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March 17, 2016

Mr. Lyle W. Cayce, Clerk
U.S. Court of Appeals for the Fifth Circuit
600 S. Maestri Place
New Orleans, Louisiana 70130-3408

Re: No. 15-20078; *EEOC v. Bass Pro Outdoor World, LLC*

Dear Mr. Cayce:

By this letter, which should be filed in this case under Federal Rule of Appellate Procedure 28(j) and Fifth Circuit Rule 28.4, Bass Pro responds to the EEOC's letter of March 16. Thank you for circulating copies to the panel.

Bass Pro has “challenge[d] the EEOC’s failure to conduct *any* § 706 investigation, issue *any* § 706 determination, or engage in *any* § 706 conciliation.” Reply Br. 29. As Bass Pro has explained, the EEOC did not investigate or identify a single aggrieved individual before it filed this suit seeking compensatory and punitive damages on behalf of tens of thousands of unidentified people. *Id.* at 30–31. In response, the EEOC’s letter quotes extensively from *Arizona ex rel. Horne v. Geo Group, Inc.*, No. 13-16081, 2016 WL 945634 (9th Cir. Mar. 14, 2016), arguing that the Ninth Circuit’s recent opinion “fully supports the district court’s conclusion in the instant case.” EEOC Letter 1.

Yet the EEOC’s letter fails to mention the Ninth Circuit’s crucial caveat: “We are not called upon to consider whether the EEOC could maintain a nationwide class action against an employer based on an investigation of less than a dozen employees or whether such an investigation would be reasonable.” *Geo*, 2016 WL 945634, at *7 n.6 (trying to distinguish *EEOC v. CRST Van Expedited, Inc.*, 679 F.3d 657 (8th Cir. 2012)). It is hardly surprising that the EEOC would omit this language. After all, the facts are even worse for the EEOC in this case

(where the number of investigated individuals was *zero*) than they were in the hypothetical case that gave pause to the Ninth Circuit (where the number was “less than a dozen”). If *Geo* is in any way “pertinent and significant,” FED. R. APP. P. 28(j), it is only as an illustration of how little the EEOC did to meet Title VII’s pre-suit obligations in this case.

Respectfully submitted,

s/ Michael W. Johnston

Michael W. Johnston

Counsel for Defendants-Appellants

p.s. This letter is being transmitted via the Court’s CM/ECF Document Filing System, <https://ecf.ca5.uscourts.gov>; it has been scanned with the most recent version of McAfee VirusScan Enterprise and is free of viruses. An electronic copy is being served on today’s date, via the Court’s CM/ECF Document Filing System, upon counsel for all parties.