

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 35

David R. Koch (NV Bar #8830)
Brody R. Wight (NV Bar #13615)
KOCH & SCOW LLC
11500 S. Eastern Ave., Suite 210
Henderson, NV 89052
Telephone: (702) 318-5040
Email: dkoch@kochscow.com, bwight@kochscow.com
Attorneys for Appellant Nevada Organic Remedies, LLC

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46, 47	Preliminary Injunction Hearing, Defendant's Exhibit 2009 Governor's Task Force Report	n/a	AA 011408 - AA 011568
47	Preliminary Injunction Hearing, Defendant's Exhibit 2018 List of Applicants for Marijuana Establishment Licenses 2018	n/a	AA 011569 - AA 011575

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47	Preliminary Injunction Hearing, Defendant's Exhibit 5026 Nevada Organic Remedies, LLC's Ownership Approval Letter	n/a	AA 011591, AA 011592
47	Preliminary Injunction Hearing, Defendant's Exhibit 5026 Nevada Organic Remedies, LLC's Ownership Approval Letter as Contained in the Application	n/a	AA 011593 - AA 011600
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47	Preliminary Injunction Hearing, Defendant's Exhibit 5045 Minutes of ther Legislative Commission, Nevada Legislative Counsel Bureau	n/a	AA 011604 - AA 011633
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45, 46	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 20	8/16/19	AA 011166 - AA 011332

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:

Michael V. Cristalli, Dominic P. Gentile, Ross J. Miller,
and Vincent Savarese, III

Clark Hill PLLC

Counsel for Respondents,

*Serenity Wellness Center LLC, TGIG LLC, NuLeaf Incline Dispensary LLC,
Nevada Holistic Medicine LLC, Tryke Companies So NV LLC, Tryke
Companies Reno LLC, Fidelis Holdings, LLC, GBS Nevada Partners LLC,
Gravitas Nevada Ltd., Nevada Pure LLC, MediFarm LLC, and MediFarm IV
LLC*

Ketan D. Bhirud, Aaron D. Ford, Theresa M. Haar, David J. Pope,
and Steven G. Shevorski

Office of the Attorney General

Counsel for Respondent,

The State of Nevada Department of Taxation

David R. Koch, Steven B. Scow, Daniel G. Scow, and Brody R. Wight

Koch & Scow, LLC

Counsel for Appellant,

Nevada Organic Remedies, LLC

Margaret A. McLetchie, and Alina M. Shell

McLetchie Law

Counsel for Appellant

GreenMart of Nevada NLV LLC

Eric D. Hone, Moorea L. Katz, and Jamie L. Zimmerman
H1 Law Group
Counsel for Appellant,
Lone Mountain Partners, LLC

/s/ David R. Koch
Koch & Scow

1 THE COURT: So you're on 5(b)?

2 MR. KEMP: That's correct, Your Honor, 5(b).

3 BY MR. KEMP:

4 Q Quote: "The physical address where the proposed
5 establishment will operate is owned by the applicant or the
6 applicant has the written permission of the property owner to
7 operate the proposed marijuana establishment on that property"
8 -- semicolon, close quote. That's what the statute says;
9 right?

10 A If you say so. I don't have it in front of me.

11 Q Do you want to look at it?

12 THE COURT: He correctly read it.

13 THE WITNESS: Okay. I'll take the Judge's word for
14 it.

15 BY MR. KEMP:

16 Q Okay. And that statute got amended, at least parts
17 of it did, in the legislative session that just ended in 2019;
18 right? You're familiar with AB533?

19 A Yes, generally.

20 Q And it amended part of that statute; right?

21 A I believe so.

22 Q But it didn't amend that part that requires a
23 physical address; right?

24 A I'm not sure.

25 Q Okay. Now, the statutes as enacted by the

1 legislature, that's the law, right, not the Task Force
2 recommendations?

3 A Correct.

4 Q So basically instead of following the law that I've
5 just read, the DOT decided to follow the Task Force
6 recommendation, no address required; right?

7 MR. KOCH: Objection. Legal conclusion.
8 Argumentative.

9 THE WITNESS: Well, I believe --

10 THE COURT: Overruled.

11 THE WITNESS: I'm sorry. I believe the Department
12 used its own, you know, statutory authority to create an
13 application that was, you know, responsive to, you know,
14 Question 2 and the regulations.

15 BY MR. KEMP:

16 Q Well, that's not really what happened, is it, sir?
17 You know what really happened, don't you? Certain applicants
18 were having trouble getting landlords to sign leases or to
19 sign landlord letters. It was costing them a lot of money, so
20 certain applicants and their attorneys went to the Department
21 and begged for some relief. Isn't that what really happened
22 here?

23 A Not to my knowledge.

24 Q Not to your knowledge?

25 A Yeah.

1 Q To your knowledge there was no address required as
2 of July 6th; right? That's your knowledge?

3 A My knowledge and understanding was that the location
4 was not required on the application, in part because of all of
5 the issues that it caused in 2014.

6 Q Okay.

7 MR. KEMP: Shane, can I have Exhibit 5, page 13, the
8 building section.

9 BY MR. KEMP:

10 Q Now, that section, you're supposed to include
11 documentation establishing the adequacy of size of the
12 building; right?

13 A Yes.

14 Q Did NOR put in generic building plans or did they
15 put in building-specific plans for specific buildings and
16 specific addresses?

17 A Both.

18 Q Okay. So some of your applications you had generic
19 plans and some you had specific addresses, is that correct?

20 A What I mean by that is we actually took our existing
21 dispensary floor plan and layout and removed any identifying
22 information from that, and so in a sense it was an actual, you
23 know, layout of a functioning store that had been approved in
24 the state but did not have any identifying information on it.

25 Q Well, let me ask it a little differently, then. So

1 for the eight applications NOR and HOR put in -- there were
2 eight; right?

3 A Yes.

4 Q Did you have a building address for any of the
5 eight?

6 A We had to provide an address, I believe, in another
7 part of the application, but for this particular section this
8 is non-identified, and so we had a non-identified floor plan
9 with context and language and description that is based on our
10 existing store today.

11 Q Okay. Does that mean you did have a piece of
12 property that you owned or under lease for each one of these
13 eight or you did not?

14 A We provided addresses for them according to the
15 application.

16 Q Okay. Let's go down each one, then. RD215, did you
17 provide a specific building address?

18 A Yes.

19 Q 16, a specific building address?

20 A I believe so.

21 Q 17?

22 A The answer to all of them is I believe we did.

23 Q So you think you had specific building addresses for
24 each of them, is that correct?

25 A I believe so, yes.

1 Q Did you have landlord letters? Well, wait, wait,
2 wait, wait, wait. I think I see what's happening here. By
3 specific building address, you're not talking about Post
4 Office Etcetera or something like that; right? You're talking
5 about a real building where you're going to put the
6 dispensary. Did you provide that?

7 A We had addresses that were within each jurisdiction
8 that we felt met the requirements of the application.

9 Q Okay. Did you have addresses for a building where
10 you were going to build a dispensary or did you have post
11 office boxes or UPS addresses?

12 A We had addresses that we felt met the requirements
13 of the application.

14 Q Where they UPS addresses?

15 A I can't -- I don't recall what they were for.

16 Q Did you have a landlord's letter for each one of --
17 for any of the eight applications?

18 A Was that a requirement in the application? I don't
19 recall.

20 THE COURT: Sir, it's a yes or no.

21 THE WITNESS: I don't believe so.

22 BY MR. KEMP:

23 Q Okay. And did you own any of the addresses that you
24 referenced in the eight applications?

25 A I don't recall.

1 Q There's been testimony that some people used a UPS
2 or something like that, a Post Office Etcetera, they used that
3 address. Did you do that?

4 A We may have.

5 Q Okay. So if you did that, the building plan
6 couldn't be specifically tailored to whatever you ultimately
7 would build, is that correct?

8 A To the extent that that happened, that would be
9 correct. However, as I explained earlier, our building plan
10 was based on our existing store that could be built with minor
11 tweaks just about anywhere.

12 Q Okay. Nothing better than using an existing store
13 because that's already been approved; right?

14 A And we were comfortable with it. We operate a
15 certain way. We have our tellers in one window and we have
16 check-ins a certain way. So operationally it was already
17 designed to support how we operate our retail operations.

18 Q Okay. But if you were trying to prove that you
19 could build something in 12 months, there would be nothing
20 better to submit than an existing operating dispensary; right?

21 A I mean, I'm sure your client would like to make that
22 argument, but, you know, that wasn't why we submitted it the
23 way we did. We submitted our floor plan the way we did
24 because that's how we operate, we're very successful in this
25 market, and that supports our operations, our security, our

1 training, customer flow, packaging, product flow, et cetera.
2 That's why we did it, not because we already had a store that
3 we abandoned that we were trying to retrofit.

4 Q Can we agree to a term to call the floor plan that
5 you used generic floor plan, whatever you want? Give me a
6 term.

7 A Floor plan.

8 Q Okay. So with regards to the NOR floor plan, do you
9 think that the NOR floor plan that you provided for eight
10 different jurisdictions, do you think that that provides
11 greater evidence that you can actually build a dispensary in
12 12 months than an existing dispensary that had been in
13 operation for years would provide?

14 A That's not a hypothetical I really contemplated. I
15 mean, it's a very unique circumstance you're bringing up.

16 Q I'm not disagreeing that it's a unique circumstance,
17 but okay.

18 MR. KEMP: Can I have the NOR scores, please, for
19 building construction.

20 BY MR. KEMP:

21 Q These are the scores that the Manpower graders gave
22 NOR to the NOR floor plan in these eight different
23 jurisdictions, okay. Do they look familiar?

24 A I actually haven't seen this before, but I'll take
25 your word for it.

1 Q Okay. Well, your attorney will jump up and yell and
2 scream if I'm lying. All right. So let's focus on 15 and 16.
3 Those are in two completely different jurisdictions; right?

4 A I would assume so. Again, I'm not sure how those
5 are coded. I don't know where this ID number came from or
6 what they correlate to.

7 Q Okay. But you only filed on application for
8 jurisdiction?

9 A Correct.

10 Q Okay. In other words, you didn't set up two LLCs
11 and file multiple applications; right?

12 A That's correct.

13 Q And the reason you didn't set up the two LLCs and
14 file multiple applications is you at least understood that was
15 not the way to go, that was inappropriate?

16 A Well, I believed that NOR was the applicant. NOR
17 was the licensed medical marijuana company that qualified to
18 apply for these licenses.

19 Q So you thought -- if you had you could file more
20 than one application, you would have done that, because you
21 could have got two dispensary licenses, potentially, in Clark
22 County or two in to city of Las Vegas; right?

23 A Potentially.

24 Q Okay. But you didn't do that because you knew that
25 NOR could only file one application; right? In each

1 jurisdiction.

2 A That was not our strategy. I mean, we -- NOR was
3 the existing licensee, existing operator, and that's the
4 entity that applied.

5 Q Okay. Let's get back to building construction on
6 215 and 216. Two different jurisdictions. And I think this
7 is the County and the City; right? Right?

8 A I don't know.

9 Q Okay. You know it's different jurisdictions,
10 though, because you only filed one [inaudible].

11 A Yes. I believe so.

12 Q And you got the exact same score for building
13 construction in two different jurisdictions, 16.33. Do you
14 see that?

15 A Yes.

16 Q Can you explain to me how a building in two
17 different jurisdictions could be rated exactly alike down to
18 the hundredth decimal point?

19 A No.

20 Q It's incomprehensible; right?

21 A I wouldn't say that. I just -- I'm not familiar
22 with the rationale behind it.

23 Q Okay. And then the next group of applications you
24 had, 17, 18, 19, 20, 21, those are filed in five different
25 jurisdictions; right?

1 A Six.

2 Q 17 is the last one. I'm talking about 1, 2, 3, 4,
3 5.

4 A Oh. Those five, that .33?

5 Q Yes.

6 A Yes. Okay.

7 Q Okay. So five different jurisdictions. And you got
8 the exact same rating down to the second decimal point; right?

9 A Yes.

10 Q Okay. So these were five different UPS addresses in
11 five different jurisdictions?

12 A I don't know.

13 Q They weren't real buildings; right? I mean, real
14 buildings --

15 A Well, of course they were real buildings.

16 Q -- real buildings that you were going to put a
17 dispensary in; right?

18 A I don't recall. We own, you know, commercial real
19 estate throughout the state, and it may have been some of that
20 here. I don't know. I don't remember.

21 Q The same question. Can you explain to me how the
22 NOR floor plan got the exact rating in five jurisdictions?

23 A No, I cannot. I wasn't part of the grading process.

24 Q And can you explain how the same floor plan got a
25 16.33 in the first two jurisdictions, but the exact same floor

1 plan was rated in the next five a point higher?

2 A I mean, I can speculate. I mean, it could have
3 something to with the population with regard to the relative
4 size of the floor plan. Maybe there was some thought that a
5 larger store could serve a large population better. I don't
6 know. That's complete conjecture on my part. But, like I
7 said, I wasn't privy to how this was scored, and so I can't
8 really, you know, say why there are two different scores.

9 Q Would it surprise you if I told you that all eight
10 of these for building addresses where there's not going to be
11 a real dispensary, okay, either at the UPS box or whatever,
12 all eight of your applications scored higher in this category
13 than MM's application for a real building, a real dispensary
14 that had been in operation for three years? Would that
15 surprise you?

16 A Not necessarily, no. I can tell you that --

17 Q And is that --

18 A -- we went through a lot of effort to explain how we
19 operate. It's like saying, here's a floor plan I found off
20 the Internet, go with it, versus something that, you know, we
21 know how to operate in this floor plan, it supports our
22 operations. So it wasn't just a floor plan submitted on its
23 own. I believe we provided a lot of -- a lot of information
24 about the floor plan and why it works and how -- why we
25 thought it strengthened our application.

1 Q But MM Development had an actual dispensary that had
2 been operated for years, and they got rated lower than your
3 generic floor plan at a Post Office box address. That
4 doesn't --

5 A That doesn't mean that they operate well.

6 Q Have you been to the -- were you at their
7 dispensary?

8 A Yes.

9 Q You don't think that dispensary's operated well?

10 A I'm not saying that. You're saying just because it
11 was in existence means that it's a superior floor plan. And I
12 disagreed with that assertion.

13 Q Okay. Other applications that also used generic
14 floor plans also got even higher ratings than this; right?

15 A I don't know.

16 Q Okay. Are you familiar with Thrive?

17 A Yes.

18 Q Let me show you some of their ratings.

19 THE COURT: What document?

20 MR. KEMP: This is just demonstrative, Your Honor.

21 THE COURT: So are you going to give it some
22 demonstratives at the end of the day?

23 MR. KEMP: Well, actually there's documents that
24 actually support this if --

25 THE COURT: Well, but, I mean, you have a

1 demonstrative you're showing. So are you going to give me a
2 slide?

3 MR. KEMP: Yes, we are, Your Honor.

4 THE COURT: Great. Good. Keep going.

5 BY MR. KEMP:

6 Q Okay. So we have the same 19.67 rating for five
7 places from Clark County to Elko. See that?

8 A Yes.

9 Q And we got the same 19.33 grading for the same --
10 for places from Clark County to Nye County; right?

11 A Yes.

12 Q Seems pretty consistent to me. Does it seem
13 consistent to you?

14 A Well, I see that the number 19.33 applies to Clark,
15 Las Vegas, Reno, and Nye.

16 Q And I assume that you have no explanation for how
17 Thrive got generic plans rated at 19.67 or 19.33 and MM's
18 actual building was only rated 15.33.

19 A I'm not sure that's what the application called for.
20 I think you're kind of trying to project your own idea of how
21 the application should have been post mortem.

22 Q Okay. So you think that an existing building that
23 had been operating for years could not be put in as a proposed
24 building in the application process? Is that what you think?

25 A Nope. Didn't say that.

1 Q Okay. Do you think this is kind of a bait and
2 switch here? In other words, you tell the Department that
3 you're going to build a building using generic plans at a Post
4 Office box address and then you switch it over and you build
5 something different at a different address. You think that's
6 a bait and switch, get the high points and then switch over to
7 something else?

8 A Not at all. It's quite the opposite. We are a
9 proven, experienced operator with a stellar track record that
10 took our existing floor plan that had been very carefully
11 designed and not only provided a floor plan -- the building's
12 a building. The more important thing to me is showing how
13 you're going to meet the needs of the community, how your
14 floor plan supports the business. You're looking at this very
15 differently than I would.

16 Q Well, do you think --

17 A I'm --

18 THE COURT: He's not done.

19 THE WITNESS: So, in addition to the floor plan and
20 talking about the building, it's really how do you use that to
21 serve the needs of the customers within that community. And
22 we went to great lengths to do that in our application .

23 BY MR. KEMP:

24 Q Right.

25 A And so just because MM had abandoned their location

1 on Sunset to go after the tourist, you know, market, doesn't
2 mean that they're somehow proven that they know how to operate
3 better. So what? They had another location. Big deal. We
4 had a location that saw three times, two and a half, two
5 times, something like that, the number of customers on a daily
6 basis that was proven, that we demonstrated, in my opinion,
7 that we knew how to operate and serve the needs of community.

8 Q Okay. I started off talking about building ratings,
9 which are 20, and you moved over to a different section,
10 community impact, which is 15 points; right? Different
11 sections.

12 A No. I did not do that.

13 Q Community impact isn't different than building?

14 A That's not what I said.

15 Q Is community impact different than building?

16 A It's a different section. But if you go back to
17 what this section called for, it talked about adequacy of
18 serving the needs of the customer and adequacy of size. And
19 that's what I was talking about.

20 Q How could you make an objective determination that
21 the size was adequate if you didn't even know where the
22 building was, didn't whether it's going to be one story or two
23 story, didn't know whether it's in a strip center or stand
24 alone? How can you decide that a building's adequate if you
25 don't know how big it's going to be?

1 A Because we're providing a floor plan based on how we
2 currently operate, and so we have -- we're in a very good
3 position, actually, to describe that. And I think we did so
4 very well.

5 Q Now, with regards to the NOR floor plan that you
6 used for the eight applications would or would not that have a
7 different impact in different communities?

8 A It may need to be tailored slightly. You know,
9 Starbucks has certain prototypes that they build in various
10 communities, and they tweak it based on the building and the
11 community. And we anticipated doing the same thing.

12 Q You anticipated doing it, but you didn't do it in
13 the application.

14 A Well, there wasn't -- it wasn't possible to submit
15 eight different floor plans. It was one application.

16 Q Would I be correct that NOR got the exact same grade
17 for community impact in its eight different applications filed
18 in eight different jurisdictions?

19 A I believe so. I don't know that for sure. I
20 haven't seen it. But I believe that's the case, deducing the
21 score is based on the size adequacy thing.

22 MR. KEMP: Let me have my next slide, please, Shane.
23 It's the community impact rating.

24 BY MR. KEMP:

25 Q Okay. 14.33, 14.33, 14.33, all the way down for all

1 eight applications; right? Right?

2 A Yes.

3 Q Eight different communities all across the state,
4 and you have the same community impact; right?

5 A The score is the same.

6 Q Earlier -- you know Dave Thomas; right?

7 A Yes.

8 Q He explained to us why the community impact of a
9 marijuana store say on East Boulder Highway would potentially
10 be different than a marijuana store in Summerlin. So he
11 explained that. Do you agree that the potential community
12 impact would be different if you were those two types of
13 diverse locations?

14 A I mean, it depends how you write your application. I
15 think we wrote ours in such a way that we demonstrated not
16 only our historical commitment and efforts to make a positive
17 impact to the community, but broad strategies going forward.
18 And so, I mean, if -- I guess if you drill down to the, you
19 know, certain level of detail, it could vary neighborhood by
20 neighborhood. But I think the way that we approached it with
21 our -- the way that we have always provided classes on a
22 monthly basis, now we do it twice a month, from the doctor to
23 the community, how we do community outreach, how we volunteer
24 with veterans organizations and et cetera, et cetera, those
25 are all, you know, similar kinds of general strategies.

1 Q Everybody does the volunteering with the veterans
2 and what -- everybody does that; right?

3 A So you're saying we're not unique?

4 Q Well, I'm saying that other people do the same
5 things you've described. Do you think those things justify
6 having a community impact score of 14.33 in eight different
7 jurisdictions where you don't say exactly where the
8 dispensary's going to be built?

9 A I think we did an excellent job not only of actually
10 doing the things we said we were going to do, but making a
11 strong commitment to the community. I love to talk about it.

12 Q Okay. You also got one of the highest, if not the
13 highest, ratings for care, quality, and safekeeping; correct?

14 A I don't know that.

15 MR. KEMP: Can I have my next slide, Shane.

16 BY MR. KEMP:

17 Q 82.67. I think there was only one other applicant
18 that might have been slightly ahead of this, but this was a
19 very high score, that 90.10; correct?

20 A This is the first time I'm actually seeing this, so
21 I don't know.

22 Q Now, care, quality, and safekeeping, that means when
23 the marijuana comes into the dispensary you take -- in general
24 you have tracking maps that safeguards, make sure you're
25 selling it to the right people. That's what care, quality,

1 and safekeeping is?

2 A I mean, that's a part of it. I would use a much
3 different way of describing it, but I think you're generally
4 pointed in the right direction there.

5 Q Okay. And I assume you must have some formal
6 written plan for care, quality, and safekeeping.

7 A What do you mean by that?

8 Q Don't you have a procedure manual or a plan or
9 something?

10 A The "care, quality, and safekeeping" are words from
11 the application.

12 Q Okay. And you didn't just say, I promise I'm going
13 to do a really, really good job and get an 82.67. You put in
14 some backup information?

15 A Quite a bit, yes.

16 Q And the backup information included a plan or
17 procedure?

18 A Yes. So are you asking about our SOPs and policies
19 and procedures, or are you asking what types of information we
20 put responsive to the application questions?

21 Q Rightly. You put in something there that would
22 demonstrate that you had a good care, quality, and safekeeping
23 procedure; right?

24 A Yes. We tried to address that the best we could.

25 Q And whatever you put in there, is that what you were

1 using already for NOR, or is this some new invention?

2 A Well, I think it's a combination. So, you know,
3 over the years we've certainly gotten better at certain
4 things, and so we've adapted our SOPs and our different, you
5 know, processes that we use to operate the company. So part
6 of it is describing how we've done that in the past and how
7 well we think we've done in that category, but another part of
8 it is describing how we would also do that in new locations
9 and new -- you know, going forward.

10 Q Okay. And you said you had a, quote, "stellar,"
11 unquote, track record with regards to care, quality, and
12 safekeeping?

13 A In my opinion, yes.

14 Q Okay. And isn't it true -- Counsel went over it
15 with you a little bit. Isn't it true that NOR, or rather HOR
16 sold marijuana to an underage person?

17 A Another entity, a sister company, did have an
18 incident that we discussed earlier where we found it in our
19 internal audit, reported it to the State, and addressed it.

20 Q Did you find it, or did that person's mother call up
21 and yell and scream at your manager? What really happened
22 here? Would you like to look at the incident report?

23 A We found it.

24 Q You found it.

25 A We identified the issue, and we corrected it, and we

1 ended up terminating the employee who was responsible for
2 allowing that customer to be checked in.

3 Q And this is incident happened just months before the
4 applications were being [inaudible].

5 A I believe so.

6 MR. KEMP: Can I have Exhibit 96, which is an
7 admitted exhibit.

8 BY MR. KEMP:

9 Q Have you seen this before, sir?

10 A It's hard to read. I believe this was admitted --
11 or in the proceedings earlier.

12 Q Okay. And so sometime in or around April or May of
13 2018, two months before the July notice was published,
14 sometime in that time period you had this incident of selling
15 to an underage person; correct?

16 A Well, when you say underage, they were not a minor.
17 They were under 21, but older than 18.

18 Q Okay. Well --

19 A And, yes, an incident did occur at a different
20 company, different entity. We discovered that incident, we
21 corrected it, we self reported it, and handled it in the most
22 forthright way we have.

23 Q And this is your actual compliance history, that you
24 actually sold to an underage person; right?

25 A No. That's an isolated incident that occurred. I

1 don't think it's fair to say that is our compliance history.

2 Q Oh.

3 A We are one of the highest-volume stores in the
4 state, and we have 60, 70 employees at each location. We see
5 over a thousand people a day. And given the volume of
6 business that we have handled, I think we've done an excellent
7 job of following the regulations.

8 Q Okay. Well, let's talk about selling to minors or
9 selling to underage persons, as you want to put it.

10 A So are you -- by going down this line are you saying
11 that Henderson Organic Remedies is the same as Nevada Organic
12 Remedies, which is the applicant and the party in this case?

13 MR. PARKER: Your Honor, can I just make a quick
14 objection. The witness is now asking questions, as opposed to
15 answering.

16 THE COURT: So the attorneys don't have to answer
17 him. He can ask all he wants. Because if he does not finish
18 this afternoon, he will be back tomorrow morning at 9:30.

19 BY MR. KEMP:

20 Q Henderson Organic Remedies uses the same care,
21 quality, and safekeeping plan as NOR? Sister company; right?

22 A Henderson did not apply for their licenses.

23 Q I didn't ask that.

24 A Not because of this incident, but, you know, there
25 is some common ownership, if that's what you're asking.

1 Q Did they use the same care, quality, and safekeeping
2 plan as NOR?

3 A I don't know what you're asking. Because, again,
4 this -- the care, safekeeping, and quality is a section of an
5 application. Henderson did not apply for licenses, so I'm not
6 really able to answer that.

7 Q Okay. Let's get back to selling to underage
8 persons. Are you aware of any instances where say, for
9 example, Mr. Hawkins's facility was accused of that?

10 A I'm not aware.

11 Q Anybody else other than Henderson Organic Remedies?

12 A I'm sure it's happened before, but I don't --

13 Q I'm not asking what you're sure about. I'm asking
14 if you know of any other instances --

15 A I've never asked another licensee if that's occurred
16 in their facility.

17 Q So as far as your personal knowledge, you are the
18 only dispensary in Clark County that has been involved in an
19 underage sale; is that correct?

20 A I wouldn't say that. Because I've kind of heard
21 enough to know that it's happened before. I just can't sit
22 here and tell you chapter and verse who it's happened to and
23 what the circumstances were.

24 Q Now, would I be correct that you did not indicate on
25 your application that you had been involved in an incident of

1 selling to an underage person?

2 A The Department has a history of all of our
3 deficiencies, all of our inspections, all of our audits. And
4 plus this was a separate entity. So not only did I not think
5 it was needed because they already had that information, but
6 it really wasn't applicable, because Henderson was not
7 applying for licenses.

8 Q Okay. So you did not put it on any of the eight NOR
9 applications?

10 A The State already had the information.

11 Q The answer to my question is you did not put it on
12 the applications.

13 A We did not put Henderson's incident on this
14 application.

15 Q And the reason you didn't do it is because it was
16 already in the State computer systems?

17 A No. The reason we didn't do it is because it wasn't
18 applicable. I mean, why would we put incidents from -- that
19 happened at a different company on NOR's application?

20 Q So you think the actual compliance history of an
21 applicant is not relevant, but the care, quality, and
22 procedure plan it submits is relevant. That's what you're
23 telling me?

24 A That's not what I'm saying. No.

25 Q So the actual compliance history is relevant to the

1 application?

2 A The compliance history for NOR, although I don't
3 know that it was, you know, structured this way in the
4 application, I think would be relevant. But, again, you're
5 asking me about an incident that occurred at a separate
6 company.

7 Q Okay. And isn't it true that you asked the State to
8 scrub this from its computer systems?

9 A No.

10 MR. KEMP: Shane, can I see the next on this,
11 please.

12 THE COURT: And what's its exhibit number, or is it
13 still part of --

14 MR. KEMP: Same exhibit.

15 THE COURT: Okay. Thank you.

16 MR. KEMP: Same exhibit, Your Honor, 96.

17 BY MR. KEMP:

18 Q "Please remove the investigation SODs," that's
19 statement of deficiencies; right?

20 A Correct.

21 Q Please remove them. So the State was asked to
22 remove these from its system; right?

23 A I'm not familiar with this email. I don't know the
24 history behind it.

25 Q And you don't know what your attorney asked the

1 State to do?

2 MR. KOCH: Objection. Lacks foundation.

3 Argumentative.

4 THE COURT: Overruled.

5 THE WITNESS: I know that --

6 MR. KOCH: Misstates the document.

7 THE COURT: Overruled.

8 THE WITNESS: I know that we discovered that this
9 incident occurred and that we voluntarily went to the State
10 and told them that it happened, provided a plan of correction,
11 and so on. So --

12 BY MR. KEMP:

13 Q You discovered it when the mother called complaining
14 that her son had been able to buy marijuana at the State, or
15 you discovered it how?

16 A I don't recall that's how it occurred. We have a
17 full-time internal compliance person whose job it is to ensure
18 that we're following the rules. And I believe that he
19 discovered this incident and then escalated it through the
20 proper channels of management, again, at Henderson Organic
21 Remedies.

22 Q Did you think this is something that the graders
23 should have had to consider, your actual compliance history,
24 as opposed to the theoretical compliance history in the plan
25 documents you submitted?

1 MR. KOCH: Objection. Asked and answered.
2 Argumentative.

3 THE COURT: Overruled.

4 THE WITNESS: So, again, this was for -- this had
5 not happened with the applicant. So this was a separate
6 entity. And secondly, that wasn't part of the application, so
7 we did not submit it. If it had been part of the
8 requirements, we would have gladly provided that information.

9 BY MR. KEMP:

10 Q A separate entity with the same, what was your word,
11 admirable, wonderful management that both entities had; right?
12 NOR and HOR had the same management, same executives?

13 A Yes. Similar. Some common ownership.

14 Q Okay. And isn't the reason that HOR didn't apply
15 for an application was because it was concerned that this
16 incident would hurt it?

17 A Not at all. That's not at all why.

18 MR. KEMP: Thank you, sir.

19 THE COURT: Mr. Cristalli.

20 MR. CRISTALLI: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. CRISTALLI:

23 Q 'Afternoon, Mr. Jolley.

24 A 'Afternoon.

25 Q Mr. Jolley, you talked a little bit about you being

1 familiar with the ballot initiative; correct?

2 A Yes.

3 Q And in fact NRS 453D.020 discusses a little bit
4 about the ballot initiative in terms of its introduction.
5 Specifically it talks about "In the interest of public health
6 and public safety and in order to better focus the State and
7 local law enforcement resources on crimes involving violence
8 and personal property the people of the state of Nevada find
9 and declare that the use of marijuana should be legal for
10 persons 21 years of age or older, and its cultivation and sale
11 should be regulated similar to other legal business." You
12 agree with me that that's what the provision says?

13 A Yes.

14 Q Okay. It continues on to say, "The people of the
15 state of Nevada find and declare that the cultivation and sale
16 of marijuana should be taken from the domain of criminals and
17 be regulated under a controlled system where businesses will
18 be taxed and the revenue will be dedicated to public education
19 and enforcement of the regulations of this chapter." You
20 agree with that, sir, don't you?

21 A Yes. That's what it says.

22 Q That's what it says.

23 A Yep.

24 Q And it says that because the initiative addresses
25 the issue and then through the course of the statute to make

1 sure that there are no criminals that are operating marijuana
2 establishments in the state of Nevada. You'd agree with me;
3 correct?

4 A I believe the State undertakes steps by declaring
5 background checks and so forth to make sure that the people
6 who are working in the industry meet certain requirements,
7 yes.

8 Q In fact, under 453D.200(6) -- Court's indulgence --
9 it specifically says, "The Department shall conduct a
10 background check of each respective owner, officer, and board
11 member of a marijuana establishment license application";
12 correct?

13 A I believe so.

14 Q Want to make sure that we properly vet all
15 applicants to make sure that their backgrounds are clean;
16 correct?

17 A I believe that's the intention.

18 Q Okay. And then it goes on to 453D.205(1) stating,
19 "When conducting a background check pursuant to subsection (6)
20 of NRS 453D.200 the Department may require each respective
21 owner, officer, and board member of a marijuana establishment
22 license application to submit a complete set of fingerprints
23 and written permission authorizing the Department to forward
24 the fingerprints to the Central Repository for the Nevada
25 Records of Criminal History for submission to the Federal

1 Bureau of Investigation for its report"; correct?

2 A That's what it says.

3 Q So we want to make sure that all applicants are
4 appropriately vetted before licensing a particular applicant;
5 correct?

6 A I believe so.

7 Q And then 453D.210(5)(f)(1) says, "The persons who
8 are proposed to be owners, officers, or board members of the
9 proposed marijuana establishment have not been convicted of an
10 excluded felony." Isn't that true?

11 A That's what it says.

12 Q Okay. And the ballot initiative requires all
13 ownership to be disclosed; correct?

14 A I mean, we talked earlier about, you know, how
15 that's handled for publicly traded companies. But, yes, I
16 believe that that language is correct.

17 Q Okay. So let's talk about that with regard to how
18 it's dealt with with publicly traded companies. You would
19 agree with me, would you not, sir, that if you are a
20 shareholder of a company that you have an ownership interest?
21 Correct?

22 A Yes, I would agree with that.

23 Q So to take it to its logical conclusion, then, if
24 the ballot initiative, if the NRS requires the disclosure of
25 all, and it says "shall," all ownership interests in a

1 marijuana establishment, you would agree with me, sir, that it
2 would be difficult in light of the fact that all shareholders
3 are considered owners to make that full disclosure; correct?

4 MR. KOCH: Objection. Legal conclusion.

5 THE COURT: Overruled.

6 THE WITNESS: I think when this language was drafted
7 I don't know that it really considered the implications for
8 publicly traded entities. But there are many now, you know,
9 companies that are publicly traded. And so I believe that in
10 a case where you have, you know, ambiguity the Department has
11 been able to clarify the rules for handling those situations.

12 BY MR. CRISTALLI:

13 Q Okay. So the ballot initiative says "shall be
14 disclosed"; correct?

15 A Yes.

16 Q And the regulations say "shall be disclosed";
17 correct?

18 A I believe so.

19 Q So it's your testimony here that the Department of
20 Taxation could usurp both the initiative and the regulations
21 in order to justify nondisclosure?

22 A I would say clarify.

23 MR. KOCH: Objection. Legal conclusion and
24 argumentative.

25 THE COURT: Overruled.

1 THE WITNESS: I would say clarify.

2 BY MR. CRISTALLI:

3 Q Mr. Kemp talked to you a little bit about locations.
4 And I think he's established pretty clearly that both the NRS
5 453D.210(5)(b) and NAC 453D.268 require a physical address
6 where the proposed marijuana establishment will be located and
7 a physical address of any co-owned or otherwise affiliated
8 marijuana establishment is. You agree with both -- the fact
9 that both the NRS and the regulations say that; correct?

10 A I believe so. I didn't read what you just read, but
11 that sounds -- sounds to be accurate.

12 Q Okay. And now going to the application --

13 MR. CRISTALLI: Shane, can you put up Exhibit 5.

14 BY MR. CRISTALLI:

15 Q Let's go to page 8 first, because it pops up as the
16 first reference I'll make. Middle of the sentence in red it
17 says, "No applicant may be awarded more than one retail store
18 license in a jurisdiction/locality unless is less applicants
19 than licenses allowed in the jurisdiction." That's correct;
20 right? That's what it says?

21 A That's what it says.

22 Q Okay. And that's what you abided by. You followed
23 that; correct?

24 A We only submitted one application per jurisdiction.

25 Q Okay. And Mr. Kemp addressed this with you, but he

1 didn't address who had applied for multiple licenses in the
2 same jurisdictions under different LLCs and were awarded those
3 licenses. Are you familiar with the fact that both Essence
4 and Thrive were awarded two licenses in on jurisdiction that
5 they applied in under different LLCs under the same
6 organizational structure?

7 A I have heard that.

8 Q But your company did not do that?

9 A That's correct.

10 MR. CRISTALLI: Okay. Let's go to Attachment A,
11 Shane, if we could, on that same exhibit. That's on page 21.
12 BY MR. CRISTALLI:

13 Q If you look at where it starts "Marijuana
14 establishment's proposed physical address if the applicant
15 owns property or has secured a lease or other property
16 agreement. This must be a Nevada address and cannot be a P.O.
17 box." That says that; correct?

18 A There's part of that that you read that I didn't see
19 on the screen here.

20 UNIDENTIFIED SPEAKER: Are you talking about 5A?

21 MR. CRISTALLI: Yes.

22 UNIDENTIFIED SPEAKER: It's the wrong form.

23 MR. CRISTALLI: Oh, that's okay. You could leave
24 that -- okay. We'll go back to that, then. Is that it?

25 MR. CRISTALLI: May I approach, Your Honor, so I can

1 see?

2 THE COURT: You may.

3 And, sir, if it's not clear on your screen or it's
4 centered, let us know, and we'll try getting it for you.

5 BY MR. CRISTALLI:

6 Q So this particular exhibit requires a physical --
7 I'm sorry. This particular Attachment A requires a physical
8 address, doesn't it?

9 A I mean, it has a field for a proposed physical
10 address. This doesn't, you know, indicate the scoring for
11 locations.

12 Q Okay. Well, let's agree that's [inaudible]. It
13 says, "Marijuana establishment's proposed physical address.
14 This must be a Nevada address and cannot be a P.O. box";
15 correct?

16 A Yes.

17 Q That's what it says; right? Right?

18 A Yes.

19 Q And that's not the application that your company
20 Nevada Organic Remedies filled out, is it?

21 A I'm not sure.

22 Q Well --

23 A Is this the previous draft, or the final draft?

24 Q You tell me.

25 A Yeah. I don't know. So I can only go with what's

1 on the screen. I can't tell you by looking at this if this
2 was the one we actually submitted or not.

3 MR. CRISTALLI: Okay. Shane, can you pull up the
4 other one on page 21. We can look at them both now.

5 BY MR. CRISTALLI:

6 Q This particular Attachment A says, "Marijuana
7 establishment's proposed physical address if the applicant
8 owns property or has secured a lease or other property
9 agreement. This must be a Nevada address and cannot be a P.O.
10 box." Is that what it says?

11 A Yes.

12 Q That's different than the previous Attachment A that
13 you looked at; correct?

14 A Yes.

15 Q Okay. The first one required the physical address,
16 the second one required a physical address if the applicant
17 owns the property or has secured a lease; correct?

18 A Right. Yes.

19 Q But under both of these you can't have a P.O. box;
20 right?

21 A That's what it says.

22 MR. CRISTALLI: Okay. Shane, can you go to --

23 Your Honor, this is a demonstrative. It is part of
24 the disclosures that was provided to us from the State and
25 that we just received.

1 THE COURT: And why is it demonstrative, then?

2 MR. CRISTALLI: Well, because I don't have a hard
3 copy of it, and I can't mark it as an exhibit or introduce it.
4 I have it on my screen, and Shane has it on his screen.

5 THE COURT: Does anybody know what Mr. Cristalli's
6 talking about?

7 They all say, no, they don't have any idea what
8 you're talking about. Can you give us a number of the
9 document?

10 MR. CRISTALLI: Yes. It is DOT041835.

11 THE COURT: Does anybody know that document?

12 MR. KOCH: Know the one before it, but that's it.
13 Can you just tell us what it is and we can maybe --

14 MR. CRISTALLI: It is the -- let's see here. It's
15 called Recreational Application Period. It lists the RD
16 numbers, it lists the applicants, the address where the
17 applicants are submitting applications in, the county, local
18 jurisdiction --

19 THE COURT: Perhaps you can carry your laptop over
20 there and show them. And then maybe they will be familiar
21 with the document and we can move on.

22 So how are you going to get me a hard copy if you
23 use it as a demonstrative?

24 MR. CRISTALLI: Well, at this very moment it's --

25 THE COURT: No. That would be tomorrow.

1 MR. CRISTALLI: Yes.

2 THE COURT: You'd bring it?

3 MR. CRISTALLI: Yes.

4 THE COURT: Okay. Since it looks a lot like real
5 evidence, I'm going to try and work with you.

6 MR. SHEVORSKI: Yeah, it's our document.

7 THE COURT: It's a Department of Taxation document,
8 because it says DOT on it.

9 MR. SHEVORSKI: Correct, Your Honor.

10 THE COURT: I gathered that all by myself.

11 MR. KOCH: You're not submitting it into evidence?
12 You're just going to use it as a demonstrative.

13 MR. CRISTALLI: No.

14 MR. KOCH: Go ahead.

15 THE COURT: They're going to use it demonstratively.
16 Any objection? Everybody says they're okay with that
17 procedure, Mr. Cristalli, on the condition you bring me an
18 exemplar tomorrow for Dulce to mark as Demonstrative next in
19 order.

20 MR. CRISTALLI: Yes, Your Honor, I will do that.

21 THE COURT: She's going to leave a space.

22 MR. CRISTALLI: Shane, DOT041835.

23 BY MR. CRISTALLI:

24 Q And if you go down specifically to Nevada Organic
25 Remedies LLC, you'll see an address of 5130 South Fort Apache

1 Road, Suite 215 through 145, Las Vegas, Nevada. Is that what
2 it says?

3 A Yeah, I believe so. Kind of hard to read.

4 MR. CRISTALLI: And then, Shane, if you'd go down to
5 RD329.

6 BY MR. CRISTALLI:

7 Q You see RD329?

8 A RD329, Commerce Park Medical LLC. Yes.

9 Q And the address is listed at 5130 South Fort Apache
10 Road, Suite 215 to 155, Las Vegas, Nevada; correct?

11 A Uh-huh. Yes.

12 Q It's the same address as the address that you use in
13 your application, isn't it?

14 A I believe so.

15 MR. CRISTALLI: Okay. Shane, can we go to 316 --

16 BY MR. CRISTALLI:

17 Q And that, by the way -- do you understand Commerce
18 Park Medical to be known as doing business as Thrive?

19 A I'm not familiar with that entity name, but it
20 should be Thrive. I don't know.

21 MR. CRISTALLI: Okay. Can you go down, Shane, to
22 316.

23 UNIDENTIFIED SPEAKER: Actually, isn't it directly
24 on the page?

25 MR. CRISTALLI: I'm sorry? DOT041840.

1 BY MR. CRISTALLI:

2 Q Do you see RD316?

3 A Yes.

4 Q It has Essence Tropicana LLC?

5 A Uh-huh.

6 Q And it has 5130 South Fort Apache Road, Suite 215
7 through 147, Las Vegas, Nevada.

8 A Yes, I see that.

9 Q Same address; correct?

10 A I see that.

11 MR. CRISTALLI: And, Shane, if we could go to 263,
12 RD.

13 BY MR. CRISTALLI:

14 Q Do you see that RD263?

15 A Yes.

16 Q And that's Cheyenne Medical?

17 A Yes.

18 Q And that also uses the same address as 5130 South
19 Fort Apache Road, Suite 215 through 156, Las Vegas, Nevada
20 89148; correct?

21 A So the street address is the same, the 5130 South
22 Fort Apache.

23 Q And the suites are different; correct?

24 A I believe so, yeah.

25 Q The address is the same?

1 A The street address appears to be the same.

2 Q Correct. The street addresses are all --

3 A Different suites.

4 Q Correct. The street address for all those locations
5 are the same -- I'm sorry.

6 A The suite address?

7 Q The physical addresses are the same, the suites are
8 different; correct?

9 A I believe so.

10 Q Okay. And do you recognize Cheyenne Medical as
11 Thrive?

12 A I don't. I don't know what LLC that is.

13 Q Okay. And once again, the application says that you
14 cannot use P.O. boxes; correct?

15 A Correct.

16 Q And as Mr. Kemp had indicated to you, it would be
17 very difficult if you go through the applications specific to
18 building floor plans, community impact, security as it relates
19 to the building in the particular location that that building
20 is situated to have the exact same specifications for each
21 building you put in each jurisdiction; true?

22 A That's correct. The Department designed the
23 application process to be kind of more generic by virtue of
24 submitting one application for multiple jurisdictions. That's
25 how it was designed from the very beginning, yes.

1 Q So there would certainly be some variations with
2 regard to those specifications depending on the jurisdictions
3 that you applied in; right?

4 A Well, depending on the physical building itself and
5 other -- sometimes jurisdictions have their own requirements
6 that could affect the floor plan, as well.

7 Q Okay. So you, because of how you interpreted the
8 application to be, did not have to go out and secure a
9 location; correct?

10 A We had to provide an address in that jurisdiction.

11 Q You did not have to secure, I'm sorry, a letter of
12 intent; right?

13 A We did not secure a letter of intent.

14 Q You did not have to go secure a purchase agreement,
15 correct, or secure a piece of real property?

16 A Yeah. Because the location wasn't a graded section
17 and the Department said we didn't have to secure a location,
18 we did not go out and sign a lease.

19 Q Okay. But you would agree with me, sir, would you
20 not, that the statute does require a location; correct?

21 A Statute requires a location that meets the
22 separation requirements, et cetera. But for purposes of this
23 application the Department indicated in its rightful authority
24 that you did not need to secure a location given all the
25 problems that had happened in 2014.

1 Q Well, that was -- that was what you interpreted the
2 Department requiring. But there was other applicants that
3 were participating in this competition with you that were
4 under the impression that they in fact had to go secure
5 letters of intent, that they had to go purchase a real
6 property in order to secure a location for the purposes of the
7 application; correct?

8 A They should have clarified that before wasting all
9 that energy and money securing locations. But it's clear to
10 the vast majority of people who were paying attention what the
11 rules were. And the rules were you didn't have to have a
12 lease, you didn't have to own a building. You simply had to
13 provide an address that was within that jurisdiction that did
14 not have a P.O. box, you know, in the --

15 Q Sir, I showed you two different applications, and we
16 compared them; correct?

17 A Yes.

18 Q And those two applications had different information
19 in them with regard to the requirement of a property address,
20 did they not?

21 A They had different information, but there's only one
22 applicable application. The Department didn't issue two
23 applications and say, pick the one you like and submit it.
24 One appears to be a previous draft, whereas there was only one
25 application that was applicable to the period.

1 Q So if they were both on the Department of Taxation
2 Website and the applicants had I guess an opportunity to
3 choose either one, depending on I guess what day it was when
4 they went on to download their application, there could be a
5 mixup in terms of what application would be required in terms
6 -- in regard to filing for this period; correct?

7 A If the applicant wasn't being careful and wasn't
8 following the rules and taking necessary steps to ensure that
9 they were using the right form, I could see how that could
10 potentially happen. But -- I didn't --

11 Q But, sir --

12 A I'm not finished. But, you know, I spoke with a
13 number of applicants and I don't think it would be fair to say
14 that there was some general confusion at this time. There was
15 a previous draft of the application, and there was the real
16 application.

17 Q And the contents of the application required very
18 specific information with regard to building, though, didn't
19 it?

20 A With regard to like a floor plan? Is that what
21 you're asking?

22 Q It required a floor plan; correct?

23 A Uh-huh. Yes.

24 Q It required a budget; right?

25 A Yes.

1 Q It required information specific to community
2 impact; right?

3 A Yes.

4 Q It required information with regard to security
5 plans; correct?

6 A Correct.

7 Q And the application said very specifically to be as
8 specific as you could with regard to those requirements.

9 A I'm not aware of that language off the top of my
10 head.

11 Q And you said that some applicants -- the majority of
12 applicants knew what application to use. That's what you
13 said; right?

14 A Again, you know, given my involvement in the
15 industry, my position and my day-to-day, I was in frequent and
16 constant interaction with many members of the industry, and I
17 think if there was widespread confusion about the location, I
18 would have known about it. It was actually quite the
19 opposite. The discussion that I heard and observed was more
20 of a sigh of relief that the locations were not required this
21 time given all the headaches and problems that resulted from
22 the 2014 application period. And --

23 Q Well --

24 A I'm not finished. Please let me finish. We have
25 monthly meetings in the NDA. I mean, we have these

1 conversations about what's going on in the industry and what
2 the Department's up to almost every month. There's
3 occasionally a month where we don't. And not only that, but
4 just the ongoing dialogue among, you know, owners and members
5 and managers and stuff I -- you know, I just don't think that
6 there was -- there was definitely discussion about it, but,
7 like I said, it was more of a relief that we didn't have to
8 secure locations. So were there isolated cases where people
9 were confused by the location requirement and maybe they
10 hadn't taken the time to look at the most up-to-date
11 application, yeah, that's very possible. But I don't think
12 it was a widespread issue in my experience.

13 Q Okay, sir. You don't know for a fact as to the
14 percentage of applicants who knew that they did not have to
15 submit a property location and others who thought that they
16 did; correct? You don't know for certain?

17 A I mean, I have a general -- I have a general sense
18 for that just because of my --

19 Q Sir, I'm just asking you a yes or no question.

20 THE COURT: You've got to let him finish. I know
21 you may be answering [sic] yes or no, but he doesn't have a
22 tendency to answer that way.

23 MR. CRISTALLI: Yes, Your Honor.

24 THE WITNESS: It's intentional. I'm just trying
25 to be accurate in my responses. I apologize if it comes

1 across --

2 BY MR. CRISTALLI:

3 Q You know that -- in fact, Mr. Kemp discussed his
4 client with you, MM, and the fact that they had an operating
5 dispensary or a dispensary that was operational for their
6 proposed site, so certainly their company wasn't one of the
7 ones that didn't think that they didn't have to submit a
8 property location; correct?

9 MR. KOCH: Objection. Speculation.

10 THE COURT: Overruled.

11 THE WITNESS: I can't speculate about their frame of
12 mind. I know that they made a strategic decision to abandon
13 their location and go after the tourist market at Planet 13.
14 In fact, their initial strategy was to bifurcate medical and
15 rec, and they made a commitment to the tourist location
16 without even getting permission to bifurcate. And then they
17 later found out that they couldn't do that, and so they ended
18 up moving their medical and their retail license to the Planet
19 13 location, abandoning the Decatur and Sunset location.

20 So, again, you know, I don't know what they were
21 thinking at the time, but I do not believe there was mass
22 confusion about this location thing. If anything, there was a
23 collective sense of relief that leases were not required this
24 go around.

25 //

1 BY MR. CRISTALLI:

2 Q Do you know who Dave Thomas is?

3 A Yes.

4 Q Do you know what company he owns?

5 A I believe he's a partner in Shango.

6 Q Okay. And do you realize that Dave Thomas got up
7 here and testified that he was unaware that he did not have to
8 put forward a property location or secure -- I'm sorry, secure
9 a property location with a letter of intent or purchase
10 agreement?

11 A I can't speak to his level of commitment or
12 understanding or familiarity with the process.

13 Q Okay. And his testimony further was that he used
14 the application that required a letter of intent or to secure
15 a property, in fact spent money, spent quite a bit of money to
16 secure those properties.

17 A I'm not familiar with his situation. I never had
18 that conversation with him.

19 Q You familiar with Mike Villeon?

20 A No, not really. Just by name.

21 Q Mike Villeon also testified that he believed that he
22 was required to secure a letter of intent and a -- letter of
23 intent or property in order to go forward with this
24 application process.

25 A So there's a pattern of unsuccessful applicants

1 using the wrong form, okay.

2 Q Okay. So you define it as the wrong form. Let's
3 discuss that again. There were two forms on the Department of
4 Taxation Website. You're identifying it's the wrong form,
5 sir, because you in fact used the form that did not require a
6 -- require you to secure a letter of intent or to actually
7 purchase the property.

8 A Look, there was only one form. The Department made
9 changes to the form. I believe they sent an email outlining
10 what those changes were in great detail. And for anyone who
11 was paying should have been aware of that. I can't -- I
12 cannot explain why people used the wrong form. I think that's
13 actually a pretty good indication that they're not detail
14 oriented and probably would be unsuccessful in a competitive
15 application process.

16 Q Sir, was this a guessing game to try to figure out
17 what form to use in order to be successful with the
18 application? If you are an applicant that is --

19 THE COURT: Did you want him to answer that
20 question?

21 MR. CRISTALLI: I was going to --

22 THE COURT: That's a yes or no.

23 MR. CRISTALLI: I was going to follow up with it.
24 But yes.

25 THE WITNESS: I think I'm rubbing off on you.

1 Look, I'm an applicant, I'm not the State, okay. I
2 followed the rules. It was clear as day to me which
3 application to use. There was not one moment of confusion
4 among my team, myself, our in-house counsel, our outside
5 counsel, anyone on our team. So if some groups used the wrong
6 version of the form despite the updates that were sent out by
7 the State, you know, I can't explain that. But -- nor is it
8 my job. I can just tell you from my experience it was -- it
9 was common sense, it was not a point of confusion. And if it
10 was some widespread pandemonium, I would have heard about it
11 as the president of the NDA. And I didn't hear about it. The
12 conversation that I heard and that I was involved in was,
13 again, actually the opposite. It was, who, we are very happy
14 that the State isn't requiring a location this go around. So
15 it's quite the opposite of the picture you're trying to paint.

16 BY MR. CRISTALLI:

17 Q Okay. And that's because the people that you were
18 dealing with, your consultants -- you testified you had
19 consultants; correct?

20 A Yeah. But that's not who I was referring to in my
21 previous statement.

22 Q Did you have consultants?

23 A Yes.

24 Q Okay. Who were they?

25 A Amanda Connor is our legal counsel. We had a

1 technical writer that we consulted with who helped review the
2 content that we were writing and provide feedback, we had
3 architect who would help with plans and some other things
4 regarding the building. I'm trying to think what other
5 consultants we may have had. Probably the big ones. But, you
6 know, most of the work we did ourselves internally working
7 with our counsel.

8 Q And the information that you were receiving with
9 regard to your requirement to just put an address in for your
10 jurisdictions that you were applying to came from your legal
11 counsel?

12 A It was a combination of our legal counsel and our
13 own internal team's interpretation of the rules and of the
14 application.

15 Q Well, it was your team getting information from the
16 Department of Taxation with regard to what was required in the
17 applications?

18 A Yes, that's correct.

19 Q Okay. So the Department of Taxation didn't
20 necessarily communicate the same information you were getting
21 to all the applicants.

22 A Oh. No. I'm sorry. Let me clarify that. We were
23 receiving Listservs. For example, if I remember correctly, I
24 could be wrong in this, but I believe there was an email that
25 the Department sent out clarifying the changes that had been

1 made to the application form. I would have to go back and,
2 you know, kind of refresh my memory, but I believe that that
3 was clearly articulated, including the change to the address
4 and some other changes to application form.

5 Q Okay. Now --

6 THE COURT: Mr. Cristalli, is this a lovely place to
7 take a short afternoon break?

8 MR. CRISTALLI: Yes, Your Honor. Thank you.

9 THE COURT: All right. We're going to take 10
10 minutes.

11 (Court recessed at 3:43 p.m., until 3:50 p.m.)

12 THE COURT: Let's see if we can power through, guys.
13 We've got another 45 minutes, 50 minutes.

14 Mr. Cristalli.

15 MR. KEMP: Judge, as a procedural thing we talked to
16 the State, okay, and we have our findings of fact done, but
17 they're a real mess. Could we have a couple more days to
18 clean up the mess?

19 THE COURT: I asked my staff when I got here this
20 morning, I said, did we anything from those guys; no.

21 MR. CRISTALLI: They're due today.

22 MR. KOCH: I've got a set we'll send to you, a draft
23 set.

24 THE COURT: I would prefer them to be cleaned up.

25 MR. KEMP: How about Friday at 5:00, Your Honor?

1 THE COURT: How about Thursday.

2 MR. KEMP: Thursday's fine.

3 THE COURT: Because if you give them to me Friday at
4 5:00 I won't get to see them, because by the time people get
5 them put in the system and everything it will be too late for
6 them to get them to me.

7 MR. SHEVORSKI: Real quick on the pocket brief, Your
8 Honor. Do you want that publicly filed, do you want it email
9 with everyone cc-ed? How do you want it?

10 THE COURT: It's usually publicly filed,
11 distributed, and I would love a copy sent to my law clerk.

12 MR. SHEVORSKI: Absolutely.

13 THE COURT: And remember your phrase you're looking
14 for; right? Do you know the phrase you're looking for? You
15 are looking for the one that is green on my notes, "necessary
16 or convenient" is the phrase.

17 MR. SHEVORSKI: I do know the phrase, Your Honor.

18 MR. GENTILE: Your Honor, we I believe have filed
19 ours.

20 THE COURT: When?

21 MR. GENTILE: Hour or two ago, according to my
22 office.

23 THE COURT: Okay. Because I haven't seen it. I've
24 been asking.

25 MR. GENTILE: It is not what you would call a pocket

1 brief, however.

2 THE COURT: So it's not less than five pages?

3 MR. GENTILE: Maybe a pocketbook brief.

4 MR. KOCH: The entire bookcase, Your Honor.

5 MR. SHEVORSKI: I think it was like 150.

6 THE COURT: I don't know that it's carry-on size.

7 MR. GENTILE: It really couldn't be done -- to my

8 way of thinking, and I wrote it, it really couldn't be done as

9 a pocket brief.

10 THE COURT: Mr. Gentile, I don't care how long it

11 is.

12 MR. GENTILE: Okay. Good.

13 THE COURT: I used the term "pocket brief" because

14 that's when I was a young lawyer what they called those things

15 you pulled out in the middle of trial sort of like the ambush.

16 MR. GENTILE: Right.

17 THE COURT: Because it didn't used to have to be

18 served back then.

19 MR. SHEVORSKI: We followed the Byron White method,

20 Your Honor, under 10 pages.

21 THE COURT: Okay. Mr. Cristalli, can you finish

22 now.

23 MR. CRISTALLI: Yes, Your Honor.

24 THE COURT: That'd be lovely.

25 //

1 BY MR. CRISTALLI:

2 Q Okay. Mr. Jolley, just to kind of summarize where
3 we were, it's your testimony that based on your information
4 you obtained through your representative, specifically Amanda
5 Connor, that you weren't required to submit letters of intent
6 or purchase agreements with regard to jurisdictions; correct?

7 A That's not what I --

8 MR. KOCH: Objection. Attorney-client
9 communication.

10 THE COURT: Overruled.

11 THE WITNESS: That's not what I said.

12 THE COURT: He's been talking about it all
13 afternoon.

14 MR. KOCH: About the whole team, but --

15 BY MR. CRISTALLI:

16 Q Well, based on information from your team you didn't
17 have to secure letters of intent or real property; correct?

18 A I would say that based on information from the
19 Department itself my team and I and our counsel concluded that
20 we did not need to secure locations for our application.

21 Q And that was based on information received from the
22 Department of Taxation; correct?

23 A Yes.

24 Q And you talked a little bit about Listserv; right?

25 A Yes.

1 Q A Listserv where information went out to marijuana
2 establishment licensees; correct?

3 A Among others.

4 Q Okay. You're aware, sir, are you not, that there
5 were five different Listservs with regard to communications of
6 Department of Taxation to marijuana establishment licensees?

7 A I'm generally familiar that there are multiple
8 different Listservs. I'm not -- I was not aware of number.
9 But, yes, I am aware that they're different.

10 Q And that there were significant issues with regard
11 to confusion amongst the marijuana establishment licensees
12 with regard to communications they were or were not receiving
13 from the Department of Taxation?

14 A During my three years as president of the NDA and
15 previous to that a board member I never heard that.

16 Q Okay. And you were previously in real estate?

17 A Still am, yes.

18 Q Okay. And what do you do in real estate?

19 A Own, manage, and develop commercial real estate
20 properties.

21 Q Have you ever been involved in a bidding process
22 with regard to real estate, real property?

23 A Bidding process?

24 Q Yeah. Competitive --

25 A Like a foreclosure auction or something?

1 Q Yes. Sure.

2 A Yes.

3 Q And you rely on information in order to be
4 competitive in that bidding process, I would assume. Correct?

5 A Yes. We would conduct due diligence and determine
6 what we think is the, you know, if you want to call it the
7 fair market value, and then what we're willing to bid,
8 something like that.

9 Q And sometimes the only due diligence you could do is
10 with regard to the information you were receiving from the
11 Department of -- for example, from whatever -- strike that.

12 Going back to the issue of the Department of
13 Taxation, in order to do your due diligence, get information
14 as an applicant you would have to rely on the information that
15 you obtained from the Department of Taxation; correct?

16 A I think the information that comes from the
17 Department is very important to take into consideration when
18 applying, yeah.

19 Q So to that point, if your team didn't receive the
20 information with regard to location, for example, or maybe
21 other criteria, like diversity, as Mr. Kemp had referenced
22 when he was talking to you, that applicant would be at a
23 disadvantage compared to an applicant who had that
24 information. Would you agree with me?

25 A Well, I mean, you had to get the application

1 somehow, so the claim that you received the first draft of the
2 application but not the second would raise a number of
3 questions in my mind, much more likely to be kind of
4 recreating history, rather than being included in one Listserv
5 and excluded from another. To me the much more likely
6 scenario is a post facto reconstruction of the facts to create
7 the appearance of ignorance --

8 Q Well --

9 A -- when in likelihood in my experience the
10 communication was free flowing from the Department regarding
11 the application process. I did not hear any, you know,
12 widespread confusion about people not receiving the
13 communications. And, granted, this was at a time when
14 everybody knew the applications were coming. So we were all
15 ready to start and to get this information. And so to say
16 that, oh, we didn't get it, or, we got the wrong one, to me
17 would indicate, you know, that that individual may not really
18 be as involved in the industry as you might think.

19 Q So it's your testimony, then, if a applicant
20 submitted an application that required a letter of intent or a
21 purchase agreement that that particular applicant was
22 ignorant? That's your testimony?

23 A I can speculate as to why they did not receive the
24 real application. All I can do to try to answer your question
25 is to come up with rationale for why perhaps they were

1 confused. But, as I said earlier, I wasn't confused, our team
2 wasn't confused, our attorneys weren't confused. It seemed
3 very clear the correct way to submit applications, and that's
4 what we did.

5 Q And you weren't confused because you received
6 information from the Department of Taxation as it related to
7 what you needed to include in the application regarding
8 locations and jurisdictions; correct?

9 A Yes. Combined with our own kind of knowledge of,
10 you know, the process and so forth, yes.

11 Q Okay. But if one did not receive that information
12 from the Department of Taxation and was relying on the
13 statute, was relying on the regulation, relying on the
14 substance of the application, and used the application that
15 was on the Department of Taxation Website that in fact
16 required location -- letters of intent or real property, then
17 that person would be ignorant. Is that what you're saying?

18 A I just find it very hard to kind of come up with
19 this hypothetical scenario that you're trying to paint. I
20 mean, for people who are in the industry and involved in the
21 operations and know what's going on I just find it hard to
22 believe that they went through this enormous, I mean,
23 hundreds, or thousands in our case, of hours, hundreds of
24 thousands of dollars using the wrong form. That to me seems
25 very, very unlikely given what was at stake at the time and

1 how important these applications were.

2 Q Okay. You keep referencing it as the wrong form,
3 sir; is that correct?

4 A Yes.

5 Q Is that what the Department of Taxation told you,
6 that it was the wrong form?

7 A No, they did not. That's my term. I believe
8 that --

9 Q So that's your interpretation of it.

10 A Look, the day the application period opened there
11 was one form that was the form. Not previous drafts.

12 Q So how do you know that? How do you know that the
13 other application was not on the Department of Taxation
14 Website? How do you know that other applicants weren't using
15 a different application form?

16 A I don't know that other people were not using
17 another form. But there was zero confusion on our team, and I
18 heard nothing from anyone else in the industry to indicate
19 that there was confusion. So, you know, I just don't see how
20 that could have -- this widespread confusion would have taken
21 place without me knowing about it.

22 MR. CRISTALLI: Okay. Shane, could you pull up
23 Exhibit 220. Specifically RD215.

24 BY MR. CRISTALLI:

25 Q Mr. Jolley, can you identify RD215 through 222 as

1 Nevada Organic Remedies' criteria sheet?

2 A I believe so. I'd have to reference the earlier
3 exhibits, but I think that rings a bell.

4 THE COURT: What is the exhibit number?

5 MR. CRISTALLI: 220, Your Honor.

6 THE CLERK: Is that Serenity 44 through 367?

7 MR. CRISTALLI: Yes, it is.

8 BY MR. CRISTALLI:

9 Q Do you have that in front of you?

10 A What are you referring to? I'm sorry.

11 Q Criteria -- sorry, "Tally Sheet Criteria 3." It's
12 the identified portion of your application RD215 through 222.

13 A Okay.

14 Q In that --

15 MR. KOCH: Are you asking for the identified or the
16 non-identified?

17 MR. CRISTALLI: This is the identified.

18 MR. KOCH: So I think we've got the wrong document
19 up.

20 MR. CRISTALLI: I'm sorry. It is 221.

21 THE CLERK: Proposed.

22 THE COURT: Is it only proposed?

23 MR. CRISTALLI: Any objection?

24 MR. KOCH: No, none.

25 MR. CRISTALLI: Move for admission, Your Honor.

1 THE COURT: Be admitted.

2 (Plaintiffs' Exhibit 221 admitted)

3 BY MR. CRISTALLI:

4 Q You talked on direct examination -- I'm sorry, on
5 cross-examination with Mr. Kemp that the application -- well,
6 first of all, your application was approximately a thousand
7 pages. Is that what you testified to?

8 A I believe I said in excess of thousand.

9 Q In excess of a thousand pages. And you testified
10 that it was important from the Department of Taxation's
11 perspective that it was a blind point scoring; correct?

12 A I think I commented about the fact that it was set
13 up that way to have a certain portion of the application that
14 was non-identified, just like the medical applications in
15 2014.

16 Q Okay. And as it relates to the identified portion
17 of the application you submitted one application to the
18 Department of Taxation?

19 A That's correct.

20 Q Okay. And in this particular Tally Sheet Criteria 3
21 under the identified portion it talks about organizational
22 structure; correct?

23 A Yes.

24 Q It talks about financials; right?

25 A Yes.

1 Q And taxes and other beneficial contributions;
2 correct?

3 A Yes.

4 Q Okay. And in that scoring all the evaluators,
5 Evaluator 1, Evaluator 2, and Evaluator 3, all scored the same
6 scores for each of the criteria in that tally sheet; correct?

7 MR. KOCH: It was zoomed in on time, rather than
8 scores.

9 THE COURT: Better.

10 THE WITNESS: Can you please restate the question.

11 BY MR. CRISTALLI:

12 Q Okay. So, for example, if you go up to
13 Organizational Structure, where it says 60 points, under
14 Element 1, organizational chart points possible there were
15 15 points possible, and each evaluator allocated your company
16 15 points for that particular criteria; correct?

17 A I believe so. This is the first time I'm seeing
18 this. But --

19 Q That's what it says; right?

20 A -- that looks like it's -- they're all the same,
21 yeah.

22 Q Okay. So if you go to Element 2, which is previous
23 business experience, possible points 10, each evaluator
24 awarded your company 10 points; correct?

25 A Yes.

1 Q Element 3, each evaluator out of a possible 5 points
2 allocated 4 points to your company; correct?

3 A Yes.

4 Q And going down the remaining portion of that tally
5 sheet it appears that each evaluator gave the same score,
6 except for one variation that appears under Element 5,
7 diversity, where Evaluator 1 allocated -- I'm sorry.

8 Under Experience with MJ Nevada Evaluator 1
9 allocated 8 points, versus 7 points with regard to Evaluator 2
10 and 3; correct?

11 A Yes.

12 Q So essentially each one of these evaluators gave the
13 same score for this criteria sheet; correct?

14 A No.

15 Q Okay. Am I missing some of your numbers?

16 A Yeah. You just said it. One of them --

17 Q I said --

18 A -- got a different score than the other --

19 Q Okay. Excluding that.

20 A Excluding that?

21 Q 1 point difference.

22 A So one of the three evaluators gave a different
23 score than the other two.

24 Q For one of the criteria, specifically Element 4,
25 Experience With MJ in Nevada is the only deviation from all of

1 the other criteria in that particular score sheet. Would you
2 agree with me there, sir?

3 A I mean, I'm just looking at this for the first time,
4 so at face value, yes, it appears to be the case. But I --

5 Q Well, there's not too many numbers on that sheet. I
6 mean, you could take a minute to look at it, if you want. And
7 if you -- the question is, except, excluding that particular
8 difference, which is 1 point, all of the other scores are the
9 same, exact same; correct?

10 MR. KOCH: The document speaks for itself. Asked
11 and answered.

12 MR. CRISTALLI: I don't think he did, actually.

13 THE COURT: Overruled.

14 THE WITNESS: So there's three main sections here,
15 organizational structure, financial, and taxes and other
16 beneficial contributions. We maxed out on financial and
17 taxes. We got -- is that correct?

18 BY MR. CRISTALLI:

19 Q Let me --

20 THE COURT: You've got to let him finish his answer.

21 MR. CRISTALLI: Okay.

22 THE COURT: Were you finished, sir?

23 THE WITNESS: No. You know, I just wanted to point
24 out that it appears -- and, again, I'm just looking at this --
25 that we maxed out two of the three sections. So, yeah. One

1 of evaluators gave a different score on Section 4 or
2 organizational structure, yeah.

3 BY MR. CRISTALLI:

4 Q Can you find any other -- any other score except for
5 that where there's a difference in scoring on that criteria
6 sheet?

7 A Looking at this kind of spur of the moment, I
8 cannot.

9 Q Okay. And you agreed with me when you said that
10 blind scoring was important for the evaluating process;
11 correct?

12 A Well, that -- I believe that's the State's
13 intention, was to piggyback off of what was done in '14 by
14 having a significant portion of the application be non-
15 identified, not included, you know, names and other
16 identifiable information.

17 Q Well, sir, by having Evaluator 1, Evaluator 2, and
18 Evaluator 3, wouldn't you agree with me that the purpose of
19 having that is so that you can have a blind process or an
20 independent process with regard to reviewing applications?

21 MR. KOCH: Objection. Compound.

22 THE COURT: Overruled.

23 THE WITNESS: Yeah. I mean, so I guess, you know,
24 this is the identified portion; is that correct?

25 //

1 BY MR. CRISTALLI:

2 Q Yes. Correct.

3 A So, you know, seeing this for the first time, seems
4 like they had multiple scorers to ensure that there were not,
5 you know, major abnormalities and swings in the subjectiveness
6 of the scoring that was happening. So in that regard, again,
7 just looking at it for the first time, it appears that we're
8 very consistent in our scoring with these various evaluators.

9 Q Yeah. And the evaluators are very consistent, as
10 well, to being identical, aren't they?

11 A All I can go off of is the same numbers you're
12 looking at. I can't really draw inferences into how similar
13 these evaluators are. I can see that score appears to be
14 fairly consistent, yes.

15 Q Now, Mr. Kemp talked to you a little bit compliance
16 and the issue you had with regard to your company selling to a
17 minor. Remember that?

18 A Well, by -- "minor" is I think a legal term; right?

19 Q Okay. Well, do you remember the conversation that
20 you just had moments ago with Mr. Kemp with regard to that
21 issue?

22 A Yes. But I just want to clarify that I don't it was
23 a minor. I think it was someone who was less than 21, but
24 older than 18.

25 Q Okay. For the purposes of selling marijuana to

1 individuals in the state of Nevada an individual has to be
2 21 years or older; correct?

3 A Yes.

4 Q Okay. And --

5 A Unless they're a medical card patient -- holder.

6 Q Now, you are aware of the different categories of
7 violations with the Department of Taxation when there's an
8 investigation; correct?

9 A Generally.

10 Q Okay. There's a Category 1 violation; right?

11 A Uh-huh.

12 Q Correct?

13 A I believe so. I don't remember the exact
14 nomenclature, but that sounds familiar.

15 Q So you are aware that there's three different
16 categories of violations; correct?

17 A Generally, yes.

18 Q All right. Category 1 violation would or could
19 result in revocation of a license. Are you aware of that?

20 A I'd have to go back and refresh my memory.

21 Q In fact, sale to a minor could be considered a
22 Category 1 violation, which would result in a revocation of a
23 license.

24 A Yeah. I would assume that if someone was
25 intentionally selling to minors I could see that being

1 something that would be worthy of revocation. In our case it
2 was an accident, we discovered it, and we terminated the
3 employee who allowed it to happen, and formally disciplined
4 two others. So we take and took that extremely seriously and
5 did the best we could given the circumstances to ensure that
6 proper action was taken, it was properly and immediately
7 divulged to the State, and that we put in safeguards to
8 prevent that from happening in the future.

9 For example, the software that we use for our point
10 of sale software unfortunately doesn't allow for automatic
11 detection of under 21. And this was also at a point in time
12 where the current ID scanners that we use were not in effect.
13 So we've seen taken steps to ensure that that would not happen
14 again.

15 Q That was negligent, wasn't it?

16 MR. KOCH: Objection. Legal conclusion.

17 THE COURT: Overruled.

18 THE WITNESS: Yeah. I don't really know what you
19 mean by negligent. I mean, it was -- it was --

20 BY MR. CRISTALLI:

21 Q Well, you said it was accidental.

22 A I'm still speaking.

23 It was unfortunate, it was serious in terms of
24 something that we took very seriously. I was very alarmed
25 when I learned about this incident. It's definitely something

1 that is not consistent with who we are as a company. And
2 that's why we immediately performed an investigation, took
3 necessary action, and notified the State.

4 But, again, I have to remind you we're talking about
5 -- we're not talking about the party to this case here.
6 You're talking about a completely different entity. So I'm
7 not really sure where you're going with this.

8 Q Well, compliance -- in terms of a marijuana
9 establishment and compliance and what the State does in terms
10 of its regulation, none of that information was provided to
11 the Department of Taxation and the reviewers of the
12 application considering whether or not an applicant should be
13 approved or not; correct?

14 A As I said earlier, we're talking about a separate
15 entity, first and foremost.

16 Secondly, the Department has all of the compliance
17 history for the companies that I'm involved with. And so it
18 was unnecessary for me to provide something that they already
19 had.

20 And thirdly, it wasn't called for in the
21 application, so I'm not really sure what your point is.

22 Q Well, that is my point. It wasn't called for in the
23 application, was it?

24 A To my knowledge, no.

25 MR. CRISTALLI: Court's indulgence.

1 THE COURT: Mr. Bult, do you have any questions for
2 this witness?

3 MR. BULT: I don't, Your Honor.

4 THE COURT: Mr. Parker?

5 MR. PARKER: I do, Your Honor.

6 MR. CRISTALLI: I'll just follow up, Your Honor.

7 BY MR. CRISTALLI:

8 Q I had discussed with you the fact that MM had
9 provided information with regard to a specific location for
10 its application. I think I misspoke. Instead, it's Livfree.
11 Are you familiar with the fact that Livfree in fact provided
12 information specific to a location regarding a letter of
13 intent or purchase agreement in regard to its understanding of
14 the requirements about locations in a particular jurisdiction?

15 A I'm not familiar with their application.

16 MR. CRISTALLI: Court's indulgence.

17 No further questions, Your Honor.

18 THE COURT: Mr. Parker.

19 CROSS-EXAMINATION

20 BY MR. PARKER:

21 Q Good afternoon, Mr. Jolley.

22 A Good afternoon.

23 Q You mentioned several times the Listserv,
24 information on Listserv. Do you recall that?

25 A Yes.

1 Q All right. Is that a list that the DOT has that it
2 provides information to people in the industry maybe or people
3 wanting to get into the industry?

4 A I believe so, yes.

5 Q Did you receive information through this Listserv by
6 email, by letter, by telephone call, by text? How did you
7 receive information from the Listserv?

8 A Well, I think the Listserv by definition is an email
9 distribution system.

10 Q Did you keep all of those emails that you received
11 through Listserv?

12 A I don't recall offhand.

13 Q Do you know if that would be something that your
14 company keeps as a part of its document retention policy?

15 A I don't believe those informational types of emails
16 would be included in our document retention policy, but I'd
17 have to double check that.

18 Q Do you recall destroying or deleting any of those
19 emails?

20 A Not that I can recall off the top of my head. It
21 was a while back.

22 Q Have you produced any of those emails to your
23 counsel?

24 A I don't recall.

25 Q Has your -- has anyone else in your office, to your

1 knowledge, provided any Listserv information on your behalf to
2 your counsel?

3 A I am unaware of that.

4 (Pause in the proceedings)

5 MR. PARKER: Your Honor, I think we got an agreement
6 from the State that they'll get the Listserv information for
7 us.

8 THE COURT: Uh-huh. I heard that. Aren't they
9 cooperative with you, Mr. Parker.

10 MR. PARKER: You know, I really appreciate that.

11 THE COURT: Effusive, being very nice, polite.

12 MR. PARKER: Well, I'm in the same box, I think,
13 Your Honor.

14 BY MR. PARKER:

15 Q So do you recall or did you ever take a notice of
16 the industry folks on the Listserv publications or disclosures
17 or dissemination of information?

18 A Are you asking am I familiar with who was on the
19 Listserv?

20 Q Yes.

21 A Who was on the distribution list?

22 Q Yes.

23 A No. I don't believe that's public information. I
24 think that -- I think that, you know, the points of contact
25 for marijuana establishments are included, and then people can

1 voluntarily sign up for updates with the Department, as well.

2 Q So when you receive something through this Listserv
3 you don't by chance of a list of all the other recipients
4 receiving the information?

5 A I don't believe so. I think generally you just see
6 that it's from, you know, the Department, from the Listserv.
7 You don't see all the other recipients of the email. I think
8 that -- yeah.

9 Q So earlier today when you were speaking generally of
10 how this consensus among the applicants knowing this
11 information or that information it wasn't based upon your
12 review of the Listserv, because you don't know what applicants
13 or potential applicants received that Listserv information; is
14 that correct?

15 A Yeah. It was more to do with my involvement in the
16 industry, holding monthly meetings for the Nevada Dispensary
17 Association that, as I said earlier, represents a vast
18 majority of the owners, and my day-to-day involvement in the
19 industry.

20 Q So, for example, you never spoke with Mr. Hawkins
21 about information you received from Listserv?

22 A I don't recall speaking with Mr. Hawkins about that.

23 Q You don't recall speaking to Mr. Dave Thomas about
24 information received from the Listserv?

25 A No, not specifically.

1 Q Or Mr. Steve Menzie?

2 A Not specifically, no.

3 Q Or anyone affiliated with MM?

4 A No.

5 Q So the broad statements, the broad brush you were
6 painting with regarding there was no confusion in this
7 process, it was not based upon your review of the Listserv
8 information, because you don't know who or what companies
9 actually received the Listserv information; is that correct?

10 A I don't think anyone in the private sector, you
11 know, outside the Department itself, has access to the
12 recipients of the Listserv. I think that might be, you know,
13 a violation of the Department's policies. I would certainly
14 hope they wouldn't divulge my email address to the public.

15 But, as I said earlier, it was my job to stay up to
16 date with what was happening in the industry. I think I did a
17 very good job in our efforts to help further the industry and
18 help it operate successfully.

19 And so my statement was that if there was a general
20 confusion and all of these people were without communication
21 from the Department, I think I would have known about it. And
22 I simply don't recall anyone bringing up an issue with the
23 Listserv or not getting emails from the department.

24 Q Did you ask any questions of the DOT during the time
25 leading up to the submission of applications?

1 A I didn't have direct, you know, one-on-one
2 communication with them about the application. But, as I said
3 earlier, I was certainly involved with some of the -- well,
4 involved meaning attended some of the hearings that took place
5 and some of the discussions that were happening leading up to
6 the application process.

7 Q You said you had no direct communications.

8 A Well, meaning --

9 Q Did you have some indirect?

10 A Meaning one on one. So there were occasions where I
11 would ask either members of my team or our legal counsel for
12 their opinion or clarification on certain issues. But did
13 not, at least to the best of my knowledge, go back and, you
14 know, call up the Department and ask them, you know, specific
15 questions about the application.

16 Q Were you finished?

17 A Yeah, I was. Thank you.

18 Q Did anyone on behalf of your company, either Nevada
19 Organics or Henderson Organics, call and speak to anyone at
20 the DOT?

21 A They may have. I'm not -- I'm not sure.

22 Q Did you see any information come back in the form of
23 a Listserv promulgation or publication or disclosure answering
24 a question you may have had regarding the application process?

25 A That I may have had? Not that I can recall. There

1 may have been general communications where they had FAQs that
2 other -- you know, in cases where other people asked
3 questions, and they publish those. I know that they've done
4 that in the past.

5 Q So to the best of your knowledge you don't recall
6 any of the questions that you may have had or people within
7 your group may have had that were answered through a Listserv
8 dissemination?

9 A It may have occurred, but I can't recall any off the
10 top of my head.

11 Q Okay. Did you actually download or in some way pick
12 up the application that was used on behalf of Nevada Organics?

13 A I believe I did, yes.

14 Q And can you tell me how obtained that application.

15 A I don't recall. It may have been in an email
16 attachment.

17 Q All right. In an email attachment from whom?

18 A I don't know. It could have been the Listserv, it
19 could have been our attorney. I'm not -- I'm not sure exactly
20 how I received it.

21 Q You indicated that it was either ignorance or just
22 not being familiar with the application that someone could
23 have used an application different from the application Nevada
24 Organics used. Do you recall that general testimony?

25 A I don't think I used those specific words, but I can

1 certainly recall discussing it a few minutes ago, yes.

2 Q All right. Wouldn't you agree with me that if there
3 were more than one application that application would have
4 been created by the DOT?

5 A Yes.

6 Q All right. So to the extent there was any
7 confusion, the confusion was created by having more than one
8 application available for the applicants; is that correct?

9 A Well, look, I mean, you know, what if they had a
10 previous --

11 Q Let me -- let me stop you for a second, only because
12 I am very patient, I don't interrupt people. If I do, I
13 apologize.

14 A You just did.

15 THE COURT: Wait.

16 BY MR. PARKER:

17 Q But I interrupt you only because I didn't hear a yes
18 or no.

19 THE COURT: It's 4:25. I've got 20 minutes before
20 I'm breaking for the day. If you're not done, we return at
21 9:15 in the morning.

22 Mr. Parker, did you want to continue?

23 BY MR. PARKER:

24 Q That is a cue to me to let you answer regardless of
25 what you're about to say. Go right ahead.

1 MR. PARKER: Understood, Your Honor.

2 THE WITNESS: Please restate your question.

3 BY MR. PARKER:

4 Q The question is if there was confusion regarding the
5 application, that confusion was created by having more than
6 one available application for applicants to use. Isn't that
7 true, sir?

8 A I don't -- I don't know that I can say that
9 conclusively. What if someone was, you know, not paying
10 attention? What if they downloaded the wrong form even though
11 the headings could have been correct. There's any number of
12 hypothetical circumstances that could lead someone to, you
13 know, use the wrong application. So it's not, you know -- I
14 don't think that that was a common thing at the time in my
15 experience.

16 Q Well, you really don't have any foundation for the
17 opinion that it wasn't common, because you've never done a
18 survey or asked or performed a census to determine how many
19 people used one application versus another. Is that true?

20 A I personally conducted monthly NDA meetings with
21 owners and managers of the majority of dispensary owners in
22 the state every month before, during, and after the
23 application process. And I think if there was a general
24 confusion about which form of application to use, I would have
25 heard about it. And I didn't. And so that's what I'm --

1 that's the experience that I'm using when I say that I was
2 unaware of any mass confusion. There could have been isolated
3 instances in which somebody, you know, perhaps mistakenly used
4 the wrong one, forgot to download the new one, looked at an
5 old email, didn't check their email. I don't know. There's
6 any number of situations that could have caused that. But I
7 don't think it was a widespread issue.

8 Q Okay. That's fine. Let's not talk about widespread
9 or not widespread. The question is, which I believe is fairly
10 focused, if there was more than one application available for
11 applicants, would you agree with me that that confusion in
12 terms of which one was available or having two available would
13 have been created by the DOT?

14 A Not necessarily.

15 Q All right. So do you believe that there should have
16 been two applications available for applicants to use?

17 A No.

18 Q Or just one?

19 A One.

20 Q Good enough. And if there were two, who would have
21 created those two?

22 A If there were multiple drafts like, for example, an
23 old draft and a new draft --

24 Q No. Just two.

25 A -- they would have come -- both would have come from

1 the DOT.

2 Q Thank you.

3 You indicated during your examination by Mr. Kemp
4 that it was your understanding that you did not have to secure
5 -- and I tried to take verbatim notes -- did not need to
6 secure a location. Did you learn that through the application
7 process, or did you learn that through some type of
8 communication with the DOT?

9 A I learned that from the application itself and
10 through speaking with our internal team and our counsel about
11 that specific issue.

12 Q Now, why did you need to speak with your team if it
13 was clear on the application?

14 A Because I believe there was discussion earlier in
15 the process of making the location a requirement. That's
16 something that I led when we applied in 2014, and so I knew
17 that it would be a significant undertaking to secure
18 locations, and so it was an issue that I was very much
19 interested in. And it became obvious that that was not going
20 to be a requirement. And I believe it was clearly
21 communicated in an email from the Department, if I'm not
22 mistaken, going off of memory a couple years ago. But I
23 believe that was the case. Or a year ago.

24 Q So let me make sure we're clear. Email as a part of
25 a Listserv or a separate email to your company based upon that

1 question?

2 A No, not specific to our company. It would have been
3 an email, general, you know, broadcast Listserv-type email.

4 Q And you recall that being generated by the
5 Department of Taxation?

6 A It would have been, yes.

7 Q Do you recall the time period?

8 A No. And, again, I'm going off of my memory from a
9 year ago. But I certainly recall receiving the news that that
10 was not a requirement.

11 Q It was so clear in the application that they had to
12 send out an email to make it clearer. Is that what happened?

13 A Again, I'm going off of memory here, but I believe
14 that there was an email clarification sent out by the
15 Department clearly articulating certain changes that had been
16 made from the first draft to the second draft of the
17 application form, if I'm not -- if I'm not mistaken. And if I
18 recall, that was one of them, that the location issue was one
19 of the changes that was made explained in the email.

20 Q Do you recall who offered that document?

21 A No.

22 Q And do you remember the year?

23 A It would have been 2018.

24 Q Okay. Do you remember was it sometime between
25 September 8th and September 20th, or before September 8th?

1 A It would have been before September.

2 Q Do you remember specifically if it was part of a
3 Listserv dissemination?

4 A No. I would -- I would say that it probably was,
5 but I'd have to go back and, you know, refresh my memory.

6 Q Do you know if that email was in some way attended
7 to or attached or disseminated along with the application
8 sometime between September 8th and September 20th?

9 A I don't recall what date it was, to be honest.

10 Q If it was not a part of a Listserv, how would the
11 general public become aware of it?

12 A I stated that I believe it was part of the Listserv.

13 Q Okay. And let's ask it this way, then. If the
14 general public was not a part of the Listserv, how would the
15 general public receive it?

16 A You'd have to ask the Department. I don't know all
17 of the mechanisms they use to disseminate that information.

18 Q Did you prepare the applications, you personally
19 prepare the applications for the eight licenses that Nevada
20 Organics was attempting to obtain?

21 A I oversaw the process and wrote much of the content
22 myself and was intimately involved in every step, yes.

23 Q Do you remember how many Post Office boxes you used
24 for the eight -- out of the eight licenses?

25 A I don't think we used any Post Office boxes.

1 Q Do you fill out the annual list of members and
2 managers for your LLC?

3 A Personally, no.

4 Q Do you know who does?

5 A I don't.

6 Q Do you know if any of your -- and you said this two
7 different ways. Originally when Mr. Kemp asked you about your
8 human resource director and your purchasing director you
9 called them directors. Later on in his conversation you
10 changed them from directors to officers after we took a
11 restroom break or whatever we took. Do you know why you
12 changed the description from director to officer?

13 A Their title is -- for example, Kim Lester, her title
14 is director of Human Resources, okay. But if you look at our
15 application, which was an exhibit that we all looked at
16 earlier, we checked the box "officer." So I apologize if I
17 wasn't clear in how that was communicated. But we consider
18 her to be an officer of the company because she signs
19 contracts, she hires and fires, she has a tremendous amount of
20 authority within the company. And her title is director of
21 HR, okay. But, you know, she's not a board member, right, so,
22 you know --

23 Q Right.

24 A Sorry if I'm not explaining that, you know,
25 correctly. I'm not a legal expert on corporate law, but

1 that's my understanding.

2 Q Yeah. Those remarks are helpful.

3 So the statute calls for owners, officers, and board
4 members; is that correct?

5 A I believe so.

6 Q You understood that the statute didn't call for
7 directors; is that correct?

8 A I'm not sure that I recall that it specifically did
9 not call for that. You know, going off of memory here, but,
10 you know, it was our understanding that all owners, officers,
11 board members, et cetera, would need to be disclosed, and we
12 wanted to be very forthright about who is involved in the
13 company and how the company operates.

14 Q You would agree with me, however, that your director
15 of Human Resources and your director of Purchasing was not an
16 identified category under the application or the statute? The
17 statute doesn't say "director." Is that a fair statement?

18 A My interpretation of that form that says "officer"
19 to me connotes people who have tremendous authority to bind
20 the company in contract, that kind of thing. So that was our
21 intention in putting those folks on there.

22 Q And thank you for explaining your intention. I just
23 want to make sure that were on the same page. The word
24 "director" is not used in that part of the statute nor the
25 application. It says owners, officers, and board members. Is

1 that correct?

2 A I'd have to go back and read it, but --

3 MR. PARKER: Shane, can you put that back up. I
4 need 453D.218. Yeah. We can use Exhibit 5, I believe, or we
5 can use --

6 Can you pull up 127, page 12 and 13. I guess that's
7 the quickest way to get to it right now.

8 BY MR. PARKER:

9 Q So you see the top?

10 A Yes.

11 MR. PARKER: Can you highlight it for me, Shane.

12 BY MR. PARKER:

13 Q And I believe that's taken directly from Assembly
14 Bill 422, which says the same, "owners, officers, board
15 members." Do you see that?

16 A Yes.

17 Q All right. So there is no place for directors. So
18 the director of Human Resources wouldn't have a place in that
19 list, nor would the director of purchasing have a place in
20 that list; is that correct?

21 A We considered Courtney Barker to be an officer.

22 Q Let me ask it one more time. The word "director" is
23 not included here; is that correct?

24 A I don't see it.

25 Q All right. So you were simply inserting names based

1 upon the description you gave them at your office, which is
2 director of Human Resources, without some interpretation gave
3 me earlier. You would agree with me that your director of
4 Human Resources and your director of Purchasing wouldn't fit
5 under that -- either of those three categories?

6 MR. KOCH: Objection. Argumentative.

7 THE COURT: Overruled.

8 THE WITNESS: Yeah. We discussed this with our team
9 and our legal counsel and felt that we were doing -- we were
10 complying with the rules of the application to the best of our
11 ability.

12 BY MR. PARKER:

13 Q And that's fine. I'm not asking, you know,
14 necessarily what you discussed with your team. I'm simply
15 asking what we see on the board and the positions they held at
16 your office. They were not -- they were directors. Based on
17 your earlier testimony today they were not board members, they
18 were not officers, and they were not [unintelligible]; isn't
19 that correct? Without interpretation and discussion.

20 A They're officers, yeah.

21 Q That's your belief?

22 A Yep.

23 Q Now, when you -- you said you never did your annual
24 list?

25 A No.

1 Q Do you know what an annual list is?

2 A Generally.

3 Q Tell me what it is in your -- based upon your
4 understanding.

5 A It's a list of, you know, members of an LLC or
6 managers of an LLC that's filed with the Secretary of State.

7 Q Do you have any female owners -- I'm sorry, members
8 or managers? Not owners, but members or managers?

9 A Yes.

10 Q Who would be a female member?

11 A Liesl Sicz.

12 Q And who -- do you have any female managers?

13 A Managers of the LLC?

14 Q Yes.

15 A No. The managers I believe are Steve Byrne and
16 myself.

17 Q Do you have titles like president, vice president,
18 treasurer as a part of your LLC?

19 A We use, you know, CEO and director titles in our
20 company.

21 Q Okay. Who's the CEO?

22 A I am.'

23 Q Is there a deputy CEO or anyone -- who's next in
24 charge under the CEO?

25 A Director of operations.

1 Q Is that also a member?

2 A No.

3 Q Who is that?

4 A He's not an owner. Well, he's a shareholder. His
5 name is Brandon Wygand.

6 Q Did you list that person as a part of the ownership
7 of Nevada Organics?

8 A He's not an owner.

9 Q You said he's a shareholder.

10 A Well -- so he holds shares of what is now called
11 Green Growth Brands, GGB, previously Xanthic. And so in a
12 sense he, you know, owns shares of the company. But we
13 discussed that --

14 THE COURT: Sir, are shares equity?'

15 MR. PARKER: Good question. Very good question. I
16 was going there next.

17 THE COURT: Because I know the answer.

18 THE WITNESS: I believe so. So --

19 THE COURT: Okay.

20 THE WITNESS: -- my understanding is that, you know,
21 that's how the Department has chosen to handle disclosures of
22 publicly traded companies.

23 BY MR. PARKER:

24 Q So did you list -- strike that, because I want to
25 make sure we're on the same page here.

1 How many other shareholders did you have of Nevada
2 Organics prior to your submission of your application sometime
3 before September 20th of 2018?

4 A So GGB Nevada owned 95 percent prior to submission.
5 GGB Nevada was wholly owned by Xanthic Biopharma. Xanthic
6 Biopharma is a publicly traded company.

7 In addition to GGB Nevada the other owners of Nevada
8 Organic Remedies were myself, Steve Byrne, Darren Peterson,
9 Pat Byrne, and Liesl Sicz through her entity Harvest.

10 Q Okay. And did you list all of them?

11 A Yes.

12 Q All right. And you list their percentages?

13 A Yes.

14 Q All right. In terms of GGB did you list all of
15 their owners?

16 A The rule for publicly traded companies is to list
17 their board members and officers. Which we did. And we fully
18 disclosed that.

19 Q Where did that rule come from?

20 A That's always been my understanding how the
21 Department has operated, and I believe that's in the
22 application itself.

23 Q No, no. Tell me where -- if you can recall, where
24 in the application did that come from? We've looked at this
25 application now for many more days than any of us thought we'd

1 be here. So tell me where in the application you recall
2 seeing that.

3 THE COURT: And if you need us to bring the up to
4 refresh your memory, please let us know, and they will put it
5 up on the screen for you.

6 BY MR. PARKER:

7 Q Do you know where it is?

8 A Yeah. There's a portion that talks about board
9 members and officers.

10 MR. PARKER: So, Your Honor, can I give him --

11 THE COURT: Why don't you give him Exhibit 5.

12 MR. PARKER: I will get it for him.

13 THE COURT: Maybe 5A. I don't know which one's the
14 right one.

15 MR. SHEVORSKI: I think I know.

16 BY MR. PARKER:

17 Q Start 5 or 5A. And let me know when you get to the
18 point that you believe the rule is there, and I'll ask you
19 some questions on it.

20 THE COURT: You've got three minutes left, Mr.
21 Parker.

22 MR. PARKER: It may take him longer than that, Your
23 Honor.

24 THE COURT: It may. I'm just making sure everybody
25 understands.

1 MR. PARKER: And I appreciate what you said to me
2 earlier about --

3 THE COURT: You weren't the only one.

4 MR. PARKER: -- letting him answer.

5 THE COURT: You weren't the only one I said it to,
6 Mr. Parker.

7 MR. PARKER: That's right. You've also said, give a
8 person enough rope.

9 THE WITNESS: Okay.

10 BY MR. PARKER:

11 Q All right. Read it to me, please.

12 A Well, if you look at Attachment A, it discusses the
13 owners, officers, and board members of the marijuana
14 establishment. I don't see a -- well --

15 Q Tell me what page you're on.

16 A 22.

17 MR. PARKER: Page 22. Can you put that on the
18 screen for us all, Shane.

19 THE COURT: Is that the page you're on that's on the
20 monitor, sir?

21 THE WITNESS: Yeah.

22 THE COURT: Okay.

23 BY MR. PARKER:

24 Q Now, I don't see any exclusions here for owner.
25 It's shareholders and owners. Don't you have that

1 understanding?

2 A In the traditional sense I think when these rules
3 were put in place I don't think the Department contemplated
4 the logistical implications of publicly traded companies. MM
5 Development, for example, is a publicly traded company, a
6 plaintiff in this lawsuit. I could go on right now and buy
7 shares of their company; right? So it's impractical to
8 require someone who owns one share of MM to be listed here.
9 So my understanding -- and, you know, maybe it's been, you
10 know, so long that it's just become, you know, part of my
11 understanding, I can't tell you exactly right here as I sit
12 today where it came from. But the rule has always been as far
13 back as I can recall that for publicly traded companies, you
14 know, there's a certain threshold before having to be listed
15 or something like that.

16 THE COURT: So, we're going to break. It's 4:45.
17 I'll see you guys at 9:15.

18 MR. PARKER: Thank you so much, Your Honor.

19 (Court recessed at 4:45 p.m., until the following day,
20 Tuesday, June 11, 2019, at 9:15 a.m.)

21 * * * * *

22

23

24

25

INDEX

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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PLAINTIFFS' WITNESSES

Steve Gilbert	5	-	-	-
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* * *

DEFENDANTS' WITNESSES

Andrew Jolley	16	54/158/201	-	-
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EXHIBITS

<u>DESCRIPTION</u>	<u>ADMITTED</u>
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PLAINTIFFS' EXHIBIT NO.

127, pgs. 12 and 13	101
221	192

* * *

DEFENDANTS' EXHIBIT NO.

5025, 5026	35
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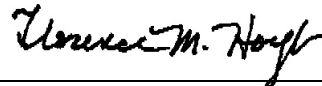
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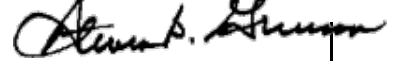
**FLORENCE HOYT
Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER

6/14/19

DATE



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC,.
et al.

Plaintiffs

vs.

STATE OF NEVADA DEPARTMENT OF
TAXATION

Defendant
.

CASE NO. A-19-786962-B

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING - DAY 7

TUESDAY, JUNE 11, 2019

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

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, TUESDAY, JUNE 11, 2019, 9:23 A.M.

2 (Court was called to order)

3 THE COURT: All right. Counsel, we have an issue.
4 We have Exhibit 26 that is missing. I understand from my
5 clerk that Exhibit 26 was supposed to be provided by the State
6 even though it's a plaintiffs' exhibit.

7 Is Mr. Kemp here?

8 THE CLERK: One of the defendants'.

9 THE COURT: Essence/Thrive's application in a
10 redacted form. Is that what it is, Dulce?

11 THE CLERK: That's what it says on the list.

12 THE COURT: It's what it says on the list. Who's in
13 charge? Who is in charge of it? Nobody is taking credit.

14 MR. PARKER: Or responsibility.

15 MR. GUTIERREZ: I think that was the evaluator notes
16 that Mr. Kemp --

17 THE COURT: No. I think it was the application,
18 because it was before the evaluator notes were produced.

19 Essence/Thrives is what Dulce has on her notes.

20 THE CLERK: It was admitted on the 24th --

21 THE COURT: By stipulation.

22 THE CLERK: It says, "on the list to be produced".

23 THE COURT: Here comes Mr. Kemp. We'll grill him.

24 Mr. Kemp, when does Mr. Rulis come back from
25 vacation?

1 MR. KEMP: Sunday.

2 THE COURT: Is he coming next week?

3 MR. KEMP: I hope so.

4 THE COURT: We're missing Exhibit 26. Do you know
5 anything about that?

6 MR. KEMP: Other than it's missing, I don't know
7 anything about it. You did get 27, though; right? Because
8 there were two.

9 THE COURT: Dulce is only telling me what we're
10 missing.

11 So when Mr. Rulis is here on Monday we will find out
12 where Exhibit -- or on Tuesday we'll find out where Exhibit 26
13 is.

14 Dulce, you might want to send him an email so when
15 he gets into the office on Monday he can look for it and
16 resolve it before he shows up on Tuesday.

17 (Pause in the proceedings)

18 THE COURT: All right. Are we ready to continue and
19 finish up Mr. Jolley?

20 Mr. Parker.

21 MR. PARKER: I am, Your Honor.

22 THE COURT: Anything else before Mr. Jolley starts?

23 Mr. Jolley, let's get you finished and get Mr.
24 Gilbert back on. I told Mr. Gilbert yesterday it was an hour
25 and a half that he would have a break. It didn't turn out

1 that way.

2 ANDREW JOLLEY, DEFENDANTS' WITNESS, SWORN

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

5 THE WITNESS: Andrew Jolley, A-N-D-R-E-W
6 J-O-L-L-E-Y.

7 THE COURT: Mr. Parker, you may continue. Mr.
8 Parker, you can continue.

9 MR. PARKER: Thank you, Your Honor.

10 CROSS-EXAMINATION (Continued)

11 BY MR. PARKER:

12 Q Good morning, Mr. Jolley. How are you?

13 A Good morning. I'm wonderful, thank you.

14 Q Good. Mr. Jolley, when we left off yesterday we
15 were talking about the confusion created by more than one
16 application, Exhibits 5 and 5A. Do you recall that?

17 A Yes, I recall.

18 Q And I want to finish that line of questioning by
19 asking you whether or not either Exhibit 5 or 5A specifically
20 indicate which applications should be used. For example, does
21 5A say no, this is -- I'm not the right application to use,
22 you should be using 5, which is Exhibit 5. Or does 5 say no,
23 I'm the earlier version, you should look to the DOT for the
24 updated version. Is there any indication on 5 or 5A which
25 application is correct?

1 MR. KOCH: Objection. The document speaks for
2 itself.

3 THE COURT: Overruled.

4 THE WITNESS: If memory serves, there was an email
5 or some communication sent by the Department stating that --
6 which form of the application was the updated form.

7 BY MR. PARKER:

8 Q Let me ask it one more time. Looking at Exhibit
9 5 --

10 MR. PARKER: I'm sorry, Your Honor. Is Exhibit 5 in
11 front of the witness?

12 THE COURT: It's not on the screen.

13 MR. PARKER: May I approach, Your Honor?

14 THE COURT: It's now on the screen in front of him.

15 MR. PARKER: Well, I want to give him the hard
16 copies so he can look at those.

17 THE COURT: You can, Mr. Parker. You can approach
18 and get it out of the book for him.

19 MR. PARKER: Thank you.

20 BY MR. PARKER:

21 Q So if you could look at the face of 5 and 5A, first
22 page of those two exhibits. Can you tell me if either exhibit
23 indicates that it is the appropriate application to use.

24 A I can't tell by looking at the front page of these
25 exhibits.

1 Q All right. Is it fair to say, sir, then, if a
2 person did not receive the email that you were speaking of
3 earlier or perhaps was not on the -- a part of the Listserv,
4 that simply by looking at the applications themselves they
5 wouldn't know which application is the appropriate application
6 to use?

7 MR. KOCH: Objection. Speculation.

8 THE COURT: Overruled.

9 THE WITNESS: Yeah. I think you'd have to look at
10 the context and the source of the application.

11 BY MR. PARKER:

12 Q Is it a true statement, sir, that without having any
13 additional information other than either application in front
14 of you you would not know which application is correct?

15 A Well, I'm only looking at the front page.

16 Q Look at all of the pages, sir. Take your time.

17 MR. KOCH: Your Honor, he's asking him to look at
18 two 34-page documents and whether they say something within
19 them. The documents speak for themselves.

20 THE COURT: Overruled. He can look at them and tell
21 me. We had him do the same thing yesterday. If it refreshes
22 his mind, let me know.

23 (Pause in the proceedings)

24 THE WITNESS: Can you please restate your question.

25 //

1 BY MR. PARKER:

2 Q Certainly. Looking at those two documents, is there
3 any indication, be it Exhibit 5 or 5A, that one is the
4 appropriate application to use versus the other?

5 A Looking at the application itself and ignoring the
6 context from which it came, I can't determine -- well, let me
7 rephrase that. There's differences in these two applications.

8 Q We understand that.

9 A They're not the same. So in a sense I guess you
10 could determine which one was the more up-to-date application,
11 you know, looking back. But there's nothing on the face of
12 the application that I can see sitting here that would
13 indicate the date from which that application was applicable.

14 Q Right. There's nothing indicating a revision date;
15 is that correct?

16 A Not that I can see.

17 Q There's nothing that would say to a applicant, this
18 is the right one and this is the wrong one, on the face of
19 those two documents?

20 A Yeah. You'd have to look at the context from which
21 the application came.

22 Q Thank you, sir. Now, yesterday you were telling me
23 why you listed certain employees as officers. Do you recall
24 that?

25 A I don't think that's what I said.

1 Q Okay. You did inform me and the Court that you
2 listed your Human Resource director and your procurement or
3 purchasing director as, who are employees. They are
4 employees; is that correct?

5 A Yes.

6 Q Okay. And you listed them as officers in your
7 application; is that correct?

8 A We believe they are officers, and we listed them as
9 such in order to be thorough and accurate.

10 Q Good enough. Are there any other officers of Nevada
11 Organics that you've listed in your application?

12 A Yes.

13 Q All right. And who are those other officers?

14 A I'd have to look back at it, but I can try my best
15 to go from memory.

16 Q Were any of them employees?

17 A Well, I think all officers are employees. Our
18 officers work for the company and also have additional
19 authority within the company.

20 Q Let me -- I like that response. So do you believe
21 that all employees can be considered officers?

22 A No.

23 Q All right. So then tell me what other employees you
24 listed as officers --

25 A We --

1 Q -- for purposes of your 2018 application.

2 A So the application asked us to list officers,
3 owners, and also key personnel, and we did that.

4 Q Key personnel was a part of the application request?

5 A If memory serves.

6 Q In terms of Exhibit 5, again -- it's on the screen
7 right now. You can look at it again. That's Exhibit 127.

8 MR. PARKER: Can you highlight the title again, or
9 the portion that says, I believe, "owners, officers, and board
10 members."

11 BY MR. PARKER:

12 Q Do you see key employees in that, on Exhibit 127,
13 which is in front of you, sir?

14 A No. But if you look at page 17, section 6 of the
15 application, reading from the first paragraph, "The
16 description of the proposed organizational structure of a
17 proposed marijuana establishment and information concerning
18 each owner, officer, and board member, including key personnel
19 of the proposed marijuana establishment, including information
20 provided pursuant to R092-17." So, again, we listed the
21 officers who run and manage the company, including the folks
22 you just mentioned. And pursuant to the application we, you
23 know, think, you know, also included some information about
24 others who work in the company.

25 Q All right. Did you list any other employees as

1 officers? That's the question I have before you right now.

2 A I think our application is self evident who we
3 listed.

4 Q You don't recall?

5 A We listed the officers who run the company, board
6 members, and owners.

7 Q You don't recall the name of any of the employees,
8 is what I'm asking you, that you listed as an officer?

9 A If they were an officer, we wrote down their name
10 and we indicated they're an officer and their title, and in
11 other sections of the application we went into detail about
12 their title, their general responsibility.

13 Q Let me see if I can focus this question so I can get
14 a more focused response. Do you know the name of any other
15 employees that you listed as officers?

16 A Let's see, you're using the word "employee," and I'm
17 saying we stated who the officers of the company are on the
18 application in the section.

19 Q Were any of those other officers employees?

20 A You know, I don't know the legal term of what you're
21 trying to get me to say here. But when somebody comes in to
22 work everyday and works for a company full-time I consider
23 that person to be an employee in addition to whatever other
24 responsibility or title they would have. You know, I mean,
25 myself included.

1 Q How about I help you with these questions.

2 MR. PARKER: All right. Your Honor, I'd like to
3 have use of the Elmo.

4 THE COURT: You may.

5 MR. PARKER: Thank you. Your Honor, I'm going to
6 put on the screen -- and I think the Court can take judicial
7 notice under 47 of the Nevada Secretary of State's
8 instructions for LLCs.

9 THE COURT: Does anyone have an objection to him
10 using this as a demonstrative exhibit?

11 You may use it as a demonstrative exhibit and mark
12 it as such.

13 Sir, if you need him to blow it up --

14 MR. PARKER: I brought copies just in case anybody
15 wanted to have a copy.

16 THE COURT: All right. Sir, if you want him to hand
17 you a copy --

18 THE WITNESS: It's okay. I can see it. Thank you.

19 THE COURT: Okay.

20 THE CLERK: Mr. Parker, do you have any extra ones?

21 MR. PARKER: Yeah. I brought one for you, too.

22 THE CLERK: Thank you.

23 MR. PARKER: Your Honor, may I approach the clerk?

24 THE COURT: You may.

25 MR. PARKER: May I also approach the witness, Your

1 Honor?

2 THE COURT: You may.

3 THE CLERK: It will be D5.

4 MR. PARKER: Thank you.

5 BY MR. PARKER:

6 Q So, sir, have you ever seen this before?

7 A I may have. I don't recall.

8 Q So these are the instructions for an LLC in the
9 state of Nevada. And if you were to turn to the second page
10 of D5, you would see that this document is a form that you can
11 use to identify whether or not you're going to be member
12 managed and, if so, those members and managers and the names
13 and addresses. Do you see that?

14 A Yes.

15 Q All right. Did you list any of these employees as
16 members or managers that you identified as officers in your
17 application?

18 MR. GRAF: Objection, Your Honor. Compound.

19 THE COURT: Overruled.

20 THE WITNESS: I don't know.

21 BY MR. PARKER:

22 Q All right. Let me see if we can help your --

23 THE COURT: Jill, can you hear Rusty from the back
24 there?

25 So I can hear you, Mr. Graf, but Jill can't. So

1 that's more important.

2 MR. GRAF: For the record, objection, compound.

3 THE COURT: Overruled.

4 MR. GRAF: Do you have another copy?

5 MR. PARKER: Would you like another copy, Graf?

6 MR. GRAF: I would.

7 MR. PARKER: Here you go.

8 MR. GRAF: Thank you.

9 MR. PARKER: You're welcome.

10 BY MR. PARKER:

11 Q So the third page of this document there's a big box
12 at the bottom that says, "manager or managing member." Do you
13 see that?

14 A Yes.

15 Q Did you list any of these employees or officers, as
16 you call them, in this document when you opened up Nevada
17 Organic Remedies?

18 A I believe Steve Byrne and myself were listed as the
19 managers.

20 Q All right. So none of these employees that you
21 identified as officers were identified in the Nevada Organic
22 Remedies list of managing members or members for Nevada
23 Organic Remedies with the Secretary of State of Nevada; is
24 that correct?

25 A Like I said, I think Steve Byrne and I, who are also

1 on the application, were listed as the managers of the LLC.

2 Q Did you list by chance in an annual list to the
3 State any officers of Nevada Organics?

4 A Yes.

5 Q All right. Do you know if you listed any of these
6 employees as officers for purposes of the State?

7 A Again, the officers that we put on our application
8 were --

9 Q Yes, sir.

10 A -- were provided to the State, yes.

11 Q All right. Well, let's see what you actually said
12 to the State.

13 MR. PARKER: Here is -- and I'd like to make this
14 the next exhibit in order, Your Honor -- is Nevada Organic
15 Remedies LLC filing with the Secretary of State, which I
16 believe you can also take additional notice under 47.130.

17 THE COURT: It's all -- I'll let it --

18 MR. KOCH: It's already an exhibit. Mr. Kemp may
19 have it in as an exhibit.

20 THE COURT: Can we use it as a demonstrative
21 exhibit --

22 MR. KOCH: It's fine.

23 THE COURT: -- rather than trying to get Mr. Kemp to
24 find it, since Mr. Rulis is on vacation?

25 MR. KOCH: Sure.

1 MR. PARKER: We'll make this D6, Your Honor?
2 THE COURT: Whatever the next in order is.
3 MR. PARKER: Would that be correct, Madam Clerk?
4 THE CLERK: Yes, that'll be good.
5 MR. PARKER: All right. And I will bring you D6.
6 May I approach, Your Honor?
7 THE COURT: You may.
8 MR. PARKER: The witness as well, Your Honor?
9 THE COURT: You may.
10 MR. PARKER: Thank you.
11 Rusty, you want one?
12 MR. GRAF: Yes.
13 THE COURT: You know, we used to call the back row
14 the peanut gallery, but I'm not sure I want to apply that to
15 you.
16 BY MR. PARKER:
17 Q All right. So this appears to be, we'll start from
18 the top, Nevada Organic Remedies LLC, your annual list of
19 officers and members. And at the bottom I see only two
20 officers, and that would be yourself and Mr. Byrne; is that
21 correct?
22 A Yes.
23 Q You didn't list any other officers, which would
24 include any employees; is that correct?
25 A On this form, no.

1 Q All right. So in terms of the State's recognition
2 of Nevada Organic Remedies LLC the only officers that are
3 identified would be yourself and Mr. Byrne; is that correct?

4 A In the Nevada Secretary of State I believe that's
5 the case.

6 Q Thank you. Would the same be true for Henderson
7 Organic Remedies?

8 A It's a different ownership structure, and I can't
9 recall who the managers were initially.

10 Q Well, let me show you what it says here for
11 Henderson Organic Remedies.

12 MR. PARKER: We can make this D7.

13 THE COURT: Why do I care, since they're not an
14 applicant that's at issue here? While I certainly care
15 about --

16 MR. PARKER: Your Honor, I had that same concern.

17 THE COURT: Okay.

18 MR. PARKER: That's why I started with -- I started
19 with the ones I knew you would have no issue with. This one
20 only because I believe it ties into something that Mr. Kemp
21 got into yesterday regarding the similarity of ownership and
22 similarity of the item under the non-identified care, quality,
23 and control issues.

24 THE COURT: I'm not concerned on the compliance
25 issue that was testified yesterday, since other than as it

1 goes to the compliance issue and the knowledge and whether
2 that should have been evaluated from an owner, officer,
3 director issue, which is what I am focusing on with these
4 applications, I'm not concerned. So I don't need --

5 MR. PARKER: No worries. I won't worry about that,
6 Your Honor.

7 THE COURT: I don't need to go into the LLC
8 formation for Henderson.

9 MR. PARKER: For Henderson?

10 THE COURT: Yeah.

11 MR. PARKER: That's fine, Your Honor.

12 THE COURT: I don't need it.

13 MR. PARKER: That's fine, Your Honor. Thank you.

14 THE COURT: Thank you.

15 MR. PARKER: You're welcome.

16 THE COURT: Trying to save some time.

17 MR. PARKER: No. I appreciate it, Your Honor.

18 THE COURT: Although I will let the witness give as
19 long an answer as he wants.

20 MR. PARKER: I've noticed that, which also allows me
21 to follow up. So I appreciate both of those considerations,
22 Your Honor.

23 BY MR. PARKER:

24 Q So, Mr. Jolley, the long and the short of it is in
25 terms of the Secretary of State of Nevada the only officers

1 you've ever identified under your annual list would be
2 yourself and Mr. Bryne; is that correct?

3 A I think the document speaks for itself.

4 Q Is that a yes, sir?

5 A This document speaks for itself.

6 Q Is that a yes, sir? I'm entitled to an answer.

7 A I'm giving you an answer.

8 Q You can talk about the document as long as you can.

9 A I mean, when you use words --

10 THE COURT: Sir, can you answer the question yes or
11 no.

12 THE WITNESS: Ever? I don't know. I don't know.

13 BY MR. PARKER:

14 Q In terms of --

15 A We've sold the company, so I don't know what the
16 current list is. So I can't answer a definitive statement.

17 Q Well, I was going --

18 A Sold part of the company.

19 Q -- to help you out with that. This list, D6, is the
20 list that was brought up this morning.

21 A Okay.

22 Q And as of this morning the only officers are
23 yourself and Mr. Byrne; is that correct?

24 A Yes.

25 THE COURT: Mr. Parker, you're making a

1 representation that you pulled or someone at your direction
2 pulled that listing off the Secretary of State's office as the
3 most accurate and up-to-date member list?

4 MR. PARKER: I am, Your Honor.

5 THE COURT: Okay. Thank you

6 MR. PARKER: You're welcome.

7 BY MR. PARKER:

8 Q And, sir, is it fair to say that in your
9 recollection you do not recall any other officers being
10 designated through the Secretary of State's annual listing for
11 Nevada Organic Remedies?

12 A Not through the Secretary of State.

13 Q Thank you. You said yesterday that you recall
14 either yourself or perhaps people within your team having
15 conversations or communications with the DOT. Do you remember
16 that?

17 A That's not what I said.

18 Q What did you say, then?

19 A We received information from DOT.

20 Q Other than the Listserv did you receive any other
21 information through any other medium?

22 MR. KOCH: Objection. Vague as to time.

23 THE COURT: Overruled.

24 THE WITNESS: Directly, I don't recall. I mean, we
25 do -- we are in somewhat constant communication with DOT. For

1 example, when we have audits or inspections there's
2 communication that is passed between our organization and the
3 Department. Regarding the application process, I stated
4 yesterday that I don't recall having any direct contact with
5 the Department regarding the application. If certain members
6 of our team did, I don't recall that off the top of my head.

7 BY MR. PARKER:

8 Q Okay. Have you ever spoken to Ms. Kara Cronkhite?

9 A Yes.

10 Q On how many occasions?

11 A I don't know. I would say a handful or maybe, you
12 know, a few occasions.

13 Q Were any of those conversations -- were any or those
14 conversations related to the 2018 application process?

15 A I don't recall.

16 Q Have you ever spoken with Mr. Damon Hernandez?

17 A I am not sure.

18 Q Let's go back to Ms. Kara Cronkhite. Were any of
19 those conversations recorder in any fashion?

20 A I'm not aware of any.

21 Q Were any of those conversations memorialized in any
22 written document, an email, a letter, or some type of response
23 in a Listserv to your knowledge?

24 A They may have been. I remember seeing email from
25 Kara I believe that was produced as part of this litigation

1 regarding the incident that we discussed yesterday at
2 Henderson. But I'm not recalling any specific emails about
3 the application process.

4 Q How about Mr. Gilbert, Steve Gilbert? Have you ever
5 spoken with him?

6 A Yes.

7 Q On how many occasions?

8 A A few.

9 Q Any of it involving the 2018 application process?

10 A Not that I can recall.

11 Q Any of it dealing with -- since you mentioned,
12 dealing with any deficiencies related to Nevada Organic
13 Remedies?

14 A Not that I can recall.

15 Q How many deficiencies has Nevada Organic Remedies
16 received?

17 A I'm not sure, but I don't think it's in -- I don't
18 think we're an outlier in terms of the rest of the industry.

19 Q More or less than 10?

20 A More.

21 Q More or less than 20?

22 A More.

23 Q More or less than 30?

24 A Are you asking in the lifetime of the company?

25 Q Well, the lifetime would be, I'm thinking since 2014

1 or '15; right?

2 A Correct.

3 Q All right. Yes.

4 A Yeah.

5 Q How many?

6 A So, yeah, over the course of those years, yeah, it
7 could be more than 30.

8 Q More than 40?

9 A Are you saying like -- let's say we have an audit
10 and we get a letter that has two deficiencies in it, are you
11 separating those, or are you counting that audit letter as
12 one --

13 Q No. I'm counting those as two deficiencies.

14 A As two. Okay.

15 Q Yes, sir.

16 A All right. Then, yeah, it's probably more than 30.
17 I wouldn't be able to quantify how many more than that, but
18 probably not many.

19 Q Do you know whether or not that list of deficiencies
20 were provided to or made available to the evaluators?

21 A I have no idea.

22 Q It appeared that your counsel, based upon
23 Exhibit 96, was attempting to prevent that issue from being
24 considered among the Nevada Organic Remedies applications. Do
25 you have the same opinion?

1 MR. KOCH: Objection, Your Honor. Misstates the
2 document. Also, it mischaracterizes the communication.
3 There's no indication that Counsel's even on that
4 communication.

5 THE COURT: Can you not make a speaking objection.
6 Overruled.

7 THE WITNESS: Can you please ask the question again.
8 BY MR. PARKER:

9 Q Yes. Do you want me to bring up Exhibit 96 again
10 just for purposes of context?

11 A Sure.

12 MR. PARKER: Could you do that for me, Shane. Let's
13 bring the whole thing in, Shane.

14 BY MR. PARKER:

15 Q And if you'd like, I can provide the book for you.
16 Can you highlight the second-to-the-last sentence of the word
17 "banks." Starts at "These investigations." And if you can't
18 see it, Mr. Jolley, I can grab the volume behind you and give
19 it to you. It says, "These investigations should be removed
20 from the log". And Kara Cronkhite is identified at the bottom
21 of this document. Do you recall ever speaking to her about
22 this document or about the incident that this document
23 concerns?

24 A No, I don't.

25 Q Do you have an understanding why these

1 investigations should be removed from the log?

2 A I don't believe I was a party to this email. I just
3 saw it for the first time yesterday, I believe. And so all I
4 can do is go off of the face of the text. I don't really have
5 any, you know, detail or inside information on this email. It
6 says, "Please remove the investigation SODs regarding self-
7 reported incidents," and goes on from there. So --

8 Q Do you know whether or not the 30-plus deficiencies
9 that you were just speaking of were also removed from the log,
10 or are they currently on log, to your knowledge?

11 A I don't have access to the State's proprietary, you
12 know, private information.

13 Q Do you know whether or not those deficiencies were
14 available to the evaluators?

15 A I do not.

16 Q You were on the NDA; right?

17 A Yes.

18 Q Were there any discussions or recommendations with
19 regards to the availability of the deficiencies for a
20 particular applicant for the evaluators?

21 A I don't recall having those discussions. It wasn't
22 really our job to be part of that discussion.

23 Q As an NDA member did you reach out to the industry
24 to inform them of whether or not deficiencies would be a part
25 of the application process?

1 A I think it was discussed a little bit here and
2 there. I mean, I think we all assumed, I know I did, that the
3 State would consider your compliance track record and, you
4 know, the status of your company.

5 Q Did any of those deficiencies concern the care,
6 quality, or safety of marijuana from seed to sale?

7 A I don't really know how to answer that question.

8 Q Well, the application -- as a part of the criteria
9 for the application the evaluators had to determine in scoring
10 your care, quality, and safekeeping. Do you recall that?

11 A Uh-huh.

12 Q Is that a yes?

13 A Yes, I do recall that.

14 Q All right. Were any of your deficiencies related to
15 that element or criteria?

16 A So deficiencies are not categorized like that. So
17 that would be a subjective, you know, call that you would have
18 to make. I guess there could be circumstances. For example,
19 I recall, you know, certain companies having significant
20 issues with the State, compliance issues, and having to shut
21 down operations.

22 Q Right.

23 A And so, yeah, I mean, I guess there could be
24 situations where a deficiency -- one could construe a
25 deficiency or adherence to a certain regulation as being, you

1 know, relevant in that general topic --

2 Q Right.

3 A -- of discussion. But I don't think that it was
4 outlined as such in the application.

5 Q Wouldn't you agree with me that with someone with
6 30-plus deficiencies that some of those deficiencies, yours in
7 particular, Nevada Organic Remedies, could touch on that
8 criteria?

9 A I believe if an operator had made serious mistakes
10 or had been shut down by the State or something like that, it
11 could factor into their qualification for additional licenses.

12 Q And if a applicant had 30 or plus deficiencies, some
13 of which touching on care, quality, and safekeeping from seed
14 to sale, wouldn't that be directly and demonstrably related to
15 the operation of a marijuana establishment?

16 A That's not how I interpreted the application. But
17 as I said earlier, I think, you know, a company's track record
18 in following the regulations could be relevant when looking at
19 issuing new licenses.

20 Q All right. Because you would agree with me that
21 that track record, if it reflected negatively upon the
22 applicant, the evaluators should have access to that for
23 determining whether or not that applicant should score high in
24 the care, quality, and safekeeping criteria. Do you agree
25 with that?

1 A I'm not familiar with how the State handled that
2 particular aspect of the application process.

3 Q All right. In terms of your communications with Mr.
4 Gilbert you said maybe half a dozen times; is that correct?

5 A Going back several years, if you count in-person
6 communications, phone communications, every possible form,
7 then, yeah, maybe, you know, a handful of communications. I
8 don't know.

9 Q All right. And do you ever recall any emails --
10 strike that. Did you communicate with Mr. Gilbert by text, or
11 only in person or by phone?

12 A I don't recall ever texting Mr. Gilbert, but I'm not
13 a hundred percent positive on that.

14 Q Okay. You had his personal email -- telephone
15 number?

16 A I definitely have his office number. I'm not sure
17 about his other contact information.

18 Q All right. Were any of your communications with
19 him, be it in person or over the phone, ever memorialized or
20 reduced to writing and sent back to you, this is to confirm
21 our conversation, you know, we don't care if you don't use
22 actual locations for your application, anything like that?

23 A I never received an email like that that I can
24 recall.

25 Q Okay. And I was using an example, a hypothetical.

1 But any type of written communication confirming the
2 conversations you may have had with him?

3 A I don't recall receiving emails directly from Mr.
4 Gilbert related to the application.

5 Q Okay. And you don't recall any of your
6 conversations being reflected in a Listserv dissemination,
7 either?

8 A I don't know what you mean by having my
9 communication being sent out to a Listserv. I don't
10 understand that.

11 Q Let's say you asked Mr. Gilbert a question regarding
12 the application process because you needed clarification and
13 he sent you an email saying, this clarifies our conversation,
14 something like that.

15 A Well, I just said I don't recall ever receiving such
16 an email.

17 Q Okay. So if you had a question regarding this 2018
18 process that you discussed with Mr. Gilbert, Ms. Cronkhite, or
19 Mr. Hernandez and it didn't make its way into something in
20 written form disseminated through the Listserv, then the
21 general public would not have that information. Is that a
22 fair statement?

23 A Well, I think each applicant had the opportunity and
24 the prerogative to clarify questions they may have had
25 regarding the application. And I don't think it's the

1 Department's practice to redistribute all communications it
2 has publicly.

3 Q Okay. So the answer to my question would be yes,
4 Mr. Parker, the public would not gain the benefit of your
5 discussions with the DOT through a written dissemination by
6 the Department of Taxation; is that correct?

7 A That's not what I said.

8 Q But is that correct?

9 A I don't believe the Department has a practice of
10 redistributing communications it has with licensees or anyone
11 public via the Listserv.

12 Q All right. Now, do you believe that there's an
13 advantage that you gained by being able to have these
14 communications with the Department of Taxation employees that
15 did not result in the public being afforded the results of
16 those conversations?

17 A I believe every applicant had the opportunity to ask
18 questions on an equal, level playing field. I think all
19 applicants had at their disposal the same opportunities to ask
20 questions and clarify issues.

21 Q That's not answering my question, sir. The question
22 is do you believe because of your ability to have these
23 conversations directly with the people training the trainers,
24 or, as they say, training the evaluators, that you perhaps
25 received information that the general public did not.

1 MR. KOCH: Objection. Lacks foundation.

2 THE COURT: Overruled.

3 THE WITNESS: No, I do not agree with that.

4 BY MR. PARKER:

5 Q Well, you had -- like you said before, you had Mr.
6 Gilbert's direct line at his office; is that correct?

7 A It's on the Website. You can get it.

8 Q Is that correct?

9 A That I had Mr. Gilbert's office phone number?

10 Q At the very least you said that; is that correct?

11 A I did say that.

12 Q All right. And you spoke with him both in person
13 and over the phone; is that correct?

14 A Going back to 2014 or '15, the course of my
15 experience and relationship with him, yes, I have had --

16 Q All right.

17 A -- conversations with Mr. Gilbert.

18 Q Same with Mr. Hernandez; is that correct?

19 A I don't recall ever speaking with Mr. Hernandez.
20 I'm not sure who that is.

21 Q And the same with Ms. Cronkhite?

22 A I met Kara during some of our first inspections back
23 in 2015 and have had various interactions with her over the
24 years.

25 MR. PARKER: Okay. Shane, I need you to bring this

1 up for me.

2 Your Honor, it's an admitted exhibit I'm looking
3 for. It's the extraction report.

4 THE COURT: I don't know all the exhibits in this
5 case, Mr. Parker.

6 Sir, I have a question on an unrelated issue while
7 he's looking for that. And if you need time to think about
8 the answer, just let me know. When did you learn that the
9 Department of Taxation would be using outside contractors to
10 review the applications under 453D?

11 THE WITNESS: I believe I learned about that leading
12 up to the application period. I believe there was a public
13 hearing in which Jorge Pupo may have mentioned that or some
14 information that came out. I'm a little fuzzy on that.

15 THE COURT: So summer of 2018?

16 THE WITNESS: Yeah, that sounds about right, but --

17 THE COURT: Okay.

18 THE WITNESS: I'm pretty fuzzy on it, but yeah.

19 THE COURT: I'm looking for your best recollection.

20 THE WITNESS: Thank you. Yeah.

21 THE COURT: All right. Sorry, Mr. Parker, I was
22 trying to use time wisely.

23 MR. PARKER: No. No worries. I have -- no worries,
24 Your Honor. I appreciate you using the time. So I believe we
25 have Exhibit 108, Your Honor, on the screen, which has been

1 admitted. It is the extraction report, page 32, KP32. I
2 believe it's Exhibit 108. And I'm concerned about Item Number
3 404.

4 BY MR. PARKER:

5 Q Can you see that on the screen, Mr. Jolley? Or can
6 you see it on your personal screen if it's easier that way?

7 A It's not on the personal screen. I can see it on
8 this one.

9 MR. KOCH: I think you can turn it off and on.

10 MR. PARKER: Yeah. It's the Plaskon approach to
11 technical issues.

12 THE COURT: The marshal's going to help if you can't
13 get it done.

14 (Pause in the proceedings)

15 BY MR. PARKER:

16 Q So this text message was taken from Mr. Plaskon's
17 telephone. It says, "Jorge Pupo is the MED Deputy Director."
18 Do you see that?

19 A Yes.

20 Q Okay. And you've spoken with Mr. Pupo; is that
21 correct?

22 A Have I ever spoken with Mr. Pupo?

23 Q Yes, sir.

24 A Yes, I have.

25 Q And how many occasions?

1 A A handful.

2 Q All right. As many times as you've spoken to Mr.
3 Gilbert?

4 A I wouldn't say that. I don't know that I can, you
5 know, directly quantify the number of conversations with both
6 of those individuals. But, you know, it's a few. It's not
7 hundreds, and it's not one or two. It's somewhere in between.

8 Q Were those discussions related to the 2018
9 application process?

10 A I don't recall ever speaking with Mr. Pupo directly
11 about the application process.

12 Q I thought you just said to the Court that you had a
13 conversation with him regarding the use of outside evaluators.

14 A That's not what I said.

15 Q What did you say?

16 A Would you like me to repeat the conversation I just
17 had with the Judge?

18 Q Just your answer.

19 A Okay. The question was when did I first learn that
20 the Department was going to use outside consultants to help
21 evaluate applications. And my general and somewhat vague
22 recollection is that it was in the summer of 2018, leading up
23 to the application process. And I believe, I don't know this
24 for sure, that it may have been through something that Mr.
25 Pupo said publicly, some kind of public statement that was

1 made. But I know that others on our team I believe had heard
2 something similar, and we discussed that.

3 Q Okay. So it came from Mr. Pupo. You just don't
4 know if you were a one-on-one conversation when that came up?

5 A No. I said I don't recall discussing the
6 application process directly one on one with Mr. Pupo. I
7 don't believe that ever occurred.

8 Q All right. But --

9 A I learned about the Department's intention to use
10 outside consultants I believe through something that came out
11 publicly, either a news article or a hearing, something like
12 that. I actually don't recall.

13 Q All right. It says, "Steve Gilbert is the program
14 manager and reports to Jorge. I report to Steve. Steve
15 prefers to not have the world know our structure. He likes
16 industry folks knowing, though, and addressing them". Now, if
17 you're not in the industry, how would you get the same level
18 of information from the DOT if you're not in the industry and
19 you're not on the Listserv?

20 A I'm not really sure what you're inferring here.
21 What do you mean by same information?

22 Q Fortunately, I get to ask the questions. And so let
23 me repeat the question. Maybe you didn't understand it or
24 maybe I need to rephrase it to make it easier for you to
25 respond to. Do you have an understanding of what "the

1 industry" means in the context of the 2018 application
2 process?

3 A I would assume it means people who are in the
4 marijuana industry in Nevada.

5 Q All right. So if you're not in the medical
6 marijuana industry in Nevada and presumably not on the
7 Listserv, how would that person, that member of the public,
8 get the same information that you're getting for purposes of
9 preparing your applications?

10 A It's up to that person and what they're looking for
11 and how resourceful they are. They can go to the Department's
12 Website, they can call the Department, they can attend, you
13 know, hearings and meetings, can read through the various
14 materials that are available through the Department's Website.

15 Q Would you agree with me that there's an advantage to
16 being the president of the NDA and having the ability to
17 contact these people personally, the DOT people that we --

18 A No, I would not agree with that.

19 Q All right. Yesterday you were discussing locations
20 with Mr. Kemp and I think to some extent Mr. Cristalli. Do
21 you recall that?

22 A Yes.

23 Q All right. And you -- as a part of that discussion,
24 you indicated I believe in part of your answer the impact to
25 the community based upon the location. Do you recall that?

1 Or did I misunderstand what you were saying?

2 A I generally remember that topic of discussion.

3 Q Do you recall that the application required you to
4 identify the maximum square footage that you had utilized? Do
5 you remember that?

6 A I believe the application called for a floor plan,
7 and there was some language in there about the size and
8 adequacy of the proposed floor plan.

9 Q And do you have -- it's my understanding you used a
10 -- I think Mr. Kemp said a generic floor plan; is that
11 correct?

12 A That was his term.

13 Q But it was your -- the floor plan that you currently
14 use; is that correct?

15 A That's not what I said.

16 Q Is it the floor plan that you currently use that you
17 wanted to replicate in different locations?

18 A I said it was based on the floor plan and there were
19 some tweaks that were made.

20 Q Okay. But I thought that some of those tweaks would
21 come after you actually found a location. Is that correct or
22 incorrect?

23 A Those are not mutually exclusive issues you're bring
24 up.

25 Q All right. So that's -- we can address them

1 individually. Was it your intention to make tweaks to a floor
2 plan that you generally use right now based upon each
3 location?

4 A We used -- we started from our existing floor plan
5 of one of our stores and then made some minor modifications to
6 that and included that in our application, because we felt
7 that it supported the idea that we could use that floor plan
8 and knew how to function as a company in this particular flow
9 and layout in a way that would best serve the needs of the
10 community.

11 Q If you don't have a location, just a floor plan, how
12 do you know that you will be able to convince a landlord or an
13 owner to allow for that floor plan or tweaks to that floor
14 plan after you enter a lease?

15 A Well, first, I've done that before, and so I had
16 confidence that I could do it, again. Secondly, in retail
17 there's pretty standard dimensions for retail buildings, and
18 so we felt that it was not unreasonable to base future stores
19 on our current store design with some minor modifications. Of
20 course things like the location of electrical panels and
21 drains and plumbing fixtures might need to be tweaked a little
22 bit based on the individual needs of the building.

23 But I don't think that's what the intention of the
24 application was. I think the intention of the section of the
25 application was for the State to get an idea of how a company

1 would operate to serve the needs of the community. And I
2 think we did an excellent job of demonstrating that.

3 Q So if that's the case, if the State only wanted an
4 idea, they could have said, please simply provide floor plans.
5 That could have been the request in the application. Didn't
6 have to do anything with building size or location, just
7 provide floor plans; right?

8 A I'm not in a position to speculate on the
9 Department's intentions or strategies behind the application.
10 I just know what the application requested, and I know, you
11 know, generally what we did to respond to that section.

12 Q Well, you gave me your interpretation of what the
13 application required. That's why this conversation started,
14 when I asked you about your floor plan. And you said it was
15 based upon your interpretation of the application this is what
16 the DOT was looking for. So I'm trying to figure out how you
17 move from what the words -- the four corners of the
18 application says, building size, adequacy, all of those
19 things, how do you jump from that to simply saying a floor
20 plan was sufficient and why in the heck you would get such
21 high scores when the application doesn't say, give me floor
22 plans. If that was the case then everybody could have just
23 provided floor plans. But the application talks about
24 building size and adequacy, not just simply floor plans. So
25 what made you think that you were simply -- or you were

1 providing adequate information when it says more than, just
2 give me a floor plan?

3 A You lost me. There's many questions in that
4 diatribe/statement/question, so I really don't know how to
5 answer that.

6 Q Let me see if I can break it up for you.

7 A Okay.

8 Q Is there any -- did you receive any information from
9 the DOT that said simply providing a floor plan would be
10 adequate in a response to building size, adequacy of building,
11 the actual requirements of the application?

12 A We went off what was stated in the application.

13 Q You didn't receive any additional information from
14 anyone at the DOT?

15 A Members of our team may have received certain
16 clarifying, you know, information, but I don't recall
17 receiving any direct communication from the DOT regarding the
18 application process.

19 Q And is it fair to say, sir, that you had no
20 conversations or any LOIs -- let's start here. Did you have
21 any LOIs in terms of lease space for any of these locations,
22 the eight or so applications you submitted?

23 A We did not provide letters of intent in our
24 application.

25 Q And you had no other type of agreement related to a

1 location that you provided with your application; is that
2 correct?

3 A I don't know what you mean by other type of
4 agreement.

5 Q Well, did you have perhaps earnest money on a piece
6 of property that you intended to buy to build a building?

7 A We own and are developing several retail properties
8 in various locations and jurisdictions that we felt would be
9 potential candidates should we receive a provisional license.
10 But following the instructions in the application, we did not
11 provide, you know, leases or letters of intent regarding
12 proposed locations.

13 Q Did you provide any building plans, or simply a
14 floor plan?

15 A We provided a great deal of detail about the
16 proposed layout and flow and processes within the proposed
17 locations.

18 Q Let me be more precise. Did you provide
19 construction drawings?

20 A I do not believe we provided construction drawings.

21 Q Did you provide a security plan that included some
22 type of contract or anything showing what would be placed on
23 that floor plan?

24 A Yes, I believe we did.

25 Q And did that also identify for purposes of outdoor

1 security devices, cameras, where you anticipated those
2 locations to be? So, for example, a floor plan would not
3 necessarily indicate windows to the exterior, it may just have
4 walls without showing where windows would be. Understand?

5 A I understand what you're saying, but I'm not sure
6 that's what we did.

7 Q If you had windows perhaps you may want more
8 security near windows; is that correct?

9 A It really depends on the layout of the building. I
10 can't really comment on a -- in that kind of hypothetical.

11 Q And I appreciate that. And you're actually helping
12 me go where I wanted to end. Without that information the
13 actual building layout -- a floor plan by itself would not
14 indicate or provide a reader or an evaluator a full complement
15 of what would be required for that establishment, because you
16 don't know what building it's going to be placed on, you don't
17 know if it's going to be first floor, the second floor, you
18 don't know if it's in the -- next to -- adjacent to an alley.
19 I mean, none of those things were a part of your application;
20 is that correct?

21 A Are you asking if we indicated where potential
22 alleyways would be in our application?

23 Q Yes, sir.

24 A I don't recall specifically discussing alleyways,
25 no.

1 Q You didn't particularly describe where windows would
2 be, either, did you?

3 A I'm not sure. I'd have to go back and look.

4 Q You didn't describe first floor or second floor?

5 A I don't recall discussing floors.

6 Q Strip mall --

7 A All of our locations are on ground floors.

8 Q Strip mall or stand alone, none of that stuff was
9 identified; right?

10 A We did not discuss strip malls in our application
11 that I can recall.

12 Q Or stand-alone buildings?

13 A I don't recall.

14 MR. PARKER: Good enough.

15 Thank you, Your Honor.

16 THE COURT: Anyone else for the plaintiffs' side?

17 Any other defendants or the State wish to inquire before I go
18 to redirect?

19 MR. SHEVORSKI: Nothing from the State, Your Honor.

20 THE COURT: Redirect.

21 REDIRECT EXAMINATION

22 BY MR. KOCH:

23 Q Well, Mr. Jolley, I told you you'd be done by 2:00
24 yesterday. I hope you're done by 2:00 today. Try to get you
25 there. You've had a lot of conversation and discussion about

1 diversity and officers and the impact on diversity, a couple
2 discussions with Mr. Kemp and Mr. Cristalli and Mr. Parker.

3 A Yes.

4 Q Did you know what NOR's diversity score was before
5 yesterday?

6 A I did not.

7 Q And for all the noise and discussion that's been had
8 here today and yesterday, do you know what the impact of the
9 diversity score for NOR was for NOR receiving or not receiving
10 a license?

11 A I'd have to do the math to work it out, but I don't
12 think it would have changed the outcome of the licenses that
13 we received.

14 Q You understood that NOR -- 8 points, is that the
15 figure that NOR received for diversity?

16 A Yes.

17 Q All right. Let's look at Exhibit 5004, please. I
18 should put it up on the screen here. It'd probably be the
19 easiest way to do that. You may need to turn your screen off
20 and on again switching over. Is it up on yours?

21 A It's working, yep.

22 Q All right. So 5004, this is a list of the
23 applicants that received a license and those that didn't and
24 all the scores for each of those applicants. Have you seen
25 this before?

1 A Yes.

2 Q Okay. Let's look down at Las Vegas, which is the
3 bottom of that first page, I believe. Las Vegas highly
4 contested market here. And we have -- NOR is Number 2; is
5 that right?

6 A Yes.

7 Q And NOR received 8 points for diversity?

8 A Yes.

9 Q If we took away 8 points from NOR, what place would
10 NOR fall to?

11 A Looks like we would have been fifth place.

12 Q Okay. So you'd be below Cheyenne, above Lone
13 Mountain; is that right?

14 A Correct.

15 Q Let's look right above that. Henderson, the same
16 page. NOR comes in second, again. Do you see that?

17 A Yes.

18 Q And if we took away those 8 points for diversity,
19 where does NOR end up?

20 A That would have been 214.99. So I think that would
21 have put us at fourth place.

22 Q And we can go through this exercise for all of the
23 seven licenses that NOR received. I've done it. We can do it
24 if the Court would like. But are you aware of any
25 jurisdiction where NOR would have lost its license if all of

1 the diversity points given to NOR were taken away?

2 A No.

3 Q And can you turn to Exhibit 70, please. You weren't
4 here when the cannabis law expert testified the first day of
5 this hearing were you?

6 A I was not.

7 THE CLERK: In sorry, 70?

8 MR. KOCH: 70.

9 THE CLERK: That's proposed.

10 MR. KOCH: You have no problem with 70, your
11 expert's report?

12 MR. KEMP: What is 70?

13 MR. KOCH: The expert's table of listings of taking
14 diversity out. It's your exhibit.

15 MR. KEMP: I thought that wasn't -- I don't have any
16 problem.

17 THE COURT: Are you okay admitting it?

18 MR. KEMP: Yeah, I'm fine, Your Honor.

19 THE COURT: Okay. It'll be admitted.

20 (Plaintiffs' Exhibit 70 admitted)

21 MR. KOCH: Let's put Exhibit 70 up.

22 THE COURT: 70's admitted.

23 BY MR. KOCH:

24 Q Exhibit 70 was a calculation that this expert came
25 up with where he took diversity away for all applicants in

1 unincorporated Clark County. Where does NOR end up?

2 A Looks like first place.

3 Q Let's go to 71.

4 MR. KEMP: Not a problem.

5 THE COURT: Any objection to 71?

6 MR. KEMP: No, Your Honor.

7 THE COURT: 71 be admitted.

8 (Plaintiffs' Exhibit 71 admitted)

9 BY MR. KOCH:

10 Q 71, same thing for Las Vegas. Where does NOR end up
11 if it takes out diversity?

12 A First place.

13 Q All right. So, long and short, there's a lot of
14 discussion about this, you know, putting officers in, taking
15 officers out for purposes of diversity based on the arguments
16 that are made. Did NOR have any benefit from diversity even
17 being considered in this process?

18 A Not that it appears. I mean, we just did our best
19 to have a thorough and accurate application listing the people
20 we felt were responsive to the application.

21 MR. KOCH: I'd like to propose Exhibit 5027. Do you
22 guys have any objection to the ownership officer letter?

23 MR. KEMP: That was the one -- I have no objection
24 if these guys --

25 MR. KOCH: Dominic, do you have any objection, 5027,

1 the ownership letter we have from the State --

2 MR. GENTILE: No. You showed that to me this
3 morning. Is that the one?

4 MR. KOCH: Yeah.

5 THE COURT: 5027 be admitted.

6 (Defendants' Exhibit 5027 admitted)

7 MR. KOCH: Do you have a binder clipped with 27?
8 Does he have a --

9 THE CLERK: I still have it, Mr. Koch.

10 MR. KOCH: If I can approach.

11 THE COURT: Would you like to approach so you can
12 take it over to the witness? That'd be great.

13 Sir, this now has a sticker on it. It's important I
14 get it back, so don't walk out with it.

15 THE WITNESS: You got it.

16 THE COURT: Thank you.

17 THE WITNESS: Uh-huh.

18 BY MR. KOCH:

19 Q Mr. Jolley, yesterday we looked at the first couple
20 of pages of 5027, because there's some question about the
21 ownership being disclosed. First the department of Taxation
22 letter, the August 20th letter, we looked at that. I think
23 that was with another exhibit that we also admitted
24 separately. So we're going to move past that. I'd like you
25 to look at Bates Number 1591. It should be the fourth page in

1 this document. Connor & Connor, did that law firm represent
2 NOR for purposes of part of this process?

3 A Yes.

4 Q And this letter here, do you recognize this letter?

5 A Yes.

6 Q What is it?

7 A It's a letter from Amanda Connor, our attorney, to
8 Kara Cronkhite at the Department notifying her of certain
9 individuals that are officers within NOR, Nevada Organic
10 Remedies.

11 Q All right. It says the following people have been
12 made officers at NOR, and it lists all those individuals,
13 including the individuals that have been talked about here as
14 director of retail, director of Human Resources, et cetera.
15 Did you ever get anything back from the Department saying,
16 we're not going to count those people as officers, after they
17 were notified of this information?

18 A No. Not that I can recall, no.

19 Q Let's turn two pages further into that document,
20 1593, another letter sent one week later, September 7th, 2018.
21 And have you seen this letter before?

22 A Yes.

23 Q Okay. Another letter from Ms. Connor to the
24 Department saying, the following people are current officers,
25 again; is that right?

1 A That's correct.

2 Q Now, here's an additional on the bottom. It says,
3 "The following individual is hereby added as an officer, Dan
4 Zarrella, Director of Marketing". Mr. Zarrella, what's his
5 race and gender?

6 A White male.

7 Q So after the list of officers was first provided to
8 the Department Nevada Organic Remedies supplemented that to
9 list a white male as an officer?

10 A Yes, that's correct.

11 Q Pretty stupid thing to do if you're trying to get
12 extra diversity points; isn't it?

13 A Yesterday Mr. Kemp made the assertion that we were
14 trying to, you know, somehow throw these people in just to
15 increase our diversity score. This clearly refutes that
16 argument. Dan had just been promoted to the -- as an officer
17 in the company, a director of Marketing. And so we felt it
18 was necessary to add him to the application to provide a
19 thorough understanding to the Department of who the people are
20 who are actually running the company.

21 Q If we go back to Exhibit 5025. I'm just going to
22 pull up the organizational chart. The second page of 5025 is
23 Bates Number 1427. And down below on that bottom section
24 there are all of the officers that Nevada Organic Remedies
25 listed, including the directors and the other individuals that

1 have been talked about at some length here. Let me just ask.
2 Brandon Wiegand, what's his diversity score? What's his race
3 and gender?

4 A He is a white male, so I don't think he would add
5 any points to the diversity score.

6 Q Ed Kistner?

7 A Same.

8 Q Kent Kiffner?

9 A Same.

10 Q Dan Zarrella?

11 A Same.

12 Q Steve Little?

13 A Same.

14 Q What about Kim Lester?

15 A Kim Lester is a female.

16 Q All right. And what about Courtney Barker?

17 A Also a female.

18 Q And what about Chris Vickers?

19 A Male. White male.

20 Q And Jeanine Terrance?

21 A Female.

22 Q So you listed everyone that you believe to be an
23 officer of the company irrespective of their race or gender;
24 is that right?

25 A That's correct.

1 Q You believe that you provided a full and complete
2 disclosure to the Department of Taxation as part of your
3 application?

4 A Yes.

5 Q And when you or NOR wrote those letters to the
6 Department on August 31st and on September 7th did the
7 Department ever come back and tell you that that was improper
8 or not an actual list of the officers?

9 A No.

10 MR. KOCH: Proposed Exhibit 5028, that was a page
11 from our operating agreement. Any objections?

12 Dominic?

13 THE COURT: Any objection?

14 MR. GENTILE: No, Your Honor.

15 THE COURT: Be admitted.

16 (Defendants' Exhibit 5028 admitted)

17 BY MR. KOCH:

18 Q And 5028 is part of the application that went to the
19 State based upon the Bates numbers here. It's a page from
20 NOR's operating agreement; is that right?

21 A Yes.

22 Q And I want to call your attention to 2.4(a), which
23 talks about the appointment, resignation, and removal of
24 officers. It says, "Appointment. The managers may from time
25 to time elect or appoint officers. Officers of the company

1 may have such titles as the corresponding officers of the
2 corporation incorporated under the laws of the state of Nevada
3 or such other titles as the board of managers shall determine,
4 and as such have powers and duties as set forth in this
5 agreement or approved by the managers." When you indicated
6 that those individuals we've looked at were officers of the
7 company did you believe that they were properly designated as
8 officers pursuant to the operating agreement of the company?

9 A Yes.

10 MR. KOCH: Go to Exhibit 5036. I think we're -- no
11 objection to that ETW exhibit. And 5037 while you're at it.

12 THE COURT: Any objection?

13 MR. KEMP: Not from me, Your Honor.

14 MR. GENTILE: No, Your Honor.

15 THE COURT: Be admitted.

16 (Defendants' Exhibit 5036 admitted)

17 BY MR. KOCH:

18 Q A couple of questions about this exhibit. First of
19 all, 5036 is a document Bates stamped ETW, it's document ETW.
20 Have you seen this document before, this actual paper version
21 of the document before this proceeding?

22 A No.

23 Q Okay.

24 A Well, I may have been on the -- the paper version,
25 no. I may have been on this distribution list. I don't

1 recall specifically this email. But I have not seen the paper
2 before now.

3 Q Yeah. We've talked quite a bit about this Listserv.
4 There's a lot of discussion about the Listserv, and this
5 purports to be from the Listserv at listserv.state.nv.us. Is
6 that where the Listserv communications came from, from the
7 Department?

8 A I believe so, yes.

9 Q Okay. And this email that apparently was sent
10 Monday July 30th, 2018, to the State MME at
11 listserv.state.nv.us, do you know if that was part of the
12 Listserv that the Department would send communications to?

13 A Yes, it appears so.

14 Q State MME, would that be -- do you know if everybody
15 who had a marijuana certificate, medical marijuana certificate
16 would have been part of that Listserv?

17 A I would assume so. Again, I don't know the inner
18 workings of the State's list, but based on the name I would
19 assume that it's at a minimum all of the required points of
20 contact for all of the different licensed companies in the
21 state.

22 Q Okay. And this email states, "To all retail store
23 license applicants. The Division has made important
24 clarifications to the application for the upcoming September
25 retail store application. The following pages of recreational

1 marijuana establishment license application, recreational
2 retail marijuana store only, have been edited". So were you
3 aware that the State -- the Department was making
4 clarifications to the application at this time?

5 A Yes.

6 Q Let me ask you first about the item under page 17,
7 where it says page 17, "Added to the first row of the Nevada
8 Recreational Marijuana Application criteria, 'including key
9 personnel'", So was that an addition that the State made?

10 A Yeah, that was an addition to the organizational
11 structure of the company section of the application.

12 Q All right. Hold that first page. We're going to
13 turn to -- because with this email there's first on the third
14 page that has an official announcement that went out.

15 A Yes.

16 Q Have you seen that official announcement before?

17 A Yes.

18 Q Okay. That official announcement has the same text,
19 it looks like. Do you see that, page 17, the same "including
20 key personnel"?

21 A Yes, I see that.

22 Q Okay. And then let's turn to the application that
23 was attached to that Listserv email. And we'll turn to page
24 17 of 34, which is Bates Number ETW43. And let me know when
25 you're there.

1 A I'm there.

2 Q Okay. The change that they reference there,
3 "including key personnel," where's that listed on this
4 document that you see here?

5 A So it would be the top box under the heading where
6 it says, "The description of the proposed organizational
7 structure," and goes on from there and indicating to the right
8 the number of points allocated to that section of the
9 application.

10 Q So let me finish that. You said, "The proposed
11 organizational structure of the proposed marijuana
12 establishment and information concerning each owner, officer,
13 and board member, including key personnel, of the proposed
14 marijuana establishment". Did you understand based upon this
15 information communicated by the Department to the entire
16 Listserv that you were to include key personnel as part of
17 your application?

18 A Yes.

19 Q And did you do that?

20 A Yes.

21 Q The individuals we've looked at, were they part of
22 your key personnel?

23 A Yes.

24 Q While we're on this document -- I guess exhibit,
25 before we leave it let's go back to the beginning of the

1 email, second page of that document where it talks about page
2 21 and 29. Do you see that at the top?

3 A Yes.

4 Q Okay. And on each of those it says that the
5 Department added "if applicant owns property or has secured a
6 lease on property or has a property agreement." See that
7 spot?

8 A Yes.

9 Q Okay. What did you understand was being changed on
10 the application pursuant to this portion of the communication?

11 A It's clear that the location is optional.

12 Q Okay. Let's actually turn to that page 21, which is
13 Bates Number ETW47. Let me know when you're there.

14 A I'm there.

15 Q Okay. And in that top box, I think we've looked at
16 it I don't know how many times in this proceeding, but I guess
17 the second box, "Marijuana establishment's proposed physical
18 address." And then it goes on to say, "if the applicant owns
19 property or a secure lease or the property agreement," was
20 that a change from the prior version of the application as you
21 understood it?

22 A It appears to be, yes.

23 Q Okay. Now, here's an interesting -- and so this is
24 an email ETW produced in this case; right?

25 A Yes.

1 Q I guess you don't know that, but it's an ETW Bates
2 number so we'll assume it is.

3 Let's go to Exhibit 5037.

4 THE COURT: Any objection to 5037?

5 MR. KEMP: No, Your Honor.

6 MR. GENTILE: No, Your Honor.

7 THE COURT: Be admitted.

8 I thought you nodded no, Mr. Gentile.

9 MR. GENTILE: Yes, I --

10 THE COURT: Yes, you have no objections?

11 MR. GENTILE: Yes, Mr. Cristalli has no objection.

12 It's his witness.

13 THE COURT: Okay. All right. Thank you, Mr.
14 Gentile.

15 Mr. Cristalli, no objection. It'll be admitted.

16 MR. CRISTALLI: Thank you, Your Honor.

17 (Defendants' Exhibit 5037 admitted)

18 BY MR. KOCH:

19 Q All right. 5037 is a section from the ETW
20 application that they have submitted in this case. Now, does
21 it surprise you that ETW, who submitted that email with the
22 Listserv with the new application with the information -- the
23 new phrasing on there, filed an application that they've
24 called the old version of the application even after they
25 received the new version of the application?

1 A Yes, this is very surprising. It appears that they
2 received the correct application form, an updated application
3 form on July 30th, '18, yet they appear to have used the old
4 version of the application when they actually submitted it.

5 Q Do you have any idea why they did that?

6 A I don't, no.

7 Q Did the Department come out to each applicant's
8 address and in person tell them which application to fill out?

9 A No.

10 Q Did it help them fill out the applications, you
11 know, put their pen to paper, anything like that?

12 A No.

13 Q All right. And so there's some applicant
14 responsibility to obtain the information and submit the
15 correct application; is that right?

16 A Absolutely.

17 Q There was some talk about this public ownership
18 question, and you said that you did not believe that every
19 owner of a share in a public corporation needed to be listed
20 as part of the application; is that right?

21 A That's correct.

22 Q Has anything that you've heard here during this
23 proceeding changed your mind on that?

24 A No.

25 Q You also testified I believe when Mr. Kemp asked you

1 that you'd expected the rules to be applied evenly and fairly
2 to all applicants. Is that what you believe?

3 A Yes.

4 Q Do you know of any other publicly owned companies
5 that are perhaps represented in this case today?

6 A There are a number of plaintiffs who are public
7 companies.

8 Q MM Development, for example, Mr. Kemp's client, are
9 they publicly owned?

10 A Yes.

11 Q Would it surprise you if MM Development did not list
12 every shareholder of their stock in their application?

13 A It wouldn't surprise me. I don't think that was
14 required in the application.

15 Q And based on my review of the information, MM
16 Development appeared to have approximately 70 million shares
17 outstanding, 30 percent of those are -- approximately are
18 referenced as being held by the public. So 21 million shares
19 of that stock, do you believe that all 21 million shares of
20 that stock should be listed with the Department of Taxation?

21 A I don't believe that was a requirement for the
22 application.

23 Q I looked yesterday, MM Development, and Mr. Kemp can
24 correct me if I'm wrong, for Planet 13 Holdings had 494,000
25 shares of ordinary stock change hands yesterday. Would it

1 surprise you if not all those shares of stock were listed with
2 the Department of Taxation as new owners, whoever purchased
3 those?

4 A It would not surprise me.

5 Q Do you think that would be a reasonable requirement
6 for the Department to have to require all of those shares of
7 stock to be listed each time they traded hands?

8 A No, I don't think it would be reasonable.

9 Q And what about each owner of a share of stock to
10 file an agent card with the Department? Do you expect that
11 those owners are doing that?

12 A No, I don't think it's a requirement, and I think it
13 would be a logistical nightmare for the State and it would
14 make the option of being a publicly traded company completely
15 invalid.

16 Q And obtaining an agent card, what does that entail?

17 A It entails getting fingerprints, filling out a form
18 with the State, submitting it to the State.

19 Q And is there a fee?

20 A Yes.

21 Q Each of the officers, owners, or board members that
22 NOR listed in its application, did they each have an agent
23 card?

24 A Yes.

25 Q What about Serenity Wellness, which is Oasis,

1 represented by Mr. Cristalli? Do you know if they're
2 publicly traded?

3 A Yes. I believe they were acquired by a publicly
4 traded company.

5 Q CLS Holdings USA, looks like they're the publicly
6 traded entity. Have you heard of that entity?

7 A Sounds right. Yes, I've read the press releases.

8 Q Would you expect CLS Holdings or Serenity or
9 whatever entities are in there to list every shareholder of
10 that entity as part of the application?

11 A No.

12 Q You don't think that would be like a fair thing to
13 do?

14 A I don't think it was called for in the application.
15 I don't think it would be logistically possible to do that.

16 Q And I guess we can go on and on, but just one more,
17 Livfree Wellness the dispensary. Do you know if they are
18 publicly traded?

19 A I think they were actually acquired during the
20 application period by a publicly traded company.

21 Q Cannabis Strategies Acquisition Corp., does that
22 name ring a bell?

23 A Sounds about right.

24 Q Do you know if Cannabis Strategies Acquisition Corp.
25 listed all of its shareholders as part of Livfree Wellness's

1 application?

2 A I don't know if they did or not.

3 Q Would you fault them if they did not list those
4 shareholders?

5 A No, I wouldn't.

6 Q And what about the Department? Would you fault the
7 Department for not requiring a list of each of those
8 shareholders of all those public companies?

9 A No, I don't think that's a requirement.

10 Q Just one last area. So there's a lot of talk about
11 building plans and what was submitted and what was not, and
12 Mr. Kemp asked you some questions about submitting a
13 photograph of an existing location as part of that building
14 plan. If you had -- if NOR had just submitted a photo of its
15 existing stores and sent that in as its building plan, what do
16 you think the score would have been?

17 A Not a very good score. I don't think that was what
18 the application was calling for. And I don't know if that
19 would be identifiable information.

20 Q Right. Because the building plan, was that part
21 identified or non-identified?

22 A Non-identified.

23 Q So if you take a picture of your store and it says
24 the source on the outside, kind of identifying your location?

25 A I mean, even seeing the building could potentially

1 be identifiable given the fact that, you know, all the
2 dispensaries in the state have been audited and inspected
3 numerous times by, you know, members of the Department.

4 Q And so there was more than just a photograph that
5 needed to be submitted for a building plan; is that right?

6 A Yes.

7 Q You haven't reviewed -- have you reviewed anybody
8 else's building plans that were submitted in this case?

9 A No.

10 Q And do you know of any -- strike that. John Ritter
11 when he was here -- were you here for his testimony?

12 A I was not.

13 Q You're familiar with who Mr. Ritter is?

14 A Yes.

15 Q Do you work with him?

16 A I have, yes. He was -- he's on the board of the
17 NDA, and he and I worked pretty closely together over the
18 years.

19 Q He testified that he expected the Department to come
20 out and do an inspection of his current location as part of
21 the application process. Did you have any expectation of an
22 inspection of that sort?

23 A No. And we're inspected regularly, but I don't
24 believe that was in the application, nor do I believe there
25 was an expectation of inspections as it would relate to the

1 application process.

2 Q And do you -- based on any communication discussed
3 with Mr. Ritter, do you believe that he truly had an
4 expectation that there would be an inspection of his location
5 as part of the application process?

6 A He and I never discussed that. I never heard that.

7 Q What about in-person interviews? Did those ever
8 take place as part of the application process?

9 A In-person interviews from the State?

10 Q Right.

11 A Not to my knowledge.

12 Q What about the State conducting background research
13 on your company or anybody else's company? Did you expect
14 them to do that?

15 A Well, they certainly requested all that information
16 in the application, and what they did with it after that I was
17 not privy to. I wouldn't be surprised if they performed, you
18 know, background check and research and due diligence on the
19 applicants.

20 Q Okay. And so what was in the application, that's
21 what you expected to be scored?

22 A Correct.

23 Q I've got one other exhibit that I wanted to ask you
24 a couple of questions about. 5039, part of our score sheet.

25 MR. KOCH: Any objection to 5039?

1 THE CLERK: I only have up to 5038.

2 THE COURT: 5039, we'd love to admit it, but we need
3 a copy.

4 MR. KOCH: You know, it is 5038 I think. I'm
5 looking at my --

6 THE COURT: So would you like us to admit 5038?

7 MR. KOCH: Let's do 5038.

8 THE COURT: Everybody okay with that?

9 MR. KOCH: It looks like my secretary ran out of
10 tabs.

11 THE COURT: Be admitted.

12 (Defendants' Exhibit 5038 admitted)

13 MR. GENTILE: No objection from ETW.

14 BY MR. KOCH:

15 Q Okay. Exhibit 5038 is a part of the handwritten
16 score sheets that the State has produced in this case. Have
17 you ever seen this document before today?

18 A No.

19 Q That ID on the top is RD215. I think we've
20 established that's NOR; is that right?

21 A Yes.

22 Q And my understanding is these are handwritten
23 comments by an evaluator for NOR's application for the
24 organizational structure section of its application. And we
25 see a lot of handwriting that's listed there. In fact, it has

1 -- if we look in the comments section about halfway down, top
2 says 22OROFBN. Do you see that?

3 A Yes.

4 Q Okay. And then it talks about owners, officers, key
5 employees, and advisors on Point Number 1?

6 A Yes.

7 Q So based upon this does it appear that the
8 evaluators considered owners, officers, key employees and
9 advisors as part of the process?

10 A Yes, it does.

11 Q Okay. And I really just want to look at the last
12 page, the third page of this document where it talks about the
13 educational achievements of the persons who are proposed to be
14 owners, officers, and board members of the proposed marijuana
15 establishment, and it has a description there. Do you see
16 that?

17 A Yes.

18 Q It says, "Collectively, owners, officers, and board
19 members have over 100 years of secondary education," lists
20 some of the degrees there. But below is what I want to call
21 your attention to. It says, "No college listed." Do you see
22 that?

23 A Yes.

24 Q So that's Ms. Lester, Ms. Sicz, Mr. Stout, and Mr.
25 Zarrella. Are those the names that are there?

1 A Yes.

2 Q So you have four without degrees as part of the
3 educational. Ms. Lester we identified as a woman; right?

4 A Yes.

5 Q Sicz is a woman?

6 A Yes.

7 Q Mr. Stout, he's African-American male?

8 A Yes.

9 Q Mr. Zarrella's a white male?

10 A Yes.

11 Q So because of those individuals not having college
12 degrees listed, it appears that NOR got a 4 instead of a 5 on
13 this section of the application; is that right?

14 A Yes.

15 Q And so is it fair to say the listing of the
16 officers, board members, and directors and owners that NOR
17 provided kind of cuts both ways, might provide some diversity
18 points, but might cut back on educational points? And if we
19 looked at everything else there might be other factors that
20 were weighed in there?

21 A Yes, I would agree with that.

22 Q And when you submitted your application did you have
23 any idea how each of these factors would be assigned points in
24 relation to every single person that was being submitted?

25 A No, I didn't. I just knew what the application

1 called for, and we did our best to be responsive, thorough,
2 and accurate.

3 Q If anything, perhaps there's overdisclosure rather
4 than underdisclosure; is that right?

5 A Well, I would certainly err on overdisclosure and
6 providing as much information as possible that we felt was
7 relevant to the application.

8 MR. KOCH: Thank you. No further questions.

9 THE COURT: Anything further?

10 Thank you, sir. We appreciate your time. Sorry you
11 had to come back today. Have a nice trip.

12 MR. KEMP: Judge, what about our recross on the new
13 errors he brought up?

14 THE COURT: How long?

15 MR. KEMP: I only have two questions.

16 MR. CRISTALLI: I have five minutes, Your Honor.

17 THE COURT: I'm timing you.

18 Sit down.

19 I'm timing you. It's 10:50.

20 MR. CRISTALLI: Okay. Thank you, Your Honor.

21 RECROSS-EXAMINATION

22 BY MR. KEMP:

23 Q Mr. Jolley, you just said that Livfree should have
24 listed its public company affiliations with its application;
25 right?

1 A Can you say that again, please.

2 Q You just told Counsel that you thought Livfree
3 should list its public company affiliations on the application
4 they filed in September?

5 A What's public? I don't know what public company
6 affiliations --

7 Q You just said that Livfree, my client, was acquired
8 by a public company and they should have put that on the
9 application? You just told the Court that.

10 A I don't believe that's what I said.

11 Q Okay. You know that Livfree wasn't acquired by a
12 public company until the week before last. You know that;
13 right?

14 A No, I didn't know that. I knew that it was in
15 process for several months. There were press releases that
16 came out, you know, middle or end of last year.

17 Q It is June of 2019 now. The application was filed
18 in September of 2016. Livfree didn't have any obligation to
19 disclose a public purchase that hadn't been negotiated and
20 hadn't been closed, did they?

21 A I'm not aware of the detail of the timing of the
22 transaction.

23 Q So as we're sitting here today you don't know if
24 Livfree did any right or wrong according to Counsel's
25 questions at all, do you?

1 A Yeah. I'm just going off of information that I've
2 gleaned from press releases and other, you know, information.

3 Q Okay. And let's talk about the MM Development
4 application. If I told you that MM actually filed shareholder
5 disclosures for Planet 13 Holdings, any shareholder that was
6 around 4 or 5 percent, is that news to you?

7 A I'm not aware of the details of their application.

8 Q Okay. But you didn't do that, did you? You didn't
9 list the shareholders of 4 or 5 percent of your [inaudible],
10 did you?

11 A We listed everyone that we felt the application
12 called for and the statutes called for.

13 Q And you didn't list the 30 percent owner that I
14 referenced yesterday on the board, the J whatever it was, and
15 you didn't list the other one. You didn't file any disclosure
16 of those?

17 A We listed everyone that the application called for.

18 Q Okay. But if MM Development listed 4 or 5 percent
19 owners of its holding company, they went above and beyond what
20 you did; right?

21 A I don't know. I'm not in a position to make that
22 judgement.

23 Q Okay. And then you took the shot at MM for just
24 supposedly listing photos of their store in their application.
25 You know that's not true; right? You know that's not true.

1 A I'm not familiar with their application.

2 Q Okay. They actually put in the building plan for
3 the location that they'd been operating for years, as well.
4 And in addition they put photos. It wasn't a case where they
5 just put photos. You know that, don't you?

6 A No, I don't know that.

7 Q Okay. Well, if that's the case, you would agree
8 with me that photos and a building plan for an existing
9 building that had been operated for years would be the best
10 proof possible that you could build a building in 12 months?

11 MS. SHELL: Your Honor, I'm not sure if Mr. Kemp is
12 providing testimony, or asking questions here.

13 THE COURT: He sounds like he's asking questions.
14 Overruled.

15 MS. SHELL: Okay. Thank you, Your Honor.

16 BY MR. KEMP:

17 Q You think an existing building is somehow inferior
18 to what you submitted, a generic building plan at the same
19 address that other applicants have listed?

20 A No, that's not what I said.

21 Q Okay. So you think the existing building in the
22 photos are superior to what you submitted?

23 A No, that's not what I said.

24 MR. KEMP: Moving on to this Exhibit 5036. Can we
25 have that on the screen, please.

1 UNIDENTIFIED SPEAKER: I have not been provided that
2 yet.

3 THE COURT: Okay.

4 BY MR. KEMP:

5 Q Mr. Koch asked you whether or not there had been a
6 change with regards to employees, and I think he pointed to
7 page 2 of the document which changed something on page 21. Do
8 you see that? That's the property section. Page 17 changed,
9 which is not the listing for diversity purposes. That's on
10 page 12; right?

11 A I'm not sure.

12 Q Okay. Attachment A was never changed, was it?

13 A I'm not sure.

14 Q And Attachment A is the attachment where an
15 applicant is required to list its owners, officers, and board
16 members, just to get focused here. That was never changed,
17 was it?

18 A I'm not sure.

19 Q Okay. So when you were discussing the addition of
20 the key personnel to the section on page 17, you were not
21 intending to imply in any way, shape, or form that there was a
22 change made to Attachment A, were you?

23 A I think the document speaks for itself.

24 Q And the document does speak for itself. There was
25 no change made to Attachment A; right?

1 A I don't know that.

2 Q Okay. Final area. You talked about the diversity
3 of NOR and suggested to the Court that diversity was not
4 outcome determinative. Do you recall that testimony?

5 A I think what I said was in a hypothetical scenario
6 if you removed all of our diversity points, we still would
7 have qualified for licenses.

8 MR. KEMP: Okay. Well, let's have Exhibits 70 and
9 71 back up, again. Pop those up. Can you make them a little
10 bigger.

11 BY MR. KEMP:

12 Q Okay. That's the list of actual -- that's the list
13 of winners if diversity was taken out; right?

14 A This was a hypothetical exercise done by a witness
15 in this case earlier on that I'm not really familiar with.

16 Q If you take out all the diversity points, this is
17 what you get in the unincorporated Clark County; right?

18 A I believe that's the intention of this
19 demonstration.

20 Q Okay. And so MM Development, if you take out the
21 diversity points, it becomes a winner, as opposed to a loser.

22 Final area, Your Honor.

23 THE COURT: Well, no. Now the hook comes out.

24 So if you could answer, sir.

25 THE WITNESS: It appears that way based on the table

1 that has been presented here.

2 THE COURT: Thank you.

3 BY MR. KEMP:

4 Q And last question. GreenMart is a loser; right?
5 GreenMart's no longer on there?

6 A GreenMart is not in the green-shaded area.

7 Q Okay. So it is outcome determinative for --

8 THE COURT: Mr. Kemp, thank you.

9 MR. KEMP: Thank you, Your Honor.

10 THE COURT: Your time has expired.

11 Mr. Cristalli, you did not tell me you had more
12 questions. You have less than five minutes.

13 MR. CRISTALLI: Yes, Your Honor. That's fine.

14 RECROSS-EXAMINATION

15 BY MR. CRISTALLI:

16 Q Mr. Jolley, you talked a little bit about the
17 Listserv information you obtained from the Listserv and
18 information specific to the location and that you didn't have
19 to have a location unless you already had one; correct?

20 A That's not what I said.

21 Q Okay. Well, we talked a little bit about the
22 Listserv and the communication and the fact that there was an
23 attachment, which was the application, and in that application
24 it changed from the requirement of having to put a location to
25 a requirement to having to put a location only if you already

1 had a location. Isn't that true?

2 A Well, that's not exactly what the document says. It
3 says something like -- I'm paraphrasing, provide the address
4 if there is a lease or you own the building, something like
5 that.

6 Q Okay. Fair enough. That information is not
7 contained in the statute. The statute in fact requires
8 specific location in that you need a letter of intent or a
9 purchase agreement; correct?

10 MR. KOCH: Objection. Legal conclusion.

11 THE COURT: Overruled.

12 THE WITNESS: Yeah, I just went off of the
13 application itself.

14 BY MR. CRISTALLI:

15 Q Are you familiar with -- are you familiar -- I
16 understand what you went off of. I'm just asking, are you
17 familiar with the statute and the requirement that the statute
18 requires permission from a landlord, letter of intent,
19 purchase agreement as it relates to a location?

20 A So my understanding of the statute is that prior to
21 receiving a final certificate, which required an inspection
22 and a bunch of other things, that the location must comply
23 with all the distance separation requirements and other
24 requirements.

25 Q And, sir, the regulation also requires specific

1 information regarding a physical address, securing a letter of
2 intent or a purchase agreement also; correct?

3 A I'm not familiar enough to quote that.

4 Q Okay. Well, assuming -- let's just assume that's
5 the case. Assume that the regulation and the statute requires
6 that an applicant secure a location through a letter of intent
7 or some type of letter from the landlord or securing the
8 property. You could see how an applicant could be confused as
9 to whether or not they should in fact include that information
10 because they want to follow the law. You would agree with
11 that, wouldn't you, sir?

12 A No.

13 Q You understand, also, that the statute and the
14 regulations also consider zoning issues as it relates to the
15 securing of a location for the purposes of putting a marijuana
16 establishment in that location; correct?

17 A I am familiar that in order to receive a final
18 certificate that locations must have zoning approval and meet
19 certain distance separation requirements.

20 Q Okay. And in regard to the property locations and
21 talking about specifically the property locations that you
22 secured in this case, which were identical to the property
23 locations of Essence and Thrive, albeit different suites.
24 We've established that; correct?

25 A If I recall correctly, yes.

1 Q Okay. And we have information in the application
2 that requires building size. True?

3 A Yes.

4 Q Plans for building size; right?

5 A Yes.

6 Q Impact on the community; correct?

7 A Correct.

8 Q Budgets; right?

9 A Yes.

10 Q You can't -- and you submitted a generic plan for
11 each and every location that you applied for in each and every
12 jurisdiction that you applied in; correct?

13 A I wouldn't use the term generic, but we supplied a
14 proposed floor plan that was consistent across the various
15 applications that we applied for.

16 Q How big is that suite that you secured in each of
17 those locations that you put on your application?

18 A I'm not sure.

19 Q You can't fit your building plans in that suite, can
20 you, sir?

21 A I'm not sure.

22 Q Well, you'd have to move from that location. You're
23 not going to stay in that location, are you, if you receive
24 these conditional licenses? You're not going to stay in the
25 suite, are you, sir?

1 A We're going to follow the regulations and the rules
2 to a tee.

3 Q You're going to stay in that suite?

4 A We're going to follow the rules and make sure we
5 have a location that complies --

6 Q Sir, it's a simple yes or --

7 A Please don't interrupt me. I'm going to follow all
8 the rules --

9 THE COURT: Wait. Mr. Cristalli, let him answer.

10 MR. CRISTALLI: Okay.

11 THE COURT: I'm going to give you five more minutes.

12 MR. CRISTALLI: Okay. Thanks.

13 THE WITNESS: We are going to comply with all of the
14 necessary rules regarding the size, the location, the zoning
15 requirements, the setbacks, the distance separation setbacks,
16 local zoning approval, local business license approval and all
17 other necessary rules in order to have a location that
18 qualifies and meets all the rules.

19 BY MR. CRISTALLI:

20 Q Okay. So you're going to contact the State
21 Department of Taxation and advise them that you are not going
22 to set up shop in your suite that you put on your application
23 for the purposes of licensing in the 2018 application process;
24 correct?

25 A We are going to identify a location that meets all

1 of the requirements that qualifies for local zoning approval,
2 business license approval. It may or may not be in the same
3 location that was provided in the application.

4 Q Sir, are you telling me that you may put your retail
5 dispensary in the suite that you have listed on your
6 application?

7 A I'm not discounting anything. We're going to
8 identify locations that meet all of the State's requirements
9 and have them built out in such a way that we fell is in the
10 best interest of the company and the community.

11 Q So if we were to go -- first of all, have you ever
12 been to the suite?

13 A I'm not sure which suite you're talking about.

14 Q The suite -- okay, all the suites for each location
15 that you put on your application for each jurisdiction that
16 you applied in, have you been in those suites?

17 A I have not been in all of those suites, no.

18 Q Do you know the square footage of those suites?

19 A Not off-hand, no.

20 Q Okay. Do you know whether or not you could fit a
21 5,000 square foot -- well, first of all, let me ask you a
22 question. How big was your floor plan in terms of building
23 size as it related to the proposal that you put into your
24 application?

25 A I would have to go back and refresh my memory by

1 looking at our application to determine the exact --

2 Q Well, sir, is it more than --

3 A I'm still speaking. In order to refresh my memory
4 on the square footage of the proposed location.

5 Q Is it more than 2,500 square feet?

6 A Yes, I believe so.

7 Q Okay. Is your suite more than 2,500 square feet?

8 A What's my suite? I'm not sure what you're asking.

9 Q I'm not sure, either. What is your suite?

10 A I'm sorry?

11 THE COURT: That's the address on South Durango?

12 MR. CRISTALLI: Yes, Your Honor.

13 THE COURT: All right.

14 THE WITNESS: Okay. That address, I'm not sure of
15 the square footage. I'm not sure of the square footage of any
16 adjoining spaces or available spaces. I'd have to go back and
17 look at that.

18 MR. CRISTALLI: Okay.

19 THE COURT: I'm sorry, it was South Fort Apache.

20 BY MR. CRISTALLI:

21 Q Have you ever been there?

22 THE COURT: 5130 South Fort Apache.

23 THE WITNESS: I can't recall.

24 BY MR. CRISTALLI:

25 Q You can't recall if you were ever in that suite?

1 A No. I'm in the area frequently. I just don't
2 recall that specific suite.

3 Q So you know whether or not that suite is even zoned
4 or could be zoned for a marijuana retail establishment?

5 A I don't know off-hand. I assume that because it is
6 an existing retail center that it would potentially qualify,
7 yes.

8 Q Okay. Let me put this out there. If there were
9 applicants who were trying to abide by the statute and abide
10 by the regulations and secure property addresses with letters
11 of intent or purchase agreements and paying money to secure
12 those locations and having difficulty in terms of zoning and
13 other issues as it relates to the law, and if they're
14 competing against you, who has a suite which you can't
15 identify in terms of size, location, zoning or other issues,
16 you would agree, sir, would you not, that you would have an
17 advantage over that applicant?

18 MR. SHEVORSKI: Objection. Compound.

19 THE COURT: Overruled.

20 THE WITNESS: No.

21 MR. SHEVORSKI: I had to try, Your Honor.

22 BY MR. CRISTALLI:

23 Q Okay, final area. In regard to ownership, it was
24 your testimony that it would be prohibitive to have publicly
25 traded companies list all of their shareholders; correct?

1 A I mean, it's my opinion that it would be
2 logistically difficult, if not impossible. But more
3 importantly, that's not what the rules say, in my opinion.

4 Q Well, let's talk about that. Let me stop you for
5 one second. I know you want to explain. The initiative says
6 you must disclose all ownership; correct?

7 A I don't recall.

8 Q You don't recall the initiative?

9 A Well, you're asking me about very specific language
10 and I don't recall the exact verbiage well enough --

11 Q Okay.

12 A -- to be able to honestly answer the question the
13 way -- that way.

14 Q Okay, fair enough. Would you agree with me, sir,
15 that the initiative is the law?

16 A Yes, as far as I know. I'm not a legal scholar, but
17 it was a ballot initiative and then it was codified in law and
18 regulations.

19 Q So if the initiative, which is law, says all
20 ownership, it means all ownership, correct, sir?

21 MR. KOCH: Objection. Legal conclusion.

22 THE COURT: Overruled.

23 THE WITNESS: Yeah, I'm not -- you know, I'm not
24 comfortable making that statement because the Department, who
25 has the authority to administer the program and run this

1 program, has addressed this issue of public ownership a
2 certain way. We've gone over it over and over and over for
3 the last two days.

4 MR. CRISTALLI: Okay.

5 THE WITNESS: You keep trying to get me to say
6 something different and I'm just going to say --

7 MR. CRISTALLI: I'm not trying to make you say
8 anything, sir.

9 THE WITNESS: I'm still speaking. You keep asking
10 me to say it a certain way and all I can say is the Department
11 has established a mechanism for dealing with that and we
12 follow their rules.

13 BY MR. CRISTALLI:

14 Q Okay. You would agree with me, sir, that the
15 Department does not have the authorization to expand or amend
16 the law, sir. Would you agree with me on that?

17 MR. KOCH: Objection. Legal conclusion.

18 THE COURT: Overruled.

19 THE WITNESS: I'm not a legal scholar. All I know
20 is it seems to me, a lay person, that they are doing their
21 best at applying the rules and making the program work.

22 BY MR. CRISTALLI:

23 Q Okay. You're familiar with the regulations as well,
24 aren't you, sir?

25 A Generally, yes.

1 Q You were on the Task Force, sir; right?

2 A I was on a working group.

3 Q Okay. And you're the President of the Dispensary
4 Board; right?

5 A Was.

6 Q Okay. And you have a lot of information with regard
7 to the application process, right, sir?

8 A I had all the same information everyone else had.

9 Q Right. In fact, you said you had more information
10 and the applicants who didn't receive licenses were ignorant.
11 You went as far as saying that, too, sir, didn't you?

12 A No.

13 Q Okay. Are you -- you're aware that this is a
14 competitive bidding process, this application; correct?

15 A Everyone was aware of that.

16 Q Okay. And there's a difference, sir, between
17 applying for a license for the first time or -- applying for a
18 license, I'm sorry, in a competitive bidding situation versus
19 a transfer of ownership or a renewal of ownership. You're
20 familiar with that; right?

21 A I understand that applying for a new license in a
22 competitive application process is different than asking for
23 an ownership transfer approval from the State, yes.

24 Q Okay. You're aware, sir, that the regulation
25 requires that if you do a renewal or a transfer you only have

1 to state ownership that is more than 5 percent. You're
2 familiar with that, right, sir?

3 A I'd have to go back and look at the regulations.

4 Q Well, you've dealt with your transfers in the past,
5 haven't you?

6 A Yes, my company has. Yes.

7 Q And you understand that the requirement is only 5
8 percent or more if you're dealing with transfers and renewals;
9 correct?

10 A I'm actually not sure that's what the rules say.

11 Q Okay. That's not a competitive process; correct?

12 A No.

13 Q Okay. And there is nothing in the regulations in
14 terms of applications for a license that says anything with
15 regard to only identify an ownership if it is 5 percent or
16 more?

17 A We can bring up the regulation. I'd like to read it
18 because I believe it says with regard to applications that for
19 corporations you're required to list officers.

20 MR. CRISTALLI: I have no further questions, Your
21 Honor.

22 THE COURT: Thank you.

23 Mr. Bult. My plan is for you to have five minutes
24 or less, too.

25 MR. BULT: I just have two questions.

1 THE COURT: Yeah, but two questions can take more
2 than five minutes.

3 CROSS-EXAMINATION

4 BY MR. BULT:

5 Q Mr. Jolley, good morning. My name is Adam Bult. I
6 represent the ETW plaintiffs.

7 MR. BULT: Shane, can we pull up 5036?

8 BY MR. BULT:

9 Q Do you recall this email that your counsel went over
10 with you?

11 A Yes.

12 Q And it's dated July 30th, 2018; correct?

13 A Yes.

14 Q In the To line is: statemme@listserv.state.nv.us.
15 Do you see that?

16 A Yes.

17 Q And you testified that you received that. Do you
18 remember that?

19 A I don't recall specifically receiving that, but I
20 believe I am on this distribution list, so I believe I would
21 have received it. And I also remember having access to this
22 information and the referenced updated application.

23 Q And how would you have had access to it?

24 A Well, that was asked yesterday and I believe my
25 response was that I don't remember exactly the mechanism by

1 which I received it, but myself and our large team and our
2 counsel all had access to the same updated, accurate,
3 applicable application.

4 Q Okay. And did you testify yesterday or today
5 whether or not your team had that same information that the
6 rest of the Listserv recipients would have had?

7 A Well, I believe that our team is on the Listserv and
8 would have had access to the same information that all other
9 members of the Listserv would have had access to.

10 Q Would it surprise you to learn that members or
11 parties to this litigation, also applicants, did not receive
12 the information contained in this July 30th email?

13 A I wouldn't be able to speculate on that.

14 Q Would it surprise you to learn that GBS Nevada
15 Partners, a party in this case, did not receive the
16 information contained in this email?

17 A Again, I have no knowledge of GBS Partners and what
18 emails they did and did not receive.

19 Q Would it surprise you to learn that Nevada Wellness
20 Centers, a plaintiff in this litigation, did not receive this
21 update on July 30th, 2018?

22 A I have the same response. I don't know.

23 Q Last question. Did the Nevada Dispensary
24 Association make any effort to double check and make sure that
25 all members of the association actually received this update?

1 A I don't know.

2 MR. BULT: Thank you. No further questions.

3 THE COURT: Anything else, Mr. Koch?

4 MR. PARKER: Your Honor, can I ask one question,
5 just to follow up with what --

6 THE COURT: One question, Mr. Parker.

7 MR. PARKER: Just one. Just one.

8 THE COURT: No follow-ups on it, just one question.

9 MR. PARKER: Just one. Just one single.

10 RE CROSS-EXAMINATION

11 BY MR. PARKER:

12 Q The Listserv information received by Nevada Organic
13 Remedies, did you as the NDA president or former president
14 forward that information to all the NDA members?

15 A I did not.

16 MR. PARKER: That's it.

17 THE COURT: Thank you, Mr. Parker.

18 Anything else, Mr. Koch?

19 MR. KOCH: No.

20 THE COURT: Thank you, sir. I would leave before
21 someone changes their mind.

22 THE WITNESS: Thank you.

23 THE COURT: Does anyone need a break before we go
24 back to Mr. Gilbert, who has been patiently waiting for over
25 24 hours for what I told him was going to be an hour and a

1 half?

2 (Court recessed at 11:13 a.m. until 11:19 a.m.)

3 THE COURT: Is everybody ready to go? I would
4 notice your table is a little light there, Mr. Kemp.

5 MR. KEMP: Your Honor, they were right behind me.

6 (Pause in the proceedings)

7 THE COURT: All right. Mr. Gilbert, if you can come
8 back up, we're going to swear you in. We're going to go until
9 about noon, we're going to break until one o'clock and then I
10 think you just heard me say we'll break at 2:00 for 15 minutes
11 and then keep going.

12 STEVE GILBERT, PLAINTIFFS' WITNESS, SWORN

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

15 THE WITNESS: Steve Gilbert. S-T-E-V-E
16 G-I-L-B-E-R-T.

17 THE CLERK: Thank you.

18 THE COURT: Mr. Parker.

19 MR. PARKER: May I proceed, Your Honor?

20 THE COURT: You may. You told me you had a lot of
21 questions for Mr. Gilbert, but let's try to stay on track
22 because I know Mr. Gilbert will answer questions with yes or
23 no if that's possible.

24 MR. PARKER: That's a compliment and an instruction,
25 I think, all at the same time.

1 THE COURT: He can answer however he wants.

2 DIRECT EXAMINATION

3 BY MR. PARKER:

4 Q So, Mr. Gilbert, how are you?

5 A Fine, thank you.

6 Q Good. You've had an opportunity to listen to a lot
7 of testimony today that may be helpful in terms of helping you
8 answer questions that I may ask. Do you recall -- strike
9 that. My clients, Nevada Wellness Center, had a meeting with
10 two of your staff employees, Ms. Cronkhite and Mr. Hernandez.
11 Were you aware of that?

12 A What type of meeting?

13 Q It was a meeting to discuss the scoring of their
14 applications.

15 A Yes, I do recall. I'm aware of the meeting.

16 Q All right. Did you get involved in that meeting at
17 all?

18 A I don't think I was part of that meeting, if I
19 recall correctly.

20 Q I know you were not there personally, but were you
21 or did anyone else participate in that conversation via the
22 phone?

23 A I'm not sure.

24 Q Are those meetings recorded, to your knowledge?

25 A They are not.

1 Q Is there typically someone else who listens in on
2 the phone when those meetings are being conducted?

3 A Typically no. We do -- Ky Plaskon would maybe
4 participate remotely from his office.

5 Q Okay. We were under the impression that someone
6 from Carson City or from the north may have been involved by
7 telephone.

8 A That may have been Mr. Plaskon.

9 Q Okay. And in terms of that off-site participation,
10 would that be a recorded conversation, someone would actually
11 record the discussions?

12 A No, they're not.

13 Q Okay. Would the members of DOT take any notes
14 related to those discussions?

15 A I think notes were taken for most meetings.

16 Q All right. Were those notes provided to counsel at
17 the Department of Taxation?

18 A I'm not aware. I do not know.

19 Q Would those notes be available for every meeting
20 that took place for every applicant that requested such a
21 meeting?

22 A That I'm not sure of, if notes were taken for every
23 meeting.

24 Q Would the notes be kept by the Department of
25 Taxation?

1 A Yes.

2 Q Could you locate those notes and provide them to
3 your counsel?

4 A Yeah. If they exist, we should have them on record.

5 Q All right.

6 (Mr. Parker confers with counsel)

7 BY MR. PARKER:

8 Q Can I have you take a look at Exhibit 5, please. It
9 should be on -- either in front of you or right next to you
10 because we just used it with the previous witness.

11 THE COURT: And, sir, if you want to look at the
12 hard copy you are free to look at it. There's also 5A that
13 counsel may refer you to or he may compare them up on the
14 screen.

15 MR. PARKER: And can we go to page 8 of 34? It's
16 MMLF19, Shane.

17 BY MR. PARKER:

18 Q And I'm concerned about Assembly Bill 422. It says
19 on Assembly Bill 422, it says -- the second bullet point says,
20 "Adds diversity, race, ethnicity, gender of applicants." And
21 then it goes on. The portion I'm concerned about, it says,
22 "To the existing merit criteria for the evaluation." Who made
23 the decision how this merit criteria for purposes of diversity
24 would be judged or scored? And I'd like the name, if you
25 could.

1 A I'm not sure who made the decision, but it is in
2 NAC453D in the regulations. How and when -- who made that
3 decision, I'm not -- I do not know. Potentially Mr. Pupo
4 would be a better person to ask.

5 Q Okay.

6 THE COURT: Sir, on the bottom corner of your
7 monitor, can you touch to clear the purple dots? Thank you.

8 THE WITNESS: You're welcome, Your Honor.

9 BY MR. PARKER:

10 Q So you don't know who actually made the decision on
11 how the scoring would be done. So, you know, the percentages,
12 the denominator, you were not a part of that decision-making
13 process?

14 A Yes, I was.

15 Q You were. Okay. So who else was involved in that
16 decision-making process?

17 A We had a group of staff who took the 2014 medical
18 application and amended it to match the recreational 453D
19 regulations. We had a document that was sent around. We
20 tried to proof it and fact check it and then ultimately we
21 sent it up to Mr. Pupo for final review.

22 Q All right. This is going to make me jump my order,
23 but I want to do so just because you just mentioned this.
24 QuantumMark prepared the training tools and actually performed
25 the evaluation of the 2014 process, is that correct?

1 A They -- that's incorrect.

2 Q What part of that is incorrect?

3 A That they performed the evaluations.

4 Q Okay. Who performed the evaluation in 2014?

5 A Contractors, just like in 2018.

6 Q Wasn't that contractor QuantumMark?

7 A QuantumMark was contracted to do a number of things
8 in 2014. Put together the scoring criteria.

9 (Mr. Parker confers with counsel)

10 BY MR. PARKER:

11 Q Why --

12 THE COURT: You can finish your answer, sir.

13 MR. PARKER: Yes.

14 THE COURT: He was waiting for you to be able to
15 listen again.

16 THE WITNESS: Yes.

17 MR. PARKER: Okay. No worries. Thank you. That is
18 a courtesy to you. Go right ahead.

19 THE WITNESS: So if I recall where I was at,
20 QuantumMark did not participate in the evaluation and
21 identifications.

22 BY MR. PARKER:

23 Q It was QuantumMark's training tools that were used
24 in 2014, is that correct?

25 A Yes, that's correct.

1 Q And then did QuantumMark provide its own training
2 tools for 2018 or did your Department amend QuantumMark's
3 training tools for purposes of training the evaluators?

4 A We amended the 2014 training tools.

5 Q Why didn't you ask QuantumMark to provide updated
6 training tools to fit a recreational application?

7 A That wasn't my decision.

8 Q Whose decision was that?

9 A That would have been a contract decision,
10 essentially Mr. Pupo or the director of the Department.

11 Q Do you know who made that decision?

12 A No, I do not.

13 Q And do you know why that decision was made? Why
14 wasn't QuantumMark utilized to come up with the 2018 training
15 tools?

16 A I don't -- I do not know. I don't know if it was
17 ever contemplated.

18 Q And so going back to where we were, you were a part
19 of the process in terms of the merit criteria for diversity,
20 is that correct?

21 A Yes.

22 Q Who made the decision on how the scoring would be
23 done?

24 A Can you be --

25 Q Yes. Who came up with let's give points based on

1 this percentage? So if you had two out of four, 50 percent;
2 50 percent translates into whatever many points. Who made
3 that decision?

4 A If I recall correctly, again, Jorge Pupo, Kara
5 Cronkhite and myself were going through the application, the
6 250 points, and if I recall correctly it was Mr. Pupo that,
7 you know, came up with the breakdown.

8 Q Did you get any guidance from the ballot question in
9 terms of scoring?

10 A Just in the formulation of the regulations, I guess
11 is how it would trickle down.

12 Q Okay. Let's start with the ballot question and then
13 we'll get to the regulations. Was there any direction that
14 you got from the ballot question itself that led to this
15 scoring methodology for diversity?

16 A I don't think so, no.

17 Q All right, thank you. So if it didn't come from the
18 ballot question, are you telling me it came from your group's
19 interpretation of the regulations?

20 A I think it's in the regulations, if I recall
21 correctly, or potentially it's not. I'd have to look at that
22 section of the regulations.

23 Q Okay. I don't believe that the regulation tells you
24 the denominator or the points to give for percentages of
25 diversity. Is that your recollection as well?

1 A Yes.

2 Q All right. So if you didn't get the information
3 from the ballot question and you did not get that information
4 from the regulations, you had to get it from somewhere. Did
5 you get it from any other jurisdiction like Colorado? Because
6 I saw in the production of your training tool where there's
7 thanks given to QuantumMark, thanks given to Colorado. Do you
8 remember those?

9 A I do.

10 Q All right. So where did you get this methodology in
11 scoring diversity?

12 A The methodology was put together by Kara, Mr. Pupo
13 and myself. As far as the breakdown on the evaluation tool --

14 Q Yes, sir.

15 A -- that was put in then -- like I said, if I recall
16 correctly, Mr. Pupo gave us the breakdown of the percentages.

17 Q Do you know where he got that breakdown from?

18 A I do not.

19 Q And do you have any understanding whether or not
20 that breakdown can be traced to another jurisdiction like
21 Colorado or Washington or California?

22 A I wouldn't know, no.

23 Q You have no idea?

24 A No.

25 Q Good enough. Do you know whether or not there was

1 some type of analysis determined or utilized to determine that
2 there would be some direct or demonstrably related way of
3 tying diversity to the operation of a marijuana establishment?

4 A Do you mind repeating that question, sir?

5 Q Certainly. You're familiar with the ballot question
6 that deals with the standard in terms of criteria, to be
7 directly and demonstrably related to the operation of a
8 medical -- I'm sorry, a marijuana establishment?

9 A Yes.

10 Q All right. Was there any analysis utilized in that
11 standard to the approach ultimately adopted for evaluating or
12 scoring diversity?

13 A I didn't use it.

14 Q Thank you. Now, I understood from Mr. Plaskon what
15 the goal of the diversity scoring was or that criteria. Am I
16 correct that it was included to encourage and facilitate
17 diversities (sic) owning and operating marijuana
18 establishments?

19 A I would believe so, yes.

20 Q All right. And Mr. Plaskon testified that based
21 upon the results of the application process there were no
22 diverse -- I'm sorry, no minority or gender female owners,
23 single owners given licenses. Is that correct or incorrect?

24 A Can you repeat that question, sir?

25 Q Do you know of any minorities that were given

1 applications or conditional licenses based on this 2018
2 application process?

3 A What I do know is the stat that is on our website,
4 59 percent of the conditional licenses awarded had diversity.

5 Q And I'm asking about owners now, because we've gone
6 through hours and days of discussing officers who are
7 employees, advisory board members who are not board members
8 under the Nevada statutes, so I want to go -- let's talk about
9 owners. Do you know whether or not a single minority owner
10 was given a conditional license based on the 2018 application?

11 A Can I ask a clarifying question, sir?

12 Q I will actually address your question. Go right
13 ahead.

14 A Okay. Are you referring to was a license or an
15 entity 100 percent minority or diverse?

16 Q Yes, sir.

17 A Okay. If I recall correctly, and I'd have to refer
18 back, but I think there was one woman all owned that was
19 awarded a conditional license.

20 Q Okay. One out of 61 or 62?

21 A 61. There might have been multiple on that. I'm
22 not sure. Different jurisdictions.

23 Q Let me have you take a look at page 15, which is
24 MMLF26. I want to make sure that's correct. Actually it's
25 MMLF15. The second to the last box says, "Evaluation

1 Committee." And it says, "An independent committee comprised
2 of state officers or employees and contracted professionals
3 established to evaluate and score applications submitted in
4 response to this request for application. Do you see that?

5 A I do.

6 Q Tell me who made up that evaluation committee.

7 A It would be the A Contractors that the Department
8 hired.

9 Q Anyone else?

10 A No, that's it.

11 Q So it says state officers. Were there no state
12 officers that are a part of this evaluation committee?

13 A There were no state officers that evaluated any of
14 the applications that the Department received.

15 Q So in terms of this application, that's a false
16 premise. The applicants, if they read this, they would think
17 that this evaluation committee actually was comprised of state
18 officers, but you're telling me there were no state officers
19 that made up this evaluation committee, is that correct?

20 A Well, it says "or employees and contracted
21 professionals."

22 Q Okay. But there were no employees, either; right?

23 A No, there was not any. The employees took place in
24 the training of the contractors.

25 Q But in terms of the evaluation committee itself,

1 there were no state officers and there were no state
2 employees, is that correct?

3 A No -- well, no state officers or employees evaluated
4 the applications. State officers and employees were involved
5 in the process of getting the contractors on board, training
6 them and then getting them ready for the applications to be
7 received.

8 Q That's fine, but that's not what it says here. And
9 in fact it says that the state officers or employees would
10 play a part in the evaluation and scoring. But that's not
11 true. That's not what happened, is it?

12 A Well, they did play a part in -- they did not play a
13 part in scoring and evaluating the applications.

14 Q Thank you, sir. Now, if we go to the next page,
15 page 16, the identifiers or identified criteria response,
16 which is the second box, do you see that?

17 A Yes.

18 Q The last sentence in this category or this box says,
19 "Assignment of identifiers will be application specific and
20 will be communicated in the application in the identifier
21 legend." Do you see that?

22 A Yes.

23 Q Now, what we've seen up to this point are groupings
24 of applications. So, for example, with Nevada Organics, which
25 you heard Mr. Jolley's -- his testimony, did you notice that

1 they had his applications grouped? I think it was 215 through
2 218 or whatever it was, 212 to 218. Do you remember that?

3 A Yes. Uh-huh.

4 Q Was that done, to your knowledge, for every
5 application that had more than one license it was seeking?

6 A It was done for every application that was received.

7 Q Okay. So if Nevada Organics had eight applications,
8 would all eight applications be grouped together for the
9 evaluators to review, let's say for the identified topics?

10 A When they were -- Yes, they would. It would be the
11 RD -- whatever RD numbers they were assigned when they came
12 in. So if it was sequential, they would be 1 through 10 or 1
13 through 8.

14 Q Now, the first sentence says here, "A nonidentified
15 response such as an assignment of letters, numbers, job titles
16 or generic business type to show the identity of a person or
17 business remains unidentifiable." Do you see that?

18 A Yes.

19 Q If you group all the licenses together, wouldn't the
20 evaluator know that that one applicant would be providing the
21 applications for all of the jurisdictions? So be it company
22 Nevada Organics, or company M&M, if they're all together, even
23 if you don't know the name, you know that that one applicant
24 is seeking applications for all of these jurisdictions because
25 you've grouped them all together?

1 A Yeah, that's correct. And then on the application
2 we asked them to identify -- I think it's Attachment I, which
3 jurisdictions they want to apply for.

4 Q Right. The problem is if you're trying to comply
5 with your own application, you're supposed to keep them
6 unidentifiable. Isn't that correct?

7 A The unidentified section, yes.

8 Q Right. Were you here when the statistician gave her
9 testimony regarding how you remove the blind procedure by
10 grouping these together?

11 A I think I was for some of it, I don't know if all of
12 it. I think it was all of it.

13 Q Did you hear that testimony?

14 A I did.

15 Q All right. So would you agree with me from the
16 State's perspective that as soon as the State made that
17 decision to group applications together, it removed the layer
18 of blindness, given what the statistician testified to?

19 A I'm not a statistician, so I don't know if I can
20 speak to the rules of statistics --

21 Q Of course.

22 A -- but I don't think so, no.

23 Q All right. Did -- you would agree with me that the
24 State did not use a random approach by mixing all of the
25 applications up so there were no commonality in grouping

1 applications. That's a true statement, isn't it?

2 A Can you repeat that, please?

3 Q Certainly. Instead of giving an evaluator eight
4 applications from one company together that doesn't identify
5 the name, you give -- you mix them all up, not having any
6 groupings whatsoever so that there's no commonality among
7 applications that could be discerned by just reading eight in
8 sequential order?

9 A Well, there was only one application submitted for
10 the most part --

11 Q Okay.

12 A -- I think. I don't know if anybody submitted two
13 applications or not. One application was submitted on a thumb
14 drive or disk.

15 Q Right.

16 A And then, you know, the appropriate jurisdictions
17 were checked and then they were evaluated that way.

18 Q Right. But the jurisdictions were not separated for
19 the evaluators, isn't that correct?

20 A That's correct.

21 Q All right. Which meant that an evaluator knew if
22 they were looking at one application -- in the case of Nevada
23 Organics they were looking at one applicant for eight
24 jurisdictions. Isn't that correct?

25 A Yes.

1 Q Right. Which means the individual applications were
2 not looked at individually, they were looked at as a group.
3 Isn't that correct?

4 A Each application was looked at individually.

5 Q Not the jurisdictions?

6 A Not the jurisdictions.

7 Q Thank you. Hence, when you look at one applicant
8 and we've seen on the screen almost complete uniformity in the
9 numbers, that's what happens when you give one evaluator eight
10 jurisdictions, one application, isn't it?

11 A Yes. And I feel that that's how it should be if
12 it's an identical application, let's say on the identified
13 side, it shouldn't vary from jurisdiction to jurisdiction.

14 Q But let's talk about the nonidentified side where
15 you are supposed to have jurisdiction specific locations,
16 floor plans, security plans, impact to the community, care,
17 safety and quality. All of those are supposed to be
18 jurisdiction and application specific; right?

19 A Again, location wasn't required, so a lot of times
20 and I think you were testifying this morning that they
21 submitted a floor plan with a location but not a specific
22 location for that jurisdiction. So in that case if they were
23 evaluated altogether, they should come up with a new score.
24 A lot of times what I think I saw was, you know, a different
25 part of the state might have a different floor plan.

1 Q You touched on part of it, but let's generally
2 discuss this kind of. I don't want to get out of order here.
3 In terms of the nonidentified, the building size and adequacy
4 would be a part of that criteria, is that correct?

5 A Yeah, that's part of it. Yeah.

6 Q Right. And the impact on the community is a part of
7 that criteria, isn't it?

8 A Yes.

9 Q All right. So each evaluator in looking at each
10 jurisdiction, not just the -- not the overall application but
11 each jurisdiction within the application, right, they're
12 charged with that responsibility, is that correct?

13 A Yes.

14 Q Right. And to do so you had to look at every
15 jurisdiction and the impact of that location on that
16 jurisdiction; correct?

17 A That's what -- the evaluators are looking for a
18 comprehensive plan. Uh --

19 Q Let me -- okay, go right ahead. I apologize. Go
20 right ahead.

21 A A comprehensive plan, you know, to where they're
22 addressing or highlighting the things that they want to do,
23 they plan to do, and they were evaluated based on that.

24 Q All right. And I appreciate that response, but
25 let's go back to jurisdiction, location, impact to the

1 community because I want to talk about those issues in regard
2 to an evaluation per jurisdiction. Do you understand?

3 A Yes.

4 Q All right. So what may be perfect for North Las
5 Vegas may not be perfect for Henderson; right?

6 A It would get into -- it depends on the location --

7 Q Right.

8 A -- and the location wasn't required.

9 Q But building size, building floor plan, safety, all
10 of those things, including the impact in that community were
11 separate identifiable elements that were made a part of that
12 criteria for scoring, isn't it?

13 A Yes. That's what the application asks for, yes.

14 Q So every evaluator was charged with that
15 responsibility in terms of taking those factors into
16 consideration as a part of your scoring; right? Isn't that
17 correct, sir?

18 A Yeah, besides location, you know, location. So they
19 looked at -- they looked at the building, they looked at the
20 plan, they looked at how much was included, how it matched the
21 regs.

22 Q Now, did you hear yourself just say they look at the
23 building?

24 A The floor plan.

25 Q Ah-ha.

1 A Sorry.

2 Q No, I appreciate that. The fact is they could not
3 look at a building with Nevada Organics because there were no
4 buildings provided, isn't that correct?

5 A I'm not sure. I mean, when I saw their application
6 it was for the first time today.

7 Q Well, you heard the testimony regarding floor plans
8 as opposed to buildings; right?

9 A Yes.

10 Q All right. Now, your Freudian slip in terms of
11 throwing out buildings is well placed because the application
12 itself talks about the adequacy of the building size. They
13 didn't say the adequacy of a floor plan, did it?

14 A I'd have to refer back to it.

15 Q We'll get there. But isn't that your recollection?

16 A I'd have to refer back to it to answer.

17 Q So each evaluator was charged with the
18 responsibility of taking all of those factors into
19 consideration per license request, isn't that correct?

20 A Yes.

21 Q All right. And giving the evaluator all eight
22 jurisdiction license requests in one application, based upon
23 what you heard in this courtroom, would remove at least a
24 layer of blindness because they were all grouped together.
25 Isn't that a fair statement, sir?

1 A I don't -- I don't necessarily agree with that.

2 Q Okay. You said that the evaluators were given the
3 one thumb drive application; right?

4 A They were.

5 Q So they at least knew that those were all together?

6 A Yes.

7 Q So in terms of blindness, in terms of the
8 relationship between each of those jurisdiction requests, they
9 knew that it was all involved with one application, isn't that
10 correct?

11 A It would remove that type of blindness --

12 Q Thank you.

13 A -- but not blindness from who they identify as.

14 Q That's fine. I just want to make sure we at least
15 agree that one level of blindness was removed by that approach
16 taken by the Department of Taxation.

17 A I don't know what the definition of a level of
18 blindness is, though.

19 Q Good enough. The Court does.

20 THE COURT: Okay. I'm getting ready for lunch. Are
21 we at a good place to break?

22 MR. PARKER: Is it already that time?

23 THE COURT: It's 10 till.

24 MR. PARKER: Oh, man, time is moving fast.

25 THE WITNESS: Yes, it is.

1 MR. PARKER: All right.

2 THE COURT: With that, sir, if you could come back
3 at 1:00. You have a nice lunch.

4 THE WITNESS: Thank you, Your Honor.

5 (Court recessed at 11:49 a.m. until 1:04 p.m.)

6 THE COURT: Mr. Parker.

7 MR. PARKER: Yes?

8 THE COURT: Are you ready?

9 MR. PARKER: Just give me a high sign. Thank you,
10 Your Honor.

11 THE COURT: That was the high sign for you to start.

12 MR. PARKER: Yes, indeed.

13 DIRECT EXAMINATION (Continued)

14 BY MR. PARKER:

15 Q Mr. Gilbert, how are you?

16 A Fine, thank you.

17 Q Good. Good afternoon. So when we left off we were
18 talking about the application and I want to continue with the
19 application so that we have a better understanding going
20 forward how certain decisions were made and how the
21 evaluations were done. I'd like for you to take a look at
22 again Exhibit 5, page 22 of the application. This is the
23 Attachment A. Now, when we left off this morning we were
24 talking about the merit criteria for diversity. Do you
25 remember that?

1 A Yes.

2 Q All right. Now, this attachment deals with the
3 identification of owners, officers and board members. Do you
4 see that?

5 A Yes, I do.

6 Q Did the State provide any insight beyond what we see
7 on this page as to how LLCs versus C Corporations versus
8 professional corporations versus any other type of corporation
9 should identify owners, officers or board members?

10 A Not that I can recall, besides the information that
11 was provided in the application.

12 Q Okay. So, for example, there were Listserv
13 disseminations that explained who would be a proper board
14 member versus officer versus owner?

15 A I don't recall a Listserv going out with that
16 information.

17 Q Do you recall any conversations with any particular
18 applicants where information beyond what's here on this
19 document was disclosed in terms of board members?

20 A Personally I don't recall myself having a
21 conversation to that extent.

22 Q All right. Is it fair to say, then, that there was
23 no additional information beyond the application itself
24 related to what would constitute a board and its members?

25 A Not to my recollection during the application

1 period. Yeah.

2 Q And is it also fair to say that there is nothing in
3 the application that mentions the words advisory board?

4 A I'd have to review the application. Not to my
5 knowledge there isn't.

6 Q And is it also fair to say that there is no
7 definition of the word officer beyond what's included here in
8 terms of the word itself, officer, in the Attachment A of the
9 application?

10 THE COURT: Were you reading my notes, Mr. Parker?

11 MR. PARKER: I think we're on the same page, Your
12 Honor.

13 THE WITNESS: Could you --

14 BY MR. PARKER:

15 Q Isn't that true, sir?

16 A Is it in the definition section?

17 Q Yes. Is there a definition section that mentions
18 officer, number one, which I believe there isn't.

19 THE COURT: So then we would go to NRS Chapter 453D
20 and the definitions are in the section that is 030.

21 MR. PARKER: That is correct.

22 And we could pull that up, Shane, if you could.

23 THE COURT: And somewhere between 15 and 16 will be
24 words that start with the letter O.

25 MR. PARKER: That is correct, Your Honor. And you

1 have my notes. But I took them with me for lunch, so then we
2 can't be cheating off each other.

3 THE COURT: Yeah. I was at a bench bar meeting.

4 MR. PARKER: Your Honor, may I approach?

5 THE COURT: You may.

6 MR. PARKER: Thank you.

7 Shane, you have to go up.

8 THE COURT: There you go.

9 MR. PARKER: All right. So between --

10 THE COURT: Whoops.

11 MR. PARKER: You just killed it, Shane. No, no, the
12 other way. The other way, Shane. Go up, up, up, up. Stop.

13 THE COURT: Stop.

14 MR. PARKER: Stop.

15 THE COURT: At the very bottom, it's right there.

16 MR. PARKER: Right there.

17 THE COURT: Whoops.

18 MR. PARKER: All right. Stop right there, Shane.

19 BY MR. PARKER:

20 Q Between 15 and 16 do you see the word officer?

21 A Between 15 and 16?

22 Q Yes, sir. Paragraph 15 and 16. Do you see the word
23 officer between marijuana and process?

24 THE COURT: And the reason he stopped you there,
25 sir, is they appear to be in alphabetical order.

1 MR. PARKER: That's correct.

2 THE WITNESS: I don't see the word officer in 15 or
3 16.

4 MR. PARKER: Thank you.

5 BY MR. PARKER:

6 Q Would you agree with me, sir, that the word officer
7 is not defined in 453D?

8 A I would have to review 453 -- Oh.

9 THE COURT: Hold on. Let me get the book for you.
10 If I remember correctly it's in the pocket part.

11 MR. PARKER: It is.

12 THE COURT: Here you go, sir. You're at the
13 beginning of 453D.

14 THE WITNESS: Thank you.

15 THE COURT: Look to your heart's content and let us
16 know when you're done.

17 THE WITNESS: Based on the definition section and my
18 quick skim through the statute, it doesn't appear to be in the
19 statute.

20 BY MR. PARKER:

21 Q All right. So the word officer is not defined in
22 the statute. Would you also agree with me that the word owner
23 is not defined in the statute?

24 THE COURT: Please feel free to keep the book, sir.

25 THE WITNESS: Okay. Thank you, Your Honor.

1 THE COURT: I'm looking in 78 and 86 now, so.

2 BY MR. PARKER:

3 Q Are you ready, sir?

4 A Yeah. Can you repeat the question?

5 Q Yes. Do you see the definition of owners in 453D?

6 A I don't see the definition, no.

7 Q Now, if you see no definitions of the word owners or
8 officers, did you as the trainer or one of the trainers of the
9 evaluators provide the evaluators with a definition of owners
10 or officers?

11 A I don't recall training them on that. But in the
12 regulations, 453D, it does define an LLC has officers. A sole
13 proprietorship I think is owners and LLC is membership or
14 members.

15 Q Okay, good enough. The answer I believe you said is
16 you did not provide a definition of owners or officers to the
17 evaluators. Is that true?

18 A I don't recall training on that. That might have
19 been a question, but I don't recall. It wasn't, I don't
20 think, part of the training modules.

21 Q Okay. I appreciate your answer, but you're not
22 truly answering my question. My question was, did you provide
23 them a definition? Your response was we did not provide
24 training. So I want to divorce you of training for just a
25 second and have you answer that question first and then I will

1 ask you a follow-up question regarding the training, okay?

2 Number one, did you provide a definition for the terms owners
3 or officers to the evaluators?

4 A I may have verbally given them the definition as we
5 used it at the Department; however, that would have been done
6 in training.

7 Q Did you provide anything in writing?

8 A Not that I recall, no.

9 Q All right. Is there a definition used or utilized
10 by the DOT that we have not become aware of? Because we don't
11 see it in the statute, so where would that -- if there is, I
12 want to know what it is and where can you find it?

13 A Just that NRS or NAC that I mentioned before is how
14 we apply an ownership -- owners, officers and board members to
15 the different corporate structures.

16 Q Well, the NAC, 453D in the code, the Administrative
17 Code, doesn't have the definition of those, either, I don't
18 believe, Mr. Gilbert. So --

19 A I'd have to take a look at it.

20 THE COURT: I don't have the Administrative Code
21 here in a book, sir, to hand you. Sorry.

22 MR. PARKER: Do we have that? Do we have the NAC?

23 MR. CRISTALLI: Yes, we do.

24 MR. PARKER: Yeah. I thought we did, too, because I
25 looked at it earlier when I examined Mr. Plaskon.

1 MR. CRISTALLI: Do you want the paper?

2 MR. PARKER: Yeah. Do you have the paper?

3 Your Honor, if I have the paper could I approach the
4 witness with the actual --

5 THE COURT: You could.

6 And, sir, you don't have to believe it's the correct
7 version of the NAC. You can confirm that for yourself and it
8 looks different, you let us know.

9 THE WITNESS: Okay. Thank you.

10 (Mr. Parker confers with counsel)

11 MR. PARKER: Okay. Is that the -- Stop right there,
12 Shane. Was that the reg or was that the NRS?

13 I.T. TECHNICIAN: This is the reg.

14 MR. PARKER: Okay. Let me -- can you go to the
15 first page of it so I can see all of the listings?

16 Your Honor, may I approach the screen?

17 THE COURT: You may.

18 MR. PARKER: It's too blurry to read. Is it on your
19 screen?

20 THE WITNESS: Yeah, it's hard to read, though.

21 MR. PARKER: Can you read it? Is it any easier on
22 your screen?

23 THE WITNESS: It's probably easier up there.

24 MR. PARKER: Go back up to the top for me, Shane.
25 Let me see if there is a definitions portion. Yes. 0001.

1 Go up, go up, go up. All right, stop. Now go up. We're at
2 seeds. Go up so we can see if we can go to -- stop. All
3 right, there we go.

4 BY MR. PARKER:

5 Q So, 453D.089 and then between 453D.094, do you see
6 any word that starts with the letter O?

7 A I do.

8 Q Do you see a word owners or officers defined in the
9 regulation?

10 A No, I do not.

11 Q All right. So we know you didn't get the definition
12 from the statute. We know it's not in the application and we
13 know you didn't get it from your regulation. So where would
14 you get a definition of owner or officer from that you would
15 use for purposes of giving it to the evaluators?

16 A Well, it's been -- those terms have been used since
17 2014 to define the ownership structures of the establishments.
18 We know that the owners, you know, have a percentage of
19 ownership. Board members may or may not. And officers
20 typically do have a percentage of ownership.

21 Q All right. And thank you for that. When the
22 evaluators were tasked with looking at Attachment A, would
23 they also by virtue of what you just said be provided with
24 information confirming that the owners, officers and/or board
25 members had a percentage of ownership of the applicant?

1 A So the process that the Department followed when
2 they looked at the application for the first time and the
3 administrative assistants, they would compare it to the
4 ownership that the Department had on record at the time.

5 Q And where would that come from, Mr. Gilbert?

6 A A database that we keep on owners, officers and
7 board members, similar to what's posted on the website.

8 Q Okay. Would that also include information from the
9 Secretary of State's Office?

10 A That's part of the packets that we get, so, yeah,
11 their entire file would.

12 Q Good. So your database, is it only comprised of
13 licensees or license holders of the medical marijuana
14 establishments?

15 A The medical marijuana?

16 Q Yes. So for purposes of the 2018 application the
17 evaluators are charged with looking at Attachment A and they
18 have an opportunity or are afforded the ability to check the
19 percentage ownership of everyone listed on Attachment A. So
20 you're saying there's a database that they use to do that,
21 perform that check, is that correct?

22 A Yeah. It was checked by -- that was checked by
23 staff.

24 Q And where does the information come from that's in
25 the database?

1 A From either the original application in 2017 or a
2 change of ownership that might have come through since then.

3 Q So the only thing you're checking is information
4 provided by the applicant? You're not using any independent
5 source to confirm whether or not an owner, officer or board
6 member has an ownership interest?

7 A I'm sorry, can you repeat that question?

8 Q Yes. You said that the information that the
9 evaluators are using comes from a database that the Department
10 of Taxation has and you said that database comes from
11 information from prior applications, you said 2017
12 applications, is that correct?

13 A Or '14, depending on -- depending what transpired
14 between 2014 and 2018.

15 Q Good enough. But you're having evaluators use
16 information received from the applicants themselves, be it
17 2014 or '17, to cross check, is that correct?

18 A Yeah. The information that they provide us in their
19 application, whether it's a transfer of ownership or -- the
20 application is the information that we rely on.

21 Q So you're relying on their information to check
22 their information, is that correct?

23 A Well, what we have on record at the Department is
24 the ownership that we approve the application for.

25 Q Again, you're relying on the applicant's information

1 to check the applicant's updated application, is that correct?

2 A Yeah. Well, the information that was vetted through
3 us through an approval process of either an application or a
4 transfer of ownership, yeah.

5 Q Right. But that information, again, was provided by
6 the applicant?

7 A Yes, it was.

8 Q Right. So what outside source are you using to
9 actually validate that the information you're receiving from
10 the applicant is true and correct?

11 A We don't use an outside source.

12 Q All right. So that means that a person can list an
13 employee as an officer and you have no way of checking in
14 terms of your own database whether or not that applicant is
15 giving you truthful and accurate information because the only
16 information you're using in the database is information they
17 provided to you previously, isn't that correct?

18 A Yes, it is. And they also sign an attestation
19 saying this information is true and we rely on the information
20 that's provided by the applicant.

21 Q All right. And so like today, you have the fortune
22 or misfortune of listening to me cross-examine Mr. Jolley and
23 you heard him indicate to us after reviewing the Secretary of
24 State's filing that the only officers identified for purposes
25 of the Secretary of State filing was himself and Mr. Byrne.

1 Did you hear that?

2 A I did, yes.

3 Q Neither of the two employees he added to his list of
4 officers were identified with the Secretary of State, is that
5 correct?

6 A Based on the documents that were put up on the
7 screen, I believe so.

8 A And if the evaluators could have checked the
9 Secretary of State information, they would have been able to
10 determine that these officers listed in your 2018 application
11 for Nevada Organics were not reflected on their Secretary of
12 State filing. Isn't that correct as well?

13 A I can't speak for the evaluators, you know, but they
14 went off the information that was provided in the application.

15 Q Right. But if they checked the Secretary of State's
16 information, which was available, isn't that correct?

17 A Oh, yeah. Yes.

18 Q Right. They would have determined at the very least
19 from its face that these are officers that are not identified
20 with the Secretary of State. Isn't that correct?

21 A Yeah, there would have been a difference, I guess.
22 I haven't looked at Mr. Jolley's application, though, so I
23 don't know what he listed.

24 Q And when you were cross-examined by Mr. Kemp, you
25 indicated, I believe, and correct me if I'm wrong, that

1 differences should have been further examined. If you saw
2 something that was different, someone should have raised a
3 flag or said something. Isn't that correct?

4 A I don't know if I recall speaking to that
5 specifically.

6 Q You didn't say flag. That's my term. But you said
7 if there was a difference, there would be some questions
8 asked.

9 A If I recall correctly, the difference would have
10 been in the ownership structure that we have on record versus
11 what was submitted in the application.

12 Q Right. And if you saw something that differed, you
13 being an evaluator, based upon your training you saw something
14 that was different than what was held by the Secretary of
15 State, then someone should have asked the question. Isn't
16 that true?

17 A No, not based on the training. What I was referring
18 to is when we checked the application to see if the ownership
19 matched currently what was on record with the Department, not
20 with the Secretary of State.

21 Q Right. I'm beyond that now.

22 A Yeah. If that matched, then the application was
23 okay to move forward. If there was a discrepancy between the
24 ownership, then that would have been brought to the attention
25 of management.

1 Q Understood. But how about if there is a discrepancy
2 between what's at the Secretary of State and what's a part of
3 Attachment A?

4 A Really it was just to see if they were registered
5 with the Secretary of State.

6 Q So no evaluation was done or no vetting was done to
7 determine if the Secretary of State's records reflected what
8 was presented in Attachment A?

9 A I don't think -- there was no comparison.

10 Q Thank you. And would you also agree that there was
11 no comparison of any outside source? Any other reliable
12 source was not used to compare Attachment A in terms of
13 ownership, officers or board members?

14 A I don't think I can answer that question because
15 that would have been -- that would have been the job of the
16 evaluators to investigate an organizational chart or the
17 structure of a company the best that they possibly could.

18 Q Did you provide training on how to go to an outside
19 source to verify the information on Attachment A?

20 A They were trained to, you know, Google and do as
21 much investigative work as they possibly can.

22 Q Okay. Well, it didn't take much to pull up the
23 Secretary of State's information; right? Isn't that correct?

24 A No, it's very easy.

25 Q Right. So at the very least we know that that

1 wasn't done in terms of Nevada Organics. Is that correct?

2 A Not to compare if the Secretary of State's
3 information matched what was in the application.

4 Q To your knowledge, was any outside sources used to
5 evaluate any of these Attachment As?

6 A I would have to refer to the evaluators on that
7 because I wasn't -- I didn't consult them after they started
8 the process.

9 Q And based upon your review of Attachment A, did you
10 provide any training or information regarding advisory boards?

11 A Not that I can recall, no.

12 Q So can you tell me why and tell this Court why would
13 members of an advisory board be utilized for purposes of
14 diversity if there was no training in terms of that?

15 A I would have to look at the application and the
16 details behind it.

17 Q Okay. Because you would agree that there was no
18 training done or definitions provided for advisory board
19 members, is that correct?

20 A I can only speak to what I trained on and I did not
21 train on advisory boards.

22 Q Thank you. So in terms of your training, if an
23 evaluator or three evaluators used advisory board members as a
24 part of their diversity scoring, that would be beyond training
25 that you provided, is that correct?

1 A That I personally provided.

2 Q Yes, sir.

3 A But we had other trainers working on the identified
4 and the nonidentified sections.

5 Q Just talking about you. That would be beyond your
6 training, is that correct?

7 A I don't know if it would be beyond my training, but
8 I don't think it was brought up.

9 Q Thank you. It would be inconsistent with your
10 training because you didn't provide that training. Is that
11 true?

12 A Not that I can recall.

13 Q So that's a true statement I made, isn't it?

14 A What was the statement?

15 Q The statement was you did not provide any training
16 on advisory board members and how they were to be considered,
17 if at all. Isn't that correct?

18 A I personally did not.

19 Q Thank you. And if an evaluator or three evaluators
20 utilized advisory board members in their diversity scoring,
21 that was not something you trained or allowed them to do based
22 upon your training. Isn't that correct?

23 A To my -- yes, to my recollection, yes.

24 Q Thank you. All right. And the same would be true
25 in terms of classifying employees as officers. You did not

1 provide any training to evaluators which would allow for staff
2 members or employees to be considered officers, is that
3 correct?

4 A I don't recall that ever coming up as a question
5 during the training, so if it didn't come up -- I mean, we
6 trained on, you know, Attachment A, which was listing of
7 owners, officers and board members.

8 Q Yes, sir.

9 A And I don't recall anything -- any questions being
10 raised about advisory board members.

11 Q And is it also true that because you did not provide
12 training to these evaluators in determining the -- or allowing
13 for employees to be classified as officers, isn't it also true
14 that you did not train them on allowing employees designated
15 as officers to be considered as a part of diversity?

16 A Can you repeat that?

17 Q Yes. And let me say up front it's somewhat
18 truncated, this question, because it takes a couple things
19 into consideration. Number one, did you provide training and
20 how to determine if an employee could be rightfully classified
21 as an officer? And I believe you said you didn't provide that
22 training. Is that true?

23 A We relied on the information that was provided by
24 the applicant.

25 Q That's fine. But you did not provide any training

1 to the evaluators in determining whether an employee could be
2 considered an officer, isn't that true, sir?

3 A Personally I did not.

4 Q Thank you. So now we take that as a platform for
5 the next question. The next question is if you didn't provide
6 the training on how -- when an employee could be considered an
7 officer, would you also agree that that employee being
8 classified as an officer would not have been -- the evaluator
9 would not have been trained on how to determine the diversity
10 qualifications for those employees that are now being
11 classified as officers?

12 A Well, if they're listed as an officer on Attachment
13 A, the diversity pieces were taken from Attachment C, I think
14 it was. I don't know if they were listed on Attachment C,
15 also, but that was the information the evaluators relied on,
16 what was provided on Attachment C.

17 Q Right. And listen, I understand the attachments.
18 What I'm trying to do is get through the training first. So
19 what I've done, and I may be slow but methodical about it, is
20 I take each one of the items one by one, which I started with
21 how you define them and then we've gone from definitions to
22 now use of those definitions and your training. Follow me?

23 A I am.

24 Q And I'm taking them in inverse order. I started
25 with board members instead of owners. We've gone through

1 board members and now we're looking at officers. And I want
2 to know whether or not, and I believe the answer is you did
3 not provide any training to the evaluators on how to
4 distinguish between an employee and an officer. Isn't that
5 correct?

6 A There was no specific training on how to distinguish
7 between. And again, they look at their org chart, they look
8 at Attachment C, they look at Attachment A and define the
9 roles that way.

10 Q Okay. And if there was no training in terms of
11 determining when an employee could be considered an officer,
12 is it also true that there was no training in determining when
13 this employee/officer would be utilized for purposes of
14 diversity scoring?

15 A Can you repeat that, sir? I'm sorry.

16 Q Yes. Let me ask it this way. Maybe this is an easy
17 way for you to understand it. How would an evaluator know
18 whether to include an employee/officer in the diversity
19 calculation?

20 A If they were listed on Attachment A and then also
21 listed on Attachment C -- I'm pretty sure it's C -- and then
22 compare it to, you know, the narratives that they wrote, the
23 organizational chart that they provided in their application,
24 they would use the information provided on Attachment C.

25 Q Okay. Now, again, I guess this means that the

1 evaluators are simply utilizing the information presented
2 without doing any -- I hate to use this word again --
3 evaluation of the employee's role versus ownership interest in
4 the company, is that correct?

5 A Well, that goes back to us comparing the ownership
6 that was provided in the application to the ownership that the
7 Department had on record, and if that matched then the
8 application was okay to go forward.

9 Q Let me bring this home for you. The reason why I'm
10 asking is because Mr. Jolley said that his purchasing person,
11 director person he listed as an officer, but there's no
12 corresponding information regarding ownership of the company
13 of the purchasing director. So how would an evaluator know
14 whether or not to include that person, the Director of
15 Purchasing, in the diversity calculation?

16 A I think it goes back to my previous comment that the
17 ownership was compared and if the ownership matched what the
18 Department had on record -- because we don't keep records of
19 employees, we keep records of what they provide as their
20 owners, officers and board members in either an initial
21 application, a transfer of ownership application or --

22 Q Good enough. Good enough. In terms of owners --
23 let's move on. In terms of owners we've learned now and
24 you've heard testimony that owners of publicly held companies,
25 be it in the United States or in Canada, were not all

1 provided. Is that correct?

2 A That's correct.

3 Q Would you agree with me that be it Attachment A, B
4 or C, there is no limitation in terms of ownership interest
5 stated in the application? So be it a 1 percent owner, 10
6 percent owner, a 50 percent owner, it just says owners, is
7 that correct?

8 A I believe so, yes.

9 Q And wouldn't you agree that that means all owners,
10 not 10 percent owners, not 20 percent owners but all owners
11 since there's no definition limiting that category?

12 A Well, in the public or in the corporations it's the
13 officers that we -- I know we didn't ask for it, but the
14 information that we've gathered throughout the years is the
15 officers of the corporation, not the shareholders.

16 Q Okay. But that's not what the application says,
17 isn't that correct?

18 A It just asks for owners, officers and board members.

19 Q Exactly. Not one or the other, it says owners,
20 officers and board members, is that correct?

21 A Yes.

22 Q Which meant that you as the Department or part of
23 the DOT, expected to get information on all three categories,
24 is that correct, owners, officers and board members?

25 A Yes.

1 Q Right. And so in terms of owners, you would agree
2 with me, sir, that this name or category, owners, did not
3 limit it in any way?

4 A Can you repeat that question, please?

5 Q Yes. There's no limitations in terms of ownership
6 interest. It says owners, which would include all, isn't that
7 true?

8 A Well, the Department had to -- it had to -- we
9 couldn't vet hundreds of shareholders on a daily basis,
10 because I think that's what the task would involve is anytime
11 somebody bought or sold a share we would have to re-vet this
12 person.

13 Q Well, then couldn't you have said in the attachment
14 we don't have time to vet all the owners of a publicly held
15 corporation or a big corporation, just tell us the big ones?
16 That's not what it said here, is it?

17 A No, it doesn't say that.

18 MR. PARKER: Can you put up Exhibit 5 again, page 22
19 of 34, which is MMLF33.

20 BY MR. PARKER:

21 Q Again, there is no limitation when it comes to
22 owners: is that correct, sir?

23 A That's correct.

24 Q All right. Now, be it Attachment A, Attachment B
25 or in particular Attachment C, if you're vetting all owners

1 then you should also be able to vet all owners in terms of
2 diversity; right?

3 A We didn't ask for all the shareholders. I don't --
4 I didn't look at hardly any of the applications, but I didn't
5 hear of any applicant submitting a list of shareholders.

6 Q Okay. Let me stop you there because you're kind of
7 jumping ahead. We've agreed, I believe, that owners is not
8 limited in any way on Attachment A, is that correct? It says
9 owners. It doesn't say, you know, 10 percent owners, 20
10 percent owners, it just says owners, is that correct?

11 A That's correct.

12 Q The word shareholder is not mentioned there, is that
13 correct?

14 A Not in the application, but I think it's mentioned
15 in the statute or the regulations of the 5 percent.

16 Q Okay. Well, let's say the regulation says 5 percent
17 but the statute I believe says all owners. Isn't that
18 correct?

19 A I'd have to go back and refer to that.

20 Q All right. I think you have --

21 THE COURT: You've got the book.

22 THE WITNESS: Yeah.

23 BY MR. PARKER:

24 Q You've got the book. Take a look at NRS 453D and
25 you tell me what the statute says in terms of owners. And

1 then you can compare that to NAC. We'll pull that up if you'd
2 like again. And I believe NAC says 5 percent. In fact, I
3 have that on my iPad if you want to look at that and make it
4 quicker.

5 Your Honor, can I approach?

6 THE COURT: You may.

7 BY MR. PARKER:

8 Q Okay. Here's the NAC.

9 A Yes.

10 MR. PARKER: I'm showing him NAC 453D, I believe
11 255, Your Honor, that says the 5 percent. And then I think he
12 has the book that shows the statute.

13 THE COURT: I'm there.

14 MR. PARKER: Thank you, Your Honor.

15 BY MR. PARKER:

16 Q Have you had a chance to look at it?

17 A Yeah, I read this. I can't find it in the statute
18 yet, though.

19 (Pause in the proceedings)

20 THE WITNESS: I can't find it in the statute.

21 MR. PARKER: All right. Your Honor, may I approach?

22 THE COURT: You may.

23 THE WITNESS: What you're referring to.

24 BY MR. PARKER:

25 Q So it's either 453D.210 and it talks about owners,

1 officers, board members.

2 A Okay.

3 THE COURT: Are you in Section 5(f)?

4 MR. PARKER: I believe that's 5(f).

5 THE WITNESS: Yes.

6 THE COURT: I'm just checking.

7 MR. PARKER: Yep. That is correct, Your Honor.

8 BY MR. PARKER:

9 Q Have you read it now?

10 A Yes.

11 Q So would you agree with me that if you utilized the
12 statute it takes you to this application Attachment A where it
13 says owners, officers and board members, is that correct? Is
14 that correct?

15 A Yes.

16 Q If you use the regulation, it says 5 percent, is
17 that correct?

18 A Yes.

19 Q So then let's assume, since this doesn't say 5
20 percent, that you were trying to comply with the statute as
21 opposed to the regulation. Is that a fair assumption?

22 A Well, it says, "The persons who are proposed to be
23 owners, officers or board members of the proposed marijuana
24 establishment."

25 Q Which is weird to me because you really don't comply

1 with the statute or the regulations because proposed owners,
2 officers and directors -- I'm sorry, board members is not
3 mentioned in Attachment A, but nor is the 5 percent from the
4 Administrative Code. So do you know how Attachment A -- or
5 who decided the wording for Attachment A, since it doesn't
6 comply with the statute or the regulations?

7 A I don't think that was changed from the 2014
8 application process.

9 Q Despite the fact that diversity was added, is that
10 correct?

11 A Diversity was.

12 Q Which requires a certain level of vetting for
13 owners, officers and board members, is that correct?

14 A For diversity?

15 Q Yes.

16 A Can you repeat that question?

17 Q Yes. When diversity was added, it required that the
18 evaluators and the DOT vet or consider the diversity of the
19 owners, the officers and the board members, is that correct?

20 A Yes.

21 Q And to do so you actually have to list them, is that
22 correct?

23 A Yes, on Attachment C.

24 Q Right. And in Attachment A you're still required to
25 list owners, officers and board members, is that correct?

1 A Yes.

2 Q Not ones that are just 5 percent owners, but all of
3 them because it doesn't say in keeping with the regulation
4 only those with 5 percent or more, is that correct?

5 A It doesn't state 5 percent.

6 Q And it doesn't include prospective owners, which is
7 described by the statute, is that correct?

8 A Well, the prospective owners would be the ones
9 applying for the license.

10 Q It doesn't use the word prospective owners in
11 Attachment A?

12 A It does not.

13 Q All right. So would you agree with me that
14 Attachment A does not comply with the statute or the
15 regulation?

16 A I don't know if I can legally -- give that legal
17 opinion if it complies or not.

18 Q I'm going to help you out. I'm going to help you
19 out with that. I'm going to take back the word comply. Would
20 you agree that it does not match the wording of the of the
21 regulation or the statute?

22 A I would agree that it doesn't match the exact
23 language.

24 Q All right, good enough. Now, did you provide any
25 training to the evaluators on how to determine whether or not

1 someone is an owner, be it 5 percent, 2 percent, 1 percent,
2 anything like that?

3 A Again, they relied on the information that was
4 provided in the application and compared it to what the
5 Department had on record as the ownership structure.

6 Q That's fine. But did you provide any training to
7 the evaluators on how to determine if someone has actually
8 listed all of their owners and who would be an owner? Have
9 you provided that training or did you provide that training?

10 THE COURT: To the evaluators?

11 MR. PARKER: To the evaluators.

12 THE COURT: Okay. Because he said something about
13 an administrative assistant, so that's --

14 MR. PARKER: Right.

15 THE COURT: Okay.

16 MR. PARKER: And I was thinking he was considering
17 those for a different reason.

18 THE COURT: Just give him a question.

19 BY MR. PARKER:

20 Q So that's -- I want you to answer that question, my
21 question, which is did you train them on how to determine what
22 an owner is?

23 THE COURT: The evaluators?

24 MR. PARKER: The evaluators. Yes.

25 THE COURT: Thank you.

1 THE WITNESS: I specifically did not.

2 MR. PARKER: Thank you.

3 THE WITNESS: I can't speak for the other trainers.

4 BY MR. PARKER:

5 Q All right. So at this point in our discussions, you
6 didn't train on board members versus advisory board members,
7 is that true?

8 A I didn't specifically.

9 Q You did not train on how to determine whether or not
10 employees should qualify as an officer. You did not, is that
11 correct?

12 A Whether a shareholder or a major officer?

13 Q Whether or not an employee would classify as an
14 officer, you didn't provide that type of training, isn't that
15 correct?

16 A I did not.

17 Q And then finally, you did not provide any training
18 on how to determine whether or not someone was an owner or
19 not, isn't that right?

20 A They did -- no, I did not.

21 Q Thank you so much. All right, now we can move on to
22 something else.

23 THE COURT: Before you do that.

24 MR. PARKER: Yes.

25 THE COURT: Sir, you mentioned earlier that the

1 administrative assistant when the application came in would
2 check it and compare it to the Department's records.

3 THE WITNESS: Yes, that's correct.

4 THE COURT: That was before it was given to the
5 evaluators?

6 THE WITNESS: Yes.

7 THE COURT: Is that who reviewed the applications to
8 determine if they were complete, the administrative assistant?

9 THE WITNESS: Yes, those same individuals.

10 THE COURT: So who made the decision that it was
11 going to be the administrative assistants who were going to
12 check to make sure they were complete?

13 THE WITNESS: That was part of the checking process
14 that we had, so part of the training, the process that we went
15 through was for the administrative assistants to review that
16 application and within our evaluation sheets there is a check
17 off of what they were looking for.

18 THE COURT: And are these the administrative
19 assistants who are paid for by the State of Nevada and are in
20 PERS, or is this the administrative assistants you hired
21 through Manpower?

22 THE WITNESS: Hired through Manpower.

23 THE COURT: Okay.

24 BY MR. PARKER:

25 Q Did you train any of them?

1 THE COURT: Wait. I'm not done.

2 MR. PARKER: Oh, I'm sorry. I liked your questions,
3 I wanted to jump in.

4 THE COURT: No.

5 MR. PARKER: Okay.

6 THE COURT: So you were relying upon the Manpower
7 folks to make a determination as to whether the applications
8 were complete?

9 THE WITNESS: Complete as far as content?

10 THE COURT: Well, that's what the statute requires,
11 sir. You're supposed to determine if they're complete before
12 you evaluate them.

13 THE WITNESS: Yes.

14 THE COURT: So who -- that's Manpower, too?

15 THE WITNESS: Yes.

16 THE COURT: Did the actual employees that are paid
17 for by the State of Nevada and contribute in PERS, any single
18 one of them actually review the applications?

19 THE WITNESS: They reviewed the ownership piece of
20 it, the ownership structure.

21 THE COURT: We had State employees reviewing the
22 ownership structure?

23 THE WITNESS: Yes. Yes.

24 THE COURT: And when was that occurring in the
25 process?

1 THE WITNESS: At the very beginning.

2 THE COURT: So when the applications came in, who
3 did that review?

4 THE WITNESS: There was a Program Officer III in
5 that position.

6 THE COURT: I need a name.

7 THE WITNESS: Jeannine Sherrick-Warner.

8 THE COURT: And is she in Carson or here?

9 THE WITNESS: She's in Carson.

10 THE COURT: Okay. And so the applications would
11 come in. That individual, Jeanine, would check the
12 application and compare it to the records that were already in
13 the Department's database?

14 THE WITNESS: Yes, that's correct.

15 THE COURT: And if there was a deviation from what
16 was in the Department's database and what was in the
17 application, what happened?

18 THE WITNESS: We would look to see if there was a
19 transfer of ownership in the house. If there was, then we
20 would compare it to what they were requesting the transfer of
21 the ownership structure to be.

22 THE COURT: So that takes me to Exhibit 5025, which
23 was introduced yesterday. It had to do with the transfer of
24 ownership relating to GGB. Can you walk me through the
25 investigation that was done when a transfer of ownership form

1 is received, understanding there were significant delays
2 because of your staffing issues, can you just walk me through
3 that process separately?

4 THE WITNESS: Sure. Is there an exhibit?

5 THE COURT: There is an exhibit, 5025. I don't have
6 it. I wrote down the number yesterday with a note to ask you
7 the question about it, so now I'm here.

8 THE WITNESS: Okay.

9 THE COURT: Mr. Koch introduced it.

10 MR. PARKER: 5025.

11 MR. KOCH: Do you want me to go get it for him?

12 THE COURT: Anybody have it? Here it is.

13 MR. KOCH: No, that's -- I believe it's 5026,
14 actually. 5025 is the org. chart --

15 THE COURT: Okay.

16 MR. KOCH: -- and 26 is the transfer of interest.

17 THE COURT: All right. Let's go to 5026. So this
18 is 5026. Before this letter got sent, okay, you signed it;
19 right?

20 THE WITNESS: Uh-huh. I think so.

21 THE COURT: What did you do? What's the process
22 before that gets signed?

23 THE WITNESS: So staff have a -- they have a
24 checklist and a process that they follow. The requirements
25 for transfer of ownership are in the regulation. They make

1 sure all the information is complete, that it's there. They
2 vet all the owners, officers and board members that are listed
3 in the application for transfer.

4 THE COURT: And when you say vet, what do you mean?

5 THE WITNESS: For background checks.

6 THE COURT: Okay.

7 THE WITNESS: State and FBI. Make sure they have an
8 agent card if they fall in the category of needing an agent
9 card. There's some estoppel certificates, depending on the
10 percentage of transfer that's done. If it's 100 percent, an
11 estoppel certificate needs to be included.

12 THE COURT: Okay.

13 THE WITNESS: I'm trying to think through the
14 checklist. Agent cards, application, notarized signatures for
15 all the exiting owners as well as the entering owners. That's
16 pretty much it besides the paperwork.

17 THE COURT: So you said that you do vetting of the
18 new people.

19 THE WITNESS: Uh-huh.

20 THE COURT: In this case there's a publicly traded
21 entity. How did you vet the publicly traded entity?

22 THE WITNESS: We vetted the owners or the officers
23 that they provided in the application.

24 THE COURT: And how did you determine if the
25 information in the materials that were submitted requesting

1 approval of the transfer of ownership were accurate?

2 THE WITNESS: We rely on the information that's
3 provided by the applicant.

4 THE COURT: And did you receive any information
5 about ownership structure above 5 percent in accordance with
6 the Nevada Administrative Code?

7 THE WITNESS: I'm sorry, can you repeat that, Your
8 Honor?

9 THE COURT: So you said you looked at officers and
10 directors.

11 THE WITNESS: Uh-huh.

12 THE COURT: Did you look at the ownership over 5
13 percent?

14 THE WITNESS: We should have, yes.

15 THE COURT: Okay. Where?

16 MR. PARKER: I'm sorry, Your Honor. Did he say he
17 should have to your --

18 THE COURT: Yes. That's why I said where.

19 MR. PARKER: Oh, good.

20 THE WITNESS: Wait. Will you stop it?

21 MR. PARKER: I just liked the answer. I just want
22 to make sure I heard it right.

23 THE COURT: I have a question that I thought of
24 yesterday for him and I'm trying to --

25 MR. PARKER: No, that was a good answer. I just --

1 I wanted to be sure he said that.

2 THE COURT: Now, remember, this is just one question
3 I'm asking. It may sound like a lot of questions but it's
4 just one.

5 THE WITNESS: That would have been done through the
6 process of vetting. So when we vet individuals we look for
7 their ownership percentage and then we compare it to whether
8 they have a background check, need a background check or need
9 an agent card. So that's where we determine the percentage of
10 ownership.

11 THE COURT: Okay. Assume with me for a minute that
12 there's somebody who has a 30 percent stake in this publicly
13 traded company, because we heard some testimony about that
14 yesterday. How would you determine if you were accurately
15 provided with information about the ownership structure of
16 that publicly traded entity?

17 THE WITNESS: As far as the shareholders go?

18 THE COURT: Uh-huh.

19 THE WITNESS: If they didn't provide the
20 shareholders, we wouldn't know.

21 THE COURT: And you wouldn't do anything to check?

22 THE WITNESS: No. We don't check the shareholders.
23 We don't ask for the information on them.

24 THE COURT: So if you have a 30 percent owner who's
25 a member of the Mafia in Canada, there's no way you would

1 know?

2 THE WITNESS: Not if they didn't provide it to us.

3 THE COURT: Not if they don't tell you?

4 THE WITNESS: Right.

5 THE COURT: Okay, thanks.

6 Now, Mr. Parker, you may resume.

7 MR. PARKER: Thank you so much.

8 BY MR. PARKER:

9 Q In terms of the Program Manager III that you were
10 just discussing with the Court, who trained that Program
11 Manager III?

12 A A group of us, depending on -- she was doing
13 transfers of ownership. That was her job. So there's many
14 facets of that job.

15 Q Is it fair to say that she did not check the
16 Secretary of State's records in terms of Nevada Organic
17 Remedies relative to officers?

18 A I believe she did, yes. That's part of the
19 application.

20 Q If she did and she found that there were officers
21 listed by Nevada Organics that was not identified in the
22 Secretary of State's records, wouldn't that raise some type of
23 issue or concern?

24 A No, it wouldn't, because I think I said earlier that
25 we don't compare what's listed in the Secretary of State's

1 website versus what's in the application.

2 Q So even if you saw a difference, you don't compare
3 it?

4 A We look to see if they're registered with the
5 Secretary of State and I think that's what the requirement is
6 in the statute or the regs.

7 Q Okay, that brings it home. So you look just to see
8 if the company is registered with the Secretary of State, you
9 don't look at the list of officers or members or managers of
10 it?

11 A No.

12 Q So you didn't do any comparison?

13 A We do -- well, we look to see if that one
14 individual, one individual is there.

15 Q That's it?

16 A Yes.

17 Q All right. Okay.

18 THE COURT: Mr. Parker, I need to break because it's
19 two o'clock and I've got to go do part of my Mental Health
20 Court.

21 MR. PARKER: Oh, great.

22 THE COURT: This is not a requested break, so if you
23 need to speak to your counsel, sir, you're welcome to.

24 MR. PARKER: Thank you, Your Honor.

25 THE COURT: Anything else, guys? Hopefully it will

1 take me less than 15 minutes. I only have one determination.

2 (Court recessed from 1:59 p.m. until 2:10 p.m.)

3 THE COURT: All right. Mr. Parker, you may
4 continue.

5 MR. PARKER: Thank you.

6 THE COURT: Mr. Gilbert, I apologize again for
7 making you wait so long yesterday and this morning.

8 THE WITNESS: That's okay. Thank you, Your Honor.

9 MR. PARKER: No worries. So when I left off --

10 THE COURT: I didn't apologize to you. I was
11 apologizing to Mr. Gilbert.

12 MR. PARKER: I'm accepting it for the whole room,
13 Your Honor.

14 THE COURT: Oh, okay.

15 MR. PARKER: That's it. Mr. Gilbert included.

16 BY MR. PARKER:

17 Q Mr. Gilbert, when we left off I wanted to follow up
18 with some of the Court's questions, mainly who trained the
19 Program Manager III, because we went into who trained or did
20 not train the evaluators in certain areas, the owners,
21 officers and board members. Who trained Program Manager III
22 on vetting owners, officers and board members?

23 A That would have been myself, as well as other
24 individuals within the Department that had differing tasks
25 such as agent card approvals, background checks.

1 Q Good enough. So I believe your answers will be
2 similar, but I want to make sure. In terms of Program Manager
3 III's training relative to board members, did you give that
4 person a definition of the words, board members?

5 A Can I -- the position is a Program Officer III.

6 Q Not program manager?

7 A It's not a program manager.

8 Q Okay, I'm sorry. So Program Officer III?

9 A Yes.

10 Q Okay. Sorry about that. Thank you. So did you
11 train the Program Officer III on the definition of a board
12 member?

13 A Probably through discussions and reviewing of
14 applications she was trained.

15 Q Okay. Anything in written form?

16 A No.

17 Q Did you provide a definition?

18 A Possibly. Not that I can recall.

19 Q Would your answer be the same in terms of advisory
20 boards? Did you give her a definition of an advisory board?

21 A Yeah, we reviewed the same.

22 Q Okay. So you did not give her a definition of
23 advisory board?

24 A I don't think I've ever handed out definitions of
25 those categories.

1 Q All right. And that would mean you didn't give her
2 any training on how to determine whether or not to include an
3 advisory board member in a diversity calculation, is that
4 correct?

5 A Well, again, a lot of questions do arise during
6 transfers of ownerships and she may have been trained at that
7 point.

8 Q Okay. But I'm not asking about that, I'm asking
9 about your direct training of the Program Officer III in terms
10 of whether or not to include an advisory board member in a
11 diversity calculation. Did you provide any training in that
12 regard?

13 A No, because diversity -- she was just processing
14 transfers of ownerships where diversity isn't taken into
15 account.

16 Q Good enough. So that ends the board member
17 questioning. How about in terms of officers, would that also
18 mean that you didn't provide any training to the Program
19 Officer III relative to when an employee would be considered
20 an officer?

21 A It would be the same. However, it's the information
22 that they provided in their application.

23 Q Which also means you didn't provide any training in
24 determining whether or not an officer, be it an employee or a
25 non-employee officer, would be included in the diversity

1 calculation, is that correct?

2 A I don't remember those issues ever coming up, so
3 wouldn't have been trained.

4 Q Okay. So no training in that regard as well. How
5 about in terms of owners? The judge asked you some real
6 pointed questions regarding --

7 THE COURT: Hypothetical questions.

8 BY MR. PARKER:

9 Q Hypothetically-pointed questions whether or not an
10 owner would include a shareholder. Did you understand that
11 question before?

12 A I did. Yes.

13 Q All right. Did you provide the Program Officer III
14 with training on determining whether or not a shareholder
15 should be considered an owner for which you would require
16 disclosure in Attachment A?

17 A No specific training module, per se, but we didn't
18 require shareholders to be listed, so that was probably the
19 extent of the training.

20 Q Good enough. So there was never any training to the
21 administrators, the Program Officer III, which is an employee
22 of the State, or the evaluators on who should be included in
23 the owner's category under Attachment A, is that correct?

24 A I don't -- the administrators?

25 Q Yeah. There are two administrators for the

1 evaluators. I just wanted to make sure I included them in
2 this question.

3 A Okay. The administrative assistants?

4 Q Yes.

5 A Okay, thank you.

6 Q Isn't that a true statement, sir?

7 A Can you repeat it?

8 Q Yes. You didn't provide any training to the Program
9 Officer III, the six evaluators or the two administrators,
10 which are also a part of the Manpower group, on determining
11 whether or not shareholders should be included in the owners
12 disclosure?

13 A I think we did because shareholders were not
14 required in the application, so that was -- I don't know if I
15 was specifically asked that question --

16 Q Okay.

17 A -- but it never came up during the evaluation
18 process of where's the shareholders --

19 Q So is it --

20 A -- in this publicly traded company.

21 Q I'm sorry, I didn't mean to interrupt you. So is it
22 fair to say that no investigation was done by anyone, be it
23 State employee or non State employee into the shareholders of
24 any applicant?

25 A The Department did not vet shareholders of the

1 publicly traded companies. We didn't require that to be
2 submitted.

3 Q And you would agree with me that the application
4 does not exclude shareholders?

5 A It asks for officers.

6 Q Owners.

7 A And board members.

8 Q Right. It does not exclude shareholders, is that
9 correct?

10 A It doesn't exclude them. Right.

11 Q All right. And would you agree with me that the
12 Administrative Code by indicating 5 percent or greater would
13 include shareholders?

14 A I don't know if I'm the right person to ask that
15 legal question. It's the owners.

16 Q Right. So if you own 6 percent of a company, you
17 would be required pursuant to the regulations to be disclosed
18 by the applicant, isn't that correct?

19 A If they're an officer of the corporation, is what we
20 required in the application.

21 Q Okay. But it says owner comma officer comma board
22 member. It doesn't say owner or officer, or owner or board
23 member, it includes all three; right?

24 A We would expect that applicant to provide the
25 information of their owners, officers and board members.

1 Q Right. And so that's pursuant to the regulations,
2 but if you consider the statutory framework, 453D.210 (f)5,
3 that means even a 1 percent shareholder should be listed and
4 disclosed under the application, Attachment A, isn't that
5 correct?

6 A I don't know if that's my decision to make or my
7 interpretation of the statute, but you know, the Department at
8 some point in time decided not to require shareholders just
9 because of the extent of, you know, it changes daily, it
10 changes hourly.

11 Q Did you say that to anyone in this form? Does it
12 say in Attachment A anywhere that we're not going to require
13 you to comply with the statute or the regulations because we
14 don't have time to look into it? Does it say anything like
15 that? And I'm paraphrasing what you said, but I just want to
16 know, is there anywhere in this application where I could find
17 that type of language?

18 A Not that I'm aware of, no.

19 Q All right. Now, I want you to compare that
20 obligation in terms of disclosure to another obligation in the
21 application. The application requires you and it takes into
22 consideration the amount of taxes paid, is that correct?

23 A Yes.

24 Q Now, when it comes to taxes paid, would that be
25 taxes paid by the applicant into Nevada or all taxes paid?