

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

WALEED HAMED, as Executor of the )  
Estate of MOHAMMAD HAMED, )  
 )  
Plaintiff/Counterclaim Defendant, )

v. )

FATHI YUSUF and UNITED CORPORATION, )  
 )  
Defendants/Counterclaimants, )

v. )

WALEED HAMED, WAHEED HAMED, )  
MUFEED HAMED, HISHAM HAMED, and )  
PLESSEN ENTERPRISES, INC., )  
 )  
Additional Counterclaim Defendants. )

CIVIL NO. SX-12-CV-370

ACTION FOR INJUNCTIVE  
RELIEF, DECLARATORY  
JUDGMENT, AND  
PARTNERSHIP DISSOLUTION,  
WIND UP, AND ACCOUNTING

Consolidated With

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WALEED HAMED, as Executor of the )  
Estate of MOHAMMAD HAMED, )  
 )  
Plaintiff, )

v. )

UNITED CORPORATION, )  
 )  
Defendant. )

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES AND  
DECLARATORY JUDGMENT

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WALEED HAMED, as Executor of the )  
Estate of MOHAMMAD HAMED, )  
 )  
Plaintiff, )

v. )

FATHI YUSUF, )  
 )  
Defendant. )

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT AND  
CONVERSION

**FATHI YUSUF and  
UNITED CORPORATION,** )  
 )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 **THE ESTATE OF MOHAMMAD HAMED,** )  
 **WALEED HAMED,** as Executor of the Estate of )  
 Mohammad Hamed, and **THE MOHAMMAD A.** )  
 **HAMED LIVING TRUST,** )  
 )  
 Defendants. )

**CIVIL NO. ST-17-CV-384**  
  
**ACTION TO SET ASIDE  
FRAUDULENT TRANSFERS**

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**KAC357, INC.,** a USVI Corporation, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 **FATHI YUSUF,** a partner, and )  
 **THE HAMED-YUSUF PARTNERSHIP** )  
 a/k/a **THE PLAZA EXTRA SUPERMARKET** )  
 **PARTNERSHIP,** )  
 )  
 Defendants. )

**CASE NO.: SX-18-CV-219**  
  
**ACTION FOR DEBT AND  
UNJUST ENRICHMENT**

**FATHI YUSUF’S OPPOSITION TO  
HAMED’S MOTION FOR PARTIAL SUMMARY JUDGEMENT AS TO CLAIM H-72  
(improperly described as “\$250,000 UNILATERAL<sup>1</sup> CHECK<sup>2</sup> TAKEN<sup>3</sup> BY YUSUF”)**

Defendant/Counterclaimant Fathi Yusuf (“Yusuf”) through his attorneys, Dudley Newman Feuerzeig, LLP hereby provides his Opposition to Hamed’s Motion for Partial

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<sup>1</sup> This is incorrect, there is no “check” to Yusuf for “\$250,000.” Rather, Hamed is contending that Yusuf improperly received a \$250,000 *credit* to equalize a disparity as to the value of certain inventory and equipment when the Plaza Extra East and Plaza Extra West stores were split and awarded to each family.

<sup>2</sup> This is incorrect, as there was no “unilateral” action taken by Yusuf relating to the accounting allegedly giving rise to this claim as all monies provided to Yusuf were approved by Master Ross.

<sup>3</sup> This is incorrect, as Yusuf has not “taken” any funds that were not already approved by Master Ross as part of an approved accounting distribution and presented by the Partnership Accountant John Gaffney.

Summary Judgment as to Claim H-72 (improperly described as “\$250,000 Unilateral Check Taken by Yusuf”) as follows:

### **I. Summary of Argument**

First, Hamed attempts to mislead as to the nature of his claim. There is no “Unilateral \$250,000 Check Taken by Yusuf”—and Hamed knows it. At best, Hamed claims that Yusuf received an improper credit in the amount of \$250,000, when funds were allocated to Yusuf so as to equalize a disparity as to the value of certain inventory and equipment when the Plaza Extra East and Plaza Extra West stores were split and awarded to each family. However, Hamed has no claim because the funds allocated to Yusuf were significantly *less* than Yusuf should have received. Instead, Yusuf should have received at least an additional \$340,000 according to Partnership Accountant John Gaffney. Therefore, Hamed has no claim. The allocation which Yusuf accepted actually resulted in a net detriment to him of at least \$340,000 and thus, there is no claim by Hamed to recover anything from Yusuf relating to this equalization calculation.

### **II. Preliminary Procedural Inaccuracies**

#### **A. Incorrect Check Reference – There is No “Check” for “\$250,000”**

There is not a singular check made payable to Yusuf in the amount of \$250,000 as reflected in Hamed’s caption. Rather, Hamed’s Claim H-72 relates to Hamed’s erroneous contention that Yusuf received an unwarranted \$250,000 *credit* upon equalizing the disparity as to the value of certain inventory and equipment when the Plaza Extra East and Plaza Extra West stores were split and then awarded or allocated to each family. Hence, there is no “\$250,000 check” written to Yusuf as Hamed improperly represents. This cannot be considered an inadvertent mistake as Hamed clearly knows from the information available to all the parties that there is no such check. This is the very reason that Hamed fails to attach any such check to his motion—he

cannot, because no such check exists. In fact, Hamed’s own words in his Motion betray his erroneous headings. In his Motion, Hamed describes his claims as relating to “seemingly improper *credits* made to Mr. Yusuf” and that certain allocations constituted a “\$250,000 *credit* in favor of Yusuf.” See Hamed’s Motion, p. 3-4. While Yusuf did receive funds to equalize the disparity, those checks were actually signed by Master Ross and presented by John Gaffney with full disclosure to Hamed’s counsel—all of which Hamed knows. Yet, Hamed misleads as to the nature of the claim.

**B. No “Unilateral” Action and Nothing “Taken” by Yusuf – Information Was Provided by Gaffney to Master and Counsel for Hamed**

Moreover, there was no “unilateral” action and there was nothing “taken” by Yusuf resulting in the issuance of the amounts payable to Yusuf, but instead, the allocation of the funds were described, explained and presented to Master Ross and Counsel for Hamed was made aware of the same and the method by which the amounts were calculated. Although Hamed is free to challenge the calculations or the amount of the credit, instead, Hamed misrepresents the events that transpired. Hamed attempts to contend that there was a secretive or nefarious action taken by Yusuf that was undisclosed and otherwise not approved. This is not correct. The amounts were presented to the Master and Counsel to Hamed and the amounts to equalize were in the form of checks issued by the Master. Hence, there was no “unilateral”<sup>4</sup> action by Yusuf and nothing was “taken” by Yusuf.

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<sup>4</sup> Moreover, Yusuf was functioning as the Liquidating Partner at this time, and therefore, such actions, even if undertaken unilaterally would have been authorized as within the scope of the Liquidating Partner’s duties. Again, Hamed would be free to challenge if he believes that the allocation was incorrect but he is not free to misrepresent that nature of the transaction or events. The use of these clearly erroneous headings calls into question Hamed’s credibility.

**C. The Allocation (of which Hamed Complains) Actually Resulted in a \$340,000 Detriment to Yusuf – Thus, Hamed Has No Claim**

As set forth below in greater detail, John Gaffney repeatedly testified that the funds paid to Yusuf so as to equalize the disparity as to inventory and equipment between the Plaza East and Plaza West stores upon the split of the stores, actually resulted in a \$340,000 shortfall to Yusuf. While Yusuf sought to bring the disparity issue to a close and make the allocation quickly, against John Gaffney's warnings that it could result in an inaccuracy, nonetheless, the allocation was made and ultimately resulted in a net loss to Yusuf of \$340,000. Consequently, at the very least, Hamed does not have any claim based upon the contention that he should have received a greater amount. If anything, Yusuf should be awarded an additional allocation of \$340,000. Likewise, as with the misrepresentations outlined above, Hamed is aware of this and yet, still filed this Motion despite the clear testimony and documentary evidence corroborating Yusuf's loss.

**III. Opposition to Hamed's Statement of Undisputed Facts**

1. **Statement 1:** Yusuf admits that John Gaffney was to provide information as to the various designated claims that Hamed articulated in the manner proscribed.
2. **Statement 2:** Disputed. There is no evidence that this excerpt relates to H-72. The claim H-72 is not identified in the excerpt and there is no exhibit attached reflecting the entire or relevant portions of the alleged "report" from which this excerpt allegedly was taken. Even if this excerpt did relate to H-72, it is incorrect or otherwise was superseded because John Gaffney has provided information in the form of written responses, deposition testimony and follow up communication with counsel for Yusuf and Hamed to clarify remaining questions following the deposition. *See* Exhibit 1—Dep. John Gaffney, Exhibit 2—Gaffney Initial Report, Exhibit 3— September 28, 2018 Email from Gaffney.

3. **Statement 3:** Admitted. John Gaffney has further explained the events in deposition testimony and in follow up communications between counsel for Hamed and Yusuf after the deposition.
4. **Statement 4:** Disputed. Yusuf disputes that the credits “remained unexplained.” On the contrary, in John Gaffney’s Report, he states:

...Mr. Yusuf insisted immediately upon settling the difference between the Plaza West and Plaza East inventory valuations and the agreed upon fixture/equipment valuations. His insistence upon settling and Judge Ross’ review and approval resulted in inventory adjustments on March 8, 2015 (see general ledger adjustment herein). **The net effect of the adjustments cost the Yusuf family \$340,118.93.**

Furthermore, the actual equipment valuations agreed between the two families was \$700,000 for Plaza West and \$300,000 for Plaza East. But the legal agreements were mistakenly finalized at 50% value due to confusion the 50/50 partner interests versus the combined values. Had these actual valuations been considered, the Yusufs would have been entitled to still another \$150,000.00....

*See* Exhibit 2—Gaffney Initial Report, HAMD663110.<sup>5</sup> In addition, Gaffney attached accounting documentation reflecting same.

Nonetheless, Yusuf admits that a deposition of John Gaffney was scheduled for him to provide additional testimony relating to the credits.

5. **Statement 5:** Disputed. The testimony of Gaffney speaks for itself as to the explanation provided. *See* Yusuf’s Counter Statement of Material Facts (“CSOMF”), ¶¶1,2, 4-6.

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<sup>5</sup> This is also attached to Hamed’s Motion as Exhibit A

6. **Statement 6:** Disputed. John Gaffney also testified that he personally explained to Judge Ross that the use of 67% was an estimated number and that Judge Ross, understood and approved of the issuance of the checks. *Id.* at 56:8-20; 58:6-12; 59:5-60:6; 61:4-10; 61:16-21.

**Statement 7:** Disputed. John Gaffney set forth in his Report and testimony that the adjustments made by Yusuf ultimately resulted in a net detriment to him of \$340,118.93 and even more if also considering the equipment valuations. *See* Exhibit 1—John Gaffney Dep.; 25:1-18 and Exhibit 2—Gaffney Report, HAMED663110.

7. **Statement 8:** Disputed. The checks were issued with the approval of Judge Ross. John Gaffney also testified that he personally explained to Judge Ross that the use of 67% was an estimated number and that Judge Ross, understood and approved of the issuance of the checks. *See* Exhibit 1—John Gaffney Dep 56:8-20; 58:6-12; 59:5-60:6; 61:4-10; 61:16-21 and Exhibit 4—Checks Issued by Judge Ross.

#### **IV. Yusuf's Counter-Statement of Undisputed Material Facts**

1. John Gaffney had many meetings with Attorney Holt and Judge Ross regarding the inventory adjustments relating to the Plaza East and Plaza West stores and thus, the checks were issued with full disclosure to Counsel for Hamed. *See* Exhibit 1—John Gaffney Dep.; 33:10-14, 34:10-19; 50:9-10. Further, John Gaffney specifically recalls that he provided all of the information relating to the scheduled and checks to Attorney Holt as they were in regular contact. *Id.* at 37: 2-8. Hamed stipulated that various financial information was provided to Hamed as part of the meeting specifically

relating to the checks issues to equalize the disparity as to the valuation of the inventory and equipment. *Id.* at 35: 21-25.

2. John Gaffney explained in his written report that:

Mr. Yusuf insisted immediately upon settling the difference between the Plaza West and Plaza East Inventory Valuation and the agreed upon fixture/equipment valuations. His insistence upon settling and Judge Ross' review and approval resulted in inventory adjustments on March 8, 2015 (see general ledger adjustments herein). The net effect of the adjustments cost the Yusuf family \$340,118.93.

*See* Exhibit 2 - Gaffney Report, HAMED663110.

3. In his deposition, when asked about this same statement from his report, Gaffney testified:

Q. So you're saying that the calculations that he [Yusuf] prepared that led to the payment of the two checks for \$644,000 and change resulted in a net detriment to Mr. Yusuf of \$340,000?

A. That's correct.

*See* Exhibit 1—John Gaffney Dep.; 25:1-5.

4. Various documents were provided to Judge Ross and Attorney Holt to demonstrate the calculations which were being made to equalize the disparity as to the inventory upon the split of the stores, including the following:



PLAZA EXTRA WEST	4,675,565.30	
PLAZA EXTRA EAST	-3,386,962.67	
DIFFERENCE BETWEEN BOTH	1,288,602.63	
	1,288,602.63	1,288,602.63
	2	
SUM AMOUNT AFTER DIVIDED BY TWO	644,301.32	

CREDIT DEPOSIT ON 7/14/15 77,335.62  
 ADJ'D TOTAL 1,211,267.01

See Exhibit 2—Gaffney Report, HAMD663114. Likewise, Gaffney also provided the following which reflects Yusuf’s use of a 67% cost of sales factor:

**PLAZA EXTRA EAST**

	3,256,478.75 ✓ (A)
INVENTORY AS OF 2/15/2015	3,179,143.14 ✓ (B)
INVENTORY RECEIVED BEFORE 3/9/2015	1,376,298.04 1,381,675.53
	4,555,441.18 4,632,776.79
LESS 67% OF TOTAL SALES	-1,318,478.51
	3,236,962.67 3,314,298.28 ✓
EQUIPMENT VALUE	150,000.00
GRAND TOTAL :	3,386,962.67

(A)-(B) 77,335.61 REIMB LRA.

See Exhibit 1—Dep. Gaffney; 18:11-18. John Gaffney also testified that he personally explained to Judge Ross that the use of 67% was an estimated number and that Judge Ross, understood and approved of the issuance of the checks. *Id.* at 56:8-20; 58:6-12; 59:5-60:6; 61:4-10; 61:16-21. See Exhibit 4 – Checks Issued by Judge Ross.

5. Following Gaffney's deposition, he was asked to follow up on certain open issues and he provided counsel for both parties the explanation, that Yusuf's use of 67% to calculate cost of sales factor and was within the margin of error. *See* Exhibit 3—September 28, 2018 Email from Gaffney.
6. John Gaffney also testified that the difference in the value of the equipment between the two stores should have also provided additional funds to Yusuf; *i.e.* that Yusuf also suffered additional detriments relating to the equipment value that was not allocated according to values agreed by the parties but instead upon a 50/50 basis. *See* Exhibit 1—Dep. Gaffney; 25:10-18.

## **V. Argument**

The documentation provided by John Gaffney and submitted to Judge Ross as well as provided to Counsel for Hamed, all reflect that the equalization as to the disparity in the value of the inventory and equipment between the Plaza East and Plaza West stores actually resulted in a detriment to Yusuf of \$340,000.00. Therefore, Yusuf did not act in a manner that was improper to the detriment of Hamed. If anything, Yusuf's desire to bring that issue to a close quickly resulted in a loss to the Yusuf family. Hamed has failed to demonstrate how there is an improper allocation to Yusuf or that Yusuf was improperly credited \$250,000. To the contrary, all of the evidence from John Gaffney has clearly indicated that there is no claim for Hamed and that, instead, Yusuf has received less and, if any award is required, Yusuf (as opposed to Hamed) should be compensated an additional \$340,000.

Moreover, Hamed was fully aware of these calculations and Gaffney's original position and all of the clarifications from him which further support his assessment that Yusuf was harmed in the amount of \$340,000. Hence, Hamed has failed to demonstrate that he is entitled to any

allocation, that Yusuf was improperly credited any amount, much less for \$250,000 or that Hamed is entitled to any type of award. At best, Hamed appears to have ignored the wealth of evidence demonstrating that he has no claim.

### **Conclusion**

For all of the foregoing reasons, Yusuf respectfully requests the Master to deny Hamed's Motion for Partial Summary Judgment as to Claim H-72 and to rule that this claim should be denied with prejudice. In the alternative, Yusuf requests that the Court determine that there are, at the very least, genuine issues of material fact that preclude partial summary judgment for Hamed.

Respectfully submitted,

**DUDLEY NEWMAN FEUERZEIG, LLP**

**DATED:** May 19, 2023

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 19<sup>th</sup> day of May, 2023, I caused the foregoing **Yusuf's Opposition to Hamed's Motion for Partial Summary Judgment as to H-72**, which complies with the page and word limitations of Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

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\_\_\_\_\_  
s/Charlotte K. Perrell

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

Exhibit 1

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, )  
MUFEED 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.

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Reported by:

Susan C. Nissman RPR-RMR  
Registered Merit Reporter  
Caribbean Scribes, Inc.  
2132 Company Street, Suite 3  
Christiansted, St. Croix  
U.S. Virgin Islands 00820  
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**E-X-H-I-B-I-T-S**

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**JOHN F. GAFFNEY -- DIRECT**

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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

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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.

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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



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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, --

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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-froms 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-froms.  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?

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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.

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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

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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.

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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.

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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 Yusufus."

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

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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

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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.

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1 Q. So you're saying that the calculations that he  
2 prepared that led to the payment of two checks for \$644,000  
3 and change resulted in a net detriment to Mr. Yusuf of  
4 \$340,000?

5 A. That's correct.

6 Q. Okay. Looking at the next paragraph of HAMD63110,  
7 you indicate -- the paragraph where you talked about the  
8 equipment values and the legal agreement mistakenly reducing  
9 it by 50 percent. And then you conclude with a sentence,

10 "Had these actual valuations been considered, the Yusufs  
11 would have been entitled to still another \$150,000," is that  
12 correct?

13 A. Yeah. Actually, I made a mistake there. It's  
14 200,000.

15 Q. Okay. And so what you did is, to get the 200, you  
16 simply subtract one fifty from the three fifty?

17 A. Correct, yes.

18 Q. Okay.

19 (Respite.)

20 Okay. Turning to HAMD63117, the adjusted  
21 inventory for Plaza Extra East.

22 A. Okay.

23 Q. All right. If you look at the -- this, the 3117,  
24 and compare it to the similar inventory, adjusted inventory  
25 for West at six three one two zero, the inventory for Plaza

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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.

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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.

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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 --

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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

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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.

10

11

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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

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

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

Exhibit 2

**WALEED HAMED**, as the Executor of the  
Estate of **MOHAMMAD HAMED**,

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF** and **UNITED CORPORATION**

*Defendants and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

**WALEED HAMED**, as the Executor of the  
Estate of **MOHAMMAD HAMED**, *Plaintiff,*

vs.

**UNITED CORPORATION**, *Defendant.*

**WALEED HAMED**, as the Executor of the  
Estate of **MOHAMMAD HAMED**, *Plaintiff*

vs.

**FATHI YUSUF**, *Defendant.*

**FATHI YUSUF**, *Plaintiff,*

vs.

**MOHAMMAD A. HAMED TRUST**, *et al,*

*Defendants.*

**KAC357 Inc.**, *Plaintiff,*

vs.

**HAMED/YUSUF PARTNERSHIP**,

*Defendant.*

Case No.: **SX-2012-CV-370**

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

**JURY TRIAL DEMANDED**

Consolidated with

Case No.: **SX-2014-CV-287**

Consolidated with

Case No.: **SX-2014-CV-278**

Consolidated with

Case No.: **ST-17-CV-384**

Consolidated with

Case No.: **ST-18-CV-219**

**EXHIBIT  
Y**

9/21/18 Gaffney Depo,  
Claim H-72

**JOHN GAFFNEY ACCOUNTANT'S REPORT  
AS TO HAMED CLAIM H-72 FOR \$1,288,602.64 --  
GENERAL LEDGER ENTRIES REGARDING "FATHI YUSUF MATCHING DRAW"**

## **I. Introduction**

This submission is made by the fiduciary partnership accountant pursuant to the applicable Orders of the Special Master: (1) Joint Discovery and Scheduling Plan, January 29, 2018; (32) Order re Joint Motion for 40 Days, August 6, 2018, and (3) Order re Motion to Strike Hamed Claim Nos. H-41 to H-141 and Additional "Maybe" Claims, August 12, 2018.

## **II. Description of this Claim 'As Made'**

On August 17, 2018, I received a document from Hamed's counsel that listed the 101 Hamed Claims (H-41 to H-141) and attached the description given by Hamed to the Special Master, the prior description of each claim and the exhibits to Hamed's CPA's report relate to the claim (if any) – listing both the old and new claim numbers. That material related to this claim is attached as **Exhibit A** hereto. The description of the claim from those materials, and to which I am responding is as follows:

### **Hamed Claim H-72 in the Amount of \$1,288,602.64 – General Ledger Entries Regarding "Fathi Yusuf Matching Draw"**

#### **DESCRIPTION OF THIS CLAIM:**

Hamed's CPA noted check #208 with the description "M HAMED INVTRY SETTLE PD TO FATHI YUSUF" and check #209 with the description "FATHI YUSUF MATCHING DRAW" written on the Plaza West Claims Reserve Account ending 9091. Both checks were for \$644,301.32 and written to Fathi Yusuf.

#### **ALL INFORMATION AND RELATED DOCUMENTS KNOWN TO HAMED:**

Hamed's CPA interviewed the Hameds regarding these checks to Fathi Yusuf. The Hameds stated that they are not aware of the business purpose of these checks. Hamed's CPA also provided John Gaffney a query dated February 15, 2016 (see Attachment VII) requesting an explanation of the business purpose and supporting documentation for entries.

Hamed's CPA reviewed Partnership Claims Reserve Account ending 9091 bank statements and noted these checks cleared in July 2015.

**INFORMATION RECEIVED BY HAMED FROM YUSUF/GAFFNEY:**

John Gaffney did not respond to our request.

**HAMED'S CPA'S EXPERT ANALYSIS OF WHY THE CLAIM IS VALID:**

Hamed's CPA did not find any sufficient reliable audit evidence, nor were Hamed's CPA provided any audit evidence from John Gaffney, that these payments were for a valid business expense or served a business purpose. As such, Hamed's CPA are not able to satisfy ourselves of the following management assertions: 1. Occurrence 2. Accuracy or 3. Classification, as described in **AU-C 315.A128**. Hamed's CPA concluded these amounts should be returned to the Partnership to conform to the management's assertions.

**III. The Work I was Ordered to Do by the Special Master**

1 . . .Mr. Gaffney will submit daily emails to counsel for Hamed [with copy to counsel for Yusuf] informing them of the hours worked and what was done. . . .

2. For each of the Hamed Claims numbered H-41 through H-141. . .John Gaffney will provide a written response, in his fiduciary capacity as the Partnership Accountant, to the following two items:

a. **Interrogatory:** Provide a written statement describing the transaction, with reference to when the actual activity or delivery occurred, who the persons/entities are, what amounts were involved, and what it was for (with reference to why the funds are allegedly properly charged to the Partnership) and making reference to any checks, invoices or other relevant documents.

b. **Production of Documents:** Attach to the above interrogatory response, the documents referenced in your response.

3. Mr. Gaffney's responses to interrogatories and document requests will be provided in the bi-weekly period in which they are completed and not in groups or all at once. . . .

**IV. Accountant's Response to Interrogatory as to Hamed Claim H-41**

A. [Date(s)] when the actual activity or delivery occurred:

**July 10, 2015**

B. Who the persons/entities are:

**Fathi Yusuf**

C. What amounts were involved,

**\$644,301.32 plus \$644,301.32 adjusted by \$77,335.62 for a net total of  
\$1,211,267.02.**

D. What it was for (with reference to why the funds are allegedly properly charged to the Partnership)

**At midnight on March 8, 2015, control of Plaza East was awarded to the Yusufs and control of Plaza West was awarded to the Hameds. Just prior to March 8<sup>th</sup>, inventory valuations were provided based upon an independent physical count and just prior to July 2015 at a meeting between the families, valuations were assigned to fixtures & equipment in both stores. These transactions were needed to establish parity since the value of assets acquired by the Hameds on March 8<sup>th</sup> substantially exceeded the value of assets to the Yusufs on the same date.**

**V. Accountant's Production of Documents**

**The documents I have used and am therefore providing are as follows:**

**Exhibit B-1:**

**Screen prints of transactions, asset valuations comparisons & other  
support for these disbursements.**

**Exhibit B-2:**

**Exhibit B-3:**



## **VI. Reservations and Limitations**

### **A. Information**

**X** I was able to obtain any information I requested in writing from the parties.

I requested the following information from a party or parties and was not able to obtain it for the following reason(s) – the written request(s) are attached as Exhibit C. The reasons(s) or explanation I was given in writing is attached as Exhibit D. My concern, reservation or limitation on my responses above is/are as follow:

### **B. Documents**

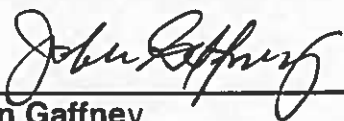
**X** I was able to obtain any documents I looked for.

I looked for the following documents and was not able to obtain them for the following reason(s) – the written statement as to the efforts I undertook are Exhibit E. The reasons(s) or for my concern, reservation or limitation on my responses above is/are as follow:

### CERTIFICATION

The above is true and accurate to the best of my knowledge. I have had no *ex parte* communications with any person, entity, party or counsel in preparing this response. I have provided this to counsel upon my completion of the work.

Dated: August 28, 2018

  
\_\_\_\_\_  
John Gaffney

### CERTIFICATE OF SERVICE

I hereby certify that on the date stated above, I served a copy of the foregoing by email, as agreed by the parties, on:

Gregory H. Hodges  
Stefan Herpel  
Charlotte Perrell  
ghodges@dtflaw.com

Carl J. Hartmann  
Joel H. Holt  
carl@hartmann.attomey

  
\_\_\_\_\_  
John Gaffney

Claim H-72:

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. Although the official claim total is \$1,288,602.64, there was a refund of \$77,335.62 resulting in a net total of \$1,211,267.02.

Included herein is the general ledger detail of these transactions, a schedule of partner draws provided in conjunction with the bi-monthly report to the court in October 2015 highlighting these items, and a summary of the amounts used to determine the distributions.

I remember this transaction well because of my attempts to prevent or at least delay this special distribution in favor of settling all balance sheet items in the normal course of the liquidation. Failing to understand balance sheets, Mr. Yusuf insisted immediately upon settling the difference between the Plaza West and Plaza East inventory valuations and the agreed upon fixture/equipment valuations. His insistence upon settling and Judge Ross' review and approval resulted in inventory adjustments on March 8, 2015 (see general ledger adjustments herein). The net effect of the adjustments cost the Yusuf family \$340,118.93.

Furthermore, the actual equipment valuations agreed between the two families was \$700,000 for Plaza West and \$300,000 for Plaza East. But the legal agreements were mistakenly finalized at 50% value due to confusion the 50/50 partner interests versus the combined values. Had these actual valuations been considered, the Yusufs would have been entitled to still another \$150,000.

This was a complicated transaction, but the theory is simple. Wishing to avoid a lot of hours searching for more components and having to explain them, I ask that I be allowed to respond verbally or at least be allowed to respond to any additional specific requests for information.

GL Account	Description	Debit	Credit	Job
33000	M HAMED INVTRY SETTLE PD TO FATHI YUSUF	644,301.32		
	Dividend Distributions	Account will be decreased		
10600	M HAMED INVTRY SETTLE PD TO FATHI YUSUF		644,301.32	
	Cash - Bank Claims 9091	Account will be decreased		
	Totals:	644,301.32	644,301.32	
	Out of Balance:	0.00		

**EXHIBIT  
B-1**

General Journal Entry

File Edit Go To Window Help

Close New List Save Print Copy Delete Row Reports Help

Copies this journal entry. Journal Entry

Date: 7-15  Reverse Transaction

Reference: 209

GL Account	Description	Debit	Credit	Job
33000	FATHI YUSUF MATCHING DRAW	644,301.32		
	Dividend Distributions	Account will be decreased		
10600	FATHI YUSUF MATCHING DRAW		644,301.32	
	Cash - Bank Claims 9091	Account will be decreased		
	Totals:	644,301.32	644,301.32	
	Out of Balance:	0.00		

General Journal Entry

File Edit Go To Window Help

Close New List Save Print Copy Delete Row Reports Help

Journal Entry

Date: 7/14/15  Reverse Transaction

Reference: JE14

GL Account	Description	Debit	Credit	Job
10600	YUSUF REFLIND OF OVERPMT	77,335.62		
	Cash - Bank Claims 9091	Account will be increased		
33000	UNITED CK 1814 TO F YUSUF TO REIMB 7/13 OVERPMT		38,667.81	
	Dividend Distributions	Account will be increased		
33000	UNITED CK 1815 TO M HAMED TO REIMB 7/13 OVERPMT		38,667.81	
	Dividend Distributions	Account will be increased		
	Totals:	77,335.62	77,335.62	
	Out of Balance:	0.00		

**2015 Plaza West Archive  
General Ledger**

**For the Period From Jul 1, 2015 to Jul 31, 2015**

Filter Criteria includes: 1) IDs: 33000. Report order is by ID. Report is printed with shortened descriptions and in Detail Format.

Account ID Account Description	Date	Reference	Jrnl	Trans Description	Debit Amt	Credit Amt	Balance
33000	7/1/15			Beginning Balance			27,482,843.2
Dividend Distributions	7/10/15	208	GEN	M HAMED INVTRY	644,301.32		
	7/10/15	209	GEN	FATHI YUSUF MA	644,301.32		
	7/14/15	JE14	GEN	UNITED CK 1815		38,667.81	
	7/14/15	JE14	GEN	UNITED CK 1814		38,667.81	
				Current Period Cha	1,288,602.64	77,335.62	1,211,267.02
	7/31/15			Ending Balance			28,694,110.2

**Plaza Extra Partnership**  
**33000 Distributions (Ptr Draws)**  
**For the Period From Jan 1, 2015 to Oct 31, 2015**

Location	Date	Reference	Jrnl	Xref	Trans Description	Amount
West	3/6/15	101	CDJ	1	HAMED - CASH DISTRIB FR PSHIP LIQUIDATION A/C	5,000,000.00
West	3/6/15	100	COJ	1	YUSUF - CASH DISTRIB FR PSHIP CLAIMS RESERVE	5,000,000.00
East	3/8/15	JE08-08	GENJ		TREAT HANUN LOAN AS DISTRIB TO HAMED & YUSUF	35,000.00
East	3/31/15	XJE31-01	GENJ		DISTRIB EAST CASH ON HAND TO YUSUF	50,000.00
East	3/31/15	XJE31-02	GENJ		DISTRIB EAST TRADE AR TO YUSUF	15,701.34
East	3/31/15	XJE31-03	GENJ	2	50/50 DISTRIB OF INVTRY DUE TO O/S VALUE AGRMT	1,657,149.14
East	3/31/15	XJE31-03	GENJ	2	50/50 DISTRIB OF INVTRY DUE TO O/S VALUE AGRMT	1,657,149.14
East	3/31/15	XJE31-06	GENJ	3	50/50 DISTRIB OF PP&E DUE TO O/S VALUE AGRMT	31,512.05
East	3/31/15	XJE31-06	GENJ	3	50/50 DISTRIB OF PP&E DUE TO O/S VALUE AGRMT	31,512.04
East	3/31/15	XJE31-08	GENJ		DISTRIB OF WAPA DEP TO YUSUF	110,842.00
West	3/31/15	JE31	GENJ		RECORD BYORDER 2015 FULL STLMT PAID BY SHOP CTR FOR PLAZA	130,245.36
West	3/31/15	JE31	GENJ		RECORD BYORDER 2015 FULL STLMT PAID BY SHOP CTR FOR PLAZA	130,245.36
West	3/31/15	XJE31-01	GENJ		DISTRIB WEST CASH ON HAND TO HAMED	50,000.00
West	3/31/15	XJE31-02	GENJ		DISTRIB WEST TRADE AR TO HAMED	11,272.96
West	3/31/15	XJE31-03	GENJ	2	50/50 DISTRIB OF INVTRY DUE TO OUTSIDE VALUE AGMT	2,162,782.65
West	3/31/15	XJE31-03	GENJ	2	50/50 DISTRIB OF INVTRY DUE TO OUTSIDE VALUE AGMT	2,162,782.65
West	3/31/15	XJE31-06	GENJ	3	50/50 DISTRIB OF PP&E DUE TO OUTSIDE VALUE AGRMT	995.00
West	3/31/15	XJE31-06	GENJ	3	50/50 DISTRIB OF PP&E DUE TO OUTSIDE VALUE AGRMT	995.01
West	3/31/15	XJE31-08	GENJ		50/50 DISTRIB OF DEP XFER TO PLESSEN DUE TO 50/50 OWNERSHIP	63,518.51
West	3/31/15	XJE31-08	GENJ		50/50 DISTRIB OF DEP XFER TO PLESSEN DUE TO 50/50 OWNERSHIP	63,518.52
West	3/31/15	XJE31-12	GENJ	3	50/50 DISTRIB OF BLDG XFER TO PLESSEN	1,090,630.63
West	3/31/15	XJE31-12	GENJ	3	50/50 DISTRIB OF BLDG XFER TO PLESSEN	1,090,630.62
West	4/9/15	105	GENJ		CASH DISTRIB RE 2014 PLAZA INC TAX ESTIMATE TO YUSUF	992,613.00
West	4/9/15	106	GENJ		CASH DISTRIB RE 2014 PLAZA INC TAX ESTIMATE TO HAMED	992,613.00
STT	4/30/15	XJE30-01	GENJ		50/50 DISTRIB FOR STT CASH ON HAND DUE TO STR AUCTION	25,000.00
STT	4/30/15	XJE30-01	GENJ		50/50 DISTRIB FOR STT CASH ON HAND DUE TO STR AUCTION	25,000.00
STT	4/30/15	XJE30-02	GENJ		50/50 DISTRIB FOR STT TRADE AR DUE TO STR AUCTION	5,521.68
STT	4/30/15	XJE30-02	GENJ		50/50 DISTRIB FOR STT TRADE AR DUE TO STR AUCTION	5,521.67
STT	4/30/15	XJE30-03	GENJ	4	50/50 DISTRIB OF STT INVTRY DUE TO STORE AUCTION	1,167,460.88
STT	4/30/15	XJE30-03	GENJ	4	50/50 DISTRIB OF STT INVTRY DUE TO STORE AUCTION	1,167,460.88
STT	4/30/15	XJE30-06	GENJ	5	50/50 DISTRIB OF STT PP&E DUE TO SALE AT AUCTION	1,116,157.37
STT	4/30/15	XJE30-06	GENJ	5	50/50 DISTRIB OF STT PP&E DUE TO SALE AT AUCTION	1,116,157.38
STT	4/30/15	XJE30-07	GENJ	6	50/50 DISTRIB OF STT LAND DUE TO O/S AGRMT / DISPUTED	165,000.00
STT	4/30/15	XJE30-07	GENJ	6	50/50 DISTRIB OF STT LAND DUE TO O/S AGRMT / DISPUTED	165,000.00
West	5/1/15	109	GENJ	7	HAMED AUCTION BID FOR 50% INT IN STT TO YUSUF	4,270,000.00
West	5/1/15	110	GENJ	7	MATCHING PMT FOR 50% INT IN STT TO YUSUF	4,270,000.00
East	5/11/15	JE11	GENJ	7	HAMED DISTRIB TO PAY PRE 2012 ACCRUED RENT PER ORDER	1,999,839.86
East	5/11/15	JE11	GENJ	7	YUSUF DISTRIB TO PAY PRE 2012 ACCRUED RENT PER ORDER	1,999,839.87
West	7/10/15	208	GENJ		CASH PMT BY HAMED TO YUSUF TO SETTLE EAST/WEST INVTRY PLUS P&E	644,301.32
West	7/10/15	209	GENJ		CASH MATCHING PMT TO YUSUF TO SETTLE EAST/WEST INVTRY PLUS P&E	644,301.32
West	7/14/15	JE14	GENJ		UNITED CK 1815 TO REIMB PLAZA FOR INVTRY STLMT OVERPMT ON 7/13/15	-38,667.81
West	7/14/15	JE14	GENJ		UNITED CK 1814 TO REIMB PLAZA FOR INVTRY STLMT OVERPMT ON 7/13/15	-38,667.81
West	9/30/15	JE30-01	GENJ	11	NON-CASH DISTRIB TO YUSUF TO SETTLE MISC DUE TO/FR ACCOUNTS AT 9/30	245,089.90
West	9/30/15	JE30-02	GENJ	11	PTL CASH DISTRIB TO HAMED TO SETTLE MISC DUE TO/FR ACCOUNTS AT 9/30	245,089.90
STT	9/30/15	XJE30-12	GENJ	11	ADJUST YUSUF/HAMED DISTRIB SETTLE ON 9/30 REF CK 251 FOR \$183,381.91	10,242.00
STT	9/30/15	XJE30-12	GENJ	11	ADJUST YUSUF/HAMED DISTRIB SETTLE ON 9/30 REF CK 251 FOR \$183,381.91	10,242.00
	10/31/15				<b>Total Distributions</b>	<b>41,751,599.39</b>

Distributions

HAMD663113

Part 2

PLAZA EXTRA WEST	4,675,565.30
PLAZA EXTRA EAST	-3,386,962.67
DIFFERENCE BETWEEN BOTH	1,288,602.63
	1,288,602.63
	2
SUM AMOUNT AFTER DIVIDED BY TWO	644,301.32

1,288,602.63

CREDIT DEPOSIT ON 7/14/15

77,335.62

ADJ'D TOTAL

1,211,267.01

# PLAZA EXTRA EAST

	3,256,478.75 ✓ (A)
INVENTORY AS OF 2/15/2015	3,179,143.14 ✓ (B)
INVENTORY RECEIVED BEFORE 3/9/2015	1,376,298.04 1,381,675.53
	4,555,441.18 4,632,776.79
LESS 67% OF TOTAL SALES	-1,318,478.51
	3,236,962.67 3,314,298.28 ✓
EQUIPMENT VALUE	150,000.00
GRAND TOTAL :	3,386,962.67

(A)-(B) 77,335.61 REIMB LRA



**2014 Plaza East  
General Ledger  
For the Period From Dec 1, 2014 to Jul 31, 2015**

Filter Criteria includes: 1) IDs from 12000 to 12000. Report order is by ID. Report is printed with shortened descriptions and in Detail Format.

Account ID Account Description	Date	Reference	Jrnl	Trans Description	Debit Amt	Credit Amt	Balance
12000 Inventory	12/1/14			Beginning Balance			3,110,352.79
	12/31/14	XJE31-02	GEN	REVERSE 2013 P		3,110,352.79	
	12/31/14	XJE31-02	GEN	BOOK 2014 PHYS	3,168,774.61		
	12/31/14	ZJE02	GEN	LATE PHYS INVT	87,704.14		
	12/31/14			Current Period Cha	3,256,478.75	3,110,352.79	146,125.96
	12/31/14			Fiscal Year End Ba			3,256,478.75
	1/1/15			Beginning Balance			3,256,478.75
	2/1/15			Beginning Balance			3,256,478.75
	3/1/15			Beginning Balance			3,256,478.75
	3/8/15	JE08-01	GEN	INVTRY ADJUST	57,819.53		
	3/8/15			Current Period Cha	57,819.53		57,819.53
	4/1/15			Beginning Balance			3,314,298.28
	5/1/15			Beginning Balance			3,314,298.28
	6/1/15			Beginning Balance			3,314,298.28
	7/1/15			Beginning Balance			3,314,298.28
	7/31/15			Ending Balance			3,314,298.28

PLAZA EXTRA EAST
------------------

	Department	Cost	Non Scannable	Total
1	GROCERY	\$1,030,008.99		\$1,030,008.99
2	MEAT	\$14,068.21	\$69,137.34	\$83,205.55
3	PRODUCE	\$6,231.22	\$8,198.27	\$14,429.49
4	DAIRY	\$94,264.82		\$94,264.82
5	FROZEN FOOD	\$98,252.97		\$98,252.97
6	SEAFOOD	\$11,890.10		\$11,890.10
8	BAKERY	\$3,971.41		\$3,971.41
9	BREAD/MILK	\$2,688.60		\$2,688.60
10	LIQUOR	\$208,274.37		\$208,274.37
11	BEER/WINE	\$89,235.93		\$89,235.93
12	TOBACCO	\$77,117.77		\$77,117.77
13	NON-FOOD	\$674,268.19		\$674,268.19
14	GENERAL MERCHANDISE	\$5,387.12		\$5,387.12
15	HBA	\$149,280.40		\$149,280.40
18	VALUE PACK	\$397,031.04		\$397,031.04
21	VALUE PACK NON FOOD	\$159,256.40		\$159,256.40
29	FROZEN VALUE PK	\$53,599.46		\$53,599.46
32	DAIRY VALUE PK	\$4,884.58		\$4,884.58
33	SEAFOOD VALUE PK	\$5,203.92		\$5,203.92
35	HBA VALUE PK	\$6,523.52		\$6,523.52
	STORE SUPPLIES (Late Adjustment)	\$57,452.02		\$57,452.02
	Mafi Email (Late Adjustment)	\$31,867.68		\$31,867.68
	Expired - See List (Late Adjustment)	(\$1,615.56)		(\$1,615.56)

Inventory Value As Of February 15, 2015	<u>\$3,179,143.14</u>	<u>\$77,335.61</u>	<u>\$3,256,478.75</u>
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Total All Locations \$10,199,265.21

## PLAZA EXTRA WEST

INVENTORY AS OF 2/18/2015	4,607,864.70
INVENTORY RECEIVED BEFORE 3/9/2015	876,139.64
	5,484,004.34
LESS 67% OF TOTAL SALES	-1,158,439.04
	4,325,565.30
EQUIPMENT VALUE	350,000.00
GRAND TOTAL :	4,675,565.30

**2014 Plaza West Archive  
General Ledger**

**For the Period From Dec 1, 2014 to Jul 31, 2015**

Filter Criteria includes: 1) IDs from 12000 to 12000. Report order is by ID. Report is printed with shortened descriptions and in Detail Format.

Account ID Account Description	Date	Reference	Jrnl	Trans Description	Debit Amt	Credit Amt	Balance
12000 Inventory	12/1/14			Beginning Balance			4,259,525.49
	12/31/14	XJE31-02	GEN	REVERSE P/Y INV		4,259,525.49	
	12/31/14	XJE31-02	GEN	BOOK C/Y INVTR	4,607,864.70		
				Current Period Cha	4,607,864.70	4,259,525.49	348,339.21
	12/31/14			Fiscal Year End Ba			4,607,864.70
	1/1/15			Beginning Balance			4,607,864.70
	2/1/15			Beginning Balance			4,607,864.70
	3/1/15			Beginning Balance			4,607,864.70
	3/8/15	JE08-01	GEN	INVTRY ADJUST		282,299.40	
				Current Period Cha		282,299.40	-282,299.40
	4/1/15			Beginning Balance			4,325,565.30
	5/1/15			Beginning Balance			4,325,565.30
	6/1/15			Beginning Balance			4,325,565.30
	7/1/15			Beginning Balance			4,325,565.30
	7/31/15			Ending Balance			4,325,565.30

<b>Plaza Extra West</b>
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<u>Dept</u>	<u>Department Name</u>	<u>Value</u>	<u>%</u>
1	GROCERY	\$1,495,450.71	32.45%
2	MEAT	\$166,631.55	3.62%
3	PRODUCE	\$44,468.45	0.97%
4	DAIRY	\$87,028.85	1.89%
5	FROZEN FOOD	\$130,766.26	2.84%
6	SEAFOOD	\$52,611.46	1.14%
7	DELI	\$5,981.77	0.13%
8	BAKERY	\$12,368.40	0.27%
9	BREAD/MILK	\$1,353.55	0.03%
10	LIQUOR	\$157,173.27	3.41%
11	BEER/WINE	\$125,183.40	2.72%
12	TOBACCO	\$60,778.20	1.32%
13	NON-FOOD	\$824,042.51	17.88%
14	GENERAL MERCHANDISE	\$73,257.03	1.59%
15	HBA	\$209,122.44	4.54%
16	R/X	\$201.40	0.00%
18	VALUE PACK	\$454,805.05	9.87%
19	VP-LIQUOR	\$83,122.22	1.80%
21	VALUE PACK NON FOOD	\$366,265.96	7.95%
22	WIC	\$199.29	0.00%
23	VP-FROZEN	\$110,887.49	2.41%
24	VP-DAIRY	\$7,370.80	0.16%
	STORE SUPPLIES	\$72,677.08	1.58%
	LATE ADJUSTMENT	\$66,117.56	1.43%

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<b>INVENTORY VALUE AS OF FEBRUARY 18, 2015</b>	<b>\$4,607,864.70</b>	<b>100.00%</b>
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<b>Total All Locations</b>	<b>\$10,199,265.21</b>
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<b>Plaza Extra St.Thomas</b>
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<u>Dept</u>	<u>Dept Name</u>	<u>Value</u>
1	GROCERY	834,906.60
2	MEAT	3,786.74
3	PRODUCE	2,908.58
4	DAIRY	109,963.75
5	FROZEN FOOD	99,381.36
6	SEAFOOD	2,394.79
7	DELI	758.49
8	BAKERY	1,446.51
9	BREAD MILK	4,283.95
10	LIQUOR	274,442.53
11	BEER-WINE	118,289.28
12	TOBACCO	47,326.46
13	NON-FOOD	282,668.33
14	GENERAL MERCHANDSE	35,199.17
15	HBA	166,981.14
18	VALUE PACK FS	190,086.05
19	VALUE PACK NON FS	72,339.92
20	WIC	40,821.05
22	INDIAN FOOD	31,107.28
23	VP-FROZEN	11,919.17
24	VP-DAIRY	3,910.60

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Total	February 9, 2015	<b>2,334,921.76</b>
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Total All Locations \$10,199,265.21

**From:** [johngaffney@tampabay.rr.com](mailto:johngaffney@tampabay.rr.com)  
**To:** [Carl@hartmann.attorney](mailto:Carl@hartmann.attorney); [Gregory Hodges](#)  
**Cc:** ["Japinga, Kim"](#); ["Joel Holt"](#); [Charlotte Perrell](#); [Stefan Herpel](#)  
**Subject:** RE: John..Friday Report and Thoughts on Moving Forward  
**Date:** Friday, September 28, 2018 3:41:59 PM  
**Attachments:** [2018-0925 Potential Yusuf Claim.pdf](#)

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Carl,

As mentioned last week, my availability this week is limited and it appears it will continue into the next week. However, after receiving your email this morning, I spent some time to finish research begun on Tuesday afternoon, the day after my deposition.

Since there's no prescribed form for my responses to the questions in the email from you and Greg, I'll just respond informally in this email to point 1 regarding the "less 67% of total sales" question.

Point 1 reads "Determine whether the Court ordered inclusion of "less 67% of total sales" for the inventory calculation of Plaza Extra East and West..."

While the Final Wind Up Plan does not mention this phrase, Sections 3 and 4 specify "Yusuf shall be the Liquidating Partner..." and "the Liquidating Partner shall have authority to wind up the Partnership business, including full power and authority to sell and transfer Partnerships Assets, engage legal, accounting and other professional services,..."

Sections 3 and 4 certainly give Yusuf authority that includes using the 67% factor in his calculations. I've admitted that he and I argued while he was doing these calculations. Simply stated, I don't like it when he or anyone attempts to reconstruct accounting that was previously performed in a controlled environment with fresh records, memory, and with consistent application. I felt his rush to calculate the imbalance between East and West inventories might negatively impact his payout. And it did.

The above attachment prepared on 9/25/18 furthers my point. Disregarding Mr. Yusuf's prior assertion that the agreed East and West equipment values were actually \$300k and \$700k, his calculations in July 2015 caused him to understate the partnership liability to him by \$145,989.95. Even if he used a "68.5%" cost of sales factor, the incremental differencnt is only \$3,582.97 in which case the additional partnership liability to Yusuf would have been \$142,414.48.

In the days following the July 10<sup>th</sup> distribution, I found an obvious error on stated inventories that resulted in a refund to the partnership of \$77,335.62. I also proved to him that had he worked to correct the equipment values and not rushed to reinvent accounting for inventories, he might have received another \$340k. He accepted my remarks and the incurred loss.

Given this conclusion, I also attempted to avoid spending time researching and haggling over other inventory adjustments since they are all within the margin of error. But in the process of researching point 1, I also found some documents supporting the other amounts you questioned which I'll present in my next email.

If this response is too informal, please send me a prescribed format.

Regards...John

---

**From:** Carl Hartmann <carl@carlhartmann.com>  
**Sent:** Friday, September 28, 2018 10:47 AM  
**To:** johngaffney@tampabay.rr.com; Gregory Hodges <Ghodges@dtflaw.com>  
**Cc:** Japinga, KiM <kim@japinga.com>; Joel Holt <holtvi.plaza@gmail.com>; Charlotte Perrell <Cperrell@dtflaw.com>; Stefan Herpel <sherpel@dtflaw.com>  
**Subject:** John..Friday Report and Thoughts on Moving Forward

John:

As it is Friday, could you give me an update on what you are working on, the spreadsheet for time and – particularly – your forward-looking assessment of when you think you can get those next three claims done? (If the follow-up on the H-72 depo is significantly slowiny you, I would prefer that you prioritize the next three claims and loop back for that additional data later.)

Also, we have the next three claims ready whenever you are there.

Thank you,

Carl

**CARL J. HARTMANN III**  
WEBSITE: [WWW.HARTMANN.ATTORNEY](http://WWW.HARTMANN.ATTORNEY)  
EMAIL: [CARL@HARTMANN.ATTORNEY](mailto:CARL@HARTMANN.ATTORNEY)  
ALL FAXES: (202) 403-3750  
D.C. TELEPHONE: (202) 518-2970  
USVI TELEPHONE: (340) 642-4422



Exhibit 4



(advbpt91)

Request ID: 2016062098000002

Item ID: 000078

Account: 190199091

Amount: \$644,301.32

Check: 208

"El Banco Popular certifica que esta imagen es fiel representación del documento original".

"DOCUMENTO NO NEGOCIABLE"

"Banco Popular certifies that this image is a true representation of the original document".

"NOT NEGOTIABLE"

UNITED CORPORATION PARTNERSHIP  
 CLAIMS RESERVE ACCOUNT  
 PO BOX 763  
 CHRISTIANSTED, VI 00821

208  
101-667/216

7-10-15  
Date

Pay to the Order of FATHI YUSUF \$644,301.32

SIX HUNDRED FORTY FOUR THOUSAND THREE HUNDRED AND 32/100 dollars

**BANCO POPULAR**  
 BANCO POPULAR DE PUERTO RICO  
 Orange Grove Branch  
 Saint Croix, U.S. Virgin Islands

For HAMED DRAW-INVTRYSUMT

021606674 190 199091 0208

*[Signature]*

Banco Popular de P.R.  
 ->021502011<-  
 (787)758-0484

194191100246 07142015

UNITED CORP DBA PAREN  
 EXTRA #/C 191-295310

EXHIBIT Q

9/21/18 Gaffney Depo, Claim H-72

BANC100730



(advbpt91)

Request ID: 2016062098000002

Item ID: 000079

Account: 190199091

Amount: \$644,301.32

Check: 209

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UNITED CORPORATION PARTNERSHIP  
 CLAIMS RESERVE ACCOUNT  
 PO BOX 763  
 CHRISTIANSTED, VI 00821

209  
 101-667/216

7-10-15 Date

Pay to the Order of FATHI YUSUF \$644,301.32

Six Hundred Forty Four Thousand Three Hundred One and 32/100ths Dollars

**BANCO POPULAR**  
 BANCO POPULAR DE PUERTO RICO  
 Orange Grove Branch  
 Saint Croix, U.S. Virgin Islands

For YUSUF DISTRIB - MATCH LNMTA

0216066741 190 199091 0209

*[Signature]*

Banco Popular de P.R.  
 ->021502011<-  
 (787)758-0484

194191100247 07142015

*[Handwritten notes: APc 191-795310, UNITED CORP DBA Reserve Form]*

EXHIBIT R

9/21/18 Gaffney Depo, Claim H-72

BANC100729