

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Edward W. Miller, Circuit Court Judge

RECEIVED

OCT 16 2015

SC Court of Appeals

Trial Court Case No.: 2011-CP-23-07338
Appellate Case No. 2015-000162

Pankaj Patel, individually and derivatively on behalf of Nominal Defendant,
VP Enterprises, Inc., ...Appellant,

v.

Krish Patel, Vijay Patel, and P Communications, Inc., ... Respondents.

RECORD ON APPEAL
Volume 1 of 3

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Pankaj Patel, Individually and Derivatively on
behalf of Nominal Defendant, VP Enterprises, Inc.

Plaintiff,

v.
Krish Patel, Vijay Patel, and
P Communications, Inc.,

Defendants,

and
VP Enterprises, Inc.,

Nominal Defendant.

IN THE CIRCUIT COURT

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
JUL B. WICKENSIMMER

**MOTION AND ORDER FOR CASE ASSIGNMENT
TO THE BUSINESS COURT
PILOT PROGRAM**

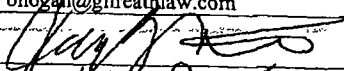
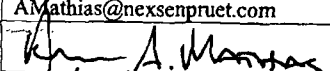
Case No. 2011-CP-23-7338

1. As counsel for a party who has appeared in this action, we move for an order of the Chief Justice assigning this case to the Business Court Pilot Program of the South Carolina Circuit Courts. We certify that as of the date of this Motion, no more than 180 days have passed since the commencement of this action. In addition, we certify that all parties have been notified of this request.

2. The principal claim or claims made in the above-referenced matter are made under the following Titles of the South Carolina Code and the matter is appropriate for assignment to the Business Court Pilot Program. (Note: Please check all that are applicable, and attach a description of the claims made in the above-referenced lawsuit.).

- X Title 33—South Carolina Business Corporation Act of 1988;
☐ Title 35—South Carolina Uniform Securities Act of 2005;
☐ Title 36, Chapter 8—South Carolina Uniform Commercial Code: Investment Securities;
☐ Title 39, Chapter 3—Trade and Commerce: Trusts, Monopolies, and Restraints of Trade;
☐ Title 39, Chapter 8—Trade and Commerce: The South Carolina Trade Secrets Act;
☐ Title 39, Chapter 15—Trade and Commerce: Labels and Trademarks; or
☐ Other Appropriate Matter determined by the Chief Justice.

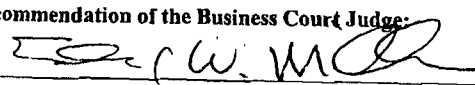
3. Insert name and contact information of moving party or parties:

Party:	Plaintiff Pankaj Patel			Party:	Defendants Krish Patel, Vijay Patel, and P Communications		
Name:	James R. Gilreath and William M. Hogan			Name:	Thomas L. Stephenson and Andrew A. Mathias		
Address:	110 Lavinia Avenue (29601) P.O. Box 2147 (29602)			Address:	55 East Camperdown Way (29601) PO Drawer 10648		
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Signature:				Signature:			
Date:	April 25, 2012			Date:	4/25/12		

4. Indicate whether the non-moving party or parties X consents, ☐ does not oppose, ☐ opposes; ☐ position on assignment is unknown.

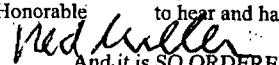
Recommendation of the Business Court Judge:

☒ Recommends ☐ Declines to Recommend


Signature of Business Court Judge

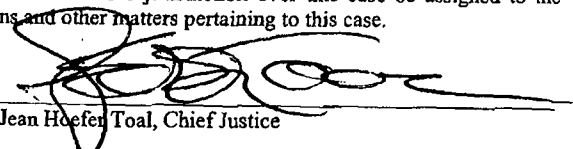
Assignment to the Business Court Pilot Program for
DENIED.

County is hereby ☐ ORDERED ☐
ENTERED COMPUTER

It is further ☒ ORDERED ☐ DENIED that exclusive jurisdiction over this case be assigned to the Honorable  to hear and handle all pretrial motions and other matters pertaining to this case.

And it is SO ORDERED.

This 22nd day of May, 2012
Columbia, South Carolina


Jean Hoefel Toal, Chief Justice

00003

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Pankaj Patel, Individually and Derivatively on
behalf of Nominal Defendant, VP Enterprises, Inc.
Plaintiff,

v.
Krish Patel, Vijay Patel, and
P Communications, Inc.,
Defendants,
and
VP Enterprises, Inc.,
Nominal Defendant.

IN THE CIRCUIT COURT

MOTION AND ORDER FOR CASE ASSIGNMENT
TO THE BUSINESS COURT
PILOT PROGRAM

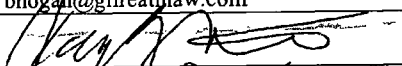
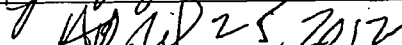
Case No. 2011-CP-23-7338

1. As counsel for a party who has appeared in this action, we move for an order of the Chief Justice assigning this case to the Business Court Pilot Program of the South Carolina Circuit Courts. We certify that as of the date of this Motion, no more than 180 days have passed since the commencement of this action. In addition, we certify that all parties have been notified of this request.

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- ☒ Title 33—South Carolina Business Corporation Act of 1988;
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☐ Title 39, Chapter 8—Trade and Commerce: The South Carolina Trade Secrets Act;
☐ Title 39, Chapter 15—Trade and Commerce: Labels and Trademarks; or
☐ Other Appropriate Matter determined by the Chief Justice.

3. Insert name and contact information of moving party or parties:

Party:	Plaintiff Pankaj Patel		Party:	Defendants Krish Patel, Vijay Patel, and P Communications			
Name:	James R. Gilreath and William M. Hogan		Name:	Thomas L. Stephenson and Andrew A. Mathias			
Address:	110 Lavinia Avenue (29601) P.O. Box 2147 (29602)		Address:	55 East Camperdown Way (29601) PO Drawer 10648			
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Email:	jim@gilreathlaw.com bhogan@gilreathlaw.com		Email:	tstephenson@nexsenpruet.com AMathias@nexsenpruet.com			
Signature:			Signature:				
Date:			Date:				

4. Indicate whether the non-moving party or parties ☒ consents, ☐ does not oppose, ☐ opposes; ☐ position on assignment is unknown.

Recommendation of the Business Court Judge:

☒ Recommends ☐ Declines to Recommend

see attached letter from Judge Ned Miller 5-1-12
Signature of Business Court Judge

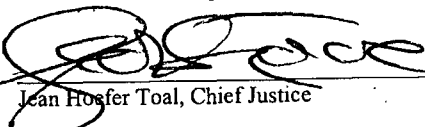
Assignment to the Business Court Pilot Program for *Greenville* is hereby ☒ ORDERED ☐

DENIED.

It is further ☒ ORDERED ☐ DENIED that exclusive jurisdiction over this case be assigned to the Honorable *Ned Miller* to hear and handle all pretrial motions and other matters pertaining to this case.

And it is SO ORDERED.

This *22nd* day of *May*, 2012
Columbia, South Carolina


Jean Hofer Toal, Chief Justice

00004

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2011CP2307338

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B WICKENSIMER

Pankaj Patel vs. Krish Patel
2012 JUN - 1 A 9:29

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a),
SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter: _____

PRESIDING JUDGE -

This judgment was entered on the 7th day of June, 2012, and a copy mailed first class this 7th day of June, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

Pankaj Patel, Individually and Derivatively on
behalf of Nominal Defendant, VP Enterprises,
Inc.,

Plaintiff,

vs.

Krish Patel, Vijay Patel, and P
Communications, Inc.,

Defendants,

and,

VP Enterprises, Inc.

Nominal Defendant.

Case No. 2011-CP-23-7338

ORDER

FILED - COURT OF COMMON PLEAS
GREENVILLE, S.C.
PAUL B. WOODWARD
CLERK
2014 FEB 31 PM 11:54

The parties to this action agreed that "the liability and damage issues w[ould] be bifurcated and the liability issues [were] to be tried first." The liability portion was tried before this Court on July 21 and 22, 2014. Any evidence on damages was to be presented at a later date if Plaintiffs had prevailed during the liability phase of the trial. After hearing testimony from many witnesses and reviewing voluminous documentary evidence, however, this Court finds no liability on the part of Defendants with respect to all of Plaintiff's causes of action. First, Plaintiff's claims are time-barred. But, second, even if Plaintiff did not file his claims too late, they are without merit. The duties that Defendants Vijay Patel ("Vijay") and Krish Patel ("Krish") owed to Plaintiff Kaj Patel ("Kaj" or "Plaintiff") extinguished prior to the Defendants' acts that were allegedly in violation of those duties. Additionally, the agency relationship with Verizon Wireless ("Verizon") that is at the heart of Plaintiff's claims against all Defendants,

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including P Communications, Inc. ("P Comm"), is not a "corporate opportunity" such that it is capable of being usurped and giving rise to liability.

Kaj's complaint alleged that this litigation was being pursued derivatively on behalf of VP Enterprises, Inc. ("VP"). Notwithstanding those allegations, Kaj's trial presentation focused exclusively upon the impact that Vijay's and Krish's conduct had upon his (Kaj's) individual interest in VP. The law is clear that a "shareholder's suit is derivative if the gravamen of his complaint is an injury to the corporation and not to the individual interest of the shareholder." *Brown v. Stewart*, 348 S.C. 33, 49, 557 S.E.2d 676, 684 (Ct. App. 2001). The Court finds that Kaj's focus on the impact to his individual interest in VP is inconsistent with a derivative action, and it indicates to the Court that he did not pursue this litigation for the benefit of VP. Accordingly, the Court concludes that Kaj intended to bring a direct claim and waived his derivative claim allegations. Moreover, under Rule 23(b)(1), South Carolina Rules of Civil Procedure, it is the duty of the Court to ensure that a derivative action is maintained only by a shareholder who fairly and adequately represents the interests of the other shareholders. In this case, VP has only one other member—Vijay—and he is a defendant. Because of this direct conflict, the Court finds that Kaj is not actually pursuing a derivative claim on behalf of VP; but rather a direct action against his fellow shareholder, Vijay, and the other defendants. This factor, as well as the manner in which the matter was tried to this Court, indicates that this case was truly a direct—as opposed to derivative—action.

Alternatively, assuming that Kaj brought a derivative claim and did not waive the same, the Court concludes, as explained *infra*, that VP did not suffer a loss. *Id.* at 49, 557 S.E.2d at 684 (noting that an "action seeking to remedy a loss to the corporation is generally a derivative one"). VP did not suffer a loss because P Comm's activities were not corporate opportunities of

VP. The absence of any loss to the corporation precludes any recovery on behalf of the corporation—that is, precludes any recovery for Kaj's claim as a derivative representative of VP.¹

BACKGROUND

Kaj emigrated from India in the early 1980's to attend Clemson University. He now makes a living as an engineer, but has also engaged in various entrepreneurial endeavors. Kaj has attempted to own and operate a restaurant, a kiosk in the mall, and a granite import company, among other ventures. None of these companies exist today.

Vijay and Krish are father and son, respectively. Although they share a surname with Kaj, they are not related to him. Vijay immigrated to the United States at about the same time as Kaj, but he did not know him at the time. Vijay previously owned and operated retail and service businesses, but he now owns two hotels in the Greenville area. He also works for Defendant P Comm, which is owned by Krish. P Comm has the agency agreement with Verizon which is the subject of this dispute.

Krish was born in 1986. He graduated from Mauldin High School in 2004 and University of South Carolina Upstate in 2008. While in school, he maintained jobs in the retail industry, including a full-time job at a corporate-owned Verizon store from 2004–2007. At trial Krish explained that in approximately late-2006, while working for Verizon, he became interested in owning and operating independent Verizon stores and that—at that time—he took steps to accomplish this goal such as looking for a physical location for a store and approaching potential investors. In October 2007, Krish was asked to resign from Verizon for violating company policy with respect to managing family members' phone plans. Krish did not benefit

¹ When referring to "Kaj" or "Plaintiff" in this Order, the Court is referring to him in both his individual and derivative capacities.

from this activity, but it was in violation of company policy. Krish thereafter joined his father in the hotel business and, according to his testimony, continued to work on a plan to open Verizon retail locations as an independent agent.

VP Enterprises, Inc. – Application Denied

The parties agree that in late 2007, after Krish no longer worked for Verizon, Kaj, Vijay, and Krish began to informally discuss a myriad of potential investment opportunities. The three of them discussed many possibilities including buying a hotel in Charleston, a pine straw company in North Carolina, and several pieces of real estate. While traveling to inspect a potential investment in the fall of 2007, Kaj, Vijay, and Krish discussed the possibility of forming a company that would own and operate Verizon retail stores. The parties disagree as to whose idea this was. The Defendants claim it was Krish's idea, but Kaj claims it was his. The evidence makes clear that, unlike Krish, Kaj had no experience in the wireless communications industry, and certainly no experience with Verizon. Also, Krish had informally pursued the idea before he discussed any investment opportunities or business ventures with Kaj.

In any event, the group agreed to form a company for the purpose of applying for an agency relationship with Verizon. Krish formed VP and listed Kaj and Vijay as its owners. Krish was not listed as an owner because of his young age and because Krish believed it might hurt his chance of getting an agency because he was a former employee. All three agreed that, because of his experience, Krish would run VP's operations. Krish was also tasked with doing all the work necessary to submit VP's application to Verizon. He received only minor assistance from Kaj.

As part of its process, Verizon requires all applicants to submit a business plan. Krish was responsible for drafting VP's business plan. Kaj provided Krish with two business plans

that he said could serve as examples. One plan was for "Tava Grill," a failed restaurant that Kaj operated, while the second was for "Kundo," another restaurant. These business plans were nearly identical. Krish—with minor assistance from Kaj—used the two plans as examples and crafted a business plan for VP. The plan was submitted to Verizon with VP's application on January 28, 2008.

At the time of filing the Complaint, Kaj alleged that he created the "Tava Grill" and "Kundo" business plans that Krish used as examples when drafting the VP business plan. However, during the course of discovery, the Defendants found the "Kundo" business plan. It is offered as a free sample on www.vrtualrestaurant.com and, thus, available to anyone with an internet connection. At trial, Kaj admitted that he used the "Kundo" business plan as the basis for his "Tava Grill" business plan and that they were nearly identical, yet he continued to maintain that the ideas and content contained in both these business plans were his property.

VP's application to Verizon was denied. The evidence uncovered in discovery and presented at trial indicates that Verizon declined VP's application because a background check conducted on both Kaj and Vijay revealed that they each failed to disclose certain information during the application process. Specifically, Vijay failed to disclose that he had a minor criminal record and Kaj failed to disclose the existence of at least one (if not more) civil suits in which he was a party within the five (5) years prior to submitting the application. The application unambiguously asked the principals of the applicant company to disclose this specific information (*i.e.*, criminal and civil litigation history).

P Communications, Inc.

After Verizon denied VP's application, Krish continued to pursue the creation of a company that would own and operate independent Verizon retail locations. Krish continued to

believe that if he applied directly, Verizon might not accept the application. He approached an acquaintance, Corby Phillips ("Corby"), and asked if he would form a company and apply for an agency relationship with Verizon. Corby agreed. From the outset, Krish and Corby's agreement was that Krish would buy Corby's interest in the to-be-formed company after it was established, assuming Verizon approved its application. After agreeing to these basic terms, Corby formed P Comm and applied for a Verizon agency relationship in April 2008. Verizon approved P Comm's application soon thereafter.

P Comm opened its first location on Pelham Road in Greenville, South Carolina in October 2008. Krish did all the work—he arranged all the financing, personally guaranteed all the loans, entered into the lease, oversaw all of the up-fitting of the property, acquired all the inventory, hired all the employees, and did anything else necessary to open the location. To celebrate, P Comm held a grand opening party on October 18, 2008. After the party, Krish joined a group of family friends at his parents' house. Kaj was there. Krish voluntarily informed Kaj that he opened a Verizon store on Pelham Road with Corby and that he planned to own the company at some point in the future. According to Krish, he told Kaj that they could discuss potential opportunities for him and the Verizon business at a later date. Kaj claims, however, that Krish withheld pertinent information from him that would have allowed him to know the full nature of his arrangement with Corby and P Comm. After opening a second location and laying the groundwork for a third, Krish acquired P Comm.

Krish Offers Kaj a Potential Opportunity

Krish continued to discuss potential investment opportunities with Vijay and Kaj. These ideas included the acquisition of hotels, convenience stores, and other real estate. In the spring of 2010, Krish approached Kaj after he (Krish) had found a handful of already-existing,

independently-owned Verizon retail locations in the Columbia, South Carolina area that were for sale. Krish wanted to purchase the stores on his own and hire Kaj to run them. Krish proposed a deal whereby Kaj would be paid as though he was a fifty-percent owner but not have any equity—or risk—associated with the operation. Kaj suggested that he and Krish purchase those stores together, each owning fifty percent. Kaj rejected Krish's proposal and offer of employment. Krish, through P Comm, acquired the stores.

Krish continued to grow P Comm, and attracted attention because of his success at such a young age. A widely-distributed local periodical, *TOWN Carolina* magazine published an article in its October 2011 issue highlighting Krish's success. Specifically, the author stated "Krish has built what you might call a wireless empire across much of South Carolina and northern Georgia as the President of [P Communications, Inc., d/b/a] Wireless Communications, a premium retailer for Verizon Wireless. He is also only 25 years old, and, no, he made his fortune the old-fashioned way—he earned it." Jac Chebatoris, *Twenty-something biz whiz Krish Patel made a good call*, *TOWN Carolina*, October 2011 at 40, available at www.towncarolina.com/issues/11-oct/ (last visited Oct. 14, 2014) (hereinafter, the "TOWN Article"). Kaj admits that the October 2011 issue of *TOWN Carolina* magazine was delivered to his home. Soon thereafter, on November 4, 2011, Kaj filed this suit.

Expert Testimony

At trial the Plaintiff presented expert testimony from Professor John Freeman ("Professor Freeman"). Professor Freeman opined that Kaj, Vijay, and Krish were co-promoters of VP and owed one another and VP fiduciary duties arising out of that relationship. These duties, he testified, continued long past Verizon's denial of VP's application because, as Kaj testified, Verizon could have changed its mind and approved VP's application if it was submitted again.

Kaj claims he instructed Krish to talk to the Verizon representatives, identify the deficiencies in their application, and make the appropriate corrections, if possible. Kaj claims Krish did not do as instructed. Professor Freeman testified that, in his opinion, Krish's alleged failure to follow up with Verizon and correct the deficiencies was a violation of the duties he owed Kaj and VP as a co-promoter. Furthermore, based on the existence of duties owed to one another long past the denial of VP's application, Professor Freeman opined that Krish and P Comm usurped a corporate opportunity from Kaj and VP when he helped form P Comm and acquire a Verizon agency relationship. Professor Freeman offered no testimony with respect to the alleged derivative claims.

Defendants presented the testimony of Professor Martin McWilliams ("Professor McWilliams"). Professor McWilliams opined that although Kaj, Vijay, and Krish owed one another and VP various duties at different times, all of those duties were extinguished prior to Krish's work to form P Comm and acquire a Verizon agency relationship. Furthermore, Professor McWilliams testified that the Verizon agency relationship was not a "corporate opportunity" capable of being usurped for two reasons: (1) Verizon has many agency relationships and just because P Comm acquired one does not preclude Kaj, VP, or anyone else from receiving another; and (2) VP's application was denied for "mutual non-disclosure" and the record makes clear that VP's effort was abandoned.

FINDINGS OF FACT

After considering voluminous documentary evidence, the testimony of many witnesses at trial, and making judgments as to their credibility, the Court makes the following findings of fact:

1. Krish worked for Verizon in a corporate-owned retail store from 2004 to 2007, during which time he acquired significant experience in the wireless retail industry.
2. Krish began to informally investigate owning his own Verizon stores before he ever talked to Kaj about any investment idea, let alone the idea of starting a company to own independent Verizon stores.
3. It was Krish's idea, not Kaj's idea, to open Verizon stores, and Kaj's testimony to the contrary is not credible.
4. Kaj has no experience or expertise in the wireless communications industry.
5. Krish chose not to apply in his own name because of his young age and because he had lost his former position with Verizon. He believed the application had a better chance of being approved if he was not the named applicant.
6. The business plan submitted by VP to Verizon actually states that Krish looked at locations for Verizon stores in September 2007; this is before Krish ever discussed the idea with Kaj. Kaj reviewed this business plan before it was submitted to Verizon.
7. In late 2007, Krish shared with Kaj and Vijay his plans to open Verizon retail stores.
8. Kaj testified he prepared certain spreadsheets in December 2007 used to analyze the idea of Verizon stores. The spreadsheets were of little or no use as they were extremely basic and pertained to running a restaurant.
9. These spreadsheets were associated with the business plan Kaj found on the internet.

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10. Kaj and Vijay formed VP. Kaj and Vijay were each fifty-percent owners of the company and served as its directors. Krish owned no stake in VP, but served as an officer of the corporation.
11. Because of Krish's experience with Verizon, he was to be in charge of running the day-to-day operations of VP.
12. Krish, not Kaj, dealt almost exclusively with the representatives from Verizon when the VP application was submitted. Although Krish was not listed and the applicant, Verizon officials knew of his involvement.
13. Krish, with the assistance of a business plan Kaj had found on the internet and modified for a prior restaurant venture, developed and submitted a business plan and application materials to Verizon for the purpose of becoming an agent.
14. Kaj never revealed to Krish that the business plan he gave him was downloaded for free off the internet. Kaj invested nothing in order to obtain the business plan template. In fact, the website www.virtualrestaurant.com, still up at the time of trial, offered the document as a "free sample."
15. The VP business plan submitted to Verizon contained no particularly unique ideas. The business plan submitted to Verizon by VP was very basic and only five pages long.
16. Kaj claimed that those ideas in the business plan that were original to him included non-confidential information, such as the approximate population of Greenville County or that the local Chamber of Commerce listed over 6,000 businesses in the area. Most of the business plan was copied directly from the free sample document Kaj found on www.virtualrestaurant.com.

17. Verizon rejected VP's application on February 26, 2008. The letter from Verizon communicating the decision did not disclose the reason(s) for the denial and none of the parties knew why VP's application was denied.
18. At trial a representative from Verizon testified that Kaj's failure to fully and accurately disclose his litigation history contributed to the denial. This testimony is credible.
19. After VP's application was denied, Krish asked Verizon representatives why it was denied. They would not tell him.
20. Once the VP application was denied by Verizon without explanation, it was reasonable for Krish to conclude that he could not pursue the idea with VP, Kaj or Vijay.
21. Verizon's representative also testified at trial that, to her knowledge, Verizon never approved any applicant who reapplied after being rejected. This representative had decades of experience with Verizon and its predecessor company. This testimony is credible.
22. Kaj never made any independent effort to pursue ownership of Verizon stores after the initial application was rejected in February 2008.
23. Once the application was rejected, Kaj abandoned the idea of owning Verizon stores and, instead, pursued other entrepreneurial opportunities with Krish and Vijay, including hotels, houses, and convenience stores.
24. After the VP application was rejected by Verizon, Kaj emailed Krish many times about other possible businesses, including hotels, houses, and convenience stores. In one email on April 18, 2009, Kaj mentioned a link on the internet about AT&T

stores that were for sale. Accordingly, Kaj believed the Verizon idea was abandoned by VP.

25. After VP's application was denied, Krish independently continued to pursue his goal of owning and operating Verizon stores.
26. Krish entered into an arrangement with Corby, pursuant to which Corby formed P Comm for the purpose of submitting an application to Verizon to become a licensed agent.
27. From the beginning and while Corby initially held one-hundred percent (100%) of the shares of P Comm, he agreed to sell Krish his stake in P Comm once the company was up and running.
28. Using a modified version of the business plan created by Krish for VP, P Comm applied to become an agent of Verizon in April 2008. The application was approved.
29. P Comm opened its first Verizon store in October 2008 in Greenville, South Carolina.
30. After hosting a grand opening party for the store on October 18, 2008, Krish visited his parents' home where he spoke to Kaj.
31. On October 18, 2008, Krish voluntarily disclosed to Kaj that he had opened a Verizon store with Corby and that he would one day own the company.
32. Krish made no specific promise to Kaj to involve him in the venture.
33. At no time did Krish represent to Kaj that he would use P Comm to resurrect the failed VP venture, and any testimony to the contrary is not credible and rejected.

34. Kaj knew of Krish's involvement in P Comm and the opening of Verizon stores since at least October 18, 2008.
35. In December 2008, Krish acquired 100% ownership of P Comm.
36. In early 2010, Krish found an opportunity to buy some existing Verizon stores in the Columbia, South Carolina area.
37. After finding the opportunity in Columbia, Krish contacted Kaj and asked if he was interested in becoming involved in the Columbia opportunity.
38. Kaj had no expectation that he would have involvement in stores other than in Columbia. There is no credible testimony to the contrary.
39. After the Columbia possibility was abandoned in mid-2010, Kaj did not mention any specific claim or desire to be involved in P Comm until this suit was filed in November 2011.
40. There was nothing to prevent Kaj from pursuing his own Verizon agency relationship and, indeed, there is credible evidence that anyone can pursue such an opportunity.
41. At trial, a Verizon representative testified that there are over one hundred (100) independently-owned Verizon retail stores in South Carolina alone and that anyone is free to submit an application.
42. From 2009 until the time this suit was filed in November 2011, Kaj, Krish, and Vijay communicated via email regularly. They communicated about pursuing other ventures and about a rental house Kaj and Krish owned together. In none of these emails does Kaj claim or mention that he believed he was entitled to participate in the Verizon stores Krish was running. The only emails mentioning

Verizon are when Krish offered Kaj the possibility of becoming involved in the Columbia stores as an employee.

43. Many of the emails to Kaj from Krish about the house they owned together are from Krish's business email address with P Comm, and Kaj obviously knew Krish was running Verizon stores.

44. Professor McWilliams's testimony is consistent with the evidence in this case and, therefore, credible. Professor Freeman's testimony as to the duties owed by the parties to one-another, however, is only consistent with the self-serving testimony of Kaj.

45. This suit was filed almost immediately after *TOWN Carolina* magazine published an article touting Krish's success and stating he had "made a fortune." (*TOWN Article*, at 40.)

46. Kaj admitted that the *TOWN Carolina* magazine was delivered to his house in October 2011.

47. Kaj filed suit on November 4, 2011.

CONCLUSIONS OF LAW

Plaintiff asserted 13 causes of action in his amended complaint: (1) dissolution of VP Enterprises, Inc., (2) violation of standards of conduct for directors under S.C. Code Ann. § 33-8-300 against Vijay, (3) violation of standards of conduct for officers under § 33-8-420 against Vijay and Krish, (4) breach of fiduciary duty against Vijay and Krish, (5) an accounting from all Defendants, (6) breach of fiduciary duty for partnership liability, (7) fraud against Vijay and Krish, (8) constructive fraud against Vijay and Krish, (9) negligent misrepresentation against Vijay and Krish, (10) equitable disgorgement against all Defendants, (11) constructive trust against all Defendants, (12) a violation of the South Carolina Unfair Trade Practices Act, and

(13) a declaratory judgment. In post-trial briefing, Plaintiff dismissed his claims for fraud, constructive fraud, negligent misrepresentation, and violation of the South Carolina Unfair Trade Practices Act. Accordingly, those particular claims are not addressed by this Order.

A. Statute of Limitations and Laches

1. Kaj's legal claims all had, at most, a three-year statute of limitations. However, claims predicated upon a breach of fiduciary duty are codified by statutes that have a two-year limit from the date of discovery. *Clearwater Trust v. Bunting*, 367 S.C. 340, 350-51, 626 S.E.2d 334, 339-40 (2006). In this case, therefore, Kaj's claims had to have been filed within two or three years of discovery. But, even if all of the applicable limitations periods were three years, Kaj's suit was filed too late.
2. Kaj's claims were not brought within either two or three years of their accrual. Accrual of a statute of limitations begins when "the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct." *Graham v. Welch, Roberts & Amburn, LLP*, 404 S.C. 235, 239, 743 S.E.2d 860, 862 (Ct. App. 2013) (quoting *True v. Montheith*, 327 S.C. 116, 119, 489 S.E.2d 615, 616 (1997)).
3. Krish testified that he explained to Kaj on October 18, 2008 that he joined forces with another person—Corby—to open independently-owned Verizon stores. Kaj claims Krish withheld information from him that would have allowed him to know that he had a claim against the Defendants. Krish's testimony is more credible on this point.

4. In the Court's view, considering the credibility of the witnesses, Kaj knew or should have known of the existence of the claims he asserts in this matter on or by October 18, 2008, yet he did not file this suit until November 4, 2011.
5. In order for a statutory limitations period to begin to run, a plaintiff need not have a fully-developed legal theory of recovery or have sought the assistance of counsel. *Snell v. Columbia Gun Exch., Inc.*, 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981). All that must occur is that the plaintiff be aware through the "exercise of reasonable diligence" that a claim "might exist." *Id.* The determination of whether a reasonable person knew or should have known of a potential claim is an objective test and does not rely on what Kaj subjectively thought or believed. *Wiggins v. Edwards*, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994).
6. Likewise, tolling the statutes of limitation based on claims of fraudulent concealment is not appropriate here. The evidence does not show that any Defendant did anything to prevent Kaj from discovering his injury. South Carolina has recognized fraudulent concealment based on the duty to disclose "inherent in the relationship between physicians and patients." *Maher v. Tietex Corp.*, 331 S.C. 371, 381, 500 S.E.2d 204, 209 (Ct. App. 1998). Indeed, this exception applies specifically because of "the expert knowledge required to ascertain an injury." *McClain v. Jarrard*, 354 S.C. 218, 220, 580 S.E.2d 763, 764 (Ct. App. 2003). Kaj's alleged injury was not hidden from him.
7. Kaj, in his post-trial response to Defendants' Motion for Involuntary Non-Suit, stated that he was pursuing his claims against Krish and Vijay in equity only.

However, even to the extent Kaj seeks only equitable relief, his claims are nevertheless time-barred. "Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or to enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights." *Mazloom v. Mazloom*, 382 S.C. 307, 319, 675 S.E.2d 746, 753 (Ct. App. 2009) *aff'd*, 392 S.C. 403, 709 S.E.2d 661 (2011). Kaj, well aware of his alleged injury, slumbered on his rights for over three years, during which time Krish expended great costs and efforts to expand the business of P Comm. Equity prevents Kaj from stepping in years later to attempt to reap the benefits of Krish's work.

8. Kaj's claims of "unclean hands," so as to prevent the application of laches, do not apply. Kaj testified that Krish led him astray and misrepresented key facts material to his claims. However, even if Krish misrepresented certain facts, none of the misrepresentations were material to Plaintiff's ability or responsibility to timely bring his claims.
9. Tolling of equitable claims is not appropriate in this case. Kaj presented no credible evidence, testimony or otherwise, that there were barriers or misconduct that prevented him from filing his suit within the prescribed time limits. Equitable tolling of the statute of limitations is an extraordinary remedy that is to be used sparingly. *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 117, 687 S.E.2d 29, 33 (2009). It is intended to prevent unfairness to befall a "diligent plaintiff." *Pelzer v. State*, 378 S.C. 516, 521, 662 S.E.2d 618, 620 (Ct. App. 2008). Generally, it arises only in cases where "extraordinary circumstances

prevented the plaintiff from filing despite his or her diligence . . . or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass" *Am. Legion Post 15 v. Horry Cnty.*, 381 S.C. 576, 583, 674 S.E.2d 181, 184 (Ct. App. 2009).

B. Merits of Kaj's Claims

10. As a separate and independent basis for this Court's decision, this Court finds that Kaj's claims each fail on their merits.

**Dissolution
(Cause of Action 1)**

11. In order for this Court to dissolve a corporation, the plaintiff must show deadlock; illegal, fraudulent, oppressive, or unfairly prejudicial action by directors or persons in control; waste or misapplication of corporate assets; abandonment of corporate purpose; or that the duration of the entity as stated in the articles of incorporation has expired. S.C. Code Ann. § 33-14-300(2).
12. However, even where grounds for dissolution exist, a judge may grant a less drastic remedy where appropriate. S.C. Code Ann. § 33-14-310(d). Further, where statutory close corporations are involved, dissolution is only available where all other remedies have failed. S.C. Code Ann. § 33-18-430.
13. In order to proceed with a claim for dissolution, it is therefore axiomatic to show that an entity exists which can be dissolved. For example, it cannot have been previously dissolved through administrative dissolution pursuant to S.C. Code Ann. §§ 33-14-220 *et seq.* VP Enterprises was administratively dissolved in June, 2011.

14. Nevertheless, in order to proceed with a so-called "oppression case" and establish entitlement to dissolution, a plaintiff must show one of many factors outlined by *Kiriakides v. Atlas Food Sys. & Servs., Inc.* Specifically,

A host of factors is identified . . . including, but not limited to, dividend withholding, eliminating minority shareholders from directorate and excluding them from employment, siphoning off corporate earnings via high compensation, leases and loans favorable to majority shareholders, failure to enforce contracts for the benefit of the corporation, appropriation or [sic] corporate assets, contracts or credit for personal use, usurping corporate opportunities, transactions between a parent corporation and a subsidiary, withholding information from minority shareholders.

343 S.C. 587, 605 n.28, 541 S.E.2d 257, 267 n.28 (2001).

15. Kaj's only articulated basis for dissolution comes from an alleged usurpation of corporate opportunities. However, as fully discussed below, there is no corporate opportunity to usurp in this case. Kaj acknowledges that VP's application to serve as an agent of Verizon was rejected. VP, therefore, had neither the ability nor the expectation of pursuing any such opportunity. And, even if it did, it still could have pursued an agency relationship after P. Comm acquired its relationship with Verizon.

**Breach of Fiduciary Duty
(Causes of Action 2, 3, and 4)**

16. Kaj alleged statutory and common law claims for breach of fiduciary duty. Each fails as a matter of law. In order to prevail on a claim for breach of fiduciary duty, a plaintiff must show:

- (1) the existence of a fiduciary duty,
- (2) a breach of that duty owed to the plaintiff by the defendant, and

(3) damages proximately resulting from the wrongful conduct of the defendant.

RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P., 399 S.C. 322, 335-36, 732 S.E.2d 166, 173 (2012) (citation omitted).

17. The common law breach of fiduciary duty has been codified and subsumed by statute (*see Clearwater Trust*, 367 S.C. at 349-50, 626 S.E.2d at 339) meaning, in this case, the fourth cause of action asserted by Plaintiff is subsumed by the second and third causes of action, which invoke relevant statutes. Under these applicable statutes, directors and officers of a corporation must act “(1) in good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner he reasonably believes to be in the best interests of the corporation and its shareholders.” S.C. Code Ann. §§ 33-8-300(a), 420(a).
18. The existence or non-existence of a fiduciary relationship is a question for this Court. *Moore v. Moore*, 360 S.C. 241, 253, 599 S.E.2d 467, 473 (Ct. App. 2004). Here, the parties owed one another varying duties at different times. However, Kaj has not shown that Defendants breached any of these duties.
19. Prior to incorporation of VP, Krish, Kaj, and Vijay all acted as promoters for the organization. “A promoter of a corporate entity is a person who acts to organize the entity by preparing it to transact business and establishing it.” *Hansen v. Fields Co., LLC*, 2011-190886, 763 S.E.2d 31, 34 n.5, 2014 WL 4087772, at **3 n.5 (S.C. Aug. 20, 2014) (citing *Bivens v. Watkins*, 313 S.C. 228, 233 n. 5, 437 S.E.2d 132, 135 n. 5 (Ct. App. 1993)). Prior to incorporation, promoters share a

fiduciary duty to the corporation and to one another similar to that of partners. *Bivens*, 313 S.C. at 232 n.4, 437 S.E.2d at 135 & nn. 4-5. However, once "the corporation has been established and an independent board of directors takes charge," the parties cease acting as promoters. *Old Dominion Copper Mining & Smelting Co. v. Bigelow*, 203 Mass. 159, 188, 89 N.E. 193, 206 (1909) *aff'd*, 225 U.S. 111, 32 S. Ct. 641, 56 L. Ed. 1009 (1912); *Pub. Inv. Ltd. v. Bandeirante Corp.*, 740 F.2d 1222, 1235 n.72 (D.C. Cir. 1984); 18 Am.Jur.2d Corporations §§ 104, 107.

20. Once VP was fully formed, Krish, Kaj, and Vijay were no longer promoters and took on their respective roles as officers and directors. Officers and directors have statutory and common law fiduciary responsibility to carry out their duties (1) in good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner he reasonably believes to be in the best interests of the corporation and its shareholders. S.C. Code Ann. §§ 33-8-300(a), 420(a).
21. Kaj has not demonstrated any actions by the Defendants that constitute a breach of fiduciary duty as promoters or as officers and directors.
22. Kaj relies on his allegation that the Defendants usurped a corporate opportunity from him and VP. However, no such opportunity existed in this case.
23. "To establish a breach of fiduciary duty by usurping a corporate opportunity, the corporation must prove that an officer or director misappropriated a business opportunity that properly belongs to the corporation." *Landon v. S & H Mktg. Grp., Inc.*, 82 S.W.3d 666, 681 (Tex. App. 2002) (citation omitted).

24. A corporate opportunity is something that a company has an "interest or reasonable expectancy" in. *Guth v. Loft, Inc.*, 23 Del. Ch. 255, 272-73, 5 A.2d 503, 511 (1939); see also *Aqua-Culture Technologies, Ltd. v. Holly*, 677 So. 2d 171, 183 (Miss. 1996). If a company is unable to undertake an opportunity, then it is not, by definition, a corporate opportunity. *Straight v. Goss*, 383 S.C. 180, 209-10, 678 S.E.2d 443, 454, 460 (Ct. App. 2009). Once Verizon rejected VP's bid to become an agent, VP lost any expectancy in the opportunity and was unable to undertake it. From that point on, as Professor McWilliams testified, the business purpose of VP was thwarted and the parties owed one another no particular duties, at least insofar as related to pursuing opportunities with Verizon.
25. Where, as in this case, "a corporation is unable to avail itself of an opportunity, its employee, officer or director is free to exploit it." *Beane v. Beane*, 856 F. Supp. 2d 280, 311 (D.N.H. 2012) (citations omitted); *Energy Res. Corp., Inc. v. Porter*, 14 Mass. App. Ct. 296, 300, 438 N.E.2d 391, 394 (1982); See also, *Looney v. M-Squared, Inc.*, 262 Ga. App. 499, 502, 586 S.E.2d 44, 48 (2003); *A. Teixeira & Co., Inc. v. Texeira*, 699 A.2d 1383, 1388 (R.I. 1997); *Field v. Allyn*, 457 A.2d 1089, 1099 (Del. Ch. 1983); *Fliegler v. Lawrence*, 361 A.2d 218, 220 (Del. 1976); *A. C. Petters Co., Inc. v. St. Cloud Enterprises, Inc.*, 301 Minn. 261, 266, 222 N.W.2d 83, 86 (1974); *Schildberg Rock Products Co. v. Brooks*, 258 Iowa 759, 769, 140 N.W.2d 132, 138 (1966); *Solimine v. Hollander*, 128 N.J. Eq. 228, 247, 16 A.2d 203, 215 (Ch. 1940); 18B Am.Jur.2d Corporations §§ 1542, 1544, 1551.

26. Where a third-party refuses to allow a company to use its product, and the company is unable to pursue that market, employees of that company are freely able to pursue that "outside opportunity" for their own gain. See *Sci. Accessories Corp. v. Summagraphics Corp.*, 425 A.2d 957, 963-64 (Del. 1980); 18B Am.Jur.2d Corporations § 1551. "An opportunity may be embraced by a director as his own without accountability to the corporation if the corporation sought without success to obtain it." *Nw. Terra Cotta Corp. v. Wilson*, 74 Ill. App. 2d 38, 47, 219 N.E.2d 860, 864 (Ill. App. Ct. 1966) (citing 19 Am.Jur.2d, Corporations, § 1313); see also *Puritan Med. Ctr., Inc. v. Cashman*, 413 Mass. 167, 178, 596 N.E.2d 1004, 1011 (1992). Here, Verizon refused to do business with VP and left Krish free to pursue the opportunity on his own.
27. Likewise, if a company abandons what may have once been a corporate opportunity, then it cannot succeed in a claim against an employee that chooses to pursue it. See *Landon*, 82 S.W.3d at 681; *Maryland Metals, Inc. v. Metzner*, 282 Md. 31, 47, 382 A.2d 564, 573 (1978); 18B Am.Jur.2d Corporations § 1551. Once Verizon rejected VP, the evidence indicates that VP was abandoned and its sole corporate purpose had been thwarted. Krish was therefore free to endeavor to work with Verizon on his own.
28. Kaj's testimony that he directed Krish to continue to pursue the Verizon agency relationship on behalf of VP is not credible, as it is not supported by any other evidence. In fact, the evidence presented at trial indicates that Kaj had moved on to other ventures.

29. Professor McWilliams's testimony regarding the abandonment of VP by Kaj and the Defendants is credible and based on documentary evidence. Professor Freeman's testimony on this topic is, therefore, disregarded because it is not based on supporting evidence other than Kaj's self-serving testimony.
30. Furthermore, notwithstanding Verizon's denial of VP's application, in the view of this Court, the agency relationship with Verizon was not a "corporate opportunity" within the meaning of the law. Corporate opportunities are business prospects that are unique and particular, including things such as the:

- **Purchase/sale of share of unique stock.** See *Kohls v. Duthie*, 791 A.2d 772 (Del. Ch. 2000); *Yiannatsis v. Stephanis by Sterianou*, 653 A.2d 275 (Del. 1995); *Beam ex rel. Martha Stewart Living Omnimedia, Inc. v. Stewart*, 833 A.2d 961 (Del. Ch. 2003).
- **Purchase of a unique company related to an ongoing enterprise.** See *Rapistan Corp. v. Michaels*, 511 N.W.2d 918 (Mich. Ct. App. 1994).
- **Purchase of unique corporate assets.** See *Collie v. Becknell*, 762 P.2d 727 (Colo. App. 1988).
- **Purchase of unique real estate.** See *Carolina Park Assocs. LLC v. Marino*, 400 S.C. 1, 732 S.E.2d 876 (2012); *DiMaggio v. Rosario*, 950 N.E.2d 1272 (Ind. Ct. App. 2011); *Babb v. Estate of Watson*, No. 2008-UP-247, 2008 WL 9841508 (Ct. App. May 2, 2008); *Straight*, 383 S.C. 180, 678 S.E.2d 443; *Ne. Harbor Golf Club, Inc. v. Harris*, 725 A.2d 1018 (Me. 1999).
- **Acquisition of a unique and exclusive contract.** See *Klinicki v. Lundgren*, 695 P.2d 906 (Or. 1985).

Here, an agency relationship with Verizon was not a unique business opportunity such as these. Even after P Comm entered into its agency agreement with Verizon, anyone, including Kaj and VP, could submit an application to acquire one. Therefore, because Kaj and/or VP could have done this, the agency relationship P Comm entered into with Verizon was not a corporate opportunity.

**Accounting
(Cause of Action 5)**

31. There is no basis for seeking an accounting from the Defendants. First, Kaj has not demonstrated liability for any cause of action that would enable him to procure an accounting to establish a measure of damages. Secondly, while partners and shareholders may sometimes obtain an accounting, neither situation is applicable here.
32. "A court should have broad discretion to fashion the most appropriate remedy to resolve the dispute." S.C. Code Ann. § 33-18-410 cmt.1. Therefore, even where the prerequisites for an accounting may be met, this Court may determine the remedy unsuitable.
33. Partners may claim an accounting only:
- (1) if he is wrongfully excluded from the partnership business or possession of its property by his copartners;
 - (2) if the right exists under the terms of any agreement;
 - (3) as provided by § 33-41-540; or
 - (4) whenever other circumstances render it just and reasonable.

S.C. Code Ann. § 33-41-550.² As an initial matter, however, it stands to reason that a party must first show the existence of a partnership in order to claim partner's accounting rights. 59A Am.Jur.2d Partnership § 15 ("A partnership and a corporation are two different and distinct entities."); see also *Martinez v. Posner, Martinez, & Padgett*, 385 So. 2d 525, 528 (La. Ct. App. 1980). Here,

² § 540 provides "Every partner must account to the partnership for any benefit and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct or liquidation of the partnership or from any use by him of its property." S.C. Code Ann. § 33-41-540(1).

however, there was never a partnership for Kaj to claim entitlement to an accounting. There is no credible evidence to contradict this finding.

34. Similarly, shareholders of a statutory close corporation may petition for an accounting where there is deadlock, grounds for dissolution, or conduct otherwise "illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner" perpetrated by directors or persons in control. S.C. Code Ann. §§ 33-18-400, 410(a)(5). Thus, in order to petition the court for an accounting, it stands to reason that the claimant must show two things: first, the claimant must be shareholder; second, the claimant must show grounds for dissolution or other misfeasance by directors or control persons. Insofar as Kaj seeks an accounting as a shareholder of VP, his claim is untenable because that corporation no longer exists and there is nothing to account. Moreover, Kaj provides no basis for his claim for an accounting of P Comm. He is neither a partner nor a shareholder of that company.

**Breach of Fiduciary Duty for Partnership Liability
(Cause of Action 6)**

35. Partners are held to a high level of fiduciary duty with one another. *See Kuznik v. Bees Ferry Associates*, 342 S.C. 579, 597, 538 S.E.2d 15, 24 (Ct. App. 2000) (citing 59A Am.Jur.2d Partnership § 420 (1987)).
36. There is, however, no partnership in this case. There is no credible evidence to support a different finding.
37. Therefore, Kaj is unable to support a showing of a violation of partnership fiduciary duties where no such entity ever existed.

**Equitable Disgorgement
(Cause of Action 10)**

38. Because Kaj is unable to show that Defendants are liable under any of the claims pled, he is not entitled to equitable disgorgement. Disgorgement is an equitable remedy, not a cause of action. Essentially, disgorgement acts like restitution, seeking to remove assets from parties that are obtained by ill-gotten means and result in unjust enrichment. See *Great-W. Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 229 (2002). Because disgorgement is merely a remedy once liability is established, claimants must first demonstrate entitlement thereto. See *Verenes v. Alvanos*, 387 S.C. 11, 17, 690 S.E.2d 771, 773 (2010). Plaintiff has failed to demonstrate any liability in this case.

**Constructive Trust
(Cause of Action 11)**

39. A constructive trust is a remedy, not a cause of action. Therefore, in order to demonstrate entitlement thereto, a claimant must first establish liability. Because Kaj is unable to show that Defendants are liable under any of the claims pled, he is not entitled to a constructive trust. "A constructive trust results when circumstances under which property was acquired make it inequitable that it be retained by the one holding legal title. These circumstances include fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution." *Gordon v. Busbee*, 397 S.C. 119, 141, 723 S.E.2d 822, 834 (Ct. App. 2012) (citing *Macaulay v. Wachovia Bank of S.C., N.A.*, 351 S.C. 287, 294, 569 S.E.2d 371, 375 (Ct. App. 2002)).

**Declaratory Judgment
(Cause of Action 13)**

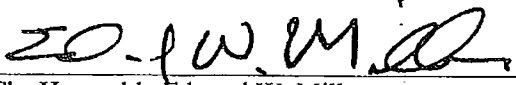
40. As discussed throughout this Order, Kaj is unable to show that Defendants are liable under any of the claims pled. It follows, then, that Kaj is not entitled to a declaratory judgment. Where a justiciable case or controversy exists, a plaintiff may seek to have the court declare "rights, status, and other legal relations." *Tourism Expenditure Review Comm. v. City of Myrtle Beach*, 403 S.C. 76, 83, 742 S.E.2d 371, 375 (2013); S.C. Code Ann. § 15-53-20; *see also* S.C. Code Ann. § 15-53-40 ("A contract may be construed either before or after there has been a breach thereof."). However, nothing under the Declaratory Judgment Act removes or otherwise alters a plaintiff's obligation to prove his or her legal case. *See Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004) (citations omitted) ("A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character.").
41. Alternatively, to the extent Kaj is entitled to a declaratory judgment, this Court hereby declares that none of the duties owed by the Defendants to Kaj were violated and he is not entitled to any of the relief he seeks.

CONCLUSION AND JUDGMENT

For the reasons stated herein, this Court finds in favor of Defendants on all counts and hereby enters a judgment accordingly.

[Signature Page to Follow]




The Honorable Edward W. Miller
Judge, Thirteenth Judicial Circuit

December 30, 2014
Greenville, South Carolina

12/31/15

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2011CP2307338

Pankaj Patel vs. Krish Patel

FILED-CLERK
GREENVILLE, S.C.
PAUL S. WICK
2014 DEC 31 PM 11:04

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON):

☐ Rule 12(b), SCRPC;
SCRPC (Vol. Nonsuit);

☐ Rule 43(k), SCRPC (Settled);

☐ Rule 41(a),
☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON):

☐ Rule 40(j) SCRPC;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ Bankruptcy;
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

☐ Affirmed;

☐ Reversed;

☐ Remanded;

☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 31st day of December, 2014, and a copy mailed first class this 31st day of December, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

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Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Pankaj Patel, Individually and Derivatively
on behalf of Nominal Defendant, VP
Enterprises, Inc.

Plaintiff,

v.

Krish Patel, Vijay Patel, and
P Communications, Inc.,

Defendants,

and,

VP Enterprises, Inc.,

Nominal Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2011-CP-23- 7338

SUMMONS

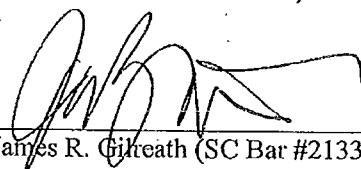
FILED-CLERK OF COURT
GREENVILLE, S.C.
2011 NOV 14

2011 NOV -14 A 11:39

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is served upon you herewith, and to serve a copy of your answer to the said Complaint on the subscribers at their office located at 110 Lavinia Avenue (29601), Post Office Box 2147, Greenville, South Carolina 29602, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

THE GILREATH LAW FIRM, P.A.

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ATTORNEYS FOR PLAINTIFF

November 4, 2011
Greenville, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Pankaj Patel, Individually and Derivatively
on behalf of Nominal Defendant, VP
Enterprises, Inc.

Plaintiff,

v.

Krish Patel, Vijay Patel, and
P Communications, Inc.,

Defendants,

And,

VP Enterprises, Inc.,

Nominal Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2011-CP-23- 7338

VERIFIED COMPLAINT
(Jury Trial Demanded)

FILED: CLERK OF COURT
GREENVILLE CO. S.C.
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The Plaintiff, complaining of the Defendants, would respectfully show to the
Court as follows:

GENERAL ALLEGATIONS

1. The Plaintiff, Pankaj Patel ("Kaj"), is a citizen and resident of Greenville County, South Carolina. Kaj brings this action both individually and on behalf of VP Enterprises, Inc., a South Carolina corporation whose principal place of business is in Greenville, South Carolina.

2. The Defendant, Krish Patel ("Krish"), is a citizen and resident of the county of Greenville, state of South Carolina. On information and belief Krish is an officer of VP Enterprises, Inc.

3. The Defendant, Vijay Patel ("Vijay"), is a citizen and resident of the county of Greenville, state of South Carolina. On information and belief, Vijay is an officer, stockholder and director of VP Enterprises, Inc.

4. The Defendant P Communications, Inc. is a South Carolina corporation which was formed on or about April 28, 2008. Its registered agent is Krish Patel and its principal place of business is in Greenville County, South Carolina.

5. This Court has jurisdiction over the parties and the subject matter of this action and venue is properly laid in Greenville County, South Carolina.

6. The Nominal Defendant, VP Enterprises, Inc. (sometimes hereinafter "VP" or "VP Enterprises") is a South Carolina corporation which was formed on or about January 28, 2008 with a principal place of business in Greenville County, South Carolina. Further details of its formation are outlined below.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

7. This is an action by Plaintiff Kaj Patel, individually and derivatively, on behalf of VP Enterprises, Inc. against certain officers and directors of VP Enterprises, Inc., namely the Defendants, Krish and Vijay for breach of the standards of conduct for directors and officers; for dissolution and/or purchase of the Plaintiff's shares for fraudulent, oppressive, and unfairly prejudicial conduct of the Defendant shareholders, directors and officers; for breach of fiduciary duty for diversion of corporate opportunities and assets; for breach of fiduciary duties as partners and/or joint venturers; for fraud, constructive fraud and negligent misrepresentation and unjust enrichment; for an accounting and disgorgement; for a declaratory judgment regarding the ownership of VP Enterprises Inc. and P Communications Inc.; and for violations of the South Carolina

Unfair Trade Practices Act. VP Enterprises, Inc. is named as a Nominal Defendant solely in a derivative capacity. This is not a collusive action to confer jurisdiction on this Court that it would not otherwise have.

8. Plaintiff, by and through his undersigned attorneys, brings this action upon personal knowledge as to himself and his own acts and upon the investigation conducted by his attorneys.

9. At all times relevant hereto Plaintiff Kaj Patel was a shareholder of VP Enterprises, and he will fairly and adequately represent the interests of VP Enterprises relevant to the Defendants' wrongful course of conduct alleged herein.

10. VP Enterprises, Inc. was formed with the assistance of Greenville attorney Allan Hill who also served as the certifying attorney on the Articles of Incorporation. The formation documents were drafted pursuant to the instructions of one or more of the individual parties who contacted Allan Hill on behalf of the corporation and the individual parties.

11. According to records recently obtained from the file of Attorney Allan Hill, the stockholders of VP Enterprises were Kaj and Vijay, each of whom was to be issued 50 shares of stock. The file of attorney Hill contains two unsigned stock certificates dated January 24, 2008, with Certificate #1 being for 50 shares to Vijay and certificate #2 being to Kaj for 50 shares with the understanding among all three individuals that Vijay would own 25 shares and Krish would also own 25 shares.

12. The Corporate Data sheet from attorney Hill's files, dated as of February 14, 2008, shows Kaj and Vijay as directors, Kaj as the President, Vijay as the Vice President, and Krish as the Secretary and Treasurer.

13. Pursuant to Rule 23(b)(1) SCRCP, no demand was made on VP Enterprises, Inc. and the Defendants, Krish and Vijay, since such a demand would have been futile as further outlined below.

14. The director Defendant of VP Enterprises, Inc., namely Vijay, and the Secretary/Treasurer, namely Krish, as more fully detailed herein, participated in, approved and/or permitted the wrongs alleged herein to have occurred, participated in efforts to conceal or disguise those wrongs from Kaj Patel as a stockholder and director of VP Enterprises, Inc., and/or negligently disregarded the wrongs complained of herein, and are not disinterested parties.

15. Because there are at most only three directors of VP and because there is no majority of independent directors capable of making a decision on the question of whether to bring this action, any demand on the inside directors who undertook the actions complained of would have been futile. Moreover, any demand would have requested that Vijay and Krish sue themselves which they will not do, thereby effectively making any demand futile.

FACTUAL ALLEGATIONS

16. In early to mid-2007, the Defendant Krish Patel had terminated his employment with Verizon Communications and joined into business with his father Vijay Patel in the hotel and real estate business. At or about this time, while discussing various real estate ventures with Krish and his father, Vijay, Kaj Patel asked Krish Patel about the possibility of establishing some type of business venture which would operate independent wireless communications stores under a license agreement with Verizon Wireless Communications. Krish informed Kaj that the Verizon idea was a very good

business opportunity and he would like to have his own Verizon store(s), but Verizon would probably never allow that since he was a former Verizon employee.

17. Kaj Patel then suggested that Krish give him some further details and later, in about November 2007, Krish shared various information with Kaj who began work on a proposed business plan for Verizon independent stores which would be operated between Kaj and Krish's father, Vijay, since Verizon presumably would not allow Krish to become an owner.

18. Kaj Patel along with Krish researched the upstate South Carolina area for potential store locations. Kaj and Krish rode together to examine various locations between December 2007 and May 2008. On one occasion an employee of Verizon named "Andre" rode with Kaj and Krish to inspect some of the locations they were considering for VP Enterprises. The parties were also considering hiring Andre as an employee of VP Enterprises.

19. In December of 2007 Kaj and Krish met, over a four day period, at Kaj's home to discuss various cash flow scenarios using spreadsheets Kaj had developed for the business. Kaj and Krish also drafted a business plan for VP Enterprises on Krish's computer for him to submit to Verizon. The business plan also included the potential store locations researched by Kaj Patel together with Krish Patel.

20. Under the proposed business plan, Vijay was to be the CEO and President, Kaj was to be Vice President, and Krish was to be the general manager. Kaj, Vijay and Krish all planned to be the co-owners of VP Enterprises and to share the profits therefrom. The object of the venture was stated in the business plan as follows:

To build the flagship agent store of Verizon Wireless in the district. Not only through sales and revenues but customer experience as well. To

provide training and support for store personnel [sic], maintaining excellent moral [sic] of all store employees. To create the best possible customer experience resulting not only in customer loyalty and increasing sales for the store, but also for Verizon Wireless. To hold store meetings that will result in the continued commitment of building one team, who, by working together will make this flagship agent store of the district.

21. The final business plan, which is dated December 6, 2007, was emailed to Kaj on or about December 4, 2007, and Krish received a marked up version from Kaj shortly thereafter. A copy of the version showing Kaj's revisions is attached to this complaint as Exhibit 1.

22. On or about December 19, 2007 Kaj sent an additional calculation worksheet to Krish for the new business plan and told Krish "I have not received your email regarding loan yet."

23. On January 6, 2008 Kaj emailed Krish and forwarded to him additional financial calculations in a worksheet form.

24. On information and belief this business plan was sent to Verizon, and on December 20, 2007, Kaj emailed Krish and requested that Krish send him the final version of the business plan that was sent to Verizon.

25. On February 8, 2008 Kaj emailed Krish a cell phone price list from a supplier in Hong Kong and asked "Will that work with Verizon?"

26. It was agreed that the ownership for the new venture, named VP Enterprises, Inc., would be 50% to Kaj, 25% to Krish, and 25% to Vijay. The members of the initial board of directors for VP Enterprises, Inc. were to be Vijay and Kaj.

27. Greenville attorney, Allan Hill represented Kaj, Vijay and Krish in the incorporation of VP Enterprises, Inc. and was responsible for drafting all of the initial corporate documents, the charter, stock certificates and initial minutes. The "VP" stood

for Vijay and Pankaj. The corporate charter was filed with the South Carolina Secretary of State on January 28, 2008.

28. On or about January 29, 2008, Kaj gave his check number 1015 in the amount of \$5,000 payable to VP Enterprises, Inc. to Krish to be deposited in the new business account for VP Enterprises, Inc.

29. Kaj, Krish and Vijay spent the next few months in discussions with Verizon Wireless while Kaj, Vijay and Krish reviewed locations throughout the Greenville, Easley, and Clemson, South Carolina areas for proposed new Verizon free-standing stores.

30. In the March-April 2008 time frame, the parties had at least three meetings with various Verizon personnel regarding a possible license operation with Verizon.

31. Shortly after the March-April meetings, Kaj was informed by Krish and Vijay that Verizon was denying any type of license operation with the new proposed venture; however, they gave Kaj no explanation or details for Verizon's unexpected actions.

32. Following what Kaj thought was a denial of any possible business operation with Verizon, the parties then looked at existing Verizon stores that might be on sale and continued to do so up until July of 2008.

33. On July 24, 2008, Kaj emailed Krish regarding a wireless business opportunity offered by the Sunbelt Business Network and wrote "check this link out for wireless business for sale....." Krish replied the next day and said "when I clicked on the link it came up unavailable?"

34. Shortly thereafter, in the August to September 2008 time frame, Kaj, while visiting Vijay at his home, discovered that Krish had just attended the grand opening of a Verizon store on Pelham Road at a specific location the three parties, namely Kaj, Vijay, and Krish, had previously reviewed and discussed as a possible store location. Kaj immediately inquired of Krish as to what was going on as this should have been in the VP Enterprises, Inc. name that Kaj, Vijay and Krish were in the process of forming and organizing. Vijay and Krish told Kaj that since Verizon would not approve a license with their proposed entity, VP Enterprises, Inc., Krish had purchased an interest in an existing corporation which had a license for a Verizon store. Kaj was not at this time told the name of this corporation. However he was told this corporation had been formed by Corby Phillips and that Krish had purchased an interest in Mr. Phillips' corporation in order "to get his foot in the door" with Verizon. Krish and Vijay then assured Kaj that the three of them (Kaj, Krish and Vijay) would continue to pursue their original plans through VP Enterprises as contemplated in the business plan (outlined in Paragraphs 19-26 above) as soon as they could figure a way to "kick" Corby Phillips out of P Communications. Upon learning this information, Kaj inquired of Vijay as to whether Vijay was involved in the Pelham Road store with Corby Phillips, and Vijay informed Kaj that he (Vijay) had no involvement.

35. Following this development, Kaj was told by Vijay that it appeared the \$5,000 he had put in VP Enterprises was not going anywhere and suggested that the \$5,000 be moved to another venture they owned named KVP Investments which was in the real estate business.

36. Following these developments Kaj, during the period between August of 2008 and May of 2010 (except during January-May of 2010 when he was out of the country), would, at least twice a week, meet with Vijay, on various matters. During the course of these numerous meetings, he was never told any more about the status of Krish and the new Verizon store venture with Corby Phillips.

37. In the spring of 2010, Kaj became aware of what he thought would be an excellent opportunity for a Verizon store in the Columbus-Tryon, North Carolina area. He immediately inquired of Krish to see if this would be something the three of them could pursue. While they were pursuing the potential Columbus-Tryon store operation, Krish came back to Kaj with an opportunity to buy seven Verizon stores in the Columbia-Florence, South Carolina area. Kaj informed him that he was only interested in a 50-50 equity partnership with Kaj managing those stores as outlined in the original VP Enterprises business plan.

38. Krish assured Kaj that he was agreeable to that proposition and informed him they should shortly be able to get back on track with their original VP Enterprises business plan. At this meeting they shook hands and further confirmed what Kaj had always thought was a 50-50 ownership in any Verizon business deal. At this point Krish said he would meet with attorney Allan Hill and have him draw up the appropriate legal paperwork.

39. However, after a few more weeks of discussions on this proposal between Kaj and Krish, which sometimes included Krish's "CFO" named Bruce, Kaj was informed that Krish only wanted Kaj to be an employee, not an owner. Krish tried to

convince Kaj that he would be getting the same benefit as a 50% owner without having to invest any money.

40. It was at or about this time, namely the spring of 2010, that Krish informed Kaj that he had "kicked" Mr. Corby Phillips out of the corporation he and Mr. Phillips had started in August of 2008. It was at this time in 2010 when Kaj first was told the name of the Corby Phillips related corporation, which was P Communications, Inc. It was at this same time, namely the spring of 2010, that Krish told Kaj there was a lot of pain and anguish in getting Mr. Phillips out of P Communications, Inc. and that it had cost him in excess of \$30,000.

41. It was at this same time that Krish informed Kaj that he was operating eight or nine Verizon stores under P Communications, Inc. He also told him he was operating all of his Verizon stores as separate limited liability companies which were owned/controlled by P Communications, Inc. Following this revelation, Kaj discovered, for the first time, from a review of records in the South Carolina Secretary of State's file, that P Communications had been formed on April 28, 2008 by Kaj's attorney, Allan Hill. At this time Kaj also discovered that Corby Phillips was removed as the registered agent on December 4, 2008 and Krish was named as the new registered agent on that same date. He has since learned that Corby Phillips is or was the owner of a restaurant known as "ROLY POLY SANDWICHES" which is located at 1616 Woodruff Road, Greenville, South Carolina, and is either next door or very near to the Verizon Store where Krish worked when he was employed with Verizon.

42. Upon becoming aware of all these facts, Kaj immediately confronted Krish and told him that he and Vijay had wrongfully concealed their extensive

involvement with Verizon and P Communications from him. At this time he asked Krish what Vijay's involvement was and Krish informed him that Vijay, contrary to what Vijay told Kaj in August of 2008, had always been involved in the Verizon venture and was involved in all the Verizon stores that Krish was involved in.

43. During this meeting Kaj laid out the time line of his involvement with Krish and Vijay, as outlined above in this complaint. In subsequent meetings Kaj held separately with Krish and Vijay, Kaj forthrightly told each of them that they had "backstabbed" him. At the request of Krish, Kaj met with Krish on May 25, 2011 at Sabroso restaurant on Woodruff Road. After reviewing documents on his laptop computer, Krish confirmed that Kaj's timeline of events related to VP Enterprises and the Verizon Wireless business was basically correct. Kaj asked Krish "do you not see anything wrong with your conduct?" Krish replied "I was keeping my options open."

44. In October of 2011 Plaintiff, for the first time became aware of the website of a company known as Wireless Communications. Its web address is: www.wirelesscommunicationsc.com. Plaintiff is informed and believes that this company is owned and/or controlled by P Communications, Inc. and/or Vijay and Krish.

45. According to the website of Wireless Communications, it owns and/or operates twenty-three (23) Verizon Wireless stores in Georgia and North and South Carolina in the following locations: Augusta Road, Pelham Road, Main Street and Haywood Road, all of which are in Greenville, South Carolina; Simpsonville/Five Forks on Woodruff Road in Greenville County; Anderson, Central, Chapin, Duncan, Hwy 153 in Powdersville, Irmo/Ballentine, Laurens, Lexington, Manning, Marion and Newberry,

all in South Carolina; Southport, Conyers, Lawrenceville, Duluth and Winder, all in Georgia; and Monroe, North Carolina.

46. The original business plan originally drafted by Kaj and revised by both Kaj and Krish envisioned ten Verizon stores, with locations on Woodruff Road, Pelham Road, Augusta Road and Haywood Road, in Greenville, Butler Road in Mauldin, Blackstock Road in Spartanburg, Highway 9 in Spartanburg, Highway 123 in Easley and stores in Anderson and Gaffney, South Carolina.

47. Thus, it appears that Krish has now established Verizon stores at all ten locations envisioned in the original business plan drafted by Kaj, with the exception of Gaffney. These stores and the others since developed by the Defendants are in the exact line of business for which VP Enterprises was formed. VP Enterprises had an actual and expectant interest in developing these opportunities and had the financial ability to undertake the development of these Verizon stores.

48. The Wireless Communications website, referenced above, under the heading "Leadership Team" lists Krish Patel as President and Vijay Patel as Vice President.

49. According to a recent article in the Greenville business magazine, *Town*, entitled "Hot Wire", Krish, at the end of 2009, had opened five Verizon stores which had reached \$3.3 million in sales. At the time this article was published, which Plaintiff believes was on or about September 30, 2011, Krish reportedly had 23 stores with plans to reach 30 stores by the end of 2011 and 50 by the end of 2012. According to this article the Defendant Vijay Patel is a vice president of Krish's wireless Verizon store business.

50. On June 22, 2011 the South Carolina Secretary of State filed a Certificate of Administrative Dissolution of VP Enterprises for failing to pay taxes and/or failing to deliver its annual report to the Department of Revenue. Defendant Vijay Patel was the registered agent to whom the Secretary of State on information and belief mailed the pre-dissolution sixty-day statutory notice of filing deficiencies at his home address listed on file with the Secretary of State's office. Neither Vijay Patel nor his son Krish Patel informed Kaj Patel of the pre-dissolution sixty-day statutory notice or the subsequent administrative dissolution. Plaintiff Kaj Patel is informed and believes Vijay and Krish Patel knew of the corporate filing deficiencies of VP Enterprises and the administrative dissolution, yet failed as officers and director to properly carry out the required administrative filings for the benefit of VP Enterprises and its other stockholder Kaj Patel.

FOR A FIRST CAUSE OF ACTION

(Dissolution and/or Buyout of Shares of VP Enterprises under §33-14-300 *et. seq.*)

51. All allegations stated above are realleged as if fully repeated herein.

52. This cause of action arises pursuant to §§ 33-14-300 and -310 of the South Carolina Business Corporation Act.

53. Because of the actions and events outlined above, the economic purpose of VP Enterprises has been unreasonably frustrated as it is not reasonably possible for the parties to continue owning the corporation together. The actions of Vijay Patel and Krish Patel relating to the business of VP Enterprises have made it impracticable to carry on business with said Defendants. Further, Defendants Vijay Patel and Krish Patel, as the shareholders in control of VP Enterprises, have acted, are acting, or will act in a manner

that is illegal, oppressive, fraudulent, or unfairly prejudicial to the Plaintiff and VP Enterprises.

54. The Plaintiff is a 50% owner in VP Enterprises, Inc. with Defendants Vijay Patel and Krish Patel owning the other half. The actions of Vijay Patel and Krish Patel as outlined above have severely damaged the Plaintiff's reasonable expectations to be realized from his interest in VP Enterprises, Inc. Vijay Patel and Krish Patel have acted in a manner unfairly prejudicial and oppressive to the Plaintiff within the meaning of South Carolina Code § 33-14-300. The Plaintiff is therefore entitled to have VP Enterprises, Inc. dissolved, or as an alternative to dissolution to be paid the fair value of his undiluted stock interest in VP Enterprises, Inc. pursuant to S.C. Code § 33-14-310.

FOR A SECOND CAUSE OF ACTION
(Violation of Standards of Conduct for Directors under § 33-8-300 against Vijay Patel)

55. All allegations stated above are realleged as if fully repeated herein.

56. Defendant Vijay Patel as a director of VP Enterprises has failed to discharge his duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he reasonably believes to be in the best interests of the corporation and its other shareholder Kaj Patel. Specifically, Vijay Patel diverted a corporate opportunity of VP Enterprises to develop, open, and operate Verizon Wireless stores under the name of VP Enterprises and instead usurped such opportunity for P Communications. Said Defendant negligently and intentionally failed to perform his duties as director in that he permitted property, property rights, and contractual rights of VP Enterprises to be diverted to Defendant P Communications for the personal benefit of Vijay Patel and his son Krish Patel and for

the benefit of P Communications, all to the detriment of VP Enterprises and Plaintiff Kaj Patel.

57. While Defendant Vijay Patel served as a director of VP Enterprises, he negligently, carelessly and intentionally failed to perform his duties as director so that assets of VP Enterprises were mismanaged, wasted and diverted to Defendant P Communications through his failure to develop the business opportunities associated with the Verizon Wireless franchises. He also failed to oversee critical administrative duties of which he had notice, such as the failure to pay necessary taxes and/or file annual report(s), and to correct such deficiencies when notified. Plaintiff Kaj Patel has thereby suffered great loss, and the value of said Plaintiff's stock and dividends have suffered great loss thereby damaging the Plaintiff as a shareholder.

58. Plaintiff Kaj Patel and Nominal Defendant VP Enterprises are therefore entitled to damages both actual and punitive, constructive trust on the assets and shares of P. Communications and assets of Vijay Patel, for disgorgement of Defendant Vijay Patel's ill-gotten gains and other equitable relief.

FOR A THIRD CAUSE OF ACTION
(Violation of Standards of Conduct for Officers under § 33-8-420 against Vijay Patel and Krish Patel)

59. All allegations stated above are realleged as if fully repeated herein.

60. Defendants Vijay Patel and Krish Patel, as officers of VP Enterprises, have failed to discharge their duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner they reasonably believe to be in the best interests of the corporation and its other shareholder Kaj Patel. Specifically, Vijay Patel and Krish Patel diverted a corporate

opportunity of VP Enterprises to develop, open, and operate Verizon Wireless stores under the name of VP Enterprises and instead usurped such opportunity for P Communications. Said Defendants negligently and intentionally failed to perform their duties as officers in that they permitted property, property rights, and contractual rights of VP Enterprises to be diverted to Defendant P Communications for the personal benefit of Vijay Patel and Krish Patel and for the benefit of P Communications, all to the detriment of VP Enterprises and Plaintiff Kaj Patel.

61. While Defendants Vijay Patel and Krish Patel served as officers of VP Enterprises, they negligently, carelessly and intentionally failed to perform their duties as officers so that assets of VP Enterprises were mismanaged, wasted and diverted to Defendant P Communications through their failure to develop the business opportunities associated with the Verizon Wireless franchises. They also failed to oversee critical administrative duties of which they had notice, such as the failure to pay necessary taxes and/or file annual report(s), and to correct such deficiencies when notified. Plaintiff Kaj Patel has thereby suffered great loss, and the value of said Plaintiff's stock and dividends have suffered great loss thereby damaging the Plaintiff as a shareholder.

62. Plaintiff Kaj Patel and Nominal Defendant VP Enterprises are therefore entitled to damages both actual and punitive, constructive trust on the assets and shares of P. communications and assets of Vijay Patel, for disgorgement of Defendants Vijay Patel's and Krish Patel's ill-gotten gains and other equitable relief.

**FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duties against All Defendants)**

63. All allegations stated above are realleged as if fully repeated herein.

64. While individual Defendant Vijay Patel was a director, and individual Defendants Vijay Patel and Krish Patel were officers of VP Enterprises, they negligently, carelessly and intentionally failed to perform the duties of director and officers so that assets and corporate opportunities of VP Enterprises were mismanaged, wasted, diverted and siphoned off to Defendant P. Communications. VP Enterprises thereby suffered great loss, and the value of the stock of the Plaintiff was greatly reduced. Plaintiff Kaj Patel and VP Enterprises lost large gains from the wasting of VP Enterprises' business opportunities by the diversion of the Verizon Wireless business to P Communications.

65. Defendants Vijay Patel and Krish Patel permitted property, property rights, business methods and contractual rights of VP Enterprises to be diverted to Defendant P Communications for the personal advantage of Defendants Vijay Patel and Krish Patel.

66. Plaintiff Kaj Patel and Nominal Defendant VP Enterprises are therefore entitled to damages both actual and punitive, constructive trust on the assets and shares of P. Communications and assets of Vijay Patel, for disgorgement of Defendants Vijay Patel's and Krish Patel's ill-gotten gains and other equitable relief.

**FOR A FIFTH CAUSE OF ACTION
(Accounting from All Defendants)**

67. All allegations stated above are realleged as if fully repeated herein.

68. To the extent Defendants Vijay Patel and Krish Patel were not functioning as officers and/or directors of the corporate enterprise VP Enterprises, said Defendants were acting as partners and/or joint venturers with the Plaintiff Kaj Patel in developing a business organization for the operation of Verizon stores.

69. Defendants Vijay Patel and Krish Patel were the signatories to the bank account of VP Enterprises and controlled the financial records of VP Enterprises. They also have controlled all the accounting and financial records of P Communications to the complete exclusion of Plaintiff Kaj Patel. The Plaintiff is entitled to an accounting of both VP Enterprises, whether functioning as a partnership and/or joint venture or as a corporation, and P Communications from all the Defendants for all activities related to VP Enterprises and the gains diverted from VP Enterprises to P Communications.

**FOR A SIXTH CAUSE OF ACTION
(Breach of Fiduciary Duty for Partnership Liability)**

70. All allegations stated above are realleged as if fully repeated herein.

71. To the extent Defendants Vijay Patel and Krish Patel were not functioning as officers and/or directors of the corporate enterprise VP Enterprises, said Defendants were acting as partners and/or joint venturers with the Plaintiff Kaj Patel in developing a business organization for the operation of Verizon stores.

72. As partners and/or joint venturers with Plaintiff Kaj Patel, Defendants Vijay Patel and Krish Patel owed their partner a fiduciary duty. Instead, said Defendants carelessly and intentionally failed to perform their duties as partners and joint venturers so that assets and corporate opportunities of VP Enterprises were mismanaged, wasted, diverted and siphoned off to Defendant P Communications. The partnership interest of Kaj Patel in VP Enterprises thereby suffered great loss, the value of the partnership interest of the Plaintiff was greatly reduced, and Plaintiff Kaj Patel and VP Enterprises lost large gains from the wasting of VP Enterprises' business opportunities by the diversion of the Verizon Wireless business to P Communications.

73. Defendants Vijay Patel and Krish Patel permitted property, property rights, business methods and contractual rights of VP Enterprises to be diverted to Defendant P Communications for the personal advantage of Defendants Vijay Patel's and Krish Patel's to the detriment of Plaintiff Kaj Patel and VP Enterprises.

74. Plaintiff Kaj Patel and Nominal Defendant VP Enterprises are therefore entitled to damages both actual and punitive, constructive trust on the assets and shares of P. communications and assets of Vijay Patel, for disgorgement of Defendants Vijay Patel's and Krish Patel's ill-gotten gains and other equitable relief.

**FOR A SEVENTH CAUSE OF ACTION
(Fraud as To Defendants Vijay Patel and Krish Patel)**

75. All allegations stated above are realleged as if fully repeated herein.

76. Defendants Vijay Patel and Krish Patel made representations to Plaintiff Kaj Patel that they would be developing a business with said Plaintiff for owning and operating multiple Verizon stores as more fully stated above.

77. Said representations were false and were also material to the Plaintiff in that the representations induced him to invest money in VP Enterprises and induced him to rely on the information provided to him by the Defendants Vijay Patel and Krish Patel concerning management decisions and the progress of store development opportunities for VP Enterprises.

78. Defendants Vijay Patel and Krish Patel knew their representations were false or had a reckless disregard for the truth of such representations.

79. Said Defendants intended that Plaintiff Kaj Patel act upon their representations about the development of the Verizon Wireless business through VP Enterprises.

80. Plaintiff Kaj Patel was ignorant of the falsity of the representations of Defendants Krish Patel and Vijay Patel. Said Plaintiff therefore relied on the representations of Defendants Vijay Patel and Krish Patel.

81. Plaintiff Kaj Patel had a right to rely on the representations of Defendants Vijay Patel and Krish Patel since the representations were pertaining to matters peculiarly within their knowledge.

82. Plaintiff Kaj Patel was consequently and proximately injured by his reliance on said Defendants' false representations.

83. Plaintiff Kaj Patel is therefore entitled to actual and punitive damages and for the imposition of a constructive trust on the Defendants' Vijay Patel and Krish Patel ill-gotten gains.

**FOR AN EIGHTH CAUSE OF ACTION
(Constructive Fraud)**

84. All allegations stated above are realleged as if fully repeated herein.

85. Defendants Vijay Patel and Krish Patel made representations to Plaintiff Kaj Patel that they would be developing a business with said Plaintiff for owning and operating multiple Verizon stores as more fully stated above.

86. Said representations were false and were also material to the Plaintiff in that the representations induced him to invest money in VP Enterprises and induced him to rely on the information provided to him by the Defendants concerning management decisions and progress of store development opportunities for VP Enterprises.

87. Said Defendants intended that Plaintiff Kaj Patel act upon their representations about the development of the Verizon Wireless business through VP Enterprises.

88. Plaintiff Kaj Patel was ignorant of the falsity of said Defendants' representations. Said Plaintiff therefore relied on the representations of Defendants Vijay Patel and Krish Patel.

89. Plaintiff Kaj Patel had a right to rely on the representations of Defendants Vijay Patel and Krish Patel since the representations pertained to matters peculiarly within their knowledge.

90. The Plaintiff Kaj Patel was consequently and proximately injured by his reliance on said Defendants false representations.

91. Plaintiff Kaj Patel is therefore entitled to actual and punitive damages and for the imposition of a constructive trust on the Defendants Vijay Patel's and Krish Patel's ill-gotten gains.

**FOR A NINTH CAUSE OF ACTION
(Negligent Misrepresentation against Defendants Vijay Patel and Krish Patel)**

92. All allegations stated above are realleged as if fully repeated herein.

93. As stated above, Defendants Vijay Patel and Krish Patel made false representations to Plaintiff Kaj Patel that they would be developing a business with said Plaintiff for owning and operating multiple Verizon stores.

94. Said Defendants had a pecuniary interest in making the representations.

95. Defendants Vijay Patel and Krish Patel owed a duty of care to Plaintiff Kaj Patel to see that they communicated truthful information to him.

96. Said Defendants breached that duty by failing to exercise due care in their representations.

97. Plaintiff Kaj Patel justifiably relied on the representations of Vijay Patel and Krish Patel.

98. Plaintiff Kaj Patel suffered a pecuniary loss as the proximate result of his reliance upon said Defendants' misrepresentations.

99. Plaintiff Kaj Patel is therefore entitled to actual and punitive damages and for the imposition of a constructive trust on the Defendants Vijay Patel's and Krish Patel's ill-gotten gains.

**FOR A TENTH CAUSE OF ACTION
(Equitable Disgorgement against All Defendants)**

100. All allegations stated above are realleged as if fully repeated herein.

101. By taking control of all the assets, contract negotiations, and finances of VP Enterprises, the Defendants have been able to misappropriate all business opportunities and assets to themselves. The misappropriation of the business of VP Enterprises has enabled Defendants Vijay Patel, Krish Patel and P Communications to take over the profits and future growth of VP Enterprises.

102. The misappropriation of the business opportunities of VP Enterprises by the Defendants was done by fraudulent, illegal and inequitable means. Plaintiff Kaj Patel and Nominal Defendant VP Enterprises are entitled to an order of this court requiring said Defendants to disgorge the profits and revenues received by said Defendants from their business operations related to the Verizon stores.

**FOR AN ELEVENTH CAUSE OF ACTION
(Constructive Trust against All Defendants)**

103. All allegations stated above are realleged as if fully repeated herein.

104. Because of the diversion of valuable corporate opportunities away from VP Enterprises and Plaintiff Kaj Patel, said Plaintiff and VP Enterprises are entitled to

have a constructive trust placed on the assets and stock of P Communications for the benefit of Plaintiff Kaj Patel and VP Enterprises.

**FOR A TWELFTH CAUSE OF ACTION
(Violation of South Carolina Unfair Trade Practices Act)**

105. All allegations stated above are realleged as if fully repeated herein.

106. The actions of the Defendants constituted a trade within the meaning of S.C. Code Ann. § 39-5-20(a).

107. The repeated actions of Defendants Vijay Patel, Krish Patel and P Communications in repeatedly opening new Verizon stores without the knowledge of Plaintiff Kaj Patel, or the involvement of VP Enterprises through misrepresentations and fraudulent concealment as outlined above,, were unfair and deceptive acts and willful violations of the S.C. Unfair Trade Practices Act, § 39-5-20, *et seq.*, S.C. Code Ann. (1976).

108. The acts of Defendants Vijay Patel, Krish Patel and P Communications impacted upon the public interest of the people of the state of South Carolina and were committed repetitiously against the Plaintiff.

109. The Plaintiff is informed and believes that the Defendants have employed similar acts of illegal, oppressive, fraudulent, or unfairly prejudicial conduct against other individual shareholders in other comparable companies including; but not limited to, Corby Phillips and shareholders/partners in their closely-held hotel companies.

110. As a result of the unfair and deceptive trade practices committed, the Plaintiff has suffered losses for which willful violations the Plaintiff is entitled to treble actual damages and an award of reasonable attorney fees and costs.

FOR A THIRTEENTH CAUSE OF ACTION

(Declaratory Judgment)

111. All allegations stated above are realleged as if fully repeated herein.

112. The Plaintiff seeks a declaratory judgment pursuant to the Uniform Declaratory Judgment Act, S.C. Code Ann. §§ 15-53-10 through -140 determining that the assets of P Communications and/or the stock therein belong to VP Enterprises and that the Plaintiff is entitled to a 50% interest in P Communications.

WHEREFORE, the Plaintiff, individually, and on behalf of VP Enterprises, Inc., prays:

A. For judgment against the Defendants in favor of VP Enterprises Inc. for actual and punitive damages due to the breaches of fiduciary duty by Defendants Vijay Patel and Krish Patel, due to the breach of the standards of conduct for directors and officers, due to the fraud, constructive fraud, and negligent misrepresentation of the Defendants;

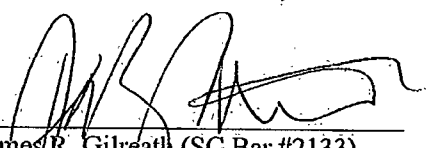
B. Alternatively, for judgment against the Defendants in favor of Kaj Patel for 50% of the damages to VP Enterprises, Inc. due to the breaches of fiduciary duty by Defendants Vijay Patel and Krish Patel; due to the breach of the standards of conduct for directors and officers, due to the fraud, constructive fraud, and negligent misrepresentation of the Defendants along with punitive damages thereon;

C. For an accounting, constructive trust, disgorgement and such other equitable relief as the Court deems just and proper;

D. For actual and treble damages, costs and attorney fees for violation of the South Carolina Unfair Trade Practices Act;

E. For such other relief as the Court deems just and proper.

THE GILREATH LAW FIRM, P.A.

By: 

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ATTORNEYS FOR PLAINTIFF

November 4, 2011
Greenville, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Pankaj Patel, Individually and Derivatively
on behalf of Nominal Defendant, VP
Enterprises, Inc.,

Plaintiff,

v.

Krish Patel, Vijay Patel, and
P Communications, Inc.,

Defendants,

and

VP Enterprises, Inc.,

Nominal Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2011-CP-23- 7338

VERIFICATION OF
COMPLAINT

FILED-CLERK OF COURT
GREENVILLE SOUTH
CAROLINA

2011 NOV -14 A 11:39

The undersigned, Pankaj Patel, being first duly sworn, hereby verifies that he has read the allegations of the foregoing Complaint against the Defendants and, based upon his own personal knowledge, such allegations are true and correct to the best of his knowledge, and, as to any allegations based upon information and belief, he believes them to be true and correct to the best of his good faith belief.

Further affiant sayeth not this 4th day of November 2011.

Pankaj Patel
Pankaj Patel

SWORN to and subscribed before me this
4th day of November 2011.

William M. Hogan
Notary Public for South Carolina
My commission expires: 11/30/13

Exhibit 1

Verizon Wireless Agent Business Plan



Company Description

This company is formed by a group of local entrepreneurs. This South Carolina based company will operate Verizon Wireless agent location(s). Location(s) will be exclusive retail location(s) to purchase Verizon Wireless service and equipment.

Objectives:

To build the flagship agent store of Verizon Wireless in the district, through sales, revenues and customer experience,

To provide training and support for store personal, maintaining excellent moral of all store employees.

To create the best possible customer experience resulting not only in customer loyalty and increasing sales for the store, but also for Verizon Wireless.

To hold regular staff meetings that will result in the continued commitment of building one team, which by working together will make our stores flagship agent stores of the district.

Development & Status

The company has not been incorporated and licenced yet. Upon meeting with Verizon Wireless approval committee, incorporation and licensing will be pursued immediately. The founders are Vijay Patel and Pankaj. Vijay will be the CEO & President. The agent location will be operated and managed by the company. Pankaj Patel will be the Vice President. Startup capital will be provided by Vijay and Pankaj Patel. Additional capital requirements of up to \$250,000.00 can be available. Bank of America and BB&T have established relationships with our principles.

A few locations sites were found in September 2007.

One definite location which is available for business is:

1618 Woodruff Road Greenville, SC 29607,

Earle, Furman, NAI has already been contacted to confirm availability.

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Comment: Krith, you may want to include a paragraph of your experience and accomplishments as verizon employee. I don't think that you being a previous employee would disqualify us. Call and check with them anonymously.

9 Additional locations have been preliminary outlined to be located as follows:

Pelham Road, Greenville, SC
Augusta Road, Greenville, SC
Haywood Road, Greenville, SC
Butler Road, Mauldin, SC
Blackstock Road, Spartanburg, SC
SC Highway 9, Spartanburg, SC
SC Highway 123, Easley, SC
Anderson, SC
Gaffney, SC

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Earle Furman, NAI (Broker in charge, Principal) has worked projects with our group previously. His firm will keep us up to date on availability of key retail locations for future expansions.

Expansion Time Line

Immediate Actions

After the business meets its projections within 3-6 months, we will start expanding locations starting with highest traffic count and market research. Our goal is to have all ten locations operating in the Upstate of South Carolina as fast as possible.

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Short Term

We would like to expand north and south of I-85. Our stretch goal would entail expanding vastly in the Carolina and Tennessee regions.

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Long Term

Our long term goal would be to expand along the east coast of the United States and to be recognized as agent leaders of Verizon Wireless.

Industry Analysis

The wireless industry is very competitive and demanding. Verizon Wireless is a recognized market

leader in this industry; mainly competing with GSM leader AT&T Mobility. Verizon Wireless has over 63.7 million customers and over 38 billion dollars in revenue. With Greenville's rank "highest cell phone per capita users" a few years ago; we believe there still is a high demand for wireless services. By offering the premium network Verizon Wireless and a strategically planned

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business team, both companies will benefit and succeed.

The wireless industry has evolved from trunk phones to the ability to down load your favorite song over the air, right off your handset device. There are over 162 million subscribers to the wireless industry and over \$118 billion in investments.

There's much more that is offered in today's wireless products. Verizon Wireless offers America's most reliable network with the industry fastest mobile broadband network. This is one of the few reasons why Verizon Wireless dominates the Carolinas/Tennessee market. With Carolina/Tennessee region being one of the most productive and revenue generating regions in the company, our company knows we can contribute to that success.

Products & Related Services

Our locations will have full intent to offer the complete line of products and wireless solutions provided by Verizon Wireless. By using a strategic inventory process control, we will be able to provide all different types of products to our consumers.

Service

A team of professional, motivated, positive and knowledgeable staff will be available for our customers.

Every customer will get the perfect customer experience from our sales team. All employees will go through extensive training when hired. The sales team will be intergraded with the communities' business events. All representatives will be trained on out bound and cold calling. Employees will be trained on how to generate small business leads as well as how to establish and create them. Employee will be trained on personal selling skills, customer first and probing models. Mystery shops will be conducted in order to evaluate and promote better performances. Employees will be trained on CDMA technology as well as evdo. As technology changes or improves all employees will be kept up to date.

Verizon Wireless VS. Competitors – AT&T, T-Mobile, Sprint, Alltel,

The competitive advantage will be taught to be sure our employees providing consumers with accurate information.

The Target Market

The market for the Verizon Wireless products is anyone age 6 and up. The Upstate, SC market is densely populated and increases to grow. With iCAR research center and south financial bank coming into Greenville, it will increase the demand for cellular users.

Market Location & Customers

Our first location will be placed on Woodruff Road, the highest traffic count and real estate value in the Upstate of SC.

Local population -- the county of Greenville with a year-round population of 500,000 +/-
Local businesses -- The Chamber of Commerce lists over 6400 businesses. Companies such as Michelin, BMW, Fluor, Jacobs, etc have large offices or corporate headquarter located here.
Venues: Bi-Lo Center (16,000), Furman University, Timmons Arena (4,750), Sirmine Stadium (13,000),
Furman University Paladin Stadium (16,000), Furman University Soccer Stadium (3,000)
The student -- USC Upstate, the largest growing university in the state. Clemson, Furman, Greenville Tech, Bob Jones, North Greenville College

Competitive Strategy

Our locations will offer:

- A professional, perfect customer experience and total wireless solutions.
- Trained individuals, guided by professionals of the business industry.
- changing behaviors to change results
- High employee motivation and good sales attitude

Marketing Plan & Sales Strategy

Market Penetration

Entry into the market should not be a problem. The first store has extremely high visibility with heavy foot traffic all day long. The most traveled on and highest real estate value road in the Upstate of SC.

Marketing Strategy

Focusing on the unique service and professionalism. Courteous and knowledgeable sales consultants to provide consumers with all their wireless needs. Backed up by Verizon Wireless, Worry Free Guarantee

- Print media -- local newspapers, magazines and student publications
- Chamber of Commerce brochures
- Direct mail -- subscriber lists, office
- Misc. -- yellow pages, charity events
- Internet Website

Corporate relations

The marketing effort will be split into 3 phases;

- 1) Opening -- An advanced notice sent out to our personal, business and community contacts.
- 2) Ongoing -- A flexible campaign with personal, business and community contacts, assessed regularly for effectiveness.
- 3) Point of sale -- A well-trained staff can increase the average check as well as enhancing the customer's overall experience. Word-of-mouth referral is very important in building a customer base.

Hours of Operation

TBA; 7 Days a week operation

Employee Training & Education

Employees will be trained not only in their specific operational duties but in the philosophy and applications of our concept. They will receive extensive information from the management and be kept informed of the latest information on the industry.

Systems & Controls

Selling with integrity

Management & Organization

Vijay R. Patel, CEO & President

Pankaj Patel, Vice President

Krish Patel, General Manager & Project Development

TBA, Sales & Operations Manager

Parul P. Patel, Director of Training & Inventory Control

Alka V. Patel, Director of Marketing

S. Allan Hill -- Attorney & Professional Business/Legal Support

Mukund Desai -- CPA, Consultant

Revenues					
				16	
	Items sold per day	Avg/person	Total/Day	Tot/Month	Tot/Year
Activations	5	\$100	\$500	\$12,000	\$144,000
	25	\$15	\$375	\$6,000	\$72,000
Accessories					
Totals	30	\$115	\$875	\$18,000	\$216,000
Tips					
		0%	\$0	\$0	\$0

Expense		Tot/Month	Tot/Year
18.00%	Food	\$75	\$900
	Rent	\$2,700	\$32,400
	CAM	\$0	\$0
	Maintenance	\$50	\$600
	Insurance	\$200	\$2,400
25%	Payroll	\$4,000	\$48,000
	Licences	\$1,200	\$14,400
	Profesional Fees	\$100	\$1,200
	Utilities	\$800	\$9,600
	Uniforms	\$0	\$0
	Linen Laundry	\$0	\$0
	Linen Rental	\$15	\$180
	Replacement costs	\$0	\$0
	Flyers	\$100	\$1,200
	Pest Extermination	\$45	\$540
1%	Disposable supplies	\$350	\$4,200
	Office Materials	\$130	\$1,560
7%	Sales & Hospitality Tax	\$1,260	\$15,120
	Credit card equipment rental	\$0	\$0
2%	Credit Card Fees	\$360	\$4,320
Total		\$11,385	\$136,620

Assume 75% by CC

Profit	\$6,615	\$79,380
% Profit	58.10%	58.10%

00071

Expense		Tot/Month
	Rent	\$2,170
	CAM	\$600
	Insurance	\$200
	Payroll	\$1,700
	Utilities	\$600
	Linen Rental	\$26
	Takeaway Menus	\$10
	Pest Extermination	\$45
	Dishwasher rental	\$130
	2% Credit Card Fees	\$140
Total		\$5,621

140.8

00072

Compatibility Report for Verizon Wireless Agent Financial Summary.xls

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The following features in this workbook are not supported by earlier versions of Excel. These features may be lost or degraded when you save this workbook in an earlier file format.

Minor loss of fidelity

of occurrences

Some cells or styles in this workbook contain formatting that is not supported by the selected file format. These formats will be converted to the closest format available.

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01/03/12

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Pankaj Patel, Individually and Derivatively on
behalf of Nominal Defendant, VP Enterprises,
Inc.,

Case No. 2011-CP-23-7338

Plaintiff,

vs.

ANSWER

Krish Patel, Vijay Patel, and P
Communications, Inc.,

Defendants,

And

VP Enterprises, Inc.

Nominal Defendant.

The Defendants Krish Patel ("Krish"), Vijay Patel ("Vijay") and P Communications, Inc. ("P") by and through their undersigned counsel answer the Complaint as follows:

FOR A FIRST DEFENSE

Defendants answer the Complaint upon their knowledge and otherwise upon information and belief and respond to the individually numbered paragraphs as follows:

1. Defendants admit that Kaj is a citizen and resident of Greenville County, South Carolina and that Kaj attempts to bring an action on behalf of VP Enterprises, Inc. It is alleged that VP Enterprises, Inc. is no longer in existence and never actually engaged in any business.
2. Paragraph 2 is admitted.

3. Paragraph 3 is admitted except that it is alleged that Vijay is no longer an officer, stockholder or director of VP Enterprises, Inc.

4. Paragraph 4 is admitted.

5. Paragraph 5 is admitted.

6. Paragraph 6 is admitted.

7. So much of Paragraph 7 is admitted as it alleges that Kaj is the Plaintiff in this lawsuit and has plead the causes of action alleged. The remaining allegations are denied.

8. In regard to Paragraph 8, the Defendants do not have sufficient knowledge to enable them to form a belief and therefore denies the same.

9. Paragraph 9 is denied.

10. Paragraph 10 is admitted.

11. So much of Paragraph 11 is admitted as alleges that VP Enterprises was to be owned by Kaj and Vijay. It is denied that Krish was to have ownership.

12. Paragraph 12 is admitted.

13. Paragraph 13 is denied.

14. Paragraph 14 is denied.

15. Paragraph 15 is denied.

16. Paragraph 16 is admitted except it is alleged that Krish Patel left Verizon in October of 2007 and alleged that the idea of operating independent wireless communication stores under a license agreement with Verizon was entirely Krish's idea not the idea of Kaj.

17. So much of Paragraph 17 is admitted as alleges that Krish and Kaj discussed the idea of opening Verizon stores and that Krish prepared a business plan and that Krish was

worried that Verizon may have some reluctance in allowing him to become an owner since he was a former employee of Verizon. The remaining allegations are denied.

18. So much of Paragraph 18 is admitted as alleges that Kaj and Krish may have looked at one or two possible locations together but it is alleged that nearly all of the possible locations were investigated by Krish not Kaj. The remaining allegations are denied.

19. It is admitted that Krish prepared a business plan and shared it with Kaj and that the business plan included locations researched by Krish. The remaining allegations are denied except that Kaj and Krish did ride with Andre.

20. Paragraph 20 is admitted.

21. Paragraph 21 is admitted.

22. In regard to Paragraph 22, it is admitted that Kaj made minor revisions to Krish's business plan and shared certain worksheets Kaj had done for a restaurant that he ran (and which ultimately failed). The Defendants do not have sufficient information to enable them to form a belief as the specifics of the e-mail referenced in this Paragraph and therefore deny the same.

23. As previously stated, Kaj e-mailed Krish certain calculations for a restaurant he ran which ultimately failed. The Defendants do not have sufficient information to enable them to form a belief as to the exact date of such e-mails and therefore deny the same.

24. Paragraph 24 is admitted.

25. Paragraph 25 is admitted and it is alleged that the price list e-mailed by Kaj was entirely worthless, was for technology not compatible with Verizon and was of absolutely no use.

26. The ownership of VP Enterprises, Inc. was always 50% Kaj and 50% Vijay.

27. Paragraph 27 is admitted.

28. Paragraph 28 is admitted.

29. Paragraph 29 is denied except that it is admitted that Kaj participated in a couple of meetings and may have reviewed a couple of locations.

30. Paragraph 30 is denied.

31. In regard to Paragraph 31, it is alleged that Verizon notified the parties that their application had been turned down in February 2008. Verizon gave no explanation for its actions. Kaj received the same information as Krish and Vijay. The remaining allegations are denied.

32. Paragraph 32 is denied.

33. Paragraph 33, based upon information and belief, is admitted but also upon information and belief, the "opportunity offered by Sunbelt Business Network" was not a Verizon affiliated business.

34. In regard to Paragraph 34, it is alleged that after Verizon denied the application submitted by VP Enterprises, Inc., Krish decided to pursue his idea on his own. The initial location for P Communications was opened on approximately October 1, 2008. It is further admitted that on October 1, 2008 Kaj became aware that Krish had become involved in the opening of the store; and that Krish had not tried to do any deal with Kaj. The remaining allegations are denied.

35. In regard to Paragraph 35, it is alleged that Kaj asked that the \$5,000 he had put into VP Enterprises be transferred to KVP Investments since VP Enterprises no longer had any further real possibility. The remaining allegations are denied.

36. In regard to Paragraph 36, it is admitted that Kaj, on numerous occasions during the time period alleged, had conversations with Vijay. The remaining allegations are denied and it specifically alleged that no information was kept from Kaj.

37. In regard to Paragraph 37, it is admitted that Kaj did ask Krish if he thought that Columbus-Tryon, North Carolina area was a potential site for a Verizon store. At the time, Krish informed Kaj that he was in the process of buying five stores in the Columbia-Florence area and did not have time to pursue any location in Columbus-Tryon. The remaining allegations are denied.

38. Paragraph 38 is denied.

39. In regard to Paragraph 39, it is admitted that Krish had discussions with Kaj about the possibility of Kaj becoming an employee but not an owner. The remaining allegations are denied.

40. In regard to Paragraph 40, it is possible that Krish told Kaj about Krish buying Corby Phillips out of P Communications, Inc. but the remaining allegations are denied.

41. It is admitted that Krish informed Kaj that he was operating a number of Verizon stores through P Communications, Inc.; that the stores were set up with separate leases with separate LLCs. The Defendants do not have sufficient information to enable them to form a belief as to what Kaj "discovered" or "learned" and therefore deny the remaining allegations.

42. Paragraph 42 is denied.

43. In regard to Paragraph 43, it is admitted that Krish and Kaj met on or about May 25, 2011 at Sabroso restaurant and that Krish discussed with Kaj what he had been doing for the last three years. The remaining allegations are denied.

44. So much of Paragraph 44 is admitted as it alleges that P Communications, Inc. has a website but these Defendants do not have sufficient information to enable them to form a belief as to how or when the Plaintiff became aware of said website and therefore denies the same.

45. Paragraph 45 is admitted except that there is no location on Haywood Road and Monroe is in Georgia.

46. Paragraph 46 is admitted except that the business plan was drafted by Krish not Kaj.

47. Paragraph 47 is denied.

48. Paragraph 48 is admitted.

49. Paragraph 49 is admitted.

50. So much of Paragraph 50 is admitted as alleges that VP Enterprises was dissolved. The remaining allegations are denied.

51. The foregoing allegations are realleged and incorporated herein by reference.

52. Paragraph 52 is admitted except that it is denied Plaintiff has plead facts sufficient to constitute a cause of action.

53. Paragraph 53 is denied.

54. Paragraph 54 is denied.

55. The foregoing allegations are realleged and incorporated herein by reference.

56. Paragraph 56 is denied.

57. Paragraph 57 is denied.

58. Paragraph 58 is denied.

59. The foregoing allegations are realleged and incorporated herein by reference.

60. Paragraph 60 is denied.

61. Paragraph 61 is denied.

62. Paragraph 62 is denied.

63. The foregoing allegations are realleged and incorporated herein by reference.

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64. Paragraph 64 is denied.
 65. Paragraph 65 is denied.
 66. Paragraph 66 is denied.
 67. The foregoing allegations are realleged and incorporated herein by reference.
 68. Paragraph 68 is denied.
 69. Paragraph 69 is denied.
 70. The foregoing allegations are realleged and incorporated herein by reference.
 71. Paragraph 71 is denied.
 72. Paragraph 72 is denied.
 73. Paragraph 73 is denied.
 74. Paragraph 74 is denied.
 75. The foregoing allegations are realleged and incorporated herein by reference.
 76. Paragraph 76 is denied.
 77. Paragraph 77 is denied.
 78. Paragraph 78 is denied.
 79. Paragraph 79 is denied.
 80. Paragraph 80 is denied.
 81. Paragraph 81 is denied.
 82. Paragraph 82 is denied.
 83. Paragraph 83 is denied.
 84. The foregoing allegations are realleged and incorporated herein by reference.
 85. Paragraph 85 is denied.
 86. Paragraph 86 is denied.

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87. Paragraph 87 is denied.
 88. Paragraph 88 is denied.
 89. Paragraph 89 is denied.
 90. Paragraph 90 is denied.
 91. Paragraph 91 is denied.
 92. The foregoing allegations are realleged and incorporated herein by reference.
 93. Paragraph 93 is denied.
 94. Paragraph 94 is denied.
 95. Paragraph 95 is denied.
 96. Paragraph 96 is denied.
 97. Paragraph 97 is denied.
 98. Paragraph 98 is denied.
 99. Paragraph 99 is denied.
 100. The foregoing allegations are realleged and incorporated herein by reference.
 101. Paragraph 101 is denied.
 102. Paragraph 102 is denied.
 103. The foregoing allegations are realleged and incorporated herein by reference.
 104. Paragraph 104 is denied.
 105. The foregoing allegations are realleged and incorporated herein by reference.
 106. Paragraph 106 is denied.
 107. Paragraph 107 is denied.
 108. Paragraph 108 is denied.
 109. Paragraph 109 is denied.

-
110. Paragraph 110 is denied.
111. The foregoing allegations are realleged and incorporated herein by reference.
112. Paragraph 112 is denied.
113. Defendants deny the allegations in the Paragraph entitled "Wherefore".
114. Defendants deny any and all allegations of the Complaint not expressly admitted herein; deny that the Plaintiff is entitled to any form of relief and deny that the Plaintiff is entitled to a trial by jury.

FOR A SECOND DEFENSE

115. The Complaint fails to state sufficient facts to constitute a claim or cause of action.

FOR A THIRD DEFENSE

116. The Plaintiff's claims are barred in whole or in part by the statute of limitations.

FOR A FOURTH DEFENSE

117. The Plaintiff's claims are barred in whole or in part because there is an accord and satisfaction.

FOR A FIFTH DEFENSE

118. The Plaintiff's claims are barred in whole or in part by the doctrines of estoppel, waiver, acquiescence and/or ratification.

FOR A SIXTH DEFENSE

119. Some of Plaintiff's claims are barred because the Plaintiff failed to make a demand on the Board of Directors and failed to meet other procedural and substantive

requirements for a derivative action as specified in Rule 23(b)(1) of the South Carolina Rules of Civil Procedure.

FOR A SEVENTH DEFENSE

120. The Plaintiff's claims are barred in whole or in part under the doctrine of laches.

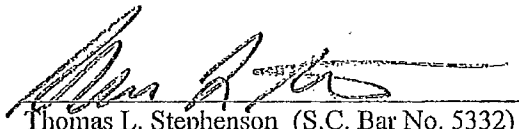
FOR AN EIGHTH DEFENSE

121. Some or all of the Plaintiff's claims are barred by the doctrine of mitigation.

WHEREFORE the Defendants pray as follows:

- (1) That the Plaintiff take nothing by virtue of their Complaint and this action be dismissed in its entirety;
- (2) That the Plaintiff's demand for jury be denied;
- (3) That the Defendants be awarded their costs and attorney's fees incurred; and
- (4) For such other and further relief as the Court may deem just and proper.

Respectfully submitted,


Thomas L. Stephenson (S.C. Bar No. 5332)
William W. Wilkins (S.C. Bar No. 6112)
Andrew A. Mathias (S.C. Bar No. 76220)
NEXSEN PRUET, LLC
55 East Camperdown Way (29601)
Post Office Drawer 10648
Greenville, SC 29603-0648
864.370.2211

Attorneys for Defendant

January 3, 2012
Greenville, South Carolina

02/07/12

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Pankaj Patel, Individually and Derivatively
on behalf of Nominal Defendant, VP
Enterprises, Inc.

Plaintiff,

v.

Krish Patel, Vijay Patel, and
P Communications, Inc.,

Defendants,

And,

VP Enterprises, Inc.,

Nominal Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2011-CP-23-7338

**AMENDED
VERIFIED COMPLAINT
(Jury Trial Demanded)**

FILED: CLERK OF COURT
GREENVILLE CO. S.C.
BRIAN D. WICKENBACH

2012 FEB - 7 P 4:33

The Plaintiff, complaining of the Defendants in this Amended Complaint, would respectfully show to the Court as follows:

GENERAL ALLEGATIONS

1. The Plaintiff, Pankaj Patel ("Kaj"), is a citizen and resident of Greenville County, South Carolina. Kaj brings this action both individually and on behalf of VP Enterprises, Inc., a South Carolina corporation whose principal place of business is in Greenville, South Carolina.

2. The Defendant, Krish Patel ("Krish"), is a citizen and resident of the county of Greenville, state of South Carolina. On information and belief Krish is an officer of VP Enterprises, Inc.

3. The Defendant, Vijay Patel ("Vijay"), is a citizen and resident of the county of Greenville, state of South Carolina. On information and belief, Vijay is an officer, stockholder and director of VP Enterprises, Inc.

4. The Defendant P Communications, Inc. is a South Carolina corporation which was formed on or about April 28, 2008. Its registered agent is Krish Patel and its principal place of business is in Greenville County, South Carolina.

5. This Court has jurisdiction over the parties and the subject matter of this action and venue is properly laid in Greenville County, South Carolina.

6. The Nominal Defendant, VP Enterprises, Inc. (sometimes hereinafter "VP" or "VP Enterprises") is a South Carolina corporation which was formed on or about January 28, 2008 with a principal place of business in Greenville County, South Carolina. Further details of its formation are outlined below.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

7. This is an action by Plaintiff Kaj Patel, individually and derivatively, on behalf of VP Enterprises, Inc. against certain officers and directors of VP Enterprises, Inc., namely the Defendants, Krish and Vijay for breach of the standards of conduct for directors and officers; for dissolution and/or purchase of the Plaintiff's shares for fraudulent, oppressive, and unfairly prejudicial conduct of the Defendant shareholders, directors and officers; for breach of fiduciary duty for diversion of corporate opportunities and assets; for breach of fiduciary duties as partners and/or joint venturers; for fraud, constructive fraud and negligent misrepresentation and unjust enrichment; for an accounting and disgorgement; for a declaratory judgment regarding the ownership of VP Enterprises Inc. and P Communications Inc.; and for violations of the South Carolina

Unfair Trade Practices Act. VP Enterprises, Inc. is named as a nominal defendant solely in a derivative capacity. This is not a collusive action to confer jurisdiction on this Court that it would not otherwise have.

8. Plaintiff, by and through his undersigned attorneys, brings this action upon personal knowledge as to himself and his own acts and upon the investigation conducted by his attorneys. Plaintiff, as of February 7, 2012, is out of the country and will file the original sworn verification to this Amended Complaint upon return.

9. At all times relevant hereto Plaintiff Kaj Patel was a shareholder of VP Enterprises, and he will fairly and adequately represent the interests of VP Enterprises relevant to the Defendants' wrongful course of conduct alleged herein.

10. VP Enterprises, Inc. was formed with the assistance of Greenville attorney Allan Hill who also served as the certifying attorney on the Articles of Incorporation. The formation documents were drafted pursuant to the instructions of one or more of the individual parties who contacted Allan Hill on behalf of the corporation and the individual parties.

11. According to records recently obtained from the file of Attorney Allan Hill, the stockholders of VP Enterprises were Kaj and Vijay, each of whom was to be issued 50 shares of stock. The file of attorney Hill contains two unsigned stock certificates dated January 24, 2008, with Certificate #1 being for 50 shares to Vijay and certificate #2 being to Kaj for 50 shares with the understanding among all three individuals that Vijay would own 25 shares and Krish would also own 25 shares .

12. The Corporate Data sheet from attorney Hill's files, dated as of February 14, 2008, shows Kaj and Vijay as directors, Kaj as the President, Vijay as the Vice President, and Krish as the Secretary and Treasurer.

13. Pursuant to Rule 23(b)(1) SCRCF, no demand was made on VP Enterprises, Inc. and the Defendants, Krish and Vijay, since such a demand would have been futile as further outlined below.

14. The director defendant of VP Enterprises, Inc., namely Vijay, and the Secretary/Treasurer, namely Krish, as more fully detailed herein, participated in, approved and/or permitted the wrongs alleged herein to have occurred, participated in efforts to conceal or disguise those wrongs from Kaj Patel as a stockholder and director of VP Enterprises, Inc., and/or negligently disregarded the wrongs complained of herein, and are not disinterested parties.

15. Because there are at most only three directors of VP and because there is no majority of independent directors capable of making a decision on the question of whether to bring this action, any demand on the inside directors who undertook the actions complained of would have been futile. Moreover, any demand would have requested that Vijay and Krish sue themselves which they will not do, thereby effectively making any demand futile.

FACTUAL ALLEGATIONS

16. In early to mid-2007, the Defendant Krish Patel had terminated his employment with Verizon Communications and joined into business with his father Vijay Patel in the hotel and real estate business. At or about this time, while discussing various real estate ventures with Krish and his father, Vijay, Kaj Patel asked Krish Patel about the

possibility of establishing some type of business venture which would operate independent wireless communications stores under a license agreement with Verizon Wireless Communications. Krish informed Kaj that the Verizon idea was a very good business opportunity and he would like to have his own Verizon store(s), but Verizon would probably never allow that since he was a former Verizon employee.

17. Kaj Patel then suggested that Krish give him some further details and later, in about November 2007, Krish shared various information with Kaj who began work on a proposed business plan for Verizon independent stores which would be operated between Kaj and Krish's father, Vijay, since Verizon presumably would not allow Krish to become an owner.

18. Kaj Patel along with Krish researched the upstate South Carolina area for potential store locations. Kaj and Krish rode together to examine various locations between December 2007 and May 2008. On one occasion an employee of Verizon named "Andre" rode with Kaj and Krish to inspect some of the locations they were considering for VP Enterprises. The parties were also considering hiring Andre as an employee of VP Enterprises.

19. Before Krish and Kaj visited potential store locations together, Krish would e-mail the addresses of potential locations to Kelly McPherson of Verizon. She would pre-approve the various locations submitted to her to let Kaj and Krish know that the proposed locations were not in a restricted area.

20. In December of 2007 Kaj and Krish met, over a four day period, at Kaj's home to discuss various cash flow scenarios using spreadsheets Kaj had developed for the business. Kaj and Krish also drafted a business plan for VP Enterprises on Krish's

computer for him to submit to Verizon. The business plan also included the potential store locations researched by Kaj Patel together with Krish Patel.

21. Under the proposed business plan, Vijay was to be the CEO and President, Kaj was to be Vice President, and Krish was to be the general manager. Kaj, Vijay and Krish all planned to be the co-owners of VP Enterprises and to share the profits therefrom. The object of the venture was stated in the business plan as follows:

To build the flagship agent store of Verizon Wireless in the district. Not only through sales and revenues but customer experience as well. To provide training and support for store personal [sic], maintaining excellent moral [sic] of all store employees. To create the best possible customer experience resulting not only in customer loyalty and increasing sales for the store, but also for Verizon Wireless. To hold store meetings that will result in the continued commitment of building one team, who, by working together will make this flagship agent store of the district.

22. The final business plan, which is dated December 6, 2007, was emailed to Kaj on or about December 4, 2007, and Krish received a marked up version from Kaj shortly thereafter. A copy of the version showing Kaj's revisions is attached to this complaint as Exhibit 1.

23. On or about December 19, 2007 Kaj sent an additional calculation worksheet to Krish for the new business plan and told Krish "I have not received your email regarding loan yet."

24. On January 6, 2008 Kaj emailed Krish and forwarded to him additional financial calculations in a worksheet form.

25. On information and belief this business plan was sent to Verizon, and on December 20, 2007, Kaj emailed Krish and requested that Krish send him the final version of the business plan that was sent to Verizon.

26. On February 8, 2008 Kaj emailed Krish a cell phone price list from a supplier in Hong Kong and asked "Will that work with Verizon?"

27. It was agreed that the ownership for the new venture, named VP Enterprises, Inc., would be 50% to Kaj, 25% to Krish, and 25% to Vijay. The members of the initial board of directors for VP Enterprises, Inc. were to be Vijay and Kaj.

28. Greenville attorney, Allan Hill represented Kaj, Vijay and Krish in the incorporation of VP Enterprises, Inc. and was responsible for drafting all of the initial corporate documents, the charter, stock certificates and initial minutes. The "VP" stood for Vijay and Pankaj. The corporate charter was filed with the South Carolina Secretary of State on January 28, 2008.

29. On or about January 29, 2008, Kaj gave his check number 1015 in the amount of \$5,000 payable to VP Enterprises, Inc. to Krish to be deposited in the new business account for VP Enterprises, Inc.

30. Kaj, Krish and Vijay spent the next few months in discussions with Verizon Wireless while Kaj, Vijay and Krish reviewed locations throughout the Greenville, Easley, and Clemson, South Carolina areas for proposed new Verizon free-standing stores.

31. In the March-April 2008 time frame, the parties had at least three meetings with various Verizon personnel regarding a possible license operation with Verizon.

32. Shortly after the March-April meetings, Kaj was informed by Krish and Vijay that Verizon was denying any type of license operation with the new proposed venture; however, they gave Kaj no explanation or details for Verizon's unexpected actions.

33. Following what Kaj thought was a denial of any possible business operation with Verizon, the parties then looked at existing Verizon stores that might be on sale and continued to do so up until July of 2008.

34. On July 24, 2008, Kaj emailed Krish regarding a wireless business opportunity offered by the Sunbelt Business Network and wrote "check this link out for wireless business for sale" Krish replied the next day and said "when I clicked on the link it came up unavailable?"

35. Shortly thereafter, in the August to September 2008 time frame, Kaj, while visiting Vijay at his home, discovered that Krish had just attended the grand opening of a Verizon store on Pelham Road at a specific location the three parties, namely Kaj, Vijay, and Krish, had previously reviewed and discussed as a possible store location. Kaj immediately inquired of Krish as to what was going on as this should have been in the VP Enterprises, Inc. name that Kaj, Vijay and Krish were in the process of forming and organizing. Vijay and Krish told Kaj that since Verizon would not approve a license with their proposed entity, VP Enterprises, Inc., Krish had purchased an interest in an existing corporation which had a license for a Verizon store. Kaj was not at this time told the name of this corporation. However he was told this corporation had been formed by Corby Phillips and that Krish had purchased an interest in Mr. Phillips' corporation in order "to get his foot in the door" with Verizon. Krish and Vijay then assured Kaj that the three of them (Kaj, Krish and Vijay) would continue to pursue their original plans through VP Enterprises as contemplated in the business plan (outlined in Paragraphs 20-27 above) as soon as they could figure a way to "kick" Corby Phillips out of P Communications. Upon learning this information, Kaj inquired of Vijay as to

whether Vijay was involved in the Pelham Road store with Corby Phillips, and Vijay informed Kaj that he (Vijay) had no involvement.

36. Following this development, Kaj was told by Vijay that it appeared the \$5,000 he had put in VP Enterprises was not going anywhere and suggested that the \$5,000 be moved to another venture they owned named KVP Investments which was in the real estate business.

37. Following these developments Kaj, during the period between August of 2008 and May of 2010 (except during January-May of 2010 when he was out of the country), would, at least twice a week, meet with Vijay, on various matters. During the course of these numerous meetings, he was never told any more about the status of Krish and the new Verizon store venture with Corby Phillips.

38. In the spring of 2010, Kaj became aware of what he thought would be an excellent opportunity for a Verizon store in the Columbus-Tryon, North Carolina area. He immediately inquired of Krish to see if this would be something the three of them could pursue. While they were pursuing the potential Columbus-Tryon store operation, Krish came back to Kaj with an opportunity to buy seven Verizon stores in the Columbia-Florence, South Carolina area. Kaj informed him that he was only interested in a 50-50 equity partnership with Kaj managing those stores as outlined in the original VP Enterprises business plan.

39. Krish assured Kaj that he was agreeable to that proposition and informed him they should shortly be able to get back on track with their original VP Enterprises business plan. At this meeting they shook hands and further confirmed what Kaj had always thought was a 50-50 ownership in any Verizon business deal. At this point Krish

said he would meet with attorney Allan Hill and have him draw up the appropriate legal paperwork.

40. However, after a few more weeks of discussions on this proposal between Kaj and Krish, which sometimes included Krish's "CFO" named Bruce, Kaj was informed that Krish only wanted Kaj to be an employee, not an owner. Krish tried to convince Kaj that he would be getting the same benefit as a 50% owner without having to invest any money.

41. It was at or about this time, namely the spring of 2010, that Krish informed Kaj that he had "kicked" Mr. Corby Phillips out of the corporation he and Mr. Phillips had started in August of 2008. It was at this time in 2010 when Kaj first was told the name of the Corby Phillips related corporation, which was P Communications, Inc. It was at this same time, namely the spring of 2010, that Krish told Kaj there was a lot of pain and anguish in getting Mr. Phillips out of P Communications, Inc. and that it had cost him in excess of \$30,000. As described in paragraph 47 below, upon information and belief, Krish actually only paid Corby Phillips \$14,000.

42. It was at this same time that Krish informed Kaj that he was operating eight or nine Verizon stores under P Communications, Inc. He also told him he was operating all of his Verizon stores as separate limited liability companies which were owned/controlled by P Communications, Inc. Following this revelation, Kaj discovered, for the first time, from a review of records in the South Carolina Secretary of State's file, that P Communications had been formed on April 28, 2008 by Kaj's attorney, Allan Hill. At this time Kaj also discovered that Corby Phillips was removed as the registered agent on December 4, 2008 and Krish was named as the new registered agent on that same

date. He has since learned that Corby Phillips is or was the owner of a restaurant known as "ROLY POLY SANDWICHES" which is located at 1616 Woodruff Road, Greenville, South Carolina and is either next door or very near to the Verizon Store where Krish worked when he was employed with Verizon.

43. Upon becoming aware of all these facts, Kaj immediately confronted Krish and told him that he and Vijay had wrongfully concealed their extensive involvement with Verizon and P Communications from him. At this time he asked Krish what Vijay's involvement was and Krish informed him that Vijay, contrary to what Vijay told Kaj in August of 2008, had always been involved in the Verizon venture and was involved in all the Verizon stores that Krish was involved in.

44. During this meeting Kaj laid out the time line of his involvement with Krish and Vijay, as outlined above in this complaint. In subsequent meetings Kaj held separately with Krish and Vijay, Kaj forthrightly told each of them that they had "backstabbed" him. At the request of Krish, Kaj met with Krish on May 25, 2011 at Sabroso restaurant on Woodruff Road. After reviewing documents on his laptop computer, Krish confirmed that Kaj's timeline of events related to VP Enterprises and the Verizon Wireless business was basically correct. Kaj asked Krish "do you not see anything wrong with your conduct?" Krish replied "I was keeping my options open."

45. Throughout this time, Krish and Vijay Patel hid from Kaj their ownership and involvement in, and the existence of, P Communications in order to capture the Verizon Wireless business for themselves. Similarly, Krish and Vijay Patel hid from Corby Phillips the existence and involvement of Kaj Patel in VP Enterprises in order to appropriate its business for himself.

46. During the start-up phase of P Communications, Krish Patel used the business plan originally drafted by Kaj Patel as the business plan for his Verizon Wireless venture with Corby Phillips with only minor insignificant changes.

47. To avoid properly sharing the profits of the Verizon Wireless business with his co-owner, Krish Patel concealed from Kaj the true operations of Krish and Vijay with Verizon Wireless. Likewise, Krish and Vijay Patel hid from Corby Phillips the extent of the real operations of P Communications with Verizon. Kaj is informed and believes that Krish Patel bought out the ownership interest of Corby Phillips in P Communications by offering to buy Phillips' shares for \$7,000 per store. Krish Patel represented to Phillips that as of December 15, 2008, he had opened only two Verizon stores, thus convincing Phillips to sell his stock in P Communications to Krish for only \$14,000. At the closing for the stock transfer, attorney asked Krish how the third store was doing, thus inadvertently revealing the existence of a third store. Plaintiff is informed and believes Krish failed to disclose the contracts and/or applications already in existence at that time for additional Verizon franchises.

48. In October of 2011 Plaintiff, for the first time became aware of the website of a company known as Wireless Communications. Its web address is: www.wirelesscommunicationsc.com. Plaintiff is informed and believes that this company is owned and/or controlled by P Communications, Inc. and/or Vijay and Krish.

49. According to the website of Wireless Communications, it owns and/or operates twenty-three (23) Verizon Wireless stores in Georgia and North and South Carolina in the following locations: Augusta Road, Pelham Road, Main Street and Haywood Road, all of which are in Greenville, South Carolina; Simpsonville/Five Forks

on Woodruff Road in Greenville County; Anderson, Central, Chapin, Duncan, Hwy 153 in Powdersville, Irmo/Ballentine, Laurens, Lexington, Manning, Marion and Newberry, all in South Carolina; Southport, Conyers, Lawrenceville, Duluth and Winder, all in Georgia; and Monroe, North Carolina.

50. The original business plan originally drafted by Kaj and revised by both Kaj and Krish envisioned ten Verizon stores, with locations on Woodruff Road, Pelham Road, Augusta Road and Haywood Road, in Greenville, Butler Road in Mauldin, Blackstock Road in Spartanburg, Highway 9 in Spartanburg, Highway 123 in Easley and stores in Anderson and Gaffney, South Carolina.

51. Thus, it appears that Krish has now established Verizon stores at all ten locations envisioned in the original business plan drafted by Kaj, with the exception of Gaffney. These stores and the others since developed by the Defendants are in the exact line of business for which VP Enterprises was formed. VP Enterprises had an actual and expectant interest in developing these opportunities and had the financial ability to undertake the development of these Verizon stores.

52. The Wireless Communications website, referenced above, under the heading "Leadership Team" lists Krish Patel as President and Vijay Patel as Vice President.

53. According to a recent article in the Greenville business magazine, *Town*, entitled "Hot Wire", Krish, at the end of 2009, had opened five Verizon stores which had reached \$3.3 million in sales. At the time this article was published, which Plaintiff believes was on or about September 30, 2011, Krish reportedly had 23 stores with plans

to reach 30 stores by the end of 2011 and 50 by the end of 2012. According to this article the Defendant Vijay Patel is a vice president of Krish's wireless Verizon store business.

54. On June 22, 2011 the South Carolina Secretary of State filed a Certificate of Administrative Dissolution of VP Enterprises for failing to pay taxes and/or failing to deliver its annual report to the Department of Revenue. Defendant Vijay Patel was the registered agent to whom the Secretary of State on information and belief mailed the pre-dissolution sixty-day statutory notice of filing deficiencies at his home address listed on file with the Secretary of State's office. Neither Vijay Patel nor his son Krish Patel informed Kaj Patel of the pre-dissolution sixty-day statutory notice or the subsequent administrative dissolution. Plaintiff Kaj Patel is informed and believes Vijay and Krish Patel knew of the corporate filing deficiencies of VP Enterprises and the administrative dissolution, yet failed as officers and director to properly carry out the required administrative filings for the benefit of VP Enterprises and its other stockholder Kaj Patel.

FOR A FIRST CAUSE OF ACTION
(Dissolution and/or Buyout of Shares of VP Enterprises under §33-14-300 *et. seq.*)

55. All allegations stated above are realleged as if fully repeated herein.

56. This cause of action arises pursuant to §§ 33-14-300 and -310 of the South Carolina Business Corporation Act.

57. Because of the actions and events outlined above, the economic purpose of VP Enterprises has been unreasonably frustrated as it is not reasonably possible for the parties to continue owning the corporation together. The actions of Vijay Patel and Krish Patel relating to the business of VP Enterprises have made it impracticable to carry on business with said Defendants. Further, Defendants Vijay Patel and Krish Patel, as the

shareholders in control of VP Enterprises, have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the Plaintiff and VP Enterprises.

58. The Plaintiff is a 50% owner in VP Enterprises, Inc. with Defendants Vijay Patel and Krish Patel owning the other half. The actions of Vijay Patel and Krish Patel as outlined above have severely damaged the Plaintiff's reasonable expectations to be realized from his interest in VP Enterprises, Inc. Vijay Patel and Krish Patel have acted in a manner unfairly prejudicial and oppressive to the Plaintiff within the meaning of South Carolina Code § 33-14-300. The Plaintiff is therefore entitled to have VP Enterprises, Inc. dissolved, or as an alternative to dissolution to be paid the fair value of his undiluted stock interest in VP Enterprises, Inc. pursuant to S.C. Code § 33-14-310.

FOR A SECOND CAUSE OF ACTION
(Violation of Standards of Conduct for Directors under § 33-8-300 against Vijay Patel)

59. All allegations stated above are realleged as if fully repeated herein.

60. Defendant Vijay Patel as a director of VP Enterprises has failed to discharge his duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he reasonably believes to be in the best interests of the corporation and its other shareholder Kaj Patel. Specifically, Vijay Patel diverted a corporate opportunity of VP Enterprises to develop, open, and operate Verizon Wireless stores under the name of VP Enterprises and instead usurped such opportunity for P Communications. Said Defendant negligently and intentionally failed to perform his duties as director in that he permitted property, property rights, and contractual rights of VP Enterprises to be diverted to Defendant P

Communications for the personal benefit of Vijay Patel and his son Krish Patel and for the benefit of P Communications, all to the detriment of VP Enterprises and Plaintiff Kaj Patel.

61. While Defendant Vijay Patel served as a director of VP Enterprises, he negligently, carelessly and intentionally failed to perform his duties as director so that assets of VP Enterprises were mismanaged, wasted and diverted to Defendant P Communications through his failure to develop the business opportunities associated with the Verizon Wireless franchises. He also failed to oversee critical administrative duties of which he had notice, such as the failure to pay necessary taxes and/or file annual report(s), and to correct such deficiencies when notified. Plaintiff Kaj Patel has thereby suffered great loss, and the value of said Plaintiff's stock and dividends have suffered great loss thereby damaging the Plaintiff as a shareholder.

62. Plaintiff Kaj Patel and Nominal Defendant VP Enterprises are therefore entitled to damages both actual and punitive, constructive trust on the assets and shares of P Communications and assets of Vijay Patel, for disgorgement of Defendant Vijay Patel's ill-gotten gains and other equitable relief.

FOR A THIRD CAUSE OF ACTION
(Violation of Standards of Conduct for Officers under § 33-8-420 against Vijay Patel and Krish Patel)

63. All allegations stated above are realleged as if fully repeated herein.

64. Defendants Vijay Patel and Krish Patel, as officers of VP Enterprises, have failed to discharge their duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner they reasonably believe to be in the best interests of the corporation and its other

shareholder Kaj Patel. Specifically, Vijay Patel and Krish Patel diverted a corporate opportunity of VP Enterprises to develop, open, and operate Verizon Wireless stores under the name of VP Enterprises and instead usurped such opportunity for P Communications. Said Defendants negligently and intentionally failed to perform their duties as officers in that they permitted property, property rights, and contractual rights of VP Enterprises to be diverted to Defendant P Communications for the personal benefit of Vijay Patel and Krish Patel and for the benefit of P Communications, all to the detriment of VP Enterprises and Plaintiff Kaj Patel.

65. While Defendants Vijay Patel and Krish Patel served as officers of VP Enterprises, they negligently, carelessly and intentionally failed to perform their duties as officers so that assets of VP Enterprises were mismanaged, wasted and diverted to Defendant P Communications through their failure to develop the business opportunities associated with the Verizon Wireless franchises. They also failed to oversee critical administrative duties of which they had notice, such as the failure to pay necessary taxes and/or file annual report(s), and to correct such deficiencies when notified. Plaintiff Kaj Patel has thereby suffered great loss, and the value of said Plaintiff's stock and dividends have suffered great loss thereby damaging the Plaintiff as a shareholder.

66. Plaintiff Kaj Patel and Nominal Defendant VP Enterprises are therefore entitled to damages both actual and punitive, constructive trust on the assets and shares of P communications and assets of Vijay Patel and Krish Patel, for disgorgement of Defendants Vijay Patel's and Krish Patel's ill-gotten gains and other equitable relief.

**FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duties against All Defendants)**

67. All allegations stated above are realleged as if fully repeated herein.

68. While individual Defendant Vijay Patel was a director and individual Defendants Vijay Patel and Krish Patel were officers of VP Enterprises, they negligently, carelessly and intentionally failed to perform the duties of director and officers so that assets and corporate opportunities of VP Enterprises were mismanaged, wasted, diverted and siphoned off to Defendant P. Communications. VP Enterprises thereby suffered great loss, and the value of the stock of the Plaintiff was greatly reduced. Plaintiff Kaj Patel and VP Enterprises lost large gains from the wasting of VP Enterprises' business opportunities by the diversion of the Verizon Wireless business to P Communications.

69. Defendants Vijay Patel and Krish Patel permitted property, property rights, business methods and contractual rights of VP Enterprises to be diverted to Defendant P Communications for the personal advantage of Defendants Vijay Patel and Krish Patel.

70. Plaintiff Kaj Patel and Nominal Defendant VP Enterprises are therefore entitled to damages both actual and punitive, constructive trust on the assets and shares of P Communications and assets of Vijay and Krish Patel, for disgorgement of Defendants Vijay Patel's and Krish Patel's ill-gotten gains and other equitable relief.

**FOR A FIFTH CAUSE OF ACTION
(Accounting from All Defendants)**

71. All allegations stated above are realleged as if fully repeated herein.

72. To the extent Defendants Vijay Patel and Krish Patel were not functioning as officers and/or directors of the corporate enterprise VP Enterprises, said Defendants were acting as partners and/or joint venturers with the Plaintiff Kaj Patel in developing a business organization for the operation of Verizon stores.

73. Defendants Vijay Patel and Krish Patel were the signatories to the bank account of VP Enterprises and controlled the financial records of VP Enterprises. They also have controlled all the accounting and financial records of P Communications to the complete exclusion of Plaintiff Kaj Patel. The Plaintiff is entitled to an accounting of both VP Enterprises, whether functioning as a partnership and/or joint venture or as a corporation, and P Communications from all the Defendants for all activities related to VP Enterprises and the gains diverted from VP Enterprises to P Communications.

**FOR A SIXTH CAUSE OF ACTION
(Breach of Fiduciary Duty for Partnership Liability)**

74. All allegations stated above are realleged as if fully repeated herein.

75. To the extent Defendants Vijay Patel and Krish Patel were not functioning as officers and/or directors of the corporate enterprise VP Enterprises, said Defendants were acting as partners and/or joint venturers with the Plaintiff Kaj Patel in developing a business organization for the operation of Verizon stores.

76. As partners and/or joint venturers with Plaintiff Kaj Patel, Defendants Vijay Patel and Krish Patel owed their partner a fiduciary duty. Instead, said Defendants carelessly and intentionally failed to perform their duties as partners and joint venturers so that assets and corporate opportunities of VP Enterprises were mismanaged, wasted, diverted and siphoned off to Defendant P Communications. The partnership interest of Kaj Patel in VP Enterprises thereby suffered great loss, the value of the partnership interest of the Plaintiff was greatly reduced, and Plaintiff Kaj Patel and VP Enterprises lost large gains from the wasting of VP Enterprises' business opportunities by the diversion of the Verizon Wireless business to P Communications.

77. Defendants Vijay Patel and Krish Patel permitted property, property rights, business methods and contractual rights of VP Enterprises to be diverted to Defendant P Communications for the personal advantage of Defendants Vijay Patel and Krish Patel to the detriment of Plaintiff Kaj Patel and VP Enterprises.

78. Plaintiff Kaj Patel and Nominal Defendant VP Enterprises are therefore entitled to damages both actual and punitive, constructive trust on the assets and shares of P. communications and assets of Vijay Patel, for disgorgement of Defendants Vijay Patel's and Krish Patel's ill-gotten gains and other equitable relief.

**FOR A SEVENTH CAUSE OF ACTION
(Fraud as To Defendants Vijay Patel and Krish Patel)**

79. All allegations stated above are realleged as if fully repeated herein.

80. Defendants Vijay Patel and Krish Patel made representations to Plaintiff Kaj Patel that they would be developing a business with said Plaintiff for owning and operating multiple Verizon stores as more fully stated above.

81. Said representations were false and were also material to the Plaintiff in that the representations induced him to invest money in VP Enterprises and induced him to rely on the information provided to him by the Defendants Vijay Patel and Krish Patel concerning management decisions and the progress of store development opportunities for VP Enterprises.

82. Defendants Vijay Patel and Krish Patel knew their representations were false or had a reckless disregard for the truth of such representations.

83. Said Defendants intended that Plaintiff Kaj Patel act upon their representations about the development of the Verizon Wireless business through VP Enterprises.

84. Plaintiff Kaj Patel was ignorant of the falsity of the representations of Defendants Krish Patel and Vijay Patel. Said Plaintiff therefore relied on the representations of Defendants Vijay Patel and Krish Patel.

85. Plaintiff Kaj Patel had a right to rely on the representations of Defendants Vijay Patel and Krish Patel since the representations were pertaining to matters peculiarly within their knowledge.

86. Plaintiff Kaj Patel was consequently and proximately injured by his reliance on said Defendants' false representations.

87. Plaintiff Kaj Patel is therefore entitled to actual and punitive damages and for the imposition of a constructive trust on the Defendants Vijay Patel's and Krish Patel's ill-gotten gains.

**FOR AN EIGHTH CAUSE OF ACTION
(Constructive Fraud).**

88. All allegations stated above are realleged as if fully repeated herein.

89. Defendants Vijay Patel and Krish Patel made representations to Plaintiff Kaj Patel that they would be developing a business with said Plaintiff for owning and operating multiple Verizon stores as more fully stated above.

90. Said representations were false and were also material to the Plaintiff in that the representations induced him to invest money in VP Enterprises and induced him to rely on the information provided to him by the Defendants concerning management decisions and progress of store development opportunities for VP Enterprises.

91. Said Defendants intended that Plaintiff Kaj Patel act upon their representations about the development of the Verizon Wireless business through VP Enterprises.

92. Plaintiff Kaj Patel was ignorant of the falsity of said Defendants' representations. Said Plaintiff therefore relied on the representations of Defendants Vijay Patel and Krish Patel.

93. Plaintiff Kaj Patel had a right to rely on the representations of Defendants Vijay Patel and Krish Patel since the representations pertained to matters peculiarly within their knowledge.

94. The Plaintiff Kaj Patel was consequently and proximately injured by his reliance on said Defendants false representations.

95. Plaintiff Kaj Patel is therefore entitled to actual and punitive damages and for the imposition of a constructive trust on the Defendants Vijay Patel's and Krish Patel's ill-gotten gains.

**FOR A NINTH CAUSE OF ACTION
(Negligent Misrepresentation against Defendants Vijay Patel and Krish Patel)**

96. All allegations stated above are realleged as if fully repeated herein.

97. As stated above, Defendants Vijay Patel and Krish Patel made false representations to Plaintiff Kaj Patel that they would be developing a business with said Plaintiff for owning and operating multiple Verizon stores.

98. Said Defendants had a pecuniary interest in making the representations.

99. Defendants Vijay Patel and Krish Patel owed a duty of care to Plaintiff Kaj Patel to see that they communicated truthful information to him.

100. Said Defendants breached that duty by failing to exercise due care in their representations.

101. Plaintiff Kaj Patel justifiably relied on the representations of Vijay Patel and Krish Patel.

102. Plaintiff Kaj Patel suffered a pecuniary loss as the proximate result of his reliance upon said Defendants' misrepresentations.

103. Plaintiff Kaj Patel is therefore entitled to actual and punitive damages and for the imposition of a constructive trust on the Defendants Vijay Patel's and Krish Patel's ill-gotten gains.

**FOR A TENTH CAUSE OF ACTION
(Equitable Disgorgement against All Defendants)**

104. All allegations stated above are realleged as if fully repeated herein.

105. By taking control of all the assets, contract negotiations, and finances of VP Enterprises, the Defendants have been able to misappropriate all business opportunities and assets to themselves. The misappropriation of the business of VP Enterprises has enabled Defendants Vijay Patel, Krish Patel and P Communications to take over the profits and future growth of VP Enterprises.

106. The misappropriation of the business opportunities of VP Enterprises by the Defendants was done by fraudulent, illegal and inequitable means. Plaintiff Kaj Patel and Nominal Defendant VP Enterprises are entitled to an order of this court requiring said Defendants to disgorge the profits and revenues received by said Defendants from their business operations related to the Verizon stores.

**FOR AN ELEVENTH CAUSE OF ACTION
(Constructive Trust against All Defendants)**

107. All allegations stated above are realleged as if fully repeated herein.

108. Because of the diversion of valuable corporate opportunities away from VP Enterprises and Plaintiff Kaj Patel, said Plaintiff and VP Enterprises are entitled to

have a constructive trust placed on the assets and stock of P Communications for the benefit of Plaintiff Kaj Patel and VP Enterprises.

**FOR A TWELFTH CAUSE OF ACTION
(Violation of South Carolina Unfair Trade Practices Act)**

109. All allegations stated above are realleged as if fully repeated herein.

110. The actions of the Defendants constituted a trade within the meaning of S.C. Code Ann. § 39-5-20(a).

111. The repeated actions of Defendants Vijay Patel, Krish Patel and P Communications in repeatedly opening new Verizon stores, without the knowledge of Plaintiff Kaj Patel or the involvement of VP Enterprises, through misrepresentations and fraudulent concealment as outlined above were unfair and deceptive acts and willful violations of the S.C. Unfair Trade Practices Act, § 39-5-20, *et seq.*, S.C. Code Ann. (1976).

112. The acts of Defendants Vijay Patel, Krish Patel and P Communications impacted upon the public interest of the people of the state of South Carolina and were committed repetitiously against the Plaintiff.

113. The Plaintiff is informed and believes that the Defendants have employed similar acts of illegal, oppressive, fraudulent, or unfairly prejudicial conduct against other individual shareholders in other comparable companies including, but not limited to, Corby Phillips and shareholders/partners in their closely-held hotel companies.

114. As a result of the unfair and deceptive trade practices committed, the Plaintiff has suffered losses for which willful violations the Plaintiff is entitled to treble actual damages and an award of reasonable attorney fees and costs.

**FOR A THIRTEENTH CAUSE OF ACTION
(Declaratory Judgment)**

115. All allegations stated above are realleged as if fully repeated herein.

116. The Plaintiff seeks a declaratory judgment pursuant to the Uniform Declaratory Judgment Act, S.C. Code Ann. §§ 15-53-10 through -140 determining that the assets of P Communications and/or the stock therein belong to VP Enterprises and that the Plaintiff is entitled to a 50% interest in P Communications.

WHEREFORE, the Plaintiff, individually, and on behalf of VP Enterprises, Inc., prays:

A. For judgment against the Defendants in favor of VP Enterprises Inc. for actual and punitive damages due to the breaches of fiduciary duty by Defendants Vijay Patel and Krish Patel, due to the breach of the standards of conduct for directors and officers, due to the fraud, constructive fraud, and negligent misrepresentation of the Defendants;

B. Alternatively, for judgment against the Defendants in favor of Kaj Patel for 50% of the damages to VP Enterprises, Inc. due to the breaches of fiduciary duty by Defendants Vijay Patel and Krish Patel, due to the breach of the standards of conduct for directors and officers, due to the fraud, constructive fraud, and negligent misrepresentation of the Defendants along with punitive damages thereon;

C. For an accounting, constructive trust, disgorgement and such other equitable relief as the Court deems just and proper;

D. For actual and treble damages, costs and attorney fees for violation of the South Carolina Unfair Trade Practices Act;

E. For such other relief as the Court deems just and proper.

THE GILREATH LAW FIRM, P.A.

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monty@thecarolinallawgroup.com

ATTORNEYS FOR PLAINTIFFS

Dated: February 7, 2012
Greenville, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Pankaj Patel, Individually and Derivatively
on behalf of Nominal Defendant, VP
Enterprises, Inc.,

Plaintiff,

v.

Krish Patel, Vijay Patel, and
P Communications, Inc.,

Defendants,

and

VP Enterprises, Inc.,

Nominal Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2011-CP-23-7338

**VERIFICATION OF
AMENDED COMPLAINT**

The undersigned, Pankaj Patel, hereby verifies that he has read the allegations of the foregoing Amended Complaint against the Defendants and, based upon his own personal knowledge, such allegations are true and correct to the best of his knowledge, and, as to any allegations based upon information and belief, he believes them to be true and correct to the best of his good faith belief.

Further affiant sayeth not this 7 day of February 2012.

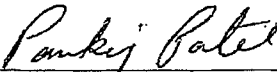

Pankaj Patel

Exhibit 1

Verizon Wireless Agent Business Plan



Company Description

This company is formed by a group of local entrepreneurs. This South Carolina based company will operate Verizon Wireless agent location(s). Location(s) will be exclusive retail location(s) to purchase Verizon Wireless service and equipment.

Objectives:

To build the flagship agent store of Verizon Wireless in the district. Through sales, revenues and customer experience.

To provide training and support for store personal, maintaining excellent moral of all store employees.

To create the best possible customer experience resulting not only in customer loyalty and increasing sales for the store, but also for Verizon Wireless.

To hold regular staff meetings that will result in the continued commitment of building one team, which, by working together will make our stores flagship agent stores of the district.

Development & Status

The company has not been incorporated and licenced yet. Upon meeting with Verizon Wireless approval committee, incorporation and licensing will be persued immediately. The founders are Vijay Patel and Pankaj. Vijay will be the CEO & President. The agent location will be operated and managed by the company. Pankaj Patel will be the Vice President. Startup capital will be provided by Vijay and Pankaj Patel. Additional capital requirements of up to \$250,000.00 can be available. Bank of America and BB&T have established relationships with our principles.

A few locations sites were found in September 2007.

One definite location which is available for business is:

1618 Woodruff Road Greenville, SC 29607,

Earle Furman, NAI has already been contacted to confirm availability.

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Comment: Make the following as bullet items.

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Comment: Krish, you may want to include a paragraph of your experience and accomplishments as verizon employee. I don't think that you being a previous employee would disqualify us. Call and check with them anononously.

9 Additional locations have been preliminary outlined to be located as follows:

Pelham Road , Greenville, SC
Augusta Road , Greenville, SC
Haywood Road , Greenville, SC
Butler Road , Mauldin , SC
Blackstock Road, Spartanburg, SC
SC Highway 9 , Spartanburg, SC
SC Highway 123, Easley, SC
Anderson, SC
Gaffney, SC

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Earle Furman, NAI (Broker in charge, Principal) has worked projects with our group previously. His firm will keep us up to date on availability of key retail locations for future expansions.

Expansion Time Line

Immediate Actions

After the business meets its projections within 3-6 months, we will start expanding locations starting with highest traffic count and market research. Our goal is to have all ten locations operating in the Upstate of South Carolina as fast as possible.

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Short Term

We would like to expand north and south of I-85. Our stretch goal would entail expanding vastly in the Carolina and Tennessee regions.

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Long Term

Our long term goal would be to expand along the east coast of the United States and to be recognized as agent leaders of Verizon Wireless.

Industry Analysis

The wireless industry is very competitive and demanding. Verizon Wireless is a recognized market

leader in this industry, mainly competing with GSM leader AT&T Mobility. Verizon Wireless has over 63.7 million customers and over 38 billion dollars in revenue. With Greenville's rank "highest cell phone per capita users" a few years ago, we believe there still is a high demand for wireless services. By offering the premium network Verizon Wireless and a strategically planned

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business team, both companies will benefit and succeed.

The wireless industry has evolved from trunk phones to the ability to download your favorite song over the air, right off your handset device. There are over 162 million subscribers to the wireless industry and over \$118 billion in investments.

There's much more that is offered in today's wireless products. Verizon Wireless offers America's most reliable network with the industry fastest mobile broadband network. This is one of the few reasons why Verizon Wireless dominates the Carolinas/Tennessee market. With Carolina/Tennessee region being one of the most productive and revenue generating regions in the company, our company knows we can contribute to that success.

Products & Related Services

Our locations will have full intent to offer the complete line of products and wireless solutions provided by Verizon Wireless. By using a strategic inventory process control, we will be able to provide all different types of products to our consumers.

Service

A team of professional, motivated, positive and knowledgeable staff will be available for our customers.

Every customer will get the perfect customer experience from our sales team. All employees will go through extensive training when hired. The sales team will be intergraded with the communities' business events. All representatives will be trained on out bound and cold calling. Employees will be trained on how to generate small business leads as well as how to establish and create them. Employee will be trained on personal selling skills, customer first and probing models. Mystery shops will be conducted in order to evaluate and promote better performances. Employees will be trained on CDMA technology as well as evdo. As technology changes or improves all employees will be kept up to date.

Verizon Wireless VS. Competitors – AT&T, T-Mobile, Sprint, Alltel,

The competitive advantage will be taught to be sure our employees providing consumers with accurate information.

The Target Market

The market for the Verizon Wireless products is anyone age 6 and up. The Upstate, SC market is densely populated and increases to grow. With iCAR research center and south financial bank coming into Greenville, it will increase the demand for cellular users.

Market Location & Customers

Our first location will be placed on Woodruff Road, the highest traffic count and real estate value in the Upstate of SC.

Local population – the county of Greenville with a year-round population of 500,000 +.

Local businesses – The Chamber of Commerce lists over 6400 businesses. Companies such as Michelin, BMW, Fluor, Jacobs, etc have large offices or corporate headquarter located here.

Venues: Bi-Lo Center (16,000), Furman University, Timmons Arena (4,750), Sbirrine Stadium (13,000),

Furman University Paladin Stadium (16,000), Furman University Soccer Stadium (3,000)

The student – USC Upstate, the largest growing university in the state. Clemson, Furman, Greenville Tech, Bob Jones, North Greenville College

Competitive Strategy

Our locations will offer:

- A professional, perfect customer experience and total wireless solutions.
- Trained Individuals, guided by professionals of the business Industry.
- changing behaviors to change results
- High-employee motivation and good sales attitude

Marketing Plan & Sales Strategy

Market Penetration:

Entry into the market should not be a problem. The first store has extremely high visibility with heavy foot traffic all day long. The most traveled on and highest real estate value road in the Upstate of SC.

Marketing Strategy

Focusing on the unique service and professionalism. Courteous and knowledgeable sales consultants to provide consumers with all their wireless needs. Backed up by Verizon Wireless, Worry Free Guarantee

- Print media -- local newspapers, magazines and student publications
- Chamber of Commerce brochures
- Direct mail -- subscriber lists, office
- Misc. -- yellow pages, charity events
- Internet Website

Corporate relations

The marketing effort will be split into 3 phases;

- 1) Opening -- An advanced notice sent out to our personal, business and community contacts.
- 2) Ongoing -- A flexible campaign with personal, business and community contacts, assessed regularly for effectiveness.
- 3) Point of Sale -- A well-trained staff can increase the average check as well as enhancing the customer's overall experience. Word-of-mouth referral is very important in building a customer base.

Hours of Operation

TBA, 7 Days a week operation

Employee Training & Education

Employees will be trained not only in their specific operational duties but in the philosophy and applications of our concept. They will receive extensive information from the management and be kept informed of the latest information on the industry.

Systems & Controls

Selling with Integrity

Management & Organization

Vijay R. Patel, CEO & President
Pankaj Patel, Vice President

Krish Patel, General Manager & Project Development
TBA, Sales & Operations Manager

Parul P. Patel, Director of Training & Inventory Control
Alka V. Patel, Director of Marketing

S. Allan Hill -- Attorney & Professional Business/Legal Support
Mukund Desai -- CPA, Consultant

Revenues					
				16	
	Items sold per day	Avg/person	Total/Day	Tot/Month	Tot/Year
Activations	5	\$100	\$500	\$12,000	\$144,000
	25	\$15	\$375	\$6,000	\$72,000
Accessories					
Totals	30	\$115	\$875	\$18,000	\$216,000
Tips					
		0%	\$0	\$0	\$0

Expense			Tot/Month	Tot/Year
18.00%	Food		\$75	\$900
	Rent		\$2,700	\$32,400
	CAM		\$0	\$0
	Maintenance		\$50	\$600
	Insurance		\$200	\$2,400
25%	Payroll		\$4,000	\$48,000
	Licences		\$1,200	\$14,400
	Profesional Fees		\$100	\$1,200
	Utlilities		\$800	\$9,600
	Uniforms		\$0	\$0
	Linen Laundry		\$0	\$0
	Linen Rental		\$15	\$180
	Replacement costs		\$0	\$0
	Flyers		\$100	\$1,200
	Pest Extermination		\$45	\$540
1%	Disposable supplies		\$350	\$4,200
	Office Materials		\$130	\$1,560
7%	Sales& Hospitality Tax		\$1,260	\$15,120
	Credit card equipment rental		\$0	\$0
2%	Credit Card Fees		\$360	\$4,320
Total			\$11,385	\$136,620

Assume 75% by CC

Profit	\$6,615	\$79,380
% Profit	58.10%	58.10%

Expense		Tot/Month
	Rent	\$2,170
	CAM	\$600
	Insurance	\$200
	Payroll	\$1,700
	Utilities	\$600
	Linen Rental	\$26
	Takeaway Menus	\$10
	Pest Extermination	\$45
	Dishwasher rental	\$130
2%	Credit Card Fees	\$140
Total		\$5,621

140.8

Compatibility Report for Verizon Wireless Agent Financial Summary.xls

Run on 12/19/2007 18:40

The following features in this workbook are not supported by earlier versions of Excel. These features may be lost or degraded when you save this workbook in an earlier file format.

Minor loss of fidelity

of occurrences

Some cells or styles in this workbook contain formatting that is not supported by the selected file format. These formats will be converted to the closest format available.

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Pankaj Patel, Individually and Derivatively on
behalf of Nominal Defendant, VP Enterprises,
Inc.,

Case No. 2011-CP-23-7338

Plaintiff,

vs.

Krish Patel, Vijay Patel, and P
Communications, Inc.,

ANSWER TO AMENDED COMPLAINT

Defendants,

And

VP Enterprises, Inc.

Nominal Defendant.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
FEB 21 2012
PM 12:22

The Defendants Krish Patel ("Krish"), Vijay Patel ("Vijay") and P Communications, Inc. ("P") by and through their undersigned counsel answer the Amended Complaint as follows:

FOR A FIRST DEFENSE

Defendants answer the Amended Complaint upon their knowledge and otherwise upon information and belief and respond to the individually numbered paragraphs as follows:

1. Defendants admit that Kaj is a citizen and resident of Greenville County, South Carolina and that Kaj attempts to bring an action on behalf of VP Enterprises, Inc. It is alleged that VP Enterprises, Inc. is no longer in existence and never actually engaged in any business.
2. Paragraph 2 is admitted.

3. Paragraph 3 is admitted except that it is alleged that Vijay is no longer an officer, stockholder or director of VP Enterprises, Inc.

4. Paragraph 4 is admitted.

5. Paragraph 5 is admitted.

6. Paragraph 6 is admitted.

7. So much of Paragraph 7 is admitted as it alleges that Kaj is the Plaintiff in this lawsuit and has plead the causes of action alleged. The remaining allegations are denied.

8. In regard to Paragraph 8, the Defendants do not have sufficient knowledge to enable them to form a belief and therefore denies the same.

9. Paragraph 9 is denied.

10. Paragraph 10 is admitted.

11. So much of Paragraph 11 is admitted as alleges that VP Enterprises was to be owned by Kaj and Vijay. It is denied that Krish was to have ownership.

12. Paragraph 12 is admitted.

13. Paragraph 13 is denied.

14. Paragraph 14 is denied.

15. Paragraph 15 is denied.

16. Paragraph 16 is admitted except it is alleged that Krish Patel left Verizon in October of 2007 and alleged that the idea of operating independent wireless communication stores under a license agreement with Verizon was entirely Krish's idea not the idea of Kaj.

17. So much of Paragraph 17 is admitted as alleges that Krish and Kaj discussed the idea of opening Verizon stores and that Krish prepared a business plan and that Krish was

worried that Verizon may have some reluctance in allowing him to become an owner since he was a former employee of Verizon. The remaining allegations are denied.

18. So much of Paragraph 18 is admitted as alleges that Kaj and Krish may have looked at one or two possible locations together but it is alleged that nearly all of the possible locations were investigated by Krish not Kaj. The remaining allegations are denied except that Kaj and Krish did ride with Andre.

19. In regard to Paragraph 19, it is admitted Verizon let Krish know if locations were in a restricted area. It is denied Kaj played any significant role in selecting locations.

20. It is admitted Krish prepared a business plan and shared it with Kaj. The remaining allegations are denied.

21. Paragraph 21 is admitted.

22. Paragraph 22 is admitted.

23. In regard to Paragraph 23, it is admitted that Kaj made minor revisions to Krish's business plan and shared certain worksheets Kaj had done for a restaurant that he ran (and which ultimately failed). The Defendants do not have sufficient information to enable them to form a belief as the specifics of the e-mail referenced in this Paragraph and therefore deny the same.

24. As previously stated, Kaj e-mailed Krish certain calculations for a restaurant he ran which ultimately failed. The Defendants do not have sufficient information to enable them to form a belief as to the exact date of such e-mails and therefore deny the same.

25. Paragraph 25 is admitted.

26. Paragraph 26 is admitted and it is alleged that the price list e-mailed by Kaj was entirely worthless, was for technology not compatible with Verizon and was of absolutely no use.

27. The ownership of VP Enterprises, Inc. was always 50% Kaj and 50% Vijay.
28. Paragraph 28 is admitted.
29. Paragraph 29 is admitted.
30. Paragraph 30 is denied except that it is admitted that Kaj participated in a couple of meetings and may have reviewed a couple of locations.
31. Paragraph 31 is denied.
32. In regard to Paragraph 32, it is alleged that Verizon notified the parties that their application had been turned down in February 2008. Verizon gave no explanation for its actions. Kaj received the same information as Krish and Vijay. The remaining allegations are denied.
33. Paragraph 33 is denied.
34. Paragraph 34, based upon information and belief, is admitted but also upon information and belief, the "opportunity offered by Sunbelt Business Network" was not a Verizon affiliated business.
35. In regard to Paragraph 35, it is alleged that after Verizon denied the application submitted by VP Enterprises, Inc., Krish decided to pursue his idea on his own. The initial location for P Communications was opened on approximately October 1, 2008. It is further admitted that on October 1, 2008 Kaj became aware that Krish had become involved in the opening of the store; and that Krish had not tried to do any deal with Kaj. The remaining allegations are denied.
36. In regard to Paragraph 36, it is alleged that Kaj asked that the \$5,000 he had put into VP Enterprises be transferred to KVP Investments since VP Enterprises no longer had any further real possibility. The remaining allegations are denied.

37. In regard to Paragraph 37, it is admitted that Kaj, on numerous occasions during the time period alleged, had conversations with Vijay. The remaining allegations are denied and it specifically alleged that no information was kept from Kaj.

38. In regard to Paragraph 38, it is admitted that Kaj did ask Krish if he thought that Columbus-Tryon, North Carolina area was a potential site for a Verizon store. At the time, Krish informed Kaj that he was in the process of buying five stores in the Columbia-Florence area and did not have time to pursue any location in Columbus-Tryon. The remaining allegations are denied.

39. Paragraph 39 is denied.

40. In regard to Paragraph 40, it is admitted that Krish had discussions with Kaj about the possibility of Kaj becoming an employee but not an owner. The remaining allegations are denied.

41. In regard to Paragraph 41, it is possible that Krish told Kaj about Krish buying Corby Phillips out of P Communications, Inc. but the remaining allegations are denied.

42. It is admitted that Krish informed Kaj that he was operating a number of Verizon stores through P Communications, Inc.; that the stores were set up with separate leases with separate LLCs. The Defendants do not have sufficient information to enable them to form a belief as to what Kaj "discovered" or "learned" and therefore deny the remaining allegations.

43. Paragraph 43 is denied.

44. In regard to Paragraph 44, it is admitted that Krish and Kaj met on or about May 25, 2011 at Sabroso restaurant and that Krish discussed with Kaj what he had been doing for the last three years. The remaining allegations are denied.

45. Paragraph 45 is denied.

46. In regard to Paragraph 46, it is alleged the business plan was drafted by Krish not Kaj.

47. Paragraph 47 is denied.

48. So much of Paragraph 48 is admitted as it alleges that P Communications, Inc. has a website but these Defendants do not have sufficient information to enable them to form a belief as to how or when the Plaintiff became aware of said website and therefore denies the same.

49. Paragraph 49 is admitted except that there is no location on Haywood Road and Monroe is in Georgia.

50. Paragraph 50 is admitted except that the business plan was drafted by Krish not Kaj.

51. Paragraph 51 is denied.

52. Paragraph 52 is admitted.

53. Paragraph 53 is admitted.

54. So much of Paragraph 54 is admitted as alleges that VP Enterprises was dissolved. The remaining allegations are denied.

55. The foregoing allegations are realleged and incorporated herein by reference.

56. Paragraph 56 is admitted except that it is denied Plaintiff has plead facts sufficient to constitute a cause of action.

57. Paragraph 57 is denied.

58. Paragraph 58 is denied.

59. The foregoing allegations are realleged and incorporated herein by reference.

60. Paragraph 60 is denied.

61. Paragraph 61 is denied.

62. Paragraph 62 is denied.
63. The foregoing allegations are realleged and incorporated herein by reference.
64. Paragraph 64 is denied.
65. Paragraph 65 is denied.
66. Paragraph 66 is denied.
67. The foregoing allegations are realleged and incorporated herein by reference.
68. Paragraph 68 is denied.
69. Paragraph 69 is denied.
70. Paragraph 70 is denied.
71. The foregoing allegations are realleged and incorporated herein by reference.
72. Paragraph 72 is denied.
73. Paragraph 73 is denied.
74. The foregoing allegations are realleged and incorporated herein by reference.
75. Paragraph 75 is denied.
76. Paragraph 76 is denied.
77. Paragraph 77 is denied.
78. Paragraph 78 is denied.
79. The foregoing allegations are realleged and incorporated herein by reference.
80. Paragraph 80 is denied.
81. Paragraph 81 is denied.
82. Paragraph 82 is denied.
83. Paragraph 83 is denied.
84. Paragraph 84 is denied.

85. Paragraph 85 is denied.
86. Paragraph 86 is denied.
87. Paragraph 88 is denied.
88. The foregoing allegations are realleged and incorporated herein by reference.
89. Paragraph 89 is denied.
90. Paragraph 90 is denied.
91. Paragraph 91 is denied.
92. Paragraph 92 is denied.
93. Paragraph 93 is denied.
94. Paragraph 94 is denied.
95. Paragraph 95 is denied.
96. The foregoing allegations are realleged and incorporated herein by reference.
97. Paragraph 97 is denied.
98. Paragraph 98 is denied.
99. Paragraph 99 is denied.
100. Paragraph 100 is denied.
101. Paragraph 101 is denied.
102. Paragraph 102 is denied.
103. Paragraph 103 is denied.
104. The foregoing allegations are realleged and incorporated herein by reference.
105. Paragraph 105 is denied.
106. Paragraph 106 is denied.
107. The foregoing allegations are realleged and incorporated herein by reference.

108. Paragraph 108 is denied.
109. The foregoing allegations are realleged and incorporated herein by reference.
110. Paragraph 110 is denied.
111. Paragraph 111 is denied.
112. Paragraph 112 is denied.
113. Paragraph 113 is denied.
114. Paragraph 114 is denied.
115. The foregoing allegations are realleged and incorporated herein by reference.
116. Paragraph 116 is denied.
117. Defendants deny the allegations in the Paragraph entitled "Wherefore".
118. Defendants deny any and all allegations of the Complaint not expressly admitted herein; deny that the Plaintiff is entitled to any form of relief and deny that the Plaintiff is entitled to a trial by jury.

FOR A SECOND DEFENSE

119. The Complaint fails to state sufficient facts to constitute a claim or cause of action.

FOR A THIRD DEFENSE

120. The Plaintiff's claims are barred in whole or in part by the statute of limitations.

FOR A FOURTH DEFENSE

121. The Plaintiff's claims are barred in whole or in part because there is an accord and satisfaction.

FOR A FIFTH DEFENSE

122. The Plaintiff's claims are barred in whole or in part by the doctrines of estoppel, waiver, acquiescence and/or ratification.

FOR A SIXTH DEFENSE

123. Some of Plaintiff's claims are barred because the Plaintiff failed to make a demand on the Board of Directors and failed to meet other procedural and substantive requirements for a derivative action as specified in Rule 23(b)(1) of the South Carolina Rules of Civil Procedure.

FOR A SEVENTH DEFENSE

124. The Plaintiff's claims are barred in whole or in part under the doctrine of laches.

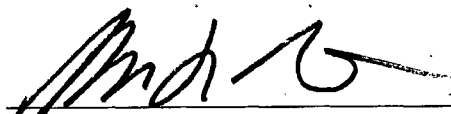
FOR AN EIGHTH DEFENSE

125. Some or all of the Plaintiff's claims are barred by the doctrine of mitigation.

WHEREFORE the Defendants pray as follows:

- (1) That the Plaintiff take nothing by virtue of their Complaint and this action be dismissed in its entirety;
- (2) That the Plaintiff's demand for jury be denied;
- (3) That the Defendants be awarded their costs and attorney's fees incurred; and
- (4) For such other and further relief as the Court may deem just and proper.

Respectfully submitted,



Thomas L. Stephenson (S.C. Bar No. 5332)
William W. Wilkins (S.C. Bar No. 6112)
Andrew A. Mathias (S.C. Bar No. 76220)
NEXSEN PRUET, LLC
55 East Camperdown Way (29601)
Post Office Drawer 10648
Greenville, SC 29603-0648
864.370.2211

Attorneys for Defendant

February 21, 2012
Greenville, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

PANKAJ PATEL, INDIVIDUALLY
AND DERIVATIVELY ON BEHALF
OF NOMINAL DEFENDANT,
VP ENTERPRISES, INC.,

PLAINTIFF,

-VS-

KRISH PATEL, VIJAY PATEL
AND P COMMUNICATIONS, INC.,
AND VP ENTERPRISES, INC.,

DEFENDANTS.

2011-CP-23-07338

TRANSCRIPT OF RECORD

JULY 21 - 22, 2014
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE EDWARD W. MILLER

APPEARANCES:

ATTORNEYS FOR PLAINTIFF:

JAMES R. GILREATH, ESQUIRE
WILLIAM M. HOGAN, ESQUIRE
MONTY DESAI, ESQUIRE
NIHAR PATEL, ESQUIRE
J. MATTHEW WHITEHEAD, ESQUIRE

ATTORNEYS FOR DEFENDANTS:

THOMAS L. STEPHENSON, ESQUIRE
ANDREW A. MATHIAS, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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DIRECT BY MR. MATHIAS -----	327
CROSS BY MR. GILREATH -----	348
KRISH PATEL	
DIRECT BY MR. STEPHENSON -----	374
CROSS BY MR. GILREATH -----	410
REDIRECT BY MR. STEPHENSON -----	442
CERTIFICATE OF REPORTER -----	448

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
P 1 - 516	(Exhibit list to be provided) ---	15	16
P 517	Second Supplemental Responses ---	241	241
P 518	Depositions of Krish and Vijay --	238	273
P 519	Deposition of Patricia Cook ---- (Plaintiff's Designations)	317	317
P 520	CV of John Freeman -----	327	327
D 1 - 232	(Exhibit list to be provided) ---	15	16
D 233	List of new stores -----	303	304
D 234	CV of Martin McWilliams -----	327	327
D 235	Defendant's witness ----- notebook exhibits	447	447

Patel Patel

Plaintiffs

List of Plaintiff's Trial Documents

Date	Date 2	Description	Bates Numbered	Pl. Trial Document No.
12/09/05		Vijay Patel criminal record	VZW0000035	1
02/14/08		Vijay Patel criminal record	VZW0000181	2
10/22/07		Krish Patel Employment Information	VZW 0001 (Plaintiff)	2A
12/05/07		Kaj Patel Business Plan email	Kaj000230	3
12/05/07		Kaj Patel Tava Grill, Inc. Business Plan	Kaj000761-766	4-9
12/05/07		Kaj Patel Kundo, Inc. Businss Plan	Kaj000767-773	10-16
12/06/07		Verizon Wireless Agent Business Plan (Pankaj Patel and Vijay Patel)	Defendants 000526-532	17-23
12/06/07		Verizon Wireless Agent Business Plan (Pankaj Patel and Vijay Patel)	Defendants 000526-532	24-30
12/06/07		Verizon Wireless Agent Business Plan (Exhibit 1 to Amended Complaint)	Kaj 000208-217	30A1-A10
12/19/07		Email to Krish Patel from Kaj Patel - Calculations	Kaj000231-232	30A-B
12/19/07		Verizon Wireless Agency Financial Summary	Defendants 000343-349	31-37
01/06/08		Verizon Wireless Agency Financial Summary	Kaj000233-235	39-40
01/10/08		Email from Krish Patel to Kaj Patel - New Calculations	Defendants 000335-342	41-41G
01/24/08		VP Enterprises - Articles of Incorporation	Kaj000258-268	42-52
01/21/08		Initial Annual Report - VP Enterprises	Kaj000261	45
01/24/08		VP Enterprises Share Certificate for Vijay Patel - 50 shares	Kaj000262	46
01/24/08		VP Enterprises Share Certificate for Pankaj Patel - 50 shares	Kaj000263	47
01/24/08		VP Enterprises - Corporate Data as of February 14, 2008	Kaj000264	48
01/24/08		VP Enterprises EIN number	Kaj000265-267	49-51
01/29/08		VP Enterprises Certificate of Existence	Kaj000268	52
01/25/08		Bank of America Statement - VP Enterprises, Inc.	Defendants 001175-1177	53-55
02/01/08		Bank of America Statement - VP Enterprises, Inc.	Defendants 001181-1183	56-58
03/01/08		Bank of America Statement - VP Enterprises, Inc.	Defendants 001178-1180	59-61
04/01/08		Bank of America Statement - VP Enterprises, Inc.	Defendants 001172-1174	62-64
09/22/13		Bank of America's response to Plaintiff's subpoena	Kaj000781-825	65-109
01/25/08		Bank of America Statement - VP Enterprises, Inc.	Kaj000785-787	69-71
02/01/08		Bank of America Statement - VP Enterprises, Inc.	Kaj000788-790	72-74
03/01/08		Bank of America Statement - VP Enterprises, Inc.	Kaj000791-793	75-77
04/01/08		Bank of America Statement - VP Enterprises, Inc.	Kaj000794-796	78-80
05/01/08		Bank of America Statement - VP Enterprises, Inc.	Kaj000797-799	81-83
06/01/08		Bank of America Statement - VP Enterprises, Inc.	Kaj000800-802	84-86

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Susan Hudgins 7/23/14

Dale Jones 7/23/14

List of Plaintiff's Trial Documents

Date	Date 2	Description	Bates Numbered	Pl. Trial Document No.
07/01/08		Bank of America Statement - VP Enterprises, Inc.	Kaj000803-806	87-90
08/01/08		Bank of America Statement - VP Enterprises, Inc.	Kaj000807-809	91-93
09/01/08		Bank of America Statement - VP Enterprises, Inc.	Kaj000810-812	94-96
10/01/08		Bank of America Statement - VP Enterprises, Inc.	Kaj000813-815	97-99
11/01/08		Bank of America Statement - VP Enterprises, Inc.	Kaj000816-818	100-102
12/01/08		Bank of America Statement - VP Enterprises, Inc.	Kaj000819-821	103-105
01/01/09		Bank of America Statement - VP Enterprises, Inc.	Kaj000822-824	106-108
02/01/09		Bank of America Statement - VP Enterprises, Inc.	Kaj000825	109
01/29/08		Deposit Slip for \$5,000 - Bank of America	Kaj000152	110
07/01/08		Bank of America Statement with deposit slip and check	Kaj003536-3541	110A-110F
01/28/08		Verizon Agent Application for VP Enterprises (Vijay Patel)	VZW0000039-45	111-117
01/28/08		Verizon Agent Application for VP Enterprises (Pankaj Patel)	VZW0000048-54	118-124
01/28/08		Verizon Agency Application for Credit	VZW0000261-266	125-130
01/28/08		Verizon Agency Application for Credit	VZW0000261-266	131-136
02/04/08		Email to Kaj Patel from Krish Patel - Mike Pavlick's (of BB&T) contact information	Defendants 000072	137
02/08/08		Email to Krish Patel from Mike Pavlick - Line of Credit	Defendants 000073	138
02/08/08		Email to Krish Patel from Kaj Patel - Cell phone price list from Hong Kong	Defendants 000074	139
02/10/08		Email to Kaj Patel from Krish Patel - tax return request	Defendants 000076	140
02/08/08		Email string between Krish Patel and Mike Pavlick - Line of Credit	Defendants 000079-80	141-142
02/11/08		Email to Krish Patel from Kaj Patel - sending Kaj's 2005 and 2006 tax returns	Defendants 000081	143
02/11/08		Letter to VP Enterprises from Mike Pavlick - BB&T has approved VP Enterprises, Inc. line of credit in the amount of \$50,000	VZW0000185	144
02/26/08		Letter from Tim Butler of Verizon - "unable to proceed" with the application	Defendants 000732	145
04/04/08		One page Corby Phillips Business Plan received from Corby Phillips	Kaj000097	145A
04/01/08		Krish Patel USC Business Plan	USC00001-23	145B-145X
04/04/08		Verizon Wireless Agent Business Plan (Corby Phillips)	Kaj000073-77	146-150
04/05/08		Email to Kelley Pearson from Corby Phillips - sending business plan	VZW0000148	151
04/08/08		Email to Krish Patel from Kaj Patel - Three seized stores in NC	Defendants 000309	152

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List of Plaintiff's Trial Documents

Date	Date 2	Description	Bates Numbered	Pl. Trial Document No.
04/18/08		Email to Krish Patel from Kaj Patel - Sending link to AT&T independent dealer	Defendants 000310	153
04/25/08		P Commuication's Timeline for Corporate Activity	Ellie Thomas Report	154
04/25/08		P Communications Initial Annual Report	Kaj002017	155
04/28/08		P Communications Articles of Incorporation	Kaj002014-2014	156-156B
05/07/08		P Communications Resolution	Defendants000608-609	156C-156D
05/07/08		P Communication of By-Laws	Defendants 000586-607	156E-156Z
04/28/08		P Communications Share Certificate for Corby Phillips - 100 shares - CANCELED	Defendants 000625	C
04/28/08		P Communications Resolution of May 7, 2008	Defendants 000610-614	158-162
09/19/08		P Communications South Carolina Business Tax Application	Kaj002006	163
12/04/08		P Communications Election by a Small Business Corporation	Kaj002003-2005	164-166
12/02/08		Verizon Wireless and P Communications Amendment No. 1 to the Authorized Agency Agreement - Principals Krish Patel and Keith Gailey	Defendants 000655-656	167-168
12/02/08		P Communications Notice of Change of Registered Agent - Corby Phillips to Krish Patel	Defendants 000579-580	169-170
12/15/08		P Communications - Resolution where Corby Phillips wishes to transfer 100 shares	Defendants 00615-616	171-172
12/15/08		P Communications Share Certificate for Krish Patel - 60 shares	Defendants 000626	173
12/15/08		P Communications Share Certificate for Keith Gailey - 40 shares CANCELED	Defendants 000627	174
11/19/08		Letter to Patricia Cook of Verizon Wireless from S. Allan Hill - P. Communications Ownership change signed by Krish Patel, Corby Phillips and Keith Gailey	VZW0000147	175
04/28/08		Verizon agent approval forms		440-453
05/20/08		Verizon Agent Approval Form for P Communications - Corby Phillips	Kaj 002009; VZW0000298-300	175a-177
06/16/08		Email to Kelley Pearson from Melissa Marie Czarnecki - Agent Location Approval Form	VZW0000122	178
06/16/08		Email to Kelley Pearson from Melissa Marie Czarnecki - Approval of P Communicationsw congtract documents	VZW0000129	179
06/24/08		Email to Corby Phillips from Krish Patel - store location addresses	Defendants 000125	180
06/27/08		P Communications Authorized Agency Agreement	VZW 0002-48 (Plaintiff)	181-227

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List of Plaintiff's Trial Documents

Date	Date 2	Description	Bates Numbered	Pl. Trial Document No.
07/02/08		Note to Allan Hill from Krish Patel (?) - Terms of contract	Defendants 000140-141	228-228 A
07/07/08		Handwritten notes (Dan Jones, CPA?)	Kaj002010	229
07/08/08		Plaintiff's VP QuickBooks entry on money transfer	Kaj000153	230
11/19/08		Letter to Patricia Cook of Verizon Wireless from S. Allan Hill - P. Communications Ownership change signed by Krish Patel, Corby Phillips and Keith Gailey	VZW0000147	231
07/22/08		Agent approval form (Corby Phillips)	VZW0000297-303	232-238
07/24/08		Email string between Krish Patel and Kaj Patel - Wireless business opportunity	Defendants 001096	239-240
08/25/08		P Communicaitons BB&T Promissory Note guaranteed by Krish and Gailey	Kaj000862-865; Kaj 003504-3522	241-260
07/29/08		BB&T Credit Application Report - loan request 07/29/08	Kaj003520-3522	261-263
09/01/08		P Communications Election by Small Business Corporation (unsigned)	Kaj002001-2002	264-265
09/08/08		Letter to Patricia Cook of Verizon Wireless - request to change P Communications' headquarter address	Kaj000087	266
10/01/08		Email to Krish Patel from Skip Tappy sending evidence of Insurance; email to Kelley Pearson from Krish Patel sending insurance documents	VZW0000130-132	267-268
10/01/08		Letter to Verizon Wireless from Mike Pavlick confirming BB&T loan to P Communications in the amount of \$60,000	Defendants 000225	269
10/07/08		Email to various person from Krish Patel - Verizon Wireless Retailer Grand Opening to be held on October 18, 2008	Defendants 000249-250	270-271
10/28/08		Verizon Wireless Agent Application (Krish Patel)	VZW0000277-285	272-280
11/01/08		Verizon Wireless Agent Application (Keith Gailey)	VZW0000286-290	281-285
11/19/08		Letter to Patricia Cook of Verizon Wireless from S. Allan Hill - P. Communications Ownership change signed by Krish Patel, Corby Phillips and Keith Gailey.	VZW0000147	286
12/04/08		P Communications Notice of Change of Registered Agent - Corby Phillips to Krish Patel	Defendants 000579-580	287-288
12/04/08		P Communications IRS Election by A Small Corporation form.	Kaj 002003-2005	289-291
12/15/08		P Communications resolution (Corby Phillips transfers 100% of shares - Krish Patel 60% and Keith Gailey 40%)	Defendeants 000615-616	292-293
12/15/08		Amendment No. 1	Kaj000090-91	294-295

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List of Plaintiff's Trial Documents

Date	Date 2	Description	Bates Numbered	Pl. Trial Document No.
12/02/08		P Communications Notice of Change of Registered Office	Defendants 000579-580	296-297
12/03/08		Letter to South Carolina Department of Revenue from S. Allan Hill sending IRS Form 2553 - P Communications to be treated for South Carolina tax purposes as an "S" Corporation	Kaj002000	298
01/01/09		P Communications Resolution - Keith Gailey sells 40% shares	Defendants 000617-618	299-300
01/02/10		Letter to Keith Gailey from Krish Patel - New salary and bonus agreement	Kaj 001998	301
01/25/10		Letter to Patrica Cook of Verizon Wireless from Krish Patel and Keith Gailey - ownership changes	Defendants 000619	302
02/09/10		Email string between Kaj Patel, Vijay Patel and Krish Patel - 189 Will Bomar property sale	Defendants 000032	303
03/01/10		Verizon, P Communication, Krish Patel, and Keith Gailey execute Amendment No. 3 removing Keith Gailey from P Communications	VZW 00200 (Plaintiff)	304
04/15/10		Email string between Krish Patel and Kaj Patel re: Pryor HUD	Kaj003828-3830	304A-C
06/04/10		Email string between Kaj Patel and Krish Patel - When will Allan Hill have draft agreement ready for review?	Defendants 000354	305
06/22/11		VP Enterprises Dissolved June 22, 2011	Kaj000014	306
04/28/08		P Communications printout from SC Secretary of State	Kaj000037	306A
09/30/11		Town Buz article - "Hot Wire"	Kaj000001-2	307-308
12/31/12		P Communications Financial Statements as of December 31, 2012	Kaj003694-3705	309-320
12/31/08		P Communications tax returns for year ending 2008	Defendants 000451-454	321-324
12/31/09		P Communications tax returns for year ending 2009	Defendants 000414-417	325-328
12/31/10		P Communications tax returns for year ending 2010	Defendants 000467-470	329-332
12/31/11		P Communications tax returns for year ending 2011	Defendants 001428-1432	333-336
12/31/12		P Communications tax returns for year ending 2012 dated 05.30.13	Defendants 001429-1432	337-341
12/31/12		P Communications tax returns for year ending 2013 dated 09.24.13	Not bates numbered	342-346
01/01/14		P Communications Profit & Loss - January - April, 2014	Not bates numbered	347-348
04/30/14		P Communications Balance Sheet as of April 30, 2014	Not bates numbered	349-355
02/14/08		VP Enterprises, Inc. formation documents	Defendants 000657-731	356-430
01/28/08		KVP Investments & Operations - Bank of America signature card of 01/28/08 and Affidavit of Bank of America dated 07/09/14	Kaj003835-3839	431-435
07/01/08		KVP Investments & Operations - Bank Statement	Kaj003861-3863	436-439

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List of Plaintiff's Trial Documents

Date	Date 2	Description	Bates Numbered	Pl. Trial Document No.	
04/08/08		Verizon agent approval forms	VZW0000318-331	440-453	
03/03/14		Ellison Thomas, CPA Report Exhibits	Not bates numbered	454-466	
05/15/10		Photos	Not bates numbered	467-469	
11/08/12		Exhibits to Corby Phillips Deposition of November 8, 2012	Not bates numbered	470-474	
07/18/14		Bank of America documents received from 07/10/14 Plaintiff's subpoena	Not bates numbered	475-487	
		Business Plan Comparisons - Kundo, Tava Grill, VP Enterprises, P Communications, and USC	Not bates numbered	488-516	
		Second Supplemental Response to Def.'s First Set of Interrogatories		517	EV
		Depositions of Krish + Vijay Patel, excerpt transcripts + (2) DVD's	(not transcribed)	518	EV
		Patricia Cook's deposition - Plaintiff's Responsive Designations		519	EV
		CV of John Freeman		520	EV

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Defendants
Patel v. Patel
Trial Documents

Date	Date 2	Description	Bates Numbered	Trial Document No.
02/07/12		Amended Verified Complaint		1-37
03/06/12		Plaintiff's Responses to Defendants' First Interrogatories		38-46
		Virtual Restaurant.com Sample Business Plan		47-53
09/06/13		Henry White letter to Bill Hogan - Response to Subpoena Issued to USC	USC000001	54
Spring '08		Krish Patel's Business Plan from USC	USC000002 - 23	55-76
12/19/07		Email from Krish Patel to Kaj Patel - Financial Calculations	Defendants 000343 - 351	77-85
01/10/08		Email from Krish Patel to Kaj Patel - Financial Summary / Application	Defendants 000335-342	86-93
01/30/08		Email from Krish Patel to Kaj Patel - Realtors	Defendants 000068	94
01/31/08		Email from Krish Patel to Kaj Patel - MLS	Defendants 000069 - 70	95-96
02/04/08		Email from Krish Patel to Kaj Patel - Mike Pavlick contact information	Defendants 000072	97
02/08/08		Email from Krish Patel to Mike Pavlick	Defendants 000073	98
02/08/08		Email from Krish Patel to Kaj Patel - Hong Kong phones	Defendants 000074	99
02/09/08		Email from Krish Patel to Kaj Patel - Cell Phone Price List from Hong Kong	Defendants 000075	100
02/10/08		Email from Krish Patel to Kaj Patel - Requesting 2 years of Kaj Patel's Tax Returns	Defendants 000076	101
02/11/08		Email from Krish Patel to Kelly Peason - Submitting Tax Returns for Kaj Patel	Defendants 000081	102
04/02/08		Email from Krish Patel to Vijay Patel - Office Building / Part Medical Office Investment Opportunity	Defendants 000330 - 331	103-104
04/08/08		Email from Krish Patel to Kaj Patel - LOI	Defendants 000309	105
04/18/08		Email from Krish Patel to Kaj Patel AT&T Independent Dealer Info.	Defendants 000310	106
04/20/08		Email from Krish Patel to Vijay Patel - Marriott Residence Inn, North Charleston from VIP	Defendants 000311 - 312	107-108

Susan Hendrix 7/23/14

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Dale Jones 7/23/14

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04/25/08		Email from Krish Patel to Vijay Patel – LOI from Vip Patel	Defendants 000321 – 323	109-111
06/25/08		Email from Krish Patel to Vijay Patel – 189 Will Bomar	Defendants 000013	112
07/14/08		Email from Krish Patel to Vijay Patel – Hotel in Arkansas	Defendants 000015	113
07/27/08		Email from Krish Patel to Kaj Patel – Wireless Business Oppt	Defendants 000017	114
08/20/08		Email from Krish Patel to Kaj Patel – KVP Investments	Defendants 000019	115
10/07/08		Email from Krish Patel to Others – VW Retailer Grand Opening	Defendants 000249 – 250	116-117
04/02/09		Email from Krish Patel to Vijay Patel – KVP Investment Information	Defendants 000028 – 31	118-121
02/09/10		Email from Krish Patel to Vijay Patel – 189 Will Bomar Property	Defendants 000032 – 34	122-124
02/16/10		Email from Kaj Patel to Rhonda Johnson – KVP Property Taxes	Defendants 000005	125
02/23/10		Email from Krish Patel to Vijay Patel – Bomar	Defendants 000035	126
02/24/10		Email from Krish Patel to Vijay Patel – Will Bomar lease	Defendants 000041 & 47	127-128
05/24/10		Email from Krish Patel to Kaj Patel – Example DM Comp.	Defendants 000052 – 53	129-130
05/25/10		Email from Krish Patel to Kaj Patel – Comp. Plan Comm. Tiers	Defendants 000055 -	131
06/04/10		Email from Krish Patel to Kaj Patel - Draft Agreement from Allan	Defendants 000353 - 354	132-133
10/26/10		Email from Kaj Patel to Krish Patel – KVP Account Funds	Defendants 000356	134
11/03/10		Email from Kaj Patel to Rhonda Johnson – IRS Notice	Defendants 000362	135
12/31/10		Email from Kaj Patel to Krish Patel – Icon sm facebook	Defendants 000368	136
03/03/11		Email from Kaj Patel to Krish Patel – KVP Account Funds	Defendants 000373	137

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03/11/11		Email from Kaj Patel to Krish Patel – Garret Heat & Air bill	Defendants 000377	138
03/21/11		Email from Kaj Patel to Vijay Patel – KVP 2010 Tax Return / Sale of House	Defendants 000378	139
03/29/11		Email from Krish Patel to Kaj Patel – Rental Taxes	Defendants 000063	140
03/30/11		Email from Krish Patel to Kaj Patel – Account Funds	Defendants 000065 - 66	141-142
05/05/11		Email from Kaj Patel to Krish Patel – Meeting	Defendants 000384	143
05/24/11		Email from Kaj Patel to Krish Patel – Meeting re: House	Defendants 000385 – 386	144-145
11/21/11		Email from Kaj Patel to Rhonda Johnson, et al. – KVP Investments	Defendants 000004	146
01/13/12		Email from Krish Patel to Kaj Patel – GC Tax	Defendants 000395	147
03/21/12		Email from Krish Patel to Kaj Patel, et al. – KVP Payment Needed	Defendants 000403 – 404	148-149
03/24/12		Email from Krish Patel to Kaj Patel, et al. – Payment Needed	Defendants 000409 -411	150-152
11/19/08		Letter from Allan Hill to Patricia Cook - P Communications, Inc. – Ownership Change	Defendants 000290	153
02/14/08		Letter from Allan Hill to VP / Kaj Patel – VP Documents	Defendants 000659 – 660	154-155
05/07/08		Letter from Allan Hill to P Communications / Corby Phillips – P Corp. Documents	Plaintiff's Exhibit 11 to Allan Hill Deposition	156-157
01/28/08		VP's Verizon Agent Application produced by Verizon	VZW0000039 – 54	158-173
11/04/11		Summons and Verified Complaint		174-209
12/07/07 – 11/18/08		Emails from Krish Patel to Kelley Pearson	VZW00498, VZW00500, VZW01305	210A-C
01/31/08		Email from Krish Patel to Kelley Pearson – Certificate	VZW00501	211
01/31/08		Email from Krish Patel to Kelley Pearson – Certificate	VZW00504	212
02/11/08		Email from Krish Patel to Kelley Pearson – Names	VZW00506	213
02/11/08		Email from Krish Patel to Tammy Blew – Information / LOI	VZW00507	214

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02/19/08		Email from Krish Patel to Kelley Pearson / Tammy Blew - Premier Agent Time Line	VZW00511	215-216	
02/27/08		Email from Krish Patel to Kelley Pearson / Tammy Blew - Update	VZW00514	217	
09/30/08		Email from Krish Patel to Kelley Pearson - Follow Up	VZW00958	218	
10/13/08		Email string Robin Stillwell & Allan Hill - Agreement		219-222	
10/28/08		Robin Stillwell Invoice to Corby Phillips	PHILLIPS00077	223	
11/09/08		Email from Corby Phillips to Krish Patel - P Comm	PJHILLIPS00143	224	
11/19/08		Allan Hill ltr to Patricia Cook - P Comm Ownership Change		225-226	
10/02/09		Email from Kelley Pearson to Krish Patel - Location Approvals	VZW00301	227	
11/02/09		Email from Kelley Pearson to Krish Patel / Keith Galey - November 2009 Targets & MTD Results	VZW00305	228	
04/15/10		Email from Krish Patel to Kaj Patel - Pryor HUD	Kaj003829	229	
04/15/10		Email from Krish Patel to Kaj Patel - Pryor HUD	Kaj003828	230	
02/13/12		Verification of Amended Complaint		231	
		P Communications Agreement Notes	PHILLIPS00076	232	
		List of new stores since 2008		233	EV
		CV of Martin McWilliams		234	EV
		Defendant's witness Notebook exhibits		235	EV

1 (Whereupon Plaintiff's exhibits 1 - 516 and Defendants'
2 exhibits 1 - 232 were previously marked by the parties)

3 **THE COURT:** Start the motor. Let's go.

4 **MR. STEPHENSON:** Your Honor, before we start, you've
5 got a couple of notebooks in front of you, a lot.

6 **THE COURT:** Four. Yeah.

7 **MR. STEPHENSON:** Four. I'll let Jim explain his. I've
8 got two up there, a black one, which is all of our exhibits.

9 **THE COURT:** Okay.

10 **MR. STEPHENSON:** And a blue one, which is a subset of
11 the black one that we will hand witnesses and ask them to
12 refer to. I believe Mr. Gilreath and I have stipulated all
13 of the evidence in. We may fight over relevance, but it's
14 all authentic and all that sort of thing.

15 **THE COURT:** Okay.

16 **MR. STEPHENSON:** And I'll let Mr. Gilreath explain his
17 exhibits.

18 **THE COURT:** All right.

19 **MR. GILREATH:** Your Honor, I've got three notebooks.
20 I've got a white notebook, which I stuck up there. And
21 that's got all of my exhibits. And as he said, we've agreed
22 that all of his and all of mine are in.

23 **THE COURT:** Okay.

24 **MR. GILREATH:** I don't think I've even got a relevance
25 objection to his. I have a red notebook, which I will use

OPENING STATEMENT - MR. STEPHENSON

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1 examining -- it's just really for me to keep me -- I kind of
2 pulled them out -- a white document, but I'm not going to
3 put that in. And then I've got a green one. It may be
4 easier for you to follow through on that one while I'm
5 examining. And I'll tell you which one I'm using and ---

6 **THE COURT:** Well, I appreciate the color-coding. I
7 don't have a green one, though.

8 **MR. GILREATH:** You don't have a green one?

9 **THE COURT:** Uh-uh (negative).

10 **MR. GILREATH:** I thought I put a green one up there.
11 Somebody give me a green one. Here you go.

12 **THE COURT:** Thanks.

13 **MR. STEPHENSON:** Your Honor, I've got a brief opening
14 statement, and Mr. Gilreath may reply.

15 **MR. GILREATH:** That's all right, Your Honor. I would
16 prefer just to waive my opening. And I've just got a very,
17 very short reply.

18 **THE COURT:** Okay.

19 (Whereupon Plaintiff's exhibits 1 - 516 and Defendants'
20 exhibits 1 - 232 were admitted into evidence by agreement of
21 the parties)

22 **MR. STEPHENSON:** Your Honor, while that's warming up,
23 just for the record, I'm Tom Stephenson. And I represent
24 Krish Patel and his dad, Vijay Patel. This is Andrew
25 Mathias. That's Alca Patel, Vijay's wife and Krish's mother

OPENING STATEMENT - MR. STEPHENSON

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1 back there in the back.

2 Of course, during this case I'm going to refer to Mr.
3 Pankaj Patel as Kaj. And it's no disrespect to Mr. Patel,
4 but we've got so many Patels in this case, including Nihar
5 Patel, and most of them are not even related to each other.
6 So it's almost necessary that we use first names.

7 And I've already explained to you, I represent Krish,
8 Vijay. Jim represents Kaj. And there's a witness Corby
9 Phillips, who you may hear from this afternoon.

10 Krish is now twenty-eight years old. When all of this
11 started, he was twenty-one or twenty-two and still in
12 college. Vijay immigrated to this country in the '80s with
13 his wife, Alca. Krish went to Mauldin High School and to
14 college over at Upstate South Carolina.

15 You're going to hear about three entities. And I have
16 a hard time keeping them straight, and so I assume that you
17 may have some difficulty, Your Honor, because the names are
18 so similar. The entity we're really here on is an entity
19 called VP Enterprises, Inc. V stands for Vijay, P stands
20 for Pankaj. There's another entity called KVP Investments.
21 K stands for Krish, V stands for Vijay, P for Pankaj.

22 There is an entity called P Communications. P
23 Communications is really the Defendant in this case. P
24 Communications is now owned by Krish. And P Communications
25 now has forty-something Verizon stores. But you'll hear

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1 about P over and over again.

2 We believe the issues for Your Honor to decide, number
3 one, the Verizon stores that we're here on. The stores now
4 owned by Krish, or more correctly, P Communications, and
5 Krish owns P.

6 Mr. Kaj is going to say it was his idea. He's going to
7 say he did a lot of work in the beginning. So we believe
8 that that is a huge issue in this case.

9 The second issue is, did Krish have some duty to
10 involve Kaj after February 28, 2008? Your Honor, you're
11 going to hear -- and it was in both of our briefs, that VP,
12 the entity owned by dad and Kaj applied to open a Verizon
13 store. It was denied on February 28, 2008. And then Krish
14 did it on his own. And you'll hear a lot about that. Did
15 Krish have a duty to involve Kaj or not?

16 The third issue is going to be was this idea, the idea
17 to open Verizon stores, a corporate opportunity even capable
18 of being taken or stolen? Was it a corporate opportunity
19 within the meaning of the law?

20 The fourth issue is can Kaj wait more than three years
21 to file this lawsuit? We say he found out about it, knew
22 about it for sure on October the 18th, 2008. This lawsuit
23 was not filed until November the 4th, 2011, weeks too late,
24 we say. They've certainly got arguments, and we're going to
25 spar over that.

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1 Another issue lurking in the background is why didn't
2 Kaj open his own store? We say that that's an issue in this
3 case, not only because of mitigation, but if it's his idea
4 and he did all this work, here we are in 2014, why hasn't he
5 tried to open a cell phone store himself? Another issue in
6 this case.

7 The time line I have some trouble keeping up with. So
8 this is for my benefit as well. 2004 Krish is in college.
9 2004 Krish is in his teens. He was born in 1985. So he's
10 nineteen years old. And while he is in college, he goes to
11 work at Verizon. And he goes to work at Verizon in some
12 technical function. And Krish works there about four years.

13 While at Verizon he became something of a superstar.
14 He became a great salesman. He was making a lot of money.
15 He knew how it worked.

16 And in October he was asked to resign by Verizon. He
17 had managed his father's cell phone, which according to
18 Verizon policy is not -- you're not supposed to do. And he
19 resigned because of that.

20 He goes to work for his dad. But before that, he had
21 thought about, and actually talked about, and investigated
22 opening these stores himself. It's probably not apparent to
23 you from the documents, but you become an agent for the
24 Verizon, an independent contractor.

25 And as an agent, you're entitled to open a store. When

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1 you open a store, you get permission. And you've got to get
2 permission for a location. And then you can ask to open
3 more stores.

4 Well, he thought that would be a good idea for himself.
5 He talked about it before he left Verizon. He talked about
6 it after he left Verizon. And in November/December he
7 decided to seriously investigate that opportunity.

8 He was twenty-one, twenty-two years old at the time.
9 He had just left Verizon. And he thought, you know, they're
10 not going to let me open a store. I'm twenty-one, twenty-
11 two. I left. I was asked to resign. He talked to his dad
12 about it. So he talks Vijay and Kaj into -- open the store
13 in their name.

14 So they formed VP. They submitted an application and a
15 plan. You'll hear that Krish does all the work. He's the
16 only one knows how to run these things. He deals with
17 Verizon. He does all the work with the banks and Verizon, a
18 company is formed, the application documents are submitted,
19 and they are rejected. They are rejected on February the
20 26th, 2008. And you'll hear no one knew why. Next slide.

21 Well, Krish, not to give up, has a buddy, or a friend,
22 or an acquaintance, Corby Phillips. Corby Phillips is now
23 selling real estate, but Corby Phillips is from around here.
24 Corby Phillips is in his mid-thirties. Corby Phillips had
25 owned retail operations before. And Krish says, you know

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1 what? Corby if you apply, you've got a retail background,
2 they might accept you.

3 So again, Krish does all the work. And you'll hear the
4 unwritten and somewhat written deal between Corby and Krish
5 was that Krish would buy him out once it got going.

6 Now, lest you think there was something surreptitious
7 about all of this, the Verizon local people who he was
8 dealing with knew Krish was involved the first time and the
9 second time. He's on both sets of documents as an officer,
10 a manager, or something, and he's dealing with them. He's
11 the one dealing with the local Verizon people trying to get
12 this application approved.

13 Well, he gets his first store. He actually opens the
14 store on October the 1st, 2008. The first store, I believe,
15 was on Pelham Road here in Greenville.

16 Well, on October the 18th his father has a party,
17 you'll hear. Vijay has a party. Vijay invites Kaj. Kaj
18 comes over to the house. And both Vijay and Krish tell Kaj
19 about the grand opening. I did it. I went ahead and did
20 it. He buys P on November the 18th.

21 And you'll hear, Your Honor, they're going to try to
22 paint this as a gold mine, that somebody found a gold mine.
23 Kaj found a gold mine and we stole it. That is just not
24 true. This was a lot of hard work, sweat and risk.

25 So he worked on this endeavor the entirety of 2008. By

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1 the end of 2008, he's got a grand total of two stores. At
2 the end of 2009, he's got a grand total of five stores. End
3 of 2010, three years later, he's got seventeen stores. And
4 those stores, you'll hear, are in Columbia and here,
5 basically, Columbia and Greenville. Next slide.

6 Well, you'll hear that no lawsuit was filed. No
7 lawyers hired, no letters written. A magazine article comes
8 out. And we'll prove this magazine went to Kaj's house.
9 You may have seen this little free magazine that comes out
10 in Greenville.

11 And if you open it up, there's an article about Krish.
12 And it said he made a fortune. That's what it says. Well,
13 Mr. Kaj saw that, made a fortune, runs to a lawyer and files
14 a lawsuit on November the 4th, 2011. Next slide.

15 Well, what are we going to prove, Your Honor? What are
16 the problems with Kaj's case? Number one, I don't believe
17 you're going to believe it was his idea. He had never been
18 in wireless.

19 His business background is riddled with failed
20 restaurants, kiosks in malls, never had a successful
21 business other than as an engineer. He's a very competent
22 engineer and has made a good living as an engineer. And he
23 has made good investments. He invested in hotels. But he's
24 never had a successful business. We'll probably argue about
25 that.

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1 But what will be admitted, he didn't know anything
2 about wireless. He knew no more about wireless than I did.
3 We'll prove that he contributed nothing or next to nothing.

4 Now, when they formed VP, he put in five thousand
5 dollars as did Vijay, which they got back in July of 2008
6 before the first store was opened. And we'll prove the
7 business plan was nothing more than a standard template that
8 you can probably find in a high school entrepreneurial
9 textbook.

10 We'll prove he failed to mitigate his damages, which I
11 think has importance beyond failure to mitigate. It proves
12 he didn't really think this was his. He didn't really know
13 how to do it. He just wants to jump on a train and try to
14 steal it from a kid. And we'll have a huge argument about
15 the statute of limitations in this case.

16 Now, you're going to hear about the business plan.
17 When this case was filed, if I heard Mr. Gilreath say
18 business plan one more time, I think I was going to throw
19 up.

20 The complaint talks about the business plan thirteen
21 times. Thirteen different times. Kaj testified in his
22 deposition about his business plan thirty times. Krish was
23 asked about it by Mr. Gilreath seventy-two times. This case
24 was, they stole the business plan. You stole the business
25 plan.

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1 Well, what's the truth? Your Honor, we're going to
2 prove this is the first email. I don't know if Your Honor
3 can see it, but on December the 4th, 2007 -- recall he had
4 left Verizon on October the 22nd. He got with his dad and
5 Kaj. Kaj sends him two business plans.

6 And he says on December the 4th, Krish, attached are
7 two business plans, one of which is for Tava Grill and has
8 some stats about Greenville. Please keep this confidential.
9 This is secret stuff.

10 Well, here are the business plans. One of them is for
11 a company called Kunda, Inc. d/b/a Abonda Restaurant. One
12 of them is for a restaurant that he opened that went out of
13 business called Tava Grill. Tava Grill had been open for
14 some years previous and was out of business when he gave
15 Krish these.

16 And you'll see they're almost exactly the same. What
17 Mr. Kaj had done was taken the Kunda plan, which says Kunda,
18 a Massachusetts Company, and it talks about a restaurant in
19 Massachusetts and got a bunch of verbiage in it. And he
20 just copied it and made the Tava Grill plan, which was an
21 Indian restaurant located here in Greenville that went out
22 of business, okay? This business plan went out of business.

23 So he sends those to Krish. Krish takes those, and he
24 does use it to do a business plan for this. It was
25 submitted. Next slide.

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25

1 Well, throughout the life of this litigation, we kept
2 trying to find the business plan. Where did they get it?
3 Where did they get this confidential business plan? Well,
4 I've got to credit Andrew Mathias. And, you know, sometimes
5 you do things you regret in cases. Well, I did something in
6 this case I regret, period.

7 Well, Andrew was sitting around my office about six
8 months ago and he happens to Google Abonda Restaurant. Just
9 Googled it. Well, now I've taken to Googling everything. I
10 Googled Mr. Gilreath last night just to see if something
11 didn't come up on him. Nothing did. But he Googled Abonda.

12 And let me show you what came up. A website. Now we
13 are live, okay? This is live on the internet, okay?
14 There's the business plan. There it is. It's the exact
15 same Kunda business plan, free on the internet.

16 And if you look at that website, it's called virtual
17 restaurant dot com, there's some entrepreneur put it up at
18 least before 2008, because it's been up continuously since
19 2007, when he said it was confidential.

20 And you read it, and it is a high school business plan,
21 and they try to get you to buy a real business plan. That's
22 what the come-on is. Here's a business plan, sign up with
23 us and you can get a real business plan. So what Mr. Kaj
24 had done is copied this off the internet and sent it to
25 Krish.

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1 And nobody knew it. They didn't know it. Monty didn't
2 know it. He never told anybody. But I told them, okay?
3 That was my regret in this case. I told them. Guys, this
4 business plan y'all been sending over is free on the
5 internet.

6 Well, they changed gears a little bit because of that.
7 And I don't know that we're going to hear all about the
8 business plan like thirteen times in the complaint, seventy-
9 two times in Krish's deposition, but that is the story of
10 the business plan.

11 Now, I'll sort of wrap this up. At the grand opening
12 an article comes out, lawsuit filed, and the issue in this
13 case, whose idea was it? What about this business plan?
14 Did Krish have a duty to involve Kaj after it was denied?
15 Whose idea? Was it a corporate opportunity? Can he wait
16 three years? And why didn't he open his own store? So we
17 believe that's the balls Your Honor needs to keep his eye on
18 today. Thank you.

19 **THE COURT:** Where's Corby Phillips or Corby whatever
20 his name is?

21 **MR. STEPHENSON:** That case is settled. So we have one
22 case here.

23 **MR. GILREATH:** We're going to call Corby as a witness
24 as soon as we get through. Probably be this afternoon,
25 hopefully.

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1 **THE COURT:** Okay.

2 **MR. GILREATH:** Your Honor, just for the record, I'm Jim
3 Gilreath here with Bill Hogan, Monty Desai, Nihar Patel, my
4 client, Kaj, we'll call him Kaj, is here. And I think his
5 wife is coming. She may not be here yet.

6 Your Honor, this is very, very brief because I'm ready
7 to try this case. I've been living with it a long time.
8 But at this point I can only say this is a case where two
9 individual defendants, in the words of the late Justice
10 Cardozo, in the famous case of Meinhard versus Salmon,
11 unquestionably owed my client, Kaj Patel, fiduciary duties
12 and the duty of finest loyalty and something stricter than
13 the morals of the marketplace.

14 Not just honesty alone, but the punctilio of an honor
15 of the most sensitive, as Cardozo said. And he said what I
16 just said. That was a quote out of Meinhard.

17 An honor and level of conduct higher than that trodden
18 by the crowd. And still honoring this standard, which has
19 withstood the test of time since it was handed down on
20 December 31st, 1928, some eighty-six years ago, and has been
21 approved no less than five times by our Court of Appeals or
22 cited five times by our Court of Appeals, four times by the
23 Fourth Circuit, one time by Judge Joe Anderson in the U.S.
24 Circuit and eleven times by the United States Supreme Court.

25 The two Defendants in this case effectively threw

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1 honesty to the wind and devised a plan of deception,
2 untruths and silence or failure to disclose. This conduct
3 has never been tolerated by any court, much less the courts
4 of South Carolina.

5 The best way I can characterize it is what Judge Garse
6 said in the 1994 Diversified Ventures case, which quoted
7 Energy Resources versus Porter, which is a case we cited in
8 our memo to Your Honor when Judge Garse said not once, not
9 twice, but three times right out of the bat, on the opening
10 of his opinion, in three separate paragraphs, he said,
11 quote, a fiduciary silence is equivalent to a stranger's
12 lie. With that, we're ready to call our first witness.

13 **THE COURT:** Say that one again.. Fiduciary silence is
14 equivalent to ...

15 **MR. GILREATH:** Fiduciary silence is equivalent to a
16 stranger's lie. He started out his opinion, I've never seen
17 this. He wrote three separate paragraphs, and he said that
18 three different times.

19 **THE COURT:** Who was that?

20 **MR. GILREATH:** That was Judge Garse in Diversified --
21 in the Diversified Ventures case. And I can give you the
22 cite on that, but I don't -- you got it here? Bill, I had
23 it ---

24 **THE COURT:** No, that's all right. We'll get it.

25 **MR. GILREATH:** That fiduciary silence is equivalent to

1 a stranger's lie.

2 **THE COURT:** Okay.

3 **MR. GILREATH:** We're ready to call our first witness,
4 Your Honor.

5 **THE COURT:** Okay.

6 **MR. GILREATH:** All right. Plaintiffs call Kaj Patel.

7 **MADAME CLERK:** If you'll place your left hand on the
8 Bible and raise your right hand, please.

9 **Pankaj Patel,** being
10 duly sworn testified as follows;

11 **MADAME CLERK:** Please state your name for the record.

12 **MR. PATEL:** Pankaj Patel.

13 **MADAME CLERK:** Thank you. You may be seated.

14 **MR. GILREATH:** Your Honor, I may refer him to some
15 things in the complaint and the answer.

16 **THE COURT:** Okay.

17 **MR. GILREATH:** So with the Court's permission, I want
18 to -- I know it's in the record, so I've got an extra one
19 here for you if you don't have one handy.

20 **THE COURT:** I've got it right here.

21 **MR. GILREATH:** Okay. I'm going to hand him up one.

22 **Direct Examination by Mr. Gilreath:**

23 Q. Okay. Mr. Patel, would you please state your full name
24 and address for the Court.

25 A. Pankaj Patel, 23 Avens Hill Drive, Greer, South

1 Carolina, 29651.

2 Q. And as we have already discussed earlier, everybody
3 calls you Kaj, right?

4 A. Yes.

5 Q. So I'm going to be calling you Kaj, and I think
6 everybody else will be calling you Kaj. Where were you born
7 and where did you grow up?

8 A. I was born in a small town in Kenya called Embu and
9 later moved to the capital city, Nairobi.

10 Q. And you were born in India, is that what you said?

11 A. No, in Kenya.

12 Q. Kenya. Was your family originally from India?

13 A. Yes, from Indian ancestry.

14 Q. And where did you do your schooling, elementary and
15 high school?

16 A. Elementary was in Embu, Kenya. And high school was in
17 the capital city, Nairobi, Kenya.

18 Q. And why did you immigrate to the United States?

19 A. My parents and I always thought that the United States
20 was a land of opportunity. And I wanted to come over here
21 and make a better living for myself and took my family
22 group.

23 Q. Okay. Tell the Court about your educational
24 background, and what you chose to study in college and where
25 you chose to go to college.

1 A. I wanted to be a computer engineer. And back then
2 1980/'81, Clemson and MIT were the only two universities in
3 the U.S. that had a computer engineering program. I applied
4 to both. As I recall, I was admitted to both. And I chose
5 to go to Clemson.

6 Q. Okay. And so tell us how you got to the United States,
7 the circumstances around your arrival.

8 A. I was flying into Washington, D.C. with a connection to
9 Florence, South Carolina. And when I landed in D.C., this
10 was in '81, the airlines were on strike. I had eighty-six
11 dollars in my pocket, two pairs of clothes. I couldn't
12 afford a hotel room with that eighty-six dollars. So I
13 slept at the airport for a couple of days until flights
14 resumed to Florence.

15 Q. Where did you sleep at the airport?

16 A. I was on the seats, benches, whatever they had back
17 then.

18 Q. And where did you say your original destination in the
19 United States was?

20 A. Florence.

21 Q. Why were you coming to Florence, originally?

22 A. My uncle had moved from Kenya to South Carolina. And
23 so I was going to spend a few weeks before school started,
24 get acclimated to the life in U.S.

25 Q. And where did he live? Did he live in Florence or

- 1 somewhere near Florence?
- 2 A. He lived in Hartsville, South Carolina.
- 3 Q. And I take it you finally got to Florence or the
- 4 Florence airport?
- 5 A. Yeah. I got to the airport. He picked me up in a
- 6 Lincoln Continental. I had never seen a car that big in my
- 7 life.
- 8 Q. Now, did you -- and how long was it after that before
- 9 you got up to Clemson and got started?
- 10 A. It was a few weeks. He dropped me off at Clemson.
- 11 Q. Okay. And do you speak English? It's obvious you
- 12 speak English.
- 13 A. Yes, sir.
- 14 Q. That was a stupid question. You speak English, but how
- 15 many other languages, if any, do you speak?
- 16 A. Well, when I came to the country, I knew the English
- 17 language, but I really couldn't carry on a conversation just
- 18 because we never spoke English in Kenya. I spoke Gujarati,
- 19 which is my mother tongue, Swahili, which is the Kenyan
- 20 National language, Hindi, which is the Indian National
- 21 language and French.
- 22 Q. So how many languages do you speak?
- 23 A. Back then I spoke five. Now I speak about four because
- 24 my French has just kind of gone away.
- 25 Q. All right. When you were at Clemson, did you do any

1 work for Clemson?

2 A. No, I came here on a student visa. So I was not
3 permitted to work.

4 Q. Tell the Court a little bit about your uncle, the one
5 that lived in Hartsville.

6 A. It was quite unfortunate. A few months after I got
7 here, he got in a freak car accident and passed away.

8 Q. How were you paying for your tuition at Clemson?

9 A. My parents were covering most of the expenses. They
10 had to borrow from friends. They worked fourteen, sixteen
11 hour days, six days a week. That wasn't enough. So, you
12 know, anything -- as I was short once I got here, I was
13 going to borrow from my uncle.

14 Q. Okay. Did anything happen -- what happened, if
15 anything, to your uncle? I may have already asked you this,
16 after you got here.

17 A. Yeah. He passed away in a car accident.

18 Q. Okay. How did you continue to stay without -- now that
19 he was dead. I think you said he was ...

20 A. The only thing that I was short. At the funeral, my --
21 I'd already met my aunt. And she told me that she would
22 carry on supporting me, whatever I needed, as much as she
23 could.

24 Q. Okay. Tell the Court a little bit about your family,
25 your wife and children.

1 A. I was married in 1991. My son, Ron (phonetics), he's
2 twenty years old. He's a rising junior at USC. That makes
3 our house divided, since I'm a die-hard Tiger fan. And my
4 daughter, Leah (phonetics), she's seventeen. She is in the
5 International Baccalaureate Program at South Side High.

6 Q. Did you do anything interesting at Clemson, other than
7 study?

8 A. Yeah, you know. In 1981; that's when we won the
9 National Championship. And I got to know William DeVane and
10 Refrigerator Perry. They were known as the Bruise Brothers.
11 And back during my math classes, my initial math classes, I
12 actually tutored both of them.

13 Q. Okay. And when did you graduate from Clemson?

14 A. In 1985.

15 Q. What does your wife do?

16 A. My wife works -- helps me in my business, tending the
17 books and administrative work.

18 Q. Is she here today yet?

19 A. She should be here. She just picked up our kids from
20 -- they're flying in from D.C., and she should be here.

21 Q. All right. Give us your work -- so you graduated from
22 Clemson in what year?

23 A. 1985.

24 Q. All right. So 1985 after you graduated, just tell us
25 briefly your work history starting in '85.

1 A. My first job was with Daniel Engineering, which is now
2 Fluor Corporation here in Greenville, South Carolina. And
3 from there, I went on to what was called J.E. Serene. It's
4 now Jacobs Engineering here in Greenville.

5 Q. And what did you do there? What did you do at J.E.
6 Serene?

7 A. Both companies, I was a process automation engineer.

8 Q. And what is a process automation engineer, briefly?

9 A. Basically, for manufacturing companies we get the
10 efficiency and consistency in the manufacturing of their
11 products.

12 Q. Okay. And so you said you started with Fluor and then
13 went with J.E. Serene and turned into Jacobs. Are you still
14 with Jacobs or what are you doing now?

15 A. In 1994 I started my own consulting company.

16 Q. Okay. And what is the name of your consulting firm
17 called?

18 A. It's ARMAN Consulting. I dedicated that company to my
19 parents, the AR is the first two letters of my father's
20 name, Arvin. And MAN is for the first three letters of my
21 mother's name, which is Manjulia. And ARMAN usually
22 translated in Hindi is -- or ARMAN is hope.

23 Q. Hope?

24 A. Yes, sir.

25 Q. How many people do you have working for you?

1 A. I currently don't have any, but I -- depending on
2 projects, number of projects, sizes of projects, I bring --
3 I'll bring on subcontractors.

4 Q. What is your average yearly revenue?

5 A. I average about -- gross about two hundred thousand
6 dollars. Potential to make a lot more, but I work a certain
7 number of hours a year because it's a good balance for
8 family life and work.

9 Q. Tell the Court about your experience as an entrepreneur
10 and when did that start?

11 A. I was actually fourteen years old when I started my
12 businesses in Nairobi. I was always very good at art. So I
13 created and designed signs, display signs for businesses.
14 And the other one was I bought blank cassette tapes in bulk
15 and sold them individually to people for a profit.

16 Q. What other different kinds of businesses you been in?

17 A. I've always had some business going, one or another in
18 the last thirty-four years ranging from import of arts and
19 crafts from Kenya to import of granite tiles from China,
20 design of point of sale systems for vertical markets and
21 also a restaurant here in Greenville.

22 Q. All right. Mr. Stephenson, as I expected, started
23 talking about Tava Grill early on. So tell the Court about
24 Tava Grill and what it was.

25 A. Tava Grill was a restaurant. It served Indian fusion,

1 Indian/African fusion cuisine.

2 Q. Did it ever open?

3 A. Yeah, it opened. Ran it for a few months.

4 Q. How long did it stay in business?

5 A. It was about six or eight months roughly in 2005.

6 Q. Did you -- why did it go out of business?

7 A. Well, you know, I opened up the restaurant for my two
8 -- two of my brothers who I had sponsored to immigrate to
9 the United States that come in in 2004/2005 time-frame. The
10 restaurant was my way of helping them out to get on their
11 feet.

12 Q. What did you do -- well, you heard him talking about a
13 business plan off of the internet and -- a business plan for
14 Tava Grill. Did you do some kind of a business plan for
15 that venture?

16 A. Yes, I did. I created a business plan, downloaded a
17 sample or template, as you call it. I used that as a
18 guideline and to customize it for the markets here in
19 Greenville and put in information that was pertinent to, you
20 know, to my restaurant and to the Greenville area.

21 Q. Did you get that -- where did you get that business
22 plan to start off with?

23 A. From the internet.

24 Q. Just like he said, right?

25 A. Yeah. Just like -- yeah.

1 Q. Was there anything in the final Tava Grill -- what was
2 in the final Tava Grill business plan that was not in the
3 internet version you got off the internet?

4 A. Well, quite a few things. One was -- back then I was
5 thinking about multi-unit businesses. So at that point in
6 my plan, I added business, you know, the demographics
7 specific to Greenville and so forth.

8 Q. What demographic information on Greenville County and
9 Greenville City was in the internet version that Mr.
10 Stephenson put up here on the board? What was ---

11 A. The one on the internet was something about
12 Massachusetts, Boston, somewhere like that.

13 Q. So you had to make all of that up? I mean, you put in
14 ---

15 A. Yes, yes, I had to create all that stuff. And ---

16 Q. All right. Now, tell -- did you do any computer --
17 what computer spreadsheet projections, if any, did you do?
18 And just tell the Court briefly about those.

19 A. I have a spreadsheet that I've designed and created.
20 This is for any new business that you're looking into that I
21 can plug in some numbers for revenues and costs and see how
22 profitable it's going to be and use that as a decision-
23 making tool to decide to get into a business.

24 Q. Okay. And you did that yourself in the Tava Grill
25 deal?

1 A. Yes. I have a -- I had a spreadsheet.

2 Q. All right. Now, tell the Court how you met the
3 Defendant, Vijay Patel, and how your relationship with him
4 developed.

5 A. Well, I can't remember exactly when I met him, but it
6 was probably around like 2002/2003 time-frame. Initially we
7 just met at events and gatherings of the Indian community
8 over here.

9 And it wasn't really until 2005 we were returning from
10 a wedding in Myrtle Beach, coming back to Greenville and we
11 happened to sit on the bus that was chartered for the
12 wedding party. And we had about six hours to kill. So we
13 sat next to each other.

14 And, you know, we talked about our lives, and our
15 families' businesses. And our friendship kind of clicked
16 from then on, kind of grew.

17 Q. And just briefly tell the Court kind of how that
18 business/friendship -- business and family friendship
19 developed after this bus ride back from Myrtle Beach, when
20 you really first got to know him.

21 A. We would get together for dinners. And I would stop by
22 his office, which was at his hotel on Congaree Road.

23 Q. Where was his hotel on Congaree Road?

24 A. It's the Comfort Inn right next to the big Crown Plaza
25 Hotel on the corner.

1 Q. That's the one where they had the fire several years
2 ago?

3 A. Yes.

4 Q. Okay. And where were his offices or where was Vijay's
5 offices -- his office?

6 A. It was at the hotel.

7 Q. Okay. At the Comfort Inn?

8 A. At the Comfort Inn.

9 Q. The Comfort Inn on Congaree Road, okay.

10 A. Right.

11 Q. All right. Did there come a time when you actually
12 went into business with Vijay? And tell the Court about
13 that, how you started a business with him.

14 A. Yeah. We talked about a better future. And it wasn't
15 until like mid or late 2007 that we started talking about
16 various businesses and getting into business together.

17 Q. And was there -- did an entity get formed as a -- well,
18 what entity was formed that you used to go into business
19 with Vijay?

20 A. It was the KVP Investments and Operations.

21 Q. All right. And what does KVP stand for?

22 A. K is for Krish, V for Vijay, P for Pankaj.

23 Q. Okay. Now, so -- and this KVP thing, we're going to
24 hear a little bit about it as we go throughout this trial.

25 It was you, Vijay and Krish, right?

1 A. Correct.

2 Q. So tell the Court when you first met Krish.

3 A. I met him, you know, when our families got together. I
4 didn't see him much at all. So it was just like a casual
5 meeting. But I really didn't get to start seeing him a lot
6 until the middle/late 2007 time-frame. All of a sudden, I
7 started seeing him at his dad's office where I would go
8 visit him.

9 Q. When did you learn where Krish was working?

10 A. It was at that time at the hotel on the initial meeting
11 that he told me he was working at Verizon Wireless and that
12 he was going to -- he was a senior in college at USC
13 Spartanburg.

14 Q. When did you start talking more to Krish and when did
15 you find out he was included in a business enterprise with
16 Vijay?

17 A. That was in the middle of -- late 2000. He had started
18 late 2007, he had quit his job at Verizon and wanted to get
19 with his father to pursue real estate and the hospitality
20 business.

21 Q. So what was your title in KVP? This is the real estate
22 company.

23 A. Yeah. I was the investor.

24 Q. What was Vijay's role?

25 A. He was the investor.

- 1 Q. And what was Krish's role?
- 2 A. Krish was going to manage and keep the books. He had
- 3 the most flexible time. So he was going to do all the day-
- 4 to-day type of stuff that Vijay and I didn't have due to our
- 5 full-time jobs.
- 6 Q. At the time this KVP started where was Krish working?
- 7 Was he at Verizon or was he at ---
- 8 A. When it started he had already quit and he was with
- 9 Vijay.
- 10 Q. He'd already quit at Verizon?
- 11 A. Right.
- 12 Q. What did Krish tell you the reasons were that he left
- 13 Verizon and went with his dad?
- 14 A. During that period of time there was no reasons. We
- 15 just never discussed Verizon at all. It was just, I used to
- 16 work there, and I quit, and I've joined my father to own the
- 17 hotel and real estate business.
- 18 Q. Okay. There did come a time when he -- did there ever
- 19 come a time when he told you why he left?
- 20 A. You know, I don't think ---
- 21 Q. If you didn't, that's fine.
- 22 A. I don't think I ever heard until just now.
- 23 Q. Until when?
- 24 A. Until, I think, Mr. Stephenson was going through why he
- 25 left, something about phones.

1 Q. Okay. What was -- this case involves an entity called
2 VP Enterprises. Now, tell the Court what the VP stands for.

3 A. V for Vijay and P for Pankaj.

4 Q. And let me just ask you, sometimes you get going. I
5 know you get a little excited and probably nervous and
6 talking a little bit fast. I'm from Horry County. I can't
7 -- I talk slow. I kind of like listening slow. So try to
8 just, you know, don't get too fast.

9 A. This is my first time in trial. So I get nervous.

10 Q. What was the purpose of VP Enterprises?

11 A. The purpose of VP was to start and operate a chain of
12 independent Verizon Wireless stores.

13 Q. And how did the idea for opening these Verizon stores,
14 through this thing to be called VP Enterprises, how did that
15 come about?

16 A. Vijay, Krish and I were driving to see a property that
17 we were considering to buy for our KVP Investments. And
18 that property was about forty minutes away, from what I
19 recall.

20 And while we were driving to the property, the subject
21 of Krish's employment at Verizon came up. And he mentioned
22 to me that he used to make a hundred thousand dollars plus
23 as a sales associate.

24 And I asked him, I said, you know, you were making a
25 hundred thousand dollars plus and you left Verizon? You

1 left that job to, you know, flip homes and get into
2 hospitality? And he said, yeah. That's what I want to do.
3 I don't want to sell phones for the rest of my life. And I
4 want to get into the real estate and the hospitality
5 business.

6 Q. Okay.

7 A. So, you know, I was getting intrigued by that. And as
8 we talked more, I realized that, you know, if he was making
9 a hundred thousand dollars plus as a sales associate and,
10 you know, then the business ought to be pretty good.

11 So I asked him, I said, you know, this looks like a
12 pretty good business. Why are you not in it? And he said,
13 well, you know, Verizon would never allow me to have my own
14 business since I was an ex-employee.

15 Q. So what happened after that?

16 A. Oh, you know, I asked him, so is that your only concern
17 or obstacle? And he said, yeah. And I said, well, you
18 know, we're considering all these businesses.

19 At that time we were looking at hotels and convenience
20 stores and all that kind of stuff. We could consider that
21 as one of our businesses. And, you know, if that's your
22 only concern, we could put it in your dad's name and my
23 name, and you can operate it and run it. And, you know, we
24 can get in the business that way. But, I said, you know,
25 we'll have to talk about the details and I'll have to really

1 look at it to, you know, to see how good a business that
2 would be.

3 Q. Now, y'all are still in the car?

4 A. Yeah. We're still in the car. And so ---

5 Q. And where was it you were going in the car again?

6 A. It was a property we were going to look at. I can't
7 remember exactly where.

8 Q. And who was in the car?

9 A. It was Vijay, Krish and I. Vijay was driving. Krish
10 and I were talking.

11 Q. And what did Vijay think about this Verizon opportunity
12 that you were ---

13 A. Well, you know, he thought it was a great idea. We
14 could pursue it that way if Krish's concern -- if Krish's
15 only concern was his employment previous.

16 Q. Well, what decisions, if any, did y'all make there in
17 the car that day about what you might do with this
18 opportunity?

19 A. Well, we decided, well, let's go forward with it. And,
20 you know, assuming the numbers and everything looks good.
21 So we all agreed and said we'll do it that way.

22 Q. And what was the plan as far as the ownership or equity
23 ownership in this thing that was going to become VP?

24 A. The equity ownership was going to be fifty percent
25 myself and fifty percent Vijay and Krish. And we had

1 already talked about with KVP and other businesses that we
2 were considering the idea of them being equal partners.

3 They were very clear with me that it was not thirty-
4 three, thirty-three, and thirty-three percent, meaning I
5 would have to come up with fifty percent of the funds for
6 any business that we look at. So it was fifty percent
7 myself and however they split their share.

8 Q. So you got back -- I guess y'all went and looked at
9 whatever you were looking at and you get back to Greenville.
10 What happened then when you got back to Greenville?

11 A. Well, while we were still driving I told Krish, I said,
12 you know, I invited him to my house and said, you know, if
13 you sit down with me, give me some basic information and
14 we'll plug it into this spreadsheet that I've developed and
15 I've used in my calculations, and once we run through the
16 numbers, you know, we can decide exactly where to go from
17 there.

18 Q. And where did you have that spreadsheet?

19 A. I, you know, had it on my computer.

20 Q. And tell the Court about what happened -- I assume you
21 had a meeting with Krish. Tell the Court what happened at
22 that meeting, what you showed him and what transpired.

23 A. It was probably, I'm guessing within a day or two,
24 Krish came to my house. And I popped open a couple of
25 beers, sat at my dining table, I pulled up my computer. I

1 pulled up my spreadsheet, and I asked Krish for some basic
2 information about how does Verizon make money.

3 He said they do it from selling data plans to
4 accessories and by asking for some numbers like on an
5 average how much profit they would make on these two items.
6 I plugged them in, and I changed some numbers that I already
7 had on the costing structures, and we played with those
8 numbers.

9 And, you know, after going through a few iterations and
10 the spread -- you don't have to sit down and put them on the
11 computer. The spreadsheet does all the calculations for
12 you.

13 Q. Right.

14 A. And the conclusion was, you know, we should be able to
15 make anywhere from five to fifteen thousand dollars on a
16 store.

17 Q. All right. Now look at Plaintiff's trial document 30B.

18 **MR. GILREATH:** That'll be in our green book, Your
19 Honor.

20 **THE COURT:** All right.

21 Q. Have you got a green book there?

22 A. Yes, I do. I left it at the table. Sorry.

23 Q. Okay. This is Plaintiff's trial document 30B, which is
24 a spreadsheet that shows revenues, lunch, so and so. Just
25 briefly tell the Court what that is and how similar, if any,

1 that is to the spreadsheet you were talking about with
2 Krish.

3 A. 30B?

4 Q. 30B.

5 A. Yeah. That's the spreadsheet we pulled up and entered
6 some information in there.

7 Q. Okay. And can you remember about when this was, what
8 month? What time of year?

9 A. I was thinking in November, probably close to the end
10 of November. I can't remember if it was before Thanksgiving
11 or after Thanksgiving. It was somewhere around that time.

12 Q. Okay. After you met back -- you met with Krish or
13 while you were meeting with Krish and looking at that
14 spreadsheet why did you think the Verizon store idea was so
15 promising?

16 A. Well, that, you know, in talking to him, he mentioned
17 that, you know, the store only requires two people to run on
18 a part-time basis. And I looked at that as, you know, this
19 would be great to deploy as multi-units compared to other
20 businesses that are difficult to get going if you're trying
21 to get a whole bunch of them started.

22 Q. Okay. So after you had that meeting with Krish, what
23 was the next step?

24 A. The next step was that, you know, we should do a
25 business plan. So I asked him, I said, do you have a

1 business plan? He said, no, I don't have a business plan.

2 And I asked him, I said, have you prepared one before. And

3 he said, no, I haven't prepared one before. And so that

4 kind caught me by surprise because he was a fourth-year

5 college student. He was a senior in college pursuing a

6 business degree and had never prepared a business plan

7 before.

8 Q. So he told you he'd never prepared a business plan?

9 A. No.

10 Q. Okay. So did you -- what happened after that regarding

11 the business plan?

12 A. Well, I said, you know, we'll have to create one. And

13 we ran through some information, what should go into the

14 business plan, you know, like demographics, industry

15 information, key personnel objectives and missions and so

16 forth.

17 And I said, you know, I have prepared one for my

18 restaurant previously. I'll dig that up and we'll have to,

19 you know, I'll shoot it out to you and let's go ahead and

20 prepare the first draft based on the information that we've

21 talked about.

22 Q. All right. Let me show you what's Plaintiff's trial

23 document 003, which is ---

24 **MR. GILREATH:** And, Your Honor, I'm showing these

25 emails. You will see some dates in 2010 up at the top, but

1 that's where Kaj had to go back and try to find them all.
2 He had them on the computer, but the actual date in the
3 computer -- the email's shown is still on there. And that's
4 the way it is on this one. And so ---

5 **THE COURT:** Okay. I got you.

6 Q. But this is Plaintiff's trial document 3, which is, I
7 think, the first or second document in our green book. And
8 that's an email dated Tuesday, December the 4th, 2007. And
9 you said, Krish, attached are two business plans, one of
10 which is for Tava Grill and has some stats of Greenville
11 that may be useful. Please keep confidential and do not
12 distribute. So I take it you sent him two business plans?

13 A. I sent him two business plans. And the confidential I
14 was talking about was my Tava Grill. I mean, that was what
15 I did. I didn't really care about the, you know, what he
16 did with the internet plan. He could go get it from the
17 internet.

18 Q. Right. What was in your Tava Grill -- you may have
19 already said this, but just to kind of get it back in
20 perspective. What was in your Tava business plan that would
21 have been helpful to go into a business plan for Verizon?

22 A. Well, you know, the demographic information was in
23 there. The multi-unit concept or thought process was in
24 that.

25 Q. Okay. And so what did you tell him to do with the

1 email -- with the business plan, the Tava Grill business
2 plan that you sent him in that email and you told him to
3 keep it confidential?

4 A. So I told him to go ahead and prepare the first draft,
5 pretty it up, add some, you know, the cover page and stuff
6 like that and shoot it back out to me so I can review it.
7 And then we can send it to Verizon.

8 Q. And did you get -- did you get back a draft?

9 A. Yes, I got a draft back. And I commented on it and
10 sent it back to him.

11 Q. Okay.. Did you ever make any revisions to the Tava
12 Grill business, I mean, to that business plan he sent back
13 to you?

14 A. Yes. I made some comments and revisions and just told
15 him to just go ahead and incorporate them and we could send
16 them out.

17 Q. All right. So let's look at page 30 -- trial document
18 30A-2. Actually, it starts on 30A-1. Is that -- just tell
19 the Court what that is. It's got some stuff out on the side
20 in blue.

21 A. 30A-1?

22 Q. 30A-1, A-2 and A-3.

23 A. Yeah, those are the comments that I made.

24 Q. So those are suggested revisions that were in here that
25 you made, right?

1 A. Yes.

2 Q. And what about this comment, the last comment on page
3 30A-2? It's in a bigger block. It starts out comment,
4 Krish, you may want to include a paragraph of your
5 experience and accomplishments as a Verizon employee. And I
6 don't think you being a previous employee would disqualify
7 us. Call and check with them anonymously. Did anything
8 ever come of that comment?

9 A. No, I don't think it did.

10 Q. What about this thing that got in there that says a few
11 location sites were found in September of 2007? Now, when
12 were you -- this was happening with you in December?

13 A. Yes.

14 Q. And what do you know, if anything, about any location
15 sites that were found in September of 2007?

16 A. There were none found. And I saw this a couple of days
17 ago in reviewing the document. But we didn't talk about
18 sites at all in September.

19 Q. All right. Now, let's go back to the business plan
20 that is found in trial document 25, 26, 27, 28 and 29. I
21 want to just briefly re-go over that with the Court. First,
22 look at the -- so we can put it in the right context, at
23 trial document 24, which is an email from Krish to Kelley
24 Pearson. And he says, I have attached a word document with
25 our Verizon Wireless business plan. So he's sending that to

1 her on December the 6th?

2 A. Yes.

3 Q. And you sent him -- he never had a business plan until
4 you sent him one ---

5 **MR. STEPHENSON:** Your Honor, I don't mind a little
6 leading. I just don't like testifying.

7 **THE COURT:** Okay.

8 **MR. GILREATH:** All right.

9 Q. All right. Go back ---

10 **MR. GILREATH:** I'm trying to speed it along, Judge.

11 This is all in the record here.

12 Q. Trial document 03. When did you first send him the
13 business plan?

14 A. I sent it to him on the 4th of December.

15 Q. So when is he sending that completed business plan to
16 Kelley?

17 A. That was December 6th.

18 Q. All right. Now, and let's look at this trial document
19 25. First, that's got your name there on the front. What's
20 the date on it?

21 A. It's December 6th, 2007.

22 Q. And this thing on page -- the second page of it under
23 -- where it talks about development and status. And it's
24 got one definite location, which is available for business
25 is 1618 Woodruff Road. And then it lists nine other

1 additional locations.

2 A. Yes.

3 Q. Tell the Court just -- well, first of all, tell the
4 Court who found each one of these locations. How many you
5 found, how many Krish found and how many, if any, Vijay
6 found.

7 A. Vijay was not involved in this location stuff. I'd
8 come up with six of them and Krish three.

9 Q. So you're testifying here under oath today that you've
10 had six of them and he had, what, three?

11 A. Three, right.

12 Q. Okay. What discussions, if any, at this time-frame in
13 December of '07 did you ever have with Krish about any
14 previous plans or anything he'd tried to do about starting a
15 Verizon store?

16 A. He had never mentioned anything about doing anything
17 with opening up a store.

18 Q. Okay. How did y'all decide on where you would have a
19 location?

20 A. Just from a high traffic area perspective.

21 Q. How long at this point in time had you lived in
22 Greenville?

23 A. I'd lived here since 1985. So I've seen the town grow
24 and seen where all the growth areas were and what the
25 traffic areas were.

1 Q. What familiarity did you have with all of these nine --

2 I don't want you to go into any detail, but just briefly

3 tell the Court what familiarity you had with them.

4 A. Just, you know, just that they were high traffic areas.

5 And the six of them that I came up with, those I knew pretty

6 well. The Gaffney and Spartanburg ones, I wasn't that

7 familiar with.

8 Q. Now, how old was Krish Patel when you sat down with him

9 and y'all were discussing these?

10 A. I guess about twenty-two.

11 Q. Twenty-two?

12 A. He was about, yeah, twenty-one, twenty-two, maybe.

13 Q. Did you have any discussions with Vijay on any of

14 these?

15 A. No. Vijay was not involved in these discussions.

16 Q. Okay. Hold on one minute. Let me get you to look -- I

17 think I want to ask you something in here. Look at -- I

18 think you've got up there the Plaintiff's, I mean, the

19 Defendants' answer to paragraph twenty-three of our

20 complaint. If you'd get that. I think I put both of those

21 up there.

22 Their answer to paragraph eighteen of our complaint

23 says -- paragraph eighteen of our complaint says, you, along

24 with Krish researched the upstate for store locations. And

25 Kaj and Krish rode together to examine various locations

1 between December and May of 2008. On one occasion an
2 employee of Verizon named Andre rode with Kaj and Krish to
3 inspect some of the locations.

4 Now, in answer to that the Defendants say, so much of
5 paragraph eighteen is admitted and alleges that Kaj and
6 Krish may have looked at one or two possible locations
7 together. But it is alleged that nearly all of the possible
8 locations were investigated by Krish, not Kaj. Do you agree
9 with their characterization of that?

10 A. No, I don't agree with that..

11 Q. And why?

12 A. Well, you know, we had come up with those general
13 locations on a business plan. And then we rode around,
14 Krish and I rode around to all of these locations, tried to
15 find exact locations that was on Pelham Road. And so like,
16 where do we want to be on Pelham Road?

17 If it's on Haywood Road, where do we want to be on
18 Haywood Road? And that -- I remember one of his friends
19 that used to -- did work at Verizon at that time called
20 Andre, that rode with us as well, we were looking at maybe
21 getting him as one of our employees once we got the business
22 started.

23 Q. Okay. On the business plan, I'm trying to get off of
24 this. I don't want Mr. Stephenson to talk about how long
25 I've stayed on this business plan. He likes to talk about

1 that. But look over on page twenty-nine where it says --
2 talks about local population, local business. You see that?
3 It's right under that paragraph about our first location.

4 A. Yes.

5 Q. Where did that come from?

6 A. That came from my Tava Grill plan.

7 Q. Okay. All right. I want you to go look -- I want you
8 to go look at page 006 ---

9 **MR. GILREATH:** Your Honor, I represent that's out of
10 the Tava Grill, I believe. Yeah. That's the Tava Grill
11 one.

12 Q. And tell the Court what, if anything, is different from
13 the Tava Grill stuff on market location and stuff and the
14 local businesses that's different in the one he did for VP.

15 A. Well, that's virtually the same except for a couple of
16 numbers, you know, updated from four hundred thousand to
17 five hundred thousand, local population. But other than
18 that, that seems to be pretty much the same.

19 Q. This information now that's in Tava Grill, who did
20 that?. Who drafted those words and put them on the computer?

21 A. I did. That was in 2005.

22 Q. Okay. All right. Why did you in your email to Mr.
23 Patel on the first exhibit we talked about where you said
24 please keep this confidential and do not distribute, why did
25 you say that?

1 A. Well, because the Tava Grill plan, you know, I spent
2 the time and energy doing it. So that was my plan. And I
3 just didn't want anybody sharing it.

4 Q. What problems, if any, did you have with him sending it
5 to Verizon?

6 A. Oh, I didn't have any problems sending it to Verizon.

7 Q. Okay. What about if he sent it to somebody else?

8 A. Well, that's why I wanted to say keep it confidential.
9 Don't give it to anybody else. This is for the purpose of
10 our new company that we're going to form.

11 Q. Okay. All right.

12 MR. GILREATH: Your Honor, we're going to have an
13 exhibit -- it's in there somewhere. I may argue that in
14 closing or later. It's an exhibit that we put together
15 that kind of -- it gets kind of long and burdensome to try
16 to go through these and say, okay, this came over here and
17 this got over here. That we've put together this -- it's
18 kind of color-coded and it shows what came out of what and
19 what went where. It's something you can look at. It takes
20 a lot of time. I'm just trying to give it ---

21 THE COURT: Okay.

22 MR. GILREATH: --- for simplicity sake or otherwise I
23 could stand up here a couple of hours and go through these
24 two. And I didn't figure you'd want to do that. So that's
25 the last -- actually, it's the last exhibit in our big book.

1 It's a ---

2 **THE COURT:** Is that the green book?

3 **MR. GILREATH:** Well, it's in both of them.

4 **THE COURT:** Oh, okay.

5 **MR. GILREATH:** It starts at trial document -- what it
6 does is it compares -- right behind the pictures. It starts
7 at 488 and it makes a comparison to Kunda and Tava. And
8 then it makes a comparison of Kunda to VP.

9 **THE COURT:** Okay.

10 **MR. GILREATH:** And then VP to P. It actually doesn't
11 have a comparison technically of Tava to VP because there's
12 another -- there's one in there for P Communications. And
13 so rather than have an extra one, although I've got them
14 working on another one, I may have that before the trial's
15 over.

16 **THE COURT:** Okay.

17 **MR. GILREATH:** What's in red, you can see what came out
18 of Tava. It's pretty self-explanatory once you spend a
19 little time looking at it.

20 **THE COURT:** Okay.

21 Q. So I think we were -- he said -- I think we'd gotten
22 through the part where -- when, if you know -- I've got a
23 document here somewhere that says that -- that he sent this
24 business plan to -- I think we've already talked about it
25 where he -- he sent it to Kelley Pearson, correct?

1 A. Yes.

2 Q. Okay. And did there ever come a time -- or when did
3 you ever meet with the Verizon people about this, if any?

4 A. Well, you know, once we submitted the plan and they
5 looked like they were pretty impressed with our overall
6 plan. So we arranged a meeting with them. I think it was
7 within a few weeks. It was Krish, Vijay and myself, we went
8 to the meeting.

9 Q. Okay. So you, Krish and Vijay went to the Verizon
10 offices and had a meeting with some Verizon people, correct?

11 A. Yes, sir.

12 Q. All right. Where was that and who was there from
13 Verizon?

14 A. That was right off 385. And that was their offices,
15 corporate offices in Greenville. And it was Tim Butler,
16 Kelley Pearson, and the third person I can't remember
17 whether it was Tammy or Patricia Cook.

18 Q. Okay. And who did most of the talking at that meeting?

19 A. I did the walk-through with them presenting them the
20 plan. I did most of the talking.

21 Q. Okay. What else was, if you haven't already said it,
22 was discussed at the meeting with Verizon and how long did
23 it last?

24 A. I think it lasted probably about a half an hour or so.

25 And, you know, I introduced myself, giving them a little bit

- 1 of my background. I have an engineering consulting company.
2 And I was going to transition into this business towards the
3 end of the year, at the end of 2008.
- 4 Q. Okay. Now, what was your title in VP?
- 5 A. I was the president.
- 6 Q. And what was Vijay's title?
- 7 A. Vice president.
- 8 Q. And what was Krish's title?
- 9 A. Krish was secretary/treasurer and manager.
- 10 Q. Do you feel like Krish was aware of his title?
- 11 A. Yeah, he was. In fact, he's the one who went to the
12 attorney's office and gave him all the information to have
13 the entity created.
- 14 Q. What officer positions did he hold?
- 15 A. The secretary and treasurer.
- 16 Q. And what were his duties?
- 17 A. He was the manager. He was the promoter. He was our
18 eyes and ears for the corporation. He was going to chase
19 down all the day-to-day activities since Vijay and I
20 wouldn't be able to do it effectively during normal business
21 hours.
- 22 Q. Okay. And who made the decision that Krish would have
23 those duties?
- 24 A. We did. And Krish made the decision to be the point of
25 contact, direct point of contact with Verizon because he had

1 -- he used to work with them and had contacts there.

2 Q. Okay. And what was yours and Vijay's thoughts on that?

3 A. We were fine with that. We didn't have any problems
4 with that.

5 Q. Okay. Now, tell the Court what you brought to this
6 venture.

7 A. I brought twenty plus years of my business experience,
8 my business plan, my spreadsheets and numbers and
9 calculations to analyze new businesses. I brought my money,
10 my banking relationships. And I had an eight hundred
11 thousand dollars line of credit that we could, if we needed,
12 and use for the expansion and growth of the company.

13 Q. To what extent, if any, were Krish and Vijay aware of
14 what you just said you brought?

15 A. They were aware of all of that. In fact, I introduced
16 them to my asset managers at UBS. And I told them that this
17 is -- the set-up with them is a much way to borrow money if
18 you have assets, rather than borrowing from a bank.

19 Q. Okay. And what did Krish bring to the venture?

20 A. Krish had the sales experience and the various
21 knowledge. And he was going to be our, you know, manage the
22 day-to-day operations.

23 Q. Anything else he was going to do?

24 A. You know, basically manage and run the operations.

25 Q. Okay. What plans, if any -- now this is all happening

1 when, in late December, right?

2 A. Late December/January time-frame.

3 Q. What plans, if any, did y'all have going into the year
4 2008 and forward? What were you planning on doing?

5 A. Well, I was going to continue working on my consulting
6 job and research on a lot of things we had agreed was I
7 would look at cell phone suppliers from -- other than
8 Verizon. Krish had mentioned that the phones directly from
9 Verizon are very expensive. And if we could find suppliers
10 in China or Taiwan, Hong Kong, wherever they're manufactured
11 and we could get directly from them, we could probably
12 increase our bottom-line numbers.

13 Q. I think I heard you mention Attorney Allan Hill. Did
14 there come a time or tell me when, if you know, was VP ever
15 incorporated?

16 A. Yeah. It was incorporated in the January 2000 time-
17 frame. And Krish met with Allan Hill and gave him all the
18 information that needed to be -- needed to be formed.

19 Q. Tell us what meetings, if any, you had with Allan Hill.

20 A. I didn't have any meetings with him.

21 Q. All right. Look at Plaintiff's trial documents 356
22 through 430.

23 **MR. GILREATH:** I would represent to the Court those are
24 documents that we subpoenaed and got from Allan Hill's file.

25 **THE COURT:** What were they, 356 ...

1 **MR. GILREATH:** Yeah. Trial document 356 through 429.

2 **MR. MATHIAS:** Is that in your white notebook?

3 **MR. GILREATH:** It's in both of them, white and green.

4 It should be. It starts off, minute books, certificate
5 books, stock ledger VP Enterprises, prepared by S. Allan
6 Hill, attorney at law. Everybody find that?

7 Q. Did you find that Kaj?

8 A. Yes.

9 Q. Okay. Just tell the Court briefly -- I don't want to
10 go through this. When did you first see this grouping of
11 documents?

12 A. This was after I talked to you. And we got these
13 documents after the lawsuit was filed.

14 Q. You say you saw them after you first talked to me?

15 A. Yes. After the lawsuit was filed.

16 Q. Did Krish ever give you these documents?

17 A. No, he didn't.

18 Q. Did Allan Hill ever give you these documents?

19 A. No, he did not.

20 Q. Okay. And let me just go through a couple of them in
21 here. It shows that the corporation was formed on January
22 24th. That's on the articles that are on page 361. When
23 did you know that this corporation had been formed?

24 A. Around that time.

25 Q. Now, you've already -- you've looked at these documents

1 and you're familiar with them. Is there any document in
2 this group I just referred to that you ever signed?

3 A. No.

4 Q. Did Krish Patel ever ask you to sign any of them?

5 A. No.

6 Q. Okay. There's a lady named Rebecca Jones here. Do you
7 know who Rebecca Jones is?

8 A. Yeah. I think she works at Allan Hill's office.

9 Q. Okay. There's some paperwork in here where she did an
10 organizational minutes of the incorporator. It's on page
11 six -- no, excuse me. It's trial document 389, resolution
12 electing directors. That's a document she signed. You
13 didn't have anything to do -- what, if anything, did you
14 have to do with electing the directors?

15 A. I didn't have anything to do with it.

16 Q. Okay. There's a written consent form here where
17 there's some directors elected on page 393. Trial document
18 393, appointment of officers. You see that you're a
19 director. Did you ever sign that document? Was that
20 document ever signed by you?

21 A. No, it was not.

22 Q. And there's some stock certificates. When did you
23 first see those stock certificates?

24 A. When they were produced for this -- after they were
25 produced -- they were produced after the case.

1 Q. Can you tell us what year it was when you first saw
2 these stock certificates?

3 A. I'm guessing 2011.

4 Q. Okay. Did you have lawyers then? Did you have a
5 lawyer when you saw that?

6 A. Oh, yes, yes. This was after you had done -- you had
7 already filed all the ---

8 Q. All right. All right. I want you to go over now to
9 page 111 and 135. These are some applications. This is an
10 agent application. And are you familiar with these
11 applications?

12 MR. GILREATH: They run, Your Honor, from page 111 over
13 to, I believe, about page 134, if I'm right.

14 Q. Are you familiar with those, Kaj?

15 A. Yes.

16 Q. And tell the Court what -- where were these agent
17 applications sent and where did you get them from?

18 A. I got them from Krish. Krish had already filled them
19 out. We reviewed them and he sent them on to Verizon.

20 Q. And whose handwriting is that on the application?

21 A. That is Krish's handwriting, I believe.

22 Q. Okay. And what's the time-frame -- these are dated in
23 January of '08. What was the time-frame that all of this
24 was happening? Is that ...

25 A. Well, that was January.

1 Q. All right. There's a -- let me -- this is going to
2 come up, so I'm going to go ahead and go into this now while
3 we're on it. Look on page 123. The question there -- it
4 says litigation history. List any pending and settled suits
5 or actions for the past five years. Provide a brief
6 description and so forth. You said you had a suit against
7 AGE Solutions. What was that?

8 A. It was an engineering company that I had filed a
9 lawsuit against, and then it was settled.

10 Q. Were you the plaintiff?

11 A. Yes, I was.

12 Q. What was that suit, just briefly, about? We don't need
13 to go in any detail with it.

14 A. I had three other partners. And they had banded
15 together to terminate and try to take over the company.

16 Q. Okay. Now, look -- and that's the only suit you
17 disclosed, correct?

18 A. Correct.

19 Q. Now, look over on page 122. And there's some
20 handwriting there that says plaintiff, Pankaj Patel, 23
21 Avens something drive, defendant, Randall Rice, 4/1/2003.
22 Tell the Court -- is that your handwriting?

23 A. No, that's not my handwriting.

24 Q. When's the first time you ever saw that or heard about
25 that?

1 A. Was when Verizon produced the documents in response to
2 this lawsuit.

3 Q. Okay. And tell the Court what that is, if you recall.

4 A. Randall Rice was a landscaper. And he had -- this was
5 in 2000 right after I built my house. And it was -- we were
6 going to -- he basically did not do what he was supposed to
7 do. So I was trying to get square with him.

8 And I'd talked to a lawyer, Rodney Pillsbury, around
9 that time, 2000 -- at the latest 2001. And nothing ever
10 came out of that. They kept on getting -- dates kept on
11 getting reassigned and it eventually just went away.

12 Q. Why didn't you disclose that on paragraph 6 of the
13 application?

14 A. Because in the application they were asking for a
15 listing of the last five years. And I think this was
16 already -- I thought this was already gone by 2002 or so.
17 So I wasn't -- I didn't think it was a problem with that
18 five-year limit.

19 Q. Okay. Now, there's also a question on here about some
20 criminal activity. I've got to find it. Do you recall
21 that?

22 A. Yes.

23 Q. And let me refer you to what is the first page in our
24 book, which is an arrest warrant and a copy of some criminal
25 court records on Vijay Patel involving a shoplifting charge.

- 1 When was the first time you ever heard about that?
- 2 A. That was when Verizon produced these documents for this
- 3 lawsuit.
- 4 Q. Did Vijay ever tell you?
- 5 A. No, he did not.
- 6 Q. Did there come a time when you had to ask Vijay? Did
- 7 you ever ask Vijay about that?
- 8 A. I didn't specifically ask about it because I didn't
- 9 know anything about this.
- 10 Q. Not about that, but did you ever ask Vijay about --
- 11 have occasion to ask him about criminal ---
- 12 A. Yes, you know, when we were -- the application -- was
- 13 told I was denied with Verizon. We had a meeting and we
- 14 were trying to get to the bottom of why we were denied. And
- 15 Krish kept on telling us that they didn't -- they wouldn't
- 16 tell him, so we don't know why we're denied.
- 17 Q. I'm going to get to that in a minute. But when did you
- 18 first find out about his criminal record?
- 19 A. When I saw this document after it was produced.
- 20 Q. All right. And do you know where we got that document
- 21 from?
- 22 A. I guess Verizon provided that in response.
- 23 Q. All right. Now, look at -- what did VP Enterprises do
- 24 regarding loans and lines of credit? And in that connection
- 25 I would refer you to look at trial documents 130, 113, 137.

1 Did VP have a banking relationship?

2 A. Yes, sir. We'd gone to BB&T and established a fifty
3 thousand dollar line of credit.

4 Q. And who -- do you know who you dealt with at ---

5 A. I think it was Mike Pavlick.

6 Q. Okay. And how much money did you put -- well, where
7 was that bank account?

8 A. That bank account was at BB&T. The line of credit was
9 at BB&T or the company account for VP was at Bank of
10 America.

11 Q. All right. Look at trial document 54 and 73. They're
12 right there together. And tell the Court how much money you
13 put into VP banking account.

14 A. It was five thousand dollars.

15 Q. And how much did Vijay put in?

16 A. It was five thousand dollars that was collected for
17 Vijay and Krish.

18 Q. So how much total was put in?

19 A. The total was ten thousand dollars.

20 Q. And how much -- did Krish put any in?

21 A. I don't know if he put any in there. I was not aware
22 of their arrangement between him and his father.

23 Q. You said you put in five thousand, right?

24 A. Right.

25 Q. And how much did they collectively put in?

- 1 A. Five thousand dollars.
- 2 Q. All right. And the documents at 54 and 73, those are
- 3 bank statements on that account, correct?
- 4 A. Correct..
- 5 Q. All right. And I'll come back to that check that's on
- 6 115. Okay. We've been talking about the application. You
- 7 told us about the lines of credit. So when did the
- 8 applications go in? What time-frame?
- 9 A. I think it was in January '08.
- 10 Q. February of '08, look at an email there on 139. You
- 11 sent an email to Krish about the cell phones from Hong Kong.
- 12 Tell the Court about what that is.
- 13 A. 139.
- 14 Q. Trial document, Plaintiff's 139. It's called the cell
- 15 phone price list from Hong Kong.
- 16 A. Yes. So all in the past we had talked about was to
- 17 find alternate suppliers from alternate -- from Verizon
- 18 directly. And I found some on the internet. And that was
- 19 an email in reference to that.
- 20 Q. Okay. And what did Krish say about that?
- 21 A. Well, he said, you know, he'll check them out. And he
- 22 said, just keep searching ---
- 23 Q. Okay.
- 24 A. --- and see if ---
- 25 Q. Did you have a conversation with him about that?

1 A. Yeah. We had -- over the course we have conversation.
2 But he said, yeah, just keep searching. Keep looking for
3 suppliers.

4 Q. Okay. What is the -- and there's some emails in here
5 where you're sending tax returns. What was the purpose of
6 -- who did you send tax returns to and what was the purpose
7 of that?

8 A. I think the tax returns were sent -- I sent some to
9 Krish so he could forward them to Verizon. But they needed
10 that also for the line of credit. It was sent for that.

11 Q. And look at trial document 144, which is a BB&T letter
12 dated February 11, 2008. That's addressed to Krish
13 confirming a fifty thousand dollar line of credit.

14 A. Yes.

15 Q. When did you become aware of that?

16 A. He had told me that the line of credit was approved way
17 back then, but I'd just seen this particular document after
18 it was produced by Verizon.

19 Q. Who did the legwork on getting the line of credit?

20 A. I think Krish was involved in that.

21 Q. Okay. Now, the next document is document 145, a letter
22 from Verizon dated February the 26th, 2008. And it says in
23 short, we are unable to proceed with an authorized agency
24 agreement at this time. It's addressed to your attention,
25 Vijay's attention, 408 Ashby Park Lane. Whose address is

1 408 Ashby Park Lane?

2 A. That's Krish's home address.

3 Q. Okay. Did you ever get a copy of this letter?

4 A. No, I didn't.

5 Q. When is the first time you ever saw a copy of this
6 letter?

7 A. When it was produced for this litigation.

8 Q. After the lawsuit was filed?

9 A. After this lawsuit was filed.

10 Q. All right. When did you first hear about the letter?

11 A. It was around the same -- around the same timing,
12 February, late February that Krish had told me that the
13 application was denied.

14 Q. All right. Now, I want you to tell the Court what
15 happened after you got this rejection letter from Verizon.

16 A. Krish had called me and told me that, you know, we'd
17 been denied. So I said, well, we need to get together and
18 figure out what to do.

19 So we met, the three of us. And I asked them, you
20 know, why -- or I asked Krish, I said, why are we being
21 denied? He said, well, they wouldn't give us any reason why
22 it's been denied. They just told us it's denied.

23 So I asked him, I said, you know, the only thing I
24 could think of because it was denied without a reason, I
25 said -- and I asked Vijay and Krish, do either one of you

1 have anything in your financial records or criminal records
2 that might be a cause of denial? Because one of the things
3 that they told us they would do background checks on the
4 company and individuals. So they both told me that they
5 didn't have any issues with their financial or criminal
6 records.

7 Q. Vijay told you that?

8 A. He did.

9 Q. And what did you know, if any, about his criminal
10 shoplifting record at the time you asked him that question?

11 A. I knew nothing about that.

12 Q. And it's your testimony that he didn't tell you about
13 it at that point, right?

14 A. Yes.

15 Q. Okay. Now -- all right. Where were you working when
16 this letter came in?

17 A. I had a contract with Fluor at their main offices right
18 behind Hayward Road.

19 Q. Okay. And where was Vijay's office?

20 A. His was at his Comfort Inn Hotel on Congaree.

21 Q. And in a typical work day or work week, how often would
22 you see Vijay and/or Krish?

23 A. I would stop by there at least once a week if not more.
24 And Vijay and Krish would usually be there.

25 Q. Let's talk a little bit about what you discussed before

1 you got this letter, when you'd stop at those meetings.

2 A. I'm sorry. Would you please ask ---

3 Q. What would you discuss -- before you got the letter
4 from Verizon denying the application, what was the purpose
5 of you going by their office and what would you discuss?

6 A. Well, you know, we had other businesses that we were
7 looking at, pursuing. So we'd talk about that. And on the
8 Verizon side, we were just waiting to hear back from them.
9 And I ---

10 Q. What was the status of KVP, which is the --

11 **MR. GILREATH:** I call it kind of the real estate
12 company, Your Honor.

13 Q. What was the status of KVP at that point?

14 A. It was -- I think it was already formed at that time.
15 And we'd already closed on the property that we were buying
16 or we were getting ready to close on that. So ...

17 Q. Okay. Now, once you got this letter, when did you meet
18 with Krish and Vijay about the letter and tell us what was
19 discussed.

20 A. It was within a few days of when he called and told me
21 that we were denied. And besides inquiring about the
22 criminal and financial records, we sat down and talked
23 about, all right, you know, since they're not telling us why
24 it's been denied, let's find out exactly why we've been
25 denied. And if we can find out the reason, I'm sure we'll

1 be able to work it out and talk to them and resolve that
2 issue.

3 So we charged Krish, because of his contacts with
4 Verizon, we charged Krish to go find out and chase that
5 down. And for me, I was going to continue looking for
6 suppliers.

7 Q. So Krish was going to go try to find what happened and
8 you were looking for what, suppliers?

9 A. Yeah, for suppliers.

10 Q. What, if anything, was Vijay going to do?

11 A. Vijay was, you know, he wasn't really actively involved
12 in -- we didn't assign any tasks for him.

13 Q. All right. Now, so this is in the time-frame
14 immediately following that letter, which was January 20 --
15 February the 26th. So between February the 26th -- or when
16 did you find out about it? You obviously found out a day or
17 two later, right?

18 A. Right.

19 Q. Okay. So from the time you found out, whenever it was,
20 late February, we had 29 days that year, being an election
21 year, how many times would you say you saw Krish and Vijay
22 each week for March, April, May and June? Let's talk about
23 those four months first.

24 A. March, April, May and June, about four months, about
25 sixteen weeks. And my normal routine was to stop by there

1 at least once a week, if not more. And if I was out of town
2 or they were out of town, then we wouldn't see each other.
3 So it was at least, I'd say sixteen weeks -- at least
4 sixteen to maybe twenty-five, thirty times. At least five
5 or ten if you look at it from that ---

6 Q. All right. In that sixteen or fifteen, however many
7 times it was, you say it was once a week, tell the Court
8 what came up in those meetings that related to VP
9 Enterprises.

10 A. Related to VP Enterprise, it was, you know, our key
11 thing was I asked Krish, so where are you on the Verizon?
12 Did you find out the reason why we've been denied so we can
13 go work around it? And it was always the same answer, I'm
14 working on it. I'm trying to get to the bottom of it. I'm
15 not getting anywhere.

16 So I might have to go to the Charlotte office. I have
17 some contacts over there. I think that that was a bigger
18 Verizon office. He was going to get to the -- maybe go up
19 the corporate ladder and find the reason.

20 Q. Did he tell you anything? What else -- did he tell you
21 anything else other than that kind of line or is that what
22 he told you every time?

23 A. That was pretty much it every time. That was pretty
24 much the same thing. Because I was -- we were kind of on a
25 hold. So we needed to get past that.

1 And it was some time, maybe around April or May that we
2 started -- well, it was maybe around March, after a couple
3 of months of that, you know, we started talking about maybe
4 if there is a roadblock with Verizon, we were still going to
5 chase that. Krish, you know, your primary task was to chase
6 that.

7 And we'll look at other carriers like AT&T or T-Mobile
8 or whoever if we're having issues -- if Verizon's having an
9 issue with us, let's look at other carriers. And we were
10 going to pursue a wireless business one way or the other.

11 Q. What did he say when you started talking about that
12 possibility?

13 A. He said, yeah, go ahead. You know, start looking for
14 other companies. Start looking for businesses. And I could
15 do that fairly effectively in the evenings and weekends on
16 the internet. So I was able to find other carriers and
17 other businesses that might be for sale that we could buy
18 and maybe get our foot in the door that way.

19 Q. Did you have conversations with him during that time-
20 frame? I'm talking now in the -- I kind of want -- I want
21 to isolate it right now to March and April because those are
22 important months.

23 A. Right.

24 Q. Did you have those kind of conversations with him in
25 March and April?

1 A. Yes.

2 Q. And in March and April -- just tell us again so we're
3 clear on it. How many times do you think you met with him
4 and Vijay in March and April of '08?

5 A. It would have to be at least, you know, four or five
6 times.

7 Q. And what did he tell you again? So we're real clear --
8 the record's real clear on that. What did he tell you was
9 going on?

10 A. I haven't been able to find out. I'm still working on
11 it. And we'll get to the bottom of it.

12 Q. And what did you ask him in each of those meetings in
13 March and April of '08?

14 A. Where are we or where are you in finding out why we've
15 been denied?

16 Q. Did he ever at any meeting in March or April -- was
17 there ever -- what discussion, if any, was there about a guy
18 by the name of Corby Phillips?

19 A. Corby was non-existent to me at that time. I mean, I
20 hadn't heard that name at all.

21 Q. Okay. So you're saying you didn't hear about Corby in
22 April -- in March and April, right?

23 A. Right. Right. I didn't hear about him at all.

24 Q. All right. Now ...

25 **MR. GILREATH:** Let me see here, ---

1 **THE COURT:** I tell you what, how much longer do you
2 think you're going to go?

3 **MR. GILREATH:** Your Honor, I may have another hour.
4 I'm not going to be able to get with him before -- I'm not
5 going to get to finish with him before lunch, I don't
6 believe.

7 **THE COURT:** Well, how do you know when I'm breaking for
8 lunch?

9 **MR. GILREATH:** I don't know. If you want to ---

10 **THE COURT:** I thought we'd take -- we've been going a
11 couple of hours. Let's take a ten minute break, okay? And,
12 of course, you can stand down, but don't discuss your
13 testimony with anybody, okay?

14 A. All right.

15 (Whereupon court was in recess at 11:46 am)

16 (Whereupon court reconvened at 12:05 pm)

17 **THE COURT:** Go ahead.

18 **MR. GILREATH:** Okay.

19 Q. I think we were in the time-frame about -- right after
20 the letter. And we were talking about meetings you had with
21 them. And I want you to look at Plaintiff's trial document
22 153, which is the AT&T independent dealer info. That's an
23 email. It looks like you sent it to Krish. You said, see
24 link below. Tell the Court what's going on with that email.

25 A. As we had talked about one of the things I was going to

1 look for as an alternative, was to look for the other
2 carriers like AT&T, T-Mobile, Sprint. And this was one that
3 I found that kind of matched -- well, it was close enough to
4 the Verizon program. So I'm sending Krish a link for him to
5 look at and see what he thought of it.

6 Q. And if I'm reading it right, did you -- when did you
7 send him that email? Is April 18th the right date?

8 A. Yes.

9 Q. Okay. And did you have any discussions with him
10 surrounding that email that you recall?

11 A. Yeah. You know, I hadn't got an email response, but
12 we'd talked about it while we were talking about these
13 Charleston hotels. And he said, you know, Kaj, let's just
14 rather than looking at AT&T and other carriers for now,
15 let's concentrate on Verizon. I'm still trying to find out
16 the reason for our denial. And we can -- we still pursued
17 that plan that we had agreed on.

18 Q. And he told you that about the time you got this email?

19 A. Yes.

20 Q. Let's concentrate on Verizon. We're going to pursue
21 that plan, if I understood you. Is that what you said?

22 A. Yes.

23 Q. And that was in the middle of April?

24 A. The middle of April.

25 Q. Okay. Now, the next document over there is a document,

1 Plaintiff's trial document 230. Just tell the Court what
2 that is. If it says -- it's talking about transfer of KVP
3 and VP on hold. Tell the Court what that is and if you know
4 who did it.

5 A. This is from my Quicken account. And on 1/29 this is
6 what it shows like the money for the five thousand dollars
7 that I put in the VP account was withdrawn. And then the
8 next entry there is 7/8. This is when the money from -- was
9 transferred from VP to KVP.

10 Q. All right. Now, so the entry 1/29/2008 got minus five
11 thousand. Is that where you wrote a check?

12 A. Yes.

13 Q. And the next entry is 7/8/2008, it's got plus five
14 thousand. What is that?

15 A. That's just my entry to keep a track that this was
16 transferred to the KVP account.

17 Q. Okay. And then it says transferred to KVP, VP on hold.
18 Now, what is that? Who wrote that and tell me what that
19 means, if you know?

20 A. I'd entered that in. This was just me putting in there
21 that we're on hold and we're trying to pursue -- trying to
22 figure out the issues with Verizon. And we were going to
23 temporarily move the money to KVP.

24 Q. All right. Whose idea was it to take the money out of
25 the VP Enterprises account, which I think you've already

1 testified had ten thousand dollars, whose idea was it to
2 take that money out and put it into the KVP account?

3 A. That was, again, Vijay and Krish. They had called me
4 and ---

5 Q. All right. Now tell me -- tell the Court what Vijay
6 and/or Krish told you that related to that transfer of money
7 in the July 8, 2008 time-frame.

8 A. It started out that we needed some money in our KVP
9 account. I said, well, let's figure out an amount, what do
10 we want to put in. And he said, well, you know, we have
11 that money in VP Enterprises just sitting there. Let's just
12 move that because we still have the line of credit for fifty
13 thousand dollars. So let's just, you know, once we get this
14 one going we'll just use the line of credit. And any
15 additional money that we need, we can just then put monies
16 in there.

17 Q. You said, if I heard you right, you said something
18 about what somebody said, once we get this going ---

19 MR. STEPHENSON: Your Honor, I don't -- he's trying to
20 ---

21 MR. GILREATH: I'm just trying to get clear -- I want
22 to ask him ---

23 THE COURT: Wait a minute. What's the objection?

24 MR. STEPHENSON: He's putting words in his mouth. He
25 needs to ask him ---

1 **MR. GILREATH:** I'm trying to ask him a question about
2 who said what he said.

3 **THE COURT:** Okay. Well, ask that question.

4 Q. You said that somebody said something about once we get
5 this going or words, if I heard that ---

6 **MR. GILREATH:** I have trouble understanding myself,
7 Your Honor. I've tried to get him to slow down.

8 Q. I'm going to go over it again. Slow down here. Anyway
9 ---

10 **THE COURT:** It must be something in the water down
11 there.

12 Q. Who made that statement?

13 A. I think that was Krish that said, you know, that ---

14 Q. All right. Just so the record's clear, tell the Court
15 exactly what Krish said about that.

16 A. That instead of putting extra money from our pockets
17 into the KVP account, we have money sitting in the VP
18 account, it's just sitting there. It's not doing anything
19 right now. So we'll temporarily transfer it out. We still
20 have a fifty thousand dollar line of credit for VP and we
21 can use that for anything that we need when we get the
22 Verizon business going.

23 Q. Okay. Now this is on July the 8th, correct?

24 A. Yes, this was ---

25 Q. All right. Now, tell the Court on July the 8th, what,

1 if anything, you knew about Corby Phillips.

2 A. I knew nothing of Corby Phillips.

3 Q. On July the 8th?

4 A... Correct.

5 Q. All right. Go back over here now and look at

6 Plaintiff's trial document 146, which is another Plaintiff's
7 documents, business plan.

8 **THE COURT:** What number was it?

9 **MR. GILREATH:** 146. This is one his client give me.

10 Well, I don't know who -- I don't want to be testifying.

11 Q. This is Verizon Wireless, the agent business plan dated
12 April the 4th. And it's got the name Corby Phillips on it.

13 Now, when's the first time you ever saw that document?

14 A. 146?

15 Q. Plaintiff's trial document 00146.

16 A. I can't seem to find 146.

17 **THE COURT:** Yeah, I'm having that same problem.

18 **MR. GILREATH:** It's not in your book? It's in the
19 green book.

20 **THE COURT:** Well, I'm looking in the green book.

21 **MR. GILREATH:** It's not in there?

22 **THE COURT:** I've got 145. That's a business plan. A
23 business plan.

24 **MR. GILREATH:** Well, it's supposed to be. Judge, have
25 you got a -- you got your white book, Judge? I apologize.

1 **THE COURT:** Yeah. It goes from 145 to 4017, I mean, to
2 17.

3 **MR. GILREATH:** But have you got ---

4 **THE COURT:** I don't have 146. I do not have a 146.

5 **MR. GILREATH:** Not in your white book either?

6 **THE COURT:** No, sir.

7 **MR. GILREATH:** Well, it's in this one. Let me hand you
8 this one. I don't know what's going on here.

9 **THE COURT:** Well, show it -- he's the one -- he's
10 testifying.

11 **MR. GILREATH:** Okay.

12 **MR. STEPHENSON:** Your Honor, any documents
13 inadvertently left out of a book, I am perfectly glad for us
14 to supplement them later.

15 **THE COURT:** Okay.

16 **MR. STEPHENSON:** I've seen this document. It's not
17 something ---

18 **THE COURT:** Okay.

19 **MR. GILREATH:** Well, this is a very important document,
20 Your Honor. I apologize. I don't know how that happened.

21 **THE COURT:** He was testifying, Mr. Stephenson. You
22 don't object to that?

23 **MR. STEPHENSON:** I figure if I let him testify we might
24 be done this week.

25 **THE COURT:** All right.

1 **MR. GILREATH:** You talking about me or the witness?

2 **MR. STEPHENSON:** You.

3 **MR. GILREATH:** All right. I apologize for that bump in
4 the road.

5 **THE COURT:** That's all right.

6 Q. But we've got Plaintiff's trial document 146, Verizon
7 business plan, April 4th, 2008, Corby Phillips. Do you see
8 that?

9 A. Yes.

10 Q. Now, tell me first, when's the first time you ever
11 heard of that document?

12 A. This was after the lawsuit was filed and produced.

13 Q. And so I want to go back. Now, we were talking about
14 that in the context of this document, July the 8th, 2008,
15 where the money got taken out of VP. You put VP on hold.
16 That's trial document 230. You see that?

17 A. Right.

18 Q. So on April the 4th, at that time-frame, what was Krish
19 telling you about VP Enterprises?

20 A. That he's still trying to chase down why we've been
21 denied.

22 Q. Okay. What was he telling you about Corby Phillips?

23 A. Nothing.

24 Q. What was he telling you about P Communications?

25 A. Nothing.

1 Q. Okay. You didn't even know -- did you know anything
2 about P Communications?

3 A. Uh-uh (negative).

4 Q. All right. Now, let's go over to Plaintiff's trial
5 document 239. This is an email from you to -- from you to
6 Krish, July 25th, 2008. Wireless business opportunity.
7 Tell the Court what that is.

8 MR. GILREATH: Is that in your green book, Judge?

9 THE COURT: Yeah.

10 MR. GILREATH: Okay. I'll get you that other one to
11 put in there.

12 Q. So tell the Court about this wireless opportunity email
13 on July the 25th.

14 A. I had followed up per the plan we had for me to go look
15 for other businesses that we could buy and get in the
16 Verizon or the industry. I found one on some network. It
17 looks like I sent the email to Krish on July 24th.

18 I didn't get a response from him. So I sent it --
19 forwarded it back to him on the 25th. And he later
20 responded on Sunday that the link become available.

21 Q. And what did you know on July the 27th about Corby
22 Phillips?

23 A. I didn't know anything about him.

24 Q. And on July the 27th when you sent this email, what did
25 you think Krish Patel was doing for K -- for VP Enterprises?

1 A. He was working on chasing down and trying to find out
2 from Verizon corporate in Charlotte.

3 Q. And the same questions regarding Corby Phillips, I
4 would ask you with regard to Vijay. What, if anything, did
5 Vijay ever tell you about Corby Phillips in this July time-
6 frame?

7 A. He didn't tell me anything about Corby Phillips.

8 Q. All right. We now get to what ---

9 MR. GILREATH: I will tell the Court it's a fairly
10 important date in this trial.

11 Q. Saturday, October the 18th, 2008. In that connection,
12 look at the email on page 270. This is actually dated
13 October the 7th of '08 from Krish Patel to a number of
14 people. Had you ever seen that -- when did you first see
15 that email?

16 A. I saw that when the documents were produced for this.

17 Q. There's a long laundry list of people on there. Have
18 you checked that to see if your name's on there?

19 A. I've checked. I never received this email. So I'm not
20 on it.

21 Q. All right. Now, tell me, if you can -- now, we've kind
22 of talked about -- I got to talking about March and April
23 and July. But just so the record is clear, tell the Court
24 as best you can estimate how many times between February
25 26th when that letter came out and October, Saturday,

1 October the 18th, that you think you met with Krish Patel.

2 A. About seven months. My normal routine was to stop by
3 Vijay's office. So I would have seen him, you know, quite a
4 -- numerous times. I can't put down exactly how many. But
5 towards maybe May/June, around that time-frame, I was seeing
6 -- Krish was a lot less over there. So if Vijay was there,
7 then I'd ask him about what was going on.

8 Q. Okay. I would ask you to look at their allegation in
9 paragraph thirty-seven of their answer, which you've got up
10 there. And I'll just read it into the record.

11 In regard to paragraph thirty-seven, it is admitted
12 that Kaj on numerous occasions during the time period
13 alleged had conversations with Vijay. So during this period
14 did you also have conversations with Vijay? You don't -- is
15 that correct?

16 A. Yes, I had plenty of conversations with Vijay.

17 Q. Did anything about Corby Phillips come up in -- what
18 came up about Corby Phillips in any conversation you had
19 between February the 26th and Saturday, October the 18th
20 about Corby Phillips?

21 A. There was nothing that came up.

22 Q. Nothing. Is that what you're saying?

23 A. Right.

24 Q. All right. Now, let's fast forward to Saturday,
25 October the 18th. And tell the Court what you learned that

1 day about what was going on with VP Enterprises?

2 A. Well, I was invited to Vijay's house, my wife and I
3 were, for a small gathering, another couple, friend of ours
4 were there. And they had a couple of guests from India that
5 I didn't know of.

6 We were talking about -- the men were in the kitchen, I
7 mean, the men were in the garage. And I'd asked Vijay if
8 Krish was going to be joining us. And he said, yeah, he
9 would be later on, once he gets back from his Verizon grand
10 opening.

11 And I said, Verizon grand opening? Is this -- did he
12 get a job back with them or is this something to do with
13 our, you know, the Verizon plan that we were working on?
14 And he immediately clammed up and said, well, you know,
15 you're going to have to talk to Krish about this. I'm not
16 involved in that. So I said, well, I'll just wait for
17 Krish.

18 Krish came in probably later on that evening, maybe an
19 hour or two later. And after he got a chance to say hello
20 to everybody, I pulled him off to the side. So the men were
21 in the garage, the women were in the kitchen. So we went to
22 the living room.

23 And I asked him, I said, you know, I just -- what is
24 going on with this Verizon thing? And I said, is this
25 related to what we're doing or is this something different?

1 He says, no, you know, I found this guy who already had a
2 Verizon business and a license. And I just recently joined
3 up with him to get our foot in the door, since we were
4 having the issue with, you know, not finding out from
5 Verizon why we'd been denied.

6 So I asked him, I said, you know, you should have told
7 me about this before. And he said, well, you know, I just
8 recently joined with him, and I haven't had much time. So I
9 will, you know, I should have -- I'm sorry. I should have
10 mentioned that to you.

11 So -- and I said, well, you know -- he said, this is
12 our foot in the door. We'll, you know, once I get Corby out
13 -- that's the first time I heard the name Corby. He said,
14 once I get Corby out, because he doesn't have the financial
15 means or capabilities to grow this business like we're
16 looking at from, you know, to grow a big business like we're
17 looking at. He said, once I have a -- once I figure out a
18 way to get him out, we can get back on our plan.

19 And I said, well, you know, how long are you looking at
20 this taking? He said, this should take anywhere from eight
21 to twelve months. And I was interested, you know, in the
22 time-frame because it kind of left me in a quandary. We had
23 already discussed a while back and the plan we were
24 proceeding with, you know, I was going to give up my
25 consulting business to jump into this full-time after the

- 1 end of the year.
- 2 So I said, you know, if it's going to take that long,
- 3 then we need to, you know, I need to either go get on
- 4 another project or go talk to Fluor and try to reintegrate
- 5 myself back in the project.
- 6 Q. And what did he say when you told him all that?
- 7 A. He said, yeah, you know, he said, it is going to take
- 8 eight to twelve months. So we'll have to -- until then, you
- 9 know, once I get Corby out, we'll resume back on our plan.
- 10 Q. Okay. What else -- did Corby's last name ever come ---
- 11 A. No, I ---
- 12 Q. What was said about Corby's last name?
- 13 A. It was just Corby. The name I remember was Corby.
- 14 Q. Why didn't you ask him anymore about Corby that night?
- 15 A. Well, you know, it was some -- what he led me to
- 16 believe and what I understood was that he had just joined up
- 17 with him and this was going to be our foot in the door and
- 18 that, you know, whatever arrangement they had would get our
- 19 foot in the door. And, you know, I could have probably ---
- 20 Q. Was there any discussion with him about the name of any
- 21 corporation that Corby had?
- 22 A. No. And I didn't think of asking at that time.
- 23 Q. He didn't volunteer it either, right?
- 24 A. No, he did not.
- 25 Q. Now, so what happened in your life as a result of that

1 as far as your arrangement with Fluor and we go on into
2 2009? Just briefly tell the Court what happened.

3 A. I'd already told them earlier in the year that I
4 wouldn't be available to continue on the project when the
5 design work in Greenville moves from Greenville to Puerto
6 Rico. So now this is October.

7 So, I was like, all right. I'm going to have to try to
8 get Fluor to put me on that team so I could have some work
9 for the next eight to ten months, or I'm going to have to go
10 look for another project. And that usually takes a couple
11 of months.

12 And based on our plan that I was going to quit my job
13 and transition by the end of the year, I'd already made
14 plans to go to India and visit family for about five or six
15 weeks. Fortunately, I was successful in talking to Fluor
16 and putting me on that -- letting me continue on that
17 project, to move to work on a site in Puerto Rico.

18 So at the end of the year, I went to India for six
19 weeks. This was the January/February time-frame. And then
20 I came back. I was here for about probably four or five
21 days and headed down to Puerto Rico for six months or so.
22 So this was still July or August of '09.

23 Q. Okay. Look at your document number 303, which is a
24 February 9th -- 10th email from you to Krish about the Will
25 Bomar property. What is Will Bomar property?

1 **THE COURT:** What number was that again?

2 **MR. GILREATH:** 303.

3 **THE COURT:** 303, okay.

4 A. The Will Bomar property is the property we owned under
5 KVP.

6 Q. KVP?

7 A. Yeah.

8 Q. Well; apparently, there was something going on at that
9 time-frame because of this email. My question to you is
10 what, if anything, in that time-frame, if you recall,
11 regarding VP Enterprises did you discuss with Krish?

12 A. This is all the way out in 2010.

13 Q. Okay. I'm in the wrong year. Excuse me. I didn't
14 mean to get into that right there. Excuse me.

15 What discussions were you -- well, you just said you
16 were in Puerto Rico for a period of time. In 2009 what
17 discussions, if any, can you recall that you had with Krish
18 where the situation with Corby came up? And tell me what he
19 said.

20 A. Well, I was in Puerto Rico from March all the way
21 through July or August. But I would come home every ten
22 days, come back for four days. And two of those days were
23 really travel. So I'd run into Vijay, but those weekends I
24 was here, I would spend the time with my family.

25 I'd call Krish and ask him, I'd say, hey, you know,

1 where are we on the -- where are you, you know, with Corby?
2 And he would tell me that he's still working on it. It's in
3 the eight to twelve month period that we discussed it was
4 going to take. He said, just be patient. And when I get
5 him out, we'll continue on that.

6 Q. Can you place a time on any conversation where he said
7 something like that? Do you recall?

8 A. That was from between March and July/August time-frame.

9 Q. Well, between March and July/August time-frame was that
10 ---

11 A. Oh, 2009.

12 Q. '09?

13 A. Right.

14 Q. That's what he told you about Corby?

15 A. Right.

16 Q. Did you have any, with him, any other discussions in
17 '09 that you could recall about Corby?

18 A. Well, yeah. When I got back from Puerto Rico, Fluor
19 wanted me to work on a project at their offices. So I got
20 back into my routine of stopping by Vijay's office. And I
21 wouldn't see Krish there. Vijay was always there. So if I
22 talked to Krish, it was on the phone.

23 I would see Vijay at the hotel. And I would ask Vijay,
24 what's, you know, what's going on with Verizon? So he said,
25 you know, you talk to Krish. I'm not involved in that. You

1 just talk to him directly about that.

2 And then when I talked to Krish, he was just like,
3 well, you know, I haven't been able to get Corby out. I'm
4 still working on it. I'm still trying.

5 Q. Okay. Now, what, if anything, did you ever learn from
6 Vijay about Corby?

7 A. I didn't learn anything.

8 Q. And what was it Vijay told you about Corby, again?

9 A. It was Krish that had told me about -- had mentioned
10 Corby.

11 Q. No, but, I mean, what, if anything, did Vijay tell you
12 about what was going on?

13 A. Right. He was not involved in that at all and I'd have
14 to talk to Krish directly on that.

15 Q. All right. Let's fast forward over to -- where I was a
16 while ago when I got off track. Go to 304A. And this is an
17 email, April the 15th of 2010 from you to Krish. And can
18 you just tell the Court what's going on there.

19 **MR. GILREATH:** Down at the bottom of that, Your Honor.

20 **THE COURT:** What number was it?

21 **MR. GILREATH:** 304A. It's an email from Kaj to Krish
22 dated April 15th.

23 **THE COURT:** Okay.

24 Q. It says, I checked Verizon's site as you suggested.
25 Just tell him what you're doing with Krish there.

1 A. So this is in April of 2010. But somewhere around
2 February/March, this is in 2010, I was just getting antsy
3 about this whole thing with the Verizon. And every time I
4 talked to Krish, he was like, well, I'm still working on
5 trying to get Corby out. I'm still working on it. We'll
6 resume.

7 So I said, you know, I'm going to have to press this
8 issue. I'm at a transition point where I'm done with my
9 Fluor work. So I'm going to either go work or, you know,
10 we're going to -- I want to find out exactly what's going on
11 here.

12 And I was going back and forth to Hendersonville at
13 that time. And I stopped in the Tryon/Columbus area. And
14 this is in February/March time-frame. And I needed
15 something for my cell phone. I was asking somebody local
16 there where's the nearest Verizon place. He said, well, the
17 nearest one is all the way out in Hendersonville.

18 So I said, you know, this could be a good location for
19 one. And so I called Krish up and I said that, hey, you
20 know, I've got some locations here. And this is 2010.
21 We're two plus years into this thing and, you know, we're
22 not going anywhere with our VP thing.

23 I said, well, what's going on with Corby? He said,
24 well, I'm getting close to getting him out. I said because
25 if we're not -- if this is not going to work out, then I've

1 got some locations that I'm looking at. And we'll have to
2 -- we'll sit down, and I'll figure out what to do with VP,
3 and we can part ways if you're stuck with Corby, then you do
4 your thing, and I'll figure out what I'm going to do.

5 And he says, no, no, Kaj. You don't need to do that.
6 You don't need to go out on your own. Just we can sit down
7 and we can talk about that. So he asked me, he said, by the
8 way, what locations are you looking at? And I said, in the
9 Columbus and Tryon area.

10 So I said, well, you know, if we -- you want to get
11 this VP thing going, then let's sit down and talk about
12 that. So we had a meeting and we talked about that.

13 And this email was a result of him asking me, he says,
14 you know, before we get all excited about Tryon and the
15 Columbus area, let's go on their -- Verizon's website and
16 make sure there are no other Verizon stores in that area.

17 Q. All right. And there's some pictures at the back of --
18 the Court's back of the green book that starts at page, I
19 think, 467. Just tell the Court briefly what those pictures
20 are and how you -- if you know what date they were taken and
21 who took them.

22 A. Yes. You know, Krish and I met and we talked about
23 Columbus, North Carolina. And it was at that time he said,
24 well, yeah, you know, I'm pretty close to getting Corby out.
25 So we can kind of, you know, pursue this.

1 And he said, you know, when you're going by there next
2 time, just get me the information of the location because
3 I've already scoped out some locations. And I took pictures
4 of these around May, the middle of May, and sent them from
5 my phone, and I texted a picture message to him.

6 Q. Okay. Can you tell the Court about any conversation
7 that you recall with Krish where you did not discuss the
8 Corby deal?

9 A. Can you repeat that question, please?

10 Q. Can you tell the Court about any conversation that you
11 can recall where you did not discuss with Krish the Corby
12 deal?

13 A. No.

14 Q. Here's an email -- so we're now over into April. What
15 kind -- what did this Columbus/Tryon, in these conversations
16 with Corby [sic] in April, what did that -- tell the Court
17 kind of what that led to. I don't think we need to go into
18 details of each meeting.

19 A. All right. So we're looking at -- talking about the
20 Columbus area. And, you know, I had thought that, you know,
21 with his deal with Corby, he only had like one store. And
22 in the course of the meetings that we had, I found out that
23 he actually had four or five stores.

24 So I said, you know, when we do this, we're going to
25 have to get this Verizon -- VP plan back on track or we're

1 going to have to figure out, you know, how to integrate that
2 into our overall VP business.

3 And while we're talking about that, after about the
4 first or second meeting, he switched gears, Kaj, we need to
5 forget about Columbus/Tryon. I have some stores in
6 Columbia/Florence area that are up for sale. And we can buy
7 those at a much cheaper price than we can start our own
8 stores.

9 So then we started talking -- all right. So I think
10 he'd said something in the range of three to five hundred
11 thousand dollars. So we talked about I would put in half
12 the money, he would put in half the money. We'd acquire
13 those stores. We'd travel back and forth from that
14 Columbia/Florence area and manage those stores. And in the
15 meantime, we would figure out how to integrate what he
16 already, you know, has with Corby.

17 And it was at that time that he told me he was
18 successful in getting Corby out and that it was a lot of
19 pain and anguish. It took him a long time to get him out.
20 And he had to spend more than thirty thousand dollars to get
21 him out.

22 Q. So you say he -- what did he tell you about getting
23 Corby out?

24 A. He said he had finally managed to get Corby out.

25 Q. Okay. When did he tell you he got Corby out?

1 A. This was in our April/May time-frame.

2 Q. And what did he tell you he paid Corby?

3 A. He said it was more than thirty thousand dollars.

4 Q. More than thirty thousand?

5 A. Right.

6 Q. Okay. And so now you know that Corby's out. So what
7 happened next with Krish?

8 A. Well, we were talking about, you know, prior to this,
9 I'd put half the money, he'd put in half the money. And
10 then, you know, we'll figure out how to integrate this. And
11 we'll integrate his existing, whatever, four or five stores
12 or however many he had at that time. I think it was -- I
13 think he said it was five or six stores. And ---

14 Q. What are you going to integrate it with?

15 A. You know, we were going to buy this seven stores in
16 Columbia. And so I would put in half the money, he would
17 put in half the money. And whatever equities he had in that
18 deal with Corby, whatever he had to pay, you know, we'd have
19 to figure out some amount of number and integrate that with
20 our Verizon plan. And so all those details we were going to
21 work out.

22 Q. Now, what do you mean when you say integrate it with
23 our Verizon plan?

24 A. So we're at the point where Corby's out. We've got the
25 foot in the door and, you know, we can now be -- we're now

1 where we can continue with the plan we had to start ---

2 Q. So what plan are you talking about?

3 A. The Verizon plan, I mean, sorry, the VP plan.

4 Q. The VP plan?

5 A. The VP plan.

6 Q. Okay. So where did that go to? What happened on all
7 of that?

8 A. Right. So we were talking about putting monies in.

9 And then towards around late May he brought in his CFO into
10 a couple of those meetings, Bruce Cole. And he says, you
11 know, Kaj, you know, we were talking about you putting in
12 half the money for this portion and we're going to take
13 these existing stores and continue with the VP plan.

14 He said, Verizon's very, very sensitive to adding
15 people. That would require me adding my name to the --
16 adding my name to Verizon. He said that it's -- they're
17 already very sensitive since I've already changed ownership
18 with Corby.

19 And so he said, you know, rather than doing that, how
20 about you don't put any money in it. We'll give you the
21 same benefits as a fifty percent owner. And we started
22 talking about that.

23 And I said, you know, as long as we take all of this
24 stuff and we agree to this and we put it into an ironclad
25 agreement, you know, that's fine. And I said, well, you

1 know, let me take a day or two and think about it. And we
2 planned on meeting on June -- on Friday, June 4th. We were
3 going to meet there at his office on that Friday to finalize
4 ---

5 Q. Okay. And tell the Court what happened at this meeting
6 on Friday, June the 4th.

7 A. So he said, all right, you know, let's go ahead and do
8 this. And we shook hands on it. And he walked me around
9 his Augusta Road -- that was where he was running his
10 operation out of and introduced me to the whole staff.

11 And while he was doing that, Vijay passed by. And I
12 asked Krish, I said, you know, how's your dad involved in
13 this or is your dad involved in this? Oh, yeah, you know.
14 My dad's been involved in this from day one. You know, this
15 is a family business. My mother's involved. My brother's
16 involved. Everybody's involved, you know.

17 And he asked me, he said, do you have any problem with
18 that? I said, that -- when he was telling me that, it just
19 sent all these red flags and bells and whistles because all
20 of -- for two years, you know, I'm talking to my friend and
21 he's been telling me that -- excuse me. He's been telling
22 me that he doesn't know a thing about it. This is all
23 Vijay's [sic] thing. And here Krish is telling me that he's
24 been involved from day one.

25 So I, you know, I didn't know what to say or what to

1 do. So I just said, all right, you know, I'll see you on
2 Monday. And -- because I was going to start work on Monday.
3 And I went back home and started thinking about it. And I
4 said -- and, you know, at that time actually when we were
5 talking about the, about an ironclad agreement that we'd
6 both agreed that we were going to have Allan Hill do, I
7 said, you know, I asked him, I said, you know, how are you
8 structured? And he says, you know, I've got a company, P
9 Communications, and I've got various LLCs under that.

10 So that was the first time I found out about P
11 Communications. So I went back home, you know, got on the
12 internet. And I was just going to look up P Communications,
13 but the thing he told about Vijay was really bothering me.

14 So when I pulled up ---

15 Q. What's really -- the thing he said about what?

16 A. About Vijay, that, you know, he's been involved on it
17 from day one.

18 Q. So you went home and what?

19 A. So I went home, pulled up -- got on the Secretary of
20 State -- on the website and pulled up P Communications.
21 And, you know, what I saw on the screen was, you know, this
22 company was formed on ---

23 Q. Well, that's next. Let me slow you down there a
24 minute. Let's go look at page 306A in the green book, South
25 Carolina Secretary of State printout, which I think is what

1 you see on some of those screens when you go to the
2 Secretary of the State's Office. Did you pull up something
3 similar to that?

4 A. Yes.

5 Q. Are you familiar with that document?

6 A. Yes.

7 Q. All right. Tell the Court what you saw on that
8 document on Friday, June the 4th that got your attention.

9 A. Well, the first thing that jumped out was the April 28,
10 2009. This company was formed in April. This is two months
11 after we formed VP Enterprise. And I saw at the bottom
12 where it says changed the agent from Corby Phillips to Krish
13 back in 2008.

14 And it just hit me that, you know, these guys have been
15 taking me for a ride. And I immediately picked up the
16 phone, I called up Krish. I didn't get him on the phone.
17 So I left a message for him to call me back. I called him a
18 couple of times that day. And I think it was either that
19 day or the next day I sent him an email saying, you know, I
20 need to talk to you in person.

21 And I think it was on Saturday that he called me and
22 said, hey, you know, I've been busy. Sorry you haven't been
23 able to get a hold of me. He's been busy trying to put that
24 deal together with Columbia and we can meet on Sunday, which
25 was, I guess the 6th.

1 Q. All right. Let me ask you one question about this form
2 down there where it says agent, 12/04/2008, change -- I
3 guess AGT is agent/add from Corby S. Phillips. What did you
4 think about that when you saw it?

5 A. I thought -- my guess was that's when Corby was removed
6 and here's just a few weeks, a few months ago he'd been
7 telling me that he's -- he had told me that he had just
8 gotten Corby out.

9 Q. Did Krish tell you -- what did Krish tell you during
10 the year 2009 about Corby Phillips?

11 A. That he was still in and he was still trying to get him
12 out or working on getting him out.

13 Q. What did he tell you during the year 2010 up until you
14 had this meeting, until you found this on the night of June
15 the 4th, almost six months, part of 2010, what was Krish
16 telling you about Corby Phillips?

17 A. That he had just recently gotten him out, you know.

18 Q. What did he -- when did he first tell you he recently
19 got him out?

20 A. That would have been the May time-frame.

21 Q. So between January and May what was he telling you
22 about Corby?

23 A. He was telling me that he was still in it and he's
24 pretty close to getting him out and it should happen
25 shortly.

1 Q. And when did he tell you he got him out?

2 A. I think it was around the May time-frame that he ---

3 Q. And how much money again did he tell you he paid him?

4 A. He said it took him a lot of time and effort and thirty
5 thousand plus dollars to get him out.

6 Q. Okay. So now you're armed with this information. What
7 did you do?

8 A. You know, I wanted to talk to Krish, you know, man-to-
9 man, eye-to-eye. And, you know, so I was finally able to
10 get a hold of him. He said we could meet at his house.

11 You know, we sat by the pool and I told him, I said,
12 two things. I said, you know, what you told me that your
13 dad's been involved from day one, I said your dad's been
14 telling me completely opposite. And when I find out from
15 the records there that, you know, it looks like you were
16 involved in this business in April of 2008, just a few
17 months after we started our company.

18 I said, is that true? He said, well, yeah, that's
19 true, but, you know, it's a long story, you know. And I
20 said, yeah, looks like it is a long story.

21 And I said, you know what, you backstabbed me and
22 you've been, you know, taking me for a ride for two plus
23 years. And I said, you know, I don't ever want to talk to
24 you again. And I said, I'll never talk to you again in my
25 life.

1 And I said, unfortunately we have this KVP business
2 that we still own together. So I said, I'll only
3 communicate with you about that. And I said, since your
4 dad's been telling me that he's never been involved, you
5 know, I don't even want to talk to him. He can, you know,
6 he can call me or he can call you. That was on Sunday.

7 And on Monday morning Vijay called me. And he says,
8 Kaj, you know, I thought this deal was all good, you know,
9 you were going to join us. I said, join us? You've been
10 telling me you've never been involved in it. I said, Krish
11 just told me about this. I said, you know, I'm not going to
12 talk to you about this over the phone.

13 So he said -- he asked me if I could come see him. So
14 I jumped in the car, went to his hotel and I told him the
15 exact same thing. I told him, I said, you know, you guys
16 betrayed my trust. I trusted you guys. You lied to me for
17 two years. And, you know, I don't want to talk to you
18 again.

19 Q. Okay.

20 **MR. GILREATH:** Your Honor, I've got just a little bit
21 more if you want me to finish up with him or I can ---

22 **THE COURT:** Well, what's a little bit?

23 **MR. GILREATH:** It won't be more than thirty minutes.
24 It may go that long. I don't think -- I don't know.

25 **THE COURT:** Okay. See if you can cut that in half, all

1 right?

2 MR. GILREATH: All right. Let's speed it up. I'm
3 getting hungry too, Your Honor.

4 MR. STEPHENSON: Jim, I'll consent to you leading, how
5 about that?

6 MR. GILREATH: No, I'm not going to stipulate to that.
7 If you'll let me summarize his testimony, ---

8 MR. STEPHENSON: I'll let you do that.

9 MR. GILREATH: --- we'd get out of here in about ten
10 minutes.

11 MR. STEPHENSON: You can summarize it.

12 MR. GILREATH: Okay.

13 Q. Kaj, two things that I want to address. The first
14 thing I want to clear up is there's been some talk about
15 Allan Hill.

16 A. Right.

17 Q. And just so the record's clear, had Allan Hill ever
18 done any work for you?

19 A. Yes, he's done work for me.

20 Q. How did VP, and you and Krish decide to get Allan Hill?

21 A. We'd agreed that we'd use Allan Hill.

22 Q. You and Krish had a discussion about that?

23 A. Right.

24 Q. Now, did you -- have you discovered who formed P
25 Communications, Inc.?

1 A. Well, you know, yeah. When I talked to Krish he said,
2 yeah, I was involved in the formation of that with Corby.

3 Q. He told you that was -- he told you he was -- wait a
4 minute. Krish said he was ---

5 A. He was involved in that formation.

6 Q. Now, wait. Who are you talking about he? Krish?

7 A. Krish.

8 Q. And was there any discussion with Krish about Allan
9 Hill being involved? Or what was ---

10 A. No, not regarding P Communications. I didn't ask him.

11 Q. Okay. So you didn't have a discussion with him about
12 that?

13 A. No.

14 Q. Okay. What have you since learned in the course of
15 this lawsuit about Allan Hill's involvement in P
16 Communications?

17 A. I guess from the documents that were produced, Allan
18 Hill was the same attorney that started the P
19 Communications.

20 Q. All right. Now, there's been some discussion by Mr.
21 Stephenson in his opening about the fact of this Hot Wire
22 Magazine. And he says he's going to prove that it came to
23 your house, which that's fine.

24 But before I get into that, because I've got one other
25 thing other than the Hot Wire thing I want to talk about.

1 Tell me when you -- how you decided to hire a lawyer or how
2 that happened and when you first went to a lawyer with this
3 lawsuit.

4 A. It was in probably -- June 4th is when I found all this
5 stuff out. And I, you know, I didn't talk to anybody but my
6 wife about that. And I happened to be at Mukund Desai, who
7 was a partner with me in all the hotels, usually has my
8 debit and checks there. So I normally pick it up from him.
9 While I was there, he brought up ---

10 **MR. STEPHENSON:** Your Honor, I object to anything
11 Mukund Desai said. Hearsay.

12 **THE COURT:** Yeah. That's hearsay.

13 **MR. GILREATH:** Well, I've got him subpoenaed.

14 **THE COURT:** Well, he can testify to what he said. He
15 can testify to what he did as a result of the conversation.

16 Q. Well, what did you do as a result of meeting with
17 Mukund Desai?

18 A. Well, you know, I ---

19 Q. Well, first of all, when did you have this meeting with
20 Mukund Desai? And what -- as a result, what transpired at
21 that meeting? And you don't have to say what he said or
22 whatever, just what did you do?

23 A. It was around July/August time-frame. We were talking
24 about -- he had brought up the subject of Verizon and Krish
25 to me ---

1 **MR. STEPHENSON:** I object. He can't talk about ---

2 **THE COURT:** You can't talk about it. What year are we
3 talking about, by the way?

4 **MR. GILREATH:** In 2010, July of 2010.

5 **THE COURT:** 2010, okay.

6 Q. Yeah, you can't say what Mukund Desai said.

7 A. Okay. All right. Sorry.

8 Q. But what did you -- as a result of the meeting you had
9 with Mukund Desai, what did you do?

10 A. I went and spoke to Monty Desai, attorney, and
11 explained to him what I found out and all these issues ---

12 Q. And what did you decide to do?

13 A. And at that time, after I talked to him, he mentioned
14 ---

15 **MR. STEPHENSON:** Your Honor, ---

16 **THE COURT:** No, You can't say what he said.

17 A. All right. Sorry. So he -- he introduced me to Jim.

18 Q. Okay. He introduced you to me?

19 A. To you.

20 Q. All right. And we're here.

21 A. And we're here.

22 Q. That's the point I was trying to make.

23 **THE COURT:** Okay.

24 Q. Now, that was in July 2010, right?

25 A. Yes, that was in July. July or August time-frame.

1 Q. Okay. Now, this Hot Wire Magazine article, tell me the
2 first time you remember ever seeing that.

3 A. I think that was ---

4 **MR. GILREATH:** Well, let me see that thing you were
5 waving around the courtroom.

6 (Whereupon the attorneys were conferring off the
7 record)

8 **MR. GILREATH:** We've got a copy of it. I was trying to
9 jog the witness' memory.

10 Q. Look at page 307 of my green book. I wasn't able to
11 find an original of it.

12 **THE COURT:** Well, because that's not the name of the
13 magazine, Mr. Gilreath.

14 **MR. GILREATH:** Well, I know it. I didn't ---

15 **THE COURT:** It's called Town. I can't remember, who is
16 that, Don Johnson or Kim Hassle, which one is it?

17 **MR. STEPHENSON:** This is the Business Journal. Kim
18 Hassle's is Talk.

19 **THE COURT:** Talk. Okay. Thank you.

20 Q. Can you just -- have you ever seen that magazine
21 before?

22 A. Yes, sir.

23 Q. Hang on. I don't think I get that at my house. I
24 don't remember seeing that.

25 **THE COURT:** All right. We'll get you on the mailing

1 list.

2 Q. All right. Now, there's an article in that magazine
3 called Hot Wire.

4 A. Yes.

5 Q. When did you first see that article?

6 A. I think that was in 2011. I don't see it. I'll try to
7 jog my memory when it was published.

8 Q. It was when? What?

9 A. It would have been when it came out.

10 Q. That would be the first time you saw it?

11 A. Yes.

12 Q. What, if anything, did that article have to do with
13 your decision-making process in filing this lawsuit or
14 whatever's got to do with this lawsuit?

15 A. That had nothing to do with it because I had already
16 talked to you guys.

17 Q. All right. Okay. Now, there's one other thing about
18 this article I like. And I want to get into it right now.

19 **MR. GILREATH:** And very shortly -- very briefly, Your
20 Honor.

21 Q. It's over in the second page of it, on page 00308, the
22 writer of the article says, quote, by the time he was
23 twenty-one, they're referring to Krish, he decided to open
24 his own Verizon store, launching Wireless Communications in
25 2008, the year he graduated from college, using the business

1 plan he had drafted in one of his college classes.

2 Now, I want to just go back just very briefly to your
3 testimony about the first conversation you had with Krish
4 about a business plan and tell me what, if anything, he told
5 you about any business plan he had drafted in 2007.

6 A. He said he didn't have any business plan and he hadn't
7 worked on a business plan before.

8 Q. What was your impression in December of 2007 about what
9 Krish Patel knew about a business -- drafting a business
10 plan?

11 A. My impression was that he, you know, he knew nothing
12 about creating a business plan.

13 Q. All right.

14 **MR. GILREATH:** Your Honor, I'll have probably some --
15 we have an exhibit on this point, Your Honor. It just came
16 up. We found out who taught him the business course. We've
17 subpoenaed his records from USC Spartanburg. And that
18 exhibit is in at page -- Plaintiff's 145.

19 **MR. STEPHENSON:** Your Honor, he's got to put that --
20 this is not the witness to put that in through.

21 **MR. GILREATH:** Well, I was just trying to ---

22 **THE COURT:** It's already in evidence? Is that right?

23 **MR. STEPHENSON:** Yeah.

24 **THE COURT:** What number are you looking at?

25 **MR. GILREATH:** Page 145. It's in evidence. I'd like

1 to just publish that for the record so ---

2 **THE COURT:** Well, you don't have to. I can read it.

3 **MR. GILREATH:** You can read it. It's a letter we got
4 in response to our record that says what his grade was.

5 **THE COURT:** You're looking at 145?

6 **MR. GILREATH:** Yeah, Plaintiff's trial document 145.
7 145B, excuse me. 145B.

8 **THE COURT:** Okay.

9 **MR. GILREATH:** And attached to that, Your Honor, is
10 another Verizon -- I hate to bring it up, but another
11 Verizon business plan. And this is the one he did for his
12 business course that he took in the spring of 2008, long
13 after this thing was formed, where he made a B. And you'll
14 hear about what he told me about what he made in that course
15 later on in the trial.

16 **THE COURT:** What now? He made a B or did he make
17 something else?

18 **MR. GILREATH:** Well, I asked him what he made and he
19 told me.

20 **THE COURT:** Oh, okay.

21 **MR. GILREATH:** That's not in the record yet. So I
22 don't want Mr. Stephenson hollering at me.

23 **MR. STEPHENSON:** I'm way beyond stopping him from
24 testifying. He can testify all he wants.

25 **THE COURT:** All right.

1 **MR. GILREATH:** My recollection is he told me he made an
2 A, but it'll be played this afternoon.

3 **THE COURT:** Okay. Town Magazine said he was a Biz
4 Whiz.

5 **MR. GILREATH:** That's what it says.

6 **THE COURT:** Yeah, all right.

7 **MR. GILREATH:** Okay. Can I confer with my group? I
8 think I'm ---

9 **THE COURT:** Yeah. Yeah.

10 (Pause)

11 Q. Kaj, look at Plaintiff's trial document 153, the AT&T
12 wireless thing. My recollection is we talked about that.
13 Somebody over here thinks we didn't.

14 A. We did.

15 Q. We did? Just so the record's clear, that's an email,
16 number 153.

17 **THE COURT:** You talked about it.

18 **MR. GILREATH:** Yeah, I thought we talked about it.

19 **THE COURT:** Yeah.

20 Q. And one other question, the claim with that guy on the
21 landscaping thing, the Magistrate's Court thing we talked
22 about, how much -- I don't know whether I asked you how much
23 money was involved in that or not.

24 A. That was only twenty-five hundred dollars. I paid the
25 attorneys more than that.

1 **MR. GILREATH:** I think that's all we've got of him at
2 this time, Your Honor.

3 **THE COURT:** Okay. Y'all got any cross examination?

4 **MR. STEPHENSON:** Yes, sir. It'll be pretty lengthy.

5 **THE COURT:** Well, this took three and a half hours.

6 **MR. STEPHENSON:** It won't be that lengthy.

7 **THE COURT:** Okay.

8 **MR. GILREATH:** That's a lot quicker than I thought it
9 was going to be.

10 **THE COURT:** All right. How long y'all want to break
11 for lunch? Until 2:15? That's an hour and ten minutes.

12 **MR. STEPHENSON:** We can certainly do that.

13 **THE COURT:** Is that enough time for everybody?

14 **MR. STEPHENSON:** It is for me.

15 **MR. GILREATH:** I've got a power bar in my pocket.

16 **THE COURT:** All right. We'll see y'all at 2:15.

17 **MR. GILREATH:** Now, we can't -- y'all can't talk --
18 nobody talk ---

19 **THE COURT:** Yeah. No, you can't talk about your
20 testimony.

21 (Whereupon court was in recess at 1:06 pm)

22 (Whereupon court reconvened at 2:21 pm)

23 **THE COURT:** Thank you. Please be seated. What?

24 **MR. GILREATH:** Your Honor, I've got -- this is his
25 suggestion, which is fine with me. I've got a banker over

MICHAEL PAVLICK - DIRECT EXAMINATION BY MR. GILREATH

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1 here from BB&T that's going to be very, very short. And he
2 said he was willing to let me call him out of order, but
3 that's up to you.

4 **THE COURT:** All right. That's fine.

5 **MR. GILREATH:** Okay.

6 **THE COURT:** Okay.

7 **MR. GILREATH:** So we'll call Mike Pavlick.

8 **MADAME CLERK:** If you'll place your left hand on the
9 Bible and raise your right hand, please.

10 **Michael Pavlick, being**
11 duly sworn testified as follows;

12 **MADAME CLERK:** Please state your name for the record.

13 **MR. PAVLICK:** Mike Pavlick.

14 **MADAME CLERK:** Thank you. You may be seated.

15 **MR. GILREATH:** All right. I need a red book for the
16 witness.

17 **THE COURT:** Here, he can borrow mine. Or do I need it?

18 **MR. GILREATH:** I've got an extra one, Judge.

19 **THE COURT:** Okay.

20 **MR. GILREATH:** That's 246 I was looking for so
21 desperately a while ago, it's in the red book.

22 **THE COURT:** Oh, all right. Now, wait a minute. I
23 thought the red book was Stephenson's.

24 **MR. GILREATH:** No, that's ---

25 **THE COURT:** No?

1 **MR. GILREATH:** The red book's mine.

2 **THE COURT:** Okay.

3 **MR. GILREATH:** I've got red and green. Red, green and
4 white.

5 **THE COURT:** Okay. The Italian flag, right?

6 **Direct Examination by Mr. Gilreath:**

7 Q. Okay. Mr. Pavlick, state your full name and address
8 for the record.

9 A. Michael Robert Pavlick, 200 Wessex Street,
10 Simpsonville, South Carolina, 29681.

11 Q. And you're appearing here today pursuant to a subpoena
12 I sent you, correct?

13 A. That's correct.

14 Q. And where are you employed?

15 A. BB&T.

16 Q. And how long have you been at BB&T?

17 A. Eighteen years.

18 Q. Okay. And without going any further, I'll just ask
19 you, did there come a time in August of 2008 when you had
20 some dealings with a company called P Communications?

21 A. Yes, sir.

22 Q. And let me ask you to look in that book there, just
23 open it up and turn it over to page -- Plaintiff's trial
24 document 00241. It's kind of in the middle. Do you see the
25 pages?

- 1 **THE COURT:** It's the bottom right.
- 2 Q. It's a note. Do you see that?
- 3 A. Yes, sir.
- 4 Q. It's a BB&T promissory note. And that is a promissory
- 5 note -- are you familiar with that note?
- 6 A. Yes, sir.
- 7 Q. And for the record, that's a note that is dated -- I
- 8 can't find the date on here -- August 25th, 2008. The
- 9 borrower is P Communications, Inc., Krish Patel and Keith
- 10 Gailey. And it's in the amount of sixty thousand dollars.
- 11 Were you the loan officer that was involved in that?
- 12 A. Yes, sir.
- 13 Q. And who did you deal with primarily?
- 14 A. Primarily with Krish.
- 15 Q. With who?
- 16 A. Krish.
- 17 Q. With Krish, okay. And that's Krish's signature over on
- 18 the signature page, which is at 244, correct?
- 19 A. Yes, sir.
- 20 Q. What was your understanding when you made this loan to
- 21 P Communications as to who owned P Communications?
- 22 A. Krish Patel and Keith Gailey.
- 23 Q. That was your understanding?
- 24 A. Yes, sir.
- 25 **THE COURT:** And who was that second one?

1 A. Keith Gailey.

2 THE COURT: Okay.

3 Q. And did Mr. Krish Patel -- was there any resolution, a
4 certificate of corporate resolution signed in connection
5 with this loan?

6 A. Yes, sir.

7 Q. And look over at page 263A, Certificate of Corporate
8 Resolution. You see that?

9 A. Yes, sir.

10 Q. And in that -- is that Krish Patel's signature there
11 and Mr. Gailey's on page 263B?

12 A. Yes, sir. I'm sure that's Krish, and I think it's
13 Keith's on the right there.

14 Q. Okay. And tell the Court what they certified to you in
15 that resolution, just kind of simply.

16 A. It primarily indicates that they had the authority to
17 enter into, among other things, debt on behalf of the
18 entity, P Communications, Inc.

19 Q. And they certified to you, and that's on the first page
20 there, 00263A, they certified to you that they were the
21 president and vice president of this corporation, is that
22 correct?

23 A. Yes, sir.

24 Q. Now, what discussions, if any, did you ever have with
25 Krish Patel about an entity called VP Enterprises, if you've

1 ever heard of it?

2 A. When they first applied for the loan to finance the
3 Verizon store, that was the entity that they first applied
4 to us under.

5 Q. So you were familiar with VP because there's actually a
6 document we looked at earlier today. It's not in that red
7 book, but it's a -- I'll represent to you it's a letter. We
8 can get it out and show it to him just to speed it along.
9 It was a letter where you approved a line of credit to VP,
10 correct?

11 A. Yes, sir.

12 Q. Okay. So you were familiar with VP?

13 A. Yes, sir.

14 Q. And there had been a line of credit extended to them,
15 correct?

16 A. We did not end up making the loan. It was approved.

17 Q. Okay. But you knew what VP was?

18 A. Yes, sir.

19 Q. Okay. What were you told about VP's application to
20 Verizon?

21 A. My recollection is that Verizon did not approve their
22 application for the store because of a lack of Verizon
23 experience.

24 Q. For lack of what?

25 A. Experience with a Verizon store.

1 Q. Okay. Now, one last question. When you made this loan
2 did you know or had you ever met a guy named Corby Phillips?

3 A. I do not recall hearing that name prior to our
4 conversation last Friday.

5 Q. So you're telling the Court the first time you ever
6 heard about Corby Phillips was when you talked to me on
7 Friday?

8 A. Yes, sir.

9 MR. GILREATH: No further questions.

10 **Cross Examination by Mr. Stephenson:**

11 Q. Mr. Pavlick, is that correct?

12 A. Yes, sir, that's correct.

13 Q. You and I have never met before.

14 A. No, sir.

15 Q. We've never even talked.

16 A. No, sir.

17 Q. The practice of making a loan to a corporation, you
18 could have the president of a corporation own zero of it,
19 correct?

20 A. Yes, sir.

21 Q. That's common, isn't it?

22 A. Yes, sir.

23 Q. And when you said that your understanding that Krish
24 owned P, it certainly could have been true that at that
25 point in time Krish did not own P, but he had the authority

- 1 to sign on behalf of P, correct?
- 2 A. That's correct.
- 3 Q. And your testimony doesn't differ with any of that,
- 4 correct?
- 5 A. Correct.
- 6 Q. Now, you talked about VP. You've never laid eyes on
- 7 this man before, have you?
- 8 A. Which one, sir?
- 9 Q. This man right here. Stand up, Kaj.
- 10 A. No, sir.
- 11 Q. Never laid eyes on him. And the credit you extended to
- 12 VP, the corporation VP, the sixty thousand dollar line of
- 13 credit, remember that?
- 14 A. Well, it was approved, but we never made any ---
- 15 Q. Approved?
- 16 A. Yes, sir.
- 17 Q. You also extended credit to P. The credit you extended
- 18 to P would have had nothing to do with Kaj Patel if he were
- 19 the owner of VP, but not P?. In other words, you didn't just
- 20 transfer the line of credit over from VP and P?
- 21 A. No, sir.
- 22 Q. You had to go through the process all over again.
- 23 A. Yes, sir.
- 24 Q. And P had to be approved for its own line of credit.
- 25 A. Yes, sir.

1 **MR. STEPHENSON:** That's all I got. Thank you.

2 **MR. GILREATH:** Your Honor, I've got one further
3 clarification question.

4 **Redirect Examination by Mr. Gilreath:**

5 Q. Who told you about this lack of retail experience that
6 you testified about? You said you heard about it.

7 A. It would have been one of the principals I was dealing
8 with at the time. Probably Krish, but I ...

9 Q. Okay. That's all I have.

10 **MR. STEPHENSON:** Nothing further, Your Honor.

11 **THE COURT:** Okay. Thanks. You can step down. Can we
12 release him?

13 **MR. GILREATH:** Release him, please. Thank you.

14 **MR. STEPHENSON:** Mr. Patel.

15 (Whereupon Pankaj Patel returned to the witness stand)

16 **MR. STEPHENSON:** Your Honor, my questions are going to
17 come from the blue notebook, which is most of our exhibits.
18 It says Defendants' witness notebook.

19 **Pankaj Patel - Cross Examination by Mr. Stephenson:**

20 Q. And do you mind if I call you Kaj?

21 A. No, that's fine.

22 Q. Kaj, let's talk about your claim that this was your
23 idea and your brainchild. We on the same wavelength? Are
24 we?

25 A. You know, we discussed it like it was our ---

1 Q. But your testimony is -- do you claim that this was
2 your idea, correct?

3 A. It was our idea.

4 Q. Well, you testified earlier that it was your idea.

5 A. I testified that the idea of putting it in Vijay's and
6 my name was -- that was ---

7 Q. I'm talking about opening the Verizon stores. Is your
8 claim that this was your idea?

9 A. No, I don't think I ---

10 Q. You remember when I took your deposition?

11 A. Yeah.

12 MR. STEPHENSON: Your Honor, I'm handing him a copy of
13 his deposition.

14 THE COURT: Okay.

15 MR. STEPHENSON: I'm also handing you a copy of the
16 original.

17 THE COURT: You can go ahead and open it if you want
18 to. You want to give him the original?

19 MR. STEPHENSON: He's got a copy. I'll give it to him.

20 THE COURT: I would have opened it. I thought ---

21 MR. STEPHENSON: Oh, sorry.

22 THE COURT: No, that's all right. I thought you were
23 going to use it.

24 Q. Kaj, would you turn to page 35 of the deposition in
25 front of you. That's not the deposition. That's the

1 deposition. Do you remember when I took your deposition
2 about two years ago? Do you remember that? Kaj?

3 A. Yes.

4 Q. Do you remember when I took your deposition two years
5 ago?

6 A. Yes.

7 Q. You were under oath.

8 A. Yes, I was.

9 Q. You were on video.

10 A. Yes.

11 Q. And you swore to tell the truth just like today,
12 correct?

13 A. Yes.

14 Q. And I asked you on page 35 -- and I asked you about the
15 complaint. And in the complaint you claimed that this whole
16 thing was your idea. And on line 7 you said, yes, it was
17 your idea, correct? Line 7, page 35, you see that?

18 A. I'm reading through it.

19 Q. Read line 7.

20 A. Well, I have to read the question.

21 Q. Go ahead.

22 A. This was two years ago.

23 **THE COURT:** Go ahead and read the question and then
24 answer his question.

25 **MR. GILREATH:** What page are you on now?

1 **MR. STEPHENSON:** 35, line 7.

2 A. Yes.

3 Q. That's what you claimed back then, and that's what you
4 claimed this morning, and that's what you claimed ---

5 A. What I claimed was we were driving in the car to go
6 look at that property, we were talking about his prior
7 employment. And he didn't have -- he had ---

8 Q. Did you say it was your idea, yes or no?

9 A. The idea was ---

10 Q. Yes or no?

11 A. Well, ---

12 **THE COURT:** Let me explain to you.

13 A. Okay.

14 **THE COURT:** You answer his question yes or no. And
15 then you'll have a full opportunity to explain your answer,
16 okay?

17 A. Okay.

18 **THE COURT:** Go ahead.

19 A. So ---

20 **THE COURT:** So yes or no.

21 Q. Now, wait a minute, ---

22 A. Yes.

23 **THE COURT:** Wait, wait, wait, wait a minute. Wait a
24 minute. Ask the question, Mr. Stephenson.

25 A. Yes, and let me explain.

1 Q. Yes. You ---

2 A. And let me explain.

3 Q. Okay.

4 A. So when we were driving in the car and we were talking
5 about his prior employment and he said he didn't have -- he
6 used to make a hundred thousand plus dollars. And I told
7 him that, you know, I asked him why did you leave the
8 company if you were making that much money? He said to flip
9 the homes and join with his father.

10 And when we were -- when I asked him did you -- why
11 aren't you doing this on your own? And he, you know, he
12 said it was because I would not be approved by them. The
13 idea I came up with, if that's the only thing that's
14 stopping you, we can do it in your father's and my name.
15 And that's the idea I was ---

16 Q. All right. Well, you also claimed it was your idea to
17 open multi stores. That was your idea?

18 A. Yes, that was my idea.

19 Q. And your lawyer went into great detail about what an
20 entrepreneur you are, right?

21 A. Yes.

22 Q. Would you turn to page 40 in the book in front of you,
23 the blue book. Not the deposition, the blue book. The blue
24 book, page 40, which is Defendant's trial document 41, which
25 is your answers to interrogatories I sent you. Page 40.

- 1 You there?
- 2 A. Yes.
- 3 Q. At page 40 I asked you to list every business venture
- 4 you've been involved in in the last twenty years, right?
- 5 A. Yes.
- 6 Q. Well, the first one, Global Connections, no longer in
- 7 existence, true?
- 8 A. True.
- 9 Q. Out of business?
- 10 A. It's no longer in business.
- 11 Q. Out of business.
- 12 A. Well, it is not in business.
- 13 Q. Well, you didn't sell it to somebody and make a lot of
- 14 money, did you?
- 15 A. No.
- 16 Q. You didn't take it public, did you?
- 17 A. No.
- 18 Q. It's out of business.
- 19 A. Yes, it is. And ---
- 20 Q. All right. The second one, Intuitive Business
- 21 Solutions, out of business.
- 22 A. Yes, we didn't ---
- 23 Q. Out of business.
- 24 A. It's not in business.
- 25 Q. ARMAN Consulting, that's your engineering business,

- 1 true?
- 2 A. Yes.
- 3 Q. The third one, Applied Engineering Solutions.
- 4 A. Yes.
- 5 Q. You sued your co-owners, correct?
- 6 A. Yes.
- 7 Q. We'll come back to that, but you sued them, correct?
- 8 A. Yes. If somebody does something wrong, ---
- 9 Q. All right.
- 10 A. --- and I have to seek to ---
- 11 Q. Blue Heaven Associates.
- 12 A. Can I -- if you ask me a question, can I ---
- 13 **THE COURT:** Yeah, let him finish. Go ahead.
- 14 **MR. STEPHENSON:** It's a yes or no question, Your Honor.
- 15 A. Yeah, but I'd like to explain. I mean, ---
- 16 **THE COURT:** Wait, wait ---
- 17 A. If you're asking me ---
- 18 **MR. GILREATH:** Your Honor, he ---
- 19 **THE COURT:** Okay. I got him. I got him under control.
- 20 **MR. GILREATH:** Okay. He's getting out of control here.
- 21 A. Sir, I'd just like to respectfully ask you ---
- 22 **THE COURT:** No, no, no, you don't get to ask questions.
- 23 He just asked you was it true or false that you sued your
- 24 partners. And you said yes, and then you were explaining.
- 25 Go ahead and finish your explanation.

1 A. Certainly. So can you please ask me that question
2 again?

3 Q. I'm through with it. Did you sue your co-owners in
4 Applied Engineering Solutions?

5 A. Yes. And let me explain.

6 (Pause)

7 **THE COURT:** Well, go ahead.

8 A. When somebody does wrong and we can't resolve it, then
9 I have no choice but to look at the justice system to help
10 resolve it. And I came from Africa. We didn't have that
11 luxury down there. Here, I do. And that's one of the
12 reasons I moved to the country.

13 Q. All right. E, Blue Heaven Associates, that is an
14 investment in a Hampton Inn in Chapel Hill, North Carolina.
15 And you didn't own the hotel, you owned part of it, correct?

16 A. Yes.

17 Q. So you didn't run that business.

18 A. No. It was never our plan for me to run it.

19 Q. All right. The next one, a Sleep Inn Hotel in
20 Columbia, same thing.

21 A. Yes.

22 Q. You owned part of it and didn't run it, right?

23 A. Correct.

24 Q. The third one, another hotel, you owned, but didn't run
25 it, correct?

- 1 A. Correct.
- 2 Q. The next one, Granite Distributors, out of business.
- 3 A. Right.
- 4 Q. The third one, condominiums. You owned them, you
- 5 didn't run them, right?
- 6 A. Correct.
- 7 Q. The fourth one, KVP we're here on today, right?
- 8 A. Yes.
- 9 Q. Before we get off that, Krish ran that company because
- 10 he dealt with the bankers, the lawyers, and the realtors,
- 11 correct?
- 12 A. Yes.
- 13 Q. All right. VP, we'll come back to that. PAH, a video
- 14 poker company in North Carolina, out of business. Am I
- 15 right?
- 16 A. You mentioned -- you said video poker. It wasn't video
- 17 poker.
- 18 Q. Well, what was it?
- 19 A. It was a gaming machine. It wasn't.---
- 20 Q. Out of business.
- 21 A. I -- we gave it to the company that owned the machines.
- 22 Q. Gave it to them.
- 23 A. It's their ---
- 24 Q. Gave them?
- 25 A. Yes.

- 1 Q. Gave it away?
- 2 A. Yes.
- 3 Q. You made no money out of it?
- 4 A. We made some money.
- 5 Q. Not much. You walked away from it.
- 6 A. Right.
- 7 Q. The next one, Monjalla (phonetics), a kiosk in the
- 8 mall, As Seen on TV, correct?
- 9 A. No.
- 10 Q. Well, it's out of business.
- 11 A. It's not a kiosk. It was a full store.
- 12 Q. Out of business.
- 13 A. I sold it. My aunt took over it.
- 14 Q. Was there a dispute with your aunt?
- 15 A. No, there wasn't a dispute. I had opened up that
- 16 company for the uncle and aunt that helped me when I first
- 17 came to this country. Their son had some -- when his father
- 18 died at a young age, he went to drugs and he had a drug and
- 19 alcohol problem.
- 20 And he came to me and said, you know, I'd like to get
- 21 my life straightened out. And I'm clean. And I'd like to,
- 22 you know, open up my own business. So it was my turn to
- 23 help their son out.
- 24 And so I opened up that business for him. He'd come
- 25 with some numbers for me. I ran them through my

1 spreadsheet. It looked like a viable business. I was going
2 to set it up for him and let him run the business so he can
3 get on his feet and get his life straightened out. And, you
4 know, so the plan was just fine. It was just the execution
5 ---

6 Q. Mr. Patel, we're going to be here all day.

7 MR. STEPHENSON: That's not responsive.

8 THE COURT: Yeah, just ---

9 A. Okay.

10 THE COURT: What was your question to begin with?

11 Q. My question is Monjalla Enterprises is no longer in
12 business?

13 A. The reason I -- excuse me. He's trying to paint me
14 that all these businesses that I started are all failures.
15 They're not all failures. And if he's talking from a money-
16 making perspective, yeah, I lost five thousand dollars here,
17 eight thousand dollars over there, but what all these
18 businesses taught me was a very valuable lesson. I mean,
19 that's what ---

20 MR. STEPHENSON: Your Honor, he's not answering my
21 question.

22 THE COURT: All right. You don't get to just do a
23 narrative. So be responsive to his questions. Go ahead.

24 Q. And so far we have no business that you've ever started
25 that's still in business, correct?

- 1 A. No. The ARMAN Consulting is. AE Solutions is.
- 2 Q. All right. Tava. We left off Tava, didn't we?
- 3 A. Yes.
- 4 Q. Tava. You started Tava, and it closed after a few
- 5 months.
- 6 A. After about six months.
- 7 Q. And you didn't list it on this, did you?
- 8 A. No, I didn't.
- 9 Q. And there was litigation associated with Tava, wasn't
- 10 there?
- 11 A. It was not. I believe I was asked to list all the
- 12 companies that I ---
- 13 Q. Listen to my question.
- 14 A. --- was an owner of.
- 15 Q. Listen to the question. There was litigation
- 16 associated with Tava, correct?
- 17 A. It was after I -- it was after it was sold.
- 18 Q. No longer in business.
- 19 A. It's no longer in business.
- 20 Q. Well, the interrogatory asked you to list every
- 21 business you've been involved in in the last twenty years.
- 22 You were involved in Tava, were you not?
- 23 A. I was involved from a -- it was fully owned by my wife.
- 24 I was helping my wife and ---
- 25 Q. You were involved in it?

1 A. I listed -- I've been involved in a lot more businesses
2 than what I -- maybe I was wrong, but I thought this was
3 businesses that I owned.

4 Q. Tava is no longer in business, correct?

5 A. Tava is no longer in business.

6 Q. And it closed after a few months.

7 A. It closed after a few months because the company was --
8 the restaurant was started for my brothers that were
9 immigrating to this country that I sponsored. And it was my
10 way to help them get on their feet. And the business plan
11 and the numbers that we based all those numbers on ---

12 Q. Mr. Patel, we're going to be here all week if you don't
13 answer the question.

14 **THE COURT:** Just let him -- Okay. Go ahead.

15 A. So it didn't fail because of anything that I did wrong.
16 The plans didn't work out. The projections and numbers
17 didn't work. It failed because of execution. My brothers
18 -- my brothers and their families that came and that were
19 going to run it, the first brother and his wife left two
20 weeks ---

21 **THE COURT:** We're getting a little far afield. You've
22 answered. You've given your explanation. Go ahead.

23 Q. If you would, Kaj, turn to page 49 of your book,
24 Defendant's trial exhibit 49 in your book. Are you there?

25 A. Yes.

1 Q. No, I don't think you are. 49 in the upper right-hand
2 corner.

3 A. Well, there's a 49 down here.

4 Q. Are you with me?

5 A. Yes.

6 Q. 49 is your email to Krish on December the 4th, 2007,
7 correct?

8 A. Correct.

9 Q. And 49 attaches the two business plans, correct?

10 A. Correct.

11 Q. And, of course, it attaches the famous Tava
12 confidential business plan and the famous Kunda confidential
13 business plan. Am I correct about all of that?

14 A. The Kunda wasn't confidential.

15 Q. Well, you said two business plans, they're
16 confidential, right?

17 A. I said one of which was Tava Grill and has some stats
18 in Greenville, please ---

19 Q. You said please keep confidential.

20 A. Please keep confidential. It was the Tava Grill that I
21 was referring to.

22 Q. All right. Now, true or not, you never told anyone
23 that you got it off the internet?

24 A. That's why I attached it. It's, you know, it's a ---

25 Q. Listen to my question. True or not, you never told

1 anyone until I told you I knew about it that you got it off
2 the internet?

3 A. No, I told -- I told my lawyer.

4 Q. Tell the truth now.

5 A. Yes, I told my lawyers at one time.

6 Q. When?

7 A. Something during the conversation of the -- what was
8 that plan and where it would have come from.

9 Q. Okay. Well, let's look at it. You'll agree with me at
10 page 50, trial document number 4, is the first page of the
11 Kunda business plan.

12 A. Yes.

13 Q. You see that?

14 A. Page 50?

15 Q. Yes. Page 50 at the top. The page numbers are in the
16 top right-hand corner.

17 A. I understand that. It's says Tava Grill. And you're
18 referring to ---

19 **THE COURT:** Tava.

20 Q. All right. Tava. Okay.

21 A. Yeah.

22 Q. Well, turn to page 56 and keep your finger there. 56
23 is the Kunda plan, correct?

24 A. Correct.

25 Q. They have the exact same heading. You can flip it back

1 and forth. Exact.

2 A. Correct.

3 Q. So all you did was copy the internet free business plan
4 Kunda and basically changed the names, correct?

5 A. No, I didn't. I changed a lot of stuff on the Kunda
6 ---

7 Q. Let's look at what you changed. Tava Grill, Inc., a
8 South Carolina based company. Kunda, Inc., a Massachusetts
9 based company, right?

10 A. Yes, sir. That's what I changed.

11 Q. Will operate Tava Grill, will operate Abonda, correct?

12 A. Yeah.

13 Q. A single unit. Both of them says single unit, correct?

14 A. Yes.

15 Q. And if you look through it, you will admit that you
16 copied much of the internet business plan ---

17 A. There's a paragraph on there where I added an entire
18 paragraph that said multi-unit.

19 Q. All right. Well, let me find out what's confidential
20 here. It couldn't be confidential about who owns it because
21 this is 2005 and it's closed, right?

22 A. But that's my business plan, Tava Grill's.

23 Q. Well, it's of no value to anybody, but to you.

24 A. So I want to protect it. It may not be of value to you
25 or anybody else, but it is of value to me. I spent time

1 going through and getting all the information for the
2 markets for Greenville.

3 Q. Well, you'll agree with me that who owned this failed
4 restaurant had no value to Krish Patel?

5 A. No, I don't agree. You keep categorizing it as failed.
6 It is not a failed restaurant. If you're talking in terms
7 of dollars, yeah, it's failed because I lost whatever, two
8 or three thousand dollars. But, you know, it teaches me a
9 lot about business. Every single one of these businesses
10 that you're categorizing as failures has taught me a lot
11 about -- what I know about business today.

12 Q. All right. Well, ---

13 A. And I will continue to start -- I'll probably have
14 another twenty or thirty companies by the time I'm dead.
15 But -- and a lot of them might be failures, but that's not
16 going to keep me from pursuing an idea or a company that I
17 have.

18 Q. All right. Now, the menu, is the menu of Tava Grill
19 confidential?

20 A. Yes.

21 Q. Okay. Is the fact that you say in here there are only
22 two Indian restaurants in Greenville confidential? Is that
23 confidential?

24 A. That part is not confidential. What I was -- what was
25 confidential was my plan.

1 Q. All right. I'm trying to find out what was
2 confidential in the plan.

3 A. It's my plan.

4 Q. Okay.

5 A. I took the effort and time -- I don't care about the
6 Kunda plan. I took the time and effort to create the Tava
7 Grill plan. It belongs to Tava Grill, which is owned by my
8 wife. And I helped generate this. So whenever I said
9 confidentiality, anything I created -- if it's worthless to
10 you, that's all right. But it's mine and it's confidential
11 to me.

12 Q. Okay. Page 63, Plaintiff's document number 24. The
13 page numbers, again, in the upper right-hand ---

14 A. I understand.

15 Q. You see that?

16 A. Yes.

17 Q. Of course, Krish took these two plans, changed them and
18 sent them to Verizon on December 6th, which is 2 days after
19 you sent them to him?

20 A. Yeah. He changed them, added the information that we
21 discussed and put them in there. We went through an
22 iteration of edits, and that's what he sent to them.

23 Q. Well, we know what happened. You sent them to him on
24 the 4th, ---

25 A. Right.

- 1 Q. --- right?
- 2 A. Yes.
- 3 Q. He sent it back to you. And then he sent it to
- 4 Verizon, correct?
- 5 A. Yes.
- 6 Q. And you made certain changes to the plan, correct?
- 7 A. Sure.
- 8 Q. And your attorney has made a big picture of it and put
- 9 it in color, correct? Look at the complaint. Turn to page
- 10 28.
- 11 A. In this book?
- 12 Q. 28 of the blue notebook. The one you've got your hand
- 13 on. You at 28?
- 14 A. Yes.
- 15 Q. 28 is exhibit 1 of your complaint, correct?
- 16 A. Correct.
- 17 Q. So Krish took the Kunda plan or the Tava plan ---
- 18 A. He didn't take the Kunda plan.
- 19 Q. How do you know that?
- 20 A. Because everything -- the information that I've got
- 21 from the Tava plan is in this package. The Greenville
- 22 demographics is verbatim in here. The paragraph that I had
- 23 put on here, that's verbatim in here. That wasn't in Kunda
- 24 ---
- 25 Q. Well, the Judge can determine that. Page 28 would be

1 the changes in 29, the changes you made to what he sent you,
2 page 29, right?

3 A. These are the ---

4 Q. Suggestions?

5 A. --- what I asked him to -- yes.

6 Q. And he, of course, didn't take all your suggestions.

7 You made certain suggestions and he sent it in, correct?

8 A. He put some in.

9 Q. Some on the first page, which was page 29. Some on
10 page 30, none on page 31, none on page 32, none on page 33.

11 A. You know, unless I compare them, I'll have to take your
12 word for that, that it's none.

13 Q. Well, this is your document, not mine. And you
14 apparently pulled it off the computer ---

15 A. Well, we can go through that exercise, put them side by
16 side, and we can go compare them, and we can figure out
17 exactly what, I mean, I can't tell from looking at this what
18 happened.

19 **THE COURT:** Well, take a minute and compare them.

20 A. Okay. So exactly which paragraphs to go compare?

21 Q. You want me to ask the question all over again?

22 A. Yes.

23 Q. Okay. You are on page 29.

24 A. Okay.

25 Q. Those are the changes you suggested to the one Krish

- 1 wrote.
- 2 A. Right.
- 3 Q. Correct?
- 4 A. Correct.
- 5 Q. 30, those are the changes you suggested to the one
- 6 Krish wrote, right? 30.
- 7 A. 30, yes.
- 8 Q. 31 you made no change.
- 9 A. Correct.
- 10 Q. 32 you made no change.
- 11 A. Correct.
- 12 Q. 33 you made no change.
- 13 A. Correct.
- 14 Q. All that correct?
- 15 A. Correct.
- 16 Q. All right. If you would, turn to page 70. Plaintiff's
- 17 trial document 31. You see that?
- 18 A. Yes.
- 19 Q. This is an email from Krish to you. Here are the
- 20 calculations I configured, if you have any questions. And
- 21 there's a spreadsheet in the back. You see that?
- 22 A. Correct.
- 23 Q. Those are your numbers, not Krish's, correct?
- 24 A. This is numbers that are on my spreadsheet.
- 25 Q. They're your numbers.

1 A. They're the activations and accessories per person,
2 those are the numbers that I got from him when we sat down
3 at my house and ran through my spreadsheet.

4 Q. Let's talk about that. The activations would have been
5 his numbers because you don't know anything about
6 activations at this point in time?

7 A. In fact, I asked him, I said, how does Verizon make
8 money? And he said, activations and accessories. And I
9 said, you know, on average what is it? And I said, you
10 know, we can do -- and those are the numbers we played with
11 with it. It's 525 in this spreadsheet, then calculate it --
12 put the basic information in there. It calculates based on
13 the formulas and the math and everything that I have that
14 tells you what the bottom and top line numbers are.

15 Q. Let's talk about that for a second. So the rest of the
16 numbers are yours? The basic spreadsheet is yours and you
17 made the spreadsheet? That's the point, correct?

18 A. I created that spreadsheet, which was -- that I created
19 for Tava Grill. I sent that spreadsheet to -- when he came
20 to my house in November, we went through that entire
21 spreadsheet and talked about these numbers.

22 I said, give me the numbers for activations, numbers
23 for accessories and how much you make for each. And then on
24 the expense side, I went and put down -- we said, all right.
25 Payroll's -- I asked Krish, I said, you know, my restaurant,

1 I need about ten, twelve people. How many people does it
2 take to run Verizon? He said, only two. So I -- we changed
3 all those numbers.

4 We went through that whole -- that was the -- that's
5 what we used to decide whether we're going to go into
6 business or not. And then, down the road, I gave him that
7 spreadsheet because we'd already decided that the ---

8 Q. All right. Now, I got page 70 and the documents behind
9 page 70 from you.

10 A. Right.

11 Q. So I'm assuming that's what was attached on December
12 the 19th, correct? It came from you.

13 A. This was on the second iteration.

14 Q. Okay. Well, turn over to page 77. Are you there?

15 A. Page 77.

16 Q. Two days later. You emailed to Krish, see attached
17 calculations spreadsheet. And there's an attachment that I
18 got from you.

19 A. Right.

20 Q. Are you there?

21 A. Yes.

22 Q. Page 79. And we're all the way to January the 6th. So
23 you'd been fooling around with these spreadsheets for, what,
24 two weeks. And there are more spreadsheets attached to
25 January the 6th, correct?

1 A. I wasn't fooling around with the spreadsheets. On --
2 in November, after that car ride, when the idea came up, we
3 went to my house. And that was in November. And we used
4 the spreadsheet to determine whether we were going to get
5 into the business or not.

6 Q. All right.

7 A. The spreadsheets -- can I please finish?

8 Q. Yeah, please.

9 A. We used the spreadsheet to determine whether we were
10 going to go into business or not.

11 Q. All right.

12 A. Because the spreadsheet told us with the basic numbers
13 that he'd given me, activations and accessories and, you
14 know, how many activations and how many accessories we
15 should be able to sell in a day. The spreadsheet
16 calculates, based on the numbers that you put in there, it
17 calculates. I have the formulas. And I started that from a
18 blank sheet of Excel spreadsheet.

19 And we sat there and went through that spreadsheet.
20 That determined what we, you know, that we were going to go
21 forwards with this business. That was not a live document.
22 We made the decision, then we were going to go forward
23 later.

24 It was only a month or two, as you say, fooling around
25 for about month. It was only then that he asked me that he

1 wanted -- remember that spreadsheet we used to make our
2 decision on? Can you please send that to me so I can plug
3 in those numbers and play with them?

4 So these are the numbers that -- and he played with
5 them two or three times and he'd sent them to me. And at
6 that time it was just a matter, are we changing, you know,
7 moving payroll from four thousand to forty-five hundred or
8 what? And so I ---

9 Q. All right. Let's look at December the 19th. Page 77.
10 Page 77. Are you there?

11 A. Yes.

12 Q. You sent him an email on December the 19th. And you've
13 already sent the business plan in on the 6th. And you said,
14 see attached calculations spreadsheet, right? Those are
15 your words.

16 A. Yes.

17 Q. Turn to the spreadsheet. The first item on the expense
18 side is food, eighty-five thousand dollars per year, yes or
19 no?

20 A. On 78?

21 Q. Yes, sir.

22 A. Yes.

23 Q. And, of course, a Verizon store does not serve food,
24 correct?

25 A. And, again, this was a spreadsheet that I ---

- 1 Q. You need to answer yes or no and then explain it.
- 2 A. Okay.
- 3 Q. Yes or no?
- 4 A. Yes.
- 5 Q. A Verizon store does not serve food?
- 6 A. Right.
- 7 Q. Below that, you've got linen rental, a hundred and
- 8 eighty dollars. You see that?
- 9 A. Right.
- 10 Q. A Verizon store doesn't rent linen, does it?
- 11 A. It doesn't.
- 12 Q. Below that you've got menus, two hundred and forty
- 13 dollars.
- 14 A. Right.
- 15 Q. A Verizon store doesn't have menus, does it?
- 16 A. Right.
- 17 Q. Below that you've got pest extermination and disposable
- 18 supplies and dishwasher rental.
- 19 A. Right.
- 20 Q. You see that?
- 21 A. Yes.
- 22 Q. None of that has anything to do with a Verizon store,
- 23 does it?
- 24 A. None of it does. And that's why when we went through
- 25 our spreadsheets, I had zeroed those out.

1 Q. Well, do you have any spreadsheets that you calculated
2 that pertain to a Verizon store and not a restaurant?

3 A. That's what we sat down in our -- my dining room and
4 went through all those numbers and came -- that's how we
5 came up with the five to fifteen thousand dollars.

6 And it was not a live document. I didn't save it. If
7 I saved it, that's what I got. And it wasn't until -- that
8 was just a decision-making tool. How are we going to go --
9 based on the numbers.

10 I was just concerned -- what I wanted to know was where
11 do these numbers fall off. We went through that exercise
12 and that document was dead until he asked me and wanted this
13 spreadsheet so he can keep a track of the numbers we'd
14 talked about. I'd already gone -- we had already sat down
15 and gone through the whole exercise three or four times on
16 that December ---

17 Q. And, of course, you don't have any spreadsheets today
18 where you say you made them to fit a Verizon store? You
19 don't have them?

20 A. As I said, that was a -- we pulled it up, and I didn't
21 save those numbers.

22 Q. All right.

23 A. It was just a decision-making tool. We weren't going
24 to use that spreadsheet afterwards.

25 Q. Let's look at 79, page 79. January the 6th, a month

- 1 after the business plan had been sent in, correct?
- 2 A. Right.
- 3 Q. And you say, from Kaj to Krish, subject, Excel S, which
- 4 would have been your spreadsheet, right?
- 5 A. It says -- yeah, spreadsheet.
- 6 Q. All right. Look at the spreadsheet. We've got sales
- 7 and hospitality tax, fifteen thousand dollars. Are you
- 8 aware that Verizon stores don't pay hospitality tax? Yes or
- 9 no?
- 10 A. (No verbal response).
- 11 Q. Yes or no?
- 12 A. No, they don't pay a hospitality tax.
- 13 Q. All right. Below that we've got linen rental, take-
- 14 away menus, pest extermination, and dishwasher rental, none
- 15 of which pertains to a Verizon store, correct?
- 16 A. Correct.
- 17 Q. This is a month later.
- 18 A. Correct.
- 19 Q. Above that, we've got food. And they don't sell food
- 20 in a Verizon store, do they?
- 21 A. No. No, they don't.
- 22 Q. Okay. Turn to page 83, which is Plaintiff's document
- 23 118.
- 24 A. I'm sorry. Plaintiff's what?
- 25 Q. 118 at the bottom, 83 at the top right-hand corner.

- 1 A. Yes.
- 2 Q. Okay. 118 or 83, would be the agent application.
- 3 A. Correct.
- 4 Q. And your testimony, the record's clear, that Krish
- 5 filled this out for your dad and for you, right?
- 6 A. Yes. That was our agreement. We went ---
- 7 Q. Yes or no? Krish filled it out for your dad and you?
- 8 A. Yes.
- 9 Q. And he filled it out based on information you gave.
- 10 A. Yes.
- 11 Q. You reviewed it before you signed it.
- 12 A. Yes.
- 13 Q. But the writing on page 83 is his.
- 14 A. Yes.
- 15 Q. All right. Page 84, the writing is his.
- 16 A. Yes.
- 17 Q. Page 85, the writing is his.
- 18 A. Correct.
- 19 Q. And, of course, if you look at Line 22 on 85 where they
- 20 ask him to indicate the breakdown of the proposed wireless
- 21 business percentage of pre-pay, post-pay and wireless, you
- 22 see that?
- 23 A. Right.
- 24 Q. You knew nothing about that. Krish did it and he
- 25 filled in what he thought the appropriate numbers were,

- 1 correct?
- 2 A. Correct.
- 3 Q. The same for line 23.
- 4 A. Correct.
- 5 Q. Now, it's true, isn't it, Kaj, that at this point in
6 time you knew no more about the wireless business than any
7 average citizen?
- 8 A. That is true.
- 9 Q. You'd never worked in the wireless business.
- 10 A. No, I didn't.
- 11 Q. You didn't know how the wireless businesses make money.
- 12 A. I did from our conversations with Krish.
- 13 Q. You knew what Krish told you.
- 14 A. Yes.
- 15 Q. You didn't know any more than that.
- 16 A. No, but I didn't need to.
- 17 Q. Okay. Page 86, you signed that, didn't you?
- 18 A. Yes.
- 19 Q. You read it before you signed it?
- 20 A. Yes.
- 21 Q. Did you read the part that said, and I'm looking right
22 under 35. I'm going to read it to you and you let me know
23 if I read it correctly. I hereby certify that the
24 information in this document is true, accurate and complete
25 to the best of my knowledge. I understand if any

1 information is provided that's determined to be incorrect by
2 Verizon Wireless that my application for agency status can
3 be denied or my agency status revoked. You read that,
4 didn't you?

5 A. Yes.

6 Q. And below that in the next paragraph, I recognize that
7 Verizon Wireless may reject any or all applications in its
8 sole and absolute discretion and that Verizon Wireless' only
9 obligation pursuant to this application is to tell the
10 applicant after final review whether the application has
11 been approved or denied. You read that, didn't you?

12 A. Yes.

13 Q. So they had no obligation to tell you why, did they?

14 A. They didn't have any obligations, but with all the
15 companies that I've worked with, if you -- you can ask them,
16 and if they tell you, you can always work it out. You know,
17 if somebody's denied for something, that can be resolved.

18 Q. All right. Page 87. That is your signature.

19 A. Yes.

20 Q. And the writing to the right-hand side is something
21 that came from Verizon when they produced the documents
22 responsive to your attorney's subpoena, correct?

23 A. Correct.

24 Q. In other words, you didn't write it on there.

25 A.. Correct.

- 1 Q. They wrote it on there.
- 2 A. Correct.
- 3 Q. All right. Page 88, you read this before you signed
- 4 it, right?
- 5 A. Yes.
- 6 Q. This is Krish's writing, but you read it. Correct?
- 7 A. This looks like my handwriting.
- 8 Q. Okay. Your handwriting. So under five where it says
- 9 litigation history, list any pending and settled suits or
- 10 actions for the past five years. You list a suit against AE
- 11 Solutions, right?
- 12 A. Correct.
- 13 Q. And you knew you were supposed to tell the truth?
- 14 A. I told the truth.
- 15 Q. Listen to me.
- 16 A. Yes.
- 17 Q. You knew you were supposed to tell the truth.
- 18 A. Yes.
- 19 Q. And you knew if you didn't tell the truth, they might
- 20 deny your application.
- 21 A. Correct.
- 22 Q. And you knew you were supposed to give a complete
- 23 answer, right?
- 24 A. Correct.
- 25 Q. And I asked you a very similar question in my

- 1 interrogatories. And if you'll turn back to page 38.
- 2 A. The blue book or ---
- 3 Q. I'm sorry?
- 4 A. Is that the blue book or ---
- 5 Q. The blue book, page 38. You with me?
- 6 A. Yes.
- 7 Q. What I asked you is, provide the caption for every
- 8 lawsuit or action in which the Plaintiff is or has been
- 9 named a party and state for each lawsuit certain
- 10 information, right?
- 11 A. (No verbal response).
- 12 Q. Right?
- 13 A. Right.
- 14 Q. And you revealed one lawsuit, is that correct?
- 15 A. Yes.
- 16 Q. And, of course, my answer is any lawsuit ever, right?
- 17 A. Yes.
- 18 Q. All right. And you named the one. Well, you never
- 19 revealed until today the lawsuit that Verizon noted on page
- 20 87, did you? Yes or no?
- 21 A. Will you please ask that question again?
- 22 Q. You never revealed until today the lawsuit on page 87
- 23 that Verizon found out about, right?
- 24 A. That was revealed.
- 25 Q. You never revealed it before today.

- 1 A. (No verbal response).
- 2 Q. Yes or no?
- 3 A. Revealed to who?
- 4 Q. Anybody in this litigation.
- 5 A. I revealed that to my attorneys.
- 6 Q. Your attorney. So your testimony is you told your
- 7 attorneys and they didn't tell me, even though they knew they
- 8 were supposed to. Is that your testimony?
- 9 A. This was after the ---
- 10 Q. Is that your testimony?
- 11 A. It was revealed after the -- this was when they asked
- 12 me about ---
- 13 Q. It was revealed after you got the documents from
- 14 Verizon ---
- 15 A. When they asked me about ---
- 16 Q. --- you found out -- Verizon found out about it, and
- 17 they knew you didn't tell them, am I right?
- 18 A. I had completely forgotten about that lawsuit.
- 19 Q. Well, did you tell your attorneys? Because I can tell
- 20 you your interrogatories were never supplemented, and
- 21 they've never uttered one word back. Is it your testimony
- 22 you told those lawyers about that lawsuit and they never
- 23 told me? Is that your testimony?
- 24 A. When they asked me about this ---
- 25 Q. Listen to me. Did you tell your attorneys about that

1 lawsuit on page 87, yes or no?

2 A. Yes, after ---

3 Q. When?

4 A. After they asked me about this note.

5 Q. They asked you about that note in the last week, am I
6 right about that?

7 A. No. It was whenever we'd gotten this -- this document.

8 Q. Well, do you know why they never supplemented your
9 answers to interrogatories?

10 A. You know, I'm not a lawyer. I don't ---

11 Q. All right. Let's look at that lawsuit, okay? I have
12 in my hand the court records of your lawsuit that Verizon
13 found out about on page 87 that you never told them about,
14 you never told me about, never supplemented your
15 interrogatories about. And I'm going to ask you about it.
16 Are you aware that that lawsuit was dismissed on May 22nd,
17 2009? Are you aware of that?

18 A. I thought that was -- I talked to my lawyer -- I'm not
19 aware of that. I was ---

20 **MR. STEPHENSON:** Your Honor, these are the court
21 records of that lawsuit.

22 **THE COURT:** Okay.

23 **MR. STEPHENSON:** The very front sheet is the public
24 index. And it was dismissed on May the 22nd, 2009. Let me
25 hand that up.

1 Q. You had an attorney named Rodney Pillsbury, didn't you?

2 A. Correct.

3 Q. Behind the civil cover sheet, we've got the complaint,
4 refer to that. You made light of this lawsuit, but you sued
5 a landscaper for breach of contract, breach of contract
6 accompanied by a fraudulent act, breach of implied covenant
7 of good faith and fair dealing, fraud, constructive fraud,
8 negligent misrepresentation, breach of warranty, unfair
9 trade practices in a seven-page complaint, right?

10 A. Correct.

11 Q. And that lawsuit was still pending when you filled out
12 your application at Verizon.

13 A. I didn't know it was pending at all.

14 Q. I'm not asking you whether you knew. It was.

15 A. It may have -- it was -- I filed it in -- I talked to
16 my lawyer in the year 2000.

17 Q. Well, we know what the -- we know Verizon found out
18 about it and they noted it next to your name, didn't they?

19 A. Yeah, if that's their notes.

20 Q. Did you tell them about another lawsuit? Did you tell
21 them that Unifund Credit Card had sued you in 2007? Did you
22 tell them about that?

23 A. They didn't sue me.

24 Q. They didn't?

25 A. No.

1 Q. Do you see this lawsuit that was filed on August 23rd,
2 2007, Unifund Credit Card versus Pankaj Patel?

3 A. I don't even know who Unifund is.

4 Q. Well, is that you, Pankaj Patel?

5 A. There was a credit card company that had been calling
6 me about a credit card that was owed by a Pankaj Patel.
7 They found me, and I told them that that was not me. I
8 didn't give them my social security number. I said, give me
9 the last four digits of that social security number and they
10 verified that that was not me. So nobody was -- that was
11 done then.

12 Q. Now, you indicated to Verizon that there was one
13 lawsuit involving Applied Engineering Solutions. There was
14 actually two, weren't there, Mr. Patel? Two?

15 A. You know, ---

16 Q. One filed in '05 and one filed in '06. Am I right
17 about that, two lawsuits?

18 A. That was just one lawsuit.

19 Q. Well, I'm going to hand you two different complaints.
20 My trusty associate pointed out that there were two
21 lawsuits, one filed in '05 and one filed in '08. I'm going
22 to hand you the one filed in '05.

23 A. Okay.

24 Q. You got that one?

25 A. Right.

1 Q. And you had Rodney Pillsbury in the fraud lawsuit
2 against your landscaper, correct?

3 A. Correct.

4 Q. And you had the Wyche Firm in your lawsuit against your
5 partners in A Engineering, correct?

6 A. Correct.

7 Q. And there was a lawsuit filed in '05. And there was
8 another lawsuit filed in '08. Am I right about that?

9 A. You know, I'm not a lawyer. So this was the same ---

10 Q. You're ---

11 A. This was one lawsuit. I was -- regarding the same
12 stuff. So, you know, I don't know about the technicalities,
13 whether it's one or two. I disclosed that I was in a
14 lawsuit with AE Solutions. You know, ---

15 Q. Well, do you think ---

16 A. It was the same lawsuit. And I, you know, I don't know
17 how in the legal system they get filed. Whether they get
18 filed as one lawsuit or fifteen lawsuits. If I were a
19 lawyer, I would know all of that stuff, but I don't.

20 Q. Well, do you agree with me you only disclosed one
21 lawsuit to me and one lawsuit to Verizon?

22 A. Yeah, well, the one lawsuit with AE Solutions. And the
23 other one, I -- closed. It was asking for five years on the
24 Verizon application.

25 Q. All right.

1 A. I thought that case was gone because nothing came of
2 it. We never got to trial. We never got to court. So, you
3 know, in 2002 I'd given up on it and I thought it was
4 closed. And what my lawyer, Rodney Pillsbury, should have
5 told me that it's still open.

6 Q. Are you telling this Court under oath that Rodney
7 Pillsbury dismissed that lawsuit without telling you ---

8 A. I don't think he -- he dismissed it. He just said they
9 kept on changing the dates on Magistrate's Court. And that
10 court never or the date never came up. So it just went
11 away.

12 Q. He told you when he dismissed it, didn't he? Rodney?

13 A. I don't recall him saying if or when it was dismissed.
14 I didn't think it was dismissed by us or, you know.

15 Q. You're the plaintiff.

16 A. It was a twenty-five hundred dollar lawsuit, okay? It
17 was for a landscaper that did wrong. And, you know, I
18 didn't want him going to do the same thing to other people.
19 And so the thing was, you know, he was not -- he was a guy
20 with a truck and represented himself as a landscaper.

21 And when things went completely wrong, he didn't want
22 to rectify it. And so ---

23 MR. STEPHENSON: Your Honor, he needs to answer the
24 question. We'll be here all day.

25 THE COURT: Well, he's trying to explain the lawsuit.

1 But I think we've got the gist of it.

2 Q. All right. Turn to page 95, Mr. Patel. I'm going to
3 tell you, Mr. Patel, that I've got every email you produced
4 and every email my client produced. And this lawsuit's been
5 going on for two years.

6 And here we have the next email after the food
7 spreadsheets, the dishwasher spreadsheets, and the menu
8 spreadsheets. And the next email I've got is an email from
9 Krish to you about a house on the lake over in Seneca,
10 right? And the price was six hundred and eighty-nine
11 thousand dollars, right?

12 A. I can't remember if it was a house in Seneca or what,
13 but, yeah, there's a ---

14 Q. Okay. Well, it is what it is.

15 A. Right.

16 Q. Well, the next page, 96, if you look at the bottom, you
17 ask him to make an appointment to go look at the house on
18 the lake over in Seneca.

19 A. Correct.

20 Q. All right. So we know y'all are looking at Verizon.
21 You're looking at a house in Seneca on the lake, right?

22 A. Yes, sir.

23 Q. It was all the same thing. Y'all were looking at four
24 businesses, right?

25 A. Correct.

- 1 Q. So y'all were looking at houses, hotels, convenience
2 stores and maybe a Verizon dealership, right?
- 3 A. Right.
- 4 Q. And, of course, VP was created to acquire a Verizon
5 dealership, not an AT&T dealership, not a T-Mobile
6 dealership.
- 7 A. Correct.
- 8 Q. A Verizon dealership.
- 9 A. Correct.
- 10 Q. Right?
- 11 A. Yes.
- 12 Q. There was no talk of anything else, right?
- 13 A. There was talk of all the others after we were ---
- 14 Q. Well, before then?
- 15 A. Okay.
- 16 Q. And you were also looking at the same time, houses,
17 hotels, convenience stores, and I left one out, pine
18 needles.
- 19 A. Yes.
- 20 Q. A pine needle business.
- 21 A. Correct.
- 22 Q. All right. Turn to page 98. Now, your lawyer made a
23 big deal of the fact that Krish dealt with the bank. Krish
24 dealt with the bank. No question about that, right?
- 25 A. Right. Correct.

- 1 Q. Krish dealt with the bank on behalf of KVP as well as
2 VP, correct?
3 A. (No verbal response).
4 Q. Correct?
5 A. Correct, yes. He ---
6 Q. And you knew it.
7 A. He had ---
8 Q. And you knew it.
9 A. Yes. I knew it. We had specifically chosen him
10 because he had the most time on his hands during business
11 hours that we couldn't ---
12 Q. Okay.
13 A. So, yes. He was supposed to track down all those loose
14 ends, including banks, you know, the Verizon, attorneys,
15 whatever that was going to require during normal business
16 hours that Vijay and I could not get to. Everything else
17 that we could do on weekends and evenings, that I could help
18 with, that's what we were going to do.
19 Q. So Krish dealt mostly with Verizon and Krish is the
20 only one who dealt with the banks.
21 A. For?
22 Q. For VP or KVP.
23 A. No, we dealt with the banks. I had to, you know, we
24 had to sign all the ---
25 Q. Well, let's look at 98. 98. He asked you for your

- 1 driver's license information so he could send it on to the
2 bank. You sent it to Krish. He sent it to the bank, right?
- 3 A. I can't remember if I sent it directly to Mike or sent
4 it to Krish.
- 5 Q. Well, I can tell you who you sent it to.
- 6 A. Okay.
- 7 Q. All right. 99, you made a big deal about this. And I
8 can tell you, we can pull up Alibaba right now. We have the
9 internet hooked up in this courtroom if you want to. And
10 Alibaba is nothing more than a fancy e-bay, correct?
- 11 A. Correct.
- 12 Q. It's just a site where you can put in cell phones, I
13 could put in suits, I could put in glasses, I could put in
14 candy and it would pop up if they're for sale in Asia,
15 correct?
- 16 A. If you're looking for parts ---
- 17 Q. You want me to do it?
- 18 A. If you're looking for parts from other countries, yes,
19 that's a site ---
- 20 Q. Right. You went to Alibaba, put in cell phones and
21 found some cell phones for sale, right?
- 22 A. Right. Amongst other sites.
- 23 Q. Well, this is what you sent.
- 24 A. Well, that's one of them where it came up with where
25 cell phones were available.

1 Q. Listen to my question. Your lawyer made a big deal
2 about this. You found some cell phones for sale and sent
3 them to Krish, right?

4 A. Yes. We had agreed ---

5 Q. No, listen to my question. You can explain it later.

6 A. Okay.

7 Q. You found some cell phones for sale and sent it to
8 Krish. Yes or no?

9 A. Correct.

10 Q. And it turned out these cell phones were useless for
11 Verizon, right?

12 A. At that time. If you look at his response, it says you
13 can keep researching to see if ---

14 Q. I'm not asking you about his response.

15 A. Okay.

16 Q. The cell phones were useless in a Verizon store.

17 A. They were not compatible. The ---

18 Q. Not compatible.

19 A. Compatible. GSM and GPRS were not.

20 Q. All right. Page 100, trial document, Plaintiff's trial
21 document 143. And, again, Krish is dealing with the
22 bankers, Verizon. And you sent him your tax returns and he
23 sends them on to Verizon, right?

24 A. Yes. That was the agreed upon duties that he was going
25 to do. So, yes.

1 Q. All right. Page 65, your lawyer made a big deal out of
2 this. Krish even dealt with Allan Hill.

3 A. Page ---

4 Q. Page 101, I'm sorry. 101. 101, Plaintiff's trial
5 document 358, which is a letter from Allan Hill dated
6 February 14th, 2009. Do you see that?

7 A. Yes.

8 Q. Allan Hill had been your lawyer, right?

9 A. Yes, on previous ---

10 Q. Allan Hill had represented you on many things
11 previously, right?

12 A. Just on a few things, yes.

13 Q. And you asked Krish to deal with Allan Hill, right?

14 A. Krish, Vijay, and I, all three of us or at least
15 collectively, them and me, dealt with Allan Hill. And we'd
16 agreed that we'd use -- since we both know him, we would use
17 him for the formation of this entity.

18 Q. Your lawyer made a big deal of the fact that you hadn't
19 seen the corporate documents before he subpoenaed them from
20 Allan Hill. Do you remember that?

21 A. You know, big deal. So? I mean, you say -- you keep
22 referring to big deal. And ---

23 Q. It was a big deal.

24 A. Maybe to you and to him. I don't know any difference.

25 Q. It wasn't a big deal to you because you knew those

1 corporate documents existed and you knew ---

2 A. I know the company was formed. Because as per our
3 agreement and as per direction to Krish that, you know, to
4 take care of banks, attorneys, you know, ---

5 Q. And you had, in fact, used Allan Hill before. And
6 Allan Hill had created companies for you before. So you
7 knew the type of documents that Allan generated.

8 A. Generally.

9 Q. So it was no surprise when you got the document that
10 Mr. Gilreath held up an hour ago.

11 A. That the company was formed.

12 Q. Okay. Turn to page 103. See that? You there?

13 A. Yes, 103.

14 Q. All right. Now, you've already testified that you were
15 denied and Krish told you within a day or two.

16 A. Yes.

17 Q. And Vijay also told you within a day or two.

18 A. Yes.

19 Q. And at the time that this was turned down, you were
20 pursuing four other businesses, pine needles, hotels,
21 convenience stores, and houses.

22 A. Correct.

23 Q. It was all the same. Your Verizon dealership, maybe, a
24 pine needle dealership, maybe, hotels, maybe, convenience
25 stores, maybe, other real estate, maybe, looking at all of

- 1 those, right?
- 2 A. We were evaluating.
- 3 Q. Evaluating all of those.
- 4 A. All of those.
- 5 Q. All right.
- 6 A. We were considering them. So ---
- 7 Q. Considering? Considering?
- 8 A. --- if it worked out, we'll get into those businesses.
- 9 If they don't work out, we won't.
- 10 Q. We won't.
- 11 A. Right.
- 12 Q. Move on to something else. Page 104, which is your
- 13 email dated April the 2nd, 2008. You see that? It starts
- 14 at the bottom. See that?
- 15 A. Yes.
- 16 Q. And you found a medical office building, another type
- 17 of real estate, and sent it to Krish. Hey, maybe we can buy
- 18 this, right?
- 19 A. Right.
- 20 Q. Another business you were evaluating.
- 21 A. Correct.
- 22 Q. All together.
- 23 A. Correct.
- 24 Q. And you could have gone into any of them, you could
- 25 have gone into none of them, right?

1 A. If we agreed to pursue them, then we would go into
2 them.

3 Q. All right.

4 A. If we didn't, we didn't.

5 Q. All right.

6 A. But it was a collective decision between the three of
7 us whether we were going to pursue a business or not.

8 Q. Page 111. You with me?

9 A. Yes.

10 Q. Page 111. It starts at the bottom, an email from you
11 to Krish.

12 A. Correct.

13 Q. And Vip called today. It'll be a few weeks before we
14 get the 3C stores in North Carolina.

15 A. Correct.

16 Q. These are convenience stores.

17 A. Correct.

18 Q. Right?

19 A. Correct.

20 Q. They've been taken over by a bank, right?

21 A. Correct.

22 Q. Foreclosed on, right?

23 A. Right.

24 Q. And Vip called you. You were talking to Vip. And so
25 y'all are talking about maybe buying convenience stores, a

- 1 Comfort Inn and a Sleep Inn, right?
- 2 A. Correct.
- 3 Q. All together, just like Verizon. All of you, right?
- 4 A. We were evaluating.
- 5 Q. Evaluating, okay. Page 112. You with me?
- 6 A. Yes.
- 7 Q. 112, your email to Krish. Verizon had turned you down,
- 8 right?
- 9 A. Verizon had ---
- 10 Q. Verizon had turned you down.
- 11 A. But we were still working on trying to get to the
- 12 bottom of it.
- 13 Q. Verizon had turned you down.
- 14 A. Okay.
- 15 Q. And KP was created to acquire Verizon, right? You
- 16 already told me that. VP. VP was created to acquire
- 17 Verizon, right?
- 18 A. Yes. VP not KP.
- 19 Q. VP was created to acquire Verizon. And what you did,
- 20 you went on the internet and you saw where AT&T, you could
- 21 apply for an independent dealer for AT&T just like Verizon,
- 22 right? Just like Verizon?
- 23 A. Yes.
- 24 Q. Yes.
- 25 A. We had -- in our meetings we had talked about ---

- 1 Q. That ain't my question. You went on the internet and
2 you found that you could apply for AT&T just like Verizon.
3 Yes or no?
- 4 A. Yes. Just like we had discussed within the three of
5 us.
- 6 Q. And it doesn't surprise you that T-Mobile, Alltel, all
7 of the cellular dealerships have the same deal and you can
8 apply with them, right?
- 9 A. This was the AT&T one.
- 10 Q. Well, you found AT&T, but you could have looked at any
11 of them, right?
- 12 A. Correct.
- 13 Q. And this is not a particular store or a particular
14 opportunity, this is a website that said if you want an AT&T
15 agency, here's how you apply.
- 16 A. Correct.
- 17 Q. And that's all it was.
- 18 A. Correct.
- 19 Q. Okay. 113. April the 20th. And I've gotten all the
20 emails, okay? The emails tell the story. April the 20th,
21 this is an email that starts at the bottom from you to
22 Krish. It is about three hotels, a Marriott, a Comfort Inn,
23 and a Sleep Inn, all in Charleston.
- 24 A. Correct.
- 25 Q. You see that?

1 A. Yes.

2 Q. So y'all were really looking at hotels now, hard.

3 A. No, we had started looking at all these, all at the
4 same time. In fact, these two hotels, if the plan for them
5 -- the deal had gone through, we had agreed that Krish was
6 actually going to move down there and run it.

7 So, you know, it was, you know, the businesses that we
8 get into, we'll look at them and it wasn't that because this
9 one -- it wasn't that because VP was -- we were denied by
10 VP, that's what we were doing here. We were out there
11 looking at all of these all at the same time. You know, we
12 could have looked at fifteen others.

13 Q. All right.

14 A. Just because VP was denied had nothing to do with what
15 these businesses that we're looking at. We were looking at
16 it from day one.

17 Q. You would agree with me the pine needle business didn't
18 pan out, so you quit looking ---

19 A. Just like any other business, we -- the three of us
20 looked at it. We went and looked at it. We, the three of
21 us collectively decided we were not going to pursue it
22 because the cost of hiring a person to run that was not
23 going to give us any more profits. So the three of us sat
24 down and agreed, here, we're not going to do that.

25 The three of us sat together after we -- these hotels,

1 we were looking at eleven million dollars. The seller
2 wanted thirteen. The three of us sat together and said,
3 we're not going to pay more than eleven million dollars
4 because it's not a good deal past that. So we collectively
5 decided not to get into the business. Which other business
6 would you like to talk about?

7 Q. Well, we're going to talk about them all.

8 A. All right.

9 Q. Page 115. April the 25th. It starts out at the
10 bottom. There was actually a letter of intent for eleven
11 million dollars that was talked about on a hotel in North
12 Charleston, right?

13 A. Right.

14 Q. Y'all talked about that.

15 A. Yes.

16 Q. You were serious about it.

17 A. Right.

18 Q. Right? Page 119, which is Defendant's trial exhibit
19 number 12. And it starts out, Krish to you, June the 25th
20 of '08, 189 Will Bomar. You bought that house, right?

21 A. Yes.

22 Q. Am I right?

23 A. Yes.

24 Q. And you just sold it, what, a month ago?

25 A. Yes.

- 1 Q. And Krish managed it.
- 2 A. Yes, he did.
- 3 Q. Krish opened the bank accounts, right?
- 4 A. Correct.
- 5 Q. Krish hired the realtors.
- 6 A. Yes.
- 7 Q. When it wouldn't sell, he found somebody to rent it and
- 8 did the lease.
- 9 A. For the first month.
- 10 Q. Okay. And you knew he was doing that, right?
- 11 A. Yes. That's what we had agreed on.
- 12 Q. All right. Well, this is about the house. Page 120.
- 13 You with me?
- 14 A. Yes.
- 15 Q. Page 120 is the bank statement for VP in July of 2008.
- 16 A. Correct.
- 17 Q. Right? In July of 2008, two people had put money in
- 18 it, you and Vijay, right? You don't have to look. You need
- 19 to remember. Who put money in other than you and Vijay?
- 20 A. I'm looking at -- you're asking about VP. This is for
- 21 VP.
- 22 Q. This is for ---
- 23 A. You said July. We put the monies in January, not in
- 24 July. So ---
- 25 Q. You put five thousand dollars in and he put five

- 1 thousand in.
- 2 A. Correct.
- 3 Q. And in July the money was taken out and the account
- 4 went to zero, right?
- 5 A. Correct. He ---
- 6 Q. And the money was put over in KVP, correct?
- 7 A. Correct.
- 8 Q. And VP did no business after that, right?
- 9 A. It was just on hold. We had fifty thousand ---
- 10 Q. VP did no business after that.
- 11 A. The business hadn't started. The company was ---
- 12 Q. The business hadn't started. Matter of fact, VP never
- 13 did any business, did it? Never.
- 14 A. You mean as far as opening the stores?
- 15 Q. Well, anything.
- 16 A. Correct.
- 17 Q. VP never did any business.
- 18 A. Right.
- 19 Q. And you knew on February the 26th that VP was formed to
- 20 acquire a Verizon dealership that had been denied, right?
- 21 A. It was denied. And for the next nine months we were
- 22 going to get to the bottom of that. Krish was appointed to
- 23 chase that down. So it was not closed. If it, you know, if
- 24 it was closed we would have -- if you're asking or if you're
- 25 trying to get to, you know, you know, since we got the

1 letter of denial, this was, as Krish put it, case closed, we
2 would have done something at that time.

3 Not -- and so we were still -- VP was open. The bank
4 accounts were open. The line of credit was open. And we
5 were pursuing this. And once Krish finds out, as he was
6 appointed to do and he had agreed to, once we find out what
7 the reason is being, work around it, we will get VP going
8 again. And the plan B and C was if Verizon doesn't work
9 out, we'll go into other carriers. And if -- or we go buy
10 companies that are already in business and we can buy them
11 and do it that way.

12 Q. Okay. Did Krish have the right to quit?

13 A. Yeah.

14 Q. Krish didn't have a non-compete, did he?

15 A. No, he didn't.

16 Q. Krish could go into business for himself if he wanted
17 to, couldn't he?

18 A. He could.

19 Q. And on July the 1st of 2008, VP had no money in its
20 account after the money was given back to you to ---

21 A. The money was not given back out because we were
22 closing and we were not doing anything. KVP needed some
23 money. They called me and said, we need some money in here.
24 And we -- I was ready to put money out of my pocket. They
25 needed -- they were going to have to put the money out of

1 their pocket.

2 They suggested that we move temporarily those monies
3 out, since it's just sitting there. We still have the fifty
4 thousand dollar line of credit. When things get going, you
5 know, we'll use the fifty thousand dollars credit and we'll
6 put as much money as we want to in there.

7 Q. All right. Page 123. An email from you to Krish on
8 July the 14th, 2008. See that? See that?

9 A. Yes.

10 Q. You sent a link about buying a hundred and ninety-five
11 room hotel down in Arkansas, right?

12 A. Correct.

13 Q. You didn't buy it.

14 A. No, we didn't.

15 Q. Now, let me ask you this. You own hotels yourself at
16 this point in time, right?

17 A. Yes. I'm in ---

18 Q. You've already acquired them. Vijay owned hotels,
19 right?

20 A. Correct.

21 Q. Would it be against your deal with Vijay if you went
22 out and bought a hotel without telling him? He's already in
23 the hotel business.

24 A. Correct. I mean, if ---

25 Q. Could he buy a hotel without telling you?

1 A. Sure.

2 Q. Okay. Could he buy a pine needle business without
3 telling you?

4 A. Sure.

5 Q. Could he buy a house without telling you?

6 A. Sure.

7 Q. Okay.

8 A. He couldn't go and start another Verizon business
9 without telling me. We had formed a corporation. We had
10 invested the money in there. And we were in that together.
11 And, you know, if they wanted to go do something on their
12 own, all they had to do is tell me.

13 Q. All right. Page 125. Here is an email where you sent
14 Krish a link to Sunbelt Business Brokers. You see that?

15 A. Page 124 or 25?

16 Q. 125.

17 A. Yes.

18 Q. It is your email, starts at the bottom, August the 20th
19 of '08.

20 A. Correct.

21 Q. You knew you'd been turned down by Verizon, right?

22 A. Correct.

23 Q. And this is another business for sale, correct?

24 A. Correct.

25 Q. And it wasn't Verizon, was it?

1 A. I can't remember exactly whether it was Verizon or not.

2 Q. Well, it probably wasn't Verizon.

3 A. It might have been Verizon.

4 Q. Might have been Verizon, you don't know.

5 A. Right.

6 Q. All you know is, it was a business for sale.

7 A. It was a business for sale and the plan between the
8 three of us was while Krish is looking -- while Krish is
9 there looking and trying to find out, get to the bottom of
10 why Verizon denied us, the three of us agreed that I would
11 look for other alternatives and other businesses to buy. So
12 this was a result of me doing what I was supposed to do and
13 what Krish was going to do.

14 Vijay was not actively doing anything. So this was --
15 Krish, you get to the bottom of finding out why we were
16 denied by Verizon. And Kaj, go look for other -- as plan B,
17 go look for alternatives. So I'm sending them emails and
18 we're talking. And then all of a sudden we're talking about
19 all these things.

20 Q. All right.

21 A. So none of us ever said that, you know, Kaj, you know,
22 we shouldn't pursue this. We were pursuing all of this,
23 whether it was hotels, convenience stores, whatever you want
24 to call it and probably a half a dozen others that we didn't
25 decide to consider.

1 Q. Some worked out and some didn't.

2 A. Right. And none of this -- we collectively decided to
3 go into business. It's the one business that we did decide
4 to go in was the Verizon. That's why we formed the
5 corporation. That's why we invested money. The rest of
6 them we didn't because we didn't decide to -- collectively
7 we didn't decide to go into them.

8 Q. And the only one that turned you down was Verizon.

9 A. And that didn't matter. We were going to get into the
10 Verizon -- we were going to get ---

11 Q. Turn to page 126. 126. Remember I said I had these
12 emails in order, okay?

13 A. All right.

14 Q. The emails tell a story.

15 A. Correct.

16 Q. Do you agree with me?

17 A. Right.

18 Q. And you can say what you want to in court, but you
19 can't change emails, can you?

20 A. Right.

21 Q. And a lot of what you said today is just you talking.
22 We've got to believe you. There are no emails.

23 A. Sir, I'm under oath. And I am ---

24 Q. Well, we'll see about that.

25 A. --- telling what I believe is the truth.

1 Q. Here we've got the next email, which is April the 2nd
2 of 2009.

3 A. Correct.

4 Q. You got me?

5 A. Yes.

6 Q. The prior email was August of 2008.

7 A. Yes.

8 Q. A lot happened between August of 2008 and April of
9 2009. There are no emails, are there?

10 A. (No verbal response).

11 Q. No emails between you and Krish or you and Vijay.

12 A. We did a lot of discussions ---

13 Q. Let's talk about that.

14 A. --- through ---

15 Q. Isn't it true that on October the 18th, 2008 you were
16 invited to Vijay's house?

17 A. Yes, it is true.

18 Q. He invited you to his house.

19 A. Yes.

20 Q. Okay. And you asked where Krish was.

21 A. Yes.

22 Q. And Vijay voluntarily said, oh, he's at his grand
23 opening at his Verizon store, right?

24 A. Correct.

25 Q. He told you that.

- 1 A. Yes.
- 2 Q. He didn't try to hide it. He told you that.
- 3 A. There were seven months between ---
- 4 Q. Answer my question. He told you that. You didn't ask
- 5 him, he told you.
- 6 A. I asked him and he told me.
- 7 Q. You didn't ask him anything.
- 8 A. I asked ---
- 9 Q. He told you where Krish was.
- 10 A. Yes.
- 11 Q. And Krish came.
- 12 A. And he did, right.
- 13 Q. And Krish told you he was at his grand opening of a
- 14 Verizon store.
- 15 A. Yes.
- 16 Q. Correct?
- 17 A. Correct.
- 18 Q. Let's talk about what else was said. Krish got there
- 19 and Krish told you that he had opened a Verizon store on
- 20 Pelham Road, yes or no?
- 21 A. Yes, he did.
- 22 Q. And there's no question you knew he had pursued a
- 23 Verizon opportunity by a different method in August til
- 24 September of 2008. You knew that.
- 25 A. Yes, he told me that he had pursued it through someone

1 who already had a company and who had already had a Verizon
2 business. And it was just recently that he joined up with
3 him.

4 Q. He mentioned Corby.

5 A. He mentioned the name Corby.

6 Q. He said Corby.

7 A. He said Corby, right.

8 Q. And you claim that what he told you was he was going to
9 find a way to kick Corby out and bring you in. That's what
10 you're claiming.

11 A. Yes. He was going to -- he told me that he didn't have
12 the financial means or capabilities to have multi-unit
13 stores. So this was our foot in the door. And when he's
14 out, to have some sort of an arrangement that I didn't have
15 details for.

16 Q. And there's no question in August or September you knew
17 that Krish Patel, through another entity, had acquired a
18 Verizon store.

19 A. Another entity that he told me he had joined up with
20 that already had a Verizon business license.

21 Q. And you knew you were not part of it. And you knew VP
22 was not part of it.

23 A. Correct. He said that was our foot in the door.

24 Q. And you knew that Krish continued to open other stores
25 because this was grand opening of store number one.

1 A. No, I didn't know that.

2 Q. He didn't deny it, did he?

3 A. We didn't talk about ---

4 Q. You didn't talk about it. He answered the questions
5 you asked him.

6 A. No. He told me that he didn't have the means -- that
7 Corby didn't have the financial means to grow this into a
8 business. So that told me that he was -- he was not
9 planning on having more than one store. He might have
10 already had one store. You know, I don't know if this is
11 the first store, second store or what, but he had recently
12 joined up with Corby.

13 Q. Now, I read your lawyer's trial brief. And they claim
14 you quit your job at Fluor before the October meeting at his
15 house, is that true?

16 A. I didn't quit the job. I had told them that ---

17 Q. You were going to resign.

18 A. --- the design process -- it was a contract. The
19 design phase was going to last from -- until December of
20 2008. And we had -- all three of us had sat down and said,
21 by that time I should be able to -- we will be able to grow
22 this company and I should -- I will get into it full-time.

23 So it wasn't -- I told Fluor that I would not be
24 available to work on the project when it moves to Puerto
25 Rico because this was more important. And I didn't tell

1 Fluor why I was not going to be available.

2 Q. Well, so you told Fluor you weren't going to work with
3 them anymore based on some idea that y'all might find some
4 business ---.

5 A. It wasn't some idea, sir. I had -- we had talked this
6 through. We had planned this through. This was the first
7 business in my entire life that I was ready to quit what I
8 was doing to jump into this. Because I looked at the --
9 when I looked at the projection, the simplicity of the
10 business, you know, this was the ideal thing that I've been
11 looking for in a multi-unit business.

12 You know, when you look at restaurants and all the
13 other types of business, they're very difficult to deploy
14 into multi-unit. This was a business that was very, very
15 simple to me, you know. For two people, two part-time
16 people to run it, it was less than seventy-five, eighty
17 thousand dollars to have one store for a start-up. And with
18 hundred -- eight hundred thousand dollars that I had, we
19 could have done ten at the same time.

20 Q. Listen to me. We're going to something else.

21 A. Well, you know, you ask me questions. I'm trying to
22 explain to you, you know.

23 Q. Listen to me. On October the 18th, Krish told you he
24 had bought into another store.

25 A. He had gone in with ---

- 1 Q. Bought into.
- 2 A. He had gone in with somebody that already had a ---
- 3 Q. And he owned part of it.
- 4 A. That, I, you know, we didn't get into the details of
- 5 what their arrangement was.
- 6 Q. All right. Now getting to 126. We've got no emails
- 7 after that that had anything to do with any of this, but you
- 8 knew what you knew. Page 126. You there? This is ---
- 9 A. Yes.
- 10 Q. --- April the 9th. This is November, December, six
- 11 months later, right?
- 12 A. Correct.
- 13 Q. And y'all are emailing about KVP. And if you'll look
- 14 at the attachment, it's about something to do with 189
- 15 Bomar, right?
- 16 A. Right.
- 17 Q. Turn to page 131. Now, Mr. Kaj, I listened to you
- 18 carefully. The next email between you and Krish is all the
- 19 way in 2010, okay? So we've got November, December, all of
- 20 2009 and January of 2010 with not an email from you to
- 21 Krish. You agree?
- 22 A. Yes.
- 23 Q. And, of course, your excuse now is you were in Puerto
- 24 Rico.
- 25 A. It's not an excuse. That's what we talked about.

1 Q. Well, you can email from Puerto Rico, right?

2 A. I can, just like I could have emailed from Fluor. When

3 I'm at Fluor and when I'm at my client's sites, you know, I

4 don't use their -- pulling up and using their email systems.

5 I just couldn't do that, I mean. So it was ---

6 Q. Well, you were home every ten days for four days.

7 A. Yes. And that's when I talked to them. I'd see Vijay.

8 I'd stop at his place. I'd talk to Krish and say, hey, you

9 know, where are we? We had already talked about there's

10 going to be eight to twelve months. That's why I went to

11 Puerto Rico. If he had told me that, hey, we're ready to

12 go, I would have ended up quitting my job just like we had

13 planned and move onto this thing.

14 Q. All right.

15 A. But the plan was ---

16 Q. Listen to me.

17 A. The plan was ---

18 Q. The question was whether you had any emails. And you

19 don't, right? These conversations between you and Krish,

20 you've got no proof of it, other than your word.

21 A. We have ---

22 Q. Listen to me. You've got no proof of it other than

23 your word.

24 A. That's right.

25 Q. No emails, no witnesses?

- 1 A. No witnesses.
- 2 Q. All right. 135. Are you there?
- 3 A. Yes.
- 4 Q. We have an email to Krish from you about the banker and
5 selling Bomar Road.
- 6 A. Right..
- 7 Q. Right?
- 8 A. Right.
- 9 Q. And what happened is -- I guess while you were in
10 Puerto Rico, Krish arranged for the sale of part of Bomar
11 Road. And he used that to pay down the mortgage.
- 12 A. I was already -- I was back from Puerto Rico.
- 13 Q. Oh, you're back by then? You're back.
- 14 A. Right.
- 15 Q. Okay. You're back. Next email, next day. Page 136.
16 February 24. You with me?
- 17 A. Right.
- 18 Q. Email with the lease that Krish had arranged.
- 19 A. Right.
- 20 Q. All right. Turn over to 138. April 15th, a year and
21 nine months, I guess, if my arithmetic is correct, after the
22 April 18th -- October the 18th meeting at Kaj's house. Tax
23 day 2010, right?
- 24 A. Right.
- 25 Q. And you emailed to Krish -- next page, 139. You with

1 me?

2 A. Yes.

3 Q. And you knew Krish was in business, right?

4 A. Yes.

5 Q. And you knew he had been in business since at least

6 October the 18th, right?

7 **THE COURT:** Of what year are you talking about?

8 **MR. STEPHENSON:** October the 18th, 2008.

9 **THE COURT:** Okay.

10 Q. We're now in 2010, April the 15th, right?

11 A. Right.

12 Q. And you emailed him at the bottom of 139 on April the

13 15th. I checked Verizon's site as you suggested. There is

14 no store listed. When do you want to get together to talk?

15 I can partner up if you're not interested. You see that?

16 A. That's when I was -- yes.

17 Q. So you're telling Krish, hey, you don't want to do it,

18 I'll get somebody else to do it, right?

19 A. No. What I'm ---

20 Q. Well, that's ---

21 A. What I'm telling him is that I have -- we have been

22 talking about this for two plus years. And he's been

23 stringing me along and telling me that he's going to -- it

24 was started from, yeah, we can't find anything from Verizon.

25 I'm with Corby now. And it's going to take eight to twelve

1 months to get out.

2 So that was our plan, wait until eight to ten months,
3 get him out. And then we'll continue. So that brought us
4 to the late 2009.

5 And when that came and went, that's when I was getting
6 antsy and saying, hey, you know, are we doing this or not?
7 If we're not, let's sit down, wind down with -- do whatever
8 needs to be done with KVP and we will go our separate ways.

9 Q. And that ---

10 A. All this long, he has never told me that he had started
11 the company ---

12 Q. Let's talk about what you found out ---

13 **MR. GILREATH:** Judge, he needs to let the witness
14 finish what he's trying to say. I know he doesn't like ---

15 **THE COURT:** I think he was finished.

16 **MR. GILREATH:** --- what he's saying.

17 **THE COURT:** Didn't ---

18 A. No, he's been cutting me off. So I'm sorry.

19 **MR. GILREATH:** I know he doesn't like what he's saying,
20 but he's entitled to say it.

21 **THE COURT:** Yeah. Yeah. Okay. All right. All right.

22 Q. All right. April of 2010, let's find out what
23 happened. You told Krish, I got a place we can put a
24 Verizon store, and if you don't want to, I've got a partner.

25 A. Right. This was -- we had -- I have already called --

1 this was a result of our conversation ---

2 Q. Yes or no? You told him you had a partner.

3 A. I was first -- I didn't have a partner.

4 Q. That's a lie?

5 A. I was pressing that I could get a partner.

6 Q. Did you ever get a partner?

7 A. No, I never did.

8 Q. So this wasn't the truth?

9 A. It was telling him that I can get a partner.

10 Q. I can partner up if you're not interested.

11 A. Yeah. I can partner up. If this thing is not working,
12 you know, we've gone on for two plus years. If this thing
13 is not working out, I said, I'd thought of Tryon and the
14 Columbus area. I'd talked to him about that.

15 And then I said, you know what? This thing's gone on
16 for too long. It's been going on for two years, you know.
17 We're either doing this thing with VP or not. And if we're
18 not, let's sit down and let's talk about it and go through
19 whatever needs to be done and we can figure that out.

20 And I said, you know, you can do whatever you're doing
21 with Corby. And I -- even at that time he didn't tell me
22 that Corby was out. I said, you can continue doing what
23 you're doing with Corby, and I'll figure out what I'm going
24 to do next.

25 And he said, no, Kaj, you don't need to get out and go

1 on your own. Let's talk about these locations that you're
2 looking at. And that's when I -- that's when I sat down,
3 talked to him about that.

4 And he said, but -- so this email was really in
5 response to -- he had told me, go check on the Verizon site
6 and confirm that there's no other stores there before we
7 look at that. And I said, yeah. But based on what you'd
8 told me, I checked. There's no stores around there.

9 And subsequently, we sat down and started talking about
10 how we were going to -- and that's when -- it was around
11 that time that he said he was finally -- managed to get
12 Corby out and we can pursue -- pursue this thing.

13 Q. All right. All of this talk between you and Krish that
14 you claim happened, and all of the thousands of documents
15 -- and I'm going to tell you, it's like ten thousand
16 documents, and I don't know how many hundreds of emails.

17 A. Right.

18 Q. Do you have one piece of paper that proves any of it?
19 One? One piece of paper?

20 A. Yeah, but we met so many ---

21 Q. No, listen to me. Answer the question. Do you have
22 one piece of paper that proves any of this, one email?

23 A. What kind of piece of paper are you talking about?

24 Q. An email.

25 A. This conversation -- when we have our conversations, we

1 don't document or write everything. I'm not going to have
2 -- we don't have conversations about, yeah, this is what's
3 going on, that's what -- if we sit down and we talk about
4 it, it's not going to be followed up with this email.

5 These emails, if you look at them, you can see they've
6 got an attachment or it's got a link or something that we
7 want to share that we can easily share by email, not our
8 conversations.

9 You know, if we had documented every single
10 conversation we had, we would have maybe ten thousand pages
11 in here that the Judge would have to go through. I mean,
12 just, you know, ---

13 Q. All right. Let's get to that.

14 A. Emails that were not into emails. And they very well
15 knew that when I'm at Fluor and I'm in Puerto Rico, I don't
16 use my client's networks to do personal emails. And this
17 was something outside of my consulting work, which I was
18 going to quit at the end of 2008 based on our plan.

19 Q. 2010 you were going to quit?

20 A. I said 2008.

21 Q. Now, Kaj, you said a minute ago that you were trying to
22 smoke him out and if he didn't want to do business with you,
23 y'all could go your separate ways and he could stay with
24 Corby or whatever he was doing, right?

25 A. We would figure out what needs to be done.

1 Q. Go your separate ways.

2 A. We would figure out what needs to be done with VP
3 Enterprises. VP Enterprises was still up and up. The line
4 of credit was still in place. The bank account was still in
5 place.

6 We had not -- the three of us never sat down and said,
7 you know, this business is closed. We're not pursuing it
8 anymore. They kept on telling me this is where -- per our
9 plans. I mean, you show me one piece of document that says
10 that this is -- you talking about paper. Show me one piece
11 of document that says that we sat down and decided to close
12 this business, and close this account and close this LLC.

13 Q. The Judge will decide that.

14 A. Okay. I'm sorry.

15 Q. Okay. Kaj, in April of 2010 you told Krish, hey, --
16 you sent this to smoke him out and if he wants to go his own
17 way, you could figure it out, right?

18 A. Right.

19 Q. And at the time he had five stores.

20 A. I didn't know he had ---

21 Q. Well, that's what it turned out. He had five.

22 A. Right.

23 Q. And this location you say you found in Tryon, just so
24 the record's clear, he didn't take it, right?

25 A. Sorry. Please ask that again.

1 Q. He never put a store in Tryon.

2 A. I don't know if he's ---

3 Q. Well, there's no evidence he put a store in Tryon. You
4 found this location. Krish Patel didn't stick a store in
5 Tryon.

6 A. Correct.

7 Q. No one went there as far as you know.

8 A. If there isn't one there.

9 Q. And you never tried to get a partner to go in there,
10 did you?

11 A. I didn't because when I asked him at that time, where
12 are we on this, because if this is not working out, if
13 you're not done with Corby, then let's figure out what we're
14 going to do. And what he told me was that I got Corby out.
15 We can do this and let's start one. That's when we started
16 talking about these.

17 And then, from that he changed subjects and said, wait
18 a minute, I've got these seven stores that we can buy. So
19 then we said, all right, that seven store deal is much
20 better than starting this one. So let's put our efforts in
21 that and forget about this one. So that's why we didn't do
22 that.

23 Q. And what happened is you went to his store on Augusta
24 Road.

25 A. Correct. I met with him three or four times there.

- 1 Q. At the store on Augusta Road. And it's there at the
2 corner of McDaniel and Augusta, still there.
- 3 A. Right.
- 4 Q. You went in there. And you knew he was in a deal with
5 Corby. And you say you never met Corby, but you knew he was
6 in a deal with Corby.
- 7 A. Corby, correct.
- 8 Q. That's what you thought, right?
- 9 A. Correct.
- 10 Q. And he didn't hide from you when you went in there that
11 he had other locations. You knew it.
- 12 A. Yes, after the first couple of meetings, he said he had
13 other locations.
- 14 Q. He said he had other locations.
- 15 A. Other locations, right.
- 16 Q. So he brought up the fact that he had the opportunity
17 to buy some stores, five or six stores, in Columbia, right?
- 18 A. Yeah, Columbia. He mentioned Columbia, Aiken, ---
- 19 Q. Columbia, South Carolina, right?
- 20 A. --- Florence, that area. Right.
- 21 Q. And y'all talked about it?
- 22 A. We did.
- 23 Q. And your talk with him was about you going fifty/fifty
24 in the Columbia store.
- 25 A. Yes, we talked about fifty/fifty on that.

1 Q. Now, listen to me. And you told him you were only
2 interested in a fifty/fifty deal to buy the Columbia store,
3 right?

4 A. Yes.

5 Q. All right. And you knew he already had stores that you
6 weren't participating in.

7 A. Yes.

8 Q. You knew he already had stores running.

9 A. At that time, yes. Had ---

10 Q. He had five of them.

11 A. Five stores, right.

12 Q. And you're talking about fifty/fifty in the Columbia
13 store, right?

14 A. Right.

15 Q. Something different. Fifty/fifty in the Columbia
16 store.

17 A. It was -- the conversations was it was going to be all
18 part of the ---

19 Q. Now ---

20 A. We were going to integrate this and get our VP back on
21 track.

22 Q. But y'all were talking about fifty/fifty in the
23 Columbia store, right?

24 A. We were fifty/fifty in everything.

25 Q. Well, you knew he already had a store running. You've

1 already told me that.

2 A. Right. And we were going to integrate that. The
3 discussion was, whatever had -- whatever he had in there,
4 we're going to figure out how to integrate that and bring
5 that all under the one umbrella as we started with VP. And
6 that's why we had talked about going to Allan Hill and put
7 that into an ironclad agreement.

8 Q. All right. Now, listen to me. You didn't know about
9 the Columbia store before he told you.

10 A. That was his. I never claimed that it was my idea or
11 whatever.

12 Q. So just so the record is clear, he ended up buying
13 those Columbia stores. He didn't buy something that you
14 knew about. He already knew about it, right?

15 A. Correct.

16 Q. And what he offered you was employment in the Columbia
17 store.

18 A. He very well knows that I was not, you know, I make two
19 hundred thousand dollars plus. I don't need employment. If
20 I needed employment, I, you know, I could have done that,
21 you know, stayed with Fluor and Jacobs. I went into my own
22 business. And I wasn't going to go to work for somebody
23 else. That was -- they knew that very well. I mean, ---

24 Q. And your testimony is he offered you employment and you
25 turned him down, you were insulted, ---

1 A. No, that's not --

2 Q. You weren't insulted?

3 A. That was not my testimony that he offered me employment
4 and I turned it down. Our agreement that we were talking
5 about was to purchase that stores, since those were brand
6 new coming up, we would put fifty/fifty monies in there.
7 Whatever he had going up til then, we would figure out how
8 much he had into it and we would integrate all of that.

9 Q. All right. Would you open your deposition. See your
10 deposition there?

11 **THE COURT:** Okay. Well, I tell you what. Let's just
12 take a short break.

13 **MR. STEPHENSON:** Okay.

14 **THE COURT:** Take about ten minutes.

15 (Whereupon court was in recess at 4:01 pm)

16 (Whereupon court reconvened at 4:13 pm)

17 **THE COURT:** Okay.

18 **Pankaj Patel - Cross Examination by Mr. Stephenson:**

19 Q. All right. Mr. Kaj, turn to page 140, which is an
20 email from Krish to you dated May the 24th. Do you see
21 that?

22 A. Yes.

23 Q. All right. And to it he attached an estimation for the
24 profitability of the store.

25 A. Right.

- 1 Q. Right?
- 2 A. Right.
- 3 Q. And later on he talks about letting you be an employee
- 4 but not an owner, right?
- 5 A. Yes, with our agreement in place.
- 6 Q. All right. And your claim is they hid all of this from
- 7 you all these years, what was really going on.
- 8 A. Yes.
- 9 Q. Well, did you go to the Celebration of Life that the
- 10 Patel's put on on May the 21st? I can tell you it was May
- 11 the 21st.
- 12 A. Right.
- 13 Q. You went?
- 14 A. Right.
- 15 Q. With your wife?
- 16 A. Yes.
- 17 Q. And Vijay and Alca?
- 18 A. Correct.
- 19 Q. And two hundred and fifty other people?
- 20 A. Correct.
- 21 Q. And it was a celebration about the life of this Patel
- 22 family, right?
- 23 A. Yes.
- 24 Q. And a lady from Verizon got up at the Celebration of
- 25 Life ---

- 1 A. Right.
- 2 Q. --- on May the 21st.
- 3 A. Right.
- 4 Q. And she talked about Krish; who had worked for Verizon
- 5 since he was eighteen years old and what a wonderful job he
- 6 had done building these stores that he had in Greenville,
- 7 right?
- 8 A. Right.
- 9 Q. And that was May the 21st.
- 10 A. Right.
- 11 Q. And they invited you to that party.
- 12 A. Yes.
- 13 Q. And the lady got up and told the whole story.
- 14 A. Yes, she told a story.
- 15 Q. Okay. And that was May the 21st.
- 16 A. Correct.
- 17 Q. At the Marriott here in Greenville.
- 18 A. Right.
- 19 Q. All right. So we got this email on May the 24th where
- 20 Krish is emailing you. And that's page 140. That's trial
- 21 exhibit 129. You see that?
- 22 A. Yes.
- 23 Q. And Krish is emailing you, talking about profitability.
- 24 A. Right.
- 25 Q. And then the next day, page 142, Krish emailed you

1 again.

2 A. Correct.

3 Q. And talks about, again, a split of profits and your
4 becoming an employee, not an owner.

5 A. We weren't talking about employee. We were talking
6 about how he was going to do that fifty/fifty deal and
7 integrate everything with -- and how he was going to be able
8 to compensate with our agreement in place.

9 Q. All right. Let's look at the email dated May the 25th.
10 He talks about seven percent, ten percent, thirteen percent.
11 You were going to get a percentage, right?

12 A. Yes.

13 Q. Okay. And you were going to manage the Columbia
14 stores. And it was about the Columbia store, not the
15 Greenville store, right?

16 A. That was all going to be integrated. He was going to
17 show me how much dollars we're looking at per store as
18 something we were going to be able to put in our agreement
19 that since I won't -- we didn't want to do -- he didn't want
20 to have my name in the forefront because of the sensitivity
21 with Verizon. So he was trying to tell me that, you know,
22 this is, if we look at one store, it's five thousand dollars
23 if we do it based on the number of the stores and
24 information like that.

25 Q. All right. And then the next page, 144, June the 5th.

1 He is trying to open -- I think it's his sixth store, number
2 six. Could be wrong. Approximately number six in Laurens.
3 And you knew he was down there opening a store in Laurens.
4 You knew that, right? He told you.

5 A. Yes. We had already talked about that. And we had
6 talked about buying the seven stores ---

7 Q. Columbia?

8 A. --- the Columbia stores and everything, right.

9 Q. And you were going to go in on the Columbia store. And
10 then you say you found out, and you didn't want to ever talk
11 to him again, right?

12 A. Yes.

13 Q. That's your testimony.

14 A. I was -- and that was June 4th, I believe. We had met
15 and we agreed and we shook hands. And that's the day he
16 told me about -- when I saw Vijay walking through that
17 store, that's when we found out about -- that's when I found
18 out. And that's when I was -- that's what triggered that.
19 And that's when I found out that evening. And that's the
20 weekend that I talked to him. And I said, well, we'll
21 communicate -- we'll need to communicate because of the KVP
22 stuff.

23 Q. All right. But you never talked to him again on this
24 other thing.

25 A. On what other thing?

1 Q. Verizon.

2 A. Correct.

3 Q. And you left out in your direct testimony the
4 Celebration of Life when Verizon stood up and told you, the
5 lady from Verizon stood up and said, Krish has worked for us
6 since he's eighteen, and he's built this whole thing.

7 A. We were already talking about it. During that whole
8 time from March/April time-frame. In fact, the May 15th is
9 when I sent him the pictures.

10 Q. All right. Well, we go the rest of 2010 and there's no
11 emails, right?

12 A. Okay.

13 Q. Related to this?

14 A. Right..

15 Q. And you knew that he had five stores and he was going
16 to buy five more. And at the time he had ten. And you
17 decided you would never talk to him again about Verizon.
18 You would only deal with him on KVP.

19 A. Right.

20 Q. No emails about Verizon.

21 A. Right.

22 Q. You didn't apply for a Verizon store.

23 A. I wasn't going to. He has already executed the whole
24 plan for all the Greenville locations.

25 Q. Well, did you ---

1 A. And if I was going to go do everything on my own, it
2 would be just like he -- me doing what he did to me. So
3 unless we sat down there and figured this out and how we're
4 going to close this out, I was just not going to talk to
5 them and socialize with them.

6 And, you know, I just -- they betrayed my trust. They
7 didn't tell me any of this stuff. So, you know, I don't
8 know what I was going to do, but I went in there to talk to
9 them. I told them, I just don't want to talk to you guys
10 ---

11 Q. Ever again.

12 A. --- again.

13 Q. All right.

14 A. And, you know, the subject or issue of VP and doing
15 business and all that kind of stuff, I was not, you know, I
16 didn't go there to talk about that. I said, you know, this
17 is what I found out. Krish agreed, yeah. That's, you know,
18 he started the company.

19 And, you know, I looked at him and I saw that as a
20 betrayal. And the fact that they didn't mention that for
21 two, two and a half years. And I saw them, you know, in
22 those two and a half years, I probably saw them hundreds of
23 times.

24 Q. Listen to me. I don't want to talk over you anymore.
25 You never, ever in your whole life have investigated the

1 opportunity to open a Verizon store yourself.

2 A. I said the idea was once we sat there ---

3 Q. That's a yes or no question.

4 A. --- no, not on my own. But, you know, there's a lot of
5 businesses that, you know, ---

6 **MR. STEPHENSON:** Your Honor, that is a yes or a no
7 question.

8 **THE COURT:** Well, I think he said, no, not on his own.

9 A. Right. I'm not denying that it is -- it was a
10 collective effort. That's why we formed VP Enterprises.
11 That's why we have, you know, three owners. That, you know,
12 we pursued that. If they'd told me that was dead from the
13 day they, you know, started this Corby ---

14 **THE COURT:** Okay. You're getting a little far afield.
15 You're not being responsive to the question. And I don't
16 mind you explaining your answer, but that's a little far.

17 A. Sorry.

18 **THE COURT:** Okay. Go ahead.

19 Q. Put VP aside. You admit you found out in mid-2010 ---

20 A. Right.

21 Q. --- you say he's done something to you. Since that
22 date you have never inquired with Verizon, AT&T, Alltel, or
23 any carrier about establishing your own agency.

24 A. The business plan and the locations that ---

25 Q. That's a yes or no ---

1 **THE COURT:** Just yes or no and ---

2 A. I'm sorry. Yes, and let me explain.

3 Q. The answer is no, and explain, right?

4 **THE COURT:** Well, ---

5 A. Please ask that again, sir.

6 **THE COURT:** No, you let him give his answer.

7 A. Please ask the question again ---

8 Q. Since ---

9 A. --- so I can answer.

10 **THE COURT:** Wait, wait, wait, do not -- one person at a
11 time. All right. Ask your question, Mr. Stephenson.

12 Q. In mid-2010 you say you found out and decided never to
13 talk to any of them again. Since that date, have you
14 applied with Verizon, AT&T or any other carrier about
15 establishing your own agency with yourself or anybody in
16 connection to yourself?

17 A. No, I've not. And let me explain.

18 Q. Feel free.

19 A. They had already executed the whole plan to start from
20 the Greenville area. Plus, if I did something on my own, I
21 would be just doing what they're doing to me. So we'd have
22 to sit down and figure out what to do with VP. And when I
23 approached Monty about that and gained some legal advice,
24 that's what brought this case about.

25 Q. All right. Now, we know there's nothing in writing

1 where you complained in 2010, right? Nothing in writing.

2 A. Nothing in writing about what?

3 Q. You're complaining that these guys did something to
4 you.

5 A. You know, I said my ---

6 **THE COURT:** Well, wait. He asked is there anything in
7 writing where you made the complaint? Yes or no and then
8 you can explain.

9 A. I'm sorry.

10 Q. Yes or no. 2010 ---

11 A. This whole process is new to me. So please ask that
12 again so I know whether I say yes or no.

13 Q. There's nothing in writing in the year 2010 where you
14 made a complaint about what you say these guys did.

15 A. No. And ---

16 Q. All right. There's nothing in writing in 2011 until
17 you filed your lawsuit on November the 4th, 2011. Yes or
18 no?

19 A. I had already -- sorry. I'm sorry.

20 Q. You need to say yes or no and then explain. There's
21 nothing in writing in 2011 until you filed your lawsuit on
22 November the 4th where you made any complaint about what you
23 say these guys did.

24 A. There is, sir. Yes, there is in writing what I
25 communicated with my lawyers way before then.

1 Q. Okay. We'll exclude that. There's nothing in writing,
2 other than what you claim you wrote your lawyer in 2009,
3 2010, or 2011, any of those three years, until you filed
4 your lawsuit on November the 4th, yes or no?

5 A. If there isn't, there isn't.

6 Q. Okay. All right. We'll look at what is in writing.
7 We're almost through.. Page 148. You with me?

8 A. Yes.

9 Q. All right. An email from you to Kaj [sic], about KVP
10 on March 3rd. Page 149, an email on March the 11th about a
11 heating and air bill. Page 150, an email on March 21st to
12 sell the house. Page 151, the house, right?

13 A. Yes.

14 Q. Now, if you would, look at the article, which is 158.
15 You see that?

16 A. Yes.

17 Q. You heard me say at the beginning that the reason you
18 filed this lawsuit is you saw this article. And, of course,
19 y'all deny that, right?

20 A. I heard you say that.

21 Q. You deny that, right?

22 A. Yes.

23 Q. It did come to your house.

24 A. It did.

25 Q. And it is strangely document number 1. You produced

1 three thousand, seven hundred and something documents in
2 this case. But this is number 1, document number 1. Look
3 at the bottom. Kaj, number 1. You see that?

4 A. Yes.

5 Q. That is the very first and most important document you
6 produced to you, right?

7 A. I don't know how they numbered these documents.

8 Q. Okay.

9 A. And it's not -- I don't know if it's the first one.
10 And this article -- when this article came out, in, I guess
11 it's in 2011, I've already retained my lawyers in the
12 July/August time-frame of the previous year. So this
13 article had nothing to do with the lawsuit.

14 MR. STEPHENSON: Your Honor, if you'll give me five
15 minutes, I may be through.

16 THE COURT: Three.

17 MR. STEPHENSON: Three?

18 (Pause)

19 MR. STEPHENSON: I'm through, Your Honor.

20 THE COURT: That's very impressive. No, you're not
21 done yet.

22 A. Oh, okay.

23 MR. GILREATH: Your Honor, I'm operating under the
24 distinct impression that we want a short redirect.

25 THE COURT: I would not limit you in your presentation

1 of your claim.

2 **MR. GILREATH:** I want to get to the next witness.

3 **THE COURT:** All right.

4 **Redirect Examination by Mr. Gilreath:**

5 Q. So I've just got a few questions here, Kaj. Did Krish
6 ever resign from VP Enterprises?

7 A. No, he did not.

8 Q. Now, this kind of came and went real quick, actually.
9 It kind of caught me off surprise. This lawsuit by Unifund
10 CCR Partners against you.

11 A. Right.

12 Q. I just want to be clear. Is that you or is that not
13 you?

14 A. It's the same name ---

15 Q. I know it's the same name.

16 A. That's not me.

17 Q. Do you have any knowledge of anything in this lawsuit?

18 A. No.

19 Q. Ever heard of it?

20 A. No.

21 Q. You never retained a lawyer for that or anything,
22 right?

23 A. No, that ---

24 Q. All right. The Rodney -- well, this lawsuit that he
25 was waving around up here, this twenty-five hundred dollar

1 Magistrate's case, I guess ---

2 MR. GILREATH: This is in the record, isn't it, Tom?

3 THE COURT: It's not an exhibit.

4 MR. GILREATH: Not an exhibit?

5 THE COURT: He used it for impeachment purposes.

6 Q. Let me show you here. The date it looks like they sent
7 the amended complaint was the second day of July, 2002. Did
8 you know there was an amended complaint in it?

9 A. No, I did not.

10 Q. Okay. At the time you signed that application, and
11 obviously there was nothing on it about this lawsuit, tell
12 the Court what memory, if any, you had of that lawsuit or
13 what discussions you might have had with that with Krish or
14 anybody.

15 A. I had no memory of that. We didn't have a discussion.

16 Q. Did you ever get any money from that lawsuit?

17 A. No, I did not.

18 Q. And that page that I showed you that was the writing of
19 somebody from Verizon where Mr. Rice's name came up, ---

20 A. Right.

21 Q. --- was that the first time you ever -- you recall the
22 lawsuit?

23 A. Yes, that was.

24 Q. I mean, obviously, you filed it, but that was the first
25 time you recalled it since then. Why did you -- he wanted

1 to make a big deal, it seemed to me like, because you
2 wouldn't talk to Vijay. And I don't want to rehash all
3 that, but just what was the basic reason you didn't want to
4 talk to Vijay or Krish anymore?

5 A. I was friends with his -- with him, you know. Our
6 families were very close. He was like a brother to me.
7 And, you know, Krish was like a son to me, just like my own
8 son.

9 And, you know, when I found this out, they betrayed my
10 trust. And, you know, you know, friends are like family to
11 me. I didn't have -- I don't have much family over here.
12 So, it's, you know, that was a pretty big blow to me. And I
13 didn't want to talk to him if he's, you know, I don't want
14 friends that betray me.

15 Q. Well, I was just getting ready -- because I wrote it
16 down and put it in quotes. You said, quote, they betrayed
17 my trust.

18 A. Right.

19 Q. What -- just briefly tell the Court what -- how much
20 you did trust these guys before this came up.

21 A. Well, I mean, trust is everything. That's why every
22 time they told me anything, I took that for face value, you
23 know. If I have any inclination, it would have been a
24 different thing. But, you know, if it was, you know, some
25 guy on the street, you know, but these guys, I trusted them,

1 you know. And ...

2 **MR. GILREATH:** I think I'll quit with that, Your Honor.

3 **THE COURT:** All right.

4 **MR. GILREATH:** We'll call Corby Phillips.

5 **THE COURT:** Okay.

6 **MR. STEPHENSON:** One thing.

7 **Recross Examination by Mr. Stephenson:**

8 Q. The credit card lawsuit, it says to Pankaj Patel, 23

9 Avens Hill Drive. That's you, right?

10 A. Yes.

11 Q. Okay.

12 A. I've never received that.

13 **THE COURT:** Okay.

14 **MADAME CLERK:** If you'll place your left hand on the
15 Bible and raise your right hand, please.

16 **Corby Phillips,** being
17 duly sworn testified as follows;

18 **MADAME CLERK:** Please state your name for the record.

19 **MR. PHILLIPS:** Corby S. Phillips.

20 **MADAME CLERK:** Thank you. You may be seated.

21 **Direct Examination by Mr. Gilreath:**

22 Q. Mr. Phillips, you live here in Grenville?

23 A. I actually live in Pickens.

24 Q. Okay. And what kind of business are you in?

25 A. I'm a sales manager, actually a sales rep for off-road

1 equipment.

2 Q. Okay. When did you first come to know Krish Patel?

3 A. I owned the Roly Poly sandwich shop on Woodruff Road.

4 I started in like '03, sold it in '05. And he worked at the

5 Verizon store next door. He was a customer there.

6 Q. Okay. So you got to know him coming and going through

7 the Roly Poly sandwich shop?

8 A. Correct, sir.

9 Q. What kind of a relationship did you have with him and
10 how did you get along with him?

11 A. It's funny how things come full-circle. I think I
12 first shook his hand because I thought he was stealing Coke
13 from me because I gave a deal to Verizon Wireless employees.
14 If they bought one glass a day, they could get as many
15 refills as they wanted.

16 I noticed I'd see him with a cup every day, but I
17 didn't see him at my counter every day buying a cup. So I
18 kind of got offended by that. And he came over and
19 apologized. And it's kind of a small thing, but it was the
20 principal of the matter.

21 Q. Okay. So he was getting Coca-Colas he wasn't paying
22 for, is that what I hear you're saying?

23 A. I can't prove that, but that's what my assumption was.

24 Q. Okay. And you talked to him about it?

25 A. Yeah.

1 Q. Now, did -- when did Krish Patel first approach you
2 about getting in the Verizon business?

3 A. I'd sold the restaurant in '05, was selling real estate
4 in '06 and part of '07. So I'd say it was around the first
5 quarter of '08.

6 Q. Okay. The first -- when did you say?

7 A. The first quarter of '08, probably around the March
8 time-frame.

9 Q. The March time-frame?

10 A. Yeah.

11 Q. March of '08. Can you -- was it -- can you say first,
12 middle or the last part of March?

13 A. I can't, Mr. Gilreath.

14 Q. Okay. And what -- had you been in any business
15 dealings with him other than selling food over there at Roly
16 Poly?

17 A. Yeah. I helped him with a couple of real estate deals
18 and his investment group to buy -- I'm not sure of the
19 address, but behind the Pizza Inn down there on Woodruff
20 Road, a couple of properties down there. And I helped him
21 facilitate those deals.

22 Q. And so some time in March you say he approached you
23 about some kind of Verizon business.

24 A. Correct.

25 Q. And just tell the Court, briefly as you can, what he

1 told you, how it was going to work.

2 A. He said he wanted to get a Verizon agency business and
3 had been denied previously and wanted to know if I wanted to
4 start up with him and make some money.

5 Q. What did he tell you about the previous denial?

6 A. Just that he was denied. And I assumed it was based on
7 because he was an employee of Verizon. But I think at that
8 time he was working for his father. I think a previous
9 employee. I don't ask -- I didn't ask why they denied.

10 Q. Okay. Did he tell you about Kaj Patel?

11 A. No. I didn't know Kaj until we met at the mediation.

12 Q. So the name Kaj Patel never came up?

13 A. I don't believe, so, no. I don't remember.

14 Q. How about VP Enterprises, did that name come up?

15 A. That was on the hard business plan that he handed to
16 me.

17 Q. Okay. Well, that's my next question. Did you -- look
18 in that red book there.

19 **MR. GILREATH:** Judge, I'm back in my red book now.

20 **THE COURT:** Yeah.

21 **MR. GILREATH:** You've got one, haven't you?

22 **THE COURT:** Yeah.

23 Q. Okay. Look at page -- wait just a second. Actually,
24 it's behind the first page on page 146, which is the -- you
25 see that?

1 A. Yeah.

2 Q. April 4th, 2008, Verizon Wireless Agency Business Plan,
3 Corby Phillips.

4 A. Correct.

5 Q. Now, how did you -- well, look at the next document
6 over on page 151. There's an email from -- it looks like
7 it's from you to Kelley Pearson, dated April the 5th. As
8 per our conversation you requested a business plan. Is that
9 an email you sent to them?

10 A. Yes, sir.

11 Q. Is this the email that you, I mean, the business plan
12 that you sent to Ms. Pearson, the one that's on page 146?

13 A. Yeah.

14 Q. And where did you get that business plan from?

15 A. Krish handed it to me in the hard copy.

16 Q. Did he give -- did it have your name already on it?

17 A. No.

18 Q. Did you have to retype it?

19 A. I retyped the entire thing and added some names that we
20 thought we could bring in later on for employees to make it
21 complete.

22 Q. Okay. Did he tell you where he got that business plan?

23 A. He said it was from a previous partnership.

24 Q. Okay. And if you look over on the last page of that
25 business plan, one page -- trial document 150, you've got

1 some names of some people. Why is Krish's name not on
2 there?

3 A. Because of the denial beforehand with the jeopardizing
4 of him being a Verizon employee, to not get it through.

5 Q. Okay.

6 A. Not get it approved.

7 Q. Was he worried about that?

8 A. He seemed so, yes.

9 Q. Okay. So what was the next -- let's see. Who handled
10 the communications with Verizon for the P -- well, I haven't
11 gotten to P Communications yet. What lawyer did you talk to
12 about helping you with this thing?

13 A. The business lawyer or ---

14 Q. Not the business plan, no. The entity that was going
15 to ---

16 A. Oh, it was Allan Hill. And Krish headed up that part
17 of talking to Allan Hill.

18 Q. Had you ever met Allan Hill before this?

19 A. No, sir.

20 Q. So he introduced you to Allan Hill?

21 A. Correct.

22 Q. And what did y'all do with Mr. Allan Hill?

23 A. He wrote the LLC. And he was supposed to supply a
24 contract for a partnership between Krish and I until we got
25 it up and going.

1 Q. Okay. What were your duties at P -- and so y'all
2 formed a corporation. What was the name of that corporation
3 going to be?

4 A. P Communications.

5 Q. Okay. Look over at page 152. We've got P
6 Communications, Inc., action taken by written consent by
7 incorporator. That's Rebecca Jones.

8 THE COURT: You talking about 156 or ---

9 MR. GILREATH: Yeah, 156. Yes, sir.

10 THE COURT: Okay.

11 Q. You were elected to the initial board of directors,
12 correct?

13 A. Correct.

14 Q. And then there's a document 155, if you flip over a
15 page, I believe. Do you see that? Initial annual report of
16 corporation?

17 A. Yes.

18 Q. And it shows you as the president, secretary and
19 treasurer.

20 A. Correct.

21 Q. And that was signed on April 25th, '08. And over on
22 page 156 are the articles of incorporation are dated April
23 28th. Is that the articles that Mr. Hill prepared for you?

24 A. It looks to be.

25 Q. All right. And then there's a set of bylaws.

1 **THE COURT:** You've got two 156's. Never mind.

2 Q. Let's go over to page 157. And there's a stock
3 certificate that was issued to you April 2008 for a hundred
4 shares. Is that your stock certificate?

5 A. I'm having trouble locating 157.

6 Q. Down at the bottom, there's number 157 right there.

7 A. 156.

8 **THE COURT:** It's 156 A, B, C, D, so keep going.

9 Q. Yeah. You got to keep going. 156 goes all the way
10 over to Y. We had to add some pages in there.

11 A. Okay.

12 Q. Keep going, you'll come back to 157.

13 A. All right. I got it.

14 Q. That's a stock certificate that has since been
15 cancelled, but it's dated July 2008. Who prepared that for
16 you? Mr. Hill?

17 A. Yes.

18 Q. Okay. And then there's a corporate data sheet. Who
19 prepared that and is that correct?

20 A. Is that page ---

21 Q. 157.

22 A. Yeah. That'd be Mr. Hill's Law Firm, yes.

23 Q. And that says that you were the president, secretary
24 and treasurer, correct?

25 A. Correct.

- 1 Q. And a set of organizational minutes for P
2 Communications run over through 158 through 162. Is that
3 your signature on 162, dated April 28th?
4 A. Yes, it is.
5 Q. Okay. And on page 160 it says appointment of officers.
6 And you were elected as president, secretary and treasurer?
7 A. Correct.
8 Q. All right. And how long were you the president,
9 secretary and treasurer of this corporation?
10 A. It looks like -- so that was April 28th until the --
11 November, November of '08.
12 Q. When do you think you got out as an officer?
13 A. The November time-frame of 2008.
14 Q. Okay. So did there come a time that you sold your
15 stock in this corporation?
16 A. Yes.
17 Q. Did there come a time that you sold part of your stock
18 or do you remember?
19 A. I sold it all at one time.
20 Q. And who did you sell it to?
21 A. Mr. Patel.
22 Q. And when did you resign your offices in the
23 corporation?
24 A. That'd be the same date as the sold stock.
25 Q. All right.

1 A. I'm sure you have that in here.

2 Q. I'm going to show you that document in a moment. Look
3 over on document number 171. This is actually taken by
4 written consent of all the directors. P Communications,
5 Inc., a two-page document.

6 And it says, whereas, Corby S. Phillips wishes to
7 transfer his one hundred shares of corporate stock back to
8 the corporation and wishes to resign as an officer and
9 director of the corporation. And it's dated the 15th day of
10 December 2008. Would that be the date that you resigned and
11 sold your stock?

12 A. I believe so, yes.

13 Q. And you were out of the -- would that be the date you
14 were out of the corporation?

15 A. Correct.

16 Q. All right. Now, And were you out before then?

17 A. Out of the corporation? I don't believe so, no.

18 Q. All right. So let me show you a document here that --
19 this is on page 163. Now, this is a document to the South
20 Carolina Department of Revenue for P Communications, Inc.
21 And it's got some stuff there in the middle.

22 A. Uh-huh (affirmative).

23 Q. And then it's signed at the bottom by, what I -- do you
24 recognize that signature?

25 A. I can only assume it's Krish Patel there.

1 Q. And Krish Patel is telling the Department -- what did
2 he sign that as?

3 A. It looks like president to me.

4 Q. And what date did he tell the Department of Revenue
5 that he was the president?

6 A. 9/19/08.

7 Q. In your opinion, was that correct?

8 A. No.

9 Q. You hadn't resigned at that date, right?

10 A. That's correct.

11 Q. And look up above that. Does that look -- whose
12 handwriting is that on this form?

13 A. I don't know.

14 Q. Okay. Is it yours?

15 A. No. Mine's much messier than that.

16 Q. Have you ever seen that form before?

17 A. No, not to my knowledge.

18 Q. Did you give -- what permission, if any, did you give
19 Mr. Patel to file a form with the South Carolina Department
20 of Revenue, which contained incorrect information?

21 A. I never verbally gave him permission to submit
22 documents. I believe at this time he was acting as director
23 of operations, though.

24 Q. Okay. But he was not the president? You had not
25 resigned?

- 1 A. No, I had not.
- 2 Q. And he says there that he's got seven percent of the
3 stock. You see that?
- 4 A. Yeah, I do. Yeah.
- 5 Q. Okay. On September the 19th, was that a correct
6 representation?
- 7 A. That was part of the negotiation of the contract that
8 Allan Hill was supposed to be drawing up to where I was
9 going to own seven percent, but that -- at the time of this
10 document, it looks like I would have had one hundred percent
11 still.
- 12 Q. Okay. What document, if any, can you recall that you
13 had in your possession on September the 19th that would have
14 given Krish Patel the right to say he had seven -- that you
15 had only seven percent of the stock?
- 16 A. None, as far as official stock pledges or anything
17 then.
- 18 Q. All right. Let's look over here at another document
19 dated -- this is on page 164. Collection by Small Business
20 Corporation, form 2553, dated December 4th, '08. And it
21 says, under penalties of perjury, I declare that I have
22 examined this election including the company's schedule and
23 to the best of my knowledge and belief it is true, correct
24 and complete. Whose signature does that appear to be there?
25 It's signed by the president for P Communications.

1 A. It appears to match the one on 163, which is Krish
2 Patel.

3 Q. All right. And that's dated on December 4th. Now, on
4 December 4th, look over on the next page and the form
5 indicates that he's telling the IRS that he acquired some
6 stock on September the 1st of '08, and that he owns sixty
7 percent of the stock and Mr. Gailey owns sixty percent of
8 the stock.

9 Now, I showed you that other document where you got
10 out. So did you give him any permission to tell -- what
11 permission, if any, did you give him to tell the IRS under
12 penalties of perjury that he owned sixty percent of this
13 corporation as opposed to what was seven percent back there?
14 What permission, if any, did you give him to make this
15 apparently -- this improper representation to the Internal
16 Revenue Service?

17 A. None.

18 Q. Okay. All right. Now, there has been some testimony
19 here earlier about a loan with BB&T where I think it was
20 sixty thousand dollars, sometime -- I think it was in
21 August. And I'll just represent to you -- well, let me just
22 ask you this first. What, if anything, do you know about
23 that loan?

24 A. I don't know of a loan.

25 Q. You don't know anything about it?

1 A. I know Krish had money from, I guess, the previous
2 partnership or wherever it was coming from. The only thing
3 we did with a bank was a Wachovia checking account on
4 Woodruff Road. I don't know where the money that funded
5 that checking account came from.

6 Q. What, if any -- let me show you -- what do you know, if
7 anything -- you don't -- what, if anything, do you know
8 about a note to BB&T?

9 A. I don't recall anything, Mr. Gilreath.

10 Q. Do you know anything about him signing a note to BB&T
11 for sixty thousand dollars and signing it as president?

12 A. I don't recall. I don't believe so.

13 Q. Okay. Now, there has been some testimony here before
14 you got here that Kaj Patel said Krish finally got him out
15 of the corporation and that he paid you a lot more than your
16 stock was worth. But he told Kaj that he paid you thirty
17 thousand dollars. Now, would you please tell the Court what
18 he actually paid you.

19 A. Fourteen thousand.

20 Q. And how did he pay you?

21 A. One hundred dollar bills.

22 Q. Fourteen thousand dollars in one hundred dollar bills.
23 And where did that transaction come down?

24 A. Allan Hill's office.

25 Q. Okay. And was Allan -- who was in the room when this

1 fourteen thousand dollars, money that Krish came up with,
2 got counted out?

3 A. Allan, Krish and I. And Allan was over at his desk.

4 Q. Okay.

5 A. We were at his conference table.

6 Q. Once P Communications got started, what was going to be
7 the deal you had with Krish?

8 A. I retain seven percent of the company after we could
9 bring him in and he becomes director of operations, and I
10 was kind of an inactive, silent partner. And my revenues
11 from the business would be reinvested in the company for the
12 first year per store.

13 And I could be bought out at a later time, but that was
14 not negotiated at that time. And we kept going back and
15 forth on the contract that Allan Hill was supposed to be
16 preparing for us. And it never came out with all the stuff
17 I wanted in it, so it stalled. And it never came about.

18 Q. And -- you were talking kind fast when you said that
19 percent. I just want to be sure the record's clear. You
20 said ---

21 A. Seven.

22 Q. Seven percent?

23 A. Yeah.

24 Q. Okay. Sounded like you said seventy percent. So the
25 deal was you were -- you were -- it was seven percent you

1 and ninety-three percent him, correct?

2 A. And Mr. Gailey was in on that, too.

3 Q. Mr. Gailey?

4 A. Yeah.

5 Q. Did that deal ever happen or did you just get bought
6 out? What happened?

7 A. Like I say, I asked for some changes to the contract
8 from Mr. Hill. And it got stalled. And I never saw the
9 contract with the provisions that I wanted in it. And I
10 kept on getting pressure from Krish just to buy me out. And
11 I eventually gave in and sold out.

12 Q. And so you were bought out of this corporation on
13 December -- let me show you that document.

14 A. You said the 15th, I think.

15 Q. December the 15th, 2008, is that correct?

16 A. Yes, sir.

17 Q. And you were totally out of the business and you were
18 gone?

19 A. Correct.

20 Q. All right. Hold on.

21 (Pause)

22 Q. Look at page 263 there in that book. That's the note I
23 was referring to, the sixty thousand dollar note. And that
24 note is dated August the -- let me see if I can find the
25 date on it. August 25th, 2008. And it's signed Krish Patel

1 as president and Keith Gailey as vice president. Based on
2 the documents I had shown you here today, could you tell the
3 Court who was the president of that corporation at the time
4 that note was signed?

5 A. That would be me.

6 Q Did you give him any authority to go out and tell the
7 bank that -- represent to the bank, a federal lending
8 institution, that he was the president of that corporation?

9 A. I do not believe so.

10 (Pause)

11 Q. I think that's all the questions I've got. Mr.
12 Stephenson may have a few questions for you.

13 **Cross Examination by Mr. Stephenson:**

14 Q. Mr. Phillips, I have just a few questions. From day
15 one you were something of a silent partner, right?

16 A. Correct.

17 Q. And you didn't put any money in it.

18 A. No. My seven percent was just to be reinvested after
19 each store for a year.

20 Q. Okay. But you never put a dollar in ---

21 A. No.

22 Q. --- the company. And Krish did all the work.

23 A. No. I looked at some locations, worked on the business
24 plan.

25 Q. After that, he did all the work.

1 A. Most of it, yes.

2 Q. And the intent all along was first he'd be ninety-three
3 percent, you'd be seven percent. That's what it was from
4 day one.

5 A. I think Mr. Gailey was in there at the sixty/forty and
6 I was seven.

7 Q. But you'd be seven percent.

8 A. Yeah.

9 Q. And the date that you got bought out, there was a piece
10 of paper signed at Allan Hill's office on November the 18th.
11 That's when you got the fourteen thousand dollars.

12 A. Yeah. That could be because that's when I -- but I
13 don't understand why the document then says the 15th. I
14 don't know.

15 Q. A lot of times documents are done after the fact.

16 A. Okay. Well, then that's why I said November 1st.

17 Q. But there was a piece of paper signed at Allan Hill's
18 office when you got your fourteen thousand dollars.

19 A. Correct.

20 Q. And Krish's job was to deal with the banks and deal
21 with Verizon.

22 A. As director of operations he was doing the store
23 locations and all of that, yeah.

24 Q. And, of course, he was going to become a larger owner
25 than you from day one.

1 A. Correct.

2 Q. That's all I've got.

3 **THE COURT:** All right. Thanks. You can step down.

4 Can we release him?

5 **MR. GILREATH:** Yes. Your Honor, we've got two -- I
6 don't know how long -- I've got two short video deposition
7 clips I want to play of Vijay and Krish. And then I intend
8 to call Mr. Freeman. We can either play those tonight or we
9 can stop and play them in the morning, and bring him in.
10 Whatever you want to do.

11 **THE COURT:** What's short?

12 **MR. GILREATH:** The shortest will be ---

13 **THE COURT:** Well, I mean how many minutes?

14 **MR. GILREATH:** They're probably -- I watched them the
15 other day. They're probably at least -- by the time we get
16 -- probably thirty, forty minutes by the time we play both
17 of them.

18 **THE COURT:** Well, we'll just wait until tomorrow
19 morning, I guess. Is that all right?

20 **MR. GILREATH:** I'm tired. That would suit me fine.

21 **THE COURT:** Okay. 9:30. See y'all tomorrow.

22 **MR. GILREATH:** 9:30. Thank you, Judge.

23 (Whereupon court was in recess at 4:58 pm)

VIDEO DEPOSITION OF KRISH PATEL

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1 **Tuesday, July 22, 2014:**

2 (Whereupon court reconvened at 9:55 am)

3 **THE COURT:** Thank you. Please be seated. Okay. Y'all
4 want me to watch this?

5 **MR. GILREATH:** Yes, Your Honor. Your Honor, I've got
6 -- I don't know whether you want it now or not, but we've
7 got the original of these. And I've also got a -- one of
8 these little condensed copies that's marked in yellow and
9 red, who designated what.

10 **THE COURT:** Okay.

11 **MR. GILREATH:** The red is Tom's and the yellow's mine.

12 **THE COURT:** There some significance in the color coding
13 on this or is it ---

14 **MR. GILREATH:** I'm just trying to keep him red and I'm
15 trying to stay yellow or green.

16 **THE COURT:** All right.

17 **MR. GILREATH:** I can't get over there. I'm going to
18 have to do something -- all right. We'd offer into evidence
19 the excerpts of the video deposition of Krish Patel taken on
20 November 9th of 2012.

21 (Whereupon Plaintiff's exhibit 518 was marked for
22 identification)

23 (Whereupon the video deposition of Krish Patel was
24 played for the Court)

25 (Whereupon the video was ended)

1 **MR. GILREATH:** Your Honor, that's the end of his. I'll

2 just go ahead and roll on to the ---

3 **THE COURT:** Okay.

4 **MR. GILREATH:** The other one's real short.

5 **THE COURT:** Okay.

6 (Whereupon the video deposition of Vijay Patel, marked
7 also as Plaintiff's exhibit 518, was played for the court)

8 (Whereupon the video was ended)

9 **MR. GILREATH:** That's all, Your Honor.

10 **THE COURT:** Okay. What's next?

11 **MR. GILREATH:** We're going to call Professor John
12 Freeman.

13 **THE COURT:** All right. Why don't we just take about a
14 five to ten minute break.

15 **MR. GILREATH:** Thank you.

16 (Whereupon court was in recess at 10:41 am)

17 (Whereupon court reconvened at 10:50 am)

18 **THE COURT:** You ready?

19 **MR. GILREATH:** Yes, sir.

20 **THE COURT:** Okay.

21 **MR. GILREATH:** The Plaintiff would call John Freeman as
22 the next witness.

23 **THE COURT:** All right. We got any stipulations about
24 his qualifications?

25 **MR. STEPHENSON:** Your Honor, if they want to put in

1 Professor Freeman's resume or anything like that, you've
2 heard him testify numerous times, I'm sure. I stipulate
3 that Professor Freeman is a renowned expert who has
4 testified repeatedly in the South Carolina courts.

5 **MR. GILREATH:** Your Honor, ---

6 **THE COURT:** In what?

7 **MR. GILREATH:** --- we've got his CV. I don't have it
8 right handy, but ...

9 **THE COURT:** Expert in what?

10 **MR. STEPHENSON:** Well, that's what I don't know.

11 **THE COURT:** All right. I'm sorry to interrupt. Go
12 ahead.

13 **MR. GILREATH:** Your Honor, we'll get a CV and put it
14 in. I may have it here somewhere. Here's a book that we've
15 got fixed. We found out that ---

16 **THE COURT:** Another one.

17 **MR. GILREATH:** No, actually the pages were missing, the
18 wrong order. So you need to switch that out with your white
19 book or you can keep both of them, whichever ---

20 **THE COURT:** No, no.

21 **MR. GILREATH:** You probably need more paper like I do.

22 **John Freeman,** being duly
23 sworn testified as follows;

24 **MADAME CLERK:** Please state your name for the record.

25 **PROFESSOR FREEMAN:** John Patrick Freeman, F-r-e-e-m-a-

1 n.

2 **MADAME CLERK:** Thank you. You may be seated.

3 (Whereupon Plaintiff's exhibit 517 was marked and
4 admitted into evidence)

5 **MR. GILREATH:** Judge, this is just an exhibit with his
6 interrogatory.

7 **Direct Examination by Mr. Gilreath:**

8 Q. Professor Freeman, please state your name and address
9 for the record.

10 A. John Patrick Freeman, 2329 Wilmot, W-i-l-m-o-t, Avenue,
11 Columbia, SC 29205.

12 Q. Okay. I have handed you what's been marked as our
13 Plaintiff's exhibit, I'm not sure what number.

14 **MADAME COURT REPORTER:** 517.

15 **MR. GILREATH:** 17?

16 **MADAME COURT REPORTER:** 517.

17 Q. 517, which would be Plaintiff's exhibit, which is
18 Plaintiff's second supplemental response to Defendant's
19 first set of interrogatories to the Plaintiff. Do you see,
20 starting at the bottom of page 2, a summary description of
21 the scope of your testimony?

22 A. Yes, sir.

23 Q. Please read that into the record.

24 A. Professor Freeman may express his professional opinions
25 concerning the behavior of Krish Patel and his father, Vijay

1 Patel, in the light of the facts of this case with
2 particular attention to the fairness and reasonableness of
3 Krish Patel's conduct toward the Plaintiff as a promoter,
4 business manager and corporate control person in developing
5 and exploiting the business opportunity involving the
6 establishment and operation of retail wireless communication
7 stores under the auspices of, excuse me, Verizon Wireless
8 Communications.

9 It is believed that Professor Freeman will testify that
10 the behavior of Defendant, Krish Patel, vis-a-vis,
11 Plaintiff, was unreasonable and unfair in light of the facts
12 of this case due to Krish Patel engaging in various wrongful
13 acts and omissions.

14 Q. Professor Freeman, have you prepared yourself to
15 testify as an expert witness here today?

16 A. I have.

17 Q. In your preparation to testify in this matter have you
18 conducted the kind of investigation that is common for
19 experts in your field testifying in cases such as this?

20 A. Yes, sir.

21 Q. Are you here today to express a legal conclusion?

22 A. I am not.

23 Q. What are you here to do today?

24 A. As indicated by the interrogatory answer, I'm here to
25 express opinions concerning the behavior and standard of

1 conduct of Vijay and Krish in their dealings with the
2 Plaintiff concerning this Verizon Wireless opportunity with
3 particular emphasis on evaluating their handling of the
4 business opportunity, their behavior in terms of candor,
5 honesty, full disclosure, fairness toward their fellow
6 venturer and investor.

7 **THE COURT:** Before you go any farther, let's, just for
8 the record, clear up what he's being qualified as an expert,
9 how he's being qualified as an expert. Have y'all come to
10 some consensus on that so the record is clear?

11 **MR. STEPHENSON:** No, Your Honor, I don't see this as an
12 expert case. He's getting ready to testify about the
13 ultimate facts in this case. He's going to testify that he
14 concludes somebody did something. That's not the proper
15 province of an expert, that's a fact-finder.

16 He's already excluded himself from testifying about
17 legal opinions, which he can't do. So he can try to put him
18 in, but I don't think this is an expert case. I don't see
19 how he can testify in this case.

20 **THE COURT:** Well, that's why we've got to get this
21 cleared up before we go any farther. How are you tendering
22 -- in what field are you tendering him as an expert?

23 **MR. GILREATH:** We can offer him as an expert in the
24 field of the standard of conduct for promoters and business
25 managers and corporate controlled persons in factual

1 settings involving business opportunities and establishing
2 an operation of business entity. We offer him as qualified
3 to give opinion testimony concerning the fairness and
4 reasonableness of such conduct and as to the matters listed
5 in the interrogatories.

6 **MR. STEPHENSON:** Can I have some voir dire about that,
7 Your Honor?

8 **THE COURT:** Certainly. Yeah.

9 **MR. STEPHENSON:** All right.

10 **THE COURT:** Okay.

11 **Voir Dire by Mr. Stephenson:**

12 Q. Professor Freeman, let's see if we can agree on a
13 couple of things. First of all, you agree with me that the
14 province of an expert is not to be an advocate?

15 A. Only in this respect, generally, yes, but I want to
16 explain. If the expert has formed opinions and comes to
17 court to express those opinions, the expert in a sense is
18 advocating the opinions truthfully and honestly held by the
19 expert. To that extent there is -- the expert is
20 advocating, but the true legal advocates in the case are the
21 lawyers and not the expert.

22 Q. All right. I think we agree on that. You agree with
23 me -- let's take the past five years. The past five years
24 you've not formed an entity of any type, that would be an
25 LLC, a corporation, a closed corporation, C corporation or

1 any other entity? You've not been involved in the formation
2 of such an entity in the past five years?

3 A. Not such an entity. I think I did in the last five
4 years set up an insurance trust for my family.

5 Q. All right. But other than that, nothing in the last
6 five years? You've not advised anybody on setting up an
7 entity in the last five years?

8 A. I don't believe so.

9 Q. Well, let's go back ten years. You've not advised
10 anybody on setting up an LLC, a closed corporation, a
11 corporation or an entity in the last ten years?

12 A. I don't believe so.

13 Q. Well, let's go back twenty years. Let's go back --
14 it's now 2014, let's go back to 1994. Since 1994 you've not
15 been advised -- you have not advised anybody on setting up
16 any entity, period, other than I think you helped Ken Childs
17 set up a law firm?

18 A. Right. And I've set up an LLC for myself.

19 Q. For yourself. So in the past twenty years you've not
20 advised anybody who was a promoter in setting up an entity,
21 anybody who was potentially an officer setting up an entity,
22 anybody who was potentially a stockholder in setting up an
23 entity in the past twenty years, right?

24 A. I don't believe so since ---

25 Q. Well, ---

1 A. I'm just trying to do the math. Since '95, I don't
2 believe so.

3 Q. All right. Now let's go back further than that. It's
4 true, isn't it, you have never, other than what you've
5 mentioned, set up an LLC in South Carolina? Never?

6 A. Just my own.

7 Q. Your own. You've already mentioned that. You've never
8 set up a South Carolina closed corporation, ever?

9 A. I don't believe I have.

10 Q. You have never set up a South Carolina corporation?

11 A. That's not true. I had a PA at one point, which was a
12 South Carolina ---

13 Q. Your own PA. Your own PA.

14 A. And I think that Ken Childs -- I forget the entity. I
15 think it was a PA at the time I set it up.

16 **MR. STEPHENSON:** Well, Your Honor, I would submit he's
17 not qualified to testify of what he just said he was going
18 to testify about. He's not set up a South Carolina
19 corporation ever as near as I can determine. I think he
20 started at the University of South Carolina in 1997 as a
21 professor. And ---

22 A. '73, sir.

23 **MR. STEPHENSON:** --- how is he going to give ---

24 **THE COURT:** '73. You've got to get your facts
25 straight.

1 **MR. STEPHENSON:** '73. Even longer than that. I was a
2 high school student back then.

3 **THE COURT:** No, you were not in '73.

4 **MR. STEPHENSON:** I was just out.

5 **MR. GILREATH:** You look a lot older than that.

6 **MR. STEPHENSON:** Your Honor, I would submit he's not
7 qualified to testify in this case.

8 **MR. GILREATH:** Your Honor, we're not offering him about
9 how we should have set the thing up. We're asking -- we're
10 offering him as an expert on the standard of conduct, of
11 what people are supposed to do as a promoter, what conduct
12 is expected of them in this State or generally anywhere.

13 **THE COURT:** Okay. Well, actual experience in a field
14 is not the only underlying qualification to be qualified as
15 an expert. Now if you wanted to go through his past
16 experience. He was qualified less than a month ago in this
17 building as a ---

18 **MR. STEPHENSON:** Against lesser lawyers who didn't
19 raise the proper objections.

20 **THE COURT:** All right. Over your objection I'm going
21 to qualify him.

22 **MR. STEPHENSON:** All right.

23 **Direct Examination by Mr. Gilreath Continued:**

24 Q. Mr. Freeman, how would you categorize the relationship
25 between Krish Patel, Vijay Patel and Kaj Patel in connection

1 with the establishment ---

2 **MR. STEPHENSON:** I would object to that. That goes --
3 that's a legal conclusion. He's getting ready to say they
4 were promoters or something. That is a legal conclusion.

5 **THE COURT:** Well, I'm going -- over your objection, I'm
6 -- I don't think ...

7 **MR. GILREATH:** I'm just talking about the relationship.

8 **THE COURT:** Yeah, he's just going to describe the
9 relationship between the three persons. Okay. Go ahead.
10 A. I believe that they were co-participants in the
11 promotion of VP Corporation. I believe that in that
12 activity they functioned as, I've heard the term in this
13 courtroom, partners, and in the sense that it was a partner-
14 like relationship as joint venturers in the handling of that
15 process.

16 I believe as well that they were co-investors and they
17 were participants in the control of the venture as they were
18 forming it and as it became formed. And by that I point to
19 things such as shared ownership with Kaj having ownership.
20 And we just heard testimony from Vijay that he had half of
21 the ownership with his son. So they're co-investors.

22 We've heard time and again about Krish being the
23 general manager and an officer. And we know that Krish and,
24 excuse me, Kaj and Vijay were also directors of the
25 business. And it looks to me like they were functioning as

1 a unit all with a common purpose and aim of setting this
2 enterprise up and seeing it flourish.

3 Q. Now you've mentioned co-investors and co-promoters.
4 Why that term?

5 A. Because they were -- we've already heard testimony
6 about stock ownership being split between Kaj and the other
7 two. So that means co-investors. And what was your other
8 question, co-promoters?

9 Q. Yes.

10 A. Because they were all participants in the promotional
11 process. And we've heard testimony at length about the
12 development of the business plan, the submission of the
13 business plan, the seeking of the letter of credit, the
14 infusion of cash into a bank account and everybody pulling
15 together. And so that's what promoters do in seeking to
16 form and start up a business.

17 Q. You heard the question on the video by Vijay about how
18 he -- well, his stock ownership with Krish. Is that of any
19 importance in your opinions?

20 A. Well, it shows that Krish is not just an officer and
21 not just a general manager, but is also an equity holder in
22 the business just as Kaj is.

23 Q. Do you attach any significance to the fact that Krish
24 was identified on the business plan as VP's general manager
25 and also in charge of sales and operations?

1 A. Yes, I do.

2 Q. Explain your answer.

3 A. I consider it highly important. And the reason I
4 consider it highly important is because it's recognized that
5 if you're the manager of an enterprise, a lot is expected of
6 you. And it's been said that as to people who are in
7 charge, people who are in control, who are, as Kaj said, the
8 eyes and ears of the enterprise as Krish was, the rules of
9 fair dealing and full disclosure and loyalty are relentless
10 and supreme. And that's what I taught my students and
11 that's what I believe.

12 Q. And in your teaching about business formation did you
13 analyze and explain to your students about the standard of
14 conduct owed by promoters and managers?

15 A. Yes.

16 Q. In your own words define that standard of conduct.

17 A. In my estimation there's a duty of care and there's a
18 duty of loyalty. And this case is very much a duty of
19 loyalty case. And loyalty calls for full disclosure. It
20 calls for honest dealings. It deals -- it calls for candor..
21 It calls for no concealments, fair treatment and no hip-
22 pocketing, as I called it when I was a teacher, of
23 opportunities that properly belong to the venture.

24 Q. In your opinion was the nature of the relationship
25 between Krish and Kaj and Vijay pre-incorporation?

1 A. Is there a question there?

2 Q. What would -- yeah. Excuse me. What was the opinion
3 -- in your opinion what was the nature of the relationship
4 between Krish and Kaj and Vijay in the pre-incorporation
5 stage?

6 A. They were co-promoters in the set-up of the business,
7 co-promotion being a type of joint venture arrangement,
8 partner-like where there's full disclosure obligations.
9 There's loyalty obligations. There's no taking an unfair
10 advantage. There's no concealments, straight-up dealing,
11 one for all, all for one, and it's got to be fair.

12 Q. In your opinion what was the nature of the relationship
13 between Krish and Kaj and Vijay in the post-incorporation
14 stage?

15 A. The same thing in my estimation. For one thing, the
16 start-up of the business hadn't really started up. The
17 business had been formed, but it had not yet gotten over the
18 hump in the sense of being qualified as a Verizon store
19 operation. But that opportunity was out there.

20 And the business existed -- and the business -- I just
21 don't see Krish's duties in particular changing. And the
22 reason is he had a duty of candor, full disclosure of
23 loyalty and fairness as a promoter, and he was also a
24 general manager of the business.

25 And, as I said, if you're a general manager of the

1 business, much is expected of you. And we just had a video
2 tape and I wrote down his explanation of what he was. And
3 he said he -- he had the brains, he had the experience, he
4 had the knowledge, he had the expertise, he had four years
5 retail experience, I was the one who made it all happen.

6 And he -- that was just a partial list. I didn't get
7 it all down, but clearly a lot is -- if you have all that
8 going for you, a lot is expected of you. And the question
9 is did he handle his role in discharges, duties properly? I
10 didn't see any significant difference in the duties pre and
11 the post.

12 Q. Okay. Were all of the joint ventures alike in the
13 nature of the duties owed?

14 A. Well, I just commented on that. I don't -- I think
15 more is expected of Krish for the simple reason that he was
16 -- he was the spearhead. He was the one who was trusted to
17 interface. He was the one who interfaced with the bank. He
18 was the one who interfaced with Verizon.

19 He is the one that people looked to for this special
20 expertise. And he claimed he had it and they were right to
21 look to him for discharging his jobs in that regard. The
22 question is did he do it fairly and honestly?

23 Q. Now you've been mentioning the term of joint venture.
24 Why are you using that term?

25 A. Because that's what you are if you're a co-promoter of

1 a business. You're in a venture where you owe a duty of
2 loyalty to your other co-venturers who have reposed trust
3 and confidence in you. And that's what was going on here.
4 They were agents of each other. They were working together
5 for a common end. And a lot was expected of each of them
6 when it comes to honesty in fair dealing and integrity.

7 Q. You used the term venture. What was the nature of the
8 venture in your opinion?

9 A. To establish a Verizon operation and to do multiple
10 stores, just what Krish did under the name of P
11 Communications.

12 Q. If the duties owed were partner-like, how could Krish
13 have a heightened standard of conduct in your estimation?

14 A. Because that's the way it works. Go back to the
15 Meinhard case where you had Salmon who was the managing
16 joint venturer is what that was. That's what Cardozo --
17 called it a joint venture. He said as to people who are
18 managers, they're held to specially high standard. And
19 that's where the relentless and supreme duty of candor and
20 honesty and fair dealing comes from. It's his terms,
21 relentless and supreme. Famous case. It's in all the
22 books.

23 Q. Okay. How long in your opinion does this obligation of
24 good faith and fair dealing owed by the promoter last?

25 A. It lasts -- we've got a marker in South Carolina called

1 Bivens. And the Bivens case suggests formation and start-
2 up. This business was formed and it was at the start-up
3 stage. And when Krish decided, quote, his phrase was case
4 closed, unilaterally. And I would beg to differ.

5 I didn't think the case was closed. I think that the
6 case -- that the venture was still alive and it actually
7 continued in business for a couple of years, I believe.

8 Q. Do you have an opinion of whether the rejection by
9 Verizon under the application submitted by VP freed Krish to
10 compete with Kaj?

11 A. Yes.

12 **MR. STEPHENSON:** I'm going to object to that. That's
13 the ultimate question.

14 **THE COURT:** Yeah. I think that is asking for a legal
15 conclusion.

16 Q. Okay. Have you reviewed or familiar with the rejection
17 letter ---

18 A. Yes.

19 Q. --- and the wording of the rejection letter?

20 A. Yes.

21 Q. Is there any language in the rejection letter that ---

22 **MR. STEPHENSON:** Again, I object, Your Honor.

23 **MR. GILREATH:** Let me ---

24 **THE COURT:** Wait a minute. Let him finish.

25 **MR. STEPHENSON:** Okay.

1 Q. Is there any language in the rejection letter that was
2 important to you in reaching any of your conclusions here?

3 A. Yes.

4 **THE COURT:** Wait a minute. Do you want to object?

5 **MR. STEPHENSON:** I can't understand how this is apropos
6 to anything. Is there any language in the rejection letter
7 that ---

8 **THE COURT:** Well he can testify to what he relied on to
9 come to his conclusions ---

10 **MR. STEPHENSON:** All right.

11 **THE COURT:** --- that rendered his opinions.

12 **MR. STEPHENSON:** Okay.

13 Q. Do you need to see it, professor?

14 A. No, I know -- I know the letter.

15 Q. Tell the Court what language here you're talking about.

16 A. It said that the application has been denied and that
17 it says something like at this time or it ---

18 Q. Let me hand it to you. That's exhibit ...

19 **THE COURT:** 19, I think.

20 **MR. GILREATH:** I should have had it up here. Here it
21 is.

22 Q. You've got a green book up there. Professor, it's on
23 page -- it's 145 in the green book, February the 26th, 2008
24 letter.

25 **THE COURT:** What now? Page what?

1 **MR. GILREATH:** 145. It ought to be in the white and
2 the green book.

3 **THE COURT:** In the green book?

4 **MR. GILREATH:** Page 145. Don't tell me you don't have
5 that. You don't have a green book.

6 **THE COURT:** I've got 145 as the Verizon agent business
7 plan.

8 **MR. STEPHENSON:** Your Honor, if you'll look, he's got
9 blue and green confused. If you'll look -- it's in the blue
10 book at 145.

11 **MR. GILREATH:** You mean it's not in the green book?

12 **THE COURT:** Well, you've got two -- you've got several
13 page 145's.

14 **MR. STEPHENSON:** It's 145 in the blue book, I can
15 assure you. Or 103 at the top. 103 at the very top.

16 **THE COURT:** Okay. All right. Okay, go ahead. We got
17 it.

18 **MR. STEPHENSON:** Plaintiff's exhibit ---

19 **THE COURT:** We got it, we got it, we got it.

20 Q. You got it, professor?

21 A. I got it.

22 Q. Okay. Just so -- okay.

23 **THE COURT:** As a matter of fact, I have the blue book
24 and the green book right in front of me. So there's no
25 favoritism here.

1 Q. If you would, Professor Freeman, just read that part of
2 the letter into the record so ---

3 A. Yeah, here it is. After careful review of your
4 application we are unable to proceed with an authorized
5 agency agreement at this time. And those three words, at
6 this time, I did attach significance to.

7 Q. And just describe what -- in what regard -- you got
8 anymore to say about that?

9 A. Same thing as a dismissal without prejudice. That
10 means you're still in the game. Instead of retreat, reload
11 and get going because the game is still on. At this time
12 means that there's ---

13 MR. STEPHENSON: Your Honor, now he's ---

14 A. --- there may be ---

15 MR. STEPHENSON: Your Honor, objection. Now he's
16 opining on the English language. I don't think that's a
17 proper ---

18 THE COURT: We all do that. I'm going to -- your
19 objection's noted. I'll let him -- okay.

20 A. I took that as something not -- that doesn't say case
21 closed, it says case may be continued without prejudice.
22 And the question then is what do we have to do to get this
23 fixed? That's my interpretation in light of my knowledge,
24 background, training and experience.

25 Q. Okay. Do you have an opinion of whether Krish Patel

1 breached the obligations he owed Kaj?

2 A. Yes.

3 **MR. STEPHENSON:** I object. That's the ultimate
4 question, whether Krish Patel breached his obligation.

5 **MR. GILREATH:** Well, I'm talking about his conduct. I
6 mean, I'll rephrase it. Maybe he'll like this better.

7 Q. Do you have an opinion regarding Krish Patel's conduct?
8 That's what he's talking about.

9 A. Yes.

10 Q. And what is that?

11 A. That as in a malpractice case where a lawyer fails to
12 measure up to the appropriate standard, I believe here that
13 his conduct was below the standard. And I'd like to explain
14 my answer.

15 Q. Yeah, please explain that.

16 A. He put himself and allowed himself to be in a position
17 where much was expected of him. He got in the venture. He
18 took all the credit for being the eyes, the ears, the
19 brains, the man with the knowledge, the man with the
20 expertise of that venture, and he went out and sought to
21 launch that venture.

22 And that venture sputtered.. It had its -- it got
23 slapped. Just like you might have somebody get their visa
24 -- application for a visa turned down. We've all been there
25 where we've wanted to do something, needed permission and it

1 didn't happen right away. But we went back and it happened.

2 I don't view this turn-down as the last word, he did.

3 I believe that was an error on his part. He -- we've heard

4 him testify time and time and time again. We've seen it on

5 the screen, this is my plan, basically I am it, it's all

6 about me, it's all about Krish. And I respectfully

7 disagree.

8 I think that that's not keeping with the appropriate

9 standard. I think that that is below the standard. I think

10 that that is conduct that is disloyal, self-centered, greedy

11 and inappropriate for somebody that's in his position.

12 I take into account in offering this position that

13 Attorney Hill was testifying in this case and testified that

14 when it came to P Communications ---

15 **THE COURT:** Wait a minute. I haven't -- Allan Hill has

16 testified?

17 **MR. GILREATH:** No.

18 **THE COURT:** In a deposition?

19 A. I read his deposition, which I rely upon.

20 **THE COURT:** Okay.

21 **MR. GILREATH:** Deposition.

22 A. I'm just relying upon it as an expert. But it was very

23 telling to me.

24 **THE COURT:** Okay.

25 A. Because what he said was as to Kaj knowing about P

1 Communications, he said it never even occurred to him, he
2 said it twice, it never even occurred to him that Kaj didn't
3 know about P Communications, which tells me that it's so
4 obvious, somebody, you know, versed in the field,
5 understanding what's going on would recognize that setting
6 up P Communications to take the opportunity that was
7 originally held by VP is such an important fact and such a
8 serious matter that it would be obvious that Kaj would be
9 informed and brought up to speed and told about this. And
10 it didn't happen.

11 And I believe that when you take a look at what was
12 done and wasn't done in this case, there's much
13 responsibility that falls on Krish for concealments, which
14 are totally inappropriate in a case like -- in a situation
15 like this.

16 Q. You may have already covered this, but what about the
17 fact that VP was turned down by Verizon, didn't the
18 rejection terminate the opportunity or the argument -- the
19 rejection terminated the opportunity ---

20 A. Well, that's for the Court -- the Court's going to
21 decide that. I think my views are pretty obvious.

22 Q. Okay. Various other cases say that a rejection --
23 excuse me. Professor Freeman, in your opinion what did
24 Krish need to do post-turndown as a promoter, manager,
25 whatever in order to perform up to the standard of care for

1 a person in his position?

2 A. Basic honesty, candor, full disclosure and no beating
3 around the bush, no half truths, no hiding, no concealments,
4 just be forthright and explain what he wants to do and make
5 sure that Kaj is on board with it and that VP's interests
6 are being protected such as do your level best to figure out
7 what went wrong with Verizon and what can be done to fix it.

8 And the fact of the matter is, we know that that's a
9 reasonable course of conduct to do because he went off in a
10 different direction and exploited the opportunity. He just
11 jettisoned Kaj in the meantime. And I fault him for that.
12 I think that that was disloyal and inappropriate.

13 Q. Why do you say disclosure's called for under these
14 circumstances?

15 A. Because they're co-venturers in my estimation, they're
16 co-shareholders. If you're in a business with somebody, you
17 don't have the right to take unfair advantage of them. You
18 don't have the right to oppress them. You don't have the
19 right to double deal with them, or backstab them, or betray
20 them or any of that. You're supposed to be up-front and
21 honest and make full disclosure and treat people like you
22 would like to be treated.

23 Q. And what about the fact that VP was turned down? You
24 may have already ---

25 A. I've discussed that. I think you don't retreat, you

1 reload and you overcome things. We can't -- in America --
2 in our society, being persistent and being diligent and
3 seeing things through and overcoming adversity is a way of
4 life. It's what makes capitalism work. And it's called for
5 here. And it didn't happen.

6 Q. Why wasn't he acting properly when he simply moved in a
7 different direction?

8 A. Because he had hip-pocketed the opportunity, took it
9 all for himself and his father and stiffed Kaj.

10 Q. Do you have an opinion whether Krish's actions caused
11 damages to Kaj?

12 A. Yes.

13 Q. And what is that?

14 **MR. STEPHENSON:** I object. He's not been identified as
15 any sort of damage witness.

16 **THE COURT:** Is he going to talk about numbers? What is
17 he ---

18 **MR. GILREATH:** No, I'm not talking about numbers. I'm
19 talking about how his conduct affected Kaj or what his
20 conduct ---

21 **THE COURT:** How it damaged him? How, not quantified,
22 is that right?

23 **MR. GILREATH:** Yeah. I'm not going to ask him anything
24 about ---

25 **THE COURT:** Okay.

1 **MR. GILREATH:** I'm not even talking about money here
2 yet.

3 **THE COURT:** Okay.

4 **MR. GILREATH:** You're going to get to hear that case
5 again if we keep going.

6 A. I'm not here to talk about dollars. I simply state
7 that Kaj as a co-participant in the VP Corporation was
8 entitled to fair treatment. He didn't get it. As a co-
9 venturer he's entitled to fair treatment. He didn't get it.
10 He was entitled to share in the benefits of this opportunity
11 and he got stiffed. And he was -- and he was misled. And
12 in my estimation he's correct in saying he was betrayed.
13 And I consider that wrongful.

14 Q. In preparing to testify here did you form any opinions
15 concerning Krish Patel's view of his obligations?

16 A. Yes.

17 Q. And what are those? Explain your answer.

18 A. First of all, ---

19 **MR. STEPHENSON:** I object. He's getting ready to opine
20 about Krish Patel's ---

21 **THE COURT:** State of mind? How can he -- how does that
22 -- he's qualified as an expert, but he's not ---

23 **MR. GILREATH:** Your Honor, I'm asking him what -- in
24 forming his opinions in Krish's conduct to what effect did
25 the way Krish viewed himself kind of as, for lack of a

1 better term, the master of the universe is what I saw on the
2 screen earlier this morning, ---

3 **MR. STEPHENSON:** He's already ---

4 **MR. GILREATH:** --- that he did it all. It's how -- how
5 did that attitude affect his opinions, vis-a-vis, his
6 conduct?

7 **THE COURT:** You're just talking about Professor
8 Freeman's ---

9 **MR. GILREATH:** How he -- well, how he viewed it and how
10 that played into his opinions regarding Krish's conduct.

11 **THE COURT:** Well, I'm not sure that's relevant, is it?
12 I mean, just that that would be -- that's getting awful
13 personal, isn't it?

14 **MR. GILREATH:** Well, I'm talking about how he -- how he
15 viewed his -- I'm not talking about what kind of -- I'm
16 talking about how he viewed himself in this venture and, you
17 know, it's my business plan. Everything's me, me, me, it's
18 Krish. You didn't hear ---

19 A. I've already testified to that, sir.

20 **THE COURT:** Yeah, he's already answered. I think
21 that's asked and answered.

22 **MR. GILREATH:** All right. Okay.

23 Q. Do you have an opinion -- all right. I'll withdraw
24 that. Do you have an opinion whether Vijay is responsible
25 or his responsibility here -- we've been talking a lot about

1 Krish.

2 A. Yes, I do.

3 Q. We're going to switch over to Vijay. What about Vijay?

4 A. I hold him accountable as well.

5 Q. And why do you say that?

6 A. I hold him accountable because he joined hands with his

7 son in a -- in stiffing Kaj and in appropriating the

8 corporate opportunity for their joint benefit. If you

9 accredit Kaj's testimony, there was also deception, there

10 was concealments, not just from Krish, but also from Vijay.

11 And we've had testimony about that, if that testimony's

12 credited. And I have credited that's wrongful, improper,

13 and I believe it hurt Kaj.

14 Q. What is your understanding of the meaning of the term

15 oppression as it's used in the corporate covenant's field

16 regarding the conduct of business management?

17 A. Grossly abusive behavior.

18 Q. Anything else?

19 A. Yeah. I consider -- I consider concealments --

20 typically in your oppression cases, you see those in

21 control. And I consider, frankly, Krish and Vijay to be in

22 control. Krish is everything about the enterprise, and

23 Vijay, between them they have half the stock and certainly a

24 veto over anything that happens. I consider them control

25 people.

1 And I believe that they took action to benefit
2 themselves and damaged Kaj, that they, in essence, froze him
3 out, squeezed him out. That's common you see in an
4 oppression case. He was denied access to this opportunity.
5 They took it off and evidently have done very well.

6 And I don't mean to be saying that, you know, hats off
7 to Krish for being a good businessman, but there's a certain
8 way to do business. And I don't think that that was done
9 here.

10 Q. Were you familiar with any instances where oppression
11 conduct toward an owner has been held permissible in a South
12 Carolina business entity?

13 A. I've never -- I'm not aware of any instance where
14 oppression has been greeted warmly by the courts of this
15 State.

16 Q. And can you explain this lack of cases?

17 A. In my estimation, our -- the standards in South
18 Carolina are high for those people in business who have
19 loyalty obligations. They've remained high. There's case
20 after case where those high standards are -- have been
21 enforced and applied. And the willingness of the courts to
22 do that in oppression cases is consistent with what I
23 consider to be the overall trend.

24 Q. Okay. That's all the questions I have. Please answer
25 any questions Mr. Stephenson might have.

1 **MR. STEPHENSON:** One second, Your Honor. I may be able
2 to cut this short.

3 **THE COURT:** Okay.

4 **Cross Examination by Mr. Stephenson:**

5 Q. Professor Freeman, you would agree with me that in your
6 testimony that eighty percent of the time you testify for
7 plaintiffs in business cases, not lawyer malpractice cases?

8 A. I would say so.

9 Q. All right.

10 A. That's a guesstimate, but I wouldn't quibble with that.

11 Q. All right. And I believe you've had seventeen cases
12 with Mr. Gilreath previously?

13 A. I've had a bunch of them, seventeen or more.

14 Q. Seventeen ---

15 A. Or less. But -- we've had a lot of cases.

16 Q. All right. So you've had a lot of cases with Mr.
17 Gilreath in the past all as a plaintiff?

18 A. Yeah, with investment fraud, investment misconduct,
19 oppression cases.

20 Q. And you would agree with me that Mr. Gilreath never
21 ever in the history of the world, going back to the
22 beginning of time brought you a case where you didn't find
23 that the other side committed some kind of fraud?

24 A. Well, first of all, I think this is the only time I
25 ever was an expert for him.

1 Q. Well, ---

2 A. But, otherwise, I think -- there might have been some
3 cases that I didn't get involved in. But when we worked
4 together on a case, we made money, we recovered.

5 Q. Well, that really wasn't my question. And I think
6 you've answered it. But never has he brought you a case
7 where you said, hey, they didn't do anything wrong on the
8 other side? Never.

9 A. I don't think so. Oh, there's one case that we lost.

10 Q. Well, ---

11 A. But we won at trial, but it got overturned by the
12 Fourth Circuit. But ---

13 Q. But your opinion was the other side did something wrong
14 anyway?

15 A. Yeah, and so was Joe Anderson's.

16 Q. All right. Let me see if we can agree on some general
17 principles. Let's talk about promoter liability for a
18 second. You wrote the South Carolina bar review outline for
19 corporations?

20 A. I did years ago, right.

21 Q. Taught it?

22 A. Oh, sure.

23 Q. And generally when you talk about promoter liability
24 you talk about pre-incorporation, generally?

25 A. That's one of the aspects of it, but it's also in there

1 that promotion is a joint venture. If you have my outline,
2 I'm happy to look at it.

3 Q. Well, I've got your outline. It says pre-incorporation
4 problems, promoters in general.

5 A. Okay.

6 Q. You wrote it?

7 A. Yeah.

8 Q. And generally ---

9 A. May I take a look at it since you've got it?

10 Q. You've answered my question.

11 **MR. GILREATH:** Your Honor, if he's going to question
12 him about something -- there may be something in there he
13 wants to talk to him about.

14 **MR. STEPHENSON:** I'll let him do that. I asked him a
15 simple question, did he write it? Yes. Is promoters
16 discussed under the topic pre-incorporation problems? He
17 said, yes.

18 A. But I think you'll also find in there that it's viewed
19 as a joint venture, that it's fiduciary in nature, fair
20 dealing is called for.

21 Q. Sure.

22 A. Okay.

23 Q. But it's generally promoter liability ends upon
24 incorporation.

25 A. It may, you know, you've got the Bivens case. The

1 formation, which is incorporation and the start-up. The
2 pre-incorporation contract -- you can't have a pre-
3 incorporation contract, it's true, after incorporation
4 because you're not in the pre-incorporation period. But
5 there will be a fact question as to whether the promotional
6 stage is finished.

7 Q. There's a fact question, I ---

8 A. Yes, sir.

9 Q. --- agree. Do you agree with me that a corporation
10 must have an interest or expectancy in an opportunity for it
11 to be a corporate opportunity?

12 A. That language -- let me answer it this way. Yes,
13 however, okay? There's a test called the interest or
14 expectancy test, but there are various tests that are used.
15 And that's not the only test. I think that's a Delaware
16 test from -- that -- Guth versus Loft, which -- where the
17 opportunity was Pepsi, Pepsi Cola, good opportunity. That's
18 one way of looking at it, but there are other ways of
19 looking at it.

20 The American Law Institute standard focuses first and
21 foremost on the one thing, and that is full disclosure of
22 the opportunity and seizing the opportunity. And if the
23 opportunity is seized without full disclosure, it's
24 automatically wrongful. So there are various tests.

25 Q. Do you agree with me that if a corporation does not

1 have the realistic ability to seize an opportunity, then it
2 is by definition not a corporate opportunity?

3 A. Yes with a big question mark over the realistic
4 opportunity to seize it and what can be done to patch
5 together a lack of financing. It may be that, for example,
6 the corporation's articles of incorporation exclude doing
7 business in the railway area, but you can amend that
8 possibly. Various ways of getting around it.

9 To me, what I think is, what would an independent --
10 the best test is what would an independent and fair minded
11 board do, bunch of decision makers if they had full
12 disclosure of their options?

13 Q. Are you aware of any reason why Mr. Kaj did not try to
14 get his own agency?

15 A. Yes, because he was lied to by Krish.

16 Q. Well, he found out and he never tried, correct?

17 A. Well, I heard his testimony and he believed that it
18 wasn't his role to compete against Kaj, although Kaj had
19 competed against him, wrongfully.

20 Q. Let's talk about the sources of Krish's duty. You've
21 already talked about promoter liability, ---

22 A. Yes.

23 Q. --- right? That aside, what is the source of Krish's
24 duty personally to Kaj?

25 A. Well, you've got promoter liability, which is ---

1 Q. I said that aside.

2 A. Which is venture liability.

3 Q. Okay.

4 A. So they're co-venturers with an -- in my view this
5 venture is continuing through the start-up. And it
6 sputtered at the start-up, but the start-up wasn't
7 completed. The opportunity was snatched away before they
8 had a chance to reload and re-compete after their
9 application was denied at this time.

10 Other sources of obligations, he was an officer of the
11 business. He was a control person of the business. He was
12 a manager of the business. With his father he had a veto
13 over everything that happened in the business. Those are
14 mighty serious obligations and sources of duties, and they
15 all fall on Krish.

16 Q. All right.

17 **MR. STEPHENSON:** Your Honor, I may not have anything
18 else. I am reminded ten years ago, Gedney Howe was an
19 expert, and it was a similar experience cross examining
20 Gedney Howe, I know when to quit.

21 **THE COURT:** Okay.

22 **MR. STEPHENSON:** Let me have a second.

23 (Pause)

24 **MR. GILREATH:** Your Honor, ---

25 **MR. STEPHENSON:** Let me talk to my ---

1 **THE COURT:** Wait a minute, let him ...

2 **MR. GILREATH:** I'm not going to ask him -- I don't have
3 any further questions.

4 **THE COURT:** Okay. Well, he wants to make sure he
5 hasn't ---

6 **MR. GILREATH:** Okay, okay. While he's doing that, as a
7 matter of housekeeping, Your Honor, I had those -- do you
8 want to put these in the record? This is the two Patels'
9 depositions.

10 **THE COURT:** Whatever you want to do.

11 **MR. GILREATH:** Yeah, I'll put -- I'm going to put those
12 in the record. And I gave her a copy, the same thing I gave
13 you, a condensed version that's marked yellow. And we're
14 going to also give her a copy of the disks as soon as we get
15 it over here.

16 **THE COURT:** Okay.

17 (Whereupon Plaintiff's exhibit 518 was admitted into
18 evidence)

19 **MR. STEPHENSON:** Your Honor, that's all I've got.

20 **THE COURT:** Okay.

21 **MR. STEPHENSON:** I will say this, I heard Ross Anderson
22 in a seminar on cross examining experts, and he said JD Todd
23 gave the best cross examination he'd ever heard, some expert
24 guy. And he said, where are you from? And the guy said,
25 Walhalla. And JD Todd said, Walhalla, and sat down.

1 Sometimes that's the best you can do.

2 **THE COURT:** What are you saying about Columbia here,
3 Mr. Stephenson?

4 **MR. STEPHENSON:** I started to do that, but ...

5 **THE COURT:** Okay. Professor, let me just ask you a
6 couple of questions.

7 A. Yes, sir.

8 **THE COURT:** Wouldn't you agree that the reason that
9 Verizon denied the application is of high importance in this
10 matter?

11 A. Not necessarily, Your Honor. Simply because, first of
12 all, I heard that different kind of -- different floating
13 ideas, ---

14 **THE COURT:** Yeah.

15 A. --- have no retail experience, no Verizon retail
16 experience, criminal record, lied about law suits, this kind
17 of stuff. And it is a factor, but I have yet to see it get
18 buttoned down.

19 And whatever the factor is, there was a quick work-
20 around, an easy work-around that was never attempted on
21 behalf of VP, but was within two months effectuated on
22 behalf of a competing organization secretly. And so I just
23 think that that's a factor, ---

24 **THE COURT:** Okay.

25 A. --- but there's a work-around.

1 And more than this, I think that before you can act on
2 a turn-down you have to do your absolute level best to
3 figure out what happened and why and see if you can correct
4 it. And I'm not seeing that that happened.

5 We had the just -- a seizing of the opportunity and a
6 moving in a different direction with the man who had the
7 shopliftings participating in the new business, the other
8 guy's secretly thrown off the side of the boat. I think
9 that's wrong.

10 **THE COURT:** Okay. Well, ---

11 A. It's definitely a factor.

12 **THE COURT:** And if let's say the criminal history was
13 the reason for the turn-down, then this corporation, VP, was
14 doomed in getting a license?

15 A. As long as Vijay was in it because Vijay is the man
16 with the criminal history.

17 **THE COURT:** Okay. And if it was lying on or -- not --
18 I don't mean to -- failing to disclose lawsuits was the
19 reason, then the same would be true for Kaj?

20 A. I don't necessarily agree. And the reason is, you
21 know, let's talk about it. You know, if it's -- he's had
22 nothing to do with the thing, and he thought it was more
23 than five years, and that's the reason, I know you take that
24 into account. You really -- you really, I think, need to
25 probe that with the people at Verizon. And that never, as

1 far as I can see, that never happened.

2 **THE COURT:** Well, ---

3 A. I consider the lawsuit thing to be small compared to
4 the shoplifting criminal thing, frankly.

5 **THE COURT:** Okay. And perhaps the lack of retail
6 experience of the two incorporators would be of
7 significance?

8 A. Yeah, but on the other hand you've got retail
9 experience galore in Krish, and Krish is the manager. And
10 I ...

11 **THE COURT:** Okay. But the bottom line is we don't
12 know, and that's a big factor and ---

13 A. Well, we never -- we never found out, but we found out
14 that it doesn't make much of a difference if your name's
15 Krish and Vijay because they -- they end up with P. But if
16 your name is Kaj, there's some -- you're not even allowed to
17 be told about this. I just think that that is terrible.

18 **THE COURT:** Below the -- okay.

19 A. Below the belt.

20 **THE COURT:** All right. Okay. Y'all got any other
21 questions you want to ask on any of that?

22 **MR. GILREATH:** We have nothing, Your Honor.

23 **THE COURT:** Okay. Thank you, professor.

24 A. Thank you, Your Honor.

25 **MR. GILREATH:** Your Honor, I haven't talked to him yet

1 about what his schedule is. Is he released if we want to
2 release him?

3 **THE COURT:** You -- yeah.

4 **MR. STEPHENSON:** I can.

5 **THE COURT:** I want to know what he thought about
6 General Willoughby, if he was -- if he had a chance to talk
7 to him. Okay. He's released from subpoena. Y'all -- as
8 far as I'm concerned he's released.

9 **MR. GILREATH:** Your Honor, that's all the Plaintiffs
10 have. We rest.

11 **THE COURT:** Okay.

12 **MR. STEPHENSON:** Your Honor, we have a motion. And I
13 have my lawyer who's got some sense who's going to argue it.

14 **THE COURT:** Okay. All right.

15 **MR. CABLE:** That's saying a lot. These are written
16 copies of the motion that we're going to file later on, but
17 I just thought y'all might like to have one as well.

18 Your Honor, at this time the Defense moves for an
19 involuntary non-suit. That's pursuant to rule 41(b), very
20 similar to motion for a directed verdict under rule 58. The
21 difference is since we're trying it to you, you get the
22 ability to determine credibility of witnesses, weigh the
23 evidence. You are not required as you would be under a rule
24 58 motion to view evidence in the light most favorable to
25 the Plaintiff.

1 The first and easy way to kick this case out, and I
2 think the correct way to do it is on the statutes of
3 limitations. The common law claims here generally have a
4 three year statute of limitations. Statutory claims, unfair
5 trade practices has three years. And corporate duties, 33-
6 8-300 and 33-8-420 respectfully are two years from the date
7 of discovery.

8 However, the common law claims are changed a little bit
9 here. The case of Clearwater Trust applies. And that case
10 says that common law claims that are premised on a breach of
11 fiduciary duty are codified and subsumed by the Business
12 Corporations Act. So we've got a two year statute of
13 limitations for those.

14 It's undisputed Kaj stood up and testified and told us
15 all that at the latest by October 18th, 2008 he knew that
16 Krish Patel had gone out and done Verizon stores without him
17 and without VP. Now, he continued to go on and say, oh,
18 well, I didn't know about Corby's last name. And I didn't
19 know what the name of the corporation was. Fine.

20 But he knew that day, if there was an injury, and we
21 submit that there's not, and we'll talk about that in just a
22 second, but if there was an injury, he knew about it on
23 October 18th, 2008. He didn't file suit until November 4th,
24 2011. It's close, but it's over three years later. So the
25 two year's obviously out, even the three years are out.

1 The Plaintiff apparently acknowledges this because in
2 their pretrial brief they say that it should be tolled, it
3 should be equitably tolled and it should be tolled by means
4 of fraudulent concealment. But neither one of those applies
5 because equitable tolling is a -- is an extraordinary remedy
6 that the courts say is used sparingly where plaintiffs are
7 unable to pursue their rights. Maybe it's their -- they
8 can't file it for some reason or another. There's been no
9 evidence whatsoever that says that Kaj Patel couldn't have
10 filed it.

11 The talk of -- and again, these are disputed and we
12 submit these promises never happened, but Kaj has talked
13 that Krish said, oh, I'm going to fix it later, and I'm
14 going to get VP back on track. Fixing something later
15 doesn't change the fact that the injury has occurred and
16 that he is not prevented from filing suit, and he simply
17 didn't do so. He was not the, quote, diligent plaintiff
18 that the courts use equitable tolling in.

19 Also, fraudulent concealment does not apply here.
20 Fraudulent concealment is used typically in medical
21 malpractice cases. And the reason is in those cases
22 injuries by their nature are hidden. And the only way that
23 you're going to know about them is if your doctor tells you
24 about them, okay? So if your doctor doesn't tell you, then
25 it's not fair to hold that against you.

1 Here, there's no question. Again, Kaj knew about his
2 injury on October 8th -- 18th, at the latest 2008. He knew
3 about it. Krish came and told him about it. Vijay told him
4 about it. There's no doubt about it, and he didn't file.

5 So tolling is not appropriate. The statute of
6 limitations has run. And for that reason, every one of the
7 claims immediately should be dismissed.

8 Well, let's talk briefly about the substance of the
9 claims themselves. And I think that I can help move things
10 along if I sort of group them together a little bit.

11 So first let's talk about breach of duty claims. One
12 of them is a breach of partnership duty. That claim must
13 immediately fail. There's no question here that there's not
14 a partnership. We don't have an LLP. We don't have
15 anything like that. We have a corporation, okay? So
16 there's no partnership duties discussed anywhere in this
17 case that are anyway applicable. So that claim
18 automatically must fail.

19 Now, the breach of duty under 33-8-300 and 33-8-420,
20 respectively, that's directors and officers of the
21 corporation. There's also a common law breach of fiduciary
22 duty claim in there as well.

23 Now to show breach of fiduciary duty you have to show a
24 duty, breach and damages. And we acknowledge that at some
25 points there is fiduciary duties that did apply, okay?

1 Before incorporation they're promoters. You heard Krish in
2 his video testify, he agrees, he acknowledges that.

3 But we also submit to you that the rule is once the
4 company's incorporated and a board of directors is in place,
5 promotion ends. That's the end of pre-incorporation that we
6 were talking to Professor Freeman about. From then on the
7 Defendants had the duties of directors and officers,
8 respectively.

9 Also, there's no breach here. The only thing that the
10 Plaintiffs have discussed in any way, shape or form in the
11 way of potential breach is what's so-called usurpation of
12 corporate opportunities. But there's a lot of problems with
13 that.

14 First and foremost being, there was no corporate
15 opportunity here. There was a business opportunity, but
16 that's different than a corporate opportunity. A corporate
17 opportunity is something that you have to have an interest
18 or reasonable expectancy. And the courts have said over and
19 over, hopes, aspirations won't cut it, okay? You have to
20 actually be able to expect to seize that opportunity.

21 And VP was unable to undertake the opportunity. They
22 tried. They submitted an application. It was rejected.
23 For that reason, there's no interest; there's no expectancy.

24 Straight v. Goss, which is a South Carolina Supreme
25 Court case from 2009, I believe it is, should be in your

1 materials, I apologize, says that where you cannot seize an
2 opportunity, there is no corporate opportunity. And
3 furthermore, to the extent that there was an opportunity,
4 once Verizon rejected them, that opportunity's gone.

5 And if you look at AmJur, I believe I cited 1551 for
6 you, AmJur is very clear that once a third party refuses to
7 do business or the corporation abandons an opportunity, it's
8 gone and an individual, including employees of that
9 corporation, may seize it for themselves. If there was an
10 opportunity, and we submit there's not, at most that's what
11 happened here.

12 Of course, another problem is, there's no corporate
13 opportunity because there's nothing unique here, okay? If
14 you look at the cases of corporate opportunities, there's
15 always some element of uniqueness. You're buying stock,
16 you're buying a particular corporate asset, you're buying
17 real estate.

18 Here what we're talking about is an agency
19 relationship. Anyone can apply for those things. Kaj
20 talked about that. Anyone can try to go out and get it.
21 That is not the uniqueness that a corporate opportunity has.

22 And then just the final element, the breach of
23 fiduciary duty is damages. We've heard no testimony of
24 damages. That is an essential element to the claim. And
25 for that reason it should be dismissed.

1 Finally, or excuse me, let's move on, rather, to the
2 second sort of grouping of his claims for fraud,
3 constructive fraud and negligent misrepresentation. I'm
4 going to kind of group those together.

5 To show that, you've got to have a false representation
6 that is material. In the case of fraud there's got to be
7 intent. The Plaintiff has to be ignorant of it, justifiable
8 reliance, and then the element of damages or pecuniary loss.

9 Here there's no material false representation, okay?
10 They talk about we tried to get Verizon stores together.
11 That's true, okay? Any promises that Kaj says Krish made
12 that we're going to try to get it going again, those aren't
13 false representations because a false representation has to
14 be something of existing fact. And the case law says that
15 if I promise to do something in the future, but that promise
16 gets broken, that is not a representation of existing fact.

17 Also, there's nothing material here because to the
18 extent that Kaj wants to say that Krish was saying Corby's
19 still around, and he's not, dah, dah, dah, dah, dah, even if
20 that's false, you can't show materiality because materiality
21 is defined as something that would make you act or refuse to
22 act.

23 And Kaj has stated he didn't do anything differently.
24 He thought about getting rid of his job, but he kept it. So
25 he had -- he didn't change his position in any way, shape or

1 form.

2 There's no pecuniary interest in line here, okay?
3 Krish had the corporation. He was making money. VP was
4 already denied. There's no reason for him to want to do
5 that.

6 There was no reliance because, again, like I talked
7 about Kaj kept working. He didn't change his position in
8 any real way. And he had no right to rely because even if
9 we want to credit his testimony as true, and again, we
10 submit it's not, but if we want to credit his testimony as
11 true that I'm going to fix this and I'm going to get VP back
12 in, it's unreasonable because Verizon had rejected VP. And
13 Kaj knew that. Kaj's name was on that, and it had been
14 rejected.

15 Again, an essential element for fraud, constructive
16 fraud, negligent misrepresentation is damages. We've heard
17 no testimony as to that. So it should be dismissed for that
18 reason.

19 The unfair trade practices claim, there's no unfair or
20 deceptive act here. When you look at the cases that talk
21 about that, it's advertising gambling jackpots that are
22 above statutory limits. It's copying your competitor's
23 logos. It's marking up repair bills. There's nothing like
24 that even pled, much less discussed here.

25 And also, an essential element under unfair trade

1 practices is it must affect the public interest. And the
2 way that you show that is through repetition. There's none
3 of that, okay? Insofar as Kaj wants to say that there was
4 repetition and they kept opening stores, well the case law
5 is clear that repeating against just you is not repetition.
6 It must be in the market generally and it must be to other
7 people.

8 In their complaint or it's, rather, in the Plaintiff's
9 complaint, tries to mention Corby Phillips. Now you heard
10 Corby Phillips testify. And he didn't speak to any unfair
11 or deceptive act. All he talked about was there was going
12 to be one agreement, we changed it to another agreement, he
13 bought me out, okay? That's not unfair. Also, it's not the
14 same act. And, thirdly, it's a sales securities, which is
15 specifically exempted from the unfair trade practices.

16 And then finally, again, damages injury is an essential
17 element of unfair trade practices. We've heard no testimony
18 to that. So it should be dismissed.

19 And then finally just sort of these mop-up claims,
20 their initial claim is for dissolution. Well, VP is
21 dissolved. It was administratively dissolved back in 2011.
22 There's nothing -- there's nothing to be dissolved at this
23 point.

24 They also move on accounting under both partnership and
25 shareholder bases. Again, like we've talked about, there's

1 no partnership. This is a corporation.

2 There's also no basis for shareholder accounting
3 because Kaj is not a shareholder of P. And also it's moot
4 because they've got an accounting. It's in your book up
5 there. We gave it to them in discovery. So there's really
6 no basis for this claim either.

7 And then finally they talk about disgorgement,
8 constructive trust, declaratory judgment. Those are
9 remedies. Those aren't independent causes of action. They
10 first must show entitlement to them. And as we've stated
11 here so far, they can't prove any of their claims,
12 therefore, they're not entitled to any remedies that they've
13 asked for. Thank you.

14 **THE COURT:** Okay.

15 **MR. GILREATH:** Your Honor, a couple of things. I'm
16 thinking I heard him say there were no material false
17 representations. I think somebody's silence can cause a
18 serious problem under the law in this area. And it's
19 equally important as any misrepresentations of which there
20 were many as you've heard, that I heard, what I consider a
21 misrepresentation.

22 I mean, Kaj was asking the guy, you know, what have you
23 found out? What about, you know, when is Corby getting out?
24 Told him, trying to get Corby out. He strung him on with
25 Corby from the day he heard about Corby in October of '08,

1 he strung him out about Corby until sometime in late May or
2 early June.

3 I mean, he just totally misrepresented -- he kept
4 telling him, well, now I finally got him out. Then he told
5 him it'd take him thirty thousand dollars and he actually
6 paid him fourteen thousand dollars.

7 And, you know, what would Kaj have done if he had known
8 about Corby? What would Kaj had done had he come to him and
9 said I've got this guy, Corby, and we were able to do that?
10 I mean, what -- if he's under a fiduciary duty, if he's a
11 manager or he's a promoter and this entity was clearly still
12 -- they were still trying to find out, he said we chartered
13 him to go find out what happened. We were trying to find
14 out.

15 And Kaj was entitled to find out what happened or
16 either he was entitled to find out what his co-partner, his
17 promoter and his manager was doing. And the guy was out
18 there, as he said, backstabbing him. And he basically took
19 their idea, their joint idea, which Krish wants to say is
20 his, and took it and ran with it. And all of that should be
21 -- should belong to the people who were the partners of that
22 venture or that belonged to the venture, but the people that
23 are in it and got some rights.

24 And I don't know of any reason why what he, I mean, he
25 did it. It's not a question of could he have done it. He

1 did it. And he's made a fortune off of it. And now they
2 want to come in here and say that there were no material
3 false misrepresentations or any falsehoods.

4 I've never heard such a string of falsehoods in the
5 forty-six -- I started practicing law forty-six years ago
6 this year in Greenville, South Carolina right down the
7 street down here on Church Street. And I have never in my
8 forty-six years of practice ever heard such a string of
9 misrepresentations, and failure to speak and duty to speak
10 as I've heard in this courtroom today. And you haven't
11 heard them all yet if you don't grant these motions, If you
12 don't -- if the case goes on past these motions.

13 **THE COURT:** Okay.

14 **MR. GILREATH:** You're going to hear some more, I
15 believe.

16 Now, he says there was no pecuniary interest in Krish
17 -- if I -- I wrote it down. I think he said there was no
18 pecuniary interest in Krish lying or in Krish lying. That's
19 the only reason Krish was doing this. He was afraid of Kaj.
20 Kaj could have -- he didn't want Kaj to get out there and
21 get in competition with him. He was trying to keep Kaj over
22 here.

23 And he kept -- and the other thing he kept telling Kaj
24 was, he kept telling him, we're going to get this thing back
25 on. I go back to the point where they took the five

1 thousand dollars out of the account. And that was -- he was
2 already in business with Corby then. He knew what he was
3 doing when that money came out of that account. And that --
4 because that happened in June or July.

5 And Krish -- Kaj wrote on his book, VP on hold. And he
6 got those words, I believe, from some -- from what he said,
7 that Krish said or there were words to the effect that we've
8 got this thing on hold til we find out what's going to
9 happen. And we've got a line of credit we can use when we
10 come back in. So he's -- he's trying to just lead Kaj on.
11 And so Kaj didn't do -- didn't do anything.

12 And Krish knew what was happening. He'd already
13 contacted Corby. He says Corby didn't speak to any
14 deceptive acts. I mean, Corby started out talking about
15 Krish stealing Coca-Colas from him the first time he met
16 him. And then it went on from there.

17 I mean, he kept -- Krish did all kind of stuff with
18 that corporation. He lied -- he misrepresented to BB&T. He
19 misrepresented to the Internal Revenue Service. He
20 misrepresented twice to the South Carolina Department of
21 Revenue.

22 And he wants to stand up here with a straight face and
23 say Corby didn't speak to any deceptive acts. And then
24 Krish told Kaj that he'd paid Corby thirty thousand dollars
25 and paid him fourteen thousand dollars in cash.

1 He was a promoter. He was continued as a promoter.
2 That entity still had money in the bank account as late as
3 June or July of '08. And so how can he now be a promoter
4 for it?

5 What he did is he was still promoting. He was doing
6 for P Communications exactly what he was supposed to do for
7 this company. And why couldn't he have -- why couldn't they
8 have done that or why isn't this company or this entity
9 entitled to the fruits of his labor? Otherwise, I don't
10 think the law is that you -- that you can come out and
11 misrepresent and tell untruths to your partners, go out and
12 get another entity and then go get a forty store thing and
13 then we just sit, you know, tough luck.

14 Because he came back and told us he tried to -- he
15 tried -- he finally told us what was happening. The -- keep
16 in mind I have not read his brief that he handed me a while
17 ago. We would probably like the opportunity to maybe file
18 something on that or whatever.

19 He got up here and told you -- and this -- I haven't
20 replied to this. I can't let it stand. He told you that he
21 gave us an accounting in discovery. Your Honor, I was going
22 to bring my expert up here and they -- we would be -- if we
23 had of decided to try this case on liability, we'd been over
24 here fighting with you about discovery abuse and what they
25 haven't given us and what -- the things that our forensic

1 accountant has found wrong in these books.

2 We decided we'd just kind of put all that aside because
3 it's easier to do it the way we're doing it. But, I mean,
4 for him to come into this court now and tell us he'd given
5 us an accounting is one more -- I don't even want to say
6 what I think about it.

7 One other document. Your Honor, and this document is
8 in evidence. It's Defendant's trial document 0210C, which I
9 got, I mean, maybe I had it from Verizon, but it's in -- Mr.
10 Stephenson, he emailed it to me. It's an email that's very
11 -- 210C. It's an email from Krish to Kelley Pearson on
12 December 18th, '08.

13 And it says here is the information of Vijay Patel,
14 director of real estate and facilities. And so Verizon
15 knows that Vijay is going to work with P. So they
16 apparently don't have a real big problem with Vijay.

17 **THE COURT:** I want to give an opportunity to review
18 your motion for involuntary non-suit. I'll just tell you,
19 I've got a problem with the statute of limitations. I've
20 got a problem with -- the evidence before me -- before me, I
21 mean, it's pretty clear that sort of black letter law that
22 promoter liability ends with the incorporation.

23 Krish is not a shareholder. So he doesn't get locked
24 into those duties. This is kind of a hybrid entity, I
25 guess, is what you're trying to establish, isn't it, Mr.

1 Gilreath?

2 **MR. GILREATH:** Well, he's a manager. And I think as
3 Professor Freeman testified, those duties don't stop once
4 the corporation starts, I mean, once the corporation's
5 formed. I mean, he was -- he was doing a lot of stuff after
6 it was formed. It was formed way back in '07.

7 **THE COURT:** Yeah. So I got -- to me the -- he's
8 rocking along, he's working, he's trying to get -- and I'm
9 talking about Krish. And, you know, even though he's being
10 characterized -- I like your Tom Wolf reference, master of
11 the universe. But it's pretty clear, he is the brains
12 behind the operation.

13 And neither one of the other two know how to run a
14 retail establishment. And the proof's in the pudding, he's
15 got -- I don't know how many stores, forty stores, and he's
16 done it without either one of Vijay or Kaj being involved in
17 it.

18 But the reason for the denial from Verizon, to me, is
19 it's a line in the sand. It's not necessarily the reason
20 for it, but the denial is. He did -- the only evidence I've
21 got at this point is that, and I guess it came out of his
22 deposition, was that he continued to try to talk to the
23 three representatives at Verizon after the denial and they
24 stonewalled him. That's the only evidence I've got.

25 And whether it was the criminal history of his father,

1 or the failure of your client to disclose lawsuits, or the
2 fact that neither one of the incorporators had any retail
3 experience or any knowledge about the Verizon business,
4 whatever the reason, which, to me, is of some importance, it
5 was a line in the sand that -- with respect to VP -- what is
6 it? Vijay, VP?

7 MR. GILREATH: VP.

8 THE COURT: VP.

9 MR. GILREATH: VP is our entity.

10 THE COURT: And so those are some of my issues. And
11 the statute of limitations is a problem. I mean, that's a
12 ---

13 MR. GILREATH: Well, we are -- let me address two
14 things here.

15 THE COURT: Yeah.

16 MR. GILREATH: VP -- he never resigned from VP.
17 There's nothing in the record to indicate he ever resigned
18 from VP. He was in VP all the way up til VP got -- somehow
19 it goes administratively resolved way on out there.

20 He was also an officer of VP. You heard him on the
21 screen there this morning say he accepted that. So, I mean,
22 he's got some duty as an officer of VP.

23 And the last time I checked, I don't think officers are
24 supposed to go out and misrepresent and not tell the truth
25 to their people that are in the company with them when they

1 ask questions about what's going on. I mean, I just don't
2 think ---

3 **THE COURT:** I agree with you there, but what is the
4 remedy for that, for a dishonest employee or corporate
5 member? I mean, what happens to them with respect to the
6 corporation?

7 **MR. GILREATH:** Well, if they go out and snatch an
8 opportunity away from this thing, and it -- it's obvious
9 that it -- his name was on that application. It's obvious
10 that they were -- there could have very easily have been a
11 way that that opportunity could have been done in some form,
12 shape or fashion.

13 Nobody ever was given that chance. He just took it and
14 ran with it and then basically did not tell us what was
15 going on ---

16 **THE COURT:** I ---

17 **MR. GILREATH:** --- for two and a half years ---

18 **THE COURT:** There's a ---

19 **MR. GILREATH:** --- after we asked him.

20 **THE COURT:** There's a distinction between a moral --
21 violation of a moral duty and a legal duty. And I'm not
22 commenting on that, what went on and the clear damage done
23 to a friendship by the activity and is distinguishable from
24 what's legally enforceable. And I do, you know, the statute
25 of limitations is a -- that's a, you know ...

1 **MR. GILREATH:** Well, Your Honor, on statute of
2 limitations, we talked about that in our brief, our pretrial
3 brief. There's a doctrine of fraudulent concealment, which
4 is specifically stated in the corporate code. I don't know
5 the statute off the tip of my tongue. But, I mean,
6 fraudulent concealment tolls the statute of limitations.

7 And he -- what I've heard off this witness stand so far
8 in this courtroom the last two days is he was trying to
9 figure out what was going on, and he never really was told
10 until they had that meeting over there on June the 6th in
11 Krish's office, June 6th of 2010. That's when he found out.
12 That's when he found out what was going on.

13 And so he didn't have anything to file a lawsuit about
14 until he knew it. As soon as he found out about it, he
15 contacted a lawyer, and here we are. And he's well within,
16 as we explained in our brief, he's well within three years
17 of the time he discovered it.

18 **THE COURT:** Well, you know, ---

19 **MR. GILREATH:** He really only -- not that long if you
20 take three years out from the mark when he knew about the
21 thing in October. He ---

22 **THE COURT:** Well, if there was a usurpation of a
23 corporate opportunity, he knew about that in October of '08.
24 He knew he was out -- had a Verizon thing going.

25 **MR. GILREATH:** I know it, but then he tells -- the

1 problem is he tells him I've got -- I've got this guy,
2 Corby. And we're going to get this thing back going on.
3 Yeah, yeah, he knew that. We don't deny that he knew that
4 then.

5 But he told him that he had gotten his foot in the
6 door, and as soon as he kicked Corby out, we were going
7 forward. So there was no reason for him to do anything. He
8 thought -- he believed him. I mean, this guy was his
9 friend. He believed him.

10 And so he waited. I mean, that's what most people
11 would do if your friend tells you, you know, we've got a
12 little bump in the road on this deal, we're going to have to
13 do this. You don't think your friend's lying to you.
14 You're going to believe him. And you're going to rely on
15 him.

16 And he relied on him. He actually changed his job plan
17 based on this. And, I mean, if that's not enough to toll
18 the statute, I don't know what is.

19 I mean, you just -- you can't do what he did, go out, I
20 mean, two weeks after this thing happened and get up with
21 Corby and do this deal and then hide it from him until -- he
22 hid it from him. I mean, no question. That's
23 uncontroverted. He hid it from him until October.

24 And then he comes in in October and he says -- he had
25 to fess up then because he knew it. So he comes up with

1 this story, well, I just got my foot in the door. Well,
2 that was an untruth right off the foot.

3 Heck, he went to Allan Hill. He's the one that started
4 this thing out. He didn't say, oh, by the way, I really
5 decided I'm going to do this thing on my own, and I had to
6 go to Verizon with another guy, and you guys are out, and
7 I'm not going to have anything to do with it, and I'm going
8 to take this and run on it on my own. I'm the master of the
9 universe. I don't need you. I'm going on. And that's what
10 he was thinking. And that's what he did. But that ain't
11 what he was telling this man.

12 Now, I've been practicing law forty-six years. And I
13 don't believe that dog's going to hunt down in the Supreme
14 Court of South Carolina, frankly. I just -- with all the
15 decisions that I have read, I don't believe that kind of
16 conduct that I've heard in this courtroom today and
17 yesterday is going to ever fly in Columbia, South Carolina.
18 Maybe it will, I don't know. I'll probably be dead and quit
19 practicing law by the time that decision comes down.

20 But I just -- but this thing -- he said we're going to
21 get our, our foot in the door. He didn't say I'm going to
22 get my foot in the door. We're going to get our foot in the
23 door. Now, if that ain't fraudulent concealment, I don't
24 know what it is. Going to get our foot in the door.

25 Every time he asked him, what's happening with Corby?

1 Oh, I'm working about Corby. Well, we now know that from --
2 the evidence is going to show, if you see more later on,
3 it's in there, it just hasn't all got developed as good as
4 I'd like to, which I was going to do by cross examination.

5 But he keeps asking him about Corby, and Corby's gone.
6 You saw it yesterday, Corby is gone before the end of the
7 year. He's gone. He's out. He got paid off with fourteen
8 thousand dollars cash money in Allan Hill's office while
9 Allan Hill sat there and watched him. And he's gone.

10 And he's still telling him, Corby, can't get him out.
11 He's telling him -- he's not talking much -- he's not even
12 talking much about -- well, first of all, he quit talking
13 about Corby because he told him Corby's going to take eight
14 months to a year. So he kind of got off of the Corby deal.

15 And he's still interested in what have you found out
16 from Verizon? So he starts telling him I'm going to go up
17 to Charlotte and find out what's happening up there. He
18 wasn't anymore going to get in his car and go to Charlotte
19 and find out what happened. He'd already gotten a deal
20 going with Corby.

21 I mean, it's just one mistruth -- it's just a string,
22 absolute -- I hesitate to use this word in the courtroom,
23 it's just a string of lies. Can't say anymore.

24 **THE COURT:** Okay. Well, I'm going to give him -- why
25 don't we just come back at, say, how long y'all want? Who

1 do you got if I deny your motion?

2 MR. STEPHENSON: We're not going to finish today, in an
3 hour.

4 THE COURT: All right. Well, what do you got? What
5 you got?

6 MR. STEPHENSON: How many witnesses?

7 THE COURT: Um-hum (affirmative).

8 MR. STEPHENSON: We've got three, probably. Three or
9 four. The long one being Krish. The long one being
10 Professor McWilliams.

11 (Pause)

12 MR. STEPHENSON: Yeah, we could finish tomorrow if you
13 want to think about it today.

14 MR. MATHIAS: Give him the rest of the day and we can
15 put on our case in one day.

16 MR. STEPHENSON: We've got one witness who came from
17 out of town.

18 THE COURT: We can do that.

19 MR. STEPHENSON: Do what? Put the witness on from out
20 of town?

21 THE COURT: Yeah. Who is it?

22 MR. STEPHENSON: It is ---.

23 MR. MATHIAS: Tammy Blew ---

24 MR. STEPHENSON: --- Tammy Blew ---

25 MR. MATHIAS: --- from Verizon.

1 **MR. STEPHENSON:** --- from Verizon. Sir?

2 **THE COURT:** I'm talking to myself.

3 **MR. GILREATH:** Your Honor, I kind of got lost. I'm not
4 sure what we're talking about. Now, are we talking about
5 coming back and rearguing this motion or are we talking
6 about -- I got mixed up.

7 **THE COURT:** Yeah, me, too. We're talking about, you
8 know, in the light most favorable to the non-moving party
9 ---

10 **MR. STEPHENSON:** But that's not the standard.

11 **THE COURT:** It might be in this court.

12 **MR. GILREATH:** Let the Judge finish talking, please.

13 **THE COURT:** Nah, he's helping me out. Well, we're
14 going to go -- they've got -- how long is this witness today
15 from out of town?

16 **MR. STEPHENSON:** Our direct's going to be twenty
17 minutes.

18 **MR. GILREATH:** Your Honor, I -- you're not going to see
19 any long cross examination out of me, I promise.

20 **THE COURT:** Okay. Why don't we -- I'm going to take
21 the motion under advisement. And we'll proceed with
22 testimony at what time? 1:30? Is that ---

23 **MR. STEPHENSON:** We could be back at one. 1:30? 1:30
24 suits me.

25 **THE COURT:** Well, whatever. How much time y'all want?

1 **MR. GILREATH:** How about 1:15? Split the difference.

2 **THE COURT:** 1:15?

3 **MR. STEPHENSON:** Yes, sir, 1:15 is fine.

4 **THE COURT:** 1:15 is good. Let's do that.

5 **MR. STEPHENSON:** Okay.

6 **THE COURT:** That's an hour.

7 (Whereupon court was in recess at 12:19 pm)

8 (Whereupon court reconvened at 1:28 pm)

9 **THE COURT:** Thank you. Please be seated.

10 (Pause)

11 **THE COURT:** Okay.

12 **MR. STEPHENSON:** Your Honor, we call Tammy Blew.

13 **Tammy Blew,** being duly

14 sworn testified as follows;

15 **MADAME CLERK:** Please state your name for the record.

16 **MS. BLEW:** Tammy Blew.

17 **MADAME CLERK:** Thank you. You may be seated.

18 **Direct Examination by Mr. Stephenson:**

19 Q. Ms. Blew, you're here under a subpoena?

20 A. Yes.

21 Q. If you would, tell the Court what you do for a living.

22 A. I work for Verizon Wireless. I am the district manager
23 for the local agent channel.

24 Q. And how long have you been with Verizon?

25 A. This year, twenty-seven years.

- 1 Q. What is your region?
- 2 A. Carolina south district.
- 3 Q. If you would, give us a brief job description.
- 4 A. I support the local agent channel, myself and my team.
- 5 We provide training and provide support to our agents and
- 6 distribution where needed.
- 7 Q. The local agent channel, what is that? What do you
- 8 mean by that?
- 9 A. It's an alternative distribution to our retail stores.
- 10 It's authorized agents. We have premium retailers, other
- 11 agencies that represent Verizon.
- 12 Q. Right. So it would be not company owned stores, ---
- 13 A. Right.
- 14 Q. --- or premium retailers, which would be ---
- 15 A. That's national retailers.
- 16 Q. Okay. It's agents?
- 17 A. Agents.
- 18 Q. Are you generally familiar with an application process?
- 19 A. Yes.
- 20 Q. Do you participate in the application process?
- 21 A. In the beginning.
- 22 Q. Is there a website that I could go to right now that
- 23 invites me to apply? Me, Tom Stephenson?
- 24 A. Yes.
- 25 Q. Could I apply?

1 A. Yes.

2 Q. If I applied would I receive an application in the
3 mail, a telephone call, at least some correspondence from
4 Verizon?

5 A. You would get a phone call.

6 Q. All right. Is anybody eligible to apply?

7 A. Yes.

8 Q. Now if you get an agency and you go through the
9 application process, you are accepted, does your agency
10 entitle you to any exclusivity?

11 A. No.

12 Q. What does the agency that you get entitle you to do?

13 A. When an agent is approved they will submit the location
14 that they want to initially be approved. That will go
15 through the initial process from the approval process.

16 Q. All right.

17 A. If they wanted to add more doors, then we would have to
18 approve those as we go.

19 Q. Did I ask you in the subpoena to bring me a list of
20 doors opened since 2008?

21 A. Yes.

22 (Whereupon Defendant's exhibit 233 was marked for
23 identification)

24 Q. I'm going to hand you what's been marked as exhibit
25 233.

1 **MR. STEPHENSON:** Your Honor, this was produced.

2 There's so much paper here. It wouldn't surprise you to
3 know that none of us can find it in our book. So I'm going
4 to remark it. I think ---

5 **THE COURT:** Okay.

6 **MR. STEPHENSON:** --- Mr. Gilreath has seen it. There's
7 no dispute about that.

8 **MR. GILREATH:** Yeah, I've seen it.

9 (Whereupon Defendant's exhibit 233 was admitted into
10 evidence)

11 Q. All right. What is exhibit 233, Ms. Blew?

12 A. It's a list of our new doors that have opened since
13 2008.

14 Q. All right. There's a chart over here. If I told you
15 that I took that list of a hundred and thirty stores and put
16 red dots on them, just glancing at the list, does it look
17 like I accurately described the chart that you have been
18 looking at?

19 A. It does.

20 Q. Now, I'm going to tell you that sitting here today
21 Krish Patel of P Communications has eighteen stores.

22 A. Okay.

23 Q. The rest of them belong to other agents?

24 A. Yes.

25 Q. All right. Do you recall an agent, just out of the

- 1 blue, an agent who applied at about the time Krish Patel
2 opened his first store on Pelham Road? And that would be --
3 somebody had a tire company over in Powdersville.
4 A. Right. Piedmont Wireless.
5 Q. Piedmont Wireless?
6 A. Greg Handler.
7 Q. A guy named Greg Handler applied?
8 A. Yes.
9 Q. He had a tire store?
10 A. Yes.
11 Q. Given an agency?
12 A. Yes.
13 Q. Opened his store?
14 A. Yes.
15 Q. Sold it?
16 A. Yes.
17 Q. Still in existence today?
18 A. Yes.
19 Q. All right. Now, do you recall when VP applied?
20 A. Yes.
21 Q. Were you aware and was Verizon aware that Krish Patel
22 was involved in that process?
23 A. Yes.
24 Q. Do you recall when P Communications applied?
25 A. Yes.

- 1 Q. Were you aware and was Verizon aware that Krish Patel,
2 was involved in P Communications also?
3 A. Yes.
4 Q. Do you recall when VP was denied?
5 A. I don't know the exact date.
6 Q. I don't -- I'm not asking you to know the exact date.
7 Do you recall the event ---
8 A. Yes.
9 Q. --- when VP was turned down?
10 A. Yes.
11 Q. Do you recall who the two applicants were?
12 A. Yes.
13 Q. Who were they?
14 A. That was Kaj Patel and Vijay Patel.
15 Q. Okay. How many times did you deal with Kaj Patel?
16 A. That one initial visit.
17 Q. That was it?
18 A. Business meeting. Yes.
19 Q. All right. You've been with Verizon how long?
20 A. Twenty-seven years this year.
21 Q. Do you recall a single instance when an individual's
22 name was on an application and that person was denied and
23 they reapplied and it was accepted?
24 A. No.
25 Q. That's in twenty-seven years?

1 A. Yes.

2 Q. Do you know why VP was denied?

3 A. I do not.

4 Q. That's beyond your grade level basis, ---

5 A. Right.

6 Q. --- so they say?

7 MR. STEPHENSON: One second. I may be through.

8 (Pause)

9 MR. STEPHENSON: That's all I've got, Your Honor.

10 THE COURT: Okay. Cross.

11 **Cross Examination by Mr. Gilreath:**

12 Q. You've never seen anybody that was denied get approved,
13 right?

14 A. Right.

15 Q. Isn't it true, Ms. Blew, Krish Patel repackaged his
16 plan through P Communications and got it approved with Corby
17 Phillips and took it on to where it is today?

18 A. I don't know that I would call it repackaged. He -- he
19 and Corby got together and wanted to open up an agent
20 location.

21 Q. And it got -- and it got approved?

22 A. Through Corby, yeah.

23 Q. And you knew Krish was involved with Corby?

24 A. Yes.

25 Q. It wasn't any big secret about that?

1 A. Right.

2 Q. And you knew Krish was involved with the other
3 corporation?

4 A. Right.

5 Q. And he repackaged that deal, used the same business
6 plan and got it approved, correct?

7 A. The application that was submitted was approved. It
8 was in Corby Phillip's name.

9 Q. Yeah. How long -- how long did Corby Phillips last
10 with Verizon Wireless?

11 A. I don't recall.

12 Q. He was gone by the end of 2008, wasn't he?

13 A. I don't recall.

14 Q. You don't recall?

15 A. I don't remember.

16 Q. You don't have any recollection?

17 A. I don't.

18 Q. Let me ask you one other question.

19 A. Yes, sir.

20 Q. You weren't in here when Mr. Stephenson stood up and
21 made his opening statement. And I didn't hear him real
22 good, but everybody on my side said they heard him real
23 good. And they're telling me, and I thought I heard it, but
24 I wasn't sure, that he said that Krish Patel was forced to
25 resign from Verizon Wireless. Do you know anything about

1 that?

2 A. I do not.

3 Q. If you had known something about that, what effect
4 would that have had on this deal?

5 A. I would ---

6 Q. If you had known the guy that was behind Corby Phillips
7 ---

8 **MR. STEPHENSON:** Your Honor, he needs to let her answer
9 the question.

10 **THE COURT:** Okay.

11 A. I'm not the approver. I submit ---

12 **MR. GILREATH:** I've been watching him ---

13 **THE COURT:** Yeah, you -- yeah, rubbing off. Okay. Let
14 her answer.

15 A. Okay. Ask me the question again.

16 Q. Okay. You said you did not know that Krish Patel was
17 forced ---

18 A. Right.

19 Q. --- to resign -- okay. And if you had known this when
20 or Verizon had known this when Corby Phillips put his deal
21 in, would y'all have accepted it?

22 A. He was accepted. And the approver that approves the
23 actual application for processing was the regional
24 president, Jerry Fontaine, who I know Krish knew and Jerry
25 knew him. So it was approved.

1 Q. Okay. But you didn't know that Krish Patel was forced
2 to resign?

3 A. No.

4 Q. Okay. And this fellow -- now he was forced to resign
5 and then he actually filed another application with Verizon
6 to be a part owner in Corby's store sometime before the end
7 of '08, didn't he? He and Mr. Gailey got in?

8 A. Right.

9 Q. And by the end of '08 -- by the end of '09 -- by the
10 end of '08 Corby was gone, I believe. No, the end of '09.
11 Excuse me. I got my years mixed up. The end of '09 Corby
12 was gone, wasn't he?

13 A. I said I don't know the date when -- when he left.

14 Q. Let me ask you this. When you -- when you have a
15 Verizon franchise and you're lucky enough or whatever, good
16 enough or whatever it takes to get a Verizon store, doesn't
17 Verizon expect you to keep them advised of who's the
18 stockholders in the store and who owns it all?

19 A. Yes.

20 Q. And if Krish Patel got rid of Corby Phillips in
21 December of '09 you would expect him to shortly tell Verizon
22 that Corby was gone and that he had it all or that Gailey
23 was gone and he had it all, correct?

24 A. Right, and which he did. He went through his account
25 manager and sales operations.

1 Q. Yeah. Look over -- let me get this red document out
2 here. Look at page 302, I believe. Look right here at
3 Plaintiff's -- that's a Plaintiff's document ---

4 A. This one?

5 Q. And that's a letter to Patricia Cook. Is she your
6 boss?

7 A. No. She works in sales operations.

8 Q. And that letter was written January 20th of 2010.
9 Krish Patel is writing her and says please make the
10 following changes that Keith Gailey's forty percent interest
11 has been surrendered to the corporation, thereby one hundred
12 percent of the stock is owned by the company, is that
13 correct?

14 A. That's what it says.

15 Q. All right. Turn back one page and look at page 200299.
16 And I'll represent to you that that is an action taken by
17 written consent of all the directors of P Communications
18 signed by Mr. Patel and Mr. Gailey.

19 And it says, I'm not going to read it all, but I'll
20 represent to you, and I don't think Mr. Stephenson will
21 disagree that it represents that Mr. Gailey has sold his
22 stock to the corporation and that Krish Patel now owns one
23 hundred percent of the stock January 1st, 2009.

24 Now, the last time I checked, January 2010 is a year
25 later. You got any explanation of why Krish Patel would

1 wait a year to tell y'all that?

2 A. I do not.

3 Q. Is that the kind of business -- is that what you expect
4 of your franchisees, that they're going to go out and change
5 their ownership and hide from you ---

6 **MR. STEPHENSON:** Your Honor, I ---

7 **THE COURT:** Wait, wait, wait, wait, wait. What's your
8 objection?

9 **MR. STEPHENSON:** He is stating facts not in evidence.

10 **MR. GILREATH:** Okay. I'll start over, Your Honor.

11 **THE COURT:** Okay.

12 Q. Is that what you expect of your franchisees, for them
13 to be fortunate enough to have a franchise and to fail to
14 disclose to you for over a year the fact that the ownership
15 had changed and that Mr. Gailey was gone?

16 A. We would expect to have more timely information, yes,
17 sir.

18 Q. Okay. Thank you, ma'am. No further questions.

19 **MR. STEPHENSON:** Nothing further.

20 **THE COURT:** Do you know what the criteria are to get
21 qualified as an agent?

22 A. A potential agent would submit a business plan and we
23 would go through the plan. Once the plan was discussed and
24 we agreed upon it, we would then give the agent the
25 application to complete and fill out. That along with

1 financials would be submitted back to Verizon for approval
2 process.

3 **THE COURT:** Okay. But what are the criteria that would
4 approve, you know, be the up or down?

5 A. The approvals are done through our legal department.
6 It would -- one thing on an approval would be the location
7 that they would be looking at. As far as the agent
8 contract, as far as an approval would go, it would be
9 approved initially by our regional president and then it
10 would be submitted through sales ops and then submitted to
11 legal and finance, who are on the final approvals.

12 **THE COURT:** Okay. And so ---

13 A. It would be based -- we do a background check and
14 financials.

15 **THE COURT:** Okay. So store location, financials of the
16 principals involved in the corporation?

17 A. Yes, sir.

18 **THE COURT:** And background of the principals involved
19 in the corporation?

20 A. Yes, sir.

21 **THE COURT:** Okay. Any other criteria you can think of?

22 A. None that I can think of.

23 **THE COURT:** Okay. Y'all got any other questions you
24 want to ask?

25 **MR. GILREATH:** Let me ask her one other thing about ---

1 **THE COURT:** All right.

2 **Cross Examination by Mr. Gilreath Continued:**

3 Q. Did you -- were you ever in a meeting with --
4 originally when they sent the original business plan in on
5 VP?

6 A. I was.

7 Q. You were in that original meeting? Did you see -- did
8 you see that business plan?

9 A. I did.

10 Q. And what did you think of the business plan?

11 A. It was a business plan that described the areas in
12 which the agent -- potential agent wanted to grow, some
13 pieces of marketing, as I recall. It was a basic business
14 plan.

15 Q. How important was that business plan as far as making
16 the decision to -- any decisions you had to make? I know
17 you didn't make the ultimate decision.

18 A. Right. The business plan shows that there's been some
19 thought put into -- not just going out on a limb, that you
20 want to be an agent for Verizon. So it shows what your
21 sales projected, what you're projecting in sales, locations
22 you're interested in, territories, marketing. So it shows
23 that there's been some thought put into it. If a business
24 plan doesn't include things like that, then at that point we
25 would -- I would not have approved to move forward without a

1 better plan.

2 Q. So would it be fair to say that a business plan is a
3 very important part of the application process?

4 A. It's the first step in the process.

5 Q. Okay.

6 **MR. GILREATH:** That's all I got.

7 **THE COURT:** Okay. I'll just follow up on that. You
8 get two applications with substantially similar business
9 plans, one is granted and one is not. So the other criteria
10 would fall on who the principals are in the corporation, is
11 that right?

12 A. Right. But the business plan is not going to cause you
13 not to be approved. The application being denied would
14 cause you not to be approved.

15 **THE COURT:** I'm sorry, say that again.

16 A. Ask me your question again. I want to make sure I
17 understand ---

18 **THE COURT:** Okay.

19 A. --- what you're saying.

20 **THE COURT:** You got two applicants ---

21 A. Right.

22 **THE COURT:** --- with substantially similar business
23 plans.

24 A. Well, because Krish was involved as both, not
25 necessarily as an agent principal, I figured it was his

1 business plan. That's why it was similar.

2 **THE COURT:** Well, this is what I'm getting at. Let me
3 finish my question. You've got two applicants with
4 substantially similar business plans, different principals.
5 One is accepted and one is denied. Can you distinguish what
6 the, I mean, ---

7 A. It was -- the difference is the principals on each
8 application.

9 **THE COURT:** Okay. All right. Thank you.

10 A. You're welcome.

11 **MR. STEPHENSON:** Your Honor, can this witness be
12 excused?

13 **THE COURT:** Y'all got any ---

14 **MR. GILREATH:** That's fine.

15 **THE COURT:** Okay. Yes, ma'am. Thank you.

16 A. You're welcome.

17 **MR. STEPHENSON:** Your Honor, we're going to publish
18 parts of the deposition of Ms. Patricia Cook, who is
19 unavailable. She had surgery on her mouth.

20 What I've done just so as not to have to show a video
21 tape, I've highlighted the deposition and the portions
22 designated by us and by Mr. Gilreath. Your Honor, may I
23 publish this to the Court? It's not that long.

24 **THE COURT:** Yeah, that's fine.

25 **MR. GILREATH:** Your Honor, ---

1 **THE COURT:** Yeah, y'all go through it and make sure
2 it's all good.

3 **MR. GILREATH:** Your Honor, I want to -- I've got a ---

4 **MR. STEPHENSON:** You want what you designated?

5 **MR. GILREATH:** I've got a position on what he's
6 designating and something that's relative to all her -- of
7 what he designated. And I'd like to hand that up to the
8 Court now if I could and give them a copy. This is our
9 response to his designations.

10 **THE COURT:** Oh, okay. Who is Patricia Cook?

11 **MR. STEPHENSON:** Patricia Cook is another employee of
12 Verizon.

13 **MR. GILREATH:** I'd like to file this ---

14 **THE COURT:** Yeah, go ahead. Have you got another copy?

15 (Whereupon Plaintiff's exhibit 519 was marked and
16 admitted into evidence)

17 **MR. STEPHENSON:** Your Honor, they're saying in essence
18 you shouldn't believe her. But I think I'm entitled to put
19 it ---

20 **MR. GILREATH:** No, you can put it in.

21 **MR. STEPHENSON:** --- in, then you can make that
22 determination.

23 **MR. GILREATH:** Oh, yeah. I'm not objecting to it, Your
24 Honor. That's just for Your Honor's assistance and kind of
25 our position on what she's saying.

DEPOSITION OF PATRICIA COOK

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1 **THE COURT:** Okay.

2 (Whereupon the attorneys were conferring off the
3 record)

4 **MR. STEPHENSON:** All right. Your Honor, it won't take
5 long.

6 **THE COURT:** Okay.

7 (Whereupon the deposition of Patricia Cook was read
8 into the record by Mr. Stephenson)

9 **Deposition of Patricia Cook:**

10 Q. State your full name and address for the record, ma'am.

11 A. Answer. Patricia Liberty Cook, 504 Grimes Drive,
12 Simpsonville, South Carolina, 29681.

13 Q. Question. Okay. Where are you employed?

14 A. Answer. Verizon Wireless.

15 Q. Question. Give me your educational background and
16 employment up and until Verizon Wireless.

17 A. Answer. Up until Verizon Wireless.

18 Q. Question. Well, I've been working for Verizon now, in
19 other words, answer, I've been with Verizon twenty years.

20 Q. Question. Okay. Bring me forward in your various
21 positions in Verizon through today.

22 A. Answer. I started out as a customer service
23 representative, went to a technical support representative,
24 supervisor of quality services and special events and then
25 to sales operations.

DEPOSITION OF PATRICIA COOK

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1 Q. Question. Is that your position now?

2 A. Answer. Right now I'm senior analyst for the marketing
3 team.

4 Q. Question. When did you first meet Krish Patel?

5 A. I don't remember the exact time.

6 Q. Question. Can you give me the rough date?

7 A. Approximately four years ago.

8 Q. Okay. Have you ever dated Krish Patel?

9 A. No, sir.

10 Q. Have you ever been out with him on a social basis?

11 A. Not out with him. I attended his corporate events.

12 Q. Okay. You don't have any kind of relationship with
13 him?

14 A. No, sir.

15 Q. Question. Have you ever met Kaj Patel?

16 A. No, sir.

17 Q. Question. So today is the first time you've ever seen
18 him?

19 A. Yeah.

20 Q. Question. Okay. All right. Now look at exhibit 10.
21 Have you ever seen that? This is a letter from Verizon
22 Wireless dated February 26th addressed to VP Enterprises
23 informing them that they're unable to -- Verizon is unable
24 to proceed with an authorization agency agreement at this
25 time. That's signed by Mr. Butler. Is his office here in

1 Greenville?

2 A. Answer. Yes, sir.

3 Q. Okay. Did you have any involvement in the decision to
4 approve or not approve?

5 A. Yes.

6 Q. Question. Tell me about that.

7 A. My job was to pull background checks on individuals
8 that apply as agent principals, to run credit on individuals
9 and then compile the data.

10 Q. Question. What did you find when you did that?

11 A. Answer. When I compared the background checks to the
12 agent application in this particular case, I remember the
13 applicants, the agent principals stating that they had no
14 previous criminal history and I believe no -- were in no
15 legal or no litigation, and I found that was not the case.

16 Q. Question. Do you remember which one that applied to?
17 It only applied to one of them, didn't it?

18 A. Answer. It was only one of them. I don't recall
19 exactly the name of the applicant, but if you gave them to
20 me, I think I could.

21 Q. Question. All right. Look at number 11. And that's
22 the agent application for VP Enterprises. And you can see
23 that the principals are Pankaj, and we call him Kaj because
24 he goes by Kaj, the president, and Vijay Patel, who is
25 Krish's father. Just to refresh your memory, would it be

1 correct for me to state that the guy with the criminal
2 problem was Vijay?

3 **MR. STEPHENSON:** An objection.

4 Q. Okay. Who had the problems?

5 A. I believe it was Pankaj.

6 Q. Question. What kind of problem did he have?

7 A. I don't remember specifics. I just don't remember the
8 specifics.

9 Q. Question. And you think it was Kaj Patel, not Vijay?

10 A. Answer. I believe so.

11 Q. Well, at the break I didn't make them an exhibit. I
12 don't have that document here. I'll get it at a break, but
13 I'll refresh your memory. Can you remember one of them
14 having a problem with shoplifting at a Belk's?

15 A. Answer. Not specifically.

16 Q. Question. Can you tell me specifically what, if any,
17 problem you think Kaj had?

18 A. I don't remember specifics. It's been years since.

19 Q. But your recollection, there was only one of them, not
20 all of them?

21 A. To my memory, yes.

22 Q. Okay. Question. When you found that -- when you found
23 that information, I'll show it to you here just shortly,
24 what did you do with it and who did you -- well, what did
25 you do with it?

1 A. Answer. I compiled information, I verified social
2 security numbers, dates of birth to ensure that I had to the
3 best of my ability, had the person actually on the report
4 which I do if anything comes back within ten years.

5 Q. Question. Right.

6 A. I compiled information, put it all together and then I
7 provide that information as part of the approval process to
8 our legal department.

9 Q. Question. And who makes the ultimate decision whether
10 to accept or reject the application?

11 A. Answer. I'm not sure.

12 MR. STEPHENSON: Some additional documents are marked.

13 Q. Question. Are those the documents that obtain -- that
14 you referred to earlier?

15 A. Yes, sir.

16 Q. Now that you've seen this would I be correct to assume
17 that the problem Verizon had was with Mr. Vijay Patel, not
18 Mr. Kaj Patel?

19 A. Are you asking me if it was solely Vijay?

20 Q. Yeah.

21 A. I don't believe so. I don't -- I don't believe so.

22 Q. Question. You don't believe so?

23 A. No, sir.

24 Q. Well, can you tell me what kind of problem they had
25 with Kaj Patel, if you know?

1 A. If you provided me with a background check I could
2 recall.

3 Q. Question. I don't have a background check on him
4 because it wasn't produced to me. I think that's part of my
5 30(b)6 notice. Well, question, so as we sit here today
6 you're still telling me that you think the problem was with
7 another -- with the other principal, Kaj Patel?

8 A. Answer. I believe so. Yes, sir.

9 Q. Question. But you can't tell me what it was?

10 A. Answer. Specifically, I cannot.

11 Q. Question. Well, how did you prepare for this
12 deposition?

13 A. I spoke to Laura ---

14 **MR. STEPHENSON:** Editorial; Laura was the lawyer who
15 was outside counsel.

16 A. Answer. I spoke to Laura. At the time I did not have
17 access to these particular documents to go back and review
18 all them. I'm not in a position -- in that position at this
19 time and if they were not available to me.

20 Q. Question. Did you meet with anybody other than Laura?

21 A. Answer. No.

22 Q. Did you talk with any of the other two witnesses we've
23 got here today?

24 A. Answer. No, sir.

25 Q. Did you have any discussions with anybody about any

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1 problem with Kaj Patel?

2 A. Answer. At the time.

3 Q. Question. No, in preparation of your deposition?

4 A. Answer. No, sir.

5 MR. STEPHENSON: Is that it?

6 MR. GILREATH: Yeah.

7 MR. STEPHENSON: We're done.

8 MR. GILREATH: Your Honor, the only point I would say,
9 this lady actually gave two depositions that day. She gave
10 her -- she had an individual deposition and then we went
11 into a 30(b)6 deposition. Both of those are included in
12 that, right, Tom?

13 MR. STEPHENSON: Yep.

14 MR. GILREATH: So she -- sometimes she was speaking
15 individually and sometimes she was speaking for Verizon.

16 THE COURT: Okay.

17 MR. STEPHENSON: The next witness, Your Honor?

18 THE COURT: Well, I just have one question. Ms. Blew
19 said she'd been with Verizon for twenty-seven years. That
20 means 1987. Did we have cell phones in 1987?

21 MR. GILREATH: I think we did, but they weren't real
22 good.

23 THE COURT: They were bag phones.

24 MR. MATHIAS: I think Verizon was in a different line
25 of business.

1 **THE COURT:** Did Verizon exist in 1987?

2 **MR. MATHIAS:** It's predecessor.

3 **MR. STEPHENSON:** I think she was talking about Verizon
4 or its predecessors.

5 **THE COURT:** Okay. I was just curious about that. Who
6 was the predecessor? Southern Bell or something?

7 **MR. MATHIAS:** GT.

8 **THE COURT:** Who?

9 **MR. MATHIAS:** GTE.

10 **KRISH PATEL:** GTE.

11 **THE COURT:** Oh, okay. All right. Thank you. That's
12 just an aside, has nothing to do with the case. Thank you
13 very much. Okay. Next witness.

14 **MR. STEPHENSON:** I'm going to turn this over to people
15 smarter than me.

16 **MR. MATHIAS:** Professor Martin McWilliams.

17 **THE COURT:** Okay.

18 **MR. GILREATH:** Your Honor, as we did with Professor
19 Freeman, we have agreed that he's qualified as -- to testify
20 to whatever they're going to put him up for.

21 **THE COURT:** You want to specify what his expert
22 qualifications are? I mean, what's the field he's ---

23 **MR. GILREATH:** I mean, they need to say that, of
24 course, but I'm not -- I'm going to go along the same line
25 of ---

1 **THE COURT:** Okay.

2 **MR. GILREATH:** --- same line as Mr. Stephenson did.

3 **THE COURT:** How about it? What is it?

4 **MR. GILREATH:** I'd like to hear on the record exactly

5 what they're going to ---

6 **THE COURT:** We'll get it out of them.

7 **MR. GILREATH:** Okay.

8 **MR. MATHIAS:** Did you have his CV -- did y'all mark

9 Professor Freeman's CV?

10 **MR. GILREATH:** Your Honor, before I forget it.

11 **MR. STEPHENSON:** Even if he forgets, he can put it in.

12 I don't care.

13 **MR. GILREATH:** Here is Professor Freeman's CV.

14 **THE COURT:** No, that's McWilliams. I don't need to

15 look at them.

16 **MR. GILREATH:** Okay.

17 (Pause)

18 **THE COURT:** Do you swear to tell the truth?

19 **PROFESSOR McWILLIAMS:** Yes, sir.

20 **THE COURT:** All right. State your name for the record.

21 **MADAME COURT REPORTER:** Give me a minute to mark the

22 exhibits, please.

23 **THE COURT:** Oh, sorry. That was a practice round.

24 **PROFESSOR McWILLIAMS:** I won't change my answer.

25 **THE COURT:** Hey, can I talk to you two up here for a

1 second?

2 **MR. GILREATH:** Which two?

3 **THE COURT:** You and you.

4 (Whereupon a bench conference was held off the record)

5 (Whereupon Plaintiff's exhibit 520 was marked and
6 admitted into evidence)

7 (Whereupon Defendant's exhibit 234 was marked and
8 admitted into evidence)

9 **THE COURT:** We'll just take a short break. And I'm
10 sorry, professor. If you'll just be patient with us.

11 **PROFESSOR McWILLIAMS:** Yes, sir.

12 (Whereupon court was in recess at 2:07 pm)

13 (Whereupon court reconvened at 2:23 pm)

14 **THE COURT:** All right.

15 **Martin McWilliams, Jr.,**
16 being duly sworn testified as follows;

17 **MADAME CLERK:** Please state your name for the record.

18 **PROFESSOR McWILLIAMS:** Martin McWilliams.

19 **MADAME CLERK:** Thank you. You may be seated.

20 **MR. MATHIAS:** I think we've stipulated that Professor
21 McWilliams is an expert in his field.

22 **THE COURT:** Well, let's find out what that -- he's
23 being qualified as an expert for the purposes of this trial
24 in what field?

25 **MR. MATHIAS:** In the field of fiduciary duties and

1 standards of care owed by those involved in business
2 ventures.

3 **THE COURT:** Agree?

4 **MR. GILREATH:** Your Honor, I would kind of like to hear
5 him or either hear Mr. Mathias say what he's going to say,
6 which is kind of like the same thing Mr. Freeman said when I
7 asked him. I'm not -- have you got something in writing on
8 the interrogatory answer or whatever you sent me? Or either
9 just ask him or you tell the Court ---

10 **THE COURT:** Well, he did. He just did. Say it again
11 out loud so he can hear you.

12 **MR. MATHIAS:** An expert in the field of fiduciary
13 duties and standards of care owed by individuals involved in
14 business ventures.

15 **THE COURT:** Got that?

16 **MR. GILREATH:** I'm going to kind of do the same
17 objection he did. If he's going to testify on the law and
18 testify to whether ---

19 **THE COURT:** I'm not -- he's not going to get to render
20 conclusions on the law. He can't do that. He's going to
21 testify to fiduciary duty and relationships between
22 individuals in business ventures.

23 **MR. MATHIAS:** As well as standards of care.

24 **THE COURT:** Standards of care.

25 **MR. GILREATH:** Well, is he going to testify about what

1 he said he was going to testify on when I took his
2 deposition because if he's going to come in here with some
3 new opinions or something I haven't heard about because I
4 took his deposition. I don't want any surprise opinions is
5 what I'm saying.

6 **MR. MATHIAS:** The scope of his testimony will be the
7 exact same. And you can cross him on anything you want.

8 **MR. GILREATH:** Okay.

9 **THE COURT:** All right. Have at it.

10 **Direct Examination by Mr. Mathias:**

11 Q. Professor McWilliams, please state your name for the
12 record.

13 A. Martin C. McWilliams, Jr.

14 Q. And I believe we've marked your CV as exhibit 234.
15 What do you do for a living?

16 A. I'm a law professor at the University of South
17 Carolina.

18 Q. For the record can you please state your educational
19 background.

20 A. Yes. I graduated from the University of Virginia in
21 1969. Spent three years in the service as an infantry
22 officer. And went back to my home state of Mississippi, put
23 myself through the Ole Miss Law School on a GI Bill.

24 And by that time I had decided I wanted to be a law
25 professor. And so my mentors at Ole Miss suggested I tick a

1 couple of boxes. One of those was -- I went to Harvard to
2 the law school there for an additional degree. So my most
3 recent degree is from the law school at Harvard University.

4 Q. And aside from your career as a law professor at the
5 University of South Carolina can you give me a little bit
6 more about your professional background?

7 A. Yes. After I finished at Harvard, I clerked for the
8 late Robert Ainsworth, who was a judge in the United States
9 Court of Appeals for the Fifth Circuit. One of the boxes I
10 was told I needed to tick to be a law professor was to go to
11 work for a, quote, Wall Street law firm. And so after Judge
12 Ainsworth, I went to New York, and I was hired by Davis,
13 Polk & Wardwell, which is one of the big Wall Street law
14 firms.

15 I'm sure my mentor at Ole Miss didn't realize I was
16 going to take him literally, but I did. And there I went.
17 And so I practiced law for Davis, Polk for six years. Three
18 in their New York office and three in their London office
19 and was trained as a corporate and securities lawyer by
20 Davis, Polk.

21 When Davis, Polk asked me to come back to New York, I
22 resigned and took up my teaching position at the University
23 of South Carolina. That was in 1983. And I've been on the
24 faculty of the University of South Carolina ever since
25 except for one year when I took leave and went back to New

1 York, worked for Sullivan and Cromwell for a year and
2 decided I preferred teaching. And so I've been teaching
3 ever since.

4 And the courses that I teach are precisely the ones
5 that are relevant in this context. I teach business
6 corporations, agency partnership, advanced business
7 corporations, contracts and non-profit corporations and
8 other similar courses.

9 Now, after I came back from Sullivan and Cromwell the
10 firm of -- it was then called Boyd, Knowlton, Tate & Finlay
11 in Columbia, asked me to come to work as counsel for them.
12 They needed some help in their corporate and securities
13 department.

14 And so I signed on as counsel there. That was in about
15 1987 and worked as counsel for Boyd, Knowlton and a
16 successor firm, which has now come down to the Haynsworth
17 firm, Haynsworth, Sinkler, Boyd for twenty-five years doing
18 corporate and securities work for them and doing some expert
19 witness work.

20 I left the Haynsworth firm on April 1st of 2013 after
21 twenty-five years in order to settle back in to spending
22 more time at the law school and do some more expert witness
23 work. And that's where I find myself today.

24 Q. Are you a member of any professional organizations?

25 A. I am. I am a member -- I'm an elected member of the

1 American Law Institute. I'm a member of the South Carolina
2 Bar, North Carolina Bar, the John Belton O'Neill Inn of
3 Court in Columbia. And I'm an elected fellow of the
4 Honorable Society of Gray's Inn in London, one of the four
5 London Inns of Court that manages their justice system.

6 Q. When were you contacted about this case?

7 A. Well, my engagement letter is dated February the 5th,
8 2014.

9 Q. And what were you asked to do?

10 A. I was asked to review the record and give an idea of
11 how I felt the pleadings played out in terms of perhaps
12 forming some opinions and perhaps testifying in court.

13 Q. And have you done that?

14 A. Yes, I have.

15 Q. Were you deposed?

16 A. Yes, I was.

17 Q. And since that time have you continued to review
18 material in this case?

19 A. I have. As the record has expanded, yes, I have kept
20 up with the expanding record.

21 Q. And has that continued review changed or reenforced
22 your opinion?

23 A. It's reenforced the opinions I had from the beginning,
24 yes.

25 Q. And what are your opinions in this case?

1 A. Well, I really have -- it's basically one opinion.

2 And that is that the Defendants in this case have acted in
3 good faith and have not breached their -- the various
4 fiduciary duties that they owed, at least not in any
5 material sense.

6 Q. Have you reviewed the Plaintiff's pretrial brief?

7 A. I have.

8 Q. Have you been sitting in the courtroom and listening to
9 the witnesses in this case?

10 A. Most of them over the last two days. I didn't hear the
11 opening.

12 Q. Did you listen to Professor Freeman's testimony?

13 A. Yes, I did.

14 Q. Considering everything you've listened to how would you
15 describe the Plaintiff's view of the duties in this case?

16 A. The word that comes to mind is conflate, c-o-n-f-l-a-t-
17 e. It's my view that the -- the Plaintiff's arguments are
18 conflating varying duties that are owed by the Defendants
19 under different sets of circumstances that are relevant in
20 this case.

21 Q. And what are the duties that -- in your opinion are
22 relevant in this case?

23 A. Well, there are two sets of duties. One is the set of
24 promoter's duties. And the other is the set of duties that
25 are owed in the corporate context by directors and officers

1 of corporations.

2 Q. And in your opinion, based on the review of evidence
3 and listening to the testimony in this case, would you
4 please explain to the Court your opinion of the duties in
5 this case and the relevant standards of care and how they
6 may have progressed throughout the parties' relationship.

7 A. Yes. If His Honor would let me approach the ---

8 **THE COURT:** Yeah, sure. Help yourself.

9 A. Can y'all hear me okay over here, the reporter and
10 everybody?

11 **THE COURT:** I'm sure the reporter will let you know if
12 she can't hear you.

13 A. And she's welcome.

14 **MR. GILREATH:** Your Honor, I can't see the board there.
15 Turn it around.

16 **THE COURT:** You want to drag a chair around?

17 **MR. GILREATH:** That's good.

18 **THE COURT:** That's good. I can see it.

19 A. Can you see it?

20 **THE COURT:** Yeah.

21 **MR. GILREATH:** I can see it good. I want him to see it
22 better than I can.

23 A. If we imagine that this line is time going by, what we
24 have in the world of business and commerce among the three
25 principal parties in this case was a -- was a group of

1 people, a number of them are sitting in the courtroom today,
2 who got together and sometimes did business together and
3 sometimes they didn't. And sometimes they would actually
4 get a project started, but sometimes the projects wouldn't
5 get done.

6 It wasn't just -- if I may use these names, Krish, and
7 Kaj and Vijay, it wasn't just those three. There are others
8 as well in this sort of world of business and commerce. And
9 at some point the three people I just named began to
10 crystalize a project that they had been talking about.

11 And they crystalized the project or the idea of forming
12 a corporation, number one. And number two, for that
13 corporation to apply to Verizon Wireless for a license to do
14 a stand-alone -- a stand-alone Verizon store. So an idea, a
15 crystalized idea to form a corporation for a stand-alone
16 Verizon store and making the necessary application.

17 And at that point our first sort of interesting batch
18 of duties click in. And those are the promoter's duties.
19 The promoter's duties began in what I call the promoter's
20 stage of the facts in this case, again.

21 A time came when the duties of the promoters were
22 fulfilled and a corporation is actually formed. The
23 corporation was formed, articles were filed and the group
24 entered into this second stage. And the second stage was
25 the corporate stage. Now the -- and this is where

1 conflation comes in because the duties that are relevant to
2 the promoter's stage are quite different than the duties
3 that are relevant, relevant to the corporate stage.

4 And the corporate stage, we have two directors who were
5 Kaj and Vijay. And then we have an officer, which was
6 Krish. And those were the three members of the corporation.
7 So, counselor, when I say that the duties morphed over time,
8 this is the way it worked.

9 Q. Okay. Is it possible for a fiduciary -- well, I'm
10 sorry. Excuse me. Is it possible for promoter's duties to
11 extend beyond a corporation?

12 A. Well, in unusual circumstances. I think that there has
13 been testimony from right here this morning about a case
14 called Bivens, which is a South Carolina case, Watkins and
15 -- Bivens against Watkins.

16 And that was an interesting case in which -- I think
17 I'm right about this. A widow invested her money with a
18 couple of folks. They ---

19 **MR. GILREATH:** Your Honor, he's kind of starting to
20 talk about the law here. I thought we were talking about
21 the facts.

22 **MR. MATHIAS:** Your Honor, Mr. Freeman testified how
23 Bivens applied to ---

24 **THE COURT:** Yeah, ---

25 **MR. MATHIAS:** --- this case.

1 **THE COURT:** --- I'll let him.

2 A. And that the -- she lost all of her money. And the
3 question was what standard should be applied to the chaps
4 who organized the corporation?. And the decision in Bivens
5 was that because the corporation was never fully formed that
6 promoter's duties continued.

7 Q. And what do you mean by fully formed?

8 A. Well, a corporation is formed principally by filing
9 articles with the Secretary of State, a first report of
10 corporations, which goes to the Department of Revenue. Then
11 the -- there are bylaws that are adopted. And a board of
12 directors probably -- as significantly as anything in this
13 case, a board of directors is formed.

14 Q. And much like in this case a board of directors
15 including Kaj and Vijay?

16 A. That's correct. The board of directors was set up in
17 this case, and that's Kaj and Vijay. And there's a -- the
18 record has a very complete set of documentation of the
19 formation of the corporation. And these in this case, and,
20 of course, that's the VP, V as in Victor, P as in Paul, VP
21 Corporation. It -- there's no question that in this case it
22 was properly formed and fully formed. And, therefore, it
23 wouldn't fall within the very unusual exception of Bivens.

24 The -- if you'll permit me to cite some authority ---

25 Q. Sure.

1 A. --- for the proposition. I always like to back up my
2 -- when I'm doing this, I like to back up my assertions with
3 some authority.

4 And if we look at 18 American Jurisprudence 2nd,
5 section 104, the promotion stage ends when the promoters
6 cease to perform acts that characterize promoters such as
7 inducing subscriptions and that sort of thing. And section
8 104 of 18 AmJur, I think as a person who does research in
9 this area, I can fairly characterize as the usual rule.

10 AmJur goes on in section 107 to say that fiduciary
11 relation continues until the plan or scheme of promotion has
12 been accomplished. And it normally ceases when the
13 corporation has been established and an independent board of
14 directors is established. And that's the case here.

15 Q. Now in your opinion, given the fact that there's the
16 promoter's stage, the pre-incorporation stage and the
17 corporate stage, did the Defendants satisfy the duties they
18 owed the Plaintiff in this case?

19 A. Yes.

20 Q. Can you please explain the basis of your opinion.

21 A. Well, we started with the promoter's stage. And
22 there's been testimony in this court that promoters owe
23 duties to one another like partners that are fiduciary in
24 nature. And I don't disagree with that.

25 There's a number of times, just as Cardozo's famous

1 rhetoric from the Meinhard and Salmon case, has been brought
2 up in this court that partners, actually joint venturers,
3 Professor Freeman had that right, owe one another a
4 punctilio of the honor of the most sensitive. So that's --
5 and that is -- and I say rhetoric. I mean, that's *obiter*
6 *dicta*. It's cited often actually by the South Carolina
7 Supreme Court.

8 So a high level of duty among promoters, among the
9 promoters themselves and from the promoters to the
10 corporation that's being formed ---

11 Q. In your review of the pleadings in this case did you
12 see any allegations in the complaint or the amended
13 complaint that the Defendants breached any duties during the
14 promotion stage?

15 A. I did not see any allegations in the complaint or the
16 amended complaint of any breaches of this high level of duty
17 during the promoter's stage.

18 You know, if I may, let me quote another famous judge,
19 Justice Frankfurter, who is SEC against Chenery, C-h-e-n-e-
20 r-y, said almost as famously as Justice Cardozo's quote,
21 that to say that a man is a fiduciary only begins the
22 analysis. It gives direction to further inquiry to whom is
23 he a fiduciary, what obligations does he owe as a fiduciary,
24 in what respect has he failed to discharge these obligations
25 and what are the consequences of his deviation from duty?

1 And so I feel as if this analysis that I'm here testing
2 about -- testifying about, to a certain extent, the duties
3 are owed among the promoters and to the corporation being
4 formed, and the obligations are of a high level.

5 Q. In the corporate stage is it your opinion the
6 Plaintiffs -- the Defendants did not violate any duties owed
7 to the Plaintiffs?

8 A. It's my opinion that during -- that once the promoter's
9 stage had ended, the corporation is fully formed, now the
10 three principals are officers and directors of the
11 corporation, that they did not violate their -- the standard
12 of duty as corporate officers and directors.

13 Q. Why?

14 A. Well, the -- I brought with me -- I brought with me the
15 statute. It's section 33-8-300. And it says that a
16 director -- and I should say that officer's duties are
17 phrased exactly the same as director's duties. And that's
18 in subsection 420. So this applies to officers and
19 directors.

20 A director shall discharge his duties as a director in
21 good faith with the care of an ordinarily prudent person in
22 the like position under similar circumstances, and three, in
23 a manner he reasonably believes to be in the best interest
24 of the corporation and its shareholders.

25 In the official comments to section 33-8-300 it says

1 this; section 33-8-300 does not use the term fiduciary
2 because the term could be confused with the unique
3 attributes and obligations of a fiduciary imposed by the law
4 of trusts, some of which are not appropriate for directors
5 of the corporation.

6 And I read that into the record purposely to show that
7 both in the statutory words themselves and in the official
8 comment the duties that are owed during the corporate phase
9 are significantly lower than during the promoter's stage.
10 Nevertheless, I see no breaches of duty in either stage.

11 I'd like to -- I'd like to put another case into the
12 record. It's a well known case in South Carolina called
13 Kuznik, K-u-z-n-i-k, against Bees Ferry Associates. And
14 that's a South Carolina Court of Appeals case.

15 This is a significant case for a number of reasons.
16 And the -- I have three -- I've three significant parts of
17 this case to mention to support my testimony. One is this
18 case holds that partnership analysis is relevant only to the
19 analogy to promoters. When the promotion is over, the duty
20 shifts to the corporation. And I think that's a -- I think
21 that's a very important holding in light of some other
22 testimony we've heard today.

23 In Kuznik the promotion was successful, the corporation
24 was formed. One of the promoters, who became an officer,
25 was ruled by the Court of Appeals not to be a, quote,

1 control person and, therefore, to be subject only to the
2 usual officer duties.

3 And in that respect I'd like to note that Krish, who's
4 the little circle on the board, Krish, being an officer, is
5 subject to officer's duties, not to director's duties,
6 certainly not to promoter's duties once we're in the
7 corporate phase. Nor is he subject to shareholder's duties
8 because he was not a shareholder.

9 It's very clear from the corporate organizational
10 documents of VP Corporation that there were two
11 shareholders, and they were Vijay and Kaj. And, therefore,
12 Krish would not have shareholder's duties. He would have
13 the duties of an officer of the corporation, which are the
14 same as those I've just read into the record.

15 Q. Based on your review of the record, what is your
16 opinion with respect to when the duties between the parties
17 arising out of the corporation ended?

18 A. So when did the corporate stage end? A couple of --
19 actually three approaches I'd like to take to that question.
20 The first is that the Defendants in the case, who are Vijay
21 and Krish, I think the record is clear, clear to me at
22 least, did everything they were required to by the board of
23 directors.

24 And so if Krish's final act, for example, which he was
25 asked to do by the board of directors was to make an

1 investigation into why VP's application to Verizon was
2 denied, and Krish made a persistent effort, I think that's
3 the word that's in the record, to solve that riddle, and it
4 was determined that the answer to that question was not
5 forthcoming from Verizon. Indeed, on the filing that's made
6 with Verizon it says in bold type that if an application is
7 denied, Verizon will not tell you why it was denied. So
8 Krish tried to find out and he was unable to find out.

9 And as I read the record, that was the last time that
10 the board of directors of VP assigned any duties to Krish.
11 And that would have been in probably, I suppose, late
12 February, early March of 2008.

13 And so, therefore, the board of directors in a way quit
14 directing once the -- once the denial of licensure came back
15 from Verizon. Krish was asked to try to find out why. He
16 tried, he was not able under Verizon policy to find out.
17 The board quit directing. Nothing happened anymore.

18 And that leads me to my sort of second point of view,
19 which is the board of directors sort of went off the air.
20 In my view, they abandoned the business. And when we think
21 in terms of abandoning a business where we went for, after
22 that point, the corporation went for more than two years
23 without taking any actions of any kind, whatever, until
24 finally it was administratively dissolved.

25 I think we can -- I think we can get some useful

1 guidance from the restatement of agency, which says that
2 agency terminates when the purposes of the agency become
3 impossible. And that's section 111 of the second
4 restatement of agency.

5 Q. And after the corporation -- the corporate period
6 ended, the duties ceased to exist, were there any other
7 relationships between the parties from which duties could
8 have arisen?

9 A. No.

10 Q. Why?

11 A. Excuse me?

12 Q. Why?

13 A. Well, some suggestions have been made in the pleadings.
14 And one of them has been expressed here today. And that is
15 that the -- and that is that the three of them actually --
16 that the three of them were actually a partnership. And
17 that can't be true.

18 A partnership is an association of two or more persons
19 to carry on as co-owners of business for profit. That's the
20 statutory definition from the Uniform Partnership Act.

21 That was not the case here. This was clearly a
22 corporation that was being formed. References to
23 partnership are valid, as I mentioned just a second ago,
24 only in respect of comparing partnership duty to duty among
25 promoters.

1 Q. Could they have been joint venturers?

2 A. Well, that was my next point. It's also been testified
3 that they were joint venturers, but they were not joint
4 venturers. Under South Carolina law a joint venture is a --
5 it's two or more persons who undertake to carry on as co-
6 owners a single project for profits and each with equal
7 power or authority over the venture with each other. That's
8 not what -- that's not what we have here.

9 What we have here is a set of promoters setting up a
10 corporation. It's not a partnership. It's not a joint
11 venture.

12 Q. Based on their general relationship, in your opinion,
13 did they have a special relationship with trust and
14 confidence?

15 A. I -- what you're referring to is that fiduciary duties
16 can be -- can be found. And that's not my job to say.
17 Whether there's a fiduciary duty or not, that's the Judge's
18 job.

19 But it is possible -- it is sometimes found that there
20 are fiduciary duties among people where there's a relation
21 of trust and confidence between them. But the -- I can't, I
22 mean, I can't make that decision for the Judge. But I would
23 argue that there's nothing in this record that supports such
24 a relationship of trust and confidence. But that's for the
25 Judge to decide.

1 Q. With respect to a cause of action for breach of
2 fiduciary duty, in your opinion, was P Comm's agency
3 relationship with Verizon a corporate opportunity of VP?

4 A. No, it was not.

5 Q. Why?

6 A. Well, the -- there are sort of two main reasons for
7 that. One is that it's widely understood that when it
8 becomes impossible for an enterprise to carry on some sort
9 of business opportunity that comes their way, that business
10 opportunity is not a corporate opportunity in the sense that
11 you're referring to.

12 And my second point is that in order to establish that
13 there is a corporate opportunity in this special respect it
14 has to be shown that there is some special or peculiar
15 interest between the corporation and whatever the business
16 opportunity is.

17 And here we had a situation where, number one, the
18 business opportunity became impossible because it was
19 declined by Verizon. And for a second -- a second reason, a
20 second and separate reason, there was nothing special and
21 particularized about the Verizon license that was obtained
22 by P that would arguably even make it be a corporate
23 opportunity of VP.

24 And the reason for that is that anyone who, I mean,
25 we've had testimony in here just a few minutes ago that

1 anybody who wants to can go online and apply for a Verizon
2 cellular license. And we have the big chart that was over
3 here to my left showing that since the time of the relevant
4 facts in this case, way over a hundred and thirty Verizon
5 licenses have been issued in South Carolina showing that for
6 one particular license to be issued is not a corporate
7 opportunity.

8 I mean, my favorite example, what I teach in class, is
9 if you've got five identical white Fords on the lot and
10 somebody comes and buys one of those white Fords, that's not
11 a business opportunity that's been taken away from somebody
12 else. Everybody else in the world has four more identical
13 ones to choose from.

14 AmJur, the absence of -- this is section 18(b), 15 --
15 volume 18(b) section 15 36. The absence of an expectancy,
16 which I just described, will render the corporation -- the
17 corporate opportunity principal inapplicable.

18 15 40, section 15 40, usurpation of a corporate
19 opportunity breaches a duty owed, if to anyone, to the
20 corporation, not to individual shareholders. And that's a
21 point that may come up in a minute.

22 Section 15 42, expectancy, only projects in which the
23 corporation has an active commercial interest or expectancy
24 are prescribed under this test, the opportunity must come to
25 the Defendant in his official capacity with the corporation

1 asserting the opportunity. Not individual. A corporation
2 must also have the ability to pursue the opportunity. And
3 that's section 15 44.

4 Q. I think that's all I've got.

5 A. Is that enough?

6 Q. Yeah. That's all I've got.

7 **THE COURT:** Okay. Cross.

8 **Cross Examination by Mr. Gilreath:**

9 Q. Good afternoon.

10 A. Afternoon, sir.

11 Q. I'll try to make this short. You said something,
12 before I forget up here, about the agency. You didn't
13 testify to anything about agency in your deposition, I don't
14 recall, did you? That's not on that list of stuff you gave
15 us that you referred to in forming your opinions, your one-
16 page sheet. You remember that?

17 A. Yes. The reason I mentioned ---

18 Q. Your deposition, you want to look at it? You remember
19 it, don't you?

20 A. Yes, I do.

21 Q. It didn't have anything in there about agency,
22 restatement agency in there, did it?

23 A. Well, that was the -- and, no, it didn't. And I'll
24 explain.

25 Q. It's something new you've come up with since I took

1 your deposition.

2 A. It's new only in the sense that it reenforces an
3 opinion that I gave during your deposition.

4 Q. Now, you said, if I heard you right, I was trying to
5 write it down, the Defendants have acted in good faith and
6 have not breached their duties. That's basically what you
7 said, right?

8 A. Yes. Basically, yes.

9 Q. And you spent a whole lot of time talking, I was trying
10 to look at some other stuff, write and listen out of one ear
11 at the same time, but I heard you talking a whole lot more
12 about promoter's duties than I believe I heard you talking
13 about duties as an officer, correct, or as a stockholder or
14 a director, correct?

15 A. No, that's not -- no, it's not correct in terms of
16 substance. In terms of words, maybe I said more words about
17 promoters ---

18 Q. All right. Wait a minute. Okay. Let's just go back
19 and ...

20 A. If I could finish my ---

21 Q. Okay.

22 A. --- answer.

23 Q. I didn't mean to cut you off.

24 A. But I did directly refer to officer's duties,
25 director's duties and shareholder's duties.

1 Q. Okay. Well, I'm going to get to that. But your
2 position on promoter's duties, if I understand it, is it
3 kind of cuts off when the corporation is formed, right?

4 A. Well, I could -- the rule is that once the corporation
5 is fully formed, then the promoter phase ends and corporate
6 duties become the relevant duties.

7 Q. Okay. Well, that's what I want to talk to you about is
8 the corporate duties. And you agree with me and there's no
9 question in your mind that Krish was an officer, correct?

10 A. Correct.

11 Q. He admitted that. Were you here when we played his --
12 you saw his -- you were here when we played the video ---

13 A. Yes.

14 Q. And he -- questionably admitted he was an officer. You
15 heard that. And did you hear -- did you hear what Vijay had
16 to say about the way he and Krish shared their ownership?
17 And would you agree with me that there -- and you heard
18 Professor Freeman say and Professor Freeman, if I heard him
19 right, seemed to say it looked to him like that he was at
20 least probably a defacto shareholder. Would you agree with
21 that?

22 A. No, I don't agree with that. He was not a shareholder.
23 You can easily look in the record and see that there are
24 fifty percent of the shares issued to Kaj and fifty percent
25 issued to Vijay and none were issued to Krish.

1 Q. You looked in the corporate records and you saw that?

2 A. Yes, sir.

3 Q. Perhaps you might better look at the corporate records
4 again. Let me get -- I don't want to make a big deal out of
5 this and take up a lot of time, but I want you to look in
6 the corporate records, and they're right here at the end of
7 this book, and I want you to show me -- and you looked at
8 these, right?

9 A. Yes.

10 Q. All right. This is -- I'll represent to you, and this
11 is in the record, that these are the corporate records. And
12 you say you looked at them. I want you to look in there and
13 see where there was ever a fully signed stock certificate
14 issued to Krish -- to anybody.

15 A. I didn't say a stock certificate was issued. It's very
16 common ---

17 Q. You said it was in the corporate records that he was a
18 stockholder.

19 A. It's very common in closely held corporations not to
20 ever get around to issuing the certificates.

21 Q. The fact is, you don't -- you don't really have a real
22 good handle on what the facts of this case are, do you?

23 A. Is that a question that you're asking ---

24 Q. That's a question.

25 A. Yes.

1 Q. You didn't -- you said you looked at the corporate
2 records and you can't -- you're not -- I'll represent to
3 you, you can sit there and look til the sun goes down
4 tonight, you're not going to find a signed stock certificate
5 in there from Krish Patel to Kaj Patel or anybody.

6 A. I didn't say I would find a signed stock certificate.
7 I'm looking on Defendant's exhibit 000693 and it says number
8 of shares, fifty, Pankaj Patel, number of shares, fifty,
9 Vijay Patel. That's an action taken by written consent by
10 all the directors at the organizational meeting, February
11 14th, 2008.

12 Q. Show me where those directors signed that. Show me
13 where there was a meeting and where they signed it. Let me
14 switch books with you.

15 A. I'll tell you where you can find it signed, counselor,
16 is if you will look in the application that was made by the
17 -- by VP you will see that these are all exhibits to that
18 application, and the application is signed.

19 Q. You're talking about -- which application? The one
20 made to the ---

21 A. To Verizon.

22 Q. Yeah. And who was that signed by?

23 A. It was signed by all -- all of them. It was signed by
24 Vijay and Kaj.

25 Q. You talking about the application to Verizon?