UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 18-22172-Civ-COOKE/GOODMAN

CARLOS NORIEGA,

      Plaintiff,

vs.

NORTH BAY VILLAGE,
a Florida municipality,

      Defendant.
_____/

VIDEOTAPED DEPOSITION OF MARLEN MARTELL

January 17, 2019
9:00 A.M. - 1:04 P.M.
U.S. Legal Support
21500 Biscayne Boulevard, Suite 501
Aventura, Florida 33180

Stenographically Reported by:
JOYCE STEVENSON, CSR, RPR, RMR
Florida Professional Reporter

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2

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8

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13

14

    ALSO PRESENT:
15
    CARLOS NORIEGA
16

17 VIDEOGRAPHER:

18 U.S. LEGAL SUPPORT
    LEON BEYLUS
19

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10   PLAINTIFF'S EXHIBITS MARKED FOR IDENTIFICATION

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1   Deposition taken before JOYCE STEVENSON, Registered

2   Professional Reporter, Registered Merit Reporter and Notary

3   Public in and for the State of Florida at large in the above

4   cause.

5   *****

6   THE VIDEOGRAPHER: Good morning. We are now

7   on the video record.

8   Today the Thursday, the 17th day of

9   January, 2019. The time is 9:34 A.M. We are

10   here at 21500 Biscayne Boulevard, Aventura

11   Florida, for the purpose of taking the video

12   deposition of Marlen Martell taken by the

13   plaintiff in case No.18-22172, Carlos Noriega

14   vs. North Bay Village, which is filed in the

15   United States District Court in and for the

16   Southern District of Florida.

17   The court reporter is Joyce Stevenson of

18   U.S. Legal Support. The videographer is Leon

19   Beylus of U.S. Legal Support.

20   Would all counsel present kindly state

21   their appearance for the record.

22   MR. BUSCHEL: Robert Buschel on behalf of

23   Carlos Noriega.

24   MR. RAILEY: Jonathan Railey on behalf of the

25   defendant, North Bay Village.

1   THE COURT REPORTER: Do you swear the testimony you

2   are about to give will be the truth, the whole truth, and

3   nothing but the truth?

4   THE WITNESS: Yes.

5   Thereupon,

6   MARLEN MARTELL

7   having been first duly sworn, was examined and testified as

8   follows:

9   DIRECT EXAMINATION

10 BY MR. BUSCHEL:

11   Q.   My name is Robert Buschel. I represent

12 Carlos Noriega.

13   Have you ever given a deposition before?

14   A.   Yes.

15   Q.   How many times?

16   A.   I believe once.

17   Q.   What kind of case was it?

18   A.   It's still a case that's pending.

19   Q.   Okay.

20   A.   It's against -- it's the state, I guess,

21 versus Pierre. Councilman Pierre.

22   Q.   North Miami Beach?

23   A.   Yes, sir.

24   Q.   You're a witness in that case?

25   A.   Yes, sir.

1   Q.   Are you a witness for the state or the

2 defense?

3   A.   I am a witness for the state.

4   Q.   Is that matter set for trial?

5   A.   It was. Now it's been postponed.

6   Q.   When did you give your deposition in that

7 case?

8   A.   I really don't recall. It was either at the

9 end of last year or the beginning of this year.

10   Q.   Okay.

11   A.   I do apologize.

12   Q.   That's all right.

13   December? January? Is what --

14   A.   Yeah, I would -- November, December.

15   Q.   November, December?

16   A.   Yes, because we just got into January, so --

17   Q.   So let me explain some rules.

18   If there is a question that I ask you today

19 that you don't understand, I want you to tell me to

20 rephrase the question.

21   Will you do that for me?

22   A.   Sure.

23   Q.   I also ask to the best of your ability to

24 answer the questions fully and completely as you

25 possibly can.

1   Will you do that for me?

2   A.   Yes, sir.

3   Q.   Do you feel well enough to give a deposition

4 today?

5   A.   Yes, sir.

6   Q.   Are you taking any medication that would

7 affect your ability to testify truthfully?

8   A.   No, sir.

9   Q.   Could you state your name and spell your last

10 name?

11   A.   My name is Marlen Martell. Last name is

12 M-A-R-T-E-L-L.

13   Q.   What do you do for a living?

14   A.   I am -- I'm working now for the City of North

15 Miami.

16   Q.   What do you do for North Miami?

17   A.   I work in the clerk's office. I'm the

18 assistant city clerk.

19   Q.   And how long have you been doing that?

20   A.   I started in November.

21   Q.   And prior to that, what did you do?

22   A.   Prior to that, I was employed by North Bay

23 Village.

24   Q.   And what position did you have in North Bay

25 Village?

1   A.   I was the Village manager.

2   Q.   And can you give me the dates for your

3   employment with North Bay Village?

4   A.   I started on March, I believe it was the

5   28th, until July, early July.

6   Q.   Of 2018?

7   A.   Yes, sir.

8   Q.   How did your position end there? Did you

9   resign or were you terminated?

10   A.   I resigned from the position.

11   Q.   How did you know or come to know that the

12 position of Village manager was available and that you

13 should apply for it?

14   A.   I had a number of individuals let me know

15 that this position was available.

16   Q.   Do you know who, specifically?

17   A.   Actually, the first that I came to find out

18 about it was while I was at a commission meeting and

19 was told that the Village manager and a couple of their

20 staff had walked off, so I knew the position would

21 become available shortly after that.

22   Q.   You actually went to a North Bay Village

23 commission meeting and --

24   A.   No, no, I was a commissioner in North Miami

25 Beach.

1   Q.   Right.

2   A.   And this happened -- I found out about it

3   when I was on the dais. We had walked off the dais.

4   We were going to an executive session, and somebody

5   mentioned it, you know, that, you know, this was

6   happening. And I was like, no, it's not, so --

7   Q.   Do you remember who told you?

8   A.   I believe it was Brian Andrews.

9   Q.   Who is that?

10   A.   Brian Andrews is a consultant, public -- what

11   do you call it? He's a PR person.

12   Q.   And is North Miami a client of his company?

13   PR company?

14   A.   North Miami? No.

15   Q.   North Miami Beach?

16   A.   North Miami Beach was.

17   Q.   How long were you a commissioner in North

18   Miami Beach?

19   A.   From 2011 to 2018.

20   Q.   Were you always a commissioner or to become

21   vice mayor or anything like that?

22   A.   No, I worked for the City of North Miami

23   Beach for 13 years. Afterwards, went to the City of

24   Sunny Isles. Opened up my own restaurant; became a

25   teacher, an adjunct teacher at FIU, and then through

1 all of that, I was also a commissioner in North Miami

2 Beach; won my first election in 2011.

3   Q.   So did you later, I guess, confirm that there

4 was a position available to be manager at North Bay

5 Village?

6   A.   Yes.

7   Q.   How did you confirm that?

8   A.   I am not sure. I believe that the mayor let

9 me know that this position was available and this was

10 an opportunity to apply.

11   Q.   The mayor of North Bay Village?

12   A.   Yes, sir.

13   Q.   And who was that?

14   A.   Connie Kreps.

15   Q.   How did she let you know?

16   A.   I believe I received a phone call from her.

17   Q.   So you two knew other before?

18   A.   Oh, yes, we had been --

19   Q.   How --

20   A.   Since we were both commissioners, we had

21 attended a number of dinners, we had attended a number

22 of different events.

23   Q.   And are you suggesting that she suggested to

24 you that you should apply to be Village manager?

25   A.   Yes.

1   Q.   Can you tell me why you were qualified to be

2   Village manager in North Bay Village?

3   A.   I have my master's degree in public

4   administration. I worked in government for over 25

5   years. I was a commissioner for seven of those years,

6   and it's a combination of everything that I have done

7   that the next logical step was to be a city manager.

8   Q.   Do you remember who you were competing

9   against at North Bay Village?

10   A.   Yes. I was completing against Anita Holloway

11 and I was also competing against other lady that I

12 don't recall her name.

13   Q.   Is Ms. Holloway the Doral -- did she work for

14 Doral, or am I thinking of someone else?

15   A.   No, you're thinking of someone else.

16   Ms. Holloway actually worked for the City of

17 North Miami Beach and North Miami. She ended up -- I

18 don't know what was the other city she ended up working

19 for, but I had known her from North Miami Beach and --

20 from North Miami Beach. It's Anita Faye Holloway.

21   Q.   And do you know Yvonne Solar --

22   A.   Oh, that's the other lady, yeah. I don't

23 know her, no.

24   Actually, I met her that day actually, while

25 we were going through the interviews.

 1   Q.   Did you meet with each one of the

 2   commissioners as part of the process?

 3   A.   No.

 4   Q.   Did you meet with any of the commissioners?

 5   A.   No.

 6   Q.   Did you meet with the mayor to be interviewed

 7   before you were appointed?

 8   A.   Actually, wait a minute. There were some

 9   meetings that took place prior to -- actually, all the

10   candidates met with the commissioners. So, yeah, we

11   did.

12   I don't recall if I met with all of them, to

13   be honest. I remember specifically meeting with

14   Cattabriga.

15   Q.   Did you meet with Andreana Jackson?

16   A.   I really can't recall.

17   Q.   Did you meet with Mayor Kreps?

18   A.   I really can't recall.

19   Q.   Any other commissioners that you remember?

20   A.   No.

21   Q.   Did you prepare for these interviews?

22   A.   No.

23   Q.   Did you study the city, make any

24   presentation, explain why you were --

25   A.   Oh, yes. That, I did.

1   I went to the city, took pictures of the

2   roads, looked around for items that I thought could

3   have been improved; improvements that could have been

4   done with the Village, yes. I did go ahead and look

5   thoroughly at the Village.

6   Q.   Did you analyze the budget?

7   A.   I was not so concerned with the budget as

8   more as I was concerned with the services for the

9   residents.

10   Q.   And some of them, or at least one of the

11   commissioners mentioned that you put together a package

12   and presented it and said you did some work in

13   researching the city, is that --

14   A.   Yes.

15   Q.   -- what you are referring to?

16   A.   Yes.

17   Q.   Can you give the overall theme of what that

18   package entailed?

19   A.   It entailed showing a lot of the landscape

20   issues that we had in the Village, showing how certain

21   things hadn't been addressed; catch basins that were

22   clogged, these things called bulb-outs which had no

23   plants in them or dried up plants. I looked at the

24   seawall behind certain buildings that I knew were not

25   up to code. That's -- I went through each one of the

 1   islands just to see what were the things that I would

 2   have to address. A lot of potholes and stuff like

 3   that.

 4   Q.   So it sounds like your packaging focus was

 5   based upon beautification of the town?

 6   A.   Yes.

 7   Q.   Of the Village?

 8   A.   Yes.

 9   Q.   You mentioned that you were an adjunct

10   professor at FIU.

11   What did you teach?

12   A.   I taught public sector budgeting and applied

13   research methods.

14   Q.   Are you still doing that?

15   A.   No, sir.

16   Q.   Did you have any sense of what any issues

17   were in terms of how the government -- the actual

18   administrative government was working in North Bay

19   Village before you arrived?

20   A.   Yes, sir.

21   Q.   Tell me about that.

22   A.   I had heard that there -- I had heard that

23   the mayor had expressed to me that she wasn't being

24   supported by the current administration, and that that

25   was a huge issue and that there was all kinds of stuff

1 going on that wasn't up to par with the previous

2 manager and that there was issues with Mr. Noriega and

3 the hurricane party.

4   It seemed like they were looking for somebody

5 to come in and really address all these issues and

6 bring the Village -- change the image of the Village to

7 a positive image. It just seemed like it had a really

8 negative outlook.

9   Q.   Did the mayor express that she wanted the

10 chief of police to be terminated before you arrived?

11   A.   Yes.

12   Q.   When did she do that?

13   A.   She had done that -- she had done that

14 probably when I was looking to apply.

15   Q.   Did the mayor make it a condition of your

16 employment that the chief of police be terminated?

17   A.   It wasn't a condition. It was more of an

18 understanding.

19   Q.   Can you elaborate, please?

20   A.   She had expressed to me that that the chief

21 was not acting properly; that he was -- that he was

22 one-sided on an issue having to do with another

23 commissioner, and that he was trying to get her in

24 jail, and therefore, he needed to go.

25   And basically, he was part of the previous

1 administration so it was, like, a cleaning house.

2   Q.   Frank Rollason was your predecessor?

3   A.   Yes, sir.

4   Q.   Did you ever talk to him before you accepted

5 the job?

6   A.   No, he e-mailed me.

7   Q.   Did he offer to talk to you?

8   A.   Yes, sir.

9   Q.   But you hadn't taken him up on that?

10   A.   I e-mailed him right back saying I was

11 very -- I kindly appreciated it, but I didn't want

12 to -- that I, you know, I wasn't going to -- basically,

13 thank you very much, but no thanks.

14   Q.   Did anyone else besides the mayor communicate

15 to you that there was an expectation of clean up in,

16 you know, to get rid of Chief Noriega?

17   A.   Yes.

18   Q.   Who was that?

19   A.   Normal Powell.

20   Q.   Who is Norman Powell?

21   A.   Norman Powell is the city attorney.

22   Q.   And you met with him before you accepted the

23 position?

24   A.   Yes, sir.

25   Q.   Where did you meet with him?

1   A.   I'll be honest, I don't recall.

2   Oh, yes, I met with him at -- I don't know if

3   it was a Starbucks, but it was in Miami Shores, where

4   he lives.

5   Q.   So it's your understanding that Mr. Powell

6   lives in Miami Shores?

7   A.   Yes, sir.

8   Q.   And you live in North Miami Beach, I assume?

9   A.   Yes, sir.

10   Q.   So you met him at the Starbucks.

11   Can you approximate how long before you

12   accepted the position with the Village that you had

13   this meeting?

14   A.   The meeting took place before -- the

15   interviews took place before everything took place.

16   This was very preliminary.

17   Q.   And who invited whom? Did you ask him to

18   meet or did he ask you to meet?

19   A.   Sir, I don't recall.

20   Q.   Did you know the purpose of the meeting

21   before you went?

22   A.   Yes, sir.

23   Q.   And what was the purpose of the meeting?

24   A.   It was just to discuss the position, what

25   would be the process, just, you know, those type of

1   information.

2   Q.   How long did your Starbucks meeting last?

3   A.   Probably about maybe half an hour.

4   Q.   Can you tell me what you discussed?

5   A.   Not really.

6   Q.   Did he, Mr. Powell, make it clear that

7   removal of the chief of police, Carlos Noriega, was

8   expected?

9   A.   Yes, sir.

10   Q.   Did he say why?

11   A.   He -- there was an understanding that the

12 entire previous administration was not in favor of the

13 mayor.

14   Q.   And a moment ago you mentioned that the mayor

15 felt that the chief was trying to get her in some type

16 of criminal trouble.

17   A.   Yes, sir.

18   Q.   Do you know specifically what that was?

19   A.   It was something having to do with the

20 previous commissioner; Mr. Hornsby.

21   Q.   Okay.

22   A.   That some envelope appeared in his mailbox

23 with some information of his past.

24   Q.   Having to do with a criminal history?

25   A.   Yes, sir.

 1   Q.   Did you happen to be -- did you ever attend

 2   any North Bay Village commission meetings before you

 3   became Village manager?

 4   A.   No.

 5   Q.   Did you watch any of their recorded meetings?

 6   A.   No.

 7   Q.   Did you research what this issue was about

 8   with the Commissioner Hornsby before you arrived?

 9   A.   No.

10   Q.   But it was clear to you that Norman Powell

11   and the mayor were concerned that Carlos Noriega was

12   investigating Commissioner Hornsby's claim?

13   MR. RAILEY: Form.

14   You can answer.

15   THE WITNESS: Yes.

16   BY MR. BUSCHEL:

17   Q.   Besides meeting with Mayor Kreps and

18   Mr. Powell, was there anyone else that met with you on

19   the commission before you were Village manager?

20   A.   Yes.

21   Q.   Who else?

22   A.   Mitch Edelstein.

23   Q.   Who is Mitch Edelstein?

24   A.   He is a lobbyist/resident, mainly resident of

25   the Village.

1   Q.   Did you know him before you met with him?

2   A.   Yes.

3   Q.   And how long have you known Mr. Edelstein?

4   A.   I've known Mitch about probably about seven

5 to eight years.

6   Q.   Did you deal with him when you were a

7 commissioner in North Miami Beach?

8   A.   Yes, sir.

9   Q.   Is he a registered lobbyist with North Miami

10 Beach?

11   A.   As far as I know, yes.

12   Q.   But that's your relationship with him; he's a

13 lobbyist, you were a public official, you knew each

14 other from city business?

15   A.   Right.

16   Q.   Are you personal friends with him?

17   A.   Umm --

18   Q.   I know these things get blurred.

19   Do you consider him a friend?

20   A.   I consider him an acquaintance.

21   Q.   Okay.

22   A.   He was, I guess you could say instrumental in

23 having me come to the Village.

24   Q.   Can you explain what you mean by that?

25   A.   I knew about budget, and I had met with the

1   mayor in the past to go over the budget. She was not

2   trusting of Mr. Rollason, so I was just looking at the

3   budget, which things -- where you could cut back, where

4   were the areas where monies could be placed that you

5   could later on utilize, just some of the areas where I

6   knew that that's the way you are able to fluff the

7   budget, basically. And he's the one that arranged

8   meeting with her.

9   Q.   Who is this again? Who were meeting with?

10   A.   Mr. Edelstein.

11   Q.   No, no, who has he suggesting that you meet

12 with?

13   A.   The mayor.

14   Q.   I'm sorry?

15   A.   The mayor.

16   Q.   Okay.

17   A.   This happened about -- probably about six

18 months to a year prior to me ever applying.

19   Q.   Was Mr. Edelstein an advocate for you to be

20 the Village manager?

21   A.   Yes.

22   Q.   Did he express any, I guess, quid pro quo in

23 response that if he gets you this job, did he have any

24 expectations from you?

25   A.   Maybe in his mind. Not in mine.

1   Q.   Did he express any expectation to you?

2   A.   He expressed different positions. Again, not

3   mine.

4   Q.   What were the positions he expressed?

5   A.   Like, chief of staff or something in that

6   nature.

7   Q.   Did he suggest --

8   A.   In the police department.

9   Q.   Yeah, did he express who he wanted to be

10 chief of police?

11   A.   Did he express who he wanted to be?

12   Q.   Yes?

13   A.   Chief of police?

14   Q.   Yes. In North Bay Village.

15   A.   Yes.

16   Q.   Who did he express?

17   A.   John Buhrmaster.

18   Q.   Did you know John Buhrmaster before you

19 became Village manager?

20   A.   Yes.

21   Q.   How did you know him?

22   A.   I had been introduced to him through Mitch.

23   Q.   How many times have you met Mr. Buhrmaster?

24   A.   Once.

25   Q.   Do you remember where that was?

1   A.   Yes.

2   Q.   Where was that?

3   A.   We met at the Starbucks on Miami Gardens.

4   Q.   Different than the Miami Shores one?

5   A.   Yes, sir.

6   Q.   How long before you became manager did you

7   meet John Buhrmaster?

8   A.   Probably a month to two months prior to.

9   Q.   And what was the purpose of your meeting with

10 him?

11   A.   To see if he was, you know, somebody that I

12 would consider hiring, what his background was.

13   Q.   And this is for chief of police in North Bay

14 Village?

15   A.   Yes, sir.

16   Q.   Was Mitch Edelstein at that meeting?

17   A.   No.

18   Q.   So it was you and he alone?

19   A.   Yes, sir.

20   Q.   How long was the meeting?

21   A.   Probably about the same; about 30 minutes.

22   Q.   Were you impressed with John Buhrmaster?

23   A.   Yes, sir.

24   Q.   Do you recall what his background was?

25   A.   Yeah, he had a huge background in the City of

1   Miami. He was -- looked like a very nice gentleman

2   that would put the police department in a good

3   standing. He showed to be extremely knowledgeable and

4   extremely professional.

5   Q.   Did he mention that he was interested in the

6   job?

7   A.   Yes.

8   Q.   Did you ask him any questions about Carlos

9   Noriega?

10   A.   I believe I did not. My focus was not there.

11   Q.   As you sat there interviewing or having a

12   conversation with John Buhrmaster, did he have any

13   opinion about Carlos Noriega as chief of police?

14   A.   Not really. I had heard some negative things

15   about his involvement in Miami Beach, but I was just

16   trying to build a good team.

17   Q.   What did you hear about Carlos Noriega and

18   Miami Beach?

19   A.   I had heard that he was -- that he was

20   involved when the officers were on the ATCs -- ATVs,

21   and that whole situation was under his watch and that

22   he was too nice; too nice of a -- too nice that his --

23   basically, his employees took advantage.

24   Q.   Do you know what discipline the ATV officers

25   received in Miami Beach?

1   A.   No, sir.

2   Q.   Did you receive -- did you do any research on

3   that issue, the ATV issue in Miami Beach?

4   A.   I'm sorry?

5   Q.   Did you do any research on that --

6   A.   No.

7   Q.   -- what the situation was --

8   A.   No.

9   Q.   -- what happened? What his discipline was?

10   A.   No.

11   Q.   Anything else in Miami Beach that you recall?

12   A.   No.

13   Q.   At some point, you accept the job as North

14   Bay Village manager, correct?

15   A.   Yes, sir.

16   Q.   Do you recall how many days you were there

17   before you terminated Carlos Noriega?

18   A.   I believe it was, like, two weeks.

19   Q.   Did you terminate him in person?

20   A.   Yes.

21   Q.   Do you recall where that was?

22   A.   In my office.

23   Q.   Was anyone else there with you?

24   A.   Yes.

25   Q.   Who?

1   A.   Norman Powell, the city attorney, and Ana

2   Deleon, the personnel coordinator.

3   Q.   Did you take any notes of the meeting?

4   A.   No, sir.

5   Q.   Do you know if -- Ana Deleon, you said?

6   A.   Yes.

7   Q.   Did she?

8   MR. RAILEY: Form.

9   BY MR. BUSCHEL:

10   Q.   If you saw.

11   Did you see her taking notes?

12   A.   No.

13   Q.   What was the reason, if any, that you gave

14 that you were terminating Carlos Noriega?

15   A.   At the moment, all I stated to him was that

16 we were taking a different direction.

17   Q.   What did you mean by that?

18   A.   I had already had a number of incidents with

19 him that led me to that point.

20   Q.   And what was the direction you wanted to take

21 the police department that was different than what was

22 happening?

23   A.   Number one was I needed to have a police

24 chief that would adhere to my request. I needed to

25 lower the overtime that there was in the police

1 department. I needed to get control of the officers

2 and how things were being handled.

3   Q.   But as you sat there in that meeting, you

4 knew that the mayor and Mr. Powell wanted Carlos

5 Noriega to be terminated as the chief?

6   A.   Yes.

7   Q.   And you knew the reason, the main reason why

8 was that the chief of police, Carlos Noriega, was

9 investigating the mayor for criminal activity?

10   MR. RAILEY: Form.

11 BY MR. BUSCHEL:

12   Q.   You can answer.

13   MR. RAILEY: You can answer.

14   THE WITNESS: Oh, that was their

15   interpretation, not mine.

16 BY MR. BUSCHEL:

17   Q.   But they communicated that to you?

18   A.   Yes.

19   Q.   Did you review Carlos Noriega's personnel

20 file prior before you terminated him?

21   A.   No, I did not.

22   Q.   Did you interview any members of the police

23 department before you terminated him?

24   A.   No, I did not.

25   Q.   Did you review any personnel -- any

1   evaluation forms or any, you know, the evaluation

2   report -- performance evaluation report of Chief

3   Noriega before you terminated him?

4   A.   No.

5   Q.   Did you know that Chief Noriega was on

6   intermittent Family Medical Leave Act when he was

7   terminated?

8   A.   Yes.

9   Q.   How did you know that?

10   A.   I had been informed by Mr. Powell.

11   Q.   And when did he inform you of that?

12   A.   He informed me of that probably when I was

13   first hired.

14   Q.   Why did he tell you that?

15   MR. RAILEY: Form.

16   You can answer.

17   THE WITNESS: Because he was trying to let me

18   know that because he was on FMLA was not something

19   that could prevent me from firing him.

20   BY MR. BUSCHEL:

21   Q.   So he told you that even though Carlos

22   Noriega was on FMLA, you could still fire him?

23   A.   Yeah, I could still terminate him, yes.

24   Q.   Do you know who Ana Watson is?

25   A.   Yes.

1   Q.   Who is she?

2   A.   She was a resident of the Village. I didn't

3   know her very well. She spoke a lot. I didn't -- I

4   don't tend to take in information that -- it doesn't

5   apply to me.

6   Q.   Can you be more specific?

7   A.   Because she -- there -- okay, because it's

8   like you're not getting the real story. You're hearing

9   one person's part of it and it's, you know, she -- she

10 mentioned something about -- well, I don't even know if

11 I got it through her, but somebody said about some

12 checks that bounced or some checks that she was

13 involved with. And then I don't know if she was

14 arrested or she wasn't arrested.

15   Supposedly she had gone to the building

16 department and was taking copies of plans. I don't

17 know. I don't know what's true, what's not. I can't

18 even start to tell you.

19   Q.   Are you aware that Ms. Watson is under

20 criminal charges by the state attorney's office in

21 Miami now?

22   A.   Now?

23   Q.   Yes.

24   A.   No.

25   Q.   Did you know that she was under

1 investigation, criminal investigation, by the North Bay

2 Village police department?

3   A.   No.

4   Q.   Do you know what Ana Watson's relationship

5 was with Mayor Kreps?

6   MR. RAILEY: Form.

7   THE WITNESS: They were best buddies.

8 BY MR. BUSCHEL:

9   Q.   What makes you say that?

10   A.   The day that I got inaugurated or soon after

11 that, something like that, we all had, like, dinner

12 together.

13   Q.   And it was clear from the conversation that

14 Ms. Watson and Mayor Kreps were friends?

15   A.   Yeah, it was Ms. Watson, Mayor Kreps and

16 Barbara Kramer.

17   Oh, maybe I used the wrong name. Maybe it's

18 not Barbara.

19   Q.   Mary?

20   A.   Yeah, Mary Kramer, yes. Sorry.

21   Barbara Kramer's my friend from North Bay

22 Village -- from North Miami Beach.

23   Q.   That's fine.

24   What was Mary Kramer's relationship to the

25 mayor?

1   MR. RAILEY: Form.

2   THE WITNESS: I do not know.

3   As far as I know -- what I do know is that

4   supposedly they were friends, and that's how

5   her husband got involved in becoming a

6   commissioner.

7   BY MR. BUSCHEL:

8   Q.   Do you know her husband's name?

9   A.   Yes.

10   Oh, God, what is his name?

11   He's the last commissioner that was -- that

12   is still there.

13   Alvarez. Jose Alvarez, could be.

14   Q.   Would you have liked to have known whether

15   Ana Watson, best buddies with the mayor, was under

16   criminal investigation by the North Bay Village police

17   department before you fired Carlos Noriega?

18   MR. RAILEY: Form.

19   THE WITNESS: No.

20   BY MR. BUSCHEL:

21   Q.   How come?

22   A.   Because that's the police department and they

23   needed to do what they needed to do.

24   Q.   So you recognize as the Village manager that

25   you shouldn't necessarily know about ongoing

1   investigations?

2   MR. RAILEY: Form.

3   THE WITNESS: No, I wanted to -- I reached

4   out to Behar to find out what was going on.

5   When I got in, there was only three

6   employees that were eligible to be dismissed

7   because they were part time and they weren't

8   under the union.

9   Those were only the three officers that

10   were Behar, Columbano and another gentleman. I

11   did not know at all that Columbano was involved

12   in Ana Watson's investigation or whatever was

13   going on with her. I found out after the fact.

14   When I asked him what he did, he said he

15   did background checks, so that's what I thought

16   he did.

17   Behar, I thought, was doing the internal

18   affairs, and I asked him by e-mail more than

19   once, you know, what are you working on? What

20   are you doing? What's, you know, what are you

21   doing?

22   I'm paying you. I don't know what your

23   job is.

24   And at no moment did that gentleman

25   respond back to me either in writing or

1   verbally.

2   As a matter of fact, he never even met

3   with me until the day that I released him from

4   his duties.

5   BY MR. BUSCHEL:

6   Q.   Did you ever meet with Chief Noriega to

7   discuss what Tom Columbano and Sam Behar were doing?

8   A.   No, I believe I did not.

9   Q.   Do you understand the police department and

10   the chain of command?

11   A.   Yes.

12   Q.   Did you consider the possibility why Sam

13   Behar and Tom Columbano did not respond to you is

14   because they report directly to the chief of police?

15   MR. RAILEY: Form.

16   THE WITNESS: No, because when I reached out

17   to them, Mr. Noriega was no longer the chief.

18   BY MR. BUSCHEL:

19   Q.   Who replaced -- well, John Buhrmaster did not

20   replace Chief Noriega?

21   A.   No.

22   Q.   You agree? That's correct?

23   A.   Yes, that's correct.

24   Q.   Were you under the impression that John

25   Buhrmaster would accept the position of chief of

 1 police?

 2   A.   Yes.

 3   Q.   When did you learn that he was willing to be

 4 chief of police?

 5   A.   When we first met.

 6   Q.   At the Starbucks?

 7   A.   Yes.

 8   Q.   When did that change?

 9   A.   The Monday prior to inaugurating the new

10 chief.

11   Q.   So the Monday -- and who was the new chief?

12   A.   No -- oh, Lewis Velkin.

13   Q.   So do you remember the day of week Lewis

14 Velkin was sworn in as the chief?

15   A.   I believe it was that Wednesday.

16   Q.   So two days prior, you found out that John

17 Buhrmaster was not going to be accepting the position

18 of chief?

19   A.   Yes.

20   Q.   How did you find that out?

21   A.   He went ahead and he texted me.

22   Q.   Do you still have the text?

23   A.   I have a different phone now. It might be on

24 my old phone.

25   Q.   Did he give a reason or was he just --

1   A.   No.

2   Q.   What did the text say?

3   A.   No, he let me know that this was a personal

4   reason that occurred for his daughter. It was medical,

5   and that due to that, he would not be able -- his

6   daughter had had a baby, his grandbaby, and he was

7   watching the grandbaby a lot, and something happened

8   that they spent, like, the entire night at the

9   hospital.

10   His text was letting me know that he had

11   spent the whole night at the hospital and basically, I

12   guess, whatever that situation was, was going to have

13   him be a grandfather full time instead of part time.

14   Q.   So your impression was due do personal

15   medical reasons within his family he could not accept

16   the position of chief?

17   A.   Correct.

18   Q.   Even though he previously obligated himself

19   to be the chief?

20   MR. RAILEY: Form.

21   THE WITNESS: Yes, sir.

22   BY MR. BUSCHEL:

23   Q.   Did you call him after that text?

24   A.   Yes.

25   Q.   And what did you talk about?

1   A.   I wasn't able to reach him.

2   Q.   So you never had a subsequent conversation

3 after the text?

4   A.   After the text, I -- no, I could not get

5 ahold of him for awhile.

6   I believe after that, I'm talking about

7 months ago, I may have actually had been -- was able to

8 reach out to him and he responded and we just talked

9 about -- I just asked, you know, are you okay? Did you

10 see, you know, did you -- you know, did you feel this

11 wasn't a good fit for you? You know, like, basically,

12 like, what happened?

13   And he, again, had said it was his family

14 situation and he just knew that he wasn't going to be

15 able to fulfill the position.

16   Q.   How many conversation did you have with John

17 Buhrmaster about him not accepting the position of

18 chief?

19   A.   I think that was the only one that I had.

20   Q.   And in any of those conversations that you

21 had with John Buhrmaster, did he comment about Carlos

22 Noriega?

23   A.   I believe not.

24   Q.   Lewis Velkin; how do you know him?

25   A.   When I found out that Mr. Bushmaster was no

1 longer interested in the position, I reached out to

2 Bill Hernandez, which is the chief of police for the

3 City of North Miami Beach, and I asked him if he knew

4 of anyone that would be interested in the position.

5   Q.   Let's do a timeline.

6   Did you terminate Carlos Noriega before you

7 knew John Buhrmaster wasn't going to accept the

8 position of chief or after?

9   A.   I terminated Mr. Noriega. I put the add in

10 the advertisement for a chief.

11   Afterwards, Mr. Bushmaster went ahead and

12 submitted and was going to be hired. So Mr. Noriega

13 was already terminated by the time that Mr. Bushmaster

14 was going to take place.

15   Q.   Buhrmaster, you mean?

16   A.   Buhrmaster, yes, sir.

17   Q.   So let me just do -- you knew six months to a

18 year before you became the Village manager, you

19 interviewed Mr. Buhrmaster?

20   MR. RAILEY: Form.

21   THE WITNESS: Oh, no.

22 BY MR. BUSCHEL:

23   Q.   Or a month before?

24   A.   Yes.

25   Q.   So a month before you became Village manager,

1 your hope -- and he said he was interested in being the

2 chief of police?

3   A.   Yes.

4   Q.   When you terminated Carlos Noriega, you had

5 every expectation that John Buhrmaster would be the

6 chief of police?

7   A.   Yes.

8   Q.   It was after Carlos Noriega was terminated

9 that you learned that personal matters in John

10 Buhrmaster's life prevented him from accepting the

11 position of chief of police?

12   A.   Correct.

13   Q.   So this was a surprise that --

14   A.   Yes.

15   Q.   When you realized that John Buhrmaster was

16 not going to accept the position of chief in North Bay

17 Village, you called the chief of North Miami Beach for

18 recommendation?

19   A.   Correct. Correct.

20   Q.   How long have you known the chief of North

21 Miami Beach?

22   A.   Five, six years.

23   Q.   You trusted his judgment?

24   A.   Definitely.

25   Q.   And he recommended Lewis Velkin?

1   A.   Yes.

2   Q.   Who was the interim chief before you hired

3   Mr. Velkin?

4   A.   Brian.

5   Q.   Brian?

6   Last name?

7   A.   I don't recall. He was the -- there was two

8   lieutenants; McCready and Brian. I don't recall

9   Brian's last name.

10   Q.   So there was an acting chief?

11   A.   Yes, sir.

12   Q.   So the chief of North Miami Beach recommends

13 Lewis Velkin.

14   What was his experience; Lewis Velkin's?

15   A.   He was a detective in Miami-Dade County, had

16 worked there for 20 something years.

17   Q.   Miami-Dade, the county?

18   A.   Yes, sir.

19   Q.   Did you do any background check on him?

20   A.   I did a preliminary one.

21   Q.   How did you do that?

22   A.   I went ahead and I contacted a gentleman by

23 the name of Glenn Rice, and he and went ahead looked

24 into Mr. Velkin.

25   Q.   Do you know Glenn Rice's background?

1   A.   I believe he's an investigator.

2   Q.   Was he ever a police officer?

3   MR. RAILEY: Form.

4   THE WITNESS: I don't know.

5 BY MR. BUSCHEL:

6   Q.   Did he hold any other positions in government

7 that you're aware of?

8   A.   No, not aware of any.

9   Q.   How did you come to Mr. Rice?

10   A.   I had hired Mr. Juan Valiente from -- I had

11 worked with Mr. Juan Valiente in Biscayne Park. He had

12 been -- he showed a lot of interest in being cost

13 savings and very intelligent when it came to vehicles

14 and ways to save money for the police department and

15 handling the storage rooms and what were some of the

16 items and stuff like that. So he was -- he seemed to

17 be the person that would be a great asset to me and an

18 ally at the city.

19   Q.   Did Mr. Valiente work at North Bay Village?

20   A.   Yes, I hired him.

21   Q.   What was his position?

22   A.   He was public works director.

23   Q.   And you knew him from a previous job from,

24 where?

25   A.   When I worked as Village manager -- village

1   clerk in Biscayne Park.

2   Q.   What was his position there?

3   A.   He was a -- he was a volunteer officer.

4   Q.   Do you know his history as a police officer?

5   A.   Yes.

6   Q.   Can you tell me what that is?

7   A.   He told me that he had worked in Hialeah for

8   a long period of time, and he -- and I also found out

9   later that he had also worked for the City of Hialeah

10 Gardens.

11   Q.   Did you ever ask him about the credentials

12 and reputation of John Buhrmaster?

13   A.   I don't recall. I could have. I could have

14 asked him, like, his opinion of, you know, but I really

15 don't recall specifics.

16   Q.   What did Glenn Rice provide you in terms of

17 background on Lewis Velkin?

18   A.   He provided me with some documents that

19 basically just had some -- wasn't very detailed, but it

20 was enough for me to see that this was, you know, a

21 good fit; a good professional for the Village.

22   Q.   Do you know what Mr. Velkin's highest rank

23 was in the Miami-Dade police department?

24   A.   No, I do not.

25   Q.   Did you look at his internal affairs file?

1   A.   No, I did not.

2   Q.   Do you know if Mr. Velkin is known by any

3   other name besides Lewis Velkin?

4   A.   I do now.

5   Q.   What was it what is it?

6   A.   I was just told probably two weeks ago that

7   he went by Luis Vasquez, I believe they said to me.

8   Q.   Did anyone explain to you why he changed his

9   name?

10   A.   No.

11   Q.   I'm assuming Glenn Rice didn't share any data

12 or information that you that Lewis Velkin was known by

13 another name?

14   A.   No, he didn't know.

15   Well, I'm sorry. I don't know what he knew

16 or didn't know, but at that time I was unaware of any

17 of that.

18   His records from Miami-Dade County had been

19 requested but had not been released.

20   Q.   Were you under pressure to hire a new chief?

21   A.   Yes.

22   Q.   Did that pressure prevent you from doing a

23 thorough investigation of Mr. Velkin?

24   A.   Yes.

25   Q.   Had you had the luxury of more time, you

1   would have done more?

2   A.   Yes.

3   Q.   Okay.

4   A.   Well, I take it back, no.

5   The information that was provided to me I

6   didn't think was -- that I had to pursue it any

7   further.

8   He did mention to me about some kind of

9   harassment that was placed against him. It's something

10   that happens to a lot of police officers. He's not the

11   only one. I also knew -- wait a minute.

12   I did know that there was an incident where

13   he saved his partner or was present with when -- when

14   his partner in North -- that was in the location of

15   North Miami Beach passed, or there was something in

16   that respect, and he shot a dog; not killed a dog, just

17   shot him, like, to stop him, because it was our joke.

18   Q.   Okay.

19   A.   You know.

20   Q.   Any other concerns before you hired him?

21   MR. RAILEY: Form.

22   THE WITNESS: No.

23   BY MR. BUSCHEL:

24   Q.   Did anyone besides you recommend him to be

25   chief?

1   A.   Mr. Valiente was also in agreement.

2   Q.   Was there a search committee formed by you to

3   consider chiefs of police?

4   A.   At the beginning there was.

5   Q.   How long was the process from beginning to

6   end?

7   A.   I couldn't tell you that because I don't know

8   how long the coordinator placed it on, you know,

9   advertised it or whatever. I know that there was some

10   applications. We went through them, a number of them

11   were removed and then they were given to the finance

12   director, Mr. Powell and Ana to go ahead and, you know,

13   basically look over about five of them.

14   Q.   Did the mayor have a position on Mr. Velkin?

15   MR. RAILEY: Form.

16   THE WITNESS: No, nobody did.

17   BY MR. BUSCHEL:

18   Q.   Nobody did?

19   MR. RAILEY: Form.

20   BY MR. BUSCHEL:

21   Q.   Mr. Powell?

22   A.   No.

23   Q.   Do you know how long Mr. Velkin was a member

24   of the Miami-Dade police department?

25   A.   I believe it was anywhere from 20 to 30

1 years, because he retired from there.

2   Q.   He retired?

3   Are you familiar with the Florida retirement

4 system?

5   A.   Yes.

6   Q.   Is did Miami-Dade police department an FRS

7 system?

8   A.   Yes.

9   Q.   Is North Bay Village part of the FRS?

10   A.   Yes.

11   Q.   When did Lewis Velkin retire from the

12 Miami-Dade police department before he became chief?

13   A.   He retired either in January or February.

14   Q.   Of 2018?

15   A.   Yes.

16   Q.   And when was he hired?

17   A.   I believe he was hired, I would say, around

18 May.

19   Q.   Was there a -- are you aware of a rule that

20 prevents somebody from retiring from the FRS system and

21 taking a new job with another FRS system?

22   A.   Yes.

23   Q.   Did you have anyone look into whether that

24 was -- was it okay to hire Mr. Velkin for that reason?

25   A.   Yes.

1   Q.   Who?

2   A.   I had gone ahead and I had spoken to

3   Mr. Powell and I had spoken to Mr. Velkin for him to

4   make sure that that was something he could do.

5   Q.   And what did Mr. Powell advise?

6   A.   He said that we would -- that there was ways,

7   basically, around it.

8   Q.   Did you ask him what those ways were?

9   A.   I'm not sure if Mr. Powell was who got in

10 touch with -- well, Mr. Velkin got in touch with FRS to

11 find out how else could he continue working with -- how

12 he could continue working and not affect his FRS

13 retirement, and the answer was to go through a third

14 party.

15   Q.   And did you know who that third party was?

16   A.   It was a basically, like, a -- like, a

17 contract -- like a temp agency is basically how we did

18 it.

19   Q.   And so Mr. Velkin's salary was paid through a

20 temp agency?

21   A.   Yes, sir.

22   Q.   Do you remember the name of the temp agency?

23   A.   No, I'm sorry, I do not.

24   Q.   Does the same Stephanie Leon, PA, L-E-O-N

25 mean anything to you?

1   A.   No.

2   Q.   Did you approve the third party that was

3 going to pay Mr. Velkin?

4   A.   No, I don't recall.

5   Q.   Did you rely on Mr. Powell to research and

6 make sure this was within the law to do?

7   A.   Yes.

8   Q.   Do you remember where this conversation took

9 place?

10   A.   In my office.

11   Q.   Okay.

12   A.   In my office and then in Powell's office when

13 Velkin advised me of the situation.

14   Q.   So Mr. Velkin, as far as you knew, realized

15 there was an FRS situation that needed to be navigated?

16   A.   Correct.

17   Q.   Did Mr. Velkin have to be approved by the

18 city commission to be chief of police or was it your

19 authority to hire him?

20   A.   It was my authority to hire him. I had to

21 present him to the commission, basically, to give --

22 for them to give their blessings.

23   Q.   Did anyone on the commission know that there

24 was an FRS issue that needed to be navigated for Lewis

25 Velkin?

1   MR. RAILEY: Form.

2   THE WITNESS: No.

3   BY MR. BUSCHEL:

4   Q.   Did you advise anyone on the commission that

5   you were firing Carlos Noriega before you did?

6   A.   On the commission?

7   Q.   Yes.

8   A.   No.

9   Q.   Well, who did you advise that you were

10   terminating Carlos Noriega before you did?

11   A.   Norman Powell.

12   Q.   When did you tell him?

13   A.   I told him the day -- the next day from when

14   I met with Mr. Noriega.

15   Q.   I'm sorry, so you met with Mr. Noriega, and

16   then at this meeting you then decide you were going to

17   terminate him?

18   A.   Correct.

19   Q.   And did you have any written settlement

20   agreement to present to Mr. Noriega?

21   A.   No.

22   Q.   Did you offer him to resign in the meeting

23   where you terminated him?

24   A.   I don't recall. I believe not, but I don't

25   recall.

1   MR. BUSCHEL: Let's take a five minute break,

2   okay?

3   THE VIDEOGRAPHER: Going off the video record

4   at 10:31.

5   (Recess taken.)

6   THE VIDEOGRAPHER: Back on the video record

7   at 10:43 A.M.

8 BY MR. BUSCHEL:

9   Q.   Ms. Martell, do you know who Mr. Wollschlager

10 is?

11   W-O-L-L-S-C-H-L-A-G-E-R.

12   A.   Yes.

13   Q.   Who is he?

14   A.   Nick is the, or was, the chief of Biscayne

15 Park.

16   Q.   Did you consider him for a position with

17 North Bay Village?

18   A.   Yes.

19   Q.   Was he hired?

20   A.   Yes.

21   Q.   What position did he have?

22   A.   He was hired as the assistant chief.

23   Q.   How long was he with the Village?

24   A.   Approximately, I believe, one week. Seven

25 days, ten days, something like that.

1   Q.   What happened there?

2   A.   Nick was hired, and in the morning I received

3   a phone call that some kind of article had hit the

4   paper and the newspaper, basically, was putting him in

5   something having to do with Biscayne Park.

6   Q.   Do you know what happened?

7   What the end of that story is for

8   Mr. Wollschlager?

9   A.   Yes. He's been exonerated. The FBI actually

10   put in his file the information that should have been

11   there from day one.

12   Q.   So explain what was he accused of and what

13   was he exonerated of.

14   A.   I don't know what he was accused of. I know

15   that whatever was in his file, in his IA file, was not

16   closed. So because of it not being closed or the last

17   paperwork that's supposed to be on there, he was -- he

18   was not -- he was not being looked at as, you know,

19   clean; clean bill of health, basically.

20   Q.   How did you know him or meet him?

21   A.   I had worked with Nick for a year in Biscayne

22   Park.

23   Q.   What was his position there?

24   A.   Chief of police.

25   Q.   And you thought he was a good chief of

1 police?

2   A.   Amazing.

3   Q.   How come you didn't consider him for chief?

4   A.   Because Nick didn't have enough experience,

5 length of time, and I didn't want for -- he was of, you

6 know, he was a colleague, he -- I had worked with him.

7 It may have been too much of a conflict and I thought

8 that that was not a good fit.

9   Q.   Was there a deputy chief position at North

10 Bay Village before you hired Mr. Wollschlager?

11   A.   No.

12   Q.   You created the position?

13   A.   Yes.

14   Q.   And when this came out, I assume that you had

15 a discussion with him? Once the article came out, you

16 had a discussion with Mr. Wollschlager?

17   A.   No, I did not.

18   Q.   Well, he resigned, I assume?

19   A.   I'm trying to remember the sequence in which

20 it occurred.

21   I remember the morning I received a phone

22 call. My response was I need to look into it before

23 anything further happens.

24   At that time, I had already hired my HR

25 director. My HR director then looked into what had or

1   paperwork and blah-blah-blah, and her and I went up to

2   Mr. Powell to talk to him about the situation and let

3   him know, you know, what had happened. And his --

4   basically, his recommendation was, you know, that I had

5   to let him go of his position.

6   Q.   So Mr. Powell weighed in on whether

7   Mr. Wollschlager should remain with the police

8   department?

9   A.   Correct.

10   Q.   And his recommendation was to let him go?

11   A.   Yes.

12   Q.   Who told Mr. Wollschlager he needed to go?

13   A.   The chief of police.

14   Q.   Who was that?

15   A.   Velkin.

16   Q.   Velkin, okay.

17   About how long after that was

18 Mr. Wollschlager cleared?

19   A.   Within the same day that the article came

20 out.

21   Q.   Was Mr. Wollschlager ever rehired in North

22 Bay Village?

23   A.   No.

24   Q.   Did you know he was cleared the same day?

25   A.   What do you mean by "cleared"?

1   Q.   Well, you said he was cleared the same day as

2   the article.

3   What do you mean?

4   A.   Oh, he was released. He was terminated in

5   North Bay Village.

6   Q.   I see what you're saying.

7   A.   He was not cleared of his paperwork. His

8   paperwork came in after the fact.

9   Q.   I understand, okay. Thank you for

10 clarifying.

11   Did you know Norman Powell before you became

12 Village manager?

13   A.   Yes.

14   Q.   How long did you know him?

15   A.   Same time as Mr. Edelstein; through lobbyist

16 positions that he took on in North Miami Beach.

17   Q.   What kind of clients did Mr. Powell have

18 that --

19   A.   He usually represented -- I believe he

20 represented Solid Gold may have been the name. He

21 represented -- I don't know if one or more than one of

22 strip clubs in North Miami Beach.

23   Q.   Anything else stand out who he represented or

24 did work for?

25   A.   No.

1   Q.   Were you friends with Mr. Powell?

2   A.   No.

3   Q.   Okay.

4   A.   Acquaintance.

5   Q.   Professional relationship?

6   A.   Correct.

7   Q.   And he was already Village attorney when you

8   became Village manager?

9   A.   Yes.

10   Q.   Did you have an opinion of his skills,

11 ability and advice as an attorney before you became

12 Village manager?

13   A.   No, wait a minute. Rephrase that, please.

14   Q.   Did you have an opinion of his ability and

15 skills as an attorney prior to you becoming the Village

16 manager?

17   A.   He was an attorney. I didn't really, you

18 know -- my interaction with him was just as a lobbyist.

19   Q.   So you had no reference to his skills as an

20 attorney prior to you joining North Bay Village?

21   A.   Correct.

22   Q.   Do you know his relationship with the Mayor

23 Kreps?

24   A.   No, I don't know when he met her or how or,

25 you know, I -- I don't know, you know, how they -- how

1   they met each other. I can only assume that it was

2   through Mitch.

3   Q.   Well, what I'm getting at is did Mr. Powell

4   and Mayor Kreps have a good working relationship?

5   MR. RAILEY: Form.

6   THE WITNESS: I don't know.

7   I mean, they did once he was hired. Prior

8   to that, I have no knowledge of what their

9   relationship was.

10   BY MR. BUSCHEL:

11   Q.   Once he was Village attorney, did Mayor Kreps

12   appear to be pleased with his services?

13   A.   Extremely.

14   Q.   What makes you think that?

15   A.   The fact that on the dais she had said how

16   grateful and wonderful she was to have him there; how

17   she patted him on the back the day having to do with

18   the fireworks when he really had done nothing.

19   Q.   Does the Village attorney -- let me rephrase

20   the question.

21   Should the Village attorney in North Bay

22   Village have any influence over the day-to-day

23   management of the police department?

24   A.   No.

25   Q.   Do you believe that Norman -- once you were

1   manager, do you believe that Norman Powell was a good

2   Village attorney?

3   A.   No.

4   Q.   Why? What makes you think so?

5   A.   As the Village attorney, your position is to

6   remove liability from the Village, and instead it was

7   more of instigating.

8   Q.   Can you give examples?

9   A.   He would agree with anything the mayor said,

10   even if that created an open liability for the Village.

11   He was looking into situations having to do

12   with Mr. Rollason and the fence masters. He went ahead

13   and put out -- I shouldn't say that.

14   He possibly was who put out the information

15   of the hurricane party that was not redacted.

16   Q.   Any other examples you can think of?

17   A.   While in commission meetings, a number of

18   times I told him the mayor could not be the one to make

19   the motion; she's only to second it. And it continued

20   to happen.

21   Anything having to do with planning and

22   zoning, you have to go ahead, it's quasi-judicial, and

23   you have to go ahead and swear in anybody that's going

24   to speak for or against it, and he wouldn't, or he

25   didn't.

1   There was another time where I said to him

2   that one of the commissioners had crossed the line with

3   Sunshine Violation, and he basically said I was wrong.

4   Q.   What's Sunshine Violation?

5   A.   There's e-mails that went between them that

6   said "Do not respond", but were clear on that they were

7   not happy with my performance.

8   Q.   So there were e-mails between the mayor and

9   Mr. Powell regarding your performance?

10   A.   No, there were e-mails between the

11   commissioners expressing their unhappiness with my

12   performance.

13   Q.   Have you seen that --

14   A.   Yes.

15   Q.   -- seen those e-mails?

16   Do you possess those e-mails?

17   A.   Yes.

18   Q.   Do you believe that Norman Powell played a

19   role in your --

20   A.   Yes.

21   Q.   -- departure?

22   A.   Yes.

23   Q.   Let me finish the question.

24   A.   I'm sorry.

25   Q.   No, no, I know it's human impulse, but we

1   have to make a record.

2   What makes you think that Norman Powell

3   participated in your departure at North Bay Village?

4   A.   He was present when the mayor read a speech

5   to me.

6   MR. RAILEY: Do you want to take a break?

7   BY MR. BUSCHEL:

8   Q.   Just take your time.

9   A.   Stating that I had no integrity and that I

10   didn't have leadership skills.

11   Q.   I'm sorry, I missed a word.

12   You had no, what?

13   A.   I had no integrity or leadership skills.

14   Q.   Where was this speech given?

15   A.   It was given on the fourth floor conference

16   room. Mr. David Miller, Mr. Norman Powell and myself

17   were present.

18   Q.   So the mayor had a prepared --

19   A.   Yes, she did.

20   Q.   A prepared writing?

21   Okay, did she provide it to you?

22   A.   Not at that time.

23   Q.   Any specifics why she felt you didn't have

24   integrity?

25   A.   Because she didn't get her way.

1   Q.   What did she want you to do that you weren't

2   doing?

3   A.   In my interviews -- my interviews as a

4   manager, there was another gentleman that worked for

5   Opa-Locka and they wanted me to hire him, and I was not

6   comfortable. I didn't feel that he set the skill set

7   that I needed in the Village, and I went ahead and I

8   hired Yolanda Menengazo as our HR director, because she

9   was extremely qualified, was an outstanding person. I

10 had met her in North Miami Beach. Her mother is the

11 mayor for West Miami 30 years, and I know her mother,

12 and I knew that I was bringing in a real professional.

13   And unfortunately, Ana Deleon in the time

14 that I was there proved that she did not have either

15 the skill set, the knowledge, the experience, the

16 education, for that position.

17   Q.   Who did they want you to hire from Opa-Locka?

18   A.   Last name is Reyes. I think Ernesto Reyes.

19   Q.   What position did they want -- did the mayor

20 want Mr. Reyes to have?

21   A.   I guess basically he would have been hired as

22 assistant city manager.

23   Q.   And you felt Mr. Reyes was not qualified for

24 that position?

25   A.   I needed somebody strong in the HR

1 department, and that was not his strength. His

2 strength was on budget.

3   And I had spoken to the finance director, Mr.

4 Bert Wrains, and had talked to me and told me that this

5 gentleman had called him on issues, so he -- his

6 strength was not on there.

7   In addition to that, his resume -- I was not

8 at all impressed with his resume. He had gone to

9 Michigan, had worked a very short period of time there

10 and had just -- it just didn't feel right.

11   Q.   So --

12   A.   I went ahead and prior to hiring either one,

13 I gave them an assignment. I took that assignment,

14 which was to provide me with an RFP and give me a

15 newsletter, because those were things that we had

16 talked about going head and bringing forth in the

17 Village; bringing forth a number of RFPs and bringing

18 forth a newsletter.

19   He called me the following morning telling me

20 that he wasn't interested in the position. And I said,

21 why? You know, what was the reasoning?

22   And he said to me that, you know, first of

23 all, he hadn't done the assignment. But he had said

24 something in the realm that I had given him the

25 impression that it wasn't a good fit or something.

1   My meeting with him, or my interview with him

2   was because what I was told was just hire him and if

3   you don't like him, get rid of him in a couple of

4   months, and I just didn't feel that that was something

5   I would do to somebody.

6   You know, if I'm going to hire you, you have

7   a position. I'm not going to take you away from that

8   job to hire you and then get rid of you.

9   Q.   How long would it take for you to evaluate an

10 employee before you realize they fit or don't fit?

11   MR. RAILEY: Form.

12   THE WITNESS: It really depended. I had an

13   open mind when it came to all the employees. I

14   did not -- first of all, the Village doesn't have

15   that many employees or directors, I should say.

16   Basically, I had two directors. I had the

17   finance director and the police director. That

18   was it.

19   I had a capital improvement person that

20   was outsourced. I had the clerk, which was not

21   under my purview and neither is the attorney.

22   Those are charter officers.

23   So the reality is I only had two

24   individuals, and I had come in with the

25   mentality of seeing, you know, if we could

1   build a team.

2   BY MR. BUSCHEL:

3   Q.   So let's go back to the fourth floor

4   conference room.

5   You had David Miller.

6   Norman Powell was in the room?

7   A.   Yes.

8   Q.   Mayor Kreps?

9   A.   Yes.

10   Q.   Anyone else?

11   A.   No.

12   Q.   Were you all sitting or standing?

13   A.   Sitting.

14   Q.   Was anything said to you by Mayor Kreps

15   besides what she read off the speech? The paper?

16   A.   At the end, she asked for my resignation or

17   to leave the Village amicably.

18   Q.   How long you were into your tenure before she

19   had this fourth floor conference meeting with you?

20   A.   Less than 90 days.

21   Q.   Prior to that, did you have any understanding

22   that the mayor was unhappy with you?

23   A.   Yes.

24   Q.   How did she express that?

25   A.   Everything was fine until after Mother's Day

1 when an article came out showing her as being crazy

2 eyes and with a nasty face in the newspaper.

3   I don't recall what the article was about,

4 but again, it was negative for North Bay Village and

5 she blamed me for not having Brian Andrews on the

6 payroll and that he could have, you know, stopped all

7 these negative articles.

8   And then she expected me to bring forth

9 fireworks for the 4th of July.

10   It was not budgeted. It was not -- it was

11 something that was being expected of me within two

12 month's time. That requires a permit. That requires

13 getting, you know, all of this done way in advance.

14 And she expected me to get in touch with, or have

15 already gotten in touch with all these business owners

16 across the street to have this done without an approval

17 from the rest of the commission.

18   So it was like working, spinning your wheels

19 for what?

20   You first needed the approval from the

21 commission before you proceed, or at least that's how I

22 interpret it.

23   And when the day of the meeting came, we had

24 already met, Norman Powell and myself, had already met

25 with the other commissioners. They had all agreed that

1 it was going to be approved. And then the day of, the

2 true fireworks came out.

3   Q.   You mean figuratively she explained what

4 the --

5   A.   Figuratively, true fireworks as in everything

6 went cluster every which way but loose.

7   The commissioners that had agreed on

8 approving it suddenly backed off. She was angry, and

9 then she kept throwing questions at me that I didn't

10 have that she expected.

11   And again, it was all questions as if I had

12 everything lined up when I had no approval first.

13   And it was over $25,000, which was out of my

14 purview.

15   Q.   Did any other commissioners ever express any

16 dissatisfaction with your performance in the first 90

17 days?

18   A.   Yes.

19   Q.   Who?

20   A.   I had gotten Miami-Dade County to come out

21 and clean every catch basin in the entire Village,

22 which had not been done -- I don't even know when,

23 which was one of my initiatives to make sure that if we

24 had a hurricane, it would minimize flooding.

25   And I had worked until -- I had worked Monday

1   until I think 2:00 in the morning.

2   The following day was commissioner meeting,

3   and we had worked, I don't know how many hours.

4   Between that Monday or Tuesday, we had probably worked

5   a good, you know, 20 hours, some crazy number like

6   that.

7   And after that, Commissioner Jackson started

8   drilling me about the cleaning of the catch basins and

9   how much I had spent and how it was -- why hadn't I

10 informed her? Why hadn't I told her? Why hadn't I

11 provided the information? That we had seen each other

12 on Monday, we had seen each other or Tuesday; why was

13 that information not provided?

14   And the line of questioning went on and on

15 and on and on. I don't know if it started the night

16 before or just that whole morning, but it went on and

17 on and on and on.

18   The final e-mail she sent to me and to the

19 commissioners stating she did not accept my apology,

20 because my last response to her was, you know,

21 basically it was -- it was a -- it was an oversight on

22 my behalf to not mention to them the cost of the catch

23 basins and so on and so forth.

24   And then her response was "I do not accept

25 your apology when it comes to public funding."

1   And to be honest, I wasn't apologizing.

2   There was nothing for me to apologize for. If

3   anything, I did the Village a service to bring forth,

4   but that one e-mail was sent to all the commissioners.

5   Q.   Any other commissioner express any

6   dissatisfaction in the first 90 days?

7   A.   After the firework scenario, by that Friday

8   the mayor had already also sent an e-mail to all the

9   commissioners stating how unhappy she was about lesson

10   learned about what happened at that commission meeting

11   having to deal with the fireworks.

12   Q.   What was the lesson learned?

13   A.   She had, you know, broken it down, whatever.

14   You know, just a number of, I guess, things that she

15   saw as going wrong; would have been nice if it would

16   have been budgeted. That would have been the first

17   thing.

18   Q.   Which the commission has to do?

19   A.   The commission has to approve it, yes. Never

20   budgeted.

21   Q.   Any other commissioners write any emails or

22   say anything to you about your performance?

23   A.   Last one was Cattabriga, and she making

24   comments -- she made a comment of we can do better.

25   This was because information had not been disseminated

1 | having to do with -- I believe it had to do with the

2 | break-ins, and that the information had not gone out,

3 | so on and so forth, but again, everything was my fault.

4 | Q.   Break-in? What does that mean "break-ins"?

5 | A.   There were some break-ins in the Village. I

6 | think, like, 13 cars were broken into, and maybe the

7 | information was not provided fast enough to those

8 | residents and so on and so forth. I believe it was

9 | about that.

10 | Her last one was just, I just, you know --

11 | Q.   She blamed that on you?

12 | A.   Yeah.

13 | Q.   Any other commissioner?

14 | A.   No. Those three.

15 | Q.   Do you think you were being treated fairly at

16 | this point in your tenure?

17 | A.   No.

18 | Q.   So from that -- walk me through from the

19 | mayor's speech on the fourth floor conference room on

20 | what happened. Explain from that point to your

21 | departure.

22 | A.   I need to talk to my attorney.

23 | Q.   Okay. You want to take a break?

24 | A.   Please.

25 | THE VIDEOGRAPHER: Going off the video record

1   at 11:11 A.M.

2   (Recess taken.)

3   THE VIDEOGRAPHER: Back on the video record

4   at 11:16 A.M.

5   BY MR. BUSCHEL:

6   Q.   Do you remember the last question or do you

7   wanted her to read it again?

8   THE WITNESS: If you could read it again.

9   MR. BUSCHEL: Please.

10 (Thereupon, the requested portion of the transcript was read

11 back by the reporter.)

12   THE WITNESS: After she went ahead and read

13   the speech that she had before her, I walked

14   out -- I -- I looked at her and told her I would

15   not be resigning and she'd have to fire me.

16   She looked at me and she said she would be

17   calling a special session. I said go right

18   ahead.

19   I walked out of the room. I had Ms.

20   Menengazo come to the room, Juan Valiente come

21   to the room and the chief of police come to the

22   room and Wendy, which was the person I had

23   hired as my assistant, and I sat them down and

24   I let them know that I had been asked -- that

25   my resignation had been asked for.

1   And they were basically with their mouth

2   open wide. And I said I will be coming to work

3   until I'm asked to leave.

4   BY MR. BUSCHEL:

5   Q.   And then after that meeting, what -- did you

6   come up with a plan during that meeting to try and

7   satisfy the mayor and the other two commissioners?

8   A.   No. I went ahead and I asked Mr. Powell that

9   I wanted a copy of that letter that she had written to

10 me. I received -- he said to me that he didn't have

11 it; that Mr. Miller had it.

12   I received a call the next morning on my way

13 to work from Mr. Miller letting me know that he would

14 provide me that letter. And I start talking to

15 Mr. Miller, and David advised me that he couldn't

16 provide me -- he couldn't provide me with any legal

17 advice; that I needed to have an attorney.

18   And prior to this meeting ever taking place

19 with Mr. Powell and David, David had come into my

20 office and we were just sitting there, talking, because

21 we've known each other from North Miami Beach.

22   And David, from what I could tell and from

23 when he asked me, do you know what this meeting is

24 about, he had no knowledge of what was going to take

25 place in that conference room.

1   Q.   So you met with Mr. Miller before you went

2   into the fourth floor conference room?

3   A.   Yes.

4   Q.   And it was your impression based upon your

5   conversation with Mr. Miller that he did not know the

6   subject matter of the meeting in the fourth floor

7   conference room with the mayor?

8   A.   Correct.

9   Q.   Were you able to tell if he knew before

10 walking into the conference room or did you walk in

11 together?

12   A.   No, we walked in together.

13   Q.   So he was hearing the speech the same way you

14 were?

15   A.   Correct.

16   Q.   So after this meeting with your staff, your

17 main staff, you did not seek to change minds of the

18 mayor and the two other commissioners regarding your

19 service?

20   A.   Are you asking me if I met with them after

21 that or reached out to them?

22   Q.   No, I'm just -- in your mind, did you think

23 oh, this isn't going to end well, they're going to try

24 to fire me and there's nothing I can do about it, or

25 did you say to yourself well, maybe there are certain

1   steps that I can take to do to try to prevent my

2   termination?

3   A.   I didn't know what I was thinking. I was --

4   I was really taken by the situation. I was -- I didn't

5   feel that it was within her right to ever take me into

6   a closed conference room and read out something to me

7   without the rest of the commissioners.

8   I immediately that night -- the day that it

9   happened, I reached out to Councilman Lim, who was in

10 my support.

11   I had spoken with Mr. Alvarez, Jose Alvarez,

12 I don't know if it was the day before that or just a

13 few days prior and he had told me that I had his full

14 support.

15   And then I also reached out to Cattabriga to

16 let her know what had happened, you know, but it was

17 brief. It wasn't like a full-on conversation.

18   By this time, Jackson was no longer talking

19 to me, so I knew there was no need to go there, and I

20 didn't want to deal with the mayor at all.

21   Q.   Did you hire counsel?

22   A.   The day that I -- the day that I talked to

23 the commissioners was the same day that I had had --

24 the mayor had talked to me, it was on my way home. The

25 next morning I hired counsel to represent me.

1   Q.   Who did you hire?

2   A.   I hired Mr. John Hearn.

3   Q.   And at that point when you spoke to

4   Mr. Hearn, did you hire him for the purpose of a

5   severance package, to create one or --

6   MR. RAILEY: Finish the question.

7   BY MR. BUSCHEL:

8   Q.   Let me finish the question.

9   Or just to seek general advice?

10   MR. RAILEY: To the extent that you can

11   answer this without infringing on any conversation

12   that you had with Mr. Hearn, if you have an

13   independent thought you can answer, otherwise I'm

14   going to instruct you not to answer.

15   THE WITNESS: I went ahead and contacted

16   Mr. Hearn because of -- Mr. Hearn had been the

17   person to negotiate my contract, and I was

18   reaching out to him to let him know what had

19   happened.

20   BY MR. BUSCHEL:

21   Q.   So you had a written contract with the

22   Village when you were hired?

23   A.   Correct.

24   Q.   At some point, you signed a settlement

25   agreement with the Village, correct?

1   A.   Correct.

2   Q.   And there was a severance package, if you

3   will, as part of that settlement with the Village,

4   correct?

5   A.   It was an agreement, not severance.

6   Q.   I mean, you left and you were given a certain

7   amount of money and --

8   A.   To go away.

9   Q.   Yes.

10   A.   Yes.

11   Q.   How long between the meeting at the fourth

12   floor conference room with the mayor and the signing of

13   that settlement agreement?

14   A.   About two weeks.

15   Q.   Were there any other conversations with any

16   other commissioners, between you and any other

17   commissioners, in between -- the two weeks between the

18   conference room meeting and the settlement?

19   A.   No, just with Mr. Powell.

20   Q.   You had a conversation with Mr. Powell?

21   What did you discuss?

22   A.   The day after -- the day after -- the day

23   after I was asked for my resignation, Mr. Powell's

24   secretary was waiting for me downstairs and had called

25   and had sent e-mails that there was an executive order

1   that I had to sign, basically giving my powers over to

2   the chief of police.

3   Q.   Before you settled?

4   A.   Yes.

5   Q.   Was there a vote on this executive order?

6   A.   Nope.

7   Q.   All right. So you've got to walk me through

8   this a little bit.

9   Well, first, did you think that was proper

10 for you to sign?

11   A.   No.

12   Q.   Where was this meeting with Mr. Powell?

13   A.   He actually refused to meet with -- okay.

14   So the following day, his assistant calls me

15 a number of times, sends me the agreement or the

16 executive order a number of times, calls me at

17 lunchtime, waits for me in front of my door to sign it.

18 I continue to say I'm not going to sign this, I'm not

19 going to sign this, I'm not going to sign this.

20   The same paper was given to me by different

21 people, including the clerk, and my papers of other

22 things to sign. And I finally just said I'm not going

23 to go ahead and sign this.

24   And at that time, Mr. Powell hadn't even --

25 hadn't even talked to me. Hadn't confronted me.

1   Q.   So let me -- there was an executive order

2   that was drafted by Mr. Powell, to your understanding?

3   A.   Correct.

4   MR. RAILEY: Form.

5   BY MR. BUSCHEL:

6   Q.   He e-mailed it to you?

7   A.   Yes.

8   Q.   The executive order was from -- for your

9   signature to give over your power as Village manager to

10 the chief of police?

11   A.   Correct.

12   Q.   And there had been no agenda item vote or

13 anything regarding with the Village commission

14 regarding this subject?

15   A.   Nope.

16   Q.   Okay, I understand.

17   Who authorized Norman Powell to send you this

18 executive order?

19   MR. RAILEY: Form.

20   THE WITNESS: I don't know.

21 BY MR. BUSCHEL:

22   Q.   Did you ask him?

23   A.   No, I didn't ask him.

24   Q.   And you said you received it from the clerk

25 as well?

1   A.   Yes.

2   Q.   Same answer; you don't know who authorized

3   the clerk to send you the executive order?

4   A.   I'm pretty sure it was Mr. Powell who gave it

5   to her, because how would she have it?

6   Q.   So when you refused to sign it, what was the

7   next event that happened regarding your separation?

8   A.   The next event that happened was that he

9   showed up at my office. I went ahead and --

10   Mr. Valiente, who was who I hired, had come to my

11   office and said that he had reached out to me the day

12   before, wanted to talk to me and that Mr. Powell wanted

13   to meet with me that morning at 10:00 A.M. to discuss a

14   severance.

15   Q.   So he went to Mr. Valiente; not to you?

16   A.   Correct.

17   Q.   Did you agree to meet with Mr. Powell?

18   A.   No.

19   Q.   What's the next event?

20   A.   I went over to speak with the finance

21   director. I had made some copies and --

22   Q.   Mr. Wrains?

23   A.   Mr. Wrains.

24   And when I was walking back from Mr. Wrains'

25   office, Mr. Powell was in my office with Mr. Valiente.

1   Q.   So that was a surprise?

2   A.   Very much so.

3   Q.   You took the meeting, I assume?

4   A.   I sat, yeah.

5   Q.   What did Mr. Powell say?

6   A.   Mr. Powell said to me that he would be

7   willing to offer me $125,000 on the spot, either out of

8   his own pocket, or the Village would go ahead and make

9   me a check by the end of the week.

10   Q.   He offered to pay out of his own pocket?

11   What was your response to that?

12   A.   He -- I said to him I have an attorney, and

13 any kind of negotiations, you need to go through him.

14 And he had put a piece of paper on my desk with

15 125,000, with his signature on it.

16   Q.   Do you have that document?

17   A.   Yes.

18   Q.   Do you have it with you today?

19   A.   I don't think so.

20   Q.   Well, let me ask you this.

21   What did you bring today?

22   A.   I brought the public records request that I

23 had asked for in the Village.

24   Q.   Okay.

25   A.   Because I had asked for all my e-mails just

1   in case that for some reason I needed to prove my

2   innocence or anything at all.

3   Q.   I'm going to ask that we make a copy of that

4   today.

5   A.   I really don't have anything in here. I

6   actually found this in the back of my car.

7   I brought just -- I had written down some

8   meetings that I had had prior to letting go of

9   Mr. Noriega, and then I brought down -- I brought

10 the -- basically the information. I wrote down all the

11 timelines and everything that happened throughout my

12 time with the Village just to have for anything that

13 may come up.

14   Q.   You kept a diary?

15   A.   Yes, sir.

16   Q.   We'll deal with that in a moment. Thank you.

17   All right. At some point he leaves,

18 Mr. Powell leaves this -- well, strike that.

19   Mr. Valiente is in your office. Do you --

20 was he there for you or were you upset that he ushered

21 Mr. Powell in your office or what was your

22 interpretation of that?

23   MR. RAILEY: Form.

24   THE WITNESS: I was rather surprised. This

25   was somebody that I had hired myself and I thought

1   that he was my ally. And I did know that him and

2   Mr. Powell had had some conversations prior to,

3   because his son is or was or is in school to

4   become a lawyer, and Mr. Powell was going to get

5   him into, like, a courtroom, stuff like that so he

6   could view that.

7   I thought that was, like, okay, I

8   understand. It's my kid. You know, you want

9   your kid to experience certain things, we

10   become buddies.

11   So I just felt that he should have been my

12   friend, not his friend.

13   So when he -- the first time he came --

14   the first time he sat there, he heard that

15   conversation. I tell, you know, when they --

16   when Mr. Powell walks out, Mr. Valiente walks

17   out, you know, I tell Mr. Valiente -- he's,

18   like, you really should go for it, this is a

19   really good thing.

20   And I just looked him and I said I'll

21   think about it. And he goes, you know, he's,

22   you know, they're willing to pay for your

23   daughter's insurance and, you know, and this

24   amount and, you know, you should just -- this

25   is a really great thing, you should take it.

1   And he went upstairs to talk to him.

2   When he came back down with the same piece

3   of paper, then he had written on it at the very

4   bottom something about just sign the executive

5   order, like, just -- all this would be true,

6   just sign the executive order.

7   BY MR. BUSCHEL:

8   Q.   And what was the next event after that

9   meeting when Mr. Powell and Mr. Valiente were in your

10 office?

11   A.   Actually, after that -- actually, the day

12 before that Wednesday, the situation with Kreps

13 happened on Tuesday. Wednesday was the situation with

14 the executive order.

15   At the end of the day, I looked up special

16 sessions. What I found out was that the only person

17 that could call the special session is a commissioner

18 with the manager's approval.

19   So the main reason for that executive order

20 to become reality is that if I signed it over to the

21 chief, he would then call the special executive order

22 and everything went away. I would have been fired on

23 the spot.

24   Q.   Sure.

25   A.   So that's why the pressure of the executive

1 order was so important.

2   And then that Thursday, that was in the

3 morning when I met with him. After that, I sat at my

4 computer, I continued working. I sent out basically a

5 memo to all the commissioners saying this is the stuff

6 that I have accomplished within the time I've been

7 here. This was something that I had told them that I

8 would be submitting at a later time, more like in the

9 September, October time period after we had finished

10 the strategic planning and all that bunch of stuff that

11 we had already done, but based on what had happened I

12 just wanted to let them know hey, look, I've done this,

13 this, this, this, this, this and this. You know, I've

14 fulfilled, you know, a lot of -- I accomplished a lot

15 in the short period I was there.

16   Q.   And the chief of police at the time was

17 Mr. Velkin?

18   A.   Yes.

19   Q.   The man you hired?

20   A.   Yes, sir.

21   Q.   After you sent out this e-mail listing your

22 goals, objectives and accomplishments in the period of

23 time that you were at the Village, what happens? The

24 next event relating to your tenure there?

25   A.   That was on Thursday.

1   On Friday morning, I had a 6:00 A.M. to go

2   see my son in Michigan. I went to see my grandkids.

3   And because I was going to be out of the Village for a

4   few days, that's when they wanted me to sign the

5   executive order, but I had gone to Mr. Wrains and asked

6   him was that normal process?

7   Mr. Wrains had told me no; that he had been

8   actually having a procedure done and never was he asked

9   to sign anything over at the time that he was going

10   through his procedure. So I finished doing my memo and

11   I left on an airplane Friday morning.

12   And then from Friday morning, from that day,

13   Friday, over the weekend, conversations went back and

14   forth between my attorney and myself.

15   And I hadn't seen my son in such a long

16   period of time, and my first comment to him was I don't

17   have cancer; I've just lost a lot of weight.

18   So the next few days, which I -- which was at

19   the very end of June and I came back -- first day I was

20   back on the third and I attended the Fourth of July

21   event with the city, which the mayor was very surprised

22   that I was there. And I continued working until the

23   meeting that took place on July 8th when they approved

24   my contract.

25   Q.   What do you mean? What contract?

1   A.   They voted on my agreement.

2   There is no resignation letter.

3   Q.   When did you decide that you were leaving the

4   village?

5   A.   If that contract got approved, I had three

6   choices; I was going to -- they were going to fire me

7   on the dais; they were going to approve the agreement,

8   and the worst case scenario is I was going to be asked

9   to stay, and I could no longer work with either the

10 mayor or the attorney.

11   Q.   Did they create an environment which was

12 unworkable?

13   MR. RAILEY: Form.

14   THE WITNESS: Oh, without a doubt.

15 BY MR. BUSCHEL:

16   Q.   Can you summarize how it was like between the

17 fourth floor conference room meeting until you left;

18 the environment, the climate created by the mayor and

19 Mr. Powell?

20   A.   There was just so much tension. They weren't

21 talking to me. I just knew what was happening. And I

22 continued to work. I was not about to let them state

23 that I was -- that I had abandoned my position.

24   I worked every single day until that day. It

25 was just very difficult to walk in there, knowing what

1   was happening.

2   The environment truly became tense from after

3   Mother's Day all the way until she sat me down and read

4   that to me, which was about more than a month.

5   Q.   What was your salary supposed to be, or what

6   was it when you were Village manager?

7   A.   My salary was 125.

8   Q.   A year?

9   A.   Yes.

10   Q.   Was there a term to your contract?

11   A.   Yes.

12   Q.   How long was it for?

13   A.   It was the standard contract of vacation,

14   sick, insurance, severance package, terminated or

15   released or whatever you want to call it.

16   Q.   Was the severance package for a monetary

17   amount less than the 125,000?

18   A.   Yes.

19   Q.   Do you remember what it was?

20   A.   No.

21   Q.   What I'm asking is was it a three year

22   contract? A two year contract?

23   A.   Yes, I had a three year contract.

24   Q.   And you meant among other benefits to get a

25   salary of 125,000 a year?

1   A.   Yes.

2   Q.   And your settlement agreement -- your

3   settlement agreement was for 125,000?

4   A.   127.

5   Q.   127.

6   Anything significant about the extra 2,000?

7   A.   It was to cover my lawyer's fees.

8   Q.   So in short, the Village paid you a year's

9   salary to separate from the city from the Village?

10   A.   And my daughters's insurance.

11   Q.   And your daughter's insurance, okay.

12   Did you ever express to the Village that

13   there would be -- that you had grounds for unlawful

14   termination if they were to terminate you?

15   A.   No.

16   Q.   You didn't express to any Village

17   commissioner that you had a certain medical condition

18   or that if you were to be terminated, you could sue on

19   that behalf? On that ground?

20   A.   No.

21   Q.   I'm going to ask you specifically because

22   this person testified, Ms. Jackson said that she heard

23   that you had a medical condition that if they were to

24   terminate you, would expose the city to liability.

25   Did you ever communicate that to her?

1   MR. RAILEY: Form.

2   THE WITNESS: Oh, I know now what she is

3   talking about.

4   Prior to me getting hired, they did a full

5   background check and my medication was exposed

6   and was written in legal affairs as the manager

7   that the -- like, that I had medication, that I

8   was -- that I was on meds or something to that

9   effect; that somehow my information, my

10   personal HIPAA information was leaked.

11   I can only imagine that's what she was

12   referring to.

13 BY MR. BUSCHEL:

14   Q.   Okay.

15   A.   My medication was doctor prescribed.

16   Q.   Do you have any understanding why the Village

17 agreed to pay you 127,000 as opposed to the pre-agreed

18 severance package amount?

19   MR. RAILEY: Again, if you can answer that

20   without having any conversations with your lawyer,

21   you can answer it.

22   THE WITNESS: This is pure speculation.

23   I can only imagine that due to the way it

24   was handled, due to what I had experienced, due

25   to the circumstances, specifically that I was a

1   commissioner that had stepped down from that

2   role and stepped down as a Village clerk to

3   take on something and be terminated at such a

4   small amount of time that, you know, those were

5   things that they may have taken into

6   consideration.

7   MR. BUSCHEL: Do you want to take a break?

8   Five minutes?

9   MR. RAILEY: Sure.

10   THE VIDEOGRAPHER: Going off the video record

11   at 11:44 A.M.

12   (Recess taken.)

13   THE VIDEOGRAPHER: Back on the video record

14   at 12:02 P.M.

15   BY MR. BUSCHEL:

16   Q.   How many times did you have face-to-face

17   meetings with Carlos Noriega when you were Village

18   manager?

19   A.   Maybe three or four.

20   Q.   Do you recall where those meetings were?

21   A.   Yes.

22   Q.   Where were they?

23   A.   The first meeting we had was in the

24   conference room the day -- the same night that I was

25   sworn in.

1   The next time that we had a meeting was the

2   next time he had come into my office asking me if he

3   could release a bulletin. That was Thursday, which was

4   my first day at work.

5   The next day, Friday. He had come to my

6   office, but it was just -- he was in his workout

7   clothes. It was just informal. He just asked me if he

8   could continue with the process of hiring new

9   employees, and I had said no, not at this time. It was

10   part of the request that I had given to all the -- of

11   our staff.

12   And then I had on that following day actually

13   written an e-mail to everyone just, again, going over

14   the items that I wanted to make sure that they would

15   abide by until, you know, I got a better handle on the

16   Village.

17   And then after that we -- I believe after

18   that is when we actually had a meeting which was when I

19   presented the bulletin to him and asked him why had he

20   released it being aware of that Mr. Powell first had to

21   look at anything prior to it being submitted to the

22   residents.

23   Q.   Okay, so let's start with the first one.

24   The conference room on the day you were sworn

25   in, the night you were sworn in.

1   A.   Right.

2   Q.   Were you and he alone in the conference room?

3   A.   No, the finance director was there,

4   Mr. Wrains. The city clerk was there, Yvonne Hamilton,

5   and if I'm not mistaken I believe also -- what was the

6   guy's name?

7   The CIP guy from CAP was there. Diego.

8   Q.   Explain those initials.

9   A.   No, his -- oh, CIP is the capital improvement

10 project manager for CAP, which is the -- they are a

11 company that provides building officials and building

12 department personnel.

13   Q.   Was this a -- well, describe the meeting.

14   A.   I had taken in all of the pertinent personnel

15 just to, you know, let them, you know, let them know

16 who I was, let them now how happy I was to be at the

17 Village and how I wanted us to be a team and have, you

18 know, and come together, work together as a team and

19 that there were a couple of things that I wanted them

20 to make sure that got taken care of, only because I had

21 just walked in the door, you know.

22   And it was things like, you know, I didn't

23 want any high purchases and I didn't want hired

24 personnel. I don't know what I put in the list, but

25 the gist of it was because number one is I didn't know

1   what our budget situation looked like. It was already

2   March. And normally, you know, freezes are done for

3   purchases at around -- anywhere from June to July. And

4   personnel, it depends, you know, what the situation is.

5   But because I had just walked in the door, I

6   just felt that it was better for me to first understand

7   what we had before we kept adding to it.

8   Q.   How long did you think you would need to

9   evaluate the budget and personnel before any high end

10   purchases or personnel would be hired?

11   A.   High purchases, I would say a good -- I think

12   with both of them, it would take me at least two

13   months.

14   Q.   Did Carlos Noriega make any high purchases

15   during his time when you were the Village manager to

16   the time he was terminated?

17   A.   I'm not aware of any that he made, no.

18   Q.   Did he hire any personnel?

19   A.   He did not hire anybody. He was going

20   through the process of hiring people.

21   Q.   And the process, does it cost any money to

22   the Village?

23   A.   I'm really not aware because I am not -- I

24   don't know at what point were background checks done

25   which would mean, you know, basically personnel or an

1   outside agency. How they handled that, I was not aware

2   of that.

3   It was -- it was more of, you know, stopping

4   the process at this time. That's all.

5   Q.   Have you ever reviewed any budgetary studies

6   on how expensive it is to hire a new police officer

7   versus pay an existing police officer overtime?

8   A.   No, I have not done studies, but based on my

9   knowledge of being around government, overtime is one

10   of the easiest ways to be able to increase your --

11   increase your pension and is one of the easiest ways to

12   increase your salary.

13   Unfortunately, police officers don't get paid

14   what they deserve to get paid. I mean, the average

15   officer starts at 45 to 50,000. That can be -- that's

16   a regular salary in another position. But the way they

17   make up for it is on overtime and off duty work.

18   Q.   All right. So my question to you is it's

19   more expensive to pay overtime than to hire new

20   officers?

21   A.   Yes and no.

22   Yes, it is more -- yes, it is expensive to go

23   ahead and have the overtime so on and so forth. The

24   problem with hiring new officers is when you hire them,

25   that's it. You're stuck with them. Because the --

1   they become part of the union, and at that point you

2   are no longer able to let go of an officer.

3   While the overtime, you can go ahead and

4   modify it by going ahead and making changes to

5   schedules.

6   Q.   During this meeting, did you have an

7   understanding of whether the police department was

8   fully manned? Understaffed? Any of that?

9   A.   Mr. Noriega did inform me that there were

10   openings or vacant positions in the police department.

11   Q.   Anything else discussed with in the

12   conference room that day with Mr. Noriega?

13   A.   We weren't in a conference room.

14   Q.   I thought you said when you were -- your

15   first meeting, after you were sworn in.

16   A.   Oh, no, none of that information of

17   employer -- of the question -- line of questioning that

18   you're asking me about officers, no, none of that was

19   discussed. It was just more of an open -- this is the

20   expectations, I just walked in the door, let me get

21   ahold of, you know, let me get ahold of Village needs

22   so that we can then make some changes.

23   Q.   So you're saying it's a -- go ahead.

24   A.   Sorry.

25   Q.   The conference room meeting on the night you

1   were sworn in was generally introductory remarks, this

2   is who I am, hello?

3   A.   Yes.

4   Q.   Welcome aboard?

5   A.   Correct.

6   Q.   Excellent, okay.

7   And then you had, I guess your -- the release

8   of the bulletin you were discussing, where was that

9   meeting?

10   A.   It really wasn't a meeting.

11   He walked into my office. I was on the

12   computer. He said to me, you know, can I send this

13   out? And I said sure.

14   I gave -- I felt he was, you know, he was the

15   chief of police. He -- you know, there's things that

16   he needs to inform the residents about, you know. It

17   was on him, you know.

18   Q.   Sure.

19   A.   I wasn't going to micromanage what everybody

20   did.

21   Q.   And I guess the Village manager is ultimately

22   in charge of the police department, correct?

23   A.   Yes.

24   Q.   But did you, I guess, philosophically leave

25   the day-to-day management of the police department to

1 the police chief?

2   A.   Yes.

3   Q.   How long was this meeting about the bulletin

4 where he popped into your office?

5   A.   Oh, no, it was two seconds. It wasn't a

6 meeting. It was just here it is.

7   Q.   A pop in, okay.

8   A.   You know, can I get it out?

9   Sure, go ahead.

10   Q.   And then there was a next meeting, you said

11 there was this informal -- informal meeting about

12 hiring and that's when you had this conversation about

13 don't hire anybody yet until I get a sense of the

14 budget?

15   A.   Right. This was -- I was sworn in Wednesday.

16 Thursday was the situation with the bulletin. Friday,

17 probably anywhere between 5:00 and 7:00, I couldn't

18 tell you because, you know, I just -- I worked very

19 long hours.

20   He popped in and just said to me hey, by the

21 way, you know, we're going to have some interviews, you

22 know, can we proceed with them, blah-blah-blah; you

23 know, I have this position open and, you know, I would

24 like to go ahead and, you know, this has -- the process

25 has already been started so, you know, I wanted to

1   finish it off.

2   And my response was, you know, no. You know,

3   we went over this, you know, yesterday. It's really,

4   you know -- you know, and he asked me how long do you

5   think you'll be and I said, you know, give me at least

6   a couple of months, you know?

7   Q.   Did you hear anything about that after?

8   A.   Yes, that was what one of the issues was that

9   after I got -- when -- on Monday, I heard that there

10 were -- there were some interviews that were scheduled,

11 possibly had happened over the weekend or were going to

12 happen that Monday, and I told my assistant please let

13 the chief know, no interviews.

14   Q.   Did the interviews happen?

15   A.   I'm -- I believe they didn't.

16   Q.   Okay.

17   A.   If they did, it was before Monday. It would

18 have been over the weekend, if they had happened.

19   Q.   Do you have any information that it did?

20   A.   I don't have anything written.

21   Q.   Were any police officers hired during your

22 tenure as Village manager?

23   A.   No.

24   Q.   The next you mentioned something about an

25 e-mail.

1   Did you have an e-mail conversation with the

2   chief about a bulletin?

3   A.   No.   I received either a phone call -- I

4   received either a phone call or an e-mail from the

5   mayor or Norman stating that any notices, information,

6   bulletins, you know, what do you call those? Like a

7   public notice, you know, those kind of things needed to

8   first be approved by the attorney that that had been

9   made -- that had been made aware to the chief months

10 ago.

11   Q.   And who was supposed to review that?

12   A.   The city attorney.

13   Q.   Why was that?

14   A.   That's what he said; that he wanted to make

15 sure that everything that went out had been preapproved

16 by him.

17   Q.   Mr. Powell did?

18   A.   Yes.

19   Q.   And did he articulate why he wanted that?

20   A.   I can only -- I can't -- I'm not clear on it.

21 I can only think that it was because of the tension.

22   Q.   I mean, it is the city attorney interfering

23 with the police department, isn't it?

24   MR. RAILEY: Form.

25   THE WITNESS: To be honest, I don't know what

1   his role is when it comes to the chief of police.

2   BY MR. BUSCHEL:

3   Q.   I mean, but you do know that he does -- the

4   chief of police does not report to the Village

5   attorney?

6   A.   That would be true.

7   Q.   Let me ask you -- we'll make it a composite

8   exhibit of e-mails.

9   Let me ask you to take a look at it. It's

10   dated March 29, 2018. Let me ask you to review it and

11   then just look up at me when you're done.

12   Are these e-mails a fair and accurate

13   representation of e-mails that you received regarding

14   the subject matter of this police bulletin that was

15   released?

16   A.   Yes.

17   (Thereupon, Plaintiff's composite Exhibit No.1

18   was marked for identification.)

19   MR. BUSCHEL: I'll hand you what we'll mark

20   as the next Exhibit, No.2.

21   (Thereupon, Plaintiff's Exhibit No.2 was marked for

22   identification.)

23   BY MR. BUSCHEL:

24   Q.   Do you recall reviewing this exhibit? The

25   Public --

1   A.   Yes.

2   Q.   -- Information Bulletin?

3   Is this the Public Information Bulletin that

4   the Mayor Kreps was referring to in the e-mail in

5   Exhibit 1?

6   A.   I believe so.

7   Q.   Is there anything in your opinion that

8   exposes the Village to legal liability for telling

9   people to roll up and lock their windows and be safe

10   kind of thing?

11   MR. RAILEY: Form.

12   THE WITNESS: I'm not a lawyer, but I don't

13   see anything that would be a liability.

14   BY MR. BUSCHEL:

15   Q.   Did you see that Mayor Kreps, and I'll show

16   it to you again, that Mayor Kreps says "Please see that

17   this practice enforced in order to prevent and avoid

18   any potential liability."

19   A.   Correct.

20   Q.   To your knowledge, was the Village ever sued

21   for a Public Information Bulletin that was released by

22   the police department?

23   A.   Not that I'm aware of.

24   MR. RAILEY: Form.

25   BY MR. BUSCHEL:

1   Q.   Have you ever heard of that in your

2   experience as a city councilperson or a commissioner or

3   any role that you have had in any of the number of

4   roles that you have had in municipalities?

5   A.   No.

6   Q.   Do you think you would have suffered the same

7   mistreatment that you described from the mayor if you

8   had not terminated Carlos Noriega?

9   MR. RAILEY: Form.

10   THE WITNESS: Say that again.

11 BY MR. BUSCHEL:

12   Q.   I mean, if you chose, if you did not

13 terminate Carlos Noriega, do you think she would

14 have -- the mayor would have been upset with you that

15 you didn't do that?

16   MR. RAILEY: Form.

17   THE WITNESS: Yes.

18 BY MR. BUSCHEL:

19   Q.   If you were not instructed and agreed to

20 terminate Carlos Noriega as the chief, would you have

21 done so at the point in your tenure that you terminated

22 Carlos Noriega?

23   MR. RAILEY: Form.

24   THE WITNESS: That's a hard yes or no, and

25   I'll explain why.

1   BY MR. BUSCHEL:

2   Q.   Okay.

3   A.   As a new manager, it's very important to have

4   the support of your staff.

5   I came in with not looking to terminate

6   Mr. Noriega. I came in to analyze the Village. And

7   what I did expect was for -- what I did expect was to

8   have the support, and when Mr. Noriega seemed to have

9   challenged me, I felt I had no other choice but to

10 terminate the employment so that I could be successful.

11   Q.   How did he challenge you?

12   A.   Well, first of all, I felt that by him

13 submitting a bulletin knowing that those other e-mails

14 were also in the past, that you know, some -- at some

15 point prior to me getting there, this was the process.

16   If he would have come to me and said, you

17 know, Marlen, I know this is the process, this is the

18 bulletin, you know, just know that, you know, this is

19 what we have done -- in the past, this is what I was

20 told, this is, you know, supposedly there is even a

21 trail of e-mails saying that all -- that all bulletins

22 must go through the attorney.

23   So I would have said, okay, here he is; he's

24 already informing me of information.

25   And instead, I was handed a bulletin, asked

1   to get it out. I didn't see -- as I said, I didn't see

2   any conflict in it, so of course I said go ahead.

3   And then I received that -- that e-mail from

4   the mayor saying "Here we go again," and I'm like, what

5   are you talking about? This is, like, my first day at

6   work.

7   And then I -- I received -- I speak with

8   Mr. Powell, and he explains this is what was done, this

9   is why it was done, it was a process in order to make

10 sure that, you know, information was not given out

11 properly so on and so forth.

12   So that was, you know, how I felt. And

13 because I was a new manager, you know, to me it was

14 like, okay, why is he doing this?

15   So then the next day comes, which this is

16 Thursday, and then Friday comes and another incident

17 occurs having to do with going ahead and employing new

18 police officers which at this point, I don't know who

19 they are. I don't know if they've already been vetted.

20 I don't know if they are friends. I don't know any of

21 this information of who these individuals are.

22   So I feel like, okay, well, now I'm going --

23 I'm being, again, challenged as to this situation.

24   And then finally I'm like, okay, what do I do

25 with this information? You know, how do I -- how do I

1   address this?

2   And, you know, I -- you know, I was -- I

3   asked another colleague, you know, hey, how would you

4   do -- what would you do at this point? You know, how

5   would you -- how would you address this?

6   And they said simple; just put the bulletin

7   and ask why, you know, why did you go ahead and submit

8   this the first day you're there when you know you're --

9   you know, you just got sworn in.

10   And Mr. Noriega's response was that he did

11 not -- was not, like, aware of this or this was not,

12 you know -- you know -- you know, like, if he didn't

13 know that he could get out -- the bulletin was not

14 something that he had to put through the attorney's

15 office.

16   So I said to him, do you want me to pull out

17 all the e-mails or whatever there is stating that this

18 was the process or -- or whatever?

19   And then he, you know, basically that's where

20 our conversation ended, and I just said okay, don't

21 worry about it. I was just, like, I just -- I felt

22 that he was not going to work with me.

23   Q.   Over one bulletin?

24   A.   No, it's not the bulletin. It's the lie.

25   It's not -- it's -- if somebody says to me I

1 screwed up, I'm sorry, I wasn't thinking about it, I

2 forgot about those instructions, it's understandable,

3 we're human.

4   But when somebody says to me I'm not aware of

5 it when this has been going on for months prior to me

6 getting there or even advising me, hey, this -- this --

7 you know, hey, prior to you getting here, this is what

8 was said, this is what I was asked to do, you know, do

9 you want to continue this or do you want to change the

10 process? Do you want to talk to Mr. Powell about it

11 and get that waived?

12   But I'm sorry, I didn't -- I didn't get that.

13   Q.   And you think that because he wanted to

14 continue with the hiring process, that was another

15 reason -- and then stopped when you said don't do it,

16 that was another reason he wasn't going to be a good

17 chief?

18   A.   Well, it wasn't that he stopped. It was that

19 that was unclear.

20   I was -- I was told that the interviews did

21 take place over the weekend.

22   Q.   Who told you that?

23   A.   Ana Deleon had mentioned to me that she was

24 under the impression that they had. And Juliette,

25 which at the time was -- she was a temp, and she came

1   to me saying, hey, there's interviews scheduled for

2   today, Monday. And I was like, why would interviews be

3   scheduled for Monday? I had talked to him on Friday

4   and told him to stop the process; just give me a chance

5   to breathe here.

6   Q.   Do you have to sign off on any new hires in

7   the police department?

8   A.   I never got to that point.

9   Q.   Right, I mean, but is that something the

10 Village manager does?

11   A.   I can imagine so. I can imagine that the

12 chief needs to bring it to the manager, because in that

13 Village, the layers are a little different than in our

14 locations.

15   Q.   Is it the mayor's role to say how -- what

16 e-mails and bulletins should be run by the Village

17 attorney?

18   MR. RAILEY: Form.

19   THE WITNESS: I couldn't answer that, to be

20   honest.

21 BY MR. BUSCHEL:

22   Q.   Did you consider any type of progressive

23 discipline with Carlos Noriega?

24   A.   No, I did not.

25   Q.   Is part of the reason why you didn't consider

1 progressive discipline is because you knew that the

2 mayor wanted Carlos Noriega terminated?

3   A.   No.

4   Q.   Why didn't you consider progressive

5 discipline then?

6   A.   Because this is not an employee that -- this

7 was a very important position. This was one of the

8 most important positions for a manager and a police

9 chief to have together.

10   You cannot be successful without a successful

11 team. I felt I needed somebody that was going to

12 really be strong with me, and I think -- I thought that

13 the same way that he was under the impression that the

14 mayor wanted me out, the mayor wanted him out -- sorry.

15 I thought that he was probably under the impression

16 that you know, I wanted him out.

17   You see what I'm saying?

18   Q.   Right.

19   A.   In other words, he was not going to be -- he

20 was not going to treat me fairly because he felt that I

21 was out to get him, which I never was.

22   Q.   Did you have information that Carlos Noriega

23 knew that the mayor wanted him, Carlos Noriega, out?

24   A.   I didn't have specifics. I can imagine

25 because they had already gotten rid of the previous

1   attorney. They had -- Mr. Rollason had to step down or

2   left or resigned or -- I never new what happened there.

3   Didn't ask. Wasn't, you know, I did not -- I did not

4   find out on purpose certain things to make sure that I

5   could stay objective.

6   So, you know, there was these circumstances

7   already that had occurred, so therefore, you know, I

8   just was -- I just knew that I had to have a good

9   strong team.

10   Q.   So is it your testimony you didn't -- one of

11   the reasons you fired Carlos Noriega is because the

12   mayor wanted it?

13   A.   The mayor wanted for -- to terminate

14   Mr. Noriega. That is true.

15   I let go of Mr. Noriega because I saw --

16   because he did certain things that I felt would not

17   make him a team player with me.

18   Q.   So besides the bulletin and he wanted to, or

19   may have scheduled interviews with police employees

20   that weren't hired, what else did he do?

21   A.   I felt he had lied to me.

22   Q.   By saying he didn't -- he didn't get any

23   e-mail saying I got to run bulletins by the Village

24   attorney?

25   A.   Yes, but not because he didn't get an e-mail;

1 because that was the practice prior to me getting

2 there. That had already been done.

3   Q.   Are you aware if any Village bulletins from

4 the police department were given to the Village

5 attorney for approval?

6   MR. RAILEY: Form.

7   THE WITNESS: I'm not aware of that.

8   I was just explained that that's the --

9   what they wanted done, and I believe there is

10   an e-mail stating that any kind of public

11   information needs to go by the attorney.

12 BY MR. BUSCHEL:

13   Q.   Any other reasons?

14   A.   No.

15   Q.   Did Carlos Noriega attempt to have any

16 meetings with you to explain what was going on in the

17 police department?

18   A.   No. The day that he had scheduled a

19 meeting -- oh, no, I take it back.

20   There was a day when he said to me about the

21 progress and the police department and so on and so

22 forth. So there was an exchange of the good things

23 that he was doing in the Village, yes.

24   Q.   Okay.

25   A.   I don't recall when that was, though.

1   Q.   But he offered to bring you up to speed on

2   what his department was doing?

3   A.   Yes.

4   Q.   And you never had that meeting?

5   A.   No, we did. We had that meeting, and then we

6   were going to have -- then another -- we had -- and

7   this is the only part that I apologized to Mr. Noriega

8   about was that when he came into my office and he

9   was -- he came in with the impression that he was

10 coming in for a meeting rather than for the termination

11 that took place.

12   Q.   So on the day that he was terminated, he was

13 prepared to tell you what's going on with the police

14 department?

15   MR. RAILEY: Form.

16   THE WITNESS: I couldn't say yes or no. I

17   can only speculate. Possibly.

18 BY MR. BUSCHEL:

19   Q.   But prior to that, did he ever sit down with

20 you and say let me tell you some of the things that

21 we're working on and what we do, some of the programs,

22 the units, what we have been doing?

23   A.   No, no, we haven't -- we didn't get to that

24 point. Just I did know that he had a good relationship

25 with the residents because I had spoken to the

1 residents. I had looked into, you know, what was the

2 relationships there and I knew that he was being

3 successful with the residents. They were very fond of

4 him.

5   Q.   Okay.

6   A.   So it was a very hard decision.

7   Q.   I just want to make sure I have all the

8 reasons in your mind that you're saying that you

9 terminated him.

10   Have you told me all of them?

11   A.   Yes, sir.

12   Q.   Oh, you mentioned earlier about the hurricane

13 party.

14   A.   Oh, m-hmm.

15   Q.   Tell me about that.

16   Was that one of the reasons that you fired

17 him?

18   A.   No, no. The hurricane party was something

19 that was taken out of -- that was blown out of

20 proportion.

21   We -- Chief Velkin and myself took the tape

22 to the state attorneys's office. They went ahead and

23 said there was nothing there. They went ahead and said

24 that chief -- that the chief had gone ahead and taken

25 disciplinary action and there was nothing further. And

1 that is -- and that was true.

2   Q.   You were satisfied with the disciplinary

3 action that Chief Noriega gave to the officers involved

4 in the hurricane party?

5   A.   I was not satisfied with that, his -- the

6 disciplinary action that was taken, but that's also not

7 my call. That was his choice.

8   Q.   Did you discuss with him what discipline you

9 thought was appropriate?

10   A.   No, this was prior to me getting there. This

11 was no -- that was not my battle.

12   Q.   Oh, okay. So you weren't around for this

13 hurricane party?

14   A.   Not at all.

15   Q.   And just for the record, generally, there was

16 a hurricane, officers were on standby to respond to any

17 emergencies and some of them were drinking alcohol on

18 duty, is that your understanding?

19   A.   That's what I was told.

20   Q.   That was prior to your tenure?

21   A.   Yes. I was not present, did not witness it,

22 was not around.

23   Q.   Do you know who the supervisor of that

24 particular unit was during the hurricane status in the

25 police department?

1   A.   No, I do not.

2   MR. RAILEY: Form.

3   THE WITNESS: I heard names, did not know if

4   that was -- the question you're asking me I cannot

5   answer because you're asking me to verify

6   something that I can't verify.

7   So did I hear that one of the lieutenants

8   was present, but I don't know if that was the

9   lieutenant that was in charge.

10   BY MR. BUSCHEL:

11   Q.   James McCready; was that the one you heard?

12   A.   Yes.

13   Q.   Was James McCready during your tenure ever

14   acting chief?

15   A.   No.

16   Q.   Was he ever acting chief after the hurricane

17   party, to your knowledge?

18   MR. RAILEY: Form.

19   THE WITNESS: I don't know.

20   BY MR. BUSCHEL:

21   Q.   So you told me at some point a video of the

22   hurricane party was released to the media?

23   A.   Correct.

24   Q.   Were you aware of that?

25   A.   Yes.

1   Q.   Was that during your tenure?

2   A.   Wait a minute.

3   I was not aware that it got released.

4   Q.   Right.

5   A.   Okay?

6   Q.   But you knew it was on the news?

7   A.   Well, that's what I'm trying to say that.

8   Q.   Okay.

9   A.   After the fact, I found out that it was on

10 the news again.

11   Q.   That's what I mean. Yes.

12   A.   Yes.

13   Q.   Do you know who released it to the news?

14   MR. RAILEY: Form.

15   THE WITNESS: I would have to speculate. I

16   can't -- I can't for sure tell you.

17 BY MR. BUSCHEL:

18   Q.   Were you the Village manager when it was

19 released to the news?

20   A.   Yes.

21   Q.   Did you try and figure out who did that?

22   A.   No.

23   Q.   I assume you weren't happy that it was

24 released to the news?

25   A.   Not at all.

1   Q.   Did you ever mention to anyone that you

2 thought it was the mayor or Norman Powell that released

3 the hurricane party to the news?

4   A.   Yes.

5   Q.   Who did you tell?

6   A.   It could have been to the chief of police.

7   Q.   Which one?

8   A.   Velkin.

9   Q.   Why did you think it was the mayor or Powell?

10   A.   Because the only way to obtain a copy of that

11 would have been through our IT department.

12   Q.   Okay.

13   A.   The copy that was -- that went to the news

14 was done without being redacted. That tape had to have

15 been redacted in order for it to have been released.

16   Q.   And when you say "redacted" you mean fuzz out

17 the faces of the police officers?

18   A.   Yep.

19   Q.   Do you have any theories on the political

20 gain of those two people? Why would they do that to

21 injure the reputation of the city or the Village?

22   MR. RAILEY: Form.

23   THE WITNESS: Again, it was just to show how

24   terrible the previous administration had been.

25 BY MR. BUSCHEL:

1   Q.   I see.

2   Do you remember the name of the person that

3   was in charge of IT at the Village?

4   A.   Johnny.

5   Q.   Johnny Savedra?

6   A.   Yes.

7   Q.   Did you work with him?

8   A.   Yes.

9   Q.   Did he help you?

10   A.   That's a wonderful one to ask.

11   Q.   How do you mean?

12   A.   If backstabbing is a way to help somebody, I

13   guess you could say yes.

14   Q.   Explain what you mean, please.

15   A.   He would say things that he was going to

16   bring to me and he never did.

17   When I was going through a very difficult

18   time with the Village and I said I need certain things,

19   I was still the manager, I was -- I could give a public

20   records request spoken, and it was to be supplied to me

21   and it never was.

22   I asked for a number of things which took me

23   two months to receive. And I had conversations with

24   him multiple times within the time that -- that the

25   mayor asked me to resign to when my agreement was

1   actually approved.

2   Q.   Was Johnny Savedra at the initial meeting in

3   the conference room on the day that you were sworn in?

4   A.   When I was --

5   Q.   On the night you were sworn in.

6   A.   The night we were -- I was sworn in, I

7   believe he was -- I don't know if he was in the room.

8   He probably was downstairs in the commission chambers

9   because he's the one that recorded the meetings.

10   Q.   You did not terminate him?

11   A.   Nope.

12   Q.   Why didn't you terminate him?

13   A.   There was a lot of people I should have

14 terminated, to be honest.

15   He was a contract employee and he claimed to

16 be a forensic IT person, and I thought he could do more

17 damage than good for the Village.

18   Q.   In what sense?

19   A.   He could erase things. He could, you know,

20 make things disappear. He could provide things.

21   I didn't know what his abilities were as an

22 IT person. And IT is a very delicate position, and I

23 thought that he was doing his job neutral. He was

24 being neutral.

25   He explained to me that he had had doings

1 with the police department with files over there and

2 things over there; with our side of it, you know. He

3 was working for Norman. He was in too many place.

4   Q.   What does that mean "neutral"?

5   What are you saying?

6   A.   I'm saying that you do your job. You're

7 supposed to do your job.

8   Q.   Right.

9   A.   You're not supposed to input your feelings.

10 You're not supposed to input. You're supposed to -- if

11 somebody asks you to provide this, you provide this.

12   Q.   Right.

13   A.   You know, and I don't know what he was doing.

14 I don't know what he was -- who he was loyal to, if he

15 was -- if he was actually providing things to other

16 people, if he was giving them information, I don't

17 know.

18   Q.   Well, what makes you think he might have?

19   A.   Because when I requested certain things I

20 wasn't getting them afterwards.

21   Q.   Was this from beginning to end; when you

22 walked in the door until the time you left?

23   A.   At the beginning, he was helpful. Then I saw

24 that as time went by, he wasn't so helpful and I

25 started seeing things I wasn't happy with.

1   Q.   Were you aware that a database, the criminal

2   justice information system, was mirrored or copied by

3   Johnny Savedra and given to a third party vendor called

4   Xact?

5   MR. RAILEY: Form.

6   THE WITNESS: No.

7   BY MR. BUSCHEL:

8   Q.   Were you aware that Norman Powell told Johnny

9   Savedra to copy all the data bases of North Bay

10   Village, including police intelligence data bases, and

11   give it to Xact Services?

12   MR. RAILEY: Form.

13   THE WITNESS: No.

14   BY MR. BUSCHEL:

15   Q.   Were you made aware that there was a police

16   investigation of the mirroring of the criminal justice

17   information by the North Bay Village police department

18   that was going on because of that?

19   MR. RAILEY: Form.

20   THE WITNESS: No and yes.

21   No, I was not aware of it.

22   Yes, after the fact, I saw some paper that

23   basically, I think, was accusing Norman and

24   maybe was going to the state and I believe that

25   Bert Wrains was the one who submitted all these

1   documents. Bert submitted all these documents.

2   I don't know what that meant.

3   BY MR. BUSCHEL:

4   Q.   No one -- I assume no one, including

5   Mr. Powell, did not say he was doing that for

6   litigation purposes or any reason?

7   MR. RAILEY: Form.

8   THE WITNESS: No.

9   BY MR. BUSCHEL:

10   Q.   Were you aware that Carlos Noriega was taking

11   steps to make the police department, I guess, certified

12   and approved on a national level?

13   A.   No, not until the gentleman resigned.

14   There were three -- the three people were

15   Mr. Columbano, Mr. Behar, and there was a third

16   gentleman which was a very quiet man, and I never knew

17   what he was doing.

18   He walked into -- or the chief told me he

19   walked into his, office submitted his letter of

20   resignation and then at that time proceeded to say that

21   he was doing the accreditation.

22   Q.   Former FBI agent?

23   A.   I don't know who he is. I don't know who he

24   was. I don't even remember his name.

25   Q.   Did you ever ask Carlos Noriega, can you

1   explain what Sam Behar, Tom Columbano and this

2   accreditation guy does for our Village?

3   A.   No, sir, I did not.

4   Q.   Were you made may aware of any ongoing

5   litigation that involved North Bay Village while you

6   were Village manager?

7   A.   Please explain.

8   Q.   Were there any lawsuits pending when you

9   walked in the door?

10   A.   Not that I way was aware of.

11   Q.   Would you expect to be apprised that there is

12 ongoing litigation that involves the Village?

13   MR. RAILEY: Form.

14   THE WITNESS: Yes.

15 BY MR. BUSCHEL:

16   Q.   And to your recollection, did anyone in the

17 Village say we're suing someone or someone is suing the

18 Village for various reasons?

19   A.   No. The only thing that I knew was something

20 that could have gone to the state having to do with the

21 gentleman, Mr. Hornsby.

22   Q.   Okay.

23   A.   Something was happening there. I just didn't

24 know what it was.

25   I don't think it was a lawsuit.

1   Q.   Did you receive a whistleblower letter from

2   my law firm on behalf of Carlos Noriega while you were

3   Village manager?

4   A.   Yes.

5   Q.   Did you read it at this time it was sent to

6   the Village?

7   A.   No.

8   Q.   Why didn't you read it?

9   A.   I didn't know it was there. Mr. Wrains had

10 been the person to have received it. He actually

11 forwarded it to me the day after Mr. Noriega was let go

12 at, like, 7:00 at night.

13   Q.   Did you tell Mr. Wrains that you were going

14 to terminate Mr. Noriega before you did?

15   A.   No, I did not.

16   Q.   Did you tell anyone besides Mr. Powell that

17 you were going to terminate Mr. Noriega before you did?

18   A.   Yes.

19   Q.   Who?

20   A.   Mr. Collins. Brian Collins.

21   Q.   Because he was going to be the acting --

22   A.   I take it back. No, I never told him.

23   I just told him I needed him in the -- later

24 that day, but I was not about to go into -- I didn't

25 want him to -- I didn't want him to be put into an

1 awkward position as best as possible, so I didn't go

2 into any details with him; just that I said to him I'd

3 appreciate your services this afternoon, and I'll

4 explain afterward.

5   Q.   Were you certain he would accept the position

6 of acting chief?

7   A.   Yes.

8   Q.   How were you certain?

9   A.   Well, I found out that he had done it in the

10 past, so I didn't see why he wouldn't.

11   And I had two choices; I had two lieutenants,

12 so at the time if one didn't take it, the other one was

13 able to.

14   Q.   So there were only two people that knew that

15 Carlos Noriega was going to be fired before he was

16 fired; you and Mr. Powell?

17   MR. RAILEY: Form.

18   THE WITNESS: Yes, and possibly -- I don't

19   know if Ana knew beforehand.

20   Well, before she walked into my office,

21   yes, she was notified.

22 BY MR. BUSCHEL:

23   Q.   Ana?

24   A.   Deleon.

25   Q.   Did she keep her position while you were

1 Village manager?

2   A.   Yes.

3   Q.   How did you inform the commissioners and the

4 mayor that the chief was terminated?

5   A.   I truly do not recall.

6   Q.   Did Mayor Kreps express any reaction when you

7 told her?

8   A.   I'm pretty sure she was probably very happy.

9   Q.   Any other commissioners happy?

10   MR. RAILEY: Form.

11   THE WITNESS: No, sir.

12 BY MR. BUSCHEL:

13   Q.   All right.

14   A.   Not that I can recall.

15   MR. BUSCHEL: All right. Let's take another

16   break. We're almost done here.

17   THE VIDEOGRAPHER: Going off the video record

18   at 12:53 P.M.

19   (Recess taken.)

20   THE VIDEOGRAPHER: Back on the video record

21   at 1:02 P.M.

22 BY MR. BUSCHEL:

23   Q.   Ms. Martell, did Chief Noriega provide

24 e-mails on a daily basis to you regarding matters

25 relating to the police department?

1   A.   I don't recall them being on a daily basis.

2   Q.   But from time to time?

3   A.   Yes.

4   Q.   Do you feel that there was anything that the

5   police department was doing that you should have been

6   informed of?

7   A.   No.

8   MR. BUSCHEL: Let me show you we'll make a

9   Composite Exhibit No.3.

10   (Thereupon, Plaintiff's Composite Exhibit No.3 was marked for

11   identification.)

12   BY MR. BUSCHEL:

13   Q.   Have you ever seen Exhibit No.3 before?

14   A.   Not that I can recall.

15   Q.   Were you aware of any of these

16   accomplishments of the police department in 2017?

17   A.   Not that I can recall.

18   Q.   Was Mr. Noriega available to you by telephone

19   when you wanted?

20   A.   I never bothered him.

21   Q.   Okay.

22   A.   There was no reason for me to contact him.

23   Q.   And back to the exhibit, I'm sorry.

24   There was a memo dated November 21, 2016,

25   subject matter; 2016 accomplishments.

1   Was that ever provided or have you ever seen

2   that?

3   A.   I don't recall, but it doesn't -- I know he

4   did either e-mail something to me. I think it was an

5   e-mail stating -- stating some of the accomplishments.

6   It wasn't as extensive as that is.

7   Q.   What was the crime rate in North Bay Village

8   in 2017?

9   MR. RAILEY: Form.

10   BY MR. BUSCHEL:

11   Q.   Do you know?

12   A.   I don't know.

13   Q.   Were you ever informed?

14   A.   No, not as to the statistics so on and so

15   forth, but I did ask one of the officers, you know, how

16   many times have you put your life on the line in the

17   Village? And his answer was after eight years, none.

18   And I was like, okay then. So --

19   Q.   Any memos? Did you receive any press

20   releases regarding the crime rates in North Bay

21   Village?

22   A.   Not that I can recall.

23   Q.   Do you recall any of the residents

24   complaining about crime?

25   A.   Yes.

1   Q.   Anything specific?

2   A.   Having to deal with the Hornsby situation.

3   Q.   Tell me about that.

4   A.   It was according to CeCe, which I believe is

5   his wife, this gentleman became the commissioner. Now

6   understand something; these are not my words.

7   Q.   Okay.

8   A.   This is me telling you the story.

9   Q.   Sure.

10   A.   So this may not be correct.

11   Q.   Okay.

12   A.   Okay?

13   So she explained to me, she -- he took on

14   this position because of Kreps, because of the mayor.

15   Q.   Who are we talking about?

16   A.   Mr. Hornsby had been influenced to take the

17   position because of Kreps.

18   Q.   Mayor Kreps?

19   A.   Mayor Kreps.

20   Then I think that once Mr. Hornsby wasn't

21   following Mayor Kreps' wishes, now this envelope shows

22   up in their mailbox.

23   Supposedly they're saying, or CeCe's saying,

24   this was extorsion, you know, put together by Mary

25   Kramer, who is also an attorney who is also the wife to

1 Jose Alvarez, who is also best friend with Mayor Kreps.

2   So that is the scenario of, you know, this

3 whole situation coming about, happening. You know, all

4 these accusations and conspiracy theories and all that

5 wonderful stuff which seems to revolve around North Bay

6 Village.

7   Q.   Other than that, did any one resident ever

8 complain about crime?

9   A.   I didn't have any -- when I first went to the

10 Village, the only thing that was brought to my

11 attention by Mitch, one of the residents, was that

12 there were some calls basically, like, bomb threats or

13 something to Channel 7, and that then there was a -- a

14 market that there was in one of the islands that was

15 also controversial because it was, I don't know,

16 Islamic or Israel or I'm not sure. I'm going to -- I'm

17 not correct on what the religious affiliation was, but

18 there was something there as well.

19   Q.   What I'm trying to get at is anyone

20 complaining that the police department wasn't doing its

21 job?

22   A.   No.

23   Q.   Let me ask you this.

24   To your knowledge, can someone be terminated

25 for -- an employee be terminated for exercising his

1 rights under FMLA?

2   MR. RAILEY: Form.

3   THE WITNESS: Can a person be terminated?

4 BY MR. BUSCHEL:

5   Q.   An employee be terminated.

6   A.   Because of FMLA?

7   Q.   Because they requested and received FMLA.

8   A.   No.

9   Q.   Same thing for whistleblower; can an employee

10 be terminated for revealing wrongdoing within a

11 municipality?

12   A.   No.

13   MR. RAILEY: Form.

14 BY MR. BUSCHEL:

15   Q.   Very good.

16   Did you understand all the questions that I

17 asked you today?

18   A.   Yes, sir.

19   Q.   Is there any answer that you need to modify

20 in any way?

21   A.   Yes, the one that you asked me about meeting

22 with the commissioners while -- my interview process.

23   Q.   Okay.

24   A.   I had realized that yes, I had met with all

25 of them at different times, and I have the e-mail.

1   Q.   And you're going to provide that to your

2   counsel?

3   A.   Sure.

4   Q.   And we're going to iron out a subpoena duces

5   tecum among the lawyers.

6   You have provided documents to Mr. Railey

7   today, which we'll discuss turning them over.

8   A.   Yeah, whatever you guys need. I'm happy to

9   provide.

10   MR. BUSCHEL: Very good. Thank you for your

11   time today. We'll reserve your right to read the

12   deposition.

13   MR. RAILEY: I have some questions.

14   MR. BUSCHEL: Oh, I'm sorry.

15   THE VIDEOGRAPHER: Jon, tell me how much time

16   because I may have to change everything.

17   MR. RAILEY: Five minutes.

18   THE VIDEOGRAPHER: Okay. Go.

19   CROSS-EXAMINATION

20   BY MR. RAILEY:

21   Q.   Ms. Martell, did the fact that Carlos Noriega

22   requested and receive FMLA play any part in your

23   decision to terminate his employment?

24   A.   No.

25   Q.   Did the fact that Carlos Noriega's police

1 | department or Carlos Noriega himself was investigating

2 | allegations pertaining to Normal Powell, Douglas

3 | Hornsby or Ana Watson play any part in your decision to

4 | terminate Carlos Noriega's employment?

5 | A.   No.

6 | Q.   Prior to Carlos Noriega's termination and

7 | while you were the manager, were you made aware of any

8 | purported whistleblowing letter that Mr. Noriega

9 | authored?

10 | A.   No, not until after the fact.

11 | Q.   So, it follows that no whistleblower letter

12 | could play any part in your decision to terminate his

13 | employment, correct?

14 | A.   No, sir.

15 | Q.   Again, why did you terminate his employment,

16 | and -- strike that.

17 | Why did you terminate Carlos Noriega's

18 | employment?

19 | A.   As the Village manager, I have the right to,

20 | under charter, to go ahead and have certain positions.

21 | When I got in, I asked for certain things to

22 | be done and it was specific because I wanted to have --

23 | I wanted to have a handle on a brand new position I had

24 | just acquired. And by doing certain things he had

25 | gone, in my opinion, he had done three things that had

1 really bothered me, and those were things that I felt

2 were important for a team to have, for a manager and a

3 chief to work together with.

4   So I was -- I just felt, honestly I felt he

5 had challenged me, and as the manager I felt that that

6 wouldn't work out long term.

7   If within the first less than two weeks of

8 something getting there, somebody was already

9 questioned you, then I'm sorry, I felt that was just

10 going to continue until my entire position would be

11 sabotaged.

12   Q.   And generally speaking, you're referring to

13 the testimony that you gave to Mr. Buschel on direct in

14 which there was an issue with the bulletin and an issue

15 regarding interviewing police officers, correct?

16   A.   It was the issue having to do with the

17 bulletin, the police officers hiring and the fact that

18 I felt that he had lied to me.

19   Q.   Did you view these as deficiencies?

20   A.   I viewed them as a -- as a Village manager

21 you have to have respect, you have to have team -- a

22 team that really supports you, and the moment that any

23 of these falls through the cracks, you can't have that

24 person on your side. You have to have that strength,

25 because it's hard enough being a Village manager and

 1   dealing with five people and five characters and five

 2   people that are already looking for to you fail. You

 3   have to have inside the team that's strong. And I'm

 4   sorry, I just did not feel that he was going to be that

 5   person.

 6   Q.   You formulated that opinion yourself?

 7   A.   Yes, sir.

 8   Q.   And you formulated this opinion irrespective

 9   of any conversation that you may have had with Mayor

10   Kreps?

11   A.   Yes, I did.

12   Q.   And you formulated this opinion irrespective

13   of any conversation that you may have had with Norman

14   Powell regarding Carlos Noriega?

15   A.   Yes, sir, I did.

16   Q.   Is it fair to say that this decision to

17   terminate Carlos Noriega's employment was made by you

18   independent of what anybody else thought at the

19   Village?

20   A.   Yes, it was.

21   Q.   And you're familiar with the charter at the

22   Village?

23   A.   Yes, sir.

24   Q.   At the time you were Village manager, you

25   were familiar with the charter?

1   A.   Yes, I was.

2   Q.   Under the charter, are you the final decision

3   maker with respect to hiring and firing of the police

4   chief?

5   A.   Yes, I am.

6   Q.   To your knowledge, is there any provision

7   under the charter that says a manager has to wait a

8   certain amount of time before firing a police chief?

9   A.   No.

10   Q.   Or making any personnel decision?

11   A.   No. You can walk in the next day and get rid

12   of everybody, which I don't agree on.

13   Q.   Did anybody at the Village ever tell you to

14   fire Carlos Noriega for an unlawful purpose?

15   A.   Rephrase that, please.

16   Q.   Sure.

17   Did anybody at the Village ever tell you

18   that -- strike that.

19   Did anybody at the Village ever tell you to

20   terminate Carlos Noriega's employment because he was

21   taking FMLA leave?

22   A.   No.

23   Q.   Or because he was a purported whistleblower?

24   A.   No.

25   Q.   You mentioned after Carlos Noriega's

1 termination, you hired Lewis Velkin for the open chief

2 position, correct?

3   A.   Correct.

4   Q.   And you interviewed Mr. Velkin?

5   A.   Yes.

6   Q.   Did you interview anybody else?

7   A.   Yes.

8   Q.   Who else?

9   A.   There were two other gentlemen that were

10 interviewed. One -- two were suggested to me by

11 Mr. Hernandez, Bill Hernandez, the chief of North Miami

12 Beach, Mr. Velkin and another gentleman, I don't

13 remember his name exactly. And the third gentleman was

14 from North Miami, which Juan Valiente suggested.

15   All of them very great candidates, very nice

16 individuals. Mr. Velkin was just very -- would fit

17 better in that environment because I needed somebody

18 who was very forward and straight and just didn't come

19 with any baggage and his personality, I think, went

20 well with that environment.

21   THE VIDEOGRAPHER: Jon, two minutes.

22 BY MR. RAILEY:

23   Q.   Okay, last question.

24   Mr. Buschel mentioned that his firm had sent

25 a letter claiming that Carlos Noriega was a

1 whistleblower to the Village.

2   For the record, that letter was sent to Bert

3 Wrains, not you, correct?

4   A.   Correct.

5   Q.   And after Carlos Noriega was terminated, you

6 received that letter from Bert, correct?

7   A.   Yes.

8   Q.   So is it fair to say you didn't know about

9 that letter at the time that you terminated Carlos

10 Noriega's employment?

11   A.   No, not at all.

12   MR. RAILEY: Nothing further.

13   REDIRECT EXAMINATION

14 BY MR. BUSCHEL:

15   Q.   How many days on the job were you when Bert

16 Wrains received that letter?

17   A.   I think --

18   MR. RAILEY: Form.

19   THE WITNESS: I think that that letter was

20   sent to him, like, two days prior to me being

21   sworn in.

22 BY MR. BUSCHEL:

23   Q.   So he was the acting interim manager?

24   A.   Yes. And in the e-mail that he sent to me

25 says that his in-box was over -- it had too many

1 e-mails, he overlooked it or something, and then he was

2 forwarding it to me.

3   He forwarded it to me, like -- Mr. Noriega

4 was let go on Thursday, and that Friday at 7:00 P.M. at

5 night is when he forwarded it to me.

6   Q.   So, did -- okay. Did you ever have a meeting

7 with Bert Wrains when you became Village manager to

8 discuss pending matters?

9   A.   I really don't recall.

10   THE VIDEOGRAPHER: I have 20 seconds.

11   MR. BUSCHEL: So we'll change. Go ahead.

12   THE VIDEOGRAPHER: Going off the video record

13   at 1:17 P.M.

14   (Recess taken.)

15   THE VIDEOGRAPHER: Back on the video record

16   at 1:21 P.M.

17 BY MR. BUSCHEL:

18   Q.   So I just want your testimony to be clear in

19 my mind.

20   You agreed that you were going to terminate

21 Carlos Noriega as chief of police in North Bay Village

22 prior to accepting the position as Village manager,

23 correct?

24   MR. RAILEY: Form.

25   THE WITNESS: Only if there was reason. I

1   was -- I was not looking to -- there had to be

2   reason.

3   BY MR. BUSCHEL:

4   Q.   But didn't you assure the mayor you were

5   going to do that?

6   MR. RAILEY: Form.

7   THE WITNESS: I wasn't -- I didn't assure her

8   when. I didn't know when -- if it was going to

9   even -- I didn't know if it was going to happen or

10   how long it was going to happen.

11   BY MR. BUSCHEL:

12   Q.   But you knew that she wanted you to do that?

13   A.   That's what she wanted.

14   Q.   And Mitch Edelstein; you assured him that you

15   were going to terminate Carlos Noriega if you were

16   appointed?

17   A.   If there was reason.

18   Q.   Did you ever have a conversation with Kevin

19   Veriker about terminating Carlos Noriega?

20   A.   Yes.

21   Q.   What did you tell him?

22   A.   He said to me that -- he actually said to me

23   that I was getting the position; to go ahead and

24   terminate Noriega. And I said I'm getting the

25   position, but I'm going to look into, you know, the

1 position.

2   I'm not -- I'm not going there for the

3 purpose -- that was not the purpose to get the

4 position.

5   Q.   Was there someone else you agreed to

6 terminate if you were hired as Village manager?

7   A.   I was also looking at the finance director.

8   Q.   Mr. Wrains?

9   A.   Yes.

10   Q.   Did the mayor want him terminated?

11   A.   I don't know if she ever verbally said it or

12 it was just a matter of looking at the positions and

13 seeing what, you know, what was being done.

14   Did you ask me did I terminate somebody else?

15   Is that what you --

16   Q.   Or that you agreed to terminate someone else.

17   A.   Oh, no, I did terminate somebody else but it

18 was not because of, you know, it was never mentioned.

19   Q.   Who was --

20   A.   Diego Lopez.

21   Q.   What was his position?

22   A.   He was the capital improvement project person

23 and public works director.

24   Q.   And then Mr. Velkin -- not Velkin; Valiente

25 was hired for that position?

1   A.   No, Mr. Valiente was hired for the position

2   but Diego stayed on. I separated the public works

3   director's position and the CIP director's position.

4   Q.   You also terminated Sam Behar and Tom

5   Columbano, correct?

6   A.   Yes, I did. Well --

7   Q.   And the third --

8   A.   I take it back. I did terminate Behar. The

9   chief of police terminated Columbano.

10   Q.   Did you direct the chief to terminate

11   Columbano?

12   A.   I had told the chief that there was only a

13   couple of ways to reduce the budget, and one of them

14   was through the three part time workers and it was up

15   to him to make that assessment.

16   Q.   You said that you had independent reasons for

17   terminating Carlos Noriega.

18   Do you know the reasoning why the mayor

19   wanted to terminate Carlos Noriega?

20   MR. RAILEY: Form.

21   THE WITNESS: The reason I'm hesitating is

22   because I'm trying to remember if it's something

23   that she personally said to me or was it an

24   assumption that I'm thinking of, and that's the

25   only reason why I'm being hesitant.

1   BY MR. BUSCHEL:

2   Q.   Okay.

3   A.   She was very -- she was very vocal on not

4   wanting the chief to stay there, and she -- her reasons

5   were the hurricane party, the reasons were that he was

6   trying to put her in jail. Those were her reasons.

7   And the fact that Mr. Noriega, Mr. Rollason and

8   Swiske --

9   Q.   Switkes.

10   A.   Switkes, was all, you know, kind of like

11   together.

12   Q.   Did you reach out to Mr. Rollason after you

13   were -- you left the Village?

14   A.   Yes.

15   Q.   What was the purpose of that?

16   A.   I had not reached out to Mr. Rollason prior

17   to because I thought that he would give me an overview

18   that wasn't going to be 100 percent true, and I had to

19   see it for myself.

20   Fortunately, when you set your mind on

21   something, that's what you're going to go forward and

22   do, and I set my mind to be the Village manager. And I

23   thought in my heart that I was going to change things

24   around and I was going to, you know, get that Village

25   back on track and take away all of negative aspects

1   that they had in the past and I was just going to, you

2   know, I was going to play God.

3   And that wasn't at all what happened. And I

4   realized afterwards why, and all the things that were

5   told to me and how the mayor was bullied by

6   Mr. Rollason was not at all the situation.

7   Mr. Rollason was not being bullied, from what

8   I could tell and from what I experienced.

9   Q.   Have you spoken to him?

10   A.   Yes, I did.

11   Q.   And I'm assuming that you don't know the

12   reasoning why Mr. Powell wanted Mr. Noriega terminated?

13   MR. RAILEY: Form.

14   THE WITNESS: I think he wanted him

15   terminated because he was following the mayor's

16   desires.

17   He was looking into all the things, all

18   the allegations that the mayor made. And I

19   don't know what she said directly about

20   Mr. Noriega. I don't know what, you know, what

21   she told him.

22   I do know that, you know, Mr. Powell was

23   not happy when Mr. Noriega put something

24   together about that situation, about the

25   looking into the police filing system or

1   whatever that was about.

2   MR. BUSCHEL: Okay, very good. All right

3   we'll reserve your right to read.

4   MR. RAILEY: One more.

5   RECROSS EXAMINATION

6   BY MR. RAILEY:

7   Q.   At the end of the day, you had your own

8   independent reasons in your decision to terminate

9   Carlos Noriega, correct?

10   A.   Yes.

11   FURTHER REDIRECT EXAMINATION

12   BY MR. BUSCHEL:

13   Q.   The mayor didn't influence you whatsoever is

14   your testimony?

15   A.   The mayor made -- the mayor made her

16   suggestion and her opinion on what she wanted.

17   I based my opinion on having a strong staff

18   and things that Mr. Noriega did.

19   In other words, I was not going to walk in

20   and fire him just because she wanted it, no.

21   Q.   And you weren't looking for a reason to do

22   it?

23   A.   No, I was -- I was going ahead and being open

24   to having a good relationship.

25   Q.   I mean, do you realize it was only six days

1   you were the Village manager before you terminated

2   Carlos Noriega?

3   A.   Yes.

4   Q.   And your testimony is that in six days,

5   without reviewing his personnel file or any of -- a

6   sit-down with him to review the accomplishments of the

7   police department, that you were able to evaluate his

8   character and his successes and fire him?

9   MR. RAILEY: Form.

10   THE WITNESS: Mr. Noriega's character and

11   successes were never -- and his skill set were

12   never the reason.

13   My -- my reasoning was simple.

14   I needed a strong team. When it comes to

15   that -- when it comes to that position, that

16   position is the -- one of the most political

17   positions you can imagine as a city manager.

18   City managers get terminated on a daily

19   based -- not based on skills; based on

20   politics; I don't like you, and that's it.

21   So that being said, I was -- my position

22   was a city manager. I had to have a team that

23   supported me, and exactly that's why I

24   terminated him.

25   In six days you do three things. How --

1   what was going to happen after six months?

2   I mean, as it was, I didn't survive, you

3   know, 120 days.

4   So imagine if on top of the situation

5   going on behind the scenes, which I was unaware

6   of, I was also having employees that not --

7   that were not supporting me.

8   BY MR. BUSCHEL:

9   Q.   Do you think there's a fair analogy between

10   what the city commission did to you and as you did to

11   Carlos Noriega?

12   MR. RAILEY: Form.

13   THE WITNESS: Yes.

14   MR. BUSCHEL: Okay, very good.

15   Thank you. We'll reserve your right to

16   read.

17   THE WITNESS: Sure.

18   MR. RAILEY: Thank you.

19   THE VIDEOGRAPHER: Going off the video record

20   at 1:31 P.M.

21   (Thereupon, the deposition was concluded at 1:31 P.M.

22   Formalities were not waived.)

23   - - -

24

25

1   ERRATA SHEET

2   DO NOT WRITE ON THE TRANSCRIPT - ENTER CHANGES ON THIS PAGE
        IN RE: CARLOS NORIEGA vs. NORTH BAY VILLAGE
3   DEPOSITION OF: MARLEN MARTELL
                     January 17, 2019
4   U.S. LEGAL SUPPORT JOB #1847584
    PAGE   LINE NO.   CHANGE   REASON
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21
    Under penalties of perjury, I declare that I have read the
22 foregoing document and that the facts stated in it are true.

23 _____   _____

24 DATE: MARLEN MARTELL

25

1

2   CERTIFICATE OF OATH

3   STATE OF FLORIDA   )

4   COUNTY OF MIAMI-DADE)

5

6   I, the undersigned authority, certify that

7   MARLEN MARTELL, personally appeared before me and was

8   duly sworn on the 17th of January, 2019.

9

    WITNESS my hand and official seal this 25th day of

10 January, 2019.

11

12

13

14

15   _____
        JOYCE M. STEVENSON, CSR, RPR, RMR

16   My Commission No. FF 972871
        Expires: March 31, 2020

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 1

 2              CERTIFICATE OF REPORTER

 3   STATE OF FLORIDA      )

 4   COUNTY OF MIAMI-DADE )

 5

          I, JOYCE M. STEVENSON, Notary Public in and for the State
 6   of Florida at Large do hereby certify that I reported in
     shorthand the deposition of MARLEN MARTELL, the witness herein;
 7   that said witness was first duly sworn by me; and that the
     foregoing pages numbered from 1 to 143 inclusive,
 8   constitute a true and correct transcript of my shorthand
     report of the deposition by said witness; and that this
 9   computer-assisted transcript was prepared under my
     supervision.
10
          I further certify that I am not an attorney or
11   counsel for either of the parties in this cause nor
     related to nor employed by any attorney or counsel
12   herein nor financially interested in the outcome of
     this action.
13
          WITNESS my hand and official seal in the City of
14   Miami, County of Miami-Dade, State of Florida, this
     25th day of January, 2019.
15

16

17   _____
          JOYCE M. STEVENSON, CSR, RPR, RMR
18        My Commission No. FF 972871
          Expires: March 31, 2020
19

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1   WITNESS NOTIFICATION LETTER

2   January 25, 2019

3   MARLEN MARTELL, c/o
    JOHNSON, ANSELMO, MURDOCH, BURKE & GEORGE, P.A.
4   2455 East Sunrise Boulevard, Suite 1000
    Fort Lauderdale, Florida 33304
5   (954)463-0100
    railey@jambg.com
6   ATTN: JONATHAN RAILEY, ESQ.

7   IN RE: CARLOS NORIEGA vs. NORTH BAY VILLAGE
    DEPOSITION OF: MARLEN MARTELL
8   January 17, 2019
    U.S. LEGAL SUPPORT JOB #1847584

9

    The transcript of the above proceeding is now available for
10 your review.

11 Please call to schedule an appointment between the hours of
    9:00 a.m. and 4:00 p.m., Monday through Friday at a U.S. Legal
12 Support office located nearest you.

13 Please complete your review within 30 days.

14 Sincerely,

15

    _____
16 JOYCE STEVENSON, CSR, RPR, RMR
    U.S. Legal Support, Inc.
17 21500 Biscayne Boulevard, Suite 501
    Aventura, Florida 33180
18 (305)937-3880

19 CC via transcript:
    ROBERT BUSCHEL, ESQ.
20 JON RAILEY, ESQ.

21

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Exhibits

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EX 0003 Marlen
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