

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF BRONX : CIVIL TERM : PART 20

-----x

3 HENRY ESPACIA,

Index:  
816345/2021E

4 Plaintiff,

5 -against-

**TRIAL**

6 EMERALD 2727 UNIVERSE LLC and RESIDENTIAL  
7 MANAGEMENT (NY) INC.,

8 Defendants.

-----x

851 Grand Concourse  
Bronx, New York 10451  
March 2, 2026

11 **B E F O R E:**

12 THE HONORABLE VERONICA HUMMEL,  
Justice of the Supreme Court & jury

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

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15 Attorneys for the Plaintiff  
40 Fulton Street  
16 New York, New York 10038  
BY: MICHAEL MARANDO, ESQ.

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801 Second Avenue, 11th Floor  
19 New York, New York 10017  
BY: BRIAN FRANKLIN, ESQ  
20 YOLANDA GAIL GOODE, ESQ., OF COUNSEL

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23  
24  
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Joanna Garcia  
Senior Court Reporter

1 M O R N I N G S E S S I O N

2 COURT OFFICER: The Honorable Veronica Hummel  
3 presiding. Plaintiff's Counsel, state your name and  
4 appearance for the record.

5 MR. MARANDO: Good morning, Your Honor. Good  
6 morning, everyone. Michael Marando on behalf of the  
7 plaintiff from the Law Offices of Lipsig, Freund and Wisell,  
8 40 Fulton Street, New York, New York 10038, Floor 24. Good  
9 morning.

10 THE COURT: Good morning.

11 MS. GOODE: May I go out and get Mr. Franklin?

12 THE COURT: Give your identification for the record  
13 and then go get him.

14 MS. GOODE: I'm representing the defendants, and I  
15 work for the firm of Gartner and Bloom, senior partner. The  
16 address is 801 Second Avenue, 11th Floor, New York, New York  
17 10017.

18 THE COURT: Good morning. You can be seated.  
19 Counsel, if you can give your appearance for the record  
20 using the mic please.

21 MR. FRANKLIN: Yes, Brian Franklin from Gartner and  
22 Bloom on behalf of defendants, Emerald 2727 Universe LLC and  
23 New York Inc. and residential Management New York, Inc.

24 THE COURT: Okay. Be seated. So, I had a motion  
25 made before me on Friday last minute from plaintiff seeking

1 to preclude Manny Silberberg from testifying at trial.

2 I have researched the issue over the weekend so I'm  
3 going to give my ruling on that, but first if you want to be  
4 heard again with a little more detail because it was rushed,  
5 go ahead, Plaintiff.

6 MR. MARANDO: Thank you, Your Honor. Good morning  
7 and happy Monday. I would like just to read into the record  
8 from the 1st Department citation 131 AD 3rd 851 where the  
9 1st Department at trial precluded testimony where the  
10 testimony itself wouldn't even either contradict or add to  
11 that of any other witness.

12 We've heard from defense counsel by himself that  
13 this individual is the third witness on behalf of  
14 Residential Management. He was not in the unit when the  
15 ceiling collapse occurred.

16 Simply his only involvement and before I get to  
17 that keep in mind, he simply was sent an e-mail from the  
18 individual who is testifying today that did go to the  
19 apartment, that did see things for himself. He was never  
20 involved in any capacity. He was simply told what happened.

21 And the most important issue I think is that  
22 through five years of discovery he was never exchanged as a  
23 witness with respect to the interrogatories, discovery  
24 demands. We want to know every individual that has  
25 knowledge or potential knowledge with respect to anything

1 relating to this accident.

2 If someone's name comes up ten times or a hundred  
3 times, it does matter. What matters is whether or not they  
4 put their name specifically in an actual discovery response  
5 which would fall under the second citation that I would like  
6 to give into the record and that is 1st Department case  
7 citation 64 AD 3d 481, where the 1st Department held that  
8 the preclusion was appropriate where through the course of  
9 discovery the witnesses were not named in the response to  
10 the interrogatories and discovery responses. Besides that,  
11 Your Honor, I know we discussed it at length on Friday and I  
12 rely on that.

13 THE COURT: Counselor?

14 MR. FRANKLIN: Yes, Your Honor. With all due  
15 respect --

16 THE COURT: Could you use the mic and pull it way  
17 closer so we can hear you this loud.

18 MR. FRANKLIN: With all due respect, the statement  
19 that opposing counsel just gave is inaccurate. During the  
20 course of discovery this individual was disclosed. He was  
21 disclosed with the document that was presented as defense  
22 evidence. It's an e-mail from the date of the incident.

23 It was produced during discovery as the incident  
24 report. The incident report is an e-mail from Fatlum  
25 Maloku, defense witness to Manny Silberberg, the other

1 defense witness. They've known about it from day one, Your  
2 Honor.

3 The reason why the defense plans to call Mr.  
4 Silberberg is because he was somewhat of a liaison between  
5 the management company and the owner. So, we submit that  
6 he's going to have additional information to provide.

7 THE COURT: Okay. I've heard arguments on the  
8 record. While it would have been I think a professional  
9 courtesy to have added him to the list of witnesses when we  
10 collected them for this trial, preclusion is an extreme  
11 penalty.

12 And so under the circumstances, I am going to allow  
13 the testimony to the extent that it is irrelevant or  
14 cumulative. I'm not ruling on that now and those objections  
15 can be made at that time.

16 MR. MARANDO: Thank you, Your Honor. Note my  
17 exception.

18 MR. FRANKLIN: I just want to note that we did  
19 include it on a subsequent amended witness list.

20 THE COURT: When was it filed?

21 MR. FRANKLIN: The witness list was filed probably  
22 in September or -- well, I apologize, Your Honor. Within  
23 the last few weeks.

24 THE COURT: Okay. Well, that's in the record then.  
25 All right. So, any other issues before we bring the jury

1 down?

2 MR. MARANDO: No, Judge.

3 MR. FRANKLIN: No.

4 THE COURT: Okay. Let's go.

5 COURT OFFICER: All rise. Jury entering.

6 (Whereupon, the sworn jurors enter the courtroom  
7 and take their respective seat.)

8 THE COURT: Good morning, everybody. Please be  
9 seated. I hope you guys enjoyed your weekend, got some  
10 rest, cleared your heads. We have a busy day today.

11 And once again, thank you for being on time. As I  
12 said, we're all here on time. It allows us to move forward  
13 and keep you engaged. Go ahead, Counselor.

14 MR. MARANDO: Thank you, Your Honor. Good morning  
15 everyone. Your Honor, the plaintiff at this time calls  
16 Fatlum Maloku.

17 MR. FRANKLIN: Your Honor, may we approach for just  
18 a minute?

19 THE COURT: Yes. Come up, please.

20 (Whereupon, at this time, a discussion was held at  
21 sidebar.)

22 COURT OFFICER: Do you swear or affirm the  
23 testimony you're about to give this court will be the whole  
24 truth?

25 THE WITNESS: Yes.

1 COURT OFFICER: State your name and address for the  
2 record.

3 THE WITNESS: Fatlum Maloku, 1166 Grand Concourse.  
4 F-A-T-L-U-M, M-A-L-O-K-U.

5 THE COURT: You can be seated. Sir, it sounds very  
6 simple, but you have to pull the mic as close as I am so the  
7 court reporter can get everything down and we want to make  
8 sure the jury hears everything you have to say.

9 THE WITNESS: No problem.  
10 F A T L U M M A L O K U, called as a witness by and on behalf  
11 of the Plaintiff, after having been first duly sworn, was  
12 examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MARANDO:

15 Q Sir, how are you?

16 A Good morning. Good.

17 Q Good morning. Thank you for being here. Mr. Maloku,  
18 in April of 2021, were you working as the superintendent at 2727  
19 University Avenue?

20 A Yes.

21 Q And at that time, you had been working at that building  
22 for approximately one year; is that fair?

23 A Yes.

24 Q Okay. And during that one year, that was your first  
25 year as an employee of Residential Management New York

1 Incorporated; true?

2 A No.

3 Q Then how long?

4 A I worked as a porter on my father's building.

5 Q Well, with respect to 2727 University and specifically  
6 Residential Management, that was the first time that you were  
7 ever employed by Residential Management; is that true?

8 A No.

9 Q Okay. Then when was the first year you were ever  
10 employed by Residential Management?

11 A As I said, I was working for Residential Management in  
12 another building when my father was a super as a porter.

13 Q Approximately what year?

14 A In reference to 2727, yes. That was my first year.

15 Q When did you first start working for Residential  
16 Management ever, sir?

17 A You could say about 2018. I'm not sure.

18 Q Okay. So, 2018 is the very first time you start  
19 working for Residential Management. With respect to the  
20 building that brings us here today 2727 University Avenue, that  
21 was approximately one year before April 21, 2021; true?

22 A True.

23 Q Okay. Now, sir, as superintendent, your job and part  
24 of your job was to assess any issues or concerns involving the  
25 tenants in 2727 University; true?

1 A Yes.

2 Q Now, if someone complained about something to you, it  
3 was your job to assess it and whether or not to fix it; true?

4 A Yes.

5 Q The tenants in that building, they relied on you for  
6 that; true?

7 A Correct.

8 Q And in that building specifically, there's men, women,  
9 children of all ages; true?

10 A I would think so, yes.

11 Q Well, I don't want you to think, sir. In terms of  
12 being the super there for about a year and a half, you're  
13 familiar that there's different individuals of all ages; true?

14 A True.

15 Q Okay. Now, there's men and women in their 70s and 80s  
16 and there's individuals much younger than that; true?

17 A Again, I'm not sure. You say men and women. I'm not  
18 sure how many there were. Yes, there were individuals over the  
19 age of 70, correct.

20 Q Okay. Thank you. Now because of that, in terms of  
21 voicing complaints, there was not one way to voice a complaint  
22 specifically, if someone was much older, they may only be able  
23 to voice a complaint verbally; true?

24 A No. They would call.

25 Q Okay. But could they also --

1 THE COURT: I'm sorry. No, they would --

2 THE WITNESS: They would call on the phone. Not  
3 just verbally in person, no.

4 Q Okay. But yes or no, were they able to tell you  
5 something verbally in person that was appropriate as well;  
6 correct?

7 A Yes.

8 Q Okay. They didn't have to call. They could also tell  
9 you in person in the hallway, outside, in the building; true?

10 A Anywhere.

11 Q Anywhere?

12 A Correct.

13 Q Now, in 2727 University Avenue, it's approximately how  
14 many floors?

15 A Six.

16 Q Six floors?

17 A From the lobby.

18 Q And about 55 units?

19 A Give or take.

20 Q About eight units a floor?

21 A Correct.

22 Q And the general layout of each floor -- withdrawn.

23 How are the apartments numerated? Is it 1 through 8  
24 and the also letters next to that number?

25 A No.

1 Q How is it enumerated?

2 A The number goes in corresponding with the floor. So,  
3 the 4th floor would have the number 4 in front of it. The 3rd  
4 would have a 3. And the 6th would have the 6 and letters would  
5 refer to a specific apartment.

6 Q Specifically apartment 4F, that would be on the 4th  
7 floor; correct?

8 A Yes.

9 Q And as the super in that building for approximately one  
10 year, you're familiar with the general layout of that unit;  
11 correct?

12 A Yes.

13 Q Because you had been there before; true?

14 A True.

15 Q And you're familiar with the amount of bathrooms in  
16 that; correct?

17 A Yes.

18 Q You're familiar with the amount of bedrooms in that?

19 A Yes.

20 Q You're familiar with the general size of how big it is  
21 that specific square foot unit; correct?

22 A Not the square foot, but an idea of how big it is, yes.

23 Q An idea because you were there before?

24 A Yes.

25 Q Several times?

1 A I'm not sure what several means but --

2 Q More than once?

3 A More than once.

4 Q Okay. Sir, if a tenant complained about mold on a  
5 ceiling during the time where you were a super at 2727  
6 University Avenue, it was your job to address that concern;  
7 true?

8 A Could you repeat that one more time?

9 Q Of course. If at any point you don't understand my  
10 question, please let me know and I'll try to my best to  
11 rephrase. Okay?

12 A No problem.

13 Q Okay. In around April of 2021, 2021 as a whole, if  
14 anyone voiced a specific complaint about mold in their unit on a  
15 ceiling, it was your job during that time when you were  
16 superintendent to address that concern; fair?

17 A Yes.

18 Q The same thing would apply for cracking or leaking from  
19 a ceiling; true?

20 A True.

21 Q Your job was not to just simply listen to complaints,  
22 your job was to address them appropriately; true?

23 A Yes.

24 Q As you see fit; true?

25 A You could say that.

1 Q Sir, I don't want to say it. This is your testimony.  
2 Was that true?

3 A Yes.

4 Q Now, while working for Residential Management during  
5 this time period and sir, I know the full entity is Residential  
6 Management New York Incorporated. For the remainder of today,  
7 if I refer to it as Residential Management, you know what I'm  
8 talking about; right?

9 A Yes.

10 Q Okay. Now, when working for Residential Management as  
11 superintendant in and around April of 2021, you were doing so as  
12 an employee on behalf of that company; true?

13 A Yes.

14 Q And on behalf of that company, that company  
15 specifically was a property manager; correct?

16 A Could you say it one more time?

17 Q Of course. The company you were working for  
18 Residential Management, that company was a property manager;  
19 correct?

20 A I don't understand the question.

21 Q The job of Residential Management as your employer was  
22 to manage 2727 University; true?

23 A True.

24 Q It had superintendents which was yourself and it had a  
25 handyman; true?

1 A Yes.

2 Q And maybe other individuals; true?

3 A Yes.

4 Q When you were working at that building, you were  
5 working as an agent on behalf the owner of that building;  
6 correct?

7 MR. FRANKLIN: Object to form.

8 THE COURT: Overruled.

9 A I don't know what agent means.

10 Q Okay. I'll rephrase. When you were working as a  
11 superintendent for Residential Management in and around 2021,  
12 you're doing so not only for your company, but as a company that  
13 was working on behalf of the actual entity that owned the  
14 building; true?

15 A That's beyond my need of knowing. I was working for  
16 Residential Management.

17 Q Okay. But sir, before today, there was a point where  
18 you had a deposition; true?

19 A I don't know.

20 Q You never testified in this case?

21 A Like this, No.

22 Q Not in actual court, sir, but before today in 2023, you  
23 appeared for a deposition; true?

24 A I don't remember.

25 Q Maybe I can refresh your memory. Sir, with respect to

1 getting paid, isn't it true that you had previously testified  
2 that you would receive paychecks on behalf of both Emerald, 2727  
3 University and also Residential Management; true?

4 A My paycheck came from Residential Management. I'm not  
5 sure how many people's names were on the check.

6 MR. MARANDO: Your Honor, I do have the transcript.  
7 If Your Honor wants to read the appropriate jury instruction  
8 with respect to reading depositions.

9 THE COURT: I don't have the exact wording before  
10 me, but Ladies and Gentlemen of the Jury, prior to a trial  
11 if a party is taking swear testimony under oath during a  
12 deposition, that testimony is considered sworn to and  
13 therefore, it's authoritative as testimony here today.

14 Q Okay. Sir, you do remember that before today in 2023  
15 you appeared for a deposition with a lawyer where you were  
16 represented in connection with this specific case involving Mr.  
17 Henry Espacia; true?

18 A Don't remember.

19 Q You don't remember being asked any questions at all for  
20 three hours?

21 A Could it have been on a computer?

22 Q Yes, exactly.

23 A Yes, yes.

24 Q So, before today, you actually were asked questions and  
25 gave answers; true?

1 A Yes.

2 Q And before that deposition started, you were asked to  
3 tell the truth; is that true?

4 A Yes.

5 Q In fact, you swore to tell the truth?

6 A Yes.

7 Q Okay. Anything in that deposition was told  
8 untruthfully, sir?

9 A I don't think so, no.

10 Q Sir, on Page 17 of your deposition, Lines 3 to 9, were  
11 you asked this question and did you give this answer?

12 "QUESTION: Were you employed by Emerald 2727  
13 University LLC and Residential Management at the same time?

14 "ANSWER: I believe so.

15 MR. MARANDO: Page 17, Lines 10 to 14.

16 "QUESTION: On your paychecks, did it say 2727  
17 University?

18 "ANSWER: Correct.

19 Q Sir, do you remember giving that specific testimony  
20 almost three years ago?

21 A Yes.

22 Q Okay. And three years ago is closer in time to the  
23 date of why we're here; correct? It's closer in time to April  
24 2021?

25 A Yes.

1 Q So, if it's closer in time, is it more accurate? Are  
2 you changing your testimony now, sir?

3 A No. I'm in the changing my testimony. Like I said, I  
4 don't remember. I didn't remember at the moment.

5 Q Well, in this moment after reading the question and  
6 answer that you were read and you affirmatively gave your  
7 answer, we can agree that your paychecks did in fact say 2727  
8 University Emerald; correct?

9 A Yes.

10 Q So, because of that, you know that as working for  
11 Residential Management, you were working on behalf of the owner  
12 of the property; true?

13 A True.

14 Q Now, in fact, the owner of the property Emerald 2727  
15 University hired that company Residential Management to address  
16 these exact issues, if tenants were to bring them to the super's  
17 attention; true?

18 A Not sure what they hired them for.

19 Q Well, one of the reasons that you were hired --  
20 withdrawn.

21 One of the reasons, not all of the reasons that  
22 Residential Management was hired was to address issues on behalf  
23 of the ownership; correct? One of the reasons? One of the  
24 issues?

25 A Yes.

1 Q And that applied to all of the units, the 55 units in  
2 2727 University Avenue; true?

3 A True.

4 Q Sir, at that time in approximately April of 2021, where  
5 were you living?

6 A 2727 University.

7 Q In an apartment; correct?

8 A Yes.

9 Q In an apartment provided to you on behalf of the  
10 management company or the owner than of the company; correct?

11 A Yes.

12 Q You were not paying rent?

13 A No.

14 Q Sir, your job duties as superintendent even though you  
15 lived in 2727 University Avenue, you were also the  
16 superintendent for a different building; correct?

17 A Yes.

18 Q That was 2734 Clafin Avenue, C-L-A-F-I-N?

19 A Yes.

20 Q So, let's look at the two buildings. You work in one  
21 building as the superintendent and you're the only  
22 superintendent at that time; correct?

23 A Yes.

24 Q Okay. And there's 55 units in that property; correct?

25 A Yes.

1 Q And the other building 2734 Clafin Avenue is also 55  
2 units approximately; true?

3 A Yes.

4 Q And at that time, you were the only superintendent for  
5 that building?

6 A Correct.

7 Q Okay. So, 110 units with not necessarily one person  
8 per unit, it could be hundreds of people relying on you between  
9 two buildings going back and forth as the superintendent during  
10 that time; true?

11 A Yes.

12 Q And the same thing we've been talking about with  
13 respect to your job duties, voicing complaints or listening to  
14 complaints from tenants did not only apply to 2727 University,  
15 it applied to that other building as well?

16 A Yes.

17 Q And that building was about a block away; right?

18 A Yes.

19 Q And you had to go back and forth between each building?

20 A Yes.

21 Q Sir, we spoke briefly about the -- withdrawn.

22 The duty of you as the superintendent for this specific  
23 property and specifically 2727 University; correct?

24 A Yes.

25 Q Okay. Now, if there's an issue involving a ceiling, it

1 is not the responsibility of the tenant to address that problem.

2 Would you agree with that?

3 MR. FRANKLIN: Objection. Argumentive and vague.

4 A Can you say that one more time?

5 THE COURT: Overruled.

6 Q Of course. If there was an issue during the time  
7 period where you were superintendent at 2727 University Avenue  
8 involving let's say a moldy, leaking or cracking ceiling, it  
9 would not be the responsibility of the tenant, it would be the  
10 responsibility of the superintendent or the handyman, the  
11 Residential Management company during that time period; true?

12 A When you say responsibility it first is the tenant's  
13 responsibility to address. I don't go in people's apartments  
14 just regularly. It's the tenant's responsibility to bring it up  
15 to us and then it would be our responsibility to handle it from  
16 that point, yes.

17 Q Okay.

18 A I'm sorry. Your question is -- I didn't understand it.

19 Q What part didn't you understand?

20 A What is my responsibility.

21 Q Okay. Let's ask it this way. Once someone complained  
22 to you, it then became your responsibility; true?

23 A Correct.

24 Q Okay. And once that happened, it was no longer the  
25 responsibility of the tenant; true?

1 A True.

2 Q And once something was complained to you -- withdrawn.

3 If there was a moldy ceiling in an apartment in 2727  
4 University Avenue, after it was complained to you and then as  
5 you said using your testimony, it then becomes your  
6 responsibility on behalf of the management company specifically  
7 after they voiced their complaints, anything above the ceiling  
8 that you cannot see is therefore after they voice complaints the  
9 responsibility of the management company; correct?

10 A Yes.

11 Q Okay. Because in fact, the tenants after they voice  
12 their complaints, they should not be the ones opening up the  
13 ceilings to investigate; correct? It's the responsibility of  
14 super and handyman; true?

15 A Absolutely.

16 Q Sir, we can agree that after a complaint is made  
17 specifically about a ceiling maybe with cracking or molding or  
18 leaking or discoloration, any of those things and if it's not  
19 responded to, there's a potential that something can happen to  
20 the ceiling and specifically that there's a possibility it could  
21 fall; correct?

22 MR. FRANKLIN: Objection. Calls for speculation.

23 THE COURT: Overruled.

24 A No.

25 Q It's your testimony that in no way if a ceiling is not

1 properly maintained, it can never collapse?

2 MR. FRANKLIN: Objection. Foundation.

3 A Absolutely, it can.

4 THE COURT: Sorry, sir. There's an objection.  
5 Overruled.

6 Q Sir, your response again?

7 A Could you repeat it one more time?

8 Q You said absolutely, it can; correct?

9 A Oh, yes.

10 Q Absolutely, it can meaning that there is a possibly  
11 that the ceiling can absolutely collapse; correct?

12 A A hundred percent.

13 Q And because you said it's a hundred percent possible,  
14 can we agree that if a complaint is voiced, that the number one  
15 priority should be the safety of the tenants; true?

16 A Yes.

17 Q And because the safety of the tenants is an absolute  
18 priority, it should be responded to promptly and quickly;  
19 correct?

20 A Yes.

21 Q If there's complaints made respectfully involving  
22 ceilings where they are above the tenants, men and women of all  
23 ages, even children, that the order and procedure of the way  
24 it's voiced in the complaint should be maintained by Residential  
25 Management in an appropriate fashion; correct?

1 A I'm sorry, can you rephrase that?

2 Q That was a bad question. That's on me.

3 Because ceilings can absolutely one hundred percent  
4 collapse using your words, sir --

5 A Yes.

6 Q Can we agree that because of that, the way that the  
7 management company manages the complaints and writes them down  
8 and maintains them, that it's very important to make sure that  
9 we don't lose sight of who complained and when and about what  
10 involving ceiling issues; correct?

11 MR. FRANKLIN: Objection. Vague.

12 THE COURT: That's too compound of a question.  
13 Sustained.

14 A Is there a shorter version of the question?

15 THE COURT: Hang on, sir. He's going to ask you a  
16 new question.

17 Q Sir, do you agree that the way in which a complaint is  
18 made involving something that could collapse should be  
19 maintained in a way that you can easily go back to that  
20 complaint?

21 MR. FRANKLIN: Objection. Vague and compound.

22 THE COURT: Overruled.

23 A As in written down in a log you mean?

24 Q Any way possible. If something's complained involving  
25 something like this, can we agree that it's important to

1 accurately document it?

2 A Not necessarily.

3 Q Well, if it's not documented, can we agree that maybe  
4 it can be forgotten about?

5 A Well, if it's handled, it shouldn't be forgotten. I'm  
6 confused as to what the question is.

7 Q My question is specific. Can we agree that if  
8 something is not documented that it can be forgotten; yes or no?

9 MR. FRANKLIN: Objection. Speculation.

10 THE COURT: Overruled.

11 A It depends on the person.

12 Q Sir, yes or no?

13 A Yes. Yes. Yes.

14 MR. MARANDO: Judge, at this time, I would like to  
15 admit into evidence pursuant to the CPLR, Plaintiff's  
16 Exhibits 1 and 2.

17 They were videos exchanged by defense counsel and  
18 as a matter of law, they were automatically authenticated  
19 because they came from defense counsel through discovery.

20 THE COURT: Hold on one second, please. I need my  
21 list of exhibits. One second.

22 MR. FRANKLIN: No objection, Your Honor.

23 THE COURT: I don't have my list of exhibits could  
24 you tell me which exhibit it is?

25 MR. MARANDO: Yes, Your Honor. Plaintiff's

1 Exhibits 1 and 2.

2 THE COURT: And these are now moved into evidence.

3 No objection.

4 (Whereupon, the video was marked as Plaintiff's  
5 Exhibit 1 in evidence, by the Reporter.)

6 (Whereupon, the video was marked as Plaintiff's  
7 Exhibit 2 in evidence, by the Reporter.)

8 Q Sir, I know the way you're sitting, it might be a  
9 little awkward if you need to shift your body --

10 THE COURT: You can also shift it back.

11 MR. MARANDO: Do you mind if I approach and help  
12 him out?

13 THE COURT: Sure.

14 Q Sir, I'm showing you on the screen what's a paused  
15 video Exhibit 2, video 2 paused at 18 seconds. Do you see that?

16 A Yeah.

17 Q Okay. Sir, on April 21, 2021, at some point, you went  
18 into apartment 4F in the morning; true?

19 A Yes.

20 Q And when you went in there, you took out your phone and  
21 you recorded two videos; correct?

22 A Yes.

23 Q You took one video at one point and you took a second  
24 video at another point; correct?

25 A No. They were back to back.

1 Q Back to back videos?

2 A Yes.

3 Q Like right after each other; right?

4 A One was maybe when I walked in and then one was as we  
5 were cleaning up.

6 Q Maybe five minutes after; right?

7 A Could be.

8 Q Could it be longer? Could it be less?

9 A I don't remember.

10 Q You don't remember?

11 A No.

12 Q Okay. We'll get a chance to watch the video in a  
13 moment, but I want to walk you through some pauses of video.

14 A Okay.

15 Q Sir, you remember at your deposition, you were asked  
16 questions specifically about the condition of what you saw above  
17 the ceiling that had collapsed; true? Do you remember you were  
18 asked those questions?

19 A Yes.

20 Q And specifically, you were asked questions on, sir, do  
21 you remember if there was anything maybe that looked old and  
22 deteriorated of the infrastructure above the ceiling and you  
23 said I do not remember. Do you recall that?

24 A Yes.

25 Q Let's go through it now. Let's see maybe if this

1 refreshes your memory.

2 A Sure.

3 MR. FRANKLIN: Your Honor, I'm just going to object  
4 to counsel's reference without page and line numbers to  
5 prior testimony. It's a potential for misleading of the  
6 witness.

7 THE COURT: Say it again. I just couldn't hear  
8 what you said.

9 MR. FRANKLIN: To plaintiff's counsel paraphrasing  
10 prior testimony without specific references to the  
11 transcript.

12 THE COURT: Okay. So, Counsel read from the  
13 transcript and give the page and line.

14 MR. MARANDO: Yes, Judge. I would only add that he  
15 say that he remembers. If he said he did not remember and I  
16 mis-paraphrased, that's inappropriate, but that did not  
17 happen. He said he did remember.

18 THE COURT: Okay. That's correct.

19 Q Sir, let's take a look at this.

20 A Okay.

21 Q What are we looking at? Does this appear to be rusted?

22 A That's a steel beam.

23 Q Sir, that's not what I asked. My question is very  
24 simple.

25 In this picture in the video that you took, I didn't

1 ask about a steel beam. I simply asked is this rusted?

2 A Yeah. It's coloration of rust, yes. I did not go up  
3 there and see if it's rusted.

4 Q Sir, I'm not asking did you go anywhere. I'm asking  
5 you specifically yes or no. Looking at this photograph, does  
6 this appear to be rusted; yes or no?

7 A Again, something that looks like rust doesn't  
8 necessarily mean it's rusted. So, I can't answer your question.

9 Q So, looking at this, it does not appear to be rusted at  
10 all?

11 A It has coloration of rust again.

12 Q Discoloration of rust?

13 A I did not touch it, did not look at it up close so I  
14 wouldn't know.

15 Q Sir, thank you, but my question is very specific. Does  
16 it appear to be rusted in this photograph?

17 A I don't know.

18 Q You don't know?

19 A No.

20 Q Okay. I'm going to show you another blow up from the  
21 same video Plaintiff's Exhibit 2 paused at 18 seconds. Do you  
22 see that, the blow-up here?

23 A Yes.

24 Q Okay. This specific wood beam that we're looking at,  
25 does that appear to be moldy? And I'm not asking you if it's

1 moldy. I'm asking you specifically does it appear to be moldy;  
2 yes or no?

3 A No.

4 Q It does not in your eyes?

5 A Not in my eyes.

6 Q And do you see underneath here, you're saying this  
7 doesn't appear to be rust?

8 A That's a metal beam.

9 Q Sir, I didn't ask you about a metal beam. I'm asking  
10 you specifically --

11 A No, I don't see rust.

12 Q You don't see rust here; right? And by nature, you  
13 don't see rust here either; right?

14 A I'm not an expert on rust.

15 Q Sir, I didn't ask if you're an expert. I'm saying in  
16 your opinion, does this appear to be rusted; yes or no?

17 A It has the coloration of rust, yes.

18 MR. MARANDO: Judge, I'd just like him to give an  
19 answer either yes or no or if he can't answer with yes or  
20 no --

21 THE COURT: No. It's been asked and answered.

22 Move on.

23 Q Okay. I'm going to now show you Plaintiff's Exhibit 1,  
24 the first video you took, and we'll stop it specifically at 14  
25 seconds. Okay?

1 A No problem.

2 Q Okay. Thank you. Now, do you see that now?

3 MR. FRANKLIN: Your Honor, may we approach?

4 THE COURT: One person each approach.

5 (Whereupon, at this time, a discussion was held at  
6 sidebar.)

7 THE COURT: He's going to ask you a new question.  
8 Just hang on one second.

9 THE WITNESS: Okay.

10 Q Sir, now I'm showing you a paused video from Exhibit 2  
11 and I paused it at 18 seconds. Do you see that?

12 A Yeah.

13 Q So, I'll go back, same one. Exhibit 1 --

14 MR. MARANDO: I see the issue, Judge. One moment.

15 THE WITNESS: That's 14 seconds.

16 MR. MARANDO: I'm going to just confirm, Judge,  
17 with the --

18 MR. FRANKLIN: There needs to be a clarification of  
19 the evidence on the record.

20 THE COURT: Just give him one moment to look at it.  
21 Sometimes this stuff is confusing. We'll straighten it out.  
22 Give him a moment.

23 MR. MARANDO: I'll play Exhibit 1, Judge in its  
24 entirety and I'll stop it at 14 seconds and we'll know at  
25 that point.

1 THE COURT: Describe Exhibit 1 is dated for the  
2 record exactly, Exhibit 1 is dated from what date?

3 MR. MARANDO: Exhibit 1 is the date of April 21,  
4 2021 and that is Plaintiff's Exhibit 1 in evidence.

5 MR. FRANKLIN: Your Honor, for the record, I  
6 believe the witnesses both of what he's been showing, it's  
7 all been from the same video.

8 THE COURT: Okay. For the record, that's great.  
9 Exhibit 1.

10 MR. FRANKLIN: All of it is the same video.

11 MR. MARANDO: Well, that's testifying, Counsel.

12 Judge, it was correct. Exhibit 1, 14 seconds is  
13 what we're looking at. So, I'll pull it back up.

14 MR. FRANKLIN: Just for the record, this is all  
15 Plaintiff's Exhibit 1?

16 MR. MARANDO: Right now, we're looking at  
17 Plaintiff's Exhibit 1 on the screen, correct.

18 Q Sir, I'm showing you Plaintiff's Exhibit 1. It's a  
19 video that you took that morning on April 21, 2021; correct?

20 A Yes.

21 Q Okay. Now, specifically I'm going to blow up a portion  
22 of that where we have it paused. Now do you see the wood  
23 underneath the infrastructure?

24 THE COURT: Counsel, just for the record, I thought  
25 you were going to run the whole video. If you're not,

1 that's fine. Just articulate for the record where you  
2 paused it.

3 MR. MARANDO: Yes, Judge. Plaintiff's Exhibit 1,  
4 the video has been paused at 14 seconds.

5 Q Sir, do you see that what's blown up at 14 seconds  
6 paused for video one?

7 A Yes.

8 Q Okay. Now this specific wood, does it appear to be wet  
9 in any way?

10 A No.

11 Q Does it seem to be discolored in any way?

12 A Yes.

13 Q And because it's discolored, can we agree that there's  
14 a possibility it could be wet; correct?

15 MR. FRANKLIN: Objection. Calls for speculation.  
16 No foundation.

17 THE COURT: Overruled.

18 A I'm sorry. Say that one more time.

19 Q Because you testified that it appears to be  
20 discoloration, we can agree that there's a possibility that it  
21 was in fact wet?

22 A No.

23 Q No way?

24 A That's not wet at all. Zero.

25 Q At all? Zero? Your words?

1 A Yes.

2 Q Sir, when this happened April 21, 2021 --

3 A Yes.

4 Q -- you had only worked for that building for about a  
5 month more; correct?

6 A I'm not exactly sure when I started.

7 Q Well, you testified that you left in about May of 2021;  
8 correct?

9 A You mean like going forward, I worked another extra  
10 month you're saying?

11 Q Yes.

12 A Yes.

13 Q And then what building did you go to?

14 A 1166 Grand Concourse.

15 Q So, you're there for about a year, this happens. And  
16 then a month later, you're sent to a different building?

17 A Not sent.

18 Q Well, you went to a different building; true?

19 A Yes.

20 Q Did you go on your own or did someone tell you to go?

21 A I went on my own.

22 Q So, you just packed up your bags and went to the next  
23 building?

24 A Not my bags. I packed up everything.

25 Q Did you continue to work for Residential Management?

1 A Yes.

2 Q Do you work for Residential Management today?

3 A Yes.

4 Q So, we can agree that you didn't just pack your bags.

5 You were told by Residential Management to go to a different  
6 building; true?

7 A No, absolutely not.

8 MR. FRANKLIN: Objection. Vague.

9 THE COURT: Overruled. Go ahead.

10 Q Sir, when you were working for 2727 University Avenue,  
11 you had a cellphone in connection with your job duties; correct?

12 A True.

13 Q Okay. Now you had previously testified that when you  
14 went to a different building, you had to give the phone back;  
15 correct?

16 A Yes.

17 Q Because you went to a different building?

18 A No, because it was -- yes, that phone was for that  
19 building.

20 Q Well, did you use that phone for the other building you  
21 worked at 2734 Clafin Avenue?

22 A Yes.

23 Q So, you go back and forth between two buildings and you  
24 use the same phone, but when you go to a third building, you  
25 have to give a phone back?

1 A It's a different manager.

2 Q But you were working for Residential Management again;  
3 true?

4 A It's a different manager.

5 Q Sir, my question is specific. When you went to the  
6 third building, you were still working for Residential  
7 Management; yes or no?

8 A Yes.

9 Q So, we can agree that the first two buildings, you're  
10 going back and forth, you're allowed to have the same phone, but  
11 for some reason when you go to the third building a month after  
12 this happens, you have to give the phone back; correct?

13 A I'm not sure you understand me.

14 Q Sir, yes or no?

15 A It's a different manager.

16 Q I'm not asking about that, sir. I'm asking about  
17 specific facts. When you went to the third building, you had to  
18 give the phone back; yes or no?

19 A Yes.

20 MR. FRANKLIN: Objection. Asked and answered, Your  
21 Honor --

22 THE COURT: Okay. Asked and answered. He said  
23 yes. Go ahead, Counsel. Sustained.

24 Q Sir, we spoke about how when you went to this  
25 apartment, you took two videos; correct?

1 A Yes.

2 Q Okay. And it was your testimony they happened right  
3 after each other; correct?

4 A No, I didn't say that. I said there was some time in  
5 between, but it wasn't -- it was the same day.

6 Q Okay. And we can agree that it was a substantial  
7 amount of time in between each video?

8 MR. FRANKLIN: Objection. Misstates testimony.

9 A No, we can't agree --

10 THE COURT: Sir, if you hear the word objection,  
11 just don't answer. I'm sorry, Counsel. What's your  
12 objection?

13 MR. FRANKLIN: Objection. Misstates testimony.

14 MR. MARANDO: I didn't refer to testimony, Your  
15 Honor.

16 THE COURT: Overruled. Go ahead.

17 MR. MARANDO: Can I have a read back, Madam  
18 Reporter.

19 (Whereupon, the requested testimony was read back  
20 by the Court Reporter.)

21 MR. FRANKLIN: That's my objection, Your Honor.

22 THE COURT: Understood. Overruled. Yes or no?

23 THE WITNESS: I don't remember how much exact time  
24 it was.

25 Q But there was time that had passed between the first

1 video and the second video; true?

2 A Matter of minutes, yes.

3 Q Okay. Let's go through each video, the full video and  
4 I'll ask you some questions about them. Okay?

5 A Sure.

6 MR. MARANDO: Plaintiff is showing what's been  
7 moved into evidence as Plaintiff's Exhibit 1. I want to  
8 make sure, Judge that the volume is on so we can hear it.

9 MR. FRANKLIN: Counsel, your volume is at the  
10 bottom.

11 MR. MARANDO: I'm going to just play it again since  
12 there was a pop-up.

13 (Whereupon, a video was played.)

14 MR. FRANKLIN: Your Honor --

15 THE COURT: Do you have an objection? Hang on.  
16 Hang on a second. Do you have an objection, sir? Did you  
17 have an objection?

18 MR. FRANKLIN: No. It's passed. So, no.

19 THE COURT: Okay. Go ahead, Counselor.

20 Q Sir, the video that we just saw was a video that you  
21 took; correct?

22 A Yes.

23 Q It's a video you took when you first got into the  
24 apartment; correct?

25 A Yes.

1 Q And you took it with your phone that was owned by the  
2 management company that you had to give back; correct?

3 A Correct.

4 Q And that phone specifically, you don't have that phone  
5 anymore?

6 A No.

7 Q Do you know who has that phone?

8 A No.

9 Q Sir, I'm going to show you now the second video you  
10 took. Okay?

11 A Okay. No problem.

12 MR. FRANKLIN: Your Honor, can we approach?

13 THE COURT: Approach.

14 (Whereupon, at this time, a discussion was held at  
15 sidebar.)

16 THE COURT: So, Counsel's proposed playing what?

17 MR. MARANDO: At this time, plaintiff will play the  
18 video marked into evidence as Plaintiff's Exhibit 2.

19 THE COURT: Okay. Counsel, do you have an  
20 objection?

21 MR. FRANKLIN: No, Your Honor.

22 THE COURT: Okay.

23 (Whereupon, a video was played.)

24 Q Sir, the second video Plaintiff's Exhibit 2 that we  
25 just watched, you took that video; true?

1 A Yes.

2 Q You took the first video and you took the second video.  
3 Both videos we just watched; correct?

4 A Yes.

5 Q Okay. Let's go through them for a moment and maybe we  
6 can find out the time in between each video.

7 A Okay.

8 Q Sir, this is the first video you took Exhibit 1,  
9 Plaintiff's Exhibit 1 in evidence paused at 32 seconds. Do you  
10 see this?

11 A Yes.

12 Q What do you see? What do you see in the tub?

13 A Debris from the ceiling and water.

14 Q That fell; right?

15 A Yes.

16 Q And you see water in the tub; right?

17 MR. FRANKLIN: Objection, Your Honor. No  
18 foundation --

19 THE COURT: Hold on. Excuse me. Overruled. Go  
20 ahead.

21 A I do see the water. Yes, I see dirty water.

22 Q Okay. And does the water look clean? Does it look  
23 dirty? What are we looking at?

24 A I just said dirty water.

25 Q Dirty water, okay. I'm going to do side-by-side now.

1 On the left part of the screen, we have Exhibit 1, Video 1,  
2 paused at 32 seconds. On the right side of the screen, we have  
3 Exhibit 2, Video 2 paused at 22 seconds, both in evidence. Do  
4 you see that?

5 A Yes, I see that.

6 Q Okay. Is there any difference between the first video  
7 and second video based on where I have these two videos paused  
8 at, sir?

9 A Yes.

10 Q And what's the difference?

11 A On the second video is when we started to clean.

12 Q And I'm going to do a blow-up now, the same exact  
13 time --

14 MR. MARANDO: Your Honor, may I approach?

15 THE COURT: Any objection?

16 MR. FRANKLIN: No.

17 THE COURT: Go ahead.

18 Q So, we're looking at the same tub. It is the same tub  
19 on the left as the same tub on the right; true?

20 A Yes.

21 Q In the first video when we watched it, you doesn't say  
22 anything about the ghost shower; correct? Yes or no, did you  
23 say the words ghost shower in the first video?

24 A No.

25 Q But in the second video after it appears to be cleaned

1 up, you say the words ghost shower; correct?

2 A Yes.

3 Q Okay. Based on this, does it look like it was taken  
4 two seconds apart; yes or no?

5 A It was taken in a matter of the minutes.

6 Q A matter of minutes; right?

7 A Yes.

8 Q Okay. Now, it's funny because this week for the  
9 purposes of the question, I want you to assume that if I trim my  
10 beard, it takes about a ten minutes to clean the sink.

11 Is it your testimony that this took a matter of minutes  
12 to clean up?

13 A Yes.

14 Q A matter of minutes; right?

15 A A matter of minutes.

16 Q Now, I'm going to show you on the left side of the  
17 screen Exhibit 1, Video 1 paused at 30 seconds. Do you see  
18 that?

19 A Yes, I see it.

20 Q Okay. On the right side of the screen, let's show  
21 Exhibit 2, Video 2 paused at 22 seconds. Do you see that?

22 A Yes.

23 Q Let's blow something up for each side of the TV screen.

24 MR. MARANDO: Your Honor, may I approach?

25 THE COURT: Any objection?

1 MR. FRANKLIN: No, Your Honor.

2 THE COURT: Go ahead.

3 Q So, in addition to the tub that was magically cleaned  
4 up in a matter of minutes, what about the floor? This was also  
5 cleaned up in a matter of minutes? Are you telling this jury  
6 that; yes or no?

7 A Yes. That's exactly what I'm telling you guys. There  
8 were three people there.

9 Q Do you have a card? I need a cleaner like that --

10 A Absolutely.

11 THE COURT: Counselor, sustained. The jury should  
12 disregard that comment.

13 MR. FRANKLIN: Objection to the commentary.

14 A Just so you know, there was three employees there. Me,  
15 the handyman and porter at the same time. Three guys in the  
16 bathroom. A matter of minutes.

17 Q Okay. And it was a matter of minutes for the water to  
18 go down the drain; right?

19 A Sir, have you ever seen water go down the drain?

20 Q Well, in this video, it appears to be not going  
21 anywhere --

22 A Yeah, because the debris is there. It's clogged.

23 MR. FRANKLIN: Objection, Your Honor.

24 THE COURT: Let's move on, Counsel.

25 Q So, that's good for the video for now. We may go back

1 to it, sir.

2 Now, sir, during your deposition in 2023, you testified  
3 that before this happened at some point, though you don't  
4 remember the exact day, there was an issue involving the ceiling  
5 with mold in the smaller bathroom in apartment 4F where Henry  
6 Espacia lived; correct? Do you remember giving that specific  
7 testimony?

8 A Can you read what I said --

9 MR. FRANKLIN: I'm going to object once again.  
10 Counsel is rephrasing and misstating prior testimony without  
11 any reference to a transcript and this is the improper way  
12 to --

13 THE COURT: Counsel, I have to agree. Ask him a  
14 question and then cross him with the deposition.

15 MR. MARANDO: Okay.

16 Q Sir, was there ever an issue in apartment 4F before  
17 April 21, 2021 involving any of the ceilings in apartment 4F  
18 specifically with yellow mold; yes or no?

19 A Yes.

20 Q Okay. And this happened before April 21, 2021;  
21 correct?

22 A Yes.

23 Q You don't remember the specific time; correct?

24 A No.

25 Q If I told you it was in the summertime that year prior

1 to April 2021, you would agree that's a possibility; correct?

2 MR. FRANKLIN: Objection. No foundation. Calls  
3 for speculation.

4 THE COURT: Overruled.

5 A Like I said, I don't remember. So, you could say  
6 anything. I'm not going to agree. I don't remember when it  
7 was.

8 THE COURT: Sir, you could say yes or no or you  
9 can't agree.

10 THE WITNESS: No, I don't remember.

11 Q But what we do know is that you were only at this  
12 building for about a year to a year and a half; true?

13 A Yes.

14 Q So, it that to be in that year to a year and a half  
15 before; right?

16 A Yes.

17 Q And since you left in May, we could say it's probably  
18 in 12 months or so before April of 2021; true?

19 A Correct.

20 Q Okay. All right. When Mr. Espacia complained to you  
21 about that issue, he never took a photograph of that ceiling;  
22 correct?

23 A I don't remember.

24 Q Okay. There's no document that you gave to any  
25 supervisor with respect to something that was taken by Mr.

1 Henry Espacia; true?

2 A I don't remember.

3 Q Okay. Now, sir, because this was complained to to the  
4 super, to you at some point during this time period, you  
5 addressed it; correct? Because that was your job?

6 A Yes.

7 Q And because you addressed it, you sent Justin, the  
8 handyman to go fix it; correct?

9 A I don't remember.

10 Q You don't remember. Okay. Let's see if we can refresh  
11 your memory.

12 MR. MARANDO: One moment, Your Honor. I'm just  
13 reading from -- let me just find the part.

14 Your Honor, from Page 49, Lines 1 through 25 and  
15 then Page 50, Lines 1 to 3.

16 Q Sir, were you asked this question and did you give this  
17 answer?

18 "QUESTION: Sir, before this incident, do you  
19 recall from the time that you were first in this building  
20 working performing any type of services or repairs in that  
21 apartment?

22 "ANSWER: Yes.

23 "QUESTION: What brought you to that apartment for  
24 the purpose of repair or service?

25 "ANSWER: There was a complaint about the kitchen

1 sink. We fixed the kitchen sink. There was a complaint  
2 about a yellow spot on the small bathroom ceiling like mold.  
3 So, I had Justin paint the ceiling with stain-killer."

4 After hearing that question and answer, question  
5 and answer, answers that you gave, does that refresh your  
6 memory that that was your testimony; yes or no?

7 A Yes.

8 Q So, we can agree that you sent Justin to go fix it;  
9 correct?

10 A Could be.

11 Q Well, sir, not could be. I'm just relying on your  
12 testimony.

13 A Yes.

14 Q Now, when Justin went, he used stain-killer. He didn't  
15 open up the wall; correct?

16 A First, we checked for leaks.

17 Q Sir, my question is specific. Yes or no, did he open  
18 up the wall?

19 A On the small bathroom?

20 Q Yes.

21 A No.

22 Q Okay. Yes or no, did he open up the ceiling in the  
23 small bathroom?

24 A On the small bathroom, no.

25 Q Yes, sir. To the small bathroom.

1 A No.

2 Q Okay.

3 MR. MARANDO: Judge, at this point, I'd like to  
4 show, I'll let Your Honor know in a minute. It's either 1  
5 or 2.

6 Q Now, sir, I'm showing you on the screen what's already  
7 in evidence as three different pauses of the same video Exhibit  
8 1, Exhibit 1, Exhibit 1.

9 There's three photographs. On the left, it's paused at  
10 36 seconds Exhibit 1. In the middle, it's Exhibit 1, 32 seconds  
11 and on the right, it's Exhibit 1, 30 seconds. Do you see that?

12 A Yes.

13 Q Okay.

14 MR. MARANDO: Your Honor, may I approach?

15 MR. FRANKLIN: Yes.

16 Q Sir, as the superintendent of this building for about a  
17 year, year and a half, you were familiar with the general layout  
18 of this apartment; correct?

19 A Yes.

20 Q And you knew that apartment 4F had the same general  
21 layout as apartment 5F?

22 A Yes.

23 Q Okay. So, when we look at this, since you were the  
24 super for about a year and the tenants relied on you and you  
25 testified that you knew the general layout, you know that this

1 wall that we see here in the first photograph Exhibit 1 paused  
2 at 36 seconds where it's stopped, that if I punch my hand  
3 through that wall, I end up in the small bathroom; yes or no?

4 A It would have to be a very strong punch, but yes.

5 Q But yes; correct?

6 A Correct.

7 Q This is not like some apartment or home where you have  
8 one bathroom on one side and another bathroom on the other side;  
9 correct?

10 A Correct.

11 Q These two bathrooms, they shared the same common wall;  
12 correct?

13 A Not the entire wall. The other one is smaller.

14 Q I'll rephrase. If you take this wall down, you're in  
15 the small bathroom; correct?

16 A Yes.

17 Q And the small bathroom is the same bathroom where there  
18 was an issue with the yellow on the wall where you only used  
19 stain-killer; right?

20 A Yes.

21 Q We could agree that yellow mold could be from leaking;  
22 correct? Yes or no?

23 A No.

24 MR. FRANKLIN: Objection. Foundation.

25 THE COURT: Overruled. And your answer was?

1 THE WITNESS: No.

2 Q Is there any possibility, yes or no, that yellow mold  
3 could be from water leaking?

4 A Yes.

5 Q And because there is a possibility, sir, based on that,  
6 we can agree that it's foreseeable that yellow mold could be  
7 from moisture; correct?

8 A Moisture, yes.

9 MR. FRANKLIN: Objection, Your Honor.

10 THE COURT: Overruled. What's your answer? Sorry  
11 sir.

12 THE WITNESS: Yes.

13 Q And sir, you knew this as a super; correct? In around  
14 2021, your opinions haven't changed?

15 A Yes.

16 Q Now, sir, when Justin fixed this in that year before  
17 this happened, there was no work order in connection with this  
18 specific assignment; correct?

19 A No.

20 Q Okay. But there were work orders for other things;  
21 right?

22 A Yeah.

23 Q Okay. So, Mr. Espacia, when he complained about the  
24 yellow mold, he never sent you a picture of this because he  
25 asked you, and he relied on you to fix it, which you did;

1 correct?

2 A Yes.

3 Q Okay. Tenants don't have to take pictures of things  
4 before they happen just like this because when they tell you  
5 something, it's their inspection that it gets addressed;  
6 correct?

7 A Sometimes they take pictures to show me what the issue  
8 is. There's a form for them to reach me. They would text me of  
9 the issue that is wrong and say hey super, this is what's going  
10 on in my apartment to show what the problem is, but no. They  
11 don't have to take necessarily have to take pictures.

12 Q Of course. They don't have to. But if they tell you  
13 verbally, the expectation like was here, which as a super, he  
14 complained about it. He didn't take a photograph --

15 A Wait, wait, wait. He complained about what?

16 Q In the small bathroom the yellow mold?

17 A Yes.

18 Q He did not take a photograph of it?

19 A No.

20 Q He simply told you verbally; correct?

21 A Yes.

22 Q There's no written e-mail from Henry Espacia in  
23 connection with the small bathroom issue?

24 A Not to me, no.

25 Q As you sit here today, can you recall anything in

1 writing that Henry gave to you about this issue in the small  
2 bathroom?

3 A About the small bathroom issue because you keep see  
4 saying this issue referring to the video.

5 Q No. The small bathroom?

6 A Yes, yes.

7 Q The only thing that you can remember is the verbal  
8 complaint Henry gave to you in connection with the small  
9 bathroom; correct?

10 A Yes.

11 MR. MARANDO: I'm going to go back to --

12 Q Sir, I'm going to back to Exhibit 2 paused at 18  
13 seconds which is Exhibit 2 in evidence. Do you see that?

14 MR. FRANKLIN: Your Honor, that's still the same  
15 exhibit. It's still Plaintiff's 1.

16 MR. MARANDO: I don't believe so. One second. I  
17 think it's accurate.

18 THE COURT: I think it said Plaintiff 1 at the top.  
19 Does it not?

20 MR. MARANDO: It did at the time. I'll leave it  
21 here because this is what we're looking at, Judge.

22 Q Sir, I'm showing you again what we're looking at, the  
23 three photographs all from Exhibit 1. Do you see that?

24 A Yes.

25 Q Showing you the left photo --

1 MR. MARANDO: Judge, may I approach again?

2 THE COURT: Yes.

3 Q It's paused at 36 seconds, you see that; correct?

4 A Yes.

5 Q Now, you see the infrastructure of the subfloor? Can  
6 you see it's exposed?

7 A It's very blurry, yes.

8 Q Okay. This goes into the small bathroom; correct?  
9 It's adjacent to the small bathroom this part of the  
10 infrastructure of the subfloor or the wood that we see here  
11 that's exposed; yes or no?

12 A Part of it, yes.

13 Q Okay. Now, sir, when it comes to issues with maybe  
14 piping or subfloor infrastructure, anything like that, after  
15 it's complained as you said, we can agree that it is the  
16 responsibility of the management company on behalf of the  
17 property owner; correct?

18 A Yes.

19 Q Okay. And because that's true, we can agree that it's  
20 not the tenant's job. We can't have these tenants to just  
21 simply go opening up and figuring out things themselves.

22 If they voice a complaint, it's your job as the super,  
23 the management company, handyman to actually go and assess the  
24 work that's needed to be done; correct?

25 A Yes.

1 Q The tenants are not told to go fix pipes themselves  
2 with no knowledge because you guys have the expertise; correct?

3 A Yes.

4 Q So, therefore, can we agree that the piping, the  
5 infrastructure that we cannot see that's above the floor, that's  
6 the exclusive control of the management company; correct?

7 MR. FRANKLIN: Objection. Argumentive.

8 THE COURT: I'm going to overrule. But be careful,  
9 Counselor about legal conclusions.

10 Q Well, sir, what we're looking at right now --

11 MR. FRANKLIN: Calls for a legal conclusion, Your  
12 Honor.

13 MR. MARANDO: Judge, may we approach?

14 THE COURT: Nope. Go ahead. Just ask the question  
15 again.

16 MR. FRANKLIN: Your Honor, it goes to ultimate  
17 issue.

18 THE COURT: Overruled. Go ahead and ask the  
19 question, again.

20 Q Sir, what we're looking at, the exposed infrastructure  
21 before above the ceiling, we can agree that that's in the entire  
22 control of the management company and on behalf of the owner;  
23 correct?

24 A Control, what do you mean control?

25 Q Well, what you see here now on the left photo, Exhibit

1 1 paused at 36 seconds, let's take a look at it first. Do you  
2 see the left photograph?

3 A Yes.

4 Q Do you see what's exposed that's potentially above the  
5 ceiling?

6 A Yes.

7 Q That part of this building, the infrastructure, that's  
8 at the sole control of the building and the management company;  
9 correct? The tenant does not control or have access to that  
10 part; correct?

11 A Access, yes. Control, only God controls that. What do  
12 you mean control?

13 Q Okay. Only God controls. But in terms of access, only  
14 the building and the property management have access to what's  
15 exposed there that would normally --

16 A Yes.

17 MR. FRANKLIN: Objection.

18 THE COURT: What's your objection?

19 MR. FRANKLIN: Foundation. Assumes facts and calls  
20 for a legal conclusion.

21 THE COURT: I'm going to sustain that. He's only  
22 testified that they have sole responsibility.

23 Q Now, sir, we can agree that ceilings should not fall in  
24 apartments; correct?

25 A Correct.

1 Q A bathroom ceiling should not fall during normal use;  
2 correct?

3 A Correct.

4 Q And sir, when you arrived that day, part of the ceiling  
5 was missing; correct?

6 A Correct. You keep saying missing. It was on the  
7 floor. It wasn't missing anywhere.

8 Q Correct.

9 A But it fell, yes.

10 Q Okay. Now, sir, a ceiling above a bathroom, in a  
11 bathroom, can we agree that showering is a normal use of a  
12 bathroom?

13 A Yes.

14 Q Now, sir, I know we spoke about the issue with the  
15 other bathroom that's right next to the big bathroom with the  
16 yellow mold. Do you remember that? We just spoke about it a  
17 few minutes ago?

18 A Yes.

19 Q There was another issue involving the sink in the main  
20 bathroom; correct?

21 THE COURT: I'm going to have to ask you to ask  
22 that again because I'm not sure which bathroom you're  
23 speaking about.

24 MR. MARANDO: I apologize, Your Honor. I'll  
25 rephrase.

1 Q Sir, before when reading some of your questions and  
2 answers of your deposition testimony, we read an answer where  
3 you said that there was an issue with a sink that was repaired.  
4 Do you recall that I read that about ten minutes ago?

5 A With the sink.

6 Q The kitchen sink?

7 A Yes. The strainer and the tailpipe, yes.

8 Q And the kitchen sink issue was verbally voiced as a  
9 complaint to you as a super during that time period; correct?

10 A No. I believe that was over text messages, but it  
11 could have been verbally. I'm not sure.

12 Q Okay. It could have been verbally or it could have  
13 been over message; correct?

14 A Yes.

15 Q There was no photograph that was sent on behalf of  
16 Henry; correct?

17 A No.

18 Q Okay. So, there was no -- withdrawn.

19 So far, two issues, one with the small bathroom. Henry  
20 never took a photograph beforehand of what it looked like with  
21 the issue. He just voiced the complaint?

22 And the second issue with the kitchen sink, he never  
23 took a photograph of the issue, he just verbally conveyed the  
24 complaint; correct?

25 MR. FRANKLIN: Objection. Vague.

1 THE COURT: Overruled.

2 A Correct.

3 Q Okay. So, both times before this happened, Henry does  
4 not take photographs. He actually complains and you guys fix  
5 it; correct?

6 A Correct.

7 Q Because he relies on you guys and that's your job and  
8 you guys did fix it; correct?

9 A Yes, we did.

10 MR. FRANKLIN: Objection. Argumentative.

11 THE COURT: Overruled.

12 Q Sir, before April 20, 2021, when something was done, we  
13 can agree that some things after they were done, they were put  
14 on a work order and some things that were done, there was no  
15 work order; correct?

16 A Correct.

17 Q Okay. And it's true that if you or the handyman felt  
18 like it was a small job, it doesn't have to be on a work order;  
19 correct?

20 A No.

21 Q What did you mean?

22 A The reason why the kitchen sink was on a work order is  
23 because it was the material was specifically ordered for it.  
24 So, it was also to log that which material was used.

25 Q Okay. I know we spoke --

1 A It's not small job, big job.

2 Q Okay.

3 A The way you're phrasing it.

4 MR. MARANDO: I'm going to read from --

5 MR. FRANKLIN: Your Honor, is this for refreshing  
6 or for impeachment?

7 MR. MARANDO: No, this is for impeachment, Your  
8 Honor.

9 THE COURT: So, the witness had asked how much  
10 longer it's going to be? I'm just going to tell him he has  
11 to testify until counsel is done. What are you doing now,  
12 Counsel?

13 MR. MARANDO: I'm impeaching based on his response  
14 had nothing to do with if it's a small thing or big thing.  
15 Only if something is ordered.

16 MR. FRANKLIN: Can we greet the page and line  
17 number?

18 THE COURT: He's about to give it.

19 MR. MARANDO: Page 51, Lines 7 through 9. And this  
20 was in response to the discussion of the mold in the small  
21 bathroom. Page 51 Lines 7 to 9.

22 "QUESTION: Is there a job ticket or a work order  
23 for that?

24 "ANSWER: No. That's a very minor thing."

25 Sir, were you asked that question and did you give

1           that answer in connection with your deposition that day?

2           A     Yes.

3           Q     Okay.  So, we can agree that it has nothing to do with  
4 whether or not something is purchased and it had everything to  
5 do with whatever the management company thought was a big thing  
6 or a minor thing; correct?

7           A     No.

8           Q     Sir, we just heard from your deposition --

9           A     Read it again.

10          Q     Okay.  Of course.

11                   "QUESTION:  Is there a job ticket or a work order  
12 for that?

13                   "ANSWER:  No.  That's a very minor thing."

14          A     I had said nothing about purchase or how it was written  
15 or nothing like that.  I said it was minor so, no.  There wasn't  
16 a work order.

17          Q     Because it was minor?

18          A     Yes, but I didn't say anything about why a work order  
19 gets made.  You're trying to like confuse things.

20          Q     Sir, I assure you, if you have any questions about my  
21 question, please let me know.  I'll try my best to rephrase.  
22 I'm not trying to confuse you.

23          A     You're reading something else and then stating  
24 something else, no.

25          Q     Let's go through it again.

1 A Sure.

2 Q Your testimony was in connection with the small  
3 bathroom and the stain-remover, there was no work order because  
4 that was a minor thing; correct? That's what you said?

5 A Correct.

6 Q Now, sir, some things we have work orders, some things  
7 we don't have work orders --

8 A Yes.

9 Q So, looking at the things that we do have work orders,  
10 we can disagree that after a short period of time maybe about 12  
11 months, you threw all the work orders away; correct?

12 A No, I didn't.

13 Q Okay.

14 MR. MARANDO: Judge, I'm reading from Pages 29  
15 through 30, Lines 10 to 25 and Lines 1 to 22.

16 "QUESTION: What did you do with the work orders  
17 after the work was done?

18 "ANSWER: I would store it in a bin. I have my  
19 personal files. I'll say about six months, I would keep it  
20 to a year and then I left those two buildings. So, I  
21 disregarded those work orders. I no longer needed them."

22 Q Were you asked that question and did you give that  
23 answer?

24 A Read the end of the answer you said again. I left  
25 those buildings. I no longer needed the work orders for those

1 buildings.

2 Q You forgot one part, sir. I disregarded those work  
3 orders?

4 A Because I didn't need them. I left.

5 Q So, you discard it? Can we agree about that, sir?  
6 Those are your words, not mine.

7 MR. FRANKLIN: I'm just going to object, Your Honor  
8 to Counsel's attempt to confuse with disregard and discard.

9 THE COURT: Overruled.

10 A Can you give a synonym of the word disregard?

11 Q Well, sir. It's what you said. I didn't say the word  
12 disregard. Did you say the word disregard; yes or no?

13 A Yes.

14 Q Sir, through the process of working for this building  
15 during that year or approximately a year, some of the issues  
16 that came from tenants, you would write them down on a  
17 whiteboard; correct?

18 A Correct.

19 Q And sometimes at the end of the day, either they were  
20 addressed or they weren't addressed. You and Justin would wipe  
21 it away; correct?

22 A Yes.

23 Q Okay. Even if it was not fixed if a tenant --

24 A No.

25 Q -- wanted something that they just couldn't get done

1 for whatever reason, they would get wiped away at the end of the  
2 day; fair?

3 MR. FRANKLIN: Objection. Argumentive.

4 THE COURT: Overruled. I'm sorry, sir. Go ahead  
5 and give your answer again.

6 A No. The whiteboard had the duties for the day. So, if  
7 something didn't get done, it would still remain there.

8 Q And sir, we can agree that if something or if a certain  
9 complaint from a tenant couldn't be fixed for whatever reason  
10 that the property manager deemed appropriate, that it would get  
11 wiped away; correct?

12 A Can you rephrase the question?

13 Q Sure. Sir, at the end of the day after complaints were  
14 addressed -- withdrawn.

15 At the end of the day after complaints were voiced to  
16 you as the superintendent, they were written down on a  
17 whiteboard; correct? We just established that?

18 A No, we didn't. I said on the whiteboard, we put the  
19 tasks that we would do for the day and if something didn't get  
20 completed or whatever the case is, yes. If something got  
21 completed, it would be wiped away.

22 MR. MARANDO: Your Honor, I'm reading from Pages 34  
23 and 35 of the transcripts, Lines 25, Lines 1 through 22.

24 Q Sir, were you asked this question and did you give this  
25 answer?

1                   "QUESTION:  Would that be documented anywhere?  
2            Would you write down somewhere that, you know, John Doe from  
3            apartment 3G, he called to say the kitchen sink is leaking?

4                   "ANSWER:  Yeah.  I would but that in the notes of  
5            the day.  We also kept that in the workspace.  We had like a  
6            small --

7                   "QUESTION:  Like a daily journal?

8                   "ANSWER:  No.  A board where we would write with a  
9            marker."

10           A     Yes.

11           Q     So, we can agree that in terms of complaints, they were  
12           written down; true?  On a whiteboard?

13           A     That specific complaint you gave an example of, yes.  
14           That would be written.

15           Q     So, it wasn't just duties.  It was also complaints in  
16           some cases; correct?

17           A     You said the ceiling leaking.  Trust me, I'm going  
18           there.

19           Q     Sir, my question is specifically --

20           A     You said John Doe and 3G complained that the ceiling is  
21           leaking, yes.  I'm going there that day.  So, it would be  
22           written down.

23           Q     Sir, my question is specific.  Specifically, we can  
24           agree that in some cases with complaints, they were written on a  
25           whiteboard; correct?

1 A Yes.

2 Q And they were at some point wiped away; correct?

3 A Yes.

4 MR. MARANDO: Your Honor, at this time, pursuant to  
5 CPLR 4540, plaintiff would like the Court to take judicial  
6 notice of the deed of the property pursuant to CPLR 4540 and  
7 1st Department case law into evidence.

8 THE COURT: Any objection?

9 MR. FRANKLIN: Well, that it hasn't been provided  
10 to us, for one.

11 THE COURT: It's on the list of my exhibits that  
12 I'm looking at. It's number five.

13 MR. FRANKLIN: May I observe it, Your Honor?

14 THE COURT: Sure. Let's take a moment?

15 MR. FRANKLIN: Thank you.

16 THE COURT: The witness has requested a five-minute  
17 break. So, we're going to take a five-minute break so the  
18 jury will go first.

19 COURT OFFICER: All rise. Jury exiting.

20 (Whereupon, the sworn jurors exit the courtroom.)

21 (Whereupon, a recess was taken.)

22 THE COURT: Did you have an objection?

23 MR. FRANKLIN: Well, we do have an objection to the  
24 line of questioning, Your Honor, that it seems to establish  
25 through a lay witness --

1 THE COURT: I'm not taking a general objection. I  
2 ruled on the individual questions and we'll continue that  
3 way. I thought you had an objection as to the deed.

4 MR. FRANKLIN: Well, as to deed, I just had -- it  
5 hadn't been exchanged to us before now and I was just trying  
6 to understand what the purpose of it was because I think  
7 we've stipulated that Emerald 2727 is the property owner.

8 THE COURT: Counsel, what's the relevance?

9 MR. MARANDO: It's going to come up in two seconds,  
10 Judge. It is relevant that I was going to --

11 THE COURT: Okay. He can prove relevance. You  
12 don't have an objection to the document itself? It's a  
13 business record. It shows you all own the building; right?  
14 You don't have any problems with it?

15 MR. FRANKLIN: Again, Your Honor, I wasn't even  
16 provided a copy before just now.

17 THE COURT: Okay. I'm going to allow it in. It's  
18 on the list of documents the parties exchanged.

19 And I've asked you all to go through them before  
20 the trial began for premarking. So, I don't think that I'm  
21 going to reject the argument would be any surprise and  
22 unless you have an objection that it looks inaccurate or  
23 it's not a business record, I'm going to allow it in.

24 MR. FRANKLIN: Can I have an offer the proof?

25 THE COURT: No. It's denied. I'm going to admit

1 it. Okay, let's bring the jury down.

2 COURT OFFICER: All rise. Jury entering.

3 (Whereupon, the sworn jurors enter the courtroom  
4 and take their respective seat.)

5 (Whereupon, the item referred to, previously  
6 Plaintiff's Exhibit 5 was received in evidence.)

7 THE COURT: Okay. Be seated. Ready? Okay,  
8 Counselor.

9 MR. MARANDO: Judge, I don't have much further but  
10 just for housekeeping, at this stage, I know that we just  
11 admitted into evidence Exhibit 5.

12 Pursuant to the same rule CPLR 4540 where the Court  
13 and 1st Department case law pursuant to the CPLR would take  
14 judicial notice of government agency documents, I will  
15 simultaneously seek into evidence just Page 6 of Plaintiff's  
16 Exhibit 9 and Plaintiff's Exhibit 11 pursuant to agencies  
17 and state departments in New York State and I have the case  
18 law, Your Honor and the CPLR.

19 THE COURT: First of all, you said Page 6 of  
20 Plaintiff's 9 and what page of 11?

21 MR. MARANDO: Page 1, Judge.

22 MR. FRANKLIN: Your Honor, may we approach?

23 THE COURT: Sure.

24 (Whereupon, at this time, a discussion was held at  
25 sidebar.)

1 (Whereupon, at this time, a discussion was held at  
2 sidebar.)

3 THE COURT: I'm going to take a five-minute break  
4 for the jury. I'm sorry. We're going to have to ask the  
5 jury to step out again.

6 COURT OFFICER: All rise. Jury can exiting.

7 (Whereupon, the sworn jurors exit the courtroom.)

8 (Whereupon, a recess was taken.)

9 THE COURT: Be seated. I have that at this point,  
10 plaintiff was moving for the admission of a page -- well,  
11 why don't you tell me moving for the admission for, Counsel?

12 MR. MARANDO: Yes, Judge. Thank you, Judge.  
13 Plaintiff would request to move into evidence Exhibit 9 only  
14 Page 6, which is similarly a document from ACRIS with the  
15 1st Department, I have case law that says it must come in.  
16 It's a government document.

17 And also Page 1 of Exhibit 11, also is a government  
18 agency document, The Department of State, Division of  
19 Corporations with respect to Residential Management just  
20 Page 1, Judge.

21 THE COURT: I just have to get that in my notes.  
22 Give me one second please.

23 Counsel, your objection?

24 MR. FRANKLIN: Yes, Your Honor. It's an  
25 undisclosed theory of notice via inference. And essentially

1 what the inference is is that because on one document, a  
2 Labe Twerski appears as CEO for one of the defendants and  
3 another document, he appears as a managing agent for another  
4 defendant counsel is attempting to establish notice for  
5 purposes of a premises liability condition of the property  
6 from one entity to the other entity.

7 I feel it's misleading. It was undisclosed. It's  
8 an attempt to get around the fact that they don't have  
9 actual evidence and witnesses and proof and it's by  
10 surprise.

11 THE COURT: Okay. I'm going to allow it in under  
12 the Common Law Exception For Government Public Documents and  
13 you can cross him on it. Okay.

14 MR. MARANDO: Thank you, Judge.

15 THE COURT: But it is a limited inquiry as this  
16 witness is not an officer of the company nor is the witness  
17 a legal authority.

18 MR. MARANDO: Yes, Judge. I'm wrapping it up.

19 (Whereupon, the item referred to, previously  
20 Plaintiff's Exhibit 9 was received in evidence.)

21 (Whereupon, the item referred to, previously  
22 Plaintiff's Exhibit 11 was received in evidence.)

23 MR. FRANKLIN: Your Honor, is that what's showing  
24 on the screen now?

25 MR. MARANDO: Yes. Just Page 6 and Page 1.

1 THE COURT: Okay.

2 COURT OFFICER: All rise. Jury entering.

3 (Whereupon, the sworn jurors enter the courtroom  
4 and take their respective seat.)

5 THE COURT: Thank you. You can be seated. Okay,  
6 Counselor. Go ahead.

7 MR. MARANDO: Thank you, Judge.

8 Q Sir, just a few more minutes. Thank you for your time.

9 A You're welcome.

10 Q Sir. Once again, I'm just going to show you something  
11 on the screen again. It's been moved into evidence as  
12 Plaintiff's Exhibit 9 and also Plaintiff's Exhibit 11. I may  
13 just have one question for you.

14 A Okay.

15 Q Sir, I'm showing you what's been moved into evidence as  
16 Plaintiff's Exhibit 9, Page 6. Do you see it on the screen?

17 A Yes.

18 Q I'm going to blow up a portion of it and my question  
19 will follow. Do you see now a portion underneath the signature  
20 of this government agency document under Emerald 2727 Universe  
21 LLC? There's an individual who signed as the managing member,  
22 Labe Twerski. Do you see that on this document; yes or no? I'm  
23 only asking you if see it?

24 A Yes.

25 Q And sir, as we spoke about before, Emerald 2727

1 Universe LLC, they own the building; correct?

2 A Yes.

3 Q Now, I'm showing you what's been moved into evidence as  
4 Plaintiff's Exhibit 11, Page 1, The Department of State Division  
5 of Corporations. Do you see this document on the screen; yes or  
6 no?

7 A Yes.

8 Q Now, I'm showing you a portion of the same exact  
9 document we're just looking at, do you see entity name  
10 Residential Management New York Incorporated?

11 A Yes.

12 Q That's your employer; right?

13 A Yes.

14 Q That was your employer on April 21, 2021; true?

15 A Residential, yes.

16 Q And it's your employer today; correct?

17 A Yes.

18 Q Do you see below that CEO chief executive officer, the  
19 CEO of that company is Labe Twerski. Do you see that; yes or  
20 no?

21 A Yes, it says name, Labe Twerski.

22 Q So, can we agree that it says Labe Twerski as the CEO  
23 of Residential Management on Exhibit 11 and it also has Labe  
24 Twerski as a managing member of Emerald 2727 Universe, LLC.  
25 Have you ever met this guy, Labe Twerski?

1 A No.

2 Q Do you know where he is, his involvement with both  
3 companies?

4 A I don't know.

5 MR. MARANDO: Judge, just a few more questions.

6 Q Now, sir, as you sit here today, I know you only worked  
7 at that building for about a year, but in that year, you  
8 remember Mr. Henry Espacia and he's seated here today; true?

9 A Yes.

10 Q Now, prior to April 21, 2021, we spoke about the two  
11 times that Henry complained to you about the moldy ceiling in  
12 the adjacent next bathroom beyond that wall and we also spoke  
13 with the kitchen sink both times in which Henry complained to  
14 you; correct?

15 A Yes.

16 Q Verbally; true?

17 A Yes.

18 Q He also complained about what brings us here today;  
19 true? The ceiling collapse and an issue involving the ceiling  
20 cracking, discoloration and leaking before April 21, 2021; true?

21 A I'm sorry. Can you say that one more time?

22 Q Isn't it true that before April 21, 2021, Henry also  
23 complained of the big bathroom, specifically brown  
24 discoloration, cracking and leaking in the ceiling; true?

25 A No.

1 MR. MARANDO: Judge, nothing further.

2 THE COURT: Okay. Go ahead, Counselor.

3 CROSS-EXAMINATION BY

4 MR. FRANKLIN:

5 Q I just want to pick it up right where you left off just  
6 to confirm. Mr. Espacia never he complained about the big  
7 bathroom ceiling?

8 THE COURT: You can answer. Counsel, do you want  
9 the protium and are you comfortable from there and if so,  
10 you need to pull the mic closer.

11 MR. FRANKLIN: I will set up after lunch, but for  
12 now I'm fine.

13 THE COURT: Just pull the mic closer. Ask the  
14 question again.

15 Q Just confirming, Mr. Espacia, prior to the date of this  
16 incident, he never complained to you about the ceiling in that  
17 big bathroom; did he?

18 A No.

19 Q All right. I want to -- before I go to the screen over  
20 there, currently who are you employed by?

21 A Residential Management.

22 Q Okay. And it's the same company you were employed with  
23 back then when this incident happened?

24 A Correct.

25 Q And you were employed with them for how long?

1 A From now?

2 Q When was the earliest that you were employed with  
3 Residential Management?

4 A I'm not sure. I worked as a porter at one of the  
5 buildings where my father was the super for the same management.

6 Q Okay. Now, before I forget, let me just get right to  
7 the point. Counsel showed you a lot of images on the screen.  
8 Those were all from the cellphone video that you took; right?

9 A Yes.

10 Q Okay. And help me understand, when you first found out  
11 about this incident, how did you know that there was something  
12 going on up in 4F?

13 A I seen the FDNY also in the building.

14 Q Okay.

15 A And after elaborating with them, I realized that  
16 something was going on in 4F.

17 Q And did you make your way up to the 4th floor?

18 A Yes.

19 Q Did you take the stairs? Did you take the elevator?

20 A I'm not a hundred percent sure.

21 Q When you got up there, was FDNY already in the  
22 apartment?

23 A Yes.

24 Q Had FDNY already taken down portions of the ceiling?

25 MR. MARANDO: Objection.

1 THE COURT: Overruled.

2 A I believe so, yes.

3 Q Okay. When you saw the ceiling, was it pretty much  
4 covering the whole bathtub?

5 A Pretty much.

6 Q Okay. Did you speak with the FDNY folks about them  
7 taking down the ceiling?

8 A Yes.

9 Q What did they tell you?

10 MR. MARANDO: Objection, Judge.

11 THE COURT: Sustained.

12 Q Did FDNY do an inspection of the ceiling?

13 A I think so, yes.

14 Q Okay. Do you know if that's why they took down  
15 portions of the ceiling?

16 MR. MARANDO: Objection.

17 A They deemed it unsafe.

18 THE COURT: Sustained. That's hearsay.

19 Q Did FDNY tell you that there was anything --

20 MR. FRANKLIN: Strike that.

21 Q After FDNY left the apartment, was there any violation  
22 that was issued to the building?

23 A No, not to my knowledge.

24 Q Okay. Were you -- did you receive information that the  
25 building was unsafe?

1 A No.

2 Q Okay. I want to just get a little bit of your  
3 background. You said your father was a super?

4 A Yes.

5 Q And that you worked as a porter and then you later  
6 became a super?

7 A Yes. I also help my father with tasks at his building  
8 while I was living there.

9 Q Okay. And as to 2727 University Avenue, you were the  
10 super at the time. Did you also live in the building?

11 A Yes.

12 Q Where was your apartment?

13 A Located in the basement of the building.

14 Q Okay. The day that this happened, were you at home?

15 A Yes.

16 Q All right. Do you recall receiving any phone calls  
17 before this incident happened?

18 A Yes.

19 Q What phone calls did you receive?

20 A I had a missed call from apartment 4F.

21 THE COURT: I'm sorry. Could you repeat that?

22 THE WITNESS: Yes. I had a missed call like when  
23 you don't answer from apartment 4F.

24 THE COURT: Okay.

25 Q And do you recall the time of that call from apartment

1 4F?

2 A Yes. It was 7:50 something. I'm not sure exactly.

3 Q Okay. Was that before you heard the commotion with the  
4 FDNY?

5 A Yes.

6 Q All right. Did you answer the call?

7 A No.

8 Q Why not?

9 A I was in the bathroom. I got to my phone after.

10 Q What time does your shift start?

11 A On paper?

12 Q Back then, what time were you supposed to start?

13 A 9:00 to 5:00.

14 Q What's that?

15 A 9:00 to 5:00.

16 Q Okay. All right. And about what time was it when you  
17 first learned the FDNY was in the building?

18 A Around 8:00, 8:10.

19 Q Okay. Was the handyman around at that time?

20 A I believe so. I'm not -- he was in those two  
21 buildings. I'm not sure of his exact whereabouts at that exact  
22 moment, but yes. Yes, he was around.

23 Q Okay. We saw in the video that both -- I guess you  
24 shot the video and the handyman was in the video?

25 A At that time, yes.

1 Q Okay. Did he at some point make his way up to  
2 apartment 4F?

3 A Yes.

4 Q Okay. Did he get up there around the same time as you?

5 A Yes.

6 Q All right. So, you both got up there about the same  
7 time?

8 A Correct.

9 Q All right. We heard the name Manny Silberberg. Who is  
10 Manny Silberberg?

11 A My manager.

12 Q All right. Was he there at the time that this  
13 happened?

14 A No.

15 Q At some point, did you prepare an incident report of  
16 this incident?

17 A Same day.

18 MR. FRANKLIN: Your Honor, I'm going to approach  
19 and show the witness what has previously been marked as  
20 Defense Exhibit B.

21 MR. MARANDO: Judge, just housekeeping. I have the  
22 exhibits that were marked in evidence. I don't want to hold  
23 onto them. I'd rather just give them to the Court since  
24 they're in evidence now.

25 THE COURT: I don't know if I have a list of

1 defendant's exhibits. Did you provide me with one?

2 MR. FRANKLIN: We did provide it to the clerk, but  
3 I can print up another copy.

4 THE COURT: Yes. I need a copy of that, please.  
5 For the record, what is Defendant's Exhibit B?

6 MR. FRANKLIN: Defendant's Exhibit B is an e-mail.

7 THE COURT: Do you have a date for it?

8 MR. FRANKLIN: The date is April 21, 2021, 1:19  
9 p.m.

10 THE COURT: Any objection to the submission of  
11 evidence?

12 MR. MARANDO: No, Judge.

13 THE COURT: It's admitted into evidence. No  
14 objection.

15 MR. FRANKLIN: Can I approach the witness?

16 THE COURT: Any objection?

17 MR. MARANDO: No, Judge.

18 THE COURT: Okay.

19 Q Mr. Maloku, showing you what's been marked as Exhibit

20 1. Is that your e-mail?

21 A Yes.

22 MR. FRANKLIN: I have an enlargement of the exact  
23 same e-mail which I can show to the witness prior to  
24 publishing.

25 THE COURT: Okay.

1 Q Showing you this document, does this appear to be a  
2 large version of what I just handed you?

3 A Yes.

4 MR. FRANKLIN: Permission to publish, Your Honor?

5 THE COURT: Any objection?

6 MR. MARANDO: No objection.

7 (Whereupon, the item was published to the jury.)

8 MR. FRANKLIN: This has been marked as B2, an  
9 enlargement.

10 THE COURT: You're moving that in evidence. Any  
11 objection?

12 MR. MARANDO: No objection.

13 THE COURT: B-2 is admitted into evidence.

14 Q Mr. Maloku, if you could just read through your e-mail.

15 A This morning at 7:54, I got a phone call from the  
16 tenant that lives in Apartment 4F.

17 MR. MARANDO: May we approach, Judge?

18 THE COURT: One second, please.

19 (Whereupon, at this time, a discussion was held at  
20 sidebar.)

21 THE COURT: We're going to take a five-minute  
22 break.

23 COURT OFFICER: All rise. Jury exiting.

24 (Whereupon, the sworn jurors exit the courtroom.)

25 THE COURT: For the record, please read into the

1 record the parts you're objecting to.

2 MR. MARANDO: So, a few parts on Exhibit B-2, what  
3 he's intending to publish to the jury, the portion where it  
4 says -- really any out of court statement that's not him,  
5 they asked if I'm the super and he told me that in  
6 apartment. And I'll go on.

7 In relation to the Fire Department and then that  
8 some was broken off by the Fire Department. He just  
9 testified that he got there before anything was done -- I'm  
10 sorry, after anything was done. That information is coming  
11 from the Fire Department. That must be redacted.

12 THE COURT: Go ahead, Counsel. What would you like  
13 to say?

14 MR. FRANKLIN: Your Honor, pursuant to CPLR  
15 4518 8.08 business records --

16 THE COURT: You have to really slow down.

17 MR. FRANKLIN: 4518 8.08, any writing or record  
18 whether in the form of an entry in a book or otherwise made  
19 as a memorandum or record of any act, transaction,  
20 occurrence or event shall be admissible in evidence and  
21 proof of that act, transaction, occurrence or event, if the  
22 Judge finds that it was made in the regular course of any  
23 business and that it was the regular course of such business  
24 to make it at the time of the act, transaction, occurrence  
25 or event or within a reasonable time thereafter, there's

1           been testimony that he did create incident reports.

2                       He did create records of repair incidents and that  
3           this record, it was created on the day of. This is an  
4           exception to hearsay. It's a business record created by  
5           Residential Management.

6                       THE COURT: Okay. CPLR 4518, entry was made in the  
7           regular course of business. It was in the regular course of  
8           business to make the entry. Entry must have been made at  
9           the time of the act or within a reasonable time and this is  
10          under the exception to the hearsay bar as entries made in  
11          the regular course of business. So, I'm going to allow it  
12          and find that it's an exception.

13                      MR. MARANDO: Just note my exception, Judge.

14                      THE COURT: Yes. If we could bring the jury back.

15                      COURT OFFICER: All rise. Jury entering.

16                      (Whereupon, the sworn jurors enter the courtroom  
17           and take their respective seat.)

18                      THE COURT: Be seated. Go ahead, Counselor.

19                      MR. FRANKLIN: Thank you. Publishing to the jury  
20           what's been marked as B2. Mr. Maloku, if you could continue  
21           to read or pick it up from the beginning.

22                      (Whereupon, the item was published to the jury.)

23           A        Sure. This morning at 7:54, I got a phone call from  
24           the tenant that lives in Apartment 4F; however, I could not  
25           answer the phone since I was brushing my teeth in the bathroom.

1           When I got out, I went outside to punch in at 8:00 a.m.  
2 in the morning when I saw the Fire Department. They asked if  
3 I'm the super and told me that in apartment 4F, the bathroom  
4 ceiling fell and the tenant claims he was showering when it  
5 happened and that it hit him in the head.

6           I immediately went upstairs to investigate together  
7 with the porter. The handyman showed up a few minutes later.  
8 When we got upstairs, I noticed that the medical response team  
9 was there as well.

10           I go inside the bathroom and saw the ceiling had  
11 partially fallen off and that some was broken off by the Fire  
12 Department.

13           The tenant claims he was showering when that happened  
14 so I immediately checked the shower curtain, which was  
15 completely dry. The shower wall tiles which were dry as well  
16 and saw water was running only on the tub, not on shower.

17           I noticed the tenant was fully dressed with PJs and  
18 that there was no debris or dust on him or on his head. I also  
19 recorded the stated facts above. Best, Super 2727 University.

20           Q     Is that your e-mail, malokufatlum7@gmail.com?

21           A     Yes.

22           Q     That was sent to Manny Silberberg?

23           A     Yes.

24           Q     Thank you. Now, the porter who went up there with you,  
25 do you remember his name?

1           A       I believe at the time it was Rudolph Seci.  Either him  
2 or Ladovik Tinaj.

3           Q       Tinaj, he is no longer living?

4           A       I'm not sure.

5           Q       Was he older?

6           A       Yes.

7           Q       You, he and Justin Molloy responded to this incident?

8           A       Yes.

9           Q       What did you guys do?

10          A       When I got there, I recorded what happened and then  
11 instructed the guys to start cleaning.

12          Q       Okay.  Did you use your cellphone for anything?

13          A       Yes.

14          Q       Did you turn the light on on your cellphone?

15          A       Yes.

16          Q       Where did you shine that light?

17          A       In the ceiling.

18          Q       Okay.  Did you get up and touch anything up there?

19          A       Yes.

20          Q       How did it feel?

21          A       Dry, which is why I was a hundred percent sure earlier  
22 in the question.

23          Q       How old is this building?

24          A       Very old.

25          Q       At least 80 years?

1 MR. MARANDO: Objection.

2 THE COURT: Overruled. It's a preliminary matter.

3 It moves it along a little. Go ahead, Counsel.

4 A Yeah, it's old.

5 Q Counsel asked you if the wood looked like it had stains  
6 on it?

7 A Yes.

8 Q How close were you able to get to the wood?

9 A Close enough to touch it.

10 Q And it was dry?

11 A Yes.

12 Q Now --

13 A And also prior, you know, after we started to fix the  
14 bathroom ceiling, we also checked before closing the wall if  
15 there was any leaks. That's a standard procedure.

16 Q Okay.

17 A We can't just close a ceiling, you know.

18 Q Three men working to clean up the bathroom, did you get  
19 it cleaned up first before you started fixing the ceiling?

20 A Yes.

21 Q Did you drain all that water out?

22 A Yes.

23 Q About that water, when you entered the bathroom, was  
24 the tub filled with water?

25 A Yes.

1 Q Was there materials that the Fire Department had pulled  
2 down sitting in the tub?

3 MR. MARANDO: Objection.

4 THE COURT: I'm going to sustain.

5 Q Were there materials sitting in the tub?

6 A Yes.

7 Q Do you know how they came down?

8 A Partially fell.

9 Q Were you there when they partially fell?

10 A No.

11 Q Do you know how much of it partially fell?

12 A No.

13 Q Do you know how much the Fire Department may have  
14 pulled down?

15 A No.

16 Q All right. Are there any security cameras inside any  
17 of the tenants' apartments?

18 A From the management? That would be illegal.

19 Q As far as you know, there's no cameras in Mr. Espacia's  
20 bathroom?

21 A No.

22 Q Were you aware that there was another video taken by  
23 Mr. Espacia's son?

24 A No.

25 Q Have you seen this video?

1 A No.

2 Q Do you know if it depicts how the ceiling looked before  
3 the Fire Department showed up?

4 A No.

5 Q Do you know if it shows a hole or if it shows -- let me  
6 finish -- do you know if it shows a hole?

7 A I don't know. I haven't seen it.

8 Q And you don't know how big of a hole it shows?

9 MR. MARANDO: Objection.

10 A I haven't seen the video.

11 THE COURT: Overruled.

12 Q Now, Counsel asked you about how maintenance requests  
13 were made by tenants?

14 A Yes.

15 Q Did you have phone numbers posted somewhere in the  
16 building for tenants to call if they had a maintenance request?

17 A Yes.

18 Q Whose phone number and where was it posted?

19 A The phone number was posted in the lobby and it was the  
20 phone number that reached me, the super at that time.

21 Q And if I'm not mistaken, you said you did get a call  
22 from Mr. Espacia from 4F that morning?

23 A Yes, A missed call.

24 Q Has he called you on your phone in the past?

25 A Yes.

1 Q Had he ever called you about an issue with the big  
2 bathroom ceiling?

3 A No.

4 Q Were there some e-mails for tenants to e-mail if they  
5 had an issue?

6 A Yes. They had Manny's e-mail.

7 Q Manny Silberberg?

8 A Yes.

9 Q With management?

10 A Yes.

11 Q Was Manny Silberberg's e-mail posted?

12 A All information was posted in the lobby.

13 Q Do you know if Mr. Espacia has ever sent an e-mail  
14 about the big bathroom ceiling?

15 A I have no idea.

16 Q Work orders, could tenants fill that out or is that  
17 something that management would fill out?

18 A No. We would fill that out and then would sign when  
19 the work was done.

20 MR. FRANKLIN: Your Honor, I have a document that's  
21 previously been marked as Defense Exhibit C, which I'm going  
22 to approach and show the witness.

23 THE COURT: Can you describe it just for the  
24 record?

25 MR. FRANKLIN: It is one page followed by several

1 photographs.

2 THE COURT: This is designated as a work order; is  
3 that accurate?

4 MR. FRANKLIN: Correct.

5 THE COURT: Are you showing it for identification  
6 or for admission?

7 MR. FRANKLIN: It's going to be for admission.

8 THE COURT: Any objection, Counselor?

9 MR. MARANDO: Just to the extent that he didn't  
10 take the photographs, Judge. If it was someone else, it  
11 should come in through that witness.

12 THE COURT: You have to establish that it fairly  
13 represents the condition at the time. Okay. So, once you  
14 do that, make your motion to admit into evidence.

15 MR. FRANKLIN: Okay.

16 Q Mr. Maloku, if you could take a look at those several  
17 documents and let me know when you've looked at them?

18 A Yeah. (Witness complies).

19 Q Do you recognize those documents?

20 A Yes.

21 Q How do you recognize those documents?

22 A The work order. This is my handwriting.

23 Q Okay.

24 A I made --

25 Q And the photos, can you describe how you recognize the

1 photos?

2 A The photos were sent to me by Justin stating that  
3 what's here, it was done.

4 Q Okay. So, the photos were taken by handyman Justin?

5 A Yes.

6 Q And they were sent you to you?

7 A Yes.

8 MR. FRANKLIN: Your Honor, I would move Defense  
9 Exhibit B in its entirety into evidence.

10 THE COURT: C, correct?

11 MR. FRANKLIN: Yes.

12 THE COURT: Any objection?

13 MR. MARANDO: Just to the photographs. If it comes  
14 in through Justin, he's up next, Judge. He didn't take  
15 these photographs, the deponent.

16 MR. FRANKLIN: Your Honor, there's no issue of  
17 unreliability.

18 THE COURT: Do they represent the condition as you  
19 saw it at the time?

20 THE WITNESS: Yes.

21 THE COURT: Okay. Then they're admitted.  
22 Defendant's C in evidence.

23 (Whereupon, the item referred to, previously  
24 Defendant's Exhibit C was received in evidence.)

25 MR. FRANKLIN: Your Honor, I have enlargements of

1 Exhibit C which I'm going to show to the witness.

2 THE COURT: That, again, is the work order and  
3 photographs?

4 MR. FRANKLIN: Yes.

5 THE COURT: Any objection?

6 MR. MARANDO: No, Judge.

7 Q Do these appear to be the same as what I just handed  
8 you?

9 A Yes.

10 MR. FRANKLIN: I would move Defense C-2, 3, 4 and 5  
11 into evidence.

12 THE COURT: C-2, 3, 4 and 5. Any objection,  
13 Counselor?

14 MR. MARANDO: They're only enlargements; right?

15 MR. FRANKLIN: Yes.

16 MR. MARANDO: That's fine. No objection, Judge.

17 Q Showing you Exhibit C-2, if you could just walk the  
18 jury through what you have here starting at the top.

19 A Sure. This is what a work order looks like. We would  
20 fill out --

21 THE COURT: Counsel, I have the B-1, but can I just  
22 at least see it? Okay. I have seen it.

23 A At the top we put the apartment number. You already  
24 have the building printed there. It says 2727 University.

25 Q What's under instructions?

1           A     What's under instructions? That's what the job that  
2 you did.

3           Q     Can you read it?

4           A     Sure. Changed the under sink connection, replaced  
5 stainless steel sink strainer.

6           Q     Do you have materials used on the right-hand column?

7           A     Yes.

8           Q     What do you have listed there?

9           A     Stainless steel sink strainer.

10          Q     What about long shank up at the top line? Can you read  
11 it?

12          A     It's not the best copy.

13          Q     Okay. And whose signature is down here in the place of  
14 tenant?

15          A     That's Henry Espacia.

16          Q     What's the date that this repair work order was done?

17          A     11/12/2020.

18          Q     So that's about five months before the incident with  
19 the ceiling?

20          A     Yes.

21          Q     Were you up in Mr. Espacia's apartment 4F five months  
22 before the incident with the ceiling?

23          A     Yes.

24          Q     Okay. Is this your name right down here under -- next  
25 to superintendent?

1 A Yes.

2 Q Is that the date, November 12th, 2020?

3 A Yes.

4 Q Is that your signature?

5 A Yes.

6 Q Is this how you handle a work order?

7 A Yes.

8 Q Do you want to use this to read what's up on the top  
9 under materials used?

10 A This is even worse. Sorry. It's the tail piece under  
11 the sink because you also have a picture.

12 Q I'm going to show the second page of that document.  
13 There's a hand in this photograph holding a pipe.

14 A Yes.

15 Q Whose hand is that?

16 A That's mine.

17 Q Okay. So, Justin Molloy took this picture while you  
18 were standing next to him?

19 MR. MARANDO: Objection.

20 A This particular picture --

21 THE COURT: I'm sorry, there's an objection.  
22 Sustained.

23 Q Is this your hand?

24 A Yes.

25 Q Who took this picture?

1 A I did.

2 Q You took this picture?

3 A Yes.

4 Q All right. Now, you have the third page in your work  
5 order that shows a broken pipe?

6 A It's the same two seconds later just to show the  
7 broken -- it's the same time.

8 Q And you took this picture?

9 A Yes.

10 Q Is this the shank?

11 A The shank is a very bad word. That's that goes under  
12 your sink, guys. We're not shanking nobody.

13 THE COURT: We'll just call it the pipe.

14 Q Here is says shank on the box?

15 A That's the name of the company. Sorry.

16 Q Is this a photo that you took?

17 A Yes.

18 Q It says stainless steel sink strainer?

19 A Yes.

20 Q Why did you take all these photos when you did the work  
21 order?

22 A This was evidence that work was done.

23 Q Do you do that in every case?

24 A No.

25 Q Now, when you --

1           A       This also required material because I think we're  
2 confusing everybody. This required new material from the  
3 building so people don't -- there's material logs and things  
4 cannot just go missing. So, it requires pictures so you know  
5 this thing went to this apartment. When you reorder, they know  
6 why you're reordering such stuff.

7           Q       When you were in Apartment 4F just five months before  
8 the ceiling incident, did Mr. Espacia say, hey, come look at my  
9 large bathroom there's an issue with the ceiling?

10          A       I don't remember but, no, I don't think so.

11          Q       No mention of it?

12          A       No.

13          Q       Had he mentioned it to you, would you have looked?

14          A       Yeah. I was there.

15          Q       You're up there, right, you would go take a look?

16          A       Yes.

17          Q       It wouldn't have been any trouble?

18          A       I was right there.

19          Q       And you wouldn't have objected to it?

20          A       We were not at court. We were in the building. No, I  
21 wouldn't object.

22          Q       You wouldn't have had a problem with it?

23          A       No.

24          Q       All right. Was there some sort of automation? Did you  
25 guys have that program?

1 A Yeah, that's a program for violations.

2 MR. MARANDO: Judge, can we approach?

3 THE COURT: Yes.

4 (Whereupon, the following discussion takes place at  
5 sidebar among the Court and Counsel, outside the hearing of  
6 the sworn jurors.)

7 THE COURT: Question is withdrawn and the jury  
8 should disregard the question.

9 Q Now, these work orders, did you keep them in a file  
10 draw somewhere?

11 A Yeah. Like, we had -- yes.

12 Q Now, counsel had said and he read a portion of your  
13 transcript where you said you disregarded it, did you throw  
14 anything away?

15 A No, I left it there.

16 Q You left the file cabinet at your old building?

17 A Yes. I just didn't take it with me. It wasn't  
18 important for me.

19 Q You wouldn't need it for a different building?

20 A No.

21 Q You'd leave it for the new super?

22 A Whoever needs it, but I disregarded it meaning I didn't  
23 need it in my life anymore.

24 Q Now, explain to me this whiteboard, was this for like a  
25 daily task?

1           A       The whiteboard -- every person has a way of organizing  
2 their life. The whiteboard was just my way of doing it. It has  
3 nothing to do with -- I write things down so I don't forget  
4 them. We can cross them over. I figured that it would make us  
5 feel better for ourselves as we went through tasks during the  
6 day and stay more motivated. That's why we did it. Nothing else.

7           Q       If you had something to put up on the whiteboard could  
8 it be from a work order you're going to tackle today so you put  
9 it up on a whiteboard?

10                   MR. MARANDO: Judge, can we approach?

11                   THE COURT: Overruled.

12                   MR. MARANDO: This is leading, Judge.

13                   THE COURT: Overruled. Move on.

14           A       We would put stuff that needed to be done that day on  
15 the board.

16           Q       Could that include something -- could that be  
17 something, for example, that requires a work order?

18           A       Yes.

19           Q       Okay. Suppose you needed to order a part, when the  
20 part came in, would you put that on the work order to go do that  
21 thing now?

22           A       Yes. You wouldn't do it on the board if you don't have  
23 the parts to do the job.

24           Q       If you didn't have the part, you wouldn't put it up on  
25 your daily list of things to do?

1 A No because you can't do the job.

2 Q Now, I want to go back to this incident that was put in  
3 an e-mail, this is again Defense Exhibit B and I'm holding B-2.  
4 Was this a long morning for you?

5 A Very.

6 Q Okay. How long -- did you fix the ceiling?

7 A Yes.

8 Q How long did it take for you to fix the ceiling in the  
9 bathroom of Apartment 4F?

10 A Maybe three or four hours.

11 Q Were you working alone?

12 A No.

13 Q Who were you working with?

14 A Handyman.

15 Q Was Tinaj also there?

16 A The porter doesn't do work. He only cleans.

17 Q Was he cleaning?

18 A Yes, he cleaned the stuff that fell down.

19 Q What can you tell me about the stuff that fell down?  
20 Did you touch it?

21 A Yeah. We were cleaning it. I'm assuming we have to  
22 touch it. It doesn't go in bin by itself.

23 Q Were they pieces of the ceiling?

24 A Yes.

25 Q Were they wet or dry?

1 A The part that fell in the shower were pretty wet.

2 Q The ones soaking in the bath water?

3 MR. MARANDO: Objection.

4 THE COURT: Overruled.

5 A They were in the water. You saw in the video. Of  
6 course they were wet.

7 Q What about the stuff on the floor?

8 A No.

9 Q It was dry?

10 A Dry.

11 Q What about the stuff in the sink?

12 A Partially dry.

13 Q Some of it was in the sink?

14 A Yes.

15 Q And that part was wet?

16 A Yes.

17 Q What about the stuff that fell in the toilet?

18 A Dry unless it fell inside the toilet.

19 Q All right. Were they big pieces, small pieces?

20 A All sorts of pieces.

21 Q All sorts. Okay. Did you happen to observe if Mr.  
22 Espacia had any injuries?

23 A I just -- I saw him. He was sitting down. I didn't --  
24 I'm not -- you know, no background in medical field, guys. No.

25 Q Did he have any cuts, bruises on his face?

1           A     No, he was not bleeding. He didn't have bruises or  
2 cuts.

3           Q     Was he holding his head or shoulders?

4           A     He was sitting down I don't remember exactly what he  
5 was doing.

6                   THE COURT: Are you saying he was sitting on  
7 something?

8                   THE WITNESS: He was sitting on a chair outside the  
9 bathroom I believe. I don't know if it was a chair or a  
10 futon. I don't know what it was but he was sitting down.

11          Q     Did he go with the emergency person?

12          A     Yes.

13          Q     Okay. And while he was gone, did you fix the  
14 apartment?

15          A     Yes.

16          Q     And did you have -- did you return some time later that  
17 day?

18          A     I'm not sure. We never got access I believe.

19          Q     Now, while you were still in the apartment, did you  
20 ever see him come back?

21          A     No.

22          Q     How did you leave the apartment that day? What was the  
23 condition of the bathroom?

24          A     Only sheetrock was put up. The frame was, you know,  
25 like reconstructed the bathroom and then we cleaned as much as we

1 could and we left.

2 Q You put up new drywall?

3 A Yes.

4 Q Did you have to tape it?

5 A No, we didn't have time.

6 THE COURT: I'm sorry, no what?

7 THE WITNESS: Did not have time.

8 THE COURT: Okay.

9 Q Did you at some point come back to do the taping?

10 A Not in my time. I don't believe we got access again.

11 Q Okay. Did you ask for Mr. Espacia to let you have  
12 access?

13 A Yes, we did.

14 Q When you say we, how about just you?

15 A Yes, I did.

16 Q Do you recall when?

17 A The following days. Not exactly a date and time.

18 Q And when you did, were you up at his apartment or did  
19 you see him in the hallway?

20 A We saw him. Yes.

21 Q Okay. Did you see him in the hallway and you said,  
22 hey, can I finish that? What did you say?

23 A I believe I texted him about it as well.

24 Q Okay.

25 A And he said not now.

1 THE COURT: I'm sorry, he said what?

2 THE WITNESS: Not now.

3 THE COURT: You can pull the mic closer if it's  
4 harder to lean forward. Not now?

5 THE WITNESS: Not now.

6 THE COURT: Okay.

7 Q Did you ask him more than once?

8 A Yes.

9 Q Okay. Was the response always the same?

10 A Yes.

11 Q Did you ask the plaintiff if he was all right when you  
12 saw him that first time?

13 A Yeah.

14 Q Do you recall what he said?

15 A He said no.

16 Q Okay. Did he say anything to you about taking a  
17 shower?

18 A No.

19 Q Here on Exhibit B, you say the tenant claims he was  
20 showering?

21 A That's what the Fire Department told me. When they  
22 called, the tenant said he was showering when the ceiling fell  
23 on him.

24 Q So you got that from the Fire Department?

25 A Yes.

1 Q I'm going to show you the video and it's going to just  
2 take a moment to plug it in. This will be Plaintiff's Exhibit  
3 1.

4 THE COURT: That's already been admitted into  
5 evidence. Okay.

6 MR. FRANKLIN: Correct.

7 Q Up on my screen it's just the frozen beginning of  
8 Plaintiff's Exhibit 1. I'm just going to play this.

9 (Whereupon, a video was played.)

10 Q When you came into the apartment and you saw this large  
11 hole over the bathtub, FDNY, EMTs, what were you thinking?

12 A Honestly?

13 Q Yes.

14 A I thought someone died.

15 Q And you saw that nobody had died, what was the next  
16 thing that went through your mind?

17 A I wanted to see. I thought the water would be pouring.  
18 There was nothing.

19 Q When your eyes saw that, what was going through your  
20 mind?

21 A You heard me what I said at the end. What the fuck.

22 Q This item up here --

23 A To elaborate, it made no sense why it fell. I was very  
24 confused.

25 Q It was shocking?

1 A Yeah. I expected to be like a huge leak upstairs.

2 Q The sound of the water that we hear in the video, where  
3 was that coming from?

4 A From the tub spout.

5 THE COURT: From the what?

6 THE WITNESS: Tub spout. The water comes from the  
7 tub.

8 Q Did you see any water dripping from the showerhead?

9 A No.

10 Q Was the showerhead dry?

11 A Yes.

12 Q This metal thing up here, this long metal looking  
13 thing, is that a duct?

14 A A what?

15 Q Like a duct, like an HVAC?

16 A No that's the steel beam.

17 Q Oh, that's the steel beam?

18 A Yes. And sheetrock does not get attached to that.  
19 That doesn't hold sheetrock.

20 Q And next to the steel beams, is that a two-by-four?

21 A Yeah.

22 Q And there's another two-by-four?

23 A Yes. And then another one on the end.

24 Q And then the upstairs floor, is that further up in the  
25 ceiling?

1 A Yeah, that's quite a bit up.

2 Q And around the edges, is that the drywall?

3 A Yes.

4 Q So, now I'm showing you Plaintiff's 2. This is the  
5 second video. It's different from the first video that we  
6 watched and I'm going to play it.

7 (Whereupon, a video was played.)

8 Q Did you guys go in and dry the walls and then shoot  
9 that video?

10 A No.

11 Q You weren't trying to --

12 A Why would we do that? I didn't know I was going to end  
13 up here.

14 Q How long after the first video, Plaintiff's 1, did you  
15 shoot the second video, Plaintiff's 2?

16 A Matter of minutes. Not sure.

17 Q Long enough to take all that stuff out the tub and  
18 drain it?

19 A That doesn't take very long. It's three guys in the  
20 bathroom.

21 Q Did you get some big garbage bags?

22 A We have bins. They come with wheels on the bottom. We  
23 put the garbage in and you just throw the garbage on the bin,  
24 tie the bag, pull it out, put a new garbage bag in. It doesn't  
25 take very long.

1 Q Okay. So, this is just you further documenting what  
2 you guys saw?

3 A Yeah. We -- this was further because we were surprised  
4 how -- with the shower thing.

5 Q Here is a still image of Plaintiff's 1. That's not the  
6 full length of what you guys encountered, right, because part of  
7 it is off the camera screen?

8 A Yes.

9 Q If I zoom in a little closer, this thing right here,  
10 does that hold the shower curtain ring?

11 A That's called a shower rod. Yes, it holds the shower  
12 rod.

13 Q Was that still intact?

14 A Absolutely.

15 Q It doesn't come down?

16 A No. No, sir.

17 Q Is that the other end closer to the sink and doorway?

18 A Yes.

19 Q Okay. The stuff hanging down here, is the consistency  
20 like paper?

21 MR. MARANDO: Objection.

22 A Not sure.

23 THE COURT: Overruled.

24 Q Do you know if it's consistency like cardboard?

25 A I'm not sure what it's made of.

1 Q Now, this stuff up here on the wall, that chalky  
2 looking --

3 A That's sheetrock.

4 Q That's different from the stuff that was on the  
5 ceiling -- my question is is the chalky stuff the same as the  
6 stuff that was on the ceiling?

7 A Should be.

8 Q The stuff that's on the wall?

9 A Should be.

10 Q Do you know the age of the stuff that's on the ceiling?

11 A No.

12 Q Now, there's something up in the ceiling. You can see  
13 here where I got my pointer. It looks like a piece of pipe.

14 A Can you touch it? I don't see your pointer.

15 Q It's right here.

16 A Yes, that looks like the bathroom trap for the upstairs  
17 bathroom.

18 Q Did you see anything leaking from that?

19 A No. They actually did test but nothing.

20 Q Is that over the tub or more over the sink?

21 A So, the bathroom -- I have to explain a little bit  
22 about plumbing.

23 Q Sure.

24 MR. MARANDO: Judge, can we approach?

25 THE COURT: Sure.

1                   (Whereupon, the following discussion takes place at  
2            sidebar among the Court and Counsel, outside the hearing of  
3            the sworn jurors.)

4                   THE COURT: Overruled. Go ahead.

5            Q     I don't want you to go into too much detail.

6            A     Most of the apartments have a bathtub and you have this  
7            metal thing that's outside the tub. Usually you can fill the  
8            tub, if you want, by letting it go. It's called standing waste.  
9            I'm sure you guys have it as well. The standing waste is  
10           located outside the tub so the water drains inside the tub and  
11           it travels outside so what you're asking me, it's not straight  
12           to the tub. The waste is outside the tub and then it goes  
13           connects to the main drain and then it goes down to the sewer.

14           Q     So, that in the center of the screen there is not  
15           directly above the shower?

16           A     No.

17           Q     It's closer to where the sink is located?

18           A     Yes.

19           Q     Now, the sink is right next to the tub, right?

20           A     Yes.

21           Q     And did you see debris on the toilet when you entered  
22           the room?

23           A     Very little.

24           Q     Like that, what we're showing here on Plaintiff's  
25           Exhibit 2?

1 A Yeah.

2 Q Okay. And this is Plaintiff's Exhibit 1 and it's  
3 showing the bathtub with a lot of stuff in it, is that how you  
4 found the bathtub when you first walked in?

5 A Yes.

6 Q And you said was there water running?

7 A Yes.

8 Q And it was -- where was it from, the water?

9 A The tub spout. The spout of the tub where water goes  
10 through the tub, not the shower.

11 Q It's much lower than the shower?

12 A That's literally two or three inches above the tub so  
13 it's a lot lower.

14 Q Now, the sink, did you encounter this on the sink?

15 A Yes.

16 Q Can you describe it?

17 A That's wall material, sheetrock, the paper of the  
18 sheetrock as you can see over there.

19 Q Small pieces or big pieces?

20 A It's all small pieces.

21 Q And were they dry?

22 A Yes.

23 Q Just to make sure that it's abundantly clear, let me  
24 just -- going back to the still shot of Plaintiff's Exhibit 1,  
25 are we -- when you enter the bathroom, is that the far end of

1 the bathroom that we're showing on the screen where the shower  
2 curtain rod is located?

3 A Towards the far end, yes.

4 Q And the sink, is that closer up to the entryway?

5 A Yes, it's right next to the door.

6 Q I'm going to show you this video and I'm going to ask  
7 you if you notice a window?

8 (Whereupon, a video was played.)

9 Q Is there a window right there on the far end?

10 A You don't see it on the video but, yes, there is a  
11 window.

12 Q Right there?

13 A Yeah, you see the window. The corner.

14 Q All right. And does that window open up?

15 A Yes.

16 Q After you made this repair to Mr. Espacia's bathroom,  
17 did he ever complain to you ever again about a leak?

18 A I don't know what repair you're referring to.

19 Q After you fixed that big hole in the ceiling, did he  
20 ever complain to you again about a leak?

21 A On the time I was there, no.

22 Q How much longer after that were you there?

23 A Maybe a month and a half.

24 Q Okay. But in that time, no complaints about any leaks?

25 A No.

1 Q Had you done any plumbing work as part of the repair?

2 A No.

3 Q So you didn't touch the plumbing?

4 A No.

5 Q You just put up the drywall?

6 A Correct.

7 Q No further complaints?

8 A No.

9 Q That's correct, there were no further complaints?

10 A For the time that I was there, no.

11 MR. FRANKLIN: Okay. That's all that I have.

12 THE COURT: Okay. Thank you. Counselor?

13 MR. MARANDO: Yes, Judge. Just a few questions.

14 THE COURT: Okay.

15 REDIRECT EXAMINATION

16 BY MR. MARANDO:

17 Q Sir, on direct from counsel, you were asked about  
18 whether or not this is an old building, remember that?

19 A Yes.

20 Q If there's a building that's new or old, we can agree  
21 that building ceilings specifically in the bathrooms should be  
22 maintained safely, correct?

23 A How do you maintain a ceiling?

24 Q If you hear a complaint, can we agree whether it's an  
25 old building or new building, if someone voices a complaint, a

1 ceiling should be maintained safely, correct?

2 A Yes.

3 Q Can we agree that if it's an old building, and I didn't  
4 say 80 years but let's say it is 80 years, can we agree that if  
5 it's an even older building, it should be addressed with even  
6 more care because something like this could happen, yes or no?

7 A When there's cracks and leaks, you handle it with care  
8 regardless.

9 Q Always with care?

10 A A hundred percent.

11 Q When you were asked about the time when you went to  
12 this apartment specifically in relation to the sink issue, you  
13 were asked, and I want to make sure before I sit down, whether  
14 or not Henry ever complained, and your words ten minutes ago  
15 through counsel's questioning was, I don't remember. That was  
16 your testimony ten minutes ago, correct?

17 A It's five years ago. I don't remember, but I don't  
18 think so just like I said.

19 Q Sir, not five days ago --

20 A Five years.

21 Q Okay. Sir, we can agree that before you got to the  
22 apartment, neither you nor Justin nor the porter saw anything in  
23 relation to any ceiling being taken down by the FDNY, correct?

24 A Yes.

25 MR. MARANDO: Judge, nothing further.

1 THE COURT: Counselor?

2 MR. FRANKLIN: Nothing further. Thank you. The  
3 witness is done.

4 THE WITNESS: Could I go?

5 THE COURT: You can go.

6 THE WITNESS: Oh, thank you.

7 THE COURT: Before you do that, Counsel, we're  
8 going to break for lunch now.

9 MR. MARANDO: Yes, Judge.

10 THE COURT: Jury, we'll see you back at 2:00.  
11 Thank you.

12 COURT OFFICER: All rise. Jury exiting.

13 (Whereupon, the sworn jurors exit the courtroom.)

14 THE COURT: Are there any objections we need to  
15 address?

16 MR. MARANDO: I would just say, Judge, that when I  
17 cross-examined Mr. Fatlum, he's an adverse party with  
18 respect to defense counsel --

19 THE COURT: I don't want general objections. I'm  
20 just saying is there anything that has to be resolved before  
21 2:00?

22 MS. GOODE: No, Your Honor.

23 THE COURT: All right. See you then.

24 (Whereupon, a lunch recess was taken.)

25 A F T E R N O O N S E S S I O N

1 THE COURT: Just briefly, one of the jurors has  
2 mentioned that it is difficult for her to go up and down the  
3 stairs.

4 Unfortunately, my jury room is up 12 stairs and so  
5 at this point I've informed counsel of the issue and we're  
6 going to see if tomorrow at least, if we can get a courtroom  
7 with the jury room on the same floor as the courtroom.

8 There's really no other place to put the jurors  
9 here that it would fit the need. So, I'm just putting that  
10 on the record. Counsel, are you ready to go.

11 MR. MARANDO: Yes, Judge.

12 THE COURT: Who will your next witness be?

13 MR. MARANDO: Justin Molloy on behalf of  
14 Residential Management.

15 COURT OFFICER: All rise. Jury entering.

16 (Whereupon, the sworn jurors enter the courtroom  
17 and take their respective seat.)

18 THE COURT: You can be seated. At this time, we're  
19 ready to start. Go ahead, Counsel.

20 MR. MARANDO: Thank you, Judge. Good afternoon,  
21 everyone.

22 Plaintiff at this time calls Justin Molloy. Please  
23 watch your step.

24 (Whereupon, the witness takes the stand.)

25 J U S T I N M O L L O Y, a witness called by and on behalf of

1 the Plaintiff, upon being duly sworn, testified as follows:

2 COURT OFFICER: State your name and address for the  
3 record.

4 THE WITNESS: Justin Molloy, 2734 Clafin Avenue.

5 THE COURT: You can be seated. Please pull the mic  
6 up because otherwise, the jury can't hear what you're  
7 saying. Okay. Go ahead, Counselor.

8 J U S T I N M O L L O Y, called as a witness by and on behalf  
9 of the Plaintiff, after having been first duly sworn, was  
10 examined and testified as follows:

11 DIRECT EXAMINATION BY

12 MR. MARANDO:

13 Q Hi, sir. How are you?

14 A I'm doing well.

15 Q Good. Thank you for being here. Sir, the address you  
16 just gave us 2734 Clafin Avenue, how long have you lived there?

17 A I've lived tere since 2018.

18 Q And since 2018, have you been a handyman for  
19 Residential Management until the present day today as we're  
20 sitting here?

21 A Since 2018, no.

22 Q I'm sorry?

23 A Since 2018, if I've been a handyman?

24 Q Yes, for Residential Management.

25 A Yes. Since 2018, but not currently right now.

1 Q Okay. When was the last time you were a handyman for  
2 Residential Management?

3 A Maybe three years.

4 Q So, three years ago, what happened? Did you get  
5 promoted? Did you change jobs?

6 A A porter left and I took his position.

7 Q Okay. So, if I remember correctly, you were initially  
8 a porter and then you became a handyman and now you're back to  
9 being a porter?

10 A Correct.

11 Q Okay. So, since 2018, you've been only living in 2734  
12 Clafin Avenue?

13 A Correct.

14 Q Okay. And I'm going to focus specifically on the time  
15 period of April of 2021 and I'll try to get through you as  
16 quickly as you can. I appreciate you coming today.

17 Now, during that time, April 2021, you were a handyman  
18 for two buildings; correct?

19 A Yes.

20 Q Okay. The building that you currently reside in now  
21 2734 Clafin Avenue and also a second building; true?

22 A Correct.

23 Q That second building was the building in which brings  
24 us here today 2727 University Avenue; fair?

25 A Correct.

1 Q Now, before you stepped in, I know you may have seen  
2 the superintendent for 2727 in the hallway, someone you work  
3 with on a daily basis in the hallway; true?

4 A Correct.

5 Q And did you guys travel together here?

6 A No.

7 Q Separately?

8 A Yes.

9 Q And I saw both of you in the hallway earlier today;  
10 correct?

11 A Correct.

12 Q Did you discuss anything about the case?

13 A Yes.

14 Q Okay. What did you discuss?

15 A Just being here.

16 Q Okay. So, maybe some of the questions I may ask?

17 A No.

18 Q Okay. Now, it's been -- there's been prior testimony  
19 from Fatlum, the super, that both that building in which you  
20 reside and 2727 both have approximately 55 separate units; is  
21 that fair?

22 A Yes.

23 Q Now, as the handyman, you're the only handyman for both  
24 buildings; true?

25 A At the time, yes.

1 Q Okay. And currently, you're the only porter for both  
2 buildings; true?

3 A Correct.

4 Q Okay. So, did you ever ask for more help?

5 A Not really.

6 Q Okay. Did you ever feel the need that as a single  
7 handyman for one building that it might be better for the  
8 tenants maybe to have one specific handyman for each building?

9 A Not really because me and Lum, we work together.

10 Q But he's not only focusing on that one building either;  
11 correct? He's also focusing on two buildings; right?

12 A Correct.

13 Q So, two buildings, 110 units combined with each having  
14 their own separate complaints; is that fair?

15 A Yeah.

16 Q At any point, can it be overwhelming?

17 A At times.

18 Q At times because that's normal; right? You have to  
19 respond to people. You have to listen to complaints, if they  
20 come and respond accordingly; true?

21 A Correct.

22 Q And through this, you may get close with tenants  
23 through the process of being there since 2018 --

24 MR. MARANDO: I'll a withdraw. And I'll rephrase.

25 Thank you.

1 Q Now, since you've been at this building working for  
2 Residential Management for both buildings since 2018; is it fair  
3 to say that through this course of your career almost now ten  
4 years that you may have gotten close with some of the tenants?

5 A You get familiar with them, yes.

6 Q And we heard before that these buildings have people of  
7 all different ages, maybe younger in their 20s, or in their  
8 teens, children, infants all the way up to people as high at 90  
9 years old; fair?

10 A Correct.

11 Q Now because of that, we learned this morning a little  
12 bit about the procedure and the policy when someone has to voice  
13 a complaint and we heard that from Fatlum.

14 So, my question is as follows: When someone voices a  
15 complaint, there is no one way to voice a complaints? They can  
16 convey or voice their complaints in several different ways;  
17 correct?

18 A Yes.

19 Q If someone voices their complaint verbally or if  
20 someone voices their complaint through a text message, those are  
21 both appropriate ways to voice a complaint; correct?

22 A Correct.

23 Q And part of that reason is because if someone is much  
24 older, maybe they have a flip phone or no phone and they're in  
25 their 90s and that's the way they've always lived their life,

1 they should be able to voice a complaint verbally; fair?

2 A Fair.

3 Q Because if they have to be forced to enter an e-mail or  
4 a text message, they might not be able to communicate with  
5 really the super and handyman which could be the first line of  
6 defense is resurrecting a hazardous condition; fair?

7 MR. FRANKLIN: Objection. Argumentive, compound.

8 THE COURT: I'm going to sustain compound.

9 Q Sir, in 2734 Clafin Avenue, you live rent-free;  
10 correct?

11 A Correct.

12 Q And you live rent-free at this property since 2018?

13 A Yes.

14 Q Even today as you came here as a porter, you're still  
15 working for Residential Management; fair?

16 A Correct.

17 Q And sir, you're aware that the same owner of the  
18 building 2727 University Avenue also owns 2734 Clafin Avenue;  
19 true?

20 MR. FRANKLIN: Objection. No foundation. Move to  
21 strike.

22 MR. MARANDO: He said yes, Your Honor.

23 THE COURT: I'm going to overrule.

24 Q Sir, your answer was yes; fair?

25 A Yes.

1 Q So, the owner owns that building and he owns this  
2 building so 110 units; correct?

3 A Correct.

4 Q And out of the 110 units, there's one super and one  
5 handyman; fair?

6 A Yes.

7 Q So, one owner. Okay. Now, sir, I don't plan on being  
8 here all day with you and I appreciate your time again.

9 So, I'm going to focus on one instance that we heard  
10 this morning and it was specifically an instance where Fatlum  
11 mentioned that during his period of being at 2727 University  
12 Avenue, which is the same building that Henry Espacia lives in,  
13 that you had previously been to his apartment to fix mold on a  
14 ceiling in his bathroom. Do you recall that?

15 A Yes.

16 Q Okay. And that happened, based on his testimony,  
17 during the time period in which Fatlum Maloku was the  
18 superintendent; fair?

19 A Yes.

20 Q And we heard testimony today that Fatlum was a  
21 superintendent for approximately a year. Is that consistent to  
22 what you recall?

23 A About.

24 Q And after that happened -- withdrawn.

25 Sir, you are aware of why we're here today; correct?

1 A Correct.

2 Q Okay. And you're aware that this ceiling collapse that  
3 we'll eventually talk about occurred in April of 2021; correct?

4 A Correct.

5 Q Okay. Do you have any understanding of why after a  
6 year and a half of working suddenly after something happens,  
7 Fatlum suddenly leaves 2727 University?

8 MR. FRANKLIN: Objection, Your Honor.

9 THE COURT: Sustained.

10 Q So, sir, going back to that instance involving you  
11 specifically going to apartment 4F to work on a moldy ceiling in  
12 apartment 4F. You recall that; true?

13 A Yes.

14 Q It's a fact that there is no actual work order in  
15 connection with that job; correct?

16 A I wouldn't know that.

17 Q Well, then who would know that?

18 A Mr. Fatlum.

19 Q Well, I want you to assume for the purposes of the  
20 question that his testimony was there was no work order. So,  
21 assuming that --

22 MR. FRANKLIN: Objection, Your Honor. I don't  
23 believe that's been established.

24 THE COURT: I'm going to overrule -- well, actually  
25 step up. I withdraw that.

1 (Whereupon, the following discussion takes place at  
2 sidebar among the Court and Counsel, outside the hearing of  
3 the sworn jurors.)

4 THE COURT: Go ahead, Counselor.

5 MR. MARANDO: Thank you, Your Honor. And Judge  
6 that was sustained?

7 THE COURT: It's overruled, but you can read the  
8 question back or you can ask it again.

9 MR. MARANDO: Madam Reporter, would you mind asking  
10 the question.

11 (Whereupon, the requested testimony was read back  
12 by the Court Reporter.

13 MR. MARANDO: I'm going to withdraw it entirely.  
14 I'm going to move on.

15 Q Sir, as you sit here today, you haven't seen any work  
16 order in relation to that specific job of repairing the yellow  
17 mold in the small bathroom of apartment 4F; correct?

18 A Correct.

19 Q Do you have a time frame specifically of when you went?  
20 If I told you it was approximately the summer before April 2021,  
21 would that be inconsistent as you sit here today to anything you  
22 believe?

23 A I wouldn't remember.

24 Q Is it possible it could be that time frame?

25 A I wouldn't remember.

1 Q Okay. But we do know that Fatlum was working there for  
2 about a year and his testimony was that it occurred during that  
3 year. So, could we narrow it down to that time-frame?

4 A Again, I wouldn't remember.

5 Q Now, sir, I'm going to show you -- withdrawn.

6 At some point on the morning of April 21, 2021, you  
7 ended up in apartment 4F; correct?

8 A Correct.

9 Q And that was Henry Espacia's apartment; correct?

10 A Correct.

11 Q And as you sit here today, you know Henry?

12 A Of course.

13 Q And you've known him for a long time?

14 A Of course.

15 Q In fact, he's voiced several complaints to you over the  
16 years; fair?

17 A Okay, yeah.

18 Q And he's voiced several complaints to Mr. Fatlum,  
19 whereupon, he had told you to get things done in his apartment?

20 A Correct.

21 Q And maybe sometimes some things don't get done right  
22 away but eventually, you get around to it; fair?

23 A Fair.

24 Q Sometimes maybe quicker than others?

25 A I would say Depending on the workload.

1 Q Of course, depending on the workload. I know it's a  
2 lot between two buildings and 110 units.

3 Specifically, can we agree that if there is a complaint  
4 involving a ceiling, maybe a yellow ceiling with brown mold,  
5 maybe discoloration or cracking that it should be a priority  
6 because of the dangerous implications that may fall from that?

7 A Correct.

8 Q Okay. And one of the dangerous implications that may  
9 fall from that?

10 A Correct.

11 Q And one of the dangerous implications that may fall  
12 from that involves the safety of men, women and children that  
13 may be under a particular ceiling in a space; correct?

14 A Correct.

15 Q So, now there's no record; true, as you sit here today  
16 of the very first time Henry complained of that yellow mold from  
17 when you actually fixed it; correct?

18 A Correct.

19 Q So, as we sit here today, that could have been about  
20 two months; fair?

21 A I couldn't give you a timeframe.

22 Q I don't want you to guess, sir, but it is possible that  
23 it could very well may be a two-month span that occurred; fair?

24 A I can't give you a time-frame.

25 Q Okay. Now. On April 21, 2021, eventually you ended up

1 in apartment 4F?

2 A Correct.

3 Q And when you went there, did you get there alone or did  
4 you travel with anyone?

5 A If I got to his apartment alone?

6 Q Yes.

7 A I was with Lum.

8 Q You met him downstairs and both of you walked up; fair?

9 A I can't really remember. I know we both entered the  
10 apartment together.

11 Q I know it's been a long time. So, you enter the  
12 apartment and you see Henry; fair?

13 A Yes.

14 Q You see an ambulance and people from -- withdrawn.  
15 You see people assisting him would appear to be people  
16 from EMS; fair?

17 A I can't remember that.

18 Q People from FDNY maybe?

19 A I can't remember that.

20 Q Okay. Well, at some point, you enter the bathroom,  
21 specifically the main bathroom of apartment 4F; fair?

22 A Correct.

23 Q Okay. And you saw what apparently took place; correct?

24 A Correct.

25 Q And it appeared that the ceiling had come down; fair?

1 A Yes.

2 Q Okay. I want to show you what's already in evidence as  
3 Plaintiff's Exhibit 1 and specifically it's Plaintiff's Exhibit  
4 1 paused at 38 seconds. Do you see that here?

5 A Yes.

6 Q Okay. I'm going to -- okay. Do you see -- well, sir,  
7 what do you see here in this photograph?

8 A Light fixture, hole, wood.

9 Q Now, the light fixture, does it appear to be intact?

10 A One of the bulbs, no.

11 Q Right, so let's look at this. So, the left bulb  
12 doesn't appear to be intact; correct?

13 A Correct.

14 Q But there appears to be three sockets; correct?

15 A Correct.

16 Q If you look at the right bulb or the right socket, does  
17 it appear to be damaged?

18 A Correct.

19 Q Which angle is it pointing towards? Is it pointing up,  
20 down sideways?

21 A Pointing down.

22 Q Okay. And what's below that? Does that appear to be  
23 debris from the ceiling?

24 A Correct.

25 Q Now, sir, we can agree that the reason why it's

1 important to maintain a ceiling is that if a ceiling falls, it  
2 can cause harm or damage with force like that; correct?

3 A Correct.

4 Q Okay. And, sir, not only damage to light fixtures and  
5 metal and bending metal, but it can cause harm to necks, to  
6 shoulders, to backs to the human body; fair?

7 A Fair.

8 MR. FRANKLIN: Objection. No foundation.

9 THE COURT: Sustained.

10 Q Sir, involving that instance when you did go to the  
11 bathroom and I promise you, I have about a few more questions.

12 When you went to the small bathroom as we said, maybe  
13 it was in the summer before April of 2021, you didn't take any  
14 photographs after you completed the job; correct? You did not  
15 take any photographs after you completed that job; correct?

16 A No.

17 Q Okay. And that job, during that job was specifically  
18 addressing yellow mold on the ceiling; fair?

19 A Yes.

20 Q And we spoke with Mr. Fatlum this morning. Since he's  
21 been there for a long time and since you've been there even  
22 longer, you're aware of the general layout of the units  
23 specifically and generally of apartment 4F; fair?

24 A Yeah.

25 Q And because you're familiar with the general layout,

1 you know that the bathroom in which this occurred shares the  
2 same wall with the small bathroom; fair?

3 A Yes.

4 Q Okay. When you were fixing the yellow mold in the  
5 small bathroom, we can agree, sir, that -- withdrawn.

6 The yellow mold in the small bathroom, to address that  
7 problem, you only used the stain-remover; fair?

8 A Yes.

9 Q And at no point did you physically open up the ceiling  
10 to inspect anything underneath or above the ceiling structure;  
11 correct?

12 A Yes.

13 Q Okay. So, can we agree that it was simply touched up  
14 and the actual cause of the mold was never addressed?

15 MR. FRANKLIN: Objection. Argumentative.

16 THE COURT: Overruled.

17 A Can I hear the question again?

18 Q Of course. So, can we agree because you used stain  
19 remover, that it was simply used to cover it up, meaning the  
20 actual mold but that the actual inherent reason of what maybe  
21 caused the mold, that was never addressed specifically; fair?

22 A Well, sometimes there is humidity from the shower and I  
23 see that a lot in a lot of apartments in the building.

24 Q Okay. Well, can yellow mold as a possibility be  
25 related to anything else besides humidity?

1 MR. FRANKLIN: Objection. Foundation. Calls for  
2 speculation.

3 THE COURT: Overruled. He just testified it can be  
4 humidity. He can testify what else it has been in his  
5 experience.

6 A Repeat it, again.

7 Q Of course. You mentioned that one of the possibilities  
8 that could lead to yellow mold --

9 THE COURT: Based on your experience.

10 MR. MARANDO: Thank you, Your Honor.

11 Q Sir, based on your experience is humidity, can you  
12 think of any other possibilities of what could lead to yellow  
13 mold on a ceiling in a bathroom where the unit above is the same  
14 layout which has a bathroom also on top of that, not just the  
15 big bathroom, but the small bathroom?

16 MR. FRANKLIN: Objection. Compound.

17 THE COURT: Overruled.

18 A Yeah.

19 Q And what one of the other reasons could potentially be  
20 which we don't know, but this is the possibility, that there  
21 could be moisture or water above the ceiling; fair?

22 A Correct.

23 MR. MARANDO: Judge, nothing further.

24 THE COURT: Okay. Counsel?

25 CROSS-EXAMINATION BY

1 MR. FRANKLIN:

2 Q Mr. Molloy, did you observe any water above the  
3 ceiling?

4 A No.

5 Q No?

6 A No.

7 Q Okay. So, that would just be speculation if anyone  
8 were to suggest that?

9 A Correct.

10 Q All right. Why did you use -- was it a stain-blocker  
11 to address the yellow mold in the small bathroom?

12 A Yeah. Usually, with mold, the regular paint, it bleeds  
13 through. Stain-killer is heavy odor but it gets rid of the  
14 mold.

15 Q How much mold are we talking about?

16 A It can vary.

17 Q Do you have a specific recollection of -- did you see a  
18 spot of mold in the small bathroom?

19 A I really can't recall.

20 Q Okay. Do you recall if it was anything alarming?

21 A No.

22 Q And although Mr. Espacia complained about the small  
23 bathroom, did he ever complain about the large bathroom?

24 A To me, no.

25 Q Is it possible that whatever was in the small bathroom

1 was more significant than anything that might have been in the  
2 big bathroom?

3 A No.

4 Q You don't know because he never complained to you about  
5 the big bathroom?

6 A Yeah. To me, no.

7 MR. FRANKLIN: Your Honor, if I could just hook my  
8 monitor?

9 THE COURT: Sure.

10 Q I've got Plaintiff's Exhibit 1 frozen and I'm just  
11 going to play this video and I have a couple of questions. This  
12 has already been received in evidence.

13 (Whereupon, a video was played.)

14 Q Now, I don't know if you saw that hole kind of goes  
15 over those light bulbs?

16 A Yes.

17 Q Do you know if the firefighters used in tools to break  
18 down the ceiling?

19 MR. MARANDO: Objection.

20 THE COURT: Sustained.

21 Q Do you know how the ceiling came down over those light  
22 bulbs?

23 A I'm assuming when it fell.

24 Q I don't want you to assume anything because you weren't  
25 there.

1 A Correct.

2 Q Did you see Fire Department personnel leaving the  
3 bathroom?

4 A No. At the time I was there, no.

5 Q Did you see them coming down the stairs?

6 A No.

7 Q Did you see them in the building?

8 A No.

9 Q Did you hear the sirens?

10 A No.

11 Q How do you know that Fire Department personnel were  
12 even at that place?

13 A I don't know.

14 Q Okay. Did you get there at the same time that Fatlum  
15 got there?

16 A We went inside the apartment together, correct.

17 Q Okay. Did you talk to anyone when you went inside the  
18 bathroom?

19 A No.

20 Q No?

21 A No.

22 Q Okay. All right. And when you got there, is that how  
23 it looked?

24 A Yes.

25 Q And you don't know who was in there?

1 A No.

2 Q And you don't know what they did in there?

3 A No.

4 Q Let me just ask a little bit about how long you've been  
5 working for Residential Management.

6 A I've --

7 THE COURT: Wait for a question.

8 Q You've been working with them since 2018?

9 A 2015.

10 Q 2015. And you've been working at 2727 University for  
11 how long?

12 A Same time.

13 Q All right. And you responded to a lot of repair  
14 requests?

15 A Correct.

16 Q Do you try to get to them as quickly as possible?

17 A Correct.

18 Q Does that bathroom, the one that we're looking at, on  
19 the wall that you can't really see -- let me do this.

20 This portion of the ceiling that we are looking at, is  
21 this the portion that's over the sink?

22 A Correct.

23 Q Okay. Is that also close to the door when you walk in  
24 the bathroom?

25 A Correct.

1 Q On the opposite end, is there a window?

2 A Correct.

3 Q And you see this over here?

4 A Correct.

5 Q What is that?

6 A That is I believe to be a P-trap.

7 THE COURT: I'm sorry. A what?

8 THE WITNESS: It's a plumbing waste.

9 THE COURT: Okay.

10 Q And is that more over the sink or more over the shower?

11 A It seems to be -- I really can't tell to be honest.

12 Q Okay. Is the window above that toilet?

13 A Correct.

14 Q When you came in, did you see all of that stuff sitting  
15 in the tub?

16 A Yes.

17 Q Was it soaking in the water in the tub?

18 A Yes.

19 Q All right. Now, the stuff that wasn't in the tub, the  
20 stuff that was on the floors, was it wet or was it dry?

21 A It was dry.

22 Q The stuff that was on the sink, was it wet or was it  
23 dry?

24 A Dry.

25 Q Was everything that wasn't in the tub, was it more or

1 less dry?

2 A Yes, completely.

3 Q Were the pieces big or were they small?

4 A They varied.

5 Q Okay. What were some of the larger pieces?

6 A (Indicating).

7 Q For the record, he was holding out his hand, maybe  
8 bigger than a grapefruit?

9 THE COURT: Why don't you just describe how big it  
10 is in words if you would, sir?

11 A I don't know. Maybe the size of a little smaller than  
12 this. (Indicating).

13 Q The laptop?

14 A Yeah.

15 MR. MARANDO: For the record, that's a surface.

16 Q So, these pieces, did you touch them?

17 A Yeah.

18 Q What did they feel like?

19 A The ones outside the bathtub?

20 Q Yes. The ones that weren't wet?

21 A They were dry.

22 Q Did they have more like a cardboard feel or what did  
23 they feel like?

24 MR. MARANDO: Objection, Judge.

25 THE COURT: Sustained.

1 MR. FRANKLIN: I'm just asking what he felt.

2 THE COURT: Rephrase it.

3 Q Can you describe how it felt?

4 A Grainy. Almost like dust.

5 Q Okay. Did it have any weight to it like weighted down  
6 with water?

7 A No.

8 Q Oh, and I noticed that there was something that looks  
9 like they're white and thin. Do you know if that's pieces of  
10 paint?

11 A Correct.

12 Q Okay. And the shower curtain, now, are you aware of a  
13 video which you're in the video?

14 A Yes.

15 Q Let me just play that. That's Plaintiff's Exhibit 2.

16 (Whereupon, a video was played.)

17 Q Now, you just noticed that the hole is still there in  
18 this video number 2; right?

19 A Yes.

20 Q When was this video number 2 taken?

21 A Around the time that we arrived.

22 Q Was it right after the video number 1?

23 A Correct.

24 Q It wasn't like a day later?

25 A Absolutely not.

1 Q It wasn't hours later?

2 A No.

3 Q Close in time?

4 A Absolutely.

5 Q And then did you guys fix the ceiling?

6 A Yes.

7 Q How long did it take you to fix the ceiling?

8 A Same day.

9 Q Okay. Were you there like all day doing that?

10 A We were there for a significant amount of time.

11 Q Who did the work?

12 A Me and Lum.

13 Q Okay. And was there a porter there also?

14 A Yes. He was doing the clean up.

15 Q Okay. And what was he doing to clean up?

16 A Sweeping with the dust pan, putting it in black bags,  
17 taking it out.

18 Q Taking the garbage down?

19 A Yes.

20 Q You worked as fast as you could?

21 A Yes.

22 Q Do you recall when the tenant came home?

23 A I do not recall.

24 Q After that day, did you ever see Mr. Espacia?

25 A Yes.

1 Q Okay. How did he appear?

2 A Hunched over, hurt.

3 Q Okay. What about later after that time, did you see  
4 him since?

5 A Yes.

6 Q How did he appear?

7 A Same.

8 Q Prior to this incident, did you ever see Mr. Espacia?

9 A Yes.

10 Q What types of activities did you see him doing prior to  
11 this?

12 A To and from work.

13 Q What kind of work did he do?

14 A It was in some trade, maybe plumbing.

15 Q And what makes you think that?

16 A Well, he would roll around with a tool bag.

17 Q Okay. Can you describe this tool bag?

18 A Yeah. I believe it was Milwaukee rolling tool bag.

19 Q What size was it?

20 A Maybe the size of -- pretty like medium size. Maybe  
21 like a 10/13 inch. Around there.

22 Q The size of a suitcase?

23 A About, yes.

24 Q Okay. When is the last time you've seen Mr. Espacia  
25 other than in this courtroom?

1 A Sometime within the last two weeks.

2 Q Okay. Was he walking normal?

3 A Same as he always walked after the incident.

4 Q What's that?

5 A Limping.

6 Q Which leg?

7 A Not really paying attention to that.

8 Q Okay. All right. Thank you.

9 MR. FRANKLIN: That's all I have.

10 THE COURT: Okay. Go ahead.

11 MR. MARANDO: Just two or three, yes Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. MARANDO:

14 Q Thank you, Mr. Molloy. Just a few questions. Sir,  
15 whether wet, whether dry, we can agree that if a ceiling falls,  
16 it can be dangerous; correct?

17 If wet or dry, we can agree that when a ceiling falls,  
18 it can cause harm?

19 A Correct.

20 Q Okay. Now only because you were asked about it and  
21 this is my last question.

22 I'm going to show you what's already in evidence as  
23 Exhibit 1 and I should be done here. Now I'm showing on the  
24 screen Exhibit 1, Video 1 paused at 32 seconds. Do you see  
25 that?

1 A Yes.

2 Q Okay. I'm going to compare it to a second video that  
3 was taken, Video 2, Exhibit 2 paused at 22 seconds and I'm going  
4 to blow up a portion from each. Do you see that?

5 A Correct.

6 Q Sir, the first video was taken at one point, can we  
7 agree that there was an amount of time that had passed between  
8 the first video and the second video where you see here things  
9 based on my opinion, but I want to hear your thoughts, seem to  
10 be cleaned up?

11 A Yeah. It's cleaned up.

12 Q Okay. Sir, this took more than a few minutes to clean  
13 up; is that fair?

14 A No more than five minutes.

15 Q No more than five minutes?

16 A No more than five minutes.

17 Q Could be less than five minutes?

18 A Could be less.

19 Q No chance it was more than five minutes to clean up  
20 this and also all the stuff on the floor?

21 A No more than five minutes when you have three people  
22 working there.

23 Q Were you part of anything specifically in the bathtub  
24 in that removal process?

25 A Just taking things out the sink. I can't remember

1 specifics of if I was in the bathtub or the sink. I just know I  
2 was helping clean up the debris.

3 Q So, if someone has to go in the bathtub and pick up the  
4 debris which appears to be soaking in water, we could agree that  
5 you would have to shake that off and put it into a garbage bag;  
6 fair?

7 A Yeah, correct.

8 Q And that might even drip onto the bathroom floor;  
9 correct?

10 MR. FRANKLIN: Objection. Foundation. Calls for  
11 speculation.

12 THE COURT: Could you read the question back?

13 (Whereupon, the requested testimony was read back  
14 by the Court Reporter.)

15 THE COURT: Overruled. Can you answer that or do  
16 you need the question again?

17 A Yeah. It can drip on the floor.

18 Q So, based on these two pictures, you're saying it could  
19 not have been more than five minutes?

20 A Yeah. No more than five.

21 Q If I told you when I got up here just now just to ask  
22 you these few questions, it's already been about 3 minutes and  
23 30 seconds?

24 THE COURT: Counsel, asked and answered. Move on.

25 MR. MARANDO: Okay.

1 Q Sir, you mentioned you were asked whether or not Henry  
2 ever complained about this specific main bathroom. Do you  
3 recall that?

4 A Yes.

5 Q Now, sir, it's been five years. Can we agree that  
6 there's a chance that he asked you, but in fact it's never been  
7 written down?

8 A He never asked me about this specific bathroom.

9 MR. MARANDO: No further questions.

10 THE COURT: Thank you, Counsel?

11 MR. FRANKLIN: Yes.

12 RECROSS EXAMINATION BY

13 MR. FRANKLIN:

14 Q Mr. Molloy, did you guys dry off the walls and the  
15 shower curtain before you shot that video?

16 A No.

17 Q Okay. Was it dry when you encountered it?

18 A Completely.

19 Q Okay. You still are a porter in the building today?

20 A Yes.

21 Q Okay. Are you aware of any complaints since you and  
22 Fatlum Maloku fixed that ceiling in that bathroom, have there  
23 been any other complaints of leaks from that bathroom?

24 A Not that I would have known.

25 Q In five years, not a leak?

1 A If there was, he never said anything, at least to me.

2 Q And on the day that you guys encountered that big hole,  
3 did you check all up inside in that hole?

4 A Yes.

5 Q Did you see any leak?

6 A No sign of water.

7 Q Did you touch the plumbing?

8 A Yes.

9 Q Was it dripping?

10 A Dry.

11 Q Did you do any repairs to the plumbing?

12 A No.

13 Q And did you just close up the hole?

14 A Yes, correct.

15 Q No leaks since?

16 A Nope.

17 MR. FRANKLIN: Thank you.

18 THE COURT: Counsel?

19 MR. MARANDO: Just one question.

20 THE COURT: Yes.

21 REDIRECT EXAMINATION

22 BY MR. MARANDO:

23 Q Sir, we can agree that a ceiling collapsing doesn't  
24 have to only be caused by leaking, it can be caused by  
25 deterioration, age --

1 MR. FRANKLIN: Objection, Your Honor.

2 THE COURT: Overruled.

3 Q Can we agree on that, sir?

4 A Sure.

5 Q It doesn't have to be wet to fall?

6 A Correct.

7 Q It can be from maybe old, from signs of cracking,  
8 brownish --

9 MR. FRANKLIN: Objection, Your Honor. Speculation.

10 THE COURT: Sustained.

11 MR. MARANDO: No further questions, Your Honor.

12 Thank you, sir.

13 THE COURT: Thank you sir. Counsel, do you have  
14 anymore witnesses?

15 (Whereupon, the witness stepped down from the  
16 stand.)

17 MR. MARANDO: Yes, I do, Your Honor. Your Honor,  
18 can we approach for a second?

19 THE COURT: Yes. Approach.

20 (Whereupon, the following discussion takes place at  
21 sidebar among the Court and Counsel, outside the hearing of  
22 the sworn jurors.)

23 THE COURT: So, we are going do take a five-minute  
24 break and just for the jury's information, I realize the  
25 stairs can be quite challenging.

1           So, my goal is to get us a new courtroom tomorrow  
2           where the jury room is on the same floor, but if anyone is  
3           having difficulty, please let the court officer know and he  
4           may be able to take you to a ladies' room down the hall or  
5           something so you don't have to go upstairs, but please speak  
6           to a court officer about it. Thank you.

7           COURT OFFICER: All rise. Jury exiting.

8           (Whereupon, the sworn jurors exit the courtroom.)

9           THE COURT: Come on back at 3:05.

10          (Whereupon, a recess was taken.)

11          COURT OFFICER: All rise. Jury entering.

12          (Whereupon, the sworn jurors enter the courtroom  
13          and take their respective seat.)

14          THE COURT: You can be seated. Everybody ready?  
15          Okay. Go ahead, Counselor.

16          MR. MARANDO: Thank you, Judge. Your Honor, at  
17          this time, plaintiff calls Henry Espacia.

18          (Whereupon, the witness takes the stand.)

19          COURT OFFICER: Do you swear or affirm that the  
20          testimony you're about to give will be the truth and nothing  
21          but the truth?

22          THE WITNESS: Yes.

23          COURT OFFICER: State your name and address for the  
24          record.

25          THE WITNESS: Henry Espacia and my address 2727

1 University Avenue, apartment 4F, Bronx, New York 10468.

2 THE COURT: Okay. You can be seated. Please be  
3 sure you bring the mic right up to your mouth so that  
4 everyone can hear what you have to say. Go ahead, Counsel.

5 H E N R Y E S P A C I A, called as a witness by and on behalf  
6 of the Plaintiff, after having been first duly sworn, was  
7 examined and testified as follows:

8 DIRECT EXAMINATION BY

9 MR. MARANDO:

10 Q Henry, how are you?

11 A I'm okay.

12 THE COURT: Sir, you're definitely going to have to  
13 speak louder than that. I'm sorry. I can't hear you  
14 sitting here. So, again so that the jury can hear all of  
15 what you are saying, pull the mic closer and speak loudly  
16 like you hear me please.

17 Q If you have to lean in a little bit, please try your  
18 best. Okay?

19 A Okay.

20 Q Sir, thank you for being here. In this very moment,  
21 are you taking any medication?

22 A Like what you mean?

23 Q Any pain medication?

24 A Right now?

25 Q Yes. Right now?

1 A Yes.

2 Q What are you taking?

3 A Meloxicam.

4 Q Do you know what that's for?

5 A Muscle relax.

6 Q Okay. Sir, I know you gave your address, the address  
7 you just gave us, who do you live there with?

8 A Right now?

9 Q Yes.

10 A My wife, my little child.

11 Q Okay. Who is your little child?

12 A My little son, Ethier. E-T H-I-E-R.

13 Q Now, Henry, is English your first language?

14 A No.

15 Q What's your first language?

16 A Spanish.

17 Q Okay. Where were you born?

18 A Dominican Republic.

19 Q Are you a U.S. Citizen?

20 A Yes.

21 Q How long have you been living in America?

22 A Since the '90s.

23 Q Have you ever sat next to a Judge before in a  
24 courtroom?

25 A No.

1 Q Sir, besides you your wife and your son, is there  
2 anyone else in your family, in your immediate family?

3 A Yes.

4 Q Who?

5 A My two daughters.

6 Q Is one of your daughters here today?

7 A Yes.

8 Q And who is that?

9 A Rayseel Espacia.

10 THE COURT: Spell it, sir.

11 THE WITNESS: R-A-Y-S-E-E-L.

12 Q Now, Henry, from when you first started living in the  
13 United States until as far as you can think, can you walk us  
14 through just generally some of the jobs you have done in the  
15 past?

16 A Yeah. I was doing the stockroom and sometimes in the  
17 sale for Gap and Saks 5th Avenue.

18 Q And after that, did you do anything else?

19 A After that, I did repairing beer systems.

20 Q How long did you have that job for?

21 A For ten years.

22 Q Okay. Now, from when you first came to America up  
23 until let's say 2021, were you always working full time?

24 A Yes.

25 Q Sir, I want you to take us back to April 21, 2021.

1 Okay?

2 A Okay.

3 Q And specifically, I want to talk about the morning.

4 A Okay.

5 Q So, on that morning of April 21, 2021, what time did  
6 you wake up that day?

7 A Maybe like 6:30, 6:45.

8 Q Were you alone in the apartment or was there anyone  
9 else with you at that time?

10 A No. At that time, my whole family was there.

11 Q Okay. Now, if I speed it up to 7:30, was your whole  
12 family still there or did anyone leave the apartment?

13 A My two daughters and my wife left already.

14 Q Do you know where your two daughters and your wife went  
15 that day?

16 A School and work.

17 Q Okay. So, after they left for school and work --  
18 withdrawn.

19 Your wife, as of April 21, 2021, what did she do for  
20 work?

21 A She's working with special kids.

22 Q Okay. Where?

23 THE COURT: I'm sorry. What did she do?

24 THE WITNESS: With kids with needs. Special kids  
25 like one-on-one.

1 Q Did she work for the Department of Education?

2 A Yes.

3 Q Public school?

4 A Yes.

5 Q And, sir, as of that time, April 21, 2021, your  
6 daughters, how old were they?

7 A At that time?

8 Q Yes.

9 A In that time April '21, my daughter was like maybe 15,  
10 21. She's in 2007. Like around 16, I'd say 15, 16.

11 Q Okay. And what about your son?

12 A My son, it was -- he was like 12.

13 Q Okay. Now, sir, at 7:30 in the morning that day when  
14 your wife left for work and your two children left for school,  
15 was there anyone else still with you in the apartment?

16 A Me and my son.

17 Q Do you know what your son was doing at that time?

18 A He was in bed.

19 Q He was in bed?

20 A Uh-huh.

21 Q Now, sir, at specifically 7:30 or around that time  
22 thereafter, were you planning on going anywhere? Walk us  
23 through those moments. How were you about to start your day?

24 A Okay. I was ready to go to work. They called me.  
25 They called me the week before and let me know that we're going

1 to start that day.

2 All the business open up, that we had to go and do the  
3 job. So, I wake up, prepare myself. I went and take a bath to  
4 go inside the bathroom, turn on the water, be in there a little  
5 bit because --

6 Q We'll get there, sir. Just generally. We'll get to  
7 that point. So, you were planning on going to work?

8 A Yes.

9 Q Now, was that your first day back?

10 A Yes.

11 Q When was the last time before that day you had ever  
12 worked before?

13 A It was before that day, it was the pandemic.

14 Q Okay.

15 A Before the pandemic and then it was supposed to be open  
16 that day for us.

17 Q Okay. Your job specifically, I want to talk about that  
18 for a moment. You mentioned repair beer systems?

19 A Yes.

20 Q Can you share with us a little bit about what that  
21 means? What do you mean by repair beer systems? Did you work  
22 at one building? Did you work at different buildings? Did you  
23 travel, did you not travel?

24 A I travel all around. It's like through the city. My  
25 route, it was in the city all over and so I had to go to

1 different places every single day.

2           That's why I like the job because it's no like -- it's  
3 not one thing all the time. It's different experience. You  
4 meet different people, different connections. You don't work  
5 with your boss. You know, everything is fine. I like it.

6           Q     Your boss wasn't on top of you?

7           A     No.

8           Q     Now, did you only go to bars or did you go to other  
9 places as well?

10          A     No. I go in bars, restaurants, every place they do  
11 draft, we used to do and even in boats.

12          Q     Boats, too?

13          A     Yes. Those boats, they cross from Brooklyn to here  
14 whatever, they had that in the summer. They had that. All  
15 this, I used to do all that.

16          Q     And you mentioned that you did that for about ten  
17 years?

18          A     Yes.

19          Q     Okay. Now, going back to the morning of April 21,  
20 2021, to prepare for work, did you take a shower? Were you  
21 planning on taking a shower? Walk us through that morning.

22          A     Okay. I plan to take a shower. I was going inside so  
23 my bathroom have four knobs --

24          Q     Hold on a moment. The four knobs are for what? The  
25 shower or the bathtub or both?

1 A Both.

2 Q Okay. And where is it located?

3 A About my knee.

4 Q On the wall?

5 A On the wall.

6 Q And at what height?

7 A Like around my knee. Around there. (Indicating).

8 Q Okay.

9 THE COURT: I'm sorry. Can you get an estimate in  
10 words because the reporter can't take down hand actions.

11 Q Henry, if you're standing up straight, in relation to  
12 the wall, how high up the wall are the knobs for the shower?

13 A How high is the knob?

14 Q In comparison to your body?

15 A It's like here. (Indicating).

16 MR. MARANDO: Indicating for the record, his knees.

17 Q Okay. And to turn the water on, did you have to bend  
18 down?

19 A Yes.

20 Q Okay. Now, at some point, did you try to turn the  
21 water on?

22 A Yes.

23 Q Okay. And in that moment, when you tried to turn the  
24 water on, what did you hear, feel, see? What happened?

25 A I just see like a big noise like bam and then boom. I

1 just receive something on my head.

2 Q Okay. In that moment, what did you feel?

3 A A sharp pain in everywhere like my neck, shoulder,  
4 head, back.

5 Q Okay.

6 A It was a lot of pain.

7 Q Did you see anything in that moment -- withdrawn.  
8 Did anything touch your body?

9 A Yeah. The ceiling, I know that it's -- I'm just  
10 feeling something in my neck that knocked me down like a fall  
11 and twist. So everything.

12 Q Were you still standing up or did you get physically  
13 knocked down?

14 A I was knocked down in the tub.

15 Q Okay. In that moment, what happened next? Withdrawn.  
16 Why don't you share with us what happened next after  
17 that?

18 A After that, I called my son. When I went down, I  
19 called my son and I said, come home. And when my son come up, I  
20 tell him that I call 911. I'm hurt.

21 Q All right. I want to pause for a minute. I want to  
22 talk about this specific apartment. How long have you been  
23 living there?

24 A I've been living there since my kid is born, the little  
25 one. So, he's 17 right now. I've been living there about 17

1 years.

2 Q Okay. I want to look at April 20, 2021 and maybe go  
3 back a few years.

4 During the two years before this happened, did you ever  
5 have anything wrong with the apartment that you had to complain  
6 about?

7 A Yes.

8 Q Okay. What are some examples?

9 A Example of what's wrong?

10 Q I'm not talking about the main bathroom or we'll get  
11 there, but not why we are here. Did you ever have to complain  
12 about anything else in your apartment?

13 A Yeah. A lot of things like the sink --

14 Q Like what?

15 A Well, they did the sink. They did even the tile in the  
16 floor. I don't remember all the specifics. It was the roof of  
17 my little bathroom.

18 Q Okay. I'm going to focus on that for a little bit.  
19 When you say the roof of the little bathroom, do you mean the  
20 ceiling?

21 A Yes.

22 Q Okay. Now, did you ever complain about the ceiling in  
23 the small bathroom?

24 A Yes.

25 Q Was that before April 21, 2021?

1 A Yeah.

2 Q Do you know exactly generally when it happened?

3 A I could say like maybe summertime.

4 Q Of that year?

5 A Yes.

6 Q Summertime before April 2021?

7 A Yeah.

8 Q Okay. Now, did anyone else -- withdrawn.

9 When there was an issue with the small bathroom, who  
10 did you complain to?

11 A To the super and the handyman.

12 Q Okay. Did they eventually fix it?

13 A Yeah.

14 MS. GOODE: Objection to eventually, Your Honor.

15 THE COURT: Overruled.

16 A They get there. They fix it.

17 Q Before they repaired it or fixed it or whatever, did  
18 you ever take a photograph of what it looked like and showed it  
19 to the super or the handyman?

20 A No.

21 Q Okay. I know you briefly mentioned the sink and I want  
22 you to assume for the question, we already heard from Mr. Fatlum  
23 and we heard from Justin. With the sink, there was a sink in  
24 your apartment that had to be repaired?

25 A Yes.

1 Q And that was before the April 21, 2021; correct?

2 A Yes.

3 Q Right around November?

4 A Yes.

5 Q Okay. The issue with that sink before they fixed it,  
6 did you ever take a picture of that issue?

7 A No.

8 Q Why not?

9 A Because -- well, at least my part and the building, we  
10 just any time we see the super or the cleaning guy or the  
11 handyman, you give the complaint. That's the way you do.

12 Normally you say, super, this happened. Handyman, this  
13 happened. Can you go to my apartment to fix it? That's the way  
14 normally you tell everyone.

15 Q Now, Henry, the small bathroom, where is that bathroom  
16 located?

17 A Inside my bedroom.

18 Q Why don't you use that bathroom?

19 A That bathroom is too small.

20 Q In comparison to the other bathroom, what are we  
21 talking about?

22 A Like half a size.

23 Q Okay.

24 A We just use that bathroom for like brushing teeth or if  
25 somebody is using the other one, but it's uncomfortable even you

1 sitting down on the toilet or whatever, the sink is right there.

2 The door is right there. It's small.

3 Q How tall are you? Do you know?

4 A Most people say 5'11, 6 feet.

5 Q Okay.

6 A I don't know.

7 Q And do you know how much you weighed back then? If you  
8 don't, there's okay.

9 A Maybe 210, 205, 220. Something like that. 200.

10 Q Now, Henry, in the main bathroom. I'm going to call it  
11 the main bathroom. Okay? Did you ever notice anything wrong  
12 with the main bathroom around or before April 21, 2021?

13 A Yeah. It was cracking. It was leaking because any  
14 time -- and that's the one thing that happened. Even when I  
15 tell the super that it was leaking, it's leaking and it stops,  
16 leaking and it stops. So, it happened a lot of times.

17 Q Okay. Besides leaking and cracking, was there anything  
18 else wrong that you complained about?

19 A Yeah. There was a big brown spot.

20 Q Okay. Did you ever voice these complaints to anyone in  
21 the building?

22 A If any what?

23 Q Did you ever complain about this to anyone in the  
24 building?

25 A Yeah, to the super and handyman.

1 Q Now, who is the handyman?

2 A In that time, the handyman, Justin.

3 Q Okay. Now, did you ever complain to Justin before  
4 April 21, 2021?

5 A Yes.

6 Q Okay. What did you tell him?

7 A Justin, I have problem in my ceiling. I had a big  
8 brown spot and it's cracked and it sometimes leaking, sometimes  
9 stops, sometimes leaking. So, when you going to go fix? He  
10 always say just tell the super, tell the super.

11 Q Now, could you just put a time-frame on this? How and  
12 when, if any did these specific conversations take place?

13 A Probably between two, two and a half months before that  
14 happened.

15 Q Besides Justin, based on his recommendation, what did  
16 you -- did you eventually tell Fatlum?

17 A Yes.

18 Q And what did you tell Mr. Fatlum?

19 A I tell Mr. Fatlum, Mr. Fatlum, it's a big mold in my  
20 bathroom, brown mold, whatever you gonna call it. Like a brain  
21 stain. A big brown stain. It was a crack all the way to the  
22 bathroom and it was like different colors, brown, yellow.

23 Q Did you mention anything else?

24 A Yeah. It was leaking and cracked.

25 Q Now, when you told him that, what did he tell you?

1           A     He always tell me, yo, bro, I'll get to there. I'll  
2 get to there.

3           Q     Did he ever get to it?

4           A     No.

5           Q     Henry I want to show you a video that's been premarked  
6 as Plaintiff's Exhibits 5. I'm sorry. Plaintiff's Exhibit 3.

7                   MR. MARANDO: Judge, it's not in evidence. I'm  
8 just going to show him just for ID on my laptop first.

9                   THE COURT: Any objection?

10                  MR. FRANKLIN: I haven't seen it.

11                  MS. GOODE: Judge, I don't want him publishing it  
12 to the jury if it's marked for ID and it's not in evidence.

13                  MR. MARANDO: I'm going to walk up.

14                  THE COURT: I have to ask you to speak louder.

15                  MS. GOODE: I said I didn't want him publishing to  
16 the jury since it's not in evidence.

17                  THE COURT: This is premarked as Plaintiff's  
18 Exhibit 3?

19                  MR. MARANDO: Yes, Your Honor.

20                  THE COURT: Is there a description you can give  
21 without releasing too much information about it?

22                  MR. MARANDO: Yes. Video of plaintiff.

23                  THE COURT: Okay. You can show it.

24                  MR. MARANDO: Can I approach, Your Honor?

25                  THE COURT: Yes.

1 Q Mr. Espacia, I'm showing you what's been premarked as  
2 Plaintiff's Exhibit 3. I'm going to show you the video first.  
3 I'm going to sit back down and I'm going to ask you some  
4 questions. Okay?

5 A Okay.

6 THE COURT: Just don't comment on it, sir, until  
7 you're asked a question.

8 MR. MARANDO: Okay. Thank you, Judge.

9 (Whereupon, the video was played.)

10 Q Now, sir, I'll talk about the video in a moment, but  
11 going back to the day April 21, 2021, you mentioned that you  
12 called out for your son?

13 A Yes.

14 Q Now, when you called out for your son, eventually, did  
15 he come to you?

16 A Yes.

17 Q Okay. And then once he came to you, what, if anything,  
18 happened?

19 A Can you repeat the question?

20 Q When your son came to you, where were you positioned?

21 A It was almost sitting down.

22 Q Okay. Were you still inside the tub?

23 A Yes.

24 Q Okay. Now, eventually, did an ambulance come to your  
25 aid at the apartment?

1 A Yes.

2 Q Do you know who called the ambulance?

3 A My son.

4 Q Okay. Did you tell your son to call an ambulance?

5 A I said call 911.

6 Q Before they arrived, did you tell your son anything  
7 else?

8 A I just say to my son throw a picture.

9 Q Throw a picture?

10 A Yeah, to prove what happened.

11 Q Now, the video that I just showed you, was that a  
12 result of you telling your son to take a picture?

13 A Yes.

14 Q The video that I just showed you, does that fairly and  
15 accurate represent you in the tub in the immediate moments after  
16 this occurred?

17 A Yeah.

18 MR. MARANDO: Judge, I would like to admit this  
19 into evidence, Plaintiff's Exhibit 3.

20 THE COURT: Any objection?

21 MS. GOODE: I just want to make sure it's the same  
22 video I've seen.

23 THE COURT: Let counsel see it, please.

24 MS. GOODE: No objections, Your Honor.

25 THE COURT: Okay. That is moved into evidence as

1 Plaintiff's Exhibit 3 without objection.

2 (Whereupon, the video was marked moved Plaintiff's  
3 Exhibit 3 in moved into evidence, by the Reporter.)

4 Q Henry, I see your hair. You're bearing a bun; right?

5 A Yes.

6 Q If you took your bun out, how long does your hair go  
7 down?

8 A About my shoulder.

9 Q About your shoulders?

10 A Yeah.

11 Q How long has your hair been like that?

12 A I don't recall. Long time. It's a long time.

13 Q Do you shampoo and condition every single day?

14 A No.

15 Q Okay.

16 A No, I just shampoo like twice a week.

17 Q The days you don't shampoo and condition, if you have  
18 to take a shower how do you go about that? What do you do?

19 A I just put a shower cap and cover my hair.

20 Q I want to go back to the complaints you made to Mr.  
21 Fatlum and Justin in the two months before you mentioned. How  
22 many times did you complain to each of them, if any?

23 A Several times.

24 Q What's several times?

25 A I'd say five, six times, seven.

1 THE COURT: Could you read that answer back,  
2 please?

3 (Whereupon, the requested testimony was read back  
4 by the Court Reporter.)

5 Q And when you complain to them, where did it happen?  
6 Was it in the hallway, outside, down the block? Where did this  
7 happen?

8 A Normally when you see them more or you see them  
9 outside. Sometimes they're sweeping or whatever. You see them  
10 in the hall. Then you tell them, you know, something happened  
11 in my apartment. You have to go and do this, this or this.  
12 That's the way you tell them.

13 Q Now, Henry, the video I just showed you, did you see  
14 your body and how you were positioned?

15 A Yes.

16 Q Was that the exact position that you fell in or did you  
17 have to move into that position?

18 A No. I had to try forcing myself to be in that  
19 position.

20 MS. GOODE: I'm sorry. I can't hear that, Your  
21 Honor.

22 THE COURT: Could you repeat the answer into the  
23 mic, sir?

24 THE WITNESS: I said I try force myself to be in  
25 that position.

1 MR. MARANDO: Your Honor, I'm going to publish  
2 what's in evidence as Plaintiff's Exhibit 3.

3 THE COURT: Counsel, can you see from there? Do  
4 you need to move?

5 MS. GOODE: No, I can see.

6 THE COURT: Okay.

7 (Whereupon, the video was published to the jury.)

8 Q Henry, I'm going to show you the video and I'll have  
9 questions afterwards. Okay?

10 A Okay.

11 (Whereupon, the video the played.)

12 Q Henry, I paused the video at ten seconds. Do you see  
13 that?

14 A Yes.

15 Q Was that you in the video?

16 A Yes.

17 Q Okay. Is this the video your son took?

18 A Yes.

19 Q Okay. Now, do you see the ceiling in this video?

20 A Yes.

21 Q Does this fairly show the same way the ceiling looked  
22 right after the ceiling collapsed?

23 A Yes.

24 Q Now, when the ceiling collapsed, did you feel any pain  
25 to any parts of your body?

1 A My neck, back, shoulder. I think even my leg.

2 Q Now, where I have it paused, Plaintiff's Exhibit 3 at  
3 ten seconds, is this the same location of where the issue was  
4 where you complained to the super and Fatlum and Justin?

5 A Yeah. The issue starts from -- to my left all the way  
6 on my left all the way to inside the bathtub.

7 Q Okay. Now, sir, from that day until today, did you  
8 ever get any surgeries?

9 A No.

10 Q Did you ever get any surgeries?

11 A Since that day?

12 Q Since that day until today?

13 A Yes.

14 Q To what body parts?

15 A My neck, both shoulders.

16 Q Have you gotten any physical therapy from when that  
17 happened until today?

18 A Yes.

19 Q And just generally, can you approximate much how much  
20 physical therapy?

21 A More than 200.

22 Q Okay. Now, did you see doctors from then to now?

23 A Yes.

24 Q Okay. Right now, today in the past, you know, one  
25 week, two weeks or two months, have you seen any doctors, gone

1 to physical therapy?

2 A Oh, to physical therapy, no.

3 Q Why not?

4 A Because it was too expensive and --

5 MS. GOODE: Objection, Your Honor.

6 THE COURT: Overruled.

7 Q Okay. Besides physical therapy, after four years, in  
8 the past two or three months, are you still seeing any doctors?

9 A No.

10 Q Okay. Why not?

11 A Because I can't cover it. I don't have the money.

12 Q Okay. If money was not an issue, would you still be  
13 continuing to go to these things?

14 A Yes.

15 Q Okay. And when you went to physical therapy, did it  
16 help you?

17 A A little bit.

18 Q And where did it help you? What parts of your body?

19 A Make me like most of the time, make me like a little  
20 bit in my back, it make me feel less pain.

21 Q I want to go back to the video and I want to rewind it  
22 to five seconds of Plaintiff's Exhibit 3. Do you know how there  
23 was so much water in the bathtub?

24 A Because the water was come down.

25 Q You felt it come down?

1 A Yeah. I think -- yeah. I feel it when it hit me.

2 THE COURT: I'm sorry. I didn't hear that  
3 response. Can you read back the response.

4 (Whereupon, the requested testimony was read back  
5 by the Court Reporter.)

6 Q When your son came to the bathroom, besides calling  
7 911, did he do anything else?

8 A Yeah. He went over to me. I think he tried to close  
9 the water.

10 Q Okay. Now, I'm going to actually go to the point of  
11 the video, hold on. I'll leave it at that. Okay. That's all I  
12 have for this video, sir.

13 Now, sir, Henry, if you're not going to physical  
14 therapy, if you're not going to doctors, if you're not going to  
15 MRIs in the past few months, right now, how are you taking care  
16 of your pain if you have pain?

17 A I have take medication Meloxicam.

18 Q And where do you get it?

19 A My private doctor gives it to me.

20 Q Okay. Now Henry I want you to assume that the doctor  
21 who did the surgery on your neck before today, he came on Friday  
22 to testify and when he testified, he said that you need future  
23 neck surgery and future back surgery.

24 You've only gotten one neck surgery. Is there a reason  
25 why that if you've been recommended for neck surgery, a second

1 surgery and a back surgery that you haven't gotten it?

2 A Yeah. He say I got too many damage and pain and I'm  
3 thinking about it. It's like first of all, you know, I don't  
4 want to go through more surgery.

5 Right now, I got too much pain. I already went through  
6 three surgeries. It's hard. It's very -- sorry. What was the  
7 question, again?

8 Q The question was that the doctor who did your neck  
9 surgery on Friday, he spoke with us and he said that you need  
10 future physical therapy, but in addition to that, he said you  
11 need future surgery again to your neck and you've been also  
12 recommended for future surgery to your back.

13 From his recommendation until now, you've only gotten  
14 one surgery to your neck. Is there a reason why?

15 A Yeah. Like I said, it's -- I don't want to go through  
16 more surgery. I'm afraid. I'm not -- you know, this surgery  
17 process and everything is painful. It's, you know, you could  
18 stay like this, you could be paralyzed or you could die. Things  
19 like that.

20 It's something that you have to think about before you  
21 do that. I'm not weird because I want to get better, but it  
22 doesn't make you like if you're afraid to do that.

23 Q So, does that mean that you'll never get the surgery in  
24 the future?

25 A I will. I will. At some point, I will.

1 Q Okay. And what's going to be the deciding factor if  
2 you get it or not?

3 A Well, I would say like my kids. You know, be with  
4 them, be walking with them. My kids is my whole life. So, I  
5 would like to be more time with them and be able to do a lot of  
6 things with my kids, maybe with their family when they have  
7 family, go with grandchildren and things like that. So, you  
8 want to be able to do all of that kind of stuff.

9 Q Okay. Talking about your kids, I want to focus on your  
10 two daughters. Okay, today, are they in college?

11 A Yes. I'm proud of that.

12 Q Where do they go to college?

13 A My daughter is right there, the little one. She's  
14 going to Villanova, Pennsylvania. And the other one is going to  
15 Tufts, Massachusetts.

16 Q Okay. From when this happened until today, did your  
17 daughters start college during that time period?

18 A Yes.

19 Q Okay. Did they have to get moved into college?

20 A Yes.

21 Q Did you go with them to move them into college?

22 A Yes.

23 Q Okay. When you did that, can you share with us what  
24 that experience was like for you?

25 A Wow, terrible because it's like you see the parents

1 moving the kid, bring it up, you know, helping them out and  
2 whatever and you right there standing, can't do nothing.

3 Plus my wife and even my daughter helping her sister to  
4 bring things up. You know, that's hard. It's breaking your  
5 heart. It's like damn. You feel like you not a man no more.

6 Q Well, did you carry anything?

7 A Probably I carry I think maybe like a light bag or  
8 something. Nothing more than that.

9 Q Okay. And seeing the other parents and especially the  
10 fathers doing these things, how did that make you feel?

11 A Like I said, it made me feel helpless, nothing. You  
12 know, like nothing. Like I don't feel like be the man no more.  
13 Sad.

14 Q Before April 21, 2021, before this happened, if there  
15 was something in house in your apartment with your family that  
16 had to get done, who would do it in the house?

17 A Me.

18 Q Okay. Now, afterwards, if there's something physical  
19 that needs to get done, who does it now?

20 A Now after that, my son help, my wife.

21 Q Now, if this happened in April of that year 2021, can  
22 you think of the first time that you saw someone else in your  
23 family other than yourself do one of these physical things in  
24 your apartment?

25 A You mean, what I realize when that happened?

1 Q If you have any examples?

2 A Well, I would say like for Christmas time, like, we  
3 normally have Christmas tree and the star across it, it's in the  
4 top.

5 And no matter used to take it down and set it up for  
6 everything and then my kid come in and do the thing. And that  
7 year I can't because all the pain and I can't reach up there and  
8 my son had to take a ladder to go down and get it.

9 Q Now, sir, at that time, if you're 54 today, if my math  
10 is correct, you were about 49 at that time; correct?

11 A Yes.

12 Q As a 49-year-old father at that time, did seeing your  
13 13 year-old son do something that you would normally do, how did  
14 that make you feel?

15 A Yeah. It makes me feel like I'm not the provider no  
16 more. Like I'm not the father no more. I'm like more like a  
17 person there, like a person they don't count for nothing.  
18 That's how I feel.

19 Q When you look to the future, when you look to the  
20 future of Henry Espacia, your family specifically, is there  
21 anything that you think of or that you don't think of when it  
22 comes to how you feel and your condition now?

23 A Oh, definitely. You see, like I side, my kids, I would  
24 like to see them be proud they being the professional they want  
25 to be.

1           And my two daughters give me kids and you know, be  
2 doing the same things with their kids what I did with them like  
3 play with them, you know. I do a lot. I help a lot my kids  
4 around.

5           Q       How did you walk before the accident and how do you  
6 walk now?

7           A       I used to walk normal and now it's hard to me walking.

8                   MR. MARANDO: Judge, at this time, I'd like to  
9 admit into evidence a video that was exchanged by the  
10 defendants. It's been premarked for ID as a Plaintiff's  
11 Exhibit.

12                   THE COURT: Which one?

13                   MR. MARANDO: It's Plaintiff's Exhibit 24. It's  
14 the private surveillance video taken of Henry provided to us  
15 by defendants. And pursuant to CPLR, it's automatically  
16 authenticated.

17                   THE COURT: Okay. Any objection?

18                   MS. GOODE: No objections, Your Honor.

19                   THE COURT: Okay. Just to make sure the reporter  
20 got that.

21                   MR. MARANDO: I have the CD. Let's mark it into  
22 evidence, please.

23                   THE COURT: Counsel, can you approach?

24                   (Whereupon, the following discussion takes place at  
25 sidebar among the Court and Counsel, outside the hearing of

1 the sworn jurors.)

2 THE COURT: Jury, we're going to take a five-minute  
3 break.

4 COURT OFFICER: All rise. Jury exiting.

5 (Whereupon, the sworn jurors exit the courtroom.)

6 THE COURT: Okay. For the record, the witness  
7 asked if he could stand up and stretch and plaintiff was  
8 searching for an exhibit. So, on consent, with the jury  
9 removed from the room, you can stand up and move around and  
10 stretch for a few moments, sir.

11 We'll be back at 4:05 and a reminder, we stop at  
12 4:45 on the dot.

13 MR. MARANDO: Thank you, Judge.

14 (Whereupon, the item referred to, previously  
15 Plaintiff's Exhibit 24 was received in evidence.)

16 (Whereupon, there was a brief pause in the  
17 proceedings.)

18 THE COURT: We're going to get the jury now and for  
19 the record, just a reminder we have to stop under the rules,  
20 not my rules, the rules, 4:45.

21 COURT OFFICER: All rise. Jury entering.

22 (Whereupon, the sworn jurors enter the courtroom  
23 and take their respective seat.)

24 THE COURT: You can be seated. Okay, Counselor.

25 MR. MARANDO: Thank you Judge. Thank you,

1 everyone.

2 Q Henry, I'm going to show you a video that's in evidence  
3 as Plaintiff's Exhibit 24. I'm going to show you part of the  
4 video and then afterwards, I'm going to ask you some questions.

5 Now, before I show you the video, I want you to hear  
6 that for the purposes of the question, this was taken by a  
7 private investigator hired by the defendants. Okay, I'm  
8 starting the video at 2 minutes and 28 seconds.

9 (Whereupon a video was played.)

10 Q Henry, is that you in the video? I paused it at 2  
11 minutes and 33 seconds?

12 A Yes.

13 Q Okay. When this video was taken, did you have any idea  
14 that this video was being taken?

15 A No.

16 Q I'm going to ask you to keep watching it.

17 (Whereupon a video was played.)

18 Q Okay. Did you see the video just stopped?

19 A Yes.

20 Q As you were walking?

21 A Yes.

22 Q Was that you in the video?

23 A Yes.

24 Q Is that the same way that you walk now still five years  
25 after the accident?

1 A Yes.

2 Q Okay. At any point in time when that video was taken,  
3 did you have any clue that you were being recorded secretly?

4 A No. Now that I see it now. I didn't know.

5 Q Okay. Did you walk with a limp?

6 A Huh?

7 Q Do you walk with a limp?

8 A Yes.

9 Q Did you walk with a limp before the accident?

10 A No.

11 Q In fact when you were -- withdrawn.

12 Sir, talking about your jobs and everything you did  
13 before this happened, how did it feel to you, if any, when you  
14 would bring home a paycheck?

15 MS. GOODE: Objection, Your Honor.

16 MR. MARANDO: Judge --

17 MS. GOODE: Can we approach?

18 THE COURT: Yes.

19 (Whereupon, the following discussion takes place at  
20 sidebar among the Court and Counsel, outside the hearing of  
21 the sworn jurors.)

22 THE COURT: I'm going to overrule it, but it's  
23 going to be very limited.

24 Q Henry, before this happened, how did it feel when you  
25 were working to bring home a paycheck to your family?

1 MS. GOODE: Note my objection.

2 THE COURT: Yes, of course. Objection noted.

3 Q You can speak, sir.

4 A Well, to me, it's feeling great because I feel like I'm  
5 the man in the house and I, you know, contribute something like  
6 I'm the man. I could provide my kids whatever they need, food,  
7 you know, things for school and things like that. You feel like  
8 you the man.

9 Q Okay.

10 A You the one.

11 Q After this happened, did you ever return to work even  
12 for one day?

13 MS. GOODE: Objection, Your Honor.

14 THE COURT: It's a fact. Overruled.

15 A Yes.

16 Q When did you return to work?

17 A Like a week after -- like a week after the accident.

18 Q Did you stop working or did you continue working after  
19 that?

20 A No. I had to stop. The pain was so much. I went to  
21 work and I tried to do my job and I can't. The pain was too --  
22 my back was hurting me. My neck was tight.

23 Q After five years and seeing that video, is there any  
24 reason why you haven't gone back to work?

25 A I can't do -- I can't do my job no more. I don't know

1 what kind of job I'm going to do in the future, but I can't do  
2 my job no more.

3 MS. GOODE: Objection.

4 THE COURT: Overruled.

5 Q Henry, before April 21, 2021, were you ever involved in  
6 a car accident?

7 A Yes.

8 Q Okay. When?

9 A Like around 2009.

10 Q Okay. So, about 16, 17 years ago from today; right?

11 A Yes.

12 Q Before April 21, 2021, it was about ten years before or  
13 11 years before; right?

14 A Yes.

15 Q And my math is probably off. It's been a long day.  
16 After that happened, were you -- withdrawn.

17 That car accident, did it happen in New York?

18 A Yes.

19 Q After it happened, were you taken away by ambulance?

20 A No.

21 Q Did you go to the hospital?

22 A No.

23 Q Did you get an MRI?

24 A No.

25 Q Did you exchange information with the other driver?

1 A Yes.

2 Q Did you go do physical therapy?

3 A Maybe, yeah. Maybe like one or two.

4 Q And did you go for your neck and back twice?

5 A Yes.

6 Q Eventually, did you stop going to physical therapy?

7 A Yes.

8 Q Now, for the next ten years, did you ever see any  
9 doctors for your neck, your back, your shoulders after that?

10 A No.

11 Q During that same time period, did you go back to work  
12 at full capacity?

13 A Yes.

14 Q As working for the beer system company?

15 A Yes.

16 Q Where you travelling all across New York City?

17 A Yes.

18 Q Doing these things?

19 A Yes, and go out, and up and down to stair. Sometimes  
20 it's in the basement. So, I never had a problem.

21 Q Did you ever injure yourself at work?

22 THE COURT: What was the question, sir?

23 MR. MARANDO: I'm sorry, Judge.

24 Q Did you ever get hurt while doing any of these things  
25 at work?

1 A No.

2 Q Were you able to do your job at full capacity up until  
3 the day this happened?

4 A Yeah. I was number one in my company.

5 Q Number one?

6 A Number one. I could say for now, you call my company  
7 and they will tell you. I was number one.

8 I was the one including my job is this kind of job like  
9 most of everybody had to go to the company and use the company  
10 vehicle, the cars and things like that and punch in.

11 I was working with my own car coming down from my home  
12 to the job and the job to my house. I don't have to go to the  
13 company to do that and it was only me because they know I do the  
14 job.

15 Q To do your job, did you have to use your own car?

16 A Yes.

17 Q Do you drive now?

18 A No. I could drive maybe 15, half an hour but I'm  
19 afraid because I could drive but I'm afraid but I can't -- I  
20 don't have the ability. You know, I could -- I can't turn  
21 around.

22 If I turn this way to check that, my neck hurt me and I  
23 got pain in my shoulder and things. If I turn the wheel, I'm  
24 feeling it. So, it's not the same.

25 Q Are you able to look fully over your shoulder when

1 you're driving the same way that you did before this happened?

2 A No.

3 Q Sir, the mornings when you wake up now compared to how  
4 you used to wake up before, any difference at all?

5 A Yes. It's a lot of difference.

6 Q When you first wake up, how is it different?

7 A It's like when you wake up, the first thing everything  
8 is painful and then taking time to take a bath or whatever that  
9 you have to do, then to dress up, it's to dress up is like an  
10 adventure.

11 Like I have to -- it hurts to put my shirt on, you  
12 know, shoes. You have to sit down. I can't bend no more the  
13 way I used to be. You know, it's really hard.

14 Q Sir, was there anything that you were passionate about  
15 that before this accident, you would enjoy that now you can no  
16 longer do either with your family, your friends or anything at  
17 all?

18 A Yeah. I used to go everywhere with my kids, may  
19 vacation, my time free. We used to go everywhere like  
20 restaurant. This is the good thing about my job, you know.

21 You get to know people at a different place and they  
22 start new business and you go there. So, you know, it's  
23 vacation, restaurant that I always did with my kids and I miss  
24 that.

25 Q Mr. Espacia, I have no further questions. Thank you.

1 THE COURT: Counsel, can you approach?

2 (Whereupon, at this time, a discussion was held at  
3 sidebar.)

4 CROSS-EXAMINATION

5 BY MS. GOODE:

6 Q Good afternoon, Mr. Espacia. My name is Yolanda Gail  
7 Goode and I'm going to be cross-examining on this case. Now,  
8 I'm going to ask you a series of questions with yes or no; do  
9 you understand that?

10 A Yes.

11 Q Now, Mr. Espacia, at the time you -- this incident  
12 happened it was COVID, correct. COVID ended?

13 A Yes.

14 Q And you hadn't worked for a period of time because of  
15 COVID, correct?

16 A Yes.

17 Q Okay. And at the time you were working for the beer  
18 company, you had a driver's license, correct?

19 A Yes.

20 Q Was that a Class E driver's license?

21 A I can't tell you. It's like a regular.

22 Q Well, regular license is Class D, correct?

23 A I don't know exactly. I don't know what kind.

24 MS. GOODE: Your Honor I'd like to have this marked  
25 for identification as Defendant's I.

1 THE COURT: Can I just see it? As Defendant's?

2 MS. GOODE: Defendant's I.

3 MR. MARANDO: Has it been marked?

4 MS. GOODE: No.

5 THE COURT: Defendant's I. And can you broadly  
6 describe it for my record.

7 MS. GOODE: DMV records.

8 THE COURT: Okay. Fair enough.

9 MR. MARANDO: Judge, if I can approach? This the  
10 first time I'm seeing this.

11 THE COURT: Okay. Take a moment to look at it.  
12 Are you just using it to refresh his recollection?

13 MS. GOODE: Yes.

14 THE COURT: Okay. Fair enough. Can you just give  
15 the court reporter. She has to mark it.

16 MS. GOODE: Let the record reflect that this is a  
17 three-page document, Your Honor.

18 THE COURT: Okay.

19 (Whereupon, the item referred to, previously  
20 Defendant's Exhibit I was marked for identification.)

21 Q Mr. Espacia, I ask you to take a look at what's been  
22 marked as Defendant's I for identification. Do you see the  
23 identification information at the top? You see the very top of  
24 Page 1?

25 A State -- yes.

1 MS. GOODE: May I approach the witness, Judge?

2 THE COURT: Yes.

3 MS. GOODE: Let me just check, sir. I don't think  
4 you're on the right page. So, I'm asking you to take a look  
5 right here tow top, sir; do you see that?

6 A The date?

7 Q No. Just the top. You see the first name? Do you  
8 recognize that name, sir?

9 A First name. Yes. Henry.

10 Q Is that your name?

11 A Yes.

12 Q And the last name Espacia, is that your name?

13 A Yes.

14 Q And your date of birth, I won't say it out loud, is  
15 that your date of birth?

16 A 8/19/71.

17 Q Yes. And you're male, eye color black, correct?

18 A Yes.

19 Q And you're not a veteran, correct?

20 A No.

21 Q And so all that information is correct. Let's look  
22 down to the third paragraph. Is the mailing address correct?

23 A 2727 University Avenue. Yes.

24 Q That's where you were living at the time of the  
25 incident?

1 A Yes.

2 Q And this is a DMV driver's motor vehicle, do you see  
3 that Mr. Espacia?

4 A Class E?

5 Q Yes. Class E.

6 MS. GOODE: Your Honor, I'd ask you take judicial  
7 notice that a Class E driver's license gives you permission  
8 to drive a limo, a cab, you can get a truck driver's  
9 license.

10 A No, I didn't know --

11 MS. GOODE: I'm just asking the Judge, Mr. Espacia.  
12 No question to you.

13 THE COURT: Any objection?

14 MR. MARANDO: Your Honor, other than they're  
15 required to be marked before cross-examination of the  
16 plaintiff and they haven't been subpoenaed to the courtroom.  
17 But besides that, Judge, I would object entirely.

18 THE COURT: May I see that? It's a printout of the  
19 DMV?

20 MS. GOODE: Yes, Your Honor, and it's signe and it  
21 says certified.

22 THE COURT: I'm going to move it into admission  
23 over objection.

24 MR. MARANDO: Note my objection, Your Honor.

25 THE COURT: Okay. Defendant's I. Please give it

1 to the court reporter so it can be marked into evidence.

2 (Whereupon, the item referred to, previously  
3 Defendant's Exhibit I was received in evidence.)

4 Q Now, you see that Mr. Espacia, we're looking at the  
5 first page. Now, we've already agreed that it's your address,  
6 2727 University Avenue, Apartment 4F, Bronx, New York and then  
7 it says driver's education course completed, no. Then under  
8 that it says active credentials, do you see that, the last  
9 paragraph?

10 A Yes.

11 Q And it says issued 6/27/25. That would have been last  
12 year, correct?

13 A Yes.

14 Q And it expires 8/19/2030. That is five years from now,  
15 correct?

16 A Yes.

17 Q And it's a Real ID meaning it's the updated new and  
18 improved identification, correct?

19 A Yeah.

20 Q The one where you have the picture and the baby picture  
21 and all that, the new ones we're all required to have?

22 A The new one. Yeah.

23 Q So, this would have been issued after the incident of  
24 April 21, 2021, correct?

25 A I don't get.

1 Q Let me rephrase it. The incident happened April 21,  
2 2021, correct?

3 A Yes.

4 Q This driver's license Class E would have been issued  
5 last spring, that would have been four years after the incident,  
6 correct?

7 A Yes.

8 Q And it doesn't expire for five years, correct?

9 A Yeah.

10 Q I'm not the best in math either but five years. Good  
11 enough, right?

12 A Okay.

13 Q Now, let's step back to the day of the incident. Oh,  
14 just one other thing Mr. Espacia, do you remember testifying at  
15 a deposition about three years ago on March 27th, 2023?

16 A Yes.

17 Q And you had a lawyer, maybe not Mr. Marando, but there  
18 was a lawyer there with you?

19 A Yes.

20 Q Okay. And was it video or was it in person?

21 A Video.

22 Q Okay. And there was someone from my office, not me,  
23 who asked you a series of questions?

24 A Yes.

25 Q Okay. And you had a Spanish interpreter, correct?

1 A Yes.

2 Q So, you had someone that could interpret for you when  
3 you were being asked questions, correct?

4 A Yes.

5 Q Now, we heard from you that a couple of months before  
6 this incident you told the super that you had a problem with  
7 your ceiling, correct?

8 A Yes.

9 Q And you said -- one of the things you said was that you  
10 would see the super outside, he would be sweeping, cleaning  
11 whatever, right?

12 A Yes.

13 Q And you said there was no formal thing done, if you saw  
14 the super you would say, hey, can you come fix the ceiling,  
15 check the bathroom?

16 A Yes.

17 Q And you have to be in the apartment when the super  
18 comes unless you give him permission to go in without you,  
19 correct?

20 A Yes.

21 Q He can't just go into your apartment?

22 A No.

23 Q Now, let's talk about this crack. We saw pictures of  
24 it. Now, the crack started I believe you said from the tub to  
25 over the sink, correct?

1 A Yes.

2 Q Okay. Now, approximately how long was that crack?

3 Now, let's use from this juror to this juror, Juror 1 to 2. Was  
4 the crack the length from Juror 1 to Juror 2 or something else?

5 A It was -- I didn't measure but is.

6 Q I'm not asking you to measure. But just look at -- we  
7 have this whole jury box. Would I stop the crack in front of  
8 this juror, this juror, this juror? From beginning to end. How  
9 long was that crack?

10 A In between the first one.

11 Q The woman in the black jacket?

12 A Yeah. To the third one something like that.

13 Q So the gentleman right here?

14 A Yeah. Like that.

15 Q What about the width of this crack, was it as wide --

16 MS. GOODE: Let the record reflect that the witness  
17 indicated from Juror No. 6 through 4. Right direction.

18 Q Now, how wide was this crack if, again, standing in  
19 front of the jury box? Was the width of Juror No. 6, the  
20 partition right here?

21 A No.

22 Q Was it smaller?

23 A Yeah. Like you could say -- I could say like a line.

24 Q It wasn't that thick, it was like a line but it started  
25 at Juror No. 6?

1 A Yeah.

2 MS. GOODE: Let the record reflect that the witness  
3 indicated it wasn't the width of the jury box, but it was  
4 the length starting from Juror No. 6, No. 5 to No. 4.

5 A Yeah. If you look, it was big.

6 Q All right. Now, you also said that there was water  
7 coming down the walls, correct?

8 MR. MARANDO: Objection.

9 A I never say that.

10 THE COURT: Overruled.

11 Q But there was leaks, correct?

12 A Yes.

13 Q And those leaks, they came from where the crack was?

14 A Yeah, and the mold too.

15 Q We'll get to the mold but we're just talking about the  
16 cracks right now.

17 A Yeah.

18 Q And so would the leaks come from the length of the  
19 crack, would it only come from one section of the crack,  
20 describe that for us?

21 A That, I couldn't tell you exactly dimension but it came  
22 through the crack.

23 Q And this crack, it started from the tub to the sink?

24 A The sink to the tub. The same thing.

25 Q Yes or no, it started from the tub and ended up over

1 the sink?

2 A Yeah. They together. They right there.

3 Q Because you have the tub and then you have the sink  
4 that's right next to it?

5 A Yeah, right there. Next to.

6 Q How big would you say this bathroom is? Is it as big  
7 as from the stenographer to where you're sitting to the back  
8 wall or is it bigger than that?

9 A I could say that big bathroom --

10 Q We're talking about the large bathroom?

11 A Yeah. This is the door.

12 Q When you say the door, you mean the door where the  
13 jurors come out of?

14 A This is door of the bathroom.

15 Q Where you're sitting?

16 A Yeah. I could say all the way to the wall.

17 Q Okay.

18 MS. GOODE: So, let the record reflect that the  
19 witness is indicating from where he's sitting in the witness  
20 box all the way to the end of this wall.

21 A Yeah.

22 Q That would be the length of your bathroom?

23 A Yeah.

24 Q What would be the width of your bathroom?

25 A Width --

1 Q If we start from where the Judge is sitting, would it  
2 start from the Judge, across, as far as the width, or something  
3 else?

4 A The width, it could be --

5 Q Now, width we're talking about width, not length, but  
6 the wideness?

7 A Okay. Wide. I could say the wide is like it's very  
8 wide. It should be like maybe the wall to right here.

9 Q Okay.

10 MS. GOODE: So, let the record reflect the witness  
11 is sitting in the witness box.

12 Q So, would it be by your leg where my hand is by your  
13 leg?

14 A Probably.

15 Q Okay. And that's your right leg or your left leg?

16 A My right.

17 Q And you're sitting facing sideways towards the jurors  
18 so from your right leg all the way to where?

19 A I don't get it.

20 Q The width starts with your right leg and where would it  
21 end?

22 A Like that wall right there.

23 Q Okay.

24 MS. GOODE: So. The witness is indicating to the  
25 width behind him.

1 Q Correct? Behind where you're sitting?

2 A Yeah.

3 Q Okay. So, now we have the length, the width and we  
4 know how long the crack was and we know that water would come  
5 out of that crack.

6 Now, could you see the leaks as they were coming down?  
7 The water, could you see it visibly?

8 A Yes.

9 Q Okay. And would the water drop outside of the bathtub?

10 A Outside and inside. Both.

11 Q Okay. Outside and inside. And sometimes you would  
12 have to put a bucket there, right?

13 A Well, yeah. I could say yes and no. You could put  
14 like a little thing until it stop and then throw it away and  
15 then you put it in the sink. It's a little space between like  
16 this between the --

17 Q The tub and the sink?

18 A The tub and the sink. And if you put it in the tub or  
19 sink because it covered the little space.

20 Q You would put something in there to catch it?

21 A Yeah.

22 Q How big was the thing that you would use? A small  
23 trash can, a bucket or something else?

24 A Like, yeah.

25 Q Would it fill up?

1           A     No. Not really. Sometimes probably a little bit,  
2 sometimes more, sometimes less.

3           Q     It just depends how much it was?

4           A     Yes, how much water comes down.

5           Q     And it especially happened the two months before the  
6 incident, right? The leaking was more especially two months  
7 before the incident?

8           A     It was worse.

9           Q     Right. It was worse?

10          A     It was worse.

11          Q     Okay. Now, there was also, you said, mold, right?

12          A     Yeah. Like a brown -- well, that's what they call it,  
13 like a brown spot.

14          Q     Now, the brown spot, is it brown like inside the  
15 courtroom or lighter brown?

16          A     No. Between that brown, like that, you could call that  
17 brown.

18          Q     You mean the wall?

19          A     Like the light one and the dark, some part around the  
20 brown one and then it's a little light.

21          Q     Where was this brown spot located, over the tub, over  
22 the sink or something else?

23          A     Between the sink and the tub.

24          Q     And how about was the circumference, meaning how  
25 round -- was it round, square, rectangular?

1 A Well, I didn't measure. I just --

2 Q I know you didn't measure it.

3 MR. MARANDO: Judge, I mean, I get it, long day,  
4 but if we can just let the witness --

5 THE COURT: What's your objection, Counselor?

6 MR. MARANDO: If he could finish the answer.

7 THE COURT: Let's let him finish the answer. Sure.  
8 Ask the question again please.

9 MS. GOODE: Sure, Your Honor.

10 Q I said I know you don't know the dimension, but like we  
11 did with the crack and the bathroom, you see this podium here,  
12 was this spot as large as the brown stain was this big or  
13 smaller?

14 A I telling you what I see with my eyes calculate. I  
15 don't know how it's dimension but it was pretty big.

16 Q I'm not asking for dimensions. I'm asking you to take  
17 a look at this. See the podium I'm standing in front of you,  
18 see where I have my papers, was the spot bigger than this or  
19 smaller than this?

20 A I could say maybe this size.

21 Q About this size?

22 A Yeah.

23 MS. GOODE: Let the record reflect that the witness  
24 indicated that the podium I'm standing in front of, the  
25 brown spot was about this.

1 A Yeah.

2 Q And this was over the tub or between the tub and the  
3 sink?

4 A And the sink.

5 Q Okay. And was there a yellow spot also of mold or it  
6 was just the brown?

7 A It was the brown, like I said, and the yellow around.  
8 The brown was in the middle.

9 Q And then we had the yellow around it?

10 A Yeah.

11 Q Now, at the time of the incident, two months before  
12 when you had this big yellow thing and brown, did your son have  
13 a camera?

14 A No.

15 Q Did you have a camera?

16 A No.

17 Q You didn't have a phone?

18 A I have phone.

19 Q Did your phone have a camera?

20 A Yes.

21 Q Did your son's cellphone have a camera?

22 A I don't remember if my son -- yeah, I don't remember  
23 what kind of phone he got.

24 Q This was two months before, the phone that he -- did he  
25 use a camera or a phone to record you in the tub?

1 A My son.

2 Q Okay. And was that a phone or camera or a combination  
3 of both?

4 A No, it was a phone.

5 Q It was a phone. And that phone that he used to record  
6 you sitting in the tub, did he have that phone two months before  
7 the incident?

8 A I don't know.

9 Q But you had a phone?

10 A I had a phone.

11 Q Okay. Now, you told us the dimensions of the bathroom,  
12 where was -- when you opened the door, to go into the  
13 bathroom --

14 A Yes.

15 Q -- and you walked in, you could see this brown stain  
16 every day, correct?

17 A Yes.

18 Q Every day for two months you could see it?

19 A Yes.

20 Q Now, when you went to look when you showered, did you  
21 look up and you could see that stain as you showered?

22 A What do you mean?

23 Q When you shower sometimes people shower and they look  
24 up, they look down?

25 A Oh, looking up?

1 Q Yeah.

2 A No.

3 Q Okay. And this stain that was in the bathroom, your  
4 wife had a phone, right?

5 A Sure.

6 Q And she had a camera, right, in that phone?

7 A Yes.

8 Q And your oldest daughter, the one in high school at the  
9 time, I believe she went to Horace Mann?

10 A Yes.

11 Q She had a phone?

12 A I don't remember when I give a phone to my kids. I  
13 don't know.

14 Q But your son had a phone because he had it two months  
15 after the incident?

16 A Yeah. No, I never said he had a phone. I think, yeah,  
17 he had a phone.

18 Q Now, let's go to the day of the incident, when you woke  
19 up, you told us your family was still there and at some point  
20 they left and it was you and your son in the apartment, your two  
21 daughters went to school, your wife went to work?

22 A Yes.

23 Q And then you go to the bathroom?

24 A Yes.

25 Q Now, you're going to take a shower?

1 A Yes.

2 Q Okay. Do you have pajamas on, do you have a robe on,  
3 what do you have when you enter?

4 A I don't use robe. I don't remember exactly what I had.

5 Q But you had clothes on?

6 A I should be having something.

7 Q Did you have house slippers on or you just walked in  
8 bare feet?

9 A No, I don't have slipper.

10 Q So, you enter the bathroom, you turn the light on or is  
11 the light already on?

12 A The light is already on.

13 Q And when you enter, you turn on the light -- oh, the  
14 light's already on. You come into the bathroom, you don't hear  
15 anything unusual, correct?

16 A Yeah.

17 Q No?

18 A You don't hear nothing.

19 Q And you don't see anything unusual when you first enter  
20 the bathroom, correct?

21 A What you mean by --

22 Q Unusual. You don't see -- the ceiling isn't collapsing  
23 at that time, that would be unusual, right?

24 A No.

25 Q Then whatever you're wearing, you take it off, correct?

1 A Yeah.

2 Q Now, the tub, we have the sink on the left side and  
3 then we have the tub on the right side, correct?

4 A Yes.

5 Q Now, when you step into the tub, how do you step into  
6 it? Do you step into it by the sink or do you step into it from  
7 the front because it's a rectangular tub, correct?

8 A Yes.

9 Q And the tub has two sides, it has a left side and right  
10 side, correct?

11 A Yes.

12 Q And the shower nozzle is on the left side, correct?

13 A Yes.

14 Q Okay. And on the right side would be the bathroom  
15 floor, correct?

16 MR. MARANDO: Can I have that read back? I'm  
17 sorry.

18 THE COURT: Counsel, you have one minute? Do you  
19 want to break now?

20 MS. GOODE: Yes, Your Honor.

21 THE COURT: We're going to have to break for the  
22 day now. Can counsel approach?

23 MR. MARANDO: Yes.

24 (Whereupon, the following discussion takes place at  
25 sidebar among the Court and Counsel, outside the hearing of

1 the sworn jurors.)

2 THE COURT: Okay. So that's going to be it for  
3 today. Thank you for your attention. We have been lucky  
4 and another Judge has kindly offered his courtroom which has  
5 a jury room on the same floor so tomorrow, very importantly,  
6 we will not be meeting here. You will be meeting in Room  
7 621. That's where we'll be tomorrow at 9:30.

8 Again, I remind you, please don't discuss the case  
9 with anyone and have a good evening. Thank you.

10 COURT OFFICER: All rise. Jury exiting.

11 (Whereupon, the sworn jurors exit the courtroom.)

12 THE COURT: On the record. As I notified counsel,  
13 we've been given Room 621 for tomorrow. The jurors are  
14 being asked to come in at 9:30 a.m. The counsel has to  
15 transport the records to the new courtroom tomorrow. They  
16 can speak with my clerk to see if there's an assistant.

17 Now, my court officer is going to be give his  
18 appearance for the record and give notice of two issues.

19 COURT OFFICER: Officer Pompano. I was approached  
20 by two jurors about potential issues for their future  
21 attendance for the trial. Juror 6 approached me first. She  
22 informed me that this coming Friday, the 6th, she has  
23 preplanned travel expenses that she already paid for so  
24 that's already set up, a family vacation, and she's leaving  
25 Friday around noon. She could provide proof of prior

1 purchase for that.

2 Also, Alternate No. 1 informed me that next  
3 Tuesday, March 10th, she would have to be flying out to a  
4 different state for an uncle's funeral service so she said  
5 she's available up until that date of the 10th but services  
6 are being held.

7 THE COURT: Okay. Let's do the second one first,  
8 Alternate No. 1. My proposal, and I'm open to any ideas, is  
9 we just have her come in Tuesday, Wednesday, and then we see  
10 where we're at.

11 COURT OFFICER: That was Juror No. 6.

12 THE COURT: Oh, I apologize. You're right. That  
13 would be my proposal. We could talk to her tomorrow but  
14 otherwise direct her to come and we'll see how it plays out;  
15 does that make sense?

16 MR. MARANDO: Yes, Judge.

17 MS. GOODE: Yes, Your Honor.

18 THE COURT: Tell her she should come tomorrow.

19 Alternate No. 1, she's talking about in essence  
20 becoming unavailable next Tuesday. My suggestion would be  
21 the same, we would wait until Friday and see how it all  
22 plays out.

23 MS. GOODE: I agree, Your Honor.

24 THE COURT: Let them know they've been heard and  
25 they should come tomorrow and they should plan on being

1 here. Juror No. 6 should plan on being here Tuesday,  
2 Wednesday, Thursday at least and the other -- tell them they  
3 should plan on being here.

4 MR. MARANDO: Judge, tomorrow at 9:00, 9:15?

5 THE COURT: The courtrooms open at 9:15. I'm going  
6 to ask you to speak to the clerk. Maybe there's a cart or  
7 something you could use to transfer the records. That's not  
8 my jurisdiction and we're going to need media tomorrow in  
9 the new courtroom, right?

10 MR. MARANDO: I may, I may not. At this point, I'm  
11 probably done.

12 THE COURT: I think it's modernized actually Room  
13 621.

14 MR. MARANDO: Thank you, Judge.

15 MS. GOODE: Just so it's official, the reason I  
16 objected to future work and I didn't mind about as far as  
17 future pain and suffering, counsel was right, but when the  
18 plaintiff started talking about he can't work in the future,  
19 then I objected because we know that he's not putting  
20 anything in for future lost earnings and now the jurors hear  
21 he's not working now because of this.

22 THE COURT: I appreciate it, Counsel. I overruled  
23 it and it's in the record. I understand the fact he 's not  
24 working.

25 MR. FRANKLIN: Your Honor, one other thing to put

1 on the record.

2 THE COURT: If it's about a previous objection,  
3 we're not going to revisit all my rulings again.

4 MR. FRANKLIN: I think that the plaintiff, when he  
5 said he had no more money to see doctors --

6 THE COURT: That was also objected to and I  
7 overruled it so it's on the record. Okay. We'll see you  
8 tomorrow.

9 MR. MARANDO: Thank you, Your Honor. Have a nice  
10 night.

11 (Whereupon, the trial was adjourned to Tuesday,  
12 March 3, 2026 at 9:30 a.m.)

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