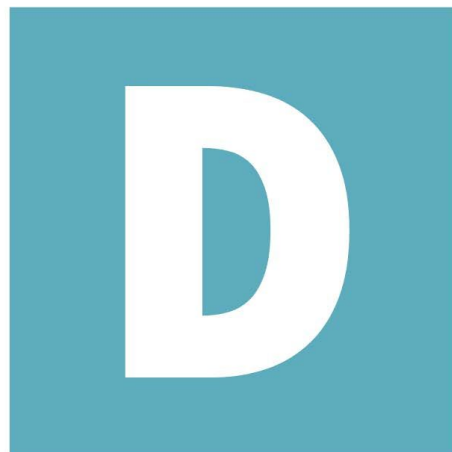


In The Matter Of:
JANE DOE v.
XYZ ASSOCIATION, LLC.

SAMPLE

RICHARD CAVIDAD
November 19, 2014
Confidential



Demo & Associates

IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY, PENNSYLVANIA

- - -

JANE DOE :

Plaintiff, :

vs. : No. 101200847

XYZ ASSOCIATION, LLC. :

Defendants :

- - -

November 19, 2014

- - -

Oral deposition of RICHARD CAVIDAD, taken pursuant to notice, held at 17 East Gay Street, West Chester, Pennsylvania 19381, commencing at 11:05 a.m., before Mary Smith, Registered Professional Reporter, there being present.

Demo + Associates
100 South Broad Street, Suite 720
Philadelphia, Pennsylvania 19110
215-557-7466

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

2

3 MCLAFFERTY & ASSOCIATES, P.C.

4 By: Sarah L. McLafferty, Esquire

5 12 South 22nd Street

6 Philadelphia, Pennsylvania 19103

7 Attorney for the Plaintiff

8

9 MISC LAW FIRM

10 By: Andrew P. Black, Esquire

11 Two Penn Center Plaza

12 1500 J.F.K. Boulevard, Suite 100

13 Philadelphia, Pennsylvania 19102

14 Attorney for Defendant, XYZ Association

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S T I P U L A T I O N

1 It is hereby stipulated and agreed by and

2 between Counsel that the filing and certification

3 have been waived, and that all objections, except

4 as to the form of the question, are waived until

5 the time of trial.

6

7 - - - -

8 RICHARD CAVIDAD, having first been duly

9 sworn, was examined and testified as follows:

10 BY MS. MCLAFFERTY:

11 Q. Good morning Mr. Cavidad. My name is Sarah

12 McLafferty, and I represent Jane Doe.

13 Have you been deposed before?

14 A. No.

15 Q. Let me just give you some brief instructions.

16 Essentially, this is a question and answer

17 session. We are just here to find out what you

18 remember, as well as what you don't remember.

19 So, just keep in mind that you don't have

20 to answer a question that you don't remember, and,

21 in fact, we would rather you not guess. Do you

22 understand that?

23 A. Definitely.

24 Q. Essentially, the purpose of the deposition is

25 to find out what you know. You are under oath

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1 today. The court reporter is taking down my
2 questions and your answers. It's important you
3 keep your answers verbal.
4 I see you are shaking your head. When we
5 go back to read the transcript, we can't see your
6 head shaking.
7 A. I understand.
8 Q. If there is any time you need a break, I don't
9 think we'll be long. If you need a break, let me
10 know and we'll accommodate you.
11 A. Okay.
12 Q. Can you give me your educational background,
13 briefly?
14 A. Yes. I went to West Chester University,
15 about nine credits away from graduating.
16 Q. What years was that?
17 A. 1996 to 2001. Then, also last spring.
18 Q. As I understand it, you are being deposed
19 because you were a bartender at XYZ; is that
20 correct?
21 A. Yes.
22 Q. Can you tell me what period of time you were a
23 bartender at XYZ?
24 A. From February of 2006 to February of 2012.
25 Q. During those six years, was that the only place

Page 6

1 you worked?
2 A. Yes.
3 Q. Was your sole responsibility bartender, or did
4 you have other responsibilities?
5 A. Just bartender.
6 Q. Between 2001 and 2006, did you have any kind of
7 employment?
8 A. Yes, I worked at Iron Hill.
9 Q. Iron Hill brewery?
10 A. Yes.
11 Q. Did you work at Iron Hill during those five
12 years?
13 A. I worked at Iron Hill when I was at college,
14 1998 until 2004.
15 Q. How about between 2004 and when you
16 started working at Kooma?
17 A. I worked at Kildare's.
18 Q. Is that also here in West Chester?
19 A. Yes.
20 Q. What kind of place is that?
21 A. It's an Irish pub and restaurant.
22 Q. How long did you work at Kildare's?
23 A. For about almost three years.
24 Q. 2004 to 2006?
25 A. Yes.

Page 7

1 Q. Was your position at Iron Hill a bartender?
2 A. Initially it was as a busboy, when I first
3 started, then a server and then a bartender.
4 Q. Can you give me basically the time frame?
5 A. Busser for about half a year, server for a
6 year-and-a-half, and the rest of the time I was
7 bartending.
8 Q. Let me give you one more instruction. I know
9 you know what I'm going to say. Let me finish the
10 question before you answer. It makes it hard for
11 him to get us talking at the same time.
12 A. Okay.
13 Q. When you went to Kildare's, were you strictly
14 a bartender?
15 A. I served and also bartended toward the end.
16 Q. What period of time did you serve and what
17 period of time did you bartend?
18 A. About a year serving and about a year
19 bartending.
20 Q. Do you recall who hired you to work at Kooma?
21 A. Jeff Cerra.
22 Q. What was Jeff's position?
23 A. He was the general manager.
24 Q. Were you hired to be a bartender there?
25 A. Yes.

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1 Q. Do you have any recollection of December 12th
2 of 2008, the evening?
3 A. No.
4 Q. Did you have an opportunity to talk to
5 Mr. Campbell prior to the deposition?
6 A. Yes, I did, right before we got in here.
7 Q. What did you talk about?
8 MR. CAMPBELL: Objection. Don't
9 answer that, privileged.
10 MS. McLAFFERTY: How is that
11 privileged?
12 MR. CAMPBELL: I'm representing
13 him as a former employee of Kooma. I can
14 represent a former employee.
15 MS. McLAFFERTY: Okay.
16 BY MS. McLAFFERTY:
17 Q. Did you review any documents?
18 A. No.
19 Q. Have you talked to anyone else, other than
20 Mr. Campbell, about this deposition?
21 A. No.
22 Q. Do you know Ryan McCool?
23 A. Yes.
24 Q. How long have you known Ryan?
25 A. Since 2004.

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1 Q. How did you meet him?
2 A. He actually showed me an apartment that I
3 eventually rented.
4 Q. Where was the apartment?
5 A. 317 South High Street.
6 Q. Can you tell me, after you met him, did you
7 socialize? What was your relationship after you
8 met him?
9 A. I saw him doing work in the apartment itself.
10 I started seeing him once I started working at
11 Kooma.
12 Q. How frequently did you see him at the
13 apartment?
14 A. Not very frequently, whenever something
15 needed to be done. It wasn't on a consistent
16 basis.
17 Q. How long did you live at 317 High Street?
18 A. One year. For a year.
19 Q. Do you know when it was you saw Ryan at Kooma?
20 A. I think after that, he showed me another
21 apartment, which we ended up not renting. That was
22 the next time I saw him. After I started working
23 at Kooma, I saw him. He would come in there
24 somewhat regularly.
25 Q. After you started working at Kooma, I think

Page 10

1 you said February, 2006?
2 A. Yes.
3 Q. When he came in, would he be coming in with
4 family or friends?
5 A. He usually came in with his girlfriend and his
6 best friend, Kevin, and his girlfriend.
7 Q. Were they coming in to eat, drink, both?
8 A. Mostly to eat.
9 Q. Do you know Kevin Lukins also?
10 A. Yes.
11 Q. How did you know Kevin?
12 A. The same way I know Ryan.
13 Q. Through the apartment?
14 A. Yes.
15 Q. When did you meet Kevin?
16 A. The same time I met Ryan.
17 Q. They were working together?
18 A. Yes.
19 Q. In 2004 when you met Ryan, you met Kevin?
20 A. Yes.
21 Q. Do you know the frequency you saw Kevin?
22 A. The same as I saw Ryan.
23 Q. Were they usually together when you saw them?
24 A. Yes.
25 Q. When you were working at Kooma, is it fair to

Page 11

1 say it was the location on Gay Street across from
2 Landmark?
3 A. Yes.
4 Q. When you started working at Kooma, was
5 Landmark there yet?
6 A. I don't know. I think it just opened.
7 Q. Did you have a certain shift that you worked
8 at Kooma?
9 A. Toward the end I worked every Wednesday
10 through Saturday.
11 Q. Toward the end of the time that you worked
12 there?
13 A. Yes.
14 Q. As of 2008, do you know whether you were
15 working Wednesday through Saturday?
16 A. Yes, I was.
17 Q. What hours did you work Wednesday through
18 Saturday?
19 A. Wednesday, I would come in at 4:00. We would
20 be done by 11:00. Thursday, I would come in at
21 4:00, be done about 11:30. Friday and Saturday,
22 4:00 to 2:00.
23 Q. Were you always working at the bar?
24 A. Yes.
25 Q. Did they serve food at the bar?

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1 A. Yes.
2 Q. What time did they serve food at the bar until?
3 A. 12:00.
4 Q. Every day until 12:00?
5 A. On the weekend, until 12:00. Wednesday and
6 Thursday, 10:30.
7 Q. Do you recall whether they had a full menu at
8 the bar?
9 A. Yes.
10 Q. How many bartenders did they have on duty at
11 Kooma on Friday and Saturday nights?
12 A. Two.
13 Q. Do you remember, did you typically get a large
14 crowd there?
15 A. Yes.
16 Q. What kind of -- can you give me an idea of the
17 crowd you would get?
18 A. I don't know the numbers. I just know it would
19 get busy.
20 Q. Do you know the occupancy there, maximum
21 occupancy?
22 A. Not exactly.
23 Q. Do you remember how many people you could seat
24 at the bar?
25 A. I think ten to fifteen.

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1 Q. We've heard some testimony that there would be,
2 after a certain hour, tables that would be removed
3 so more people could come into the bar, is that
4 your recollection?
5 MR. CAMPBELL: Objection to the
6 form.
7 THE WITNESS: Yes.
8 BY MS. McLAFFERTY:
9 Q. Do you know what time that would happen?
10 A. Usually around 10:00 or 10:30.
11 Q. Do you remember how many tables would be
12 moved?
13 A. I think three or four.
14 Q. After the tables were moved, could you still
15 serve food at the bar?
16 A. Yes.
17 Q. Were you able to serve anyone who was standing
18 in the area where the tables had been removed?
19 A. Serve them what?
20 Q. Anything, food or alcohol.
21 A. Yes.
22 Q. I already asked you whether you remember the
23 night of the 12th. You don't remember anything
24 about that?
25 A. No.

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1 Q. Do you remember whether Ryan came in that
2 night at all?
3 A. I don't.
4 Q. Did you hear about Ryan's accident?
5 A. Yes.
6 Q. How did you hear about his accident?
7 A. Just because, I don't know, just from knowing
8 people in work. I don't know exactly where I heard
9 it from. I heard what happened, and I was really
10 upset about it.
11 Q. There has been a mention of, I think, a Ben
12 Goldberg. Was he another bartender with you?
13 A. Yes.
14 Q. Do you recall whether he worked Friday nights
15 with you?
16 A. Yes, he did.
17 Q. Would he have been the bartender who worked
18 with you in December of 2008?
19 A. I think so.
20 Q. Would there have been any other bartenders
21 that worked Wednesday through Saturday?
22 A. No. The only thing I can think of, I'm not
23 sure when the other bar opened.
24 There was a bar on the other side that
25 opened. I don't remember when it opened.

Page 15

1 Q. When that bar opened, did you ever work that
2 other bar?
3 A. Randomly.
4 Q. How about Ben Goldberg, did he work that bar
5 as well?
6 A. No.
7 Q. If you can, give me an idea of how the
8 responsibilities were broken down, if at all,
9 between the bartenders on a busy night?
10 A. We just both worked the bar. There was no,
11 like, breakdown of any responsibility. We just
12 took care of the customers.
13 Q. Would it be fair to say that after 10:00,
14 the crowd was somewhat a younger crowd?
15 A. Sometimes.
16 Q. West Chester is a college town. Did you get a
17 lot of college students that would come into Kooma?
18 A. Sometimes.
19 Q. Did you know that Ryan was a college kid?
20 A. I didn't know if he was in college. I knew he
21 was.
22 Q. How about Kevin Lukins?
23 A. I kind of grouped them both the same.
24 Q. Do you know Brad Moore?
25 A. Real estate guy?

Page 16

1 Q. I think so.
2 A. Yes, he was friends with Kevin and Ryan.
3 Q. Yes?
4 A. Yes, I know him.
5 Q. And Chris Picariello?
6 A. I don't remember that.
7 Q. With the nickname Pooch?
8 A. It sounds familiar. I can't remember. One of
9 my friend's name is Pooch, but it's not Chris.
10 Q. So, do you remember whether Brad Moore would
11 come into Kooma?
12 A. Yes, he would come in.
13 Q. Can you give me an idea if at Kooma whether
14 there were any methods by which you would count a
15 patron's drinks?
16 A. It was just like any other, I guess, place I
17 have worked where we would just keep track of not
18 their drinks but how they looked when they
19 appeared at the bar.
20 Q. How would you do that?
21 A. You would see if they had glassy eyes, if
22 their speech was slurred, if their movement was
23 uneven, if they were dozing off.
24 Q. There wasn't any specific way to count the
25 number of drinks that were served?

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1 A. Not specifically.
2 Q. Was there any maximum amount of drinks you
3 would serve to any one person at Kooma?
4 A. No.
5 Q. Did you remember having a drink, a Stoli punch
6 drink?
7 A. Yes, that is a drink in every bar in town.
8 Q. Was there some special vodka drink that Kooma
9 was known for?
10 A. No. I mean, a Stoli punch is a Stoli punch.
11 It's a mixture of different flavored vodkas mixed
12 with vodka, orange juice and grenadine.
13 Q. How did you make it?
14 A. As I said.
15 Q. Ounces?
16 A. Probably two to two-and-a-half ounces of
17 alcohol.
18 Q. Would that be different types of vodka?
19 A. Yes, the flavored vodkas. That is why we
20 call it Stoli punch.
21 Raspberry, orange, vanilla, strawberry,
22 it's like a Long Island iced tea. It's not a drink
23 that is specific to Kooma.
24 It seems like everybody has the idea it
25 was specific to Kooma. Everybody made it and

Page 18

1 still makes it.
2 Q. The two, two-and-a-half ounces, would that all
3 be vodka?
4 A. Yes.
5 Q. Then what?
6 A. It would be served in a pint glass, orange
7 juice, pineapple and cranberry juice.
8 Q. Sixteen ounce glass?
9 A. Yes.
10 Q. Had you ever seen Ryan when he was drunk?
11 A. Never really saw Ryan drunk. He wasn't a big
12 drinker.
13 Q. Do you know whether he had a drink of choice
14 when you did see him?
15 A. Yes, he always drank Ketel One and tonic.
16 Q. Did you know anything about Ryan outside of
17 the real estate and when he would come into Kooma?
18 A. Yes, I mean, I knew him. I would consider him
19 a friend, because I knew his girlfriend, Brittany,
20 and they used to come in and they were friendly.
21 Brittany actually worked at Iron Hill with my old
22 roommate. So, I knew him, yes.
23 Q. Did you know anything about his work-out
24 habits? Were you one of the gym guys?
25 A. No, him and Kevin worked out a lot. I knew

Page 19

1 that. They were really into fitness.
2 Q. You remember nothing about December 12th; you
3 have no idea if it was a crowded night or anything
4 like that?
5 A. No.
6 Q. Do you know a Mike Pino?
7 A. Yes.
8 Q. Do you recall whether he was a barback on
9 Friday night?
10 A. I don't remember that night if he was working
11 or not, but he was a barback. At first, he worked
12 the door, then he became a barback.
13 Q. After you heard about the accident, did you
14 hear about anything that had taken place?
15 A. Yes, I heard that he was drinking beforehand,
16 and he went to Landmark and then apparently went
17 to Kooma and then went home, fell asleep and then
18 woke up and drove his car.
19 Q. So, you heard he was drinking beforehand. You
20 mean he was drinking before he went to Landmark?
21 A. Yes.
22 Q. Who did you hear that from?
23 A. I don't remember.
24 Q. Do you remember who you heard about the
25 accident from?

Page 20

1 A. I don't remember.
2 Q. Do you remember hearing anything about what
3 they were drinking at Landmark?
4 A. No, I don't remember.
5 Q. Do you remember hearing about how long they
6 had been at Landmark?
7 A. No. I just found it interesting because I
8 never saw him or Kevin get inebriated, especially
9 to that point. It was kind of a shock. They are
10 not big drinkers.
11 Q. But you heard he had been drinking before,
12 then he went to Landmark and then to Kooma and then
13 home?
14 A. Yes, that is what I heard.
15 Q. Then got up and was in a car accident?
16 A. Yes.
17 Q. Any other details you heard about that night?
18 A. I don't remember. It's kind of just a
19 memory, but I don't remember.
20 Q. You don't remember who told you that?
21 A. No.
22 Q. Do you remember how long after the accident
23 you heard about it?
24 A. Maybe about a week or two weeks after the
25 accident.

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1 Q. Understanding you don't remember December 12th,
2 I want to ask you some general questions about how
3 Kooma operated during that time frame.
4 A. Sure.
5 Q. I understand that a typical Friday night would
6 be two bartenders on duty?
7 A. Yes.
8 Q. On a typical Friday night, do you remember how
9 many servers would be on duty?
10 A. Four to six.
11 Q. The two bartenders, the ones that would be
12 filling the drinks for the servers?
13 A. Yes.
14 Q. And the two bartenders would also be serving
15 the people at the bar and anyone standing,
16 correct?
17 A. Yes.
18 Q. I know you don't have any specific numbers,
19 but can you give me an approximation, typically
20 what kind of numbers you would serve over the
21 course of a given Friday night?
22 A. What do you mean numbers?
23 Q. How many people would you serve alcohol to?
24 A. I don't remember.
25 Q. Do you remember the credit card system you

Page 22

1 used?
2 A. Yes, Digital Dining.
3 Q. What is that?
4 A. A computer system we used.
5 Q. We have the credit card search processing with
6 Hartland, does that sound familiar?
7 A. No.
8 Q. Were you ever involved with any of the
9 managerial responsibilities at Kooma?
10 A. No.
11 Q. Explain to me what Digital Dining is.
12 A. It's a computer interface. Basically, when
13 somebody goes to ring something in, they touch it,
14 and the software information goes into Digital
15 Dining.
16 Q. What information goes in there?
17 A. Mixed drinks, desserts. When you want
18 something, you ring it in on the computer dining.
19 Every restaurant has software. Some use Digital
20 Dining or Aloha.
21 Q. Is it Digital Dining that was used in 2008?
22 A. Yes.
23 Q. Does the Digital Dining take in the credit
24 card numbers as well?
25 A. Yes, it's a full computer that is planted on

Page 23

1 whatever, a counter.
2 It has a credit card swiper attached to
3 it. You ring something in, then swipe next to it,
4 and that is how you start a tab.
5 It would go through Digital Dining. I
6 don't know what credit card company took care of
7 the credit cards.
8 Q. On a Friday night, would you have an amount of
9 cash payers and credit card payers?
10 A. It would vary. Sometimes it would be all
11 credit card and sometimes all cash.
12 Q. Do you know where Ben Goldberg is now?
13 A. Yes.
14 Q. Where is he?
15 A. In Ardmore.
16 Q. Do you know what he does now or where he
17 works?
18 A. I don't know what he does, but I know he
19 lives in Ardmore and just got married a few months
20 ago.
21 Q. Are you still friendly with him?
22 A. Yes.
23 Q. Do you know if he has a recollection of the
24 accident?
25 A. I didn't talk to him about it. I didn't know

Page 24

1 if someone got in contact with him. I didn't
2 really want to talk to anybody about it.
3 Q. Have you seen Ryan since the accident?
4 A. Yes.
5 Q. Where have you seen him?
6 A. I saw him at Kooma. He would come in
7 afterwards. I also see him when I got to drop off
8 my rent. His brother is my landlord.
9 Q. You are still living in one of their
10 properties?
11 A. Yes.
12 Q. Have you ever talked with him about the
13 accident?
14 A. No.
15 Q. Have you ever talked with Kevin, or anybody
16 else about the accident?
17 A. I talked with Kevin, not about the accident,
18 but how it's sad to see how Ryan is now.
19 Q. Can you be more specific about what you mean
20 by that?
21 A. Before the accident, he was, like, a really
22 healthy, strong, athletic kind of guy. Now he has
23 that traumatic brain injury. He is my friend, and
24 it's kind of sad.
25 Q. What kind of interaction do you have with

Page 25

1 Ryan, other than when you see him with the rent?
2 A. That is the only interaction I have with him
3 now. I don't work at Kooma anymore. He doesn't
4 come out, and I work somewhere he doesn't come to.
5 The only time I ever see him is when I
6 drop off the rent, and we are still friendly. He
7 calls me, Rick, we are coming over to do something
8 at the house. That is it. I'm still friendly with
9 Kevin. I know he just got married.
10 Q. Do you recall any issues, or would you have
11 been aware of any issues at Kooma where there was
12 any citations having to do with the liquor license?
13 A. Yes.
14 Q. Tell me about that.
15 A. It was for serving somebody under age.
16 Q. When was that?
17 A. I don't remember the date, but I was the one
18 that served the person under age.
19 Q. What happened?
20 A. It was a very extenuating circumstance. There
21 was a bouncer already there. It was after 10:00, I
22 believe, and the power was off for, I think, fifteen
23 to twenty minutes.
24 So, we were transitioning, or closing, or
25 keeping it open. The power came back on.

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1 When you are a bartender and the power is
2 gone, you assume everyone is getting carded. It
3 was a frenzy. I don't remember who the person was
4 I served.
5 Q. Was there some kind of undercover sting
6 operation that they found that out?
7 A. There was somebody, obviously. They sent
8 somebody in there, the LCB did.
9 Q. Any other citations?
10 A. Not that I'm aware of.
11 Q. As of December of 2008, did you have any TIPS
12 or certifications?
13 A. I think I did.
14 Q. We heard testimony that was not a requirement?
15 A. That was not a requirement in Pennsylvania at
16 that time, but I had done it before. I had done
17 it in Delaware where I worked briefly for Iron Hill,
18 and I did it for Iron Hill when I worked there
19 afterward.
20 Q. I'm going to show you this very quickly, some
21 pictures of Kooma, and ask you to take a look at
22 them.
23 These pictures were taken more recently.
24 The restaurant has changed its name. For the
25 purpose of identifying the layout, I'll let you

Page 27

1 look at all of these.
2 Do those pictures pretty much show the
3 layout of the bar as it was when it was Kooma in
4 December of 2008?
5 A. Yes.
6 Q. There is some mention at one point there was a
7 sushi bar, is that right?
8 A. Yes.
9 Q. Where was the sushi bar?
10 A. Where the tables are right here.
11 Basically, it was right here, and the
12 sushi bar is where the partition is there. It went
13 through there and stretched along.
14 MS. McLAFFERTY: Let's mark this
15 as Exhibit-1.
16 (Photograph marked as Exhibit-1
17 for identification.)
18 BY MS. McLAFFERTY:
19 Q. Can you mark where the sushi bar was?
20 A. Here.
21 MS. McLAFFERTY: For the record,
22 he has marked an X on the left hand side of
23 Exhibit-1.
24 MS. McLAFFERTY:
25 Q. Was that partition there or not there?

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1 A. That was not there.
2 Q. That was added after the fact?
3 A. Yes.
4 Q. This was all one, and this was a sushi bar?
5 A. Yes.
6 Q. Was there any bartender at the sushi bar?
7 A. There was not a bartender at the sushi bar.
8 There were sushi chefs.
9 Q. If anyone was drinking alcohol at the sushi
10 bar, the servers would have to come to you to get
11 the alcohol?
12 A. Yes.
13 Q. Is it about the same size as the bar as it
14 was?
15 A. Yes, that is exactly the same.
16 Q. Did you have a certain side of the bar; in
17 other words, if there are two of you, do you work
18 the front and he worked the back, or vice-versa?
19 A. No.
20 Q. Everybody worked everywhere?
21 A. Yes.
22 Q. The way that the tables are laid out in the
23 picture, is that similar way at that time they would
24 have been laid out?
25 A. Yes, exactly.

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1 MR. CAMPBELL: He is looking at a
2 different picture now.
3 MS. McLAFFERTY: Let's mark that
4 as Exhibit-2.
5 (Photo marked as Exhibit-2 for
6 identification.)
7 BY MS. McLAFFERTY:
8 Q. That is how the tables are laid out?
9 A. Yes.
10 Q. Other than that change in the sushi bar, are
11 there any other changes that you see in the basic
12 layout of the place?
13 A. Not in the basic layout.
14 Q. The colors have changed?
15 A. Just the colors.
16 MS. McLAFFERTY: I'm going to mark
17 this as Exhibit-3.
18 (Photo marked as Exhibit-3 for
19 identification.)
20 BY MS. McLAFFERTY:
21 Q. This kind of shows the bar stools. Is that
22 approximately the same amount of bar stools that
23 were there in 2008?
24 A. I would say that it's not the same amount of
25 bar stools because they had different-sized bar

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1 stools. They weren't as small and as compact as
2 those are in Exhibit-3.
3 Q. Would you describe them, what the bar stools
4 were like back in December of 2008?
5 A. They were just taller. They were white in
6 color with a higher backing.
7 Q. Who was the manager in December of 2008 at
8 Kooma?
9 A. I know Dennis was the manager. I'm not sure
10 if it was Cat or Janine as the manager.
11 Q. Dennis Youn?
12 A. Yes.
13 Q. What would Dennis do on a Friday night; what
14 was his responsibility?
15 A. His responsibilities were to interact with the
16 guests, make sure the food came out of the
17 kitchen, support the employees on the floor, if
18 they needed help and ask the bartenders if they
19 needed anything behind the bar.
20 Q. Is it fair to say, on a given Friday night, at
21 least for this part of Kooma, that there would only
22 be two people serving alcohol as bartenders, and
23 then the servers would come to you to get the
24 alcohol orders filled?
25 A. Yes.

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1 Q. I believe you said you don't know whether the
2 smaller bar eventually opened on the other side,
3 was opened in December of 2008?
4 A. I don't remember.
5 Q. When it was opened, do you know whether or not
6 there was a separate bartender there serving
7 alcohol?
8 A. Yes, they had another bartender there.
9 Q. Was there a separate entrance?
10 A. It was through the side of the restaurant.
11 Where Exhibit-3 is, right there, you would walk past
12 seats and there was an entrance.
13 MS. McLAFFERTY: Let me show you
14 this, which I'll mark as Exhibit-4.
15 (Photo marked as Exhibit-4 for
16 identification.)
17 BY MS. McLAFFERTY:
18 Q. As I understand it, the front door to Kooma
19 was over here where you see the stand?
20 A. Yes, and this is the side door.
21 Q. Could you get into the side bar from the
22 street without walking through?
23 A. No.
24 Q. There is a door there. I guess that was
25 blocked off?

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1 A. Yes, that was definitely blocked off.
2 MS. McLAFFERTY: I think that is
3 all I have.
4 BY MR. MANN:
5 Q. Just a few followup questions.
6 You testified you kind of heard about
7 Ryan's accident through the grapevine, but you are
8 not sure who?
9 A. Yes.
10 Q. I believe you mentioned you were very upset
11 about it when you heard. What was the it that made
12 you upset?
13 A. What happened to him.
14 Q. The fact he was in an accident or the fact
15 you might have been the individual serving him?
16 A. The fact he was in an accident and the
17 severity of the accident.
18 Q. I believe also you mentioned a Ketel One and
19 tonic?
20 A. Yes.
21 Q. Was that always what Ryan drank?
22 A. Yes.
23 Q. Did you ever serve him anything other than a
24 Ketel One and tonic?
25 A. No. That is all that him and Kevin drank.

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1 Q. Did you ever socialize with Ryan or Kevin
2 outside of your position at Kooma?
3 A. What do you mean socialize?
4 Q. Did you ever meet him and hang out with them
5 and drink at a bar somewhere?
6 A. No.
7 Q. Any personal events, birthdays, anniversaries?
8 A. No.
9 Q. Do you have any contact with Ryan now at all?
10 A. Yes.
11 Q. That is with respect to something about your
12 apartment?
13 A. Yes, I rent through his brother, Andy McCool,
14 and he works for Andy, or they work together. It's
15 a family business. When I go to pay my rent, I
16 drop it off in person, and he is there.
17 Q. Do you understand Ryan McCool is still
18 employed by McCool Properties?
19 A. Yes.
20 Q. Have you seen Ryan do anything that would lead
21 you to believe that he is employed?
22 What types of tasks does he do for McCool
23 Properties that you are aware of?
24 A. The only thing I know, he is there when I drop
25 the rent off, and sometimes he calls me and let's me

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1 know when people are coming over for inspection.
2 MR. CAMPBELL: I'm a little
3 confused. Where are you talking about?
4 BY MR. MANN:
5 Q. Where is it you go to drop off the checks?
6 A. MAC Real Estate on High Street.
7 Q. MAC Real Estate?
8 A. Yes.
9 Q. M-A-C?
10 A. Yes, right across the street from the 711.
11 Q. How far back from today do you recall going to
12 drop off checks and seeing Ryan there in an
13 employed position or handling duties for McCool
14 Properties?
15 A. A few months ago.
16 Q. So, a few months ago is the first time you
17 have seen him at McCool Properties since the day of
18 the accident?
19 A. No. I saw him before that.
20 Q. How many times have you seen Ryan McCool at
21 MAC Real Estate when you went to drop off your
22 checks?
23 A. A couple of times.
24 Q. At least two times?
25 A. Yes.

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1 Q. More than five times?
2 A. No.
3 Q. How many times have you received a phone call
4 from Ryan McCool regarding MAC Properties or MAC
5 Real Estate?
6 A. Maybe, like, two or three times.
7 Q. When he calls, he is calling as a
8 representative of MAC Real Estate or McCool
9 Properties?
10 A. He just says, Rick, it's Ryan, I'm giving you
11 notice somebody is coming over to drop something
12 off or inspect your apartment tomorrow.
13 MR. CAMPBELL: This is after the
14 accident?
15 THE WITNESS: Yes.
16 BY MR. MANN:
17 Q. Have you ever called Ryan to talk about your
18 apartment, or anything to do with McCool
19 Properties?
20 A. No. I usually talk to Kevin or Andy directly.
21 Q. Your interaction with Ryan, recent
22 interactions after the date of the accident, when
23 you talk to him on the phone, does he appear to
24 have an idea of what is going on?
25 A. I necessarily don't talk to him long enough to

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1 be able to assess that. It's usually like less
2 than a minute phone call. I don't think it would
3 be fair to assess it that way, to give an
4 assessment of his state of mind.
5 Q. Fair enough.
6 When you do speak to him, does he appear
7 to get what he told you a few seconds before that?
8 A. Like I said, the longest I spoke to him was a
9 minute. I never got that idea that he did or did
10 not.
11 MR. MANN: Can we take a few
12 minutes break?
13 MR. CAMPBELL: Yes.
14 (At this time, a short recess was
15 taken.)
16 BY MR. MANN:
17 Q. Mr. Cavidad, as far as Ben Goldberg, do you
18 have his telephone number?
19 A. Yes.
20 Q. Would you provide it to us?
21 A. Yes.
22 Q. What is his number? And if you have his home
23 address, that would be great.
24 A. 610-360-6688.
25 Q. Any other contact information, home address?

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1 A. No.
 2 Q. Have you spoken to him recently?
 3 A. Yes.
 4 Q. How is he doing?
 5 A. Good. Just got married.
 6 Q. Do you know what he is doing in Ardmore, a job
 7 or anything like that?
 8 A. No.
 9 Q. Favorite place to hang out?
 10 A. No.
 11 Q. As far as the stories or version you heard as
 12 far as the night of the accident, I believe you
 13 summarized it with Ryan was drinking before he went
 14 to Landmark, Kooma, went home, fell asleep and went
 15 out and then had the accident. Was that all from
 16 one individual?
 17 A. I don't remember.
 18 Q. It's possible it was from a few stories?
 19 A. Yes.
 20 Q. December 12th into the 13th?
 21 A. I don't remember. It's a long time ago.
 22 Q. Did you happen to hear anything at all, as far
 23 as what Ryan may have consumed, as far as alcohol,
 24 prior to leaving his house, or going out?
 25 A. No, I didn't.

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1 have.
 2 MR. CAMPBELL: You are done, sir.
 3 (Deposition concluded at 11:55 a.m.)
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1 Q. Anything at all as far as what he might have
 2 had to eat or drink at Landmark?
 3 A. No idea.
 4 Q. Ben didn't happen to say he recalled seeing
 5 Ryan at Kooma that night?
 6 A. I didn't speak to Ben about it.
 7 Q. Do you recall anybody's name you did speak
 8 with about this?
 9 A. No.
 10 MR. MANN: No further questions.
 11 Thank you.
 12 MS. McLAFFERTY:
 13 Q. Real quickly, you mentioned that they both
 14 drank Ketel One and tonic?
 15 A. Yes.
 16 Q. Your impression is neither one were big
 17 drinkers?
 18 A. No.
 19 Q. How many drinks would they have when they came
 20 into Kooma?
 21 A. Two.
 22 Q. You never saw him drink anything other than
 23 Ketel One and tonic?
 24 A. No.
 25 MS. McLAFFERTY: That is all I

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1
 2 C E R T I F I C A T I O N
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 4
 5 I, Mary Smith, Registered Professional
 6 Reporter, do hereby certify that the proceedings and
 7 evidence are contained fully and accurately in the
 8 notes of testimony taken by me on the foregoing
 9 matter and that this is a correct and certified
 10 transcript of the same.
 11
 12
 13 *Mary Smith*
 14 Mary Smith, R.P.R.
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|---|---|---|--|---|
| <p style="text-align: center;">A</p> | <p>bar (37) 11:23,25;12:2, 8,24;13:3,15;14:23,24; 15:1,2,4,10;16:19;17:7; 21:15;27:3,7,9,12,19; 28:4,6,7,10,13,16; 29:10,21,22,25,25;30:3, 19;31:2,21;33:5</p> <p>barback (3) 19:8,11,12</p> <p>bartend (1) 7:17</p> <p>bartended (1) 7:15</p> <p>bartender (15) 5:19,23; 6:3,5;7:1,3,14,24; 14:12,17;26:1;28:6,7; 31:6,8</p> <p>bartenders (8) 12:10; 14:20;15:9;21:6,11,14; 30:18,22</p> <p>bartending (2) 7:7,19</p> <p>basic (2) 29:11,13</p> <p>basically (3) 7:4;22:12; 27:11</p> <p>basis (1) 9:16</p> <p>became (1) 19:12</p> <p>beforehand (2) 19:15, 19</p> <p>behind (1) 30:19</p> <p>Ben (6) 14:11;15:4; 23:12;36:17;38:4,6</p> <p>best (1) 10:6</p> <p>big (3) 18:11;20:10; 38:16</p> <p>birthdays (1) 33:7</p> <p>blocked (2) 31:25;32:1</p> <p>both (4) 10:7;15:10,23; 38:13</p> <p>bouncer (1) 25:21</p> <p>Brad (2) 15:24;16:10</p> <p>brain (1) 24:23</p> <p>break (3) 5:8,9;36:12</p> <p>breakdown (1) 15:11</p> <p>brewery (1) 6:9</p> <p>brief (1) 4:15</p> <p>briefly (2) 5:13;26:17</p> <p>Brittany (2) 18:19,21</p> <p>broken (1) 15:8</p> <p>brother (2) 24:8;33:13</p> <p>busboy (1) 7:2</p> <p>business (1) 33:15</p> <p>Busser (1) 7:5</p> <p>busy (2) 12:19;15:9</p> | <p>Can (13) 5:12,22;7:4; 8:13;9:6;12:16;14:22; 15:7;16:13;21:19; 24:19;27:19;36:11</p> <p>car (2) 19:18;20:15</p> <p>card (7) 21:25;22:5,24; 23:2,6,9,11</p> <p>carded (1) 26:2</p> <p>cards (1) 23:7</p> <p>care (2) 15:12;23:6</p> <p>cash (2) 23:9,11</p> <p>Cat (1) 30:10</p> <p>CAVIDAD (3) 4:8,11; 36:17</p> <p>Cerra (1) 7:21</p> <p>certain (3) 11:7;13:2; 28:16</p> <p>certification (1) 4:3</p> <p>certifications (1) 26:12</p> <p>change (1) 29:10</p> <p>changed (2) 26:24; 29:14</p> <p>changes (1) 29:11</p> <p>checks (3) 34:5,12,22</p> <p>chefs (1) 28:8</p> <p>Chester (3) 5:14;6:18; 15:16</p> <p>choice (1) 18:13</p> <p>Chris (2) 16:5,9</p> <p>circumstance (1) 25:20</p> <p>citations (2) 25:12;26:9</p> <p>closing (1) 25:24</p> <p>college (5) 6:13;15:16, 17,19,20</p> <p>color (1) 30:6</p> <p>colors (2) 29:14,15</p> <p>coming (5) 10:3,7;25:7; 34:1;35:11</p> <p>compact (1) 30:1</p> <p>company (1) 23:6</p> <p>computer (4) 22:4,12, 18,25</p> <p>concluded (1) 39:3</p> <p>confused (1) 34:3</p> <p>consider (1) 18:18</p> <p>consistent (1) 9:15</p> <p>consumed (1) 37:23</p> <p>contact (3) 24:1;33:9; 36:25</p> <p>Counsel (1) 4:3</p> <p>count (2) 16:14,24</p> <p>counter (1) 23:1</p> <p>couple (1) 34:23</p> <p>course (1) 21:21</p> <p>court (1) 5:1</p> <p>cranberry (1) 18:7</p> <p>credit (8) 21:25;22:5, 23;23:2,6,7,9,11</p> <p>credits (1) 5:15</p> <p>crowd (4) 12:14,17; 15:14,14</p> <p>crowded (1) 19:3</p> <p>customers (1) 15:12</p> | <p style="text-align: center;">D</p> <p>date (2) 25:17;35:22</p> <p>day (2) 12:4;34:17</p> <p>December (10) 8:1; 14:18;19:2;21:1;26:11; 27:4;30:4,7;31:3;37:20</p> <p>Definitely (2) 4:23;32:1</p> <p>Delaware (1) 26:17</p> <p>Dennis (3) 30:9,11,13</p> <p>deposed (2) 4:13;5:18</p> <p>deposition (4) 4:24;8:5, 20;39:3</p> <p>describe (1) 30:3</p> <p>desserts (1) 22:17</p> <p>details (1) 20:17</p> <p>different (3) 17:11,18; 29:2</p> <p>different-sized (1) 29:25</p> <p>Digital (7) 22:2,11,14, 19,21,23;23:5</p> <p>Dining (8) 22:2,11,15, 18,20,21,23;23:5</p> <p>directly (1) 35:20</p> <p>documents (1) 8:17</p> <p>Doe (1) 4:12</p> <p>done (6) 9:15;11:20,21; 26:16,16;39:2</p> <p>door (4) 19:12;31:18, 20,24</p> <p>down (2) 5:1;15:8</p> <p>dozing (1) 16:23</p> <p>drank (4) 18:15;32:21, 25;38:14</p> <p>drink (10) 10:7;17:5,6,7, 8,22;18:13;33:5;38:2, 22</p> <p>drinker (1) 18:12</p> <p>drinkers (2) 20:10; 38:17</p> <p>drinking (7) 19:15,19, 20;20:3,11;28:9;37:13</p> <p>drinks (7) 16:15,18,25; 17:2;21:12;22:17; 38:19</p> <p>drop (8) 24:7;25:6; 33:16,24;34:5,12,21; 35:11</p> <p>drove (1) 19:18</p> <p>drunk (2) 18:10,11</p> <p>duly (1) 4:8</p> <p>During (3) 5:25;6:11; 21:3</p> <p>duties (1) 34:13</p> <p>duty (3) 12:10;21:6,9</p> | <p>34:13</p> <p>employee (2) 8:13,14</p> <p>employees (1) 30:17</p> <p>employment (1) 6:7</p> <p>end (3) 7:15;11:9,11</p> <p>ended (1) 9:21</p> <p>enough (2) 35:25;36:5</p> <p>entrance (2) 31:9,12</p> <p>especially (1) 20:8</p> <p>Essentially (2) 4:16,24</p> <p>estate (7) 15:25;18:17; 34:6,7,21;35:5,8</p> <p>evening (1) 8:2</p> <p>events (1) 33:7</p> <p>eventually (2) 9:3;31:2</p> <p>everybody (3) 17:24,25; 28:20</p> <p>everyone (1) 26:2</p> <p>everywhere (1) 28:20</p> <p>exactly (4) 12:22;14:8; 28:15,25</p> <p>examined (1) 4:9</p> <p>except (1) 4:4</p> <p>Exhibit-1 (3) 27:15,16, 23</p> <p>Exhibit-2 (2) 29:4,5</p> <p>Exhibit-3 (4) 29:17,18; 30:2;31:11</p> <p>Exhibit-4 (2) 31:14,15</p> <p>Explain (1) 22:11</p> <p>extenuating (1) 25:20</p> <p>eyes (1) 16:21</p> |
| <p style="text-align: center;">B</p> <p>back (5) 5:5;25:25; 28:18;30:4;34:11</p> <p>background (1) 5:12</p> <p>backing (1) 30:6</p> | <p style="text-align: center;">C</p> <p>call (3) 17:20;35:3;36:2</p> <p>called (1) 35:17</p> <p>calling (1) 35:7</p> <p>calls (3) 25:7;33:25; 35:7</p> <p>came (6) 10:3,5;14:1; 25:25;30:16;38:19</p> <p>Campbell (10) 8:5,8,12, 20;13:5;29:1;34:2; 35:13;36:13;39:2</p> | <p style="text-align: center;">E</p> <p>eat (3) 10:7,8;38:2</p> <p>educational (1) 5:12</p> <p>else (2) 8:19;24:16</p> <p>employed (3) 33:18,21;</p> | <p style="text-align: center;">F</p> <p>fact (5) 4:21;28:2; 32:14,14,16</p> <p>fair (5) 10:25;15:13; 30:20;36:3,5</p> <p>familiar (2) 16:8;22:6</p> <p>family (2) 10:4;33:15</p> <p>far (7) 34:11;36:17; 37:11,12,22,23;38:1</p> <p>Favorite (1) 37:9</p> <p>February (3) 5:24,24; 10:1</p> <p>fell (2) 19:17;37:14</p> <p>few (7) 23:19;32:5; 34:15,16;36:7,11;37:18</p> <p>fifteen (2) 12:25;25:22</p> <p>filing (1) 4:3</p> <p>filled (1) 30:24</p> <p>filling (1) 21:12</p> <p>find (2) 4:17,25</p> <p>finish (1) 7:9</p> <p>first (4) 4:8;7:2;19:11; 34:16</p> <p>fitness (1) 19:1</p> <p>five (2) 6:11;35:1</p> <p>flavored (2) 17:11,19</p> <p>floor (1) 30:17</p> <p>follows (1) 4:9</p> <p>followup (1) 32:5</p> | |

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