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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

EQUAL EMPLOYMENT Case No. 8:07-CV-02612
OPPORTUNITY COMMISSION,

Plaintiff(s),

v.

BLOCKBUSTER INC.,

Defendant(s).

DEPOSITION OF LITA ZUBIATE

Bethesda, Maryland

August 22, 2008

9:30 a.m.

Job No. 1-135452

Pages 1-52

Reported by: Linda S. Kinkade, CSR, RMR, CRR

Spanish Language Interpreter: David Sperling

1 Q And why did you leave Target?
 2 A I left Target -- do I -- do I have to
 3 answer that question?
 4 Q Yes, ma'am.
 5 MR. PHILLIPS: Do you need legal advice?
 6 THE INTERPRETER: Should we go outside?
 7 MR. PHILLIPS: Hang on a second.
 8 (Discussion between interpreter and witness.)
 9 MS. KEILLER: We can mark this portion of
 10 the deposition as confidential, if that would allay
 11 some concerns.
 12 MR. PHILLIPS: I wouldn't ordinarily do
 13 this, but I think what I'll need to do is briefly
 14 consult with Ms. Zubiata off the record because of the
 15 nature of the objection I think I'm going to pose to
 16 the question. It's not necessarily a privilege issue,
 17 but it's a matter that -- it may be a matter that I'll
 18 have to instruct the witness to not answer the
 19 question on. And if that's the case, then before I
 20 instruct her to not answer, I want to make sure that
 21 I'm on firm ground doing that. So I'll need to
 22 consult with her in private. So I'm going to go ahead

1 and consult with my witness right now and be back in
 2 very, very shortly.
 3 MS. KEILLER: Let's go off the record.
 4 (Discussion was had off the record.)
 5 (Brief interruption.)
 6 MR. PHILLIPS: We're back on the record.
 7 For the record, EEOC posed objections to the question
 8 on the basis of relevancy and undue burdensomeness.
 9 Based on the nature of the burden, EEOC will instruct
 10 the witness to not answer the question. And the
 11 information involved is not -- we're not going to
 12 allow her to disclose that today.
 13 We understand that the defendant will reserve
 14 its right to, if it deems it necessary, to compel an
 15 answer to the question, and we would welcome any
 16 discussion before such motion to compel, but we're not
 17 going to allow the witness to answer the question
 18 today.
 19 MS. KEILLER: For the record, Blockbuster
 20 reserves its right to compel an answer to the
 21 question, if necessary.
 22 BY MS. KEILLER:

1 Q Let's move on. Where did you work before
 2 Target?
 3 A At a cleaning company that's called Able.
 4 Q How long did you work there?
 5 A Approximately nine or ten months.
 6 Q And what was your hourly wage?
 7 A Six fifty.
 8 Q When did you begin working for Express
 9 Personnel?
 10 A In January of 2005.
 11 Q And how did you hear about the position at
 12 Express Personnel?
 13 A My niece, Lolita, let me know about it.
 14 Q Did you fill out an application?
 15 A I don't recall.
 16 Q Did you have an interview?
 17 A No.
 18 Q Do you know who made the decision to hire
 19 you?
 20 A Ms. Cindy Brown.
 21 Q Do you mean Cynthia Brown, Cinnie?
 22 A Mrs. Brown.

1 Q Okay. And what position were you hired
 2 for?
 3 A She told me -- she told me -- Lolita told
 4 me the type of work it was, but -- that I was going to
 5 be performing, but I don't know exactly what the
 6 position was.
 7 Q And was the Blockbuster assignment your
 8 first for Express Personnel or did you do other
 9 assignments for Express Personnel?
 10 A No, it was the first assignment.
 11 Q And was it the only assignment?
 12 A Yes.
 13 Q And what were your job duties?
 14 A To put the labels onto the discs and to
 15 check to see whether they were broken and to place
 16 some stickers on them. That's all.
 17 Q And what were your work hours when you
 18 began your assignment?
 19 A I don't -- I can't recall exactly what time
 20 I would get on. On one occasion I would start at 9:00
 21 and then I would -- it was changed and I started at
 22 7:00. And two or three times they changed our work

<p style="text-align: right;">Page 21</p> <p>1 schedule.</p> <p>2 Q Do you know why your work schedule changed?</p> <p>3 A Yes.</p> <p>4 Q Why?</p> <p>5 A Because there were people who wanted to</p> <p>6 come in earlier and they wanted to work for longer so</p> <p>7 that they could make overtime.</p> <p>8 Q And when did your assignment at Blockbuster</p> <p>9 end?</p> <p>10 A I worked approximately -- I thought I</p> <p>11 worked for two months, but I spoke with Marisol and</p> <p>12 she said that it's on record that I worked at Express</p> <p>13 for one month.</p> <p>14 MR. PHILLIPS: And, again, I'll instruct the</p> <p>15 witness to not disclose the content of communications</p> <p>16 with EEOC counsel.</p> <p>17 BY MS. KEILLER:</p> <p>18 Q Try not to tell me about your conversations</p> <p>19 with Marisol or Mr. Phillips. Okay?</p> <p>20 A That's fine.</p> <p>21 Q Thank you. And why did your assignment</p> <p>22 end?</p>	<p style="text-align: right;">Page 23</p> <p>1 Q What's the name of the supervisor you're</p> <p>2 speaking of?</p> <p>3 A We knew him as Taj. I don't know exactly</p> <p>4 what his name was.</p> <p>5 MS. KEILLER: For the record, the spelling</p> <p>6 is T-A-J.</p> <p>7 BY MS. KEILLER:</p> <p>8 Q And who would translate his comments for</p> <p>9 you?</p> <p>10 A Lolita, Elizabeth.</p> <p>11 Q And did you ask them to translate for you</p> <p>12 or did they just do it on their own?</p> <p>13 A No, I asked them to translate, but they</p> <p>14 would just say he's saying for us to get to work.</p> <p>15 (Exhibit No. 2 marked for identification and</p> <p>16 attached hereto.)</p> <p>17 BY MS. KEILLER:</p> <p>18 Q I'm handing you the complaint in this</p> <p>19 lawsuit. Have you seen this document before?</p> <p>20 A No, I haven't seen this document before.</p> <p>21 The only document I've ever seen having to do with</p> <p>22 this trial is this document right here.</p>
<p style="text-align: right;">Page 22</p> <p>1 A How do you want me to answer?</p> <p>2 Q Were you terminated or did you quit?</p> <p>3 A I quit.</p> <p>4 Q Why did you quit?</p> <p>5 A Because I felt stressed out for the way</p> <p>6 that we were treated.</p> <p>7 Q How were you treated?</p> <p>8 A Generally speaking?</p> <p>9 Q Yes.</p> <p>10 A The supervisor, he would -- he would walk</p> <p>11 around with something either like rolled-up newspaper</p> <p>12 or cardboard and he would smack it down on his hands</p> <p>13 and he would shout out like sort of haranguing us.</p> <p>14 And he would be walking around like a military</p> <p>15 officer. And when they would translate what he was</p> <p>16 saying, they would say he was just saying get to work,</p> <p>17 but it was a lot more than that because he used to</p> <p>18 speak a lot more than that. And I could tell by his</p> <p>19 gestures that they were angry gestures and he would be</p> <p>20 smacking that thing on his hands. And then I would</p> <p>21 feel very stressed out. And my shoulders and my neck</p> <p>22 would -- would hurt because of it.</p>	<p style="text-align: right;">Page 24</p> <p>1 THE INTERPRETER: For the record, she is --</p> <p>2 MR. PHILLIPS: You can put that away.</p> <p>3 THE INTERPRETER: And you said put that</p> <p>4 away.</p> <p>5 MR. PHILLIPS: And there is no big mystery.</p> <p>6 Just for the record, it's a letter just telling her</p> <p>7 about the location, date and time of the deposition.</p> <p>8 That's all it is.</p> <p>9 BY MS. KEILLER:</p> <p>10 Q It's okay.</p> <p>11 A No. Excuse me.</p> <p>12 Q Anything your counsel, Mr. Phillips, or Ms.</p> <p>13 Ramos gave you, you don't have to show me.</p> <p>14 A Okay.</p> <p>15 Q I'm going to ask you a few questions about</p> <p>16 some of the allegations in the complaint. For the</p> <p>17 record, I'm referring to paragraph 18, page 5.</p> <p>18 Did anyone touch you while you were at your</p> <p>19 assignment at Blockbuster?</p> <p>20 A Me?</p> <p>21 Q Yes.</p> <p>22 A No.</p>

<p style="text-align: right;">Page 29</p> <p>1 Answer the question.</p> <p>2 BY MS. KEILLER:</p> <p>3 Q I'll clarify. Were you assigned duties</p> <p>4 that were not part of your job?</p> <p>5 A No.</p> <p>6 Q Were you ever sent home prior to the time</p> <p>7 you were supposed to get off of work?</p> <p>8 A Yes.</p> <p>9 Q Who sent you home?</p> <p>10 A I can't remember, but I think it was Taj</p> <p>11 who would let me know that I could or I should leave.</p> <p>12 Q Why?</p> <p>13 A Because there wasn't enough work.</p> <p>14 Q Did anyone yell at you at work?</p> <p>15 A Not directly, but -- but Taj would do so</p> <p>16 generally.</p> <p>17 Q When you say "generally," do you mean yell</p> <p>18 at everyone at work or yell -- or was he yelling while</p> <p>19 he was around you?</p> <p>20 A He would walk around shouting. He would</p> <p>21 walk around shouting. He would come up close. The</p> <p>22 distribution -- I don't know how to explain -- can I</p>	<p style="text-align: right;">Page 31</p> <p>1 move this way to the right, you could see a different</p> <p>2 attitude in his face, in his facial expression, which</p> <p>3 was, like, more friendly towards the black people.</p> <p>4 BY MS. KEILLER:</p> <p>5 Q Did you ever see him shout at</p> <p>6 non-Hispanics?</p> <p>7 A Yeah. He might have shouted, but in his</p> <p>8 face you could tell that it was more friendly. It was</p> <p>9 something friendly. And his gestures showed that as</p> <p>10 well.</p> <p>11 Q Did anyone else yell at you or shout at</p> <p>12 you?</p> <p>13 A No.</p> <p>14 Q Did you ever do any training while you were</p> <p>15 assigned to Blockbuster?</p> <p>16 A I don't know if you'd consider it training</p> <p>17 when Lolita taught me what to do, the job she did and</p> <p>18 Elizabeth did.</p> <p>19 Q Did you ever ask for training from someone</p> <p>20 other than Lolita or Elizabeth?</p> <p>21 A Who? Ask who?</p> <p>22 Q Anyone.</p>
<p style="text-align: right;">Page 30</p> <p>1 explain by talking about how the things were</p> <p>2 distributed in there?</p> <p>3 Q Yes.</p> <p>4 THE INTERPRETER: The interpreter is going</p> <p>5 to -- because the times of the gesture that</p> <p>6 accompany -- that will accompany the text, the</p> <p>7 interpreter is going to ask her to break it down.</p> <p>8 Because she makes gestures which are not verbal and</p> <p>9 they can't go on the record and I can't -- I'm unable</p> <p>10 to recall the multiple gestures, at least five of them</p> <p>11 that were just made.</p> <p>12 So I'm going to ask the witness, if the</p> <p>13 attorneys are okay with it, to repeat it from the very</p> <p>14 beginning and then I can break it down and do it</p> <p>15 accurately.</p> <p>16 MS. KEILLER: Thank you.</p> <p>17 THE WITNESS (through the interpreter):</p> <p>18 There was a central alleyway. He would walk along</p> <p>19 that lane or alleyway and he would be banging away on</p> <p>20 the newspaper or piece of cardboard shouting. And he</p> <p>21 would address or shout towards the area where almost</p> <p>22 all of the Hispanics were. And that when he would</p>	<p style="text-align: right;">Page 32</p> <p>1 A I would ask -- well, I would -- with regard</p> <p>2 to the job, I would just ask Elizabeth or Lolita.</p> <p>3 Q Did you ever ask Linc or Taj?</p> <p>4 A No.</p> <p>5 MS. KEILLER: For the record, Linc is</p> <p>6 L-I-N-C.</p> <p>7 BY MS. KEILLER:</p> <p>8 Q Did anyone ever make racial comments to</p> <p>9 you, I mean comments about your race?</p> <p>10 A (In English): I don't remember.</p> <p>11 THE WITNESS (through the interpreter): I</p> <p>12 can't remember -- excuse me -- I can't remember. But</p> <p>13 one time, on one occasion, I heard something about</p> <p>14 Hispanics, you know. They would sort of set up</p> <p>15 competitions. They would say, like, this table is the</p> <p>16 Hispanics. This table are you all. I don't know if</p> <p>17 you consider that racial.</p> <p>18 BY MS. KEILLER:</p> <p>19 Q Who set up the competitions?</p> <p>20 A Taj.</p> <p>21 Q And can you tell me about the competitions?</p> <p>22 What were they like?</p>

<p style="text-align: right;">Page 45</p> <p>1 providers?</p> <p>2 A No.</p> <p>3 Q And what are you seeking from this lawsuit?</p> <p>4 MR. PHILLIPS: I'll object to the</p> <p>5 foundation, but she can answer.</p> <p>6 THE WITNESS: Just to be a witness.</p> <p>7 MS. KEILLER: I have no further questions</p> <p>8 for now.</p> <p>9 MR. PHILLIPS: Just a couple of questions.</p> <p>10 EXAMINATION</p> <p>11 BY MR. PHILLIPS:</p> <p>12 Q When you were working at the Blockbuster</p> <p>13 warehouse, were the black employees allowed to take</p> <p>14 longer breaks than the Hispanics?</p> <p>15 A I never timed it per se, but I do know that</p> <p>16 they were given longer breaks.</p> <p>17 Q Was that fairly frequent?</p> <p>18 A Yes.</p> <p>19 Q You mentioned that Taj would do a lot of</p> <p>20 yelling; is that correct?</p> <p>21 A Yes.</p> <p>22 Q Was that a daily occurrence?</p>	<p style="text-align: right;">Page 47</p> <p>1 hands. She is really small and thin and she looks</p> <p>2 very -- she looks very subdued. And she would turn --</p> <p>3 or submissive.</p> <p>4 THE INTERPRETER: Interpreter correction.</p> <p>5 Not "subdued," submissive.</p> <p>6 THE WITNESS (through the interpreter): She</p> <p>7 would turn red and get very nervous. And yet he would</p> <p>8 continue to be staring at her. He would stare and</p> <p>9 stare at her. I would -- he would sit right across</p> <p>10 from me, but he would not look at me. And I, the way</p> <p>11 I saw it is that she felt humiliated as he did this.</p> <p>12 At least that's what I observed for the time that I</p> <p>13 worked there.</p> <p>14 BY MR. PHILLIPS:</p> <p>15 Q And would you consider Taj's attitude</p> <p>16 toward the Hispanics hostile?</p> <p>17 A Yes, I would consider it hostile.</p> <p>18 MR. PHILLIPS: No more questions.</p> <p>19 MS. KEILLER: Just one follow-up question.</p> <p>20 EXAMINATION</p> <p>21 BY MS. KEILLER:</p> <p>22 Q You said that you knew that the blacks had</p>
<p style="text-align: right;">Page 46</p> <p>1 A Yes.</p> <p>2 Q Was that a constant occurrence throughout</p> <p>3 the day?</p> <p>4 A What do you mean constant? Do you mean</p> <p>5 whether the whole day long he was shouting?</p> <p>6 Q I'll withdraw the question and rephrase.</p> <p>7 Was the shouting at the workers frequent during the</p> <p>8 day?</p> <p>9 A They were every day? Are you talking</p> <p>10 about -- are you asking whether they were every day?</p> <p>11 Q Did it happen often during each day?</p> <p>12 A I believe that when the morning would start</p> <p>13 he would shout. And then by noon once again. And</p> <p>14 then in the afternoon I think -- the routine was</p> <p>15 pretty much like that, three times a day.</p> <p>16 Q How did Taj treat Milagros Ledesma?</p> <p>17 A Taj would sit right across from me, in</p> <p>18 front of me, but he would never look at me. But he</p> <p>19 would be watching Milagros who sat next to me. He</p> <p>20 would watch while we did our job, which was to look</p> <p>21 for the broken DVDs and put the stickers on. He would</p> <p>22 watch her for a long time. He would look at her</p>	<p style="text-align: right;">Page 48</p> <p>1 longer breaks?</p> <p>2 A Yes.</p> <p>3 Q How did you know that?</p> <p>4 A Because we would all have a break and they</p> <p>5 would come back after we would. Because they would</p> <p>6 exit through the garage door.</p> <p>7 Q Did everyone take breaks at the same time?</p> <p>8 A No, but sometimes it would coincide that</p> <p>9 the black people and we would have our breaks at the</p> <p>10 same time.</p> <p>11 Q Did you take your break at the same time</p> <p>12 every day?</p> <p>13 A No. We would take it at the time that they</p> <p>14 would tell us to.</p> <p>15 MS. KEILLER: No further questions.</p> <p>16 MR. PHILLIPS: We'll read and sign.</p> <p>17</p> <p>18 (Signature having not been waived, the</p> <p>19 deposition of LITA ZUBIATE was concluded at 11:07</p> <p>20 a.m.)</p> <p>21</p> <p>22</p>