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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX

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

Thursday, January 31, 2013  
Kingshill, VI 00850

The above-entitled action came on for Hearing on a  
TRO, before the Honorable DOUGLAS A. BRADY, Judge, in  
Courtroom Number 211, commencing at approximately  
9:12 a.m.

SANDRA HALL  
REGISTERED PROFESSIONAL REPORTER  
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PLAINTIFF'S EXHIBITS

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P R O C E E D I N G S

(Commenced at approximately 9:12 a.m.)

1  
2  
3 THE CLERK: Hamed -- sorry. Mohammad  
4 Hamed by his authorized agent, Waleed Hamed versus  
5 Yusuf Yusuf -- sorry -- Fathi Yusuf and United  
6 Corporation.

7 THE COURT: We are here for the second  
8 day of the hearing on plaintiff's emergency motion for  
9 temporary restraining order and/or preliminary  
10 injunction. I apologize for the delay and the  
11 confusion in the starting time.

12 Anything we need to know in advance  
13 before we get going with the taking of the defendant's  
14 evidence?

15 MR. HOLT: Your Honor, I do have a  
16 flight 3:30 today, so I'm getting surgery tomorrow  
17 morning, but I talked to them so I think we are going  
18 to finish before noon.

19 THE COURT: Excellent. How many  
20 witnesses, not to pin you down.

21 MR. DAVID: Judge, we have three  
22 witnesses, which we estimate their direct is  
23 approximately going to be rough and dirty, 30,  
24 45 minutes, probably less.

25 THE COURT: Very good.

1 MR. HOLT: I have one or two rebuttal,  
2 possibly, and I will be short on cross I'm sure.

3 THE COURT: Very good. Okay. If there  
4 is nothing else, defense, go ahead and call your first  
5 witness, please.

6 MR. DIRUZZO: Thank you, your Honor.  
7 Defense calls Yusuf Yusuf.

8 THE COURT: Rule on witnesses is still  
9 in effect so counsel, just please monitor them.

10 MR. DIRUZZO: Yes, sir.

11 THE WITNESS: Good morning, everybody.

12 **YUSUF YUSUF,**

13 having been called as a witness, and having been first  
14 duly sworn by the clerk of the court, was examined and  
15 testified, as follows:

16 **DIRECT EXAMINATION**

17 BY MR. DIRUZZO:

18 Q Good morning, sir. Could you state your name,  
19 spelling both your first and last name for the record?

20 A Yusuf Yusuf. Y-U-S-U-F; Y-U-S-U-F.

21 Q Thank you. Now, sir, I'm going to ask you  
22 some questions. If you don't understand the questions,  
23 let me know and I will repeat or rephrase the question.

24 A Okay.

25 Q Sir, where are you currently employed?

1 A Plaza Extra.

2 Q And which one?

3 A East location.

4 Q And what is your job title?

5 A Management.

6 Q And how long have you had that position?

7 A Since 2000.

8 Q And do you have that position as you are  
9 sitting here today?

10 A Yes.

11 Q And as part of your job duties, do you  
12 maintain the custody, care and control of the business  
13 records of Plaza Extra East?

14 A Yes.

15 Q And do you have access to all those records?

16 A Yes.

17 Q Sir, do you know an employee -- well, do you  
18 know an individual by the name of Wadda Charriez?

19 A Yes.

20 Q And if you know, could you spell -- do you  
21 know how to spell Charriez?

22 A No.

23 Q Okay. How do you know Ms. Charriez?

24 A She is the office manager.

25 Q At Plaza Extra East?



1 A At Plaza Extra East, yes.

2 Q And do you have any idea how long she's had  
3 that position?

4 A From since -- actually, no.

5 Q Has she been -- has she had that position  
6 during the duration of your employment at Plaza Extra  
7 East?

8 A Yes.

9 Q Sir, I'm going to turn your attention to an  
10 incident that happened recently with Ms. Charriez at  
11 work. Do you know what I'm talking about?

12 A Yes.

13 Q And just briefly, could you describe to the  
14 Court what that incident was about?

15 MR. HOLT: Your Honor, I just object to  
16 foundation because I don't believe this gentleman was  
17 present when the incident took place.

18 MR. DIRUZZO: I will include the  
19 foundation.

20 THE COURT: Okay.

21 Q (MR. DIRUZZO) Sir, were you present at Plaza  
22 Extra East when an incident occurred with Ms. Charriez  
23 regarding her employment status?

24 A Yes.

25 Q Okay. And do you remember when that was?

1 A It was on January 8th.

2 Q And do you remember the cause of that  
3 incident?

4 A Yes.

5 Q And what was that cause?

6 A She was manually entering time.

7 Q And as a -- to lay a little background, when  
8 an employee clocks in and clocks out of work, how does  
9 that happen? How do they do that?

10 A We have a punch-clock system that uses the  
11 handprint of your right hand, and you put in your  
12 social security number and that's the process. You put  
13 in your social security number and put your hand in;  
14 two devices of security so you can identify the  
15 individual that came to work.

16 Q And is every employee supposed do that?

17 A Yes.

18 Q And is there any way that that system of  
19 internal control can be circumvented?

20 A Yes.

21 Q How so?

22 A If someone manually enters the time.

23 Q And how would one manually enter the time?

24 A They have to have a user name and a password  
25 to enter a system called TruTime.

1 Q And is -- could you just briefly describe what  
2 exactly is TruTime?

3 A TruTime gathers the data for that punch-clock  
4 system that generates the employees coming in and  
5 coming out.

6 Q And was there a time where you reviewed the  
7 hours for Ms. Charriez?

8 A Yes.

9 Q And when was that?

10 A It was for the week of Thanksgiving.

11 Q And why was that?

12 A Because I noticed the time change -- the time  
13 did not change for Wadda.

14 Q Could you be a little bit more specific? What  
15 do you mean by that?

16 A Meaning her pay was not different from the  
17 previous weeks.

18 Q And why would you expect that it would be  
19 different?

20 A Because she didn't come in on the day of  
21 Thanksgiving.

22 Q And did Ms. Charriez work on Thanksgiving?

23 A No.

24 Q Is Ms. Charriez a salaried employee?

25 A No.

1 Q Is she paid hourly?

2 A Yes.

3 Q Does she get paid time and a half for  
4 overtime?

5 A Yes.

6 Q Do you have any idea what her salary or what  
7 her hourly pay rate is?

8 A Twelve dollars.

9 Q Okay. Sir, I'm going to show you a composite  
10 exhibit, Defense Exhibit 13?

11 MR. HOLT: Your Honor, I don't mind if  
12 the witness identifies it. I mean, we've never seen  
13 all this stuff, so I don't know if I can stipulate to  
14 the coming in of the exhibit or not yet.

15 (The document was marked Defendant's  
16 Exhibit Number 13 for identification.)

17 Q (MR. DIRUZZO) Sir, take a moment, review that  
18 document, let me know when you've familiarized yourself  
19 with it?

20 A Yes, I know what this is.

21 Q Okay. What is it?

22 A This is her timesheet.

23 Q Well, actually, I'm going to be specific.  
24 Take a look at the first two pages in particular, then  
25 page 3 going forward?

1           A           The first two pages is of another employee  
2 that works in the office.

3           Q           And?

4           A           And the third one is -- that's Wadda's punch  
5 clock.

6           Q           Okay. Sir, are these documents maintained in  
7 normal course of business activity of Plaza Extra East?

8           A           No.

9           Q           These documents aren't maintained normally?

10          A           The documents are, but what we normally don't  
11 practice is the manual punch.

12          Q           Okay. I'm going to turn your attention to the  
13 first page. Could you describe for the Court what  
14 you're looking at here and what information you're able  
15 to obtain based on this first page?

16          A           On the first page indicates one of our  
17 employees that work in the office. I believe this is  
18 Sabrina's time, an individual that works in our cash  
19 room.

20          Q           And does it indicate the date that -- where  
21 she worked, the date that she worked?

22          A           Yes, all the days that she had worked for us.

23          Q           And does it show the time that she punched in  
24 and punched out?

25          A           Yes.

1 Q Okay. I'm turning your attention to the part  
2 that's highlighted. The part that's highlighted has an  
3 asterisk next to the times, specifically 8 a.m. and  
4 4 p.m. Do you have any idea what that asterisk means?

5 A The asterisk means someone manually entered  
6 the time.

7 Q And turning your attention to December 24th,  
8 it was at 8:17 a.m. and 7:05 p.m. There is no asterisk  
9 there. What does that mean?

10 A That means the individual actually went to the  
11 machine, punched in her social security number and her  
12 handprint.

13 Q Okay. Now, turning your attention to the  
14 second page. This employee, a Bartlett, turning your  
15 attention to the 25th where it shows 8 a.m. and 4 p.m.  
16 with an asterisk; is that because that was manually  
17 entered as well?

18 A Yes.

19 Q Okay. Now, turning your attention to the  
20 third page, and the third page going forward is--1, 2,  
21 3, 4--the fourth page. And on the top of the fourth  
22 page it says, Charriez, W. You see that there?

23 A What's the date listed?

24 Q Starting on November 19th, a Monday, going  
25 to --

1 A Yes, I see that.

2 Q Okay. Sir, turning your attention to November  
3 22nd, a Thursday. Do you remember that date?

4 A Yes.

5 Q What was that date?

6 A Thanksgiving day.

7 Q Okay. Sir, you see the times there? Could  
8 you read in the record the times that when Ms. Charriez  
9 clocked in and clocked out?

10 A The time for November 22nd is 7:38 a.m. in the  
11 morning to 7:20 p.m. in the evening.

12 Q And is there an asterisk there indicating that  
13 that was manually entered into the system?

14 A Yes.

15 Q And, sir, is that accurate?

16 A No.

17 Q How do you know that?

18 A I worked there all day and she didn't come to  
19 work.

20 Q Okay. Now, sir, did there come a point in  
21 time where you became suspicious about the total number  
22 of hours that Ms. Charriez was working?

23 A Yes.

24 Q And what happened as a result of your  
25 suspicion; what, if anything, did you do?

1           A           What I did is I printed out the other  
2 employees' timesheet that work in the office, and I  
3 could see that they came in to work and they got paid  
4 for what they manually -- what they actually punched at  
5 the clock, which is the social security number and  
6 their handprint. And then I noticed Wadda was also  
7 paid for that day.

8           Q           Be specific. That day being Thanksgiving?

9           A           Thanksgiving day, 11/22nd.

10          Q           Okay. Turning your attention to the seventh  
11 page of Exhibit 13. Starting on the seventh page going  
12 forward, what is that?

13          A           This is Wadda's timesheet.

14          Q           For what period?

15          A           For the whole year of 2012.

16          Q           And, sir, for the whole year of 2012 is there  
17 anything -- when you reviewed this document, was there  
18 anything that you found to be unusual?

19          A           Yes.

20          Q           And what was that?

21          A           Every time that she indicated, she did not  
22 work. Every time that's listed there, she indicated  
23 that she came in roughly about a half an hour before  
24 eight o'clock and left a half an hour after 7 p.m. in  
25 the evening, and all these times were manually punched



1 in.

2 Q Just so the record is clear, did Ms. Charriez  
3 ever use the normal stick-your-hand-on-the-machine and  
4 your social security number to clock in and clock out  
5 in the calendar year 2012?

6 A The records here never showed that.

7 Q Okay. Sir, the time -- what's the name of  
8 this computer system that keeps all the employees'  
9 time?

10 A TruTime.

11 Q And is TruTime -- the entries in TruTime, are  
12 those kept in the normal course of business of Plaza  
13 Extra East?

14 A Yes.

15 Q And are those kept for every single employee?

16 A Every single employee.

17 Q And does Plaza Extra East rely on the data in  
18 TruTime in order to generate employees' paychecks?

19 A Could you repeat that?

20 Q Does Plaza Extra East rely on the data within  
21 TruTime in order to generate the paychecks for the  
22 employee?

23 A Yes.

24 Q Okay. And are the -- are normally the data  
25 entries within TruTime, do they accurately reflect the

1 events that took place therein?

2 A Yes.

3 Q And, sir, are you the only person that has  
4 access to TruTime?

5 A No.

6 Q Who else has access to TruTime?

7 A There is a few people in management that has  
8 access and office clerk.

9 Q Those few people, who are they?

10 A Wadda, for one office manager; you have  
11 Ms. Bartlett also have access; and Mafi Hamed; and so  
12 do I.

13 Q And did you prepare these reports?

14 A Yes.

15 Q And how did you prepare them?

16 A The --

17 Q Let me ask it this way. How did you generate  
18 these reports?

19 A You enter your passcode into the system and  
20 you generate as far back as the system has been  
21 created.

22 Q And that's just you hit the print button?

23 A Yeah.

24 Q And do you remember when this report was  
25 generated?

1           A           It indicates to the top-right corner January  
2 2nd, 8:18 p.m. at night.

3           Q           And just so we're clear, you're talking about  
4 page 7 going forward, the report for Ms. Charriez for  
5 the entire year of 2012?

6           A           Correct.

7           Q           Now, turning to the front page though, the  
8 front page when you have a comparison to another  
9 employee, when was that generated?

10          A           January 18th.

11          Q           Of this year?

12          A           Of this year. Sorry.

13                   MR. DIRUZZO: Your Honor, defense moves  
14 Exhibit 13 into evidence.

15                   MR. HOLT: Your Honor, we have no  
16 objection. I do just want to make sure it's clear that  
17 you're gonna see a time of January 18th on the first  
18 seven or eight pages, and then you're gonna see the  
19 time of January 2nd after that.

20                   THE COURT: I believe that's the  
21 testimony we just heard.

22                   MR. HOLT: Right. I just wanted to make  
23 clear because it's really not just one document, but I  
24 have no problem it being submitted. No objection.

25                   THE COURT: The Defense 13 is admitted.

1 (The document, heretofore marked  
2 Defendant's Exhibit Number 13 for identification, was  
3 received in evidence.)

4 Q (MR. DIRUZZO) Sir, you're being shown Defense  
5 Exhibit 14 marked for identification. Take a moment to  
6 take a look at that document and let me know when you  
7 are done perusing it?

8 (The document was marked Defendant's  
9 Exhibit Number 14 for identification.)

10 A I'm ready.

11 Q Okay. Sir, could you please identify this  
12 composite exhibit? What is it?

13 A For the month of December.

14 Q What year, sir?

15 A Of 2012. I generated her weekly timesheet.

16 Q And "her," are you referring to Ms. Wadda  
17 Charriez?

18 A Correct.

19 Q And when you generated her weekly timesheet,  
20 what happened?

21 A Along with the weekly timesheet I also  
22 generated on our DVR system, it's called Intellect, the  
23 times when she entered the building and the times when  
24 she left.

25 Q Okay. So starting on page 2, that document is

1 a picture of the video image?

2 A Correct.

3 Q Do these video images that are contained in  
4 composite Exhibit 14, do they fairly and accurately  
5 represent the events that took place therein?

6 A Yes.

7 Q And are these video images maintained and kept  
8 in the normal course of business of Plaza Extra East?

9 A Yes.

10 Q And do you have care, access, and custody and  
11 control of these video images during the course of your  
12 employment?

13 A Yes, sir.

14 Q Okay. Now, sir, let's talk about these video  
15 images. What do those video images portray, let me  
16 start on the second page?

17 A If you look at the second page in reference to  
18 counter check the time that she manually entered into  
19 the system, she indicated that she came in at 7:36 a.m.  
20 in the morning.

21 Q Okay. Just so we're clear, so you're saying  
22 the first page, the first line represents that  
23 Ms. Charriez clocked in at 7:36 a.m. --

24 A On December 3rd.

25 Q -- on December 3rd, and that has an asterisk

1 there, that means that was manually entered?

2 A Yeah.

3 Q And then you're saying the second page shows  
4 video evidence of when she actually arrived to work?

5 A Correct.

6 Q And what time was that, sir?

7 A That's at 8:37.

8 Q Okay. Now, what is the second page -- I'm  
9 sorry -- the third page?

10 A Third page indicates the time that she came  
11 down from the office, which is the end of her work.

12 Q So is the third page, is it also a video of --  
13 it's a picture?

14 A Yes.

15 Q And it's a picture of Ms. Charriez leaving?

16 A Yes.

17 Q And what time does that reflect?

18 A Seven o'clock.

19 Q And just so we're clear, is 19:00 hours the  
20 same as seven o'clock p.m.?

21 A Correct, that's military team.

22 Q And when did -- what time did Ms. Charriez's  
23 time entries reflect when she clocked out?

24 A She manually entered on December 3rd that she  
25 left at 7:25.

1 Q Did Ms. Charriez have, to your knowledge, any  
2 permission to clock out manually, enter her time later  
3 than when she actually left the building?

4 A If she had my permission?

5 Q Well, let's start, did she have your  
6 permission to do that?

7 A No.

8 Q To your knowledge, did she have anyone's  
9 permission?

10 A No.

11 Q Okay. Sir, I'm going to turn your attention  
12 specifically to December 18, 2012. And flipping  
13 through these pictures, let me know when you get to  
14 December 18, 2012?

15 A I'm ready.

16 Q Okay. Sir, what does the first picture  
17 indicate?

18 A The first picture indicate December 18th on  
19 the Intellect's player that Wadda came in to work at  
20 8:45.

21 Q Now, that picture of the person with her back  
22 turned to the camera, is that Ms. Charriez?

23 A Yes.

24 Q And how do you know that that's Ms. Charriez?

25 A When I reviewed the video I saw when she came

1 in. There is couple different angles that indicate  
2 that's her.

3 Q And do you have any doubt that that's actually  
4 Ms. Charriez in that picture right there?

5 A I know it's her.

6 Q Okay. Turn to the next page on December 18th.  
7 What does that picture indicate or reflect?

8 A It indicated the time that she came from the  
9 office; meaning, that that was the end of her shift and  
10 she left on December 18th at 6:20.

11 Q And is that her in the top left corner?

12 A That's her in the top-left corner.

13 Q Just behind the stack of --

14 A Baskets.

15 Q -- baskets? Okay. And flip to the next page,  
16 sir. What does that image show the Court?

17 A That also indicates that at 6:20 she was at  
18 the pizza parlor.

19 Q Okay. And the next page?

20 A The next page indicates on December 18th at  
21 6:40 when she walked out the store.

22 Q And is that her with the -- looks like a  
23 broom?

24 A She did shopping. That's a broom and some  
25 shopping bags.



1 Q Okay. Now, sir, let's flip, go back a couple  
2 pages and you see the time card report for Ms. Charriez  
3 for the calendar week December 17, 2012 through  
4 December 21, 2012?

5 A Yes.

6 Q And for December 18, 2012, what time is  
7 reflected in the system?

8 A She indicated that, which she manually punched  
9 in at 7:36 a.m., she came to work in the morning.

10 Q And did she actually come to work at  
11 7:36 a.m.?

12 A No. The surveillance here indicates she came  
13 in at 8:45.

14 Q And what about when she clocked out?

15 A When she clocked it out it indicates she left  
16 at 7:20 p.m., 7:20 p.m. in the evening.

17 Q And did she actually leave at 7:20 p.m. in the  
18 evening?

19 A No. It indicated that on the Intellect system  
20 that she left at 6:20.

21 MR. DIRUZZO: Your Honor, defense moves  
22 14 into evidence.

23 THE COURT: Any objection?

24 MR. HOLT: I have no objection.

25 THE COURT: Exhibit 14 is admitted.

1 (The document, heretofore marked  
2 Defendant's Exhibit Number 14 for identification, was  
3 received in evidence.)

4 Q (MR. DIRUZZO) Sir, I'm showing you what's  
5 been marked as Defense Exhibit 15 for identification.  
6 Take a moment and let me know when you're done perusing  
7 that document?

8 (The document was marked Defendant's  
9 Exhibit Number 15 for identification.)

10 A Yes, I see it.

11 Q What is this document?

12 A This is for all employees, rules and  
13 regulations of Plaza Extra.

14 Q And does Plaza Extra have these rules and  
15 regulations in the Plaza Extra East store?

16 A Yes.

17 Q And why don't you tell the Court about these  
18 rules and regulations; in general, how do they work?

19 A Before you are employed you have to fill out  
20 -- I'm sorry -- you have to read the rules and  
21 regulations. And what you fill out is you print your  
22 name, you sign it to indicate that you did read it, and  
23 you have to submit it back to the store for filing.

24 Q And are these rules and regulations for  
25 employees in general? Is this kept in a personnel or

1 an HR file?

2 A Yes.

3 Q And does each employee have an HR or personnel  
4 file?

5 A Every single employee that gets hired by Plaza  
6 Extra have to read, acknowledge this, sign it and  
7 return it for filing.

8 Q Okay. And turning your attention to this  
9 document, in particular, what does this document  
10 reflect?

11 A This indicates the rules and regulations for  
12 Wadda, which dated back in January 7, 1998.

13 Q And, sir, do you know where this document came  
14 from?

15 A From her personnel file.

16 Q And do you know who retrieved this document?

17 A I have.

18 Q And when did you retrieve this document?

19 A Yesterday.

20 Q And where was this document -- where was her  
21 personnel file located?

22 A We have a file cabinet for all our employees  
23 in the Plaza East store.

24 Q Okay. Now, sir, I'm going to turn your  
25 attention to Rule 16. Is this Rule 16 where it says,

1 every employee is given a half hour or full hour for  
2 lunch after six hours of work must punch out for lunch.  
3 Lunch hour is to be spent in designated area in the  
4 store lunch room. Does this apply to all the  
5 employees?

6 A Yes.

7 Q All right. What about Rule 17? Any employee  
8 found cheating on her time card will be immediately  
9 dismissed. Does that apply to all the employees?

10 A Yes.

11 Q Rule 18. Time cards must be punched  
12 immediately after you have been relieved of your  
13 duties. Does that apply to all employees?

14 A Yes.

15 Q Rule 19. All employees are expected to leave  
16 the premises within 15 minutes of your punch time  
17 unless you're doing personal shopping. Does that apply  
18 to all employees?

19 A Yes.

20 Q Turning to the next page, sir, Rule 23. Any  
21 employee found stealing would be subject to arrest and  
22 will be immediately dismissed. Does that apply as well  
23 to all employees?

24 A Yes.

25 Q And the next page, 35. Absolutely no shopping

1 while on work hours unless authorized by management.  
2 If you are on lunch hour, any merchandise purchased  
3 must be kept at service desk. Does that apply to all  
4 employees?

5 A All employees.

6 Q Sir, now, did Ms. Wadda Charriez violate these  
7 rules and regulations of Plaza Extra East?

8 A Yes.

9 MR. DIRUZZO: Your honor, defense moves  
10 Exhibit 15 into evidence. Actually, let me lay one  
11 more predicate.

12 THE COURT: Sure.

13 Q (MR. DIRUZZO) Sir, starting on page 19, do  
14 you see a signature there -- I'm sorry, page 9?

15 A Page 9?

16 Q Page 9?

17 A Yes.

18 Q Whose signature is that?

19 A That's Wadda's signature.

20 Q And how are you familiar with that signature?

21 A I have seen the signature before.

22 Q Is that her signature on page 10 as well?

23 A Yes.

24 Q And the next page, page 15, is that her  
25 signature as well?

1 A Yes.

2 Q And page 12, is that her signature as well?

3 A What page?

4 Q Page 12?

5 A Yes.

6 Q And page 14, is that her signature as well?

7 A Yes.

8 MR. DIRUZZO: Defense moves 15 into  
9 evidence.

10 THE COURT: Any objection?

11 MR. HOLT: No objection.

12 THE COURT: Without objection

13 Defendant's 15 is admitted.

14 (The document, heretofore marked  
15 Defendant's Exhibit Number 15 for identification, was  
16 received in evidence.)

17 Q (MR. DIRUZZO) Sir, did management of Plaza  
18 Extra have good cause to terminate Wadda Charriez's  
19 employment?

20 A Yes.

21 Q Now, let's talk about her -- the job role she  
22 has or had. The job role that she had, would you  
23 explain what she did?

24 A She did payroll.

25 Q Okay. Sir, is she an essential employee?

1 A No.

2 Q Why not?

3 A She's not an essential employee because --

4 Q Let me ask you this way. If you wanted to,  
5 could you replace her?

6 A The next day.

7 Q And how difficult would it be to find a  
8 replacement for Ms. Charriez?

9 A It's not difficult.

10 Q Now, sir, I want to turn your attention to the  
11 Plaza Extra East store. Is there current inventory in  
12 the store?

13 A Yes.

14 Q And has any payments to vendors, have any  
15 payments to vendors been stopped out of normal course  
16 of business?

17 A No.

18 Q Has there been any recent disruption with  
19 ordering supplies or ordering merchandise for Plaza  
20 Extra East?

21 A No.

22 Q Have you ever witnesses Fathi Yusuf blocking  
23 or stopping any payments to vendors?

24 A No.

25 Q As far as the back area, the receiving area of

1 Plaza Extra East, is there inventory in the store room?

2 A Yes.

3 Q Is that -- is the inventory level what Plaza  
4 Extra East would normally keep?

5 A Yes.

6 Q Sir, is there any threat to Plaza Extra  
7 supermarkets being closed?

8 A No.

9 Q Have you ever witnessed Fathi Yusuf  
10 intimidating employees?

11 A No.

12 Q Have you ever seen Fathi Yusuf threatening any  
13 of the Hamed family members with physical harm?

14 A No.

15 Q Sir, before you came here today, did you ever  
16 have an opportunity to review the plaintiff's motion  
17 for a temporary restraining order that was filed in  
18 December of 2012?

19 A Yes.

20 Q And, sir, since that time has any of the  
21 allegations that Plaza Extra was gonna close or use  
22 good -- well, anything like that, has that ever come to  
23 pass? Did any of that stuff ever happen?

24 A No.

25 MR. DIRUZZO: Yield the witness.



1 THE COURT: Thank you. Cross examine.

2 **CROSS EXAMINATION**

3 BY MR. HOLT:

4 Q Good morning.

5 A Good morning.

6 Q You mentioned a Mafi Hamed. Who is he?

7 A He is one of the store managers.

8 Q And can you explain how you work with him in  
9 the store managing the east store?

10 A Can you explain that a little bit better?

11 Q Well, he's a store manager and you're a store  
12 manager?

13 A Yes.

14 Q And you work together?

15 A Yes.

16 Q And both equal managers of the same store?

17 A Yes.

18 Q Okay. And showing you Exhibit Number 15,  
19 which is the -- I think the last one. These are the  
20 rules and regulations that are dated July of 1997, is  
21 that correct?

22 A Yes.

23 Q And these are on the letterhead, Plaza Extra,  
24 is that correct?

25 A Correct.

1 Q And these are for the Plaza Extra store at  
2 Sion Farm?

3 A Correct.

4 Q And when you see the signatures over on the  
5 pages with Wadda's signature on it, these are also on  
6 the Plaza Extra letterhead, is that correct?

7 A Yes.

8 Q It doesn't say United Corporation, does it?

9 A No.

10 Q And who do you understand owns the Plaza Extra  
11 East store?

12 A My dad.

13 Q And he ever told you he has a partner?

14 A Yes.

15 Q And who is the partner in that store?

16 A Mohammad Hamed.

17 Q And that's a partner in that store?

18 A From what I understand there is an agreement.

19 Q What do you understand that agreement is?

20 A I don't know the details of the agreement, but  
21 I understand the agreement is between my dad and  
22 Mohammad Hamed.

23 Q That they are partners in the store?

24 A According to profits.

25 Q And they are partner in profits in the store?

1 A Only profits.

2 Q That's what you understand?

3 A M-hmm.

4 Q And who told you it's only profits?

5 A My dad.

6 Q So other than what your dad told you, anyone  
7 else tell you that?

8 A My brother.

9 Q Which brother is that?

10 A Mike Yusuf.

11 Q And when did he tell you that?

12 MR. DIRUZZO: Objection; hearsay.

13 THE COURT: He can answer.

14 A I don't recall exactly what day it is.

15 Q (MR. HOLT) It was recently wasn't it?

16 A No. I've known this from a very long time.

17 Q Okay. Now, let's talk about Wadda. You mind  
18 if I refer to her as Wadda? It's easier for me to say  
19 that.

20 A Sure.

21 Q Now, you indicated that she did not punch in  
22 with the handprint and the social security number like  
23 the other employees, is that correct?

24 A Correct.

25 Q Okay. As a matter of fact, she just started

1 that within the last two weeks? Is she doing that now?

2 A No.

3 Q Okay. So she still doesn't even check in with  
4 a handprint and a social security number?

5 A After January 8th she's been punching in with  
6 her social security number and handprint.

7 Q Okay?

8 A But prior to that, she never had.

9 Q Okay. And you all got this system in place in  
10 1998, didn't you?

11 A I don't recall exactly when we had it  
12 installed.

13 Q It was years ago, wasn't it?

14 A It was years ago.

15 Q And Wadda's never checked in with a handprint  
16 or social security number until just very recently,  
17 correct?

18 A Correct.

19 Q And you knew that, right?

20 A Yes.

21 Q And when you weren't present in the courtroom  
22 and she testified, I will represent to you that she  
23 testified that she does work banking, going to  
24 different businesses --

25 MR. DIRUZZO: Object --

1 MR. HOLT: I haven't asked the question  
2 yet.

3 Q (MR. HOLT) -- both before she comes to the  
4 office and sometimes after she comes to the office.  
5 Now, is that true?

6 A Can you repeat that question?

7 Q Are you aware of the fact that Wadda does some  
8 of the financial work for Plaza that she needs to do  
9 with various government agencies and banks before she  
10 comes to work sometimes and sometimes after she leaves,  
11 is that correct?

12 A That's correct.

13 Q Okay. And under the Fair Standard Labor's  
14 Act, you've got to pay her for that work, don't you?

15 MR. DIRUZZO: Objection; calls for legal  
16 conclusion.

17 MR. HOLT: He's the manager of the  
18 store.

19 THE COURT: Sustained.

20 Q (MR. HOLT) As the manager of the store, do  
21 you have to pay her for that time?

22 MR. DIRUZZO: It's the same objection.

23 THE COURT: He can answer.

24 A Yes.

25 Q (MR. HOLT) Okay. So if she actually did

1 check in with her hand and her social security number  
2 after she had done an hour and a half of banking work,  
3 it wouldn't show up on her timesheet, would it?

4 A Repeat that.

5 Q If she actually worked for an hour and a half  
6 before she came in and then she checked in with her  
7 handprint and her social security number, it wouldn't  
8 show up -- that hour and a half she spent working for  
9 you, it wouldn't show up on the timesheet, would it?

10 A It won't, but to my knowledge I know that she  
11 is supposed to hand punch, put in her social security  
12 number and manually put in her hand punch.

13 Q Okay. But isn't the reason why she doesn't  
14 put it -- hand touch the hand and put in the social  
15 security number is because you know that she does work  
16 both before she comes to the store and after she leaves  
17 the store sometimes in order to do the banking and the  
18 other work she does for Plaza?

19 A Correct.

20 Q Okay. Now, you indicated that something --  
21 you got suspicious, something came to your attention  
22 about her time card. Was it you who noticed that or  
23 Fathi Yusuf?

24 A I did.

25 Q Okay. And what did you do when you got that

1 information?

2 A I generated the timesheet report.

3 Q Okay. Now, the timesheet report I see is for  
4 January 2, 2013, is that correct?

5 A I'd have to look at it again. I'm not too  
6 sure.

7 Q There is a timesheet report we went over in  
8 your testimony, that's what you generated?

9 A Yes.

10 Q Okay. So on that day was the date that you  
11 pulled those records, correct?

12 A Yes.

13 Q And who did you share those records with?

14 A Shared it with my dad.

15 Q Okay. How come you didn't share it with your  
16 co-manager, Mafi Hamed?

17 A I don't need to.

18 Q Sir, I'm not asking you whether you need to.  
19 Why didn't you?

20 A Because I chose to show it to my dad.

21 Q All right. We'll come back to that in a  
22 second.

23 And then the photographs that we saw in  
24 the next exhibits, they were just generated yesterday,  
25 weren't they, that whole punch in?

1 A The photographs?

2 Q Yeah.

3 A No.

4 Q When did you do those?

5 A You would have to look on the date on each  
6 surveillance picture that was taken, it indicates the  
7 time when it was printed.

8 Q At the top --

9 A No, not at the top of the page. You said the  
10 picture --

11 Q Right.

12 A -- on the surveillance shows to the bottom  
13 right.

14 Q Okay. That's shows when it was printed?

15 A Correct.

16 Q Okay. So these documents were generated I see  
17 1/19, January 19th, January 21st. Is that when these  
18 were generated?

19 A Yes.

20 Q Okay. And did you share these with Mafi?

21 A No.

22 Q Okay. And have you ever presented any of this  
23 information you have to the other manager in the store,  
24 Mafi, to see what his input are with these images?

25 A I won't need to because he have access to the



1 same information.

2 Q So if he -- he's to just go generate it on his  
3 own, is what you're saying? You didn't bother to share  
4 this with him?

5 A He can. Just like I said earlier, he have  
6 access to the same system.

7 Q And did you ever discuss with him about what  
8 you should do in addressing the situation with Wadda in  
9 light of the information that you had?

10 A No.

11 Q And isn't it true that this information up  
12 until the time she started punching in would be  
13 inaccurate because it don't reflect the time that she  
14 spent both before she came to work, or the time after  
15 she left when she was still working for Plaza?

16 A Repeat that again.

17 Q Isn't it true that the timesheets that you've  
18 generated and the photographs that you've generated  
19 wouldn't accurately show how much she's worked if she's  
20 doing work both before she comes into the store and  
21 after she leaves the store on behalf of Plaza?

22 A You indicated on the pictures itself or the  
23 whole document?

24 Q The whole time that you did all of this. If  
25 you don't know on that day what work she did before she

1 came in on behalf of Plaza or what work she did after  
2 she left on behalf of Plaza, then this don't really  
3 give you an accurate picture of the amount of hours she  
4 worked, doesn't it?

5 A It gives you a good indication what time she  
6 comes in. It gives you a good indication of what time  
7 she leaves.

8 Q Does it give you a good indication of what  
9 time she actually work if she performs work before she  
10 comes in and after she leaves?

11 A Well, to my knowledge, if she does any work  
12 for Plaza prior to coming in to the work, it's about  
13 maybe two days maximum out of the week. So I would say  
14 yes, it would be accurate.

15 Q So -- well, let me put it like this. None of  
16 these records are gonna show us how much work she did  
17 before she came into the store, are they?

18 A No.

19 Q And none of these records are gonna show what  
20 work she did for Plaza after she left the store, are  
21 they?

22 A She doesn't do any work after Plaza.

23 Q Sometimes she doesn't leave work to go do the  
24 banking for Plaza?

25 A If you look at the times, 6:20 at night, I

1 don't think there is any bank that's opened after 4.

2 Q That's not my question. Are you testifying  
3 that she never does work in the afternoon for Plaza  
4 outside of the store?

5 A After what time?

6 Q Any time. Does she leave the store during the  
7 day to do work?

8 A During the day she does.

9 Q Okay. And so since she's not checking in or  
10 out, we don't really know what hours she actually  
11 worked in the store or out of the store, do we?

12 A Correct.

13 Q And that's why you went ahead and had Wadda as  
14 opposed to any other employee in the store not bother  
15 to check in with a handprint and a social security  
16 number?

17 A That's not true. She's not allowed to do  
18 that.

19 Q Well, you just testified that you've known  
20 since -- or whenever you put in this system that Wadda  
21 doesn't do the handprint or the social security number?

22 A Correct.

23 Q And why do you let her do that?

24 A I didn't allow her to manually punch in her  
25 time.

1 Q So she's been doing that for years, but you  
2 didn't allow it?

3 A No, no, no. I never knew about it until  
4 recently.

5 Q Okay. So the whole time that she's worked  
6 there, you've been the manager of the store, correct?

7 A Correct.

8 Q So if she's been doing this for years and  
9 you're the store manager, you're saying you didn't know  
10 about it?

11 A Correct.

12 Q Okay. And why did that become so important to  
13 come up all of a sudden?

14 A Because recently we had double signature  
15 applied by my dad. I'm not too sure exactly what month  
16 it was, but it was over a year. Ever since that  
17 incident where we're told to have two signatures per  
18 check, I was checking all payroll. I was checking all  
19 of the vendors that's being paid.

20 So from then, that's when I started to notice  
21 around Thanksgiving where the time never changed. Her  
22 payroll, her paycheck never actually changed. So it  
23 indicated right there that something was fishy. So I  
24 looked more into detail and I noticed that she put in  
25 over 11 hours that she worked on the day that she

1 didn't come in to work.

2 Q Okay. So up until the time that you looked at  
3 it, she's been getting a paycheck for years and you  
4 didn't have any questions about it, correct, up until  
5 November?

6 A Because I never used to look at the payroll.

7 Q Okay. Even though you're the manager of the  
8 store, you never looked at the payroll?

9 A Correct.

10 Q All right. And you were present -- you said  
11 there was an incident on January 8th? What was that  
12 incident?

13 A January 8th is the day that my dad spoke to  
14 Wadda and terminate her employment.

15 Q And you were present when that took place?

16 A Yes, sir.

17 Q And did you hear him tell her that he was  
18 coming after her because she'd sold out to Hamed?

19 A No.

20 Q She testified he said that. You didn't hear  
21 it?

22 MR. DIRUZZO: Objection; argumentative.

23 THE COURT: I'll allow it.

24 Q (MR. HOLT) Let me ask you this question.

25 Were you there during all the conversation he had with

1 her?

2 A Yes, sir.

3 Q And isn't it true the reason --

4 THE COURT: Go ahead.

5 Q (MR. HOLT) Isn't it true that the reason why  
6 all of this came up in November is because your father  
7 thought that Wadda was being a favor to the Hameds and  
8 had sold out to them and you decided that you wanted to  
9 get rid of her?

10 MR. DIRUZZO: Objection; foundation;  
11 calls for speculation and mental state.

12 THE COURT: If he knows, he can answer.

13 A No.

14 Q (MR. HOLT) Okay. And as far as Wadda was  
15 concerned when you had all this information, wouldn't  
16 you normally take that to your co-manager, Mafi, to do  
17 it?

18 A Not on all occasions, no.

19 Q But wouldn't that be the normal thing to do?

20 A No.

21 Q Fathi didn't manage the east store, did he?

22 A I don't think he manages any of the stores  
23 because he is the owner.

24 Q Okay. Fathi lives and works in St. Thomas,  
25 doesn't he?

1 A He have over some years.

2 Q And in addition to Mafi, who else worked in  
3 the east store as a manager?

4 A As a manager?

5 Q Yeah.

6 A There is -- in what capacity are you asking?

7 Q In the same capacity that you're in?

8 A There is me, there is Mafi and there is Wally.

9 Q Okay. And you didn't bring any of this up  
10 with Wally Hamed either, did you?

11 A I hardly see Wally at the store.

12 Q So the answer to the question is, no, you did  
13 not bring this up with Wally Hamed, did you?

14 A No.

15 Q But you chose to bring it up with Fathi, not  
16 with the managers that's in the store, Mafi and Wally,  
17 did you?

18 A Correct.

19 Q Now, you weren't in the store on January 9th  
20 when the police came, were you?

21 A No. I was ill.

22 Q And did anyone tell you that Fathi Yusuf fired  
23 Mafi Yusuf and fired Wally Yusuf?

24 MR. DIRUZZO: Objection; hearsay.

25 THE COURT: Sustained.

1 Q (MR. HOLT) When you indicated that you've  
2 never heard your father say that he was firing Mafi or  
3 Wally, is that true?

4 A My dad? No, I never heard that.

5 Q And are you aware of him ever trying to do so?

6 A I was -- it was someone mentioned it to me,  
7 yes.

8 Q Okay. And when did that happen?

9 A They mentioned it to me when I was at home.

10 Q On January 9th?

11 A Yes.

12 Q Okay. And have you ever heard your father say  
13 that he's gonna close out the store?

14 A I don't recall.

15 Q So you've never heard him say that?

16 A I don't recall.

17 Q You've never heard him say that if he can't  
18 get rid of the Hameds, he's gonna close the store?

19 A I don't recall that.

20 Q And you weren't present on the 9th as far as  
21 the witness that the police were doing and all the  
22 things that went on to the store?

23 MR. DIRUZZO: Asked and answered.

24 THE COURT: He can answer.

25 MR. HOLT: I will withdraw the question.



1 THE COURT: Okay.

2 MR. HOLT: I have no other questions.

3 THE COURT: Thank you. Redirect.

4 MR. DIRUZZO: Briefly, your Honor.

5 **REDIRECT EXAMINATION**

6 BY MR. DIRUZZO:

7 Q Mr. Yusuf, does Wadda Charriez -- in calendar  
8 year 2012, did she have business before eight o'clock  
9 to do for Plaza Extra on every single working day?

10 A I don't think there is any work before eight  
11 o'clock because I don't think there is any government  
12 agencies or banks that's opened prior to eight o'clock.

13 Q Okay. What about outside of, let's just say  
14 outside of the establishment, outside of the premises,  
15 did -- was she tasked with doing something outside of  
16 work on every single business day in the calendar year  
17 2012?

18 A No.

19 Q And what about after work? Did she have  
20 something to do after work outside of the premises on  
21 every single business day during calendar year 2012?

22 A No.

23 Q Do you have any idea how much money she has  
24 stolen by falsifying her records during the calendar  
25 year 2012?

1 A I haven't calculated, but I roughly noticed  
2 that she's been accumulating two hours and I think  
3 18 minutes overtime roughly every week.

4 Q Okay. And let's run through those  
5 calculations. That's two hours a day of overtime. She  
6 gets paid how much?

7 MR. HOLT: Your Honor, objection; well  
8 beyond the scope.

9 THE COURT: That's true, and  
10 mischaracterize the way you just said. Limit your  
11 questioning to the cross examination.

12 MR. DIRUZZO: That's fine, your Honor.

13 Q (MR. DIRUZZO) Sir, does Wadda Charriez  
14 prepare the payroll?

15 A Yes.

16 Q And just so we're perfectly clear, does  
17 Ms. Charriez on a daily basis have work to do for Plaza  
18 Extra before eight o'clock and after eight o'clock on a  
19 daily basis during calendar year 2012?

20 A No.

21 MR. DIRUZZO: Nothing further.

22 **RECROSS EXAMINATION**

23 BY MR. HOLT:

24 Q I take it that the only surveillance that  
25 you've looked at is for the month of December, is that

1 correct?

2 A Correct.

3 Q You hadn't done that for the whole year, have  
4 you?

5 A No.

6 MR. HOLT: Thank you.

7 THE COURT: Okay. You may step down,  
8 sir. Thank you very much.

9 Next witness.

10 MR. DAVID: Your Honor, the defense  
11 calls Ayman Al-Khaled.

12 **AYMAN AL-KHALED,**

13 having been called as a witness, and having been first  
14 duly sworn by the clerk of the court, was examined and  
15 testified, as follows:

16 **DIRECT EXAMINATION**

17 BY MR. DAVID:

18 Q Morning, sir. Could you state your name for  
19 the record, please?

20 A My name is Ayman Al-Khaled.

21 Q And, sir, are you currently employed?

22 A Yes.

23 Q By whom?

24 A United Corporation.

25 Q How long have you been employed by United

1 Corporation?

2 A I have been working with the United  
3 Corporation from January of 2012.

4 Q In what capacity, sir?

5 A Okay. I have been hired basically for  
6 Mr. Fathi Yusuf on December of 2011 regarding working  
7 on specific files been presented to him from the FBI.  
8 And he asked me to be looking through these records.  
9 And I was hired again by him on October of 2012 as a  
10 capacity of a controller.

11 Q Okay. Sir, can you give the Court the benefit  
12 of your educational background?

13 A Yes. I got a bachelor degree in accounting.

14 Q From where, sir?

15 A From Amman, Jordan.

16 Q Okay. And when did you achieve that degree?

17 A I graduated in the year of 2000.

18 Q And did you go to work after that in the field  
19 of accounting?

20 A Yes, I was working in the State of Kuwait for  
21 the Kuwait Investment Authority as an accountant. And  
22 prior to Plaza Extra I was working in a company down  
23 here on the island. It's a EDC company called Kazi  
24 Management. I was handed two markets over a total of  
25 33 stores for them.

1 Q Okay. Let's go back for a second. What did  
2 you do in Kuwait?

3 A In Kuwait I was working as a accountant for  
4 the Kuwait Investment Authority. They have investment  
5 all over the world and I was working in their  
6 accounting department.

7 Q And what kind of things you were doing in  
8 their accounting department?

9 A Which is day-to-day operations accounting work  
10 as far as bank reconciliation, producing income  
11 statement, financial statement as balance sheet, cash  
12 flows statement.

13 Q Okay. And when did you come to St. Croix?

14 A I came eight years ago.

15 Q Okay. So that's 2004?

16 A Yes.

17 Q And what did you do in 2004? Let me start.  
18 For Kazi Management?

19 A No, I didn't start with Kazi Management.  
20 Prior to that I was working with a family member. He  
21 owned a gas station. I was in charge of the gas  
22 station and handling the books for the gas station.

23 Q Okay. And how long did you do that?

24 A I did that almost for four or five years.

25 Q Okay. And when did you start with Kazi

1 Management?

2 A Two years ago almost.

3 Q Well, that's 2010?

4 A End of 2010 I believe, if I'm not mistaken.

5 Q Can you spell Kazi Management for us?

6 A K-A-Z-I.

7 Q Okay. And what did you do for Kazi?

8 A In Kazi Management I was working controller  
9 for two market: Market of Louisiana. They have then  
10 stores of K.F.C.; and the State of Hawaii, they have  
11 another 25 or as far as I remember 25 Burger King  
12 locations. I was handling the day-to-day operation for  
13 them as far as the cash reconciliation and internal  
14 controls, and issuing financial statement for the whole  
15 market, and issuing trend report for the market coaches  
16 and the market director to be able to determine what's  
17 the -- how their stores' doing, what they are  
18 performing; if they are losing or making money; and  
19 issuing reports regarding the cost of sales for these  
20 stores.

21 Q Okay. And when you -- you said you started at  
22 the end of 2011 for Mr. Yusuf, Fathi Yusuf for a  
23 project that evolved from the criminal case, is that  
24 correct?

25 A Correct.

1 Q Okay. And how long were you on that project?

2 A Well, Mr. Yusuf give me an offer to work on  
3 that project for a year. And when he decided he want  
4 me to work on that project, he took me to the Plaza  
5 East store location and he introduce me to his son,  
6 Yusuf Yusuf and to Mr. Muffed Hamed. And he told them  
7 that Ayman is going to work on this hard drive that  
8 presented for us, and he is going to look on everything  
9 on this hard drive without specifying any specific  
10 names.

11 Q Okay. And did there come a point in time  
12 where a new opportunity at United Corporation presented  
13 itself?

14 A Correct.

15 Q And do you know someone named Margie Soeffing?

16 A Correct. She used to be I guess -- not she  
17 used to be. She's still as a one-day controller. She  
18 used to be the previous controller for the Plaza Extra  
19 stores.

20 Q And did she work full time to your knowledge?

21 A Prior to that, yes, she was working full time.  
22 Now, she working only one day a week, which is  
23 Saturday.

24 Q Okay. And did there come a point in time  
25 where -- strike at that.

1                   Did you find out that there was an  
2 opening for a controller at United Corporation?

3           A           Correct.

4           Q           How did you find that out?

5           A           Mr. Yusuf approach me and ask me if I know any  
6 controllers around because his controller is leaving  
7 the company within two weeks. So he ask me if I know  
8 somebody. I tell him I would like to take the job, if  
9 it's available, for me.

10          Q           Okay?

11          A           And at that date that Mr. John Gaffney was  
12 available, and he used to be my previous supervisor at  
13 Kazi Management, and he's working right now with us at  
14 the Plaza Extra. And Mr. John voted for me in front of  
15 Mr. Yusuf. He told him that Ayman is capable of taking  
16 care of this job if you wanted to offer it to him.

17          Q           Okay. Now, since -- and you ultimately got  
18 the job?

19          A           Yes.

20          Q           Okay. And what are your duties and  
21 responsibilities in your current position at United?

22          A           Well, after I took the job as a capacity of  
23 controller, I had to --

24          Q           Actually, tell us what a controller does?

25          A           Controller basically -- there is a day-to-day



1 operation and cash reconciliation point, which is we  
2 have to make sure that after the end of day work, there  
3 is some report being generated from the P.O.S. system  
4 and we have to take these numbers from the P.O.S.  
5 system and track it down and drill to it as far as, you  
6 know, we have to know how much sales in cash, how much  
7 sales in credit cards and how much sales in debit.

8 Q What's P.O.S. mean?

9 A P.O.S., which is point of sale.

10 Q Okay. So when a cash register is rung up,  
11 there is data that's created, and your responsibility  
12 is to reconcile that data to make sure all the dollars  
13 in are captured?

14 A Correct.

15 Q Okay. What else do you do?

16 A And then I do also follow-up with the A.P. and  
17 the payroll department, which is the accounts payable  
18 and the A.P. girls, and which is we are working in on  
19 enhancing what the company have prior to this. Because  
20 the minute I work to this company, especially in the  
21 St. Croix location, they used to have typewriters.  
22 They use in these computers that they have as  
23 typewriters. And I explain a little bit more for you.

24 In the east location they have three  
25 stand-alone computers wasn't communicating with each

1 other. Each one of them had a separate database, not  
2 even a single balance could match with another computer  
3 because they wasn't communicating with each other.

4 Q Now, do you know -- are you familiar with a  
5 computer program called the Peachtree?

6 A Yes.

7 Q What is it?

8 A Peachtree, it's a higher, a little bit higher  
9 end than any software that's available for accounting  
10 use, and you could produce from it balance sheets. You  
11 could produce income statement. You could produce cash  
12 flow. You could produce and generate all reports that  
13 you could utilize it. It just need to be utilized  
14 correctly, and it wasn't prior to that utilized  
15 correctly.

16 Q And when you were saying that they were using  
17 the computer systems as typewriters, do you mean that  
18 they weren't using Peachtree to its full potential?

19 A Yes. And also they were using just as a  
20 matter of issuing checks. Not even single deposits  
21 used to be reported in the St. Croix location in these  
22 accounts as far as bank accounts.

23 Q Okay. And are you also working with  
24 Mr. Gaffney?

25 A Yes.

1 Q And what are you doing with Mr. Gaffney?

2 A We are enhancing the accounting procedure that  
3 the company have, and we are working in having each  
4 store to be autonomous and be able to issue corrected  
5 financial statement as far as balance sheet, income  
6 statement and cash flow statement to be presented to  
7 the management, and they will be able to take decisions  
8 on that.

9 Q Okay. Who do you report to?

10 A Mr. Mike Yusuf.

11 Q Have you and Mr. -- or has Mr. Gaffney with  
12 your assistance finished this work?

13 A Not yet.

14 Q Okay. Let me ask you this, sir. Have you  
15 ever witnessed Fathi Yusuf making any types of threat  
16 or harm to any of the Hamed family members?

17 A No.

18 Q Are the vendors being paid timely?

19 A Yes.

20 Q Are orders being made timely?

21 A Yes.

22 Q Are the stores stocked?

23 A The stores well stocked.

24 Q Well stocked?

25 A Yeah.

1 Q Okay.

2 A Although if you don't mind I will mention the  
3 east location, due to a specific employee over there,  
4 they behind on entering their invoices in the system  
5 for almost two months, which is we talking about the  
6 month of October of last year.

7 Q Okay. And is that a reason why the payments  
8 to the vendors from these stores are being delayed?

9 A Correct.

10 Q Tell us about that employee?

11 A Her name is Mary. I don't remember the last  
12 name. Sorry.

13 Q Okay.

14 A And she been with the company for the past  
15 26 years.

16 Q And Mary just happens to move a little slower?

17 A Yes.

18 MR. DAVID: One second, your Honor. I  
19 may be finished.

20 (Pause.)

21 Q Prior to your employment with United  
22 Corporation, were the books and records of United  
23 Corporation and obviously within that supermarket  
24 records, kept in accordance with the generally accepted  
25 accounting principles?

1 A No, not at all.

2 Q And is that one of the things that you've been  
3 hired to fix?

4 A Yes.

5 Q And that's required, to your knowledge, by the  
6 plea agreement that was entered into with the  
7 government?

8 A Correct.

9 Q What is your relationship to Fathi Yusuf?

10 A I'm distance family for Mr. Yusuf.

11 Q Tell us how are you related to Fathi Yusuf?

12 A My mom is Mr. Yusuf niece.

13 MR. DAVID: That's all I have, sir.

14 Thank you.

15 THE COURT: Thank you. Cross exam.

16 **CROSS EXAMINATION**

17 BY MR. HOLT:

18 Q Good afternoon -- good morning.

19 A Good morning.

20 Q Do you know what certified public accounting,  
21 a C.P.A. is?

22 A Yes.

23 Q Are you a C.P.A.?

24 A No, sir.

25 Q And you indicated you started working for

1 Fathi Yusuf in January of 2012?

2 A Yes.

3 Q And was there any type of written engagement  
4 letter defining what your scope is?

5 A Yes, I have a application been filled at the  
6 United stores. And basically not working for Mr. Yusuf  
7 by himself, I'm working for the whole company, which is  
8 the United Corporation.

9 Q Okay. I'm going back to just January 2012 --

10 A Yes.

11 Q -- when you started working doing the work you  
12 described. Did you give him a letter -- or did they  
13 give you a letter called an engagement letter that  
14 we're engaging your services, and give you the scope of  
15 the agreement?

16 A No, I didn't receive that.

17 Q Okay. And you indicated that this work was  
18 related to looking at the information turned over by  
19 the FBI?

20 A Correct. Actually not from the FBI. It been  
21 presented to him from the C.P.A.'s up in Buffalo.

22 Q Okay. And since you work in the store, are  
23 you familiar with the fact that there are different  
24 bank accounts for either the United Corporation  
25 Shopping Center as opposed to the supermarkets?

1 A Correct.

2 Q Okay. And you were paid from where?

3 A Excuse me?

4 Q You were paid from a Plaza Extra supermarket  
5 account?

6 A Yes.

7 Q Okay. Now, in 2012 you said you started being  
8 controller for the company?

9 A Correct.

10 Q And what account, bank account are you being  
11 paid from? A Plaza Extra supermarket account?

12 A Yes, I'm doing controller for Plaza Extra  
13 accounts.

14 Q Okay. And I guess that gets down to my next  
15 question. I should have just gone directly to it. Are  
16 you doing any work on the United Corporation Shopping  
17 Center accounts?

18 A United Corporation? Not yet. I didn't have a  
19 chance to touch it. There is a lot of work in the  
20 stores itself that it's not allowing us to touch  
21 anything else. When I take this job I inherited six  
22 month back work of bank reconciliation need to be done  
23 for the stores.

24 You talking about the St. Croix location, you  
25 have three bank account in each location; multiply six

1 month, that's 18 bank reconciliation for one location  
2 and --

3 Q Okay. Here's my question then. If I asked  
4 you something about the United Corporation Shopping  
5 Center bank accounts, you would say you have not had  
6 time to get to those yet?

7 A Yes.

8 MR. HOLT: Okay. No other question.

9 MR. DAVID: Nothing further, your Honor.

10 THE COURT: Thank you.

11 THE WITNESS: Thank you.

12 THE COURT: You may stand down, sir.

13 Next witness.

14 MR. DIRUZZO: Your Honor, defense calls  
15 Mr. John Gaffney.

16 THE COURT: Excuse me, counsel. Could  
17 you spell that name of the last witness, please?

18 MR. DAVID: Sure.

19 MR. HOLT: The answer is no.

20 MR. DAVID: The answer is no, judge.

21 MR. DIRUZZO: Last name,  
22 A-L-K-H-A-L-E-D; first name Ayman, A-Y-M-A-N.

23 THE COURT: Thank you.

24 MR. DAVID: Madam Reporter, I think we  
25 used the name Margie Soeffing. It's spelling is



1 S-O-E-F-F-I-N-G.

2 **JOHN GAFFNEY,**

3 having been called as a witness, and having been first  
4 duly sworn by the clerk of the court, was examined and  
5 testified, as follows:

6 **DIRECT EXAMINATION**

7 BY MR. DIRUZZO:

8 Q Good morning, sir.

9 A Good morning.

10 Q Could you please state your name spelling your  
11 last name?

12 A John Gaffney. G-A-F-F-N-E-Y.

13 Q And, sir, what is your current job occupation?

14 A I work for United Corporation. I am kind of a  
15 controller.

16 Q Okay. Sir, why don't we start off with your  
17 education. Could you briefly tell us about your  
18 education?

19 A I have a BSBA in accounting from University of  
20 Florida, 1973.

21 Q Okay. And what about your professional  
22 experience?

23 A When I graduated, I went to work for a Big  
24 Eight accounting firm called Haskins & Sells.

25 Q And, sir, could you spell that for the court

1 reporter?

2 A Haskins & Sells, H-A-S-K-I-N-S & S-E-L-L-S.  
3 Our international name was Delloitte Haskins & Sells  
4 and they merged.

5 Q And, sir, is that accounting firm currently  
6 known at Delloitte & Touche?

7 A Yes, it is.

8 Q Okay. And how long did you spend at Haskins &  
9 Sells?

10 A Three years in the audit department, three and  
11 a half years.

12 Q And after your tenure there, what did you do  
13 next?

14 A I went out and began a practice of my own in  
15 the late 70s.

16 Q And your practice consisted of?

17 A It was primarily geared to tax work.

18 Q Okay. And, sir, how many years have you spent  
19 in public accounting?

20 A Well, I've been in an out of private  
21 accounting, but I've spent probably about 15 to 20  
22 years in public.

23 Q What about the private accounting?

24 A Private accounting another 15 years.

25 Q And do you have experience as -- well, are you

1 currently a certified public accountant?

2 A No. I let my license expire. I went inactive  
3 in the mid-80s.

4 Q And were you previously a certified public  
5 accounting?

6 A Yes, I was. I got certified in 1975.

7 Q And you held a license -- or what jurisdiction  
8 issued you that license as a certified public  
9 accountant?

10 A Florida.

11 Q And how long was that license active for?

12 A It was active for six years.

13 Q Sir, do you have any experience in retail  
14 accounting?

15 A Yes, I do.

16 Q Why don't you tell us about that experience?

17 A For about ten years I was part owner of a  
18 retail operation in Florida. We had sixteen stores;  
19 fifteen stores in Florida, one in Georgia.

20 Q Okay. Now, sir, have you ever worked for a  
21 company known as Kazi Management?

22 A Yes, I have.

23 Q And what was your capacity? What were you  
24 doing for Kazi Management?

25 A I was the director of finance for them.

1 Q And just briefly, what were your job duties?

2 A Well, I managed an office of approximately 11  
3 controllers. We had markets throughout the U.S. and  
4 some overseas. It was 275 fast food restaurants,  
5 mostly KFCs, Pizza Huts, Taco Bells, etc.

6 Q Do you know an individual by the name of Ayman  
7 Al-Khaled?

8 A I sure do.

9 Q How do you know him?

10 A He applied for a position as controller in May  
11 of 2010 and I hired him.

12 Q Is that Kazi Management?

13 A Yes, it was; 2011, it was.

14 Q And how would you characterize Mr. Ayman  
15 Al-Khaled's performance as controller?

16 A I characterize it as very good.

17 Q Okay. Sir, let's fast forward to your current  
18 employment with United Corporation. Do you remember  
19 when you were hired?

20 A Yes.

21 Q When was that?

22 A It was late September and I arrived on October  
23 7th.

24 Q And in what capacity were you hired? What  
25 were your job duties supposed to be?

1           A           I was coming in as an outside consultant  
2 initially to evaluate their system of internal  
3 controls.

4           Q           And what are internal controls?

5           A           I'm sorry?

6           Q           Could you define what internal control is?

7           A           Internal controls are basically the policies  
8 and systems in place to ensure that all of the assets  
9 and liabilities are safeguarded in the company.

10          Q           Are you familiar with the term GAAP?

11          A           Yes.

12          Q           What does GAAP stand for?

13          A           Generally accepted principles.

14          Q           And do internal controls have any relationship  
15 to GAAP?

16          A           They sure do.

17          Q           How so?

18          A           Well, basically the reliance on financial  
19 statements was built upon a system of internal  
20 controls.

21          Q           Sir, you said financial statements. Could you  
22 define financial statements for us?

23          A           GAAP financial statements generally consist of  
24 the balance sheet and income statement and statement of  
25 cash flows.

1 Q And just briefly, what is a statement of cash  
2 flows?

3 A Well, statement of cash flows basically takes  
4 all of the components of cash, beginning with net  
5 income of the business, make certain adjustments for  
6 charters, non-cash charters such as depreciation and  
7 amortization. And then what it does is it measures the  
8 activity or the net activity of the various asset and  
9 liability accounts to come up with, first, operational  
10 cash movement; then, financing cash movement; then,  
11 investing cash movement. And then what happens is you  
12 get your net increase and decrease in cash, and you  
13 compare your beginning and ending balances. If they  
14 balance, you've got a statement of cash flows.

15 Q All right. Now, sir, when you arrived and  
16 started working for United Corporation, what did you  
17 initially observe?

18 A Well, I observed that there was essentially  
19 four computers that had an accounting system, but none  
20 of them were integrated. In the west location, for  
21 instance, there were two databases using the Peachtree  
22 accounting system; one was being used for payroll, the  
23 other one was being used for accounts payable, but in  
24 essence what they were was they were being used as word  
25 processing systems to print checks.

1 Q That's in the west location. What about the  
2 east location?

3 A The east location did have a server and it did  
4 have a single database that had been a recent  
5 development. And although they did have a server, the  
6 person doing accounts payable and the person doing  
7 payroll, again, they were using it more or less like a  
8 word processing system because all they were doing was  
9 they were using it to print checks.

10 Q And what about the St. Thomas location?

11 A In St. Thomas there was a controller by the  
12 name of Margie Soeffing. And she basically had a  
13 server also with two people; one person doing payroll,  
14 one person doing accounts payable. And that was the  
15 only system that actually had accounts payable  
16 functioning. She was then in charge of collecting data  
17 from the east and west locations from analysis of bank  
18 accounts at the end of each month, and then posting  
19 them as a journal entry into her system.

20 Q When you started working for United  
21 Corporation, did you initially come up with a plan of  
22 things that had to be done or implemented?

23 A Yes, I did.

24 Q And what was that plan?

25 A Well, after I studied it for a little while, I

1 said we have to get a better accounting system in  
2 because there is no system of internal controls in  
3 existence.

4 Q Okay. Now, you talked about using Peachtree  
5 as a typewriter. Could you briefly describe the  
6 functionality of Peachtree and then contrast it to what  
7 was actually being used?

8 A Well, Peachtree is truly a good accounting  
9 system. It's a low-end system, but it's a very good  
10 accounting system quite capable of accounting for  
11 receivables, payables. You know, it's got the general  
12 ledger. It's capable of printing GAAP financial  
13 statements, balance sheet, income statement and  
14 statement of cash flows when set up properly.

15 When I say it was used as a word processor,  
16 essentially, a bill would come in and they would  
17 literally just go in and write checks. And so there  
18 was really no accounting for accounts payable, if you  
19 will. In other words, they didn't go in, voucher in  
20 the payable and then pay it 30 days later. In some  
21 instances, however, they did. And that was completely  
22 omitted in the accounting that was done over in  
23 St. Thomas and those were some of the weaknesses.

24 Q Are you familiar with the phrase "accrual  
25 accounting"?



1           A           Yes, I am.

2           Q           What is accrual accounting?

3           A           Accrual accounting is basically where you're  
4 matching income and receipts in the same periods.  
5 Essentially when you sell an account, for instance,  
6 what you have, you don't collect cash necessarily in  
7 the month of the sale. What you have is an accounts  
8 receivable. The cash might be collected the following  
9 month, or it might be collected a year from now.  
10 Accrual accounting basically dictates that a sales is  
11 still recognized regardless of when payment is  
12 occurred.

13                       Same thing is true on the other side when  
14 you're paying bills. If an electric bill comes in, in  
15 November and it's paid in December, it's still a  
16 November expense. And the accrual accounting is just a  
17 system of recognizing those facts.

18          Q           Is accrual accounting consistent with  
19 generally accepted accounting principles?

20          A           Yes, it is.

21          Q           You heard the phrase or term "cash  
22 accounting"?

23          A           Yes, I have.

24          Q           What is that?

25          A           Well, cash basis accounting is basically, you

1 know, income and expenses are recognized when  
2 collected.

3 Q Now, sir, how would you characterize the  
4 method of accounting of United Corporation at the three  
5 stores when you arrived?

6 A Well, it was meant to be accrual accounting,  
7 but the only accrual accounting that was occurring was  
8 related to accounts payable in St. Thomas. The rest of  
9 the accounting was being done from the analysis of bank  
10 statements. Consequently, it was at best a cash  
11 accounting.

12 I discovered as time went on that at least one  
13 of the locations tended to lag behind. One of the  
14 locations where I was located actually paid bills very  
15 promptly, typically in a month of receipt. So not so  
16 much of an issue there, but in one of the other  
17 locations tended to pay two to three months in arrears.

18 Q Sir, I'm going to turn to or ask you this.  
19 Have you ever heard of the acronym P.O.S.?

20 A Yes.

21 Q What does that stand for?

22 A Point of sale.

23 Q And how does point of sale -- well, what  
24 exactly is point of sale?

25 A Well, point of sale system -- well, in Plaza

1 for instance, the point of sale system is the system  
2 that regulates all the cash registers. And it  
3 typically -- it typically contains all of the detailed  
4 information as to pricing. A good point of sales  
5 system also contains all of the detailed costing, and  
6 is usually capable of some form of inventory  
7 management.

8 Q And was the point of sale system being used,  
9 was that integrated with the accounting systems?

10 A No, it wasn't.

11 Q How was it lacking?

12 A Well, there was no recording of point of sale  
13 in Peachtree. Essentially, what happened was each  
14 month, and it lagged behind probably -- well, when I  
15 arrived and still to this date, 2012 accounting hasn't  
16 been done beyond June of 2012. Okay. But the point of  
17 sale was not being recorded in the accounting system.

18 Instead what they were doing was analyzing  
19 monthly bank statements and they were coming up with  
20 the journal entry to record the effects of what made it  
21 to the bank.

22 Q Is that consistent with GAAP?

23 A No, not at all.

24 Q Now, sir, I'm going to turn your attention to  
25 the inventory. Did you have an opportunity to take a

1 look at the accounting in respect to the inventory?

2 A Yes.

3 Q And did you come up with an initial  
4 observation or conclusion about that inventory?

5 A Well, my observation is very definitely that  
6 they have a periodic inventory method. They don't use  
7 a perpetual method. A periodic is where you basically  
8 just take a physical inventory from time to time. They  
9 do it once a year in February, so we're coming up on  
10 that right now.

11 Q Okay?

12 A Perpetual inventory, on the other hand, is a  
13 system whereby inventory is checked in and checked out.  
14 So when the sale occurs, it actually measures the cost  
15 associated with the particular item, but the P.O.S.  
16 system may be capable of that, but it's not being  
17 utilized for that purpose so what we have truly is a  
18 periodic system.

19 And all of the charges to inventory were going  
20 to inventory on the balance sheet, which made it  
21 practically -- made the income statements useless  
22 throughout the year.

23 Q Let's talk about that. What should have been  
24 done, according to generally accepted accounting  
25 principles, as it relates to the inventory?

1           A           Well, a periodic method is a perfectly  
2 acceptable and accurate form of accounting for  
3 inventory. Essentially you have to acknowledge that  
4 that's what you're doing, is periodic; and you charge  
5 all your purchases to cost of sales purchases. And  
6 then periodically when you do your physical  
7 inventories, you make an inventory adjustment that  
8 trues up the true cost of sales.

9           Q           And was that being done?

10          A           No, it wasn't.

11          Q           What was being done?

12          A           What was being done was everything was being  
13 charged to inventory. So the financial statement, the  
14 only financial statement I've been able to get out of  
15 the system that has any credibility whatsoever is the  
16 June 30, 2012 financial statement. And at the time  
17 that I ran that financial statement inventory was  
18 valued at about \$40 million.

19          Q           And is there any problem with that valuation?

20          A           Yeah, the true inventory is probably closer to  
21 10, maybe as high as 12 million.

22          Q           So you have a \$30 million variance, give or  
23 take?

24          A           Yeah.

25          Q           And is that problematic?

1           A           Well, you know, what it results in is a \$30  
2 million overstatement of income.

3           Q           Okay. Sir, you ever hear of the acronym  
4 I.T.O.?

5           A           Yes.

6           Q           What is that?

7           A           Inventory turnover.

8           Q           And what -- could you define inventory  
9 turnover for us?

10          A           Well, it's an important metric that management  
11 uses to determine the efficiency of buying and selling  
12 inventory. I.T.O. in retail operation, especially  
13 something with spoilage, if it's too low it means that  
14 you have a potential for greater spoilage.

15          Q           Okay. Sir, you ever heard of the phrase "days  
16 sales outstanding"?

17          A           Yes.

18          Q           What is that?

19          A           D.S.O. Well, sales on account, it's the  
20 amount of time that it takes to collect your sales on  
21 account.

22          Q           And does that relate to accounts receivable?

23          A           Yes.

24          Q           And what did you initially observe regarding  
25 accounts receivable?

1           A           Well, it's not on the system. It's not on the  
2 system. In St. Thomas they do record the receivables.  
3 They are pulled -- they are treated in an incorrect  
4 way. They are actually pulled out of the P.O.S. So  
5 when a sale occurs on an account in St. Thomas, what  
6 they do is they void the sale the moment they complete  
7 it so they've got a cash register statement.

8                       For the sake of example, let's say they sell  
9 \$500. They void that sale and then that paperwork goes  
10 to someone whose responsibilities it is to put it in  
11 the system and then to later collect it. That right  
12 now in St. Thomas has lagged months behind.

13          Q           And is that system -- is there any problems  
14 with the way the system is as you saw it or as you just  
15 described?

16          A           Oh, yeah. Well, it's a severe internal  
17 control weakness. Because if a -- if the accounts  
18 receivable aren't entered or collected, we would never  
19 know about it.

20          Q           Sir, turning your attention to credit cards.  
21 Are you familiar or had an opportunity to review how  
22 credit cards are processed by United Corporation?

23          A           Yes.

24          Q           And what did you observe?

25          A           I mean, it's pretty -- the credit card

1 processing is pretty good. The batch out at the end of  
2 the day sometimes has some left-over moneys that I  
3 monitor now because I'm looking at the P.O.S. on a  
4 daily basis. I monitor it now. So if there is  
5 something that doesn't get included in, let's say,  
6 today's batch, I will look tomorrow to see whether or  
7 not we have a corresponding overage, but generally the  
8 credit card process, it was pretty good.

9 Q Is there anything with regard to the credit  
10 card processing that has come to your attention as  
11 being problematic?

12 A Yes. As a matter of fact, there was a -- an  
13 A.C.H. problem recently with American Express in the  
14 east location, and it resulted in American Express  
15 issuing checks in settlement of the daily batches, and  
16 those checks have been getting mailed to St. Thomas.  
17 And I had to go over to St. Thomas on an emergency  
18 basis this weekend for payroll and I came back with  
19 about 20 checks that probably totalled anywhere -- I  
20 didn't even look at them, but I glanced at a few and  
21 they range between 2 and \$6,000. So I would imagine  
22 there was a pretty good amount of money there. If any  
23 of them had gotten lost in the mail, we wouldn't really  
24 know under the old system.

25 Q Sir, turning your attention to audits of



1 financial statements. Are you familiar with those?

2 A Yes.

3 Q And, sir, when a certified public accountant  
4 audits the management's financial statements, what do  
5 they do?

6 A Well, there is an awful lot of analytic review  
7 being done today. In earlier times there was an awful  
8 lot of selection that was done to verify things at, you  
9 know, to a source document. If, for instance, you  
10 wanted to verify the validity of a particular expense,  
11 you would actually make that selection beginning at the  
12 general ledger and drilling down into, let's say, the  
13 purchases journal. And then what you would do is you  
14 would examine the invoice for that purchase to  
15 determine the validity of it.

16 Income on the other hand was typically audited  
17 from the standpoint of determining where it begins, and  
18 it actually goes kind of opposite direction, but in a  
19 store in a retail operation it's always the P.O.S.

20 Q Okay. Sir, are you familiar with the phrase  
21 or term "audit report"?

22 A Yes.

23 Q What is that?

24 A Well, the audit report usually is the entire  
25 set of financial statements that's accompanied by an

1 opinion from the outside C.P.A. firm.

2 Q And are there -- is there more than one type  
3 of opinion from a C.P.A. firm?

4 A Yes.

5 Q And can you describe what those opinions are?

6 A Well, there is a no opinion. There is an  
7 adverse opinion. Then there is, of course, favorable  
8 opinion, which is what everybody seeks.

9 Q Okay. Let's talk about an adverse opinion.  
10 What is adverse opinion?

11 A An adverse opinion is basically where a  
12 C.P.A. firms comes in, attempts to conduct work and  
13 can't form a conclusion as to the fair presentation of  
14 the financial statements.

15 Q And what is no opinion?

16 A A no opinion is there aren't sufficient books  
17 and records to even begin.

18 Q So when you came in to United Corporation and  
19 started the work, how would you characterize the  
20 ability or the type of opinion that a C.P.A. firm would  
21 be able to render?

22 A Well, having been recently, having gone  
23 through the process recently and having spent \$250,000  
24 on an audit, I can honestly say that we could have  
25 probably spent a half million dollars and probably

1 wound up with either a no opinion or an adverse  
2 opinion.

3 Q Okay. Now, sir, with the work that you're  
4 performing, what is the goal, the end game so to speak  
5 of the work that the consulting with respect to audit  
6 is?

7 A Well, aside from establishing a descent -- a  
8 good system of internal controls, it is to be able to  
9 generate financial statements with very, very good  
10 audit trails. Theoretically, I could see an audit, the  
11 price of audit coming from what I just mentioned down  
12 to \$50,000 with a good set of internal controls and  
13 also audit trails.

14 Q So you're estimating the cost savings of  
15 approximately 450,000 based on when the work that  
16 you're performing is completed?

17 A Yes.

18 Q Sir, have you ever been asked by -- well, let  
19 me go back. Are you familiar with any of the Hamed  
20 brothers?

21 A Yes.

22 Q And have you ever talked to them?

23 A Yes.

24 Q Okay. Have you ever been asked by them to --  
25 for them -- or for you to deliver to them your work

1 product?

2 A Yes.

3 Q And what happened?

4 A Well, I actually haven't -- I don't have a  
5 deliverable product yet. Because we did a conversion  
6 beginning January 1st of 2013, and the end of the month  
7 was yesterday. I have been keeping up with the  
8 P.O.S. entries during this first month. In the two  
9 locations, east and west, they are current through  
10 about the 23rd of the month. I just got the last  
11 documents handed to me last night as a matter of fact.  
12 I have all of the documents through the 27th I believe  
13 from St. Thomas in my possession right now. I intend  
14 to go over there again this week, and I am going to  
15 actually post those into the system.

16 As soon as all those are posted and as soon as  
17 bank statements come in, and they're pretty late here  
18 in the islands, they are beyond mid-month, I would say  
19 that by the end of October I would actually have some  
20 reconciliations and some form of deliverable product.

21 Q Sir, you just said by the end of October?

22 A By the end of October -- I'm sorry. I meant  
23 by the end of February.

24 Q You would expect to have a deliverable product  
25 by the end of February?

1           A           It won't be a perfect statement because I  
2 intend to also encourage Margie, work with Margie in  
3 St. Thomas to bring 2012 to a close. Right now the  
4 St. Thomas accounting for revenue has not been done  
5 since June of 2012. And so I'd asked her to complete  
6 that action.

7                   Ayman has completed all of the analysis work  
8 that allowed me to post the activity from July through  
9 November for the other two locations. And we just  
10 received the bank statements recently and I expect to  
11 have that finished up too, but whether or not I will  
12 have the balance sheet, I won't really have a good  
13 balance sheet by the end of October. That's going to  
14 take some more time because I know in my review of the  
15 2012 work, I see some adjustments that need to be  
16 updated back to 2011.

17           Q           I believe you said the balance sheet to be  
18 ready by October?

19           A           I'm sorry. I keep thinking I'm in September  
20 because -- yeah, by the end of February.

21           Q           Okay?

22           A           It's going to take a few months before the  
23 balance sheet is actually -- it's kind of like building  
24 a bridge across the bay. You're building it together  
25 and it has to meet perfectly in the middle.

1 Q Okay. Sir, have you done any training with  
2 any of the employees?

3 A Yes, I have.

4 Q And what training have you done?

5 A I have trained Lizette and Myra in the west  
6 store in the new system. I have basically educated  
7 them on the chart of accounts and its purpose. They  
8 really -- their understanding of the chart of accounts  
9 was minimal. Their understanding of debits and credits  
10 is nonexistent. I also trained Lavena, Wadda and Mary  
11 in the east store also on the new system.

12 I found that everybody was very cooperative  
13 and very intelligent, but the -- they lacked certain  
14 knowledge of the theory of the accounting system and  
15 how it's best used.

16 Q Sir, you just mentioned the chart of accounts.  
17 What is that?

18 A The chart of accounts is basically the  
19 categories that items are classified as. Cash, for  
20 instance, is an item on the balance sheet, but it's  
21 also cash in the chart of accounts. Revenue is an  
22 income statement item in the chart of accounts.

23 Q Okay. Was there any problems -- well, what  
24 problems, if any, did you observe in the chart of  
25 accounts when you started working?

1           A           Well, the chart of accounts being used over in  
2 St. Thomas had a structure that indicated that someone  
3 was looking toward being able to departmentalize the  
4 three locations. In actuality, they used the suffix,  
5 10, to account for both east and west over here. So  
6 those two -- the operations of east and west were  
7 merged into one. They used the suffix 20 to account  
8 for St. Thomas. And they used the suffix 30 to account  
9 for the tenants with the accounting, which was the  
10 rentals and so forth at the east location.

11                   Essentially there was a lot of cross over.  
12 There was a lot of confusion in the equities section,  
13 meaning, there were multiple. There were four retained  
14 earnings accounts.

15           Q           Is that problematic?

16           A           Yeah, it was pretty problematic. When the  
17 first time -- my first conversation with Margie  
18 Soeffing after I introduced myself, I had asked her  
19 whether or not she had ever done a thorough analysis of  
20 the equities section of the financial statement and she  
21 said, no, she could never figure it out.

22           Q           Have you done it yourself?

23           A           I have. It took me two passes. It took me  
24 two passes and searching for a lot of information, but  
25 I finally did reconcile.

1 Q Okay. Sir, are you familiar with the phrase  
2 "adjusting journal entry"?

3 A Yes.

4 Q And what is an adjusting journal entry?

5 A Well, an adjusting journal entry, it is  
6 typically something that's done by the controller. And  
7 it is a journal entry that is based upon some analysis  
8 to true up, you know, some figure.

9 Q And were adjusting journal entries being done  
10 properly?

11 A In the -- over a long period of time, yes, but  
12 the timeliness was very poor. As I said, the  
13 accounting for United Corporation still to this day  
14 lags behind. We've not reconciled anything since June  
15 of 2012.

16 Q Sir, have you ever heard the phrase FAS 109  
17 accounting for income taxes?

18 A I have heard it, yes.

19 Q And briefly tell us, what does that mean?

20 A Well, I'm not sure. Honestly, I'm not sure  
21 what 109 is because I don't keep them memorized, but  
22 financial accounting standards. And it's basically  
23 pronouncements from the A.I.C.P.A. on the treatment of  
24 certain things.

25 Q And were the -- was the accounting for income



1 taxes being done properly when you arrived at United  
2 Corporation?

3 A Um --

4 Q Let me be specific.

5 A Yeah.

6 Q For accounting purposes, not for income tax  
7 purposes, but for the accounting purposes under  
8 generally accepted accounting principles?

9 A Well, I mean, I have taken exception to some  
10 of the handlings in the financial statements. It may  
11 get a little bit confusing. The significant portion of  
12 the balance sheet of United Corporation is brokerage  
13 accounts with Banco Popular and Merrill Lynch. The  
14 reason those are correct on the income tax returns is  
15 because it was done with great analysis by the outside  
16 C.P.A. firm in the past.

17 The accounting for on the books and records of  
18 United Corporation in my opinion are not as good as  
19 they should be. One of the items that I take exception  
20 to is unrealized gain or loss on investments. And  
21 that's an item that typically is used to track original  
22 basis, meaning, what you originally have invested in  
23 something. And it can be viewed, it's often viewed as  
24 an income statement item, but I usually find that it's  
25 better placed on the balance sheet. Because when it's

1 put into the income statement it closes into retained  
2 earnings and you lose track of what your original basis  
3 was.

4 Q Sir, during the course of your employment have  
5 you had an opportunity to review the plea agreement?

6 A I have.

7 Q Okay. The plea agreement sets out certain  
8 terms or certain requirements for United Corporation.  
9 When you started working for United Corporation,  
10 insofar as it relates to the accounting, was United  
11 Corporation in compliance with the plea agreement?

12 A No.

13 Q And when you're done with the work that you're  
14 performing, do you anticipate United Corporation to be  
15 in compliance with the plea agreement?

16 A Yes.

17 Q Sir, are you familiar with an individual by  
18 the name of Wadda Charriez?

19 A Yes.

20 Q How do you know this individual?

21 A I was introduced to her in the east location.  
22 She does the payroll work.

23 Q Okay. Now, is her position as payroll clerk,  
24 is that a critical or important position?

25 A Payroll clerk is always a critical -- is

1 always an important position because especially in --  
2 we found that out this week in St. Thomas when we  
3 received the resignation of the payroll clerk over  
4 there. It caused me to have to go over there on  
5 basically 24-hours notice, become familiar with it.  
6 And I'll be over there again this Monday to make sure  
7 that payroll gets done.

8 Q Okay. Now, is Wadda Charriez's employment as  
9 a payroll clerk, is she critical?

10 A Um --

11 Q Let me ask it this way. Is she irreplaceable?

12 A No, she is not irreplaceable.

13 Q And how do you know that?

14 A Well, there was about--I forget how many weeks  
15 ago, maybe two weeks ago--she was out sick on the day  
16 payroll was to be done and she said she was going to be  
17 out for a few days. And one of the other girls,  
18 Lavena, she did the payroll on Monday morning. And  
19 from what I recall, it was about two o'clock when she  
20 finished it up on Monday.

21 Q Can you compare the time it took Lavena to  
22 complete the task versus Wadda?

23 A Well, the week before it had been mentioned to  
24 me that the payroll wasn't complete on Monday, and that  
25 it was done sometime Tuesday morning. It was completed

1 by Tuesday morning. Now, I don't really know the  
2 particulars of it, but you know, that was just a for  
3 instance; but to my knowledge for the most part payroll  
4 is typically completed in each of the locations on  
5 Monday.

6 In St. Thomas, Sherry, I forget Sherry's last  
7 name, but Sherry typically comes in early on Monday  
8 mornings and has it completed. Her target for  
9 completing payroll in St. Thomas is noon.

10 Q And as you're sitting here today, would you be  
11 comfortable if Wadda was replaced with Lavena?

12 A I would be.

13 Q And finally, sir, when it's all said and done,  
14 the financial statements that would be produced, how  
15 would you characterize both the timeliness and the  
16 accuracy of those financial statements when all of your  
17 work at the end of the day, when your work as  
18 consultant is completed?

19 A Well, I'm accustomed to and I have experience  
20 having closed financial statements in three and a half  
21 days after the close of a month. That was a  
22 requirement when I worked for Emerson Electric, and it  
23 can be done.

24 A good quality financial statement and a good  
25 quality system will produce not only a good balance

1 sheet and income statement, with all balance sheet  
2 items reconciled every month, it will also produce a  
3 good statement of cash flows because I found that to be  
4 a financial statement that businessmen and  
5 entrepreneurs understand well. They understand that  
6 better than even income statements. And I designed the  
7 chart of accounts to accomplish that.

8 I can actually prove, I can actually prove it  
9 and have. I have run preliminary financial statements  
10 mid-January and the statement of cash flows balance is  
11 perfectly -- and it's really quite an accomplishment.  
12 Because 90 percent of the businesses that C.P.A. firms  
13 go in to audit can't produce a statement of cash flows.

14 MR. DIRUZZO: Nothing further at this  
15 time.

16 THE WITNESS: Okay.

17 THE COURT: Thank you. Mr. Holt.

18 **CROSS EXAMINATION**

19 BY MR. HOLT:

20 Q Let me start off with Wadda Charriez?

21 A Yes.

22 Q You've worked with her?

23 A Yes.

24 Q You've worked with the person in her position  
25 in all three of the stores, correct?

1           A           Yes.

2           Q           And you would describe her work as excellent,  
3 wouldn't you?

4           A           I would.

5           Q           She's a very good worker, isn't she?

6           A           I think she is.

7           Q           She's better than the ones in her position in  
8 the others stores, isn't she?

9           A           I wouldn't say. Perhaps one of them she is;  
10 the one that I most recently worked with, yes.

11          Q           And you've never had any problems in the  
12 performance of her job, have you?

13          A           No.

14          Q           Now, you started work in this store -- you  
15 started working for Plaza in September of 2012?

16          A           October 8th was my first day.

17          Q           Okay. 2012?

18          A           2012.

19          Q           Okay. And you knew Ayman before you came to  
20 work there?

21          A           Yes, I did.

22          Q           Was he the one who actually introduced you to  
23 Mr. Yusuf to get you the job?

24          A           I was introduced -- I actually was introduced  
25 to them back in 2012 when I was still on the island

1 before I moved back to Florida.

2 Q And who introduced you to them?

3 A Ayman did.

4 Q So your contact with the store came through  
5 Ayman, is that correct?

6 A Yes.

7 Q Okay. And did you, when you started work in  
8 October of 2012, did you actually have a formal  
9 engagement letter which listed what you would do?

10 A No, I didn't.

11 Q And then you've talked here about all the work  
12 you've done. Am I correct in understanding that there  
13 is an accounting system for each of the Plaza Extra  
14 stores?

15 A Yes.

16 Q Okay. And then, is there an accounting system  
17 for the United Shopping Center?

18 A There is going to be, yes. It hasn't been set  
19 up yet.

20 Q Okay. Have you done any work on the accounts  
21 for the United Shopping Center?

22 A Other than I have segregated the department I  
23 referred to earlier as with the suffix 30. I've  
24 segregated those numbers as they exist in 2012. As I  
25 said, they're not complete yet, but I've segregated

1       them, and because there is not too much activity in  
2       that I have kind of put that to the side because the  
3       Plaza stores and, you know, departments 10 and 20 are  
4       so much more important.

5       Q       So you have some familiarity with the United  
6       Shopping Center financial bank accounts, but you've  
7       concentrated primarily on the three stores?

8       A       Correct.

9       Q       Okay. And when we say the three stores, I  
10      take it then there is a separate bank account system,  
11      payrolls, invoicing, purchasing, separate system for  
12      the Sion Farm east store -- I mean -- excuse me -- the  
13      Plaza Extra East store, the Plaza Extra West store and  
14      the St. Thomas store?

15     A       Yes, that's what we're putting in now.

16     Q       And you've done nothing to merge any of these  
17     together, correct?

18     A       The intention is when the accounting is being  
19     done in all three on a monthly basis, we will combine  
20     all three.

21     Q       But during the day as they are working, they  
22     still work as three separate stores?

23     A       Exactly.

24     Q       And even when you merge them, will you also  
25     merge them with the United Shopping Center account?



1 A Yes.

2 Q So right now they're totally separate?

3 A Correct.

4 Q Okay. Now, which account are you paid from?

5 Are you paid from one of the Plaza Extra accounts?

6 A Yeah, I'm paid from Plaza West.

7 Q The store that's located in Plaza Extra West?

8 A Yes.

9 MR. HOLT: Let me have the witness shown  
10 Exhibit 7, 9, 13, 15.

11 THE COURT: This is plaintiff's?

12 MR. HOLT: Yeah, Plaintiff's Exhibit 7,  
13 9, 13 and 15.

14 (The documents were marked Plaintiff's  
15 Exhibit Numbers 7, 9, 13 and 15 for identification.)

16 MR. DIRUZZO: Your Honor, we object;  
17 beyond the scope.

18 MR. HOLT: They talked about the  
19 accounting. I'm going to ask him how he books these  
20 accounts.

21 THE COURT: I'll permit it, at least at  
22 this stage.

23 Q (MR. HOLT) Looking at Exhibit Number 7,  
24 you'll see that these are statement of rents due for  
25 Plaza Extra East from United Corporation. Are you

1 familiar with those documents?

2 A I don't think that I've seen this one, this  
3 Number 7.

4 Q Can you just look through all of the documents  
5 and see if you've seen any of the composite exhibit?

6 A I think I have seen one of these, yes.

7 Q Okay. And this shows United Corporation  
8 sending a rent-due statement to Plaza Extra?

9 A Yes.

10 Q So as an accountant, do you plan on entering  
11 this as a debit on the Plaza Extra account and a sum  
12 owed on the United Corporation account?

13 A That was my intention, yes.

14 Q Okay. And showing you Exhibit Number 9, this  
15 is a check for 5.4 million. You know, before I leave  
16 that, let me have the witness shown Exhibit 20. This  
17 is the most recent rent statement of February 1, 2013.  
18 Have you seen this one?

19 (The document was marked Plaintiff's  
20 Exhibit Number 20 for identification.)

21 A No, I haven't.

22 Q Would you have entered it the same way as the  
23 other ones?

24 A Yes, I would.

25 Q Before doing that, would you consult with

1 anyone to see if in fact Plaza Extra supermarket has  
2 agreed to pay this rent?

3 A Well, I would certainly question whether or  
4 not it was collectible before entering.

5 Q But before you list an account payable on one  
6 company and due to the other company, would you at  
7 least inquire as to whether or not there's really been  
8 an agreement to pay these sums of money?

9 A Yes, I would.

10 Q And if the Hamed family told you that they  
11 hadn't agreed to pay this rent, how would you enter it?

12 A Well, I don't know that I would consider that  
13 I would have to get their approval.

14 Q Whose approval would you have to get?

15 A I'd get Mike Yusuf, president of United  
16 Corporation.

17 Q Well, he's the landlord?

18 A No, he is not. He's the president of United  
19 Corporation --

20 Q Well, United --

21 A -- doing business as Plaza Extra. If he says  
22 it's a good payable receivable, then it is.

23 Q So if United Corporation sends a rent notice  
24 to Plaza, you see that as the same entity?

25 A Yeah, United Corporation doing business as

1 Plaza, yes.

2 Q In your accounting business have you ever seen  
3 a company send a rent notice to itself?

4 A Well, as a matter of fact, I have seen  
5 intercompany do two forms where you have one bookkeeper  
6 sending it to another one, yes.

7 Q And has anyone ever told you that Plaza is  
8 actually a partnership that operates separately from  
9 Mohammad Hamed and Fathi Yusuf?

10 MR. DIRUZZO: Hearsay.

11 THE COURT: You can answer it.

12 THE WITNESS: I'm sorry.

13 THE COURT: You can answer it.

14 A I have heard the term partnership used as more  
15 of a joint venture splitting the profits of Plaza.

16 Q (MR. HOLT) Okay. If in fact there is a joint  
17 venture or a partnership, you would have to change the  
18 accounting on how you treated these, wouldn't you?

19 MR. DIRUZZO: Your Honor, beyond the  
20 scope of direct.

21 THE COURT: I'm sorry. Could you ask  
22 the question again.

23 Q (MR. HOLT) If you had to -- if in fact there  
24 is a joint venture or a partnership, you would then  
25 have to change how you would enter the accounting of

1 this document as rent being owed and rent being paid?

2 MR. DIRUZZO: Objection.

3 THE COURT: Objection is overruled.

4 A No. It is -- it's basically an intra-company  
5 payable due to/from. And it really, in the final  
6 analysis on the tax returns of United Corporation,  
7 washed.

8 Q (MR. HOLT) But if there was a partnership in  
9 place that existed, then you would have to have a  
10 separate entity -- let me rephrase.

11 Partnerships have to file tax returns,  
12 don't they?

13 MR. DIRUZZO: Objection; outside the  
14 scope of direct.

15 THE COURT: I will allow it.

16 MR. DIRUZZO: Objection; calls for legal  
17 conclusion.

18 MR. HOLT: He is an accountant.

19 THE COURT: I'm going to allow it.

20 A If there is a partnership where tax returns  
21 are being filed. But what's been consistently done and  
22 typically the safe route is that there is  
23 S Corporations for United Corporation that's been a  
24 consistency for a long time. There is no evidence of  
25 partnership.

1 Q (MR. HOLT) Do you know if the Hameds are  
2 shareholders in United?

3 A I know they are not.

4 Q And do you know though that they've received  
5 profit from United?

6 A The answer to that is that I know of an  
7 agreement that they are to -- that there is going to be  
8 a split of the Plaza operations, but the answer is that  
9 I know they receive payroll checks. They don't receive  
10 profits though.

11 Q All right. But you testified that you know  
12 that there's supposed to be a split of the profits from  
13 the Plaza store, correct?

14 A Correct, yeah.

15 Q And that would be a separate type of  
16 accounting entry, won't it?

17 A Not necessarily. It could be a 1099  
18 recognition, and I've seen that happen.

19 Q And it could also be partnership which would  
20 then be part and separate taxes?

21 A It could be.

22 Q It could be either one, couldn't it?

23 A Could be.

24 Q And before you get to the final end of your  
25 work, you're going to have to figure that out, aren't

1 you?

2 A No. As far as I'm concerned that's an already  
3 forgone conclusion. There is a consistency of how tax  
4 returns have been filed now for many, many years and  
5 there is no question about how they are going to  
6 continue to be filed.

7 Q Have any tax returns been filed since 2002?

8 A They have been prepared.

9 Q They have not been file, have they?

10 A That's the subject of the plea agreement, is  
11 protected under the plea agreement. They have been  
12 prepared with the intent to file them.

13 Q And you're not a registered C.P.A. in the  
14 Virgin Islands, are you?

15 A No, I'm not.

16 Q So you couldn't sign those tax returns, could  
17 you?

18 A I could as a controller.

19 Q You're not the controller of the company, are  
20 you?

21 A I would say that probably I am. I would say I  
22 am.

23 Q Okay. And what is Ayman's position?

24 A I'm sorry?

25 Q What is Ayman's position. Mr. Ayman, what is

1 his position?

2 A What's his position? Mohammad?

3 Q No, no. Hamed Al-Khaled?

4 MS. CAMERON: Ayman.

5 Q (MR. HOLT) Ayman?

6 A Oh, Ayman Al-Khaled. Ayman Al-Khaled is also  
7 a controller.

8 Q So the company has two controllers?

9 A As a matter of fact it has three at the  
10 moment.

11 Q Who is the third one?

12 A Margie.

13 Q Okay. And has anyone every told you actually  
14 you get that title, controller?

15 MR. DIRUZZO: Objection; hearsay.

16 MR. HOLT: Well --

17 Q (MR. HOLT) Why do you call yourself the  
18 controller?

19 A Well, I've been referred to that, you know, by  
20 people in Plaza.

21 Q Who?

22 A Mike, and even some of the people in the  
23 accounting department.

24 Q Okay. Something funny?

25 A No, no.



1 Q Looking at Exhibit Number 9, you see a check  
2 from United Corporation on the Plaza Extra account?

3 A Yes, I do.

4 Q To United Shopping Plaza of \$5.4 million?

5 A Yes, I do.

6 Q How would you treat that in the books?

7 A I didn't. This was in February of 2012 and I  
8 did see an entry in the accounting records. This is  
9 the first time I've seen the check though.

10 Q So you haven't gotten so far as to figure out  
11 how you're going to do that check?

12 A It's already accounted in the accounting  
13 records as I'm so sure it must be under rent.

14 Q And so United Corporation owns the shopping  
15 center where they collect rents, correct?

16 A M-hmm.

17 Q And so the rents they collect would be income  
18 to them, won't it?

19 A Yeah.

20 Q So this 5.4 million would actually be income  
21 to United Corporation, won't it?

22 A Yes, and it would be offset by an expense in  
23 the United Corporation too, so it's a wash.

24 Q Oh, so it's just writing this \$5.4 million  
25 checks so they can do a wash on it's income tax return?

1           A           Yes. The net effect on the United tax return  
2 is zero. The character of the income though could be  
3 that it's passive income to the real estate. However,  
4 in closely related entities, the character remain. It  
5 has to be the same on both sides, so it's typically  
6 just a wash.

7           Q           So if the IRB determines that the supermarket  
8 is in fact a partnership, then this would be income to  
9 United and a deduction to the partnership, wouldn't it?

10                   MR. DIRUZZO: Objection; calls for  
11 speculation and calls for legal conclusion as to what  
12 the IRB would determine.

13                   THE COURT: Well, I think it's a  
14 hypothetical as to whether the IRB -- if the IRB did  
15 that. I think you can answer.

16           A           If the IRB determined that it was a  
17 partnership?

18           Q           (MR. HOLT) If the supermarkets were a  
19 partnership separate from United, then would this be  
20 income to United and a deduction to the partnership?

21           A           I'm not sure I can really answer that question  
22 because it isn't a partnership.

23           Q           I asked you a hypothetical, so assume it is a  
24 partnership. Assume IRB determines it's a partnership?

25           A           Well, you know, whenever you're talking about

1 rental income, you're talking about a different  
2 character of income. And that's -- you know, when you  
3 have related parties from a tax point of view, from a  
4 tax point of view it typically has to be the same  
5 character on both sides of the transaction.

6           So in other words, you couldn't have, you  
7 couldn't have earned income and write a check to  
8 yourself for rent on, let's say, business property and  
9 have it be treated as passive income, you know, on one  
10 part of your tax return and active income, earned  
11 income as a deduction on the other side. In this case  
12 we're talking about an intra-company payment.

13       Q       Okay. That's not my question. If the  
14 IRS determines that the Plaza Extra East store is a  
15 partnership between Mr. Yusuf and Mr. Hamed, and it's  
16 not United Corporation, then this would be a deduction  
17 to the partnership and income to the corporation,  
18 wouldn't it?

19       A       Yes, it would.

20       Q       All right?

21       A       If the IRS did that, yes.

22       Q       All right. Showing you Exhibit Number 13.  
23 This is a series of checks dated August 15th of 2012  
24 and I believe the last document is a check for  
25 2.7 million. Do you see that?

1 A M-hmm.

2 Q Have you dealt with that check yet?

3 A No. I've heard about it. I haven't seen this  
4 check.

5 Q So you haven't gotten to the part of the  
6 records -- first of all, what account is that written  
7 on?

8 A United Corporation d/b/a Plaza Extra.

9 Q That's one of the shopping -- one of the  
10 supermarket accounts?

11 A It looks like it, yes.

12 Q Okay. And it was then paid over to United  
13 Corporation?

14 A Yes.

15 Q Okay. And do you know where it was deposited?

16 A This would have had to have been deposited  
17 into Department 30, the tenant account.

18 Q The tenant account, which is the shopping  
19 center account?

20 A Yes.

21 Q Okay. And have you dealt with how that check  
22 is gonna be treated on the books of --

23 A I have to correct myself.

24 Q One second?

25 A I have to correct myself. I think -- I assume

1 that because I think that's where I saw the number up  
2 here in 2012.

3 Q Okay. So my question to you, have you gotten  
4 to the point where you're doing the accounting on that  
5 check and how it is going to be treated on the  
6 supermarket accounts?

7 A No. I'm actually planning that work this  
8 month now that we've finished up the W-2's and all the  
9 year-end reporting for payroll.

10 Q And have you actually gotten to the point on  
11 how that would be treated on United's book assuming it  
12 is deposited in the tenant account?

13 A No, I haven't.

14 Q Okay. And have you been involved in all and  
15 how the money in the United Corporation shopping center  
16 account is dispersed?

17 MR. DIRUZZO: Objection; outside the  
18 scope of direct.

19 THE COURT: The question is, have you  
20 been involved?

21 MR. HOLT: Yeah.

22 THE COURT: You can answer.

23 A No. I mean, I see some affects of the  
24 accounting for it, but the answer is, is that I don't  
25 have current day-to-day. I don't have current

1 day-to-day vision on the cash receipts and  
2 disbursements on all of the accounts. The main,  
3 primary thing that I've been focusing on this month in  
4 particular has been gathering and putting in a system  
5 that accounts for the P.O.S. records.

6 Q So you can't tell me how the money that was  
7 put into the United account has been spent?

8 A At this point, no.

9 Q Even though you are the controller?

10 A At this point I haven't gotten to that point  
11 yet.

12 Q Okay. Showing you Plaintiff's Exhibit Number  
13 26. Do you recognize this document?

14 (The document was marked Plaintiff's  
15 Exhibit Number 26 for identification.)

16 A Yes, I do.

17 Q And this is a Banco Popular Securities  
18 document?

19 A Yes.

20 Q And it has United Corporation d/b/a Plaza  
21 Extra on it?

22 A M-hmm.

23 Q And what money goes into this account?

24 A Well, this is the -- what month is this? This  
25 is as of 12/31? You know, of course this is accounted

1 for on the balance sheet of United Corporation.

2 Q That's not what I asked you. What money goes  
3 into this account?

4 A It's the money of the United Corporation.

5 Q Isn't it true that the money that goes into  
6 this account are the profits from the three  
7 supermarkets?

8 A It could be that. It could be the profits  
9 also from the rental corporation.

10 Q So you think -- you don't know whether or not  
11 the profits of the rental go into this account?

12 A I don't have specific knowledge, but it could  
13 very easily be that, yes.

14 Q You don't know, do you?

15 A No. I've looked at combined financial  
16 statements and they're all merged. There is no -- the  
17 ability to segregate exactly where it comes from. It's  
18 sort of like having a single dollar bill in your left  
19 pocket and a single dollar bill in your right pocket  
20 and switching what has just occurred.

21 Q You don't know, do you?

22 A I do know.

23 Q So now you're telling me that United  
24 Corporation Shopping --

25 A I do know that it's entirely possible that

1 some of the profits of the rental operation could be  
2 sitting in there, yes.

3 Q I didn't ask you if it's possible. Do you  
4 know if in fact they're in there?

5 A I don't know that any money -- I don't know of  
6 any transfers directly from the United Corporation  
7 rental account that went in there. The answer to that  
8 is, no, I don't know that.

9 Q And do you know why this money is in that  
10 account?

11 MR. DIRUZZO: Objection; calls for --  
12 well outside the scope of direct.

13 MR. HOLT: He is the controller of the  
14 company.

15 THE COURT: Well, he's talked about his  
16 role and just examined his role, so I will let him  
17 answer, if he knows.

18 A Well, the answer is, is that this investment  
19 account has been around for quite a while, long before  
20 I got here, but it's not uncommon for people with  
21 excess cash to put them in a good solid earning  
22 investment.

23 Q (MR. HOLT) So you have no knowledge about  
24 whether or not this was formed as part of the criminal  
25 case, or the profits would all be escrowed under the



1 TRO in the criminal case?

2 A Sounds vaguely familiar, but the answer is I  
3 don't know that for sure.

4 MR. HOLT: Your Honor, we move Exhibits  
5 20 and 26 into evidence.

6 MR. DIRUZZO: No objection.

7 THE COURT: Plaintiff's 20 and 26 are  
8 admitted without objection.

9 (The documents, heretofore marked  
10 Plaintiff's Exhibit Number 20 and 26 for  
11 identification, were received in evidence.)

12 MR. HOLT: Nothing further.

13 THE COURT: That concludes the cross  
14 exam. Is there any redirect?

15 MR. DIRUZZO: No.

16 THE COURT: Thank you very much, sir.  
17 You may stand down.

18 Any other witnesses?

19 MR. DIRUZZO: No, your Honor. We  
20 rest.

21 THE COURT: Any rebuttal?

22 MR. HOLT: Yes, your Honor. Your Honor,  
23 we planned on calling as our first witness Fathi Yusuf,  
24 but I don't know if he's here.

25 (Pause.)

1 MR. DAVID: Your Honor, I'm not sure  
2 what the purpose of the exercise is, but Mr. Yusuf is  
3 not here.

4 MR. HOLT: Okay.

5 MR. DAVID: And I'm not aware that he  
6 was under subpoena to be here, and in fact, I know he  
7 wasn't under subpoena to be here.

8 THE COURT: Was Mr. Yusuf subpoenaed?

9 MR. HOLT: No, he was not. I will call  
10 Mike Yusuf instead.

11 **MAHER YUSUF,**  
12 having been called as a witness, and having been first  
13 duly sworn by the clerk of the court, was examined and  
14 testified, as follows:

15 **DIRECT EXAMINATION**

16 BY MR. HOLT:

17 Q Mr. Yusuf, you testified earlier in this case,  
18 is that correct?

19 A Yes.

20 Q Last week? Showing you what I'm going to mark  
21 as Exhibits 22, 23 and 24. These are certified copies  
22 of deeds from the recorder's office. Do you recognize  
23 them?

24 (The documents were marked Plaintiff's  
25 Exhibit Numbers 22, 23 and 24 for identification.)

1 A Yes -- oh -- yes, I do.

2 Q Are these deeds the deeds for the three  
3 properties that you indicated 2.7 million was used to  
4 purchase?

5 A Yes.

6 Q And showing you the first deed as dated May  
7 18th of 2012 from the Robert Merwin Trust for the  
8 La Grange property, do you see that, September 22?

9 A What page is that?

10 Q The first page of Exhibit Number 22 at the  
11 top. It says indentured made this 18th day of March  
12 2002?

13 A Yes.

14 Q Do you see that?

15 A Yes.

16 Q And the recording on the side says May 25,  
17 2012, do you see that?

18 A Yes, May 25th.

19 Q Okay. And on Exhibit 23, it says June 21,  
20 2012; and the recording document on the side say July  
21 6, 2012. Do you see that?

22 A Same Exhibit 23?

23 Q No. Exhibit 23?

24 A Repeat that again.

25 Q Exhibit Number 23, it's a warranty deed from

1 Frederick Side, Inc. to United Corporation dated June  
2 1, 2012. Do you see that?

3 A You talking about Armstrong?

4 Q Armstrong is Exhibit Number 22. It's dated  
5 May 18th of 2012; recorded May 25, 2012. You see that?

6 A You got it wrong. Number 23 --

7 Q I apologize. Tell me what exhibit numbers you  
8 have and what are the dates of the deeds? I apologize.

9 A Number 23 is the La Grange.

10 Q La Grange. And that's a property from the  
11 Armstrong?

12 A Yeah.

13 Q And what is the date of that deed?

14 A May 18.

15 Q 2012?

16 A 2012, yeah.

17 Q You see the recording on the side of May 25,  
18 2012?

19 A Correct.

20 Q And then what is the next document you have?

21 A Exhibit 24.

22 Q What about the other one before that?

23 A Exhibit 22?

24 Q What is the date of that deed?

25 A Which one?

1 Q 22?

2 A June 21, 2012.

3 Q You see the recorder's stamp indicating it was  
4 recorded on July 6, 2012?

5 A Correct.

6 Q Okay. And the last exhibit, Exhibit 24, what  
7 is the date of that document?

8 A December 17, 2012.

9 Q And that's for the Enfield Green property near  
10 the airport?

11 A Correct.

12 Q Okay. And these are the three properties that  
13 you say that you used 2.7 million to purchase?

14 A Yes.

15 Q Any other properties?

16 A No.

17 Q Can you explain to me how you can take a check  
18 out of the United Corporation supermarket account on  
19 August 15th or 20th, whatever day it was, and purchase  
20 property that had closed in May of 2012 and June of  
21 2012?

22 A Repeat that again.

23 Q When you testified at this court that the  
24 funds that were removed from the shopping center were  
25 used to purchase these three parcels of land; and my

1 question to you is, how did you use the 2.7 million  
2 that you took out of the account in August of 2012 to  
3 purchase property in May and June of 2012?

4 A Well, I used upon the account to pay for  
5 property when the funds was available.

6 Q So when you bought the property in May of  
7 2012 from the Armstrong Trust, and then you bought the  
8 property in June of 2012 from the Frederick C. Company,  
9 you didn't use any part of the 2.7 million you took out  
10 in August 2012, did you?

11 A I used whatever funds was in United.

12 Q Okay. So let's back to the real question.  
13 What happened to the 2.7 million that you removed from  
14 the account in August of 2012?

15 A It should be -- I used for property and  
16 whatever else.

17 Q Okay. So you testified in front of this Court  
18 last week that you used it to buy three pieces of  
19 property?

20 A Yes, I did.

21 Q You would agree now that that isn't true, is  
22 it? You couldn't use it to purchase these three pieces  
23 of property, could you?

24 A It was part of either one or two properties.

25 Q Well, we see one property that's dated in --

1 the last property dated in December 17th of 2012. So  
2 you could have used it to purchase that property,  
3 correct?

4 A Yeah, I could have.

5 Q But that's the only property that you could  
6 have used those funds to purchase, isn't that true?

7 A I wasn't looking if it was the 2.7 to replace  
8 properties. I wasn't doing that. The property was  
9 available, I had funds and I paid for it.

10 Q Okay. So let's get back to the question.  
11 What did you do with the 2.7 million that you removed,  
12 that was removed from the Plaza Extra supermarket  
13 account into the United account? What was it used for?

14 A Some properties and whatever else.

15 Q What is the whatever else?

16 A I don't know. I'm not -- I haven't used it  
17 for anything.

18 Q You haven't used it to purchase properties  
19 overseas?

20 A Oh, no.

21 Q Have you used it to invest in other  
22 businesses, like the mattress business or things like  
23 that?

24 A Yes, I did.

25 Q And were those businesses in the name of

1 United Corporation?

2 A No.

3 MR. HOLT: No other questions.

4 MR. HOLT: Your Honor, I would like to  
5 introduce those exhibits into evidence, 22, 23 and 24.

6 THE COURT: Any objections?

7 MR. DIRUZZO: No objection and no  
8 questions.

9 THE COURT: Okay. 23 -- I'm sorry --  
10 22, 23 and 24 are admitted without objection, and you  
11 may stand down, Mr. Yusuf.

12 (The documents, heretofore marked  
13 Plaintiff's Exhibit Numbers 22, 23 and 24 for  
14 identification, were received in evidence.)

15 MR. HOLT: We call Waleed Hamed.

16 **WALEED HAMED,**

17 having been called as a witness, and having been first  
18 duly sworn by the clerk of the court, was examined and  
19 testified, as follows:

20 **DIRECT EXAMINATION**

21 BY MR. HOLT:

22 Q Can you state your name for the record again?

23 A Waleed Hamed.

24 MR. HOLT: And may I have the witness  
25 shown Exhibit 27.



1 (The document was marked Plaintiff's  
2 Exhibit Number 27 for identification.)

3 Q Showing you Exhibit Number 27, what is this?

4 A These are checks made out to Fathi Yusuf  
5 signed by Fathi Yusuf from the Plaza Extra account.

6 MR. DIRUZZO: Your Honor, we would  
7 object to this line of questioning as being outside the  
8 scope of defense's case. I know I didn't talk about  
9 any checks with Fathi Yusuf in respect to Ayman  
10 Al-Khaled, John Gaffney, or Yusuf Yusuf.

11 THE COURT: What's the purpose?

12 MR. HOLT: Well, on cross examination  
13 they showed him checks that were made out to him during  
14 the same time period. I was just trying to clarify to  
15 the Court that both parties took checks from the same  
16 account.

17 MR. DIRUZZO: May I respond?

18 THE COURT: Yes.

19 MR. DIRUZZO: Your Honor, the time for  
20 this exercise should have been done on redirect; not as  
21 rebuttal.

22 MR. HOLT: If I had known what exhibits  
23 they were gonna use, it would have been easier to use  
24 them on cross examine.

25 MR. DIRUZZO: It's been working both

1 ways.

2 THE COURT: Okay. Well, let's let it  
3 work both ways. I will allow it.

4 Q (MR. HOLT) Now, can you tell me what the time  
5 period is for these checks?

6 A They go from 2001 through 2004.

7 Q And these predate the Feds seizing these  
8 accounts?

9 A Some of them, sir.

10 Q Okay. And was it acceptable for Mr. Yusuf to  
11 write these checks?

12 A Yes.

13 Q Why?

14 A Because it was agreed by both families to do  
15 so.

16 Q If that's true, then why was the 2.7 million  
17 removed by Mr. Yusuf in August of 2012 not acceptable?

18 MR. DIRUZZO: Objection; asked and  
19 answered. He's already gone over this on direct.

20 THE COURT: He can answer the question.

21 A Could you repeat the question, please?

22 Q (MR. HOLT) If it's true that it was  
23 acceptable for Mr. Yusuf to write those checks, then  
24 why was the 2.7 million removed by Mr. Yusuf in August  
25 of 2012 not the same thing?

1           A           Because the amount that Mr. Yusuf withdrew is  
2 really excessive. It's 2.7 million. And at the same  
3 time we didn't agree to it. I mean, we didn't have an  
4 opportunity to do such a thing.

5           Q           And prior to the withdrawal of the  
6 2.7 million, can you tell me whether or not any member  
7 of the Hamed or Yusuf family had ever withdrawn funds  
8 that were not agreed to?

9           A           No.

10          Q           Now, can you tell me what prevents Mr. Yusuf  
11 from withdrawing these funds again?

12                       MR. DIRUZZO: Same question, your Honor.

13                       THE COURT: I'm sorry. Objection is  
14 what?

15                       MR. DIRUZZO: Asked and answered and  
16 outside the scope of our case; legal conclusion.

17                       THE COURT: I will allow the one  
18 question.

19          A           Could you repeat the question again, please?

20          Q           (MR. HOLT) What prevents Mr. Yusuf from doing  
21 this again tomorrow, if anything?

22          A           Nothing whatsoever.

23                       MR. HOLT: Can I have the witness shown  
24 Exhibit 28 -- I'm sorry -- 27 -- I'm sorry -- 26. I  
25 apologize.

1 MR. DIRUZZO: Your Honor, this is  
2 clearly beyond the scope. And this document just came  
3 in to evidence through Maher, who was called on  
4 rebuttal.

5 MR. HOLT: You know, I'll withdraw the  
6 questions, your Honor.

7 THE COURT: All right.

8 Q (MR. HOLT) We've heard about the criminal  
9 TRO. Can you tell me whether or not the Hamed family  
10 believed the 2.7 million violated the criminal TRO?

11 MR. DIRUZZO: Objection; asks for a  
12 legal conclusion.

13 MR. HOLT: This is what they believed.

14 THE COURT: Rephrase the question again.

15 Q (MR. HOLT) Are you familiar with what we call  
16 the TRO in the criminal case?

17 A Yes, sir.

18 Q And does that TRO have restrictions on removal  
19 of funds?

20 A Yes, it does.

21 Q And did your father, Mr. Hamed, consider the  
22 withdrawal of those funds to be in violation of the  
23 TRO?

24 MR. DIRUZZO: Objection.

25 THE COURT: Sustained.

1 Q (MR. HOLT) Did you consider the withdrawal of  
2 those funds to be in violation of the TRO?

3 MR. DIRUZZO: Objection; relevance and  
4 legal conclusion.

5 THE COURT: I'll allow it. He said what  
6 he understood.

7 MR. DIRUZZO: And one problem, your  
8 Honor. Commenting on a legally operative document is  
9 not on the record.

10 MR. HOLT: Just what his belief is.  
11 He's a defendant in the case.

12 THE COURT: Commenting on the plea  
13 agreement?

14 MR. DIRUZZO: No. The temporary  
15 restraining order that's currently in place. That's a  
16 legally operative document.

17 THE COURT: We have had a lot of  
18 testimony about the effect of the TRO. He can answer  
19 the question what he understood.

20 A Can you ask the question again, please?

21 Q (MR. HOLT) Did you believe that the  
22 withdrawal of the 2.7 million in the supermarket  
23 accounts by Mr. Yusuf violated the criminal TRO?

24 A Yes, sir.

25 Q And why didn't you or your father move to

1 enforce that TRO?

2 MR. DIRUZZO: Objection; speculation as  
3 to his father.

4 THE COURT: Don't ask as to the father.

5 Q (MR. HOLT) Why didn't you move to enforce  
6 that TRO?

7 A Because I'm no longer a party to the criminal  
8 case. My charges have been dismissed.

9 Q And has your father ever been a part of the  
10 criminal case?

11 A No, he hasn't.

12 MR. HOLT: No other questions. And I  
13 will move Exhibit 27 into evidence.

14 THE COURT: Any objection to 27?

15 MR. DIRUZZO: No objection, your Honor.

16 THE COURT: 27 is admitted.

17 (The document, heretofore marked  
18 Plaintiff's Exhibit Number 27 for identification, was  
19 received in evidence.)

20 MR. DIRUZZO: No cross.

21 THE COURT: No cross examination. Thank  
22 you very much. Any other --

23 MR. HOLT: We have no other witnesses,  
24 your Honor.

25 THE COURT: Very well. That concludes

1 the taking of evidence.

2 MR. HOLT: And, your Honor, one thing.  
3 We did have a transcript of Mike Yusuf's testimony. I  
4 don't know if the Court wants us to submit it or not.  
5 We provided a transcript to the other side.

6 MR. DIRUZZO: Well, your Honor, we are  
7 or we have ordered all the testimony from the first  
8 day, and we're going to be ordering all the testimony  
9 from this day as well. So obviously the record and  
10 transcripts are what they are.

11 THE COURT: Is it fair to assume that  
12 both sides would like to have the opportunity to  
13 present something in writing?

14 MR. DIRUZZO: Yeah, we would.

15 MR. DAVID: Yes, sir.

16 THE COURT: And do you require the  
17 transcript to do that?

18 MR. DIRUZZO: Exactly, your Honor, post  
19 findings of fact and conclusions of law.

20 THE COURT: Okay. We have very hard  
21 working court reporters who are overworked. There are  
22 three court reporters for the court, but Ms. Burke says  
23 -- I'm sorry -- says in two weeks she should be able to  
24 have that. How much time do you need after that?

25 MR. DAVID: Your Honor, I think another

1 week, ten days after we get the transcript we can get  
2 this done because then we can do a lot of work without  
3 it, but we obviously are going to need to punch things  
4 in.

5 MR. HARTMANN: That's acceptable.

6 THE COURT: So if we look out two weeks  
7 from now, so by February 22 both sides have the  
8 opportunity to present their arguments as to what was  
9 heard and what is to be done.

10 MR. DAVID: That's acceptable, judge.

11 MR. HOLT: It's acceptable. I just want  
12 to make sure. The transcript will be done in two  
13 weeks, that's around February 15th.

14 MR. HOLT: 14th.

15 THE COURT: 14th, 15th.

16 MR. HOLT: So then you are talking about  
17 trying to have the --

18 THE COURT: I thought that's what  
19 Mr. Hartmann was suggesting.

20 MR. HOLT: Okay. February 22nd. I'm  
21 sorry. I wasn't paying attention to --

22 THE COURT: Well, I know that two-week  
23 period you're going to use well anyway, and you don't  
24 need to wait for the transcript to put your legal  
25 arguments together and to gather the facts as you



1 recall.

2 MR. DIRUZZO: One more point, your  
3 Honor. Yesterday Mr. Holt was so kind as to provide  
4 Exhibit 7 to deposition transcript that we received and  
5 entered into evidence. And I made the mistake of  
6 forgetting to bring it today, so I'll just be filing it  
7 with the court.

8 THE COURT: I'm sorry. I didn't really  
9 follow that.

10 MR. DIRUZZO: The Exhibit 7 to  
11 Plaintiff's Exhibit 1, the deposition transcript had  
12 certain exhibits.

13 THE COURT: Oh, right, right, right.

14 MR. DIRUZZO: And Mr. Holt was so kind  
15 as to provide that document yesterday via e-mail and I  
16 just forgot to bring it out today, so I will just be  
17 filing it on paper with the court and get back to --

18 THE COURT: That's fine. That's the  
19 exhibit referenced in Plaintiff's Exhibit Number 1.  
20 The deposition transcript of Mr. Yusuf included Exhibit  
21 7 to that deposition.

22 MR. DIRUZZO: Exactly.

23 THE COURT: And that has been provided  
24 and will be added to the record and will be accepted as  
25 part of the evidence as a part of Exhibit 1.

1                   MR. HOLT: And if we can find somebody  
2 to get those exhibits, can we just submit them as well?

3                   MR. DIRUZZO: I have no problem with  
4 that.

5                   THE COURT: That's fine. It's better to  
6 have a more complete record than not. Okay. If there  
7 is nothing else, then we will adjourn.

8                   MR. HARTMANN: Thank you, your Honor.

9                   MR. DAVID: Thank you.

10                  MR. DIRUZZO: Thank you.

11                  (Hearing concluded at approximately  
12 11:40 a.m.)

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CERTIFICATE OF REPORTER

I, SANDRA HALL, RPR, Official Court Reporter II of the Superior Court of the Virgin Islands, Division of St. Croix, do hereby certify that I reported by machine shorthand, in my official capacity, the TRO Hearing in the case of *Mohammad Hamed v. Fathi Yusuf and United Corporation, SX-12-CV-370*, in said Court, on the 31st day of January, 2013.

I FURTHER CERTIFY that the foregoing 130 pages are a true and accurate computer-aided transcription of my stenotype notes of said proceedings.

I HAVE HEREUNTO subscribed my name, this 1st day of February, 2013.

**Sandra Hall, RPR**

Digitally signed by Sandra Hall, RPR  
DN: CN = Sandra Hall, RPR, C = US, O = Superior Court  
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Sandra Hall, RPR  
Official Court Reporter II

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