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**UNITED STATES BANKRUPTCY COURT  
THE SOUTHERN DISTRICT OF NEW YORK**

In re:

JENNIFER CONVERTIBLES, INC.,<sup>1</sup>

Debtors.

Chapter 11

Case No. 10-13779 (ALG)

(Jointly Administered)

**DECLARATION OF ELLEN V. HOLLOMAN IN SUPPORT OF DEBTORS'  
OBJECTION AND RESPONSE IN OPPOSITION TO MOTION OF TMCC, INC. FOR  
AN ORDER COMPELLING PAYMENT OF POSTPETITION LEASE OBLIGATIONS,  
DIRECTING THE TIMELY PERFORMANCE OF ALL LEASE OBLIGATIONS OR, IN  
THE ALTERNATIVE, COMPELLING DEBTOR TO IMMEDIATELY REJECT LEASE**

**To: The Honorable Allan L. Gropper  
United States Bankruptcy Judge**

I, Ellen V. Holloman, do hereby declare:

1. I am an associate at the law firm of Olshan Grundman Frome Rosenzweig & Wolosky LLP, which is counsel to the Debtors in the above-captioned chapter 11 proceeding. I

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, if applicable, are: (i) Jennifer Convertibles, Inc. (4646); (ii) Jennifer Convertibles Boylston MA, Inc. (7904); (iii) Jennifer Chicago Ltd. (0505); (iv) Elegant Living Management, Ltd. (5049); (v) Hartsdale Convertibles, Inc. (1681); (vi) Jennifer Management III Corp. (3552); (vii) Jennifer Purchasing Corp. (7319); (viii) Jennifer Management II Corp. (9177); (ix) Jennifer Management V Ltd. (9876); (x) Jennifer Convertibles Natick, Inc. (2227); (xi) Nicole Convertibles, Inc. (5985); (xii) Washington Heights Convertibles, Inc. (0783).

am admitted to the bar of this Court, and I am familiar with the proceedings in this matter. I respectfully submit this Declaration in support of the Debtors' *Objection and Response in Opposition to Motion of TMCC, Inc. for an Order Compelling Payment of Postpetition Lease Obligations, Directing the Timely Performance of all Lease Obligations or, in the Alternative, Compelling Debtor to Immediately Reject Lease* (the "Objection and Response"), in order to place before the Court certain documents and deposition testimony that are relevant to the Objection and Response.

2. On October 18, 2010, the Debtors served subpoenas on TMCC, Inc. ("TMCC"), GMM Consulting, Inc. ("GMM"), and Josalco, Inc. (now known as JSP Realty Group LLC) ("Josalco"). During discovery had thus far in this matter, the Debtors have taken the depositions of Gerald McCrystal, the principal of TMCC and GMM, and Joseph Picone, Jr. and Victor Emanuelo, the President and General Counsel, respectively, of Josalco. In addition, TMCC and GMM produced documents, and Josalco made documents available for inspection, in response to the subpoenas.

3. Attached hereto are true and correct copies of the "Min-U-Script" versions of transcripts from those depositions, without exhibits and as follows:

- i. The deposition transcript of Gerald McCrystal is attached hereto
- ii. as Exhibit 1;
- iii. The deposition transcript of Joseph Picone, Jr. is attached hereto
- iv. as Exhibit 2;
- v. The deposition transcript of Victor Emanuelo is attached hereto
- vi. as Exhibit 3.

4. Attached hereto as Exhibit 4 is a true and correct copy of a document titled “Exhibit B”, bearing production number M 77. This document was produced by TMCC and GMM, and was marked as Exhibit 9 during the deposition of Gerald McCrystal.

5. The original deposition transcript of Mr. McCrystal’s deposition was mailed to counsel for TMCC and GMM on November 8, 2010. As of the date of this Declaration, no errata has been provided. The original deposition transcripts of Mr. Picone and Mr. Emauelo will be mailed to counsel for Josalco as soon as they are received.

I hereby certify under penalty of perjury that the foregoing is true and correct.

/s/ Ellen Holloman  
Ellen V. Holloman

Dated: November 22, 2010  
New York, New York

**EXHIBIT 1**

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UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK

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Chapter 11

IN RE: Case No.  
 10-13779 (ALG)

JENNIFER CONVERTIBLES, INC.,  
 Debtor.

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DEPOSITION OF GERALD McCRYSTAL  
 Friday, November 5, 2010  
 10:30 a.m.

Reported by:  
 Joan Urzia

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1  
 2  
 3 **A P P E A R A N C E S:**  
 4  
 5 **CULLEN & DYKMAN, LLP**  
 6 Attorneys for Movants  
 7 100 Quentin Roosevelt Boulevard  
 8 Garden City, New York 11539  
 9 **BY: BONNIE L. POLLACK, ESQ.**  
 10 Bpollack@cullenanddykman.com  
 11  
 12  
 13 **OLSHAN GRUNDMAN FROME**  
 14 **ROSENZWEIG & WOLOSKY, LLP**  
 15 Attorneys for Debtor  
 16 65 East 55th Street  
 17 New York, New York 10022  
 18 **BY: ELLEN V. HOLLOMAN, ESQ.**  
 19 Eholoman@olshanlaw.com  
 20  
 21  
 22  
 23  
 24  
 25

2

1  
 2 November 5, 2010  
 3 10:30 a.m.  
 4 New York, New York

5  
 6 Deposition of GERALD McCRYSTAL,  
 7 held at the offices of Olshan Grundman  
 8 Frome Rosenzweig & Wolosky, LLP, 65 East  
 9 55th Street, New York, New York, pursuant  
 10 to Subpoena, before Joan Urzia, a Notary  
 11 Public of the State of New York.  
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4

1  
 2 **G E R A L D M c C R Y S T A L,**  
 3 called as a witness, having been duly  
 4 sworn by a Notary Public, was examined  
 5 and testified as follows:  
 6 **EXAMINATION BY**  
 7 **MS. HOLLOMAN:**  
 8 Q. Good morning, Mr. McCrystal.  
 9 Thank you for coming.  
 10 Just for our record, could you  
 11 state your full name and identify your  
 12 counsel.  
 13 A. Gerald McCrystal.  
 14 Bonnie Pollack.  
 15 Q. Are you Gerald, G-E-R --  
 16 A. G-E-R-A-L-D, yeah.  
 17 Q. Okay.  
 18 Have you ever been deposed  
 19 before?  
 20 A. Yes.  
 21 Q. In connection with what kind of  
 22 matter? You don't have to describe it in  
 23 great detail.  
 24 A. A civil matter, you know.  
 25 Q. Was it a contract dispute or a



5

1 G. McCrystal  
 2 real estate matter?  
 3 A. No. It was between me and a  
 4 vendor.  
 5 Q. Oh, okay.  
 6 So you've been deposed before.  
 7 A. Yes.  
 8 Q. But I think it's fair to still  
 9 remind you of the ground rules for a  
 10 deposition.  
 11 This is a court proceeding. We  
 12 have a court reporter here. What she's  
 13 doing is taking down what we say.  
 14 A. Okay.  
 15 Q. So we need to have a clear  
 16 record.  
 17 If you could please wait until I  
 18 finish my questions before you answer them,  
 19 and I'll try to do the same with respect to  
 20 your answers. That will make it easier for  
 21 Joan to get everything down.  
 22 There are going to be documents  
 23 marked as exhibits and shown to you, either  
 24 for you to comment on or perhaps to refresh  
 25 your recollection of matters.

6

1 G. McCrystal  
 2 If I ask you any questions that  
 3 aren't clear, if you have trouble  
 4 understanding me or if I'm speaking  
 5 quietly, just say so. I'm happy to  
 6 rephrase or raise my voice or anything like  
 7 that.  
 8 If you answer a question that I  
 9 ask, the assumption is that you understood  
 10 the question. But again, if you need  
 11 clarification, feel free to ask.  
 12 A. Okay.  
 13 Q. Same thing for anything like a  
 14 comfort break, you know if you need to use  
 15 the restroom or feel like you're getting  
 16 tired, just say so. The only thing I ask  
 17 for you to do is to wait until all  
 18 questions are answered. We'll take a break  
 19 as long as there is no pending question.  
 20 So those are the ground rules.  
 21 Do you have any questions for me?  
 22 A. No.  
 23 Q. Okay.  
 24 Is there any reason that you  
 25 can't testify truthfully today?

7

1 G. McCrystal  
 2 A. No.  
 3 Q. Do you intend to testify  
 4 truthfully today?  
 5 A. Yes.  
 6 Q. Okay.  
 7 I'm going to place before you two  
 8 documents. They're marked as Exhibit 1 and  
 9 Exhibit 2.  
 10 (Exhibit 1, Notice, marked for  
 11 identification, as of this date.)  
 12 (Exhibit 2, Notice, marked for  
 13 identification, as of this date.)  
 14 BY MS. HOLLOMAN:  
 15 Q. Please take a moment to review  
 16 them, and when you're ready, please let me  
 17 know.  
 18 While you're reviewing, I'm just  
 19 going to authenticate for the record those  
 20 are true and correct copies of subpoenas  
 21 that were sent to TMMC Inc. and GMM  
 22 Consulting Inc. with affidavits of service  
 23 that are dated October 18, 2010.  
 24 MS. POLLACK: I have an  
 25 objection, because our law firm

8

1 G. McCrystal  
 2 received the subpoenas. They were not  
 3 sent directly to TMCC and GMM -- not  
 4 that there's an issue with that, I'm  
 5 just saying you had stated that they  
 6 were sent to Mr. McCrystal. They were  
 7 sent to our law firm.  
 8 MS. HOLLOMAN: So you're  
 9 objecting to --  
 10 MS. POLLACK: No, I'm just  
 11 clarifying the record.  
 12 MS. HOLLOMAN: Are you objecting  
 13 to the introduction of the exhibits?  
 14 MS. POLLACK: No. I'm just  
 15 clarifying the record.  
 16 MS. HOLLOMAN: Got it.  
 17 BY MS. HOLLOMAN:  
 18 Q. So these are subpoenas that are  
 19 addressed to TMMC?  
 20 A. -- well, it has the wrong  
 21 addresses, but I understand, yeah.  
 22 Q. They're sent to or they're meant  
 23 for -- is that more clear?  
 24 A. Yes.  
 25 Q. Do you understand?



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1 G. McCrystal  
 2 A. I think so.  
 3 Q. Okay.  
 4 Have you ever seen those  
 5 documents before?  
 6 A. I don't believe so.  
 7 Q. Okay.  
 8 What I'd like to do right now is  
 9 just establish terminology. It seems  
 10 pretty basic, but I just want to make sure  
 11 we understand each other in this  
 12 proceeding.  
 13 A. Okay.  
 14 Q. When I say TMCC, I'm referring to  
 15 TMCC Inc. Similarly, when I say GMM --  
 16 A. Yeah, that's fine.  
 17 Q. I mean GMM Consulting, Inc.  
 18 A. That's fine.  
 19 Q. And when I say debtors, I'm going  
 20 to be referring to Jennifer Convertibles or  
 21 Hartsdale Convertibles, although I may be  
 22 more specific at times with respect to  
 23 Hartsdale. But if you have any questions,  
 24 let me know.  
 25 A. Okay.

10

1 G. McCrystal  
 2 Q. I just want to make sure that we  
 3 understand each other and that we agree on  
 4 the terminology.  
 5 A. Okay.  
 6 Q. Okay.  
 7 Your understanding, is it your  
 8 understanding that Jennifer Convertibles  
 9 and Hartsdale Convertibles are debtors in  
 10 bankruptcy?  
 11 A. Yes.  
 12 Q. All right.  
 13 What is your relationship to  
 14 TMCC?  
 15 A. I'm the, you know, corporate  
 16 officer, president of the company. I'm the  
 17 only officer of the company. It's my  
 18 company.  
 19 Q. Okay.  
 20 That's the same question for  
 21 GMM?  
 22 A. Same as TMCC, I'm the president,  
 23 I'm the sole owner of the company.  
 24 Q. And so is it correct your job  
 25 title at both places, TMCC and GMM, is

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1 G. McCrystal  
 2 president?  
 3 A. Yeah, I would guess so.  
 4 Q. Okay. All right.  
 5 Are they separate entities, TMCC  
 6 and GMM?  
 7 A. Yes.  
 8 Q. Okay.  
 9 Are they related in any way?  
 10 A. I own them both, I guess would be  
 11 the relation.  
 12 Q. So they both have the same  
 13 ownership?  
 14 A. Same ownership.  
 15 Q. Okay.  
 16 Do they keep separate books and  
 17 records?  
 18 A. Yes.  
 19 Q. Now, do you understand that  
 20 you're here today to testify pursuant to  
 21 the notices in front of you, Exhibit 1 and  
 22 Exhibit 2?  
 23 A. Yes.  
 24 Q. All right.  
 25 Do you understand that you're

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1 G. McCrystal  
 2 here today as a representative of both TMCC  
 3 and GMM?  
 4 A. Yes.  
 5 Q. Okay.  
 6 Apart from any conversations that  
 7 you may have had with your counsel,  
 8 Ms. Pollack, do you have any understanding  
 9 about why your deposition was requested in  
 10 this matter -- let me just advise you  
 11 quickly, don't refer to any conversations  
 12 that you have had with Mrs. Pollack when  
 13 you answer.  
 14 A. Repeat the question now, I'm  
 15 sorry.  
 16 Q. Fair enough. That's okay.  
 17 A. Okay.  
 18 Q. Apart from any questions you've  
 19 had with your counsel, what is your  
 20 understanding of why you're here and why  
 21 your deposition was requested today?  
 22 A. I guess to give testimony on the  
 23 agreement.  
 24 Q. On the agreement, you said?  
 25 A. You know, on the lease with



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1 G. McCrystal  
 2 Hartsdale.  
 3 Q. Do you have any other  
 4 understanding other than that?  
 5 A. No.  
 6 Q. I'm going to place before you  
 7 another document. This has been marked as  
 8 Exhibit 3 in this matter.  
 9 (Exhibit 3, Motion, marked for  
 10 identification, as of this date.)  
 11 BY MS. HOLLOWMAN:  
 12 Q. Take a moment just to look it  
 13 over, and when you're ready, please look  
 14 up.  
 15 While you're reviewing, I'm just  
 16 going to state for the record that that is  
 17 a true and correct copy of the notice of  
 18 motion and motion together with exhibits  
 19 that was filed by Cullen & Dykman LLP on  
 20 behalf of TMCC in this matter.  
 21 Just to establish terminology,  
 22 I'm going to refer to Exhibit 3 as the  
 23 motion.  
 24 A. Fine.  
 25 Q. Have you seen that document

14

1 G. McCrystal  
 2 before?  
 3 A. Yes, I have.  
 4 Q. Did you ask your counsel to file  
 5 that document on behalf of TMCC?  
 6 A. Yes.  
 7 Q. Are you familiar with the facts  
 8 and the allegations that are set forth in  
 9 the motion?  
 10 A. I believe I am.  
 11 Q. Just some basic background  
 12 questions. They'll be very basic.  
 13 A. Okay.  
 14 Q. What is TMCC?  
 15 A. It's a holding company for the  
 16 space at 1821 Broad Hollow Road.  
 17 Q. Is it in any other business?  
 18 A. No.  
 19 Q. It's just a holding company,  
 20 that's fair to say?  
 21 A. Yes.  
 22 Q. Okay.  
 23 And we've talked before that  
 24 you're the president of TMCC, that was your  
 25 testimony before.

15

1 G. McCrystal  
 2 A. Yes.  
 3 Q. What are your responsibilities as  
 4 the president of TMCC?  
 5 A. Paying whatever bills TMCC has  
 6 and, you know, I guess filing any, you  
 7 know, tax returns or whatever the company  
 8 may have, you know.  
 9 Q. Do you have any other  
 10 shareholders or partners?  
 11 A. No.  
 12 Q. Are there any other employees?  
 13 A. No.  
 14 Q. Okay.  
 15 When did you found TMCC -- or is  
 16 that correct, sir, I apologize, did you  
 17 found TMCC?  
 18 A. Yes, I did found it. An  
 19 estimate, I would say about a little over 3  
 20 years ago, you know, give or take, you  
 21 know.  
 22 Q. Was it ever in any other line of  
 23 business?  
 24 A. No.  
 25 Q. What is Roma Furniture?

16

1 G. McCrystal  
 2 A. Roma Furniture is a furniture  
 3 store, retail furniture store that I'm also  
 4 the president of that company.  
 5 Q. Is it a separate company from  
 6 TMCC?  
 7 A. Yes.  
 8 Q. Is it a separate company from  
 9 GMM?  
 10 A. Yes.  
 11 Q. Okay.  
 12 What is Roma FLI?  
 13 A. That's a company that I own.  
 14 That's the furniture company that I'm the  
 15 president and, you know, corporate officer  
 16 or whatever. That's furniture retail  
 17 store. That's the corporate name of Roma  
 18 Furniture.  
 19 Q. So there is an identity between  
 20 Roma FLI and Roma Furniture?  
 21 A. No.  
 22 MS. POLLACK: Objection. Do you  
 23 understand what identity means?  
 24 THE WITNESS: No.  
 25 Q. I can rephrase the question.





17

1 G. McCrystal  
 2 A. Okay.  
 3 Q. And also, I want your knowledge,  
 4 I don't want to put words in your mouth.  
 5 A. Okay.  
 6 Q. What is the relationship between  
 7 Roma Furniture and Roma FLI?  
 8 A. Roma FLI is the corporate name  
 9 for Roma Furniture.  
 10 Q. Is it fair to say Roma Furniture  
 11 is the trade name?  
 12 A. Yeah, okay, fine, I would say  
 13 that that's --  
 14 MS. POLLACK: Objection to the  
 15 extent it calls for a legal  
 16 conclusion, but you can answer the  
 17 question.  
 18 A. Yeah, I guess, you know.  
 19 Q. Do you have a job title there at  
 20 Roma Furniture?  
 21 A. I'm also the president of that  
 22 company.  
 23 Q. And do you have a job title at  
 24 Roma FLI?  
 25 A. Same, president of that company.

18

1 G. McCrystal  
 2 It's the same company.  
 3 Q. Okay.  
 4 What is the relationship, if any,  
 5 between Roma Furniture and TMCC?  
 6 A. That I am the president of both  
 7 companies.  
 8 Q. But beyond that, is there any  
 9 other relationship?  
 10 A. No.  
 11 Q. Do they share books and records?  
 12 A. No.  
 13 Q. Are there any employees of Roma  
 14 Furniture?  
 15 A. Yes.  
 16 Q. How many employees?  
 17 A. Five.  
 18 Q. Does Roma Furniture have an  
 19 office or a storefront?  
 20 A. Yes.  
 21 Q. An office or a storefront?  
 22 A. Both. I have an office in the  
 23 store, you know.  
 24 Q. What about Roma FLI?  
 25 A. The same.

19

1 G. McCrystal  
 2 Q. Did you found Roma Furniture?  
 3 A. Yes.  
 4 Q. When was that?  
 5 A. I think December of '97.  
 6 Q. And it may seem obvious from the  
 7 name of the company, but what line of  
 8 business is Roma Furniture in?  
 9 A. Furniture retail.  
 10 Q. All right.  
 11 I'm going to ask the same round  
 12 of questions for GMM.  
 13 What is GMM Consulting?  
 14 A. GMM Consulting is a corporation  
 15 that I formed after the, you know, the  
 16 lease agreement with Hartsdale.  
 17 Q. Approximately when was that?  
 18 A. I would guess August of 2009, I  
 19 think, maybe September -- maybe September.  
 20 I think September is more accurate.  
 21 Q. Okay.  
 22 And what line of business is GMM  
 23 in?  
 24 A. I formed GMM Consulting to make  
 25 up for -- I don't know what kind of

20

1 G. McCrystal  
 2 business you would call this, but I formed  
 3 GMM Consulting to make up for the profit  
 4 that I would lose by relocating.  
 5 Q. So let's talk about --  
 6 A. I don't know what you want to  
 7 call that, you know.  
 8 Q. Your knowledge, whatever you  
 9 would want to call it, however you would  
 10 characterize it is what I'm looking for.  
 11 A. I suppose you could call it a  
 12 real estate company, you can call it -- you  
 13 know, I don't know.  
 14 MS. HOLLOWAN: Could you read the  
 15 answer back?  
 16 (Whereupon, the requested portion  
 17 was read back by the court reporter.)  
 18 BY MS. HOLLOWAN:  
 19 Q. Okay. So let's go through that a  
 20 little bit.  
 21 You say you formed GMM Consulting  
 22 to make up for the profit you would lose by  
 23 relocating. Relocating where and  
 24 relocating what?  
 25 A. Relocating, you know, Roma



21

1 G. McCrystal  
 2 Furniture.  
 3 Q. Okay. To where?  
 4 A. To 1815 Broad Hollow Road.  
 5 Q. Now, you say you formed it in  
 6 order to make up for lost profits that  
 7 would be caused by the relocation, that's  
 8 correct?  
 9 A. Yes.  
 10 Q. Was there any other reason to  
 11 form that?  
 12 A. No.  
 13 Q. Why did you make the decision to  
 14 relocate to 815 Broad Hollow Road -- and  
 15 let me rephrase, I apologize.  
 16 A. Okay.  
 17 Q. Why did you make the decision to  
 18 relocate Roma Furniture to 1815 Broad  
 19 Hollow Road?  
 20 A. I was called by Hartsdale Inc. --  
 21 I spoke with Harley Greenfield, I believe  
 22 that's his last name, and then I spoke with  
 23 Ed Seidner, I was called by them about  
 24 leasing my space that I was currently in at  
 25 1821 Broad Hollow Road, and when we reached

22

1 G. McCrystal  
 2 an agreement, I had to move immediately  
 3 and, you know, once we reached an  
 4 agreement, this was the space that we  
 5 agreed I was going to move to, you know.  
 6 Q. And when you say this was the  
 7 space you're referring to 1815 Broad Hollow  
 8 Road?  
 9 A. Yes.  
 10 Q. Sorry for all the repetition.  
 11 It's just to make a clear record.  
 12 A. I understand. I understand.  
 13 Q. Okay.  
 14 Is there any relationship between  
 15 GMM and Roma Furniture?  
 16 A. Only that I'm the owner of both  
 17 companies.  
 18 Q. And GMM and Roma Furniture keep  
 19 separate books?  
 20 A. Yes.  
 21 Q. All right.  
 22 Last of the background questions.  
 23 Have you heard of Josalco Inc.?  
 24 A. Yes.  
 25 Q. What is your understanding of

23

1 G. McCrystal  
 2 Josalco Inc.?  
 3 A. He's my landlord.  
 4 Q. The company is your landlord?  
 5 A. Josalco Inc., the company, you  
 6 know, is my landlord, yes.  
 7 Q. Have you also heard that company  
 8 called Joe Picone & Sons?  
 9 A. Yeah, originally I think that's  
 10 what he called the company.  
 11 Q. How about JSP Realty?  
 12 A. Yes, yes.  
 13 Q. All referring to the same  
 14 thing --  
 15 A. I think it was JS -- I don't know  
 16 the details of his business, but I think  
 17 that they had a company change.  
 18 Q. But to your understanding,  
 19 Josalco Inc., Joe Picone & Sons, JSP Realty  
 20 are the same entity?  
 21 A. Yes.  
 22 Q. Okay.  
 23 Do you have an understanding of  
 24 their business?  
 25 A. No.

24

1 G. McCrystal  
 2 Q. What is your understanding of  
 3 your relationship with them?  
 4 A. That I am their tenant and  
 5 they're my landlord.  
 6 Q. Okay.  
 7 Who do you deal with there?  
 8 A. Joe Picone.  
 9 Q. Is there anyone else?  
 10 A. Occasionally, Vic Emanuelo.  
 11 Q. Who is Joe Picone?  
 12 A. As far as I know, he is the owner  
 13 of Josalco, which is my landlord, you know.  
 14 Q. How about Vic Emanuelo?  
 15 A. As far as I know, he is counsel  
 16 to Josalco.  
 17 Q. Is there anyone else that you  
 18 deal with at Josalco?  
 19 A. No.  
 20 Q. How long have you been dealing  
 21 with Josalco?  
 22 A. A little over three years.  
 23 Q. Do you deal with them on any  
 24 matters other than a lease?  
 25 MS. POLLACK: I'm just going to



25

1 G. McCrystal  
 2 interpose. Can you clarify the "you"  
 3 that you're speaking of in all these  
 4 questions?  
 5 MS. HOLLOWAN: Fair enough.  
 6 That's absolutely right.  
 7 BY MS. HOLLOWAN:  
 8 Q. Does TMCC deal with Josalco on  
 9 any matters other than the lease matter?  
 10 A. No.  
 11 Q. Now, this is a question for you  
 12 personally.  
 13 Did you speak with anyone at  
 14 Josalco about the debtor's bankruptcy?  
 15 A. Yes.  
 16 Q. Who did you speak with there?  
 17 A. I spoke with Joe Picone and Vic  
 18 Emanuelo.  
 19 Q. What did you discuss with them?  
 20 A. Well, I told them that they filed  
 21 a bankruptcy, or they filed for bankruptcy,  
 22 and that's about it. That's what we  
 23 discussed, you know.  
 24 Q. Do you remember when those  
 25 conversations took place?

26

1 G. McCrystal  
 2 A. Took place, you know, after you  
 3 guys, after Hartsdale filed bankruptcy in  
 4 July, you know, we speculated that they  
 5 were going to file bankruptcy in June, you  
 6 know.  
 7 You know, I spoke with them after  
 8 they started paying the rent again, you  
 9 know, when they started paying the rent  
 10 again.  
 11 Q. When was that?  
 12 A. I think September 1st -- started  
 13 paying part of the rent, partial rent, you  
 14 know.  
 15 Q. Did you speak with both Joe  
 16 Picone and Victor Emanuelo on these  
 17 occasions or one or the other?  
 18 A. Yeah, I'm sure I've spoken to  
 19 both of them.  
 20 Q. Okay.  
 21 A. I don't think I ever spoke to  
 22 them together in the same room, but I spoke  
 23 to them individually.  
 24 Q. Okay.  
 25 Did you speak with anyone at

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1 G. McCrystal  
 2 Josalco, either Mr. Picone or Mr. Emanuelo,  
 3 about the motion, that would be Exhibit 3  
 4 in front of you?  
 5 A. No.  
 6 Q. Have you spoken with anyone at  
 7 Josalco, Mr. Picone, Mr. Emanuelo about  
 8 this deposition?  
 9 A. No.  
 10 Q. Do you know if anyone has spoken  
 11 to Josalco on TMCC's behalf about this  
 12 deposition?  
 13 A. No, not that I know of.  
 14 Q. Same question for GMM, has anyone  
 15 spoken to Josalco on GMM's behalf about  
 16 this deposition?  
 17 A. No. I did tell him that I was  
 18 going for a deposition, you know, when I  
 19 saw him, I said I have a deposition. He  
 20 asked me what's going on with the case  
 21 there, and I said, you know, I'm going for  
 22 a deposition.  
 23 That's the extent of it, though.  
 24 I didn't give the details of it, but I did  
 25 tell him I was going for a deposition.

28

1 G. McCrystal  
 2 Q. When you say him?  
 3 A. Joe.  
 4 Q. Joe, okay.  
 5 How did you learn that this  
 6 deposition was going to take place?  
 7 A. My attorney told me.  
 8 Q. What did you do to prepare for  
 9 the deposition?  
 10 A. I reviewed some of these  
 11 documents that, you know, the motion and  
 12 whatnot, you know.  
 13 Q. Any other documents other than  
 14 the motion?  
 15 A. No.  
 16 Q. So is it fair to say you reviewed  
 17 the documents attached to the motion?  
 18 A. Yeah, yeah, the motion, I guess  
 19 the lease, the motion, you know, whatever  
 20 was -- yeah, I'm pretty sure that this was  
 21 it, you know, okay.  
 22 A lot of it, you know, I don't  
 23 understand, but I reviewed it just to try  
 24 to have an understanding when I came here.  
 25 Q. I think, just for the record,



29

1 G. McCrystal  
 2 I'll make a representation that the  
 3 documents attached to the motion are a copy  
 4 of a lease, it's a copy of a sublease  
 5 agreement, it's a copy of a document called  
 6 Amended Exhibit B, and there is a copy of a  
 7 document called landlord's consent.  
 8 I think those are marked  
 9 respectively Exhibits A through D. That's  
 10 my understanding.  
 11 MS. POLLACK: The document speaks  
 12 for itself.  
 13 MS. HOLLOMAN: Yes, absolutely,  
 14 and it's in the record.  
 15 BY MS. HOLLOMAN:  
 16 Q. So is it fair to say you reviewed  
 17 all of those documents?  
 18 A. I briefly reviewed them, yes.  
 19 Q. Okay.  
 20 Now, other than with Mr. Picone  
 21 and with Mrs. Pollack, have you discussed  
 22 this deposition with anyone else?  
 23 A. No.  
 24 Q. Were you told by anyone to retain  
 25 documents in connection with the motion?

30

1 G. McCrystal  
 2 MS. POLLACK: Objection. It's  
 3 vague. Retain? What is retain?  
 4 BY MS. HOLLOMAN:  
 5 Q. Do you have an understanding what  
 6 retain means?  
 7 A. I have an understanding of what  
 8 retain means, but I don't understand the  
 9 question.  
 10 Do you mean to get additional  
 11 documents for the motion? I don't  
 12 understand the question.  
 13 Q. Were you told to retain documents  
 14 in connection with the motion?  
 15 MS. POLLACK: Same objection.  
 16 A. I honestly -- I understand when  
 17 you say retain --  
 18 Q. What do you understand retain to  
 19 mean?  
 20 A. To possess.  
 21 Q. Do you understand retain to mean  
 22 save, or hold on to?  
 23 A. Okay, yes, I suppose to, yes.  
 24 Q. Were you told to save or hold on  
 25 to documents in connection with the motion?

31

1 G. McCrystal  
 2 A. No, no.  
 3 Q. Did TMCC or GMM receive  
 4 instructions to save or hold on to  
 5 documents in connection with the motion?  
 6 DI MS. POLLACK: Objection. Not only  
 7 is it vague, but to the extent it calls  
 8 for anything that is subject to the  
 9 attorney-client privilege, I'm directing  
 10 him not to answer.  
 11 MS. HOLLOMAN: There is no  
 12 request for attorney-client privilege.  
 13 BY MS. HOLLOMAN:  
 14 Q. Do you understand the question?  
 15 MS. HOLLOMAN: Can we have it  
 16 read back?  
 17 (Whereupon, the requested portion  
 18 was read back by the court reporter.)  
 19 MS. POLLACK: Objection. Vague.  
 20 When? What time? By who?  
 21 BY MS. HOLLOMAN:  
 22 Q. Do you understand the question?  
 23 A. I think I understand the  
 24 question.  
 25 Q. Well, you can answer it to the

32

1 G. McCrystal  
 2 best of your ability.  
 3 A. Any documentation that I had I  
 4 gave to my attorney, you know, when all  
 5 this started.  
 6 The only other documentation I  
 7 gave was a few e-mails that I had. I  
 8 didn't think that they pertained to the  
 9 case, but apparently they did, so I gave  
 10 them to other the other day. But other  
 11 than that, no.  
 12 Q. I'm going to ask the question  
 13 again, because I'm trying to just get to  
 14 the answer.  
 15 A. Okay.  
 16 Q. Separate and apart from yourself,  
 17 because you are here in the capacity for  
 18 TMCC and GMM, separate and apart from any  
 19 instruction that you personally may have  
 20 received, do you know if TMCC and GMM  
 21 received any instructions to hold on to or  
 22 save documents in connection with the  
 23 motion?  
 24 MS. POLLACK: Same objection.  
 25 You can answer it.



33

1 G. McCrystal  
 2 BY MS. HOLLOMAN:  
 3 Q. If you understand the question,  
 4 you can answer it. If you don't, I can  
 5 keep trying.  
 6 A. No, I don't have any -- I don't  
 7 believe I received anything telling me to  
 8 hold on to or look for anything.  
 9 Q. Separate and apart from the  
 10 instructions that we've been talking about,  
 11 have you taken any steps to preserve  
 12 documents in connection with the motion?  
 13 A. Again, only what I've given to my  
 14 attorney.  
 15 Q. Did anyone collect documents from  
 16 you personally in response to the subpoenas  
 17 that were addressed to TMCC and GMM?  
 18 A. No.  
 19 Q. Did anyone collect documents from  
 20 TMCC and GMM in response to the subpoenas  
 21 that were addressed to TMCC and GMM?  
 22 A. If anything was collected by  
 23 anybody, my attorney would know. I  
 24 wouldn't know. I gave her whatever  
 25 paperwork, you know, was necessary. I

34

1 G. McCrystal  
 2 didn't give anything to anybody -- nobody  
 3 walked in off the street and said can I  
 4 have something.  
 5 Q. Oh no, no.  
 6 A. All right.  
 7 MS. HOLLOMAN: Can I have the  
 8 last answer read back?  
 9 (Whereupon, the requested portion  
 10 was read back by the court reporter.)  
 11 BY MS. HOLLOMAN:  
 12 Q. I'm not sure if I have the answer  
 13 to the question, so I'm going to try again.  
 14 A. Okay.  
 15 Q. Is it correct to say that you  
 16 provided documents to your counsel in  
 17 connection with the motion?  
 18 A. Yes.  
 19 Q. Did you provide those documents  
 20 at the request of your counsel?  
 21 A. Some of them, yes.  
 22 Q. When you say some of them, which  
 23 do you mean?  
 24 A. Well, like I said, like these  
 25 e-mails, you know, they said do you have

35

1 G. McCrystal  
 2 anything, any other documentation besides  
 3 what we have. I believe my counsel has all  
 4 the documentation that I had.  
 5 Q. Do you know if documents were  
 6 collected from anyone other than yourself  
 7 in connection with the motion?  
 8 A. Only maybe my attorney.  
 9 Q. When you say --  
 10 A. The attorney that drafted the  
 11 lease, the agreement.  
 12 Q. Who was that?  
 13 A. Paul Perkins.  
 14 Q. What law firm is he with?  
 15 A. He is with the Lynch Law Firm.  
 16 Q. Is it correct to say that it's  
 17 your belief that documents may have been  
 18 collected from Paul Perkins in connection  
 19 with the motion?  
 20 A. I would imagine so.  
 21 Q. Do you know if documents were  
 22 collected --  
 23 A. I don't know for sure, but I did  
 24 ask him if they need any documentation to  
 25 give it to them, you know.

36

1 G. McCrystal  
 2 Q. And when you say you did ask him  
 3 to give documentation to them, who is  
 4 "them"?  
 5 A. Mrs. Pollack.  
 6 Q. Okay.  
 7 As a general matter, what kind of  
 8 documents and records does TMCC have?  
 9 A. You know, bank statements and tax  
 10 returns.  
 11 Q. Anything else?  
 12 A. Nope.  
 13 Q. Any correspondence filed?  
 14 A. No.  
 15 Q. Any other records?  
 16 A. No.  
 17 Q. Does TMCC have a real estate  
 18 file?  
 19 A. No.  
 20 Q. Does TMCC, is it a signatory to  
 21 any leases other than the lease with  
 22 Josalco?  
 23 A. No.  
 24 Q. TMCC doesn't sell anything, does  
 25 it?



37

1 G. McCrystal  
 2 A. No.  
 3 Q. It doesn't have any employees?  
 4 A. No.  
 5 Q. Doesn't have a payroll?  
 6 A. No.  
 7 Q. Do you have a secretary or an  
 8 assistant?  
 9 A. No.  
 10 Q. Does TMCC have a bank account?  
 11 A. Yes.  
 12 Q. Okay.  
 13 What kind of bank account?  
 14 A. Checking account.  
 15 Q. Does TMCC have an accountant?  
 16 A. Yes.  
 17 Q. Who was that accountant?  
 18 A. Joel Seidner.  
 19 Q. Joel?  
 20 A. S-E-I-D-N-E-R.  
 21 Q. I'm sorry, was it Joe or Joel?  
 22 A. Joel, J-O-E-L.  
 23 Q. I have a similar set of questions  
 24 for GMM, just as a general matter, what  
 25 kind of documents and records does GMM

38

1 G. McCrystal  
 2 have?  
 3 A. GMM has bank account, it does  
 4 have a payroll, you know, it will have a  
 5 tax return at the end of the year.  
 6 Q. Does it have a correspondence  
 7 file or --  
 8 A. No.  
 9 Q. Is GMM the signatory to any lease  
 10 or other kind of real estate agreement?  
 11 A. No.  
 12 Q. And the bank account that's  
 13 just -- what kind of bank account is --  
 14 A. Checking.  
 15 Q. Sorry?  
 16 A. Checking account.  
 17 Q. GMM doesn't make any sales?  
 18 A. No.  
 19 Q. You say it has a payroll?  
 20 A. Yes.  
 21 Q. That's right?  
 22 A. Yes.  
 23 Q. Okay.  
 24 Does it have employees?  
 25 A. Well, I'm the president of the

39

1 G. McCrystal  
 2 company, but I guess technically -- and I  
 3 have my wife on as well.  
 4 Q. So your wife receives a paycheck?  
 5 A. A check, yeah.  
 6 Q. What does she do for her  
 7 paycheck?  
 8 A. Nothing.  
 9 Q. And you're the other employee on  
 10 the payroll, is that fair to say?  
 11 A. Yes.  
 12 Q. Are there any other employees or  
 13 any other -- let me stop, please let me  
 14 back up.  
 15 Are there any other employees at  
 16 GMM?  
 17 A. No.  
 18 Q. Is there anyone else on the  
 19 payroll at GMM?  
 20 A. No.  
 21 Q. Does GMM have a bank account?  
 22 A. Yes.  
 23 Q. Okay.  
 24 I'm sorry, I think you had  
 25 mentioned that before.

40

1 G. McCrystal  
 2 A. Yes.  
 3 Q. I apologize, yeah.  
 4 Is TMCC's bank account separate  
 5 from GMM's bank account?  
 6 A. Yes.  
 7 Q. Does GMM have an accountant?  
 8 A. Yes.  
 9 Q. Is it Mr. Joel Seidner?  
 10 A. Yes.  
 11 Q. Who manages the payroll? Is that  
 12 Mr. Seidner or is that yourself?  
 13 A. I get it done through ADP.  
 14 Q. And you provide the instructions  
 15 to ADP?  
 16 A. Yes.  
 17 Q. Is the payroll done on a monthly  
 18 basis or some other basis?  
 19 A. It used to -- not anymore, but it  
 20 used to come, you know, I used to do it  
 21 weekly.  
 22 Q. Are you a W-2 employee for GMM?  
 23 A. I guess so. I would imagine so.  
 24 Q. I'm sorry?  
 25 A. Yes, I believe so, I believe I



41

1 G. McCrystal  
 2 would be, yes.  
 3 Q. How about your wife, is she also  
 4 a W-2?  
 5 A. Yes.  
 6 Q. Now, you had mentioned it used to  
 7 be on a weekly basis.  
 8 When did that change?  
 9 A. Well, it ceased I guess in May  
 10 when Hartsdale stopped paying.  
 11 Q. Is it correct that -- let me back  
 12 up.  
 13 What is GMM's source of revenue?  
 14 A. Hartsdale, Inc.  
 15 Q. When you say Hartsdale Inc.,  
 16 could you -- I'm not sure if I understand  
 17 the answer.  
 18 A. Hartsdale Inc. pays rent to TMCC  
 19 and GMM.  
 20 Q. Does GMM lease anything to  
 21 Hartsdale?  
 22 A. GMM is on the lease for 1821  
 23 Broad Hollow Road.  
 24 Q. Did GMM sign the lease?  
 25 A. I signed the lease.

42

1 G. McCrystal  
 2 Q. But did GMM sign the lease?  
 3 MS. HOLLOWMAN: I want the record  
 4 just to reflect that Mr. McCrystal is  
 5 reviewing Exhibit Number 3.  
 6 A. No, it does not appear that way.  
 7 MS. HOLLOWMAN: Excuse me one  
 8 second.  
 9 (Pause)  
 10 Q. Does TMCC have an accounts  
 11 receivable and accounts payable?  
 12 A. I suppose so.  
 13 Q. What documents would show the  
 14 accounts receivable and payable?  
 15 A. I guess the accounts receivable  
 16 would be the canceled checks from  
 17 Hartsdale.  
 18 Q. For TMCC?  
 19 A. Yes. And the accounts payable  
 20 would be the canceled checks I write to  
 21 Josalco.  
 22 Q. Is the lease at 1821 Route 110  
 23 TMCC's only business?  
 24 A. Yes.  
 25 Q. That's fair to say?

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1 G. McCrystal  
 2 A. Yes.  
 3 Q. Okay.  
 4 And now I have a set of questions  
 5 similar for GMM.  
 6 Does GMM have accounts receivable  
 7 and accounts payable?  
 8 A. Yes.  
 9 Q. What documents would show that?  
 10 A. The check from Hartsdale, I  
 11 think, that would show the accounts  
 12 receivable. The accounts payable would  
 13 show my payroll. I guess also for both  
 14 companies the accountant gets paid, so you  
 15 know.  
 16 Q. And is it correct to say that  
 17 GMM's sole source of revenue is from  
 18 Hartsdale?  
 19 A. Yes.  
 20 Q. Does TMCC have an e-mail -- oh,  
 21 excuse me -- does TMCC have an e-mail  
 22 domain?  
 23 A. No.  
 24 Q. How about GMM, does GMM have an  
 25 e-mail domain?

44

1 G. McCrystal  
 2 A. No.  
 3 Q. Do you use e-mail on occasion to  
 4 transact business for TMCC or GMM?  
 5 A. No, not really.  
 6 Q. Have you ever used e-mail on  
 7 occasion to transact --  
 8 A. Only to ask -- you know, once the  
 9 agreement, everything went into place and  
 10 Hartsdale took possession of 1821, if I had  
 11 questions about, you know, the rent or  
 12 where it was, I was referred to Darsha  
 13 Willis, I believe it is, and I was told to  
 14 e-mail her if I ever had questions or  
 15 needed anything.  
 16 So I did e-mail, you know, pretty  
 17 much every other month because the rent was  
 18 usually late.  
 19 Q. Could you state for the record  
 20 just what the e-mail address that you used  
 21 is?  
 22 A. I don't know what it is. I know  
 23 it's Darsha Willis, that's it.  
 24 Q. Oh, I'm so sorry, your e-mail  
 25 address.



45

1 G. McCrystal  
 2 A. Oh, my e-mail address, sure,  
 3 mctony75@optonline.net.  
 4 Q. Does TMCC have any document  
 5 retention policies?  
 6 A. I don't understand the question.  
 7 Q. Okay.  
 8 Does TMCC have any procedures for  
 9 retaining or storing documents?  
 10 A. No.  
 11 Q. Does GMM have any procedures for  
 12 retaining or storing documents?  
 13 A. Just a file, you know.  
 14 Q. Do you generally keep documents  
 15 that you receive on TMCC's behalf or GMM's  
 16 behalf?  
 17 A. Sometimes, you know.  
 18 Q. What do you typically discard?  
 19 A. Anything that doesn't look  
 20 important.  
 21 Q. And what do you generally retain?  
 22 A. You know, that could be, you  
 23 know -- I would keep a bill usually, if I  
 24 paid a bill, I would keep a bill.  
 25 Q. Okay.

46

1 G. McCrystal  
 2 Would you keep the lease, for  
 3 example?  
 4 A. Yes, I would keep the lease.  
 5 Q. What is an example of something  
 6 that you might discard?  
 7 A. Junk mail, something that looks  
 8 like, you know, this. If it looks like the  
 9 100th copy of something, you know,  
 10 something that I don't think is of any  
 11 importance.  
 12 Q. Duplicates, for example?  
 13 A. Yes, that I would believe would  
 14 be duplicates or something, yes.  
 15 Q. Is that the same for GMM?  
 16 A. Yes.  
 17 Q. I'm going to take a quick step  
 18 back and just briefly talk about your  
 19 background, you personally, not separate  
 20 and apart from TMCC and GMM.  
 21 A. Okay.  
 22 Q. What is your educational  
 23 background beginning with graduation?  
 24 A. A year of college maybe.  
 25 Q. After you did that year of

47

1 G. McCrystal  
 2 college, what has your employment here  
 3 been?  
 4 A. I've been self-employed. I owned  
 5 a takeout place for 4 years. I owned a bar  
 6 for two years, and then I've been in the  
 7 furniture business for the last 12 or 13  
 8 years.  
 9 Q. How did you start in the  
 10 furniture business?  
 11 A. My father was in the furniture  
 12 business.  
 13 Q. So a family-owned business?  
 14 A. Well, he retired, and so I came  
 15 into the furniture business -- he  
 16 semi-retired, whatever, you know.  
 17 Q. Does TMCC stand for anything?  
 18 A. It's kind of my son's initials --  
 19 but other than that, no.  
 20 Q. And GMM is that --  
 21 A. Kind of my initials.  
 22 Q. I'm going to introduce two  
 23 exhibits, they're Exhibits 4 and 5.  
 24 They've been remarked. Let me put them in  
 25 front of you.

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1 G. McCrystal  
 2 (Exhibit 4, Document Bates  
 3 stamped M-1 through 15, marked for  
 4 identification, as of this date.)  
 5 (Exhibit 5, Document Bates  
 6 stamped M-16 through 45, marked for  
 7 identification, as of this date.)  
 8 BY MS. HOLLOWMAN:  
 9 Q. Please take a moment to look them  
 10 over. You don't have to read every word,  
 11 but take as long as you need to be  
 12 comfortable with the documents.  
 13 Just for the record, these are  
 14 copies of a lease agreement between Josalco  
 15 Inc. and TMCC Inc. They appear to be dated  
 16 as of the 29th of September 2007.  
 17 Exhibit Number 4 bears production  
 18 numbers M-1 through 15 and Exhibit Number 5  
 19 bears production numbers M-16 through 45.  
 20 A. Okay. I think I know what this  
 21 is. This looks like there is a mistake  
 22 here on a page.  
 23 Q. I'm providing these documents in  
 24 the way that they were provided to us.  
 25 A. Oh, okay.





49

1 G. McCrystal  
 2 Q. And I can just also state for the  
 3 record these documents were provided by  
 4 your counsel in response to the subpoenas  
 5 to TMCC and GMM.  
 6 A. Okay.  
 7 Q. My first question to you is:  
 8 Does Exhibit 4 come from TMCC's business  
 9 records?  
 10 A. It probably comes from my  
 11 attorneys. I'm sure I have a copy, but I'm  
 12 sure my attorney provided them with this.  
 13 Q. When you say your attorney, you  
 14 mean Cullen & Dykman, or do you mean  
 15 someone else?  
 16 A. Maybe Paul Perkins -- you know,  
 17 Cullen & Dykman, you know what I'm saying,  
 18 yeah.  
 19 Q. Okay.  
 20 So have you seen Exhibit 4  
 21 before?  
 22 A. Yes.  
 23 Q. What is it?  
 24 A. It's lease I have with -- it's  
 25 lease, and I think it's sublease that's in

50

1 G. McCrystal  
 2 here, too.  
 3 Q. Take your time. Go ahead and --  
 4 A. I believe it's the lease for TMCC  
 5 and the sublease for --  
 6 MS. POLLACK: Take a look at it.  
 7 Q. Take your time. You don't have  
 8 to rush. Be comfortable.  
 9 A. I guess this is the lease between  
 10 TMCC and Josalco. I don't believe the  
 11 sublease is in here. Yeah, I'm pretty sure  
 12 that's what this is. Okay.  
 13 Q. Just for our terminology, I'm  
 14 going to refer to Exhibit 4 as the lease.  
 15 A. Okay.  
 16 Q. And I'll also refer to the  
 17 premises that are the subject of the lease.  
 18 We've been talking about 1821 Route 110,  
 19 also called Broad Hollow Road -- I'm just  
 20 going to call that "the premises" going  
 21 forward.  
 22 A. Okay.  
 23 Q. Do we understand each other?  
 24 A. Yes.  
 25 Q. Again, if you have any questions

51

1 G. McCrystal  
 2 or there is anything that's unclear, just  
 3 let me know.  
 4 A. Okay.  
 5 Q. Is there any other lease  
 6 agreement between Josalco and TMCC with  
 7 respect to the premises?  
 8 A. No.  
 9 Q. To your understanding, what does  
 10 this document accomplish?  
 11 A. It's just a lease for use of the  
 12 space at 1821 Broad Hollow Road.  
 13 Q. Is it fair to say that the  
 14 document establishes the terms under which  
 15 TMCC will lease the premises from Josalco?  
 16 A. Yes.  
 17 Q. It's fair that the lease  
 18 establishes the parties' rights and  
 19 obligations to each other with respect to  
 20 the premises?  
 21 A. Yes.  
 22 Q. Can you turn to page M-5 -- when  
 23 I say M-5 -- you see it, that's the  
 24 production number -- and at the bottom  
 25 there, is that your signature?

52

1 G. McCrystal  
 2 A. Yes.  
 3 Q. And again, going to page M-14,  
 4 using that same pagination, the production  
 5 number.  
 6 A. Yes.  
 7 Q. That's also your signature?  
 8 A. Yes.  
 9 Q. Is this document complete, to  
 10 your knowledge?  
 11 A. To my knowledge, yes, I believe  
 12 it is.  
 13 Q. Are there any other exhibits or  
 14 attachments or --  
 15 A. No.  
 16 Q. Did TMCC use a broker?  
 17 A. No.  
 18 Q. Do you know if Josalco used a  
 19 broker?  
 20 A. No.  
 21 Q. Can you turn to page M-15 in the  
 22 document. Are you there?  
 23 A. Yeah, I'm here.  
 24 Q. What does this exhibit refer to?  
 25 A. The rent.



53

1 G. McCrystal

2 Q. So is this TMCC's understanding

3 as to what the monthly rent TMCC was to

4 pay -- no, let me strike that.

5 Is this Exhibit B accurate?

6 A. Yes.

7 Q. Is it correct that Exhibit B

8 reflects monthly rent that TMCC was to pay

9 to Josalco for specific time periods?

10 A. Yes.

11 Q. Okay.

12 According to this page, what is

13 the monthly rent between November 1, 2009

14 and October 31, 2010?

15 A. \$32,000.

16 Q. What is the monthly rent due for

17 the period between November 1, 2010 and

18 October 31, 2011?

19 A. \$33,280.

20 Q. Is it correct that this document

21 also reflects annual rent for given time

22 periods?

23 A. Yes.

24 Q. Can you describe the premises for

25 the record?

54

1 G. McCrystal

2 A. It's a free-standing building,

3 glass, a lot of glass windows in the front,

4 16-foot ceiling, I believe.

5 Basically when I took it over, it

6 was basically somewhat of a shell and it

7 had to be set up for, you know, as a retail

8 store, put up walls and whatnot, you know,

9 there is an office there -- there was

10 anyway.

11 Q. So you're describing it in 2007?

12 A. I'm describing when I took it

13 over, yes, that's when I took it over.

14 Q. Do you have any view as to what

15 the fair market value for the premises was

16 in 2007?

17 A. No.

18 Q. Do you think the rent that TMCC

19 was paying when it took over the premises

20 in 2007 was a good rent?

21 A. I think it was good for what I

22 needed it for.

23 Q. Was it a fair rent?

24 A. I wouldn't -- you know, I thought

25 it was fair, I suppose.

55

1 G. McCrystal

2 Q. Would you describe the lease as a

3 good deal?

4 A. I would describe it as a fair

5 deal.

6 Q. In your opinion, is the premises

7 in a desirable location?

8 A. For furniture retail, yes.

9 Q. Why do you say that?

10 A. Because this particular part of

11 Route 110 is probably the most desirable

12 location for furniture retail on Long

13 Island.

14 Q. What is the basis for that view?

15 A. The space sits between two major

16 parkways, and there are other furniture

17 stores around you. People come to Route

18 110 to shop for furniture. But this

19 particular area is probably, is right smack

20 in the middle of it. It's probably the

21 most desirable area to be.

22 Q. So you were happy to get this

23 lease?

24 A. Yes.

25 Q. Did you think this would be a

56

1 G. McCrystal

2 benefit for TMCC?

3 A. Yes, or for Roma Furniture, but

4 yes, yes.

5 Q. That was going to be my next

6 question, this would be a benefit for Roma

7 Furniture?

8 A. Yes.

9 Q. Where did Roma Furniture move

10 from?

11 A. 55 Price Parkway.

12 Q. Is that far --

13 A. It's about --

14 -- from the premises?

15 A. It's only about two blocks, but

16 it's a significant difference.

17 Q. Do you know what occupied the

18 premises before Roma Furniture moved in?

19 A. A furniture store.

20 Q. Do you know why they left?

21 A. No.

22 Q. Do you know what business it was,

23 what the name of the business was?

24 A. I don't remember.

25 Q. Now, referring back to M-15,



57

1 G. McCrystal  
 2 which is marked Exhibit B, other than the  
 3 schedule basically that's set forth here,  
 4 were there any other payments due from TMCC  
 5 to Josalco under the lease?  
 6 A. Some odds and ends, back flow  
 7 test, I think, you know, if the taxes go  
 8 up, I think if the taxes go up on the  
 9 property we would have to pay the  
 10 differences on the taxes for the year -- I  
 11 don't know -- you know, like I said, I  
 12 think the sprinklers maybe -- it was like  
 13 incidental stuff.  
 14 Usually it adds up to, you know,  
 15 less than \$2,000 a year. I think this year  
 16 we got a little bigger tax hike than  
 17 normal, but under normal situation it's not  
 18 that -- you know ...  
 19 Q. Can you turn to page M-6 in  
 20 Exhibit 4.  
 21 A. Sure.  
 22 Q. I'm just going to go over a few  
 23 things. If you look at the paragraph  
 24 that's marked 41st, it's very small print,  
 25 take a moment to review it.

58

1 G. McCrystal  
 2 A. Okay.  
 3 Q. Let me know when you've had a  
 4 chance.  
 5 A. Okay, I've read it.  
 6 Q. What is your understanding of  
 7 that paragraph?  
 8 A. I have no understanding of it at  
 9 all.  
 10 Q. I'll try to break this down and  
 11 make it simpler.  
 12 A. Okay.  
 13 Q. For the record, the paragraph  
 14 reads --  
 15 MS. POLLACK: The document speaks  
 16 for itself.  
 17 MS. HOLLOMAN: I just want to  
 18 make it clear for the record when I  
 19 follow up with my question for  
 20 Mr. McCrystal.  
 21 BY MS. HOLLOMAN:  
 22 Q. "If the tenant shall at any time  
 23 during the term of this lease or any  
 24 extension or renewal thereof be in default  
 25 hereunder, and if the landlord shall

59

1 G. McCrystal  
 2 institute an action or summary or other  
 3 proceeding against the tenant based on such  
 4 defaults, and if the landlord prevails,  
 5 then the tenant shall reimburse the  
 6 landlord for the expenses of attorneys fees  
 7 and disbursements thereby incurred by the  
 8 landlord so far as the same are reasonable  
 9 in amount. The amount of such expenses  
 10 shall be deemed to be additional rent  
 11 hereunder."  
 12 A. Okay.  
 13 Q. Did TMCC ever pay such additional  
 14 rent to Josalco?  
 15 A. No, I don't believe so.  
 16 Q. Since the paragraph has been read  
 17 allowed, do you have any different  
 18 understanding of the paragraph?  
 19 A. I think --  
 20 Q. Did you see that help?  
 21 A. I think that what it basically  
 22 means is that if, you know, he has to evict  
 23 me, I would have to pay any legal fees.  
 24 Q. And do you also understand that  
 25 such fees would be termed additional rent?

60

1 G. McCrystal  
 2 A. Yes, I understand that, okay.  
 3 Q. Okay.  
 4 If we could look at on the same  
 5 page, it actually carries over to the next  
 6 as well -- that's the 43rd, just take a  
 7 moment to review that. I think that this  
 8 may be more familiar to you because you had  
 9 mentioned real estate taxes previously.  
 10 A. Okay, yeah.  
 11 Q. Yeah.  
 12 A. So it says I have to pay 75  
 13 percent of all increases and real estate  
 14 taxes assigned to the land --  
 15 MS. POLLACK: You don't have to  
 16 read it out loud.  
 17 Q. You don't have to read it out  
 18 loud. Just take a moment.  
 19 A. I believe that's basically what  
 20 it means.  
 21 Q. So is it correct that your  
 22 understanding is that real estate taxes  
 23 could constitute additional rent?  
 24 A. I guess so, yeah.  
 25 Q. Other than what's set forth on



61

1 G. McCrystal  
 2 Exhibit B, which is that page M-15 that we  
 3 were just reviewing?  
 4 A. Correct.  
 5 MS. HOLLOWAN: I'm going to  
 6 introduce two additional exhibits.  
 7 (Exhibit 6, Letter dated 6/16/10,  
 8 marked for identification, as of this  
 9 date.)  
 10 (Exhibit 7, Invoice dated  
 11 1/19/09, marked for identification, as  
 12 of this date.)  
 13 BY MS. HOLLOWAN:  
 14 Q. Just take a moment to review  
 15 these documents.  
 16 A. Yeah, I know what these documents  
 17 are.  
 18 Q. While you do, just for the record  
 19 the document that's been marked as Exhibit  
 20 6 bears production numbers M-47 through 48,  
 21 and it's a letter from JSP Realty Group LLC  
 22 to Edward B. Seidner S-E-I-D-N-E-R, dated  
 23 June 16, 2010.  
 24 The document that's been marked  
 25 as Exhibit 7 appears to be an invoice dated

62

1 G. McCrystal  
 2 January 19, 2009 addressed to TMCC, Inc.  
 3 from Josalco Inc. and it bears production  
 4 number M-49.  
 5 Are you ready? Have you had a  
 6 chance to review it?  
 7 A. Yeah.  
 8 Q. Also for the record, these  
 9 documents were produced by your counsel in  
 10 response to the subpoenas that were  
 11 directed to TMCC and GMM.  
 12 A. Okay.  
 13 Q. Have you seen these documents  
 14 before?  
 15 A. I may have, but you know -- I  
 16 probably did. I don't remember them, but I  
 17 know what they are.  
 18 Q. Do you know if they come from  
 19 TMCC's business records or files?  
 20 A. This one might, Number 7 -- it  
 21 might. I don't have a copy of it or  
 22 anything like that, you know -- I don't  
 23 think I do anyway.  
 24 Q. I'm not sure if I understood your  
 25 answer.

63

1 G. McCrystal  
 2 A. I don't know if I have a copy of  
 3 it, or if I have it on file, but I guess I  
 4 must have if my attorney produced it, or my  
 5 attorney had it on file.  
 6 Probably maybe a copy of this got  
 7 sent to my copy, too. You know, I don't  
 8 really recall this -- like I said, you  
 9 know, I think this was, I guess this was  
 10 the tax increase for whatever, for 2009.  
 11 That's all I can comment on this  
 12 one. Would you like me to comment on this  
 13 one as well.  
 14 Q. Please do, yes. And I guess my  
 15 questions for that, just so the record is  
 16 clear, have you seen that document before?  
 17 A. I think I have.  
 18 Q. Does it come from TMCC's business  
 19 records or files?  
 20 A. I don't believe so.  
 21 Q. Do you know where it comes from,  
 22 if not from TMCC's business records or  
 23 files?  
 24 A. No. This here is for the  
 25 garbage. What it is is --

64

1 G. McCrystal  
 2 Q. This is referring to Exhibit 6?  
 3 A. Yes. In the Town of Babylon  
 4 where the store is, the town provides the  
 5 garbage pick-up. They basically tell you  
 6 what you have to have for garbage  
 7 removal -- this is up, you know, like I  
 8 have a store in the Town of Babylon, you  
 9 know, and I pay them for their garbage  
 10 removal.  
 11 If you don't pay the garbage  
 12 removal, what happens is the person that  
 13 owns the property gets the bill. So  
 14 apparently Hartsdale did not pay the  
 15 garbage bill and so the landlord must have  
 16 gotten, you know my landlord, must have got  
 17 the bill.  
 18 That's what I'm guessing. So he  
 19 sent this out, you know, because he wanted  
 20 them to pay the bill for the garbage.  
 21 Q. Let's focus on Exhibit 6 for a  
 22 few minutes.  
 23 A. Okay.  
 24 Q. Now, this document was sent to  
 25 Edward Seidner at Hartsdale Convertibles.



65

1 G. McCrystal  
 2 Do you see that at the top of the  
 3 document?  
 4 A. Yes.  
 5 Q. And at the bottom of the document  
 6 do you see the CCs on the document?  
 7 A. Yes.  
 8 Q. Do you know who Owen Wincig is,  
 9 W-I-N-C-I-G?  
 10 A. That was the attorney -- I never  
 11 met him, I believe this was the attorney  
 12 that dealt with my attorney for the lease  
 13 agreement.  
 14 Q. And for TMCC Inc., attention  
 15 Gerald McCrystal, a copy was sent to you?  
 16 A. I guess maybe it was. I don't  
 17 know. If I did, I don't have it, you know.  
 18 Q. Do you have any reason to doubt,  
 19 though, that a copy was --  
 20 A. No, I don't doubt it was.  
 21 Q. And for Brian Held, H-E-L-D, do  
 22 you know who Brian Held is?  
 23 A. Brian Held is the other attorney  
 24 that worked on my lease agreement.  
 25 Q. Which law firm does he practice

66

1 G. McCrystal  
 2 with?  
 3 A. Lynch Law Firm.  
 4 Q. All right.  
 5 Now, the second paragraph of this  
 6 letter states "refuse removal bill  
 7 constitutes additional rent and as such  
 8 must be paid within 15 days from the date  
 9 hereof."  
 10 A. Okay.  
 11 Q. And you testified earlier that  
 12 this letter refers to refuse removal in the  
 13 Town of Babylon?  
 14 A. Yes.  
 15 Q. So it's fair to say that  
 16 something like refuse removal is an item of  
 17 additional rent?  
 18 A. I don't know if that's even in  
 19 the lease to be honest with you, but you  
 20 know I don't know -- I'll be honest with  
 21 you, I don't know, on a legal standpoint if  
 22 it really is considered additional rent.  
 23 Q. Well, you should answer from your  
 24 understanding.  
 25 A. I don't believe that that should

67

1 G. McCrystal  
 2 be additional rent.  
 3 Q. Okay.  
 4 A. Because again, what I was saying  
 5 is -- you know, the size of the dumpster,  
 6 it's -- you know, you know, it could be --  
 7 you know, there's no way to determine that.  
 8 Q. Now, for Mr. Emanuelo who signed  
 9 this letter, you testified earlier that you  
 10 understood he was counsel to Josalco?  
 11 A. Yes.  
 12 Q. Do you have any understanding of  
 13 why you would have received a copy of this  
 14 letter?  
 15 MS. POLLACK: Objection.  
 16 MS. HOLLOWAN: Could you read my  
 17 question back?  
 18 (Whereupon, the requested portion  
 19 was read back by the court reporter.)  
 20 MS. POLLACK: You can answer the  
 21 question.  
 22 A. No.  
 23 Q. Do you think there is anything  
 24 inaccurate or incorrect about this letter?  
 25 MS. POLLACK: Objection.

68

1 G. McCrystal  
 2 A. I can't say whether --  
 3 Q. This letter appears to state that  
 4 it's a notice to TMCC, that as tenant TMCC  
 5 has failed to pay an outstanding balance of  
 6 a refuse removal bill.  
 7 MS. POLLACK: Objection. The  
 8 document speaks for itself.  
 9 BY MS. HOLLOWAN:  
 10 Q. It's on the first page of the  
 11 document. Would it help to have the  
 12 question read back?  
 13 A. No, no, I understand the  
 14 question.  
 15 Q. Okay.  
 16 A. You know, it looks like that's  
 17 what it is, yeah -- I guess that's what it  
 18 is.  
 19 Q. Do you see in the second  
 20 paragraph where the removal bill is  
 21 characterized as additional rent?  
 22 A. Yes, I do.  
 23 Q. Do you have any reason to believe  
 24 that that's inaccurate?  
 25 MS. POLLACK: Objection. Asked



69

1 G. McCrystal  
 2 and answered.  
 3 A. Yeah, I believe it's inaccurate.  
 4 Q. You think it's inaccurate?  
 5 A. Yes.  
 6 Q. What is the basis for that  
 7 belief?  
 8 A. I don't believe that, you know,  
 9 refuse removal is additional rent.  
 10 Q. Okay.  
 11 Are there -- what items do you  
 12 understand additional rent to be under the  
 13 lease?  
 14 A. The things I mentioned before,  
 15 the back flow, the additional taxes -- I  
 16 don't know if there is any cleanup -- you  
 17 know, I don't even think there is, no -- I  
 18 think that's all there is.  
 19 I think the sprinklers need a  
 20 back-flow test once a year, and like I  
 21 said -- and the taxes -- you know, as far  
 22 as I know that is all that there is.  
 23 Q. Are you aware of any definition  
 24 of additional rent in the lease?  
 25 A. No.

70

1 G. McCrystal  
 2 Q. Turning now to Exhibit 7, take a  
 3 moment to review and let me know when  
 4 you're ready.  
 5 A. Okay.  
 6 Q. Is it fair to say that this  
 7 notice is a reminder to TMCC to pay a pro  
 8 rata share of annual real estate taxes?  
 9 A. Yes.  
 10 Q. Okay.  
 11 Do you consider that item annual  
 12 real estate taxes the pro rata share an  
 13 additional rent item?  
 14 A. Yes.  
 15 Q. At the bottom of the document,  
 16 Exhibit 7, do you see that handwritten  
 17 note?  
 18 A. Okay, do not mail letter, Gerry  
 19 paid -- yes, I see it.  
 20 Q. Do you know whose handwriting it  
 21 is?  
 22 A. No.  
 23 Q. That's not your handwriting?  
 24 A. No.  
 25 Q. All right.

71

1 G. McCrystal  
 2 And again, do you know where this  
 3 document came from?  
 4 A. It came from Josalco Inc.  
 5 Q. Do you know how this document  
 6 came to be produced in connection with the  
 7 subpoenas that were issued to TMCC and GMM?  
 8 A. He probably said to me I got this  
 9 bill here, Gerry, and showed it to me,  
 10 because I see him pretty often, and I paid  
 11 it probably.  
 12 MS. HOLLOWMAN: Could you read my  
 13 question?  
 14 (Whereupon, the requested portion  
 15 was read back by the court reporter.)  
 16 A. Oh I'm sorry.  
 17 Q. That's okay.  
 18 A. I must have provided it to  
 19 counsel or my former counsel provided it to  
 20 counsel, or, you know, your end provided it  
 21 to my counsel.  
 22 Q. But something like this document,  
 23 this didn't come from TMCC's own files?  
 24 A. I don't believe so, unless it was  
 25 like mixed up with something, but I don't

72

1 G. McCrystal  
 2 even know why I would produce this.  
 3 Q. Could you turn in Exhibit 4 to  
 4 page M-10. I'm going to direct your  
 5 attention to the paragraph marked 57,  
 6 that's up at the top. If you could just  
 7 take a moment and review that.  
 8 A. Okay.  
 9 Q. Do you understand that this  
 10 paragraph calls for TMCC to pay a security  
 11 deposit to Josalco?  
 12 A. Yes.  
 13 Q. Is it correct that the security  
 14 deposit is to be two months of rent?  
 15 A. Yes.  
 16 Q. Did TMCC comply with that  
 17 requirement?  
 18 A. Yes.  
 19 Q. Do you know the amount that TMCC  
 20 has on security deposit with Josalco for  
 21 the period of October 2009 to November  
 22 2010?  
 23 A. I don't remember.  
 24 MS. POLLACK: Objection. Did you  
 25 mean to say November 9 to 10, or



73

1 G. McCrystal  
 2 November 9 to 9?  
 3 A. No, well, I would have gave it to  
 4 him in November of 2007.  
 5 (Whereupon, the requested portion  
 6 was read back by the court reporter.)  
 7 MS. HOLLOWAN: Yeah, uh-huh.  
 8 A. I guess, I would guess it was 2  
 9 months rent, whatever it was back then, I  
 10 guess.  
 11 Q. Well, if you refer to Exhibit B,  
 12 you can see what the amount would be.  
 13 A. Yeah, it was either 50 or  
 14 \$60,000.  
 15 Q. Well, if you could, please --  
 16 MS. POLLACK: Objection.  
 17 BY MS. HOLLOWAN:  
 18 Q. If you can go to Exhibit M-15.  
 19 MS. POLLACK: If you know the  
 20 answer, answer it. If you don't know,  
 21 you don't know.  
 22 BY MS. HOLLOWAN:  
 23 Q. Please go ahead.  
 24 A. I think it was \$50,000. I don't  
 25 remember.

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1 G. McCrystal  
 2 Q. You think it was \$50,000?  
 3 A. It might have been \$60,000. I  
 4 don't remember. I guess it was \$60,000,  
 5 because the first two months security would  
 6 be \$60,000.  
 7 Q. Would it be \$64,000?  
 8 A. No.  
 9 Q. Between November 1, 2009 to  
 10 October 31 --  
 11 A. No, it wouldn't be 2009 because I  
 12 gave him the deposit for the beginning of  
 13 the lease, which basically started, I  
 14 started payments for January 1st. So I  
 15 believe it was, you know, I gave him the 2  
 16 months, it was \$60,000.  
 17 Q. So it was \$60,000?  
 18 A. I believe so.  
 19 Q. Now, if you refer again to the  
 20 paragraph that's marked 57?  
 21 A. Okay.  
 22 Q. Do you understand that that  
 23 paragraph imposes an obligation to increase  
 24 what's on deposit with the landlord?  
 25 A. Yes.

75

1 G. McCrystal  
 2 Q. As the amount increases?  
 3 A. Yes.  
 4 Q. As pardon me, as the amount of  
 5 rent increases?  
 6 A. Yes.  
 7 Q. So for the period of November  
 8 1st --  
 9 A. But I never gave him any  
 10 additional.  
 11 Q. Okay, that's where I was going.  
 12 So you understand at current or present the  
 13 amount on deposit is \$60,000?  
 14 A. I believe so, I believe so.  
 15 Q. All right.  
 16 What documents would show that?  
 17 A. I don't know, I guess a check  
 18 somewhere, you know.  
 19 Q. Why haven't additional amounts  
 20 been deposited with Josalco in accordance  
 21 with the paragraph?  
 22 MS. POLLACK: Objection.  
 23 A. I never gave it to him.  
 24 Q. Did he ever ask you for it?  
 25 A. No.

76

1 G. McCrystal  
 2 Q. So it's correct that your  
 3 understanding is the security deposit is to  
 4 be 2 months of rent?  
 5 A. Yes.  
 6 Q. And it's correct that your  
 7 understanding is at present TMCC has  
 8 \$60,000 on deposit with Josalco?  
 9 MS. POLLACK: Objection. Asked  
 10 and answered.  
 11 A. I believe it's \$60,000. You  
 12 know, I don't remember. It may be less.  
 13 It may be more. I believe it's \$60,000.  
 14 Q. Okay.  
 15 Could the amount be greater than  
 16 \$60,000?  
 17 MS. POLLACK: Objection. Asked  
 18 and answered.  
 19 A. I don't believe so.  
 20 Q. Could the amount be \$104,000?  
 21 MS. POLLACK: Objection.  
 22 A. No.  
 23 Q. Do you know if Josalco is still  
 24 holding that deposit?  
 25 A. Yes, I believe. I don't know



77

1 G. McCrystal  
 2 what he does with it, but...  
 3 Q. Have you had any discussions with  
 4 Josalco about the deposit?  
 5 A. No.  
 6 Q. Who is Gerald McCrystal Senior?  
 7 A. My father.  
 8 Q. Is he the guarantor?  
 9 A. I believe he is.  
 10 Q. Do you know what obligations he's  
 11 guaranteeing?  
 12 A. No.  
 13 Q. Do you know who drafted the rider  
 14 to the lease, specifically that's pages  
 15 marked M-6 to M-14?  
 16 A. No. I could guess that it was --  
 17 MS. POLLACK: Don't guess.  
 18 Objection.  
 19 A. I don't know.  
 20 MS. HOLLOMAN: Are you objecting  
 21 to your client's answer?  
 22 MS. POLLACK: Yeah, I'm objecting  
 23 to the extent he knows he should  
 24 answer. No speculation.  
 25 MS. HOLLOMAN: That's an

78

1 G. McCrystal  
 2 interesting objection.  
 3 BY MS. HOLLOMAN:  
 4 Q. You're saying you don't know who  
 5 drafted it?  
 6 A. I don't know. I don't know.  
 7 Q. Could the Lynch Law Firm have  
 8 drafted it?  
 9 A. No.  
 10 Q. You think Josalco's counsel maybe  
 11 drafted it, or Josalco maybe drafted it?  
 12 A. Possible. I don't know.  
 13 Q. Did you negotiate any of the  
 14 terms in the rider, again that's the pages  
 15 between M-6 and M-14?  
 16 A. I don't remember if I did or not.  
 17 Q. Did TMCC or GMM ask the Lynch Law  
 18 Firm to provide any documents in response  
 19 to the subpoenas that were issued to TMCC  
 20 and GMM?  
 21 A. Yes, I asked him to provide  
 22 whatever he had to give to my counsel.  
 23 Q. And when you say counsel, you  
 24 mean Cullen & Dykman?  
 25 A. Yes.

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1 G. McCrystal  
 2 Q. Does TMCC have any other  
 3 attorneys other than the Lynch Law Firm and  
 4 Cullen & Dykman?  
 5 A. Well, I started this with Paul  
 6 Levitt.  
 7 Q. Does Mr. Levitt have a law firm?  
 8 A. Yes.  
 9 Q. What is the name of that, please?  
 10 A. Levitt and something.  
 11 Q. Could it be Levitt & Vitale?  
 12 A. That's it -- it might be even be  
 13 Vitale & Levitt.  
 14 Q. Fair enough. I'm sure we'll be  
 15 able to figure it out.  
 16 A. Yeah.  
 17 Q. When you say you started this  
 18 with Paul Levitt, could you say more about  
 19 what you mean?  
 20 A. When I didn't receive rent, I  
 21 started an eviction process.  
 22 Q. And that's what you mean when you  
 23 say you "started this"?  
 24 A. Yes.  
 25 Q. All right.

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1 G. McCrystal  
 2 MS. HOLLOMAN: Do you want to  
 3 take a 5-minute break?  
 4 MS. POLLACK: Yes.  
 5 (Recess taken from 11:46 a.m. to  
 6 11:52 a.m.)  
 7 (Exhibit 8, Sublease agreement  
 8 dated 8/18/10, marked for  
 9 identification, as of this date.)  
 10 (Exhibit 9, Document entitled  
 11 Exhibit B, marked for identification,  
 12 as of this date.)  
 13 (Exhibit 10, Rider to Sublease  
 14 Agreement dated 8/21/09, marked for  
 15 identification, as of this date.)  
 16 (Exhibit 11, Amended Exhibit B,  
 17 marked for identification, as of this  
 18 date.)  
 19 BY MS. HOLLOMAN:  
 20 Q. We've marked some documents now  
 21 to be introduced as exhibits and I'm going  
 22 to pass them over to you.  
 23 I'm just going to take some quick  
 24 notes.  
 25 For the record, the document





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1 G. McCrystal  
 2 that's being marked as Exhibit 8 bears  
 3 production numbers M-50 through M-76. It's  
 4 marked as a sublease agreement dated as of  
 5 18 August 2010 between TMCC Inc. and  
 6 Hartsdale Convertibles Inc. That's Exhibit  
 7 8.  
 8 Exhibit 9 is a document with the  
 9 title Exhibit B in quotations. That bears  
 10 production numbers M-77.  
 11 Exhibit 10 bears production  
 12 numbers M-78 through M-80. It's titled  
 13 Rider to Sublease Agreement. It bears a  
 14 date August 21, 2009 with sub landlord as  
 15 TMCC Inc. and subtenant as Hartsdale  
 16 Convertibles Inc.  
 17 For Exhibit 11, that's a document  
 18 bearing production numbers M-133 through  
 19 134, I believe, and the title of it is  
 20 Amended Exhibit B, in quotes.  
 21 BY MS. HOLLOWAN:  
 22 Q. Mr. McCrystal, take your time.  
 23 Look over the documents and let me know  
 24 when you're ready.  
 25 A. I think I'm ready.

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1 G. McCrystal  
 2 Q. Okay.  
 3 Just to authenticate, all of  
 4 these documents were produced by your  
 5 counsel in response to the subpoenas to  
 6 TMCC and GMM.  
 7 MS. HOLLOWAN: Also for the  
 8 record, the document that's been  
 9 marked as Exhibit 8 has an internal  
 10 document number, at the bottom left  
 11 and bottom right, 00131911.  
 12 A. I'm sorry?  
 13 MS. HOLLOWAN: This is just for  
 14 the record. Feel free to look along.  
 15 We were talking about Exhibit 8.  
 16 Then the document that's been  
 17 marked as Exhibit 10 also has an  
 18 internal document number 0013192. Let  
 19 me just double-check -- sorry,  
 20 00131912 as the internal document  
 21 number.  
 22 And the document bearing  
 23 production number M-77 has no internal  
 24 document numbers or pagination.  
 25 That's Exhibit 9, and similarly

83

1 G. McCrystal  
 2 Exhibit 11 has no internal document  
 3 numbers or pagination.  
 4 BY MS. HOLLOWAN:  
 5 Q. Have you seen these documents  
 6 before?  
 7 A. Yes.  
 8 Q. Each of them?  
 9 A. Yes, I believe so.  
 10 Q. Okay.  
 11 Do they come from TMCC's files or  
 12 business records?  
 13 A. They come from my files or my  
 14 attorney, Paul Perkins or Paul Levitt or  
 15 Cullen & Dykman's files.  
 16 Q. Is there any difference in the  
 17 term TMCC's files and your files?  
 18 A. No, I guess not, no.  
 19 Q. Same question for GM --  
 20 A. Yes, it's my company. Yes, I  
 21 consider both of those entities mine.  
 22 Q. So their documents are your  
 23 documents, that's also fair to say?  
 24 A. Yes, yes.  
 25 Q. Okay.

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1 G. McCrystal  
 2 Just to establish some  
 3 terminology I'm going to refer to the  
 4 document that's been marked as Exhibit 8 as  
 5 sublease?  
 6 A. Okay.  
 7 Q. For the document marked as  
 8 Exhibit 10, I'm going to call that the  
 9 rider.  
 10 A. Okay.  
 11 Q. For the document that's marked as  
 12 Exhibit 9, that will be called Exhibit B.  
 13 For the document we've marked as  
 14 Exhibit 11, we're going to call that  
 15 Amended Exhibit B?  
 16 A. Okay.  
 17 Q. Is that fair, so we understand  
 18 each other?  
 19 A. No problem.  
 20 Q. How did TMCC come to enter into  
 21 the sublease with Hartsdale?  
 22 A. I got a phone call from Harley  
 23 Greenfield, I believe that's his last  
 24 name -- anyway, he called me and said he  
 25 was interested in my space, they wanted to



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1 G. McCrystal  
 2 open up an Ashley Furniture store on Route  
 3 110, and he said that I would work with Ed  
 4 Seidner on the agreement.  
 5 And I got a call from Ed Seidner,  
 6 and they wanted my space, told me they  
 7 wanted my space. He had told me that he  
 8 had something going on down the road about  
 9 a mile up the road, but he knew that that  
 10 was an inferior space and that there was no  
 11 available space in the more desirable area  
 12 where I was. And so he wanted me to move  
 13 out and he wanted to take possession of my  
 14 premises.  
 15 Q. Now, who is Harley Greenfield?  
 16 A. As far as I know, he is the CEO  
 17 of Jennifer Convertible, but that was the  
 18 only conversation I ever had with him.  
 19 Q. Okay.  
 20 A. From there on in, everything was  
 21 with Ed Seidner.  
 22 Q. Who is Ed Seidner?  
 23 A. He told me he was a corporate  
 24 officer of the company. In what capacity,  
 25 I have no idea, vice-president or -- I have

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1 G. McCrystal  
 2 no idea.  
 3 Q. So it's your testimony that  
 4 Harley Greenfield called you and made a  
 5 proposal to you with respect to the  
 6 premises?  
 7 A. Yes.  
 8 Q. Do you remember when that  
 9 happened?  
 10 A. Late June or early July of 2009.  
 11 Q. Of 2009?  
 12 A. 2009.  
 13 Q. Just for the record, all the  
 14 agreements are dated 2009, so --  
 15 A. Okay, yeah.  
 16 Q. So that comports with your  
 17 recollection?  
 18 A. Yes.  
 19 Q. So after you spoke with  
 20 Mr. Greenfield, you began to speak with  
 21 Mr. Seidner about this matter?  
 22 A. Yes.  
 23 Q. How often did you speak with him?  
 24 A. We spoke a few times in the  
 25 beginning. We spoke a few times, you know,

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1 G. McCrystal  
 2 negotiating the deal on the lease.  
 3 Q. Did you have counsel in  
 4 connection with those negotiations?  
 5 A. No, I did not.  
 6 Q. Do you know if Mr. Seidner had  
 7 counsel?  
 8 A. As far as I know, no.  
 9 Q. At any time in 2009, did TMCC  
 10 have difficulty paying rent to Josalco in  
 11 connection with the premises?  
 12 A. In 2009?  
 13 Q. Uh-huh.  
 14 A. No.  
 15 Q. At any time in 2008, did TMCC  
 16 have any difficulty paying rent to Josalco?  
 17 A. No.  
 18 Q. At any time in 2007, did TMCC  
 19 have any difficulty paying rent to Josalco?  
 20 A. No.  
 21 Q. Did you use a broker in section  
 22 with the sublease?  
 23 A. No.  
 24 Q. Do you know if anyone else used a  
 25 broker, either Josalco or Hartsdale, used a

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1 G. McCrystal  
 2 broker in connection with the sublease?  
 3 A. No.  
 4 Q. Is it correct that there was an  
 5 Ashley Furniture store somewhere on Route  
 6 110, at the time that Mr. Greenfield called  
 7 you?  
 8 A. As far as I know, no.  
 9 Q. Was there a Jennifer Convertibles  
 10 store?  
 11 A. Yes.  
 12 Q. Where was that, if you can  
 13 recall?  
 14 A. It's a couple of blocks -- I  
 15 don't know, it's on Broad Hollow Road,  
 16 maybe 2 or 3 blocks south of 1821.  
 17 Q. Do you think that that's what  
 18 Mr. Greenfield was referring to, that  
 19 store, in his initial phone call with you?  
 20 MS. POLLACK: Objection.  
 21 Referring to?  
 22 BY MS. HOLLOMAN:  
 23 Q. Was he referring to that -- I can  
 24 rephrase the question to make it more  
 25 clear.



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1 G. McCrystal  
 2 Was Mr. Greenfield referring to  
 3 the Jennifer Convertibles that was two or  
 4 three blocks off Broad Hollow Road in his  
 5 initial conversation with you?  
 6 A. No.  
 7 Q. Do you know what he was referring  
 8 to?  
 9 A. Yes, I knew what he was referring  
 10 to. He was referring to the 1821 Broad  
 11 Hollow Road space.  
 12 Q. Let me back up. I think maybe my  
 13 questions aren't clear.  
 14 It's my understanding that you  
 15 testified, and we can have the record read  
 16 back for clarity, that Mr. Greenfield said  
 17 he had something going on?  
 18 A. No, that's not -- I don't believe  
 19 that's what I said. He called me and said  
 20 that -- oh, something going on -- no, I  
 21 understand -- the space that he was  
 22 thinking about taking before this space?  
 23 Q. Uh-huh.  
 24 A. No. That's about a mile north.  
 25 Q. Okay. All right.

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1 G. McCrystal  
 2 And so as we've discussed after  
 3 you spoke with Mr. Greenfield, you began to  
 4 speak with Seidner, right?  
 5 A. Yes.  
 6 Q. And you had a few conversations  
 7 with him. Do you remember about how many?  
 8 A. I don't know, a dozen.  
 9 Q. What was the substance of those  
 10 conversations?  
 11 A. The substance of the  
 12 conversations was, you know, in the  
 13 beginning it was, you know, about them, you  
 14 know, subleasing my store. They really, he  
 15 said to me how he really wanted it, that he  
 16 knew it was a better location than any of  
 17 the other locations that are available, and  
 18 that he was willing to, you know,  
 19 compensate me to leave.  
 20 Q. When you say them, I'll just stop  
 21 you there.  
 22 Who are you referring to?  
 23 A. Hartsdale.  
 24 Q. Hartsdale, okay. Go ahead.  
 25 A. So we reached an agreement on the

91

1 G. McCrystal  
 2 price of rent, and then from there the  
 3 attorneys kind of took over. Other  
 4 conversations I had with him were about  
 5 some things in the lease.  
 6 Q. What were those things in the  
 7 lease?  
 8 A. I asked him for a security  
 9 deposit. He told me that they don't give  
 10 security deposits, that it's not their  
 11 practice to do business with that, and that  
 12 he refused to give me a security deposit.  
 13 Q. They being Hartsdale?  
 14 A. Yes. We had another conversation  
 15 because then Ashley Furniture --  
 16 Q. Did you ever get a security  
 17 deposit from Hartsdale?  
 18 A. No, I did not. Ashley Furniture  
 19 had to inspect the store to okay giving  
 20 them I guess the franchise rights or  
 21 something. We had that conversation. We  
 22 had a conversation about a clause in the  
 23 lease, you know, basically stating that,  
 24 you know, they call it a good guy clause,  
 25 if you don't pay the rent, you agree to

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1 G. McCrystal  
 2 leave the premises and, you know, you're  
 3 off the hook for the remainder of the  
 4 lease.  
 5 If you don't leave the premises  
 6 and I have to take legal action to get you  
 7 out, you will be responsible for it  
 8 personally. And he also refused to sign  
 9 that.  
 10 Q. He is Ed Seidner?  
 11 A. Ed Seidner, yeah, on behalf of  
 12 Hartsdale.  
 13 Q. Do you recall any other  
 14 conversations other than what you've just  
 15 described?  
 16 A. No, just the initial, you know,  
 17 like I said, the initial negotiation of  
 18 what the additional, you know, what the  
 19 additional rent would be for the sublease.  
 20 Q. If you could get Exhibit 8 in  
 21 front of you.  
 22 A. Sure.  
 23 Q. Are you ready?  
 24 A. Yeah.  
 25 Q. Okay.



93

1 G. McCrystal  
 2 A. What page?  
 3 Q. Just starting at the front.  
 4 A. Okay.  
 5 Q. Generally, have you seen this  
 6 document before?  
 7 A. Yes.  
 8 Q. In your view, what does the  
 9 sublease accomplish?  
 10 A. It's my agreement between myself,  
 11 me, TMCC and GMM Consulting with Hartsdale,  
 12 Hartsdale Inc. and what they would pay for  
 13 the, you know, additional, for the rent.  
 14 Q. Is GMM a party to this agreement?  
 15 A. I believe Exhibit B is the  
 16 amended part of the sublease.  
 17 Q. Just bearing with Exhibit 8 at  
 18 the moment, that's the sublease agreement.  
 19 Is GMM a party to the agreement?  
 20 A. No. It doesn't look like that.  
 21 I don't even see a payment schedule in  
 22 here.  
 23 Q. Now, separate and apart from the  
 24 document, putting that aside for a moment,  
 25 do you think that GMM is a party to the

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1 G. McCrystal  
 2 agreement?  
 3 A. Yes.  
 4 Q. What is the basis for that?  
 5 A. GMM is me.  
 6 Q. So there is an identity between  
 7 you and GMM? Do you understand that  
 8 question?  
 9 A. I believe so. I mean, I own  
 10 TMCC. I own GMM Consulting. I own Roma  
 11 Furniture. You know, they're all my  
 12 companies. As far as I'm concerned, we're  
 13 all the same, you know, in that aspect.  
 14 Q. So anything that TMCC does, GMM  
 15 also does?  
 16 A. No, not necessarily, but in other  
 17 words as far as this is concerned, as far  
 18 as payment is concerned, yes.  
 19 Q. As far as --  
 20 A. As far as payment of rent is  
 21 concerned, yes, because --  
 22 Q. I beg your pardon. As far as  
 23 payment is concerned, yes what?  
 24 A. As far as the rent goes.  
 25 Q. So you're saying there is an

95

1 G. McCrystal  
 2 identity between TMCC and GMM with respect  
 3 to rent under the sublease?  
 4 A. Yes, I believe so.  
 5 Q. And the basis for that view is  
 6 that you are the president of both TMCC and  
 7 GMM; is that correct?  
 8 A. Yes.  
 9 Q. All right.  
 10 A. I would say the basis is that the  
 11 agreement is the way, is the agreement of  
 12 what we established as what the rent would  
 13 be and as to, you know, how it's paid.  
 14 Q. I'm not sure if I understand your  
 15 answer.  
 16 A. Well, we agreed that the rent  
 17 would be paid to both companies.  
 18 Q. And so it's your understanding  
 19 that that agreement makes GMM a party to  
 20 the agreement?  
 21 A. Yes.  
 22 Q. I just want to clarify your  
 23 testimony.  
 24 A. Yes.  
 25 Q. I also don't want to put words in

96

1 G. McCrystal  
 2 your mouth, so if that's not right, you  
 3 don't have to agree with me.  
 4 A. Yes, I believe that's correct,  
 5 yes.  
 6 MS. HOLLOWMAN: Could you read  
 7 back I guess the last three questions  
 8 and answers?  
 9 (Whereupon, the requested portion  
 10 was read back by the court reporter.)  
 11 BY MS. HOLLOWMAN:  
 12 Q. Is GMM a sub landlord under the  
 13 sublease?  
 14 A. No.  
 15 Q. If you could look at page bearing  
 16 production number M-76, that's the very  
 17 last page of Exhibit 8, is that your  
 18 signature?  
 19 A. Yes.  
 20 Q. And if you could refer to Exhibit  
 21 10 and look at page M-80, that's the last  
 22 page of Exhibit 10?  
 23 A. Exhibit 10?  
 24 Q. Yes.  
 25 A. Okay, sorry -- yes, that is my



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1 G. McCrystal  
 2 signature there also.  
 3 Q. Referring back to page M-76, you  
 4 signed this document on behalf of TMCC?  
 5 A. Yes.  
 6 Q. Why is there no signature block  
 7 for GMM?  
 8 A. I don't know. I believe it may  
 9 be because that company wasn't formed at  
 10 the time of this agreement. I don't know.  
 11 I don't know.  
 12 Q. And with respect to the rider,  
 13 again that's Exhibit 10, at page M-80 --  
 14 A. I'm sorry, Exhibit 10?  
 15 Q. Exhibit 10, the last page,  
 16 production number M-80.  
 17 A. Yes.  
 18 Q. There your signature is for TMCC  
 19 Inc. as the sublandlord, and is it correct  
 20 that there is no signature block for GMM?  
 21 A. Yes.  
 22 Q. Do you know why that is?  
 23 A. No.  
 24 Q. Going back to Exhibit 8, this is  
 25 the sublease?

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1 G. McCrystal  
 2 A. Okay.  
 3 Q. Is this document as is complete,  
 4 to your knowledge?  
 5 A. Yes.  
 6 Q. As presented to you?  
 7 A. Yes.  
 8 Q. Are there any attachments or  
 9 exhibits that should be considered together  
 10 with the sublease?  
 11 A. I wouldn't know, to be honest  
 12 with you. This is like, to me this is like  
 13 legal and this is something I would leave  
 14 to my attorney.  
 15 Q. I want to draw your attention  
 16 to -- again, this is in Exhibit 8, in the  
 17 bottom right hand, there is internal  
 18 pagination.  
 19 A. I'm sorry, what page are we on?  
 20 Q. Let's just start with page M-51  
 21 in Exhibit 8. If you look at that bottom  
 22 right, there is an internal pagination  
 23 there.  
 24 Do you see that, it says page 2  
 25 through 30?

99

1 G. McCrystal  
 2 A. Okay, yes.  
 3 Q. And when I say internal  
 4 pagination, that's what I'm referring to.  
 5 A. Okay.  
 6 Q. All right.  
 7 This is just for record keeping  
 8 purposes. If you could refer to M-75 and  
 9 look at the internal pagination there.  
 10 A. Okay.  
 11 Q. The next page in the production  
 12 numbers is M-76, is that correct?  
 13 A. Yes.  
 14 Q. Do you see that the internal  
 15 pagination skips from page 26 to 31?  
 16 A. Yes.  
 17 Q. Do you know what pages appear to  
 18 be missing from this document?  
 19 MS. POLLACK: For the record, it  
 20 also says page 26 of 30 and the next  
 21 page says page 31 of 34.  
 22 MS. HOLLOMAN: Right.  
 23 MS. POLLACK: So they both skip  
 24 and I haven't had an opportunity to  
 25 look at this again since we've

100

1 G. McCrystal  
 2 discussed it earlier, and I believe  
 3 what happened is that the 31 through  
 4 34 was from a prior draft, they  
 5 probably used the signature page from  
 6 a prior draft, and I will confirm for  
 7 you, obviously not today, but Monday,  
 8 that what you have marked as Exhibit 8  
 9 is the entire sublease agreement and  
 10 that there is nothing missing.  
 11 MS. HOLLOMAN: That would be very  
 12 helpful.  
 13 BY MS. HOLLOMAN:  
 14 Q. It's just for the record.  
 15 A. I understand.  
 16 Q. Okay. That's fine. That's fine.  
 17 MS. POLLACK: And of course, if  
 18 that should be incorrect and there is  
 19 something missing, I will produce it.  
 20 MS. HOLLOMAN: Sure, that would  
 21 go without saying, but I appreciate  
 22 you putting that on the record.  
 23 BY MS. HOLLOMAN:  
 24 Q. Do you know who drafted Exhibit  
 25 8, the sublease?



101

1 G. McCrystal  
 2 A. My attorney, I would assume.  
 3 Q. Are you assuming, sir, or do you  
 4 know?  
 5 A. My attorney, I would guess, you  
 6 know, he told me he did, I guess.  
 7 Q. When you say your attorney,  
 8 that's Mr. Perkins?  
 9 A. Paul Perkins, yes.  
 10 Q. Of the Lynch Law Firm?  
 11 A. Yes.  
 12 Q. Okay.  
 13 If you could refer to Exhibit 10,  
 14 that's the rider, do you think that  
 15 Mr. Perkins also drafted this agreement?  
 16 A. Yes, I believe so.  
 17 Q. If you could refer to Exhibit 9,  
 18 that's the document that's marked or titled  
 19 Exhibit B.  
 20 A. Yes.  
 21 Q. Do you know who drafted Exhibit  
 22 B?  
 23 A. I'm assuming Paul Perkins.  
 24 Q. You're assuming --  
 25 A. Paul Perkins, you know, his law

102

1 G. McCrystal  
 2 firm, his law firm.  
 3 Q. Okay.  
 4 For the record, do you know why  
 5 Exhibit 9 doesn't have an internal document  
 6 number like the sublease or the rider?  
 7 A. No.  
 8 Q. Who has knowledge of Exhibit B,  
 9 or I should say Exhibit 9, other than  
 10 yourself?  
 11 A. My attorneys do, Lynch Law Firm,  
 12 Cullen & Dykman, and Vitale & Levitt.  
 13 Q. Does anyone else have knowledge  
 14 of Exhibit 9?  
 15 A. Besides myself, no.  
 16 MS. POLLACK: Objection. Maybe  
 17 you can clarify what you mean by  
 18 knowledge.  
 19 BY MS. HOLLOWAN:  
 20 Q. Does anyone know of?  
 21 MS. POLLACK: Know of the  
 22 existence of?  
 23 MS. HOLLOWAN: Yeah.  
 24 A. Know the existence of?  
 25 Q. Yeah.

103

1 G. McCrystal  
 2 A. Well, I'm going to assume  
 3 Hartsdale Inc. knows the existence of it, I  
 4 assume.  
 5 Q. Anyone specific at Hartsdale?  
 6 A. I would guess Ed Seidner, his  
 7 attorney Owen Wincig.  
 8 Q. Are you guessing, or do you know?  
 9 A. He would, because his attorneys  
 10 had to approve of everything. This is a  
 11 sublease agreement. I would imagine  
 12 Josalco was aware of it, too.  
 13 Q. So you say you would imagine that  
 14 Josalco is aware of the sublease agreement?  
 15 A. I would imagine that he's aware  
 16 of the sublease agreement, yes. I wasn't  
 17 involved in the, you know, too much of the  
 18 agreement here, you know; in other words,  
 19 the lawyers -- this is like, you know, more  
 20 legal terminology.  
 21 I was not involved so much in it  
 22 until the end when, you know, they had a  
 23 question -- like again, as I mentioned  
 24 before about them not wanting to be, you  
 25 know, on the hook personally for the lease

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1 G. McCrystal  
 2 with that good guy clause, and them not  
 3 wanting to produce security deposits, you  
 4 know -- I was called upon to say, you know,  
 5 is this okay, is that okay, you know.  
 6 But the legal text of this, no.  
 7 At the end, they said, okay, this is the  
 8 way you wanted it, Gerry, and this is what  
 9 this says. I said, okay, if you're telling  
 10 me that's what it says, then fine. And I  
 11 signed off on it.  
 12 Q. So it's correct you signed the  
 13 sublease, you signed the rider?  
 14 A. Yes.  
 15 Q. Okay.  
 16 If you could get Exhibit 9 in  
 17 front of you.  
 18 A. Okay.  
 19 Q. That's the one that's marked  
 20 Exhibit B in quotes at the top.  
 21 A. Okay.  
 22 Q. All right.  
 23 Taking that first paragraph,  
 24 monthly rent paid to TMCC, what is your  
 25 understanding of that first -- paragraph



105

1 G. McCrystal  
 2 may be the wrong word -- section of the  
 3 document?  
 4 A. That's portion of the rent that  
 5 gets paid to TMCC.  
 6 Q. Now, there is a second paragraph  
 7 there and it's titled Additional Monthly  
 8 Rent Paid to Roma FLI Inc.  
 9 A. Right.  
 10 Q. What is your understanding of  
 11 that section?  
 12 A. My understanding of that was for  
 13 the one-time payment of the -- you know,  
 14 the one-time payment of the execution  
 15 agreement. I understand that it also lists  
 16 additional rent there.  
 17 This was something that was a  
 18 mistake apparently because the additional  
 19 rent starting October 15th, that was  
 20 supposed to go to GMM Consulting. So it  
 21 was corrected afterwards.  
 22 Q. Again, I don't want to put words  
 23 in your mouth, but was it corrected by  
 24 what's been marked as Exhibit Number 11,  
 25 which is titled Amended Exhibit B. You

106

1 G. McCrystal  
 2 could put that in front of you and compare.  
 3 A. Yes, I have them next to each  
 4 other -- yes, that's what Amended Exhibit B  
 5 is, yes.  
 6 Q. Okay.  
 7 Now, referring back to Exhibit 9,  
 8 in that third section which is titled  
 9 Additional Monthly Rent Paid to GMM  
 10 Consulting Inc.?  
 11 A. Yes.  
 12 Q. What is your understanding of  
 13 that section of the document?  
 14 A. That that is the balance of the  
 15 rent that gets paid. That's what it is.  
 16 Q. You call that the balance of the  
 17 rent?  
 18 A. Yes, yes, because like if you --  
 19 yes, that's what it is, the balance of the  
 20 rent.  
 21 Q. Okay.  
 22 You don't consider that  
 23 additional monthly rent, that's just rent?  
 24 A. Balance of the rent, yes.  
 25 Q. But let me just clarify my

107

1 G. McCrystal  
 2 question. That's not additional monthly  
 3 rent, that's rent?  
 4 A. It's additional, it's part of the  
 5 rent, however you want to say it, but it's  
 6 rent.  
 7 Q. Well, I don't want to say it in  
 8 any particular way, I want to get your  
 9 understanding.  
 10 A. It's rent.  
 11 Q. This third section, Additional  
 12 Monthly Rent Paid to GMM Consulting is  
 13 Rent?  
 14 A. Yes.  
 15 Q. Okay.  
 16 Now, moving back to the second  
 17 section of Exhibit 9, which is the one  
 18 marked Exhibit B at the top?  
 19 A. Yes.  
 20 Q. Additionally monthly rent paid to  
 21 Roma FLI, Inc.?  
 22 A. Yes.  
 23 Q. Now, just for background  
 24 questions, Roma FLI, is that the holding  
 25 company for Roma Furniture?

108

1 G. McCrystal  
 2 A. Roma FLI is the company corporate  
 3 name of Roma Furniture.  
 4 Q. The corporate name?  
 5 A. Correct.  
 6 Q. Was Roma FLI a party to the  
 7 lease? When we defined lease, that was  
 8 between Josalco and TMCC?  
 9 A. Yes, if it's on here, then I  
 10 would assume -- if it's in the sublease, I  
 11 guess I would assume it was a party to the  
 12 lease.  
 13 Q. Let me back up a little. Let me  
 14 be clear.  
 15 A. Okay.  
 16 Q. If you look at Exhibit 4 --  
 17 A. Okay.  
 18 Q. I don't want to jump ahead --  
 19 A. I understand, I understand.  
 20 Q. Okay.  
 21 A. Yes, go ahead.  
 22 Q. Okay.  
 23 Is Roma FLI a party to the lease?  
 24 A. No.  
 25 Q. Okay.



109

1 G. McCrystal  
 2 Is Roma FLI a party to the  
 3 sublease? Please take a look at Exhibit 8.  
 4 A. Okay.  
 5 Q. If that refreshes you. If you  
 6 don't need to be refreshed, you don't have  
 7 to.  
 8 A. No, it is not signed off here.  
 9 Q. Referring again back to the  
 10 second section, Additional Monthly Rent  
 11 Paid to Roma FLI, on Exhibit 9, who  
 12 requested those additional payments that  
 13 are set forth there?  
 14 A. That was the agreement I agreed  
 15 upon with Ed Seidner, that this would be  
 16 the rent.  
 17 Q. I'm going to repeat my question.  
 18 Who requested the additional  
 19 monthly rent payment that's set forth here?  
 20 A. I requested that the payment of  
 21 the rent would be broken up into two  
 22 companies.  
 23 Q. So it's your testimony that it's  
 24 your request?  
 25 A. That the rent would be broken up

110

1 G. McCrystal  
 2 into payment of two companies, yes.  
 3 MS. POLLACK: For clarification,  
 4 what are you referring to? Are you  
 5 referring to the payments to Roma FLI,  
 6 or the payments to GMM Consulting?  
 7 MS. HOLLOWAN: Only Roma FLI at  
 8 this point, yeah.  
 9 MS. POLLACK: Thank you.  
 10 A. The payment to Roma FLI was for  
 11 me to move, was for me to get out. They  
 12 needed me out of there immediately. That  
 13 fee, that \$100,000 fee was -- these other  
 14 payments, besides the \$100,000, no other  
 15 payment went to Roma FLI. They only went  
 16 to GMM Consulting.  
 17 Q. Okay.  
 18 So the payment that's  
 19 characterized here under additional monthly  
 20 rent paid to Roma FLI Inc., as a one-time  
 21 upfront payment paid upon execution of  
 22 agreement for \$100,000 was requested by  
 23 you?  
 24 A. Yes.  
 25 Q. Okay.

111

1 G. McCrystal  
 2 A. It was part of the agreement I  
 3 had made with Ed Seidner.  
 4 Q. Do you have any understanding of  
 5 why a one-time upfront payment to Roma FLI  
 6 is characterized here as a additional  
 7 monthly rent?  
 8 A. No.  
 9 Q. Is it fair to say that the  
 10 characterization of a one-time upfront  
 11 payment to Roma FLI as additional monthly  
 12 rent is inaccurate?  
 13 A. I don't know. Again, this to me  
 14 is like something counsel would write up,  
 15 not something I would --  
 16 Q. I don't want to ask what your  
 17 attorneys did, not at all. I just want  
 18 your understanding what you understand to  
 19 be.  
 20 So please don't -- if you only  
 21 understand this through conversations with  
 22 counsel, please don't say, but if you have  
 23 your own understanding --  
 24 A. No, that would be it, it would be  
 25 something between me and counsel.

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1 G. McCrystal  
 2 Q. So you never would have discussed  
 3 this or you have no understanding of this  
 4 other than through discussions with  
 5 counsel?  
 6 A. Yes.  
 7 Q. That's correct to say?  
 8 A. That's correct.  
 9 MS. POLLACK: When you say  
 10 "this" --  
 11 MS. HOLLOWAN: Oh, I beg your  
 12 pardon, right.  
 13 BY MS. HOLLOWAN:  
 14 Q. We are referring to throughout  
 15 this testimony the second section of  
 16 Exhibit 9, which is the additional monthly  
 17 rent paid to Roma FLI characterized as a  
 18 one-time upfront payment paid upon  
 19 execution of agreement.  
 20 A. Yes.  
 21 MS. POLLACK: I want to be clear  
 22 here because there seems to be a bit  
 23 of confusion. Are you saying that he  
 24 wouldn't have any knowledge of --  
 25 MS. HOLLOWAN: I'm not saying





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1 G. McCrystal  
 2 anything.  
 3 MS. POLLACK: No. The question  
 4 was: Do you have knowledge only  
 5 through your conversations with  
 6 lawyers as to the way it's written, or  
 7 as to the fact that it's being paid?  
 8 BY MS. HOLLOWAN:  
 9 Q. As to your understanding --  
 10 neither one of those -- as to your  
 11 understanding, you have only an  
 12 understanding of this based on  
 13 conversations with counsel?  
 14 A. Yes.  
 15 Q. So you wouldn't be able to  
 16 testify about it without revealing  
 17 attorney-client communications?  
 18 A. I believe so. If I'm  
 19 understanding of the question correctly,  
 20 then I believe so, yes.  
 21 Q. So you're not able to comment on  
 22 the characterization of the one-time  
 23 upfront payment as rent?  
 24 A. I know what the money was used  
 25 for, but I don't know what -- in other

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1 G. McCrystal  
 2 words, I know what the money was used for,  
 3 but I don't know the answers as to why it  
 4 was worded this way, but I know it was used  
 5 for, you know, it was used as a moving fee,  
 6 I used it to move.  
 7 Q. Do you think the wording is  
 8 inaccurate in any way?  
 9 A. I don't know if it's accurate or  
 10 inaccurate. Again, to me this is something  
 11 that my counsel did. There must have been  
 12 a reason for it. I have no idea.  
 13 Q. Setting aside what your counsel  
 14 did and discussions with counsel, did you  
 15 understand that this was a rent payment,  
 16 this one-time upfront payment? Was that a  
 17 rent payment?  
 18 A. I understood to be as, you know,  
 19 to be money to used to move. That's what I  
 20 understood it to be used for.  
 21 Q. So you didn't understand to be  
 22 used for rent, you understand it as a  
 23 moving incentive, is that fair to say?  
 24 A. No, we needed the money to move  
 25 to another space; in other words, they

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1 G. McCrystal  
 2 needed me out right away and I had to go to  
 3 another store and build, and so I told them  
 4 I needed this money to move.  
 5 Q. I don't want to mischaracterize  
 6 what you're saying. The one time upfront  
 7 payment to Roma FLI, not an incentive, but  
 8 rather assistance with moving fees?  
 9 A. Yeah, it was -- basically, yes,  
 10 yes.  
 11 Q. And so is it fair to say that it  
 12 was not intended to be rent?  
 13 A. I guess kind of, sort of -- yeah,  
 14 yes.  
 15 Q. I apologize, I don't want to  
 16 repeat and waste your time, but it's also  
 17 your position that you can't testify about  
 18 the wording of this agreement without  
 19 referring to conversations you've had with  
 20 counsel?  
 21 A. Correct.  
 22 Q. Because I don't want to go into  
 23 that.  
 24 A. Yes.  
 25 Q. And so that's your --

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1 G. McCrystal  
 2 A. Yes, that is correct, yeah.  
 3 Q. Okay.  
 4 If you could get Exhibit 11 in  
 5 front of you, do you have that?  
 6 A. Yes.  
 7 Q. I think you said you had them  
 8 side by side. That's smart. I'm going to  
 9 do the same.  
 10 A. Yes.  
 11 Q. Now, looking at Exhibit 9 and  
 12 Exhibit 11 they're titled Exhibit B and  
 13 Amended Exhibit B respectively side by  
 14 side.  
 15 What is your understanding of the  
 16 differences between the documents?  
 17 A. That is the corrected document,  
 18 11 is the correction of Number 9.  
 19 Q. How does Exhibit 11 correct  
 20 Exhibit 9?  
 21 A. It speculates that the rent would  
 22 go to GMM Consulting for the years 2009 and  
 23 2010, not to Roma FLI.  
 24 Q. Uh-huh.  
 25 It's correct that previously



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1 G. McCrystal  
 2 what's characterized as additional monthly  
 3 rent for the 2009-2010 period was to go to  
 4 Roma FLI?  
 5 A. I'm confused. No, in other  
 6 words, I'll repeat to you what I meant.  
 7 Q. Okay, please.  
 8 A. In other words, the October 15,  
 9 2009 to October 31, 2009 payments and the  
 10 November 1, 2009 to September 30, 2010  
 11 payments were supposed to go to GMM  
 12 Consulting.  
 13 So it was corrected here in the  
 14 Amended Exhibit B, because those payments  
 15 were not supposed to go to Roma FLI.  
 16 Q. So just also for the record,  
 17 you're referring to payments that are set  
 18 forth on Exhibit 9 versus payments set  
 19 forth on Exhibit 11?  
 20 A. Yes.  
 21 THE WITNESS: May I take a break?  
 22 (Recess taken from 12:31 p.m. to  
 23 12:37 p.m.)  
 24 (Whereupon, the requested portion  
 25 was read back by the court reporter.)

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1 G. McCrystal  
 2 BY MS. HOLLOWAN:  
 3 Q. So to get back into the  
 4 questioning, that was the purpose of the  
 5 amendment to correct payments that  
 6 initially were set forth to Roma FLI here  
 7 on Exhibit 9, here on Exhibit 11, which is  
 8 the amendment to set them forth through GMM  
 9 Consulting?  
 10 A. Right.  
 11 MS. HOLLOWAN: Could you read  
 12 that back?  
 13 (Whereupon, the requested portion  
 14 was read back by the court reporter.)  
 15 BY MS. HOLLOWAN:  
 16 Q. Do you recall when Exhibit B  
 17 which is marked in this proceeding as  
 18 Exhibit 9 was drafted?  
 19 A. I think it was sometime in the  
 20 end of November, something, of 2009, I  
 21 think.  
 22 Q. And we're referring to Exhibit 9?  
 23 A. Oh I'm sorry, Exhibit 9 -- I  
 24 apologize.  
 25 Q. It's okay.

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1 G. McCrystal  
 2 A. Exhibit 9 was drafted, I guess  
 3 the same time as the sublease, sometime  
 4 around, you know, I would assume. I  
 5 received it all at the same time, you know.  
 6 Q. And to refresh your recollection  
 7 the sublease is dated August 2009?  
 8 A. Okay, so then I guess -- yeah,  
 9 okay, so sounds about right, yeah.  
 10 Q. So it's fair to say that it was  
 11 prepared?  
 12 A. Yeah, August or September. Yeah,  
 13 okay, it sounds about right.  
 14 Q. And how about Exhibit 11 in this  
 15 proceeding which is titled Amended Exhibit  
 16 B?  
 17 A. Yeah, it was a couple of months  
 18 later, it was like a month or two -- I want  
 19 to say it was at the end of November, I  
 20 think, because I had called them on the  
 21 first.  
 22 First when I said the check is  
 23 made out to the wrong company, the \$10,000  
 24 check, I think. And they said okay. And  
 25 they submitted it to GMM Consulting, and

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1 G. McCrystal  
 2 then they called me and said it's not  
 3 written that way in the lease, and I said,  
 4 oh, okay, there's a mistake there -- so we  
 5 rectified it.  
 6 Q. And when you said they in your  
 7 last answer?  
 8 A. Hartsdale.  
 9 Q. Okay.  
 10 Anyone in particular at  
 11 Hartsdale?  
 12 A. Ms. Darha Willis. She said we  
 13 had to have it amended to cut future  
 14 checks.  
 15 Q. The additional monthly rent  
 16 payments for the period October 15, 2009  
 17 and October 31, 2009 as set forth on  
 18 Exhibit 9 and the November 1, 2009 to  
 19 September 31, 2009 payments as set forth on  
 20 Exhibit 9 were to go to Roma FLI?  
 21 A. I'm sorry.  
 22 (Whereupon, the requested portion  
 23 was read back by the court reporter.)  
 24 A. So what I believe you just said  
 25 was that on Exhibit 9 it shows that the



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1 G. McCrystal  
 2 payments for those months that we discussed  
 3 were going to Roma FLI?  
 4 Q. Uh-huh.  
 5 A. Yes, that's what it says here,  
 6 yeah.  
 7 Q. And then there is a change to  
 8 Exhibit 11, those same payments are now  
 9 directed to, they're called additional  
 10 monthly rent payments and they're directed  
 11 to GMM Consulting Inc.?  
 12 A. Yes.  
 13 Q. Why the change between Roma FLI  
 14 and GMM?  
 15 A. This was an error that I didn't  
 16 catch when I looked over the sublease  
 17 initially and it was an error, you know, it  
 18 was a drafting error.  
 19 Q. So when Exhibit 9 was drafted  
 20 those payments were always intended to go  
 21 to GMM Consulting?  
 22 A. Yes.  
 23 Q. Referring now to Exhibit 11,  
 24 which is the Amended Exhibit B document --  
 25 A. Okay.

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1 G. McCrystal  
 2 Q. Were any payments that are  
 3 described here as additional monthly rent  
 4 ever made to GMM?  
 5 A. Yes.  
 6 Q. Was the one-time upfront payment  
 7 described here as an additional monthly  
 8 rent payment to Roma FLI ever made?  
 9 A. Yes.  
 10 Q. What was the one-time upfront  
 11 payment used for -- sorry, what was the  
 12 one-time upfront payment to Roma FLI used  
 13 for?  
 14 A. To pay for, to pay for the move  
 15 basically.  
 16 Q. Okay.  
 17 A. The new space that I had to move  
 18 to.  
 19 Q. And the space you moved to was  
 20 1815 Broad Hollow Road?  
 21 A. Correct.  
 22 Q. Down the road?  
 23 A. Right next door, half the size.  
 24 Q. Why did TMCC decide to move?  
 25 A. Well, TMCC really didn't move --

123

1 G. McCrystal  
 2 you mean Roma, is that what you're getting  
 3 at?  
 4 Q. TMCC is the sub lessor under the  
 5 sublease?  
 6 A. Yes.  
 7 Q. So let me rephrase my question,  
 8 you're right.  
 9 Why did TMCC decide to enter into  
 10 the sublease?  
 11 A. Because Ed Seidner called me,  
 12 said he really wanted the space, that he  
 13 would sublease the space from me and pay me  
 14 rent, enough rent to compensate for my loss  
 15 of not being in a more desirable space.  
 16 Q. The payments that are  
 17 characterized as additional monthly rent  
 18 that are set forth on Exhibit 11 to GMM are  
 19 intended to compensate for a loss?  
 20 A. Yes.  
 21 Q. Well, I just want to get your  
 22 understanding, if you want to say more  
 23 please feel free.  
 24 A. In other words, the rent, we  
 25 established a rent amount of let's take,

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1 G. McCrystal  
 2 you know, if you want to take November 1,  
 3 2009 as an example, that the rent would be  
 4 \$52,000 a month for him to stay there.  
 5 I divided it into two  
 6 companies -- my accountant recommended me  
 7 to do it that way.  
 8 Q. That's Joel Seidner?  
 9 A. Yes.  
 10 Q. Is he any relation to Ed Seidner  
 11 that?  
 12 A. Would be funny -- you never know.  
 13 But I don't think so, I think he would have  
 14 said something to me by now if he was.  
 15 Q. That was one of my questions.  
 16 A. No, no.  
 17 Q. Why set it up this way.  
 18 A. I really don't know. I asked him  
 19 how should I go about doing this, and he  
 20 said to me this is how you should do it. I  
 21 said okay.  
 22 Q. So is it your testimony that Joel  
 23 Seidner, your accountant or let me be more  
 24 specific the accountant for TMCC and GMM --  
 25 A. And Roma and -- right.



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1 G. McCrystal  
 2 Q. -- and Roma suggested that the  
 3 lease, or I beg your pardon, the sublease  
 4 be set up this way?  
 5 A. He suggested that the payments  
 6 for the rent be set up that way. He didn't  
 7 have any input in the lease.  
 8 So I told my attorney, you know,  
 9 this is how I want the payments for the  
 10 rent to be divided. I don't want all  
 11 52,000 per se -- let's say, using that  
 12 month again as an example, I didn't want  
 13 all \$52,000 to go to TMCC, I wanted \$32,000  
 14 of it to go to TMCC and \$20,000 to go to  
 15 GMM.  
 16 MS. HOLLOWAN: Could you read  
 17 that back?  
 18 (Whereupon, the requested portion  
 19 was read back by the court reporter.)  
 20 BY MS. HOLLOWAN:  
 21 Q. How did you -- what is your  
 22 understanding of how the \$32,000 figure as  
 23 a monthly rent due to TMCC under Exhibit  
 24 11 -- strike that.  
 25 Do you see on Exhibit 11, the top

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1 G. McCrystal  
 2 portion that says, Monthly Rent Paid to  
 3 TMCC --  
 4 A. Yes.  
 5 Q. Do you see in the period between  
 6 November 1, 2009 to October 31, 2010 that  
 7 the payment set forth there is \$32,000?  
 8 A. I'm sorry, what was the date you  
 9 used?  
 10 Q. No problem.  
 11 A. November 1, 2009 to October 31,  
 12 2010?  
 13 Q. Right.  
 14 A. \$32,000, yes.  
 15 Q. What is your understanding of why  
 16 that figure is the rent?  
 17 A. I don't know why really, but I'm  
 18 assuming it's something to do with the  
 19 taxes or something, I don't know -- or why  
 20 my accountant suggested I do this, I really  
 21 don't know.  
 22 Q. You think it's due to taxes?  
 23 A. Something with taxes or  
 24 something, you know, I would guess. Why  
 25 else would it be, you know.

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1 G. McCrystal  
 2 Q. Do you recall the monthly rent  
 3 that is due to Josalco from TMCC under the  
 4 lease?  
 5 A. Yes, yes, it's the same.  
 6 Q. It's the same?  
 7 A. Yes.  
 8 Q. So do you still think that this  
 9 figure has to do with taxes?  
 10 A. Well, I'm assuming that's why my  
 11 accountant had me break it up. That's what  
 12 I was getting at.  
 13 Q. Okay.  
 14 A. But this would be enough to cover  
 15 that for that -- you understand? I really  
 16 don't know. This is what my accountant  
 17 told me, and so this is what I did.  
 18 Q. But it's correct then that the  
 19 monthly rent paid to TMCC is the same as  
 20 the monthly rent that TMCC was to pay to  
 21 Josalco?  
 22 A. Yes.  
 23 Q. Okay.  
 24 When we get to the third section  
 25 going down to additional monthly rent paid

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1 G. McCrystal  
 2 to GMM Consulting, for that period November  
 3 1, 2009 to September 30, 2010, and there is  
 4 a \$2,000 -- I'm sorry, I beg your pardon, a  
 5 \$20,000 payment set forth there?  
 6 A. Yes.  
 7 Q. What is your understanding of how  
 8 that figure was chosen?  
 9 A. Well, that's the difference.  
 10 Q. The difference between what?  
 11 A. The difference between what I pay  
 12 Josalco and the difference of what the rent  
 13 is from Hartsdale.  
 14 Q. Now, when you say what I pay  
 15 Josalco, what are you paying Josalco for?  
 16 A. The rent on the space.  
 17 Q. Right.  
 18 And so for this \$2,000 figure,  
 19 that's not being used to pay rent to  
 20 Josalco?  
 21 A. That is being used for the  
 22 additional -- that is being used to  
 23 compensate me for the dollar amount that I  
 24 lost from moving from a better space to a  
 25 different space.



129

1 G. McCrystal  
 2 Q. So it's not rent, is that fair to  
 3 say?  
 4 A. No, it is rent. I mean, it's  
 5 rent. That's how we established it is  
 6 rent.  
 7 Q. But if it's being used --  
 8 A. What I do with it personally, I  
 9 don't see how that matters. It's set up as  
 10 rent.  
 11 Q. Just to go back to your  
 12 testimony, that \$20,000 is being used to  
 13 compensate for loss is that your  
 14 testimony?  
 15 A. Yes.  
 16 Q. It's not being used for rent, is  
 17 that right?  
 18 A. It's not being used for me to pay  
 19 rent.  
 20 Q. Right.  
 21 A. It's income from rent.  
 22 Q. How is it income from rent?  
 23 A. Because it's the rent I get for  
 24 the space at 1821. The rent I get for the  
 25 space at 1821 using those dates is \$52,000.

130

1 G. McCrystal  
 2 Q. But what is your basis for  
 3 calling it rent if you're using it to  
 4 compensate for a loss?  
 5 A. That's what we agreed on as it  
 6 was going to be, it was going to be rent.  
 7 Q. So the only basis for that is an  
 8 agreement to characterize it as rent?  
 9 A. Again, that you'd have to speak  
 10 to my attorney on. I don't know.  
 11 Q. You have no view on something  
 12 like that?  
 13 A. No. In other words, the way I  
 14 saw it this was rent, it was additional  
 15 rent for the space because it was a  
 16 desirable space to compensate me for a loss  
 17 I would take, but it's --  
 18 Q. Well, did you see it as  
 19 additional rent, or did you see it as some  
 20 other kind of compensation?  
 21 A. I see it as additional rent to  
 22 compensate me.  
 23 Q. You don't think those things are  
 24 exclusive?  
 25 A. No, I don't.

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1 G. McCrystal  
 2 Q. If you're not using it to pay any  
 3 rent?  
 4 A. No, I don't. I see it as  
 5 additional rent. No I don't see it as  
 6 anything different.  
 7 Q. So even though it's this amount  
 8 that's set forth here on Exhibit 11 in the  
 9 third section isn't being used to pay any  
 10 rent, you're still characterizing it as  
 11 rent?  
 12 A. I'm characterizing it as rent  
 13 because I am the landlord between me and  
 14 Hartsdale, that's my rent. What my  
 15 landlord makes on my rent that I pay him is  
 16 no concern to me, it's rent, I pay him  
 17 rent, I don't ask him if he use it is to  
 18 pay for the building or if he use it is to  
 19 light on fire. It's rent.  
 20 Q. So you're also characterizing it  
 21 as a compensation for a loss?  
 22 A. That's how we came out to that  
 23 determination of what the rent would be.  
 24 Q. When you say when we came out to  
 25 a determination?

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1 G. McCrystal  
 2 A. Me and Ed Seidner.  
 3 Q. Okay.  
 4 And can you -- are you referring  
 5 to a particular conversation?  
 6 A. Well, our initial negotiations,  
 7 one of the first three or four negotiations  
 8 when we came to a number. That was the  
 9 number that we came up with.  
 10 Q. Can you tell me --  
 11 A. -- that we could agree upon.  
 12 Q. Can you tell me more about those  
 13 conversations?  
 14 A. I can't tell you too many  
 15 details.  
 16 Q. Just to the best of your  
 17 recollection.  
 18 A. Best of my recollection was how  
 19 much more rent would you want to leave. I  
 20 said I would want this much more. And then  
 21 we agreed. You know, we agreed, there was  
 22 some negotiating on what it would be, but  
 23 in is the number that we settled on. And  
 24 that happened in two or three  
 25 conversations.



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1 G. McCrystal

2 Q. So your understanding there with

3 these conversations with Mr. Seidner was

4 that there was an additional amount to be

5 paid as an incentive for you to leave?

6 A. There was an additional amount of

7 rent to be paid for his incentive for me to

8 leave, yes.

9 Q. An additional amount you're

10 saying of rent?

11 A. Of rent.

12 Q. Or was it some other payment?

13 A. It's rent.

14 Q. How is it rent in your view?

15 A. It's rent, because I rented it to

16 him. I rented him my space. I don't have

17 anything. I'm not performing any service

18 for him. I'm renting him my space.

19 Q. But wasn't TMCC receiving \$32,000

20 in rent from Hartsdale?

21 A. Yes, it was receiving \$32,000 --

22 but the agreement was \$52,000, 32 goes to

23 TMCC and 20 goes to GMM.

24 Q. So GMM was receiving, or as set

25 forth in this Amended Exhibit B, Exhibit

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1 G. McCrystal

2 11, GMM was to be receiving and additional

3 \$20,000 to compensate for losses?

4 A. That was part of the rent. That

5 was part of the rent.

6 MS. POLLACK: Asked and answered

7 at this point.

8 A. That was part of the rent. Using

9 that month as an example again, \$52,000 is

10 the rent I want to tell him to send

11 \$32,000 to TMCC and \$20,000 to GMM or

12 \$5,000 to GMM and \$15,000 to me personally,

13 it's rent, and if they agreed upon it,

14 that's the rent. It doesn't matter where

15 we send it to, it's rent.

16 Q. Or it's your understanding that

17 it's the rent?

18 A. It's rent, yes.

19 Q. It's your testimony that the

20 payments were set up this way on the advice

21 of Joel Seidner your accountant?

22 A. Yes.

23 Q. Is it your understanding that

24 this was done this pay for your tax

25 benefit?

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1 G. McCrystal

2 A. I really don't know. I said how

3 I do this whole thing, you know, we're

4 moving, we're moving to a new location now,

5 we don't know if we're going to make it,

6 what do I do here, and he said do it this

7 way, and I said okay.

8 Q. Did he ever explain to you why?

9 A. He may have, but I probably

10 wouldn't have understood it.

11 Q. With all due respect, sir, do you

12 make all of your business decisions based

13 on advice you don't understand?

14 A. Not all of them, but I do make

15 some of them.

16 Q. \$52,000 worth of a business

17 decision?

18 A. He's my accountant he's been my

19 accountant for a long time, he said do it

20 this way, this is the best way to do it and

21 I said okay.

22 Q. And you didn't inquire about why

23 this would be the best way?

24 A. No.

25 Q. You don't recall if he explained

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1 G. McCrystal

2 to you why this would be the best way?

3 A. He probably did, he probably did,

4 but I don't recall.

5 MS. POLLACK: Counsel, please

6 keep your facial expressions that are

7 argumentative out of this deposition.

8 MS. HOLLOMAN: Oh, I'm sorry.

9 Certainly, Mr. McCrystal, no

10 disrespect. I meant no disrespect.

11 MS. POLLACK: Thank you.

12 BY MS. HOLLOMAN:

13 Q. Genuinely, Mr. McCrystal, I

14 do apologize if you took offense to

15 that.

16 A. I understand. I understand.

17 Q. It was your earlier testimony

18 that GMM didn't exist until sometime in

19 2009, is that right?

20 A. It was a new company that I had

21 formed for this whole thing, this whole

22 thing meaning the deal with Hartsdale and

23 myself.

24 Q. The sublease, is that correct?

25 A. Yes.



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1 G. McCrystal  
 2 Q. When did GMM come into existence?  
 3 A. I believe August or September, or  
 4 right around the time we did this.  
 5 Q. And who established it for you?  
 6 A. I think my accountant did it.  
 7 Q. Okay.  
 8 Do you know what kind of company  
 9 GMM is?  
 10 A. No.  
 11 Q. You testified earlier that  
 12 payments were made to GMM pursuant to  
 13 Exhibit 11?  
 14 A. I'm sorry, repeat the question?  
 15 Q. You had testified earlier that  
 16 payments were made to GMM pursuant to  
 17 Exhibit 11, which is this Amended Exhibit  
 18 B?  
 19 A. Yes.  
 20 Q. What were those payments used  
 21 for?  
 22 A. I drew a salary from it, I guess.  
 23 Q. You drew a salary? Is it also  
 24 correct that your wife drew a salary?  
 25 A. Yes, and my wife drew a salary,

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1 G. McCrystal  
 2 yes.  
 3 Q. What did you do in order to draw  
 4 that salary?  
 5 MS. POLLACK: Objection. Sort of  
 6 vague. When?  
 7 BY MS. HOLLOWAN:  
 8 Q. Did GMM perform any  
 9 services for Hartsdale?  
 10 A. I don't see what a -- you know,  
 11 there is no services, no. The only service  
 12 GMM provided them with is the space that  
 13 they lease.  
 14 Q. Okay.  
 15 Did you do anything in order to  
 16 receive a salary from GMM?  
 17 A. Besides whatever minor paperwork  
 18 is involved, no.  
 19 Q. You did minor paperwork?  
 20 A. Minor paperwork.  
 21 Q. Could you describe what you mean  
 22 by minor paperwork?  
 23 A. You know, I set up payroll, set  
 24 up a checking account -- you know, minor  
 25 paperwork.

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1 G. McCrystal  
 2 Q. About how many hours a month did  
 3 you --  
 4 A. I have no idea.  
 5 Q. Would you think it would be less  
 6 than ten hours a month?  
 7 A. Maybe.  
 8 Q. And you had mentioned earlier  
 9 that it was a weekly payroll from GMM at  
 10 one point?  
 11 A. Yes.  
 12 Q. What was the amount of that  
 13 weekly payroll?  
 14 A. I'd have to check my records.  
 15 It's roughly whatever, pretty much, you  
 16 know, to cover whatever is there.  
 17 Q. There are records that would  
 18 show?  
 19 A. I think so.  
 20 Q. What would those records be?  
 21 A. Payroll.  
 22 Q. Just the payroll?  
 23 And again, you've testified  
 24 earlier that your wife received a paycheck  
 25 from GMM?

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1 G. McCrystal  
 2 A. Yes, yes.  
 3 Q. Did she perform any services or  
 4 do any job function or tasks in order to  
 5 get a payment from GMM?  
 6 A. No, not really, no.  
 7 Q. Okay.  
 8 And would it be fair to say you  
 9 spent less than ten hours a month on --  
 10 MS. POLLACK: Asked and answered.  
 11 A. I guess so, yeah.  
 12 Q. How much was your weekly payroll?  
 13 A. Lately, I spend more.  
 14 MS. POLLACK: Asked and answered.  
 15 A. I don't know. I'd have to check.  
 16 I haven't drawn a check from --  
 17 BY MS. POLLACK:  
 18 Q. Did you disburse the entire  
 19 payment received from Hartsdale each  
 20 month?  
 21 A. Just about, yes.  
 22 Q. Did do you that on a weekly  
 23 basis?  
 24 A. No, probably monthly basis.  
 25 Q. But the entire month was



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1 G. McCrystal  
 2 disbursed at the end of each month?  
 3 A. Yes.  
 4 Q. Was it an equal split between you  
 5 and your wife?  
 6 A. No.  
 7 Q. If you can recall what was the  
 8 split?  
 9 A. I don't recall, but I know I  
 10 received more than she did.  
 11 Q. What documents might help you  
 12 recall?  
 13 A. My payroll documents.  
 14 Q. I'm going to make a request on  
 15 the record for those documents to be  
 16 produced?  
 17 MS. POLLACK: We'll take it under  
 18 advisement.  
 19 MS. HOLLOWAN: Okay.  
 20 MS. POLLACK: To be clear that's  
 21 the payroll records for GMM  
 22 Consulting?  
 23 MS. HOLLOWAN: Yes.  
 24 MS. POLLACK: Is it payroll?  
 25 MS. HOLLOWAN: We're asking for

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1 G. McCrystal  
 2 payroll records.  
 3 BY MS. HOLLOWAN:  
 4 Q. The documents you said  
 5 would help you, would refresh for  
 6 you.  
 7 A. Okay.  
 8 Q. So did GMM ever use funds  
 9 received from Hartsdale to pay real estate  
 10 taxes?  
 11 A. No.  
 12 Q. Did GMM ever use funds received  
 13 from Hartsdale to pay attorneys fees?  
 14 A. No.  
 15 Q. Did GMM ever use funds received  
 16 from Hartsdale to pay water charges?  
 17 A. No.  
 18 Q. Did GMM ever use funds received  
 19 from Hartsdale to pay for example rubbish  
 20 carting?  
 21 A. No.  
 22 Q. Did GMM ever use funds to pay any  
 23 rent due under the lease, not the sublease,  
 24 the lease?  
 25 A. No.

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1 G. McCrystal  
 2 Q. What documents show the use of  
 3 the payments by GMM, is it just the  
 4 payroll, or is there anything else?  
 5 A. I mean it's payroll, I had a  
 6 pension fund there.  
 7 Q. Are you and your wife the  
 8 beneficiaries of that fund?  
 9 A. Yes.  
 10 Q. Anybody else?  
 11 A. No -- my kids might be, but I  
 12 don't think so, you know.  
 13 Q. Is there any consulting agreement  
 14 between GMM and Hartsdale?  
 15 A. No.  
 16 Q. Does GMM do any consulting?  
 17 A. No.  
 18 MS. POLLACK: GMM and Hartsdale?  
 19 MS. HOLLOWAN: Yeah.  
 20 A. Oh, consulting -- no, the only  
 21 tie they have is the lease, yeah.  
 22 Q. Is there any agreement between  
 23 GMM and TMCC, any agreement at all?  
 24 A. I own both companies. I mean,  
 25 there could be a verbal agreement between

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1 G. McCrystal  
 2 myself and myself -- but I mean, other than  
 3 that, no.  
 4 Q. So is it correct to say there are  
 5 no agreements between GMM --  
 6 A. Yeah, yeah, nothing in writing.  
 7 Q. Well, I just want to be clear  
 8 that there are no agreements between GMM  
 9 and TMCC?  
 10 A. Well, like I said, you know,  
 11 they're both my companies, so I mean, what  
 12 agreement that we both take rent from this  
 13 one source, you know, that would be the  
 14 only, I guess, agreement, you know. I  
 15 consider that an agreement.  
 16 Q. So you consider an agreement  
 17 between TMCC and GMM to be set forth here  
 18 in this Exhibit 11, which is called Amended  
 19 Exhibit B?  
 20 A. Yes, yes, I consider it because  
 21 they're getting rent from the same source,  
 22 yeah. In that respect they're, you know,  
 23 they're somehow affiliated with each other,  
 24 I suppose.  
 25 Q. So the document that's been





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1 G. McCrystal  
 2 marked as Exhibit 11, Amended Exhibit B,  
 3 reflects an agreement between TMCC and GMM?  
 4 A. I guess so.  
 5 Q. To your understanding?  
 6 A. Yeah, I think so, yeah.  
 7 Q. Okay.  
 8 Is there any agreement between  
 9 Roma Furniture and TMCC with respect to --  
 10 A. No.  
 11 Q. Is there any agreement between  
 12 Roma and TMCC with respect to the premises,  
 13 with respect to the lease or with respect  
 14 to the sublease?  
 15 A. No, no.  
 16 Q. Okay.  
 17 Does GMM have any agreement with  
 18 Roma Furniture, whether that's written or  
 19 unwritten?  
 20 A. I'm sorry? You know, getting  
 21 back to that other question, I guess there  
 22 is some connection because they're on this  
 23 here, but I mean, there is no, you know --  
 24 no -- no, there is no connection.  
 25 Q. Do you have any view on the fair

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1 G. McCrystal  
 2 market value of the premises in 2009?  
 3 MS. POLLACK: Asked and answered.  
 4 BY MS. HOLLOWMAN:  
 5 Q. Not in 2007. In 2009.  
 6 A. No.  
 7 Q. Do you think it's possible that  
 8 the fair market value of the premises has  
 9 increased between 2007 and 2009, or you  
 10 have no view?  
 11 A. I really have no view.  
 12 Q. Okay.  
 13 A. My view is always something --  
 14 Q. I don't want you to speculate,  
 15 but please feel free to answer -- but if  
 16 you don't have a view, you don't have to  
 17 make up an answer.  
 18 A. Okay.  
 19 Q. I'd like to, in Exhibit 8, which  
 20 is the sublease, if you could get that in  
 21 front of you. If you could turn to page,  
 22 turn to the production pagination M-53  
 23 through 54. That's at the bottom. If you  
 24 could just review, we don't need to read it  
 25 into the record, but if you could review

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1 G. McCrystal  
 2 Section 5 of the sublease.  
 3 A. If I could read it again.  
 4 Q. Take your time.  
 5 A. Okay, I read it.  
 6 Q. At the top of page M-54, the  
 7 first full sentence says, "At all times  
 8 during the term subtenant shall be  
 9 permitted to challenge or ask for support  
 10 for the amounts payable pursuant to the  
 11 provisions of the over-lease for the  
 12 purposes of this paragraph" -- with this  
 13 paragraph being entitled additional rent.  
 14 Do you see that there, sir?  
 15 A. Let me just look.  
 16 Q. Go ahead and read. Take as much  
 17 time as you need.  
 18 A. I don't really understand what  
 19 that means, "At all times during the term  
 20 subtenant shall be permitted to challenge  
 21 or ask for support for the amounts payable  
 22 pursuant to the provisions of the  
 23 over-lease for the purposes of this  
 24 paragraph" -- I don't, you know.  
 25 Q. You don't have a view on this?

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1 G. McCrystal  
 2 A. No, I don't.  
 3 Q. Do you understand that the  
 4 additional monthly amount that's set forth  
 5 on the Amended Exhibit B that's been marked  
 6 as Exhibit 11 is additional rent?  
 7 MS. POLLACK: Objection. Calls  
 8 for a legal conclusion.  
 9 MS. HOLLOWMAN: I'm asking for his  
 10 understanding.  
 11 MS. POLLACK: And I'm just noting  
 12 my objection for the record, counsel.  
 13 These are federal stip. My  
 14 objections have to be noted.  
 15 A. This paragraph and almost every  
 16 paragraph in here, I'm sure my legal  
 17 counsel explained to me, you know, at the  
 18 time, but I do not understand any of it.  
 19 I'd have to refer to him.  
 20 Q. And that's Paul Perkins?  
 21 A. Yes.  
 22 Q. Okay.  
 23 MS. HOLLOWMAN: Ms. Pollack, if  
 24 you could consider this also a request  
 25 on the record that we are --



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1 G. McCrystal  
 2 MS. POLLACK: Just a second.  
 3 MS. HOLLOWAN: Sure, take your  
 4 time.  
 5 MS. POLLACK: Okay, I'm sorry.  
 6 RQ MS. HOLLOWAN: Hartsdale as the  
 7 subtenant under the sublease is making a  
 8 formal request, we're asking for support  
 9 for the accounts payable described in  
 10 this paragraph on the record, and this  
 11 is in addition to our requests set forth  
 12 in our subpoena.  
 13 MS. POLLACK: For the record,  
 14 this paragraph, in legal terms, refers  
 15 to the additional rents paid under the  
 16 overlease for real estate taxes and  
 17 insurance or whatever other charges  
 18 there are.  
 19 I don't even know if there have  
 20 been any payments made that you have  
 21 not gotten the bills for. The bills  
 22 are right in Exhibits 6 and 7. So I'm  
 23 not sure what you're asking for.  
 24 MS. HOLLOWAN: We're making a  
 25 formal request for all support as

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1 G. McCrystal  
 2 described in this paragraph, and it's  
 3 all support for any accounts payable  
 4 as additional rent. This paragraph  
 5 refers to -- I'm sorry, this paragraph  
 6 is entitled Additional Rent.  
 7 MS. POLLACK: Yeah, additional  
 8 rent in the legal term, not extra rent  
 9 negotiated between the parties.  
 10 MS. HOLLOWAN: We're making a  
 11 request for all -- I'm not going to  
 12 get into a colloquy with you, but  
 13 we're making a formal request and I'd  
 14 like it noted for the record for all  
 15 documents, all support.  
 16 MS. POLLACK: So hold on. So to  
 17 be clear, you want to see all of the  
 18 additional rent bills that we paid to  
 19 the landlord?  
 20 MS. HOLLOWAN: If any. There may  
 21 be none. But that's what we're making  
 22 a request for.  
 23 MS. POLLACK: I'll take it under  
 24 advisement. For what time period?  
 25 MS. HOLLOWAN: Beginning in

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1 G. McCrystal  
 2 August 2009 to the present day.  
 3 MS. POLLACK: They didn't even  
 4 move into the premises in August 2009.  
 5 MS. HOLLOWAN: Beginning in  
 6 August 2009 to the present day. If  
 7 there is nothing from 2009 --  
 8 MS. POLLACK: Well, if TMCC paid  
 9 something to the landlord in August  
 10 2009, how does that relate to  
 11 Hartsdale who didn't move in until  
 12 October 2009?  
 13 MS. HOLLOWAN: This lease is  
 14 signed as of -- I beg your pardon, the  
 15 sublease is signed as of the 18th of  
 16 August.  
 17 MS. POLLACK: Right, and they  
 18 didn't move in until October.  
 19 MS. HOLLOWAN: So beginning as of  
 20 the 18th of August, the legal  
 21 obligation adheres to that day.  
 22 MS. POLLACK: The legal  
 23 obligation --  
 24 MS. HOLLOWAN: If there are no  
 25 documents available --

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1 G. McCrystal  
 2 MS. POLLACK: No, no, no, you're  
 3 not listening to me. If they paid a  
 4 bill in August, that wasn't your  
 5 client's obligation to pay because you  
 6 didn't move it into October, how is  
 7 that relevant?  
 8 MS. HOLLOWAN: Again, this  
 9 document is dated and signed  
 10 apparently as of the 18th of August  
 11 2009.  
 12 MS. POLLACK: Well, why don't you  
 13 go through the document and see when  
 14 they moved in and when their provision  
 15 started?  
 16 MS. HOLLOWAN: I'm not going to  
 17 have a discussion with you much  
 18 further on the record. It's totally  
 19 inappropriate.  
 20 MS. POLLACK: You know what,  
 21 we'll probably bring this one to the  
 22 judge.  
 23 MS. HOLLOWAN: That will be fine,  
 24 you can certainly bring it to the  
 25 judge, but again consider that a



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1 G. McCrystal  
 2 formal request. If you have no  
 3 documents from August 2009, that's  
 4 fine. If you have no documents at  
 5 all, it may well be that there are no  
 6 documents, but we are making a formal  
 7 request for those documents.  
 8 MS. POLLACK: I'll state for the  
 9 record that we have turned over every  
 10 single document within our files with  
 11 respect to the lease and the sublease.  
 12 I will ask them if they have any  
 13 additional bills, but everything that  
 14 we have, you have -- we being TMCC,  
 15 GMM.  
 16 MS. HOLLOMAN: Bear with me for a  
 17 moment, sir.  
 18 Do you want to go off the record,  
 19 take a two minute break?  
 20 MS. POLLACK: Up to you.  
 21 (Recess taken from 1:13 p.m. to  
 22 1:19 p.m.)  
 23 (Exhibit 12, Document titled  
 24 Landlord Consent to Sublease  
 25 Non-Disturbance and Attornment

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1 G. McCrystal  
 2 Agreement, marked for identification,  
 3 as of this date.)  
 4 (Exhibit 13, Letter dated 6/9/10,  
 5 marked for identification, as of this  
 6 date.)  
 7 (Exhibit 14, Letter dated  
 8 7/29/10, marked for identification, as  
 9 of this date.)  
 10 MS. HOLLOMAN: I'm going to put  
 11 some new documents, some new exhibits  
 12 into the record. You can set those  
 13 aside.  
 14 Now these are going to be marked  
 15 Exhibit 12, Exhibit 13 and Exhibit 14.  
 16 So please take your time and look  
 17 them over and then for the record I'll  
 18 identify them.  
 19 The document that is marked as  
 20 Exhibit 12 bears production numbers  
 21 M-142 through 148 and it's a document  
 22 titled Landlord Consent to Sublease  
 23 Non-Disturbance and Attornment  
 24 Agreement.  
 25 The document that has been marked

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1 G. McCrystal  
 2 as Exhibit 13 is a letter to Edward  
 3 Seidner from Victor Emanuelo. It's  
 4 dated June 9, 2010 and it bears  
 5 production number M-46.  
 6 The document that has been marked  
 7 as Exhibit 14 is a letter to Jordanna  
 8 Nadridge from Paul Levitt. It's dated  
 9 July 29, 2010 and it bears production  
 10 number 151.  
 11 BY MS. HOLLOMAN:  
 12 Q. So if you could put Exhibit 12 in  
 13 front of you, that's the Landlord Consent  
 14 to Sublease Non-Disturbance and Attornment  
 15 Agreement.  
 16 A. Okay.  
 17 Q. Now, I can represent to you that  
 18 this document was produced by your counsel  
 19 in response to the debtor's subpoenas to  
 20 TMCC and GMM.  
 21 A. Okay.  
 22 Q. Have you seen that document  
 23 before?  
 24 A. I think I have. I think I have.  
 25 It looks familiar.

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1 G. McCrystal  
 2 Q. Do you remember maybe when you  
 3 saw it?  
 4 A. Probably like right around the  
 5 time we -- you know, August of 2009 when we  
 6 did all this.  
 7 Q. Okay.  
 8 When did you understand the  
 9 sublease began?  
 10 A. I was under the impression that  
 11 it began, I think, you know, I think -- to  
 12 me, it began October 15th when they took  
 13 possession of the space.  
 14 Q. Do you know why it's dated August  
 15 18, 2009?  
 16 A. Originally Hartsdale wasn't too  
 17 sure of what date they wanted to take  
 18 possession, and I think originally they  
 19 wanted to take possession -- when we  
 20 originally were talking about this, I think  
 21 they wanted possession like September 1st.  
 22 But I believe because of this  
 23 Ashley inspection, it held up our, you  
 24 know -- so things got turned around and  
 25 then they said -- he had told me, Ed told



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1 G. McCrystal  
 2 me that they weren't going to take  
 3 possession until the 15th, and that was  
 4 kind of like a last-minute change.  
 5 So in my mind, you know, October  
 6 15th, they took possession, you know, they  
 7 took the key from me and that is when they  
 8 took the space.  
 9 Q. So is it fair to say that even  
 10 though the agreement is dated August 18,  
 11 2009, TMCC's obligations didn't begin under  
 12 the agreement until October 15, 2009?  
 13 A. When you say TMCC's obligations,  
 14 to who?  
 15 Q. I can rephrase.  
 16 Is it fair to say even though the  
 17 agreement is dated August 18, 2009 either  
 18 party to the sublease had no obligations to  
 19 one another until October 15, 2009?  
 20 A. Yeah, I believe technically in  
 21 the lease, you know, that upon signing  
 22 contract they were supposed to give me,  
 23 Hartsdale was supposed to give me the  
 24 \$100,000 check and the \$10,000 check, but  
 25 he changed it the last minute and said he

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1 G. McCrystal  
 2 couldn't give it to me until they moved in,  
 3 you know, on the 15th.  
 4 Q. And "he" is?  
 5 A. Ed Seidner. So thinking back,  
 6 maybe that had something to do with it, but  
 7 that was, you know -- okay.  
 8 Q. Just for terminology sake, I'm  
 9 just going to call that document  
 10 "landlord's consent," okay?  
 11 A. All right.  
 12 Q. Now, again, you think you may  
 13 have seen this document before; is that  
 14 right?  
 15 A. I must have. I signed it.  
 16 Q. I was going to ask you that.  
 17 A. Yeah, so I must have seen it,  
 18 yes.  
 19 Q. If you look at M-148, is that  
 20 your signature there?  
 21 A. Yes.  
 22 Q. Okay.  
 23 Do you recognize the other  
 24 signatures there?  
 25 A. One is for Joe Picone. I have no

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1 G. McCrystal  
 2 idea who is the other signature is -- oh, I  
 3 guess it's Ed's signature, okay.  
 4 Q. So Mr. Picone signed for Josalco,  
 5 is that your understanding?  
 6 A. Yes.  
 7 Q. And Mr. Seidner signed for  
 8 Hartsdale is that your understanding?  
 9 A. Yes.  
 10 Q. And you signed for TMCC, is that  
 11 your understanding?  
 12 A. Yes.  
 13 Q. Okay.  
 14 Take a moment and review this  
 15 document because I'm going to ask you about  
 16 your knowledge generally and then your  
 17 understanding specifically with respect to  
 18 the document.  
 19 A. Okay.  
 20 Q. My first general question, just  
 21 to your knowledge right now, is this  
 22 document dated?  
 23 A. It doesn't appear to be -- no, it  
 24 wasn't, it's not dated.  
 25 Q. Do you understand that this

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1 G. McCrystal  
 2 document was provided to Josalco?  
 3 A. Yes.  
 4 Q. Okay.  
 5 And you understand it was  
 6 provided to Hartsdale?  
 7 A. Yes.  
 8 Q. Okay.  
 9 Do you know roughly when that  
 10 happened? Was that in, say, August 2009?  
 11 A. August, maybe late July, it was  
 12 before the master lease, I think, you know,  
 13 if that's what we're going to call it, the  
 14 sublease was signed, you know.  
 15 Q. Was it before the rider also was  
 16 signed, that's Exhibit 10? Feel free.  
 17 Take a look.  
 18 A. Yeah, it may be, it may have  
 19 been -- it may have been. I would think  
 20 so.  
 21 Q. Do you know when Exhibit 12 was  
 22 signed -- do you remember when you signed  
 23 it?  
 24 A. Like early August, late July,  
 25 like I said, yeah. You know, everybody



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1 G. McCrystal  
 2 signed it around the same time, a day or  
 3 two apart maybe. This thing was probably  
 4 FedEx'd all over the place, you know. No  
 5 one actually ever met, you know.  
 6 Q. Do you know if any documents were  
 7 provided to Josalco in connection with the  
 8 landlord's consent?  
 9 A. Any documents provided to Josalco  
 10 would have been between my attorney, Paul  
 11 Perkins and Josalco.  
 12 Q. You have no knowledge yourself?  
 13 A. I have no knowledge, no. I was  
 14 never there for it, you know.  
 15 Q. Did TMCC provide Josalco with  
 16 Exhibit B that's the document marked as  
 17 Exhibit 9 in this proceeding at any time?  
 18 A. I wouldn't -- that would be  
 19 between the attorneys. If it's part of the  
 20 sublease, I honestly don't know.  
 21 Q. Did you, on behalf of TMCC,  
 22 instruct your attorneys to provide Josalco  
 23 with Exhibit B?  
 24 A. I didn't, I really didn't  
 25 instruct the attorneys to, you know -- I

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1 G. McCrystal  
 2 said whatever everybody needs to get the  
 3 deal to go through, you know, if there is  
 4 something that you think is going to be a  
 5 problem, call me, but otherwise, you know.  
 6 Q. Do you know if anyone provided  
 7 Josalco with either Exhibit B or Amended  
 8 Exhibit B, and in this proceeding they're  
 9 Exhibits 9 and 11?  
 10 A. I would, you know, I wouldn't  
 11 know, I wouldn't know.  
 12 Q. Are you aware of any obligations  
 13 under the lease to share any rent or  
 14 anything of value in excess of the rent  
 15 under the lease with Josalco?  
 16 A. I knew that there was something  
 17 in there regarding that, and I was told  
 18 that that was covered in the sublease.  
 19 Q. Who told you that it was covered  
 20 in the sublease?  
 21 A. My attorney Paul Perkins.  
 22 Q. Okay.  
 23 Do you know where that obligation  
 24 is in the lease?  
 25 A. No.

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1 G. McCrystal  
 2 Q. Do you know where that obligation  
 3 is in the sublease?  
 4 A. No.  
 5 Q. Okay.  
 6 Did you ever discuss the payments  
 7 to GMM that are called for on the Amended  
 8 Exhibit B, which is marked as Exhibit 11 in  
 9 this proceeding, did you ever discuss that  
 10 with anyone at Josalco?  
 11 A. No.  
 12 Q. Okay.  
 13 Did you ever take steps to  
 14 conceal from Josalco payments to GMM that  
 15 are called for on the Amended Exhibit B,  
 16 which is Exhibit 11 in this proceeding?  
 17 A. I never -- you know, had a  
 18 conversation with him with the exact dollar  
 19 amount of what, you know, what I was  
 20 subleasing the space to him with, no. I  
 21 never told him that I wasn't making money.  
 22 You know, he knew I was making something on  
 23 it, you know, but we never discussed a  
 24 dollar amount, he never asked.  
 25 Q. How do you know that he knew you

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1 G. McCrystal  
 2 were making money on it, as you said?  
 3 A. Because I told him that I was  
 4 making something.  
 5 Q. And "him" is?  
 6 A. Joe Picone.  
 7 Q. When did you have that  
 8 conversation?  
 9 A. When I first approached him and I  
 10 said to him -- you know, after I had  
 11 negotiated the deal with Ed Seidner, I went  
 12 to, you know, I had to go to my landlord  
 13 now and make sure it was okay with him.  
 14 So I went to him and he happened  
 15 to have this other smaller space, you know  
 16 next door and I said to him, you know, what  
 17 I'd like to do is I'd like to sublease the  
 18 space to Hartsdale, and I said to him, you  
 19 know, like it's a good deal, I said to him,  
 20 I'm going to sublease to Hartsdale, I'm  
 21 going to make some money on it, and I said  
 22 you have a smaller space next door that's  
 23 vacant, and I said if you'd like, I'll rent  
 24 that space too from you.  
 25 And he said yeah, okay, great.



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1 G. McCrystal  
 2 And that was basically it. And then, you  
 3 know, then my attorney told me we need a  
 4 consent from the landlord, and that's what  
 5 this is.  
 6 Q. So it's your understanding that  
 7 Joe Picone at Josalco is aware of some  
 8 additional payments other than rent under  
 9 the sublease?  
 10 A. Yes.  
 11 Q. Okay.  
 12 Could you take a look at Exhibit  
 13 13 and put that in front of you?  
 14 A. Sure.  
 15 Q. Again, that's a letter addressed  
 16 to Ed Seidner at Hartsdale Convertibles  
 17 from Victor Emanuelo, who is VP and general  
 18 counsel at Josalco.  
 19 A. Okay.  
 20 Q. Now, for the record, this  
 21 document was produced by your counsel in  
 22 response to the subpoenas to TMCC and GMM.  
 23 A. Yes.  
 24 Q. Have you ever seen this document  
 25 before?

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1 G. McCrystal  
 2 A. Maybe. I don't know.  
 3 Q. Do you see at the bottom in the  
 4 left where your a CC, a carbon copy  
 5 recipient?  
 6 A. Yes.  
 7 Q. Do you have any doubt that you  
 8 received this document?  
 9 A. No.  
 10 Q. Does this document come from  
 11 TMCC's records?  
 12 A. It either comes from TMCC's  
 13 records or possibly, rather Paul Perkins or  
 14 Paul Levitt, you know, or one of them. A  
 15 lot of times if I get something legal, I  
 16 just give it to my attorney.  
 17 Q. Okay.  
 18 Is Brian Held, he's also a carbon  
 19 copy recipient of this letter, at Lynch Law  
 20 Firm?  
 21 A. Yes.  
 22 Q. Okay. All right.  
 23 Did you have any discussions with  
 24 Mr. Emanuelo or anybody else at Josalco in  
 25 connection with this letter, with Exhibit

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1 G. McCrystal  
 2 13?  
 3 A. I don't recall having any kind of  
 4 conversation with him. I mean, you know,  
 5 like he had called me and said what are you  
 6 doing about -- you know, when the first  
 7 month came in May of 2009 we hadn't  
 8 received the rent, he had called me and  
 9 asked me, you know, what are you doing with  
 10 this, you know, and so I said to him, well  
 11 you know we sent him a letter, you know,  
 12 whatever the letter was, some kind of  
 13 letter saying, you know, that you didn't  
 14 pay the rent for May --  
 15 Q. He is?  
 16 A. My attorney, Paul Levitt sent a  
 17 letter to this, you know, to him saying we  
 18 didn't receive the rent. I had spoken to  
 19 Ed -- this went out in June -- I had spoken  
 20 to Ed Seidner in the middle of May when I  
 21 hadn't received the rent and I had asked  
 22 him, you know, what's going on, the rent  
 23 comes late, but it never comes two weeks  
 24 late.  
 25 He said to me well, Gerry, we're

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1 G. McCrystal  
 2 going through some stuff and he said I  
 3 promise you you'll be paid the rent on June  
 4 1st and we're probably going to be a month  
 5 behind with the rent and we can talk in  
 6 July or August about, you know, how we're  
 7 going to catch up on it.  
 8 So then on June 1st I said, and  
 9 I'm not usually one to call right away, you  
 10 know, it comes the 2nd or the 3rd or the  
 11 4th or the 5th, but I said you know, I  
 12 called Ed on the first to see, you know, if  
 13 everything was okay, and Ed told me that  
 14 everything wasn't okay and that he couldn't  
 15 discuss what was going to happen but he  
 16 didn't foresee me getting paid for another  
 17 3 months.  
 18 And so I said, okay. So then I  
 19 went to Josalco and I spoke with Joe Picone  
 20 and I guess I spoke with Vic and I told him  
 21 what was going on, and I said -- and I had  
 22 already contacted Paul Levitt at the time  
 23 and I told him, you know, we were sending  
 24 out the letter to, you know, to Ed Seidner  
 25 basically saying that we wanted -- you



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1 G. McCrystal  
 2 know, I guess basically the letter says --  
 3 it has a name, but it basically said that  
 4 we expect the rent or we have to begin  
 5 eviction.  
 6 Q. So just to take a step back  
 7 because that was a long answer, it's  
 8 correct to say that this letter requests  
 9 payments of rent from Hartsdale for the  
 10 months of May and June 2010?  
 11 A. It says here -- I think this is a  
 12 letter saying that -- what happened was,  
 13 you know, because Ed told me I was going to  
 14 get money on May 1st, I made -- or rather  
 15 on June 1st, and Joe Picone was a little  
 16 upset, I gave Joe \$10,000, I says they're  
 17 going to pay, they said they're going to  
 18 pay, here is \$10,000 as a sign of good  
 19 faith, and it was only like another 10 days  
 20 away or anyway, and I said let's wait and  
 21 see what happens.  
 22 I think what this letter says,  
 23 this is just a letter to Ed Seidner letting  
 24 them know that I didn't make payment on the  
 25 rent. Vic had told me, and I don't

170

1 G. McCrystal  
 2 remember if this was in June, I think, Vic  
 3 had told me that someone from I think Owen  
 4 Wincig actually had called and told Vic  
 5 Emanuel that they did pay me the rent and  
 6 that I wasn't paying the rent to them.  
 7 So I think Vic sent this out  
 8 looking for some kind of proof of payment.  
 9 I don't think this is, you know, him asking  
 10 them for the rent. This is him just making  
 11 a statement that the rent wasn't paid.  
 12 Q. Okay.  
 13 And this letter refers to a  
 14 \$10,000 payment, partial payment --  
 15 A. Right.  
 16 Q. -- of the combined rent for May  
 17 and June?  
 18 A. No, I believe just May, I think.  
 19 Q. Just May?  
 20 A. Yeah.  
 21 Q. And you made that payment?  
 22 A. Yes.  
 23 Q. Okay.  
 24 So according to this letter,  
 25 after that \$10,000 payment was made toward

171

1 G. McCrystal  
 2 May rent, that's your understanding --  
 3 A. Yes.  
 4 Q. Let me back up because we're  
 5 talking about two different things, there's  
 6 your understanding and then there's a  
 7 letter.  
 8 A. Okay.  
 9 Q. Let's set aside your  
 10 understanding for a moment and we'll go  
 11 according to the letter, okay?  
 12 A. Okay.  
 13 Q. According to this letter, a  
 14 \$10,000 payment was made?  
 15 A. Yes.  
 16 Q. So the remaining rent due for the  
 17 months of May and June is \$54,000; is that  
 18 correct?  
 19 A. That's the remaining rent that  
 20 TMCC would pay them.  
 21 Q. Yeah, would pay. So that works  
 22 out to \$32,000 a month?  
 23 A. That TMCC pays to Josalco, yes.  
 24 Q. Okay.  
 25 Is it your understanding that

172

1 G. McCrystal  
 2 Josalco, either Joe Picone or Vic Emanuelo,  
 3 knew that Hartsdale was paying, making  
 4 additional payments to GMM?  
 5 A. I don't know -- they knew they  
 6 were making additional payments to me.  
 7 They wouldn't have known which company they  
 8 were making additional payments to.  
 9 Q. It's fair to say they knew you  
 10 were getting additional payments?  
 11 A. Yes.  
 12 Q. And they knew this because you've  
 13 had a conversation with Joe Picone?  
 14 A. I had a conversation with Joe  
 15 Picone, yes.  
 16 Q. Did you characterize those  
 17 payments as rent when you spoke to  
 18 Mr. Picone?  
 19 A. I don't remember what I  
 20 characterized them as. I would imagine I  
 21 said I'm subleasing the space on the  
 22 sublease. Something along those lines.  
 23 Q. Would you have characterized  
 24 those payments as payments meant to address  
 25 lost profits?



173

1 G. McCrystal  
 2 A. I wouldn't have discussed that  
 3 with Joe Picone.  
 4 Q. Okay.  
 5 And you wouldn't have  
 6 characterized them as rent, you would just  
 7 said --  
 8 MS. POLLACK: Asked and answered.  
 9 BY MS. HOLLOWAN:  
 10 Q. -- they were payments due from  
 11 the sublease?  
 12 A. I would have characterized it as,  
 13 yeah, I'm going to sublease the space --  
 14 and yeah, I would characterize it as rent,  
 15 that I'm going to make money on the rent I  
 16 charge them above what you charge me.  
 17 Q. So you're saying that he knew  
 18 that, "he" being Joe Picone?  
 19 A. He knew I was making money on it,  
 20 yes.  
 21 Q. Above and beyond the rent?  
 22 A. Yes.  
 23 Q. Okay.  
 24 MS. POLLACK: Objection. The  
 25 rent -- clarify that, the rent under

174

1 G. McCrystal  
 2 the sublease or the rent under the  
 3 sublease?  
 4 MS. HOLLOWAN: I can't clarify  
 5 his testimony.  
 6 MS. POLLACK: You were  
 7 paraphrasing his testimony and all you  
 8 used was the word rent.  
 9 MS. HOLLOWAN: I just -- I can't  
 10 clarify his testimony.  
 11 A. Would you like me to clarify it?  
 12 Q. Absolutely. I want to give you  
 13 an opportunity. You could do that.  
 14 A. I would be making additional --  
 15 on the sublease that I would be making, I  
 16 would be charging more for the rent than  
 17 what he charges me -- yes, that was made  
 18 clear to him.  
 19 Q. Okay.  
 20 Could you put Exhibit 14 in front  
 21 of you?  
 22 A. Okay.  
 23 Q. Have you had a chance to review  
 24 it? Take your time.  
 25 A. Okay, I think I more or less know

175

1 G. McCrystal  
 2 what this is, yes.  
 3 Q. Exhibit 14, just for the record,  
 4 was produced by your counsel in response to  
 5 the debtor's subpoenas to TMCC and GMM?  
 6 A. Okay.  
 7 Q. Have you ever seen this document  
 8 before?  
 9 A. I believe so.  
 10 Q. Okay.  
 11 What is this document?  
 12 A. This is just a letter stating,  
 13 you know, that the rent is behind.  
 14 Q. The rent for --  
 15 A. I'm sorry, hold on a second.  
 16 Q. Go ahead. Take your time.  
 17 A. Yeah, this is just a letter  
 18 stating that they are behind on the rent  
 19 and -- that's what it says. I think so --  
 20 right?  
 21 Q. It's your understanding.  
 22 A. I guess this is -- this is the  
 23 letter after they filed Chapter 11 as to  
 24 what would be due -- I'm under the  
 25 understanding that when a company files for

176

1 G. McCrystal  
 2 Chapter 11, from the moment they stay  
 3 forward they're responsible for the rent  
 4 for the time that they stay there, so I  
 5 believe Hartsdale filed for Chapter 11 on  
 6 July 17th, so beginning on July 18th, you  
 7 know, for those whatever 14 days of the  
 8 month, or maybe it's really only 13, maybe  
 9 that's a mistake in math there -- you know,  
 10 whatever it is, that's the sum that's owed  
 11 for July and this is the sum that is owed  
 12 for August, and then if they didn't pay the  
 13 rent that we would lift the stay, put in --  
 14 I understand, you know, we had an eviction,  
 15 like a court case for eviction, like a  
 16 date, and that it gets put into stay  
 17 because, you know, they filed Chapter 11,  
 18 that we would put it in a request to lift  
 19 the stay if the rent for August 1st wasn't  
 20 paid.  
 21 Q. In the second paragraph of the  
 22 letter, do you see that?  
 23 A. Yes.  
 24 Q. Where rent is characterized as  
 25 \$52,000 for August 1st, do you see that





177

1 G. McCrystal  
 2 there?  
 3 A. Yes.  
 4 Q. What constitutes the \$52,000  
 5 number?  
 6 A. The \$52,000 that is in Exhibit  
 7 11, I guess, the corrected one?  
 8 Q. Uh-huh.  
 9 A. That's \$52,000.  
 10 Q. Well, again, what is your  
 11 understanding of what that figure  
 12 constitutes?  
 13 A. The rent for August 1st is  
 14 \$52,000.  
 15 Q. What makes up that figure?  
 16 A. The \$30,000 that they -- the  
 17 \$32,000 that gets paid to TMCC and the  
 18 \$20,000 that gets paid to GMM. If you put  
 19 it together, it comes out to \$52,000.  
 20 Q. Are you aware of any other  
 21 versions of this letter?  
 22 A. No.  
 23 Q. Are you aware of any version of  
 24 this letter that's been altered to remove  
 25 the \$52,000 figure?

178

1 G. McCrystal  
 2 A. Not that I know of, no.  
 3 Q. Can you refer back to Exhibit  
 4 13 -- actually no, never mind, sorry. I  
 5 think we're done with this.  
 6 A. Okay, no problem.  
 7 Q. Could you put Exhibit 3 in front  
 8 of you briefly? That's the motion. I  
 9 think it's the thickest document in the  
 10 pile.  
 11 A. Okay.  
 12 Q. Now, do you have any  
 13 understanding why GMM is not a party to the  
 14 motion?  
 15 A. No.  
 16 Q. What is your understanding --  
 17 A. Oh, GMM is not a party to the  
 18 motion?  
 19 Q. Yes.  
 20 A. It says it in here, though, on  
 21 page 2, I see their name there. I didn't  
 22 read the whole paragraph.  
 23 Q. But do you see that the motion,  
 24 hot motion is brought on behalf of? It's  
 25 brought on behalf of TMCC?

179

1 G. McCrystal  
 2 A. Yeah. I don't know.  
 3 Q. So you have no view or no  
 4 understanding why --  
 5 A. No, again, this is was subpoenaed  
 6 to attorneys, and so...  
 7 Q. Don't refer to your conversations  
 8 with counsel.  
 9 A. Okay.  
 10 Q. No understanding, is that your  
 11 answer?  
 12 A. Yes.  
 13 Q. What is GMM's address?  
 14 A. The address -- I mean, the  
 15 corporate address is 1815 Route 110, same  
 16 as TMCC. I have everything sent to a P.O.  
 17 Box.  
 18 Q. Can you look in Exhibit 3, if you  
 19 turn to page 5, at the bottom of the  
 20 document there's a footnote -- take a  
 21 moment to review.  
 22 A. Okay.  
 23 Q. Now, just to be clear, is it your  
 24 contention, you personally, separate from  
 25 TMCC, separate from GMM, is it your

180

1 G. McCrystal  
 2 contention that Josalco knew of payments  
 3 to -- is it your contention that Josalco  
 4 was aware of payments under the sublease in  
 5 excess of \$32,000?  
 6 A. Yes.  
 7 Q. And what is the basis of that  
 8 contention?  
 9 MS. POLLACK: Asked and answered.  
 10 A. Because of the conversation I had  
 11 with him.  
 12 Q. With?  
 13 A. With Joe Picone.  
 14 Q. And that conversation is with  
 15 respect to specifically the sublease?  
 16 A. Yes.  
 17 Q. Did you disclose any amounts in  
 18 that conversation?  
 19 MS. POLLACK: Asked and answered.  
 20 A. No.  
 21 Q. No?  
 22 A. No.  
 23 Q. Did he ask you about any amount?  
 24 A. No, he never did.  
 25 Q. Did you ever discuss any



181

1 G. McCrystal  
 2 obligation that TMCC had to Josalco to pay  
 3 rent or items of value under the sublease  
 4 to Josalco?  
 5 A. I'm sorry, can you repeat the  
 6 question?  
 7 MS. HOLLOMAN: Could you read  
 8 that back?  
 9 (Whereupon, the requested portion  
 10 was read back by the court reporter.)  
 11 MS. POLLACK: Asked and answered.  
 12 A. No.  
 13 MS. HOLLOMAN: Mr. McCrystal,  
 14 thank you for coming in. We have no  
 15 further questions for you at this  
 16 time. Your counsel may want the  
 17 opportunity to cross-examine you, so  
 18 we're not done yet.  
 19 MS. POLLACK: There is no  
 20 cross-examination, but for the record,  
 21 I just want that, so that I'm clear,  
 22 the items that you have requested are  
 23 the payroll records from GMM and any  
 24 documents under Section 5 of the  
 25 lease, paragraph 5 of the sublease --

182

1 G. McCrystal  
 2 that's all that was requested, right?  
 3 MS. HOLLOMAN: I'm trying to see  
 4 if there is anything else.  
 5 (Continued on next page to  
 6 include signature and jurat.)  
 7  
 8  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

183

1 G. McCrystal  
 2 That's all that is requested on  
 3 this, correct, that's correct.  
 4 (Time noted: 1:51 p.m.)  
 5  
 6  
 7  
 8  
 9 GERALD McCRYSTAL  
 10  
 11 Subscribed and sworn to before me  
 12 this \_\_\_ day of \_\_\_\_\_, 2010.  
 13  
 14 \_\_\_\_\_  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

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1  
 2 C E R T I F I C A T E  
 3 S T A T E O F N E W Y O R K )  
 4 : s s .  
 5 C O U N T Y O F N E W Y O R K )  
 6  
 7 I, Joan Urzia, a Notary Public  
 8 within and for the State of New York,  
 9 do hereby certify:  
 10 That GERALD McCRYSTAL, the  
 11 witness whose deposition is  
 12 hereinbefore set forth, was duly sworn  
 13 by me and that such deposition is a  
 14 true record of the testimony given by  
 15 the witness.  
 16 I further certify that I am not  
 17 related to any of the parties to this  
 18 action by blood or marriage, and that I  
 19 am in no way interested in the outcome  
 20 of this matter.  
 21 IN WITNESS WHEREOF, I have  
 22 hereunto set my hand this 8th day of  
 23 November, 2010.  
 24 \_\_\_\_\_  
 25 Joan Urzia



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1

2 ----- I N D E X -----

3 WITNESS EXAMINATION BY PAGE

4 GERALD McCRYSTAL MS. HOLLOMAN 4

5

6 DIRECTION NOT TO ANSWER: Page 31

7

8 DOCUMENT REQUEST: PAGE

9 1) All support for any accounts 149

10 payable as additional rent

11

12 ----- EXHIBITS -----

13 EXHIBIT FOR ID.

14 Exhibit 1 Notice 7

15 Exhibit 2 Notice 7

16 Exhibit 3 Motion 13

17 Exhibit 4 Document Bates stamped M-1 48

18 through 15

19 Exhibit 5 Document Bates stamped M-16 48

20 through 45

21 Exhibit 6 Letter dated 6/16/10 61

22 Exhibit 7 Invoice dated 1/19/09 61

23

24 (Continued)

25

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1

2 ----- EXHIBITS (Cont'd) -----

3 EXHIBIT FOR ID.

4 Exhibit 8 Sublease agreement dated 80

5 8/18/10

6 Exhibit 9 Document entitled Exhibit B 80

7 Exhibit 10 Rider to Sublease Agreement 80

8 dated 8/21/09

9 Exhibit 11 Amended Exhibit B 80

10 Exhibit 12 Document titled Landlord 153

11 Consent to Sublease

12 Non-Disturbance and

13 Attornment Agreement

14 Exhibit 13 Letter dated 6/9/10 154

15 Exhibit 14 Letter dated 7/29/10 154

16

17

18

19

20

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23

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1

2 DEPOSITION ERRATA SHEET

3 Case Caption: Jennifer Convertibles, Inc.

4

5 DECLARATION UNDER PENALTY OF PERJURY

6 I declare under penalty of perjury

7 that I have read the entire transcript of my

8 Deposition taken in the captioned matter or

9 the same has been read to me, and the same is

10 true and accurate, save and except for

11 changes and/or corrections, if any, as

12 indicated by me on the DEPOSITION ERRATA

13 SHEET hereof, with the understanding that I

14 offer these changes as if still under oath.

15

16

17 \_\_\_\_\_

18 GERALD McCRYSTAL

19

20 Subscribed and sworn to on the \_\_\_\_ day of

21 \_\_\_\_\_, 2010 before me,

22 \_\_\_\_\_

23 Notary Public,

24 in and for the State of \_\_\_\_\_

25

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1

2 DEPOSITION ERRATA SHEET

3 Page No. \_\_\_\_ Line No. \_\_\_\_ Change to: \_\_\_\_

4 \_\_\_\_\_

5 Reason for change: \_\_\_\_\_

6 Page No. \_\_\_\_ Line No. \_\_\_\_ Change to: \_\_\_\_

7 \_\_\_\_\_

8 Reason for change: \_\_\_\_\_

9 Page No. \_\_\_\_ Line No. \_\_\_\_ Change to: \_\_\_\_

10 \_\_\_\_\_

11 Reason for change: \_\_\_\_\_

12 Page No. \_\_\_\_ Line No. \_\_\_\_ Change to: \_\_\_\_

13 \_\_\_\_\_

14 Reason for change: \_\_\_\_\_

15 Page No. \_\_\_\_ Line No. \_\_\_\_ Change to: \_\_\_\_

16 \_\_\_\_\_

17 Reason for change: \_\_\_\_\_

18 Page No. \_\_\_\_ Line No. \_\_\_\_ Change to: \_\_\_\_

19 \_\_\_\_\_

20 Reason for change: \_\_\_\_\_

21 Page No. \_\_\_\_ Line No. \_\_\_\_ Change to: \_\_\_\_

22 \_\_\_\_\_

23 Reason for change: \_\_\_\_\_

24 SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

25 GERALD McCRYSTAL



1

2 DEPOSITION ERRATA SHEET

3 Page No. \_\_\_\_ Line No. \_\_\_\_ Change to: \_\_\_\_

4 \_\_\_\_\_

5 Reason for change: \_\_\_\_\_

6 Page No. \_\_\_\_ Line No. \_\_\_\_ Change to: \_\_\_\_

7 \_\_\_\_\_

8 Reason for change: \_\_\_\_\_

9 Page No. \_\_\_\_ Line No. \_\_\_\_ Change to: \_\_\_\_

10 \_\_\_\_\_

11 Reason for change: \_\_\_\_\_

12 Page No. \_\_\_\_ Line No. \_\_\_\_ Change to: \_\_\_\_

13 \_\_\_\_\_

14 Reason for change: \_\_\_\_\_

15 Page No. \_\_\_\_ Line No. \_\_\_\_ Change to: \_\_\_\_

16 \_\_\_\_\_

17 Reason for change: \_\_\_\_\_

18 Page No. \_\_\_\_ Line No. \_\_\_\_ Change to: \_\_\_\_

19 \_\_\_\_\_

20 Reason for change: \_\_\_\_\_

21 Page No. \_\_\_\_ Line No. \_\_\_\_ Change to: \_\_\_\_

22 \_\_\_\_\_

23 Reason for change: \_\_\_\_\_

24 SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

25 GERALD McCRYSTAL



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**EXHIBIT 2**

1

UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK

-----

Chapter 11

IN RE: Case No.  
 10-13779 (ALG)

JENNIFER CONVERTIBLES, INC.,  
 Debtor.

-----

DEPOSITION OF JOSEPH PICONE  
 Tuesday, November 16, 2010  
 10:00 a.m.

Reported by:  
 Joan Urzia

3

1  
 2 A P P E A R A N C E S:  
 3  
 4 C U L L E N & D Y K M A N, L L P  
 5 Attorneys for Movants  
 6 100 Quentin Roosevelt Boulevard  
 7 Garden City, New York 11539  
 8 BY: MATTHEW G. ROSEMAN, ESQ.  
 9  
 10  
 11 O L S H A N G R U N D M A N F R O M E  
 12 R O S E N Z W E I G & W O L O S K Y, L L P  
 13 Attorneys for Debtor  
 14 65 East 55th Street  
 15 New York, New York 10022  
 16 BY: ELLEN V. HOLLOMAN, ESQ.  
 17 Eholoman@olshanlaw.com  
 18  
 19  
 20 V I C T O R E M A N U E L O, E S Q.  
 21 Attorney for the Witness  
 22 500 Bi-County Boulevard  
 23 Suite 117  
 24 Farmingdale, New York 11735  
 25

2

1  
 2 November 16, 2010  
 3 10:00 a.m.  
 4 Farmingdale, New York

5  
 6 Deposition of JOSEPH PICONE, held  
 7 at the offices of Victor Emanuelo, Esq.,  
 8 500 Bi-County Boulevard, Farmingdale, New  
 9 York, pursuant to Subpoena, before Joan,  
 10 Urzia, a Notary Public of the State of New  
 11 York.  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

4

1  
 2 J O S E P H P I C O N E,  
 3 called as a witness, having been duly  
 4 sworn by a Notary Public, was examined  
 5 and testified as follows:  
 6 EXAMINATION BY  
 7 MS. HOLLOMAN:  
 8 Q. Good morning, Mr. Picone. My  
 9 name is Ellen Holloman. I'm here from  
 10 Olshan Grundman Frome Rosenzweig & Wolosky.  
 11 We represent the debtors in this  
 12 proceeding.  
 13 Could you state your full name  
 14 for the record?  
 15 A. My name is Joseph Picone, Jr.  
 16 Q. Will you have counsel present at  
 17 these proceedings, sir?  
 18 A. Yes.  
 19 Q. Who is that, please?  
 20 A. Victor Emanuelo.  
 21 MS. HOLLOMAN: I'd like the  
 22 record to reflect that Mr. Emanuelo is  
 23 presently out of the room, but will  
 24 shortly join us.  
 25 BY MS. HOLLOMAN:



5

1 J. Picone  
 2 Q. Have you ever been deposed  
 3 before?  
 4 A. Sir.  
 5 Q. In what context?  
 6 A. Similar to this.  
 7 Q. What kind of a matter was it?  
 8 A. Real estate.  
 9 Q. Were you a party in that  
 10 proceeding?  
 11 A. No.  
 12 Q. You were a non-party?  
 13 A. Right.  
 14 Q. How long ago was that?  
 15 A. Since my last EBT? I don't  
 16 remember. Probably a year or two ago  
 17 maybe.  
 18 Q. So we'll just refresh you on the  
 19 ground rules for a deposition, even though  
 20 you've been through the experience before.  
 21 There is a court reporter here  
 22 making a record of everything that we're  
 23 saying, and we're going to have documents  
 24 that will be marked as exhibits and shown  
 25 to you for your review, either to refresh

6

1 J. Picone  
 2 you or to have you comment on them.  
 3 Most of these documents have been  
 4 previously marked at a deposition in this  
 5 matter.  
 6 Because we need a clear record,  
 7 one of the rules is if you could wait until  
 8 I finish asking my questions before you  
 9 provide your answers, and we'll try not to  
 10 talk over one another, that way Joan can  
 11 make a clear record of these proceedings.  
 12 If any of my questions are  
 13 unclear or you don't understand anything  
 14 I'm saying, or if you need me to talk  
 15 louder, please definitely let me know, I'm  
 16 happy to rephrase or raise my voice or  
 17 anything you need.  
 18 But if you answer a question,  
 19 sir, the assumption is you understand what  
 20 was asked of you.  
 21 If you need a break at any time,  
 22 a comfort break maybe for the restroom or  
 23 just to stretch your legs, just ask and  
 24 we're happy, you know, we'll definitely  
 25 break.

7

1 J. Picone  
 2 The only thing I would ask is we  
 3 not do that while a question is pending.  
 4 So we can have a break once the question  
 5 has been answered.  
 6 Do you understand?  
 7 A. Yes.  
 8 Q. Okay.  
 9 Is there any reason that you  
 10 cannot testify truthfully today?  
 11 A. No.  
 12 Q. Do you intend to testify  
 13 truthfully today?  
 14 A. Of course.  
 15 Q. Thank you.  
 16 And we're going to place before  
 17 you the first exhibit in this matter, it's  
 18 been marked Picone 1, and for the record,  
 19 this is a true and correct copy of a  
 20 subpoena that was sent to Josalco Inc. and  
 21 it has an affidavit of service attached to  
 22 it.  
 23 (Picone Exhibit 1, Subpoena;  
 24 affidavit, marked for identification,  
 25 as of this date.)

8

1 J. Picone  
 2 BY MS. HOLLoman:  
 3 Q. Please take a moment to review  
 4 the document, just look it over and let me  
 5 know when you're ready.  
 6 Are you ready, sir?  
 7 A. Ready.  
 8 Q. Okay.  
 9 Have you seen that document  
 10 before?  
 11 A. No.  
 12 Q. Okay.  
 13 Could I direct your attention  
 14 perhaps to the last page of that document?  
 15 In the second paragraph, do you see where  
 16 your name is highlighted in bold there,  
 17 sir?  
 18 A. Yes.  
 19 Q. Does this refresh your  
 20 recollection at all about having seen this  
 21 document before?  
 22 A. No.  
 23 Q. Okay.  
 24 This is a subpoena that is  
 25 directed at Josalco Inc. I'm going to --



9

1 J. Picone  
 2 when I say Josalco Inc., I'm going to just  
 3 use the term Josalco so we understand each  
 4 other, I'm use that for shorthand. Is that  
 5 all right?  
 6 A. That's fine.  
 7 Q. What kind of a business or line  
 8 of business is Josalco in?  
 9 A. They own buildings, real estate,  
 10 and they rent them.  
 11 Q. Okay.  
 12 What is your relationship to  
 13 Josalco, sir?  
 14 A. Could we go off the record for a  
 15 minute?  
 16 Q. Would you like to have your  
 17 counsel present, sir?  
 18 MR. ROSEMAN: I know what he's  
 19 going to say. It identifies his age  
 20 as 34 years of age.  
 21 THE WITNESS: Yeah, I want to  
 22 meet this person.  
 23 A. Okay, go ahead.  
 24 Q. What is your relationship,  
 25 please, to Josalco?

10

1 J. Picone  
 2 A. I'm an officer of the company.  
 3 Q. Okay.  
 4 Are you a president, do you have  
 5 a title?  
 6 A. I believe it's president, or  
 7 member -- it's an LLC, so...  
 8 Q. Does Josalco have any employees?  
 9 A. No.  
 10 Q. Are there any other members or  
 11 principals?  
 12 A. Yes.  
 13 Q. Who are they, please?  
 14 A. I believe it's Victor Emanuelo.  
 15 Q. Any others?  
 16 A. That's it.  
 17 Q. Is there a Joe Picone III?  
 18 A. Yes.  
 19 Q. Is he a member of Josalco?  
 20 A. I'm not sure. I don't think so.  
 21 Q. Is Josalco known by any other  
 22 names?  
 23 A. Josalco was our old name. It was  
 24 an old name. It was changed to JSP Realty  
 25 Inc. -- or the Inc., LLC.

11

1 J. Picone  
 2 Q. What prompted that change?  
 3 A. There was a division in the  
 4 family holdings and that made for a change  
 5 in the --  
 6 Q. Are you finished with your  
 7 answer?  
 8 A. Yes.  
 9 Q. Is Josalco and JSP Realty, are  
 10 they essentially the same entity?  
 11 A. I don't think there is anymore  
 12 Josalco.  
 13 MR. EMANUELO: Can we go off the  
 14 record?  
 15 MS. HOLLOWMAN: Yes.  
 16 (Whereupon, an off-the-record  
 17 discussion was held.)  
 18 MS. HOLLOWMAN: The record should  
 19 reflect that Mr. Emanuelo has joined.  
 20 BY MS. HOLLOWMAN:  
 21 Q. Is it still okay to use the term  
 22 Josalco, you'll still know what I mean?  
 23 A. Okay. Don't matter to me.  
 24 Q. All right.  
 25 With respect to Exhibit 1, sir,

12

1 J. Picone  
 2 do you understand that you're here today to  
 3 testify pursuant to that notice?  
 4 A. Excuse me?  
 5 Q. With respect to Exhibit 1 that's  
 6 before you, do you understand that you're  
 7 here today to testify pursuant to that  
 8 notice?  
 9 A. That I could do what?  
 10 Q. That you're here to testify.  
 11 Sorry, my voice is low.  
 12 A. Right.  
 13 Q. Is that your understanding?  
 14 A. Yes.  
 15 Q. Okay.  
 16 I have some quick, you know,  
 17 housekeeping matters.  
 18 Did you do anything to prepare  
 19 for this deposition?  
 20 A. No.  
 21 Q. Did you review any documents?  
 22 A. No.  
 23 Q. Did you discuss this deposition  
 24 with anyone, including any legal advice  
 25 that you may have received?





13

1 J. Picone  
 2 A. No.  
 3 Q. What is your educational  
 4 background, beginning with your graduation?  
 5 A. High school and some college.  
 6 Q. Okay.  
 7 And since the college education,  
 8 what's been your employment history?  
 9 A. In the real estate business.  
 10 Q. For about how many years?  
 11 A. 40.  
 12 Q. Is it fair to say that you're  
 13 very experienced in real estate?  
 14 A. I would say a little bit -- just  
 15 a little.  
 16 Q. All right.  
 17 I'm going to put a document  
 18 before you. This has been previously  
 19 marked in another deposition in this matter  
 20 as Exhibit 4. It's for your review.  
 21 MS. HOLLOWAN: This is for you,  
 22 Mr. Emanuelo.  
 23 MR. EMANUELO: Thank you.  
 24 BY MS. HOLLOWAN:  
 25 Q. Please take a moment to review

14

1 J. Picone  
 2 and when you're ready -- you don't have to  
 3 necessarily read every single word, but  
 4 take all the time that you need to be  
 5 familiar with it.  
 6 And for the record, again, this  
 7 document was previously marked as Exhibit  
 8 4, it was produced by counsel to TMCC in  
 9 response to two subpoenas to TMCC and GMM  
 10 and it bears production numbers M-1 through  
 11 15.  
 12 A. I've looked at it.  
 13 Q. Are you ready?  
 14 A. Yes.  
 15 Q. Have you seen that document  
 16 before, sir?  
 17 A. Yes.  
 18 Q. What is it?  
 19 A. It's a lease.  
 20 Q. For terminology sake, we'll just  
 21 refer to this document going forward as a  
 22 lease, or as "the lease," I should say.  
 23 Who is the lease between, what  
 24 parties?  
 25 A. It's between Josalco Inc. and

15

1 J. Picone  
 2 TMCC Inc.  
 3 Q. Okay.  
 4 It's correct that the premises  
 5 that's subject to this lease would be 1821  
 6 Route 110?  
 7 A. That's correct.  
 8 Q. And it's right that Route 110 is  
 9 also called Broad Hollow Road?  
 10 A. That's right.  
 11 Q. Okay. I just want to make sure.  
 12 Going forward, I'm going to refer  
 13 to that as "the premises" in this matter;  
 14 is that all right?  
 15 A. That's fine.  
 16 Q. Do you know the premises?  
 17 A. Yes.  
 18 Q. What is it?  
 19 A. It's a building on Route 110,  
 20 about 20,000 square feet, used for retail  
 21 purposes.  
 22 Q. Does Josalco own that building?  
 23 A. Yes.  
 24 Q. What is TMCC Inc.?  
 25 A. What is it?

16

1 J. Picone  
 2 Q. Uh-huh.  
 3 A. It's the tenant.  
 4 Q. Do you know who Gerald McCrystal  
 5 is?  
 6 A. Yes.  
 7 Q. Who is he?  
 8 A. He's the tenant that represents  
 9 TMCC Inc.  
 10 Q. When did you meet Mr. McCrystal?  
 11 A. Oh, I know him for many years.  
 12 Q. How did you first meet him?  
 13 A. I met him being in the business.  
 14 His father always looked to rent some  
 15 buildings from us, or we've done some  
 16 business with them before, and then we did  
 17 some business with them as a landlord  
 18 tenant also in this building that he used  
 19 to rent at one time also --  
 20 Q. When you say this building --  
 21 A. -- and he rents another building.  
 22 Q. Excuse me, sir.  
 23 A. He rented this building and then  
 24 he moved into another building of ours.  
 25 Q. Okay.



17

1 J. Picone  
 2 Just to be clear, when you said  
 3 "this building," you're not referring to  
 4 this building?  
 5 A. No, the 1815 building -- 19821  
 6 building.  
 7 Q. Would you say you've known  
 8 Mr. McCrystal for 20 years?  
 9 A. Probably.  
 10 Q. More?  
 11 A. About 20 years.  
 12 Q. Do you have any understanding  
 13 what business TMCC is in?  
 14 A. No, except that they were in the  
 15 furniture business.  
 16 Q. Have you heard of Roma Furniture  
 17 or Roma FLI?  
 18 A. Yes.  
 19 Q. What are they?  
 20 A. Also a business that Gerry  
 21 McCrystal is involved with.  
 22 Q. Was there a Roma Furniture store  
 23 at the premises at any point?  
 24 A. At that premises?  
 25 Q. Yes, sir.

18

1 J. Picone  
 2 A. Yes, there was.  
 3 Q. Does Josalco have any other  
 4 business relationship with TMCC other than  
 5 as set forth in this lease?  
 6 A. No.  
 7 Q. Does Josalco -- I think you had  
 8 testified earlier that Josalco rents  
 9 another building to TMCC; is that right?  
 10 A. That's right, yes.  
 11 Q. Where is that building, please?  
 12 A. Right next door.  
 13 Q. Do you know the address at all?  
 14 A. 1815 Route 110, or Broad Hollow  
 15 Road.  
 16 Q. So other than as set forth in the  
 17 lease and with respect to 1815 Broad Hollow  
 18 Road, is there any other relationship  
 19 between TMCC and Josalco?  
 20 A. No, just those two buildings.  
 21 Q. Other than those two buildings,  
 22 is there any other relationship between  
 23 Josalco and Mr. McCrystal separate and  
 24 apart from TMCC?  
 25 A. No, just as landlord tenant.

19

1 J. Picone  
 2 Q. Is that the only lease agreement  
 3 between Josalco and TMCC with respect to  
 4 the premises?  
 5 A. I believe so, yes. There is  
 6 another lease with Roma Furniture at a  
 7 different location, at 1815.  
 8 Q. Okay.  
 9 And other than those two, there  
 10 are no other leases?  
 11 A. No.  
 12 Q. Are there any other agreements of  
 13 any kind between Josalco and TMCC or  
 14 Mr. McCrystal with respect to the premises?  
 15 A. No.  
 16 Q. Could you take a look at page M-5  
 17 in the document, you'll see on the bottom  
 18 right-hand corner of the page, there will  
 19 be letters and numbers, and if you could  
 20 look at the page marked M-5, do you have  
 21 that in front of you, sir?  
 22 A. Yes.  
 23 Q. Okay.  
 24 Is that your signature there,  
 25 sir?

20

1 J. Picone  
 2 A. Yes.  
 3 Q. Okay.  
 4 If you could also look, sir, at  
 5 M-14, is that your signature there as well,  
 6 sir?  
 7 A. Yes.  
 8 Q. Okay.  
 9 Is there anyone else at Josalco  
 10 who has knowledge of the lease or TMCC or  
 11 Mr. McCrystal?  
 12 A. Yes.  
 13 Q. Who is that?  
 14 A. Victor Emanuelo.  
 15 Q. Could you turn to page M-15 in  
 16 the document please, sir? Do you have it  
 17 there, sir?  
 18 A. Yes.  
 19 Q. Okay.  
 20 If you could just take a moment  
 21 to look it over, I'm going to ask what your  
 22 understanding is of what this page refers  
 23 to.  
 24 A. This is his payment schedule.  
 25 Q. Does that refer to payment of



21

1 J. Picone  
 2 rent, sir?  
 3 A. Yes.  
 4 Q. Is anything inaccurate about this  
 5 page, to your knowledge?  
 6 A. No. It seems to be right.  
 7 Q. For the period of November 1,  
 8 2009 to October 31, 2010, under the monthly  
 9 payment section, it's accurate that the  
 10 rent is \$32,000?  
 11 A. That's the rent that I collected.  
 12 Q. Are there any other payments due  
 13 from TMCC to Josalco under the lease other  
 14 than as set forth here?  
 15 A. Yes.  
 16 Q. What are those items, sir?  
 17 A. There's some rent for sewers,  
 18 water use, fire sprinkler use, taxes, I  
 19 believe, and I think that's all we bill  
 20 them out for -- maybe snow removal and  
 21 parking lot maintenance.  
 22 Q. About how much is that on an  
 23 annual basis?  
 24 A. Probably about 3 or 4 or \$5,000.  
 25 Q. Are there any other items that

22

1 J. Picone  
 2 would be due, items of additional payment  
 3 that would be due under the lease that you  
 4 can think of?  
 5 A. Well, not really due me, but they  
 6 do pay a garbage fee to the Town of Babylon  
 7 which has not been paid.  
 8 Q. And "they" is TMCC,  
 9 Mr. McCrystal?  
 10 A. Excuse me?  
 11 Q. When you say they, sir, that's  
 12 TMCC or Mr. McCrystal; is that right?  
 13 A. Yes.  
 14 Q. Could you turn to page M-10 in  
 15 that document, please, sir, and I wanted to  
 16 draw your attention to the paragraph that's  
 17 marked 57. If you could take a moment to  
 18 review that, sir. Please do and let me  
 19 know when you've had a chance to look it  
 20 over.  
 21 A. Okay. I see it.  
 22 Q. What is your understanding of  
 23 that paragraph, sir?  
 24 A. That they should have two months'  
 25 security with us.

23

1 J. Picone  
 2 Q. Do you recall if TMCC complied  
 3 with that requirement when the lease was  
 4 signed?  
 5 A. I would have to check my records.  
 6 Q. Okay.  
 7 Do you know how much was supposed  
 8 to have been deposited?  
 9 A. To me, it would have been, when  
 10 this lease was done, I would believe that  
 11 two months would have been \$32,000 -- I'm  
 12 sorry, twice that, so \$64,000.  
 13 Q. Is it correct that the lease, or  
 14 in particular that paragraph of the lease  
 15 calls for the amount on security deposit to  
 16 be increased as rent is increased?  
 17 A. Yes, it should be increased  
 18 according to paragraph 57.  
 19 Q. Is that also, according to your  
 20 understanding, sir, separate and apart  
 21 maybe from the document?  
 22 A. That it should be increased?  
 23 Q. Uh-huh.  
 24 A. Yeah, it should be increased.  
 25 Q. Okay.

24

1 J. Picone  
 2 Do you know if the amount on  
 3 deposit has increased since the lease was  
 4 signed?  
 5 A. I don't know.  
 6 Q. Did TMCC ever have any difficulty  
 7 paying rent to Josalco in 2007?  
 8 A. In 2007?  
 9 Q. To the best of your recollection,  
 10 sir?  
 11 A. Yeah, I don't remember.  
 12 Q. Do you remember if TMCC had any  
 13 difficulty paying any rent in 2008 or 2009?  
 14 A. No, not in the last couple of  
 15 years. They did pretty good.  
 16 Q. Okay.  
 17 Did there come a time when TMCC  
 18 sought to sublet the premises to another  
 19 party?  
 20 A. Yes.  
 21 Q. When did that happen?  
 22 A. I believe it was in 2009, the end  
 23 of 2009.  
 24 Q. Your recollection is what it is.  
 25 A. Yeah, it was around 2009,



25

1 J. Picone  
 2 November -- or they started around November  
 3 or October of 2009.  
 4 Q. And I have some documents that I  
 5 can show you, sir, if that might refresh  
 6 your memory.  
 7 How did you come to learn about  
 8 that?  
 9 A. Well, Gerry rented that building  
 10 from me and he had, I had another building  
 11 empty next door, 1815. So he came to me  
 12 with a proposal to rent that building,  
 13 1815, that he had somebody that he was  
 14 going to sublease 1821 to.  
 15 Being he had the lease on the  
 16 building and he was coming in and filling  
 17 up some empty space we had, basically they  
 18 moved into that space from 1821 to 1815 and  
 19 then the new tenant moved in, Ashley  
 20 Furniture, into 1821, and that went on  
 21 probably in September or October of 2009  
 22 that would have been.  
 23 Q. Okay. Just bear with me one  
 24 moment, sir.  
 25 Okay. I have a document that I'm

26

1 J. Picone  
 2 going to place before you. This was  
 3 previously marked at a deposition, at a  
 4 previous deposition in this matter as  
 5 Exhibit 3. Here is a copy for you. You  
 6 can set those other documents aside, sir.  
 7 For the record, that's a copy of  
 8 a notice of motion, motion, together with  
 9 exhibits that was filed by Cullen & Dykman  
 10 LLP on behalf of TMCC.  
 11 Just take a moment to review the  
 12 document, sir. Take as much time as you  
 13 need.  
 14 A. Okay.  
 15 Q. Just for our terminology, I'm  
 16 going to refer to that document as the  
 17 motion, and you'll see in the top part of  
 18 the document there, sir, there is a line  
 19 that says In Re Jennifer Convertibles.  
 20 Do you see that there, sir?  
 21 A. Yes.  
 22 Q. I'm just going to refer to  
 23 Jennifer Convertibles and Hartsdale as the  
 24 debtors -- okay, is that all right?  
 25 A. Fine.

27

1 J. Picone  
 2 Q. And I can represent to you that  
 3 the debtors own and operate Ashley  
 4 Furniture, which I had mentioned before.  
 5 So when I refer to "the debtors,"  
 6 I'm going to be referring to all those  
 7 entities unless I'm specific and mention  
 8 Hartsdale or Jennifer separately -- does  
 9 that sound all right, sir?  
 10 A. Sounds good.  
 11 Q. Have you ever seen that document  
 12 before?  
 13 A. No, not that I remember.  
 14 Q. Okay.  
 15 A. No, I didn't see this.  
 16 Q. Do you have any understanding of  
 17 what that document is?  
 18 A. Well, it appears to be -- I don't  
 19 even know how to describe it -- but I guess  
 20 this is their filing of bankruptcy,  
 21 according to what it says here.  
 22 Q. Well, that document is a motion  
 23 in the bankruptcy proceedings.  
 24 Do you understand that Jennifer  
 25 Convertibles, Hartsdale, the debtors are

28

1 J. Picone  
 2 debtors in bankruptcy?  
 3 A. Yes.  
 4 Q. Okay.  
 5 Have you ever personally spoken  
 6 to anyone at the debtors?  
 7 A. No -- I shouldn't say that. I  
 8 did speak to -- I don't remember his  
 9 name -- yes, but I did speak to somebody.  
 10 Q. And you can't recall his name at  
 11 the moment?  
 12 A. No, it was somebody from Ashley  
 13 or Hartsdale.  
 14 Q. When did that happen, sir, to the  
 15 best of your memory?  
 16 A. I believe sometime this summer,  
 17 after there was this filing.  
 18 Q. What was the conversation about?  
 19 A. Just basically what happened or  
 20 what is going on, and his response was  
 21 they're sorting things out and they're  
 22 working through this process, and basically  
 23 sit tight and we'll see what's going to  
 24 happen.  
 25 Q. When you say "this process," sir,



29

1 J. Picone  
 2 could you be more specific?  
 3 A. The bankruptcy.  
 4 Q. Have you spoken to Mr. McCrystal  
 5 about the debtors?  
 6 A. Yes.  
 7 Q. What have you discussed with him?  
 8 A. Well, obviously when they weren't  
 9 paying the rent, we were concerned that the  
 10 rent was coming in, because he wasn't  
 11 paying me the rent.  
 12 So there was a discussion about  
 13 when we were going to collect it and how  
 14 long, what's going on, and just general  
 15 questions about how it was moving along.  
 16 Q. Was that one conversation, or  
 17 were there several conversations?  
 18 A. Oh, there was probably a few of  
 19 them.  
 20 Q. Could you say how many  
 21 conversations?  
 22 A. There could have been four or  
 23 five.  
 24 Q. And when did they occur, please?  
 25 A. At any time after this happened.

30

1 J. Picone  
 2 Q. Okay.  
 3 A. And maybe every two, three weeks  
 4 or four weeks, you know.  
 5 Q. And when you say "after this  
 6 happened," you're referring to the  
 7 bankruptcy; is that right?  
 8 A. Right.  
 9 Q. Okay.  
 10 A. When the checks stopped coming.  
 11 Q. Did you speak to Mr. McCrystal  
 12 about any legal action Mr. McCrystal was  
 13 planning to take with respect to the  
 14 debtors?  
 15 A. Yes.  
 16 Q. What was that conversation?  
 17 A. He told me he retained counsel  
 18 and that he was going to be doing what he  
 19 had to do and follow through to see what  
 20 was going to happen with the, with all the  
 21 bankruptcy procedures and keep me abreast  
 22 of what was going on.  
 23 Q. Was he more specific than that at  
 24 all?  
 25 A. No, not really.

31

1 J. Picone  
 2 Q. Did he explain what he was going  
 3 to do with respect to the bankruptcy?  
 4 A. No, just that he had retained  
 5 somebody to, a lawyer to follow through on  
 6 keeping abreast of what was going on.  
 7 Q. Uh-huh.  
 8 Have you talked to Mr. McCrystal  
 9 about this deposition?  
 10 A. No, I don't believe so -- oh, I  
 11 mentioned to him just the other day that I  
 12 was being deposed, but that was all.  
 13 Q. Okay.  
 14 Did you say anything other than  
 15 you were being deposed?  
 16 A. No.  
 17 Q. All right.  
 18 You just mentioned it?  
 19 A. Just after I knew that I had to  
 20 do this, I had picked up the rent from his  
 21 other building and I told him that I had a  
 22 meeting with you.  
 23 Q. All right.  
 24 I have a few more documents for  
 25 you to review, sir. I'm going to put them

32

1 J. Picone  
 2 into the record now. You can set that one  
 3 aside.  
 4 This is a document that was  
 5 previously marked Exhibit 8. I'll hand  
 6 this to you now.  
 7 MS. HOLLOMAN: Here is a copy for  
 8 you, Mr. Emanuelo, and for you  
 9 Mr. Roseman.  
 10 This document was previously  
 11 marked as Exhibit 9 in these  
 12 proceedings, and again, there is a  
 13 copy for Mr. Emanuelo and Mr. Roseman.  
 14 This document was previously  
 15 marked as Exhibit 10 -- there's just a  
 16 few of them, so I'll keep handing them  
 17 out -- and then I'll clarify for the  
 18 record what everything is.  
 19 Here is Exhibit 11.  
 20 Here is Exhibit 12.  
 21 BY MS. HOLLOMAN:  
 22 Q. Just take a moment sir, again.  
 23 It's the same instruction. Please take as  
 24 much time as you need to feel comfortable,  
 25 look it over. I'm going to make some



33

1 J. Picone  
 2 statements for the record while you're  
 3 reviewing the document.  
 4 MS. HOLLOWAN: For the record,  
 5 the document that was previously  
 6 marked Exhibit Number 8 bears  
 7 production numbers M-50 through M-76.  
 8 It's a sublease agreement dated August  
 9 18, 2009 between TMCC and Hartsdale.  
 10 The document previously marked as  
 11 Exhibit 9 in this proceeding bears  
 12 production numbers M-77 and it's  
 13 titled "Exhibit B."  
 14 There is a document previously  
 15 marked as Exhibit 10 in these  
 16 proceedings. It bears production  
 17 numbers M-78 through M-80. It's  
 18 marked as a rider to sublease  
 19 agreement. It's dated August 21,  
 20 2009.  
 21 There is a document that was  
 22 previously marked as Exhibit 11 in  
 23 these proceedings. It bears  
 24 production numbers M-133 through 34  
 25 and is titled "Amended Exhibit B."

34

1 J. Picone  
 2 Then there is a document that was  
 3 previously marked as Exhibit 12. It  
 4 bears production numbers M-142 through  
 5 148, and it's titled, "Landlord  
 6 consent to sublease, non-disturbance  
 7 and attornment agreement."  
 8 BY MS. HOLLOWAN:  
 9 Q. Are you ready, sir?  
 10 A. Yes.  
 11 Q. Just to explain where these  
 12 documents come from, they were produced by  
 13 TMCC's counsel in response to subpoenas  
 14 that the debtors issued to TMCC and GMM.  
 15 For terminology, I'm going to  
 16 refer to these documents -- the document  
 17 that was previously marked as Exhibit 8,  
 18 I'm going to call that document "the  
 19 sublease."  
 20 The document that was previously  
 21 marked as Exhibit 10, I'm call that "the  
 22 rider." The document that was previously  
 23 marked as Exhibit 8, I'm just going to call  
 24 that "Exhibit B."  
 25 A. Fine.

35

1 J. Picone  
 2 Q. And you can lay them out in front  
 3 of you, sir, whichever way you'd like, you  
 4 can be comfortable with what you have in  
 5 front of you.  
 6 A. Okay.  
 7 Q. Have you seen any of these  
 8 documents before?  
 9 A. No.  
 10 Q. So you didn't have any input in  
 11 creating them or drafting them?  
 12 A. No.  
 13 Q. Have you ever heard of GMM  
 14 Consulting, Inc.?  
 15 A. No.  
 16 Q. Just going forward, I'm going to  
 17 refer to that as "GMM;" is that okay?  
 18 A. Fine.  
 19 Q. Okay. So it's fair you don't  
 20 have any understanding of GMM's business?  
 21 A. No.  
 22 Q. Is GMM a tenant of Josalco?  
 23 A. No.  
 24 Q. Did GMM ever seek Josalco's  
 25 permission to sublet the premises?

36

1 J. Picone  
 2 A. Yes -- well, wait, who?  
 3 Q. GMM.  
 4 A. I don't know about GMM.  
 5 Q. So it's correct that GMM never  
 6 sought Josalco's permission to sublet the  
 7 premises?  
 8 A. Not GMM.  
 9 Q. Is Josalco GMM's landlord with  
 10 respect to any property?  
 11 A. No.  
 12 Q. Do you have any understanding --  
 13 A. Are you saying GMM or --  
 14 Q. Yes, sir.  
 15 A. No. I wasn't sure because  
 16 there's TMCC, and I want to make sure that  
 17 GM and --  
 18 Q. No, you're right to clarify, sir.  
 19 I'm definitely referring to GMM, and if you  
 20 have any trouble hearing me, please let me  
 21 know.  
 22 Do you have any understanding of  
 23 any relationship between GMM and TMCC?  
 24 A. No.  
 25 Q. Could you put, it's Exhibit 9 in



37

1 J. Picone  
 2 front of you please, sir. It's correct  
 3 that you have a never seen that document  
 4 before?  
 5 A. That's right.  
 6 Q. Do you have any understanding of  
 7 what this document is?  
 8 A. Well, now I do.  
 9 Q. What is the basis of your  
 10 understanding, sir?  
 11 A. It looks like another rent  
 12 schedule that TMCC is collecting rent from  
 13 Roma -- or rent that should be collected to  
 14 these parties, TMCC and Roma FLI Inc. and  
 15 GMM Consulting.  
 16 MS. HOLLOWAN: Could you read  
 17 that back?  
 18 (Whereupon, the requested portion  
 19 was read back by the court reporter.)  
 20 BY MS. HOLLOWAN:  
 21 Q. Is it correct, sir, that you  
 22 never saw this document until today?  
 23 A. Yes.  
 24 Q. Okay.  
 25 And so the understanding that

38

1 J. Picone  
 2 you've just testified about comes from  
 3 reviewing it today that?  
 4 A. It comes from where?  
 5 Q. Just reviewing it here today.  
 6 A. Yes, that I saw this schedule.  
 7 Q. Okay.  
 8 Could you place in front of you  
 9 the document that's marked as Exhibit 11?  
 10 A. 11?  
 11 Q. Yes, sir.  
 12 A. Okay.  
 13 Q. Before today, sir, have you seen  
 14 that document?  
 15 A. No.  
 16 Q. Do you have any understanding as  
 17 to what that document is?  
 18 A. It looks like the same one as  
 19 Exhibit 9.  
 20 Q. Was the substance of this  
 21 document or Exhibit 9 ever discussed with  
 22 you?  
 23 A. Not these papers, it was never  
 24 discussed. As far as what?  
 25 Q. If you take a look at -- put

39

1 J. Picone  
 2 Exhibit 9 in front of you, sir, that sets  
 3 forth a monthly rent to TMCC; is that  
 4 correct?  
 5 A. I don't follow your question.  
 6 Q. Are you looking at Exhibit 9? Do  
 7 you have that in front of you?  
 8 A. Yes.  
 9 Q. At the top, do you see where it  
 10 says, "monthly rent paid to TMCC"?  
 11 A. Yes.  
 12 Q. In the middle, do you see where  
 13 it says, "additional monthly rent paid to  
 14 Roma FLI"?  
 15 A. Yes.  
 16 Q. And at the bottom where it says,  
 17 "Additional monthly rent paid to GMM  
 18 Consulting Inc."?  
 19 A. Right.  
 20 Q. Were any of these payments  
 21 discussed with you?  
 22 A. No.  
 23 Q. If you could put Exhibit 11 in  
 24 front of you, sir.  
 25 Do you have that in front of you,

40

1 J. Picone  
 2 sir?  
 3 A. Yes, I do.  
 4 Q. Was this document in substance  
 5 ever discussed with you?  
 6 A. No.  
 7 Q. Was GMM a party to the lease?  
 8 A. No.  
 9 Q. And the lease between Josalco --  
 10 we defined that earlier -- between Josalco  
 11 and TMCC?  
 12 A. No, GMM, no, we never talked  
 13 about GMM.  
 14 Q. Okay.  
 15 Is it correct, sir, that you were  
 16 generally aware that TMCC sublet the  
 17 premises to the debtors?  
 18 A. Yes.  
 19 Q. Did you ever review the sublease  
 20 agreement in connection with that  
 21 transaction?  
 22 A. No.  
 23 Q. Okay.  
 24 Is it fair to say that at the  
 25 time the sublease was made, that Josalco



41

1 J. Picone  
 2 was not aware of any additional payments to  
 3 be made to Roma FLI as is set forth on  
 4 Exhibits 9 and 11?  
 5 A. I was not aware of the amounts,  
 6 but I knew that there was probably a  
 7 difference.  
 8 Q. When you say "a difference," sir,  
 9 what are you referring to?  
 10 A. Well, I would assume that he  
 11 rented the place or subleased the place for  
 12 an amount, for a different amount than what  
 13 he was paying.  
 14 Q. What is the basis of that, sir?  
 15 A. Based on the fact that he was  
 16 renting in my other building and he had a  
 17 lease already on the building on 1815 and  
 18 that he was going to -- we extended the  
 19 lease, I believe, at the time, so he would  
 20 be able to get Ashley into the building.  
 21 Q. You testified earlier, sir, that  
 22 you assumed that Mr. McCrystal sublet the  
 23 premises for a different amount, is that a  
 24 fair characterization?  
 25 A. Yes.

42

1 J. Picone  
 2 Q. When you say "different amount,"  
 3 what are you referring to?  
 4 A. Well, he probably did it for --  
 5 he probably rented the building for the new  
 6 tenant Ashley for an amount more than he  
 7 was paying me.  
 8 Q. Is that your assumption, sir, or  
 9 is that something that you know?  
 10 A. My assumption, because I didn't  
 11 know how much he really rented the building  
 12 for.  
 13 Q. Why would you assume that?  
 14 A. Because nobody does anything for  
 15 nothing.  
 16 Q. Is there any other reason why you  
 17 would assume that?  
 18 A. Not really.  
 19 Q. So looking at -- if you could put  
 20 Exhibit 9 and 11 side by side, and looking  
 21 at the payments that are called for there  
 22 to Roma.  
 23 A. Right.  
 24 Q. Did you discuss with  
 25 Mr. McCrystal those payments?

43

1 J. Picone  
 2 A. No.  
 3 Q. Did you have any understanding  
 4 with respect to those payments?  
 5 A. I don't understand your question.  
 6 Q. Let me rephrase, make it more  
 7 clear.  
 8 Did you have any belief that  
 9 there were payments being made to Roma?  
 10 A. I don't know -- there must have  
 11 been something made to them but I don't  
 12 know how much he was getting paid.  
 13 Q. And with respect to GMM as set  
 14 forth on those schedules, additional  
 15 payments to GMM?  
 16 A. I didn't know anything about GMM.  
 17 Q. But it's correct, sir, and fair  
 18 to say that you believed that Mr. McCrystal  
 19 was subletting the space for more than he  
 20 was paying you?  
 21 A. That's correct.  
 22 Q. Okay.  
 23 Did you ever discuss that with  
 24 Mr. McCrystal?  
 25 A. Nope.

44

1 J. Picone  
 2 Q. That was just your assumption,  
 3 your belief, that's fair to say?  
 4 A. That's right.  
 5 Q. Okay.  
 6 If you could put Exhibit 12 in  
 7 front of you please, sir. Just take a  
 8 moment to review.  
 9 A. Okay.  
 10 Q. Have you seen that document  
 11 before, sir?  
 12 A. I must have, because I signed it.  
 13 Q. That was my next question.  
 14 At M-148, is that your signature  
 15 there, sir?  
 16 A. Excuse me?  
 17 Q. At production number, I'm sorry,  
 18 148, M-148, is that your signature on that  
 19 page, sir?  
 20 A. 144.  
 21 MR. ROSEMAN: You signed both  
 22 places.  
 23 A. Okay.  
 24 Q. And also, sir, at 144.  
 25 A. Right.





45

1 J. Picone  
 2 Q. Does that refresh your memory at  
 3 all?  
 4 A. Not really, but I signed it.  
 5 Q. Do you know when that document  
 6 was executed?  
 7 A. I'm looking for a date -- well, I  
 8 don't see a date here, so...  
 9 Q. Separate and apart from the  
 10 document, do you have any knowledge of when  
 11 it was signed?  
 12 A. I don't remember, but I would  
 13 assume it was when we did that deal, so  
 14 that had to be around September or October  
 15 of '09.  
 16 Q. Do you know if any documents were  
 17 provided to either yourself or to Josalco  
 18 in connection with the landlord's consent?  
 19 A. Do I have any what?  
 20 Q. Do you know if any documents were  
 21 provided to yourself or Josalco in  
 22 connection with the landlord's consent?  
 23 A. No.  
 24 Q. Okay.  
 25 Did you have any conversations

46

1 J. Picone  
 2 with Mr. McCrystal about the sublease?  
 3 A. Yes, just that he was subleasing  
 4 it.  
 5 Q. Did he ever tell you that he  
 6 would be making money on the sublease?  
 7 A. Yes.  
 8 Q. Can you tell me more about that  
 9 conversation?  
 10 A. Only that he was subleasing the  
 11 building and that he was going to be  
 12 renting my other building and basically he  
 13 had rented it for more than I was satisfied  
 14 with.  
 15 Q. I'm sorry, sir?  
 16 A. That I was satisfied with. In  
 17 other words, the rent that I was  
 18 collecting, I would be collecting, and he  
 19 was renting it for more.  
 20 Q. Did he say for how much more?  
 21 A. No.  
 22 Q. Did you ask him for how much  
 23 more?  
 24 A. No.  
 25 Q. Did he ask your permission to do

47

1 J. Picone  
 2 that?  
 3 A. Well, we gave it to him in our  
 4 sublease.  
 5 Q. Are you aware of any obligation  
 6 or requirement for TMCC to share any rent  
 7 or any item of value beyond the rent from  
 8 the sublease with Josalco?  
 9 A. I'm not sure what you mean by  
 10 that.  
 11 Q. I'm just asking for your  
 12 knowledge or your understanding, if there  
 13 is any obligation or requirement for TMCC,  
 14 Mr. McCrystal, to share the rent or any  
 15 item of value that TMCC might gain from the  
 16 sublease with Josalco.  
 17 A. No.  
 18 Q. Is Josalco currently receiving  
 19 rent payments for the premises?  
 20 A. Yes.  
 21 Q. Did Josalco receive rent for the  
 22 premises in September 2010?  
 23 A. Yes.  
 24 Q. For October 2010, was the rent  
 25 received?

48

1 J. Picone  
 2 A. Yes.  
 3 Q. And for this month, has the rent  
 4 been received?  
 5 A. Yes.  
 6 MS. HOLLOMAN: Could we take just  
 7 a two-minute break? Is that all  
 8 right?  
 9 (Recess taken from 11:10 a.m. to  
 10 11:17 a.m.)  
 11 BY MS. HOLLOMAN:  
 12 Q. I just want to go back to your  
 13 prior testimony, sir, when you discussed  
 14 your assumption that Mr. McCrystal was  
 15 subletting the premises for a different  
 16 amount than the rent that he was paying to  
 17 you -- well, to Josalco, not to you.  
 18 When you say a different amount,  
 19 again, that's something above and beyond  
 20 the rent; is that correct?  
 21 A. I don't know what you call it. I  
 22 suppose it would be rent. He was renting  
 23 it to somebody else. So I guess you would  
 24 call it rent.  
 25 Q. You would call it rent, even



49

1 J. Picone  
 2 though it wouldn't be used for paying rent?  
 3 A. To me, I was collecting my rent.  
 4 While he was renting it to somebody else, I  
 5 assume it was rent.  
 6 Q. And again, sir, this is based on  
 7 your assumption, not a particular  
 8 discussion or conversation that you had  
 9 with Mr. McCrystal?  
 10 A. Well, he was renting the building  
 11 from me and he was making money on it. So  
 12 if you're renting it to somebody else, it's  
 13 rent.  
 14 Q. But again, sir, just so I'm clear  
 15 for the record, this is not based on a  
 16 particular conversation or discussion that  
 17 you had with Mr. McCrystal --  
 18 MR. ROSEMAN: I'm going to  
 19 object. This question has been asked  
 20 and answered several times. I think  
 21 the record is clear.  
 22 BY MS. HOLLOWMAN:  
 23 Q. It's not based on a particular  
 24 conversation, it's your assumption?  
 25 A. Well, we have a lease agreement,

50

1 J. Picone  
 2 sublease agreement and what we spoke about,  
 3 you know, that he was going to be  
 4 subleasing it for additional rent.  
 5 Q. And again, sir, just to be clear,  
 6 any amounts were not discussed?  
 7 A. No.  
 8 Q. And also just to be clear, sir,  
 9 no amounts were provided to Josalco?  
 10 A. No.  
 11 Q. And it's your testimony, sir,  
 12 that Josalco provided Mr. McCrystal with  
 13 permission to do this?  
 14 A. Yes.  
 15 Q. And just so that my question is  
 16 clear, when I say that -- let me rephrase  
 17 because I said "this" instead of being more  
 18 specific.  
 19 It's your testimony, sir, that  
 20 Josalco provided Mr. McCrystal with  
 21 permission to sublet the premises?  
 22 A. Yes.  
 23 Q. And it's your testimony, sir,  
 24 that Josalco provided Mr. McCrystal  
 25 permission to sublet the premises for an

51

1 J. Picone  
 2 additional amount of rent?  
 3 A. I don't know if that -- I don't  
 4 think it says that in the sublease  
 5 agreement.  
 6 Q. So that's not your testimony,  
 7 sir?  
 8 A. He could rent it for whatever he  
 9 wants to rent it for.  
 10 MS. HOLLOWMAN: Okay, sir. Those  
 11 are all the questions that I have for  
 12 you at this time. Mr. Roseman may  
 13 want to cross-examine and your own  
 14 counsel may have some questions for  
 15 you, so we're not done.  
 16 EXAMINATION BY  
 17 MR. ROSEMAN:  
 18 Q. I just have a couple of brief  
 19 questions.  
 20 Mr. Picone, roughly how many  
 21 buildings do you or your various real  
 22 estate entities currently own?  
 23 A. About 10 to 12.  
 24 Q. And if you can give me a round  
 25 number, because I know it's a significant

52

1 J. Picone  
 2 number, in your course of 40 years in the  
 3 real estate business, how many buildings  
 4 have you owned?  
 5 A. I was involved with a company  
 6 that involved probably maybe closer to 50  
 7 or 60 buildings.  
 8 Q. And in the course of your  
 9 involvement with various real estate  
 10 companies that owned many buildings, could  
 11 you guesstimate or estimate the number of  
 12 leases you've entered into?  
 13 A. 100 -- I don't know, I don't  
 14 really know a number, but many.  
 15 Q. Would you say more than 100?  
 16 A. Probably.  
 17 Q. And would you consider yourself  
 18 an expert in this area of business, real  
 19 estate business?  
 20 A. Pretty knowledgeable.  
 21 (Continued on next page to  
 22 include signature and jurat.)  
 23  
 24  
 25



53

1 J. Picone  
 2 MR. ROSEMAN: I have no further  
 3 questions.  
 4 (Time noted: 11:23 a.m.)  
 5  
 6 \_\_\_\_\_  
 7 JOSEPH PICONE  
 8  
 9 Subscribed and sworn to before me  
 10 this \_\_\_\_ day of \_\_\_\_\_, 2010.  
 11  
 12 \_\_\_\_\_  
 13  
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1  
 2 ----- I N D E X -----  
 3 WITNESS EXAMINATION BY PAGE  
 4 JOSEPH PICONE MS. HOLLOMAN 4  
 5 MR. ROSEMAN 51  
 6  
 7 ----- EXHIBITS -----  
 8 PICONE FOR ID.  
 9 Exhibit 1 Subpoena; affidavit 7  
 10  
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54

1  
 2 CERTIFICATE  
 3 STATE OF NEW YORK )  
 4 : ss.  
 5 COUNTY OF NEW YORK )  
 6  
 7 I, Joan Urzia, a Notary Public  
 8 within and for the State of New York,  
 9 do hereby certify:  
 10 That JOSEPH PICONE, the witness  
 11 whose deposition is hereinbefore set  
 12 forth, was duly sworn by me and that  
 13 such deposition is a true record of the  
 14 testimony given by the witness.  
 15 I further certify that I am not  
 16 related to any of the parties to this  
 17 action by blood or marriage, and that I  
 18 am in no way interested in the outcome  
 19 of this matter.  
 20 IN WITNESS WHEREOF, I have  
 21 hereunto set my hand this 16th day of  
 22 November, 2010.  
 23  
 24 \_\_\_\_\_  
 25 Joan Urzia

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1 DEPOSITION ERRATA SHEET  
 2 Case Caption: Jennifer Convertibles, Inc.  
 3  
 4 DECLARATION UNDER PENALTY OF PERJURY  
 5 I declare under penalty of perjury  
 6 that I have read the entire transcript of my  
 7 Deposition taken in the captioned matter or  
 8 the same has been read to me, and the same is  
 9 true and accurate, save and except for  
 10 changes and/or corrections, if any, as  
 11 indicated by me on the DEPOSITION ERRATA  
 12 SHEET hereof, with the understanding that I  
 13 offer these changes as if still under oath.  
 14  
 15  
 16  
 17 \_\_\_\_\_  
 18 JOSEPH PICONE  
 19  
 20 Subscribed and sworn to on the \_\_\_\_ day of  
 21 \_\_\_\_\_, 2010 before me,  
 22 \_\_\_\_\_  
 23 Notary Public,  
 24 in and for the State of \_\_\_\_\_  
 25



<p>1</p> <p>2 DEPOSITION ERRATA SHEET</p> <p>3 Page No. ____ Line No. ____ Change to: ____</p> <p>4 _____</p> <p>5 Reason for change: _____</p> <p>6 Page No. ____ Line No. ____ Change to: ____</p> <p>7 _____</p> <p>8 Reason for change: _____</p> <p>9 Page No. ____ Line No. ____ Change to: ____</p> <p>10 _____</p> <p>11 Reason for change: _____</p> <p>12 Page No. ____ Line No. ____ Change to: ____</p> <p>13 _____</p> <p>14 Reason for change: _____</p> <p>15 Page No. ____ Line No. ____ Change to: ____</p> <p>16 _____</p> <p>17 Reason for change: _____</p> <p>18 Page No. ____ Line No. ____ Change to: ____</p> <p>19 _____</p> <p>20 Reason for change: _____</p> <p>21 Page No. ____ Line No. ____ Change to: ____</p> <p>22 _____</p> <p>23 Reason for change: _____</p> <p>24 SIGNATURE: _____ DATE: _____</p> <p>25 JOSEPH PICONE</p>	57
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<p>1</p> <p>2 DEPOSITION ERRATA SHEET</p> <p>3 Page No. ____ Line No. ____ Change to: ____</p> <p>4 _____</p> <p>5 Reason for change: _____</p> <p>6 Page No. ____ Line No. ____ Change to: ____</p> <p>7 _____</p> <p>8 Reason for change: _____</p> <p>9 Page No. ____ Line No. ____ Change to: ____</p> <p>10 _____</p> <p>11 Reason for change: _____</p> <p>12 Page No. ____ Line No. ____ Change to: ____</p> <p>13 _____</p> <p>14 Reason for change: _____</p> <p>15 Page No. ____ Line No. ____ Change to: ____</p> <p>16 _____</p> <p>17 Reason for change: _____</p> <p>18 Page No. ____ Line No. ____ Change to: ____</p> <p>19 _____</p> <p>20 Reason for change: _____</p> <p>21 Page No. ____ Line No. ____ Change to: ____</p> <p>22 _____</p> <p>23 Reason for change: _____</p> <p>24 SIGNATURE: _____ DATE: _____</p> <p>25 JOSEPH PICONE</p>	58
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**EXHIBIT 3**

1

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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Chapter 11

IN RE: Case No.  
10-13779 (ALG)

JENNIFER CONVERTIBLES, INC.,  
Debtor.

-----

DEPOSITION OF VICTOR EMANUELO  
Tuesday, November 16, 2010  
11:27 a.m.

Reported by:  
Joan Urzia

3

1  
2 A P P E A R A N C E S:  
3  
4 C U L L E N & D Y K M A N, L L P  
5 Attorneys for Movants  
6 100 Quentin Roosevelt Boulevard  
7 Garden City, New York 11539  
8 BY: MATTHEW G. ROSEMAN, ESQ.  
9  
10  
11 O L S H A N G R U N D M A N F R O M E  
12 R O S E N Z W E I G & W O L O S K Y, L L P  
13 Attorneys for Debtor  
14 65 East 55th Street  
15 New York, New York 10022  
16 BY: ELLEN V. HOLLOMAN, ESQ.  
17 Eholoman@olshanlaw.com  
18  
19  
20  
21  
22  
23  
24  
25

2

1  
2 November 16, 2010  
3 11:27 a.m.  
4 Farmingdale, New York  
5  
6 Deposition of VICTOR EMANUELO,  
7 held at the offices of Victor Emanuelo,  
8 Esq., 500 Bi-County Boulevard, Farmingdale,  
9 New York, pursuant to Subpoena, before  
10 Joan, Urzia, a Notary Public of the State  
11 of New York.  
12  
13  
14  
15  
16  
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18  
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21  
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4

1  
2 V I C T O R E M A N U E L O,  
3 called as a witness, having been duly  
4 sworn by a Notary Public, was examined  
5 and testified as follows:  
6 EXAMINATION BY  
7 MS. HOLLOMAN:  
8 Q. Could you state your full name  
9 for the record please, sir?  
10 A. Yes. My first name is Victor,  
11 V-I-C-T-O-R. My last name is Emanuelo,  
12 E-M-A-N-U-E-L-O.  
13 Q. Is it correct that you'll be  
14 representing yourself in these proceedings,  
15 sir?  
16 A. Yes.  
17 Q. Have you ever been deposed  
18 before, sir?  
19 A. I have.  
20 Q. How many times?  
21 A. Too many to count.  
22 Q. In what sorts of matters?  
23 A. Various matters, primarily  
24 personal injury actions.  
25 Q. Okay. I think it's worth going



5

1 V. Emanuelo  
 2 through the ground rules, sir, even though  
 3 you're very familiar with how these  
 4 proceedings work.  
 5 There is a record being made  
 6 here. We're going to have exhibits that  
 7 will be used to, for you to testify about,  
 8 or perhaps to refresh your memory?  
 9 Most of the documents, in fact  
 10 all of the documents actually have been  
 11 previously marked at the deposition that  
 12 you've just sat down and at another  
 13 deposition in this proceeding.  
 14 Because we need a clear record,  
 15 if you could wait until I'm finished with  
 16 my question before you give your answer,  
 17 and I will try and do the same. Please  
 18 make sure that your answers are verbal, no  
 19 head nodding or shaking.  
 20 If any of my questions are  
 21 unclear, please tell me. I'll do my best  
 22 to rephrase them. I will assume that you  
 23 understood my question if you're able to  
 24 answer it.  
 25 Again, if you need a break, or if

6

1 V. Emanuelo  
 2 anyone needs a break, just say so, we can  
 3 do that, that's no problem. The only, you  
 4 know, requirement that I would ask is that,  
 5 you know, not while there is a question  
 6 pending. We can break once all questions  
 7 or once the pending question has been  
 8 answered.  
 9 Is that all right?  
 10 A. Yes.  
 11 Q. Is that all understood?  
 12 A. Yes.  
 13 Q. Okay.  
 14 Is there any reason that you  
 15 couldn't testify truthfully today?  
 16 A. No.  
 17 Q. Do you intend to testify  
 18 truthfully today, sir?  
 19 A. Yes.  
 20 Q. Okay.  
 21 I'm going to place before you a  
 22 document that's been marked as Picone 1.  
 23 Please take a moment, sir, to review.  
 24 For the record, Picone 1 is a  
 25 copy of a subpoena that was sent to Josalco

7

1 V. Emanuelo  
 2 Inc., with an affidavit of service as dated  
 3 October 18, 2010.  
 4 A. Okay, I'm ready for questions.  
 5 Q. Have you seen that document  
 6 before, sir?  
 7 A. Yes.  
 8 Q. Okay.  
 9 That document is a subpoena that  
 10 is directed at Josalco Inc. I'm going to  
 11 use "Josalco" in those proceedings to refer  
 12 to Josalco Inc.  
 13 Is that all right?  
 14 A. Yes.  
 15 Q. What line of business is Josalco  
 16 in?  
 17 A. It owns real estate.  
 18 Q. Any other line of business?  
 19 A. No.  
 20 Q. Who are the principals or members  
 21 of Josalco?  
 22 A. The name Josalco Inc. refers to a  
 23 C corp that owned the premises in question  
 24 in this action.  
 25 Q. Does it have any officers or

8

1 V. Emanuelo  
 2 directors, or did it, I should say?  
 3 A. It did.  
 4 Q. And who were they, sir?  
 5 A. Joseph Picone Jr., president. I  
 6 was vice-president and general counsel, and  
 7 Bernadette G-R-I-L-L-O was the secretary.  
 8 Q. Any others?  
 9 A. No.  
 10 Q. Is it correct that Josalco came  
 11 to change its name at some point?  
 12 A. Yes.  
 13 Q. When did that happen?  
 14 A. On September 29th of 2009.  
 15 Q. And why did it undergo the name  
 16 change?  
 17 A. Josalco Inc. was a wholly-owned  
 18 subsidiary of a C corp named Joseph Picone  
 19 & Son, Inc. That entity Joseph Picone &  
 20 Son, Inc. was dissolved pursuant to Section  
 21 355 of the Internal Revenue Code.  
 22 The assets of that entity, which  
 23 included the real estate holdings of  
 24 Josalco Inc., were divided among the  
 25 shareholders of that holding company Joseph



9

1 V. Emanuelo  
 2 Picone & Son Inc. The premises in question  
 3 in this proceeding were conveyed during the  
 4 course of that dissolution of the holding  
 5 company to a limited liability company by  
 6 the name of JSP Realty Group LLC.  
 7 Q. Okay.  
 8 A. Just to make the record clear,  
 9 that entity has only one member. Its sole  
 10 member is an S corp by the name of Picone  
 11 Acquisition Corp.  
 12 Q. Is Joseph Picone Jr. a member of  
 13 Picone Acquisition Corp., or a shareholder?  
 14 A. He is the majority shareholder in  
 15 that entity, yes.  
 16 Q. Okay.  
 17 Are you a shareholder in that  
 18 entity as well?  
 19 A. I am not.  
 20 Q. Okay.  
 21 Throughout the name and corporate  
 22 changes that we've discussed, is Josalco,  
 23 too, now JSP Realty and its owner still in  
 24 roughly the same line of business?  
 25 A. Exactly the same business, yes.

10

1 V. Emanuelo  
 2 Q. Okay.  
 3 It's okay to continue to use  
 4 Josalco throughout the proceedings?  
 5 A. I think so, yes.  
 6 Q. Okay, good.  
 7 Now, putting Picone 1 before you,  
 8 sir, do you understand that you're here  
 9 today to testify pursuant to that notice?  
 10 A. I do.  
 11 Q. Okay.  
 12 Some record-keeping matters,  
 13 housekeeping matters.  
 14 Did you do anything to prepare  
 15 for the deposition?  
 16 A. No.  
 17 Q. So you didn't review any  
 18 documents or any files?  
 19 A. Well, you did send me some  
 20 documents prior to this proceeding that I  
 21 did look at.  
 22 Q. What documents were those, sir?  
 23 A. The motion and the exhibits.  
 24 Q. When you say "the motion," you're  
 25 referring to Exhibit, I believe it's 3 in a

11

1 V. Emanuelo  
 2 previous proceeding -- so let's get that in  
 3 here now. I'll put this before you.  
 4 That's the document purpose referring to in  
 5 your prior answer, sir?  
 6 A. Yes, when I said the motion, I  
 7 was making reference to this document.  
 8 MS. HOLLOWMAN: And just for the  
 9 record, that's previously marked as  
 10 Exhibit 3 in the prior depositions.  
 11 It's a copy of a notice of motion, any  
 12 motion filed by Cullen & Dykman on  
 13 behalf of TMCC Inc.  
 14 BY MS. HOLLOWMAN:  
 15 Q. Did you review that document in  
 16 advance of these proceedings?  
 17 A. Yes.  
 18 Q. Or just -- yes, okay.  
 19 Did you discuss this deposition  
 20 with anyone, and of course, sir, including  
 21 any conversations where you gave legal  
 22 advice to anybody?  
 23 A. No.  
 24 Q. Okay.  
 25 Briefly, very briefly, if we

12

1 V. Emanuelo  
 2 could have your educational background  
 3 beginning with your graduation.  
 4 A. Do I have to give you the years?  
 5 Q. Of course not. Of course not.  
 6 A. Well, I attended high school here  
 7 on Long Island at Half Hollow Hills High  
 8 School in Dix Hills. Graduated in 1976. I  
 9 received a bachelor of arts degree from the  
 10 State University of New York at Albany in  
 11 1980. And then a law degree from Hofstra  
 12 University in 1984.  
 13 Q. Since your law degree, sir, can  
 14 you give me a brief recount of your  
 15 employment history?  
 16 A. I was employed as an associate at  
 17 several different law firms during the mid  
 18 1980s, and then I came to be employed as  
 19 general counsel by the Picone Group  
 20 starting in the late 1980s.  
 21 Q. So you've been practicing law  
 22 consistently since your graduation from law  
 23 school?  
 24 A. Yes.  
 25 Q. And do you have a field of





13

1 V. Emanuelo  
 2 concentration or a specialty?  
 3 A. Real property law.  
 4 Q. Thank you.  
 5 I'm going to introduce another  
 6 exhibit. This was previously marked as  
 7 Exhibit 4. For the record, that is a copy  
 8 of a lease between Josalco and TMCC Inc.  
 9 It bears production numbers M-1 through 15.  
 10 Again, it bears exhibit sticker  
 11 number 4 from the previous proceeding.  
 12 Also, for the record, this  
 13 document was provided by counsel to TMCC in  
 14 response to subpoenas that were sent to  
 15 TMCC and GMM by the debtor.  
 16 If you could take your time, sir,  
 17 just review it, I'm sure you've seen it  
 18 before.  
 19 A. I have, I'm very familiar and  
 20 ready to answer questions about it.  
 21 Q. Okay.  
 22 You've seen this document before?  
 23 A. Yes, I have.  
 24 Q. What is it?  
 25 A. It is a lease between Josalco

14

1 V. Emanuelo  
 2 Inc. and TMCC Inc. for the premises at 1821  
 3 Route 110 in Farmingdale, New York.  
 4 Q. Can we call this document, the  
 5 lease going forward in these proceedings?  
 6 A. Yes.  
 7 Q. And we can refer to the premises  
 8 referred to in the lease as the premises?  
 9 Again, those are the premises at 1821 Route  
 10 110?  
 11 A. Yes.  
 12 Q. Okay, good.  
 13 What is TMCC Inc.?  
 14 A. I don't -- it appears to be a  
 15 corporation. I'm not certain from looking  
 16 at this document whether it is a domestic  
 17 corporation, but it appears that it's a  
 18 corporate entity. In any event, it was and  
 19 is the tenant at the premises.  
 20 Q. Do you know a Gerald McCrystal?  
 21 A. Yes.  
 22 Q. How do you know him?  
 23 A. Well, there are two Gerald  
 24 McCrystals. There is a Sr. and a Jr. I  
 25 know both, and in this case I believe

15

1 V. Emanuelo  
 2 you're referring to Jr. I know him to have  
 3 some association with TMCC Inc.  
 4 Q. What is that association?  
 5 A. I believe he's an officer, but  
 6 without referring to the signature line of  
 7 the document, I couldn't tell you exactly  
 8 what office he holds.  
 9 Q. Okay.  
 10 Do you have any understanding of  
 11 what business TMCC is in?  
 12 A. No.  
 13 Q. Have you ever heard of Roma  
 14 Furniture, or Roma FLI?  
 15 A. Yes.  
 16 Q. What is it?  
 17 A. The form of entity is not  
 18 something I'm aware of. I've seen the name  
 19 Roma Furniture on the awnings of several  
 20 buildings in the Farmingdale area for as  
 21 long as I can remember.  
 22 Q. Is it a furniture chain store?  
 23 A. It may be.  
 24 Q. Well, yeah, I would want your  
 25 understanding, not -- you know.

16

1 V. Emanuelo  
 2 A. I don't know.  
 3 Q. You don't know, okay.  
 4 Was there a Roma Furniture at any  
 5 point at the premises?  
 6 A. Yes.  
 7 Q. Is there any other relationship  
 8 between Josalco and TMCC other than is in  
 9 this document, in Exhibit 4, the lease?  
 10 A. No.  
 11 Q. Does Josalco have another lease  
 12 agreement with TMCC with respect to a  
 13 different premises?  
 14 A. Yes.  
 15 Q. Is that the premises at 1815  
 16 Broad Hollow Road?  
 17 A. Yes, but to be clear, I'm not  
 18 certain if it's the same corporate entity.  
 19 It's essentially the same parties, but  
 20 without referring to the lease that  
 21 controls that arrangement, I'm not certain  
 22 if it's the same corporate entity.  
 23 Q. If it's TMCC, is what you're  
 24 saying.  
 25 A. Correct.



<p style="text-align: right;">17</p> <p>1 V. Emanuelo 2 Q. So I could rephrase. 3 Does Josalco have any other 4 relationships with Mr. McCrystal other than 5 as set forth in the lease? 6 A. Yes. 7 Q. What are those relationships? 8 A. There is another tenancy at the 9 building adjacent to these premises to the 10 south, a portion of the building at 1815 11 Route 110. 12 Q. Any other, other than what you've 13 just mentioned? 14 A. No. 15 Q. Is there any other lease 16 agreement between Josalco and Mr. McCrystal 17 other than this lease? 18 A. Actually, there is a third 19 month-to-month tenancy in a portion of 20 18 -- another portion of the building known 21 as 1815 Broad Hollow Road, and I believe 22 it's used for warehousing purposes by 23 Mr. McCrystal's various entities, the small 24 portion of the warehouse space in the 25 building at 1815 Route 110.</p>	<p style="text-align: right;">19</p> <p>1 V. Emanuelo 2 between Josalco and TMCC? 3 A. I believe that it does, yes. 4 Q. Were there any other payments due 5 from TMCC to Josalco under the lease? 6 A. No -- well, there are some items 7 of additional rent, I should clarify. This 8 lease provides for the tenant to pay to the 9 landlord a percentage or some portion of 10 the real estate taxes. There are also some 11 nominal payments made for services, 12 utilities used at the building, sewer and 13 fire sprinkler and perhaps a water bill, 14 but those are small numbers. 15 Q. On an annual basis, can you 16 estimate how much those payments would 17 amount to? 18 A. No, not without looking at the 19 numbers, no. 20 Q. Where could you look at the 21 numbers? Are there any documents I should 22 say that would show you those numbers? 23 A. Typically there are invoices that 24 we provide to the tenants which outline the 25 numbers and they are billed as we receive</p>
<p style="text-align: right;">18</p> <p>1 V. Emanuelo 2 Q. With respect to the document in 3 front of you, sir, did Josalco use a broker 4 for that transaction? 5 A. I don't recall. 6 Q. Do you know if anyone used a 7 broker, Mr. McCrystal or TMCC with respect 8 to that transaction? 9 A. I have no recollection of that. 10 Q. If you could turn to page M-15 of 11 that document, sir -- are you ready? 12 A. Yes. 13 Q. What does that page refer to, 14 sir? 15 A. The rent schedule. 16 Q. That's the rent schedule between 17 TMCC and Josalco; is that correct? 18 A. Yes. 19 Q. Okay. 20 Is there anything inaccurate 21 about this page? 22 A. I'm not sure I understand that 23 question. 24 Q. Well, is this page accurate? 25 Does it correctly reflect the rent schedule</p>	<p style="text-align: right;">20</p> <p>1 V. Emanuelo 2 the charges from third parties -- typical 3 passers, but they are relatively small 4 numbers, in the hundreds of dollars per 5 quarter perhaps. 6 Q. Are you speaking specifically 7 about this premises, or just generally with 8 respect to all of your tenants when you're 9 making this estimate? 10 A. Both, but certainly specifically 11 to these premises. Furniture buildings, 12 for example, don't use a great deal of 13 water, so the number there would be small. 14 The fire sprinkler fee is an 15 interesting charge that the local water 16 district assesses. They charge property 17 owners for keeping water in the sprinkler 18 pipes, and it's a small number, but it's a 19 pass-through to the tenants. 20 Q. All for public safety. 21 A. Yes, in the name of public 22 safety. 23 And then there is a small -- and 24 I'm not certain because I have not looked 25 at any invoices relative to this</p>



21

1 V. Emanuelo  
 2 relationship, but typically there would  
 3 also be some small charges for sewer use  
 4 and maybe some snow removal as well.  
 5 Q. Okay.  
 6 Could you turn to page M-10  
 7 please, sir, in that document? I draw your  
 8 attention to the paragraph that is marked  
 9 57th.  
 10 A. Yes.  
 11 Q. If you could take a moment to  
 12 review.  
 13 A. I'm familiar with the paragraph.  
 14 Q. What is your understanding of the  
 15 paragraph, please?  
 16 A. The provision states, A, and I'll  
 17 paraphrase, that there is to be a security  
 18 deposit made under the terms of this lease  
 19 and it should, at the inception of the  
 20 lease, be equal to two months of the then  
 21 current rent and it should increase as the  
 22 rent increases, throughout the term of the  
 23 lease.  
 24 Q. What happened with respect to  
 25 this transaction?

22

1 V. Emanuelo  
 2 A. I don't recall.  
 3 Q. Do you have any records that  
 4 would show the amount on security deposit  
 5 for TMCC with respect to these premises  
 6 today?  
 7 A. Yes.  
 8 Q. Are they here in your office?  
 9 A. Yes.  
 10 Q. Would you be able to review them?  
 11 A. Yes.  
 12 Q. Would you like to do that? Would  
 13 that refresh your recollection?  
 14 A. Would you like me to do that?  
 15 Q. Would that refresh your  
 16 recollection, sir?  
 17 A. Yes, sure. We'd have to take a  
 18 brief recess.  
 19 (Recess taken from 11:47 a.m. to  
 20 11:49 a.m.)  
 21 BY MS. HOLLOMAN:  
 22 Q. Have you refreshed your  
 23 recollection, sir?  
 24 A. I have. There is no security  
 25 deposit on hand for these premises during

23

1 V. Emanuelo  
 2 the negotiations between Mr. Picone and  
 3 Mr. McCrystal when this sublease was  
 4 created. The amount on deposit pursuant to  
 5 the terms of this lease was transferred and  
 6 is held pursuant to the lease on the  
 7 adjacent premises at 1815 Route 110.  
 8 Q. Okay.  
 9 Just so I understand, at one  
 10 point there was an amount on deposit for  
 11 the premises and then it was transferred to  
 12 the premises at 1815?  
 13 A. Yes.  
 14 Q. Okay, good.  
 15 How much is the amount on  
 16 deposit, sir?  
 17 A. I don't recall, but if you'd  
 18 like, I can give you the exact number. It  
 19 was at some point equal to 2 months of the  
 20 current rent, but I don't have the exact  
 21 number at my disposal.  
 22 Q. Was it at some point equal to two  
 23 months of the current month as of this  
 24 date, or current rent as of the date of the  
 25 lease?

24

1 V. Emanuelo  
 2 A. I'm sorry, as of the date of the  
 3 transfer. Whether it's been, and whether  
 4 it reflects -- and I believe that it does  
 5 not reflect an amount, an amount equal to  
 6 two months of the rent, the current rent at  
 7 the other premises, but it was simply an  
 8 arrangement that the parties made to move  
 9 the money from one account to the other.  
 10 Q. Is that arrangement in writing at  
 11 all reflected in another agreement, or was  
 12 it done orally?  
 13 A. It was done orally.  
 14 Q. Okay.  
 15 Did TMCC ever have any difficulty  
 16 paying rent to Josalco in the 2007 to 2009  
 17 time frame?  
 18 A. Prior to this bankruptcy  
 19 petition, is that the time frame we're  
 20 trying to define?  
 21 Q. Yeah, the time frame would be  
 22 between signing the lease and then a  
 23 sublease agreement that occurred in August  
 24 2009.  
 25 A. I don't know exactly how to



25

1 V. Emanuelo  
 2 define the term difficulty, but the rent  
 3 payments, as I can recall, were made fairly  
 4 promptly.  
 5 Q. And in terms of defining, you  
 6 know, it's whatever your understanding is,  
 7 for difficulty.  
 8 A. I don't recall any difficulty.  
 9 Q. Was TMCC ever late in making  
 10 payments during that time period?  
 11 A. I don't recall.  
 12 Q. Is it correct that there came a  
 13 time when TMCC sought to sublease the  
 14 premises to another party?  
 15 A. Yes.  
 16 Q. How did you come to find out  
 17 about that?  
 18 A. I believe Mr. Picone mentioned it  
 19 to me.  
 20 Q. Did you have any discussions with  
 21 TMCC or Mr. McCrystal about that?  
 22 A. No.  
 23 Q. Other than with Mr. Picone, did  
 24 you have any discussions with anyone about  
 25 that?

26

1 V. Emanuelo  
 2 A. No.  
 3 Q. Were you involved in preparing  
 4 any of the materials for the sublease, such  
 5 as a lease agreement, a rider, a rent  
 6 schedule?  
 7 A. No.  
 8 Q. Did you review any of those  
 9 materials for Josalco?  
 10 A. Only the sublease agreement,  
 11 which you didn't mention in the laundry  
 12 list you just gave me.  
 13 Q. I'm sorry, I thought I did. I  
 14 beg your pardon.  
 15 A. Just the consent to the sublease,  
 16 I did look at that.  
 17 Q. The consent to the sublease, I'm  
 18 sorry, I thought I had mentioned the  
 19 sublease agreement.  
 20 A. Uh-huh.  
 21 Q. I'm so sorry, sir. I didn't mean  
 22 to interrupt your testimony.  
 23 And do you recall when you made  
 24 that review?  
 25 A. No.

27

1 V. Emanuelo  
 2 Q. Could it have been August 2009?  
 3 A. I would guess that it was right  
 4 in and around the time that it was signed,  
 5 but I don't have any independent  
 6 recollection of the time frame.  
 7 Q. I think you have Exhibit 4 before  
 8 you, sir; is that right?  
 9 A. Yes.  
 10 Q. I'm sorry, if you confer instead  
 11 to Exhibit 3, that's the motion -- I just  
 12 want to establish terminology. The motion  
 13 refers to a bankruptcy In Re Jennifer  
 14 Convertibles -- that refers to In Re  
 15 Jennifer Convertibles -- I'm going to refer  
 16 to, when I say "the debtors," I'll be  
 17 referring to Jennifer Convertibles, to  
 18 Hartsdale Convertibles.  
 19 Is that okay?  
 20 A. Yes.  
 21 Q. All right.  
 22 With respect to the motion that's  
 23 Exhibit 3 there in front of you, do you  
 24 have any understanding of the facts or the  
 25 allegations that are set forth in the

28

1 V. Emanuelo  
 2 motion?  
 3 A. Not a very clear understanding,  
 4 no. I did review it after you sent it to  
 5 me, but not in a way I might if I were  
 6 directly involved in the matter.  
 7 Q. Do you understand that the  
 8 debtors are in bankruptcy?  
 9 A. Yes.  
 10 Q. Okay.  
 11 Have you ever talked to anyone at  
 12 the debtors?  
 13 A. I have.  
 14 Q. To whom have you spoken?  
 15 A. I've spoken to someone who  
 16 identified himself as an officer of one of  
 17 these entities, a fellow by the name of  
 18 Seidner is the last name, and I also heard  
 19 from on two or three occasions from a  
 20 representative, again, of the debtor, his  
 21 name is Matthew Bordwin -- I didn't get the  
 22 spelling of his name -- and he identified  
 23 himself as, I don't recall the title he  
 24 used, but he made reference to his  
 25 association with an accounting firm that



<p>1 V. Emanuelo</p> <p>2 was representing this debtor in some</p> <p>3 capacity in connection with its</p> <p>4 negotiations with landlords at the various</p> <p>5 retail locations that the debtor had</p> <p>6 control of.</p> <p>7 Q. With reference to your</p> <p>8 conversation with Mr. Seidner, did you have</p> <p>9 more than one conversation with him?</p> <p>10 A. I believe there were two over the</p> <p>11 last several months.</p> <p>12 Q. Okay.</p> <p>13 What was the substance of those</p> <p>14 conversations?</p> <p>15 A. It wasn't a lot of substance. In</p> <p>16 both instances I indicated to him that we</p> <p>17 had no -- we, as Josalco or the successor</p> <p>18 in interest to Josalco under the terms of</p> <p>19 the lease, had no real relationship with</p> <p>20 the debtor and that any conversations about</p> <p>21 this location and about this lease ought to</p> <p>22 more properly take place with the master</p> <p>23 tenant under the terms of the lease.</p> <p>24 Q. That would be TMCC?</p> <p>25 A. Yes.</p>	29	<p>1 V. Emanuelo</p> <p>2 Q. Did he say what that conversation</p> <p>3 was about?</p> <p>4 A. Not that I can recall, no.</p> <p>5 Q. You also said you heard from a</p> <p>6 representative or someone saying they were</p> <p>7 a representative of the debtor called</p> <p>8 Matthew Bordwin; is that right?</p> <p>9 A. Yes.</p> <p>10 Q. How many times did you have a</p> <p>11 conversation or contact with Mr. Bordwin?</p> <p>12 A. Contact would more accurately</p> <p>13 describe the conversations. They were by</p> <p>14 telephone and I'm not sure if it was two,</p> <p>15 perhaps three, but I believe only two</p> <p>16 times, we spoke twice.</p> <p>17 Q. Okay.</p> <p>18 And what was the substance of</p> <p>19 those contacts or conversations?</p> <p>20 A. Mr. Bordwin had contacted the</p> <p>21 property owner in order to initiate some</p> <p>22 conversation about revisions to -- I'm not</p> <p>23 going to be entirely accurate here, but</p> <p>24 revisions to the document that controlled</p> <p>25 his client's relationship to the property.</p>	31
<p>1 V. Emanuelo</p> <p>2 Q. And that's the substance of both</p> <p>3 conversations, sir?</p> <p>4 A. I believe so, yes.</p> <p>5 Q. Do you recall anything else about</p> <p>6 those conversations?</p> <p>7 A. No.</p> <p>8 Q. Is it correct that he initiated</p> <p>9 both of those conversations by calling you</p> <p>10 or in some other way?</p> <p>11 A. Yes, he did call us, yes.</p> <p>12 Q. Okay.</p> <p>13 Do you know if he spoke to anyone</p> <p>14 else at Josalco, or perhaps to Mr. Picone?</p> <p>15 A. I believe that he did speak to</p> <p>16 Mr. Picone. I'm not sure if it was once or</p> <p>17 more than once, but I do believe they did</p> <p>18 have a conversation, at least one</p> <p>19 conversation.</p> <p>20 Q. What's the basis for that belief?</p> <p>21 Was this a conversation you had with</p> <p>22 Mr. Picone?</p> <p>23 A. No, I think Mr. Seidner had</p> <p>24 mentioned to me that he had spoken with</p> <p>25 Mr. Picone.</p>	30	<p>1 V. Emanuelo</p> <p>2 By that I mean he was reaching</p> <p>3 out to, I think mistakenly to the landlord,</p> <p>4 to the owner of the premises, to make an</p> <p>5 offer to remain in possession of the</p> <p>6 premises and to, I presume, modify the</p> <p>7 lease so that his client would be inclined</p> <p>8 to accept rather than reject the lease in</p> <p>9 the bankruptcy proceeding.</p> <p>10 Q. Did you direct Mr. Bordwin to</p> <p>11 speak to Mr. McCrystal or anyone at TMCC?</p> <p>12 A. In the first conversation that we</p> <p>13 had, I directed him to speak with</p> <p>14 Mr. McCrystal. In the second time</p> <p>15 Mr. Bordwin called me -- well, prior to the</p> <p>16 second time Mr. Bordwin called me, I had</p> <p>17 learned of Mr. Roseman's involvement in the</p> <p>18 matter and I then suggested that</p> <p>19 Mr. Bordwin contact Mr. Roseman directly.</p> <p>20 Q. Have you heard from him since?</p> <p>21 A. I have not.</p> <p>22 Q. Is there anything else to add to</p> <p>23 that?</p> <p>24 A. Add to what?</p> <p>25 Q. Add to your testimony about your</p>	32



<p style="text-align: right;">33</p> <p>1 V. Emanuelo 2 conversations with Mr. Bordwin? 3 A. No. 4 Q. You didn't discuss anything else 5 with him? 6 A. Well, he did make his offer on 7 behalf of the debtor to me in the first 8 conversation, and we did not discuss any of 9 those terms in the second conversation. 10 The second conversation was 11 confined strictly to my suggestion that he 12 reach out for Mr. Roseman directly. 13 Q. Do you recall the offer that he 14 made? 15 A. I do. 16 Q. What was that offer? 17 A. To modify the rent schedule 18 effectively -- we never -- because I didn't 19 feel it was appropriate for us to talk 20 further about it, we only spoke about his 21 offer on behalf of the debtor to modify the 22 rent schedule from the rent -- for a period 23 of 4 years -- my recollection is he was 24 prepared to make a commitment on behalf of 25 this debtor to remain in possession of the</p>	<p style="text-align: right;">35</p> <p>1 V. Emanuelo 2 Q. Uh-huh. 3 Can you say roughly how many 4 times? 5 A. In total? 6 Q. Yeah. 7 A. Since the filing of the petition? 8 Q. Exactly. 9 A. 6 or 8 times. 10 Q. Okay. 11 Did you have any discussions with 12 Mr. McCrystal about the motion that is the 13 document marked as Exhibit 3? 14 A. No. 15 Q. Okay. 16 Did you discuss this deposition 17 with Mr. McCrystal? 18 A. No. 19 Q. Okay. 20 MS. HOLLOWAN: Would it be all 21 right if we just took a brief comfort 22 break? 23 A. Actually, if I could clarify -- 24 Q. Oh, of course, sir. 25 A. With regard to the answer I gave</p>
<p style="text-align: right;">34</p> <p>1 V. Emanuelo 2 premises for a 4-year period beginning 3 sometime earlier this year 2010 and the 4 offer was to pay a fixed monthly rent of 5 \$26,000 for that entire 48-month period. 6 Q. Okay. 7 MR. ROSEMAN: I didn't hear the 8 number. 9 THE WITNESS: \$26,000 monthly. 10 BY MS. HOLLOWAN: 11 Q. Other than with Mr. Bordwin and 12 Mr. Seidner, have you spoken with anyone 13 else -- 14 A. No. 15 Q. -- the debtors? 16 A. Sorry, no. 17 Q. Have you spoken to Mr. McCrystal 18 about the debtors? 19 A. Yes. 20 Q. How many times? 21 A. Specifically about the debtors, 22 I'm not certain. About -- it was more 23 often, we had spoken more often since the 24 filing of this petition about the payment 25 of rent to JSP.</p>	<p style="text-align: right;">36</p> <p>1 V. Emanuelo 2 last, I did speak with Mr. McCrystal about 3 the fact that we were served with a 4 subpoena. 5 So he was aware that, and he may 6 have been made aware by another source, but 7 I did make him aware that we, meaning 8 Josalco, was compelled to produce documents 9 and to produce someone to testify in the 10 context of the bankruptcy proceeding. 11 Q. Okay. 12 And was that the substance of the 13 conversation? 14 A. That was all that we spoke about, 15 yes. 16 MS. HOLLOWAN: All right. Thank 17 you. 18 (Recess taken from 12:07 p.m. to 19 12:12 p.m.) 20 BY MS. HOLLOWAN: 21 Q. I'm going to place before you 22 documents. They've been previously marked 23 in these proceedings as Exhibit 8. 24 Exhibit 8 just, for the record, 25 is a sublease agreement that bears</p>



<p>1 V. Emanuelo 2 production numbers M-50 through 76. It's a 3 sublease agreement dated August 18, 2009 4 between TMCC and Hartsdale. 5 I'll place before you a document 6 that is marked as Exhibit 9 that bears 7 production number M-77 and it's titled 8 Exhibit B. 9 Here is Exhibit 10. This is a 10 document bearing production numbers M-78 11 through M-80, it's titled, "Rider to 12 sublease agreement" dated August 21, 2009, 13 again previously marked as Exhibit 10. 14 Here is a document marked Exhibit 15 11. It bears production numbers M-133 16 through 34 and it's titled Amended Exhibit 17 B. 18 And then the last document here 19 is marked Exhibit 12. That document bears 20 production numbers M-142 through 148. That 21 was previously marked as Exhibit 12 and 22 it's titled, "Landlord consent to sublease 23 non-disturbance and attornment agreement." 24 So just make yourself generally 25 familiar with the documents. Let me know</p>	37	<p>1 V. Emanuelo 2 A. It is the sublease agreement 3 between TMCC Inc. and the debtor. 4 Q. Did you have any role, sir, in 5 drafting that document or providing 6 comments on it when it was prepared? 7 A. No. 8 Q. How did you come to see that 9 document? 10 A. It was attached as an exhibit to 11 the e-mail you sent me a few weeks ago. 12 Q. It's correct it was attached to 13 the motion? 14 A. To the motion, correct. 15 Q. Just for the record, that's 16 marked as Exhibit 3 here. 17 Have you ever seen Exhibit 8, the 18 sublease, before you reviewed the motion? 19 A. No. 20 Q. Okay. 21 How about for Exhibit 9, a 22 document that's titled Exhibit B? 23 A. No, I have not seen it prior to 24 receiving it as an attachment to the 25 motion.</p>	39
<p>1 V. Emanuelo 2 when you're ready. 3 A. I'm ready. 4 Q. Okay. 5 We'll start with documents 8 6 through 11, if you could just sort of 7 arrange those in front of you, however 8 you're most comfortable? 9 For the record, these documents 10 were all produced by TMCC's counsel in 11 response to the debtor's subpoenas. 12 Establish our terminology, I'm 13 going to refer to the document as the 14 sublease for Exhibit 8, the rider for 15 Exhibit 10, Exhibit B for Exhibit 9. Is 16 that okay? 17 A. Sure. 18 Q. Okay. 19 Just so we understand each other, 20 I'll be using that shorthand. 21 Have you seen those documents 22 before? 23 A. Yes. 24 Q. Starting with Exhibit 8, what is 25 that document?</p>	38	<p>1 V. Emanuelo 2 Q. Is that the same answer as well, 3 you had not seen the document that's marked 4 here as Exhibit 10 before you reviewed the 5 motion? 6 A. Yes, I had not seen it until I 7 reviewed the motion. 8 Q. Okay. 9 Does Josalco have any have any 10 business policies or practices with respect 11 to subletting? 12 A. They vary from agreement to 13 agreement. 14 Q. With respect to the lease and the 15 premises in question here, what was the 16 policy with respect to subletting, to the 17 extent there was a policy -- I mean, maybe, 18 let me back up. That might be a bad 19 question. 20 Was there a policy -- excuse me, 21 strike that. 22 Did Josalco have a policy with 23 respect to subletting that was applicable 24 to the lease? 25 A. I wouldn't define the term</p>	40



<p style="text-align: right;">41</p> <p>1 V. Emanuelo 2 necessarily as policy. My recollection is 3 this lease contains, this lease between 4 Josalco and TMCC Inc., contains a provision 5 that is typically contained in leases of 6 this type, and that provision includes 7 language that states that any, and I'm 8 paraphrasing, but anything of value in 9 excess of the rent provided for under the 10 lease that is obtained during a sublease or 11 pursuant to a sublease is the property of 12 the landlord. 13 That's the typical -- if you ask 14 me, maybe I can rephrase how I started this 15 answer and say that if you could use the 16 phrase or the term policy to describe 17 Josalco's position with regard to 18 subletting arrangements, the lease itself 19 does have a provision that says that any 20 thing of value in excess of the rent would 21 be the property of the landlord. 22 Q. Is that in connection with a 23 sublease or an assignment? 24 A. In both instances, I believe the 25 provision would be applicable in both</p>	<p style="text-align: right;">43</p> <p>1 V. Emanuelo 2 this instance, though, this language 3 narrowly, has narrowly construed -- would 4 indicate that it's applicable only in the 5 case of an assignment of a lease. 6 Q. Okay. 7 Was it Josalco's understanding 8 that this paragraph at 72nd was also 9 applicable to subletting? 10 A. No, I don't think so, because it 11 would have been -- I'm sure that during the 12 course of Mr. Picone's discussions with 13 Mr. McCrystal about the sublease, it would 14 have come up. 15 Q. This paragraph in particular 16 or -- 17 A. The paragraph in particular or 18 the policy, if we can continue to use that 19 phrase that might otherwise control, which 20 would be if there was to be a profit made, 21 it would be the property of the landlord. 22 Q. Okay. 23 Other than this paragraph, are 24 you aware of anything else in the lease 25 agreement that can be considered applicable</p>
<p style="text-align: right;">42</p> <p>1 V. Emanuelo 2 instances. 3 Q. Can you show me where in the 4 lease this policy or provision is with 5 respect to subletting? I think the lease 6 is marked as Exhibit 4? 7 A. I'm not certain that it's here, 8 but if it is, I will be able to find it. 9 Yes, I found it. 10 Q. Where is that, sir? 11 A. The language is contained in -- 12 it's on the page of the exhibit marked M-13 13 under paragraph 72nd and it's 72nd, sub 4. 14 Q. So the paragraph that begins 15 anything herein contained to the contrary 16 notwithstanding tenant may assign this 17 lease provided -- and then there are 18 subparagraphs 1, 2, 3 and 4? 19 A. Yeah, so I see that it is 20 actually limited to an instance in which 21 there is an assignment of the lease. 22 This -- property management is 23 not a perfect world and sometimes 24 assignment and subletting terms are used 25 interchangeably and incorrectly. So in</p>	<p style="text-align: right;">44</p> <p>1 V. Emanuelo 2 perhaps to subletting? 3 A. Well, I'm not certain this is 4 applicable, but no, there wouldn't be 5 anything else other than a provision of 6 this type, and I've not reviewed this 7 document in any detail to prepare for 8 today, but I know this is a document that 9 represents the form that we use primarily 10 in transactions of this type, and I don't 11 believe language relative to that issue 12 would be contained anywhere else. If it 13 were to be here, it would be in that 14 paragraph. 15 Q. Did you prepare this document? 16 A. I believe that I did, yes. 17 Q. Have you ever heard of GMM 18 Consulting? 19 A. Yes. 20 Q. How did you come to hear of them? 21 A. When I first received a copy of 22 the motion and saw that entity in the 23 exhibits to the motion. 24 Q. I'm going to refer to them as GMM 25 going forward instead of the full name,</p>





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1 V. Emanuelo  
 2 just as a shorthand; is that all right?  
 3 A. Yes.  
 4 Q. Okay.  
 5 Do you have any understanding of  
 6 GMM's business?  
 7 A. I do not.  
 8 Q. Does Josalco do any business with  
 9 GMM?  
 10 A. No.  
 11 Q. Just to be clear, I want to  
 12 clarify my question, does Josalco do any  
 13 business with GMM, separate and apart from  
 14 any business Josalco may do with GMM's  
 15 principal?  
 16 A. Could you repeat that question?  
 17 (Whereupon, the requested portion  
 18 was read back by the court reporter.)  
 19 A. I still don't understand.  
 20 Q. Do you know who GMM's principal  
 21 is?  
 22 A. No.  
 23 Q. Okay. That's fine.  
 24 Is it correct to say then that  
 25 GMM is not a tenant of Josalco?

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1 V. Emanuelo  
 2 A. That is correct.  
 3 Q. With respect to the premises?  
 4 A. Yes.  
 5 Q. With respect to any other  
 6 premises that Josalco may --  
 7 A. It would also be correct to say  
 8 that GMM is not a tenant at any other  
 9 premises that Josalco owns.  
 10 Q. Okay.  
 11 Do you have any understanding of  
 12 the relationship between GMM and TMCC?  
 13 A. No.  
 14 Q. Do you have any understanding of  
 15 the relationship, if any, between GMM and  
 16 Mr. McCrystal?  
 17 A. No.  
 18 Q. Just to clarify, I'm referring to  
 19 Gerry McCrystal Jr.  
 20 If you could place, I think it's  
 21 marked as Exhibit 9, if you could put that  
 22 before you, sir, as well as Exhibit 11.  
 23 Have you seen either of those  
 24 documents before?  
 25 A. Yes.

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1 V. Emanuelo  
 2 Q. Is it correct that the first time  
 3 you saw those is when you reviewed the  
 4 motion for the first time?  
 5 A. Yes, that's correct.  
 6 Q. Do you refer when you reviewed  
 7 the motion for the first time?  
 8 A. Within the past 30 days.  
 9 Q. Okay.  
 10 Could you take a look at both  
 11 Exhibit 9 and Exhibit 11, the first section  
 12 that have document, of those documents.  
 13 Do you have any understanding of  
 14 what that section does or what that section  
 15 is?  
 16 A. Well, it has a heading and it's  
 17 entitled Fixed Rent Schedule -- well,  
 18 actually, there is another title below that  
 19 that says monthly rent paid to TMCC.  
 20 Q. On both of those documents for  
 21 the time period between 2009 and 2010, is  
 22 the amount of rent set out there the same  
 23 amount of rent that TMCC pays to Josalco?  
 24 A. Yes.  
 25 Q. Okay.

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1 V. Emanuelo  
 2 In the second sentence of both  
 3 documents, sir, where there is a reference  
 4 to -- bear with me one second -- yeah, to  
 5 Roma FLI Inc., do you see that on both  
 6 documents?  
 7 A. Yes.  
 8 Q. I guess my first question is have  
 9 you heard of Roma FLI Inc.?  
 10 A. Not before my review of these  
 11 exhibits to the motion, no.  
 12 Q. But you are familiar with Roma  
 13 Furniture?  
 14 A. Well, I've heard the name Roma  
 15 Furniture. I don't know what form of  
 16 entity there might be, that that might  
 17 have, but yes, I've heard the name Roma  
 18 Furniture before.  
 19 Q. Is it fair to say you're not  
 20 aware of any relationship between Roma  
 21 Furniture and Roma FLI Inc.?  
 22 A. Yes, it's fair that.  
 23 Q. All right.  
 24 I'm going to take a quick step  
 25 back with respect to these documents.



<p style="text-align: right;">49</p> <p>1 V. Emanuelo 2 Do you know what these documents 3 are? 4 A. They are exhibits to the -- well, 5 in the case of Exhibit 9, it's original 6 Exhibit B to the sublease, and as the 7 heading indicates Exhibit 11 is an 8 amendment to that schedule attached to the 9 sublease. 10 Q. And drawing your attention back 11 to the second section of both of these 12 documents where there is the reference to 13 an additional monthly rent paid to Roma 14 FLI -- 15 A. Yes. 16 Q. -- at any time prior to these 17 proceedings were you aware of, you know, a 18 one-time upfront payment to Roma FLI as set 19 forth on these documents? 20 A. I was not. 21 Q. Do you have any understanding 22 what that payment was for? 23 A. Yes. 24 Q. How did you come to have that 25 understanding?</p>	<p style="text-align: right;">51</p> <p>1 V. Emanuelo 2 Q. Does Josalco have any 3 relationship or business arrangement with 4 Roma FLI? 5 A. No. 6 Q. If you could put the document 7 marked Exhibit 11 before you, sir. At the 8 top section of the document where it says, 9 "Monthly rent paid to TMCC" -- 10 A. Yes. 11 Q. -- with respect to the 2009 and 12 2010 time period, that's November 1, 2009 13 to October 31, 2010. 14 Do you see that there? 15 A. Yes. 16 Q. Is that the same amount of rent 17 that TMCC pays to Josalco for that time 18 period? 19 A. Yes. 20 Q. And it's correct, sir, that GMM 21 is not a party to the lease between TMCC 22 and Josalco with respect to the premises? 23 A. Correct. 24 Q. Okay. 25 If you could place before you the</p>
<p style="text-align: right;">50</p> <p>1 V. Emanuelo 2 A. From reading the documents. It's 3 clear to me that it's payment made to this 4 entity as it states on its face, a one-time 5 upfront payment upon the execution of the 6 agreement, and I believe that makes 7 reference to the sublease agreement. 8 Q. Right. 9 Do you know what that payment was 10 intended for? 11 A. No. 12 Q. Did you ever have any discussions 13 with Mr. McCrystal about that payment? 14 A. No. 15 Q. Do you know if anyone else at 16 Josalco had discussions with Mr. McCrystal 17 about that payment? 18 A. It would only be Mr. Picone and 19 myself -- but no. 20 Q. Does Josalco lease any property 21 to Roma FLI? 22 A. No. 23 Q. Does it sublease any property to 24 Roma FLI? 25 A. No.</p>	<p style="text-align: right;">52</p> <p>1 V. Emanuelo 2 document that's marked as Exhibit 12. 3 Have you seen that document 4 before? 5 A. Yes. 6 Q. Do you know what that document 7 is? 8 A. It's the landlord's consent to 9 the sublease of the premises by TMCC to the 10 debtor. 11 Q. Okay. 12 Did you prepare that document? 13 A. No. 14 Q. I just wanted to draw your 15 attention to one thing. At the bottom -- 16 you can look at the bottom of any page of 17 the document, but it says, there is a file 18 stamp number there and it says, 19 "C:/documents and settings" -- do you see 20 that? 21 A. I do. 22 Q. Is that your file stamp? 23 A. No. 24 Q. That's not from your system? I 25 just wanted to be sure.</p>



<p style="text-align: right;">53</p> <p>1 V. Emanuelo</p> <p>2 A. No, I never actually learned how</p> <p>3 to add those stamps to the bottom. This</p> <p>4 can be helpful.</p> <p>5 Q. I think they're added</p> <p>6 automatically by some Microsoft program,</p> <p>7 but again --</p> <p>8 A. One that's beyond my skill level.</p> <p>9 Q. Do you know who created the</p> <p>10 document?</p> <p>11 A. No.</p> <p>12 Q. How did you first come to see the</p> <p>13 document?</p> <p>14 A. Probably -- I don't know</p> <p>15 specifically, so I don't recall. I usually</p> <p>16 get things electronically, but I don't know</p> <p>17 that I received this in that fashion.</p> <p>18 There was an attorney</p> <p>19 representing TMCC at the time, my</p> <p>20 recollection is that he was located outside</p> <p>21 of New York. I can't recall if it was a</p> <p>22 "he", but I don't remember his name.</p> <p>23 Q. Does the name Paul Perkins ring a</p> <p>24 bell?</p> <p>25 A. That's the name, yes.</p>	<p style="text-align: right;">55</p> <p>1 V. Emanuelo</p> <p>2 so I did look at it, but not in any detail</p> <p>3 that I can remember.</p> <p>4 Q. Okay.</p> <p>5 Was this the only document that</p> <p>6 you received in connection with obtaining a</p> <p>7 consent from Josalco for the sublease?</p> <p>8 A. Yes.</p> <p>9 Q. Are there any drafts of this</p> <p>10 document available?</p> <p>11 A. I would not have any. I didn't</p> <p>12 have any substantive comments to make to it</p> <p>13 when I saw it.</p> <p>14 Q. Okay.</p> <p>15 Did anyone ever provide you or</p> <p>16 anyone else at Josalco, Mr. Picone, with a</p> <p>17 copy of the sublease, or the rider, or</p> <p>18 Exhibit B, or the Amended Exhibit B that</p> <p>19 we've been talking about in connection with</p> <p>20 obtaining Josalco's consent?</p> <p>21 A. Not until I received it in</p> <p>22 connection with this bankruptcy proceeding,</p> <p>23 but not prior to that, no.</p> <p>24 Q. Were any of those documents ever</p> <p>25 described to you in substance, the</p>
<p style="text-align: right;">54</p> <p>1 V. Emanuelo</p> <p>2 Q. All right.</p> <p>3 So does that refresh you at all,</p> <p>4 perhaps Mr. Perkins sent you this document?</p> <p>5 A. I'm sure that he did.</p> <p>6 Q. Okay.</p> <p>7 Do you remember -- I'm sorry, let</p> <p>8 me go back.</p> <p>9 Do you remember when this</p> <p>10 document was executed?</p> <p>11 A. No.</p> <p>12 Q. Okay.</p> <p>13 Was this document ever updated?</p> <p>14 A. Not to my knowledge.</p> <p>15 Q. Are there any other version of</p> <p>16 this document that might apply to the lease</p> <p>17 and the premises?</p> <p>18 A. I don't believe so.</p> <p>19 Q. Okay.</p> <p>20 Did you review this document on</p> <p>21 behalf of Josalco?</p> <p>22 A. I did very briefly. It was --</p> <p>23 the time frame was very tight. I recall, I</p> <p>24 believe I was either on vacation or about</p> <p>25 to go on vacation when I looked at it and</p>	<p style="text-align: right;">56</p> <p>1 V. Emanuelo</p> <p>2 sublease, the rider, the document titled</p> <p>3 Exhibit B or the document entitled,</p> <p>4 "Amended Exhibit B"?</p> <p>5 A. No.</p> <p>6 Q. Did you ever have any discussions</p> <p>7 with Mr. McCrystal about any payments to</p> <p>8 GMM that are called for on Exhibit B or on</p> <p>9 Amended Exhibit B?</p> <p>10 A. No.</p> <p>11 Q. Did you have any -- I should say</p> <p>12 did you have those discussions at any time?</p> <p>13 A. I'm sorry, could you repeat that</p> <p>14 question?</p> <p>15 Q. Did you have those discussions at</p> <p>16 any time?</p> <p>17 A. I don't know what you mean by</p> <p>18 those discussions.</p> <p>19 Q. Yeah, sorry?</p> <p>20 MS. HOLLOWAN: If you could read</p> <p>21 back the last question, just so I'm</p> <p>22 clear.</p> <p>23 (Whereupon, the requested portion</p> <p>24 was read back by the court reporter.)</p> <p>25 A. I've never had any discussions</p>



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1 V. Emanuelo  
 2 with Mr. McCrystal about those payments.  
 3 Q. Did you have any discussions with  
 4 Mr. McCrystal about payments under the  
 5 sublease regardless of whether they were  
 6 going to be payments made to GMM?  
 7 A. Yes.  
 8 Q. What were those discussions?  
 9 A. Well, the rent was -- since the  
 10 rent was coming from the debtor to TMCC and  
 11 then to JSP or Josalco, I did have some  
 12 discussion with, I've had some discussions  
 13 throughout the, since the filing of this  
 14 petition with Mr. McCrystal about when we,  
 15 Josalco, might expect to receive payment  
 16 for the rent due for specific periods of  
 17 time.  
 18 So there is the pre-petition rent  
 19 which we've talked about, and then the  
 20 post-petition rent as well.  
 21 Q. Okay.  
 22 If you could put Exhibit 11 in  
 23 front of you again. At the bottom section  
 24 where it says, "Additional monthly rent  
 25 paid to GMM Consulting Inc.," did you have

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1 V. Emanuelo  
 2 any conversations with Mr. McCrystal about  
 3 payments to Mr. McCrystal as reflected here  
 4 on the schedule?  
 5 A. No.  
 6 Q. Did you ever talk with  
 7 Mr. McCrystal about Mr. McCrystal's  
 8 receiving payments over and above what the  
 9 rent was in connection with the sublease  
 10 from the debtor?  
 11 A. Yes.  
 12 Q. What were those conversations?  
 13 A. We didn't discuss the amounts and  
 14 it was only subsequent to my being made  
 15 aware that this arrangement existed.  
 16 I indicated to Mr. McCrystal  
 17 directly and through counsel my feeling  
 18 that this, I wouldn't want these payments  
 19 to interfere with Josalco's ability to  
 20 continue to receive its rental payments.  
 21 Q. Was that one conversation that  
 22 you had, or did you have a few  
 23 conversations about that?  
 24 A. There was more than one.  
 25 Q. About how many conversations?

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1 V. Emanuelo  
 2 A. Two or three.  
 3 Q. When did they take place?  
 4 A. Prior to my -- well, no, I  
 5 suppose -- well, prior to my speaking  
 6 directly with Mr. Roseman on behalf of  
 7 Mr. McCrystal.  
 8 MS. HOLLOMAN: Can you read that  
 9 back?  
 10 A. I can restate it. Once I knew  
 11 that Mr. Roseman was involved and his firm  
 12 was involved representing Mr. McCrystal, I  
 13 thought it would be more appropriate for me  
 14 to have those discussions with Mr. Roseman.  
 15 Q. When did you learn that  
 16 Mr. Roseman and his firm would be involved  
 17 with these proceedings?  
 18 A. The exact date, I'm not certain  
 19 of. Within the last 30 to 40 days,  
 20 something like that.  
 21 Q. Could that be before or after I  
 22 sent you the motion?  
 23 A. It would be after.  
 24 Q. Did you ever discuss with  
 25 Mr. McCrystal any obligation that TMCC or

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1 V. Emanuelo  
 2 he may have to share rent or any item of  
 3 value that he received under the sublease  
 4 with Josalco?  
 5 A. I mentioned that the lease may  
 6 have contained a provision in it, but we  
 7 didn't discuss it specifically, no.  
 8 Q. Did he have any reaction to that?  
 9 A. No -- well, maybe I -- I'm not  
 10 sure it was a reaction to that.  
 11 He did mention to me that he had  
 12 had some discussion with Mr. Picone about  
 13 the fact that he was to receive some amount  
 14 in excess of the rent required under the  
 15 terms of the lease between TMCC and  
 16 Josalco.  
 17 Q. Do you have Exhibit 11 in front  
 18 of you, sir?  
 19 A. Yes.  
 20 Q. Do you know when that document  
 21 was drafted?  
 22 A. I do not.  
 23 Q. When Josalco provided the consent  
 24 to the sublease as set forth in, I think  
 25 it's Exhibit 12 -- if you could put that in



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1 V. Emanuelo  
 2 front of you.  
 3 A. Yes.  
 4 Q. Was Josalco aware of Amended  
 5 Exhibit B?  
 6 A. No.  
 7 Q. Did Josalco consent in any way to  
 8 Amended Exhibit B?  
 9 A. Without reviewing Exhibit 12, I  
 10 wouldn't be able to state definitively my  
 11 position on that point, but as a general  
 12 statement I would say that this consent,  
 13 this consent document does allow the tenant  
 14 to make its arrangements with the debtor.  
 15 Q. And it's correct to say that you  
 16 didn't review either Exhibit B, that's  
 17 Exhibit 9 in these proceedings, or Amended  
 18 Exhibit B, which is Exhibit 11 in these  
 19 proceedings, in connection with signing the  
 20 landlord's consent document that?  
 21 A. Is correct, we did not.  
 22 Q. And you didn't discuss either of  
 23 those documents in substance before  
 24 providing the consent that's set forth in  
 25 the landlord consent?

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1 V. Emanuelo  
 2 A. I did not.  
 3 Q. Okay.  
 4 I think I'm going to put in one  
 5 more document. This was previously marked  
 6 as Exhibit 14 in the deposition of  
 7 Mr. McCrystal.  
 8 So just for the record, that  
 9 document bears production numbers 151.  
 10 It's a letter from Paul E. Levitt dated  
 11 July 29, 2010 addressed to Jordana  
 12 Nadritch, and just also for the record this  
 13 was produced by TMCC's counsel in response  
 14 to the debtor's subpoenas to TMCC and GMM.  
 15 Have you had an opportunity to  
 16 review, sir?  
 17 A. Yes.  
 18 Q. Okay.  
 19 Have you seen this document  
 20 before?  
 21 A. Yes.  
 22 Q. Do you know who Paul Levitt is?  
 23 A. Yes.  
 24 Q. Who is he?  
 25 A. He is a lawyer here in Melville

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1 V. Emanuelo  
 2 retained by TMCC -- I'm not certain what  
 3 other arrangements or what other work  
 4 Mr. Levitt may have performed on behalf of  
 5 TMCC, but my recollection is that he was  
 6 retained to commence a non-payment  
 7 proceeding against the debtor under the  
 8 terms of the sublease.  
 9 Q. Do you recall receive a copy of  
 10 this letter around July 29, 2010?  
 11 A. I know I received a copy. I'm  
 12 not sure exactly when it was.  
 13 Q. Okay.  
 14 Do have you any reason to doubt  
 15 that it was around July 29th?  
 16 A. No, I'm sure that it was.  
 17 Q. If I could draw your attention to  
 18 the second paragraph of the letter that  
 19 begins August 1, 2010?  
 20 A. Yes.  
 21 Q. Do you see there it says on  
 22 August 1, 2010 rent of \$52,000 will be due  
 23 and owing; is that correct?  
 24 A. That's what it says, yes.  
 25 Q. When you initially received this

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1 V. Emanuelo  
 2 letter, did the copy you received include  
 3 the \$52,000 figure?  
 4 A. It did not.  
 5 Q. What did the letter that you  
 6 received show?  
 7 A. It showed the remaining language  
 8 in that sentence, but the amount was  
 9 deleted.  
 10 Q. Okay.  
 11 What did you do next?  
 12 A. I called Mr. Levitt.  
 13 Q. And what did you discuss with  
 14 him?  
 15 A. I made reference to the fact that  
 16 the amount was deleted.  
 17 Q. And what did he do next?  
 18 A. There was no follow-up  
 19 conversation. I'm not sure if I spoke to  
 20 him directly, now that I think about it or  
 21 if I left him a message, but I know I  
 22 expressed my -- I'm not sure that it would  
 23 be concern, but I expressed the fact that  
 24 the document had, there had been something  
 25 removed from the document or excluded from



<p style="text-align: right;">65</p> <p>1 V. Emanuelo</p> <p>2 the document, or whited out on the</p> <p>3 original, somehow that number wasn't</p> <p>4 reflected in the copy that I received.</p> <p>5 Q. Did you eventually or did you</p> <p>6 come to receive a copy of this letter where</p> <p>7 the amount was not obscured?</p> <p>8 A. No, unless it was -- it may have</p> <p>9 been an exhibit to the motion, I don't know</p> <p>10 whether it was, but I came to know after</p> <p>11 reviewing the motion that that would be the</p> <p>12 amount that would be included in that</p> <p>13 sentence.</p> <p>14 Q. So is it fair to say that it was</p> <p>15 on your review of the motion that it was</p> <p>16 the first time Josalco learned that the</p> <p>17 premises were being sublet for a total of</p> <p>18 \$52,000 a month?</p> <p>19 A. I believe so. It may have been</p> <p>20 come out in the course of a conversation at</p> <p>21 some point prior to that, but I don't think</p> <p>22 I heard the -- I don't think I heard the</p> <p>23 exact amount until I saw the exhibit to the</p> <p>24 motion.</p> <p>25 Q. When you referred to the fact</p>	<p style="text-align: right;">67</p> <p>1 V. Emanuelo</p> <p>2 became aware of the amount that would have</p> <p>3 been included had the copy I received not</p> <p>4 been modified.</p> <p>5 Q. Okay.</p> <p>6 Do you know who modified the copy</p> <p>7 that you received?</p> <p>8 A. I do not.</p> <p>9 Q. Do you have any view as to who</p> <p>10 might have done it?</p> <p>11 A. I believe it was, it was</p> <p>12 contained in an e-mail I received from</p> <p>13 Mr. Levitt.</p> <p>14 Q. Okay.</p> <p>15 Do you know why your document or</p> <p>16 your letter was modified?</p> <p>17 A. That's a hard question to answer,</p> <p>18 if I know why. I have a --</p> <p>19 Q. Do you have a view as to why your</p> <p>20 document was modified?</p> <p>21 A. Somebody felt it wasn't</p> <p>22 information that Josalco ought to be privy</p> <p>23 to at some point, would be my guess, if I</p> <p>24 was to guess.</p> <p>25 Q. Did you have any -- you mentioned</p>
<p style="text-align: right;">66</p> <p>1 V. Emanuelo</p> <p>2 that it may have come out in a prior</p> <p>3 conversation, who would those conversations</p> <p>4 have been with?</p> <p>5 A. Either Mr. McCrystal or</p> <p>6 Mr. Roseman.</p> <p>7 Q. What did those conversations</p> <p>8 concern generally?</p> <p>9 A. At some point I was made aware</p> <p>10 that there was an amount in excess of the</p> <p>11 rent provided under the lease between</p> <p>12 Josalco and TMCC.</p> <p>13 So somebody told me how it came</p> <p>14 out. It's not clear to me, but at some</p> <p>15 point I did, I was made aware that there</p> <p>16 was an amount in excess of the rent. It</p> <p>17 may have been Mr. Bordwin, it may have been</p> <p>18 Mr. Roseman -- I'm not certain.</p> <p>19 Q. I just want to make sure that I'm</p> <p>20 clear on your testimony on this document.</p> <p>21 You never received another</p> <p>22 version of this letter?</p> <p>23 A. I think -- I'm not sure, but I</p> <p>24 don't think I saw it, again unless it was</p> <p>25 attached to the motion, but at some point I</p>	<p style="text-align: right;">68</p> <p>1 V. Emanuelo</p> <p>2 that you had called Mr. Levitt, you</p> <p>3 thought, and maybe left a message for him,</p> <p>4 is that fair?</p> <p>5 A. Yes.</p> <p>6 Q. You don't recall having any</p> <p>7 conversations with Mr. Levitt about this</p> <p>8 letter?</p> <p>9 A. No.</p> <p>10 Q. Okay?</p> <p>11 A. His involvement in the matter</p> <p>12 became, I think became moot or his</p> <p>13 involvement terminated when there was a</p> <p>14 petition in bankruptcy filed. I don't</p> <p>15 believe he had any role in, on behalf of</p> <p>16 TMCC in connection with the bankruptcy</p> <p>17 action.</p> <p>18 Q. Okay.</p> <p>19 And again, you don't recall</p> <p>20 receiving a copy of this letter where that</p> <p>21 figure was not obscured?</p> <p>22 A. No, not specifically, unless we</p> <p>23 looked at the motion. If there was any</p> <p>24 value in doing that, if it's an exhibit --</p> <p>25 as I said before, I know that somehow or</p>



<p style="text-align: right;">69</p> <p>1 V. Emanuelo 2 another I came to know what the amount was 3 that would have been contained as it is now 4 on this version of the letter. 5 So whether it was by -- I don't 6 think I received it from Mr. Levitt, I 7 think if it's contained as an exhibit in a 8 motion, then that's where I saw it, or I 9 came to know independently what that amount 10 was, but somehow or another, I put the two 11 together. 12 Q. Do you know if there is a copy of 13 this letter in your lease file with respect 14 to the lease in the premises? 15 A. I don't think that there is, no. 16 Q. Okay. 17 Do we have the lease file handy? 18 A. Yes, it's right here on the 19 conference table. 20 You have refreshed my 21 recollection, I have seen this letter 22 before. It is contained in the lease file. 23 Q. Does seeing the letter in your 24 lease file refresh your recollection any 25 further as to how you came to have a copy</p>	<p style="text-align: right;">71</p> <p>1 V. Emanuelo 2 sir, and Emanuelo Number 1, perhaps if you 3 put them side by side, or whatever works, 4 do you see any difference between the two 5 documents? 6 A. I do. 7 Q. Where is the difference? 8 A. At the very bottom left-hand 9 margin of the document marked Exhibit 14, 10 there is an additional annotation, you 11 could call it, and it indicates in lower 12 case letters BCC, colon, and then my name 13 after that. 14 Q. Okay. 15 Does looking at these two 16 documents side by side refresh you any 17 further as to what happens how many 18 different versions of this document you may 19 have received? 20 A. No. 21 Q. I want to go through a little bit 22 more, sir, about your testimony as to how 23 you became aware that TMCC and 24 Mr. McCrystal were receiving a total of 25 \$52,000 a month in payments from the</p>
<p style="text-align: right;">70</p> <p>1 V. Emanuelo 2 of the letter that didn't have the \$52,000 3 figure obscured in the second paragraph? 4 A. I'm sad to say, no, it does not 5 refresh my recollection in any way. I 6 don't know how I got it. As I stated 7 earlier, I do know that I did come to know 8 what the amount was, perhaps it was because 9 I did receive this. The letter doesn't 10 indicate how it was sent, it's not a fax. 11 It doesn't appear to be a copy of an 12 e-mail, so... 13 MR. ROSEMAN: I'd like to have 14 this marked as an exhibit. 15 MS. HOLLOMAN: That's absolutely 16 fine. 17 (Emanuelo Exhibit 1, Letter dated 18 7/29/10, marked for identification, as 19 of this date.) 20 BY MS. HOLLOMAN: 21 Q. So now we've marked a document 22 that's marked as Emanuelo Number 1. It's a 23 letter dated July 29, 2010 to Jordana 24 Nadritch from Paul E. Levitt, L-E-V-I-T-T. 25 If you look at Exhibit Number 14,</p>	<p style="text-align: right;">72</p> <p>1 V. Emanuelo 2 debtor. 3 Is that all right? 4 A. Sure. 5 Q. You testified that you became 6 aware of it, you weren't exactly sure how; 7 is that fair? 8 A. Yes. 9 Q. And that this was sometime in the 10 last 30 days; is that fair? 11 A. Yes. 12 Q. If you could search your memory, 13 sir, and just try to pinpoint to the best 14 of your ability how that came to be. 15 So far we've discussed 16 conversations you've had with 17 Mr. McCrystal, we've mentioned 18 conversations or messages perhaps you've 19 left with Mr. Levitt. There have been 20 conversations you've mentioned with 21 Mr. Roseman. 22 I've sent you a copy of a motion. 23 Does any of this help to refresh you about 24 when you may have learned about the 25 \$52,000, a month payment that TMCC was</p>



<p style="text-align: right;">73</p> <p>1 V. Emanuelo 2 receiving from the debtor? 3 A. No, it doesn't. I just know that 4 I came to be aware of it. As you stated, 5 there were lots of conversations and 6 documents that changed hands and lots of 7 parties involved in, on behalf of these, 8 both the debtor and the tenant. So no, I 9 can't pinpoint specifically when I came to 10 be aware of it. 11 Q. Do you recall your reaction to 12 the information? 13 A. I had no real reaction. It 14 wasn't -- I had no real reaction to it 15 other than I was made aware of it. 16 Q. You weren't surprised to learn of 17 it? 18 A. No. 19 Q. Okay. 20 After you learned of it, did you 21 then have a conversation with Mr. McCrystal 22 about it -- and it, to be specific for the 23 question, is the payment of \$52,000 a month 24 from the debtor to TMCC. 25 A. Yes. As I stated earlier, I did</p>	<p style="text-align: right;">75</p> <p>1 V. Emanuelo 2 Q. Can I draw your attention, sir, 3 to Exhibit 3? That should be in the pile 4 there in front of you. It's the motion? 5 A. Yes. 6 Q. If you could turn to page 5, 7 internal pagination 5, and there's a 8 footnote at the bottom. 9 A. I've read it. 10 Q. Okay. 11 Could you put Exhibit 12, I guess 12 that would be the easiest way, or else you 13 could turn to Exhibit D within the 14 document -- I mean whatever is easiest for 15 you. 16 A. Yes, I can. But before I get 17 there, I can tell you yes, we did send -- 18 there was some pre-petition rent that was 19 never paid and there was a demand letter 20 sent in connection with that non-payment. 21 So there is a default under the 22 terms of the lease. There is a portion of 23 the rent that remains unpaid to this day. 24 Q. Okay. 25 A. I hope that answers your</p>
<p style="text-align: right;">74</p> <p>1 V. Emanuelo 2 speak with Mr. McCrystal on more than one 3 occasion about Josalco's view that we would 4 not -- our interest was in continuing to 5 collect our rent, that's our business -- 6 and if his desire to collect an amount in 7 excess of the rent provided under the terms 8 of the lease was going to affect our 9 ability, Josalco's ability, that is, to 10 collect the rent provided under the terms 11 of the lease, that we wouldn't be happy 12 about it. 13 Q. Okay. 14 Has Josalco received rent from 15 TMCC for the premises for September 2010? 16 A. Yes. 17 Q. Has it received rent from TMCC 18 for the premises for October 2010? 19 A. Yes. 20 Q. And has it received rent for the 21 premises from TMCC for November 2010? 22 A. Yes. 23 Q. Do you think that TMCC has 24 violated the terms of the lease? 25 A. No.</p>	<p style="text-align: right;">76</p> <p>1 V. Emanuelo 2 question. 3 Q. Go ahead, sir. You can look at 4 either Exhibit 12 or Exhibit D. Whatever 5 is easiest. I think perhaps Exhibit D 6 would be best. 7 Maybe if you start at the last 8 page and then start scrolling backward, you 9 may come across Exhibit D, which is the 10 landlord consent to sublease 11 non-disturbance attornment agreement. 12 Maybe that's the fastest way for you to 13 find it. 14 A. There is no way to know whether 15 the document you're referring to is Exhibit 16 D to the motion because it's not identified 17 as such. 18 Q. I produced it as we received it. 19 A. Okay. 20 Q. Yeah, my understanding is that in 21 the footnote, it says an argument is belied 22 by landlord's consent annexed as Exhibit D, 23 and that's my understanding of what the 24 landlord's consent is. So I understand 25 that's Exhibit D.</p>





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1 V. Emanuelo  
 2 A. Okay.  
 3 Q. So drawing your attention then  
 4 back to the footnote now that you have a  
 5 reference at this Exhibit D and then the  
 6 footnote, do you have any, I guess do you  
 7 have any, do you think that this footnote  
 8 is accurate?  
 9 A. Do I think it's accurate in its  
 10 statement that it makes as to what the  
 11 debtor's argument might be?  
 12 Q. Well, with respect to what the  
 13 over landlord, which is Josalco in this  
 14 instance, did or did not consent to.  
 15 A. I don't think the landlord's  
 16 consent to the additional payments was  
 17 required. That would be my understanding.  
 18 Q. Do you understand those  
 19 additional payments to be rent payments?  
 20 A. I'm not sure that's for me to  
 21 determine.  
 22 Q. Do you have any view?  
 23 A. No.  
 24 MS. HOLLOWAN: If we could take a  
 25 one-minute break, I'm just going to go

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1 V. Emanuelo  
 2 through.  
 3 (Recess taken from 12:59 p.m. to  
 4 1:07 p.m.)  
 5 BY MS. HOLLOWAN:  
 6 Q. Is Bernadette Grillo still with  
 7 Josalco?  
 8 A. No.  
 9 Q. Okay.  
 10 When did she leave?  
 11 A. September of 2009.  
 12 Q. Okay.  
 13 Would she have any knowledge of  
 14 these proceedings?  
 15 A. No.  
 16 Q. All right.  
 17 Do you understand from your  
 18 review of documents or for any  
 19 conversations that you may have had that  
 20 Mr. McCrystal is requiring the debtors to  
 21 make monthly payments that are in excess of  
 22 the rent that is due from TMCC to Josalco?  
 23 A. Yes.  
 24 Q. Do you understand from your  
 25 review of documents or from conversations

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1 V. Emanuelo  
 2 that you may have had that Mr. McCrystal is  
 3 profiting from the sublease?  
 4 A. Well, I'm not sure that it's  
 5 Mr. McCrystal specifically, but an entity  
 6 that he has some connection with, yes.  
 7 Q. Well, if that's -- I don't want  
 8 to put words in your mouth. What is your  
 9 understanding?  
 10 A. I'm not sure the distinction is  
 11 important in the real world, but I am aware  
 12 that there is profit that there is an  
 13 amount in excess of the rent being paid to  
 14 an entity that Mr. McCrystal has an  
 15 interest in.  
 16 Q. Okay.  
 17 And do you know if Mr. McCrystal  
 18 provides any of that amount to Josalco?  
 19 A. He does not.  
 20 Q. Okay.  
 21 MS. HOLLOWAN: Mr. Emanuelo,  
 22 thank you very much for the time. At  
 23 the moment I have no further  
 24 questions, but Mr. Roseman will  
 25 probably want the opportunity to ask

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1 V. Emanuelo  
 2 you a few questions. Thank you, sir.  
 3 THE WITNESS: You're welcome.  
 4 BY MR. ROSEMAN:  
 5 Q. You testified earlier that you  
 6 had two conversations with a Mr. Seiden  
 7 from Hartsdale; is that correct?  
 8 A. Yes.  
 9 Q. And you testified that Mr. Seiden  
 10 contacted you?  
 11 A. Yes, and I have to admit that, I  
 12 apologize for not remembering this earlier,  
 13 but at least one of the conversations was  
 14 about something related to his occupancy of  
 15 the premises, and what I stated in my  
 16 earlier testimony was that I directed him  
 17 to Mr. McCrystal, and one of the  
 18 conversations was about the bankruptcy  
 19 petition very briefly, but the other was  
 20 about some small problem with the building,  
 21 I can't remember if it was a roof leak or a  
 22 parking lot issue, but something to do with  
 23 the condition of the premises and I  
 24 directed him to Mr. McCrystal in both  
 25 instances.



<p style="text-align: right;">81</p> <p>1 V. Emanuelo</p> <p>2 Q. Did Mr. Seiden ever discuss with</p> <p>3 you the rent he was paying?</p> <p>4 A. He did not.</p> <p>5 Q. When I meant he, the debtor.</p> <p>6 A. No, he did not.</p> <p>7 Q. The only discussions regarding</p> <p>8 the rent came from a Mr. Bordwin?</p> <p>9 A. Yes.</p> <p>10 Q. And you said that Mr. Bordwin</p> <p>11 presented an offer to Josalco?</p> <p>12 A. Yes.</p> <p>13 Q. And that offer was for an -- I'll</p> <p>14 withdraw that.</p> <p>15 What was that offer for?</p> <p>16 A. A modification of, and it's hard</p> <p>17 to call it the lease because there was no</p> <p>18 direct contractual relationship between the</p> <p>19 debtor and Josalco.</p> <p>20 So it was a statement of the</p> <p>21 debtor's willingness to remain in</p> <p>22 possession of the premises if it could pay</p> <p>23 a reduced amount to Josalco, and I'm not</p> <p>24 sure that -- in fact, I'm certain that he</p> <p>25 didn't understand who was who in this</p>	<p style="text-align: right;">83</p> <p>1 V. Emanuelo</p> <p>2 he make those preferences known to either</p> <p>3 TMCC directly or to counsel for TMCC.</p> <p>4 Q. Okay.</p> <p>5 I'd like you to -- changing</p> <p>6 topics -- your lease folder, take a look at</p> <p>7 Emanuelo Exhibit 1.</p> <p>8 A. Yes.</p> <p>9 Q. And I noticed that they're</p> <p>10 velo-bound -- not velo-bound, arco'd into</p> <p>11 the folder. How are they arco'd in? Are</p> <p>12 they in chronological order?</p> <p>13 A. I would hope so, but that's not</p> <p>14 always the case.</p> <p>15 Q. And I noticed when it was</p> <p>16 removed, it was removed from your</p> <p>17 right-hand side of the file, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And there was maybe the second or</p> <p>20 third sheet of paper in that file?</p> <p>21 A. It was the third sheet -- the</p> <p>22 first two pages are stapled together and</p> <p>23 they are -- this binder within the lease</p> <p>24 folders is usually reserved for</p> <p>25 correspondence that we receive that's not</p>
<p style="text-align: right;">82</p> <p>1 V. Emanuelo</p> <p>2 transaction because the first conversation</p> <p>3 I stated to him that he ought to speak to</p> <p>4 the master tenant.</p> <p>5 And then some weeks later he</p> <p>6 called me again to ask me whether or not we</p> <p>7 had given any thought to his proposal, and</p> <p>8 I believe by that point your firm had been</p> <p>9 retained by TMCC, and I then referred him</p> <p>10 in that second conversation to you</p> <p>11 directly.</p> <p>12 Q. So after you asked him to speak</p> <p>13 to the master tenant and advised him that</p> <p>14 it was inappropriate for you to consider</p> <p>15 this offer to extend the tenancy of the</p> <p>16 debtors, he called you again?</p> <p>17 A. Yes.</p> <p>18 Q. And he inquired if you had</p> <p>19 considered his what you viewed as an</p> <p>20 improper contact, is that fair to say?</p> <p>21 A. Yes.</p> <p>22 Q. Okay.</p> <p>23 A. Improper might be strong because</p> <p>24 we're all sort of connected in this</p> <p>25 arrangement, but it seemed appropriate that</p>	<p style="text-align: right;">84</p> <p>1 V. Emanuelo</p> <p>2 directly related to the lease itself.</p> <p>3 So any amendment to the lease I</p> <p>4 would have in the left-most binder in the</p> <p>5 lease file, and then general correspondence</p> <p>6 is usually what comes next, and that letter</p> <p>7 that's been marked as you stated is</p> <p>8 something I would put in that category.</p> <p>9 Q. And that was the second letter in</p> <p>10 the file?</p> <p>11 A. It was because I think you're</p> <p>12 right, it's probably because of the way it</p> <p>13 was received, the date it was received.</p> <p>14 Q. And the date of the first letter,</p> <p>15 does it have a date?</p> <p>16 A. What's on the top?</p> <p>17 Q. Uh-huh.</p> <p>18 A. September 13th of 2010.</p> <p>19 Q. So is it fair to assume that</p> <p>20 Exhibit 1 was received by you sometime</p> <p>21 prior to September 13, 2010?</p> <p>22 A. Yes.</p> <p>23 Q. And is there a third letter in</p> <p>24 there, or a third document in there?</p> <p>25 A. Well, yes -- well, actually, this</p>



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1 V. Emanuelo  
 2 was, I believe -- the two pages that  
 3 followed this letter that's been marked, as  
 4 you stated, were received at the same time.  
 5 It was a copy of a notice of appearance in  
 6 the Chapter 11 proceeding by Mr. Levitt.  
 7 MS. HOLLOWAN: Should we mark  
 8 these documents at some point just for  
 9 clarity sake? I think we should.  
 10 MR. ROSEMAN: Sure.  
 11 BY MR. ROSEMAN:  
 12 Q. And the next document, does that  
 13 have a date?  
 14 A. July 13, 2010.  
 15 MR. ROSEMAN: Okay. I have no  
 16 further questions.  
 17 MS. HOLLOWAN: I have just one  
 18 small item of redirect and then we'll  
 19 go ahead and mark these exhibits and  
 20 place them on the record, just for  
 21 clarity, because I'll never remember,  
 22 if we don't.  
 23 MR. ROSEMAN: Sure.  
 24 BY MS. HOLLOWAN:  
 25 Q. You were speaking earlier about

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1 V. Emanuelo  
 2 your contacts or conversations with  
 3 Mr. Bordwin with respect to some offer or  
 4 proposal that he was making with respect to  
 5 the premises.  
 6 I just want to be clear, did you  
 7 regard his contact as improper when he  
 8 contacted you the second time, or was that  
 9 misguided?  
 10 A. I stated improper might be  
 11 strong. I was happy to know that someone  
 12 on behalf of the debtor was expressing an  
 13 interest in remaining in the premises,  
 14 because as I said earlier, our interest is  
 15 keeping the building rented, and I've come  
 16 to know bankruptcy proceedings as not  
 17 necessarily taking into account the needs  
 18 of the landlords so much, and so I was  
 19 happy to know that there was a continuing  
 20 interest being expressed on behalf of this  
 21 debtor to remain in possession, but I did  
 22 feel it was -- how we label it probably not  
 23 so important -- inappropriate for that  
 24 discussion to take place directly between  
 25 Mr. Bordwin and me, I thought that it ought

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1 V. Emanuelo  
 2 to take place between Mr. Bordwin and a  
 3 representative of TMCC.  
 4 I wanted to be apprised of the  
 5 outcome or even be involved in those  
 6 discussions, but only with TMCC involved as  
 7 well.  
 8 Q. Because of the privity between  
 9 TMCC and --  
 10 A. Yeah, it just didn't seem right  
 11 not to have their -- they certainly had an  
 12 interest in the outcome of those  
 13 conversations, TMCC that is.  
 14 Q. Of course.  
 15 MS. HOLLOWAN: I think that's it.  
 16 I think we should just mark or state  
 17 for the record what the documents are  
 18 that we've just discussed on redirect.  
 19 MR. ROSEMAN: Off the record.  
 20 (Whereupon, an off-the-record  
 21 discussion was held.)  
 22 THE COURT REPORTER: Okay.  
 23 (Emanuelo Exhibit 2, Notice of  
 24 appearance, marked for identification,  
 25 as of this date.)

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1 V. Emanuelo  
 2 (Emanuelo Exhibit 3, Letter dated  
 3 9/13/10, marked for identification, as  
 4 of this date.)  
 5 (Emanuelo Exhibit 4, Fax cover  
 6 sheet dated 7/13/10, marked for  
 7 identification, as of this date.)  
 8 MS. HOLLOWAN: Exhibit Emanuelo 2  
 9 is a notice of appearance dated July  
 10 29, 2010 on behalf of TMCC Inc. and  
 11 GMM Consulting Inc.  
 12 Emanuelo Exhibit 3 is a letter  
 13 dated September 13, 2010 addressed to  
 14 Gerald McCrystal from Michael Kane,  
 15 chairman, Zoning Board of Appeals,  
 16 Town of Babylon.  
 17 Emanuelo Exhibit 4 is a fax cover  
 18 sheet addressed to Victor Emanuelo  
 19 from Paul E. Levitt dated July 13,  
 20 2010.  
 21 MR. ROSEMAN: I'd like a copy of  
 22 the transcripts.  
 23 THE COURT REPORTER: Sure.  
 24 MS. HOLLOWAN: And you have  
 25 the order, and the rough would be



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1 V. Emanuelo  
 2 fine.  
 3 THE COURT REPORTER: Okay.  
 4 (Time noted: 1:24 p.m.)  
 5  
 6  
 7 \_\_\_\_\_  
 8 VICTOR EMANUELO  
 9 Subscribed and sworn to before me  
 10 this \_\_\_\_ day of \_\_\_\_\_, 2010.  
 11  
 12 \_\_\_\_\_  
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 2 ----- I N D E X -----  
 3 WITNESS EXAMINATION BY PAGE  
 4 VICTOR EMANUELO MS. HOLLOMAN 4  
 5  
 6 ----- EXHIBITS -----  
 7 EMANUELO FOR ID.  
 8 Exhibit 1 Letter dated 7/29/10 70  
 9 Exhibit 2 Notice of appearance 87  
 10 Exhibit 3 Letter dated 9/13/10 88  
 11 Exhibit 4 Fax cover sheet dated 88  
 12 7/13/10  
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 2 C E R T I F I C A T E  
 3 STATE OF NEW YORK )  
 4 : ss.  
 5 COUNTY OF NEW YORK )  
 6  
 7 I, Joan Urzia, a Notary Public  
 8 within and for the State of New York,  
 9 do hereby certify:  
 10 That VICTOR EMANUELO, the witness  
 11 whose deposition is hereinbefore set  
 12 forth, was duly sworn by me and that  
 13 such deposition is a true record of the  
 14 testimony given by the witness.  
 15 I further certify that I am not  
 16 related to any of the parties to this  
 17 action by blood or marriage, and that I  
 18 am in no way interested in the outcome  
 19 of this matter.  
 20 IN WITNESS WHEREOF, I have  
 21 hereunto set my hand this 16th day of  
 22 November, 2010.  
 23  
 24 \_\_\_\_\_  
 25 Joan Urzia

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1  
 2 DEPOSITION ERRATA SHEET  
 3 Case Caption: Jennifer Convertibles, Inc.  
 4  
 5 DECLARATION UNDER PENALTY OF PERJURY  
 6 I declare under penalty of perjury  
 7 that I have read the entire transcript of my  
 8 Deposition taken in the captioned matter or  
 9 the same has been read to me, and the same is  
 10 true and accurate, save and except for  
 11 changes and/or corrections, if any, as  
 12 indicated by me on the DEPOSITION ERRATA  
 13 SHEET hereof, with the understanding that I  
 14 offer these changes as if still under oath.  
 15  
 16  
 17 \_\_\_\_\_  
 18 VICTOR EMANUELO  
 19  
 20 Subscribed and sworn to on the \_\_\_\_ day of  
 21 \_\_\_\_\_, 2010 before me,  
 22 \_\_\_\_\_  
 23 Notary Public,  
 24 in and for the State of \_\_\_\_\_  
 25



<p style="text-align: right;">93</p> <p>1</p> <p>2 DEPOSITION ERRATA SHEET</p> <p>3 Page No. ____ Line No. ____ Change to: ____</p> <p>4 _____</p> <p>5 Reason for change: _____</p> <p>6 Page No. ____ Line No. ____ Change to: ____</p> <p>7 _____</p> <p>8 Reason for change: _____</p> <p>9 Page No. ____ Line No. ____ Change to: ____</p> <p>10 _____</p> <p>11 Reason for change: _____</p> <p>12 Page No. ____ Line No. ____ Change to: ____</p> <p>13 _____</p> <p>14 Reason for change: _____</p> <p>15 Page No. ____ Line No. ____ Change to: ____</p> <p>16 _____</p> <p>17 Reason for change: _____</p> <p>18 Page No. ____ Line No. ____ Change to: ____</p> <p>19 _____</p> <p>20 Reason for change: _____</p> <p>21 Page No. ____ Line No. ____ Change to: ____</p> <p>22 _____</p> <p>23 Reason for change: _____</p> <p>24 SIGNATURE: _____ DATE: _____</p> <p>25 VICTOR EMANUELO</p>	
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<p style="text-align: right;">94</p> <p>1</p> <p>2 DEPOSITION ERRATA SHEET</p> <p>3 Page No. ____ Line No. ____ Change to: ____</p> <p>4 _____</p> <p>5 Reason for change: _____</p> <p>6 Page No. ____ Line No. ____ Change to: ____</p> <p>7 _____</p> <p>8 Reason for change: _____</p> <p>9 Page No. ____ Line No. ____ Change to: ____</p> <p>10 _____</p> <p>11 Reason for change: _____</p> <p>12 Page No. ____ Line No. ____ Change to: ____</p> <p>13 _____</p> <p>14 Reason for change: _____</p> <p>15 Page No. ____ Line No. ____ Change to: ____</p> <p>16 _____</p> <p>17 Reason for change: _____</p> <p>18 Page No. ____ Line No. ____ Change to: ____</p> <p>19 _____</p> <p>20 Reason for change: _____</p> <p>21 Page No. ____ Line No. ____ Change to: ____</p> <p>22 _____</p> <p>23 Reason for change: _____</p> <p>24 SIGNATURE: _____ DATE: _____</p> <p>25 VICTOR EMANUELO</p>	
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**EXHIBIT 4**

EXHIBIT "B"

FIXED RENT SCHEDULE

Monthly Rent paid to TMCC:

October 15, 2009 to October 31, 2009	\$	15,500.00
November 1, 2009 to October 31, 2010	\$	32,000.00
November 1, 2010 to October 31, 2011	\$	33,280.00
November 1, 2011 to October 31, 2012	\$	34,611.00
November 1, 2012 to October 31, 2013	\$	35,995.65
November 1, 2013 to October 31, 2014	\$	37,435.47
November 1, 2014 to October 31, 2015	\$	38,932.89
November 1, 2015 to October 31, 2016	\$	40,490.21
November 1, 2016 to October 31, 2017	\$	42,109.82
November 1, 2017 to October 31, 2018	\$	43,794.21
November 1, 2018 to October 31, 2019	\$	45,545.98

Additional Monthly Rent paid to Roma FLI, Inc.:

One time up front payment paid upon execution of Agreement:	\$	100,000.00
October 15, 2009 to October 31, 2009	\$	10,000.00
November 1, 2009 to September 30, 2010	\$	20,000.00

Additional Monthly Rent paid to GMM Consulting, Inc.:

October 1, 2010 to October 31, 2010	\$	18,000.00
November 1, 2010 to October 31, 2011	\$	18,000.00
November 1, 2011 to October 31, 2012	\$	18,000.00
November 1, 2012 to October 31, 2013	\$	18,000.00
November 1, 2013 to October 31, 2014	\$	18,000.00
November 1, 2014 to November 30, 2014	\$	18,000.00
December 1, 2014 to October 31, 2015	\$	20,000.00
November 1, 2015 to October 31, 2016	\$	20,000.00
November 1, 2016 to October 31, 2017	\$	20,000.00
November 1, 2017 to October 31, 2018	\$	20,000.00
November 1, 2018 to October 31, 2019	\$	20,000.00

