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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CRIMINAL TERM: PART K-23

-----x
THE PEOPLE OF THE STATE OF NEW YORK,

-against- Indictment No.
1709/2010

Jury Trial

HARRY DORVILIER and
HARRY'S NURSING REGISTRY, INC.,

Defendants.

-----x
Queens Supreme Court
125-01 Queens Boulevard
Kew Gardens, New York 11415
April 30, 2012
May 1-4, 7-11, 2012

B E F O R E:

THE HONORABLE JOEL BLUMENFELD,
Justice, Supreme Court
And a jury, plus four alternates

A P P E A R A N C E S:

RICHARD A. BROWN, ESQ.,
District Attorney, Queens County
BY: ROSEMARY BUCCHERI, ESQ.
Assistant District Attorney

ALTER & BARBARO, ESQS.
Attorney for the Defendants
26 Court Street
Brooklyn, New York 11242
BY: BERNARD MITCHELL ALTER, ESQ.

NICOLE C. ROBINSON, CSR
Senior Court Reporter

1 THE CLERK: Number one on the calendar, 1709 of
2 2010, Harry Dorvilier and Harry's Nursing Registry, Inc.
3 This is the case on trial. It is continued. All parties are
4 present. Appearances remain the same. The jury is not
5 present.

6 THE COURT: Any applications before we begin,
7 Counselor?

8 MS. BUCCHERI: No, judge.

9 MR. ALTER: No, Judge.

10 THE COURT: Let's get the jury in.

11 MR. ALTER: I'm still trying to convince the
12 defendant not to testify.

13 THE COURT: That's none of my business.

14 MR. ALTER: We're still a work in progress.

15 THE COURT: Ultimately, it is your client's call.

16 MR. ALTER: Absolutely, your Honor.

17 THE COURT: He clearly wants his day in court.

18 After the People rest, you will ask for a recess. You will
19 explain to him the jury having heard the evidence, why it is
20 or what your recommendation is and why. And after that,
21 he'll think about it, and then he'll give you an answer what
22 his ultimate decision is. Right now, nobody's heard any
23 evidence.

24 MR. ALTER: Correct, your Honor.

25 THE COURT OFFICER: Ready for the jury, your Honor?

1 THE COURT: Yes.

2 THE COURT OFFICER: Jury entering.

3 (Whereupon, the jury entered the courtroom.)

4 THE CLERK: Good morning, jurors. Welcome back to
5 K-23. Again, take a second to make sure all your cell phones
6 and electronic devices are on silent.

7 (Whereupon, the jury was sworn en masse.)

8 THE CLERK: This is the case on trial. All jurors
9 have been sworn and are properly seated.

10 Do both sides waive the reading of the roll?

11 MS. BUCCHERI: So waived.

12 MR. ALTER: So waived.

13 THE COURT: Good morning. So, do you feel
14 flattered by the fact that you're here? I ask if you felt
15 happy and flattered? Why?

16 THE JUROR: Because we have a chance to serve.
17 They thought based on we could give a fair trial, based on
18 that.

19 THE COURT: Exactly right. Who picked you?

20 THE JUROR: The attorneys.

21 THE JUROR: Yourself.

22 THE JUROR: Ourselves.

23 THE COURT: Did I pick you? The attorneys and the
24 defendant picked you. I have no say in it at all. You came
25 here as a part of the panel of 60 prospective jurors. 40 of

1 the 60 made it into this box. Why just the 16? What was
2 there about you that impressed them? Do they know what your
3 verdict is going to be? You don't know what your verdict is
4 going to be, right? But by selecting you and not knowing
5 what your verdict is going to be, they agree to be bound by
6 whatever verdict you give. In other words, they're trusting
7 you to do justice here. That's a pretty powerful thing,
8 isn't it?

9 What do they know about you? They listened to my
10 questions of you and they listened to your answers to my
11 questions. Why just you? It is pretty powerful. That's why
12 I asked you if you felt flattered. Again, I didn't ask you
13 if you felt happy. It is customary at the beginning of every
14 trial to instruct you as to your basic functions, duty and
15 conduct. I'm also going to introduce you in a general way to
16 the procedure in this trial. This trial, the People of the
17 State of New York against Harry Dorvilier and Harry's Nursing
18 Registry, Inc., commenced with the selection of the jury
19 which we concluded on Friday. As you can see, this jury is
20 composed of 12 members and in addition, there are four
21 alternates.

22 Our alternates are Jennifer Scanlan, Esperanza
23 Contreras-Wang, Blanca Valencia and Amy Francis. If you are
24 an alternate, you need to pay as close attention to the
25 evidence as the rest of the jury. If for any reason, any one

1 of the members of the jury isn't able to serve, an alternate
2 will be required to step in the place of that juror.

3 The second part of the trial is about to start.
4 This part is the opening statement on behalf of the
5 prosecution by Assistant District Attorney Rosemary Buccheri.
6 In her opening statement, Ms. Buccheri is required to
7 indicate to you what the prosecution intends to prove by way
8 of evidence that support the charges against these
9 defendants. Once she completes her opening statement,
10 defense counsel have the option to make opening statements on
11 behalf of the two clients.

12 Now, what attorneys say in an opening statement is
13 not evidence. It is a preview of what the attorney expects
14 the evidence will show. Once opening statements have been
15 completed, Ms. Buccheri will present a witness whom she will
16 question. Questions she asks of a witness she calls to the
17 witness stand is called direct examination. Once she
18 completes her questions, Mr. Alter, defense counsel, will
19 then be given an opportunity to question those witnesses.
20 Should he choose to question a witness called by Ms.
21 Buccheri, his questioning of that witness is called
22 cross-examination.

23 This process will continue for each witness Ms.
24 Buccheri presents to give testimony. When she finishes
25 calling all of her witnesses, the defense will be given an

1 opportunity to do so as well. Remember, the defense need not
2 prove anything. Therefore, they do not have to cross-examine
3 any of the prosecution's witnesses, nor do they have to offer
4 any witnesses of their own.

5 Once both sides have finished presenting witnesses,
6 the defense and the prosecution will be given an opportunity
7 to make closing remarks to you. These closing arguments will
8 not be evidence. They will just be arguments made by the
9 attorneys to discuss the facts and circumstances in the case
10 and should be confined to the evidence and to reasonable
11 inferences one can draw from the evidence.

12 As I indicated earlier, neither opening statements
13 nor closing arguments are evidence and any statement or
14 argument made by the attorneys that is not based on the
15 evidence should be disregarded by you. After closing
16 arguments, I'll give you detailed instructions on the law
17 that relate to this particular case. After I finish those
18 instructions, you'll then retire to deliberate, so that you
19 can reach your verdict.

20 Now, I'm going to instruct you on the evidence.
21 When you judge the facts, you are to consider only the
22 evidence. Evidence includes testimony of the witnesses,
23 exhibits that are received in evidence and stipulations of
24 the parties. So, what's a stipulation? A stipulation is a
25 fact the parties agree to present to the jury as evidence

1 without calling a witness to testify. Why would they do
2 that? It's because there's no disagreement. Both parties
3 agree that the evidence that they're presenting to you by
4 stipulation is something you should accept as fact. There's
5 no dispute. So, if there's no dispute, why drag the witness
6 away from their personal or professional lives to come and
7 tell you something that both sides agree is fact? Everyone
8 understand what a stipulation is? Anybody not understand?
9 If you don't understand, let me do my job. I'm not offended
10 by that.

11 THE JUROR: Run it one more time by me.

12 THE COURT: Suppose in a hypothetical case a car,
13 both parties agree that both cars were not speeding. Would
14 you need to bring in somebody to testify that neither car was
15 speeding? If they both agree, suppose you have a witness who
16 can say they're not speeding. Why make that person give up
17 time from work to come here to tell you something that both
18 sides agree?

19 THE JUROR: Okay.

20 THE COURT: Everyone get that?

21 If an exhibit is given to you to examine during the
22 trial, you should examine it carefully, individually and
23 without any comment. Questions that are asked by either
24 attorney or by me are not in and of themselves evidence. It
25 is only when questions become coupled with answers they

1 become evidence. You may not infer any fact from the mere
2 asking of a question. What does that mean? Suppose in a
3 hypothetical trial a witness is on the stand. The lawyer
4 says to the witness, answer this question yes or no. Have
5 you stopped beating your wife? What does it mean if the
6 witness says yes? What does it mean if the witness says no?
7 Can't break the habit, right? What if in reality the witness
8 never beat his wife? When you first heard the question,
9 didn't you start to think this guy must beat his wife, but
10 what if the reality is not true? Would that have been a fair
11 question? The minute you heard the question, you all
12 inferred that he must have beaten his wife.

13 Now, do you understand why you can't infer anything
14 from the mere asking of a question? Just wouldn't have been
15 fair, right? Anyone not understand that? Good. Comments or
16 remarks made by either attorney are not evidence and,
17 therefore, must be disregarded by you. During the course of
18 the trial, Ms. Buccheri, Mr. Alter may exercise their right
19 to object to the other's question or to the introduction of
20 an exhibit on the ground that the attorney believes it is
21 somehow legally improper or inadmissible.

22 Well, if an attorney objects, I have to rule on the
23 objection. I have two possible rulings. I'll either sustain
24 or overrule the objection. If I sustain an objection to a
25 question, you must disregard the question and any answer if

1 one's been given. You must also draw no inference from the
2 question or from any answer nor either speculate as to what
3 the witness would have said if permitted to answer. Evidence
4 stricken from the record must likewise be disregarded.

5 On the other hand, if I overrule the question, the
6 question will be allowed to answer and the answer will stand.
7 Please bear in mind that my rulings on the law are simply
8 that. Under no circumstance are such rulings to be
9 considered by you as indicating that the Court has an opinion
10 as to the guilt or innocence of the defendant.

11 Members of the jury, it is you and you alone who
12 are the sole and exclusive judges of the facts. Now, I want
13 you to understand that objections may come rather quickly and
14 at times an attorney may seem agitated. Please do not resent
15 this or penalize either party for this. Understand that they
16 are just doing their job. Objecting is part of their job.

17 As I stated at the very beginning, you are the
18 triers of the fact. Therefore, it will be up to you to
19 decide which witness to believe and which witness not to
20 believe. Furthermore, you will decide how much of every
21 witness' testimony to accept and how much to reject. Please
22 use your common sense in evaluating all testimony. All that
23 is asked of you is that you apply your same common sense that
24 you apply in your everyday lives to determine who is telling
25 you the truth, who is not, and who is telling you something

1 less than the full truth.

2 Please remember that it is the quality of the
3 evidence that controls, not the quantity of the evidence or
4 the number of witnesses called by either side. While you are
5 the sole judges of the facts, my job is to be the sole judge
6 of the law. You must accept the law as I give it to you
7 without any hesitation or reservation. You must accept the
8 law as I give it even if you privately disagree with me or
9 with the law.

10 There are three basic principles of law that apply
11 to this and all criminal cases. They are the presumption of
12 innocence, the prosecution's burden and the standard of
13 proof. Throughout these proceedings, the defendants are
14 presumed to be innocent. The charges made against him that
15 you heard when you first came here are only accusations and
16 nothing more. They are not proof of guilt or anything else.
17 The fact that these defendants are in this courtroom on trial
18 does not mean that they are guilty of anything. As a result,
19 you must find a defendant not guilty unless on the evidence
20 presented at this trial, you conclude that prosecution has
21 proven that defendant's guilt beyond a reasonable doubt.

22 The defendants are not required to prove that they
23 are not guilty. In fact, the defendants are not required to
24 prove or disprove anything. To the contrary, it is the
25 prosecution that has the burden of proving the defendant's

1 guilt beyond a reasonable doubt. That means before you can
2 find either defendant guilty of a crime, the prosecution must
3 prove beyond a reasonable doubt every element of that crime
4 including that that defendant is the person responsible for
5 committing the crime. The burden of proof never shifts from
6 the prosecution to the defense. If the prosecution fails to
7 satisfy its burden of proof, you must find that defendant not
8 guilty. If the prosecution does satisfy its burden of proof,
9 then you may find that defendant guilty.

10 The defendants need not call any witnesses or
11 question any of the prosecution's witnesses or take the
12 witness stand in their own defense. In an American court of
13 law, a defendant need not do anything. The reason for this
14 is because again the defendants are already presumed
15 innocent. Should a defendant choose not to call or question
16 witnesses or take the witness stand, you may not draw any
17 negative inference from that. In other words, you cannot
18 hold it against the defendant.

19 So, what does our law mean when it requires guilt
20 beyond a reasonable doubt? The law uses the phrase proof of
21 guilt beyond a reasonable doubt to tell you how convincing
22 the evidence of guilt must be to permit a verdict of guilty.
23 The law recognizes that in dealing with everyday events,
24 there are very few things in this world that we know with
25 absolute certainty. Therefore, the law does not require the

1 prosecution to prove a defendant's guilt beyond all possible
2 doubt. On the other hand, it is not sufficient for the
3 prosecution to prove that a defendant is probably guilty. In
4 a criminal case, the proof of guilt must be stronger than
5 that. It must be beyond a reasonable doubt.

6 So, what's a reasonable doubt? A reasonable doubt
7 is an honest doubt of a defendant's guilty for which a reason
8 exists. It is an actual doubt, not an imaginary doubt. It
9 is a doubt that a reasonable person acting in a matter of
10 this importance would be likely to entertain because of the
11 evidence that was presented or because of the lack of
12 convincing evidence. Proof of guilt beyond a reasonable
13 doubt is proof that leaves you so firmly convinced of the
14 defendant's guilt that you have no reasonable doubt of the
15 existence of any element of the crime or the defendant's
16 identity as the person who committed the crime.

17 In determining whether or not the prosecution has
18 proven a defendant's guilt beyond a reasonable doubt, you
19 should be guided solely by a full and fair evaluation of the
20 evidence. After carefully evaluating the evidence, you must
21 decide whether or not that evidence convinces you beyond a
22 reasonable doubt of the defendant's guilt.

23 Whatever your verdict may be, it must not rest upon
24 baseless speculations, nor may it be influenced in any way by
25 bias, prejudice, sympathy or by a desire to bring an end to

1 your deliberations or to avoid an unpleasant duty. If you're
2 not convinced beyond a reasonable doubt that a defendant is
3 guilty of a charged crime, you must find that defendant not
4 guilty of that crime. If you are convinced beyond a
5 reasonable doubt that a defendant is guilty of a charged
6 crime, then you may find that defendant guilty of that crime.

7 As I told you before, the defendants are charged
8 with two counts of grand larceny in the third degree, 11
9 counts of grand larceny in the fourth degree and one count of
10 scheme to defraud in the first degree. In my final
11 instructions to you at the end of the trial, I'll give you
12 detailed instructions of law as to these specific charges.

13 Finally, I'm now going to instruct you on how you
14 must conduct yourselves during the trial. Our law requires
15 jurors to follow certain instructions in order to help ensure
16 a government and fair trial. Do not converse either among
17 yourselves or with anyone else about anything related to this
18 case. You may tell the people with whom you live and your
19 employer that you are a juror and give them information about
20 when you'll be required to be in court, but you may not talk
21 with them or anyone else about anything related to this case.

22 I know that many of you use cell phones,
23 Internet-enabled cell phones such as Blackberry, smartphones,
24 Google phones, Android phones and iPhones, Internet and other
25 tools of technology. You must not use these tools to

1 communicate electronically with anyone about the case. This
2 includes your family and friends. You may not communicate
3 with anyone about the case on your cell phones through
4 e-mail, text messaging such as SMS, on Twitter, to any blog
5 or website, to any Internet chatroom or by way of any other
6 networking such as Facebook, My Space or Linked In. I became
7 a judge in 1987. I never had to say any of those words.

8 Do not at any time during the trial request,
9 accept, agree to accept or discuss with any person the
10 receipt or acceptance of any payment or benefit in return for
11 supplying any evidence concerning the trial. You must
12 promptly report directly to me any incident within your
13 knowledge involving an attempt by any person to improperly
14 influence you or any member of the jury.

15 Do not visit or view either in person or online the
16 premises or place where the charged crimes were allegedly
17 committed or any other premises or place involved in the
18 case. Do not read, view or listen to any accounts or
19 discussions in the case reported by newspapers, television,
20 radio, the Internet or any other media. Do not attempt to
21 research any fact, issue, person or law related by
22 researching the library, the Internet or any other means or
23 source.

24 You should not consult dictionaries or reference
25 material, search the Internet, blog or any other electronic

1 tools to obtain information about this case or to help you
2 decide the case. Do not try to find out information from any
3 source outside the confines of this courtroom.

4 Members of the jury, why are these rules so
5 important? Our law does not permit jurors to talk to anyone
6 about the case because only jurors are authorized to render a
7 verdict. Only you have been found to be fair and no one else
8 has been so qualified. Our law does not permit jurors to
9 converse among themselves about the case until the Court
10 tells them to begin deliberations because premature
11 discussions can lead to premature final decisions.

12 You are not allowed to take notes during the course
13 of this trial. Experience tells us that the act of
14 note-taking distracts the attention of the juror from the
15 trial. Please understand that at any time during your
16 deliberations, you have the right to request that testimony
17 be read back to you and that any exhibits marked and received
18 in evidence be delivered to you.

19 Finally, you must promptly report to me any
20 incident within your knowledge involving any attempt by any
21 person to influence any member of the jury. I've just told
22 you that you're to report any attempt by anyone to improperly
23 influence you. Lawyers are not permitted to have any contact
24 with you other than what takes place on the record during the
25 course of this trial. If you see an attorney in the hallway

1 or outside and that attorney doesn't say hello or acknowledge
2 your presence, do not think the attorney is being rude. They
3 are not permitted to have that contact with you.

4 Now, Assistant District Attorney Rosemary Buccheri
5 will make her opening statement.

6 MS. BUCCHERI: Thank you very much, Judge.

7 Good morning, ladies and gentlemen of the jury.
8 Good morning, your Honor. Good morning, Counsel.

9 As you know, I am Assistant District Attorney
10 Rosemary Buccheri. This is the opportunity that I have to
11 tell you what I intend to prove during the course of the
12 trial, and the evidence will show that from August 8, 2006
13 through December 27, 2007, the defendant who the evidence
14 will show is the owner of Harry's Nursing Registry, Inc.
15 located at 88-25 163rd street in the County of Queens
16 operated a nurse's registry, and the evidence will show that
17 this type of business he employs, he hires LPNs and in some
18 cases RNs.

19 What are LPNs? The testimony will show that LPNs
20 are licensed practical nurses and RNs are practical nurses.
21 They have to both go to school, graduate and sit for boards.
22 In this case, the LPNs will tell you they sat for the boards
23 with the State of New York and they received their licenses.
24 Now.

25 , the testimony will also show that the LPNs, how

1 did they hear about the defendants? Well, they heard about
2 them from word of mouth or friends who were already working
3 for the defendant, the nursing registry. The nurse's
4 registry, he hired these LPNs or RNs to go into patient's
5 homes that were unable to take care of themselves or the
6 family was unable to take care of the patients and they need
7 assistance.

8 What did the LPNs have to do? They go to the
9 defendant's place of business, they fill out an application.
10 The evidence will show that when they filled out the
11 application, they had to provide documentation. What type of
12 documentation? They had to provide proof that they had a
13 certificate or a license from the state that they were in
14 fact a licensed LPN or in some cases RN. They had to provide
15 documentation. They had to give their certificate for fire
16 and safety, certificate for CPR. Whatever documentation the
17 defendant required of them in order to be hired, the LPN had
18 to supply it. Once they filled out the application, they had
19 to take a test. A test that was offered by the defendant in
20 order to be hired at the defendant's place of business.

21 The evidence will also show from the testimony of
22 the LPNs, that once they took the test, they were hired. And
23 how did they get their assignments? Well, they were given
24 the assignments from the defendant. Defendant asked them if
25 they wanted to do a pediatric case involving children or an

1 adult case. It was their choice and whatever assignments the
2 defendant had available, the defendant set the amount of
3 hours and the rate of pay that each of the LPNs would be paid
4 by the defendants per hour.

5 Furthermore, the evidence will show that the
6 defendants required in order for the LPNs to be paid, they
7 had to fill out progress notes, nurse's notes that they had
8 to fill out each day as to what type of care and treatment
9 they provided for the patients. They also had to submit time
10 sheets, time sheets they obtained from the defendant and they
11 had to submit the time sheets and the progress notes on a
12 weekly basis back to the defendant in order to get paid.

13 The evidence will show if they did not submit both
14 of those two documents, they did not receive their paycheck.
15 The evidence will also show that the time sheets and progress
16 notes had the name of the defendant's business with his
17 address, Harry's Nursing Registry and with the Queens
18 address.

19 Now, the LPNs will also testify and the People will
20 prove not only did the defendant determine their hours and
21 the assignments and the rate of pay, but also provided
22 in-service training at the Queens location, so that the
23 nurses received further instructions, further refresher
24 courses as the type of treatments were needed to take care of
25 their patients.

1 The LPNs will also testify that if they were sick
2 and they couldn't fulfill their duty to take care of their
3 patient, they would notify the defendant and the defendant
4 will send a replacement. It wasn't up to the LPN to say I'm
5 sick today and I have to send someone. They would notify the
6 defendant and the defendant's place of business will send an
7 LPN on their behalf.

8 The evidence will show that the defendant had
9 control over them. He was their employer and the LPNs were
10 their employees. There was a relationship. It was an
11 employee/employer relationship. Now, throughout the period
12 from August of 2006 to December of 2007, the LPNs and they
13 will testify noticed when they received their paychecks from
14 the defendant, they noticed a discrepancy and the discrepancy
15 was on the line of checks that were issued by Harry's Nursing
16 Registry, Inc. and signed by the defendant. The evidence
17 will show that on the memo line, less W/C and the witness
18 will testify Workers' Comp, a dollar an hour they worked. If
19 a witness testified they worked \$50, it was \$50 that was
20 deducted from their paycheck for that week, and it was the
21 defendants who paid the employees. It wasn't the patient's
22 family who paid them. The money came directly from the
23 defendant. The defendant had control over the LPNs.

24 The evidence will also show that this dollar per
25 hour that was deducted was done so without the permission and

1 authority of the LPNs. And that, ladies and gentlemen of the
2 jury, is the crime of grand larceny in the third degree and
3 the People will prove that some of the LPNs over this period
4 of time from August of 2006 to December of 2007, the amount
5 of monies that were deducted without their permission and
6 authority by these defendants, the evidence will show was in
7 excess of \$3,000. In some cases, the amount of money during
8 the same period was in excess of \$1,000 and that's the crime
9 of grand larceny in the fourth degree.

10 The testimony of the LPNs will show that more than
11 ten of these LPNs had this money taken from them without
12 their permission. The defendant obtained it, he kept it and
13 he withheld it. And this, ladies and gentlemen, is the crime
14 of scheme to defraud in the first degree.

15 Now, some of these LPN that are going to come in
16 here to testify still work for the defendant, but they're
17 coming here because their money was deducted without the
18 permission and authority of the defendants. You're going to
19 hear testimony from Steve Carbone and Steve Carbone is a
20 director with the New York State Workers' Compensation Board,
21 and he will tell you and we will prove what is an employee.
22 Well, an employee is a person who works for an employer and
23 provides labor and time and benefits for the employer in
24 exchange for pay. He will also tell you that the Workers'
25 Compensation Board to determine if someone is an employer,

1 they look at the assignments, who has control of the
2 assignments. They look at who is giving the pay, how the
3 rate of pay is determined. They're looking at the nature of
4 the work. They're looking at scheduling. They're looking at
5 the ability to hire and fire, and I submit to you the
6 evidence will show that the defendant did all of that. He
7 was able to hire them. He was able to fire them if they
8 didn't perform up to their duties. He paid them. He
9 determined their rate of pay. He paid them by check. They
10 had to submit nurse's notes and progress notes and time
11 sheets.

12 You will hear from Steve Carbone that it doesn't
13 matter whether or not the LPNs received a 1099. Based on the
14 factors that he will testify to as to whether or not they
15 were an employee and we submit that the defendant had no
16 authority to deduct the dollar per hour from each of these
17 LPNs. Now, the testimony will show in order for the
18 defendant to run his business, he had to hire LPNs because
19 that's the nature of the his business. In order to
20 effectively run a nurse's registry, you had to have RNs and
21 LPNs. They were licensed practical nurses.

22 Ladies and gentlemen, this is the People's case.
23 It is very simple. The defendant was -- the defendants were
24 the employer and the L -- the defendants were the employer
25 and the LPNs were the employees. It was up to the defendant

1 to obtain the Workers' Compensation for his employees, not to
2 deduct the it dollar per hour from their paychecks as the
3 defendant did. The employees were under his control. He did
4 scheduling. He paid them.

5 Ladies and gentlemen, remember during voir dire I
6 asked you to keep your eye on the ball and when you listen to
7 the testimony and evidence that's presented, I will submit to
8 you that the evidence will show that it doesn't matter how
9 big of a business the defendant ran. It doesn't matter the
10 number of employees that he had. What matters is that the
11 defendant was not authorized by law to deduct a dollar per
12 hour for Workers' Compensation Insurance for his employees.
13 By doing this, the defendant committed these crimes as
14 charged and I ask you at the end of the People's case, at the
15 end of the trial when you're charged on the law, that the
16 only verdict that you find is a verdict of guilty on all
17 counts as consistent with the testimony, the evidence and the
18 law as instructed by Judge Blumenfeld. Thank you.

19 THE COURT: Mr. Alter, do you wish to make an
20 opening statement?

21 MR. ALTER: I do have a motion, your Honor, I would
22 like to make at the end of the People's opening statement
23 that you might want to hear.

24 THE COURT: You want to go side-bar?

25 MR. ALTER: Yes.

1 (Whereupon, the following was recorded at sidebar.)

2 MR. ALTER: I'm entitled at the end of the opening
3 statement, to make a motion to dismiss the People's case.

4 THE COURT: So make it.

5 MR. ALTER: Your Honor, the People have failed to
6 show money has been stolen from employees. They haven't
7 shown a fiduciary relationship, no trustee relationship. All
8 they have shown is money was withheld from paychecks in Mr.
9 Dorvilier's payroll account. Now, all the cases I've cited
10 have indicated that this would be a civil case and not a
11 criminal case.

12 THE COURT: Are you done?

13 MR. ALTER: Yes.

14 THE COURT: Motion denied.

15 MR. ALTER: Okay.

16 (Whereupon, the following was recorded in open
17 court:)

18 THE COURT: You just seen the attorneys go side-bar
19 and talk to me. It is supposed to be out of your earshot.
20 Were you able to hear any of it? Someone say yes, someone is
21 saying no. Why aren't you supposed to hear it?

22 THE JUROR: It could have something to do on the
23 law or something that may not --

24 THE COURT: If you may remember about ten minutes
25 ago I told you and I have separate jobs, right. When you get

1 into the jury room, am I going to be allowed in there?

2 THE JUROR: No.

3 THE COURT: What about the reporter?

4 THE JUROR: No.

5 THE COURT: The lawyers?

6 THE JUROR: No.

7 THE COURT: We're not. We have separate jobs here.

8 Where you are deciding the facts of the case, you are the
9 sole and exclusive judge of the facts. That means you and
10 you alone. So, you get to do your job out of our earshot.
11 When they want to make an objection to me and make argument
12 about the objection, I have to do it out of your earshot.
13 Some people aren't soft-spoken and that system won't work.
14 Unless the attorneys can talk quietly, each time they do
15 that, I have to clear you out and put you in the jury room,
16 so they can argue on the record. Alternatively, if they can
17 talk quieter, the trial will move quicker. Attorneys can get
18 into it. They can get emotional. They can get theatrical.
19 If you see or hear that, what are you supposed to do? Is any
20 of that evidence? Good. Why did I bring it up now? To just
21 tell them try to not do that.

22 You may make your opening statement.

23 MR. ALTER: Thank you, your Honor.

24 Good morning, everybody. My name is Mr. Alter. I
25 am with the firm of Alter & Barbaro and I would like to talk

1 about a client, hard-working business man who has been in the
2 borough for 20 years. He sets up a nurse's registry. It is
3 a nurse. Patients call. They want a nurse, they get a
4 nurse. The doctors submit the plans. Mr. Dorvilier is not a
5 doctor. He's not an expert. All he does is he gets a nurse
6 and he brings them to the doctor and then the person is seen
7 at the place. These people are -- they don't take the
8 medical decision from Mr. Dorvilier. They take it from a
9 doctor with a care plan. These people are contractors.
10 These are professionals, but what the assistant is saying is
11 not the case. These are licensed professionals, people who
12 have discretion. Lawyers, doctors, they administer medicine
13 and not from my client who is not a medical professional. He
14 is a nurse broker. The State wants to put Mr. Dorvilier in
15 jail for grand larceny.

16 MS. BUCCHERI: Objection, Judge.

17 THE COURT: Sustained.

18 MR. ALTER: The State is prosecuting my client for
19 grand larceny. What he did was make a business decision, but
20 I have people working for me. I'm paying them a certain
21 amount of money. Help me out, dollar an hour, we will pay
22 for the Workers' Compensation Insurance. This goes on for a
23 year and-a-half, no objection by any of these workers. In
24 fact --

25 MS. BUCCHERI: Objection. Judge.

1 THE COURT: This is what he expects the evidence to
2 show. Overruled.

3 MR. ALTER: No objection by any of the workers.
4 This goes on for a year and-a-half unabated. Most of these
5 people still work for us. They still continue to work for my
6 client and they are happily employed there, getting
7 assignments day in and day out. The net effect is I don't
8 understand what this is all about. The People have to prove
9 that my client stole money. This is what grand larceny is
10 all about. He didn't steal any money. This was a good faith
11 at best, a good-faith, honest payroll dispute. There are
12 civil courts that resolve these matters. In fact, these
13 employees could have gone to those courts and resolved those
14 issues.

15 MS. BUCCHERI: Objection, Judge.

16 THE COURT: You're now making a summation.

17 MR. ALTER: Right.

18 THE COURT: Not an opening.

19 MR. ALTER: Okay.

20 THE COURT: There is a time in the trial you will
21 get to sum up.

22 MR. ALTER: Very well, your Honor.

23 THE COURT: You have to get past the openings
24 first.

25 MR. ALTER: Okay. The evidence will show that my

1 client didn't steal any money from anybody. The money that
 2 was supposedly stolen came from his payroll account. He took
 3 the necessary steps. He thought he had the opportunity and
 4 obligation and right to do it.

5 MS. BUCCHERI: Objection, Judge.

6 THE COURT: What did you just say?

7 MR. ALTER: He studied what he felt to be the
 8 correct law, made a proper -- made a proper business
 9 decision.

10 THE COURT: That's what the evidence is going to
 11 show?

12 MR. ALTER: Yes.

13 THE COURT: Overruled.

14 MR. ALTER: And made a proper business decision.

15 The People here have to prove my client's guilt beyond a
 16 reasonable doubt. My client notified everybody that was in
 17 his employ that he was going to be taking the dollar an hour
 18 out. He had these workers for a year and-a-half, continued
 19 to work for Mr. Dorvilier, the company, Harry's Nursing
 20 Registry without any objection. In fact, I would say 85
 21 percent of these people still work and get their assignments
 22 from our client and from the defendants.

23 Thus, there is no grand larceny. Thus, there is no
 24 scheme to defraud. The people who are claiming to be victims
 25 still continue to work for us getting their assignments,

1 getting their jobs, holding their jobs and staying on our
2 payroll. I think the evidence will show no theft, no grand
3 larceny and only a proper business decision was made by my
4 client. He is an honest, hard-working business man, one in
5 business for 21 years, trying to run his business and let's
6 assume there is a mistake made. That doesn't rise to a level
7 of a crime. Just an improper business decision.

8 MS. BUCCHERI: Objection.

9 THE COURT: You're summing up again.

10 MR. ALTER: That doesn't rise --

11 THE COURT: Are you waiving your summation?

12 MR. ALTER: I'll hold on that, Judge.

13 THE COURT: Okay.

14 MR. ALTER: The evidence will show that there was
15 no theft, no larceny. Mr. Dorvilier was running a good
16 business and I ask that the jurors listen very carefully and
17 put yourself in his position and listen to the evidence very
18 carefully. Thank you very much.

19 THE COURT: You may call your first witness.

20 MS. BUCCHERI: Thank you.

21 The People call Norma Formoso.

22 THE COURT OFFICER: Witness entering.

23 N O R M A F O R M O S O , a witness called by the People, after
24 having been first duly sworn by the Clerk of the Court, took the
25 witness stand and testified as follows:

1 THE COURT OFFICER: The People call Norma Formoso,
2 resident of Queens County.

3 THE COURT: You may inquire.

4 MS. BUCCHERI: Thank you.

5 DIRECT EXAMINATION

6 BY MS. BUCCHERI:

7 Q Good morning. I'm going to ask you to keep your voice
8 up, so everyone can hear you. Try to speak a little louder.

9 A Sure.

10 Q Are you presently working?

11 A Yes.

12 Q Where do you work?

13 A I work for Harry's Nursing Registry.

14 Q Is that where you're working now?

15 A Yes.

16 Q How long have you worked for Harry's Nursing Registry?

17 A I believe I have been working since 1992.

18 Q In what capacity are you working at Harry's Nursing

19 Registry? What do you do there?

20 A I work as a licensed practical nurse and I do home care
21 services.

22 Q What is a licensed practical nurse?

23 A Okay. To obtain a license of practical nurse, you
24 supposed to get a certificate of -- sorry. To complete a program
25 generally takes about one year and after that, you have to take

1 the state board tests and then you become a licensed practical
2 nurse.

3 MS. BUCCHERI: Can I just ask the defendant to stop
4 flipping the papers.

5 THE COURT: Don't ask anymore questions. When he
6 finds what he's looking for, then you'll start again.

7 MR. ALTER: You know what, Judge, go ahead. Very
8 well, your Honor. Continue.

9 THE COURT: You may continue.

10 MS. BUCCHERI: Thank you.

11 Q Now, did you -- that was your schooling, what you just
12 testified to?

13 A Yes.

14 Q And after your schooling, what did you have to do?

15 A After schooling? I don't understand the question.

16 Q You graduated from school?

17 A Yes.

18 Q After you graduated from school, did you have to take a
19 test?

20 A Yes, we have to take the state board test in order to
21 become licensed.

22 Q And did you take that test?

23 A Yes, I did.

24 Q And did you pass it?

25 A Yes.

1 Q And once you passed it, did you receive something from
2 the state?

3 A Yes, we receive a license.

4 Q What did you receive?

5 A A license.

6 Q It is a license issued by what state?

7 A By New York State.

8 Q And it's a license for what?

9 A To become a licensed practical nurse.

10 Q Now, do you remember when that was?

11 A I believe it was like I graduated in 1991.

12 Q Now, do you have to -- withdrawn.

13 Is your license up-to-date?

14 A Yes.

15 Q And do you have to take refresher courses to maintain
16 your license?

17 A No, we just have to renew it every five years.

18 Q When you renew it, what do you have to do?

19 A We just send out a check.

20 Q And who do you send the check to?

21 A I believe it is to the New York State Education,
22 something like that. I don't recall that much.

23 MR. ALTER: I didn't hear.

24 THE WITNESS: Education department.

25 THE COURT: Department of Education.

1 THE WITNESS: Something like that, yeah.

2 Q When did you start working at Harry's Nursing Registry?

3 A Since 1992.

4 Q And where is Harry's Nurse's Registry located?

5 A 88-25 163rd Street, Jamaica, Queens.

6 Q Do you know who owns Harry's Nurse's Registry?

7 A Yes, I believe it is Harry Dorvilier.

8 Q Do you see him anywhere in the courtroom today?

9 A Yes, I do.

10 Q Can you please point him out by describing an article of
11 clothing for the record?

12 A Yes, it is the gentleman in the black suit.

13 THE COURT: Indicating the defendant.

14 MS. BUCCHERI: Thank you, your Honor.

15 Q Now, how did you hear about the defendant?

16 A About his agency?

17 Q Yes.

18 A I remember looking in the newspaper and seeing article
19 that they needed license practical nurse who speak Spanish,
20 bilingual, Spanish and English, so I love it. I called and I got
21 hired.

22 Q What did you have to do in order to be hired?

23 A We have to take a test --

24 Q Not we. What did you have to do?

25 A I had to take a test.

1 Q What kind of test?

2 A Just to see how much knowledge we have. I will see how
3 much knowledge we have with medications, treatments and diseases.

4 Q Where did you have to take this test?

5 A At Harry's agency.

6 Q And when did you have to take this test?

7 A Before I started working. In order to be hired, I had
8 to pass that test.

9 Q And did you pass that test?

10 A Yes, I did.

11 Q Did you have to provide any documentation when you were
12 hired by Harry's?

13 A Yes, definitely. I have to present my certificate, my
14 license, my Social Security, my citizenship, and I have to take a
15 test of fire safety and CPR in order to start working, and also I
16 have to pay malpractice insurance on my own.

17 Q Now, did you do all that? Did you show those documents
18 to the defendants?

19 A Yes.

20 Q Now, after you took the test and you showed those
21 documents, what happened next?

22 A I waited for the person in charge in those days who used
23 to give the work to the nurses. I would say the supervisor and
24 they would call me and say if I was interested in working on a
25 case, and I will come to the agency, get their information and if

1 I was okay with the case, I get the case.

2 Q And do you remember who this person was?

3 A In those days, no.

4 Q What type of assignments did you take?

5 A Okay. I work as a private nurse. My assignment is to
6 work under the direction of registered nurse and a physician
7 implementing treatment, medication, hygiene care and keeping a
8 safety environment for the person that is on disability or any
9 other thing, any other condition.

10 Q And you said you work under the direction of a
11 registered nurse.

12 Is that registered nurse somebody at the defendant's
13 place of business?

14 MR. ALTER: Objection.

15 THE COURT: Sustained.

16 Q Where is the registered nurse located?

17 A I believe it is at Harry's Nurse's Registry.

18 Q What is the name of the registered nurse?

19 A Charlene.

20 Q Now, does Charlene still work at Harry's?

21 A I don't know at this moment if she still works there.

22 MR. ALTER: I can't hear, Judge.

23 THE COURT: She said I don't know.

24 THE WITNESS: I don't remember. I don't know.

25 Q Now, what type of assignments did you have with the

1 defendant?

2 A What type of assignments? He would give us -- this is
3 how it works. We will get the paperwork from her in order for us
4 to do the nurse's notes. We have to do the nursing notes of what
5 we do every day in the patient's house. We have to bring the time
6 sheet which is provided by the agency, and it has to be signed by
7 the patient or the family in order for us to get paid. All
8 documentation is provided by Harry's agency.

9 Q The assignments you receive, are they adult or
10 pediatric?

11 A I do both.

12 Q Whether it is an adult assignment or a pediatric
13 assignment, the nurse's notes and time sheets, are they the same?

14 A Yes. Excuse me. When you say are they the same?

15 Q The same type of form.

16 A Yes.

17 Q When you get your assignments from the defendant, does
18 he employ you with any supplies?

19 A Everything that goes on the record is supplied by the
20 agency.

21 Q What else? Does the defendant provide you with anything
22 else besides the notes?

23 A He believe we also do in-services in the agency once in
24 a while in order for us to be updated with medication or
25 treatments or things like that.

1 Q What is in-service?

2 A It is like we take a class or a course that it has to be
3 taken at the agency.

4 Q Now, you said at the agency. What agency?

5 A Harry's Registry.

6 Q Is it taken at the 163rd Street location?

7 A Some of them, yes.

8 Q Once you get your assignment, then what happens next?
9 Do you take care of your patient?

10 A Yes, I go to the patient's house, and I take care of the
11 patient and if something go wrong, the patient gets sick, the
12 first thing we have to do is call the agency and the doctors.

13 MS. BUCCHERI: I'm going to ask that this be marked
14 People's 1 for identification.

15 THE COURT: Have you shown it to counsel?

16 MS. BUCCHERI: I will show it to counsel, Judge.

17 (Whereupon, the Time sheet was marked for
18 identification as People's Exhibit 1.)

19 THE COURT OFFICER: People's 1 marked for
20 identification.

21 MS. BUCCHERI: Please show it to the witness.

22 Q Ms. Formoso, do you recognize that?

23 A Yes.

24 Q Do you recognize what that is?

25 A Yes, I do.

1 Q What is that?

2 A This is the time sheet we have to give every two weeks
3 in order for us to get paid. We have to put the hours, okay. The
4 hours, our name, the name of the client and they have to sign it.

5 Q And is that a copy of a time sheet that you filled out?

6 A Yes.

7 MS. BUCCHERI: At this time, I ask that what's been
8 marked as People's 1 for identification be moved into
9 evidence.

10 MR. ALTER: No objection, your Honor.

11 THE COURT: No objection?

12 MR. ALTER: No objection.

13 THE COURT: It is moved into evidence.

14 (Whereupon, the Time sheet was marked in evidence
15 as People's Exhibit 1.)

16 THE COURT OFFICER: People's 1 received in
17 evidence.

18 Q Looking at People's 1, does it have an address on it?

19 A Yes.

20 Q What address is it?

21 A 88-25 163rd Street, Jamaica, New York 11432.

22 Q Does it have a name on it?

23 A Harry's Nursing Registry.

24 Q Thank you.

25 You also mentioned notes that you have to fill out for

1 your patients?

2 A Yes.

3 Q Where do you obtain the notes from?

4 A From Harry's Agency.

5 MS. BUCCHERI: I'm going to ask that this be marked
6 People's 2 for identification.

7 THE COURT: Have you shown it to counsel?

8 MS. BUCCHERI: I will.

9 MR. ALTER: No objection, your Honor.

10 THE COURT: When you say "no objection," she hasn't
11 offered it into evidence. Are you saying you have no
12 objection to it being marked in evidence?

13 MR. ALTER: No objection to it being marked in
14 evidence.

15 THE COURT: So, we will receive it in evidence and
16 mark it as People's 2 in evidence.

17 (Whereupon, the Progress note was marked in
18 evidence as People's Exhibit 2.)

19 THE COURT OFFICER: People's 2 marked and received
20 in evidence.

21 MS. BUCCHERI: Please show it to the witness.
22 Thank you.

23 Q Do you recognize that?

24 A Yes, I do.

25 Q What is that?

1 A It is our progress notes --

2 Q And --

3 A -- that we have to do every day when we are with the
4 patient.

5 Q Is this a copy of the progress notes that you received?

6 A Yes.

7 Q Now, the progress notes, you fill them out daily, you
8 said?

9 A Daily.

10 Q What do you do with the progress notes at the end of the
11 day?

12 A I usually put it on my purse, take it with me and every
13 two weeks I bring it to the agency.

14 Q You bring it to Harry's Nursing Registry?

15 A Yes.

16 Q What do you have to do with them?

17 A Leave them there.

18 Q For what purpose?

19 A For the patient's records. They need to keep the
20 patient's records and also in order for us to get paid that we
21 were there doing our job.

22 Q Do you have to submit anything else to the defendants
23 besides the nurse's notes?

24 A The time sheets.

25 Q And how often do you have to submit the time sheets?

1 A Every two weeks.

2 Q What, if any, purpose is there for you submitting time
3 sheets?

4 A In order for us to get paid.

5 Q When you were hired by the defendants, how was your rate
6 of pay determined?

7 A Can you repeat the question?

8 Q Sure.

9 When you were hired to work as an LPN, how was the
10 amount of money that you were going to earn per hour determined?

11 A It was determined by the agency, by Harry's agency.

12 Q And do you remember who told you how much you were going
13 to get paid per hour?

14 A I believe was the person that is in charge to give the
15 cases.

16 Q And do you know who that was?

17 A Back in 1992, no, I don't remember her name, but there
18 are a couple of nurses there, but sometimes you spoke to different
19 ones.

20 Q Do you know how many nurses there are at the defendant's
21 place of business, if you know?

22 A I'm just guessing over 100.

23 Q When you were paid, how were you paid?

24 A By check.

25 Q Did you pick up your check?

1 A Yes.

2 Q And who issued the check to you?

3 A Harry's Nursing Registry.

4 Q Do you know who signed the check?

5 A I believe was Harry. Not sure.

6 MR. ALTER: What did she say?

7 THE COURT: She believes it was Harry. She's not
8 sure.

9 A I haven't looked at my check. I just go and take it to
10 the bank.

11 Q That's okay.

12 Now, did there come a time in August of 2006 that you
13 noticed a problem with your checks, your paychecks?

14 A Yes.

15 Q What, if anything, did you notice?

16 A I noticed that it say dollar has to be taken away, a
17 dollar per hour has to be taken away to pay Workers' Compensation.

18 Q Did you notice that on your paychecks?

19 A Yes.

20 Q And do you know over what period of time you noticed
21 that dollar per hour being deducted?

22 A I think it starting in 2006.

23 Q And do you know over what period of time it went to if
24 it started in 2006?

25 A I'm not sure, but I would say maybe a year, a year

1 and-a-half.

2 Q The paychecks you received, who were those checks made
3 payable to?

4 A Norma Formoso.

5 Q And that's you?

6 A Yes.

7 MS. BUCCHERI: I'm going to ask that these be
8 marked People's 3A through M.

9 THE COURT: Do you have any objection to them
10 coming into evidence?

11 MR. ALTER: No.

12 THE COURT: You have no objection to them being
13 marked 3A through M in evidence?

14 MR. ALTER: No.

15 THE COURT: Then we will mark them as such.

16 MS. BUCCHERI: Thank you.

17 (Whereupon, the Pay stubs of Norma Formoso were
18 marked in evidence as People's Exhibit 3A-3M.)

19 THE COURT OFFICER: People's 3A through M marked
20 and received in evidence.

21 MS. BUCCHERI: Can you please show the witness.

22 Q Ms. Formoso, can you please look at these documents?

23 A Yes.

24 Q Do you recognize these documents?

25 A Yes, I do.

1 Q What do you recognize them to be?

2 A It's copy of my checks, pay stub.

3 Q And pay stubs from where?

4 A From Harry's Nurse's Registry.

5 Q These are copies of the original paychecks that you
6 received?

7 A Yes.

8 Q Looking at 3A and they're marked on the back, can you
9 please tell us the date of that check?

10 A 8/9/2006.

11 Q Can you tell us the amount of that check, please?

12 A It's \$1,813.50.

13 Q Now --

14 THE COURT: How much was that?

15 THE WITNESS: \$1,813.50.

16 THE COURT: What date was that?

17 THE WITNESS: What date? 8/9/2006.

18 THE COURT: August 9th of '06?

19 THE WITNESS: Yes.

20 Q Do you see the memo line?

21 A Yes.

22 Q And what does it state on the memo line? What does it
23 read on the memo line?

24 A Oh, less WC at one per hour.

25 Q Now, can you tell us looking at this check, how many

1 hours did you work for this period?

2 A I work 93 hours.

3 Q So, how much money was deducted from your paycheck for
4 this check and dated 8/9/2006?

5 A \$93.

6 Q Can you look at 3B, please. What's the date?

7 A 9/6/2006.

8 Q What's the amount of that check?

9 A 1,755.

10 Q And what does the memo line state on -- for that one?

11 A Less WC \$1 per hour, \$90.

12 THE COURT: How many?

13 THE WITNESS: 90.

14 THE COURT: 9-0?

15 THE WITNESS: Yes.

16 Q Do you know what W/C stands for?

17 A Workers' Compensation.

18 Q Can you please look at the next check which would be 3C?

19 A Yes.

20 Q What's the date of that check?

21 A 10/4/2006.

22 Q What's the amount of that check?

23 A \$2,145.

24 Q What does the memo line read?

25 A Less WC \$1 per hour, 110.

1 Q 110 what?
2 A Dollars.
3 Q Can you look at the next one, please?
4 A 10/18/2006.
5 Q What is the amount of that check?
6 A \$2,145.
7 Q And what does the member line read?
8 A Less WC \$1 per hour, \$110.
9 Q The next one, what's the date on that one?
10 A 1/10/2007.
11 Q How much is that check made out for?
12 A \$1,950.
13 Q And what does the memo line read?
14 A Less WC \$1 per hour, \$100.
15 Q The next check, please.
16 A 1/24/2007.
17 Q And what -- how much money is that check made payable
18 for?
19 A \$2,340.
20 Q And what does the memo line read?
21 A Less WC, one dollar per hour, 120.
22 Q The next check, what is the date on that check, please?
23 A 2/7/2007.
24 Q How much is that check made payable for?
25 A 2,145.

- 1 Q What does the memo line read?
- 2 A Less WC \$1 per hour, \$110.
- 3 Q The next check, please.
- 4 A 2/21/2007.
- 5 Q How much is that check made payable for?
- 6 A \$2,145.
- 7 Q And what does the memo line read?
- 8 A Less WC \$1 per hour, \$110.
- 9 Q The next check what is that date, please?
- 10 A 1,000 -- 3/8/2007.
- 11 Q How much is that check made payable for?
- 12 A 1,950.
- 13 Q What does the memo line read?
- 14 A Less WC, \$1 per hour.
- 15 Q And for this time period, how many hours did you work?
- 16 A 100.
- 17 Q So, how much money was deducted from your paycheck for
- 18 this time period?
- 19 A 100.
- 20 Q The next check, what's the date of that check, please?
- 21 A 3/21/2007.
- 22 Q And how much is this check made payable for?
- 23 A \$2,185.
- 24 Q What does the memo line state?
- 25 A Less WC \$1 per hour, \$115.

1 Q The next check, please, what is the date on that check?

2 A 4/4/2007.

3 Q And how much is that check made payable for?

4 A \$2,340.

5 Q And what does the memo line state?

6 A Less WC, \$1 per hour, \$120.

7 Q And the next check, please, what is the date of that
8 check?

9 A 4/18/2007.

10 Q And how much is that check made payable for?

11 A 1,950.

12 Q What does the memo line state?

13 A Less WC, \$1 per hour, \$100.

14 Q And the last one, what is the date of that check?

15 A 5/2/2007.

16 Q And how much money was this check made payable for?

17 A \$2,340.

18 Q And what does the memo line state?

19 A Less WC, \$1 per hour, \$120.

20 Q Thank you.

21 Ms. Formoso, if there came a time that you were unable
22 to go to work, what, if anything, would you do?

23 A If I cannot go to work, I have to report it to the
24 agency.

25 Q And what, if anything, would happen with respect to your

1 patient or patients?

2 A They will try to get a nurse as soon as possible to
3 replace me.

4 THE COURT: Who would?

5 THE WITNESS: Harry's Nurse's Registry.

6 Q At any time during this period, did you ever give the
7 defendants permission or authority to deduct the dollar per hour
8 from your paycheck?

9 MR. ALTER: Objection, your Honor. She's leading
10 the witness.

11 THE COURT: Overruled.

12 Q You can answer that.

13 A Can you repeat the question.

14 Q Sure.

15 At any time during the period of time in the checks, did
16 you ever give the defendants permission and authority to take that
17 dollar per hour out from your paychecks?

18 A I don't recall that.

19 MS. BUCCHERI: Judge, I have nothing further of
20 this witness.

21 THE COURT: Do you wish to cross-examine?

22 MR. ALTER: I just have a couple of questions.

23 CROSS-EXAMINATION

24 BY MR. ALTER:

25 Q Are you still working for Harry's?

1 A Yes, I do.

2 Q How long have you been working for Harry's?

3 A 23, 22 years.

4 Q Are you satisfied there?

5 A I do.

6 Q And you pay your own Social Security, ma'am?

7 A Yes.

8 Q He doesn't take any taxes out of your pay?

9 A No.

10 Q You carry your own malpractice insurance?

11 A I do.

12 Q Why do you carry it and can you explain to the jury?

13 A I carry malpractice insurance is just in case we made a
14 mistake during our care of the patients, so that will cover us.
15 If the patients try to get some -- I don't know how to explain it,
16 but that's how it is.

17 Q Now, you got these checks each week, all these checks,
18 right?

19 A Every two weeks.

20 Q Every two weeks, you got a check.

21 Now, you didn't say anything about it either, did you,
22 the deductions?

23 A I did.

24 Q Did you complain to anybody?

25 A Yes, I spoke to Mr. Harry, and I asked him why you

1 taking a dollar out, and he says he has to pay Workers'
2 Compensation.

3 Q That was it?

4 A Yes.

5 Q Nothing further about that?

6 A No.

7 Q You continued to keep accepting these checks every two
8 weeks?

9 A Yes.

10 Q Without any further complaint?

11 A No.

12 Q You continue to still work for Harry's Nurse's Registry
13 to this day?

14 A I do.

15 MS. BUCCHERI: Objection as to asked and answered.

16 THE COURT: She already said that twice.

17 Q Prior to August of 2006, did you get a letter or any
18 written correspondence from Harry's Nurse's Registry concerning
19 this Workers' Compensation deduction?

20 A To be honest, maybe I did, but I don't remember.

21 Q You think you might have gotten the letter from him?

22 A We get a lot of letters from Harry sometimes.

23 Q You knew of that deduction as it was going along for the
24 whole year period?

25 A Yes.

1 Q You continued to work for Harry during that entire
2 period?

3 MS. BUCCHERI: Objection. Asked and answered.

4 THE COURT: That's the third time you asked it.

5 MR. ALTER: Okay. You're right, your Honor.

6 Q Now, when you're not working and you don't go to the
7 assignments, do you get sick pay?

8 A No.

9 Q Do you get any paid vacation?

10 A No.

11 Q Do you have any pension or any 401K from them?

12 A No.

13 Q Are you able to take assignments from any other nurse's
14 agencies?

15 A Yes.

16 Q Have you done that?

17 A Yes.

18 Q Would you tell the jury what other assignments you've
19 taken?

20 A I have worked for another agency a couple of years ago
21 from Long Island, yeah.

22 Q At the same time that you were working for Harry?

23 A Yes.

24 Q The tools and equipment that you came to the job with,
25 you have your own stethoscope?

1 A Yes.

2 Q How about blood pressure machinery?

3 A Yes.

4 Q Would you tell the jury the type of equipment you have
5 to bring to the job with you?

6 A Yes. I have to bring my own stethoscope, my own blood
7 pressure machine, that's it.

8 Q The medical instruction, you would take -- that patient
9 care comes from the doctor?

10 A Yes.

11 Q How often do you interact with the doctor, discuss
12 patient care?

13 A Can you repeat.

14 Q How often do you discuss patient care with the doctor?

15 A Oh, every time we have an appointment, every six months.
16 All depends on the patient's health.

17 Q If you had a medical problem, you would call the doctor
18 on-site, correct?

19 A We call the doctor and we call the agency.

20 Q Now, on these checks that were issued, A through M, you
21 don't know who signed the checks?

22 A I didn't pay attention to the signature.

23 Q Can you tell who you got these checks from?

24 A It only say Chase Bank.

25 THE COURT: Who signed the check on the signature

1 line?

2 THE WITNESS: I don't see a signature here. I
3 don't see a signature.

4 Q So, you got checks from Harry's Nurse's Registry, but
5 you don't know who signed them, am I correct, ma'am?

6 A You're correct.

7 Q Now, tell us the type of equipment that the
8 patient -- tell us the type of patient that you take care of.

9 A Okay. Right now I'm take -- I have two patients during
10 the week in pediatric. I have a patient who has a ventilator,
11 oxygen, he has a GT, tracheostomy.

12 Q What is that again? I didn't hear that. Tracheotomy?

13 A Tracheostomy.

14 Q What type of equipment do these patients have?

15 A He has ventilator.

16 Q Right.

17 A He has oxygen. He has kangaroo pump for his feedings.

18 Q How often are you with this patient?

19 A Thursdays, Fridays and Saturdays.

20 Q What type of condition does this patient have?

21 A Complete care.

22 MS. BUCCHERI: I'm going to object.

23 THE COURT: It is not clear how this is relevant.

24 MR. ALTER: We're talking about the type of care
25 and who -- what responsibility she has on the job, your

1 Honor.

2 THE COURT: Why is that relevant?

3 MR. ALTER: We're talking about --

4 THE COURT: Why is that relevant? She's a licensed
5 practical nurse. She's taking care of patients three days a
6 week. We learned she has to go to another place to get work
7 for the other days of the week. What's the difference about
8 how this particular patient's she is working in the year 2012
9 has for an indictment that covers the period exclusively from
10 September '06 to May 2nd of '07? How does 2012 have
11 anything to do with this?

12 MR. ALTER: You're right.

13 THE COURT: It happens occasionally.

14 Q Do you remember who you were working for in '06?

15 A I think I remember.

16 Q Would you tell me?

17 A Yes, it was two-year-old boy who has a tracheostomy,
18 oxygen and ventilator and kangaroo pump also.

19 Q Now, where does that equipment come from?

20 A It comes from the --

21 MS. BUCCHERI: Objection.

22 A It comes from the supply company.

23 THE COURT: Mr. Dorvilier, you have a right to
24 testify after the People rest. That will be your decision.
25 But when you testify, you'll have to be sworn under oath. If

1 you wish to be heard by the jury, that is the only way the
2 jury gets to hear you. If you have other outbursts, there
3 will be sanctions against you. Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 Q We are going back to the time of 2006 to 2007. You were
6 working for a boy with what type of condition?

7 A Yeah.

8 MS. BUCCHERI: Objection, Judge.

9 THE COURT: Sustained.

10 MR. ALTER: Your Honor, the issue here is control.
11 They made arguments about that. I want to talk about some of
12 the decisions the licensed practical nurse has to make at the
13 site that my client has nothing to do with.

14 THE COURT: Unless there is going to be evidence
15 that your client is a registered nurse, he has apparently
16 hired people or has employed people to go to different places
17 to take care of patients. Whether the patient has to supply
18 those ventilators or other things, whether he has to or she
19 does has no bearing on this case about whether or not he did
20 in fact take unauthorized deductions from the paycheck.
21 That's what this case is about. Not the nature of care,
22 quality of care. That has nothing to do with this case.

23 Q You would say you only saw Mr. Dorvilier -- the Harry's
24 Nurse's Registry once every two weeks; is that correct?

25 MS. BUCCHERI: Objection.

1 Q During the period of time of August -- August of 2006 to
2 September of 2007, how often would you come to the agency?

3 A Every two weeks.

4 Q So, you had no contact with them for that two-week
5 period?

6 A If we don't have to, no.

7 THE COURT: Apparently, if you get an assignment
8 and you have to fill out his forms for nurse's notes and his
9 forms for payment, where would you get those forms from?

10 THE WITNESS: I will get them -- every two weeks I
11 will give them the ones that I finish and get more for the
12 following week.

13 Q The first job you get sent to, he gives you the forms.
14 He says come back in two weeks and when you give him the forms,
15 you get the next set of forms?

16 A Yes, but actually, he has someone to do that on the
17 front desk. It is not --

18 THE COURT: It is one of his employees?

19 THE WITNESS: His employees, yes.

20 Q You bring back your time sheets every two weeks with
21 your report and you get a paycheck?

22 A Yes.

23 Q And that's the only contact you basically had with the
24 agency; am I correct?

25 A No.

1 MS. BUCCHERI: Objection.

2 Q What other contact?

3 A If I'm not able to go to work or be late like today, I
4 have to report myself to them.

5 Q But when you're on the job, when you're working on this
6 patient, doing what's necessary for this patient, right --

7 A Yes.

8 Q -- he is not there or anybody supervising?

9 A We have supervisors on the agency. Not him.

10 Q Not him?

11 A No.

12 THE COURT: Do these supervisors work for him?

13 THE WITNESS: Yes.

14 Q Do you see them come to the job during that period of
15 time very often?

16 A No.

17 MS. BUCCHERI: Objection.

18 THE COURT: Sustained.

19 Q But you don't see Mr. Dorvilier?

20 MS. BUCCHERI: Objection, Judge.

21 A Excuse me?

22 THE COURT: Sustained.

23 MR. ALTER: I'm talking about the time period in
24 the indictment, Judge.

25 Q August of 2006 to September of 2007, what was the method

1 by which you would get paid?

2 A What was the method that I --

3 Q What would you do, ma'am?

4 A What would I do? I have to bring my nurse's note to the
5 agency with my time sheet that have to be signed by the patient or
6 the family and give it to the person in the front desk. That will
7 be all.

8 Q The patient's family or the patient would sign your time
9 sheet to say that you were there during that time; am I correct?

10 A You are correct.

11 Q You would take that patient's time sheet signed -- given
12 by you and your nurse's notes and you would hand that in every two
13 weeks?

14 A Yes.

15 Q So, the contact is basically the medical care and
16 everything that was done during that period of time from August of
17 2006 to September 2007, you were doing this?

18 A I was doing that.

19 MS. BUCCHERI: Objection, Judge.

20 THE COURT: Sustained.

21 THE COURT: What's your next question?

22 MR. ALTER: That's it.

23 THE COURT: Do you have any re-direct?

24 MS. BUCCHERI: I have one question.

25 THE COURT: Go ahead.

1 REDIRECT EXAMINATION

2 BY MS. BUCCHERI:

3 Q Prior to 2006, was a dollar per hour deducted from your
4 paycheck?

5 A I don't remember because I don't keep my copies. I
6 don't keep them.

7 MS. BUCCHERI: I have nothing further.

8 THE COURT: Anything else?

9 MR. ALTER: No, sir.

10 THE COURT: Thank you very much. You may step
11 down.

12 THE WITNESS: Thank you.

13 (Witness excused.)

14 MS. BUCCHERI: The People's next witness is Bendy
15 Pierre-Joseph.

16 THE COURT OFFICER: Witness entering.

17 B E N D Y P I E R R E - J O S E P H , a witness called by the
18 People, after having been first duly sworn by the Clerk of the
19 Court, took the witness stand and testified as follows:

20 THE COURT OFFICER: The People call B-E-N-D-Y,
21 P-I-E-R-R-E, J-O-S-E-P-H. Resident of Queens County.

22 THE COURT: You may inquire.

23 MS. BUCCHERI: Thank you, your Honor.

24 DIRECT EXAMINATION

25 BY MS. BUCCHERI:

1 Q Good morning. I'm going to ask that you keep your voice
2 up, so everyone can hear you.

3 A Okay.

4 Q Do you work?

5 A Yes.

6 Q Where are you currently working?

7 A Flushing Manor.

8 Q Where are you working?

9 A Where?

10 Q Yes.

11 A On Flushing.

12 Q What's the name of the place you work?

13 A Flushing Manor.

14 Q Flushing Manor?

15 A Yes.

16 Q Do you work someplace else currently?

17 A Yes.

18 Q Where is that?

19 A Harry's Registry.

20 Q Where is Harry's Registry located?

21 A It is on 88, 163rd Street.

22 Q Is that in the County of Queens?

23 A Yes.

24 Q Do you know who the owner of Harry's Nurse's Registry
25 is?

1 MR. ALTER: Objection, your Honor.

2 THE COURT: Overruled.

3 A Yes.

4 Q Who is that?

5 A Mr. Harry Dorvilier.

6 Q And do you see him anywhere in the courtroom today?

7 A Yes.

8 Q Can you please point him out by describing an article of
9 clothing that he's wearing?

10 A Okay. He's wearing a black suit and a white shirt.

11 THE COURT: Indicating the defendant.

12 MS. BUCCHERI: Thank you, Judge.

13 Q What do you do at Harry's Nurse's Registry?

14 A I'm a nurse.

15 Q What type of nurse?

16 A Licensed practical nurse.

17 Q What is that?

18 A Like you go to school and you get your license to take
19 care of the patient at home or in the hospital, but with Harry,
20 it's home care.

21 Q Did you receive a license?

22 A Yes.

23 Q And who are you licensed by?

24 A New York State.

25 Q When was the first time that you became familiar with

1 the defendants?

2 A I see him only two times during -- I never saw him
3 often, only two times.

4 Q When was the first time that you went to Harry's Nurse's
5 Registry?

6 A I went to apply for the job. That was the first time.

7 Q When was that?

8 A I don't remember, but sometime in 2006.

9 Q When did you become a licensed practical nurse?

10 A August 1997.

11 Q Prior to -- withdrawn.

12 When you went to Harry's to apply, what did you have to
13 do?

14 A I have to bring all my documents, license, social,
15 references and physical, CPR and also liability insurance.

16 Q You took these documents to where?

17 A To the secretary at Harry's Registry.

18 Q Do you know who that is or was?

19 A Yeah, her name is Carmen.

20 Q Do you know Carmen's last name?

21 A No.

22 Q When was that?

23 A First, it was 2006. I'm not sure the year. It's been a
24 long time.

25 Q After you went and provided your documents, what was the

1 next thing that happened?

2 A They have to give you a test.

3 Q Did you take a test?

4 A Yes, I took a test.

5 Q And where did you take the test?

6 A At the office.

7 Q That's the office at 163rd Street?

8 A Yes.

9 Q What type of test was it?

10 A It is based on nursing, about nursing, medical

11 terminology, yes.

12 Q Did you pass the test?

13 A Yes, I did.

14 Q What happened after you passed this test at the
15 defendant's place of business?

16 A They have to verify all my paper before they can give me
17 a case and I was called within three to four days that I have a
18 case.

19 Q And who gave you the case?

20 A That was Ms. Carmen.

21 Q When you received your case, did you have to go into the
22 office?

23 A Yes, to get all the information.

24 Q What type of information did you have to get?

25 A The name of the patient and the address and what type of

1 patient I'm going to be taking care of, like diagnosis.

2 Q What type of patient was it, if you remember?

3 A It was a patient with a stroke with -- she was on a
4 ventilator and she has G tube.

5 Q How often did you take care of that patient?

6 A Thursday, Friday, Saturday and Sunday, Friday, Saturday
7 and Sunday.

8 Q Who determined the number of hours that you took care of
9 your patient?

10 A It depend on the assignment they give me. Carmen told
11 me it was 12-hour shift, so I make 12 hours every night.

12 Q And is Carmen an employee of the defendant?

13 A Yes.

14 Q When you were hired, did you discuss how much you would
15 be making per hour?

16 A Yes, correct.

17 Q And who did you discuss that with?

18 A Carmen.

19 Q Harry's Nurse's Registry, what type of business is that?

20 A It's a nursing business.

21 Q What do you mean a nursing business? What does it do?

22 A He hire nurses to go out and take care of the patient.

23 Q After you got the assignment to take care of this
24 patient, did the defendants provide you with anything necessary to
25 take care of your patient?

1 A No.

2 Q Did you have to get anything from the office to take
3 care of your patient?

4 A No.

5 Q When you took care of your patient, did you have to make
6 any notations?

7 A Yes, every day.

8 Q How did you make these notations?

9 A The notes, it's how -- it's depend on the care you give
10 to the patient. You take the vital signs and you do the
11 assessment, so you put it down and then at the end, you sign and
12 then you return the note.

13 Q Where did you get the notes from?

14 A From Harry's Registry office.

15 Q How often -- withdrawn.

16 What did you have to do with these notes at the end of
17 your day?

18 A You keep it. Every Friday you have to return it.

19 Q Where did you have to return it?

20 A At the office, Mr. Harry's Registry.

21 Q Do you have to return anything else on Friday?

22 A Yes, a time sheet also.

23 Q Where did you obtain the time sheet from?

24 A From Mr. Harry's Registry office.

25 Q When did you obtain the time sheet?

1 A Every Friday.

2 Q What, if any, purpose is there -- withdrawn.

3 When you return the time sheet and the nurse's notes,
4 what, if any, purpose is there for doing that?

5 A To get paid and to say you were there and you give care
6 to the patient.

7 Q Who are you submitting the time sheets and notes to?

8 A To Carmen.

9 Q Do you know who pays you?

10 A I get my pay stub from Carmen. She always hand to me
11 and I sign for it.

12 Q How do you get paid?

13 A By check.

14 Q And the checks that you receive, who issues those
15 checks?

16 A Mr. Harry.

17 Q How do you know he issues those checks?

18 A Because he signs it.

19 MR. ALTER: Objection.

20 THE COURT: Overruled. That's your answer.

21 MS. BUCCHERI: Can you please show the witness I
22 believe it is People's 1 and 2.

23 THE CLERK: Witness being shown People's 1 and 2.

24 MS. BUCCHERI: Thank you.

25 Q Can you please look at People's 1 and 2. There are

1 stickers on the back as to which one.

2 A There are no numbers.

3 THE COURT: Is there a sticker on the back?

4 THE WITNESS: Yes.

5 THE COURT: What does it say?

6 THE WITNESS: Okay.

7 Q Can you please look at People's 1. What is that?

8 A This is a time sheet.

9 Q Is that a time sheet that you receive from the agency?

10 A Yes.

11 Q Can you please look at People's 2.

12 Do you recognize that?

13 A Yes.

14 Q What is that?

15 A Nurse's notes.

16 Q And is this a copy of the nurse's notes that you
17 received from the agency to take care of your patient?

18 A Yes.

19 Q Back in 2006, do you remember how many patients that you
20 took care of while working for the defendants?

21 A Only one.

22 Q Was that an adult case?

23 A Yes.

24 Q Did there come a time in 2006 that you noticed a
25 discrepancy with your paycheck?

1 THE COURT: You object?

2 MR. ALTER: I heard the answer, Judge. I'm not
3 objecting.

4 THE COURT: The reason I ask is because this refers
5 to January 10th of 2007. It is not clear why this is
6 relevant at all.

7 MR. ALTER: I have you. I didn't object -- was
8 there an answer?

9 THE COURT: She's got no answer.

10 Q When did you start working for the defendant?

11 A Back 2006 or 7. What I said before, I not sure of the
12 year.

13 Q Did there come a time that you noticed a discrepancy
14 with your paychecks?

15 A Can I ask you something? Can you repeat for me, please.

16 Q Sure.

17 Did there come a time -- well, withdrawn.

18 You received paychecks from the defendant, correct?

19 A Correct.

20 Q And when you received your paychecks from the defendant,
21 did you look at your paychecks?

22 A Yes.

23 Q Did there come a time in 2007 that you noticed a
24 discrepancy with your paychecks?

25 A Yes, I did, in 2007.

1 Q And can you tell us what the discrepancy was that you
2 noticed with your paychecks?

3 A I noticed there was a dollar for WC. I didn't even
4 understand what WC was, and I called, and I spoke to Carmen, and
5 she transferred the call to the bookkeeper.

6 Q What was the name of the bookkeeper?

7 A I don't know, and then she told me that dollar was for
8 Workers' Comp.

9 Q Did you ever give the defendants permission or authority
10 to deduct the dollar per hour --

11 MR. ALTER: Objection.

12 Q -- from your paychecks?

13 THE COURT: Overruled.

14 MR. ALTER: Leading the witness.

15 THE COURT: It is not leading. Overruled.

16 A No.

17 MS. BUCCHERI: I'm going to ask that this be marked
18 People's 4A through R for identification.

19 THE COURT: Any objection to them going in
20 evidence?

21 MR. ALTER: No.

22 THE COURT: In evidence.

23 (Whereupon, the Pay stubs of Bendy Pierre-Joseph
24 were marked in evidence as People's Exhibits 4A-4R.)

25 THE CLERK: People's 4A through R marked and

1 received in evidence.

2 MS. BUCCHERI: Thank you.

3 Q Can you please take a look at those.

4 Have you had an opportunity to look at them?

5 A Yes.

6 Q Do you recognize them?

7 A Yes, I do.

8 Q What do you recognize them to be?

9 A Copy of pay stub.

10 Q How do you recognize them to be copies? Whose pay stubs
11 are they?

12 A Bendy Pierre-Joseph, my pay stub.

13 Q Are they yours?

14 A Yes.

15 Q They're copies of the original paychecks that you
16 received?

17 A Yes.

18 Q With respect to the first one, can you look at that?

19 A Yes.

20 Q Can you tell me the date?

21 A January 10, 2007.

22 Q Can you tell us how much the check is made payable for?

23 A How much?

24 Q Yes.

25 A \$2,104.50.

1 Q Can you tell us what it says on the memo line?

2 A It says less WC at one per hour, \$108.

3 Q Can you look at the next check. Can you tell us the
4 date of that check?

5 A January 24, 2007.

6 Q And how much is that check made payable for?

7 A \$1,749.

8 Q What does the memo line state?

9 A It says less WC at one per hour, \$93.50.

10 Q Can you please look at the next check.

11 What is that date?

12 A February 21, 2007.

13 Q How much is that check made payable for?

14 A \$2,940.

15 Q And can you please tell us what the memo line states?

16 A Less WC at one per hour, \$156.

17 Q What's the date of the next check?

18 A March 6, 2007.

19 Q And what does the memo line state?

20 A It says less WC.

21 Q And how much is that check made payable for?

22 A \$1,482.

23 Q Now, looking at this check, can you tell us how many
24 hours that you worked for this time period?

25 A 78 hours.

1 Q How much money was deducted from your paycheck for this
2 period of time?

3 A None. It says less WC.

4 Q How many hours did you work?

5 A I work 78 hours.

6 Q So, how much money then --

7 A The dollar was deducted, but it didn't --

8 Q So, if you worked --

9 MR. ALTER: What -- -- your Honor, I object. You
10 have to let the witness finish her answer to the question and
11 not cut the witness off, your Honor.

12 THE COURT: Did you finish your answer? Is there
13 an amount written at how much at a dollar an hour was taken
14 off?

15 THE WITNESS: It is 78 hours times 20.

16 Q That's how much? What does that represent?

17 A That was a deduction.

18 THE COURT: How much was the deduction?

19 THE WITNESS: Let me see. It should be 1,600 if
20 you make the --

21 Q So then, how much was deducted?

22 A Can I have a pen? Let me do it in pen, please, okay.
23 It should be 1,560, but the amount of the check is \$1,482.

24 Q So, then, can you tell us what the deduction was, how
25 much the deduction was?

1 A \$78. That means the dollar was deducted -- sorry. I
2 didn't hear you. \$78.

3 Q Can you look at the next check, please?

4 A I lost track. What date?

5 THE COURT: You're up to E, 4E.

6 Q What's the date of that check?

7 A April 18, 2007.

8 Q Is that E?

9 A That's 4F.

10 THE COURT: Look at 4E.

11 Q What is the date of that check?

12 A April 4, 2007.

13 Q And how much was this check made payable for?

14 A 1,881.

15 Q And what does the memo line state, please?

16 A Less WC at one per hour, \$99.

17 Q Can you look at 4F, please. What is the date of that
18 check?

19 A April 18, 2007.

20 Q How much was that check made payable for?

21 A \$1,254.

22 Q And what does the memo line state?

23 A Less WC at one per hour, \$66.

24 Q Can you look at G?

25 A May 2, 2007.

- 1 Q How much is this check made payable for?
- 2 A \$1,672.
- 3 Q And what does the memo line state, please?
- 4 A Less WC at one per hour, \$88.
- 5 Q Can you look at the next one which is H.
- 6 A June 13, 2007.
- 7 Q How much is this check made payable for?
- 8 A \$1,264.
- 9 Q And what does the memo line state?
- 10 A Less WC at \$1 per hour, \$66.
- 11 Q What is the date on the next check which is 4I?
- 12 A June 27, 2011.
- 13 Q How much is that check made payable for?
- 14 A \$1,045.
- 15 Q And what does the memo line state?
- 16 A Less WC at \$1 per hour, \$55.
- 17 Q Can you look at the next one which I believe is 4J.
- 18 What is the date of that check?
- 19 A July 25, 2007.
- 20 Q How much is that check made payable for?
- 21 A \$2,508.
- 22 Q What does the memo line state?
- 23 A Less WC at \$1 per hour, \$132.
- 24 Q And can you look at the next one, which is K. What is
- 25 the date on that check?

1 A August 22, 2011.

2 Q And how much is that check made payable for?

3 A \$1,254.

4 Q And what does the memo line state?

5 A Less WC at \$1 per hour, \$66.

6 Q The next one is L. Can you please look at that. What
7 is the date of that check?

8 A September 5, 2007.

9 Q How much is that check made payable for?

10 A It's \$3,045.

11 Q What does the memo line state?

12 A Less WC at \$1 per hour, \$135.

13 Q Can you please look at M and what is the date of that
14 check?

15 A September 19, 2007.

16 Q How much is this check made payable for?

17 A \$2,965

18 Q And what does the memo line state?

19 A Less WC at \$1 an hour, \$135.

20 Q Can you look at the next check which would be N.
21 What is the date of that check?

22 A October 3, 2007.

23 Q How much is that check made payable for?

24 A \$2,965

25 Q And what does it state on the memo line?

- 1 A Less WC at \$1 per hour, \$135.
- 2 Q Can you look at the next check.
- 3 What's the date of that check?
- 4 A October 17, 2007.
- 5 Q How much is that check made payable for?
- 6 A \$3,221.50.
- 7 Q And what does the memo line state, please?
- 8 A Less WC at \$1 per hour, \$148.50.
- 9 Q Can you look at the next check which is P?
- 10 A October 31, 2007.
- 11 Q How much is that check made payable for?
- 12 A \$2,965
- 13 Q Around what does the memo line state?
- 14 A Less WC at \$1 per hour, \$135.
- 15 Q And can you look at the next check, please, and what is
- 16 that date?
- 17 A November 14, 2007.
- 18 Q And how much is that check made payable for?
- 19 A \$2,965
- 20 Q And what does the memo line state?
- 21 A Less WC at \$1 per hour, \$135.
- 22 Q And you should have the last one. What is the date on
- 23 that?
- 24 A November 27, 2007.
- 25 Q How much is that made payable for?

1 A \$2,547.

2 Q And what does the memo line state?

3 A Less WC at \$1 per hour, \$113.

4 Q Thank you.

5 Did there come a time if you were unable to go to work
6 because you were sick, what, if anything, you would do?

7 A I would call the agency.

8 Q And what, if anything, would happen to your patient?

9 A I would call the agency and they would send a
10 replacement, another nurse.

11 Q The replacement would be coming from where?

12 A Wherever they -- home. I don't know.

13 Q But an employee of Harry's?

14 A Yes, from Harry's. Yeah.

15 MR. ALTER: Objection, your Honor.

16 THE COURT: Sustained.

17 MR. ALTER: I ask that the answer be stricken.

18 THE COURT: It is stricken.

19 Q Did you have to attend in-service training? Did Harry's
20 provide any in-service training?

21 A Yes.

22 Q What type of in-service training?

23 A Sometimes it's on fire safety or anything new.

24 Q Where was the in-service held?

25 A At the office.

1 Q At Harry's Nurse's Registry?

2 A Yes.

3 MS. BUCCHERI: Judge, I have nothing further.

4 THE COURT: Anything?

5 MR. ALTER: Yes.

6 CROSS-EXAMINATION

7 BY MR. ALTER:

8 Q Did you carry your own malpractice insurance during the
9 period of time from the time you began to work for Harry from the
10 beginning of '07 to the end of the series of paychecks?

11 A Yes.

12 Q And would you explain to the jury what malpractice
13 insurance is?

14 A Malpractice insurance is anything happen in the job, the
15 insurance cover you.

16 Q You pay this on your own?

17 A Yes.

18 Q Did Harry's Nurse's Registry give you any Social
19 Security benefits?

20 A No.

21 Q Did you pay your own Social Security benefits?

22 A No. From Harry's?

23 Q Yes.

24 A No.

25 Q Did you get any paid vacation from Harry's Nurse's

1 Registry?

2 A No.

3 Q Any benefits at all?

4 A No.

5 Q If you didn't show up to work at your station, would you
6 get paid?

7 A No.

8 Q The equipment that was at the site was not supplied by
9 Harry?

10 A No.

11 Q It was somebody else?

12 A Correct.

13 Q You would get your medical instructions from doctors who
14 would give -- tell you what they want for their patient care,
15 correct?

16 A Yes.

17 MS. BUCCHERI: Objection.

18 THE COURT: Sustained as to relevance.

19 Q During the period of time from January of 2007 through
20 November of 2007, were you getting your medical instructions from
21 the physician on-site?

22 MS. BUCCHERI: Objection, Judge.

23 THE COURT: Do you know who the doctor was for each
24 of your patients?

25 THE WITNESS: Yes.

1 THE COURT: Who?

2 THE WITNESS: I don't remember the name.

3 THE COURT: Did they have individual doctors or
4 were they doctors supplied by Harry's Nurse's.

5 THE WITNESS: They have a book. The patient has a
6 book who has a doctor's name, all the instructions and the
7 orders from the doctor, from the hospital.

8 THE COURT: So, the hospital releases the patient,
9 has his or her own doctor, the doctor leaves instructions.
10 Your job is to follow the instructions?

11 THE WITNESS: The instructions, yes, correct.

12 THE COURT: If you mess up, you could be sued?

13 THE WITNESS: Yes.

14 THE COURT: That's why you carry malpractice
15 insurance?

16 THE WITNESS: Yes.

17 Q During that course of time from January of 2007 through
18 November of 2007, did you have other places where you were
19 working?

20 A Yes.

21 Q Can you tell the jury where you were working?

22 MS. BUCCHERI: Objection.

23 THE COURT: Sustained. What's the relevance?

24 MR. ALTER: It is to show we were a part-time job.

25 THE COURT: If you're a part time employee, you're

1 still -- if you are an employee and you are working part
2 time, you're still a part-time employee.

3 MR. ALTER: Yes.

4 THE COURT: Anything else?

5 Q Ma'am, I show you this document.

6 I show it to Ms. Buccheri?

7 MR. ALTER: I ask that it be marked --

8 MS. BUCCHERI: May I see it, though.

9 (Whereupon, the Document was marked for
10 identification as Defendants' Exhibit A.)

11 THE COURT OFFICER: Defense A marked for
12 identification.

13 Q Do you recognize that document, ma'am?

14 A Yes.

15 Q • Did you sign it?

16 A Yes.

17 MS. BUCCHERI: Objection, Judge.

18 THE COURT: Overruled.

19 MR. ALTER: I offer it in evidence, your Honor.

20 THE COURT: I have no idea what the document is or
21 what it's relevance is. Sustained.

22 MR. ALTER: May I show it to the Court?

23 THE COURT: I have to rule on what's on the record.

24 MR. ALTER: It is a memorandum --

25 THE COURT: No. Ask questions.

1 MR. ALTER: Okay.

2 Q I show you this document.

3 Would you tell the Court and jury what that document is?

4 A Excuse me?

5 THE COURT: Do you know what that piece of paper
6 is, Defense A?

7 THE WITNESS: Yes.

8 THE COURT: What is it?

9 THE WITNESS: Once you sign -- read it, you sign
10 it, you agree for malpractice practice, to get malpractice,
11 to pay your taxes, your own health insurance.

12 THE COURT: Okay.

13 THE WITNESS: This is it.

14 Q Does it also tell you you are an independent contractor
15 also?

16 MS. BUCCHERI: Objection.

17 THE COURT: Sustained.

18 THE COURT: Do you have any idea what an
19 independent contractor is?

20 THE WITNESS: No.

21 THE COURT: So, who showed you that piece of paper?

22 THE WITNESS: When I sign it?

23 THE COURT: Yes.

24 THE WITNESS: 2006. I don't remember who hand it
25 to me, but it was in the page that Carmen give to me.

1 THE COURT: Carmen gave you a bunch of pieces of
2 paper to sign and you signed them?

3 THE WITNESS: Yeah.

4 THE COURT: Did you read it before you signed it?

5 THE WITNESS: I don't remember reading it.

6 THE COURT: Do you remember if you asked her about
7 any questions of what it means to be an independent
8 contractor?

9 THE WITNESS: No, I didn't ask nothing. All I
10 do --

11 THE COURT: That's your signature?

12 THE WITNESS: I remember sign it. She said for
13 malpractice insurance and health insurance and income taxes.

14 THE COURT: So, she told you that you're
15 responsible for your own income taxes, your own Social
16 Security, and you have to provide yourself with your own
17 malpractice?

18 THE WITNESS: Yeah.

19 THE COURT: You agreed to do that?

20 THE WITNESS: Yes, and I signed it.

21 THE COURT: Okay.

22 MR. ALTER: I offer it in evidence, your Honor.

23 THE COURT: Any objection?

24 MS. BUCCHERI: No, Judge.

25 THE COURT: It is received in evidence.

1 (Whereupon, the Document was marked in evidence as
2 Defendants' Exhibit A.)

3 THE COURT OFFICER: Defendants' A marked and
4 received in evidence.

5 Q Now, ma'am, during the course -- are we ready?

6 During the period of time from January 1st of 2007 to
7 November 2007 when you got these checks, did you make any
8 complaint about them?

9 A From 2007, yeah, I noticed that there was something
10 missing.

11 THE COURT: When for the first time did you make a
12 complaint is what he's asking you.

13 THE WITNESS: I don't remember.

14 THE COURT: Was it in 2007 --

15 THE WITNESS: 2007, yes.

16 Q Who did you make a complaint to?

17 A First of all, Carmen, and then she transferred the call
18 to bookkeeper, and I didn't get correct answer.

19 Q So, when did you find out Workers' Compensation was
20 being deducted from your pay?

21 A So then I asked to speak to Mr. Harry one day.

22 Q And what happened then?

23 A Yeah, and I asked him why dollar was taken from my
24 checks. He said you have to pay for Workers' Comp.

25 Q Workers' Compensation?

1 A Yes.

2 Q When did that conversation take place?

3 A Sometime in 2007. I don't remember the month and the
4 date.

5 Q After that conversation, did you do anything else
6 further about this?

7 A No.

8 Q How many paychecks did you get from Harry's Nurse's
9 Registry after that conversation?

10 A I don't remember.

11 Q Do you know what period of time that
12 conversation -- when that conversation --

13 A Sometime in 2007.

14 Q Did you get any checks after that conversation?

15 A Yes, I worked for him.

16 Q You worked for him after that?

17 A Yes.

18 Q Do you know the amount of checks you got from him?

19 MS. BUCCHERI: Objection.

20 THE COURT: Sustained.

21 Did he still deduct the dollar an hour?

22 THE WITNESS: Yes.

23 THE COURT: He gave you an explanation. You
24 accepted his explanation and he kept doing it?

25 THE WITNESS: Yes.

1 THE COURT: Anything else?

2 Q Tell us about your educational background, ma'am.
3 Where did you go to school?

4 MS. BUCCHERI: Objection, Judge.

5 THE COURT: Overruled.

6 How far did you go in school?

7 THE WITNESS: College.

8 THE COURT: Where?

9 THE WITNESS: Queensboro College.

10 THE COURT: Anything else?

11 THE WITNESS: No, that's it.

12 Q Would you tell the Court what type of care, what do you
13 do for these patients in the period in question, January 1, 2007
14 to November 2007?

15 MS. BUCCHERI: Objection as to relevancy, Judge.

16 THE COURT: Sustained. How is that relevant to
17 whether or not there was a grand larceny or scheme to
18 defraud?

19 MR. ALTER: No further questions, your Honor.

20 THE COURT: Anything else?

21 MS. BUCCHERI: No, Judge.

22 THE COURT: Thank you. You may step down.

23 THE WITNESS: Thank you.

24 (Witness excused.)

25 THE COURT: At this point, we're going to take a

1 luncheon recess. It is almost a quarter to 1:00. Don't look
2 so disappointed. Please remember the admonitions. Listen,
3 I'm required to give you these admonitions. I don't mean to
4 insult your intelligence. I'm sure you got it the first
5 time.

6 Do not discuss this case among yourselves or with
7 anyone else or permit anyone to discuss it in your presence.
8 Do not visit or view anyplace or premises mentioned in
9 connection with this case. Do not pay any attention to any
10 account of this case that may be reported in the media. If
11 there are any accounts of this case reported in the media,
12 keep an open mind. We will reconvene at two o'clock. Please
13 be where the court personnel tells you to be. Please do not
14 eat too much for lunch. Get some exercise because some of
15 this can be tedious. The only way you're going to be able to
16 do your job is you have to stay up and pay attention. Get
17 some exercise. Have a great lunch and see you at two
18 o'clock.

19 (Whereupon, the jury exited the courtroom.)

20 THE COURT: The jurors have left.

21 Any application, People?

22 MS. BUCCHERI: The only thing I do have is if the
23 defendant is going to speak to his attorney while the People
24 are questioning their witnesses, if he could keep his voice
25 down because it does become distracting and at times his

1 voice -- you hear his voice over that of the witness that is
2 testifying.

3 THE COURT: I told you once. The second time I'm
4 going to tell you. If you and your lawyer need to confer,
5 your lawyer has the right to ask for a recess. Write him a
6 note. If you have a question, hand it to him. If he thinks
7 he needs to interrupt --

8 MR. ALTER: I will give him a pen.

9 THE COURT: If he thinks he needs to interrupt the
10 proceedings, he'll do that. If he doesn't think it is
11 necessary to interrupt the proceedings, then he'll wait and
12 then he'll talk to you during the recess. You understand
13 that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: You don't want to appear to be trying
16 to avoid testifying under oath by saying things that one,
17 disrupt the proceedings; and two, to try to talk loud enough
18 as if you're talking to the jury without you being under
19 oath. You understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: Be back at two o'clock. If you fail to
22 appear, a warrant will issue for your arrest. This trial
23 will continue in your absence. If it continues in your
24 absence and you are convicted in your absence, you could be
25 sentenced up to two and-a-third to seven years in jail on the

1 grand larceny, three counts. On the E felony counts, you
2 could be sentenced up to one and-a-third to four years in
3 jail. Some of those sentences can run consecutively. \$250
4 mandatory surcharge, \$50 DNA fee, \$20 Crime Victims
5 Assistance fee. Show up late, bail will be increased and if
6 you fail to show up over 30 days, you could be indicted for
7 bail jumping. Do you understand all of that?

8 THE DEFENDANT: Yes.

9 THE COURT: Have a good lunch.

10 (Whereupon, a luncheon recess was taken.)

11 A F T E R N O O N S E S S I O N

12
13 * * * * *

14
15 THE CLERK: Case on trail continues. All the
16 parties are present. The defendant is present. The jury is
17 not present.

18 THE COURT: Any applications before we proceed?

19 MS. BUCCHERI: No, your Honor.

20 MR. ALTER: No, your Honor.

21 THE COURT: Let's get the jury.

22 THE COURT OFFICER: Jury entering.

23 (Whereupon, the jury entered the courtroom.)

24 THE CLERK: Case on trial continued. All sworn
25 jurors are present and properly seated.

1 Do both sides waive the reading of the roll?

2 MS. BUCCHERI: Yes.

3 MR. ALTER: Yes.

4 THE COURT: Good afternoon.

5 You may call your next witness.

6 MS. BUCCHERI: Thank you.

7 The People call Linda Dei-Baning.

8 THE COURT OFFICER: Witness entering.

9 L I N D A D E I - B A N I N G , a witness called by the People,
10 after having been first duly sworn by the Clerk of the Court, took
11 the witness stand and testified as follows:

12 THE COURT OFFICER: The People call Linda
13 Dei-Baning, D-E-I-B-A-N-I-N-G. Resident of Kings County.

14 THE COURT: You may inquire.

15 MS. BUCCHERI: Thank you.

16 DIRECT EXAMINATION

17 BY MS. BUCCHERI:

18 Q I ask you to keep your voice up, so everybody can hear
19 you.

20 A Okay.

21 Q Do you currently work?

22 A Yes, I do.

23 Q Where are you working?

24 A Right now, I work with New York State Office of Children
25 and Family Services. I currently work with New York State Office

1 of Children and Family Services.

2 Q What do you do there?

3 A I'm a registered nurse.

4 Q What are your responsibilities as a registered nurse?

5 A In this facility, I hand out -- I administer
6 medications. I admit the kids when they come in. I do the
7 paperwork for discharge. I hold groups, mostly health groups.

8 Q Did you have to take a test to be a registered nurse?

9 A Yes, I did.

10 Q What type of test did you have to take?

11 A I had to take the New York State boards for nursing.

12 Q Did you pass them?

13 A Yes, I did.

14 Q As a result of passing them, what, if anything, did you
15 receive from the state?

16 A I received a license to practice as a registered nurse
17 and a registration.

18 Q Do you have another license from the state?

19 A Yes, I do.

20 Q What is that for?

21 A I have a driver's license and I also hold a license
22 practical nurse.

23 Q Is that an LPN?

24 A Yes.

25 Q When did you go to school to become an LPN?

1 A I attended 1997, I believe.

2 Q Did you have to take an exam also to become a licensed
3 practical nurse?

4 A Yes, I did. New York State board of nursing for
5 practical nurses.

6 Q When did you become an RN?

7 A I became RN in 7/7/07.

8 Q Did there come a time that you heard about the defendant
9 in this case?

10 A Yes.

11 Q And when was that?

12 A I don't remember when exactly, but it was sometime
13 during my license practical nurse years.

14 Q And what period of time are you referring to with
15 respect to the license practical years?

16 A I was a practical nurse from '98 up until '07.

17 THE COURT: Did you work for him?

18 THE WITNESS: Yes, I did.

19 THE COURT: How did you learn of him?

20 THE WITNESS: Through other co-workers.

21 THE COURT: Did you go through an interview
22 process?

23 THE WITNESS: I filled out an application.

24 Q Did you have to provide any other documents when you
25 filled out the application?

1 A You have to provide your license, your registration,
2 most of the time CPR, malpractice insurance, and that's mostly it,
3 those kind of documentations.

4 Q After you provided those documentations, what happened
5 next?

6 A You're offered a variety of cases and you get to pick
7 which one you would like to go on.

8 Q What was the name of the defendant's business?

9 A Harry's Nursing Registry.

10 Q Do you know where it is located?

11 A It's in Queens, I think around Jamaica Avenue. I'm not
12 sure. Don't remember.

13 Q Do you know who the owner of Harry's Nurse's Registry
14 is?

15 A Harry Dorvilier.

16 Q Do you see him anywhere in the courtroom today?

17 A Yes, I do.

18 Q Can you please point him out by describing an article of
19 clothing?

20 A He's wearing the gray jacket with the navy blue tie with
21 the print on it.

22 THE COURT: Indicating the defendant.

23 Q Now, how did you get your assignments?

24 A I would go into the office and they would give
25 me -- show me a sheet of paper with the patient's information on

1 it, where the patient lived, what kind of case it was, and you
2 could pick and choose where you wanted to go.

3 Q And do you remember who gave you this choice?

4 A It would be one of the ladies in the office.

5 Q And did there come a time that you decided which case
6 you wanted to work on?

7 A Yes.

8 Q How long did you work for the defendants?

9 A It was less than a year, anywhere between six to nine
10 months.

11 Q During that period of time, approximately how many cases
12 did you work on?

13 A I can't remember, but I did many cases.

14 Q Was it adult cases, pediatric cases, if you remember?

15 A I can't remember, but I would like to say it was mostly
16 adult.

17 THE COURT: You would like to say that?

18 THE WITNESS: Yes.

19 THE COURT: Say it.

20 THE WITNESS: It was mostly adult.

21 Q Now, how was the rate of pay, your hourly wage
22 determined, wages determined?

23 A They had a rate for LPNs, they had a rate for RNs, and
24 if the patient's insurance was Medicaid, it was a lesser rate, and
25 if they had like regular, good insurance, not Medicaid, then it

1 was a little bit more.

2 Q You mean private insurance?

3 A Private insurance, yes.

4 Q The amount of money that the insurance companies paid,
5 is that the amount of money you received per hour?

6 A I wouldn't know that.

7 MR. ALTER: Objection, your Honor.

8 THE COURT: Sustained.

9 How would she know what her employer does?

10 Q Now, who told you what your rate would be, if you
11 remember?

12 A I don't remember the person exactly, but it is in the
13 paperwork that you fill out. Depending on what kind of insurance
14 it was that the patient had, how much you would be paid for.

15 Q What about the length of hours you were required to work
16 for the patient, who determined that?

17 A The agency.

18 Q When you received your assignments, did the defendants
19 provide you with anything?

20 A No, just the patient's information, home address.

21 Q What were your responsibilities for the patients?

22 A Most of the patients activities of daily living, i.e.,
23 bathing, dressing, giving medication, whatever that patient needed
24 as part of their care.

25 Q The care that you provided, did you have to write that

1 anyplace?

2 A Yes, we were given nurse's notes which we had to write
3 our shift notes on.

4 Q Where did you obtain those nurse's notes from?

5 A From the agency.

6 Q At what point did you get those nurse's notes?

7 A I can't recall. I can't recall right now because all
8 that's in my mind is how my agency now does it. Because of the
9 beginning, because of where Harry's agency is located, I hated to
10 drive from Brooklyn to Queens. There's hardly any parking there,
11 you get tickets, so I went to the office the first time when I
12 registered, maybe the next two, three paychecks, and then I had
13 them mailing it to me, so I can't recall if they would put the
14 time slips and the nurse's notes in there, if they would mail it
15 to me separately. I can't recall at this point.

16 THE COURT: What would you do once you completed
17 the slips?

18 THE WITNESS: I would mail it in.

19 THE COURT: You wouldn't get your check until after
20 you mailed those in?

21 THE WITNESS: Exactly.

22 MS. BUCCHERI: Can the witness be shown People's 1
23 and 2 in evidence?

24 THE COURT OFFICER: People's 1 and 2 being shown to
25 the witness.

1 Q Can you please look at People's 1.

2 A Yes.

3 Q Do you recognize that?

4 A Yes.

5 Q What is it?

6 A It is the time slip.

7 Q And is that a copy of the time slip that you received
8 from the defendants?

9 A Right now, I can't recall if it looked exactly like
10 this, but --

11 THE COURT: You had to fill out a time slip?

12 THE WITNESS: I had to fill out a time slip and I
13 had to write nurse's notes.

14 Q Let me ask you this. With respect to the time sheets,
15 did it have any information written on the time sheets?

16 A The information that was preprinted as far as day, time
17 in, time out, hours work, week ending and the client's signature
18 to verify that you were there and you worked.

19 Q What about People's 2, do you recognize that?

20 A Yes, that's the nurse's notes, progress notes.

21 Q Is that --

22 A This looks familiar.

23 Q And is that a copy of the nurse's notes that you
24 received while you were employed with the defendant?

25 A Yes.

1 Q Did there come a time in 2007 that you noticed a
2 discrepancy with your paychecks?

3 A Yes, there was a time. After a while of working for
4 them, I noticed there was an amount at the bottom -- a dollar and
5 it said per hour, so I called, and I questioned it, and they told
6 me it was for Workers' Comp.

7 MR. ALTER: Objection. Never mind. I withdraw the
8 objection.

9 Q Do you remember who you spoke with?

10 A No, I don't.

11 Q Do you remember when it was that you called?

12 A No, I don't.

13 THE COURT: Do you know who you called?

14 THE WITNESS: I called the agency. I spoke to
15 somebody in the agency.

16 Q But you don't remember who that was?

17 A No.

18 Q While you were employed at Harry's, did you have to
19 attend any in-service training?

20 A While I was there, I don't recall attending any.

21 Q At any point during the period of time that you noticed
22 the deductions, did you ever give the defendants permission or
23 authority to withdraw that money?

24 A No.

25 Q If you were unable to take care of your patient, what,

1 if anything, would you do?

2 A I would let the agency know, so they would find another
3 nurse to fill in.

4 Q Was it your responsibility to get a replacement?

5 A No.

6 MS. BUCCHERI: I'm going to ask that these be
7 marked People's 5A through N.

8 THE COURT: Have you shown it to counsel?

9 MS. BUCCHERI: Yes, I will. For identification.

10 MR. ALTER: Thank you.

11 THE COURT: Any objection to them being marked in
12 evidence?

13 MR. ALTER: None whatsoever.

14 THE COURT: Marked in evidence.

15 (Whereupon, the Pay stubs of Linda Dei-Baning were
16 marked in evidence as People's Exhibits 5A-N.)

17 THE COURT OFFICER: People's 5A through N marked
18 and received in evidence.

19 MS. BUCCHERI: Thank you. Can you please show the
20 witness.

21 Q Can you please look at those?

22 A Yes.

23 Q Have you had an opportunity to look at them?

24 A Yes.

25 Q Do you recognize them?

1 A Yes.

2 Q What do you recognize them to be, please?

3 A My pay stubs, copies of.

4 Q And how do you recognize them to be your pay stubs?

5 A They have my information, my name, my address, hours
6 worked.

7 Q Are these copies of paychecks that you received while
8 you were employed by the defendants?

9 A Yes.

10 Q Can you please look at the first check that's marked 5A.
11 Can you please tell us the date of that check?

12 A January 24, 2007.

13 Q What's the amount?

14 A \$380.

15 Q And what does the memo line state?

16 A Less W/C at \$1 per hour.

17 Q Does it say anything else?

18 A Parenthesis 20, so I'm guessing \$20.

19 Q Well, how many hours did you work during this pay
20 period?

21 A 20 hours.

22 Q What does WC stand for?

23 A What I was told was Workers' Comp. That was what I saw.
24 Less means taken away from, so I called and I questioned and they
25 said Workers' Comp.

- 1 Q Can you look at the next check which would be 5B.
2 What's the date on that check?
3 A 2/7/07.
4 Q What's the amount of this check?
5 A The amount is \$570.
6 Q Is there anything on the memo line?
7 A On this memo line, no.
8 Q How many hours did you work during this period, this pay
9 period?
10 A 30 hours.
11 Q Can you look at 5C?
12 A Yes.
13 Q What's the date of this check?
14 A 2/21/2007.
15 Q How much is this check made payable for?
16 A \$570.
17 Q What does the memo line state?
18 A Less Workers' Comp. at \$1 per hour at 30 hours, so \$30
19 in the parenthesis, it says \$30.
20 Q Can you please look at D?
21 A Yes.
22 Q What's the date on that check?
23 A 3/8/2007.
24 A \$380.
25 Q What does it say on the memo line?

1 A Memo line says less WC, but there's no amount.

2 Q And how many hours did you work during this pay period?

3 A 20 hours.

4 Q That would be how much money was deducted?

5 A \$20.

6 Q How about the next one which I believe is E?

7 A This check is dated 3/21/2007.

8 Q How much is this check made payable for?

9 A In the amount of \$570.

10 Q What does it state on the memo line?

11 A Less Workers' Comp. \$1 per hour, \$30 in parenthesis.

12 Q How about the next one which I believe is F?

13 A 3/21/2007.

14 THE COURT: Second check for the same date?

15 THE WITNESS: Yes. Unless it is a copy of the same
16 thing, this does say 5F.

17 MR. ALTER: Is it a duplicate?

18 MS. BUCCHERI: No. I can show counsel.

19 Q With respect to F, what was the amount of that check,
20 please?

21 A \$570.

22 Q And is there something written on the memo line?

23 A Yes.

24 Q What does it state?

25 A Less Workers' Comp. \$1 per hour, \$30 in parenthesis.

1 Q Can we look at the next one which is G? What is the
2 date of this check, please?

3 A 4/4/2007.

4 Q What is the amount of this check?

5 A \$570.

6 Q What does it state on the memo line?

7 A Less Workers' Comp. at \$1 per hour, parenthesis \$30.

8 Q Can you look at the next one which would be H, please?

9 A 4/18/2007.

10 Q How much is this check made payable for?

11 A \$950.

12 Q And what does it state on the memo line?

13 A Less Workers' Comp. at \$1 per hour, parenthesis \$50.

14 Q And the next check which is I, what is the date of this
15 check, please?

16 A The date is 5/2/2007.

17 Q How much is this made payable for?

18 A \$1,349.

19 Q And what does it state on the memo line?

20 A Less Workers' Comp. at \$1 per hour, \$71 in parenthesis.

21 Q The next check, please, and what is the date on that
22 check?

23 A 5/16/2007.

24 Q How much is this check made payable for?

25 A \$1,140.

- 1 Q And is there something written on the memo line?
- 2 A Yes.
- 3 Q What does it state?
- 4 A Less Workers' Comp. at \$1 per hour, \$60 in parenthesis.
- 5 Q Can you look at the next one which is K.
- 6 What is the date of that check?
- 7 A 5/30/2007.
- 8 Q How much is that for?
- 9 A \$1,102.
- 10 Q What does the memo line state?
- 11 A Less Workers' Comp. at \$1 per hour, \$48 in parenthesis.
- 12 Q The next one which is L, please.
- 13 What is the date of that check?
- 14 A 6/13/2007.
- 15 Q How much is this check for?
- 16 A \$969.
- 17 Q What does it state on the memo line, please?
- 18 A Less Workers' Comp. at \$1 per hour, in parenthesis \$51.
- 19 Q The next one which is M, what is the date on that check?
- 20 A 6/27/07.
- 21 Q And how much is this check made payable for?
- 22 A \$1,637.
- 23 Q And is there something written on the memo line?
- 24 A Yes.
- 25 Q What does it state?

1 A Less Workers' Comp. at \$1 per hour, \$37 in parenthesis.

2 Q The last one which is N.

3 A Dated 7/11/2007.

4 Q How much is this check made payable for?

5 A \$760.

6 Q And is there something written on the memo line?

7 A Yes.

8 Q What is that?

9 A Less Workers' Comp. at \$1 per hour, 40 in parenthesis.

10 Q Now --

11 THE COURT: I would like to ask you to look at the
12 last two, 5M and N. Did you say that on June 27th of '07
13 you earned 1637, but they only deducted \$37?

14 THE WITNESS: Yes, that's what in parenthesis.

15 THE COURT: July 11th, when you earned much less,
16 \$760, they deducted \$40?

17 THE WITNESS: Yes, that's what's on here.

18 THE COURT: Okay. Go ahead.

19 THE COURT: Do you have other questions?

20 MS. BUCCHERI: I do, yes.

21 Q With respect to these checks, who issued these checks to
22 you?

23 A Harry's Nurse's Registry.

24 Q Do you know who signed these checks?

25 A No.

1 Q How did you receive these checks?

2 A In the beginning, I would go pick it up. After a few
3 times, two or three times, I had them mail it to me.

4 MS. BUCCHERI: Thank you. I have no further
5 questions, Judge.

6 THE COURT: Any cross?

7 MR. ALTER: Yes.

8 CROSS-EXAMINATION

9 BY MR. ALTER:

10 Q Let me see if I have this correct. The agency didn't
11 supply you with any equipment; am I correct?

12 A That's correct.

13 Q You would bring your own stethoscope in?

14 A Yes.

15 Q Your blood pressure machine, medicine machine?

16 A Yes.

17 Q All the equipment is at the site, nothing to do with the
18 agency?

19 A It's either at the site or you have to have it.

20 Q The malpractice information, would you tell the jury
21 what that's for?

22 A Malpractice insurance is for God forbid something
23 happens and somebody sues you, you have that to cover yourself.

24 Q Now, you administer your medicines and treatment that's
25 given to you by a plan by a doctor; am I correct?

1 A Yes.

2 Q The doctor on-site is giving you a plan or during the
3 period of time that you work for this agency, the doctor would
4 tell you what you had to do with the patient?

5 A An order form, yes.

6 THE COURT: Do you know who the doctor worked for?

7 THE WITNESS: No, I don't.

8 THE COURT: Did you ever see the doctor?

9 THE WITNESS: I never saw any doctor.

10 THE COURT: So, you got written instructions?

11 THE WITNESS: Yes, written instructions.

12 THE COURT: Who handed you the written
13 instructions?

14 THE WITNESS: It's usually in the patient's chart
15 at the house.

16 THE COURT: So, you get an assignment. When you
17 get to the house, there is a patient there and written
18 instructions and assuming you can read the doctor's
19 handwriting, you know what your instructions are?

20 THE WITNESS: Correct.

21 Q Now, during the period of time you would work for this
22 period of two weeks, you would just mail your time sheets in? You
23 never -- did you ever see the agency at all?

24 A Yes, I had said before when I registered with them, I
25 went to the agency. I just said a few minutes ago that I went

1 there the first few times to pick up my check, but it was too much
2 of a hassle, so I started asking them to mail it to me.

3 Q After those first couple of period, after that, you
4 would send in your time sheets and your notes and they would send
5 you a check?

6 A That's right.

7 Q Who would sign the bottom of your time sheets or your
8 notes to verify that you were there?

9 A I'm not sure if it is myself or the client because every
10 agency is different.

11 Q So, it could have been the patient or somebody in the
12 patient's home could have done this?

13 A Usually, the nurse's notes, I have to sign it. On the
14 time slip, the patient has to sign it if they're able. If they're
15 not able to, a family member, somebody has to sign that you were
16 there and that you worked.

17 Q They would verify your presence there?

18 A Exactly.

19 Q Not the agency?

20 A Not the agency.

21 Q Now, if you didn't work that day, would you get paid?

22 A No.

23 Q Did you have any health insurance on the job?

24 A No.

25 Q Did you get any benefits at all?

1 A No.

2 Q Any vacation?

3 A I mean, you work when you want to work, so if you don't
4 feel like working a certain week, you don't take any cases.

5 Q This is your call as to when you wanted to work?

6 A Basically.

7 Q Now, was Social Security taken out?

8 A That was the one thing with Harry's agency, they didn't
9 take taxes.

10 Q They didn't take taxes?

11 A Is that what you're referring to, Social Security?

12 Q Yes.

13 A Yes.

14 Q You got a 1099 at the end of the year?

15 MS. BUCCHERI: Objection, Judge.

16 A I don't know what a 1099.

17 THE COURT: Overruled.

18 Did you pay income taxes?

19 THE WITNESS: Yes, I had to pay my own income
20 taxes.

21 THE COURT: I understand. So, how did the federal
22 government know how much you made? Did anyone give you a
23 statement that said how much your income was that year?

24 THE WITNESS: Oh, yeah.

25 THE COURT: That form is called a 1099.

1 THE WITNESS: Thank you.

2 THE COURT: Did you get that form from the
3 registry?

4 THE WITNESS: Yes.

5 MR. ALTER: Thank you, your Honor.

6 Q I'm going to show you a document --

7 MR. ALTER: I would like to have this marked in
8 evidence.

9 THE COURT: Any objection?

10 MS. BUCCHERI: No.

11 THE COURT: B in evidence.

12 (Whereupon, the Document was marked in evidence as
13 Defendants' Exhibit B.)

14 THE OFFICER: Defendant's B marked and received in
15 evidence.

16 Q I would like to show you that document, ma'am.

17 Do you recognize it?

18 A Yes, it has my handwriting on it.

19 Q You signed that document?

20 A Yes.

21 Q Can you tell the jury what that document is?

22 A Should I read it?

23 Q You could look it over and just tell us what it is.

24 THE COURT: Read it to yourself and see if you know
25 what it is.

1 A Okay, this is a document that I signed, and it is saying
2 that I understand I am an independent contractor and am
3 responsible for any and all income taxes, which I was aware of,
4 and health insurance, malpractice, et cetera. Malpractice, yes, I
5 knew I was responsible for that. Et cetera, I don't know what the
6 et cetera is.

7 Q But that does bear your signature, ma'am?

8 A Yes.

9 Q When you -- when did you find out that the -- that
10 Harry's Nurse's Registry was taking this dollar an hour out of
11 your pay?

12 A I noticed it sometime while I was working for him on my
13 pay stub and so I questioned it.

14 Q Was it in your first pay stub that you got?

15 A I don't recall when I noticed it, but I noticed it at
16 some point and I questioned it.

17 Q After you questioned it, did you continue to work for
18 the registry with the dollar an hour taken out?

19 A Yes, I did.

20 Q Did you say anything after that at all?

21 A No, I didn't. They told me it was being taken out for
22 Workers' Comp. I don't know I'm not supposed to pay for my own
23 Workers' Comp.

24 MR. ALTER: Objection, your Honor. She's not
25 answering my question.

1 THE COURT: It is answering your question.

2 Overruled.

3 A It is. I watch too much Discovery I.D. Sorry.

4 Q Did you continue to work for Harry's Registry with the
5 money being taken out of your pay?

6 MS. BUCCHERI: Asked and answered.

7 THE COURT: Sustained.

8 Q Nothing was done after that, right?

9 MS. BUCCHERI: Objection. That was asked and
10 answered as well.

11 THE COURT: Are you sure you want an answer?

12 MR. ALTER: I'll leave it alone.

13 Q Do you know how many paychecks you got from Harry's
14 Nurse's Registry, Inc. after you made that complaint?

15 A No, I don't know how many exactly.

16 Q Do you have a ballpark figure at all?

17 A No.

18 Q You do recall getting checks after you made the
19 complaint?

20 A I answered that question yes already.

21 MR. ALTER: Very well, your Honor. No further
22 questions.

23 THE COURT: Do you have anything further?

24 MS. BUCCHERI: No.

25 THE COURT: You may step down.

1 THE WITNESS: Thank you.

2 (Witness excused.)

3 THE COURT: You may call your next witness.

4 MS. BUCCHERI: The People call Lucille Hamilton.

5 THE WITNESS: Witness entering.

6 L U C I L L E H A M I L T O N , a witness called by the People,
7 after having been first duly sworn by the Clerk of the Court, took
8 the witness stand and testified as follows:

9 THE COURT OFFICER: The People call Lucille
10 Hamilton. Common spelling on both. Resident of Queens
11 County.

12 THE COURT: You may inquire.

13 MS. BUCCHERI: Thank you.

14 DIRECT EXAMINATION

15 BY MS. BUCCHERI:

16 Q Good afternoon. I ask you to keep your voice up, so
17 everyone can hear you. The microphone doesn't work.

18 THE COURT: It works.

19 Q Are you currently working?

20 A No.

21 Q When is the last time that you worked?

22 A October of 2010.

23 Q 2010?

24 A Yes.

25 Q Where were you working in 2010?

1 A For Harry's Nurse's Registry.

2 Q And where is Harry's Nurse's Registry located?

3 A It's in Queens. I believe it is 89th Avenue.

4 THE COURT: When did you start working for Harry's
5 Registry?

6 THE WITNESS: 2003.

7 THE COURT: You stopped in 2010?

8 THE WITNESS: Yes, my case ended.

9 Q What did you do at Harry's Nurse's Registry?

10 A Well, I'm an LPN, and I was assigned to go to different
11 patients' house and administer nursing care.

12 Q How did you hear about Harry's Nurse's Registry?

13 A Through a friend.

14 Q And when was that?

15 A That was around 2003 --

16 Q When you heard about Harry's nurse?

17 A -- I went to register to see if I could get employment.

18 Q Employment as what?

19 A As a licensed practical nurse.

20 Q When did you become a licensed practical nurse?

21 A In 1967.

22 Q Did you have to sit and take the boards?

23 A It took a year and-a-half for schooling, and then I had
24 to take a state board and pass, and then I received the license.

25 Q From what state, please?

1 A New York State.

2 Q When you went to Harry's Nurse's Registry, do you know
3 who the owner is?

4 A Mr. Harry.

5 Q Do you know his last name?

6 A Dorvilier. I may not pronounce it right, but it is
7 Dorvilier.

8 Q Do you see him anywhere in the courtroom?

9 A Yes, I do.

10 Q Can you please point him out and describe an article of
11 clothing?

12 A That's Mr. Harry over there with the -- look like a
13 black suit and tie and smiling.

14 THE COURT: The record will so reflect.

15 MS. BUCCHERI: Thank you.

16 Q When you went to the agency, what did you do?

17 A Well, I went to apply and I needed a license. I had to
18 take a pharmacology exam and to show my picture I.D.

19 Q Now, you say you had to take an exam.

20 Where was that exam held?

21 A At Harry's Nurse's Registry.

22 Q Did you pass that exam?

23 A I passed that exam, yes.

24 Q Then what happened next?

25 A After you pass the exam, then you speak with the clerk

1 in which her name was Carmen, and she tell you the cases that they
2 have.

3 Q Do you remember how much time passed, if any, from you
4 taking the exam and receiving an assignment?

5 A Well, the next week I had my assignment.

6 Q What type of assignment was it?

7 A I had an assignment in a home taking care of a child
8 with Cerebral Palsy.

9 THE COURT: In 2003?

10 THE WITNESS: Yes.

11 THE COURT: This count relates to the period of
12 August 8th of 2006 to December 26, 2007, so confine your
13 questions to that time period.

14 MS. BUCCHERI: Okay.

15 Q During that period, 2006 and 2007, how many cases or how
16 many assignments did you have with the defendants?

17 A I had one assignment.

18 Q And was it the same assignment that you had when you
19 started?

20 A No.

21 Q The assignment that you had during 2006 and 2007, what
22 type of assignment was it?

23 A It was taking care of a young child.

24 Q When you were hired by the defendants, did you discuss
25 with them how you were going to be paid?

1 A Yes.

2 Q And what was discussed about how you were going to be
3 paid?

4 A It was discussed we would get paid every two weeks.
5 They told me the amount of money that I would receive.

6 Q Who told you that?

7 A The clerk.

8 Q Do you remember the clerk's name?

9 A Carmen.

10 THE COURT: When you said she told you how much
11 money you would receive, did she give you an hourly rate or
12 what your two-week payment would be?

13 THE WITNESS: Hourly rate and note that we get paid
14 every two weeks.

15 Q During 2006 and 2007 when you had your assignments, did
16 the agency provide you with anything?

17 A No.

18 Q When you went to take care of your patient during this
19 period of time, did you have to take down any notes?

20 A You have to write nurse's notes.

21 Q And how often do you make notations on the nurse's
22 notes?

23 A Every day. If the case was for five days, it was every
24 day you needed a nurse's note.

25 Q The case that you spoke about during this period of

1 time, was it every day?

2 A For five days a week, yes.

3 Q The nurse's notes, what would you do with the nurse's
4 notes at the end of your shift?

5 A You keep it.

6 Q And who --

7 THE COURT: You keep it forever?

8 THE WITNESS: You keep it and when you go to
9 bring -- to get paid every two weeks, you bring those nurse's
10 notes.

11 THE COURT: Along with your time sheet?

12 THE WITNESS: Along with your time sheet, yes.

13 Q Where did you obtain the time sheet from?

14 A From Harry's Nurse's Registry.

15 MS. BUCCHERI: Can the witness please be shown
16 People's 1 and 2.

17 Q Looking at People's 1, do you recognize that?

18 A Yes, this is the time sheet we used.

19 Q What about People's 2?

20 A This is the nurse's note.

21 Q What would you do with the nurse's notes and time sheets
22 at the end of the two-week period?

23 THE COURT: She just told us that. She would
24 submit it to her employer in order to get paid.

25 Q How would you get paid?

1 A How would I give it?

2 Q How would you get paid?

3 A By check.

4 THE COURT: Do you want to publish 1 and 2 to the
5 jury? So far, the witnesses have seen it, but not the jury.

6 MS. BUCCHERI: Okay, that's fine, your Honor.

7 (Whereupon, the exhibit was published to the jury.)

8 Q When you received your paycheck, did you pick it up or
9 was it mailed to you?

10 A Pick it up.

11 Q Where did you pick it up from?

12 A From Harry's Nurse's Registry.

13 Q Do you know who signed your checks?

14 A Mr. Harry.

15 Q Now, did there come a time in 2006 that you noticed
16 there was a discrepancy with your paychecks?

17 A Yes.

18 Q What is it you noticed about your paychecks?

19 A That Workers' Comp. fee was taken from my paycheck.

20 Q When you noticed this, did you do anything about it?

21 A Yes.

22 Q What did you do?

23 A Well, I spoke to Carmen about it.

24 Q What happened?

25 A And she told me that's being taken from the check.

1 Q Did you do anything else?

2 A Yes. Before this money was taken from us, we had a
3 meeting.

4 Q And do you remember when this meeting was?

5 A This meeting was sometime in April and it was --

6 THE COURT: April of what year?

7 THE WITNESS: April, middle of 2005.

8 THE COURT: Well, this count refers to August 8th
9 of 2006 to December 26th of 2007.

10 Q So, during the period of time of 2006 and 2007, did you
11 ever bring this to anybody's attention?

12 A Okay. Since it is 2006, we had a meeting on a Saturday.
13 All the nurses were told to come on a Saturday.

14 Q Do you know who called this meeting?

15 A Mr. Harry.

16 Q Who was present during this meeting?

17 A The nurses that worked for the agency and his
18 supervisor.

19 Q Who was his supervisor?

20 A Her name is Cheryl. I don't remember the last name.

21 Q And what, if anything, happened?

22 A She had first start telling us that they would take out
23 Workers' Comp. money from our check and the nurses was in an
24 uproar. I complained also that Workers' Comp. money is not
25 supposed to be taken from our check. She called Mr. Harry. He

1 came into the meeting and we voiced our complaint, too, about
2 money should not be taken from our check, and Mr. Harry's remark
3 was that he is -- he does -- what is he? He is a consultant, so
4 he knows about taking money from our check.

5 Q Now, after the meeting, did you still notice the money
6 being deducted from your paycheck?

7 A Yes.

8 MS. BUCCHERI: I'm going to ask that this be marked
9 People's 6A through M as in Mary.

10 THE COURT: It will be received in evidence 6A
11 through M without objection.

12 MR. ALTER: No objection.

13 (Whereupon, the Pay stubs of Lucille Hamilton were
14 marked in evidence as People's Exhibits 6A-M.)

15 THE CLERK: People's 6A through M marked and
16 received in evidence.

17 MS. BUCCHERI: Please show the witness.

18 Q Ms. Hamilton, can you please look at these.

19 A Okay.

20 Q Have you had an opportunity to look at them?

21 A Yes.

22 Q Do you recognize them?

23 A Yes.

24 Q What do you recognize them to be?

25 A It is my pay stubs.

1 Q How do you recognize them to be your pay stubs?

2 A My name is on it.

3 Q Are these copies of paychecks you received while you
4 were employed by the defendants?

5 A Yes.

6 Q Now, looking at 6A, the stickers are on the back, so we
7 know we're talking about the right one.

8 A The light is so dull.

9 THE COURT: You need light?

10 THE WITNESS: Yes.

11 Q What's the date of the check?

12 A October 4, 2006.

13 Q Is that A?

14 A Yes.

15 Q What's the amount of the check?

16 A The original amount is \$560.50.

17 Q Do you see the memo line?

18 A The memo line?

19 Q Yes.

20 THE COURT: We could make this a lot easier. These
21 checks are in evidence. Is there any indication that any
22 money from this check was taken out for Workers' Comp?

23 THE WITNESS: Yes.

24 THE COURT: How much money?

25 THE WITNESS: \$29.

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THE COURT: Move on to the next check.

Q With respect to the next check, what's the date of that check?

A October 18, 2006.

Q Was there any money taken out for Workers' Comp?

A \$58.

Q As to the next check, what's the date on that check?

THE COURT: The next check 6C?

MS. BUCCHERI: Yes.

A January 10, 2007.

Q Was there any money --

A \$46.

Q And for the next check, what is that date?

A January 24, 2007, \$53 was taken out.

Q For Workers' Comp?

A Yes, for Workers' Comp.

Q The date of the next check?

A February 7, 2007, \$46 was taken out for Workers' Comp.

Q For the next week what's that date?

A February 21, 2007.

Q Was money taken out?

A \$48 for Workers' Comp.

Q The date of the next check, please?

A August 8, 2007.

Q Was money taken out?

1 A \$31.05.

2 Q As to the next check, what's the date on that, please?

3 A August 22, 2007.

4 Q Was Workers --

5 A \$54 was taken out for Workers' Comp.

6 Q The next check, please?

7 THE COURT: That's I?

8 THE WITNESS: Looks like H.

9 THE COURT: Look at I.

10 Q The next one is I. What's the date of that check?

11 A September 5, 2007, \$47.05.

12 THE COURT: 47.05?

13 THE WITNESS: 5.

14 Q How much money was taken out for Workers' Comp?

15 A 47.5.

16 THE COURT: .05?

17 THE WITNESS: It just says .5.

18 THE COURT: So, that's .50.

19 Q The next one, please, what's the date of that check?

20 THE COURT: J?

21 MS. BUCCHERI: Yes.

22 A October 17, 2007.

23 Q Was money taken out for Workers' Comp?

24 A \$40.5.

25 THE COURT: \$40.50.

1 THE WITNESS: Yes.

2 Q K, what's the date of that check?

3 A October 31, 2007. \$53.50 for Workers' Comp.

4 Q Next?

5 A November 14, 2007. \$62.50.

6 Q Next?

7 A November 28, 2007. \$63 for Workers' Comp.

8 Q That's it?

9 A Yes, because I think we did October 4th.

10 THE COURT: You said you think you did October 4th?
11 You never did October 4th.

12 THE WITNESS: October 4 --

13 THE COURT: What's the -- is there a letter behind
14 that? What's the sticker on the back?

15 THE WITNESS: 6A.

16 THE COURT: You did October 4th of '06.

17 THE WITNESS: Of 2006, okay.

18 THE COURT: That was your first one.

19 Anything else?

20 MS. BUCCHERI: I do, but counsel asked what was the
21 amount.

22 THE COURT: \$29.

23 MR. ALTER: Got it. Thank you.

24 Q At any point during this period of time, did you ever
25 give the defendants permission or authority to deduct a dollar per

1 hour from your paycheck?

2 A No.

3 Q During 2006 and 2007, did you ever attend any in-service
4 training?

5 A Yes.

6 Q What is in-service training?

7 A In-service training is like new techniques that's being
8 taught in nursing or sometime the state will come down on our
9 nurse's notes, what they wanted to find written in the nurse's
10 notes and also if there was equipment like vents or oxygen
11 machines, something new that, some new type of technology, those
12 are our in-service meetings.

13 Q Where would that training take place?

14 A At Mr. Harry's on the third floor.

15 Q At any point if you were unable to take care of your
16 patients because you're sick, what would you do?

17 A You notify the clerk Carmen and you tell her. You call
18 and tell her that you're sick and she'll find a replacement if
19 they had a replacement. If they didn't have a replacement, then
20 the patient didn't have no one.

21 MS. BUCCHERI: I have nothing further.

22 THE COURT: Any cross?

23 CROSS-EXAMINATION

24 BY MR. ALTER:

25 Q You said you attended a meeting in '06 prior to the

1 money being taken out of your pay, correct?

2 A Yes.

3 THE COURT: Was it before?

4 THE WITNESS: No, the same day. Mr. Harry came,
5 gave a meeting on the Saturday to let us know he was taking
6 money out from us.

7 Q The money didn't start coming out until after the
8 meeting?

9 A After the meeting, yes.

10 Q So, you continued to work for Harry's Nurse's Registry
11 and let me see -- I'm going to count the number of checks if I
12 can. Excuse me.

13 THE COURT: It went to M, so that's 13.

14 Q That's a period of getting paid every two weeks, a
15 period of at least 26 weeks?

16 A Okay.

17 Q And you continued to work, get your pay and -- am I
18 correct, ma'am?

19 A Correct.

20 Q Did you say anything about it at all?

21 A I did. I complained. I complained at the meeting.

22 Q At the meeting, but that was it?

23 A And that was it.

24 Q So, after that, after that was told to you that that
25 money was coming out, that Workers' Compensation deduction was

1 being made, you continued to work with the reduced amount?

2 A Yes, I did.

3 Q So, you agreed to this; am I correct?

4 A No, I didn't agree, but I needed a job, so that's why I
5 continued to work.

6 Q That's why you did it?

7 A Yes.

8 Q You continued to --

9 A I needed a job.

10 Q You continued for two years until 2010; am I correct?

11 A Yes, I did.

12 Q Now, I'm going to ask you, ma'am, did you also -- the
13 equipment that was at the job, was that supplied by you?

14 A No, the equipment is usually supplied by an agency, a
15 medical supply agency according to the patient's needs.

16 Q That would be at the location, right?

17 A It would be at the location of the patient's home.

18 Q You would have your own stethoscope?

19 A Yes, my own.

20 Q Your own blood pressure tools?

21 A The blood pressure and the stethoscope came together.

22 THE COURT: Where did you get those?

23 THE WITNESS: Well, when you're doing nursing, you
24 have to have your own blood pressure machine.

25 THE COURT: Did you need it for your training,

1 also?

2 THE WITNESS: Yes.

3 THE COURT: You already owned it?

4 THE WITNESS: I owned it, but I also -- you buy new
5 supply every year.

6 THE COURT: Anything else?

7 Q Did you get a letter from the Harry's Registry that
8 advised you that they were going to take the dollar out?

9 A Never.

10 Q You found out about it at the meeting?

11 A At the meeting when he first mentioned it.

12 Q Before all the deductions started, how many people were
13 at the meeting; do you recall?

14 A About 30 nurses or more.

15 MR. ALTER: I would like this document marked for
16 I.D.

17 (Whereupon, the Document was marked for
18 identification as Defendants' Exhibit C.)

19 THE COURT: Have you shown it to counsel?

20 MR. ALTER: Yes.

21 THE COURT: Any objection?

22 MS. BUCCHERI: I do have an objection.

23 THE COURT: For I.D.

24 MS. BUCCHERI: It is outside 2006 and 2007.

25 THE COURT: Okay.

1 MR. ALTER: Let me see. If it is, I will withdraw
2 it.

3 THE COURT OFFICER: Defense C marked for
4 identification and shown to the witness.

5 Q Do you recognize that document?

6 A Yes, I recognize it. That's my signature.

7 MR. ALTER: I offer it in evidence. I'm not ready
8 yet.

9 Q Did you sign that document prior to coming on board with
10 Harry's Nurse's Registry?

11 A No, that was after.

12 Q When did you sign that document ma'am?

13 A In 2005.

14 Q That was prior to the period that we're talking about
15 with respect to this -- these charges, correct?

16 A Before.

17 MR. ALTER: I offer that in evidence, your Honor.

18 MS. BUCCHERI: I'm going to object as to relevancy.

19 THE COURT: Could I see it, please.

20 Do you know what an independent contractor is?

21 THE WITNESS: Yes.

22 THE COURT: Did you know it on the date that you
23 signed this document?

24 THE WITNESS: No.

25 THE COURT: Objection sustained.

1 MR. ALTER: Note my exception on this.

2 Q Did you pay your own income tax when you were working on
3 this job?

4 A Yes.

5 Q Your own Social Security?

6 A Well, from the income tax, everything that I had to pay,
7 yes.

8 Q You took care of that all yourself?

9 A Yes.

10 Q Did you carry your own malpractice insurance?

11 A In order to work for the agency, we had to have
12 malpractice insurance.

13 Q Would you explain to the jury what that is?

14 A That's liability in case anything happens on the job,
15 the insurance company takes up and pays the bills, but --

16 Q Sorry?

17 THE COURT: When you say anything happens on the
18 job --

19 THE WITNESS: Concerning the patient, not us.

20 THE COURT: The patient claims you did something
21 wrong, the patient can sue you and insurance company will
22 indemnify you?

23 THE WITNESS: Yes.

24 Q Now, on the job, did you get your medical instructions
25 and what you did to deal with the patient from the doctor that was

1 involved --

2 A No, there is a supervising nurse that gives you your
3 instructions.

4 Q Was there a care plan given to you at the job, at the
5 location?

6 A The supervising --

7 MS. BUCCHERI: Objection as to what time frame are
8 we speaking about?

9 THE COURT: During the year that you've been
10 testifying about, 2006 and 2007, when you would go to a
11 patient, you didn't know what was wrong with the patient, did
12 you?

13 THE WITNESS: No, but there is a supervisor at the
14 agency when you take a case, and she sits down, and she goes
15 over all that paperwork and explains what's wrong with the
16 patient, the medication, and what you must do.

17 THE COURT: Is there also a plan when you get to
18 the patient's home?

19 THE WITNESS: That's the same planning you use.

20 THE COURT: There's a name on there?

21 THE WITNESS: A doctor's name is only on for the
22 medication. Whatever the medication the doctor orders,
23 there's a sheet showing what the doctor ordered.

24 THE COURT: That's the patient's doctor?

25 THE WITNESS: That's the patient's doctor.

1 THE COURT: The defendant has nothing to do with
2 getting that doctor?

3 THE WITNESS: No, it is only the supervisor makes
4 sure before --

5 THE COURT: The supervisor makes sure you know what
6 the note says?

7 THE WITNESS: That's right.

8 THE COURT: Anything else?

9 Q How long did you continue to work for Harry's Registry?

10 THE COURT: She already testified to that. She
11 said until 2010.

12 MR. ALTER: Nothing further, your Honor.

13 THE COURT: Anything further?

14 MS. BUCCHERI: No.

15 THE COURT: Thank you very much. You may step
16 down.

17 THE WITNESS: Thank you.

18 (Witness excused.)

19 THE COURT: You may call your next witness.

20 MS. BUCCHERI: The People call Sulaiman Ali-El.

21 THE COURT OFFICER: Witness entering.

22 S U L A I M A N A L I - E L, a witness called by the People,
23 after having been first duly sworn by the Clerk of the Court, took
24 the witness stand and testified as follows:

25 THE COURT OFFICER: The People call Sulaiman

1 Ali-El. S-U-L-A-I-M-A-N, A-L-I, E-L. Resident of Queens
2 County.

3 THE COURT: You may inquire.

4 MS. BUCCHERI: Thank you, Judge.

5 DIRECT EXAMINATION

6 BY MS. BUCCHERI:

7 Q Good afternoon. I'm going to ask you to keep your voice
8 up, so everyone can hear you.

9 A Okay.

10 Q Do you work -- are you currently working?

11 A I'm not currently working. I'm on Mr. Harry's nursing
12 registry, but I'm not employed at the time, not working.

13 Q When was the first time you heard about Harry's Nurse's
14 Registry?

15 A I think it was in about 2005. 2004, 2005.

16 Q How is it you heard about Harry's Nurse's Registry?

17 A Word of mouth. It was with someone that I was working
18 with in another establishment.

19 Q When was this?

20 A I think it was 2005. I think so.

21 Q Now, when you heard about Harry's Nurse's Registry, what
22 did you do?

23 A Well, I went by there to see if there was employment
24 available. They gave me forms to fill out and we went through the
25 employment process.

1 Q Do you remember who you spoke to when you filled out
2 these forms?

3 A I do.

4 Q Who was that?

5 A Her first name is Carmen. I don't recall her last name.

6 Q And what type of forms did you have to fill out, if you
7 remember?

8 A Just basic information, work history, what type of
9 schooling I had, just general information on most employment
10 forms.

11 THE COURT: What kind of job were you applying for?

12 THE WITNESS: As a nurse.

13 THE COURT: Were you a nurse at the time?

14 THE WITNESS: Yes, I was.

15 THE COURT: What kind of nurse were you?

16 THE WITNESS: Licensed practical nurse.

17 THE COURT: Who licensed you?

18 THE WITNESS: The State of New York.

19 Q And what happened after that, after you filled out these
20 forms?

21 A After a little while, a few weeks later I was called and
22 offered an assignment.

23 Q Where is Harry's Nurse's Registry located?

24 A It's in Jamaica, Queens at 163rd Street near Hillside
25 Avenue.

1 Q Do you know who owns Harry's Nurse's Registry?

2 A Mr. Harry Dorvilier.

3 Q Do you see him anywhere in the courtroom today?

4 A Yes, I do.

5 Q Can you please point him out by describing an article of
6 clothing?

7 A Mr. Harry has on what I think is a blue jacket and blue
8 tie.

9 THE COURT: It changes with every witness.

10 MS. BUCCHERI: I see that.

11 THE COURT: Indicating the defendant.

12 MS. BUCCHERI: Thank you.

13 Q What type of assignments did you have?

14 A The agency basically assigns people for home care
15 services and I worked as a home care that worked in home care as a
16 nurse there.

17 Q In 2006 and 2007, do you remember what type of
18 assignments you had?

19 A Again, it is just basically home care. I would go to
20 the home and provide whatever services were required by the
21 client.

22 Q When you were required, did you discuss how much money
23 you would be paid per hour?

24 A No, I did not.

25 Q In 2006 and 2007, did you ever discuss how much money

1 you would be paid per hour?

2 A No. We were given a wage for the work that we were
3 doing, but there was no discussion about what the wage would be.

4 THE COURT: You took this job and you had no idea
5 what they were going to pay?

6 THE WITNESS: Yes, but there was no -- the wage
7 were set.

8 THE COURT: Who told you what the wage was?

9 THE WITNESS: Employees of Mr. Harry.

10 THE COURT: They told you what the wage. Was it an
11 hourly rate?

12 THE WITNESS: Yes, sir.

13 THE COURT: Do you remember what that hourly wage
14 was?

15 THE WITNESS: The hourly wage at the time depended
16 on whether or not it was a pediatric client or an adult
17 patient.

18 THE COURT: But there was a fixed wage for each?

19 THE WITNESS: Yes, your Honor.

20 THE COURT: Which was better?

21 THE WITNESS: The pediatric wage was better.

22 THE COURT: Because they're more active?

23 THE WITNESS: No, I think because for whatever
24 reason, I think they get -- the agency paid more for
25 pediatric clients. I don't know.

1 Q Do you remember in 2006 or 2007 what type of cases you
2 handled?

3 A Basically, there was one case that I worked, and I was
4 pretty consistent with that case for about a year and-a-half, I
5 think.

6 Q Was that a pediatric case or an adult case?

7 A It was a pediatric case that became an adult case.

8 THE COURT: The person aged or your wage went down?

9 THE WITNESS: Both.

10 THE COURT: What was the cut-off between pediatric
11 and adult, what age?

12 THE WITNESS: I think the age was 21.

13 Q When you received your assignments, did the agency or
14 the defendants provide you with anything?

15 A The agency would simply would provide me with a means to
16 communicate with the client and directions to the home and
17 that's -- as well as nursing notes and things like that, but other
18 than that, I didn't receive --

19 THE COURT: How would you get paid? What paperwork
20 did you have to give the employer?

21 THE WITNESS: Time sheets and nursing notes.

22 Q Where would you obtain those from?

23 A From the nurse's registration, from the office.

24 Q And how often would you obtain the nurse's notes and the
25 time sheets?

1 A Well, time sheets were required to be turned in every
2 two weeks. Nurse's notes also every two weeks we turned them in,
3 so as long as there was a supply of nurse's notes and time sheets,
4 I would get them as-needed.

5 Q And when you turned them in, who would you turn them in
6 to?

7 A They were turned in to the agency secretary.

8 Q For what purpose?

9 A For the purpose of being filed for medical records and
10 also with timekeeper for payment.

11 Q How would you get paid?

12 A By check.

13 Q Did you pick up your check or was it mailed to you?

14 A I would pick the checks up.

15 MS. BUCCHERI: Can you please show the witness
16 People's 1 and 2.

17 A Yes.

18 Q Can you look at People's 1.

19 A I don't have my glasses and I'm really having trouble.

20 THE COURT: Still need your glasses?

21 A This is 2, okay. This is 1, all right.

22 Q Looking at People's 1, do you recognize that?

23 A Yes, that's -- that looks like a time sheet, looks like
24 a time sheet.

25 Q And is that time sheet a time sheet that you were

1 supplied by the defendants?

2 A Yes.

3 Q What about People's 2? Can you look at that?

4 A These are the nurse's notes that we were submitted as a
5 record of our care for the patients.

6 Q And those are notes you received from the defendant?

7 A Yes.

8 Q Did there come a time in 2006 in September of 2006 that
9 you noticed a discrepancy with your paychecks?

10 A Yes.

11 Q And can you please tell us what that discrepancy was?

12 A We were -- money was being deducted from every hour. I
13 think it was \$1 per hour deduction for Workers' Compensation fund.

14 Q And you noticed that on -- because you said "we." With
15 respect to yourself, did you notice that on your paychecks?

16 A Yes.

17 Q Do you know over what period of time the dollar per hour
18 was deducted?

19 A I don't know the exact period of time, but I do know for
20 the length of the case -- after it was started, it was for the
21 length of that case which was over a year, I'm sure.

22 Q What are you referring to when you say length of the
23 case?

24 A The fact that I was on the case from the duration of the
25 case, the time I worked on the case it was deducted from the

1 inception until the time I left the case.

2 Q You're talking about your assignment with the agency?

3 A Yes.

4 Q At any point when you noticed these deduction, did you
5 bring it to anybody's attention at the agency?

6 A I did not because I thought that it was required for
7 Workers' Compensation fund. I thought it was for my benefit and
8 other employees.

9 Q Did anybody tell you that they were doing that?

10 MR. ALTER: Objection. Asked and answered. It is
11 leading the witness also.

12 THE COURT: Sustained.

13 Q With respect to these deductions -- withdrawn.

14 When you received your paychecks, how did you receive
15 your paychecks?

16 A We were -- I would pay by check.

17 Q And these checks, do you know who issued these checks?

18 A Harry's Nurse's Registry and that's all that I know.

19 Q Do you know if these checks were signed?

20 A Yes.

21 Q Do you know who signed them?

22 A They had Mr. Harry Dorvilier's signature on them. His
23 name was on them.

24 MS. BUCCHERI: I'm going to ask that this be marked
25 7A through P for identification. Showing counsel.

1 THE COURT: Any objection to them going in
2 evidence?

3 MR. ALTER: No objection.

4 THE COURT: Marked and received in evidence 7A
5 through P.

6 (Whereupon, the Pay stubs of Sulaiman Ali-El were
7 marked in evidence as People's Exhibits 7A-P.)

8 THE COURT OFFICER: People's 7A through P marked
9 and received in evidence.

10 MS. BUCCHERI: Thank you.

11 Q Can you please look at those, please.

12 Have you had an opportunity to look at them?

13 A Yes.

14 Q Do you recognize them?

15 A I recognize those.

16 Q What do you recognize those to be?

17 A Those are copies of paychecks I received from Harry's
18 Nurse's Registry.

19 Q How do you know they're copies of your paychecks?

20 A Because they have my name and address on them. They
21 also have the nurse's registration address and name and address on
22 them and I remember getting the money.

23 Q Now, looking at A, we are going to do one by one,
24 please.

25 Can you please tell us the date of the check?

1 THE COURT: You see on the back where it says 7A?

2 THE WITNESS: Yes.

3 Q Can you tell us the date on that check, please?

4 A The date on the check is 9/8/2006.

5 Q And can you tell us how much the check was for?

6 A \$2,736.

7 Q Now, do you see the memo line?

8 A I do, yes.

9 Q What does the memo line say?

10 A It says less Workers' Compensation, WC, \$1 per hour and
11 it is 144 hours.

12 Q So, what does that mean when you say 144 hours? How
13 much money was deducted from your paycheck during this period of
14 time?

15 A \$144.

16 Q With respect to all these checks that are in front of
17 you, do they all say on the memo line a dollar per hour was
18 deducted?

19 THE COURT: That was for Workers' Comp?

20 THE WITNESS: Yes.

21 THE COURT: What does 7B have?

22 Q Tell us the date and amount.

23 A The date on this one is 10/4/2006.

24 Q The amount that was deducted?

25 A \$252.

1 Q Next.

2 THE COURT: 7C.

3 A 10/18/2006.

4 Q The amount that was deducted?

5 A \$144.

6 THE COURT: That was for Workers' Comp?

7 THE WITNESS: Yes, your Honor.

8 THE COURT: 7D.

9 Q What's the date on the check?

10 A This says 1/10/2007, but this is 7D.

11 THE COURT: Yes, 1/10/07.

12 THE WITNESS: Yes.

13 THE COURT: How much was deducted for Workers'

14 Comp?

15 THE WITNESS: \$144.

16 THE COURT: 7E.

17 Q What's the date on the next one?

18 A 1/24/2007.

19 Q How much money was deducted?

20 A \$168.

21 Q F, please.

22 A The next one is 2/7/2007. \$168.

23 Q Next one is G. The date?

24 A The date is -- it says 2/21/2007.

25 Q The amount of money that was deducted for Workers' Comp.

1 please?

2 A \$168.

3 Q H, date of the check?

4 A 3/7/2011. This one doesn't have --

5 Q Let me ask you this. On the memo line, what does it
6 say?

7 A It says less Workers' Compensation, but there's no
8 amount there.

9 THE COURT: How many hours does it say you worked?

10 THE WITNESS: It was -- it is on another line.

11 Actually, it is written in.

12 THE COURT: What's the amount?

13 THE WITNESS: \$168.

14 THE COURT: I.

15 Q I, what's the date of that check, please?

16 A 3/21/2007.

17 Q The amount of money that's deducted?

18 A \$168. The next one is 4/4/2011.

19 Q The amount of money?

20 A \$168. 4/18/2007. \$168.

21 Q L, the date of the check?

22 A 3/2/2007.

23 Q The date of check?

24 A Excuse me. That's a 5. I'm sorry. 5/2/2007.

25 Q The amount of money deducted for Workers' Comp?

1 A \$168.

2 Q M?

3 A 5/16/2007.

4 Q How much money?

5 A \$168.

6 Q N, date of the check?

7 A 6/27/2007.

8 Q Amount of money?

9 A \$246.

10 Q O, the date of the check?

11 A 11/14/2007.

12 Q How much deducted?

13 A \$336.

14 Q The next one is 11/28/2007. The monies?

15 A \$246.00.

16 Q At any time, did you give the defendants permission or
17 authority to deduct that money?

18 A I don't recall doing so, no.

19 Q Now, during the time that you worked for the defendants,
20 did you have to attend any in-service training?

21 A The in-services were we were sent out memorandums that
22 we were to attend these in-services as they were required, but it
23 was very -- because of the work hours, it was very difficult to
24 ever make any of the in-services. It was just always conflicted
25 with work schedule, so oftentimes they were rescheduled and

1 postponed until eventually it just never happened.

2 Q The in-service training, where were these in-service
3 trainings held?

4 A At Harry's Nurse's Registry.

5 Q If there came a time that you were sick or unable to
6 take care of your patients, what, if anything, would you do?

7 A I would just call the registry and alert them that I
8 wasn't able to be on duty that day.

9 Q What, if anything, would happen with respect to your
10 patient?

11 MR. ALTER: Objection, your Honor.

12 THE COURT: Overruled.

13 Q What, if anything, would happen to your patient, if you
14 know?

15 THE COURT: Do you know?

16 THE WITNESS: Another nurse would usually be
17 assigned to the case. Oftentimes, the parent -- because of
18 the nature of the work, the parent would usually decline
19 having another nurse, but that was my part of the bargain. I
20 was to let them know that I couldn't be there to do it, you
21 know.

22 MS. BUCCHERI: I have no further questions.

23 THE COURT: Any cross?

24 MR. ALTER: Yes.

25 Can I have a moment, your Honor?

1 THE COURT: Yes.

2 MR. ALTER: I would like to have this marked.

3 (Whereupon, the Document was marked for
4 identification as Defendants' Exhibit D.)

5 THE COURT OFFICER: Defendant's D marked for
6 identification and being shown to the witness.

7 CROSS-EXAMINATION

8 BY MR. ALTER:

9 Q Mr. Sulaiman, I show you that document and ask you if
10 you recognize it.

11 A I've seen this before, yes.

12 Q Were you shown -- is that your signature on that
13 document?

14 A It is.

15 Q Did you read the document before you signed it?

16 A Yes, I did. I think, yeah.

17 Q You did?

18 A Yes.

19 Q And it was given to you, so you could look it
20 over? This is before you started working for us, before you
21 started working for the defendants?

22 A Yes.

23 MR. ALTER: I offer it in evidence, your Honor.

24 MS. BUCCHERI: I object as to relevancy.

25 THE COURT: Can I see it, please.

1 MR. ALTER: Maybe I could ask some more foundation
2 questions, your Honor.

3 THE COURT: Okay.

4 Q Now, that document, take a look at that document
5 carefully, Mr. Sulaiman.

6 A If I had my glasses, I would take a little more closer
7 look, but I'm not able to really see it that clearly right now.
8 I'm sorry about that, but that's what it is. If you would like to
9 read it to me, I can hear.

10 MR. ALTER: Judge --

11 THE COURT: What's your question to him?

12 MR. ALTER: About some of the contents of that
13 document.

14 A Again, I can hear. I'm just not able to read too clear.

15 THE COURT: The jury can't know what it is in a
16 document if it is not in evidence.

17 THE WITNESS: Yes, sir.

18 THE COURT: Can you see what the date is on that
19 document?

20 THE WITNESS: It is 10/19/05.

21 THE COURT: This count refers to August 9th of '06
22 to November 28th of '07.

23 MR. ALTER: Right.

24 THE COURT: Can you see anything in that document
25 that talks about your consenting to a deduction for Workers'

1 Comp.?

2 THE WITNESS: No.

3 THE COURT: At the time you signed that document,
4 did you know what an independent contractor was?

5 THE WITNESS: I thought that I was an independent
6 contractor at the time that I signed this document.

7 THE COURT: Do you know what it is in a matter of
8 law?

9 THE WITNESS: I do not.

10 THE COURT: Did you know then?

11 THE WITNESS: I did not.

12 THE COURT: Anything else?

13 Q When you started working there, did you know you were
14 working on a per-job basis, that you would be getting paid by the
15 job?

16 A Yes.

17 Q You would be taking out -- your taxes were being paid by
18 you?

19 A Yes.

20 Q Harry's Nurse's Registry didn't take taxes out of your
21 pay?

22 A No.

23 Q Did you also know that you had to take your own
24 malpractice insurance out?

25 A Yes.

1 Q You were responsible for your own equipment?

2 A When you say equipment, what equipment?

3 Q Stethoscope.

4 A Every nurse is responsible for their own equipment in
5 that regard.

6 Q And he would not supply you with any equipment at all?

7 A That's standard policy for nurses.

8 Q That's what you signed on to when you --

9 A Yes.

10 MR. ALTER: I offer it in evidence, your Honor.

11 THE COURT: The document is not in evidence. The
12 testimony is in evidence.

13 MR. ALTER: I move for the document in evidence.

14 MS. BUCCHERI: I'm going to object.

15 THE COURT: It has no -- the objection is
16 sustained.

17 Q You signed this document prior to '06; am I correct?

18 MS. BUCCHERI: Objection. It has been asked and
19 answered.

20 THE COURT: The document was in 2005?

21 MR. ALTER: Right.

22 MS. BUCCHERI: Yes.

23 THE COURT: That pretty much speaks for itself.

24 Q No further document you signed after that and you
25 continued working for us after signing that document; am I

1 correct?

2 A Yes.

3 Q Did you sign anything further?

4 A Not that I can recall.

5 MR. ALTER: Now, I'm offering it in evidence, your
6 Honor.

7 MS. BUCCHERI: I'm going to object.

8 THE COURT: Sustained.

9 MR. ALTER: It is an employment agreement with my
10 client.

11 THE COURT: But it says nothing about Workers'
12 Comp. That's why I'm ruling.

13 MR. ALTER: It doesn't say anything?

14 THE COURT: It does not. It says nothing about
15 Workers' Comp.

16 MR. ALTER: Okay.

17 THE COURT: Okay. Anything else?

18 Q Mr. Sulaiman, you didn't say anything --

19 THE COURT: Is your name Sulaiman or Ali-El?

20 THE WITNESS: Both. That is my name.

21 THE COURT: Is your first name Sulaiman?

22 THE WITNESS: Yes, sir. My first name is Sulaiman.

23 THE COURT: Call him Mr. Ali-El.

24 Q Mr. Sulaiman --

25 THE COURT: His name is Ali-El.

1 Q Mr. Ali-El, you continued to work for Harry's through
2 what period of time have you worked for him?

3 A From the time I think that I signed in up until this
4 year.

5 Q You still come to us -- you still get assignments from
6 us when we have cases?

7 A When there are assignments, sure.

8 Q There's no problem with Harry's at all?

9 A At this point -- let me say this. You know, once it was
10 clarified that the money was not to be taken out and I understood
11 that it was okay to go back to work for Mr. Harry and I would do
12 so.

13 Q During the period of time that this money was being
14 deducted, you never said a word about it?

15 A I thought it was being deducted for Workers'
16 Compensation.

17 Q You never made a complaint about it at all?

18 A When I worked with the hospital, I didn't complain about
19 money being taken out of my check for any of my emergency or
20 health needs.

21 THE COURT: Did you know at the time who was
22 responsible under the law for paying Workers' Comp?

23 THE WITNESS: I did not. I thought that Mr. Harry
24 was doing it because he was taking the money for it.

25 THE COURT: Anything else?

1 Q On the job, Mr. Ali-El, the patient had a care plan?
2 You would work with a care plan?

3 A Yes.

4 Q That would have a doctor's name on it?

5 A Yes.

6 Q And the doctor would tell you what you had to do with
7 the patient?

8 A Yes.

9 Q The patient had all kinds of medical equipment there,
10 too?

11 A Yes.

12 Q Supplied by a third-party vendor?

13 A Yes.

14 Q Your instructions for medical care and for administering
15 treatments came from that doctor, correct?

16 A Yes.

17 Q And at the end of the assignment when you turned in your
18 time sheet, who -- you would sign how many hours you would work to
19 get paid?

20 A Yes.

21 Q And then you would then get -- who would confirm that
22 those assignments that you had worked those hours? Where would
23 there be a confirmatory signature?

24 A Either the client or the client's guardian.

25 Q It would have nothing to do with the agency at all?

1 A They did not verify the hours. The hours were verified
2 for the agency by the client.

3 Q And also medical care was also administered by the
4 doctor, correct?

5 MS. BUCCHERI: Objection.

6 A The medical care, I administered the medical care.

7 Q Through the auspices of the doctor who was supervising
8 this particular job?

9 A Yes.

10 THE COURT: Did the doctor ever stand there and
11 watch you administer instructions?

12 THE WITNESS: No.

13 Q That's because you are a professional nurse; am I
14 correct?

15 A Yes, sir.

16 Q That would generally give you the opportunity to
17 administer that medicine under a doctor's care because of
18 that -- because of the position that you have?

19 A Yes.

20 Q Because of the license you have?

21 A Yes.

22 Q It is considered a trusted position --

23 MS. BUCCHERI: Objection, Judge.

24 THE COURT: You object to his being built up as
25 being a trusted nurse? He's doing your work for you. Let

1 him do it.

2 Q You're a trusted position as administered care to the
3 patients?

4 A Yes.

5 MR. ALTER: Thank you. Nothing further.

6 THE COURT: Anything else?

7 MS. BUCCHERI: No.

8 THE COURT: You may step down. Thank you.

9 THE WITNESS: Thank you.

10 (Witness excused.)

11 THE COURT: Anymore witnesses for today?

12 MS. BUCCHERI: Not for today, Judge.

13 THE COURT: Look how disappointed they look. In
14 addition to this trial, I have nine other cases on my
15 calendar. I don't want to waste your time. I'm going to try
16 to take care of all those cases assuming the lawyers show up
17 on time between 9:30 and 10:00. I don't need you to be here
18 until 10:00, which I asked you to do today. I need all of
19 you to show up, not just most of you. I need all of you to
20 show up on time.

21 The bad news is that every Tuesday and Thursday,
22 the lines out there are atrocious. The reason they're
23 atrocious is that sometimes the police arrest people and take
24 them into custody and sometimes they give them what they call
25 summons or desk appearance tickets where they're not arrested

1 or they are told to come into court to answer the charges.
2 The dates they make those summons or desk appearance tickets
3 are always Tuesdays and Thursdays, so Tuesdays and Thursdays,
4 the lines are terrible. So, although, you don't have to be
5 in my courtroom by 9:,30 you have to be here at 10:00. Allow
6 yourself enough time to get through the lines tomorrow.
7 Please remember the admonitions.

8 Do not discuss this case amongst yourselves or with
9 anyone else or permit anyone to discuss the case in your
10 presence. Do not visit or view anyplace or premises
11 mentioned in connection with this case. Do not pay any
12 attention to any account of this case that may be reported in
13 the media. If there are any accounts of this case reported
14 in the media, keep an open mind. Have a safe trip home.
15 Please report where the court personnel asks you to be no
16 later than 10:00 a.m.

17 (Whereupon, the jury exited the courtroom.)

18 THE COURT: The jurors have left.

19 Any applications?

20 MS. BUCCHERI: No.

21 MR. ALTER: Not me.

22 THE COURT: So, Mr. Dorvilier, you are both due
23 here tomorrow at 10:00 a.m. and the People.

24 Mr. Dorvilier, you're -- make sure you're here on
25 time. If you fail to show up, a warrant could issue for your

1 arrest. The trial will be continued in your absence. If it
2 continues in your absence, if you are convicted in your
3 absence, you could face up to two and-a-third to seven years
4 state prison on the class D felonies. One and-a-third to
5 four years in state prison on the class E felonies. A \$250
6 mandatory surcharge, \$50 DNA fee, \$20 Crime Victims
7 Assistance fee. Show up late, bail can be set and if you
8 fail to show up over 30 days, you could be indicted for bail
9 jumping. Do you understand everything I just said to you?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Have a good night.

12 (Whereupon, the trial was adjourned to May 1,
13 2012.)

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF QUEENS: CRIMINAL TERM: PART K-23

3 -----x

4 THE PEOPLE OF THE STATE OF NEW YORK,

5 -against-

Indictment No.
1709/2010

6 Jury Trial

7 HARRY DORVILIER and
8 HARRY'S NURSING REGISTRY, INC.,

9 Defendants.

10 -----x

Queens Supreme Court
125-01 Queens Boulevard
Kew Gardens, New York 11415
May 1, 2012

11 B E F O R E:

12 THE HONORABLE JOEL BLUMENFELD,
13 Justice, Supreme Court
14 And a jury, plus four alternates

15 A P P E A R A N C E S:

16 RICHARD A. BROWN, ESQ.,
17 District Attorney, Queens County
18 BY: ROSEMARY BUCCHERI, ESQ.
Assistant District Attorney

19 ALTER & BARBARO, ESQS.
20 Attorneys for the Defendants
26 Court Street
Brooklyn, New York 11242
21 BY: BERNARD MITCHELL ALTER, ESQ.

22
23 NICOLE C. ROBINSON, CSR
Senior Court Reporter

24

25

1 THE CLERK: Number ten, our case on trial, 1709 of
2 2010, Harry Dorvilier and Harry's Nurse's Registry.

3 Step up, please. Appearances for the record.

4 MS. BUCCHERI: Rosemary Buccheri for the People.

5 Good morning, your Honor.

6 THE COURT: Good morning.

7 MR. ALTER: Bernard Alter for the defendant.

8 We have had a series of contracts because the word
9 "Workers' Compensation" wasn't on there, if I recall the
10 Court's ruling. However, the heart of the -- this is the
11 plaintiff's --

12 THE COURT: You are the defendant. You're not the
13 plaintiff.

14 MR. ALTER: Lucille Hamilton and Sulaiman Ali-El,
15 all other contracts came into evidence, so what I'm trying to
16 argue to the Court is two-fold. When someone signs an
17 agreement, there is an old Court of Appeals, Pipinola
18 (phonetic) versus Swift. You are charged when you sign an
19 agreement with knowledge of what you sign. They could argue
20 they didn't know what it meant and that's certainly fair game
21 for the DA to examine on. The reason I'm bringing this out
22 now is you are going to have all -- the same form of
23 contracts of all these other witnesses, so I want to give the
24 Court --
25 now --

1 THE COURT: Let me ask you something.

2 MR. ALTER: Yes, your Honor.

3 THE COURT: If someone is an independent
4 contractor, which your argument is, what right does your
5 client have to take money out of their checks for Workers'
6 Comp., if they are concerned that they might be disabled as
7 an independent contractor, if he has no obligation, which is
8 your position?

9 MR. ALTER: Right, that's my position.

10 THE COURT: To get them Workers' Comp, they have an
11 obligation only if they want to get their own individual
12 disability policy.

13 MR. ALTER: Correct.

14 THE COURT: So, who authorized him to take any
15 money out of an independent contractor's check?

16 MR. ALTER: Well, here is the issue, Judge.

17 THE COURT: Answer my question.

18 MR. ALTER: Yes.

19 THE COURT: Did anyone authorize him to take money
20 out of the check to get disability for them?

21 MR. ALTER: No.

22 THE COURT: Then what's your theory?

23 MR. ALTER: My theory is by continuing to work
24 there and being told this was going to happen, they
25 acquiesced, ratified the agreement. That's another story. I

1 have a nice case on that issue.

2 THE COURT: I'll listen to any case you have.
3 Right now, I'm not charging the jury.

4 MR. ALTER: I'm telling you why the contracts are
5 important. I'll tell you the other reason. Give me a
6 moment, your Honor. The name of the case is --

7 THE COURT: Do you have copies?

8 MR. ALTER: I have one. I'll turn it over.

9 THE COURT: She is entitled to see what you want to
10 argue.

11 MR. ALTER: I'll give it to her. I know the case.
12 7 NY2d 181 says improper contract where the client took the
13 representation, got the bills, got the services, worked with
14 the lawyer, ratified the contract. New York has the concept
15 of gratification or acquiescence, so by permitting this to go
16 on for the length of time they've done, they've acquiesced
17 and implied an agreement to this process, that they've
18 allowed him to take it out of there.

19 THE COURT: If it is in fact a misdemeanor that
20 your client is committing, are you saying the other parties
21 to consent to a misdemeanor?

22 MR. ALTER: No.

23 THE COURT: Any case law that says if an employer
24 wants to commit a crime and make the independent contractor a
25 victim, that the victim has acquiesced to that?

1 MR. ALTER: There's no --

2 THE COURT: We're not talking -- keep doing
3 research.

4 MR. ALTER: I'm not talking about that, your Honor.
5 I'm talking about the question of whether or not there is a
6 question of ratification. The question -- if they have
7 allowed the thing to go on for a year and-a-half and didn't
8 say anything, they have impliedly agreed to take the money
9 out. They acquiesced in it.

10 THE COURT: Have you done any research in criminal
11 law?

12 MR. ALTER: Yes.

13 THE COURT: What does criminal law say when you do
14 a larceny by false pretense? Is there any defense to the
15 crime of grand larceny that you ratify when someone takes
16 money by false pretenses?

17 MR. ALTER: No.

18 THE COURT: Find me some cases on that.

19 MR. ALTER: My client takes the position that he
20 had the right --

21 THE COURT: Under what authority did he have the
22 right?

23 MR. ALTER: He hired an accountant who told him,
24 who showed them an opinion of the New York State Insurance
25 Company.

1 THE COURT: Do you have a copy of that opinion?

2 MR. ALTER: Yes, I do.

3 THE COURT: Are you going to call the accountant?

4 MR. ALTER: No. The guy has given me another story
5 right now. He has hired an accountant. He researched this
6 himself and he took the position that he could take the money
7 and pay Worker's Compensation benefits. The problem is,
8 Judge, that -- the problem, Judge, is if the money -- if the
9 money, his payroll account, it has invested and that's the
10 whole cases I cited before. Where the money was stolen from.
11 That's the who-done-it question. It wasn't being stolen from
12 the payees.

13 THE COURT: Wait a second. He was supposed to pay
14 the payees money.

15 MR. ALTER: Right.

16 THE COURT: Per hour.

17 MR. ALTER: Correct.

18 THE COURT: And he pays a dollar less an hour.

19 MR. ALTER: Correct.

20 THE COURT: And he's taking that money according to
21 you to in fact buy them Workman's Comp?

22 MR. ALTER: Yes.

23 THE COURT: Did he ever give them a policy?

24 MR. ALTER: We have a policy. He didn't give it to
25 them, but we have a policy in effect. We paid the money

1 over --

2 THE COURT: You want me to read what you gave me or
3 you want to keep talking?

4 MR. ALTER: No. You asked me a question.

5 THE COURT: Have you seen this before?

6 MS. BUCCHERI: No, Judge. I have a copy now.

7 MR. ALTER: May I be heard some more?

8 THE COURT: No, I'm reading. Remember, what you're
9 giving me now is something I will have to consider should you
10 offer a defense.

11 MR. ALTER: Correct.

12 THE COURT: What else do you want to say?

13 MR. ALTER: The issue of the contract going in, the
14 employment agreements goes to the theory of good faith.
15 That's why they need to come in.

16 THE COURT: Okay. I'll allow them in. Anything
17 else?

18 MR. ALTER: That's it.

19 THE COURT: That's your theory, I understand. The
20 insurance department suggested that when contacted, the New
21 York Workers' Compensation Board, did anyone do that New York
22 case?

23 MR. ALTER: He said his accountant did, your Honor.

24 THE COURT: And he got an answer from him?

25 MR. ALTER: He said he could do this. That's what

1 the accountant came back and said.

2 THE COURT: You are going to have to produce the
3 accountant. Do you have a subpoena? Did you subpoena him?

4 MR. ALTER: I could subpoena him, Judge.

5 THE COURT: How else are you going to get him?

6 MR. ALTER: Okay. I'll do that.

7 THE COURT: Do you need me to sign the subpoena?
8 I'll sign it.

9 MR. ALTER: I'll do that. Yes, I will. I'll do
10 that today.

11 THE COURT: If your client has a good-faith
12 defense, the jury has to buy it. If he just says it, it will
13 be self-serving. You need to produce the accountant.

14 MR. ALTER: Correct.

15 THE COURT: Let's get the jury.

16 THE COURT OFFICER: Jury entering.

17 (Whereupon, the jury entered the courtroom and upon
18 taking their respective seats, the following occurred:)

19 THE COURT: Good morning. Was the line long?
20 You may call your next witness.

21 MR. ALTER: Should we put -- I need these two
22 documents in evidence. May I have them put into evidence?

23 THE COURT: For the record, indicate which
24 documents they are. They have stickers on the back.

25 MR. ALTER: Yes, your Honor. These are Defendant's

1 Exhibits C, which is the --

2 THE COURT: Just C and D?

3 MR. ALTER: C and D.

4 THE COURT: Any objection?

5 MS. BUCCHERI: Yes, Judge. The same objection that
6 I had yesterday.

7 THE COURT: Okay. C and D are now in evidence.
8 Overruled.

9 MR. ALTER: May I publish them to the jury, your
10 Honor?

11 THE COURT: Yes.

12 (Whereupon, the Documents were marked in evidence
13 as Defendants' Exhibits C&D.)

14 THE COURT OFFICER: Defendant's C and D marked and
15 received in evidence.

16 (Whereupon, the exhibits were published to the
17 jury.)

18 THE COURT OFFICER: Defendant's C and D have been
19 published to the jury.

20 THE COURT: Now, you can call your next witness.

21 MS. BUCCHERI: The People call Gina Osse Prophete.

22 THE COURT OFFICER: Witness entering.

23 G I N A O S S E P R O P H E T E , a witness called by the
24 People, after having been first duly sworn by the Clerk of the
25 Court, took the witness stand and testified as follows:

1 THE COURT OFFICER: People call Gina, O-S-S-E,
2 P-R-O-P-H-E-T-E. Resident of Queens County.

3 THE COURT: You may inquire.

4 MS. BUCCHERI: Thank you.

5 DIRECT EXAMINATION

6 BY MS. BUCCHERI:

7 Q I'm going to ask you to keep your voice up, so everyone
8 can hear you.

9 A Okay.

10 Q Are you currently working?

11 A Yes, I am.

12 Q Where do you work?

13 A For Home Care At Its Best.

14 Q And what do you do at Home Care At Its Best?

15 A I work as a licensed practical nurse.

16 Q What is a licensed practical nurse?

17 A You have to take the state test to pass and you get a
18 license. You take the test.

19 Q I ask you to keep your voice up.

20 A Okay.

21 Q And did you take the test?

22 A Yes, I did.

23 Q And did you pass it?

24 A Yes, I did.

25 Q Are you licensed by the state?

1 A Yes.

2 Q What state are you licensed by?

3 A State of New York.

4 Q How long have you worked at your current job?

5 A I would say seven years.

6 Q Prior to there, where were you employed?

7 A I was employed in Manhattan. I was working for a child.

8 Q Keep your voice up.

9 A I was working in Manhattan before that.

10 Q As what?

11 A As a licensed practical nurse also.

12 Q Are you familiar with the defendants in this case,

13 Harry's Nurse's Registry and Harry Dorvilier?

14 A Yes.

15 Q How is it that you're familiar with them?

16 A I was working with them.

17 Q When did you work with them?

18 A About six, seven years.

19 Q Approximately what year?

20 A 2005 -- no, 2007.

21 Q And how is it that you're familiar with them? How did
22 you hear about them?

23 A Oh, a friend of mine gave me the address and I went and
24 I went to apply for an application. I took the test and I had an
25 assignment.

1 Q Do you know where Harry's Nurse's Registry is located?

2 A Yes, on 163rd and Jamaica.

3 Q Is that in the County of Queens?

4 A Yes.

5 Q Do you know who owns Harry's Nurse's Registry?

6 A Harry Dorvilier.

7 Q Do you see that person here in the courtroom today?

8 A Yes, I do.

9 Q Can you please describe an article of clothing that he's
10 wearing?

11 A He's wearing a suit, gray and black, with a tie.

12 THE COURT: What color suit?

13 THE WITNESS: It is a gray suit.

14 THE COURT: Indicating the defendant.

15 MS. BUCCHERI: Thank you.

16 Q Now, when you went to the defendant's place of business,
17 you filled out an application?

18 A Yes, I did.

19 Q Did you have to provide any documents?

20 A All my documents.

21 Q Such as what type?

22 A Such as my license, Social Security, insurance and all
23 my papers, and I had to take a test also.

24 Q And where was the test held at?

25 A At the office.

1 Q Now, did you pass that test?

2 A Yes, I did.

3 Q And after taking the test, what happened next?

4 A They called me for an assignment. Not the same day.

5 They called me afterwards for the assignment.

6 Q Do you remember who called you?

7 A Harry.

8 Q Did the defendant himself call you?

9 A I don't remember really if it was him or someone else.

10 Q Do you know what kind of business Harry's Nurse's
11 Registry is?

12 A For nursing.

13 Q I ask you to keep your voice up, okay?

14 A Okay.

15 Q What type of assignments did you receive in 2006/2007?

16 A I received an assignment working with children on a
17 ventilator, with a trach, gastrostomy tube.

18 Q How long were you employed with Harry's?

19 A About six years.

20 Q When you received your assignments, did the defendants
21 provide you with anything necessary to perform your duty as an
22 LPN?

23 A Nurse's notes, time sheet.

24 Q The nurse's notes and time sheets, where did you obtain
25 them from?

1 A From the office, Harry's office. Well, when I pick up
2 the check, it is handed to me.

3 Q What do you do with them?

4 A I fill them out and give them back, so I can get paid.

5 Q With respect to the time sheet, who fills that out?

6 A I fill it out and the patient's family signs it.

7 Q Now, when you were hired -- withdrawn.

8 In 2006 and 2007 with respect to your patient, did you
9 ever discuss how much you would receive per hour?

10 A Yeah.

11 Q Who discussed that with you, how much you would be paid
12 per hour?

13 A Harry.

14 Q Harry himself?

15 A Yes.

16 Q Where did this conversation take place?

17 A On the phone.

18 Q And the amount of money that you received per hour, did
19 it depend on the type of case that you were assigned?

20 A Yes.

21 Q What determined the difference per hour that you would
22 receive?

23 A Can you say it again.

24 Q Sure.

25 The amount of money you would receive per hour depended

1 on what?

2 A Because it was a ventilator case, so he gave
3 me -- because we were taking care of two kids, two children.

4 Q So, the amount of money you received per hour for kids,
5 is that more or less than what you would receive for an adult
6 case?

7 A Yes.

8 Q Is it more or is it less money?

9 A More.

10 Q Than an adult case?

11 A Yes.

12 MS. BUCCHERI: Can you please show the witness
13 People's 1 and 2, please.

14 Q Can you please look at People's 1 and 2. Can you look
15 at People's 1.

16 A Yes.

17 Q Do you recognize what is in People's 1?

18 A A date.

19 Q No, the document itself. Just turn it over, please.

20 A Time sheet.

21 Q Is that a copy of a time sheet that you received?

22 A Yes, it is.

23 Q With respect to People's 2, can you look at that?

24 A Yes.

25 Q And what is that, please?

1 A Progress notes that we have to fill out.

2 Q Is this a copy of the progress notes that you received?

3 A Yes.

4 Q What did you do with your progress notes at the end of
5 your shift?

6 A Leave it in the book.

7 Q What book?

8 A There is a nurse's registry book at the home, so we have
9 to leave it there and at the end of the week send it to -- bring
10 it to Harry's Nurse's Registry.

11 Q What, if anything, else do you have to bring besides the
12 notes to the defendant's place of employment?

13 A The time sheet.

14 Q What, if any, significance is there to bringing the time
15 sheet and the nurse's notes?

16 A Excuse me?

17 Q Why do you need to bring the time sheet?

18 A In order to get paid.

19 Q How did you get paid?

20 A By check.

21 Q Do you know who issued the check?

22 A Harry's.

23 Q Do you know who signed the check?

24 A Harry.

25 Q When you received your paycheck, did you pick it up or

1 was it mailed to your home?

2 A Pick it up.

3 Q Did there come a time in 2006 that you noticed a
4 discrepancy with your paycheck?

5 A Yes.

6 Q Can you please tell us what that discrepancy was,
7 please?

8 A A dollar an hour taken for Workers' Compensation.

9 Q Had anybody prior to this time noticed it ever discussed
10 that with you?

11 A No.

12 Q Did you ever give permission or authority to the
13 defendants to withdraw that dollar per hour for this Workers'
14 Compensation to be deducted from your paychecks?

15 A No.

16 Q Did anybody ever show you a Workers' Compensation
17 policy?

18 A No.

19 Q Did you know for a fact if in fact -- did you know if in
20 fact you had Workers' Compensation Insurance?

21 A I thought so, yes.

22 Q Why did you think so?

23 A Because it was taken out.

24 Q Did anybody show you a policy?

25 MR. ALTER: Objection. It's been asked and

1 answered and she's leading her own witness.

2 THE COURT: No. Overruled.

3 Q Did anybody ever show you a Workers' Comp. insurance
4 policy?

5 A No.

6 Q So, other than the dollar per hour, you had no knowledge
7 of any policy for Workers' Comp. in your name; is that correct?

8 A Yes.

9 THE COURT: Did you have your own insurance for
10 disability?

11 THE WITNESS: Yes.

12 THE COURT: You had your own private insurance?

13 THE WITNESS: Yeah.

14 THE COURT: Did you have that insurance at the time
15 of -- August 9th of 2006 and November 27, 2007?

16 THE WITNESS: Yes.

17 THE COURT: You were paying your own premium?

18 THE WITNESS: Yes.

19 Q What was the disability insurance?

20 A In case something would happen at the job.

21 Q Do you know the name of that kind -- type of insurance?

22 A I don't remember.

23 THE COURT: Are you asking the name of the company?

24 Q Was that malpractice insurance?

25 A Yes, malpractice.

1 THE COURT: Malpractice insurance is different than
2 disability and Workers' Comp. is different than disability.
3 So, my question to you is, do you know what Workers' Comp.
4 covers?

5 THE WITNESS: No, I didn't have it.

6 THE COURT: Do you have any idea what Workers'
7 Comp. covers?

8 THE WITNESS: Yes.

9 THE COURT: What?

10 THE WITNESS: In case you cannot work.

11 THE COURT: You carry disability insurance on your
12 own?

13 THE WITNESS: No.

14 THE COURT: I thought you told me you did.

15 THE WITNESS: I'm sorry. It was the malpractice.
16 Sorry.

17 THE COURT: You never had your own disability
18 insurance?

19 THE WITNESS: No.

20 MS. BUCCHERI: I'm going to ask that People's 8A
21 through I be marked for identification.

22 THE COURT: Are you going to consent to them being
23 moved in evidence?

24 MR. ALTER: Yes, your Honor.

25 (Whereupon, the Pay stubs of Gina Propete were

1 marked in evidence as People's Exhibits 8A-Y.)

2 THE COURT OFFICER: People's 8A through Y marked
3 and received in evidence.

4 MS. BUCCHERI: Can you please show the witness.

5 Q Can you please look at those?

6 A Have you had an opportunity to look at them.

7 A Yes.

8 Q Do you recognize those documents?

9 A Yes, those are my checks.

10 Q How do you recognize them to be your checks?

11 A My name on this.

12 Q Are these copies of paychecks that you received from the
13 defendants?

14 A Yes.

15 Q Can you please look at 8A. Look at the back.

16 A 8A.

17 Q Can you please tell us the date of the check?

18 A 8/9/2006.

19 Q And the amount of the check?

20 A \$3,024.

21 Q What does it say on the memo line?

22 A It says dollar per hour taken out for Workers'
23 Compensation.

24 Q And how many hours during this time period did you work?

25 A Eight hours.

G. PROPHETE - PEOPLE - DIRECT

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Q No, during this time period, how many hours?

A 112.

Q So, how much money was deducted from your paycheck for Workers' Comp. during this period of time?

A \$112.

Q The documents that you have in front of you marked 8A through Y, when you reviewed them, on the memo line, did it indicate that money was taken out on each and every one of these checks for Workers' Comp?

A Yes.

THE COURT: 8B, how much was taken out?

Q What's the date of the check on 8B?

A 3,000.

THE COURT: The date, 9/6/2006.

Q How much money was taken out for Workers' Comp. insurance?

A A dollar per hour.

Q What's the dollar amount?

A 112 hours.

THE COURT: \$112?

THE WITNESS: Yes.

Q 8C?

THE COURT: What's the date?

A 8C, 10/4/2006.

Q How much money was taken out, please, for Workers' Comp?

1 A A dollar per hour, 112 hours.

2 Q How much money was taken out?

3 A A dollar per hour. \$112.

4 Q Thank you.

5 Can you look at D. The date of the check, please?

6 A 10/18/2006.

7 Q How much money was taken out for Workers' Comp.
8 insurance?

9 A \$112.

10 Q E, please. What's the date of the check?

11 A 1/24/2007.

12 Q And how much was taken out for Workers' Comp. insurance?

13 A \$112.

14 Q F, what is the date of the check?

15 A The date is 2/7/2007.

16 Q The amount of money deducted for Workers' Comp?

17 A \$112.

18 Q G, what's the date of the check, please?

19 A There is a --

20 Q Well, do you --

21 A 2/21/2007.

22 Q And can you please tell us how much money was deducted
23 from Workers' Comp?

24 A \$112.

25 Q H, please what is the date of the check?

1 A Date of the check is 3/7/2007.

2 Q And how much money was deducted?

3 A 112.

4 Q How many hours did you work?

5 A \$116. Sorry.

6 THE COURT: Is that 116?

7 THE WITNESS: 116, yes.

8 Q I, please. Can you look at 8-I. What is the date of
9 the check?

10 A The date of the check is 3/21/2007.

11 Q How much money was deducted for Workers' Comp?

12 A \$112.

13 Q J, please. What is the date of the check?

14 A The date is 4/4/2007.

15 Q And approximately how much money was deducted for
16 Workers' Comp?

17 A \$112.

18 Q K?

19 A 4/18/2007.

20 Q How much was deducted for worm?

21 A \$112.

22 Q L, what was the date of the check, please?

23 A 5/2/2007.

24 Q How much was deducted for Workers' Compensation?

25 A \$112.

1 Q M, please, what's the date of that check?

2 A 5/16/2007.

3 Q How much money was deducted from this paycheck for this
4 pay period for Workers' Compensation?

5 A \$112.

6 Q N, Exhibit N, what was the date of the check?

7 A 5/30/2007.

8 Q How much money was deducted for Workers' Compensation?

9 A \$112.

10 Q O, please. The date of the check, please?

11 A 6/13/2007.

12 Q How much money was deducted for Workers' Compensation?

13 A \$112.

14 Q P, what is the date of the check, please?

15 A 6/27/2007.

16 Q How much money was deducted for Workers' Compensation?

17 A \$112.

18 Q Q, what is the date of the check, please?

19 A 7/11/2007.

20 Q How much money was deducted for Workers' Compensation,
21 please?

22 A \$112.

23 Q R, what is the date of the check, please?

24 A 7/25/2007.

25 Q And how much money was deducted for Workers'

1 Compensation for this time period?

2 A 112.

3 Q Is that \$112?

4 A \$112.

5 Q S, please, what is the date of the check?

6 A 8/22/2007.

7 Q And how much was deducted for Workers' Compensation
8 during this pay period?

9 A \$96.

10 Q T, what is the date of the check, please?

11 A 9/5/2007.

12 Q And how much was deducted for Workers' Compensation
13 during this pay period?

14 A 112.

15 Q U, what's the date of the check, please?

16 A 9/19/2007.

17 Q How much was deducted for Workers' Compensation during
18 this pay period?

19 A \$112.

20 Q V, what is the date of that check, please?

21 A 10/3/2007.

22 Q And how much was deducted for Workers' Compensation
23 during this time period?

24 A \$112.

25 Q W?

1 A 10/17/2007.

2 Q How much was deducted during this pay period for
3 Workers' Compensation?

4 A \$112.

5 Q X, what's the date of that check, please?

6 A 10/31/2011.

7 Q How much was deducted during this time period for
8 Workers' Compensation?

9 A \$112.

10 Q You should have one more. Y, what is the date of that
11 check?

12 A 11/14/2007.

13 Q How much was deducted for Workers' Compensation during
14 this time period?

15 A \$112.

16 Q Now, during the course of time that you were employed by
17 the defendant, did you ever attend in-service training?

18 A Yes, I did.

19 Q What is in-service training?

20 A In-service training is when all the nurses come together
21 and they explain to us about ventilators, how we're supposed to do
22 it, and if there's a problem, what we should do.

23 Q And where was this in-service training held?

24 A At the office, at the agency.

25 Q And who notified you of any upcoming in-service

1 training?

2 A A note.

3 Q And this note, who wrote the note, if you know?

4 A Harry's Registry.

5 Q Well, was it signed by a specific person, if you
6 remember?

7 A I don't remember really.

8 Q How did you get the note?

9 A With our time sheet.

10 Q And do you know if during the period of 2006 through
11 2007, how many in-service training sections you attended?

12 A I don't remember.

13 Q Now, during 2006 and 2007, if you were sick or unable to
14 take care of your patients, what, if anything, was your
15 responsibility to do?

16 A My responsibility was to call the office and tell them
17 that I -- I won't be able to be there, so they could send another
18 nurse.

19 MS. BUCCHERI: Judge, at this time, I have no
20 further questions.

21 THE COURT: Do you wish to cross-examine?

22 MR. ALTER: Yes, I do, your Honor.

23 Can I have the exhibits.

24 THE COURT: Which ones?

25 MR. ALTER: All of them.

1 THE COURT: A through Y.

2 CROSS-EXAMINATION

3 BY MR. ALTER:

4 Q Could you just tell the jury the amount of money you
5 received for each of these checks, please, every pay period from
6 Harry's Nursing Registry?

7 A \$3,024.

8 Q First pay period.

9 A \$3,024.

10 Q The next one, ma'am. What date is that check, please?

11 A 8/9/2006.

12 Q The next check, please?

13 A 9/6/2006.

14 Q What was the amount of that check?

15 A \$3,024.

16 Q The next check and give the date and the amount to the
17 jury, please.

18 A 10/4/2006. \$3,024.

19 Q The next one, date and the amount of check, please?

20 A 10/18/2006. \$3,024.

21 Q The next check, please, date and amount?

22 A 1/24/2007, \$3,024.

23 Q Again, the next one.

24 A 2/7/2007, \$3,024.

25 Q Next check, please?

1 A 2/2/2007. \$3,024.

2 Q Next check.

3 MS. BUCCHERI: Sorry, Judge. With respect to the
4 last one, the date on that check.

5 THE WITNESS: 2/21/2007.

6 Q Next one.

7 A 3/7/2007. 3,132.

8 Q Keep going.

9 A 3/21/2007, \$3,024. 4/4/2007, \$3,024. 4/18/2007,
10 \$3,024.

11 Q Next check.

12 A 5/2/2007, \$3,024.

13 Q 5/16/2007, \$3,024. 5/30/2007, \$3,024. 6/13/2007,
14 \$3,024. 6/27/2007, \$3,024. 7/11/2007, \$3,024. 7/25/2007, 3,360.
15 8/22/2007, 300 -- 3,264. 9/5/2007, 3,808. 9/19/2007, 3,696.
16 10/3/2007, 3,696.

17 Q Do you have an idea what the total of those checks are?

18 MS. BUCCHERI: I believe there's still more checks.

19 THE COURT: You asked for all of them.

20 MR. ALTER: I thought I was done.

21 Q Excuse me, ma'am. Continue.

22 THE COURT: She's up to W.

23 MR. ALTER: That was my fault.

24 A 10/17/2007, 3,696. 10/31/2007, 3,696. 11/14/2007,
25 3,696.

1 Q Thank you.

2 Now, would you tell the -- when did you discover that
3 the dollar an hour was being withheld from your check; was it the
4 first check?

5 A Yes, the first one.

6 Q You noticed the money being withheld then.

7 What did you do about it?

8 A I called the office.

9 Q Who did you speak to specifically?

10 A Harry.

11 Q What did he tell you?

12 A He says it has to be taken for Workers' Compensation.

13 Q Did you do anything after that?

14 A No.

15 Q Let me see the date of that check again. May I take a
16 look at that check, please. From this date of August 9, 2006,
17 when you first saw that, am I correct again, the dollar an hour
18 being deducted?

19 A Yes.

20 Q You called the office and you had a conversation with
21 Harry and he gave you an explanation and that was it; am I
22 correct?

23 MS. BUCCHERI: Objection, Judge. It has been asked
24 and answered.

25 THE COURT: He told you he had to do that and what

1 did you say?

2 THE WITNESS: For Workers' Compensation.

3 THE COURT: What did you say?

4 THE WITNESS: I didn't say anything.

5 THE COURT: Did you assume he was telling you the
6 truth?

7 THE WITNESS: Yes.

8 Q Did you do anything after that?

9 MS. BUCCHERI: Objection.

10 A What I did, I tried to find out. Everyone says he's
11 taking off them, so I didn't say anything.

12 Q So, from that day forward, you never made a complaint
13 about it?

14 THE COURT: To whom?

15 MR. ALTER: To anybody.

16 A No.

17 Q What was the answer?

18 A No.

19 THE COURT: She said no.

20 Q To anybody, not to the --

21 MS. BUCCHERI: Objection as to the form of the
22 questions.

23 MR. ALTER: I didn't say anything.

24 Q You were a licensed practical nurse at the time?

25 A Yes.

1 Q At that site, you were involved in dealing with a doctor
2 when you went to the patient?

3 A No.

4 Q Who gave you the care plan?

5 A The office, Harry's.

6 Q Did you consult with a doctor at all?

7 A No.

8 Q Were there doctors notes in the file?

9 A Yes, I wrote my notes. Yes.

10 Q When you gave medications to patients, who would
11 authorize the medication?

12 A The doctors.

13 Q You would get those medications and those treatments
14 from the doctor's notes in the file, correct?

15 MS. BUCCHERI: Objection, Judge.

16 THE COURT: Sustained.

17 Q Who gave you authority to give the medicines?

18 MS. BUCCHERI: Objection, Judge.

19 THE COURT: Were the medicines there?

20 THE WITNESS: Yes.

21 THE COURT: They were prescribed by a doctor?

22 THE WITNESS: Yes.

23 THE COURT: You were a licensed practical nurse?

24 THE WITNESS: Yes.

25 THE COURT: Are you licensed to give those

1 medications?

THE WITNESS: Yes, I am.

2 THE COURT: Anything else?

3 Q Now, at the site, the equipment, did you bring your own
4 blood pressure machine? Was it your own blood pressure --

5 A Nothing was given.

6 Q It was your own equipment?

7 A Yes.

8 Q At the end of the day, the patient would verify your
9 hours, am I correct, or the member of the family?

10 A The week.

11 Q After the two-week period?

12 A Yes.

13 Q You sign off and they would give it to you and you would
14 bring it into the office to get paid?

15 A Yes.

16 Q At no time did you have to verify your hours? Your
17 patient verified your hours; am I correct?

18 MS. BUCCHERI: Objection. Asked and answered.

19 THE COURT: She just said that.

20 Q Were you carrying your own malpractice insurance?

21 A Yes.

22 Q Would you tell the Court and jury what that is?

23 A In case something will happen at the job, like an
24 incident, like an incident or an accident, so I could be covered.
25

1 Q Now, with respect to the monies you received from
2 Harry's Nurse's Registry, were those payroll checks from Harry's
3 Nurse's Registry?

4 A Yes.

5 Q You got those checks from the defendant?
6 A Yes.

7 Q How long did you work for the defendant, ma'am?

8 A Well, I'm not -- six to seven years, but I'm not sure.
9 I can't say --

10 THE COURT: When was the last year you worked for
11 him?

12 THE WITNESS: Last year.

13 THE COURT: Last year, 2011?

14 THE WITNESS: Yes.

15 Q So, you were with the defendant for what period of time?

16 MS. BUCCHERI: Objection. It's been asked and
17 answered.

18 A I'm not sure. I cannot say.

19 MR. ALTER: I would like to have this marked for
20 identification, your Honor.

21 THE COURT: Defendant's E for I.D..

22 (Whereupon, the Document was marked for
23 identification as Defendants' Exhibit E.)

24 THE COURT OFFICER: Defendant's E marked for
25 identification and being shown to the witness.

1 Q I ask you if you can identify that document, ma'am.

2 A Yes.

3 Q Did you sign that document?

4 A Yes, I did.

5 Q And would you tell the --

6 MR. ALTER: Judge, I would like to offer it in
7 evidence.

8 MS. BUCCHERI: Judge, I'm --

9 THE COURT: So far in the record, there's nothing
10 to say what that document is other than she said she signed
11 it.

12 Q Can you tell the Court and jury what that document is,
13 ma'am?

14 A It is a -- that I am an independent contractor and is
15 responsible for any and all income tax, insurance, malpractice.

16 THE COURT: Is that your employment contract? Is
17 that the contract you signed when you were hired?

18 THE WITNESS: Let me see. Yeah.

19 MR. ALTER: I offer it in evidence, your Honor.

20 THE COURT: Any objection?

21 MS. BUCCHERI: No, Judge.

22 THE COURT: There being no objection, it is
23 received in evidence.

24 (Whereupon, the Document was marked in evidence as
25 Defendants' Exhibit E.)

1 THE COURT OFFICER: Defendant's E marked and
2 received in evidence and being published to the jury.

3 (Whereupon, the exhibit was published to the jury.)

4 THE CLERK: The exhibit has been published to the
5 jury.

6 Q Ma'am, on the contract, you were paying your own income
7 tax?

8 A Yes.

9 Q Your own Social Security?

10 A Yes.

11 Q You also got a 1099 at the end of the year?

12 A Yes.

13 Q So, that meant you were responsible for all your
14 payments for all your taxes?

15 MS. BUCCHERI: Objection.

16 THE COURT: Do you know what a 1099 means?

17 THE WITNESS: Yes.

18 THE COURT: Did your employer withhold any taxes or
19 Social Security from your --

20 THE WITNESS: No, I paid it myself.

21 THE COURT: You had to pay it?

22 THE WITNESS: Yes.

23 THE COURT: That's what he's asking.

24 Anything else?

25 Q You carried your own insurance?

1 A Yes.

2 MS. BUCCHERI: Objection, Judge. Asked and
3 answered.

4 THE COURT: Sustained. This is not summation,
5 Counsel. This is cross-examination.

6 MR. ALTER: Oh, sorry.

7 THE COURT: Do you have any other questions of this
8 witness?

9 MR. ALTER: No, your Honor.

10 THE COURT: Any re-direct?

11 MS. BUCCHERI: Briefly.

12 REDIRECT EXAMINATION

13 BY MS. BUCCHERI:

14 Q The Defense Exhibit E, this contract, did anybody
15 explain it to you?

16 A No.

17 Q Sorry?

18 A No.

19 Q Do you know who gave you that?

20 A Harry's Nurse's Registration.

21 Q Do you know specifically who gave that to you?

22 A Harry's.

23 Q It was the defendant himself?

24 A Yes.

25 Q And when the defendant gave that to you, did he explain

1 what was contained in this agreement?

2 A No.

3 Q Did he explain to you what an independent contractor
4 was?

5 A No.

6 Q Did you know what an independent contractor was?

7 A Yes.

8 Q Did anybody during the period of 2006, 2007 ever tell
9 you that you were an independent contractor?

10 A No.

11 MS. BUCCHERI: I have nothing further.

12 THE COURT: Anything else?

13 MR. ALTER: No.

14 THE COURT: Thank you. You may step down.

15 THE WITNESS: Thank you.

16 (Witness excused.)

17 THE COURT: At this point, we are going to take a
18 brief recess. Do not discuss this case amongst yourselves or
19 with anyone else. Do not visit or go to any location
20 mentioned in this case. Do not pay any attention to any
21 account of this case that may be reported in the media. If
22 there are any accounts of this case reported in the media,
23 keep an open mind. We should reconvene shortly.

24 (Whereupon, the jury exited the courtroom.)

25 THE COURT: The jurors have left. Any

1 applications?

2 MS. BUCCHERI: No.

3 MR. ALTER: No.

4 (Whereupon, a recess was taken.)

5 THE COURT: Bring in the jury.

6 (Whereupon, the jury entered the courtroom.)

7 THE CLERK: Case on trial continued. All sworn
8 jurors are present and properly seated. Do both sides waive
9 the reading of the roll?

10 MS. BUCCHERI: So waived, yes.

11 MR. ALTER: So waived.

12 THE COURT: You may call your next witness.

13 MS. BUCCHERI: The People call Pearline Dryer.

14 THE COURT OFFICER: Witness entering.

15 P E A R L I N E D R Y E R , a witness called by the People,
16 after having been first duly sworn by the Clerk of the Court, took
17 the witness stand and testified as follows:

18 THE COURT OFFICER: The People call Pearline Dryer.
19 First name, P-E-A-R-L-I-N-E, D-R-Y-E-R. Resident of Queens
20 County.

21 THE COURT: You may inquire.

22 MS. BUCCHERI: Thank you, Judge.

23 DIRECT EXAMINATION

24 BY MS. BUCCHERI:

25 Q Good afternoon.

1 Are you currently working?

2 A Yes.

3 Q Where do you work?

4 A I work for Harry's Nurse's Registry in Brooklyn and I
5 work in Long Island privately.

6 Q Where is Harry's Nurse's Registry located?

7 A 163rd Street in Jamaica, Queens.

8 Q Is that separate and apart from Harry's Nurse's
9 Registry?

10 A No, that's Harry's Nurse's Registration got me that job.

11 THE COURT: Your client, your patient is in
12 Brooklyn, but you got the job through the office in Queens?

13 THE WITNESS: Yes.

14 THE COURT: You said you also work privately
15 elsewhere?

16 THE WITNESS: Yes.

17 THE COURT: In Nassau?

18 THE WITNESS: Yes.

19 Q Do you currently work for the defendants?

20 A Yes.

21 Q How did you hear about the defendants?

22 A Sometime you see it in the phone book and people
23 recommend you to the agency.

24 Q When did this occur? When did you first go to Harry's
25 Nurse's Registry?

1 A That's about five, six years ago. I don't remember
2 exactly the month or the date and all.

3 Q Do you know approximately what year?

4 A 2-6, 2-7.

5 Q 2006, 2007?

6 A Yes.

7 Q What do you do at Harry's Nurse's Registry? What is
8 your job?

9 A To take care of a little girl, a little sick child.

10 Q But what is your title?

11 A LPN, licensed practical nurse.

12 Q As a licensed practical nurse, how did you become a
13 licensed practical nurse?

14 A Go vocational school in California.

15 THE COURT: Is there an issue about what a licensed
16 practical nurse is for this jury?

17 MR. ALTER: I don't mind hearing the background.

18 THE COURT: You have no idea what a LPN is?

19 MR. ALTER: I do.

20 THE COURT: Have you been listening?

21 MR. ALTER: I have been, your Honor. I would just
22 like to see the educational background.

23 THE COURT: Where did you get your degree?

24 THE WITNESS: In California.

25 Q Is that where you went to school?

1 A Yes.

2 Q Did there come a time that you moved to New York State?

3 A Yes.

4 Q When you moved to New York State, did you move here as a
5 licensed practical nurse?

6 A Yes.

7 Q Did you have to sit and take the New York State boards
8 to become a licensed practical nurse?

9 A No, I applied for reciprocity, transfer.

10 THE COURT: You took a California board and did New
11 York recognize the California board certificate?

12 THE WITNESS: Yes.

13 THE COURT: So, you were licensed to practice in
14 New York as well?

15 THE WITNESS: Yes.

16 THE COURT: Let's continue.

17 Q When you went to Harry's Nurse's Registry, what did you
18 have to do?

19 A I had to take a written test, just a written test.

20 Q Did you --

21 A And fill out an application.

22 Q Sorry?

23 A And fill out an application.

24 Q And the written test, where was that held?

25 A In the -- at the front, downstairs at the front desk.

1 Q Was it held at Harry's Nurse's Registry?

2 A Yes.

3 Q Did you have to provide any documentations?

4 A Yes.

5 Q What documentation did you have to provide?

6 A License, CPR, fire and safety, insurance.

7 Q What type of insurance?

8 A Malpractice.

9 Q What is malpractice insurance?

10 A Anything happen on the job, any emergency, you are
11 covered.

12 Q The job meaning where your assignment is?

13 A Yes.

14 Q Do you know who the owner of Harry's Nurse's Registry
15 is?

16 A Yes.

17 Q Who is it?

18 A Harry Dorvilier.

19 Q Do you see him anywhere in the courtroom today?

20 A Yes.

21 Q Can you please point him out by describing an article of
22 clothing?

23 A He has a gray suit on.

24 THE COURT: Indicating the defendant.

25 MS. BUCCHERI: Thank you.

1 Q Did there come a time that you were hired by the
2 defendants?

3 A Yes, I'm hired. I still work for them.

4 Q You still currently working there now?

5 A Yes.

6 Q In 2007, did you have assignments with the defendants?

7 A Yes.

8 Q What type of assignments did you have?

9 A I had an assignment to take care of an older lady and I
10 quit and then I had an assignment to take care of a little child
11 and then I quit and then I have a little girl now that I
12 still -- I am still with for the past five years.

13 Q Now, back in 2007 when you had those assignments, did
14 anyone discuss with you what your hourly pay would be?

15 A Yes.

16 Q Who was that?

17 A The person who did the application.

18 Q Who was that?

19 A That was -- I don't know her name. The supervisor at
20 that time. She upstairs.

21 Q Is she still working for Harry's now?

22 A I don't really know.

23 Q Were you told how much you would be paid per hour?

24 A Yes.

25 Q What was that?

1 A That was \$19.50 an hour.

2 Q Is that what you were told you were being paid for your
3 assignments in 2007?

4 A For the children, they paid us 24.50 an hour.

5 Q And how about for the adult assignment that you had in
6 2011? How much were you paid per hour?

7 A 19.50.

8 Q Now, when you received your assignments in 2007, did the
9 defendants provide you anything necessary to perform your duty?

10 A Nothing. Just call you and told you about the job. You
11 take it and you go out. You have to provide everything for
12 yourself.

13 Q What did you have to provide?

14 A Stethoscope, you have to provide your own gloves,
15 everything. Only thing they gave you was the paperwork, the
16 nurse's notes and time sheets. That's all.

17 Q The nurse's notes and the time sheets, where did you
18 obtain those from?

19 A I got them at the agency.

20 Q How often did you get them from the agency?

21 A Every two weeks. When you drop off, you pick up.

22 Q When you drop off what?

23 A When you drop off the time sheet and then you get fresh
24 ones or you can pick up a package and you have to -- it last you
25 for a while.

1 MS. BUCCHERI: Can you show this witness People's 1
2 and 2.

3 Q Please look at People's 1.

4 A Yes.

5 Q Can you flip it, so you can see the actual document?

6 THE COURT: Why don't you assist her.

7 Q Do you recognize that?

8 A This is the time sheet, yes.

9 Q Is it a copy of the time sheet that you received from
10 the defendants?

11 A Yes.

12 Q Can you please look at People's 2.

13 A Okay, yes.

14 Q And what is that?

15 A This is the nurse's notes.

16 Q Is that a copy of a nurse's note that you received for
17 your assignment?

18 A Yes.

19 Q Did you notice a discrepancy in your paychecks in 2007?
20 A Yes.

21 Q Can you tell me?

22 A A dollar an hour was removed in the thing for Workers'
23 Compensation.

24 Q When you noticed this deduction, did you complain at the
25 defendant's place of business?

1 A I don't remember. No.

2 Q Did you talk about it?

3 A We talked at the front desk about it, but we had to talk
4 to somebody upstairs and you would never get to talk to anybody
5 upstairs and all that --

6 Q Did you speak to the defendant about that?

7 A No, I never speak to the defendant.

8 Q Did you know -- withdrawn.

9 Had the defendant or anybody at Harry's Nurse's Registry
10 ever shown you a Workers' Compensation insurance policy?

11 A Never.

12 Q During that time in 2007, did you in fact know if you
13 had Workers' Compensation insurance?

14 A No, I didn't know if I had it. I know I was paying for
15 it, but I didn't know if I really had the insurance.

16 Q You never saw a policy number?

17 A No.

18 Q At any point during this period of time in 2007, did you
19 give the defendants permission and authority to deduct a dollar
20 per hour for Worker's Compensation?

21 A No.

22 MS. BUCCHERI: I ask that these be marked People's
23 9A through N.

24 THE COURT: Any objection to them being in
25 evidence?

P. DRYER - PEOPLE - DIRECT

MR. ALTER: No, your Honor.

THE COURT: They will be marked as People's 9A through N in evidence.

MR. ALTER: Your Honor, I need a side-bar for a moment.

THE COURT: Do you want it on the record?

MR. ALTER: Yes.

THE COURT: Let's go side-bar.

(Whereupon, the following was recorded at sidebar.)

MR. ALTER: The district attorney has been asking questions about workers -- my question is she says did the woman know she asked, do you know if there was a policy. The DA knows there was a policy in effect. She saw the policy. I've given her all the policies.

THE COURT: It is what the witness knows.

MR. ALTER: Okay.

(Whereupon, the following was recorded in open court:)

(Whereupon, the Pay stubs of Pearline Dryer were marked in evidence as People's Exhibits 9A-N.)

THE COURT OFFICER: People's 9A through N marked and received in evidence and being shown to the witness.

MS. BUCCHERI: Thank you.

Q Can you please look at these?

A Okay.

1
2 THE COURT: Did you look at these before you came
3 to court today?

4 THE WITNESS: Yes.

5 THE COURT: Have you seen them already?

6 THE WITNESS: Yes.

7 THE COURT: You can start asking questions.

8 Q What are those?

9 A These are my paychecks, copies.

10 Q Copies?

11 A Yes.

12 Q And how do you know they're yours?

13 A My name is written on all of them.

14 Q Can you please look --

15 THE COURT: On each of them, is there a notation in
16 the memo column that Worker's Compensation was deducted on
17 those checks?

18 THE WITNESS: Worker's Compensation was deducted --

19 THE COURT: WC.

20 THE WITNESS: Yes.

21 THE COURT: On each one of those checks?

22 THE WITNESS: Let me check. Yes.

23 Q With respect to the first one, can you tell us the date
24 and amount of the Worker's Compensation that was deducted?

25 A The first one, \$70.

Q What's the date?

P. DRYER - PEOPLE - DIRECT

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A March 21, 2007.

Q The amount of deduction?

A \$70.

Q Next?

THE COURT: Next date.

A Next date was \$70.

Q What was the date, please?

A The 3/21/07.

THE COURT: That's what you said the first one.

THE WITNESS: Yes.

THE COURT: What's B?

MS. BUCCHERI: There are two checks.

THE WITNESS: The second one is the same, 3/21/07 for the same thing.

THE COURT: \$70 again?

THE WITNESS: \$70, yes.

THE COURT: You got two checks that day?

THE WITNESS: Yes.

Q Next, C, please?

A 4/18/07, \$84.

Q Next.

A Next one was the 5/2, \$36.

Q What year is that?

A '07.

Q Next please.

1 A 6/13/07.

2 Q Amount?

3 A \$117.

4 Q Next.

5 A 7/25/07, \$123.

6 Q Next.

7 A The 8/22/07, \$20.

8 Q Next.

9 A The 9/5/07, \$64.

10 Q Next one.

11 A 9/19/07, \$140.

12 Q Next one.

13 A 9/19/07, \$140.

14 THE COURT: Is that both from 9/19?

15 THE WITNESS: Yes.

16 A 10/17, \$140.

17 THE COURT: L was 10/31/07, 140.

18 Q Next.

19 A 11/14/07, \$54.

20 THE COURT: Last one.

21 THE WITNESS: 11/27/07, \$99.

22 THE COURT: 99?

23 THE WITNESS: Yes.

24 Q During the time period of 2007, March 2007 through the

25 end of 2007, did you ever attend any in-service training?

1 A Once.

2 Q And where was that in-service training held?

3 A At Harry's Nurse's Registry.

4 Q And do you know how were you notified that there was an
5 in-service training?

6 A They would -- they give you a little memo at the -- when
7 you pick your paycheck up, they put a little memo in the check.

8 Q And the memo that you received, do you know who signed
9 this memo, if anyone?

10 A I think the supervisor signed it. She's not there
11 anymore. That supervisor already left.

12 Q If there came a time that you were unable to take care
13 of your patient because you were sick or something else came up,
14 what, if anything, would you have to do?

15 A If I just call the agency and I tell them that I cannot
16 go to work today because and they will replace somebody or if they
17 cannot replace somebody, the family have to take care of the
18 patient themselves.

19 MS. BUCCHERI: I have nothing further.

20 THE COURT: At this point, we're going to take a
21 luncheon recess. Do not discuss this case among yourselves
22 or with anyone else or permit anyone to discuss the case in
23 your presence. Do not visit or view any of the places in
24 connection with this case. Do not pay any attention to any
25 account of this case that may be reported in the media. If