing at the Give Away Center is separated by gender. Respondent also notes that due to the set up and the limited space, "first-timers" often get confused and disorientated when looking for clothing and personal items at the Give Away Center.

27. *During Lynn's visit to the Center, Ms. Moulton assisted Lynn with picking out men's clothes.*

RESPONSE: Respondent admits that the Complainant was accompanied by Ms. Moulton. Respondent also admits that it was Ms. Moulton who scheduled the appointment for the Complainant to come to the Give Away Center. Respondent does not have any information or knowledge concerning Ms. Moulton assisting the Complainant with picking out clothing. Respondent admits that the Complainant and Ms. Moulton brought clothing to the front desk that they packed in a bag, but they left behind at the front desk.

28. *Ms. Moulton went into the men's clothing section at the Center, picked out a sweater from the men's clothing section and handed the sweater to Lynn.*

RESPONSE: Respondent admits that the Complainant was accompanied by Ms. Moulton. Respondent also admits that it was Ms. Moulton who scheduled the appointment for the Complainant to come to the Give Away Center. Respondent does not have any information or knowledge concerning Ms. Moulton assisting the Complainant with picking out clothing.

29. *Shortly after Ms. Moulton handed Lynn the sweater, Ms. Brooks loudly announced that only men were allowed in the men's section and only women were allowed in the women's section, and that because Lynn's identification said female Lynn could not obtain men's clothing.*

RESPONSE: Respondent denies the allegations contained in this paragraph. Rather, Ms. Brooks saw that the Complainant and Ms. Moulton going into the men's section to presumably

look for clothing. Believing that the Complainant had mistakenly gone into the men's section based upon Complainant's identification that was presented upon entering the Give Away Center, Ms. Brooks tried to redirect the Complainant and Ms. Moulton back to the women's section. At this time no one had indicated to the Respondent or Ms. Brooks that the Complainant did not identify with the sex that was assigned at birth. Likewise, no one informed the Respondent that the Complainant was transgender. Respondent also denies that Ms. Brooks "loudly announced" that only men were allowed in the mens' section and only women were in the women's section." Respondent further denies that Ms. Brooks' intention in redirecting the Complainant to the women's section was discriminatory or done for an impermissible reason(s).

30. Lynn was shocked and embarrassed by Ms. Brooks' announcement.

RESPONSE: Respondent denies that the Complainant was shocked and embarrassed as there was nothing about Ms. Brooks' statement that would have elicited this response. In fact, Ms. Brooks thought she was merely assisting the Complainant by re-directing the Complainant.

31. Ms. Moulton informed Ms. Brooks that Lynn does not identify as a woman, prefers to be referred to by their name, does not wear women's clothing, and wears men's clothing.

RESPONSE: Respondent admits that Ms. Moulton and Ms. Brooks went out into the visitor lobby to discuss this issue in private. It was at this point that Ms. Moulton decided to inform Ms. Brooks, for the first time, that the Complainant did not identify as a woman and did not wear women's clothing. Unfortunately, the manner in which Ms. Moulton decided to handle this matter and her short-sightedness caused some confusion and created the perceived awkwardness that could have otherwise have been avoided. She should have informed the Respondent of the issue when she first made the appointment with the Give Away Center.

32. *Ms. Brooks told Ms. Moulton that the Center goes by what is on Lynn's identification; Lynn could only "shop" in the women's clothing section; and referred to Lynn using female pronouns.*

RESPONSE: Respondent denies the allegations in this paragraph. Following Ms. Moulton informing Ms. Brooks that the Complainant identified as a male, Ms. Brooks discussed with Ms. Moulton the Complainant's identification that she presented, which indicated that Complainant was a female. Ms. Brooks also reminded Ms. Moulton about the Give Away Center's protocol and need to maintain a certain amount of inventory for SRM's male residents. Thereafter, upon Ms. Moulton returning to the Give Away Center, Ms. Brooks informed the Complainant and Ms. Moulton that the Complainant could select clothing from either the men's or women's section.

33. *Ms. Moulton informed Lynn they could not shop in the men's clothing section.*

RESPONSE: If Ms. Moulton so informed the Complainant, she did so on her own volition. Ms. Brooks informed the Complainant and Ms. Moulton that the Complainant could select clothing from either the men's or women's section after Ms. Moulton informed her of the issue.

34. *Lynn left the Center with Ms. Moulton without obtaining any items from the Center because the Center limited Lynn from selecting clothing from the men's section, the only clothing that Lynn wears.*

RESPONSE: Respondent denies the allegations in this paragraph. Respondent informed the Complainant and Ms. Moulton that they could select clothing from either the men's or women's section. However, the Complainant and Ms. Moulton decided to exit the building without obtaining any items from the Give Away Center.

35. *Lynn left the Center without obtaining any items from the Center because the Center limited Lynn to selections from the women's clothing section, clothing that Lynn does not wear.*

RESPONSE: Respondent denies the allegations in this paragraph. Respondent informed the Complainant and Ms. Moulton that they could select clothing from either the men's or women's section. However, the Complainant and Ms. Moulton decided to exit the building without obtaining any items from the Give Away Center.

D. Further Evidence of Disparate Treatment at the Center

36. *In the past, Ms. Moulton's White and non-transgender women clients were permitted to access the men's clothing section at the Center.*

RESPONSE: Respondent lacks knowledge and information sufficient to admit or deny this allegations with respect to whether other women recipients were either transgender or non-transgender. Respondent does not recall a female recipient taking clothing for themselves from the men's section in the past.

37. *In the past, Ms. Moulton's White and non-transgender women clients were permitted to try on jackets, pants, and other items from the men's clothing section at the Center.*

RESPONSE: Respondent lacks knowledge and information sufficient to admit or deny this allegations with respect to whether other women recipients were either transgender or non-transgender. Respondent does not recall a female recipient taking clothing for themselves from the men's section in the past.

38. *Lynn was denied access to the men's clothing section and could not obtain men's clothing from the Center because Lynn is a brown-skinned Puerto Rican transgender person.*

RESPONSE: Following Ms. Moulton informing Ms. Brooks that the Complainant identified as a male, Ms. Brooks discussed with Ms. Moulton the Complainant's identification that she presented, which indicated that Complainant was a female. Ms. Brooks also reminded Ms. Moulton about the Give Away Center's protocol and need to maintain a certain amount of inventory for the male residents. Thereafter, upon Ms. Moulton returning to the Give Away Center, Ms. Brooks informed the Complainant and Ms. Moulton that the Complainant could select clothing from either the men's or women's section.

Respondent takes exception to Complainant's allegation regarding having "brown skin." Respondent further denies that it discriminated against the Complainant on the basis of skin color or race. Moreover, a disproportionally large number of less-fortunate who access programs and services at SRM are minorities. In particular, the total number of people who identified as Caucasians who received services from the Give-Away Center was 243; and the total number of people who identified as Hispanics who received services from the Give-Away Center was 635.

39. Lynn was denied access to the men's clothing section and could not obtain men's clothing from the Center because of Lynn's sex.

RESPONSE: Respondent denies the allegations in this paragraph. Moreover, SRM's record keeping demonstrates that the Give Away Center actually services more women than men. For the 2016 calendar year the total number of females who received services through the Springfield Rescue Mission's Give Away Center was 937 compared to 749 males during the same year.

40. Lynn was denied access to the men's clothing section and could not obtain men's clothing from the Center because of Lynn's gender identity.

RESPONSE: Respondent denies the allegations in this paragraph. Following Ms. Moulton informing Ms. Brooks that the Complainant identified as a male, Ms. Brooks discussed with Ms. Moulton the Complainant's identification that she presented, which indicated that the Complainant was a female. Ms. Brooks also reminded Ms. Moulton about the Give Away Center's protocol and need to maintain a certain amount of inventory for the male residents. Thereafter, upon Ms. Moulton returning to the Give Away Center, Ms. Brooks informed the Complainant and Ms. Moulton that the Complainant could select clothing from either the men's or women's section.

41. *Lynn was denied access to the men's clothing section and could not obtain men's clothing from the Center because of Lynn's color.*

RESPONSE: Respondent denies the allegations in this paragraph. Respondent further takes exception to Complainant's allegation regarding having "brown skin". Respondent denies that it discriminated against the Complainant on the basis of skin color or race. Moreover, a disproportionally large number of less-fortunate who access programs and services at SRM are minorities. In particular, the total number of people who identified as Caucasians who received services from the Give-Away Center was 243; and the total number of people who identified as Hispanics who received services from the Give-Away Center was 635.

42. *Lynn was denied access to the men's clothing section and could not obtain men's clothing from the Center because of Lynn's race.*

RESPONSE: Respondent denies the allegations in this paragraph. Respondent denies that it discriminated against the Complainant on the basis of skin color or race. Moreover, a disproportionally large number of less-fortunate who access programs and services at SRM are minorities. In particular, the total number of people who identified as Caucasians who received

services from the Give-Away Center was 243; and the total number of people who identified as Hispanics who received services from the Give-Away Center was 635.

CLAIMS FOR RELIEF

Count I: Unlawful Public Accommodation Discrimination Based Upon Sex

43. Complainant Lynn Rivera re-alleges paragraphs 1-42 and incorporates them herein.

RESPONSE: Respondent repeats and re-alleges its responses to paragraphs 1 through 42 of the Complainant's Charge of Discrimination and incorporates the same by reference as if fully set forth herein.

44. Respondent discriminated against Complainant Lynn Rivera in the use of a place of public accommodation by denying Lynn access to the men's clothing section at the Give-Away Center and preventing Lynn from obtaining men's clothing from the Give-Away Center.

RESPONSE: Respondent denies the allegations contained in this paragraph.

45. Respondent's actions violated Massachusetts Public Accommodation Laws, Mass. Gen. Laws ch., 272 § 98 by discriminating on the basis of sex.

RESPONSE: Respondent denies the allegations contained in this paragraph.

46. As a direct result of respondent's actions, Complainant Lynn Rivera was denied full and equal enjoyment of the accommodations, advantages, facilities, goods, services, and privileges of the Give-Away Center.

RESPONSE: Respondent denies the allegations contained in this paragraph.

Count 2: Unlawful Public Accommodation Discrimination Based Upon Gender Identity

47. Complainant Lynn Rivera re-alleges paragraphs 1-42 and incorporates them herein.

RESPONSE: Respondent repeats and re-alleges its responses to paragraphs 1 through 42 of the Complainant's Charge of Discrimination and incorporates the same by reference as if fully set forth herein.

48. Respondent discriminated against Complainant Lynn Rivera in use of a place of public accommodation by denying Lynn access to the men's clothing section at the Give-Away Center and preventing Lynn from obtaining men's clothing from the Give-Away Center.

RESPONSE: Respondent denies the allegations in this paragraph.

49. Respondent's actions violated Massachusetts Public Accommodation Laws, Mass. Gen. Laws ch., 272 § 98 by discriminating on the basis of gender identity.

RESPONSE: Respondent denies the allegations in this paragraph.

50. As a direct result of Respondent's actions, Complainant Lynn Rivera was denied full and equal enjoyment of the accommodations, advantages, facilities, goods, services, and privileges of the Give-Away Center.

RESPONSE: Respondent denies the allegations in this paragraph.

Count 3: Unlawful Public Accommodation Discrimination Based Upon Color

51. Complainant Lynn Rivera re-alleges paragraphs 1-42 and incorporates them herein.

RESPONSE: Respondent repeats and re-alleges its responses to paragraphs 1 through 42 of the Complainant's Charge of Discrimination and incorporates the same by reference as if fully set forth herein.

52. Respondent discriminated against Complainant Lynn Rivera in use of a place of public accommodation by denying Lynn access to the men's clothing section at the Give-Away Center and preventing Lynn from obtaining men's clothing from the Give-Away Center.

RESPONSE: Respondent denies the allegations in this paragraph.

53. *Respondent's actions violated Massachusetts Public Accommodation Laws, Mass. Gen. Laws ch., 272 § 98 by discriminating on the basis of color.*

RESPONSE: Respondent denies the allegations in this paragraph.

54. *As a direct result of Respondent's actions, Complainant Lynn Rivera was denied full and equal enjoyment of the accommodations, advantages, facilities, goods, services, and privileges of the Give-Away Center.*

RESPONSE: Respondent denies the allegations in this paragraph.

Count 4: Unlawful Public Accommodation Discrimination Based Upon Race

55. *Complainant Lynn Rivera re-alleges paragraphs 1-42 and incorporates them herein.*

RESPONSE: Respondent repeats and re-alleges its responses to paragraphs 1 through 42 of the Complainant's Charge of Discrimination and incorporates the same by reference as if fully set forth herein.

56. *Respondent discriminated against Complainant Lynn Rivera in use of a place of public accommodation by denying Lynn access to the men's clothing section at the Give-Away Center and preventing Lynn from obtaining men's clothing from the Give-Away Center.*

RESPONSE: Respondent denies the allegations in this paragraph.

57. *Respondent's actions violated Massachusetts Public Accommodation Laws, Mass. Gen. Laws ch., 272 § 98 by discriminating on the basis of gender race.*

RESPONSE: Respondent denies the allegations in this paragraph.

58. *As a direct result of Respondent's actions, Complainant Lynn Rivera was denied full and equal enjoyment of the accommodations, advantages, facilities, goods, services, and privileges of the Give-Away Center.*

RESPONSE: Respondent denies the allegations in this paragraph.

PRAYERS FOR RELIEF

Wherefore, Complainant Lynn Rivera requests this Commission:

1. *Declare Respondent has engaged in unlawful public accommodation discrimination in violation of Mass. Gen. Laws ch., 272 § 98;*

2. *Enjoin Respondent and its agents, officers, employees, and volunteers from engaging in practices this Commission deems to be in violation of Mass. Genl. Laws ch., 272 § 98;*

3. *Order Respondent's agents, officers, employees, and volunteers undergo LGBTQ cultural competency trainings;*

4. *Order Respondent to adopt and implement LGBTQ inclusive policies at the Center;*

5. *Award Complainant civil penal damages pursuant to Mass. Gen. Laws ch. 272 § 98; and*

6. *Such other relief as the Commission deems just.*

RESPONSE: Respondent denies that it violated M.G.L. c. 272 § 98 or any other statute and, therefore, denies the Complainant is entitled to judgment as demanded.

AFFIRMATIVE DEFENSES

Further answering, the Respondent asserts the following affirmative defenses.

FIRST DEFENSE

By way of affirmative defense, the Respondent states that its actions were not motivated by discriminatory animus.

SECOND DEFENSE

By way of affirmative defense, the Respondent states that the Complainant's claim must fail since Complainant was not treated less favorably because Complainant is a member of a protected class.

THIRD DEFENSE

By way of affirmative defense, the Respondent states that the Complainant's claims must fail since the Respondent's decisions and actions were based on legitimate non-discriminatory reasons.

FOURTH DEFENSE

By way of affirmative defense, the respondent states that the complainant's claims are barred since, at all times, the respondent acted in good faith.

FIFTH DEFENSE

By way of affirmative defense, the respondent states that the complainant is not entitled to recover because of her failure to mitigate damages.

SIXTH DEFENSE

By way of affirmative defense, the respondent states that the complainant was not subjected to any adverse action or denied full and equal enjoyment of a place of public accommodation because of Complainant's gender, sex, gender identification, race or skin color.

SEVENTH DEFENSE

By way of affirmative defense, the respondent states that the complainant is estopped from recovering in this action by way of complainant's own conduct.

EIGHTH DEFENSE

By way of affirmative defense, the respondent states that it is a non-profit, charitable organization that is not open to the public and it does not accept or solicit the patronage of the general public.

NINTH DEFENSE

By way of affirmative defense, the respondent states that the aforementioned Charge was neither been signed nor verified by the Complainant as required under M.G.L. c. 151B § 5; 804 CMR 1.03(3).

TENTH DEFENSE

By way of affirmative defense, the respondent states that the complainant is estopped from recovering in this action because she was an at-will employee and was never subjected to discrimination or retaliation.

ELEVENTH DEFENSE

By way of affirmative defense, the respondent states that it was justified in its conduct and acts and, therefore, the complainant cannot recover.

TWELFTH DEFENSE

By way of affirmative defense, the respondent states it had no knowledge of the complainant's gender identity.

THIRTEENTH DEFENSE

By way of affirmative defense, the respondent entered into an interactive process with the complainant's representative that led to a resolution of any issue.

FOURTEENTH DEFENSE

By way of affirmative defense, the respondent states that the complainant was not denied full and equal enjoyment of accommodations, advantages, facilities, goods, services, and privileges of a place of public accommodation.

FIFTEENTH DEFENSE

By way of affirmative defense, the respondent states the it is not a place of public accommodation.

SIXTEENTH DEFENSE

By way of affirmative defense, the respondent states that it is exempt from the Public Accommodation Law.

CONCLUSION

Respondent respectfully requests that the MCAD dismiss Complainant's Charge of discrimination because there is no credible evidence to support Complainant's allegations and Complainant cannot establish the necessary elements for these claims.

RESPONDENT,
SPRINGFIELD RESCUE MISSION

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CERTIFICATE OF SERVICE

I, Carole Sakowski Lynch, attorney for the Respondent, hereby certify that I have this day served the foregoing Notice of Appearance to all parties in this action by serving same via First Class mail to:

Allison W. Wright, Esq.
GLBTQ Legal Advocates and Defenders
30 Winter Street, Suite 800
Boston, MA 02108

Dated: 3/20/17

Attorney: _____
Carole Sakowski Lynch

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD NO. 17SPA00221

LYNN RIVERA,

Complainant

v.

SPRINGFIELD RESCUE MISSION,

Respondent

AFFIRMATION OF RON WILLOUGHBY

1. I am the Executive Director/CEO of the Respondent in the above-captioned action.

2. I have read the Position Statement that was prepared on behalf of the Respondent to be filed at the Massachusetts Commission Against Discrimination by Attorney Fred P. Frangie of Morrison Mahoney LLP.

3. Upon information and belief, the facts set forth in that statement are true.

Signed under the pains and penalties of perjury this 20 day of March, 2017.

Ron Willoughby

EXHIBIT 1

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD NO. 17SPA00221

LYNN RIVERA,
Complainant

v.

SPRINGFIELD RESCUE MISSION,
Respondent

MOTION TO DISMISS COMPLAINANT, LYNN RIVERA'S, CHARGE OF DISCRIMINATION IN ITS ENTIRETY

Pursuant to 804 CMR 1.05, the Respondent, SPRINGFIELD RESCUE MISSION ("SRM" or "Respondent"), hereby requests that the above captioned matter that was filed by the Complainant, Lynn Rivera ("Complainant"), be dismissed on the grounds that SRM is a religious organization and/or a private organization that is not open to the public and, therefore, not a place of public accommodation.

Introduction

In this action the Complainant alleges being denied full and equal enjoyment of accommodations, advantages, facilities, goods, services, and privileges of a place of public accommodation on the basis of sex (female), gender identity (transgender), color (brown skin), and race (Puerto Rican). In particular, Complainant alleges being denied access to the men's clothing section at the Springfield Rescue Mission's Give Away Center in violation of the Massachusetts Public Accommodation statute, M.G.L. c. 272 §§ 92A and 98.

Respondent, a non-profit organization, which is considered a church corporation (Exhibit 1), denies that it discriminated against the Complainant in any manner and further states that it is not a "place of public accommodation" as defined under Chapter 272,

§ 92A. Thus, its status as a religious organization and/or private organization renders the Massachusetts Public Accommodation statute inapplicable.

For the reasons stated herein, the Respondent respectfully requests that the Massachusetts Commission Against Discrimination dismiss the instant action on the grounds that the Complainant cannot state a claim for violation of the Massachusetts Public Accommodation Statute.

Facts Not in Dispute.

1. SRM is a non-profit organization that has been in existence since 1892. It is registered as tax exempt under Internal Revenue Code Section 501(c) (Exhibit 2) and identified as a Church Corporation under the Secretary of State's Corporate Division filings. (Exhibit 1).

2. SRM's By-Laws indicate that it is a "Christian non-profit 501(c) (3) organization adhering to the principles of the Protestant Evangelical church community and supported by free will offerings from interested individuals, churches, businesses, and civil organizations. (Exhibit 3).

3. SRM's Articles of Organization indicate that it was created for:

> The promotion of Christianity and the amelioration of the condition of poor and fallen humanity by holding religious services and radio broadcasts; distributing Christian literature; providing food, clothing, lodging and other aid for unfortunate persons; and in connection therewith to maintain appropriate buildings for these purposes; and to do all things permitted to such corporations under Chapter 180 of the General Laws. (Exhibit 3).

4. Furthermore, in the Articles of Organization the SRM's purpose is to:

> [M]eet the physical and spiritual needs of the hungry, homeless, and poor by introducing them to Christ and helping them apply the Word of God to every area of their lives. SRM's secondary objective is to equip the poor with basic life skills and knowledge to rise above dependency on entitlements/handouts and become contributing members of society. Our third objective is to advocate for the poor, educate the general public on issues relating to poverty, and seek the public's personal, corporate and financial support. (See Exhibit 3).

5. Additionally, SRM's Statement of Faith provides that:

[P]resent the Gospel of Jesus Christ according to God's Word (the Bible) to those we serve. To preserve the unity of the ministry, we require all staff, Board members, and volunteers (engaged in program teaching, preaching or counseling), subscribe to the Statement of Faith below and refrain from sharing any doctrines that are contrary to it. (Exhibit 3).

6. In furtherance of its purpose, SRM offers a number of programs to the less-fortunate. In particular:

> The **Men's Emergency Shelter Program**, which is a 43 bed emergency shelter for men that offers homeless men with safe shelter, nutritious meals, hygiene supplies, clothing, counseling and referrals to community resources as needed.

> The **Men's New Life Rehabilitation Program,** which works individually with participants to help them transition back into the community and sustain a productive life.

> The **Men's Transitional Living Program,** which offers its residents an additional 12 months to live in an alcohol and drug-free environment and receive meals, support, and case management before transitioning to independent living.

> The **Give Away Center,** which provides clothing, shoes, coats, jackets, and household goods to the needy - free of charge.

> **The Public Breakfast Program,** which offers a well-balanced full breakfast to approximately 100 hungry men, women, and children six days per week.

> **Operation SONshine,** which is a mobile food service program that delivers an average 200 nutritious meals per day to the underprivileged.

> **Traditional Holidays Meals,** which provides the hungry and the homeless individuals with a sit-down holiday meal on Easter, Thanksgiving, and Christmas.

> **Operation Hope Tote,** which is an annual campaign, that provide daily essentials (e.g. soap, toothpaste, shampoo) to the poor and homeless. (Exhibit 4, Brook's Affidavit ¶ 6).

6. These programs are offered to a limited number of eligible recipients who are selected by SRM after being screened. All recipients are underprivileged. **Additionally, all of its programs are offered to its selected recipients free of charge**. (Exhibit 4, Brook's Affidavit ¶ 6).

7. SRM relies primarily upon private contributions and does not receive any state or federal funding. Thus, its programs and the ability to offer same to its residents and the less fortunate rely heavily upon private donations. (Exhibit 4, Brook's Affidavit ¶ 7).

8. SRM's main facility is located at 10 Mill Street in Springfield, Massachusetts. The building is secured and in order to access the facility one must go through the front gate that is normally manned by a staff member or volunteer. (Exhibit 5)

9. To access SRM's Men's Rehabilitation Program, the individual must pass through the "Intake" door which is secured and under constant surveillance. (Exhibit 6)

10. Upon entering the "Intake" door into the holding room, the individual walks through a metal detector and must go through an intake procedure before being accepted into the program.

11. SRM's Give Away Program is only accessible by appointment and only for selected community members. To gain access, the community recipients must first make an appointment with SRM, which involves first successfully passing a pre-screening process before being able to access the program. (Exhibit 4, Brook's Affidavit ¶ 12).

12. Thereafter, the community recipient is given an appointment to come to the Give Away Center. (Exhibit 7).

13. On the scheduled date, the community recipient must pass through the front gates and use the "Visitor Entrance" to gain access into the building. (Exhibit 8).

14. Once in the lobby, the visitor must present proper identification before being allowed into the Give Away Center. (Exhibit 4, Brook's Affidavit ¶ 12, and Exhibit 9).

15. Upon entering the Give Away Center, the community recipient must check-in at the front desk to verify that he or she is on the list of selected community recipients for that day.

He or she will also have to present identification before being allowed access to the Give Away Center. (Exhibit 4, Brook's Affidavit ¶ 12 and 16).

16. SRM reserves its right to limit distribution or items or deny access to community members to the Give Away Center based upon lack of inventory or inappropriate conduct. (Exhibit 10).

17. Tapestry Health is a community-based health services agency that, for a number of years, has worked in unison with SRM to fulfill the needs of Tapestry Health clients. (Complainant's Charge ¶ 14 and Exhibit 4, Brook's Affidavit ¶13).

18. Beginning in or around February 2016, the Complainant worked with a social worker at Tapestry Health named Emily Moulton. (Complainant's Charge ¶ 15).

19. Since in or around 2014, Ms. Moulton regularly took her clients from Tapestry Health to the Center to acquire clothing, household items, and other services offered by the Center. (Complainant's Charge ¶ 17).

20. In or around mid-April 2016, Ms. Moulton scheduled an appointment for the Complainant to obtain clothes and other items from SRM's Give Away Center. The appointment was scheduled for April 28, 2016. (Complainant's Charge ¶ 22).

21. On April 28, 2016, Ms. Moulton and the Complainant presented to the Give Away Center. Per the Give Away Center's protocol, Lenore Brooks, the Volunteer Program Coordinator and the Give Away Center Manager, checked the Complainant's identification. (Exhibit 4, Brook's Affidavit ¶ 15 and 16, and Complainant's Charge ¶ 24).

22. SRM's policy is to check all recipients in before they can enter the Give Away Center. (See Exhibit 4, Brook's Affidavit ¶ 15 and 16).

23. Thereafter, Ms. Moulton and the Complainant proceeded to look at clothing and personal items. (Complainant's Charge ¶ 27).

24. At one point, Ms. Brooks noticed that the Complainant and Ms. Moulton were "shopping" in the men's clothing area. As a result, Ms. Brooks proceeded to call to their attention that the area they were in was the men's section. (Exhibit 4, Brook's Affidavit ¶ 18).

25. Before that time, neither the Complainant nor Ms. Moulton had informed Ms. Brooks that the Complainant did not identify with the sex she was assigned at birth. (Exhibit 4, Brook's Affidavit ¶ 18). It should also be noted that the Give Away Center is a small room and it was not unusual for recipients (especially first-timers) to become disoriented while looking for items and ending up in the wrong section. (See Exhibit 4, Brook's Affidavit ¶ 19).

26. Upon Ms. Brooks' attempt to redirect the Complainant and Ms. Moulton to the women's section, Ms. Moulton asked to speak to Ms. Brooks in private. Thereafter, Ms. Moulton and Ms. Brooks went into the visitor entry lobby whereby Ms. Moulton proceeded to inform Ms. Brooks that this was a sensitive issue and that the Complainant identified as a male. This was the first time that this was brought to the Respondent's or Ms. Brooks' attention. (Exhibit 4, Brook's Affidavit ¶ 20).

27. In response, Ms. Brooks indicated that the Complainant's identification stated that she was a female, which presumably spawned the confusion. Thereafter, a discussion ensued between Ms. Moulton and Ms. Brooks regarding the Give Away Center's policies and how the Give Away Center was dependent upon donations and how clothing and personal items were given away in accordance with SRM's inventory. Additionally, Ms. Brooks indicated that SRM's priority was to its residents who participated in the SRM's residential programs (Men's Emergency Shelter Program, Men's New Life Rehabilitation Program, and Men's Transitional Living Program). (Exhibit 4, Brook's Affidavit ¶ 20 and 21). For this reason, men's clothing was in more demand and the SRM could be more liberal about allowing female recipients from the community to use the Give Away Center than male recipients. (Exhibit 4, Brook's Affidavit ¶ 21).

28. Following this discussion, and having had an opportunity to process the information and understand the issue that Ms. Moulton had shared with Ms. Brooks, upon returning to the Give Away Center, Ms. Brooks indicated to Ms. Moulton that it would be okay for the Complainant to take whatever clothing she desired (men's or women's). (Exhibit 4, Brook's Affidavit ¶ 23).

29. Ms. Brooks believed that this ended whatever misunderstanding there was. (Exhibit 4, Brook's Affidavit ¶ 23).

30. Thereafter, the Complainant and Ms. Moulton continued to look for clothing and, when it appeared that they were completed, they returned to the front desk with a bag of clothes. (Exhibit 4, Brook's Affidavit ¶ 24).

31. According to Ms. Brooks, the Complainant and Ms. Moulton approached the front desk slowly, placed their plastic bag containing the clothing items they selected on the desk and indicated very calmly and deliberately that they would not be taking anything that day. They then promptly exited the building. (Exhibit 4, Brook's Affidavit ¶ 24).

32. This surprised Ms. Brooks, who had indicated to Ms. Moulton that the Complainant could take whatever clothing the Complainant wanted. (Exhibit 4, Brook's Affidavit ¶ 24).

Argument

In this action, it is alleged that the Complainant was not allowed to select clothing from the men's clothing section of the SRM's Give Away Center program based upon sex, gender preference, race, and skin color in violation of M.G.L. c. 272 § 98. For the reasons stated herein, Complainant's Charge should be dismissed.

a. SRM is a religious organization that is exempt from Massachusetts' Public Accommodation Law.

Under the Massachusetts Public Accommodation Law, M.G.L.c. 272, § 98, discrimination on the basis of sex, gender identity, color, or race is prohibited in any place of public accommodation. M.G.L.c. 272, § 92A defines a place of public accommodation as "any place,

whether licensed or unlicensed, which is open to and accepts and solicits the patronage of the general public ..." M.G.L.c. 272, § 98. M.G.L. c. 272 § 92A further goes on to specifically identify, by way of example, a number of establishments and entities that are considered places of public accommodation:

> (1) an inn, tavern, hotel, shelter, roadhouse, motel, trailer camp or resort for transient or permanent guests or patrons seeking housing or lodging, food, drink, entertainment, health, recreation or rest; (2) a carrier, conveyance or elevator for the transportation of persons, whether operated on land, water or in the air, and the stations, terminals and facilities appurtenant thereto; (3) a gas station, garage, retail store or establishment, including those dispensing personal services; (4) a restaurant, bar or eating place, where food, beverages, confections or their derivatives are sold for consumption on or off the premises; (5) a rest room, barber shop, beauty parlor, bathhouse, seashore facilities or swimming pool, except such rest room, bathhouse or seashore facility as may be segregated on the basis of sex; (6) a boardwalk or other public highway; (7) an auditorium, theatre, music hall, meeting place or hall, including the common halls of buildings; (8) a place of public amusement, recreation, sport, exercise or entertainment; (9) a public library, museum or planetarium; or (10) a hospital, dispensary or clinic operating for profit... M.G.L. c. 272 § 92A.

Equally compelling, the Massachusetts Transgender Political Coalition identified the following places/services as falling under the purview of the Massachusetts Public Accommodations' Law:

> Health care facilities, including medical and dental offices, hospitals, clinics, pharmacies, nursing homes, and other health care facilities; hotels, motels, campsites, and other places of lodging; restaurants, bars, nightclubs, and other establishments serving food or drink; retail establishments, including stores, shopping centers, car rental agencies, and other retail establishments; theaters, concert halls, sports arenas and stadiums, and other places of entertainment; convention centers, lecture halls, and other places of public gathering; museums, libraries, galleries, and other places of public display or collection; parks, zoos, amusement parks, beaches, and other places of recreation; public transit and bus stations, train terminals, airports, platforms, and other transportation facilities; public streets, highways, sidewalks, boardwalks, and other public ways; service establishments, including laundromats, dry-cleaners, banks, gas stations, barber shops, beauty salons, travel agents, funeral parlors, employment agencies; providers of professional services such as law offices, doctors, dentists, accountants, and insurance agents; public spaces and offices of state and local government agencies including, court rooms, hearing rooms, meeting rooms, waiting areas, lobbies, entrances, polling places, public information counters and displays. (Massachusetts Transgender Political Coalition *"Discrimination in*

Public Accommodations", (05/03/16) Retrieved from http://www.masstpc.org/take-action/legislation/public -accommodations/)

Missing from both of these comprehensive lists of "places of accommodation" are religious associations, non-profit organizations and churches.

As the facts not in dispute demonstrate, SRM is a religious organization that was first established in 1892. SRM's by-laws indicate that it is a Christian non-profit 501(c)(3) organization adhering to the principles of the Protestant Evangelical Church community and supported by free will offerings from interested individuals, churches, businesses and civic organizations. SRM's Articles of Organization indicate that it was created for:

> *The promotion of Christianity and the amelioration of the condition of poor and fallen humanity by holding religious services and radio broadcasts; distributing Christian literature; providing food, clothing, lodging and other aid for unfortunate persons; and in connection therewith to maintain appropriate buildings for these purposes...*

SRM's Articles of Organization go on to add that its purpose is to:

> *[M]eet the physical and spiritual needs of the hungry, homeless, and poor by introducing them to Christ and helping them apply the Word of God to every area of their lives. SRM's secondary objective is to equip the poor with basic life skills and knowledge to rise above dependency on entitlements/handouts and become contributing members of society. Our third objective is to advocate for the poor, educate the general public on issues relating to poverty, and seek the public's personal, corporate and financial support.*

Thus, evidencing the sincerity and genuineness of SRM's position that it is a religious organization and should be exempt from the Commonwealth's public accommodations laws.[1]

Furthermore, applicable case law has indicated that churches and religious organizations are exempt from the public accommodation laws. (See *Donaldson v. Farrakhan 762 N.E.2d 835, 436 Mass. 94(2002)* "Application of state public accommodation laws to compel minister to address women in mosque's men's meeting would have impermissibly interfered with rights of

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1 It is also noteworthy to add that even though M.G.L. c. 272 § 92 and 98 is inapplicable to the Springfield Rescue Mission, SRM decided to allow the Complainant access to the Give Away Center. This calls into question the Complainant's motivation for bringing this charge of discrimination against it.

minister, mosque, and religious organization to free expressive association under the First Amendment; separation of sexes was part of organization's belief system, and expression of religious viewpoints specific to men of the faith would have been impaired by inclusion of women in the meeting." *Donaldson v. Farrakhan (2002) 762 N.E.2d 835, 436 Mass. 94.*) See also *See, Hurley v. Irish-American Gay, Lesbian and Bisexual Grp. of Bos., 515 U.S. 557, 573 (1995)* (application of public accommodation law violated nonprofit organization's rights to expressive activity protected by the First Amendment), see also Donaldson v. Farrakhan, 435 Mass. 94, 102 (2002) (holding that "[f]orcing the mosque and its leaders to include women in the meeting would change the message").

Thus, based upon the aforementioned statute and applicable case law, SRM is a religious organization exempt from the public accommodation law. Accordingly, the Complainant's Charge of Discrimination must be dismissed.

b. SRM is also a private organization and not a public accommodation.

In addition to being a religious organization, SRM is also a private organization and, consequently, does not fall under the ambit of the public accommodation laws. "In order to determine whether an organization is a private organization or a place of public accommodation, courts inquire if the entity in question employs "genuine selectivity" in carrying out its policies with respect to applicants and members. *See, e.g., Concord Rod & Gun Club, Inc. v. MCAD, 402 Mass. 716, 720 (1988); Murray v. Framingham Country Club, 2005 WL 2009681, at *5 (Mass. Super. Ct. June 20, 2005); Solyts v. Wellesley Country Club, 2002 WL 31998398, at *6 (Mass. Super. Ct. Oct. 28, 2002); Schkolnick v. The Fly Club, 12 MDLR 1185 (1990).* This inquiry is performed as part of the larger effort to determine whether an organization is truly a private entity that limits and restricts its membership or whether it "is open to or solicits the patronage of the general public" within the meaning of M.G.L. c. 272, § 92A.

"In determining whether a facility qualifies as 'a place of public accommodation,' there are several factors considered by courts. The most important factor is the selectivity of membership." See *Haskins v. President & Fellows of Harvard College, Civil Action No. 993405 (Mass.Super.Ct. Sept. 18, 2001), 13 Mass. L. Rptr. 691 (Zobel, J.).* Additionally, other factors to consider in resolving this issue are: (1) membership control; (2) history of the organization; (3) use of the facility by non-members; (4) the extent of revenues from non-members; (5) whether the facility advertises to the public; and (6) the formality observed by the club. *U.S. v. Lansdowne Swim Club, 713 F.Supp. 785, 796-97 (E.D.Pa., 1989); and Jankey v. Twentieth Century Fox Film, 14 F.Sup. 1174, 1179 (C.D.Cal., 1998).*

As the facts not in dispute demonstrate, this fact driven inquiry demonstrates that SRM is a private organization and not a place of public accommodation. First and foremost, the selectively of SRM recipients is extremely limited and selective. Moreover, SRM's programs are solely for the underprivileged and people in need. For example, residents of the Men's Emergency Shelter Program, Men's New Life Rehabilitation Program and the Men's Transitional Living Program, must be male, homeless, and underprivileged. Residents must also abide by SRM's rules and policies and be able to reside in an alcohol and drug-free environment. The program is further limited in numbers by SRM's resources and the number of beds and food it has to offer. Likewise, SRM's Give Away Center Program is also limited. Priority is first given to the residents of the Men's Emergency Shelter Program, Men's New Life Rehabilitation Program and the Men's Transitional Living Program. Thereafter, depending upon inventory, SRM may offer access to selected community members. The selected community recipients for the Give Away Program must be low-income and "in-need" and can only participate in this program by appointment after being successfully screened. The selected recipients are also limited to taking enough clothing to

fill a bag no greater than 13 gallons and he/she can only access the program no more than four times a year.

Additionally, the facility that houses the majority of SRM's programs, including the Give Away Center, is located at 10 Mill Street in Springfield, Massachusetts and is surrounded by a large metal fence. The only egress and ingress is through a guarded gate located at the front entrance of the parking lot. To gain access to the Emergency Shelter, male individuals looking for access must enter a secured door that leads through a metal detector before going to a holding area. The individual is then screened and must pass a drug test before being accepted into a program.

In order to access the Give Away Center, a potential recipient must be underprivileged and successfully pass a screening process.

Furthermore, SRM does not solicit or accept patronage from the general public. Moreover, all of the programs that it offers **are free of charge**. It is also noteworthy that SRM does not receive any state or federal funding. Rather, most of its inventory and resources come from private donations.

Thus, as the above indicates, SRM is a private organization and, as such, is exempt from the public accommodation laws.

For the reasons stated herein, the Respondent respectfully request that the Massachusetts Commission Against Discrimination dismiss the Complainant's Charge of Discrimination.

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CERTIFICATE OF SERVICE

I, Fred P. Frangie, attorney for the Respondent, hereby certify that I have this day served the foregoing Motion to Dismiss Complainant Lynn Rivera's Charge of Discrimination in its Entirety to all parties in this action by serving same via First Class mail to:

Allison W. Wright, Esq.
GLBTQ Legal Advocates and Defenders
30 Winter Street, Suite 800
Boston, MA 02108

Dated: _____ Attorney: _____
Fred P. Frangie

EXHIBIT 2

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD NO. 17SPA00221

LYNN RIVERA,

Complainant

v.

SPRINGFIELD RESCUE MISSION,

Respondent

AFFIDAVIT OF LENORE MASCIOTRA BROOKS

I, LENORE MASCIOTRA BROOKS, hereby depose and say:

1. I am over the age of eighteen (18) and believe in the obligation of the oath.

2. I am the Volunteer Program Coordinator and the Give-Away-Center Manager at the Springfield Rescue Mission.

3. My work address is 10 Mill Street, Springfield, Massachusetts.

4. The Springfield Rescue Mission is a non-profit organization that has been in existence since 1892. It was established under the leadership of Julius Cummings, a former Salvation Army Captain.

5. The Springfield Rescue Mission's goal is to meet the physical and spiritual needs of the hungry, homeless, addicted, and poor for the Greater Springfield area by providing food, shelter, clothing, Christian rehabilitation services, medical attention, counseling, literacy training and advocacy through their Rehabilitation Program and Emergency Service Programs.

6. The Springfield Rescue Mission offers a number of programs to the less fortunate. In particular, the Men's Emergency Shelter Program, the Men's New Life Rehabilitation Program, the Men's Transitional Living Program, and the Give-Away Center. Additionally, the Springfield Rescue Mission offers The Public Breakfast Program, Operation SONshine, Traditional Holidays Meals, and Operation Hope Tote to the less fortunate. These programs are offered to people in need – free of charge

7. The Springfield Rescue Mission relies primarily upon private contributions and does not receive any state or federal funding. Thus, its programs and the ability to offer same to its residents and to the less fortunate relies heavily upon private donations.

8. The Give-Away-Center is a program that provides clothing, shoes, coats, jackets, and household goods – free of charge-. Inventory available is reflective of donations received,

with priority given to the Springfield Rescue Mission's Residential and Emergency Program Needs.

9. The Give-Away-Center strives to accommodate individuals and families throughout the Greater Springfield area with clothing items, household goods, personal care items, all free of charge. The Give-Away-Center is by appointment only and is not open to the public. These items are distributed during the week to people in need and upon request subject to the available inventory.

10. With the Springfield Rescue Mission's approval, community recipients/agencies may also take advantage of the Give-Away-Center up to four times per year, although the Springfield Rescue Mission reserves its right to make special accommodations for emergency situations.

11. With limited resources and inventory, the SRM must be protective of its resources and inventory understanding that some community recipients may abuse the Give-Away-Program by taking clothing and personal items and selling them on the street.

12. The Give-Away-Center's protocol for community recipients to access this program requires them to call for an appointment, show proper identification prior to receiving services, and to bring a bag with them not to exceed 13 gallons. Upon entering the Give-Away-Center, eligible community recipients are allowed to fill their bag with clothing, personal items, and household goods – free of charge.

13. Tapestry Health is a community-based health services agency. In the past, Tapestry Health and Springfield Rescue Mission have worked in unison to fulfill the needs of Tapestry Health clients.

14. In or around mid-April 2016, Ms. Moulton called the Springfield Rescue Mission and was able to secure an appointment for Lynn Rivera to access the Give-Away-Center on April 28, 2016. The appointment was for 9:30 a.m.

15. Prior to inviting a community recipient to the Give-Away-Center, I will screen the individual seeking access to the program by searching the individual's name in the SRM database to determine eligibility or disqualification.

16. On April 28, 2016 at approximately 9:30 a.m., Ms. Moulton and Lynn were invited to the Give-Away-Center. Per the Give-Away-Center's protocol, I checked Lynn's identification. At the time there were approximately 3-4 other community recipients at the Give-Away-Center along with two residence assigned to work with me.

17. Springfield Rescue Mission's policy is to check all recipients in before they can enter the Give-Away-Center. Springfield Rescue Mission must be protective of its inventory and be guarded as to community recipients who obtain clothing and items from the Give-Away Center only to barter or sell the items for money, drugs, or alcohol. Upon Complainant showing identification, Lynn and Ms. Moulton proceeded to look at clothing and personal items.

18. At one point in time I noticed that Lynn was shopping in the men's clothing area, so I proceeded to call to their attention that the area they were in was the men's section. At this time I had no knowledge that Lynn was transgender or that she did not identify with the sex she was assigned at birth.

19. The Give-Away-Center is a small room and it was not unusual for recipients (especially first-timers) to become disoriented while looking for items and ending up in the wrong section. Thus, I was only trying to direct them to the women's section in accordance with the identification that Lynn presented to me which indicated that Lynn was a female.

20. Upon attempting to direct Lynn and Ms. Moulton to the women's section, Ms. Moulton asked to speak to me alone- in private. Thereafter, we went into the visitor entry lobby whereby Ms. Moulton proceeded to tell me that this was a sensitive issue and that the Complainant identified as a male. This was the first I was ever told about this.

21. During this conversation we discussed Complainant's identification, which indicated that she was a female and the Give-Away-Center's policies and how the Give-Away-Center was dependent upon donations and how clothing and personal items are given away in accordance with the inventory that they have and that there is priority given to the residents who participate in the Springfield Rescue Mission's residential programs (Men's Emergency Shelter Program, Men's New Life Rehabilitation Program, and Men's Transitional Living Program).

22. Because SRM's priority is to service the needs of its Residential and Emergency Shelter Programs first, men's clothing would be more in demand than women's clothing. Additionally, SRM receives more donations consisting of women's clothing than men's clothing. Consequently, women's clothing is more readily available to the selected community recipients.

23. Following this discussion, and having an opportunity to process the information that Ms. Moulton had shared with me, upon returning to the Give-Away-Center, I told Ms. Moulton that it would be okay for the Complainant to take whatever clothing she desired (men's or women's). Consequently, I believed that this ended whatever confusion or misunderstanding there was.

24. Thereafter, the Complainant and Ms. Moulton continued to look for clothing, and when it appeared that they were completed, they walked slowly to the front desk and placed the plastic bag containing clothing items on the desk. Very calmly and deliberately, Ms. Moulton indicated that they would not be taking anything that day and then exited the building. This surprised me as I had previously indicated that Lynn could take whatever clothing she wanted.

25. The total number of females who received services through the Springfield Rescue Mission's Give-Away-Center for the year 2016 was **937**.

26. The total number of males who received services through the Springfield Rescue Mission's Give-Away-Center for the year 2016 was **749**.

27. The total number of people who identified as Caucasians who received services from the Give-Away Center for the year 2016 was **243**.

28. The total number of people who identified as Hispanics who received services from the Give-Away Center for the year 2016 was **635.**

29. The total number of people who identified as Black who received services from the Give-Away-Center for the year 2016 was **293**.

30. I did not discriminate against the Complainant on the basis of her sex, skin color, race, or gender identity.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 9 17TH DAY OF MARCH 2017.

Lenore Masciotra Brooks

EXHIBIT 3

STEVE'S STORY

Steve went through some really tough times. His wife was sick for a long time, and he numbed his pain with alcohol. Steve's wife passed away three days before their 15th anniversary, and he spiraled downhill fast, losing his job, becoming homeless and estranged from his children. But thanks to you, that's not the end of the story ...

"And though my wife was getting closer to God before she passed, I was angry with Him. I'd lost my way." Within a month, Steve also lost his job and soon found himself homeless. "That was when I ran into the chaplain from here, on Operation SONshine"— our ongoing outreach to this community beyond the walls of the Springfield Rescue Mission. "He told me, 'Come over to the Rescue Mission and take a look. There is nothing you are going to lose." And Steve had everything to gain!



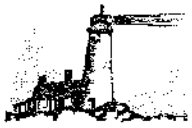
Steve volunteers serving the homeless on Operation SONshine

"At the Springfield Rescue Mission, I found God all over again. I let him into my heart," Steve smiles. And after several months in our Rehabilitation Program, Steve says, "If I hadn't stayed, I'd probably have relapsed and be living on the streets again, not caring about anybody else in the world."

But today, he's not only found his way back to God, he's reaching out to others and is reunited with estranged family members. "I find myself being more helpful as I look for what my purpose in life is now," he says. "I know I have purpose—that God has a plan. I may not know what it is, but I'm helping out a lot of people, so maybe that's my purpose in life, to help others."

While Steve is helping others, he's actually helping himself! He reached out to his family members and has begun to restore the relationships he thought were lost. He now has contact with his children and grandchildren. Steve is relishing the fact that he's reunited with his family.

You make this possible! Your donations keep programs like Operation SONshine, our Emergency Shelter and Rehabilitation Program operational and ready to help homeless men like Steve rebuild their lives!



DONATE NOW (/donate-online)

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EXHIBIT 4

JODI'S STORY

Caring friends like you helped give Jodi a new lease on life, and it shows.

Some kids hardly have a chance. Jodi was one of them. He lost his father to alcoholism. His family was shattered by abuse. Introduced to drugs by an older brother while he was still very young, he found it all too easy to follow the crowd when he got to high school. "I was just a stupid teenager," he says, "trying to be cool with my friends."

For a while, he says, he kept the drugs "under control." After high school, he joined the Navy, and it seemed like the worst of his past was behind him. But it wasn't — when Jodi got out of the military, the old family conflicts surfaced, and so did the old habits. Before he knew it, his life was heading downhill fast.

He started using drugs again. He got caught and landed in jail. Out after 30 days, Jodi discovered he'd lost his job — now he had no way to support himself. Home was a tent, pitched on a makeshift Florida campsite at a homeless encampment in the woods.

It was the most dangerous year of his life. "If I had stayed in the situation I was in, I'd probably have been murdered," Jodi recalls. "It was a community with high drug usage and very violent." But thanks to friends like you, Jodi found a safe home at the Springfield Rescue Mission. And because you believed he could be somebody, he also has new hope.

"I had no hope at all," Jodi remembers. "I had God in my life, but after all the hurt that I had been through, I thought that He didn't love me."

But since coming to the Mission, he adds, "My whole

attitude has changed."

"I have found peace of mind," Jodi says. "The Mission opened my eyes to see." With your help, he's found the help he needs to heal the memories that haunted him. With counseling, he's mastering the skills that will make him a productive member of society. Thank you for making it possible!

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EXHIBIT 5

Searching For Peace: JOSE'S STORY

Your support and prayers gave Jose what he had been searching for his whole life: Peace.

Looking back, Jose remembers suffering from depression for most of his 60 years, even as a child. "I'm still working out where this stems from." "I had a great childhood, which makes it more difficult to find out why." Even a loving family couldn't protect Jose from the "extreme loneliness" that eventually led to a drinking problem.

"The drinking made me feel better about my social awkwardness," he says. But in the end, alcohol only made the loneliness more intense and led to a cycle of self-medication that spiraled into suicidal thoughts and a series of hospital stays.

Released from the hospital last August, Jose couldn't return to the home he had shared with his girlfriend—unable to cope with his drinking, she had asked him to move out. That's when he as referred to the Springfield Rescue Mission.

"What I always needed"

"I felt welcomed!" he says of his arrival. Working through the Men's New Life Program, Jose found the one medicine that could lift his depression without leaving him deeper in despair: God. "I'm getting to know my Creator," he tells us. "I'm reading the Bible and applying it to my daily life. The approach here is what I always needed." Your support and prayers gave Jose what he had been searching for his whole life: Peace. "I had experienced bits of peace, but not for this length of time." Today, Jose is happy to share his new-found peace with his family, including his three grown children and three grandchildren. And he has something to share with you: "Thank you from the bottom of my heart! You don't realize how many you are helping!"

EXHIBIT 6

Never too far from God: GEORGE'S STORY

Your support is giving George the time he needs to build a new life.

Ask George what he wants for Christmas this year, and he'll tell you how much he hopes to see his granddaughter. It's been a long time since the family wanted George around . . . but this year, with help from friends like you, everything has changed!

For over thirty years, George's life was about one thing, and one thing only: addiction. And it was taking its toll. Depression, anger, anxiety . . . George's days were filled with despair, and he could never hold a job for long.

In fact, he was the kind of person most of society gives up on. "He can't change," they say. "He's too far gone."

But as a friend to the poor in Greater Springfield, and a partner of the Springfield Rescue Mission, you know that with God there's no such thing as "too far gone."

"Initially, I came to the Mission because I was hungry," George admits. But once his emergency needs were met, he began to feel God's love through our staff and volunteers . . . and something happened in his heart.

"This place was completely different from what I expected," he exclaims. "I was totally surprised. We have tasks to do and they get done, but I don't feel it's a burden. In fact, I think we all enjoy it, and we talk about these things together. After years of being a loner, to be able to talk with others here and to relate to them . . . that's a big change for me."

Best of all, George says that his life has been transformed by the spiritual care you help make possible. "I've learned to fellowship, to see God in a different light . . . to see what He has done and is doing for me. He was the thing that was missing. I've found peace of mind through Him."

After so many years, George knows the changes won't be complete overnight. "I still get angry sometimes," he says. "But now I know how to deal with it better." And because of your generosity, George will have the time he needs at the Springfield Rescue Mission to grow fully into his new life . . . and back into his family's lives as well.

Thank you for the gift of new life this Christmas!

For I am convinced that . . . neither the present nor the future . . . nor anything else in all creation, will be able to separate us from the love of God that is in Christ Jesus our Lord.
ROMANS 8:38-39, NIV

EXHIBIT 7

Springfield Rescue Mission
Give Away Center Policy

The Give Away Center (GAC) strives to accommodate individuals and families throughout the Greater Springfield area [community] with clothing items, household goods, personal care items, etc. (free of charge.) Inventory available is reflective of donations received, with priority given to the Springfield Rescue Mission's (SRM) Residential and Emergency Shelter Program needs. We, therefore, reserve the right to limit items distributed when inventory [donations] is low.

The GAC protocol for community recipients:

- Call for an appointment.
- Show ID prior to receipt for services.
- Bring a bag not to exceed the size of a 13 gallon trash bag to gather and carry items selected.

With SRM approval, community recipients/agencies may take advantage of the GAC up to 4 times per year. SRM may make special accommodations for emergency situations.

SRM reserves the right to limit distribution of items or deny access to the GAC based upon, but not limited to, the following: lack of inventory, inappropriate behavior, i.e., conduct, disrespect for staff, residents or volunteers, foul language, misuse of goods provided, not following above protocol.

The goal of the Springfield Rescue Mission, since 1892, is to meet the physical and spiritual needs of the hungry, homeless, addicted and poor by introducing them to Christ and helping them apply the Word of God to every area of their lives.

"The King will answer and say to them, 'Truly I say to you, to the extent that you did it to one of these brothers of Mine, even the least of them, you did it to Me.'" Matthew 25:40 *...and they would be distributed to each as any had need." Acts 4:35*

Ron Willoughby, Executive Director/CEO

EXHIBIT 8

MAURA HEALEY
ATTORNEY GENERAL

Gender Identity Guidance for Public Accommodations
September 1, 2016

Effective October 1, 2016, Massachusetts law prohibits discrimination based on gender identity in places of public accommodation.[1] This document is intended to help businesses and other places of public accommodation comply with the law. First, it provides definitions and general information about obligations under the law. Second, it provides specific information regarding the use of sex-segregated facilities such as restrooms and locker rooms. Third, it provides guidance on how to address circumstances in which there is reason to believe an individual is asserting gender identity for an improper purpose, such as to engage in unlawful conduct.

Massachusetts law now explicitly prevents places of public accommodation from discriminating against, harassing, or providing different or inferior service to an individual based on gender identity. It also protects the right of all people – including transgender people – to use sex-segregated facilities that are most consistent with their sincerely held gender identity. In states with similar laws, reports of the improper assertion of gender identity have been exceedingly rare. Therefore, in most circumstances, a place of public accommodation should presume that an individual is using the appropriate facility. When there is a legitimate reason to believe that someone is not using the appropriate facility, a limited inquiry may be warranted in order to ascertain that person's gender identity.

This law does not allow individuals to gain access to a sex-segregated facility that is not consistent with their gender identity. Nor does it protect anyone, regardless of gender identity, who engages in improper or unlawful conduct in a sex-segregated facility or elsewhere (see Section IV below). If a person engages in improper or unlawful conduct, a business or other place of public accommodation may remove the patron and, if warranted, refer the matter to law enforcement.

I. DEFINITIONS

Gender identity, as defined under Massachusetts law, means "a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth." In essence, gender identity is a person's internal sense of their own gender. The law provides that gender identity must be "sincerely held as part of a person's core identity."

Transgender is a term that is used to refer to a person whose gender identity is different from that person's assigned birth sex. The person knows that the gender typically associated with their body does not match who they know they are inside. For this reason, many transgender people transition and live as the gender they know themselves to be.

[1] G.L. c. 272, §§ 92A and 98.

Public accommodations include businesses that are open to and serve the public. They include any place "which is open to and accepts or solicits the patronage of the general public," regardless of whether it charges for products, goods, services, or admission. A place of public accommodation may be publicly or privately owned or operated. Examples of public accommodations include, but are not limited to: hotels, stores, restaurants, theaters, sports stadiums, health and sports clubs, hospitals, transportation services, museums, libraries, and parks.

For more information about what is considered a place of public accommodation under Massachusetts law, please see G.L. c. 272, § 92A.

II. GENERAL OBLIGATIONS

The law provides that a place of public accommodation may not discriminate against an individual based on that individual's gender identity. Unlawful discrimination includes, but is not limited to:

- Refusing or denying service;
- Offering a different or inferior class or quality of service or a more limited set of products, goods, services, or facilities than are available to others;
- Advertising or otherwise publicizing that it does not accept business from, or the patronage of, transgender or gender non-conforming individuals;
- Providing false information about the availability of products, goods, services, facilities, or admission; and
- Harassment and intimidation.

III. SEX-SEGREGATED FACILITIES

The law provides that all people, including transgender people, may use whichever sex-segregated facilities, including restrooms, locker rooms, and changing rooms, are most consistent with their gender identity (rather than their assigned birth sex).

Does the law prohibit sex-segregated facilities, including men's/women's restrooms, locker rooms, and changing rooms?
No. Places of public accommodation may still maintain sex-segregated restrooms, locker rooms, and changing rooms. However, under this law, individuals may use whichever sex-segregated space is most consistent with their gender identity.

What should a place of public accommodation do if a patron complains about the presence of a transgender person in a sex-segregated facility?
This law is intended to ensure that all people, regardless of their gender identity, have equal access to places of public accommodation, including bathrooms, locker rooms, and changing rooms.

If a patron complains about the mere presence of a transgender person in a sex-segregated facility, or a patron expresses concern that someone may be using the incorrect facility based on that person's appearance, a place of public accommodation should first assess whether there is any reasonable basis to believe that person is not using the appropriate facility most consistent with their gender identity (see below).

If there is no legitimate reason to question, or that person confirms, that they are using the facility most consistent with their sincerely held gender identity, a place of public accommodation may still take certain steps to address the privacy concerns of the complaining patron. A place of public accommodation may:

- Remind the complaining patron that Massachusetts law protects the right of all people, including transgender people, to access sex-segregated facilities most consistent with their gender identity, as long as the individual is not engaged in any improper or unlawful conduct;
- Offer any patron seeking additional privacy, including the complaining patron, an accommodation, such as a privacy screen, curtained area, or private changing room, if available;
- Offer any patron, including the complaining patron, the opportunity to use a private facility, such as a unisex bathroom or changing room, if available (see below); or
- Institute a neutral policy that applies to all patrons regardless of gender identity to address privacy concerns, such as a requirement that clothing be worn in certain areas of a facility.

Businesses are not obligated to provide privacy accommodations, such as a privacy screen, curtained area, or private changing room. But if a business chooses to do so, it must make such accommodations available to everyone, regardless of gender identity. The business cannot require or encourage any patron to accept an accommodation based on gender identity (see more below).

What should a place of public accommodation do if it has reason to believe that a person is not using the appropriate sex-segregated facility?

Misuse of sex-segregated facilities is exceedingly rare. As a general matter, employees of a place of public accommodation should presume that an individual is using the correct facility (the one most consistent with their gender identity), if the person is not engaged in any improper or unlawful conduct.

Employees of a place of public accommodation should not assume an individual's gender identity solely by appearance. The fact that a woman, whether transgender or not, is perceived as having a "masculine" appearance is not a legitimate reason to exclude her from, or question her presence in, a sex-segregated facility intended for women. Similarly, the fact that a man may appear "feminine" is not a credible basis to exclude him from, or question his presence in, a sex-segregated facility intended for men.

Inquiry into a person's gender identity is generally not necessary. However, if a place of public accommodation has a legitimate concern about whether a person is using the appropriate facility,

an employee may attempt to resolve the issue through a private and discrete conversation with that person. A legitimate concern arises where, due to the behavior of the person in question, the place of public accommodation is reasonably worried about potentially improper or unlawful conduct. Under such circumstances, an employee may approach a patron privately, out of the earshot of others, and ask, for example: "Are you using the appropriate facility?" In most cases, if the person confirms that they are using the facility most consistent with their gender identity, that should be the end of the inquiry (unless there is a reasonable basis to believe that the person is actually engaging in improper or unlawful conduct, as discussed in Section IV below).

In the vast majority of cases, it is not appropriate for a place of public accommodation to request documentation of an individual's stated gender identity. However, a request for documentation may be permissible in the limited circumstance in which the person is, or is seeking to become, a member in an organization that regularly requires documentation of gender for all members on an equal basis, such as a health or sports club.

In that circumstance, an individual's gender identity may be demonstrated by **any one** of the following: (1) a driver's license or other government issued identification; (2) a letter from a doctor, therapist, or other healthcare provider; (3) a letter from a friend, clergy, or family member regarding the person's routine conduct, such as dress, grooming, and use of corresponding pronouns; or (4) any other evidence that the gender identity is sincerely held as part of the person's core identity. A place of public accommodation may not use a request for documentation to harass, intimidate, embarrass, or otherwise discriminate against a person based on gender identity.

May a place of public accommodation provide a private or single-occupancy space or other privacy accommodation as an alternative to its sex-segregated shared facilities?
Yes. A place of public accommodation may make a private or single-occupancy space available as an alternative to its men's/women's facilities. If a place of public accommodation chooses to offer a private space, it must make the space available on the same terms and in the same manner to all patrons, regardless of their gender identity. Although a place of public accommodation may offer a private space, it cannot require or encourage any person to use that space instead of its sex-segregated facilities based on their gender identity.

Does the law require places of public accommodation to build gender-neutral and/or unisex facilities?
No. This law does not require places of public accommodation to build gender-neutral facilities, such as unisex or single occupancy bathrooms or locker rooms. However, places of public accommodation may do so, if they so choose.

IV. IMPROPER OR UNLAWFUL CONDUCT

What does it mean to assert gender identity for an improper purpose?
This law explicitly provides that a person may not assert gender identity for an "improper purpose." This means that a person may not fraudulently assert gender identity to gain access to a sex-segregated facility in which they would otherwise not be permitted. It also means that a

person may not assert gender identity for the purpose of engaging in improper or unlawful conduct. Examples of improper or unlawful conduct may include, but are not limited to:

- Loitering in a facility for the purpose of observing other patrons;
- Harassment of an employee or patron;
- Threats or violence towards another person;
- Photographing or videotaping other patrons without permission; or
- Other violations of existing law, including criminal law.

This new law does not provide any protections for someone who engages in improper or unlawful conduct, whether in a sex-segregated facility or elsewhere. Nor does it provide a defense to criminal charges brought against someone engaged in unlawful conduct. Anyone who engages in unlawful conduct in a sex-segregated facility or elsewhere may properly be questioned, detained, and reported to law enforcement (see below). This new law does not affect any existing criminal laws or their applicability to any particular conduct.

Does this law allow a person to access a sex-segregated facility that is not consistent with their gender identity?
No. This law protects the right of individuals to use sex-segregated facilities that are most consistent with their gender identity. It does not allow an individual to fraudulently assert gender identity in order to gain access to sex-segregated facilities in which they would otherwise not be permitted. In such circumstances, it may be appropriate for a place of public accommodation to take action consistent with its usual policies regarding the removal or suspension of patrons who engage in improper conduct.

What should a business or place of public accommodation do if it believes a person is engaging in improper or unlawful conduct, either in a sex-segregated space or elsewhere?
If an employee of a public accommodation has reasonable grounds to believe that a person, regardless of gender identity, is engaged in improper or unlawful conduct (as discussed above), the employee may address the situation through whatever means the business typically addresses misconduct by a patron, including asking the patron to leave, or calling security or law enforcement. If a person asserts gender identity to access a sex-segregated facility for the sole purpose of engaging in unlawful conduct, that person may properly be referred to law enforcement. In such circumstances, a place of public accommodation may take action consistent with its usual policies regarding contacting law enforcement to address the unlawful conduct of a patron.

However, any referral to law enforcement must be based on an individual's unlawful conduct, and not on the individual's gender-related identity or appearance. In no event may a place of public accommodation seek to use law enforcement or security to harass or embarrass a person based on gender identity.

Questions: If any business or other place of public accommodation has any questions about its obligations and responsibilities under this law, or how to address recurring situations that may arise, please contact the Civil Rights Division of the Attorney General's Office at (617) 963-2917.