

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

MOHAMMED HAMED by His Authorized)
Agent WALEED HAMED,)
)
Plaintiff/Counterclaim Defendant,)
)
vs.) Case No. SX-12-CV-370
)
FATHI YUSUF and UNITED CORPORATION,)
)
Defendants/Counterclaimants,)
)
vs.)
)
WALEED HAMED, WAHEED HAMED, MUFEED)
HAMED, HISHAM HAMED, and PLESSEN)
ENTERPRISES, INC.,)
)
Additional Counterclaim Defendants.)

THE VIDEOTAPED ORAL DEPOSITION OF JOHN GAFFNEY

was taken on the 3rd day of April, 2014, at the Law Offices
of Adam Hoover, 2006 Eastern Suburb, Christiansted,
St. Croix, U.S. Virgin Islands, between the hours of
3:14 p.m. and 4:41 p.m., pursuant to Notice and Federal
Rules of Civil Procedure.

Reported by:

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Also Present:

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Hatim Yusuf, Interpreter
Kim Japinga
Waleed Hamed
Hisham Hamed
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Maher Yusuf
Fathi Yusuf

COLLOQUY

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E-X-A-M-I-N-A-T-I-O-N

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E-X-H-I-B-I-T-S

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6	Documents previously marked in the deposition of Maher Yusuf	10
7	October 5th, 2013 letter from Carl Hartmann III to Attorneys Nizar DeWood and Joseph DiRuzzo	58

JOHN GAFFNEY -- DIRECT

1 **THE VIDEOGRAPHER:** In the matter of Mohammad
2 Hamed v. Fathi Yusuf and United Corporation v. Waleed Hamed,
3 Waheed Hamed, Mufeed Hamed, Hisham Hamed and Plessen
4 Enterprises, Inc., in the Superior Court of the Virgin
5 Islands, Division of St. Croix, Civil Action No.
6 SX-12-CV-370.

7 My name is Josiah Wynans. I am the
8 videographer for today's proceedings. Our court reporter is
9 Cheryl Haase. Today's date is April 3rd. The deponent is
10 John Gaffney. And the time is --

11 **MS. CAMERON:** 3:14.

12 **THE VIDEOGRAPHER:** -- 3:14.

13 For the purpose of voice identification, I am
14 requesting that the attorneys present identify themselves at
15 this time.

16 **MR. HARTMANN:** Carl Hartmann for the
17 plaintiff.

18 **MR. HODGES:** Greg Hodges for the defendants.

19 **MS. CAMERON:** K. Glenda Cameron for
20 defendants.

21 **THE VIDEOGRAPHER:** Please swear the witness.

22 **THE REPORTER:** Would you raise your right
23 hand, please?

24

25

Cheryl L. Haase
(340) 773-8161

JOHN GAFFNEY -- DIRECT

JOHN GAFFNEY,

Called as a witness, having been first duly sworn,

Testified on his oath as follows:

DIRECT EXAMINATION

BY MR. HARTMANN:

Q. Good afternoon, sir. Could you state your full name for the record?

A. John Gaffney.

Q. And could you spell your last name?

A. G-A double F-N-E-Y.

Q. And do you use any middle initial or name?

A. F for Francis.

Q. Okay. And are you a resident of the U.S. Virgin Islands?

A. Yes.

Q. Okay. And are you currently employed?

A. Yes.

Q. Okay. Now, I'm going to ask you a series of questions today. If there's anything that you don't understand or you want me to repeat, please ask me.

Also, if you wanted to take any time off for a drink, to use the facilities or anything else, just let me know.

A. Okay.

Q. All right. And where are you employed?

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1 **A.** I'm employed with United Corporation Plaza Extra.

2 **Q.** Okay. And are you a -- are you an employee of
3 United Corporation, or Plaza Extra Supermarkets?

4 **A.** It's the same thing.

5 **Q.** Okay. And -- and do you do the financial and
6 accounting work for Plaza Extra?

7 **A.** Yes, I do.

8 **Q.** Okay. And do you -- do you claim any privilege,
9 legal privilege, with regard to testimony about your
10 communications with -- with officials of Plaza Extra
11 corporation?

12 Plaza Extra Supermarkets? I'm sorry.

13 **A.** Would you repeat that?

14 **Q.** Yes. Will you allow me to examine you with regard
15 to your communications with, for instance, Mr. Fathi Yusuf,
16 the head of -- of Plaza Extra Supermarkets in the presence
17 of his counsel?

18 **A.** I'm going to say yes.

19 **Q.** Okay. Did -- did you and counsel for Plaza Extra
20 Supermarkets have a discussion today before you came here?

21 **A.** Not today.

22 **Q.** No?

23 **A.** No.

24 **Q.** You didn't --

25 **A.** I mean, there was talk next door, but there was no

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1 real discussion, other than, Hi, hello, or how are you?

2 Q. Okay. And -- and did -- were you prepared at any
3 other time for this testimony?

4 A. Yesterday we spent about an hour together to --

5 Q. And who was there, please?

6 A. Well, Greg Hodges was there; Glenda was there. At
7 one point later on in the evening, but it became social,
8 Fathi Yusuf was there; Mike Yusuf was there; at some point
9 Yousuf was there, also; Nizar DeWood was there.

10 Q. Okay. And what was the subject of that
11 discussion?

12 A. They -- they just asked me if I had any questions,
13 and -- and, you know, we discussed a couple of things. They
14 had asked me a couple of things, and I had to refresh my
15 memory on some dates because I had my, you know, I was just
16 off by a couple of months on some dates.

17 Q. Uh-huh.

18 A. That's about all.

19 Q. Were you -- were you given any sample questions or
20 any sample answers?

21 A. Yes.

22 Q. Okay. Such as what?

23 A. Have trouble now.

24 Q. To the extent that you recall.

25 A. The -- the first question was why I was brought

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1 in. That's right.

2 Q. And what answer was suggested to you?

3 MR. HODGES: Objection.

4 MR. HARTMANN: I asked him the foundational
5 question.

6 MR. HODGES: You asked what -- what answer
7 was suggested.

8 MR. HARTMANN: I asked him whether any
9 questions or answers were suggested to him, my -- my leading
10 question.

11 MR. HODGES: No, you said what answers were
12 suggested to you.

13 MR. HARTMANN: Yes, I did. I laid the
14 foundation. I said to him, Were you given any questions or
15 suggested answers, and he said yes.

16 MR. HODGES: I don't recall the "suggested
17 answers" part.

18 MR. HARTMANN: I'll -- I'll ask it again.
19 What's the objection? I'm sorry.

20 MR. HODGES: Objection to the form of the
21 question.

22 MR. HARTMANN: Okay. Fine.

23 Q. (Mr. Hartmann) Were you given -- were you given
24 sample questions or suggested answers to those sample
25 questions?

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1 **A.** I was asked a question, I answered the question,
2 and then I was asked further questions. And frankly, to be
3 honest with you, upon further questions, I had my memory
4 refreshed.

5 **Q.** Okay. And -- and at any time were answers
6 suggested to you?

7 **A.** Not really, no.

8 **Q.** Okay. And when you answered, were -- were you
9 ever provided with prompts or other information?

10 **A.** No.

11 **Q.** Okay. And did you examine any documents in
12 preparation for your deposition?

13 **A.** I looked at some tax returns that I thought were
14 filed in May, and they -- turned out they were filed in
15 February. So that was one of the -- that was one of the
16 memory refreshers.

17 **Q.** Okay. And I'd ask you to take a look at the
18 documents that are marked Exhibit 6.

19 (Deposition Exhibit No. 6 was
20 marked for identification.)

21 **Q.** **(Mr. Hartmann)** Were these the documents that you
22 reviewed to refresh your recollections?

23 **A.** I just, I looked at the tops of the pages. I
24 wouldn't exactly call it a review, but yes.

25 **Q.** Okay.

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1 **A.** This is exactly it.

2 **Q.** And -- and what -- can you tell me just generally
3 what Exhibit 6 is?

4 **A.** Exhibit 6 is the --

5 **Q.** Take a second to look through all of that?

6 **A.** Okay. These are the copies of the tax returns for
7 the years 2002, '3, '4, '5, '6, '7, '8, '9, '10, '11 and
8 '12.

9 **Q.** And your -- your job position is what again? I'm
10 sorry.

11 **A.** I'm currently the controller.

12 **Q.** And tell me briefly what a comptroller (sic) does?

13 **A.** Controller essentially safeguards the assets,
14 and -- and, with integrity, puts in controls, and, you know,
15 presents financial statements to management that fairly
16 represents --

17 **Q.** Okay. And could you spell the name of your title?

18 **A.** C-O-N-T-R-O-L-L-E-R.

19 **Q.** Controller?

20 **A.** Controller.

21 **Q.** Okay.

22 **A.** It has optional spellings. There's a British
23 spelling that puts a P in there.

24 **Q.** Okay. And when were you hired for this position?

25 **A.** October 7th, 2012.

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1 **Q.** And very briefly, what is your academic
2 preparation for your position?

3 **A.** Well, I graduate from University of Florida with a
4 major in accounting in 1973, minored in computer science.
5 Went to work for Haskins & Sells, which is currently Deloitte
6 & Touche. I worked in the audit department for three-and-
7 a-half years, then I went out on my own. And I primarily
8 practiced in small business, and with a pretty heavy
9 emphasis on taxation.

10 **Q.** And you testified, did you not, in a preliminary
11 hearing in this case earlier this year?

12 **A.** Yes, in 2000 --

13 **Q.** I'm sorry. In 2013?

14 **A.** 2013.

15 **Q.** I'm sorry.

16 And the information with regard to your prior
17 employment that you gave there was all correct?

18 **A.** Yes.

19 **Q.** Yes. Okay.

20 And when you were -- when you were retained
21 to -- in the present position, were you hired to do
22 financial -- any financial work for United Corporation,
23 the -- the corporate entity, or were you hired to work on
24 the books and records of Plaza Extra Supermarkets?

25 **A.** As I said in a previous answer, it's really one in

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1 the same, because it's United Corporation doing business as
2 Plaza Extra.

3 Q. Okay. I believe in your -- your preliminary --

4 A. I think -- I think I need to interrupt at this
5 point, because I need to dispel a lie. I mean, there's --
6 there's a lie going around that there's a separate
7 partnership. There is no federal I.D. number for Plaza
8 Extra.

9 Q. Actually, there is.

10 A. It does business -- well, maybe there is now, but
11 when was it gotten? Okay?

12 The fact of the matter is, is that there's no
13 order stating that Plaza Extra is a partnership. All there
14 is is an opinion that gives rise to, you know, further
15 litigation. Fact of the matter is, is if you've gotten a
16 federal I.D. number now for Plaza Extra, you've done that
17 yourself, and I think it's a violation. I think it's a -- I
18 think it's unlawful.

19 Q. Okay. And -- and the --

20 So if, in prior testimony this week, Fathi
21 Yusuf testified there was a partnership, he would be
22 incorrect, is that correct?

23 A. No, it just depends on the definition that he uses
24 and -- when he says that to -- there's a partner involved.
25 Okay?

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1 Q. Okay.

2 A. But it's certainly not what's being rumored as
3 going around.

4 Q. But -- but the Judge also said that there was a
5 partnership, as well, didn't he?

6 A. He gave an opinion that there was, and I didn't
7 have to read beyond the first page of that to know that it
8 was an opinion that basically allowed for litigation to
9 continue. It was not an order.

10 Q. I see. And so you think that the Judge was wrong
11 in his opinion that there was a partnership?

12 A. No, I think there's some merits about a
13 partnership, but I -- I don't think it's the way it's
14 defined.

15 Q. Okay. I guess the question is this: We agree
16 that Plaza Extra Supermarkets sells grocery stores (sic) and
17 takes in money, do we not?

18 A. Sells groceries, yes.

19 Q. Yes. Groceries. Takes in money.

20 And that it has expenses, does it not?

21 A. Yes.

22 Q. Distinct and separate from that,
23 United Corporation rents property, does it not?

24 A. (Witness nods head.) Yes, that's one of its
25 functions.

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1 **Q.** Do you do the books, do you work on the financials
2 of United Corporation? For instance, when you were asked at
3 the preliminary injunction if you knew where the money from
4 a \$2.7 million withdrawal were, you said you had no idea;
5 that you hadn't worked -- you didn't work on the United
6 books.

7 Do you recall that testimony?

8 **A.** No, I do. I do see the United books, and in fact
9 they're incorporated into the overall financial statements.

10 **Q.** In the Sage 50 system that's -- that's used by the
11 company, are -- are the United financial -- the United
12 tenant account, for instance, referenced in that?

13 **A.** They are now.

14 **Q.** As of what date?

15 **A.** I don't know. Let me see when I put them in. I
16 know that what happened was -- oh, actually, I take that
17 back. I take that back.

18 They are in a combination company now,
19 because what I did was I set up separate accounting
20 departments in St. Thomas, at Plaza East and at Plaza West.
21 Then Iman was doing -- Iman did the, basically, the bank
22 analysis to come up with the journal entries to be able to
23 include the effects of the --

24 **Q.** But that's something new you've done now.

25 **A.** Yeah, I put that into a combination company.

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1 Q. Okay.

2 A. And I -- I specifically kept everything separate
3 so I could present it either way.

4 Q. Okay. So let me ask you a question. Maybe I can
5 clarify things.

6 The -- you are now looking at a computer, are
7 you not?

8 A. Yes.

9 Q. Okay. And do you recognize the program that's
10 running on the computer?

11 A. Yes, I do.

12 Q. And what is that program?

13 A. Sage 50 2014.

14 Q. And just basically please describe to me what Sage
15 50 2014 is?

16 A. Well, it's formerly known as Peachtree Complete,
17 and in 2014 they re-branded it, and it's a pretty
18 comprehensive, it's not a high-end accounting package, but
19 it's a -- it's a very, in my opinion, it's a very good
20 accounting package.

21 Q. Okay. And did you supply to me, as counsel for
22 the plaintiffs, the 2013 financials of Plaza Extra
23 Supermarkets, as distinct from United Corporation, in
24 this -- as three data files in this system?

25 A. Yes, I gave you the three data files for both --

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1 all three of the Plaza stores.

2 Q. Okay. And did those data files contain any
3 information about, say, the United Corporation tenant
4 account?

5 A. No.

6 Q. And was -- it was represented to me, was it not,
7 that the three data files that you supplied to me --

8 And what were those three files?

9 A. St. -- they were the operations of St. Thomas,
10 Plaza East and Plaza West.

11 Q. And was it represented that those three data files
12 were a true and accurate representation of the finances as
13 kept in realtime with regard to the Plaza Extra
14 Supermarkets' financials?

15 A. Yes.

16 Q. And were they a true and accurate --

17 A. They are true and accurate. Of course, you know,
18 for instance, I'll give you an example, at Plaza East
19 accounts payable tends to lag about sixty days behind. So,
20 I mean, you know, there are those little nuances, so what
21 happens is sometimes there are adjustments that occur long
22 after the fact. So they are subject to change.

23 Q. Okay. And at the time the documents were -- the
24 data files were provided to me, were there any notations or
25 other reservations about, such as the one you just

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1 mentioned?

2 **A.** Absolutely not. There were no -- there was no
3 limitations, but basically what happened was, as I had them,
4 I gave them exactly the way they were. There was nothing
5 changed. You know, the -- there were -- there were things
6 that I knew were lagging behind, just as what I mentioned,
7 and, you know, one of the things that lagged behind for a
8 long time was also the accounting for the securities, but
9 now that's pretty current.

10 **Q.** Okay. And do you also prepare tax forms for
11 the -- for Plaza Extra Supermarkets?

12 **A.** No, I don't.

13 **Q.** Do you prepare tax forms for United Corporation?

14 **A.** No.

15 **Q.** Do you provide data that -- is that incorporated
16 into the tax forms for United Corporation?

17 **A.** Yes, I do, just like any controller would. Just
18 like Margie did.

19 **Q.** And do you provide -- and do you provide data for
20 input into the tax forms for Plaza Extra Supermarkets'
21 income?

22 **A.** Yeah, I just pretty much answered that question,
23 yeah.

24 **Q.** Okay. And -- and in doing that, in keeping those
25 records, the records that you provided to me as being

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1 contemporaneous, was there any information about the
2 2.7 million? You provided -- excuse me. I'm sorry. Strike
3 that.

4 You provided to me both the 2012 and the 2013
5 financials, did you not?

6 **A.** Yeah, I provided the backups for them.

7 **Q.** Right.

8 **A.** And I don't --

9 **Q.** Explain to me what exactly is provided to
10 plaintiffs, when you say "the backups." You've made a
11 distinction between that and the program itself, and the
12 data itself?

13 **A.** Well, the backups are actually a -- a complete
14 audit trail of all the transactions that have occurred in
15 the system.

16 **Q.** Are they the exact same, when reconstituted --
17 strike that.

18 Is the term for converting a backup into a
19 working data file in the Sage 50 computer system
20 "restoration"?

21 **A.** Yes.

22 **Q.** Okay. And when a backup file is restored in the
23 Sage 50 computing system, does that create an identical
24 working copy to the live copy that's being used in the
25 stores?

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1 **A.** Yes. Yes, it does.

2 **Q.** Okay. And -- and how far behind the -- the live
3 system does it lag?

4 **A.** Well, the -- the longest lag is at Plaza East.
5 It's primarily the, you know, a -- a condition as a result
6 of an employee, a long-term employee that is slow to get
7 accounts payable processed. The swiftest one is Plaza West.
8 Accounts payable is typically entered within 24 to 48 hours.
9 There is some lag over at St. Thomas, but that's improving.

10 That's the primary lag. As I mentioned
11 before, there was a -- a pretty long-term lag in a few other
12 areas, especially shortly after the conversion. One of the
13 other areas that lagged behind was the accounting for the
14 securities transactions, primarily at Banco Popular. But
15 those are all current through December 31st of 2013.

16 And then, finally, one of the things that
17 lagged behind in the conversion was the establishment of
18 controls over accounts receivable, meaning the in-store
19 charges. The accounts receivable lagged behind because
20 in -- at the end of January, I essentially had a very key
21 person doing payroll over in St. Thomas who basically gave
22 notice with only three days -- three days' notice. And so I
23 was on a plane over there on the third day observing
24 payroll, and I -- I continued to do payroll myself for about
25 the first two to three months before I got people hired and

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1 trained.

2 **Q.** Okay. Now, let's talk about each of those lag
3 periods between the live working copies in the stores, and
4 the backup copy you supplied to plaintiff on a monthly
5 basis.

6 You said that the longest lag period was
7 Plaza Extra East. How long is the lag there?

8 **A.** I would say, right now, they probably still got
9 January open for accounts payable.

10 **Q.** So it lags by approximately, this is the first of
11 April, so --

12 **A.** Minimum 60 days, and -- and probably somewhere
13 between 60 and 90 days, and that's an improvement because it
14 was lagging six months.

15 **Q.** Okay. And at the time you produced the year-end
16 financials for 2013, which I believe you did on
17 February 5th -- excuse me -- January 5th, how long was the
18 lag then?

19 **A.** She was probably in, just starting October at that
20 point.

21 **Q.** Okay. So the backup copies that you supplied
22 to -- to me for transmission to the plaintiff at the time of
23 year end was approximately three months?

24 **A.** Approximately three months. And probably, if you
25 did that on January, if I gave you a backup on January, my

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1 guess is that you probably would have only had the
2 securities transactions through about August or September,
3 because I think I did all of the months through
4 December 31st sometime in January or February.

5 **Q.** Okay. So you're saying, if I -- I don't want to
6 put words in your mouth -- you're saying that with regard to
7 the backup copy that I received for the year ending of 2013,
8 the -- at least some of the accounts payable were back -- at
9 least three months out of due, and the securities accounts
10 were as much as five months out of due?

11 **A.** Perhaps as much as five months. I can't recall
12 exactly, but I usually sit down and do those several months
13 at a time because it's a -- a tedious process, and I gained
14 efficiency by doing three months each at a time.

15 **Q.** Okay. And in addition to the inherent lag, the
16 lag that exists on the day that you give them to me, every
17 day after that, they become one day more out of date, is
18 that correct?

19 **A.** Every day after that, they become more -- one day
20 closer to correct. Okay? Closer to in present time.

21 I, you know, it's April 3rd right now, and
22 I'm still trying to close 2013.

23 **Q.** Okay. Now, if I had access to the live system, I
24 would -- I would see the most recent version of that?

25 **A.** Yes, you would.

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1 Q. Yes, I would.

2 A. Yes.

3 Q. So by -- by using the backups, I'm actually months
4 behind?

5 A. It -- it varies. You could be. Accounts payable
6 could be. Like I said, right now, Mary is -- is posting
7 January accounts payable. So for all practical purposes,
8 December is finished at East. So if I -- if we're talking
9 about December 31st of 2013, those are pretty reliable
10 numbers. There are some adjustments pending. There were a
11 couple of things that, in my review, there were a couple of
12 things that I spotted that had to be worked. I brought
13 Humphrey over and he did three days' worth of work to
14 correct one thing that I spotted. And this morning I was
15 working on another thing that I spotted.

16 So there's still the potential for a few
17 minor adjustments to 2013.

18 **MR. HARTMANN:** Okay. Could I get a read-back
19 of my question, if you could?

20 Q. **(Mr. Hartmann)** If you could listen to her read
21 back my question and then answer it?

22 A. Okay.

23 Q. Appreciate it. Thank you.

24 **THE REPORTER:** "So by using the backups, I'm
25 actually months behind?"

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1 Q. (Mr. Hartmann) Is that correct?

2 A. In parts of it, sure. Yeah.

3 Q. Okay.

4 A. That would be true for East, in particular.

5 Q. Okay. And is there any way -- skip that.

6 And approximately, what I -- I meant when I
7 say it gets older every -- it gets more out of date every
8 day, is, you gave me the 2000 -- you gave me a monthly
9 backup for, let's say, February.

10 A. Uh-huh.

11 Q. And you gave that to me on what date?

12 A. Well, I've been trying to do a backup right at the
13 end of each month.

14 Q. Right.

15 A. And my -- my assumption being that by the end of
16 each month, I have -- the bank accounts have been
17 reconciled; the -- the sales has been reconciled, because at
18 that point, of course, we -- we have the gross receipts
19 taxes calculated and sent in for payment.

20 Q. Okay.

21 A. So essentially, you know, with regard to the
22 operational data, it's fairly complete.

23 Q. But I guess what I'm saying is this, that Sage 50
24 does not have, in the version of Sage 50 I have access to
25 that you supplied to me as backups that I restore, there's

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1 no way that when additional information is added after it's
2 been given to me, that additional information appears to me,
3 is there?

4 **A.** No, just only a new backup.

5 **Q.** Yeah. So every day that I use it for those thirty
6 days, it's another day out of date?

7 **A.** Yeah. Oh, yeah. I see what you're saying.

8 **Q.** Yes.

9 **A.** Yes. Okay.

10 **Q.** Okay. Thank you.

11 **A.** Now I understand, yeah.

12 **Q.** Okay. And could you explain to me, you said the
13 system uses three different data files. Could you explain
14 just basically what that's about?

15 **A.** Well, a decision was made early on to set up
16 separate accounting departments in each location. Prior to
17 my coming here, there was only one accounting department
18 over in St. Thomas. The operations of East and West were
19 rolled up in a series of about five journal entries in each
20 location. They totally lacked controls. It was simply a
21 bank analysis. They were being called bank reconciliations,
22 but they were nothing more than bank analysis, and the
23 income was being posted according to the deposits being made
24 to the bank. If a deposit didn't make it, go to the bank,
25 it didn't get reported as income.

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1 So, essentially, the decision was made to put
2 in a -- an accounting system in all three locations that
3 would have the same system of controls, and the -- the most
4 major thing that was implemented was the interface between
5 Point of Sale and Peachtree.

6 **Q.** So you said early on that you were brought in
7 pursuant to a court order, or something like that, to try to
8 fix what I think you described it as pretty much a -- a
9 total mess.

10 Would that be true?

11 **A.** Yeah, it was pretty -- it was a pretty good
12 description that it was a pretty total mess before.

13 **Q.** And you --

14 **A.** I'm not saying that it was -- it didn't have any
15 integrity. It did have integrity.

16 **Q.** Uh-huh.

17 **A.** It's just that it lacked controls.

18 **Q.** Okay. And was it accurate?

19 **A.** I'd say fairly accurate.

20 **Q.** Okay. And do you know where -- where the -- where
21 the accounting records were before -- you've given me 2012
22 and 2013, is that correct?

23 **A.** Correct, yeah.

24 **Q.** Okay. And do you have any idea where the
25 accounting records are for 2002 through 2011?

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1 **A.** Well, I know that there are accounting records
2 over in the warehouse at St. Thomas. I've been up there, --

3 **Q.** Uh-huh.

4 **A.** -- and I got tired of looking for things, because
5 I couldn't really get anything that was too cohesive.

6 Now, when I first came here, I was aware of
7 being able to get financial statements that dated back to
8 about 2005 and '6, but there was a hard drive crash, I
9 believe it was December 17th, and Margie portrayed to me
10 that she lost all her backups and everything in the process.

11 We restored the accounting system from a
12 backup that I had made on December 11th, after a great deal
13 of effort to try and get that backup made.

14 **Q.** And for what year did you restore it?

15 **A.** Well, the -- my backup was made on December 11th,
16 2012, and what happened was the crash occurred on the 17th.
17 I think by the 18th it was restored, and then we had to
18 reconstruct that week's work. And I was in Miami, or I was
19 in Florida at the time.

20 **Q.** I guess what I'm asking is, was it just 2012
21 financials, or did it go back? Would, for instance, 2006 be
22 on it?

23 **A.** There is some, there is some data in there.
24 There's some general ledger data that goes back beyond two
25 years. Sage maintains two years of detail, --

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1 Q. Uh-huh.

2 A. -- but there are some comparative numbers that --
3 that go back beyond that.

4 And in -- in the 2012 the backup that I gave
5 you, that contains -- that contains all of that information.
6 Nothing has changed, and that remains static right now,
7 because once 2012 was closed, I've kept those, and I've --
8 I've been diligent about making sure that those records stay
9 alive.

10 Q. Those are comparison numbers. Those aren't the
11 actual financial transactional records for years before
12 that, is that correct?

13 A. Yeah. I mean, if I might look in here.

14 Q. Certainly.

15 A. I think there's -- do you have the 2012s restored
16 in here?

17 Q. Yep.

18 A. Okay. I don't see the 2012s in here.

19 Q. Well, I -- I didn't bring it today.

20 A. Okay.

21 Q. It was brought from the CPA, so it's possible --

22 A. Okay. It seems to me, if my memory's correct, it
23 seems to me I'm able to get comparative information that
24 goes back to at least 2010.

25 Q. Okay.

JOHN GAFFNEY -- DIRECT

1 **A.** If I do some comparative financial statements, I
2 can get it at least through back to 2010.

3 **Q.** And your recollection is that the financial
4 records before 2010 are in a warehouse?

5 **A.** The -- I'm hoping that there are hard copies of
6 most of the records in the warehouse at St. Thomas. I did
7 look for a lot of them after the crash, when I was trying to
8 find things, but I -- I didn't have a great deal of success.

9 **Q.** Okay.

10 **A.** And I did find a -- spotty old backups on
11 computers, but -- and I had to get help from Sage to -- to
12 break through them, because they had old passwords and
13 whatnot on them. But I didn't get anything cohesive, like
14 I -- I had one old backup at East, and it was, you know, as
15 far as I was concerned, East and West were just using it to
16 process payroll and/or accounts payable, and it was being
17 used much like a word processor. There was no integrity
18 when it came to general ledgers or anything like that, or
19 anything that would feed into a financial statement.

20 **Q.** Okay. Now, in the -- let's use the 2013 year that
21 you supplied on January 5th, 2014.

22 You said, sort of off the bat, it -- it
23 lagged in certain areas, such as accounts payable and
24 securities for a couple of months. Beyond that, is there
25 any other major financial data related to the Plaza Extra

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1 Supermarkets' financials that do not appear in that
2 financial information that you gave me at year-end 2013?

3 **A.** We just recently reconciled the intra-company due
4 to/from accounts. We just got them tied down finally.
5 There tend to be some lags, for instance, St. Thomas makes
6 the -- the weekly income tax, the federal income tax that's
7 calculated from the payroll, St. Thomas actually makes that
8 deposit for both East and West, and it records an
9 intra-company due from adjustment. And then East -- it's
10 incumbent upon East and West to post the offset. They don't
11 always do it, --

12 **Q.** Okay. And when you say --

13 **A.** -- so that lags.

14 **Q.** -- federal tax, you mean FICA. You don't mean
15 federal estimated quarterlies.

16 **A.** No, it -- correct. It's not estimated quarterly.
17 I'm talking about the income taxes withheld from the
18 employee payroll checks.

19 **Q.** And where are the quarterly estimated taxes paid
20 from?

21 **A.** They're paid -- where are they paid from?

22 **Q.** Yes.

23 **A.** They're paid from the Plaza St. Thomas account.

24 **Q.** So if I looked in the Plaza St. Thomas account for
25 the fourth quarter of 2013, I would find the estimated

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1 federal quarterly payment?

2 **A.** They're not estimated, no. These are very exact
3 payroll tax deposits, because it's the money that's deducted
4 from people's payroll checks.

5 **Q.** I understand that. I'm asking a slightly
6 different question.

7 I understood that what you said was that the
8 FICA is paid out there. Then I asked you, where are the
9 quarterly estimated federal returns paid out of?

10 **A.** There aren't any.

11 **Q.** What do you mean, "there aren't any"?

12 **A.** United Corporation and Plaza Extra do not make
13 quarterly estimated tax payments, because they're not a
14 tax -- taxable entity.

15 **Q.** I see.

16 What were the approximate gross receipts of
17 the Plaza Extra Supermarkets in 2013?

18 **A.** 2013? They're just under a hundred million
19 dollars.

20 **Q.** Okay. And on a hundred million dollars, no
21 federal estimated payroll taxes were paid?

22 **A.** No.

23 **Q.** I mean, excuse me. Federal estimated income taxes
24 were paid.

25 **A.** No, as a matter of fact.

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1 Q. Okay.

2 A. United Corporation is --

3 Q. No, no.

4 A. -- an S corporation.

5 Q. Just -- no questions.

6 A. Okay.

7 Q. And in the past, has United Corporation paid the
8 estimated federal income tax for its distributees?

9 A. That's a good question. That -- yes, it has.

10 Q. It has.

11 A. Yes.

12 Q. And should it do that?

13 A. It's acceptable. It's commonly done.

14 Q. Is -- is it -- does it meet GAAP standards?

15 A. Sure.

16 Q. Okay.

17 A. For an S corporation, sure. Yeah.

18 Q. Okay. And what account were those estimated
19 federal income taxes paid out of in the fourth quarter of
20 2013?

21 A. What account were they paid out of? I think 2013.

22 Q. 2013?

23 A. Oh, there weren't any paid.

24 Q. Fourth quarter?

25 A. There weren't any paid in 2013.

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1 Q. Why is that?

2 A. Because there was no tax liability.

3 Q. Not even at the individual level?

4 A. Not even at the individual level.

5 Q. So on a hundred million dollars of gross sales,
6 there were no taxes paid?

7 A. Gross sales has nothing to do with income tax.

8 Q. No, I'm just asking the question?

9 A. That's right.

10 Q. You said there was a hundred million dollars of
11 gross sales, and no income taxes are due at the corporate
12 level, at the partnership level, or at the individual S
13 corporation shareholder level?

14 A. There were no estimated payments made as
15 distributions to the shareholder in the fourth quarter of
16 2013.

17 Q. How about in the third quarter?

18 A. Not in the third quarter or the second quarter.

19 Q. How about in the first quarter of 2014?

20 A. Yes, there were.

21 Q. Okay. And who made the determination that there
22 would be no federal estimated income tax payments made in
23 2000 -- the fourth quarter and third quarter in 2013?

24 A. Of course, I received copies of the tax returns,
25 and I also had privy to the estimated tax payments that were

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1 being made through distributions in the past, and I saw the
2 accumulation, and I questioned it, and a decision was made
3 to not make 'em.

4 **Q.** On your advice?

5 **A.** Uh --

6 **MR. HODGES:** Objection. Are you -- are you
7 talking about the tax returns, the --

8 **MR. HARTMANN:** Estimated federal income tax
9 returns, or estimated income tax returns for the third and
10 fourth quarter of 2013. I'm just asking him who made --

11 **MR. HODGES:** Of what?

12 **MR. HARTMANN:** Of 2013.

13 **MR. HODGES:** Of United Corporation?

14 **MR. HARTMANN:** Of United Corporation and S,
15 yes.

16 He said that none were paid from United
17 because it's an S. He said, normally United pays its
18 shareholders' income taxes. Normally it reports the
19 quarterly taxes. He said it wasn't done in the second and
20 third quarter of 2013, and I've now asked him, Who made that
21 decision?

22 **Q. (Mr. Hartmann)** You can answer.

23 **A.** Well, I was directed by -- by Joe DiRuzzo.

24 **Q.** By Joe DiRuzzo. And who was Joe DiRuzzo?

25 **A.** He's the attorney for the -- the Yusufs.

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1 **MR. HODGES:** I would object to any further
2 questions about attorney-client privilege, the tax returns
3 that have been filed, or quarterly tax returns that you are
4 mentioning.

5 **MR. HARTMANN:** What's the basis of the
6 privilege?

7 **MR. HODGES:** He's talking -- you're --
8 you're -- you've just elicited a communication between
9 DiRuzzo and Mr. Gaffney.

10 **MR. HARTMANN:** With regard to the Plaza Extra
11 Supermarket income. Mr. DiRuzzo -- a hundred million
12 dollars worth of income came into Plaza Extra?

13 **A.** Let me tell you what account they went in.

14 **Q. (Mr. Hartmann)** All I'm asking about is whether
15 income tax was paid on that?

16 **A.** The money is deposited into accounts that all
17 read, every one of them reads, United Corporation d/b/a
18 Plaza Extra.

19 **Q.** I understand that. I'm simply -- I'm not
20 asking --

21 **A.** So it's not Plaza Extra. It's United Corporation
22 that --

23 **Q.** I'm not asking with anything with regard --

24 **A.** Nothing's changed.

25 **Q.** -- to income that United Corporation makes from

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1 its tenant accounts, or any other rental accounts or
2 anything like that. I'm only asking about the hundred
3 million dollars of income that Plaza Extra Supermarkets
4 bring in, okay? On which you said is no income taxes paid,
5 and you said Mr. DiRuzzo advised you not to do it.

6 Did Mr. DiRuzzo -- strike that.

7 Did you personally, as the comptroller --
8 controller, excuse me -- ever have any discussions with the
9 Bureau of Internal Revenue about the fact that -- that, on a
10 hundred million dollars of income, no estimated quarterly
11 income tax was being paid?

12 **MR. HODGES:** Objection to answering that
13 question based on attorney-client/work product privilege.

14 **MR. HARTMANN:** Only asking him whether he had
15 a direct communication with BIR.

16 **MR. HODGES:** He -- Mr. -- he was engaged by
17 counsel, or he -- his company was engaged by counsel. He
18 was an employee working under the direction of Mr. DiRuzzo.
19 This is attorney-client/work product privilege, and he will
20 not answer.

21 **MR. HARTMANN:** I'm not -- I'm not asking
22 about that.

23 **MR. HODGES:** I'm not going to engage in a
24 debate with you.

25 **MR. HARTMANN:** I'm asking whether he had a

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1 conversation with a public official. Him personally.

2 **MR. HODGES:** You can answer that.

3 **MR. HARTMANN:** Okay.

4 **A.** Yes, I have.

5 **Q. (Mr. Hartmann)** Okay. And -- and you discussed
6 the fact that it wouldn't be paying those taxes?

7 **A.** Yeah, I'd say that came up.

8 **Q.** And which official was this?

9 **A.** It was Claudette Anderson.

10 **Q.** Okay. And approximately when did that
11 conversation take place?

12 **A.** Had a discussion with her probably in February of
13 this year.

14 **Q.** Would it be surprising to you that BIR has no
15 recollection or records that reflect any conversation about
16 taxes not being paid?

17 **A.** Would it surprise me if what?

18 **Q.** That BIR has no such records, nor do the people
19 have a recollection of those taxes, any arrangements or
20 discussions about the estimated taxes not being paid?

21 **A.** Why would they?

22 **Q.** I don't know. It would be odd to have a
23 discussion and for them not to recall it, wouldn't it? This
24 is -- this is how much money? What would the normal
25 quarterly taxes be?

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1 **A.** Well, the -- I mean, it's an interesting question.
2 Would it surprise me if they had no recollection of it?
3 It's not as if --

4 **Q.** No, that wasn't my question. I'm sorry. I asked
5 you, what are the quarterly taxes normally? The quarterly
6 estimated income taxes?

7 **A.** What I saw a long history of, was I saw a long
8 history of roughly 600 to -- 600,000, in aggregate, to maybe
9 a million dollars. Maybe even at 1.1 million.

10 **Q.** Per quarter?

11 **A.** Per quarter.

12 **Q.** Yeah. So it was -- it was somewhere between \$2.6
13 and \$4.2 million a year?

14 **A.** Uh-huh.

15 **Q.** Okay. And tell me -- tell me what your --
16 since -- tell me what you recall of the conversation with
17 her.

18 What you said, what she said?

19 **A.** Well, my -- my conversation surrounded notices
20 that I had seen that came from them that were erroneous.

21 **Q.** And -- and when was -- when was this again?

22 **A.** I want to say that the first notices that I got
23 were towards the tail end of 2013, and I questioned them,
24 and the response that I got was that they just hadn't
25 finished processing everything.

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1 **Q.** Okay. And -- and during that conversation, you
2 related to the BIR that -- that no estimated taxes had been
3 paid for the second quarter of 2013?

4 **A.** I believe --

5 **MR. HODGES:** Objection. Objection.
6 Attorney-client/work product privilege.

7 You don't need to answer that.

8 **THE WITNESS:** Okay.

9 **MR. HARTMANN:** Do you want to explain why?

10 **MR. HODGES:** No, I'm not going to --

11 **MR. HARTMANN:** Okay. That's fine.

12 **Q.** **(Mr. Hartmann)** And -- and what -- what else was
13 discussed during that conversation?

14 **MR. HODGES:** Objection. Attorney-client
15 privilege/work product.

16 **Q.** **(Mr. Hartmann)** Okay. Would it be fair to say
17 you're not going to tell me anything more about that?

18 **A.** That's fair.

19 **Q.** I just have to hear it from you.

20 **A.** Yeah, I would say that's fair.

21 **MR. HOLT:** Just to be clear, so that's --
22 that's an objection that any conversation with Claudette, a
23 public official that worked for IRB --

24 **MR. HODGES:** In the -- in the sense that he
25 was working on behalf of an attorney, gathering that

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1 information, yes.

2 **MR. HOLT:** Even though he was talking to a
3 public official?

4 **MR. HODGES:** Yeah.

5 **MR. HARTMANN:** Okay.

6 **Q. (Mr. Hartmann)** Okay. So are there -- are there
7 any other taxes -- first of all, every year, from 2002 to
8 2012, every quarter those estimated quarterly tax returns
9 were filed and paid, is that correct?

10 **A.** Yeah. I -- I mean, I saw records when I first
11 came here about quarterly estimated payments that were being
12 made. The first financial statements that I looked at, of
13 course, had distributions to shareholders, so I was looking
14 for details of -- of them, and eventually one thing led to
15 another. Sure.

16 **Q.** That's before the S conversion?

17 **A.** That was before the -- no, no. No.

18 **Q.** After the S conversion?

19 **A.** The S conversion's ten years old, at least.

20 **Q.** 1999?

21 **A.** 1999.

22 The -- no, I'm just talking about, when I
23 first came on board, I looked at the status of financial
24 statements, and they were lagging about eight months behind.

25 **Q.** Well, the tax returns that we looked at that was

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1 Exhibit --

2 **A.** Six.

3 **Q.** -- 6, thank you, those all reflect the fact that
4 this was an S corporation, that payments were made to
5 shareholders, and that United Corporation was paying the
6 taxes for them, is that correct?

7 **A.** It shows distributions to shareholders.

8 **Q.** Okay.

9 **A.** It doesn't show anything else.

10 **Q.** Okay. And -- and did United Corporation pay the
11 taxes for those individuals for those years, do you know?

12 **A.** United Corporation made distributions, and they
13 did make them directly payable to the Internal Revenue
14 Service. I did see copies of those checks.

15 **Q.** Okay. And did they make estimated payments during
16 that whole time?

17 **A.** Yes, for the most -- well, I think the estimated
18 payments started up, I can't remember exactly when. Not
19 during the entire time, but the estimated payments started
20 getting made, I think in 2005.

21 **Q.** Okay. And are you aware that on April 25th, 2012,
22 the Superior Court of the Virgin Islands issued a temporary
23 restraining order instructing Plaza Extra Supermarkets and
24 its parent, United -- or United Corporation, whatever the
25 relationship is, to not alter the means, methods, of -- of

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1 doing business?

2 **A.** 2012, or 2013?

3 **Q.** 2013.

4 Did I say '12? I'm sorry.

5 **A.** Yeah.

6 **Q.** Yeah, 2013.

7 **A.** 2013?

8 **Q.** April 25th, 2013?

9 **A.** I don't remember that specific, but I do remember
10 some -- some things that I read in -- in that time frame.

11 **Q.** Okay. And -- and was -- was the nonpayment of
12 estimate -- of these estimated federal taxes a change from
13 what had gone on before?

14 **A.** No.

15 **Q.** So there were periods previously when no estimated
16 taxes were paid?

17 **A.** There were periods where they were either up or
18 they were down, based upon the -- the needs for tax payments
19 to be made. But it's customary, it's customary not to make
20 estimated tax payments, if you're not making money.

21 **Q.** I thought you said they made a hundred million
22 dollars?

23 **A.** I -- you kept saying that, and I tried to correct
24 you.

25 **Q.** Oh, okay.

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1 **A.** The company only brings in gross revenue of a
2 hundred million. Many companies bring in a hundred million
3 dollars and spend 200 million, and they lose a hundred
4 million.

5 **Q.** Okay.

6 **A.** They not only don't have a tax liability,
7 sometimes they've got a refund pending.

8 **Q.** Okay. Was there ever a period, in all the time
9 that you know of, that the amount of estimated taxes in any
10 quarter was zero?

11 **A.** Yes.

12 **Q.** When?

13 **A.** Well, I -- I saw many periods before 2005 that
14 there were no estimated tax payments made.

15 **Q.** There were estimated payments made, or filed?
16 Reported?

17 **A.** There were no estimated tax payments made that I
18 could tell.

19 **Q.** But how about filed?

20 **A.** What's the difference?

21 **Q.** Well, the -- you can file a return saying that you
22 have a tax obligation, but not send a check in to the
23 government?

24 **A.** Well, estimated tax payments are one thing, and a
25 filing is another thing. They're two separate things.

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1 **Q.** Okay. And are there any other -- any other tax
2 items, such as the 2013 estimated income tax payments, that
3 either you or -- or Mr. DiRuzzo or United or Plaza Extra
4 Supermarkets have decided in the last 24 months to stop
5 paying?

6 **MR. HODGES:** Objection. Calls for
7 attorney-client/work product privilege.

8 **MR. HARTMANN:** I'm asking about their tax
9 filings.

10 **MR. HODGES:** You're asking what they decided
11 to do --

12 **MR. HARTMANN:** No, I'm not.

13 **MR. HODGES:** -- with counsel.

14 **MR. HARTMANN:** I'll rephrase it.

15 **Q.** **(Mr. Hartmann)** Are there any more tax filings
16 that have been customarily made, or tax payments that have
17 been customarily made, that have been altered in the last 24
18 months?

19 **A.** Well, the only other tax filings, and I do them, I
20 do the quarterly payroll tax filings.

21 **Q.** Okay.

22 **A.** That wasn't originally supposed to be the plan,
23 but I do them. And I -- what I do is I make sure all the
24 quarterly payroll taxes are paid. Those are -- that's FICA,
25 Medicare, federal, state un -- or VIESA, unemployment.

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1 Q. Okay.

2 A. So all those tax returns are timely filed, and --
3 and the taxes are all paid on those.

4 Q. How about Virgin Islands gross receipts tax?

5 A. Oh, the gross receipts, I do that too.

6 Q. Okay.

7 A. I forgot about that.

8 Q. And -- and those are paid more or less like they
9 have over the last --

10 A. Yes.

11 Q. -- five or ten years?

12 A. Very accurately so.

13 Q. Okay. Let me swerve off into a different area.

14 Do the -- you have in front of you one of the
15 open files for one of the stores.

16 Which store is it, please?

17 A. West; Plaza West.

18 Q. Okay. And is there anywhere in the, either that
19 one you're looking at, or in the other two that you supplied
20 me with, a list of all of the bank and securities accounts
21 of Plaza Extra Supermarkets or Plaza Extra -- or United
22 Corporation?

23 A. What they're --

24 Q. I'm sorry. That was compound.

25 First, let's ask -- ask, Plaza Extra

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1 Supermarkets. Are there -- is there a listing in there
2 somewhere of the bank accounts?

3 **A.** Yes.

4 **Q.** Okay. And just call up one -- one such bank
5 account, and tell me what it is?

6 **A.** Well, I'm -- for instance, I'll just go into the
7 bank reconciliations. I know what the account numbers are
8 because I made them standard between all the locations. The
9 operation account is 103, or 10300.

10 **Q.** Okay.

11 **A.** There is a special payroll account over at
12 St. Thomas, that's 10350.

13 **Q.** When you say "special payroll account," what does
14 that mean?

15 **A.** It's a separate account. The other two stores
16 combine their operation and payroll accounts together.

17 **Q.** Okay.

18 **A.** And then -- then there's a credit card deposit
19 account, which is 104. And then there's the TeleCheck
20 account, which is 105.

21 **Q.** Okay. And -- and now can you look in that and
22 tell me what the account number is for any other non-Plaza
23 Extra United account? In other words, the tenant account or
24 any other account that United has that is not a Plaza Extra
25 account?

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1 **A.** No, there's a separate database for the tenant
2 account.

3 **Q.** But that's not something that's been supplied to
4 me, and that's not kept in the regular course of the Plaza
5 Extra account, correct?

6 **A.** Correct.

7 **Q.** Okay. Okay. Other than the accounts that are
8 listed in the three files that you gave me -- you know which
9 three files I'm talking about? The year-end 2013?

10 **A.** Uh-huh.

11 **Q.** Are there any other bank accounts that -- that
12 contained funds that come from Plaza Extra Supermarkets that
13 are not in that database?

14 **A.** I don't think so, because that's what the controls
15 are for.

16 **Q.** That would be good.

17 **A.** That would be good. Yeah.

18 There aren't any. No, there aren't any.

19 **Q.** Okay.

20 **A.** The controls are there for that purpose.

21 **Q.** And -- and are funds ever transferred from any
22 Plaza Extra bank account that is not reflected as an
23 outgoing transaction in the three files that you gave me for
24 the year 2013?

25 **A.** Correct, yes.

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1 Q. The answer is no?

2 A. The answer is, no, there are not. There are no
3 funds that get transferred out. Everything is -- there's a
4 lot of integrity in these.

5 Q. Okay. And as long as we're in a discussion about
6 integrity, we've heard a lot of testimony about large
7 amounts of money being kept in safes.

8 Is that still a practice?

9 A. Yeah, as far as I can tell, it is, yes.

10 Q. (Laughing). Okay.

11 A. I'm -- I'm -- I see the people going in and out of
12 the cash room. I -- I will, yeah, I will say that I have
13 left those -- those numbers static.

14 Q. By "static," it's don't ask, don't tell?

15 A. Meaning it's -- no. In other words, what I did
16 was, when I came on board initially, I said, How much does
17 each register, what is the fund? You know, one store it was
18 \$93 or something, another store it was \$115. How many
19 registers do you have? We have 23. I multiplied it out,
20 that was the register fund. How much does the -- the girl
21 in the cash room has her own, what we call petty cash, but
22 it's not. It's basically, it's a head teller fund. And
23 then there's the safe fund, and I -- I must say, most of the
24 cash funds are mostly controlled by the -- the Hameds in
25 each of the stores.

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1 **Q.** Okay. When you say they're controlled by the
2 Hameds in each of the stores, do you -- are you involved in
3 that procedure at all?

4 **A.** No.

5 **Q.** Okay.

6 **A.** I -- I was involved in the cash room procedures as
7 far as the interface between the POS, the Point of Sale
8 system, and -- and, you know, making sure that everything
9 was recorded and controlled in the Sage account.

10 **Q.** Okay. Do you account in any way for money in or
11 out of the cash room?

12 **A.** No, I have not. And I haven't done any surprise
13 cash counts. That was something that was -- that was
14 planned, but it's just, we're just not at that point yet.

15 **Q.** Okay. And you've said that you were directed to
16 set up a more -- you didn't use the word secure system.

17 **A.** Controls.

18 **Q.** A more controlled system.

19 **A.** Uh-huh.

20 **Q.** Who directs you in the doing of that?

21 **A.** No one. I do it.

22 **Q.** Okay. Who do you take your instructions from?

23 **A.** I don't get any instructions. I came in here, I
24 was -- I was the one who figured it out. The POS,
25 basically, the POS is a function of all the work being done

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1 at the cash registers. What happens is it rolls up into an
2 end of day. We have issues, you know, in St. Thomas in
3 particular, I've got a very complex system of tracking
4 batches that don't close out at the end of the day. I could
5 have, at the end of any given day, there could be \$8,000 in
6 shortages for no other reasons than the batches didn't close
7 out on the machines, and then the next day it might be 7,000
8 over, or 9,000 over. And what we do is we monitor that --
9 that rise and fall.

10 **Q.** Okay.

11 **A.** So that's -- that's an existing issue. I've got
12 Humphrey challenged to keep trying to improve that. It's
13 not nearly as bad over in the two St. Croix stores.

14 **Q.** Why is that?

15 **A.** Not sure. We -- we think it's Banco Popular, but
16 of course they argue. But I -- it's -- it's mostly
17 hardware. I think it's mostly a hardware issue. It could
18 be some people issue. It could be a lack of diligence on
19 the part of the supervisory personnel at the end of the
20 night to really ensure that these -- these credit card
21 machines are batched out.

22 **Q.** Is there any reconciliation between -- between POS
23 and -- and overall funds to identify the amount of money
24 that isn't going through the system?

25 **A.** Yes, there is. Every month I do -- I do a sales

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1 reconciliation, and that's my ultimate control, and that's
2 where the gross receipts tax returns are prepared from. So
3 that's the ultimate control.

4 I'll give you an example, in October --

5 **Q.** Before you go on, before you give me an example,
6 so are you saying that the gross receipts is computed on
7 POS?

8 **A.** Yes, it is.

9 **Q.** Okay. And so -- so any transactions that go on in
10 the cash room would be -- would still be captured in POS?

11 **A.** The -- yeah, the --

12 **Q.** Not the transactions themselves, but the --

13 **A.** Yeah, the cash room -- the cash room is
14 responsible for providing all of the details of the action
15 that went on in the store that day. So in other words, if
16 there was a hundred thousand dollars in sales, and 29,000 of
17 it was cash and -- and 75,000 was various credit card types
18 of activities, and another 10,000 or whatever was WIC or you
19 name it, we get all the details of that.

20 So essentially, the sales figure is the
21 credit, and then I got to find a whole bunch of debits that
22 add up to that credit.

23 **Q.** Okay. And -- and to access the Sage 50 system
24 that you use to keep this thing, each of the separate stores
25 has a license for a certain number of users, is that

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1 correct?

2 **A.** Yeah.

3 **Q.** And how many licenses does it have in each of the
4 stores?

5 **A.** Five.

6 **Q.** Okay. And who have the -- who have the passwords?
7 Who are the people that have those passwords?

8 **A.** Each person who has got an account.

9 **Q.** And who are the present account holders in each
10 store?

11 **A.** Well, the gen -- there's three generic -- there's
12 actually four generic -- actually, I take it back. There's
13 five generic user logs in -- in each location. I don't
14 allow the use of names. So there's payroll clerk, accounts
15 payable clerk, assistant, controller, and then admin.

16 The two -- the two passwords that were
17 consistent between -- between the locations were controller
18 and admin.

19 **Q.** Okay. And those are the names of the accounts, or
20 the passwords on the accounts?

21 **A.** Those are the names of the accounts.

22 **Q.** Okay. And -- and to use the account, you need not
23 only the name of the account, but also a password, is that
24 correct?

25 **A.** Correct, yeah.

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1 Q. Okay. And who has presently -- which store are
2 you most familiar with?

3 A. I'm familiar with all three of the stores, but I
4 mean --

5 Q. Pick one.

6 A. West.

7 Q. Tell me who --

8 A. I -- I -- I do most of my work at West, so I'm in
9 their live database every single day.

10 Q. Okay. And who, for -- for each of those accounts,
11 who has the passwords?

12 A. Well, for instance, Myra is the payroll clerk, so
13 she's got her own password.

14 Q. Okay.

15 A. I don't know what it is. As admin, I can go in
16 and I can reset her password if she got hit by a car or if
17 she forgot it.

18 Q. But you don't know it?

19 A. I don't know it.

20 Q. So you couldn't actually transact on it.

21 A. I can't actually log in with her I.D., no. I
22 cannot do that, no.

23 Q. And -- and how many people have access to that
24 password?

25 A. Just Myra.

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1 **Q.** Okay. And who's -- what's the second one?

2 **A.** Lisette, of course, is accounts payable.

3 **Q.** Okay.

4 **A.** West is the only one where we don't have, quote,
5 unquote, somebody assigned to a system. Although recently,
6 I assigned Humphrey over in St. Thomas the controller
7 password, or the controller account, so he can get into all
8 three locations. I let him set up his own password.

9 **Q.** Does anybody have that besides him?

10 **A.** No.

11 **Q.** Do you audit the pass -- use of the password?

12 **A.** I don't really know what auditing a password would
13 be.

14 **Q.** Do you have a log-in, a log-out, that the user
15 checks to see if they in fact have been all those logs in
16 and logs out?

17 **A.** I have the admin password, so all I -- basically,
18 the admin password is the highest level password.

19 **Q.** I understand that, but, for instance, you said
20 only Humphrey has Humphrey's password?

21 **A.** Yeah, only Humphrey knows his passwords.

22 **Q.** Okay. And when Humphrey logs in and logs out, is
23 there a control sheet generated to make sure Bob Smith isn't
24 logging in and logging out?

25 **A.** I don't get it.

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1 Q. Okay.

2 A. I don't understand the question.

3 Q. How do you know that someone other than Humphrey
4 isn't using Humphrey's password?

5 A. Oh, that's a good question. If -- if Humphrey
6 gave his password out, yeah, somebody could --

7 Q. Or if someone saw it over his shoulder?

8 A. Somebody theoretically could, yeah. Somebody,
9 theoretically, could, if they had his password, they could
10 do it.

11 Q. Okay. So anybody could be using those passwords?

12 A. Well, there's a certain amount of integrity that
13 you expect. I will tell you that Humphrey, Humphrey was a
14 nice surprise. He was -- he was a good find.

15 Q. And I'm not --

16 A. And he's a pretty high-integrity guy.

17 Q. I'm not suggesting he's not, --

18 A. Yes.

19 Q. -- but I thought Chase was high integrity, but
20 they called me up and told me that my password had been
21 hacked and --

22 A. Okay.

23 Q. -- so I'm simply saying, somebody could have
24 watched him over --

25 A. Yeah, somebody could always do that. I, to be

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1 honest with you, I haven't imposed like changes to passwords
2 every 90 days.

3 Q. Okay.

4 A. And I know some people do that, but --

5 Q. You were telling me who else had accounts and
6 passwords?

7 A. What's that?

8 Q. Who else has accounts and passwords?

9 A. Well, I mean in each of the stores --

10 Q. No, no, you were telling me specifically about
11 West?

12 A. West. Just Lisette. Just Lisette.

13 Q. Right.

14 A. And as I said, the West is the only one that
15 the -- doesn't have an assignment of assistant.

16 Q. Okay.

17 A. At East, at East --

18 Q. And -- and did you receive a request from
19 Mr. Hamed, Mohammad Hamed, for a password?

20 A. No.

21 Q. Did you receive a request from me, as Mr. Mohammad
22 Hamed's attorney, for a password?

23 A. Yes, I did.

24 Q. Did you receive a request from Shawn Hamed for a
25 password for his father?

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1 **A.** Probably, yeah.

2 **Q.** Did you receive a request from Wally Hamed for a
3 password for his father?

4 **A.** I don't remember getting one from Wally, but
5 maybe.

6 **Q.** Okay. And -- and do you know who Mr. Mohammad
7 Hamed is?

8 **A.** Yes, I do.

9 **Q.** And who is he?

10 **A.** Well, he is the father of the -- the sons here,
11 and he is a -- a person who worked with Fathi Yusuf for many
12 years.

13 **Q.** Okay. And do you recognize him as a, under the
14 Court's order, a partner in Plaza Extra Supermarket, who the
15 Court has ordered you to give equal access to with regard to
16 this system?

17 **A.** I'd like to see the court order for equal access.

18 **Q.** You -- you have not been shown that?

19 **A.** I've not been shown that.

20 **Q.** You've not been told that there's a court order --

21 **A.** No.

22 **Q.** -- for equal access?

23 **A.** No.

24 Well, what I saw was -- was a court opinion,
25 but -- and then I saw the order with regard to the

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1 co-management of the -- the co-management of the operation.

2 **Q.** You did not see the order that says that there's
3 supposed to be mutual access?

4 **A.** I don't recall seeing that.

5 **MR. HARTMANN:** Okay. The court re -- the
6 videographer has to go off.

7 **THE WITNESS:** Okay.

8 **THE VIDEOGRAPHER:** Going off record at 4:13.
9 (Discussion held off the record.)

10 **THE VIDEOGRAPHER:** Going back on record at
11 4:15.

12 **Q. (Mr. Hartmann)** Okay. I'm going to hand you a
13 document that's been marked --

14 Just to confuse things, what's the next one
15 in sequence? Did we use 6?

16 **MS. JAPINGA:** Uh-huh.

17 **MR. HARTMANN:** Seven.

18 (Deposition Exhibit No. 7 was
19 marked for identification.)

20 **Q. (Mr. Hartmann)** Exhibit 7.

21 What I've handed you is an October 5th, 2013
22 letter from myself to Attorneys DeWood and DiRuzzo.

23 Were you ever given a copy of this letter, do
24 you know?

25 Take a minute and look it over.

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1 **A.** You're talking, starting with this Page 1 here?

2 **Q.** Yeah. Just take a look --

3 **A.** There's 40 pages.

4 Yeah, I haven't seen this, no.

5 **Q.** No, you have not seen this letter?

6 **A.** (Witness shakes head.)

7 **Q.** No?

8 **A.** I don't think so, no.

9 **Q.** Okay. Turn, if you would, to Page 22, and look
10 down two-thirds of the way down the page where I recite to
11 them part of the Court's order. This is a request from me
12 to them for, among other things, passwords to the system.

13 Would you say you never -- this was never
14 transmitted to you, right?

15 **A.** Okay. Where do you see passwords?

16 **Q.** No, no. No, no. No. I'm -- I'm just saying, you
17 said that you didn't see this letter, right?

18 **A.** I haven't seen this, no.

19 **Q.** All right. Okay. So it says, No. -- No. 2, it
20 says, the next part of the Court's clarification ordered
21 that, Mutual access of all sensitive financial data records
22 and financial statement shall be permitted according to the
23 process to be determined by the parties. Okay?

24 Do you see that?

25 **A.** Yeah.

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1 **Q.** Okay. So did -- did you establish -- have you
2 been asked by me, and has Attorney Wood (sic) conveyed my
3 request to you to provide these passwords?

4 **A.** I've been asked --

5 **Q.** Pursuant to the mutual access?

6 **A.** -- I've been asked by you.

7 **Q.** Yes.

8 **A.** But where does it say that that has to be done?

9 **Q.** Well, that's the Court's order?

10 **A.** What?

11 **Q.** Court's order?

12 **A.** Yeah, but where does it say that you -- you get
13 passwords? I -- I don't even get the passwords of the
14 people that were -- that I set up as users.

15 **Q.** You mean if -- if the owner of the company came to
16 you and said, Give me the password, you wouldn't do it?

17 **A.** You know, in my previous years, there was an IT
18 department and there was a key -- there was a key person at
19 the top of the IT department that kept in a secure safe the
20 admin password to the system. It's not normally given out,
21 not only to the owners, but it is kept as a secure thing.
22 And I have done that part, but Mike doesn't have access. No
23 one in the Yusuf family or anybody goes in except for
24 accounting personnel.

25 **Q.** But -- but if Mr. Yusuf came and --

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1 **A.** If I gave you my password, you could go in and you
2 could change something and -- and -- and say that I did.

3 **Q.** That's true, but you could give me an account,
4 couldn't you?

5 **A.** Yeah.

6 **Q.** And you said to me, in fact, in an e-mail, that
7 you were going to give me a password --

8 **A.** No, I didn't.

9 **Q.** You didn't?

10 **A.** No, I said I considered giving it, but I had to
11 give some thought to it.

12 **Q.** Oh, I see.

13 And did you say that you were going to get a
14 license for a -- the reason that you weren't giving me a
15 password was because there already five passwords, and you
16 would have to wait until you got the next upgraded version
17 in 2014?

18 **A.** I -- I've said that we were considering upgrading
19 to Quantum, which -- which didn't have the five-user
20 limitation.

21 **Q.** Okay.

22 **A.** And if so, I wouldn't -- for instance, you've got
23 an auditor -- I've set up a user account called auditor. If
24 there were a sixth, if there were a sixth license available
25 in each of the stores, theoretically, you could get them

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1 real time. Now, I have a problem with that, people outside
2 the accounting department having real-time access to it. I
3 have a personal problem with that.

4 **Q.** I understand that, but if Mr. Fathi Yusuf came up
5 to you and said to you, I want my password, would you tell
6 him no?

7 **A.** I would say no, yes.

8 **Q.** You would say he couldn't have it?

9 **A.** I would say no, and --

10 **Q.** The owner --

11 **A.** -- he knows it.

12 **Q.** -- the owner of the company --

13 **A.** He would know.

14 **Q.** -- would not get a password?

15 **A.** I would basically provide for the secure -- secure
16 transition of that, if I were leaving, but I would say no to
17 him. And he knows it.

18 **Q.** Okay.

19 **A.** He knows I wouldn't.

20 **Q.** And if -- and if Mr. Mohammad Hamed or his lawyer
21 or his agent came up to you and said, I want that password,
22 would you say no to him?

23 **A.** (Witness laughing). Well, let's put it this way:
24 I would -- I would consider setting up a user password for
25 non-accounting personnel for view-only access.

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1 Q. Will you do that now?

2 A. I would do that, yeah, with a sixth license. If
3 we upgrade to Quantum, I would certainly do that. And we've
4 talked about it some more recently.

5 Q. Okay. So will you provide that to your attorney
6 and have him provide that to me?

7 A. Well, you already have a user log-in as auditor.
8 Unfortunately --

9 Q. No, I mean on the live system?

10 A. Yeah. Unfortunately, I have to deactivate it to
11 open up, so that the people can go in daily to do their
12 work. So what happens is, I've got a sixth -- I've got a
13 sixth user set up, but I have to deactivate it because in
14 order to activate auditor, for instance, I have to
15 deactivate somebody else's.

16 Typically what I've done, when I've made
17 those backups, I've deactivated controller.

18 Q. Okay.

19 A. Okay? And I activated auditor, so that you had
20 access.

21 Q. Would you set it up --

22 **MR. HODGES:** Objection. This is an
23 opportunity for you to ask questions about historical
24 facts, --

25 **MR. HARTMANN:** No, it isn't.

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1 **MR. HODGES:** -- not for you to ask the
2 witness to do things.

3 **MR. HARTMANN:** Not at all. He's the
4 control -- controller, and I'm asking him what he will do.

5 **Q. (Mr. Hartmann)** Will -- will you set up such an
6 account for me that -- that allows the controller account to
7 be deactivated at certain times during the day or week so
8 that live access can be obtained during that time? Supply
9 that to your counsel for them to give it to me.

10 **A.** I don't know. I mean, you know, I -- I have to --
11 I have to give some thought to that, because, of course, you
12 know, there's -- there's implications of doing so.

13 **Q.** What are the implications --

14 **A.** I mean, the implications --

15 **Q.** -- of gaining live access if it's read-only?

16 **A.** If, for instance, I knew that your access wasn't
17 intended to or going to disturb the -- the accounting
18 process, I would be inclined to do so, yes.

19 **Q.** Okay. But a read-only account would not disturb
20 the accounting process.

21 **A.** Not in and of itself, no.

22 **Q.** Okay. So will you create such a -- an accounting
23 password?

24 **MR. HODGES:** I would object to -- to -- to
25 asking this witness to do -- if you want to ask him a

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1 question about what he knows, do it. This is not an -- an
2 opportunity for you to ask for him to do things.

3 **Q. (Mr. Hartmann)** Okay. You can answer.

4 Will you set that up and give that to your
5 counsel?

6 **A.** At this point, I -- I'm -- I -- I'm just going to
7 say, no, I won't.

8 **Q.** Okay.

9 **A.** I won't.

10 **Q.** That's fine.

11 But you admit that there would be no
12 functional problem created by, in the system, created by
13 read-only access?

14 **A.** Not in and of itself. My experience has been with
15 providing data, though, that there's been repercussions. So
16 my experience has not been good with -- with giving things
17 too rapidly.

18 **Q.** So your only -- your only objection would be that
19 you don't want the -- the other partner to have the data.

20 **A.** No, no, it's not that at all. I don't mind the
21 other partner having data. What I do mind is that giving
22 them data, then what they do is they take that data and they
23 dog the people and prevent them from getting the job done.
24 And I've had that happen time and again, to a point where I
25 don't want to give them the data because I don't want them

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1 going to other personnel and dogging them about something
2 and sending them off on a wild goose chase.

3 **Q.** But that isn't affecting the financ -- the actual
4 accounting.

5 **A.** Yes, it is. It prevents the work from being done.
6 We had a tremend -- this is a hundred million dollar
7 company, in case you want to know.

8 **Q.** No, it's not.

9 **A.** And -- and you know what? It's a --

10 **Q.** It's not making any money.

11 **A.** It's a hundred million dollar operation.

12 **Q.** No, no, no.

13 **A.** It's a hundred million dollar operation.

14 **Q.** It's not going to make a cent.

15 **A.** And let me tell you something --

16 **THE REPORTER:** Wait, wait, wait, wait.

17 **A.** It normally takes a team of people to do it.

18 **THE REPORTER:** Just a minute. Just a minute.

19 If I have my hands off the machine, don't
20 talk.

21 **THE WITNESS:** Okay.

22 **MR. HARTMANN:** Excuse me for one second.

23 (Respite.)

24 **MR. HARTMANN:** Let's go back to Exhibit 6,
25 and even though these are the tax returns for the years 2002

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1 through 2012, when were they filed in actuality?

2 **A.** Well, they're date stamped February 11th, 2013.

3 **Q.** **(Mr. Hartmann)** Okay. And were you with -- you
4 were there on February, on that date?

5 **A.** Yes, I was.

6 **Q.** Okay. And did you participate in the completion
7 of these documents?

8 **MR. HODGES:** Objection.

9 **A.** I had --

10 **MR. HODGES:** Attorney-client privilege/work
11 product. Instruct him not to answer.

12 **MR. HARTMANN:** I'm only asking whether he --

13 **MR. HODGES:** I'm not going to argue with you
14 about that.

15 **MR. HARTMANN:** Okay.

16 **MR. HODGES:** You can ask another question.

17 **MR. HARTMANN:** That's fine.

18 **Q.** **(Mr. Hartmann)** You're not going to answer?

19 **A.** Right.

20 **Q.** Okay. Did you supply any of the data that went
21 into doing the tax returns?

22 **MR. HODGES:** Objection. Attorney-client/work
23 product privilege. Instruct him not to answer.

24 **Q.** **(Mr. Hartmann)** Okay. Did you see these tax
25 returns after they were filed?

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1 **A.** Yes.

2 **Q.** Did you review them after they were filed?

3 **A.** Yes.

4 **Q.** Are you familiar with them?

5 **A.** Pretty much.

6 **Q.** Do they reflect that one-half of the net profits
7 of -- of the Plaza Extra Supermarkets, that 100 million,
8 approximately \$100 million a year of income, that the net
9 profits generated by that \$100 million a year is the -- is
10 ascribable to or is the property of Mohammad Hamed?

11 **A.** No.

12 **Q.** Okay. Can you explain to me why that is?

13 **A.** Yeah. Because they've been filed consistently the
14 way they've been filed since as far back as I've been able
15 to tell.

16 **Q.** Okay. But -- but if he is, in fact, entitled to
17 one-half of the net profits, that should be listed in those,
18 shouldn't it?

19 **A.** It's not listed in them.

20 **Q.** It's not listed?

21 **A.** It's not listed in them.

22 **Q.** But if he is entitled to one-half of the net
23 profits from that income, he should be listed.

24 **A.** Well, of course, that's your assertion. That's
25 your question. I don't think that -- I don't think the --

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1 the question is quite an accurate question.

2 **Q.** Well, I will represent to you that both Mr. Fathi
3 Yusuf and United Corporation, testifying separately, have
4 said that there is absolutely no dispute, none whatsoever,
5 that he is entitled to one-half of the net profits generated
6 by Plaza Extra Supermarkets from the years 2002 to 2012. I
7 will represent that to you as a fact. You may take that as
8 a fact in my next question.

9 If that is a fact, should that have been
10 listed on these tax returns?

11 **MR. HODGES:** Objection. This is not an
12 expert deposition. You -- there's been no arrangements for
13 that.

14 **MR. HARTMANN:** There's no distinction between
15 an expert and non-expert testimony.

16 **MR. HODGES:** You're asking for his opinion.

17 **MR. HARTMANN:** I can ask him for his opinion.
18 He's the comptroller of the company. That's all he ever
19 gives.

20 **Q. (Mr. Hartmann)** You can answer. You can answer.

21 **MR. HODGES:** No, I'm -- I'm instructing him
22 not to answer, based on attorney-client privilege/work
23 product.

24 **MR. HARTMANN:** What attorney-client
25 privilege?

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1 **MR. HODGES:** I'm not going to argue with you
2 about it.

3 **MR. HARTMANN:** Okay.

4 **Q. (Mr. Hartmann)** Did you -- the meeting that you
5 had with the -- that you described earlier with the Bureau
6 of Internal Revenue --

7 **MR. HARTMANN:** Let me just clarify the
8 objection. Are you telling me I can't examine him about
9 those -- those -- those tax returns?

10 **MR. HODGES:** I'm not -- I -- I will object
11 based on whatever question you have.

12 **MR. HARTMANN:** Okay.

13 **Q. (Mr. Hartmann)** Can you point to me anywhere in
14 those tax returns where it says that it mentioned Mohammad
15 Hamed, or any -- any profits being distributed to him?

16 **A.** No.

17 **Q.** Okay. If he, in fact, was entitled to one-half of
18 the profit, should that have been listed in those returns?

19 **MR. HODGES:** Same objection I had a moment
20 ago.

21 **Q. (Mr. Hartmann)** Okay. In those returns, does it
22 reflect that all of the gross -- all of the profits
23 ascribable to the gross income of Plaza Extra Supermarkets,
24 all of the net profits from that -- from those sales were,
25 in fact, ascribed to and therefore distributed among, the

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1 shareholders of United Corporation?

2 **MR. HODGES:** Same objection.

3 **MR. HARTMANN:** You're directing him not to
4 answer on the basis --

5 **MR. HODGES:** Yes.

6 **MR. HARTMANN:** -- of privilege?

7 **MR. HODGES:** Yes.

8 **MR. HARTMANN:** Okay.

9 **Q. (Mr. Hartmann)** Did the -- you're familiar with
10 the documents that were filed publicly. You've said, in
11 those, did any person other than the shareholders of
12 United Corporation pay any income taxes related to the gross
13 sales of Plaza Extra Supermarkets, or the net profits
14 thereof?

15 **A.** I don't have any knowledge of that.

16 **Q.** You can't tell from looking at those who paid it?
17 Who paid the taxes?

18 Aren't there distribution forms in there?

19 **A.** No.

20 **Q.** There aren't?

21 **A.** No. There're K-1s that report distributions to
22 the seven, to the shareholders.

23 **Q.** Okay.

24 **A.** Yeah.

25 **Q.** So -- so there are K-1s that report distribution

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1 to shareholders?

2 **A.** Right. It doesn't say that they're paid for taxes
3 or anything. Just shows --

4 **Q.** Okay.

5 **A.** -- as just a distribution number.

6 **Q.** Okay. Those distribution numbers add up to a
7 hundred percent, do they not?

8 After each shareholder's name, there's a
9 percentage, right?

10 **A.** Yeah.

11 **Q.** And who are the shareholders that those -- those
12 were -- those funds were distributed to, do you recall?

13 **A.** Yeah, they're the Hamed family -- or not --
14 they're the Yusuf family's.

15 **Q.** Okay. So a hundred percent of the income was
16 distributed, was allocated and attributed to, the Yusuf
17 family?

18 **A.** That's correct.

19 **Q.** None of it to Mohammad Hamed?

20 **A.** That's correct.

21 **Q.** Okay. Going back to your -- your -- this meeting
22 that you had with the Bureau of Internal Revenue, can you
23 tell me where it took place?

24 **A.** At the -- at the Bureau.

25 **Q.** And how many meetings were there?

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1 **A.** Oh, gosh. It was really -- there was really
2 probably -- on this subject, there was one in particular,
3 and then I -- I brought some -- you know, I brought some
4 data back afterwards.

5 **Q.** Okay. And approximately what date was the one
6 particular meeting, and then the second meeting?

7 **A.** It had to have been in February of this year.

8 **Q.** Okay. So that was, you said there were no
9 payments made for the second, third or fourth quarters of
10 2012, right?

11 **A.** That's corrected.

12 **Q.** Of 2013, I'm sorry.

13 **A.** 2013, that's corrected.

14 **Q.** Yeah. And so the meeting that you're discussing
15 was a meeting about a tax deficiency notice, is that
16 correct?

17 You said that you had received some
18 communications from BIR?

19 **A.** Yeah. Not a tax deficiency. What it was was an
20 adjustment of the -- of the numbers. In other words, it was
21 a statement of the tax credit carry-forwards.

22 **Q.** Okay. And -- and where did it take place,
23 physically?

24 In what office?

25 **A.** The meeting?

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1 Q. Yeah.

2 A. Here in St. Croix.

3 Q. At what location?

4 A. The one over near Sunny Isles there.

5 Q. Okay. And who was present at the meeting?

6 A. Mike Yusuf, myself and Claudette.

7 Q. And did you ever inform the Hameds of the fact of
8 this meeting?

9 A. No.

10 Q. Okay. And this meeting occurred months after the
11 TRO, is that correct?

12 A. Yeah.

13 Q. Did you ever tell the Hameds about the -- the tax
14 deficiency notice you received?

15 A. Why -- why would I have to?

16 Q. I'm just asking whether you did.

17 A. No, I didn't.

18 Q. Okay. And did you ever tell the Hameds, any of
19 the Hameds, about the fact that this meeting was going to
20 take place?

21 A. No.

22 Q. Okay. And did you ever report to the Hameds the
23 results of the meeting?

24 A. No.

25 Q. And -- and can you supply to your counsel, for

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1 supplying to me, a copy of that notice, whatever notice and
2 correspondence you had with them?

3 **A.** Can I supply my what?

4 **Q.** Your counsel with copies of whatever you got from
5 them --

6 **A.** Yeah.

7 **Q.** -- or you sent to them?

8 **A.** Yeah.

9 **MR. HARTMANN:** And, Counsel, will you supply
10 those to me?

11 **MR. HODGES:** I'll consider it --

12 **MR. HARTMANN:** Okay.

13 **MR. HODGES:** -- once I look at it.

14 **MR. HARTMANN:** Thank you.

15 **Q. (Mr. Hartmann)** And over the last six months, has
16 anybody ever come to you and told you that discovery was
17 being taken in this case, and asked you for documents
18 relating to any kind of correspondence you had with -- with
19 regard to taxes or financials with any third parties?

20 **A.** No. I -- I mean, I've gotten e-mails from you
21 requesting things.

22 **Q.** Okay.

23 **A.** You know, probably got --

24 **Q.** But -- but have your attorneys ever -- has
25 United's or Plaza Extra's attorneys ever come to you and

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1 said to you that discovery's being conducted and asked you
2 about --

3 **MR. HODGES:** Objection. Attorney-client.
4 Instruct him not to answer.

5 **MR. HARTMANN:** Okay.

6 **Q. (Mr. Hartmann)** Have you ever seen any discovery
7 requests with regard to this case?

8 **A.** I don't know. I might have. I -- I -- I don't
9 have any specific recollection, but I might have.

10 **Q.** And -- and you didn't read the -- you said you did
11 read the Court's TRO and -- did you?

12 **A.** Yeah. Isn't that the -- the -- a pretty short,
13 very summarized two-page document?

14 **Q.** No, it's -- it's a long 25-page document.

15 **MR. HODGES:** No, it is not. Objection. That
16 is not --

17 **MR. HARTMANN:** Oh, I'm sorry. The order.

18 **Q. (Mr. Hartmann)** Did you read the Court's
19 memorandum opinion?

20 **A.** I -- I read -- I read down through the first page.
21 I didn't read the whole thing, no.

22 **Q.** Okay. And why did you decide not to read the
23 whole thing?

24 **A.** Because I looked at it, and I said, It's an
25 opinion. It's not an order.

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1 Q. I see.

2 MR. HARTMANN: Okay. We're going to go off
3 the record for a minute.

4 THE VIDEOGRAPHER: Going off record at 4:35.
5 (Respite.)

6 THE VIDEOGRAPHER: Going back on record at
7 4:38.

8 Q. (Mr. Hartmann) Mr. Gaffney, when you testified at
9 the preliminary injunction hearing, you were asked whether
10 you were licensed as a CPA in the Virgin Islands.

11 Has that -- you said you were not.

12 A. No, I'm not.

13 Q. Has that changed?

14 A. No, no, it hasn't changed.

15 Q. Have you -- have you become licensed or lost your
16 license in any jurisdiction --

17 A. No, I --

18 Q. -- since that hearing?

19 A. Oh, no. No.

20 Q. And you get a payroll check, right?

21 A. Yes, I do.

22 Q. On the top of the payroll check, does it say
23 United Corporation, or does it say United Corporation d/b/a
24 Plaza Extra?

25 A. I -- I know it says Plaza Extra on it.

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1 **Q.** So it may just say plain old Plaza Extra?

2 **A.** I know the account that it comes out of. It reads
3 United Corporation d/b/a Plaza Extra.

4 **Q.** Okay. And -- and into that account, none of the
5 United Corporation's rents or other income flows, is that
6 correct?

7 **A.** Correct.

8 **Q.** All that flows into that account is Plaza Extra
9 Supermarket's sales income?

10 **A.** Correct.

11 **Q.** Okay. So you are, in fact, paid by Plaza Extra
12 Supermarkets' income?

13 **A.** No, I'm paid by United Corporation doing business
14 as Plaza Extra, see, because that's the definition that you
15 and I have argument about.

16 **Q.** Okay. I understand our argument.

17 **MR. HARTMANN:** I -- counsel has instructed
18 you not to answer a number of questions based on privilege.
19 That's not a matter between you and I, but it is a matter
20 that has to be dealt with, and so I at this time will
21 suspend the deposition subject to its continuation after
22 we've sought appropriate orders from the court. Okay?

23 **THE VIDEOGRAPHER:** Going off record at 4:41.

24 **MR. HODGES:** Oh, I'm sorry. I'd like the
25 opportunity to review the deposition, read and review the

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1 deposition by the deponent.

2 **MR. HARTMANN:** Do you want to go on the
3 record?

4 **MR. HODGES:** I think she has it. Is that
5 okay?

6 (Whereupon the deposition concluded
7 at 4:41 p.m.)

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CERTIFICATE**C-E-R-T-I-F-I-C-A-T-E**

1
2
3 I, CHERYL L. HAASE, a Registered Professional Reporter
4 and Notary Public No. NP-158-03 for the U.S. Virgin Islands,
5 Christiansted, St. Croix, do hereby certify that the above
6 and named witness, JOHN GAFFNEY, was first duly sworn to
7 testify the truth; that said witness did thereupon testify
8 as is set forth; that the answers of said witness to the
9 oral interrogatories propounded by counsel were taken by me
10 in Stenotype and thereafter reduced to typewriting under my
11 personal direction and supervision.

12 I further certify that the facts stated in the caption
13 hereto are true; and that all of the proceedings in the
14 course of the hearing of said deposition are correctly and
15 accurately set forth herein.

16 I further certify that I am not counsel, attorney or
17 relative of either party, nor financially or otherwise
18 interested in the event of this suit.

19 IN WITNESS WHEREOF, I have hereunto set my hand as such
20 Certified Court Reporter on this the 24th day of April,
21 2014, at Christiansted, St. Croix, United States Virgin
22 Islands.

23 _____
24 Cheryl L. Haase, RPR
25 My Commission Expires 2/10/16