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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 GRAHAM CHASE ROBINSON,

4 Plaintiff,

New York, N.Y.

5 v.

19 Civ. 9156 (LJL)

6 ROBERT DENIRO, et al.,

7 Defendants.

8 -----x
9 November 1, 2023
10 9:10 a.m.

11 Before:

12 HON. LEWIS J. LIMAN,

13 U.S. District Judge

14 -and a Jury-

15 APPEARANCES

16 SANFORD HEISLER SHARP, LLP
17 Attorneys for Plaintiff

18 BY: BRENT HANNAFAN
19 ANDREW MACURDY
20 KATE MACMULLIN
21 VINCENT MCKNIGHT, JR.

22 TARTER, KRINSKY & DROGIN, LLP
23 Attorneys for Defendants

24 BY: RICHARD C. SCHOENSTEIN
25 INGRID CARDONA
LAURENT DROGIN
BRITTANY LAZZARO

-and-

TRAUB LIEBERMAN STRAUS & SHREWSBERRY LLP
BY: GREGORY BENNETT

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1 (Trial resumed; jury not present)

2 THE COURT: We have the jury but I have one thing I
3 need to raise with the parties before we bring the jury in.

4 It has been brought to my attention that there is one
5 juror who arrives early before the jury room opens. That juror
6 sits on a bench, appropriately, outside on the 15th floor.
7 When one set of counsel arrive, it has been brought to my
8 attention they sit near that juror. That juror then moves to
9 the other side of the floor. And then, when the other set of
10 lawyers come, they end up sitting near that juror. Both sets
11 of counsel end up talking about the case.

12 Nothing has been brought to my attention that requires
13 me to make inquiry of the juror, but if anybody feels like I
14 should then I will entertain that application but I am going to
15 issue a directive. The directive is that the lawyers in this
16 case and the parties are not to spend any time on the 15th
17 floor until the jury room is opened, which will be about
18 8:45 a.m., in order to avoid contact with the juror who arrives
19 early.

20 Is that understood from plaintiff?

21 MR. HANNAFAN: Yes, your Honor.

22 THE COURT: And from defendants?

23 MR. SCHOENSTEIN: Yes, your Honor.

24 THE COURT: Let me ask a question about the exhibits.
25 I have received the e-mail, it was very helpful indicating

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1 where there are objections. Some of the objections are along
2 the lines of no objection, subject to hearing the actual
3 excerpt and that it is stipulating to date, and from the
4 defendants with respect to Harvey, they want to know the
5 portions that would be played.

6 Have those issues been worked out?

7 MR. DROGIN: Yes, your Honor.

8 MR. MACURDY: Yes, your Honor.

9 THE COURT: Anything else from plaintiff before we put
10 the witness on the stand and bring in the jury?

11 MR. HANNAFAN: Just one thing, to give your Honor a
12 heads up about timing. We have got a number of witnesses who
13 we are going to be calling today. I had emailed defense
14 counsel last night and asked that Ms. Chen be here, Tiffany
15 Chen be here later this afternoon. In the possibility we don't
16 get through everyone, counsel asked me if we would agree that
17 she could come tomorrow if counsel thinks we will get through
18 the day and I agree to that. Ms. Chen has some issues which I
19 don't think we need to discuss on the record, and so I agreed
20 to that.

21 So, just to let the Court know, if for some reason we
22 end with Mr. Harvey a little early today, we expect to call our
23 next witness tomorrow morning.

24 THE COURT: OK. Let's see how it goes.

25 Anything else from defendants?

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1 MR. SCHOENSTEIN: Your Honor, I agree with that, and I
2 just note for your Honor it sounds like we are ahead of
3 schedule with testimony, we are doing pretty well as far as I
4 can tell.

5 THE COURT: Good. That was my sense.

6 MR. MACURDY: Your Honor, can I amend one thing about
7 exhibits? I think we have been provided excerpts of the audio,
8 we still have to listen to all of them so there could be
9 objections depending on that, but we are in the process of
10 doing that.

11 THE COURT: OK. Let's bring in the jury.

12 MR. SCHOENSTEIN: Should we go ahead and have
13 Mr. Tasch take the stand?

14 THE COURT: Yes. Please.

15 (Witness resumes the stand)

16 (Continued on next page)

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Tasch - Direct

1 (Jury present)

2 THE COURT: Good morning, members of the jury. I hope
3 you all had a pleasant evening. We will continue with the
4 examination of Mr. Tasch.

5 Counsel, you may proceed.

6 MR. McKNIGHT: Thank you, your Honor.

7 MICHAEL TASCH, resumed.

8 DIRECT EXAMINATION (Cont'd)

9 BY MR. McKNIGHT:

10 Q. Good morning, Mr. Tasch.

11 A. Good morning.

12 Q. Sir, do you recall that during the course of this
13 litigation you were designated as Canal's representative for
14 certain topics?

15 A. That's what they tell me.

16 Q. And one of those topics was Canal's policies, procedures,
17 and protocols concerning discrimination, harassment,
18 retaliation and employee investigations; employee compensation,
19 prerequisites and benefits; employee expenses and
20 reimbursements including use of Canal American Express cards,
21 petty cash, and expenses that Canal paid for employees?

22 Is that one of the areas that you were designated as a
23 representative to speak on behalf of Canal?

24 A. It might be, but I have no idea about the policies and
25 procedures at Canal.

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Tasch - Direct

1 Q. And another area that you were designated as a
2 representative for Canal, sir, was any investigation concerning
3 plaintiff undertaken by Canal, or anyone acting on its behalf,
4 including any investigations serving as the basis for Canal's
5 state court lawsuit against plaintiff or Canal's counterclaim
6 in this lawsuit.

7 Is that another area that you were designated to be a
8 representative?

9 A. Not to my knowledge.

10 MR. McKNIGHT: Your Honor, could I show the client,
11 just for identification to refresh his recollection?

12 THE COURT: I don't think he is your client. I think
13 you said can you show your client.

14 MR. McKNIGHT: I'm sorry. I apologize. I misspoke.
15 Can I show Mr. Tasch Exhibit no. 415?

16 THE COURT: I assume there is no objection.

17 MR. SCHOENSTEIN: No objection.

18 THE COURT: Go ahead.

19 Sometimes there are exhibits to be shown just to the
20 witness and not to the jury and that's because it's not
21 admitted into evidence.

22 Go ahead.

23 BY MR. McKNIGHT:

24 Q. Mr. Tasch, I direct you to page 2 of Plaintiff's Exhibit
25 no. 415 and ask you to look at paragraphs 1 and 2 under Topics

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Tasch - Direct

1 of Testimony.

2 A. I see it.

3 Q. Does that refresh your recollection as to the topics that
4 you were offered as a representative for in this particular
5 case?

6 A. I'm not sure how to answer that question because, as I said
7 before, I had no -- the area of policies and procedures was all
8 the plaintiff's, it was her responsibility only.

9 MR. McKNIGHT: Your Honor, could I have Tasch
10 deposition page 32, lines 8 to 11?

11 THE COURT: Do you want to read it to him?

12 MR. McKNIGHT: Yes, I do.

13 THE COURT: Any objection to that?

14 MR. SCHOENSTEIN: No.

15 THE COURT: OK. You may do so.

16 BY MR. McKNIGHT:

17 Q. Mr. Tasch, you remember that your deposition was taken on
18 April 7, 2022?

19 A. Yes.

20 Q. And at that time you were under oath, sir?

21 A. Yes.

22 Q. And at that time this question was asked of you:

23 "Q Mr. Tasch, you are Canal's official witness on topics 1
24 and 2; correct?"

25 And the answer was: "Yes."

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Tasch - Direct

1 A. I see it.

2 Q. Was that true at the time, sir?

3 A. I'm not really sure what that means so I don't know.

4 MR. McKNIGHT: Could I have Tasch deposition, page 30,
5 lines 19 to page 31, line 4, please?

6 THE COURT: Go ahead.

7 MR. McKNIGHT: Sir, that would be line 19. Are you
8 going to get 19 in there?

9 MR. KELLY: I got it.

10 MR. McKNIGHT: OK.

11 Q. Once again, at your deposition, sir, do you recall you were
12 asked this question:

13 "Q Do you understand Canal has designated you as a 30(b)(6)
14 witness?"

15 "A Yes."

16 "Q To satisfy the rules of 30(b)(6), you understand that you
17 must give complete, knowledgeable, and binding answers on
18 Canal's behalf; correct?"

19 "A Yes."

20 Do you recall giving that testimony?

21 A. I don't, but I see it now.

22 Q. And was that true at the time, sir?

23 A. I guess.

24 MR. McKNIGHT: Your Honor, could I have an instruction
25 from the Court about what a 30(b)(6) witness is?

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Tasch - Direct

1 MR. SCHOENSTEIN: Objection.

2 THE COURT: What's that? I didn't hear, counsel.

3 MR. SCHOENSTEIN: Objection. I object to that
4 instruction.

5 THE COURT: That objection is sustained.

6 MR. McKNIGHT: Very well, your Honor.

7 BY MR. McKNIGHT:

8 Q. Mr. Tasch, Canal's policy for paying for employees and
9 working meals, is that if they were working, and especially at
10 night or on call for Mr. De Niro, that their meals would be
11 taken care of; is that correct?

12 A. As far as I know. Sorry. As far as I know.

13 Q. And Canal's policy for employees' use of taxis, Ubers or
14 Lyfts was if an employee needed to take a taxi, Uber or Lyft
15 for work-related reasons, it was Canal's policy that Canal
16 would pay for that taxi, Uber or Lyft; isn't that correct, sir?

17 A. As far as I know. I never saw the written policy.

18 Q. And the specifics of Canal's policy of paying back
19 employees for unused vacation days were not written down
20 anywhere. Isn't that correct?

21 A. As far as I know.

22 Q. And during the time that Ms. Robinson was employed at
23 Canal, Canal didn't have a written policy about the use of
24 credit cards; isn't that correct, sir?

25 A. As far as I know that's correct.

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Tasch - Direct

1 Q. As far as you know, Canal paid certain employees for unused
2 vacation going back at least as far as October 2013; isn't that
3 correct?

4 A. I'm not sure about the date, but yes. Plaintiff would send
5 me an e-mail every year with everybody's unused vacation.

6 Q. Now, you just stated that you would get an e-mail. Is that
7 an e-mail that you would usually receive toward the end of the
8 calendar year?

9 A. Yes. That is correct.

10 Q. And that e-mail would set forth bonuses and unused vacation
11 days to be paid by your company on behalf of Canal?

12 A. Vacation days for sure. Bonuses I don't remember, per se.

13 Q. And while Ms. Robinson was employed by Canal there were --
14 Mr. De Niro never communicate to you that he did not approve
15 the vacation day reimbursement listed on Ms. Robinson's e-mails
16 that she sent to you at the end of the year?

17 A. I don't remember any reimbursements.

18 Q. Do you recall whether he ever disapproved of the
19 reimbursements on the e-mails that you received?

20 A. Not to my knowledge.

21 Q. And do you recall whether -- you do not recall Mr. De Niro
22 ever raising concerns about paying for vacation days from
23 October 3rd, 2013 through April of 2019?

24 A. I do not.

25 MR. McKNIGHT: I have nothing further, your Honor.

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Tasch - Cross

1 THE COURT: OK.

2 Defense examination.

3 CROSS-EXAMINATION

4 BY MR. SCHOENSTEIN:

5 Q. Mr. Tasch, I am going to try not to tread over the same
6 ground as yesterday too much but just to acclimate us, tell us,
7 again, what is Canal? What kind of company is Canal?

8 A. Canal is an S corporation and a loan-out corp. So, what
9 does that mean? An S corporation, for tax purposes, is that
10 everything flows through to the individual. The entity itself
11 does not pay a corporate tax, it flows through to the
12 individual, who then pays individual tax. And in the old days
13 they used to call these companies loan-out companies. Usually
14 the shareholder was loaned out for the services that he or she
15 provided.

16 Q. What are the sources of Canal's revenue?

17 A. The sources of Canal's revenue are generally Mr. De Niro's
18 acting services, any residuals he would get from prior films,
19 and commercials.

20 Q. Do any of his other business entities -- the restaurants,
21 the hotels -- do those monies flow through Canal?

22 A. They do not.

23 Q. And is that the entirety of Canal's revenue, as best you
24 know?

25 A. Yes.

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Tasch - Cross

1 Q. And, generally speaking, what are the expenses of Canal?

2 A. Well, you have professional fees, travel and entertainment,
3 office expense, business gifts, employee salaries,
4 compensation.

5 Q. Professional fees. Does that mean people like you?

6 A. Yes.

7 Q. And Mr. Harvey?

8 A. Yes.

9 Q. What's the biggest category of Canal's expenses?

10 A. Generally would be the compensation expense.

11 Q. And that's for people who work in the office?

12 A. Yes. It's employees of Canal.

13 Q. Including Ms. Robinson?

14 A. Correct.

15 Q. Who else would fall in that category -- actually, I'm going
16 to come back to that.

17 And were there any other categories you could think
18 of, of expense, for Canal?

19 A. Well, there is FICA expense because the employer is
20 required to pay their share. There were other categories but
21 those were the major ones.

22 Q. And so, when you take away expenses from revenue, hopefully
23 you have profit. What happens to the profit of Canal?

24 A. As I said before, since it is an S corp it flows through to
25 the individual -- in this case Mr. De Niro, he owns a hundred

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Tasch - Cross

1 percent of the company -- would receive a K-1 from the company.

2 Q. Very good.

3 Do you know the plaintiff Ms. Chase Robinson?

4 A. I do.

5 Q. When did you first start interacting with her?

6 A. My educated guess is probably sometime in 2009.

7 Q. And in what capacity did you interact with Ms. Robinson?

8 A. Generally going over things in the office that were going
9 on.

10 Q. Was she one of your primary contacts at Canal during the
11 time period 2009 until she resigned in 2019?

12 A. I would say yes.

13 Q. And how was your relationship with Ms. Robinson?

14 A. She was an employee of the company. I treat all employees
15 of the client all the same.

16 Q. I wasn't -- that's good to know but I meant more how did
17 you get along with her.

18 A. For most part we got along OK.

19 Q. Did you interact frequently?

20 A. More as the years went on than at the beginning.

21 MR. SCHOENSTEIN: Can we pull up Defendant's Exhibit
22 5, please?

23 Your Honor, I'm going to offer Exhibit 5. I don't
24 think there is any objection.

25 MR. McKNIGHT: No objection.

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Tasch - Cross

1 THE COURT: Received.

2 (Defendant's Exhibit 5 received in evidence)

3 MR. SCHOENSTEIN: If we can publish to the jury,
4 please, and scroll down? There we go. Go to the Mark Bosswick
5 e-mail, thank you. Stop right there, Ms. Cardona.

6 BY MR. SCHOENSTEIN:

7 Q. Do you see this e-mail from Mr. Bosswick to you and
8 Ms. Robinson in July of 2017?

9 A. I do.

10 Q. Who was Mr. Bosswick, by the way?

11 A. Mr. Bosswick, at this time, was the managing partner --
12 comanaging partner of Berdon LLP.

13 Q. And who is Francesca Commisso?

14 A. She was, at that time, the bookkeeper that worked on the
15 Canal account.

16 Q. And so, Mr. Bosswick wrote to you on July 20, 2017: Please
17 adjust Chase's compensation to \$175,000 per year, effective
18 immediately, and another increase to \$200,000 effective January
19 1, 2018.

20 Do you see that?

21 A. I do. I do. I'm sorry.

22 Q. And is that consistent with your recollection of what her
23 compensation was during those time periods?

24 A. Yes.

25 Q. Did you have any professional opinion at the time as to

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Tasch - Cross

1 that level of compensation?

2 MR. McKNIGHT: Objection, your Honor.

3 THE COURT: Sustained.

4 MR. SCHOENSTEIN: Let's take down that exhibit and put
5 up Defendant's Exhibit 337.

6 THE COURT: Any objection to 337?

7 MR. McKNIGHT: No, your Honor.

8 THE COURT: 337 is received.

9 (Defendant's Exhibit 337 received in evidence)

10 BY MR. SCHOENSTEIN:

11 Q. So 337 is a text from the plaintiff dated March 11, 2017.

12 Do you see that?

13 A. I do.

14 Q. And I'm going to read some of it to you, I will have some
15 questions about it. She writes to -- Robin Chambers: Michael
16 Tasch is the most condescending, dismissive, arrogant and
17 impersonal accountant I have ever met right after Mark
18 Bosswick. Michael tries to discount everything I have done for
19 Bob to protect him in both HR and looking into everything
20 Berdon has overlooked or chosen to take a blind eye to for the
21 past 10 years.

22 Do you see that language?

23 A. I do.

24 Q. Did Ms. Robinson ever say any of those things to your face?

25 A. Absolutely not.

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Tasch - Cross

1 Q. Do you agree with her assessment that you were
2 condescending, dismissive, arrogant and impersonal?

3 A. Absolutely not.

4 Q. And were any of those things accurate about Mark Bosswick?

5 A. Absolutely not.

6 Q. Now, turning to the rest of this she writes: And all for
7 his own salvation, never in Bob's best interest.

8 Sir, do you think in your service to Mr. De Niro you
9 have done anything other than act in his best interest?

10 A. No. Always in his best interest.

11 Q. And then Ms. Robinson wrote: He thinks Sandy is on notice.
12 Berdon should be as well for their incompetence, lack of being
13 proactive, and never having Bob's best interest at heart. They
14 do a great disservice to Bob.

15 Do you agree with that assessment?

16 A. Of course not.

17 Q. Do you know who Sandy is?

18 A. I am guessing she's -- probably Sandy O'Hearan.

19 Q. Who is Sandy?

20 A. She was CEO or the CFO of Tribeca Film Center and Tribeca
21 Productions; Tribeca Enterprises at one time.

22 Q. And did Ms. Robinson, ever to your face, raise her concerns
23 with Sandy O'Hearan?

24 A. There was one time where there was a particular person that
25 was going to be let go and the plaintiff had given them

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Tasch - Cross

1 instructions, according to her, not to mention it to her and
2 they did mention it to that employee. So that was the only
3 time I really heard about anything.

4 Q. Do you recall plaintiff raising issues about other Canal
5 employees to you?

6 A. I'm sorry?

7 Q. Do you recall plaintiff raising issues about any other
8 Canal employees to you?

9 A. Not in particular.

10 Q. Was Ms. Robinson paid during the time period she was
11 working abroad?

12 A. As far as my recollection is, yes.

13 Q. Did there come a time when an assistant was hired to work
14 under her?

15 A. Yes.

16 Q. And were you involved in that?

17 A. No.

18 Q. Did you approve it?

19 A. No.

20 Q. Did you have any understanding of why Ms. Robinson needed
21 an assistant?

22 A. The plaintiff told me the reason she did.

23 Q. What was that?

24 A. It was too much work for her to work on Canal and the
25 townhouse at the same time.

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Tasch - Cross

1 Q. Was it your understanding that the assistant's hiring was
2 connected to the work on the townhouse?

3 A. Yes.

4 Q. Did there come a time when plaintiff brought healthcare
5 issues to your attention?

6 A. Yes.

7 Q. When was that, as best you recall?

8 A. '17, maybe? The year 2017, maybe?

9 Q. And do you recall what those concerns were?

10 A. Well, she felt the plan that we had was not very good and
11 conducive to all the employees. She felt -- the plaintiff felt
12 that she could find a better plan that would work for Canal
13 Productions.

14 Q. And what was the outcome of that?

15 A. The eventual outcome was that we stayed with the plan we
16 had.

17 Q. Was a meeting held in that regard?

18 A. It was.

19 Q. And was the determination made at that meeting?

20 A. It was.

21 Q. Were you there?

22 A. I was.

23 Q. Was plaintiff there?

24 A. Plaintiff was there.

25 Q. Was Mr. De Niro there?

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Tasch - Cross

1 A. Mr. De Niro was there.

2 Q. And what was the conclusion of the meeting?

3 A. The conclusion was Mr. De Niro decided to keep the plan the
4 same.

5 Q. What, if any reaction, did plaintiff have, that you
6 observed?

7 A. Well, I would only be making an educated guess, but she
8 certainly --

9 MR. McKNIGHT: Objection.

10 MR. SCHOENSTEIN: No guessing, sir.

11 THE COURT: Objection is sustained.

12 MR. SCHOENSTEIN: I want to know what you saw.

13 THE WITNESS: Sorry. I'm sorry. Ask it again,
14 please?

15 BY MR. SCHOENSTEIN:

16 Q. What did you see or hear in terms of her reaction?

17 A. I didn't see --

18 MR. McKNIGHT: Objection, your Honor?

19 THE COURT: The objection is overruled, but so we have
20 a clear record, Mr. Schoenstein, would you mind asking the
21 question again and the witness will answer it again.

22 MR. SCHOENSTEIN: Sure.

23 BY MR. SCHOENSTEIN:

24 Q. Did you see or hear any reaction from the plaintiff at that
25 meeting?

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Tasch - Cross

1 A. I did not.

2 Q. Did you have any discussions about Ms. Robinson with
3 Mr. De Niro in the time frame January to March 2019?

4 A. I'm not sure how to answer that question. Maybe you could
5 narrow it for me?

6 Q. Did you raise any concerns, in early 2019 with Mr. De Niro,
7 regarding Ms. Robinson?

8 A. Not that I remember at that time.

9 Q. At any other time?

10 A. Well, down the road, March-April, the expenses for Canal,
11 the assistant, the dollars going out the door, and the petty
12 cash that I was giving to her to get things for the townhouse.

13 Q. And those were items you discussed with Mr. De Niro?

14 A. Yes.

15 Q. And, to the best of your recollection, in what time frame
16 did you do that, sir?

17 A. More in the February/March time frame.

18 Q. 2019?

19 A. Correct.

20 Q. Did you raise those issues on your own accord?

21 A. I did.

22 Q. Were you prompted by Ms. Chen to raise those issues?

23 A. Not at that time.

24 Q. You said in response to questions this morning you didn't
25 know much about policies and procedures because Ms. Robinson

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Tasch - Cross

1 set the policies and procedures?

2 A. Correct.

3 Q. What did you mean by that?

4 A. She was in charge, and so generally our role as accountants
5 is never to do the policies and procedures of clients. When we
6 get asked, if there is a written policy and the client asks us
7 to review it, we will do that. But we don't get involved in
8 policies or procedures, it is not our job.

9 Q. And did you have an understanding as to whose job that was
10 at Canal?

11 A. My recollection is that the plaintiff took on that job.

12 Q. And did plaintiff, as far as you know, ever prepare any
13 written policies or procedures regarding meals?

14 A. I do not know that.

15 Q. Did you ever see any written policies or procedures
16 prepared by plaintiff regarding Ubers, taxis, or Lyfts?

17 A. I did not.

18 Q. Did you ever receive any written policies or procedures
19 prepared by plaintiff regarding vacation days?

20 A. I did not.

21 Q. Did you ever see any written policies or procedures
22 prepared by plaintiff regarding use of corporate credit cards?

23 A. I did not.

24 Q. Do you recall Mr. De Niro moving into a new townhouse in
25 the time frame late 2018?

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Tasch - Cross

1 A. It was around September of '18, I believe.

2 Q. What, if any involvement, did your accounting firm have
3 with that townhouse?

4 A. The only involvement at that time was one of Bob's
5 attorneys prepared the lease, we made sure that the lease got
6 signed, sent back to the attorneys to send to the landlord, and
7 we paid the first month's rent and security deposit.

8 Q. And did you have any involvement with household staffing?

9 A. I did not.

10 Q. Did you have involvement with paying household staffing?

11 A. Yes.

12 Q. Did you deal with Ms. Robinson with relation to the
13 townhouse?

14 A. Not in general. I mean, if there was something there, or
15 maybe she needed petty cash that would be the time I would have
16 dealt with the plaintiff.

17 Q. Did there come a time when you met Tiffany Chen?

18 A. There was a time, yes.

19 Q. When was that?

20 A. I believe it was sometime in April of '19.

21 Q. We heard some comments of yours on a recording yesterday
22 where I think you said you had met her for five minutes and you
23 had a reaction to her.

24 Do you recall that?

25 A. I don't think -- if that's what it said. I think if I

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Tasch - Cross

1 would have met her for five minutes I would have had it figured
2 out.

3 Q. Well, have you known her now for four years?

4 A. I have.

5 Q. And do you have a relationship with Ms. Chen?

6 A. I do.

7 Q. And how is it now?

8 A. The relationship is very good.

9 MR. SCHOENSTEIN: Can we pull up Defendant's Exhibit
10 35, please?

11 We offer this, your Honor, if there is no objection.

12 MR. McKNIGHT: Can I see it?

13 THE COURT: Any objection?

14 MR. McKNIGHT: No objection, your Honor.

15 THE COURT: 35 is received.

16 (Defendant's Exhibit 35 received in evidence)

17 MR. SCHOENSTEIN: Let's start, Ms. Cardona, with the
18 earliest in time e-mail. Scroll back up? OK.

19 BY MR. SCHOENSTEIN:

20 Q. So there is a March 8, 2019 e-mail to Ms. Robinson copying
21 you and Mr. De Niro, subject: Mold report.

22 Do you see that?

23 A. I do.

24 Q. Do you recall the issue of mold in the apartment -- in the
25 townhouse, coming up in early 2019?

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Tasch - Cross

1 A. I do. A little before this time I think it came up.

2 Q. And what was the issue, as best you recall?

3 A. Tiffany complained of headaches and maybe rashes and she
4 felt that there was mold in the house. We had somebody come in
5 and look. I think at the beginning there was no mold, they
6 found some stuff in the air conditioning, they cleaned it out,
7 she put up some fans and other things like that, and she kept
8 insisting that there was mold.

9 Q. Let me stop you right there.

10 A. Sure.

11 Q. As she kept insisting that there was mold, what was your
12 reaction to that?

13 A. Quite frankly, I did not believe her.

14 Q. And, did Ms. Robinson express to you any reaction to
15 Tiffany's complaints about mold?

16 A. Yes. She did not -- the plaintiff did not believe her
17 either.

18 Q. Do you recall the plaintiff telling you, Tiffany Chen must
19 have Munchausen's?

20 MR. McKNIGHT: Your Honor, I object to the leading
21 nature of the questions.

22 THE COURT: The objection is sustained.

23 Q. What, if anything, did plaintiff have to say about Ms. Chen
24 and her report of mold?

25 A. I don't recall.

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Tasch - Cross

1 Q. OK. And what happened with the mold issue? How was it
2 resolved?

3 A. Eventually the mold was found and it was remediated. There
4 was a leak I think in the roof, and it came down the side wall
5 and that's where the mold was coming in there. So, eventually
6 it was taken care of and everything was OK at that time.

7 Q. Was that in the March 2019 time frame?

8 A. Yes.

9 Q. Do you know if Ms. Robinson ever apologized to Ms. Chen for
10 not believing her?

11 A. I do not.

12 MR. McKNIGHT: Objection. He is continuing to lead.

13 THE COURT: No. That's overruled.

14 MR. SCHOENSTEIN: Let's pull up, please, Plaintiff's
15 Exhibit 69.

16 This is already in evidence, your Honor.

17 Do you know what? Actually, I'm sorry Ms. Cardona.
18 Can you go back to Defendant's Exhibit 35? I had another
19 question that I forgot. Thank you.

20 Q. So we saw the Tiffany Chen e-mail. Can we scroll up? OK.

21 So do you see that, sir, in response to Ms. Chen's
22 e-mail about mold, Ms. Robinson wrote to you and Tom Harvey on
23 March 8, 2019?

24 A. I do.

25 Q. And Ms. Robinson, in response to Ms. Chen's complaint that

NB15rob1

Tasch - Cross

1 mold was causing her rashes and other physical ailments wrote:
2 Dear God, please get back to her ASAP. This is targeted at me.
3 When you speak to Bob, you need to include her, otherwise she
4 assumes I'm at fault.

5 Do you see that language?

6 A. I do.

7 Q. Is that consistent with what plaintiff was saying to you at
8 the time about the physical injuries Ms. Chen was suffering
9 from the mold?

10 A. It is. The targeted part I'm not sure of.

11 MR. SCHOENSTEIN: Now let's go to Exhibit 69,
12 please -- Plaintiff's Exhibit 69.

13 Q. There came a time when Ms. Robinson resigned; correct?

14 A. Yes. That's correct.

15 Q. And we see here in Exhibit 69 that Mr. De Niro forwarded
16 her resignation to you and others on April 6, 2019, at
17 8:48 p.m. Do you see that?

18 A. I do.

19 Q. Do you recall receiving it that evening?

20 A. I don't remember.

21 Q. Do you recall what your reaction was when you learned
22 Ms. Robinson resigned?

23 A. My reaction was I was a little surprised.

24 Q. You were not anticipating her resignation?

25 A. I was not.

NB15rob1

Tasch - Cross

1 Q. Had you been told she was being fired?

2 A. No.

3 MR. McKNIGHT: Your Honor, objection.

4 THE WITNESS: I'm sorry.

5 THE COURT: Overruled.

6 A. OK. I'm sorry. Can you ask that again, please?

7 Q. No, no. I said had you been told she was being fired.

8 A. No.

9 Q. So, at the time of the resignation -- you can take down
10 that exhibit, thank you.

11 At the time of the resignation, what was the office
12 staff at Canal? Who was on it?

13 A. Michael Kaplan was there; Sabrina was there; before her
14 resignation the plaintiff was there. I think that's all of my
15 recollection.

16 Q. How about her assistant? Was her assistant there at the
17 time?

18 A. I don't know -- I just don't remember if Lulu was let go
19 before or after.

20 Q. And what about Gillian Spear? Was she there at that time?

21 A. She was certainly there at some point in time, I just don't
22 remember what the date was.

23 Q. And was there a point in time in 2019 where all five of
24 those office workers were engaged by Canal?

25 A. Well, the ones I mentioned for sure. Gillian I just don't

NB15robl

Tasch - Cross

1 remember, to be honest.

2 Q. And what is the office staffing for Canal today?

3 A. The staffing for Canal today is there are three that work
4 in the office.

5 Q. And who is that?

6 A. There is Francis Bogan, Gabby Lauredine and Sabrina.

7 Q. And does Sabrina work full-time for Canal?

8 A. She does.

9 Q. And has there been any dropoff in the office's performance
10 going from five to three employees?

11 A. Yes, there is not --

12 MR. McKNIGHT: Objection.

13 THE COURT: Sustained for lack of foundation.

14 Q. Well, sir, you interact with Canal's office; is that fair
15 to say?

16 A. That is fair to say.

17 Q. You get information and reports from them on a regular
18 basis?

19 A. Well, not so much reports. We generally speak every day
20 just because there is things going on, bills to be paid,
21 situations to deal with.

22 Q. Has there been any noticeable change in activity that you
23 have observed?

24 A. No.

25 MR. McKNIGHT: Your Honor, I object.

NB15rob1

Tasch - Cross

1 THE COURT: That's overruled.

2 MR. McKNIGHT: OK.

3 BY MR. SCHOENSTEIN:

4 Q. You have -- you are familiar with the cost of Canal's
5 office staff?

6 A. Yes.

7 Q. And how does the cost of the five office staff in 2019
8 compare to the cost of the three office staff now?

9 A. Well, the cost is much less today.

10 Q. Has there been any office worker that was ever paid as much
11 as Chase Robinson?

12 A. No.

13 Q. Has Berdon had to pick up any additional responsibilities
14 due to the departure of Ms. Robinson?

15 A. No.

16 Q. Yesterday counsel played for you a snippet of a telephone
17 call you had with plaintiff. Do you recall that?

18 A. Yes, I do.

19 Q. And that call was on March 7, 2019 so that would have been
20 around the time this mold stuff was going on; right?

21 A. Yes.

22 Q. Did Ms. Robinson have your permission to record telephone
23 calls?

24 A. She did not.

25 Q. Did she tell you she was doing that?

NB15rob1

Tasch - Cross

1 A. Absolutely not.

2 Q. Did she tell you she was recording calls with other Canal
3 employees?

4 A. Absolutely not.

5 Q. Did she tell you she was recording her calls with
6 Mr. De Niro?

7 A. Absolutely not.

8 MR. SCHOENSTEIN: Let's put up DX 81, please -- 81-A.
9 I believe there is no objection to this either?

10 THE COURT: Any objection?

11 MR. McKNIGHT: No objection, your Honor.

12 THE COURT: Received.

13 (Defendant's Exhibit 81-A received in evidence)

14 BY MR. SCHOENSTEIN:

15 Q. You were asked, after the departure of Ms. Robinson, to
16 help gather some information with respect to SkyMiles?

17 A. Yes.

18 Q. By the way, did you conduct an investigation of Chase
19 Robinson?

20 A. I'm not sure what that means.

21 Q. Well, did your office undertake any forensic investigation
22 of the activities of Ms. Robinson?

23 A. No, we did not.

24 Q. To the extent there was any controversy about
25 Ms. Robinson's departure, what role did your office play, if

NB15rob1

Tasch - Cross

1 any?

2 A. When asked for information, we provided the information.

3 Q. And was this information in this e-mail, was that within
4 the information you were asked to gather and provide?

5 A. Yes. Yes.

6 MR. SCHOENSTEIN: Now, I want to scroll down,
7 Ms. Cardona, to the page that summarizes the SkyMiles
8 transfers. Keep going. There you go.

9 Q. Do you recall seeing this list of transfers of frequent
10 flyer miles in 2019?

11 A. I do.

12 Q. This is information you obtained to find out what SkyMiles
13 had been moved from Canal's to Ms. Robinson's account?

14 A. That is correct.

15 Q. And you passed this information own to who?

16 A. I passed this information on to Tom Harvey and Mr. De Niro.

17 Q. So, do you see that on March 7, 2019, 999,000 Delta
18 frequent flyer miles were transferred to Ms. Robinson's
19 account?

20 A. I do.

21 Q. And that's the same day she secretly recorded a telephone
22 call with you?

23 A. I don't remember the date, but.

24 Q. Well, I will represent to you the tape we heard yesterday
25 was dated March 7th.

NB15rob1

Tasch - Cross

1 A. Then the answer is --

2 Q. You would agree with me this says March 7?

3 A. The answer is yes.

4 Q. And did she ever tell you in that phone call: By the way,
5 I'm transferring a million frequent flyer miles to my personal
6 account.

7 A. Absolutely not.

8 Q. Did she tell you she would be making two more transfers of
9 a million miles each, later that month?

10 A. Absolutely not.

11 Q. Did Mr. De Niro ever tell you he approved her transferring
12 5 million miles?

13 A. Absolutely not.

14 Q. Did he ever tell you she was authorized to sweep the
15 account and take all the SkyMiles?

16 A. Absolutely not.

17 Q. Did he ever tell you she could take SkyMiles, quit, and
18 keep the SkyMiles?

19 MR. McKNIGHT: Your Honor, he is leading again.

20 THE COURT: No, it's overruled, sir.

21 Q. Did he ever tell you that?

22 A. Absolutely not.

23 Q. Did she ever tell you that? Did Ms. Robinson ever say: I
24 have a right it take all the miles I want, quit tomorrow, and
25 keep em.

NB15rob1

Tasch - Redirect

1 A. Absolutely not.

2 MR. SCHOENSTEIN: That's all I have.

3 THE COURT: Redirect.

4 MR. McKNIGHT: Mr. Kelly, can we have Plaintiff's
5 Exhibit 98, please? I believe there is no objection to this.

6 THE COURT: Any objection to PX- 98?

7 MR. SCHOENSTEIN: Can I just see it quick? No
8 objection.

9 THE COURT: Received.

10 (Plaintiff's Exhibit 98 received in evidence)

11 REDIRECT EXAMINATION

12 BY MR. McKNIGHT:

13 Q. Now, we are looking at Plaintiff's Exhibit 98, correct,
14 sir? And if you will scroll down to this, further on, Ms. Chen
15 wrote to you that Bob wanted me to get AmEx bills for spending,
16 some during the setting up of the townhouse; correct?

17 A. I'm not sure I see that -- oh, I do see it now. Yes.

18 Q. And you were seeing this from Tiffany Chen on April 4,
19 2019?

20 A. That is correct.

21 Q. And this is one of the inquiries you got with respect to an
22 investigation into this particular case and into Ms. Robinson
23 at this time before she resigned; correct?

24 MR. SCHOENSTEIN: Objection. Form.

25 Q. This is on April 4th, correct?

NB15robl

Tasch - Redirect

1 A. It says it is on April 4th.

2 Q. And she resigned on April 6?

3 A. OK.

4 Q. So you received this before she resigned; correct?

5 A. If the April 6 date is correct, then I would say yes.

6 Q. Yes.

7 MR. McKNIGHT: Can I see Plaintiff's Exhibit 156?

8 MR. SCHOENSTEIN: No objection.

9 THE COURT: Received.

10 (Plaintiff's Exhibit 156 received in evidence)

11 BY MR. McKNIGHT:

12 Q. Mr. Tasch, this is another e-mail that you got from
13 Ms. Chen asking you for information about Ms. Robinson;
14 correct?

15 A. Yes. That's correct.

16 Q. And this was dated April 6, correct?

17 A. Correct.

18 Q. And what time on April 6 did you receive this?

19 A. It looks like 1:59 p.m.

20 Q. And you testified during direct examination that you didn't
21 hear about the resignation until the evening of April 6; isn't
22 that correct?

23 A. I'm not sure if I remember the question. I don't remember
24 when I found out about the resignation.

25 (Continued on next page)

NBA6ROB2

Tasch - Redirect

1 BY MR. MCKNIGHT:

2 Q. Approximately 8 o'clock in the evening you received an
3 e-mail, correct, from -- about the resignation?

4 A. Was that one of the e-mails that counsel showed before?

5 Q. Sure is.

6 A. Yes, okay.

7 Q. All right. So you received this before the resignation,
8 correct?

9 A. Yes.

10 MR. MCKNIGHT: Could I see Plaintiff's Exhibit
11 Number 157, please?

12 THE COURT: Any objection to 157 received.

13 MR. SCHOENSTEIN: No.

14 THE COURT: Received.

15 (Plaintiff's Exhibit 157 received in evidence)

16 BY MR. MCKNIGHT:

17 Q. This is another e-mail you got from Tiffany Chen, correct?

18 A. Correct.

19 Q. In this e-mail which is April 8, it indicates that Bob
20 wants all of Chase's charges and expenses. Everything she had
21 been spending. Did you get this e-mail on that date, sir?

22 A. Yes.

23 Q. And you also received a call from Tiffany Chen about
24 Ms. Robinson where she was trying to find evidence of alleged
25 stealing on behalf of Ms. Robinson, did you not?

NBA6ROB2

Tasch - Redirect

1 MR. SCHOENSTEIN: Objection.

2 THE COURT: Give me one moment. Overruled. The
3 objection is overruled.

4 A. I'm sorry could you repeat the question, please.

5 BY MR. MCKNIGHT:

6 Q. I sure will.

7 You can take down Exhibit 157.

8 I'm saying you also received a phone call from
9 Tiffany Chen about Ms. Robinson where she was trying to find
10 evidence about Ms. Robinson's stealing; is that correct?

11 A. I don't recall that.

12 Q. I'd like to show you, just to show to you, Tasch deposition
13 Page 430, Lines 21 to 25.

14 THE COURT: Any objection?

15 MR. SCHOENSTEIN: No objection to him showing it to
16 the witness.

17 BY MR. MCKNIGHT:

18 Q. Do you see this, Mr. Tasch?

19 A. I do.

20 Q. Does that refresh your recollection as to whether you
21 received a phone call from Ms. Chen about looking into
22 information about whether she allegedly had been stealing?

23 A. This does not say anything about a phone call.

24 THE COURT: The question is whether it refreshes your
25 recollection about a phone call. Does it refresh your

NBA6ROB2

Tasch - Redirect

1 recollection?

2 THE WITNESS: No, does not.

3 THE COURT: All right.

4 MR. MCKNIGHT: Could I see Plaintiff's Exhibit 147,
5 please?

6 MR. SCHOENSTEIN: No objection.

7 THE COURT: Received.

8 (Plaintiff's Exhibit 147 received in evidence)

9 BY MR. MCKNIGHT:

10 Q. Now, Mr. Tasch, this is another e-mail that you received
11 from Ms. Chen, correct -- or rather from Mr. Kaplan to Ms. Chen
12 and copied to you?

13 A. I was a CC.

14 Q. All right. And this was further investigating into issues
15 involving Ms. Robinson, correct?

16 A. Not sure. Investigation in my world is different than in
17 yours. I provided information when asked.

18 MR. MCKNIGHT: You can take this down.

19 BY MR. MCKNIGHT:

20 Q. Canal had no policy regarding investigation into employees'
21 expenses, correct?

22 A. Again, it's different in my world than yours, so there were
23 no written policies that I saw.

24 Q. And at some point in time, you received, obviously from
25 these letters and e-mails, various requests for information

NBA6ROB2

Tasch - Redirect

1 about Ms. Robinson, correct?

2 A. That is correct.

3 Q. And you were asked to produce, and you did produce,
4 American Express statements?

5 A. Yes.

6 Q. And you were asked to produce, and you did produce, certain
7 account statements and e-mails regarding petty cash?

8 A. I don't know about account statements. E-mails I did
9 provide.

10 Q. But in the course of reviewing this information, Berdon
11 employees --

12 A. Berdon.

13 Q. Sorry, pronounced it wrong -- Berdon employees did nothing
14 to investigate or verify whether there were any authorized
15 American Express charges for the Paola meals?

16 A. Correct.

17 Q. And Berdon employees did nothing to investigate or verify
18 whether there were any authorized charges associated with Whole
19 Foods, Dean & DeLuca on the American Express charge?

20 A. Correct.

21 Q. And Berdon employees did nothing to investigate or verify
22 whether there were any authorized charges associated with Uber,
23 taxi, Lyft, on the American Express charges?

24 A. Correct.

25 Q. And Berdon employees did nothing to investigate or verify

1 whether a March 2018 trip was authorized on any card?

2 A. I don't know what that trip was about.

3 Q. All right. And Berdon employees did not do anything or
4 reach a conclusion as to whether Robinson had engaged in any
5 wrongdoing?

6 A. That is correct.

7 MR. MCKNIGHT: I have nothing further, your Honor.

8 THE COURT: Mr. Schoenstein.

9 MR. SCHOENSTEIN: Briefly.

10 MR. MCKNIGHT: One more question, your Honor.

11 THE COURT: Okay.

12 BY MR. MCKNIGHT:

13 Q. And all Berdon employees did, after they were asked for
14 this information, was pass it on to the requesters; isn't that
15 correct?

16 A. Well, when you say "Berdon employees," all the information
17 came to me and I passed it on.

18 Q. All right. And so you received requests. Did you pass the
19 information on to the requesters?

20 A. Correct.

21 Q. And you did nothing during that process to determine
22 whether any of these charges or any of the expenses were
23 authorized in any way?

24 A. Correct.

25 THE COURT: Mr. Schoenstein.

NBA6ROB2

Tasch - Recross

1 RE CROSS EXAMINATION

2 BY MR. SCHOENSTEIN:

3 Q. Sir, is your accounting firm retained from time to time to
4 do forensic investigations?

5 A. It is.

6 Q. Was it retained to do a forensic investigation of Chase
7 Robinson?

8 A. It was not.

9 Q. Would that have to be a separate retention from its usual
10 engagement?

11 A. Yes.

12 Q. Do you usually do investigations of matters where you're
13 also serving as the active accountant?

14 A. The answer to that is no, we do not.

15 Q. And so --

16 A. It's a conflict of interest.

17 Q. Say it again?

18 A. It's a conflict of interest.

19 Q. Right. Because you were involved, you wouldn't
20 investigate?

21 A. Correct.

22 Q. So instead you gathered up all the information as
23 requested, right?

24 A. Yes, that is correct.

25 Q. And who did you pass it on to?

NBA6ROB2

Tasch - Recross

1 A. I passed it on to either Tiffany for Bob or Tom Harvey.

2 Q. Tom Harvey for?

3 A. Tom Harvey.

4 Q. Yes.

5 A. Yes.

6 MR. SCHOENSTEIN: Thank you.

7 THE COURT: All right. Sir, you are excused as a
8 witness. You may step down.

9 (Witness excused)

10 THE COURT: Plaintiff may call their next witness.

11 MR. MACURDY: Plaintiff calls Michael Kaplan,
12 your Honor.

13 THE COURT: Let's bring Mr. Kaplan in.

14 (Pause)

15 THE COURT: Mr. Kaplan, please step forward into the
16 witness box. Remain standing, my courtroom deputy will
17 administer the oath.

18 MICHAEL IRA KAPLAN,

19 called as a witness by the Plaintiff,

20 having been duly sworn, testified as follows:

21 THE COURT: Mr. Kaplan, you may be seated.

22 Please speak into the microphone, try to keep your
23 voice up. Pause after the question is asked before you answer.
24 Counsel, you may inquire.

25 MR. MACURDY: Thank you, your Honor.

NBA6ROB2

Kaplan - Direct

1 DIRECT EXAMINATION

2 BY MR. MACURDY:

3 Q. Good morning, sir.

4 A. Good morning.

5 Q. You work for Canal Productions?

6 A. I worked for Canal Productions, yes.

7 Q. You worked for them full time for about 14 years or so?

8 A. I worked for full-time from -- I started in 2003 through
9 2020.

10 Q. Okay. And you --

11 THE COURT: You're no longer working for them; is that
12 correct?

13 THE WITNESS: I only work as an independent contractor
14 now.

15 BY MR. MACURDY:

16 Q. You work as an independent contractor?

17 A. I do some work for them, but I'm not a full-time employee.

18 Q. Correct. So it sounds like for about 16, 17 years, you
19 worked full-time for Canal?

20 A. Yeah.

21 Q. And now you continue to work for them, but on a contracting
22 basis?

23 A. I do some consulting and help out with some projects on the
24 side. But I don't go into their office or -- yeah.

25 Q. You still receive compensation from Canal, correct?

NBA6ROB2

Kaplan - Direct

1 A. I do, yes.

2 Q. So you've been with Canal for about 20 or so years total?

3 A. Yes.

4 Q. You want to keep working for Canal, right?

5 A. No, no, my time is winding down. I'm a real estate agent
6 now. I have a podcast. I'm a writer, bunch of things going
7 on. I'm not looking to keep working for Canal forever, no.

8 Q. So you're not interested in continuing to do work for
9 Canal?

10 A. No.

11 Q. You don't appreciate receiving --

12 A. No, of course, I'd like to get paid. Sorry, didn't mean to
13 interrupt. But it's not my goal to keep working for Canal, no.

14 Q. Well, sir, I'm sure like the rest of us, you appreciate
15 making money, right?

16 A. Sure.

17 Q. And you wouldn't turn down continued work from Canal,
18 correct?

19 A. My goal is -- in life right now starting -- just got into
20 real estate a year ago, I have a podcast, I write. Those are
21 my goals. My goal is not to continue to work for Canal. This
22 is not like a resignation letter or anything. I don't work
23 there full time, so I don't need to do that. So I'm just
24 saying, no, I do not plan to continue to work there much
25 longer.

NBA6ROB2

Kaplan - Direct

1 Q. So you're telling us that you plan to not work for Canal
2 much longer; that's your testimony?

3 A. I've been helping with some archiving projects when they
4 are finished. I do not think I'll -- I have no idea what the
5 future holds, but I don't think I'll be working there much --
6 we'll see.

7 Q. But you expect to be working past today for Canal, correct?

8 A. Yes.

9 Q. You expect to receive some form of compensation from Canal
10 in the future, correct?

11 A. Sure.

12 Q. You don't want to say anything here that would make Canal
13 or anyone associated with it unhappy with you, correct?

14 A. I'm just here to tell the truth.

15 Q. You don't want to say anything here that would make Canal
16 or anyone associated with it unhappy with you, correct?

17 A. I might make them unhappy with some things I say. I have
18 no idea. So, no, that's not correct.

19 Q. From late 2008 onward from your time at Canal, Ms. Robinson
20 was in charge of Canal's office, right?

21 A. Yes.

22 Q. And based on what you observed, Ms. Robinson functioned as
23 a chief of staff of sorts to Mr. De Niro, correct?

24 A. Well, her job evolved over the years. She was an assistant
25 for several years. Then she brought in another person to

NBA6ROB2

Kaplan - Direct

1 become sort of like the assistant, the main assistant. She
2 served as more of an overseer at that point. I think I've used
3 the term chief of staff. I don't actually know what chief of
4 staff really means but...so, yes, she sort of ran the office.

5 Q. You've used the term "chief of staff" to describe
6 Ms. Robinson's role, correct?

7 A. I have used the term, yes.

8 Q. And as part of her job, Ms. Robinson would be looking out
9 for things on the horizon related to Mr. De Niro that Canal
10 would handle or have some involvement in, right?

11 MR. BENNETT: Objection.

12 THE COURT: Basis.

13 MR. BENNETT: Form.

14 THE COURT: Sustained.

15 BY MR. MACURDY:

16 Q. You worked with Ms. Robinson at Canal?

17 A. Yes.

18 Q. You observed the actions that she took, correct?

19 A. Yes.

20 Q. And what you observed included Ms. Robinson looking out for
21 things on the horizon related to Mr. De Niro that Canal would
22 handle or have involvement in, correct?

23 MR. BENNETT: Objection.

24 THE COURT: Sustained.

25 Q. In your observations, in your interactions, in your

NBA6ROB2

Kaplan - Direct

1 discussions with Ms. Robinson, she knew all the lingo and all
2 the people in Mr. De Niro's life, correct?

3 MR. BENNETT: Objection, vague.

4 THE COURT: Sustained. It's both vague and leading.

5 MR. MACURDY: Well, your Honor, this is a witness that
6 works for Canal.

7 THE COURT: I don't think you've established the basis
8 to ask leading questions of this witness.

9 BY MR. MACURDY:

10 Q. Sir, did you feel that Ms. Robinson could get what
11 Mr. De Niro wanted better than others could?

12 A. What do you mean by that?

13 Q. Well, could she achieve results that Mr. De Niro sought
14 better than other employees at Canal?

15 MR. BENNETT: Objection.

16 THE COURT: Sustained.

17 MR. BENNETT: Foundation.

18 THE COURT: Sustained.

19 BY MR. MACURDY:

20 Q. From speaking and observing Mr. De Niro, did you have an
21 understanding that Mr. De Niro considered Ms. Robinson a better
22 enforcer than others?

23 MR. BENNETT: Objection.

24 THE COURT: I'll -- do you have a specific statement
25 of Mr. De Niro's you want to ask about?

NBA6ROB2

Kaplan - Direct

1 MR. MACURDY: I'm asking him about --

2 THE COURT: You're asking him to get into
3 Mr. De Niro's state of mind here. I don't know what "better
4 enforcer" means. Maybe you can ask a better question.

5 BY MR. MACURDY:

6 Q. Sir, have you ever referred to Ms. Robinson as a better
7 enforcer than others for Mr. De Niro?

8 A. I don't know if he used those terms or not, but I think
9 he -- she -- I'm not sure what you mean by enforcer, I guess
10 I'm trying to...

11 Q. Sir, you gave a deposition in this case?

12 A. Yes.

13 Q. You were under oath?

14 A. I was.

15 Q. It was recorded and transcribed?

16 A. Sure.

17 MR. MACURDY: Your Honor, I'd like to read from
18 Mr. Kaplan's deposition. Page 139.

19 MR. BENNETT: What's the line, Counsel?

20 MR. MACURDY: Line 21 to 140, Line 19.

21 THE WITNESS: I'm supposed to read?

22 THE COURT: No. He's asking permission.

23 Is there a line?

24 MR. MACURDY: Your Honor, Line 21 on 139 through
25 Line 19 on 140.

NBA6ROB2

Kaplan - Direct

1 THE COURT: Any objection?

2 MR. BENNETT: Your Honor, I have no problem showing
3 the witness to refresh his recollection, but I don't think any
4 foundation has been laid to impeach with his --

5 MR. MACURDY: No, he denied -- he said he didn't
6 remember making that statement on Line 16.

7 THE COURT: I'll permit it.

8 BY MR. MACURDY:

9 "Q. Mr. De Niro also conveyed that he valued that Ms. Robinson
10 was available to him, correct?

11 "A. I don't think he ever in so many words said that to me.

12 "Q. Was that the message that you got, though?

13 "A. It was implied that he valued that she -- it was a little
14 bit of smoke and mirrors to it, but that she -- that she would
15 get -- that she was aware of everything. She had been around
16 so long. She knew all the names, knew all the lingo, knew all
17 the people and he definitely thought that he didn't have a
18 complete trust in the people in the office to know -- in a --
19 when push came to shove, he thought Chase was a better
20 enforcer. She could be tougher with people, she could get what
21 he wanted better than others could."

22 That was your testimony, sir, correct?

23 A. Yes.

24 Q. And a Canal lawyer was present when you gave your
25 deposition, correct?

NBA6ROB2

Kaplan - Direct

1 A. Yeah.

2 Q. Mr. De Niro communicated to you that he valued how
3 Ms. Robinson made sure that she got things done; is that fair
4 to say?

5 A. As I said it there, it was implied. He thought she, you
6 know, didn't mind being sort of the bad cop to just get things
7 done, get what he needed in some cases.

8 Q. He communicated to you that he valued that, correct, that
9 she --

10 A. He communicated to me that he valued that in all employees.
11 That's what he liked in people in general. So I don't remember
12 the direct conversation. Sorry.

13 Q. Mr. De Niro communicated to you, sir, specifically about
14 Ms. Robinson, that he valued how she got things done, correct?

15 A. I do not remember a specific conversation to that effect.
16 I said implied there because I think I meant that's my memory
17 of how he viewed her as an employee in general.

18 MR. MACURDY: Your Honor, I'd like to read deposition
19 139, Lines 8 to 21 -- 8 to 20, I'm sorry.

20 THE COURT: Any objection?

21 MR. BENNETT: No objection, your Honor.

22 THE COURT: You may do so.

23 BY MR. MACURDY:

24 "Q. Did Mr. De Niro ever communicate to you what he valued in
25 Ms. Robinson's work?

1 "A. Yes, that she was -- he communicated to me that -- that
2 she was -- like she was -- you know, she made sure things
3 ran -- got done. She made sure that things got done. That is
4 what he said to me. She made sure she got things done. That
5 was his opinion of her at some point. I don't know what year
6 that was, though."

7 That was your testimony, sir?

8 A. This deposition was a while ago, so -- yeah, I'm sure I
9 said that. And I'm sure he must have said it in some way to
10 me, but I just don't remember it specifically at the moment.

11 Q. When Ms. Robinson resigned, you wrote to her that she set a
12 great example for hard work, right?

13 A. I replied to an e-mail, she sent me a farewell e-mail and I
14 put that in there, yes.

15 Q. And you wrote that she set a great example for hard work,
16 right?

17 A. I did write that, yes.

18 Q. You wrote that she was a great example of being willing to
19 drop everything, no matter the time, when needed, right?

20 A. She had just resigned and had sent me a very nice e-mail.
21 And I replied with a nice e-mail in kind like a human being.

22 Q. And you wrote she was a great example of being willing to
23 drop everything, no matter the time, when needed, right?

24 A. I did write that, yes.

25 Q. You wrote she was a great example by always looking out for

NBA6ROB2

Kaplan - Direct

1 his privacy first and foremost, right?

2 A. Yes, that was before this, but yes.

3 Q. Mr. De Niro?

4 A. Yes.

5 Q. And from your observations, Ms. Robinson was willing to
6 make herself available for whatever was going on in
7 Mr. De Niro's life, right?

8 MR. BENNETT: Objection.

9 THE COURT: Sustained.

10 BY MR. MACURDY:

11 Q. Sir, in the course of your time at Canal that overlapped
12 with Ms. Robinson, you were not aware of all the times that
13 Mr. De Niro would call Ms. Robinson, correct?

14 A. I wasn't aware of the times he would call any of the
15 employees, no. Only myself.

16 Q. And you don't have any personal knowledge regarding whether
17 Mr. De Niro authorized Ms. Robinson to charge more than what
18 other employees were allowed to charge to the company Amex
19 cards, right?

20 A. No.

21 MR. MACURDY: Mr. Kelly, can you pull up
22 Plaintiff's 7?

23 MR. BENNETT: Your Honor -- sorry.

24 THE COURT: I understand there's an objection to this.
25 And the objection is sustained at the moment. It's cumulative

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Kaplan - Direct

1 and what is the basis for offering Plaintiff's 7?

2 MR. MACURDY: Your Honor, I'll point you to a
3 particular text.

4 THE COURT: Okay.

5 MR. MACURDY: Mr. Kelly, can you highlight down 1157
6 through 113, just make sure 113 is on there. So the last
7 sentence on 113, your Honor.

8 THE COURT: Objection sustained.

9 BY MR. MACURDY:

10 Q. So at some point you met Tiffany Chen, correct, sir?

11 A. Yes.

12 Q. Who is Tiffany Chen?

13 A. She was Mr. De Niro's girlfriend.

14 Q. And you had conversations with her in 2019, early 2019 time
15 period?

16 A. I had -- she was in the apartment, so, yes, I had
17 conversations with her when I would be working -- when I would
18 be working on the apartment, sorry.

19 Q. And did you have communications with her about
20 conversations she had with Mr. De Niro's driver?

21 A. In 20 -- when specifically are you talking about?

22 Q. Let me take a step back.

23 Is Claude Mr. De Niro's driver?

24 A. Claude was one of the driver's at that time, yeah.

25 Q. In April-ish time, 2019?

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Kaplan - Direct

1 A. Yes.

2 Q. And you recall having a conversation with Ms. Chen about a
3 discussion she had with Claude the driver about Ms. Robinson?

4 A. I mean, I don't recall every conversation I had with
5 anybody in April 2019, but I'm sure we talked about -- who
6 knows.

7 MR. MACURDY: Your Honor, I'd like to pull up
8 Plaintiff's 7 just for the witness.

9 THE COURT: To refresh his recollection.

10 MR. MACURDY: Yes, your Honor. I'll point him to
11 specific text.

12 Mr. Kelly, can you highlight 9:35 a.m. to 9:38?

13 BY MR. MACURDY:

14 Q. Can you review those texts, sir? Let us know when you're
15 done.

16 A. I've read them.

17 Q. And does that refresh your recollection that this
18 conversation that Ms. Chen recounted to you, that she recounted
19 to you that she had with Claude?

20 A. I mean, this sounds -- I don't remember any of this, but,
21 yeah, it sounds what Claude is saying here --

22 THE COURT: No, the question is just does it bring
23 back a memory.

24 THE WITNESS: No.

25 MR. MACURDY: Mr. Kelly, you can take that down.

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Kaplan - Direct

1 BY MR. MACURDY:

2 Q. Sir, you've said before that when Ms. Chen heard something
3 she wanted to hear about Ms. Robinson, Ms. Chen would run with
4 it from there, right?

5 A. Yeah, that probably sounds accurate.

6 Q. She wasn't necessarily a reliable narrator when it came to
7 Ms. Robinson, right?

8 A. I think I said she wasn't a reliable narrator when it came
9 to pretty much anybody.

10 Q. Ms. Chen communicated to you at some point in April 2019
11 "the whole situation with Ms. Robinson has become very single
12 white female," right?

13 MR. BENNETT: Objection.

14 THE COURT: Sustained.

15 BY MR. MACURDY:

16 Q. Based on your years of working with Ms. Robinson, you never
17 thought Ms. Robinson wanted a romantic relationship with
18 Mr. De Niro, right?

19 A. No.

20 Q. And at the same time period, end of March, early
21 April 2019, you observed that ending Ms. Robinson's employment
22 was Ms. Chen's focus at the time, correct?

23 MR. BENNETT: Objection.

24 THE COURT: Overruled.

25 A. What was the time period you said?

1 BY MR. MACURDY:

2 Q. From last week of March, first week of April 2019?

3 A. Her focus was in getting people to talk to Bob about things
4 that they were telling her about Ms. Robinson's behavior in
5 general.

6 MR. MACURDY: Your Honor, I'd like to read from
7 Mr. Kaplan's deposition 276, Line 16 to 2. 276, 16, to 277, 2.

8 THE COURT: You may do so.

9 BY MR. MACURDY:

10 "Q. In the last two weeks of Ms. Robinson's employment, you
11 observed that Ms. Chen made it her singular mission to end
12 Ms. Robinson's employment; is that right?

13 "A. Yeah. I -- I would say it was -- it was her focus of
14 her -- of what she was doing at that time."

15 That was your testimony, correct, sir?

16 MR. BENNETT: Your Honor, there was an objection to
17 form.

18 THE COURT: Yeah, you can read -- the jury will know
19 there was an objection to form with respect to that question,
20 and you can inquire on your examination of Mr. Kaplan if you
21 want with respect to the form of the question he was asked.

22 MR. MACURDY: Thank you, your Honor.

23 Mr. Kelly, can we pull up Plaintiff's Exhibit 91?

24 Your Honor, these are texts with -- involving
25 Mr. Kaplan. I can lay a foundation, or is your Honor in a

1 position to rule? What do you prefer?

2 THE COURT: Is there an objection to 91?

3 MR. BENNETT: There was, yes. It's unclear to me what
4 the passage is.

5 MR. MACURDY: I can point your Honor to a specific
6 text.

7 THE COURT: Point to me a specific text.

8 MR. MACURDY: Mr. Kelly, can you enlarge 243 to 244?

9 This was taking place, your Honor, on April 5.

10 THE COURT: Is there an objection to this?

11 MR. BENNETT: Yes, your Honor, it's in a vacuum, it's
12 confusing, there's no context.

13 MR. MACURDY: I can lay it.

14 THE COURT: I think you need to lay a foundation for
15 this whole document. So why don't you, A, I'll see if you can
16 lay a foundation for the documents and then --

17 MR. MACURDY: Yes, your Honor.

18 THE COURT: -- we can go from there.

19 BY MR. MACURDY:

20 Q. So, sir, in April of 2015 [sic], first week of April, you
21 had communications with Ms. Chen?

22 A. Did you say 2015?

23 Q. I'm sorry, 2019, thank you.

24 You had communications with Ms. Chen about ending
25 Ms. Robinson's employment; isn't that correct?

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1 A. I remember there was a lot of conversations and texts from
2 Ms. Chen about, you know, trying to get -- about to understand
3 how crazy Chase was, yes.

4 Q. Well, we just looked at your deposition testimony, and you
5 had testified in your deposition that in the last two weeks of
6 Ms. Robinson's employment, it was Ms. Chen's singular mission
7 to end Ms. Robinson's employment, correct?

8 A. She's a very focused person when she's on a topic. So,
9 yes, if I said singular, that's what I meant by that, yes.

10 Q. It's fair to say you had conversations with her about that?

11 A. Yes. And I didn't know, you know, if anything was going to
12 come of it, but that's what she was focused on that week or
13 those two weeks, whatever you want to call it.

14 Q. And you also had conversations at that time period with
15 other people in the Canal orbit about Ms. Robinson talking to
16 them on that topic, correct?

17 A. It was more gossipy in nature, like, can you believe what's
18 going on here, but yes.

19 Q. And those people included Dan Harvey?

20 MR. BENNETT: Objection. I'm not --

21 THE COURT: Well, I think there's going to be a pretty
22 plain hearsay objection to any of the content of these
23 statements. But, I mean, you can ask the question whether he
24 had topics, questions with respect -- conversations with others
25 about the subject of what Ms. Chen was saying to them. You can

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Kaplan - Direct

1 answer just that question. With respect to what was said,
2 whether Ms. Chen said positive things about Ms. Robinson,
3 whether she said negative things about Ms. Robinson, that's all
4 hearsay.

5 BY MR. MACURDY:

6 Q. Well, sir, without getting into the specifics, as you just
7 said, you had gossiped with other people about Ms. Chen having
8 conversations with them regarding Ms. Robinson's employment.

9 And one of those people was Dan Harvey, correct?

10 A. I don't remember all the people I talked to, but I spoke to
11 Dan regularly, so -- I mean, possibly, yes.

12 Q. Another one of those people was Tom Harvey?

13 A. Again, I spoke to -- there's a bunch of people I spoke to
14 every day when I worked there full time and so, yes.

15 Q. Another one was Mr. De Niro's daughter, Drena De Niro,
16 correct?

17 A. I don't remember if I spoke to Drena about this or not,
18 but, again, these are people I would speak to every day.

19 Q. Another person you spoke to that about was Rafael De Niro?

20 THE COURT: The objection to that is sustained because
21 as to that, it calls for hearsay. So.

22 MR. MACURDY: Your Honor --

23 THE COURT: Did you have conversations on the general
24 subject about Chase Robinson with those people without saying
25 what the conversations related to?

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Kaplan - Direct

1 THE WITNESS: But, I mean, I don't remember so -- so I
2 don't...

3 MR. MACURDY: Your Honor --

4 THE COURT: You clearly planned to ask this witness
5 what Tiffany Chen said, what they said to him that Tiffany Chen
6 had said to them. It's evidence 101.

7 MR. MACURDY: Well, your Honor, he's denying it, so I
8 would propose --

9 THE COURT: It's -- the objection is sustained.

10 MR. MACURDY: Mr. Kelly, can you pull up
11 Plaintiff's 100?

12 Your Honor, the focus of this one is texts at 1106 and
13 1111.

14 MR. BENNETT: Your Honor, we have an objection to
15 this.

16 THE COURT: Objection is sustained.

17 BY MR. MACURDY:

18 Q. Sir, you worked with Michael Tasch, the accountant,
19 correct?

20 A. Yes.

21 Q. In April of 2019, you spoke or communicated with Michael
22 Tasch about Ms. Chen, correct?

23 A. I'm sure I did. I don't remember specifics, but...

24 Q. You wrote to Michael Tasch on April 4th: I heard Tiff
25 e-mailed you about the apartment expenses. We should

1 strategize on this. She's trying to take down Chase, of
2 course.

3 Isn't that right?

4 MR. BENNETT: Objection.

5 THE COURT: Sustained.

6 MR. MACURDY: That was a statement of a party
7 opponent.

8 THE COURT: You can ask this witness about statements
9 that Ms. Chen made to him. You can't ask him what he said to
10 others about Ms. Chen unless you do it as a prior inconsistent
11 statement.

12 I'm giving you free rein, even though there are
13 questions about it, the admissibility of it, to ask about
14 statements that Ms. Chen made to him because those statements
15 are not necessarily admissible for their truth, but they're
16 admissible for the fact that Ms. Chen said them.

17 With respect to others, there's no allegation in this
18 case, that I'm aware of, that Mr. Berdon acted with a
19 discriminatory motive.

20 MR. MACURDY: May we approach, your Honor?

21 THE COURT: No.

22 BY MR. MACURDY:

23 Q. Sir, are you aware that in June 2019, Canal sent
24 Ms. Robinson an agreement for her to sign waiving any legal
25 claims against Canal or Mr. De Niro?

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1 MR. BENNETT: Objection.

2 THE COURT: Overruled.

3 A. Waiving legal claims, no, I don't know anything about that.

4 BY MR. MACURDY:

5 Q. But you are aware of Ms. Robinson's response to Tom Harvey
6 in June 2019 setting out a severance proposal, correct?

7 MR. BENNETT: Objection.

8 THE COURT: Overruled.

9 A. Yeah, I, I'm aware of that.

10 BY MR. MACURDY:

11 Q. After Ms. Robinson sent that e-mail to Tom Harvey on
12 June 12th, Tom Harvey told you that he wanted you to spend 24/7
13 thinking of crazy Chase shit and writing it down, correct?

14 A. We had been gathering, you know, for Bob's piece of mind,
15 we had been gathering all the sort of evidence of all the crazy
16 shit she did. And he wanted us to focus it into one because we
17 kind of -- it was all over the place, so he said 24/7, like put
18 it together, you know, so...

19 Q. So it is true that after Ms. Robinson sent that email to
20 Tom Harvey on June 12, Tom Harvey told you he wanted you to
21 spend 24/7 thinking of crazy Chase shit and writing it down?

22 MR. BENNETT: Objection.

23 THE COURT: Overruled.

24 A. I don't remember the wording. I mean, 24/7 I think is a
25 bit of an exaggeration. But, you know, the message was --

1 yeah, we had all this stuff, but, you know, write it all down
2 in one spot so we have it in one place.

3 MR. MACURDY: Your Honor, I propose to introduce
4 Plaintiff's 19 under the Court's prior ruling.

5 THE COURT: I think my prior ruling was that you could
6 use documents to impeach. That doesn't necessarily mean they
7 come in as evidence.

8 MR. MACURDY: Understood. It would be texts at 906
9 and 907.

10 MR. BENNETT: We think it's been established as
11 inconsistent.

12 THE COURT: The objection is sustained because you
13 have -- because you haven't established an inconsistency.

14 BY MR. MACURDY:

15 Q. So after Mr. Harvey gave you that instruction, you wrote a
16 text communication conveying that, correct?

17 A. I'm sure I did, but I don't remember the specifics.

18 Q. And you texted on -- in April 2019 -- I'm sorry, in June of
19 2019: I talked to Tom, he told me he wants me to spend 24/7
20 thinking of crazy Chase shit and write it down.

21 Isn't that true?

22 A. If I texted that, then he did say that. But, you know,
23 he's a colorful person and I'm sure it was conveyed -- 24/7 to
24 me is not, like, we're going to spend all the time writing
25 stuff down, like, this is what you're doing today. You know,

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Kaplan - Direct

1 you've been gathering all this stuff about Chase, put it all
2 down in one place.

3 MR. MACURDY: I propose to publish that same portion.

4 THE COURT: Objection?

5 MR. BENNETT: I don't think the foundation has been
6 laid for any --

7 THE COURT: Sustained.

8 BY MR. MACURDY:

9 Q. Later in the summer of 2019, Mr. Kaplan, you believe that
10 Ms. Robinson was threatening to sue Mr. De Niro, right? That
11 was your belief, correct?

12 MR. BENNETT: Objection, time frame.

13 THE COURT: Overruled.

14 A. I don't remember the time of when this was, but I, at some
15 point, was aware that she was threatening to sue.

16 BY MR. MACURDY:

17 Q. And you're aware that Canal filed a lawsuit against
18 Ms. Robinson in August of 2019, right?

19 A. Again, the dates, I don't remember the dates, but, yes,
20 Canal did file a lawsuit, yes.

21 Q. Do you have any reason to disagree with August 2019 being
22 the date?

23 A. I do not, no.

24 Q. Ms. Robinson had not brought any lawsuit against Canal or
25 Mr. De Niro at that time, correct?

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Kaplan - Direct

1 A. No.

2 Q. It was your understanding that Tom Harvey and Mr. De Niro
3 wanted to ruin Ms. Robinson first because she was threatening
4 to sue Mr. De Niro, correct?

5 MR. BENNETT: Objection.

6 THE COURT: Objection is sustained.

7 BY MR. MACURDY:

8 Q. Did you have --

9 THE COURT: There's no -- members of the jury, there's
10 no issue in this case with respect to the motive of any party
11 in terms of bringing the lawsuit. Parties are permitted to ask
12 questions with respect to the foundation of the evidence and
13 whether the evidence is well founded or not.

14 MR. MACURDY: One moment, your Honor.

15 THE COURT: In other words, questions can be asked
16 about whether the evidence is contrived or that.

17 BY MR. MACURDY:

18 Q. Mr. Kaplan, in this time period that we're talking about,
19 did Mr. Harvey ever tell you that Canal wanted to ruin
20 Ms. Robinson first because she was threatening to sue
21 Mr. De Niro?

22 MR. BENNETT: Objection.

23 THE COURT: Sustained.

24 MR. MACURDY: Nothing further, your Honor.

25 THE COURT: All right. Defendants.

1 MR. SCHOENSTEIN: Your Honor, do you want to take the
2 mid-morning break before we do this, it's 10:34.

3 THE COURT: I think maybe just -- since we go until
4 1 o'clock, maybe we'll just do about 15 or so minutes of
5 examination now, and then we'll take our break, unless members
6 of the jury need a break now?

7 JUROR: Yeah, it's okay.

8 THE COURT: So we'll go for another 15 minutes?

9 JUROR: Yeah.

10 THE COURT: Let's go another 15 minutes and we'll take
11 our break.

12 MR. BENNETT: Thank you, your Honor.

13 CROSS-EXAMINATION

14 BY MR. BENNETT:

15 Q. Good afternoon, Mr. Kaplan.

16 A. Good morning.

17 Q. I'll talk about some of your experience before working with
18 Canal. What does Canal Productions do?

19 A. Canal Productions is a -- it's basically a company -- it's
20 Robert De Niro. It's a private -- it is a vanity company, I
21 think is the term. It just does whatever his life is, whether
22 it's his travel, his events. Anything he's doing, it's doing.

23 Q. And between January 2016 and April 6, 2019, did Canal
24 employ other assistants aside from Ms. Robinson and yourself?

25 A. Yes.

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Kaplan - Cross

1 Q. Who during that time period?

2 A. What was the first date you said?

3 Q. January 2016?

4 A. Off the top of my head, I'd say, yes, there was

5 Nellie Norden, Katherine Wernet, Morgan Billington, there was

6 Gillian Spear, Sabrina Weeks-Brittan, Lulu White, not sure if I
7 forgot anybody. Forgive me if I did.

8 Q. Thank you, Mr. Kaplan. Between the same time period of
9 January 2016 and April 6, 2019, did you communicate with
10 Ms. Robinson generally on a daily basis?

11 A. Yes.

12 Q. And during that same time period, did you ever observe
13 Ms. Robinson communicate or speak with other Canal personnel?

14 A. Of course.

15 Q. Did you ever observe Ms. Robinson yell at any Canal
16 employees while you worked together?

17 A. I observed her yell at all Canal employees while we worked
18 together.

19 Q. Within the time period that we're discussing, January 2016
20 to April 6, 2019, do you recall anyone in particular?

21 MR. MACURDY: Objection, your Honor.

22 THE COURT: Basis.

23 MR. MACURDY: Relevance.

24 MR. BENNETT: I request a sidebar, your Honor.

25 THE COURT: Okay. Let's step at sidebar.

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1 (At the sidebar)

2 THE COURT: Where is this going?

3 MR. BENNETT: Your Honor, there are a few questions I
4 plan on asking Mr. Kaplan based on his -- there are a number of
5 questions that I plan on asking Mr. Kaplan, this being the
6 first one, which I tried to provide the jury with a background
7 as to what it is -- what it was like to work with Ms. Robinson
8 yesterday. We are going backwards.

9 At the pretrial conference, your Honor said generally
10 there will not be any opinion testimony with respect to
11 Ms. Robinson's behavior or conduct. However, yesterday at
12 page -- it is reflected on Page 331 and 332 of the transcript,
13 plaintiff's counsel opened the door by asking Mr. De Niro
14 certain questions, including whether he characterized plaintiff
15 as nasty, snappy, snippety, or petulant.

16 From my perspective, that has opened the door for
17 these types of questions.

18 THE COURT: So tell me, I think there's an argument
19 that plaintiff opened the door in terms of asking the questions
20 of this witness about his opinion of Ms. Robinson upon her
21 departure. But where are you going in terms of the specific
22 conversations? I mean, those can tend to be excludable under
23 403.

24 MR. BENNETT: I don't think there will be any specific
25 conversations. It's his personal observances of particular

1 words she may have said or the manner in which she treated
2 Canal personnel.

3 THE COURT: So tell me what you expect to elicit.

4 MR. BENNETT: Did she ever use the word "bitch" in the
5 office? Did she ever use off-colored jokes, like referring to
6 salads as gay salads? Did she ever scream and yell at other
7 employees? That's part of her allegations in this case, that
8 Bob yelled at her all the time. That's relevant from an
9 objective standpoint to try to give the jury the overall
10 environment at Canal.

11 MR. MACURDY: Your Honor, I strongly disagree, this is
12 hugely prejudicial. They're trying to besmirch Ms. Robinson in
13 a number of different ways. The questions to Mr. De Niro
14 before that he mentioned were regarding gendered terms that he
15 used towards her. That certainly doesn't open the door towards
16 them asking other employees at Canal general descriptions on
17 her personality and derogatory statements about her.

18 THE COURT: Well, why did you ask the questions? I'm
19 surprised that you asked the questions about his opinion of her
20 upon her departure, and didn't --

21 MR. MACURDY: Which --

22 THE COURT: At the very beginning of your examination,
23 when you said, didn't you send an e-mail to Chase Robinson, you
24 know, talking about what a good employee she was?

25 MR. MACURDY: Well, that was about her as a worker,

1 your Honor, which is relevant. How hard she worked, how
2 available she was to Mr. De Niro, which goes directly to their
3 claims against her about her not working and being on vacation
4 all the time. So it goes -- it goes directly to that.

5 MR. BENNETT: It went to his subjective assessment of
6 the relationship between the two of them, and I want to put
7 that e-mail response in context. I want to take the jury
8 backwards a little bit. I am going to get to the resignation
9 letter and ask him a couple of questions about that.

10 But that letter in a vacuum, that response, is exactly
11 what the plaintiff wants, for the jury to look at it in a
12 vacuum.

13 MR. MACURDY: But --

14 THE COURT: Go ahead.

15 MR. MACURDY: Certainly on cross-examination, they can
16 read the letter she sent him and read more of his letter, if
17 they want that. That doesn't open the door to making this case
18 about her personality and besmirching her and the dislike for
19 her. It's hugely prejudicial in front of the jury.

20 THE COURT: Well, I mean, frankly, the language that
21 was used, doesn't that language go to the subjective elements
22 of whether there was gender discrimination. I mean, if she's
23 using that kind of language, isn't that actually very relevant
24 to the -- you elicited from Mr. De Niro testimony about words
25 that he used. It sounds like he was just reframing the

1 language she used.

2 MR. MACURDY: Your Honor, I don't believe there was
3 any testimony about Mr. De Niro saying the "B" word because she
4 used it.

5 THE COURT: But you elicited that Tiffany Chen used
6 that "B" word. I'm going to take it question by question, but
7 the objection is overruled.

8 (Continued on next page)

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1 (In open court)

2 MR. BENNETT: Can I have the last question read back?

3 THE COURT: No. I'm not going to ask the court
4 reporter to do that. You can ask the question again.

5 BY MR. BENNETT:

6 Q. Mr. Kaplan, between January 2016 and April 6, 2019, did you
7 ever observe Ms. Robinson yell at other Canal personnel?

8 A. Yes, frequently.

9 Q. Was there one particular Canal employee that she directed
10 most of her attention to?

11 A. No, she -- any of the assistants in the office, if she
12 didn't, you know, if they didn't do something she wanted to or
13 she thought someone around her -- or didn't do it the exact way
14 that she had spelled out or thought -- kept her out of the loop
15 on something, she could just yell at them, you know, go nuts,
16 slam doors. Just, yeah, make their life hell.

17 Q. Mr. Kaplan, did Robinson ever yell at you during the course
18 of your employment?

19 A. Yes.

20 Q. Did you ever overhear Ms. Robinson curse at work?

21 A. Yes.

22 Q. Did you ever overhear Ms. Robinson use the word "bitch" at
23 work?

24 A. Yes.

25 Q. Did you ever overhear Ms. Robinson make any off-colored

1 jokes?

2 A. Yeah, she was not very politically correct.

3 Q. Can you think of any particular jokes that she mentioned?

4 MR. MACURDY: Objection, your Honor.

5 THE COURT: Sustained. I think you can move on to
6 another subject.

7 MR. BENNETT: Thank you, your Honor.

8 BY MR. BENNETT:

9 Q. Based on your experience working with Canal between January
10 2016 and April 6, 2019, did any Canal employee other than
11 yourself and Ms. Robinson have more information concerning
12 Mr. De Niro's personal life?

13 A. Did any -- I'm sorry, anybody besides us?

14 Q. That's correct.

15 A. No, we had more information regarding his personal life.

16 Q. And would you say the same when it came to Mr. De Niro's
17 professional life?

18 MR. MACURDY: Objection, your Honor.

19 THE COURT: Sustained.

20 BY MR. BENNETT:

21 Q. During your experience with Canal --

22 THE COURT: If you can avoid the leading questions,
23 same instruction to you as to the plaintiffs, don't lead.

24 MR. BENNETT: Thank you, your Honor, okay.

25

NBA6ROB2

Kaplan - Cross

1 BY MR. BENNETT:

2 Q. Based on your experience working with Canal between
3 January 2016 and April 6, 2019, was information concerning all
4 aspects of Mr. De Niro's professional and personal life shared
5 freely amongst all personnel within Canal?

6 A. No.

7 Q. Did you ever refuse to disclose certain aspects of personal
8 or professional features related to Mr. De Niro's life to other
9 Canal personnel?

10 A. No.

11 Q. Did Ms. Robinson refuse to disclose such information?

12 A. From time to time, yes.

13 Q. Did she ever explain to you why for any particular instance
14 she didn't want certain information to be disseminated to other
15 Canal personnel?

16 A. She would say we couldn't trust the other assistants in the
17 office with certain things.

18 Q. Thank you.

19 Before your full-time employment with Canal ended --

20 MR. BENNETT: I'll withdraw the question, your Honor,
21 my apologies.

22 BY MR. BENNETT:

23 Q. Before Ms. Robinson commenced employment with Canal, did
24 you receive any payment for unused vacation days at the end of
25 each calendar year?

1 A. No.

2 Q. And did that procedure or practice change when
3 Ms. Robinson's employment commenced with Canal?

4 MR. MACURDY: Objection, your Honor, relevance.

5 THE COURT: Overruled.

6 A. It changed, yeah, I believe a few years into her
7 employment. Not sure -- don't know the exact year.

8 BY MR. BENNETT:

9 Q. How did the procedure change?

10 A. I -- she called me to -- into the big office, Bob's office
11 one day, and we're talking about stuff and I remember her
12 saying that we're going to go forward, you and I are going to
13 have, you know, set amount of vacation days that everyone gets,
14 14, 15, whatever it was at the time. Any ones we don't use
15 you're going to get paid a day rate at the end of the year as
16 part of your Christmas bonus. You're not getting a raise
17 anytime soon, but this is kind of a little bump at the end of
18 the year for loyalty.

19 Q. And during that conversation or in any other occasion when
20 you were speaking with Ms. Robinson, did Ms. Robinson explain
21 to you that you would not need to count a vacation day if you
22 performed any work on a particular day when you were on
23 vacation?

24 A. No.

25 Q. Can you think of any particular days where you were on

NBA6ROB2

Kaplan - Cross

1 vacation and you may have performed some work while employed by
2 Canal?

3 MR. MACURDY: Objection, relevance, Judge.

4 THE COURT: Sustained.

5 BY MR. BENNETT:

6 Q. Mr. Kaplan, to your knowledge, did written policies ever
7 exist at Canal concerning when it would pay for employee
8 lunches, dinners, or coffees?

9 A. Nothing was written, no.

10 Q. What was the practice in that regard when it came to
11 lunches, dinners and coffees?

12 MR. MACURDY: Objection.

13 THE COURT: Overruled.

14 A. The practice with lunches was paid for, we often usually
15 ordered in. Coffees was paid for during the day, someone would
16 run out, usually get coffee, but if you were out you could get
17 yourself a coffee. And dinners, the practice was, you know, if
18 you're working late, you order dinner in the office. Or if you
19 were out at an event or doing something on the weekend workwise
20 you could expense a meal as well.

21 BY MR. BENNETT:

22 Q. Thank you, Mr. Kaplan. I'm going to go backwards to the
23 vacation.

24 Do you recall any instance where you performed work on
25 a vacation day between 2016 and 2019 for Canal?

NBA6ROB2

Kaplan - Cross

1 MR. MACURDY: Objection.

2 THE COURT: Sustained.

3 BY MR. BENNETT:

4 Q. Did you ever have a discussion with Ms. Robinson regarding
5 whether she took the subway?

6 A. Yes.

7 Q. What did she say?

8 MR. MACURDY: Objection.

9 THE COURT: Overruled.

10 A. I remember she -- at one time I remember talking and she
11 laughed at the idea of riding the subway. She said she was a
12 native New Yorker, but she called it the green line, the
13 6 train at one point. She never took the subway to my
14 knowledge.

15 Q. Did you ever have a discussion with Ms. Robinson concerning
16 her preferences for air travel?

17 A. Yes.

18 Q. What did he say?

19 A. She flew first or business class always and always Delta.
20 She thought American Airlines was, I think she thought the
21 first class there was basically coach, so...

22 Q. Thank you. Did Mr. De Niro ever say to you that he wanted
23 Ms. Robinson or anyone else ever working for Canal available on
24 a 24/7 constant basis?

25 MR. MACURDY: Objection. Hearsay.

NBA6ROB2

Kaplan - Cross

1 THE COURT: It's not hearsay.

2 Well, did he ever direct you, sir, to work on a 24/7
3 basis?

4 THE WITNESS: No.

5 THE COURT: Did you ever hear him say that to
6 Ms. Robinson?

7 THE WITNESS: No, no, he understood people had to
8 sleep.

9 THE COURT: That last bit, he understood people had to
10 sleep, I'm striking.

11 BY MR. BENNETT:

12 Q. Mr. Kaplan, did you ever overhear Ms. Robinson volunteer to
13 be the person who was accessible to Mr. De Niro whenever it was
14 that he required assistance?

15 MR. MACURDY: Objection, your Honor. Counsel is
16 leading again.

17 THE COURT: Yes, that objection is sustained.

18 BY MR. BENNETT:

19 Q. Were you ever involved in a conversation with Mr. De Niro
20 and Ms. Robinson where Mr. De Niro -- I'll withdraw the
21 question.

22 Did you ever observe any Canal personnel making travel
23 arrangements for Mr. De Niro?

24 A. Yes.

25 Q. Did that include air travel?

NBA6ROB2

Kaplan - Cross

1 A. Yes.

2 Q. During the instances that you observed, how would Canal pay
3 for the air tickets?

4 A. On the company credit card.

5 Q. As far as you understood it back then, during the 2016 to
6 2019 time frame, was there -- were there any limitations that
7 were placed on how Canal could purchase airline tickets?

8 A. My -- yes, they were to use the card at all times, never to
9 use miles or anything else.

10 Q. When you say never to use miles, where -- how did you learn
11 that information?

12 A. There was a trip, I believe it was like -- it was a
13 yachting trip, around the world trip he was doing with lots of
14 moving parts as he did often. And I know the assistants at the
15 time were trying to get -- trying to book flights for nannies
16 to meet them there and they used the miles thinking this is a
17 great idea, and Chase found out and didn't like that.

18 And I also think, yeah. No. Sorry. I don't know if
19 I was supposed to keep talking. But, yeah, there was a time
20 also when a different assistant used miles to purchase tickets
21 for Bob's kids, AK and Julian. And was also told do not use
22 the miles for that, use the card. The miles are not for that.

23 Q. Who told that, the employees?

24 A. Chase. She was in charge of the miles.

25 Q. Where were you when you learned that --

1 MR. BENNETT: I'll withdraw the question, your Honor.

2 BY MR. BENNETT:

3 Q. Mr. Kaplan, overall, you worked with -- how long did you
4 work with Ms. Robinson at Canal?

5 A. Eleven years.

6 Q. Did you enjoy working with her?

7 MR. MACURDY: Objection.

8 THE COURT: Overruled.

9 A. No, no.

10 BY MR. BENNETT:

11 Q. Why not?

12 A. Because it was very stressful because she micromanaged me
13 in many instances. And in other instances she just tormented
14 the people I worked with. I became like the armchair therapist
15 for pretty much every single assistant who came through in
16 those 11 years, whether they'd be crying or complaining or just
17 venting about whatever she was up to because -- so it was not a
18 fun experience.

19 Q. Did Ms. Robinson ever complain to you about certain people
20 who were performing services for Mr. De Niro or Canal?

21 MR. MACURDY: Objection. Relevance.

22 THE COURT: What is the relevance to this?

23 MR. BENNETT: A little bit of leeway, your Honor. I
24 will get to a point. I was going to relate to an experience
25 that Mr. Kaplan I believe was pretty common throughout their

1 employment over the --

2 THE COURT: Can you ask questions on another topic for
3 a couple minutes and we'll address it during the mid-morning
4 break.

5 MR. BENNETT: Yes, your Honor.

6 BY MR. BENNETT:

7 Q. Mr. Kaplan, when plaintiff's counsel was questioning you on
8 direct examination, you invoked the phrase "smoke and mirrors",
9 do you recall that testimony?

10 A. Yes.

11 Q. What are you referring to what you said smoke and mirrors?

12 A. I was referring to the idea that Chase had this job that
13 she was very secretive about, and there was this general sense
14 that when she was gone that we were going to have to step in
15 and do all the different things that she was working on. And
16 we realized afterwards we had opened up the hood, so the speak.
17 It was a little bit of smoke and mirrors because there was
18 really not that many things that couldn't easily be -- the
19 office just ran smoothly without her and kept going.

20 Q. Thank you. And at some point in 2018, you learned that
21 Mr. De Niro would be moving into what we've been referring to
22 as the townhouse; is that correct?

23 A. Yes.

24 Q. Do you recall when you learned he would be moving into the
25 townhouse, approximately?

NBA6ROB2

Kaplan - Cross

1 A. I don't remember the date. It was probably in July. But I
2 don't remember exactly when.

3 Q. Do you recall the year?

4 A. 2018.

5 Q. Thank you. With regard to the townhouse work specifically,
6 do you recall Ms. Robinson complaining about any aspects of her
7 work on it?

8 A. No.

9 Q. Did you perform any work with the townhouse?

10 A. I did.

11 Q. What types of things did you do?

12 A. I did a little bit of everything. I helped with
13 establishing all the TV setups, all the Internet setup,
14 organizing the selection with Chase as well of the Robert
15 De Niro, Sr. painting, having them hung, installed. Pretty
16 much all the furniture, it was all hands on deck. We were
17 working on that, the painting, the electrical work, getting an
18 electrician in.

19 It was a big fixer upper, so pretty much every aspect
20 of that townhouse was in my life for several months as well.

21 Q. Mr. Kaplan, we don't need to get into details, but was
22 there a period of time between January and May of 2019 where
23 you were not working?

24 A. Yes.

25 Q. When did you return to work? I'll withdraw the question.

1 Do you recall when you stopped working for a period of
2 time?

3 A. Yeah. I had a heart attack. That's why I couldn't go
4 through the metal detector here today. I was out of action for
5 about five weeks or so.

6 Q. When did you suffer from the heart attack?

7 A. On the 26th of 2019.

8 Q. Month?

9 A. Sorry, January 26, I'll never forget.

10 Q. Do you recall when you resumed employment, approximately?

11 A. I believe it was the first or second week in March.

12 Q. Okay.

13 A. Of 2019, I don't know the exact date.

14 MR. BENNETT: Your Honor, this may be an opportune
15 time to break.

16 THE COURT: All right. Members of the jury we'll take
17 a 15-minute break now. Don't talk about the case amongst
18 yourselves or with anybody else, don't do any research and
19 enjoy the break.

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1 (Jury not present)

2 THE COURT: Counsel, be seated. The witness can step
3 down. Should the witness be excused for this colloquy?

4 MR. BENNETT: Yes, your Honor.

5 THE COURT: Okay.

6 So tell me where you're going with respect to the --
7 that line of examination?

8 MR. BENNETT: Your Honor, if you could give me a
9 moment. I'm not sure where I left off.

10 Your Honor, are you referring to Mr. Kaplan's
11 understanding of his availability, that particular issue.

12 THE COURT: No, there was an objection that I
13 sustained for the moment or said can you move on to another
14 topic.

15 MR. BENNETT: Yes, your Honor, thank you.

16 THE COURT: That's what I'm referring to.

17 MR. BENNETT: I think there are a few questions, not
18 many, and it certainly will not take up a great period of time.
19 But it will go to -- the testimony I think thus far is pretty
20 clear that Ms. Robinson served as the head assistant and needed
21 to service Mr. De Niro's personal, professional needs along
22 with all the other Canal personnel.

23 Mr. Kaplan, as I understand it, used to be a
24 soundingboard for Ms. Robinson with respect to numerous
25 individuals in his professional and personal universe. And

1 really, it goes to the question as to whether or not she's
2 fulfilling her job duties in a faithful manner by basically
3 gossiping about numerous other people, whether it's an ex-wife,
4 a girlfriend, family members, other people in Mr. De Niro's
5 professional life.

6 THE COURT: So the question that you had was did
7 she -- did Ms. Robinson complain to you about some other
8 employee or other employees, I think that was the question.

9 MR. BENNETT: Yes.

10 THE COURT: What do you expect the answer to be and
11 what's the relevance?

12 MR. BENNETT: I think the answer will be, yes, and I
13 think it was a common occurrence from what I understand. And
14 it really just gives the jury an overall better picture as to
15 how Ms. Robinson was performing her job duties. And there is a
16 duty of loyalty claim. I think it's relevant to that.

17 MR. MACURDY: I disagree, your Honor. There's no
18 relevance to this about these sort of conversations. All they
19 are trying to do here is besmirch Ms. Robinson in front of the
20 jury. It is prejudicial and it doesn't go to the duty of
21 loyalty, talking about gossip. It's not about the actual job
22 she was performing.

23 MR. BENNETT: I didn't want to interrupt counsel. I
24 think on a broader issue, it also goes to credibility. Right
25 now, one of the focus of Ms. Robinson's claims is that Tiffany

1 was allegedly targeting her, and she was complaining about it
2 to numerous people including Tasch, Harvey, et cetera.

3 Also by asking this question and eliciting information
4 that is responsive for Mr. Kaplan, it would provide the jury
5 with some overall context that she complained about everything.
6 She would voluntarily take on certain assignments and par for
7 the course when it came to the townhouse, she was complaining
8 about it. It was consistent with her past behavior.

9 THE COURT: I'm going to sustain the objection. Its
10 relevance is extremely minimal. Its prejudicial effect in
11 terms of distracting the jury is great. The case really is not
12 about Ms. Robinson's personality.

13 You can inquire in cross-examination of Ms. Robinson
14 into questions about whether she complained about others,
15 whether she -- the language about targeting was language that
16 was used with respect to others. You've got some leeway in
17 terms of your examination of Ms. Robinson.

18 But to ask this witness about prior acts of
19 Ms. Robinson that goes to credibility really is the kind of
20 thing that 608(b) is addressed to. I've sustained objections
21 from the defendants on grounds like that, and I'm sustaining
22 the objection of the plaintiff with respect to your examination
23 on that subject.

24 (Continued on next page)

25

1 MR. BENNETT: Thank you, your Honor.

2 If I could just ask one thing? Depending, obviously,
3 on of course Ms. Robinson's testimony when it comes to any of
4 those particular issues, we may wish to recall Mr. Kaplan.

5 THE COURT: Parties can call rebuttal witnesses to put
6 on a prior inconsistent statement if, subject to the Court's
7 discretion with respect to the ordering of witnesses. You are
8 not precluding yourself.

9 See you back here in 10 minutes.

10 (Recess)

11 THE COURT: I understand from plaintiff's counsel that
12 with respect to Ms. Weeks-Brittan that the disputes regarding
13 exhibits may require some more extended discussion. From the
14 e-mail that has been sent to me, it appears that the disputes
15 all concern the defendant's anticipated exhibits, so what I
16 propose is that we see how far we get going through
17 Mr. Kaplan's testimony and then the direct of Ms. Weeks-Brittan
18 and then, depending on where things stand and how far we can go
19 with Ms. Weeks-Brittan before we get to the disputed exhibits,
20 we either take an early lunch break or we excuse the jury.

21 Does that make sense, from plaintiff's perspective?

22 MR. MACURDY: Yes, your Honor.

23 MS. LAZZARO: Your Honor, if I may? We are actually
24 withdrawing Defendant's Exhibit 124, 148.

25 THE COURT: Hold on for a second. 124?

1 UNIDENTIFIED SPEAKER: 124, 148, 326, 170.

2 THE COURT: I didn't think 326 there was objection to,
3 it was 323.

4 MS. LAZZARO: 323 is exceptionally limited. We
5 intend, if at all, to point to the last page, Canal 0048973,
6 with the text message starting at 9:12.

7 THE COURT: Maybe that will help the plaintiff in
8 terms of if they have an issue with respect to it. I can also
9 tell you that through my review I did have a question about the
10 relevance of DX 250 but I'm sure folks can educate me.

11 Let's put Mr. Kaplan back on the stand.

12 MR. MACURDY: Your Honor, may I ask one question for
13 Mr. Kaplan.

14 THE COURT: Of course.

15 MR. MACURDY: I understand the objection for a
16 document like PX- 96, where Mr. Kaplan writes: I heard Tiff
17 e-mail you about apartment expenses, we should strategize on
18 this, she is trying to dig down Chase, of course. My argument
19 would be Mr. Kaplan is an agent of Canal so it comes in as a
20 party opponent statement and he is referring to a statement
21 made by Tiffany Chen, who also acts as an agent of Canal. And
22 so, I don't need any consistency, those are -- those are two
23 statements of party opponents.

24 THE COURT: I will consider your argument and I will
25 hear from defendants with respect to it but let's get through

NB15rob3

Kaplan - Cross

1 the rest of defense examination and then --

2 MR. MACURDY: Yes, your Honor.

3 THE COURT: Let's bring in the jury.

4 (Continued on next page)

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Kaplan - Cross

1 (Jury present)

2 THE COURT: Counsel, you may continue.

3 MR. BENNETT: Thank you, your Honor.

4 BY MR. BENNETT:

5 Q. Mr. Kaplan, did you ever witness Ms. Robinson scratching
6 Mr. De Niro's back?

7 A. Yes. I can recall -- he used to, like, be like when he
8 would be standing in our office there like is a door frame he
9 kind of like awkwardly would be, like, shimmy on it, trying to
10 get a scratch kind of thing and it would bother her and she
11 would be like, let me get that, and give it a scratch.

12 Q. Do you recall observing that interaction once or more than
13 once?

14 A. I have a memory of it so I think it happened a few times.

15 Q. Are you aware whether or not any phone conversations you
16 had with Ms. Robinson were recorded?

17 A. I have learned that there was, yes.

18 Q. Did you ever give Ms. Robinson consent to have your
19 telephone conversations recorded?

20 A. I did not. No.

21 Q. Between January 2016 and April 6, 2019, did you ever run
22 errands for Mr. De Niro?

23 A. I did, yes.

24 Q. What types of errands would you run?

25 A. I would -- all sorts of things. Pick up iPhones, pick up

NB15rob3

Kaplan - Cross

1 tech equipment, camera stuff, prescriptions. I had a bike seat
2 made for him for his child, stuff like the sleep machine.
3 Pretty much anything he needed, whatever came up. It changed
4 constantly and whatever was needed I would go get.

5 Q. Did you ever take photographs or video record celebratory
6 get-togethers for Mr. De Niro?

7 A. Yes. That was one of my primary functions. All the kids'
8 birthday parties, the holiday parties, Father's Day. Whenever
9 the family was together. He is a big family guy so it happened
10 frequently and I would take video or camera -- sometimes we had
11 a professional take pictures and I would do the video,
12 sometimes I would do both, depending on the situation.

13 Q. Thank you.

14 And your full-time employment, I believe you
15 testified, ended in or around March 2020?

16 A. Yes.

17 Q. Did you receive any severance payments from Mr. De Niro or
18 Canal?

19 A. No.

20 Q. At the time of your full-time employment with Canal
21 concluded in Mar 2020, what was your annual compensation?

22 A. I received \$80,000 a year plus a \$5,000 Christmas bonus.

23 Q. Thank you.

24 At any point during your employment with Canal, did
25 you ever record conversations between yourself and Mr. De Niro

NB15rob3

Kaplan - Redirect

1 or any other Canal employees?

2 A. I have never recorded a phone conversation with anybody in
3 my life. I believe that's a breach of trust, so no, definitely
4 not.

5 Q. Following the end of your employment with Canal in March of
6 2020, did you keep, for yourself, any SkyMiles?

7 MR. MACURDY: Objection.

8 THE COURT: Overruled.

9 A. No.

10 MR. BENNETT: Thank you, Mr. Kaplan.

11 I have no further questions, your Honor, subject to
12 redirect.

13 MR. MACURDY: Your Honor, I would like to revisit
14 Plaintiff's Exhibit 96, if you don't mind putting it up ON the
15 screen?

16 THE COURT: No. I will hear you later on that.

17 MR. MACURDY: Understood.

18 REDIRECT EXAMINATION

19 BY MR. MACURDY:

20 Q. Sir, you testified about Tom Harvey instructing you to
21 investigate or look into Ms. Robinson's spending in all
22 directions; correct?

23 MR. BENNETT: Objection to form.

24 THE COURT: Sustained as to form.

25 Q. Sir, we discussed earlier a discussion between you and

NB15rob3

Kaplan - Redirect

1 Mr. Harvey in summer of 2019 about looking for crazy Chase
2 stuff. Do you recall that?

3 A. Yes. We had that conversation. Here.

4 Q. So you did, in fact, look into spending or charges on the
5 Canal American Express card in Ms. Robinson's name?

6 A. Yes. We had been doing that before that conversation.

7 Q. What you ended up doing when you looked at taxi and Uber
8 charges is you just added up every single taxi and Uber charge
9 on the AmEx for a two-year period; right?

10 MR. BENNETT: Objection.

11 THE COURT: Basis?

12 MR. BENNETT: Foundation; with regard to that
13 particular aspect.

14 THE COURT: The objection is sustained as to lack of
15 foundation.

16 BY MR. MACURDY:

17 Q. Sir, one of the things you looked at on the charges was
18 charges for taxis and Ubers on the AmEx card; right?

19 A. Yes.

20 Q. And under Mr. Harvey's instruction, you added up all the
21 taxi and Uber and Lyft charges on that AmEx card between 2017
22 and 2019; correct?

23 A. It was not under Mr. Harvey's instruction. I had added
24 them up because, for years, she only used taxis and Ubers and
25 no one else was allowed to just do that and it was something I

NB15rob3

Kaplan - Redirect

1 was curious about, what was the actual total, because I don't
2 think anyone wrapped their head around it until we did that.

3 Q. You didn't make any determination about what those rides
4 were for, you just added up the total number of charges; right?

5 A. Yes. There is no way to determine off a credit card bill
6 what the ride is for.

7 Q. You also looked at, during that time period, charges on
8 that AmEx for Paola's, Whole Foods, and Dean & DeLuca; right?

9 A. Yes. Those are places she frequented often.

10 Q. And for those you just added up every charge for Paola's,
11 every charge for Whole Foods, every charge for Dean & DeLuca
12 from 2017 to 2019; right?

13 A. Yes.

14 Q. You didn't make any sort of determination about what the
15 charge was for; correct?

16 A. I mean, it's a restaurant. Paola's, I don't know what that
17 means, what it is for but, yeah, it is fresh food.

18 Q. I apologize. You didn't make any determinations about
19 whether it was -- what the context was for the charge; correct?

20 MR. BENNETT: Objection.

21 THE COURT: Sustained.

22 Q. You didn't make any determination about whether you
23 considered it a proper charge or not; right?

24 A. No.

25 Q. Sir, did you meet with any lawyers for Canal before your

1 testimony today?

2 A. I did, yes.

3 Q. Who did you meet with?

4 A. I met with Mr. Bennett and -- I don't know the names of
5 everybody but I met with them for -- the other night.

6 Q. So you met with multiple people sitting at this table here?

7 A. Brittany and Mr. Bennett, yes, and Brent -- Brett. Sorry.
8 I met, just to -- I had a meeting briefly where they just told
9 me to, you know, what to be prepared for and tell the truth.

10 Q. So you met in person?

11 A. Yes.

12 Q. Was that the only time you met?

13 A. Yeah.

14 Q. About how long was it?

15 A. Hour and a half.

16 Q. That was briefly?

17 MR. BENNETT: Objection.

18 THE COURT: Sustained. Argumentative.

19 Q. They aren't your lawyers; right?

20 A. No.

21 Q. You are just a contractor for Canal?

22 A. I am.

23 Q. Did you talk about how to answer the question, if you got
24 it, about your loyalty to Canal?

25 A. No.

NB15rob3

Kaplan - Recross

1 Q. What did you talk about for an hour and a half?

2 MR. BENNETT: Objection. Your Honor, this is getting
3 into privilege.

4 THE COURT: Arguably getting into work product. You
5 can ask the general question.

6 BY MR. MACURDY:

7 Q. What did you generally talk about, with Canal's lawyers for
8 an hour and a half, a few days ago?

9 A. Just what to expect. You know, the deposition was nine
10 hours so -- on Zoom -- so I didn't think an hour and a half
11 more was going to -- was the worst thing in the world. But, no
12 just -- I had never been in court before so what to expect
13 and -- yeah. General.

14 MR. MACURDY: Nothing further, your Honor.

15 MR. BENNETT: One question, your Honor.

16 THE COURT: OK.

17 RECROSS EXAMINATION

18 BY MR. BENNETT:

19 Q. Mr. Kaplan, I believe when counsel asked whether you had
20 met with anyone at the defendant's table you also mentioned
21 another name; is that correct?

22 A. I met -- I mean, I don't remember everybody. What do you
23 mean? I don't understand.

24 Q. Did you speak with anyone from Ms. Robinson's table before
25 your testimony here today?

NB15rob3

Kaplan - Redirect

1 A. Yes.

2 Q. Who did you speak with?

3 A. Annabelle. Yes, she had been contacting me and I spoke
4 with -- oh yeah -- Brent on the phone the other day, he called
5 me to give me instructions as well.

6 Q. How long did that conversation with counsel last?

7 A. A few minutes.

8 Q. Do you recall generally what was discussed?

9 A. Yeah. He just told me what I could expect from the
10 proceedings.

11 Q. Did you --

12 A. And I -- sorry. And he asked me if I was -- he asked me if
13 I still worked for Canal and what the status was with that
14 because it had come up during the deposition.

15 Q. Other than that topic, did you get into any other specific
16 topics that your testimony has touched on today?

17 A. I don't remember. I don't think so, no.

18 MR. BENNETT: Thank you.

19 Thank you, your Honor.

20 THE COURT: Anything further?

21 MR. MACURDY: Just briefly, your Honor.

22 REDIRECT EXAMINATION

23 BY MR. MACURDY:

24 Q. Just to clarify, sir, you received a subpoena from
25 Ms. Robinson to appear here today, correct?

1 A. I did. Someone showed up at my door at like 9:30 at night
2 with a nice surprise for me with their subpoena; yes.

3 THE COURT: Members of the jury, that's just the way
4 it works. You shouldn't infer anything from that. In other
5 words, service providers show up, can show up at all hours and
6 generally tend to show up when they expect the person to be at
7 home.

8 BY MR. MACURDY:

9 Q. So you, of course, needed to interact with personnel and
10 Mr. Hannafan, for Ms. Robinson, to know where to show up and
11 what day; correct?

12 A. Well, I think it had it on the subpoena but -- I considered
13 it is helpful if someone calls me. I didn't mind it but -- I
14 knew where I was supposed to go, it was on the subpoena.

15 Q. The subpoena was for 9:00 a.m. Monday; right?

16 A. The subpoena was -- oh, yeah. Good point. The subpoena
17 was for October 30th when this trial started; yes.

18 MR. MACURDY: Nothing further, your Honor.

19 THE COURT: You are excused as a witness, subject to
20 my reconsideration with respect to the one line of examination
21 and I assume that, if necessary, defendants will arrange for
22 Mr. Kaplan to be available, if necessary.

23 MR. BENNETT: We can accomplish that, your Honor; yes.

24 THE COURT: Plaintiff call their next witness.

25 MR. McKNIGHT: Sabrina Weeks-Brittan, please, your

1 Honor.

2 THE COURT: Let's bring the witness in.

3 Counsel, you may address that issue with respect to
4 the one exhibit at the end of the trial day today.

5 MR. MACURDY: We will discuss it, your Honor.

6 THE COURT: Yes, at the end of the trial day.

7 MR. MACURDY: Understood.

8 THE COURT: Ma'am, please step forward into the
9 witness box, remain standing. My deputy will administer the
10 oath.

11 SABRINA WEEKS-BRITTAN,

12 called as a witness by the Plaintiff,

13 having been duly sworn, testified as follows:

14 THE DEPUTY CLERK: Please state your full name for the
15 record and spell your first and last name.

16 THE WITNESS: Sabrina Tipton Weeks-Brittan.

17 S-A-B-R-I-N-A, last name, W-E-E-K-S B-R-I-T-T-A-N.

18 THE COURT: Ms. Weeks-Brittan, please try to keep your
19 voice up, speak into the microphone, speak clearly, and pause
20 after you are asked a question so the court reporter and the
21 jury and I can pick it all up.

22 Go ahead.

23 MR. McKNIGHT: Thank you, your Honor.

24 DIRECT EXAMINATION

25 BY MR. McKNIGHT:

- 1 Q. Good morning, Ms. Weeks-Brittan.
- 2 A. Good morning.
- 3 THE COURT: Keep your voice up.
- 4 A. Sorry. Good morning.
- 5 Q. Who is your current employer?
- 6 A. Canal Productions.
- 7 Q. What is your position with Canal Productions?
- 8 A. With Canal Productions? Manager.
- 9 Q. Do you work for any other entities that are managed by
- 10 Mr. De Niro?
- 11 A. Tribeca Productions.
- 12 Q. And what is your position with Tribeca Productions?
- 13 A. Manager of production and development.
- 14 Q. When did you start working for Canal?
- 15 A. Mid-July 2018.
- 16 Q. When did you start working for Tribeca?
- 17 A. January 2021.
- 18 Q. Are you working for both of them now?
- 19 A. Yes.
- 20 Q. At the time that you started working for Canal, who was
- 21 your supervisor?
- 22 A. Chase Robinson and Robert De Niro.
- 23 Q. At that time Ms. Robinson had worked for Canal for over a
- 24 decade; correct?
- 25 A. Correct.

1 Q. And Ms. Robinson did not report to you; is that correct?

2 A. Correct.

3 Q. Ms. Robinson in fact reported to Mr. De Niro; is that
4 correct?

5 A. Correct.

6 Q. And you weren't present for all of the conversations that
7 Ms. Robinson had with Mr. De Niro about her job
8 responsibilities; correct?

9 MS. LAZZARO: Objection to the form?

10 A. Correct.

11 THE COURT: Sustained.

12 A. Correct.

13 THE COURT: Ma'am, so the way the proceedings work is
14 that after there is a question, the other side gets to make an
15 objection. If I sustain the objection, counsel move on and you
16 don't answer. If I overrule the objection, you answer.

17 Go ahead, counsel.

18 BY MR. McKNIGHT:

19 Q. During the time that you and Ms. Robinson worked at Canal
20 together, for that period of time you worked most of the time
21 in the office; correct?

22 A. Correct.

23 Q. And during that period of time, for most of that time,
24 Ms. Robinson worked out of a home office; is that correct?

25 A. Correct.

1 Q. And so, you weren't present most of the time when
2 Ms. Robinson might have been having conversations with
3 Mr. De Niro about her work assignments or responsibilities?

4 MS. LAZZARO: Objection?

5 THE COURT: Overruled. It's a hypothetical question.
6 I assume if there were conversations she wasn't present for
7 them.

8 MR. McKNIGHT: Very well.

9 A. Correct.

10 Q. And you would agree that you didn't have visibility into
11 the specifics of all of the work that Ms. Robinson performed?

12 MS. LAZZARO: Objection?

13 THE COURT: Overruled.

14 A. I agree.

15 Q. Now, what was your salary initially when you were hired?

16 A. Initially, \$65,000.

17 Q. And there came a time in 2019 when you received an
18 increase; correct?

19 A. Correct.

20 Q. And that happened around the time that the complaint was
21 filed in this action; correct?

22 A. I believe so.

23 MS. LAZZARO: Objection.

24 THE COURT: Overruled.

25 Q. Is that correct?

1 A. Fall of 2019? Around there?

2 Q. No. Around fall of 2019, around the time that you received
3 your raise, it was around the time that the complaint was filed
4 in this action; correct?

5 A. Correct.

6 Q. You had a conversation with Mr. De Niro at that time;
7 correct?

8 A. Correct.

9 Q. And at that time you pressed for a raise because you were
10 taking over the responsibilities that Ms. Robinson had to do in
11 part, correct?

12 A. No.

13 MR. McKNIGHT: Court's indulgence.

14 Q. Did you write an e-mail to Mr. Bosswick at that time about
15 the basis for your raise?

16 A. I believe I emailed Bosswick and Tasch.

17 Q. Right; and Mr. Bosswick is a partner at Tasch, correct?

18 A. At Berdon.

19 Q. At Berdon, right.

20 At that time you told Mr. Bosswick that you were
21 seeking a raise, in part, because you were taking over the
22 duties of Ms. Robinson; isn't that correct?

23 A. I would love to see the e-mail. I don't remember. But the
24 basis of the raise was to match my base salary from my previous
25 employer. And I discussed with Bob that I came in from a job

1 with a higher salary, I asked Chase to match that base salary,
2 she said no at the time so I brought it up with Bob that I had
3 flagged earlier on in my career that I wanted my salary matched
4 and he said, you know, of course, she never brought that to me.
5 I said I knew that because she said "no" when I asked her
6 immediately and that's why he gave me a raise.

7 Q. When you emailed Mr. Bosswick for it you actually mentioned
8 Chase Robinson and her duties; isn't that correct?

9 A. I absolutely believe you, I just don't recall the e-mail.

10 MR. McKNIGHT: Your Honor, we are pulling up the
11 exhibit. 409, excuse me, your Honor. Plaintiff's Exhibit 409.
12 Your Honor, I would like to show Plaintiff's Exhibit 409.

13 THE COURT: OK. Let me see it.

14 Q. Miss, do you see Plaintiff's Exhibit 409?

15 A. Yes.

16 Q. And I direct your attention to the bottom of the first
17 page.

18 A. Yes.

19 Q. And you see there, ma'am, where you wrote: Since Chase's
20 departure, our workload has increased. This is both because we
21 have taken on the few responsibilities she did at all, but also
22 because Bob's needs have changed over time.

23 Did you write that?

24 A. Yes.

25 Q. And so you obtained a raise in part because you were taking

1 over the responsibilities from Ms. Robinson; correct?

2 A. The few responsibilities, yes.

3 MR. McKNIGHT: No further questions, your Honor.

4 THE COURT: Defense? Can you do some examination
5 before we get to any disputed exhibits?

6 MS. LAZZARO: Absolutely, your Honor.

7 THE COURT: Good. And you will let me know when we
8 get to any disputed exhibits.

9 MS. LAZZARO: Absolutely, your Honor.

10 CROSS-EXAMINATION

11 BY MS. LAZZARO:

12 Q. Hi, Ms. Weeks-Brittan. Thank you for being here today.

13 Before we begin, is it OK if I refer to you as Sabrina?

14 A. Yes.

15 Q. Did you go to college?

16 A. Yes.

17 Q. Where did you go?

18 THE COURT: Try to keep your voice up.

19 A. University of Michigan, Ann Arbor.

20 Q. When did you graduate?

21 A. 2015.

22 Q. Did you graduate with a degree?

23 A. I did.

24 Q. What was that?

25 A. Degree in political science.

NB15rob3

Weeks-Brittan - Cross

1 Q. Did you work post graduation?

2 A. Yes.

3 Q. Where?

4 A. Oracle Corporation.

5 Q. Where was that?

6 A. Initially in Boston, and then I was able to transfer to the
7 New York office.

8 Q. What was your role with Oracle?

9 A. Initially sales and business development; and in New York,
10 financial website optimization consulting.

11 Q. Did there come a time when you applied to work for Canal?

12 A. Yes.

13 Q. When was that?

14 A. Summer of 2018.

15 Q. What position did you apply for?

16 A. Executive assistant to Robert De Niro.

17 Q. How did you learn about that position?

18 A. A mutual friend.

19 Q. Did you interview for the position at Canal?

20 A. Yes.

21 Q. How many interviews did you have?

22 A. I believe three.

23 Q. Where were they conducted, if you recall?

24 A. On the upper east side at a cafe, I believe in the 90s.

25 Q. Who interviewed you?

1 A. All three times Chase, and I believe Michael Kaplan was
2 present at the second interview.

3 Q. Did Bob ever interview you?

4 A. No.

5 Q. Did you meet Bob at all during the interview process?

6 A. No.

7 Q. Did you find that odd?

8 A. Yes. I thought I was being catfished.

9 THE COURT: I'm sorry. Catfished?

10 THE WITNESS: Like you are told you are meeting
11 someone endearing and great and it ends up not being that. I
12 thought I was quitting a stable job at Oracle for a creative
13 job, which was what I was doing, but I was afraid that it
14 wasn't actually for Robert De Niro as I never met him.

15 THE COURT: Is that a phrase, "catfished"?

16 THE WITNESS: It happens on website dating, people get
17 catfished. And it is, you know, an 80-year-old man in Florida
18 not a hot woman.

19 THE COURT: It shows your generation.

20 BY MS. LAZZARO:

21 Q. During the interview process, what was your understanding
22 of plaintiff's position at Canal?

23 A. My understanding was that she was vice president of
24 production and finance.

25 Q. And did you have an understanding of Canal's business at

NB15rob3

Weeks-Brittan - Cross

1 that time?

2 A. Not really.

3 Q. As you stand here today, what type of business is Canal, to
4 the extent you can explain it?

5 A. It's Robert De Niro's personal office and business office.

6 Q. Does Canal do any production work?

7 A. No; Tribeca does.

8 Q. Does Canal do any financing?

9 A. We submit financing to Berdon.

10 Q. You mentioned that Mr. Kaplan was present during one or
11 more of your interviews; is that correct?

12 A. Yes.

13 Q. What was your understanding of Mr. Kaplan's role?

14 A. A very vague understanding. I had looked him up on
15 LinkedIn ahead of time and I think it said something like
16 special ops. And I asked about it -- and he is a funny guy --
17 he was vague and funny in his answer.

18 Q. Understood.

19 Did you have any memorable impressions of Ms. Robinson
20 at the time during your interview?

21 MR. McKNIGHT: Objection, your Honor.

22 THE COURT: Sustained as to form.

23 A. She seemed very --

24 THE COURT: No, no. Remember --

25 THE WITNESS: Sorry, you're right.

1 THE COURT: -- when I say "sustained" you don't answer
2 the question.

3 THE WITNESS: My bad. Sorry.

4 BY MS. LAZZARO:

5 Q. During the interview stages did you have any perception of
6 or understanding of Ms. Robinson's role with the company?

7 A. Not the extent of it, no.

8 Q. Did you eventually get offered a position at Canal?

9 A. Yes.

10 Q. When?

11 A. Towards the end of June 2019.

12 Q. Who extended you the offer?

13 A. Chase.

14 Q. How did you receive the offer?

15 A. I believe I received it actually in-person at the third
16 interview, and then she emailed me more formally.

17 Q. And did the e-mail have details as to what your anticipated
18 job duties would be?

19 A. Not initially. But since I came from a corporate job
20 before, I wanted to hammer those details out so I did ask for
21 them and she replied with more details.

22 Q. Do you recall what details were supplied?

23 A. She explained that we received health insurance after 90
24 days, she gave me an offer letter contingent on completing a
25 background check, and the vague responsibility was anything

1 that Robert De Niro or Chase Robinson asked of you.

2 Q. Understood.

3 You accepted this position?

4 A. Yes.

5 Q. And what was your title when you first started?

6 A. Executive assistant to Robert De Niro.

7 Q. I think you already covered this with counsel, but when you
8 first started your compensation was -- what was your
9 compensation?

10 A. \$65,000.

11 Q. And -- I'm sorry. You did try to negotiate this amount?

12 A. I did. Yes. I was making \$85,000 at Oracle and I asked,
13 when Chase extended the offer, if she would match or consider
14 matching.

15 Q. Was a reason provided by Ms. Robinson?

16 A. No.

17 Q. Did you think the offer of compensation was typical salary
18 of an executive assistant?

19 A. I did.

20 Q. So you accepted the job, regardless, at 65K?

21 A. Yes.

22 Q. Why was that?

23 A. I was eager to transition my career into entertainment and
24 I was excited about the opportunity, regardless of the pay.

25 Q. Now, just talking about this early stage, are you yet to

NB15rob3

Weeks-Brittan - Cross

1 meet Bob?

2 A. Upon, you know, receiving the offer and stuff? No.

3 Q. Did there ever come a time where you raised compensation
4 with Bob directly?

5 A. I raised it with him around the fall of 2019, which is when
6 I received the raise.

7 Q. Sabrina, you missed opening here today but my colleague,
8 Mr. Schoenstein, mentioned that testimony might be
9 non-sequential at times so I just want to jump to that
10 conversation real quick, so flash-forward to you in 2019, can
11 you explain the conversation you had with Bob regarding the
12 raise in compensation?

13 A. Yes. So the conversation came up because my colleague at
14 the time, Gillian Spear, flagged to Bob that she was looking
15 for additional opportunities and that she was hoping to
16 transition -- she ended up taking a Jon Stewart. At the time,
17 Bob pulled me into his office to have a touch-base to gauge if
18 I was content and happy at the company and how I felt about
19 everything. The conversation touched on Chase and he brought
20 up how he trusts people until you break --

21 MR. McKNIGHT: Objection, your Honor; hearsay.

22 THE COURT: Sustained, in terms of what Mr. De Niro
23 said to you.

24 MS. LAZZARO: Understood.

25 BY MS. LAZZARO:

NB15rob3

Weeks-Brittan - Cross

1 Q. Was there anything further you asked of Bob?

2 A. Yes. I said that Chase was extremely difficult to work
3 with and I was happy with the fact that she was no longer at
4 the company, but something that I had flagged to her initially
5 was that my salary in my previous role was \$85,000. And I
6 asked if he thought I was doing a good job, if he would
7 consider matching the salary at my old job, and he said of
8 course -- sorry.

9 Q. So your salary was matched?

10 A. Correct.

11 Q. Understood.

12 A. I have received a raise since then, as well.

13 Q. And that's with your work with Tribeca?

14 A. Correct.

15 Q. What do you make now?

16 A. I now make \$100,000.

17 Q. We are going to do a flashback real quick. The early days
18 at Canal, executive assistant, you start mid-2018, just to
19 orient you with that. Who do you report to when you first
20 started at Canal?

21 A. Chase Robinson.

22 Q. Who directed your work at Canal?

23 A. Chase.

24 Q. Did you consider plaintiff to be your boss?

25 A. One of them, yes.

NB15rob3

Weeks-Brittan - Cross

1 Q. Was the other Bob?

2 A. Yes.

3 Q. Were there any other assistants already working at Canal
4 when you started?

5 A. Gillian Spear.

6 Q. Was Gillian's role the same as yours?

7 A. Yes.

8 Q. Did you know how much Gillian was making at the time?

9 A. No.

10 Q. Was there anyone else working at Canal during this time?

11 A. Michael Kaplan; Chase Robinson; and about a month into my
12 role, Lulu white.

13 Q. And was Mr. Kaplan an assistant?

14 A. Vague special ops; yes.

15 Q. So when you started working at Canal, what were your hours?

16 A. In-office they were 9:00 to 6:00 or 10:00 to 7:00; Gillian
17 and I staggered, based on which one of us was on-call, and then
18 the person who was on-call took this physical on-call phone
19 with them home at night in case anything came up after hours.

20 Q. Did you need to be in office by a certain time?

21 A. Yes.

22 Q. Who required this?

23 A. Chase.

24 Q. What time was it again?

25 A. Either 9:00 or 10:00, depending on the on-call person.

NB15rob3

Weeks-Brittan - Cross

- 1 Q. Did plaintiff work in the office as where will?
- 2 A. No.
- 3 Q. Where was plaintiff working from, to your knowledge?
- 4 A. Most of the time her apartment uptown.
- 5 Q. Did you get the option to work remotely?
- 6 A. No.
- 7 Q. Did Ms. Spear get the option to work remotely?
- 8 A. No.
- 9 Q. Did plaintiff typically call to ensure you were by your
10 desk by a certain time in the morning?
- 11 A. Absolutely.
- 12 Q. Did plaintiff ever keep tabs on you by checking in in other
13 ways?
- 14 A. Yes. She often called the after-hours phone after hours to
15 make sure that it was on loud and that someone was picking up.
- 16 Q. Did plaintiff ever come in to the office?
- 17 A. Yes.
- 18 Q. How frequently?
- 19 A. Usually depended on when Bob was in, or around the
20 holidays, I would say maybe twice a week.
- 21 Q. So Bob was in about twice a week as well?
- 22 A. Correct.
- 23 Q. And did you receive any perks while employed?
- 24 A. Yes.
- 25 Q. What were they?

NB15rob3

Weeks-Brittan - Cross

1 A. A Metro Card and a \$100 a month gym reimbursement, and
2 coffees and lunches in-office.

3 Q. Let's break those apart. Were there any general policies
4 related to reimbursements --

5 A. We had --

6 Q. -- during the time period from when you started to
7 plaintiff's resignation?

8 A. Yes. At that time we had to submit petty cash reports to
9 Chase for reimbursement, and I believe Chase sent those on to
10 Michael Tasch at Berdon.

11 Q. Did plaintiff create this policy, to your knowledge?

12 A. To my knowledge, yes, but I'm not sure.

13 Q. Were these policies strictly enforced?

14 A. Yes.

15 Q. By plaintiff?

16 A. Yes.

17 Q. Were the Metro Cards to travel to and from the office?

18 A. Yes.

19 Q. Did you ever use Ubers or taxis for work?

20 A. Occasionally, yes.

21 Q. How frequently?

22 A. Maybe once or twice a month. Depended on events after work
23 that we might have to meet Bob at.

24 Q. So, is it fair to say that most of the time you would use
25 public transit?

1 A. Yes.

2 Q. Let's turn to the lunch-in-office policy you mentioned.
3 What did you understand the lunch-in-office policy to be?

4 A. I was told that Gillian and I had to order lunch together
5 when we were in-office, so we would align on a restaurant
6 choice, Chase logged us into the office Caviar account --
7 Caviar.com, it is a food website -- and we could choose
8 anything to our liking that was reasonable.

9 Q. And what was your understanding of reasonable in terms of
10 the monetary amount?

11 A. \$20, \$25 a person.

12 Q. And how did you know that?

13 A. I just feel I'm reasonable and that seemed fair for New
14 York for salad, sandwiches, stuff like that.

15 (Continued on next page)

16

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25

1 BY MS. LAZZARO:

2 Q. And how often would you order in office lunch?

3 A. Every day we were in office.

4 Q. When you were physically present in office?

5 A. Yes.

6 Q. Is there anything else you would submit reimbursement
7 requests for?

8 A. Taxis, if we had to take taxicabs, you know, to and from
9 something Bob-related, to get him to sign something. We'd
10 submit that. Our corporate cards were Amex, if a vendor didn't
11 take Amex and I had to use my personal, I would explain on the
12 petty cash sheet and submit that to Chase.

13 Q. And what was your understanding, once you submitted these
14 to plaintiff, how were these handled?

15 A. She then, I believe, submitted them to Michael Tasch, who
16 remitted physical cash to Chase, and then one of the -- one to
17 two times she would come into the office that week or a couple
18 weeks later, she would physically hand us cash in exact change
19 for our petty cash.

20 Q. And who is Michael Tasch?

21 A. He's our accountant.

22 Q. And when you say our, you mean?

23 A. Canal Productions.

24 Q. Did plaintiff always approve your reimbursements?

25 A. For the most part, yes.

NB16ROB4

Weeks-Brittan - Cross

1 Q. Did you supply a hard copy of your receipts?

2 A. Yes.

3 Q. Was that a requirement by plaintiff?

4 A. Yes.

5 Q. While working under plaintiff at Canal, was there ever a
6 time she did not approve a reimbursement?

7 A. Yes.

8 Q. Is there a particular time that you recall this happened?

9 A. Yes.

10 Q. When was it?

11 A. It was Thanksgiving --

12 MR. MCKNIGHT: Objection, your Honor. Relevance.

13 THE COURT: Overruled.

14 A. Thanksgiving 2018.

15 BY MS. LAZZARO:

16 Q. Okay. Can you explain what happened?

17 A. I was home visiting my family in Chicago, and I was trying
18 desperately to get back to New York, but Chicago weather is
19 crazy, and there's a ton of snowstorms. All flights were
20 canceled except a flight to DC. I explained to Chase and
21 Michael Kaplan that I was going to have trouble opening the
22 office in the morning because it seemed almost impossible for
23 me to get back to New York that night. I was told by Chase,
24 figure it out. So I hopped on the flight to DC and said I'd be
25 Ubering from DC to New York in the middle of the night.

1 I asked her if I could come in a little bit late, by
2 10:00 a.m. She said 9:30, period. And I got to the office at
3 9:30. I submitted my Uber. That was 3 or \$400, in the middle
4 of the night. She said she'd pay half, and she reimbursed me
5 half for that Uber.

6 Q. Did she provide any reason for that?

7 A. No.

8 Q. Was there a snowstorm happening during that period?

9 A. Yes.

10 Q. Was anyone else at the office?

11 A. No.

12 Q. To your knowledge, was plaintiff in Manhattan at that time?

13 A. Yes.

14 Q. To your knowledge, was Gillian Spear in Manhattan at that
15 time?

16 A. I'm not sure. I think she had some sort of doctor's
17 appointment or surgery, but I don't know.

18 Q. Understood.

19 But you still made your way from Chicago to DC, back?

20 A. Yes.

21 Q. Was anyone else in the office that day; if you recall?

22 A. No. I believe Bob was out of the country.

23 Q. Was there any reason provided as to why the reimbursement
24 was rejected?

25 A. No.

NB16ROB4

Weeks-Brittan - Cross

1 Q. Did you ever raise it further with either Berdon or Bob?

2 A. No.

3 Q. Do you know what Delta SkyMiles are?

4 A. Yes.

5 Q. Did you have the benefit of using any of Canal's Delta
6 SkyMiles for any portion of the trip you just described?

7 A. No.

8 Q. Just I think what one of your last items for reimbursement,
9 you mentioned dinners. Did you get the opportunity to expense
10 dinner?

11 A. No. If we were working late in the office for some reason,
12 occasionally we would order from the Tribeca Grill downstairs,
13 our office building that Bob owns, and they'd send food up to
14 us.

15 Q. Was it your understanding you had to be physically present
16 in the office for this?

17 A. Yes. There very late as well.

18 Q. What time, about?

19 A. Around past 8:00.

20 Q. And how much would you typically spend for dinner?

21 A. 25 to 35 a person.

22 Q. Well, we covered lunch and dinner, so just to cover my
23 bases on food, because I'm sure we're all getting hungry, did
24 you ever expense any personal groceries?

25 A. Never.

NB16ROB4

Weeks-Brittan - Cross

1 Q. So still focused on 2018 to 2019. What were your general
2 job responsibilities as an executive assistant -- let me
3 rephrase that.

4 Did you discuss business calls for Bob during --

5 A. Yes.

6 Q. Okay. Did you schedule personal calls for Bob?

7 A. Yes.

8 Q. How often did you do this?

9 A. Constantly.

10 Q. Was this a delegated task?

11 A. Occasionally, Chase would delegate to Gillian or me
12 depending who was on-call. Otherwise, it would come in
13 directly from Bob.

14 Q. Did you prepare Bob's itineraries for business purposes?

15 A. Yes.

16 Q. Did you prepare his personal itineraries?

17 A. Yes.

18 Q. Was this a delegated task?

19 A. It was something Chase told me was my responsibility and
20 Gillian's, and taught me how to do it at the start of my job.

21 Q. Okay. And then you handled it moving forward?

22 A. Yes.

23 Q. Understood.

24 Did you schedule any business meetings for Bob?

25 A. Yes.

NB16ROB4

Weeks-Brittan - Cross

1 Q. Did you schedule social meetings?

2 A. Yes.

3 Q. How often did you do those?

4 A. Constantly.

5 Q. Did plaintiff tell you this was part of your job role?

6 A. Anything that Bob or Chase asked was my job.

7 Q. Did you respond to e-mails?

8 A. Yes.

9 Q. Did plaintiff ever step in to respond to e-mails?

10 A. Yes.

11 Q. Was there a particular reason or instance where she did so,
12 to your knowledge?

13 A. I got the sense it was based on perceived importance. If
14 we were on something that was cool or interesting or higher
15 level with agents and entertainment lawyers, she would step in.

16 Q. Understood.

17 Did you run errands for Bob?

18 A. Not really. Kaplan did more of that at the time.

19 Q. Did you select birthday/holiday gifts on Bob's behalf?

20 A. Yes, with Chase's oversight.

21 Q. Were these gifts for business and personal?

22 A. Yes.

23 Q. Can you just give us a sense of the volume of gifts? How
24 many folks, approximately?

25 A. Hundreds around the holidays. You know, he owns multiple

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1 companies as well, you know, likes to take care of everyone at
2 the hotel and Nobu.

3 Q. A lot of staff?

4 A. Yes.

5 Q. Understood.

6 Did you ever pick up prescriptions for Bob?

7 A. Yes.

8 Q. In proximity to Canal's office location, how far did you
9 have to travel to pick up a prescription?

10 A. The Duane Reade across the street from our office.

11 Q. How often did you do this?

12 A. At the time, only once or twice. Since then, a couple more
13 times, but now that I'm in LA, never.

14 Q. Do you recall a time when plaintiff delegated those tasks
15 to you?

16 A. Yes.

17 Q. Do you know when that was exactly -- approximately?

18 A. Maybe early 2019.

19 Q. Did it ever bother you to pick up Bob's prescriptions?

20 A. No.

21 Q. Do you know if this task was often delegated to someone who
22 was physically present in the office due to a proximity of the
23 Duane Reade?

24 A. Gillian would pick up prescriptions on occasion as well. I
25 believe Michael Kaplan as well.

1 Q. Did Bob ever joke about any of his medications?

2 MR. MCKNIGHT: Objection.

3 THE COURT: Overruled.

4 A. Not to my knowledge.

5 BY MS. LAZZARO:

6 Q. And how would you pay for those, if you were to, on the
7 occasions you did?

8 A. So Michael Kaplan left his corporate Amex in the office for
9 odd expenses like that, if we had to run across the street. So
10 we'd either take Michael Kaplan's card, or if it wasn't there,
11 maybe that would be an occasion where we use our personal and
12 seek petty cash reimbursement.

13 Q. Did you ever use your own card, if you had to run an errand
14 for Bob, and seek reimbursement after the fact?

15 A. Yes. If Michael's card wasn't in the office, yes.

16 Q. Would you say that was often?

17 A. No. He left it there for the most part.

18 Q. Okay. So Canal's corporate cards, how many were there from
19 2018 to let's say March 2019?

20 A. Two.

21 Q. Okay. Were there written policies on using them?

22 A. I don't know if they were written or not. But there were
23 policies on using Michael's card for running around, stuff, to
24 be left physically in the office. And Chase's card, we would
25 use for Bob's hotel stays, more expensive things, maybe private

1 plane travel.

2 Q. Understood.

3 If you had to run out, run an errand, grab lunch, were
4 you grabbing Kaplan's card?

5 A. Yes.

6 Q. As you were employed there, let's say the end of 2018,
7 early 2019, what was your understanding of plaintiff's role at
8 Canal?

9 A. I realize she was not doing any productions, and that's
10 something that interests me personally. I got the sense that
11 she did a lot of busy work, and you know, I was always, always,
12 always busy running around.

13 Q. And what were your general impressions of Bob? I suspect
14 you eventually met him?

15 A. Yeah. I have since met him.

16 Q. Let me step back.

17 When did you meet Bob?

18 A. August 2018.

19 Q. What were your general impressions of him?

20 MR. MCKNIGHT: Objection, your Honor.

21 THE COURT: Overruled.

22 A. Nice, soft-spoken, kind, reasonable.

23 BY MS. LAZZARO:

24 Q. So when you started in 2018, to Chase's resignation, how
25 closely did you work with Ms. Robinson?

1 A. Pretty closely.

2 Q. And the general subject she would interact on, if you could
3 provide an example?

4 A. Her delegating stuff to us, adding Gillian and myself to
5 e-mails, she'd cc us and write "the girls will handle," and
6 we'd take it over, and calls, travel.

7 Q. Okay. Let me just -- would plaintiff refer to you and
8 anyone else as "the girls"?

9 A. Yes.

10 Q. How frequently?

11 A. Fairly frequently, until Gillian Spear flagged that she
12 didn't like being called that in early 2019.

13 Q. And to your knowledge, was that raised with plaintiff
14 directly?

15 A. Yes.

16 Q. Did plaintiff stop referring to you as "the girls"
17 afterwards?

18 A. This was pretty close to when she resigned, so it did stop.

19 Q. Okay. That's fine.

20 Did Bob ever refer to you as "the girls"?

21 A. Yes.

22 Q. How frequently?

23 A. Way less frequently, and often in response to Chase calling
24 that, he would use the same term and say, "oh, great, the
25 girls."

1 Q. Understood.

2 And now, I know you mentioned throughout the day today
3 kind of briefly being on-call. I just want you to explain this
4 a bit. So would plaintiff tell you that you needed to be
5 on-call?

6 A. Yes.

7 Q. What did being on-call mean to you?

8 A. Staying reachable at all times with this physical third
9 phone that Gillian and I passed off between ourselves, and it
10 had to stay on loud so -- you know, to make myself available at
11 all times.

12 Q. Did it matter where you physically were when you were
13 on-call?

14 A. In service, did matter quite a bit. In New York as well.

15 Q. Do you recall any specific instance where plaintiff called
16 the on-call -- strike that. Let me take a step back.

17 The on-call phone is also the after-hours phone; is
18 that correct?

19 A. Correct.

20 Q. You sometimes refer to it as the back phone?

21 A. Yes.

22 Q. Do you recall a specific instance where the plaintiff
23 called the after-hours phone solely to confirm that it would be
24 answered?

25 A. She did that frequently, but I recall on Christmas, around

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1 3:00 a.m. I received a call from her. Hi, just checking. And
2 then she hung up.

3 Q. Well, Merry Christmas.

4 A. Yeah.

5 Q. Do you recall putting in a time slip for that Christmas,
6 answering the phone?

7 A. We submitted time -- Gillian and I submitted timecards to
8 Chase.

9 Q. Understood. And who generally approved them?

10 A. Chase.

11 Q. And if you went over a certain amount of hours, would you
12 get paid overtime?

13 A. Yes.

14 Q. Would you submit your overtime to plaintiff?

15 A. Yes.

16 Q. Did you have any idea how those were handled after passing
17 them off to plaintiff?

18 A. That they were sent to Tasch, is my understanding.

19 Q. Were there any instances where plaintiff questioned your
20 overtime?

21 A. She would generally question the timecards to make sure
22 they were accurate, but once deemed accurate, no, we always got
23 paid the overtime we were due.

24 Q. To your knowledge, did anyone ever have issues with getting
25 paid overtime?

1 A. I'm now --

2 MR. MCKNIGHT: Objection.

3 THE COURT: What's the relevance of this?

4 MS. LAZZARO: You can strike the question, your Honor.

5 THE COURT: Okay.

6 Q. While you were employed -- while both you and plaintiff
7 were employed at Canal, did you perceive Canal, the workplace,
8 to be hostile?

9 A. No.

10 Q. Did anyone ever refer to Bob -- excuse me. Strike that.

11 Did anyone ever refer to you the plaintiff as Bob's
12 office wife?

13 A. I thought maybe Chase did.

14 MR. MCKNIGHT: Objection, your Honor. Hearsay.

15 THE COURT: If it's from the plaintiff, the objection
16 is overruled.

17 A. I never heard Bob call her that.

18 Q. Understood. Thank you.

19 MR. MCKNIGHT: Objection, your Honor. Move to strike.

20 THE COURT: The motion is granted.

21 BY MS. LAZZARO:

22 Q. Do you ever recall a time where plaintiff took credit for
23 your work?

24 A. Yes.

25 Q. And can you provide an example?

1 A. I realized after, during this fall conversation with Bob,
2 that touch-base to gauge my happiness at the company.

3 MR. MCKNIGHT: Objection, your Honor. Relevance.

4 THE COURT: Overruled.

5 A. Bob expressed concern to me about knowing how to do his
6 production schedule and his kids' calendar.

7 MR. MCKNIGHT: Objection, your Honor.

8 THE COURT: Overruled.

9 A. I said, Bob, we've been doing this the whole time. He
10 said, you've been doing this? And he was shocked to hear that
11 Gillian and I were the ones building the travel itineraries,
12 doing the production schedule, and he generally felt bad he
13 didn't realize that work was coming from us.

14 Q. And when did that conversation take place?

15 A. Fall of 2019.

16 Q. Understood.

17 Are there any instances that otherwise come to mind
18 that you know of?

19 A. No.

20 Q. Did you feel plaintiff as a boss was strict?

21 A. Extremely.

22 Q. In what ways?

23 A. Sort of chained-to-our-desks mentality, despite her not
24 being there, she made the office morale very low, and generally
25 Gillian and I were extremely unhappy as a result of her direct

1 leadership and not Bob's.

2 Q. Did you ever raise this with Bob?

3 A. After the fact. But I was pretty new still at the time she
4 resigned, so I was trying to keep my head down.

5 Q. For clarity, after the fact, you meant after plaintiff
6 resigned?

7 A. Yes.

8 Q. Understood. From your start date to March 2019, if you
9 wanted to take off vacation, who would you submit the request
10 to?

11 A. Chase.

12 Q. Was there ever a time where plaintiff rejected your
13 vacation requests?

14 A. She often told us that wouldn't be a good time for Bob and
15 to wait or to not take it in general despite the coverage was
16 just me and Gillian on the after-hours phones, so as long as we
17 worked out our schedule, if the other person agreed to cover,
18 we were in the clear.

19 Q. And you mentioned being on-call. Were you still on-call --
20 let me rephrase that.

21 Were you ever on-call during vacation?

22 A. Yes.

23 Q. Who required you to be on-call during vacation?

24 A. Chase and Bob. We took the phone with us, so if anything
25 came up, that person handled it.

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1 Q. Was plaintiff ever on-call during vacation?

2 A. She never took the on-call phone and helped out in that way
3 ever.

4 Q. So the on-call phone was just shared between you and
5 Gillian at that time?

6 A. Yes.

7 Q. And just quickly, who is Lulu White?

8 A. She was Chase's assistant for maybe six months.

9 Q. Do you recall when she started?

10 A. August 2018, the month after I started.

11 Q. And Lulu was employed by Canal?

12 A. Yes.

13 Q. Do you know what Lulu's job duties were?

14 A. To be Chase's assistant.

15 Q. Do you know if Lulu was fired?

16 A. Not sure if she was fired or let go. Once Chase left,
17 there was no reason to have her on, in my opinion.

18 Q. Do you recall a time when -- sorry. Let me back up.

19 Do you know who Tiffany Chen is?

20 A. Yes.

21 Q. Do you recall a time when Tiffany Chen came into the
22 picture?

23 A. 2019. I think I met her around the time of Chase's
24 resignation.

25 Q. And what were your initial impressions of Tiffany?

1 MR. MCKNIGHT: Objection, your Honor.

2 THE COURT: Overruled.

3 A. That she was -- you know, came in hot and exciting,
4 go-getter. She had best -- Bob's best interests at heart, and
5 she was suspicious of Chase at the time. I was aware of that.

6 Q. Did you think Tiffany was suspicious about anyone else?

7 A. Not at that time.

8 Q. And what time are you talking about?

9 A. Around Chase's resignation. Maybe Michael Kaplan a bit as
10 well.

11 Q. Okay. You were still rather new around this time.

12 What is your relationship with Tiffany Chen presently?

13 A. Presently, we have a great relationship.

14 Q. Now, I believe I mentioned this townhouse, which you
15 haven't had the pleasure of hearing so much about. Can you
16 explain about the townhouse, to the extent you are aware of?

17 A. So initially when I started the job, Chase brought me into
18 the townhouse project. It meant meeting up with chase on the
19 weekends, odd hours, buying a bunch of things for the
20 townhouse, and then testing those things around the townhouse,
21 including building furniture out of paper for scale and random
22 things.

23 Q. Build. For clarity, you weren't putting together actual
24 furniture in the townhouse?

25 A. No. Chase wanted to visualize the size of the sofa on the

1 floor, so she asked me to make a paper replica instead of using
2 painters tape to fill it in. So it's this ridiculously large
3 paper thing on the floor that we moved around.

4 Q. Do you know how plaintiff first became involved with the
5 townhouse?

6 A. I got the sense she volunteered and was proud of it
7 initially.

8 Q. Why do you think that?

9 A. Her proximity to Bob and the perceived trust that came with
10 getting to work in his home.

11 Q. Besides building paper furniture, did you do any other work
12 at the townhouse?

13 A. We shopped a lot.

14 Q. And when you say we --

15 A. Chase and I. Lulu briefly when she started. And then
16 thankfully I went back to the office, and Lulu stayed there.

17 Q. Did you understand the townhouse to be a short-term
18 project?

19 A. I was hoping it would be for my sake, and it was for me.

20 Q. Was Mr. Kaplan involved with the townhouse at all?

21 A. Yeah. He does odd jobs. So he'd pick up things, you know,
22 maybe make some returns.

23 Q. And just quickly, because there are a lot of people
24 involved here.

25 Do you know who -- who is Ms. Rachel Humphreys?

1 A. Chase's friend and interior designer that she brought into
2 the project.

3 Q. And she was involved with the townhouse as well?

4 A. Yes.

5 Q. And to your knowledge, did Bob have any other house staff
6 at the townhouse?

7 A. I believe Tiffany had an assistant. Not sure when. And he
8 had -- intermittently had a chef in and out when his kids were
9 there.

10 Q. Do you recall a time when Tiffany began questioning any
11 alleged improprieties at Canal?

12 MR. MCKNIGHT: Objection, your Honor. Still leading.

13 THE COURT: I think it's an introduction to a new
14 subject, so it's permissible leading just to change to a new
15 subject. But after that, you'll stop the leading.

16 MS. LAZZARO: Thank you, your Honor.

17 THE WITNESS: Can I answer?

18 THE COURT: Yes, you can answer.

19 A. Yes. Around the week of Chase's resignation, I recall
20 Tiffany asking Gillian and myself if we were aware that the
21 bulk items purchased for the townhouse had ended up not being
22 returned.

23 Q. Was there anytime where you thought Tiffany was perhaps
24 looking into your spending at all?

25 A. No.

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1 MR. MCKNIGHT: Objection.

2 THE COURT: Sustained.

3 BY MS. LAZZARO:

4 Q. Based on your observations, was Ms. Chen's interest in
5 people performing services for Bob limited to men or women?

6 A. No.

7 MR. MCKNIGHT: Objection, your Honor.

8 THE COURT: Overruled.

9 BY MS. LAZZARO:

10 Q. Sorry. I'm just trying to skip some exhibits here. I want
11 to circle back to some of these points, but we're going to jump
12 a bit.

13 I'm sorry. Sabrina, did you supply an answer to the
14 last question?

15 A. I did.

16 MR. SCHOENSTEIN: It's there. I'm sorry.

17 MS. LAZZARO: Sorry.

18 BY MS. LAZZARO:

19 Q. Do you recall a time when plaintiff resigned?

20 A. Yes.

21 Q. Why do you think she left?

22 MR. MCKNIGHT: Objection, your Honor.

23 THE COURT: Sustained.

24 Q. How did you feel about her resignation?

25 A. Unbelievably happy.

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1 Q. Did you notify people that she resigned?

2 A. Like my friends and family who knew I hated working for
3 her, yes.

4 Q. Did you get together with anyone to celebrate the
5 resignation?

6 MR. MCKNIGHT: Objection.

7 THE COURT: Sustained.

8 A. Yes. Jane Rosen --

9 THE COURT: No, the objection is sustained.

10 BY MS. LAZZARO:

11 Q. Did you enjoy working with plaintiff?

12 A. No.

13 Q. After plaintiff left, did you need to hire a replacement?

14 A. No.

15 Q. How did you know what to handle moving forward?

16 A. We looked at her e-mail to make sure we weren't missing any
17 glaring projects that slipped through the cracks. We were not.

18 Q. Did you have any conversations with Bob regarding her
19 resignation?

20 A. Yes.

21 Q. And can you describe anything that you said in those
22 conversations, to the extent you remember?

23 A. Yes. I remember saying that we would look at her e-mail,
24 make sure the ball doesn't get dropped, and Gillian and I are
25 more than happy to step in and happy without her, and we

1 wouldn't let anything fall through the cracks.

2 Q. And just full circle, this is the time your compensation
3 was raised?

4 A. There was an earlier time as well, and again at that time.

5 Q. Okay. During this period, you mentioned going through work
6 e-mails. Did you find if any of plaintiff's work e-mails were
7 deleted?

8 A. Yes.

9 Q. How did you know that?

10 A. To maintain oversight in the office and for the on-call
11 person, we would always cc everyone to make sure everyone was
12 visible on e-mails, so if Gillian was on-call and I had handled
13 something, she was aware of what I was handling. We did the
14 same thing with Chase. There were e-mails that we knew she was
15 on from our own inboxes that weren't in hers.

16 Q. Did you think that was suspicious?

17 A. Yes.

18 Q. At some point in 2019, did anyone ask you to look into
19 items that seemed questionable in terms of spending or
20 charging?

21 MR. MCKNIGHT: Objection, your Honor.

22 THE COURT: Overruled.

23 A. Yes.

24 Q. Who asked you to do this?

25 A. Michael Tasch and Tom Harvey.

1 Q. And how did you go about that?

2 A. Michael Tasch sent us her Amex statements for the previous
3 couple months.

4 Q. This is the Canal corporate credit card with the
5 plaintiff's name on it?

6 A. Yes.

7 Q. Go ahead.

8 A. And we did our best to flag things we thought could be
9 improper and things that weren't Bob's charges.

10 Q. And how did you crosscheck that?

11 A. Based on Bob's location. We have meticulous notes of where
12 he's traveled to, so if there's anything that didn't align or
13 he wasn't in town and there were a number of dinner charges or
14 Uber charges, we would highlight.

15 MS. LAZZARO: Your Honor, I'd like to introduce
16 Defendant's Exhibit 93 and 95.

17 THE COURT: Why don't you have the witness identify
18 them? Go through all of the questions that you need to, and
19 then we'll see if there's an objection.

20 MR. MCKNIGHT: Your Honor, could we have a break on
21 that? We need to discuss.

22 THE COURT: What I want to do is make sure that the
23 witness establishes a foundation, that the lawyer establishes a
24 foundation. I understand there may be an objection with
25 respect to the admission of the record, but there's not any

1 conceivable objection, I think, to the foundational questions.
2 Is there?

3 MR. MCKNIGHT: They may establish a foundation, but
4 we'd like an opportunity before it gets introduced, your Honor.

5 THE COURT: I understand that.

6 MR. MCKNIGHT: All right.

7 THE COURT: So you may display it to plaintiff's
8 counsel, to the Court, and to the witness, each exhibit
9 separately, and then establish a foundation.

10 MS. LAZZARO: Understood.

11 THE COURT: Which exhibit are you now showing the
12 witness?

13 MS. LAZZARO: This is Defendant's Exhibit 93.

14 THE COURT: Okay. So you're being shown defendant's
15 Exhibit 93.

16 Q. Does this document look familiar to you?

17 A. Yes.

18 Q. These colored annotations, are those yours?

19 MR. MCKNIGHT: Objection.

20 THE COURT: What is Defendant's Exhibit 93?

21 THE WITNESS: It's the binder that Gillian Spear and I
22 put together of the Amex statements, our highlights.

23 THE COURT: How do you happen to recognize it?

24 THE WITNESS: How did I?

25 THE COURT: What is it that causes you to recognize

1 the document?

2 THE WITNESS: Oh, the first page was my handwriting,
3 and then some of these highlight were mine, and some of these
4 were Gillian's.

5 THE COURT: Okay. Do you want to show her 94?

6 MS. LAZZARO: 95.

7 THE COURT: 95. I'm sorry.

8 BY MS. LAZZARO:

9 Q. Sabrina, do you recognize this document?

10 A. Yes. Also in my handwriting.

11 THE COURT: What do you recognize it to be?

12 THE WITNESS: If we could go back to the top? Yes. I
13 recognize this as the Amex statements filtered by Ubers, car
14 services, and taxis.

15 THE COURT: How do you happen to recognize it?

16 THE WITNESS: From my handwriting and the statements
17 that Michael Tasch had sent us to review.

18 THE COURT: Is it at this point that you would seek to
19 offer this document?

20 MS. LAZZARO: I would like --

21 THE COURT: These documents?

22 MS. LAZZARO: I would like to, your Honor.

23 THE COURT: And I guess my question to you is
24 whether -- I understand there's an objection that plaintiff
25 has. Are there other questions that you can ask or other areas

1 of examination that we can cover to which there's not an
2 objection so I can address this a little bit later?

3 MS. LAZZARO: Of course, your Honor. I don't have
4 much more, but I could jump forward, and we could circle back
5 to this.

6 THE COURT: If you can. Why don't you do what you
7 can, and then we'll take an early lunch break?

8 MS. LAZZARO: I appreciate that, your Honor.

9 BY MS. LAZZARO:

10 Q. There was a time -- let me rephrase that.

11 The documents you just saw, can you explain them for
12 the jury?

13 MR. MCKNIGHT: Objection, your Honor.

14 THE COURT: Sustained. Members of the jury, it's
15 12:35. I realize this is earlier than the lunch break that we
16 usually take. If we take the lunch break now, can folks be
17 back by 1:45? Is there anybody who has a problem with that?
18 So let's take our lunch break now and be back so we can get
19 started again at 1:45. Enjoy your lunch break.

20 MS. LAZZARO: Thank you, your Honor.

21

22

23

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25

1 (Jury not present)

2 THE COURT: Okay. The witness can step down, and
3 counsel may be seated.

4 I'll hear from counsel with respect to the objections
5 to DX93 and DX95.

6 MR. MACURDY: Thank you, your Honor. I was going to
7 speak on these. We didn't know which witness they would come
8 from, so I'm prepared.

9 THE COURT: And I will hear whoever on the defense
10 side wants to address 93 and 95.

11 MR. MACURDY: Thank you, your Honor.

12 So both of these documents have several issues. For
13 one, they are hearsay. We will talk about 93 first.

14 These are documents that purport to show spending from
15 a credit card. That is prototypical hearsay. This sort of
16 thing needs to come in as a business record of Amex so we can
17 be sure of its authenticity. This witness, generating a
18 hearsay statement on some computer somewhere. So it questions
19 the authenticity. It doesn't meet the definition of a business
20 record. You would need either to get the record from either
21 American Express and have them send a witness who can come in
22 and certify it, or get a business records certification under
23 Rule 803(11). They have done neither of that in this case.

24 Beyond that, there's hearsay within the hearsay in the
25 document in terms of her -- for one, her handwriting, all the

1 Amex charges that she writes on the first page. And then the
2 highlighting itself is also a hearsay statement, that, you
3 know, this was an improper charge that we focused on. Not only
4 that, it's not only her own hearsay, but it's the hearsay of
5 someone else. She testified that Gillian Spear, another Canal
6 employee, made highlights.

7 So we have her own hearsay, the hearsay from other
8 people, we have handwritten notes. Besides the first page,
9 there is other handwriting here on Bates 52739. Scrolling
10 there for a second, your Honor.

11 On 52739, there's handwriting that says LA taxi driver
12 book trip. So once again, that's a hearsay statement. That
13 should not be coming in through this document.

14 A separate argument against this, your Honor, is under
15 402 and 403. This is a long, long list of spending for
16 different charges and then highlights of certain charges, and
17 the testimony has been that nothing was done to determine which
18 of those charges are proper or improper. Mr. Kaplan testified
19 to that.

20 So it's hugely prejudicial to show this to the jury
21 when no work has been done to make any sort of delineation and
22 just show a huge volume of charges in a prejudicial way,
23 asserting there was wrongdoing.

24 So those are my arguments to start, your Honor.

25 THE COURT: Let me hear from defendants.

1 MS. LAZZARO: Thank you, your Honor.

2 THE COURT: Plaintiff can be seated during that so I
3 can see defense counsel.

4 MS. LAZZARO: Thank you, your Honor.

5 I think it's already been established that these
6 records were received from Berdon, Tasch, Mr. Tasch
7 specifically. Mr. Tasch was on the stand. He testified that
8 he handled these records. The witness received them directly.
9 The handwriting within these documents are the witness'
10 handwriting herself.

11 To the extent a more legible version is needed, we
12 have the original compilation, including the tabs and exhibits
13 that we're happy to pass up to the Court or the witness to
14 review.

15 These are the foundation of the counterclaims and was
16 part of the information-gathering that defendants premised
17 their further investigation, once this information was relayed
18 to attorneys and accountants above the witness. As well,
19 plaintiff has used these documents and filed on their summary
20 judgment motion. They are relevant to the case and to our
21 counterclaims, certainly.

22 THE COURT: And what is your answer to the plaintiff's
23 argument that even if the -- you've established as to the
24 underlying records that they are not hearsay because they are
25 business records, that the highlighting and notations

1 constitute hearsay?

2 MS. LAZZARO: I believe the testimony will be that
3 Ms. Weeks-Brittan was the individual who implemented the
4 highlighting and handwriting herself.

5 THE COURT: But just help me with respect to why the
6 highlighting isn't an out-of-court statement admissible for its
7 truth? Why isn't the handwriting hearsay?

8 MS. LAZZARO: Because the witness can testify as to
9 the authenticity of her own handwriting.

10 THE COURT: I don't think that's a particular hearsay
11 exception.

12 MR. SCHOENSTEIN: Do you mind if I kibbitz?

13 THE COURT: That's fine. I just want to make sure --
14 I don't care who addresses the issue. I want to make sure that
15 I issue the right ruling.

16 MR. SCHOENSTEIN: The handwriting and the highlighting
17 are offered for the fact that they were put there, not for the
18 truth of the matters asserted. Right? That plaintiff's table
19 has been questioning for three days whether anybody did an
20 investigation and really looked at this stuff, and the answer
21 is right up there at that table with these documents. And she
22 can say she put the highlights, what her process was, what her
23 notes were. And that is at least admissible for the fact that
24 it was done by her on behalf of the defendants, at a minimum.

25 And then the underlying bills are plainly business

1 records. Those are Amex bills that are received on a regular
2 basis. They were passed to Berdon on a regular basis. They
3 were passed from Berdon back to the company at the request of
4 the company as part of this investigation. There's no argument
5 that the Amex bills or any of that material is hearsay. Those
6 are all plainly business records, so these are business records
7 that have been augmented.

8 And if your Honor thinks it necessary, you can give a
9 limiting instruction on the augmentation, but even that portion
10 has to be admitted for some purpose.

11 THE COURT: Okay. Is there anything more from
12 defendants before I give plaintiff the last word? Either of
13 you?

14 MR. SCHOENSTEIN: No, thank you, your Honor.

15 MR. MACURDY: Your Honor, if you just take a look at
16 Rule 803(6) of which you need to establish a business record,
17 somebody needs to testify that the record was made at or near
18 the time by or from the information transmitted by someone with
19 knowledge. The record was kept in the course of a regularly
20 conducted activity of a business organization, whether or not
21 for-profit. Making the record was a regular practice of that
22 activity. And then all of these conditions are shown by the
23 testimony of the custodian or another qualified witness or by a
24 certification that complies with --

25 THE COURT: Why isn't Mr. Berdon a perfectly qualified

1 witness with respect to all of these records? He testified
2 that he provided the credit card statements, she's testifying
3 that this came from the credit card statements. He testified
4 in great detail about his responsibilities with respect to the
5 credit card statements, and the way in which they were used in
6 the business of Canal.

7 You don't need a representative of American Express to
8 be a -- to qualify a business record if those records are, in
9 fact, used in the business of Canal.

10 MR. MACURDY: Berdon in no way generated these
11 records.

12 THE COURT: The Amex records he -- but you don't need
13 to have generated them. It just needs have to been records
14 that were kept and maintained in regular course of Canal's
15 business. And Berdon actually testified to all of that, didn't
16 he?

17 MR. MACURDY: No, your Honor, these are, again, not --
18 American Express generates the charges. All Mr. Tasch does is
19 go online and hit print. It's not a business record. It's not
20 been certified by anyone at American Express. When you charge
21 a credit card, those expenses, they don't accumulate and appear
22 at Berdon. They appear at American Express, and then Berdon
23 can login and access records of American Express.

24 So the certification or the custodian would need to
25 come from American Express.

1 THE COURT: Okay. All right. I'm prepared to rule.
2 I don't think that that's a legally correct
3 proposition. I think that Berdon and/or Canal can qualify an
4 American Express statement as a business record, and I haven't
5 heard any argument that Mr. Berdon's testimony was
6 insufficient. And I think that defendants are correct that the
7 highlighting that is provided by the witness here comes in, not
8 for the truth, but for the fact that that is what she did.
9 Again, not for the truth, but for the fact that those
10 statements were made, and that that is her work product.

11 As to the issues with respect to relevance, I think
12 it's highly relevant. There's been testimony with respect to
13 the policies of Canal as implemented by the plaintiff. And
14 this, as I understand the testimony of this witness, she is
15 testifying with respect to which of these charges are the
16 plaintiff's charges and which are Mr. De Niro's charges, or
17 giving testimony from which a jury could infer which charges
18 are the plaintiff's and which is -- belongs to Mr. De Niro.

19 Regarding what inferences to draw with respect to
20 whether the charges are proper or improper, you know, that's
21 going to be a matter as to which reasonable persons can draw
22 different inferences and ultimately will be the subject, I
23 gather, of additional testimony, including that of the
24 plaintiff and will be a matter for the jury to decide.

25 So that's my ruling with respect to those two

1 exhibits.

2 There are additional exhibits as to which there were
3 objections.

4 Is plaintiff -- I'm sorry. Is defendant still
5 planning to offer DX249?

6 MS. LAZZARO: I'm sorry, your Honor. No. We already
7 covered the topic in detail already through the witness'
8 testimony. We don't feel the need to introduce it any longer.

9 THE COURT: What about DX250.

10 MS. LAZZARO: Same.

11 THE COURT: Okay. Good. And DX323, you mentioned
12 something about the last line.

13 MS. LAZZARO: Correct. Only if plaintiff opens the
14 door, defendants would like to offer Bates stamp Canal ending
15 in 48973 commencing at 9:12 p.m.

16 THE COURT: So I'm a little bit confused by your
17 answer. Are you proposing to offer DX323 in your continued
18 examination of this witness or only --

19 MS. LAZZARO: If necessary only, correct.

20 THE COURT: Meaning that depending upon the redirect
21 examination?

22 MS. LAZZARO: That is correct.

23 THE COURT: Let me just give a quick look at it.
24 DX323?

25 MS. LAZZARO: That's correct.

1 THE COURT: We'll see with respect to the last line of
2 DX323.

3 MR. MACURDY: Your Honor, may I briefly at some point
4 make more of a record on this, one minute of the record on your
5 prior ruling?

6 THE COURT: I mean, I gave you a chance to argue. If
7 there's something new...

8 MR. MACURDY: It's just very brief. I just want to
9 put on the record that Mr. Tasch did not look at that document,
10 he was not shown it, he did not identify it or authenticate it.
11 He did not say how he went and generated it. None of that is
12 in the record, nothing about how that was regularly done in the
13 course of his business. Thank you.

14 THE COURT: If we need to have to Mr. Berdon back and
15 Mr. Berdon authenticate the American Express records that he
16 provided to the witness?

17 MR. SCHOENSTEIN: If that's where we're going,
18 your Honor, he can come back and go back on the stand and do
19 it. It seems like a waste of time. He's already testified he
20 gathered up Amex bills, passed them back on and this witness is
21 saying these are the bills she got from Berdon.

22 THE COURT: I'll receive it subject to connection, and
23 you all can figure out whether you want to have me have
24 Mr. Berdon come back. And meanwhile, if there are Amex records
25 that were provided to the plaintiff from which you drew these

1 records that you need to offer up, then, you know, I leave it
2 to you. But I'll receive it subject to connection. These two
3 exhibits, subject to connection.

4 MR. MCKNIGHT: Your Honor, my only question is given
5 that it appears that the colored portions are the only portion
6 that they are claiming might be problematic, then I am
7 suggesting to the Court that an entire bill with lines that
8 can't be identified as problematic is prejudicial.

9 And so perhaps they should redact the bill and limit
10 it to only the areas that they have identified as opposed to
11 the rows and rows and rows of information there of other
12 charges that have not been identified as being problematic.

13 THE COURT: That objection is overruled. You can
14 cross that there are lines that are not color-coded.

15 Okay. After this witness, do we have another witness
16 for today?

17 MR. MACURDY: We do, your Honor. Tom Harvey.

18 THE COURT: Okay. Great.

19 MR. SCHOENSTEIN: Your Honor, I hesitate to ever
20 correct your Honor, but just so the record is clear, you keep
21 saying Mr. Berdon. It's Mr. Tasch who works --

22 THE COURT: I'm sorry. Mr. Tasch from Berdon. Thank
23 you for correcting me.

24 See you all back here by 1:40.

25 (Lunch recess)

1 A F T E R N O O N S E S S I O N

2 1:45 p.m.

3 THE COURT: Let's bring in the jury. Let's put the
4 witness back on the stand.

5 MR. MACURDY: May I make a brief application, Judge?

6 THE COURT: Sure.

7 MR. MACURDY: Your Honor, I fully respect your ruling
8 from earlier on for Exhibits 93 and 95, defendant's exhibits.
9 I just respectfully move for reconsideration on the timing of
10 it. We submit that it would be hugely prejudicial for this to
11 come in in front of the jury and then have Mr. Tasch come back
12 here and not be able to say the authenticating words under
13 803.6(a), particularly part A, if the record was made by
14 somebody with knowledge. We don't believe that Mr. Tasch has
15 knowledge of how charges appear in AmEx records, and
16 additionally, we haven't heard about whether it was generated
17 as a PDF or an Excel. It appears to be an Excel that had then
18 been PDF'd so we don't know if lines had been deleted. Things
19 like that, your Honor. So, for those reasons, we respectfully
20 submit that the best course of action here would be to hold it,
21 subject to Mr. Tasch being able to authenticate it and
22 authenticate it as a business record.

23 THE COURT: All right. Denied.

24 I assume that you will offer the two exhibits when the
25 witness testifies?

1 MS. LAZZARO: That is correct, your Honor.

2 THE COURT: Let's put her on the stand.

3 When the records are sent by American Express to Canal
4 they become incorporated into the records of Canal and were
5 used by Canal as their business records including, the witness
6 testified, to prepare tax returns.

7 Let's bring in the jury.

8 (Continued on next page)

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1 (Jury present)

2 THE COURT: You may continue.

3 MS. LAZZARO: Thank you, your Honor.

4 I realize we are going to rehash a bit, but so that
5 the jury can obtain the benefit of looking at some of the
6 documents we were looking at earlier, Ms. Cardona, if you can
7 pull up Defendant's Exhibit 93?

8 THE COURT: Are you going to offer it into evidence?

9 MS. LAZZARO: Yes, I am.

10 THE COURT: It is received.

11 (Defendant's Exhibit 93 received in evidence)

12 MR. McKNIGHT: Your Honor, can we have a limiting
13 instruction as to the handwriting on the exhibit?

14 THE COURT: This is being offered -- the handwriting
15 on the exhibit is from the witness and she is testifying that
16 this is, reflects her analysis from the time with respect to
17 those records.

18 BY MS. LAZZARO:

19 Q. Sabrina, you testified earlier that after plaintiff's
20 departure at the request of Mr. Harvey and Berdon, you gathered
21 informed as to plaintiff's potential spending. Do you
22 recognize this first document that is in front of you, first
23 page?

24 A. Yes.

25 Q. Is that your handwriting?

1 A. Yes.

2 Q. Is this a portion of the information that you reviewed and
3 gathered?

4 A. Yes.

5 Q. Did you review plaintiff's spending on Canal's American
6 Express account?

7 A. Yes.

8 Q. Was this review approximately from May 2017 to June 2019?

9 A. Yes. That's, I believe, when the AmEx statements
10 generated, that entire time period.

11 MS. LAZZARO: And, Ms. Cardona, if you could scroll
12 through the document, briefly?

13 Q. You will recognize that there is color-coding here.

14 MS. LAZZARO: And Ms. Cardona, if you can go back up
15 to the first page for the witness? Thank you.

16 Q. Did you implement the color-coding that we see?

17 A. Yes; Gillian and I did.

18 Q. And what was the yellow highlighting meant to represent?

19 A. Groceries.

20 Q. And what was the green highlighting meant to represent?

21 A. A restaurant uptown called Paola's.

22 Q. Blue highlighting?

23 A. Taxis and car services.

24 Q. And the pink?

25 A. Flowers.

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1 Q. How did you -- strike that.

2 Did you cross-check this at all?

3 A. Yes.

4 Q. How did you do that?

5 A. So, for the flowers we received receipts directly from the
6 vendors and we checked the delivery address, whether they were
7 flowers sent to our office or if they were flowers sent to
8 Chase's personal residence.

9 Q. And what about for groceries?

10 A. For groceries, we don't ever buy groceries for Bob, so I
11 think I just highlighted all she was spending.

12 Q. And the green?

13 A. Paola's, the restaurant uptown, tried to cross-reference
14 when Bob was in town and when he wasn't, but also the majority
15 of the time he brings his own credit card and pays himself. So
16 given it was Chase's credit card, I highlighted those as hers.

17 Q. And the blue?

18 A. Taxis and car services. The car services receipts we were
19 able to see if Chase was going to and from the office or if it
20 was just all uptown stuff near her residence and tried our best
21 to cross-reference that. I didn't have the taxi receipts.

22 Q. Understood.

23 After you gathered this information, who did you pass
24 it along to?

25 A. To Michael Tasch and Tom Harvey.

1 Q. Did you make a determination other than passing along the
2 information?

3 A. No. I just flagged what the highlights, each stood for,
4 and gave it to them.

5 MS. LAZZARO: Ms. Cardona, if you can pull up
6 Defendant's Exhibit 95 and just scroll to the next page?

7 Q. Sabrina, do you recognize this document?

8 A. Yes.

9 Q. Did you consult this document -- strike that.

10 Is this your handwriting on the first page?

11 A. It is.

12 Q. OK. Can you describe your notes here?

13 A. Yes. So, I -- Gillian and I totaled the spending on Ubers
14 and taxis, car services. This was not including the ones that
15 were explicitly written out in petty cash's work charges and
16 reimbursed in cash. So, just --

17 THE COURT: Can I ask you, is this cover page a
18 summary of what you concluded? What you found?

19 THE WITNESS: Yes.

20 THE COURT: Same with respect to the previous cover
21 page?

22 THE WITNESS: Correct. Yes.

23 MS. LAZZARO: Thank you, your Honor.

24 BY MS. LAZZARO:

25 Q. Beyond passing along this information, did you make any

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1 determination?

2 A. No.

3 MS. LAZZARO: Ms. Cardona, if you can remove the
4 exhibit? Thank you.

5 Q. Just for clarity, the American Express records, you
6 received them from Berdon?

7 A. Yes.

8 Q. For any other documents you reviewed, were they records of
9 Canal?

10 A. I don't understand.

11 Q. That's fair.

12 For other documents that you reviewed in your analysis
13 for this, were they Canal records that you accessed?

14 MR. McKNIGHT: Objection, your Honor.

15 THE COURT: Objection sustained.

16 What were the other records that you reviewed in
17 preparing each of these documents?

18 THE WITNESS: Receipts. Like I mentioned, we reached
19 out directly to the flower shop, had them e-mail the receipts
20 to us.

21 BY MS. LAZZARO:

22 Q. And that's Canal's vendors?

23 A. Yes.

24 Q. Understood.

25 After Chase's departure, were any policies or

1 procedures changed?

2 A. Yes.

3 Q. Was charging and spending procedures with respect to credit
4 cards changed?

5 A. No.

6 Q. Did you maintain two corporate credit cards?

7 A. Oh, sorry. No. We cancelled Chase's card immediately.

8 Q. How do reimbursement requests work at the present at Canal?

9 MR. McKNIGHT: Objection. Relevance, your Honor.

10 THE COURT: Sustained.

11 Q. Are reimbursements more streamlined at Canal than when they
12 were?

13 MR. McKNIGHT: Same objection, your Honor.

14 THE COURT: Same ruling; sustained.

15 Q. Who created the new policies?

16 A. I spoke to Michael Tasch about the new policies and we got
17 rid of petty cash.

18 MR. McKNIGHT: Objection, your Honor. Strike.

19 THE COURT: Sustained as to anything beyond that the
20 witness spoke to Mr. Tasch about the new policies, and I am in
21 particular striking the last clause of her answer.

22 BY MS. LAZZARO:

23 Q. Did you think that plaintiff was supportive of internal
24 growth of executive assistants while she was employed at Canal?

25 MR. McKNIGHT: Objection, your Honor.

1 THE COURT: Sustained.

2 Q. After plaintiff's departure, do you think office morale
3 improved?

4 MR. McKNIGHT: Objection, your Honor.

5 THE COURT: Overruled.

6 A. Absolutely.

7 Q. After plaintiff's departure, did work seem to flow more
8 efficiently?

9 MR. McKNIGHT: Objection, your Honor.

10 THE COURT: Sustained. And also sustained as to the
11 leading.

12 MS. LAZZARO: Sorry, your Honor.

13 Q. Bringing you closer to the present. What is your current
14 job title again?

15 A. At Tribeca Productions it is manager of production and
16 development.

17 Q. What does that role entail?

18 A. I work with Jane Rosenthal who is the CEO of Tribeca, Bob's
19 producing partner and co-founder, and I work on her team doing
20 production and development; so finding scripts, finding books
21 and optioning them, moving stuff forward into pre-production.

22 Q. And that's all under this hybrid role with Tribeca
23 Enterprises?

24 A. Yes.

25 Q. And that was -- was that a promotion for you?

1 A. Yes.

2 Q. When did this happen again?

3 A. Around January of 2021.

4 Q. And did you relocate for this position?

5 A. Yes.

6 Q. Did you request the promotion?

7 A. I did.

8 Q. Can you explain the events and circumstances as to how this
9 came about?

10 MR. McKNIGHT: Objection. Relevance, your Honor.

11 THE COURT: Sustained.

12 Q. Prior to this promotion, were you considering leaving
13 Canal?

14 MR. McKNIGHT: Objection, your Honor. Relevance.

15 THE COURT: What's the relevance?

16 MS. LAZZARO: Just bringing it to her present role,
17 your Honor, both in this hybrid role and with Canal. I can
18 move past it, though.

19 THE COURT: The objection is sustained.

20 BY MS. LAZZARO:

21 Q. After plaintiff's departure, were any other assistants
22 hired at Canal?

23 A. Yes.

24 Q. Did you handle the hiring in any way?

25 A. Yes.

1 Q. Is Ms. Gabrielle Lauredine one of the executive assistants
2 you hired?

3 A. Gabrielle, yes.

4 MR. McKNIGHT: Your Honor, I don't understand the
5 relevance of this.

6 THE COURT: It is a late objection and it is
7 overruled, but how much more do you have on this particular
8 line?

9 MS. LAZZARO: I have three questions in total, your
10 Honor.

11 THE COURT: Let's see if they go.

12 BY MS. LAZZARO:

13 Q. When was the hiring of Gabby?

14 A. I would say November of 2020? Yeah. It was due to Gillian
15 Spear's departure.

16 Q. Understood.

17 And is Mr. Francis Bogan now an executive assistant at
18 Canal as well?

19 A. Yes.

20 Q. Do you know if Mr. Bogan tends to both professional and
21 personal matters for Bob?

22 MR. McKNIGHT: Objection, your Honor.

23 THE COURT: Overruled.

24 A. Yes.

25 Q. In particular, do you know if Mr. Bogan tends to Bob's

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1 kids?

2 A. Yes.

3 Q. And, in general, how do you feel about the workplace at
4 Canal now?

5 MR. McKNIGHT: Objection, your Honor. Asked and
6 answered.

7 THE COURT: Sustained. Asked and answered.

8 Q. Just for clarity, your role now, your hybrid role at Canal,
9 you are able to do that job from -- strike that.

10 Your current job, hybrid role, where are you located
11 in doing that role?

12 A. Los Angeles.

13 MS. LAZZARO: I don't have any further questioning.

14 THE COURT: OK.

15 MS. LAZZARO: Thank you.

16 THE COURT: Redirect examination.

17 REDIRECT EXAMINATION

18 BY MR. McKNIGHT:

19 Q. Ms. Weeks-Brittan, when you were hired at Canal, you didn't
20 know exactly what Ms. Robinson's salary perks or benefits were
21 at that time, did you?

22 A. I did not. No.

23 Q. But did you generally understand that Ms. Robinson had more
24 perks and benefits than you did at that time?

25 A. I didn't realize that until after.

1 Q. And you never participated in any conversations between
2 Ms. Robinson and Mr. De Niro in which there was a discussion of
3 her compensation, did you?

4 A. I did not.

5 Q. So you don't have any personal knowledge of those
6 conversations?

7 A. No.

8 Q. And you never participated in any conversation between
9 Ms. Robinson and Mr. De Niro in which there was a discussion
10 about her benefits?

11 MS. LAZZARO: Objection.

12 THE COURT: Overruled.

13 A. I did not.

14 Q. And so you don't have any knowledge about what her benefits
15 were on that job?

16 A. At the time, no. Since then, yes.

17 Q. And you never participated in any conversations between
18 Ms. Robinson and Mr. De Niro in which there was a discussion
19 about what expenses she was authorized to charge?

20 A. Correct.

21 Q. So you don't know what they discussed?

22 A. Correct.

23 Q. Now, the Canal credit card in Ms. Robinson's name was one
24 of two corporate credit cards that existed at Canal during the
25 time that you overlapped with Ms. Robinson; correct?

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1 A. Yes.

2 Q. And there are times when you used both those credit cards;
3 correct?

4 A. Michael's and Chase's to purchase things online, like
5 flights.

6 Q. Now, you were talking about some of these charges for Ubers
7 and taxis that appeared on the credit card in Ms. Robinson's
8 name; correct? Who made the highlights for the Ubers and
9 taxis?

10 A. Gillian and I did.

11 Q. And you didn't have any information from any source
12 whatsoever about Ms. Robinson's Uber accounts and where those
13 trips went, did you?

14 A. Just car services.

15 Q. So the only thing and information you had about the
16 traveling, car services, taxis and Ubers, was information about
17 where the car services went?

18 A. Yes, and when we knew Chase to be in the office or not.

19 Q. But you don't know whether she was on a business ride or
20 not at that time because you don't know where she was going?

21 A. Right.

22 Q. And you don't know -- that's the same thing is true for the
23 taxis too; correct?

24 A. Correct.

25 Q. And you don't know exactly what Ms. Robinson was doing on

1 those charges for Ubers and taxis on those dates on that
2 American Express?

3 A. Right. I had no idea what she was doing.

4 Q. You don't know where she was going or anything else about
5 it?

6 A. Nope.

7 Q. Now, there are some highlights in green on there for
8 Paola's restaurant that appeared. Who made those highlights?

9 A. Gillian and I did.

10 Q. It seems that all of the Paola's charges were highlighted
11 on that card, correct?

12 MS. LAZZARO: Objection.

13 THE COURT: Overruled.

14 Were all of Paola's -- were all of the charges to
15 Paola's highlighted?

16 A. To the best of my knowledge, yes, because we viewed that
17 when Bob was at Paola's he used his own card.

18 Q. So that was an assumption on your part, that in all of
19 those instances it couldn't have been business-related because
20 it was not related to Bob; is that it?

21 MS. LAZZARO: Object to the form.

22 THE COURT: Sustained.

23 Q. You don't know whether those Paola's charges were for
24 business purposes or not, do you?

25 A. I don't. We didn't make any assumptions, we just passed it

1 off.

2 Q. And you don't know whether those were business centered
3 dinners that perhaps Ms. Robinson was involved in? You don't
4 know?

5 A. I don't know.

6 Q. Following on that, you don't know what she was doing at the
7 time those Paola's charges were incurred, do you?

8 A. Correct. My understanding of our policy is that we didn't
9 get dinner unless in the office late.

10 MR. McKNIGHT: Motion to strike. I just asked whether
11 she knew, your Honor.

12 THE COURT: Overruled.

13 Q. You don't have access to any information about what those
14 Paola's charges were for, do you?

15 A. No.

16 Q. And you never spoke to Mr. De Niro about what, if anything,
17 Ms. Robinson might have been doing on the dates that those
18 Paola's charges were incurred?

19 A. No.

20 Q. Now, someone highlighted in yellow all the charges for
21 Whole Foods and Dean & DeLuca that appeared on this exhibit;
22 correct?

23 A. Correct.

24 Q. And there is not a single charge that isn't highlighted; is
25 that correct?

1 A. If you are telling me, then yes.

2 Q. And you don't know whether Ms. Robinson incurred those
3 charges in connection with a business-related meal or expense,
4 do you?

5 A. We just weren't allowed to purchase groceries.

6 Q. But you don't know what she was doing at that time in
7 respect to those charges?

8 A. Correct.

9 Q. And you don't know if Ms. Robinson in fact was incurring
10 those charges on behalf of Mr. De Niro, do you?

11 A. I don't believe she was.

12 Q. I'm asking you whether you know, ma'am.

13 A. I don't know.

14 MS. LAZZARO: Objection.

15 THE COURT: Overruled.

16 Q. Do you know?

17 A. No.

18 Q. And you don't know what the specifics are with the
19 purchasing of the coffee at Dean & DeLuca's, do you? You don't
20 know whether that was job-related or business-related, do you?

21 A. No.

22 Q. And you never spoke to Mr. De Niro about the dates and
23 charges associated with the Dean & DeLuca coffee charges, did
24 you?

25 A. No.

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1 Q. And you testified on direct about a situation where you
2 needed to be reimbursed for travel from D.C.; correct?

3 A. Yes.

4 Q. And isn't it correct that you submitted a reimbursement
5 form to Ms. Robinson and that you were in fact reimbursed for
6 that?

7 MS. LAZZARO: Objection.

8 THE COURT: Overruled.

9 A. I was reimbursed half of the cost of the Uber.

10 Q. Weren't you reimbursed for the amount that you submitted to
11 Ms. Robinson for reimbursement?

12 A. She explicitly told me I could only expense half, so yes.

13 Q. And you submitted reimbursement for over \$300 for that
14 charge?

15 A. I don't remember. Yes, I think so. I know I received
16 half --

17 THE COURT: Hold on for a second. You have to let the
18 witness finish her answer. You can't speak over each other.

19 MR. McKNIGHT: I apologize, ma'am.

20 THE COURT: Ma'am, you can finish your answer.

21 THE WITNESS: Whatever the dollar amount was, it was
22 the half of the cost of my Uber.

23 MR. McKNIGHT: Can we see Plaintiff's Exhibit 109,
24 please?

25 MS. LAZZARO: Objection, your Honor. We offered a

1 similar version of this very exhibit to which we encountered
2 objections. This is just a different formatting style of it
3 and now they're seeking to produce.

4 THE COURT: It may become relevant as a result of what
5 you covered in your examination. I don't think right now it is
6 being offered so I will entertain an objection once the
7 questions are asked and it is actually being offered.

8 You are not publishing it to the jury?

9 MR. McKNIGHT: I haven't published it yet.

10 BY MR. McKNIGHT:

11 Q. Ms. Weeks-Brittan, do you recognize --

12 THE COURT: Why are you showing it to her, though?

13 MR. McKNIGHT: I am showing it to her because she said
14 she was reimbursed for half of what she asked for and here
15 there is an amount she asked for and I can show you what she
16 received.

17 THE COURT: But you can't have her testify to the
18 contents of a document that is not in evidence. So, tell me
19 what it is, what the permissible use is of this, other than
20 having her read from a document not in evidence.

21 MR. McKNIGHT: I won't have her read through it. I
22 will ask her a question, your Honor.

23 THE COURT: Put it that way.

24 MR. McKNIGHT: Take it down.

25 THE COURT: Yes.

1 BY MR. McKNIGHT:

2 Q. Ms. Weeks-Brittan, did you ask for reimbursement on
3 November 26, 2018, for \$350?

4 A. I don't want to misspeak because -- I want to clarify what
5 is in the document but it is different than what I think you
6 are asking me.

7 THE COURT: So, the question is, you know, put aside
8 what you may have seen in the document.

9 THE WITNESS: OK.

10 THE COURT: From your recollection, did you, on that
11 date, submit a request for reimbursement in the amount of \$350?

12 I assume that's your question.

13 MR. McKNIGHT: Yes, your Honor.

14 THE WITNESS: I don't remember exactly what I put on
15 petty cash but if that was the amount, then yes.

16 MR. McKNIGHT: Your Honor, may I now show her to
17 refresh her recollection?

18 THE COURT: Yes.

19 MR. McKNIGHT: Thank you.

20 THE COURT: Let me explain to the witness. When a
21 witness doesn't remember something, a document can be shown to
22 them to refresh their recollection. What we all learn in law
23 school is that you can show a plate of spaghetti to a witness
24 and ask a witness what you were doing on a particular day
25 because the plate of spaghetti, which may have nothing

NB15rob5

Weeks-Brittan - Redirect

1 whatsoever to do with that day, may spark a recollection.

2 That's what refreshing a recollection is. You are shown a
3 document and you are asked a question of whether it brings back
4 a memory.

5 Go ahead.

6 THE WITNESS: It does.

7 MR. McKNIGHT: Thank you.

8 BY MR. McKNIGHT:

9 Q. I ask you to take a look at the entry November 26, 2018 at
10 10:43. Does that refresh your recollection as to the amount
11 that you sought reimbursement for?

12 A. So, I actually think that's specifying the additional cost
13 of my flight. I don't think that that's what I reimbursed for
14 my Uber but if you have the petty cash that corresponds, we can
15 figure that out.

16 Q. It just happens that I do have that.

17 A. Great.

18 Q. So, let's go to exhibit no. 103.

19 THE COURT: And remember, you are not being asked
20 about the contents of documents, you are just being asked about
21 what is in your memory.

22 THE WITNESS: Right.

23 Q. Do you recognize this document -- don't answer it, I just
24 want you to look at it to help you refresh your recollection.

25 THE COURT: Don't read out loud what is in it. The

1 question is do you recognize the document.

2 A. Sure.

3 MR. McKNIGHT: Would you turn to page 2? Would you
4 please highlight, I believe it is line 125, this is just to
5 help her see it?

6 THE COURT: Counsel, what is the question?

7 Q. The question is does this refresh your recollection as to
8 what you received in petty cash at this particular time?

9 A. Somewhat, yes.

10 THE COURT: The question then is what is your -- I
11 take it the question is what is your refreshed recollection.

12 MR. McKNIGHT: Yes, your Honor.

13 A. I still firmly believe we had a phone call where she said I
14 could expense half.

15 Q. But I'm asking what your refreshed recollection is to what
16 you received on that date.

17 THE COURT: Don't look at the document. From your
18 memory, what is your memory of what you received in petty cash
19 for that? What is your memory?

20 A. My memory is that I received half of the cost of my Uber.

21 Q. And what would half be?

22 THE COURT: From your memory.

23 Q. From your memory.

24 Please take it down.

25 A. Three-something. \$300.

1 THE COURT: Forget about what you think you know from
2 a document. That document may mean nothing. It is not in
3 evidence. What is your memory? That's what the testimony is.
4 A. My memory is just that I received half the cost.

5 Q. And going back --

6 THE COURT: I think that's your testimony, counsel.

7 Q. Going back to the Uber charges again, you didn't have
8 access to information about the pick-up and drop-off locations
9 for the Ubers?

10 A. Correct.

11 Q. And you didn't have access to information about the time
12 when the Ubers were taken?

13 A. Correct.

14 Q. And you didn't have any information about who might have
15 been in the Uber rides at those times?

16 A. Correct.

17 MR. McKNIGHT: That's all I have, your Honor.

18 THE COURT: Any further examination from defendants?

19 MS. LAZZARO: No thank you, your Honor.

20 THE COURT: Ma'am, you are excused as a witness.

21 THE WITNESS: Thank you.

22 (witness excused)

23 THE COURT: Next witness.

24 MR. MACURDY: Your Honor, plaintiff calls Tom Harvey.

25 THE COURT: Mr. Harvey may step up to the witness

NB15rob5

Harvey - Direct

1 stand. Remain standing.

2 THE DEPUTY CLERK: Please raise your right hand.

3 THOMAS HARVEY,

4 called as a witness by the Plaintiff,

5 having been duly sworn, testified as follows:

6 THE DEPUTY CLERK: Please state your full name for the
7 record and please spell out your first and last name.

8 THE WITNESS: Thomas Harvey. T-H-O-M-A-S,
9 H-A-R-V-E-Y.

10 THE COURT: Counsel, you may inquire.

11 MR.. MACURDY: Thank you, your Honor.

12 DIRECT EXAMINATION

13 BY MR. MACURDY:

14 Q. Good afternoon, sir.

15 A. Good afternoon.

16 Q. Sir, you have been Mr. De Niro's lawyer for about 30 years;
17 is that right?

18 A. One of, yes.

19 Q. You have represented Canal Productions as well?

20 A. Yes.

21 Q. You serve as a lawyer for a number of other entities that
22 Mr. De Niro owns; right?

23 A. Yup. Yes.

24 Q. Like Tribeca Film?

25 A. Yes.

NB15rob5

Harvey - Direct

1 Q. You have also represented several of Mr. De Niro's kids?

2 A. Yes.

3 Q. Raphael De Niro?

4 A. Yes.

5 Q. Served as a lawyer for Drena De Niro?

6 A. Yes.

7 Q. Lawyer for Julian De Niro?

8 A. Yes.

9 Q. Other of Mr. De Niro's kids; right?

10 A. One other, yes.

11 Q. Am I right, sir, that you would like to keep Mr. De Niro's
12 business?

13 A. I would like to keep every client.

14 Q. Mr. Harvey, it is fair to say that Ms. Chen, back in 2019,
15 when Ms. Robinson was employed at Canal, she expressed dislike
16 to you for Chase Robinson; is that right?

17 A. She certainly didn't like the way Ms. Robinson was
18 performing her work in March of 2018.

19 Q. Well, you believe that Ms. Chen had made Ms. Robinson out
20 to be a lunatic in Mr. De Niro's eyes, right?

21 MR. DROGIN: Objection.

22 THE COURT: Overruled.

23 A. I wouldn't know what Ms. Chen had Mr. De Niro believing.

24 MR. MACURDY: Your Honor, I would like to play
25 Plaintiff's Exhibit 397. I don't believe there is an

NB15rob5

Harvey - Direct

1 objection.

2 THE COURT: Is there objection?

3 MR. DROGIN: There is no objection.

4 THE COURT: OK.

5 (audio file played)

6 Q. Sir, that was your voice?

7 A. It was.

8 Q. This was you speaking with Ms. Robinson in the days after
9 she departed Canal; correct?

10 A. Right, when she was tape recording me; yes.

11 Q. Sir, if we didn't have that tape recording all we would
12 have is your word right now, yes?

13 A. You would have Ms. Robinson's word, too.

14 Q. And you are talking about the transition after she departed
15 Canal; right?

16 A. That's the tape, yes.

17 Q. And so there had to be a reason why you presumed that
18 Ms. Chen had been making Ms. Robinson out to be a lunatic to
19 Mr. De Niro, right?

20 MR. DROGIN: Objection.

21 THE COURT: Sustained.

22 Q. Sir, you were not present for any conversations Mr. De Niro
23 had with Ms. Robinson during her employment about what she
24 could expense during her work at Canal; right?

25 A. I don't agree with that, no.

NB15rob5

Harvey - Direct

1 Q. So your testimony here today is that you were present for
2 conversations about Ms. Robinson's expenses with Mr. De Niro?

3 MR. DROGIN: Objection to form.

4 THE COURT: Overruled.

5 A. I think throughout the eleven years Ms. Robinson worked
6 there certainly were times where I was involved in discussions
7 with money being spent by the office and by other people.

8 Q. Is it your testimony, sir, that you were present for
9 conversations between Ms. Robinson and Mr. De Niro regarding
10 expenses related to Ms. Robinson?

11 MR. DROGIN: Objection.

12 THE COURT: Basis?

13 MR. DROGIN: I think it has been asked and answered.

14 THE COURT: Overruled.

15 A. When Canal expenses were being discussed between
16 Mr. De Niro, Ms. Robinson, and other people, there were times
17 during her eleven-year employment that I was involved, yes.

18 Q. And you served as general counsel to Canal?

19 A. Yes.

20 Q. Isn't it true, sir, you have no firsthand knowledge of the
21 expenses Ms. Robinson had been authorized by Mr. De Niro to
22 make relating to transportation?

23 A. I have a general knowledge of Canal's policies.

24 Q. You have no firsthand knowledge of transportation expenses
25 that Mr. De Niro had authorized for Ms. Robinson specifically?

NB15rob5

Harvey - Direct

1 MR. DROGIN: Objection.

2 THE COURT: Sustained.

3 A. I certainly --

4 THE COURT: No. Remember, you have been in the
5 courtroom so you presumably understand how this goes. When I
6 sustain an objection, it means you don't answer.

7 Q. Sir, you testified a moment ago, you said you were aware of
8 general policies; right?

9 A. Yes.

10 Q. Were you aware of specific arrangements relating to
11 transportation expenses between Mr. De Niro and Ms. Robinson?

12 MR. DROGIN: Objection.

13 THE COURT: No. That question is permissible.

14 A. Sure, I was aware that Mr. De Niro, himself, sometimes
15 takes subways. I'm aware that he certainly expected his
16 children to take subways. I'm aware that he certainly expected
17 Canal employees, generally, to take subways or buses and not
18 Ubers or limousines.

19 MR. MACURDY: Move to strike, your Honor.

20 THE COURT: No, I think it is responsive because you
21 asked if there were specific arrangements for her and he
22 answered that question.

23 Q. Sir, you have no firsthand knowledge of arrangements
24 between Ms. Robinson and Mr. De Niro regarding meal expenses --
25 her meal expenses during her work at Canal; correct?

NB15rob5

Harvey - Direct

1 A. I would disagree with that. Generally I knew what the
2 policy was at Canal for the past 30 years.

3 Q. Sir, are you aware of specific arrangements between
4 Mr. De Niro and Ms. Robinson regarding her meal expenses during
5 the time she worked at Canal?

6 A. Unless there was something outside the general policy. I'm
7 aware of the general policy.

8 Q. And it is possible there is something outside of the
9 general policy relating to Ms. Robinson; correct?

10 MR. DROGIN: Objection.

11 A. It's possible.

12 THE COURT: Objection is sustained. Calls for
13 speculation.

14 Q. Sir, you were not present for any conversations between
15 Mr. De Niro and Ms. Robinson regarding Canal paying for her
16 rent while she lived in Los Angeles in 2013 and 2014; correct?

17 MR. DROGIN: Objection.

18 THE COURT: Sustained. Actually, I'm sorry. I am
19 changing my view. Objection is overruled.

20 MR. DROGIN: Your Honor, may I offer explanation?

21 THE COURT: Yes.

22 MR. DROGIN: Outside the statute. We are not seeking
23 anything related to this. On that.

24 MR. MACURDY: May I respond?

25 THE COURT: The objection still is overruled. It

NB15rob5

Harvey - Direct

1 comes in as background. This is not -- there is no claim with
2 respect to this time period but it's, you know, you have heard
3 a lot of testimony about things that are not directly at issue
4 but they're coming in as background.

5 Go ahead.

6 MR. DROGIN: Thank you.

7 THE WITNESS: No.

8 BY MR. MACURDY:

9 Q. You were not present for any conversations between
10 Mr. De Niro and Ms. Robinson regarding Canal paying for her
11 Internet at that L.A. apartment, correct?

12 A. No.

13 Q. You were not present for any conversations between
14 Mr. De Niro and Ms. Robinson regarding her working out of her
15 home in New York City; correct?

16 A. No.

17 Q. You were not present for any conversations between
18 Mr. De Niro and Ms. Robinson regarding her working from London
19 or from Spain for Canal, correct?

20 A. No.

21 Q. You were not present for any conversations between
22 Mr. De Niro and Ms. Robinson regarding reimbursement of unused
23 vacation days, correct?

24 A. Not prior to Ms. Robinson's departure.

25 Q. Prior to Ms. Robinson's departure you were not present for

NB15rob5

Harvey - Direct

1 any conversations between Mr. De Niro and Ms. Robinson
2 regarding expensing Ubers or taxis, right?

3 A. That's correct.

4 Q. Prior to Ms. Robinson's departure, you were not present for
5 any conversations between Ms. Robinson and Mr. De Niro
6 regarding reimbursements for meal expenses, correct?

7 A. Correct.

8 Q. You were not present for any conversations between
9 Mr. De Niro and Ms. Robinson prior to her departing regarding
10 SkyMiles, right?

11 A. Correct.

12 Q. Prior --

13 A. Actually, that's incorrect.

14 THE COURT: So why don't you give the correct answer.

15 THE WITNESS: There was, years ago, an issue because I
16 believe it was Drena wanted to use air miles and there was some
17 bickering back and forth about who is entitled to air miles.
18 Chase and Bob and other people in the office at that time,
19 there was some discussions as what they should be used by and
20 by whom.

21 Q. Sir, you were not present for any conversations, prior to
22 Ms. Robinson's departure, between Ms. Robinson and Mr. De Niro,
23 about her going to Los Angeles in March of 2018; right?

24 A. I was subsequent to that, after Ms. Robinson's departure
25 from Canal.

NB15rob5

Harvey - Direct

1 Q. Prior to her departure you were not present for any
2 conversations between her and Mr. De Niro about her going to
3 L.A. in March 2018, correct?

4 A. No.

5 Q. You have no firsthand knowledge of why Ms. Robinson went to
6 Los Angeles in March of 2018, right?

7 A. I do now.

8 Q. You have no firsthand knowledge of why Ms. Robinson went to
9 Los Angeles in March of 2018?

10 A. Define "firsthand knowledge."

11 Q. Well, you were not present, you didn't have a conversation
12 with her about going to Los Angeles in March of 2018; right?

13 A. That's correct.

14 Q. At the time you didn't have a conversation with Mr. De Niro
15 about it; right?

16 A. That's correct.

17 Q. You didn't tell her to go to Los Angeles; right?

18 A. No.

19 Q. There were three Canal employees that you had looked
20 through records to come up with your allegations of wrongdoing
21 by Ms. Robinson; one was Michael Kaplan, right?

22 A. One of them, yes.

23 Q. One was Gillian Spear?

24 A. Yes.

25 MR. DROGIN: Objection, your Honor.

NB15rob5

Harvey - Direct

1 THE COURT: Sustained as to form.

2 Q. I can try it another way. Well, sir, it is your position
3 you instructed three Canal employees to look through records,
4 records related to spending by Ms. Robinson? Is that true?

5 A. At a certain point in time I asked them to look at and
6 gather documents, yes.

7 Q. And one was Michael Kaplan?

8 A. That's correct.

9 Q. One was Gillian Spear?

10 A. That's correct.

11 Q. And one was Sabrina Weeks-Brittan, right?

12 A. That's correct.

13 Q. Now, to your knowledge, none of them were present for
14 discussions between Ms. Robinson and Mr. De Niro about
15 Ms. Robinson's meal expenses, correct?

16 MR. DROGIN: Objection.

17 THE COURT: Sustained.

18 Q. And Ms. Weeks-Brittan had worked at Canal for less than a
19 year when she was involved in that inquiry; correct?

20 A. Well, she started in, I believe, August of '18 and
21 Ms. Robinson leaves in early April of '19?

22 Q. The answer is yes?

23 A. To what?

24 Q. To her being at Canal less than a year when she became
25 involved in the inquiry.

NB15rob5

Harvey - Direct

1 A. Sabrina Weeks-Brittan was at Canal less than a year in
2 April of 2019.

3 Q. And none of those three Canal employees have any expertise
4 in investigations, correct?

5 MR. DROGIN: Objection.

6 THE COURT: Sustained.

7 Q. Those three individuals were assistants at Canal at the
8 time; correct?

9 A. That was their title, yes, except for Kaplan, which I found
10 out today he is a supersleuth.

11 Q. Were they accountants?

12 A. No.

13 Q. And you never saw with your own eyes, sir, Ms. Robinson
14 order an Uber or a taxi that wasn't for a permissible purpose;
15 is that true?

16 MR. DROGIN: Objection.

17 THE COURT: Sustained as to form.

18 Q. Sir, Canal had a non-discrimination and non-harassment
19 policy in 2016 through 2019; is that right?

20 A. I believe so.

21 Q. If an employee experienced discrimination or harassment,
22 you were the person they were supposed to report it to?

23 A. It depends on the time frame. Originally it would have
24 been someone at Tribeca Film Center, they had their own HR
25 department until Ms. Robinson broke off and created her own

NB15rob5

Harvey - Direct

1 little fiefdom.

2 Q. Well, 2018 you would have been the person at Canal to
3 report discrimination to?

4 A. I'm not sure of the timing. Certainly at a certain point
5 after Ms. Robinson breaks off or grabs Canal and makes it her
6 own little fiefdom she retained employment lawyers and created
7 policies and had a handbook and that sort of thing.

8 Q. Under Canal's policy you were supposed to investigate
9 allegations like that, right?

10 A. Depends. It depends on the timing.

11 Q. 2018, you were the person to investigate complaints of
12 discrimination and harassment?

13 A. I don't know if that's true.

14 Q. So when did you become the person?

15 A. I don't know if I ever, quote, became the person.

16 Q. When did you become the person that people could report
17 their complaints of discrimination and harassment to at Canal?

18 MR. DROGIN: Objection.

19 THE COURT: Sustained.

20 Q. In 2019 Ms. Robinson told you that Ms. Chen was harassing
21 her, correct?

22 A. Oh yes.

23 Q. Ms. Robinson told you she felt like Tiffany Chen was
24 targeting her, correct?

25 A. Yes. Yes.

NB15rob5

Harvey - Direct

1 Q. You spoke with Ms. Robinson about it?

2 A. Yes.

3 Q. And according to you, your solution was Ms. Robinson needed
4 to do a better job returning Ms. Chen's phone calls; right?

5 A. No, I had much more than that.

6 Q. So you never said that your solution was for Ms. Robinson
7 to do a better job returning Ms. Chen's phone calls?

8 MR. DROGIN: Objection.

9 THE COURT: Sustained.

10 MR.. MACURDY: I will try it another way, your Honor.

11 Q. Sir, back in 2018, you told Ms. Robinson, after she
12 complained to you, that Ms. Robinson needed to return the phone
13 call if she said she is going to call someone, that way there
14 wouldn't be an issue. Right?

15 MR. DROGIN: Objection.

16 THE COURT: Overruled.

17 A. I'm sorry. What's the question?

18 Q. Back in 2018, 2018-2019, when Ms. Robinson complained to
19 you about harassment from Ms. Chen, you told Ms. Robinson to
20 return the phone call if she said she is going to call someone,
21 that way there wouldn't be an issue; right?

22 MR. DROGIN: Objection.

23 THE COURT: Overruled.

24 A. Well --

25 MR. DROGIN: Can we just get a time frame? Because

NB15rob5

Harvey - Direct

1 first question was 2019 and now we are going back to 2018 to
2 2019.

3 THE COURT: I think we are 2018. I assume this is
4 background not actually substantive evidence of violation?

5 MR. MACURDY: Well, your Honor, I'm trying to go to
6 what his response was.

7 THE COURT: You are focused on 2018?

8 MR. MACURDY: In 2019, your Honor. I said 2018-2019.
9 2019 is the time frame.

10 THE COURT: You started off with 2018. Why don't you
11 start the question again, maybe you can give a month.

12 BY MR. MACURDY:

13 Q. Sir, in the first few months of 2019, after Ms. Robinson
14 reported to you that she was being harassed by Tiffany Chen,
15 you told Ms. Robinson to return the phone call if she said she
16 is going to call someone that way there wouldn't be an issue;
17 right?

18 MR. DROGIN: Objection.

19 THE COURT: Basis.

20 MR. DROGIN: He is referring to a conversation, or at
21 least a telephone call where there has been no orientation as
22 to when that call took place or what was actually said. There
23 is a context here that is missing. He is looking to link the
24 word "harassment" to some other conversation.

25 MR. MACURDY: Your Honor, I'm asking about --

NB15rob5

Harvey - Direct

1 THE COURT: Overruled.

2 THE WITNESS: I'm sorry. What is the question?

3 BY MR. MACURDY:

4 Q. Sir, in early 2019, after Ms. Robinson complained to you of
5 harassment by Ms. Chen, you told Ms. Robinson to return the
6 phone call if she says she is going to call someone, that way
7 there wouldn't be an issue; right?

8 MR. DROGIN: Objection.

9 THE COURT: Overruled.

10 A. I have told any Canal employee to return calls to avoid
11 issues. I think in March of 2019 Ms. Robinson was complaining
12 that Ms. Chen was asking her to do a lot of things and she
13 was -- herself, and she advised Michael Kaplan to stop
14 returning phone calls to Ms. Chen. I told her return the phone
15 calls and then it probably wouldn't happen. In addition, I
16 said if that doesn't work for you, get out of the townhouse.
17 Be done with it.

18 Q. So you agree, you told her what you need to be doing is
19 returning phone calls, right?

20 A. I told her that she had several options. She could stop
21 working on the townhouse. She could stop dealing with the
22 mold. She could return the phone call. She could do whatever
23 she wanted. But, move on.

24 Q. Other times you told her something different about
25 returning phone calls, right?

NB15rob5

Harvey - Direct

1 A. I told her if it upsets you that Ms. Chen is asking you to
2 do something, like get the number for a moving company, don't
3 return the call and turn it over to someone else. It's not a
4 big deal. You have actually this thing called Google and you
5 can just look up Force Movers.

6 Q. Right. So other times you told her to ignore Ms. Chen,
7 right?

8 MR. DROGIN: Objection.

9 THE COURT: Sustained.

10 MR. MACURDY: Your Honor --

11 THE COURT: Sustained. Sustained.

12 MR. MACURDY: Mr. Kelly, can we bring up Plaintiff's
13 Exhibit 14?

14 This is offered for impeachment purposes, Mr. Harvey
15 is the text on the left side.

16 THE COURT: What is defendant's position?

17 MR. DROGIN: There is no objection to this.

18 THE COURT: OK. Go ahead. You are offering
19 Plaintiff's Exhibit 14.

20 MR. MACURDY: Yes, I offer it, your Honor.

21 THE COURT: OK. Received without objection.

22 (Plaintiff's Exhibit 14 received in evidence)

23 BY MR. MACURDY:

24 Q. Mr. Harvey, these are texts from March 2019 between you and
25 Ms. Robinson?

NB15rob5

Harvey - Direct

1 A. Yes.

2 Q. She writes, in the blue: I'm not really sure what to do at
3 this point.

4 The next text message is: Can you, me, and Tasch get
5 on the phone first thing?

6 And then she writes: This insanity has got to stop.
7 It is so uncomfortable and just downright harassment.

8 Do you see that, sir?

9 A. I do.

10 Q. You write back: Stay out of it.

11 Do you see that?

12 A. I do.

13 Q. She writes: He keeps calling me about it. She e-mails me
14 about it.

15 The "he" there is Mr. De Niro, the "she" is Ms. Chen;
16 right?

17 A. I assume.

18 Q. Me, I keep saying speak to Tasch, speak to Tom. I want to
19 stay out of it. This isn't my job.

20 Do you see that?

21 A. I do.

22 Q. And you write: Turn your phone off.

23 A. I do.

24 Q. You didn't actually do anything to address Ms. Robinson's
25 complaints of harassment by Ms. Chen, right?

NB15rob5

Harvey - Direct

1 A. I did. I spoke to her the next day and we had a phone
2 conversation and I told her I would take care of it. Please
3 stop. And she insisted that the mold testing go through her,
4 please don't speak to Bob, please don't speak to Tiffany, let
5 me handle it. And I said, I'll deal with Bob, I'll deal with
6 it with him. You can stay out of it.

7 Q. You didn't take any remedial action with respect to
8 Ms. Chen, right?

9 MR. DROGIN: Objection.

10 THE COURT: Sustained.

11 Q. Ms. Robinson was fully cooperative in helping with any
12 transition issues in the days after she departed Canal; right?

13 A. No.

14 Q. Your testimony is that she was not cooperative?

15 A. My testimony is --

16 MR. DROGIN: Objection.

17 THE COURT: Overruled.

18 A. My testimony is that by April 8 or April 9, Chase Robinson
19 was not returning various passwords and had a tremendous amount
20 of information, according to Chase Robinson 15 pages of
21 information, that she was not going to return unless Bob spoke
22 to her, unless Bob contacted her, and unless she knew that Bob
23 was going to not consider her some sort of bad person. And I
24 wrote an e-mail that said, to Bob, that said, hey Bob, I'm
25 getting the administrative passwords, Chase is cooperating.

NB15rob5

Harvey - Direct

1 After, I spoke to Chase and said, hey Chase, just cooperate,
2 let's go through the transition. And thereafter, she refused
3 to return anything -- money, gift cards, boxes, computers,
4 phones, cameras. So I guess it goes to your definition of
5 cooperation.

6 (Continued on next page)

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NB16ROB6

T. Harvey - Direct

1 BY MR. MACURDY:

2 Q. So she communicated to you that she was offering to do
3 whatever Mr. De Niro needed. Yes or no, sir?

4 A. Conditioned.

5 Q. Sorry, just to clarify. She communicated to you that she
6 offered to do whatever Mr. De Niro needed in the transition,
7 correct?

8 A. With a condition.

9 Q. In fact, Ms. Robinson proactively reached out to you to
10 find out whatever open items she could help with in the
11 transition; isn't that right?

12 A. No. That's bizarre that you would even suggest it.

13 MR. MACURDY: Mr. Kelly, can we pull up
14 Plaintiff's 74?

15 Your Honor, I move to admit Plaintiff's 74.

16 THE COURT: Any objection?

17 MR. DROGIN: No objection.

18 THE COURT: Received.

19 (Plaintiff's Exhibit 74 received in evidence)

20 BY MR. MACURDY:

21 Q. Sir, the bottom-in-time e-mail, April 9, is you writing to
22 Mr. De Niro, Chase provided Michael Kaplan with the passwords
23 and is compiling a list of open issues and projects she was
24 working on to try to make sure we don't drop a ball on
25 anything. It is going to take a little time, but she is trying

NB16ROB6

T. Harvey - Direct

1 to help make it a smooth transition. Right?

2 A. That's what it says, yes.

3 Q. And Ms. Robinson writes back to you: Hi, Tom, as we
4 discussed this afternoon, you were going to ask Bob what the
5 certain things were that could only be resolved by me. I was
6 told you'll be let know. What does he have in mind, so I can
7 address it as quickly as possible?

8 Do you see that, sir?

9 A. I see it, yes.

10 MR. MACURDY: Mr. Kelly, I'd like to play
11 Plaintiff's 398.

12 THE COURT: Any objection?

13 MR. DROGIN: No.

14 THE COURT: You may do so.

15 MR. DROGIN: Your Honor, can we get the date of the
16 recording?

17 THE COURT: I think that was -- what's the date of the
18 recording?

19 MR. MACURDY: I'll have to get back to you on that
20 one.

21 MR. DROGIN: I believe it's in Exhibit 61. I think
22 that you raised it --

23 MR. MACURDY: I can --

24 THE COURT: Why don't the two of you meet and confer
25 for a moment, see if you can agree on a date?

NB16ROB6

T. Harvey - Direct

1 (Pause)

2 MR. MACURDY: Your Honor, I'd like to play it and then
3 I can ask the witness questions about it.

4 THE COURT: I'm just asking if you can stipulate to
5 the date. Is there a stipulation as to the date?

6 MR. MACURDY: Not right now, your Honor.

7 MR. DROGIN: There's a document that we believe has
8 the date.

9 THE COURT: So why don't the two of you meet and
10 confer for a moment and see if you can agree on a date?

11 (Pause)

12 THE COURT: Why don't you please talk outside the
13 presence of the jury?

14 MR. DROGIN: I apologize.

15 MR. MACURDY: Your Honor, we already agreed with
16 counsel that this was coming in.

17 THE COURT: Just tell me -- can you meet and confer?
18 If there's a disagreement, I'll address the disagreement over
19 the date at sidebar. Maybe we'll have a little voir dire.
20 Tell me if you have met and conferred and exhausted it. You
21 let me know.

22 MR. DROGIN: We propose a stipulation that this date
23 of the --

24 THE COURT: No, outside the presence of the jury. If
25 I can hear you, you know...

NB16ROB6

T. Harvey - Direct

1 MR. DROGIN: We object to the use of the document.

2 THE COURT: On what basis?

3 MR. DROGIN: There's no foundation as to when it was
4 recorded.

5 THE COURT: Okay. Then I think I'm going to -- do you
6 have an answer with respect to that?

7 MR. MACURDY: Well, your Honor.

8 THE COURT: You can't just play something without
9 there being any --

10 MR. MACURDY: I thought that was the purpose of our
11 prior meet-and-confers with defense counsel. But we can
12 stipulate that it was April 9, 2019.

13 THE COURT: Is there agreement on that?

14 MR. DROGIN: Absolutely.

15 THE COURT: Okay. All right. Members of the jury,
16 when there's a stipulation, you know the parties agree on that.

17 Okay. Go ahead. You can play it.

18 (Plaintiff's Exhibit 398 received in evidence)

19 (Audio played)

20 BY MR. MACURDY:

21 Q. That was your voice, sir?

22 A. It was.

23 Q. According to you, sir, no one came to you from Canal and
24 said you need to investigate Ms. Robinson for wrongdoing at any
25 time in 2019. Right?

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1 A. I'm sorry?

2 Q. According to you, no one came to you from Canal and said
3 you need to investigate Ms. Robinson for wrongdoing at any
4 point in 2019. Right?

5 A. Well, certainly not prior to her departure. That's
6 correct.

7 Q. Well, at some point in the summer of 2019, you were
8 investigating Ms. Robinson, correct, looking into her spending?

9 A. Summer of '19, yes.

10 Q. I'm asking, sir, is it your testimony that it's not like
11 someone from Canal came to you and said, you should investigate
12 wrongdoing by Ms. Robinson?

13 MR. DROGIN: Objection.

14 THE COURT: Overruled.

15 A. I guess it's all in how you perceive it. On the Monday
16 after Ms. Robinson resigned, I went back down to Canal offices,
17 and Gillian, Sabrina, and Kaplan were there and started telling
18 me that there's all sorts of things that they didn't think were
19 proper.

20 Q. So was it your testimony, sir, that no one told you you
21 need to investigate Ms. Robinson for wrongdoing?

22 MR. DROGIN: Objection. Your Honor, there may also be
23 a privilege issue, the way this is trending.

24 THE COURT: Yes. The objection is sustained on
25 privilege grounds.

1 MR. MACURDY: May I be heard on that, your Honor?

2 THE COURT: Sure.

3 (Continued on next page)

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T. Harvey - Direct

1 (At the sidebar)

2 MR. MACURDY: Your Honor, I don't need to get into
3 anything that could potentially touch on privilege. There may
4 be an argument that, you know, he's a fact witness here. But
5 all I want to do here is impeach him with deposition testimony
6 where he says it was not like somebody -- someone came to me or
7 anyone else and said you need to investigate Chase for
8 wrongdoing. That's all I'm trying to do.

9 MR. DROGIN: I don't know what particular page or what
10 the context was, and I may have objected to it at that time.
11 Where was it?

12 MR. MACURDY: Day 2, Page 42.

13 MR. DROGIN: I'm just reading it. I'm just reading.
14 Yeah, this is exactly my objection. If you read the
15 deposition --

16 THE COURT: Sorry. What page and line?

17 MR. MACURDY: Day 2, Page 42.

18 MR. DROGIN: Page 42.

19 MR. MACURDY: Line 13.

20 MR. DROGIN: Line 13 through Page 43, Line 3. That's
21 the point. My objection is -- you don't even have to read past
22 Line 3 or Line 5.

23 MR. MACURDY: But there is no objection in the
24 transcript.

25 THE COURT: Both of you have to be quiet so I can

1 read.

2 Okay. So tell me what, from your perspective, the
3 relevance is of this line of examination, because there's both
4 a question of relevance, there's also a question of whether it
5 gets into privilege? So where does this go?

6 MR. MACURDY: Well, for one, I want to impeach his
7 credibility; for two, the substantive point is that he -- there
8 are questions about how the investigation arose, and that goes
9 to the credibility and the motives and the bias against
10 Ms. Robinson, and it further impeaches his credibility from
11 there. There's --

12 THE COURT: So let me ask you some follow-up
13 questions.

14 Assume that he was someone from Canal who said, I
15 really want you to investigate her and we should conduct an
16 investigation, I'm pissed off at her. Wouldn't that come
17 squarely within the attorney-client privilege?

18 MR. MACURDY: Well, for one, your Honor, it hasn't
19 been objected to, so it's --

20 THE COURT: Yes. But let's assume that the answer to
21 the question is, did nobody ask him to investigate, and you
22 bring that out, then where do you go from that? Then you're
23 going to ask some follow-up questions about --

24 MR. MACURDY: Well --

25 THE COURT: And I assume you're not trying to

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T. Harvey - Direct

1 establish the proposition that he investigated on his own
2 without anybody prompting it. You told me that you want to
3 establish motive.

4 MR. MACURDY: We've seen other e-mails from Ms. Chen,
5 multiple e-mails directing Canal employees to begin an
6 investigation. So it's to impeach the position of Canal. He's
7 saying no one told me to do this. Ms. Chen is sending out
8 multiple e-mails initiating investigations.

9 THE COURT: Sir, you can ask Ms. Chen that. And I
10 think you did ask other people, but to ask this witness, it
11 seems like it gets to an area of privilege.

12 Let me hear from defense counsel.

13 MR. DROGIN: I think there are two things. The emails
14 that we -- and counsel is speaking to regarding Ms. Chen were
15 sent on the 4th and 5th -- sent 4th, 5th, 6th to Mr. Tasch, not
16 Mr. Harvey. So that's something completely different. Now,
17 she reads on, and he's gone over there and people are giving
18 him information. And I think he's asking whether anyone
19 directed him to conduct an investigation. And this was the
20 question that was asked here.

21 But at some point you're gathering information, you're
22 an attorney, you're forming an opinion based on what
23 information has been brought forward to you. I don't know if
24 there was a formal investigation that somebody pointed a finger
25 and said, okay, you've given me this new information that I

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1 didn't know, formally investigate it. I don't think there's a
2 clear line of demarcation. And when an attorney is getting
3 information that employees are bringing forward, and then they
4 decide they're going to ask for more.

5 THE COURT: So let me ask you this question: I mean,
6 plaintiff is right that defendant -- not defendant, Mr. Harvey
7 gave that bit of testimony then. Is there any objection to him
8 being shown this testimony, said you were deposed, didn't you
9 give this bit of testimony? And then if there are further
10 questions that implicate a privilege, you know, then we deal
11 with it question by question. Isn't that the right way to
12 handle that?

13 MR. DROGIN: Perhaps what I would suggest, then, is
14 that the jury just be instructed, and Mr. Harvey be told, that
15 he does not have to delve into privileged communications, and
16 that he will also be given an opportunity to answer the
17 question in full or provide the context. I mean, then it's
18 fine. Because then I am not concerned about privilege, and
19 then he gets an answer -- gets an opportunity to explain his
20 answer.

21 THE COURT: You can ask him to explain the answer on
22 your examination. You can ask that question, and then we'll
23 deal with any follow-up questions. If there are privilege
24 objections, you'll object on the grounds of privilege, and I
25 will inform the jury that with respect to if there are

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1 communications that are made in confidence for the purpose of
2 obtaining or receiving legal advice, those are subject to
3 attorney-client privilege.

4 MR. DROGIN: Okay.

5 (Continued on next page)

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T. Harvey - Direct

1 (In open court)

2 THE COURT: Go ahead.

3 BY MR. MACURDY:

4 Q. I will return to the question, sir.

5 It's your position that no one from Canal in anytime
6 in 2019 came to you and said you need to investigate
7 Ms. Robinson for wrongdoing.

8 THE COURT: I think you can ask him the question, was
9 he deposed in his deposition and did he say the following.

10 MR. MACURDY: I can go straight to the --

11 THE COURT: You can go straight to the --

12 MR. MACURDY: Thank you, your Honor.

13 BY MR. MACURDY:

14 Q. Sir, you gave a deposition in this case?

15 A. I did.

16 Q. You were under oath?

17 A. I was.

18 Q. It was transcribed?

19 A. It was.

20 MR. MACURDY: Your Honor, I'd like to read the
21 August 17, 2022, deposition of Mr. Harvey, Page 42, Lines 13 to
22 Page 44, Line 10.

23 THE COURT: I think it's just 44 --

24 MR. MACURDY: I'm sorry.

25 THE COURT: I'm sorry.

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1 MR. MACURDY: Do you want the full answer to the
2 question, or do you want to --

3 THE COURT: Do you want to just read up to -- what
4 line?

5 MR. MACURDY: I think if it's an abbreviated answer,
6 it would be through Line 6 on 43.

7 THE COURT: Go ahead.

8 MR. MACURDY: While Mr. Kelly is pulling it up, I'll
9 start.

10 BY MR. MACURDY:

11 "Q. Okay. So Ms. Robinson's employment ended on April 6,
12 2019. Several months later, in June of 2019, you had a
13 telephone call with Ms. Robinson. At some point in between
14 those events, Canal began investigating certain aspects of
15 claimed wrongdoing by Ms. Robinson; is that correct?

16 "A. I wouldn't put it that way, because you say "claimed
17 wrongdoing." It is not like someone said, there is wrongdoing,
18 go investigate it. It was happening in realtime, our discovery
19 of it. It was not like someone came to me or anyone else and
20 said, you need to investigate Chase for wrongdoing."

21 That was your testimony, sir?

22 A. It is.

23 THE COURT: Let me caution the witness, since the
24 witness is a lawyer, just to particularly confine yourself to
25 the questions that are being asked and the answers that are

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1 directly responsive so as not to trench on areas as to which
2 there's a potential claimed privilege.

3 THE WITNESS: Thank you, Judge.

4 BY MR. MACURDY:

5 Q. So, sir, while Canal employees - Ms. Weeks-Brittan,
6 Ms. Spear, Mr. Kaplan - are doing this transitioning, they just
7 came across misconduct by Ms. Robinson after she left; is that
8 your testimony?

9 A. They came to me with things that they found inappropriate
10 that Ms. Robinson had done. I'm not sure they would have
11 couched it or been able to couch it as wrongdoing as you say.

12 Q. But according to you, they weren't looking for it. Right?

13 A. Not as far as I was concerned, not at that time period, not
14 on April 8 or 9th, whenever it is.

15 Q. Well, when they first discovered it, whenever it was in the
16 middle of 2019, you're saying -- is it your testimony that they
17 came upon it while they were transitioning things from
18 Ms. Robinson -- Ms. Robinson's workload?

19 MR. DROGIN: Objection.

20 THE COURT: Sustained.

21 BY MR. MACURDY:

22 Q. After Ms. Robinson resigned, you discussed severance with
23 her, right?

24 A. Yes.

25 Q. In the few weeks after Ms. Robinson departed Canal, she was

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T. Harvey - Direct

1 requesting a recommendation letter for business school
2 applications. Right?

3 A. That's correct.

4 Q. You told her to draft one, and you would make sure
5 Mr. De Niro sees it. Right?

6 A. Yes.

7 Q. You never responded to her after you said that?

8 MR. DROGIN: Objection.

9 THE COURT: Overruled.

10 A. When you say never responded, I'm not sure what you mean.
11 I'm sure we communicated. I'm sure I told her in a phone call,
12 I think that's recorded, that she was not getting a letter of
13 recommendation because Mr. De Niro believed she had stolen the
14 air miles. So I'm not sure when you say I didn't communicate
15 to her.

16 Q. Well, she followed up with you a few weeks later by e-mail.
17 Right?

18 A. She followed up --

19 MR. DROGIN: Objection. Objection.

20 THE COURT: Hold on for a second.

21 Overruled.

22 MR. DROGIN: Can we at least get a point in time?

23 THE COURT: I think you said she followed up a few
24 weeks later by e-mail, so overruled.

25 A. Sorry. Can you repeat the question, please?

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1 Q. Well, after you told her to draft a recommendation later,
2 she did. Right?

3 A. Yes.

4 Q. And then she followed up about the status of it a few weeks
5 later with you by e-mail, correct?

6 A. She followed up with it several times. And I called her
7 and said, "You're not getting the letter of recommendation
8 signed by Mr. De Niro because he thinks you stole the air
9 miles." And other things.

10 Q. And eventually, you sent Ms. Robinson an agreement
11 requesting that she waive all potential legal claims against
12 Canal and Mr. De Niro, right?

13 A. I'm sure I did.

14 Q. And that would be in exchange for a severance amount,
15 correct?

16 MR. DROGIN: Objection.

17 THE COURT: Sustained.

18 MR. MACURDY: Your Honor, I'd like to bring up -- we
19 can start with Plaintiff's 17, Plaintiff's 90 is the attachment
20 to it. I thought there was not an objection with redactions,
21 but I guess I can find out.

22 MR. DROGIN: Which document was this?

23 MR. MACURDY: Plaintiff's 17 and 90.

24 MR. DROGIN: No, that's okay. Based on your prior
25 rulings, there's no objection.

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1 THE COURT: Received.

2 (Plaintiff's Exhibits 17 and 90 received in evidence)

3 MR. MACURDY: Mr. Kelly, can you show that to the
4 jury?

5 BY MR. MACURDY:

6 Q. So, sir, this is an e-mail on June 9th you wrote to
7 Ms. Robinson attaching a release; is that correct?

8 A. Yes. I recognize it.

9 MR. MACURDY: Your Honor, I also move to admit
10 Plaintiff's 90 which is the attachment.

11 MR. DROGIN: No objection.

12 THE COURT: Received.

13 MR. MACURDY: You can leave it zoomed out, Mr. Kelly.

14 BY MR. MACURDY:

15 Q. Plaintiff's 90, sir, is the severance waiver and release
16 agreement that you sent to Ms. Robinson?

17 A. Yes.

18 Q. And it essentially -- one of the things -- one of the
19 things it accomplishes is if Ms. Robinson were to sign it is
20 that she would release or waive or give up legal claims against
21 Mr. De Niro and Canal and related entities; is that right?

22 MR. DROGIN: Objection.

23 THE COURT: Basis.

24 MR. DROGIN: He's asking for a legal conclusion. He's
25 testifying as a fact witness.

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T. Harvey - Direct

1 THE COURT: Members of the jury, this is fact
2 testimony, and it's not legal testimony. As to any issues of
3 law, you'll take that from me.

4 Your objection is overruled.

5 A. It's a standard release.

6 BY MR. MACURDY:

7 Q. Is that generally what it accomplishes, it releases or
8 waives and gets rid of her potential legal claims against Canal
9 or Mr. De Niro?

10 A. Yes.

11 MR. MACURDY: Mr. Kelly, can you go to the second
12 page?

13 BY MR. MACURDY:

14 Q. And up there at the top, it mentions a severance agreement
15 with a blank for the amount, do you see that?

16 A. I do.

17 Q. Sir, Ms. Robinson responded to this a few days later in
18 June, right?

19 A. I'm sure she did.

20 MR. MACURDY: Mr. Kelly, can you pull up
21 Plaintiff's 70.

22 I believe this is in evidence, your Honor.

23 BY MR. MACURDY:

24 Q. And Mr. Harvey, you were cc'd on this e-mail from
25 Ms. Robinson?

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T. Harvey - Direct

1 A. Yes.

2 Q. And she writes down there, third paragraph from the bottom,
3 "Now I've been told by Tom Harvey you're unwilling to sign the
4 letter of recommendation for the London School of Economics.
5 I've also been given a release to sign by Tom Harvey."

6 A. Yes, I see it.

7 Q. After this e-mail came in, you spoke with Michael Kaplan,
8 correct?

9 A. I'm sure I did.

10 Q. You told him to spend 24/7 thinking of crazy Chase stuff
11 and writing it down, right?

12 A. I wouldn't use that terminology, but I'm certainly telling
13 Kaplan, who is not exactly the most focused guy, to follow up
14 on some things he was gathering.

15 MR. MACURDY: Mr. Kelly, can we pull up Plaintiff 19
16 just for the judge and counsel, the 906 text?

17 Your Honor, I'd like to impeach with the bottom text
18 message.

19 THE COURT: Any objection.

20 MR. DROGIN: We would object. This is improper
21 impeachment. The witness is being asked directly about what he
22 said and he's given an answer. And this was hearsay earlier
23 when Mr. Kaplan was asked about it. We now have the alleged
24 declarant and he's been asked about it.

25 THE COURT: I don't know that you can ask this witness

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1 about it, but you may have a basis for the receipt of this into
2 evidence at this point.

3 MR. MACURDY: Well, your Honor, I would move to admit
4 this as a statement of a party opponent for at this point for
5 impeachment purposes.

6 THE COURT: I think that the last text comes in. Is
7 there a basis for the last text not coming in as a prior
8 consistent statement?

9 MR. DROGIN: It's not his statement, your Honor.
10 Mr. Kaplan could have put anyone -- he could have said that a
11 third-party told him anything. Mr. Harvey can be asked
12 directly about what he told Mr. Kaplan or whether he told
13 Mr. Kaplan something. And the jury has already heard from
14 Mr. Kaplan on this subject.

15 MR. MACURDY: Your Honor, these are -- sorry,
16 your Honor.

17 THE COURT: You may use it to confront the witness
18 without showing it to the jury.

19 BY MR. MACURDY:

20 Q. Sir, do you see on the screen a text message that Michael
21 Kaplan sent on June 12, 2019?

22 A. I do.

23 Q. That was a day after Ms. Robinson sent that e-mail with her
24 severance proposal that we just looked at, right?

25 A. That's right.

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1 Q. Actually, before that, let's go to the top text in the --
2 what's up there right now. At 9:06 a.m., Michael Kaplan wrote,
3 "Wait. I talked to Tom." Do you see that?

4 A. I do.

5 MR. DROGIN: Objection.

6 THE COURT: Sustained. You can ask a question, you
7 know, does -- look at that bottom e-mail, does that refresh
8 your recollection that you, in fact, told Mr. Kaplan that you
9 wanted him to spend 24/7 thinking of crazy Chase shit and write
10 it down?

11 THE WITNESS: No, I'm sure I told Michael Kaplan that
12 there were documents I needed. I'm assuming he's embellishing
13 or writing this to a friend. I have no idea.

14 THE COURT: Move on. Next.

15 BY MR. MACURDY:

16 Q. Your testimony remains that no one ordered those three
17 Canal employees to look into the conduct of Ms. Robinson; is
18 that right?

19 MR. DROGIN: Objection.

20 THE COURT: Sustained.

21 BY MR. MACURDY:

22 Q. You did not respond for the next three weeks to
23 Ms. Robinson's June 11 e-mail; is that right?

24 A. Before Ms. Robinson's June 11 e-mail, I had told her on the
25 phone, she tape recorded me, Bob is not giving you the letter

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1 of recommendation because he thinks you stole air miles and
2 other things. That's when she writes that e-mail to me.

3 Q. So then she wrote another e-mail following up on her prior
4 one and that was on July 12, 2019, right?

5 A. Okay, yes.

6 Q. And she writes in that e-mail, we've seen it in this case,
7 that she would involve a lawyer if she didn't hear from you --
8 actually, if she didn't hear you from by July 12, 2019?

9 MR. DROGIN: Objection.

10 THE COURT: Sustained.

11 MR. MACURDY: I can show the document, your Honor, but
12 let me fix my question.

13 BY MR. MACURDY:

14 Q. She wrote in that e-mail, which I believe was early July,
15 that she would involve a lawyer if she didn't hear back from
16 you by July 12; is that correct?

17 MR. DROGIN: Objection.

18 THE COURT: Sustained.

19 MR. DROGIN: Objection, your Honor.

20 BY MR. MACURDY:

21 Q. So, sir, you're aware that Ms. Robinson in July of 2019
22 wrote an e-mail suggesting she would involve a lawyer if she
23 didn't hear back, you're aware of that, correct?

24 MR. DROGIN: Objection.

25 THE COURT: I'll permit it. Go ahead.

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1 A. Yes.

2 BY MR. MACURDY:

3 Q. And upon receipt of that, Mr. De Niro expressed that he was
4 upset about it to you; is that fair to say?

5 A. Well, he was upset, certainly prior to June 11th or on or
6 about June 11th forward, he was upset.

7 Q. And so you were in charge of sending a letter with Canal's
8 own allegations against Ms. Robinson after that, right?

9 A. After what?

10 Q. After she sent that e-mail, you were in charge of sending
11 her a letter with Canal's own allegations against her, correct?

12 A. Right. I told her on June 11th about the allegations. And
13 then I followed it up with a letter or an e-mail.

14 MR. MACURDY: Mr. Kelly, can we pull up Plaintiff's 20
15 in evidence?

16 BY MR. MACURDY:

17 Q. So we have looked at this, but if you can zoom in, this is
18 July 2, 2019, Ms. Chen: Writes Chase e-mailed, she's
19 threatening legal action if she still does not get a response
20 by the 12th. Tom is getting ready to hit her hard with letter.

21 Do you see that?

22 A. Yes, I do.

23 Q. And you were, in fact, getting ready to hit her hard with
24 the letter at that point?

25 A. I don't know what that -- I was drafting a letter in

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T. Harvey - Direct

1 early -- excuse me -- mid June, right after June 11th I started
2 drafting a letter.

3 Q. You were in charge of getting -- going on the offensive
4 against her, right?

5 A. I was in charge of getting the cash, gift cards, computers,
6 air miles, and other items she stole back. That's what I was
7 charged with.

8 MR. MACURDY: Can we go to the next page, Mr. Kelly?

9 BY MR. MACURDY:

10 Q. Mr. De Niro writes: Can you believe Chase? As I said to
11 Tom, who the F does she think she is?

12 Tiffany Chen writes: She thought she was your wife, I
13 saw it from the beginning. I told you.

14 Mr. De Niro writes: The balls, the nerve, the
15 chutzpah, the sense of entitlement. How dare her.

16 Tiffany Chen writes: Tom will get her.

17 A. I'm sorry, is there a question.

18 Q. Well, sir, when you sent your letter to Ms. Robinson --
19 strike that.

20 You led the investigation into Ms. Robinson, correct?

21 A. Yes.

22 Q. Now, when you did that, you looked at the Canal American
23 Express card that was in her name, correct?

24 A. All of the American Express cards.

25 Q. And you assumed that it was Ms. Robinson making the

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T. Harvey - Direct

1 purchases in the first place, right?

2 A. I didn't assume anything. I looked at the charges, looked
3 who charged it, looked what it was charged for, looked when it
4 was charged, asked for backup receipts or any other information
5 Canal had with respect to any specific charges.

6 Q. Well, let's talk about the card that was in Ms. Robinson's
7 name.

8 A. Sure.

9 Q. You assumed that the charges on those cards were made by
10 Ms. Robinson, right?

11 A. I didn't assume anything. You're doing an investigation.
12 You are having an open mind. It could have been stolen.
13 Kaplan could have used it. What do I know?

14 Q. Right. You don't know who made the charges on that card,
15 right?

16 A. At the beginning of the investigation, 100 percent clear,
17 yes.

18 Q. You still do not know who made any given charge on that
19 card, right?

20 A. Counselor, we disagree strongly on that. Your client knows
21 who did those charges, and I know who did those charges.

22 Q. Sir, you have no personal knowledge of any one of those
23 charges and the context surrounding it, correct?

24 A. Was I there when Chase Robinson used the American Express
25 card to pay for a hotel in London? No. I wasn't. But I was

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T. Harvey - Direct

1 there to look at the charges and figure out that she did it and
2 did it all the time for three years, 24/7. She worked for
3 Robert De Niro, she said, but she also charged him 24/7.
4 Groceries, dinners, hotels, air miles, just use and use and
5 use.

6 THE COURT: All right. I'm going to strike that
7 answer.

8 THE WITNESS: Sorry, your Honor.

9 THE COURT: And, actually, it's 3:25. I think it's a
10 good time for our midafternoon break. Members of the jury,
11 we'll take a 15-minute break.

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1 (Jury not present)

2 THE COURT: Sir, you may step down.

3 Counsel, you may be seated.

4 How much -- I'm trying to figure out timing for the
5 rest of the day. How much more does plaintiff have with
6 respect to this witness?

7 MR. MACURDY: I think I'm more than halfway done,
8 your Honor.

9 THE COURT: And what's defendant's estimate in terms
10 of how long they'll need?

11 MR. DROGIN: Under an hour, or probably 45 minutes to
12 an hour would be my --

13 THE COURT: It seems like that will take us to the end
14 of the day, at least, which is helpful.

15 MR. DROGIN: Yes.

16 THE COURT: There is an issue as to which I would
17 appreciate the assistance of the parties. I have some concern
18 that with respect to all of the testimony regarding the time
19 period after Ms. Robinson leaves Canal, that the jury may need
20 some guidance with respect to the relevance of that testimony.

21 As I understand the state of the record and of this
22 case, there is no claim that remains by Ms. Robinson that the
23 investigation was wrongful or retaliatory or that it could lead
24 into any kind of damages. I have permitted testimony with
25 respect to the investigation because it potentially bears on

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1 the credibility of the allegations made against Ms. Robinson.
2 In other words, if the people who were doing the investigation
3 had a bias against Ms. Robinson, that might tend to undermine
4 the claims made by the investigators with respect to the
5 propriety of the charges.

6 I fear that all of that is ending up getting a bit
7 confused in front of the jury. I'm not going to give any kind
8 of a limiting instruction, at least I don't plan to, unless the
9 occasion arises before the end of the day today. But maybe
10 it's a topic for first thing tomorrow morning, the parties can
11 meet and confer and advise me as to whether there's any kind of
12 instruction I should give with respect to the relevance of this
13 testimony.

14 Is there anything else from plaintiff right now? I'm
15 going to hear you from at the end of the day with respect to
16 that one exhibit.

17 MR. MACURDY: I would just add, your Honor, I -- the
18 Plaintiff's 96, the exhibit you mentioned. Plaintiff 7, I
19 would put in the same bucket, the single white female text. I
20 think we can make the same arguments apply.

21 THE COURT: Is there anything else from defendants?

22 MR. DROGIN: Can I just briefly address the last point
23 your Honor made?

24 THE COURT: Yes.

25 MR. DROGIN: It -- may I sit?

1 THE COURT: Sure.

2 MR. DROGIN: It should be clear that any confusion
3 here is a risk borne and understood by the plaintiff. These
4 were two separate lawsuits. There was a lawsuit in state
5 court, which -- with Canal's claims. Plaintiff then started
6 her lawsuit and then moved to stay the state court action. And
7 they convinced the state court judge to stay that action on the
8 ground that it would be more efficient to allow this case to
9 move forward.

10 Four years later, I'm not so sure. But what we did
11 was we discontinued the state court action with the
12 understanding that the counterclaim -- that Canal's claims
13 would be brought as counterclaims here. And the argument that
14 they made was that these claims were all interrelated because
15 these were retaliatory counterclaims. So they have always
16 linked the two cases.

17 So if there's confusion here now because of that, they
18 could have avoided that by letting the other case proceed. So
19 this is a risk that they were aware of and they made a decision
20 back then as to how they wanted to litigate Canal's claims.

21 THE COURT: Okay. All right. See you back here in
22 about ten minutes.

23 (Recess)

24 THE COURT: All right. A point that defendants made
25 and that I hadn't fully focused on, the transcript at various

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1 points has me referring to Mr. Berdon. Rather than having the
2 court reporter change the transcript, I am just going to make
3 it clear for the record that in the past where I refer to
4 Mr. Berdon, I meant Mr. Tasch. I assume that everyone
5 understood that.

6 MR. SCHOENSTEIN: Yes, your Honor.

7 THE COURT: The other thing I should make clear for
8 the record is that as to those two exhibits, 93, 95, I think
9 they probably also are admissible as summary exhibits, but
10 let's put the witness back on the stand and bring in the jury.

11 (Continued on next page)

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1 (Jury present)

2 THE COURT: Counsel, you may continue.

3 MR. MACURDY: Thank you, your Honor.

4 BY MR. MACURDY:

5 Q. Sir, we were discussing the Canal American Express card in
6 Ms. Robinson's name. Do you recall that?

7 A. I do. Yes.

8 Q. That was a shared corporate card; correct?

9 A. It was a card in her name used by other people
10 occasionally, yes.

11 Q. The other Canal employees had access to the card?

12 A. Yes.

13 Q. And as we discussed somewhat, you weren't there when the
14 purchases we are talking about in 2017 to 2019 occurred,
15 correct?

16 A. Correct.

17 Q. You weren't in the store when the purchases happened?

18 A. Not that I recall, no.

19 Q. You weren't sitting behind the computer when somebody
20 pressed "pay", correct?

21 A. No.

22 Q. During Ms. Robinson's employment, Mr. De Niro never spoke
23 to you about how and when Ms. Robinson was allowed to use
24 SkyMiles, right?

25 A. Again, other than there was an issue, like I said in 2015,

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1 I don't know who was involved. I don't recall.

2 Q. Other than that one issue, no discussions with Mr. De Niro?

3 A. That's correct; until after April 6, 2019.

4 Q. And Ms. Robinson's authorization related to SkyMiles wasn't
5 written down anywhere; correct?

6 A. I haven't seen anything.

7 Q. So, prior to April 6, 2019, you have no idea what
8 Ms. Robinson's arrangement was with Mr. De Niro regarding
9 SkyMiles; right?

10 A. Specifically the SkyMiles? That's correct.

11 Q. Now, when you worked on this inquiry into the spending we
12 have been discussing, you also looked at vacation days for
13 Ms. Robinson; is that right?

14 A. At a certain point. You are calling it an inquiry --
15 investigation. Whatever. It sort of developed.

16 Q. And you, at that time, and as you came to your conclusion,
17 you assumed that Mr. De Niro was not aware of Ms. Robinson's
18 year-end e-mails requesting reimbursement for unused vacation
19 days. Isn't that true?

20 A. Well, I guess you have to put it in time because at a
21 certain point I have a meeting and there is a discussion.

22 Q. Well, you gave a deposition after that meeting with
23 Mr. De Niro, right?

24 A. I'm sorry?

25 Q. You gave a deposition in 2022, that was much after that,

1 right?

2 A. Right, but there are e-mails where Mr. De Niro is on the
3 e-mails where Ms. Robinson is sending them to Berdon that has
4 the vacation days and the reimbursement so I'm not sure of your
5 question. Was I aware of his awareness or lack thereof? I'm
6 not sure I follow you.

7 Q. At the time of your deposition in 2022, you were not aware
8 that Mr. De Niro had been included on those year-end vacation
9 day e-mails from Ms. Robinson for 2016 to 2018; correct?

10 A. I don't -- I don't necessarily know that now.

11 MR. MACURDY: Your Honor, I would like to read from
12 Mr. Harvey's deposition, day one, page 141, 23 to 143:4.
13 Specifically, your Honor, line 17 to 19. I am just pointing
14 you to that part.

15 THE COURT: 17 to 19 of which page?

16 MR. MACURDY: Page 142. That's the specific part to
17 focus on, your Honor.

18 THE COURT: OK. Defendant's position.

19 MR. DROGIN: On the first portion you will note
20 dueling objections to the form so I renew that objection here,
21 and onto the second part I don't think it's inconsistent based
22 on the phraseology of the question.

23 THE COURT: Give me one moment.

24 MR. DROGIN: I think it was a bad question then and a
25 bad question now.

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1 THE COURT: If you talk I can't read.

2 MR. DROGIN: I apologize.

3 THE COURT: The objection is sustained.

4 BY MR. MACURDY:

5 Q. After you worked with the three Canal employees we have
6 been discussing in the inquiry into the spend, at some point
7 you actually spoke to Mr. De Niro about what spending for
8 Ms. Robinson he had authorized, correct?

9 A. Sure. Yep.

10 Q. And you didn't spend very much time speaking with him, did
11 you?

12 MR. DROGIN: Objection.

13 THE COURT: Give me one moment. Basis?

14 MR. DROGIN: Privilege.

15 THE COURT: Sustained.

16 Actually, you can answer that question, how much time
17 he spent. How much time did you spend with Mr. De Niro?

18 THE WITNESS: Too much. Seriously, your Honor, it was
19 ongoing over time so I'm not sure if you are referencing a
20 particular day, but over time I was reporting back to him what
21 I had been looking at and what we were discovering, so we had a
22 lot of discussions on a lot of various issues about it.

23 BY MR. MACURDY:

24 Q. Well, particularly let's talk about reimbursement for her
25 leftover vacation days. Isn't it true that you spoke to

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1 Mr. De Niro for 60 seconds on that topic? Correct?

2 A. I think what you are referring to is when I told
3 Mr. De Niro that Ms. Robinson had claimed she had never gone on
4 a vacation from '16 to '19 and he instantly responded: What
5 are you talking about? I don't remember when -- something to
6 the effect she was always on vacation. So, that I think is
7 what you are referring to, is that's what his response was to
8 that particular issue.

9 Q. So is it true, sir, that the amount of time that you spent
10 discussing Ms. Robinson's vacation days with Mr. De Niro, as
11 part of Canal's investigation, was 60 seconds?

12 MR. DROGIN: Object to form.

13 THE COURT: Sustained as to form.

14 MR.. MACURDY: Is it verbiage, your Honor?

15 THE COURT: Yes.

16 Q. Sir, the amount of time that you spent discussing with
17 Ms. Robinson -- discussing Ms. Robinson's vacation days with
18 Mr. De Niro as part of this inquiry we have been discussing was
19 60 seconds, right?

20 A. Again, you are calling it an inquiry, I look at it as an
21 investigation, and certainly on a particular day there was a
22 60-second conversation but there were further discussions. I
23 don't even recall if there were any future discussions
24 specifically factually about the vacation days and the
25 evidence.

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1 MR. MACURDY: Your Honor, I would like to read from
2 Mr. Harvey's deposition, day two, page 245 at 17, to 246:6.

3 THE COURT: Defendant's position? Any objection?

4 MR. DROGIN: Just to the form as indicated there, but
5 not other than that.

6 THE COURT: To reading from the deposition? Since
7 there is no objection, go ahead.

8 MR. MACURDY: (reading)

9 "Q How much time was spent discussing Ms. Robinson's vacation
10 days with Mr. De Niro as part of Canal's investigation?"

11 Then there was an objection.

12 "A About 60 seconds, when I told him that she had robbed him
13 that way and suggested that she had gone on vacation. He just
14 simply shrugged his head and muttered that she was on vacation
15 more than any person that I have ever met in my life and he
16 walked out the door."

17 That was your testimony, sir?

18 A. Yes.

19 Q. And it is true that each year in 2016, 2017, 2018,
20 Ms. Robinson did in fact submit her leftover vacation days to
21 Mr. De Niro for approval, correct?

22 A. She sent him an e-mail and I believe cc-ing Michael Tasch
23 getting an e-mail being sent showing Bob had approved
24 reimbursement for those particular vacation days for each year.

25 Q. Sir, you have been sitting in this courtroom, I can pull up

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Harvey - Direct

1 the exhibit, but in 2018, for example, it was an e-mail
2 directly to Mr. De Niro --

3 A. Right.

4 Q. -- asking for his approval; correct?

5 A. Right, cc-ing Michael Tasch so she could get paid. Yes, I
6 believe that's the way it worked.

7 Q. Sir, one of the spending items that you looked at related
8 to Whole Foods?

9 A. Yes.

10 Q. And the Whole Foods charges on the American Express card in
11 Ms. Robinson's name, you assume that those were charges by
12 Ms. Robinson?

13 A. Depends on what time in the investigation. Certainly not
14 day one.

15 Q. But by the end you assumed that the charges from 2017 to
16 2019 were all by Ms. Robinson on the AmEx card?

17 A. I say "concluded" as opposed to "assumed."

18 Q. Well, your position is that every single Whole Foods charge
19 during those years was attributable to Ms. Robinson; correct?

20 A. We concluded that it was Chase Robinson who used the card
21 to purchase the food at Whole Foods, the groceries.

22 Q. That's another thing you assumed. You assumed that any
23 time it said "Whole Foods" on the Canal AmEx it was for
24 grocery, right?

25 A. Grocery, coffees, whatever. Something to do -- I knew it

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1 wasn't an automobile.

2 Q. Well, you were not aware at the time that Whole Foods
3 actually does sell prepared foods, you could buy a lunch there;
4 right?

5 A. Correct.

6 Q. It sounds like you are also telling us that you concluded
7 or assumed that any purchase on there was for Ms. Robinson
8 herself for Whole Foods and not for Mr. De Niro?

9 MR. DROGIN: Objection.

10 THE COURT: Sustained as to form.

11 Q. So, sir, you were here in the courtroom during
12 Ms. Weeks-Brittan's testimony and Canal's lawyers showed some
13 spreadsheet of AmEx charges, right?

14 A. Yes.

15 Q. And those were the spreadsheets that you looked at in your
16 inquiry?

17 A. Investigation. You are calling them spreadsheets. I would
18 have to go back and look, but I believe they were downloaded
19 from the American Express account. So you are suggesting it
20 might be a spreadsheet, I believe it was directly from American
21 Express, you can filter out, for example, if I have a \$10,000
22 bill and wanted to filter out Ubers or rideshare or something
23 like that, apparently you can do that on American Express.

24 MR. MACURDY: Move to strike as hearsay, your Honor.

25 THE COURT: Sustained as to non-responsive and I will

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Harvey - Direct

1 strike it as non-responsive.

2 Q. Sir, on those lists of charges there were highlighting for
3 different categories we heard?

4 A. Yes.

5 Q. And when it came to Ubers or taxis there wasn't a single
6 Uber or taxi charge for the relevant time period that wasn't
7 highlighted, right?

8 A. That's correct; all from that particular card.

9 Q. And then you had somebody add up all the charges for those
10 Ubers and taxis over the time period?

11 A. That's correct.

12 Q. And you don't know the specifics about what Ms. Robinson
13 was doing at the time of any given Uber or taxi charge, right?

14 MR. DROGIN: Objection.

15 THE COURT: Overruled.

16 A. That's correct.

17 Q. You never spoke to Mr. De Niro about the specifics of what
18 work, if any, Ms. Robinson was doing at the time of any given
19 Uber or taxi charge?

20 MR. DROGIN: Objection.

21 THE COURT: Basis?

22 MR. DROGIN: I will withdraw the objection.

23 A. I wouldn't adopt that now.

24 Q. So it is your testimony that you did sit down with
25 Mr. De Niro and talk about the specifics of what work, if any,

1 Ms. Robinson was doing for given Uber and taxi charges on the
2 list?

3 MR. DROGIN: Objection.

4 THE COURT: Basis?

5 MR. DROGIN: Form.

6 THE COURT: Overruled.

7 A. I spoke to him, there were charges for a foreign country,
8 whether it was London or Spain or something, to confirm that he
9 wasn't there with Ms. Robinson doing something for him.

10 Q. Sir, you are aware that Ms. Robinson routinely worked
11 remotely --

12 A. Yes.

13 Q. -- abroad for Canal?

14 A. Yes.

15 Q. So another category of charges that were highlighted on
16 that list was for Paola's restaurant; is that right?

17 A. Yes.

18 Q. And every single Paola's charge was highlighted during the
19 relevant time period?

20 A. Yes.

21 Q. And then all of those charges were added up?

22 A. Yes.

23 Q. And you don't know the specifics about what Ms. Robinson
24 was doing at the time of any given Paola's charge; right?

25 A. I assume eating.

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Harvey - Direct

1 Q. You don't know?

2 A. No.

3 Q. You don't have access to information on the specific items
4 purchased at Paola's?

5 A. Definitely not.

6 Q. You don't have access to information about the time when
7 the Paola's charges were placed, right?

8 A. That may or may not be true. I don't recall.

9 Q. You don't have access to information about which Paola's
10 charges, if any, were for Mr. De Niro; right?

11 A. I think we do, yes.

12 Q. So when you look at the AmEx charges, you can tell us which
13 charges were for Mr. De Niro?

14 A. No. You look at the charges and then you go to
15 Mr. De Niro's itinerary to make sure, one, he wasn't in New
16 York; two, did he use his card, did he have to be there. And
17 if he were out of town and using his particular card overseas,
18 we concluded that it wasn't Mr. De Niro.

19 Q. So if he was in New York, how did you rule him out?

20 A. I'm sorry?

21 Q. If he was in New York, how did you rule him out?

22 A. You simply go to his schedule and you can see -- I will
23 make it up -- on Monday, June 2, where was he having dinner and
24 you can see he is at a Nobu event or something.

25 Q. You did that for every single Paola's charge from to '17 to

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Harvey - Direct

1 2019?

2 A. I believe we did, yes. And well, there is another layer to
3 it also. Mr. De Niro would also use his American Express card
4 when he dined at that restaurant so we would get his American
5 Express and we started putting it all together and it is like a
6 puzzle. You can determine it wasn't him.

7 Q. You did that work yourself, sir?

8 A. I did that work with other people.

9 Q. Who was the person who did that work?

10 A. When you say "did that work" you grab the American Express,
11 you look at the calendar, you look at Bob's, you look at the
12 e-mails which unfortunately were deleted a bunch of them, but
13 that's the general. And when you say "who" it would have been
14 Kaplan, Sabrina, Gillian, myself. For the most part.

15 Q. Someone highlighted on the charges all the entries for
16 Whole Foods and Dean & DeLuca?

17 A. Yes.

18 Q. Every single one over the time period?

19 A. Right.

20 Q. They were all added up?

21 A. Yes.

22 Q. You don't have access to information about which Whole
23 Foods -- about -- I'm sorry, excuse me.

24 You don't have access to information about which Whole
25 Foods and Dean & DeLuca charges, if any, were for Mr. De Niro?

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Harvey - Direct

1 A. I'm sorry. Are you talking about the location of the
2 establishment?

3 Q. I'm asking you about whether you have access to information
4 on whether any given Whole Foods or Dean & DeLuca charge was
5 purchased for Mr. De Niro's consumption.

6 A. So do I have information? Yeah. Bob has housekeepers that
7 do his grocery shopping. He doesn't do his own grocery
8 shopping. So, I'm not sure I understand the question.

9 Q. So are you saying, sir, that you just assume that every
10 charge for Whole Foods and Dean & DeLuca on this Canal AmEx
11 card in Ms. Robinson's name was not for Mr. De Niro?

12 A. That's what I concluded, yes.

13 Q. And you don't know the specifics about what Ms. Robinson
14 was doing at the time of the Whole Foods and Dean & DeLuca
15 charges, right?

16 A. That's correct.

17 Q. You don't have access to information on the specific items
18 purchased at Whole Foods and Dean & DeLuca?

19 A. I'm not sure that's correct. I certainly didn't look that
20 closely.

21 Q. You don't have access to information about the time when
22 the Whole Foods and Dean & DeLuca charges were placed?

23 A. You know, I believe that there were receipts that did have
24 time stamps but I don't recall and it certainly didn't impact
25 the investigation.

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Harvey - Direct

1 Q. You never spoke to Mr. De Niro about the specifics about
2 what work, if any, Ms. Robinson was doing at the time of the
3 Whole Foods and Dean & DeLuca charges; is that right?

4 A. That's fair.

5 Q. Sir, all of these expenses we are talking about, they were
6 out in the open in the AmEx records; right?

7 MR. DROGIN: Objection.

8 THE COURT: Sustained.

9 Q. All of these expenses appeared in the Canal American
10 Express records; right?

11 A. That's correct.

12 Q. And as we have heard those credit cards, like any credit
13 card, generated monthly account statements; correct?

14 A. That's correct.

15 Q. For years?

16 A. Certainly from '16 to '19, yes.

17 Q. Mr. De Niro's accountants looked at the AmEx statement
18 every month?

19 A. That's correct.

20 Q. They paid the AmEx statement every month?

21 A. I assume they did.

22 Q. They logged every single expense Canal had in the company's
23 general ledger, right?

24 A. I assume they did.

25 Q. The accountants never had a problem with the expenses on

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Harvey - Direct

1 the AmEx card in Ms. Robinson's name?

2 MR. DROGIN: Objection.

3 THE COURT: Sustained.

4 Q. Well, the Uber charges were paid each month from '16 to
5 '19, right?

6 A. If they were on the American Express, for sure.

7 Q. The Paola's charges were paid every month from '16 to '19?

8 A. Definitely.

9 Q. And Canal's accountants were actually never part of -- I
10 will use your word -- investigation, into Ms. Robinson's
11 alleged spending, right?

12 MR. DROGIN: Objection.

13 THE COURT: Overruled.

14 A. Other than supplying documents.

15 Q. You did not take the time to show your conclusions about
16 Ms. Robinson's spending to the people in charge of Canal's
17 financial statements, right?

18 MR. DROGIN: Objection.

19 THE COURT: Sustained.

20 Q. Never hired a professional investigator to look into the
21 allegations?

22 A. I would think that I would qualify as one. I don't have a
23 license but I am an attorney.

24 Q. Never hired a forensic accountant?

25 A. No, although I have an MBA.

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Harvey - Cross

1 MR. MACURDY: Nothing further, your Honor.

2 THE COURT: Defense examination.

3 CROSS-EXAMINATION

4 BY MR. DROGIN:

5 Q. Mr. Harvey, do you have a law degree?

6 A. I do.

7 Q. What law school did you go to?

8 A. New York Law.

9 Q. When did you graduate?

10 A. 1990.

11 Q. Are you currently a practicing attorney in New York State?

12 A. Yes.

13 Q. Are you admitted and in good standing as an attorney in New
14 York State?

15 A. Yes.

16 Q. Have you ever been disbarred?

17 A. No.

18 Q. Have you ever been suspended?

19 A. No.

20 Q. Have you ever been sanctioned by a Court?

21 A. Not yet.

22 Q. Have you ever been censured by a Court?

23 A. No.

24 Q. Have you ever been formally admonished by a Court?

25 A. No.

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Harvey - Cross

1 Q. When did you first meet Mr. De Niro and can you describe
2 the circumstances of how you met him?

3 A. Socially. 1985 or 1986, somewhere in there.

4 Q. At that point, were you an attorney?

5 A. No.

6 Q. But five years later you became an attorney?

7 A. Right.

8 Q. After you graduated from law school -- withdrawn.

9 How long after you graduated from law school did you
10 begin providing legal services to Mr. De Niro?

11 A. 1995 or 1996.

12 Q. In what area or areas of law do you practice?

13 A. On criminal trials, civil trials, litigation.

14 Q. Do you represent Mr. De Niro individually on certain legal
15 matters?

16 A. I do.

17 Q. What about Canal Productions?

18 A. I represent them too.

19 Q. What about what we refer to as the Tribeca entities?

20 A. Right. Tribeca Film Center, Tribeca Productions, Tribeca
21 Enterprises. There is a number of other entities. I would
22 have to look at a spreadsheet to figure it out.

23 Q. Are you familiar with any interaction that may occur
24 between the different entities and Mr. De Niro?

25 A. Yes. Well, they're all housed in the same building.

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Harvey - Cross

1 So Mr. De Niro developed a building in 1990 to attract
2 artists to Tribeca and as he built up each -- his film
3 production company, Tribeca Films -- with Jane Fonda -- has an
4 office there. Tribeca Enterprises had an office there.
5 Tribeca Film Festival has an office there. And there are
6 offices on three or four floors that all belong to him, and
7 then you have a Steven Spielberg or someone like that on the
8 other floors.

9 THE COURT: You said Tribeca Films with Jane Fonda?

10 THE WITNESS: No. Jane Rosenthal. Did I say Jane
11 Fonda? I apologize.

12 BY MR. DROGIN:

13 Q. I believe it is indicated you also provided legal services
14 for other members of Mr. De Niro's family?

15 A. I have.

16 Q. During the period 2016 to 2019, approximately how often
17 would you speak with Mr. De Niro?

18 A. It depended on what was going on. It could be nothing for
19 weeks, it could be on a daily basis.

20 Q. Over the years that you provided services to Canal, did you
21 have occasion to interact with the Canal employees?

22 A. Yeah. Sure.

23 Q. That included Ms. Robinson?

24 A. Yes.

25 Q. When was the first time you met her?

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Harvey - Cross

1 A. I assume 2008 when she started working.

2 Q. On what types of matters did you interact with
3 Ms. Robinson?

4 A. Typically when Bob need needed to get in touch with me,
5 something like that.

6 Q. Were the matters in which you would interact with
7 Ms. Robinson specifically limited?

8 A. Certainly back in 2008, but as years went on and
9 Ms. Robinson started to handle more things, I would hear if she
10 was getting involved with a healthcare program or some issue
11 like that, phone line. Something.

12 Q. Is it fair to say that over time, then, during your
13 relationship, the interaction expanded?

14 A. Well, it changed. Let me put it to you that way.

15 Q. And during the confined period from 2016 to 2019, did you
16 have an understanding as to what her general duties and
17 responsibilities were?

18 A. Sure. To oversee the office and make sure that Bob got
19 where he needed to be and spoke to who he had to speak with.

20 Q. Other than yourself, does Mr. De Niro interact with other
21 professional service providers?

22 A. Yeah. Of course.

23 Q. Other lawyers?

24 A. Yes. He has trust and estates, real estate, entertainment
25 lawyers, etc.

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Harvey - Cross

- 1 Q. Tax?
- 2 A. Yes. Certainly.
- 3 Q. Matrimonial?
- 4 A. Unfortunately.
- 5 Q. Employment?
- 6 A. Now you are getting personal.
- 7 Q. And did you have occasion, in performing services for Canal
- 8 and Mr. De Niro, did you have occasion to interact with those
- 9 other service professionals?
- 10 A. Sure.
- 11 Q. You have heard about Canal's accountants. Did you also
- 12 interact with insurance brokers?
- 13 A. Yes.
- 14 Q. Would it be fair to say that you have a very broad and
- 15 diverse understanding of Mr. De Niro and Canal's legal and
- 16 business interests?
- 17 A. Yes.
- 18 Q. Turning specifically to 2018, were there any specific
- 19 issues going on that impacted your role as general counsel?
- 20 A. Well, he got divorced in 2018, I was not involved in the
- 21 matrimonial at all, and then when he leases a new -- the
- 22 townhouse, my partner does the lease.
- 23 Q. I used a term there and I want to ask you about it. I used
- 24 the term "general counsel." Are you familiar with that term?
- 25 A. Yes.

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Harvey - Cross

1 Q. Were you -- do you consider yourself Canal's general
2 counsel?

3 A. Yes.

4 Q. Can you tell the jury your understanding as to what general
5 counsel is?

6 A. Yeah. They get to pay you less every month because you get
7 the title of general counsel and handle all the daily issues
8 that can come up.

9 Q. And was there a point you met Ms. Chen?

10 A. Yes.

11 Q. Approximately when was that?

12 A. Well, I certainly would have communicated with her in March
13 of '19. I don't think I met her in person until probably
14 April-May of '19.

15 Q. In your interactions with Ms. Robinson, did you and she
16 have direct access to each other?

17 A. You mean Ms. Robinson and Ms. Chen?

18 Q. I apologize. Ms. Robinson and you.

19 A. Did we have -- I'm sorry.

20 Q. Were you able to directly access Ms. Robinson if you needed
21 her?

22 A. Yeah. Of course. Yes.

23 Q. Was she able to directly access you?

24 A. Yes.

25 Q. How would you communicate with Ms. Robinson if you needed

NB15rob7

Harvey - Cross

1 to?

2 A. Phone.

3 Q. What about e-mail?

4 A. Yes. Sure. Occasionally. More phone, but yes of course
5 e-mail.

6 Q. What about text?

7 A. Occasionally, yeah.

8 Q. Would you also come to Canal's office? Is that fair?

9 A. Yeah.

10 Q. Would it be fair to say that if Ms. Robinson wanted to
11 reach you, she could?

12 A. Yes.

13 Q. And in the period from the fall, let's say September of
14 2018, up until the time that she resigned in April of 2019,
15 approximately how frequently would you speak with her?

16 A. It was not all that frequently.

17 Q. Prior to 2018, had Ms. Robinson ever raised any concerns
18 with you that she had been subjected to any form of harassment
19 at Canal?

20 A. No.

21 Q. Prior to 2018, had Ms. Robinson ever raised any concerns
22 with you that others at Canal had been subjected to any form of
23 harassment?

24 A. No.

25 Q. Between 2016 and 2018, and I will limit those to before

NB15rob7

Harvey - Cross

1 September 2018, did Ms. Robinson bring complaints to your
2 attention about her job?

3 A. Just generally; that she was overworked, didn't like some
4 of the people she worked with.

5 Q. At any point during that limited time period, did she ever
6 make any complaints to you, either -- let me break it down.
7 Did she ever make any complaints to you about Mr. De Niro's
8 behavior towards her?

9 A. No.

10 Q. Any by telephone?

11 A. I'm sorry.

12 Q. Any by telephone?

13 A. No.

14 Q. Any in written form, longhand on paper?

15 A. No.

16 Q. Any via e-mail?

17 A. No.

18 Q. Any via text?

19 A. No.

20 Q. As 2018 rolled into 2019, did there come a point in time
21 when Ms. Robinson brought complaints to you about Ms. Chen?

22 A. Yes.

23 Q. What do you recall about the first time that she brought a
24 complaint forward to you?

25 A. Very early, in March 5th or 6th, somewhere in there,

NB15rob7

Harvey - Cross

1 Michael Tasch and Ms. Robinson were working on the townhouse
2 and there was a mold issue and that's the first time I think we
3 discussed or had any issue involving Tiffany Chen.

4 Q. Before we talk about the mold issue, what were the nature
5 of the complaints that Ms. Robinson was bringing to you about
6 that situation?

7 A. Just that she felt she was being held responsible to fix
8 the mold problem in general.

9 Q. Did she -- sorry.

10 She was being held responsible by who or whom?

11 A. I guess she felt she was being held accountable or
12 responsible by Bob -- Mr. De Niro -- for the mold.

13 Q. Did there come a point in time when she mentioned Ms. Chen?

14 A. Yes. Later on.

15 Q. In relation to the mold issue?

16 A. Yeah. Just in the beginning it was that Ms. Chen had made
17 it up and was just -- just there was no mold and anything she
18 was complaining about had nothing to do with any health issues.

19 Q. You said made it up. Had made what up?

20 A. Ms. Chen apparently developed some health issues the first
21 week in March, skin rashes, that sort of thing, and she
22 believed there was mold in the house and I guess complained to
23 Mr. De Niro, who in turn gets in touch with Mr. Tasch and
24 Ms. Robinson and tells them try to fix it, try to deal with it,
25 do whatever it is.

NB15rob7

Harvey - Cross

1 Q. At some point during this mold episode, did Ms. Robinson
2 ever raise any complaints with you about how Ms. Chen was
3 treating her?

4 A. At any time? Certainly towards the end of March she
5 complained but in the beginning of March it was that
6 Mr. De Niro was holding her responsible and somehow blaming her
7 for the situation.

8 Q. And is it, related to Ms. Chen, what were the nature of her
9 complaints as related to -- or that she was relating about
10 Ms. Chen?

11 A. Well, I think it was on March 27 she called me and
12 complained that she was being targeted, harassed, based upon an
13 e-mail that Ms. Chen had sent out -- or several e-mails I
14 should say.

15 Q. At any time during this, I will call it the mold episode,
16 did Ms. Robinson ever mention to you that she felt Ms. Chen
17 was -- I will adopt your word -- targeting her based on her
18 gender?

19 A. On March 27 she had called me and was, again, complaining
20 about Ms. Chen sending an e-mail asking her the painter's
21 numbers, that stuff. And at that point she said in September
22 and October Ms. Chen had sent her what she considered
23 inappropriate text messages or e-mails, something about her
24 being a unicorn and doing a great job and loving the house and
25 saying her and Bob were funny together or something like that.

NB15rob7

Harvey - Cross

1 Q. Let me go back to the beginning of March. You were shown
2 Plaintiff's Exhibit 14.

3 MR. DROGIN: I ask you to provide it to everyone,
4 Plaintiff's Exhibit 14 in evidence.

5 Q. This is a text between you and Ms. Robinson?

6 A. Yes.

7 MR. MACURDY: Your Honor, excuse me. It is not
8 showing up on our screens.

9 THE COURT: It is not showing up on mine. Does
10 plaintiff have it now?

11 BY MR. DROGIN:

12 Q. There are two texts from March 5. Do you see that?

13 A. I do. I do.

14 Q. To your recollection, those two March 5 texts, was that
15 also regarding the mold issue?

16 A. Right.

17 Q. March 7 she says: This insanity has got to stop. It's so
18 uncomfortable and just downright harassment.

19 Do you see that?

20 A. Yes.

21 Q. Prior to that point, had Ms. Robinson ever once indicated
22 that she felt that her -- she was being victimized by any form
23 of gender discrimination?

24 A. No.

25 Q. And as she used the word "harassment" here, do you have an

NB15rob7

Harvey - Cross

1 understanding that she was talking about gender discrimination?

2 A. No. I thought the way she wrote it and the way she said
3 things in the past that she was being harassed, meaning people
4 were not listening to her or complaining that she wasn't doing
5 her job. That, to her, is being harassed.

6 Q. Is your perception of her use of the word "harassment"
7 there, is that reflected in your answer to her?

8 A. Certainly.

9 Q. You say: Stay out of it.

10 Can you explain to the jury what you are telling her
11 to stay out of?

12 A. Sure. Well, stay out of the mold issue. The problem
13 was --

14 Q. Sorry. I don't want to cut you off, you answered my
15 question.

16 Then she says: He keeps calling me about it. She
17 e-mails me about it. Me, I keep saying speak to Tasch, speak
18 to Tom. I want to stay out of it, this isn't my job.

19 Do you see that?

20 A. Yes.

21 Q. And then you respond: Turn your phone off.

22 A. Right.

23 Q. So from those three texts on March 7, is she following up
24 at all with you on a gender discrimination claim?

25 A. No.

NB15rob7

Harvey - Cross

1 Q. When you said: Turn your phone off; why did you tell her
2 to turn her phone off?

3 A. Because they were phone conversations going on between the
4 contractor and myself on how to deal with the mold issue on how
5 you are supposed to deal with it and I felt that Ms. Robinson
6 was trying to stay in the middle of it all to monitor what was
7 going on.

8 Q. What do you mean by in the middle of it all?

9 A. OK. There is a mold problem. I called someone who deals
10 with mold and said, Can you figure this out, please? And
11 Ms. Robinson got involved and asked to be contacted by those
12 various professionals, which I didn't -- in my mind, had no
13 reason to do that. Just stay out of it.

14 Q. At any time prior to April 6, 2019, had any other Canal
15 employees ever mentioned that they felt that Ms. Chen was
16 harassing them based on their gender?

17 A. No.

18 Q. At any time since April 6, 2019, have any Canal employees
19 ever come forward and made you aware that they believed that
20 they're the victim of discrimination based on gender?

21 MR. MACURDY: Objection. Relevance.

22 THE COURT: Overruled.

23 A. No.

24 Q. Prior to her departure in 2019, had Ms. Robinson ever made
25 you aware that other Canal employees had reported to her that

NB15rob7

Harvey - Cross

1 they felt they were being harassed by Ms. Chen based on their
2 gender?

3 A. No.

4 Q. You were played a recording of your voice on direct
5 examination and you identified it as your voice. Were you
6 aware that Ms. Robinson was recording that call?

7 A. No.

8 Q. And that call was recorded on April 9th we stipulated,
9 correct?

10 A. Yes.

11 Q. That would have been three days after she resigned?

12 A. That's correct.

13 Q. She could have said anything she wanted because she knew
14 she was recording herself?

15 A. Presumably.

16 Q. She could have made something up just to preserve herself
17 saying it, right?

18 MR. MACURDY: Objection, your Honor.

19 THE COURT: Sustained.

20 Q. In that phone call that she recorded on April 9, was there
21 any mention of gender discrimination?

22 A. No.

23 MR. DROGIN: Can we bring up Defendant's Exhibit 35?

24 THE COURT: Is there any objection to this exhibit?

25 MR. MACURDY: Can we scroll down?

1 THE COURT: It is not on the e-mail to me, if that
2 helps you.

3 MR. DROGIN: To tell you the truth, I think it has
4 actually been received as a plaintiff's exhibit and I have just
5 identified it with our number. Can we correlate it to speed
6 things up?

7 THE COURT: Does plaintiff happen to know which
8 exhibit number this came in as plaintiffs?

9 MR. MACURDY: If you give me one second?

10 MR. DROGIN: I apologize, Judge.

11 THE COURT: We may have it down as coming in as
12 Defendant's Exhibit 35 already.

13 MR. MACURDY: Thank you, your Honor.

14 THE COURT: Go ahead.

15 MR. DROGIN: Ms. Cardona, can you scroll up a little
16 bit.

17 BY MR. DROGIN:

18 Q. This is a March 9, 2019 e-mail from Ms. Robinson to
19 Mr. Tasch and Mr. De Niro.

20 If you can scroll up to the top?

21 Do you see Ms. Robinson forwards it to you?

22 A. Yes.

23 Q. She says: Dear God. Please get back to her ASAP. This is
24 targeted at me. When you speak to Bob, you need to include
25 her, otherwise she assumes I'm at fault.

NB15rob7

Harvey - Cross

1 Do you see that?

2 A. I do.

3 Q. Was this consistent with the instructions that you had
4 given her? Or wasn't this consistent with the instructions you
5 had given her?

6 A. When you say instructions --

7 Q. "Turn your phone off."

8 A. Oh. Yes. Consistent.

9 Q. Here she says: This is targeted at me.

10 A. Right, but -- I see what it says. I mean, I'm
11 communicating with Bob by phone.

12 Q. I think you have made clear you were involved at this point
13 with the mold issue? Just yes or no. Were you involved?

14 A. To the extent that I had referred them to a mold testing,
15 licensed person, a licensed contractor and people like that,
16 and told them to deal with that situation.

17 Q. And in this e-mail to you she says: This is targeted at
18 me.

19 Do you see that?

20 A. I do.

21 Q. Upon reading that, did you have any reason to believe that
22 this was a complaint of gender-based discrimination?

23 A. No.

24 Q. At some point you learned Ms. Robinson resigned?

25 A. Yes.

NB15rob7

Harvey - Cross

1 Q. How did you learn that?

2 A. Mr. De Niro forwarded her resignation e-mail to me.

3 Q. When was that?

4 A. April 6.

5 Q. Do you recall approximately what time that was?

6 A. I'm guessing around -- I remember it around 6:00 at night.

7 Q. I just want to show you an exhibit and ask you the
8 question.

9 MR. DROGIN: Apologies, Judge. We are making such
10 good time that I didn't actually expect to get this far into
11 Mr. Harvey. This is Plaintiff's Exhibit 69.

12 Q. Does this refresh your recollection as to what time you
13 learned that Ms. Robinson resigned on April 6?

14 A. Yes. About 9:00 on Saturday night.

15 Q. Soon after you got this e-mail, did you take any action in
16 your capacity as general counsel to Mr. De Niro and Canal?

17 A. Yes.

18 Q. What caused you to take such legal action -- or to take --
19 withdrawn. Long day.

20 What about the e-mail, if anything, caused you to see
21 a need to provide legal services to these clients?

22 MR. MACURDY: Objection, your Honor; form, relevance,
23 vague.

24 THE COURT: Overruled.

25 A. After seeing the e-mail, the one thing I was concerned

NB15rob7

Harvey - Cross

1 about is Mr. De Niro's schedule, the whole idea of having the
2 offices to make sure that he knows where to be, when to be,
3 whether it is a Nobu opening, a reading of a script, etc. He
4 doesn't have that information itself, it is all contained --
5 Ms. Robinson had led me to believe that there were certain
6 aspects that only she knew about and knew where all the
7 information was. So I think on Sunday I contacted the other
8 assistants, told them I would meet them down there to try to
9 figure out how bad the situation is going to be and what we are
10 going to do.

11 Q. What do you mean by how bad a situation?

12 A. I assumed it would be pandemonium in terms of Mr. De Niro
13 not making his appointments and schedules, etc.

14 Q. Let's talk for a moment about the specific components of
15 this potential pandemonium. What, if anything, in general
16 terms, was going on in Mr. De Niro's matrimonial action at that
17 time?

18 A. Well, he was going -- they were trying to work out custody,
19 that's where you hear on the tape the schedule they're talking
20 about, you take the kids when, you take the kids there. He
21 needed that schedule for something.

22 MR. MACURDY: Objection, your Honor. Reference to
23 some sort of out-of-court statement.

24 THE COURT: It is not hearsay. Overruled.

25 Q. I will direct your attention down to the April -- the

NB15rob7

Harvey - Cross

1 e-mail that Ms. Robinson sent at 8:41 where she said: Bob, I
2 already emailed you and Jennifer the access schedule this
3 evening that you just requested.

4 A. Right.

5 Q. Who is Jennifer?

6 A. Jennifer is one of his divorce attorneys, matrimonial
7 attorneys.

8 Q. What did you understand the "access schedule" to mean?

9 A. The schedule with respect to visiting or sharing the
10 children.

11 Q. In fact two hours after she resigned that's the first thing
12 he asked about; isn't that true?

13 A. That's correct.

14 Q. And her response also includes: Bob, please read the
15 e-mail below from me. I have decided no longer work for you,
16 please respect my wish.

17 Do you see that?

18 A. I do.

19 Q. When you saw that, was it your understanding from reading
20 that e-mail that she was eager to continue to have
21 communications with him?

22 A. It was my understanding she didn't necessarily want to do
23 anything.

24 Q. Was that part of what contributed to this potential
25 pandemonium?

NB15rob7

Harvey - Cross

1 A. Yes.

2 Q. What is a press junket?

3 A. When you have a new movie, in this case "The Irishman" at
4 this period of time, you go and invite the press to come to a
5 particular location, in this situation it was Tribeca Film
6 Festival, it was about to go, and they invited all the press to
7 talk about "The Irishman," which was a big film at that time.
8 Or about to be.

9 Q. So, as you understood it, did Ms. Robinson have certain
10 duties and responsibilities relating to this press junket
11 regarding "The Irishman"?

12 A. Well, she certainly had information in the scheduling and
13 all of those sorts of things, that's the whole idea of Canal is
14 to make sure you schedule things. So if he had to meet with
15 Marty Scorsese but instead had to meet a reporter that he made
16 a commitment to, you needed to know that. That's the whole
17 idea of Canal.

18 Q. I missed one thing. Did you have an understanding at the
19 time that Ms. Robinson was also involved in assisting
20 Mr. De Niro in some ways relating to the matrimonial action?

21 A. Yeah. Simply providing him looking at his phone, his
22 e-mails to figure out the schedule and when he had the kids.
23 There was some sort of negotiation going on. He needed to know
24 how often he was with the kids, what he did with them, those
25 sorts of things.

NB15rob7

Harvey - Cross

1 Q. When, in relation to April 6, 2019, was the Tribeca Film
2 Festival?

3 A. I don't know the exact date. It was like the next week or
4 something.

5 Q. And at that point in time when the Tribeca Film Festival is
6 upcoming, how, if you know, and if at all, does that impact the
7 workload at Canal?

8 A. It gets busy.

9 Q. At that time, did you have an understanding as to whether
10 any of Canal's computer systems had passwords on them?

11 A. Yes, they do.

12 Q. How did you know that?

13 A. Because I had spoken on Sunday, when I spoke to Michael
14 Kaplan, he alerted me to the fact that Ms. Robinson had all the
15 information for all the passwords.

16 Q. Did you, upon reading this e-mail, did you have any
17 knowledge as to what urgent matters might require immediate
18 attention from Mr. De Niro?

19 A. No. The way I read that, the whole idea of having Canal is
20 to let the assistants know what he has to do. So the idea that
21 Mr. De Niro could tell anyone what his schedule was made no
22 sense. What does he know? What does he want to know? He
23 wants to know his schedule? Well, what about his schedule?
24 Everything about his schedule. He doesn't know the schedule.

25 Q. That was Saturday evening. What did you do on Monday?

NB15rob7

Harvey - Cross

1 A. I went down to Canal offices.

2 Q. Who was there?

3 A. Gillian Spear, Sabrina Weeks-Brittan, and Michael Kaplan.

4 Q. Did you have conversation with them independently, or
5 together, or what?

6 A. Together.

7 Q. In general terms, what did you say to them?

8 MR. MACURDY: Objection. Hearsay.

9 MR. DROGIN: What he said to them?

10 MR. MACURDY: Out-of-court statement offered for the
11 truth.

12 THE COURT: Overruled.

13 A. I told them all that, please, hit the ground running, go
14 through all the computers you can, through the e-mails, through
15 the text messages, and try to put together Bob's schedule. I
16 understand that it's almost going to be impossible.

17 Q. And what were you told and by whom?

18 A. Well, first I got empty stares back at me like I was crazy
19 and I didn't understand when they looked at me that way. I
20 thought they didn't understand, this is a crisis, we don't know
21 Bob's schedule; come on, let's go. And they just stood there
22 and then they started to laugh. I said, What's so funny? Let
23 me in on the joke. The schedule is right on the computer, we
24 have everything. Honestly, I didn't believe them. I said, you
25 have got to be missing something. Ms. Robinson told me she has

NB15rob7

Harvey - Cross

1 15 pages of items.

2 Q. So what was the misunderstanding here?

3 A. That they were --

4 MR. MACURDY: Objection, your Honor. Relevance.

5 THE COURT: Sustained.

6 Q. Was there a disconnect between your understanding from
7 Saturday night and the information that the employees were
8 giving you on Monday?

9 MR. MACURDY: Objection. Relevance.

10 THE COURT: Overruled as to that.

11 A. They handled -- they knew where Bob had to be, when he had
12 to be, who he had to talk to -- I'm sorry for going so fast.

13 So, there was no issue. It was almost seamless in a
14 sense.

15 Q. At that point did you have the passwords?

16 A. No.

17 Q. Either that day or the day that followed, did you speak
18 with Chase Robinson by telephone?

19 A. Yes; I believe on the 9th of April.

20 Q. And for what purpose did you speak with her?

21 A. I asked Ms. Robinson to give Michael Kaplan the passwords.

22 Q. Did you call her or did she call you?

23 A. I called her, I believe. Or she returned my call. One or
24 the other.

25 (Continued on next page)

NB16ROB8

T. Harvey - Cross

1 BY MR. DROGIN:

2 Q. And when you asked Ms. Robinson to give her the password,
3 what did she tell you?

4 A. She told me that she needed Bob's authorization in writing
5 to release the passwords because that was the proper way to
6 handle it.

7 Q. What, if anything, did you do when she told you that?

8 A. I said, Chase, can't we just have the password? Something
9 to that effect, and she said no, she wants to handle it right.

10 Q. And you mentioned something about 15 pages a few moments
11 ago.

12 A. Mm-hmm.

13 Q. Can you explain to the jury what that reference was to?

14 A. Yes. Chase had always said she has a tremendous job and
15 lots of important things, and if she were ever to leave, Bob
16 would be stranded, and only she knew where this stuff was, so
17 that she had pages and pages. She had a bible of all the stuff
18 that Bob needed to know.

19 Q. Okay. I'd like to replay Plaintiff's Exhibit 398, which
20 was that April 9 telephone call that she recorded.

21 (Audio played)

22 MR. DROGIN: You can stop.

23 BY MR. DROGIN:

24 Q. Did you hear her say "I don't know"?

25 A. Yes.

NB16ROB8

T. Harvey - Cross

1 Q. Did you ask her what the pressing issues are?

2 A. Yes.

3 Q. She told you she didn't know?

4 A. That's what she said.

5 Q. From your position, was she cooperative at that particular
6 time?

7 A. No. I felt she was dragging her feet, and I didn't know
8 what she was doing, to be honest with you. She resigned on a
9 Saturday night. And then I'm saying just give me the
10 information, she's saying she'll be professional, and she's not
11 giving me the information. Including the passwords, which I
12 thought were very, very easy.

13 MR. MACURDY: Your Honor. I mean, we've listened to
14 that tape like -- it seems like we should finish the last
15 minute for completeness.

16 MR. DROGIN: No objection.

17 THE COURT: You can do it on your examination.

18 BY MR. DROGIN:

19 Q. Did you ever get those between pages?

20 A. No.

21 Q. Did you ever get any pages?

22 A. No.

23 Q. What instructions, if any, did you give to the Canal
24 employees about trying to figure out what might be important?

25 A. Go through e-mails, check any schedules, or any other

NB16ROB8

T. Harvey - Cross

1 documents like that that they had, and just go over Bob's
2 schedule and make sure it's complete or is as complete they
3 could determine it was or should be.

4 Q. Did you ever have the need to contact Ms. Robinson again,
5 to follow-up for any additional information?

6 A. Not after I got the passwords back.

7 Q. Now, having instructed Canal employees to look for these
8 open items, were open items -- sorry, or other items brought to
9 your attention at that time?

10 A. Yes.

11 MR. DROGIN: Your Honor, this would open an entirely
12 new and potentially somewhat lengthy line of questioning
13 regarding the information that was brought forward.

14 THE COURT: So are you suggesting we break for the
15 day?

16 MR. DROGIN: I'm suggesting only because it's a good
17 chapter to end on.

18 THE COURT: Whether or not it's a good chapter to end
19 on, it's ten of 5:00, so it sounds like it's a good time to
20 break for the day.

21 Please follow my instructions not to do any research,
22 look on the Internet, or anything like that about this case.
23 And don't talk to anybody, including family or friends, about
24 the case.

25 Enjoy your evening. Please be back here a little

NB16ROB8

T. Harvey - Cross

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before 9:00 so we can get started on time.
Have a good evening, everyone.

NB16ROB8

1 (Jury not present)

2 THE COURT: All right. The witness can step down.

3 Be seated.

4 So I'm hearing argument with respect to PX7 and PX96.

5 I need a five-minute break. Before we do that, let me make

6 some inquiries of you all.

7 What remains on the plaintiff's case after this

8 witness? And what's the order of witnesses?

9 MR. HANNAFAN: Your Honor, we have Tiffany Chen,

10 Chase Robinson, our expert, Dr. Goldstein, and possibly

11 Robin Chambers, and possibly Ms. Robinson's mother.

12 THE COURT: And what's the order of witnesses? Who's

13 next after this witness?

14 MR. HANNAFAN: I think, as I stand here right now, I

15 think it will be Ms. Chen.

16 THE COURT: How long do you expect that to go?

17 MR. HANNAFAN: I'd imagine she'd probably be a couple

18 of hours on our end. I don't know how much with defense

19 counsel. And then Ms. Robinson after that. Again, possibly, I

20 don't know about Ms. Chambers in terms of whether we will in

21 fact call her. Ms. Robinson is going to testify after

22 Ms. Chen.

23 THE COURT: Okay.

24 MR. HANNAFAN: And then I don't think -- that would be

25 several hours. And then, again, I don't know how much defense

NB16ROB8

1 counsel may want to cross.

2 THE COURT: It sounds like you may finish plaintiff's
3 case this week.

4 MR. HANNAFAN: I expect we will.

5 THE COURT: And sitting here today, does the defense
6 have any witnesses that they intend to call?

7 MR. SCHOENSTEIN: Possibly. We've identified, I
8 think, five other potential witnesses. We're not sure about
9 any of them. It depends on how the next couple of days play
10 out. I'd say the following: None of them would be extensive,
11 in any event. One of them is the expert who would be a
12 rebuttal expert, and then the others are more minor former
13 Canal employees who would be much shorter periods of testimony.
14 And we don't know. We intended at the end of plaintiff's case,
15 obviously, to move for directed verdict. And so the outcome of
16 that might also shape our strategy. But I would say this, I
17 guess to cut to the chase, so to speak.

18 I think the defense case, if it puts one on, would not
19 be much more than a day.

20 THE COURT: Okay. I'm trying to think about the
21 timing, obviously, of the charge conference. You all should be
22 prepared Friday afternoon at the end of the day for Rule 29
23 motions, which I assume will be oral. My policy with respect
24 to those is that counsel can submit something in writing if
25 they want, and I allow counsel making a motion, obviously, to

NB16ROB8

1 set forth all of the grounds in which they believe that they
2 are entitled to judgment. And then we'll take it from there
3 until the charge conference.

4 MR. SCHOENSTEIN: I would only add, just so I say it
5 out loud, I have a fairly long cross-examination of the
6 plaintiff in mind.

7 THE COURT: That doesn't surprise me for some reason.
8 She's the plaintiff, so it's not unusual for these kinds of
9 cases.

10 Why don't we reconvene at five minutes after 5:00?

11 MR. HANNAFAN: I'm sorry, your Honor?

12 THE COURT: Five minutes after 5:00.

13 MR. HANNAFAN: I'm sorry. Yes, your Honor.

14 (Recess)

15 THE COURT: All right. Let me try to frame the
16 question. The question is the admissibility of PX6 and PX96 as
17 to both of which I sustained objections.

18 What I'd like to hear from plaintiff is whether, in
19 plaintiff's mind, I improperly sustained objections to
20 questions that would have established the admissibility of the
21 exhibits or whether, on the basis of the record that plaintiff
22 established for the examination, I improperly sustained an
23 objection to the admissibility of the exhibits.

24 By framing the question that way, what I mean to do is
25 to give the plaintiff an opportunity to tell me that I goofed

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1 and that the exhibit should have been received. I don't view
2 it as an opportunity for plaintiff to say I could have asked
3 additional questions that would have established the
4 admissibility of the exhibits or to ask for a redo.

5 So let me hear from plaintiff first.

6 MR. MACURDY: Your Honor, just to clarify, the first
7 one is PX7. I think your Honor said 6.

8 THE COURT: All right. I meant to say PX7. That's
9 what my notes say. If I said PX6, I apologize.

10 MR. MACURDY: So, your Honor, both are text message
11 exchanges. One involves Tiffany Chen and Michael Kaplan, the
12 other one involves Michael Kaplan and Michael Tasch. And
13 there's a specific text in each exchange that we believe is
14 relevant, highly relevant.

15 On PX7, the text is at --

16 THE COURT: Do you want to bring it on the screen?

17 MR. HANNAFAN: Our tech guy had to step out to take
18 care of something. He -- we're going to ask if defendant can
19 do it.

20 THE COURT: Okay.

21 MR. MACURDY: It's Plaintiff's 7. And it's the text
22 at 1:13 a.m.

23 THE COURT: Remind me of the date of this.

24 MR. MACURDY: April 1, 2019, the 1:13 p.m. So --

25 THE COURT: Give me a second. Which one?

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1 MR. MACURDY: 1:13 p.m., your Honor, particularly the
2 last sentence.

3 THE COURT: Okay.

4 MR. MACURDY: So, your Honor, the last sentence is a
5 reference to a movie. She's talking about Chase Robinson.
6 Ms. Chen is talking about Chase Robinson, and she says the
7 situation has become very, quote, single white female, which is
8 a movie about a woman who gets a new roommate, a psychopathic
9 roommate who wants to take over that woman's life. So that one
10 text message encapsulates the entire claim here as to
11 discrimination by Ms. Chen.

12 It's a statement of Ms. Chen, who you know is acting
13 as an agent of Canal. Throughout -- your Honor's summary
14 judgment order recognized that. And so it's a statement by a
15 party opponent. It doesn't need to be inconsistent according
16 to Rule 801(d)(2)(D). It just needs to be a statement by an
17 opposing parties' agent.

18 As to the PX96, your Honor, that is -- if defense
19 doesn't mind pulling that up when you have a chance.

20 THE COURT: Let's wait for them to pull it up.

21 MR. MACURDY: That would be the 7:07 p.m. text.

22 This is a text chain between Michael Kaplan and
23 Michael Tasch on April 4, 2019. Michael Kaplan writes, you
24 heard Tiff e-mail you about apartment expenses. We should
25 strategize on this. She's trying to take down Chase, of

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1 course.

2 There's a separate e-mail where Ms. Chen -- which has
3 been admitted into evidence -- e-mails Mr. Tasch and asks him
4 to look into Ms. Robinson's spending on the townhouse. And so
5 Michael Kaplan, as the text suggests, has spoken with Ms. Chen,
6 and says here that she's trying to take down Chase, of course.

7 So the implication is that he has an understanding
8 from his discussions with Ms. Chen, in his observations, that
9 the point of her asking Mr. Tasch to do this inquiry is to take
10 down Ms. Chen, which is what we would argue is retaliatory, and
11 a retaliatory action after Ms. Robinson's April 2nd protected
12 activity as well as other protected activity.

13 And under the same theory, Michael Kaplan was an
14 employee of Canal at the time. So this also would be
15 admissible as a statement of a party opponent.

16 THE COURT: All right. I'll give you the last word.
17 Are there more words that you want to say right now before I
18 hear from the other side?

19 MR. MACURDY: Not right now. Thank you.

20 THE COURT: Okay.

21 MR. BENNETT: Thank you, your Honor.

22 I have a few points to make. I think both PX7 and
23 PX96 actually share a commonality. And your Honor made a few
24 rulings with respect to particular text messages in the
25 pretrial order. Essentially, the thrusts, to adopt your

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1 wording, your Honor, was the extent that Mr. Kaplan or
2 Mr. Harvey did not testify or did not acknowledge that they may
3 have said certain words, but those text messages could be used
4 for impeachment purposes. I think these are quite similar to
5 that and fall into the same bucket. However, I also think that
6 PX7 --

7 THE COURT: Let's bring up PX7, and then you can
8 address that, and then we'll talk about PX96.

9 MR. BENNETT: Thank you.

10 It is the 1:13 entry on Page 3 at the bottom. A few
11 points about this.

12 The plaintiff attempted to introduce this during the
13 examination of Mr. Kaplan. So they were going to ask
14 Mr. Kaplan to, I guess, opine or give his understanding about a
15 phrase that was invoked by Ms. Chen before Ms. Chen has even
16 testified as to what it is that she may have meant by it.

17 Number one.

18 Number two. I don't think in general, from a timing
19 standpoint or from a substantive standpoint, that there's been
20 any demonstration, but that as of April 1, 2019, at 1:13 p.m.,
21 Ms. Chen is acting as an agent with regard to this specific
22 topic or this area of inquiry at the time.

23 THE COURT: What do you mean this topic of --

24 MR. BENNETT: Ms. Chen is not acting in her capacity
25 as some type of agent on behalf of Canal and communicating with

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1 another coworker of Ms. Robinson's at the time. Right now,
2 she's speaking with Mr. Kaplan and offering some incredibly
3 ambiguous phrase that not everyone is going to understand. So
4 I do think it has the potential -- a very likely potential to
5 mislead or confuse the jury.

6 THE COURT: So let me ask you about --

7 MR. BENNETT: If you notice -- I apologize for
8 interrupting. Right below that entry on the next page, there's
9 a picture of a bunch of dogs. There's a lot going on in this
10 text exchange. This is not something -- that's not a corporate
11 official -- corporate communication amongst agents.

12 THE COURT: Put it back up again.

13 So as I understand your argument, it's not an
14 admission because Ms. Chen is not a party opponent. It would
15 come in as an agency admission. Am I understanding your
16 argument correctly? And with respect to this, there's not
17 enough offered to show that this statement is made in her
18 capacity as an agent. Is that --

19 MR. BENNETT: I think that's correct. There's
20 certainly not enough evidence before the Court that's been
21 admitted to demonstrate that she is in fact or in law an agent
22 -- and certainly not by this data of April 1, 2019.

23 THE COURT: Give me one moment.

24 That would be whether it came in as an exception to
25 the hearsay rule. But why doesn't it also come in, not for its

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1 truth, but for the fact that the statement was made by
2 Ms. Chen, a person whose intent is at issue in this case, and
3 whether she has a gender bias? Why wouldn't it come in for
4 that purpose?

5 MR. BENNETT: The statement by itself, without
6 context, doesn't have anything to do with gender. There are
7 many jurors who likely have never seen that movie. It's going
8 to be meaningless without -- we would be dealing with a
9 different situation if Ms. Chen was testifying today. But it
10 was Mr. Kaplan. It wasn't Ms. Chen. Mr. Kaplan did not send
11 this text.

12 THE COURT: Okay. Anything more to say on this
13 e-mail? And then I'm going to -- sorry. This text, and then
14 I'm going to ask you for your view on the other text.

15 MR. BENNETT: Nothing further on PX7.

16 Your Honor, the movie, as I understand it, which I
17 haven't seen for quite a long time, deals with quite a few
18 subject matters. So I think there is room for interpretation
19 there. I'll just add that.

20 Other than that, I have nothing further on that
21 particular document.

22 THE COURT: Let's bring up the other document, PX96.

23 MR. DROGIN: I'm sorry, your Honor. May I say one
24 thing about that?

25 THE COURT: Yes.

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1 MR. DROGIN: Thank you.

2 That was a murder. One can just as easily say that
3 Ms. Chen was concerned for her safety. So if it's going to
4 come in, then you kind of have to let the story be told about
5 the movie so she can answer what she felt. I feel like we're
6 really digging a hole here, all because somebody put something
7 in quotes, and they want to interpret it a particular way.

8 THE COURT: So actually, let me ask this question:
9 You both seem to be saying, listen, this is subject to
10 different types of interpretations. Why isn't the appropriate
11 answer, Ms. Chen is going to testify in this case, and I should
12 let it in because one interpretation of it is that it does
13 reflect some form of gender bias, that the bias is against
14 Ms. Robinson because she is a woman; it's not a man taking over
15 a woman's life, which would be a different interpretation?
16 That wouldn't be any gender basis at all. It would be maybe
17 hostility, but it wouldn't be reflected gender bias. And then
18 let Ms. Chen explain away the text when she testifies? Why is
19 isn't that the right answer?

20 MR. DROGIN: I'm concerned about bias, and I'm
21 concerned about inference. It could be a Shakespearean quote.
22 It could be the title of a book. It's put in quotes. And it
23 is subject to different meanings and interpretations. So it's
24 not clear what she's saying. And I would submit that it's not
25 a gender term. It's a term -- it's a reference to a film. She

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1 could have said Titanic, and they would say, well, that's
2 referencing to something else.

3 They are taking a movie title, and they're trying to
4 transport it into something. To Mr. Bennett's point, let's
5 watch the movie, and then we can ask her what part of the movie
6 were you referring to. That seems like an onerous burden to
7 put on her, and it seems like we're really a far way from where
8 we ought to be, respectfully, at this point in the case. And I
9 don't know that this document really helps anyone.

10 THE COURT: Let's go to the next document, PX96.
11 Let's bring up the relevant quote.

12 MR. BENNETT: Your Honor, I believe plaintiff pointed
13 to the bottom of 707 at the bottom of Page 2. I don't want to
14 mislead.

15 THE COURT: Okay. I got it.

16 MR. BENNETT: Number one, I think the first part is
17 hearsay. I heard Tiffany e-mailed you about apartment
18 expenses. The latter part, which she should --

19 THE COURT: Slow down, please.

20 MR. BENNETT: Thank you, sorry. I'm not trying --

21 THE COURT: Let me look at it.

22 All right. Well, I mean, if the first part is claimed
23 to be hearsay by Mr. Kaplan, I heard Tiff e-mailed you about
24 apartment expenses, does it become an adoptive admission
25 because of Mr. Tasch's response?

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1 MR. BENNETT: I mean, I don't see -- he doesn't agree.

2 THE COURT: But he says, I'll call you in the
3 morning -- that doesn't seem like he's disagreeing with the
4 proposition that Tiff e-mailed you about apartment expenses.

5 MR. BENNETT: I don't disagree, but it does seem a
6 little bit ambiguous there. I don't know if it's that
7 clearcut.

8 THE COURT: Let me hear about the second part, because
9 I don't think the first part is what the plaintiff is focused
10 on.

11 MR. BENNETT: Beyond that, your Honor, I really don't
12 see a distinction between this particular text and the ones
13 that your Honor ruled on in the pretrial order; for example,
14 Mr. Kaplan's text exchanges with Mercedes Tahir or Winogora or
15 some of those other folks.

16 If the question was put to Mr. Kaplan, did you have
17 the perception as of April 4, 2019, that Tiffany was trying to
18 take down Chase, I don't think I would have objected to that.
19 That was a fair question. I think it was probably asked. I
20 don't recall the specific language that was used in formulating
21 that question. And if he said no, then they could have used
22 this for impeachment. To me, this text exchange is the same
23 type that you ruled on in the pretrial order.

24 THE COURT: Well, doesn't it come in as an admission
25 by Mr. Kaplan, not that he had the perception that Tiffany was

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1 trying to take down Chase, but that, in fact, Ms. Chen was
2 trying to take down Chase, not a matter of perception, but a
3 matter that he's got knowledge?

4 MR. BENNETT: I don't think that was established as of
5 the time during his questioning today that as of -- or
6 preceding the moment he sent this text. I don't think there
7 was an adequate foundation to come to that conclusion.

8 THE COURT: All right. Anything more on PX96?

9 MR. BENNETT: No, your Honor.

10 THE COURT: Let me hear now, again, from plaintiff.

11 MR. MACURDY: Well, your Honor, counsel was saying
12 that these are like the other e-mails that you ruled on on the
13 motion in limine for texts that dealt with motive and could be
14 used for impeachment. I think the clearest distinction is that
15 these are pre-resignation e-mails --

16 THE COURT: I don't need you to spend time with
17 respect to that. I really want you to focus on the
18 admissibility. I will look at it on a blank slate.

19 MR. MACURDY: Understood, your Honor. I think these
20 can come in as hearsay exceptions.

21 I do think that for Ms. Chen's statement in PX7, I
22 believe it was -- I mean, she is -- it is established by
23 Mr. De Niro's testimony she was supervising Chase Robinson and
24 supervising her on the townhouse, and that text is about the
25 work on the townhouse and her interactions with Ms. Robinson,

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1 who works for Canal, and she's discussing it with another Canal
2 employee. I think they are also -- both of these admissible
3 for nonhearsay purposes, as your Honor mentioned, which is
4 Ms. Chen's intent and her state of mind, which is highly
5 relevant to the discrimination and retaliation claims in this
6 case.

7 THE COURT: So let me ask you a couple questions.

8 First of all, with respect to Ms. Chen being an agent,
9 it raises an interesting underlying question, which I don't
10 think either of you have addressed, is whether in Ms. Chen's
11 capacity as Mr. De Niro's girlfriend and the person who was
12 supervising work on the townhouse, that work was done on behalf
13 of Canal, or whether she's doing it in her personal capacity,
14 or some different capacity. Mr. De Niro was actually sort of
15 quite clear in -- as you heard it, in drawing a distinction
16 between with respect to the house -- I had a problem I wanted
17 to solve, the two of them were not getting along, but with
18 respect to the office, nobody tells me what to do. He's kind
19 of emphatic with respect to that.

20 So have you established that with respect to the house
21 and the work on the house, she was doing work as an agent of
22 Canal?

23 MR. MACURDY: Ms. Chen or Ms. Robinson, the "she"
24 there?

25 THE COURT: I'm sorry. Ms. Tiffany Chen.

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1 MR. MACURDY: Well, Mr. De Niro employs Ms. Robinson
2 at Canal to do both professional-related tasks for him and
3 personal life-related tasks. There's testimony on that, and
4 those things for his kids and his divorce proceedings and with
5 his pets and with his houses.

6 And so you know, our position is this was a direction
7 of his to work -- for Ms. Robinson to work with Ms. Chen and
8 under her supervision on the townhouse as a task for her Canal
9 job. I'm not sure how she could be acting otherwise outside of
10 her Canal employment, your Honor.

11 THE COURT: Okay. And with respect to PX7, let me ask
12 you whether it would address the issue, from your perspective,
13 if after Ms. Chen authenticates PX7, you offer it during her
14 examination?

15 MR. MACURDY: If that's what you'll give us, your
16 Honor, I will take it. I would rather introduce it through
17 Michael Kaplan, which I think we're entitled to do.

18 THE COURT: Well, let me ask you with respect to that.
19 Mr. Kaplan can't interpret what Ms. Chen meant by single white
20 female. That's sort of hornbook law. He could, I suppose,
21 testify to what he understood, but how would his understanding
22 be relevant with respect to any issues in this case? It
23 doesn't go to whether he has some kind of a motive, and he
24 wasn't involved in the actions that would constitute
25 retaliation. So I don't understand how his understanding would

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1 be relevant.

2 MR. MACURDY: Well, your Honor, two things. One, I
3 think we're entitled when there's an exchange, an electronic
4 communication between two people, that the recipient of the
5 communication who is taking part in participating in that
6 exchange, to give the context for it and their understanding.
7 I think that that is relevant, and the jury is entitled to hear
8 that.

9 Absent that, we'd still like to introduce it through
10 him. If your Honor rules that we can't solicit that from him,
11 then we can do that. But I think that the participants in a
12 communication can provide more context and understanding than a
13 person sitting on the outside of a conversation.

14 THE COURT: I agree with that proposition stated that
15 broadly, but I want to cut it a little more finely, because
16 there's a difference between what somebody means and what
17 somebody understands. And either of them could be admissible
18 depending on relevance. My question, really, is with respect
19 to the relevance of Mr. Kaplan's understanding.

20 MR. MACURDY: Let me try this, your Honor. I think
21 we're entitled to have Mr. Kaplan say, what did you understand
22 the single white female to be, or what does the movie mean to
23 you. It could be other interactions that he's had with
24 Ms. Chen that inform that understanding. And that is something
25 that I think the jury should be hearing here, as opposed to

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1 forcing us to put it in through Ms. Chen, who will have, I'm
2 sure, a particular take on what that means.

3 THE COURT: Why are you entitled to have Mr. Kaplan
4 say what he understood, and what is the relevance? Let's say
5 he understood it in a gendered way, but Ms. Chen says that's
6 not at all what I meant? Why would Mr. Kaplan's mistaken
7 understanding be relevant? In some cases, it might be. In
8 this case, I'm searching for why it would be.

9 MR. MACURDY: Let me make a practical point, your
10 Honor. I think if you agreed with our premise that this is a
11 potentially relevant statement by Ms. Chen -- it is relevant
12 because one would have an understanding of that movie in a, you
13 know, one-sentence plot to that movie. And so if we were
14 forced to elicit it through Ms. Chen, I'm guessing, your Honor,
15 that she's not going to agree with how we would assert that
16 that quote should be understood, as counsel was suggesting.

17 But I think that we're entitled to ask Mr. Kaplan, who
18 may provide a different take otherwise to use this. Otherwise,
19 we just leave it for the jury. We can't bring facts into
20 evidence about the plot of that movie. I think we can ask
21 another witness, do you know the plot to Single White Female.
22 The appropriate way to put it in front of the jury is
23 participant in the conversation. That's Mr. Kaplan. I don't
24 think it needs to be an extended questioning, but one to two
25 questions.

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1 THE COURT: What about with respect to PX96? Let me
2 hear from you on PX96, which is up on the screen right now. So
3 it's very helpful.

4 MR. MACURDY: Well, this is a statement by
5 Michael Kaplan, so you know, squarely within an agent of the
6 party opponent, or employee of the party opponent. I think to
7 the extent there's hearsay in the first half from Ms. Chen, I
8 think that comes in for the same reasons we discussed, that
9 she's acting as an agent in the scope of her employment here.
10 She's --

11 THE COURT: Sorry. There's -- oh, I see. Go ahead.

12 MR. MACURDY: Tiff e-mailed you about apartment
13 expenses. It implies that Ms. Chen had a conversation with
14 Mr. Kaplan, so she's speaking with Mr. Kaplan about a task she
15 gave.

16 THE COURT: I apologize for cutting you off. I don't
17 think the hearsay issue is in the fact -- is that Tiff e-mailed
18 about apartment expenses. That wouldn't necessarily be a
19 statement that is an out-of-court statement taken for its truth
20 for, say, verbal act.

21 The hearsay issue is in Kaplan's recitation of what he
22 heard from Tasch about what Ms. Chen did. That's the nature of
23 the hearsay issue.

24 MR. MACURDY: Well, your Honor, let me take it step by
25 step. This sentence is Michael Kaplan saying: I heard Tiff

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1 e-mail you about apartment expenses. We should strategize on
2 this. She's trying to take down Chase, of course.

3 So my reading of that, your Honor, is that
4 Michael Kaplan has had a conversation with Ms. Chen where
5 Ms. Chen conveyed that she tasked the accountant,
6 Michael Tasch, with investigating Ms. Robinson's apartment
7 expenses, and now Michael Kaplan has circled over to the
8 accountant, directly saying we should work on this or
9 strategize together because Tiffany Chen is trying to take down
10 Chase, of course.

11 And so I think that's highly relevant to Ms. Chen's
12 actions and statements to Michael Kaplan, and that he certainly
13 is in a position to provide that observation, given we have
14 that other text chain between him and Ms. Chen, as well as the
15 other communications that they had at that time.

16 THE COURT: Did you ask Mr. Kaplan whether he had a
17 conversation with Ms. Chen about tasking the accountant with
18 investigating Ms. Robinson's apartment expenses?

19 MR. MACURDY: I want to say I did, your Honor. I'd
20 have to look at the transcript.

21 THE COURT: Okay. All right. Let me ask you about
22 the second part. First of all, did you establish any
23 foundation for the notion that Mr. Kaplan would have a basis
24 for knowledge about whether Ms. Chen was trying to get
25 Ms. Robinson fired?

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1 MR. MACURDY: Well, I did ask questions. I didn't
2 ultimately admit the exhibit, but about conversations he had
3 with Ms. Chen about the ending of Ms. Robinson's employment.
4 And where I was going with that, if your Honor remembers, is he
5 had conversations with other people, like the Harveys, about
6 Ms. Chen's conversations with them about ending Ms. Robinson's
7 employment. So I did ask questions in that vein, and he did
8 give answers. I didn't ultimately admit the text exchange on
9 that.

10 THE COURT: And if this is just Mr. Kaplan's
11 perception of motive of Ms. Chen, how would that be admissible?
12 I realize that the defendants say, well, maybe, you know, his
13 perception is admissible, but again, what's the relevance of
14 that?

15 MR. MACURDY: Well, your Honor, I think the fairest
16 inference from this is it's coming directly from his
17 conversations with Ms. Chen, which we've established there's a
18 foundation that he's had them. He references one here. The
19 reason why he's writing this text is because he had a
20 conversation with Ms. Chen, on her direction, to Michael Tasch
21 about investigating Ms. Robinson. So I think it's his
22 recounting from communications that he had with Ms. Chen at the
23 time.

24 THE COURT: I don't think you asked Mr. Kaplan whether
25 Ms. Chen said to him that Ms. Chen was trying to get

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1 Ms. Robinson removed from either the townhouse or from Canal,
2 did you?

3 MR. HANNAFAN: I don't believe I did, your Honor. But
4 I don't think I need to for a foundation for this. It's not an
5 impeachment of Mr. Kaplan or Ms. Chen, but I don't think I have
6 to ask those magic words to lay a foundation for him having a
7 conversation with her about it and having knowledge of her
8 statements.

9 THE COURT: All right. I am prepared to rule. You
10 are entitled to a ruling so that you can prepare.

11 I'm going to reconsider and permit that portion of PX7
12 that contains Ms. Chen's quote with respect to single white
13 female to be offered during Ms. Chen's testimony.

14 I think that there has been enough evidence offered by
15 the plaintiff that whether Ms. Chen had a bias based upon
16 gender is relevant to the case. And the hearsay issue is
17 resolved because that statement wouldn't be received for its
18 truth, but for the fact that the statement was made.

19 The defendants may be correct that the statement has
20 several different meanings, but I didn't hear the defendants
21 say that one of the meanings couldn't be a gendered one, and
22 the plaintiff, in fact, gave me an explanation of single white
23 female that could be construed to be gendered. And the timing
24 is such that it would be relevant.

25 I'm not going to permit Mr. Kaplan to be recalled with

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1 respect to the exhibit because the plaintiff has not made to me
2 a showing that Mr. Kaplan's understanding of what Ms. Chen
3 meant would have any relevance to this case, or its relevance
4 would be extremely marginal. The plaintiff could have tried to
5 establish a little bit more of a foundation that Mr. Kaplan had
6 some understanding of, as a lay opinion, of what Ms. Chen
7 meant, but didn't.

8 So that's my ruling with respect to PX7. It can come
9 in during Ms. Chen's testimony.

10 With respect to PX96, I'm going to adhere to my
11 ruling. The bit about Tiffany e-mailing about apartment
12 expenses, I don't think is the -- I haven't heard that is the
13 particularly pertinent portion of the text that most --
14 pertinent portion is the whole thing. The linkage of the
15 apartment expenses to strategizing about Tiffany Chen trying to
16 take down Chase, of course, and the plaintiff did not establish
17 a foundation from which Mr. Kaplan would know what Ms. Chen
18 was -- what her motives were.

19 And even from the way in which the text is written, it
20 appears to be, on its face, speculation as to Mr. Kaplan's
21 understanding or views with respect to what Ms. Chen may be
22 doing, but not something he knows based upon his own percipient
23 knowledge. And whether he was strategizing based upon this
24 perception is not particularly relevant, and I think would be
25 somewhat cumulative under 403.

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1 So those are my rulings. I've heard the parties, and
2 I appreciate the arguments.

3 Is there anything else from plaintiff?

4 (Continued on next page)

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1 MR. MACURDY: A separate matter, your Honor.

2 So, in a number of examinations defense has asked
3 witnesses about secret recordings, whether they consented, also
4 how that made them feel, so the implication that there is
5 something nefarious about it. We would ask if your Honor could
6 give some sort of instruction to the jury about New York being
7 a one-party consent state, that there is nothing illegal about
8 it. Something to that effect.

9 THE COURT: Yes. I think that point is potentially
10 well taken so why don't you try to come up with some language
11 to that effect, share it with the defendants, and I can give
12 some form of an instruction. I mean, you didn't object to the
13 testimony, I think the testimony that the calls were recorded
14 and that the other side didn't know that they were being
15 recorded at the moment that they were being recorded is
16 relevant, but I take your point that somebody could improperly
17 infer that what she was doing was illegal and that's not an
18 impression that the jury should be left with.

19 MR. MACURDY: Thank you, your Honor. Will do.

20 MR. SCHOENSTEIN: Your Honor, one other evidentiary
21 issue I anticipate, I don't know if you want to deal with it
22 now: The issue of the Tom Harvey letter and the return of
23 property. We feel the plaintiffs have kicked the doors, blown
24 the doors off, thrown the doors away on this. They keep
25 inquiring about these texts that Tom was going to get her, Tom

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1 was out to get her, and they keep suggesting that the whole
2 investigation was a farce and an effort to punish Ms. Robinson.
3 And so, that letter from Mr. Harvey that your Honor wouldn't
4 allow in previously, that is the letter that was sent right
5 after these texts about Tom will get her. That has to be
6 allowed not for the truth of the matters asserted in it, which
7 your Honor saw some hearsay, but for the fact that it was said
8 and what it said. And plaintiff's refusal to return property
9 in response to that letter is plainly part of the story that is
10 relevant to this dispute as plaintiff's are pitching it. If
11 plaintiffs hadn't wanted to get into any of the
12 post-resignation activity it might be a different matter but
13 they've gone after that. They've gone after, oh, was the
14 investigation good enough? And weren't you just out to get
15 her? So, we have to be able to show the letter that was sent,
16 the demands that were made, and the fact that there was not
17 compliance with those demands, to tell the true story.

18 THE COURT: Do you have the letter? Do you want to
19 put it up on the screen?

20 MR. SCHOENSTEIN: The Harvey letter is Plaintiff's
21 Exhibit 10. We anticipate this will come up either in the --
22 I'm sorry, it is Defendant's Exhibit 10, my apologies -- will
23 come up either in the examination of Mr. Harvey and/or in the
24 examination of Ms. Robinson.

25 THE COURT: Scroll down, please?

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1 MR. SCHOENSTEIN: Scroll down a little bit, please?

2 THE COURT: I take it, but I will ask the question,
3 you don't need to offer the portion of the letter that refers
4 to the value of the SkyMiles.

5 MR. SCHOENSTEIN: No, we can redact that. You will
6 see, you know, we are definitely interested in the last line
7 about returning the SkyMiles. And if you will scroll down to
8 the next page, there are other demands at the end of the
9 letter. But I mean, if it is a matter --

10 THE COURT: Scroll back up.

11 Let me ask plaintiffs, there are portions of this
12 letter that almost -- that really reiterate things that have
13 come out in testimony. There is also some detail in it that,
14 including the value of the SkyMiles, but further down about
15 particular trips and the like that has not been the subject of
16 testimony, and as I hear Mr. Schoenstein, it doesn't seem like
17 that is the particular relevance of it. Why shouldn't I
18 receive the letter in a redacted form so that the jury has the
19 context of the various demands and when they were made but
20 doesn't necessarily have the value of the SkyMiles or the trip
21 to Hawaii on December 24 to December 30th and maybe one or two
22 other things?

23 MR. MACURDY: Your Honor, our position is that this
24 should not be admitted in any form. It would be hugely
25 prejudicial to allow all of these allegations that are in the

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1 case and even more that are not. If you look at one of the
2 first paragraphs, it is just listing item by item that we
3 haven't heard any allegations about in the case.

4 THE COURT: Let's go up to the first paragraph.

5 MR. MACURDY: It would be the -- it now appears the
6 laundry list that they have there, food, transportation,
7 dog-sitting, groceries, cameras, iPhone, subscriptions to
8 magazines and newspapers, Pilates classes, dry cleaning,
9 flowers for your residence, an unknown number of gift cards,
10 and helped yourself to petty cash. Most of that list we are
11 not going to hear about in trial, as well as the next
12 paragraph, their claims here are only about SkyMiles in 2019
13 and it refers to millions of SkyMiles in prior years so it
14 would be very prejudicial to put this in front of a jury and
15 let them see all of these things.

16 So, that's our initial position. If your Honor is
17 ruling that it comes in redacted, it would have to be heavily
18 redacted, certainly no allegations that aren't in the case
19 aren't being put in front of the jury in writing in this
20 document.

21 MR. SCHOENSTEIN: Two other points.

22 THE COURT: Let me hear from you, Mr. Schoenstein.

23 MR. SCHOENSTEIN: First, you know, this letter which
24 has some allegations that have not carried over to the
25 complaint but a lot that have, was sent before any allegation

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1 of discrimination was made by the plaintiff and, therefore, the
2 timing of that is absolutely critical and relevant. They're
3 suggesting that the complaint was retaliatory but these
4 allegations were already made.

5 Second of all, it rebuts what apparently is an
6 assertion that plaintiff was cooperative upon her departure,
7 which we are shocked that they would even argue, but since they
8 have we have to rebut it. And the fact that she is sitting
9 on -- we may bring in the piles of boxes she was sitting on in
10 her home of Canal property. Refusing to return it is anything
11 but cooperative.

12 THE COURT: So, Mr. Schoenstein, let me suggest -- I'm
13 not going to rule on this right now but I will be more
14 receptive to its receipt if it is redacted. Because while it
15 is relevant for the purposes that you have identified, I also
16 have to go through a 403 balancing test and there are a number
17 of portions on this that involve allegations that are not in
18 the case and that once one reads it, it would be difficult for
19 a jury to put out of their mind, even with a limiting
20 instruction such as, for example, the value of the Delta
21 SkyMiles. But I'm not limiting it to that. So --

22 MR. SCHOENSTEIN: We will prepare a redacted copy, we
23 will provide it to the plaintiff and see if we can get their
24 agreement. If we can't agree on a version, we will submit it
25 to the Court.

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1 THE COURT: I would like it by about 10:00 tonight,
2 just so I have a chance to look at it. So that means you all
3 are going to have to do a little bit of work once you get back
4 to your offices.

5 MR. SCHOENSTEIN: OK.

6 MR. DROGIN: Judge, one of the other --

7 THE COURT: No. I am going to hear from plaintiff who
8 stood up before you did.

9 MR. MACURDY: Your Honor, I just want to put on the
10 record, your ruling on PX- 7, we would ask that the entire
11 document come into evidence. There are other relevant text
12 messages in that exchange by Ms. Chen.

13 THE COURT: Gosh. I mean, you know, we have a whole
14 argument about that particular portion and you don't tell me
15 about it and now it is 5:55 p.m. so I'm not going to -- if you
16 establish a foundation with Ms. Chen for other portions of it,
17 you know, go for it. I'm not precluding you from the ability
18 to try to get it in through other portions through Ms. Chen,
19 but I'm not going to rule right now that anything other than
20 "single white female" comes in.

21 MR. MACURDY: I apologize, your Honor. I was trying
22 to focus the discussion but I understand your ruling.

23 THE COURT: So, you know, go for it with Ms. Chen.
24 You don't -- you didn't get it with Mr. Kaplan other than with
25 respect to "single white female."

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1 MR. MACURDY: Understood. Thank you, your Honor.

2 THE COURT: Defendant had one last thing.

3 MR. DROGIN: Mr. Schoenstein talked me out of it.

4 THE COURT: All right. It is 5:56. We are going to
5 let the court reporter go and everybody else go. Have a good
6 evening.

7 (Adjourned to November 2, 2023, at 9:00 a.m.)

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24	156	483
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8	5	463
9	337	464
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