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IN THE MATTER OF INDEPENDENT  
INVESTIGATION UNDER EXECUTIVE  
LAW 63(8)  
-----X

VIRTUAL ZOOM INVESTIGATION

June 10, 2021

4:00 p.m.

TESTIMONY OF WITNESS 6/10/2021,  
remotely held at the above time and place,  
taken before Melissa Gilmore, a Stenographic  
Reporter and Notary Public of the State of New  
York, pursuant to stipulations between Counsel.

Job No. NY4626001

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

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A P P E A R A N C E S: (Cont'd)  
TALKIN, MUCCIGROSSO & ROBERTS LLP  
Attorneys for WITNESS 6/20/2021  
40 Exchange Place, 18th Floor  
New York, New York 10005  
BY: DENIS PATRICK KELLEHER, ESQ.  
E-MAIL dkelleher@talkinlaw.com

ALSO PRESENT:  
JOE RAGUSO, Videographer

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P R O C E E D I N G S

THE VIDEOGRAPHER: Good afternoon.  
We are on the record at 4 p.m. Eastern  
Time. Audio and video recording will  
continue to take place unless all parties  
agree to go off the record.

This is media unit 1 of the video  
recorded interview of Witness June 10,  
2021, being taken by counsel here for the  
matter of Independent Investigation Under  
New York Executive Law Section 63(8).

This deposition is being held via  
video conference. My name is Joe Raguso  
from Veritext, and I'm the videographer.  
The court reporter is Melissa Gilmore from  
Veritext.

Melissa will now swear in the  
witness.

W I T N E S S      6/10/2021,      called as a  
witness, having been duly placed under  
oath by a Notary Public, was examined and  
testified as follows:

EXAMINATION BY

BY MS. CLARK:

1 WITNESS 6/10/2021

2 Q. Okay. WITNESS 6/10/2021, welcome  
3 back.

4 A. Thank you.

5 Q. Thanks for making time for us again.

6 As with the first day, you are under  
7 oath and all the rules that we went over the  
8 first day still apply. I won't go through all  
9 of that again.

10 I will just ask, is there any reason  
11 you can't testify accurately and truthfully  
12 today?

13 A. No.

14 Q. And I just want to confirm that the  
15 only person in the room with you is your  
16 counsel; is that correct?

17 A. Correct.

18 Q. And have you spoken to anyone other  
19 than counsel about our prior session on May 5?

20 A. I have not, no.

21 Q. So the first time we met, you were  
22 describing a conversation you had with Melissa  
23 DeRosa before you had the phone call with  
24 Kaitlin [REDACTED] that you recorded. And you said  
25 after the phone call started with Ms. DeRosa,

1 WITNESS 6/10/2021

2 she dialed in Alphonso David.

3 So once Alphonso David was dialed  
4 in, can you describe, in as much detail as you  
5 can, what each of the three of you said in that  
6 call?

7 A. Sure. Alphonso joined the  
8 conversation. He said that I should ask  
9 leading questions, and he told me to say  
10 basically, you know, working for Andrew Cuomo  
11 is a tough place to work, but I've never seen  
12 anything like sexual harassment.

13 Q. Were there any other statements he  
14 told you to use or to try to get Kaitlin to  
15 agree to?

16 A. No. I believe we went over what  
17 Melissa had told me to say and that was also  
18 discussed I believe, but other than that, no.

19 Q. And what was it that you went over  
20 that Ms. DeRosa had told you to say?

21 A. Just say that the tweets were being  
22 circulated amongst reporters and that was the  
23 reason that I was reaching out.

24 Q. And did Mr. David say why he wanted  
25 you to make statements such as this was a

1 WITNESS 6/10/2021

2 difficult work environment, but I didn't see  
3 any sexual harassment?

4 A. No.

5 Q. Was there any discussion about  
6 what -- let me start over.

7 Was there any discussion about what  
8 use might be made of the recording if Kaitlin  
9 agreed with you that it was a tough  
10 environment, but there wasn't sexual  
11 harassment?

12 A. No.

13 Q. Did Mr. David have any discussion  
14 with you about what the legal standards were  
15 for sexual harassment?

16 A. No.

17 Q. Was there any discussion on the call  
18 about the legality of tape recording a phone  
19 call?

20 A. No, but my understanding was that  
21 Melissa and Alphonso had had that conversation  
22 and decided it was okay to tape record the  
23 conversation.

24 Q. What was your understanding based  
25 on?

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WITNESS 6/10/2021

MR. KELLEHER: I'm sorry. She said their understanding.

Q. What was your understanding of what their understanding was based on?

MR. KELLEHER: Okay.

A. Melissa had checked with Alphonso about doing that.

Q. And did she tell you that?

A. I believe so, yes.

Q. Did she tell you whether there was any discussion about where [redacted] Kaitlin was located when you would be speaking with her?

A. No.

Q. Did they suggest to you that you find out where [redacted] Kaitlin was located when you were speaking to her?

A. They did not.

Q. Was it your understanding you were calling her on her cell phone?

A. Correct.

Q. Did you ask [redacted] Kaitlin where she was?

A. I did not.

Q. Do you know where [redacted] Kaitlin was?

A. She was in New York is my



1 WITNESS 6/10/2021

2 understanding.

3 Q. And what's your understanding based  
4 on that she was in New York?

5 A. It's based on my cell phone records.

6 Q. And what about your cell phone  
7 records leads you to believe that she was in  
8 New York?

9 A. Going over them, I believe she was  
10 in New York.

11 Q. Did you have any discussion with  
12 either Ms. DeRosa or Mr. David or the two of  
13 them together about whether it made a  
14 difference where **Kaitlin** was when you spoke  
15 to her on the call as to whether or not --

16 A. I did not. I did not.

17 Q. You said that Mr. David said that  
18 you should use leading --

19 MS. KENNEDY PARK: May I ask a  
20 question?

21 MS. CLARK: Absolutely.

22 MS. KENNEDY PARK: Thank you.

23 You said it was based on your cell  
24 phone records. Is that because the number  
25 you called **Kaitlin** at, her cell phone

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WITNESS 6/10/2021

was a New York cell phone number?

THE WITNESS: Yes, but I have also gone over my cell phone records.

MS. KENNEDY PARK: And so what is it on your cell phone records that makes you think that [REDACTED] Kaitlin [REDACTED] was in the State of New York when you reached her?

THE WITNESS: I'd have to speak with my counsel and get back to you.

MR. KELLEHER: Just give me one second.

MS. KENNEDY PARK: Sure.

(Discussion off the record.)

THE WITNESS: My cell phone records show that she was in [REDACTED] New York, and I also believed her to be in New York because she worked for a New York State agency.

MS. KENNEDY PARK: So your cell phone records reflect that her number was a number from [REDACTED] New York; is that right?

THE WITNESS: Yes, but, again, I believe they also show that that number

1 WITNESS 6/10/2021

2 was in New York at the time the call was  
3 made.

4 RQ MS. KENNEDY PARK: We would request  
5 that you produce the cell phone records.

6 THE WITNESS: Okay.

7 MR. KELLEHER: We can discuss that  
8 later -- Jennifer, we can discuss that  
9 later, but I don't think that should be a  
10 problem.

11 MS. KENNEDY PARK: Okay. Thank you.

12 BY MS. CLARK:

13 Q. You said that Mr. David suggested  
14 you make leading statements or ask leading  
15 questions.

16 Were there any other topics he  
17 suggested that you cover other than trying to  
18 get **Kaitlin** to agree that there hadn't been  
19 any sexual harassment?

20 A. Not that I can recall. I would just  
21 like to state that, during that conversation, I  
22 was unaware that Mr. David was asking me to get  
23 Kaitlin to agree to -- that she hadn't seen any  
24 sexual harassment.

25 Q. But he did say -- make statements

1 WITNESS 6/10/2021

2 like, it was a tough work environment, but  
3 there wasn't any sexual harassment, things like  
4 that?

5 A. He said it was a tough place to  
6 work, but I didn't see anything like sexual  
7 harassment.

8 Q. Were there any topics other than  
9 sexual harassment that Mr. David suggested that  
10 you ask questions about or make statements  
11 about to [REDACTED] Kaitlin ?

12 A. He had just said to me to ask  
13 open-ended questions, and I can't really recall  
14 anything beyond that.

15 Q. What open-ended questions did he  
16 tell you to ask?

17 A. Such as keep questions open ended or  
18 the conversation open ended.

19 Q. Did Mr. David suggest that you check  
20 back in with him after you have the  
21 conversation with [REDACTED] Kaitlin ?

22 A. He did not, no.

23 Q. Did you have any conversations with  
24 Mr. David on any other occasions relating to

25 [REDACTED] Kaitlin ?

1 WITNESS 6/10/2021

2 A. I did not.

3 Q. Did Ms. DeRosa tell you anything  
4 about any conversations she had with Mr. David  
5 other than that they had agreed it was not  
6 illegal to record?

7 A. She just said that she had checked  
8 with Alphonso about the phone call and it was  
9 okay.

10 Q. Did she tell you anything about any  
11 conversations she and Mr. David had about why  
12 they wanted you to record the conversation?

13 A. They did not.

14 Q. Did she convey to you anything that  
15 she and Mr. David discussed about what they  
16 tended to do with any recording that you  
17 obtained?

18 A. They did not.

19 MS. CLARK: Jenn?

20 MS. KENNEDY PARK: How long was the  
21 call with Mr. David?

22 MR. KELLEHER: I'm sorry. I didn't  
23 hear that.

24 Could you repeat that, Jennifer, or  
25 have the reporter read it back?

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WITNESS 6/10/2021

MS. KENNEDY PARK: Sure. How long was the call with Mr. David?

THE WITNESS: I think it was a few minutes.

MS. KENNEDY PARK: A few meaning two or more?

THE WITNESS: More than two minutes. Probably like five minutes or so.

MS. KENNEDY PARK: So in those five minutes, the only thing you remember Mr. David saying was, ask open-ended questions and ask her the question about I saw a lot but didn't see anything like sexual harassment. That's all you remember?

THE WITNESS: So I can't recall if Melissa was on the phone and then conferenced Alphonso in. I believe that's what happened.

So, yeah, it was a few-minute conversation with Alphonso and that's what I can remember of the conversation.

MS. KENNEDY PARK: Did you take any notes of the conversation?

1 WITNESS 6/10/2021

2 THE WITNESS: I did not, no.

3 MS. KENNEDY PARK: Did you send any  
4 e-mails or text message to anybody about  
5 that conversation?

6 THE WITNESS: No.

7 MS. KENNEDY PARK: Thanks, Anne.

8 BY MS. CLARK:

9 Q. Did you tell anyone about what was  
10 discussed in that conversation?

11 A. I told my husband, yeah.

12 Q. Anyone other than your husband?

13 MR. KELLEHER: Anne, I'm assuming  
14 besides the people that she has already  
15 testified that she told about the  
16 conversation.

17 Q. Not the conversation with [REDACTED] Kaitlin  
18 The conversation with Mr. David and Ms. DeRosa.

19 A. My [REDACTED] and [REDACTED], an MTA  
20 lawyer.

21 Q. And were you speaking to [REDACTED]  
22 for legal advice?

23 A. Yes.

24 MS. CLARK: Is your counsel going to  
25 assert privilege over that conversation?

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WITNESS 6/10/2021

MR. KELLEHER: Yes.

MS. CLARK: Anything else, Jenn?  
Hyatt?

MS. KENNEDY PARK: I guess, when they, Mr. David or Ms. DeRosa, expressed to you or you came to understand that it was okay, from their perspective, for you to record the call, did you talk to anyone else about that issue, the issue of whether you could legally record the call?

THE WITNESS: I did not, no.

MS. KENNEDY PARK: And if you found out it turns out [REDACTED] Kaitlin was not in the State of New York when you made that call, would that change your view as to whether the call was appropriate -- recording the call was appropriate?

MR. KELLEHER: You know, we're not going to --

THE WITNESS: It's seems hypothetical, so...

MR. KELLEHER: Yeah. And if you want to go off the record, we can have this conversation.



1 WITNESS 6/10/2021

2 I mean, you're getting into an area  
3 here -- unless you're going to proffer to  
4 me that you know for a fact that she was  
5 not in New York that -- we're not going to  
6 go down this road.

7 MS. KENNEDY PARK: Okay. [REDACTED] Kaitlin  
8 was not in New York when you made that  
9 phone call.

10 Does that change your view on  
11 whether that call was appropriate to make  
12 and record?

13 THE WITNESS: I'm sorry. Can you  
14 repeat what you just said?

15 MS. KENNEDY PARK: [REDACTED] Kaitlin was not  
16 in the State of New York when you recorded  
17 the phone call with her.

18 Does that change your view on  
19 whether it was appropriate for you to  
20 record the call?

21 THE WITNESS: No.

22 MS. KENNEDY PARK: Why not?

23 THE WITNESS: I was given legal  
24 advice.

25 I can't tell if you're making a

1 WITNESS 6/10/2021

2 statement that she was not in New York.

3 Is that what you're saying?

4 MS. KENNEDY PARK: I'm proffering to  
5 you that [REDACTED] Kaitlin was not in the State of  
6 New York.

7 MR. KELLEHER: Are you proffering  
8 that she was in a state that required  
9 two-party consent?

10 MS. KENNEDY PARK: I'm asking the  
11 witness, does that change your view on  
12 whether it was appropriate for you to  
13 record that conversation?

14 MR. KELLEHER: I think she asked and  
15 answered that question already.

16 MS. KENNEDY PARK: Did you  
17 understand that the legal advice that you  
18 were being given by Mr. David was based on  
19 [REDACTED] Kaitlin 's location and assumptions about  
20 where she was located?

21 THE WITNESS: I don't know.

22 MS. KENNEDY PARK: Thanks, Anne.

23 MS. CLARK: Okay. I don't think I  
24 have anything else.

25 Do you, Jenn or Hyatt?

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WITNESS 6/10/2021

Okay. Thank you, WITNESS 6/10/2021.  
I'm sorry that there was a dispute with  
the other parties that required us to do  
this in two pieces, but thank you for  
making the time for us today.

THE WITNESS: Sure. Thank you.  
Bye.

MR. KELLEHER: Jennifer, we can talk  
some more about the cell phone record,  
okay?

MS. KENNEDY PARK: Yep. Why don't  
you just give us a call when you want to  
talk about the cell phone records.

MR. KELLEHER: Okay. Thanks very  
much.

THE VIDEOGRAPHER: We are off the  
record at 4:15 p.m. Eastern Time and this  
concludes today's testimony.

(Timed noted: 4:15 p.m.)

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C E R T I F I C A T E

STATE OF NEW YORK )

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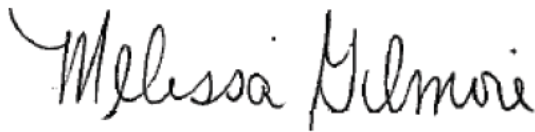
COUNTY OF RICHMOND)

I, MELISSA GILMORE, a Notary Public within and for the State of New York, do hereby certify:

That WITNESS 6/10/2021, the witness whose deposition is hereinbefore set forth, was duly placed under oath by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of June, 2021.



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MELISSA GILMORE