

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

WALEED HAMED, as the Executor of)
the Estate of MOHAMMAD HAMED,)
)
Plaintiff/Counterclaim Deft.,)
)
vs.) Case No. SX-2012-CV-370
)
FATHI YUSUF and UNITED)
CORPORATION,)
)
Defendants/Counterclaimants,)
)
vs.)
)
WALEED HAMED, WAHEED HAMED,)
MUFEEED HAMED, HISHAM HAMED, and)
PLESSEN ENTERPRISES, INC.,)
)
Counterclaim Defendants.)
WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)
)
Plaintiff,)
)
vs.) Consolidated with
) Case No. SX-2014-CV-287
)
UNITED CORPORATION,)
)
Defendant.)
WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)
)
Plaintiff,)
)
vs.) Consolidated with
) Case No. SX-2014-CV-278
)
FATHI YUSUF,)
)
Defendant.)

**ORAL DEPOSITION OF JOHN GAFFNEY
AS TO HAMED REVISED CLAIM H-72**

THE ORAL DEPOSITION OF JOHN F. GAFFNEY

was taken on the 24th day of September, 2018, at the Offices of Caribbean Scribes, Inc., 2132 Company Street, Suite 3, Christiansted, St. Croix, U.S. Virgin Islands, between the hours of 11:06 a.m. and 12:51 p.m., pursuant to Notice and Federal Rules of Civil Procedure.

Reported by:

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

Description	Counsel	Page
Direct	by Mr. Hartmann	5
Cross	by Mr. Hodges	22
Redirect	by Mr. Hartmann	42

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

Exhibit	Description	Page
G through Z		7

JOHN F. GAFFNEY -- DIRECT

1
2
3
4
5
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JOHN F. GAFFNEY,

called as a witness, having been first duly sworn,
testified on his oath as follows:

DIRECT EXAMINATION

BY MR. HARTMANN:

Q. Could you identify your full legal name for the record, please?

A. John F. Gaffney.

Q. Okay. And Mr. Gaffney, did you cause an inventory for the East and West stores to be prepared by RGIS in 2015?

A. Yes.

Q. Okay. And did RGIS provide you with the written result of that inventory?

A. Yes.

Q. Okay. And what method of counting the inventory was used by RGIS?

A. We -- I refer to them as RGIS. They have some electronic equipment that scans barcodes. And then what they do is, they take a physical count and they associate that count with that barcode that also identifies the location. And they bring in about 20 to 30 people, who are each assigned in an area. And then they sort of have a map. And -- and the process, everything automatically transmits to a -- to a computer that they've also got on site.

Q. Okay. And once that is done, does -- I will refer

JOHN F. GAFFNEY -- DIRECT

1 to RGIS as RGIS as well.

2 **A.** Yes.

3 **Q.** Does RGIS then send you the cumulative inventory
4 for both the East and West store?

5 **A.** What they do is they send us a flash drive, or
6 they actually leave us a flash drive at the completion of
7 the inventory. And then that flash drive is -- is used to
8 transmit the physical count on the server, on the retail POS
9 server, and then what happens is Rich reads their files and
10 it does a kind of a matching and then he generates -- he
11 actually generates the valuation and then he sends that
12 to --

13 **Q.** Okay.

14 **A.** Go ahead.

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

16 And by "Rich," you mean Mr. Ruggiere?

17 **A.** Yeah. Yes, Rich Ruggiere, yeah.

18 **Q.** Okay. And do we presently have either those two
19 flash drives or two files from the server?

20 **A.** I'm not sure I heard your question correctly.

21 **Q.** Okay. Do -- does the partnership presently have
22 possession of either of those two flash drives or the two
23 files that were placed on the server?

24 **A.** We have the flash drives for Plaza East. And I
25 was mistaken earlier when I said yes to the question,

JOHN F. GAFFNEY -- DIRECT

1 because I realize that Shawn was the person who maintained
2 over at Plaza West. He was the one who maintained the
3 physical records.

4 **Q.** But do you have in your possession the inventory
5 for East?

6 **A.** Yes, I do.

7 **Q.** Okay. And you're going to supply that to us?

8 **A.** Yes, I can.

9 **Q.** Okay. Thank you.

10 And if you would now turn -- you've been
11 given a set of exhibits, G through Exhibit Z.

12 Have you been supplied with those?

13 **A.** Yes.

14 **Q.** Okay. And I'd like to make those exhibits, G
15 through Z, a part of the record, please.

16 (Deposition Exhibits G to Z were
17 marked for identification.)

18 If you turn over to Exhibit Y, which is the
19 second from the last.

20 **A.** Okay.

21 **Q.** And if you could tell me what Exhibit Y is?

22 **A.** I'm -- I had trouble finding it before, too.

23 Okay. I've got it.

24 **Q.** Okay. Could you just briefly explain what
25 Exhibit Y is?

JOHN F. GAFFNEY -- DIRECT

1 **A.** Exhibit Y is my response to Claim Number H-72.

2 **Q.** Okay. By your "response," you mean it's a report
3 provided to counsel for both sides, which provided your
4 views as the fiduciary accountant for the partnership?

5 **A.** Yes.

6 **Q.** Okay. And I'd ask you to please turn over to the
7 document labeled HAMD663117, which is the end of year for
8 Plaza Extra East.

9 **A.** Okay. I've got it.

10 **Q.** Okay. And would it be correct to state this
11 document cumulates the information provided by RGIS?

12 **A.** Yes, it does.

13 **Q.** So, in other words, the inventory that RGIS did
14 was placed onto a spreadsheet in which all the grocery items
15 that were hand-counted were listed by the amount of
16 inventory beginning with that particular grouping.
17 Grocery --

18 **THE COURT REPORTER:** I'm sorry.

19 **Q.** -- et cetera.

20 **THE COURT REPORTER:** I'm so sorry, but it's
21 really mumbled. If you could --

22 **A.** We've got some external noise coming through
23 somehow.

24 **MR. HARTMANN:** Is this any better?

25 **THE COURT REPORTER:** Yes.

JOHN F. GAFFNEY -- DIRECT

1 **A.** That sounds better.

2 **THE COURT REPORTER:** So "hand-counted were
3 listed by the amount of inventory" --

4 **Q.** **(Mr. Hartmann)** Beginning with grocery.

5 **A.** Okay.

6 **Q.** Is that what this is?

7 **A.** Yes.

8 **Q.** Okay. Just briefly, can you explain what Items 1
9 through 35 are?

10 **THE COURT REPORTER:** I'm sorry, explain what?

11 **A.** Explain what items --

12 **Q.** **(Mr. Hartmann)** Items 1 through 35 are?

13 **A.** Well, we call them departments, but beginning with
14 the grocery department, then the meat, produce, and then
15 finally Department 35 is health and beauty value pack.

16 **Q.** Okay. And the final three items on the list, were
17 those supplied by Mr. Ruggiere and RGIS?

18 **A.** The final three items were -- I don't think those
19 were supplied by RGIS, no.

20 **Q.** Okay. Where were they supplied from?

21 **A.** They were lists that were done up internally.

22 **Q.** By who?

23 **A.** I want to say by Yusuf, but honestly, I think also
24 that one of them might have been done by Mafi.

25 **Q.** Okay. If you'd direct your attention to the last

JOHN F. GAFFNEY -- DIRECT

1 -- says "expires," would you tell me where that comes from
2 and what that is?

3 **A.** Yeah. I would say that that's expired merchandise
4 that was found at or near the count. And my guess also is
5 that would have been supplied by -- by Yusuf. That's Yusuf
6 Yusuf.

7 **Q.** Okay. Now, if you would please turn over four
8 pages to Bates Number HAMD663120.

9 **A.** Okay.

10 **Q.** And is that the same listing for the West store?

11 **A.** Yes, it is.

12 **Q.** Okay. And I started to ask you about East, but if
13 you could look at the West, down at the bottom, it says,
14 Inventory Value as of February 18th, 2015, is that the
15 correct date for this?

16 **A.** Yes, it is.

17 **Q.** Okay. Now, you notice that it contains, again,
18 departments, so that information 1 through 24 was supplied
19 by RGIS; is that correct?

20 **A.** Yes.

21 **Q.** Okay. And you'll notice the final two items on
22 that list are store supplies and late adjustment; is that
23 correct?

24 **A.** Correct, yes.

25 **Q.** You see the -- the line there, the last item --

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1 the last two items there, do they show a correction for
2 expired items?

3 **A.** There's no correction, no, not at West.

4 **Q.** Okay. Well, then, were you aware that in 2015 at
5 the time of the inventory that a communication from Shawn in
6 that \$54,592.08 in expired or spoiled inventory for West?

7 **A.** I can't say that I'm aware of anything exact about
8 it. I remember some subsequent conversation about expired
9 products, yes.

10 **Q.** Okay. And can you explain why that wasn't added
11 to the West inventory?

12 **A.** I really don't have -- I have no knowledge why
13 that didn't happen there.

14 **Q.** Okay. And Mr. Gaffney, what would be the effect
15 if \$54,000 were added to that correction for expired?

16 **A.** If 54,000 was added to the Plaza West inventory,
17 it obviously would have decreased the value of the
18 inventory.

19 **Q.** Okay. And that would, in effect, credited the
20 Hameds with that \$54,000; is that correct?

21 **A.** Yes.

22 **Q.** Okay. So if you turn over to -- if I understand
23 correctly, you created a matrix sheet, which you can see on
24 Page HAMD663114 and 115.

25 **A.** Okay. Okay. Go ahead. I found them.

JOHN F. GAFFNEY -- DIRECT

1 **Q.** Okay. And would it be correct to say that 115 and
2 118 are the movement of those numbers on the summation
3 sheets for East and West?

4 **MR. HODGES:** Did you mean to say 118?

5 **Q.** **(Mr. Hartmann)** Yes. 115 and 118 are the
6 respective (unintelligible) for East and West and I believe
7 those totals are on 114.

8 **A.** Okay. 114, yeah.

9 **Q.** In other words, let's do it one at a time.

10 115 was your taking the information off the
11 sheets that we were just looking at and putting it on kind
12 of a summation sheet; is that correct?

13 **A.** Let me study this a little bit. And by the way,
14 just so that you -- I didn't prepare these. I didn't
15 prepare these. I reviewed them.

16 **Q.** Who prepared them, please?

17 **A.** It was probably Fathi Yusuf in conjunction with
18 our accounts payable person, who would have been Lissette at
19 the time.

20 **Q.** Okay. Now, I'm just going to make a statement to
21 try and summate, and you can tell me whether my statement is
22 correct or not, and if it's not correct, you can just tell
23 me what is correct, okay?

24 **A.** Okay.

25 **Q.** Moved the East information -- someone moved the

JOHN F. GAFFNEY -- DIRECT

1 East information to 115. Someone moved the Plaza West
2 information to 118. And then accumulative information from
3 those two was moved to 114; is that correct?

4 **A.** That's correct, yes.

5 **Q.** Okay. And then the way that the checks were --
6 were calculated is that the East total was subtracted from
7 the West total, and the difference between them, the million
8 two hundred and eighty-eight thousand six hundred and two
9 sixty-three was paid to Yusuf as a corrective amount in the
10 form of two checks?

11 **A.** Correct.

12 **Q.** And then later, it was discovered that there had
13 been an error in the calculations of \$77,335.62, so that
14 amount was repaid by Yusuf back into the CRA account?

15 **A.** That's correct.

16 **Q.** Okay. So I have a couple of questions about those
17 checks and that process, okay?

18 Okay. First of all, the leading off of the
19 spoiled inventory for West created a -- you said would have
20 created a credit in the amount of that spoiled inventory to
21 Hamad; is that correct?

22 In other words, in the same way that 77,000
23 was corrected at one point, that difference would simply
24 have been to subtract it from the amount that was paid to
25 Yusuf, --

JOHN F. GAFFNEY -- DIRECT

1 **A.** Correct.

2 **Q.** -- correct?

3 **A.** That's correct.

4 **Q.** Okay. With regard to the -- to the West inventory
5 that you say was used to do this, you don't believe at the
6 moment that you or Mr. Yusuf have possession of that
7 information; is that correct?

8 **A.** We don't have the detailed information, correct.

9 **Q.** Right. And without that detailed information, is
10 there any way to tell whether the rest of this information
11 is correct?

12 **A.** Well, the calculations that Mr. Yusuf performed
13 were based upon information that we did have, which was
14 purchases after the physical inventory and up to the date of
15 March 8th, which was the date we separated the stores. And
16 likewise, we also had the daily sales. So the answer is, is
17 that it's a calculation that we had very specific records to
18 support. I did review those.

19 **Q.** Right. I guess what I'm asking is this: If right
20 now I would simply subtract from the amounts that RGIS
21 described, these checks that were written, going backwards,
22 could I recreate those calculations going backwards without
23 that West data?

24 **A.** I'm not sure I completely understood the question.
25 Something got lost there.

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1 **Q.** Okay. We've agreed that a check was written to
2 Mr. Yusuf and it was corrected by \$77,000. We followed that
3 track back to the original RGIS inventories. And we've now
4 decided that we don't have the RGIS inventory for West.

5 So what I'm asking is, is there any way today
6 to track these numbers back to some original source? Is
7 there another document? Is there another database? Is
8 there somewhere else I can derive that initial number that
9 found its way out to this final spreadsheet?

10 **A.** If I understand your question correctly, the
11 answer is yes, because I'm assuming that Shawn still has
12 maintained the flash drive and the records that were given
13 to him on that inventory.

14 **Q.** Okay. Well, let me restate my question.

15 If Shawn doesn't have that, that isn't
16 available to us, could we track it back?

17 **A.** You know, I believe RGIS does keep a history file
18 on these. I believe they do. And the answer is, if --

19 **Q.** Okay.

20 **A.** -- they do, we can get it from them.

21 **Q.** Okay. Would you, then, being paid for this by the
22 partnership under this process that we're in now, please
23 contact RGIS, see if you can obtain such a file. And if you
24 can or you can't, could you please report that in writing?

25 **A.** Sure.

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1 **Q.** Attorney Hodges and myself?

2 **A.** Sure.

3 **Q.** Thank you.

4 Okay. Now, also during this period of time,
5 were you aware that certain inventory was moved from Plaza
6 Extra West to Plaza Extra East after the inventory was done?

7 **A.** Yes.

8 **Q.** And in these pages that we've looked at, 114, 115,
9 118, where is that reflected?

10 **A.** It's not reflected on any of these. It was
11 reflected in the due-to-firms between the two stores,
12 because we used to invoice any transfers from West to East,
13 and that was customary. So the answer is that it is
14 reflected in the -- in the due-to-firms. And there were two
15 that -- there were two transfers. I think one was after,
16 one was right before the inventory, though. I've got a list
17 of the transfers, though, for that year.

18 **Q.** Okay. Well, I'm looking -- no, scratch that. I'm
19 sorry.

20 Are you aware that on June 12, 2015, there's
21 a notation from Shawn Hamed showing that \$123,207.25 in
22 inventory was moved from Plaza Extra West to Plaza Extra
23 East after the initial inventory, that's from February 26th,
24 2015 to March 5th, 2015?

25 **A.** And you said 123,000 and change?

JOHN F. GAFFNEY -- DIRECT

1 **Q.** That's the amount. This isn't a memory test.

2 **A.** Yeah.

3 **Q.** I'm not asking if you know the exact amount.

4 **A.** Well, I'm actually -- I did pull out a list of the
5 inventory transfers and the -- there was a transfer recorded
6 on -- actually, on March 8th for 51,245.11.

7 **Q.** And was that going West to East or East to West?

8 **A.** From West to East.

9 **Q.** Okay. And then on what date?

10 **A.** Well, actually the document that I recorded was
11 actually on March 8th, believe it or not.

12 **Q.** On March 8th.

13 So you saw an amount between the end of the
14 inventory and March 8th in the amount of how much?

15 **A.** \$51,245.

16 **Q.** Okay. And did you find any listing on the
17 document you're looking at for a hundred twenty-three
18 thousand two hundred seven twenty-five?

19 **A.** No, I don't. I -- prior transfer that I found is
20 forty-five thousand eight nineteen, but that was on
21 February 28th, before the -- well, actually, wait a minute.
22 The inventory was in February. Okay.

23 So actually then that one, the forty-five
24 thousand eight nineteen was also another transfer after the
25 inventory.

JOHN F. GAFFNEY -- DIRECT

1 **Q.** And roughly what would the sum of those two
2 amounts be?

3 **A.** Well, that would be ninety -- roughly 97,000.
4 Just a little over 97,000.

5 **Q.** Okay. So we got that down to a discrepancy of
6 just \$26,000. Okay.

7 Final question in this grouping: I see a
8 correction. If you look at Page 3118 again, that's the
9 Plaza West summary sheet that you said Mr. Yusuf created.

10 **A.** Yes.

11 **Q.** You'll see a line there that says, "LESS 67% OF
12 TOTAL SALES."

13 **A.** Correct.

14 **Q.** What is that a correction for?

15 **A.** That is actually -- basically all he did was he
16 estimated the cost of the inventory, based upon a margin of
17 33 percent. So he took the total sales and he multiplied it
18 by 67 percent to get the cost of inventory.

19 **Q.** Okay. Then how much did that come out to?

20 **A.** Came out to one million one hundred fifty-eight
21 thousand four hundred and thirty-nine -0- four.

22 **Q.** Okay. Now, if you turn over and look at the same
23 point on Page 3115.

24 **A.** Okay.

25 **Q.** Okay. What is the -- what is the amount credited

JOHN F. GAFFNEY -- DIRECT

1 to East for less 67 percent of total sales?

2 **A.** One million three hundred and eighteen thousand
3 four seventy-eight fifty-one.

4 **Q.** And so would it be correct to say that you created
5 what was essentially a \$40,000 credit in the favor of Yusuf?

6 **A.** 40,000?

7 **Q.** By -- by those two numbers?

8 **A.** I'm not sure how you -- how you come up with --
9 how do you calculate that? 40,000.

10 **Q.** The difference between what you credited East and
11 what he credited for West.

12 **A.** Well, by my count, it's closer to 250,000, looking
13 at the two numbers.

14 **Q.** Okay. So you came to a \$250,000 credit to West by
15 that maneuver?

16 **A.** Okay. What he did was, he reduced West's
17 inventory by 1,158,000 and he reduced East's inventory by
18 1,318,000.

19 **Q.** Right. And so he created a net effect of about a
20 \$250,000 credit in favor of Yusuf?

21 **A.** Yes.

22 **Q.** Okay. And the net effect would be that if that
23 credit weren't there in favor of Yusuf, the total amount of
24 the adjustment would be reduced by \$250,000?

25 **A.** Correct.

JOHN F. GAFFNEY -- DIRECT

1 **Q.** Okay. But you, as fiduciary accountant, I'm going
2 to ask you to go back and do some research on this specific
3 question, but as you sit here now, this is not a memory
4 test, so I'm not binding you to the answer.

5 I'm not asking you -- I'm not asking you for
6 a final answer on this. I'm going to ask you to go back and
7 do some research and report to us in the same way you're
8 going to go to RGIS, but as you sit here now, is it -- do
9 you know of any place in the Court's order, or in the
10 accounting orders in this case, where Mr. Yusuf was -- was
11 given permission to create that particular correction, that
12 67-percent correction?

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

14 **Q.** Okay. Okay. And is that a -- is that a
15 correction that if you, as an accountant, would have made in
16 doing an inventory and reporting it to the Court if you were
17 the accountant doing that correction? That inventory?

18 **A.** Not unless I was asked to.

19 **Q.** Okay. So will you, as part of your duties as the
20 fiduciary accountant -- and Greg and I will supply these to
21 you -- go back through the orders that apply to this
22 accounting and determine whether the Court had directed or
23 approved any such 67-percent correction?

24 **A.** I'm not sure exactly what you're asking me. Will
25 you --

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1 **Q.** We're going to -- we'll supply you with
2 appropriate documentation. Whatever Greg thinks is
3 appropriate to this and whatever I think is appropriate to
4 this, will you go back and look and see if you can find a
5 direction for that 67-percent correction?

6 **A.** In the Court records, you mean?

7 **Q.** Yes. In the orders that apply to how this
8 accounting needs to be done.

9 **A.** Well, I stated, of course, that I don't know of
10 any direction in the Court records.

11 Are you asking me to go back and see if I can
12 find some?

13 **Q.** Yes. We're going -- we will supply you with the
14 Court record applicable to this and we want to see if you
15 think that there's something in the orders that would let an
16 accountant to make such a correction.

17 **A.** Okay. I mean, I could --

18 **Q.** Your opinion as an accountant.

19 **A.** I can certainly go through, you know, the Court
20 records, sure.

21 **Q.** Okay. That's great.

22 Greg, do you have questions?

23 **MR. HODGES:** I do. Were you finished?

24 **MR. HARTMANN:** Yes, I think I am.

25 **MR. HODGES:** Okay. Thank you.

CROSS-EXAMINATION

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BY MR. HODGES:

Q. Good morning, Mr. Gaffney.

A. Hi, Greg.

Q. I assume you guys can hear me okay?

A. Yeah. Your voice is loud and clear.

Q. What my wife tells me all the time.

Let's turn to your report that is Exhibit Y.

If you would turn to Page HAMD 663110.

A. 110? Okay. I got these confused a little bit.

Hold on. Got it. Okay.

Q. And at the top, it says, "Claim H-72:" and then you have some verbiage; is that correct?

A. Yes.

Q. Okay. And the very first sentence says, "The following 4 journal entries settle the excess value of Plaza West assets acquired by the Hameds versus the value of assets acquired by the Yusufs."

A. Yes.

Q. Is that right?

A. That's correct.

Q. Now, when you use the word "assets," do you include the equipment in those assets?

A. Yes.

Q. Okay. So when you were talking about the \$644,000

JOHN F. GAFFNEY -- CROSS

1 checks, two checks that were written to Mr. Yusuf, that
2 644,000 amount included equipment?

3 **A.** Yes.

4 **Q.** And can you explain to me how the -- where that
5 equipment was included in that 644,000?

6 **A.** Sure. On the -- there's a -- let me find the
7 summary page. Here we go. Equipment value.

8 If you look at Document 63115 and 63 --
9 663 -- yeah, 663118, you see the equipment value for East as
10 150,000 and the equipment value for West is 350,000.

11 **Q.** Okay.

12 **A.** And then the totals from both of those documents
13 flow into the document that is 63114. And the difference
14 between that total is, of course, is the one million two
15 eighty-eight that gave rise to the two \$600,000 checks.

16 **Q.** Okay. Okay. All right. I understand. Thank you.

17 **A.** Okay.

18 **Q.** All right. So turning back to the page that I
19 directed you to at the outset, the 63110, if you look down
20 in the third paragraph, you -- at the very last sentence of
21 the third paragraph, "The net effect of the adjustments cost
22 the Yusuf family \$340,118.93."

23 Can you explain what you mean by that
24 conclusion?

25 **A.** Yes. And this is -- not everybody understands

JOHN F. GAFFNEY -- CROSS

1 this easily, but we measured inventory, year-end/year-out by
2 physical inventory and that's called periodic physical --
3 periodic inventory method. And it is customary when a
4 company uses the periodic inventory method, to not adjust
5 inventory throughout the year. They only -- you only adjust
6 it at the time that the inventory is taken.

7 And -- and we have many, many years of
8 consistent application. And I say many, many years. I did
9 see, you know, I did see some years prior to even when I
10 arrived in 2012, that physical inventory adjustments were
11 posted once each year, which -- and I didn't see inventory
12 records, but as soon as I got there, I did see these Excel
13 schedules, and the answer is, is that we used to post the
14 physical inventory and adjustment for the physical inventory
15 once each year after the physical was taken.

16 **Q.** Okay.

17 **A.** And to -- to explain the difference, what happened
18 was -- yeah, to explain the difference of \$340,000, after
19 Fathi Yusuf did all the calculations, what he did was, he
20 closed the gap between those numbers that I felt would have
21 probably -- that would have been the numbers. There could
22 have been a couple of minor adjustments, but the \$340,000,
23 Mr. Yusuf closed the gap between Plaza West and Plaza East
24 by \$340,000. And it cost him that. I proved it to him and
25 he accepted that, you know, that cost of \$340,000.

JOHN F. GAFFNEY -- CROSS

1 Extra East starts with groceries at Number 1, or grocery at
2 Number 1, and ends with HBA value pack at thirty-five,
3 right?

4 **A.** Correct, yeah.

5 **Q.** At least the numbered parts.

6 And -- but the -- the Plaza Extra West
7 inventory starts with Number 1, grocery, and ends with
8 Number 24, VP-Dairy.

9 Can you explain the -- why there's a
10 difference in the numbers for the categories of goods for
11 those two inventories?

12 **A.** You know, there's no -- there's no rationale,
13 other than it would probably be the evolution of the
14 database at East versus the evolution of the database at
15 West, because they weren't, in any way, connected to one
16 another.

17 **Q.** Okay. So that the skipped numbers don't have any
18 significance in your -- in your mind?

19 The skipped numbers. The skipped numbers in
20 respect to inventories, because obviously, there's --
21 there's not 35 categories listed in the Plaza Extra East
22 inventory at 63117, and there's about 24 categories in
23 the -- in the similar inventory for West.

24 **A.** Yeah, it didn't have any import, or, you know,
25 significance to me.

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1 Since these -- since the time of these
2 inventories, I have learned that there are departments that
3 are no longer used. I wouldn't have known it at the time of
4 these inventories, but, you know, since then, I got a little
5 bit more involved in the physical inventory and I did
6 discover -- I discovered that.

7 **Q.** Okay. Now, turning back to the Plaza Extra East
8 inventory, 63117, the adjustments, what's referred to in
9 parentheticals as "late adjustments," there are three of
10 them, right?

11 **A.** Correct, yeah.

12 **Q.** The store supplies at 57,000 and change, do you
13 know where that adjustment came from?

14 **A.** I -- basically, I got a manual sheet that had some
15 detailed listings, and I made a copy of it to bring here.
16 Let me see if I can find it. I probably have it here. I
17 got a stack of papers, but I did -- I did make a point of
18 copying that -- that sheet, so -- but all it is is basically
19 a list of numbers. I mean, it could literally be hundreds
20 of numbers, \$111, \$98, et cetera, that adds up to \$57,000.

21 **Q.** Do you know whether the Hameds or their counsel
22 agreed to that adjustment, 57,000 and change, adjustment?

23 **A.** Offhand, no.

24 I do know there was some communication. And
25 it seemed as though -- it seemed as though both parties were

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1 interested in counting some things that they felt had never
2 been counted in years past, and it seems that in the --

3 **Q.** Okay.

4 **A.** -- in the communications that I remember, there
5 was an interest on both sides to count things that had never
6 been counted in the past.

7 **Q.** Okay. So you don't know whether the Hameds agreed
8 to that \$57,000 adjustment?

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

10 **Q.** Okay. What about the next adjustment, the one
11 that's described as "Mafi Email" for \$31,000 and change?

12 **A.** I believe that was a number that was either
13 supplied to me by Mafi, or it was one that he agreed to.

14 **Q.** Okay. And then the -- when you say you believe
15 that it was either supplied to you by Mafi or what he agreed
16 to, are there documents that would reflect that, that you
17 have?

18 **A.** I think I've got some e-mail correspondence that
19 probably would have been between him and Yusuf, or -- but
20 they did agree to certain adjustments. And I believe
21 this -- I believe I'm the one who would have put that "Mafi
22 Email." I would have put that there.

23 **Q.** Okay.

24 **A.** Well, actually, I say -- I say I put that there.
25 I probably -- I don't know. I'm -- you know, sometimes I

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1 look at things to see whether or not it has my thumbprint.
2 I know I do certain things unique from other people.
3 Whether or not I would have explained it "Mafi Email," so
4 it's possible that I -- that wasn't my thumbprint, but it is
5 definitely something that I recall there was communication
6 about, and I do remember specifically that Yusuf and Mafi
7 agreed on some adjustments, and I believe this was one of
8 them.

9 **Q.** Okay. When you say "this," you're talking about
10 the \$31,000-and-change adjustment?

11 **A.** Yes.

12 **Q.** Okay. Now, the last adjustment, which is
13 described as "Expired - See List" for \$1,600 and change, do
14 you know where that came from?

15 **A.** I believe that was actually merchandise identified
16 during the physical inventory that was then supplied to
17 Yusuf.

18 So, in other words, the RGIS people, that
19 was -- that was, you know, in their inventory count. They
20 just noticed expiration dates that had passed and they
21 identified it for them.

22 **Q.** Okay. So this is -- when it says "Expired," it
23 doesn't necessarily mean spoiled, it means it's a sale date
24 code that expired?

25 **A.** Yes.

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1 **Q.** Okay. Turning to the similar inventory for Plaza
2 West at 63120.

3 **A.** Yes.

4 **Q.** The -- the last two entries, "Store Supplies" and
5 "Late Adjustment," you see those?

6 **A.** Yes, I do.

7 **Q.** Do you know where the store supplies, was that an
8 adjustment, or was that an addition, or was that included
9 by -- in the RGIS inventory?

10 **A.** Those -- those would have been additions.

11 **Q.** All right. So the store supplies was not a part
12 of the RGIS inventory, is that what you're saying?

13 **A.** Yes, correct.

14 **Q.** Do you know where that store supplies figure came
15 from?

16 **A.** I really don't. It had to be either added by --
17 by Shawn or by Mike Yusuf.

18 In other words, one of them would have had
19 tell me, you know, to add that.

20 **Q.** Okay. And did Mr. Yusuf agree to this addition?

21 **A.** You mean Fathi Yusuf?

22 **Q.** Yes.

23 **A.** I would say that if he was aware of it, that's a
24 question. I mean, I think that it's highly likely. He
25 didn't get into the detail to necessarily question it.

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1 **Q.** Okay. And then we're talking about -- we just
2 finished talking about store supplies adjustment of 72,000
3 and change. The last adjustment is late adjustment for
4 \$66,000 and change; is that correct?

5 **A.** Yes.

6 **Q.** Do you know the source of that adjustment?

7 **A.** I don't have any specific -- I don't have any
8 specific recall on it.

9 When I looked at it, when I first looked at
10 it, I assumed it was pretty similar to the non-scannable.
11 You know, it was the non-scannable. Sometimes what happens
12 is, during physical inventories, they'll actually have an
13 order that they've got on the dock that they haven't
14 received in yet. It might -- it might be in a -- in a
15 container. And -- and then what happens is they -- instead
16 of even counting it, they just simply take the invoice that
17 covers the container. But I don't have specific recall on
18 that exact 66,000 figure.

19 **Q.** Would you be able to obtain information, either
20 that you have in your files or the files maintained for the
21 West store and the East store with respect to all of the
22 adjustments that we've just been talking about?

23 **A.** It is possible that I could find some things.

24 You know, when this was all happening, I was
25 trying to capture everything and supply it to all sides.

JOHN F. GAFFNEY -- CROSS

1 And it is possible that I do have some notes and/or e-mails
2 on these. I can go back and look in my records back in that
3 time frame.

4 **Q.** Would you look in your records of -- regarding the
5 three adjustments we discussed for Plaza Extra East
6 inventory and two adjustments we discussed for the Plaza
7 West inventory, and let Attorney Hartmann and me know
8 whether you have any information regarding those
9 adjustments? And if not, where you think the information
10 might be if the -- you know, if, for example, you think that
11 the information regarding West might be in the possession of
12 Shawn or Mafi or any of the Hameds, let us know and
13 Mr. Hartmann can ask his client to -- to provide that.

14 **A.** Very good. Yes, I can.

15 **MR. HODGES:** All right. Is that okay with
16 you, Carl?

17 **MR. HARTMANN:** Certainly.

18 **Q. (Mr. Hodges)** Now, we -- I note that there's no
19 listing for expired goods for the West store.

20 Does that mean that RGIS did not identify any
21 expired inventory?

22 **A.** You know, there's two things I suppose that can
23 happen, and that is that when they're doing a fiscal
24 inventory, if they encountered something that is known to be
25 expired, they can leave it out of the count. I don't know

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1 what their specific instructions are. I would -- I would
2 love to go back and ask them that question, whether or not
3 they were ever instructed to leave out expired product that
4 was found.

5 I do know that the fiscal inventories, a lot
6 of the inventory had -- did include expired product, though.
7 I do know that for a fact. And it might have simply been
8 the case that they didn't recognize it when they were
9 counting it.

10 **Q.** Okay. Now, did you have a meeting with Attorney
11 Holt regarding this inventory adjustment at any point in
12 time?

13 **A.** Yes, I have. I've had meetings with him about
14 this.

15 **Q.** Okay. Do you recall the date of that meeting?

16 **A.** Oh, boy, no, I wouldn't recall the date, but I
17 know these calculations were done about -- sometime probably
18 in July. Well, that's right. The distribution list would
19 show it.

20 **Q.** All right. So if I asked you whether if the
21 meeting was on Tuesday, July 28th, 2015, would you be able
22 to confirm that, based on your records?

23 **A.** I might be able to with -- if I can --

24 **MR. HARTMANN:** We'll stipulate to that.

25 **MR. HODGES:** I'm sorry, I didn't hear you,

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1 Carl.

2 **MR. HARTMANN:** I said we will stipulate that
3 that meeting occurred on that date.

4 **Q. (Mr. Hodges)** Okay. Fair enough. Thank you.

5 So with the understanding that there was a
6 meeting on July 28, do you recall who else was at that
7 meeting?

8 **A.** If it's the meeting I'm thinking of right now --
9 July 28th. That seems a little bit early to be having a
10 meeting about it with Judge Ross, but it seems to me that we
11 had a meeting in Joel Holt's office in that time frame that
12 involved Judge Ross, myself, Joel Holt, and, gosh, I can't
13 even remember who else was there, but there were other --
14 there was somebody else there, too. I'm sorry, I can't. I
15 can't remember right now. I'd have to go back and look at
16 e-mails.

17 **Q.** There was nobody -- Mr. Yusuf wasn't there, or no
18 Yusuf was in that meeting; is that correct?

19 **A.** Yes, that's correct.

20 **Q.** And no attorney for the Yusufs or United was in
21 that meeting; is that correct?

22 **A.** That might have been the person. It might have
23 been that Nizar was there, Nizar DeWood.

24 **Q.** But you don't know?

25 **A.** I don't know right offhand, no, I'm sorry.

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1 **Q.** Okay. You don't recall me asking you to find out
2 whether Judge Ross would allow Nizar and Mr. Yusuf to
3 attend, and you being told that, no, they shouldn't attend?

4 **MR. HARTMANN:** Greg, if you were at the
5 meeting, you can say so, and we'll stipulate.

6 **MR. HODGES:** I wasn't at the meeting.

7 **MR. HARTMANN:** Oh, okay.

8 **A.** Yeah, unfortunately my -- my memory's usually
9 pretty good, but sometimes I miss with people. I don't
10 recall those specifics, I'm sorry.

11 **Q.** **(Mr. Hodges)** Okay. Do you know whether, in
12 advance of that meeting on July 28, 2015, or at the meeting,
13 you provided Attorney Holt with accounting or financial
14 information supporting the -- the payment of the two checks
15 to Mr. Yusuf in the amount 644,000 and change?

16 **A.** The answer is I was supplying Joel Holt every
17 month --

18 **MR. HODGES:** Hold on. Hold on. I believe --
19 hold on.

20 Did you say something, Carl?

21 **MR. HARTMANN:** We'll stipulate to Exhibit X
22 is the supplying of these same financials to -- to Joel,
23 either before, during, or immediately after that meeting.

24 **Q.** **(Mr. Hodges)** All right. You see Exhibit X,
25 Mr. Gaffney?

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1 **A.** Let me find it. X? X, yes.

2 **Q.** Okay. And this is an e-mail from Attorney Holt
3 dated July 28, 2015 to some unknown individual since the
4 e-mail is blacked out. And apparently the subject is
5 something blacked out, received from Gaffney, July 28, 2015;
6 is that correct?

7 **A.** Yes.

8 **Q.** Okay. You didn't -- you didn't receive this
9 e-mail, did you?

10 **A.** I don't believe so, no.

11 **Q.** Okay. Now, do you know whether you -- this says,
12 Received from Gaffney, July 28, 2015.

13 Do you know whether you had previously
14 supplied Attorney Holt with financial or accounting
15 information regarding the -- the two checks that were --
16 that are the subject of H-72 via a zip drive?

17 **A.** You know, I don't have specific knowledge of this,
18 and I did say that I didn't receive this e-mail. You know,
19 because it's so heavily blacked out, it's impossible for me
20 to say that with 100-percent certainty. But I was supplying
21 Joel Holt with information continuously at not just monthly
22 intervals, literally I would supply them as part of our
23 monthly reporting and then bimonthly reporting. He would
24 ask questions and then I would supply him more information,
25 information in the days following. So, I mean, there was

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1 continuous communication going on between Joel Holt and I.

2 And it is -- I do specifically remember
3 supplying him with copies of all of these -- these items,
4 the copies of the checks, the copies of the schedules. They
5 were probably even included in my bimonthly reports, but
6 sometimes I gave information even in advance of that when
7 there were questions, when there were specific questions
8 about, you know, cash movement or whatever.

9 Q. Okay. If you look at Exhibit X, that exhibit,
10 when you look through all the blackout, let's see, one, two,
11 three pages that are blacked out, you get to the summary
12 sheet that we were talking about earlier with Attorney
13 Hartmann; is that correct?

14 A. Yes, correct.

15 Q. Summary sheets?

16 A. Yes. Okay.

17 Q. Okay.

18 A. Are those part of this same e-mail?

19 Q. And -- I'm sorry?

20 A. I'm just asking, is that -- these summaries
21 sheets, were they attached to this e-mail that we were just
22 discussing?

23 Q. That's my understanding. Attorney Hartmann can
24 confirm that.

25 A. Okay.

JOHN F. GAFFNEY -- CROSS

1 **MR. HARTMANN:** Yes, we'll stipulate to that.

2 **A.** Okay.

3 **Q.** **(Mr. Hodges)** Okay. Now turning back to that
4 meeting that you recall having with Attorney Holt and Judge
5 Ross at a minimum on July 28, 2015, do you know how long
6 that meeting lasted?

7 **A.** Well, two meetings are coming to mind: One in
8 which I walked out with Judge Ross afterwards; and then the
9 other one where I remained with Joel Holt afterwards. You
10 know, I don't think there was -- I would think that I spent
11 two hours in that meeting.

12 **Q.** Okay. And the subject of the meeting was to
13 provide you with an opportunity to explain why the checks
14 for \$644,000 were appropriate; is that fair to say?

15 **A.** Oh, boy. I don't recall a meeting where we were
16 just confined to this subject, because some other subjects
17 came up, came into my mind right away as soon as we started
18 talking about this meeting, because I remember, you know,
19 there was a lot of discussion.

20 There was the one meeting with Judge Ross
21 there where Joel was objecting to a number of items,
22 including the compressor purchase, the shopping carts. And
23 I think that I might be talking about two separate meetings,
24 but, oh, boy. I wish I had --

25 **Q.** The meeting that led to the issuance or delivery

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1 of the check for -- in the amount of \$183,000 and change?

2 **A.** Yeah. That was -- that was -- I'm trying to
3 connect this inventory, this inventory thing with that one
4 that led to the hundred and eighty-three. I'd have to look
5 back. I would probably have to go back and kind of scan
6 through my e-mails again and get my -- my timeline correct,
7 but -- because I'm -- I just don't have any certainty that
8 we're talking about the -- that I'm talking about the same
9 meeting. I'm sorry.

10 **Q.** Okay. Well, since we are only talking, at least
11 at this point in time, about Hamad Claim H-72, if you would
12 go back in your records and determine whether, you know,
13 when there was a meeting, assuming there was a meeting, and
14 I believe we have a stipulation that there's a meeting on
15 July 28, 2015, what I'd like for you to share with counsel
16 is what information you actually provided to Attorney Holt
17 and/or Judge Ross in connection with the explanation of the
18 two checks that have led to Claim H-72.

19 **A.** Okay.

20 **Q.** Okay? So you understand what I'm looking for?

21 **A.** Yeah, I do. I've noted it down.

22 **Q.** E-mail from you or some -- some indication that,
23 you know, on such and such date, you delivered, you know,
24 information -- accounting or financial information to
25 Attorney Holt or Judge Ross in connection with that claim.

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1 **A.** Got it. Got it. Who was present. What was
2 delivered. Okay.

3 **Q.** Right. And then finally, if you would take a look
4 at Exhibit Z?

5 **A.** Let's see here. Is it marked Z?

6 **Q.** I don't know. It would be your last exhibit and
7 it's only like five or six pages.

8 **A.** Okay. Well, I think what happened was, I -- okay.
9 Yeah, oh, it is marked Z. Yes, I'm sorry. Yes, I got it.

10 **MR. HARTMANN:** What's the first Bates number
11 on that, please?

12 **A.** What's what?

13 **MR. HODGES:** The first page number?

14 **MR. HARTMANN:** John, just for the record,
15 would you read the Bates number in the lower left hand?

16 **A.** It says 2015 balance sheets, and it's sheets
17 abbreviated.

18 **MR. HODGES:** Yeah, there's at least -- I
19 don't believe that it was Bates Stamped.

20 I would ask if we would stipulate, Carl, that
21 this is the financial information that was produced on
22 November 16, 2015 as the, quote, "Partnership Accounting,"
23 end quote?

24 **MR. HARTMANN:** Stipulated.

25 **Q.** **(Mr. Hodges)** Okay. Now, Mr. Gaffney, Exhibit Z is

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1 a document that you prepared; is that right?

2 **A.** Yes, correct.

3 **Q.** Okay. And it was produced, as we've stipulated,
4 on November 16, 2015 as the official, quote, "Partnership
5 Accounting," that was required by the plan?

6 **A.** Correct.

7 **Q.** Is that your understanding?

8 **A.** Yes.

9 **Q.** Okay. Now, turn to note 10 and tell us how that
10 relates to the summary sheets that we've been discussing
11 this morning with you on Claim H-72?

12 **A.** Well, Note 10 is basically -- it defines the
13 distribution that was a result of this inventory calculation
14 done by Mr. Yusuf.

15 **Q.** Okay. So what it did -- correct me if I'm
16 wrong -- is it, without expressly accounting for that
17 \$77,000 payback, so to speak, it -- it effectively
18 incorporated that payback and reduced the \$644,000 payments
19 to payments of \$605,000 and change; isn't that right?

20 **A.** Correct, correct.

21 **MR. HODGES:** Okay. Okay. I think I'm
22 finished. Let me just check real quickly.

23 (Respite.)

24 Okay. That is the extent of my questioning
25 this morning, Mr. Gaffney. Thank you for your time.

JOHN F. GAFFNEY -- REDIRECT

1 **A.** Thank you.

2 **MR. HARTMANN:** Okay. Just, I have a couple
3 more questions about what Greg asked you.

4 And if you could -- if the court reporter
5 could simply note the time on the record at this point.

6 **THE COURT REPORTER:** 12:18.

7 **MR. HARTMANN:** Thank you.

8 **REDIRECT EXAMINATION**

9 **BY MR. HARTMANN:**

10 **Q.** Mr. Gaffney, if you go to Exhibit Y, it says 3110.
11 That's the one that -- (unintelligible)

12 **THE COURT REPORTER:** I'm sorry. I'm sorry,
13 Carl. You're really muffled again. I don't know what
14 happened.

15 **MR. HARTMANN:** Okay. I'm sorry. Let me move
16 it.

17 **THE COURT REPORTER:** There you go.

18 **THE WITNESS:** See, that's perfect right
19 there.

20 **Q.** **(Mr. Hartmann)** Turn to Page -- turn to Page 3110
21 in Exhibit Y. That's the page where you had the additional
22 information that you put in in text.

23 **A.** Yes, I'm there.

24 **Q.** Okay. Now, the third paragraph down, the one that
25 Greg directed your attention to, you say you remember this

JOHN F. GAFFNEY -- REDIRECT

1 transaction well, because of your attempts to prevent, or at
2 least delay the special distribution.

3 Okay. What -- could you explain what you
4 meant by that?

5 **A.** I had referred to it in my previous answer, and
6 basically I referred to periodic method of physical
7 inventory. And with the periodic method of physical
8 inventory, in our case, that means once annually.

9 What happens is, we make an adjustment to
10 inventory only once annually. And when I say periodic
11 method, that's as opposed to perpetual inventory where your
12 system reduces inventory every time an item is sold.

13 In our case -- in our case, our records were
14 never to the point of being able to do that, so we relied on
15 a periodic physical inventory.

16 Now, the way that works simply is that it
17 just -- if you value \$3 million inventory on -- and you say
18 that's what the inventory is December 31st, it remains that
19 until the next December 31st.

20 In this case, what happened was Mr. Yusuf's
21 adjustments had the effect of closing the gap. They closed
22 the gap. And right or wrong, and accountants certainly know
23 the frailties of periodic inventory, but right or wrong,
24 they stick to the consistency. The consistency of
25 methodology. And if we had stuck to the consistency --

JOHN F. GAFFNEY -- REDIRECT

1 Q. Okay.

2 A. Yeah. Go ahead.

3 Q. I'm sorry. So would it be correct to say that
4 Mr. Yusuf used the actual count done by RGIS, and you were
5 suggesting that some other number, some other correction
6 should be applied; is that correct?

7 A. I was suggesting that we just simply leave the
8 counts alone. In other words -- and that's consistency of
9 methodology. That's a very important -- that's a very
10 important aspect in the -- the accounting world,
11 consistency. And had we left --

12 Q. I guess what I'm asking is, was Mr. Yusuf asking
13 you to change the numbers that came from RGIS?

14 A. No.

15 Q. He wanted to leave the numbers?

16 A. He did not. He did not ask me to change the
17 numbers from RGIS.

18 Q. Okay. So what were actually used in the final
19 calculation, the actual real numbers from RGIS; is that
20 correct?

21 A. Correct.

22 Q. Okay. And you say in that same sentence that you
23 are trying to prevent or delay a special distribution.

24 Who are you trying to prevent or delay from
25 asking? Was it Hamed? Was it the special master? Was it

JOHN F. GAFFNEY -- REDIRECT

1 the accountants? Was it RGIS?

2 **A.** No, I was attempting to --

3 **Q.** Who were you trying to stop?

4 **A.** I was just simply trying to stop Mr. Yusuf from --
5 from going through the exercise.

6 **Q.** Okay. And was it Mr. Yusuf that insisted on going
7 through the exercise at that time and submitting the
8 distribution at that time?

9 **A.** He -- yes, it was him who insisted upon doing
10 the -- doing the calculation and to justify the distribution
11 at that time, yes.

12 **Q.** And if that was to his detriment, why would he be
13 insisting on doing it at that time? Why not wait until the
14 process ends?

15 **A.** Because he doesn't understand accounting so well.

16 **Q.** And would there be a benefit from his doing the
17 accounting at that time and insisting that the payments be
18 made at that time?

19 **A.** The only benefit really was, you know, basically
20 getting rid of an item that was going to eventually have to
21 be gotten rid of. You know, we had balance sheet items that
22 had to --

23 **Q.** Didn't he also --

24 **A.** Go ahead.

25 **Q.** Didn't, by forcing this at that time, by insisting

JOHN F. GAFFNEY -- REDIRECT

1 on doing it his way, didn't he get a check for \$1,200,000?

2 Two checks for a million two hundred thousand?

3 **A.** Yeah, the net effect was -- actually, four
4 transactions was a million two hundred thousand, correct.

5 **Q.** So instead of waiting for the end of the
6 accounting process that had been ordered by the Court, and
7 against your advice, and against what you said was standard
8 accounting methods, Mr. Yusuf insisted on doing it this way,
9 and he did so, and the effect of that was him receiving
10 \$1,200,000 at that time in a floor transaction; is that
11 correct?

12 **A.** Well, you know, now that -- now that we're
13 discussing it, it seems to me that there was some
14 communication, and I'm not sure where, exactly, but there
15 was some communication about needing to even up, you know,
16 the disparity between East and West inventory and the
17 equipment, because the equipment meeting obviously preceded
18 this. And as I understood the equipment meeting, that
19 the -- the valuation of Plaza West inventory was meant to be
20 700,000 and the valuation of Plaza East -- not inventory,
21 I'm sorry, equipment, was meant to be 300,000. So the
22 acknowledgment was that -- go ahead.

23 **Q.** I guess the point I'm making is -- the point that
24 I'm making is this: He proceeded to write himself a check.
25 And when was that check written?

JOHN F. GAFFNEY -- REDIRECT

1 **A.** It was written in July of 2015. July 10th, I
2 think.

3 **Q.** And that check was already written before you had
4 the meeting with Joel Holt, wasn't it?

5 **A.** Yes.

6 **Q.** And the reason you had the meeting with Joel Holt,
7 wasn't it, because Joel Holt specifically was objecting to
8 things in that check? That he objected to the 67 percent of
9 total sales being used as a correction, and he objected to
10 the fact that only East had expired inventory credit to it?
11 Wasn't that why the meeting took place with Judge Ross?

12 **A.** You mentioned -- you said something about only
13 East had expired merchandise in it? Oh, okay, you're
14 talking about that \$1,500 adjustment.

15 **Q.** Yes. But weren't those the points that Joel Holt
16 was meeting, because that check had just been issued out of
17 time and against everybody's objections?

18 **A.** Well, you are correct in stating that Joel Holt
19 expressed an objection to, you know, those checks being
20 issued.

21 **Q.** Okay. And the reason he was objecting to the
22 checks being issued is because Mafi Yusuf had created a
23 67-percent credit that meant \$250,000 to him and because
24 Fathi Yusuf had credited expired items to himself, but not
25 to the West store, would that be a characterization of Joel

JOHN F. GAFFNEY -- REDIRECT

1 Holt's objections?

2 **A.** No, I can't -- I can't say that that would be a
3 characterization of his objection. I don't recall that
4 he --

5 **Q.** What was he objecting to?

6 **A.** What's that?

7 **Q.** What was he objecting to? Why were you having a
8 2-hour meeting?

9 **A.** Well, as I said, as I recall, we had a number of
10 issues discussed in that meeting. One that was kind of
11 perpetual that started literally in March and just continued
12 on for months was the payment for the compressors and the
13 shopping carts that were ordered. And there were -- there
14 was a lot of discussion about that. So the -- but the --
15 those disbursements, I'm not even -- I can't even say with
16 certainty that it was those disbursements that was the cause
17 of the meeting. Those disbursements were probably found out
18 about as we were, you know, going into that meeting,
19 because, you know, since -- if the meeting occurred on
20 July 28th -- I'm just going back and I'm -- and I'm not --
21 unfortunately, I don't have specific recall on the sequence
22 of events. But normally I would have, at the end of a
23 month, or in the first days following the end of the month,
24 I would -- I would actually notify Joel Holt what happened
25 during that month. And since the checks were written on

JOHN F. GAFFNEY -- REDIRECT

1 July 10th, and since we had the meeting on July 28th,
2 according to this e-mail, I'm not sure that I necessarily
3 communicated that to him unless he asked me for an update
4 mid-month.

5 **Q.** Okay. But we've already stipulated to it and you
6 already testified that you supplied the documents in
7 Exhibit Y to Joel Holt for that meeting; is that correct?
8 And that those documents were in that meeting. And you
9 testified that Greg Hodges, that they were discussed in that
10 meeting. That all I'm asking is --

11 **MR. HODGES:** I object. I don't believe that
12 is what his testimony was. And it wasn't Exhibit Y, it was
13 Exhibit X.

14 **Q. (Mr. Hartmann)** I'm sorry. Exhibit X.

15 Exhibit X, you testified that Exhibit X was
16 supplied to Joel Holt for that meeting; is that correct?

17 **A.** I would say -- I'm just going to say yes. You
18 know, it seems as though it follows the timeline and the
19 fact that it would have been discussed in that meeting is a
20 little earlier than the norm, but for some reason, maybe it
21 was -- it came up. And I would say -- I mean, I had those
22 documents at that time, so, yes.

23 **Q.** And how many days after the issuance of the check?

24 **A.** Well, if the meeting was on July 28th and the
25 checks were written on July 11th or 10th, you know, you're

JOHN F. GAFFNEY -- REDIRECT

1 talking about, what, two weeks. About 15 days or so.

2 Q. Okay. So two weeks after the checks were issued,
3 you supplied documents showing the detail on those checks to
4 Joel Holt and to the special master and had a 2-hour meeting
5 in which you said Joel Holt objected to the issuance of
6 those checks.

7 What do you recall about Joel Holt's
8 objection to the issuance of those checks?

9 A. Well, first of all, of course, those checks were
10 first -- or the calculations were first submitted to Judge
11 Ross at a meeting on the day those checks would have been
12 written, which if they were written on July 11th, we would
13 have covered the calculations with Judge Ross.

14 The main objection that I recall Joel Holt
15 was -- his main objection was the sense of not having better
16 control of what was being disbursed out of the cash
17 accounts. I'm not so sure -- I'm not so sure we -- I'm not
18 so sure that we got that heavy into the inventory
19 calculations, other than we knew that there was a disparity
20 between the equipment valuations and we knew there was a
21 disparity between the physical inventory count at Plaza West
22 versus the physical inventory count at Plaza East, but I
23 just don't --

24 Q. Just to -- just so I can correct -- just so I can
25 be clear on the record, so the record is not muddled about

JOHN F. GAFFNEY -- REDIRECT

1 this, could you flip over the first page of the exhibit set,
2 Exhibit G, which has its Bates Number HAMD654911?

3 **A.** Okay.

4 **Q.** Okay. And could you just read for the record the
5 title of that document?

6 **A.** "Note of Entry of Judgment/Order."

7 **Q.** Okay. And if you look over to the page -- the
8 next page, which is Bates Number 4912.

9 **A.** Yes.

10 **Q.** And does the first paragraph of that stipulate
11 that the parties are stipulating with the approval of the
12 master to certain facts?

13 **A.** And say that question again.

14 **Q.** Does the first sentence of that statement say the
15 parties are stipulating to the consent and approval of the
16 master to certain facts?

17 **A.** Correct, yes.

18 **Q.** And is one of the facts of the parties
19 specifically and expressly stipulated to in Paragraph 1,
20 that the inventory -- excuse me, that the depreciated value
21 of the equipment for the purposes of all calculations would
22 be \$150,000 for Plaza East, and that the stipulated value
23 for Plaza West would be \$350,000?

24 **A.** Correct.

25 **Q.** Okay. So at no point that you know of, from this

JOHN F. GAFFNEY -- REDIRECT

1 point on, until the checks were written up to this date, is
2 there any dispute that the amount of money that was supposed
3 to be added to the Plaza Extra East value was 150,000 and
4 the amount that was supposed to be added to Plaza Extra West
5 was 350,000?

6 **A.** Yes. This order settled it. We knew that.

7 **Q.** Okay. And in the calculations that we've gone
8 over, is it not sure that those amounts were added, that
9 \$150,000 was added to the value to Plaza Extra East and
10 \$350,000 was added to the value of Plaza Extra West?

11 **A.** Correct.

12 **Q.** And so the issue of the valuation of equipment
13 wasn't why Fathi Yusuf was trying to rush the checks for the
14 inventory, was it?

15 **A.** No, I don't think that was really a factor.

16 **Q.** Inventory -- in an early -- I'm sorry?

17 **A.** I don't think that was a factor. I don't think
18 the equipment was as much a factor as the inventory. I
19 think he -- I think Mr. Yusuf, he had -- he had a lot of
20 attention on the -- the differences in the inventory. And I
21 think the equipment was just -- that was something else
22 tangible he could see.

23 **Q.** Okay. And those sheets that we've been looking
24 at, the ones you say were first supplied to Judge Ross, and
25 that's supplied to Joel Holt for the meeting of the 28 --

JOHN F. GAFFNEY -- REDIRECT

1 July 28th, those sheets, you said, were prepared by Fathi
2 Yusuf; is that correct?

3 **A.** Yes.

4 **Q.** Okay. And against your advice, Fathi Yusuf was
5 rushing that process; is that correct?

6 **A.** I was trying to get him to -- to -- I was
7 definitely trying to get him to stop doing the calculation,
8 yes.

9 **Q.** Okay. And so the numbers, the additional numbers
10 that Greg Hodges has asked you to look up, the two or three
11 items at the end of those inventory lists, were items that
12 Mr. Yusuf was putting into his final sheets and submitting
13 them to Judge Ross; is that correct?

14 **A.** He was using the physical inventory summary sheets
15 that we had gotten from Rich from International Retail, yes.

16 **Q.** But the two sheets that we've looked at, the 118
17 and 115 that feed into the final sheet, RGIS didn't create
18 those sheets, did it?

19 **A.** Which ones are you talking about again? I'm
20 sorry.

21 **Q.** Items 115, 3115, the Plaza Extra East summary, and
22 3118, the Plaza Extra West summary, that fed into 3114, the
23 overall summary, none of those three sheets were created by
24 RGIS, were they?

25 **A.** Correct. No, they were not.

JOHN F. GAFFNEY -- REDIRECT

1 **Q.** All of those sheets were created and rushed
2 through this process by Mr. Yusuf; is that correct?

3 **MR. HODGES:** Objection to the use of the word
4 "rushed."

5 **THE WITNESS:** Yeah, I would say the answer --

6 **Q.** (Mr. Hartmann) Go ahead and answer.

7 **A.** The answer is yes, these sheets were created.
8 He -- what happened was, and my memory at the time was, that
9 I was up to my neck in accounting and issues. And when he
10 was trying to do this, I was trying to prevent him from
11 taking me off -- off of my -- my purpose. It wasn't that I
12 was trying to prevent him from settling up the difference;
13 it was just that I was trying to get him to not do it,
14 because I was afraid that with the way he looked at it, he
15 would -- he would not take into account standard accounting
16 theory, and -- and I didn't want to stop what I was doing.

17 **Q.** Okay. If you look at -- okay. And if you'd look
18 again at 3115, to one for East.

19 **A.** Uh-huh.

20 **Q.** And line says, "Less 67% of Total Sales," did you
21 specifically try to stop him from submitting that line to
22 Judge Ross in July?

23 In other words, did you say to him, Fathi
24 Yusuf, what is the reason that there's a 67-percent change
25 to the actual inventory? We shouldn't submit that to Judge

JOHN F. GAFFNEY -- REDIRECT

1 Ross?

2 **A.** I don't recall ever trying to specifically stop
3 him from using that line. 33-percent margin, or 67 percent
4 cost of sales, was -- was not completely arbitrary, but it
5 is a little bit arbitrary, because we had, in recent years,
6 we had -- we had actually had margins in 1 year that were as
7 high as 36 percent and we had margins in two recent years
8 that were down in about the 31 to 31-and-a-half percent.
9 So, you know, that percentage could have been 67 percent, or
10 it could have been 69 percent, or theoretically it could
11 have even been 64 percent. Probably my only advice to him
12 at the time was whatever percentage he used be consistent
13 between the two stores.

14 **Q.** But I'm asking you a specific question about what
15 you recall.

16 You said that before Joel Holt saw these
17 numbers, when the check was actually being written in the
18 early part of the July, that -- that you and Fathi Yusuf
19 approached Judge Ross with these numbers; is that correct?

20 **A.** Correct.

21 **Q.** And did you represent to Judge Ross at that time
22 that these were not your numbers; that these were not
23 accounting numbers that -- that you had come up with from
24 the record; that these were, in fact, arbitrary numbers that
25 Fathi Yusuf had selected for that line, 67 percent? Did you

JOHN F. GAFFNEY -- REDIRECT

1 tell Judge Ross --

2 **MR. HODGES:** Objection.

3 **Q. (Mr. Hartmann)** -- you, personally, tell Judge
4 Ross --

5 **MR. HODGES:** Objection.

6 **Q. (Mr. Hartmann)** -- what the sheets were that he was
7 being given?

8 **A.** Okay. The answer is, is that, yes, I believe it
9 was made clear to Judge Ross that the 67 percent was a --
10 was an estimated number. I believe he -- he had a clear
11 understanding of that when these numbers were presented to
12 him.

13 **Q.** And were you physically present when the numbers
14 were presented?

15 **A.** To Judge Ross?

16 **Q.** Yes.

17 **A.** Yes, I was.

18 **Q.** Before the check -- he approved the check being
19 issued?

20 **A.** Correct. Yes, I was.

21 **Q.** Okay. And did you tell him that these were
22 accounting sheets, or did you tell him that these -- this
23 was a number that Fathi Yusuf had made up himself and had
24 approximated?

25 **A.** Are you referring to --

JOHN F. GAFFNEY -- REDIRECT

1 **Q.** I just want to know what you remember about the
2 conversation.

3 **A.** Are you referring again to the 67 percent of total
4 sales?

5 **Q.** Yes.

6 **A.** Okay. Let me tell you -- let me just tell you a
7 little bit more.

8 Fathi Yusuf and I discussed the 67 percent of
9 sales, and we had a lengthy conversation about that. And I
10 told him -- I told him at that time that the -- he could use
11 69 percent, but whatever percent that he used, he had to be
12 consistent.

13 Now, having said that, I also reviewed all
14 the numbers, because, for instance, the inventory received
15 before March 9th, I actually had to explain to Lizette, who
16 was running the report, exactly how to run the report in
17 order to get that, what you're looking at there, one million
18 three seventy-six two ninety-eight initially. And then I
19 corrected it, because when I came back in and I reviewed it,
20 I came back and made it one million three eighty-one six
21 seventy-five eight. That's my writing. And the little
22 double checkmark means that I validated it twice.

23 But the -- and the same thing with sales, 60
24 percent, 67 percent of total sales, you don't actually -- we
25 don't actually have the sales figure here, but we had a --

JOHN F. GAFFNEY -- REDIRECT

1 we had the accounting report with a total figure. And I
2 probably have those records. I probably have those records
3 attached in with my bimonthly reports, because I'm sure
4 those were part of the record I would have supplied to Joel
5 Holt, also.

6 **Q.** Okay. So let me ask my question again. Please
7 try to focus on my question, okay?

8 You were physically present when these
9 numbers were presented to Judge Ross --

10 **A.** Yes.

11 **Q.** -- is that correct?

12 **A.** Yes.

13 **Q.** Okay. Now, the reason that these were being
14 presented to Judge Ross was because Fathi Yusuf was trying
15 to get himself issued a check for one point -- no, two
16 checks, in the total of over \$1.2 million; is that correct?

17 **A.** Correct.

18 **Q.** And at that time -- this is my question: At that
19 time, did you tell Judge Ross that that 67 percent of sales
20 was not a method that RGIS had come up with; it was not to
21 do with the actual inventory; instead it was a corrective
22 factor, which is approximated and added by Fathi Yusuf? Did
23 he know that fact? Did you tell him, or did Fathi tell him?

24 **A.** Did you hear all that? I'm having -- I had a hard
25 time hearing exactly. You got a little muffled again.

JOHN F. GAFFNEY -- REDIRECT

1 **Q.** Okay. I'll -- I'll -- I'll ask again.

2 As you and Fathi Yusuf sat in the meeting
3 with Judge Ross and proffered these three documents that
4 we've looked at, the East, the West, and the combined, did
5 either you or Fathi Yusuf state -- do you recall whether you
6 or Fathi Yusuf stated to Judge Ross that the 67-percent
7 correction was not part of the RGIS inventory; it had no
8 relation whatsoever to the RGIS inventory numbers; it was a
9 corrective factor that was being added; and that it had been
10 approximated by Fathi Yusuf?

11 Just yes or no. Did you tell him that?

12 **A.** Yes.

13 **Q.** Okay. Who told him, you or Fathi?

14 **A.** I would have.

15 **Q.** You would have or you did? Do you recall or don't
16 you recall?

17 **A.** I did. I was -- I was the best one able to
18 explain this.

19 **Q.** Go ahead.

20 **A.** I was -- I would have told him. I would have told
21 him. I examined these. You know, I'm not going to say that
22 Fathi Yusuf didn't also go through the explanation, but
23 Judge Ross and I were able to communicate more clearly.

24 And I feel very strongly that when I told him
25 that the 67 percent was basically an estimate of the cost of

JOHN F. GAFFNEY -- REDIRECT

1 inventory as a percentage of our sales. And, you know, if
2 the 67 percent was used on West, and then another percent
3 was used on East, well, you know, that would have been
4 highly questionable. But the fact that it was used
5 consistently in both, you know, is basically good
6 accounting.

7 Q. But you said that it -- sometimes that percentage
8 would be as low as 34 percent?

9 A. Well, what -- what -- no, actually, the margin,
10 okay? So when I say -- like, for instance, it's not
11 uncommon for our margins to run in the 31 to 32 percent,
12 which would mean that that -- that percentage we're looking
13 at here would read 68 or 69 percent. That's just a hundred
14 percent less 32 percent is 68 percent. We did have some
15 years --

16 Q. So I'm clear -- I'm now clear on what you're
17 saying happened in the conversation with Judge Ross.

18 Now I'm going to ask you a second question,
19 which is, is it your understanding, is it your belief -- and
20 I'm not trying to trap you. This isn't tricky. I'll tell
21 you exactly what I'm going to do. I'm going to submit a
22 brief to Judge Ross and I'm going to say in it, Judge Ross,
23 the Court orders in this case say to use the inventory.
24 RGIS did the inventory. There's nothing in that order,
25 there's nowhere in what was agreed to by the parties for the

JOHN F. GAFFNEY -- REDIRECT

1 math that would be applied to this inventory that said the
2 Fathi Yusuf can apply a corrective factor to the inventory,
3 and by doing so, net \$250,000.

4 What I'm trying to ask you is, when I say
5 that to Judge Ross, do you think that that will come as a
6 surprise to Judge Ross, or do you think Judge Ross knew that
7 what was being used was not the original inventory numbers,
8 but was instead a corrective factor that Fathi Yusuf had
9 approximated? Do you think he understood that?

10 **A.** Yes, I do. I know he understands that.

11 **MR. HODGES:** Objection.

12 **MR. HARTMANN:** Okay.

13 (Respite.)

14 **Q.** (Mr. Hartmann) Let me just check and see if I have
15 anything else.

16 Oh, you said that the check -- that the
17 information for the check was supplied to Judge Ross in
18 early July before the check was written.

19 Was it a surprise to Joel Holt, or any of the
20 Hameds, before the check was written?

21 **A.** No.

22 **Q.** Okay. Were the Hameds or Joel Holt told that the
23 check was going to be written --

24 **A.** No.

25 **Q.** -- before it was written?

JOHN F. GAFFNEY -- REDIRECT

1 **A.** No.

2 **Q.** Okay. And once it was written, did Joel Holt
3 specifically object to the -- having written it and having
4 not been giving the calculations or any motive?

5 **A.** I remember him objecting to it, yes.

6 **MR. HARTMANN:** Okay. I have no further
7 questions. Thank you.

8 Can we go off record?

9 **MR. HODGES:** No further questions.

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14 (Whereupon the deposition concluded
15 at 12:50 p.m.)

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

I, SUSAN C. NISSMAN, a Registered Merit Reporter and Notary Public for the U.S. Virgin Islands, Christiansted, St. Croix, do hereby certify that the above and named witness, **JOHN F. GAFFNEY**, was first duly sworn to testify the truth; that said witness did thereupon testify as is set forth; that the answers of said witness to the oral interrogatories propounded by counsel were taken by me in stenotype and thereafter reduced to typewriting under my personal direction and supervision.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand as such Registered Merit Reporter on this the 12th day of December, 2018, at Christiansted, St. Croix, United States Virgin Islands.

My Commission Expires:
July 18, 2019

Susan C. Nissman, RPR-RMR
NP-70-15