

SUPREME COURT OF NEVADA

Case No. 79668

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Elizabeth A. Brown
Clerk of Supreme Court

GREENMART OF NEVADA NLV LLC,; and
NEVADA ORGANIC REMEDIES, LLC

Appellants,

v.

SERENITY WELLNESS CENTER LLC; TGIG, LLC; NULEAF INCLINE
DISPENSARY, LLC,; NEVADA HOLISTIC MEDICINE, LLC; TRYKE
COMPANIES SO NV, LLC; TRYKE COMPANIES RENO, LLC; PARADISE
WELLENESSE CENTER; GBS NEVADA PARTNERS, LLC; FIDELIS
HOLDINGS, LLC; GRAVITAS NEVADA, LLC; NEVADA PURE, LLC;
MEDIFARM, LLC; MEDIFARM IV LLC;
and STATE OF NEVADA, DEPARTMENT OF TAXATION,

Respondents,

Appeal from the Eighth Judicial District Court,
Clark County, Nevada
District Court Case # A-19-786962-B
The Honorable Elizabeth Gonzalez

APPELLANT'S APPENDIX – VOLUME 34

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing APPELLANT APPENDIX was filed electronically with the Nevada Supreme Court on the 13th day of January, 2020. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

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1 Q So they were having difficulties with diversity;
2 right?

3 A Yes.

4 Q Because they couldn't find any basis.

5 A Well, is this -- let me read them again. Because
6 he's saying --

7 THE COURT: Sir, take a minute and read them.

8 THE WITNESS: Okay. Can you repeat the question,
9 sir.

10 BY MR. GENTILE:

11 Q They were having difficulty with diversity?

12 A They were having -- if I recall correctly, they were
13 having difficulty with, you know, what qualifies as diversity.
14 When they were trained for the diversity section they were
15 given the breakdown of the percentages, so what knew how to
16 break it down. But they didn't know what fell under diversity
17 as far as race.

18 Q I want to call your attention to --

19 MR. GENTILE: Let's go to page 15, line 100 -- I
20 mean entry 100.

21 BY MR. GENTILE:

22 Q I'm going to take you back in time to a few days
23 after the December 5th announcement of who were awarded
24 conditional licenses, okay. This is just a few days later.

25 On the 11th of December you receive an email from

1 Mr. Plaskon. It says, "Green Thumb bought Essence last month,
2 according to the RGJ. That's the Reno Gazette Journal; right?

3 A Yes.

4 Q Commonly referred to as the RGJ.

5 A Uh-huh. Yes.

6 Q Okay. And you respond and you say, "Yeah, I'm
7 aware. They're preparing the transfer paperwork to be
8 submitted."

9 And then here's my question for you. We -- and I'm
10 sure one of my brethren here is going to show it to you.
11 There were several if you want to call them applicants, they
12 were applicants in the sense that they submitted an
13 application, that had prearranged deals, some of them signed
14 in terms of permanent, that made it clear that they had agreed
15 that if they were awarded a license they were really never
16 going to operate, they were going to turn it over to a
17 publicly traded company or some other company. And this
18 statute and the regulations speaks in terms of the prospective
19 licensee. Did it come to your attention before December 5th
20 of 2018 that any such arrangement had been entered into by
21 anybody who submitted an application?

22 A Not that I'm -- not that I can recall. I mean, what
23 Ky's referring to here is we see articles. He's our education
24 and information officer, so he's always looking on the
25 Internet for news. So he saw -- he must have seen that.

1 Q So until you got that from him on that day you did
2 not know that --

3 A No. I probably knew it already. A lot of times
4 I'll get an email or the article. Ky sometimes -- Mr.
5 Plaskon's sometimes a few days behind getting his emails out.

6 Q Do you recall when it first came to your attention
7 and which applicant it was that you learned had already
8 entered into a prearranged deal to -- had sold their business
9 to someone?

10 A No, I don't -- I don't recall that. I recall this.
11 That's it.

12 Q That's it. You only recall this text message,
13 nothing else?

14 A Right.

15 Q So you don't recall actually having it come to your
16 attention before December 5th of 2018 --

17 A For --

18 Q -- that such -- please -- that such a deal, whether
19 it be Essence or anybody else, had been entered into?

20 A So we do hear stuff like a deal's being struck. But
21 until we get the transfer of ownership paperwork we don't
22 acknowledge anything in the system of record at the Department
23 of Taxation until we get -- until we get that transfer of
24 ownership -- we call them TRAS [phonetic] -- we don't
25 acknowledge any transfer of ownership whatsoever.'

1 Q Do you know what a shill is?

2 A No, I don't think so.

3 Q Boy, I'll tell you what.

4 THE COURT: So the next thing he's asking you about
5 a beard.

6 MR. GENTILE: No, I'm not going to -- never use that
7 one anymore.

8 THE COURT: Okay.

9 BY MR. GENTILE:

10 Q You know what a ringer is?

11 MR. KOCH: Skip back to that one.

12 THE WITNESS: Maybe.

13 BY MR. GENTILE:

14 Q Did you ever play baseball?

15 A I do play baseball.

16 Q All right. You know what a ringer is.

17 A Yeah.

18 Q Okay. Same meaning. That's what I mean, okay.

19 You've got Secretariat running as Spark Plug, okay. The name
20 says Spark Plug, but it's Secretariat. That's a ringer;
21 right?

22 A Right.

23 Q Okay. In this situation, these applications, if
24 somebody entered into a deal to transfer, that applicant isn't
25 really going to be the operator if he gets the award; right?

1 A We just looked at what was submitted on the
2 application. And what we did is when we intook the
3 application we'd look at the ownership structure that they
4 submitted on their application and compared it to what we had
5 on record at the Department. And if it didn't match, then we
6 would look to see if we had a transfer of ownership in house,
7 if that matched what was submitted in the application.

8 Q Let me -- let me get something straight in my own
9 head. If I have a license and I want to transfer it, that is
10 not a competitive process, is it?

11 A No. Not as far as the Department of Taxation was
12 concerned.

13 Q So if the person that I enter into a deal with to
14 transfer my license if I get one, they themselves could not
15 have won this race on their own, because they certainly could
16 have applied, they've got a ringer out in front for them,
17 don't they?

18 A I don't -- we'd have to look at the application. I
19 don't -- in the hypothetical we'd have to look at and evaluate
20 the application.

21 Q Thank you.

22 You want to see the application? Because the
23 application is not going to tell you that they've sold. Now,
24 would you -- just on your own. This time I'm asking you, sir,
25 you. Somebody who is the Secretariat of applicants files an

1 application and there's no way they're going to lose the race,
2 and all you see is the application. You do not know what is
3 not disclosed to you, which is that if we win this we're never
4 going to operate it. They don't disclose that to you. You
5 think that's misleading?

6 A And again, we just rely on the information that's --

7 Q What is it about yes or no?

8 A -- put into the application.

9 Q What is it about yes or no you can't answer? You
10 want me to ask it again?

11 A It potentially could be misleading, yes.

12 MR. GENTILE: Thank you. Nothing further.

13 THE COURT: All right. So we're getting close to
14 the time where were going to hear from another witness and
15 take another break at 3:00 o'clock. I want to ask you some
16 process question --

17 THE WITNESS: Okay.

18 THE COURT: -- while everybody else is thinking and
19 getting ready, because were going to interrupt you anyway.

20 So assume for a minute -- we've already talked about
21 the regulations and who was in charge of drafting that. So
22 let's get -- fast forward to the applications are coming in.
23 When an application comes into the Department what happens to
24 it?

25 THE WITNESS: When an application came in for the

1 10-day window --

2 THE COURT: Uh-huh.

3 THE WITNESS: -- the applications were either
4 dropped off or mailed into either Carson City or Las Vegas
5 office.

6 THE COURT: Right.

7 THE WITNESS: They're collected by the tax
8 processors. Then the administrative assistants from the
9 Marijuana Enforcement Division would go down and collect the
10 application, they would -- there's a cash handling sheet
11 that's a process form for Taxation that would be collected,
12 also, showing the payment of the application fee.

13 Then they would be brought up and they would be
14 scanned into a share drive, and then the thumb drives secured.
15 And then they'd be logged also on the spreadsheet. That's
16 when they were assigned their ID number and the date and time
17 that they were received.

18 THE COURT: Who made determination whether the
19 application was complete or not?

20 THE WITNESS: That was made when the applications
21 were handed out to the evaluators.

22 THE COURT: That was -- it wasn't made until time?

23 THE WITNESS: That's correct.

24 THE COURT: Who made the decision that that was when
25 the decision as to whether an application was complete or not

1 would be made at that late date?

2 THE WITNESS: We have -- we have process -- we had
3 an intake process that was documented that was ran up to Mr.
4 Pupo --

5 THE COURT: So you're saying Mr. Pupo?

6 THE WITNESS: -- if I recall. Mr. Pupo may know.

7 THE COURT: Mr. Pupo made the decision that nobody
8 would worry about whether the application was complete or not
9 until it was given to the evaluators and they would make that
10 decision?

11 THE WITNESS: I'm not sure if that's correct. But
12 the intake -- yeah. I guess I don't know.

13 THE COURT: Okay. I don't know is good. If you
14 don't know, tell me, I don't know. We'll ask somebody else.

15 THE WITNESS: I was trying to think through the
16 process of the intake process. And I have to go back and look
17 at it. If the -- because we have an administrative review
18 process. We're the administrative review team of the
19 evaluators that the administrative assistants would go through
20 and look at those. I don't know if they did by 1 through 462,
21 or if they did it as they handed them out.

22 THE COURT: But it was not upon receipt of the
23 applications at the Department?

24 THE WITNESS: No, it was not upon receipt.

25 THE COURT: Okay. So let's go back, then, again to

1 the creation of the application form. Who within the
2 Department was responsible for the creation of that form?

3 THE WITNESS: There was a number of us involved. We
4 had a -- we had a small team who met on a regular basis, we
5 think, as much as possible where we took the application and
6 we compared it to the regulations and updated it --

7 THE COURT: Right.

8 THE WITNESS: -- through a [unintelligible] changes
9 Word document.

10 THE COURT: You told me that. But I'm just trying
11 to figure out who the person is who was responsible so that --
12 you were here for the buck stops here discussion? Maybe not.
13 It's been several days. Who was the person who was
14 responsible for the preparation of that application, put it
15 all together, had a bow, and then gave it off to whoever
16 approved?

17 THE WITNESS: That was Ky Plaskon, Kara Cronkhite,
18 and myself.

19 THE COURT: Okay. And as the supervisor of those
20 other two individuals that means you're essentially in charge
21 of it?

22 THE WITNESS: I was, yes, in charge of getting it to
23 Mr. Pupo for a final review.

24 THE COURT: And then he would do the final review
25 and make a determination up or down whether it was going to be

1 used?

2 THE WITNESS: Yes.

3 THE COURT: And as you said earlier, you were not
4 aware of the limitations of -- or, I'm sorry, the difference
5 between initiative petition law and legislative law.

6 THE WITNESS: Yes, that's correct.

7 THE COURT: Okay. And you looked at the regulations
8 that had been developed by someone else within the Department
9 that you'd assisted on a little bit in making modifications to
10 the application that had previously been used?

11 THE WITNESS: That's correct.

12 THE COURT: Okay. Thanks.

13 All right. Anybody else want to start for 20-some
14 minutes before we get to Ms. --

15 MR. KEMP: I'd be happy to try to --

16 THE COURT: Thank you, Mr. Kemp. I was just trying
17 to get so I understand the process, because I'm a little lost.
18 Because you all have lived it with your clients, and I
19 haven't.

20 DIRECT EXAMINATION

21 BY MR. KEMP:

22 Q Mr. Gilbert, good to see you again. As you recall,
23 we met on the -- at the December 13th hearing in front of
24 Judge Bailus.

25 A Yes.

1 Q And at that hearing Judge Bailus issued an order
2 from the bench that all electronic data was to be preserved;
3 right?

4 A Yes.

5 Q And your phone was specifically listed in that
6 order; correct?

7 A Yes.

8 Q Okay. And if I recall correctly, the written order
9 was signed that day. Do you recall?

10 A I'm not sure if I've seen that or not.

11 Q Okay. And that wasn't a short hearing. We were
12 there from 10:00 o'clock till about 4:30 that day; right?

13 A Yes.

14 Q Okay. And when Mr. Gentile indicated to you that
15 Mr. Plaskon's phone has 14 or 16 texts to and from you and him
16 between December 13th through January 2nd and yours doesn't,
17 your explanation is that you may have deleted those?

18 A No, I don't -- I'm not aware of those texts.

19 Q You said you commonly delete things on your phone.

20 A That's a process I do, yeah.

21 Q Okay. And did you stop that process --

22 A Not delete, but I clean up my phone. I keep it
23 clear.

24 Q Okay. Fair. And did you continue that process on
25 December 14th, 16th, 16th, 17th?

1 A No. Not that -- not that I can recall.

2 Q But you may have?

3 A No, I don't -- because I got that -- I got the order
4 on the 15th and I stopped using my phone. I still have my
5 phone in possession.

6 Q You stopped using your phone, yet you and Mr.
7 Plaskon were sending texts back and forth still?

8 A I misspoke. I was still using my phone.

9 Q So you were still using your phone, but somehow or
10 another these texts got deleted.

11 A Was that on the reports?

12 Q The reports indicate that we have 14 texts back --
13 14 or 16 back and forth between you and Mr. Plaskon from his
14 phone, yet we got none from your phone.

15 Q I don't know why.

16 Q Is it possible you deleted some of those?

17 A I don't -- I don't recall deleting any of those
18 texts.

19 Q Do you recall taking any sort of actions to preclude
20 the deletion of any future texts after the preservation order
21 was entered on December 13th?

22 A Not that I can recall doing.

23 Q So you didn't do anything to comply with the
24 preservation order?

25 A I might have misunderstood your question.

1 Q You didn't do anything specific to comply with the
2 preservation order?

3 A I just -- I still have my phone. I mean, I'm not --
4 and I didn't touch it.

5 Q And you were still deleting texts back and forth to
6 -- from Mr. Plaskon, Mr. Pupo, Kara Cronkhite, everyone you
7 communicate with; right?

8 A I don't -- I'm not sure.

9 Q But that's a possibility, that you were deleting
10 those texts?

11 A I don't -- I didn't delete -- I didn't delete
12 anything after the 15th that I recall.

13 Q After the 15th.

14 A After the 14th I meant. I'm sorry.

15 Q After the 14th you didn't delete anything.

16 A Right.

17 Q But between the time the preservation order was
18 entered at 4:59 p.m. on December 13th to the December 14th you
19 may have deleted some?

20 A Possibly, yes.

21 Q So possibly after the preservation order was entered
22 you deleted texts back and forth to Mr. Plaskon and yourself,
23 Mr. Pupo and yourself, Cronkhite possibly?

24 A I would have to -- I'd have to look.

25 Q Is it your practice to clean up your phone on a

1 periodic basis?

2 A Yes.

3 Q Once a day?

4 A No. Not once a day. Whenever I -- whenever it gets
5 too full.

6 Q End of the day?

7 A Sometimes.

8 Q Okay. And lots of texts were coming in at that time
9 because there was a little bit of controversy over the
10 issuance of licenses. Is that fair to say?

11 A I don't recall that.

12 Q All right. So you can't tell us with any type of
13 certainty that we have been given all your texts between the
14 time December 13th through January 2nd; correct?

15 A I don't recall deleting texts or doing anything
16 purposely to not comply to the order.

17 Q Okay. I'm not suggesting you did it purposely. But
18 you may have done it inadvertently; correct?

19 A I don't -- I don't recall doing that.

20 Q All right. Now, why don't we focus on a couple
21 specific things that Mr. Gentile didn't focus on. And I'd
22 like to get down to the nitty-gritty of some of the grading,
23 okay. Building construction.

24 MR. KEMP: Can I have 209 and 396 please
25 [unintelligible]. Exhibit 209, DOT396. Okay. Can you

1 highlight that a little better for us, please, the bottom
2 under "Building Construction."

3 BY MR. KEMP:

4 Q Now, these were what points the --

5 THE COURT: Can you read that, sir, or do you need
6 to get to the volume?

7 THE WITNESS: I can see -- I can read it.

8 THE COURT: Okay.

9 BY MR. KEMP:

10 Q Are you sure you can see it? I can get the book for
11 you.

12 A You could move over a little bit.

13 Q Which way do you want it?

14 A Move it -- move it a little more that way and
15 smaller so it fits on the screen.

16 Q Smaller, or bigger?

17 A It's not fitting on my screen.

18 THE COURT: He has an issue with his screen's
19 resolution, as opposed to the rest of us.

20 BY MR. KEMP:

21 Q Okay. So you want it smaller?

22 A Little bit bigger.

23 Q Bigger?

24 A Please.

25 Q Okay. Bigger than that?

1 A No, that's fine.

2 Q Okay. This was the instructions given to the
3 graders as to how they were to grade the building construction
4 section; correct?

5 A Yes.

6 Q And you were ones that -- you were the one that took
7 this from the 2014 evaluations and just moved it over and this
8 was part of the 2018; right?

9 A Yes. Correct.

10 Q So as close as can be you were the author of this.

11 A The author was QuantumMark.

12 Q Okay. They were the original author, but you were
13 the one that decided to move it over to the 2018 application
14 process?

15 A That decision was Mr. Pupo. You know, he gave me
16 guidance and direction to do that.

17 Q So Mr. Pupo said to you, let's go out and get
18 whatever they did in 2014 and copy it and move it over?

19 A Yes.

20 Q Okay.

21 A Yeah. Well, it was determined -- because we knew
22 the process that we had to follow was going to be similar to
23 the 2014 process, so this was -- this was taken.

24 Q Okay. And would I be correct that the prime focus
25 of a building construction section was to make sure the

1 building could actually be built in 12 months? That's what
2 you were looking to do?

3 A Yeah. With the budget.

4 Q So you wanted to make sure the plans were good
5 enough, the budget was good enough to make sure that there was
6 actually a dispensary built in 12 months. That's the
7 objective here?

8 A Yes.

9 Q And would I also be correct that if there was an
10 existing dispensary that had been submitted as a proposed
11 location that that existing dispensary would automatically be
12 built? It's already built.

13 A Can you be more specific on the existing --

14 Q If someone had an existing dispensary and for
15 whatever reason they were tendering that as a proposed
16 location, that dispensary's already built.

17 A That's correct.

18 Q That satisfies the primary objective; right?

19 A That depends. You know, if the floor plan and the
20 layout had everything that was required in the criteria, then
21 it would be scored based on what was submitted.

22 Q Let me add a couple more facts. Let's assume it's
23 the existing dispensary that was in operation for years,
24 compliance with all the State regulations that you'd been in
25 and out the dispensary, you being the DOT. That would have to

1 per se comply with all the State regulations, wouldn't it?

2 MR. SHEVORSKI: Object to form.

3 THE COURT: Overruled.

4 THE WITNESS: It's hard to say. It should.

5 BY MR. KEMP:

6 Q It's definitely built. It should be compliant with
7 the State regulations; right?

8 A It should be, unless something came out of
9 compliance between the time that they opened and they were --

10 Q And do you know of any dispensaries here in the
11 state that have sinks in the middle of the retail lobby,
12 sinks, hand sinks in the middle of the retail lobby?

13 A I haven't been in that many, but the ones that I
14 have been in usually don't have a sink

15 Q Usually they have a bathroom that has a sink; right?
16 Right?

17 A Right. Unless they're producing product, also -- or
18 not producing, but --

19 Q So if an evaluator found fault in the fact that an
20 application did not put a sink in the retail lobby, you would
21 think that would be odd, wouldn't you?

22 A In a retail lobby?

23 Q Right.

24 A Yes. I mean, that's not where it belongs.

25 Q That would have been a mistake?

1 A Potentially, yes.

2 Q And if an evaluator had taken points away from an
3 existing dispensary that had been in existence for years on
4 the grounds that it could not be built in time, that would
5 have been a mistake, too; right?

6 A I'm sorry, sir. Can you repeat that question.

7 Q If an applicant put in an existing dispensary that
8 had been open and operating for years and an evaluator had
9 evaluated that under this criteria, the building criteria, and
10 taken away points because that building -- dispensary could
11 not be built in time, that would have been wrong; right?

12 A I'd have to -- we'd have to look at the evaluators
13 and how they scored it.

14 Q We're going to look at the evaluators in two seconds
15 here. But that would be wrong; right?

16 A Okay. Because I didn't evaluate the application.

17 Q Right?

18 A I'd have to look at the application in that
19 scenario.

20 Q Okay. You're familiar with MM Development, operates
21 Planet 13?

22 A Yes.

23 Q And before that they were in Mezzine over there by
24 Sunset and 215; correct?

25 A Yeah.

1 Q You've personally been in the building, haven't you?

2 A I've been in the new one.

3 Q Okay. So you knew that MM Development had an
4 existing dispensary before they moved on November 1st;
5 correct?

6 A Correct.

7 Q Okay. And you knew -- well, let me ask you this.
8 Did you know that that was the dispensary that they identified
9 in their Clark County application?

10 A I did not.

11 Q Okay. Assuming for the sake of argument that MM
12 Development did identify their existing dispensary that had
13 been open and operating for years in their application, that
14 should have been a relatively high rating on the building
15 construction criteria, should it not?

16 A Again, I'd have to look at the application and
17 evaluate it. But if it was -- if it was that not all the
18 criteria should have scored, you know --

19 Q Should have got a 20; right?

20 A That's hard to say. I can't say that.

21 Q They put pictures of it in the application. Should
22 have got a 20; right? Right?

23 A Again, I wasn't -- I didn't evaluate the
24 application, so I can't comment on that.

25 Q Is there any way you could have given more detail

1 than pictures, not just one, not just two, but multiple
2 pictures of an existing dispensary in an application with
3 regards to building construction and building plan details?
4 Is there any way you could give them -- evaluate in more
5 detail than that?

6 A I'd have to look at the application. I don't -- I
7 didn't evaluate the application, so I can't comment on what
8 was in the content of the applications.

9 Q Okay.

10 A That question would probably more appropriate to the
11 evaluators.

12 Q Okay. You've already said it probably have been a
13 20 out of 20 or close; right?

14 A It depends on the content.

15 MR. KOCH: Objection. Misstates --

16 THE COURT: Overruled. You can continue your
17 answer.

18 THE WITNESS: It depends on the content of the
19 application or what was provided.

20 BY MR. KEMP:

21 Q So if it's an actual dispensary and the pictures
22 aren't pretty enough or big enough, you think that somehow or
23 another it could be ranked under a 20? Somehow or another you
24 can conclude that the building couldn't be completed in 12
25 months?

1 A Again, that would be a question for the evaluators.

2 Q Well, you're the one that trained the evaluators,
3 you're the one that wrote the criteria.

4 A Right.

5 Q Well, how could you possibly conclude that an
6 existing building could not be built in 12 months? How could
7 you possibly conclude that?

8 MS. SHELL: Objection. Argumentative.

9 THE COURT: Overruled. You can answer.

10 THE WITNESS: I trained the evaluators on the
11 process. I trained them on the history of marijuana. I
12 trained them on the score card or the evaluation sheet. We
13 relied on their expertise and experience to make those
14 determinations.

15 THE COURT: You relied on the Manpower folks'
16 expertise and experience?

17 THE WITNESS: Yes.

18 THE COURT: Just making sure I understood what you
19 said.

20 BY MR. KEMP:

21 Q Well, consistent with your training if someone had
22 rated an application that had an existing building with an 8
23 out 20 because the schedule of estimated resources for
24 building appear unrealistic and unachievable, would you agree
25 with me that would be a mistake?

1 A Again, that would be a question for the evaluators.

2 Q You trained the evaluators. You wrote the
3 guidelines. Given your knowledge of the guidelines and the
4 training you provided, would that be a mistake?

5 A I would have to look at -- I'd have to look at the
6 application. The evaluators would have to look at the
7 application.

8 Q So what you're telling me is that even an existing
9 building, a dispensary that had been open for years somehow
10 someone could determine that it couldn't be built in 12 months
11 depending on what's put in the application? That's what
12 you're telling me?

13 A Well, the evaluators would look at what they were
14 proposing, their timeline, their budget, and make that
15 determination.

16 Q What do you need a timeline for construction for
17 with an existing building, an existing dispensary that's been
18 open for years? What do you need a timeline for construction
19 for?

20 A It was the -- so it was the new dispensary or the
21 new retail store going into that existing building? Is that --

22 Q Exactly. Exactly. That's my point.

23 A I don't --

24 Q The Department had already approved the change from
25 that location to the new Planet 13 location effective November

1 1st; right?

2 A They were --

3 Q Right? And so --

4 MR. PARKER: I'm sorry. Can we get the answer?
5 He's shaking his head affirmatively.

6 THE COURT: We can, yes.

7 Sir.

8 THE WITNESS: I'm trying to understand the
9 questions. I'm sorry.

10 THE COURT: He says they got approval to move,
11 because, you know, you have to get approval from the
12 Department before you move, so they got approval of the move.
13 And they're moving from one building to the new building
14 approved, and now they're filing an application to put a new
15 dispensary in the building they're moving from.

16 Right? Is that what you said? Okay.

17 BY MR. KEMP:

18 Q And that's what you understood was Planet 13's
19 situation to be; right?

20 A Got you.

21 Q You understood that?

22 A I understood.

23 Q Okay. Now, how could you ever reduce the score
24 someone on the grounds that they couldn't build a building in
25 time for an existing building that had been operating for

1 years?

2 A I didn't -- I didn't evaluate the application. That
3 question would be more appropriate to the evaluators. Because
4 they would be able to determine -- I mean, because I don't
5 know what -- I don't know what -- I don't know what that floor
6 plan included.

7 Q It included the floor plan of the existing
8 dispensary and pictures of it while it was being operated.
9 What more do you need to prove that a building could be
10 completed in 12 months? What more do you need?

11 MS. SHELL: Objection. Asked and answered.

12 THE COURT: Overruled.

13 MS. SHELL: Or not answered --

14 THE COURT: Well, yes. Maybe.

15 THE WITNESS: To open within 12 months, probably not
16 a whole lot more.

17 BY MR. KEMP:

18 Q So they should have at least got a 20; would you
19 agree?

20 A Again, I need to -- I would need to ask the
21 evaluators that. I don't know what they -- I can't see what
22 they were looking at.

23 Q If someone only got a 13.33 in this category under
24 the circumstances that I've given you, wouldn't you agree with
25 me that there's probably a screw-up here?

1 A It would to be asked to the evaluators. I don't --
2 I didn't evaluate the applications.

3 MR. KEMP: Okay. Why don't we go -- can you -- I'm
4 not going to move to admit all of them, Your Honor. These are
5 a portion of the things -- of the 20,000 pages that were --

6 MR. RULIS: I think we're going to need a minute,
7 Your Honor. I don't think they've seen them yet.

8 THE COURT: Okay. So why don't we take a short
9 recess. How long do we believe the witness that's coming at
10 3:00 is going to take?

11 MR. KEMP: Twenty-five minutes, Your Honor.

12 THE COURT: Sir, I want you to feel like you can
13 take a half-hour break to walk around, talk to anybody you
14 want to, and if you want to talk to your lawyers, you're
15 welcome to.

16 THE WITNESS: All right. Thank you.

17 THE COURT: So all of you lawyers who are listening
18 to me, since we're going to be breaking today for a week or
19 so, I would love to have pocket briefs from anybody who cares
20 about the meaning of the term "all regulations necessary or
21 convenient to carry out the provisions related to an
22 initiative petition, as opposed to legislation." I looked,
23 couldn't find anything, so you guys are to look.

24 MR. PARKER: Repeat that one more time, Your Honor.

25 THE COURT: I am reading. "All regulations

1 necessary or convenient to carry out the provisions," and I am
2 looking at it in relationship to an initiative petition, as
3 opposed to legislation, given the limits of Article 19 of the
4 Constitution.

5 Okay. How long do you need for your break?

6 MR. KEMP: Five minutes, Your Honor.

7 THE COURT: Five minutes.

8 (Court recessed at 2:52 p.m., until 3:03 p.m.)

9 THE COURT: Ma'am, if you'd come forward up here.
10 And we're going to let your attorney sit in the jury box, but
11 you'll come sit up here in this box, please.

12 STACEY DOUGAN, PLAINTIFFS' WITNESS, SWORN

13 THE CLERK: Thank you. Please be seated. Please
14 state and spell your name for the record.

15 THE WITNESS: Stacey Dougan, S-T-A-C-E-Y, Dougan,
16 D-O-U-G-A-N.

17 THE COURT: Miss, there is water in the pitchers,
18 there are M&Ms in the dispensers, and you may have to look at
19 some of the documents in the binders. If so, counsel or my
20 staff will assist you.

21 Okay. Mr. Kemp, you may continue.

22 DIRECT EXAMINATION

23 BY MR. KEMP:

24 Q Good afternoon, Ms. Dougan.

25 MS. SHELL: I'm sorry, Your Honor. And I apologize

1 to Mr. Kemp. Before we get started --

2 MR. KEMP: Your Honor, I don't want her to make any
3 statements of fact in front of the witness, because this is a
4 key point of the examination.

5 MS. SHELL: Okay.

6 MR. KEMP: And I talked to her about it. And if she
7 wants to excuse the witness so we can talk about this --

8 MS. SHELL: Could we --

9 THE COURT: Okay. So, ma'am, I'm going to ask you
10 to go back outside for a minute.

11 THE WITNESS: Can I leave my --

12 THE COURT: Yes. You can leave your stuff if you
13 want.

14 (Witness exited courtroom)

15 THE COURT: All right. Ms. Shell, you had an issue
16 you wanted to raise.

17 MS. SHELL: Yes. And I believe that the -- Mr.
18 Kemp's table has already pulled up the testimony that I wanted
19 to correct -- statements that I wanted to correct.

20 So when we were in court on Wednesday morning on a
21 hearing on the motion for protective order I stated that MPX
22 did not own GreenMart at the time that they applied for the
23 license. Your Honor, that was incorrect. When I went back
24 and -- I'm relatively new to this case, and when I went back
25 -- I thought I knew all the facts. I went back and was

1 preparing last night, and looking through the materials that I
2 had been given by Mr. Kemp in preparation for today's
3 examination of Ms. Dougan, and I realized I had made an error.
4 And I did not want to let that sit on the record.

5 THE COURT: Okay.

6 MR. KEMP: Your Honor, this was a key point in the
7 examination of Mr. Plaskon. And if you recall, I put up the
8 charts of the GreenMart people.

9 THE COURT: I got it. I'm not worried about it.
10 It's an issue I will weigh as part of my deliberative process
11 at some point when I get closer to having more of the
12 evidence.

13 If we could get the witness back in, because we're
14 trying to get the rest of our witnesses done today. Because
15 Mr. Gilbert would like to finish, I think. Although it's
16 unlikely.

17 MR. SHEVORSKI: You might have a point, Your Honor.

18 THE COURT: You want to the over-under on how many
19 more hours?

20 Ms. Dougan, if you'd come on back up. And since
21 we've already sworn you, I'd like to remind you you're still
22 under oath.

23 Mr. Kemp, you're up.

24 BY MR. KEMP:

25 Q Ms. Dougan, can you see the screen there -- or you

1 have a screen in front of you.

2 A Yes.

3 MR. KEMP: Can I pop up the first statement of fact,
4 Shane, please.

5 THE COURT: There's also a little one here.

6 THE WITNESS: There's a glare. Oh. This is much
7 better. Yeah. Here we go.

8 BY MR. KEMP:

9 Q Take your time, Ms. Dougan. And would you read that
10 statement of fact.

11 A So let me say this, and I'm going to say this in
12 full disclosure.

13 Q No, no, no, no.

14 A I don't know what this means.

15 THE COURT: Ma'am, ma'am, hold on a second. He's
16 got to ask a question.

17 THE WITNESS: Oh. Okay. Go ahead.

18 THE COURT: He's just asking you to read it first.

19 THE WITNESS: I read it. I don't understand it, but
20 I read it.

21 BY MR. KEMP:

22 Q Do you know whether that's true or not?

23 A I'm not sure, because I don't know what it means. I
24 need somebody in layman's terms to tell me. I'm not an
25 attorney myself.

1 Q Okay. Let me see if I can break it down for you.

2 THE COURT: Wait. Hold on a second. Since it has
3 not been read into the record, I need copies of the slide to
4 mark as Demonstrative 2.

5 MR. KEMP: Okay.

6 THE COURT: Mr. Rulis, you're on it.

7 MR. RULIS: I'm on it, Your Honor.

8 THE COURT: Okay. Sorry. Now you can break it
9 down.

10 BY MR. KEMP:

11 Q Do you know whether or not on October 11th, 2017, a
12 corporation known as MPX owned another corporation named CGX
13 Life Sciences, Inc., and that that corporation had entered
14 into an agreement to buy a third entity known as GreenMart
15 Nevada NLV? Do you know one way or the other?

16 A No.

17 Q Okay. Let me have my next statement back.

18 Do you know whether or not GreenMart of Nevada NLV
19 at the time they applied for a marijuana license, which would
20 have been September 2017, do you know that they were not owned
21 by MPX or CGX Life Sciences, Inc.? Do you know that one way
22 or the other?

23 A No.

24 Q Okay. So would it be fair to say that you do not
25 know who owns GreenMart NLV ?

1 A I know Beth Stavola.

2 Q Okay. You do not know who the shareholders are, or
3 the owners?

4 A Correct.

5 Q Okay. And you've never met the shareholders or
6 owners --

7 A No.

8 Q -- of GreenMart NLV ?

9 A Correct. No, I have not.

10 Q Okay. And have you met any of the owners,
11 shareholders, or directors of MPX?

12 A No.

13 Q Or MPX International?

14 A No.

15 Q And do you even know that MPX International's a big
16 Canadian publicly owned company? Do you know that?

17 A I know that now that you've said that.

18 Q Today you know that?

19 A Correct.

20 Q But prior to today you didn't know --

21 A That's correct.

22 Q -- that the ultimate owner of GreenMart may have
23 been a big Canadian public company?

24 A Correct.

25 Q Okay. All right. And with regards to CGX Life

1 Sciences, Inc., you don't know any of the owners, officers, or
2 directors of that entity?

3 A No.

4 Q Okay. Now, you said you did know somebody.

5 A Yes.

6 Q Who's that?

7 A Beth Stavola.

8 Q Okay. Beth Stavola. Okay. And she would be a
9 blonde woman, I take it?

10 A That's correct.

11 Q Okay. Did there come a time that you were asked to
12 have some involvement with GreenMart NLV ?

13 A Yes.

14 Q And when was that?

15 A I don't remember the exact date, honestly.

16 Q 2017 sometime?

17 A Around. Yes.

18 Q Or 2018? I can't remember.

19 A Around that time. I really don't remember.

20 Q Okay. Do you remember going down and getting your
21 fingerprints taken?

22 A Yes.

23 Q Was it shortly prior to that time that you were
24 asked to be involved with GreenMart NLV ?

25 A Yes.

1 Q Okay. And did you know prior to going to get your
2 fingerprints taken what GreenMart -- did you even know there
3 was a GreenMart NLV ?

4 A I did not know.

5 Q Okay. But you said you were approached by a woman
6 named Stavola?

7 A No. I was not approached by her.

8 Q You approached her?

9 A No. I was introduced to her by a friend of mine
10 named Krista Whitley.

11 Q Okay. And was this approximately near the time you
12 were fingerprinted?

13 A That I was introduced to Beth, or to Krista?

14 Q That you were introduced to Beth?

15 A Yes.

16 Q Okay. So if you were fingerprinted sometime in say
17 July or August of 2017, it would have been somewhat near that
18 time?

19 A Correct.

20 Q Prior to that time had you had any involvement
21 whatsoever in the marijuana business here in Nevada?

22 A Yes.

23 Q Okay. What was the involvement you had?

24 A I had already started a Four 'N 20. it's a
25 cannabis-infused fine dining dinner experience -- well, I had

1 already started putting it together and developing it. I had
2 also been experimenting with preparing food with cannabis. I
3 own a plant-based restaurant in downtown Las Vegas, and so
4 that's my involvement as far as that's concerned.

5 Q Okay. Had you been involved in the ownership or
6 operation of a marijuana dispensary prior?

7 A No.

8 Q Okay. Have you ever been involved in the ownership
9 or operation of a marijuana dispensary?

10 A No. Not owner or operations.

11 Q Okay. You've seen these Lee's Liquor commercials
12 that are on TV every now and then?

13 A Lee's Liquor?

14 Q Right.

15 A I've seen the billboards, but I don't have TV.
16 So --

17 Q Okay. And on the billboard you see an older man,
18 Mr. Lee?

19 A Correct.

20 Q Ever met that man?

21 A No.

22 Q Okay. And have you ever met Shelby Brown?

23 A No.

24 Q Have you ever met anyone named Caroline Clark?

25 A Not that I'm aware of.

1 Q Or --

2 A But I will say this. I meet a lot of people. So
3 you saying these names is really no consequence, because I
4 meet a lot of people every day in all respects to a lot of
5 things. So --

6 Q Okay. Does the name Shelley Hayes sound familiar?

7 A No.

8 Q How about Laura Martin?

9 A No.

10 Q Scott Rutledge?

11 A No.

12 Q Okay. And if I told you that they were other people
13 that had been indicated to be on the board of GreenMart ,
14 would today be the first you know that?

15 A From the majority of the names, yes.

16 Q Okay. So can I assume from that that you've never
17 had a board meeting?

18 A We've never had a board meeting.

19 Q Okay. And was it your understanding that you were
20 being nominated or proposed or whatever word you're
21 comfortable with to be on the board of GreenMart NLV?

22 A Yes.

23 Q Yes?

24 A Yes.

25 Q Okay. What was your compensation for doing that?

1 A Well, there were some things that were said that I
2 would be compensated for, but there have been no compensation
3 yet, simply because, from what I understand, there's some
4 other licensing or some things that need to happen before
5 compensation can happen. So me choosing to be on the board
6 was not strictly for compensation. There were as some other
7 things that I wanted to do with my career, and that's one of
8 the reasons why I chose to do that.

9 Q Okay. And was it your understanding that any of
10 these promises would include money?

11 A No.

12 Q Okay. So there was no monetary compensation?

13 A Not that we discussed that I remember. That I
14 remember.

15 Q All right. Do you know one way or the other whether
16 or not GreenMart NLV put in an application for a marijuana
17 license, or more than one application sometime in September
18 2018?

19 A I do know that they did apply for an application. I
20 don't know how many, and I don't know the date.

21 Q Do you know whether they succeeded or not?

22 A Yes.

23 Q And how'd you find that out?

24 A I found that out about a week ago.

25 Q A week ago when someone contacted you?

1 A Yes.

2 Q Who would that be?

3 A Well, when I was subpoenaed for this then I found
4 out then.

5 Q Okay. So from the time you gave your fingerprints
6 to the time you were subpoenaed did you have any involvement
7 with GreenMart NLV ?

8 A Not in particular.

9 Q How about specifically?

10 A No.

11 Q Okay. Do you have any -- did Ms. Stavros [sic]
12 indicate a reason why she wanted you to be involved with
13 GreenMart?

14 A Absolutely.

15 Q What was that?

16 A She told me because I am plant-based chef they were
17 looking for someone who could add that component to the board.
18 And because I had already been practicing with recipes and
19 things like that, they thought I would be a good addition. In
20 addition to that, my family's been in this community for over
21 30 years, and I've built quite the name for myself in the
22 community. So it just looks good for them to have me on the
23 board.

24 Q And do you understand that GreenMart NLV first got
25 a marijuana license sometime in 2014?

1 A I wasn't aware of that. There were a lot things,
2 honestly, that I wasn't aware of. But it was of no
3 consequence to me, because I thought this would be a great
4 opportunity not only for me, but for -- and we all thought it
5 mutually, as well.

6 Q Okay. Did GreenMart approach you at any time
7 between 2014 and the September 2018 licensing period to be
8 involved with their company?

9 A Up until the time when I was fingerprinted, no. But
10 during that time, yes.

11 Q Okay. And the other person that you mentioned, what
12 was that name again?

13 A Krista Whitley.

14 Q And are they involved with GreenMart NLV, too?

15 A Yes.

16 Q And what is their involvement, if you know?

17 A I'm not exactly sure. But she's the one that
18 introduced me. I believe she and Beth have been friends for a
19 while, though.

20 Q Okay. But you think she has some sort of formal
21 position with the company?

22 A I don't know. I can't speak on that.

23 Q Okay. All right. Just to sum it up -- oh. I said
24 the fingerprinting was in 2017. I meant July or August 2018.
25 Is that correct?

1 A That's -- yeah. It was -- yeah. That's probably --
2 yeah. That sounds about right.

3 Q Okay. So just summing up, you've never been to a
4 board meeting of GreenMart NLV ?

5 A No.

6 Q You've never met any of these other people I told
7 you that were potentially listed as board members?

8 A No.

9 Q Okay. And the only person that -- did you meet Ms.
10 Stavros [sic], or did you just talk on the phone?

11 A Ms. who?

12 Q Stavros, Elizabeth Stavros.

13 MR. GENTILE: Stavola.

14 THE WITNESS: Stavola? Beth Stavola.

15 BY MR. KEMP:

16 Q Stavola. I'm sorry.

17 A Of course, yeah. I've met her.

18 Q Okay. She came down to your restaurant, or you went
19 somewhere?

20 A I've come -- she's come to my restaurant before, but
21 we -- I've come to her office and met with her and her
22 attorney. It was, you know -- yeah, we did the whole thing.

23 Q Her office here in Nevada, or her office on the East
24 Coast?

25 A Yes. It's in Nevada. No. Nevada. Here on

1 Bridger. It's right down the street from my restaurant.

2 Q Okay. And do you know whether or not she is located
3 here in Nevada on a full-time basis or whether she's on the
4 East Coast?

5 A I don't think she's here in Nevada on a full-time
6 basis. If she is, I don't know. But, yeah.

7 Q Okay. Have you heard the term "advisory board"?

8 A Yes.

9 Q Okay. To you what does the term "advisory board"
10 mean?

11 A Someone who advises the president or the CEO of a
12 company to -- for different things.

13 Q Okay. Okay. Was it your understanding that you
14 were to be part of the advisory board of GreenMart NLV ?

15 A I don't know if advisory board was the terminology.
16 I just said I would sit on the board. But I know that because
17 this industry is so new, I just kind of kept it open, and
18 whatever I was comfortable with I would -- I would try to
19 contribute to the board. So I don't know if it means advisory
20 or some other terminology.

21 Q Okay. But as of today's date you've given no advice
22 to GreenMart; right?

23 A Correct.

24 Q You've attended no meetings on their behalf; right?

25 A Correct.

1 Q You've never -- we've already gone through you've
2 never met these other people I've indicated that may also have
3 been board members?

4 A Correct.

5 Q All right. Thank you.

6 THE COURT: Ma'am, what's the name of your
7 restaurant?

8 THE WITNESS: Simply Pure.

9 THE COURT: Okay. Thank you.

10 Did any of the other plaintiffs want to ask any
11 questions?

12 Mr. Parker.

13 MR. PARKER: I'll be quick, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. PARKER:

16 Q Good afternoon, Ms. Dougan.

17 Did anyone ever ask you in 2014 to be a member of
18 their board?

19 A No.

20 Q Did anyone ever --

21 A I don't remember. Not that I remember.

22 Q Not that you recall. Do you recall --

23 A Oh. Wait, wait, wait. My friend Krista who owns
24 the CBD company, who introduced me to Beth. She asked me to
25 be on her board, but it wasn't in 2014.

1 Q Right. Did anyone explain to you that diversity
2 would be a factor for the application process in 2018?

3 A No.

4 Q Beth Stavola didn't indicate that to you?

5 A No. But Beth -- the relationship that I have with
6 Krista and I, and I'll just explain this and then you have to
7 go on with your -- because I trust Krista, I trust Beth. So
8 -- and I say this because -- well, anyway. Go ahead.

9 Q No worries.

10 A Go ahead.

11 Q No worries. The --

12 A I'll just wait.

13 Q Did Krista ever tell you that there were diversity
14 points that would be given for the 2018 application process?

15 A She did not tell me that there was diversity points.
16 But we're big on women-owned business, so that was -- that's
17 always been me and Krista's thing, is making sure that women
18 are -- so I don't know what diversity means. I don't know if
19 the means women, gender, or if you're talking about race, but
20 in this case there were some conversations, like, hey, we
21 really want to make sure that we're taking care of women, and
22 that kind of thing. So, yeah.

23 Q So going into this no one ever informed you that you
24 being a part of this board that didn't have any meetings,
25 didn't even have any conversations with these other board

1 members, that being on the board would give them diversity
2 points or anything like that? It never came up?

3 A That never came up. We never had any meetings about
4 that.

5 Q Thank you. Thank you.

6 THE COURT: Mr. Shevorski.

7 MR. SHEVORSKI: No, Your Honor.

8 THE COURT: Ms. Shell.

9 MS. SHELL: Just a few questions, Your Honor. And I
10 think I am going to make my way up to the podium for once,
11 instead of being in the ghetto. I'm at the back row.

12 CROSS-EXAMINATION

13 BY MS. SHELL:

14 Q Good afternoon, Ms. Dougan. How are you?

15 A Good.

16 Q So let me ask you a couple questions. First, you
17 were asked if you were ever approached about being a board
18 member in 2014.

19 A Correct.

20 Q Did you live here in 2014?

21 A Yes.

22 Q Okay. Just checking. Now, you had mentioned when
23 Mr. Kemp was talking to you that you had been practicing with
24 recipes that have, I take it, some marijuana component to
25 them?

1 A Absolutely.

2 Q Okay. And how long have you been doing that for?

3 A Long time. Longer than what I care to say in court.

4 Q It's only part of the record. Is it more than five
5 years?

6 A Yes.

7 Q It's more than five years.

8 A Yes.

9 Q And are you familiar with an event called Women
10 Grow?

11 A Of course.

12 Q What is Women Grow?

13 A So Women Grow is a -- actually, Krista I believe is
14 the one who was the president of Women Grow. There's a
15 chapter here, who was again, Krista Whitley, my friend. And
16 so Women Grow is an organization, it's a national
17 organization, and they have a chapter here, and so I would --
18 and basically it's introducing women into the cannabis
19 industry, because there's such a disparity there. And so
20 that's how I met Krista, and that's how we actually expanded
21 into the cannabis industry here together.

22 Q So you think the representation of women in the
23 industry is important?

24 A Oh, my gosh. Yes, 1000 percent.

25 Q 100 percent?

1 A Yes.

2 Q Okay. And you said there's a disparity. Can you
3 tell me what you mean about that disparity?

4 A Well, it's been said, and again, this has not been
5 from my research, but it's been said that the cannabis
6 industry has been a male -- more male-dominated industry, as
7 far as ownership, as far as, you know, control over whether it
8 be the front end or the back end. And so that's what I mean
9 by disparity. And, of course, being a woman of color, and
10 people of color not necessarily having the avenues to go in
11 because of, you know, felonies, or criminal records, or
12 whatever the case may be. So, you know, as somebody that's --
13 that I actually fit the mold and I'm actually interested in
14 cannabis, you know, it just made it easier for me to be a part
15 of the group, the Women Grow. And I think we've been doing
16 that in, what, 2015 -- 2016, '17, something around there.
17 Yeah, it was great.

18 Q Okay. And you -- are you aware of whether GreenMart
19 has opened a dispensary?

20 A No. I don't think they've opened a dispensary. I'm
21 pretty sure they haven't. The reason why I say that is
22 because there are other things that -- that's why with the
23 questions about the board and meeting and stuff, it's just
24 like, you don't really have to do that until all of the -- I
25 prefer, because I'm a business owner and I'm a single mom, I

1 prefer to know -- to have information on an as-needed basis.
2 So the fact that I don't know all these people on the board
3 and we haven't had meetings is no consequence to me. I want
4 information need-know basis. So, with that being said, it
5 doesn't mean that there was no board or all these people or
6 whatever. It just means that it just wasn't the right time
7 yet, because they don't have a dispensary yet.

8 MS. SHELL: No further questions, Your Honor.

9 THE COURT: Anything further?

10 Mr. Kemp.

11 REDIRECT EXAMINATION

12 BY MR. KEMP:

13 Q They don't have a dispensary yet, but is it your
14 understanding that they're required by the State -- tell me if
15 you know this one way or the other -- they're required by the
16 State to open all of their dispensaries that they won for by
17 December 6th of this year, seven months?

18 A That's fine.

19 Q And you as a board member, have you done anything to
20 lease locations for those dispensaries? No?

21 A It doesn't matter to me. I'm on the board, and they
22 need me and I need them. So --

23 Q Okay. And you haven't done anything to build those
24 locations?

25 A No.

1 Q Do you know any -- has anyone brought any activity
2 to your --

3 A Well, and then, again -- and, again, when I was
4 approached I wasn't approached to know all of these details.
5 I was approached because of my expertise in the industry. So
6 that -- it wasn't really something I needed to know. Like I
7 said, I have my own business. I have my own. So when I'm
8 diversifying my portfolio when it comes to my business that
9 was just something that I chose to do. It wasn't like I
10 needed to know all of these details. But thank you for
11 supplying them.

12 Q Okay. But, as far as you know, there's been no
13 board review of leases, building budgets, anything of the
14 sort; right?

15 A No.

16 Q And with regards to the annual election of officers
17 or directors, have you even done that for --

18 A No.

19 Q Okay. Thank you.

20 THE COURT: Anyone else?

21 Thank you. Have a nice day, ma'am.

22 THE WITNESS: Thank you.

23 THE COURT: Thanks so much for coming. Have a very
24 nice day.

25 THE WITNESS: Thank you. Of course. Thank you.

1 THE COURT: Good luck with your restaurant.

2 THE WITNESS: Thank you.

3 THE COURT: I wanted to make sure they knew what the
4 name was, because they're downtown a lot.

5 THE WITNESS: It's on my shirt, Simply Pure. Inside
6 Downtown Container Park. Downtown Container Park.

7 MS. SHELL: Walking distance, Your Honor.

8 THE COURT: I was making sure we got her little ad
9 in here.

10 MR. BALDUCCI: Thank you, Your Honor.

11 THE COURT: 'Bye, Mr. Balducci. See you next week.

12 MR. BALDUCCI: Thank you.

13 THE COURT: All right. Can we go back to Mr.
14 Gilbert?

15 MR. KEMP: Yes, Your Honor.

16 THE COURT: Mr. Gilbert, you ready? Did you get
17 enough time off the stand to recollect yourself and face the
18 rest of the afternoon.

19 MR. GILBERT: Yes.

20 THE COURT: Okay.

21 Mr. Kemp, you're up.

22 MR. KEMP: And, Your Honor, where we left off I was
23 just moving to admit --

24 THE COURT: Did you mark them with the clerk?

25 MR. RULIS: Yes, Your Honor.

1 MR. KEMP: Yes, Your Honor.

2 THE COURT: Thank you, Mr. Rulis.

3 MR. KEMP: 121, 122, and 123, which are the
4 handwritten evaluation notes for at least one of MM
5 Development's applications, and I think the GreenMart
6 applications.

7 THE COURT: Okay. Any objection to the admission of
8 MM and GreenMart's notes from the evaluators which have been
9 marked as Exhibits 121 and 123?

10 MR. RULIS: Your Honor, can I correct one thing. He
11 said GreenMart. It's LivFree.

12 MR. KEMP: Oh. I'm sorry, Your Honor. LivFree.

13 THE COURT: I'm sorry. I was relying on what he
14 said. So what are they exactly, Mr. Rulis?

15 MR. RULIS: 121 are the -- they are handwritten
16 notes on an MM Development application, 122 would be
17 handwritten notes on financial plans for LivFree, and 123
18 would be organizational structure handwritten notes for MM
19 Development.

20 THE COURT: So they're your clients basically.

21 MR. RULIS: Correct.

22 THE COURT: Okay. Any objection to 121 through 123
23 with that understanding?

24 Okay. They'll be admitted.

25 (Plaintiffs' Exhibits 121 through 123 admitted)

1 MR. KEMP: Can we have the first page of 121,
2 please, Shane.

3 STEVE GILBERT, PLAINTIFFS' WITNESS, PREVIOUSLY SWORN
4 DIRECT EXAMINATION (Continued)

5 BY MR. KEMP:

6 Q Now, on the top there do you see where it says "284
7 only per KP"?

8 A Yes.

9 Q KP would be Mr. Plaskon?

10 A Yes. Yeah.

11 Q And so for some reason Mr. Plaskon is telling the
12 evaluators just do 284, don't do 284 through 287; right?

13 A I don't know. It looks that way, yes.

14 Q Okay. This was supposed to be a randomized process,
15 was it not?

16 A Yes.

17 Q And if Mr. Plaskon is pulling out applications and
18 having them scored separately for some reason of his own, that
19 is not a randomized process, is it?

20 A I'd have to know more of the situation, but it
21 wouldn't be -- it could still be random. I don't know why -
22 Mr. Plaskon would probably be the best person to answer why
23 they pulled it out.

24 Q Okay. And with regards to 121, Exhibit 121, let's
25 just assume that 284 is the application that MM Development

1 put in for Clark County which referred to the existing
2 building that I've discussed with you before.

3 A Okay.

4 MR. KEMP: Okay. Can you flip over to page 3,
5 Shane, where -- and highlight the part where it says "Not
6 located on this part of plan."

7 BY MR. KEMP:

8 Q And to the left, if I'm not mistaken, that would be
9 your evaluation elements that you provided to the graders;
10 correct, sir?

11 A Yes.

12 Q And the portion that appears to be in the brackets
13 says, quote, "The planning of scheduled activities along with
14 the estimated resources and duration appear unrealistic and
15 unachievable." Do you see that?

16 A I do.

17 Q And do you see what the comment is?

18 A Yes, I do.

19 Q And that says, "Not located in this part of the
20 plan"; correct?

21 A Yes, it does.

22 Q And the rating here on zero to 10 points, they only
23 gave them an 8; right?

24 A Yes.

25 Q So basically this particular evaluator for an

1 existing building downgraded the points it awarded because it
2 was unrealistic and unachievable for that building to be built
3 in 12 months; correct?

4 A The evaluator -- that would probably be a more
5 appropriate question for the evaluator.

6 Q If the evaluator had done that, that would be a
7 mistake, wouldn't it?

8 A Again, I would have to look at the application and
9 compare what was included in the application.

10 Q Why don't we have you apply in your mind the
11 evaluation criteria that you wrote to an existing building and
12 tell me if it would be appropriate to downgrade someone for
13 having an unrealistic and unachievable plan to build that
14 building in 12 months when you had an existing building.

15 A I didn't write this criteria per se.

16 Q You just copied it or cribbed it from the 2014
17 application?

18 A And then updated it with NAC 453D.

19 Q Mr. Gilbert, this is obviously a mistake; right?

20 A Again, that would be a question for the evaluators
21 who would have intimate knowledge of the application and
22 evaluation they did.

23 Q Let me soften it a little bit. Does it appear to
24 you more likely than not that this was a mistake?

25 A Again, I couldn't say without looking at the

1 application.

2 Q And if the application had a building that had
3 already been built operating for years, this would have been a
4 mistake; correct?

5 A Again -- because based on the note, "Not located in
6 this part of plan," I don't know what that means.

7 Q Okay. Why did it need to be provided in any sort
8 of plan if the building's already built? Why? Why? If the
9 purpose is to ensure that a building will be built in
10 12 months, why does it have to be provided in any part of the
11 plan?

12 A Well, I would -- again, the evaluators would have
13 more knowledge of this on why they scored and their note. I
14 didn't see who scored it. But this individual can probably
15 recollect why.

16 Q Isn't the most likely explanation that they didn't
17 understand for whatever reason that this was an existing
18 building that had been operated as a dispensary for years?
19 Isn't that the most obvious explanation?

20 A I can't make that determination from these notes.

21 Q Okay. Well, other than that explanation can you
22 give me any other possible explanation for this mistake?

23 A Not without looking at the application or talking to
24 the evaluator.

25 MR. KEMP: Okay. Can we flip over to the page

1 that's DOT1908, please.

2 BY MR. KEMP:

3 Q And that section says, quote, "Have professional
4 signage that meets the advertising guidelines established by
5 the Department," unquote; correct?

6 A Yes.

7 Q And would I be correct that an existing dispensary,
8 any advertising that it's using, the sign out front has
9 already been approved by the Department?

10 A Yeah.

11 Q So, assuming this application was for an existing
12 dispensary, it already had advertising approved by the
13 Department; correct?

14 A It should have.

15 Q Okay. And this particular evaluator downgraded the
16 application for not providing professional signage or
17 advertising guidelines; right? That's what it says right
18 here, "not provided." Right?

19 A Yeah. And again, the evaluator would know why they
20 scored it that way. I can't speak for them. My only -- my
21 only thought would be that they didn't provide documentation.

22 Q Oh. Okay. And then it says, quote, "No hand sink."
23 Did I read that right?

24 A Yes.

25 Q Okay. So an existing dispensary that the Department

1 regulated for years got lower points because there was no hand
2 sink, supposedly; right? Is that what you're telling me?

3 A That's what it -- it says "No hand sink located in
4 retail area" maybe.

5 Q Okay. Do you have to have a hand sink in the retail
6 area?

7 A So it depends. And Kara Cronkhite would probably be
8 the better person to speak to this.

9 Q Well, you're the one who took these plans and gave
10 them to -- or these evaluation points.

11 A Right.

12 Q Tell me what you're understanding is as to whether
13 or not you need a hand sink in the retail area.

14 A So my understanding, and, again, Kara Cronkhite,
15 she's a health inspector, would have a better explanation.
16 But from my understanding if they're -- if they're doing any
17 pre-roll preparation, any packaging of product, any handling
18 of product to make it available for retail, a hand sink is
19 required.

20 Q Okay. Now, with regards to the next comment under
21 that it says, "No lighting plans." See that?

22 A Yes.

23 Q And the requirement is to demonstrate that adequate
24 lighting is provided in all areas of the establishment; right?

25 A Yes.

1 Q Can I assume that if MM Development had not been
2 providing adequate lighting for year after year after year in
3 an existing dispensary the Department would have cited them
4 for that?

5 A Quite possibly, yes.

6 Q Okay. All right. Okay. If you take a look on page
7 21914, we have an another evaluator for the same application.
8 Although, for the record, the first evaluator's name was what,
9 sir? If you know.

10 A I didn't catch it --

11 Q It's on the top. On the top left there.

12 A This one here?

13 Q Yeah. It says Sonia, I think or Soria. Do you know
14 who that is?

15 A I don't. I don't know whose initial that is.

16 Q Okay. Now, this person also took away points for
17 not having a, quote, "effective and efficient building
18 planning documented in response." Do you see that?

19 A Yes.

20 Q So, again, the second evaluator, we have an existing
21 building, and they're taking away points because we don't have
22 a plan to building the building; right? Right?

23 A Again, that would be a question for the evaluator
24 who did this exact evaluation.

25 Q Well, they did take away points, because we see

1 three pages later that they only 7 there; right? Right?

2 A Yeah, they did get a 7.

3 Q So they lost points because someone thought they
4 should have a building plan for an existing building; right?

5 A That's what the notes say, yes.

6 Q Okay. All right. And let's take a look at page
7 1920, the next evaluator, their ranking. See that, that 7?
8 Right?

9 A Yes.

10 Q Okay. So they also took away points from an
11 existing building; right?

12 A Yes, that's correct.

13 Q Okay. And if I told you that MM Development got
14 15.33 ratings in this 20-point [unintelligible], is that
15 consistent with your understanding?

16 A I don't -- I'd have to --

17 Q Well, let's just assume that they did. Can you
18 understand why an applicant would be upset if the additional
19 4.67 points it should have gotten in just this one area would
20 have made it a winner and someone apparently made some
21 mistakes on their application? Can you understand that?

22 A Again, I don't know if there was a mistake made. I
23 would have to, again, talk to the evaluators who scored it.

24 Q Well, what --

25 A It looks like this one was consistent with the last

1 one.

2 Q It looks like they consistently made the same
3 mistake by deciding that an actual building could not be built
4 in 12 months; that's what you're saying, sir?

5 MS. SHELL: Objection. Argumentative.

6 THE COURT: Overruled.

7 THE WITNESS: Can you repeat the question, sir.

8 BY MR. KEMP:

9 Q They're consistently making the same mistake, all
10 three of them.

11 A Again, that would be a question to ask them. They
12 were the one that evaluated the application.

13 Q Now, I assume there was some sort of, as Mr. Parker
14 would put it, QC, quality control of this process.

15 A Nobody else had input into the evaluation of the
16 applications. Those were done solely by the evaluators.

17 Q So if all three evaluators made a simple mistake
18 like this, no one from the Department was overlooking it or
19 doing any sort of quality control. Is that what you're
20 telling me?

21 A There was quality control on the total scores and
22 the compiling of the ranking and --

23 Q But the rankings in the building area that we've
24 just gone through, there was no quality control on that;
25 correct?

1 A We relied on the expertise of the evaluators.

2 Q So the answer to my question is, yes, Mr. Kemp,
3 there was no quality control, we relied on the Manpower people
4 being experts. Is that correct?

5 A Yes.

6 Q Okay. In retrospect that was a big mistake, wasn't
7 it, sir?

8 A I don't feel -- I don't feel that way. I think it
9 was done properly by the experienced staff that we had.

10 Q Okay. All right. Let's take a look at -- let's
11 stick with MM -- 123. Top right, please.

12 Do you see how they list six different applications
13 on the top right there?

14 A Yes.

15 Q So it wasn't randomized per application, was it?
16 Was it?

17 A Well, applicants submitted one application on a
18 thumb drive and then indicated the jurisdictions that they
19 wanted it applied to. Unless it was for a different
20 jurisdiction.

21 Q MM Development submitted six different applications;
22 correct?

23 A I would to go -- I'd have to look.

24 Q Okay. Well, you would -- let's just assume that
25 they submitted six, one for Clark, one for North Las Vegas,

1 one for Reno, one for Las Vegas, one for Nye, and one for
2 Mesquite, okay. Could you assume that for me?

3 A Sure. Yes.

4 Q Okay. The applications were not graded separately,
5 were they?

6 A If there's a separate one for the different
7 locations, for, for example, Reno, you know, Nye, and
8 Mesquite, they would have been -- they would have been
9 evaluated separately. However, if they were all sent -- if
10 one application was sent in and applied to I think it was
11 Attachment I, if I'm not mistaken, of the application where
12 they indicated the jurisdiction that they wanted to apply it
13 to, then that one application would have been evaluated,
14 because that's what provided us.

15 Q So if they put in separate applications for six
16 different jurisdictions, they were supposed to be evaluated
17 separately, or they were not supposed to be --

18 A They would have been evaluated separately.

19 Q If they were supposed to be evaluated separately,
20 why do we have 1 through 6 on this particular sheet,
21 Exhibit 123?

22 A I don't know. I'd have to see who put that note on
23 there and ask them.

24 Q Does this suggest to you that these applications
25 were not evaluated separately like they were supposed?

1 A Again, I don't know if I have the information there
2 to answer your question.

3 Q Were you here for the statistician's testimony --

4 A I was.

5 Q -- that there's a 500,000 to 1 chance that these
6 applications were evaluated separately? Did you hear that?

7 A I think so, yes.

8 Q And are you going to tell the Court that these
9 applications were evaluated separately?

10 A Separately as far as one evaluated, then 2
11 evaluated, then 3?

12 Q Yes.

13 A Again, I'd have to ask the evaluators. I don't know
14 how --

15 Q So you don't even know whether or not this was a
16 blind, unbiased evaluation as we sit here today. You don't
17 know; right?

18 A Well, I feel it was, sir.

19 Q But you don't know. You don't know. You said you
20 have to ask the evaluators.

21 A No. I was going to ask the evaluators, sir, if this
22 came in as a separate application, each 1 through 6, or if it
23 came in as one application on one thumb drive.

24 Q Okay.

25 A In that case they'd be evaluated once and applied to

1 the different jurisdictions.

2 MR. KEMP: Okay. Can we flip over to page 1852,
3 please, Shane.

4 BY MR. KEMP:

5 Q This is the diversity section; correct, sir?

6 A Yes, it is.

7 Q Okay. And I see that the divisor in here is 2 out
8 of 12 or 17 percent; right?

9 A Yes.

10 Q And 17 percent would be 4 points; right?

11 A Yes.

12 Q Okay. So if I'm reading this right, they included
13 12 people in the scoring, and they determined that two of them
14 were diverse, and so they did the math and they determined
15 that that was 17 percent, so that's why they got 4 points. Is
16 that the way you understand that?

17 A Yes, it is.

18 Q Okay. Couple general questions. If you had a
19 public corporation -- and why -- you heard the testimony about
20 it from the GreenMart woman, didn't you?

21 A Yes.

22 Q Okay. So let's assume we had MPX owning CPX or
23 whatever it was owning GreenMart. And let's assume that
24 GreenMart had this advisory board, okay, and let's assume that
25 the other two were corporations that had officers and

1 directors in each corporation. If we were rating diversity,
2 who should we use, all the officers and directors of all
3 three, the officers and directors of one only? What should we
4 do?

5 A What was supplied in the application was what was
6 used for diversity. However, it would be the officers of the
7 corporation.

8 Q So the officers -- again, GreenMart North Las Vegas
9 is a Nevada limited liability company. So what you're saying
10 is what we should have used is the officers of MPX and the
11 officers of CSX?

12 A The officers, if they were listed in the
13 application, they would have been used for the diversity score

14 Q Well, let's not talk about what was listed in the
15 application. Let's talk about your understanding of what
16 should have been used under that scenario, okay. Okay? So
17 they should have done the officers and directors of MPX and
18 CSX; correct? Correct?

19 A They should have listed their officers.

20 Q And those officers and directors of MPX and CSX
21 should have been included in the diversity calculation; right?

22 A If they were in the application, they would have
23 been listed on -- they would have been used in the --

24 Q I'm not asking if they were in the application. I'm
25 asking what the rules were, what the procedure was supposed to

1 be, okay. Supposed to have them all listed; right?

2 A We relied on the information that was supplied in
3 the application.

4 Q We'll get to that, okay. What you were supposed to
5 do, though, is list the officers and directors of each one of
6 the parent corporations; right?

7 THE COURT: And when you say you, not the Department
8 of Taxation, the applicants.

9 BY MR. KEMP:

10 Q The applicants should have done that; right? Right?

11 A The applicants should have provided us enough
12 information for us to make a good determination. We rely on
13 the information on good faith.

14 Q I understand that, okay. The applicants should have
15 listed the officers and directors of MPX and CSX in the I
16 believe it was Attachment B for the diversity rating; correct?

17 A I don't -- not sure about the directors. I know the
18 statute reads for a corporation it's the officers.

19 Q It reads officers and board members, does it not?

20 A I'm trying to remember the number, and I don't
21 recall it. I think it might only say officers.

22 Q Okay. Assuming you're you're wrong and I'm right,
23 that it does say board members, would you agree with me that
24 it should include the board of directors members?

25 A Yeah, they should have included their board.

1 Q Okay. And that's applicant's responsibility, in
2 this case GreenMart's. They should have put the officers and
3 directors of MPX and the officers and directors of CSX; right?

4 A Yes.

5 Q Okay. Now let's assume that GreenMart, perhaps they
6 just didn't understand the reg, okay. Perhaps they -- it was
7 just an honest mistake. Instead of listing the officers and
8 directors, they put in an advisory board, such as the woman we
9 just heard from today, and the advisory board had eight women
10 and -- eight women and/or minorities, and because of that they
11 got a 16 diversity rating. Let's just assume that, okay.
12 Now, if the Department discovers that GreenMart has not listed
13 the officers and directors of both of its parents, what should
14 be done?

15 A Well, if we did discover something like that, the
16 Department would definitely look into it. What should be done
17 is not necessarily my decision to speak to. It'd be the, you
18 know, Jorge Pupo or even Georgia Young.

19 Q Okay. So if it turned their diversity rating from a
20 16 to say a 4, for example, and that is enough to drag them
21 out of the winners category in Clark County, city Las Vegas,
22 and the other places they won, you're saying that there's no
23 procedure that you know of to correct that mistake?

24 A We do have procedures in place to investigate
25 falsifying information. And we would look into that. We take

1 that kind of stuff seriously. And, again, what -- the result
2 of that investigation necessarily wouldn't be my call.

3 Q And you would consider an applicant like GreenMart
4 that did not put in the officers and directors of the parent
5 as falsifying information? You would could that as falsified
6 information?

7 A I would have to have the details behind the
8 scenario.

9 Q Okay. And if they were deemed to falsify
10 information, the application should be struck?

11 A Can you repeat --

12 Q The application should be struck?

13 A Can you repeat that question.

14 Q If were deemed to have falsified information with
15 regards to the officers and directors they listed in the
16 diversity section, the application should be struck?

17 A And, again, that would not be my decision. We would
18 do the investigation, we would try to determine if it's
19 factual.

20 Q Are you telling me that even if the DOT has actual
21 knowledge that an applicant has not put the right officers and
22 directors in the diversity section and using the right persons
23 in the diversity section would result in it being a loser,
24 you're talking me that the Department isn't going to take away
25 the license? That's what you're telling me?

1 A No, it's not.

2 Q You would take away the license?

3 A Potentially. And we would need to --

4 Q When are you going to do that?

5 A We would need to do the investigation, gather all
6 the facts, and then that's when it would be presented to
7 Deputy Director Pupo or Director Young.

8 Q Have you started the investigation yet with regards
9 to GreenMart?

10 A I didn't know there was an investigation going.

11 Q Is there any investigation going on on any of these
12 applications that have been filed?

13 A Not that I'm aware of.

14 Q Okay. We were told by Mr. Plaskon -- and I saying
15 that right, Plaskon?

16 A Yeah.

17 Q We were told by Mr. Plaskon that the Department had
18 discovered that there were mistakes made in the people listed
19 in the diversity section as owners, officers, and directors
20 and what the Department had on record -- or there were
21 inconsistencies I think he said. And he said that the
22 Department sent out letters to these people and told them to
23 fix it. Are you familiar with that?

24 A I might be. Can you repeat what it was?

25 Q Mr. Plaskon said that after the determination was

1 made as to who would get the conditional licenses, sometime in
2 December, that the Department had discovered that there were
3 inconsistencies I think his words were between what the
4 applicant listed as the officers, directors, and owners and
5 what the Department had on record, okay. He said that they
6 sent out letters to the applicants with regards to that. Do
7 you have any knowledge of that?

8 A I don't. There were applicants who had different
9 ownership in their application than they did currently on
10 record.

11 Q Okay.

12 A Is that what you've been referring to?

13 Q Yes. Okay. Okay. And --

14 A So if there was a transfer -- so if we received the
15 application and we compare the ownership listing to the
16 currently -- what's currently on record with the Department of
17 Taxation and it didn't match, then we would go and look to see
18 if there's a transfer of interest in the house. If they had
19 already submit a transfer of interest --

20 Q In the house referring to filed with the Department?

21 A Yes. Correct.

22 Q Okay.

23 A The Department, unfortunately, is far behind in
24 processing transfers of ownerships, and we didn't feel that
25 that should have been a reason to, you know, deny an

1 application. So it was decided by Mr. Pupo that we would --
2 and he might be the better person to speak to this than me,
3 that we would honor the transfer of ownership that was
4 currently submitted to the Department of Taxation.

5 Q So even though the application has the wrong owners,
6 the wrong officers, or the wrong directors in it in the
7 diversity section, you're going to give them the license and
8 honor? That's what you're going to?

9 A Well --

10 Q That's what you're going to do; right?

11 A If the transfer of ownership is completed and
12 approved. So the letter that Mr. Plaskon might have been
13 referring to is the conditional approval letter.

14 Q He said letters.

15 A It might have been more than one applicant. I'm not
16 sure.

17 Q Okay. Do we know as we sit here today?

18 A I don't.

19 Q Okay. Now, this whole area of public ownership and
20 how the application should be processed and whether the
21 shareholders should be listed or not, the Department didn't
22 even consider that in preparing these applications, did it?

23 A How -- if -- can you clarify that question.

24 A Well, Mr. Gentile asked you a couple questions about
25 how the application says you have to list the percentage of

1 owners; right?

2 A Uh-huh. Yes.

3 Q And if you applied that strictly, you would have to
4 list all the owners of a publicly traded corporation; right?

5 A That's correct.

6 Q Lot of people?

7 A Oh, yes, in some cases.

8 Q Okay. The Department really didn't think this
9 through, did they?

10 A Well, we have thought that through, and --

11 Q No. At the time the application was prepared the
12 Department didn't think this through.

13 A We don't vet shareholders of corporations, just the
14 officers.

15 Q Okay. Well, isn't it true that the Department told
16 some applicants that they should list current owners and other
17 applicants that they should list new owners?

18 A Potentially if somebody had a transfer of ownership
19 submitted to the Department which we hadn't acted upon, that
20 might have been the question.

21 Q In the application process the Department told some
22 applicants to do it one way, and told other applicants to do
23 it another way with regards to listing owners, officers, and
24 directors; correct?

25 A Yes, that could be correct.

1 Q Okay. And do you think that's a really appropriate
2 process when you've got 20 diversity points that some people
3 are doing it one way and some people are doing it another way
4 because the Department's given them inconsistent guidelines?

5 A If I understand your question, sir, I think that
6 scenario would be in the case of a transfer of ownership being
7 submitted at the time of the application is the only time that
8 information would have been given to an applicant. Because
9 the Department had not -- had acted upon that transfer. It
10 could have been -- we're way behind, six months, seven months
11 in transferring some of these.

12 Q I'm going to leave this to Mr. Bult, because he's
13 got something interesting to discuss with you at some point.

14 A Okay.

15 Q Let's get back to MM Development. If you take a
16 look at the diversity section, someone says 2 out of 12 or
17 17 percent; right?

18 A Yes.

19 Q And if out of those 12 people we had two woman and a
20 Hispanic, should that have a 2, or a 3?

21 A Two women and a Hispanic?

22 Q Right. Out of the 12. What should that have been?

23 A That should have been a 3.

24 Q Should have been a 3. Okay. And 3 out of 12 would
25 be what?

1 A 25 percent.

2 Q Okay. How many points would that be?

3 A That would have been 6 points.

4 Q So it would have been more points?

5 A Yes.

6 Q So if someone just didn't understand that Vargas was
7 a Spanish name and someone missed the fact that Vargas was
8 listed as a Hispanic on Section B, if someone made that
9 mistake, okay, is there any remedy at this point?

10 A That wouldn't be my decision.

11 Q Whose decision is that? Whose decision is that --
12 if I show you clear and obvious mistakes on an application
13 that were made by the graders, whose decision is that to fix
14 it?

15 A That would be my superiors, Mr. Pupo or Ms. Young.

16 THE COURT: Sir, before he goes to the next question
17 let me ask a followup question to something else he asked.

18 Are you aware of anyone telling potential applicants
19 that diversity was only going to be used as a tie breaker?

20 THE WITNESS: I am not aware of that.

21 THE COURT: Okay. Thank you.

22 BY MR. KEMP:

23 Q Okay. In fact, the Department has a training module
24 it gives to people to certify whether or not they understand
25 enough about marijuana to be considered certified; right? You

1 have a training module, question --

2 A I'm not sure I'm familiar with that.

3 MR. KEMP: Shane, can I get -- following up on the
4 Judge's question, can I get --

5 THE COURT: Sorry

6 MR. KEMP: It's a little out of order, Your Honor,
7 but we'll give Shane a little test here.

8 Can I get --

9 UNIDENTIFIED SPEAKER: 2014?

10 MR. KEMP: Yeah. Let's try that.

11 BY MR. KEMP:

12 Q Okay. This is a training module which Mr. Plaskon
13 -- is it Plaskon or Plakon? You know, I'm terrible with
14 names.

15 A Plaskon.

16 Q Plaskon. I used to be better.

17 Okay. All right. This is -- Mr. Plaskon told us
18 that this was a training module that the Department was using
19 for something called the Department of Taxation Marijuana
20 Compliance Program. Are you familiar with this?

21 A I think I am. I haven't seen it in a long time.

22 Q Okay. And this is -- these are questions and
23 answer, a little practice test that the Department gives to
24 either new employees or maybe even certifying people; right?
25 Right? You've seen this before; right?

1 A I'm pretty sure I have. It might be kind of old.
2 I'm trying to look at the date. We don't -- we don't certify
3 anybody. It might have been a -- Mr. Plaskon could probably
4 speak better to what it is.

5 MR. KEMP: Okay. Let's see the question that we're
6 interested in, Shane, please. It think it was Number 8. 8 or
7 12. 8. Okay.

8 BY MR. KEMP:

9 Q In the case of a tie in the scoring between an
10 applicant for license the Department will do what? Section
11 80. And Mr. Plaskon told us that the correct answer was that
12 it would be used as a tie breaker. Is that the correct
13 answer?

14 A Yes.

15 Q So in the case of a tie in the scoring between
16 applicants diversity is a tie breaker; right?

17 A Was that Section 80?

18 Q I'm just asking what the right answer to that
19 question is.

20 A The right answer --

21 Q Is diversity a tie breaker?

22 A The right answer to the question is organizational
23 chart. That's what's used for a tie breaker.

24 Q The diversity in the organizational chart; right?

25 A It just says the organizational chart.

1 Q And let's get a little more focused.

2 THE COURT: And where do you see that answer, sir?
3 Or do you just know that answer?

4 THE WITNESS: It's in the regulations, Your Honor.

5 THE COURT: Okay. Thank you.

6 BY MR. KEMP:

7 Q Okay. After the conditional license awards were
8 announced on December 6th Mr. Hernandez had a number of phone
9 calls with applicants, some of which Mr. Plaskon was on, in
10 which applicants that did not get a provisional license were
11 told that diversity was used as a tie breaker, not a
12 separately graded area. Have you heard that before?

13 A No, I have not. First time.

14 Q Okay. Is there any explanation you can give me --
15 and diversity actually was used as a grading category, the
16 20 points; right?

17 A Yes.

18 Q Okay. Is there any explanation you can give me why
19 Mr. Plaskon, Mr. Hernandez, or your training materials would
20 be confused as to how diversity would be used?

21 A I don't have a explanation for that. It's the first
22 I've heard.

23 Q Okay. Mr. Plaskon and Mr. Hernandez were trainers
24 of these graders; right?

25 A Yes.

1 Q So if the trainers didn't know whether diversity was
2 a tie breaker or a point grade -- a point award criteria, if
3 the trainers didn't know that, we're in trouble, aren't we?

4 A I'd have to look at Section 80. But I don't -- they
5 should have known that.

6 Q They should have known that. Why was the Department
7 telling losing applicants that diversity was only used as a
8 tie breaker? Why?

9 MR. KOCH: Objection. Lacks foundation.

10 THE COURT: Overruled.

11 THE WITNESS: I wasn't in any of those meetings. I
12 haven't heard that being said.

13 BY MR. KEMP:

14 Q Okay. All right. Before we get off the actual
15 grades let's flip over to LivFree's real quick. Livfree is
16 Exhibit 122.

17 You've heard the expression "cash is king"? Yes?

18 A Yes.

19 Q Cash is a liquid asset; yes?

20 A Yes.

21 Q And this applicant, according to the grader, has
22 liquid 20.5 million. Do you see that? 20.5 million.

23 A Yes.

24 Q Am I reading that right?

25 A Unless I -- yes, you're reading that --

1 Q Okay. And if we flip over -- let me ask a couple
2 other questions first.

3 Mr. Gentile went through the requirement for 250,000
4 liquid; right?

5 A Yes.

6 Q That could have been cash or bank account or various
7 other things; right?

8 A Yes.

9 Q But cash, cash qualifies; right?

10 A It does.

11 Q Okay. So if the applicant had let's just say
12 \$2 million cash on premises, on premises of the dispensary in
13 the safe, that's not unusual, is it?

14 A I'm not sure. I don't --

15 THE COURT: So, Mr. Kemp, is this one of those
16 security issues that we probably want to stay away from?

17 MR. KEMP: Okay. I'm not naming any names, Your
18 Honor.

19 THE COURT: So just a significant amount of cash on
20 premises.

21 MR. KEMP: Okay. Well, this is an admitted exhibit,
22 Your Honor. I'm past that point.

23 THE COURT: Well, no. On vaults.

24 MR. KEMP: I'm already past that point, Your Honor.

25 THE COURT: Okay.

1 BY MR. KEMP:

2 Q Okay. Why don't we take a look at the third page,
3 where it says, "Liquid cash, including vaults and registers,
4 1,942,000." See that?

5 A Yes.

6 Q Okay. And I assume that the Department has a fair
7 degree of knowledge as to how much cash an applicant has at
8 any one time; right? I mean, you track these things seed to
9 sale pretty rigorously?

10 A We don't really look at the -- we don't analyze how
11 much cash should be on hand.

12 Q Okay. You do know that most of these applicants --
13 in fact, all these applicants can't open bank accounts, right,
14 under federal law?

15 A Yes.

16 Q So it's a pretty cash-intensive business?

17 A Yes.

18 Q Okay. So here we have an applicant with 20 million
19 liquid on page 2, 2 million just in the vaults and the
20 registers on page 3, we have a bank account from Wells Fargo
21 for another 367,000. So that's, what, 2.4 million. Right?
22 Right?

23 A Yes.

24 Q And this particular grader, do you see what they
25 did? They gave them a zero because we didn't have \$250,000

1 worth of cash. See that?

2 A I do, yes.

3 Q Do you think that's right, that someone with a bank
4 account with 367,000 with an additional \$2 million just in the
5 vaults and registers with another 20.5 million liquid on the
6 first page, do you think that's right, that you should get a
7 zero for being required to \$250,000?

8 A Again, the evaluator would have to answer that
9 question. I can't answer, because I wasn't evaluating.

10 Q Well, if you were an evaluator --

11 THE COURT: Wait. You've got to let him finish his
12 answer.

13 MR. KEMP: Go ahead.

14 THE COURT: Sir, finish, please.

15 THE WITNESS: Because I also do see "no -- with no
16 supporting backup" in the notes, so I --

17 BY MR. KEMP:

18 Q We're going to get to that.

19 A I don't know what they're looking at.

20 Q If you had someone with a Wells Fargo Bank statement
21 for 367,000, 2 million in the vault and the registers and
22 another 20.5 million liquid, would you score that person with
23 a 10 because they had \$250,000 liquid?

24 A If there was documentation and supporting that
25 information, then, yes.

1 Q Okay. The Wells Fargo statement alone, ignoring
2 everything else, of 367,000 should have satisfied this
3 criteria; right?

4 A Yes. If they -- again, it's hard for me to answer
5 that question without either talking to the evaluator or
6 looking at the application.

7 Q Well, if they had a bank statement -- Wells Fargo is
8 a recognized bank, isn't it?

9 A Yes.

10 Q It's not like the, you know, Bank of Cannabis in
11 Pahrump or whatever that one's called? There is a little --

12 A Is there?

13 Q Okay. Maybe the Department's not supposed to know
14 about that.

15 In any event, Wells Fargo -- Wells Fargo is a
16 recognized bank; right?

17 A Yes.

18 Q So if you have a bank statement from Wells Fargo
19 that says three sixty-seven, they should have got the
20 10 points here?

21 A Again, I -- there's more to it than just that,
22 because they would look to what's unencumbered, what's
23 available.

24 Q I'm just talking about the two fifty liquid
25 requirement. I'm not talking about grading the rest of the

1 financial plan. For the two fifty liquid they should have got
2 the 10; right?

3 A If they -- if they provided all the supporting
4 documentation that they showed they had unencumbered funds for
5 1.5 million --

6 Q Okay. Now, you jumped from two fifty to 1.5.

7 A Well, I was looking at this note here, two hundred
8 fifty times 6.

9 Q So are you saying that because there were six
10 applications the amount required for each application is
11 1.5 million now?

12 A It's two hundred and fifty times location.

13 Q So you think one of the applications should have
14 qualified, but not other five? Is that what you're saying?

15 A I don't think I can answer that question without
16 looking at --

17 Q This really shouldn't be a hard one when we've got
18 20 million liquid, should it? Should it?

19 A Again, I'd have to look at the detail and
20 supporting documentation. Or consult with the -- ask the
21 evaluator.

22 Q Okay. Why don't we flip over to page 14 of this.
23 One evaluator thinks this applicant has --

24 THE COURT: He's turning it sideways so I don't have
25 to bend my head. He saw me doing the crooked thing. Thank

1 you, Shane.

2 (Pause in the proceedings)

3 BY MR. KEMP:

4 Q You see the 10 down there? Do you see the two
5 seventy handwritten?

6 A Yes.

7 Q So this particular evaluator scored this application
8 as having \$270 million worth of let's just say assets, okay.
9 \$270 million; right?

10 A Yes.

11 Q And you do know that every single one of the top
12 20 applicants in Clark County got a 40 on their financial
13 rating. You do know that; right?

14 A I don't.

15 Q Okay. I don't want to take the time to show you the
16 chart.

17 This applicant with \$270 million got a 12.67. That
18 surprise you, sir?

19 A Again, I would need to look at the rest -- see the
20 4? I don't -- because there was a 4 down there. And again,
21 the evaluators would have, you know, intimate knowledge of the
22 process and also the criteria and the application.

23 Q So I think the bottom line here is that the
24 evaluators screwed up too bad. Is that pretty much where
25 we're at? The evaluators screwed up too bad. There's no

1 remedy. Can't be fixed. Right?

2 A I don't feel that way, no.

3 Q Oh. Tell me how we're going to fix this?

4 A If -- again, you know, if there's proof, we'll --
5 the Department would look into it.

6 Q Oh. The same Department that Mr. Pupo said we don't
7 have an appeal right? That Department's going to look into
8 it? When everyone tried to appeal the denials of their
9 licenses Mr. Pupo took the position that there's no appeal
10 right; right?

11 MS. SHELL: Objection. Assumes facts not in
12 evidence.

13 THE COURT: Overruled.

14 THE WITNESS: The Department of Taxation.

15 BY MR. KEMP:

16 Q The Department of Taxation took the position there's
17 no appeal right?

18 A I think --

19 Q Tell me how I bring these mistakes to the attention
20 of the Department and get it fixed. Tell me how to do it.
21 What form is there, what should I do, who should I call, what
22 should -- what is the process?

23 A I don't know if I'm the right person to give you
24 that advice.

25 Q Well, who is?

1 A Potentially Mr. Pupo.

2 Q Mr. Pupo. You are aware that Mr. Pupo told everyone
3 that they had no right of appeal. Are you aware of that?

4 A I am.

5 Q So I should go ask Mr. Pupo, who told me there's no
6 right of appeal, how to appeal this? That's what you're
7 telling me?

8 A Yes.

9 Q That doesn't sound like a real good remedy. By the
10 way, I like Mr. Pupo, but that still doesn't sound like a good
11 remedy.

12 A Then maybe Director Young.

13 Q Director --

14 A I'm definitely not the one to make that decision.

15 Q What about your boss? The Tax Commission is the
16 authority over the Department; right?

17 A Yes.

18 Q People do appeal Department decisions to the Tax
19 Commission?

20 A Yes, they do.

21 Q That happens almost every day?

22 A Uh-huh.

23 Q Yes?

24 A Yes.

25 Q Why can't I appeal to the Tax Commission?

1 A I'm not sure on the legality of that. I'm not the
2 right person to speak to that.

3 Q Okay. I have tried to appeal to the Tax Commission,
4 and apparently it's getting balled up somewhere. Do you have
5 any information about that?

6 A I don't.

7 Q Okay.

8 MS. SHELL: What'd he say?

9 THE COURT: Balled up. That means it's not moving
10 very quickly.

11 MS. SHELL: Oh. Okay.

12 THE COURT: It's like a slow play.

13 MR. KEMP: Judge, am I using phrases that have not
14 been used in this courtroom recently? I know Mr. Gentile is,
15 but --

16 THE COURT: Okay. I'm having to explain what you're
17 saying, Mr. Kemp. But remember, I've been around for almost
18 as long as you have.

19 MR. KEMP: Okay. I would feel better if we had some
20 millennials over there, but I really feel bad now.

21 MS. SHELL: I'm really flattered that Mr. Kemp
22 thinks I'm a millennial, but -- I appreciate it very much.
23 Thank you.

24 BY MR. KEMP:

25 Q All right. Okay. Let's --

1 THE COURT: We have a half hour. If we could focus
2 on getting productive information out of this gentleman before
3 we come back on the 10th.

4 MR. KEMP: Okay. Let's take a look at the
5 diversity grades in Exhibit -- excuse me, the diversity
6 language in Exhibit 209, please, Shane. And let's look at
7 that magic language, non-Anglo whatever it is.

8 BY MR. KEMP:

9 Q Okay. Now, what was the name of this group that did
10 the 2014 application that you cribbed from?

11 A QuantumMark.

12 Q QuantumMark. Okay. Now, QuantumMark did not draft
13 this language, because they weren't involved in the 2018
14 application; right? And diversity wasn't part of the 2014.
15 So you couldn't steal this from QuantumMark; right?

16 A That's correct.

17 Q Okay. Where did you steal it?

18 MR. KOCH: Objection, Your Honor. Blasphemy.

19 THE COURT: Where did you borrow, or what was the
20 source.

21 BY MR. KEMP:

22 Q What was the source of this information? Okay?

23 A I'm trying to -- what document is this? Is this
24 just --

25 Q This is something called the application criteria

1 points breakdown. Do you want to see the front real quick?

2 A Yeah, could I?

3 MR. KEMP: Back to the front page, Shane, real
4 quick.

5 THE WITNESS: Oh. I see.

6 BY MR. KEMP:

7 Q Okay. Got it?

8 A Got you. It's stretched out.

9 Q All right. Back to the key language.

10 A Is that stretched at -- I'm sorry.

11 THE COURT: Can you see it, sir, or do we need to
12 get you a hard copy?

13 THE WITNESS: Could I get a hard copy of this?

14 THE COURT: You can.

15 What exhibit number is it?

16 MR. KEMP: I have it as 209, Your Honor.

17 (Pause in the proceedings)

18 THE COURT: And what page?

19 MR. KEMP: Page 4.

20 BY MR. KEMP:

21 Q Ready?

22 A Yes.

23 Q Okay. What's the original source of this
24 information?

25 A This doesn't appear to be the evaluation sheets that

1 we used.

2 Q It doesn't appear to be the desktop diversity
3 calculator that came later. I'm just asking what the source
4 of this information is.

5 A Jorge Pupo came up with the breakdown.

6 Q So he came up with this language that we see here,
7 non-Caucasian female and non-Anglo/European American? Mr.
8 Pupo is the author?

9 A That I -- that I'm not sure.

10 Q Well, who is the author?

11 A I don't know.

12 Q Where did you get it?

13 A I don't know if I've seen this.

14 Q These are in the application criteria that were
15 given to the Manpower graders; right? Right?

16 A This appears to be a different one.

17 Q A different one than what?

18 A Than what we used.

19 Q Okay. And why do you say that?

20 A The format of it.

21 Q This is the same one that you've been looking at
22 with Mr. Gentile and me in other criteria. We're just in
23 diversity definition now.

24 A Oh. I see. Hold on.

25 Q Okay? Same one.

1 A Yeah. Well, the other one has the points
2 vertical --

3 Q Right. Right.

4 A -- not horizontal.

5 Q So you're just referring to the --

6 A Yeah.

7 Q I got you.

8 A Yeah. I just want to make sure that the scores are
9 the same.

10 Q But with regards to the grades that I've already
11 read where did that come from?

12 A I don't recall.

13 Q Okay. It had to come from somewhere.

14 A So I know when we put the -- when we put the
15 evaluation forms together Jorge Pupo and Kara and myself, Kara
16 Cronkhite got together and went over them. So, you know, it
17 might be a better question for Director Pupo.

18 Q Seems like it's a better question for anyone who's
19 not on the stand. But anyway, the word there is -- the word
20 is "and"; correct? Do you see that?

21 A Yes.

22 Q Is that a mistake?

23 A non-Caucasian female -- yeah, that's probably a
24 mistake.

25 Q Screw-up; right?

1 A Uh-huh.

2 Q Yes?

3 A Potentially. It should say --

4 Q Should say "or"; right?

5 A Right.

6 Q Screwed up; right? Right?

7 A Uh-huh.

8 Q Yes?

9 A Yeah.

10 Q Yes? Okay. is this the first time you've realized

11 there's a screw-up in this criteria on diversity, today, right

12 now? First time you've realized it?

13 A No. That was brought to my attention before.

14 Q Before -- before the last seven days?

15 A No.

16 Q So in the last seven days someone said, hey, we

17 screwed up, we put "and," it should be "or"?

18 A Yes.

19 Q And the reason this screw-up's important is if

20 you're a black male. Since it requires you both to be female

21 and a minority, if you're a black male, technically under this

22 definition as literally applied you wouldn't be a minority,

23 would you?

24 A I don't -- probably not under "and," no.

25 Q No. So that's why it's a screw-up, because it

1 excludes African-American males; right? Right?

2 A Well, they were trained --

3 Q They were trained to ignore the words that you gave
4 them and put their own words in? Is that what you're telling
5 me?

6 A They were --

7 MS. SHELL: Objection.

8 THE COURT: Sustained. If you would rephrase your
9 question, please.

10 BY MR. KEMP:

11 Q Go ahead. Go ahead, Mr. Gilbert.

12 THE COURT: Wait. You've got to rephrase your
13 question.

14 MR. KEMP: No. I think he was answering, Your
15 Honor. They were trained, cut him off.

16 THE COURT: But -- yes, he was answering a question
17 I sustained the objection to.

18 BY MR. KEMP:

19 Q Okay. And they were trained to do what --

20 A They were trained --

21 Q -- with regards to the word "and"? They were
22 trained to ignore the criteria that the Department gave them?
23 Is that what you're saying?

24 A No. They were trained to -- they were trained to
25 score on non-Caucasian female or non-Anglo/European American.

1 That's how they were trained. I don't think anybody was ever
2 confused.

3 Q So the oral training was different than the written
4 guidelines. Is that what you're telling me?

5 A Yes.

6 Q And how is you know that they were trained on "or,"
7 as opposed to "and"? Do you have personal knowledge of that?

8 A Well, I do have personal knowledge in the document
9 that we did train them on sometime after the start of the
10 process. And we did clarify with "or." I don't recall ever
11 specifically talking to them about "and" and "or" in the
12 training process. I don't -- nobody ever came to me and said
13 they were confused about like the scenario that you brought up
14 before.

15 Q Mr. Plaskon came to you and told you he was
16 confused, didn't he?

17 A I don't recall if he did.

18 MR. KEMP: Let's Exhibit 110, Items 366 and 367,
19 please. Excuse me. 108.

20 THE COURT: Those were the text messages?

21 MR. KEMP: Yes.

22 376 and -77, Shane.

23 BY MR. KEMP:

24 Q Mr. Gentile showed you this. Mr. Plaskon was so
25 confused he didn't even know if the diversity program should

1 be included in the application process; right?

2 A That's what he's saying in his text, yes.

3 Q He didn't even know if the diversity program should
4 be included as of -- when is this, September 19th.

5 A Yeah.

6 Q Right?

7 A Yes, that's what he's saying.

8 Q So you've been grading these Manpower graders for a
9 couple weeks -- or excuse me, training the Manpower graders
10 for a couple weeks; right?

11 A Yes.

12 Q Taking everyone's \$5,000 as the applications pour
13 in; right? Right?

14 A Yes.

15 Q And you don't even know -- you, the Department of
16 Taxation, whether diversity should be included in the program;
17 right?

18 A Well, I can't speak for Ky, but diversity was
19 discussed prior to the application being released in July.
20 And Jorge Pupo would be the best person to talk to about that.

21 Q Putting poor Mr. Pupo under the bus again; right?
22 Mr. Pupo knows. All right.

23 Okay. Now, Mr. Plaskon thought this was such a big
24 problem that he wanted you to go to Mr. Pupo and get guidance;
25 right?

1 A I don't -- I'm not sure what his problem was here,
2 whether it was should it be in the application or something
3 else. Because this is about the time that we did train them
4 on that document.

5 MR. KEMP: Shane, can I have 108, 379 through 380 --
6 or Items 379 and 380.

7 BY MR. KEMP:

8 Q That says, "Could Jorge give --" and I say George
9 because that's what he's typically called by his friends,
10 George.

11 A Okay.

12 Q Okay. You're his friend?

13 A I don't call him George.

14 Q We have friends of his in the audience here.

15 A I don't call him George.

16 Q Okay. All right. George you understand me to mean
17 Mr. Pupo?

18 A Okay.

19 Q Okay. "Could George give us any clarification on
20 the diversity section?" Do you see that?

21 A Yes.

22 Q So the diversity was so confusing as of late
23 September that the person responsible for the graders was
24 asking for clarification; right?

25 A Yes.

1 Q And clarification was soon to come, was it not?

2 A Yeah. I think it was right around that time.

3 MR. KEMP: Okay. Can I see Slide 114, please. Oh.
4 Excuse me.

5 THE COURT: You want that 1974 [sic] version?

6 MR. KEMP: That's what I want, Your Honor. The '64,
7 yes.

8 THE COURT: Okay.

9 MR. KEMP: Which I believe is --

10 THE COURT: I remember what it looks like. It's
11 pasted onto a piece of Department of Taxation letterhead.

12 MR. KEMP: Right. Okay. Have we got it? That's
13 it.

14 BY MR. KEMP:

15 Q Mr. Gilbert, have you ever seen this before?

16 A Yes, I have.

17 Q Okay. Where did this come from? What was the --
18 from the Department's point of view, okay -- I know it came
19 from the federal government. From the Department's point of
20 view who acquired now?

21 A If I recall correctly -- you're talking about the
22 whole document, or just this part?

23 Q Just the federal guidelines for definition of a
24 minority -- as minority.

25 A Kara Cronkhite I think put into the document or --

1 Q Popped it up on the Internet?

2 A I can't -- you know, I don't know how -- where she
3 got it.

4 Q So Kara Cronkhite did a little Internet research on
5 diversity; is that right?

6 A She might have, yes.

7 Q And Kara Cronkhite, is she a diversity officer at
8 the Department?

9 A No, she is not.

10 Q Does she have any special training as to diversity?

11 A I don't know.

12 Q Don't know one way or the other?

13 A Not that I'm -- not that I'm aware of.

14 Q Why was it you thought she was qualified to look on
15 the Internet for a definition of diversity to be used in
16 scoring these applications?

17 A I don't -- we were -- I don't know if she is
18 qualified. But this would -- this is the federal guidelines
19 that we put into this document, and then we, if I recall
20 correctly, sent it up through Mr. Pupo for approval.

21 Q You sent it to Mr. Pupo for approval?

22 A Yes.

23 Q He's also not a diversity officer, is he?

24 A I'm not sure.

25 Q He has no special experience with regards to

1 diversity, does he?

2 A I don't know.

3 Q Did you send it to the AG's Office and ask them to
4 give you a little help?

5 A Again, I don't know what Mr. Pupo --

6 Q Do you know if it was sent to the AG's Office to get
7 little help on what the definition of diversity is?

8 A I don't know if it was or not.

9 Q So instead, one of the Department of Taxation
10 employees, Cronkhite, she looks on the Internet for a
11 definition of diversity, and that's what you decide to use
12 midstream in this application process; is that correct?

13 A I can't answer for Kara. I don't know where she got
14 that.

15 Q So you don't know where this came from after you
16 just told me it came from Ms. -- Ms., or Mrs?

17 A Mrs. Cronkhite.

18 Q Okay.

19 A Miss. I'm sorry. So she -- the document was sent
20 to me. If I recall correctly, it was sent from Ky to -- from
21 Ky to Kara, myself, and Mr. Pupo

22 Q Okay. Can I assume that this definition of
23 diversity was never given to any of the applicants at any time
24 prior to them filling out their applications?

25 A I don't know. I'm not --

1 Q Well, if you ginned it up sometime in late
2 September, how could it have been given to applicants before
3 they filed their applications between September 10th and
4 September 20th?

5 A Most likely it wouldn't -- this document here would
6 not have been given to them.

7 Q But you relied in part upon the applicants to,
8 quote, "self identify" their diversity; right?

9 A Yes.

10 Q So applicants were supposed to decide whether some
11 of their members were diverse or not diverse without knowing
12 what definition of diversity the Department would employ;
13 correct?

14 A They were -- yeah. The question -- I'm trying to
15 recall the question on the -- I'm trying to recall the
16 application. It might have been stated in the application.

17 Q Were you here the day we had the diversity expert on
18 the witness stand?

19 A No, I was not.

20 Q Okay. And would it surprise you if his testimony
21 was that this federal definition of minorities went out of
22 vogue in 2007?

23 A I wouldn't -- I wouldn't -- I'm not familiar with
24 that information.

25 Q 20 points is a lot of points out of 250, is it not?

1 A It is a lot of points.

2 Q Do you think maybe a little more care attention
3 should have been given to how diversity was defined, scored,
4 what the applicants were told with regards to who should be
5 put on the diversity page? Do you think some more care and
6 attention should have been to that area?

7 A I'm not an expert in diversity, and I -- therefore I
8 can't speak to that.

9 Q No one at the Department was an expert on diversity;
10 right?

11 A I don't know if anybody is.

12 Q Okay. Do you think the whole approach that the
13 Department applied to diversity, as our expert said, was
14 sloppy, haphazard, make it up as you go? You think that's
15 true?

16 A I don't think so. I feel that the process that we
17 had and the information that we collected on self reporting we
18 scored them fairly and evenly.

19 Q Okay. Well, let's see if get this right. The
20 applicants were not told what the diversity criteria were;
21 right? Right?

22 A I can't say for sure.

23 Q And they weren't even told whether officers and
24 directors of the parents should be listed on the diversity
25 form or not. They weren't told that; right?

1 A I think it does say officers in the application
2 should be listed in one of the attachments.

3 Q But it doesn't specify how you should treat either
4 publicly traded company or parent corporations, does it?

5 A Not specifically in the application.

6 Q Not not specifically. Not even generally; right?
7 Right?

8 A I'm trying to recall if there's a phrase on one of
9 the pages.

10 Q Okay. Would you agree with me that if we have two
11 different applicants, one of which listed its corporate
12 parents one way and one which listed them another way, okay,
13 and that resulted in a different outcome than if they had been
14 -- both been consistent, you think that's fair?

15 A I would have to look at the application. Doesn't
16 sound like it would be fair.

17 Q Doesn't sound like it'd be fair.

18 A Right.

19 Q Yeah. And can you understand how some applicants
20 that got a 4 diversity rating, like MM Development, would be
21 upset that other applicants got a 16, like GreenMart, when
22 GreenMart's owned by a half-billion-dollar Canadian public
23 company? Can you see why they would be a little upset?

24 A Yes.

25 Q Not fair; right?

1 A Well, I think it's fair based on the information
2 that was provided in the applications.

3 Q So if -- let's not use -- let's quit picking
4 GreenMart, because I've picked on them a lot today.

5 Let's assume that someone was trying to manipulate
6 the diversity points or, you know, game the system I think is
7 the phrase I've heard before. Let's assume someone was trying
8 got do that and they just created a board of directors that
9 was all female, all minority, whatever, just to try to get
10 more diversity points? You think that's appropriate?

11 A No, I don't.

12 Q And what safeguards did the Department have against
13 that happening?

14 A So we did compare -- the ownership that was
15 submitted in the application had to match the ownership that
16 we had on record with the Department at the time of the
17 application.

18 Q Okay. And earlier Mr. Gentile asked you about LLCs.

19 A Yes.

20 Q And corporations have boards of directors; right?

21 A Uh-huh.

22 Q Yes?

23 A Yes.

24 Q LLCs have members; correct?

25 A Yes.

1 Q They don't have boards of directors?

2 A Correct.

3 Q Okay. So if an LLC like Clear River LLC had listed
4 a board of directors and got some credit for diversity points,
5 you think that's fair?

6 A I'd have to -- I'd have to look at the scenario. I
7 mean, I -- it's hard for me to -- if this is a hypothetical.

8 Q Well, the scenario is an LLC, which you already said
9 doesn't have a board of directors, claimed people to be on
10 maybe an advisory board or some such, an advisory board, and
11 put them in and got diversity points. That's the
12 hypothetical. That's not fair, is it?

13 A I'd have to look at -- I'd have to look at it. But
14 if they're listing different positions than with a structure
15 should have them --

16 Q Let me ask it a little differently. Would you --
17 did the Department expect that people would put real officers
18 and directors, real LLC members, not so-called advisory boards
19 in the diversity section under the owners, officers, and
20 directors section?

21 A Yes. Uh-huh.

22 Q And -- okay. And applicants were told to do that;
23 is that right?

24 A Yes.

25 Q So if an applicant didn't do that, they potentially

1 did something wrong; right?

2 A Yeah.

3 Q Maybe they're just stupid. I'm not saying it was
4 intentional, okay.

5 A Yeah. Or hurt themselves, yes, in the application
6 process.

7 Q Well, I think some of them helped themselves quite a
8 bit, okay.

9 Now that the Department -- if the Department is
10 presented with incontrovertible proof that, for example, an
11 LLC had put in an advisory board and gotten diversity points,
12 a lot of diversity points, like 16 because of that, and that
13 it would have dropped that person -- if you take those 16
14 points would have dropped them from being a winner into a
15 loser, will the Department correct that?

16 A We'd look into the scenario, and I would have to --
17 I'm not the one to make that call.

18 Q I know. Mr. Pupo is; right?

19 A Or Director Young.

20 Q Okay. How do I get Mr. Pupo to do something here?

21 A I'm not sure what you're trying to get him to do.

22 Q I'm trying to get him to accurately score the
23 applications at least consistently on the diversity, okay.

24 A That's probably a question you should ask Mr. Pupo.

25 Q Okay.

1 THE COURT: And do you know when he gets back from
2 vacation?

3 THE WITNESS: I think it's next week.

4 THE COURT: Okay.

5 MR. SHEVORSKI: June 4th.

6 THE COURT: Thank you, Mr. Shevorski.

7 BY MR. KEMP:

8 Q Well, let me ask a couple questions, okay.

9 THE COURT: So Will said he'll waste some more time
10 rather than let you start, Teddy.

11 MR. KEMP: Isn't that a plea for help, Your Honor?
12 That was a plea for help I heard.

13 MR. PARKER: I'll wait.

14 (Pause in the proceedings)

15 BY MR. KEMP:

16 Q All right. The application uses the term "self
17 identified" in a number of portions; right?

18 A Yes.

19 Q Okay. So you were relying upon the applicants to be
20 honest and accurate; right?

21 A Yes.

22 Q But it was the Department's responsibility to
23 provide consistent guidelines to the applicants; right?

24 A Yes.

25 Q Okay. You think that could have been better with

1 regards to the diversity area?

2 A I don't -- I don't think so. You know, we do get a
3 lot of questions. Ky Plaskon, Mr. Plaskon would probably be
4 the better person to ask on how many questions he may have
5 received in regards to, you know, diversity. But I don't
6 recall we received too many.

7 Q What was -- oh. I've got it.

8 Sir, was there a procedure that the Department
9 implemented whereby an applicant that was confused could
10 potentially ask a question to get a clarification?

11 A Mr. Plaskon monitors generic email. A lot of
12 questions came in through there.

13 Q Okay. I've seen some responses to questions where
14 he says, "See application, see regulations," and other
15 responses where he actually gives some substantive
16 information. Is that your understanding of what was going on
17 here?

18 A I'm not aware of that.

19 Q Okay. Do you think it would have been a good idea
20 that any question and answer he gave was made available to all
21 the applicants so we had some consistency here?

22 A We try to do the best that we can to educate.

23 Q Okay.

24 A I think we did send out some list serves.

25 Q But you've seen bulletin boards that have questions

1 and answers posted on them so everybody's up to speed,
2 everybody's got the same information?

3 A Yeah, I've seen those.

4 Q That's commonly done with government contracting
5 programs; right?

6 A I'm not sure about that, but I've seen the boards.

7 Q Okay. But you didn't do that?

8 A We did not.

9 Q Okay. In retrospect do you think you should have
10 done that?

11 A Now, Ky would probably be a better person to ask
12 that, because I don't know the quantity and type of questions
13 that he did receive. I know he's in a situation where he did
14 receive a lot of questions, but he couldn't give out -- he
15 couldn't give out an answer that's -- that an applicant would
16 have an advantage with.

17 Q Well, there wouldn't be any advantage if you told
18 all the applicants the questions and answers. If you told
19 everybody the question and answer, no one has an advantage
20 there, do you think?

21 A We tried -- the Department did a good job, I think,
22 in my opinion, of providing the information they did.

23 Q A good job even though half the applicants knew the
24 that building address was not required and say half thought it
25 was required? The Department did a good job on that point?

1 MS. SHELL: Objection. Assumes facts not in
2 evidence.

3 THE COURT: Overruled.

4 THE WITNESS: I wasn't aware that half the
5 applicants didn't know that.

6 BY MR. KEMP:

7 Q You knew that some of the applicants didn't know
8 that?

9 A Yes.

10 Q For example, you know, that Livfree went out and got
11 real addresses for all six of those applications; right?

12 A I didn't know that.

13 Q Well, you heard Mr. Thomas testify to the extreme
14 efforts he went to get approved addresses; right?

15 A I did hear that.

16 Q And the Department expected people to be more like
17 Mr. Thomas than just to put down a Post Office box, didn't
18 they?

19 A Can you repeat that.

20 Q Didn't the Department expect that applicants would
21 be like Mr. Thomas, have real addresses and real locations?

22 A We -- the Department did not require a location.

23 Q Okay. And how could you rate things like community
24 impact without knowing where in Clark County the dispensary
25 was going to be?

1 A So in that -- in that -- that would have to --

2 Q I have to ask the graders?

3 A I was trying to help you out so you don't have to.

4 Q Okay. Go ahead.

5 A So, I mean, it's a -- so their plan, their plan to
6 the community would -- the more demonstrating in the
7 application -- I'm trying to articulate this the best way.
8 And I apologize if I'm not. The more information provided in
9 that application, the more they would score. More detailed
10 and comprehensive.

11 Q And if you didn't even know where the building is,
12 how are you going to determine the community impact? How are
13 you going to do that?

14 A It'd have to be associated with the jurisdiction
15 that they were applying for.

16 Q Okay. Okay. Somewhere in Clark County. How are
17 you going to determine the community impact -- Clark County
18 covers a lot of ground, doesn't it?

19 A Yeah. I don't --

20 Q Henderson covers a lot of ground, doesn't it?

21 A It does.

22 Q Isn't it true that you can't consider the community
23 impact unless you know where the dispensary's going to be?

24 A I don't believe that. It's -- it would be their
25 plan, their plan to, you know, address the community. And

1 again, that's -- that's in the regulations and the particular
2 criteria together.

3 Q Getting back to the MM Development situation, we
4 have an actual dispensary building, okay. Some of the
5 applicants put in generic plans for unknown locations. Are
6 you aware of that?

7 A Yes.

8 Q Okay. And, for example, I think Thrive won six
9 licenses, and they have generic plans; right?

10 A I don't know.

11 Q Okay. Well, let's assume someone had six licenses
12 issued and they provided generic plans at unknown locations,
13 okay. Let's assume that. How do you -- how can you explain
14 -- how you can meaningfully grade things like the community
15 impact, you know, building detail, you know, affecting the
16 local jurisdiction? How can you do that if you don't even
17 know where the building is?

18 A It would be, again, their comprehensive plan that
19 they submitted in the non-identified section. It's their plan
20 altogether.

21 Q A comprehensive plan to build a building at an
22 unknown location, don't know whether it's one story, two
23 story, don't know whether it's a strip center, don't know
24 whether it's a stand-alone building, don't know what part of
25 town it's in, don't know whether it's on a main thoroughfare.

1 How can you realistically evaluate community impact if you
2 don't know any of those things?

3 A Well, location wasn't required --

4 Q It wasn't required --

5 A -- or scored.

6 Q It wasn't required at the end of the application
7 process. It was required at the beginning, was it not?

8 A Yeah. From what I saw today and then what I know,
9 there was an application that was supposed to -- but then a
10 change was made and notification out to industry that a change
11 was made.

12 MR. KEMP: Thank you, Mr. Gilbert.

13 THE COURT: Are you done, Mr. Kemp?

14 MR. KEMP: Yes, Your Honor.

15 THE COURT: All right. So I'm going to let you get
16 up, and we're going to talk about scheduling, okay, rather
17 than making Mr. Parker start for only five minutes.

18 So we're planning to come back on June 10th at about
19 9:30. Can someone explain to me, other than finishing Mr.
20 Gilbert what the plan is for that day. And then Mr. Koch
21 needs to explain to me if he's still in trial with Judge
22 [inaudible].

23 MR. SHEVORSKI: June 10th at what time, Your Honor.

24 THE COURT: 9:30.

25 MR. SHEVORSKI: 9:30. Thank you.

1 THE CLERK: 10:30.

2 THE COURT: Oh. Dulce says 10:30. Because I have
3 to do a preliminary injunction hearing on Mr. Koch's other
4 case or Mr. [unintelligible]'s case.

5 MR. KOCH: 10:30?

6 MR. KEMP: We've been trying to cut back the number
7 of additional witnesses that we intend to offer.

8 THE COURT: I noticed that.

9 MR. KEMP: And we've already gone to two days. I
10 think we could probably fairly say we've got one day left now,
11 one and a half. One and a half, Your Honor.

12 THE COURT: Teddy says two.

13 MR. PARKER: I said two. You included Mr.
14 [inaudible] today in that analysis?

15 MR. KEMP: Yeah.

16 MR. PARKER: I'm going to say long and short, Your
17 Honor.

18 THE COURT: Okay. So Teddy says two.

19 MR. PARKER: And if we're short, then God bless us.

20 THE COURT: I understand. I mean, you're all happy
21 you left early.

22 So who have you got left? You're going to finish
23 Mr. Gilbert. What else have you got?

24 MR. KEMP: I had Mr. Groesbeck, who's with Planet
25 13. I might not call him given what -- I might call him for

1 just a brief, limited diversity point.

2 And then I had someone from Livfree on the
3 financials. I want to look at the transcript, but I think the
4 witness may have answered all those questions, so I'd probably
5 pull that person back.

6 So I personally do not have any more witnesses, Your
7 Honor.

8 THE COURT: Mr. Gentile, Mr. Cristalli, how much
9 more have you got?

10 MR. CRISTALLI: Your Honor, I believe -- we have Mr.
11 -- we have at least Mr. Pupo.

12 THE COURT: I know. When he comes back from
13 vacation.

14 MR. CRISTALLI: Yes. And in light of that I know
15 that there was a request previously, and I think there's an
16 outstanding request in another case with regard to Mr. Pupo's
17 cell phone records, and I'm not quite sure what the status of
18 that is. That may have been appealed, but I don't know.
19 Somebody else may have that information. We certainly would
20 like that going in -- especially in light of the fact now we
21 have some additional time before we start back up on the 10th.
22 We'd like to address that issue. Certainly in light of what
23 we've seen up to this point and the records that we've already
24 examined, we think that they're' certainly relevant to this
25 hearing.

1 THE COURT: Mr. Bult, how many more people have you
2 got?

3 MR. BULT: Maybe Damon Hernandez, Mark Bradley, Paul
4 Thomas, and Ramsey Davis. So four to five.

5 THE COURT: And you're thinking that's a day?

6 MR. BULT: No. No. I never said that. If I did, I
7 take it back.

8 THE COURT: How long do you think that is?

9 MR. BULT: If Damon gets called, I think it's over a
10 day. But the Bradley, Thomas, and Davis I think we could get
11 in half a day.

12 THE COURT: Are you guys calling the graders?

13 MR. BULT: That's a subject for the plaintiffs to
14 discuss in light of Gilbert's testimony.

15 THE COURT: I understand. That's why I'm asking.
16 Because it's a --

17 MR. BULT: I understand. But in light of what Mr.
18 Gilbert testified to, I think we're leaving that door open.

19 THE COURT: Okay.

20 MR. KOCH: Your Honor, with respect to witnesses,
21 Andrew Jolley is a witness that's been subpoenaed. He's my
22 client representative. He is -- will be gone for an extended
23 period. Already is gone. He would be available on the 10th.
24 I'd spoken with Mr. Kemp about potentially call him on some
25 basis on that date. That's the only day he would be

1 available. So --

2 MR. KEMP: I'm not sure we need him at this point,
3 Your Honor. But I told Counsel I'll let him know soon.

4 MR. KOCH: I want him as part of our case. So he's
5 been subpoenaed, and my request that we be able to take his
6 testimony on that Monday, and whether it's out of order or
7 however. He's been subpoenaed. We believe he's necessary for
8 our case, as well.

9 THE COURT: And is that the only day he's available
10 between now and the end of June?

11 MR. KOCH: As far as I know, yes. He's -- he's
12 going to be back for I think the 9th, that Sunday, he's able
13 to stay for that extra day and that's it. But that's it. So
14 I can talk with him, but that's the only day, and I think we
15 can make it work, depending upon the subsequent times.

16 I will also talk --

17 THE COURT: [Unintelligible].

18 MR. KOCH: -- to [inaudible]. He had a pretrial, a
19 calendar call next Tuesday. And there may be some discussion
20 there about actual lengths of time for that trial. And if
21 so --

22 THE COURT: And when it's actually starting.

23 MR. KOCH: It should start on the 11th. It's
24 scheduled for the 11th in Federal Court. I don't think
25 there's anything in front of us as far as we know. I would

1 have told you.

2 THE COURT: It's usually criminal that's in front of
3 you and you guys trail it. And that's still the case from
4 what I understand.

5 MR. KOCH: I understand. We'll defer to the Court.

6 THE COURT: All the civil cases serve at the
7 pleasure of the criminal docket.

8 MR. KOCH: Yeah. Absolutely. I understand. We're
9 told it shouldn't be an issue based on the schedule, but I
10 will check, and by the 4th I will know.

11 THE COURT: All right. So then I am going to fill
12 the 11th, or wait until you communicate with us after next
13 week, after Tuesday or Wednesday as to whether that's
14 available for you?

15 MR. KOCH: I will notify the Court on Tuesday.

16 THE COURT: If you could email all counsel and copy
17 my law clerk and assistant after you get out of your calendar
18 call with Judge [unintelligible], then I'll know whether I can
19 use the 11th for other things, because I've got other people
20 wanting stuff, and I'm trying to keep days open for you guys
21 to get you finished.

22 So my guess is you're going to need three more days.
23 So -- and the does not include the argument. That's just for
24 the evidence. Is anybody going to want to do anything else
25 before you argue, other than sit down and say, we rest on our

1 evidence?

2 MR. SHEVORSKI: State may have half a day one day of
3 case in chief.

4 THE COURT: Well, I understand. That's part of the
5 evidence.

6 MR. SHEVORSKI: Yeah.

7 THE COURT: I'm talking about once you are all done,
8 all of you, with the evidence is there anything else you want
9 to do besides me say, Mr. Kemp, it's time for your closing
10 argument?

11 MR. SHEVORSKI: I think we may file -- we may file a
12 motion on 1983 stuff, Your Honor. We may not.

13 THE COURT: Okay. All right. Anything else you can
14 tell me?

15 MR. SHEVORSKI: Nothing from the State, Your Honor.

16 THE COURT: So you're giving me pocket briefs on
17 that "convenient" language in the statute?

18 MR. SHEVORSKI: Yes, Your Honor.

19 THE COURT: Okay. Y'all have a lovely day. If
20 somebody decides there's some other way I can help you other
21 than being available on June 10th at 10:30 to help you, I am
22 at your disposal.

23 (Court recessed at 4:47 p.m., until
24 Monday, June 10, 2019, at 10:30 a.m.)

25 * * * * *

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EXHIBITS

<u>DESCRIPTION</u>	<u>ADMITTED</u>
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PLAINTIFFS' EXHIBIT NO.

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* * *

DEFENDANTS' EXHIBIT NO.

None admitted in Volume II

* * *

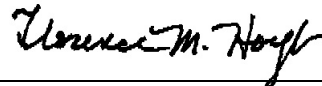
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

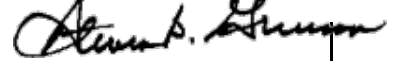
**FLORENCE HOYT
Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER

6/14/19

DATE



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC, .
et al. .

Plaintiffs .

CASE NO. A-19-786962-B

vs. .

STATE OF NEVADA DEPARTMENT OF .
TAXATION .

DEPT. NO. XI

Defendant .

**Transcript of
Proceedings**

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BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING - DAY 6

MONDAY, JUNE 10, 2019

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

APPEARANCES:

FOR THE PLAINTIFFS:

DOMINIC P. GENTILE, ESQ.
MICHAEL CRISTALLI, ESQ.
ROSS MILLER, ESQ.
WILLIAM KEMP, ESQ.
ADAM BULT, ESQ.
MAXIMILIEN FETAZ, ESQ.
THEODORE PARKER, ESQ.

FOR THE DEFENDANTS:

KETAN BHIRUD, ESQ.
STEVE SHEVORSKI, ESQ.
THERESA HAAR, ESQ.
RUSTY GRAF ESQ.
BRIGID HIGGINS, ESQ.
ERIC HONE, ESQ.
DAVID KOCH, ESQ.
ALINA SHELL, ESQ.
JARED KAHN, ESQ.
PHILIP HYMANSON, ESQ.
JOSEPH GUTIERREZ, ESQ.

1 LAS VEGAS, NEVADA, MONDAY, JUNE 10, 2019, 10:35 A.M.

2 (Court was called to order)

3 THE COURT: So, counsel, I have one housekeeping
4 matter. I was out of town last week speaking at the
5 Conference of the National Association of Certified Valuers
6 and Appraisers and received information that some flowers had
7 been delivered to my office.

8 MR. GENTILE: What?

9 THE COURT: Wait. I'm not done. Let me make my
10 disclosure. As you guys were leaving the other day I thanked
11 Mr. DiBella because I had been a client of his for his shop
12 for -- since 1986. So I was surprised that I received some
13 beautiful flowers, but I wasn't here to enjoy them. I have
14 marked the note that appears to be handwritten from the
15 DiBella folks. My staff, who enjoyed the flowers, will be
16 sending a thank you note to DiBella Florists.

17 MR. KOCH: The same flower that smiles today
18 tomorrow will be dying, Your Honor.

19 THE COURT: Well, you know, that's the problem with
20 flowers. But they look lovely. But I've made my disclosure.
21 They don't [unintelligible]. My staff loved them, so you guys
22 may get special treatment today, Mr. Gentile, from Dulce.
23 They're beautiful flowers. They did a great job, which is why
24 I've gone there for 30 years.

25 THE CLERK: Is this a Court exhibit?

1 THE COURT: Court Exhibit 1, Court's disclosure.

2 [Unintelligible] on something.

3 MR. SHEVORSKI: Yeah. Your Honor, may I please,
4 real quick?

5 THE COURT: You may.

6 MR. SHEVORSKI: So the parties have agreed to finish
7 the plaintiffs' side. I believe Mr. Parker has some questions
8 for Mr. Gilbert, and then we're going to go to Mr. Jolley to
9 accommodate his schedule, and then restart with State's
10 questioning, cross of Mr. Gilbert.

11 THE COURT: Everybody agree to that process?

12 MR. KEMP: Your Honor, I had three to five more
13 minutes of questions for Mr. Gilbert, and I told Mr. Parker
14 about that.

15 MR. PARKER: No, I have no objection.

16 THE COURT: Okay. So we're going to get Mr. Gilbert
17 up, ask him a few questions on the plaintiffs' side, finish up
18 with the plaintiffs' side. Before anybody else begins their
19 examination we're going to go to Mr. Jolley, finish Mr. Jolley
20 up, and then go back to Mr. Gilbert. So Mr. Gilbert can walk
21 to Starbucks or wherever he wants after we finish this first
22 group, if he's willing to go in and out of security again.

23 All right. Sir, come on back up. Since it's a new
24 day, we're going to swear you in.

25 //

1 STEVE GILBERT, PLAINTIFFS' WITNESS, SWORN

2 THE COURT: Guys, I need you to not talk, because
3 you screw up my record.

4 THE CLERK: Sir, please state --

5 THE COURT: Sorry. Some of you would want the
6 record in a few weeks when you go someplace else.

7 THE COURT: Sir, please state and spell your name
8 for the record.

9 THE WITNESS: Steve Gilbert, S-T-E-V-E
10 G-I-L-B-E-R-T.

11 DIRECT EXAMINATION (Continued)

12 BY MR. KEMP:

13 Q Good morning, Mr. Gilbert. One subject we didn't
14 talk about us distance separation. Is there a requirement
15 that dispensaries be a certain distance between certain types
16 of schools and community facilities?

17 A Yes, there is in the regulations.

18 Q Okay. In other words, they have to be a thousand
19 feet away from say a public school and 300 feet away from a
20 community facility like a church?

21 A Yes. I think that's correct.

22 Q Now -- and then to quote 453D.210(5)(c), quote, "The
23 property is not located within 1,000 feet of public school;"
24 and then (2) 300 feet of community facility." That's your
25 understanding of the law; right?

1 A Yes, it is.

2 Q Okay. Now, in a situation where you had an
3 application which didn't have a specific address, like a Post
4 Office box or a UPS box situation, how was it that the
5 Department could enforce that particular requirement?

6 A That requirement wasn't asked for or scored or
7 evaluated within the application during the criteria. So that
8 would be part of the conditional approval process within the
9 12 months after receiving the conditional.

10 Q So, in other words, you gave people the conditional
11 licenses on say December 6th; right?

12 A December 5th.

13 Q December 5th. And so sometime after that the State
14 would come in and make sure that the separation requirements
15 were met?

16 A Yeah, that's -- that's somewhat correct. So within
17 the 12 months each conditional licensee holder has a certain
18 number of steps to complete before they become operational,
19 and then they would come to us for a final inspection and show
20 us those licensings and zoning.

21 Q Okay. So let's say you get to the point of a final
22 inspection and you find out that someone has built a
23 dispensary, fully built it out within 300 feet of a school.
24 They don't get a license; right?

25 A In that case probably not.

1 Q In that location I mean.

2 A In that location if it's in violation of the zoning.

3 Q Okay. Even if they've spent tens of thousands or
4 even hundreds of thousands of dollars, if they're within
5 300 feet of a school, they don't get a license.

6 A And, again --

7 Q Excuse me. I said school. I meant 300 feet from a
8 church, 1,000 feet from a school.

9 A So in the situation like that upon the final
10 inspection through that 12-month process we would hope that
11 the applicant or the conditional licensee would be working
12 with us, we'd be able to consult him on it. But if we did run
13 into a situation like that, that would be something that would
14 be evaluated by my superiors before something would be revoked
15 or --

16 Q Well, there's nothing to evaluate, is there? It's
17 state law they have to be 300 feet away from a church and a
18 thousand feet -- there's nothing to evaluate.

19 A That's correct. Right.

20 Q Either they're within the 300 feet or a thousand
21 feet or they're not.

22 A But we would look at the situation, yes. But it is
23 -- that's what the law states.

24 Q Well, you say, we would look at it. You're implying
25 there's some discretion that you could give them a license

1 even if they were within 300 feet of a church? You could let
2 them move; right?

3 A Yes, we could let them move.

4 Q But you couldn't give them a license in a restricted
5 area?

6 A If they're in violation of regulations or the
7 statute, no.

8 Q Okay. Because that's a mandate from state law.
9 It's not optional.

10 A That's correct.

11 Q Okay. Now, as I understand, this is from the
12 legislature. Quote, "The distance must be measured from the
13 front door of the proposed marijuana establishment to the
14 closest point of the property line of a school, community
15 facility," and then it goes on, okay, unquote. Is that your
16 understanding?

17 A Yes, it is.

18 Q So if we have a school or a church, we take the
19 property it's on and we find the closest point to the
20 marijuana facility will measure 300 feet. If it's a church,
21 300 feet; right?

22 A Yes.

23 Q And there's nothing new about this 300 foot. It's
24 been in the statute for years; right?

25 A Yeah. Through the medical days.

1 Q Okay. So let me see if I -- if I see exactly how
2 this works, okay. Let's see if we can make so everyone can
3 see it. Okay.

4 Now, I'm assuming that we have a building here --

5 THE COURT: So where is this information from?

6 MR. KEMP: This is just a drawing to illustrate --

7 THE COURT: This is your hypothetical situation?

8 MR. KEMP: Yes, Your Honor, this is hypothetical.

9 THE COURT: Okay. Just making sure.

10 MR. KEMP: I'll probably mark this for the record
11 when we're done.

12 THE COURT: Lovely.

13 BY MR. KEMP:

14 Q Okay. So let's assume we have three parcels ont
15 other side of the street. Are you with me so far, Mr.
16 Gilbert.

17 A Okay.

18 Q Then we have the street, and then -- I'm just trying
19 to figure out where the forbidden area is, all right. So
20 Parcel Number 3 in Building 3 we have a community facility
21 like a daycare or church, okay. Okay? You got me so far?

22 A Yes.

23 Q And so we would go to the corner of the property
24 line and we would measure 300 feet radius, right --

25 A Yes, sir.

1 Q -- and if the building -- or, excuse me, the front
2 door I think is what the statute says. If the front door is
3 within that 300-foot radius, you can't have a dispensary
4 there; right?

5 A That's correct.

6 Q And in this case Building Number 2 in my example is
7 all within the 300-foot radius; right?

8 A Looks to be in the hypothetical, yes.

9 Q But we could have a dispensary in Building Number 1,
10 because that's over 300 feet in this example; right?

11 A Is that the same parcel of land, just two buildings
12 on the parcels?

13 Q Well, it doesn't really matter if it's the same
14 parcel, because for the dispensary you measure from the front
15 door. You don't measure from the parcel.

16 A That'd be great.

17 Q So Building 1 is okay, but Building Number 2 is
18 illegal; right?

19 A Yeah, based on the drawing that would be correct.

20 Q Okay. Now, I don't know if you're familiar with
21 what they do with taverns, but when someone applies for a
22 tavern there's a distance separation requirement from other
23 taverns. Are you familiar with that in general?

24 A No, I'm not.

25 Q Okay. When they apply for taverns they have

1 professional surveyors fill out portions of the application,
2 like Horizon Surveyor, and they have to certify that this
3 proposed tavern location is X number of feet away from any
4 existing tavern. Are you kind of familiar with that?

5 A Yes.

6 Q Okay. Is there any type of requirement that the DOT
7 has that an applicant has to prove that a dispensary is over a
8 thousand feet from a public school and 300 feet from the
9 property line of a church?

10 A Yes, there is. Part of conditional steps that they
11 need to complete within the 12 months is to supply the
12 professional zoning, a zoning approval from the local
13 jurisdiction.

14 Q Okay. Well, you're not relying on the City of
15 Pahrump and Nye County and places like that to enforce the
16 State's separation requirement, are you?

17 A No, we're not. We will look at the separation
18 requirements and compare them to ours.

19 Q You look at it independently, the DOT does?

20 A Yes.

21 Q So, for example, if the City of Las Vegas just
22 didn't pick up on the fact that they were within 300 feet of a
23 church, that doesn't matter, because they're still in
24 violation of state law; right?

25 A That's correct.

1 Q So if we had a hypothetical case like I'm talking
2 about right here, where say the City of Las Vegas approved
3 this, if the DOT finds that you're within 300 feet of the
4 property line of Parcel 3, the building's within 300 feet,
5 that's it, illegal dispensary; right?

6 A Potentially, yes. Yes.

7 Q Well, you keep saying potentially. I mean, this is
8 pretty black and white, isn't it?

9 A If it is in violation of the statute, we would -- or
10 the regulation, we would investigate and see the
11 circumstances.

12 Q Okay. And how is that usually brought to the DOT's
13 attention? Does the church complain about it, does someone in
14 the community complain about it?

15 A I don't recall in my experience getting a complaint
16 for that. Maybe years ago in the medical days it might have
17 been questioned. But I don't recall getting a complaint in
18 the most recent years.

19 Q Okay. I'm glad you brought that up. This
20 separation is both for medical and recreational; right?

21 A Yes, it is.

22 MR. KEMP: Okay. Thank you.

23 THE COURT: Mr. Parker.

24 And then were going to suspend this witness and go
25 to Mr. Jolley; correct?

1 (Pause in the proceedings)

2 MR. PARKER: Your Honor, the --

3 MR. KOCH: I think Mr. Bult had questions after Mr.
4 Parker, but I may be -- I don't want to cut him off.

5 THE COURT: Did you?

6 MR. BULT: No. I think he may cover them. If I
7 have one or two, it's fine.

8 THE COURT: So you'll wave at me if you'd like to
9 ask questions? Because looking over there I didn't see you
10 getting up. Sorry.

11 MR. BULT: No. It's fine.

12 MR. PARKER: Your Honor, I'm going to be here for a
13 little while with Mr. Gilbert. I don't know what Mr. Jolley's
14 time constraints are.

15 MR. KOCH: Yeah. I thought you said a few questions
16 based on last Friday, but --

17 MR. PARKER: No, no. I --

18 THE COURT: So if Mr. Parker's not a few
19 questions --

20 MR. PARKER: I had the whole week and a weekend to
21 be able to prepare for this gentleman, so --

22 THE COURT: All right. Mr. Parker, sit down.

23 Sir, I'm going to let you go get some coffee or
24 something.

25 How long the Mr. Jolley so I can tell Mr. Gilbert

1 when to come back?

2 MR. KOCH: I think my direct will be less than an
3 hour for sure, and then depending upon cross.

4 THE COURT: So hour and a half or so. Go visits
5 Starbucks, walk around. I wouldn't go back to the Washington
6 -- the office.

7 THE WITNESS: Okay.

8 THE COURT: You'll never get back here.

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: All right. So we're going to suspend
11 Mr. Gilbert while we do Mr. Jolley, and then resume. Because
12 Mr. --

13 MR. KEMP: Your Honor, I forgot to mark the exhibit.

14 THE COURT: Would you like to mark it as
15 Demonstrative next in order?

16 MR. KEMP: I would, Your Honor.

17 THE CLERK: That'll be D3. D, demonstrative. It's
18 my codes so that I know what it is. The Ds don't go back to
19 the jury.

20 MR. PARKER: Your Honor, while he's doing that I
21 have I have been able to avoid the 17th, so if the Court wants
22 to use the 17th, I'm available on the 17th.

23 THE COURT: Okay. So far it's booked today and
24 tomorrow.

25 MR. SHEVORSKI: 17 is fine with the State, Your

1 Honor.

2 THE COURT: Dan was talking about booking something
3 when you guys hadn't. So let's see what he booked. He booked
4 a settlement conference all day on the 17th. But I have time
5 later in that week.

6 MR. KOCH: I think we talked the 18th and 19th for
7 our case, Your Honor. Can I call Mr. Jolley now?

8 THE COURT: Yes, you may.

9 So do you want me to book the 18th and 19th before
10 Dan gives them away to somebody else? Everybody okay coming
11 on the 18th and 19th? Anybody have a problem with the 18th or
12 19th?

13 MR. SHEVORSKI: It's fine with the State, Your
14 Honor.

15 MR. GENTILE: I have one, but I also have other
16 lawyers that are here, so I could -- we'll deal with it.

17 THE COURT: So we're going to book the 18th and
18 19th. Don't let Dan set anything else.

19 ANDREW JOLLEY, DEFENDANTS' WITNESS, SWORN

20 THE CLERK: Thank you. Please be seated. Could you
21 please state and spell your name for the record.

22 THE WITNESS: Andrew Jolley, A-N-D-R-E-W
23 J-O-L-L-E-Y.

24 THE COURT: Sir, there's a pitcher of water there,
25 there's M&Ms in the dispenser, then there's a ton of exhibits

1 counsel may refer you to.

2 MR. KOCH: Just a couple, hopefully.

3 DIRECT EXAMINATION

4 BY MR. KOCH:

5 Q Mr. Jolley, are you involved in the business of
6 marijuana?

7 A Yes.

8 Q When did you first become involved?

9 A Started looking at it in 2013, applied for licenses
10 in '14, opened in '15.

11 Q And prior to that time frame what line of work were
12 you in?

13 A Commercial real estate investments mostly.

14 Q And tell us what -- how you first became involved.
15 How'd you learn of it, and what was the steps that were made
16 to become involved in the business of marijuana?

17 A Believed in the medical benefits of marijuana for
18 quite some time, and also believed that it should be
19 legalized, but I didn't really consider getting into the
20 industry until Nevada passed its laws in the summer of 2013
21 allowing the industry to be commercialized and to issue
22 licenses. I felt that myself and business partner and others
23 would be compelling applicants, and so we applied in 2014 for
24 medical licenses.

25 Q What was the entity that applied for that license?

1 A Nevada Organic Remedies and Henderson Organic
2 Remedies.

3 Q All right. And so you submitted an application in
4 2014. Were you successful in obtaining a license?

5 A Yes.

6 Q And how many licenses were obtained?

7 A We were awarded a production license for Nevada
8 Organic Remedies cultivation and dispensary, and we were also
9 separately awarded a dispensary license for Henderson Organic
10 Remedies, another entity that I am the owner of.

11 Q All right. And after award of that license did you
12 -- did Nevada Organic Remedies move forward and actually open
13 a location?

14 A Yes.

15 Q When did that location open?

16 A Our cultivation opened in October of '15, our
17 production in December of '15, and our dispensary opened on
18 December 10th of 2015.

19 Q What was your role with respect to the operation of
20 those establishments?

21 A Owner and CEO.

22 Q Okay. Were you familiar with the processes and
23 regulations that apply to those establishments?

24 A Yes.

25 Q And other than your direct involvement with your

1 specific dispensaries or cultivation locations were you
2 involved personally in the industry itself outside of your
3 business?

4 A Yes. I was involved in the industry in a number of
5 different ways. I was one of the founding members of the
6 Nevada Dispensary Association. I was a board member, and then
7 I became the president of the NDA, a position that I held for
8 three years. I also helped out in the Question 2 campaign and
9 a couple of other panels and boards that I've been a part of.

10 Q Nevada Dispensary Association. That's been
11 mentioned a few times during the course of this hearing. Can
12 you tell us a little bit more about that organization. What
13 was its purpose?

14 A Sure. The Nevada Dispensary Association was formed
15 actually after Clark County held its special use permit
16 hearings and business license hearings in early 2014. We were
17 a part of that. And then that organization ultimately became
18 the preeminent industry association for the state of Nevada.
19 We during my tenure as president represented well over
20 90 percent of dispensary owners in the state and were involved
21 in, you know, a lot of different regulatory discussions,
22 community involvement, you know, a lot of different facets of
23 representing the best interests of the community and the
24 industry.

25 Q When you say the NDA represented 90 percent or more

1 of dispensaries what does that mean exactly? Do they have to
2 join, or did you force them to join?

3 A No. So that means that they voluntarily joined the
4 organization, signed our bylaws, and paid dues.

5 Q Were any of the -- you looked at plaintiff parties
6 that are part of this case here?

7 A Yes.

8 Q Were any of those entities part of the NDA during
9 your time that you were on the board?

10 A I believe all or the majority of them were, yes.

11 Q And you served as a board member and as president of
12 that organization?

13 A Initially as a board member, and then became
14 president when that seat was vacated.

15 Q Okay. When did you become president, if you recall?

16 A I believe it was early 2016. There was a president
17 who served for a short term, and then when he left I was asked
18 to run for president by several members of the Association.

19 Q Yeah. And you ran and you apparently were elected
20 as president? Was there actually an election?

21 A Very prestigious, a very tight race. No. I --
22 yeah, several members approached me, including the former
23 president -- two former presidents, and asked me to run, and I
24 reluctantly did that because I felt like I could add some
25 value.

1 Q Okay. Who were the former presidents that asked you
2 to run?

3 A Neil Tomlinson was the first president, an attorney
4 here in town, and he stepped down, and Shane Terry was the
5 president for just a couple of months, and he ended up leaving
6 the company that he was leading, and so when he stepped down
7 from his position with that company he also stepped down from
8 the president of the NDA.

9 Q All right. You said you became president in 2016.
10 During the time you were president did the NDA work on the
11 initiative Question 2 that you referenced?

12 A The NDA didn't get involved directly, but because of
13 my involvement in the industry generally I was asked to be a
14 part of the Question 2 team, if you will. And I cared about
15 it a lot, and so I ended up becoming very involved in the
16 campaign.

17 Q Okay. And so you were aware of what Question 2 was
18 proposing?

19 A Yes. Generally, yes.

20 Q Okay. What did you understand the purpose of that
21 initiative to be?

22 A Question 2 was a ballot initiative proposing to make
23 marijuana recreationally available in the state of Nevada for
24 adults. It provided provisions that would essentially double
25 the number of dispensary licenses in the state. Where there

1 were 60-something, 63, 64 medical only dispensaries, Question
2 2 allowed for essentially a doubling of those licenses
3 allocated by population to various jurisdictions throughout
4 the state. It allowed for adults over the age of 21 to
5 purchase limited quantities of marijuana and marijuana
6 products from licensed dispensaries throughout the state. And
7 several other provisions. But that's generally what the
8 purpose was.

9 Q All right. Question 2 passed, we know. After
10 Question 2 passed were you involved personally with any
11 further steps to sort of implement Question 2?

12 A So the Nevada Dispensary Association has been and
13 was asked to be involved before, during, and after the passage
14 of Question 2 intimately, worked very closely with the State
15 and, of course, with owners and other stakeholders in the
16 community, law enforcement, et cetera, to be very thoughtful
17 and careful about how Question 2 was implemented, the
18 regulations surrounding Question 2. In addition to that I was
19 asked to be on a couple of different panels, one for Clark
20 County, the Green Ribbon Panel, and I was asked to be on a
21 working group for the Governor's Task Force for the
22 implementation of Question 2, the recreational program.

23 Q All right. That Task Force, we've heard some
24 testimony about that previously. What was your specific role?
25 You were on the working group. What did you do?

1 A I was on the working group for the retail
2 subcommittee, so the committee that I was on, I don't remember
3 exactly how many members there were, eight or twelve, in that
4 range. We were tasked with coming up with recommendations for
5 the regulations regarding dispensaries under the recreational
6 program. So everything from, you know, application to
7 operation to marketing to, you know, inventory controls and
8 other operational issues.

9 Q Okay. Let's have you turn -- we're looking for
10 Exhibit 2009, find the binder.

11 MR. KOCH: If I could approach, Your Honor.

12 THE COURT: You may.

13 (Pause in the proceedings)

14 BY MR. KOCH:

15 Q Exhibit 2009 has been identified previously as the
16 Task Force report that was prepared, final report May 2017.
17 Have you seen this report before?

18 A Yes.

19 Q All right. Ask you just about a couple of the
20 recommendations that were there. If you could turn to page
21 2515, Bates Number 2515.

22 A Okay.

23 Q And that should be titled Application Licensing
24 Requirements. You see that?

25 A Yes.]

1 Q Going to ask you about the recommendation under the
2 Application Process section, which says, "The Task Force
3 recommends that the qualifications for licensure of a
4 marijuana establishment in the impartial numerically scored
5 bidding process for retail marijuana stores be maintained as
6 in the medical marijuana program."

7 First let's stop there. Was there some carryover
8 from medical marijuana with respect to the application process
9 for recreation that you're aware?

10 A Yes. There's quite a bit of overlap.

11 Q Okay. And then it goes on to say, "Except for a
12 change in how local jurisdictions participate in the selection
13 of locations, the Department of Taxation should rank the
14 applicants based on applicants' qualifications without respect
15 to the planned location of their business. The local
16 government should be responsible for working with the rank
17 list of applicants prepared by the Department of Taxation to
18 determine acceptable locations based on requirements within
19 the respective jurisdiction."

20 Were you aware of that recommendation?

21 A Yes.

22 Q Was that something that was discussed among Task
23 Force members?

24 A Yes.

25 Q What was the purpose of that recommendation as you

1 understood it?

2 A It was to improve upon the previous process, which
3 was very problematic with respect to location selection. So
4 back in 2014 on the medical program there was a requirement to
5 have the location identified and secured, owned or leased, in
6 order to submit an application. Not only that, but certain
7 jurisdictions, like Clark County, for example, actually issued
8 special use permits to applicants prior to when the State went
9 through its competitive application scoring process which
10 occurred -- came out in November of '14.

11 So that created a lot of confusion in the community.
12 There were something like 500 applications in 2014 for 60-
13 something licenses, and so the requirement to have an
14 applicant secure a location prior to applying created a lot of
15 collateral damage in the community. As you can imagine, you
16 had almost 80 or 90 percent of the locations that were secured
17 went unused, essentially. And so in order to avoid that same
18 problem there was a recommendation made here and ultimately
19 carried out by the Department not to make a location selection
20 a requirement to apply. It's simply inefficient, it was
21 problematic, and created a lot of headaches for people.

22 Now, being in the real estate industry, it was an
23 advantage to me, because we own shopping centers and we were
24 able to secure locations. But if you look at totality of what
25 happened in 2014, there was a lot of problems with requiring

1 applicants to secure a location prior to applying. You had so
2 many people go out and sign a lease or in some cases even buy
3 buildings, and those applicants ultimately didn't -- many of
4 them did not get a license from the State, and so it led to a
5 lot of inefficiency problems, even lawsuits and other issues
6 with that.

7 So this, in my opinion, was an effort to learn from
8 that past mistake in 2014 and improve upon it and essentially
9 allow the State to decide who gets the license and for the
10 local jurisdictions to decide where those licenses would go.
11 Which is how it's done for many other industries and other
12 examples.

13 Q And let me ask. Was this issue or this change, was
14 this known in the industry, to the extent you know?

15 A Everyone that I talked to, and keep in mind, I
16 talked to a lot of people, was aware of this and supported it.

17 MR. CRISTALLI: Objection. Calls for speculation.

18 THE COURT: Overruled.

19 THE WITNESS: In my experience everyone that I
20 talked to knew about it and, not only that, was in favor of
21 it, because of the past problems that were encountered in
22 2014.

23 BY MR. KOCH:

24 Q I read the regulations more generally. Did you
25 participate at all with respect to the Department and its

1 process for drafting and adopting regulations?

2 A Well, I was certainly aware of the process and kept
3 close tabs on the process and attended many hearings. And so
4 in that respect I was certainly aware of the regulatory
5 process.

6 Q What type of hearings were held on the regulations?

7 A Well, any time there are new regulations adopted
8 there's a requirement to have public hearings and take public
9 comment. But not only that, stepping back even before the
10 regulations were adopted the Task Force met under a public --
11 open meeting rules, and so there was public comment during
12 each of the Task Force meetings. There was, you know, public
13 comment regarding temporary regulations. There was public
14 comment on hearings regarding the permanent regulations. So
15 there were several steps along the way in which people could
16 have voiced their concerns or opinions about the regulations
17 and more specifically, the application process itself.

18 Q All right. And if someone had an objection to a
19 proposed regulation brought up to Task Force, would that
20 objection would be considered by the Task Force?

21 A Well, I guess it would depend on what you mean by
22 considered. But, yeah, there were certainly many
23 opportunities for industry people, owners, operators, and the
24 public to comment on the proposed recommendations from the
25 Task Force, but also the actual regulations that were

1 ultimately promulgated.

2 Q And you said you attended some of the public
3 hearings on the regulations?

4 A Yes.

5 Q You said temporary regulations. Were there
6 temporary regulations that were adopted at some point?

7 A So Question 2 passed in November of 2016. It called
8 for the recreational program, if I remember correctly, to be
9 operational by 2018. But piggybacking off of what other
10 states had done, Nevada decided to actually start allowing
11 recreational sales in advance of that deadline, and that was
12 through a program called Early Start. And I believe in order
13 to get the Early Start Program up and running, which allowed
14 for recreational sales to take place essentially under the
15 medical regime starting in July 1st of 2017, I believe that
16 there were some temporary regulations that were put in place
17 to support that effort.

18 Q Did NOR or Nevada Organic Remedies -- did it apply
19 to open under the Early Start Program?

20 A Yes.

21 Q In most of the industry, as far as you're aware of,
22 apply to be open under the Early Start Program?

23 A Most dispensaries applied and pursued -- applied for
24 and pursued the Early Start Program. Not all either qualified
25 or could get their affairs in order to actually do that, but

1 as far as I can recall, the vast majority did apply for that.

2 Q So not everyone that applied actually got a license
3 under Early Start?

4 A Well, there were certain conditions that had to be
5 met. And, you know, looking back there were at least one
6 dispensary that I'm familiar with, possibly multiple who
7 simply were not in a position to comply with all the
8 requirements to be open on July 1 for the Early Start Program.

9 Q And then let's move forward to the -- closer to the
10 time frame we're talking about specifically here in the 2018
11 application process. Were you aware that final regulations
12 were adopted by the Department of Taxation at some point?

13 A Yes.

14 Q And do you know when those were adopted?

15 A I believe final regulations were adopted in early
16 2018, maybe July of '18.

17 Q Were those regulations promulgated to the industry?

18 A Absolutely. Everyone was made aware of them through
19 various means, the lists are through public publication, et
20 cetera.

21 Q Ask about that for a second. The Listserv you've
22 mentioned, what is that?

23 A Starting back in 2014 the Department at that time
24 DPBH, The Department of Public and Behavioral Health, who
25 administered the medical marijuana program, started the

1 Listserv, which has continued ever since that time, which is
2 essentially a email distribution list to keep industry folks,
3 as well as anyone who wants to, up to speed on what is
4 happening with the medical and now recreational programs. The
5 State also requires each medical and recreational marijuana
6 licensee to have a designated point of contact, which includes
7 an email address specifically so the Department can keep
8 abreast of what's going on.

9 Q All right. And did NOR receive communications
10 through that Listserv?

11 A Yeah. We have many people in our company who are on
12 that Listserv distribution list.

13 Q And were there communications in 2018 to that
14 Listserv about the application process for recreational
15 marijuana licenses?

16 A There were several communications, emails regarding
17 the application process, not only in '18, but starting in '17.

18 Q Okay. So did you feel like you were aware of the
19 process and how it would be carried out?

20 A Yes, I believe anyone and everyone who is part of
21 the industry was aware of the process and what was going on,
22 and I certainly was.

23 Q Were you aware that applications would be sought or
24 received by the Department to open -- to receive an additional
25 recreational marijuana license?

1 A Yes.

2 Q Okay. And did NOR start working on applications to
3 submit for that process?

4 A We started months and months in advance, yes.

5 Q How far in advance of when the applications were due
6 did NOR start?

7 A I guess in a way we started preparing our
8 application after Question 2 was passed. I mean, we -- you
9 know, based on the language and the ballot initiative we knew
10 it would be a competitive application process, and we made
11 certain assumptions about the types of information the
12 Department would seek in evaluating applications. And so we
13 spoke with legal counsel and met internally very early on,
14 meaning, you know, end of '16 through '17 and into '18.
15 Started laying the groundwork for a compelling application and
16 spent significant amount of time and energy putting the pieces
17 in place to be a good applicant, a good applicant meaning an
18 applicant that we thought would be compelling for the State
19 and its review of what we knew would be hundreds and hundreds
20 of applications.

21 Q Did you ever consider just resubmitting your medical
22 application that you filed in 2014?

23 A I never considered that. We had people that, you
24 know, brought that up, you know, can we leverage the hundreds
25 and hundreds of pages of documents that we wrote and put

1 together from 2014, but I knew that wouldn't be enough. The
2 industry had changed, the world had changed from 2014 to 2018.
3 In 2014 no one in Nevada had experienced running a regulated
4 marijuana company. By 2018 it was already a very competitive
5 industry. And I take nothing for granted, and so we made a
6 concerted effort as early as possible to start laying the
7 groundwork for a compelling application.

8 Q How many people did NOR have work on its
9 applications?

10 A I was primarily responsible for it, beginning to
11 end. But we had dozens of people inside and outside the
12 company working on various aspects of the application. So we
13 hired counsel who has a team of people to help with that, but
14 we also enlisted the help of several people inside the company
15 and a few consultants, as well, to help us prepare the
16 application.

17 Q Do you have an estimate of how much actual time, how
18 many hours were spent to prepare those applications?

19 A So we started doing meetings and conference calls
20 probably in the summer of 2017. And so between the time we
21 started actively having meetings and working on aspects of the
22 application until it was submitted in September of '18, I
23 would only guess that there were thousands of man hours spent
24 and, you know, considerable financial investment, as well,
25 preparing an application that we were proud of and that we

1 felt represented our collective efforts as a company.

2 Q How long was the application that NOR submitted, how
3 many pages?

4 A I don't remember the exact number of pages, but it
5 was in the thousands, you know, it was well over 1200 pages.

6 Q One of the issues in this case is the question of
7 whether multiple applications would be submitted or whether
8 one application would be submitted for multiple jurisdictions.
9 What did NOR do with respect to preparation of one or more
10 applications?

11 A Well, that was a good question, because we didn't
12 know how the State would accept applications. We didn't know
13 early, early on whether or not you had to submit a separate
14 application for each jurisdiction for which you were applying
15 or if there would be one application that could be submitted
16 for multiple jurisdictions. It ended up being the case that
17 the State decided that only one application was required, and
18 then you would essentially check the boxes for the various
19 jurisdictions that you wanted to apply for. And the fees
20 would then be adjusted according to the number of
21 jurisdictions for which you're applying.

22 Q And so it sounds like NOR did not actually prepare
23 from start to finish a separate application for each
24 jurisdiction, is that right?

25 A No, we did not. We prepared a single application

1 that we felt would meet the requirements for the State and
2 apply in all those various jurisdictions and then essentially
3 selected the various jurisdictions that we wanted to apply in
4 which I believe were eight.

5 Q Does it surprise you that NOR received essentially
6 the same score in each of the jurisdictions for which an
7 application was submitted?

8 A No, because it was the same application. Everyone
9 knew that, and it shouldn't be a surprise to anybody. But I
10 believe our scores did vary slightly if I'm not mistaking.

11 Q How slightly, do you know?

12 A I don't remember, but it was a very small amount.
13 And when I inquired about that and discussed it with our team
14 and with our counsel I think we ultimately theorized that it
15 had to do with how the size of the proposed marijuana facility
16 might meet the needs of the community, because the size of a
17 community and the needs of the community may be different for
18 the different jurisdictions for which we are applying. And so
19 we theorized that that could have had an impact on the slight
20 variance in our score. But essentially we received the same
21 score.

22 MR. CRISTALLI: Objection. That calls for
23 speculation.

24 THE COURT: Overruled.

25 //

1 BY MR. KOCH:

2 Q And you've actually reviewed the scores that NOR
3 received for each jurisdiction?

4 A Yes.

5 Q Those scores, are they all within a point or so of
6 each other?

7 A I believe so, yes.

8 Q So when we say a slight variance, less than a point?

9 A I actually don't remember, but it's very minimal.

10 Q And did NOR submit its application in a timely
11 fashion?

12 A Yes.

13 Q There's been some question in this case regarding
14 the disclosure of ownership as part of the application. And
15 currently are there other owners than you and the original
16 owners of NOR?

17 A Yes.

18 MR. KOCH: Exhibit 5026. If I can approach, again.

19 THE CLERK: That's proposed.

20 THE WITNESS: Proposed?

21 THE COURT: So can we take it down. Is there a
22 stipulation of 5026?

23 MR. CRISTALLI: Haven't seen it.

24 MR. KOCH: It's the transcript letter.

25 THE COURT: Hold on a second, sir.

1 MR. KOCH: All right. No objection. Move to admit
2 5026, and also 5025 while we're at it.

3 THE COURT: Any objection to 5025, 5026?

4 MR. KEMP: No, Your Honor.

5 THE COURT: They'll be admitted.

6 (Defendants' Exhibits 5025 and 5026 admitted)

7 MR. CRISTALLI: No, Your Honor.

8 THE COURT: Okay. Now you can display it. Thank
9 you.

10 BY MR. KOCH:

11 Q All right. It's the last one in there. And, Mr.
12 Jolley, Exhibit 5026, can you tell us what this is.

13 A This is a letter from the Department of Taxation
14 dated August 20th, 2018, to Amanda Connor on behalf of Nevada
15 Organic Remedies.

16 Q And Amanda Connor, what was her role with respect to
17 Nevada Organic Remedies?

18 A Legal counsel.

19 Q Okay. And the subject is MME Ownership Change. Was
20 Nevada Organic Remedies going through an ownership change at
21 that point in time?

22 A Yes.

23 Q And can you describe for us what you understood this
24 letter to be.

25 A Sure. Earlier in the year we had decided to sell a

1 portion of the company to a group called Green Growth Brands,
2 GGB. And so this letter is confirming that the State had
3 reviewed and approved that ownership change and lists the
4 entities and individuals related to each entity that
5 constitute the owners of Nevada Organic Remedies.

6 Q Okay. There's an entity named GGB Nevada LLC, and
7 then below that, Xanthic Biopharma Inc. What are those
8 entities and their relationship to Nevada Organic Remedies?

9 A So GGB Nevada LLC was acquiring a 95 percent
10 ownership of Nevada Organic Remedies. GGB Nevada LLC is
11 wholly owned by Xanthic Biopharma Inc., which has board
12 members and officers listed below that.

13 Q Okay. And we turn to the next page. There are
14 other individuals listed there, yourself, Stephen Byrne,
15 Patrick Byrne, Harvest Dispensaries and Liesl Sicz and Darren
16 Peterson. What was their role with respect to Nevada Organic
17 Remedies?

18 A These five individuals were the original owners of
19 Nevada Organic Remedies who were in place in 2014. And it was
20 these five individuals who were selling a portion of the
21 company to Green Growth Brands, to GGB Nevada.

22 Q And that letter, as of the time it was written, did
23 that accurately depict the ownership structure of Nevada
24 Organic Remedies?

25 A Yes.

1 Q Let's turn to the prior exhibit, 5025. Can you tell
2 us what this document is, it's -- well, go ahead and tell us
3 what you understand this to be.

4 A So 5025 is a section of the application submitted in
5 September of 2018, 5.2.10.1, organizational charts, which is
6 responsive to part of the application regarding owners,
7 officers, board members, et cetera of the company.

8 Q Let's turn to the second page of that document,
9 which is Bates Number 1427. And there's a chart up there. If
10 you could tell us what this chart depicts, please.

11 A Sure. This is a chart that describes the owners of
12 Nevada Organic Remedies, their respective ownership
13 percentages and the case of Xanthic Biopharma, a publicly
14 traded company, the board members and officers of that
15 company.

16 Q And then down below it says, "Nevada Organic
17 Remedies LLC officers." Who are they?

18 A So these are the people that -- the executives that
19 actually run Nevada Organic Remedies. So we felt that it was
20 important to provide thorough and accurate representation of
21 the applicant, Nevada Organic Remedies and who owns and runs
22 the company.

23 Q So was it disclosed to the Department of Taxation as
24 part of NOR's application, the owners, officers, and board
25 members of the entity?

1 A Yes, it's throughout the entire application. I
2 think there's -- I counted at least four cases of this
3 disclosure just in this section alone.

4 Q And to the individuals listed there, did they obtain
5 agent cards?

6 A The individuals, yes.

7 Q And what's the purpose of an agent card as you
8 understand it?

9 A Both the medical and recreational programs require
10 that owners and officers and employees of a medical marijuana
11 or a recreational marijuana facility obtain an agent card
12 before -- as part of its approval process. And that is a way
13 for the State to essentially monitor who is involved in the
14 industry, make sure they can pass a background check. And
15 it's part of the regulatory regime for overseeing the program.

16 Q All right. Let me have you turn to -- a few more
17 pages in, Bates Number 1435. Can you tell us what this part
18 of the document depicts.

19 A So we wanted to provide some detail as to who the
20 owners of the company are. And so we included, you know,
21 small pictures, head shots, name, title and role briefly
22 describing who all of the individuals are affiliated with the
23 company.

24 Q And did NOR list every shareholder? Xanthic was a
25 public company -- NOR list every shareholder of Xanthic?

1 A No, I don't believe that was a requirement.

2 Q Let's look at, same binder, should be Exhibit 5023.
3 And Exhibit 5023 is titled "Licensed entity, owners, officers,
4 board members as of May 1st, 2019." Do you know if the
5 Department kept a list of owners, officer, and board members
6 of each licensed entity?

7 A Yes, I believe it does.

8 Q And if we look in this document there aren't Bates
9 numbers, but we're going to look alphabetically to find Nevada
10 Organic Remedies, which is about halfway through. Let me know
11 when you get there.

12 A Yep, I've found it.

13 Q All right. So the first indication that I see of
14 Nevada Organic Remedies --

15 MR. KOCH: Actually, Brian, if you could go up one.
16 Yeah, there we go.

17 BY MR. KOCH:

18 Q It's right under Nevada Natural Medicines, and it
19 says, "T56" to the left of that. Do you know what that
20 indicates, the T56?

21 A That could be our application number. It just says,
22 "ID" at the top of the column.

23 Q Okay. And listed here, it says, "Distributor for
24 the license type." Did NOR have a distributor license?

25 A Yes.

1 Q Okay. And it lists a number of individuals there in
2 the T56 as owners, officers, and board members; is that right?

3 A Yes.

4 Q Did NOR try to keep the Department up to date with
5 respect to who was an owner, officer, or board member of the
6 company?

7 A Yes, we're required to. And we have made every
8 effort to do that, yes.

9 Q If that changed, would NOR update the Department?

10 A Absolutely.

11 Q Okay. Let's turn a couple more pages in. We're
12 going to go to the ID that appear to be associated with the
13 application in this case, [unintelligible] RD215. Let me know
14 when you're there.

15 A Okay.

16 Q All right. So we have RD215 -- actually let me --
17 if I could first point you down to the bottom of that page
18 216. Do you see that?

19 A Yes.

20 Q And on 216 you're listed first as an owner/officer.
21 Do you see that?

22 A Yes.

23 Q Was that accurate that you were an owner/officer of
24 Nevada Organic Remedies for the retail dispensary license in
25 Las Vegas?

1 A Yes.

2 Q And it continues on to the next page. There's a
3 number of individuals on RD216 including Patrick Byrne and
4 Stephen Byrne at the top of that page. Do you see that?

5 A Yes.

6 Q And those, also, were owners and officers with
7 respect to 216?

8 A Yes, that's correct.

9 Q Okay. One of the questions that I had is on -- if
10 we go back to 215, right above that, there's a number of
11 individuals listed again for Unincorporated Clark County.
12 Patrick Byrne is the first one listed there, and I didn't see
13 your name or Steve Byrne. Do you know why you're not on
14 there?

15 A I'm not sure. This is -- I didn't prepare this
16 list. I believe this is the State's list that they publish.
17 But I don't know why we wouldn't be. I think we were listed
18 on all the other Nevada Organic Remedies sections.

19 Q And you and Steve Byrne were listed on the
20 application for all the licenses, all the applications that
21 were submitted to the Department; is that right?

22 A The ownership was the same for every application
23 that we applied for. I don't know why -- if we were excluded,
24 I don't know why that would have been the case. It may have
25 been a clerical error, I'm not sure.

1 Q If fact if we go look at RD217 on the following
2 page, again. You're listed there as an owner/officer for
3 North Las Vegas; is that right?

4 A RD217?

5 Q Right. On the following page.

6 A Yes.

7 Q And RD218, also? Next page.

8 A Yes, that's correct. Yeah.

9 Q So as far as you're aware, you did provide that list
10 of names of owners and officers to the State; is that right?

11 A Yes. We provided a complete and accurate list of
12 all owners of Nevada Organic Remedies.

13 Q And the LLC itself, who are the managers of Nevada
14 Organic Remedies LLC listed with the Secretary of State?

15 A I believe myself and Steve Byrne.

16 Q Why didn't you just list yourself and Steve Byrne in
17 the application?

18 A I don't think that was what the application was
19 calling for. I believe the application was asking just like
20 in our ownership transfer letter that we had received from the
21 State a full and accurate listing of all owners and board
22 members and officers, as well.

23 Q All right. After NOR submitted its application to
24 the Department what happened between then and December of
25 2018, as far as your application, any communication, what was

1 that period of time like for NOR?

2 A Well, it was business as usual for us. We were just
3 operating the business. There was nothing to do regarding the
4 applications themselves. We didn't have any direct
5 communication with anyone that was, you know, scoring the
6 applications or reviewing them as far as I know.

7 Q Did you call -- did you know who the evaluators were
8 that were hired by the Department?

9 A No.

10 Q Did you talk to any of the evaluators during that
11 period of time?

12 A No.

13 Q Did you speak to any of the Department employees
14 with respect to the status of NOR's application during that
15 period of time?

16 A No.

17 MR. PARKER: I'm sorry. What period of time was
18 that again?

19 MR. KOCH: The time the application was submitted
20 until the awards or decisions were made in December of 2018.

21 MR. PARKER: Thank you very much.

22 BY MR. KOCH:

23 Q One of the issues that's been raised as part of a
24 motion in this case is compliance. What does compliance mean
25 to you in the context of this industry?

1 A We have about 256 pages of regulations that we are
2 required to comply with. And so we're a highly regulated
3 industry. And so, you know, a big part of running a marijuana
4 company here in the State of Nevada is understanding and
5 complying with those regulations, something we take very
6 seriously.

7 Q And when Mr. Ritter was here he testified about what
8 he called a deficiency. What's a deficiency in this industry?

9 A Deficiency is when the Department finds that a
10 licensee is not in compliance with certain aspects of the
11 regulations, and they issue a formal letter stating what those
12 deficiencies are.

13 Q Has NOR ever received a deficiency letter?

14 A Yes, I believe everyone in the industry has received
15 deficiencies.

16 Q And when NOR receives a deficiency letter does it
17 take steps to respond to it?

18 A Absolutely. So we're required to respond to a
19 letter of deficiency within a certain number of days, I
20 believe it's 10 days. And, yes, we've always done that and
21 always sought to comply with all regulations.

22 Q There's been one allegation made in this case about
23 NOR making a sale of marijuana to an individual who was
24 underage. Are you aware of that allegation?

25 A Yes. But I believe it was actually Henderson

1 Organic Remedies, not Nevada Organic Remedies, a sister
2 company, if you will. Another entity that I'm also an owner
3 of.

4 Q Okay. Was there an issue with a sale of marijuana
5 to an individual who was underage that you're aware of?

6 A Yes.

7 Q Okay. And what happened after that issue? Well,
8 how did NOR -- HOR become aware of that issue?

9 A So there was an incident where we were conducting an
10 internal audit to make sure we were following all of the
11 regulations, and we discovered that we had made a sale to
12 someone who I believe may have been 19 or 20 years of age, so
13 not the 21 years required. Under the medical program, you
14 know, you can have a medical card if you're under that age,
15 but under the recreational program you're required to be 21
16 years or older to purchase.

17 We uncovered that one of our employees had
18 accidentally checked in someone who was under the age of 21.
19 We caught that, we found it out, we did an internal
20 investigation to understand why that happened. And then we
21 disclosed that voluntarily to the State letting them know what
22 our course of correction was. In this specific case I believe
23 we terminated the employee who accidentally allowed that
24 person who was under the age of 21 to purchase products. And
25 we reprimanded -- officially reprimanded, you know, through

1 written sanctioned two other employees that were involved in
2 the transaction.

3 Q And so you self reported that transaction; is that
4 right?

5 A Yes, we self reported it.

6 Q And did the Department respond to your self report?

7 A Yes, they did.

8 Q And do you know how they responded?

9 A I don't remember exactly, but I think that they
10 acknowledged the plan of correction that we submitted along
11 with the self reporting of the incident.

12 Q And is this the only time that you've had a
13 discussion or communication with the Department about
14 correcting an incident and a plan of correction?

15 A No, that's part of any deficiency. In this case we
16 weren't issued a deficiency because we discovered the issue
17 before the State did. But in a normal situation, let's say
18 the State came in and performed an audit and found, for
19 example, a box sitting on the floor when it should be elevated
20 off the floor a certain number of inches, you know, in those
21 cases we have always responded within the designated required
22 time frame with a plan of correction.

23 Q All right. And are you aware of any of the
24 companies either that are parties to this case or that operate
25 in the industry who have operated since 2014 without a

1 deficiency?

2 A I'm not aware of a single company that has operated
3 without a deficiency.

4 MR. CRISTALLI: Objection. Calls for speculation.

5 THE COURT: Overruled.

6 BY MR. KOCH:

7 Q Let's pick your knowledge about the process the
8 Department used. You were generally aware of the process the
9 Department used to receive and score the applications?

10 A Yes. We knew that was forthcoming after Question 2
11 passed and the State made certain announcements along the way
12 leading up to the application process itself. But, yes, I was
13 aware of that.

14 Q Were there any improprieties or anything that you
15 believe was done wrong by the Department through the course of
16 that process?

17 A Not that I'm aware of.

18 MR. CRISTALLI: Objection. Speculation.

19 THE COURT: Overruled.

20 BY MR. KOCH:

21 Q Anything you might have done differently if you were
22 running the process?

23 A Well, I think it's easy to Monday morning
24 quarterback lots of things, especially when you look at the
25 context, right, you have a State that had only a couple years

1 previously implemented what is not almost a billion-dollar
2 industry from nothing, right. And these were not folks who
3 had experience regulating marijuana programs before. First it
4 was the Department of Health, and then later the Department of
5 Taxation.

6 So, yeah, I think we can all sit back and nitpick
7 certain things that could have been approved upon. But
8 overall I think the Department did a phenomenal job of
9 communicating its intentions following the ballot initiative,
10 implementing regulations that are responsive to the directives
11 and the ballot initiative. They provided ample opportunities
12 for public comment and feedback from the industry itself. I
13 don't recall a single individual in this room or among the
14 plaintiffs who stood up at any of the hearings and criticized
15 this application process or called into question or who made
16 significant criticisms of the application process.

17 Everyone knew that it would be essentially a blind
18 point score, and those who scored the highest would get the
19 highest number of licenses. We could have argued at that time
20 if that was the fair thing to do or a way to maximize the
21 distribution of licensees, but that's not what happened.
22 Everyone, the State, the public, and the industry itself was
23 aware of how these licenses would be allocated, and I don't
24 recall any significant debate about that leading up to the
25 application process itself.

1 Q One of the issues specifically talked about quite a
2 bit here is the diversity component of the scoring. Were you
3 aware the diversity to be one of the issues that were -- one
4 of the items that was part of the grading process?

5 A Yes.

6 Q All right. Did anyone at those public hearings
7 otherwise object to diversity being part of the process?

8 A There was some discussion about diversity.
9 Diversity was not a requirement in the original medical
10 program. And several legislators in the state wanted to
11 include diversity going forward, and so I believe that was
12 added to the medical program as a criteria for the allocation
13 of future applications under the medical program. And so,
14 yes, there was some discussion during -- that would have been
15 the 2015 I believe legislative session about diversity and
16 maybe even the '17, as well.

17 But I don't recall any significant debate in the
18 promulgation of the regulations about diversity with the
19 industry, and I don't recall any significant debate, at all
20 really, when the application itself came out. No one stood
21 up, as far as I can recall, and said, hey, this is a problem
22 or this scoring rubric is messed up or I have an issue with
23 this. I just don't remember any of that.

24 Q One of the other criticisms that's been levied, is
25 it certain of the criteria on that directly demonstratively

1 related to the operation of the marijuana establishment. Did
2 anyone object that a certain criteria was listed was not
3 directly and demonstratively related to the operation of the
4 marijuana establishment?

5 A Well, I think it was clear that the State was
6 looking for people who had experience running a marijuana
7 establishment. In fact, the only people who could apply for
8 the recreational licenses were people who had already had a
9 medical license. And so it was clearly understood in my
10 opinion that the State was looking for experienced operators.
11 But I do not recall anyone standing up and saying that -- or
12 complaining that the application did not specifically call for
13 experience, I mean I think it was understood. I know in our
14 case we made every effort to leverage and to taunt and to, you
15 know, use our significant experience as an operator here in
16 the state throughout all aspects of the application.

17 Q All right. You said, "taunt." Did you mean to say
18 taut?

19 A Taut. Thank you very much.

20 Q Okay. If there's any taunting going on I was --

21 THE COURT: I was wondering, the way they were
22 talking it's like a sports game.

23 THE WITNESS: Maybe that's some foreshadowing of the
24 next people who are going to ask me questions. No, I'm just
25 kidding. Yeah, thank you for correcting that.

1 BY MR. KOCH:

2 Q All right. Let's just talk for a moment about what
3 happens if an injunction were granted here. What's your
4 understanding as far as NOR's obligation to open an
5 establishment with its conditional license?

6 A So we applied for eight licenses and we were awarded
7 seven. Part of the requirement is that we have one year from
8 the time the licenses were -- the provisional licenses were
9 awarded to get open. And so we're halfway through that right
10 now, right. And I think the plaintiffs in this case know
11 that, and I think their tactics to delay and --

12 MR. CRISTALLI: Objection.

13 THE COURT: Overruled.

14 THE WITNESS: -- stall that are apparent. So we are
15 under a tight time frame to get these new locations open. And
16 so we would absolutely incur a tremendous amount of harm if we
17 are further delayed in getting them open. And unfortunately,
18 local jurisdictions throughout the state are looking at this
19 case, and they are -- they have decided to delay processing
20 zoning applications and other necessary steps to get these
21 facilities open because of the wild speculation that has been
22 spread through these proceedings and the people involved.

23 BY MR. KOCH:

24 Q There's let's say an exception or maybe a carve-out
25 within that time period and the problems promulgated saying if

1 there are extenuating circumstances that time period may be
2 extended. Have you had any discussions with the Department or
3 anyone else about extending that period for extenuating
4 circumstances?

5 A I haven't personally had any discussions with the
6 Department about that issue. My hope is that they consider
7 this case and what the local municipalities have done in
8 extenuating circumstance, but to date there's nothing that I'm
9 aware of that's in writing guaranteeing that. So as far as I
10 am concerned, in the way that we're running our business,
11 we're not taking anything for granted. We're assuming that
12 the State's deadline still stands.

13 Q What needs to happen between now and December 4th,
14 2019, in order to get a final approval and inspection to be
15 able to open those establishments?

16 A Well, you would have to secure a location that met
17 all of the separation requirements that were discussed
18 previously. You'd have to go through local zoning approval.
19 You'd have to get a local business license. You's have to get
20 the facility built out and inspected by the Department in
21 order to begin operations.

22 Q So within the next six months you'd have to do all
23 of those things?

24 A Correct.

25 MR. KOCH: No further questions.

1 THE COURT: So, sir, before I turn you over to the
2 plaintiffs, the transaction between you and your original
3 founding parties with GGB Nevada, was that an all-cash
4 transaction?

5 THE WITNESS: No.

6 THE COURT: How much stock did you get as a result
7 of that transaction?

8 THE WITNESS: The transaction was 95 percent cash
9 and 5 percent stock.

10 THE COURT: So how many shares, or if it's easier,
11 what percentage of shares do you own in Xanthic Biopharma?

12 THE WITNESS: The short answer is I don't know. The
13 more lengthy explanation is that I'm a significant shareholder
14 of Xanthic/GGB. They changed their name from Xanthic to GGB,
15 Green Growth Brands. So I may refer to those interchangeably.
16 We are in the process of selling our Henderson license to the
17 same entity, and that's set to close at the end of this month.
18 When that closes I know that I will be one of the largest
19 shareholders in the company.

20 THE COURT: And when you say significant, and I'm
21 not talking about the future closing, only the one right now,
22 what is your percentage of the publicly traded entity?

23 THE WITNESS: I would guess around 1 percent, but I
24 could be off a little bit on that.

25 THE COURT: So you think you only own 1 percent of

1 the publicly traded entity?

2 THE WITNESS: Uh-huh.

3 THE COURT: Who owns the majority interest of that?

4 THE WITNESS: Who does?

5 THE COURT: Yep.

6 THE WITNESS: The largest shareholder I believe is
7 the Schottenstein family.

8 THE COURT: And how much do they own percentage
9 wise?

10 THE WITNESS: I believe it's around 30 percent.

11 THE COURT: Okay. Thank you.

12 THE WITNESS: You're welcome.

13 THE COURT: We have about 15 minutes, Mr. Kemp. If
14 you'd like to start.

15 MR. KEMP: We might as well get started, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. KEMP:

18 Q Good morning, Mr. Jolley.

19 A Good morning.

20 Q Now when I say NOR, will you understand that to be
21 Nevada Organic Remedies?

22 A Yes.

23 Q And rather than say HOR for Henderson Organic
24 Remedies, I think I'll just say it out in full, okay?

25 A I know where you're going with that, and that's --

1 Q Yeah, you've had that problem before?

2 A That's fine with me, although I've used both --

3 Q Okay.

4 A -- terms.

5 Q Now basically Nevada Organic Remedies got an 8 for
6 its diverse grading; right?

7 A As far as I recall.

8 Q Eight out of 20, which means in the eyes of the
9 graders you were 40 percent diverse?

10 A I'm not sure I can answer that.

11 Q Okay. And as the Judge mentioned, Xanthic's, a big
12 public Canadian public company?

13 A I don't know what you mean by big.

14 Q Well, it's over a billion-dollar company; right?

15 A I'm not sure if that's true.

16 Q Okay. Does it strike you as odd that a billion-
17 dollar Canadian public company wind up with an 8 or 40 percent
18 diversity rating?

19 A Well, A, you're using the word "big" again, and I
20 don't know what that really means. I don't think they're a
21 billion-dollar company. And, B, no, I don't personally find
22 that odd.

23 Q You don't find that offensive that a big Canadian
24 public company got a relatively high diversity rating of 8?

25 MR. KOCH: Objection. Argumentative.

1 THE COURT: Overruled.

2 THE WITNESS: Offensive?

3 BY MR. KEMP:

4 Q Yeah, offensive to minorities and women. You don't
5 find that offensive?

6 A We put together a very compelling application, and
7 I'm proud of the score that we received. We put -- with
8 respect to diversity, we were as accurate and thorough and
9 complete as possible in our application, and we didn't know --

10 Q If you were so --

11 THE COURT: Wait. You've got to let him finish, Mr.
12 Kemp.

13 BY MR. KEMP:

14 Q Go ahead.

15 A We did not know precisely that would be scored. We
16 didn't know the rubric, we didn't know exactly -- so how it
17 would turn out, we just put down on paper, you know, our best
18 effort that accurately represented the owners, board members,
19 and officers of the company, and that's where it shook out.

20 Q Well, actually what you did is you put the director
21 of human resources on your application as an owner, officer,
22 and board member; didn't you, a woman?

23 A Nope. I don't think that's correct.

24 Q Okay. Are you aware that she was rated for
25 diversity, she was part of your diversity rating? Are you

1 aware of that?

2 A Who are you talking about?

3 Q Okay. Why don't we get to it, and I'll show you
4 your exact diversity rating and what people were included and
5 not included, okay? And you tell me if you think someone
6 shouldn't have been included or if someone should have been
7 included, all right? First though, would you agree with me in
8 general that NOR's an LLC; right?

9 A That's correct.

10 Q Would you agree with me in general that the DOT
11 should have treated all the LLC applicants the same with
12 regards to how they graded diversity?

13 MR. KOCH: Objection. Legal conclusion,
14 speculation.

15 THE COURT: Overruled.

16 THE WITNESS: You're asking me to speculate on how
17 the Department graded applications, and I'm not --

18 BY MR. KEMP:

19 Q I'm not asking you how they graded --

20 A -- in a position to do that.

21 Q -- it.

22 THE COURT: Wait.

23 THE WITNESS: I'm still answering your question.

24 THE COURT: Guys, one at a time. Mr. Kemp, you've
25 got to let him finish.

1 MR. KEMP: Okay.

2 THE COURT: Sir, could you finish your answer. The
3 question was, should they have treated all LLCs the same?

4 THE WITNESS: You're asking me a technical question
5 about how the Department graded applications, and I don't
6 think I'm in a position to do that.

7 BY MR. KEMP

8 Q So you think it would be fair that they would give
9 you some special treatment that they didn't give to other
10 applicants, that's what you think --

11 MR. KOCH: Objection. Lacks --

12 THE COURT: Overruled.

13 THE WITNESS: Special treatment.

14 BY MR. KEMP:

15 Q Right.

16 A I don't know where that is coming from, but I don't
17 believe that we were deserving of any special treatment. I
18 believe that we put our best foot forward following the
19 guidelines of the application. We put together a thorough,
20 honest, complete and accurate application and we got the score
21 that we got.

22 Q Well, it's not fair to grade one LLC one way and
23 grade another LLC that's similarly situated another way;
24 right? That wouldn't be fair; would it?

25 A You are asking me to speculate about other

1 applications that I have no knowledge of. That's a ridiculous
2 question --

3 Q Oh, I'm going to show you some, sir.

4 A I'm still answering your question. I think it's
5 ridiculous for you to ask me a hypothetical to compare our
6 application with others when I haven't reviewed anyone else's
7 application.

8 Q I'm asking you --

9 A Nor was I in the position to be the one grading
10 those applications.

11 Q I'm asking --

12 A We put forth our most accurate, complete application
13 and we got the score that we got.

14 Q Did you expect that the Department of Transportation
15 would --

16 THE COURT: Taxation.

17 BY MR. KEMP:

18 Q Taxation would grade LLCs in the same fashion with
19 regards to diversity as opposed to grading some one way and
20 some the other way. Did you expect that?

21 MR. KOCH: Objection. Speculation.

22 THE COURT: Overruled.

23 THE WITNESS: The Department put forth an
24 application with a scoring rubric with certain requirements,
25 and it was my expectation that the Department would grade

1 those fairly across the board. And not only that, but a large
2 portion of the application itself was non-identified. So to
3 me that signified the Department's commitment to grading and
4 scoring these applications in an unbiased fair manner. And I
5 now know that they hired independent consultants to help do
6 that, to minimize the impact of having the regulators who
7 oversee the program, who have interaction with the applicants,
8 to minimize any potential bias there.

9 So from what I could tell, the Department absolutely
10 intended to be impartial in their evaluation of these
11 applications, and from where I sit today it seems like they
12 did a reasonable job of doing that.

13 THE COURT: Sir, can I ask the question slightly
14 different. Did you expect that they would apply consistent
15 standards in their grading to all LLCs?

16 THE WITNESS: Yes.

17 THE COURT: Okay. Thank you.

18 THE WITNESS: You're welcome.

19 BY MR. KEMP:

20 Q And that includes LLCs that were owned by public
21 companies. You expected them to provide the same standards?

22 A I guess I can repeat myself over and over and over
23 again, but I just --

24 Q Why don't you repeat the answer you gave to the
25 Judge, the yes or no answer.

1 A I'm going to give the answer that I am comfortable
2 with.

3 Q Well, no, you're actually required --

4 THE COURT: Mr. Kemp. Mr. Kemp, let him finish. I
5 want to give everybody in this courtroom as much time as they
6 need, under reasonable circumstances, to answer the questions.
7 And if it's not yes or no and he needs to explain, that's
8 great, we'll sit here and wait.

9 MR. KEMP: I'm fine with that, Your Honor.

10 THE COURT: But I just want one person talking at a
11 time, so later my record's going to be okay for whoever's
12 going to review this.

13 MR. KEMP: Okay. I'm not taking responsibility
14 though if he goes longer than today.

15 THE COURT: I know. I understand.

16 MR. KEMP: Okay.

17 THE COURT: Okay.

18 BY MR. KEMP:

19 Q Go ahead. The question was whether or not you
20 expected the Department to grade diversity the same for LLCs
21 with parent corporations? Yes, you did, no, you didn't, or
22 you can give your explanation or both. Go ahead.

23 A I expected the Department to be impartial and fair
24 for all applicants.

25 Q So that's a yes answer to my question?

1 A Would you like me to repeat what I just said?

2 Q No. I'd like you to tell me if that's a yes answer
3 to my question.

4 A You keep, you know --

5 Q I keep asking --

6 A -- asking questions in such a way that is forcing me
7 to agree with what you -- with the conclusion you'd like me to
8 come to, but I'm expressing my answer in a way that I'm
9 comfortable with.

10 Q That's what I'm supposed to do, Mr. Jolley. I'm
11 supposed to ask the question that way.

12 A Fair enough.

13 Q Okay.

14 A Well, good luck with that.

15 Q Let's try one more time. Would you agree with me
16 that you expected that the Department would grade LLCs equally
17 on the diversity portion with regards to public ownership?

18 A I expected the Department to evaluate all applicants
19 equally and with the same standards and rules.

20 Q Okay. Let me give you a hypothetical. Let's assume
21 that a company known as GreenMart, NLB LLC, was owned by CSX
22 and CSX was owned by a Canadian public company known as MPX.
23 You've heard of MPX; right?

24 A Yes.

25 Q Big player in the cannabis industry?

1 A You like using the word "big." I don't know what
2 you mean by that.

3 Q They have a lot of assets.

4 A What do you mean by a lot? I don't know, it's all
5 relative.

6 Q They're worth over \$200 million.

7 A I don't know.

8 Q Okay. All right. Would you agree with me that the
9 Department should have used the same approach to grading
10 diversity given that MPX was an owner of GreenMart LLC as they
11 did for NOR and Xanthic, should have done the same approach?

12 A I'm not familiar with their application. I'm not
13 familiar with their corporate structure, but I would expect
14 the Department to apply the rules consistently among
15 applicants.

16 Q Okay. And let me show you who GreenMart put in as
17 owners, officers, and directors.

18 MR. KEMP: Can I have my first slide, Shane.

19 BY MR. KEMP:

20 Q We've seen this before. I don't know if you've seen
21 it before, but they put in Elizabeth Stavola. You know her;
22 right?

23 A Yes.

24 Q She's a pretty, I won't use the word big,
25 significant player in the cannabis industry?

1 A I would say that.

2 Q Okay. And the gentleman under her, that's Mr.
3 Boyes?

4 A Is that a question?

5 Q Do you see Mr. Boyes there?

6 A Yes.

7 Q Again, he's also a significant player in the
8 cannabis industry?

9 A I'm not as familiar with Mr. Boyes.

10 Q Okay. So GreenMart and then these other eight
11 people, these are an advisory board that the LLC formed. We
12 had had one of them testify. I just want you to assume that
13 it's an advisory board, okay, of the LLC. Assuming for the
14 sake of argument that the Department graded just these people
15 for diversity for GreenMart and did not grade the owners,
16 officers, and board members of MPX, they would have been doing
17 something different than what was done in your case; right?

18 MR. KOCH: Objection. Speculation.

19 THE COURT: Overruled.

20 THE WITNESS: I'm not sure.

21 BY MR. KEMP:

22 Q Okay. Well, you would agree me that it should be
23 the same one way or the other, either they should grade all
24 the parent companies, officers, directors, and owners for
25 diversity for all applicants or they should not do it for all

1 applicants. Should be the same one way or the other; right?

2 A Again, you're asking me to comment on --

3 Q I'm asking you to -- go ahead.

4 A -- comment on the content of one's application. You
5 could have similar corporate structures among applicants, but
6 if you, you know, one applicant may present the information
7 differently, and so I can't speculate on what they did on
8 their application. I don't know. All I can say, like I said
9 many times already, is that I would expect the Department to
10 be fair in how it applies its rules.

11 Q Okay. So if GreenMart was owned by MPX, to do it
12 the same way you did it the applicants should have disclosed
13 the officers and directors of the public company, to do it the
14 way you did it?

15 A I think every applicant should be thorough and
16 accurate in its disclosures in its application.

17 Q Okay. And by that you mean that GreenMart should
18 have disclosed the owners and directors of the public
19 corporation, like you did, in their application. That should
20 have been done; right?

21 A I think each applicant had the responsibility to
22 provide thorough and accurate information on their
23 application.

24 Q Well, why did you include --

25 THE COURT: Mr. Graf, did you have an objection or

1 are you hanging out to kibitz?

2 MR. GRAF: Your Honor, I do have an objection. I
3 object to the silhouette of Shelby Brown as being the way that
4 it's indicated. That is a man. It's clearly not indicated as
5 a man, and I find it offensive.

6 THE COURT: Okay.

7 MR. GRAF: And I want to make sure the record's
8 clear that I objected to it.

9 THE COURT: And that was to the demonstrative slide
10 that --

11 MR. GRAF: Yep.

12 THE COURT: -- is on the viewer. Okay.

13 MR. GRAF: Thank you, Your Honor.

14 THE COURT: All right. You can continue. But we're
15 going to break after this next answer.

16 BY MR. KEMP:

17 Q Okay. Back to the question. The reason that you
18 included the officers and directors of the public company
19 Xanthic, that owned NOR, is because you understood that was
20 required; correct?

21 A We made every effort to be honest and accurate and
22 complete in our application.

23 Q You thought it was required in the application;
24 right?

25 A We made every effort to be thorough and accurate and

1 complete in our application and follow the rules in the
2 application.

3 THE COURT: All right. So we're going to take our
4 break now for lunch. This is not a requested recess.

5 MR. KEMP: Thank you, Your Honor.

6 THE COURT: So my question is do you need the
7 morning of June 12th. Yes, no, maybe?

8 MR. GENTILE: Your Honor, I'm in the Supreme Court
9 that morning.

10 THE COURT: Okay. So I will not book you the
11 morning of June 12th. I have currently reserved June 18th
12 through 20th. Assume with me for a minute that we have two
13 days this week, three days next week, is that enough?

14 MR. KOCH: Better be. Hope so.

15 MR. SCHEVORSKI: It's fine as far as the State's
16 concerned, Your Honor.

17 THE COURT: I have frequently told witnesses that
18 when they give answers that aren't yes and no sometimes it
19 takes longer and they miss flights. So if we have a situation
20 where that happens with this witness, what's the plan?

21 MR. GENTILE: I'll have to look at the flight
22 schedule.

23 MR. KOCH: Well, we'll continue these. He's doing
24 -- you know, he's doing a great job, so I want let him make
25 sure he testifies fully and accurately and truthfully.

1 THE COURT: No, no. I appreciate that. It's just
2 if I get to 4:45 and we're not done. I've got a problem.

3 MR. KOCH: I understand.

4 THE COURT: Okay.

5 MR. KOCH: I'll talk to Mr. Jolley about that --

6 THE COURT: It's not a requested break. You can
7 talk to him about that.

8 MR. KOCH: Yeah.

9 THE COURT: Any other stuff before I have a
10 conference call at 1:00 o'clock with somebody who wants me to
11 find time to finish their trial that didn't finish last -- was
12 it Thursday -- Thursday, Thursday morning.

13 MR. CRISTALLI: Your Honor --

14 THE COURT: Mr. Cristalli.

15 MR. CRISTALLI: Thank you, Your Honor. I believe
16 there is a motion scheduled for Wednesday --

17 THE COURT: There is.

18 MR. CRISTALLI: Yes. So that is -- Your Honor,
19 we'll hear that motion on Wednesday?

20 THE COURT: That was the plan.

21 MR. CRISTALLI: Okay. Wanted to make sure.

22 THE COURT: If you wanted me to, you know, hear it
23 another time, I will. I don't usually set those kind of
24 motions on short time, but --

25 MR. PARKER: Can we hear it on the 17th? I have to

1 fly out on Wednesday morning. I can take my by phone.

2 THE COURT: Do you all want to move it to the 17th?
3 I'm okay with that.

4 MR. GUTIERREZ: It's our motion. I think we'd
5 rather keep it on Wednesday. We filed an order shortening
6 time. So if we could keep it Wednesday at 12:00, that's good
7 for us.

8 THE COURT: You want to move it to Tuesday afternoon
9 since you've --

10 MR. PARKER: Tomorrow afternoon would be great for
11 me.

12 THE COURT: Can we do it Tuesday afternoon?

13 MR. GUTIERREZ: I'm in another court tomorrow
14 afternoon, a settlement conference in front of Judge Weiss.

15 MR. KEMP: What about Thursday afternoon?

16 MR. GUTIERREZ: Thursday could work.

17 MR. KEMP: Is that good for you?

18 MR. PARKER: I can do it on the phone on Thursday.

19 THE COURT: Okay. So we'll move it to Thursday.
20 What time?

21 MR. GUTIERREZ: Whatever time works. I'm available
22 all day. 1:30?

23 MR. PARKER: No. Let's do it in the morning,
24 Your Honor. My flight coming back is in the afternoon, so
25 that's --

1 THE COURT: Can we do it Thursday morning at 11:30?
2 And if more than one person wants to attend --

3 MR. PARKER: Your Honor, 11:30 here is three hours
4 later. So can we it like 9:00 o'clock in the morning or 9:30
5 in the morning?

6 THE COURT: Hold on, Mr. Parker.

7 MR. PARKER: I'll be on Eastern Time next week.

8 THE COURT: Mr. Parker, you are a lot of work.

9 THE COURT: So you're going to South CARolina, huh?

10 MR. PARKER: I will be in South CARolina. I leave
11 on Wednesday morning.

12 THE COURT: Hold on a second. Let me look. I have
13 an 8:30 session that day, I have five things at 9:00 o'clock,
14 one of which is complicated. What time is your plane Eastern
15 Time?

16 MR. PARKER: It's normally an 11:20 flight. That's
17 the flight I intend to take coming back. So that's 8:20 your
18 time.

19 THE COURT: That's at 8:20 a.m. I'm not doing it at
20 8:20.

21 MR. PARKER: I know. But I land in Atlanta an hour
22 later. So typically I have about an hour-and-a-half window
23 there. That's the window I try and take advantage of.

24 THE COURT: And what time does your flight usually
25 leave Atlanta to come to Las Vegas?

1 MR. PARKER: Normally around 1:50, I believe.

2 THE COURT: Eastern Time. Which is 10:50, which
3 means if I try and do you on my 9:00 o'clock calendar I will
4 put you on hold and then when everybody's here and before you
5 have to board your next flight I will do your hearing.

6 MR. PARKER: Perfect.

7 THE COURT: Does that work?

8 MR. PARKER: That sounds great, Your Honor.

9 THE COURT: So for those of you listening at home,
10 that's 9:00 o'clock Thursday. The motion's that Wednesday is
11 being moved to 9:00 o'clock Thursday.

12 And if more than one person is appearing by phone,
13 Mr. Parker, you will have to set up a call-in number.

14 MR. PARKER: All right. No problem. Thank you,
15 Your Honor.

16 THE COURT: Anything else? See you guys at 1:15. I
17 do have a 1:00 o'clock conference call.

18 (Court recessed at 12:02 p.m., until 1:15 p.m.)

19 THE COURT: Are we all ready?

20 THE MARSHAL: Ready to go?

21 THE COURT: They're not all there.

22 (Pause in the proceedings)

23 THE COURT: Mr. Jolley, I'd like to remind you
24 you're still under oath. Okay. And as soon as we find the
25 rest of the lawyers, we'll start. I have a bad habit of

1 starting early and they haven't figured it out yet. Today I
2 was just on time, though.

3 (Pause in the proceedings)

4 THE COURT: Okay.

5 MR. KEMP: Okay.

6 THE COURT: We are now up to a quota, so you may
7 continue.

8 MR. KEMP: Okay.

9 CROSS-EXAMINATION (Continued)

10 BY MR. KEMP:

11 Q Mr. Jolley, I understand you have to be somewhere
12 tonight. Is that why we're trying to get you done?

13 A Yes.

14 Q Is it San Francisco you're going to?

15 A No.

16 Q Okay. All right, back to where we were and I think
17 we were at the GreenMart officers and directors. And my
18 question was if you did it one way, in other words, listing
19 the officers and directors of Xanthic and GreenMart did it
20 another way, not listing officers and directors their entity,
21 which would be MPX again, what was your expectation? Was it
22 your expectation that everyone would do it the same way?

23 A I can't speak to GreenMart, but what we did is we
24 thoroughly reviewed the application and tried to be as
25 responsive and thorough and accurate as we could be.

1 Q Well, did the DOT or the State give you any
2 instruction as to how public corporations that were applicants
3 or applicants that were owned by public corporations, did the
4 State give you any instruction as to what you were supposed to
5 do?

6 A For the most part I believe the application was
7 self-explanatory.

8 Q So you understood the application to instruct to
9 include officers and directors of parent corporations, is that
10 right?

11 A We disclosed everything we thought we should
12 disclose and we did disclose officers and board members.

13 Q So you thought you were required to disclose the
14 officers and directors of the parent; correct?

15 A Well, when it comes down to judgment calls, we erred
16 on the side of -- you know, more disclosure we thought was
17 appropriate.

18 Q Okay. So you think it would have been appropriate
19 for an applicant to disclose the officers and directors of a
20 parent?

21 A Again, you're asking me to kind of in a way tacitly,
22 you know, second-guess another person's application that I
23 have no knowledge of, but I believe each applicant has to use
24 their own discretion and judgment to decide what's appropriate
25 to disclose. We did the best we could.

1 Q Well, you don't think the diversity scoring should
2 have been up to different applicants' discretion; right?

3 A I think the rules should apply across the board,
4 even though no two companies are the same, have different
5 structures and things.

6 Q In the best of all worlds would you agree that the
7 DOT should have given clear instruction to all the applicants
8 that had any sort of involvement with a public company as to
9 how to do it?

10 A In my view the DOT did a reasonable job at putting
11 forth the rules of the application, posting the application
12 and providing an opportunity for people to ask questions.

13 Q But there were no instructions with regards to
14 public companies that were applicants or owned applicants;
15 correct?

16 A I don't know about that.

17 Q Do you know of any specific rules that were given
18 for applicants that were either owned by public companies or
19 public companies?

20 A The Department has had a precedent of handling
21 disclosure of owners, board members, officers of public
22 companies and we had insight into that, I would say, you know,
23 going into the application process. Not that we were unique.
24 I think, you know, anyone in the industry could have, you
25 know, had the same knowledge we had. You know, there's a

1 precedent for disclosing owners. As we talked about earlier
2 there's, you know, certain requirements regarding agent cards
3 and that kind of thing. So we, in a sense, you know, had some
4 background in that, but at the end of the day we all were
5 given the same application and did our best to adhere to the
6 rules and the requirements of the application.

7 Q Okay. Earlier I asked you whether it would be fair
8 for one applicant to do it one way and one applicant to do it
9 another way. I asked the same question of Mr. Gilbert and I
10 would like to show you what he said and see if you agree with
11 him. Take a look at your screen. Shane.

12 THE COURT: And is this a transcript from the day he
13 testified last week?

14 MR. KEMP: It's a transcript from Friday, Your
15 Honor, which the transcript lists 5/30 but it's really 5/31.

16 THE COURT: Thank you.

17 MR. KEMP: And these are pages 202, lines 10 through
18 18.

19 THE COURT: And that's already been filed with the
20 court --

21 MR. KEMP: Right.

22 THE COURT: -- by the court reporter, by Flo?

23 COURT RECORDER: I haven't filed them yet.

24 THE COURT: You haven't filed them yet? It will be
25 filed by the Court Recorder. Right?

1 COURT RECORDER: Yes, ma'am.

2 MR. KEMP: Okay.

3 BY MR. KEMP:

4 Q Okay. Do you see the question and answer of Mr.
5 Gilbert where I asked him if you have two different
6 applicants, one that listed the corporate parents one way and
7 one that did it the other and you would have had a different
8 outcome but that wouldn't be fair? He says -- "Doesn't sound
9 like it would be fair?" And he says, "Right." Do you see the
10 questions and --

11 A Yes, I see the screen.

12 Q Would you agree with Mr. Gilbert?

13 A It's not my job to analyze how the Department graded
14 the applications that they have the statutory authority to
15 grade. And I don't think your question here gives enough
16 context for anyone, including Mr. Gilbert, to provide a
17 thorough and fair answer. And so I will -- I'm not in a
18 position to speculate on that.

19 Q Okay. Now, if the State thinks that what they did
20 was unfair -- assume that for me -- what's the remedy here?
21 Should we do it over again?

22 MR. KOCH: Objection. Legal conclusion.
23 Argumentative.

24 THE COURT: Overruled.

25 THE WITNESS: Well, I don't think I would interpret

1 that response to that question the same way you just stated
2 it; first.

3 MR. KEMP: Okay.

4 THE WITNESS: Okay.

5 MR. KEMP: Fair. Or I understand; better word.

6 THE WITNESS: I'm glad you agree with me. Thank you.

7 MR. KEMP: I didn't say I agree, I said I understand.

8 THE WITNESS: But if you're asking if there is or
9 should be a flawless application process for a very complex
10 program, I mean, great, that would be wonderful if one could
11 invent that, but I don't think that's -- I don't think that's
12 feasible. I think the State did its best effort. It
13 certainly had the authority to run and administer the program
14 the way that they see fit. And so I just don't -- I don't
15 think it's a reasonable question. I think that they have done
16 a good job of running the program.

17 BY MR. KEMP:

18 Q Do you think it would have been complex -- your word
19 -- for the State to tell the applicants that they should list
20 the officers and directors of their parent companies one way
21 or the other way? Do you think that would have been a complex
22 thing?

23 A That's not what I said.

24 Q Well, what's your answer?

25 A I said running a program of this nature is

1 inherently complex.

2 BY MR. KEMP:

3 Q But telling an applicant how to list its publicly
4 traded company's officers and directors, that's not complex,
5 is it?

6 A I think the State should make an effort to be clear
7 with its rules.

8 Q And is it correct that the State didn't tell you
9 precisely how to list the officers and directors of the
10 parent?

11 A I don't think that's a fair statement.

12 Q They did tell you how to list the officers and
13 directors of the parent?

14 A You know, we didn't just make this up out of thin
15 air. I mean, we reviewed the application, we had a period of
16 time where we could have asked for clarification questions and
17 we did our best to be responsive to the sections of the
18 application.

19 Q Okay. Now, you're an LLC or at least NOR is an LLC;
20 right?

21 A Yes.

22 Q And you recognize there's a difference between LLCs
23 and corporations; corporations have boards of directors and
24 LLCs don't. Do you recognize that?

25 MR. KOCH: Objection. Lacks foundation.

1 Argumentative.

2 THE COURT: Overruled.

3 THE WITNESS: You know, I'm not a lawyer, but I do
4 recognize that there are differences between LLCs and
5 corporations.

6 BY MR. KEMP:

7 Q Now, what would be your position on whether it was
8 appropriate for an applicant to list someone -- an LLC
9 applicant to list someone on a so-called advisory board and
10 get diversity points for that?

11 MR. KOCH: Objection. Incomplete hypothetical.

12 THE COURT: Overruled.

13 THE WITNESS: Each applicant has to use their own
14 discretion and judgment to put forth an application that meets
15 the requirements. So I'm not sure that I'm, you know,
16 qualified or in a position to speculate about the importance
17 of an advisory board.

18 BY MR. KEMP:

19 Q Okay. So if 20 applicants put together an advisory
20 board and they use that as a mechanism to get, say, 20
21 diversity points and that was the difference in them winning
22 and you losing, do you think that would be appropriate?

23 MR. KOCH: Objection. Incomplete hypothetical.

24 THE COURT: Overruled. You can answer.

25 THE WITNESS: Again, this is a hypothetical

1 situation that I'm just not sure I'm in a position -- I mean,
2 maybe you could ask the Department that. I just don't know
3 really what I can say to shed light on that.

4 MR. KEMP: Well, I did ask the Department that.
5 Can I have my next in order, Shane.

6 THE COURT: And if you could give us the date of the
7 citation and the page numbers.

8 MR. KEMP: This is the same day, Your Honor. Mr.
9 Gilbert. Pages. 167, lines 1 through 4.

10 THE COURT: Thank you.

11 BY MR. KEMP:

12 Q Do you see the testimony there? "Question: They
13 should have put the officers and directors of MPX and the
14 officers and directors of CSX; right?" "Answer: Yes." Do
15 you see that statement?

16 A Yes.

17 Q Do you agree with that?

18 A Again, you're asking me to put myself in Mr.
19 Gilbert's position and opine on his response and I just don't
20 have -- I don't have a response for that.

21 BY MR. KEMP:

22 Q Okay. Well --

23 A We followed the application the best we could, given
24 the circumstances, and I think, you know, every applicant
25 should have done that and if there were areas of ambiguity

1 they could have and should have asked questions.

2 Q Okay. But assuming that NOR got the 8 diversity
3 grade -- that's what you got, right, 8?

4 A I believe so.

5 Q Assuming you got 8 doing it one way and GreenMart
6 got a 16 doing it the opposite way, not listing the officers
7 and directors of the parent, would you agree with me that
8 there should be some sort of procedures to insure that all the
9 LLCs with publicly traded parents were graded the same way?

10 A I think the State should make an effort to apply the
11 rules evenly across the board, but I can't comment on someone
12 else's application that I haven't reviewed and know nothing
13 about.

14 Q Okay. Fair. So the State should apply the rules
15 evenly across the board; right? That's what you just said.

16 A Yes. I believe the State should be fair.

17 Q Okay. And now that you've seen, at least in my
18 hypothetical, that the rules were not applied evenly to
19 GreenMart and you with regards to listing the parents and
20 officers -- excuse me, the officers and directors of the
21 parent for diversity purposes, now that you've seen that it
22 wasn't applied evenly, what should we do?

23 MR. KOCH: Objection. Legal conclusion.
24 Argumentative.

25 THE COURT: Sustained. Can you rephrase your

1 question?

2 BY MR. KEMP:

3 Q Can you see why applicants who didn't win solely
4 because of diversity points, can you see why they'd be upset
5 with this diversity procedure?

6 MR. KOCH: Objection. Speculation.

7 THE COURT: Overruled.

8 THE WITNESS: I don't have enough information to
9 opine on that.

10 BY MR. KEMP:

11 Q Well, let me give you a little more. If you took
12 diversity out of it altogether, M&M would have won in Clark
13 County, if you just took away all the diversity grades. Can
14 you see why M&M would have been upset?

15 A Are you saying that the applications should not have
16 included diversity?

17 Q Well, I'm going to get to that in a minute.

18 A I'm confused.

19 Q But can you see why an applicant, that if you did
20 not have any diversity points or if you did not score
21 diversity they may have been a winner? Can you see why they
22 would be upset?

23 A So if I could have rewritten the application to say
24 that if your initials are AMJ you get an extra 100 points,
25 yeah, we would have gotten first place instead of second.

1 You're asking me if I could rewrite the application in a way
2 that would benefit me or somebody else. I just don't know
3 that I have anything to offer on that.

4 Q So what MM Development should have done is they
5 should have gotten an advisory board and packed it full of
6 women and minorities and got 20 diversity points instead of 4,
7 then they would have been a winner. That's what they should
8 have done, is that what you're telling me?

9 MR. KOCH: Objection. Argumentative.

10 THE COURT: Overruled.

11 THE WITNESS: That's not what I'm saying. I'm
12 saying we all received the same application. We all had a
13 chance to ask questions to clarify.

14 MR. CRISTALLI: Objection. That misstates the
15 evidence.

16 THE COURT: Overruled.

17 BY MR. KEMP:

18 Q There were two applications; right?

19 A I wasn't finished.

20 Q Okay, go ahead.

21 A We had the ability to ask clarifying questions.
22 And at the end of the day I believe all applicants, who were
23 existing medical licensees, mind you, went into the
24 application process understanding full well that the
25 Department had statutory authority to collect, score

1 applications and ultimately award licenses. And so if one had
2 concerns about the application or the criteria that were in
3 the regulations, there were multiple points in time where they
4 could have asked for clarification, pointed out that it was
5 not done correctly, or as you say, come up with any myriad of
6 suggestions to make it more favorable for them. But that's
7 just not how the process, you know --

8 Q Prior to September 20th did you personally have any
9 concerns that an applicant, an LLC would create an advisory
10 board to try to get diversity points?

11 A I can't say that's a scenario that I spent a lot of
12 time considering.

13 Q And so if you didn't think about it, why do you
14 think the other applicants should have thought about it and
15 asked questions about it?

16 A I'm not saying that.

17 Q Okay. So this situation, and we'll call it the
18 GreenMart situation just for shorthand, this situation --

19 MS. SHELL: I'm going to object to characterizing it
20 as GreenMart situation, Your Honor.

21 THE COURT: Okay.

22 MR. KEMP: Okay. Let me try and rephrase it, Your
23 Honor.

24 THE COURT: It's overruled.

25 MR. KEMP: Oh, okay.

1 THE COURT: She won one last week, though, or the
2 week before.

3 MS. SHELL: Two, Your Honor. Two.

4 MR. KEMP: The day is not over, Your Honor.

5 THE COURT: I had the same objection from somebody
6 earlier. I don't remember who it was. Okay, so you got one.

7 BY MR. KEMP:

8 Q Referring to the GreenMart -- and what I refer to by
9 the GreenMart situation is we have the LLC with an advisory
10 board that doesn't list their officers and directors of their
11 parent, okay. So you would agree with me that no one -- no
12 one anticipated that. You didn't anticipate it?

13 A I would not agree with that.

14 Q You did anticipate that someone would try to list
15 advisory board members on an LLC to get more diversity points?
16 You did anticipate that?

17 A I cannot say that I spent a lot of time considering
18 that hypothetical situation.

19 Q Okay. No one considered that, right, no one that
20 you know of?

21 A You're asking me if I can identify individuals who
22 considered this particular hypothetical scenario?

23 Q Right.

24 A I don't even know how to answer your question, to be
25 honest. I'm sorry, I'm doing the best I can, but.

1 Q You can say no, you can't identify any individuals
2 or you can say yes, you can. There's easy answers here.

3 A All I can say is applicants had the opportunity to
4 ask questions about the application prior to submitting it.

5 Q Okay. Let's talk about the NOR ownership at the
6 time you filed your application. So the application was filed
7 sometime between September 10th and September 20th, I believe.

8 A That sounds correct. I don't remember the exact
9 dates.

10 Q If that's the filing period, do you know when in the
11 filing period you filed?

12 A It was not on the last day.

13 Q Okay.

14 A It was sometime before that.

15 MR. KEMP: Can I have Exhibit 93, please, and the
16 pop out, please.

17 BY MR. KEMP:

18 Q Now, according to this document, and this is from
19 Xanthic, I believe, it says the NOR acquisition was completed
20 on September 4th, 2018. Is that true?

21 A That's what this statement says.

22 Q I know that's what that statement says. I'm asking
23 is it true that's when the acquisition was completed?

24 A When it was ultimately consummated, I believe so,
25 going from memory. It had been in the works for months before

1 that.

2 Q So at the time you filed the application, it would
3 have been after the acquisition; right?

4 A That's correct.

5 Q Okay. And now as I understand it, 100 percent of
6 the membership interest in NOR was sold to GGB Nevada, LLC,
7 100 percent?

8 A At the time the application was submitted we had
9 transferred 95 percent of NOR to GGB Nevada.

10 MR. KEMP: Can I have my next one, Shane?

11 This is Exhibit 94, Your Honor. I'll submit it.

12 BY MR. KEMP:

13 Q "In September 2018, the members of the company sold
14 100 percent of the membership interest to GGB Nevada, LLC."
15 Did I read that right?

16 A I believe -- yes, you read that correctly.

17 Q And that's true; right?

18 A Now, I just said as of the time we submitted our
19 application we had sold 95 percent of NOR.

20 BY MR. KEMP: Shane, will you show him whose
21 financial statement that is on the top, please? At the very
22 top there. Yeah, that's good. Good. Pop that up.

23 BY MR. KEMP:

24 Q That's from Nevada Organic Remedies Consolidated
25 Financial Statements. That's what Exhibit 94 is. And that

1 statement says you sold 100 percent, not 95 percent. Okay,
2 Mr. Jolley? Is this some sort of mistake?

3 A I'm not -- I haven't reviewed this document, so I
4 don't really know.

5 Q You could be wrong. You could have sold 100 percent
6 in September 2018?

7 A I don't think so, no.

8 Q So you think you filed an erroneous financial
9 statement?

10 A I didn't file this financial statement.

11 Q Did you know that this was filed with the Canadian
12 Stock Exchange, this statement that I'm looking at right here
13 now, Exhibit 94?

14 A I know that Xanthic/GGB, I'll kind of use those
15 interchangeably, had certain filing requirements that it was
16 working on, but I was not aware of this statement in the
17 document.

18 Q Okay.

19 A If it is in fact the most accurate up-to-date
20 statement. I'm not sure.

21 Q Well, let's boil this down. Are you even sure as we
22 sit here today whether they sold 100 percent or 95 percent?

23 A Yes.

24 Q You are sure?

25 A Yes.

1 Q And what is the answer?

2 A 95 percent.

3 Q Okay. All right. In the application you listed

4 yourself and the Byrne brothers as owners of NOR; correct?

5 A They're not brothers.

6 Q They're just both named Byrne?

7 A Yep.

8 Q And it's spelled the same way, B-y-r-n-e?

9 A Strange, right? Yes, that's correct.

10 Q It does sound strange. Okay. All right. But in

11 any event, you list two people named Byrne and yourself as

12 owners; right?

13 A And Liesl Sicz through her entity and Darren

14 Petersen. Yes.

15 Q Liesl Sicz. Okay. If I'm right, she wasn't

16 actually an owner of NOR, was she?

17 A Well, she was the member of an LLC that was an owner

18 of NOR.

19 Q And that would be the Harvest LLC?

20 A That's correct.

21 Q So you listed her as an owner of NOR, even though

22 she was actually an owner of Harvest; right?

23 A Well, in my mind it's kind of the same thing. I

24 mean --

25 Q Same thing?

1 A I'm still answering your question. So the Harvest
2 entity owned 10 percent of NOR and Liesl was the member of
3 that entity, as far as I can recall.

4 Q Now, let's assume that this transaction had not
5 occurred, okay, and by that I mean the sale to GGB and the
6 involvement of Xanthic. Let's assume that hadn't occurred.
7 Would I be correct that then in that case you and the two
8 Byrnes would both be the only people listed as owners?

9 A No.

10 Q Who else is involved?

11 A The Harvest entity, whose member is Liesl Sicz, and
12 Darren Petersen were also owners of NOR.

13 Q Darren Petersen is a white male?

14 A Yes, I believe so.

15 Q So assuming for the sake of argument that the
16 Harvest LLC would have been given points for being owned by a
17 woman, even though an LLC isn't actually gender specific,
18 assuming that you would have had one out of five diverse in
19 that scenario?

20 MR. KOCH: Objection, lacks foundation.

21 THE COURT: Overruled.

22 THE WITNESS: If you are speaking strictly of the
23 members of the NOR LLC --

24 MR. KEMP: Right.

25 THE WITNESS: -- then yeah.

1 BY MR. KEMP:

2 Q And one out of five, that would have given you 4
3 diversity points, not the 8 you got?

4 A I'm actually not sure how the State scored that
5 section.

6 Q Well, assuming that they did division where they
7 took the diverse person and they divided into the number of
8 people that were owners, officers and directors, that would be
9 20 percent. You don't know as you sit here today that that
10 qualifies as a 4?

11 A Well, you're making certain assumptions about how
12 the State scored the diversity section and you're focusing
13 only on owners. And I honestly don't know to what degree they
14 took into consideration, you know, directors and others
15 involved in the company.

16 Q Okay. But as an LLC, NOR wouldn't have any
17 directors. We've already been through that. Right?

18 A We don't have an official board of directors as an
19 LLC, but we do have directors who run and operate the company,
20 are key executives within the company.

21 Q Okay. Well, I'm glad you brought that up. You
22 don't have an official board for NOR, but you have people that
23 you call internally directors; right?

24 A We do not have an official board of directors, if
25 that's your question.

1 Q And so, for example, you have a Director of Human
2 Resources; right?

3 A That's a title within our company, yes.

4 Q And you also have a Director of Marketing?

5 A Yes.

6 Q And a Director of Purchasing?

7 A Yes.

8 Q And the Human Resources director, that's a woman?

9 A Yes.

10 Q And the Marketing director is also a woman?

11 A No.

12 Q Oh, okay. What about Purchasing?

13 A Courtney Barker is a woman, yes.

14 Q Okay. And isn't it true that even though they were
15 not officially on the board of directors of NOR, that you
16 listed your Director of Human Resources and your Director of
17 Purchasing as directors in the owner/officer/director section?

18 A I interpreted the application --

19 THE COURT: Sir, that was a yes or no.

20 THE WITNESS: Yeah, I'm uncomfortable with the way
21 that the question was phrased.

22 BY MR. KEMP:

23 Q Can you answer yes or no and then I will allow you
24 to expand?

25 A Sure. Can you please restate the question?

1 Q Isn't it true that in the owners, officers and
2 directors section of the application you listed the Director
3 of Human Resources and the Director of Marketing as directors,
4 even though they weren't officially on the board of directors
5 of NOR?

6 A Well, there is no board of directors, so.

7 Q You've already said that.

8 A Yeah.

9 Q So you listed them because you called them a
10 director, even though they weren't on the board of directors
11 of the LLC; correct?

12 A Well, it's their title. It's their official title.

13 THE COURT: So, sir, did you list them as directors
14 under the definition of board of directors on the application?

15 THE WITNESS: We didn't call them board of directors.
16 We were --

17 BY MR. KEMP:

18 Q You called them directors?

19 A Yeah. We called them -- yeah, that's their title in
20 the company. So we're trying to describe to the State an
21 accurate and complete picture of who runs the company and who
22 the individuals are actually making decisions and managing
23 people and so forth.

24 Q And so it was your understanding that on this
25 application even if you just called them director -- if you

1 called everyone -- how many employees does NOR have, 200?

2 A Two hundred and fifty something.

3 Q If you called all 250 people directors, okay, it was
4 your understanding that you could list them on the application
5 under the director -- owners, officers and directors section.
6 That's what you're telling me?

7 A No, that wasn't what we did. I interpreted the
8 application to be asking who runs the company, who are the
9 executives that make decisions to operate the company, and we
10 felt that those high-level executives that run the
11 organization would be pertinent to disclose on the
12 application.

13 Q So you interpreted the requirement in the
14 application to list owners, officers and directors to really
15 mean owners, officers, directors and high-level executives.
16 That's what you did?

17 A I'm not sure I would agree with that specifically
18 because if you look at Xanthic, for example, we listed their
19 officers and board members. And when it came to NOR we listed
20 the people that we felt were crucial to running the company.

21 Q Well, you didn't list the Director of Human
22 Resources of Xanthic, did you?

23 A I'm not familiar with if they even have a director
24 of human resources.

25 Q But you did list the Director of Human Resources and

1 Director of Marketing of NOR, two women; right?

2 A We have an executive team at NOR and we listed all
3 the people who are part of that executive team.

4 Q Including these --

5 A These are the people who actually run the company.

6 Q Including these two women who are not officially on
7 the board of directors of NOR, you listed them; right?

8 A We listed all the key executives that compose the
9 executive team who come into the office every day and run the
10 company.

11 Q Including the two women; right?

12 A Including everyone who's a key executive in the
13 company.

14 Q Okay. Would I be correct that the application
15 required you to list the percentage of ownership of all the
16 owners?

17 A I think --

18 Q Do you want to look at it?

19 A Well, I think where that statement gets murky is
20 when you talk about publicly traded companies.

21 Q Okay. That's where we're going to go in a minute,
22 but would you agree with me that the application requires,
23 quote, "all owners and their percentage of ownership" to be
24 listed?

25 MR. KOCH: Objection. He's pointing to a section of

1 the document. I'd ask him to show it.

2 THE COURT: Overruled.

3 BY MR. KEMP:

4 Q Do you know as you sit here -- I'll show it to you
5 if you want.

6 A Yeah, please.

7 MR. KEMP: Shane, will you pop it up, please?

8 I.T. TECHNICIAN: Sorry, which exhibit?

9 MR. KEMP: It's Exhibit 5, page 11.

10 BY MR. KEMP:

11 Q "And the organizational chart showing all owners,
12 officers and board members of the recreational marijuana
13 establishment, including percentage of ownership of each
14 individual -- for each individual." Right, that's what it
15 says?

16 A Yes.

17 Q Now, counsel asked you some questions about -- I
18 can't remember who it was, someone you listed on the
19 percentage of ownership. It's true that you did not list all
20 of the owners of Xanthic; right?

21 A Xanthic is a publicly traded corporation and our
22 understanding was that for a publicly registered or publicly
23 traded companies that you're required to disclose the officers
24 and board members, which we did.

25 Q Where did you get that understanding?

1 A Well, I've been involved in the industry from the
2 beginning and our legal counsel has been and we had just
3 recently received an approval letter from the Department of
4 Taxation itself approving the 95 percent transfer of
5 ownership.

6 Q Okay.

7 A I'm still going. So I --

8 Q So it was your --

9 A So we did a similar disclosure in our application,
10 listing those same board members and officers. At no point in
11 time was there a requirement to list every shareholder of
12 Xanthic.

13 Q But it was your understanding that you had to list
14 all of the officers and directors of the public company but
15 not the shareholders, is that correct?

16 A That's correct. My understanding was that we had to
17 list the board members and officers in the application, just
18 as we had recently done in the ownership transfer request that
19 we submitted to the State which was recently approved.

20 Q Okay. And you did not include the major
21 shareholders of Xanthic; correct?

22 A I don't agree with that statement.

23 Q Okay. All Js Greenspace LLC, have you ever heard
24 that name?

25 A All Jay Green Piece?

1 Q All Js Greenspace LLC.

2 A Not off the top of my head.

3 Q And if I told you they owned 37 million shares of
4 Xanthic, they are 22.5 percent, that's news to you now?

5 A Can you tell me who the members and managers are of
6 that LLC?

7 Q Earlier you referenced an individual named Schott
8 something?

9 A Schottenstein.

10 Q Yes. So the Schottenstein company is one of the
11 major owners?

12 A As far as I know, yes.

13 Q And do you know how much they own?

14 A My recollection was around 30 percent.

15 Q Okay. And how about GA Opportunities Corp? They
16 own 27 million shares of Xanthic or 16.5 percent of the
17 company. You didn't list them under the organizational chart,
18 did you?

19 A I believe we listed everyone that the application
20 required us to list.

21 Q Okay. I'm not asking if you think you did
22 everything right, I'm asking specifically did you list GA
23 Opportunities Corp. or not?

24 A GA Opportunities Corp. is not on our application, as
25 far as I can recall.

1 Q And neither was All Js, which by the way is a
2 wonderful name for a marijuana company, All Js Greenspace LLC;
3 right?

4 A I do not believe we listed All Js.

5 Q But you did list Liesl -- how do you pronounce her
6 last name?

7 A Liesl Sicz.

8 Q And she only owned .5 percent of NOR through
9 Harvest; right?

10 A Yeah, post 95 percent transaction. I'd have to pull
11 that up again and see, but yeah, it was a smaller percentage.

12 Q Okay. Let's use your 95 percent. So if you use
13 your 95 percent, these two shareholders that own 37 percent of
14 NOR you didn't list, but the woman who only owned, what was
15 it, .5 percent, you did list as an owner; right? Right?

16 A Well, you know --

17 Q I'm just asking what you did.

18 A Yeah. So I don't believe we listed those two
19 entities, you know. You're asking me to make certain
20 assumptions that I frankly don't know as I sit here right now,
21 but I know we did list Liesl Sicz, yes.

22 Q Okay. So why did you list the woman that only owned
23 .5 percent and you didn't list the shareholders that owned 74
24 times as much stock? Why was that?

25 A Well, first of all, Liesl was one of the founding

1 owners. She was integral in the establishment, the set-up
2 operations of the company. Very involved. And number two, I
3 understood the rules at the time did not require us to list
4 every shareholder for a publicly traded company. I thought we
5 were required to disclose board members and officers and
6 directors, which we did.

7 Q And number three, she was a woman?

8 A Liesl Sicz is in fact a woman, yes.

9 Q So by listing her you got diversity points, whereas
10 the other two you would have lost diversity points if you
11 listed them?

12 A We listed Liesl because it was accurate, not because
13 she was a woman. She was a founder of the company.

14 Q Okay. All right.

15 MR. KEMP: Shane, can I have the slide for Exhibit
16 127. Did we admit that?

17 THE CLERK: It's proposed.

18 MR. KEMP: Your Honor, I'd move to admit 127, which
19 is --

20 THE COURT: Any objection to 127?

21 MR. KEMP: That's the NOR application.

22 MR. KOCH: Which part of it?

23 MR. KEMP: Pages 12 and 13, the diversity portion.

24 MR. KOCH: Is this the one that we submitted with
25 redacted?

1 MR. KEMP: Yeah.

2 MR. KOCH: Okay. That's fine.

3 THE COURT: And it's a two-page document?

4 MR. KEMP: It's more than that.

5 THE COURT: Or am I only admitting two pages?

6 MR. KEMP: I'm just using the two pages.

7 THE COURT: So we're going to admit pages 12 and 13
8 of 127.

9 (Plaintiffs' Exhibit 127, pages 12 and 13, admitted)

10 BY MR. KEMP:

11 Q Okay. Sir, do you recognize this as Attachment A
12 from the NOR application for the marijuana -- recreational
13 marijuana license?

14 A Yes.

15 Q Okay. And the first person there, that's named who?

16 A Courtney Barker.

17 Q Okay. And you list her as an officer of NOR; right?

18 A Correct.

19 Q But she really wasn't an officer, was she?

20 A She runs -- she's one of the most influential
21 executives in the company, so I would call her an officer.

22 Q Okay. You would call her an officer, but she's not
23 recognized as an officer by the Nevada Secretary of State, is
24 she?

25 A For NOR LLC?

1 Q Right.

2 A I don't believe so, no.

3 Q So you listed what you think are highly influential
4 or key employees as officers, even though they weren't really
5 officers or board members of NOR; right?

6 MR. KOCH: Objection. Argumentative. Lacks
7 foundation.

8 THE COURT: Overruled.

9 THE WITNESS: Yeah, so again we disclosed what we
10 thought was most responsive to the application.

11 MR. KEMP: Okay.

12 THE WITNESS: Including the executive team, the
13 directors on the executive team.

14 BY MR. KEMP:

15 Q So when the application asks you for owners,
16 officers and board members, you thought that really meant
17 executive team. Is that what you're telling me?

18 A I'm trying to think back to the discussions that we
19 had with our team and with our counsel. But, yeah, we
20 believed we were being responsive to the application.

21 Q Okay. And you also put in Kimberly Lester, who is
22 the Director of Human Resources.

23 MR. KEMP: Can you pop that one up, Shane?

24 BY MR. KEMP:

25 Q And again, she's not an owner of NOR, nor a legally

1 recognized officer or director of NOR; correct?

2 A She's Director of Human Resources.

3 Q So the answer to my question is yes, she is not a
4 legally recognized officer or director of NOR, she's just
5 someone you call a director?

6 A You know, I actually don't know what the legal
7 definition is sitting here. I'm not a lawyer. But we believe
8 we were being responsive to the application.

9 Q Okay. Assuming that the board of directors has the
10 power to hire and fire officers and take other actions like
11 merging the corporation, approving a merger, she doesn't have
12 that power, does she?

13 A She has the authority to hire and fire, yes, within
14 her department. Yes.

15 Q Officers of the corporation, she has the authority
16 to hire and fire?

17 A I would say fairly high level, you know,
18 individuals.

19 Q But she has the authority -- she has the authority
20 to decide whether the corporation should merge or not or sell
21 itself?

22 A Not the sole authority, no.

23 Q She doesn't have any authority in that regard, does
24 she?

25 A I mean, she's a member of a small group of

1 executives that run the company.

2 Q Okay. All right. Let's take a look at Jeanine
3 Terrance, please. And we have her listed as -- what do we
4 have her listed as, an officer?

5 A Director of Finance.

6 Q Okay. And again, she's not a legally recognized
7 owner, officer or board member of NOR; right?

8 A She's a key executive that makes very important
9 strategic decisions on behalf of the company.

10 Q Okay. I understand she's a key executive, but my
11 question is she's not an owner, a legally recognized officer
12 or a legally recognized board member of NOR; right?

13 A You know, I don't -- I don't know that I can answer
14 that, other than saying she's an executive within the company.
15 She's not an owner. That's why we didn't put her in the
16 owners, you know, box.

17 Q Okay. But by having these three women listed even
18 though they weren't owners, legally recognized board members
19 or officers, would I not be correct that NOR got a better
20 diversity rating than it would have gotten?

21 A I'm not sure.

22 Q Well, I'm going to show you in a minute. If they
23 did get a better diversity rating, do you think that would be
24 wrong?

25 MR. KOCH: Objection. Argumentative. Lacks

1 foundation.

2 THE COURT: Overruled.

3 THE WITNESS: I believe the State did its best to
4 apply the rules to score our application. We put forth the
5 information we felt was pertinent and they scored it.

6 BY MR. KEMP:

7 Q And if I told you that MM Development did not list
8 their human resources director, which is a woman, did not list
9 their GM, which is a Hispanic, and did not list their
10 controller, which is an Asian woman, even though these are key
11 employees but not legally recognized board members or
12 officers, if they didn't list these three people, would you
13 agree with me that you got a diversity grade based on
14 something that other applicants potentially could have done
15 but didn't do?

16 A I do not know how MM Development is structured --

17 Q Okay.

18 A -- and how they operate their business.

19 Q So if you listed all these key employees, the three
20 women as owners, officers and board members but MM Development
21 didn't, how do we reconcile that now? Should we re-rate your
22 application, their application? What should we do?

23 MR. KOCH: Objection. Legal conclusion. Incomplete
24 hypothetical.

25 THE COURT: Overruled.

1 THE WITNESS: I think the Department has the
2 statutory authority to accept, review and grade applications.
3 It seems to me that the process was followed. And if M&M
4 regrets not including certain information or not describing
5 things in the way that they now would like to have done, I
6 don't know how to fix that.

7 BY MR. KEMP:

8 Q Well, do you think most of the applicants thought
9 that they should list real board members, legally recognized
10 ones, not just people that you call a director or a key
11 employee?

12 MR. KOCH: Objection. Speculation.

13 MR. KEMP: Do you think that's what most applicants
14 thought?

15 THE COURT: Overruled.

16 THE WITNESS: Well, I believe that all applicants
17 received the same application. All applicants had the
18 opportunity to ask the kind of questions you're asking now.
19 And all applicants submitted what they felt was in their best
20 interest to submit.

21 BY MR. KEMP:

22 Q And you're aware that Mr. Gilbert specifically
23 testified that an LLC like NOR should not list people as
24 directors because they don't have a board of directors. Are
25 you aware of that?

1 A I'm not.

2 MR. KEMP: Pop it up, Shane.

3 And, Your Honor, this is the same day, 203-20 to
4 203-2, which must be 204-2.

5 THE COURT: Thank you.

6 MR. KEMP: And, Your Honor, that S should be LLCs.
7 I think we've already written a letter to the court reporter
8 on that point.

9 THE COURT: And that would be on line 22?

10 MR. KEMP: Yes. On 24.

11 THE COURT: You think the word "Yes" should be LLC?

12 MR. KEMP: The S should be LLCs.

13 THE COURT: Oh. You're probably right.

14 MR. KEMP: Uh-huh.

15 THE COURT: But you were probably talking over
16 someone and so it got garbled and it got missed.

17 MR. KEMP: That couldn't have happened, Your Honor.
18 That was the first day.

19 MR. KOCH: Zing.

20 THE COURT: Sorry, Mr. Kemp.

21 MR. KEMP: No problem.

22 BY MR. KEMP:

23 Q They don't have boards of directors; right?

24 A Who is "they"?

25 Q They being LLCs.

1 A And again, I'm not a legal expert, but our LLC does
2 not have a board of directors.

3 Q It does not?

4 A That's what I said, yes.

5 Q I just want to make sure. Okay. And are you aware
6 that the Manpower graders did not let other applicants use key
7 employees to potentially boost their diversity scores?

8 MR. KOCH: Objection. Lacks foundation.

9 THE COURT: Overruled.

10 THE WITNESS: I'm not aware of what Manpower did or
11 did not do.

12 MR. KEMP: Your Honor, I move to admit Exhibit 129,
13 which is the scoring for Thrive.

14 THE COURT: Any objection to 129?

15 MR. KEMP: That's 129.

16 THE COURT: What pages of 129?

17 MR. KEMP: I'm on 394729, Your Honor.

18 THE COURT: So, hold on. Let's --

19 (Colloquy among the attorneys)

20 MR. KEMP: Your Honor, I just want to see if there's
21 anything that needs to be redacted. We're talking about the
22 evaluating -- the scoring sheets.

23 THE COURT: So we'll take a short break for you to
24 look at 129 and determine which page, if any, should be
25 admitted and if any additional redactions need to be made.

1 Dulce, if you could work with them on the original
2 129, which is in the book.

3 Sir, this is not a requested break. Five minutes.

4 (Court recessed from 2:01 p.m. until 2:07 p.m.)

5 THE COURT: Did we finish our review and discussion?

6 MR. KOCH: I don't know. They left.

7 THE COURT: They're gone.

8 (Pause in the proceedings)

9 THE COURT: All right. So did we have a chance to
10 review the proper portion of 129?

11 MR. KEMP: Yeah, they're okay, Your Honor.

12 THE COURT: Which page numbers? Since I'm only
13 admitting part of 129, which page numbers?

14 MR. KEMP: It would be 39472, Your Honor.

15 THE COURT: 39472.

16 MR. GUTIERREZ: It's supposed to have one more.

17 MR. KEMP: Yeah. There's another one that comes
18 later, though, Your Honor. Do you want to do them both now?

19 THE COURT: Only if you've agreed to them.

20 MR. KEMP: Yeah, we have agreed. The other one is
21 39473.

22 THE COURT: Is that correct, Mr. Gutierrez?

23 MR. GUTIERREZ: Yes, Your Honor. Those are the two
24 that we went -- we covered.

25 THE COURT: So pages 39472 and 39417 (sic) of 129

1 will be admitted.

2 MR. KEMP: All right.

3 THE COURT: Dulce wants to mark those two as 129A.

4 Is that okay with you, Mr. Kemp?

5 MR. KEMP: That's fine.

6 THE CLERK: Thank you.

7 MR. KEMP: Okay. Can you blow that up a little bit,
8 Shane?

9 BY MR. KEMP:

10 Q And, sir, I know you haven't seen this before, but
11 this is a comment made in the diversity section of the Thrive
12 app where the Manpower grader is talking about who they're
13 rating and who they're not rating. Do you see where it says,
14 "Not looking at key staff experience"?

15 A It says, "Not looking at" -- something -- "ownership
16 credit or key staff experience."

17 Q So apparently the Manpower graders rated some
18 applicants like you by giving them diversity credit for women
19 on their staff but other applicants didn't have the same
20 opportunity to earn diversity points.

21 MR. KOCH: Objection. Lacks foundation.

22 MR. KEMP: Is that fair?

23 THE COURT: Overruled.

24 THE WITNESS: Well, the folks we were just talking
25 about are officers in the company. We didn't select board

1 member, we didn't select owner, we selected officers. Right?

2 BY MR. KEMP:

3 Q They weren't legally recognized by the Secretary of
4 State of Nevada.

5 A They were officers in our company.

6 Q You called them officers; right? Right?

7 A Whose turn is it? Do you want me to --

8 Q Let me ask this. If you called --

9 THE COURT: Can you rephrase your question?

10 MR. KEMP: I will rephrase.

11 THE COURT: Thank you.

12 BY MR. KEMP:

13 Q If you called the janitor the director of
14 maintenance, would you consider her to be an officer of the
15 company that we should list for diversity credit?

16 A That's not what we did.

17 Q I'm just asking you. You seem to have a broad
18 definition of key employees here.

19 A Yeah, so those folks run the company. They manage
20 those 250 people. They're also shareholders, by the way.

21 Q But Thrive didn't get the same benefit because they
22 didn't get rated on their key staff, did they?

23 A Yeah, I'm not sure I agree with your comparison
24 here.

25 Q What is it you don't agree with?

1 A Well, number one, you're showing the one annotation
2 that I really don't understand the context of and asking me to
3 draw a direct comparison between this situation and ours, and
4 I'm just not comfortable with that.

5 Q Okay. One of the people you listed was the Director
6 of Human Resources, right, a woman?

7 A Correct.

8 Q And if MM Development had a director of human
9 resources, also a woman, that they were not given credit for,
10 would you at least agree with me that you two were treated
11 differently?

12 A Well, we consider that an officer of our company.
13 I don't know what they -- how they are structured.

14 Q So if you have someone that you call a director and
15 internally somewhere in your brain you think that they're an
16 officer, then you should list them on the State application
17 form as an officer of the applicant? Is that what you're
18 telling me?

19 A Yeah. We interpret it as someone who has
20 significant authority, who runs major departments and
21 divisions of the company, who has significant influence. We
22 consider them to be an officer, yes.

23 THE COURT: Sir, have you ever heard the phrase,
24 owners, officers and directors before, OOD?

25 THE WITNESS: I've heard it, you know, yes,

1 discussed.

2 THE COURT: What do you think it means?

3 THE WITNESS: So, owners own equity. Officers, you
4 know, are -- have significant authority within the company.
5 And directors, you know, members of the board of directors.

6 THE COURT: Okay. Thanks.

7 BY MR. KEMP:

8 Q Okay. Let's go back to Thrive and let's use them as
9 an example and see the situation they were in as far as
10 grading.

11 MR. KEMP: Can I have 129, 39449, please.

12 THE CLERK: Proposed.

13 BY MR. KEMP:

14 Q Okay. Do you see the people that they have rated on
15 the top there?

16 THE CLERK: I'm sorry, that's proposed.

17 MR. KEMP: Oh. I thought we admitted that, Your
18 Honor.

19 THE COURT: It's proposed. Dulce wins.

20 MR. KEMP: Yeah, it's okay. Yeah, we've agreed to
21 that.

22 MR. GUTIERREZ: No objection, Your Honor.

23 THE COURT: It will be admitted.

24 THE CLERK: Thank you. It will be 129B.

25 //

1 BY MR. KEMP:

2 Q So they have one woman out of seven members, which
3 was one out of seven or .14, and so they only got a 4
4 diversity rating because they did not list, you know, their
5 internal brain definition of officers or directors that you
6 did, you know, and so they got a lower diversity score than
7 you did. They got 4 and you got 8. Do you think that's
8 right?

9 A I'm not sure I really understand how the State even
10 did the scoring, so I don't know how to answer that.

11 Q Okay. And if you didn't understand, will you agree
12 with me that the other applicants probably didn't understand,
13 either?

14 A I mean, we knew diversity was a criteria. We knew
15 that we were asked to divulge who all of the, you know, board
16 members, owners and officers were and we felt that we did that
17 to the best of our ability. What happened after it was
18 submitted was unknown to us at the time.

19 Q Let me ask it this way. If the State had told you
20 that you could only use real board of directors, not advisory
21 board, real officers not someone who's not recognized by the
22 Secretary of State, would you have complied with that
23 directive?

24 A We did our best to comply with the application and
25 in hindsight would have absolutely complied with whatever

1 version of the application you're hypothetically coming up
2 with.

3 Q So if the State had been more specific you would
4 have complied with their directive; right?

5 A Yes.

6 Q Okay. And I'm not saying it's all your fault for
7 inconsistencies. It's partly the State's fault; right?

8 MR. KOCH: Objection. Argumentative.

9 THE COURT: Overruled.

10 THE WITNESS: What is the State's fault? I don't
11 understand your question.

12 BY MR. KEMP:

13 Q I just showed you that they rated some people for
14 MM Development and Thrive one way and they rated you another
15 way. You don't think that's an inconsistency?

16 A I'm not sure I have enough information and context
17 to make that evaluation.

18 Q Okay. Did the DOT provide guidance to you as to
19 whether or not to include key employees such as the Director
20 of Human Resources in the diversity section?

21 A We had lots of employees that weren't included in
22 that. We put only the people who run the company and have
23 significant authority that we consider officers of the
24 company.

25 Q Only the women?

1 A No. No, no, no, that's not true at all.

2 Q Okay. We'll go through the list in a minute.

3 A So we included our Director of Marketing, who's a
4 male, a white male, we included our Director of Retail, who's
5 also a white male, and others. It wasn't only selecting, hand
6 selecting people. To be honest, I didn't even know being a
7 woman was considered diversity. I did not know that at the
8 time. I thought --

9 Q You didn't --

10 A I'm still talking.

11 THE COURT: You've got to let him finish.

12 MR. KEMP: Okay.

13 THE WITNESS: I thought that --

14 THE COURT: We may not get done with him today and
15 he may not be able to leave, but you've got to let him finish.

16 MR. KEMP: It's his choice, Your Honor.

17 THE WITNESS: That's good. So we didn't hand pick,
18 cherry pick anyone. These are the people who run the company
19 that we considered officers, these director level people. And
20 anyone with that title -- our Director of Cultivation, he was
21 on there. He's not -- he's a white male. So it wasn't that
22 we selected only women to put on there for that purpose. We
23 were just trying to be as thorough and accurate as possible.

24 BY MR. KEMP:

25 Q So you did not know that when the legislature

1 included an amendment to the statute in the 2017 session that
2 you should consider the diversity of board members and you
3 should also look at minorities, women, gender, you didn't
4 think that included women?

5 A I didn't know specifically how they would view
6 gender versus race versus ethnicity, etcetera. I did not know
7 that at the time.

8 Q But you knew that women would be rated higher than
9 men. You did know that?

10 A Honestly, I don't recall what the definition of
11 diversity was at the time. I'm certainly generally familiar
12 with the change that was made to add diversity back in '17,
13 but, you know, maybe others involved in our team did know that
14 but that wasn't why these individuals were put on the
15 application. They were put on the application because they,
16 along with all the other people who were included in the same
17 category, actually run the company and have major
18 responsibility here in the state of Nevada for hundreds of
19 employees.

20 Q Okay. Now we have three different LLCs and we've
21 talked about them, NOR, the Thrive one and GreenMart, okay.
22 And I've already shown you that in GreenMart they were graded
23 on an advisory board and not on the officers or directors of
24 the parent. I've shown that to you. You were graded not on
25 an advisory board but on your definition of key employees as

1 officers or directors. And Thrive, they were graded a third
2 way using the existing ownership but not their key employees.
3 So we have three different ways that diversity is being graded
4 here. Would you agree with me that we should have one
5 consistent approach to grading diversity, not three different
6 approaches?

7 MR. KOCH: Objection. States facts not in evidence.

8 THE COURT: Overruled.

9 THE WITNESS: I believe the Department can only
10 evaluate applications as they're written and each applicant
11 has to make its best effort at providing the responsive
12 information.

13 BY MR. KEMP:

14 Q So we should have made up the diversity scoring
15 system after all the applications were filed?

16 A That's not what I said.

17 Q That's okay with you?

18 A That's not what I said.

19 Q Okay. Well, I've shown you the three different
20 approaches that were taken. Do you agree we should have had
21 one uniform procedure?

22 A I believe you're oversimplifying the process.

23 Q Well, I'm trying to. Do you agree that in those
24 three cases we should have at least treated the applicants the
25 same way? GreenMart should have had its officers and

1 directors of the parent graded if you did and Thrive should
2 have had its key employees graded if you did; right? It
3 should have been all the same; right?

4 A Now you're asking me to speculate on what applicants
5 may or may not have included in their application. I'm not
6 comfortable doing that. I mean, again, we put forth our best
7 effort and we were graded accordingly.

8 Q Okay. Let's bore in a little bit on this advisory
9 board we talked about. Would you agree that an LLC should not
10 be allowed to set up an advisory board full of women and
11 minorities just to try to increase its diversity grade?

12 MS. SHELL: Objection. Argumentative.

13 BY MR. KEMP:

14 Q And again, I'm not saying you did it, I'm saying in
15 the abstract would you agree that an applicant shouldn't be
16 allowed to do that?

17 THE COURT: And your objection was?

18 MS. SHELL: Argumentative, Your Honor.

19 THE COURT: Overruled.

20 MS. SHELL: Thank you.

21 THE WITNESS: I'm not -- I'm not familiar with --
22 you know, we didn't do that, so what another applicant should
23 or shouldn't have done is really up to the State to decide.

24 BY MR. KEMP:

25 Q Okay. And let me show you what Mr. Gilbert said.

1 MR. KEMP: And again, this is from the same day, 204
2 16-25 through 205-2.

3 BY MR. KEMP:

4 Q Do you agree with that?

5 A I mean, you're asking me to again go back and rehash
6 one statement from one mid-level manager from the State. I
7 don't know that -- I don't know that I have enough context to
8 opine on this statement.

9 Q Isn't Mr. Gilbert number two under Mr. Pupo in the
10 Department of Taxation?

11 A Something like that. I'm not sure.

12 Q So he's not mid-level, he's upper level; right?

13 A I'm not sure. He's never appeared to be in the
14 highest echelon, from my experience.

15 Q Okay. Did you give any consideration, you being
16 NOR, to creating an advisory board and put women and
17 minorities on it? Did you give any consideration to doing
18 that?

19 A No, I don't believe so.

20 Q And you didn't consider doing that because you knew
21 it was wrong; right?

22 A That's just not how we're structured. We were
23 thorough, accurate and, you know, consistent in how we operate
24 the company. I didn't think of that hypothetical structure
25 because it doesn't really apply to us. We put down who the

1 actual people are that run the company. If you go to our
2 office right now, you'll find those same people with their
3 name on a business card with those titles running the company
4 as shareholders and executives within our company. It's not
5 some made up board, they're real people.

6 Q I'm not saying they're not real people. I'm saying
7 they're not real officers and directors. Do you see the
8 difference?

9 A I'm beginning to see the point you're trying to
10 make, but that's not how our company is structured.

11 Q Okay. Let me ask a different question. You have a
12 lot of women on the Xanthic board; right?

13 A What's your definition of a lot?

14 Q More than two or three.

15 A Would you please pull it up so we can look at the
16 actual thing instead of speaking about it abstractly?

17 MR. KEMP: Shane, can we have Exhibit 127, 12
18 through 13 again.

19 BY MR. KEMP:

20 Q Carli. We have Carli, right, that's a woman?

21 A Yes.

22 Q And we've already talked about Stultz (sic); right?

23 A Liesl Sicz?

24 Q Yeah, Sicz. I'm sorry.

25 A Yes. Uh-huh.

1 Q And the other woman up there is one you mentioned,
2 she's one of the partners; right? Joan -- how do you say her
3 last name?

4 A Jean Schottenstein.

5 Q Okay. So you have at least three on the board of
6 Xanthic; correct?

7 A Carrie Closener (phonetic), Jean Schottenstein, and
8 who's the third one you mentioned?

9 Q Well, you also have Liesl. She's not on the board
10 of Xanthic. She's the owner of Harvest; right?

11 A She's a founding owner and owner of Harvest, which
12 is a member of NOR LLC. Yes.

13 Q Right. So you have at least three; right?

14 A At least three women in the company?

15 Q In the ownership structure or the director
16 structure.

17 A Okay.

18 Q Okay. Would you agree with me that whether those
19 people are women or men, would you agree with me that that is
20 not directly and demonstrably related to the operation of a
21 marijuana business, whether those three people are men or
22 women?

23 A I'm not sure I understand your question.

24 Q In general do you think diversity is directly and
25 demonstrably related to the operation of a marijuana business?

1 A I mean, if you're asking if you can run a company, a
2 multi-million dollar company with 200 plus employees with only
3 men, I don't know if that's realistic or feasible. Are you
4 asking like how important it is to have women in a company?

5 Q No. I'm asking whether you think gender, being a
6 man or woman, whether you think that's directly and
7 demonstrably related to the operation of a marijuana business?

8 A I mean, at the end of the day a marijuana company
9 isn't dissimilar from any other company, okay, so take that
10 out of the equation. You're asking how important is it to
11 have mixed genders in a company? I think it's important.

12 Q Do you think it's directly and demonstrably related
13 to the operation of the business, as opposed to unimportant?

14 A I think I already answered that.

15 Q Well, you gave an answer. Was that a yes answer or
16 no?

17 A I think it's important to any company to have, you
18 know, a variety of genders.

19 Q Would I be correct that the Governor's Task Force
20 that you sat on did not consider diversity? That wasn't a
21 recommended factor for --

22 A I don't recall off the top of my head.

23 Q Okay. And the DOT treated owners, board members and
24 officers equally for this diversity calculation. Do you
25 understand that?

1 A I am actually unaware of that. I don't know --

2 Q Okay.

3 A -- how hat was handled behind the scenes.

4 Q Are you familiar with other governmental entities
5 like the Department of Aviation at the Clark County airport
6 that focus on ownership as opposed to officers and directors
7 for diversity purposes?

8 A No, I'm not. I'm not familiar with the Department
9 of Aviation.

10 Q Do you think that ownership for diversity purposes
11 should be more heavily weighed than, say, for example, an
12 advisory board?

13 A I would say that that really depends on the company
14 and how it's structured and how it actually operates.

15 Q Would I be correct that there's only one company,
16 marijuana company owned by minorities here in Clark County out
17 of the eighty?

18 A I don't know that.

19 Q Only Mr. Hawkins' company, one out of eighty; right?

20 A I certainly know Mr. Hawkins, but I don't know that
21 I can comment on his ownership as compared to all the other
22 companies in the county or the state.

23 Q Do you know any other dispensaries owned by
24 minorities other than Mr. Hawkins?

25 A So, we have a board member who's African-American.

1 I know other companies who have --

2 Q Owned. Owned, not board members. Owned.

3 A And what do you -- I mean --

4 Q Owned means owned. You own the shares or you own
5 that LLC membership. Do you know --

6 THE COURT: Remember how you told me owned meant
7 equity? That's what we're talking about.

8 THE WITNESS: Fair enough. I can't recall any off
9 the top of my head.

10 BY MR. KEMP:

11 Q There are none, are there?

12 A I don't know.

13 Q Assuming it is Mr. Hawkins is the sole minority
14 owner and it's one out of eighty, that's 2.5 percent of the
15 marijuana dispensaries in town; right?

16 A Do you want me to get out my calculator and confirm
17 that?

18 Q Well, why don't we just assume that that's 2.5
19 percent.

20 A Fair enough.

21 Q Do you think -- or actually it's 1.25 percent. I'm
22 wrong. It's 1.25.

23 MR. KEMP: I thought you were going to jump in
24 there, Judge.

25 THE COURT: I'm not doing that today.

1 MR. KEMP: Okay.

2 BY MR. KEMP:

3 Q 1.25 percent. Do you think that's really what the
4 legislature intended when they changed the statute in 2017 to
5 try to encourage diversity ownership?

6 MR. KOCH: Objection. Speculation.

7 THE COURT: Overruled.

8 THE WITNESS: I can't comment on the legislature's
9 intention.

10 BY MR. KEMP:

11 Q Okay. Well, whatever it was, would you agree with
12 me that the diversity really hasn't worked because we only
13 have 1.25 percent ownership now?

14 A Look, what I can say is that the diversity
15 requirement came after the fact. It wasn't part of the
16 initial medical applications. And if you think about it, the
17 only people who could apply for these new licenses, the
18 universe of applicants was set back in 2014 when the medical
19 licenses were awarded. So the time to implement diversity was
20 back then when we were creating the universe of applicants, in
21 my opinion. So we're kind of -- you know, kind of tweaking
22 the system, trying to make it better by adding diversity, you
23 know, later on. But I think it's -- you have to add some
24 context to the kind of hypothetical exercise that you seem to
25 really enjoy to go back and try to recreate how the program

1 would work, and how it would be shaped today would be very
2 different.

3 Q Okay. We had a ballot initiative; correct?

4 A Yes.

5 Q And that's why we have rec because of the ballot
6 initiative; right?

7 A Correct.

8 Q And that was passed in November of 2016; right?

9 A Yes.

10 Q And that did not include diversity; right?

11 A I do not believe so.

12 Q Okay. And November 2016, three years hasn't passed
13 yet, has it?

14 A Between what and what?

15 Q Between November 2016 and the present day.

16 A Correct.

17 Q So the ballot initiative cannot be changed by the
18 legislature for three years; right?

19 A Correct.

20 Q So diversity shouldn't have been used at all, should
21 it?

22 A Well, you're ignoring the part of the regulations
23 that state that the Department has authority to run the
24 department or run the program, accept and grade, score
25 applications and award licenses.

1 Q So your position is that the legislature can't
2 change the ballot initiative for three years but the
3 Department of Taxation can. Is that what you're telling me?

4 A No.

5 Q Okay. So you would agree that we cannot change the
6 ballot initiative until November of 2019; correct?

7 A My understanding of Nevada law, and again, you're
8 asking me to opine on legal issues here, but my understanding
9 is that the major components of a ballot measure cannot be
10 altered by the legislature for three years after its passage.
11 But I also understand that the Department has been given
12 statutory discretion to run the Department and to administer
13 the program.

14 Q Would you consider 20 points out of 250 to be a
15 major portion of the application?

16 A I would say it's significant.

17 Q Well, okay. All right. Let's talk about building
18 address. Earlier I told you that there were two different
19 applications; right?

20 A I don't believe we covered that.

21 Q Okay. Are you aware that the applicants in this
22 case -- we're referring to the 462 -- some of them filed one
23 application that said either you had to be an owner or you had
24 to provide a landlord's letter for a lease situation, and
25 others provided an application that had different wording.

1 Are you aware of that?

2 THE COURT: Mr. Kemp, you're referring to the
3 existence of two different forms?

4 MR. KEMP: Right.

5 THE COURT: Thank you.

6 THE WITNESS: I'm aware that the State had previous
7 drafts of the application, but there was only one application
8 that was applicable at the time the application period opened.
9 BY MR. KEMP:

10 Q So if I told you the application that required
11 ownership or the landlord's letter was on the State website as
12 recently as two weeks ago, that would be a shock to you?

13 A I don't know that I would be shocked. I mean,
14 people make mistakes. The Department of Transportation (sic)
15 is not immune from having potentially --

16 THE COURT: Department of Taxation?

17 MR. KOCH: Taxation.

18 THE WITNESS: What did I say?

19 THE COURT: Transportation.

20 THE WITNESS: Yeah. I guess somebody jinxed it
21 earlier. But anyway, yes, Department of Taxation. Thank you.
22 BY MR. KEMP:

23 Q Transportation screws up, too.

24 A Yeah, maybe. So, yeah, is it possible that they had
25 an outdated version of the application? I did not see that

1 specifically. I heard that that had occurred. I wouldn't be
2 shocked. But that's a technicality. The big picture here is
3 what was applicable at the day the application period opened.
4 And if someone wasn't paying attention close enough to
5 understand which form was appropriate for such a large
6 endeavor and commitment, then, you know, I don't know that you
7 can really blame the Department for that.

8 Q Okay. And the application notice was published July
9 6th, I believe.

10 A Somewhere around there, as far as I can recall.

11 Q And the final day was September 20th; right?

12 A Something like that.

13 Q So between the time period of July 6th through
14 September 20th, you personally didn't know that there were two
15 forms, is that correct?

16 A I don't recall. I knew that they were -- they had
17 previously been discussing the location requirements, whether
18 or not to require a secured, you know, location and that kind
19 of thing, but, you know, we paid pretty close attention to the
20 whole process. We were part of the Listserv. And we were not
21 confused by the fact that there were previous versions of the
22 application. It was pretty clear to us which form to use.

23 Q You didn't even know there were two forms. What do
24 you mean you were sure which form to use?

25 A We were not confused by that. We knew which form to

1 use.

2 Q Well, if you didn't know there were two forms, how
3 could you be confused?

4 A I don't know that there were two forms. I don't
5 know -- I now know that there were two forms, but I'm not sure
6 if they actually published it or not. But for us it wasn't a
7 point of discussion. We got the form, we followed it and
8 submitted our application.

9 Q Okay. Let's talk about the address requirement a
10 little bit. Earlier you referenced the Task Force's
11 recommendation that the address requirement be dispensed with;
12 right?

13 A I wouldn't call it the address requirement. It's
14 more of securing a location and using that location as a basis
15 for grading on the application. As we now know, the
16 application did have a spot for address; it just wasn't
17 graded. There were no points assigned to it, so it was more
18 of a guidance than it was a requirement.

19 Q Would I be correct that NRS 453D.210 that was in
20 effect when the application was filed required that an address
21 be submitted as part of the application?

22 A Can you show that to me? I don't have that
23 memorized.

24 Q Well, let me read it to you. Section (b): "The
25 physical address where the" --