

Kathleen Dix, Esquire

1 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

2

3 FREDY KAPLAN, :

4 Plaintiff, :

5 - against - :

6 NEW YORK STATE DEPARTMENT :

OF LABOR, ROBERTA REARDON, :

7 as Commissioner, KATHY DIX, :

MICHAEL PAGLIALONGO and PICO :

8 BEN-AMOTZ in their individual :

capacities as aiders and abettors, :

9 :

Defendants. :

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APRIL 13, 2020

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GOLKOW LITIGATION SERVICES

24

877.370.3377 ph/917.591.5672 fax

25

deps@golkow.com

1

A P P E A R A N C E S: (through Zoom)

2

3

ZABELL & COLLOTTA, P.C.

BY: SAUL D. ZABELL, ESQUIRE

4

One Corporate Drive, Suite 103

Bohemia, New York 11716

5

(631) 589-7242

szabell@laborlawsny.com

6

Representing the Plaintiff

7

OFFICE OF THE ATTORNEY GENERAL

8

OF THE STATE OF NEW YORK

BY: MICHAEL BERG, ASSISTANT

9

ATTORNEY GENERAL

28 Liberty Street

10

New York, New York 10005

(212) 416-8651

11

michael.berg@ag.ny.gov

Representing the New York State

12

Department of Labor

13

NEW YORK STATE DEPARTMENT OF LABOR

14

COUNSEL'S OFFICE

BY: ROBERT F. AXISA, Litigation Director

15

Harriman State Office Campus

Building 12, Room 509

16

Albany, New York 12240

(518) 485-1819

17

robert.axisa@labor.ny.gov

18

LUIBRAND LAW FIRM PLLC

19

BY: KEVIN A. LUIBRAND, ESQUIRE

ASHLYNN SAVARESE, ESQUIRE

20

950 New Loudon Road

Suite 270

21

Latham, New York 12110

518-783-1100

22

kluibrand@luibrandlaw.com

Representing the witness,

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Kathleen Dix, Esquire

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1	I N D E X	
2	WITNESS	PAGE
3	KATHLEEN DIX, ESQUIRE	
4	By Mr. Zabell	5
5	- - -	
6	E X H I B I T S	
7	Previously marked Exhibits	Ref. page
8	No. 2 New York State DOL Employee Handbook	63
9		
10	No. 3 Topic Number 0254: Workplace Harassment Policy	67
11		
12	No. 4 Counsel's Office Organization Chart	85
13	No. 5 E-mail string, top one dated 4/15/16	
14	[DOL000393-396]	92
15	No. 8 E-mails dated 4/25/16 [DOL000302-303]	99
16		
17	No. 9 E-mails dated 4/25/16 [DOL000305-306]	105
18	No. 11 Complaint Form Complaint #DOL-0618	
19	[DOL000244-245]	110
20	No. 15 Memorandum dated 8/32/16 from Selica Grant	
21	[DOL000777]	142
22	No. 21 E-mail dated 3/28/17 Subject: DEOD issue	
23	[DOL000334]	154
24	- - -	
25		

1 THE COURT REPORTER: All parties are  
2 appearing remotely and have agreed to the  
3 witness being sworn in remotely. Due to the  
4 nature of remote reporting, please pause  
5 briefly before speaking to ensure all  
6 parties are heard completely, as there is  
7 sometimes a delay.

8 MR. BERG: I'm Michael Berg with the  
9 New York state attorney's office I'm  
10 representing the defendant Department of  
11 Labor in this case just as your attorney may  
12 object from time to time to certain  
13 questions, I may object to some of the  
14 questions as well. To save time I'm just  
15 going to state the word objection and I'm  
16 not going to state objection to the form of  
17 the question. That's what I mean every time  
18 I object, unless I go ahead and state  
19 otherwise I may raise with Mr. Zabell some  
20 other issues from time to time but generally  
21 my objections will be to the form of the  
22 question and I just want to help him create  
23 a clear record so I'm going to keep it to  
24 the single word objection.

25 ... KATHLEEN DIX, ESQUIRE, having

1           been duly sworn as a witness, was examined  
2           and testified as follows:

3   BY MR. ZABELL:

4   Q.       Good morning, Ms. Dix.

5   A.       Good morning.

6   Q.       My name is Saul Zabell. I'm sure you've  
7   heard of me. I will be conducting your deposition  
8   today.

9           Are you aware of that?

10   A.       I wasn't aware of it until you just told me.

11   Q.       Did you know that you're being deposed  
12   today?

13   A.       I knew I was being deposed today, yes.

14   Q.       And did you know that you are being deposed  
15   pursuant to a subpoena?

16   A.       Yes.

17   Q.       And that subpoena has been issued in a  
18   Federal Court matter, correct?

19   A.       Yes.

20   Q.       Have you ever been deposed before, Ms. Dix?

21   A.       Not that I recall, no.

22   Q.       Are you a practicing attorney?

23   A.       Yes.

24   Q.       Have you ever conducted a deposition?

25   A.       I've assisted but not done one myself.

1 Q. So the answer to my question would be no,  
2 you have not conducted a deposition, correct?

3 A. I guess not, no.

4 Q. Okay. At this deposition you are required  
5 to provide answers to the questions I ask you.

6 Do you understand that?

7 A. Yes.

8 Q. If you do not understand a question I ask  
9 you, you have an obligation to tell me you do not  
10 understand the question.

11 Do you understand that?

12 A. Yes.

13 Q. If you provide an answer to a question that  
14 I've asked you, it will be assumed that you  
15 understood the question.

16 Do you understand that?

17 A. Yes.

18 Q. How are you feeling today?

19 A. Fine.

20 Q. Can you think of any reason why your ability  
21 to give both truthful and accurate testimony today  
22 would be impaired?

23 A. No.

24 Q. Now, Ms. Dix, I see when I'm asking you  
25 questions that you are turning and looking to your

1 attorney for some sort of guidance.

2 You understand that at a deposition you  
3 cannot be guided in your answers, correct?

4 MR. LUIBRAND: Objection. She is  
5 allowed to look at her attorney.

6 BY MR. ZABELL:

7 Q. You may disregard the objection and provide  
8 an answer.

9 A. Can you repeat the question?

10 Q. Okay. I said that I notice when I'm asking  
11 you questions, you're looking to your attorney for  
12 assistance.

13 Do you understand that at this deposition  
14 your attorney cannot assist you with answers?

15 A. Yes, I understand that.

16 Q. Okay. And that everything you say is under  
17 oath.

18 Do you understand that?

19 A. Yes.

20 Q. And although your attorney is off camera, he  
21 cannot assist you, either verbally or nonverbally,  
22 in answering questions.

23 Do you understand that?

24 A. Yes.

25 Q. Did you prepare for this deposition in any

1 way?

2 A. Yes.

3 Q. How did you prepare for this deposition?

4 A. I spoke with my attorney and I read the  
5 exhibits.

6 Q. When did you speak with your attorney?

7 A. Last week.

8 Q. What day last week?

9 A. I believe it was Wednesday. Was that the  
10 8th?

11 Q. Wednesday the 8th; is that your testimony?

12 A. Yes.

13 Q. And for how long did you speak with your  
14 attorney?

15 A. Approximately an hour and a half.

16 Q. Did you do that in person?

17 A. No.

18 Q. Did you do it telephonically?

19 A. Yes.

20 Q. And in preparation for this deposition did  
21 you take any notes?

22 A. No. Well, I took a note my attorney told me  
23 about myself, but not in terms of the documents that  
24 I reviewed.

25 Q. You took a note based upon what your



1 attorney advised you --

2 A. [Inaudible]

3 Q. You have to let me finish the question.

4 A. Okay.

5 Q. You took a note from your attorney in  
6 preparation for this deposition; is that your  
7 testimony?

8 A. Yes.

9 Q. And what was the content of that note?

10 A. What time to be here.

11 Q. Did you review any documents, in preparation  
12 for this deposition, with your attorney?

13 A. No.

14 Q. Did you annotate any documents in  
15 preparation for this deposition?

16 A. No.

17 Q. Was anybody else present when you met with  
18 your attorney in preparation for this deposition?

19 A. I didn't meet with him. I spoke with him.

20 Q. Was anybody else present when you spoke with  
21 your attorney last Wednesday, the 8th?

22 A. My nephew was at my house.

23 Q. And was your nephew present while you spoke  
24 with your attorney?

25 A. He was in another room.

1 Q. So the answer to my question would be yes or  
2 no?

3 MR. LUIBRAND: Object.

4 Answer the question however you wish.

5 THE WITNESS: Yes, he was present but  
6 he was not sitting next to me in the same  
7 room.

8 BY MR. ZABELL:

9 Q. Do you know if your nephew heard the  
10 conversation between you and your attorney?

11 A. Yes, I know he did.

12 Q. And did he, in fact, hear the conversation?

13 A. No, he did not.

14 Q. Thank you, Ms. Dix.

15 Now, Ms. Dix, you and I have never met  
16 before today, have we?

17 A. We've spoken on the phone but we've never  
18 met in person.

19 Q. And how pleasant was that conversation?

20 A. It was quite a while ago. It was a brief  
21 conversation about a Department of Labor case so it  
22 was just factual.

23 Q. Okay. So it was neither pleasant nor  
24 displeasing, correct?

25 A. Correct.

1 Q. Now, Ms. Dix, do you have an education?

2 A. Yes.

3 Q. What is your education?

4 A. I have a high school diploma, I have an  
5 Associate's degree, I have a Bachelor's degree and I  
6 have a Juris Doctorate degree.

7 Q. Let's start with your Associate's degree.

8 Could you tell me when did you receive your  
9 Associate's degree?

10 A. In 1980.

11 Q. And from what institution did you receive  
12 your Associate's degree?

13 A. Hudson Valley Community College.

14 Q. And was there a specific concentration in  
15 which you received your Associate's degree?

16 A. Yes.

17 Q. And what was that?

18 A. Criminal justice.

19 Q. And when did you receive your Bachelor's  
20 degree?

21 A. 1982.

22 Q. From what institution did you receive your  
23 Bachelor's degree?

24 A. State University of New York.

25 Q. What location?

1 A. Oswego, New York.

2 Q. Did you receive a BS or a BA?

3 A. BA.

4 Q. In what concentration?

5 A. Public justice.

6 Q. Are you sure that that was a Bachelor of  
7 Arts and not a Bachelor of Science?

8 A. Yes.

9 Q. Okay. And what year did you receive your  
10 Juris Doctor?

11 A. 1987.

12 Q. From what institution?

13 A. Albany Law School.

14 Q. Are you admitted to practice law in the  
15 State of New York?

16 A. Yes.

17 Q. And you've been admitted since when?

18 A. 1988.

19 Q. And have you ever practiced law in private  
20 practice?

21 A. Yes.

22 Q. From when to when?

23 A. From 1988 until 1993.

24 Q. And where did you practice from 1988 to  
25 1993?

1 A. I practiced locally with a gentleman named  
2 Timothy Tippins. I practiced with a firm called  
3 Ferrara, Jones & Sipperly and I practiced with a  
4 firm called Dyley, Testa & Drakel(ph.).

5 Q. And what area of law did you practice?

6 A. I did matrimonial law. I did family court.  
7 I did real estate. I did commercial lending and  
8 some bankruptcy.

9 Q. Did you ever practice labor law?

10 A. Prior to going to the labor department, no.

11 Q. At the labor department did you practice  
12 labor law?

13 A. Yes.

14 Q. When did you go to the labor department?

15 A. December 1st, 2014.

16 Q. After 1993, when you stopped practicing law  
17 in the private sector, what was your first place of  
18 employment?

19 A. New York State Department of Taxation and  
20 Finance.

21 Q. And what was your title?

22 A. Senior attorney.

23 Q. And when were you hired by them?

24 A. I don't remember the date of hiring but I  
25 started on October 14th, 1993.

1 Q. And what type of work did you do as a senior  
2 attorney at the New York State Department of  
3 Taxation?

4 A. I defended the department in tax cases when  
5 people would appeal a tax bill that they got, tax  
6 assessment. I can't remember what they were called.

7 Q. Do you work for the New York State  
8 Department of Taxation now?

9 A. No.

10 Q. Who do you work for now?

11 A. New York State Office of the Medicaid  
12 Inspector General.

13 Q. Okay. So you've worked for the New York  
14 State Department of Taxation from when to when?

15 A. From 1993 until approximately September of  
16 1998.

17 Q. In 1998 where did you work?

18 A. Workers' Compensation Board.

19 Q. And what did you do at the Workers' Comp  
20 Board?

21 A. I worked in what was then called the Office  
22 of Appeals, reviewing appeal cases.

23 Q. And what was your title?

24 A. At first it was senior attorney and then I  
25 got a promotion to associate attorney.

1 Q. And for how long did you work at the  
2 Workers' Comp Board?

3 A. Until I left there and went to the  
4 Department of Labor in 2014. My last day at  
5 Workers' Comp was November 30th, 2014.

6 Q. So you started at the Department of Labor in  
7 2014; is that your testimony?

8 A. Yes.

9 Q. And what was your title when you started at  
10 the Department of Labor?

11 A. Associate attorney.

12 Q. And you worked at the Department of Labor  
13 from when to when?

14 A. Until I believe it was February -- excuse  
15 me -- January 10th, 2018.

16 Q. Did you leave the Department of Labor  
17 voluntarily --

18 A. Yes.

19 Q. -- or were you asked to leave?

20 A. I left voluntarily.

21 Q. At the time that you left voluntarily were  
22 you advised that you were to be terminated?

23 A. No.

24 Q. At any time since leaving the Department of  
25 Labor have you found out that you were going to be

1 asked to leave the Department of Labor?

2 A. No.

3 Q. Okay. So it's your testimony that you did  
4 not leave the Department of Labor under threat of  
5 discharge?

6 A. Yes, that's my testimony.

7 Q. Do you believe that your jeopardy -- your  
8 job was in jeopardy at the Department of Labor?

9 A. Yes.

10 Q. And why did you believe that your job was in  
11 jeopardy at the Department of Labor?

12 A. Because I was given a Notice of Discipline.

13 Q. And when were you given a Notice of  
14 Discipline?

15 A. I believe it was October 10th, 2017.

16 Q. What did that Notice of Discipline say?

17 A. It alleged acts of -- I don't know, I don't  
18 remember what they called it, bad behavior and that  
19 they were seeking discipline, which could be  
20 anywhere from a suspension, fine or up to  
21 termination.

22 Q. And prior to getting that notice did you  
23 understand that your performance was being  
24 scrutinized?

25 A. No.



1 Q. Did anybody at the Department of Labor speak  
2 to you about perceived deficiencies in your  
3 performance?

4 A. No.

5 Q. Who was your supervisor at the Department of  
6 Labor?

7 A. When I started it was a gentleman Harry  
8 Dunsker and then it became a gentleman name Michael  
9 Pagliolonga.

10 Q. So it's your testimony that Michael  
11 Pagliolonga never spoke to you about deficiencies in  
12 your performance?

13 A. Correct.

14 Q. Would it surprise you if I told you that he  
15 testified to something very different than that?

16 MR. LUIBRAND: Objection.

17 BY MR. ZABELL:

18 Q. You can disregard the objection and answer.

19 A. Yes.

20 Q. Have you found Michael Pagliolonga to be an  
21 honest person when you dealt with him?

22 A. No.

23 Q. Why is that?

24 A. I found that he would tell me one thing and  
25 I would hear something different from somebody else.

1 Q. On how many different occasions did that  
2 occur?

3 A. I don't recall.

4 Q. I don't know if this will make you feel more  
5 comfortable, but I tend to agree with you, I didn't  
6 find him to be a terribly honest person either.

7 Do you think that Mr. Pagliolonga liked you?

8 A. I don't know that.

9 MR. BERG: Objection.

10 BY MR. ZABELL:

11 Q. I'm sorry, I didn't hear you?

12 A. I don't know how he felt.

13 Q. Do you know how Mr. Pagliolonga came to be  
14 your supervisor?

15 A. Yes.

16 Q. How did he come to be your supervisor?

17 A. He was promoted to deputy counsel.

18 Q. And do you know how his promotion came  
19 about?

20 A. No.

21 Q. Were you aware of an incident where he took  
22 a photograph of Mr. Dunsker?

23 A. Yes.

24 Q. While Mr. Dunsker, a state employee, was  
25 sleeping on the job?

1 A. Yes. His name is Dunsker, d-u-n-s-k-e-r.

2 Q. Okay. What do you know about that  
3 picture-taking event?

4 A. I know that Mr. Dunsker was experiencing  
5 some medical issues and that he had gone to the  
6 doctors the night before and several of us were  
7 discussing our concern for his health and the next  
8 morning Mr. Pagliolonga showed us that he had taken  
9 a picture of him at his desk and had them close the  
10 door behind him, leaving Harry in the office.

11 Q. Okay. Do you know what, if anything,  
12 Mr. Pagliolonga did with that picture?

13 A. After he showed it to me?

14 Q. Yes.

15 A. I was told, I wasn't there, that he showed  
16 it to other people in the office.

17 Q. And do you know if Mr. Pagliolonga had made  
18 any comments about how he was going to use that  
19 picture?

20 A. Yes.

21 Q. And what were those comments?

22 A. I was told that he said I'm going to be  
23 deputy counsel within a week.

24 Q. Who told you that he said that?

25 A. Christina Heinz and Larissa Bates.

1 Q. Okay. And did Mr. Pagliolonga eventually  
2 become the assistant counsel?

3 A. He became deputy counsel eventually, yes.

4 Q. Do you think that his taking that picture of  
5 Mr. Dunsker sleeping at his desk had anything to do  
6 with it?

7 MR. BERG: Objection.

8 BY MR. ZABELL:

9 Q. I'm sorry?

10 A. I don't know.

11 Q. Do you think that it did?

12 MR. BERG: Objection.

13 BY MR. ZABELL:

14 Q. You can answer.

15 A. I don't know. I know that -- I believe that  
16 he was petitioning for that job prior to it so  
17 whether or not he was in line to get it beforehand,  
18 I don't know.

19 Q. Did you apply for that position?

20 A. No.

21 Q. Now, Mr. Dunsker, even though he was  
22 sleeping at his desk, didn't lose employment with  
23 the Department of Labor, correct?

24 A. Correct.

25 Q. Apparently, that was not sufficient enough

1 for him to lose his job, correct?

2 A. I don't know what consequences there were.  
3 I know nothing about anything that was done with  
4 that.

5 Q. Right.

6 You know he didn't lose his job after that  
7 incident, correct?

8 A. Correct.

9 Q. And you knew that Mr. Pagliolonga had gotten  
10 promoted, correct?

11 A. Correct.

12 Q. Now, could you tell me in the two years  
13 leading up to your departure from the Department of  
14 Labor what precisely were your duties and  
15 responsibilities?

16 A. I was hired to run the Labor Standards  
17 litigation team and to effect a program or a  
18 protocol for litigation in terms of assignment of  
19 cases, standardizing the procedure so that answers  
20 were done on time and not categorizing the decisions  
21 but making sure if there was any directions in a  
22 decision, to follow-up if that got done.

23 I assigned cases, I reviewed answers,  
24 reviewed briefs. Whatever documents had been  
25 prepared by the attorneys and if there were

1 settlement negotiations, I was able to approve the  
2 settlement, in consultation with the director of  
3 Labor Standards.

4 And then shortly before I left, I want to  
5 say maybe within six months or so, I was also  
6 assigned to PESH in some asbestos cases I believe it  
7 was.

8 Q. When did you takeover Labor Standards?

9 A. When I first started, that was what I was  
10 hired to do and that's what I did when I got there  
11 on December 1st, 2014.

12 Q. And in 2014 how would you describe the  
13 operation of Labor Standards?

14 A. To me it was all new and confusing.

15 Q. All new?

16 A. Well, I hadn't done this law before and I  
17 hadn't been at the Department of Labor so learning  
18 the procedure and, you know, who filed the appeals  
19 and schedules and all that was new to me.

20 MR. BERG: Mr. Zabell?

21 MR. ZABELL: I don't know who is  
22 speaking at this point.

23 MR. BERG: It's Michael Berg. I seem  
24 to have lost the image and I may have lost  
25 power so let me -- let's see if I can

1           redirect.

2                       MR. ZABELL: Okay. So we'll take a  
3 break while we do that. We see that you are  
4 working through the system.

5                       (Brief recess taken at 10:36 a.m.

6                       (Deposition resumes 10:41 a.m.)

7                       MR. BERG: Let me put it briefly on  
8 the record that this is Michael Berg, I've  
9 had a powered outage in my home and  
10 neighborhood courtesy of high winds and Con  
11 Edison. I consent to following along with  
12 audio only for this part of the deposition  
13 and will try to gain access to the  
14 previously circulated exhibits so that we  
15 won't have any interruptions beyond the five  
16 minutes that we just took.

17                      If I can't gain access to those  
18 documents or exhibits then I'll speak with  
19 Mr. Zabell and we'll try to come up with  
20 another solution.

21                      MR. ZABELL: Very good, Michael,  
22 we'll work with you to make it happen.

23                      (The court reporter read back the  
24 record as follows:

25                      "Q. And in 2014 how would you

1 describe the operation of Labor Standards?

2 A. To me it was all new and  
3 confusing.

4 Q. All new?

5 A. Well, I hadn't done this law  
6 before and I hadn't been at the Department  
7 of Labor so learning the procedure and, you  
8 know, who filed the appeals and schedules  
9 and all that was new to me.")

10 MR. ZABELL: Thank you.

11 BY MR. ZABELL:

12 Q. Ms. Dix, would you describe, in 2014, the  
13 running of Labor Standards as organized?

14 A. No.

15 Q. How would you describe it?

16 A. They were trying to get organized so there  
17 had been some changes made, they had hired some  
18 paralegals to do some file organization and so part  
19 of it had started to get organized, but that was  
20 what they hired me to do, was to organize the rest  
21 of the process.

22 Q. Okay. And at some point you had hired an  
23 individual by the name of Fredy Kaplan to assist you  
24 in that process?

25 A. I did not hire Fredy, Mr. Kaplan.



1 Q. Who hired Mr. Kaplan?

2 A. I don't know.

3 Q. Was Mr. Kaplan working there at the time  
4 that you became employed --

5 A. No.

6 Q. -- by Labor Standards?

7 A. No.

8 Q. Did Mr. Kaplan report to you?

9 A. Yes.

10 Q. So someone else hired Mr. Kaplan to report  
11 to you?

12 A. Yes.

13 Q. And what was the effect on Labor  
14 Standards -- what was the effect of hiring Fredy  
15 Kaplan on Labor Standards?

16 A. It gave us another attorney to litigate  
17 cases.

18 Q. And did Mr. Kaplan, in fact, litigate cases?

19 A. Yes.

20 Q. And did he assist in clearing up a backlog  
21 of cases?

22 A. No, I don't believe there was a backlog of  
23 cases.

24 Q. So in 2014 you are of the opinion that there  
25 was no backlog of cases?

1 A. Right. Cases came in, were litigated as  
2 they came in. The IBA scheduled the hearings so we  
3 didn't have cases that we needed to schedule, we  
4 just did what the IBA scheduled.

5 Q. I see, okay.

6 You know there have been reports issued from  
7 the Commissioner of Labor that say something very  
8 different, right?

9 A. No, I wasn't aware of that.

10 Q. Okay. Now, was Mr. Kaplan assigned to a  
11 specific office?

12 A. He worked in the New York City office.

13 Q. Okay. And by volume what was the busiest  
14 office?

15 A. I don't know.

16 Q. Shouldn't you have known as the head of  
17 Labor Standards?

18 A. I was wasn't the head of Labor Standards.

19 Q. What were you?

20 A. I supervised the litigation team for Labor  
21 Standards.

22 Q. So as the head of litigation for Labor  
23 Standards shouldn't you know by volume which office  
24 had the highest volume?

25 A. No, because it didn't work that way.

1 Q. Well, tell me how it worked.

2 A. We had attorneys up in Albany, we had  
3 attorneys in New York City and cases were just  
4 assigned to the attorneys based on numbers that came  
5 in, location, things of that nature, but in a  
6 balanced manner.

7 Q. What does that mean, "a balanced manner"?

8 A. There were certain cases that were higher in  
9 dollar value and, for instance, those might take  
10 longer to litigate so I wouldn't give somebody two  
11 or three of those when I knew the hearings were  
12 coming up within a couple days apart, for instance.

13 And then there were others that were lower  
14 dollar amounts that, say, discovery wouldn't be  
15 intense on so those got assigned differently.

16 Q. Okay. Now, in 2014 was Mr. Kaplan working  
17 in Labor Standards?

18 A. No.

19 Q. In 2015 was Mr. Kaplan working in Labor  
20 Standards?

21 A. Yes.

22 Q. And in 2015 was Mr. Kaplan the most senior  
23 attorney in Labor Standards?

24 A. No.

25 Q. Who was the most senior attorney?

1 A. I think it was Ben Garry, but I'm not  
2 positive.

3 Q. Okay. Was Mr. Kaplan the most senior  
4 attorney in the New York office in Labor Standards?

5 A. No.

6 Q. Who was in the New York office?

7 A. When Mr. Kaplan was hired there were two  
8 other gentlemen there that had been there prior to  
9 my coming to Labor Standards. I don't know when  
10 they were hired.

11 Q. And what were their names?

12 A. Paul Piccigallo and Jake Ebers.

13 Q. Do you know how long Paul Piccigallo worked  
14 at Labor Standards?

15 A. No, I do not.

16 Q. You know I do, right?

17 A. No, I don't know that.

18 Q. And Mr. Ebers, do you know how long he  
19 worked at Labor Standards?

20 A. No, I do not.

21 Q. And they started working for the Department  
22 of Labor right out of law school, correct?

23 A. I don't know.

24 Q. You don't seem to know much about the staff  
25 that you supervised.

1 Is there a reason for that?

2 A. I wasn't there when they were hired.

3 Q. But you did supervise them, correct?

4 A. Yes.

5 Q. And how long after you were hired did it  
6 take for them to leave the Department of Labor?

7 A. They both left in the summer of 2015. I  
8 don't remember if it was July or August.

9 Q. Okay. So they lasted less than seven months  
10 after you started, correct?

11 A. No.

12 Q. No.

13 So you started in November, correct?

14 A. No.

15 Q. Didn't you say you started in November?

16 A. I said I started December 1st, 2014.

17 Q. Okay. So December 1st, 2015 and if that  
18 takes us to July, that's seven months, maybe eight  
19 if you include the month that you started, right?

20 A. December 1st, 2014.

21 Q. Right.

22 A. July or August, so it was not less than  
23 seven months.

24 Q. Would you say it was less than eight months?

25 A. Depending on the date, it was around eight

1 months.

2 Q. Okay, around eight months.

3 Their departure have anything to do with  
4 your arrival?

5 A. I don't know.

6 Q. Did you ever ask?

7 A. No.

8 Q. You didn't want to know the answer?

9 A. I had no reason to ask. They told me they  
10 were leaving to take jobs in the private practice  
11 with better pay.

12 Q. Okay. Now, if you were Mr. Kaplan's  
13 supervisor, who, other than you, would have hired  
14 him for that position?

15 A. I don't know how the government --  
16 governor's office of appointments works so I don't  
17 know the answer to that.

18 Q. You will agree that you've been a bureaucrat  
19 since 1993, correct?

20 A. No.

21 Q. Isn't that when you said you started working  
22 for the New York State Department of Taxation?

23 A. Yes.

24 Q. You didn't consider yourself a bureaucrat?

25 A. No.

1 Q. Do you know what that word means?

2 A. Yes.

3 Q. What does it mean to you?

4 A. One who runs the government, one who works  
5 in the government. I was a civil servant.

6 Q. Okay. So maybe you don't, that's okay.

7 So at some point after Mr. Piccigallo leaves  
8 and Mr. Ebers leaves there's Mr. Kaplan and who else  
9 is left with Mr. Kaplan to handle the litigations  
10 for Wage and Hour in the New York City?

11 A. Prior to other attorneys coming on, it was  
12 just Mr. Kaplan.

13 Q. How long was Mr. Kaplan alone for?

14 A. Approximately three months.

15 Q. And how many attorneys were hired to assist  
16 Mr. Kaplan in handling the wage and hour cases in  
17 the New York City office?

18 A. Three people were hired. They were law  
19 school graduates, they had not yet been admitted to  
20 the bar.

21 Q. So three newbies were hired, correct?

22 A. Correct.

23 Q. Was it part of Mr. Kaplan's job to train  
24 them?

25 A. No.

1 Q. Who trained them?

2 A. I did, Mike Pagliolonga did, Pico did, Pico  
3 Ben-Amotz, and Mr. Kaplan mentored them just as much  
4 as Mr. Ebers and Mr. Piccigallo mentored him when he  
5 came on board.

6 Q. How many times did you go down to New York  
7 City to train them?

8 A. None.

9 Q. Oh. You trained them over the phone, did  
10 you?

11 A. I did.

12 Q. Okay. How many times did Pico Ben-Amotz  
13 meet with them to train them?

14 A. I don't know.

15 Q. How many times did Mr. Pagliolonga meet with  
16 them to train them?

17 A. I don't know.

18 Q. Do you know if Mr. Ben-Amotz or  
19 Mr. Pagliolonga ever met with them to train them?

20 A. Yes, I believe they did. I was told they  
21 did.

22 Q. Oh, you were told and, therefore, you  
23 believed what you were told, correct?

24 A. Yes.

25 Q. And the only time you didn't believe what



1 you were told was when Mr. Pagliolonga would tell  
2 you something, correct?

3 A. I can't answer that question.

4 Q. Well, you did before when you said that you  
5 didn't think that Mr. Pagliolonga was truthful?

6 A. I said that, yes. Your question is  
7 confusing me.

8 Q. Oh, I'm sorry, I didn't mean for you to be  
9 confused, I'm just asking you a question.

10 Didn't you say before that you did not think  
11 that Mr. Pagliolonga was truthful?

12 A. Yes.

13 Q. And didn't you say that you felt that  
14 Mr. Pagliolonga was not a truthful person because he  
15 would tell you things that you would later find out  
16 to not be true?

17 A. Correct.

18 Q. Did you find the same thing with Pico  
19 Ben-Amotz, would he tell you things that you would  
20 later find out to not be true?

21 A. No.

22 Q. Just Mr. Pagliolonga, correct?

23 A. Well, there might have been others as well  
24 but you just asked me about Mr. Pagliolonga.

25 Q. Oh, who were the others at the Department of

1 Labor that you did not find to be truthful?

2 A. Ben Garry, Taylor Waites, Jake Ebers, Steve  
3 Pepe.

4 Q. Have you finished answering?

5 A. Yes.

6 Q. Okay. So those one, two, three, four people  
7 that you just identified were four people who worked  
8 for the Department of Labor that were the four  
9 people, other than Mr. Pagliolonga, that worked at  
10 the Department of Labor that you did not feel to be  
11 honest, correct?

12 A. I didn't say that.

13 Q. Okay. Was Ben Garry always honest with you?

14 A. No, not about like, say, time and  
15 attendance, but I didn't feel that they were  
16 dishonest when dealing with cases.

17 Q. Okay. Well, you know that time and  
18 attendance is a big deal these days, right?

19 A. Yes.

20 Q. Okay. And if you lie about time and  
21 attendance, you're actually stealing from the  
22 government, correct?

23 A. Yes.

24 Q. And if you're stealing from the government,  
25 you're stealing from the citizens of the State of

1 New York, correct?

2 A. Yes.

3 Q. But you didn't think that was important,  
4 correct?

5 A. He didn't lie about his time and attendance  
6 when he was at work and when he wasn't at work. He  
7 may have lied about why he didn't come into work,  
8 but he always charged the time that he was to  
9 charge.

10 Q. Okay. And he would lie about why he was  
11 taking that time to somehow excuse the time,  
12 correct?

13 A. I felt that he was, yes.

14 Q. Okay. Now, what was your issue with Taylor  
15 Waites?

16 A. She lied about when she came into work and  
17 when she left work.

18 Q. Okay. Is that a accepted time issue?

19 A. No, because she was an hourly employee.

20 Q. Okay. What about Jake Ebers?

21 A. He did not disclose to me when he was  
22 interviewing for jobs, he would say he had a  
23 doctor's appointment.

24 Q. And what about Steve Pepe?

25 A. He would make excuses for his behavior if I

1 didn't -- if I counseled him on behavior that  
2 happened that I didn't think should happen, he would  
3 make excuse for it.

4 Q. Well, what type of behavior are we talking  
5 about?

6 A. Not getting an answer finished on time.

7 Q. And what were the excuses he would come up  
8 with?

9 A. I don't recall off the top of my head.  
10 Probably other workload.

11 Q. But you know that of all the New York State  
12 Department of Labor Wage and Hour employees that you  
13 supervised that these four had lied to you, correct?

14 A. I believe that they had, yes.

15 Q. And they were the only ones that lied to  
16 you, correct?

17 A. I don't know.

18 Q. Well, the only ones that you suspected of  
19 lying to you, correct?

20 A. Correct.

21 Q. And then Mike Pagliolonga, correct?

22 A. Correct.

23 Q. Do you think that JR Pichardo ever lied to  
24 you?

25 A. I'm not aware that he did. I know there's

1     been allegations that he did, but I have never been  
2     told opposite of what he has told me.

3     Q.        Okay. So did he tell you that he used  
4     anti-Semitic terms?

5     A.        No, he did not tell me that.

6     Q.        Did he tell you that he referred to female  
7     co-workers as bitches?

8     A.        He said that he didn't recall doing that but  
9     if he had, he didn't mean it derogatorily.

10    Q.        Well, is there a positive way to call  
11    someone a bitch?

12    A.        I'm not aware of one.

13    Q.        So you think by saying that he didn't use  
14    the term bitch negatively, you still believed him,  
15    right?

16    A.        I believe what he said, that he didn't think  
17    it was derogatorily done.

18    Q.        Even though you can't think of a way where  
19    you can call someone a bitch in a positive way,  
20    correct?

21    A.        I can't, no.

22    Q.        I can't either.

23                    MR. ZABELL: Mr. Berg, can you think  
24                    of anything? Mr. Berg, are you there?

25                    MR. BERG: Yeah, I'm here, I was on

1           mute. I'm not testifying, Mr. Zabell.

2                   MR. ZABELL: Okay. Very good.

3 BY MR. ZABELL:

4 Q.           Now, do you know how Mr. Pichardo came to be  
5 employed at the New York State Department of Labor?

6 A.           I believe he was -- it went through the  
7 governor's appointment office.

8 Q.           So Governor Cuomo appointed him; is that  
9 your testimony?

10 A.           I don't know who appointed him. I don't  
11 know how that process works.

12 Q.           Did you ever ask?

13 A.           Yes.

14 Q.           You did?

15 A.           Yes, I would inquire on how that works and I  
16 was told it worked differently depending on who may  
17 have recommended the particular appointee.

18 Q.           I see.

19                   And did you ask specifically with regard to  
20 Mr. Pichardo?

21 A.           No, I don't believe I did.

22 Q.           You're aware that at some point  
23 Mr. Pichardo's co-workers complained about his  
24 behavior, correct?

25 A.           Yes.

1 Q. How many times did you meet with  
2 Mr. Pichardo in person?

3 A. In person? Three, I believe.

4 Q. And how long did he work for you?

5 A. He was hired around November of 2015 and he  
6 left in October of 2016.

7 Q. So would you agree that that's about 11  
8 months?

9 A. Approximately, yes.

10 Q. Okay. So in 11 months of working for you  
11 you met with him three times; is that correct?

12 A. Yes.

13 Q. And you met with him as his direct  
14 supervisor, correct?

15 A. Twice, yes.

16 Q. Twice.

17 So you met with him twice as his direct  
18 supervisor and then one time when you were not his  
19 direct supervisor?

20 A. No, I was his supervisor but it wasn't a  
21 work meeting. He was in Albany for an alumnus event  
22 and myself and another co-worker took him out to  
23 dinner.

24 Q. Oh, who was the other co-worker?

25 A. Alyssa Gorvich.

1 Q. So you socialized with Mr. Pichardo outside  
2 of the office, correct?

3 A. Yes.

4 Q. On how many different occasions did you  
5 socialize with Mr. Pichardo outside of the office?

6 A. One.

7 Q. Did you find it to be a pleasant evening?

8 A. It was fine, yes.

9 Q. And where did you take him to dinner?

10 A. I think it was the City Line restaurant.

11 Q. Were drinks served?

12 A. I don't recall. I didn't drink and I don't  
13 believe Alyssa drinks so I don't recall if he  
14 ordered a drink, but I don't believe so.

15 Q. So when you and another woman took  
16 Mr. Pichardo out did he say anything inappropriate  
17 during that meeting?

18 A. No.

19 Q. Was it an enjoyable meeting?

20 A. Yes.

21 Q. So you met Mr. Pichardo, over the course of  
22 11 months, twice as his direct supervisor and once  
23 to socialize with him; is that correct?

24 A. Roughly the whole staff of New York City  
25 came up over the holidays and we did have a staff



1 meeting so I would have to add that in as three  
2 times as direct supervisor and the one time when we  
3 went to dinner.

4 Q. I see. And whose duty and responsibility  
5 was it to teach Mr. Pichardo the duties of a Labor  
6 Standards attorney?

7 A. Mine.

8 Q. And how did you go about teaching  
9 Mr. Pichardo how to be a Labor Standards attorney?

10 A. We were on the phone probably at least every  
11 other day, if not everyday, and he would sit in on  
12 hearings that other people did, and then he would  
13 have the other people in New York City, including  
14 Mr. Kaplan, Ms. Waites and Mr. Sadiqi, they would  
15 help each other out, under my direction.

16 Q. Under your direction?

17 A. Yes.

18 Q. And did your direction specifically include  
19 for Mr. Kaplan to mentor all three of them and teach  
20 them how to do their job?

21 A. I never directed him to do that, it's just  
22 the way it worked, just as Mr. Ebers and  
23 Mr. Piccigallo had done with him.

24 Q. I'm sorry, could you repeat that last word?  
25 You got cutoff a little bit.

1 A. I said I never directed him to mentor him in  
2 terms of an office directive, but he did, it was  
3 just the way the office worked down there, the same  
4 way that Mr. Piccigallo and Mr. Ebers had mentored  
5 him.

6 Q. By "him" you mean Mr. Kaplan, correct?

7 A. Yes, correct, I'm sorry, Mr. Kaplan.

8 Q. And Mr. Kaplan was a practicing attorney  
9 before he went to work for the Department of Labor,  
10 correct?

11 A. That's my understanding, yes.

12 Q. And he had actually tried cases, correct?

13 A. I don't know.

14 Q. Have you ever tried a case?

15 A. Yes.

16 Q. Before what entities?

17 A. The Division of Tax Administration I think  
18 it's called, DTA, and the Department of Health.

19 Q. I see. Is that --

20 A. Donation Board.

21 Q. I see. Is that anything like trying a case  
22 before the Industrial Board of Appeals?

23 A. It's similar but they're not the same.

24 Q. Okay. Did you ever try a case before the  
25 Industrial Board of Appeals?

1 A. No.

2 Q. You know how?

3 A. Pardon me?

4 Q. You know how to?

5 A. Yes.

6 Q. But you never have?

7 A. No.

8 Q. Have you specifically chosen not to?

9 A. No.

10 Q. It just worked out that way?

11 A. When I was hired on they made me the manager  
12 and they said the cases are being tried by the  
13 senior attorneys and had it come to be that I had  
14 to, I would have, but it didn't come to be that I  
15 had to.

16 Q. I see. Now, when did you first find out  
17 that Mr. Pichardo was accused of talking to  
18 co-workers in derogatory terms?

19 A. That would have been when Mr. Kaplan called  
20 me in April of 2016.

21 Q. In April of 2016 Mr. Kaplan called you for  
22 what purpose?

23 A. He called to talk to me about JR.

24 Q. For what purpose?

25 A. I don't know what his purpose was.

1 MR. BERG: Objection.

2 MR. ZABELL: She answered before the  
3 objection so I don't know who made the  
4 objection.

5 MR. BERG: This is Michael Berg, I  
6 objected.

7 MR. ZABELL: Thank you, Michael.

8 BY MR. ZABELL:

9 Q. He called you, you don't know why he called  
10 you, but he relayed to you in a call that you didn't  
11 know why he was making, that Mr. Pichardo was using  
12 derogatory terms; is that your testimony?

13 A. Can you repeat that, please.

14 MR. ZABELL: Peg, do you mind if I  
15 have that read back, please.

16 (The court reporter read back the  
17 record as follows

18 "Q. He called you, you don't know  
19 why he called you, but he relayed to you in  
20 a call that you didn't know why he was  
21 making, that Mr. Pichardo was using  
22 derogatory terms; is that your testimony?")

23 THE WITNESS: The answer is no.

24 BY MR. ZABELL:

25 Q. Okay. So you knew why Mr. Kaplan was making

1 the phone call?

2 A. No.

3 Q. In the phone call did he relay to you that  
4 Mr. Pichardo was using derogatory terms to describe  
5 his colleagues?

6 A. No, I don't believe he did.

7 Q. Okay. So why don't you tell me what the  
8 derogatory words were that Mr. Kaplan relayed to you  
9 in that conversation in April of 2016?

10 A. I don't believe he told me the words. I  
11 believe he told me that Ms. Sadiqi and Ms. Waites  
12 were upset with the way he was speaking to them.  
13 Mr. Pichardo was speaking to them, Ms. Sadiqi and  
14 Ms. Waites.

15 Q. And what did you do to investigate  
16 Mr. Kaplan's complaints?

17 A. I reached out to Ms. Waites and Ms. Sadiqi,  
18 myself, and I believe Mr. Dunsker was on both calls.

19 Q. Okay. And why was Mr. Dunsker on both phone  
20 calls?

21 A. Because he was my supervisor.

22 Q. Okay. And what did Ms. Sadiqi and Ms.  
23 Waites relate to you?

24 A. Ms. Sadiqi related to me that she was having  
25 difficulty with Mr. Pichardo in terms of his

1 behavior, in a shared office, and talking loudly  
2 when she was on phone calls.

3 And then she relayed to me that he had  
4 called her a bitch twice and relayed the  
5 circumstances surrounding the comments. She relayed  
6 to me that she had spoken to him about his behavior  
7 and that it had not changed.

8 Q. And what Mr. Ms. Waites relate to you?

9 A. Ms. Waites said she did not have as much  
10 contact with him, as they did not share an office,  
11 and that he was maybe unpleasant but she did not  
12 have the same degree of interaction with him so she  
13 did not have the same level of complaint.

14 Q. Okay. So when a female employee complains  
15 to you that a male employee is referring to her as a  
16 bitch, does that trigger any reporting obligations  
17 on your part?

18 MR. BERG: Objection.

19 BY MR. ZABELL:

20 Q. You can disregard the objection and answer.

21 A. Yes.

22 Q. What reporting obligations is that supposed  
23 to trigger?

24 A. I reported it to my direct supervisor and to  
25 the person in charge -- well, Mr. Ben-Amotz, and

1 then he asked me to bring in Mr. Pagliolonga because  
2 he was -- I'm not sure the title, but basically the  
3 human resources attorney.

4 Q. I see. But you didn't file a complaint with  
5 DEOD at that time, correct?

6 A. No, I did not.

7 Q. Did you know that you had the ability to  
8 file a complaint with DEOD at that point?

9 A. I have the physical ability to file a  
10 complaint in the DEOD at any point. I'm not sure  
11 what you mean.

12 Q. Did you know that you could have complained  
13 with them?

14 A. I was told I could, it didn't rise to that  
15 level yet without investigating it.

16 Q. Oh, who told you it didn't rise to that  
17 level?

18 A. I believe it was Mr. Pagliolonga.

19 Q. He told that you.

20 Did that sound right to you?

21 A. It's not my area of specialty so I relied on  
22 what he said.

23 Q. I see. Do you know if it was his area of  
24 specialty?

25 A. It was relayed to me that it was.

1 Q. By whom?

2 A. Mr. Ben-Amotz.

3 Q. Mr. Ben-Amotz related to you that you have  
4 to defer to Mr. Pagliolonga?

5 A. He asked me to loop him in, that that was  
6 his area of specialty and that we had to make sure  
7 that we looked through everything closely, you know,  
8 make sure we were doing the right thing and get all  
9 the information.

10 Q. I see. Did there -- so after that -- after  
11 Mr. Kaplan complained, what steps did you take?

12 A. I went to Mr. Dunsker, we made phone calls  
13 to Ms. Waites and Ms. Sadiqi, I made a phone call to  
14 Mr. Ben-Amotz. He asked me to bring in  
15 Mr. Pagliolonga, and Mr. Dunsker and Mr. Pagliolonga  
16 and myself, on the phone with Mr. Ben-Amotz, had a  
17 conference.

18 Q. Okay. And did you, in fact, do that?

19 A. Do what?

20 Q. Have that conference?

21 A. Yes.

22 Q. And what occurred during that conference?

23 A. We discussed the next steps, which were to  
24 go down to New York City and speak to Mr. Pichardo  
25 and Mr. Kaplan and Ms. Sadiqi and Ms. Waites.



1 Q. Okay. Is that one of the two or three times  
2 that you met with Mr. Pichardo?

3 A. Yes.

4 Q. So of the training sessions that you gave  
5 him, at least one of them, one of the three, was  
6 when you had to speak to him about inappropriate  
7 behavior, correct?

8 A. Yes.

9 Q. Well, out of the three, how many were  
10 related to his inappropriate behavior?

11 A. That was the one that I did in person and  
12 then I accompanied Mr. Pagliolonga when they asked  
13 him to resign.

14 Q. So out of the three times that you met with  
15 him, two had to do with his inappropriate behavior,  
16 correct?

17 A. No. I met with him four times, but two were  
18 dealing with the issue, yes.

19 Q. Okay. So only two were for training,  
20 correct?

21 A. One was when he came up to Albany for his  
22 alumnus activity and within the office that day, he  
23 worked in the office that day, we went over whatever  
24 cases we needed to go over.

25 And the New York City staff, including

1 Mr. Ben-Amotz, Ms. Sadiqi, Ms. Waites, Mr. Kaplan  
2 and Mr. Pichardo came at holiday time, we had a  
3 staff meeting at that time as well and we discussed  
4 the issue, so that would be those two times.

5 And then when I went down to New York City,  
6 after the complaints had been lodged, and I met with  
7 Mr. Pichardo, we also had a staff meeting with the  
8 staff and discussed other work issues at that time.

9 So three out of the four would have been  
10 discussions about training or work issues or  
11 procedure process, that kind of thing.

12 Q. Okay. Now, did there come a time where  
13 Mr. Kaplan actually complained, with specificity,  
14 about Mr. Pichardo's behavior?

15 A. Yes.

16 Q. So he actually made a complaint of  
17 discrimination with you?

18 A. Yes.

19 Q. And what were the specifics of that  
20 complaint of discrimination?

21 A. He said Mr. Pichardo had referred to him as  
22 a crack whore, a F'ing Jew. I don't recall -- I  
23 think there was a third comment but I can't recall  
24 what it was.

25 He told me that Labor Standards

1 investigators had told him this, that he didn't hear  
2 it himself, but that he felt very distressed by the  
3 situation and that his blood pressure had gone up  
4 and he had been to the doctors and he asked that he  
5 and Mr. Pichardo be separated.

6 Q. Was that the only thing that Mr. Kaplan  
7 complained to you about?

8 A. No.

9 Q. So when I asked you what did Mr. Kaplan  
10 complain about, I didn't ask you to limit it so,  
11 please, tell me everything that he complained to you  
12 about.

13 A. Well, you asked me when he called me  
14 specifically and made the remarks and I talked to  
15 Mr. Kaplan several times about Mr. Pichardo, but the  
16 conversation about the name calling, so to speak,  
17 with Mr. Kaplan was not the same conversation I had  
18 with him about Mr. Pichardo's work.

19 So there was another conversation where he  
20 and I spoke and he said Mr. Pichardo was not being a  
21 team player and wasn't helping out -- excuse me.  
22 Didn't feel he was helping out with the cases, the  
23 same way that Ms. Waites and Ms. Sadiqi were.

24 Q. And did Mr. Kaplan relate to you in that  
25 conversation about the effect Mr. Pichardo was

1 having on Ms. Sadiqi and Ms. Waites?

2 A. Not in that conversation, no.

3 Q. Was there a conversation where he did  
4 complain to you about Mr. Pichardo's behavior  
5 towards Ms. Sadiqi and Ms. Waites?

6 A. Yes.

7 Q. And when was that?

8 A. I believe it was the 20th of April in 2016.

9 Q. And could you tell me the context of that  
10 call?

11 A. He said that Ms. Waites and Ms. Sadiqi were  
12 upset that Mr. Pichardo wasn't treating them nicely,  
13 that he wasn't being a team player and that there  
14 was a lot of tension.

15 Q. And did he make specific allegations  
16 regarding the comments Mr. Pichardo was making about  
17 Ms. Sadiqi and Ms. Waites?

18 A. I don't believe he did in that conversation.

19 Q. Did he in any conversation?

20 A. We discussed it in other conversations after  
21 I had spoken with Ms. Sadiqi but I don't know  
22 that -- exactly what was said, but, yes, he and I  
23 did discuss it, but I believe it was after  
24 Ms. Sadiqi had revealed to me what he had said to  
25 her.

1 Q. Did there come a time where you had a  
2 conversation with Mr. Kaplan and Mr. Pagliolonga was  
3 on the phone?

4 A. Yes.

5 Q. And do you know when that occurred?

6 A. When I went down to New York City after the  
7 20th, I think that must have been the 22nd, it was  
8 the Friday, it was the following Tuesday of April in  
9 2016.

10 Q. And could you tell me what was discussed on  
11 that phone call?

12 A. Yes. Mr. Kaplan called and sounded upset,  
13 or said he was upset, and I went and got  
14 Mr. Pagliolonga. And Mr. Pagliolonga came in my  
15 office and I had Mr. Kaplan on speakerphone and that  
16 is when he relayed to us that Mr. Pichardo had made  
17 these anti-Semitic comments.

18 Q. Did he make any allegations regarding  
19 Mr. Pichardo's treatment of Ms. Waites and  
20 Ms. Sadiqi in that same conversation? Yes or no?

21 A. I'm trying to remember because there was  
22 several conversations.

23 Yes, he asked about when Mr. Pichardo was  
24 going to be moved out of Ms. Sadiqi's office.

25 Q. So at that time Mr. Pichardo was not moved

1 out of Ms. Sadiqi's office?

2 A. No.

3 Q. Did you tell Ms. Sadiqi that that would, in  
4 fact, occur?

5 A. That Mr. Pichardo was going to be moved?

6 Q. Yes.

7 A. Yes, he told her that we were working on  
8 that.

9 Q. I see. Did you, in fact, move Ms. Sadiqi,  
10 as opposed to Mr. Pichardo?

11 A. No.

12 Q. I see. So when Mr. Kaplan made his  
13 complaints did he just complain about Mr. Pichardo's  
14 anti-Semitic behavior or did he also complain about  
15 the mistreatment of Ms. Sadiqi and Ms. Waites in the  
16 office?

17 MR. BERG: Objection.

18 BY MR. ZABELL:

19 Q. You can disregard the objection and answer.

20 A. When Mr. Kaplan called on the date that he  
21 lodged his complaint that Mr. Pichardo had made  
22 anti-Semitic remarks, he also discussed Mr. Pichardo  
23 being moved out of Ms. Sadiqi's office and wanted to  
24 know when that was going to take place.

25 Q. Did you inquire as to why he wanted to know

1 about matters that affected Ms. Sadiqi and not him?

2 A. No. He said Ms. Sadiqi had come to him on  
3 several occasions, but he had seen her that morning  
4 and she seemed visibly upset so he was concerned.

5 Q. I see. Were you similarly concerned for  
6 Ms. Sadiqi?

7 A. I called her and spoke with her, and she did  
8 seem upset.

9 Q. Were you similarly concerned about  
10 Ms. Sadiqi, yes or no?

11 MR. BERG: Objection. Answer however  
12 you wish.

13 THE WITNESS: I was concerned that  
14 she was upset, yes.

15 BY MR. ZABELL:

16 Q. Thank you.

17 Were you also concerned for Ms. Waites?

18 A. No.

19 Q. Why is that?

20 A. Mr. Waites wasn't in the office with  
21 Mr. Pichardo, Ms. Sadiqi was, and that brought  
22 tension for her.

23 Q. Did you at that point conclude that what  
24 Ms. Sadiqi was being made to endure was changing the  
25 terms and conditions of her employment?

1 MR. BERG: Objection.

2 BY MR. ZABELL:

3 Q. You can answer.

4 A. I don't know how to answer that.

5 Q. Well, did Ms. Sadiqi relate to you that  
6 based upon what she has had to endure, it made her  
7 feel uncomfortable in the workplace?

8 A. Yes.

9 Q. Did she relate to you that it prevented her  
10 from being fully successful in the workplace?

11 A. Not that it prevented her but that it made  
12 it more difficult.

13 Q. Okay. So it was an impediment to her  
14 success in the workplace?

15 MR. BERG: Objection. There's no  
16 question pending.

17 THE WITNESS: I don't know.

18 BY MR. ZABELL:

19 Q. Would you agree that what she was  
20 complaining about was an impediment to her success  
21 in the workplace?

22 A. I don't think I can answer that. That would  
23 really be Ms. Sadiqi's perception, not mine.

24 Q. Well, did you ever think about it?

25 A. I thought about it a lot. I don't know.



1 She's a different person than I am. Some people can  
2 brush things like that off, some people can't.

3 Q. Would it have been an impediment to your  
4 success in the workplace if a male co-worker was  
5 referring to you as a bitch?

6 A. Probably not.

7 Q. Do you know if you've referred to anybody in  
8 the workplace as a bitch?

9 A. Have I?

10 Q. Yes.

11 A. Probably.

12 Q. And this is while you're working for the New  
13 York State Department of Labor?

14 A. No.

15 Q. Was this before you worked for the New York  
16 State Department of Labor?

17 A. Yes, it would have been at Workers' Comp, I  
18 had relationship with some of the people I worked  
19 with and you could joke around like that. Never in  
20 a, you know, a management meeting or derogatory way  
21 but a joking way.

22 Q. So in a joking way, you would jokingly refer  
23 to your colleagues as bitches, correct?

24 A. No, I might have said that to like one or  
25 two women that I worked with, we might have joked

1 about it, but I wouldn't refer to them that way to  
2 other people, no.

3 Q. So you would jokingly refer to one or two  
4 other people that you worked with as bitches,  
5 correct?

6 A. With them, yeah.

7 Q. Were any of them men?

8 A. No.

9 Q. Okay. So Mr. Kaplan had complained about  
10 anti-Semitic comments and he was inquiring about the  
11 well-being of Ms. Waites and Ms. Sadiqi in that  
12 phone call with you and Mr. Pagliolonga, correct?

13 A. I believe it was just Ms. Sadiqi, he was  
14 concerned about her welfare.

15 Q. Okay. What happened after that phone call?

16 A. The one where he lodged the complaints about  
17 anti-Semitic remarks?

18 Q. Well, the one where he complained about  
19 anti-Semitic remarks and inquired about Ms. Sadiqi's  
20 well-being?

21 MR. BERG: Objection.

22 BY MR. ZABELL:

23 Q. You can disregard the objection and answer.

24 A. After he made the complaints during that  
25 conversation, Mr. Pagliolonga filed the complaint

1 with the DEOD.

2 Q. Okay.

3 A. And there were other conversations during  
4 the day regarding Mr. Pichardo's -- where he could  
5 sit. There was apparently quite a -- other offices  
6 or other divisions of Department of Labor were in  
7 the same building like audit and things like that so  
8 they were trying to find space for him and I was  
9 told that there wasn't very many available spaces,  
10 if any, and they were trying to locate an empty desk  
11 for him to sit at.

12 Q. And you said that you've been to the New  
13 York City office on at least two occasions, right?

14 A. Correct.

15 Q. And as you walked through the office you  
16 know that there are many open offices, correct?

17 A. When I was down there there were many desks  
18 that were empty, yes.

19 Q. Okay. Did you inquire --

20 A. They were cubicles.

21 Q. Did you inquire if he could sit at any one  
22 of those empty desks?

23 A. Yes.

24 Q. And who told you no, he couldn't?

25 A. I believe it was Mr. Pagliolonga, he said

1 they didn't belong to us. It was Department of  
2 Labor or -- it wasn't counsel's office, I believe he  
3 said they weren't Department of Labor real estate,  
4 so to speak.

5 Q. I see. But there were many, many different  
6 desks that he could have sat at, correct?

7 A. Yes.

8 Q. Okay. Did you ever see a copy of the  
9 complaint that Mr. Pagliolonga filed with DEOD?

10 A. Yes.

11 Q. Did you think it was accurate?

12 A. Yes.

13 Q. Did you think it was well written?

14 A. No. It's a form he filled out with a few  
15 comments in it so it wasn't like a legal document  
16 that he prepared. He just wrote down what  
17 Mr. Kaplan had said and then signed it.

18 Q. Do you know what the nature of the complaint  
19 was that Mr. Pagliolonga filed with the DEOD?

20 A. It related that Mr. Kaplan had said  
21 Mr. Pichardo made anti-Semitic remarks and that  
22 Mr. Pichardo had also been mistreating another  
23 female co-worker, but I don't remember the exact  
24 words.

25 And I don't recall if Mr. Pagliolonga put in

1 what Mr. Kaplan said he called him, that he called  
2 him a crack whore and an F'ing Jew, I don't remember  
3 if he put those things in there. I would have to  
4 refer to the documents.

5 Q. Well, do you have any reason to believe that  
6 Mr. Pichardo did not refer to Mr. Kaplan as a crack  
7 whore?

8 MR. BERG: Objection.

9 BY MR. ZABELL:

10 Q. You can answer.

11 A. Do I have a reason to believe he didn't?

12 Q. Correct.

13 A. Now I do. I didn't then.

14 Q. Do you have any reason to believe that  
15 Mr. Pichardo didn't refer to Mr. Kaplan as a fucking  
16 Jew?

17 A. Yes.

18 MR. BERG: Objection.

19 BY MR. ZABELL:

20 Q. And what was your reason to believe that  
21 Mr. Pichardo did not refer to Mr. Kaplan as a  
22 fucking Jew?

23 A. Because Mr. Pichardo denied doing so and  
24 Mr. Kaplan later indicated to me that he had made  
25 that up.

Kathleen Dix, Esquire

1 Q. I see. Do you know what the results were of  
2 the DEOD investigation?

3 A. I know the letter --

4 MR. BERG: Objection.

5 THE WITNESS: Sorry. No, I don't  
6 know the results. I only know the letter  
7 that was issued to Mr. Kaplan said.

8 BY MR. ZABELL:

9 Q. And what did that letter say?

10 A. It indicated that they found no violation of  
11 federal or state law, but that there was a violation  
12 of Department of Labor's conduct policy.

13 Q. Do you know what the Department of Labor's  
14 conduct policy said?

15 A. I don't know what section they were  
16 referring to in the letter so, no, I don't know what  
17 part they said he violated.

18 Q. Do you know if the DEOD confirmed that  
19 Mr. Pichardo had referred to Mr. Kaplan with  
20 anti-Semitic slurs?

21 MR. BERG: Objection.

22 THE WITNESS: No, I --

23 BY MR. ZABELL:

24 Q. You can answer.

25 A. No, I don't.

1 Q. Would you be surprised if the DEOD did  
2 confirm that Mr. Pichardo referred to Mr. Kaplan  
3 with anti-Semitic slurs?

4 MR. BERG: Objection.

5 THE WITNESS: I really wouldn't be  
6 surprised either way. I wasn't involved in  
7 the investigation, other than to be  
8 interviewed, so I don't know what they  
9 found.

10 MR. ZABELL: Okay. I'm going to show  
11 you some documents now.

12 Mr. Berg?

13 MR. BERG: Hang on one moment.

14 Yes, I will have access to the  
15 documents for as long as I have battery life  
16 in my computer.

17 MR. ZABELL: Okay.

18 BY MR. ZABELL:

19 Q. Ms. Dix, have you ever seen this document?

20 MR. BERG: Mr. Zabell, I would ask  
21 that you identify the document by PDF  
22 number.

23 MR. ZABELL: This is Exhibit Number  
24 2.

25 MR. BERG: Thank you.

1 BY MR. ZABELL:

2 Q. Previously marked as Exhibit Number 2.

3 Ms. Dix, have you ever seen that document  
4 before?

5 A. Yes.

6 Q. Do you know what it is?

7 A. It's New York State Department of Labor  
8 Employee Handbook.

9 Q. Okay. And have you ever seen it before?

10 A. Yes.

11 Q. Could you tell me when you have seen it?

12 A. I saw it Friday night, when I was going over  
13 the exhibits, and I don't recall if I ever looked at  
14 it while I was working at Department of Labor, but  
15 it's likely that I did.

16 Q. Is it a document that you would have  
17 received as part of your employment at the  
18 Department of Labor?

19 A. I don't believe I received it in paper form.  
20 I may have been referred to it in training or in an  
21 e-mail.

22 Q. I see. Are you familiar with its content?

23 A. Generally, not particularly but, generally,  
24 yes.

25 Q. So, generally, what did it say?



1 A. It lists the standard of conduct, what our  
2 responsibilities are and things of that nature.

3 Q. And does it advise you that if you are made  
4 aware of employee complaints of discrimination, that  
5 you have an obligation to act on them?

6 A. I would have to refer to the particular part  
7 of the policy. Looks like that's on page 3.

8 Q. Without looking at the policy now you have  
9 no idea, correct?

10 A. Can you repeat the question.

11 MR. ZABELL: Peg, would you mind,  
12 please.

13 (The court reporter read back the  
14 record as follows:

15 "Q. Without looking at the policy  
16 now you have no idea, correct?")

17 THE WITNESS: No idea of what? I'm  
18 sorry.

19 BY MR. ZABELL:

20 Q. No idea of what your obligations are when  
21 you become aware of complaints of discrimination?

22 A. It depends on the employee is that is aware  
23 of the complaint. Supervisors have one obligation  
24 and then as it goes up the chain there's different  
25 obligations. Co-workers have different obligations

1 than supervisors.

2 Q. Were you Mr. Kaplan's co-worker?

3 A. I was his supervisor.

4 Q. Were you Ms. Waites' co-worker?

5 A. I was her supervisor.

6 Q. Were you Ms. Sadiqi's co-worker?

7 A. I was her supervisor.

8 Q. Okay. So with regard to complaints that may  
9 have come from those three individuals or had to do  
10 with those three individuals, you were a supervisor  
11 with supervisory responsibilities, correct?

12 A. Correct.

13 Q. So what were your responsibilities according  
14 to this handbook, Exhibit 2?

15 A. I don't know off the top of my head. I  
16 would have to read the -- look at the page, specific  
17 pages.

18 Q. Of course.

19 And when Mr. Kaplan, Ms. Sadiqi and Ms.  
20 Waites were talking to you about these incidents  
21 that were occurring, did you happen to look at this  
22 document?

23 A. No.

24 Q. Even though you were a supervisor, correct?

25 A. I was their supervisor.

1 Q. And you didn't look to see what your  
2 obligations were as their supervisor, correct?

3 A. No, I did not.

4 Q. Okay. I'm going to show you Exhibit  
5 Number 3.

6 Do you see that document?

7 A. Yes.

8 Q. Do you know what that document is?

9 A. It says it's "Topic Number 0254: Workplace  
10 Harassment Policy."

11 Q. Have you ever seen that before?

12 A. I believe I have but not in this form.

13 Q. Well, in what form have you seen it?

14 A. I believe it was online, during like an  
15 online class that we take.

16 Q. Do you know what workplace harassment is?

17 A. Yes.

18 Q. What is that?

19 A. It's conduct that's offensive to someone  
20 else.

21 Q. So any offensive conduct is workplace  
22 harassment; is that your testimony?

23 A. No.

24 Q. Okay. So what is harassment in the  
25 workplace?

1 A. It's listed right here in the document.

2 Q. Well, I know what the document says but I  
3 don't know what you think it to be?

4 A. I think it's what the document says it is.

5 Q. Well, after reading the document why don't  
6 you tell me what you think it is, and be as specific  
7 as your intellect allows.

8 A. I defer to the document.

9 Q. I know you do, but that's why it's important  
10 for me to see what your legal mind thinks harassment  
11 is, especially when you have the cheat sheet of  
12 having the document there.

13 A. "Workplace harassment is against the law, a  
14 form of discrimination that violates Title VII of  
15 the Civil Rights Act of 1964 and other state and  
16 federal guidelines. Workplace harassment is any  
17 unwelcome verbal or physical conduct based on these  
18 protected categories: Race, color, religion, sex,  
19 ethic or national origin, age, disability, sexual  
20 orientation, veteran status or political affiliation  
21 that is severe or pervasive enough not to create a  
22 hostile work environment or it can be when a  
23 supervisor's harassing conduct effects an employee's  
24 employment status or benefits, for example,  
25 termination or demotion."

1 Q. So is that what you think workplace  
2 harassment is or is that what you just read it to  
3 be?

4 A. Yes.

5 Q. Yes to both?

6 A. No, you asked me if that's what I think it  
7 is, and I said yes.

8 Q. And did you just read that policy word for  
9 word?

10 A. Yes.

11 Q. Okay.

12 A. I missed a few words, I believe.

13 Q. Now, did Mr. Kaplan complain about  
14 race-based discrimination?

15 MR. BERG: Objection.

16 BY MR. ZABELL:

17 Q. You can answer.

18 A. It's not clear to me if Jewish is a race.

19 Q. So you think Jews might be a race; is that  
20 your testimony?

21 A. No, I don't know if that's what he thought.  
22 My understanding was it was based on his being  
23 Jewish, but I took it as a religious but he may have  
24 said it was race.

25 Q. Mr. Kaplan may have said it was race?

1 A. Excuse me, he may have thought it was.

2 Q. Why did Mr. Kaplan think it was race?

3 A. I don't know if he did. I just said he  
4 may --

5 MR. BERG: Objection.

6 BY MR. ZABELL:

7 Q. Well, did Mr. Kaplan relate to you that he  
8 was being discriminated against based upon his race?

9 A. I don't know how he categorized it.

10 Q. Then why would you think Mr. Kaplan thought  
11 it was race?

12 A. I didn't say I did.

13 Q. You just said it.

14 A. I said he may have.

15 Q. Right.

16 Why did you think Mr. Kaplan may have  
17 thought that this was discrimination based upon his  
18 race?

19 A. I don't know if he did or he didn't, but  
20 some people made that comment, so I don't know what  
21 he was thinking.

22 Q. So some people made the comment that Jews  
23 are a different race?

24 A. I've heard that, yes, over my years of being  
25 alive.

1 Q. Did you hear that from any employees of the  
2 New York State Department of Labor?

3 A. Not that I recall.

4 Q. Did you think that being Jewish means you're  
5 a different race?

6 A. No.

7 Q. Now, other than Hitler, can you think of  
8 anybody else that has said that being Jewish is a  
9 different race?

10 MR. BERG: Objection.

11 THE WITNESS: I've heard it. I  
12 couldn't tell you their names. I don't  
13 know.

14 BY MR. ZABELL:

15 Q. Were they part of any hate groups?

16 A. No.

17 Q. Were they part of the legal staff at the New  
18 York State Department of Labor?

19 A. No.

20 Q. Okay. Did Mr. Kaplan complain about  
21 color-based discrimination?

22 A. No.

23 Q. Did he complain about sex-based  
24 discrimination?

25 A. Yes.

1 Q. Did he complain about ethnic or national  
2 origin-based discrimination?

3 A. That wasn't my understanding that he did.

4 Q. Did he complain that he was being  
5 discriminated against based upon his age?

6 A. Yes.

7 Q. Did he complain that he was being  
8 discriminated against based upon his disability,  
9 physical or mental?

10 A. No.

11 Q. Did he complain that he was being  
12 discriminated against based upon his sexual  
13 orientation?

14 A. Yes.

15 Q. Did he complain that he was being  
16 discriminated against based upon his veteran status?

17 A. No.

18 Q. Did he complain that he was being  
19 discriminated against based upon his political  
20 affiliation?

21 A. No.

22 Q. So it is your position that Mr. Kaplan  
23 complained that he was being discriminated against  
24 based upon his religion, his age and his sexual  
25 orientation, correct?



1 A. It's not my opinion. It's what he -- it's  
2 my perception of what he said to me.

3 Q. Okay. And you are talking about what he  
4 said to you in this conversation with  
5 Mr. Pagliolonga, correct?

6 A. Correct.

7 Q. What did Mr. Kaplan say to you that led you  
8 to believe that he was claiming discrimination based  
9 upon his sexual orientation?

10 A. His comment about JR saying that he was a  
11 coke whore or something to that effect, there was  
12 some indication of -- and I don't remember exactly  
13 what -- having to do with being gay and being a coke  
14 whore.

15 Q. Are you aware of any studies that link being  
16 gay to being a coke whore?

17 A. No.

18 Q. Now, that was the first time that you  
19 mentioned coke whore. Before you had said crack  
20 whore.

21 A. Oh, crack whore. Excuse me. Yes.

22 Q. Your testimony was incorrect; is that  
23 correct?

24 A. It was crack whore or coke whore. I'm not  
25 dealing with drugs. To me they would be the same

1 thing.

2 Q. So you think coke is the same as crack?

3 A. I don't know.

4 Q. Okay. Now, what did Mr. Kaplan say or  
5 relate to you and Mr. Pagliolonga to make you think  
6 that he was complaining about discrimination  
7 regarding his age?

8 A. I don't recall his exact words but the  
9 complaint was about the younger people not doing  
10 their share of work.

11 Q. Well, was it all younger people or just one  
12 younger person?

13 A. I don't recall. He did complain about  
14 Mr. Pichardo.

15 Q. That would be one younger person.

16 A. And he referred to Ms. Waites and Ms. Sadiqi  
17 and Mr. Pichardo as the kids in conversations, so I  
18 don't recall if he was complaining about all of them  
19 at that time. He did subsequent to that but at that  
20 time I don't recall if he complained about all of  
21 them in that way.

22 Q. Okay. So I asked you before if, in the  
23 conversation with Mr. Pagliolonga, Mr. Kaplan  
24 complained about age discrimination or about  
25 discrimination based upon his age, and you said yes.

1 Do you recall that?

2 A. Yes.

3 Q. Well, what were the specific complaints that  
4 he made?

5 A. He didn't state them. It was the  
6 conversation combined with other comments he had  
7 made in the past. So he said that overall he felt  
8 that it was a difficult work environment for him,  
9 that he didn't want Mr. Pichardo around him, that he  
10 was feeling very stressed, and I understood that to  
11 mean all the different things that he had complained  
12 about and at that time he wanted a complaint taken  
13 further up the chain of command, which would have  
14 been DEOD.

15 Q. Well, did you take notes of any of the other  
16 complaints that Mr. Kaplan made?

17 A. The conversation we had --

18 Q. Yes or no?

19 A. Yes.

20 MR. LUIBRAND: Answer however you  
21 want. You are not bound by him.

22 BY MR. ZABELL:

23 Q. Did you turn those notes over as part of the  
24 discovery demands in this litigation?

25 MR. BERG: Objection.

1 BY MR. ZABELL:

2 Q. I'm ready for an answer?

3 MR. LUIBRAND: There's no  
4 documentation demand issued to her.

5 MR. ZABELL: Counsel, your job is to  
6 remain silent.

7 MR. LUIBRAND: No, it's not. That  
8 might be the job down there, but it's not  
9 the job up here.

10 MR. ZABELL: Make an objection but  
11 beyond that your role is to remain silent.

12 MR. LUIBRAND: No, it's not.

13 MR. ZABELL: No, it absolutely is.  
14 You should read the federal rules.

15 BY MR. ZABELL:

16 Q. Ms. Dix?

17 A. Yes.

18 Q. Did you ever turn over your notes of your  
19 conversations with Mr. Kaplan to anyone?

20 A. No.

21 Q. Do you have those notes?

22 A. Yes.

23 Q. Where are those notes?

24 A. In my possession.

25 Q. Where in your possession?

1 A. They're contained in a notebook that I use  
2 in the course of my employment to keep track of work  
3 duties and assignments and meetings and things of  
4 that nature.

5 Q. And do you have specific notes about  
6 Mr. Kaplan's complaints about discrimination, yes or  
7 no?

8 MR. LUIBRAND: Answer however you  
9 want.

10 THE WITNESS: Yes.

11 MR. ZABELL: Okay. I am going to  
12 make a demand for those notes.

13 BY MR. ZABELL:

14 Q. Where is that notebook currently located?

15 A. In my possession.

16 Q. Where in your possession?

17 A. In a bag sitting next to me.

18 Q. You have them there with you now; is that  
19 your testimony?

20 A. Yes.

21 MR. ZABELL: I am going to ask that  
22 that notebook be copied and sent to me now.  
23 Mr. Luibrand, do you have the technological  
24 ability to do such a thing?

25 MR. LUIBRAND: I may, I don't know.

1 I'll check. I'll take the request under  
2 advisement.

3 MR. ZABELL: Would you like to take a  
4 break to check now?

5 MR. LUIBRAND: No. You can proceed.

6 MR. ZABELL: I would like to proceed  
7 with those notes.

8 MR. LUIBRAND: You didn't subpoena  
9 the notes, Mr. Zabell. You didn't subpoena  
10 anything from this woman.

11 MR. ZABELL: I think you're mistaken.

12 MR. LUIBRAND: No, I reviewed the --

13 MR. ZABELL: She's here today and she  
14 testified to that.

15 MR. LUIBRAND: She didn't review the  
16 notes to prepare her testimony, you didn't  
17 subpoena the notes, she is not obliged to  
18 produce them. You can continue your  
19 deposition or you can terminate the  
20 deposition, it's up to you.

21 MR. ZABELL: Your statements are  
22 cute, sir.

23 BY MR. ZABELL:

24 Q. I would like to you take a look at those  
25 notes that you were talking about, that you have

1 right there besides you, and I would like for you to  
2 tell me what they say about Mr. Kaplan.

3 MR. LUIBRAND: You are not going to  
4 tell her what to do at a deposition,  
5 Mr. Zabell.

6 MR. ZABELL: I just did, sir.

7 MR. LUIBRAND: It does not have  
8 anything to do with this.

9 You can ask her questions, I object,  
10 she answers the questions, so go ahead.

11 BY MR. ZABELL:

12 Q. Ms. Dix, when was the last time you looked  
13 at those notes regarding Mr. Kaplan?

14 A. I couldn't tell you.

15 Q. And those were notes that you had taken as  
16 part of your job at the New York State Department of  
17 Labor?

18 A. I took them as my own way to manage my work.

19 Q. As part of your job at the New York State  
20 Department of Labor, correct?

21 A. Yes.

22 Q. And in those notes do you have specific  
23 complaints that Mr. Kaplan made about  
24 discrimination?

25 A. I have notes of the conversation where he

1 disclosed that, yes.

2 Q. Okay. Do you have notes of any other  
3 conversations with Mr. Kaplan?

4 A. Oh, probably many. We talked about cases  
5 almost on a daily basis and I would have notes of  
6 all those conversations as well.

7 Q. And how many notes do you have regarding  
8 Mr. Kaplan complaining about or discussing  
9 discrimination?

10 A. One.

11 Q. Does that mean you only had one conversation  
12 with Mr. Kaplan complaining about or discussing  
13 discrimination?

14 A. No.

15 Q. So you didn't take notes of all of your  
16 conversations with Mr. Kaplan, you only took notes  
17 of one, correct?

18 A. No.

19 MR. BERG: Objection.

20 BY MR. ZABELL:

21 Q. Did I not ask you how many notes you took  
22 regarding Mr. Kaplan's complaints of discrimination?

23 A. Yes.

24 Q. And did you tell me one?

25 A. Yes.



1 Q. So you only had one meeting with Mr. Kaplan  
2 or one discussion with Mr. Kaplan where he talked  
3 about discrimination that you took notes for,  
4 correct?

5 A. Yes.

6 Q. And you would take notes to help you  
7 remember things, correct?

8 A. Yes.

9 Q. Do you have a memory, Ms. Dix?

10 A. Yes, I do.

11 Q. How would you characterize your memory?

12 A. I'm not a doctor. I couldn't tell you.

13 Q. Well, has anybody complained to you about  
14 your memory?

15 A. Yes, my daughter.

16 Q. And when was the last time your daughter  
17 complained to you about your memory?

18 A. When she was a teenager.

19 Q. And what were her complaints to you about  
20 your memory?

21 A. She would say that she told me something and  
22 I asked her to repeat it.

23 Q. Did she complain that you forgot about  
24 things?

25 A. No.

1 Q. Okay. Are you currently married?

2 A. No.

3 Q. Were you ever married?

4 A. Yes.

5 Q. Did your spouse complain to you about your  
6 memory?

7 A. No.

8 Q. And when was the last time your daughter  
9 complained to you about your memory?

10 A. When she was a teenager.

11 Q. I don't know how old she is now so could you  
12 tell me how many years ago that was, if at all?

13 A. Over ten years.

14 Q. So ten years ago your daughter started  
15 complaining to you about your memory; is that  
16 correct?

17 A. She would complain that I would ask her the  
18 same question twice.

19 Q. Is that the same complaint you relayed to me  
20 before?

21 A. Yes.

22 Q. You think so?

23 A. Yes.

24 Q. Could you describe this notebook where you  
25 took down your conversation with Mr. Kaplan

1 complaining about discrimination?

2 A. Sorry, I didn't hear the first part of your  
3 question.

4 Q. Could you describe this notebook?

5 A. A spiral notebook.

6 Q. Could you tell me what color it is?

7 A. I had several over the course of my  
8 employment. I'm not sure what color it was.

9 Q. Did you date your specific conversations in  
10 that notebook?

11 A. Yes.

12 Q. And did you put important conversations in  
13 that notebook?

14 A. I put important and unimportant  
15 conversations in that notebook to keep track of  
16 work. So if I had a phone call where somebody asked  
17 me to return the call, as I took the message off my  
18 voice mail I would put it in the book to indicate it  
19 was something that I had to follow-up on, and that  
20 may or may not have been important.

21 Q. Okay. Would you only put things in the book  
22 that you had to follow-up on?

23 A. No, not necessarily, no.

24 Q. Okay. So anything, whether it was important  
25 or unimportant, would end up in that notebook,

1 correct?

2 A. Correct.

3 Q. Do you recall the specific entry that you  
4 made where Mr. Kaplan was complaining about  
5 discrimination?

6 A. I recall making one. I'm not sure I know  
7 what you're asking me.

8 Q. Well, do you recall what the content of it  
9 was?

10 A. Some of it.

11 Q. Tell me what you recall.

12 A. That he called, that he was upset, he said  
13 Mr. Pichardo had made remarks about him, including  
14 the crack whore and F'ing Jew.

15 That he wanted Mr. Pichardo moved to another  
16 location, things of that nature.

17 Q. Did you take those notes from the  
18 conversation that you had with Mr. Kaplan at the  
19 same time Mr. Pagliolonga was on the phone with you?

20 A. Yes.

21 Q. Okay. So that was the same conversation?

22 A. Yes.

23 Q. Do you have any other notes at all in your  
24 notebook of Mr. Kaplan discussing or complaining  
25 about acts of discrimination?

1 A. Not that I am aware of. I only had that one  
2 conversation with him that led to the complaint and  
3 then any other conversations, I don't have any  
4 recollection of anything being detailed enough,  
5 other than he and I would have had a, you know, an  
6 in-person conversation about it or on the phone  
7 conversation about it.

8 Q. Okay. I have put up Exhibit Number 4.  
9 Do you see that?

10 A. I do.

11 Q. Do you know what that is?

12 A. "Counsel's office organizational chart."

13 Q. And does that appear to be accurate to you?

14 MR. BERG: Objection.

15 BY MR. ZABELL:

16 Q. You can disregard the objection and answer.

17 A. Not at this time, no.

18 Q. At the time that you were employed at the  
19 Department of Labor does it appear to have been  
20 accurate?

21 A. At some point it appeared.

22 Q. Does it appear to you --

23 A. No, I take that back. It had listed  
24 Mr. Kaplan as an hourly attorney. It was my  
25 understanding that he was salaried.

1 Q. He was salaried.

2 So was Mr. Kaplan -- in this organization  
3 chart was Mr. Kaplan under your direct supervision?

4 A. No, he was under Ms. DiConstanzo's  
5 supervision on this chart.

6 Q. During his employment did there come a point  
7 when Mr. Kaplan was no longer under your direct  
8 level of supervision?

9 A. Yes.

10 Q. And when was that?

11 A. I believe it was the end of 2016.

12 Q. Okay. And how did Mr. Kaplan come to not be  
13 under your direct level of supervision?

14 A. Mr. Kaplan had started working on what we  
15 call Public Work cases and I didn't supervise those.  
16 Ms. DiConstanzo supervised those.

17 Q. And do you know how Mr. Kaplan came to be  
18 working on Public Works cases?

19 A. Sort of. I didn't make the decision to put  
20 him on Public Work cases but the circumstances that  
21 came up were we had an attorney who had a very heavy  
22 hearing calendar and he gave his notice that he was  
23 leaving the department and previous to that -- I  
24 don't know when he gave his notice to Shapiro, I'm  
25 not privy to when he gave his notice, but around

1 that same time Mr. Kaplan was having quite a bit of  
2 trouble with the president of the IBA and counsel,  
3 and he had asked if he could start learning other  
4 areas, including Public Work or like apprenticeship.

5 And he asked to be taken off of all the  
6 cases where the president of the IBA was presiding  
7 over that case, and it was around that same time  
8 that I was told they were going to move Fredy  
9 over -- excuse me -- move Mr. Kaplan over to take  
10 Mr. Shapiro's place, because he had the most  
11 litigation experience.

12 Q. Who was the president of the IBA that you're  
13 referring to?

14 A. Vilda Vera Mayuga.

15 Q. Is it -- was the title president or was it  
16 chairperson, if you know?

17 A. I think it was chairperson.

18 Q. Right, I think so too.

19 And what type of issues did Mr. Kaplan have  
20 with Ms. Mayuga?

21 A. Ms. Mayuga had issues with every attorney.  
22 I would get probably weekly complaints from her  
23 about anything and everything that any attorney did.

24 And in specific to Mr. Kaplan I can't say  
25 that it was any different than she would complain

1 about any of the other attorneys. She would comment  
2 somebody might not be prepared.

3 But I remember in particular that in one  
4 case Mr. Kaplan had made a motion to dismiss at the  
5 end of the petitioner's case and she was very upset  
6 about that because then they have to deal with it,  
7 but Mr. Pichardo had done the exact same thing  
8 because it was an appropriate thing to do. So we  
9 would get complaints of that nature, not wanting  
10 them to perhaps do what they were doing or perhaps  
11 she felt someone rolled their eyes at her, that was  
12 Mr. Piccigallo from before that.

13 So I got complaints a lot from her so I  
14 don't know if she had a specific issue with  
15 Mr. Kaplan or not, but she tended to have issues  
16 with all the attorneys.

17 Q. So the chairperson of the IBA generally  
18 would complain to you about the competency of the  
19 attorneys, correct?

20 A. Not necessarily, it could be what they wore,  
21 it could be that they rolled their eyes or it could  
22 be how they handled the case.

23 Q. Right.

24 And these are things that impact upon their  
25 competency, correct?



1 A. No, not all of them.

2 Q. Not all of them?

3 A. I don't know think what you wear impacts  
4 your competency as an attorney.

5 Q. Okay. Were there any complaints about  
6 Mr. Pichardo made by the chairperson of the IBA?

7 A. Yeah, she didn't like that he had made a  
8 motion to dismiss at the end of one of his cases.

9 Q. Okay.

10 A. And I believe one time he didn't have a tie  
11 on at the hearing because he got called in at the  
12 last minute, when someone got stuck on the train.

13 Q. I see.

14 MR. BERG: Mr. Zabell and  
15 Mr. Luibrand, this is Michael Berg, I am  
16 having a telephone battery issue now, I'm  
17 low so I would like to take a break and see  
18 if I can locate another phone or portable  
19 charger so that we can continue.

20 MR. ZABELL: Okay. So it's 12:00  
21 now. We were going to take a break at 12:30  
22 for lunch. I would have no objection to  
23 taking that break now and reconvening at  
24 1:00.

25 MR. BERG: That's fine.

1 MR. LUIBRAND: That's fine.

2 MR. ZABELL: Okay. Very good. We'll  
3 reconvene at 1:00.

4 MR. BERG: Thank you.

5 (Luncheon recess taken at 12:02 p.m.)

6 (Deposition resumes at 1:06 p.m.)

7 BY MR. ZABELL:

8 Q. Ms. Dix, we were questioning you before we  
9 took a break.

10 Do you recall that?

11 A. Yes.

12 Q. During that break have you had an occasion  
13 to speak to your counsel about this deposition?

14 A. No.

15 Q. Did you speak to anyone about this  
16 deposition?

17 A. I just told the baby-sitter that I would  
18 be -- that I was continuing to need her services.

19 Q. Okay. Now, you indicated to me before that  
20 you have a teenage -- I'm sorry -- that ten years  
21 ago you had a teenage daughter?

22 A. Correct.

23 Q. Do you currently live with that teenage  
24 daughter?

25 A. No.

1 Q. Okay. May I inquire who the baby-sitter was  
2 for?

3 A. My nephew.

4 Q. Okay. And are you the sole care provider  
5 for your nephew?

6 A. No.

7 Q. Okay. With whom do you live, Ms. Dix?

8 A. I live by myself. My nephew stays with me.  
9 He has been staying with me for a couple of months  
10 since his father passed away.

11 Q. Okay. Other than your nephew, does anybody  
12 else reside with you?

13 A. No.

14 Q. And how old is your nephew?

15 A. Ten.

16 Q. Ms. Dix, have you had an opportunity to  
17 think about your testimony from earlier this  
18 morning?

19 A. I had an opportunity to but I didn't. I was  
20 doing other things.

21 Q. Can you think of any reason why the  
22 testimony you gave me was not accurate?

23 A. No.

24 Q. Was it, in fact, accurate?

25 A. To the best of my recollection and

1 knowledge, yes.

2 Q. I'm going to show you Exhibit 6 -- actually,  
3 I'm sorry, Exhibit 5.

4 Do you see that?

5 A. I do.

6 Q. I'll make it a little larger for you.

7 Do you know what that is?

8 A. It's a copy of an e-mail.

9 Q. And is it a copy of an e-mail that was sent  
10 to you and from you?

11 A. Yes.

12 Q. And what do you recall regarding the context  
13 of this e-mail?

14 A. It was late on a Friday afternoon when I  
15 received it.

16 Q. And do you recall any communications with  
17 Mr. Kaplan that led up to that e-mail?

18 A. No.

19 Q. No.

20 Do you remember the content of the e-mail?

21 A. I see it on the screen right now.

22 Q. Okay. My question is do you remember the  
23 content of the e-mail? It was not whether or not  
24 you could read the e-mail on the screen right now.

25 A. I reviewed this e-mail Friday night with the

1 exhibits so I was refreshed of the content of the  
2 e-mail.

3 Q. Okay. Is there a comment that you made in  
4 there about I guess your ex?

5 A. I don't see that. Oh, yes, that was a  
6 different date, April 21st, yes.

7 Q. So you didn't remember that even though you  
8 just reviewed the e-mail?

9 A. No, what was on the screen was the one from  
10 April 15th.

11 Q. Well, that's one complete document, Ms. Dix.

12 A. No, I don't believe it is.

13 Q. Were you not sent a copy of these exhibits  
14 beforehand?

15 A. I got them Friday night.

16 Q. And you reviewed them Friday night, right?

17 A. Correct.

18 Q. And you didn't remember from Friday night to  
19 today writing about your ex?

20 A. You didn't ask me that.

21 Q. No, I didn't.

22 A. You showed me the e-mail that on a Friday  
23 night Mr. Kaplan had reached out to me and I  
24 responded.

25 This is a different e-mail, this is dated

1 the following week.

2 Q. Okay.

3 A. So not the same document, even though it's  
4 contained in the same PDF format.

5 Q. Do you remember the context of why you were  
6 exchanging these e-mails with Mr. Kaplan?

7 A. They are different e-mails. Which one?

8 Q. Any of them?

9 A. Yes, we were talking.

10 Q. Is that all you remember from those e-mails  
11 is that you were talking?

12 A. No, I remember lots about the e-mails.

13 Q. Well, then tell me everything you remember  
14 about the e-mails.

15 A. From which one?

16 Q. From any of them -- actually, no, from all  
17 of them.

18 A. Can you scroll back up to the top?

19 Q. I can.

20 A. Can I? I don't know if I can on this.

21 Q. You cannot.

22 But remember, I'm not asking you to read  
23 them, I'm asking you for what you remember about  
24 them and you said you remember a lot, so you don't  
25 even have to look at them to tell me what you

1 remember.

2 A. Well, I do because they're different dates  
3 so there's different conversations that were had.

4 Q. I know but you said you remembered a lot.  
5 Please tell me what you remember, Ms. Dix, if you  
6 do, in fact, remember.

7 A. I remember that on April 15th, Fredy sent  
8 me -- excuse me -- Mr. Kaplan sent me this e-mail.  
9 I recall that it was late and I believe it was a  
10 Friday night and I told him -- he wanted to talk  
11 about Mr. Pichardo, and so I told him I was still  
12 there and he called me and we spoke.

13 Q. And what did you speak about?

14 A. We spoke about he felt that Mr. Pichardo's,  
15 as he put in his e-mail, lack of enthusiasm and  
16 willingness to be a team player was becoming a  
17 potential problem and that's when he disclosed to me  
18 that Mr. Pichardo was not helping with the cases as  
19 much as Ms. Waites and Ms. Sadiqi was.

20 Q. And you remember all that or are you just  
21 reading it?

22 A. No, I remember that.

23 Q. And what did he tell you about the issues in  
24 the office with Mr. Pichardo?

25 A. He said Mr. Pichardo wasn't taking his

1 direction when he asked him to work on a case and  
2 that he wasn't working as much on the cases as the  
3 other attorneys were.

4           There was -- when Mr. Piccigallo and  
5 Mr. Ebers left, the cases that they had were  
6 reassigned to Mr. Kaplan and when the new people  
7 came on board, we were reassigning them, as-needed,  
8 to the new people, which was Ms. Waites, Ms. Sadiqi  
9 and Mr. Pichardo and so there was -- the  
10 reassignment work that was being done and he didn't  
11 feel that Mr. Pichardo was taking on as much work as  
12 Ms. Waites and Ms. Sadiqi was.

13 Q.       Ms. Dix, could you adjust the camera on your  
14 computer so I can see your face like I did before.

15 A.       (Witness complies.)

16 Q.       Thank you.

17           What else do you remember from these  
18 e-mails?

19 A.       From that conversation, that's about all.

20 Q.       Well, we go from April 15th to April 21st.

21           What do you remember from this e-mail?

22 A.       Mr. Kaplan and I had been discussing that  
23 Ms. Sadiqi had spoken to Mr. Pichardo about his  
24 behavior and he hadn't corrected it, and Mr. Kaplan  
25 followed up with this e-mail, referencing an



1 article, and the part of the article talked about  
2 people with certain personality disorders don't  
3 correct their behavior, even if it affects them or  
4 if someone points it out to them.

5 Q. So you commented on that?

6 A. Yes.

7 Q. And what was your comment?

8 A. I said it sounded just like they wrote it  
9 about him and my ex.

10 Q. Okay. Well, what was it that sounded like  
11 they wrote it about Mr. Pichardo and your ex?

12 A. Because Ms. Sadiqi had talked to me about  
13 having spoken to Mr. Pichardo on her own and that he  
14 didn't correct his behavior and that was the -- part  
15 of the e-mail that -- excuse me -- that was part of  
16 the article that sounded like Mr. Pichardo and my ex  
17 husband.

18 Q. Okay. Now, do you have favorable  
19 recollections of your ex-husband?

20 A. Of course I do.

21 Q. Do you have favorable recollections of  
22 Mr. Pichardo?

23 A. Yes, I do.

24 Q. Was the article that Mr. Kaplan was  
25 referring to, was that favorable?

1 A. It was neither. It was factual.

2 Q. Could you explain to me what it discussed  
3 factually, if you remember?

4 A. It discussed personality disorders. It's my  
5 recollection it was more of an academic article.

6 Q. And what was the personality disorder that  
7 it was?

8 A. I think it was more than one type but I know  
9 it talked about narcissistic personality disorder.

10 Q. Okay. Was that a positive personality trait  
11 exhibited by your husband?

12 A. Well, it was neither positive or negative,  
13 it just is. It's a personality trait.

14 Q. And as you recall it, was it a positive  
15 personality trait in your ex-husband?

16 A. It's neither positive nor negative, it just  
17 is.

18 Q. And you felt that same way for Mr. Pichardo  
19 as well?

20 A. Yeah.

21 Q. Okay. And you believed that?

22 A. I wouldn't have said it if I didn't.

23 Q. I don't know if that's actually accurate but  
24 okay.

25 Ms. Dix, do you know what that document is?

1 MR. BERG: Do you have an exhibit  
2 number?

3 MR. ZABELL: That's Exhibit Number 8.

4 THE WITNESS: You have something that  
5 popped up on the screen that's covering it  
6 so I can't see the whole thing.

7 MR. ZABELL: I don't know what popped  
8 on your screen but let me see.

9 MR. LUIBRAND: Nothing. It was an  
10 office communication.

11 MR. ZABELL: I'm assuming you have  
12 removed it?

13 MR. LUIBRAND: Yeah.

14 MR. ZABELL: Okay. We're looking at  
15 Exhibit 8. And for those of you who have  
16 joined us for the video conference, all of  
17 the exhibit numbers are in the top tab, I  
18 don't know if you can see it, I'll point  
19 to -- I don't know if you can see it now, I  
20 put the cursor on it. I'm not sure if you  
21 can see that or not.

22 BY MR. ZABELL:

23 Q. Ms. Dix, what do you recall from this  
24 e-mail?

25 A. I recall that Ms. Sadiqi had e-mailed me and

1 I responded to it.

2 Q. Okay. Now, it says here that you wanted to  
3 give Ms. Sadiqi an alternate work location, as  
4 opposed to Mr. Pichardo, correct?

5 A. No.

6 Q. Okay. So I'm going to ask you to read the  
7 second line, I would like you to read it slowly and  
8 with some level of passion.

9 A. "Fredy's office on Friday and you said you  
10 were going to go there and it was my understanding  
11 that you were."

12 Q. So, Ms. Dix, I need you to follow the  
13 instructions that I give you.

14 A. You asked me to read the second line.

15 Q. No, the second sentence.

16 So the first is Roya, you see that?

17 A. Oh, okay.

18 Q. It says, "I am sorry," but that's really the  
19 first line.

20 Then there's the line after that, the one  
21 that said "I did just send."

22 A. Oh, yes, "I did just send an e-mail to Pico  
23 and Mike and I asked Pico to give you an alternate  
24 work location immediately".

25 Q. Now you wrote that e-mail, correct?

1 A. Yes.

2 Q. And you wrote it to Roya, correct?

3 A. Yes.

4 Q. Roya Sadiqi, correct?

5 A. Yes.

6 Q. So you had asked Pico to give Ms. Sadiqi an  
7 alternate work location, correct?

8 A. Yes.

9 Q. Okay. You know that when I just asked you  
10 that question a couple of seconds ago you said no,  
11 right?

12 A. No.

13 Q. No, you don't remember that?

14 A. I don't recall the exact question.

15 Q. I see.

16 A. You can read it back to me if you would  
17 like.

18 Q. I could, but the record reflects your  
19 response.

20 So what is more accurate, what you said  
21 before or what you wrote here in this e-mail?

22 MR. LUIBRAND: Objection. You can  
23 answer.

24 THE WITNESS: We had -- I had asked  
25 Mr. Ben-Amotz and Mr. Pagliolonga to give

1 Ms. Sadiqi a temporary, alternative location  
2 until we could relocate Mr. Pichardo, it was  
3 the office next to Mr. Ben-Amotz, and I  
4 believe I suggested that he let her work out  
5 of the empty office until we could relocate  
6 Mr. Pichardo.

7 BY MR. ZABELL:

8 Q. Okay. Did your e-mail to Ms. Sadiqi reflect  
9 your concerns about the seriousness of the  
10 situation?

11 A. It appears to, yes.

12 Q. It appears here, based upon how you are  
13 writing it, that you viewed Ms. Sadiqi's situation  
14 as being pretty severe, right?

15 A. I believe Ms. Sadiqi was very upset and then  
16 to that extent, yes.

17 Q. Okay. And it was pervasive, meaning you had  
18 to actually get her out of that office, at least  
19 temporarily, until you could figure out how to get  
20 him out of the office, correct?

21 MR. BERG: Object to the form.

22 BY MR. ZABELL:

23 Q. You may disregard the objection and provide  
24 an answer.

25 A. She said she was uncomfortable working in

1 the office with him so to alleviate that discomfort  
2 for her, I tried to find her some place else to work  
3 so she wouldn't have to sit face-to-face with  
4 Mr. Pichardo.

5 Q. Right.

6 And Ms. Sadiqi was never on your list of  
7 liars, correct?

8 A. No, she's not.

9 Q. Okay. Now, here's an e-mail from her; is  
10 that correct?

11 A. Yes.

12 Q. Is this a follow-up to your e-mail or is  
13 this what sparked your e-mail?

14 A. I believe it came first, but the date -- the  
15 time stamp would tell you.

16 MR. BERG: Excuse me, Mr. Zabell,  
17 where are you?

18 MR. ZABELL: I am on the second page  
19 of the document, an e-mail from Roya Sadiqi  
20 to Dix, Kathleen, April 25, 2016 at 12:15.

21 MR. BERG: Got it. Thank you.

22 MR. ZABELL: No problem.

23 BY MR. ZABELL:

24 Q. What does it appear that Ms. Sadiqi is  
25 complaining about?

1 A. That Mr. Pichardo spoke to her about our  
2 meeting the previous week.

3 Q. Does it appear that Ms. Sadiqi, through  
4 these e-mails, feels uncomfortable filing a  
5 complaint?

6 A. She said she was uncomfortable, so it  
7 doesn't just appear it, she said it.

8 Q. Right.

9 And what is your responsibility when an  
10 employee relays -- an employee that you directly  
11 supervised relays to you this level of  
12 uncomfortability?

13 A. I would address it.

14 Q. Okay. And did you address it by filing a  
15 DEOD complaint?

16 A. There was a DEOD complaint already filed.

17 Q. There was, regarding -- who filed that DEOD  
18 complaint that you just said was already filed?

19 A. Mr. Pagliolonga.

20 Q. Okay.

21 A. I apologize, no, the complaint was filed the  
22 following week, which I believe -- what's the date?  
23 The 25th. Yes, this was the day before the  
24 complaint was filed. I apologize.

25 Q. I see.



1           And did Mr. Kaplan relate to you the level  
2 of discomfort that Ms. Sadiqi was experiencing as a  
3 result of Mr. -- exposure to Mr. Pichardo?

4           A.       I believe he told me she was visibly shaken  
5 and that she looked upset.

6           Q.       Okay. Do you recall anymore to this e-mail,  
7 other than what I just scrolled through? This is  
8 the bottom of the document.

9           A.       I'm sorry, can you repeat your question?

10          Q.       Do you recall anything more to this  
11 document, other than what I just scrolled through?

12          A.       No, just what I had put in the e-mail.

13          Q.       Okay. I would like to show you Exhibit -- I  
14 believe it's Exhibit 9.

15                   Do you know what Exhibit 9 is?

16          A.       It appears to be an e-mail to Mr. Ben-Amotz  
17 and Mr. Pagliolonga. It doesn't say who it's from,  
18 but it appears to be signed by me.

19          Q.       Okay. So do you recall sending it?

20          A.       Actually, I don't recall sending it but I  
21 did review it Friday night and I did send it, but I  
22 didn't recall prior to that that I had sent it.

23          Q.       Could you read for me what the subject line  
24 is?

25          A.       "Please give Roya a alternative work

1 location immediately."

2 Q. Okay. Now, aside from the obvious typo,  
3 this is the second e-mail with that subject,  
4 correct?

5 A. I didn't look at the subject line of the  
6 previous e-mail.

7 Q. You don't remember what the --

8 A. No, I didn't read the previous -- for the  
9 previous exhibit I didn't read the subject line.

10 Q. Well, that's consistent.

11 So this e-mail says "please give Roya a  
12 alternative work location immediately," correct?

13 A. Yes.

14 Q. Okay. And you meant that to be the subject  
15 of this e-mail, correct?

16 A. Yes.

17 Q. And what is the purpose of sending Pico this  
18 e-mail?

19 A. Because Ms. Sadiqi relayed to me that she  
20 was uncomfortable sharing the office with Mr.  
21 Pichardo and we had not yet been able to secure a  
22 alternative work location for Mr. Pichardo, so I  
23 asked Mr. Ben-Amotz to find another work location  
24 for Ms. Sadiqi temporarily until we could relocate  
25 Ms. Pichardo.

1 Q. Right.

2 And you said here that Ms. Sadiqi feels  
3 "intimidated and frightened," correct?

4 A. Yes.

5 Q. Is that equivalent with severe and pervasive  
6 behavior?

7 A. No. This was just a one time she told me  
8 about it, so severe and pervasive would be more than  
9 one time.

10 Q. Oh, somebody told you that, that severe and  
11 pervasive can't be one time?

12 A. No, nobody told me that. It's my  
13 understanding and my interpretation of the wording.

14 Q. I see. Do you understand that if an  
15 employee is intimidated or frightened by a certain  
16 behavior then it's severe, correct?

17 MR. BERG: Objection.

18 BY MR. ZABELL:

19 Q. You can answer.

20 A. I can't tell you what happens that makes an  
21 employee feel the way they do. Everybody's  
22 reactions are different.

23 Q. You said here "the tension in her office is  
24 thick."

25 Those were your choice of words?

1 A. I believe that's what she said to me; if  
2 not, then I paraphrased that and I put that in  
3 there. Yeah, I typed that.

4 Q. And you also say that "she is concerned that  
5 this will come back to bite her and reflect poorly  
6 on her as an employee"; is that correct?

7 A. Yes, that's what it says.

8 Q. Did you believe that to be accurate?

9 A. No, I believe I told her -- no, I believe it  
10 was accurate that she believed that because she said  
11 that to me, but I didn't believe that it would come  
12 back to hurt her. She felt that it was her first  
13 job out of law school and she didn't want there to  
14 be a blemish on her, so to speak, that she causes  
15 trouble, but I assured her that that wouldn't be the  
16 case, we thought very highly of her as an attorney  
17 and that this would not reflect poorly on her  
18 because she chose to tell us about this situation.

19 Q. Okay. And then you say here that "she needs  
20 to be removed from the situation immediately; is  
21 that correct?

22 A. Yes.

23 Q. What was the situation that she needed to be  
24 removed from immediately?

25 A. The situation of the tension in her office

1 because JR had not been relocated to another work  
2 location yet.

3 Q. Right.

4 In fact, this e-mail doesn't talk about  
5 relocating JR, it talks about relocating her,  
6 correct?

7 A. Yes.

8 Q. Now, Mr. Ben-Amotz responds, correct?

9 A. Can you scroll back up, please.

10 It appears that he sent an e-mail at 12:05  
11 with a different subject and it wasn't sent to me,  
12 it was sent to Mr. Pagliolonga and he copied me on  
13 it.

14 Q. Well, did you ever have any discussions with  
15 him?

16 A. Mr. Ben-Amotz about relocating workers?

17 Q. About relocating Ms. Sadiqi?

18 A. Other than e-mails, no, I didn't speak to  
19 him directly. I would have spoken to  
20 Mr. Pagliolonga, as we were both in the same  
21 location.

22 Q. And what were your discussions with  
23 Mr. Pagliolonga about relocating Ms. Sadiqi?

24 A. Well, they were about relocating  
25 Mr. Pichardo and finding a place for Ms. Sadiqi to

1 temporarily sit while we were doing that, because I  
2 was told that there wasn't available spaces or if  
3 there were, they were having trouble moving him, but  
4 I wasn't part of that, I was only told that they  
5 were doing it.

6 And so I asked Mr. Pagliolonga about having  
7 Ms. Sadiqi sit someplace outside of that shared  
8 office until Mr. Pichardo was moved.

9 Q. I see, okay.

10 And I'm going to show you a copy of a  
11 exhibit. Have you ever seen this, Exhibit 11?

12 Have you ever seen this document before?

13 A. Yes, I believe it's the complaint that  
14 Mr. Pagliolonga filed after we spoke with Mr.  
15 Kaplan.

16 Q. So you have seen this document; is that  
17 correct?

18 A. Yes, he gave me a copy of it at the time.

19 Q. I see.

20 Because when I asked you before if you had  
21 seen a copy of the complaint filed by  
22 Mr. Pagliolonga, you said no, you had not?

23 A. No, I did not say that.

24 MR. BERG: Objection.

25 MR. ZABELL: Okay. Well, the record

1 reflects that you have.

2 BY MR. ZABELL:

3 Q. Now, did you think that this document was  
4 accurate?

5 MR. BERG: Objection.

6 THE WITNESS: Can you scroll down a  
7 little further, please.

8 It appears to be, based on the  
9 conversation that we had with Mr. Kaplan.

10 BY MR. ZABELL:

11 Q. Right.

12 Didn't Mr. Kaplan complain on behalf of Ms.  
13 Sadiqi?

14 A. He had complained on behalf of Ms. Sadiqi,  
15 yes.

16 Q. Right.

17 And he had complained on behalf of Ms.  
18 Sadiqi that she was being treated differently  
19 because of her gender, correct?

20 A. No.

21 Q. No, he didn't complain that Mr. Pichardo was  
22 referring to her as a bitch?

23 A. I don't believe he told me that. I think it  
24 was Ms. Sadiqi that told me what Mr. Pichardo had  
25 said to her.

1 Q. Okay. Because Mr. Pagliolonga said in the  
2 phone call that he had with you on the phone and  
3 Mr. Kaplan, that Mr. Kaplan clearly complained on  
4 behalf of Ms. Sadiqi and Ms. Waites about  
5 Mr. Pichardo using the term bitch.

6 Are you aware of that?

7 MR. BERG: Objection.

8 THE WITNESS: I'm not aware of  
9 Mr. Pagliolonga's testimony.

10 BY MR. ZABELL:

11 Q. So either he is lying about the contents of  
12 the phone call or you are, correct?

13 MR. BERG: Objection.

14 THE WITNESS: No, that's not correct.  
15 It could be that he's recalling things that  
16 I'm not recalling and I'm recalling things  
17 he's not recalling.

18 BY MR. ZABELL:

19 Q. I see. Have you ever had an issue recalling  
20 certain things accurately?

21 A. No.

22 Q. You have never had that problem, right?

23 A. Not to my knowledge. If I don't recall it,  
24 I say I don't recall it.

25 Q. Sure, okay. So where it says "details of



1 claim" it says that Mr. Kaplan complained about  
2 race-based discrimination, correct?

3 A. Correct.

4 Q. What was the race that Mr. Kaplan was  
5 complaining about?

6 A. Apparently because he was Jewish.

7 Q. So Mr. Kaplan identified race; is that  
8 correct?

9 A. I don't know, because Mr. Pagliolonga filled  
10 this out. He said he was complaining because he  
11 was -- he said he was being discriminated against  
12 with anti-Semitic comments.

13 Q. Right.

14 A. And Mr. Pagliolonga filled out this form,  
15 outside of my presence.

16 Q. So, apparently, Mr. Pagliolonga, not unlike  
17 Hitler, believes that Jews are of a different race,  
18 correct?

19 MR. BERG: Objection.

20 THE WITNESS: I don't know what  
21 Mr. Pagliolonga believes.

22 BY MR. ZABELL:

23 Q. Well, do you think that Jews are a different  
24 race?

25 A. No.

Kathleen Dix, Esquire

1 Q. So then this document is not accurate,  
2 correct?

3 MR. BERG: Objection.

4 THE WITNESS: It's an accurate  
5 representation of the document that  
6 Mr. Pagliolonga gave me and he said he filed  
7 with DEOD.

8 BY MR. ZABELL:

9 Q. Okay. But from what you heard Mr. Kaplan  
10 complain about, there were no allegations of  
11 race-based discrimination, correct?

12 A. Mr. Kaplan complained about being  
13 discriminated against based on anti-Semitic comments  
14 because he was Jewish.

15 Q. Ms. Dix, that's a wonderful answer. It's  
16 not an answer to the question that I asked you and I  
17 would like for you to do your levelheaded best to  
18 listen to the questions that I ask you and answer  
19 them.

20 Do you understand that?

21 MR. LUIBRAND: Answer the questions  
22 however you wish, Ms. Dix.

23 MR. ZABELL: Mr. Luibrand does not do  
24 you a service by advising that. He is  
25 incorrect and in violation of the Federal

Kathleen Dix, Esquire

1 Rules of Civil Procedure.

2 MR. LUIBRAND: And you are in  
3 violation when you tell the witness how to  
4 answer questions and when you raise your  
5 voice when you do it, that's a violation of  
6 the federal rules.

7 MR. ZABELL: You're mistaken, sir.  
8 We don't expect much from you so don't worry  
9 about it. Just object to the form of the  
10 question and that's it.

11 BY MR. ZABELL:

12 Q. Now, Ms. Dix, did you at any part of the  
13 conversation you had with Mr. Kaplan and  
14 Mr. Pagliolonga, hear Mr. Kaplan say that he was  
15 being discriminated against based upon his race, yes  
16 or no?

17 A. No.

18 MR. LUIBRAND: Ms. Dix, answer it  
19 however you want.

20 THE WITNESS: I don't recall  
21 Mr. Kaplan using the word race. Mr. Kaplan  
22 talked about anti-Semitic comments.

23 BY MR. ZABELL:

24 Q. Did, Ms. Dix, Mr. Pagliolonga talk about  
25 race?

1 A. Mr. Pagliolonga expressed the --  
2 qualification isn't the right word -- the criteria  
3 necessary to be able to file a complaint with the  
4 DEOD and in that explanation he would have said the  
5 word race.

6 Q. Did he have that discussion with Mr. Kaplan  
7 on the phone?

8 A. Yes.

9 Q. What did Mr. Pagliolonga say specifically?

10 A. I don't recall his specific words.

11 Mr. Kaplan expressed that he didn't think things  
12 were moving fast enough relating to moving Mr.  
13 Pichardo out of the joint office with Ms. Sadiqi,  
14 and he asked that it be elevated. And  
15 Mr. Pagliolonga explained to Mr. Kaplan that there  
16 wasn't -- there wasn't a criteria and there weren't  
17 complaints sufficient to file a complaint based on  
18 protected class such as race, et cetera, I don't  
19 remember the exact quotation, and that it was after  
20 that Mr. Pagliolonga explained that to him  
21 Mr. Kaplan had then subsequent to that said, well,  
22 there were these comments about in anti-Semitic  
23 manner, and Mr. Pagliolonga responded by saying,  
24 well, now we have enough to file a complaint.

25 MR. ZABELL: Okay. I'm getting an

1 emergency phone call at this point. I would  
2 like to take a short break. Should be no  
3 longer than four minutes.

4 (Brief recess taken at 1:36 p.m.)

5 (Deposition resumes at 1:42 p.m.)

6 BY MR. ZABELL:

7 Q. So, Ms. Dix, you have in front of you  
8 Exhibit 11 that you were just testifying about?

9 A. Yes.

10 Q. In your conversation with Mr. Kaplan and  
11 Mr. Pagliolonga, the conversation that led to this  
12 document being created, is it your testimony that  
13 all Mr. Kaplan complained about was anti-Semitic  
14 comments?

15 A. With regard to Mr. Pichardo and himself,  
16 yes.

17 Q. Okay. And did he complain about anything  
18 else at the time you had that conversation?

19 A. He complained that he didn't think we were  
20 moving quickly enough relocating Mr. Pichardo out of  
21 the joint office he shared with Ms. Sadiqi.

22 Q. Was that a complaint on Mr. Kaplan's behalf  
23 or on Ms. Sadiqi's behalf?

24 A. I guess he made it on Ms. Sadiqi's behalf  
25 but he is the one who made it.

1 Q. Right.

2 And did he explain why he felt it was  
3 important for you to move a little quicker to  
4 protect Ms. Sadiqi?

5 A. Yes, he said Ms. Sadiqi was upset and  
6 physically shaken.

7 Q. Okay. So he was complaining on his behalf  
8 and on Ms. Sadiqi's behalf; is that correct?

9 A. Yes.

10 Q. Did you have any reason to believe that the  
11 complaints he was making on Ms. Sadiqi's behalf were  
12 not accurate?

13 A. No.

14 Q. Now, at the time he made the complaints did  
15 you have any reason to believe that the complaints  
16 Mr. Kaplan made on his own behalf were inaccurate?

17 A. No.

18 Q. In fact, you thought they were accurate,  
19 correct?

20 A. I didn't form an opinion on the truth of  
21 them, I just believed what Mr. Kaplan told me.

22 Q. Did there come a time where you felt that  
23 the complaints that Mr. Kaplan made were inaccurate?

24 A. There wasn't a time when I felt it. There  
25 was a time when he told me it.

1 Q. And do you know when that was?

2 A. It was at a luncheon for -- when Mr. Shapiro  
3 was leaving and I believe it was around October 11th  
4 of 2016.

5 Q. And could you tell me exactly where you were  
6 when Mr. Kaplan had this conversation with you?

7 A. We were within the law library within the  
8 office of counsel at the Department of Labor.

9 Q. And what were you doing at this law library?

10 A. We were at a luncheon for Mr. Shapiro and we  
11 had gotten food to eat and we were sitting, eating  
12 our food.

13 Q. Were you drinking any alcoholic beverages?

14 A. No.

15 Q. Were you under the influence of any  
16 recreational drugs?

17 A. No.

18 Q. Were you under the influence of any  
19 prescription drugs?

20 A. I take prescription drugs.

21 Q. Were you taking them that day?

22 A. I assume I was. I don't remember  
23 specifically taking them that day, but I take them  
24 every day so I have to assume I was.

25 Q. Can you tell me what prescription drugs you

1 were taking around that time?

2 A. I take Crestor for cholesterol.

3 Q. So do we all.

4 A. I take -- I can't think of the word now,  
5 Restasis eye drops for dry eyes and I believe at the  
6 time I was taking Cymbalta for perimenopausal  
7 issues.

8 Q. Okay. Is that what's known as a melatonin  
9 replacement?

10 A. I don't know.

11 Q. Okay. Was that -- what were the symptoms  
12 you were taking the Cymbalta for?

13 A. I was having premenstrual syndrome and night  
14 sweats and hot flashes.

15 Q. Okay. Were there any emotional side effects  
16 that you were suffering from at the time that you  
17 were taking it?

18 A. Well, one of the reasons she gave it to me  
19 is because the premenstrual syndrome you get  
20 agitated easily.

21 Q. Okay. And were you exhibiting any signs of  
22 depression?

23 A. When? At the --

24 Q. At the time that you were taking the  
25 Cymbalta?



1 A. No, I don't believe I was.

2 Q. Okay. Were you experiencing any delusional  
3 behavior?

4 A. No.

5 Q. Were you experiencing any paranoid behavior?

6 A. No.

7 Q. So tell me what exactly Mr. Kaplan said to  
8 you at this luncheon.

9 A. Somehow Mr. Pichardo's name came up, and I  
10 don't recall the specifics of why it came up, and  
11 Mr. Kaplan said to me, "you know I made that up,  
12 don't you? Turns out it was true."

13 Q. And what did you say in response?

14 A. I didn't respond.

15 Q. Were you supervising Mr. Kaplan at that  
16 time?

17 A. Yes. Supervising --

18 Q. I have your answer.

19 MR. LUIBRAND: The witness is allowed  
20 to --

21 MR. ZABELL: I have your answer.

22 (Inaudible cross-talking with  
23 multiple speakers.)

24 BY MR. ZABELL:

25 Q. I will draw your attention to Exhibit

1 Number --

2 A. The end of the pay period he was switched to  
3 Ms. DiConstanzo but I don't know --

4 Q. I'm going to ask that you take a look at  
5 Exhibit Number 4, please.

6 (Inaudible cross-talking with  
7 multiple speakers.)

8 THE COURT REPORTER: I cannot write  
9 when everyone is speaking at the same time  
10 so all of that was inaudible.

11 BY MR. ZABELL:

12 Q. Okay. I'm going to direct your attention to  
13 Exhibit Number 4, ma'am.

14 Now, on Exhibit Number 4, which is the  
15 organization chart that was provided by the Attorney  
16 General's office in this case, it indicates that  
17 Mr. Kaplan is under the supervision of Maria  
18 DiConstanzo; is that correct?

19 A. Yes, it does.

20 Q. And do you know what time this -- at the  
21 time that you had this luncheon was the time that  
22 Mr. Shapiro had left Public Works, correct?

23 A. No.

24 Q. No, you weren't having the luncheon for  
25 Mr. Shapiro leaving Public Works?

1 A. Yes.

2 Q. Okay. So Mr. Shapiro left Public Works and  
3 that's when Mr. Kaplan came into Public Works,  
4 correct?

5 A. No, there was an overlap. Mr. Shapiro had  
6 not yet left Public Works when Mr. Kaplan was up in  
7 the Albany office.

8 Q. Oh, I see. So Mr. Kaplan was still working  
9 for you; is that what your testimony is?

10 A. Mr. Kaplan was switched to Ms. DiConstanzo  
11 at the end of a pay period and I don't know if that  
12 was the end of the pay period, but during the switch  
13 he stayed on as my supervisee until I signed his  
14 time card, and then he switched to Ms. DiConstanzo,  
15 but I don't know the dates of when that happened.

16 Q. So is it your testimony now you don't know  
17 if Mr. Kaplan was working for you at the time of  
18 that luncheon?

19 A. I believe he was but I don't have the date  
20 that he was switched.

21 Q. Okay. So you believe he was but you're not  
22 sure; is that your testimony?

23 A. I believe he was working for me on the date  
24 that he disclosed that to me.

25 Q. I see. And out of the blue he just said to

1 you, "can you believe I lied about that"?

2 MR. BERG: Objection.

3 THE WITNESS: No, that's not what he  
4 said.

5 BY MR. ZABELL:

6 Q. Okay. What exactly did he say?

7 A. He said, "you know I made that up."

8 Q. And did you ask him if he made that up?

9 A. No, I did not.

10 Q. Did you ask him any questions after he said  
11 "I made that up"?

12 A. No, I did not.

13 Q. You just went silent?

14 A. Yes.

15 Q. And did he continue to talk to you?

16 A. The subject was changed but, yes, we  
17 continued to speak within that time we were sitting  
18 there eating lunch.

19 Q. And what did you discuss?

20 A. I don't recall.

21 Q. Did you take any notes of that conversation  
22 in your little notebook?

23 A. No, I did not.

24 Q. Okay. Even though you testified before that  
25 you would take notes of yourself speaking to

1 Mr. Kaplan in that notebook, correct?

2 A. If I had occasion to, yes.

3 Q. Okay. But there I guess you didn't have  
4 occasion to?

5 A. We were in the office library, I was not at  
6 my desk and my notebook was not with me.

7 Q. I see. And you never went back to your  
8 notebook to take notes of it, correct?

9 A. I did not make any notes of that  
10 conversation, no.

11 Q. And this conversation happened at what  
12 month?

13 A. It was in October, I believe, when he came  
14 up to the Albany office, when Mr. Shapiro was  
15 leaving, and my best recollection it was in October  
16 of 2016.

17 Q. Okay. So in October of 2016 Mr. Kaplan said  
18 to you that he made up the allegations against  
19 Mr. Pichardo, correct?

20 A. Correct.

21 Q. And you said nothing to him about it,  
22 correct?

23 A. Correct.

24 Q. Did you ever discuss it with Mr. Kaplan?

25 A. No.

1 Q. I see. Now, some of the allegations that he  
2 made about Mr. Pichardo was that he called Roya  
3 Sadiqi a bitch, right?

4 A. No, that's not the allegation that he made  
5 about Mr. Pichardo with regard to himself.

6 Q. So Mr. Kaplan never complained about  
7 Mr. Pichardo called Ms. Sadiqi a bitch?

8 A. I don't recall that he told me that. I  
9 believe it was Ms. Sadiqi that told me that.

10 Q. Now, did you ever have any discussions with  
11 Ms. DiConstanzo about what Mr. Kaplan said to you?

12 A. Yes.

13 Q. And what did you say to Ms. DiConstanzo?

14 A. After I had disclosed to Mr. Pagliolonga  
15 what Mr. Kaplan had said, Ms. DiConstanzo and I  
16 discussed it because at that time she was his  
17 supervisor.

18 Q. When did you disclose to Mr. Pagliolonga  
19 what Mr. Kaplan is alleged to have said to you?

20 A. It was the following year, in March, I  
21 believe.

22 Q. So you waited from October of 2016 to March  
23 of 2017 to discuss it with your supervisor?

24 A. Yes.

25 Q. It's a long time, right? I'm waiting.

1 A. It depends on your perception of time.

2 Q. Okay. Well, how many months was it that you  
3 just sat on that information?

4 MR. BERG: Object to the form. Go  
5 ahead.

6 THE WITNESS: Approximately five  
7 months.

8 BY MR. ZABELL:

9 Q. Five months, from October to March?

10 A. Approximately.

11 Q. Now, at the time Mr. Kaplan said that to  
12 you, did you think he was telling the truth?

13 A. No.

14 MR. BERG: Objection.

15 BY MR. ZABELL:

16 Q. What did you think the purpose of Mr. Kaplan  
17 saying that to you was?

18 A. I didn't know what the purpose was.

19 Q. Did you think he was joking?

20 A. I thought he could have been.

21 Q. Did you tell Mr. Pagliolonga, some  
22 approximately five months later, that you thought  
23 Mr. Kaplan was joking when he said that to you?

24 A. I believe I did. I believe I told him that  
25 I didn't think what he said was accurate, but then

1 subsequent events led me to believe that it was  
2 accurate and that's when I disclosed it to  
3 Mr. Pagliolonga.

4 Q. So at the time Mr. Kaplan said to you that  
5 he made it up, you did not think it was accurate?

6 A. Correct.

7 Q. And then subsequently something happened to  
8 make you think it was accurate, correct?

9 A. Events happened that led me to not believe  
10 what Mr. Kaplan was telling me and so then I thought  
11 perhaps when he said that to me, he was telling the  
12 truth.

13 Q. So what happened that led you to believe  
14 that Mr. Kaplan was telling the truth?

15 A. It was relayed to me that he was lying to  
16 help Ms. Waites cover her time and attendance.

17 Q. Are we talking about the cat caper?

18 A. I'm not sure what you're talking about, "cat  
19 caper."

20 Q. Okay. So when was it brought to your  
21 attention that Mr. Kaplan was helping Ms. Waites lie  
22 about her time and attendance?

23 A. It was in March, within days of when I  
24 disclosed to Mr. Pagliolonga what Mr. Kaplan had  
25 told me.



1 Q. March of 2017?

2 A. Correct.

3 Q. In March of 2017 Mr. Kaplan was working in  
4 Public Works, correct?

5 A. He was doing both, Public Work and Labor  
6 Standards.

7 Q. Really? Because on the org chart that was  
8 provided here by the Attorney General's office it  
9 just indicates that he is working for Public Works.

10 In fact, you testified just before that it  
11 was right around that October 16th date that he  
12 switched over from Prevailing Wage to Public Works,  
13 right?

14 A. That's when he was reassigned to that  
15 program area, yes.

16 Q. Okay. So in March of 2017 you were Taylor  
17 Waites' direct supervisor, correct?

18 A. Yes.

19 Q. And Mr. Kaplan was working in Public Works,  
20 correct?

21 A. He was assigned to that program area but he  
22 was also still --

23 Q. And Ms. Waites --

24 (Inaudible cross-talking with  
25 multiple speakers.)

1 BY MR. ZABELL:

2 Q. And Ms. Waites was working in prevailing  
3 wage -- I'm sorry in -- in Wage and Hour, correct?

4 A. Yes, that's where she was assigned.

5 Q. She was your employee in Wage and Hour,  
6 correct?

7 A. Yes.

8 Q. And Mr. Kaplan was assigned to Public Works,  
9 correct?

10 A. Yes.

11 Q. Okay. What was the issue with Ms. Waites?

12 A. She had asked for some time off for personal  
13 reasons and the date that she had asked off was not  
14 the date that the personal event took place and so I  
15 had directed her to come to work on that particular  
16 day, because she had a hearing the next day. And  
17 Mr. Kaplan told me that the day that I directed her  
18 to come in, that it was the date that her personal  
19 event took place.

20 Q. Okay. What was the personal reason that she  
21 asked for time off?

22 A. She was fostering a cat and she asked for  
23 time off because the cat was ill and had to be put  
24 down.

25 Q. Whose cat was this cat?

1 A. Deputy commissioner James Rogers.

2 Q. Deputy commissioner James Rogers of what?

3 A. Of Department of Labor.

4 Q. So she was watching a deputy commissioner of  
5 the Department of Labor's cat and because of that  
6 cat watching, she had to take time off?

7 A. Yes.

8 Q. What was it about the cat watching that  
9 required her to take that time off?

10 A. The cat was ill and needed special treatment  
11 and care and the day it was going to be put down she  
12 said she needed the day off to take it to the vet to  
13 be put down.

14 Q. Well, did you get the veterinary records to  
15 find out when the cat was put down?

16 A. I did not.

17 Q. Do you know if anybody did?

18 A. No, I don't know.

19 Q. Well, could you tell me where deputy  
20 commissioner James Rogers falls in the org chart  
21 that's in front of you?

22 A. He's not on the chart that's in front of me.

23 Q. Do you know why he's not on there?

24 A. No. I didn't create the org chart. I  
25 didn't create the organizational --

1 Q. Is he a deputy commissioner in charge of  
2 Wage and Hour?

3 A. He was deputy commissioner of Labor  
4 Standards, yes.

5 Q. Oh, of Labor Standards, okay.

6 Do you report to him?

7 A. No, I don't.

8 Q. Does Mr. Pagliolonga report to him?

9 A. I don't know.

10 Q. Do you know if Pico Ben-Amotz reports to  
11 him?

12 A. It's my understanding general counsel only  
13 reports to the governor's office or the  
14 commissioner, but I don't truly know that chain of  
15 command.

16 Q. Did Taylor Waites report to him?

17 A. No, she did not.

18 Q. Okay. Do you know how she came to be his  
19 cat sitter?

20 A. No. I know why but I don't know how.

21 Q. Okay. Could you tell me why?

22 A. Mr. Rogers and his wife had just had a baby,  
23 and the cat and the baby were not getting along.

24 Q. And somehow that became Ms. Waites'  
25 responsibility?

1 A. I don't know. All I know is that she was  
2 fostering his cat for him.

3 Q. So at some point that cat had to be put  
4 down; is that correct?

5 A. Yes, that's what I was told.

6 Q. And your direct report put her down,  
7 correct?

8 A. No, I believe a veterinarian did.

9 Q. Right, of course.

10 But your direct report coordinated the  
11 putting down of that cat, correct?

12 A. I don't know who coordinated it.

13 Q. Okay. And you were upset because Ms. Waites  
14 wanted to take time off to put deputy commissioner  
15 James Rogers' cat down, correct?

16 A. I was aware Ms. Waites had a hearing coming  
17 up and I didn't think she would be adequately  
18 prepared for the hearing if she took the time off  
19 she requested.

20 Q. Yeah, but let's face it, none of your  
21 attorneys are ever adequately prepared for their  
22 hearings; you are aware of that, correct?

23 A. No.

24 Q. Perhaps you should be. Maybe Chairperson  
25 Mayuga was right; have you given some thought to

1 that?

2 A. No.

3 Q. I can assure you what you relate to me as  
4 Chairperson Mayuga's concerns are also my concerns,  
5 but you knew that before this deposition, correct?

6 A. No.

7 Q. Well, then you should have.

8 So you were upset because your direct report  
9 asked for time to put down or to have put down a cat  
10 that belonged to a deputy commissioner, correct?

11 A. I was not upset that she asked for time. I  
12 was upset that she wouldn't have time to adequately  
13 be prepared for a hearing and she had asked Ms.  
14 Sadiqi to cover for her. Ms. Sadiqi had a workload  
15 of her own and Ms. Sadiqi could not take on the case  
16 for her.

17 Q. I see. So did you tell her she couldn't  
18 have that time off?

19 A. I did.

20 Q. And she took that time off anyway, correct?

21 A. She told me, subsequent to the days I said  
22 she couldn't have off, I believe it was a Tuesday  
23 and a Wednesday, and then she subsequently told me  
24 that she thought Wednesday was going to be the day  
25 that the cat was put down. And I said, well, if

1 Wednesday is the day the cat is going to be put down  
2 then we can work around it, but I have to make sure  
3 you are prepared for your hearing.

4 Q. And when was the hearing?

5 A. Thursday.

6 Q. Okay. So did Ms. Waites go to work on  
7 Tuesday of that week?

8 A. No, I don't believe she did.

9 Q. Did she go on work on Wednesday of that  
10 week?

11 A. No.

12 Q. Did she go to work on Thursday of that week?

13 A. Yes.

14 Q. Did she have that hearing?

15 A. Yes, I believe the hearing went forward or  
16 it settled, but it was on the calendar. I don't  
17 recall the outcome of that particular hearing.

18 Q. Okay. So when did you find out that that  
19 cat was not put down on Thursday -- I'm sorry -- on  
20 Wednesday?

21 A. Wednesday.

22 Q. On Wednesday you found out that the cat was  
23 not put down on Wednesday?

24 A. Yes.

25 Q. And how did you find that out?

- 1 A. Ms. Sadiqi told me.
- 2 Q. I see. And did you believe Ms. Sadiqi?
- 3 A. Yes, but I verified it by calling
- 4 Mr. Rogers.
- 5 Q. And what did Mr. Rogers say?
- 6 A. Mr. Rogers verified that the cat was put
- 7 down on Tuesday and asked me if there was a problem.
- 8 Q. And did you tell him there was a problem?
- 9 A. I did.
- 10 Q. Okay. And this all became Mr. Kaplan's
- 11 problem, right?
- 12 A. Not until he lied to me.
- 13 Q. Okay. And what did he say to you that was a
- 14 lie?
- 15 A. He told me the cat was put down on
- 16 Wednesday.
- 17 Q. Do you know if he was told that the cat was
- 18 put down on Wednesday?
- 19 A. I don't know what he was told.
- 20 Q. What was Mr. Kaplan's involvement in putting
- 21 this cat down?
- 22 A. I don't know.
- 23 Q. What was Mr. Kaplan's involvement with
- 24 Taylor Waites at the time?
- 25 A. I don't know.



1 Q. He wasn't even working in the same  
2 department as Ms. Waites was at that time, correct?

3 A. He was assigned to a different bureau, but  
4 he was working in the same office that he always  
5 worked in.

6 Q. Okay. But he was assigned to a different  
7 bureau. So he worked for a different bureau, didn't  
8 work with Ms. Waites and somehow became complicit in  
9 the great James Rogers cat caper of 2017, correct?

10 MR. BERG: Objection.

11 MR. LUIBRAND: Objection.

12 THE WITNESS: No.

13 BY MR. ZABELL:

14 Q. Or the great cat caper?

15 A. I have to --

16 MR. LUIBRAND: Objection. Go ahead  
17 and answer.

18 THE WITNESS: I have to say no  
19 because parts of what you said are not  
20 accurate.

21 BY MR. ZABELL:

22 Q. Well, what's not accurate?

23 A. He did continue to work with Ms. Waites and  
24 Ms. Sadiqi on hearing preparations and Labor  
25 Standards cases, so he would have had contact with

1 both of them in the course of his employment and in  
2 the course of being in the same office with them,  
3 even though he was assigned to the Bureau of Public  
4 Works.

5 Q. But he was never their supervisor, correct?

6 A. No, he was never their supervisor.

7 Q. And he was never responsible for keeping  
8 track of their time, was he?

9 A. No, he was not.

10 Q. And he didn't report to you at that time  
11 according to this organization chart, correct?

12 A. In March, no, he didn't at that time.

13 Q. Okay. But yet he was still responsible and  
14 complicit in Taylor Waites maybe lying, maybe not  
15 lying to you, correct?

16 A. I only know the statement he made to me  
17 whether he was responsible or complicit, you have to  
18 ask him.

19 Q. Well, I have asked him and he said you're  
20 lying.

21 Are you lying?

22 A. No, I'm not.

23 Q. Okay. So somehow he became complicit in  
24 Taylor Waites' scheme to get a bereavement day for  
25 the euthanizing of Mr. Rogers' cat; is that correct?

1 A. He chose to tell me what he told me and why,  
2 I don't know, and if you want to categorize it as  
3 complicit, that's up to you, but all I know is he  
4 told me what he told me.

5 Q. Did you ever ask Taylor Waites to bring in a  
6 note from the doctor as to when the cat was  
7 euthanized?

8 A. No, I did not.

9 Q. Don't you think that that would have given  
10 you the answer that you needed?

11 A. I asked Ms. Waites and she told me that the  
12 cat was put down on Tuesday.

13 Q. I thought you said before that it was put  
14 down on Wednesday?

15 A. No. I said it was not put down on  
16 Wednesday.

17 Q. Okay. Did you write down what Ms. Waites  
18 said to you in your notebook?

19 A. I believe it was an e-mail exchange.

20 Q. Oh, okay. So somewhere --

21 A. I think it's one of the exhibits, I'm not  
22 sure.

23 Q. Somewhere there's an e-mail exchange  
24 regarding putting down Jim Rogers' cat, correct?

25 A. There was an e-mail exchange about

1 professional behavior in the office and putting  
2 aside personal difficulties to make sure the job  
3 gets done.

4 Q. I see. And by "personal difficulties" you  
5 mean handling the euthanization of a deputy  
6 commissioner's pet, correct?

7 A. Yes, at that time that's what I meant.

8 Q. Do you see the absurdity in this?

9 A. I have no opinions. I'm just telling you  
10 the facts.

11 Q. Okay. Except you don't know if they're  
12 facts or not, correct?

13 A. They're facts of what happened within my  
14 knowledge of what I saw and what I heard.

15 Q. Right, but you barely remember what you're  
16 saying five minutes earlier may impact on how  
17 somebody was to interpret your recollection, right?

18 MR. LUIBRAND: Objection.

19 Go ahead and answer.

20 THE WITNESS: I can't answer that.

21 BY MR. ZABELL:

22 Q. Why, you don't remember?

23 A. Your question is wrong.

24 Q. You don't remember?

25 A. No, I didn't say that. I said I couldn't

1 answer your question.

2 Q. I see. So in March of 2017, some six, maybe  
3 seven months after Mr. Kaplan may have said to you,  
4 jokingly, that he lied about the allegations of  
5 Mr. Pichardo, you thought that those allegations --  
6 you thought what Mr. Kaplan now said was a lie,  
7 correct?

8 MR. LUIBRAND: Objection to the form.

9 THE WITNESS: I don't understand your  
10 question.

11 BY MR. ZABELL:

12 Q. It's convenient that you wouldn't.

13 A. Well, you are talking about what he said,  
14 but he said things different times, so that's why  
15 I'm not sure what you're referring to.

16 Q. In March of 2017 was Mr. Pagliolonga  
17 counseling you on your work performance?

18 A. No, he was not.

19 Q. And if he said that he was, he would be  
20 lying?

21 MR. BERG: Objection.

22 THE WITNESS: Well, it wouldn't be  
23 truthful.

24 BY MR. ZABELL:

25 Q. So are you saying that if Mr. Pagliolonga

1 said that in March of 2017 he was counseling you on  
2 your work performance, he would be lying; is that  
3 your testimony?

4 MR. BERG: Objection.

5 THE WITNESS: I received no  
6 counseling. Whether he was planning to do  
7 it or not, I have no idea, but I never  
8 received a counseling from him.

9 BY MR. ZABELL:

10 Q. I see. In March of 2017 were you aware that  
11 Mr. Pagliolonga was unhappy with your work  
12 performance?

13 A. No, I was not.

14 Q. In March of 2017 were you unhappy with your  
15 work performance?

16 A. No, I was not.

17 Q. Were you ever unhappy with your work  
18 performance?

19 A. Not with my work performance.

20 Q. Okay. I'm going to ask that you take a look  
21 at Exhibit 15.

22 Do you see that document?

23 A. Yes.

24 Q. Have you seen that document before?

25 A. Not before I saw these exhibits, no.

1 Q. Okay. Did you have occasion to read this  
2 exhibit before today?

3 A. I believe I read it Friday night.

4 Q. Okay. And what do you recall from your  
5 reading of it Friday night?

6 A. Just that I had never seen it before. I  
7 don't recall the contents of it. I read all the  
8 exhibits and it was a large quantity.

9 Q. Does this document confirm that there were  
10 witness statements to what Mr. Kaplan complained  
11 about?

12 A. Can you scroll down.

13 I know it talked about interviewing people.  
14 They talked about an investigation with the  
15 statements, yes.

16 Q. But does it confirm that Mr. Kaplan was  
17 called a fucking Jew, a Jew lawyer and a crack  
18 whore?

19 MR. BERG: Objection.

20 BY MR. ZABELL:

21 Q. You can disregard the objection, and answer.

22 A. No, it does not. It confirmed that one or  
23 more inappropriate derogatory statements were made  
24 but did not say that the ones that were listed here  
25 were the ones that were confirmed.

Kathleen Dix, Esquire

1 Q. Well, why don't you read the first two  
2 sentences of the second paragraph out loud, just  
3 read it slowly because the court reporter has to  
4 take down every word.

5 A. "Through our investigation we determined  
6 probability that Mr. Pichardo called, referred to  
7 Mr. Kaplan as a F'ing jew, a jew lawyer and a crack  
8 whore."

9 Q. That's statement one, go ahead read the  
10 second one.

11 A. "Witness statements not only confirmed that  
12 Mr. Pichardo called Ms. Sadiqi and Ms. Waites a  
13 bitch both directly and indirectly, but also  
14 revealed that Pichardo used anti-Semitic language in  
15 reference to Mr. Kaplan."

16 Q. Okay. So you don't read that to confirm  
17 that Mr. Pichardo used anti-Semitic language in  
18 reference to Mr. Kaplan?

19 A. No.

20 MR. BERG: Objection.

21 THE WITNESS: That there was  
22 probability but that they did confirm some  
23 statement.

24 MR. ZABELL: I'm sorry. Madame  
25 Reporter, I'm going to ask that you read



1 back my question to this witness.

2 Ms. Dix I'm going to ask that you  
3 just listen to the question that I asked.

4 (The court reporter read back the  
5 record as follows:

6 "Q. So you don't read that to  
7 confirm that Mr. Pichardo used anti-Semitic  
8 language in reference to Mr. Kaplan?"

9 A. No.

10 MR. BERG: Objection.

11 THE WITNESS: That there was  
12 probability but that they did confirm some  
13 statement.")

14 BY MR. ZABELL:

15 Q. After you had the opportunity to have the  
16 question and your answer read back, would you like  
17 to change your answer?

18 A. Your question was -- I thought was does this  
19 confirm that those three comments were made. It  
20 confirms that anti-Semitic statements were made but  
21 in my mind it doesn't confirm those three were the  
22 ones that were confirmed.

23 Q. Ms. Dix, are you having some difficulty  
24 hearing the questions that I'm asking you?

25 A. I didn't think so but what I heard from you

1 is not what I heard the reporter just read back.

2 Q. Yeah, it's funny how that happens. And by  
3 "funny" I mean that in the most sarcastic of ways.

4 Ms. Dix, it's important that you listen to  
5 the questions that I ask you and only the questions  
6 that I ask you.

7 Are you capable of doing that?

8 A. Yes.

9 Q. Then please do so, okay? Okay, Ms. Dix?

10 MR. LUIBRAND: Do you have a  
11 question, counsel?

12 MR. ZABELL: I need Ms. Dix to  
13 confirm that that is okay.

14 THE WITNESS: Is that a question?  
15 Are you asking me if it's okay? Of course  
16 it's okay.

17 BY MR. ZABELL:

18 Q. Very good.

19 So was Mr. Pichardo found to have violated  
20 the New York State Department of Labor's Workplace  
21 Harassment Policy?

22 A. That's what this memo says, yes.

23 Q. And did you believe that to be truthful and  
24 accurate?

25 A. I never saw this document --

1 MR. BERG: Objection.

2 THE WITNESS: -- till Friday night.

3 I have not seen this at all.

4 BY MR. ZABELL:

5 Q. So nobody at the Department of Labor shared  
6 with you that your employee was found to have  
7 violated the Department of Labor's Workplace  
8 Harassment Policy?

9 A. Correct.

10 Q. Did you ever any discussions with Selica  
11 Grant?

12 A. Yes, I believe I had an interview with her.

13 Q. And what do you recall discussing with  
14 Ms. Grant?

15 A. I recall discussing with her the contents of  
16 my conversation with Mr. Kaplan, on a couple of  
17 occasions, and the conversation that I had with Ms.  
18 Sadiqi and Ms. Waites, and the conversation or  
19 conversations that I had with Mr. Pichardo regarding  
20 the complaints that both Ms. Sadiqi and Mr. Kaplan  
21 had made.

22 Q. Did you have any reason to believe that  
23 Ms. Grant was something less than thorough in her  
24 investigation?

25 A. I knew of nothing other than my interview.

1 I believe Ms. Sadiqi told me that she had  
2 spoken to her but I was not made aware of the -- who  
3 they talked to or what their investigation  
4 surrounded.

5 In fact when I would ask Mr. Pagliolonga, he  
6 told me he wasn't at liberty to discuss it or he  
7 didn't know, but I was not told what the  
8 investigation -- how it was proceeded or when it was  
9 done.

10 Q. Over the course of your career with the  
11 Department of Labor, how many matters were referred  
12 to the DEOD for investigation?

13 A. I have no idea.

14 Q. How many matters were you involved with at  
15 the DEOD?

16 A. Just this, when I was interviewed.

17 Q. On how many different occasions have you  
18 been accused of discriminating against co-workers?

19 A. None.

20 Q. Do you know how Mr. Pichardo's employment  
21 came to end at the Department of Labor?

22 A. Yes.

23 Q. How?

24 A. He resigned.

25 Q. And do you know how his resignation was

1 precipitated?

2 A. Yes.

3 Q. Could you tell me how?

4 A. Mr. Pagliolonga was going to serve him with  
5 a letter of termination and offered him the  
6 opportunity to resign instead.

7 Q. Do you know why he offered him the  
8 opportunity to resign instead?

9 A. He said if he resigned then it wouldn't be  
10 on his record that he was terminated and that I  
11 could -- he could still use me as a reference, and  
12 he would give him a positive reference.

13 Q. Was that brought to your attention?

14 A. I was there when he said it.

15 Q. Okay. So you used that as an incentive for  
16 him to resign, the fact that he could use you as a  
17 letter of reference?

18 A. It appeared to be that way, yes, that's what  
19 he said.

20 Q. Did you ever give him a letter of reference?

21 A. I did.

22 Q. Did you lie in that letter of reference?

23 A. I did not.

24 Q. Were you aware that Mr. Pichardo resigned?

25 A. Yes, I was.

1 Q. Did you ever see his resignation letter?

2 A. I did Friday night in these exhibits. He  
3 typed it up and gave it to Mr. Pagliolonga the day  
4 that he resigned and Mr. Pagliolonga had shown it to  
5 me but I never had a copy of it. I read it that day  
6 but I never saw it again until Friday night.

7 Q. Did Mr. Pagliolonga relay to Mr. Pichardo  
8 what he was accused of saying?

9 A. Not in that conversation, no.

10 Q. Do you know if he ever relayed to  
11 Mr. Pichardo what he was accused of saying?

12 A. With regard to Ms. Sadiqi, I did, and  
13 Mr. Pagliolonga, I believe, was in the meeting at  
14 the time.

15 With regard to Mr. Kaplan, I don't know.

16 Q. It looks like from Mr. Pichardo's  
17 resignation letter that he knew what he was accused  
18 of, correct?

19 A. With regard to Ms. Sadiqi, yes. I assume  
20 with regard to Mr. Kaplan, but I never told him.

21 Q. Okay. Did you find Mr. Pichardo to have  
22 fitness of character?

23 A. Did I find it? I didn't adjudicate it.

24 Q. So is your answer, no, you never made that  
25 decision, that conclusion?

1 A. Yes, I made that conclusion but I didn't  
2 adjudicate it so I didn't make a finding.

3 Q. So did you ever tell anybody that you found  
4 that Mr. Pichardo was -- I just want to make sure I  
5 get it right -- Mr. Pichardo showed great fitness of  
6 character; did you write that?

7 A. Pardon me? Did I write it? Yes, I wrote  
8 it.

9 Q. Did you believe it when you wrote it?

10 A. If you are reading from my letter, I wrote  
11 it.

12 Q. Well, I'm not saying I'm reading from your  
13 letter.

14 A. I would have said that in his character  
15 Affidavit for admission to the bar.

16 Q. And did you find Mr. Pichardo to have great  
17 fitness of character?

18 A. When it came to his practice of law and  
19 presenting cases at the IBA, yes.

20 Q. Great fitness of character, okay.

21 What about did you find that he had a good  
22 willingness to learn?

23 A. Yes.

24 Q. Did you find that he had a strong ability to  
25 adapt to circumstances?

1 A. Yes.

2 Q. Did you find Mr. Pichardo to be respectful?

3 A. Yes, he was always respectful to me and he  
4 was always respectful at the IBA. I never had any  
5 complaints that he was not.

6 Q. You didn't hear -- you don't remember  
7 testifying before that someone accused him of  
8 rolling his eyes at them?

9 MR. BERG: Objection.

10 THE WITNESS: Not him. It was  
11 Mr. Piccigallo.

12 BY MR. ZABELL:

13 Q. I see. Did you find that Mr. Pichardo  
14 always did the right thing?

15 A. With regard to his cases, yes.

16 Q. And did you find Mr. Pichardo to have  
17 sufficient moral character?

18 A. With regard to litigating his cases, yes.

19 Q. Now, you're aware that you were going to be  
20 asked to resign from the Department of Labor,  
21 correct?

22 A. No.

23 MR. BERG: Objection.

24 BY MR. ZABELL:

25 Q. Did you read any -- did you read all of the



1 exhibits that were sent last week?

2 A. Yes.

3 Q. And you don't recall reading anything about  
4 you being asked to resign?

5 A. I don't, no. I didn't read every one word  
6 for word, but, no, I don't recall that.

7 Q. So some time after having to fire  
8 Mr. Pichardo for being inappropriate with his  
9 co-workers and Mr. Kaplan, you wrote a letter of  
10 reference for him, correct?

11 A. Can you repeat the question?

12 MR. ZABELL: Madame Reporter.

13 (The court reporter read back the  
14 record as follows:

15 "Q. So some time after having to  
16 fire Mr. Pichardo for being inappropriate  
17 with his co-workers and Mr. Kaplan, you  
18 wrote a letter of reference for him,  
19 correct?")

20 MR. BERG: Objection.

21 THE WITNESS: The timeline fact is  
22 factually correct, but I wasn't aware of the  
23 findings in the investigation.

24 BY MR. ZABELL:

25 Q. But you were aware that you were asked to be

1 part of the team that fired him, correct?

2 A. That's incorrect.

3 Q. You were not asked to be part of that team?

4 A. No, I was not.

5 Q. You just volunteered for it?

6 A. No, I was told that I wasn't -- it wasn't

7 required but they thought Mr. Pichardo would feel

8 more comfortable if I were there, but it was not my

9 responsibility to fire him and --

10 Q. Were you there? Were you there?

11 A. When Mr. Pagliolonga told Mr. Pichardo, yes,

12 I was.

13 Q. Do you have an interest in concealing that

14 fact?

15 A. I'm not concealing anything.

16 Q. I see.

17 Let me show you Exhibit 21.

18 Do you know what this is?

19 A. Yes, it looks like an e-mail that I had sent

20 to Mr. Pagliolonga.

21 Q. Now, did you explain to Mr. Pagliolonga why

22 you waited what you called approximately five

23 months, what I call more like six months, to relay

24 this information?

25 A. I did not in this e-mail, no.

1 Q. I see.

2 A. I did in my conversation with him though.

3 Q. Of course.

4 Does it change your understanding of events  
5 now that you know that DEOD confirmed that  
6 anti-Semitic comments were made?

7 MR. BERG: Objection.

8 THE WITNESS: No.

9 BY MR. ZABELL:

10 Q. Does it change your understanding of events,  
11 having seen the DEOD complaint and recalling what  
12 Mr. Kaplan told you in October of 2016?

13 A. I now know the basis for the letter to  
14 Mr. Kaplan and Mr. Pichardo regarding their -- the  
15 findings, the outcome of the investigation, but I  
16 only knew what the outcome was based on the letter  
17 that they sent.

18 Q. Can you tell me --

19 A. State laws had been violated but DOL's -- a  
20 DOL policy had been violated, but I didn't know the  
21 basis for those findings until I read this Friday  
22 night.

23 Q. Tell me the things that Mr. Kaplan  
24 complained about with you and with Mr. Pagliolonga  
25 on the phone, prior to the DEOD complaint, did any

1 of those allegations not prove to be founded by the  
2 DEOD complaint?

3 MR. BERG: Objection.

4 BY MR. ZABELL:

5 Q. You may disregard the objection.

6 A. I don't know.

7 Q. What you do know from reading Ms. Grant's  
8 report, the report that I just showed you, is that  
9 everything that you relayed to me that Mr. Kaplan  
10 said was confirmed by the DEOD's report, correct?

11 MR. BERG: Objection.

12 THE WITNESS: I didn't -- they didn't  
13 say it that way. They said probability but  
14 not confirmation.

15 BY MR. ZABELL:

16 Q. Okay. And they also said that there were  
17 witness statements to anti-Semitic comments,  
18 correct?

19 A. Correct.

20 Q. And you said that Mr. Kaplan complained  
21 about anti-Semitic comments, correct?

22 A. He complained about those three comments,  
23 yes, he said --

24 Q. Anti-Semitic comments and about Roya  
25 Sadiqi's treatment, correct?

1 A. Correct.

2 Q. Did he complain that Ms. Sadiqi was subject  
3 to derogatory comments regarding her gender?

4 A. I don't believe he did, no. I don't recall  
5 that.

6 Q. Okay. Now, in March of 2017 Mr. Kaplan no  
7 longer worked for you, correct?

8 A. Correct. Yeah, correct. He was assigned  
9 to -- he never worked for me, I was just his  
10 supervisor. He worked for the State of New York.

11 Q. Well, you were supposed to work for the  
12 State of New York either, but I don't find you  
13 working for me either.

14 Now, you were interrogated regarding your  
15 allegations, correct?

16 A. Yes.

17 Q. By a John Dormin?

18 A. Yes.

19 Q. What was your opinion of Mr. Dormin?

20 MR. BERG: Objection.

21 THE WITNESS: It was the first time I  
22 had met him so I didn't really have an  
23 opinion. I had never met him before.

24 BY MR. ZABELL:

25 Q. Was he nice to you?

1 A. At times.

2 Q. Was he mean to you?

3 A. No, he was never mean.

4 Q. Okay. Did he treat you appropriately?

5 A. He didn't treat me like an attorney but he  
6 treated me like a target of an investigation so ...

7 Q. Now, at the time he treated you like -- as  
8 an target of an investigation, were you already  
9 interviewing to leave the Department of Labor?

10 A. I was applying but I don't think I had had  
11 any interviews yet.

12 Q. Okay. So did his treating you like the  
13 target of an investigation encourage you to leave  
14 the Department of Labor?

15 A. No, I was already planning to leave.

16 Q. And why were you planning on leaving?

17 A. The job that I had at the Department of  
18 Labor was highly concentrated in administration and  
19 in supervision and I wanted to get back into more  
20 hands-on legal work.

21 Q. And is that what you're doing now?

22 A. I am.

23 Q. What type of hands-on legal work are you  
24 doing now?

25 A. I'm presenting cases before the

1 administrative law judges at the Department of  
2 Health on behalf of the department -- the office of  
3 the Medicaid Inspector General.

4 Q. Okay. Now, did Mr. Pichardo deny calling  
5 Ms. Sadiqi a bitch?

6 A. He said he didn't remember doing it.

7 Q. Did you ever tell Mr. Dormin that  
8 Mr. Pichardo denied calling Ms. Sadiqi a bitch?

9 A. I don't recall what words I would have said  
10 if he asked me, but he didn't say I never did it.  
11 He said I don't recall doing it.

12 Q. I see. So if there is a transcript that  
13 contradicts what you just said, that transcript  
14 would be wrong, correct?

15 A. I couldn't say.

16 Q. So going back to that October 2016  
17 statement, was anybody around you at the time that  
18 Mr. Kaplan made that statement?

19 A. The one in the law library for Mr. Shapiro's  
20 luncheon? There were other employees, other people  
21 from the office in the luncheon at the time.

22 Q. Were you sitting at a round table or a  
23 square table?

24 MR. BERG: Objection.

25 THE WITNESS: We weren't sitting at a

1 table at all.

2 BY MR. ZABELL:

3 Q. Were you standing?

4 A. No, we were sitting in chairs that were  
5 lined up against the wall.

6 Q. I see. And did you have your food --

7 A. [Inaudible] technically.

8 Q. Did you have your food resting on your laps  
9 at that time?

10 A. Either our food or our plates, if we had  
11 finished.

12 Q. I see. And who was sitting next to you at  
13 the time?

14 A. Mr. Kaplan was sitting to my right and there  
15 was no one sitting to my left.

16 Q. And was anybody sitting to Mr. Kaplan's  
17 right?

18 A. No, I believe he was in the end chair but  
19 there was no one sitting to his right.

20 Q. Okay. Was there anybody sitting to your  
21 left?

22 A. Not immediately but there may have been a  
23 couple chairs down.

24 Q. Okay. Who were they?

25 A. Whoever was in there. There were paralegals



1 and other attorneys that came in and out and I don't  
2 remember who was there at that time.

3 Q. Well, did you ask them if they heard what  
4 Mr. Kaplan just said?

5 A. No, I did not.

6 Q. Did you try to identify a potential witness  
7 to what you believe you heard Mr. Kaplan say?

8 A. No, I did not.

9 Q. So the only person who heard Mr. Kaplan say  
10 what you have alleged him to have said is you,  
11 correct?

12 A. As far as I know. I don't know if anybody  
13 else heard him.

14 Q. And what exactly do you think he said?

15 A. He said, "you know I made that up, right?  
16 It turns out it was true."

17 Q. Were those his exact words?

18 A. I don't know.

19 Q. Well, tell me what you think his exact words  
20 were.

21 A. "You know I made that up, right? Turns out  
22 it was true."

23 Q. So that's what you think his exact words  
24 were, correct?

25 A. That's what I believe, yeah. That's what I

1 recall.

2 Q. Okay. And you didn't say anything in  
3 response to him, correct?

4 A. Correct.

5 Q. You just let it go, correct?

6 A. I didn't respond.

7 Q. Right.

8 And you didn't think he was telling the  
9 truth at the time he said that, correct?

10 MR. BERG: Objection.

11 THE WITNESS: No, I didn't.

12 BY MR. ZABELL:

13 Q. Okay. And it wasn't until Jim Rogers' cat  
14 died that you thought there might be some truth to  
15 it?

16 MR. BERG: Objection.

17 THE WITNESS: There was a series of  
18 events, including the event with Ms. Waites,  
19 that led me to believe that he might have  
20 been telling the truth that day.

21 BY MR. ZABELL:

22 Q. Okay. What were those other events, other  
23 than the great cat caper?

24 MR. BERG: Objection. You can  
25 answer.

1 THE WITNESS: With regard to  
2 settlements of cases, Mr. Kaplan was not  
3 following the directions that I had given  
4 him and asking Ms. Sadiqi to not tell me  
5 that he was settling cases outside of what  
6 he told me he was going to do.

7 BY MR. ZABELL:

8 Q. You accept that as of October of 2016 he had  
9 moved over to Public Works, correct?

10 A. He still had Labor Standards cases assigned  
11 to him at that time, I believe.

12 Q. I see. But he wasn't your direct report,  
13 correct?

14 A. Correct.

15 Q. Okay. He was working for somebody else,  
16 correct?

17 A. He was supervised by Ms. DiConstanzo.

18 Q. Right.

19 Did you ever tell Ms. DiConstanzo that you  
20 were having difficulty with her direct report?

21 A. Yes.

22 Q. Really.

23 Do you have a memo to that effect?

24 A. No.

25 Q. Did you write anything in your notebook to

1 that effect?

2 A. That I spoke to Ms. DiConstanzo? No.

3 Q. So the only person who knows this is you,  
4 right?

5 A. Well, Ms. DiConstanzo would know it.

6 Q. Maybe. We're going to find that out.

7 When did you believe -- I'm sorry, did you  
8 write-up that perceived insubordination?

9 A. I did not.

10 Q. Aren't you supposed to write-up  
11 insubordination?

12 A. It depends on the factors. I consulted with  
13 the ethics officer and he told me my obligation was  
14 to report it to Mr. Pagliolonga and that once I had  
15 reported it, my obligation was done.

16 Q. Did you report insubordination to  
17 Mr. Pagliolonga?

18 A. I reported the whole situation to him.

19 Q. Did you report insubordination; yes or no?

20 MR. BERG: Objection.

21 MR. LUIBRAND: Answer the question  
22 however you wish.

23 THE WITNESS: I don't know if I used  
24 that word, but I told him everything that  
25 was concerning me about Mr. Kaplan.

1 BY MR. ZABELL:

2 Q. Okay. So if an employee --

3 MR. LUIBRAND: You got to allow her  
4 to answer the question, counsel.

5 BY MR. ZABELL:

6 Q. If an employee is insubordinate do you  
7 report it?

8 MR. LUIBRAND: She is going to finish  
9 her answer whether you like it or not.

10 MR. ZABELL: I don't even know if  
11 that's counsel speaking. I have no idea who  
12 is speaking. I'm going to ask that you  
13 remain silent while I'm asking my questions,  
14 please.

15 MR. LUIBRAND: No.

16 Finish your answer, Ms. Dix.

17 MR. ZABELL: You don't get to say no.  
18 If you like, I will give you a moment to  
19 review the Federal Rules of Civil Procedure  
20 so you can reacquaint yourselves with your  
21 obligations here.

22 MR. LUIBRAND: I'll tell you what,  
23 you don't allow her to finish her answer  
24 then we can conclude the deposition and we  
25 can bring it all to the judge.

Kathleen Dix, Esquire

1 MR. ZABELL: I don't have a problem  
2 with that, if that's what you --

3 MR. LUIBRAND: I do. Let's conclude  
4 it.

5 (Inaudible cross-talking with  
6 multiple speakers.)

7 MR. ZABELL: If you are interrupting  
8 my deposition --

9 MR. LUIBRAND: No, you are jumping on  
10 her answers, you won't allow her to finish  
11 her answers. It's going to be very clear,  
12 if your stenographer took it down correctly,  
13 it's going to be very clear that you  
14 wouldn't let her finish her answer.

15 MR. ZABELL: Okay. What you're doing  
16 now is --

17 MR. LUIBRAND: You jumped on her  
18 answer, and that's inappropriate under the  
19 federal rules. You have to allow a witness  
20 to finish the answer to her questions.

21 MR. ZABELL: Mr. Luibrand, are you  
22 finished speaking?

23 MR. LUIBRAND: No, I'm not.

24 MR. ZABELL: Finish speaking.

25 MR. LUIBRAND: I'm done at this

1 moment. Go ahead.

2 MR. ZABELL: Okay. So Mr. Luibrand,  
3 you don't seem to understand that under the  
4 Federal Rules of Civil Procedure you can  
5 make objections to the form, but you cannot  
6 make speaking objections. You think you are  
7 doing your client a service and you are  
8 really not. What you are doing is muddying  
9 up my transcript and I won't permit that.

10 You have to behave yourself here,  
11 especially because we're doing this in the  
12 manner in which we are. So please, I ask  
13 you, if you need time to review your  
14 obligations under the Federal Rules of Civil  
15 Procedure, I'll give you that opportunity.  
16 If you do not believe you need that, I'm  
17 just going to ask that you remain silent and  
18 object to the form and let's move forward.

19 MR. LUIBRAND: I'm not going to  
20 permit you to cutoff answers to questions  
21 that the witness is giving, that violates  
22 the Rules of Civil Procedure. It's a  
23 question and answer process. You ask a  
24 question, she gives an answer.

25 You cannot, as she is giving her

1 answer, jump on her answer so as to  
2 prematurely terminate her answer so that you  
3 can get a record that you like, rather than  
4 a truthful record or an accurate record.

5 She was giving an answer, you jumped  
6 on her answer before she completed her  
7 answer. She is permitted to finish her  
8 question -- her answer to your question, and  
9 you are not going to shut me up in any  
10 respect when you do that.

11 MR. ZABELL: Mr. Luibrand, are you  
12 finished?

13 MR. LUIBRAND: She should be able to  
14 finish her answers to her questions, that is  
15 in her best interest and that's exactly what  
16 we're going to do so we can return after the  
17 answer she was giving, the question and the  
18 answer, and she can finish the answer, and  
19 then you can move on to your next question.

20 MR. ZABELL: Mr. Luibrand, are you  
21 finished speaking? Mr. Luibrand, are you  
22 finished speaking?

23 MR. LUIBRAND: For this moment I am,  
24 yeah.

25 MR. ZABELL: Good.



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1 MR. LUIBRAND: You are not going to  
2 allow her to finish the answer, we'll  
3 conclude the deposition.

4 MR. ZABELL: Mr. Luibrand, are you  
5 finished speaking?

6 MR. LUIBRAND: I just gave you my  
7 answer.

8 MR. ZABELL: And then you started  
9 speaking again. Good. I will assume by  
10 your silence you're finished speaking.

11 BY MR. ZABELL:

12 Q. Ms. Dix --

13 MR. LUIBRAND: She is not going to  
14 answer any further questions until she  
15 allowed to finish the question that you  
16 asked her.

17 BY MR. ZABELL:

18 Q. Ms. Dix --

19 MR. LUIBRAND: Counsel --

20 BY MR. ZABELL:

21 Q. -- did you have a conversation with an  
22 ethics officer at the Department of Labor?

23 MR. LUIBRAND: Counsel, we'll finish  
24 this at another time. I'm going to shut it  
25 down. You're not allowing her to answer her

1           questions. I'm not continuing the  
2           deposition.

3                    If you want to reconsider, do it this  
4           moment, but, if not, we are all done.

5 BY MR. ZABELL:

6 Q.        Ms. Dix, did you have a conversation with a  
7           ethics officer at the Department of Labor?

8                    MR. LUIBRAND: Okay. We're done with  
9           the deposition. Thank you everybody. If  
10          you want --

11                   MR. BERG: Excuse me -- excuse me --

12                   MR. LUIBRAND: You want to allow her  
13          to finish answering the question, we can do  
14          that but you are not going to interrupt her  
15          answers.

16                   MR. BERG: Excuse me, Mr. Luibrand,  
17          this is Michael Berg on behalf of the  
18          Department of Labor.

19                   MR. LUIBRAND: Yeah, Michael.

20                   MR. BERG: We reserve the right to  
21          question Ms. Dix, if and when Mr. Zabell's  
22          questioning is completed.

23                   MR. LUIBRAND: Yeah, I don't have an  
24          objection to that.

25                   MR. BERG: I just wanted it to be

Kathleen Dix, Esquire

1 clear on the record.

2 MR. LUIBRAND: Yeah, that's fine, I  
3 understand that.

4 BY MR. ZABELL:

5 Q. Ms. Dix --

6 MR. LUIBRAND: We're all done. Thank  
7 you. Thank you.

8 (Ms. Dix's and Mr. Luibrand's screen  
9 dropped from the Zoom room.)

10 BY MR. ZABELL:

11 Q. -- did you speak with an officer at the  
12 Department of Labor, yes or no?

13 MR. ZABELL: It appears that  
14 Mr. Luibrand and Ms. Dix have just hung up  
15 the connection. It seems like from their  
16 actions it was intentional and I guess I'll  
17 just have to make an application to have a  
18 continued deposition.

19 Mr. Berg, do you have anything you'd  
20 like to add?

21 MR. BERG: Yes. Thank you for your  
22 cooperation with the various technical  
23 issues we had today.

24 MR. ZABELL: No problem. We all have  
25 to -- we're all in this together.

1 I understand your position that you  
2 would like to question Ms. Dix at the  
3 conclusion of my deposition. Obviously, I  
4 don't get to do that today. I'm just going  
5 to ask that you serve a cross-notice. If  
6 you e-mail it to me I will, of course, honor  
7 it, if and when we get to do this again.

8 MR. BERG: Mr. Zabell, you never  
9 served a notice of any deposition.

10 MR. ZABELL: Sure, we did. We  
11 actually subpoenaed Ms. Dix, she testified  
12 in the beginning.

13 MR. BERG: You subpoenaed Ms. Dix but  
14 you did not comply with the federal rules  
15 with respect to serving a notice upon the  
16 defendants in this case, not with respect to  
17 Ms. Dix, not with respect to any of the DOL  
18 witnesses.

19 MR. ZABELL: No, we're talking  
20 Ms. Dix. We're not talking about any other  
21 witnesses. And in many instances we can  
22 have agreements to conduct depositions.

23 Ms. Dix is not under your power,  
24 that's why we served a subpoena upon her,  
25 which, obviously was necessary because

1 Mr. Luibrand doesn't really understand the  
2 process.

3 All I'm saying is just send me a  
4 notice that you would like to depose her. I  
5 don't care if it's in a simple e-mail and I  
6 will be fine, this way I can document my  
7 file for it.

8 MR. BERG: That's fine. I'm just  
9 pointing out an omission on your part.  
10 Obviously, I have not objected to this  
11 deposition going forward on the basis of the  
12 subpoena. I'm happy to e-mail you. I will  
13 do so once we know if and when the  
14 deposition is going to continue.

15 MR. ZABELL: You got it.

16 MR. BERG: All right. Take care.

17 MR. ZABELL: Everybody have a good  
18 day.

19 (Deposition concluded 2:46 p.m.)

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C E R T I F I C A T I O N

I, MARGARET M. REIHL, a Registered Professional Reporter, Certified Realtime Reporter, Certified Court Reporter, Certified LiveNote Reporter and Notary Public, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically, by and before me, remotely, via Zoom, to the best of my ability, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

*Margaret M. Reihl*

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Margaret M. Reihl, RPR, CRR, CLR  
CCR License #XI01497  
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Kathleen Dix, Esquire

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ACKNOWLEDGMENT OF DEPONENT

I, KATHLEEN DIX, ESQUIRE, do hereby  
certify that I have read the foregoing pages  
and that the same is a correct transcription  
of the answers given by me to the questions  
therein propounded, except for the  
corrections or changes in form or substance,  
if any, noted in the attached Errata Sheet.

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KATHLEEN DIX, ESQUIRE

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Kathleen Dix, Esquire

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