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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

MOHAMMED HAMED By His Authorized)
Agent WALEED HAMED,)
) CIVIL No. SX-12-CV-370
Plaintiff,)
) ACTION FOR DAMAGES
vs.) INJUNCTIVE AND
) DECLARATORY RELIEF
FATHI YUSUF and UNITED) JURY TRIAL DEMANDED
CORPORATION,)
)
Defendants.)
_____)

CERTIFIED TRANSCRIPT

The Hearing in the above-entitled action was heard
before the HONORABLE DOUGLAS A. BRADY, JUDGE, in Courtroom
No. 211, Kingshill, St. Croix, on Friday, January, 25th,
2013, at approximately 10:30 a.m.

SUZANNE A. OTWAY-MILLER
REGISTERED PROFESSIONAL REPORTER
SUPERIOR COURT OF THE VIRGIN ISLANDS
KINGSHILL, ST. CROIX, U.S.V.I.
(340) 778-9750

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ON BEHALF OF THE PLAINTIFF:

JOEL HOLT, ESQUIRE
Law Offices of Joel H. Holt
2132 Company Street, Suite 2
Christiansted,
U.S. Virgin Islands 00820
(340)773-8709
holtvi@aol.com

CARL J. HARTMANN, III, ESQUIRE
5000 Estate Coakley Bay, L6
Christiansted,
U.S. Virgin Islands 00820
Carl@carlhartmann.com

ON BEHALF OF THE DEFENDANT:

NIZAR A. DeWood, ESQUIRE
The DeWood Law Firm
2006 Eastern Suburb, Suite 101
Christiansted,
U.S. Virgin Islands 00820

CHRISTOPHER M. DAVID, ESQUIRE
Fuerst Ittleman David & Joseph, PL
1001 Brickell Bay Drive, 32nd Floor
Miami, FL 33131
(305)350-5690
cdavid@fuerstlaw.com

JOSEPH A. DiRUZZO, III, ESQUIRE
Fuerst Ittleman David & Joseph, PL
1001 Brickell Bay Drive, 32nd Floor
Miami, FL 33131
(305)350-5690
jdiruzzo@fuerstlaw.com

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P R O C E E D I N G S

1
2 THE COURT: Good morning.

3 THE CLERK: **Mohammad Hamed by his authorized**
4 **agent, Waleed Hamed versus Fathi Yusuf and United**
5 **Corporation.**

6 MR. HOLT: For the record, my name is Joel Holt
7 along with Carl Hartmann. I represent Mr. Mohammad
8 Hamed.

9 MR. DiRUZZO: May it please the Court, good
10 morning, Your Honor. Joseph DiRuzzo together with
11 Christopher David and Nizar DeWood, we represent the
12 United Corporation and Fathi Yusuf.

13 THE COURT: The matter is before the Court this
14 morning on plaintiffs' Emergency Motion and
15 Memorandum to Renew Application for TRO, and
16 defendants' Response in Opposition to Plaintiffs'
17 Renewed TRO Application. Those are the -- that is
18 the only matter that's before the Court and that's
19 the only matter that we'll be entertaining today, and
20 we will take evidence as necessary to address that.

21 So I'll -- I guess I'll ask Attorney Holt on
22 behalf of the plaintiff, is there anything
23 preliminarily before you call your first witness?

24 MR. HOLT: The only preliminary matter we have,
25 which we would like to do before the first witness is

1 to ask the Court to take judicial notice of the four
2 items that we submitted to the Court.

3 One is the transcript of Mr. Yusuf given in
4 another Superior Court case; the second item is the
5 Rule 12 motion filed by the defendants in this case;
6 third item is the Rule 12 Reply Memorandum filed by
7 the defendant in this case. And the fourth matter is
8 a complaint, certified copy of a complaint that was
9 filed by United Corporation against Waleed Hamed, and
10 each of those contains what we assert to be judicial
11 admissions which we would like to use in this
12 proceeding.

13 THE COURT: Yes.

14 MR. DiRUZZO: Your Honor, we would object, one
15 in respect to the deposition transcript of Fathi
16 Yusuf. We object under the rule of completeness,
17 especially it appears that plaintiffs intend to
18 selectively cherry pick certain portions of that
19 document. The document speaks for itself, but we
20 would not concede that those qualify as an admission.

21 In respect to the documents that are filed in
22 this case, the fact that they are filed, if that's a
23 judicial notice that the Court is willing to do
24 that's not a problem, but as far as anything else,
25 I -- we would object.

1 And as to the certified copy of the complaint
2 filed in a related case at its preliminary matter,
3 that complaint hasn't been served so there is no
4 action ongoing. However, if the Court wants to take
5 judicial notice that it has been filed, we won't
6 object to that because that's the truth, it has been
7 filed.

8 So although we would anticipate, of course,
9 during the course of discovery in that case to the
10 extent that we get there, that the factual
11 allegations contained in that complaint would be
12 amended as the facts come to light in the court
13 through normal discovery means. We don't take the
14 position that the facts as alleged in that complaint
15 are necessarily the actual facts. Those facts as
16 alleged just put the defendant on notice as is
17 required under the Federal Rules of Civil Procedure
18 under those pleadings.

19 THE COURT: Thank you.

20 MR. DiRUZZO: Can I briefly respond. As to the
21 first item, we have -- we intend to offer the entire
22 deposition. As a matter of fact, we submitted a
23 certified copy of the deposition before today's
24 hearing, so it's already in the court record.

25 We have done a summery of the key parts

1 permitted under Rule 1001, so that the Court doesn't
2 have to guess as to which part we're talking about,
3 and those parts have not only been separated out,
4 Exhibit 1 is a -- Deposition Exhibit 1A are the
5 summary excerpts, so the Court can direct its
6 attention to specific matters that we believe to be
7 highly relevant in this case.

8 Items two and three They've conceded. Item
9 number 4 on the complaint, it's a certified complaint
10 that's in this court so it doesn't matter whether
11 it's served or not. But just for the matter it was
12 served yesterday or the day before.

13 THE COURT: All right. Thank you for that.
14 Your concern Mr. DiRuzzo, regarding the deposition
15 transcript should be laid by the fact that the entire
16 transcript is presented and now is in the Court's
17 record.

18 I'll address these evidentiary matters when they
19 are presented. I don't know if the plaintiff is
20 presenting them right now, but I will grant -- I will
21 take judicial notice of those matters.

22 Yes, sir.

23 MR. DIRUZZO: As for the -- on the defense side
24 for point of order, another preliminary matter, the
25 defendant would invoke the rule of sequestration and

1 would ask that all witnesses who are not parties to
2 the case be asked to stay outside the room and not
3 talk about their potential testimony, or to the
4 extent that they have testified that they would --
5 their testimony that they have testified to to other
6 potential witnesses.

7 And Mr. David will address the Rule 408 motion.

8 MR. HOLT: I have no objection to sequestration.

9 THE COURT: Anybody who's going to be a witness
10 in this case, you are excused from the courtroom at
11 this time. Thank you very much for being here, and
12 sorry that you can't participate in the viewing but
13 those are the rules.

14 Any other persons who are going to be witnesses?
15 Counsel, make sure you don't have any of your
16 witnesses in the courtroom, please.

17 MR. HOLT: Other than the parties, correct.

18 THE COURT: Yes, that's Mr. Mohammad Hamed who's
19 here, Mr. Mahar Yusuf is here as the representative
20 of United.

21 MR. DiRUZZO: Yes, sir, he's the president of
22 United Corporation.

23 THE COURT: And Fathi Yusuf is not present?

24 MR. DAVID: Not present, Your Honor.

25 THE COURT: Very well.

1 MR. DAVID: Your Honor, counsel has indicated
2 that their moving papers and cited at length in their
3 moving papers a number of statements allegedly made
4 during a mediation settlement conference as proof of
5 liability to establish liability as to the alleged
6 partnership.

7 They have offered and quoted at length letters
8 from Attorney DeWood to Attorney Holt following up on
9 settlement offers, laying out settlement offers and
10 discussing different possible potential to settle or
11 otherwise resolve of the claim.

12 Rule 408 explicitly precludes the admission of
13 those type of documents for the purpose they are
14 being offered here today. They are being offered to
15 establish liability, which means the existence of
16 this alleged partnership. They are using Mr. DeWood
17 use of the term nakedly partnership as a fact that
18 there was, in fact, a partnership.

19 It was clearly a settlement negotiation. It was
20 a follow up, it was a settlement agreement, it has
21 all the ear marks of being protected under Rule 408,
22 and the plaintiff should not be allowed to use
23 settlement discussions and admissions and statements,
24 or alleged admissions and statements and settlement
25 discussions, which parenthetically are not complete

1 because they are follow-up letters from Mr. DeWood
2 that would otherwise preclude it.

3 Your Honor, it would chill the settlement
4 process, it would chill the mediation process, and it
5 would make potentially both Mr. DeWood a witness and
6 Mr. Holt a witness when Rule 408 is designed to
7 prevent such a side show from occurring. So we would
8 ask that any reference -- that the plaintiff be
9 precluded from any reference to any type of -- any of
10 these settlement negotiations.

11 Now, Your Honor, I anticipate counsel is going
12 to provide you with some case law, because I believe
13 it was in one of their responsive pleadings that
14 suggests that they are allowed to use that. The case
15 law that counsel is relying on, I don't have the case
16 citation, I remember the case law suggests or states
17 when one party -- when the -- you cannot use them
18 offensively, you can use them defensively, so they
19 are using them offensively, and we don't believe that
20 you should be able to allow that settlement
21 communications to be offered as factual predicates
22 for their case in chief, Your Honor.

23 THE COURT: Thank you.

24 MR. HOLT: Your Honor, there are three exhibits,
25 they've been premarked as Exhibits 10, 11 and 12,

1 they are dated February 2012 and March of 2012, all
2 well before I was ever in this case so they aren't
3 communications with me at all.

4 They -- Exhibit Number 10 is an e-mail from
5 Mr. Nizar to Waleed Hamed, and basically it's been
6 proffered because it says that he will be sending a
7 formal notice of partnership disillusion. And then
8 it refers to an attachment, and attached to that
9 e-mail is a letter from Mr. DeWood addressed to
10 Mr. Mohammad Hamed, my client, officially dissolving
11 the partnership, listing the assets of three grocery
12 stores and then talking about discussions how to
13 finish the disillusion.

14 And so it has nothing to do with settlement.
15 It's a notice of disillusion, it's a listing of the
16 assets, and it's an indication they want to meet to
17 have an orderly disillusion.

18 The third document, Exhibit 12, is dated March
19 13th, and that is -- the e-mail, says, "Please sign
20 the attached partnership disillusion agreement."
21 That disillusion has several things that are key
22 here, one it starts off, says, "Whereas the partners
23 that have operated the partnership under an oral
24 agreement since 1986."

25 Then talks about Mr. Yusuf withdrawing from the

1 partnership pursuant to the notice of that
2 discussion, and wanting to resolve their differences.
3 And it talks about the parties of shared profits,
4 losses, deductions, credits and cash. And then it
5 goes over on the next page and it lists the three
6 assets again, the Plaza Extra east store, the Plaza
7 Extra west store and the Plaza Extra St. Thomas. And
8 those are the only items that I intend to refer to
9 because I think they are all factual statements of
10 notice of disillusion, listing of assets, and then
11 efforts to try to get the disillusion moving.

12 THE COURT: Are they not presented in the
13 context of proposed settlement?

14 MR. HOLT: Not at all. The notice of
15 disillusion, we're dissolving that. That gives you
16 notice.

17 THE COURT: That's number 10 or number 11?

18 MR. HOLT: Number 10 is only important one. The
19 e-mail covers number 11. Number 11 is -- and this is
20 the notice of disillusion, and it talks about three
21 assets, and then it talks about how we'll proceed
22 from there. And number 11 is the notice of
23 disillusion. And then number 12 is the proposed
24 partnership disillusion agreement. Whereas the
25 whereas clauses talks about how we got here, and it

1 lists the assets. And then when this gets to where
2 we're going to go from here, I'm not going to offer
3 any of that.

4 MR. DAVID: Your Honor, as a brief follow up.
5 Your Honor, the dispute preexisted the first letter
6 and was a response and an effort by -- an effort
7 through Mr. DeWood on behalf of the Yusuf family to
8 resolve their differences. Those were words counsel
9 just used, resolve their differences.

10 If we have to have Mr. DeWood testify that there
11 was a dispute, I don't think that -- there clearly
12 was a dispute at the time they were trying to resolve
13 their issue between them. So we think it is clearly
14 prohibited by 408 and they should be excluded.

15 THE COURT: And what about if only the whereas
16 clauses are presented?

17 MR. DAVID: Well, Your Honor, the whereas
18 clauses they are being offered for the -- they are
19 being offered as a fact. There's no context to why
20 the whereas clauses were used. There is no
21 discussion. The documents weren't signed, you know,
22 so you don't have this issue -- you don't have any --
23 you get into the whole issue of why didn't you sign
24 off on the whereas clauses? Why didn't you approve
25 that part of the agreement.

1 And then we get into all the settlement
2 discussions and why people didn't sign, and why that
3 language was included which is exactly what 408 is
4 designed to preclude and designed to keep us out of
5 this swamp so we don't have to have witnesses and
6 lawyers testifying about why they used words in
7 settlement agreements, Your Honor.

8 If it's a pink house or magenta house it really
9 doesn't matter what the if we've defined what our
10 agreement is related to the house. So using these
11 words that's the context problem. What they were
12 doing is they are trying to use a -- what's clearly a
13 settlement negotiation is clearly derived to resolve
14 the differences between these people which preexisted
15 these letters.

16 And they want to use -- cherry picked pieces of
17 them which were never signed or executed out to
18 establish a fact here to say this is, in fact, a
19 partnership, Judge, when to get the context you would
20 have to dig deep into the settlement discussions that
21 were -- that occurred prior to those letters being
22 sent, Your Honor, which is exactly what 408 doesn't
23 want us to do because if you do that you start
24 talking about why people are settling, you start
25 hamstringing people in settlements.

1 Your Honor, we say a lot of things in mediation
2 conferences, a lot of things in settlement cases
3 to -- conferences to get them solved. Very few of
4 those, and almost none of them ought to be visited
5 upon us in the courthouse. If we don't make a deal
6 then we'll never make settlements. So 408 clearly
7 precludes use of these documents, and it should be
8 excluded.

9 MR. DeWood: Judge, Nizar DeWood on behalf of
10 Mr. Yusuf. I'd like to address the allegations made
11 by Attorney Holt.

12 THE COURT: Now, my understanding for the first
13 time that you are the representative of Mr. Yusuf?

14 MR. DeWood: Yes, Judge.

15 THE COURT: And the other gentlemen are the
16 representatives of United?

17 MR. DeWood: And co-counsel for Mr. Yusuf.

18 THE COURT: And you are counsel to Mr. Yusuf but
19 not to United Corporation?

20 MR. DeWood: I have designated myself as
21 co-counsel for United in this matter and also as
22 counsel in the United versus Waleed Hamed matter.

23 Judge, in all fairness --

24 THE COURT. As far as I am concerned, that's the
25 first time I've ever understood there may be some

1 distinction about who is representing whom. I
2 thought all three attorney are representing both
3 defendants, if that is not true.

4 MR. DeWood: That's true.

5 THE COURT: You want to give the second lawyer's
6 prospective on this motion. If we're going this
7 slowly we're not going to get very far.

8 MR. DeWood: I'll make it brief. Attorney Holt
9 just made a statement to the Court stating this was
10 not done in settlement negotiations. This is
11 absolutely unbelievable, Your Honor.

12 This was done because when the default case
13 issue became apparent, Mr. Fathi Yusuf was actually
14 discussing with Mr. Waleed their disputes, the issues
15 that were coming up, and the failure of the parties
16 to an agreement, it is precisely why there was an
17 exchange back and forth of the parties' positions.

18 As a matter of fact, there was many discussions
19 between myself and Mr. Holt, and I have no problem,
20 Judge, to testify as to what Mr. Holt had said
21 including him and every single attorney for the
22 Hameds if that's the road he wants to go down.

23 We have many documents, many proposed settlement
24 agreements and many representatives, whether through
25 his office or the office of the defendants'

1 attorneys. For him to pick an e-mail and letter, an
2 unsigned letter, because neither party could agree,
3 and that's the point that Mr. Holt doesn't seem to
4 bring forth to the Court as to why is it that these
5 parties could not agree.

6 If, in fact, there was an agreement on his
7 client's part, why doesn't he present a signed
8 agreement? Why wasn't there any communications from
9 Mr. Holt or from Waleed Hamed saying, by the way
10 guys, you've submitted the letter, could you
11 please -- here's our signed version, or here's our
12 comment.

13 The truth is, Judge, neither party could agree.
14 The parties tried so hard to reach an agreement but
15 they couldn't.

16 One of the issues that came up was the fact that
17 Mr. Holt himself was telling Mr. Waleed that this was
18 a partnership when the parties have always agreed
19 this was never a partnership. So I'm stating if
20 that's what Mr. Holt wants we -- the Court ought to
21 allow the parties to bring the entire record before
22 it to decide whether or not there was actually
23 settlement negotiations ongoing or not.

24 THE COURT: All right.

25 MR. HOLT: If I could just, briefly, Your Honor.

1 I don't know what he's talking about, an
2 unsigned letter, because the letter from him was
3 signed.

4 THE COURT: Which exhibit?

5 MR. HOLT: This is Exhibit Number 11. And it is
6 a very simple letter giving notice of disillusion and
7 listing the assets, then saying we need to decide
8 who's going to take which one. So it is not a
9 negotiation. It is a notice, it's a listing of
10 assets and it talks about where we go to solve this.
11 And they talk about my involvement and all the
12 outrageous things, I wasn't involved when this came
13 along.

14 But I do find it little funny when one of their
15 lawyers has written a letter saying it is a
16 partnership and lists the assets. We think that is
17 not only not a settlement letter, but it's highly
18 irrelevant.

19 THE COURT: You're talking about Number 11 now?

20 MR. HOLT: Yes. Number 10 is only relevant
21 because it's the e-mail that transmitted number 11.
22 So the content of number 10 is not important. Then
23 number 12 is the proposed disillusion agreement which
24 he is now taking to the next step and putting context
25 in it.

1 THE COURT: The Motion in Limine is denied as to
2 Exhibit 10 and 11. I'll take 12 under advisement.

3 MR. DAVID: Your Honor, we have a continuing
4 objection.

5 THE COURT: Yes.

6 If there's nothing else, why don't I ask the
7 plaintiff to call your first witness, please.

8 MR. HOLT: Your Honor, we're going to call
9 Waleed Hamed as our first witness.

10 Before I do that, you've agreed to take judicial
11 notice of four documents, are those things you want
12 to read in chambers as opposed to us reading into the
13 record? They are now part of the record.

14 I will say this much, while the whole deposition
15 is in, the judicial notice actually just took what
16 we've marked as Exhibit 1A, which would be the
17 excerpts.

18 THE COURT: I don't need to have those read into
19 the record.

20 MR. HOLT: So the same would be true of the
21 brief. Okay. We call Waleed Hamed.

22 Thereupon,

23 WALEED HAMED,

24 having been first duly sworn, was examined and testified
25 as follows:

1 MR. HOLT: Your Honor, for the record, we marked
2 this as Exhibit 1, was the deposition. Exhibit 2 --
3 excuse me, 1A are the excerpts. Exhibit 2, the Rule
4 12 motion. Exhibit 3 is the rule 12 reply, and
5 Exhibit 4 is the Complaint. And we move those into
6 evidence since you've taken Judicial notice.

7 MR. DIRUZZO: Subject to continuing objection,
8 Your Honor.

9 THE COURT: Exhibits 1, 1A -- 1, 1A --

10 MR. HOLT: 2, 3 and 4.

11 THE COURT: 2, 3, and 4 are admitted.

12 **(Plaintiff's Exhibit 1, 1A, 2, 3 and 4 marked**
13 **for identification and received into evidence.)**

14 DIRECT EXAMINATION

15 MR. HOLT:

16 Q Can you state your name for the record.

17 A Waleed Hamed.

18 Q And can you tell me where you reside.

19 A 7 Southgate, Christiansted.

20 Q Are you familiar with the Plaza Extra grocery
21 store located in the Virgin Islands?

22 A Yes, sir.

23 Q And what is -- When did you first start becoming
24 involved in the operation?

25 A In 1996.

1 Q And where did you start your work?

2 A I started my work in 1986 at the Plaza Extra
3 Sion Farm location.

4 Q And what were you doing?

5 A I was doing everything, bagger cashier, off
6 loading containers. What you call it, cashiers, produce,
7 meat, everything in the store.

8 Q And why were you working in that store?

9 A Because my father owned 50 percent of it. He's
10 a partner in it.

11 MR. DiRUZZO: Objection, hearsay.

12 THE WITNESS: I'm sorry?

13 THE COURT: Object is denied.

14 BY MR. HOLT:

15 Q Who is your father?

16 A Mohammad Hamed.

17 Q And you see him in court today?

18 A Yes.

19 Q And at that time was he working in the store?

20 A Yes, he was.

21 Q Where did he work?

22 A He worked in the produce department as well as
23 the warehouse.

24 Q And did there come a time when you began then to
25 do different things in the store from what you started

1 out?

2 A Yes.

3 Q And what -- can you explain to the Court what
4 you started doing as far as the Plaza East Sion Farm store
5 is concerned.

6 A I was in charge of everything that was happening
7 in the store as far as ordering, sales, dealing with
8 suppliers, running the front end, running the back end,
9 off loading containers, pricing, sales, produce
10 department, meat department, stocking the shelves,
11 changing prices, doing sales.

12 Q And did there come a time when you became
13 manager of the store?

14 A Yes.

15 Q Can you explain to the Court how the Plaza East
16 grocery market operates as far as management was
17 concerned?

18 A Management would -- we have different store, not
19 store managers, I'm sorry. We have different department
20 managers that are in charge of the different departments
21 and we oversee them, we make sure that they are doing
22 their jobs, making sure they are doing their orders, they
23 are doing --

24 MR. DiRUZZO: Objection, Your Honor, foundation
25 as to "we".

1 THE COURT: And put a time frame on it.

2 BY MR. HOLT:

3 Q When did you start becoming a manager of the
4 store?

5 A Probably later on. Probably in '88. '87, '89.

6 Q Before Hugo or after?

7 A Before Hugo.

8 Q And when you talk about "we" just explain how
9 did the manager of the store operate?

10 First off, who did you understand the store was
11 owned by?

12 A My father and --

13 MR. DiRUZZO: Objection, hearsay. Lack of
14 foundation, and opportunity to voir dire the witness
15 as to how he actually knows this.

16 MR. HOLT: Your Honor, I'll give a little
17 foundation.

18 BY MR. HOLT:

19 Q Did you ever have any conversations with
20 Mr. Fathi Yusuf?

21 A Yes.

22 Q And did he tell you who owned the store?

23 A Yes.

24 Q And what did he tell you?

25 A He told me that it's owned by my father and him,

1 50/50.

2 Q And this is before hurricane Hugo?

3 A Yes.

4 Q And when you became a manager of the store, how
5 did the store management work?

6 Would you -- could you -- Did you run the whole
7 store by yourself?

8 MR. DiRUZZO: Objection, leading.

9 MR. HOLT: I'll rephrase.

10 BY MR. HOLT:

11 Q Can you explain the management of the store, how
12 the store was managed with two partners?

13 MR. DiRUZZO: Objection. Withdrawn.

14 THE WITNESS: Mr. Yusuf always took care of the
15 office. My dad was in charge of the receiving, and
16 he did also the produce. I was merely taking care of
17 the day-to-day operations of the store, front end,
18 service desk, produce, meat, grocery trailers,
19 ordering, dealing with suppliers.

20 BY MR. HOLT:

21 Q And did any of the Yusuf family work in there
22 beside Mr. Yusuf?

23 A No, sir.

24 Q Did there come a time that the store expanded?

25 A Yes, sir, it did.

1 Q And about when did it begin to extend?

2 A Well, the store -- We lost the store in 1992 to
3 a fire so we were out of business for about a year, year
4 and a half. And we started the St. Thomas location I
5 believe in late '92 or early '93.

6 Q All right. And so while you were rebuilding the
7 store here, tell me how did the development and management
8 of the St. Thomas store come about?

9 A When we start negotiating, meaning Fathi and my
10 father and I, with the Tutu Park people, we were looking
11 at that location to go into, and the individuals were back
12 and forth to our office in St. Croix, that's prior to the
13 fire.

14 Finally a deal was struck, or a lease was
15 signed, then we lost the store. We continued with the
16 lease.

17 Q And did there come a time where you went to
18 St. Thomas?

19 A Yes, sir.

20 Q And tell me about opening the St. Thomas store.

21 A I was sent over to the St. Thomas store. We
22 took on another partner in St. Thomas.

23 Q What was his name?

24 A Ahamad Idhelleh.

25 COURT REPORTER: Can you spell that?

1 THE WITNESS: A-h-a-m-a-d. I-d-h-i-e-l-e or
2 d-e.

3 MR. HOLT: I-d-h-e-l-l-e-h.

4 BY MR. HOLT:

5 Q And tell me about then. What -- who owned the
6 store in St. Thomas at that point when you had this?

7 A My father, Mr. Yusuf and Mr. Idhelleh.

8 Q Did there come a time that he was bought out,
9 Mr. Idhelleh was bought out?

10 A Yes, he was.

11 Q After he was bought out who owned the store?

12 A My dad and Mr. Mohammad at the time, Yusuf.

13 Q And what percentage?

14 A 50/50.

15 Q And during that time did you manage the
16 St. Thomas store?

17 A I helped manage the St. Thomas store. I
18 initially set up the store. My brother Willy was over
19 there working. Prior to opening the store I was over
20 there working, and I didn't get paid. Mike Yusuf came
21 over to the St. Thomas store and he helped put the store
22 together with me, then he went back and start working on
23 the St. Croix store.

24 I continued working in the St. Thomas store,
25 staying in the St. Thomas store, I believe, until probably

1 April of '94.

2 Q All right. And you mentioned another name,
3 Michael Yusuf?

4 A Mike Yusuf. Mahar Yusuf.

5 Q And who is he?

6 A He's the son of Fathi Yusuf.

7 Q Then I take it -- When you finally left
8 St. Thomas, where did you go?

9 A I came back to St. Croix to open the St. Croix
10 store.

11 Q And who was managing the St. Croix store when
12 you reopened?

13 A I was managing.

14 Q Now, did there come a time that --

15 THE COURT: Excuse me, when you say the
16 St. Croix store, are you talking about Plaza East?

17 MR. HOLT: Yes.

18 THE WITNESS: Yes, Plaza East.

19 BY MR. HOLT:

20 Q And did there come a time that you then opened a
21 third store?

22 A Yes.

23 Q And can you tell the Court about that.

24 A We decided -- we had purchased a property I
25 think in 1988, or probably early '89, I'm not sure what

1 year it was, which is my dad and Mr. Yusuf bought 107
2 acres over in Grove Place for future development.

3 MR. DiRUZZO: Objection, hearsay. Move to
4 strike.

5 BY MR. HOLT:

6 Q Did you have personal knowledge of the fact
7 that this property was brought?

8 THE COURT: Okay. Hold on a second. Tell me
9 your objection.

10 MR. DiRUZZO: It was hearsay. I don't believe
11 the witness testified that he had personal knowledge
12 as to his transaction. I believe he said it was his
13 father and Fathi Yusuf.

14 THE COURT: Can you --

15 BY MR. HOLT:

16 Q Did you have personal knowledge of who owned the
17 property?

18 A Yes, I had personal knowledge.

19 Q And who owned that property?

20 A The property is owned by Mr. Mohammad Hamed and
21 Fathi Yusuf.

22 Q Did there come a time when a store was placed on
23 that property?

24 A Yes, sir.

25 Q And what's the name of that store?

1 A Plaza Extra West.

2 Q And when did that store open?

3 A In 2002.

4 Q And who owns that store?

5 A That store is owned by my dad and Mr. Yusuf.

6 Q Tell me how -- Now you have three stores, tell
7 me how you began to operate the three stores.

8 A Well, in every store there is one Yusuf and one
9 Hamed. There's four Hameds working in the stores and
10 there's four Yusufs working in the stores. One of the
11 Hameds is me, the other one is my brother Willy the other
12 one is Mufeed and Hisham. On the Yusuf side it's Fathi
13 Yusuf, Mahar Yusuf, Yusuf Yusuf and Najar Yusuf.

14 And each one, each store has one Yusuf and one
15 Hamed, with the exception of the St. Thomas store and
16 Plaza Extra East. Plaza Extra East it was me, my brother
17 Mufeed and Yusuf Yusuf. In Plaza Extra St. Thomas it's
18 Fathi Yusuf, Najar Yusuf and Waheed Hamed.

19 Q And that's Willy?

20 A That's Willy.

21 Q And when you talk about the Hameds and the
22 Yusufs you're either talking about the two fathers or
23 sons; is that correct?

24 A Yes.

25 Q Okay. And how did it develop then that you had

1 one Yusuf and one Hamed? How would they work together?

2 A They would work together in cooperation. That
3 was the agreement between the Hameds and the Yusufs is one
4 of them would be in there.

5 MR. DiRUZZO: Objection.

6 THE COURT: What's your objection, sir?

7 MR. DiRUZZO: Hearsay. Foundation as to
8 personal knowledge.

9 BY MR. HOLT:

10 Q Do you have personal knowledge?

11 A Yes, I do, sir. I've been there since 1986.
12 I've seen this, I've worked in this, I've done this. I
13 lived it, I slept it, I dreamt it, everything.

14 Q And you do that today?

15 A Up to today, yes, sir.

16 Q And what is the management of each of the
17 stores, can you explain it to the Court?

18 A I'm sorry.

19 Q Could you explain how the Hameds and Yusufs
20 operate these three grocery stores?

21 A There is one from each family member that
22 operates the store who's the manager. Every individual
23 has certain management in each department. For instance,
24 I deal with the ordering, with overall general -- overall
25 management of the whole store. I overlook all

1 departments, ordering, sales, contracts with vendors.

2 THE COURT: Excuse me, that is the Plaza East
3 store or all three stores?

4 THE WITNESS: That's the Plaza East, Judge,
5 that's where I work at.

6 BY MR. HOLT:

7 Q Keep on going.

8 A Yusuf Yusuf is in charge of the front and he's
9 in charge of the service desk and the safe. Mufeed Hamed
10 is in charge of the groceries, he's in charge of the
11 warehouse, he's in charge of -- the warehouse, he's not
12 the receiving manager we have certain individuals in the
13 receiving department but he oversees those departments.

14 Q And if a decision has to be made in the store,
15 how is the decision made in the east store?

16 A We all cooperate together. We all talk
17 together. If we have a situation we confer, we discuss
18 the issues at hand and we come up with a solution.

19 Q How long have you operated the east, sir?

20 A I've been in the east store since 1986. It was
21 out due to the fire, and when we open up, I guess from '94
22 to this time.

23 Q And as far as the St. Thomas store, how has that
24 always operated between the Hamed and Yusuf family?

25 A At the time when I was in St. Thomas opening the

1 store, Mr. Yusuf came over and he was there when we had
2 the situation with the third partner, Mr. Idhelleh, and
3 finally when we bought him out I was going back between
4 the east store and St. Thomas, and the St. Thomas store
5 and Mr. Yusuf also is doing that.

6 We alternated one weekend, or I believe two
7 weeks in two weeks out, and Mr. Yusuf said, you know what,
8 I'll stay in the St. Thomas store you stay in the east
9 store and you can come over monthly or maybe every two
10 months and you can go ahead and see what these guys are
11 doing. At least train your brother or train the rest of
12 the managers.

13 And I did that for three, four months, and after
14 that I didn't go over to St. Thomas very often.

15 Q And did there come a time that another Yusuf son
16 and Hamed son took over the management of the store?

17 A Willy was always there. Waheed was always
18 there, he was the counterpart to Yusuf from 1993 on.

19 Q And how does that operate today?

20 A Operates the same. Well, Najar came take, I'm
21 not sure when. After he finished college he came down and
22 started working in the store.

23 Q And he works there today?

24 A He works there, yes.

25 Q And going to the Plaza West store on St. Croix,

1 who manages that store? How does that work?

2 A Well, the store -- when we open the store in
3 2000 Mike Yusuf is the manager of the store, I was there
4 briefly to help set up the store and work with him in
5 developing the store and getting things right, and at the
6 same time my brother Hisham was there managing the store
7 with him.

8 Q And how is it operating today?

9 A It's operating by Mahar Yusuf and Hisham Hamed.

10 Q And Hisham is also known by another name?

11 A Sean Hamed.

12 Q Do the three stores operate independently of
13 each other or do they operate together?

14 A Each store has separate accounts, they have
15 separate operating accounts. We all have access to the
16 monies. We all have to sign on the checkbooks, one family
17 member from the Yusuf and one family member from the
18 Hameds have to sign on those checks.

19 Q And that's for each of the stores?

20 A Yes, sir.

21 Q And now someone from the west store orders
22 produce, for example, for the store, does he do it in
23 conjunction with other stores?

24 A No, sir.

25 MR. DiRUZZO: Objection. Compound.

1 THE COURT: Ask the question again, please.

2 BY MR. HOLT:

3 Q Can you tell me how the stores operate, is it
4 independent or collectively in trying to order produce and
5 other products?

6 MR. DiRUZZO: Objection, leading.

7 BY MR. HOLT:

8 Q Tell me how the stores operate.

9 A Each store orders its own produce, its own meat,
10 its own grocery. There might be a time where I would
11 collectively order -- say I make a contract for 15 or 20
12 containers of sugar and those -- that particular contract
13 would go to the two stores, or three stores, if St. Thomas
14 need it or they are out of it they can always take from
15 that contract.

16 Or I would do a contract for vegetable oil for a
17 number of containers, it's under Plaza Extra east, it
18 would be shipped to Plaza Extra west because they have a
19 larger warehouse so we keep it there. But everything else
20 they order their own produce, their own meat, their own
21 dairy, their own grocery.

22 Q And does each store have it's own bank account?

23 A Yes.

24 Q And when you say it's own bank account, does it
25 have more than one bank account?

1 A Yes.

2 Q What are the bank accounts each store would
3 have?

4 A Each store would have a tele-check account, it
5 would have an operating account, accounts payable and
6 payroll checks would go out of. It would have a credit
7 card account and that's where all the credit card
8 transactions would go into.

9 Q What are these banks that you have these
10 accounts at?

11 A We have Scotia Bank and we have Banco Popular.

12 Q And in this case you've signed an affidavit
13 submitted with the TRO motion, and I'm just showing you
14 that document. And looking at paragraph 9 --

15 MR. DiRUZZO: Objection, counsel is impeaching
16 his own witness.

17 MR. HOLT: No, I'm not. I'm asking him to
18 identify the document.

19 THE COURT: Okay.

20 MR. HOLT: We submitted an affidavit of
21 Mr. Hamed in support of his TRO motion, paragraph 9,
22 he lists each store, the operating accounts, the
23 numbers and identity of the bank.

24 THE COURT: And what's your question?

25 MR. HOLT: I'm just asking him to identify them

1 specifically. I'll just ask him, he might know this
2 from memory.

3 BY MR. HOLT:

4 Q St. Thomas Plaza operating account, which bank
5 is that with?

6 A Scotia.

7 Q Payroll account, which bank is that with?

8 A I believe it's Banco.

9 Q Tele-check account?

10 A That's Scotia.

11 Q And the credit card account?

12 A Banco.

13 Q And Plaza Extra east operating account, who's
14 that with?

15 A Banco.

16 Q Credit card account?

17 A Banco.

18 Q And the tele-check account?

19 A Scotia.

20 Q Plaza Extra west, what is the operating account?

21 A Banco.

22 Q The credit card account?

23 A Banco.

24 Q And the tele-check account?

25 A Scotia.

1 Q Now, have these businesses generated profits,
2 these three supermarkets?

3 A Yes, sir, they have.

4 Q Now, did there come a time in the early 2000s
5 that there was a raid by the Federal Government that
6 seized certain books and records of the company?

7 A Yes, sir.

8 Q And when was that?

9 A That was in September -- I'm sorry, that was in
10 October 2001.

11 Q Okay. All right. Now, I'm going to breakdown
12 this question before and after. Before the raid by the
13 federal government, what would happen when the store would
14 generate profits? How would the profits be distributed
15 from these three stores?

16 A We've used the profits to buy properties and the
17 properties are -- we've got properties under Pleasant
18 Enterprises which is jointly owned 50/50 by the Hameds and
19 the Yusuf.

20 And Pleasant Enterprises owns 107 acres where
21 the Plaza Extra west is sitting on, it also owns 150 acres
22 over across from the rum factory in Frederiksted. It also
23 owns Mandela Circle in St. Thomas, two acres. It also
24 owns 10 acres in Fort Milner, and that was bought with the
25 profits from the Plaza Extra store and Plaza Enterprises.

1 I'm sorry, maybe I left one or two properties out of
2 Pleasant Enterprises.

3 There's also a company that's called Peter's
4 Farm Investments that's jointly owned by my dad myself
5 and Mr. Yusuf 50/50, and we bought -- we bought
6 properties. It has 147 acres in St. Thomas over by UVI;
7 it has about 300 acres in Frederiksted; it has another 56
8 acres by Peter's Farm in Christiansted, and it has about
9 85 acres at the eastern end of St. Croix.

10 Also another company that we own is 16 Plus, it
11 has that we bought -- it has two -- couple of plots in
12 St. Thomas, I think it's about maybe an acre of each, and
13 there's about 328 acres that the company owned that is
14 over -- it's referred to as Diamond Couture that's owned
15 by the Yusuf and Hamed 50/50.

16 Q So all of these properties you have described
17 are owned by corporations formed by the two families; is
18 that correct?

19 A Yes.

20 Q And each one of those corporations is owned 50
21 percent by the Yusuf family and 50 percent by the Hamed
22 family?

23 A Yes, sir.

24 Q And these corporations bought land from using
25 the profits of the three supermarkets?

1 A Yes, sir.

2 Q Has the profits of the three supermarkets ever
3 been distributed anything other than 50/50?

4 A No, sir.

5 Q And when it comes time to distribute the
6 profits, how is that determination made? Who decides that
7 we're going to do this or we're going to do that?

8 THE COURT: Are you still talking before the
9 raid?

10 MR. HOLT: Yes, before the raid.

11 THE WITNESS: It's always been done jointly,
12 collectively. It's either through my father or
13 through me and Mr. Yusuf.

14 BY MR. HOLT:

15 Q Okay. Now, since the raid, what has happened
16 with the profits in the store?

17 A Well, the profits -- we have a TRO in place by
18 the feds, all the profits are put -- we -- actually we had
19 them in the bank accounts and then we recently decided to
20 put them in an investment account in Banco Popular
21 securities.

22 Q And so since 2000, since the raid by the federal
23 government, have profits been distributed to either of the
24 Yusuf or Hamad family as part of the profits?

25 A No, sir.

1 Q And those profits are where now?

2 A They are in -- most of -- the majority of which
3 is millions of dollars is over at Banco Popular
4 Securities, or it's called Banco Securities I believe.

5 Q And are there multiple accounts at Banco Popular
6 Securities?

7 A Yes.

8 Q And are there any other accounts?

9 A There might be a Merrill Lynch account also.

10 Q And those profits are -- were placed there and
11 are now placed there by -- ordered into the federal
12 criminal case?

13 A Yes.

14 Q And that case is still pending against United
15 Corporation?

16 A Yes.

17 Q And that order froze those assets?

18 A Yes, sir.

19 Q Now, when the store burned down in the east, can
20 you tell me about how that was rebuilt? How did you
21 rebuild that store? From what funds?

22 A Once the store was burned we lost everything.
23 We had insurance, luckily. Insurance paid us for the
24 supermarket. We took those funds and we reopened the
25 store.

1 Q Okay. And did the funds come from one partner
2 or both partners?

3 A Oh, definitely both partners.

4 Q And why would both partners put up funds to
5 rebuild the building?

6 A Because they are partners.

7 MR. DiRUZZO: Objection, leading. Foundation as
8 to the actual source of those funds and as to --

9 THE COURT: Well, that question's already done.
10 The next question is, why did both partners put it
11 up.

12 MR. DiRUZZO: Objection, hearsay.

13 THE COURT: If he knows.

14 BY MR. HOLT:

15 Q Do you have direct knowledge as to why both
16 partners put up money?

17 MR. DiRUZZO: Objection, Your Honor. The
18 plaintiffs have not alleged that this witness is the
19 partner, they've alleged that Mr. Hamed is the
20 partner.

21 THE COURT: They've also said he's the general
22 manager and knows the operations of the store very
23 well. If he knows he'll say so, if he doesn't know
24 he'll say so.

25 THE WITNESS: Could you repeat the question.

1 BY MR. HOLT:

2 Q Can you tell me why the two partners would put
3 up money to rebuild the store?

4 A To operate the store. To open back the stores.
5 They agreed to be in business together and they decided on
6 opening up the store as well as the St. Thomas store.

7 Q So when they had profits they shared them, when
8 they have obligations they shared them?

9 MR. DiRUZZO: Objection, leading.

10 THE COURT: Okay.

11 BY MR. HOLT:

12 Q I'll rephrase the question. Can you tell me
13 whether or not the partners, Mr. Hamed and Mr. Yusuf,
14 shared the profits?

15 A Yes.

16 Q Can you tell me whether or not the partners,
17 Mr. Mohammed -- Mr. Hamed and Mr. Yusuf shared the loss?

18 A Yes, they have.

19 Q And that's been since you've been involved in
20 the company?

21 A Yes, sir.

22 **(Plaintiff's Exhibit 7 marked for**
23 **identification.)**

24 BY MR. HOLT:

25 Q Now, showing you group Exhibit Number 7. Do you

1 have Exhibit number 7 in front of you?

2 A Yes, sir.

3 Q Do you recognize these documents?

4 A Yes.

5 Q Can you tell me what these documents are?

6 A These are letters sent to my dad and there are
7 also some copies, attached copies to me of demand for rent
8 for the Plaza Extra east store.

9 Q And who was sending the letter?

10 A United Corporation.

11 Q And who's signed for United Corporation?

12 A Fathi Yusuf.

13 Q And who are the letters being sent to?

14 A They are sent to Mr. Mohammed Hamed.

15 Q And that's your father?

16 A That's my father, yes.

17 Q And if you look over on the second page of that
18 exhibit, I see that you're copied at the bottom?

19 A Yes, sir.

20 Q When these notices were sent, would you get
21 copies of them?

22 A Yes, sir.

23 Q And why is that?

24 A I represent my father. I am an agent for my
25 father. I work on behalf of my father.

1 Q And do you have a power of attorney for your
2 father?

3 A Yes.

4 Q And when did he first execute that?

5 A I believe it's either '95 or 96.

6 Q And since that time have you acted as power of
7 attorney?

8 A Yes, I have.

9 Q And has Mr. Yusuf recognized that fact?

10 A Yes, he has.

11 MR. DiRUZZO: Objection, Your Honor. I've never
12 seen this power of attorney that this witness is
13 talking about. I think we're entitled to see if, in
14 fact, the document exists and be able to use it for
15 cross-examination purposes.

16 THE COURT: All right. He didn't say that he
17 has one so we'll find out.

18 BY MR. HOLT:

19 Q Is there a document that gives you a power of
20 attorney?

21 A Yes.

22 MR. HOLT: I'll be glad to supply that.

23 BY MR. HOLT:

24 Q Has he executed more than one power of attorney?

25 A Yes, he has.

1 Q How many has he executed?

2 A Two.

3 Q When did he execute the other one?

4 A Late last year, 2012.

5 Q And does Fathi Yusuf know that you have a power
6 of attorney to act on your father's behalf?

7 A Yes, sir.

8 MR. DiRUZZO: Objection, calls for speculation.

9 BY MR. HOLT:

10 Q Is it your understanding that Fathi Yusuf knows
11 that you have a power of attorney?

12 A Yes.

13 MR. DiRUZZO: Objection to the witness
14 understanding.

15 THE COURT: Get him to answer, explain why he
16 knows.

17 BY MR. HOLT:

18 Q On these rent notices, are they sent directly to
19 your father or to you care of your father?

20 A They are sent to my father and there is also a
21 letter that goes, I guess it's a postal signature return I
22 guess it's called, also to me. A copy that goes to me.

23 Q And why did you get a copy?

24 A Because I represent my father and I have power
25 of attorney for my father.

1 Q And Mr. Yusuf knows that?

2 A Yes, he does.

3 Q And when you look over then on the third page of
4 this document, do you see the certified mail return
5 receipt requested to Mohammad Abdul Quader, Q-u-a-d-e-r?

6 A Yes.

7 Q You see that? That's your father?

8 A Yes.

9 Q And this is sent by whom?

10 A Sent by United Corporation.

11 Q And it's sent to your father where?

12 A To the Plaza Extra Sion Farm east store.

13 Q Okay. And that's the address for the east
14 store?

15 A Yes, sir.

16 Q And, again, these are rent notices of increases
17 of rent?

18 A Yes.

19 Q Okay. And I take it that these -- were these
20 rents ever agreed to?

21 A These rents were never agreed to.

22 **(Plaintiffs' Exhibit 8 marked for**
23 **identification.)**

24 BY MR. HOLT:

25 Q Now, showing you Exhibit Number 8. Can you tell

1 me what this document is. What is this document?

2 A This is a calculation that United Corporation,
3 Fathi Yusuf, came up with, and his calculation is based on
4 the St. Thomas lease to calculate the rents for the east,
5 for the Plaza Extra east store.

6 Q And this covers the time period from when to
7 when?

8 A This covers from 1/2004 to 12 -- I'm sorry, from
9 1/2004 through 12/31/2011.

10 Q And why did he do this rent calculation? Why
11 did Mr. Yusuf do this rent calculation?

12 MR. DiRUZZO: Objection, speculation.

13 THE COURT: If he knows.

14 BY MR. HOLT:

15 Q Who gave you this rent calculation?

16 A Fathi Yusuf.

17 Q And do you know who prepared it?

18 A Fathi Yusuf.

19 Q How do you know that?

20 A He gave it to me and, obviously, he worked on
21 it.

22 MR. DiRUZZO: Objection. Objection,
23 speculation.

24 BY MR. HOLT:

25 Q I don't need it. Did he give this to you?

1 A Yes.

2 Q Did you discuss this with him?

3 A Yes.

4 Q And is it your understanding that this is the
5 amount of rent United Corporation wanted Plaza east store
6 to pay?

7 A Yes, sir.

8 Q And these calculations are based upon the rent
9 the St. Thomas store paid?

10 A Yes.

11 Q And what was the total amount of rent sought for
12 this time period from 2004 all the way up to 2011?

13 A \$5,408,806.74.

14 **(Plaintiffs' Exhibit 9 marked for**
15 **identification.)**

16 MR. HOLT: Can I show the witness Exhibit 9,
17 Your Honor?

18 THE COURT: Yes.

19 BY MR. HOLT:

20 Q And what is Exhibit Number 9?

21 A It's a check that I signed. And my signature is
22 on the bottom as well as Yusuf Yusuf signed it. It's for
23 \$5,408,806.74. It's written out to United Shopping Plaza,
24 which is the landlord in the Plaza Extra east store, and
25 it's written out of Plaza Extra account. Supermarket

1 account.

2 Q It's signed by two people. Who's it signed by?

3 A By Yusuf Yusuf, which is Fathi Yusuf's son, and
4 it's signed by me.

5 Q And why did the two of you sign this check?

6 A Because that's the agreement that we have, that
7 each one of the family members sign the check.

8 Q Okay. And this check is dated what date?

9 A February 7, 2012.

10 MR. HOLT: Your Honor, I move Exhibit 7, 8, 9
11 into evidence.

12 THE COURT: Any objection?

13 MR. DiRUZZO: No objection.

14 THE COURT: Admitted.

15 **(Plaintiff's Exhibit 7, 8 and 9 received into**
16 **evidence.)**

17 BY MR. HOLT:

18 Q Now, after this check on February 7, 2012, was
19 sent, did any problems develop between the parties?

20 A Yes.

21 Q And what were those problems?

22 A Mr. Yusuf would come in and he would rant and
23 rave, throwing accusations that we've done this, we stole
24 money, we took money. That he wants us out of the store,
25 that he wants to close the store down, that we have until

1 the end of the month to get out of the store.

2 He gave us several notices, and I believe it's
3 in some letters in, I guess in Exhibit 7, where he says
4 he -- the lease is terminated and he wants us out by the
5 end of June 2012. He would do that in our office, he
6 would do that downstairs in front of customers, he would
7 do it in front of suppliers. He would undermine our
8 authority.

9 **(Plaintiffs' Exhibit 10 and 11 marked for**
10 **identification.)**

11 MR. HOLT: Okay. Could I have the witness shown
12 Exhibits 10 and 11.

13 MR. DAVID: Your Honor, we renew our 408
14 objection to Exhibit 10.

15 THE COURT: 10 is the e-mail?

16 MR. DAVID: Yes, 10 is the e-mail and 11 is the
17 letter. It was after, the witness just testified,
18 that the problems were developing and its resolution
19 of the differences between them, Judge.

20 THE COURT: As to 10 and 11, I denied your
21 motion.

22 MR. DAVID: I'm just renewing it because now the
23 facts are in, the reason why it should be excluded.

24 THE COURT: Thank you.

25 BY MR. HOLT:

1 Q Okay. Look at Exhibit Number 10, can you tell
2 me what that is and the date?

3 A I'm sorry.

4 Q Can you tell me what that document is and the
5 date of the document?

6 A That's an e-mail from Nizar DeWood, Mr. Yusuf's
7 attorney, February 10, 2012.

8 Q And does that refer to an attachment?

9 A Yes, sir.

10 Q And look at Exhibit Number 11, is that the
11 attachment?

12 A Yes, sir.

13 Q And what did Mr. -- Does that have Mr. DeWood's
14 signature on it?

15 A Yes, it does.

16 Q What does that letter tell you?

17 A It's telling me the disillusion of the
18 partnership of Yusuf and Hamed.

19 Q And that's a letter directed to who?

20 A Mohammad Hamed.

21 Q Who --

22 A And Waleed Hamed.

23 Q And what -- Why was the letter directed to you,
24 or care of you?

25 A Because I have power of attorney. I am an agent

1 for my father.

2 Q And it says, stop disillusion of the
3 partnership, Yusuf Hamed?

4 MR. DiRUZZO: Objection, Your Honor, the letter
5 speaks for itself.

6 BY MR. HOLT:

7 Q What does it say at the top here?

8 MR. DiRUZZO: Objection.

9 THE COURT: All right, he can ask.

10 BY MR. HOLT:

11 Q What does it say on the top?

12 A It says, DeWood Law Firm.

13 Q And re: What's the letter about?

14 A Oh, reference, disillusion of partnership, Yusuf
15 and Hamed.

16 Q And what is he telling you in the first sentence
17 of the letter?

18 A "This letter is to confirm the party's desire to
19 dissolve the above-reference partnership. Partnership
20 disillusion would involve appropriate", and so on.

21 Q And then looking at the second paragraph, does
22 it identify the assets of the partnership?

23 A Yes, it does.

24 Q What are those?

25 A As it stands the partnership has three major

1 assets, Plaza Extra west Grove place, including the real
2 property; Plaza Extra east Sion Farm location and Plaza
3 Extra Tutu Park, St. Thomas.

4 **(Plaintiffs' Exhibit 12 marked for**
5 **identification.)**

6 BY MR. HOLT:

7 Q Okay. Now, showing --

8 Could I have the witness shown Exhibit Number
9 12.

10 Your Honor, we move Exhibits Number 10 and 11
11 into evidence.

12 MR. DIRUZZO: Same objection.

13 THE COURT: Admitted.

14 **(People's Exhibit 10 and 11 received into**
15 **evidence.)**

16 BY MR. HOLT:

17 Q And can you identify what Exhibit Number 12 is?

18 A It's an e-mail from Mr. DeWood.

19 Q What's the date of it?

20 A March 13, 2012.

21 Q And who's it sent to?

22 A It's sent to me.

23 Q And what does the e-mail say?

24 A Partnership disillusion agreement.

25 Q And was there an attachment to the agreement?

1 A Yes.

2 Q And the attachment is a proposed partnership
3 disillusion agreement?

4 A Yes, sir.

5 Q On the first page are there whereas clauses?

6 A Yes, sir.

7 Q Can you read the second whereas clause into the
8 record.

9 MR. DiRUZZO: Your Honor, document speaks for
10 itself, and we have a witness for that.

11 THE WITNESS: The second one, sir.

12 THE COURT: He can read it.

13 BY MR. HOLT:

14 Q The second and third.

15 A "Whereas the partnership was formed for the
16 purpose of operating supermarket in the district of
17 St. Croix and St. Thomas.

18 "Whereas serious disputes and disagreements
19 between the parties relating to financial matters of the
20 partnership resulting in the partners unable to continue
21 as partners."

22 Q And then above that, the paragraph -- the first
23 whereas clause?

24 A The first one?

25 Q Yes.

1 A "The partners have operated the partnership
2 under an oral partnership agreement since 1986."

3 Q And, finally, down at the bottom of the page,
4 the second to the last whereas clause, where it says,
5 "Whereas the partners have".

6 A "Whereas the partners have shared profits,
7 losses, deductions, credits and cash of the partnership."

8 Q Do you have direct knowledge that that, in fact,
9 occurred?

10 A Yes, sir.

11 Q Has that occurred?

12 A Yes, it has.

13 Q And over on the second page of this document,
14 does it identify the assets of the partnership?

15 A Yes, it does.

16 Q And are those the same three stores you
17 previously described in the letter marked as Exhibit
18 Number 11?

19 A Yes, sir.

20 Q Plaza east, Plaza west and Plaza St. Thomas?

21 A That's correct.

22 MR. HOLT: We move Exhibit 12 into evidence for
23 the limited purpose of identifying what was read into
24 the record.

25 MR. DAVID: Your Honor, we would object and we

1 again renew our objection under Rule 408 because the
2 witness has now established the text of the documents
3 that there was serious disputes, Your Honor, and all
4 of these exhibits, 10, 11 and 12 ought to be stricken
5 from the record and the testimony should be stricken
6 from the record, Your Honor.

7 THE COURT: I'm going to admit it. I think it
8 falls under the -- one of the exceptions under
9 408(b). It's not presented to show anything other
10 than a historical background and the context in which
11 those discussions were taking place rather than to
12 bring in evidence of the discussions themselves.

13 **(Defendants' Exhibit 12 received into evidence.)**

14 BY MR. HOLT:

15 Q Now, during the ensuing months, can you describe
16 what effect these discussions had on the operations of the
17 store?

18 A We tried to resolve the matter within, different
19 settlements with different people, with attorneys, and up
20 to this date we haven't been able to do so. Mr. Yusuf
21 continued taking unilateral decisions on his own. He
22 tried -- he's always threatening to fire us, he's always
23 threatening to close down the stores.

24 I mean, one day he would say I'm going to close
25 down the east store, you have no part to this east store,

1 the east store is mine. Even though he received rent,
2 even though he submits, and he continues to submit, even
3 after we filed the lawsuit, he continues to send rent
4 letters or demands.

5 **(Plaintiffs' Exhibit 13 marked for**
6 **identification.)**

7 MR. HOLT: Can I have the witness shown Exhibit
8 Number 13, Your Honor.

9 THE COURT: Yes.

10 BY MR. HOLT:

11 Q Can you tell me what Exhibit 13 is?

12 A This is a letter that Mahar Yusuf bought to me
13 at the Plaza Extra east store.

14 Q And it's addressed to whom?

15 A It's addressed to my dad by -- through Waleed
16 Hamed, me.

17 Q So your name is actually on the letter?

18 A Yes.

19 Q And what's the date of the letter?

20 A It's August 15, 2012.

21 Q And is there some handwritten notations on this
22 letter?

23 A Yes.

24 Q What does that say?

25 A It says, "received 8/16/2012", by me.

1 Q Then it goes, "Re: Notice of withdrawal"?

2 A Yes.

3 Q And this is from Fathi Yusuf?

4 A Yes, it's from him.

5 Q And what did Fathi Yusuf indicate was going to
6 be done when he sent this letter?

7 A He said the amount of 2 million, 784, 706 would
8 be withdrawn from United operating account. Not really
9 United operating account, it's a Plaza Extra account that
10 he's talking about, and that's where the money actually
11 was withdrawn from, effective August 15, even though I
12 received it on August 16.

13 The amount equals the proceeds you previously
14 withdrew through your agent Waleed Hamed. To ensure full
15 accuracy, attached are the receipts. And he never sent
16 any receipt attached to this letter. And I requested
17 those receipts from Mike at the time that he gave me the
18 letter, and he says -- he didn't even answer.

19 Q So did he give you a breakdown where the \$2.7
20 million was coming from?

21 A Yes. Past confirmed withdrawals, one million
22 six; additional withdrawals, one million 95. 50 percent
23 of St. Maarten bank account, 44,000 and 50 percent of
24 Cairo Amman bank account of 44, 6, 96.

25 Q And this letter indicates there were things

1 attached to it?

2 A Yes, sir.

3 Q Was there anything attached to it?

4 A Absolutely not.

5 Q And turn to the second page, that's a letter
6 dated what date?

7 A The same day, August 16.

8 MR. DiRUZZO: I'm sorry, Your Honor, I don't
9 have -- this is a one-page document.

10 **(Discussion off the record.)**

11 BY MR. HOLT:

12 Q Looking at the next page, what's the date of
13 that letter?

14 A August 16.

15 Q And that's to whom?

16 A To Mr. Fathi Yusuf.

17 Q And who wrote this letter?

18 A I did.

19 Q And you wrote it on what type of letterhead?

20 A Plaza Extra.

21 Q And what did you tell him in that letter?

22 A That, "In response to your letter of August 16,
23 or August 15, notice of withdrawal, the figures have not
24 been agreed to. Indeed, there were no attachments as
25 indicated and there are numerous other funds that have to

1 be included in any such calculations before any
2 disbursements can be made.

3 "For example, all withdrawal receipts have to be
4 reviewed before any withdrawals are paid. No mention or
5 indication of the amount that the Yusuf family has
6 previously withdrawn. By way of another example is an
7 800,000 plus due the Hamed family from the sale of the
8 condo property in St. Thomas would have to be included.

9 "In short while these are just a few examples,
10 no withdrawal will be issued until the full accounting is
11 done and agreed to in writing."

12 Q Now, up until this time had anyone ever
13 unilaterally withdrawn money from any Plaza Supermarket
14 accounts without the other partner agreeing?

15 A No, sir.

16 Q And in this letter you indicated that you don't
17 agree with that withdrawal?

18 A No, I don't agree.

19 Q Now, the next letter is dated what?

20 A August 22.

21 Q It's from United Corporation?

22 A Yes.

23 Q Signed by whom?

24 A Fathi Yusuf -- by Mahar Yusuf for Fathi Yusuf.

25 Q And what in this letter, what did he tell you?

1 A "In response to your letter through your
2 agent -- "

3 Well, the letter is to my father.

4 "In response to your letter --"

5 Q It's to your father but it says by who? Your
6 name is on this?

7 A Yes. In response to your letter through your
8 agent Waheed Hamed does not deny validity of any amount
9 stated as owing and outstanding to United Corporation.
10 Your letter requests that an accounting be done for other
11 matters, which is a separate issue. Please reduce to
12 writing those other matters you contend are owed, and
13 provide us of supporting documentation."

14 Q Did you respond to this letter?

15 A Yes.

16 Q And looking at this next document, is that your
17 response?

18 A I sent an e-mail out.

19 Q What's the date?

20 A August 25.

21 Q And who did you send it to?

22 A I sent it to Mr. Yusuf, and copies went to Mahar
23 Yusuf and Yusuf -- and Mike Yusuf.

24 Q And what did you tell him in this document?

25 A What I stated is, "Your suggestion that the

1 Hamed family agreed to your calculations of any sums due
2 to you is incorrect. The Hamed family dispute those
3 calculations and insist on full accounting. Moreover -- "

4 Q And the next paragraph, what does it say?

5 A "Moreover, any unilateral withdrawal of funds
6 would violate the court's order currently in place and it
7 would also violate the agreement between our families."

8 Q Now, let me talk about those two things. First
9 of all, what is the Court's order you're referring to?

10 A The federal TRO.

11 Q And it was your understanding that if he
12 withdrew funds for personal use that that would violate
13 that Court's order?

14 A Yes, sir.

15 Q Then you say in the next sentence, "It would
16 also violate the agreement between our families," what are
17 you referring to?

18 A The agreement is we're supposed to agree on
19 whatever withdrawal, everyone does.

20 Q And in those you -- the last letter in this
21 exhibit, what is that?

22 A That is the check that Fathi Yusuf and Mahar
23 Yusuf signed, contrary to the agreement that we have one
24 Hamed and one Yusuf sign the check. And the check is
25 dated 8/15, which leads me to believe that the checks were

1 deposited.

2 MR. DiRUZZO: Objection, calls for speculation.

3 BY MR. HOLT:

4 Q The date of the check is August 15th?

5 A Yes, sir.

6 Q And when was the date that you got notice that
7 they were going to be actually withdraw the funds?

8 A August 16.

9 Q You got notice the day after this check was
10 written?

11 A Yes.

12 Q And this check is payable to who?

13 A United Corporation.

14 Q Is this written on the supermarket account?

15 A Yes, Plaza Extra east.

16 Q So this came from the bank account of the Plaza
17 Extra east store?

18 A Yes.

19 Q And can you explain to the Court again about the
20 signatures on this check.

21 MR. DiRUZZO: Objection, asked and answered.

22 THE WITNESS: The signature --

23 THE COURT: Go ahead, you can answer.

24 THE WITNESS: The signature are Fathi Yusuf and
25 Mahar Yusuf.

1 BY MR. HOLT:

2 Q And is that the normal practice of checks that
3 are being written in this business?

4 A No, sir.

5 MR. HOLT: And, Your Honor, we move Exhibit
6 Number 13 into evidence.

7 MR. DiRUZZO: No objection.

8 THE COURT: Admitted.

9 **(Plaintiffs' Exhibit 13 received into evidence.)**

10 BY MR. HOLT:

11 Q Now, as a result of this withdrawal, what action
12 was taken by the Hamed family?

13 A We requested -- we requested the funds be
14 returned.

15 Q Were they returned?

16 A No, they weren't returned.

17 Q And as a result, what did you do?

18 A Filed a lawsuit.

19 Q You filed this lawsuit?

20 A I'm sorry.

21 Q You filed this lawsuit?

22 A Yes, sir.

23 Q And in this lawsuit you sought the return of
24 those monies?

25 A Yes.

1 Q And you sought -- What other orders do you seek
2 regarding the money?

3 MR. DiRUZZO: Objection. The pleading's before
4 the Court, they speak for themselves.

5 MR. HOLT: You know what, they are. I'll
6 withdraw.

7 THE COURT: Thank you.

8 BY MR. HOLT:

9 Q Now, since the filing of this lawsuit, have
10 there been any other problems in the operation of Plaza
11 Extra that didn't exist before 2012?

12 A Yes. One simple thing is the lady in the
13 office, accounts payable, the office manager was
14 instructed not to give us any more mail. Normally all the
15 mail that comes into the Plaza Extra goes to my desk, if
16 it's United Corporation it goes to them. If it's personal
17 it goes to whoever.

18 But once it's the store mail it comes to my
19 desk, I look at it, or -- if I -- if it's personal. If
20 it's for the store I deal with it and then I distribute it
21 to either accounts payable or whomever that is in the
22 office.

23 Mr. Yusuf went ahead and he started paying his
24 own attorneys out of the supermarket account. His
25 litigation account, his attorneys in this case out of

1 Plaza Extra account.

2 Q We'll get to that in a second. Let me ask you,
3 you mentioned United Corporation, who owns the shopping
4 center?

5 A United Corporation.

6 Q And that's owned by who?

7 A Fathi.

8 Q So your family does not own any part of the
9 shopping center itself?

10 A No, sir.

11 Q Your ownership interest is limited to the
12 supermarket?

13 A Yes, sir. Supermarket, yes, sir.

14 **(Plaintiffs' Exhibit 14 marked for**
15 **identification.)**

16 BY MR. HOLT:

17 Q And showing you Exhibit Number 14. Can you tell
18 me what this is? What is Exhibit Number 14?

19 A That's a letter to Najjar Yusuf, reference
20 control and accounts.

21 Q What type of letterhead?

22 A Plaza Extra.

23 Q And what is -- who is Najjar Yusuf?

24 A He's the son of Fathi Yusuf.

25 Q And what was this letter notifying Mr. Yusuf of?

1 What was the problem and what was the date again,
2 November --

3 A November 2, 2012.

4 Q It's after the lawsuit is filed?

5 A Yes, sir.

6 Q Why were you notifying them of a problem?

7 A Well, it's my brother who's notifying them, it's
8 Willy, Waheed, not me, he's the one who signed it.

9 Q Right.

10 A But the problem is they've hired --

11 MR. DiRUZZO: Objection, hearsay --

12 THE WITNESS: It's not.

13 THE COURT: Hold on. Hold on. Hold on.

14 THE WITNESS: I'm sorry.

15 THE COURT: Establish how.

16 BY MR. HOLT:

17 Q Are you familiar with the problem that was going
18 on in the stores of hiring accountants?

19 MR. DiRUZZO: Objection. That --

20 THE COURT: He's not -- he's withdrawn that
21 question and now he's going another route which I
22 will allow.

23 BY MR. HOLT:

24 Q Do you have any direct knowledge of the hiring
25 of the accountants to work at your store?

1 A Yes, sir.

2 Q And who were the accountants that were hired?

3 A One of them is Ayman Al-Khaled and he is the
4 nephew of Fathi Yusuf, and the other one is Mr. John, I'm
5 not sure about his last name.

6 Q Is that Mr. Gaffney?

7 A Yes.

8 Q And Mr. Al-Khaled, he is a relative of
9 Mr. Yusuf?

10 A Yes, he is nephew.

11 Q Hiring him violates the TRO in the federal
12 court?

13 A To my understanding, yes, sir.

14 MR. DiRUZZO: Objection, move to strike. That
15 calls for a legal conclusion.

16 THE COURT: That's stricken.

17 MR. HOLT: I'll withdraw.

18 BY MR. HOLT:

19 Q And what stores were they working in?

20 A Initially Mr. Al-Khaled was hired to do
21 accounting for the St. Croix locations. Came over to the
22 St. Croix store, he says not -- Well, he came over, I was
23 introduced to him and he said --

24 MR. DiRUZZO: Objection, hearsay.

25 THE COURT: He came over and he said.

1 MR. DiRUZZO: "He" being Ayman.

2 THE COURT: Well, let's find out what he said.

3 BY MR. HOLT:

4 Q When he came over to your store --

5 A He came over and he told me --

6 Q Just tell us what he did.

7 A That he was hired to --

8 MR. DiRUZZO: I'm -- Objection, Your Honor.

9 BY MR. HOLT:

10 Q Listen to the question. When he came to
11 St. Croix, what did he start doing?

12 A He starts working on the accounting.

13 Q And who was he being paid by?

14 A Plaza Extra.

15 Q Not by United Corporation or -- but Plaza Extra
16 supermarket accounts?

17 A Yes, sir.

18 Q And did he provide you with the information he
19 generated?

20 MR. DiRUZZO: Objection, lack of specificity to
21 "he". If he could be a little more specific.

22 BY MR. HOLT:

23 Q Did Mr. Ayman Al-Khaled who was on the
24 supermarket payroll ever provide you with any accounting
25 information he generated?

1 A I requested it and never got it.

2 THE COURT: We're talking about Plaza east,
3 correct?

4 HE WITNESS: Yes.

5 BY MR. HOLT:

6 Q Now, did there come a time that they then put an
7 office in another store?

8 A Yes.

9 Q Which store did they put an office in?

10 A The west store.

11 Q And who worked in the office in the west store?

12 A Mahar Yusuf, Sean Hamed.

13 Q Those were the managers?

14 A Those are the managers.

15 Q Who worked in the office in accounting in the
16 west store.

17 A Ayman and Mr. John.

18 Q And did they give access to the Hamed family of
19 their work?

20 A No, they didn't.

21 Q What did they do?

22 A All what they did is lock themself in the room.

23 MR. DiRUZZO: Objection, lack of personal
24 knowledge. Calls for speculation, he wasn't in the
25 room.

1 BY MR. HOLT:

2 Q Did you ever go down and see the room that they
3 were in?

4 A Yes.

5 Q Was the room locked?

6 A I was told it was locked. To my personal
7 knowledge I was told it was locked.

8 MR. DiRUZZO: Objection, hearsay. Move to
9 strike.

10 THE COURT: Okay. That's sustained.

11 BY MR. HOLT:

12 Q Have you ever seen any of the accounting work
13 done by either Mr. Gaffney or Mr. Al-Khaled?

14 A No. I requested it, it was never provided.

15 Q So they are being paid from the supermarket but
16 you're not seeing it?

17 MR. DiRUZZO: Objection, leading.

18 THE WITNESS: That's correct.

19 THE COURT: Okay. I'll let it go.

20 BY MR. HOLT:

21 Q Now, has there ever been accounting work done
22 for any of the supermarkets that you -- that the Hamed
23 family was not allowed access to prior to this?

24 A No.

25 MR. HOLT: Your Honor, we move in --

1 BY MR. HOLT:

2 Q This letter was to put them on notice that --
3 Well, What was the purpose of this letter?

4 MR. DiRUZZO: Objection, Your Honor. The
5 document speaks for itself. And he's not the author
6 of the document.

7 THE COURT: Your objection is that it speaks for
8 itself?

9 MR. DiRUZZO: One, it speaks for itself. Two,
10 it's hearsay which the author of the document is not
11 on the witness stand.

12 MR. HOLT: I'll call the author.

13 THE COURT: All right.

14 **(Plaintiffs' Exhibit 15 marked for**
15 **identification.)**

16 MR. HOLT: Can I have the witness shown Exhibit
17 Number 15.

18 MR. DiRUZZO: Your Honor, we would object.
19 This -- these checks were qualified as within --
20 under the scope of attorney/client privilege on
21 behalf of United Corporation.

22 We also object on the basis of relevance. We
23 think it's highly improper for these documents to
24 even be discussed, let alone made a part of the
25 record.

1 MR. HOLT: Your Honor, proffer. These are
2 checks written on the supermarket account for
3 Mr. Yusuf's private attorneys in this litigation,
4 they are not supermarket or business related
5 activities, that's number one. And, number two, they
6 are signed both by members of the Yusuf family not by
7 one member of the Hamed family and one member of
8 Yusuf.

9 MR. DiRUZZO: Your Honor, I would say one, lacks
10 personal knowledge and two, United Corporation is a
11 defendant in an ongoing federal case. He has been
12 indicted, he has entered a plea agreement with the
13 federal government, has pled to improprieties at the
14 operation, including but not limited to the Plaza
15 Extra grocery stores.

16 THE COURT: Okay. Well, the -- there's no -- I
17 don't see an attorney/client privilege violation, so
18 that objection is denied.

19 MR. DiRUZZO: Then there was personal knowledge
20 as to the basis.

21 THE COURT: How does he have knowledge of this?

22 MR. HOLT: These are checks that are returned on
23 the supermarket accounts that he has personal
24 knowledge of.

25 THE COURT: All right.

1 MR. DiRUZZO: Your Honor, we stand by our
2 objection.

3 THE COURT: I'll admit it.

4 BY MR. HOLT:

5 Q What are these checks?

6 A These are checks made to Fathi Yusuf's legal
7 team, attorneys.

8 Q Okay. And these checks are made on what
9 account?

10 A The Plaza Extra, St. Croix account.

11 Q The St. Croix account?

12 A Yes, sir.

13 Q And are they signed by a member of the Hamed
14 family?

15 A No, they are not.

16 Q And other than the check for 2.7 million, have
17 you ever seen any other checks that weren't signed by a
18 member of the Yusuf family and the Hamed family?

19 A Yes, I have.

20 Q What are they?

21 A There was another check that was made to
22 Attorney Smock.

23 Q Other than those three checks have you seen any?

24 A No, sir.

25 **(Plaintiffs' Exhibit 16 marked for**

1 **identification.)**

2 BY MR. HOLT:

3 Q Now, showing you Exhibit Number 16.

4 And, Your Honor, while we do that I move Exhibit
5 Number 15 into evidence.

6 MR. DiRUZZO: Your Honor, objection.

7 THE COURT: Admitted.

8 **(People's Exhibit 15 received into evidence.)**

9 BY MR. HOLT:

10 Q Can you tell me what Exhibit Number 16 is?

11 A It's a check written out to Mr. Smock and
12 Moorhead for \$3,395.

13 MR. DiRUZZO: Your Honor, we would object, the
14 second page has clear billing records there.

15 MR. HOLT: We'll remove the second page, just go
16 with the first page.

17 MR. DiRUZZO: I'm sorry, Your Honor, just to be
18 clear, the plaintiffs are just proceeding with the
19 first page of the exhibit? Just so the record is
20 clear.

21 THE COURT: That's what was just said, yes.

22 BY MR. HOLT:

23 Q Can you tell me what this document is?

24 A That's a check for \$3,395 to Smock and Moorhead.

25 Q And that check is for what?

1 A That's for legal services.

2 MR. DiRUZZO: Objection, lack of personal
3 knowledge. If he didn't write it he doesn't know
4 what it's for.

5 THE COURT: How does he know.

6 MR. DiRUZZO: I'm sorry, the only way he would
7 have known is he would have been involved in the
8 attorney/client privilege.

9 BY MR. HOLT:

10 Q Was there a bill in the store?

11 A This check was presented to me for signature.

12 Q Did you sign it?

13 A I refused to sign because Fathi Yusuf refused to
14 sign a check for my attorney and my brother's attorney.

15 Q So you did not sign this check?

16 A I did not sign the check.

17 Q And that's because it was a check to one of his
18 lawyers?

19 A Yes, sir.

20 MR. DiRUZZO: Your Honor, we renew the objection
21 because the witness has just testified that his own
22 attorneys and his brother's attorney would have been
23 paid out of Plaza Extra account, so I see no
24 relevance to why when as to the other checks that
25 paid for attorneys for ongoing legal services and

1 ongoing federal criminal case, how that's relevant.

2 THE COURT: Your objection is to the question
3 that's being asked or are you anticipating he's going
4 to move to admit?

5 MR. DiRUZZO: I'm renewing the objection now the
6 witness has just laid the foundation that he
7 personally and his brothers, in respect to the
8 ongoing federal criminal case, that their legal
9 services have been paid out of the Plaza Extra
10 account.

11 MR. HOLT: I'm going to get to that.

12 THE COURT: I'm not sure there's an objection so
13 I won't --

14 MR. DiRUZZO: I'm just renewing the objection
15 and move to strike Exhibit 15, again.

16 THE COURT: Okay. Renewed objection is denied.

17 BY MR. HOLT:

18 Q Now, there was a time when you would be
19 presented with the check to pay Mr. Smock?

20 MR. DiRUZZO: Objection, leading.

21 BY MR. HOLT:

22 Q Can you tell me whether or not there was ever a
23 time when you were presented with a check for Mr. Smock to
24 sign?

25 A Yes.

1 Q And when there was that time, why wouldn't you
2 approve and sign?

3 A Because all the defense team for the federal
4 case that we have was being paid out of the Plaza Extra
5 account.

6 Q The supermarket's account?

7 A The supermarket's account, yes.

8 Q Why would you then not sign this one?

9 A Because my attorneys in the legal -- in the
10 federal case haven't been paid.

11 Q Was there --

12 A Mr. Yusuf -- Mr. Yusuf refused to pay that.

13 Q Was there a time that they were paid?

14 A Yes.

15 Q And then there came a time when he refused to
16 pay the checks?

17 A Yes.

18 Q And when did that happen?

19 A This happened, I believe, maybe six months, five
20 months ago.

21 Q In 2012?

22 A In 2012.

23 Q So up until then he would sign all of the
24 checks?

25 A Yes.

1 Q Now, could you and your brother sign a check to
2 those lawyers?

3 A Yes, we can.

4 Q And why don't you?

5 A Because we don't want to be in violation of the
6 TRO.

7 Q And would you also be in violation of another
8 agreement?

9 A Yes, the family agreement.

10 Q While they are both signing checks your brothers
11 haven't chosen to do that?

12 A Correct.

13 Q As a matter of fact, on the removal of the 2.7
14 million with the two Yusufs signing the check, could you
15 and one of your brothers sign a check for 2.7 million and
16 remove it?

17 A No, we can't.

18 Q Why not?

19 A Because of the TRO.

20 Q And you're talking about the TRO in the criminal
21 case?

22 A Yes.

23 Q If the TRO weren't in place --

24 A Yes.

25 Q -- would you do that?

1 A Yes.

2 Q You would?

3 A He took 2.7.

4 Q Would you do it without their permission?

5 A No, I won't.

6 Q Now, what keeps the Yusuf family from writing a
7 check to themselves for everything in the account today
8 just like they did the 2.7?

9 A Nothing.

10 **(Plaintiffs' Exhibit 17 and 18 marked for**
11 **identification.)**

12 BY MR. HOLT:

13 Q Now, showing you Exhibit Number 17 and 18, can
14 you tell me what these are?

15 Your Honor, while they are looking at it I would
16 move Exhibit Number 16 into evidence.

17 MR. DiRUZZO: Your Honor, subject to our --

18 THE COURT: Recognizing the objection it will be
19 admitted.

20 **(People's Exhibit 16 received into evidence.)**

21 MR. DiRUZZO: And, Your Honor, defense would
22 like an offer of proof as to 17 and 18, because it's
23 my understanding, because the plaintiff's issued a
24 subpoena ducus tecum to attorney Robert King in this
25 case, and then when the defense finally tried to

1 issue their own ducus tecum, the plaintiffs
2 vehemently objected and sited to this Court's order
3 granting the motion for protective order that no
4 discovery would be taken.

5 So seeing when it suits the plaintiffs to get
6 documents through discovery process it's fine, but
7 when the defense tries to get -- subpoena documents
8 and documents through their own ducus tecum, the
9 plaintiffs turn right back around and object and move
10 for protective order.

11 So we would object to defense 17, 18 coming from
12 the subpoena ducus tecum issued to Attorney Bob King
13 that this is improper.

14 MR. HOLT: First of all, Your Honor, these did
15 not come from any documents generated by Mr. King,
16 these are documents Mr. Hamed had in his possession.
17 Second, of all they consented to that subpoena being
18 served so that's an exception to Rule 2016.

19 THE COURT: I've seen subpoenas issued by both
20 parties subsequent to the motion for protective
21 order. So anyway the -- your objection is noted and
22 denied.

23 BY MR. HOLT:

24 Q Looking at Exhibit Numbers 17 and 18, can you
25 tell me what that is?

1 A Notice of payment of purchase price.

2 Q That's Exhibit Number 17?

3 A Yes, sir.

4 Q And is there a signature on that?

5 A Yes.

6 Q And who is that?

7 A That's Najeh Yusuf.

8 Q Anyone else?

9 A No one.

10 Q What was the purpose of that? What does that
11 document reference?

12 MR. DiRUZZO: Your Honor, the defense would
13 object. This document regards a Y & S Corporation.
14 We're here in response to United Corporation and
15 plaintiffs alleged partnership with the Hameds. I
16 see no reason why they want to talk about Y & S
17 Corporation.

18 Moreover, it's hearsay and I take it it's being
19 offered for the truth of the matter asserted
20 contained therein.

21 THE COURT: I don't know. What's in it?

22 MR. HOLT: Let me make a proffer, Your Honor.

23 One of our concerns in this case is the Yusuf
24 family will abscond with the funds, this is one of
25 the ventures they used from profits from the

1 business, they bought the Doroithia Project in
2 St. Thomas together, Hamed owns half Yusuf's own half.

3 And just the year of this document, recently
4 they sold their interest. So document number one, is
5 the document number 17 is one of the notices that
6 they are authorizing the sale of their stocks so it
7 can be sold.

8 And then the second document is Mr. Yusuf's
9 handwritten notes showing the disbursement of funds
10 showing that the Hamad family is owed the amount of
11 \$800,000 plus to be transferred, but that money has
12 never been paid. And part of this TRO is the concern
13 about if we don't get an order freezing the assets
14 they'll just take all the assets and we won't be
15 fighting over anything.

16 MR. DiRUZZO: Your Honor, hearsay. It's
17 unexecuted. All you have is one signature, nothing
18 with the buyers, nothing with the sellers.

19 THE COURT: How is it that that's in his
20 possession?

21 BY MR. HOLT:

22 Q How did you get possession of Exhibit Number 17?

23 A This was sent over for my brother Hisham Hamed
24 to sign.

25 Q And did you deal with that?

1 A I gave it to Hisham and he eventually signed it.

2 MR. DiRUZZO: Objection if it was given to
3 Hisham Hamed.

4 BY MR. HOLT:

5 Q Was it given to you or Hisham?

6 A It was given to me.

7 Q And why did he give it to you?

8 MR. DiRUZZO: Objection, speculation.

9 THE COURT: Okay. All right. I'm going to
10 sustain that objection.

11 BY MR. HOLT:

12 Q Okay. The document, you have personal knowledge
13 of that document?

14 A Yes, sir.

15 Q And it needed your brother's signature.

16 MR. DiRUZZO: I'm sorry, Your Honor, there is no
17 signature on it. He can testify that his brother is
18 on it, if he knows it.

19 THE COURT: Let them establish what he can
20 establish, then we can object.

21 BY MR. HOLT:

22 Q Did you have your brother sign this document?

23 A Yes.

24 Q And did you then have the document returned to
25 Attorney King?

1 A Yes.

2 Q And why did you do that?

3 A Because there was a sale of the property and we
4 expected that we're going to get paid for our money.

5 Q And then looking at Exhibit Number 18.

6 MR. DiRUZZO: Your Honor, at this point we're
7 rejecting on -- going on Exhibit 17. He has no
8 personal knowledge as to why it's sent over. It
9 wasn't signed. It doesn't even involve this witness,
10 it involves his brother, and it's unexecuted.

11 THE COURT: He just -- go head.

12 MR. HOLT: I think I can put the foundation in
13 place.

14 THE COURT: He said this is of his personal
15 knowledge and he personally sent it over to Attorney
16 King or wherever.

17 BY MR. HOLT:

18 Q Looking at Exhibit Number 18, what is that
19 document?

20 A That document is a breakdown that Yusuf did,
21 Fathi Yusuf.

22 Q Is this in handwriting?

23 A Yes, it is.

24 Q And who's handwriting is this?

25 A Fathi Yusuf.

1 Q And what does this handwriting purport to do?

2 MR. DiRUZZO: Objection, Your Honor. He hasn't
3 laid the foundation to personal knowledge of Fathi
4 Yusuf's handwriting, and there's no signature on this
5 document.

6 THE COURT: Lay a foundation, please, counsel.

7 BY MR. HOLT:

8 Q Do you know Fathi Yusuf's handwriting?

9 A Yes, I do.

10 Q And is this his handwriting?

11 A Yes, it is.

12 Q And this was his handwriting in conjunction with
13 what? What was he doing?

14 A He's breaking down the Dorothea sale, how much
15 money it was sold for, what funds he received in hand.
16 And the total amount was 1605, then it's split 50/50
17 because it's owned by the Yusuf and the Hamed, and the
18 Hameds are due 802,966.

19 Q This shows the sale of the Dorothea property in
20 St. Thomas was how much?

21 A One million five hundred.

22 Q And how much was the Hamed family supposed to
23 get from that sale?

24 MR. DiRUZZO: Objection, asked and answered.

25 Document speaks for itself.

1 THE COURT: Overruled.

2 BY MR. HOLT:

3 Q The second one is called the Jordan fund, it
4 says 75,000 Dinar, can you explain that?

5 A 75,000 Dinar was my father gave it as instructed
6 by Fathi.

7 MR. DiRUZZO: Objection as to personal
8 knowledge. Hearsay.

9 BY MR. HOLT:

10 Q Do you have personal knowledge --

11 MR. DiRUZZO: Objection, leading.

12 BY MR. HOLT:

13 Q -- of the document?

14 A Yes.

15 Q What is that knowledge?

16 A He gave 75,000 not to Fathi but an individual
17 that Fathi asked my father to give to of 75,000 Dinars
18 which equals to 105,932.

19 MR. DiRUZZO: Objection lacks personal knowledge
20 as to how much 75,000 Dinars equates in U.S. dollars.
21 Objection, hearsay as to what Fathi Yusuf said to
22 this unidentified third person.

23 MR. HOLT: I'll withdraw.

24 THE COURT: Thank you.

25 BY MR. HOLT:

1 Q Does this show an amount due to the Hamed
2 family?

3 A Yes, it does.

4 Q And that's from the transaction that's described
5 on this paper?

6 A Yes.

7 Q And what is the amount due the Hamed family?

8 A \$802,966.00.

9 Q Is that the number that you were referring back
10 on August 24 when you sent the e-mail to Mr. Yusuf talking
11 about the accounting between the parties?

12 A Yes, sir.

13 Q Okay. And has the Hamed family ever received
14 these funds?

15 A No, we haven't.

16 Q And do you know where these funds are?

17 A I have no idea where.

18 MR. HOLT: Okay. We move into evidence Exhibit
19 Number 17 and 18.

20 MR. DiRUZZO: Same objection, Your Honor.

21 THE COURT: All right. We'll admit it.

22 **(People's Exhibit 17 and 18 received into**
23 **evidence.)**

24 MR. HOLT: If I could have a break for one
25 second.

1 THE COURT: Go ahead.

2 BY MR. HOLT:

3 Q Can you tell me the list of things that the
4 Yusuf family has done which caused you to file a lawsuit
5 and seek this injunction, other than the items that we've
6 already spoken?

7 A They have threatened to fire the Hamed partners,
8 physically remove us from the store, bad mouthing us or
9 talking about us in bad terms to suppliers, to employees
10 and certain customers.

11 His ranting and raving in the office, in front
12 of employees, in front of suppliers. His sort of what he
13 would -- what he did was he cancelled orders. He limited
14 to how we conduct business as far as the ordering, pricing
15 or whatever. All of a sudden it has to be approved by him
16 after 25 years of running the business.

17 Threatening us with harm, physical harm.
18 Intimidating us into leaving the store. Threatening to
19 take us off of the authorization to sign the checks.
20 Threatening to close down the east store at one time, the
21 St. Thomas store another, the west store at another and
22 sometimes all the stores all at one time. And most
23 recently, the firing of one of our key people, Ms. Wadda.

24 Q Directing your attention to January 9th of this
25 year; do you recall the event that happened on that day?

1 A Yes.

2 Q Can you tell the Court of your own personal
3 knowledge what happened that you observed and were witness
4 to.

5 A I received a call the night before from Wadda
6 that Mr. Yusuf had fired her.

7 MR. DIRUZZO: Objection. Hearsay.

8 THE COURT: Sustained.

9 BY MR. HOLT:

10 Q Who is Wadda?

11 A Wadda is the office manager who has been
12 employed in Plaza for the past 15 years.

13 Q She works under your --

14 MR. DIRUZZO: Objection, leading.

15 THE COURT: I'll allow it.

16 BY MR. HOLT:

17 Q Tell me whether or not she works on your
18 direction?

19 A Yes.

20 Q Does she?

21 A Yes.

22 Q And is it your understanding that she was
23 terminated?

24 A Yes.

25 Q By whom?

1 A Mr. Yusuf.

2 Q And what, if anything, did you do in response to
3 that?

4 A I hired her back.

5 Q And did she come in the store the next day?

6 A Yes, she did.

7 Q And why did you hire her back?

8 A Mr. Yusuf never gave me any indication why he
9 fired her. The normal course of management, or the normal
10 course of dialogue that we have is if we have a situation
11 of an employee who did something, or presumably did
12 something, or whatever it is, we always as managers,
13 discuss, or as owners, we discuss the issues at hand.

14 We find out what that employee did. We rarely
15 just go ahead and fire an individual, especially -- By
16 Yusuf coming over to the Plaza Extra east store and just
17 firing Wadda out of the east store saying that she did
18 something.

19 And at the same --

20 MR. DIRUZZO: Objection, Your Honor, narrative.

21 THE COURT: Just answer the question you're
22 asked.

23 BY MR. HOLT:

24 Q So she came back to work the next day?

25 A Yes.

1 Q And what happened?

2 A Mr. Yusuf came in and he told her that, didn't I
3 fire you? She said, I hired you. He says, well, I fired
4 you, you have to leave the store.

5 Q Were the police called?

6 A Yes, he called the police on her.

7 Q And were you there when the police were there?

8 A Yes, sir.

9 Q Tell me what you observed while the police were
10 there?

11 A Mr. Yusuf said they have to leave my store, this
12 is my store, they have no right here, I fired her. Even
13 he said he fired my brother Mufeed.

14 He directed the police to remove us and Wadda
15 from there. The police then said they would take it under
16 advisement, and they left. Me and my attorney left and we
17 went to court and we submitted the motion.

18 Q Now, did Mr. Yusuf say what he would do if
19 anything if the police didn't remove everybody?

20 MR. DIRUZZO: Objection, Your Honor, leading.

21 MR. HOLT: I said --

22 THE COURT: I don't think that's leading.

23 Allowed.

24 You can answer.

25 THE WITNESS: He would close down the store.

1 BY MR. YUSUF:

2 Q And he said that in your presence?

3 A Yes, sir.

4 Q And at that juncture I take it you left to go to
5 court?

6 A Yes.

7 Q Did there come a time that you returned back to
8 the store that morning?

9 A Yes.

10 Q And did a discussion take place with all the
11 parties present as to what would be done regarding the
12 stores?

13 MR. DiRUZZO: Objection. Settlement discussion,
14 lack of foundation as to whether all of the parties
15 were there and know who's there.

16 BY MR. HOLT:

17 Q Who was present in the office?

18 MR. DiRUZZO: Objection.

19 THE COURT: Okay.

20 THE WITNESS: Attorney DeWood, Attorney Glenda.

21 MR. DiRUZZO: Your Honor, that was without a
22 doubt after the parties met in mediation, that has to
23 be 408.

24 THE COURT: Okay.

25 MR. HOLT: And after that case was filed.

1 THE COURT: I'm going to ask you to start over
2 with that. How much longer do you have this witness?

3 MR. HOLT: I'm pretty close to being finished.
4 You want to take a break?

5 THE COURT: Well, I want to make sure that the
6 staff is taken care of, and obviously we're going to
7 have a substantial cross-examination. Is this a good
8 time for a break?

9 MR. HOLT: Yes.

10 THE COURT: Okay.

11 MR. DiRUZZO: Perfect.

12 THE COURT: Let's -- I don't know if we want to
13 talk a lunch break at this point.

14 MR. DiRUZZO: I just ask that the witness be
15 reminded of his obligations until he's done
16 testifying.

17 THE COURT: Yes, sir. And Attorney Holt will
18 advise him, please.

19 **(Recess at 12:00 p.m. until 1:50 p.m.)**

20 THE COURT: We'll pick it up where we left off.
21 I think everybody -- I assume state side counsel
22 would prefer not to come back next week to finish
23 this, and so let's do our best to make sure we'll
24 finish today. We'll just go straight through as long
25 as we need to. That will be the plan.

1 MR. DiRUZZO: Your Honor, there's a distinct
2 possibility that we might not get done with all the
3 witnesses today, especially our witnesses, and if we
4 have to come back next week, I'll come back next
5 week.

6 THE COURT: We'll do our best to get through
7 today.

8 MR. HOLT: In other words, to expedite things, I
9 have no more questions.

10 THE COURT: Thank you.

11 CROSS-EXAMINATION

12 BY MR. DiRUZZO:

13 Q Good afternoon, Mr. Hamed.

14 A Good afternoon.

15 Q I'm going to ask you a series of questions, if
16 you don't understand the question, I speak too fast, not
17 loud enough, let me know and I'll either repeat or
18 rephrase the question, okay?

19 A Okay.

20 Q Now, sir, you've testified that this partnership
21 agreement that you just talked about is between your
22 father Mohammad Hamed and Fathi Yusuf; is that correct?

23 A Yes, sir.

24 Q Please tell us what were the exact terms of that
25 agreement?

1 A It's a 50/50 partnership to the supermarket.

2 Q Be specific, when you say the supermarket what
3 are you referring to?

4 A When they got together to form this partnership
5 it was to open the Plaza Extra east store.

6 Q So you're talking about -- This partnership
7 you're talking between Fathi Yusuf and your father in
8 respect to the Plaza Extra grocery store operations,
9 correct?

10 A Yes, sir.

11 Q What were the terms of this agreement? You said
12 it was 50/50?

13 A Yes.

14 Q What else?

15 A That the Plaza Extra east store will pay rent to
16 United Corporation, the United Shopping Plaza.

17 Q Just so we're clear, what you're saying is the
18 grocery store operations will pay rent to United
19 Corporation as the landlord for the actual dirt, you know,
20 of Plaza Extra Sion Farm?

21 A For the Plaza Extra east store.

22 Q What else were the terms?

23 A It's -- really those are the terms as I
24 understand.

25 Q Just so we're perfectly clear, you're testimony

1 today is that the terms of the agreement between your
2 father and Fathi Yusuf were it was 50/50 to run the Plaza
3 Extra grocery store and nothing else?

4 A Well, they are responsible -- they are
5 responsible to share the profits, they are responsible for
6 the receivables, the payables, the risk that they are
7 taking together. If they lose both parties lose not just
8 one. They make money both parties make money.

9 Q And these are the terms, are you sure?

10 A Yes.

11 Q Okay. When you testified that Mohammed Hamed
12 actually worked at the grocery store in Sion Farm?

13 A Yes, sir.

14 Q And, correct me if I'm wrong -- Well, he
15 actually stopped working at the grocery store in Sion Farm
16 at some point in time, I want to say 1996; is that
17 correct?

18 A Yes.

19 Q Okay. From the time that this partnership
20 began, which You say was in the middle '80s until 1996,
21 Mohammed Hamed never had signatory authority over any bank
22 accounts of Plaza Extra, correct?

23 A That's correct.

24 Q And because he never had signatory authority, he
25 never wrote a single check on behalf of Plaza Extra

1 during -- between 1986 and 1996?

2 A That was the duty of Fathi Yusuf, he was
3 responsible for the office.

4 Q Because Fathi Yusuf was in charge, correct?

5 A No, he was responsible for the office.

6 Q Now, in respect to this partnership agreement
7 between your father and Fathi Yusuf, how long was this
8 partnership agreement supposed to last?

9 A There was no definite terms. As far as we know
10 it's forever.

11 Q Now, your testimony on your direct examination
12 was that the checks that were written in respect to the
13 Plaza Extra grocery stores, that those always required two
14 signatures, correct, that was your testimony?

15 A We started doing that in either late 2009 or
16 2010 that we came to an agreement.

17 Q So your testimony on direct that you always
18 needed two signatures, that was incorrect?

19 MR. HOLT: Objection. He didn't say that.

20 THE COURT: Just ask the questions. Don't
21 characterize his testimony.

22 BY MR. DiRUZZO:

23 Q Well, sir, the reason that two signatures were
24 needed, or are currently needed, is because Fathi Yusuf
25 wanted it that way, correct?

1 A Yes. He came to us and we both agreed on it,
2 yes.

3 Q "He came to us," that means Fathi Yusuf came
4 to -- Who did he come to?

5 A He came to me.

6 Q And it was his idea? He came to you, it was his
7 idea, right?

8 A So what. It's his idea. There's a lot of other
9 stuff it was my idea.

10 Q Sir, that wasn't the question. The question
11 was, it was his idea, correct?

12 A He came to me with it.

13 Q Now, Fathi Yusuf had written a check to himself,
14 unilaterally just wrote himself a check. You're testimony
15 was that would be -- somehow that would be improper or
16 wrong, that he just can't write himself a check.

17 A I'm sorry, I -- what do you mean by that?

18 Q Let me break it down for you, sir. Your
19 testimony on direct was you're complaining that there were
20 checks written on Plaza Extra grocery stores that had
21 signatures of just the Yusuf family, you were complaining
22 about those checks, for example?

23 A Yes, sir.

24 Q Right?

25 A Uh-hum.

1 Q And now -- But you also testified just now that
2 in 2009/2010, whenever it was, up until that time only one
3 signature was needed on an account?

4 A Yes, sir.

5 Q Okay. Now, if Fathi Yusuf had written a check
6 unilaterally by himself, it was his idea, he didn't ask
7 anyone? If he wrote himself a check to himself, that
8 would have been improper, that would have breached this
9 partnership agreement that you're talking about, that you
10 talk about on direct examination, correct?

11 A Could you --

12 Q Let me --

13 A -- repeat the question.

14 Q If Fathi Yusuf cut himself a check right now, he
15 signs it, made payable to Fathi Yusuf, he signs it, he
16 goes to the bank, he cashes it, he takes money out, your
17 testimony is this is not allowed, this is improper, this
18 breaches this alleged partnership agreement?

19 A Based on the agreement that we have together
20 right now it has to have two family, one member of each
21 family.

22 Q Let's talk about before you needed two family
23 signatures back in, I don't know, 2007.

24 In 2007, if Fathi Yusuf had written a check to
25 himself without asking anyone else, made payable to Fathi

1 Yusuf, signed to Fathi Yusuf, that would have breached the
2 partnership agreement.

3 A No.

4 Q So what you're saying is Fathi Yusuf could have
5 unilaterally taken money out of Plaza Extra and that would
6 not have breached the partnership agreement?

7 A He would have to let us know about it.

8 Q Sir, that's not what I'm asking.

9 A He would have to let us know about it.

10 Q Sir, I understand. Answer my question, if Fathi
11 Yusuf, without letting anyone else know, wrote himself a
12 check, would that have breached the partnership agreement?

13 A If he wouldn't let nobody else know, yes.

14 Q Okay.

15 MR. DiRUZZO: Your Honor, may I approach.

16 THE COURT: Yes, sir.

17 **(Defendants' Exhibit 1 marked for**
18 **identification.)**

19 BY MR. DiRUZZO:

20 Q I'm showing you a document that's been marked as
21 Defense Exhibit 1. Please take a moment and review that
22 document, that composite document and let me know when
23 you're done reviewing.

24 A I'm through.

25 Q You're done, sir?

1 A Yes.

2 Q Sir, this composite exhibit, Defense Exhibit 1,
3 these are a series of checks, correct?

4 A Yes.

5 Q And these checks were written on the Plaza Extra
6 accounts, to be specific the United Corporation, d/b/a
7 Plaza Extra account at Scotia Bank?

8 A Correct.

9 Q And these checks are all written made payable to
10 Wally Hamed?

11 A That's correct.

12 Q And all these checks have your signature on it,
13 correct?

14 A Correct.

15 Q And on the back of these checks these -- they
16 have an endorsement and that endorsement reflects your
17 signature on it?

18 A Correct.

19 Q Okay.

20 MR. DiRUZZO: Now, Your Honor, the witness
21 doesn't need to see the exhibit anymore, can we move
22 it into evidence, Defense Exhibit 1?

23 THE COURT: Objections?

24 MR. HOLT: No. No objection.

25 THE COURT: Admitted.

1 **(Defendants' Exhibit 1 received into evidence.)**

2 BY MR. DiRUZZO:

3 Q Sir, in the event that there is a dispute over
4 the management of a Plaza Extra store between a Hamed
5 brother and a Yusuf brother, I'm sure that that would have
6 happened over the course of many years of Plaza Extra has
7 been operating, correct?

8 A Yes. Not very often.

9 Q But there was some times that has happened over
10 a management decision?

11 A Yes.

12 Q And when this occurred, if the two brothers
13 couldn't agree, Fathi Yusuf he is the one that made the
14 ultimate call, correct?

15 A I would say, yes.

16 Q Now, sir, I'm going to turn your attention to
17 the deposition transcript that's been admitted into
18 evidence by the plaintiffs, Plaintiffs' Exhibit 1.

19 Your Honor, can the witness be shown Plaintiffs'
20 Exhibit 1.

21 MR. HOLT: Your Honor, while he's at it 1, 1A,
22 2, 3 and 4 were admitted.

23 THE COURT: Thank you.

24 BY MR. DiRUZZO:

25 Q Sir, before you have an opportunity to take a

1 look at that document, on direct examination you referred
2 to the Plaza Extra Tutu Park, or the St. Thomas location;
3 correct, you talked about that?

4 A Yes.

5 Q And you also talked about how you had -- there
6 was this partnership between your father Fathi Yusuf and
7 an individual by the name of Ahamad -- could you help me
8 out with his last name?

9 A Idhelleh.

10 Q Idhelleh. And you referred to Mr. Ahamad as the
11 partner in St. Thomas, correct?

12 A Yes.

13 Q And ultimately, Mr. Ahamad, he was bought out,
14 he is no longer the partner in St. Thomas, correct?

15 A That's correct.

16 THE COURT: You mean Mr. --

17 THE WITNESS: Idhelleh.

18 MR. DiRUZZO: Idhelleh.

19 THE COURT: Thank you.

20 BY MR. DiRUZZO:

21 Q He's no longer the partner in St. Thomas?

22 A That's correct.

23 Q Now, sir, I want to turn your attention to this
24 exhibit that's already been admitted into evidence, I want
25 you to turn your attention to the third page. Let me know

1 when you get there.

2 And I don't -- Let me be specific, the third
3 page of the document, not the third page of the actual
4 deposition transcript.

5 A The third page of the document?

6 Q Third page of the document. One, two, three.

7 A Yes.

8 Q And that page reflects exhibits, correct?

9 A Yes.

10 Q And Exhibit Number 7, that refers to a joint
11 venture agreement, correct?

12 A Yes.

13 Q Okay. Well, the fact -- and sir, you would
14 agree that that joint venture agreement, that's not part
15 of that deposition transcript that's in front of you,
16 correct?

17 A Can I go through?

18 Q Sure.

19 A No, I don't see it.

20 Q Now, sir, you don't see that joint venture
21 agreement in front of you? The fact of the matter is,
22 Mr. Idhelleh he wasn't a partner in Plaza Extra Tutu, he
23 was a joint venturer in Plaza Extra in Tutu, correct; as
24 the document, Exhibit 7 Joint Venture Agreement that
25 should have been attached to this exhibit reflects.

1 A Whether it's a joint venture it's a partner,
2 that's the way I understand it.

3 Q Sir, actually why don't we discuss that. What's
4 your understanding of the difference between a joint
5 venture and a partner?

6 A It's the same. It just means the same to me.

7 Q Okay. Sir, in respect to Plaza Extra, Tutu
8 Park, have you seen the lease agreement between Plaza
9 Extra and the landlord?

10 A At one time or another, yes.

11 Q Well, you never -- you personally, you didn't
12 sign that lease agreement, did you?

13 A No, sir.

14 Q Your father, he didn't sign that lease
15 agreement, did he?

16 A No, sir.

17 Q Fathi Yusuf, he signed that lease agreement,
18 correct?

19 A If I can see that I can tell you that.

20 Q Sure. I'll get it to you in a little bit.

21 Sir, the fact of the matter is that your father
22 has never given a personal guarantee as to a Plaza Extra
23 or United Corporation debt, correct?

24 A I don't understand.

25 Q Do you understand what a personal guarantee is,

1 sir?

2 A Yes, sir.

3 Q Has your father -- The fact is that your father
4 has never executed a personal document guaranteeing the
5 debt of either United Corporation or Plaza Extra?

6 A Never executed a document. But he is fully a
7 partnership who's liable for payments and everything else.

8 Q Sir, that wasn't the question. The question is,
9 your father never executed a personal guarantee in respect
10 to the operation of Plaza Extra, correct; that's a fact?

11 A No, he's not.

12 Q And just so the record's clear, you're agreeing
13 with me he never did?

14 A That's correct. But he is responsible for it.

15 Q Now, sir, I'm going to turn your attention to
16 the ongoing criminal case; you're familiar with that case?

17 A Yes, sir.

18 Q And you were named a defendant in that case?

19 A Yes.

20 Q And United Corporation was a named defendant in
21 that case?

22 A Yes.

23 Q Along with Fathi Yusuf and Mahar Yusuf among
24 others?

25 A Yes.

1 Q And that case is ongoing, correct?

2 A Yes.

3 Q And in that case your father he was never
4 charged was he?

5 A No, sir.

6 Q And he was never taken into custody was he?

7 A No, sir.

8 Q You were taken into custody?

9 A Yes, sir.

10 Q Fathi Yusuf was taken into custody?

11 A Yes, sir.

12 Q Mahar Yusuf was taken into custody?

13 A Yes.

14 Q Now, at some point in time during the criminal
15 case there became an issue as to who actually owns Plaza
16 Extra?

17 A No, it wasn't who owns Plaza Extra, who owns
18 United.

19 Q Well, sir, you along with the other named
20 criminal defendants were indicted for what happened at
21 Plaza Extra, correct?

22 A What happened at United d/b/a Plaza Extra.

23 Q Sir, were -- in respect to the ongoing federal
24 criminal case, there was a plea agreement that was entered
25 into, correct?

1 A Yes, sir.

2 Q And the plea agreement --

3 May I approach, Your Honor?

4 THE COURT: Yes, to the marshal, please.

5 **(Defendants' Exhibit 2 marked for**
6 **identification.)**

7 BY MR. DiRUZZO:

8 Q Sir, I'm showing you what's been marked as
9 Defense Exhibit Number 2, take a moment to peruse that
10 document and let me know when you're done reviewing it.

11 A Yes, sir.

12 Q Okay. Sir, in the ongoing federal criminal case
13 you're represented by two attorneys by the names of Gordon
14 Rhea and RandallAndreozzi, correct?

15 A Correct.

16 Q And, sir, they executed this document on your
17 behalf, specifically on page 14, correct?

18 A Yes.

19 Q And page 20?

20 A Correct.

21 Q Now sir --

22 A I'm sorry, page 20?

23 Q Page 20.

24 A Yes.

25 Q Now, sir, on page one of this plea agreement,

1 here in this plea agreement it talks about the defendant
2 United Corporation d/b/a Plaza Extra?

3 A Yes, sir.

4 Q And the nature of this plea agreement involves
5 the federal government's allegation in respect to Plaza
6 Extra, correct?

7 A Yes.

8 Q Now, in this plea agreement it reflects certain
9 ownership percentages of United Corporation d/b/a Plaza
10 Extra, correct.

11 And I'll turn your attention to, specifically,
12 page 11.

13 A Page 11.

14 MR. HOLT: Your Honor, to move things along
15 we'll stipulated that United Corporation is owned by
16 the Yusufs not --

17 THE COURT: I think the question is United d/b/a
18 Plaza.

19 MR. DiRUZZO: That is --

20 THE COURT: But perhaps Attorney Holt will
21 stipulate to what the document says.

22 MR. HOLT: I will. I don't want to interrupt
23 his questioning, I was trying to move things along.

24 BY MR. DiRUZZO:

25 Q The ownership percentages are listed on page 11?

1 A Yes, sir.

2 Q And this document was executed by your attorneys
3 acting in your place as your legal representatives in the
4 ongoing federal criminal case, correct?

5 A Yes, sir.

6 Q Now, sir, and the reason that they executed this
7 document -- Well, actually let me be specific there's
8 signatures on page 14 and page 20, you recognize their
9 signatures, correct?

10 A Yes.

11 Q These are their signatures and you don't dispute
12 the accuracy and authenticity of that document do you?

13 A As far as I know, yes.

14 Q And, of course, you won't enter into a plea
15 agreement without reading it; but have you read this
16 document, your attorney acting on your behalf executing
17 it?

18 A I don't remember if I read it or not.

19 MR. DiRUZZO: Okay. Now, Your Honor, the
20 defense would move Exhibit Number 2 into evidence.

21 MR. HOLT: No objection.

22 THE COURT: Admitted.

23 **(Defendants' Exhibit 2 received into evidence.)**

24 **(Defendants' Exhibit 3 marked for**
25 **identification.)**

1 BY MR. DiRUZZO:

2 Q Now sir, I'm showing you another document that's
3 Exhibit 3. Take a moment and take a look at that
4 document, peruse it and let me know when you've finished
5 reviewing that document.

6 A Yes.

7 Q And sir, on page five, Gordon Rhea executed this
8 document on your behalf?

9 A Yes.

10 Q And on the next page, page six, RandallAndreozzi
11 executed this document on your behalf?

12 A Yes.

13 Q And, sir, this document reflects that United
14 Corporation, d/b/a Plaza Extra was to pay \$10 million to
15 the Virgin Islands Bureau of Internal Revenue, correct?

16 Take a look at page one.

17 A Yes, sir.

18 Q Ask to move Exhibit Number 3 into evidence.

19 MR. HOLT: No objection.

20 THE COURT: Admitted.

21 **(Defendants' Exhibit 3 received into evidence.)**

22 **(Defendants' Exhibit 4 marked for**
23 **identification.)**

24 BY MR. DiRUZZO:

25 Q Sir, take a moment to take a look at defense

1 Exhibit Number 4?

2 A Yes, sir.

3 Q All right, sir, I'm going to turn your attention
4 to page six of the document?

5 A Yes.

6 Q And that's a letter between an attorney by the
7 name of Henry Smock and Tamarah Parson-Small at the
8 Virgin Islands Bureau of Internal Revenue, you agree with
9 me?

10 A Yes.

11 Q And down at the bottom there's a carbon copy to
12 Gordon Rhea and Randall Andreozzi?

13 A Yes.

14 Q Who's your attorney in the ongoing criminal
15 case?

16 A Yes.

17 Q Sir, on the very next page there's a \$10 million
18 check made payable to the Virgin Islands Bureau of
19 Internal Revenue?

20 A Yes, sir.

21 Q And, sir, on the very last page, page 9, there
22 are signatures of shareholders of United Corporation,
23 including Fathi Yusuf and other family members, you would
24 agree with that?

25 A Yes.

1 Q Sir, have you seen this document before?

2 A I don't recall.

3 Q Sir, in respect to the ongoing federal criminal
4 case, have either of your attorneys ever lodged an
5 objection with the prosecutors -- let me be real specific.

6 You would agree with me none of your attorneys
7 filed a document with the District Court of the Virgin
8 Islands Clerk's office disputing the ownership percentages
9 in United Corporation d/b/a Plaza Extra.

10 A No, they haven't.

11 Q Sir, when the federal criminal case was ongoing,
12 at no point in time did you ever stand up and say hold on,
13 my father's a partner in Plaza Extra; you never made that
14 representation to the court, did you?

15 A No, I never had no reason to. My father was not
16 an indicted individual.

17 Q Sir, I'll take that as a never. You never made
18 that representation?

19 A That's what I said, I never did.

20 Q And when it became an issue as to who actually
21 owns Plaza Extra, at that point in time neither you nor
22 your attorneys stood up and said wait a minute, my father
23 Mohammed Hamed he actually owns 50 percent of Plaza Extra;
24 you never made that representation did you?

25 A No, sir.

1 Q But now -- Sir, I'm going to turn your attention
2 to July 9 of 2009, on that day there is a hearing in the
3 ongoing federal criminal case, and at that hearing the
4 federal government brought up that there is a potential
5 issue as to who actually owned Plaza. Let me be specific,
6 United Corporation d/b/a Plaza Extra, do you remember that
7 day?

8 You remember going in front of Judge Finch and
9 what was said in front of the federal prosecutors and the
10 attorneys that day?

11 A I remember there was an issue but I don't
12 remember exactly what happened.

13 Q You don't remember exactly what was said?

14 A Sir, no.

15 Q Sir, if I show you a transcript of that hearing
16 will that refresh your recollection?

17 A It might.

18 MR. DiRUZZO: Then, Your Honor, I'll table this
19 train of discussion until a further point in time.
20 Defense would move Exhibit Number 4 into evidence.

21 THE COURT: Objection to number 4?

22 MR. HOLT: No objection to number 4. Sorry
23 about that, Your Honor.

24 THE COURT: Admitted.

25 **(Defendants' Exhibit 4 received into evidence.)**

1 THE COURT: Is that document, that transcript,
2 is that marked as an exhibit?

3 MR. DiRUZZO: Not yet.

4 THE COURT: Okay.

5 **(People's Exhibit 5 marked for identification.)**

6 BY MR. DiRUZZO:

7 Q Sir, before you get an opportunity to read
8 that -- before sitting here today, before you had an
9 opportunity to read that transcript, you do remember that
10 the federal government, the prosecutors were making an
11 issue about whether your father was actually a partner in
12 Plaza Extra?

13 A I don't remember if it was my father or if it
14 was us. I don't recall exactly.

15 Q But do you recall there was something that was
16 discussed?

17 A Yes.

18 Q Now, sir, I'm going to turn your attention to
19 the amount of money, or the Banco Popular securities
20 accounts, you're familiar with those accounts?

21 A Yes.

22 Q And as you're sitting here today you would agree
23 there's in excess of \$40 million into those accounts?

24 A That's correct.

25 Q And those -- those accounts at Banco Popular,

1 and also I want to say there's also a Merrill Lynch
2 account, correct?

3 A Yes.

4 Q And those accounts are subject to the
5 restraining order in the ongoing federal criminal case?

6 A Yes.

7 Q And those funds haven't gone anywhere over the
8 last -- during the duration of the federal criminal case?
9 They've been at Banco Popular securities, they haven't
10 gone anywhere? They haven't gone to Jordan, they haven't
11 gone anywhere else, correct?

12 A That's correct.

13 MR. DiRUZZO: This will be Defense Exhibit 6.

14 **(Defendants' Exhibit 6 marked for**
15 **identification.)**

16 BY MR. DiRUZZO:

17 Sir, I'm showing you a composite exhibit
18 marked as Defense Exhibit 6, can you take a moment to
19 peruse that document.

20 A Yes, sir.

21 Q Sir, Defense Exhibit 6, these are a bunch of
22 images or photographs, pictures, correct?

23 A Yes.

24 Q Of Plaza Extra Sion Farm?

25 A Correct.

1 Q And, sir, these pictures depict, starting on the
2 first page, the inside of Plaza Extra Sion Farm where the
3 customers would shop, agreed?

4 A Yes, they are. The aisles.

5 Q And on the seventh page of that document,
6 starting on the seventh page, it depicts the warehouse,
7 the receiving area, the back of the building that's not
8 accessible to the public, correct?

9 A That's correct.

10 Q Now, sir, these pictures accurately depict the
11 inside of Plaza Extra Sion Farm, correct?

12 A On that given day, yes, whatever day it was.

13 Q And, sir, do you have any reason to believe that
14 this picture wasn't taken in the next -- wasn't taken
15 recently? Does this look like a recent picture to you?

16 A Yes.

17 Q Now, sir, these pictures depict a grocery store
18 full of inventory? That looks pretty well stocked to me.
19 Sir, you would agree there's plenty of inventory in Sion
20 Farm as we sit here today?

21 A There is inventory.

22 Q And not only is there inventory available to the
23 public, there's also inventory in the back so the -- in
24 the event that the front floor needs to be restocked it
25 can be, correct?

1 A Not everything, but there's a significant space
2 on the shelf that are not full.

3 Q Sir, the truth of the matter is that payments to
4 suppliers, they haven't been blocked, and Plaza Extra, the
5 grocery stores, there's plenty of inventory there for the
6 public of St. Croix to buy, that's the truth of the
7 matter?

8 A That's your opinion, sir.

9 Q Well, I'm asking you, sir, answer my question
10 request.

11 A Repeat the question.

12 Q The question is, payments to suppliers have not
13 been blocked?

14 Let me make it real easy, these pictures depict
15 a grocery store full of inventory that is not about to
16 close any time soon, correct?

17 A I could say, yes.

18 MR. DiRUZZO: Defense would move Exhibit 6 into
19 evidence.

20 MR. HOLT: No objection, but is there a time to
21 the photos?

22 MR. DiRUZZO: I would be able to represent taken
23 last night.

24 MR. HOLT: When?

25 MR. DiRUZZO: Last night.

1 MR. HOLT: No objection.

2 MR. DiRUZZO: Although I'll tie up that
3 foundation on predicate with some of our witnesses.

4 MR. HOLT: I'll stipulate to it.

5 MR. DiRUZZO: Okay.

6 THE COURT: Group Exhibit 6 is admitted.

7 **(Defendants' Exhibit 6 received into evidence.)**

8 BY MR. DiRUZZO:

9 Q Sir, I want to turn your attention to the name
10 of Wadda Charriez.

11 THE COURT: How do you pronounce her last name?

12 THE WITNESS: Charriez.

13 BY MR. DiRUZZO:

14 Q Charriez. Sir, you would agree with me that
15 having employees file false time records to reflect hours
16 that they worked when they didn't actually work, that's
17 against company policy? Plaza Extra doesn't pay people
18 for hours that they did not work?

19 A That's correct.

20 Q And when people falsify their time sheets there
21 is a problem because Plaza Extra pays money -- pays wages
22 to employees that don't deserve it?

23 A Are you referring to Wadda or --

24 Q I'm just saying in general.

25 A General, yes.

1 Q Now, sir, you would also agree with me that when
2 that -- You'll also agree with me when an employee of
3 Plaza Extra falsifies his or her time records a manager of
4 Plaza Extra would have good cause to fire that employee
5 for stealing from Plaza Extra, agreed?

6 A No, disagree.

7 Q You're saying to this judge that if someone
8 steals from Plaza Extra that manager won't have good cause
9 to fire them?

10 A There are procedures in place.

11 Q The question is not about procedure, the
12 question is simply about good cause.

13 A There are procedures in place.

14 Q Sir, I understand that. I understand.
15 Objection, nonresponsive.

16 THE COURT: You asked the question and he
17 answered it. I'm sure he'll get to the specific
18 answer. He can answer the question. Ask it again
19 and let him answer.

20 BY MR. DiRUZZO:

21 Q Sir, you would agree with me if an employee
22 steals from Plaza Extra a manager of Plaza Extra would
23 have good cause to fire that employee?

24 A They do, but they can't do it unilaterally.

25 Q Okay. Now, sir, you've been provided Defense

1 Exhibit 5. If you take a moment to take a look at that
2 document, specifically starting on page 9, and page 9
3 through page 13.

4 MR. HOLT: Page what?

5 MR. DiRUZZO: Page 9 through 13.

6 THE WITNESS: Yes, sir.

7 BY MR. DiRUZZO:

8 Q And, sir, starting on page 9, the prosecutor in
9 the criminal case where you're a named defendant brought
10 to the court's attention, and to all the parties to that
11 criminal case that, quote.

12 "One of the issues that has arisen is who, in
13 fact, owns the share of United. On paper, it is
14 entirely owned by the Yusuf family, and it is
15 distributed amongst various families.

16 "However, I believe in civil litigation there
17 was deposition testimony in which it indicated that
18 setting aside the formalities of share certificates,
19 that, in fact, the shares were owned 50 percent by
20 the Yusuf family and 50 percent by the Hamed family,
21 and no indication as to how it broke down or even if
22 it broke down between individual family members."

23 That's what the prosecutor said in the ongoing
24 criminal case where you're a defendant, correct?

25 A That's what I'm reading, yes.

1 Q And, sir, at no point in time did Gordon Rhea
2 stand up and object on July 9, 2009? He didn't say
3 anything on your behalf? He didn't tell the government
4 that, you know what, Mohammed Hamed he really owns 50
5 percent of Plaza Extra, he never said that?

6 A Because Mohammed Hamed is not part of the
7 criminal case.

8 Q So -- But you didn't -- but according to your
9 direct testimony you knew that your father was a partner
10 in Plaza Extra since the mid 1908s, well before this
11 federal criminal case you knew that, and that's what your
12 testimony on direct was?

13 A Yes.

14 Q And in July 2009 when the federal government
15 showed up and said, there is an issue here as to who
16 actually owns Plaza Extra, you never said anything in
17 respect to your father's ownership in Plaza Extra?

18 A My father wasn't a party to the -- he wasn't a
19 party to the criminal case so I don't see where he has to
20 come in at that point.

21 Q I'm not talking about what your father has to
22 say, I'm asking whether you did anything in the criminal
23 case, the answer is, no?

24 A But I am not the shareholder.

25 Q Just to be perfectly clear --

1 A My father -- I never said I was a shareholder or
2 a partner, my father is.

3 Q Just so we're perfectly clear, your testimony,
4 this partnership between Fathi Yusuf and your father is
5 not between Fathi Yusuf and you, it's not between Fathi
6 Yusuf and Waheed, it's not between Fathi Yusuf and anyone
7 else, it's between Fathi Yusuf and Mohammed Hamed, that's
8 what your testimony is?

9 A Yes.

10 Q Also on July 9, 2009, when all this was going on
11 in the federal criminal case, your brother Waheed never
12 stood up and said anything about what happened? He never
13 stood up and said my father owns 50 percent of Plaza Extra
14 did he?

15 A No, he didn't.

16 Q Defense would move Exhibit 5 into evidence?

17 MR. HOLT: Your Honor, we object. Exhibit 5 is
18 about 60, 70 pages. I saw it for the first time
19 and I don't know what else is in it.

20 THE COURT: How about the first page and the
21 pages that were referenced.

22 MR. DiRUZZO: I have no problems with that, Your
23 Honor.

24 THE COURT: Page 9 to 13, just the front page
25 that identifies the hearing, and then the pages 9 to

1 13 will be admitted.

2 MR. DiRUZZO: Your Honor, I would just ask that
3 the first page through 13 because it also includes
4 the attorneys that were present at the time.

5 MR. HOLT: No problem.

6 THE COURT: Pages 1 through 13?

7 MR. DiRUZZO: Correct.

8 THE COURT: Pages 1 through 13, Exhibit 5 are
9 admitted.

10 MR. HOLT: I mean I just don't know if it's
11 complete, that's the only problem I have. I haven't
12 seen it before. It looks like that's the initial
13 response and then the government comes back on page
14 14 and --

15 MR. DiRUZZO: Your Honor, I represent that all
16 the pages that are on the paper are part of the
17 document. It's also part of our request for
18 additional notice.

19 MR. HOLT: You know what, to be honest with you,
20 it can all come in. I don't know what's in it. I
21 don't know if they expect you to read it.

22 THE COURT: Let's -- there's an indication they
23 only need pages 1 to 13, so without objection 1 to
24 13.

25 MR. DiRUZZO: 1 through 13.

1 THE COURT: 1 through 13.

2 **(Defendants' Exhibit 5 received into evidence.)**

3 BY MR. DiRUZZO:

4 Q And finally, Mr. Hamed, in respect to that
5 hearing, both you, your brother, Fathi Yusuf, Mike Yusuf,
6 all the criminal defendants, the individuals, the people
7 that would show up, they were there with their attorneys?

8 A Yes, sir.

9 Q Sir, have you ever heard of an entity known as
10 5H Holdings?

11 A Yes.

12 MR. HOLT: Excuse me, I couldn't --

13 BY MR. DiRUZZO:

14 Q I will repeat. Sir, have you ever heard of an
15 entity called 5H Holdings Incorporated?

16 A Yes.

17 Q Sir, please describe to the Court what is that
18 entity?

19 A It's a company that I created between me and my
20 brother that -- Waheed Hamed and me.

21 Q Okay. And this is a Virgin Islands entity,
22 correct?

23 A That's correct.

24 Q And with documents filed with the Office of the
25 Lieutenant Governor?

1 A Correct.

2 Q And those documents, the Articles of
3 Incorporation, those were filed in April of 2012?

4 A I assume, yes.

5 Q It was filed last year? You would agree it was
6 filed 2012?

7 A Yes.

8 Q And the purpose of this entity 5H Holdings, is
9 to go into business, correct? It's designed to make
10 money?

11 A Yes.

12 Q And one of the -- are you an officer of 5H
13 Holdings?

14 A Yes, I am.

15 Q And what is your title or position?

16 A President.

17 Q And who else are the officers of 5H Holdings?

18 A My brother, Waheed Hamed.

19 Q Who are the 5H -- is 5H Holdings?

20 A There's no individuals, it's 5H.

21 Q So the 5H doesn't stand for Waleed Hamed, Waheed
22 Hamed, Mufeed Hamed?

23 A If you assume, but, no. It's 5H, just like any
24 other name.

25 Q Who decided to name it 5H?

1 A I came up with the name.

2 Q And why did you come up with that name? Does it
3 have any significance at all?

4 A It's 5H.

5 Q Okay. And, sir, 5H Holdings, through you acting
6 as the authorized representative of 5H Holdings, 5H
7 Holdings has been actively looking into business
8 opportunities on St. Thomas, correct?

9 A Yes.

10 Q Including the potential acquisition of Marina
11 Market?

12 A No.

13 Q What exactly has the business opportunities of
14 5H Holdings been looking into on St. Thomas? Please tell
15 the Court what are those business opportunities?

16 A The only business opportunity there is there's a
17 contract to purchase.

18 Q Tell us about this contract to purchase.
19 Contract to purchase what?

20 A There's a contract to purchase the property in
21 Red Hook.

22 Q Let's be specific about the property, what
23 property are you referring to?

24 A East end. I think it's called East End Gallery
25 or something like that.

1 Q I'm sure that the Court has been to Red Hook,
2 but let's be specific for the record. As you're driving
3 into Red Hook and East End Cafe is on your right and
4 you're going up and Chelsea Drugstore is on your left and
5 you keep going and you pass where the Marina is, and you
6 pass Marley Malone up into the left there, that is where
7 Marina Market is, are you referring to that property where
8 you pull into your left and Marina Market's on your right
9 and there's a bunch of stores to your right, is it that
10 property right there?

11 A Yes, sir.

12 Q Okay. And sir, this contract to purchase, is
13 the contract to purchase just the property or is it a
14 contract to purchase -- I'll be real specific. Is it a
15 contract to purchase just the land itself or is it a
16 contract to purchase everything on it including the
17 building?

18 MR. HOLT: Your Honor, we maybe here longer than
19 I thought, but what's the relevance?

20 THE COURT: Why is it relevant?

21 MR. DiRUZZO: Your Honor, if there is a
22 partnership this goes toward irreparable injury.
23 Because if there is this partnership, it's our
24 position that Mohammad family is taking a position
25 that there's no adverse harm to the partnership and

1 that they've already targeted an additional
2 acquisition, so this case is nothing more than a
3 money damages case where preliminary injunctive
4 relief is inappropriate under the circumstances.

5 MR. HOLT: Your Honor, I'll let him go through
6 with it, but I don't see the relevance. In the
7 interest of time I'd like to speed it up, but I don't
8 want to interfere if he thinks it's relevant.

9 THE COURT: Make your point. The other business
10 opportunity that are being explored, and let's move
11 on.

12 BY MR. DiRUZZO:

13 Q Sir, was this contract to purchase -- is it to
14 purchase not only the dirt but also the building on the
15 dirt?

16 A Yes.

17 Q And then when -- if this transaction were to
18 actually come to pass, would the current tenants, would
19 they be kicked out?

20 Would the people or entity that's currently
21 operating the Marina Market, would either 5H Holdings or
22 another corporation that you own, your family owns, would
23 you take over running Marina Market?

24 A I have no interest in that. Once somebody's
25 paying, the tenants are paying, why should I kick them

1 out? That's the intention of it.

2 Q Sir, since you've been working at the Plaza
3 Extra Sion Farm, since the mid 1980s, as part of your
4 duties, part of your duties as the manager have to do,
5 obviously, with the reporting obligations to the federal
6 government, the local government; for example, you had to
7 do gross receipt tax, you had to make sure gross receipt
8 taxes were filed and paid?

9 A I'm sorry, I don't understand.

10 Q I'll clarify. During the course of your
11 employment at Plaza Extra, one of your jobs as a manager
12 is to make sure that, among other things, that taxes get
13 paid, you know, you don't have problems with filings get
14 filed, Franchise tax gets paid, stuff like that, you have
15 to make sure that is done?

16 A That obligation was left to Fathi Yusuf.

17 Q And, sir, during the course of your employment
18 did you ever have an opportunity to review any of the tax
19 filings? Did you ever have that opportunity to review any
20 of the tax filings?

21 A Not that I recall, no.

22 Q Sir, do you recall in the late 1990s Pablo
23 O'Neill suggested to Plaza Extra to convert from a C
24 Corporation to an S Corporation?

25 A Yes.

1 Q And in respect to that, well, tax transaction,
2 that conversion from a C Corporation to an S Corporation,
3 some of the shares of United Corporation they were
4 transferred from Mr. -- I'll be specific, Fathi Yusuf and
5 his wife to their children, you were aware of that?

6 A Yes.

7 Q This was late 1999 Early 2000?

8 A Yes.

9 Q Okay. Sir.

10 Your Honor, I have nothing further at this time.

11 Yield the witness.

12 THE COURT: Okay. Redirect.

13 REDIRECT EXAMINATION

14 BY MR. HOLT:

15 Q Going to the criminal case. I think you said --
16 let me make it clear, I think you said it -- was your
17 father a defendant in that case?

18 A No.

19 Q Did he have a lawyer representing him in that
20 case?

21 A No, sir.

22 Q And in that case, it's still pending, isn't it?

23 A Yes, sir.

24 Q And one of the things that needs to be done is
25 filing -- tax returns have to be filed don't they?

1 A Yes.

2 Q And those tax returns haven't been filed?

3 MR. DiRUZZO: Objection, leading.

4 BY MR. HOLT:

5 Q And have those tax returns been filed?

6 A No.

7 Q And why not?

8 MR. DiRUZZO: Objection.

9 THE COURT: What's the nature of your objection.

10 MR. DiRUZZO: First of all, lack of foundation
11 to whose tax returns, and then lack of personal
12 knowledge as to -- he hasn't testified about any of
13 the preparation of the tax returns. And I believe he
14 just testified that he doesn't have anything to do
15 with tax reporting.

16 THE COURT: Ask the question again, please.

17 BY MR. HOLT:

18 Q Which tax returns have to be filed?

19 A United Corporation, Plaza Extra.

20 Q And those tax returns have not been filed?

21 A No, sir.

22 Q And your lawyers are representing you with
23 regard to all of those issues?

24 A Yes, sir.

25 Q And until that case is dismissed these assets

1 are all frozen and the security accounts?

2 A Yes, sir.

3 Q So you have an interest in following that
4 litigation?

5 A Yes.

6 Q And do you know why the tax returns have not
7 been filed?

8 MR. DiRUZZO: Objection.

9 THE COURT: That's a yes or no answer.

10 MR. DiRUZZO: Well then, leading.

11 THE COURT: It's not leading.

12 BY MR. HOLT:

13 Q Isn't it true that the reason why your tax
14 returns haven't been filed is because of this partnership
15 interest, whether it be a partnership?

16 MR. DiRUZZO: That's leading.

17 THE COURT: Okay. Ask him if he knows why.

18 BY MR. HOLT:

19 Q Do you know why the tax returns haven't been
20 filed?

21 A Because there's an objection about the
22 partnership issues at hand.

23 Q Now, going back to the checks, Exhibit Number 1,
24 they gave you a series of checks, I see they are dated
25 between 2002, 2003, 2000 -- I can't read all the dates,

1 but if these checks were dated before the criminal
2 investigation, okay, 'cause I don't know if they were or
3 not, I can't read the exact date, if these were dated
4 before the criminal investigation, could you write a check
5 without the Yusufs knowing about it?

6 MR. DiRUZZO: Objection, leading. And these
7 documents were written in 2002 and, I want to -- and
8 2003, and I believe the testimony was that the feds
9 raided Plaza Extra in October of 2001.

10 MR. HOLT: Then --

11 THE COURT: Rephrase the question.

12 BY MR. HOLT:

13 Q If these checks were written after the feds
14 raided, did the feds put anyone in place to oversee the
15 management of the place?

16 A They put somebody in place in 2003 I believe.

17 Q Okay. And after that person came in, could you
18 write checks without their approval?

19 A No, sir.

20 Q They approved every single check?

21 A Yes, sir.

22 Q And would you ever written a check to yourself
23 without the Yusuf family knowing about it and being able
24 to write a corresponding check equal to that?

25 MR. DiRUZZO: Objection, calls for speculation.

1 THE COURT: Stop. It doesn't call for
2 speculation.

3 But when are you talking about?

4 MR. HOLT: Prior to the receiver being put in
5 place.

6 MR. DiRUZZO: Objection, I need foundation as to
7 when the receiver was put in place.

8 THE COURT: According to what you just said, it
9 was in April of '03.

10 MR. DiRUZZO: I didn't say that.

11 THE COURT: I'm sorry, not the receiver.

12 MR. HOLT: Well, let me just ask the question
13 again.

14 THE COURT: Hold on a second. Go ahead, ask
15 your question.

16 BY MR. HOLT:

17 Q After the receiver was in place, could anyone
18 write the checks without the receiver's approval?

19 A No.

20 Q And before the receiver was in place, would you
21 write checks yourself without the Yusuf -- someone from
22 the Yusuf family having knowledge of that check in the
23 business?

24 A They would have to have knowledge of it.

25 Q And if it was a check for you to withdraw for

1 personal use, would that go into a record somewhere where
2 they could then withdraw a similar amount?

3 A Yes.

4 Q And all of these checks are checks written on
5 Scotia Bank accounts, I believe.

6 Would somebody from the Yusuf family see all of
7 these checks when it came back from the bank?

8 A Yes.

9 MR. DiRUZZO: Objection, calls for speculation.

10 THE COURT: I'm going to try to respond to the
11 objections when they are made, not let the lawyers
12 keep talking. So I'll overrule that objection.

13 Go ahead.

14 THE WITNESS: Yes, sir, could you repeat.

15 BY MR. HOLT:

16 Q Would someone from the Yusuf family see these
17 checks?

18 MR. DiRUZZO: Objection.

19 THE COURT: Overruled.

20 THE WITNESS: Yes.

21 BY MR. HOLT:

22 Q And you were asked about the C Corporation in
23 1999. Did the United S Corporation switch to a C
24 Corporation?

25 A Yes. I'm sorry, switch?

1 Q You were asked about Pablo O'Neill recommending
2 it become a C corporation some point in the --

3 A No, I think it's from a C to an S.

4 Q And when that change took place, did that have
5 any effect on how the profits from the three supermarkets
6 were disbursed?

7 A Absolutely not.

8 Q And you were asked about the money in the Banco
9 Popular Security account, and right now that that's frozen
10 by the TRO, as you understand it, in place from the
11 federal court.

12 MR. DiRUZZO: Objection, that's not a pending
13 question, that's a statement.

14 BY MR. HOLT:

15 Q Can you tell me whether or not money can be
16 withdrawn from the Banco Popular accounts with -- where
17 all of these millions of dollars are being held?

18 A Right now, no.

19 Q And if the federal cases are dismissed then what
20 would happen?

21 MR. DiRUZZO: Objection, calls for speculation.

22 MR. HOLT: He certainly knows. He's the manager
23 of the business.

24 THE COURT: If you know.

25 THE WITNESS: Yes.

1 BY MR. HOLT:

2 Q Would there be anything to keep Mr. Yusuf or
3 anyone else from just taking these monies and leaving?

4 A Absolutely not because he did it with the 2.7.

5 MR. HOLT: No other questions.

6 MR. DIRUZZO: Nothing further.

7 THE COURT: Okay. Next witness.

8 MR. HOLT: We call William.

9 Thereupon,

10 WAHEED HAMED,

11 having been first duly sworn, was examined and testified
12 as follows:

13 DIRECT EXAMINATION

14 BY MR. HOLT:

15 Q State your name for the record.

16 A Waheed Hamed.

17 Q Where do you reside?

18 A 4-15-4 St. Thomas, Virgin Islands.

19 Q And where do you work?

20 A At Plaza Extra, St. Thomas.

21 Q And what is your job?

22 A I run the store.

23 Q And how long have you been running that store?

24 A For 19 years.

25 Q And can you tell, Your Honor, how that store

1 operates?

2 A It's run by me and my partner which is one Yusuf
3 one Hamed in each store. We make decisions together and
4 deal with vendors, buy, sell, negotiate on behalf of Plaza
5 Extra.

6 Q And can you tell me whether or not the operation
7 of that store has changed in any way since this litigation
8 has been filed?

9 A Yes, it has.

10 Q And how so?

11 A We're not communicating at all, which is hurting
12 the flow of the business. We're not -- You know, there's
13 certain decisions that have to be made, we always
14 contacted each other before, now we're not and that's on
15 the Yusuf side.

16 You know, we try to be prompt and try to be
17 courteous to one another, but since this incident happened
18 nobody is really seeing face to face.

19 Q And how has it affected the business?

20 A Well, for one -- at one given time, or a few
21 times, the Yusufs told the vendors that they are not --

22 MR. DAVID: Objection, hearsay.

23 THE COURT: I want to hear what they told the
24 vendors.

25 BY MR. HOLT:

1 Q Did you have problems with the vendors?

2 A Vendors would call me --

3 MR. DAVID: Objection, hearsay.

4 THE COURT: The vendors called to ask a question
5 that's -- he can answer that.

6 THE WITNESS: They told me why --

7 MR. DAVID: Objection, hearsay.

8 THE COURT: You said they called you?

9 THE WITNESS: Yes.

10 BY MR. HOLT:

11 Q What were they calling you about?

12 A They were calling me telling me about Najeh told
13 them not --

14 MR. DAVID: Objection, hearsay. Double hearsay.

15 THE COURT: That's sustained.

16 BY MR. HOLT:

17 Q Let me ask you, have there been problems paying
18 the vendors?

19 A Yes.

20 Q Have there been problems doing orders with the
21 vendors?

22 A Yes.

23 Q And what are those problems?

24 A The problem is the Yusuf ordered not to accept
25 any merchandise in the store.

1 MR. DAVID: Objection, Your Honor, hearsay.

2 THE COURT: Stop. Don't talk about what anybody
3 told you or whatever anybody told anyone else. Just
4 answer your attorney's questions.

5 THE WITNESS: Sure.

6 BY MR. HOLT:

7 Q Just explain the problems as the manager that
8 you've encountered in trying to operate the store since
9 this litigation was started.

10 A Inventory problems.

11 Q What are inventory problems?

12 A Vendors not delivering.

13 Q Why are they not delivering?

14 A Because they were instructed not to deliver.

15 MR. DAVID: Objection, hearsay.

16 THE COURT: If he knows. If the vendors have
17 come to him and said we're not able to deliver
18 because we have standing instructions not to deliver
19 --

20 MR. DAVID: That's classic hearsay, Your Honor.
21 What a third party offered for the truth of the
22 matter asserted out of court, that's classic.

23 MR. HOLT: It's an admission against interest of
24 the Yusufs if everyone's telling them not to do it.

25 THE COURT: All right. Let's just ask the next

1 question, please.

2 BY MR. HOLT:

3 Q Why aren't the vendors -- why aren't they
4 selling the items to the store that have been ordered?

5 A They were not instructed to deliver.

6 Q And did you make the orders?

7 A Yes.

8 Q Did you cancel the orders?

9 A No.

10 Q Who cancelled the orders?

11 A The Yusufs.

12 MR. DAVID: Objection, lack of predicate.

13 Hearsay. He can only understand it from what the
14 vendors told him.

15 THE COURT: Let's -- If he can only understand
16 from what vendors told him, then how does it get in?

17 MR. HOLT: The vendors have told him the Yusufs
18 have said, don't deliver, then that's admission
19 against their agreement.

20 THE COURT: It's not an admission if it's coming
21 from the vendor. Let's sustain the objection.

22 MR. DAVID: Thank you, Your Honor.

23 BY MR. HOLT:

24 Q Have there been other problems in paying the
25 vendors?

1 A Yes. We cannot pay vendors because we have no
2 money to pay vendors.

3 Q And does the store generate enough business to
4 pay vendors?

5 A Yes.

6 Q And why aren't the vendors being paid?

7 A Because the Yusufs are paying --

8 MR. DAVID: Objection, Your Honor, hearsay.

9 MR. HOLT: He's the manager.

10 THE COURT: Overruled.

11 Go ahead.

12 THE WITNESS: Because the Yusufs are using the
13 money to pay accountants that we've never had before,
14 one of them is his nephew that's making over
15 \$100,000. They pulled out approximately \$3 million
16 out of the company. I could have just used one third
17 of that 3 million and paid my vendors up to date and
18 I won't have any problems with any delivery or
19 anything like that.

20 BY MR. HOLT:

21 Q Okay. And can I have the witness shown exhibit
22 14?

23 THE COURT: Yes.

24 MR. HOLT: I'm not sure if the original got over
25 here.

1 BY MR. HOLT:

2 Q Looking at Exhibit Number 14, do you recognize
3 this document?

4 A Yes, I do.

5 Q And what's the date of this document?

6 A The date in November 2, 2012.

7 Q And this is a document written by who?

8 A By myself.

9 Q And you wrote it? On which stationery?

10 A The United -- the Plaza Extra.

11 Q And that's to who?

12 A Najeh Yusuf.

13 Q And who is Najeh?

14 A Najeh Yusuf is Mr. Yusuf's son.

15 Q And what is his involvement in the supermarket?

16 A One of them, one of us. We both work together,
17 we make decisions together. I mean, one Hamed one Yusuf,
18 that's how it's been operated from the time we originated.

19 Q And he's in your store?

20 A Yes, sir.

21 Q And in this letter to him, what did you tell
22 him?

23 A I told him that -- I mean, I could read it or
24 give you a summary.

25 Q Give me a summary?

1 A First of all that we've never had an accountant
2 that we've had for the 19 years in St. Thomas, that we've
3 never paid an accountant more than \$50,000 a year, and now
4 all of a sudden I have an accountant in St. Thomas, two in
5 St. Croix and each one of them is making over \$100,000.

6 And I objected to it because they never, you
7 know, we never discussed this. They took it upon
8 themselves to do what they want. They never shared any
9 information with us and, you know, that's at least
10 \$200,000 out of the fund, which is our fund that we could
11 have paid the vendors with.

12 Q And at the end of this letter what did you tell
13 him?

14 A I said that, you know, we will not approve any
15 more of these payments to these guys.

16 Q And what are the names of the guys?

17 A One in St. Thomas her name is Margie, I don't
18 remember her last name, but I think it's Soeffing or
19 something like that. The second one, which is Mr. Yusuf's
20 nephew which is Ayman Al-Khaled, and the third one is
21 Mr. John Gaffney.

22 Q So all three of them are mentioned in this
23 letter?

24 A Yes, sir.

25 Q Now, would you normally sit down and write a

1 letter to Najeh Yusuf when you had a problem?

2 A No, sir, I would not.

3 Q And why did you write this one?

4 A Because there's no communication. I mean, we're
5 asking what's going on with these guys and there's no
6 communication to who are they or what they are doing.
7 They are hiring people without telling us. You know, it's
8 just frustrating. For me to get to him I have to write
9 him a letter and hand deliver it to him.

10 Q And, as a result of this letter, were these
11 people terminated?

12 A No.

13 Q And have you ever had access to any of the
14 records that they generate?

15 A No.

16 Q And they are being paid from which account?

17 A Plaza Extra account.

18 Q Supermarket?

19 A Plaza Extra supermarket, yes, sir.

20 Q Do you see Mr. Yusuf on a regular basis?

21 A The last time I saw him was in December.

22 Q Do you ever see him, or did you see him in the
23 St. Thomas store?

24 A Yes, all the time.

25 Q And did he ever make any statements to you

1 regarding your working at the store?

2 A No.

3 Q Did he ever tell you that you should stop
4 working at the store?

5 A Yes. He came out furiously yelling in front of
6 all my staff that he is going to close the store down,
7 that he is firing me and he's firing my brothers and he
8 is, you know, closing the store immediately.

9 And the employees would come to me, some crying,
10 some holding their heads, manager like, what's going on?
11 Whatever, I try to calm them down because now the ethics
12 or the stability of the store, it has gone. Like somebody
13 shattered it. And here they are like, do we have a job
14 tomorrow? We don't have a job tomorrow? Can he really
15 close the store down?

16 Q So employees have come to you with these
17 problems?

18 A Yes, sir, many.

19 Q And what would be the time frame of these
20 problems?

21 A Some time last year. I mean around October,
22 December. In the summer.

23 MR. HOLT: Okay. No other questions. I move
24 Exhibit 14 into evidence.

25 THE COURT: Any objection?

1 MR. DAVID: No, Your Honor.

2 THE COURT: 14 is admitted.

3 **(Plaintiffs' Exhibit 14 received into evidence.)**

4 CROSS-EXAMINATION

5 BY MR. DAVID:

6 Q Is your store still operating?

7 A Sir, excuse me?

8 Q Is your store still operating?

9 A Yes.

10 Q Are the shelves stocked?

11 A Not one hundred percent.

12 Q Are they stocked 90 percent?

13 A I would say about 75.

14 Q Are the -- is the stockroom stocked 75 percent?

15 A Maybe a little less.

16 Q Do you have a full complement of employee?

17 A A full what?

18 Q A full complement of employees.

19 A Yes.

20 Q Is this -- are all the employees being paid?

21 A Yes.

22 Q Okay. Mr. Yusuf hasn't shut the store down,
23 right?

24 A He has threatened many times.

25 Q He hasn't shut it down?

1 A He has threatened many times.

2 Q Please answer my question.

3 A He hasn't. I'm telling you what he said.

4 Q He hasn't shut the store down, correct?

5 A Apparently not.

6 Q Sir, does it surprise you that when your father
7 filed a lawsuit against the Yusuf brothers, father, that
8 there's some friction in your relationship as a result of
9 that?

10 A I don't understand your question.

11 Q Sir, you said that everything has changed
12 there's dysfunction in the relationship between you and
13 the Yusuf family counterpart.

14 A Yes.

15 Q And you called them -- Who's your counterpart in
16 the Yusuf family?

17 A Najeh.

18 Q He's your partner?

19 A Yes.

20 Q What's the terms of your partnership agreement?

21 A Excuse me?

22 Q What's the terms of your partnership agreement?

23 A My father owns the store.

24 Q I'm asking you a different question. You said
25 Najeh is your partner?

1 A Because he -- his father said that's your
2 partner, okay. Mr. Yusuf said Najeh is your partner and
3 you are his partner.

4 Q What are the terms of your partnership agreement
5 between you Waheed Hamed and Najeh Yusuf?

6 A We own 50 percent, they own 50 percent, that's
7 all that I know.

8 Q Well, there's a difference, because you just
9 told us that you and Najeh, you Waheed Hamed and Najeh
10 Yusuf are partners?

11 A Yes.

12 Q What are the terms of the partnership between
13 you Waheed Hamed and Najeh Yusuf? I'm not asking you what
14 you think the terms of this partnership between Mr. Fathi
15 Yusuf and your father is.

16 A I don't know at this moment.

17 Q Margie, she ever quit?

18 A No.

19 Q She didn't quit?

20 A No.

21 Q Are you aware that -- Were you indicted in the
22 criminal proceeding?

23 A Yes.

24 Q You're familiar with the obligations that are
25 imposed on the criminal defendants as a result of the plea

1 agreement, right?

2 A I don't know what you're talking about.

3 Q Well, let's try it this way, do you know that
4 the plea agreement that was entered into between United
5 Corporation d/b/a Plaza Extra requires that United
6 implements accounting controls and procedures?

7 A I am not aware. I mean I don't recall at this
8 moment. My attorney at the time told me that your case is
9 dismissed.

10 Q Okay. So you don't know of any continuing
11 obligation of United Corporation vis-a-vis the federal
12 government, consisting with the plea agreement, correct?

13 A Not to my knowledge.

14 Q And you don't know that they have to employ,
15 develop and implement for accounting control and
16 procedures, right?

17 A If --

18 Q Let me try it this way. Do you know what
19 accounting controls are?

20 A No, sir.

21 Q Do you have any accounting experience?

22 A No, sir.

23 Q Okay. Do you know what GAAP means? G-A-A-P,
24 what that acronym means?

25 A No.

1 Q You don't know what Mr. Gaffney does, correct?

2 A Gaffney, John Gaffney?

3 Q You don't know what he does do you?

4 A No, sir. I spoke to him. He came to my store
5 and I asked him what he's doing. He said he's setting up
6 some accounting, Peachtree, that we've used to pay our
7 vendors and do our accounting.

8 And he said any time -- I told him, please -- he
9 said, I'm here, I'm a neutral guy. I said if you're a
10 neutral guy I need to know what you're doing. He said, no
11 problem, I will give you all the information that I'm
12 doing up to today.

13 Up to today I have not gotten an e-mail from him
14 or phone call from him as what his status is. He promised
15 that he would do that and he has not done that.

16 MR. DAVID: Objection, Your Honor. Move to
17 strike the hearsay statement. He was not responsive
18 to the question. His answer was what Mr. Gaffney
19 told him. I asked him what Mr. Gaffney does, he went
20 on with a diatribe, that clearly was hearsay.

21 THE COURT: What he said was hearsay. I'm
22 surprised you waited until he finished his answer.

23 MR. DAVID: Your Honor, I can't interrupt the
24 witness in the middle of an answer.

25 THE COURT: Okay.

1 MR. DAVID: All right.

2 THE COURT: All right. Go ahead. I will go
3 ahead and exclude that portion of the answer that was
4 hearsay.

5 MR. DAVID: Thank you, Your Honor.

6 BY MR. DAVID:

7 Q Do you know what Ayman Al-Khaled does?

8 A No.

9 Q Sir, are you familiar with the lease between
10 Tutu Park Limited and the landlord as the landlord doing
11 business -- and United Corporation d/b/a Plaza?

12 A I'm aware there's a lease, I never read the
13 lease.

14 Q Have you ever seen it?

15 A No, sir.

16 Q Okay. Did you ever talk to your father about
17 the lease?

18 A I don't recall at this moment.

19 Q Did you ever talk to any of your brothers about
20 the lease?

21 A I've -- I don't recall at this moment.

22 Q Would there be anything that would refresh your
23 recollection?

24 A I don't know.

25 Q Okay. Do you know if there are any guarantors?

1 Strike that.

2 Do you know what a lease guarantor is?

3 A No.

4 MR. DAVID: Okay. No further questions.

5 THE COURT: Redirect.

6 REDIRECT EXAMINATION

7 BY MR. HOLT:

8 Q How many employees do you have?

9 A We have approximately 180 employees.

10 Q Who's Kareema Dorsette?

11 A Kareema Dorsette is the accounts payable clerk.

12 MR. DiRUZZO: Objection, Your Honor, beyond the
13 scope of the cross.

14 MR. HOLT: I have no more questions. And my
15 next witness will be Kareema Dorsette.

16 THE COURT: Just in terms of the rule on
17 witnesses, the witnesses who are not going to be
18 called again are welcome to be in the courtroom.

19 Thereupon,

20 KAREEMA DORSETTE,

21 having been first duly sworn, was examined and testified
22 as follows:

23 DIRECT EXAMINATION

24 BY MR. HOLT:

25 Q State your name for the record.

1 A Kareema Dorsette.

2 Q And where are you employed?

3 A At Plaza Extra, St. Thomas.

4 Q St. Thomas?

5 A Uh-hum.

6 Q And were you subpoenaed to be here today?

7 A Yes, sir.

8 Q And what -- have you ever met me before today?

9 A No.

10 Q And what is your job title?

11 A Accounts payable.

12 Q And can you tell me what that entails?

13 A I pay all the vendors, basically it.

14 Q And who do you report to?

15 A Willy Hamed and Najeh Yusuf.

16 Q Do you ever have any dealing with Fathi Yusuf?

17 A Rarely, but --

18 Q In the last few months has Fathi Yusuf ever
19 spoken to you about closing the store in St. Thomas?

20 A I went to him to sign a check, and when I went
21 to him to sign the check he was looking at the
22 spreadsheet, and apparently the funds was very low and he
23 said the funds are low, the store is not making any money
24 and it's cheaper for us to have the store closed.

25 Q And did you report that conversation to anyone?

1 A Willy.

2 Q And why did you report that to Willy?

3 A Because I have four kids first of all, my last
4 son is sick, he's very sick.

5 MR. DiRUZZO: Objection, relevance to how the
6 number of kids relate to the relief under --

7 THE COURT: Let's get to the answer. Let's get
8 her to answer the question.

9 BY MR. HOLT:

10 Q Without going into detail about your kids, why
11 did you report that conversation?

12 A Because I was worried about losing my job.

13 Q No more questions. Thank you.

14 CROSS-EXAMINATION

15 BY MR. DiRUZZO:

16 Q Good afternoon, ma'am. I'm going to be brief.
17 The store is still open, correct?

18 A Yes, sir.

19 Q And you haven't lost your job, correct?

20 A As ever today, no.

21 Q Thank you. No further questions.

22 THE COURT: Thank you.

23 MR. HOLT: Thank you. You're excused.

24 We call Mufeed Hamed.

25 Thereupon,

1 MUFEED HAMED,
2 having been first duly sworn, was examined and testified
3 as follows:

4 DIRECT EXAMINATION

5 BY MR. HOLT:

6 Q Can you state your name for the record.

7 A Mufeed Hamed.

8 Q And where do you work?

9 A Plaza Extra east, Sion Farm.

10 Q And what is your job there?

11 A Store manager.

12 Q And how long have you been a store manager?

13 A Almost 18 years.

14 Q And can you tell me how the Plaza east store
15 operates as far as your being a manager in that store?

16 A Yes. It's managed by -- jointly by the two
17 families, I represent my father, and the Yusufs is Yusuf
18 Yusuf represents his half.

19 Q And your father is who?

20 A Mohammad Hamed.

21 Q And who is his father?

22 A Fathi Yusuf.

23 Q What is your understanding of the relationship
24 between Mohammad Hamed, your father and Fathi Yusuf.

25 MR. DAVID: Objection, Your Honor, predicate.

1 BY MR. HOLT:

2 Q I'll predicate the question. Has Fathi Yusuf
3 ever told you what the relationship is between him and
4 Mohammed Hamed?

5 A Yes.

6 Q What has he told you?

7 A 50/50 partners in the supermarket business.

8 Q Okay. Now, how many employees do you have at
9 that store?

10 A About 200.

11 Q And as it relates to St. Croix and St. Thomas --
12 St. Croix east, St. Thomas and St. Croix west, which one
13 is the biggest store?

14 A St. Croix west, square footage.

15 Q And what about from sales?

16 A St. Croix east.

17 Q That's your store?

18 A Yes.

19 Q And in the store that you're in, is there an
20 employee that we call Wadda?

21 A Yes.

22 Q What is Wadda's full name?

23 A Wadda Charriez.

24 Q And what does Wadda do?

25 A She's the office manager. Her job is very

1 critical to the operation of Plaza Extra.

2 Q How long has she held that job?

3 A Over 15 years.

4 Q And did there come a time where you understood
5 she was discharged recently?

6 A Yes.

7 Q And who discharged her?

8 A Fathi Yusuf.

9 Q And what did you do when you heard about that?

10 A Brought her back in.

11 Q When?

12 A The next day.

13 Q Why did you do that?

14 A I was not told why she was fired and needed -- I
15 needed to get to the bottom of it. You can't fire
16 somebody that has that type of position where the store
17 relies on her quite a bit.

18 Q And normally when you get to the bottom of it
19 how would you do that?

20 A I get with Yusuf Yusuf and myself, and we look
21 over the evidence, or the alleged situation, or alleged
22 whatever she did. We look at it, once we're a hundred
23 percent certain that we have proof, then we proceed.

24 Q Okay. And when you say you proceed, what would
25 you do? Do you automatically discharge someone?

1 A No, we don't. We talk to her, find out the
2 situation, and normally we don't discharge anybody. In my
3 history of working at Plaza Extra we've rarely fired
4 anyone for doing something.

5 Q If an employer of her level had been
6 misreporting their times and you saw documentation which
7 supported that, what would you do?

8 A I would have to see the evidence. And, you
9 know, based on her time working with us that would take
10 into my consideration and the type of work that she does.
11 And, again, she's very critical to the operations of Plaza
12 Extra. You can't replace her that easily.

13 And then we make a decision from there where if
14 she -- if we're certain that she did something or she took
15 time, then we'd have her pay it back basically.

16 Q And just so the Court understands, the offices
17 for the Plaza east store, where are they?

18 A In Plaza east?

19 Q The first floor or second floor?

20 A Oh, the second floor.

21 Q And where does Wadda work?

22 A On the second floor.

23 Q How far from your office is Wadda sitting?

24 A About 10, 20 feet.

25 Q Is her desk inside a room or open area?

1 A No, open area. They are all open to each other.

2 Q When Wadda is working you know it?

3 A Yes.

4 Q How would you know it?

5 A Well, there's the owners of Plaza Extra --

6 MR. DAVID: Objection, relevance.

7 THE COURT: You can answer.

8 THE WITNESS: There's the owner of the Plaza
9 Extra, then there's Wadda then there's management.

10 BY MR. HOLT:

11 Q And is she a good employee, bad employee, hard
12 working?

13 MR. DAVID: Objection, relevance.

14 THE COURT: I'm going to allow the question.
15 Overruled.

16 THE WITNESS: She's -- she does her job very
17 well.

18 BY MR. HOLT:

19 Q Now, directing your attention to January 9, is
20 that the day that she came back to work?

21 A Yes.

22 Q Tell me what happened that day?

23 A She came to work, I was in my office at my desk,
24 then Fathi Yusuf came up and he was shocked to see her
25 there. Started telling her why she's here? Doesn't she

1 know what fired is? She's been fired. She needs to go
2 home.

3 So when I heard that I came from my desk, came
4 over to Wadda's desk and I said, you're not fired, stay
5 where you are, and that's when all hell broke loose.
6 Mr. Yusuf raised his voice and the situation got very
7 tense. He started saying she's fired, she needs to get
8 out of the store.

9 He said I'm fired, I need to get out of the
10 store. He said Waleed's fired, my other brothers are
11 fired, he's going to shut down the store, he's going to
12 call the police and have us arrested and removed from the
13 store.

14 Q Did he call the police?

15 A Yes, he did.

16 Q And what did he tell the police?

17 A He told the police, if they don't do their job
18 he's going to close the store down.

19 Q Okay. Now, did you ever have any conversations
20 with the other -- the co-manager, Yusuf? His name is
21 Yusuf Yusuf?

22 A Yes, I did. At the end of the day we had a
23 discussion with the attorneys and they said we're going to
24 get together and look at the evidence that they had.

25 Q When that happened Yusuf Yusuf wasn't there was

1 he?

2 A No.

3 Q So you had a conversation with Yusuf Yusuf when
4 none of the attorneys were there?

5 A Yes.

6 Q Tell me about that?

7 MR. DAVID: Objection, Your Honor. Withdrawn.

8 BY MR. HOLT:

9 Q Let me ask it a little different. After the
10 attorneys left, did you have a conversation with Yusuf
11 Yusuf, just the two of you?

12 A Yes, I -- the next day I went up to Yusuf Yusuf
13 and said I'd like to see the evidence.

14 Q And did he have any evidence?

15 A He never got back to me.

16 Q Did he have any evidence when you asked him?

17 A No, he never got back to me. He said he doesn't
18 have it.

19 Q Has anybody ever got back to you with any?

20 A No.

21 Q Can you tell me, in general, since the store was
22 closed, excuse me, since this litigation has begun, have
23 you had difficulties in the operations?

24 A Yes, I have.

25 Q What are those?

1 A There's been -- I mean, basically, Yusuf Yusuf
2 and I stopped talking and there was no communication
3 between us on the level that we had before and that
4 created a lot of you, know, uncomfortable situations for
5 getting -- making decisions for the store.

6 So, basically, you know, when I have to find out
7 about something that he did I would have to find out
8 through the others.

9 Q And when you were in your store, who else -- are
10 any other Hamed members in your store with you?

11 A Yes, Waleed, my brother.

12 Q And what is Waleed's role as it relates to the
13 rest of the Hamed brothers? What is his role?

14 A He's a comanager. He's the oldest brother.
15 He's the main representative for the Hamed family.

16 MR. HOLT: Just a minute, Your Honor.

17 **(Discussion off the record.)**

18 MR. HOLT: No more questions.

19 CROSS-EXAMINATION

20 BY MR. DAVID:

21 Q Good afternoon, sir.

22 A Good afternoon.

23 Q You work in the Plaza east store, right?

24 A Correct.

25 Q Plaza east store is still open?

1 A Correct.

2 Q Fully stocked?

3 A Correct.

4 Q Okay. Warehouse is fully stocked?

5 A Correct.

6 Q Vendors are getting paid?

7 A Correct.

8 Q Employees are getting paid?

9 A Correct.

10 Q Okay. You're getting paid?

11 A Correct.

12 Q Okay. Sir, you've been a manager at Plaza east
13 store for 18 years?

14 A Approximately.

15 Q I want to give you a hypothetical question. You
16 have an employee who regularly, and I'll define regularly
17 as everyday, has someone punch in early for her and punch
18 in late for her by at least an hour, in other words she
19 claims to show up at 8 o'clock she actually shows up at 9,
20 she leaves at 5 but someone punches her out at 6. So
21 everyday she steals from you for two hours, okay; you
22 understand so far?

23 A Yeah, go ahead.

24 Q This goes on for a period of weeks and months,
25 for an entire year, okay, and based upon how much she's

1 paid she's collected over \$10,000 in money she didn't
2 earn, is that grounds to fire that employee?

3 A Hypothetical question?

4 Q Yes, sir.

5 A I would really have to consider this further.

6 Q So someone stole \$10,000 from you, you would
7 have to consider whether or not you'd fire that person?

8 A Of course there's a lot of factors that we have
9 to consider.

10 Q Okay. Like what?

11 A How long she's been working there, what are the
12 conditions, what took place.

13 Q Okay. Well, you'd agree with me if someone said
14 it would be totally reasonable for someone in your
15 position to come to the decision after looking at all the
16 facts and say, you know what, you stole from me for
17 \$10,000, you're out, that would be reasonable?

18 A I would agree with that.

19 Q And, frankly, you wouldn't even be able to fight
20 with someone, with the manager of your position who said
21 I'm firing this person for stealing \$10,000 from me over
22 this year, right?

23 A Correct.

24 Q Now, the disruption that you've been talking
25 about between you and Yusuf Yusuf, that has occurred after

1 this lawsuit was filed?

2 A Correct.

3 Q Okay. And before this lawsuit was filed there
4 was no -- you and Yusuf Yusuf got along fine, correct?

5 A Correct.

6 Q Okay. Now, before this lawsuits was filed, was
7 there a point in time when you and Yusuf Yusuf didn't
8 agree on something?

9 A Yes.

10 Q Okay. What happened when you didn't agree on
11 something?

12 A We would always come to a resolution.

13 Q Okay. Was there ever a point in time where you
14 didn't agree on it, you couldn't come to a resolution, the
15 problem was so thorny that he was set in his way and you
16 were set in your way?

17 A No.

18 Q Okay. Assume that that occurred, okay, assume
19 that Yusuf Yusuf wanted it done his way, you wanted it
20 done your way and you guys talked and talked and talked
21 and tried your best and you couldn't come to a resolution.

22 A I don't like answering questions with
23 assumption.

24 Q Okay. Well, you can do it. Isn't it true that
25 in a situation such at that you would go to Fathi Yusuf

1 and make the decision?

2 A No.

3 Q No?

4 A Absolutely not.

5 Q Okay. Early in your testimony with Mr. Holt,
6 had you said that the terms you made reference to, the
7 terms of this partnership was between your father and
8 Fathi Yusuf, right?

9 A Correct.

10 Q What are the terms as you understand of this
11 alleged agreement?

12 A My father Mohammad Hamed and Fathi Yusuf are
13 partners in the Plaza Extra stores.

14 Q Okay. That it?

15 A Correct.

16 Q Are there any other terms?

17 A I'm sure there is but --

18 Q Do you know what they are?

19 A Well, they share profits, they share losses,
20 they share receivables, they share payables.

21 Q Have you ever seen your father contribute
22 further funds to the operation of the grocery stores?
23 You, sir, have you ever seen it happen?

24 A No. I was a teenager at the time.

25 Q I understand this has been a long time. How

1 long is this partnership supposed to last, forever?

2 A That's a good question.

3 Q You don't know?

4 A I don't know.

5 Q When did your father stop working?

6 A My father took some -- he went to the Hajj in
7 1996.

8 Q Okay. Forgive me, I'm not familiar with -- I'm
9 ignorant and misunderstanding what the Hajj is, can you
10 explain that to me?

11 A The Hajj is where -- it's a pilgrimage for
12 Muslims. My father and Mr. Fathi Yusuf did it.

13 Q Did that in 1996?

14 A Yes.

15 Q Forgive the question, did he retire at that time
16 or did he go and not come back?

17 A He's been traveling back and forth, but --

18 Q Between St. Croix and where, sir? You said he'd
19 been traveling back and forth.

20 A Yes, between St. Croix and to the Middle East.

21 Q Let me just try to get -- I need to understand
22 this.

23 And it will be brief, Your Honor.

24 He went to the Hajj in 1996, and since that
25 point in time he's been traveling between St. Croix and a

1 home in the Middle East.

2 A Yes.

3 Q Where is his home in the Middle East?

4 A In Jordan.

5 Q He doesn't do any more work and doesn't go to
6 work?

7 A He doesn't do any more work and doesn't receive
8 a pay check from Plaza Extra.

9 Q He's retired, right?

10 A I'm not sure what that term means.

11 Q Okay. What exactly does Wadda do?

12 A She's the office manager. She does the accounts
13 payable, she does the -- she gets all the information from
14 the deposits, she gives us a daily balance of our bank
15 accounts, of the income.

16 She also gets the information from the payables,
17 she enters that into the computer and gives us a running
18 balance. She's in charge of return checks. She's the
19 face of Plaza Extra when she goes to court to get -- I
20 forgot the word -- go after, you know, returned checks and
21 anything that's owed to the store. She does that for both
22 the east, west -- east and west stores.

23 Q Is that it?

24 A There's others but I can't recall right now.

25 Q You don't have any recollection of what else she

1 does?

2 A I can't recall, but there's more that she does.

3 Q Is there anybody in the west store that does the
4 same job that you know?

5 A I don't think there's anybody that can be
6 compared to her in the west store.

7 Q How many other -- Strike that.

8 Do you know if there's anybody that does a
9 similar job to that in St. Thomas?

10 A I'm not sure how the structure is in St. Thomas.

11 Q Do you know what Peachtree is?

12 A I've heard of it.

13 Q What is it?

14 A It's an accounting software.

15 Q Do you know how to operate it?

16 A No.

17 Q Do you know if it's on the computer system in
18 the east store?

19 A Yes.

20 Q So who operates the Peachtree software at the
21 store?

22 A I don't know. I can guess.

23 Q I don't want you to guess.

24 A I believe it's Mary, she does it for the
25 accounts payable.

1 Q And who else works with the computers in the
2 Peachtree Financial Software at the east store?

3 A Wadda, I believe she does it also.

4 Q Is there another person there?

5 A There's two other girls, but I don't think they
6 work on that.

7 Q Are there any other girls on the west store that
8 work with the Peachtree system?

9 A I don't know about the west store.

10 Q You have no understanding how to operate the
11 Peachtree financial software?

12 A No, I don't.

13 Q Do you know why it's on the computer system?

14 A Of course.

15 Q Why?

16 A For accounting purposes.

17 Q Is it important to be able to account for the
18 money that comes in and out of the grocery store?

19 A Of course it's important.

20 Q But you don't utilize and have no familiarity
21 with the operation of Peachtree financial accounting
22 software that's used by your store, is that your
23 testimony, sir?

24 A Yes, it is.

25 Q How do you keep track of the money coming in at

1 the store now?

2 A We have people in place that operate the
3 software and they tell us, they report to us.

4 Q Five years ago if Fathi Yusuf came into the
5 Plaza east store and decided that one of the employees
6 needed to be terminated and fired, that decision would
7 have stood, right?

8 A On it's own, no.

9 Q No?

10 A He would have to discuss it with us. We would
11 have to know why, 'cause if that employee goes to labor,
12 who's going to answer for it?

13 Q Okay. Sir, were you indicted by the federal
14 government along with your brothers?

15 A No, I was not.

16 Q Okay. Do you have any knowledge of the plea
17 agreement that was entered into?

18 A I don't recall it. But if I was to look at the
19 documents I could probably read it out for you.

20 Q Do you know -- Well, let's try this. You are
21 aware of the fact that the plea agreement requires that
22 United Corporation d/b/a Plaza Extra is obligated to
23 implement financial controls that are consistent with
24 generally accepted accounting principals, correct?

25 A Correct.

1 Q Okay. Do you know who's responsible for
2 implementing those controls?

3 Or let me back up, you're not responsible for
4 implementing those controls, correct?

5 A I have oversee it. I need to know what's going
6 on in the store.

7 Q Do you know what GAAP, G-A-A-P stands for?

8 A No.

9 Q Okay. That's all I have, sir.

10 THE COURT: Redirect?

11 MR. HOLT: Yes.

12 REDIRECT EXAMINATION

13 BY MR. HOLT:

14 Q As the manager of the store, are those
15 accounting controls in place at the store?

16 A Yes.

17 Q And if you need that information you can ask it
18 from one of the people that works for you?

19 A Correct.

20 Q And have you ever received any information from
21 the other accountants that have been hired?

22 We've heard throughout this case about
23 Mr. Gaffney or Mr. Al-Khaled, have they ever provided any
24 information to you?

25 A No, they never have.

1 Q Now, you were asked about employees getting
2 paid, was there a time recently that the employees got
3 paid late?

4 A Yes, there was.

5 Q And why was that?

6 A Because Mr. Yusuf told Wadda she has to work
7 until 5 o'clock and the direct deposit wasn't able to get
8 processed that day since he required her to leave early.
9 So apparently there was a few employees that didn't get
10 their checks on their normal scheduled day.

11 Q And that's since January 9?

12 A Yes.

13 Q As far as you were asked a theoretical about
14 employees punching in, has Wadda always punched in?

15 A She's always entered her time.

16 Q Is that punch in a clock or in a different way?

17 A She's always punched in, yes.

18 Q She didn't keep her own time?

19 A She keeps her own time.

20 Q And she enters it?

21 A Yes.

22 Q It's not like she goes to a clock?

23 A She never physically punches.

24 Q And you were asked a question about if
25 somebody -- if you were told, you know, that somebody

1 taking \$10,000 in time from you, remember that
2 theoretical?

3 A Yes.

4 Q In the case with Wadda, is the reason why you
5 had her come back because you knew or didn't know anything
6 about what she had done?

7 A I didn't know what she did, no.

8 Q And has anybody shown you anything that she's
9 done wrong?

10 A No.

11 Q And in order for you to discharge her you would
12 have to agree?

13 A Yes, I would have to be one hundred percent
14 certain that the alleged crime that she did is true.

15 Q And after you reviewed that, regardless of what
16 it says, what happens next?

17 A Then we consider all the factors, that she's
18 been an employee for 15 years, she has a very critical job
19 with us, we have to look at all these different things and
20 we'll take appropriate measures to correct her.

21 Q Would it be fair to say the reason why you told
22 her to come back was because the process wasn't followed?

23 A Absolutely.

24 Q No other questions.

25 THE COURT. Okay. Thank you very much.

1 Next witness.

2 MR. HOLT: We call Wadda Charriez.

3 Thereupon,

4 WADDA CHARRIEZ,

5 having been first duly sworn, was examined and testified
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. HOLT:

9 Q Can you state your name for the record.

10 A My name, Wadda Charriez.

11 Q And how do you spell your last name?

12 A C-h-a-r-r-i-e-z.

13 Q Okay. And I take it you were subpoenaed to be
14 here today?

15 A Yes.

16 Q Where do you work?

17 A Plaza Extra United Corporation.

18 Q And which store?

19 A Sion Farm.

20 Q Okay. And what is your job?

21 A I'm the office manager.

22 Q And how long have you worked there?

23 A 15 year on January 5th.

24 Q And can you tell us, generally, some of the
25 things that you do?

1 A Well, I do payroll, I dealing with the adds, I
2 dealing with the week, I dealing with employees, I dealing
3 with the merchandise, I dealing with the balance, I
4 dealing with the statement I'm dealing with the returned
5 checks, with the interest with the company. With a bunch
6 of stuff.

7 Q And how are you paid, by the hour?

8 A By hourly.

9 Q 'Cause you're not on salary?

10 A No.

11 Q And how do you keep your time?

12 A I keep it manually. I come in everyday, Monday
13 to Friday, I used to work Sunday I don't work Sunday no
14 more. I enter Monday because I came in all the time the
15 same time, and sometime I have to do stuff before I reach
16 the store and sometime I carry home. I do whatever
17 errands the company needs to be done, and I do it after.

18 Q So some of the work you do is outside the store?

19 A A lot of work outside the store.

20 Q Now, did there come a time in, earlier this
21 month in January that you were discharged?

22 A Uh-huh.

23 Q Can you tell the Court about what happened.

24 A Well, I remember the Monday when I used to ready
25 to go home Mr. Yusuf call me and tell me when I ready to

1 go home, he said, why I don't punch, I need to start
2 punch. I said, okay, I don't have any problem, I'm going
3 to punch in. I went downstairs and punch out. I have
4 some stuff to do it, I leave it, I didn't do anything
5 because he told me to punch.

6 So the next day, Tuesday, when I came to work I
7 was dealing with my work, usually I do, and he call me to
8 his desk and he was telling me about some situation about
9 my time, my overtime, how I entering my time. Why I
10 entering my time. I was explaining to him how I do it and
11 situation like that. He was telling me that was wrong and
12 that I should pay back the time and different stuff like
13 that.

14 Q Did he terminate you or did he tell you you were
15 terminated?

16 A No, in that moment. He was talking to me about
17 that and about the situation and the office and about the
18 overtime, it's not supposed to be the way. I told him
19 that's how I do and Mufeed knew and because we -- I didn't
20 have any problem with anyone in the store. That was all
21 the time that was working like that so.

22 Q And what did he tell you in response to that?

23 A Well, he said he going to check with his sons
24 and the situation like that about why Waleed had me that
25 way. And it was like something is wrong or like Waleed

1 was trying to buy me another way.

2 He just started talking about my bonus, why I
3 got more money than anybody else in the office? They have
4 a lady named Mary, she have 25 years in there, why I get
5 more than her? You know, what is special of me to, you
6 know, why I get that difference in the office.

7 Q Okay. And by the way, why did you get a higher
8 bonus? Who made that decision?

9 A The bonus?

10 Q Yes.

11 A Well, they all of them together, all of them
12 together.

13 MR. DiRUZZO: Objection, Your Honor. I need a
14 clarification as to "they" and "he" and "them."

15 It's --

16 THE COURT: Clarification.

17 BY MR. HOLT:

18 Q Do you have access to the, when the bonuses are
19 given who gets bonuses and who authorizes bonus?

20 MR. DiRUZZO: Objection. Predicate foundation
21 to bonus. What I'm hearing is overtime not bonus,
22 Your Honor.

23 MR. HOLT: She said he complained about her
24 bonus.

25 THE COURT: Question to the witness is about a

1 bonus.

2 BY MR. HOLT:

3 Q And so you get a bonus at the end of the year?

4 A Yes.

5 Q And he thought you got more than anyone else?

6 A Yes. He was mention the employee bonus, he
7 mention my paycheck, my everything.

8 Q And do you see who gets the bonuses because of
9 your access to the financial information?

10 A Well, I keep the list but they decide. I keep
11 the list every year and they -- each manager, the owner
12 decides what they give.

13 Q Do you know which manager decided to give you
14 more than the other people?

15 A Well, when I give copies to the -- also I give
16 it to Yusuf Yusuf a copy, and I give it to Mufeed too and
17 Yusuf reviews the list and he might make some changes and
18 give it to me to give it to Mufeed.

19 Q Who made the changes?

20 A Yusuf makes some changes. He puts -- in the
21 office another young girl, Lavena and Mary he give a raise
22 to 2 50.

23 Q That's what Yusuf Yusuf did?

24 A Yes.

25 Q And that's the bonus that Mr. Fathi Yusuf was

1 complaining about?

2 A Yes, the bonus.

3 Q You were told to go downstairs and punch out,
4 had you done that before?

5 A No year I never punch.

6 Q Okay. And then coming back to after this
7 conversation that you had, did there come a point where
8 Fathi Yusuf told you that you were terminated?

9 A Well, he said me and my kids we decide to let
10 you go. We decide to let you go. If you going to labor
11 or unemployment I'm going to talk to them about the time,
12 the overtime you were doing, like you were stealing time
13 so anybody could use you for like court or anything, he
14 going to say about those.

15 Q Did you consider that to be a threat?

16 A Yes, it is.

17 Q Did you come back do work the next day?

18 A Yes, because I come back.

19 Q And why did you come back?

20 A Well, Mufeed told me --

21 MR. DiRUZZO: Objection, hearsay.

22 THE COURT: That's not hearsay. Overruled.

23 BY MR. HOLT:

24 Q Go ahead.

25 A Mufeed, my boss, tell me, no, Wadda, you have to

1 go back to work.

2 MR. DiRUZZO: Objection.

3 THE COURT: Overruled.

4 THE WITNESS: You have to go back to work. You
5 go back to work, so that's what I did.

6 BY MR. HOLT:

7 Q So you did go back to work?

8 A I go back to work.

9 Q And what happened when you went back?

10 A Well, I was kind of scared because imagine I
11 just went to work, Mufeed was there too, and he came and
12 he start screaming to me, and --

13 MR. DiRUZZO: Objection, hearsay.

14 THE COURT: Don't tell us what Mr. Mufeed said
15 to you.

16 BY MR. HOLT:

17 Q Did you came back to work?

18 A Yes, I came back to work. Mufeed was in the
19 store and I was working in the office when Mr. Yusuf come.

20 Q And when you saw Mr. Yusuf, you talking about
21 Fathi?

22 A He said, I fire you. What you doing here? And,
23 you need to go. And he said he going to call the police.

24 Q And what did you tell him?

25 A Well, I told him Mufeed and Waleed told me to

1 come back.

2 MR. DiRUZZO: Objection.

3 THE COURT: Overruled.

4 BY MR. HOLT

5 Q And so what happened?

6 A No, nothing. We was there, they called the
7 police and it was a lot of people there. And it was a lot
8 of screaming and it was a hard situation for me. There --
9 I working there so many years, I consider them my family
10 and both sides I love them. I really -- and, very
11 difficult.

12 Q Did you hear Mr. Yusuf say anything about
13 closing the store?

14 A Yes, he said he prefer to close the store until
15 we stay there.

16 Q And did you hear him say anything about Mufeed,
17 about whether he was discharged?

18 A He fired Mufeed too. And Waleed, he fired him
19 too.

20 Q And did the police eventually arrive?

21 A Yes.

22 Q And since that time have you felt like you're
23 working without any harassment or do you feel continually
24 harassed?

25 MR. DiRUZZO: Objection.

1 THE COURT: Overruled.

2 THE WITNESS: It's hard working. You feel that
3 they don't want you there, like you're doing -- they
4 don't like you there so it's kind of hard working in
5 a place.

6 Used to be everybody like a family. We used to
7 work together more time and it's hard now, the
8 situation.

9 MR. HOLT: No other questions.

10 THE COURT: Cross-examination.

11 CROSS-EXAMINATION

12 BY MR. DiRUZZO:

13 Q Good afternoon, ma'am.

14 A Good afternoon.

15 Q Ma'am, I'm going to ask you a bunch of
16 questions, if you don't understand a question, I go too
17 fast, I'm not loud enough, just let me know and I'll
18 repeat the question or rephrase; do you understand, okay?

19 A (No response.)

20 Q You have to say yes.

21 A Oh, yes. Okay.

22 Q Ma'am, let's talk about what you actually do at
23 that store, first let's talk about your background, did
24 you graduate high school?

25 A Yes, in Santa Domingo. I'm from the Dominican

1 Republic.

2 Q Did you go to college?

3 A I been three years in college.

4 Q Do you have a degree yet?

5 A No, I didn't finish.

6 Q You didn't finish?

7 A No, I came here, St. Croix.

8 Q You talk about some of your duties in the
9 office.

10 A Uh-hum.

11 Q You talk about payroll checks and interest
12 rates? That's a yes?

13 A Yes.

14 Q And that's -- you're familiar with the term
15 accounting?

16 A Yes.

17 Q You're familiar with that term accounting. And
18 have you ever taken any accounting classes or anything
19 like that?

20 A No.

21 Q So if I asked you what a debit was, do you know
22 what a debit is? You ever heard that term?

23 A A debit is a minus.

24 Q What about a credit, what's a credit?

25 A It's a plus.

1 Q Have you ever heard of the generally accepted
2 accounting principals, you ever heard that term before?

3 A (Witness shakes head.)

4 Q Never heard that term?

5 A No, sir.

6 Q Are you familiar with the computer system at
7 St. Croix Plaza Extra?

8 A The computer, yes, sir, Plaza Extra computer.

9 Q And you have access to that computer system,
10 right?

11 A Yes.

12 Q And you ever heard of a software known as
13 Peachtree?

14 A Yes.

15 Q Do you know how --

16 A That's what we work on.

17 Q That' what you work on?

18 A Um-hum.

19 Q And are you familiar with Peachtree?

20 A Yes.

21 Q And on a daily basis do you use Peachtree?

22 A Yes, sir.

23 Q And are you familiar with how every option in
24 Peachtree works?

25 A Well, most of the options, yes.

1 Q Okay. You do? Okay.

2 A Most of the options.

3 Q And because -- and because of Peachtree, have
4 you ever prepared financial statements? Let me ask you,
5 do you know what a financial statement is?

6 A Go through the statement, that's what you mean?

7 Q Let me be real specific, do you know what a
8 income statement is?

9 A The deposit, the income.

10 Q No, not deposit, an income. Do you know what an
11 income statement is? It's okay if you don't. You never
12 heard that term before?

13 A No, sir.

14 Q Okay. What about a statement of cash flow, have
15 you ever heard of that? That sound familiar to you?

16 A The statement?

17 Q A statement of cash flow?

18 A No, sir.

19 Q Okay.

20 A We receive a statement but I don't know which
21 one you're talking about.

22 Q You're an hourly employee, correct?

23 A Yes.

24 Q And how much do you get paid an hour?

25 A Right now, 12.

1 Q \$12 an hour. And if you work more that 40 hours
2 a week you get paid overtime?

3 A Yes.

4 Q That's time and a half?

5 A Yes, sir.

6 Q Over the last year -- over the last year, are
7 your time entries correct?

8 A Yes. Coming in the morning and I leave in the
9 afternoon, sometimes it's dark. All of the time I never
10 miss a day, never be sick.

11 Q Sure, everyone gets sick or maybe you have a
12 vacation day. You take vacations?

13 A Not every year. Sometimes two, three years.

14 Q Do you take Christmas off?

15 A No. Only Christmas and Thanksgiving and Good
16 Friday.

17 Q You do not work?

18 A No.

19 Q Okay. Ma'am, Thanksgiving of 2012, does your
20 time card reflect --

21 A We get paid eight hours for Thanksgiving.

22 Q You get paid eight hours, so you get a paid
23 holiday?

24 A Yes.

25 Q But you don't get paid for overtime on

1 Thanksgiving?

2 A No, that was a mistake entering the time.

3 Q I understand, ma'am. Now let me be clear, you
4 agree with me you --

5 A It's 8 hours.

6 Q -- don't get paid unless you go in and actually
7 work, correct?

8 A But the holiday, Thanksgiving, we get paid eight
9 hours.

10 Q But overtime?

11 A No overtime that day.

12 Q Thanksgiving of 2012 your time sheet reflected
13 that you worked for twelve hours, correct?

14 A Yes, that was a mistake.

15 Q That was a mistake.

16 A That was a mistake entering the time. It was
17 entered and stuff in the office.

18 Q Okay. Now, you said you've work there for 15
19 years?

20 A Yes.

21 Q And so you're -- you know Fathi Yusuf well?
22 You've seen him around?

23 A Yes.

24 Q And you know -- since Fathi Yusuf is the owner
25 he makes a lot of important decisions, right?

1 A Yes.

2 Q And he makes some big decisions because he owns
3 the place, right?

4 A Yes.

5 MR. DiRUZZO: Okay. Yield the witness.

6 THE COURT: Redirect.

7 REDIRECT EXAMINATION

8 BY MR. HOLT:

9 Q Do you also understand that the Hamed family
10 also owns the store?

11 A Yes.

12 Q And you were asked about you getting paid while
13 you're in the store, but when you're outside the store
14 running the errands and banking, do you also get paid for
15 that?

16 A Yes.

17 Q Thank you.

18 MR. DiRUZZO: No recross.

19 THE COURT: Okay. That's a good time to take a
20 break.

21 Thank you, Ms. Charriez.

22 We'll be back in 20 minutes.

23 **(Recess at 3:00 p.m. until 3:20 p.m.)**

24 MR. HOLT: We call Mohammed Hamed.

25 THE COURT: Let's allow Mr. Hamed to take the

1 oath sitting.

2 Thereupon,

3 MOHAMMED HAMED,

4 having been first duly sworn, was examined and testified
5 as follows:

6 THE COURT: Good afternoon.

7 THE WITNESS: Good afternoon, sir.

8 DIRECT EXAMINATION

9 BY MR. HOLT:

10 Q Good afternoon?

11 A Good afternoon.

12 Q Can you state your name for the record, please.

13 A Mohammed Hamed.

14 Q And, Mr. Hamed before you came to the Virgin
15 Islands, can you tell me where you used to live?

16 A I used to work in Kuwait before I come into the
17 Virgin Islands.

18 Q And when you were there what did you -- what
19 kind of business did you have?

20 A I used to work in operator for the -- they have
21 a system for 15 million gallon, we pull the water from it
22 with the machine and we send it to the city, and I working
23 day and night shift.

24 Q And did there come a time that you came to the
25 Virgin Islands?

1 A I came to the Virgin Islands in 14 September,
2 1973.

3 Q And why did you come to the Virgin Islands?

4 A I coming to look for -- because my brother knew
5 Mr. Yusuf his wife, sister to my wife, and they ask her if
6 you want to come into America. And she give her the
7 certificate.

8 And without I know, after they coming to
9 America, Mr. Yusuf and his family, they went to the
10 immigration and they did the certificate. They prove it.
11 And they call us and they tell you to go embassy and fix
12 your paper in there.

13 Q All right. When you say Mr. Yusuf, are you
14 talking about Fathi Yusuf?

15 A Fathi Yusuf, yes.

16 Q Okay. And when you moved to St. Croix, where
17 did you live?

18 A In Mr. Fathi Yusuf house. Five days.

19 Q And then did you eventually move somewhere else
20 on St. Croix?

21 A When I came to St. Croix straight I went to his
22 house and I stayed five days. After five days I rent a
23 house in Whim, \$280.

24 Q And did you -- did there come a time that you
25 started to work on St. Croix?

1 A Yes, I come to work.

2 Q And what work did you do?

3 A I used to work salesman. Sell clothes from
4 house to house.

5 Q And at some point in time did you open a grocery
6 store?

7 A After I work, and then salesman for three years
8 and make a little bit money where I get some money with me
9 and I open a little grocery Carlton Grocery.

10 Q And did you ever have more than one grocery
11 store?

12 A Yes, sir. I have a next one in -- Glynn.

13 Q And did there come a time that you spoke with
14 Mr. Yusuf about going into business with him?

15 A Mr. Yusuf he was busy building the business,
16 shopping center.

17 Q And tell me how you got involved with him?

18 A And he's my brother family. He's from my
19 village. Me and he together. Neighbor in the -- back in
20 West Bank and we know him. We know his family, his
21 father, his mother and his close -- his sister with -- my
22 cousin got married with his sister.

23 Q Okay. And did there come a time that you tried
24 to help him with the shopping center?

25 A Many times.

1 Q Can you tell the court about that.

2 A Because he need money that time. His brother,
3 he start to feed him a little money from Kuwait, and one
4 time it stop. His brother. And the money, he needs
5 money. One time he tell me, Hamed I owe the people money,
6 I have to pay tomorrow and I don't have it.

7 I tell him, don't worry. I have the money. I
8 give it to your wife. I went for your house, I can find
9 you. We find him in the shopping center and his wife she
10 tell me it's my --

11 MR. DAVID: Objection, hearsay.

12 MR. HOLT: We don't need to hear that.

13 THE COURT: Okay, that's sustained.

14 BY MR. HOLT:

15 Q So did you give him the money?

16 A I give him the money and he count it. He count
17 the money, \$14,000. And he tell me, okay, that's good.
18 12,000 I will cover what I owe, 2,000 I'm going to make it
19 for the family to buy grocery thing.

20 Q Okay. And did there come a time that you gave
21 him more money?

22 A I give him CD, \$20,000 in Tortola it was. I
23 bought it. I signed it for him in Nova Scotia and he got
24 it. And the 20,000, I won lottery one time in 19 -- I
25 don't know what year. I give him 20,000.

1 And I give him 10,000 from where I working in
2 the grocery where I buy. I went to he and I give him,
3 this is what I have right now, use it. He say, I'm going
4 to charge, put it in interest. I tell him, no, I don't
5 want no interest, you is my brother-in-law before we get a
6 bad for business and is the supermarket.

7 After that he coming and tell me look, man, you
8 try to help me, thank you for that. We're going to open
9 supermarkets over there and you're going to be my partner.
10 I tell him, well, they have a friend of mine, Arab, I
11 don't want to say his name, and I believe they know his
12 name. Mr. Yusuf they know him. He tell me I'm going to
13 work with you.

14 Mr. Yusuf after he tell me -- before him and I
15 say, okay, I'm going with the man in my village, but I
16 going with the next guy. And I start with Mr. Yusuf.

17 We get a money from Banco Popular, \$1 million.
18 After they give us \$1 million it stop. They don't want to
19 give us money. We start to look a next bank maybe we get
20 the loan. We got it from next bank \$2 million and a half.
21 We give the Banco Popular what we owe, and the rest we buy
22 the stuff for the supermarket.

23 Q Okay.

24 A And we open the store without dairy. No dairy
25 in the Plaza Extra. Who give us, lent us the money? The

1 man with the furniture, his name is Baker. And they went
2 to buy the cheese and all kind of thing, and they fill it
3 up.

4 Q Now, what happened to the store in Carlton and
5 the store in Glynn?

6 A I sold it.

7 Q And what did you do with the money?

8 A Mr. Yusuf he tell me if you be here in the
9 business supermarket you cannot have a next business of
10 your own, you have to be completely work in the Plaza
11 Extra. Nothing else you can do about it. And I sell the
12 market and I sell Carlton Grocery.

13 Q And what did you do with the money from the
14 sale?

15 A I put it with the money I pay for Mr. Yusuf.

16 Q Okay. And what was your understanding of your
17 relationship with Mr. Yusuf?

18 A I'm his partner. We own 50 and he own 50 in the
19 winning or loss.

20 Q And that's 50 percent of the Plaza Supermarket?

21 A What that?

22 Q 50 percent of what?

23 A 50 percent of the supermarket.

24 Q Okay. Now, did your sons start to work in the
25 supermarket?

1 A Yes, sir.

2 Q And who is your oldest son? Who is your oldest
3 son?

4 A Mr. Yusuf he is in charge for everybody.

5 Q What is your oldest son's name? Who is your
6 oldest son?

7 A My oldest son is Waleed Hamed.

8 Q And did there come a time that you stopped
9 working in the business every day?

10 A No.

11 Q Okay. Tell me what you did in the business?

12 A He used to work with me and in the supermarket,
13 without payment before we open. They build a beam and
14 they have somebody from St. Lucia, Charlie, he used to
15 work, and he will help him hold the beam with him until 12
16 o'clock in the night.

17 Q Okay. After a while did you get the supermarket
18 open?

19 A After the work in the supermarket.

20 Q Okay.

21 A And Mr. Yusuf tell me, you is my partner, not
22 your son. Your son employees, the two, 4.65 an hour, and
23 I like any employees. I tell him I'm not saying nothing,
24 you is my partner. Whatever you say I agree with you.

25 Q Okay.

1 A Even my son or anybody.

2 Q All right. And then as you got older, did there
3 come a time that you stopped working in the store?

4 A No.

5 Q You still work there today?

6 A I never stop working in the store.

7 Q Okay.

8 A 'Till we get burn up the store. That time
9 everything is gone. I lose everything.

10 Q Now, did you eventually go back to live in
11 Jordan?

12 A I what?

13 Q Did you go back to live in Jordan?

14 A No, sir.

15 Q You stayed here?

16 A I stay here. I'm stay here fighting to build
17 back.

18 Q And did there come a time that you gave Waleed
19 your son, a power of attorney for you?

20 A Yes, sir, after I get retired.

21 Q And --

22 A I give him power of attorney because I was sick.
23 I say let me give the boy a power of attorney before we
24 get -- maybe I die, maybe not, it's -- God knows. And I
25 made the power of attorney. I give to him.

1 Q Those are all the questions I have.

2 THE COURT: Okay.

3 CROSS-EXAMINATION

4 BY MR. DAVID:

5 Q Good afternoon, Mr. Hamed.

6 A Good afternoon.

7 Q Sir, while you were testifying I was writing
8 some things down, I want to make sure I understood what
9 you said, okay?

10 A Please, take it easy. Sometime I don't hear you
11 too good.

12 Q Yes, sir. I will try to talk loud enough and
13 slow enough so you can hear me; is that fair?

14 A Yeah. Go ahead.

15 Q You testified that you initially gave Fathi
16 Yusuf \$14,000; do you remember that?

17 A 14,000?

18 Q Yes.

19 A Yes, sir.

20 Q And that -- and then --

21 A And that time I bring to him in the socks. You
22 know, the socks.

23 Q Yes, sir.

24 A I put it inside the socks. Me and my wife went
25 to her sister, his wife, to Mr. Yusuf.

1 Q Okay. And --

2 A And I asked her for -- where is Fathi tell me he
3 is in the shopping center. He was building the shopping
4 center.

5 Q Okay.

6 A And she told me, please, go and get him from the
7 shopping center.

8 Q Okay.

9 A To the house here.

10 Q I'm going to -- I'm going to try to stay
11 focused. Let me ask you another question?

12 A I went to shopping center and I find Mr. Yusuf
13 there. I tell him, let's go home, take a cup of coffee.
14 He said, Hamed, I owe the people money, I don't know how I
15 going to pay him tomorrow. I told him, look, the money, I
16 have in your house. You going to pay him and more you
17 have. He said where? I said, in your house by your wife.
18 Let's go home.

19 He went drive his car and I go behind him to the
20 house, drink the coffee. And he get the socks and open it
21 and start to check. He tell me how much? I tell him, you
22 check it. He check it. He tell me 14,000.

23 Q Okay.

24 A I tell him what I save and my grocery in my
25 business, that's what I have.

1 Q Okay.

2 A And I promise you any time I'm going to save
3 5,000, 10,000 whatever, I will bring it to you because
4 it's his brother used to send him back up when he build
5 it.

6 Q Okay. The next amount of money that you gave
7 him was a CD for \$20,000; is that correct?

8 A Yes.

9 Q Okay. And then --

10 A I gave him more than one time.

11 Q And then the next time was \$10,000; is that
12 correct?

13 A Yes.

14 Q Okay. And then you sold your store at Carlton
15 and at Glynn? You sold your two stores?

16 A I used what?

17 Q You sold your two stores, correct?

18 A Yes.

19 Q How much money did you give to Mr. Yusuf Fathi
20 Yusuf from that store?

21 A I give him whatever he asked me. \$200,000.

22 Q Do you recall that it was exactly \$200,000?

23 A Yes, sir.

24 Q Now, you said something about a million dollars
25 from Banco Popular, was that a loan?

1 A It's a loan he took from the bank.

2 Q Okay.

3 A I don't have no name. I told him -- he tell me
4 the bank they don't want nobody, so they have a partner
5 with the supermarket.

6 Q Okay.

7 MR. HARTMANN: I'm sorry, let him answer.

8 MR. DAVID: I'm letting him answer, sir.

9 I'm sorry, Judge, are we getting one lawyer here
10 or two?

11 MR. HARTMANN: I'm sorry.

12 MR. HOLT: But he needs to let him finish.

13 MR. DAVID: I apologize to the Court and to
14 counsel, and to the witness, sir.

15 THE COURT: That's fine.

16 BY MR. DAVID:

17 Q Please continue, sir.

18 A Yeah, They give us one million and They stop.

19 He come -- Fathi come to me and tell me, you know, how
20 much, Hamed we're going to be interest for that? I tell
21 him, no, you can take care of the office and I'm in the
22 warehouse I'm in charge in the warehouse so it's even.

23 He said \$16,000 a month, you pay 8. I tell him,
24 why not? I'm work with you even if I getting winner or I
25 get lose.

1 Q Okay.

2 A With sailboat. He said, okay, I want to know,
3 you know that. I tell him, okay, I know that.

4 Q Are you still working at the stores?

5 A Long time I retired.

6 Q Okay. Was there another loan for two and a half
7 million dollars?

8 A A what?

9 Q Was there another loan for two and a half
10 million dollars?

11 A Yes.

12 Q From whom?

13 A From the Bank of the Virgin Islands, Nova
14 Scotia, and then the other side, what you call it? I
15 forget the name.

16 Q Did you sign the loan documents?

17 A I'm not sign nothing.

18 Q So on the million-dollar loan that we talked
19 about you're not signed either?

20 A Fathi is the one, he sign. Mr. Yusuf the one he
21 sign with the loan, the first one and the second one.

22 Q Okay. Sir, did you sign an affidavit in this
23 case?

24 A For who?

25 Q Did you -- Do you know what an affidavit is,

1 sir?

2 A Affidavit I give my son.

3 Q What for? Why did you give your son an
4 affidavit?

5 A Why?

6 Q Yes, sir.

7 A Well, I forget at that time what he told me.
8 And he tell me sign the paper. He wants me, I sign it. I
9 give to him.

10 Q Did you read the paper before you signed it?

11 A He give me the paper.

12 Q Okay. Did you read the paper before you signed
13 it?

14 A I'm not read English, I tell you the truth.

15 MR. DAVID: I'm going to show him his
16 affidavit.

17 MR. HOLT: Sure.

18 BY MR. DAVID:

19 Q Okay. Sir, have you ever seen that piece of
20 paper before?

21 A Yes.

22 Q What is that?

23 A That's my signature in there.

24 Q Do you know what the letters, the words on the
25 paper say?

1 A Well, I need somebody to read it and they
2 explain to me in Arabic.

3 Q You can't read the words on that piece of paper?

4 A I can't read it.

5 Q Okay. Did you read it before you signed it?
6 Before you wrote your name on it --

7 A I tell me son -- I believe what they have in
8 there. He explain to me and I forget what he told me.

9 Q Okay. That's all I have.
10 You can take that back.
11 Fathi Yusuf is your partner?

12 A Yes.

13 Q Is Fathi Yusuf partners with Waleed?

14 A Ha?

15 Q Is Fathi Yusuf partners with Waleed, your son
16 Waleed?

17 A No. But he is my partner. I, not my son.

18 Q Your other sons are not partners with Fathi
19 Yusuf, correct?

20 A Yes. I'm his partner, not my son.

21 Q And if Mr. -- If Fathi Yusuf has something to
22 talk to you about the partnership, he is to talk to you,
23 correct?

24 A Yes.

25 Q And nobody else?

1 A Nobody else. If I die or I -- after I give my
2 son the power of attorney, yes, he could because I'm not
3 working. I getting old. I can't do nothing.

4 Q How long is your partnership with Mr. Yusuf
5 supposed to last? When does it end?

6 A Forever. We start with Mr. Yusuf with the
7 supermarket and we make money. He make money and I make
8 money, we stay together forever.

9 MR. DAVID: Okay. One moment, Your Honor, I
10 maybe done.

11 **(Discussion off the record.)**

12 BY MR. DAVID:

13 Q Sir, have you ever signed any -- strike that.
14 Are you aware that there is a lease?

15 A I don't know. I didn't hear you.

16 Q Is there a lease for the St. Thomas store?

17 A Lease?

18 Q Lease.

19 A To St. Thomas store?

20 Q Yes, sir.

21 A Mr. Fathi the one. He in charge for it.

22 Q What other stores is Mr. Fathi in charge of?

23 A For all the three store.

24 Q That's all I have, sir. Thank you.

25 A You're welcome.

1 MR. HOLT: No other questions. Thank you very
2 much.

3 THE COURT: Thank you, Mr. Hamed, you may stand
4 down.

5 MR. HOLT: We call Mahar Yusuf.
6 Thereupon,

7 MAHAR FATHI YUSUF,
8 having been first duly sworn, was examined and testified
9 as follows:

10 DIRECT EXAMINATION

11 BY MR. HOLT:

12 Q Can you state your name for the record, please.

13 A Mahar Fathi Yusuf.

14 Q Where do you reside?

15 A 306-A Judith's Fancy.

16 Q And where do you work?

17 A Plaza Extra.

18 Q And is there a particular store you work in?

19 A Plaza Extra West.

20 Q And is there a person in the Hamed family that
21 you work with there?

22 A Yes.

23 Q And who is that?

24 A Hisham Hamed.

25 Q Are you also the president of United

1 Corporation?

2 A Correct.

3 MR. HOLT: Can I have the witness shown Exhibit
4 Number 19. I'm sorry, I got it here.

5 BY MR. HOLT:

6 Q Is this an affidavit that you signed in this
7 case?

8 A Yes.

9 Q And that's your signature on the last page?

10 A Yes.

11 Q Okay. And looking at Paragraph 17 --

12 MR. DiRUZZO: Objection, Your Honor. Counsel is
13 trying to impeach his own witness.

14 MR. HOLT: No, I'm not. I'm on direct
15 testimony.

16 THE COURT: He can ask the question.

17 BY MR. HOLT:

18 Q You made a statement that, "United has always
19 charged rent for the use of the part of its retail
20 premises at the Plaza Extra Supermarket operations on
21 St. Croix Sion Farm do you see that?

22 A Yes.

23 Q Okay. And you -- then the next sentence you
24 said, "Mohammad Hamed has always understood that United
25 would always charge for the use of the retail space," is

1 that correct?

2 A Yes.

3 Q So Mohammad Hamed is the tenant in the store?

4 A No.

5 Q Who's the tenant?

6 A Fathi Yusuf.

7 Q Fathi Yusuf or Fathi Yusuf and Mohammad Hamed?

8 A Fathi Yusuf.

9 Q And who's the landlord?

10 A United Corporation.

11 MR. HOLT: Can I have the witness shown Group

12 Exhibit 7.

13 BY MR. HOLT:

14 Q This is a group exhibit that's already been
15 admitted into evidence and identified, have you seen these
16 documents before?

17 A Yes.

18 Q And these are letters from United Corporation to
19 Mohammad Hamed?

20 A Correct.

21 Q And some of them say Mohammad Hamed, Plaza Extra
22 Supermarkets?

23 A Correct.

24 Q Why are you sending Mohammad Hamed rent increase
25 notices or eviction notice if Fathi Yusuf owns the store?

1 A Fathi Yusuf owns the store.

2 Q Why are you sending the notices to Mohammed
3 Hamed?

4 A Because Mohammad Hamed has a business agreement.

5 Q So he does have a business agreement?

6 A He does have a business agreement.

7 Q To operate the store?

8 A To operate the store.

9 Q And you understand the agreement is to share the
10 profits 50/50?

11 A Yes.

12 Q And you're still sending these letters to
13 Mr. Hamed in 2012 and 2013, so I take it that business
14 agreement is still in place?

15 A As far as I know.

16 Q Okay. And then you also said that, "It was
17 always understood that United would charge the Yusuf
18 retail space, and would deduct the value of such rent in
19 arriving at the net profits of the Plaza Extra stores."

20 What do you mean by that?

21 A Where is that?

22 Q The last part of paragraph 7.

23 A Okay. Yes, that's correct.

24 Q Just explain to me what you mean?

25 A That we do charge the store the rent.

1 Q Okay. And so when we talk about the profits
2 that Mr. Fathi Yusuf and your father would share, we're
3 talking about the net profits, not the gross profits; is
4 that correct?

5 A The net profits, yes.

6 Q And part of the net profits is taking the rent
7 out of gross profits; is that correct?

8 A Repeat that again.

9 Q Well, part of getting to the net profits is
10 you've got to take the rent out?

11 A Yes.

12 Q No other questions.

13 THE COURT: Any cross?

14 MR. DiRUZZO: Yes, Your Honor.

15 CROSS-EXAMINATION/DIRECT EXAMINATION

16 BY MR. DiRUZZO:

17 Q Mr. Yusuf, I'm going to ask you a few questions.
18 If you don't understand the question, if I go too fast,
19 just let me know and I'll either repeat or rephrase the
20 question.

21 You are the president of United Corporation,
22 correct?

23 A Correct.

24 Q And in your role as president of United
25 Corporation you have custody of the books of United

1 Corporation?

2 A Yes.

3 Q And included in those books of United
4 Corporation would include the Articles of Incorporation of
5 United Corporation?

6 A I have a copy of it.

7 **(Defendants' Exhibit 7 marked for**
8 **identification.)**

9 BY MR. DiRUZZO:

10 Q Sir, I'm showing you a document that's been
11 marked as Defense Exhibit 7, please take a look at this
12 document, and once you're done reviewing the document, let
13 me know.

14 A Yes.

15 Q And is this the Articles of Incorporation for
16 United Corporation, the defendant in this case?

17 A Yes.

18 Q And is United Corporation a Virgin Islands
19 entity formed under the laws of the Virgin Islands?

20 A Yes.

21 Q And is United Corporation a -- still a, as you
22 sit here today, a legal entity?

23 A Yes.

24 MR. DiRUZZO: And defense moves Exhibit 7 into
25 evidence.

1 MR. HOLT: No objection.

2 THE COURT: Defendant's Exhibit 7 is admitted.

3 **(Defendants' Exhibit 7 received into evidence.)**

4 MR. DiRUZZO: May I approach, Your Honor.

5 THE COURT: Yes.

6 Marshal.

7 MR. HOLT: Your Honor, I don't know what he's
8 doing, but this is well beyond the scope. This is a
9 lease in St. Thomas, I didn't ask him any questions
10 about --

11 THE COURT: Well, you did ask --

12 MR. HOLT: You know what, they can call him in
13 their own case so they might as well do it now. No
14 problem.

15 **(Defendants' Exhibit 8 marked for**
16 **identification.)**

17 BY MR. DiRUZZO:

18 Q Sir, I'm handing you what's Defense Exhibit 8.
19 Have you seen this document before, sir?

20 A What is that?

21 Q Have you seen this document before?

22 A Yes.

23 Q And what is this document?

24 A It's a lease for St. Thomas, Tutu Park Mall.

25 For the Plaza Extra St. Thomas.

1 Q And does the document reflect who executed this
2 lease on behalf of United Corporation d/b/a Plaza Extra
3 for it's lease in St. Thomas, Tutu Park Mall?

4 A Yes.

5 Q And those persons would be?

6 A The president.

7 Q And who was the president at the time this lease
8 was executed?

9 A I was.

10 Q And did anyone else execute?

11 A Fathi Yusuf, which is my father.

12 Q What role did Fathi Yusuf execute this document?

13 A Secretary and treasurer.

14 Q Sir, I want to direct your attention to Page 52
15 of this document. Number 52. There's also -- on the
16 bottom right-hand side is also bates number FY126970?

17 A Yes.

18 Q Sir, that portion of this document, what is
19 that?

20 A That's a legal binding signature.

21 Q And then flip to the next page on the bottom of
22 Page 53, what is that?

23 A Oh, the guarantee.

24 Q Sir, who executed this guarantee?

25 A My father.

1 Q And just so the record is clear, that's Fathi
2 Yusuf?

3 A Fathi Yusuf yes.

4 Q Sir, has Mohammad Hamed ever executed a personal
5 guarantee in respect to United Corporation?

6 A No.

7 Q Has Mohammad Hamed ever executed a personal
8 guarantee in respect to United Corporation doing business
9 as Plaza Extra?

10 A Never did.

11 Okay. Move Defense Exhibit 8 into evidence.

12 MR. HOLT: No objections.

13 THE COURT: Hence Exhibit 8 is admitted.

14 **(Defendants' Exhibit 8 received into evidence.)**

15 BY MR. DIRUZZO:

16 Q Sir, I'm going to shift gears for a second and
17 talk about your role with respect to your father, not as
18 president of the United Corporation but just you as a son.

19 Can you tell the Court or describe the
20 construction of the United Shopping Center where currently
21 Plaza Extra Sion Farm sits.

22 Do you have personal knowledge of the
23 construction of the shopping center?

24 A Yes, of course.

25 Q And how old were you at the time when the United

1 Shopping Center was being built?

2 A Probably 13. 13, 14.

3 Q Were you personally involved in the shopping
4 center?

5 A Yes.

6 Q In what matter?

7 A Contractor. Anything that needs to be done.

8 Q And when that store was going up how long did it
9 take for the shopping center to be completed?

10 A Shopping center, probably -- I don't recall how
11 many years but it was completed in 1983.

12 Q Okay. And at the time, in 1983, do you remember
13 the stores that leased space from United Shopping Center?
14 What the stores were?

15 A Yes.

16 Q And to the best of your recollection, what were
17 those stores?

18 A It was retail spaces.

19 Q Okay. And in some point in time did a Plaza
20 Extra open in that -- at that location?

21 A Yes.

22 Q And when was that?

23 A 1986.

24 Q And, so the Court's aware, what was the duration
25 between when the United Shopping Center was operational

1 and when Plaza Extra first opened it's stores at that
2 shopping center?

3 A About three years.

4 Q Now, let's talk about the rent. What is the
5 current structure between United Corporation and the Plaza
6 Extra store in respect to the rent?

7 A For the Plaza Extra store?

8 Q Yes, the Plaza Extra store.

9 A Well, Mohammad Hamed was in agreement with my
10 father to run the east store, Plaza Extra Sion Farm and
11 that store was supposed to pay the rent. I'm not sure
12 what the figures were on the rent.

13 Q Now, at some point -- There's been testimony
14 that the store burnt down in a fire?

15 A Yes.

16 Q Can you estimate approximately when that was?

17 A Give or take a day, January 6, 1990.

18 Q Was the store insured?

19 A Yes.

20 Q Who was the named beneficiary, the policy holder
21 of that insurance?

22 A United Corporation.

23 Q Was Mohammad Hamed ever listed as beneficiary of
24 that insurance policy?

25 A No.

1 Q Has Mohammad Hamed ever exercised any management
2 decision in respect to United Corporation, doing business
3 as Plaza Extra?

4 A No.

5 Q Sir, I'm going to turn your attention to the
6 criminal case; you're familiar with that criminal case?

7 A Yes.

8 Q And was United Corporation d/b/a Plaza Extra
9 indicted in that criminal case?

10 A Yes.

11 Q And was Mohammad Hamed ever indicted in that
12 case?

13 A No.

14 Q At any point in time did Mohammad Hamed or a
15 representative of Mohammad Hamed come forward and assert
16 partnership interest in Plaza Extra or United Corporation
17 during that criminal case?

18 A No.

19 Q Sir, you were taken into custody in respect to
20 that criminal case?

21 A Yes.

22 Q And was your father Fathi Yusuf?

23 A Yes.

24 Q And was Waleed Hamed?

25 A Yes.

1 Q And did Mohammad Hamed was he ever taken into
2 custody in respect to that case?

3 A No.

4 Q Where was Mohammad Hamed when you were taken
5 into custody, if you know?

6 A I believe he was in the middle east.

7 Q Sir, in respect to that case, did you execute a
8 plea agreement on behalf of the United Corporation to
9 resolve the ongoing criminal case?

10 A Yes, I did.

11 Q And, sir, are you familiar with the terms of
12 that plea agreement?

13 A Not off my head, no.

14 Q If you saw that, would it refresh your
15 recollection?

16 A Yes.

17 MR. DiRUZZO: If the defense witness can be
18 shown Defense Exhibit 2.

19 THE WITNESS: Yes, sir.

20 BY MR. DiRUZZO:

21 Q Sir, turning your attention to page 2, part A.

22 A Yes, sir.

23 Q The plea agreement involves a 2001 corporate
24 income tax return of former 1120-S?

25 A Yes.

1 Q And that 2001 income tax return 1120-S that's
2 the subject of the plea agreement, did that include the
3 operation of Plaza Extra grocery stores?

4 A Yes.

5 Q Sir, I'm going to turn your attention to Page 4,
6 under Section 3, Paragraph 3.

7 MR. HOLT: Your Honor, just for the record I'm
8 going to let this continue. I just want to make sure
9 this is their case, when it's my turn it's now my
10 cross.

11 THE COURT: That's understood.

12 MR. DiRUZZO: That's fine, Your Honor.

13 THE WITNESS: Yes.

14 BY MR. DiRUZZO:

15 Q Paragraph 3, it's referring to the tax year 1996
16 through 2012, it discusses restitution.

17 Was restitution actually paid to the Virgin
18 Islands Bureau of Internal Revenue?

19 A Yes.

20 Q And do you recall, off the top of your head, do
21 you remember that amount?

22 A I believe it's eleven million.

23 Q Okay. Sir, did -- If the witness can be shown
24 Exhibit Number 4.

25 Sir, turn your attention to the last page. Is

1 that your signature there?

2 A Yes, sir.

3 Q And what capacity did you sign?

4 A As the president of United Corporation.

5 Q And this closing agreement, does this tie into
6 or reflect the restitution penalty that we just talked
7 about on page 4 of the plea agreement?

8 A Yes.

9 Q And United Corporation for those years paid tax
10 as a C-Corporation to the Virgin Islands Bureau of
11 Internal Revenue?

12 A Yes.

13 Q Now, sir, pursuant to the plea agreement, are
14 there certain conditions that United is going to have to
15 comply with?

16 A Yes.

17 Q And turn your attention to the bottom of Page 7.
18 The plea agreement requires that there's a one-year term
19 of probation and that United Corporation.

20 A Hold on. Page 7. Where?

21 Q Page -- Exhibit 2.

22 A Okay. Yes.

23 Q That United Corporation is going to have a
24 one-year term of probation?

25 A Yes.

1 Q And it's going to be monitored by an independent
2 third party certified public accounting firm?

3 A Correct.

4 Q Sir, in respect to the upcoming monitoring by an
5 independent certified public accounting firm, did United
6 Corporation take any steps to be in compliance with its
7 plea agreement?

8 A Yes.

9 Q Such as?

10 A I hired a consultant as an accountant.

11 Q And that consultant's name for the record?

12 A John Gaffney.

13 Q And did United Corporation hire any other
14 staffer in order to make sure that it was compliant with
15 the plea agreement?

16 A No, just John Gaffney.

17 Q Okay. Is John Gaffney currently working for
18 United Corporation?

19 A Yes.

20 Q And, briefly, what is he doing?

21 A He's taking the -- our accounting system and
22 organizing everything so that we can be in compliance with
23 the plea agreement, and foreseeing that we have a better
24 accounting system.

25 Q Well, right now I'm talking about your

1 accounting system; how would you qualify this accounting
2 system?

3 A How it runs? How is it going?

4 Q How is it going right now?

5 A I can ask for numbers and I can see what my
6 numbers are.

7 Q And what would you expect the improvements to be
8 after Mr. Gaffney gets done doing what he was hired to do?

9 A It should be a big improvement.

10 Q Give some examples to the Court.

11 A Have financial statements on hand any time you
12 need it.

13 Q Okay. In respect to the plea agreement, United
14 Corporation also has to develop an effective compliance
15 and ethics program?

16 A Yes.

17 Q And is that part of what Mr. Gaffney is also
18 attempting to put in place?

19 A Yes.

20 Q Sir, has United Corporation d/b/a Plaza Extra
21 ever filed a partnership income tax return?

22 A Never.

23 Q Has any of the income tax filings of United
24 Corporation ever reflected Mohammad Hamed as an owner of
25 United Corporation?

1 A No.

2 Q There's been some discussion about the need or
3 the current way that United Corporation operates with two
4 checks -- two signatures on a check, was that always the
5 case?

6 A No.

7 Q When did it change and why?

8 A In 2011, I think about August or September, my
9 father wanted more control. Fathi wanted more control on
10 the checks so he changed it from one single signature to
11 two signatures.

12 Q Let me turn your attention to the current
13 operations of Plaza Extra. Are any of the Plaza Extra
14 stores at the moment under a threat of closing down?

15 A No.

16 Q Are any of them under the threat of reduced
17 operations?

18 A No.

19 Q Have you ever witnessed your father, Fathi
20 Yusuf, make any threats of physical harm to any Hamed
21 family members?

22 A Never.

23 Q Have you ever witnessed Fathi Yusuf blocking
24 payments to vendors?

25 A No.

1 Q Are the vendors being paid in the normal course
2 of business?

3 A Yes.

4 Q Is the inventory being ordered in the normal
5 course of business?

6 A Yes.

7 Q Have the day-to-day business operations changed
8 in any material way?

9 A No.

10 Q Sir, let's talk about the money that's in the
11 bank. How many bank accounts does United Corporation
12 d/b/a Plaza Extra have?

13 A Eleven. I think it's eleven.

14 **(Defendants' Exhibit 9 marked for**
15 **identification.)**

16 MR. DiRUZZO: Your Honor, I would like the
17 witness to be shown Defense Exhibit 9.

18 THE COURT: Thank you, marshal.

19 BY MR. DiRUZZO:

20 Q Sir, you've been shown a document that's been
21 marked Defense Exhibit 9; do you recognize that document?

22 A Yes.

23 Q How do you recognize that document?

24 A By securities that we have.

25 Q And just to be clear, what -- Describe for the

1 record what is this document?

2 A It's the investment companies and security,
3 Banco securities that we have for United Corporation.

4 Q And what's the amount here that's listed that
5 United Corporation has in the bank?

6 A In the investment company 43,914,260.04.

7 Q And are these accounts ones that were subject to
8 the restraining order in the ongoing federal criminal
9 case?

10 A Yes.

11 Q And what about other accounts, does United
12 Corporation d/b/a Plaza Extra have other bank accounts?

13 A Yes.

14 Q And if you can estimate, do you have any idea
15 what the total amount is in those other bank accounts.

16 Let's break it down. Do you have any by store?
17 Let's talk about Plaza west. Plaza west has an operating
18 account?

19 A Yes.

20 Q Do you have any idea how much is in there?

21 A 1.7. 1.6.

22 Q What about Plaza east?

23 A One point -- at least almost 2 million.

24 Q And what about St. Thomas?

25 A St. Thomas, it's in the hundred thousands.

1 Q Okay. Does Plaza Extra or United Corporation
2 doing business as Plaza Extra is United Corporation under
3 any liquidity problems?

4 A Not with the stock that we have.

5 Q Sir, I'm going to turn your attention to the --
6 there were certain discussions about the Hamed family not
7 being able to have access to these bank accounts.

8 A They have full access.

9 Q And in what manner do they have full access?
10 And when you say "full access", what exactly do you mean
11 by "full access"?

12 A Just like any one of us have. They have viewing
13 access.

14 Q And how do they have viewing access?

15 A They can get online and view the accounts any
16 time they want to.

17 **(Defendants' Exhibit 10 marked for**
18 **identification.)**

19 BY MR. DiRUZZO:

20 Q Sir, you're being shown what's Exhibit 10.

21 THE COURT: Has Mr. Holt seen it?

22 MR. HOLT: Yes, I have it. No objection. Are
23 you talking about number 10?

24 BY MR. DiRUZZO:

25 Q Sir, do you recognize this document?

1 A Yes, I do.

2 Q What is it?

3 A It's a list of people that their name's on here
4 that has access, online access.

5 Q So -- And the -- could you read it into the
6 record the actual names of these individuals that have
7 online access to the Scotia bank accounts?

8 A Yes. Hisham Hamed. Mahar Yusuf. Margaret -- I
9 don't know how to say her name -- Soeffing. Myra
10 Senhouse. Wadda Charriez, Waheed Hamed. Yusuf Yusuf.

11 Q Now, sir, this document that's in front of you
12 Exhibit 10, is this document accurate and up to date.

13 In other words, did these people still have
14 actual access to view these accounts online?

15 A Yes.

16 Q Okay.

17 A That's only in one bank account. One branch,
18 sorry.

19 **(Defendants' Exhibit 11 marked for**
20 **identification.)**

21 BY MR. DiRUZZO:

22 Q Sir, you have been shown Defense Exhibit 11.
23 Sir, what is that document?

24 A Pictures of the west store.

25 Q Do you know who took that picture?

1 A I did.

2 Q When?

3 A Last night.

4 Q And what do those pictures reflect? What's in
5 the pictures?

6 A Grocery store shelving and products on the
7 shelves.

8 Q And do the pictures -- And does the Plaza Extra
9 west store have sufficient inventory to service it's
10 customers?

11 A Yes, it does.

12 Q And does the Plaza Extra west store have
13 inventory in the back in order to ensure that --

14 A Excuse me, I have three copies of each.

15 THE COURT: Supposed to be three photographs?

16 MR. DiRUZZO: I screwed up, Your Honor. One
17 moment, Your Honor.

18 **(Discussion off the record.)**

19 THE COURT: That's Exhibit 11, correct?

20 MR. DiRUZZO: Correct.

21 THE COURT: And how many photos?

22 MR. DiRUZZO: Four. Two in the front, two in
23 the back.

24 THE COURT: Okay.

25 THE WITNESS: I have four. I wanted to talk

1 about the freezers.

2 BY MR. DiRUZZO:

3 Q We'll get to that. Refer to Defense Exhibit 11,
4 do these pictures accurately reflect the state of the
5 Plaza Extra west store in respect to inventory?

6 A Yes.

7 Q As we sit here today, or as you sit here today?

8 A Yes.

9 Q And what about the freezers that you just talked
10 about, is there sufficient inventory in the freezers to
11 service the customer?

12 A Yes.

13 Q Now, sir, let's talk about the payables. As
14 president of United Corporation do you have knowledge of
15 the payables of the three grocery stores?

16 A In some capacity, yes.

17 Q Would you -- have you reviewed the accounting
18 the accounting software or the accounting data in respect
19 to these -- the three stores?

20 A I go through it with Gaffney and review steps.

21 Q And -- Well, let's talk about the St. Croix west
22 store, does -- is there any ongoing problem with paying
23 the vendors, getting the payables paid in a reasonable
24 amount of time?

25 A I have no problem paying vendors.

1 **(Defendants' Exhibit 12 marked for**
2 **identification.)**

3 BY MR. DiRUZZO:

4 Q Okay. Sir, I'm going to show you defense
5 Exhibit 12. It's a composite exhibit.

6 A Yes.

7 Q Sir, have you seen these documents before?

8 A Yes, I did.

9 Q And what is this composite exhibit, this
10 three-part composite exhibit?

11 A This is our payables, vendor payables.

12 Q When you say "our" could you be specific, the
13 vendor payroll for?

14 A Vendor payrolls for each store.

15 Q And --

16 MR. HOLT: Excuse me, payroll or payables?

17 MR. DiRUZZO: Payables.

18 BY MR. DiRUZZO:

19 Q And these accounts payables, and this document
20 in front of you, is this kept in the normal course of
21 business?

22 A Yes.

23 Q And as a role -- as president of the United
24 Corporation, do you have custody, care and control of the
25 business records of the United Corporation d/b/a Plaza

1 Extra?

2 A Yes.

3 Q Including these accounting for the payables?

4 A Yes. Every store. Each store has separate
5 control.

6 Q And, now, let's talk about the one on -- about
7 St. Thomas. Do these payables reflect any problem with
8 the vendors getting paid out of the ordinary course?

9 A No.

10 Q And turning to the last page on the St. Thomas
11 portion of Exhibit 12, could you tell the Court what the
12 total amount of the outstanding payables for the
13 St. Thomas Tutu store is?

14 A 547,624.

15 Q And then would you tell the Court what the
16 amount that is aged between zero days and 30 days?

17 A 31,000.

18 Q Zero and 30?

19 A Oh, zero and 30. 502.

20 Q Just to be clear, 502 of the 547,000 that are
21 due to the vendors is between zero and 30 days old?

22 A Correct.

23 Q Now, sir, let's go to the west store.

24 A Yes.

25 Q What's the total amount of debt due to the

1 vendors at the west store?

2 A 341.

3 Q And how much of the 341 is between zero and 30?

4 A 277.

5 Q Okay. Do you have two wests there? Do you have
6 west, east and St. Thomas?

7 A I have west, St. Thomas and east.

8 Q Okay. Now, referring to -- Sir, is United
9 Corporation doing business as Plaza Extra having any
10 difficulty paying its vendors out of the normal course?

11 A Only one issue. Only one of my locations have
12 that problem.

13 Q And what is the problem?

14 A Not paying vendors on time.

15 Q And how -- What is the basis, or how did that
16 problem come about? Why do you have that problem?

17 A I have not checked with my management over
18 there.

19 Q Okay. Which location would you be referring to,
20 sir?

21 A Plaza east.

22 Q Now, there's been some discussion about \$2.7
23 million that was transferred out of the Plaza Extra
24 account, could you discuss whether anyone in the Hamed
25 family was aware of that transfer?

1 A Yes.

2 Q And who was aware?

3 A All the Hamed was aware.

4 Q Sir, are any of the Plaza Extra 600 employees in
5 jeopardy of loosing their job?

6 A Not at all.

7 Q Is Plaza Extra in jeopardy of losing customers
8 to competitors outside of normal market conditions?

9 A No.

10 Q Sir, if the Court were to enter a Temporary
11 Restraining Order against the defendants in this case
12 allowing the Hamed family to have equal management rights,
13 would the operations of the Plaza Extra stores be
14 materially harmed?

15 A Yes.

16 Q How so?

17 A By not keeping up with United -- the plea
18 agreement with United, with the defense, with the federal
19 case and putting United in good standings and making sure
20 our accounting system is done right.

21 Q Sir, before you came here today did you have an
22 opportunity to review the plaintiff's Motion for Temporary
23 Restraining Order filed back in September of last year?

24 A Yes, I did, but I don't remember it.

25 Q And you're aware of the allegations that were

1 made in that motion for a TRO, specifically that Plaza
2 Extra was in jeopardy of shutting down or closing
3 operations because of what was happening?

4 A No.

5 Q You're not aware of that?

6 A If I'm aware? Yes. Yes.

7 Q Did any of those concerns, did they ever come to
8 pass?

9 A No.

10 Q Sir, who is Margie Soeffing?

11 A She used to be our full-time controller.

12 Q And at some time did she stop being a full-time
13 controller?

14 A She gave us a two week -- a letter with -- a
15 resignation letter.

16 Q And when approximately was that?

17 A October, I believe.

18 Q Does -- is she still working for the company?

19 A Yes, she decided that she can stay on the
20 weekends, on a Saturday, and help us go through the year
21 and maintain the St. Thomas store.

22 Q So she went from working full time to now just
23 one day a week on the weekends?

24 A One day a week, yes.

25 Q Who is Ayman Al-Khaled?

1 A Ayman is a -- I'd said distant relative of me.

2 Q And how is he related to Fathi Yusuf?

3 A His niece daughter and he's the son like.

4 Q He's your, like second or third cousin?

5 A Third or fourth. Third or fourth.

6 Q And was Ayman hired?

7 A Yes, he was.

8 Q And what capacity was he hired?

9 A To become our controller.

10 Q And when was that?

11 A Sometime in October.

12 Q Was it after Margie Soeffing tendered her
13 resignation and moved from full-time employment down to
14 just one day a week?

15 A Yes.

16 Q And in respect to Mr. Gaffney, do you have any
17 estimation about the savings to United Corporation d/b/a
18 Plaza, if any, that Mr. Gaffney's efforts are going to
19 result in?

20 A I don't know the dollar figures, but he's --
21 we're going the right path cleaning up things.

22 MR. DiRUZZO: Your Honor, defense would move, I
23 want to say Exhibit 12, 11, 10, 9, 8 and 7 into
24 evidence.

25 THE COURT: Any objection?

1 MR. HOLT: No objection.

2 THE COURT: Okay. So that's --

3 MR. DiRUZZO: Tender the witness, Your Honor.

4 THE COURT: -- number 9. Number 8 was already
5 admitted. Number 10, number 11, number 12.

6 This is cross examination.

7 **(Defendants' Exhibit 9, 10, 11 and 12 received**
8 **into evidence.)**

9 CROSS-EXAMINATION

10 BY MR. HOLT:

11 Q Yes. You testified briefly about the fire
12 burning down the supermarkets in what, 1990?

13 A 1990, yes.

14 Q Did it burn down any other part of the shopping
15 center?

16 A Yes, it did.

17 Q And you talked about the insurance proceeds were
18 paid to rebuild everything?

19 A Yes.

20 Q Okay. And where did the money come from that
21 generated the premiums to pay for the insurance?

22 A From the grocery store.

23 Q Okay. And then you talked about a \$\$10 million
24 payment or \$11 million, you weren't quite sure, to the
25 federal government's part of the plea agreement?

1 A Yes.

2 Q Okay. And where did that money come from?

3 A From the grocery store.

4 Q And then you talked about Mr. Gaffney and the
5 work that he did, who's paying him?

6 A Grocery store.

7 Q And if he's working for the grocery store why
8 won't he then make the information available to the Hamed
9 family?

10 A It is available.

11 Q So if they ask for it they get it?

12 A Of course.

13 Q So when they testified they've asked for it and
14 haven't gotten it that's incorrect?

15 A That's incorrect.

16 Q Now, in the plea agreement you're talking about
17 trying to comply with the plea agreement, one of the
18 requirements are to file final returns?

19 A Final returns, yes.

20 Q And, basically, since the federal government
21 came in and seized everything, no tax returns have been
22 filed, have they?

23 A Yes, we've been filing tax return.

24 Q Have you been filing income tax returns for any
25 of the businesses since the federal government came in and

1 shut it down?

2 A Yes.

3 Q So the actual returns have been filed?

4 A Not the actual returns, estimated returns.

5 Q So estimated payments have been made?

6 A Right.

7 Q But the returns have not been filed?

8 A No, sorry.

9 Q And isn't it true that the reason the final
10 returns haven't been filed is because there's an issue as
11 to whether or not there should be partnership returns for
12 the supermarket and corporate returns for United?

13 A That's not what I understand.

14 Q Why hasn't it been done then?

15 A Defense team stopped us from doing it.

16 Q And isn't the agreement that you have to file
17 true and correct tax returns; isn't that the agreement?

18 A Yes. True and correct, yes. And consistent.

19 Q And if the corporation that owns the shopping
20 center, United, claims the income of the supermarket,
21 which is a partnership that wouldn't be a proper tax
22 return would it?

23 MR. DiRUZZO: Objection. Calls for a legal
24 conclusion and assumes facts not in evidence as to
25 the fact of Plaza Extra actually being a partnership.

1 MR. HOLT: He can answer if he knows.

2 THE COURT: Overruled. Repeat.

3 THE WITNESS: Repeat the question.

4 BY MR. HOLT:

5 Q Isn't it true the reason why the defense team
6 didn't want to file the tax returns because if the
7 corporation United, which owns the shopping center, claims
8 the income from the supermarket as income, that that would
9 be an improper return.

10 MR. DiRUZZO: Objection, calls for speculation
11 as to the attorney's mental state who are part of the
12 defense team that do not represent --

13 THE COURT: That was a different question
14 because that asks why the defense doesn't want to
15 file returns.

16 MR. HOLT: Well, he's claiming that he has great
17 knowlege.

18 THE COURT: Ask the question again.

19 BY MR. HOLT:

20 Q One of the agreements you said is that you got
21 to get accounting in place, correct?

22 A Correct.

23 Q And one of the requirements is true and proper
24 tax returns have to be filed don't they?

25 A Correct.

1 Q And isn't it true that the reason why those tax
2 returns aren't being filed is because there's an issue as
3 to whether or not the supermarket should file separate tax
4 returns from United Corporation?

5 A The issue that Waleed Hamed is bringing up.

6 Q And isn't it true that the U.S. Attorney decided
7 they didn't want to get involved in this civil dispute and
8 that's why these tax returns aren't being filed?

9 MR. DiRUZZO: Objection.

10 THE COURT: Stop. If he knows he can answer
11 that.

12 THE WITNESS: No, I don't know.

13 BY MR. HOLT:

14 Q Okay. Fair enough. Now, you started talking
15 about two signatures on checks, and that would be one from
16 the Hamed family and one from the Yusuf family; is that
17 correct?

18 A No.

19 Q What is it?

20 A Could be any two signatures.

21 Q So if two Hameds want to sign a check and do it
22 they can?

23 A No.

24 Q Why not?

25 A It needs to be for a good cause.

1 Q Let me -- You indicated that the 2.7 million
2 that was taken out, that was signed by two members of the
3 Yusuf family?

4 A Correct.

5 Q What would keep two members of the Hamed family
6 from doing the same thing?

7 A Nothing.

8 Q Okay. So if two members of the Hamed family
9 decided to write a check for 2.7 million, that could be
10 done, is that correct?

11 A If they want to it could be done, but it's not
12 going to happen.

13 Q Why not?

14 A Because it's not -- They are not supposed to.

15 Q Why could Mr. Yusuf and another Yusuf family
16 member do it and not the Hameds?

17 MR. DiRUZZO: Objection, calls for speculation
18 as to mental state of Fathi Yusuf.

19 THE COURT: Overruled.

20 THE WITNESS: It was monies that were taken from
21 previous.

22 BY MR. HOLT:

23 Q Okay. And was it agreed by the Hamed family
24 that the money could be removed?

25 A He didn't question me or tell me anything. He

1 didn't tell me not to remove it.

2 Q Okay. Could I show the witness Exhibit Number
3 13.

4 THE COURT: Plaintiff's 13, please.

5 BY MR. HOLT:

6 Q Now the first document is the letter dated
7 August 15th directed to Mohammad Hamed by and through
8 Waleed Hamed from Fathi Yusuf, have you seen that letter?

9 A Yes, that's my signature.

10 Q That's your signature for your father, correct?

11 A Correct.

12 Q And then at the top of the page, I mean the next
13 page, the letter dated August 16th, 2002; have you ever
14 seen that letter before?

15 A 16/2012.

16 Q Yes, 2012.

17 A Yes, I saw this.

18 Q So did this letter tell you it was okay for you
19 to do the withdrawing or did it tell you you couldn't do
20 it?

21 A It didn't tell me either way.

22 Q You don't read this letter as saying you could
23 not do it.

24 It says, "In short, while these are just a few
25 examples, no withdrawals will be issued until a full

1 accounting is done and agreed to it in writing."

2 Do you see that?

3 A Um-hum. Yes.

4 Q So that tells you not to do it, didn't it?

5 A Mr. Yusuf agreed on it and I agreed on it and we
6 did it.

7 Q So the Hamad family didn't agree but the Yusuf
8 family did agree, that's what happened, right?

9 A Right.

10 Q And then on the next page there is again your
11 signature for Mr. Yusuf your father?

12 A Correct.

13 Q Where you said that you're going to take out the
14 money anyway? It says, "Accordingly, the amount requested
15 will be withdrawn."

16 You see that?

17 A Yes.

18 Q Okay. And then on the next page, this is the
19 e-mail from Waleed Hamed to you and your father indicating
20 that the calculations were incorrect, they were disputed
21 and to withdraw the funds would be to violate the court
22 order and agreement between the families. Do you see
23 that?

24 A Yes.

25 Q Now, when did you -- Well, the next document is

1 a check. When was the last time -- I mean when was that
2 check actually deposited?

3 A It was deposited the day -- two days after I
4 gave this letter. Oh, no, five days after I gave this
5 letter.

6 Q So notwithstanding the fact that you received
7 indication from the Hamed family that they did not agree
8 with it, would be in violation of those agreements, you
9 still deposited the checks didn't you?

10 A What violation?

11 Q Not withstanding the fact that they told you it
12 would be a violation you still deposited it?

13 A And I gave them documents I was taking it.

14 Q What documents did you give them?

15 A A stack of documents.

16 Q All these letters said they never got these
17 documents, did you see that?

18 A That's untrue.

19 Q Where are the documents? Who did you give them
20 to?

21 A Waleed Hamed and the whole family was there.

22 Q How come they're telling you they didn't get
23 them?

24 A I have no idea.

25 MR. DiRUZZO: Objection, that's improper.

1 THE WITNESS: It was even in your office.

2 BY MR. HOLT:

3 Q In my office?

4 A In your office, sir.

5 Q Now, it says it would violate the agreement of
6 the court order. Isn't there a court order in place
7 saying the funds are not to be removed from the account
8 unless approved by the court?

9 A It didn't remove from the account. It was
10 removed from one United account and another United
11 account.

12 Q And it was removed to an account that the Hamed
13 family does not have access to; isn't that correct?

14 A Yes.

15 Q And the funds are still in the shopping center
16 account?

17 A No.

18 Q Where are they?

19 A I bought property with it.

20 Q So you've taken money out of the United Shopping
21 Center account and you've gone and bought property; isn't
22 that correct?

23 A Correct.

24 Q Where have you bought property?

25 A Frederiksted, West Airport Road and LaGrange.

1 Q And what were the -- what company took title to
2 these properties? Let's start with Frederiksted, what
3 company took title to that property?

4 A United Corporation.

5 Q And what company took title to the West Airport
6 Road?

7 A United Corporation.

8 Q And what company took title to the LaGrange
9 property?

10 A United Corporation.

11 Q So you purchased these parcels of land since you
12 transferred the money out?

13 A Yes.

14 Q In the name of United Corporation?

15 A Yes.

16 Q And you don't think those expenditures were in
17 violation of the TRO?

18 A No.

19 MR. DiRUZZO: Objection, strike. Calls for
20 legal conclusion.

21 THE COURT: Asked and answered.

22 BY MR. HOLT:

23 Q Didn't the TRO prohibit you from hiring family
24 members without court approval?

25 MR. DiRUZZO: Objection. The TRO is not in

1 evidence.

2 MR. HOLT: I'm just asking. He's talked all
3 about it.

4 THE WITNESS: I don't know.

5 THE COURT: He doesn't know.

6 BY MR. HOLT:

7 Q You don't know?

8 A No.

9 Q You don't know. So if there's a clause in the
10 TRO saying you can't hire family members that would have
11 been violated if you hired Mr. Al-Khaled?

12 MR. DiRUZZO: Objection. Calls for speculation.

13 THE COURT: He can answer.

14 THE WITNESS: I have no idea.

15 BY MR. HOLT:

16 Q He's a family member?

17 A He is a far family member. We hired other
18 family members too.

19 Q Did you receive permission to do that?

20 A We were doing normal business. They just wanted
21 quarterly reports from us, that's all.

22 Q You've shown a lot of pictures of the store --

23 A Yes.

24 Q -- how well everything is. You going to close
25 any of the stores?

1 A No.

2 Q Okay. Were you in the office on January 9th
3 when the police came?

4 A Yes.

5 Q And you saw your father that day?

6 A Yes.

7 Q And you heard your father too, didn't you?

8 A Yes. And I heard you too.

9 Q And what did your father say about Mr. Mufeed,
10 did he fire him?

11 A Well, Mufeed was putting a stop on what we were
12 doing in investigating this girl, and he told her don't go
13 home.

14 Q Right. And --

15 THE COURT: You said "he"?

16 THE WITNESS: Mufeed Hamed.

17 THE COURT: Mufeed told her to go home?

18 THE WITNESS: He told her to come back to work
19 the next day.

20 BY MR. HOLT:

21 Q And did your father tell Mufeed he was fired?

22 A I don't remember if he did or not.

23 Q Did he tell Mufeed that Waleed was also fired?

24 A I don't remember if he did or not.

25 Q And did your father say to the police, if you

1 don't remove all these people I'm going to close the
2 store?

3 A My father says that sometimes.

4 Q Your father says it a lot, doesn't he?

5 A It's his operation, right.

6 Q He said he's going to close the stores down,
7 right?

8 A He said it.

9 Q He said it in St. Thomas in front of the
10 employees?

11 A I wasn't there.

12 Q Have you heard that he said that?

13 MR. DiRUZZO: Objection, calls for hearsay.

14 THE COURT: Sustained.

15 THE WITNESS: I'm not sure.

16 BY MR. HOLT:

17 Q You yourself have heard him say that, haven't
18 you?

19 A Yes.

20 Q Okay. That's all the questions I have.

21 THE COURT: Okay. We took a break from the
22 plaintiff's case to allow the direct examine of this
23 witness, does the plaintiff have any --

24 MR. HOLT: One last one, Your Honor.

25 Hisham Hamed.

1 **(Discussion off the record.)**

2 Thereupon,

3 HISHAM HAMED,

4 having been first duly sworn, was examined and testified
5 as follows:

6 DIRECT EXAMINATION

7 BY MR. HOLT:

8 Q State your name.

9 A My name is Hisham Hamed.

10 Q And where do you work?

11 A Plaza Extra west.

12 Q And what is your job there?

13 A I am -- I manage the store, and I'm also an
14 agent for my father.

15 Q And who do you manage the store with?

16 A Mahar Yusuf.

17 Q And can you tell me what your role is with him?

18 A We jointly manage the store.

19 Q And can you just tell the Court a little bit
20 about what joint management means?

21 A Well, we oversee all employees within the store,
22 the departments, department ordering. We also look out
23 for the best interest of the company really.

24 Q And, for example, when you sign checks, do you
25 both sign checks?

1 A Yes.

2 Q And when you order, do things -- do you do that
3 together?

4 A Well, he has his department he order and I have
5 my department that I order.

6 Q How long have you been in that store?

7 A Since 2000.

8 Q And of the three stores, where does that one
9 stand as far as volume in sales?

10 A Well, it's the largest store but it's probably
11 second.

12 Q In sales?

13 A In sales.

14 Q Now, we've been over a lot of things, but one of
15 the things that came up was about some accountant; have
16 there been accountants that have come in your store to do
17 work?

18 A Yes.

19 Q And that's since this lawsuit were filed? Who
20 are they?

21 A John Gaffney and Fathi Yusuf's nephew, Ayman
22 Al-Khaled.

23 Q And where do they work in your store?

24 A They work in the conference room, a locked
25 conference room, and recently Ayman had a desk in the

1 office.

2 Q And when they work in that conference room, do
3 you have access to that?

4 A No.

5 Q Even though it's your store?

6 A Yes.

7 Q Have you asked them about that?

8 A I've asked Mike about it, Mahar about that, and
9 he said if he feels like letting me know what's going on
10 he's going to let me know what's going on.

11 Q And has he ever let you know what's going on?

12 A Not pertaining to the accounts. He told me they
13 were doing some accounting for the store in order to split
14 the store up at one point.

15 Q Have you ever seen any of those accounting?

16 A No.

17 Q Have you tried to see the accounting?

18 A No.

19 Q And who's paying for this accounting?

20 A Plaza Extra.

21 Q That's one of the supermarkets?

22 A Yes, Plaza Extra west. They are out of my
23 payroll.

24 Q Out of your payroll?

25 A Yes, Plaza Extra west.

1 Q Can you tell me what problems, if any, have
2 developed in the operation of your store since this
3 litigation was filed?

4 A Mahar and I, we're not getting along. We only
5 talk to each other very briefly, if any. Most of the
6 discussions that -- we would like communicate, would be
7 through the managers, but as far as like before, how we
8 were, it's completely different.

9 Q And how has that affected the operations of the
10 store?

11 A It's affected the operations because the
12 employees know that there's a rift between the two of us.

13 MR. DAVID: Objection, Your Honor, calls for the
14 mental state of a third party.

15 THE COURT: Agreed. Sustained.

16 BY MR. HOLT:

17 Q Do you feel any tension in the operation of the
18 store?

19 MR. DAVID: Objection. If he feels tension,
20 that calls for the mental --

21 THE COURT: Change the question, please.

22 BY MR. HOLT:

23 Q Well, have you experienced any tension with the
24 employees in your dealing with them?

25 THE COURT: Maybe it's the word "tension."

1 BY MR HOLT:

2 Q Have you experienced any difficulty in working
3 with the employees?

4 A Yes.

5 Q What have you experienced?

6 A I feel like that there's a -- they are trying to
7 accommodate him more than they are trying to look out for
8 the best interest of the company.

9 MR. DAVID: Objection, Your Honor. Move to
10 strike. It's what someone is thinking and what
11 someone --

12 THE COURT: He said that's what he's thinking.
13 That's his impression.

14 THE WITNESS: That's what I was saying, sir.

15 MR. HOLT: We've covered everything. No more
16 questions.

17 CROSS-EXAMINATION

18 BY MR. DAVID:

19 Q Good afternoon, Mr. Hamed.

20 A Good afternoon.

21 Q How old were you in 1986?

22 A How old was I?

23 Q Yes.

24 A 11.

25 Q Did you accompany your father while you were 11

1 on his business trips when he was talking business?

2 A Actually, if you mean like going to Plaza Extra
3 east, yes, I used to accompany him there.

4 Q Okay. Did you -- Strike that.

5 What is your understanding of your father's
6 arrangement with Fathi Yusuf?

7 A Excuse me.

8 Q What is your understanding of your father's
9 arrangement with Fathi Yusuf?

10 A That they are in a partnership together in Plaza
11 Extra.

12 Q Is that it?

13 A That's the entire understanding I have.

14 Q Of the arrangement between your father and Fathi
15 Yusuf?

16 A Pertaining to what, sir?

17 Q The partnership you just indicated?

18 A Yes, they are partners in Plaza.

19 Q What are the terms of that agreement?

20 A I don't know.

21 Q It's fair to say that you weren't around when it
22 was negotiated between the two of them, correct?

23 A Yes.

24 Q Do you find it odd that you're not getting along
25 with Mike Yusuf now that there is a lawsuit by your family

1 against his family?

2 A What do you mean?

3 Q Well, your father has sued Mike's father and
4 United Corporation? Your father's filed a lawsuit, that's
5 why we're here?

6 A Yes.

7 Q Do you find it odd that the fact that this
8 lawsuit exists has made the relationship between the
9 family members somewhat tense?

10 A If I find it odd?

11 Q I guess so, yes.

12 A Yes.

13 Q You think if your family sues his family there
14 won't be any tension?

15 A Well, if his family didn't say we're not
16 partners, which we are partners and everybody knows we are
17 partners, then my father won't have to file a lawsuit.

18 Q And your father knows what the terms of the
19 agreement are, correct?

20 A You'd have to ask him.

21 Q And whatever your father said the terms of the
22 agreement when he was standing -- sitting there like you,
23 you would agree with what he says, correct?

24 A I'd have to hear what he said.

25 Q Do you think you would take what your father

1 said the agreement was?

2 A I just don't understand what you're asking.

3 Q If your father sat in the same chair you're
4 sitting in and he set forth, testified like you're doing
5 under oath as to what he believes the agreement to be that
6 he has with Fathi Yusuf, you would have no quarrel with
7 whatever your father said, correct?

8 A Correct.

9 Q Are you familiar with any of the terms of the
10 plea agreement that is entered between United Corporation
11 d/b/a Plaza Extra and the United States Government?

12 A What do you mean?

13 Q Are you aware of the criminal case?

14 A Yes.

15 Q Okay. Are you aware there was a plea agreement
16 that was signed?

17 A Yes.

18 Q Are you aware of any of the terms of the plea
19 agreement?

20 A Not that I can recall.

21 Q Okay. No further questions, Your Honor.

22 THE COURT: Very well.

23 MR. HOLT: No redirect.

24 THE COURT: That concludes the plaintiff's case.

25 I think that we will not take further testimony

1 today.

2 Defendants want to present something?

3 MR. DAVID: Your Honor, yes, we do.

4 May I proceed, Your Honor.

5 THE COURT: Yes, please.

6 MR. DAVID: Your Honor, based on the evidence
7 that has been presented at this juncture, at the
8 completion of the plaintiffs' case, we believe that
9 the Motion for Temporary Restraining Order, or
10 Preliminary Injunction should be summarily denied
11 because the plaintiff has failed to establish the
12 elements necessary for the issuance of a Temporary
13 Retraining Order or Preliminary Injunction.

14 As a threshold matter as to what we really
15 believe one of the major issues here is, this is a
16 damages case. This is a money damages case. A
17 breach of partnership is answerable by a money
18 damages claim.

19 There is no testimony whatsoever of irreparable
20 harm. There is no testimony whatsoever that money
21 damages will not remedy whatever ills they can prove
22 at the trial as the finder of facts, which is going
23 to be the jury in this case.

24 They have not established the elements for a
25 Preliminary Injunction or Temporary Restraining

1 Order. One of those elements is a substantial
2 likelihood of success on the merits. If you consider
3 the testimony of the partner who is alleged to be in
4 this case, which is Mohammad Hamed, Mr. Mohammed sat
5 in the chair and Mr. Mohammed testified to what he
6 considers to be the scope of his partnership.

7 He considers the elements -- What Mr. Mohammed
8 articulated did not satisfy the elements of a
9 partnership; there is no sharing in the losses, there
10 is no right of control, because Mr. Mohammed
11 expressly stated on both direct and cross that Fathi
12 Yusuf is in charge. Fathi Yusuf has the last word.
13 Without him, Mr. Mohammad having some right of
14 control, the partnership allegation failed.

15 Mr. Hamed also said something very, very
16 telling. He said that Fathi Yusuf is not partners
17 with his sons. So the notion that Waleed Hamed or
18 any of these other children can stand in his shoes is
19 belied by the gentleman's own testimony. He
20 testified in clear and unwavering terms that he,
21 according to him, is a partner.

22 He said, Fathi Yusuf is not a partner of my
23 sons. He did not articulate anything related to
24 Mr. Waleed Hamed being somehow put in his stead, and
25 he expressly stated that Waleed Hamed is not Fathi

1 Yusuf's partner.

2 They also identified that the statute -- that
3 the partnership will go on forever. As we have
4 briefed expansively in the papers that have been
5 giving to Your Honor, and I invite Your Honor to read
6 the cases that have been cited in those memoranda
7 because they are -- they shed plenty of light on this
8 case, and I would invite you to read the plaintiffs'
9 cases that they cite to you because they do not
10 support the claims that are being asserted here.

11 The statute of fraud bars this alleged joint
12 venture agreement. The statute of limitations bars
13 this alleged joint venture agreement, according to
14 their own testimony. They don't have evidence of a
15 partnership between United Corporation and Mohammed
16 Hamed, but they are asking you yet to enjoin the
17 operations of United Corporation.

18 If you look to the indicia of whether or not
19 there is a partnership, Judge, Mohammed Hamed is
20 not -- doesn't appear on any corporate documents.
21 Mohammed Hamed does not -- he's not been a guarantor
22 or a signatory to any loan agreements or any lease.

23 Mohammed Hamed is not participating in the
24 management, nor does he indicate that he has a right
25 to participate in the management of the operation.

1 There's never been a K-1 that was issued to him,
2 there's never been a partnership tax return that was
3 issued to him.

4 Indeed when the criminal case reared its ugly
5 head Mohammed Hamed was nowhere to be found. When
6 the criminal case reared its ugly head and Mr. Fathi
7 Yusuf was in jail for 22 days, Mr. Mohammed Hamed was
8 not knocking at the jailor's door saying, hey, I need
9 to sit in there with my partner.

10 When the criminal case was pending and the
11 United States Government said, hey, we think that
12 this is a partnership between Mohammed Hamed and
13 Fathi Yusuf and it's not really a corporation, Waleed
14 Hamed stood silent looking at his shoes.

15 Mr. Mohammed Hamed did not stand up and say, I'm
16 a partner at that point in time when the risk was at
17 the greatest. When the risk of loss was at the
18 greatest, when your personal liberty was at stake for
19 this partnership, Mr. Mohammed Hamed was nowhere to
20 be found. His son did not say, hey, my family is
21 partners in this deal, they didn't say that, Judge.
22 When the risk of loss was the greater they were
23 looking elsewhere.

24 There's no management -- evidence of management
25 decisions being made by Mohammed Hamed. On the

1 contrary, as identified on his direct examination
2 testimony and cross-examination testimony, Fathi
3 Yusuf makes the decision.

4 Waleed Hamed, to his credit acknowledged the
5 fact. He said, if there was a dispute between one of
6 the Yusuf brothers and one of the Hamed brothers in
7 the store which, by the way, Judge, they are
8 employees, Fathi Yusuf makes the call. They can
9 argue all they like, but at the end of the day Fathi
10 Yusuf makes the call, that's from their side, Judge.
11 Without -- So there's no right to joint control, that
12 is a critical element.

13 Mohammed Hamed has never been a signatory to a
14 checking account, he's never had access to any bank
15 records, he's never signed any corporate documents.
16 So if you look at whether or not they can establish
17 the elements of a partnership case, I invite the
18 Court to look at it this way, their burden, in my
19 humble opinion, is higher than a summary judgment
20 burden. They are nowhere near a summary judgment.

21 There are dozens and dozens of issues of fact
22 here. There are conflicting issues of facts. They
23 have to show you a substantial likelihood of success
24 on the merits. They don't come in with a scintilla,
25 or even a probable success on the merits, much less

1 substantial.

2 This case is going to be decided -- The question
3 that is the critical issue in an oral partnership
4 agreement is the intent of the parties. The intent
5 of the parties in this case has to be decided by the
6 jury that they have requested. That's the trier of
7 fact in this case.

8 Your Honor, I would urge you to not substitute
9 your judgment at this very preliminary stage without
10 any discovery being done to completely and wholly
11 disrupt this corporation and it's operations.
12 Because mind you what they're not asking -- they're
13 not asking for a status quo, because the status quo,
14 Judge, according to Mohammed Hamed is Fathi Yusuf in
15 charge and he frankly rides herd over these
16 employees.

17 Because Waleed Hamed is not a partner. None of
18 the Hamed young men are partners. Frankly, Your
19 Honor, none of the Yusuf men are partners, they are
20 employees. Fathi Yusuf is in charge, according to
21 Mr. Hamed.

22 So we cannot get to the issue of -- with all of
23 these conflicting facts and holes in their story as
24 to whether or not there is a partnership, the burden
25 is far too high. Because now what they want to do is

1 they want to change the status quo. And they want to
2 say to Mr. Fathi Yusuf, who is running this
3 corporation, and say oh, by the way, we're changing
4 it. Now you don't make the final calls. Now you
5 have to negotiate with Waleed Hamed. That's not the
6 status quo. It's not what we're talking about.

7 There is no threat that these stores will be
8 closed. There is no threat to operations. Your
9 Honor, they cried wolf that these stores were going
10 to be closed in September and October, the stores are
11 filled to the rim with goods, the vendors are being
12 paid. It's undisputed. People are employed and no
13 one's out of a job. Frankly, even the Hameds aren't
14 out of a job.

15 And to come all the way back to my first point,
16 Judge, the only way you get Injunctive relief and a
17 Temporary Restraining Order relief is that money
18 damages cannot remedy the loss that they can
19 ultimately prove. Money damages, 'cause look what
20 they ask you about. They talk to you about, well,
21 they are saying bad things about me and my family.

22 Well, Judge, they filed a defamation case
23 wherein they are asking for money damages. If
24 there's loss of goodwill to the store that is an
25 articulable, identifiable element of damages that an

1 accountant can testify to. That expert witnesses
2 can -- they put value upon.

3 If there's a loss of the operations of the
4 store, if there's money damages due to mismanagement,
5 experts can come in and testify to those numbers and
6 a judgment will be entered. And, frankly, Your
7 Honor, there is \$50 million, \$43 million plus about
8 \$5 million in various operating accounts right now
9 today that can satisfy a money judgment.

10 This is a damages case. So even if you could go
11 and walk out on this very precarious limb that the
12 plaintiffs ask you to venture upon and find this
13 quote, unquote, partnership, and say, well, you know,
14 I think they might have it, they just might have it,
15 you then have to step back and say, okay, is the harm
16 irreparable? And am I going to change the status
17 quo?

18 The question is, absolutely, you have to change
19 the status quo. And is it irreparable, meaning money
20 damages can't compensate for it. The answer is, you
21 simply cannot make the finding that the money damages
22 won't satisfy and provide a remedy and that the harm
23 is not irreparable.

24 And, Your Honor, the face of this record, with
25 no discovery, not a single deposition being taken,

1 they are -- it is -- they are inviting you to error
2 by entering this Preliminary Injunction at this
3 stage.

4 We think it should be denied summarily at this
5 point.

6 THE COURT: Thank you.

7 MR. HOLT: Your Honor, since I've been involved
8 in this case I hear there is a partnership, there's
9 not a partnership. This is a corporation with
10 employees, no this is a joint venture, and it's the
11 illusiveness of that which has led to all the
12 tension.

13 And, under the applicable law, a partner under
14 Title 26 Section 75A, a partner can maintain an
15 action against another partner in -- to establish,
16 legal or equitable, to establish his rights under the
17 partnership business, and one of those rights is to
18 operate the business.

19 And in this case there's no doubt this is a
20 partnership. And we start with Exhibit 1 -- or 1A,
21 the deposition of Fathi Yusuf taken in February 2000,
22 well before the criminal case arose. And in that
23 case Fathi Yusuf testified almost identical to what
24 Mohammed Hamed testified to today.

25 He talked about trying to build the business,

1 not having money, trying to borrow money, and then
2 finally Mohammed Hamed came forth and loaned him
3 money. And he says, without that money he could
4 never have started this business. And without
5 Mohammed Hamed he would never be where he was because
6 the bank wouldn't loan him money, he had run out
7 borrowing -- run out of borrowing money from everyone
8 else, and without his money he couldn't have finished
9 the building.

10 And then he goes on to talk about how he's going
11 to have to pay everybody back, and he talks about the
12 \$400,000 that he got from Mohammed Hamed and his
13 partner. And he says, I can pay you back or we can
14 be partners, and I can lose the same amount of money
15 as you and we can call it quits and we can go ahead
16 and try to make money. And he said, my advice to you
17 is to be my partner. He said, you'd be better to
18 take the 50 percent. So he, Mohammed Hamed, took the
19 50 percent.

20 And then he goes on and says, I want you to, on
21 page 23, he says, I want you to please be aware that
22 my partner's been with me since 1984, and up to now
23 his name is not in my corporation and that, excuse
24 me, that proof my honesty, because if I was not
25 honest my brother-in-law would not let me control his

1 50 percent. And I am very aware my wife knows, my
2 children know that whatever Plaza Extra owns in
3 assets, in receivable, or payable, that's debt, we
4 have a 50 percent partner.

5 And then in the end he's asked, and this is now
6 being questioned by his own lawyer: You were asked
7 by Attorney Adams, when he says United Corporation is
8 this a joint venture agreement -- and talking about
9 Plaza, he's talking about the supermarket in
10 St. Thomas and who own -- and who was partners in
11 United Corporation Plaza at the time you entered into
12 it.

13 And he says: It's always since '94 Mohammed
14 Hamed. And the lawyer says: So when it says United
15 Corporation, and he interrupts and says, it really
16 meant me and Mohammed Hamed. So that's his testimony
17 which is perfectly consistent with what you heard him
18 say here today.

19 And then in this case they file a Rule 26 Motion
20 to Dismiss, and they say -- and this is Exhibit
21 Number 2, in 1986 due to financial constraints
22 defendant Yusuf and plaintiff Hamed entered into an
23 oral joint venture agreement. The agreement called
24 for plaintiff Hamad to receive 50 percent of the net
25 profits of the operation of the Plaza Extra

1 supermarkets. And it says he's received 50 percent
2 of the net profits thereafter.

3 And, again, in their reply memorandum, on page
4 11, which is Exhibit Number 3, they say, there is no
5 disagreement that Mr. Mohammed Hamed is entitled to
6 50 percent of the profits of the operation of the
7 Plaza Extra store.

8 Likewise, they filed a complaint against Waleed
9 Hamed just this month, after all these TRO motions
10 and all these disputes, and in this complaint they
11 say, in 1986 the joint venture resulted in the first
12 supermarket store being open.

13 United again used the name Plaza Extra and the
14 first supermarket and joint venture was named Plaza
15 Extra supermarket, since then two have been added.

16 And they point out that some, in paragraph 11,
17 sometime in 1986 the plaintiff through its
18 shareholder and president Fathi Yusuf, entered into
19 an oral agreement whereby plaintiff and defendant
20 Hamed agreed to operate a grocery store. So it's
21 throughout their pleadings. And that's one reason
22 why I don't know why they object so hard to Exhibit
23 11, which is a letter sent by Nizar DeWood, where he
24 says, re: a disillusion of partnership, Yusuf and
25 Hamed, where it says that this letter is to confirm

1 the dissolution of the partnership, meaning to
2 dissolve the partnership. And then goes on to state
3 the three assets, the three grocery stores.

4 And then a follow-up e-mail where he has the
5 whereas clause where he once again talks about the
6 partnership was formed and an oral agreement in 1986,
7 it was formed for the purpose of operating the Plaza
8 supermarkets in St. Croix and St. Thomas, and that
9 the partners have shared profits, losses, deductions,
10 credits and the cash of the partnership.

11 And so to me I don't know why they keep coming
12 back and saying there's no partnership because it's
13 throughout the years of these pleadings. And that's
14 the reason why we actually called the president of
15 United because they actually have a lease in place
16 with this partnership, and they charge it rent. And
17 he sent rent letters.

18 And we asked the president of United what is
19 that? That's the partnership between my father and
20 Mohammed Hamed. And these rent notices, which are
21 Exhibit Number 7, they didn't stop when this dispute
22 arose. Oops we better not say that. These letters
23 come every month, including one that was sent January
24 1, 2013. And it's the statement of rent for Plaza
25 east from United Corporation to Mohammed Hamed at the

1 Plaza Extra supermarket, signed by Fathi Yusuf.

2 So even today as much as they want to argue to
3 you there's no partnership, and that's why we're
4 here, there's a partnership and the Hamed family need
5 this Court to recognize that partnership so that they
6 can function as a partnership instead of being
7 worried about being discharged as employees and the
8 other things that go on.

9 Now, why did we file this case? The parties
10 negotiated, they talked. It was filed in September
11 because in late August Fathi Yusuf took \$2.7 million
12 out of the supermarket account, and that was the
13 first time anyone had ever taken money out of the
14 account, unilaterally, over the other person's
15 objection. And the fear became what is going to
16 protect us from him doing that with all of the
17 assets.

18 And, as a matter of fact, when the criminal TRO
19 is gone what is going to protect us from him trying
20 to grab the whole \$43 million and taking it off
21 island, and that's what generated this. We've got to
22 file an injunction that, number one, it establishes
23 our rights, because while they pay lip service to it
24 they don't recognize it. Number two, we need to file
25 it so we make sure that they are enjoined from

1 violating those rights.

2 Now, we're not asking them to give us money,
3 that will have to be determined down the road. What
4 we want them to do is we want them to turn around and
5 agree that these assets will be operated as they have
6 in the past and unilaterally money won't be taken
7 out.

8 What if one of my clients went out and took
9 \$2.7 million, where would we be? We'd be right back
10 here complaining they took out money. They take out
11 more and we take out some and then these businesses
12 would go down. As a matter of fact, I think it's
13 admirable that my clients haven't gone and done that.

14 Now what do we continue to see. We continue to
15 see the payments to their lawyers, the payments to
16 the accountants, things that we didn't approve and
17 we're part of. If we were part of it, we might
18 agree.

19 But what led us here today was the event on
20 January 9, when they unilaterally fired a long-term
21 employee, when the manager, the Hamed manager who
22 owns -- the partners representative, hired her back.
23 They called the police, they threatened her. You can
24 see how intimidated she was.

25 They told Mufeed he was fired. They told Mufeed

1 Waleed he was fired. And then he told everybody if
2 the police don't throw everybody out of there that
3 the store is closed. And that's why we filed the
4 emergency motion. Because now we've got the
5 potential for physical violence, there's potential
6 for disputes where someone's trying to close the
7 store to prove that they are the one in control.

8 And they can say all they want about Fathi Yusuf
9 is in control, that's not correct, it's a
10 partnership. It's Mr. Hamed, as far as the
11 supermarket's concerned, and Mr. Yusuf. And they are
12 the ones that have to make joint decisions like joint
13 partners do. And if they can't then they have to
14 dissolve the partnership, maybe this litigation will
15 lead there.

16 But until we can get that worked out, we think
17 we made a prime facie case that we're likely to
18 succeed on the merits that this is a partnership,
19 that there's threat of irreparable harm and
20 partnership assets by unilateral -- and the
21 unilateral operation of the business without the
22 joint management they've always had.

23 That if that happens the public interest will
24 certainly be injured because we will lose a great
25 business here on St. Croix. And from the private

1 point of view, if everybody things oh, we're not
2 going to do that, then they should just agree to the
3 agreement, because nobody's asking for anything more
4 than to allow these businesses to operate until this
5 Court can sort out the accounts or whatever issue
6 needs to be done to either dissolve these companies
7 or settle it.

8 We think we made a prime facie case.

9 THE COURT: Thank you.

10 MR. DAVID: I'll try to be as brief as possible.

11 THE COURT: Thank you.

12 MR. DAVID: Your Honor, what they are throwing
13 around are words that have significant legal meaning
14 in this courtroom, and they were being used by lay
15 people to describe something completely different.
16 Willy Hamed sat on the stand and said he's the
17 partner, counterpart in the Yusuf family. So he's a
18 partner with him now 'cause somebody called him a
19 partner.

20 Your Honor, if I call the house yellow and it's
21 green doesn't mean that the house is yellow. The
22 notion that they have satisfied the elements of a
23 partnership is belied by their own pleadings, because
24 they can't even keep their own story straight.

25 Mohammed Hamed said he's the partner, my sons

1 are not Mr. Fathi Yusuf's partners. Mr. Holt says
2 oh, no, it's the Hamed family. That's not what the
3 man said. So now they're changing the story again
4 and it's nomenclature because they are using the
5 words out of context.

6 The trier of fact, this jury that's going to
7 hear this case at the end of the day, because what
8 I'm hearing from Mr. Holt is all of his closing
9 argument to the jury once we have everybody testify.
10 We've had nobody testify here to the real facts, to
11 all of the facts. This is a shorthand version. This
12 is a shorthand version trying to gain an upper hand
13 in some litigation.

14 But even if you -- you can't get there from
15 here. But the crux of this whole case, the entire
16 crux of this whole case, Judge, is it's a damages
17 case. It's a damages case. We will vigorously
18 dispute the notion that there's somehow this
19 partnership. But at the end of the day, if this jury
20 comes back, they are going to enter a damages
21 judgement because that's what they asked for.

22 So you can't give them a Temporary Injunction or
23 Restraining Order when there's a damage claim 'cause
24 that's what this case is about, and they won't have
25 irreparable harm. Because every single thing he

1 talks about is irreparable, is remedied by money.

2 Again, they want to change the status quo, not
3 to put Mohammed Hamed back in charge or put Mohammed
4 Hamed back in the store, it's not what they've asked.
5 What they've asked for is to put a stranger to this
6 alleged agreement, according to Mr. Hamed, in charge
7 and on equal footing with the man who Mohammed Hamed
8 says is, in fact, in charge, which is a drastic
9 departure from what's been going on for the past 26
10 years.

11 So we believe, at the end of the day, Your
12 Honor -- and I invite you to read the filings, and I
13 invite you to read the case law, there are piles of
14 it, Your Honor. If we could hand up. We copied it.
15 We have killed many trees in this case. All of the
16 cases that we've cited in our memorandum, I invite
17 you to read them, I invite you to read all of the
18 memorandum. And I invite you to read Mr. Holt's
19 cases, because when you read Mr. Holt's cases, they
20 support our position.

21 We talk about -- I'm not going to belabor that.
22 If I could pass this up to the Court.

23 THE COURT: Thank you.

24 MR. DAVID: We have no establishment of the
25 elements for a partnership, no establishment of the

1 elements of a preliminary injunction, and we believe
2 it should be denied, Judge.

3 THE COURT: All right. Thank you. I'm not
4 going to grant the motion at this stage of the
5 proceedings. We'll hear the defendants' evidence on
6 next Thursday at 9 o'clock.

7 And is there anything else we need to take care
8 of at this point?

9 MR. DiRUZZO: Yes, Your Honor. We'd like the
10 opportunity to supplement the record. The
11 plaintiffs' put in Plaintiffs' Exhibit 1, the oral
12 deposition testimony of Fathi Yusuf without the
13 exhibits. I specifically want to supplement the
14 record to include Exhibit 7, the actual joint venture
15 agreement that's discussed in the -- within that
16 deposition transcript because I believe it's highly
17 relevant to provide context to what Fathi Yusuf
18 actually did say or did not say.

19 THE COURT: Any objection?

20 MR. HOLT: No.

21 THE COURT: That will be fine. You can bring
22 that on Thursday. And nothing else today? Then
23 we'll get back together on Thursday.

24 And maybe if the parties have an opportunity to
25 get together before then, we can stipulate as to how

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the parties are going to proceed without the need to address this motion, and we can just go forward with the rest of the case.

But I'll leave that to you folks and we'll otherwise see you on Thursday morning.

Have a good weekend.

(Proceedings recessed at 5:30 p.m.)

* * * * *

CERTIFICATE OF REPORTER

I, SUZANNE A. OTWAY-MILLER, an Official Registered Professional Reporter for the Superior Court of the Virgin Islands, Division of St. Croix, do hereby certify that I reported stenographically, in my official capacity, said proceedings, in MOHAMMAD HAMED By His Authorized Agent WALEED HAMED vs. FATHI YUSUF and UNITED CORPORATION, held on the 25th day of January, 2013.

I further certify that the foregoing excerpt, pages numbered 1 through 284, inclusive, are a true and accurate computer-aided transcription of my stenotype notes of said proceedings.

WITNESS MY HAND this 22nd day of February, 2013.

Suzanne A. Otway-Miller, RPR Digitally signed by Suzanne A. Otway-Miller, RPR
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ou=Court Reporters Division, email=suzanne.miller@supremecourt.org, c=US
Date: 2013.02.22 14:18:11 -0500

SUZANNE A. OTWAY-MILLER, RPR

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