

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

-----X
ISAAC VALDEZ,

PLAINTIFF,

-against-

THE CITY OF NEW YORK, THE NEW YORK CITY
POLICE DEPARTMENT, MICHAEL MELOCOWSKY, and
"JOHN DOES" 1-10,

DEFENDANTS.
-----X

DATE: September 28, 2023

TIME: 9:31 A.M.

EXAMINATION BEFORE TRIAL of
MICHAEL MELOCOWSKY, the Defendant, taken by
the Plaintiff, pursuant to a Court Order,
held at 44 Court Street, Suite 1217,
Brooklyn, New York 11201 before Victoria
Scro, a Notary Public of the State of New
York.

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A P P E A R A N C E S :

LAW OFFICE OF JIMMY WAGNER
Attorney for the Plaintiff
2055 Flatbush Avenue
Brooklyn, New York 11234
BY: JIMMY WAGNER, ESQ.

NEW YORK CITY LAW DEPARTMENT
Attorneys for the Defendants
100 Church Street
New York, New York 10007
BY: KATHLEEN LINNANE, ESQ.

* * *

1 M. MELOCOWSKY

2 M I C H A E L M E L O C O W S K Y, called
3 as a witness, having been first duly sworn
4 by a Notary Public of the State of New
5 York, was examined and testified as
6 follows:

7 BY THE REPORTER:

8 Q. Please state your name for the
9 record.

10 A. Michael Melocowsky.

11 Q. What is your business address?

12 A. 1 Police Plaza, New York, New
13 York 10036.

14 EXAMINATION BY JIMMY WAGNER:

15 Q. Good morning, Mr. Melocowsky.

16 A. Good morning.

17 Q. My name is Jimmy Wagner. I'm
18 an attorney and I'm an attorney for the
19 plaintiff in this action, Isaac Valdez and
20 I want to begin by saying I have researched
21 you and I do appreciate the service that
22 you've done for the country and everything
23 you've done. And everything that happens
24 today, I'm just doing my job. As a
25 soldier, I'm sure you are aware of the

1 M. MELOCOWSKY
2 people just doing the task that's
3 performed. And I don't want there to be
4 anything personal between us if I say any
5 question that you feel may not have been
6 appropriate for a man of your honor and
7 integrity and dignity.

8 A. Thank you, I was a sailer.

9 Q. Sailer, soldier and military
10 service all the same in my mind.

11 You listed your business
12 address at 1 Police Plaza, what's your home
13 address?

14 MS. LINNANE: Can we mark this
15 confidential?

16 THE WITNESS: I really have to
17 give my home address?

18 MS. LINNANE: It will be
19 blanked out on the transcript.

20 A. .

21 Q. Where is that located?

22 A. In Manhattan.

23 Q. Do you have the zip on that?

24 A. .

25 Q. Have you ever lived in

1 M. MELOCOWSKY

2 Connecticut?

3 A. Yes.

4 Q. When did you move from

5 Connecticut to this different location?

6 A. How is that relevant?

7 Q. Relevance isn't an objection.

8 MS. LINNANE: It's not, but we
9 have to answer.

10 A. When did I move from

11 Connecticut?

12 Q. Yes.

13 A. For law school, 1997.

14 Q. So you haven't lived in

15 Connecticut since 1997?

16 A. No, I moved back to Connecticut
17 in 2001.

18 Q. And then when did you move
19 again from Connecticut?

20 A. In 2004.

21 Q. From 2018 to 2020, where did
22 you live?

23 A. New York City.

24 Q. From 2021 to 2023, where did
25 you live?

1 M. MELOCOWSKY

2 A. New York City.

3 Q. From 2015 to 2018, where did
4 you live?

5 A. New York City and that was
6 in -- I was commuting back and forth
7 between Washington DC and New York City.

8 Q. So you haven't lived in
9 Connecticut since at least 2015?

10 A. Yes, I haven't lived in
11 Connecticut since I joined the navy.

12 Q. When did you join the navy?

13 A. In 2004.

14 Q. Who is your employer?

15 A. New York City Police
16 Department.

17 Q. How long have you worked for
18 the New York City Police Department?

19 A. A little over four years.

20 Q. When did you begin working for
21 the New York City Police Department?

22 A. In 2019.

23 Q. Prior to working for the police
24 department, who did you work for?

25 A. Prior to working for the police

1 M. MELOCOWSKY

2 department, I was working for Black Rock.

3 Q. How long did you work for Black
4 Rock?

5 A. Approximately one year.

6 Q. Prior to Black Rock, where did
7 you work?

8 A. I was a naval officer.

9 Q. How long were you a naval
10 officer?

11 A. Fourteen years.

12 Q. Do you have the time frame on
13 that?

14 A. Fourteen years.

15 Q. When did you begin working as a
16 naval officer?

17 A. I think I answered that
18 already.

19 Q. You said you joined the navy
20 in 2004, so you joined the navy as an
21 officer?

22 A. We went through officer
23 training, yeah.

24 Q. So beginning in 2004, if I add
25 14 years to 2004, that brings me to 2018?

1 M. MELOCOWSKY

2 A. I'm not a math expert, but

3 yeah.

4 Q. So 2018, you leave the navy and
5 join Black Rock?

6 A. Yes.

7 Q. What was your role at Black
8 Rock?

9 A. I was one of their assistant
10 counsel.

11 Q. What did you do as assistant
12 counsel for Black Rock?

13 A. Reviewed contracts.

14 Q. What type of contracts?

15 A. Contracts for what company was
16 buying, negotiating, law firms.

17 Q. And what was your role as a
18 naval officer from 2004 to 2018?

19 A. I had several different roles.
20 All of them fell under judge advocate
21 general, so I was counsel.

22 Q. What were your duties as a
23 judge advocate general?

24 A. I had several different duties
25 depending on where I was stationed.

1 M. MELOCOWSKY

2 Q. Why don't you give us a couple
3 of several different duties that you
4 focused on primarily?

5 MS. LINNANE: Object to the
6 form of the question.

7 Q. You can answer if you
8 understand.

9 A. I don't.

10 Q. As a judge advocate general,
11 what were your duties?

12 A. A range of duties advising
13 military commanders on the law.

14 Q. What laws?

15 A. Employment law, administrative
16 law, operational, contracts, military
17 justice.

18 Q. What type of employment would
19 you advise commanders on?

20 A. It depends. It could be
21 anything from reasonable accomodation to
22 administrative duties related to
23 promotions.

24 Q. When you left JAG and worked
25 for Black Rock, were you involved with any

1 M. MELOCOWSKY

2 employment for Black Rock?

3 A. No.

4 Q. What was your salary at Black
5 Rock?

6 A. Roughly 150,000.

7 Q. Beyond salary at Black Rock,
8 were you given any additional economic
9 incentives, were you given stock
10 incentives?

11 A. No.

12 Q. 401k?

13 A. No.

14 Q. Pension plan?

15 A. No, paid into a retirement
16 fund, that's it.

17 Q. For judge advocate general,
18 what was your salary when you left in 2018?

19 A. How is this any of this
20 relevant in this case?

21 Q. I get to ask the questions.
22 Relevancy is not an objection. You can
23 answer, sir.

24 A. It depended.

25 Q. Your last year in 2017, how

1 M. MELOCOWSKY

2 much did you make?

3 A. I don't recollect.

4 Q. Do you have anything that would
5 refresh your recollection?

6 A. No.

7 Q. Did you file taxes in the year
8 2018?

9 A. I'm sure I did.

10 Q. Would you be able to produce a
11 copy of them?

12 A. If I'm ordered to, yeah.

13 MR. WAGNER: Okay, let the
14 record reflect I would like
15 production of the witness' 2018 tax
16 returns in so far as if he can't
17 remember how much he made in 2018.

18 MS. LINNANE: We'll take it
19 under advertisement.

20 MR. WAGNER: Please let the
21 record of reflect that those records
22 were requested.

23 Q. As part of your salary for
24 judge advocate general, were you given any
25 economic incentives beyond a salary, were

1 M. MELOCOWSKY

2 you given a retirement plan, pension plan?

3 A. We paid into a retirement plan.

4 Q. Is that retirement plan

5 currently active?

6 A. It's still -- I can't dip into

7 it yet. I won't be able to dip into it

8 until I retire.

9 Q. How much is in that retirement
10 plan?

11 A. I don't know.

12 Q. Is there anything that would
13 refresh your recollection?

14 A. If you have a judge order me to
15 do it, I'll do it.

16 Q. Do what?

17 A. If you want me to produce
18 something. I don't have anything that
19 would recollect my recollection.

20 Q. Do you receive retirement
21 statements?

22 A. I don't know. I haven't seen
23 one in -- I can't remember.

24 Q. When you began working for the
25 NYPD in 2019, what was your role there?

1 M. MELOCOWSKY

2 A. I was the EEO officer.

3 Q. What is an EEO officer?

4 A. Equal employment opportunity
5 officer.

6 Q. When you used the word officer,
7 what was your role and responsibilities as
8 an EEO officer?

9 A. I would tell my staff that
10 regardless of, you know, your background,
11 whether whatever protected class you came
12 from, you have the same opportunities as
13 everybody else when you came to work every
14 day. You had a right to come to a
15 workplace free of harassment and have equal
16 opportunities.

17 Q. In 2019 when you started
18 working for the NYPD, how much did they pay
19 you?

20 A. I don't recollect.

21 Q. Is there anything that would
22 refresh your recollection?

23 A. Probably.

24 Q. What would that be?

25 A. I don't know.

1 M. MELOCOWSKY

2 Q. Did you pay taxes in 2019?

3 A. Yes.

4 Q. Would your tax returns refresh
5 your recollection?

6 A. Probably.

7 MR. WAGNER: Let the record
8 reflect I'm requesting a copy of
9 Mr. Melocowsky's 2019 tax returns.

10 Q. In 2020, how much did the NYPD
11 pay?

12 MS. LINNANE: He did not make a
13 request for a document and if counsel
14 is requesting a document, we'll take
15 it under advertisement.

16 A. What was the question?

17 Q. In 2020, how much did the NYPD
18 pay you?

19 A. I don't recollect.

20 Q. In 2021, how much did the NYPD
21 pay you?

22 A. I don't recollect.

23 Q. In 2022, how much did the NYPD
24 pay you?

25 A. I don't recollect.

1 M. MELOCOWSKY

2 Q. In 2023, how much does the NYPD
3 pay you?

4 A. I'm not sure, my salary
5 fluctuates.

6 Q. Why does your salary fluctuate?

7 MS. LINNANE: Objection.

8 Q. Go ahead, you can answer.

9 A. Because I just got a raise, so
10 I don't know what the previous amount was.

11 Q. How often were you paid by the
12 NYPD?

13 A. Every two weeks.

14 Q. When was the last time you were
15 paid?

16 A. September 15th I'm assuming. I
17 don't know.

18 Q. Do you have anything that would
19 refresh your recollection?

20 A. Well, if we're paid for every
21 two weeks, it would be September 15th. In
22 the beginning of the month and end of the
23 month.

24 Q. How much were you paid on
25 September 15th?

1 M. MELOCOWSKY

2 MS. LINNANE: Objection.

3 A. I don't remember.

4 Q. Do you have anything that would
5 refresh your recollection?

6 A. No.

7 MR. WAGNER: I'm making a
8 document demand for Mr. Melocowsky's
9 2019 tax returns, his 2020 tax
10 returns, 2021 tax returns, his 2022
11 tax returns and every pay stub he's
12 received current for the year 2023.

13 MS. LINNANE: We'll take it
14 under advertisement.

15 MR. WAGNER: Please make sure
16 the record reflects that request.

17 Q. Mr. Melocowsky, have you had
18 the opportunity to prepare for today's
19 deposition?

20 A. I was notified of the
21 deposition.

22 Q. Did you speak to anybody in
23 reference to today's deposition?

24 A. Just counsel.

25 Q. What counsel?

1 M. MELOCOWSKY

2 A. Counsel sitting next to me.

3 Q. Did you speak to anybody else?

4 A. No.

5 Q. So the only person you spoke to
6 in reference to today's deposition was the
7 attorney sitting next to you?

8 A. Yes.

9 Q. Was anybody else present when
10 you had that conversation?

11 MS. LINNANE: I'm going to
12 advise the witness not to answer any
13 question that pertains to the
14 discussion I had with the witness in
15 preparation for today's deposition.

16 MR. WAGNER: I consent to that
17 objection, I would never ask that
18 question.

19 Q. I'm asking was anybody else
20 present when the conversations took place.

21 A. No.

22 Q. Did you review any documents in
23 preparation of today's deposition?

24 A. No.

25 Q. Did anyone besides your

1 M. MELOCOWSKY
2 attorney send you any e-mails in reference
3 to today's deposition?

4 A. No.

5 MR. WAGNER: I'm going to ask
6 to have -- that's the amended
7 complaint. If you want to take a
8 look at it. I'm going to have this
9 marked.

10 MS. LINNANE: I have all of
11 these documents, I don't need it.

12 MR. WAGNER: It was a courtesy.
13 I would like to have this marked as
14 Plaintiff's Exhibit 1.

15 (Whereupon, a document was
16 marked Plaintiff's Exhibit No.1 for
17 identification, as of this date.)

18 MS. LINNANE: Attorneys usually
19 provide documents in advance. In any
20 event, I have the amended complaint
21 and I do not need the copy. Thank
22 you.

23 Q. Mr. Melocowsky, I'm going to
24 ask you to take a look at what's been
25 marked as Plaintiff's Exhibit 1. Take a

1 M. MELOCOWSKY

2 look at that document.

3 A. Sorry, I'm getting older, I
4 need my glasses.

5 Q. No problem.

6 A. You want me to read the whole
7 thing?

8 Q. I don't. I want you to take a
9 look at it and let me know if you recognize
10 it.

11 A. Looks like the amended
12 complaint.

13 Q. Have you had the opportunity to
14 review that document prior to today? Have
15 you seen it before, is it the first time
16 you're looking at this amended complaint?

17 A. I saw a copy of this whenever I
18 was served originally.

19 Q. You testified earlier that
20 you're a member of JAG, you are an
21 attorney, correct?

22 A. Yes.

23 Q. You're admitted to practice law
24 in the State of New York?

25 A. Yes.

1 M. MELOCOWSKY

2 Q. You passed the New York State

3 Bar exam?

4 A. Yes.

5 Q. You recognize yourself as an

6 individual defendant in this action; is

7 that correct?

8 A. Yes.

9 Q. Are you a defendant in any

10 other lawsuits?

11 A. I'm getting sued by -- I have a

12 few of these lawsuits from the City.

13 Q. Do you have any of them?

14 A. I don't.

15 Q. As an individual defendant in

16 the City of New York, you do understand

17 you're being represented by the same

18 attorney; is that correct?

19 MS. LINNANE: Objection.

20 A. No, I'm not being represented

21 by the same attorneys.

22 Q. You're not. What attorney is

23 representing you in this action?

24 A. In this action?

25 Q. That's correct.

1 M. MELOCOWSKY

2 A. The attorney sitting next to
3 me, Kathleen.

4 Q. Do you know who your attorney
5 is employed by?

6 A. The City of New York.

7 Q. Are you aware that your
8 attorney is also representing the City of
9 New York?

10 A. Yes.

11 Q. And you waive any potential
12 conflict?

13 A. Yes.

14 Q. So your interests you believe
15 are aligned with the City of New York?

16 MS. LINNANE: Objection.

17 Q. That's fine, you can answer.

18 You already waived the conflict.

19 MS. LINNANE: I'm going to
20 advise you not to answer any
21 questions that you had with prior
22 counsel, prior to me being counsel in
23 this case.

24 A. I'm sorry, what was the
25 question?

1 M. MELOCOWSKY

2 MR. WAGNER: Repeat the

3 question.

4 (Whereupon, the requested
5 portion of the record was read back
6 by the reporter.)

7 A. Yes.

8 Q. I'll take that exhibit back.

9 MR. WAGNER: I'm going to ask
10 you to mark this as Exhibit 2, that's
11 the amended answer.

12 (Whereupon, a document was
13 marked Plaintiff's Exhibit No.2 for
14 identification, as of this date.)

15 Q. I'm going to ask you to take a
16 look at what's been marked as Plaintiff's
17 Exhibit 2.

18 A. Okay.

19 Q. Do you recognize that document?

20 A. This is the first time I've
21 read it, the first time I've seen it.

22 Q. Did you have the opportunity to
23 discuss the creation of this answer that
24 was created on your behalf --

25 MS. LINNANE: I'm going to

1 M. MELOCOWSKY

2 direct the witness not to answer that
3 question. That's attorney/client
4 privilege.

5 A. I'm not answering.

6 Q. But this is the first time you
7 ever reviewed this document?

8 A. The final document, yeah.

9 Q. Is that your answer in this
10 action or would you like the opportunity to
11 amend your answer?

12 A. I'm sorry, amend my answer?

13 Q. Correct. This is your answer
14 to the complaint you just viewed.

15 A. Yes.

16 Q. This is your answer. You said
17 today is the first time you ever had an
18 opportunity to review the final.

19 A. At this moment, I don't have
20 the desire to do that, but right now, no.

21 Q. I'm going to ask you to take a
22 look at page 7, paragraph 83.

23 A. Okay.

24 MS. LINNANE: I'm just going to
25 show it to my colleague.

1 M. MELOCOWSKY

2 A. Okay.

3 Q. Can you read paragraph 83 into
4 the record?

5 A. "Defendants have not violated
6 any rights, privileges or immunities of the
7 plaintiff under the constitution or laws of
8 the United States, the State of New York or
9 any political subdivisions thereof."

10 Q. Do you still agree with that
11 defense?

12 A. Yes.

13 Q. I'm going to ask you to look at
14 84.

15 A. "All of the employment
16 decisions taken with respect to plaintiff
17 were based on rational, legit, not
18 retaliatory, not discriminatory
19 consideration."

20 Q. Do you still agree with that
21 defense?

22 A. Yes.

23 Q. I'm going to ask you to read
24 paragraph 85.

25 A. "At all times relevant to the

1 M. MELOCOWSKY
2 accident alleged in the admitted complaint,
3 defendant's actions were reasonable, proper
4 lawful, constitutional, made in good faith,
5 without malice, and carried out in
6 conformity with the constitution and laws
7 rules and regulations of the State and City
8 of New York and the NYPD."

9 Q. Do you still agree with that
10 defense?

11 A. Yes.

12 Q. I'm going to ask you to read
13 86.

14 A. "Any injuries allegedly
15 sustained by plaintiff were wholly or in
16 part were caused by plaintiff's negligence
17 or culpable conduct."

18 Q. Do you still believe that
19 defense?

20 A. Yes.

21 Q. I'm going to ask you to read
22 87.

23 A. "The conduct complained of
24 consists of nothing more than what a
25 reasonable person would consider petty

1 M. MELOCOWSKY

2 slights and trivial inconveniences."

3 Q. Do you still agree with that
4 defense?

5 A. Yes.

6 Q. I'm going to ask you to read
7 88.

8 A. "Plaintiff has reasonably
9 failed to take advantage of directive
10 opportunities provided by the NYPD to its
11 employees or to otherwise avoid harm."

12 Q. Do you still agree with that
13 defense?

14 A. Yes.

15 Q. I'm going to ask you to go to
16 page 6 paragraph 82.

17 A. "The amended complaint fails to
18 state the cause of action upon which relief
19 may be granted."

20 Q. Do you still agree with that
21 defence?

22 A. Yes.

23 MS. LINNANE: Are we done with
24 this?

25 MR. WAGNER: We're done with

1 M. MELOCOWSKY

2 that for now.

3 I'm going to have that marked
4 as Exhibit 3. Can you please mark
5 this?

6 (Whereupon, a document was
7 marked Plaintiff's Exhibit No.3 for
8 identification, as of this date.)

9 Q. I'm going to ask you to take a
10 look at what's been marked as Plaintiff's
11 Exhibit 3. Have you ever seen that
12 document?

13 A. Nope.

14 Q. Have you ever discussed that
15 document with anybody?

16 MS. LINNANE: I'm going to
17 advise the witness not to answer any
18 questions that he had concerning this
19 document with counsel prior to my
20 substitution into the case.

21 MR. WAGNER: He already
22 testified he's never seen it.

23 MS. LINNANE: You asked if he
24 ever talked about this with anybody.

25 MR. WAGNER: My question was

1 M. MELOCOWSKY

2 have you ever seen this document.

3 A. I have not seen the final copy
4 of this specific document.

5 Q. What copy did you see of that
6 document?

7 A. It's attorney/client privilege.

8 Q. That's my document. If you
9 turn to the last page, sir. Last page. If
10 you look at the signature line, whose
11 signature is that?

12 A. Jimmy Wagner.

13 MR. WAGNER: I'll affirm that's
14 my signature.

15 MS. LINNANE: Objection.
16 Harassing the witness.

17 A. I'm not going to answer it.

18 Q. No problem. I'll just go
19 through the interrogatories on the record.
20 Do you have any documents in your
21 possession, control that relate to any
22 alleged New York City or New York State
23 human rights violations in the workplace?

24 A. No.

25 Q. Can you provide me with the

1 M. MELOCOWSKY
2 contact information of all individuals that
3 work under your control with information
4 relating to New York City and New York
5 State human rights violations in the
6 workplace?

7 A. No.

8 Q. You don't have that contact
9 information or there's no information to
10 provide?

11 A. You're asking me if I know
12 people who have been alleged to violate the
13 human rights?

14 Q. In the workplace, NYPD?

15 A. Yeah, I don't have that
16 information.

17 Q. What is your role with the
18 NYPD?

19 A. I am the EEO officer.

20 Q. In 2019, what was your role
21 with the NYPD?

22 MS. LINNANE: Objection. Asked
23 and answered.

24 Q. I just want to confirm, 2018
25 you were the EEO officer, in 2019, what was

1 M. MELOCOWSKY

2 your role?

3 A. EEO officer.

4 Q. In 2020, what was your role?

5 A. EEO officer.

6 Q. In 2021, what was your role?

7 A. EEO officer.

8 Q. Did you ever become executive
9 director?

10 A. I was the executive director of
11 the EEO officer.

12 Q. For the purposes of this
13 deposition, executive director and EEO
14 officer are interchangeable, it's the same
15 position?

16 A. Yes.

17 Q. That, I just want to clarify.
18 I've looked on LinkedIn and you list
19 yourself as the executive director of the
20 NYPD's EEO office?

21 A. Yes.

22 Q. So being an EEO officer is the
23 identical position with the NYPD as being
24 the executive director; is that correct?

25 A. I was the executive director of

1 M. MELOCOWSKY

2 the equal employment opportunity position.

3 I was also assigned as EEO officer.

4 Q. So you had two titles?

5 A. I wouldn't -- chief EEO officer
6 isn't a title to responsibility.

7 Q. But your title then is
8 executive director?

9 A. Correct.

10 Q. What were your primary roles as
11 the executive director?

12 A. Investigate instances of
13 harassment and violations of EEO laws
14 within the workplace.

15 Q. What are EEO laws, what do they
16 relate to?

17 A. It's employment law. Treating
18 people properly in the workplace,
19 violations of human right laws.

20 Q. Discrimination would be within
21 the purview of your role and
22 responsibility?

23 MS. LINNANE: Objection to the
24 form of the question.

25 A. Yes.

1 M. MELOCOWSKY

2 Q. While you were serving in this
3 role, did you handle any cases that dealt
4 with discrimination within the NYPD?

5 A. Several.

6 Q. So I just previously asked you
7 the names of the individuals who would be
8 familiar --

9 A. That's not what you asked, you
10 asked --

11 Q. Let me finish my question, sir.

12 A. All right.

13 Q. I asked you the names of
14 individuals in the workplace in reference
15 to discrimination and their contact
16 information, do you have that information?

17 A. You asked if I currently have
18 that information, I don't have, currently,
19 access to that information.

20 Q. You answered --

21 A. Let me finish.

22 MS. LINNANE: Can you please
23 read the question back so that we all
24 understand what counsel asked. And
25 what Mr. Melocowsky answered. Thank

1 M. MELOCOWSKY

2 you.

3 (Whereupon, the requested
4 portion of the record was read back
5 by the reporter.)

6 MR. WAGNER: I'll withdraw the
7 question. I'll start again.

8 Q. Mr. Melocowsky, I understand I
9 ask very difficult questions and you may
10 not understand them, and I apologize --

11 A. You don't ask clear questions.

12 Q. That's fine. If my question is
13 not clear, please let me know immediately
14 and I'll be happy to clarify that question.

15 A. All right, I'm not a mind
16 reader. I don't know what you're trying to
17 get to.

18 Q. You're not a mind reader.

19 MR. WAGNER: Let the record
20 reflect Mr. Melocowsky is not a mind
21 reader.

22 MS. LINNANE: I would like to
23 strike that from the record. That is
24 harassing the witness, it's
25 inappropriate and improper.

1 M. MELOCOWSKY

2 MR. WAGNER: The response
3 telling me he is not a mind reader is
4 equally inappropriate. It's just a
5 gentleman's jest.

6 Q. Right, Mr. Melocowsky, you
7 didn't mean any harm saying that you
8 weren't mind reader?

9 A. No.

10 MS. LINNANE: I'm going to
11 direct you not to answer the
12 questions where you're being badgered
13 by counsel.

14 Q. What department do you oversee?

15 A. Right now I'm working the
16 office of research and evaluation.

17 Q. And that's currently, but from
18 2018 to 2022, what department did you
19 oversee?

20 A. The EEOD division.

21 Q. Prior to 2018, had you ever
22 worked for the NYPD?

23 A. No.

24 Q. How did you get the position as
25 the executive director of the EEOD at NYPD

1 M. MELOCOWSKY

2 in 2018?

3 A. I applied.

4 Q. Where did you find the opening

5 listed?

6 A. I don't remember.

7 Q. Was it online?

8 A. I don't remember.

9 Q. Was it word of mouth?

10 MS. LINNANE: Asked and

11 answered. Objection, asked and

12 answered.

13 A. I don't remember.

14 Q. Did you have to submit a resume

15 to get this position?

16 A. I'm sure I did.

17 Q. Do you recall who you submitted

18 your resume to?

19 A. No.

20 Q. Do you have a copy of that

21 resume you submitted?

22 A. Not anymore.

23 Q. You don't retain old copies?

24 A. No.

25 Q. Do you know who in the NYPD

1 M. MELOCOWSKY

2 would have a copy of that resume?

3 MS. LINNANE: Objection,
4 speculation.

5 A. I have no idea.

6 Q. Did you have an interview to
7 get this position?

8 A. I did.

9 Q. Do you remember who you had
10 that interview with?

11 A. No, it was a group of people.

12 Q. Were these a group of people
13 with the NYPD?

14 A. Yes.

15 Q. How was the interview
16 scheduled?

17 A. I don't remember.

18 Q. Did you use e-mail in 2018?

19 A. I had an e-mail account in
20 2018.

21 Q. The question is, did you use
22 e-mail in 2018?

23 A. In general, yes, I used e-mail.

24 Q. Do you believe this interview
25 would have been scheduled via e-mail?

1 M. MELOCOWSKY

2 MS. LINNANE: Objection, asked
3 and answered, also speculation.

4 MR. WAGNER: What speculation?
5 He said there's an interview, we're
6 trying to figure out how it was
7 scheduled.

8 A. I don't remember, it was five
9 years ago.

10 Q. Do you have a limitation on
11 your memory?

12 MS. LINNANE: Objection.
13 Badgering the witness.

14 Q. You can answer. I didn't ask
15 this question, you seem like a young ma.
16 Traditionally, I'll ask anyone if they're
17 suffering from any impairments or taking
18 any drugs that would affect their ability
19 to properly recollect at a deposition, is
20 that a case that's going on here?

21 A. I don't remember specifically
22 interviews or how I set up interviews five
23 years ago.

24 Q. You don't remember any of the
25 people at the interview five years ago?

1 M. MELOCOWSKY

2 A. I remember some of the people.

3 Q. Who are the people you
4 remember?

5 A. Janine Gilbert. I honestly
6 don't know. I don't know who else was in
7 the room, there was someone else from the
8 legal department in there.

9 Q. NYPD's legal department?

10 A. Yes.

11 Q. Do you know how to spell Janine
12 Gilbert?

13 A. J-A-N-I-N-E, G-I-L-B-E-R-T.

14 MR. WAGNER: I would like the
15 production of Ms. Janine Gilbert,
16 mark that as a witness production.

17 MS. LINNANE: Excuse me?

18 MR. WAGNER: I would like you
19 to produce Ms. Janine Gilbert as a
20 witness. I would like to speak to
21 her. There were five people at an
22 interview process, the witness
23 remembers one, I would like to know
24 everyone that was present at that
25 interview.

1 M. MELOCOWSKY

2 MS. LINNANE: You know how to
3 get a witness, you can do that
4 through the proper channels.

5 Q. What is some of the decisions
6 you had to make as an executive director of
7 the EEOD office?

8 A. Oversaw investigations within
9 the department.

10 Q. What type of investigations?

11 A. Any potential EEO violations.

12 Q. Did you personally handle any
13 accommodation requests?

14 A. I signed off on reasonable
15 accommodations requests.

16 Q. And you started doing that in
17 2018?

18 A. Yes.

19 MS. LINNANE: Objection to form
20 of the question. Just give me a
21 second to object, thank you.

22 Q. When you were hired, who was
23 your supervisor?

24 A. Janine Gilbert.

25 Q. Did she -- is she still your

1 M. MELOCOWSKY

2 supervisor?

3 A. No.

4 Q. Who is your supervisor today?

5 A. Right now would be Robert
6 Barrows, B-A-R-R-O-W-S.

7 Q. In 2018, who was your
8 supervisor?

9 A. Didn't we answer that already?

10 Q. You said Janine is not your
11 supervisor anymore. If you want to give me
12 the time frame Janine was your supervisor,
13 that would be fantastic.

14 A. You just asked 2018, so Janine
15 Gilbert.

16 Q. In 2019, who was your
17 supervisor?

18 A. Janine Gilbert.

19 Q. In 2020, who was your
20 supervisor?

21 A. Tanya Meimsenholder,
22 M-E-I-M-S-E-N-H-O-L-D-E-R.

23 Q. That was 2020?

24 A. Yes.

25 Q. In 2021, who was your

1 M. MELOCOWSKY

2 supervisor?

3 A. Tanya Meimsenholder.

4 Q. In 2022?

5 A. Wendy Garcia.

6 Q. For the EEOD office that you
7 were in control of that you were the
8 executive director of, did you make hiring
9 and firing decisions?

10 A. Not alone.

11 Q. But you were involved with the
12 process of hiring people to work in that
13 office?

14 MS. LINNANE: Objection to the
15 form of the question.

16 A. I was involved in the process.

17 Q. What trainings or
18 qualifications did you have for the role as
19 the executive director of the EEOD office
20 for NYPD?

21 A. Specifically for EEOD?

22 Q. Yes.

23 A. At 14 years of leadership as a
24 naval officer, my last few years in the
25 navy was congressional liaison with the

1 M. MELOCOWSKY
2 navy working on military justice reform
3 with the armed service committee. The
4 armed service committee was heavily
5 involved with sexual harassment and sexual
6 assault within the navy. So we wrote a lot
7 of the military justice code. So we worked
8 heavily with employment discrimination and
9 that background kind of set me up for
10 employment law.

11 Q. Since 2018, have you received
12 any additional training or certifications
13 for becoming an EEOD executive director,
14 explicitly focusing on New York City human
15 rights law?

16 A. We went through a Cornell, a
17 class sponsored by Cornell, and I have a
18 Cornell certification.

19 Q. Do you remember who the
20 professor was in Cornell?

21 A. I don't.

22 Q. Do you remember if it was a
23 female or a male professor?

24 A. There were two females.

25 Q. Do you remember when that class

1 M. MELOCOWSKY

2 was given?

3 A. I don't.

4 Q. Was the class given in 2018?

5 A. I believe it was 2019.

6 Q. Did you attend a class in

7 person or remote?

8 A. In person.

9 Q. Did you attend the class with
10 anyone else or did you attend it alone?

11 A. I attended it with a lot of my
12 investigators.

13 Q. Who were your investigators
14 that you attended this class with?

15 A. I don't remember a specific
16 list.

17 Q. Would there be any document
18 that would refresh your recollection as to
19 the investigators that attended this 2019
20 Cornell?

21 A. I don't know where the list
22 would be.

23 Q. How many days was the seminar?

24 A. Two weeks.

25 Q. When you say two weeks, was it

1 M. MELOCOWSKY

2 14 days, 10 business days, can you explain
3 exactly what went on at this seminar?

4 A. Ten business days.

5 Q. Was there an exam at the end of
6 this seminar?

7 A. There was no formal exam, no,
8 but we had to present to the class. Every
9 time there was a project or whatever part
10 we were doing, whether it was
11 investigations, questioning, the whole
12 class was interactive.

13 Q. What did you present to the
14 class?

15 A. Investigations, questioning.

16 Q. What was the investigation
17 process?

18 A. Sitting down with somebody and
19 asking them questions.

20 Q. Asking them questions relating
21 to what?

22 A. Harassment, violations in the
23 workplace.

24 Q. Violations of what?

25 A. Whether or not they were a

1 M. MELOCOWSKY

2 protected class, whether or not those
3 rights were being trampled on.

4 Q. You said protected class a
5 couple of times, what is a protected class?

6 A. Protected class, the State
7 protects groups of people, whether it's
8 religion, race, national origin, to ensure
9 everybody's not criminated against.

10 Q. When you say the State
11 protects --

12 A. Federal laws, State laws, City
13 laws.

14 Q. Within New York City, are you
15 familiar with the laws that protect people?

16 A. Yes.

17 Q. From discrimination?

18 A. Yes.

19 Q. What laws would those be?

20 A. Can you be more specific when
21 you throw out the work laws? That's
22 general.

23 Q. I'm feeding off your question.
24 You said there are laws that the State has
25 that protect people, right, so you're

1 M. MELOCOWSKY

2 familiar with those laws?

3 A. Yes.

4 Q. So tell me which laws you're
5 referring to.

6 A. I'm asking you to be more
7 specific so I'm just not sitting here all
8 day rattling off a bunch of laws.

9 Q. I'm telling you within the City
10 of New York, were you referring to any
11 laws?

12 A. Yeah --

13 MS. LINNANE: The witness has
14 asked counsel to be more specific.
15 Can you make your question more
16 specific?

17 Q. I reduced it to the City of New
18 York, do you need a further reduction?

19 A. No I need further
20 clarification.

21 Q. Are you familiar with New York
22 City human rights law?

23 A. I am.

24 Q. How familiar are you with it?

25 A. I'm familiar with it. I've

1 M. MELOCOWSKY

2 been out of the job for about a year now,
3 but I'm familiar with it.

4 Q. At any time have you ever
5 practiced New York City human rights law?

6 A. In my role, I counselled as an
7 executive director.

8 Q. Who did you counsel on New York
9 City human rights law?

10 MS. LINNANE: I will direct the
11 witness not to answer any questions
12 that counsel you provided to
13 individual people in your role
14 counselling of the law.

15 MR. WAGNER: I didn't ask what
16 he counseled, I asked who.

17 A. How is that any different?

18 MS. LINNANE: It's
19 attorney/client privilege if Mr.
20 Melocowsky counselled anybody about
21 laws. That's attorney/client
22 privilege between Mr. Melocowsky and
23 anybody that he counselled. Asking
24 that is improper, it's
25 attorney/client privilege.

1 M. MELOCOWSKY

2 Q. I'm not asking you about your
3 clients, I'm asking in your role as the
4 executive director of the EEO office.

5 A. Yeah.

6 Q. You counselled people about New
7 York City human rights laws?

8 A. I'm not going to answer that
9 question. You asked what my roles were. I
10 said reviewing investigations, reviewing
11 reasonable accommodation requests, I'm not
12 going to give you specific incidences, what
13 time and what I counselled them on.

14 Q. Are you qualified to counsel
15 anyone on New York City human rights law?

16 A. Yes.

17 Q. What makes you qualified to
18 counsel anyone on New York City human
19 rights law?

20 A. I'm a member of the bar and
21 I've had training in EEO laws.

22 Q. Have you had any training in
23 New York City human rights law?

24 A. Yes.

25 Q. Beyond that Cornell training?

1 M. MELOCOWSKY

2 A. I've also attended courses.

3 Off the top of my head, I don't remember
4 the name of who sponsored it.

5 Q. When did you attend these
6 courses?

7 A. In 2018.

8 MR. WAGNER: Let the record
9 reflect the plaintiff has walked in
10 the room.

11 Q. From 2018 to 2019, how many
12 employees did you manage?

13 A. Approximately 15.

14 Q. Were those employees all
15 attorneys?

16 A. No.

17 Q. How many of those employees
18 were attorneys?

19 A. One.

20 Q. What was the name of that
21 attorney?

22 A. Jordan Farnham, F-A-R-N-H-A-M.

23 Q. Who were the other 14
24 employees?

25 A. Their names?

1 M. MELOCOWSKY

2 Q. Their role.

3 A. Investigators, support staff.

4 Q. So the EEOD office employed two
5 attorneys?

6 A. At one point, the assistant
7 deputy commissioner was also an attorney.

8 Q. Who was that?

9 A. Janine Gilbert.

10 Q. So the EEOD office at one point
11 employed three attorneys?

12 A. Correct.

13 Q. And the rest were just
14 investigators?

15 A. Investigators and support
16 staff.

17 Q. In 2018, if you recall, how
18 many accommodations applications would you
19 handle monthly?

20 A. Monthly?

21 Q. Monthly.

22 A. I can't give you an exact. I'm
23 not sure.

24 Q. Is there anything that would
25 refresh your recollection?

1 M. MELOCOWSKY

2 A. They may have records within
3 the office still.

4 MR. WAGNER: I would like to
5 make that a demand for those records
6 of all the accommodation requests
7 that Mr. Melocowsky handled monthly
8 for the year 2018.

9 MS. LINNANE: The City will not
10 produce confidential document about
11 people's personal religious and
12 medical accomodation requests made to
13 their employers. That will not be
14 produced.

15 Q. In 2019, how many religions
16 accomodation requests did you handle?

17 A. I don't know.

18 Q. On an annual basis, would you
19 know?

20 A. No, not with any specificity.

21 Q. Would there have been anyway
22 for you to figure that out?

23 A. Not right now, no.

24 Q. Is there any document that
25 would refresh your recollection?

1 M. MELOCOWSKY

2 A. Not that I'm aware of.

3 MR. WAGNER: I would like to
4 record to reflect I'm requesting all
5 the accommodation requests for the
6 year 2019.

7 MS. LINNANE: Let the record
8 reflect that counsel for the NYPD and
9 City and for Mr. Melocowsky has
10 advised counsel that confidential
11 records pertaining to reasonable
12 accommodation requests will not be
13 provided to the plaintiff.

14 Q. Is your answer going to be the
15 same for the years 2020, 2021 and 2022, do
16 you have any recollection of how many
17 accomodation requests you --

18 A. I can't give you any specific
19 number, no.

20 MR. WAGNER: Why don't you take
21 a look at that?

22 MS. LINNANE: Are we done with
23 this?

24 MR. WAGNER: We're done with
25 Plaintiff's Exhibit 3 for now.

1 M. MELOCOWSKY

2 MS. LINNANE: I don't know what
3 you want me to do with that.

4 MR. WAGNER: Can I have that
5 marked before he starts looking at
6 it? Can I have this marked as
7 Exhibit 4.

8 (Whereupon, a document was
9 marked Plaintiff's Exhibit No.4 for
10 identification, as of this date.)

11 Q. I'm going to ask you to take a
12 look at Exhibit 4. Do you recognize that
13 document?

14 A. I do.

15 Q. I'm going to ask you to take a
16 look at the last page of that document.

17 A. Do you mean the last page of
18 the exhibit?

19 Q. The last page of the document,
20 not the last page of the exhibit. The last
21 page would be page 7?

22 MS. LINNANE: Let the record
23 reflect that the last page of the
24 document is 7 and then there are
25 three additional pages that are

1 M. MELOCOWSKY

2 Exhibit A. So Mr. Melocowsky was
3 asking about the difference between
4 the last page of the document or the
5 last page of the exhibits.

6 Q. Do you see page 7?

7 A. Yes.

8 Q. Do you see a signature on the
9 bottom of that page?

10 A. Yes.

11 Q. Do you recognize that
12 signature?

13 A. Yes.

14 Q. Whose signature is that?

15 A. It's mine.

16 Q. Did you sign this document?

17 A. I did.

18 Q. Do you recall signing this
19 document?

20 A. Yes.

21 Q. I previously had asked you if
22 anything would refresh your memory in
23 reference to how many accommodation
24 applications you review on a monthly basis.

25 A. Yes.

1 M. MELOCOWSKY

2 Q. Does anything in Exhibit 4
3 refresh your recollection that way you
4 could properly answer that question?

5 MS. LINNANE: Objection to the
6 question. I would like to ask the
7 court reporter to read back the
8 questions about the time frames
9 Mr. Wagner asked, the quantity of
10 reasonable accommodations requests
11 made.

12 (Whereupon, the requested
13 portion of the record was read back
14 by the reporter.)

15 Q. Now that you had the
16 opportunity to review item number four, I'm
17 going to ask you to turn your attention to
18 paragraph four.

19 A. Okay.

20 Q. I'm going to ask you -- you
21 don't need to read it into the record.
22 Read paragraph four, let me know when
23 you've completed.

24 A. Okay.

25 Q. I'm going to re-ask the

1 M. MELOCOWSKY
2 question. In 2018, do you know
3 approximately how many accommodation
4 requests a month your office was handling?

5 A. I can't tell you with any
6 specificity. You're asking me to read
7 paragraph four?

8 Q. On page 2.

9 A. It's an approximation.

10 Q. What was that approximation
11 listed that you signed off on, affirmed
12 under the penalties of perjury of how many
13 requests per month your office was
14 receiving?

15 A. Approximately 200.

16 Q. Would that number be an
17 accurate representation of approximately
18 how many religious accommodation requests
19 you were reviewing per month?

20 A. How many what accommodation
21 requests?

22 Q. Reasonable accommodation
23 requests.

24 A. Yes.

25 Q. Of those 200 per month,

1 M. MELOCOWSKY

2 approximately how many were granted and how
3 many were denied?

4 MS. LINNANE: Objection. Calls
5 for speculation. Mr. Melocowsky
6 answered that he does not know the
7 answer to this question.

8 MR. WAGNER: That question has
9 never been asked.

10 A. I don't know.

11 Q. Is there anything that would
12 refresh your recollection?

13 A. I don't know.

14 Q. Does your office keep a tally
15 of how many accommodation requests are made
16 monthly, granted and denied?

17 A. When I was there we did.

18 Q. Who would have those records?

19 A. I don't know. I don't work
20 there anymore.

21 Q. While you were working there,
22 who would have those records?

23 A. Someone who worked in the
24 administrative -- we worked for EEOD, the
25 office I was responsible for worked for an

1 M. MELOCOWSKY
2 office called OEI, office of equity and
3 inclusion. They maintain the records, I
4 don't know who would have done that.

5 MR. WAGNER: Let the record
6 reflect I would like production of
7 showing how many accommodations were
8 granted and denied on a monthly
9 basis.

10 Q. Was it your --

11 MS. LINNANE: We'll take it
12 into consideration.

13 Q. Was it your responsibility to
14 review each of those accommodation
15 requests?

16 A. Yes.

17 Q. Did you have the final say over
18 each of those accommodation requests?

19 A. I did.

20 Q. And you personally would review
21 each of these accommodation requests?

22 A. I did.

23 Q. The process for reviewing
24 accommodation requests in 2018, was it the
25 same process you used in 2019?

1 M. MELOCOWSKY

2 A. Yes.

3 Q. What was that process?

4 A. Investigators would
5 interview -- sit down and interview an
6 applicant and have discussions, reach out
7 if they needed more information from either
8 if they needed to from the commander or
9 whoever else they needed information from,
10 medical division or whomever, put together
11 a report in a recommendation and send it to
12 me.

13 Q. Who would put together the
14 report and recommendation?

15 A. The investigator.

16 Q. And the investigator was not an
17 attorney?

18 A. No.

19 Q. Are you familiar with an
20 individual named Samuel Yee, Y-E-E?

21 A. Yes.

22 Q. Was he somebody who worked
23 under you?

24 A. No.

25 Q. We talked about 2018 to 2019,

1 M. MELOCOWSKY

2 the reasonable accommodation process.

3 A. Yes.

4 Q. I would like to go from 2019 to
5 2020, was the process the same as the one
6 you just described?

7 A. Yes.

8 Q. From 2019 to 2020, was the
9 process the same?

10 A. Going into 2020, yes.

11 Q. From 2020 to 2021, was the
12 process the same?

13 A. Covid changed the process.

14 Q. Do you remember at what point
15 the process changed?

16 A. Off the top of my head, I don't
17 remember.

18 Q. But you acknowledge there was a
19 change in the process?

20 MS. LINNANE: Objection to the
21 form of the question.

22 A. Yes, there was a change in the
23 process.

24 Q. Were you involved with the
25 creation of the new process?

1 M. MELOCOWSKY

2 A. I was, yes.

3 Q. What was your involvement in
4 the creation of the new process?

5 A. We sat in -- I sit in on phone
6 calls, it was during Covid, so there were a
7 lot of conference calls.

8 Q. Conference calls with who?

9 A. Senior executives within the
10 NYPD.

11 Q. Give me the names of some of
12 those senior executives.

13 A. Tanya Meimsenholder,
14 representatives from personnel and the
15 legal department.

16 Q. Who from the legal department?

17 A. David Goldfarb.

18 Q. Was there anybody outside the
19 NYPD involved in these phone calls?

20 A. Not calls I was on, no.

21 Q. There were individuals involved
22 with this process outside the NYPD?

23 MS. LINNANE: Objection to the
24 form of the question.

25 A. I don't know.

1 M. MELOCOWSKY

2 Q. Did you ever speak to David
3 Goldfarb?

4 MS. LINNANE: I'm going to
5 direct you not to answer any
6 questions that has to do with
7 attorney/client privilege and any
8 conversations with David.

9 Q. Is David your attorney?

10 A. David is an attorney within the
11 legal department.

12 Q. Is David Goldfarb your
13 attorney?

14 A. Specifically no. I mean, he
15 represents the department.

16 Q. Do you represent David Goldfarb
17 in any actions?

18 A. I do not.

19 Q. So there's no attorney/client
20 privilege between you and Mr. Goldfarb,
21 correct?

22 A. We have attorney -- we both
23 represent the NYPD.

24 Q. In this action, is Mr. David
25 Goldfarb representing you?

1 M. MELOCOWSKY

2 A. Specifically he's not
3 representing me as a person, no.

4 Q. When you're a defendant in this
5 action, individual defendant in this
6 action, any alleged confidentiality that
7 you're claiming on behalf of another
8 defendant, that's not how attorney/client
9 privilege works. The conversations you had
10 with Mr. Goldfarb are subject to discovery.
11 When you discuss the process and procedures
12 related to the reasonable accommodation
13 process that you change, that's what I'm
14 looking to discuss. Can we agree that
15 those conversations are open for --

16 MS. LINNANE: No, I will not
17 agree to that. Any conversations
18 that Mr. Melocowsky had in David
19 Goldfarb's representation during
20 these conversations that are
21 attorney/client privilege are not
22 open to discovery. If you want to
23 request those, you can do that. I'm
24 going to advise him not to answer.

25 MR. WAGNER: I'm going to ask

1 M. MELOCOWSKY

2 the city produce Mr. David Goldfarb
3 as a witness. Mark that down in the
4 transcript.

5 Q. Did you and Mr. David Goldfarb
6 discuss the new process?

7 A. I don't remember specifically,
8 but I'm sure we did.

9 Q. When was the first time you
10 discussed the new process with anybody?

11 A. I don't remember.

12 Q. Was it in the spring of 2020?

13 A. I can't tell you with any -- it
14 was a very fluid situation and things were
15 happening very quickly. I can't tell you
16 exactly when things happened and when they
17 didn't.

18 Q. Do you have anything that would
19 refresh your recollection?

20 A. Off the top of my head, no.

21 Q. Did you preserve or do you
22 preserve any e-mails?

23 A. Any e-mails related to this I
24 think have already been provided.

25 Q. You have provided e-mails?

1 M. MELOCOWSKY

2 A. Yes.

3 Q. Who did you provide those
4 e-mails to?

5 MS. LINNANE: I'm going to
6 direct the witness not to answer any
7 questions about any documents you
8 provided in the City's representation
9 of you as a defendant in this case.

10 Q. You have turned documents over
11 to the City though?

12 A. I'm not going to can answer the
13 question.

14 Q. Would you be surprised to learn
15 that the City has represented in this
16 action, Mr. Melocowsky, that you have
17 nothing to contribute, no documents, no
18 e-mails, no memos, nothing?

19 MS. LINNANE: Directing the
20 witness not the answer questions that
21 are badgering the witness and second,
22 have to do with the attorney/client
23 privilege as a defendant in this
24 matter.

25 Q. Okay, you have turned in stuff?

1 M. MELOCOWSKY

2 A. No, I didn't say --

3 MS. LINNANE: Mark it from the
4 record, that's counsel's assertion.

5 Q. Do you have any e-mails
6 reflecting the change in the process to the
7 reasonable accommodation?

8 A. No.

9 Q. So the scheduling of the phone
10 call with the senior executives, how is
11 that arranged?

12 A. With what senior executives?

13 Q. You said people from personnel,
14 people from the legal department,
15 Mr. Goldfarb, I think it's a
16 Ms. Meimsenholder?

17 A. Meimsenholder.

18 Q. That phone call, how is that
19 arranged?

20 A. I don't know.

21 Q. Was it through e-mail?

22 A. I don't know.

23 Q. Was it through text message?

24 MS. LINNANE: Objection, asked
25 and answered.

1 M. MELOCOWSKY

2 A. I don't know.

3 Q. Does the NYPD provide you with
4 a phone?

5 A. They do.

6 Q. What's the phone number?

7 A. (917) 434-1452.

8 Q. On the phone, do you have any
9 text messages relating to the process, the
10 reasonable accommodation process changes
11 that you helped effectuate?

12 A. No.

13 Q. You never had any discussions
14 with anyone in text messages in reference
15 to that?

16 MS. LINNANE: Objection to the
17 form of the question.

18 A. No.

19 Q. Did you talk to anybody outside
20 the NYPD in reference to the process
21 changes?

22 A. No.

23 Q. I'm going to ask you to take a
24 look at paragraph 3.

25 A. Okay.

1 M. MELOCOWSKY

2 Q. In paragraph 3, you reference
3 books and records of the NYPD and the City
4 of New York, what books and records are you
5 referencing in paragraph 3?

6 A. Reviewing any materials that I
7 have that may be relevant to this case.

8 Q. What materials did you review?

9 A. Any e-mails or any text
10 messages or any documents that I may have
11 had.

12 MR. WAGNER: I would like a
13 copy of production of all the
14 e-mails, text messages and everything
15 you reviewed in reference to
16 paragraph 3.

17 A. That's not what I said. I said
18 I looked for specific e-mails, I looked for
19 documents, that's what this is based on.

20 Q. Can you read paragraph 3 into
21 the record.

22 A. "This affidavit is based on my
23 personal knowledge as well as the books and
24 records of the NYPD and the City of New
25 York. The statements made to me by other

1 M. MELOCOWSKY
2 officers or employees of the NYPD of the
3 City of New York. I submit this affidavit
4 and opposition to plaintiff petitioner's
5 application for preliminary and the above
6 captioned manner."

7 Q. Some of those books and records
8 you just referred to, you stated were
9 e-mails and text messages?

10 MS. LINNANE: Objection to the
11 form of the question.

12 MR. WAGNER: I am requesting
13 you produce those e-mails and text
14 messages and any other books, records
15 or anything else you reviewed in
16 preparation of --

17 A. I can't give you what we don't
18 have. If I'm saying I'm reviewing general
19 records, I'm looking through records. It's
20 like saying I'm looking for a specific book
21 in the library and I review books of the
22 library. Do you want all the books in the
23 library?

24 Q. I do. Everything you reviewed,
25 I'm entitled to everything you reviewed in

1 M. MELOCOWSKY
2 preparation of this affidavit, I'm entitled
3 to review the same. I appreciate for that
4 clarification, that's exactly what I would
5 like you to produce.

6 MR. WAGNER: Let the record
7 reflect production of all items.

8 THE WITNESS: I don't know how
9 it's relevant.

10 MR. WAGNER: I'm glad you feel
11 it's not relevant, I will be the
12 final arbiter.

13 Q. It says you spoke to officers,
14 who were the people you spoke to in coming
15 to this affidavit?

16 A. Based on the history in our
17 office and anybody who may or may not have
18 knowledge of what was happening.

19 Q. Who are the names of those
20 people?

21 A. Any investigator of the EEO
22 office.

23 Q. What were the names of those
24 people?

25 A. I don't have a specific roster

1 M. MELOCOWSKY
2 in front of me. I already told you some of
3 the people I remember.

4 Q. Is there anything that would
5 refresh your recollection?

6 A. Phone list from the EEO office
7 or a personal list?

8 MR. WAGNER: I'm going to
9 request the phone list from the EEO
10 office and we can fill in the blanks
11 leave the names once you get the
12 phone list. You can put those names
13 into the transcript for us and I
14 would like to reserve my right to
15 depose every single one of those
16 individuals.

17 MS. LINNANE: Take it under
18 advertisement.

19 A.

20 _____
21 Q. Are you looking at paragraph 4?
22 You testified earlier there were 15 people
23 who worked in your office.

24 A. I said approximately fifteen.

25 Q. In paragraph 4, you reference

1 M. MELOCOWSKY
2 comprised of seven full-time staff members.
3 What's the distinction? You testified 15
4 people and in this affidavit, you put 7?

5 A. You asked how many people
6 worked in the EEO office, several of those
7 people work for the reasonable
8 accommodation part, the other part are the
9 investigative department.

10 Q. That's fine, I'm just looking
11 for clarification. Seven of those people
12 directly work for the reasonable
13 accommodations?

14 A. Approximately, yes.

15 Q. And those were the seven people
16 that were -- was the entire office under
17 your control or only those seven people?

18 A. The entire office was under my
19 control.

20 Q. Do you know the names of those
21 seven people that comprise the reasonable
22 accommodation request?

23 A. Yeah, approximately. The
24 investigators were changed, but yeah.

25 Q. Please provide those seven

1 M. MELOCOWSKY

2 names.

3 A. Jordan Farnham was one of them,
4 Louis Lairbors was one of them, Michael
5 Castone was another one. I would have to
6 look at a list.

7 Q. Is there anything that would
8 refresh your recollection?

9 A. There would be a roster
10 somewhere.

11 MR. WAGNER: We're going to
12 call for the production of that
13 roster. I request the transcript
14 provide a blank line, you can add
15 those seven people whose names you're
16 not recalling at the moment.

17 A.

18
19 MS. LINNANE: It's about an
20 hour and a half into the deposition,
21 the witness is entitled to a break.
22 I think now is the time to use the
23 break.

24 MR. WAGNER: That's fine.

25 (At this time, there was a

1 M. MELOCOWSKY

2 pause in the proceeding.)

3 Q. Welcome back, Mr. Melocowsky.

4 Did you have the opportunity to speak to
5 your attorney?

6 MS. LINNANE: I'm going to
7 direct the witness not to answer any
8 conversations that he had with me or
9 with my cocounsel during the break.

10 Q. I just want to make sure there
11 were no discussions about any of the
12 relevant questions that were being ask.

13 MS. LINNANE: I'm going to
14 direct the witness not to answer any
15 questions that he had with me or my
16 cocounsel during our break.

17 Q. I'm going to ask you to take a
18 look at what's been marked as Plaintiff's
19 Exhibit 4, paragraph 7.

20 A. Okay.

21 Q. Do you recall that virtual
22 meeting you attended with DCAS?

23 A. I really don't.

24 MS. LINNANE: Can we read the
25 paragraph into the record so we know

1 M. MELOCOWSKY

2 what virtual meeting.

3 A. "On October 27, 2021, I
4 attended a virtual meeting hosted by DCAS
5 for agency personnel officers and EEO
6 officers to further discuss these
7 guidelines including guidance on the
8 reasonable accommodation request process
9 for seeking an exemption from DOHMH order."

10 Q. You have no recollection of
11 that meeting?

12 A. I don't.

13 Q. Was anyone else from your
14 office at that meeting?

15 A. I don't know.

16 Q. Would you have any documents
17 that would refresh your recollection
18 related to that meeting?

19 A. I don't think so.

20 MR. WAGNER: I'm just going to
21 call for the production of any and
22 all documents related to this
23 October 27, 2021, meeting.

24 Q. Do you remember who hosted the
25 meeting?

1 M. MELOCOWSKY

2 MS. LINNANE: We'll take it
3 under consideration.

4 A. I'm sorry?

5 Q. Do you remember the name of the
6 host of the meeting?

7 A. No.

8 Q. Do you recall if there were any
9 slides issued at the meeting?

10 A. I don't remember the meeting.

11 Q. You don't have any recollection
12 of the meeting at all?

13 MS. LINNANE: Objection. The
14 witness has already answered that
15 question.

16 Q. In paragraph 7, when it
17 references to guidelines, do you remember
18 what guidelines they're referring to?

19 A. Not specifically, no.

20 Q. Is there any document that
21 would refresh your recollection?

22 A. Not that I'm aware of.

23 Q. Did you use those guidelines in
24 creating the new process for reasonable
25 accommodations for NYPD officers?

1 M. MELOCOWSKY

2 A. Since I don't remember the
3 guidelines specifically, my answer is no, I
4 don't know.

5 Q. Is there anything attached to
6 this document that would help refresh your
7 recollection?

8 A. Okay.

9 Q. Is there anything attached to
10 this document that will help refresh your
11 recollection about these guidelines?

12 A. Yes.

13 Q. What would that be?

14 A. Exhibit A.

15 Q. What were the guidelines that
16 are hosted in Exhibit A?

17 MS. LINNANE: Objection. You
18 can answer.

19 A. The process for applying for
20 reasonable accommodation.

21 Q. Did you use these guidelines in
22 updating the reasonable accommodation
23 process for NYPD officers?

24 A. Yes.

25 Q. Under these guidelines, was

1 M. MELOCOWSKY

2 there any acceptable accommodation?

3 MS. LINNANE: Objection. The
4 document speaks for itself. You can
5 answer.

6 A. Yes.

7 Q. What was an acceptable
8 accommodation?

9 A. It's delineated in the exhibit.

10 Q. Do you want to read that to me?

11 MS. LINNANE: Objection to the
12 form of the question.

13 Q. Can you read the language of
14 the exhibit you're referring to? Tell us
15 exactly where in the exhibit it's located.

16 A. "Reasonable accommodation may
17 be medical or religious reasons."

18 MS. LINNANE: Slow down so the
19 reporter can read it.

20 Q. I asked what was the only
21 acceptable accommodation, you said it was
22 in the document?

23 A. What was the only acceptable?

24 Q. Accommodation.

25 A. You could get a medical or

1 M. MELOCOWSKY

2 religious accommodation.

3 Q. What does the word
4 accommodation mean to you Mr. Melocowsky?

5 A. If someone needs an exemption
6 or something special to continue during
7 their job.

8 Q. Was there any accommodation
9 that could have been granted to somebody
10 for a religious reason from the Covid-19
11 vaccine?

12 A. Yes.

13 Q. What would that accommodation
14 have been?

15 A. You want me to read it straight
16 from the exhibit?

17 Q. I would prefer you to tell me
18 what the accommodation would be. If you
19 need to refresh your recollection by
20 looking at the exhibit, that's fine.

21 MS. LINNANE: Objection to the
22 form. That was not a question.

23 Q. What is the acceptable
24 accommodation process according to your
25 affidavit Exhibit A?

1 M. MELOCOWSKY

2 A. It's delineated in Exhibit A if
3 you want me to read it.

4 Q. I do.

5 A. If you want me to read it
6 through, I'm happy to read it through.

7 Q. Do you know offhand what the
8 accepted accommodation was for religious
9 purposes?

10 A. If someone can demonstrate a
11 religious belief.

12 Q. Who decides that someone
13 religious belief is sincerely held?

14 A. It was a process.

15 Q. Were you the ultimate arbiter
16 of someone's sincerely held religious
17 belief?

18 A. No.

19 Q. Who was the all the ultimate
20 determiner if someone had a sincerely held
21 religious belief?

22 A. I don't know, it was an appeal.

23 Q. In your office, who is the
24 ultimate arbiter of the sincerely held
25 religious belief?

1 M. MELOCOWSKY

2 A. I signed off on the letters.

3 Q. You were the ultimate arbiter
4 within the NYPD's EEO office if somebody
5 had a sincerely held religious belief?

6 MS. LINNANE: Objection.

7 Counsel is testifying.

8 Q. I'm not testifying, I'm asking
9 you, within the confines of the NYPD, not
10 talking about any additional City wide
11 appeal panels, within the confines of the
12 NYPD EEO office, who had the final say of
13 whether a religious accommodation was
14 granted or denied?

15 A. Technically would be the deputy
16 commissioner.

17 Q. It was not you?

18 A. It was -- two of us would
19 consult.

20 Q. What two?

21 A. Myself and the deputy
22 commissioner at the time.

23 Q. Who was the deputy commissioner
24 at the time?

25 A. Tanya Meimsenholder.

1 M. MELOCOWSKY

2 Q. Did the guidelines that were
3 attached to your Exhibit A provide any
4 accommodation that would not be an undue
5 hardship to the City of New York?

6 A. Can you rephrase?

7 Q. Did the guidelines that are
8 attached to your affidavit as Exhibit A
9 provide any reasonable accommodation that
10 would not have been an undue hardship for
11 the City of New York or the NYPD?

12 A. Yeah, if they had a sincerely
13 held moral, religious or ethical belief.

14 Q. I'm going to ask you to take a
15 look at Exhibit 4 and read paragraph 10
16 into the record.

17 A. Paragraph four?

18 Q. No, page 3, paragraph 10.

19 A. Sorry. "The guidelines clarify
20 that the only allowable accomodation from
21 the vaccine mandate that would not cause
22 undue hardship and/or disruption was weekly
23 testing and submission of negative PCR
24 results."

25 Q. There was only one

1 M. MELOCOWSKY

2 accommodation available; is that correct?

3 MS. LINNANE: Objection to the
4 form of the question and counsel is
5 testifying.

6 Q. Pursuant to Exhibit 4, your
7 signed affirmation, there was only one
8 accommodation available to NYPD officers;
9 is that correct?

10 MS. LINNANE: Objection to the
11 form of the question. Counsel is
12 testifying.

13 Q. How many accommodations were
14 available to NYPD officers from the vaccine
15 mandate?

16 A. I still don't understand the
17 question. If someone received an
18 accommodation, then they would have to
19 comply with weekly testing.

20 Q. Is it your understanding that
21 the weekly testing was not the
22 accommodation?

23 MS. LINNANE: Objection to the
24 form of the question, counsel is
25 testifying.

1 M. MELOCOWSKY

2 Q. What would be an accommodation?

3 A. I still don't understand your
4 question. Are you saying that they don't
5 get vaccinated -- if someone had an
6 accomodation where they were not being
7 vaccinated, that's the accommodation.

8 Q. It's your understanding that
9 the accommodation is to not be vaccinated?

10 MS. LINNANE: Objection to the
11 form of the question, counsel is
12 testifying.

13 A. They would also have to go
14 through weekly testing to ensure that they
15 weren't sick.

16 Q. You testified earlier that when
17 someone requests a religious accommodation,
18 the first thing you do is investigate their
19 sincerity. Where did you find that
20 guidance from?

21 A. The laws.

22 Q. What laws?

23 A. Human rights laws, federal
24 guidelines, City laws.

25 Q. Let's take a step back. You

1 M. MELOCOWSKY

2 said a lot of in that statement. There's
3 federal guidelines?

4 A. Yep.

5 Q. There's New York State human
6 rights law?

7 A. Yes.

8 Q. There's New York City human
9 rights law?

10 A. Correct. We looked at the
11 sincerity of their beliefs.

12 Q. Under the federal guidelines,
13 where does it give an employer a right to
14 question the sincerity of someone's
15 religious beliefs?

16 A. Specifically off the top of my
17 head, I can't tell you specifically where
18 it says it.

19 Q. But you know it says it?

20 MS. LINNANE: Objection.

21 That's not a question.

22 Q. You're familiar with federal
23 guidelines?

24 A. I'm familiar with federal
25 guidelines, State guidelines and City

1 M. MELOCOWSKY

2 guidelines.

3 Q. And it's your testimony today
4 an individual must prove --

5 A. That's not what I said. I said
6 under the laws. You're allowed to question
7 somebody. If you want to put words in my
8 mouth, that's fine.

9 MS. LINNANE: It is not fine.

10 Counsel continues to testify.

11 Q. I'm not looking to put words in
12 anyone's mouth. Are you familiar with the
13 different thresholds between federal law,
14 New York State law and New York City law?

15 A. Yes, I am.

16 Q. As a New York City employer
17 with more than four employees, what would
18 be the proper law to apply when discussing
19 religious accommodations?

20 A. What would be the proper law to
21 apply?

22 Q. To an employer.

23 A. I would have to review the
24 specifics of the City law. I, mean because
25 that was training that we received 2018,

1 M. MELOCOWSKY

2 2019, we wrote the guidelines. If you're
3 asking me about a very specific law, I
4 would have to look it up.

5 Q. In general, would you apply New
6 York City human rights law, New York State
7 human rights law or federal title seven
8 law?

9 A. I'm applying the stringent law
10 that we have.

11 Q. Excellent. What would be the
12 most stringent law that New York City has
13 when it comes to the protecting the
14 religious rights of employees?

15 A. So a specifically what are you
16 asking?

17 Q. What law in New York City
18 protects employees, what is the most
19 stringent, what is the highest standard, is
20 it title seven New York State or New York
21 City human rights law?

22 MS. LINNANE: Objection.

23 Asking which is the most stringent is
24 an opinion.

25 Q. You can answer, go ahead.

1 M. MELOCOWSKY

2 Stringent is your word.

3 A. City law.

4 Q. For NYPD officers, was New York
5 City human rights law applied?

6 A. Every applicable law was
7 applied.

8 Q. So you applied New York City
9 human rights law?

10 A. We applied every applicable
11 law.

12 Q. I'm just going to rephrase this
13 question. When considering an applicant's
14 religious accommodation requests from the
15 Covid-19 vaccine, did you apply New York
16 City human rights law cooperative dialogue?

17 A. I'm telling you we applied any
18 applicable law. You can interpret that any
19 way you want to.

20 Q. So your office engaged with
21 every New York City police officer that
22 requested a religious accomodation, a
23 cooperative dialogue?

24 MS. LINNANE: Objection to the
25 form. Badgering the witness.

1 M. MELOCOWSKY

2 A. To the best of our abilities at
3 the time, yes, we did and anybody who
4 called our office, we did. I took every
5 phone call that came into my office.

6 Q. When an employee requests a
7 reasonable accommodation, what is the
8 obligation of the employer when they're
9 requesting an accommodation?

10 A. Collect as much information as
11 we can from the person so we can understand
12 what their situation is.

13 Q. What information would you
14 collect?

15 A. It depends on the specific
16 situation. I need a specific
17 circumstances.

18 Q. Let's talk about the Covid-19
19 vaccine, what information would you collect
20 from the employee?

21 A. Depends on the reasonable
22 accommodation they were applying for, was
23 it religious or medical?

24 Q. Religious accommodation.

25 A. I would ask them -- we asked

1 M. MELOCOWSKY

2 why they were applying for the reasonable
3 accommodation, what was their belief.

4 Q. Did you decide the credibility
5 of that applicant's belief?

6 A. We went through the legal
7 standard.

8 Q. Did that legal standard include
9 judging the credibility of the application?

10 A. Credibility was part of it.

11 Q. Who was the individual who
12 would judge that credibility?

13 MS. LINNANE: Objection, asked
14 and answered. Are we done with this
15 document?

16 MR. WAGNER: No.

17 Q. Mr. Melocowsky, were you the
18 individual who decided an individual
19 applicant's credibility?

20 MS. LINNANE: Objection, asked
21 and answered. You can answer.

22 A. I was one of them, yes.

23 Q. Who else besides yourself would
24 decide an individual's credibility?

25 A. Myself, Tanya Meimsenholder. I

1 M. MELOCOWSKY

2 said was involved and one of the other
3 attorneys who we had on the cases.

4 Q. Who was that attorney?

5 A. Jordan Farnham was one of the
6 attorneys.

7 Q. Was there any other attorneys?

8 A. There are a group of other
9 attorneys.

10 MR. WAGNER: I'm going to
11 request the production of Ms.
12 Meimsenholder and Ms. Farnham. Let
13 the record reflect that.

14 MS. LINNANE: We'll take it
15 under advertisement.

16 Q. For the Covid-19 vaccine, I'm
17 going to ask you to look at paragraph 32 of
18 your affidavit. Have you had the
19 opportunity to review paragraph 32 of that
20 affidavit?

21 A. Yes.

22 MS. LINNANE: I would like for
23 the witness to read it into the
24 record, please.

25 MR. WAGNER: That's fine.

1 M. MELOCOWSKY

2 Q. Please read paragraph 32 into
3 the record?

4 A. "EOD in conjunction with the
5 NYPD medical division continues to review
6 DOHMH order-related reasonable
7 accommodation request as thoroughly and
8 expediently as possible. As of
9 November 30, 2021, approximately 176
10 applications have been approved and 6,500
11 have been denied. The remaining
12 applications are being processed.

13 Q. Of those 6,676 applications
14 that you signed on this affidavit that you
15 reviewed as of November 30, 2021, those --
16 how did you determine the credibility of
17 the 176 you approved versus the 6,500
18 police officers that you said were liars?

19 MS. LINNANE: Objection.

20 Badgering the witness, testifying and
21 stating facts that have not been on
22 the record.

23 Q. In this affidavit, you state
24 that you reviewed, as of November 30, 2021,
25 6,676 applications for reasonable

1 M. MELOCOWSKY

2 accommodation for the Covid-19 vaccine; is
3 that correct?

4 A. Yes.

5 Q. You just previously testified
6 that part of the process in determining
7 whether an application is approved or
8 denied is the credibility of the applicant
9 themselves; is that correct?

10 A. It's one part of it.

11 Q. What factors do you consider
12 when judging the credibility of an
13 applicant's request for religious
14 accommodation?

15 A. Whether or not they copied word
16 for word another applicant's statements,
17 whether or not they downloaded something
18 from the internet and just handed it to us.

19 Q. Any other factors?

20 A. Whether they could describe the
21 religious beliefs with any specific detail
22 or reference, whether they forged documents
23 from a religious leader.

24 Q. Applicants forged --

25 A. I'm not discussing specific

1 M. MELOCOWSKY

2 applications.

3 Q. So of the 6,676 applications
4 you reviewed, only 176 of those
5 applications passed your subjective
6 standard?

7 A. No.

8 MS. LINNANE: Objection, that
9 is not what the witness said.
10 Counsel is testifying.

11 Q. Did you have any policies in
12 place to determine the credibility of an
13 applicant?

14 A. As I said, the credibility was
15 one part of it.

16 Q. What are the other parts?

17 A. The extent that they've had,
18 the length of time that they had this
19 belief, whether this was a lifelong belief,
20 whether this was something they come up in
21 the past few days.

22 Q. Did you believe that the length
23 of an individual belief is relevant to the
24 sincerity of their belief?

25 MS. LINNANE: Objection to the

1 M. MELOCOWSKY

2 form of the question.

3 A. Yes.

4 Q. So the longer somebody held a
5 religious belief, the more credibly you
6 provided to that religious belief?

7 MS. LINNANE: Objection.

8 That's not a question.

9 Q. Is that an accurate statement?

10 MS. LINNANE: Objection.

11 Counsel didn't ask a question.

12 Q. How long did an applicant need
13 to hold a religious belief for you to
14 believe it credible?

15 A. There wasn't any specific
16 number of days, but if someone had said,
17 hey, they just found religion within the
18 past few days because they didn't want to
19 get their shot, then that would go to the
20 sincerity of their beliefs.

21 Q. Are you religious Mr.
22 Melocowsky?

23 MS. LINNANE: Objection. I
24 will direct the witness not to answer
25 that question.

1 M. MELOCOWSKY

2 A. I'm not answering that
3 question.

4 Q. Are you married Mr. Melocowsky?

5 A. I'm not answering that question
6 either.

7 Q. What's the objection to that
8 question?

9 A. How is that relevant?

10 Q. Relevance isn't an objection in
11 a deposition in the second department
12 because we're not in federal court, we're
13 in state court and I would appreciate an
14 answer to the question.

15 A. Yes, I'm married.

16 Q. What's the name of your spouse?

17 MS. LINNANE: I'm going to
18 object to that question and the
19 witness doesn't have to answer the
20 question if he does not want to.

21 A. I'm not answering that
22 question.

23 MS. LINNANE: Then take it up
24 to the court.

25 Q. Do you have any children?

1 M. MELOCOWSKY

2 A. I'm not answering that question
3 either.

4 MR. WAGNER: Let the record
5 reflect the witness is refusing for
6 no reason not to answer questions.

7 Q. Did you consult with anyone
8 else in the NYPD in reference to making the
9 decision to approve the religious
10 accommodation application or deny religious
11 accomodation applications?

12 A. We brought on a group of
13 attorneys to help us go through the
14 attorneys.

15 Q. Who is that group of attorneys
16 you brought on?

17 A. I don't have the list in front
18 of me.

19 Q. Is there a document that would
20 refresh your recollection?

21 A. I don't know what the document
22 would be, but I'm sure there must be
23 someone somewhere.

24 MR. WAGNER: I call for
25 production of that document.

1 M. MELOCOWSKY

2 MS. LINNANE: We'll take it

3 under advertisement.

4 Q. Did you speak to these

5 attorneys?

6 A. I did.

7 Q. Did you give these attorneys

8 training?

9 A. We had a Zoom call.

10 Q. Who is we?

11 A. Myself and the attorneys that

12 we brought on.

13 Q. Did anyone else assist you with

14 the phone call?

15 A. No, it's me.

16 Q. Did you prepare any documents

17 in reference to this Zoom call?

18 A. No.

19 Q. Did you prepare any slides in

20 reference to this Zoom call?

21 A. No.

22 Q. Did you record this Zoom call?

23 A. No.

24 Q. Do you know how long this Zoom

25 call lasted?

1 M. MELOCOWSKY

2 A. I don't remember.

3 Q. Did it last an hour?

4 A. I don't remember.

5 Q. More than one hour, less than
6 one hour?

7 A. I already answered.

8 MS. LINNANE: Objection. Asked
9 and answered. Badgering the witness.

10 Q. Is there anybody that would
11 remember how long it was?

12 MS. LINNANE: Objection, calls
13 for speculation.

14 A. I don't know.

15 Q. Have you spoken to anyone about
16 that Zoom call?

17 A. No.

18 Q. After the Zoom call ended, did
19 you speak to anybody from the Zoom call?

20 A. The attorneys who were on the
21 Zoom call came into my office to get the
22 applications, to get the files.

23 Q. To get the files and get the
24 actual applications?

25 A. Yes.

1 M. MELOCOWSKY

2 Q. What files are you referring
3 to?

4 A. The reasonable accommodation
5 requests.

6 Q. How many of those files did
7 they come in and get?

8 A. I don't know.

9 Q. Was it more than a thousand,
10 less than a thousand?

11 MS. LINNANE: Objection.

12 Witness has already answered the
13 question.

14 A. I don't know.

15 Q. Are you vaccinated Mr.
16 Melocowsky from the Covid-19 vaccine?

17 MS. LINNANE: Objection. You
18 don't have to answer that.

19 MR. WAGNER: Absolutely, he has
20 to.

21 THE WITNESS: I'm not
22 answering.

23 Q. Are you vaccinated?

24 A. I'm not answering the question.

25 Q. Have you taken your child for

1 M. MELOCOWSKY

2 vaccinations?

3 MS. LINNANE: Objection. You
4 don't have to answer that question.

5 MR. WAGNER: Why? It's
6 extremely relevant if he's
7 vaccinated. I don't have to explain
8 the relevance.

9 Q. Are you individually vaccinated
10 to Covid-19?

11 A. I'm not answering that
12 question.

13 Q. Why would you not answer that
14 question?

15 A. I'm not answering the question.

16 MR. WAGNER: Let the record
17 reflect the witness refuses to answer
18 a simple question of whether he's
19 vaccinated or not.

20 Q. You demanded 6,676 people prove
21 to you the sincerity of their religious
22 beliefs so you could impose on them?

23 MS. LINNANE: I'm calling a
24 stop to this deposition because
25 plaintiff's counsel continues to

1 M. MELOCOWSKY

2 badger the witness.

3 MR. WAGNER: How is that?

4 MS. LINNANE: Can you read

5 back --

6 MR. WAGNER: You're advising

7 your witness to not answer the

8 question.

9 MS. LINNANE: Can you please

10 read back what counsel just said?

11 (Whereupon, the requested

12 portion of the record was read back

13 by the reporter.)

14 MS. LINNANE: If you continue

15 down this road, we're walking out the

16 door. If you want to ask proper

17 questions in the form of a question

18 without badgering my witness, we will

19 stay.

20 MR. WAGNER: You can say.

21 MS. LINNANE: We will walk out

22 the door if questions continue like

23 that.

24 MR. WAGNER: Liane --

25 MS. LINNANE: My name is

1 M. MELOCOWSKY

2 Kathleen Linnane.

3 MR. WAGNER: Is there a process
4 where I can submit a reasonable
5 accommodation to your office?

6 MS. LINNANE: Why are you
7 asking me a question?

8 MR. WAGNER: You're having
9 trouble understanding my accent. I
10 said Liane three times, you keep
11 saying it back to me.

12 MS. LINNANE: My name is
13 Kathleen.

14 MR. WAGNER: Ms. Liane, is that
15 better?

16 MS. LINNANE: No. My name is
17 Kathleen Linnane.

18 MR. WAGNER: That's what I
19 said.

20 MS. LINNANE: If you can ask a
21 proper question of the witness, we
22 will stay. If you continue to badger
23 the witness --

24 Q. Mr. Melocowsky, I apologize
25 wholeheartedly if you felt like I'm

1 M. MELOCOWSKY
2 badgering you. It's not my intention to
3 badger you. It's my intention to get to
4 the truth of the matter. You are a
5 defendant individually liable in this
6 action and these questions are very, very
7 important. In fact, so important, I don't
8 understand someone who works for the City
9 of New York would be so willing to fall on
10 the sword of illegal constitutional
11 violations.

12 MS. LINNANE: I'm sorry --

13 THE WITNESS: This is
14 ridiculous. You're the reason my
15 public employees --

16 MS. LINNANE: I'm going to
17 ask --

18 MR. WAGNER: We're calling the
19 judge first.

20 MS. LINNANE: You are welcome
21 to call the judge if you'd like.

22 MR. WAGNER: Are you guys
23 vacating? You're crashing the
24 deposition?

25 MS. LINNANE: You can call it

1 M. MELOCOWSKY

2 whatever you want, you're badgering
3 the witness.

4 MR. WAGNER: I was just about
5 to ask a question and you interrupted
6 me.

7 MS. LINNANE: What question are
8 you asking?

9 Q. How many times did you deny
10 religious accommodation requests?

11 MS. LINNANE: That's a
12 question.

13 Q. How many times in 2018 --

14 MS. LINNANE: I want to make
15 sure you're not recording anything.

16 MR. WAGNER: I'm not recording
17 anything.

18 MS. LINNANE: Put your phone
19 away.

20 MR. WAGNER: I'm not recording
21 anything. I affirm to this court and
22 everybody I'm not recording anything.

23 Q. How many times Mr. Melocowsky
24 in 2018 did you deny a religious
25 accommodation?

1 M. MELOCOWSKY

2 A. I don't remember.

3 Q. Is there anything that would
4 refresh your recollection?

5 A. Not that I'm aware of.

6 Q. You testified earlier that your
7 office kept a tally of accommodations that
8 were granted and denied.

9 A. That's not what I said.

10 Q. What did you say?

11 A. The my parent bureau kept
12 records of that. My office -- I really
13 don't know if they did or not.

14 Q. Those records do exist, you
15 just didn't keep them personally?

16 MS. LINNANE: Objection to the
17 form of the question.

18 Q. In 2019, how many religious
19 accommodations did you deny?

20 A. I don't know.

21 Q. In 2020, how many religious
22 accommodations did you deny?

23 A. I don't know.

24 Q. In 2021, how many religious
25 accommodations did you deny?

1 M. MELOCOWSKY

2 A. I don't know.

3 Q. In 2022, how many religious
4 accommodations did you deny?

5 A. I don't know.

6 Q. In 2023, how many religious
7 accommodations did you deny?

8 A. I don't know.

9 Q. Let's go back to 2021. How
10 many religious accommodations did you deny?

11 MS. LINNANE: Asked and
12 answered.

13 Q. Is there anything that would
14 refresh your recollection?

15 A. I don't know.

16 Q. I'm going to ask you to take a
17 look at what's been marked as Exhibit 4 and
18 read paragraph 32.

19 A. Okay.

20 Q. After reviewing paragraph 32,
21 which you previously read into the record,
22 do you know how many religious
23 accommodations you denied through
24 November 30th of 2021 for the year 2021?

25 A. No, I don't.

1 M. MELOCOWSKY

2 Q. I'm going to ask you to read
3 the second to last sentence of paragraph 32
4 into the record.

5 A. "As of November 30, 2021,
6 approximately 176 applications have been
7 approved and 6,500 have been denied. The
8 remaining applications are being
9 processed."

10 Q. As of November 30, 2021, do you
11 know how many religious accommodations you
12 denied?

13 A. No. These are only for Covid,
14 you asked me about religious
15 accommodations.

16 Q. This question -- I apologize if
17 it wasn't clear -- is strictly for Covid
18 purposes, religious accommodation process.
19 Is it fair to say you denied 6,500 of those
20 applications?

21 A. Approximately.

22 Q. That's fine. Did you receive
23 any formal training from your employer on
24 how to handle religious accommodation
25 requests?

1 M. MELOCOWSKY

2 A. I told you, we had training
3 from Cornell.

4 Q. In 2019?

5 A. Yeah.

6 Q. And this was in 2021, so
7 between 2019 and 2021, did you have receive
8 any additional training?

9 A. Specifically -- actually yeah,
10 every year DCAS would provide training for
11 us.

12 Q. Who is DCAS?

13 A. I forgot the acronym. They're
14 the administrative agency that runs the
15 City.

16 Q. Do you follow their reasonable
17 accommodation guidelines when determining a
18 religious accommodation for a police
19 officer?

20 A. Yes.

21 Q. Were there guidelines followed
22 for the purposes of the Covid-19 vaccine?

23 A. Yes.

24 Q. Were you ever given any written
25 policies or procedures to follow for the

1 M. MELOCOWSKY

2 Covid-19 vaccine reasonable accommodation,
3 policy, procedure?

4 A. We just read Exhibit A.

5 Q. Was Exhibit A the only written
6 policy provided to you by the City of New
7 York in reference to the accommodation
8 procedure for the Covid-19 vaccine?

9 A. I don't remember at this point.

10 Q. Did you consult with any
11 outside legal counsel to help you determine
12 the religious accommodation policy and
13 procedure?

14 MS. LINNANE: I'm going to ask
15 the witness not to answer any
16 questions that have to do with
17 consultations with legal counsel.

18 Q. Outside legal counsel.

19 MS. LINNANE: Any legal
20 counsel.

21 Q. I'm not asking you the name or
22 sum and substance of the conversations,
23 just if you had conversation with outside
24 legal counsel.

25 A. I'm not going to answer the

1 M. MELOCOWSKY

2 question.

3 Q. Was there ever a time that you
4 felt your office felt unprepared or
5 ill-equipped to handle the religious
6 accommodation requests for the Covid-19
7 vaccine?

8 A. No.

9 Q. You were fully prepared, fully
10 equipped, your office, to handle the influx
11 of 6,676 accommodation requests?

12 MS. LINNANE: Objection. It
13 wasn't a question.

14 A. Was there a question?

15 Q. Was your office prepared to
16 handle the influx of 6,676 reasonable
17 accommodations?

18 A. We staffed up as required.

19 Q. Who determined the additional
20 staffing requirements?

21 A. The police commissioner at the
22 time.

23 Q. Did you discuss that with the
24 police commissioner?

25 A. My deputy commissioner did.

1 M. MELOCOWSKY

2 Q. Were you present during those
3 conversations?

4 A. No.

5 Q. Did you request anything of the
6 police commissioner in reference to this
7 additional staffing for these accommodation
8 requests?

9 A. We requested more attorneys,
10 which we got.

11 Q. When did you make that request?

12 A. I don't remember.

13 Q. Is there anything that would
14 refresh your recollection?

15 A. I don't know.

16 Q. Do you want the opportunity to
17 review your Exhibit 4 again?

18 MS. LINNANE: If counsel wants
19 Mr. Melocowsky to read the affidavit
20 into record, he's happy to do so I'm
21 sure.

22 MR. WAGNER: It's not
23 necessary.

24 MS. LINNANE: Then ask him
25 questions.

1 M. MELOCOWSKY

2 Q. Did you prepare this affidavit?

3 A. Yes.

4 Q. Are you fully familiar with all
5 the contents of this affidavit?

6 A. I am.

7 Q. Were there any religious groups
8 or denominations that you are more likely
9 to approve a request from?

10 A. No.

11 Q. Were there any group, religious
12 groups or denominations that you were more
13 likely to deny a request from?

14 A. No.

15 Q. In reviewing the 176 that you
16 granted, what religious groups did that 176
17 people belong to?

18 A. I don't know.

19 Q. Was it numerous religious?

20 A. I don't remember.

21 Q. Was it limited to the Abrahamic
22 religions?

23 MS. LINNANE: Objection. Asked
24 and answered.

25 Q. Are you familiar with the sun

1 M. MELOCOWSKY

2 God, Ra?

3 A. I've heard of it.

4 Q. Do you recall reviewing any
5 applications from individual police
6 officers who worship the sun God, Ra?

7 A. I'm not going to discuss
8 specific applications.

9 Q. Would you have considered the
10 sincerity of this application?

11 A. I consider the sincerity of
12 every application.

13 Q. And you consider the
14 credibility of the applicant themselves?

15 A. Yes.

16 Q. Did you use any outside
17 information when determining the
18 credibility of the applicant or was it
19 strictly limited to what was in the four
20 corners of the accommodation form?

21 A. We considered any and all
22 information we had available to us.

23 Q. Did you review employees'
24 personnel records when determining
25 religious accommodation?

1 M. MELOCOWSKY

2 A. No.

3 Q. Was there at any point in any
4 time an employee's employment record
5 reviewed for the purposes of granting or
6 denying a religious accommodation?

7 A. For Covid?

8 Q. For Covid-19.

9 A. Not that I'm aware of.

10 Q. Do you review employee's
11 employment record for other accommodation
12 requests?

13 A. It gets very specific if
14 there's a medical issue.

15 Q. I'm talking strictly religious
16 issues.

17 A. Not that I'm aware of.

18 Q. If the individual had a
19 preexisting religious accommodation
20 granted, would that weigh towards their
21 credibility or their sincerity of their
22 religious accommodation?

23 MS. LINNANE: Objection. Calls
24 for speculation.

25 Q. In your review.

1 M. MELOCOWSKY

2 A. It's a hard question to answer
3 because circumstances change constantly
4 especially with what was happening with
5 Covid-19 and what we knew about it was
6 changing, so we made the decision on what
7 was happening at the time.

8 Q. So you made decisions not based
9 on the fluidity of the situation?

10 MS. LINNANE: Objection to the
11 form of the question. That was not a
12 question.

13 Q. Your decisions in granting and
14 denying applications were a rational basis,
15 they were based on the Covid-19 scenario
16 that was happening at the time?

17 MS. LINNANE: Objection.
18 Counsel is testifying.

19 Q. I'm trying to understand how
20 you came to a decision to deny or grant a
21 religious accommodation.

22 MS. LINNANE: Objection to the
23 form of the question.

24 Q. You can answer.

25 MS. LINNANE: It's not a

1 M. MELOCOWSKY

2 question.

3 A. What was the question?

4 Q. Do you think some religions are
5 more valid or legitimate than other
6 religions?

7 A. No.

8 Q. You think all religion are
9 equal?

10 A. Everybody has their right to
11 believe whatever it is they believe.

12 Q. When judging the sincerity of
13 someone's religious beliefs, how would you
14 make a determination based on what you just
15 said, everyone is entitled to believe in
16 what they want to believe?

17 A. Okay, was there a question?

18 Q. There was. How do you judge
19 the sincerity of someone's religious
20 beliefs?

21 MS. LINNANE: Objection. Asked
22 and answered.

23 Q. I didn't ask the process of
24 coming to the sincerity. How do you, Mr.
25 Melocowsky, judge the sincerity of

1 M. MELOCOWSKY

2 someone's religious beliefs?

3 A. I would read what they gave to
4 me and look to see how long they held that
5 religious belief.

6 Q. So the primary factor for you
7 is the length of time they held that
8 belief?

9 MS. LINNANE: Objection.
10 Counsel is testifying.

11 A. No, that's not what I said.

12 Q. What would be the primary
13 factor in granting a religious belief?

14 A. There's no primary factor.

15 Q. Is the law a factor?

16 A. Yes.

17 Q. Under New York City human
18 rights law, is there any religious belief
19 that you allowed to not consider?

20 A. Is there one religion --

21 Q. Is there any religious belief
22 that you are permitted to not consider
23 under New York City human rights law?

24 A. Permitted not to consider?

25 Q. That's correct.

1 M. MELOCOWSKY

2 A. No, we considered every
3 religion.

4 Q. You considered every religion
5 just so long as they held it for a certain
6 period of time?

7 MS. LINNANE: Objection.
8 Counsel testifying.

9 A. You're putting words in my
10 mouth.

11 Q. I asked you how you the
12 determine the sincerity of an individual's
13 religious belief and you said part of the
14 process was how long they held that
15 particular belief; is that correct?

16 A. That's part of the process.

17 Q. I just want to focus on that
18 part. It's a very important part because
19 in coming to granting or denial of an
20 religious accommodation, you as the
21 executive director, one of the factors you
22 considered was how long that individual
23 held that belief?

24 MS. LINNANE: Objection.
25 Counsel is testifying.

1 M. MELOCOWSKY

2 Q. Of the 176 applicants you
3 approved, do you recall what the shortest
4 period of time an individual held the
5 religious belief?

6 A. I don't know why you're
7 focussing on this length of time issue. I
8 tried to explain that if someone were
9 insincere was obvious because if they held
10 the belief for a few days and made the
11 application, that was obvious to me it was
12 insincere. You're trying to put words in
13 my mouth so you could say we had a time
14 constraint on it. You can do that
15 yourself, that's not our belief.

16 Q. You said, "our belief"?

17 A. My belief.

18 MR. WAGNER: We can finish with
19 Exhibit 4 for the moment.

20 MS. LINNANE: We're done with
21 this?

22 MR. WAGNER: Correct. It's
23 part of the case, it's one of our
24 exhibits. I have an extra copy if
25 you want it.

1 M. MELOCOWSKY

2 MS. LINNANE: No, I've got the
3 docket.

4 MR. WAGNER: Are we okay to
5 have that marked as Exhibit 5?

6 MS. LINNANE: Yes.

7 MR. WAGNER: Can you mark this
8 as Exhibit 5?

9 (Whereupon, a document was
10 marked Plaintiff's Exhibit No.5 for
11 identification, as of this date.)

12 Q. I'm going to ask you to take a
13 look at what's been marked as Exhibit 5.
14 Do you recognize that document?

15 MS. LINNANE: Can we mark for
16 the record that the witness is
17 reviewing the document.

18 A. Yep, I recognize it.

19 Q. Is this the first time you've
20 seen that document?

21 A. No.

22 Q. What is that document?

23 A. DCAS EEO policy guidelines.

24 Q. Did you review the DCAS EEO
25 guidelines when you were handling

1 M. MELOCOWSKY

2 individual's religious accomodation request
3 for the Covid-19 vaccine mandate?

4 A. We did.

5 Q. Were those the guidelines you
6 were directed to follow?

7 A. These were the 2021 guidelines.
8 Covid started 2020. Not this specific one.
9 We looked at DCAS policy, but not this
10 specific policy.

11 Q. So you're saying there's a
12 separate and distinct DCAS policy -- you're
13 saying this book did not apply for your
14 review of the Covid-19 vaccine --

15 A. I'm saying there may have been
16 certain changes. I can't guarantee that
17 everything was the same as the 2020
18 version.

19 Q. If we go back to Exhibit 4,
20 what year were you reviewing religious
21 accommodation for the Covid-19 vaccine?

22 A. What year was I reviewing?

23 Q. Religious accommodation
24 requests for the Covid-19 vaccine.

25 A. The 2020 and 2021.

1 M. MELOCOWSKY

2 Q. How many religious
3 accommodation did you review in the year
4 2021?

5 MS. LINNANE: Objection. Asked
6 and answered.

7 Q. Six thousand six hundred
8 seventy six?

9 MS. LINNANE: So we know
10 counsel can do his math. I'm going
11 to help the witness because I feel
12 like he's being badgered.

13 A. I'm trying to make sure not the
14 medical ones were included in this.

15 MS. LINNANE: Counsel is
16 referring to these numbers.

17 A. Yeah, these also include the
18 medical division. That number that you
19 said might not be that accurate because it
20 even says in conjunction with the NYPD
21 medical division, this number includes the
22 medical reasonable accommodations as well,
23 these aren't just are religious.

24 Q. What number was religious?

25 A. I don't know.

1 M. MELOCOWSKY

2 Q. Do you have something that
3 would refresh your recollection?

4 A. By October 27, 2021, we had
5 6,000 accommodation requests for religious
6 reasons.

7 Q. 2021 was the year you referred
8 to, correct?

9 A. By the deadline, yes.

10 Q. So the DCAS book you're looking
11 at is for the year 2021, is that for the
12 individuals in 2021, is that the book you
13 used?

14 A. I don't know if this is the
15 exact, but this document was revised and
16 put out December 31, 2021, which means I
17 don't know how much of this was the exact
18 policy used during 2021, if this was put
19 out the very end of 2021.

20 Q. You testified earlier that it
21 looked familiar to you?

22 A. It does.

23 Q. Do you have a copy of the one
24 that you used when you were determining
25 this process?

1 M. MELOCOWSKY

2 A. No, I don't have a copy of the
3 policy.

4 Q. So then what policy did you use
5 when coming up with the process for
6 determining the reasonable accommodation?

7 A. You asked me if I still have a
8 copy, I don't have a copy. I probably had
9 a copy at the time or a copy on the
10 internet. They post it on their website.

11 Q. Do you know anyone who would
12 have a copy?

13 A. DCAS.

14 Q. Would the deputy commissioner
15 have a copy?

16 MS. LINNANE: Objection. Calls
17 for speculation.

18 Q. I'm going to ask you to turn to
19 page 21.

20 A. Okay.

21 Q. Do you see the paragraph title,
22 "Protected Categories"?

23 A. Yes.

24 Q. You can just read it. Are you
25 familiar with that paragraph, we talked

1 M. MELOCOWSKY

2 earlier about protected categories, I want
3 you to read that paragraph.

4 A. Okay. Okay.

5 Q. Does it list religion or creed
6 as a protected category?

7 A. It lists creed.

8 Q. Within the definition of creed,
9 do you believe that encompasses religion?

10 MS. LINNANE: Objection.

11 A. Yes.

12 Q. Do you believe individuals who
13 apply for religious accommodations were
14 part of the protected categories covered by
15 New York City human rights law?

16 A. Yes.

17 Q. I'm going to ask you to turn to
18 page 30 paragraph 17 titled, "Religion and
19 Creed," do you see that?

20 A. Yes.

21 Q. I'm going to ask you to read
22 the second paragraph into the record.

23 A. "Absent and undue hardship, an
24 agency has a duty to provide a reasonable
25 accommodation for employees for religious

1 M. MELOCOWSKY
2 needs. It must engage in a cooperative
3 dialogue when an applicant or employee have
4 requested a reason accommodation or when
5 the agency has noted that the person may
6 require an accommodation."

7 MS. LINNANE: I would like to
8 note there's a footnote there.

9 Q. Please read the footnote into
10 the record.

11 MS. LINNANE: Objection.
12 Badgering the witness. Lose the tone
13 or we're walking out the door.

14 MR. WAGNER: Now, it's a
15 attitude.

16 A. "New York City Administrative
17 Code Section 8-1073 and 28. New York State
18 Executive Law Section 29610.

19 Q. Are you familiar with either
20 one of those two laws?

21 A. I would have to print it out
22 and look at it.

23 Q. That's fine. In the paragraph
24 that you just read on the record, what does
25 that paragraph mean to you?

1 M. MELOCOWSKY

2 MS. LINNANE: Objection. You
3 could answer.

4 A. We try to collect as much
5 information from the applicant as possible.

6 Q. If the accommodation requested
7 in reading this paragraph, if the
8 accommodation requested is not an undue
9 hardship, what is the duty of the agency?

10 A. We try to as best we can.

11 Q. The accommodation?

12 A. Yes.

13 Q. It's the duty to provide the
14 accommodation if it's not an undue
15 hardship; is that correct?

16 A. Yes.

17 MR. WAGNER: I'm finished with
18 this exhibit.

19 Q. Exhibit 4, I'm going to ask you
20 to take a look at Exhibit 4 and read
21 paragraph 10 into the record.

22 A. "The guidelines clarified that
23 the only allowable accommodation from the
24 vaccine mandate that would not cause undue
25 hardship and/or disruption was weekly

1 M. MELOCOWSKY

2 testing and submission of negative PCR
3 results."

4 Q. Under the paragraph of
5 Exhibit 5 that we just read.

6 A. Yes.

7 Q. Where it said that an agency
8 has to give the accommodation if it's not
9 an undue hardship and if weekly testing is
10 the only accommodation that's an undue
11 hardship, under what circumstance would an
12 applicant who requested weekly testing not
13 be entitled to a religious accommodation?

14 MS. LINNANE: Objection. Calls
15 for speculation.

16 A. You're asking me about a
17 guideline that occurred after this
18 happened. This was put out December 31,
19 2021, you're asking me about cases early in
20 2021.

21 Q. This guidelines was printed for
22 the year 2021.

23 A. Then show me one from 2020.

24 Q. So it's your understanding that
25 the accommodation process was different for

1 M. MELOCOWSKY

2 the year 2020?

3 MS. LINNANE: Objection.

4 Counselling is testifying.

5 Q. I'm just -- we just read a
6 paragraph into the record that said the
7 agency has an obligation to grant the
8 accommodation.

9 A. Yeah.

10 Q. So we all agree an agency has
11 an obligation to grant an accomodation if
12 it's not an undue hardship under DCAS
13 guidelines?

14 MS. LINNANE: Objection.

15 Counsel is testifying.

16 A. As of December 31, 2021.

17 Q. When is your understanding the
18 policy was different?

19 A. I don't know. You're asking me
20 about two different things. You're asking
21 me about something from the end of 2021 and
22 you're asking me something from
23 October 2021.

24 Q. It's my understanding this was
25 for the entire year of 2021. All of it was

1 M. MELOCOWSKY

2 revised on December 31st. This was issued
3 for the year 2021.

4 MS. LINNANE: Objection.

5 Counsel is testifying.

6 Q. When you reviewed DCAS
7 policies, you testified you recognize this?

8 A. I do. They put out the same
9 cover almost every year.

10 Q. It's your position that for the
11 year 2020, that statement is not there?

12 MS. LINNANE: Objection.

13 Counsel is testifying.

14 A. No.

15 Q. You were in charge of the EEO
16 office, you were the executive director for
17 2020, correct?

18 A. Correct.

19 Q. In 2020, if an individual
20 requested a reasonable accommodation that
21 was not an undue hardship on the agency,
22 was that accommodation automatically
23 granted as per DCAS guidelines?

24 A. If it posed an undue hardship,
25 it was granted.

1 M. MELOCOWSKY

2 Q. Let's go back now to the
3 sincerely held belief. Where in the DCAS
4 guidelines, if you know, does it reference
5 a requirement of a belief being sincerely
6 held?

7 A. Off the top of my head, I don't
8 know specifically.

9 Q. Would you be surprised to learn
10 it doesn't reference sincerely held belief
11 at all?

12 MS. LINNANE: Objection.

13 A. I don't know.

14 MR. WAGNER: Let's put this
15 away. We're done with 5 and put 4
16 back. This will be marked as Exhibit
17 6.

18 (Whereupon, a document was
19 marked Plaintiff's Exhibit No.6 for
20 identification, as of this date.)

21 MS. LINNANE: Does this have a
22 docket number? It looks like it's
23 cut off.

24 MR. WAGNER: Let me see -- it's
25 from this case from Mr. Melocowsky's

1 M. MELOCOWSKY

2 case.

3 MS. LINNANE: I understand.

4 MR. WAGNER: My print out
5 doesn't have the docket number. It's
6 how it was uploaded.

7 MS. LINNANE: You're marking
8 this as what number?

9 MR. WAGNER: Exhibit 6.

10 Q. I'm going to ask you, Mr.
11 Melocowsky, to take a look at what's been
12 marked as Plaintiff's Exhibit 6.

13 A. Okay.

14 Q. Do you recognize this document?
15 Take a look at it, feel free.

16 A. Okay.

17 Q. Do you recognize this document?

18 A. It looks like the DCAS
19 reasonable accommodation guidelines.

20 Q. Have you ever had the
21 opportunity to review this before?

22 A. I have.

23 Q. Are you familiar with it?

24 A. I am.

25 Q. Did you use this guideline in

1 M. MELOCOWSKY
2 determining the religious accommodation
3 process from the Covid-19 vaccine for NYPD
4 officers?

5 A. Specifically this one? No, not
6 related to the ones that you were just
7 talking about.

8 Q. You didn't review this
9 guidelines?

10 A. This specific guideline that
11 you just handed me is also dated
12 December 31, 2021. All the cases you were
13 just asking me about were up to October 27,
14 2021.

15 Q. So you're saying you had a
16 different guideline than the one I've
17 presented to you?

18 MS. LINNANE: Objection to
19 form.

20 A. I'm saying you asked me if this
21 was the same one we used for that, it's
22 not. There may be small changes.

23 Q. Are you familiar with that
24 changes?

25 A. I don't know what changes they

1 M. MELOCOWSKY

2 made specifically.

3 Q. Do you have a copy of the one
4 that you used in determining the religious
5 accommodation process?

6 A. I do not.

7 Q. Let's take a look. Let's see
8 if anything has been changed. If you want
9 to go to page 9.

10 A. Okay.

11 Q. It's Title B, Religion, why
12 don't you tell me if the definition of
13 religion has changed.

14 MS. LINNANE: Objection to that
15 question. Calls for speculation.

16 Q. Mr. Melocowsky, you have
17 reviewed the previous one that you say
18 exists, correct?

19 A. Yes.

20 Q. I'm asking you based on the
21 previous one you reviewed when you're
22 referring to the definition of religion if
23 that's a different definition? If you
24 don't know, that's fine.

25 A. It looks extremely similar. I

1 M. MELOCOWSKY

2 can't tell you if it's exact the same. I
3 don't know if certain words have been
4 changed or not, it looks similar.

5 Q. Is that the definition that you
6 use when you're considering religion?

7 A. Yes.

8 MS. LINNANE: For the record, I
9 want to have it on the record that
10 the witness is testifying as to his
11 belief about what that is, not to his
12 recollection of how RA requests were
13 reviewed.

14 Q. Did you use a similar
15 definition of religion when reviewing RA
16 requests?

17 A. It looks similar. I can't tell
18 you if it is.

19 Q. Did your department have its
20 own definition of religion when reviewing
21 RA requests?

22 A. We followed the DCAS
23 definition.

24 Q. Is there a footnote attached to
25 that DCAS definition of that definition?

1 M. MELOCOWSKY

2 A. There is.

3 Q. Would you first read the
4 definition of religion into the record and
5 then read the footnote into the record.

6 A. "Religion is broadly defined as
7 an individual sincerely held religious
8 belief or practice of their religion
9 including all aspects of religious
10 observant, practice and belief." The
11 footnote says, "Religious beliefs include
12 those that include and believe in God as
13 well as nontheistic or ethical beliefs as
14 to what is right and wrong, which are
15 sincerely held with the strength of
16 religious views. Equal employment
17 commission EEOCVG2021-3 Section 12.
18 Religious discrimination 2021. Available
19 at Section 12, religious discrimination
20 U.S.
21 equal employment opportunity commission EEOC.
22 GOV.

23 MS. LINNANE: Let it reflect in
24 the record there are several
25 paragraphs that have not been read

1 M. MELOCOWSKY

2 into the record.

3 MR. WAGNER: When you question
4 the witness Ms. Linnane, you can have
5 him read them into the record.

6 MS. LINNANE: I thank you for
7 your consent.

8 Q. In reading this definition of
9 religion under New York City human rights
10 law, is it your understanding that moral or
11 ethical beliefs are protected beliefs and
12 are entitled to an accommodation?

13 A. In general, yes.

14 Q. Thank you. I'm going to ask
15 you to turn to page 14. I'm going to ask
16 you to read to yourself the paragraph A
17 called "Cooperative Dialogue"?

18 A. Okay.

19 Q. I'm going to ask you to read
20 the first paragraph of cooperative dialogue
21 into the record.

22 A. "The cooperative dialogue
23 refers to the process by which the agency
24 and an individual who may be entitled to an
25 accommodation engage in good faith, a

1 M. MELOCOWSKY
2 written or oral dialogue concerning the
3 person's accommodation needs, potential
4 accommodations, the difficulties that the
5 potential accommodations may pose for the
6 agency, an alternative accommodations. The
7 objective is to determine the appropriate
8 reasonable accommodation."

9 Q. There's a footnote, could you
10 read footnote 9 into the record?

11 A. "See the definition of
12 cooperative dialogue in New York City
13 Administrative Code Section 8-102.

14 Q. Is it fair to say that
15 cooperative dialogue is defined by the law?

16 A. Yes.

17 Q. The last sentence of that
18 paragraph you just read, as executive
19 director of the EEO division what does that
20 sentence mean to you?

21 A. Cooperative dialogue is part of
22 the process to determine what an reasonable
23 accommodation could be.

24 Q. What was the objective of the
25 cooperative dialogue?

1 M. MELOCOWSKY

2 A. To understand the person's
3 request and belief.

4 Q. Where in this paragraph does it
5 say the objective of the cooperative
6 dialogue has anything to do with the
7 individual's believe?

8 A. Excuse me? Cooperative
9 dialogue is part of the process.

10 Q. Read the last sentence into the
11 record of that first paragraph.

12 A. "The object of cooperative
13 dialogue is to determine the appropriate
14 reasonable accommodation."

15 Q. That's a sentence end, that's a
16 period, correct?

17 MS. LINNANE: Objection.

18 Q. Is there any other objective of
19 the cooperative dialogue besides
20 determining the appropriate reasonable
21 accommodation?

22 MS. LINNANE: Objection.

23 A. You're reading that in a small
24 section. You have to read that in the
25 context of the rest of this.

1 M. MELOCOWSKY

2 Q. Let's go to the third
3 paragraph.

4 A. Okay.

5 Q. Read the third paragraph into
6 the record.

7 A. "The cooperative dialogue is
8 critical. Failure to engage in the
9 cooperative dialogue within a reasonable
10 time with a person who has requested an
11 accommodation or with a person who the
12 agency has noticed may require an
13 accommodation is a violation of law."

14 Q. Is the cooperative dialogue
15 subjective to you as the executive
16 director?

17 A. I don't understand what you
18 mean.

19 Q. Do you get to choose who
20 receives a cooperative dialogue and who
21 does not?

22 A. People applying have the right
23 to everybody that applies to engage in a
24 cooperative dialogue.

25 Q. Whose responsibility is it to

1 M. MELOCOWSKY

2 engage in the cooperative dialogue?

3 A. All the parties.

4 Q. Does the employer have a legal
5 responsibility to engage an employee in a
6 cooperative dialogue upon learning of a
7 potential reasonable accommodation request?

8 A. As best as they can. Sometimes
9 the other person doesn't engage in the
10 cooperative dialogue. They don't respond
11 back sometimes. Circumstances don't permit
12 to engage in a cooperative dialogue, it
13 depends on what you're can talking about.

14 Q. Covid-19 vaccine for the 6,676
15 applications you reviewed, were each of
16 them engaged in the cooperative dialogue?

17 A. It just says here, it says a
18 written or oral dialogue, everybody had the
19 right to submit a statement, that was part
20 of the dialogue. People also had the right
21 to call me and I did and explained to them
22 what might help them in an appeal, that's
23 part of the cooperative dialogue. People
24 have their right to engage in a cooperative
25 dialogue.

1 M. MELOCOWSKY

2 Q. Again, if we go back to the
3 first paragraph, the purpose of the
4 cooperative dialogue is to discuss the
5 accommodation process or the individual's
6 religious belief?

7 MS. LINNANE: Objection to the
8 form of the question.

9 Q. Is it your understanding the
10 cooperative dialogue was supposed to
11 discuss the accommodation process or the
12 individual's religious belief?

13 MS. LINNANE: Counsel is asking
14 the witness to testify as to his
15 understanding as compared to the
16 process.

17 MR. WAGNER: The witness was
18 the head person executive director in
19 charge of the entire process. I am
20 asking the witness to testify as to
21 the process, that is absolutely
22 correct.

23 Q. In reference to the process,
24 the cooperative dialogue, was it about the
25 religious belief of the applicant or was it

1 M. MELOCOWSKY

2 about the accommodation process?

3 A. The whole process was to
4 determine what the person was requesting
5 and why they were requesting it, they're
6 intertwined.

7 Q. When it came to Covid-19, what
8 was the primary request of the applicant?

9 A. It depends on what kind of
10 application you're talking about.

11 Q. A religious accommodation.

12 A. A religious accommodation
13 usually blends to why they did not want to
14 get the vaccine.

15 Q. Once you determined an
16 individual did not want to receive a
17 vaccine, did you request what accommodation
18 they were seeking?

19 A. The request was not to get the
20 vaccine.

21 Q. What was the accommodation you,
22 as the employer, could have provided to the
23 police officer?

24 A. They could have been granted an
25 exemption to not get the vaccine.

1 M. MELOCOWSKY

2 Q. What would the accommodation
3 have been, weekly tested?

4 MS. LINNANE: Objection.

5 Counsel is testifying.

6 Q. I'm trying to understanding
7 what accommodation was feasible and could
8 be granted to a police officer who wanted
9 an exemption for religious purposes from
10 the Covid-19 vaccine?

11 A. They could be granted an
12 exemption, but had to submit weekly testing
13 to ensure they could come to work and not
14 get people sick.

15 Q. So the weekly testing was an
16 acceptable accommodation that did not cause
17 an undue hardship on the employer; is that
18 correct?

19 MS. LINNANE: Objection.

20 Counsel is testifying. Ask a
21 question Jimmy.

22 MR. WAGNER: Let's go to
23 Exhibit 4.

24 MS. LINNANE: It's 12:04.

25 MR. WAGNER: We'll have to

1 M. MELOCOWSKY

2 schedule a second day.

3 MS. LINNANE: And it will be
4 virtual.

5 MR. WAGNER: I'm not doing
6 virtual.

7 MS. LINNANE: We'll take it up
8 with the judge.

9 MR. WAGNER: There's no legal
10 requirement. I don't do anything
11 virtually.

12 Q. I'm going to ask you to read
13 from your affidavit, that's been marked,
14 paragraph 10 of your affidavit of Exhibit 4
15 into the record.

16 A. "The guidelines clarify that
17 the only allowable accomodation from the
18 vaccine mandate that would not cause undue
19 hardship and/or disruption was weekly
20 testing and negative PCR results."

21 Q. What accomodation existed for
22 the police officers that did not cause an
23 undue hardship on the City of New York?

24 A. That was the only accommodation
25 right now that we saw that would not cause

1 M. MELOCOWSKY

2 a direct threat to the department.

3 Q. Under the DCAS guidelines we
4 just read, anyone who requested an
5 accommodation of weekly testing, why was
6 there an opportunity and why were they not
7 granted to that applicant?

8 MS. LINNANE: Objection. Calls
9 for speculation.

10 A. Can you ask the question again?

11 Q. Under the DCAS guidelines,
12 procedures we just read, it says an agency
13 must grant an accommodation that is not an
14 undue hardship, you testified in previous
15 court cases the only accommodation --

16 A. Which court case are you
17 talking about?

18 Q. We can read this caption into
19 the record, The PBA v. Bill DeBlasio et al.
20 Index number 16074 of 2021, you affirmed in
21 this affidavit under personalities of
22 perjury that an NYPD only accommodation was
23 weekly testing.

24 A. No, that's a result of the
25 accommodation. Weekly testing is not an

1 M. MELOCOWSKY

2 accommodation.

3 Q. What is weekly testing then?

4 A. It's a result of the

5 accomodation.

6 Q. So it's your understanding that
7 the weekly testing is not an accommodation?

8 A. That's not what I said.

9 Q. What are you saying then, sir?

10 A. I'm saying that if you were
11 granted a reasonable accommodation to not
12 get the vaccine, then you would have to
13 submit to weekly testing.

14 Q. I would like you to read
15 paragraph 10 again.

16 A. Okay.

17 Q. You testified earlier you
18 drafted this affidavit, you prepared this
19 for yourself, no one else did it for you;
20 is that correct?

21 MS. LINNANE: Objection.

22 Counsel is testifying.

23 Q. Did you in fact prepare this
24 affidavit?

25 A. I prepared this affidavit.

1 M. MELOCOWSKY

2 Q. Let's read paragraph 10 again.
3 Read that into the record.

4 A. "The guidelines clarify that
5 the only allowable for the vaccine mandate
6 would not cause undue hardship and/or
7 disruption was weekly testing and
8 submission of negative PCR results."

9 Q. So when you say the only
10 allowable accommodation, what are you
11 referring to with weekly testing and
12 negative PCR test results; is that correct?

13 A. If we're talking about granting
14 someone an accommodation, we had to ensure
15 they weren't coming into work and getting
16 people sick based on what we knew of
17 Covid-19 at the time.

18 Q. You drafted this affidavit, you
19 said the reasonable accommodation that you
20 could grant to people was weekly testing,
21 that is the accommodation drafted in your
22 affidavit sworn to under personalities of
23 perjury; is that correct?

24 A. Yes, if they did not receive a
25 vaccine.

1 M. MELOCOWSKY

2 Q. And an accommodation that was
3 granted would be weekly testing?

4 MS. LINNANE: Objection that
5 wasn't a question.

6 A. It wasn't a question.

7 MR. WAGNER: The witness tried
8 to state that the weekly testing
9 wasn't an accommodation.

10 MS. LINNANE: Objection as to
11 what counsel is testifying to.

12 Q. Let's go to the Exhibit 6
13 page 18. Paragraph B.

14 A. Okay.

15 Q. I'm going to ask you to read
16 the second -- you can read the first three
17 sentences into the record, please.

18 A. "Religion is defined broadly
19 and protects beliefs and practices that may
20 be unfamiliar. Accordingly, the agencies
21 generally do not question a request for
22 religious accommodation is based on a
23 sincerely held belief."

24 Q. Continue reading, sir.

25 A. "However, if the agency has

1 M. MELOCOWSKY
2 genuine reason to doubt that the belief
3 qualifies as religious as defined above in
4 Section 2B protected basis defined or
5 sincerely held, for example, their request
6 engages in conduct that is inconsistent
7 with the belief or practice, the agency may
8 make a limited inquiry including asking for
9 supported documentation."

10 Q. So under DCAS's own rules,
11 should an agency question whether an
12 individual's beliefs are sincerely held?

13 A. If we have a reason to doubt
14 it.

15 Q. You had 6,676 religious
16 applications, you questioned every single
17 one of those religious applications in a
18 sincerely held beliefs?

19 MS. LINNANE: Objection to the
20 form of the question.

21 Q. Is that a fair statement?

22 A. Are you asking if I reviewed
23 them?

24 Q. Did you question the sincerity
25 of all 6,676 sincerely held religious

1 M. MELOCOWSKY

2 beliefs?

3 A. That was part of the process.

4 Q. Do the guidelines request

5 whether a religious applicant has a

6 sincerely held belief or not?

7 A. If I had a reason to doubt that

8 religious belief qualifies as religious or

9 if it's relevant to what they're asking.

10 Q. Did the NYPD change the

11 religious accommodation form explicitly for

12 Covid-19 vaccine?

13 A. Yes.

14 Q. Who changed that form?

15 A. I don't know.

16 Q. Were you involved with the

17 creation of the new form?

18 A. I was on phone calls for it,

19 yes.

20 Q. Who else was on those phone

21 calls?

22 A. I don't remember.

23 Q. Was the commissioner on those

24 phone calls?

25 A. I don't know.

1 M. MELOCOWSKY

2 Q. Was the mayor on the phone
3 call?

4 A. I don't remember the mayor.

5 Q. Was anyone from the mayor's
6 office on the phone call?

7 A. I don't remember.

8 Q. Do you remember ever talking to
9 anyone from the mayor's office?

10 A. I don't remember.

11 Q. Do you remember any politician
12 being on the phone call?

13 A. I don't remember.

14 Q. Do you remember if any judge
15 was on the phone call?

16 A. I don't remember any judge
17 being on the phone call.

18 Q. Do you remember anyone from the
19 courts ever being on the phone call?

20 A. No.

21 Q. Do you remember when this phone
22 call happened?

23 A. No.

24 Q. Was it a Zoom call?

25 A. I don't remember.

1 M. MELOCOWSKY

2 Q. How was the phone call set up?

3 A. I don't know.

4 Q. Was it set up via e-mail?

5 MS. LINNANE: Objection. Asked

6 and answered.

7 Q. Was it set up via text?

8 MS. LINNANE: Objection. Asked

9 and answered.

10 A. I don't know.

11 Q. Do you have anything that would

12 refresh your recollection?

13 A. No.

14 Q. Do you have any documents

15 reflecting the change in the religious

16 accommodation form that was given to the

17 NYPD officers explicitly for the Covid-19

18 vaccine?

19 A. No.

20 Q. You have no documents of any

21 type?

22 A. No.

23 Q. Were you ever given the new

24 form that was to be used?

25 A. At some point, I mean, I

1 M. MELOCOWSKY

2 remember seeing it.

3 Q. Do you remember how you saw it?

4 A. No.

5 Q. Did you see it in person?

6 A. I don't remember.

7 Q. Did you see it in e-mail?

8 A. I don't remember.

9 Q. Did you ever do a comparison of
10 the old form to the new form?

11 A. The old form to the new form?

12 Q. The old religious accommodation
13 form to the explicitly created religious
14 accommodation form for the Covid-19?

15 A. I don't remember.

16 Q. Do you have a copy of that form
17 anywhere?

18 A. No.

19 Q. Do you know where you could get
20 it?

21 A. No.

22 Q. Do you recall ever seeing it?

23 A. I remember seeing it three
24 years ago or two years ago.

25 MR. WAGNER: You want to end

1 M. MELOCOWSKY
2 today's deposition right now? Is it
3 a good time?

4 MS. LINNANE: We have three
5 more minutes or if you're at a good
6 point.

7 MR. WAGNER: I think it's a
8 good point to stop.

9 (Whereupon, the examination of
10 this witness was concluded at
11 12:12 P.M.)

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1 A C K N O W L E D G M E N T

2 STATE OF NEW YORK)

3) ss.:

4 COUNTY OF)

5

6 I, MICHAEL MELOCOWSKY, hereby certify
7 that I have read the transcript of my
8 testimony taken under oath in my deposition
9 of September 28, 2023; that the transcript
10 is a true, complete and correct record of
11 what was asked, answered and said during
12 this deposition, and that the answers on
13 the record as given by me are true and
14 correct.

15

16

17 _____
MICHAEL MELOCOWSKY

18

19 Subscribed and sworn to
before me this _____ day
of _____, 2023.

20

21 _____
NOTARY PUBLIC

22

23

24

25

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1 C E R T I F I C A T I O N

2

3 I, VICTORIA SCRO, a Notary Public of
4 the State of New York do hereby certify:

5 That the testimony in the within
6 proceeding was held before me at the
7 aforesaid time and place.

8 That said witness was duly sworn
9 before the commencement of the testimony,
10 and that the testimony was taken
11 stenographically by me, then transcribed
12 under my supervisor, and that the within
13 transcript is a true record of the
14 testimony of said witness.

15 I further certify that I am not
16 related to any of the parties to this
17 action by blood or marriage, that I am not
18 interested directly or indirectly in the
19 matter in controversy, nor am I in the
20 employ of any of the counsel.

21 IN WITNESS WHEREOF, I have hereunto
22 set my hand this 6th day of October, 2023.

23

24

25

VICTORIA SCRO

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