

Exhibit "16"

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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CITY OF NEW ROCHELLE,

Plaintiff,

-against-

Index No: 54190/2016

FLAVIO LA ROCCA, MARIA LA ROCCA, FLAVIO LA
ROCCA & SONS, INC. a.k.a. F. LAROCCA &
SONS INC and FMLR REALTY MANAGEMENT LLC,
Defendants.

- - - - -x

1133 Westchester Avenue
White Plains, New York

July 8, 2021
11:32 a.m.

DEPOSITION of BERNARDO F. RIVERA, a
NON-PARTY WITNESS in the above-entitled
action, held at the above time and place,
taken before Helen Wandzilak, a Notary
Public of the State of New York, pursuant
to Subpoena and stipulations between
Counsel.

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APPEARANCES:

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BY: KATHERINE ZALANTIS, ESQ.

ALSO PRESENT (VIA ZOOM VIDEOCONFERENCE):

Flavio La Rocca

Maria La Rocca

* * *

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STIPULATIONS

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IT IS HEREBY STIPULATED, by and among
the attorneys for the respective parties
hereto, that:

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All rights provided by the C.P.L.R.,
and Part 221 of the Uniform Rules for the
Conduct of Depositions, including the
right to object to any question, except as
to form, or to move to strike any
testimony at this examination is reserved;
and in addition, the failure to object to
any question or to move to strike any
testimony at this examination shall not be
a bar or waiver to make such motion at,
and is reserved to, the trial of this
action.

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This deposition may be sworn to by the
witness being examined before a Notary
Public other than the Notary Public before
whom this examination was begun, but the
failure to do so or to return the original
of this deposition to counsel, shall not
be deemed a waiver of the rights provided
by Rule 3116, C.P.L.R., and shall be

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controlled thereby.

The filing of the original of this deposition is waived.

IT IS FURTHER STIPULATED, a copy of this examination shall be furnished to the attorney for the witness being examined without charge.

* * *

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B E R N A R D O F. R I V E R A ,

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having been first duly sworn/affirmed by a

4

Notary Public of the State of New York,

5

upon being examined, testified as follows:

6

EXAMINATION BY MR. MEISELS:

7

Q What is your name?

8

A Bernardo F. Rivera.

9

Q What is your address?

10

A 274 Clove Road, New Rochelle,

11

New York 10804.

12

Q Mr. Rivera, thank you for

13

showing up today and being so patient.

14

My name is Peter Meisels.

15

[Discussion held off the

16

record.]

17

Q Mr. Rivera, my name is Peter

18

Meisels. We represent the City of New

19

Rochelle in a lawsuit which you have

20

nothing to do with.

21

We subpoenaed your testimony as

22

what they call a "non-party witness".

23

That means somebody who may have

24

information but is not a party to the

25

lawsuit. Okay?

1 BERNARDO F. RIVERA

2 Am I correct, you own Benny's
3 Tree Service?

4 A Yes.

5 Q And how long has Benny's Tree
6 Service existed?

7 A Probably around 2006.

8 Q And, as of today, where is
9 Benny's Tree Service located?

10 A We're blocking a lot. But they
11 seem to call that East Street.

12 At the time of that, I did not
13 own the property. I purchased the
14 property a year after.

15 Q And when you say "of that", do
16 you mean the incident --

17 A Yes.

18 Q -- that this lawsuit is about?

19 A Yes.

20 Q And at the time -- we're talking
21 about mid May 2015?

22 A Yes. It was a long time ago.

23 Q Correct. So we're talking about
24 the same time period?

25 A Yes, I was renting and -- I was,

Page 7

1 BERNARDO F. RIVERA

2 you know, renting the property at that
3 time.

4 Q And your business was there, but
5 as a tenant?

6 A Yes.

7 Q And I notice, on the Internet,
8 that there is an address that says 49 Park
9 Place.

10 A I don't own that property no
11 more. We moved to 274 Clove.

12 The business is there. But my
13 home, you know, my office is in my home.

14 So Park Place, we sold that and
15 we moved 274 Clove Road.

16 Q Okay.

17 A This one, you come up on the
18 Internet and everything, it stills comes
19 under Park Place.

20 Q It will, forever.

21 A Yeah.

22 Q Now, going back to May of 2015.
23 What kind of business was Benny's Tree
24 Service?

25 A Tree service.

1 BERNARDO F. RIVERA

2 Q Tree service. And what kind of
3 services did it provide? What kind of
4 work did it do?

5 A Tree work. Planting.

6 You know, anything to deal with
7 outdoors and trees and bushes.

8 Q So that would be things, such as
9 repairing trees that get knocked down in a
10 storm?

11 A Yes.

12 Q Planting new trees?

13 Are you familiar -- do you know
14 Mr. Flavio La Rocca?

15 A Yes, we've been neighbors for
16 years.

17 Q And have you ever done any
18 projects with him?

19 A Yes, I have.

20 Q Now back, going back to May of
21 2015, what kind of equipment did Benny's
22 Tree Service own?

23 A We have, pretty much, we still
24 have bucket trucks, chip trucks, you know,
25 dump trucks.

Page 9

1 BERNARDO F. RIVERA

2 Q Anything else you can think of?

3 Or is that basically what you use in the
4 tree service business?

5 A Yeah.

6 Q And back, in 2015, how many
7 employees did you have?

8 A Seven to nine.

9 I can't remember, right now. I
10 could go back, in to payroll.

11 Q Approximately?

12 A Yeah, seven to nine.

13 Q And do any of those people still
14 work for you?

15 A One.

16 Q What's that person's name?

17 A Enrique Garcia.

18 Q Did you ever have occasion to
19 discuss this incident with Mr. La Rocca?

20 A No.

21 Q Did he ever tell you what it was
22 about?

23 A No.

24 Q Did you ever ask him?

25 A No.

1 BERNARDO F. RIVERA

2 Q You first occupied the premises
3 you're in, now, first, as a tenant and
4 then you bought the premises?

5 A Yes.

6 Q Am I right? How long ago did
7 Benny's Tree Service first occupy those
8 premises?

9 A I don't -- I can't remember the
10 month, the year because we were around the
11 corner and New Rochelle came in and
12 changed the zoning.

13 Q Right.

14 A And I was looking for a new
15 place.

16 So -- 'cause where we were, they
17 came in and said that commercial vehicles
18 could no longer park outside, where I was.

19 So I was looking and I don't --
20 I can't remember the exact year, the
21 month.

22 And it happened -- I rent the
23 spot two yards down.

24 So I used to rent one spot, for
25 one of my vehicles, which I still -- it's

1 BERNARDO F. RIVERA

2 still there.

3 And it just came across and end
4 up renting the yard.

5 I mean, and, again, I have to go
6 through all of my paperwork, to look at
7 the leases and all that.

8 Because I no longer pay rent, so
9 there's no real record of that, you know.

10 Q You own it now?

11 A Yes.

12 Q You pay taxes?

13 A Yes.

14 Q During the time that your
15 business was located at East Street --

16 A Yes.

17 Q -- who plowed the snow on East
18 Street?

19 A Pretty much, we all did.

20 You know, more or less, it was
21 Mr. La Rocca because, you know, he was the
22 first yard and then we would all clean up,
23 like in front of our yard.

24 Q And did you ever have occasion
25 to make repairs to East Street?

1 BERNARDO F. RIVERA

2 A Yeah. Occasionally. I always
3 try to repair what's in front of my
4 property. We do get potholes. We do.

5 Q So would it be fair to say that
6 the businesses on East Street maintain
7 East Street?

8 A Yes.

9 Q Now going back to May of 2015,
10 where did your employees park their
11 personal cars?

12 A At that time, I would say I have
13 one or two employees that drove.

14 Because a couple of my employees
15 lived at the house that -- where I used to
16 rent, previously, on Plain Avenue.

17 So two.

18 So we used to park, down below
19 because I rented in front of the other
20 yard, I rented a spot.

21 So I used to have one of them
22 park there and a couple cars in front of
23 my yard.

24 Q Now, before we started the
25 actual deposition, there was something on

1 BERNARDO F. RIVERA
2 the screen, which you're going to see
3 later, it's titled the "Talk of the
4 Sound", okay. And you said something
5 about that guy. Who did you mean? Did
6 you mean Mr. Cox?

7 A Yeah, Mr. Cox.

8 Q And do you know him?

9 A I don't know him. But I had a
10 previous problem with him.

11 Q What was that?

12 A You know. Because he claimed
13 that I was illegally dumping in the
14 schools.

15 And so I had to come back at
16 him, if I'm illegally dumping in the
17 schools, how come I have to go to
18 security, so they could open up gates for
19 me.

20 You know. And put this all
21 over. He badmouthed me.

22 You know, he badmouthed people,
23 without getting to your facts, should be.

24 Because he had a personal
25 vendetta from this -- from one of the

1 BERNARDO F. RIVERA

2 maintenance guys that I grew up with.

3 They asked me for wood chips, I
4 dump.

5 But, when I used to have to dump
6 the wood chips, I had to pull in the
7 school, get security, to go open up a back
8 gate, open the gate, allow me in and
9 then --

10 So if I was illegally dumping,
11 why would security and the Board of
12 Education open up that gate for me.

13 Q Did he retract his allegations?
14 Did he take it back?

15 A I never really followed up on
16 it.

17 But, you know, I'm a small
18 business. I'm a, you know, I'm an
19 owner/operator. I don't just set my guys
20 up and go drive around all day.

21 No, I'm with my men. I take my
22 trees down.

23 And I had some customers call me
24 up, you know, questioning me, saying how
25 could you do that.

1 BERNARDO F. RIVERA

2 Number one, my children are in
3 the two schools that I'm dumping chips.
4 You think I'm going to go in there and
5 create problems, when I have one kid in
6 Ward and one kid in Albert Leonard.

7 You know, I think he just does
8 things without getting his facts right.

9 Q Have you ever spoken to him,
10 directly?

11 A Mr. Cox?

12 Q Yes.

13 A One time, because a tree fell
14 down on the house that he lives, but he's
15 not the owner and I did not know it
16 was the house he was renting.

17 So I knocked on his door, had
18 him move his cars out of the driveway.

19 And that's the only time I ever
20 came face-to-face with Robert Cox.

21 And I told the owner, if I
22 would've known it was him, I would have
23 never took this job.

24 Q So, for the owner, you took --

25 A Same, like you. If you own a

1 BERNARDO F. RIVERA

2 house, you say go to my rental house, a
3 tree fell across the property.

4 Q Right.

5 A I go over there, I tell you this
6 is how much it's going to be and you say,
7 okay, do it, sent me a contract and I did
8 the work.

9 When I get over there, I call
10 him up, because I'm ringing the doorbell,
11 nobody's answering.

12 And then -- oh, I was on,
13 whatever, he's doing his thing.

14 So I had to wait.

15 But if I would have known, I
16 would not accept that job.

17 Q Going back to May of 2015, I
18 know, it's a long time ago, was it your
19 usual practice to stay at your business,
20 on East Street or was it your practice to
21 go out with your crew, every day, on jobs?

22 A I would go out.

23 We'd meet in the yard. We set
24 everybody up, because I have a landscape
25 part.

1 BERNARDO F. RIVERA

2 And I send everybody that has to
3 go out and work for the day, what do you
4 need.

5 We all meet and then we usually
6 go out, about.

7 Q We're going to show you a video,
8 okay. And, basically, it is a video that
9 was made by Mr. Cox.

10 And we're going to go through
11 it. I'm just going to ask you about what
12 you see in the video.

13 [Video recording is playing and
14 shared via Zoom.]

15 Q I'm going to ask you to take a
16 look at what is shown at stop number
17 twelve on -- and this is Exhibit 13,
18 Plaintiff's Exhibit 13.

19 And we're looking at stop number
20 twelve.

21 Can you identify what you see in
22 the photograph?

23 A I see a machine and I see a few
24 men standing in the street.

25 Q Do you recall, having seen what

1 BERNARDO F. RIVERA

2 you see in the photograph, now, do you
3 recall having seen that in person?

4 A No. But that's a block that
5 everybody there has machines.

6 There's machines up and down
7 that road, all day long.

8 Q Do you recognize any of the
9 people?

10 A No.

11 Q Were you able to identify any of
12 the people?

13 A No, you can't see a face.

14 Q Okay. Fair enough. Let's
15 continue.

16 Now, we're, of the same exhibit,
17 we're now at Stop 21.

18 First of all, can you recognize
19 any of the people shown in the video?

20 A No. If that's him, that's his
21 employees, I don't know anybody.

22 Q When you say "that's him", you
23 Mr. La Rocca?

24 A Nah. You see his trucks. You
25 see that there. But I don't know anybody

1 BERNARDO F. RIVERA

2 there.

3 Q Okay. Fair enough.

4 And do you recall, back in May,
5 having seen the work that's shown in this
6 photograph, having seen -- did you see, in
7 person, what's shown in this photograph?

8 A No, we -- I pulled in my yard
9 and we did what we had to do and we left.

10 Q The same exhibit. Now we're at
11 Stop 26, okay. Do you see, in the far,
12 the far right-hand side, what looks like
13 piles of wood chips?

14 A Uh-huh.

15 Q Do you know whether or not
16 Benny's Tree Service put the wood chips
17 there?

18 A I didn't, personally, put 'em
19 there. So.

20 Q I'm asking whether your business
21 would have put them there.

22 A (Indicating).

23 Q No?

24 A (Indicating).

25 Q At the time, did you see the

1 BERNARDO F. RIVERA

2 wood chips there?

3 A I never pay attention to that
4 park because that's passed my yard.

5 The city fenced that in.

6 Q Correct?

7 A So when I pull, I pull to my
8 yard. That's passed my yard.

9 Q Right.

10 A And it's a little more downhill,
11 to the right. I never really paid
12 attention to there.

13 Q Do you notice in, roughly, the
14 middle of the photograph, there is a
15 yellow roller?

16 A Yes.

17 Q Do you know who that belongs to?

18 A I couldn't tell you whose roller
19 that was.

20 Q Is it yours?

21 A No, I don't have rollers. I
22 don't have machines, like that.

23 Q But you do have wood chippers?

24 A Yeah.

25 Q And did there ever come a time

1 BERNARDO F. RIVERA

2 that you used your wood chippers to chip
3 wood from an area along East Street?

4 A No. No, just one of the
5 neighbors came out and asked me to chip
6 some branches, 'cause there are other
7 gardeners that I do work for.

8 But, other than that, no.

9 Q Did Mr. La Rocca ever ask you to
10 chip branches for him?

11 A Actually, no. No, I did that
12 for job sites, jobs that he had gave me,
13 yes, but not, not on the road, no.

14 Q Not on East Street, okay.
15 And do you recognize either of
16 the two workers that are shown in the
17 photograph?

18 A No.

19 Q Now we're at Stop 43. Do you
20 recognize any of the people that are
21 depicted in that photograph?

22 A No, I never paid attention to
23 his workers, to be honest.

24 Q Is it your understanding, that
25 these three people are workers, not owners

1 BERNARDO F. RIVERA

2 of any other business?

3 A I would assume that, yes.

4 Q Because they're working?

5 A (Indicating). And where one,
6 two, three, four, five, six -- there were
7 seven owners on that road.

8 So these are none of the owners.

9 Q We're now at Stop 54, okay. Do
10 you see the truck that's in the middle of
11 the picture?

12 A Yes.

13 Q And do you know who owns that
14 truck?

15 A I guess that's Flavio's, it's
16 got his name on the door.

17 Or are you talking to the truck,
18 to the left?

19 Q I'm talking about the truck that
20 is -- the front wheels are slightly to the
21 left of the middle of it.

22 A Yes. Yes, that's Flavio's name
23 on it.

24 Q Now, looking to the left of the
25 photograph, do you see there's a green

1 BERNARDO F. RIVERA

2 truck?

3 A Yes, that's my truck.

4 Q That's your truck.

5 A And the truck, to the right, it
6 was my personal vehicle.

7 Q If your truck and your personal
8 vehicle were in this photograph, does that
9 mean that you were at your place of
10 business?

11 A No, because my truck, to my
12 left, is one of my maintenance trucks.

13 And we don't cut grass on
14 Saturdays.

15 My personal vehicle is to go
16 from my home to my business.

17 And then I have fifteen trucks,
18 myself.

19 So I get in one of my work
20 trucks and I do what I have to do for the
21 day.

22 'Cause I live in residential and
23 I cannot park a commercial vehicle, at
24 that time, in my driveway.

25 Q So given that the truck that you

1 BERNARDO F. RIVERA

2 use, for when you cut grass, was in the
3 yard, does that suggest that this picture
4 was taken on a Saturday?

5 A Yeah.

6 Q Do you happen to recall that
7 particular Saturday?

8 A Not really. Because I got a
9 phone call from one of the other owners,
10 telling me that the police were down
11 there.

12 So I really -- I don't remember.
13 It was like every day. I go there, you
14 know, I don't -- I stay, if I have to
15 stay. But that particular day we left
16 early.

17 Q And the person, who called you,
18 what did they say?

19 A They just asked me if I knew
20 what was going on, just being a nosey
21 neighbor.

22 I mean, that's -- as a matter of
23 fact, the vehicle, coming down, that was
24 the neighbor.

25 Because we have identical -- we

1 BERNARDO F. RIVERA

2 own the same color, same everything
3 vehicles.

4 Q And when you say the vehicle
5 coming down, you mean the one with the
6 lights on?

7 A In the middle, yeah.

8 Q The one with the lights on.
9 That actually belonged to the neighbor?

10 A Yeah.

11 Q Do you remember the neighbor's
12 name?

13 A Joseph Guglielmo.

14 Q And does he own a business?

15 A Yeah, he owns the last yard, on
16 the left.

17 Q And do you know the name of his
18 business?

19 A Probably 'cause the father's --
20 was the father's. Gotta be Guglielmo.
21 Something like.

22 Q Something, Guglielmo. All
23 right.

24 We're now at Stop 1:15. Can you
25 identify any of the vehicles that are

1 BERNARDO F. RIVERA

2 shown in this photograph?

3 A They are Mr. La Rocca's
4 vehicles.

5 Q And going back to May of 2015,
6 where did he usually store his vehicles?

7 A In his yard, usually, every
8 night, his vehicles.

9 In the morning, like my
10 vehicles, I put 'em out. Then, usually,
11 the road is clear, you don't see 'em.

12 Q Going back to May of 2015, was
13 there any difficulty in entering and
14 having your vehicles enter East Street
15 from Fifth Avenue? Was there a problem
16 caused by the width of the road?

17 A No.

18 Q Going back --

19 A Even with those vehicles,
20 there -- because I park there too, in the
21 morning.

22 'Cause, one day, we -- you know,
23 I have different trucks.

24 So every day we don't use the
25 same trucks.

1 BERNARDO F. RIVERA

2 Except for the maintenance guy,
3 Monday through Friday, they use their
4 maintenance truck.

5 And you could still pass two
6 vehicles with all those vehicles parked on
7 the --

8 Q Now we're at stop number 1:34.
9 Looking at the photograph, that's in front
10 of you, now, to the right side of it,
11 where there's a gate that's open, is that
12 Mr. La Rocca's yard?

13 A Yes.

14 Q Now, as you see it in the
15 photograph, do you think it would be
16 possible for two vehicles to pass each
17 other?

18 A Yes. You can't go by a picture.
19 I'm going by --

20 Q Your experience?

21 A -- this is what I do every day,
22 six days a week, sometimes seven.

23 Q When you get unlucky, you have
24 to work Saturday.

25 A Very rare, you gotta stop, you

1 BERNARDO F. RIVERA

2 know. 'Cause maybe there's a larger truck
3 coming, with a larger trailer, that's the
4 only time you pull over.

5 We never have issues. Everybody
6 respects everybody.

7 Q Now looking at the photograph,
8 that's shown at Stop 1:46, do you
9 recognize the truck that's on the right
10 side of the photograph, the black truck?

11 A It could be his. But there's no
12 name on it.

13 Q Any chance that it's yours?

14 A No.

15 Q Now looking at the photograph
16 that's shown at Stop 2:06, can you
17 identify the truck that's on the right,
18 that's on the right side of the
19 photograph?

20 A That's my truck.

21 Q And just looking at the ramps,
22 would I be correct that this truck is used
23 to transport equipment?

24 A Yes.

25 Q What kind of equipment?

1 BERNARDO F. RIVERA

2 A Lawnmowers. That's it.

3 Q These are ride-around mowers,
4 right?

5 A Yeah. Whatever you need to --
6 we have -- 'cause we have two box trucks
7 and they both just carry lawnmowers.
8 That's it. Nothing else ever goes in
9 these trucks.

10 Q Now, in the photograph, it shows
11 that the ramps are down.

12 A Uh-huh.

13 Q And the truck is located, in the
14 photograph, on East Street; is that right?

15 A Yes.

16 Q Had the lawnmowers, that were in
17 the truck, been removed from the truck on
18 East Street?

19 A Yes.

20 Q And what would have been the
21 reason for taking the lawnmowers out of
22 the truck on --

23 A Every Saturday morning the main
24 guy sharpens the blades, cleans the
25 machines and get 'em ready for Monday.

1 BERNARDO F. RIVERA

2 Because my rule is, Monday, we
3 fill up with gas, be ready to go, so
4 you're cutting grass at the first house by
5 eight o'clock.

6 So that's what that vehicle was
7 doing.

8 Q Now, looking at the same
9 photograph, at Stop 2:06, do you see that,
10 to the right of your truck, there's a
11 black fence?

12 A Yeah.

13 Q Okay.

14 A To the right.

15 Q To the right?

16 A Yeah.

17 Q Now is that fence adjacent to
18 the skate park?

19 A Yes, that fence belongs to the
20 skate park.

21 Q Now, I'm showing you the
22 photograph that's at Stop 2:16. Do you
23 see, it's a green truck with a white cab,
24 that's on the right side of the
25 photograph?

1 BERNARDO F. RIVERA

2 A Uh-huh.

3 Q Can you identify that truck?

4 A That's my truck. And, if you
5 rewind, they're both identical. They're
6 both, the same color, the same everything.

7 If you rewind, you'll see the
8 name, same name and everything on this
9 vehicle.

10 Q Fair enough. It doesn't say
11 Benny's, does it?

12 A No, my landscape company is Pete
13 Carino Landscape.

14 Q I see.

15 A My godfather is Patsy Carino.
16 He got sick. I started helping him.

17 So we merged. You know, he
18 brought me in and then I end up eventually
19 buying him out.

20 And I don't remember if we were
21 partners then or if I already had bought
22 him out. I don't remember what year it
23 was.

24 And I made a promise to his
25 wife, I wouldn't change the name until he

1 BERNARDO F. RIVERA

2 passes.

3 Q So he's still alive?

4 A Actually, he's having heart
5 surgery today.

6 Q Wish him well.

7 Now we're looking at a
8 photograph that's at stop number 2:25. Do
9 you see the cars that are parked at the
10 far right-hand of the photograph?

11 A Yeah.

12 Q Can you identify any of those
13 three cars?

14 A The only one, that I know of,
15 that is there, is Mr. Enrique Garcia, he's
16 my employee.

17 And that's the first car, on the
18 right, the pick-up.

19 The other cars, I don't know
20 them.

21 Q Now do you know if he usually
22 parked in that same location?

23 A Only on Saturdays. Because
24 Saturdays, nobody was -- is there.

25 'Cause the company, to the left,

1 BERNARDO F. RIVERA
2 is a union company and they work Monday
3 through Friday.

4 So only on Saturdays -- and the
5 skateboard park was not open yet
6 because -- you know, then -- because when
7 they're open they ask us not to park
8 there.

9 Which we don't park there
10 anymore because the city opened up, that
11 we can park in the city, city parking lot.

12 Q Do you remember when your
13 employee, on Saturdays, started parking
14 where he was parked as shown in the
15 photograph?

16 A I don't pay attention to where
17 people park, you know.

18 Q Did he park there over a number
19 of months?

20 A No. Let me see. Hold on. No.
21 No. I don't remember.

22 Q Before May, back in 2015, before
23 that area was clear, where did he park?

24 A Either down the hill, in front
25 of Guglielmo's yard or right in front of

1 BERNARDO F. RIVERA

2 my yard.

3 Because right, where that
4 vehicle is, is still open. But there's
5 access, where the city could go in there.

6 So that's still open, that one
7 parking spot.

8 Q So am I correct, that after that
9 area was cleared, he was able to park
10 there on Saturdays?

11 MS. ZALANTIS: I'm going to
12 object as to form.

13 Q That means you can answer. But
14 she's has to --

15 MS. ZALANTIS: I just objected
16 as to form, but you can answer.

17 A I don't know why he put it
18 there.

19 You know, like I said, I don't
20 question, as long as my men are in front
21 of my gate, I don't care, really, where
22 they park.

23 Q Of course. And I should
24 rephrase the question because I wasn't
25 asking why. I was just asking, did he

1 BERNARDO F. RIVERA

2 park there on Saturdays, after the area
3 was cleared.

4 A No, he -- that --

5 MS. ZALANTIS: Objection.

6 A -- that area was always cleared.

7 Q So he was always able to park
8 there on Saturdays, if he wanted to?

9 A Yes.

10 Q Let's continue.

11 Looking at the photograph and,
12 now were at Stop 2:47, do you recognize
13 any of the cars that are parked down the
14 hill?

15 A I mean, you see a little bit of
16 Mr. Guglielmo's because I know the car,
17 'cause we had identical cars.

18 Other than that, no.

19 Q Now the "little bit of
20 Mr. Guglielmo's", is that the truck?

21 A It's the one behind the truck.
22 Because this is a little bit a
23 ways from my yard.

24 Q Now is this further down the
25 hill from your yard?

1 BERNARDO F. RIVERA

2 A Yes.

3 Q So when I say further down the
4 hill, when I say further down the hill, I
5 mean further away from Fifth Avenue. We
6 both mean the same thing, right?

7 A No, you're technically -- 'cause
8 as the hill comes down, so where the last
9 green truck, that's my property line.

10 My frontage is only fifty feet.

11 So, technically, I had the two
12 trucks parked on the opposite side, on the
13 wall, but I was pretty much in my footage,
14 there.

15 So from the back of the last
16 truck, then, that goes down.

17 Q Now you're referring to the
18 green truck, in the last -- in the last --

19 A Yes.

20 Q We can go back, just to make
21 sure I understand.

22 MR. KOKE: Off the record.

23 [Discussion held off the
24 record.]

25 Q Is that the picture you're

1 BERNARDO F. RIVERA

2 talking about?

3 A Yeah. So, technically, the back
4 of that truck is the property line.

5 And, then, as you go, it goes
6 downhill.

7 Q So your property is
8 approximately -- would be from, roughly,
9 from the back of the truck, fifty feet
10 towards Fifth Avenue?

11 A Yes.

12 Q Mr. Rivera, that was the video.
13 Is there anything about that video that
14 would explain better what happened that I
15 didn't ask you about?

16 A No.

17 MR. MEISELS: I'd like to take a
18 ten-minute break.

19 [A short recess was taken.]

20 Q Mr. Rivera, I'm going to show
21 you a photograph that's been marked as
22 Plaintiff's Exhibit 3A. Do you recognize
23 any of the people shown in that
24 photograph?

25 A It's way too far.

1 BERNARDO F. RIVERA

2 Q Do you recognize any of the
3 vehicles shown in that photograph?

4 A It says Mr. La Rocca -- you
5 know, La Rocca & Sons' truck, I suppose.

6 Q And more towards the center of
7 it, do you see another yellow truck?

8 A You mean, all the way to the
9 right?

10 Q Well, it's to the right.
11 There's one yellow truck, all the way to
12 the left.

13 And, then, there's one, that you
14 see, it's almost like the middle of the
15 photograph; do you recognize that one?

16 A No.

17 Q And, then, down the hill, do you
18 see what looks like a white car?

19 A Yes.

20 Q Do you recognize that?

21 A I thought you were talking about
22 the white car.

23 No, the white car never -- the
24 other truck is the same color as Mr. La
25 Rocca's vehicles.

1 BERNARDO F. RIVERA

2 Q Are those his colors, yellow and
3 blue? Or what --

4 Now I'm going to show you what's
5 been marked as Defendant's C for
6 identification.

7 MR. KOKE: Off the record.

8 [Discussion held off the
9 record.]

10 Q Now, what we're showing you is a
11 second photograph, that's included in
12 Exhibit 3A.

13 Do you recall having seen what
14 is shown in this photograph?

15 A What do you mean, seen?

16 Q Did you ever, in person, see
17 what is shown in the photograph?

18 A No.

19 Q And can you identify either of
20 the two workers that have their backs to
21 the camera?

22 A No.

23 Q Now, in this photograph, do you
24 see an area that appears to be elevated,
25 where the workers are raking?

1 BERNARDO F. RIVERA

2 A Yes.

3 Q Prior to May of 2015, did that
4 area have bushes and trees in it?

5 A From my knowledge, it was there.
6 I don't remember too much, but I remember
7 seeing, there was like piles of stuff
8 there, whether bushes and trees, no, I
9 don't remember that.

10 Q Do you know what kind of stuff
11 you saw?

12 A I never really paid attention.

13 Q And do you see, at the top of
14 the hill, what looks like piles of wood
15 chips? Do you know, were those wood
16 chips?

17 A I mean, for being in the tree
18 business, it does look like wood chips.

19 Q And do you know how those wood
20 chips got there?

21 A No.

22 Q Do you know whether or not
23 someone working for you put the wood chips
24 there?

25 A Not to my knowledge.

1 BERNARDO F. RIVERA

2 Q Do you know why the wood chips
3 were put there?

4 A To me, it's to beautify.

5 Q When you say to beautify, to
6 spread them out?

7 A Yeah.

8 MR. MEISELS: Let's go to the
9 next photograph.

10 Q Now I'm showing you what's the
11 third photograph, in Exhibit 3A.

12 Looking at the far right-hand
13 side -- I'm sorry, the fourth photograph,
14 in Exhibit 3A, looking at the far
15 right-hand side of the photograph, do you
16 see that there's some cars parked up, on
17 the hill?

18 A Yes.

19 Q Can you identify any of those
20 cars?

21 A The one that I told you belongs
22 to my one employee. The other ones, I've
23 never seen before.

24 My employee still has that
25 vehicle, so.

1 BERNARDO F. RIVERA

2 Q Let's go to the fifth
3 photograph.

4 Now, looking at this photograph,
5 which is number six, the sixth photograph
6 in Exhibit 3A, do you see the line of
7 cars?

8 A (Indicating).

9 Q How many of those cars can you
10 identify?

11 A Just the one.

12 Q Just the one that belongs to
13 your employee?

14 A (Indicating).

15 Q And that's the one that's all
16 the way to the right?

17 A Yes, the first one, on the
18 right.

19 Q And you don't recognize any of
20 the others?

21 A No.

22 Q Do you recall having seen,
23 yourself, those cars parked where they're
24 shown in the photograph?

25 A There's always cars parked

1 BERNARDO F. RIVERA

2 there.

3 Q When you say always, were there
4 cars parked there from the time you first
5 started renting --

6 A Yeah.

7 Q -- your property?

8 A Yeah.

9 Q Are there cars still parked
10 there, as of today?

11 A No, 'cause the city had fenced
12 the property off. And they just left the
13 one where actually my employee's parking
14 is still open.

15 Q Right. We're going to show you
16 what's been premarked as Defendant's C for
17 identification.

18 Looking at what's been marked
19 Defendant's C for identification. Can you
20 identify any of the vehicles shown in that
21 photograph?

22 A No.

23 Q Can you identify that vehicle?

24 A No.

25 MR. MEISELS: Let's go to the

1 BERNARDO F. RIVERA

2 next photograph.

3 Q Looking at what's been marked as
4 the third photograph, that's part of
5 Defendant's C for identification. Is this
6 the area where people used to and still
7 park?

8 A Used to. Can no longer park
9 there.

10 Q Because of the fence --

11 A The city fencing the property.

12 MR. MEISELS: Let's go to the
13 next.

14 Q Can you identify what's shown in
15 this photograph, which is number four of
16 Defendant's C?

17 A It's an open area.

18 Q It's is, I'm sorry?

19 A It's an open area.

20 Q But it's an area that you've
21 seen before?

22 A Yeah.

23 Q Now is this the area, that you
24 recall, that the city enclosed with the
25 fence?

1 BERNARDO F. RIVERA

2 A I would say not the post next to
3 the garbage can, a little more over,
4 that's where the city came in.

5 But that, everything to the
6 right is still open.

7 Q This is the fifth photograph,
8 which makes up Defendant's Exhibit C for
9 identification. Does this photograph show
10 the area where people used to park?

11 A Yeah, they always park there.

12 Q Now I'm going to show you what's
13 been marked as Defendant's II for
14 identification.

15 Mr. Rivera, this exhibit, which
16 has been marked as Defendant's II for
17 identification, it is a tax map. Can you
18 identify, from this tax map, which tax
19 lots you own?

20 A I would say it would be -- I
21 believe it's 37.

22 Q We're going to show you what has
23 been premarked as Defendant's Exhibit X
24 for identification. Can you identify
25 what's shown in that photograph?

1 BERNARDO F. RIVERA

2 A Top of a sewer.

3 Q Do you recall having seen that,
4 the top of that particular sewer before?

5 A No.

6 Q We're going to show you another
7 shot of the same sewer. Does that help
8 you recall whether you've ever seen it
9 before?

10 A I mean, you could see that it's
11 going up road. But I never really paid no
12 mind to it.

13 That's in front of Guglielmo's
14 yard.

15 Q That's in front of Guglielmo's
16 yard?

17 A Yes.

18 Q We're going to show what has
19 been marked as Defendant's Exhibit GG for
20 identification.

21 Firstly, can you identify the
22 white car that's shown in --

23 A Yeah, that was my car.

24 Q That's your car. And, earlier,
25 in your test --

1 BERNARDO F. RIVERA

2 A This is a newer photo because
3 that car, I already had it for like a
4 year.

5 Q Correct. And you had testified
6 that at some point, after May of 2015, the
7 city fenced in some area?

8 A They fenced in that area, like a
9 month after the -- a month or two -- I
10 don't even think -- I think a month after
11 that, what happened.

12 Q And is the black fence, shown in
13 that photograph, that would be on the
14 passenger side of your car, is that the
15 fence you were talking about?

16 A Yes.

17 Q And you recall, that got
18 installed approximately a month after the
19 incident --

20 A More or less. I remember -- I
21 remember coming in and all of a sudden
22 there was a fence company there.

23 Q Now when you say -- you refer to
24 what happened, okay. In your mind, if
25 someone asked you, when you say what

1 BERNARDO F. RIVERA
2 happened and asked you to explain what you
3 understood happened, what would you say,
4 what would be your answer to that
5 question?

6 A Well, I didn't know. You know,
7 like I said, I didn't know too much, what
8 happened there.

9 I only know that the city came
10 in and fenced it in.

11 And not too -- not even a month
12 ago, I didn't even know that there was any
13 kind of lawsuit or any kind of thing going
14 on.

15 Q Right. And you said that the
16 city fenced it in, approximately a month?

17 A I believe it was a month. You
18 know, I can't tell you if was a month.

19 But I remember, when I pulled
20 in, because they were blocking.

21 And when I pulled in with my
22 tree trucks, I gotta go forward and then I
23 back into my yard.

24 And I remember the guy moving
25 the truck for me, 'cause he was blocking

1 BERNARDO F. RIVERA

2 that area.

3 Q When you say that you recall
4 approximately a month after --

5 A I believe it was a month or so.

6 Q You recall that happening, you
7 know, approximately, after what happened,
8 the question is:

9 In your mind, if someone asked
10 you what it is that happened, how would
11 you explain that, what happened?

12 A Well, because of, you know,
13 because of what happened there, you could
14 tell the city came in, you know.

15 And I only knew about when the
16 fen -- when they put the fence in, there
17 was an issue, really.

18 Q I appreciate that. But what do
19 you understood happened?

20 A Well, when I answered the
21 subpoena, they told me that they, you
22 know, they're accusing Mr. La Rocca of
23 cleaning up or whatever they did to city
24 property.

25 That's what I was told on the

1 BERNARDO F. RIVERA

2 subpoena. I don't know who I spoke to,
3 when I called the number.

4 Q So that's what you understood,
5 as what happened?

6 A Uh-huh.

7 Q We're still on the same exhibit,
8 GG. And that's your car; am I right?

9 A Yes.

10 Q Now looking at this second
11 photograph, in Exhibit GG, do you see, on
12 the right-hand side, in the front, there
13 are, looks like piece of concrete, of
14 concrete --

15 A The barriers.

16 Q Barrier, okay. Was that there,
17 when you first moved to East Street?

18 A That was there, already there.
19 When we moved in, that was there.

20 Q And you moved in, approximately?

21 A I don't remember if it was '15
22 or '14. I don't remember the exact.

23 Q How long had you been there,
24 before the incident that we're talking
25 about?

1 BERNARDO F. RIVERA

2 A I can't recall.

3 I can't recall because, you
4 know, like I said, there was -- everything
5 happened fast because where I was, I had
6 to get out and I had thirty days.

7 You know, I don't remember what
8 year. I don't remember.

9 Q Fair enough. But when you moved
10 in, that jersey barrier, that barrier was
11 there?

12 A Yes.

13 Q Do you know who put it there?

14 A No.

15 Q Do you know who it belongs to?

16 A No.

17 Q Same exhibit. One more. That's
18 your car, right?

19 A Yes.

20 Q And, am I correct, that if you
21 were sitting in your driver's seat, the
22 skate park would be on your left?

23 A Yes.

24 Q We're going to show you what has
25 been premarked as Bongo (ph) #2 for

1 BERNARDO F. RIVERA

2 identification.

3 Can you identify what is shown
4 in that photograph?

5 A You see Mr. La Rocca's yard and
6 you see Mr. Bongo's truck.

7 Q Is the red truck Mr. Bongo's
8 truck?

9 A Yes.

10 Q Now we're going to show you
11 what's been marked as Bongo #3.

12 Can you identify what's shown in
13 that photograph?

14 A You see Mr. Bongo's, the front
15 of his gate, to his yard.

16 Q And in reference to the blue
17 car, that's shown at the left of the
18 photograph, do you know who that belongs
19 to?

20 A No.

21 Q Looking into Mr. Bongo's yard,
22 as far as you know, is that red truck his?

23 A Yes.

24 Q And the red dump-truck, is that
25 his?

1 BERNARDO F. RIVERA

2 A Yes.

3 Q So his colors are red?

4 A Yes.

5 Q What kind of business is he in,
6 again?

7 A Blacktop.

8 MR. MEISELS: Just one moment.

9 Off the record.

10 [Discussion held off the
11 record.]

12 Q This is the second photograph,
13 that's part of Bongo 3. Is the white car,
14 shown in that photograph, yours?

15 A No.

16 Q Do you know whose it is?

17 A It's gotta be one of his
18 employees.

19 Q And the red SUV, do you know who
20 that belongs to?

21 A One of the employees.

22 Q They're consistent, with red?

23 A Well, the red one, you know, I
24 see the guy driving that one, you know, he
25 always says good morning to me as he

1 BERNARDO F. RIVERA

2 drives by.

3 Q Let's go to the third one.

4 Now, looking at the third
5 photograph, that's part of Bongo 3, to the
6 left side, you see the black fence?

7 A Yes.

8 Q Is that the fence you were
9 referring to, that the city put up?

10 A Yes.

11 Q And, on the right side, you see
12 automobiles parked perpendicular to the
13 road?

14 A Yes.

15 Q And, I think, you already said
16 you don't know who owns the white one.
17 But the red one belongs to one of Bongo's
18 employees.

19 A Yeah.

20 Q I'm showing you what's the
21 fourth photograph, included in Bongo
22 Exhibit 3.

23 Now looking to the right side of
24 the photograph, there's a car that looks
25 like a Jeep, I'm not sure what it is, an

1 BERNARDO F. RIVERA

2 SUV; do you know who owns that?

3 A No.

4 Q And then there's a car that's
5 all the way to the right, do you know who
6 owns that?

7 A No.

8 Q Now I'm showing you the fifth
9 photograph, that's part of Bongo 3. And
10 starting on the right-hand side, okay, can
11 you identify the white car?

12 A No.

13 Q That small pickup truck?

14 A No.

15 Q The other pickup truck, that's
16 facing the photographer?

17 A No.

18 Q And you already said you can't
19 identify the Jeep; am I right?

20 A (Indicating).

21 Q Looking at the photograph, if
22 you go to the far right, where they show,
23 partially show a vehicle, can you identify
24 that vehicle?

25 A No.

1 BERNARDO F. RIVERA

2 Q Let's go to number six. Can you
3 identify any of the vehicles shown in
4 Photograph 6?

5 A No.

6 Q If looking at Photograph 6, in
7 the far right of the photograph, it
8 appears that there is a house at the
9 bottom of the hill; do you see that
10 building?

11 A Yeah.

12 Q Do you know who owns that?

13 A The Arpeggios (ph).

14 Q Now does their family have a
15 business on East Street?

16 A I believe Tommy's still in
17 business.

18 Q Tommy Arpeggio (ph)?

19 A Yeah.

20 Q What kind of business is he in?

21 A Construction.

22 Q Now do they run the business
23 from that house?

24 A I assume so.

25 Q And they live there, also?

1 BERNARDO F. RIVERA

2 A No, I don't think so.

3 Q No. Do you know if they use
4 East Street to access Fifth Avenue? Or
5 did they go out the other way?

6 A You know, I had seen his trucks
7 go up and down, but I can't, you know.

8 'Cause you can't enter through
9 East Place.

10 Q Place, right.

11 A So a lot of those vehicles come
12 through East Place.

13 Q He really has a choice?

14 A Yeah. You know, 'cause I'm not
15 there during the day. I get in my trucks
16 and we leave.

17 And sometimes, you know, I go
18 back to the yard and I have to fix a
19 machine or something.

20 But I'm not there, watching the
21 road.

22 Q Sure.

23 MR. MEISELS: #7.

24 Q This is the seventh photograph,
25 which is part of Bongo #3. Can you

1 BERNARDO F. RIVERA

2 identify any of the vehicles that are
3 shown in that photograph?

4 A No.

5 Q But in the far right, is that
6 the building that you understand belongs
7 to the Arpeggios?

8 A Yeah.

9 MR. MEISELS: Number eight.

10 Q Showing you Photograph 8 of
11 Bongo Exhibit 3, can you identify any of
12 the vehicles shown in that photograph?

13 A No.

14 Q And, am I correct, if you look
15 at the right side of the photograph, you
16 see a black chain link fence.

17 A Yes.

18 Q And is that the fence that the
19 city put up?

20 A Yes.

21 Q Number nine. I'm showing you
22 Photograph 9 of Bongo Exhibit 3. Can you
23 identify any of those vehicles that you
24 see in that photograph?

25 A Bongo's truck to the left. And

1 BERNARDO F. RIVERA

2 the vehicles, no.

3 Q You explained, that you go to
4 your place of business in the morning, you
5 usually leave and you come back at the end
6 of the day?

7 A Yes.

8 Q Did there ever come a time that,
9 when you came back during the day, that
10 you saw trees that had been cut down?

11 A No.

12 And, again, from my property
13 line, down to Bongo, down, I really don't
14 pass that.

15 You know, I don't pass that.

16 So I'm not driving down the
17 road, looking at exactly everything.

18 But I have never seen anybody
19 taking a tree down.

20 Q Did you ever see any trees, on
21 the ground, that had been cut down?

22 A No.

23 MR. MEISELS: No further
24 questions.

25 MS. ZALANTIS: I just have a few

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1 BERNARDO F. RIVERA

2 questions. I'll try to be brief.

3 All the same rules, about
4 depositions, apply that Mr. Meisels
5 mentioned.

6 If you don't understand
7 something, please, let me know, so I
8 can rephrase it.

9 And, if you need to take a break
10 at any point, I just ask that if
11 there's a question pending that you
12 answer the question first.

13 A Uh-huh.

14 BY MS. ZALANTIS:

15 Q You mentioned that you filled
16 potholes on the road, on East Street, in
17 the area in front of your property.

18 A Yes.

19 Q What other types of road
20 maintenance work do you do in front of
21 your property?

22 A Well, we plow and we clean it,
23 when we can.

24 It's hard to clean it because we
25 have the kids from the skateboard park.

1 BERNARDO F. RIVERA

2 You know, they're always with the
3 littering, eating and dumping and it goes
4 up and down the roads.

5 Q Have you ever removed refuse
6 from East Street? Garbage?

7 A Yes, we have.

8 Q And what about after big storms,
9 do you ever have to do anything to the
10 road, after big storms?

11 A What kind of storms?

12 Q Where there's a lot of rain or
13 wind? Anything like that?

14 A No, because we don't have many
15 trees from our part, in the beginning.

16 Q Have you ever, since you've had
17 any knowledge of East Street or any
18 involvement in East Street, did any anyone
19 from the city maintain East Street?

20 A Never.

21 Q Have you ever seen anyone from
22 the city make any repairs to East Street?

23 A Never.

24 Q Have you ever seen anyone from
25 the city fill a pothole on East Street?

1 BERNARDO F. RIVERA

2 A Never.

3 Q And would it be fair to say,
4 that the only people that you've ever seen
5 maintain East Street are the owners that
6 have properties along East Street?

7 A The one I could say, more, that
8 maintains more than anybody is Flavio La
9 Rocca.

10 Q So it is fair to say that Mr. La
11 Rocca maintains the road more than any of
12 the other owners, on East Street?

13 A Yes.

14 Q Is that correct?

15 And, is it also fair to say that
16 Mr. La Rocca does the majority of the
17 plowing on East Street?

18 A Yeah, as I said that, from the
19 beginning.

20 Q Have you ever seen the city,
21 ever, plow East Street?

22 A Never.

23 Q You mentioned you had fifteen
24 trucks. And you mentioned a chip truck.
25 What is a chip truck?

1 BERNARDO F. RIVERA

2 A A chipper truck. That's where
3 we chip the brush.

4 Q Chipper?

5 A Chipper. Chipper and then the
6 truck.

7 Q And you mentioned about Robert
8 Cox, that he doesn't get his facts right.
9 That's something that you said about him.
10 Can you explain why you said that.

11 A Well, because I had a personal
12 thing with him and, you know, he put me
13 out there, on his, his thing and never --
14 he never called me, he never spoke to me.

15 You know, assumed that I was
16 illegally dumping and never got his facts
17 rights.

18 If he would have called the
19 schools, they would have told him, no, I
20 was not.

21 Because Ward Elementary School,
22 I had to wait until school gets out
23 because the children and the buses pick up
24 the children from their parking lot.

25 Albert Leonard, I had to go into

1 BERNARDO F. RIVERA

2 security, so they could come out and open
3 up the gate.

4 So, you know, he just put this
5 on me. He never had his facts right.

6 And when my niece was in school,
7 she did a report and got the facts from
8 him and my niece failed that course
9 because of the fact that they told her
10 that those facts were not right from
11 Robert Cox.

12 Q So, essentially, the school told
13 her, your niece, that she couldn't quote
14 something on Robert Cox's?

15 A Yes.

16 Q -- website; is that correct?

17 A Yes.

18 Q 'Cause he's known to not get his
19 facts right; is that correct?

20 A Yes.

21 Q So you described the
22 experience -- and when you said that he
23 puts it out there, how does he put it out
24 there?

25 A Well, I mean, because he ran

1 BERNARDO F. RIVERA

2 away, he'd make you to be such a monster,
3 a bad person.

4 The only reason why I followed,
5 because I had that situation and, you
6 know, I would read the comments.

7 And, you know, you're following
8 because it's -- it's putting your name out
9 there.

10 And when he went again, on
11 Flavio, that's how I was saying, he was
12 going against personal stuff, not going to
13 what the facts was.

14 And that's when I just -- I just
15 never followed him.

16 Q And when you said he puts it out
17 there, in his Blog, the Talk of the Sound?

18 A Yeah. Whatever it was that go
19 on. Because I put it to follow and then,
20 you know, it would usually come up on my
21 phone and you just look at the e-mails.

22 Q Right. And besides the personal
23 experience that you have with him, of not
24 getting the facts right, do you know of
25 any other people that had similar types of

1 BERNARDO F. RIVERA

2 experiences?

3 A Well, I know a few people that
4 work for the board of education, that he
5 had, he had done that to, you know, going
6 after people, personally, you know, that I
7 happened to know them.

8 Q And do you think that Mr. Cox
9 has an issue with the owners or
10 contractors along East Street?

11 A I think he has an issue with
12 everybody else, except for himself.
13 'Cause you never see him ever put anything
14 good.

15 Q So when he said that about you,
16 personally, is it fair to say that he
17 published or got out to his following
18 information, without first asking you
19 about it or getting a quote from you?

20 A Yeah.

21 Q Is that correct?

22 A Yeah, because he just puts it
23 out, that I'm illegally dumping.

24 So if you're claiming, I'm
25 illegally dumping --

1 BERNARDO F. RIVERA

2 Number one, every school and
3 everything has cameras.

4 So if I'm driving down a truck,
5 in broad daylight, in the back of a
6 school, to dump wood chips, do you think
7 I'm going to do that.

8 Q So you're saying it's something
9 that could be easily verified?

10 A He would've called and say, you
11 know, who gave you permission or who gave
12 this or who gave that, I would've
13 answered.

14 Q And did that impact your
15 business, in any way?

16 A It did, a little bit. It did, a
17 bit. A couple of people cancelled on me.

18 I can't remember because it was
19 a long time ago.

20 But, you know, in the beginning,
21 a couple of people put jobs on hold, you
22 know, because this guy was putting that on
23 me.

24 Q You also said that he has a
25 vendetta against someone. Who did he have

1 BERNARDO F. RIVERA

2 vendetta against?

3 MR. MEISELS: Objection as to
4 form.

5 A Jimmy Banana (sic).

6 You know, that's the person that
7 was head of the maintenance of all the
8 schools.

9 And it's like every day, every
10 week. You know, after he put that on me
11 and I started following him.

12 'Cause, you know, now, he was
13 putting me like, like Jimmy was doing
14 this.

15 So it's just, if you follow and
16 go back to all his old stuff, you see, he
17 was just on Jimmy, personally.

18 Q You also said something to the
19 effect that on East Street there is
20 machines up and down that road all day
21 long. Can you explain what you meant by
22 that?

23 A Well, you have PAB, they go out
24 with their equipment.

25 You know, you have the

1 BERNARDO F. RIVERA

2 Guglielmos, they go out with their
3 equipment.

4 You know, you have Tommy. I
5 don't see Tommy as much.

6 But you see it.

7 When I say all day long, I'm not
8 there. But it's -- businesses are seven
9 different companies.

10 So everybody's going in and out
11 of there with their equipment.

12 Q So it's fair to say that East
13 Street is a busy road, in terms of the use
14 by the contractors?

15 MR. MEISELS: Objection to form.

16 A Yeah.

17 Q So you wouldn't be surprised if
18 you saw trucks going up and down that road
19 on pretty much a daily basis --

20 A Yes.

21 Q Is that correct?

22 So you mentioned that you did
23 some projects with Mr. La Rocca. In any
24 of those projects, that you worked on with
25 Mr. La Rocca or his company, have you ever

1 BERNARDO F. RIVERA

2 seen Mr. La Rocca cut down or anyone from
3 his company cut down trees?

4 A No, he had hired me to do it. I
5 had done a few jobs for him.

6 And when he had tree work, he
7 would hire me and I would come in and I
8 would do his tree work.

9 Q So the person, that he would use
10 to cut down trees, would be you or your
11 employees; is that correct?

12 A Yes.

13 MR. MEISELS: Objection to form.

14 Q You saw a lot of pictures today,
15 of an area fenced in with a black fence.
16 Do you recall seeing those pictures,
17 today? Or do you have personal knowledge
18 of that area, that's currently fenced in
19 by the city with the black fence; is that
20 correct?

21 A Yes.

22 Q So that area, before the fence
23 was there, cars used to park in that area;
24 is that correct?

25 A Yes.

1 BERNARDO F. RIVERA

2 Q And in the entirety of that
3 area, that's now enclosed with the black
4 fence, did cars park in that area, both
5 before and after March of 2015?

6 A I would say prior, before they
7 put the fence, yes.

8 Q Right.

9 A They can no longer park there
10 because --

11 Q Correct. So before the fence
12 was up --

13 A Yes.

14 Q -- that area was used as
15 parking; is that correct?

16 A Yes.

17 Q And it was used as parking
18 before March of twenty-fifteen, correct?

19 A Yes.

20 Q And it was used as parking
21 between March of 2015 and until the date
22 they put the fence up; is that correct?

23 A Yes.

24 Q And you identified one of the
25 cars was, that you knew, was an employee

1 BERNARDO F. RIVERA

2 of your company; is that correct?

3 A Yes.

4 Q And you also identified, in the
5 group of pictures -- do you remember the
6 group of pictures in front of PAB's yard?

7 A Yes.

8 Q And there was a red truck there.
9 And you said you knew the guy that owned
10 the red truck?

11 A Yes, you know, we say good
12 morning. Personally, never --

13 Q Right.

14 A You know, "how are you". "Good
15 morning".

16 Q But you know he works for PAB?

17 A Yes.

18 Q And did you see the picture of
19 that -- did you also see the picture that
20 had that red truck in the area, that's now
21 closed in with the black fence?

22 A Yeah.

23 Q Did you ever see Mr. La Rocca,
24 or anybody from his company, cut down
25 trees in any area adjacent to East Street?

1 BERNARDO F. RIVERA

2 A No.

3 Q At any time, whatsoever?

4 A No.

5 Q So that's correct, at no time,
6 whatsoever, have you seen Mr. La Rocca or
7 anybody from his company cut down trees in
8 an area near East Street; is that correct?

9 A Yes.

10 Q And you mentioned you have fifty
11 feet of frontage, along East Street, your
12 property?

13 A I would say, more or less.

14 Q Approximately?

15 A I don't remember the exact
16 measurements.

17 Q And that you would generally
18 park -- so from -- you would park in the
19 area, within that fifty feet of frontage,
20 but on the opposite side of the street?

21 A Yeah, a little more up. Because
22 my -- close friend of my mine rents his
23 yard out. He's barely there.

24 So sometimes I'll block his
25 yard. I have permission, of him, to block

1 BERNARDO F. RIVERA

2 his yard.

3 Q If I were looking at East Street
4 and I was standing on Fifth Avenue,
5 looking down East Street --

6 A Yes.

7 Q -- your yard is to the left --

8 A Yes.

9 Q -- correct?

10 A All the yards are to the left.

11 Q All the yards are to the left.

12 And the picture that we saw, the
13 green box trucks, that was parked on the
14 right -- the shoulder on the right of East
15 Street; is that correct?

16 A Yes.

17 Q And is that generally where you
18 would park, on the right of East Street?

19 A Like when we pull the vehicles
20 out, maybe one truck might stay there,
21 that we're not using or whatever.

22 But, you know, just pull out, do
23 what we had to do and then we leave for
24 the day.

25 Q So, essentially, to the

1 BERNARDO F. RIVERA

2 shoulder, on the right, again, looking
3 down --

4 A Yes.

5 Q -- East Street?

6 The shoulder on the right is
7 more like a staging area? Is that
8 correct, to say that?

9 A Yes.

10 MR. MEISELS: Objection to form.

11 Q Do you understand what I mean by
12 staging area?

13 A Yes.

14 Q It's an area that you would load
15 the vehicles and then pull them out to the
16 job site?

17 A (Indicating).

18 Q Yes. And, then, the area to the
19 right, the right shoulder, again, looking
20 down East Street, would your employees
21 park in that area? Or is there no parking
22 there?

23 A Well, the fenced in, no more.
24 But, to the left.

25 But, no, none of my employees

1 BERNARDO F. RIVERA

2 park there. They park, except for
3 Saturdays, because PAB is not there, they
4 can park in front, 'cause they don't work.

5 But we have the city parking,
6 that we're allowed to park in.

7 Q So prior to the city installing
8 that black fence, enclosing the area,
9 would it generally be that the PAB
10 employees would park in that area, that's
11 now enclosed with the black fence?

12 A I would say 80 percent, yeah.

13 Q And the reason why your
14 employees could only potentially park
15 there, on Saturday, was because the PAB
16 employees were not there; is that correct?
17 Yes?

18 If you could just answer.

19 A Yes.

20 Q Do you remember looking at that
21 pile of wood chips, in pictures, today?

22 A (Indicating).

23 Q Yes?

24 A Yes.

25 Q In your profession, you

1 BERNARDO F. RIVERA

2 previously created wood chips, correct?

3 A Yes.

4 Q How do you do that?

5 A We put it into a chipper.

6 Q You put logs or trees in the
7 chipper?

8 A We re-chip up to six to eight
9 inches, depending on the wood.

10 Q And what --

11 A The tree. The tree. You know,
12 the heart of the tree, you don't want chip
13 as big because it kills the machine.

14 The softer the wood, you could
15 go, you know, eight inches or so.

16 Q And you're talking about eight
17 inches in diameter?

18 A Yeah, depending on what kind of
19 tree we removed.

20 Q And based on your experience of
21 someone that chipped trees, branches
22 before, how many trees and branches would
23 have to be chipped to create that pile of
24 wood chips --

25 MR. MEISELS: Objection as to

1 BERNARDO F. RIVERA

2 form, you can answer.

3 A A good amount.

4 Q A good amount, meaning, what?

5 A A normal size tree, you know.

6 Q What's a normal size tree?

7 A An 80 to 120 footer.

8 Q Just so I'm clear, based on your
9 experience -- and, previously, your
10 experience cutting down trees, to create
11 that pile of chips that you saw in the
12 pictures shown to you today, it would have
13 to have come from an 80 to 120 foot tree;
14 is that correct?

15 MR. MEISELS: Objection as to
16 form.

17 A A complete load of my truck,
18 yes.

19 Q And what do you mean by a
20 complete load?

21 MR. MEISELS: Objection to form.

22 A My truck, full.

23 Q Do you think, what you saw
24 today, the pictures of the chips today,
25 would like be a load of your truck?

1 BERNARDO F. RIVERA

2 MS. ZALANTIS: Objection as to
3 form.

4 A I mean, it's a picture, you
5 can't really look and see how much is
6 there.

7 Q Right. We're just estimating.
8 Not specifics.

9 MS. ZALANTIS: Objection as to
10 form.

11 A I can't, no.

12 Q But is it fair to say that
13 amount of wood chips, you would need a
14 substantial amount of trees or branches to
15 create that amount of wood chips?

16 MR. MEISELS: Objection as to
17 form.

18 A I would say yes.

19 Q So when you were answering
20 questions about wood chips, previously,
21 you said that you didn't, personally, put
22 the wood chips in the area that was shown
23 in the pictures; is that correct?

24 A Yes.

25 Q And you don't have any knowledge

1 BERNARDO F. RIVERA

2 of any of your employees, you don't have
3 any personal knowledge of any of your
4 employees putting the wood chips there; is
5 that correct?

6 A No.

7 Q Is it possible that one of your
8 employees put the wood chips there,
9 without you knowing about it?

10 A I can't answer that. Because,
11 again, we have dumps. We have -- you
12 know, I have accounts.

13 My men dump. I pay my bills,
14 monthly. Do I look at every single date,
15 no.

16 Q So it's possible?

17 A I don't think so.

18 Q But you wouldn't know, for sure?

19 A No.

20 MS. ZALANTIS: Give me one
21 minute.

22 One other question:

23 Q You mentioned the lot owned by
24 Guglielmo, correct? And you're familiar,
25 where that lot is?

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1 BERNARDO F. RIVERA

2 A Yes.

3 Q Have you ever seen Mr. La
4 Rocca's trucks parked in Mr. Guglielmo's
5 lot?

6 A No, he has his own yard.

7 MS. ZALANTIS: Give me one
8 moment.

9 Sorry, just one more question.

10 Q With respect to Mr. Guglielmo's
11 lot, do you remember, years prior, that
12 Mr. La Rocca would rent space in that lot?
13 And did you ever see trucks parked in that
14 lot, years ago?

15 MS. ZALANTIS: Objection as to
16 form.

17 A Not that I remember.

18 Q You don't remember?

19 [Continued on the next page to
20 allow for signature line and jurat.]

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BERNARDO F. RIVERA

A No.

MS. ZALANTIS: I have nothing further.

MR. MEISELS: Standard stips?

MS. ZALANTIS: Yes.

MR. MEISELS: Standard stips.

Thank you very much.

[TIME NOTED: 1:20 p.m.]

BERNARDO F. RIVERA

Subscribed and sworn to
before me this _____
day of _____, 2021.

Notary Public

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I N D E X

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E X H I B I T S

RIVERA DESCRIPTION

Exhibit A subpoena

[Exhibit A was uploaded to the Veritext
Portal]

[Exhibit A was marked via Veritext
Virtual]

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CERTIFICATION

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

That the witness whose testimony as
herein set forth, was duly sworn by me;
and that the within transcript is a true
record of the testimony given by said
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 8th day of July, 2021.

HELEN WANDZILAK

* * *

[& - barrier]

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[city - eating]

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New York Code

Civil Practice Law and Rules

Article 31 Disclosure, Section 3116

(a) Signing. The deposition shall be submitted to the witness for examination and shall be read to or by him or her, and any changes in form or substance which the witness desires to make shall be entered at the end of the deposition with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness before any officer authorized to administer an oath. If the witness fails to sign and return the deposition within sixty days, it may be used as fully as though signed. No changes to the transcript may be made by the witness more than sixty days after submission to the witness for examination.

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