

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 36

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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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 A By the applicant.

2 Q Right. And is it all taxes paid only in Nevada or
3 taxes paid throughout the world?

4 A It says to the State of Nevada.

5 Q I'm sorry?

6 A It says to the State of Nevada.

7 Q All right. And would that include every owner,
8 potentially?

9 A The more information they provided us, the better
10 off they were in their application.

11 Q Well, doesn't that mean that owners perhaps not
12 identified on Attachment A would get the benefit of having
13 paid more money into Nevada but not be disclosed for purposes
14 of diversity?

15 A Sorry, can you repeat that?

16 Q Okay. Let me see if I can break it down for you. I
17 was struggling with this a little bit myself over the weekend.
18 Let's say that ABC Company, a very large company, pays a ton
19 of taxes into Nevada, okay, but in terms of Attachment A they
20 don't want to disclose all of the owners of the big company,
21 and because of what you just said the Department decided they
22 didn't need to list all of their shareholders. Understood?
23 But all of those shareholders and all of those owners are
24 getting credit for the amount of taxes they paid into Nevada
25 for purposes of scoring. Understood so far?

1 A I think so.

2 Q Wouldn't it be the right thing to do that if they're
3 getting credit for taxes paid that they should also -- they
4 should also be identified in accordance with Attachment A?

5 A I would think that they would be.

6 Q That's right. And if they weren't, then the State
7 is not -- is giving them credit for taxes but not requiring
8 them to be disclosed in one of the other attachments like
9 Attachment A, is that correct?

10 A Well, I'm not -- I don't know if this -- it might
11 be a hypothetical. I don't know. I'd have to look at
12 applications and see if that was actually a fact.

13 Q And the same could be true in terms of diversity.
14 If you're taking all of the owners who were making whatever
15 amount of money and contributing to our tax base, but not
16 identify them for purposes of diversity, then -- in terms of
17 the diversity calculation, then they're getting a benefit
18 without and finding a way to gain the diversity portion of the
19 application because if they were to list everybody then they
20 would dilute the denominator for the diversity calculation?
21 Do you understand the question?

22 A No. Can you repeat it?

23 Q So if you have 100 owners contributing 10 million
24 dollars of taxes a year to Nevada but you only identified 5
25 because you know if you identify the other 95 your diversity

1 calculation you would lose points. Do you understand that?

2 A Uh-huh.

3 Q Is that a yes?

4 A I do. Yes.

5 Q Okay, good. So if you're going to get credit for or
6 try to get credit for a higher diversity level without naming
7 all of your owners, aren't you gaming the application process
8 by not identifying them for purposes of ownership?

9 MS. SHELL: Objection. Argumentative.

10 THE COURT: And by gaming you mean manipulating?

11 MR. PARKER: Exactly, Your Honor.

12 THE COURT: All right. I'm just checking.

13 MR. PARKER: No, that's exactly right.

14 THE COURT: There was an objection.

15 MS. SHELL: Yeah. Argumentative, Your Honor.

16 THE COURT: Overruled.

17 MS. SHELL: [Inaudible].

18 BY MR. PARKER:

19 Q Isn't that true, sir?

20 A Well, I mean, the information that they provided in
21 the application, I'd have to look at specific applications to
22 see what the evaluators -- how they evaluated it. I don't
23 know if that is the case.

24 Q But based upon what I just told you, that could
25 happen. That could be used -- that's a form of manipulating

1 the application process?

2 A Well, the evaluators looked at the org. chart,
3 Attachment A, Attachment C and compared that to see what the
4 -- I guess the denominator should have been or should be.

5 Q Right.

6 A And then whatever is listed on Attachment C was used
7 for the calculation of diversity.

8 Q Right. But, for example, you used Nevada Organics
9 as an example and they didn't list all of their owners, all of
10 their shareholders. There could have been thousands. But
11 they got -- was it 8 or 14 points? They got 18 diversity
12 points --

13 MR. KOCH: Eight.

14 MR. PARKER: Eight?

15 BY MR. PARKER:

16 Q They got 8 diversity points because if they had
17 listed all of those owners then the comparison between diverse
18 and non-diverse would then reduce their points under
19 diversity. Do you understand?

20 A I do understand.

21 Q Right. And that's a way of manipulating the scoring
22 under the application process if you don't require them to
23 identify all of the owners. Isn't that true?

24 A The Department didn't require --

25 Q I didn't say the Department.

1 A -- shareholders. I guess in the mathematical scheme
2 of things it's true.

3 Q That's right. That is right. A company or an
4 applicant like Nevada Organics can manipulate the system or
5 the application process by not disclosing the number of owners
6 for purposes of diversity, Attachment A, but then use the
7 benefit of all those owners for purposes of the tax portion of
8 the application, isn't that correct?

9 MR. KOCH: Objection. Misstates facts in evidence.

10 THE COURT: Overruled.

11 BY MR. PARKER:

12 Q Isn't that correct, sir?

13 A I'd have to look at the application. What I've seen
14 of it was just what I saw --

15 Q But could that be done, sir?

16 A I don't know. I'd have to look at the application.
17 I mean, if they bounce up that denominator, yes.

18 Q Thank you. Now, did you train the either the
19 Program Officer or the evaluators to compare tax bases for
20 those who are contributing to the taxes versus diversity or
21 the disclosure under Attachment A?

22 A I did not. That would have been done by one of the
23 trainers.

24 Q Okay. So you didn't do that?

25 A No.

1 Q Okay. So if you look at Exhibit 5, page 25, which
2 is MMLF36, this is the diversity section. And I wanted to --
3 do you see the large boxes in the middle?

4 A Yes.

5 Q It says, "Describe the individual's title, role in
6 the organization and the responsibilities of the position of
7 the individual." Do you see that?

8 A Uh-huh. I do.

9 Q You do? Now, was it your responsibility or not your
10 responsibility to train the evaluators on determining when an
11 employee would be included in a diversity calculation?

12 A The application, Attachment C, requires the
13 applicant to put their information there which was used for
14 the diversity, which is in the application instructions. So
15 when we went through the application originally --

16 Q Yes, sir.

17 A -- and compared it to the evaluation sheets, they
18 were trained at that point.

19 Q All right. So take a look -- let's go back for one
20 second to page 18 of 34, which is MMLF29. So if you look
21 under 6.2, the last sentence of 6.2 -- if we could blow that
22 up -- it says, "Ranking will be based on compliance with the
23 provisions of R092-17, Section 80, Chapter 453D of NRS and on
24 the content of the applications relating to." And then 6.2.2
25 says, "Diversity of owners, officers and board members." Do

1 you see that?

2 A Yes.

3 Q So it requires, the application requires compliance
4 with the statute, not the regulation; right? Or do you
5 consider the regulation and the statute having to be required
6 -- of being complied with?

7 A Well, the regulations were written based on the
8 statute.

9 Q Okay.

10 A And that's where we pulled the criteria for the
11 evaluation from the regulations.

12 Q All right. But you've already told me -- I want to
13 make sure I'm clear on this -- in terms of the statute it does
14 not indicate how the scoring was to be done, it just simply
15 said diversity; right?

16 A I'd have to go back and look.

17 Q Okay. All right. You have it in front of you,
18 don't you?

19 A I do.

20 Q So take a look.

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

22 THE COURT: You may. It's that Exhibit 5 we're
23 looking at?

24 MR. PARKER: No. This is the actual statute.

25 THE COURT: Okay. 453D.

1 While Mr. Parker is looking at it, I only got two
2 briefs on my convenient word. I got one from Mr. Gentile and
3 one from the State. Anybody else sending me one?

4 MR. HONE: Your Honor, we'll be filing ours this
5 afternoon.

6 THE COURT: Okay. Thank you.

7 MR. PARKER: Your Honor, that's actually in the reg,
8 in the Administrative Code.

9 THE COURT: Okay. So do we need to go to the
10 Administrative Code for the witness?

11 MR. PARKER: We will, Your Honor, but let me see if
12 I can avoid it for one second.

13 THE COURT: Thank you.

14 BY MR. PARKER:

15 Q The application at 6.2.2 says, "Diversity of owners,
16 officers and board members." Do you see that?

17 A Yes.

18 Q All right. So in terms of the training that we were
19 discussing a little while ago, I wanted to know if it's not in
20 the statute and it's in the reg but there's no scoring that's
21 included in the reg or the statute, I think you told me that
22 Mr. Pupo came up with the scoring method, is that correct?

23 A Yeah. I mean, ultimately yes, but it was talked
24 about through the evaluation or the application or the
25 evaluation sheets.

1 Q Do you believe that the scoring is consistent with
2 either the Administrative Code, the regulations, or the
3 statute?

4 A Can you be more specific?

5 Q Yeah, this is my point. The sentence says that it's
6 compliant with the statute an the reg, but we know that the
7 reg nor the statute has a scoring methodology included. So
8 how would an applicant know how the scoring would be done and
9 whether or not it would be consistent with either the statute
10 or the reg? Did you provide any information with regards to
11 that either in the Listserv or anywhere?

12 A Well, it says ranking will be scored. And I don't
13 recall -- I don't recall if we did it on Listserv or not. I'd
14 have to go back and look.

15 Q Okay. You didn't -- you don't recall doing it
16 yourself?

17 A I don't do Listservs.

18 Q Okay. No, no. Do you recall providing that
19 information on how the scoring would be done to anyone?

20 A I don't. No.

21 Q Okay. And you agree with me in terms of this
22 document if someone was simply relegated to the statute or the
23 regulation, the scoring methodology wouldn't be there, you
24 couldn't find it there?

25 A Well, the score methodology should be kept at the

1 Department, confidential in the Department. Otherwise
2 everybody would know how to get 250 points.

3 Q So in terms of if you're not training the Program
4 Officer or the evaluators on how to include or whether to
5 include advisory board members or employees, how would they
6 know what to do for scoring?

7 A Well, the scoring criteria breaks it down for the
8 percentages, like we've been talking about. And whatever they
9 provide on Attachment C is the information that was used to
10 score diversity.

11 Q But doesn't that also mean that the evaluators were
12 not actually complying with the statute or the regulation when
13 they did their scoring because it's not found in any of these
14 -- in either -- the scoring methodology is not found in the
15 statute and it's not found in the regulation. So if the
16 scorers were not trained and you've told me now already they
17 weren't trained on how to discern an advisory board member
18 from a regular board member, how to classify an employee
19 versus an officer, how would they be able to do the scoring
20 without that training?

21 A Well, they were able to discern. I mean, these were
22 -- these were experienced professionals that have pretty good
23 background. They're able to look at the org. chart, look at
24 the percentages of ownership, look at the positions and then
25 apply it to Attachment C and Attachment A.

1 Q Without any training?

2 A Well, they were trained on, you know, owners,
3 officers and board members as they should appear in Attachment
4 C.

5 Q And yet despite all that, we've now learned that
6 advisory board members were used in diversity calculations,
7 isn't that correct?

8 A I'd have to look at the application. I'm not sure.

9 Q We've learned that purchasing directors have been
10 used in diversity calculations, isn't that correct?

11 A Again, I'd have to look at the application. I
12 wasn't able to see it.

13 Q Good enough. Okay. I want to skip over to discuss
14 some of the training, okay, and your -- in particular your
15 role in this training that was done. You indicated that you
16 trained the evaluators but you had help from other members of
17 your team, is that correct?

18 A Yes, that's correct.

19 Q And every team member had a certain responsibility.
20 Is that correct or incorrect?

21 A That's correct.

22 Q So if we could look at -- I believe it's Exhibit 205
23 and I'd like to look at page DOT17.

24 MR. PARKER: Is 205 stipulated to?

25 MR. SHEVORSKI: Yes. It's my document.

1 MR. PARKER: Thank you. If we could look at DOT 17.

2 BY MR. PARKER:

3 Q Now, this is a reminder about confidentiality, but
4 it identifies you as a Program Manager, is that correct?

5 A Yes, that's correct.

6 Q And that's the position you held while you were
7 training the evaluators for purposes of the 2018 application
8 process?

9 A Yeah. Technically it's Health Program Manager.

10 Q Okay. Is there a difference between a program
11 manager and a health program manager?

12 A Health would be more health related. Program --

13 Q Don't say more program related. Please don't say
14 that.

15 A I don't know if there is any program manager
16 positions, not at the Department of Taxation.

17 Q Okay. So what I want you to take a look at now,
18 then, is DOT23 because I believe these are your primary
19 responsibilities. Is this a fair representation of your
20 responsibilities?

21 A Yes, it is.

22 Q The second big heading says, "Primary instructor for
23 application evaluation." Is that correct?

24 A Somewhat. My main goal or my main duty was to make
25 sure that the training took place, it was coordinated, people

1 were there, people had the information that they needed. Ky
2 Plaskon took the lead role on facilitating the training. And
3 then we brought in the staff that had experience in the proper
4 areas.

5 Q But it says, "Primary instructor for application
6 evaluation." Did you or did you not fulfill that
7 responsibility?

8 A I probably -- I probably did not.

9 Q You did not?

10 A Because we relied on the other -- the other staff
11 that have more experience than I do in their specialties.

12 Q Okay.

13 A I'm more of a general administrative position
14 person, whereas like Kara Cronkhite, she's a registered
15 environmental health specialist. Damon Hernandez, he has an
16 MBA, a lot of financial and auditing background. Ky Plaskon,
17 who you met the other day, is obviously a pretty good teacher.
18 I think he probably brought that across, I don't know. So we
19 relied on -- we relied on other staff to fulfill, because I'm
20 definitely not -- you know, I'm not a registered environmental
21 health specialist like Kara. She went to school for that and
22 has been registered and certified.

23 Q All right. So I will tell you I'm surprised that
24 you are now saying that you're not the primary instructor
25 because I thought that this document would give me an

1 understanding as to what your role was in this process. Do
2 you have -- let me ask you a few questions, then. Who would
3 be considered the primary instructor? Would it be Ms.
4 Cronkhite, Mr. Hernandez, Mr. Plaskon?

5 A You know, I think it depends on the module that was
6 being trained on. So, for example, my primary portion would
7 be the history of the program, the history of the medical
8 marijuana program, the application, how the process was done
9 in 2014. The application -- well, I went through the
10 application line by line and then we went through the
11 evaluation criteria together. And then we brought in the
12 other primary instructors, I guess you could call them, would
13 be Kara Cronkhite. She went over more of the nonidentified
14 section. That's the floor plan layout, the health and safety
15 of the product, care, quality and safekeeping. And then Damon
16 Hernandez, who has a history with taxation, a history with
17 auditing, like I said, an MBA, he was brought in to do the
18 identified section.

19 Q The identified section?

20 A Yeah.

21 Q All right. It says also, "Oversees all evaluators."
22 Did you do that or not?

23 A Yeah, and then we kind of devolved into a pattern
24 of, you know, Ky Plaskon being the go-to guy for information
25 and stuff. I mean, I got really busy. So, like check-ins,

1 check-outs during the day, we had another Program Officer III,
2 Diane O'Connor, who also helped, you know, approve time sheets
3 and that kind of stuff.

4 Q And Ms. O'Connor, is she an employee of DOT?

5 A Yes, she is.

6 Q All right. How about quality assurance, did you
7 perform any of that?

8 A I did. Not on the application evaluations, but on
9 the final product when the score and rankings were provided to
10 management.

11 Q So we heard by Mr. Plaskon that the evaluators
12 served as their own quality control. Do you recall hearing
13 that?

14 A I wasn't --

15 Q You weren't here when he said that?

16 A I wasn't here.

17 Q Is that truly your -- do you recall that being the
18 case as well?

19 A Quality assurance, I don't -- I didn't know what the
20 question was.

21 Q Okay. Do you recall whether or not the evaluators
22 were tasked with evaluating or providing quality control over
23 their evaluations?

24 A Yes, they were. They were left to be independent.

25 Q Okay. Were there any DOT employees that provided

1 quality control or quality assurance with regards to the
2 evaluations?

3 A Can I get possibly a definition of quality
4 assurance?

5 Q Certainly. Quality control typically means you're
6 looking at an individual scoring to see if there's a
7 relationship between the scoring and the information there.
8 Quality assurance is the process of doing it. So were there
9 any DOT employees that went over, took a sample application,
10 went through the information provided and the scoring to see
11 if it made sense what the evaluators came up with?

12 A That was just done during the mock application
13 training period, which lasted about five, six days. That's
14 it.

15 Q So nothing after the fact?

16 A No, because then we'd be evaluating the application
17 a second time.

18 Q Which means that when your application said in the
19 beginning that State employees and/or officers would be
20 involved in the evaluation process, that was not a true
21 statement on the back end in terms of scoring, is that
22 correct?

23 A State employees did not evaluate any applications.

24 Q They did not perform any quality control or quality
25 assurance?

1 A As far as the evaluators, checking or questioning
2 their quality --

3 Q Exactly.

4 A -- of work through their -- No, that was not done.

5 Q Thank you so much. So in terms of you being the
6 Program Manager and actually doing quality assurance, you
7 didn't do that in terms of the scoring, is that correct?

8 A Well, my quality assurance was -- no, I would never
9 second guess an evaluator's score.

10 Q All right. Thank you. Now let me have you take a
11 look at DOT24. This is Mr. Plaskon's role and responsibility.
12 It said that he would do the room preparation coordination.
13 See that?

14 A Uh-huh.

15 Q Is that a yes?

16 A Yes.

17 Q All right. I'm not trying to be a stickler, but we
18 have to get an affirmative yes or no on the record --

19 A I understand.

20 Q -- as opposed uh-huh.

21 But I thought that's what you said you did. Thought
22 you were doing the room preparations. Were not? Or were you
23 both doing it?

24 A My role is to work with the executive level at
25 Department of Taxation, make sure we had the room available.

1 We all worked together to set up the IT stuff. Yeah, I mean,
2 I worked with the director and administrative services officer
3 to make sure that we had a space for the applicants -- or for
4 the evaluators.

5 Q You mean evaluators.

6 A Yeah.

7 Q Okay. You indicated just a moment ago that you were
8 the one adapting the 2014 to the 2018 application. It says
9 here that Mr. Plaskon was doing it.

10 A He was part of that group.

11 Q Okay. All right. DOT25 is the Program Officer III.
12 That's Diane O'Connor; is that correct?

13 A Yes.

14 Q All right. And then if you go DOT26, this is the
15 person you mentioned earlier when you were speaking to the
16 Court regarding Jeannine Sherrick-Warner; is that correct?

17 A Yes, that's correct.

18 Q All right. And she was tasked with ownership
19 verification; is that correct?

20 A Yes.

21 Q Now, was this ownership verification done prior to
22 giving the applications to the evaluators?

23 A Yes, it was.

24 Q And was this the ownership verification that only
25 includes looking at what the DOT had within its own data

1 files?

2 A Yeah. We compared it to what was on record with the
3 Department.

4 Q There was no other ownership verification measures
5 taken; is that correct?

6 A Not at this point, no.

7 Q At any point. Is that correct?

8 A I guess that's an accurate statement.

9 Q Thank you.

10 THE COURT: And, sir, that's the person you
11 identified for me?

12 THE WITNESS: Yes, it is, Your Honor.

13 THE COURT: Thank you.

14 BY MR. PARKER:

15 Q Now, it says, "Location review assistants." What
16 does that mean?

17 A I've got be honest. I don't know.

18 Q I appreciate an honest answer.

19 A It was in the PowerPoint. I don't -- you know,
20 there could be typos in this PowerPoint.

21 Q Well, the words spell -- all spell correctly.

22 A Yeah, I know. Yeah.

23 Q For some reason when I read this I thought it meant
24 that there would be some exercise involving determining
25 whether or not locations utilized by applicants would be

1 reviewed. That's what I took it to mean.

2 A Not --

3 Q You don't have that understanding?

4 A I don't.

5 Q Do you know if that was done?

6 A Location reviews? That wasn't required in the
7 application, so we didn't review the locations.

8 Q You know, I've heard that more than once today. But
9 the application actually has a spot for locations; isn't that
10 correct?

11 A I'd have to look at what you're referring to.

12 Q All right. So you had not seen the -- you're not
13 familiar enough with the application to know that the
14 application requires or actually has a location block or spot
15 for you to put the location of your intended establishment?

16 A If I recall correctly, there is a box that says, if
17 you have a location put it here.

18 Q Okay. So if we were to take a look at the locations
19 provided by Nevada Organics --

20 MR. PARKER: Your Honor, have we utilized D4 yet?

21 THE COURT: D4?

22 MR. PARKER: D, as in David, 4.

23 THE COURT: Yes.

24 THE CLERK: Well, this was the one that Mr.
25 Cristalli --

1 THE COURT: We used certain pages of D4, didn't we?

2 THE CLERK: Yesterday. It was on his laptop, but I
3 have a paper copy.

4 THE COURT: He gave us paper copies this morning, so
5 we have it.

6 MR. PARKER: Perfect.

7 (Pause in the proceedings)

8 BY MR. PARKER:

9 Q All right. So Mr. Cristalli here has given me
10 DOT041840.

11 THE COURT: All right. We're going to give the
12 witness a copy.

13 MR. PARKER: Yes.

14 (Pause in the proceedings)

15 BY MR. PARKER:

16 Q So looking at -- do you have DOT041840 in front of
17 you?

18 A Yes.

19 Q Okay. And if you look at RD316 and RD329, I want
20 you to compare those locations and tell me if they're the same
21 locations. Tell me if you can -- if you recognize that those
22 are both the same documents -- same addresses. I'm sorry.

23 A It looks like there's different suites.

24 Q Okay. Same address, different suite numbers?

25 A Yeah.

1 Q Okay. Would you agree with me that the suite
2 numbers start at the same, it says 215, and then one says -
3 147, the other one says 215-155.

4 A Yes.

5 Q All right. So --

6 (Pause in the proceedings)

7 MR. HYMANSON: No objection, Your Honor.

8 THE COURT: Be admitted. What's the number?

9 MR. PARKER: This I guess will be the next in order,
10 but it's --

11 What is the exhibit number to this, Mr. Shevorski?
12 Do you know?

13 MR. SHEVORSKI: I don't know that it has an exhibit
14 number.

15 MR. PARKER: I've got a Bate number, Your Honor. We
16 could do it next in order.

17 THE COURT: Has it been marked as an exhibit yet?

18 MR. SHEVORSKI: I don't believe so, Your Honor.

19 THE COURT: So why don't you mark it next in order,
20 Mr. Parker.

21 MR. PARKER: I will do just that.

22 And what would that be, Madam Clerk.

23 THE COURT: She wants you to bring it up here so she
24 can figure it out and put a stamp on it.

25 MR. PARKER: I will bring it to her.

1 THE CLERK: We don't have a range for you yet, so
2 you'll be 300. 301.

3 MR. PARKER: I like 301.

4 (Plaintiffs' Exhibit 301 admitted)

5 THE COURT: Mr. Hymanson, do you need to approach,
6 too?

7 MR. PARKER: I'm only going to use the first page,
8 Your Honor. I'm keeping the stack the way it is.

9 (Pause in the proceedings)

10 THE COURT: Page 1.

11 (Pause in the proceedings)

12 MR. PARKER: So 302 is the Essence. Anybody have an
13 issue with that?

14 MR. KOCH: I don't have -- yeah. I mean, just as
15 long as I get a copy.

16 THE COURT: 301 is only one page, though.

17 MR. PARKER: That's only one page, which is Thrive.

18 THE COURT: And, Dulce, you have 301 as a single-
19 page document. I know. That's what I'm saying. It's a
20 single page.

21 Who has the one with the sticker?

22 MR. PARKER: I've got them both.

23 THE COURT: Give the one to Dulce, because you've
24 got to only have one page. You said it was a single page
25 pursuant to your agreement with Mr. Hymanson.

1 MR. PARKER: That is correct, Your Honor. I just
2 don't want to take them apart, because --

3 THE COURT: But you've got to now take it apart.

4 (Pause in the proceedings)

5 MR. PARKER: Can I show those to the witness?

6 THE COURT: You may.

7 So 301's been admitted, but it's a single-page
8 document. And what about 302?

9 MR. HYMANSON: No objection to the single-page
10 admission of -- the first page of 302.

11 THE COURT: 302 as a single page will be admitted.
12 Thank you. I appreciate your courtesy, Mr. Hymanson.

13 (Plaintiffs' Exhibit 302 admitted)

14 THE COURT: We're using the Elmo.

15 BY MR. PARKER:

16 Q So I have Exhibit 301 on the Elmo. And the reason I
17 put it on the Elmo, Mr. Gilbert, is just so everyone else in
18 the room can see it. But this is the application, you can
19 see, from Thrive. And you can see the address that we just
20 spoke of from I think it was D4, which was DOT041840. You see
21 it?

22 A I do.

23 Q Is the address the same?

24 A Yes, it is.

25 Q All right. And let me show you Exhibit 302. This

1 is the Essence application Attachment A. Would you agree
2 again that the application includes the address of 5130 South
3 Fort Apache Road, Suite 215 through 147?

4 A Yes.

5 Q All right. Now, did you provide any training to the
6 evaluators on their review of the locations or the addresses
7 provided in these applications?

8 A The training -- well, the location wasn't required,
9 so they weren't trained on verifying a location.

10 Q If location was not required and they were not
11 provided any training on location, how would you determine the
12 impact on the community?

13 A I think I mentioned earlier that we would look at
14 the application, the contents of the application, the
15 comprehensive information that they provided, and evaluate it
16 appropriately.

17 Q Okay. But that would not necessarily tell you where
18 in the community the establishment would be located; is that
19 correct?

20 A We would know the jurisdiction, the evaluators would
21 have.

22 Q Well, if you use that address that was contained in
23 both those applications, this would be what you would see.

24 MR. PARKER: Your Honor, this is a demonstrative.
25 This is --

1 (Pause in the proceedings)

2 THE COURT: Okay. So we're going to use the
3 demonstrative exhibit that's been identified and it's now
4 going to bear the next demonstrative in order.

5 THE CLERK: D7.

6 MR. PARKER: May I approach?

7 THE COURT: You may.

8 MR. PARKER: May I approach the witness, Your Honor?

9 THE COURT: You may.

10 MR. PARKER: So just for purposes of the room, this
11 is a -- the result of a Google Maps search performed today,
12 June 11, 2019, which it says at the top left corner.

13 BY MR. PARKER:

14 Q And then if you go below to the bottom, this is a
15 street view and it says -- you can see the information pulled
16 up through Google Maps, and it says 5130 South Fort Apache
17 Road. Do you see that?

18 A I do, yes.

19 Q Is that the same address that's contained in the
20 applications for both Thrive and Essence?

21 A Yeah. The 5130 South Apache Road is the same.

22 Q And would you agree with me that in terms of
23 determining from an evaluation standpoint the impact on the
24 community it would be difficult to use this location for that
25 evaluation?

1 A Do mind repeating that question, sir?

2 Q Yes. Wouldn't it be difficult to use a UPS Store
3 location in determining whether or not there be an impact on
4 the community as a part of the non-identified criteria?

5 A Well, the evaluators didn't take into account the
6 location when they evaluated the impact on the community.

7 Q Okay. And let me have this --

8 MR. PARKER: Any objection?

9 MR. HYMANSON: No objection, Your Honor.

10 THE COURT: And is this another demonstrative
11 exhibit?

12 MR. PARKER: It is, Your Honor. It'd be D8.

13 THE COURT: Okay.

14 (Pause in the proceedings)

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

16 THE COURT: You may.

17 BY MR. PARKER:

18 Q Now, D8 is again pulled up this morning, today, June
19 11, 2019, and it shows the address of the UPS Store as 5130
20 South Apache Road, Suite 215. Would you agree with me that
21 both applications use that same starting number for the
22 suites, 215?

23 A Yes.

24 Q All right. Now, would you also agree with me that
25 it would be difficult place both Thrive and Essence and the

1 floor plans that they submitted in that location?

2 THE COURT: In the UPS Store?

3 MR. PARKER: Exactly.

4 THE COURT: Okay.

5 BY MR. PARKER:

6 Q I don't think UPS Store would allow it. But even if
7 they would, seeing what we've seen from the street view,
8 wouldn't it be difficult to place those two locations in that
9 UPS Store?

10 A It would be difficult.

11 Q Impossible even?

12 A Yeah. It would be impossible.

13 Q Now, tell me, especially given what Mr. Jolley said
14 -- Mr. Jolley said that, we have this floor plan that we've
15 used that we may tweak from place to place but it works.
16 Would you agree with me that floor plan, no matter how much
17 tweaking he does, won't fit in in this location?

18 A I don't know the size of the locations or the size
19 of the floor plan that Mr. Jolley submitted. I would -- I
20 don't know if I can answer that yes or.

21 Q How about Essence or Thrive, since they listed --
22 both of them listed this location?

23 A Together?

24 Q Yeah. I showed you the applications. They both
25 listed this location.

1 A Can you repeat the question, please.

2 Q Yes. Is there a way of placing both of their floor
3 plans in this location?

4 A I would probably guess -- say no.

5 Q All right. Now, if you were tasked or charged with
6 the responsibility to determine whether or not a location is
7 of adequate size and especially, the one I like the most, the
8 building is of adequate size, would you not agree with me that
9 there is no way on God's green earth that this building would
10 be of adequate size for either Thrive or Essence or both of
11 them combined?

12 THE COURT: And you're referring to the UPS Store?

13 MR. PARKER: I am.

14 THE COURT: Okay.

15 BY MR. PARKER:

16 Q Isn't that true, sir?

17 A Can you repeat that question.

18 Q Isn't it -- well, I won't use God's green earth this
19 time. I saw the Judge cringe a little when I did it.

20 Wouldn't you agree, sir, that the verbiage "adequate
21 size" is a part of the criteria in the application evaluation
22 process?

23 A Yes.

24 Q Wouldn't you agree with me that there's no way that
25 an evaluator utilizing this information would be able to say

1 and grade Thrive or Essence and indicate that they meet this
2 criteria when their locations and their floor plans couldn't
3 fit in this UPS Store?

4 A Well, I would have to talk to the evaluators, of
5 course, but the location wasn't scored or ranked.

6 Q Yes. But if the -- I'm sorry.

7 A So the UPS Store wasn't taken into consideration
8 with the size of the floor plan.

9 Q You would agree with me that this building is not an
10 adequate size to accommodate their floor plans?

11 MS. SHELL: Asked and answered, Your Honor.

12 THE COURT: Overruled.

13 BY MR. PARKER:

14 Q Isn't that true?

15 A Can you repeat it.

16 Q Yes. Wouldn't you agree that this building is not
17 of adequate size to accommodate the Thrive or Essence floor
18 plans?

19 MR. HYMANSON: Objection. Speculation.

20 THE COURT: Overruled.

21 MR. HYMANSON: Thank you, Your Honor.

22 THE COURT: You made the record, Mr. Hymanson.

23 BY MR. PARKER:

24 Q Isn't that true, sir?

25 A I mean, I'd have to look at the applications and see

1 their floor plan, their proposed.

2 Q If the floor plans were in excess of the size of the
3 UPS Stores, would you then agree with me, sir, that the
4 buildings would not have been of adequate size?

5 A If they decided to use the UPS Store as their
6 location.

7 MR. PARKER: Your Honor, I want to make sure that D4
8 has been admitted into evidence.

9 THE COURT: None of the Ds are admitted. They're
10 used. They're demonstrative.

11 MR. PARKER: Okay. I'm sorry. Have we actually --
12 we do have D4, do we not?

13 THE COURT: There were some Ds that there was a
14 stipulation to admit, but they have to get a different number,
15 because Ds are demonstrative.

16 MR. PARKER: I got you.

17 THE COURT: But since there's no jury, it doesn't
18 really matter.

19 MR. PARKER: I agree. But --

20 THE COURT: There's no jury room for them not to go
21 back to.

22 MR. PARKER: Yeah. I thought there was some
23 stipulation, and that's what Mr. Cristalli thought, as well.

24 THE COURT: There was. There was.

25 MR. PARKER: Can we --

1 THE COURT: But I've got to have a real exhibit
2 number. Ds are demonstrative.

3 MR. PARKER: Can I get a real one for this one?

4 THE COURT: So, Dulce, for those Ds that the parties
5 stipulated to admit we need to actually make a separate copy.
6 So we a D and another copy. And you can use the D numbers,
7 but I've just got to -- demonstrative and then admitted.

8 Are you guys done kibitzing?

9 MR. SHEVORSKI: Yeah. We're just trying to make
10 sure it includes every on there.

11 MR. KOCH: As long as it includes everybody.

12 MR. PARKER: It does.

13 MR. KOCH: Okay. Just put the whole thing up.

14 MR. PARKER: Let's see if we can get a Bate number
15 range for this exhibit, Your Honor.

16 THE COURT: Do you want it to be a real exhibit, or
17 a demonstrative exhibit?

18 MR. PARKER: A real exhibit.

19 THE COURT: So we're up to 303 for Mr. Parker?

20 Teddy, you are on a roll. You've got three exhibits
21 in in one day.

22 MR. PARKER: You know, I am, Your Honor. I just
23 want to make sure I get the full Bate range, because what Mr.
24 Cristalli gave me goes to 1839, and the one I was given by the
25 State goes through 1855.

1 MR. KOCH: Mr. Cristalli gave you both of those,
2 actually, because [inaudible].

3 (Pause in the proceedings)

4 MR. CRISTALLI: That's what happens -- that's what
5 happens when I organize anything.

6 (Pause in the proceedings)

7 MR. PARKER: Your Honor, we ask that the next
8 exhibit in order, I don't know what the number is, the real
9 exhibit number, it would be DOT041835 through DOT041856.

10 THE COURT: Any objection? This is 303. Any
11 objection?

12 MR. KOCH: I just want to see the rest of it if he's
13 adding another section to it.

14 (Pause in the proceedings)

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

16 THE COURT: You may.

17 THE CLERK: And then this is stipulated to.

18 MR. PARKER: Yes.

19 THE CLERK: Is it admitted, Your Honor?

20 THE COURT: Yes. They all stipulated, so we can
21 admit.

22 (Plaintiffs' Exhibit 303 admitted)

23 BY MR. PARKER:

24 Q So, Mr., Gilbert, I want to talk to you about the
25 scoring relative to liquidity. Are you familiar at all with

1 that part of the application?

2 A Liquidity?

3 Q Yes.

4 A Yes.

5 Q Were you involved at all in training on the
6 liquidity portion of the identified part of the application?

7 A No. That would have been Damon Hernandez.

8 MR. PARKER: Okay. So before we get there let me
9 look again at DOT27, which we were just looking at a second
10 ago in terms of roles and responsibilities, Shane.

11 UNIDENTIFIED SPEAKER: I'm sorry. Which exhibit was
12 that?

13 THE COURT: Dulce thinks it's 205.

14 MR. PARKER: Yeah, I think it's 205, actually. It
15 is 205, page 27.

16 BY MR. PARKER:

17 Q So this is Karalin Cronkhite's role; is that
18 correct?

19 A Yes.

20 Q All right. So the items listed here in fact she
21 performed?

22 A That would have been with the mock applications. So
23 she travelled from Las Vegas to Carson City, assisted with
24 training, sat with the evaluators while they evaluated the
25 mock applications.

1 Q How about in terms of checked scores? Were those
2 only mock scores, or were those the scores -- the final
3 scores?

4 A Only the mock scores.

5 Q All right. Go to 28 in terms of Damon Hernandez.
6 Would the same be true, that he only did these in terms of the
7 mock applications?

8 A Yes.

9 Q Okay. 29, David Witkowski. Again this is only the
10 mock application?

11 A Yeah, a mock application on the non-identified.

12 Q Did you have or determine what the reasonable length
13 of time it would take to review an application?

14 A No, we didn't until we got started. Now we were
15 able to project out a finish date.

16 Q And what was the determined reasonable time to
17 complete a review of an application form?

18 A I don't recall what that was.

19 Q Okay. Well, we'll get there. Let me have you take
20 a look at DOT128.

21 MR. PARKER: 128, Shane, same exhibit, 205.

22 BY MR. PARKER:

23 Q It says, "Revenue from application fees." You see
24 that?

25 A Yes.

1 Q Now, this first paragraph after the main paragraph
2 says, "Must be used to pay back the Division for actual costs
3 incurred by the Division in processing application, including,
4 without limitation, conducting background checks." What
5 background checks were speaking of?

6 A I think that's -- I think that's language right out
7 of the statute or the regulation.

8 Q Okay. And what background checks would that be
9 referring to?

10 A That would be to --

11 Q Because the only checks -- let me make sure we're
12 clear. The only checks that you've discussed with us today
13 that may have been done was checking applications against the
14 historical information that an applicant may have provided
15 previously, including any transfers of ownership.

16 This document seems to suggest that something more
17 than that was contemplated. Am I wrong or correct?

18 A That's just language out of the application. I
19 would need to see the rest -- the previous pages of what this
20 model was.

21 Q The previous page is page 127, which says "Marijuana
22 Initial Application Fees."

23 A Yeah. I think, if I recall correctly, this is just
24 going over the history of the program, how the program works,
25 the revenue, statutory language.

1 Q Okay. This page 127 still reflects the medical
2 marijuana statute; is that correct?

3 A It does. Yep.

4 Q Wasn't it your responsibility to adapt or change or
5 revise this training information to reflect 453D?

6 A It was actually Ky Plaskon adapted it.

7 Q Okay. So obviously he didn't change this one from
8 453A to 453D; is that correct?

9 A He must have missed it.

10 Q Okay. Fair enough. In terms of conduct background
11 checks, when you did the medical marijuana application process
12 you'd have only had the application information provided with
13 that application. There would be no data previously; is that
14 correct?

15 A That's correct.

16 Q All right. And so then in conducting a background
17 check, if you had no prior information, would that have
18 included now using outside sources to figure out if the
19 application was complete and honest?

20 A I'm sorry. I don't understand the question.

21 Q Yeah. So in 2014 you would have had this data
22 compiled relating to each of the licensee applicants, because
23 that would have been the first application; is that correct?

24 A Yes, that's correct.

25 Q So when you did background checks in 2014 did it

1 include actually going to other sources, the Secretary of
2 State, online, Google searches, anything looking at SEC
3 filings, was that included in the 2014 background checks?

4 A No, it was not. That refers to state and FBI
5 background checks.

6 Q Okay. Were state and FBI background checks utilized
7 for purposes of 2018 application process?

8 A Yes, they were.

9 Q All right. And were those for all owners, or just
10 owners listed?

11 A Well, all owners that were listed in the application
12 compared to what was on record at the Department.

13 Q So if there were owners that committed felonies that
14 were not listed who were in fact owners, you would never be
15 able to determine that based upon your own data; is that
16 correct?

17 A We rely on the data that's provided in the
18 application.

19 Q So that's a correct statement?

20 A Yeah. People can provide falsified information to
21 the Department. We hope they don't.

22 Q Right. So if they're a 30 percent owner and GGB or
23 Xanthic was a felony-convicted drug dealer, you would never
24 know, because they weren't listed and you didn't use any
25 outside sources to determine that; isn't that correct?

1 A We didn't use the Department of Public Safety to run
2 a background check.

3 Q Right. And that was the purpose for the background
4 check, to figure out if there were any unsavory characters,
5 those who may have committed felonies from being in this
6 marijuana business in Nevada; isn't that correct?

7 A Yeah. There's excluded felonies listed that we look
8 for.

9 Q Right. But that wasn't accomplished in this 2018
10 application process because you never -- that was not
11 accomplished in 2018 because if they didn't list an owner who
12 perhaps had a felony conviction, you didn't do anything to
13 determine if there were any owners out there from a background
14 check; is that correct?

15 A We compared the application to the record that we
16 have in the house. All owners, officers, and board members
17 that we had listed we either verified for background checks or
18 -- and then we didn't require shareholder information, so
19 those were not checked.

20 Q All right. So shareholders of all of these
21 companies, because you didn't check, could have been felony-
22 convicted individuals; isn't that correct?

23 A Hypothetically, yes.

24 Q And you would never know, because you never checked
25 anything other than the information the applicant actually

1 gave you; is that correct?

2 A I'm sorry. Can you repeat that.

3 Q Yeah. And you would never know, the State would
4 never know, because you never checked beyond the information
5 given by applicant himself, him or herself.

6 A We relied on the information provided in the
7 application.

8 Q Right. So if an applicant wanted to hide an owner
9 who would disqualify them potentially, they just didn't have
10 to list them.

11 A Well, they were supposed to list officers of the
12 corporations, the owners, and also the board members. And we
13 rely on the information that's provided in the application,
14 and that's about the best the Department can do at that point.

15 Q That's right. But you just said the owners. You
16 didn't say some owners, but the owners; right?

17 A Yeah. Excluding --

18 Q All right.

19 A -- shareholders, because we don't -- we didn't
20 require that.

21 Q So look at DOT156. Again, it's still a part of
22 Exhibit 205. Did this medical marijuana program
23 organizational chart also miss Mr. Plaskon's review?

24 A I'm sorry. Can you repeat that.

25 Q Yes. This was used in 2018, but it says "Medical

1 Marijuana Program." Do you know why that was included in the
2 training?

3 A I don't. I don't.

4 Q You'd agree with me it should not have been
5 included?

6 A We run both programs, so technically it's correct.

7 Q But this was not for a medical license, medical
8 marijuana license.

9 A It was not. No.

10 MR. PARKER: Okay. So go to page 158, please,
11 Shane.

12 BY MR. PARKER:

13 Q Again this goes to the training. Do you recall this
14 training slide?

15 A Yeah, I do.

16 Q And the second bullet point says, "Score dispensary
17 applications individually." See that?

18 A Yes.

19 Q All right. Who was in charge of handing out the
20 applications to the evaluators?

21 A I think those -- pretty sure those came through the
22 administrative assistants. The Manpower administrative
23 assistants would ask Marilyn Gray when they needed another
24 one, and then she would provide that for them on a thumb
25 drive.

1 Q All right. And then it says, "Scoring dispensary
2 licenses as a group." Is that when the evaluators get
3 together at the end and speak to each other regarding their
4 individual scores?

5 A Yes, that's correct.

6 Q All right. And would there be any DOT involvement
7 in either level of this process, scoring applications
8 individually, or scoring dispensary licenses as a group?

9 A No, there would not.

10 Q Is there a difference between applications and
11 license in these two bullet points?

12 A I don't think so. I think it just might be the
13 wrong word.

14 Q Okay. You would treat -- you believe applications
15 and licenses would be interchangeably -- used interchangeably?

16 A Yeah. Well, no, I don't. But --

17 Q So somebody made a mistake?

18 A Well, I think scoring dispensary applications as a
19 group.

20 Q All right. Now, Mr. Jolley said that his
21 application was over a thousand pages long. Do you recall him
22 testifying to that?

23 A I didn't recall him saying that, but I believe you
24 you did.

25 Q Is that uncommon for the applications to be in

1 excess of a thousand pages?

2 A I don't think so. I think there was quite a few
3 that are large.

4 Q All right. And how long do you think it would take
5 an evaluator to review a application of a thousand pages or
6 more?

7 A You know, I don't know. I'd have to look. I'd have
8 to go back and look. I have no idea.

9 Q Well, take a look at page DOT227, which I believe to
10 be --

11 MR. PARKER: I believe to be Exhibit 206, Your
12 Honor. I think this has been stipulated to, as well.

13 THE COURT: Any objection?

14 THE CLERK: It's in.

15 THE COURT: 206 is already in. Okay.

16 MR. PARKER: All right. So go to page 227 of
17 Exhibit 206, Shane.

18 BY MR. PARKER:

19 Q It says, "Mock applications. Try to get through two
20 or three applications a day." You see that?

21 A I do.

22 Q Now, were the mock applications a thousand pages?

23 A Some were.

24 Q All right. So going through two or three
25 applications in a day was a goal set for the evaluators?

1 A You know, I don't know. This is -- this was Ky's,
2 Mr. Plaskon's slide. He might have just put that as, you
3 know, something to start the training off and then
4 realistically it might have changed.

5 Q Okay. Do you know whether or not it changed?

6 A I don't.

7 MR. PARKER: Now, can you go to 262 for me, Shane.

8 This is Exhibit 207, Your Honor. I believe this
9 exhibit has also been already admitted.

10 THE COURT: Dulce says yes.

11 MR. PARKER: All right. Thanks, Dulce.

12 And I want you to go to page 262. So Exhibit 207,
13 page 262, Shane.

14 BY MR. PARKER:

15 Q Now, these the responsibilities of the
16 administrative team. Do you see that?

17 A Yes, I do.

18 Q All right. You spoke to the Judge about this in
19 terms of the administrative team's obligations. When we talk
20 of administrative team here are we talking about the two
21 administrators that came from Manpower?

22 A Yes, the administrative assistants.

23 Q Now, it say here that they're supposed to perform
24 verification duties for background and resume checks. Again,
25 is it your testimony that that background and resume check

1 only meant reviewing the information provided by the
2 applicant?

3 A The background check portion of that would be to
4 help identify if all owners, officers, and board members had
5 current, up-to-date background checks through the State and
6 the FBI.

7 Q That's it. But it does not include a confirmation
8 that all the owners, officers, or board members actually were
9 listed.

10 A No. Not with the administrative assistants.

11 Q And would the resume checks involve determining
12 whether or not -- let's say someone listed a person as having
13 a college degree. Would that resume check involve calling a
14 school or a university to determine if they in fact had a
15 degree?

16 A I believe so. I don't know if they did make any
17 calls. That would be a question that you'd have to ask some
18 of the evaluators.

19 Q You agree with me that some -- that scoring -- one
20 of the scoring criteria included education levels?

21 A Yes.

22 Q All right. And so if someone put on their
23 application that every owner had a Ph.D in economics, you
24 would simply rely on that representation without any resume
25 check?

1 A No. They did resume checks.

2 Q And how did they do resume checks?

3 A Through Google searches.

4 Q Is there any information in a written form that I
5 could see -- because I've not -- from my review of the records
6 in this case I've not seen any Google search results regarding
7 any applicant. So this is the first I'm hearing of this. To
8 your knowledge, did you train any of these evaluators on how
9 to do a resume check?

10 A I did not.

11 Q All right. So do you know of anyone who did?

12 A I don't. It could have been the identified section,
13 so Damon Hernandez? I'm not sure.

14 Q You don't know, do you?

15 A I don't.

16 Q You don't know if a single resume was checked in
17 terms of someone's education achievements on any applicant.

18 A That's something you'd have to talk to the
19 evaluators about. I wasn't intimately involved in the
20 evaluation of the applications.

21 Q Did any evaluator come to you and say, listen, we're
22 having a difficult time confirming this person's education
23 level?

24 A Not that I can recall.

25 Q Do you recall ever offering someone assistance in

1 providing information from a university to determine if
2 someone actually was a graduate of college?

3 A I did not.

4 Q Do you know -- have you seen any documentation
5 indicating that someone actually did a search to check
6 someone's resume?

7 A No, have not.

8 Q The bullet point --

9 MR. PARKER: Put that back on the screen for me,
10 Shane.

11 BY MR. PARKER:

12 Q The bullet point says, "Will not perform merit-based
13 scoring." So the administrative team was not given the right
14 to do scoring, simply to provide information to the
15 evaluators; is that correct? Is that what this is saying?

16 A Well, it's saying that they would help verify and
17 individual, whether they had a background check or not that
18 was current with the Department, but they weren't involved in
19 evaluating the application.

20 Q Okay. How would we know whether or not any
21 background or resume checks were done by the administrative
22 team?

23 A Well, the background checks DPS -- they're not --
24 they're verifying the criminal background checks.

25 Q Yes. I'm talking about the resume checks.

1 A You would have to talk to them.

2 Q No, no. Would there be any paper trail documenting
3 that resume checks were performed?

4 A Possibly in the notes. Violations.

5 Q Okay. But we don't see it in the notes.

6 A No. That would be it. That's the paper trail.

7 Q All right. So, for example, there's no -- there's
8 no information from any schools or universities saying, yes, I
9 verified that this person went to Dartmouth College, graduated
10 in 1984?

11 A That would be question for the evaluators.

12 MR. PARKER: Can we go to DOT281, please.

13 And that would still be in Exhibit 207, Your Honor.

14 THE COURT: Thank you.

15 BY MR. PARKER:

16 Q So it says, "Multi-establishment applicants." I'm
17 concerned with the second bullet point. It says, "Cross-check
18 to make sure that owners, officers, and board members meet
19 requirements within the law for ownership percentage and
20 jurisdiction limits."

21 Now, when I saw this percentage, it made me think
22 back to the Administrative Code that says 5 percent. Do you
23 see that?

24 A Yes.

25 Q All right. Was that done in fact?

1 A So what we do is at the Department we have an agent
2 card process, and we -- based on the ownership percentage
3 they're required to get background checked periodically,
4 whether three years, five years, or annually.

5 Q Yes.

6 A So that's -- I'm assuming that's where this is from,
7 just verifying that the background checks are current.

8 Q But it says "percentage."

9 A Yeah. Which ties into -- I'm sorry, sir.

10 Q No. Go ahead. Which ties into?

11 A Which ties into whether they need an agent card or
12 background check and how often they need a background check.

13 Q And what percentage of ownership would you have to
14 do to require you to have an agent card?

15 A 5 percent.

16 Q Now, if that is the case, if the percentage is
17 important in terms of getting agent cards, how could you not
18 require shareholders with 5 percent or greater to be
19 identified on the application? Because they need an agent
20 card, and it did not identify if they can't get an agent card;
21 isn't that correct?

22 A They would -- they need to identify themselves to
23 get an agent card.

24 Q Exactly. And so if you didn't require them to do
25 it, there's no way in the world you can comply with this

1 portion of the training; isn't that correct?

2 A Well, this part of the training was to confirm that
3 the ownership that we had on record at the Department, because
4 that's what we required, met the requirements for an up-to-
5 date background check of criminal history.

6 Q No. But you included specifically for -- within the
7 law for ownership percentage, which again refers you back to
8 the Administrative Code which we went over earlier today. And
9 if that's the case, every applicant had to include a 5 percent
10 owner or greater so that you be able to then determine their
11 requirements for agent cards; isn't that correct?

12 A Well, we didn't require shareholders to be submitted
13 in the application.

14 Q I didn't use the word "shareholders." I said
15 5 percent owner or greater.

16 A Well, that would match the record at the -- what we
17 had on record at the Department.

18 Q If they disclosed.

19 A Yeah, if --

20 Q But if they did not disclose a 5 percent owner or
21 greater, then that person would not have been able -- the
22 evaluator, that is, would not be able to determine who would
23 be required to get an agent card for that establishment; isn't
24 that correct?

25 A Well, through our renewal process annually -- so we

1 know -- we know who the owners, officers, and board members
2 are, and that's part of the renewal process, is to verify that
3 they've been --

4 Q No. You know the ones they disclosed. You don't
5 know the ones that really are out there. You only know the
6 ones that that they disclosed; isn't that correct?

7 A Yes.

8 Q Because you're taking them at their word, aren't
9 you?

10 A Yes, we are.

11 Q And if they don't disclose every owner with
12 5 percent or great interest, then those owners would not have
13 been required to get agent cards, which would be against the
14 law; isn't that true, sir?

15 A I don't know. I'm not a legal expert.

16 Q Well, you put it your own training. "Requirements
17 within the law." That's within your training; isn't that
18 correct? This came straight from your training guidelines.

19 A This would refer to the 5 percent background checks
20 that we require or the 3 percent on the annual basis. That's
21 what that training was addressing.

22 Q Sir, you indicated that this training and this
23 percentage came -- this ownership percentage came from the
24 Administrative Code. That's what you said a few moments ago.

25 A Yes. I think it's the statute.

1 Q All right. And, again, it requires those with that
2 interest, that 5 percent ownership interest, to have an agent
3 card; isn't that correct?

4 A That's correct.

5 Q Which means that every applicant should identify
6 every owner with a 5 percent interest or greater; isn't that
7 correct?

8 A Yes.

9 Q And if they didn't disclose it, that would mean that
10 they did not comply with the law as you indicated in this
11 training; isn't that correct?

12 A The entity?

13 Q Yes.

14 A Yes.

15 Q Thank you. All right. So for a company like Nevada
16 Organics -- and you heard Mr. Jolley speak -- he did not
17 identify all of his ownership -- all of the owners with
18 5 percent or greater ownership in Nevada Organics. Did you
19 realize that?

20 MR. KOCH: Objection. Misstates evidence,
21 testimony.

22 THE COURT: Overruled.

23 BY MR. PARKER:

24 Q Did you hear him say that today?

25 A I did. But I -- I'd have to look at the application

1 and have it evaluated.

2 Q That's okay. We don't need the application for this
3 conversation. We heard -- you heard what he testified to.
4 And wouldn't you agree with me, given that there were owners
5 of Nevada Organics that were not identified that have a
6 greater than 5 percent interest, because we know they sold
7 95 percent of that company prior to the application process
8 being completed, wouldn't you agree with me that application
9 and given the testimony you heard was in violation of this
10 training slide?

11 MR. KOCH: Objection. Misstates testimony. He's
12 referring to what Mr. Kemp testified to.

13 THE COURT: Overruled. Mr. Kemp didn't testify.
14 BY MR. PARKER:

15 Q Isn't that true, sir?

16 A I don't know if I have enough information to answer
17 that question, because I -- I mean, I don't know if that's the
18 case. I'd have to really look at it.

19 Q Well, if he was being honest -- if he was being --
20 I'm sorry. Didn't mean to interrupt you. Go ahead.

21 A I don't know if I can answer that right --

22 THE COURT: Only one of you can speak at a time.
23 Mr. Parker, you know that.

24 MR. PARKER: I do.

25 //

1 BY MR. PARKER:

2 Q Go right ahead.

3 A I don't know if I could accurately answer that
4 question up here on the stand. I'd have to look at the
5 information and have, you know, other staff look at it, also.

6 Q Well, no. Let's just take what you heard yourself
7 with your own ears. You heard Mr. Jolley say that there are
8 owners in excess of 30 percent that were not disclosed on his
9 application. Didn't you hear him say that?

10 MR. KOCH: Objection. Misstates testimony.

11 THE COURT: So this is a requested break, Mr.
12 Parker. We're going to take a break. Everybody needs to do a
13 biological break at this point, so we will see you guys in
14 10 minutes.

15 (Court recessed at 3:37 p.m., until 3:47 p.m.)

16 THE COURT: Are we ready?

17 MR. PARKER: Ready to go.

18 THE COURT: Sir, are you ready?

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: We've got another hour.

21 MR. PARKER: We're missing Mr. Kemp.

22 (Pause in the proceedings)

23 THE COURT: Mr. Gilbert, you are ready to start up
24 again.

25 Mr. Parker, let's be brief. We've got an hour.

1 MR. PARKER: Yes indeed.

2 BY MR. PARKER:

3 Q All right. So we were talking for a moment there
4 about the length of time necessary to review an application.
5 Do you recall that?

6 A Yes.

7 Q Okay. And then we looked at the slide that talked
8 about mock applications, two to three days. Remember that?

9 A Yes.

10 Q Was that number refined to a number of hours or a
11 more precise length of time it would take to review an
12 application?

13 A Not that I can recall. Not during the mock
14 application period.

15 Q All right. How about in terms of the real
16 applications?

17 A I think -- oh, I don't -- I don't -- I don't know if
18 it was or not. I was never given an average number.

19 MR. PARKER: All right. Look at DOT298, which,
20 again, is a Exhibit 207, I believe, Your Honor. It is.

21 THE COURT: Okay.

22 BY MR. PARKER:

23 Q "Each application is estimated to take 33 hours to
24 review." Is that a fair estimate of how long it would take to
25 review each application?

1 A You know, I don't really know if that was actually
2 what took place. I'd have to look at all the applications and
3 the time that was put down for them. That would -- I think
4 from the previous -- 2014 that was an estimate, you know,
5 based on the three evaluators.

6 Q Okay. Well, you had six evaluators; right?

7 A Yeah. But three per session.

8 Q All right. And would the 33 hours include each of
9 the three evaluators' time, so maybe 11 hours for each?

10 A Yeah. Again, I don't know if -- I don't know how
11 accurate that number is. For the PowerPoint slide that was in
12 that was probably taken from 2014.

13 Q Right. Do you know if that had any applicability to
14 the 2018 applications?

15 A What --

16 Q In terms of the length of time it would take to
17 review an application. Were the applications in 2018 longer
18 than 2014 on average?

19 A You know, I don't know. I don't know what they
20 were.

21 Q All right. Good enough.

22 MR. PARKER: Let's look at page 300.

23 BY MR. PARKER:

24 Q Now, was this taken from the medical, or is this
25 particular to the 2018 recreational applications?

1 A That's from the medical.

2 Q Was it applied to the recreational applications?

3 A It was not.

4 Q It was not?

5 A No. It's not part of the criteria.

6 Q So there were no regulatory first four criteria for

7 the --

8 A No. That was -- I'm sorry, sir.

9 Q No. Go ahead.

10 A That was probably a slide just left over that should

11 have been taken out.

12 Q All right. Do you blame --

13 A It was probably addressed in training.

14 Q Do you blame Mr. Plaskon for all of the 2014 slides

15 that found its way into the 2018 training?

16 A Do I blame Mr. Plaskon?

17 Q Or attribute it to Mr. Plaskon?

18 A No. It was a group effort.

19 MR. PARKER: Okay. Turn to 314 for me, Shane.

20 Still in 207.

21 BY MR. PARKER:

22 Q Now, this says "Verification Activities." It says,

23 "Verify background check results and confirmation of resume

24 details." Would your answers be the same, that the

25 administrative team did not review anything beyond what was in

1 the DOT data files?

2 A I'm sorry. Can you clarify?

3 Q Yes. The only information the administrative team
4 used was the information provided by the applicants and what
5 the DOT had its own files; is that correct?

6 A As far as background checks, yes.

7 Q Okay. And the same with resumes; right?

8 A Yeah. I mean, you'd have to talk to the evaluators
9 if they reached out to the administrative team to do any
10 resume work.

11 Q I want you to take a look at 315. This goes a
12 little further. And I believe this is meant to comply with
13 the statute, as opposed to the regulation. It says,
14 "Verification of background checks on all proposed owners,
15 officers, and board members." Do you see that?

16 A I do.

17 Q Do you know what that entailed?

18 A Yeah. I kind of spoke to that earlier about
19 verifying that in our portal we track all background checks
20 for criminal history. That would be verifying that all
21 owners, officers, and board members listed on the application
22 were up to date on their background checks.

23 Q So when the DOT received information through the --
24 I think it was the Avino paper of the proposed purchase, do
25 you recall that in the extraction report?

1 THE COURT: Text messages? The text messages?

2 MR. PARKER: Yeah. From the extraction report.

3 BY MR. PARKER:

4 Q Do you remember that? Mr. Plaskon discussed it.

5 A I do.

6 Q Were verifications on backgrounds of those proposed
7 owners performed by the administrative team?

8 A No, they were not.

9 Q Okay.

10 A Those wouldn't be -- those wouldn't be checked until
11 we actually got the transfer of interest submitted.

12 Q All right. So, despite the fact that that was done
13 prior to the application being submitted, the proposed owners'
14 backgrounds would not have been verified; is that correct?

15 A I'm sorry. I don't understand that question.

16 Q Yeah. We know that based upon the text message
17 which was a part of the extraction report the purchase took
18 place before September 20th, 2018. Recall that?

19 A I do. I don't recall which companies it was,
20 though.

21 Q All right. But this verification slide indicates
22 that proposed owners' backgrounds would be verified; is that
23 correct?

24 A So that goes back to what I mentioned earlier. If
25 there's a transfer of interest that the Department had not

1 acted upon --

2 Q Yes.

3 A -- that transfer of interest would have to be
4 approved before that conditional license.

5 Q Now, it says "proposed owners." So this doesn't
6 seem to say at the conclusion of a transfer of ownership or a
7 transfer of interest. It just says "proposed owners," doesn't
8 it?

9 A Yes, it does.

10 Q All right. And that's how you trained them; is that
11 correct? Trained the evaluators. Or the, I'm sorry,
12 administrative team.

13 A Well, the administrative assistants would bring it
14 to Diane O'Connor, who manages the agent card portal which
15 houses all the background check information.

16 Q So this would have been meant to be performed by a
17 DOT employee?

18 A The verification of the backgrounds, yes.

19 Q All right. Do we know -- well, I believe you've
20 answered, but I just want to make sure. So a DOT employee,
21 Ms. Diane O'Connor, did she check the backgrounds of proposed
22 owners of -- what's the name of the company -- I think it was
23 Essence. I'm sorry. Of Essence that was brought out in the
24 extraction report text message?

25 A If there was -- I don't know. I don't know if we

1 had the transfer of interest in the house then.

2 Q But this doesn't say that it's predicated on the
3 transfer of interest being considered or approved. It just
4 says on all proposed owners; isn't that correct?

5 A Well, yeah. I mean, that would be proposed -- that
6 would be proposed in today's -- 2018 the proposed owners would
7 be somebody that's proposing a transfer of interest to the new
8 owner.

9 Q That's not what this say.

10 A Well, that's -- that's probably language from the
11 2014 where everybody was proposed.

12 Q So is this training incorrect?

13 A No, it's not. Because we verify all proposed
14 owners, also, if there was a transfer of interest and they
15 were awarded.

16 Q No. But based upon the purchase being done prior to
17 submission of application shouldn't the proposed owner
18 verification have been done once the DOT received notice of
19 that?

20 A I don't -- I don't think we had the transfer of
21 interest at the Department.

22 Q Okay. But the training doesn't say that the
23 transfer of interest was necessary, does it?

24 A No, it doesn't.

25 MR. PARKER: All right. Let's go to page 340.

1 Which again is still 207, Your Honor.

2 THE COURT: Thank you.

3 BY MR. PARKER:

4 Q It says, "Questions during individual review." Now,
5 I asked you about this earlier. What do you consider to be an
6 individual review?

7 A That would be if they -- if they couldn't come to a
8 conclusion or they had any discrepancies that they couldn't
9 come to a -- to a, you know, consensus, if they're more than
10 3 points apart. That wouldn't be elevated up to me.

11 Q Now, you've told me today that there were certain
12 areas of the application that you did not train the evaluators
13 on, you left it up to Ms. Cronkhite or Mr. Hernandez or Mr.
14 Plaskon. Do you recall that?

15 A Yes.

16 Q All right. So why would you be the stopping point
17 for evaluation questions if you had, you know, such a limited
18 role in the process?

19 A Because I'm management, and if something needs to be
20 elevated up to Mr. Pupo or even higher, then I would be the
21 avenue to take.

22 Q Do you recall fielding any questions from the
23 evaluators or the administrative team that you provided
24 responses to?

25 A Not specifically by the application, but they did

1 ask maybe some process questions.

2 Q Okay. And what did you do with those questions?

3 A I would answer them if I could.

4 Q Would you do it in writing?

5 A Most -- we did have some policies and procedures,
6 but if it was a question I could answer, you know, verbally, I
7 would.

8 Q Okay. But this item says here, the second-to-the-
9 last bullet point says you're supposed to document the issue.
10 Did you document every issue?

11 A I don't know if we had any issues.

12 Q Okay. You just said there were questions and you'd
13 answer them verbally. Did you document those answers that you
14 gave?

15 A Potentially. I'd have to go back and look and see
16 what we came up with through the procedures.

17 Q And if you did so, should they be in the DOT files?

18 A I don't know how to answer that question.

19 Q All right. Would that be -- would you have your own
20 separate files if you documented the issues?

21 A No.

22 Q Is there some type of central location for issues
23 that are documented?

24 A There's a -- we save all of our documents on a
25 shared drive.

1 Q Okay. Did you -- do you know if that shared drive
2 was provided to the State?

3 A All documents, from my understanding, that were
4 requested have been provided.

5 Q All right. Good. Let me have you look at DOT391,
6 which is Exhibit 209.

7 MR. PARKER: I think that's been stipulated to, as
8 well, Your Honor.

9 THE CLERK: Yes.

10 BY MR. PARKER:

11 Q You're familiar with this, the application criteria
12 points breakdown?

13 A Yes.

14 Q Did you have anything to do with determining the
15 points for the building construction?

16 A Yeah. So Jorge Pupo, Kara Cronkhite, and myself met
17 and we compared -- we compared the current application to the
18 regulations and discussed the 250 points.

19 Q All right. So building construction. This is worth
20 20 points; is that correct?

21 A Yes.

22 Q Number 1 says, "Building plan details." Do you see
23 that?

24 A I do.

25 Q Do you understand what a building plan or building

1 plan details are?

2 A Is this -- can I ask a question?

3 Q Certainly.

4 A Is this the -- I don't know what document this is.

5 MR. PARKER: Let him see the whole document, first

6 page.

7 BY MR. PARKER:

8 Q This is the scoring criteria. Are you familiar with

9 this?

10 A Looks in a different format than what I'm familiar

11 with.

12 Q This is one of the ones provided by the Department

13 of Taxation. Do you want to look at my hard copy?

14 A Yes, please.

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

16 THE COURT: You may.

17 THE WITNESS: Okay. I see.

18 BY MR. PARKER:

19 Q Are you familiar with this document?

20 A Yes.

21 Q Can you read it on the screen?

22 A It's not on the screen.

23 Q Well, just use mine --

24 A All right.

25 Q -- and I'll work with the one on the screen.

1 So Element Number 1 is building plan details. Do
2 you have an understanding of what building plan details are?

3 A That would be the floor plan, the detail of the
4 establishment.

5 Q Well, it doesn't say details of a floor plan. It
6 says building plan details; is that correct?

7 A I don't know where you're at. Sorry.

8 Q First page at the bottom, Element Number 1 under
9 building construction. Do you see it? First page.

10 A Yeah. I'm trying to -- I'm not familiar with this
11 document --

12 Q You're not familiar with the --

13 A -- this summary, the summary one. The scoring
14 criteria as it is broken out like this --

15 Q Yes.

16 A -- that's what I'm familiar with.

17 Q Okay. But are you familiar with Element Number 1,
18 building plan details?

19 A I am.

20 Q Okay. Let's start there. Would you agree with me
21 that that description does not include floor plan details?

22 A Yes.

23 Q You agree with me there's a difference between a
24 building plan and a floor plan?

25 A Yes, I would.

1 Q All right. And the Element Number 2 says, building
2 plan regulatory compliance. See that?

3 A Where? Oh.

4 Q Same page. First page at the bottom.

5 Q Yes, I see it.

6 Q All right. It doesn't say floor plan regulatory
7 compliance, does it?

8 A No, it doesn't.

9 Q Because the floor plan may be adequate, but may not
10 be compliant with the regulations; is that correct?

11 A Can you repeat that.

12 Q Yes. A floor plan could be adequate, but not in
13 compliance with the applicable regulations; isn't that
14 correct?

15 A Well, they would score lower. It wouldn't be as
16 strong in the application. The more --

17 Q Well, you would think not.

18 A The more compliant the higher they would score.

19 Q Well, in fact it had to be compliant, number one.
20 Isn't that a threshold to be in compliance?

21 A Yeah. Yes.

22 Q Right. But you can't determine if the floor plan is
23 compliant because the floor plan does not say that the
24 building is in compliance.

25 Let me give you some context. A floor plan does not

1 tell you whether or not you're within 300 feet of a school.

2 Would you agree?

3 A I'd agree with that, yes.

4 Q A floor plan does not tell you if you're within
5 1200 feet of a church or a liquor store or a casino or my
6 backyard; is that correct?

7 A Yes.

8 Q So simply providing a floor plan provides no
9 information in terms of regulatory compliance; isn't that
10 correct?

11 A It does towards the regulations surrounding a floor
12 plan.

13 Q No. I'm talking about in terms of building
14 compliance, sir. Because it says in the Element Number 2,
15 building plan regulatory compliance.

16 A No, it doesn't.

17 Q And wouldn't you agree with me, sir, that when we
18 looked at that P.O. box that was attached to the UPS Store
19 that that wouldn't tell you whether or not that floor plan was
20 actually in a building that was -- that would meet the
21 regulations? Isn't that correct?

22 A I'm sorry. Can you repeat that one, sir.

23 Q Yes. You remember I showed you the location for
24 Thrive and Essence --

25 A Yes, I do.

1 Q -- in a UPS Store, a P.O. box associated with a UPS
2 Store?

3 A Yes.

4 Q Wouldn't it be true, sir, that having that
5 information would give you no understanding of whether or not
6 that UPS Store or that P.O. box was in compliance with the
7 regulations, 300 feet from a school or a church or liquor
8 store or a casino, anything?

9 A The floor plan wouldn't.

10 Q That's right. So how would you judge a floor plan
11 under these two elements? Because it's not a building plan
12 and it provides you no information in terms of regulatory
13 compliance.

14 A I'm trying to see in the actual evaluation materials
15 what that language says, because I'm not positive why this --

16 Q No problem.

17 A All right.

18 Q You ready?

19 A Yeah. Go ahead.

20 Q All right. So what's the answer?

21 A Can you repeat the question.

22 Q I knew you were going to say that.

23 Yes. These are the two elements, building plan
24 details, and building plan regulatory compliance. You see
25 that?

1 A I do.

2 Q Wouldn't you agree with me, sir, that having a P.O.
3 box associated with a UPS Store could not provide you any
4 information for determining a building plan or building
5 regulatory compliance? Wouldn't you agree with that, sir?

6 A I would.

7 Q Thank you.

8 Now, you indicated that sometime prior to September
9 20th, 2018, there was a change made that locations were not
10 necessary. Remember that?

11 A Yeah. I think I said -- yeah. I think I brought
12 that up in my last testimony.

13 Q Was the training tool ever changed?

14 A Not that I'm aware of. Not that I can recall.

15 Q So you had the evaluators using a training tool that
16 didn't match what you were telling certain applicants; is that
17 what you're telling me?

18 MR. PARKER: You can put that back up, Shane.

19 THE WITNESS: Were you referring to this as the
20 training tool?

21 BY MR. PARKER:

22 Q As the scoring criteria, yes.

23 A I don't know if this was ever used as the scoring
24 criteria. The scoring criteria would be these sheets.

25 Q So you think that the Department of Taxation has

1 given me a document that was not actually utilized by the
2 evaluators as a scoring criteria?

3 A No, that's not what I'm saying. This might have
4 been used for a different purpose.

5 Q Well, you don't trust the heading of that document?

6 A I mean, that's what it is, yes.

7 Q That's what I thought. So if that's what it is and
8 it is the scoring criteria, why would you utilize that scoring
9 criteria if you weren't going to actually follow the elements
10 of the scoring criteria, building plan details, building plan
11 regulatory compliance?

12 A The evaluators were trained on the evaluation
13 sheets, which were these, which is different than what this
14 says here.

15 Q So --

16 MR. PARKER: Your Honor, may I approach?

17 THE COURT: You may.

18 MR. PARKER: Thank you.

19 BY MR. PARKER:

20 Q So let's actually utilize for purposes of the record
21 the Bate numbers.

22 A Okay.

23 Q So when you're referring to it, maybe you can tell
24 me what you believe to be the right documents for us to be
25 looking at, okay?

1 A Okay.

2 Q So DOT391, that's the first page of Exhibit 207 --

3 THE COURT: 209.

4 MR. PARKER: 209. Thank you.

5 THE COURT: Dulce has your back.

6 MR. PARKER: She does. I appreciate it.

7 BY MR. PARKER:

8 Q -- of Exhibit 209. Are you telling me this was not
9 -- this document and this page was not used by the scorers or
10 the evaluators?

11 A I can't recall if it was or not.

12 Q All right. So you don't know. So the head guy --
13 and I say the head guy because when we looked at the chart
14 right before we took the break and said that questions --
15 ultimately questions come to you. So as the head person, you
16 don't know if this was the scoring criteria for the
17 evaluators?

18 A The scoring criteria was in document DOT000396.

19 MR. PARKER: May I approach again, Your Honor?

20 THE COURT: You may.

21 BY MR. PARKER:

22 Q You don't believe, sir, that 391 was utilized?

23 A It doesn't give any detail that the evaluators would
24 have used.

25 Q Good enough. So let's use this one.

1 MR. PARKER: Shane, can you pull up Exhibit 209,
2 page 396.

3 BY MR. PARKER:

4 Q We'll use this one, sir.

5 A All right.

6 Q That's the one you're familiar with; is that
7 correct?

8 A Yes. It looks familiar.'

9 Q I actually like this one equally.

10 MR. PARKER: So you just blow that one up. Thank
11 you. Is that the biggest you can get?

12 Because the witness has my version -- do we --

13 THE COURT: I understand. You're welcome to walk
14 up.

15 MR. PARKER: Thank you, Your Honor. You read my
16 mind.

17 BY MR. PARKER:

18 Q All right. So the first paragraph under building
19 construction says, "Documentation concerning the adequacy of
20 the size -- of the size of the proposed marijuana
21 establishment to serve the needs of persons who are authorized
22 to purchase recreational marijuana, building plans and
23 supporting details." Do you see that?

24 A Yes, I do.

25 Q Now, it doesn't say floor plans, does it?

1 A No, it doesn't.

2 Q And supporting details. Do you know what supporting
3 details are being referenced or considered here?

4 A That would be everything describing the
5 establishment itself, or the dispensary.

6 Q All right. So a floor plan could be a one-pager.
7 Supporting details to a building plan would be more than a
8 one-page floor plan; is that correct?

9 A Right. It would be the operating procedures, you
10 know, the inventory closing, storage, pathway for customers,
11 size.

12 Q Good enough. And then it says, "Effective and
13 efficient building planning is demonstrated in the response."
14 And now we go to a excellent response versus an average or an
15 inadequate response. Do you see that?

16 A Yes.

17 Q All right. So an excellent response would be "The
18 building place demonstrates a clear definition of work areas,
19 estimation of acquired resources, and the duration of
20 individual tasks, planning of scheduled activities with the
21 estimated resources, duration are realistic and
22 achievable within five to twelve months to be fully
23 operational." You understand that?

24 A Yes.

25 Q So the 12-month requirement, is that 12 months from

1 the time a conditional license is provided to the floor plan
2 or building plan actually being constructed and ready for use?

3 A The 12 months is between December 5th and when they
4 become operational -- or final licensed by the Department.

5 Q Okay. And, again, if the scorers are using this
6 document, page 396, as opposed to 391, why didn't you change
7 it to say floor plan instead of building plan?

8 A It just wasn't changed.

9 Q So when Mr. Jolley was speaking yesterday and today
10 and was using the word "ignorant" and "confused" -- do you
11 remember him using those words?

12 A Not specifically, no.

13 Q You're smiling. Thought you may have remembered
14 them.

15 So would you agree with me, sir, that there is no
16 confusion here in that the word "building plans" are being
17 used, as opposed to "floor plans"? We can agree with that;
18 right?

19 A As far as the evaluators go?

20 Q The evaluation tools, yes. Or the scoring criteria,
21 I should say.

22 Q Not on the part of the evaluators, no.

23 Q All right. And in fact the word "P.O. box" being
24 allowed is not mentioned there, either.

25 A No.

1 Q Is that correct?

2 A That's correct.

3 Q So no P.O. box being indicated here, no information
4 saying that, we don't need a building plan or location, is
5 included here; is that correct?

6 A No, it's not.

7 Q So if the training and the scoring criteria discuss
8 building plans and location verification, wouldn't it make
9 sense that that's what the scoring should be based upon, as
10 opposed to this change that you're speaking of that's not
11 reflected in the training or the scoring criteria?

12 A Well, the evaluators were trained on evaluating
13 floor plans. And the criteria actually references more of,
14 you know, the floor plans and the ability to operate than it
15 does a construction plan.

16 Q Well, it doesn't -- the word "floor plan" didn't
17 show there at all. It says building plan. And in fact the
18 training that we went over because I wanted to take it
19 systematically, the training tool that you provided said
20 "building verification location." It didn't say anything
21 about floor plans. So tell me what training your speaking of
22 that maybe used the word "floor plans" anywhere.

23 A I'd have to go back and look and see if it mentions
24 floor plans.

25 Q Would you agree with me that the training

1 information we've gone through today, which we've gone through
2 a couple of hundred pages already, didn't mention the word
3 "floor plan"?

4 A Not that I've seen of what we looked at today.

5 Q And you agree with me that the scoring criteria does
6 not mention the word "floor plan"

7 A I'd have to go through it.

8 Q Take a second.

9 A It doesn't specifically say "floor plan," but all
10 the requirements and the criteria that they were looking for
11 is -- would be found in a floor plan.

12 Q Well, not regulatory compliance. We've already
13 talked about that. That's not going to be found in the floor
14 plan; isn't that true?

15 A Sure it could. I think so. My belief is that --

16 Q In terms of location?

17 A Not as far as location, but in compliance to the
18 other aspects of the regulations.

19 Q Good enough.

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

21 THE COURT: You may.

22 MR. PARKER: Thank you.

23 (Pause in the proceedings)

24 MR. PARKER: All right. I want to look at Exhibit
25 109, Shane -- I believe this has been admitted, Your Honor --

1 page 31.

2 THE CLERK: I'm sorry.

3 MR. PARKER: No?

4 THE CLERK: 108's been admitted.

5 MR. PARKER: All right. Well, let me I can lay the
6 foundation for it.

7 THE COURT: Okay. Is there a stipulation to 109?

8 MR. PARKER: This is the extraction report for Steve
9 Gilbert produced by -- I believe it was produced by the DOT.

10 MR. KOCH: I think it's already admitted.

11 MR. PARKER: Yeah, I thought it was admitted, Your
12 Honor. I had it highlighted as being admitted.

13 THE COURT: So Dulce now thinks it's admitted, too.
14 It is. It's now admitted.

15 (Plaintiffs' Exhibits 109 admitted)

16 MR. PARKER: Okay. Here we go. Thank you. Thank
17 you.

18 BY MR. PARKER:

19 Q So Exhibit 109, Mr. Gilbert, is the extraction
20 report from your telephone. So if we could look at page 31
21 and Entry 117.

22 A I can't see it on this one.

23 THE COURT: We're going to blow it up for you, I
24 think. Although this one you may not be able to look, because
25 it takes up a lot --

1 MR. PARKER: Paragraph number 5 is the one I want to
2 look at, Shane, on this top group. Yeah, the paragraph on the
3 top. That's it.

4 BY MR. PARKER:

5 Q Do you recall receiving this text message? Or I
6 believe it's a text message.

7 THE COURT: How about we get the actual hard copy
8 out for him. It's going to be really hard to adjust that one.

9 MR. PARKER: Well, I think it should be in one of
10 volumes behind him.

11 THE COURT: It should.

12 MR. PARKER: Let me see if I can grab it for him.

13 (Pause in the proceedings)

14 THE COURT: And what page is the Bates number, Mr.
15 Parker?

16 MR. PARKER: Your Honor, it's page 31, ST31.

17 THE COURT: So, sir, there's a number on the bottom.
18 Oh. You've got it. Okay. And you can read it. Are you okay
19 reading it from there?

20 THE WITNESS: Yes.

21 THE COURT: Okay.

22 BY MR. PARKER:

23 Q Do you recall receiving this text message, sir?

24 A Sure. I guess. I mean, I'd have to -- I mean,
25 who's it from?

1 Q Well, I see Mr. Plaskon's name at the top,
2 "Attendees." It looks like it reflects a meeting.

3 A It looks like it's a meeting.

4 Q Okay. Good. So tell me something. Where are these
5 notes taken from? Because I got it as an exhibit based on an
6 extraction report. But it does reflect a meeting. Did you
7 discuss in a text a meeting held in your office?

8 A Oh. I don't know.

9 Q Okay.

10 A I'd have to refresh my memory. "Verify all --" I'm
11 sorry.

12 Q No. Go right ahead. Read it.

13 A What's the question?

14 Q You could read it to yourself.

15 A Okay.

16 Q And I bring this to your attention because
17 paragraph 4 talks about the change of ownerships. It says,
18 "Pull out CHOWs that are needed to be completed so an
19 applicant will know this matches." See that?

20 A Yes.

21 Q And it says, "Completed by close of business 11/15.
22 These will be the priority ones that contractors will help
23 with." So to me that means an employee for DOT is doing this
24 verification. Is that correct?

25 A Yes. Because the CHOWS would be -- they're managed

1 by one of those program officers that we talked about earlier.

2 Q This says, "I don't have the names ahead of time. I
3 can't make my deadline in Number 3 below." And then it says
4 again, "Verify all owners have completed background check.
5 Take ownership spreadsheet and create a background check."
6 You see that?

7 A Yes.

8 Q Now, is the spreadsheet based on the information the
9 applicants had previously provided coupled with the 2018
10 application?

11 A I'm sorry. I don't understand that question.

12 Q Well, I'm trying to figure out what the spreadsheet
13 -- where the spreadsheet would come from. It says, "Take
14 ownership spreadsheet." You see that?

15 A Yes.

16 Q How is the spreadsheet created?

17 A It was created -- if I recall correctly, when we did
18 the matching of ownership we created an ownership list, and
19 that's the spreadsheet that must be referenced in this
20 meeting.

21 Q And who -- would the employee -- would an employee
22 of the DOT create the spreadsheet?

23 A Yes.

24 Q And where would the information for the spreadsheet
25 come from?

1 A The applications.

2 Q Okay. So the entire -- again, this goes back, as
3 you said before, the spreadsheet and any verification that was
4 done on the background of any owner came just from the
5 information the applicants provided?

6 A That's correct.

7 Q All right. Be it a CHOW, in the form of an a change
8 in ownership or a transfer of ownership or initial
9 application, that's the parameters that you would check?

10 A That's correct.

11 Q All right. In terms of monopolies, if you don't
12 have all of owners identified, how do you determine whether or
13 not there are ownership interests in other applicants'
14 proposed operations?

15 A Well, we have this list, because we could refer to
16 this list of the master owners, officers, and board members,
17 which is now posted on the Website. That was our listing of
18 owners, officers, and board members.

19 Q Right. But if -- let's say that Thrive had an owner
20 that had 20 percent interest in Thrive that they did not
21 identify and Nevada Organics had someone that had 20 percent
22 interest in Nevada Organics that they didn't identify. Would
23 that constitute a monopoly if those two companies obtained a
24 license in the same jurisdiction but you were not aware of the
25 ownership interests of both?

1 A I'd have to run the analysis. I don't know if -- or
2 have somebody do it, actually, to answer that question.

3 Q Do you understand the dilemma there?

4 A Not -- not totally.

5 Q The first level of the dilemma is that you would
6 have to get actual disclosures of the owners. You understand
7 that?

8 A Uh-huh. Yes.

9 Q Is that yes?

10 A Yes.

11 Q And then you would have to -- if you had full
12 disclosure of the ownership, then you'd have to determine if
13 any of those owners had interests in more than one applicant's
14 application for a single jurisdiction. Isn't that correct?

15 A That's correct.

16 Q So if you don't have full disclosure of all of the
17 owners of each of proposed applicant or licensee, you could
18 never determine if you had a monopoly. Isn't that correct?

19 A If you're referring to the shareholders --

20 Q Yes.

21 A -- we didn't -- we don't require that information,
22 so --

23 Q But the statute did. If you complied with the
24 statute, you'd actually have a way of determining monopolies
25 through ownership. Isn't that correct?

1 A I'd have to get a legal opinion on that one.

2 Q Well, let's look at Exhibit 108, page 21. And this
3 is an extraction report from Mr. Plaskon's telephone. And
4 I'm concerned with Item 211.

5 Do you recall this situation, Mr. Gilbert? Because
6 it mentions to you from Mr. Plaskon -- it says, "We are
7 continuing monopoly analysis today. Do you want to check in
8 later today with Dinnette and I?" Do you see that?

9 A That's me going to him?

10 Q Okay.

11 A Or is that --

12 Q I thought it was him going to you.

13 A Okay. Possibly. I mean, that was towards the end
14 of, you know, the application period, the 90 days.

15 Q All right. Do you know what the result of the
16 analysis was?

17 A Yeah. That there was no monopoly that we could
18 determine.

19 Q And how did you come to that conclusion?

20 A We had a -- we had a chart that we put together with
21 the help of Dinette that showed all the owners, officers, and
22 board members that were listed on the applications and then
23 their current -- their current licenses or certificates that
24 they hold, license, and then compared them that way.

25 Q Okay. But, again, you're only comparing what they

1 disclose; isn't that correct?

2 A That's correct.

3 Q So you're not doing anything independent of the
4 applicants' own information. And so if they don't disclose
5 all of the owners, you've not done a full monopoly analysis;
6 isn't that correct?

7 A We didn't -- again, we didn't request the
8 shareholders of the company, so we didn't have that
9 information.

10 Q All right. Can you tell me how it was determined
11 what the liquidity number needed to be for each application?

12 A That 250,000 --

13 Q Yes, sir.

14 A -- in liquid assets? I think that was used from
15 2014 or the medical.

16 Q All right. How about in terms of one years'
17 operation?

18 A I don't know if there was a -- I'm sorry. Can you
19 be more specific in that question?

20 Q Yes. Was there a determination or a threshold
21 determination made on how much money each applicant would need
22 to demonstrate that they had enough money to run the operation
23 for a year?

24 A No. That was -- that was up to the evaluators', you
25 know, expertise in the fields that they came from to determine

1 if the size and the extent of plan covered.

2 Q Well, how would they know? How would they come up
3 with a number that would be used objectively for each
4 applicant? For example, the average 5,000-square-foot
5 building that would house the operation, someone would need
6 \$3.5 million to run that operation for a year. Was an
7 analysis performed to determine that amount and whether the
8 applicant had sufficient funds for that one-year operation?

9 A Well, to answer your question, an analysis wasn't
10 done.

11 Q Thank you. And the reason I say that is because I
12 do not see anything in the DOT documentation showing that an
13 analysis was done.

14 So without an analysis how can they include in your
15 evaluation or your scoring a base line to tie to the ballot
16 question that says "directly and demonstrably related to the
17 operation of a marijuana establishment," if there's been no
18 analysis done of what it takes to run one for a year? And I
19 didn't see it any of your training, either.

20 And let me stop there. Before you answer the
21 question answer this one. Did you include --

22 THE COURT: So you want to strike that one and start
23 over?

24 MR. PARKER: I want to strike that one.

25 //

1 BY MR. PARKER:

2 Q I want to make sure we're clear. I didn't see it in
3 your training. Were there any training slides related to a
4 determination of what it costs to run a recreational marijuana
5 establishment for a year?

6 A Not that I can recall.

7 Q All right. So no training slides, no analysis. Did
8 you leave it to evaluators to determine per applicant whether
9 or not that applicant had enough money to run it for a year?

10 A We did. Because we couldn't determine -- we didn't
11 know what the applications were going to include, and they --
12 based on their expertise and their experience they -- they
13 looked at the budget and compared it to the plan.

14 Q Had a single evaluator ever operated a marijuana
15 establishment for a year?

16 A Not -- I don't think -- no.

17 Q Okay. So when you said based upon their experience,
18 they didn't have any experience in running a marijuana
19 establishment in the state of Nevada. Isn't that correct?

20 A That's correct.

21 Q So it wasn't based on experience, and there was no
22 training, and there was no analysis done by the DOT. So isn't
23 it a fair statement, sir, that there was no way to objectively
24 determine whether or not the evaluators could determine the
25 number of -- the amount of money, the amount of money

1 necessary to run a recreational marijuana establishment for a
2 year?

3 A I think there was. I mean, some of these questions
4 might be better to be asked to the evaluators themselves to
5 see what they experienced. However, they looked at the
6 comprehensive plan that was provided to them in the non-
7 identified section and then the budget to see if there was
8 enough funds to cover the plan.

9 Q Well, sir, you've already told me that none of them
10 had medical marijuana -- I'm sorry, I keep on saying medical
11 -- none of them had recreational marijuana experience in the
12 state of Nevada. You told me no analysis was done and no
13 training was done. So you left it up to people without
14 experience to come up with a number to run a recreational
15 marijuana operation in the state of Nevada; is that correct?

16 A Well, that's -- no, that's not correct. I think --
17 so the non-identified group had three people on it.

18 Q This is part of the identified portion.

19 A Oh. I thought you --

20 Q No, no. This is -- the financial ability is a part
21 of the identified portion; isn't that correct?

22 A It is part of it, yes.

23 Q Okay. So let's stay focused. Let's stay on this
24 topic, that is, the ability to finance the operation of a
25 recreational marijuana establishment for a year. You told me

1 that there was no training on it; isn't that correct?

2 A Can you repeat what you just said.

3 Q Yes. You said there was no training done in terms
4 of educating the evaluators on how to determine if an
5 applicant had sufficient amount of money to run a recreational
6 marijuana establishment for a year.

7 A Well, there was training on the financial side of it
8 by Damon Hernandez. So I don't know if I can answer that
9 specifically. I think the question you asked earlier, if I
10 may, was if there was any analysis done and provided to them.

11 Q That was one of my questions.

12 A There wasn't on the analysis.

13 Q There was no analysis. I understood that. But when
14 I looked through your training materials there was no training
15 dealing with that part of the application. Do you recall
16 seeing any training slides that dealt with that?

17 A No, there wasn't.

18 Q All right. So I -- so my question again is if there
19 was no training, there was no analysis, and we know that they
20 did not have experience in the recreational marijuana --

21 THE COURT: I'm still listening.

22 MR. PARKER: I know you are. I've seen you do this
23 before.

24 THE COURT: Keep going. I'm grabbing a book.

25 MR. PARKER: I'm with you.

1 BY MR. PARKER:

2 Q Would you agree with me that you left it up to
3 inexperienced evaluators to come up with a number?

4 A No, I would not.

5 Q Well, what number was that? Tell me that. What
6 number did they arrive at that a applicant would need to run a
7 medical marijuana establishment for a year?

8 A That would be a question I think that the evaluators
9 would have to answer, because --

10 Q You don't know the answer to that question, sir?

11 A No.

12 Q The person who trained the trainers and was the go
13 to person to field questions that could not be answered by the
14 trainers does not know what the threshold number would be to
15 run a recreational marijuana location in Nevada for a year; is
16 that correct?

17 A We did not -- we did not provide that number to
18 them.

19 Q All right. How did -- how is determined what
20 percentages of taxes paid to Nevada would equate to serve the
21 scoring? For example, I believe if we were to put the scoring
22 criteria back up, taxes are -- let's see if I can find the
23 taxes for you.

24 THE COURT: Do we need to break? I mean, I've got
25 seven minutes. If you're coughing real, bad we can --

1 MR. KOCH: I'm fine. This one question will
2 probably take seven minutes.

3 THE COURT: That is likely.

4 BY MR. PARKER:

5 Q So financials, the taxes indicate that if you've
6 paid zero to 499,000, you get 1 point, 500,000 to 999,000 2
7 points. Do you recall that?

8 A Yes.

9 Q Who came up with those numbers and those lines of
10 demarcation?

11 A I think Mr. Pupo did. This was part of the exercise
12 that Kara and Jorge and I did when we comparing the scoring
13 criteria to the regulations.

14 Q Would you agree with me that that portion has
15 nothing to do with being directly and demonstrably related to
16 the operation of a recreational marijuana facility?

17 A I think it shows the ability to run a successful
18 business in the state of Nevada.

19 Q You're saying simply paying taxes on something that
20 could be related to a construction business or a pet store
21 would be -- could be directly related to running a marijuana
22 store?

23 A Maybe not directly to the marijuana business per se.

24 Q All right. So then why -- wouldn't you agree with
25 me that the bigger the company the more points likely they

1 will receive because they pay more taxes?

2 A I don't know if I can -- bigger revenue-wise?

3 Q Yes.

4 A Yes.

5 Q All right. And does that matter, the larger the
6 company is the better you can run a marijuana retail or
7 dispensary?

8 A Can you -- just -- I'm sorry.

9 Q Yeah. Does it matter how much you paid in taxes
10 whether or not you can run and operate a recreational
11 marijuana establishment?

12 A No, it's not. But that's part of the criteria that
13 is in the regulations.

14 Q So then the question becomes why wasn't simply a
15 threshold number used, as opposed to giving higher scores for
16 higher payers of taxes?

17 A That would probably be a better question for Mr.
18 Pupo. I'm sorry.

19 Q You didn't decide these figures, did you?

20 A No, I didn't. Like I said, we were sitting, if I
21 recall correctly, discussing the scoring and Mr. Pupo came up
22 with those.

23 Q All right. Same with the liquidity number. Who
24 came up with that?

25 A I think that was carried over from the 2014

1 application process.

2 Q So you'd agree with me that, again, this scoring
3 system for the liquidity again favors the bigger companies?

4 A Well, I think that's just a minimum amount required,
5 you know, just to show that you do have liquid funds.

6 Q Well, if you look at the financial statements --
7 again, this is DOT394 -- there points that increase as you
8 demonstrate greater assets. So 250,000 1 point, in excess of
9 3.5 million is 10 points. Are you familiar with that?

10 A Yes.

11 Q So does it -- why would it matter -- after you've
12 reached the threshold of two fifty why does it matter in terms
13 of liquidity whether or not that amount of money is necessary
14 for purposes of running a marijuana establishment?

15 A Well, the liquidity wouldn't necessarily be enough
16 to open up a business within 12 months.

17 Q Okay.

18 A The liquidity -- you'd have to look at the budget,
19 and there's a lot of aspects that go into what the evaluators
20 I think looked at to come up with these determinations.

21 Q The liquidity amount was at two fifty; right?

22 A Yes.

23 Q All right. So this is taken from the liquid and
24 illiquid asset figure.

25 MR. PARKER: Make that whole section bigger, Shane,

1 so he can see where it's coming from.

2 BY MR. PARKER:

3 Q Are you familiar with that, sir?

4 A No.

5 Q These deal with the financial statements. Or this
6 information comes from the financial statements of the
7 applicants.

8 A Yeah, I'm familiar with it.

9 Q All right. So after you've demonstrated the amount
10 of liquidity necessary, this provides scoring for the more
11 money you show the more points you get; right?

12 A Yes.

13 Q You said you had nothing to do with setting these
14 parameters?

15 A Taxes. Taxes is what I said I didn't have --

16 Q Did you have anything to do with these parameters?

17 A I don't recall if -- how we came to the conclusion
18 on these. I don't know if -- I mean, I wasn't the final say
19 in it, of course.

20 Q All right. So you don't recall?

21 A No, I don't.

22 Q Okay.

23 THE COURT: Would this be a good place to break, Mr.
24 Parker?

25 MR. PARKER: It would be, Your Honor. I was about

1 to change --

2 THE COURT: All right. It's 4:45. I'm going the
3 let the witness leave before people change minds.

4 Sir, do you want to come back on Tuesday, or do you
5 want for your counsel to negotiate a different start?

6 THE WITNESS: If I fly in Tuesday morning, is that
7 fine?

8 THE COURT: I was going to start about 9:30.

9 THE WITNESS: Okay.

10 THE COURT: What time can you get here?

11 THE WITNESS: I'll have to come Monday night. But
12 that's fine. I'd like to get it over.

13 MR. KOCH: I'm sorry. I couldn't hear, Your Honor.

14 THE COURT: He said yes.

15 Okay. We'll see you Tuesday morning. You have a
16 nice weekend.

17 All right. So, team --

18 We can go off.

19 (Court recessed at 4:45 p.m., until the following
20 Tuesday, June 18, 2019, at 9:30 a.m.)

21 * * * * *

22

23

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25

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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

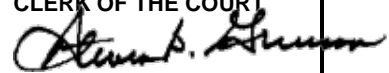
**FLORENCE HOYT
Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER

6/14/19

DATE



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC,)
et al.,)

Plaintiffs,)

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

TUESDAY, JUNE, 18, 2019

EVIDENTIARY HEARING - DAY 8

VOLUME I OF II

RECORDED BY: JILL HAWKINS, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

APPEARANCES:

FOR THE PLAINTIFFS:

DOMINIC P. GENTILE, ESQ.
MICHAEL V. CRISTALLI, ESQ.
ROSS J. MILLER, ESQ.
WILLIAM S. KEMP, ESQ.
NATHANAEL R. RULIS, ESQ.
ADAM K. BULT, ESQ.
MAXIMILIEN D. FETAZ, ESQ.
THEODORE PARKER, III, ESQ.

FOR THE DEFENDANT:

KETAN D. BHIRUD, ESQ.
STEVEN G. SHEVORSKI, ESQ.
THERESA M. HAAR, ESQ.
BRIGID M. HIGGINS, ESQ.
RUSTY J. GRAF, ESQ.
ERIC D. HONE, ESQ.
DAVID R. KOCH, ESQ.
ALINA SHELL, ESQ.
JARED KAHN, ESQ.
JOSEPH A. GUTIERREZ, ESQ.

I N D E X

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1 **LAS VEGAS, CLARK COUNTY, NEVADA, JUNE 18, 2019, 9:20 A.M.**

2 * * * * *

3 THE COURT: -- the ballot initiative with the cover
4 letter from Barbara Cegavski. Is there a stipulation to 2020,
5 ballot initiative question with the cover letter from Barbara
6 Cegavski?

7 It appears there's a stipulation from the nods of the
8 head, but those don't do well on my video, so it will be
9 admitted.

10 Any more, Mr. Shevorski?

11 MR. SHEVORSKI: Thank you.

12 THE COURT: Mr. Cristalli, you're going to straighten
13 out this issue with the exhibit?

14 MR. CRISTALLI: I think we can figure it out, or
15 we're close to figuring it out. I just followed along.

16 THE COURT: All right. So do we need to follow up on
17 anything?

18 MR. CRISTALLI: No, Your Honor.

19 THE COURT: So is it okay if we start with
20 Mr. Gilbert since he flew in last night to be here to start at
21 9:30?

22 Thank you.

23 Mr. Gilbert, if you'd come forward, we're ready for
24 you.

25 THE CLERK: Please raise your right hand.

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STEVE GILBERT

(having been called as a witness and being first duly sworn,
testified as follows:)

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

THE WITNESS: Steve Gilbert, S-t-e-v-e,
G-i-l-b-e-r-t.

THE CLERK: Thank you.

THE COURT: Mr. Parker, you may continue your
examination.

MR. PARKER: Thank you, Your Honor. Good morning.

CONTINUED DIRECT EXAMINATION

BY MR. PARKER:

Q Good morning, Mr. Gilbert. How are you?

A Good morning. Thank you. Good.

Q Not good?

A I am good.

Q Okay. Good. I'd like to start off by just
confirming areas that you won't be giving testimony on. Okay?

A Yes.

Q And I'm doing that just to make sure that those are
questions I reserve for someone who can, presuming that it will
be Mr. Pupo.

Is it true that you do not have any information or
testimony you could give us related to the merit criteria for

1 certain items, like X categories, vocational categories, those
2 sorts of things?

3 A Well, as I mentioned, I think last week or the week
4 before, that the three of us, Kara Cronkhite, Cory Pupo, and
5 myself got together, and we went through the criteria and
6 matched them up to the regulations. And then Mr. Pupo, you
7 know, had the final input on a lot of the criteria.

8 Q All right. When we spoke last week, I asked you how
9 was it determined what the tax brackets would be for purposes
10 of this point. Do you recall that?

11 A I do.

12 Q And I believe you testified that Mr. Pupo made those
13 decisions; isn't that correct?

14 A That's correct.

15 Q And you would consider that a form of merit criteria;
16 isn't that -- isn't that true?

17 A Yes.

18 Q So in terms of taxes, Mr. Pupo made that decision;
19 right?

20 A Yes.

21 Q How about the same question in terms of educational
22 categories, points for a certain amount of college,
23 postgraduate degrees? Who made that decision for the purpose
24 of scoring?

25 A If I recall correctly, that criteria for the

1 education was in chancery in 2014.

2 Q Okay. Now, is it true that education was a concern
3 and utilized in 2014 because this was a medical marijuana
4 application process as opposed to recreation?

5 A I'm not aware of that. I know that the education
6 piece was in 2014, as well as in 2015.

7 Q Do you know who decided the merit criteria for the
8 education?

9 A Again, it was carried over from 2014 and used for
10 2018 based on the regulations.

11 Q Understood. But do you know who decided it from
12 2014?

13 A Well, it was the three of us putting the criteria
14 together as a group, but, you know, Mr. Pupo had the final say,
15 of course.

16 Q Good enough. Do you know if he -- if there was an
17 analysis performed for determination -- for the determination
18 of the scoring categories for the education?

19 A Can you repeat that question, sir.

20 Q Yes. Originally when I asked you the question with
21 regards to taxes, you said you were not involved in the
22 analysis. You believe Mr. Pupo did the analysis on the tax
23 categories. I'm asking the same questions in terms of
24 education. Who performed the analysis, if there was one
25 performed, to determine how the scoring would be done for the

1 education merit criteria?

2 A I don't -- there wasn't an analysis done besides what
3 was carried over from 2014.

4 Q Understood. But who did it originally in 2014 when
5 it was done?

6 A That would have been QuantumMark. QuantumMark and
7 the administration at commission of public (indiscernible).

8 Q Someone had to approve QuantumMark's recommendation.
9 Would that have been Mr. Pupo?

10 A In 2014?

11 Q Yes, sir.

12 A No, it wouldn't have been.

13 Q Who would it have been?

14 A It would have been the administration at DPBH at the
15 time.

16 Q Okay. Was Mr. Anderson involved?

17 A Excuse me. Who?

18 Q Mr. Anderson. Do you know who he is?

19 A Oh, Bill Anderson?

20 Q Yes.

21 A No. Those were all taxation folks.

22 Q Okay. So can you give me a name of someone who was
23 involved in determining the education and merit criteria
24 categories?

25 A Gosh. No, the -- I'm trying to remember who the

1 administrators were at the time. I think it might have been
2 Marla McVey Williams.

3 Q Who?

4 A Marla McVey Williams at the time might have been the
5 administrator -- the deputy administrator. I'm sorry.

6 Q Say that again.

7 A The deputy administrator.

8 Q You're not sure?

9 A I'm pretty sure it was Marla --

10 Q Marla?

11 A -- McVey Williams.

12 Q Marla. Okay. Last name Williams?

13 A Yes.

14 Q Same question in terms of the financial strain. Who
15 made the decision that more money is better and how those
16 categories would be determined?

17 A That would have been the same determination in 2014.

18 Q Was that QuantumMark who made that decision?

19 A I don't know ultimately if they, you know, made the
20 decision. They put the criteria together and presented it to
21 DPBH.

22 Q Did Mr. Pupo have anything to do with carrying it
23 over from '14 to '18?

24 A I'm sorry. I missed that question, sir.

25 Q No worries. Did Mr. Pupo have any part to play in

1 carrying over that category from '14 to '18?

2 A Yes. Well, we all got together and went through the
3 criteria that was used in 2014, each component, whether it was
4 financial, education, care quality and safekeeping. And we
5 compared the 2014 model to what the regulations set for 2015,
6 of the recreational.

7 THE COURT: And, sir, that was the regulation, not
8 the ballot question you compared it to?

9 THE WITNESS: That's correct.

10 THE COURT: All right.

11 BY MR. PARKER:

12 Q And so what other merit criteria was included in the
13 2018 process, other than taxes, education, and financial?

14 A Care quality and safekeeping.

15 Q Was that a carryover from '14?

16 A Yes, it was.

17 Q Anything else?

18 A So we have taxes, we have financials, care quality
19 and safekeeping, organizational chart.

20 Q Those are all carryovers?

21 A Yes.

22 Q And ultimately, was that decision to carry those over
23 made by Mr. Pupo?

24 A Yeah, and, well, you know, the Governor's Task Force
25 recommendation stated to use the same criteria from 2014 and

1 the medical certificate issuing. So, I mean, it was faxed to,
2 you know, the executive team of taxation.

3 Q Well, is the adequacy and the size of the buildings a
4 part of the 2014 application process?

5 A Yes, it was.

6 Q Was that also a carryover to the 2018?

7 A Yes.

8 Q So unlike the other carryovers -- and strike that.
9 Who made the decision to carry over that category
10 from '14 to '18?

11 A Again, it was -- you know, it came out of the
12 recommendation from the Governor's Task Force and, you know,
13 the executive team with the Department of Taxation.

14 Q So was the adequacy of the size of the building
15 carryover modified sometime after the applications were sent
16 out?

17 A Can you clarify that question?

18 Q Yes. The applications for the recreational marijuana
19 licenses, those were distributed when?

20 A July 6th.

21 Q Okay. So sometime after July 6 of 2018, was there a
22 change in the DOT's position with regards to the necessity of
23 having a P.O. box -- utilizing a P.O. box versus an actual
24 location?

25 A There was a clarification sent out via LISTSERV after

1 July 5th.

2 Q Okay. Do you remember when that decision was made or
3 that change was made?

4 A I don't recall the date, but working up to, you know,
5 that date that we sent out the LISTSERV.

6 Q Okay. So was that in July or was it when the
7 application process opens in September 7 -- on September 7th of
8 2018?

9 A Can you be more specific on the question?

10 Q Well, actually, I wish I could. I need some more
11 details from you. I need to figure out when did the DOT decide
12 to change the need for a location and, instead, allow for P.O.
13 boxes. When was that decision made?

14 A I don't -- it was never changed. The decision or the
15 direction or guidance that DOT gave us and staff was that
16 location wasn't required.

17 Q Okay. Now, we've gone through the applications with
18 yourself, as well, as Mr. Plaskon we noticed that on Exhibit 5,
19 which is the application, the first page says you cannot use a
20 P.O. box. This is -- I believe it's page 21 of the
21 application.

22 So when you say that there was never a change, well,
23 your position is not reflected in Exhibit 5, which is the
24 recreational marijuana application, Attachment A. So you would
25 agree with me that what's on the screen now, which is

1 Attachment A to Exhibit 5, does not reflect your testimony in
2 that there was no change?

3 A It changed to the requirement -- I'm sorry. For
4 location?

5 Q Yes.

6 A Well --

7 Q The application says you have to have a location; is
8 that correct? And you cannot use a P.O. box; is that correct?

9 A This -- this Attachment A does, yes.

10 Q Right. Now, this is a -- Attachment A was provided
11 by the DOT. But you're telling me sometime in July, sometime
12 near July 6, 2018, the DOT determined that a location was not
13 necessary; is that correct?

14 A Well, from my -- from my recollection, going up to --
15 so the 45-day period was a chance for all applicants to put
16 their application together, July 6 to -- yeah, July 6 to
17 September 7th. During that period, the guidance from the
18 Department of Taxation was that a location was not required.
19 There was --

20 Q Stop there for a second. Repeat what you just said
21 one more time.

22 A During the application period --

23 Q Yes.

24 A -- or the writing of the application, the 45-day
25 period, guidance from the Department of Taxation was that a

1 location was not required.

2 Q So if that guidance was provided sometime within this
3 45-day period, who made that decision?

4 A That would have been Mr. Pupo.

5 Q Okay. So that gets me back to the areas that I need
6 to question Mr. Pupo on.

7 So when that -- do you know what went into that
8 decision-making process?

9 A No, I do not.

10 Q All right. Do you know if there was any
11 consideration given to that decision versus the other merit
12 criteria; for example, impact on community?

13 A I'm sorry. Can you help me understand that question
14 a little bit, please, sir.

15 Q Certainly. So by now you're probably noticing that
16 I'm going down all of the merit criteria issues, and I'm trying
17 to figure out the ones that you can provide me testimony on
18 versus the ones that I will look to Mr. Pupo to provide
19 testimony on. Do you understand that?

20 A Uh-huh.

21 Q So we've gone through a few of those. Are you
22 familiar with the impact on community criteria?

23 A Yes, I am.

24 Q All right. That is a merit criteria category, is it
25 not?

1 A Yes.

2 Q All right. So that was my next category to discuss
3 with you. And I'm trying to figure out whether or not the
4 decision to not require location, was that decision -- did that
5 decision factor in the impact on community?

6 A To my understanding, it didn't come up in our
7 discussions when we were going through the criteria between
8 Mr. Pupo and Ms. Cronkhite and myself.

9 Q Okay.

10 A What happened -- you know, decisions weigh
11 (phonetic), I can't speak to.

12 Q Did Mr. Pupo decide the scoring for the impact on
13 community?

14 A He was part of it. That would be -- again, that
15 carried over from 2014. I can't recall if those point values
16 were changed or changed for 2018 from 2014.

17 Q And that was -- and I appreciate that response
18 because that was my next question.

19 In terms of the categories that we're going over, did
20 the scoring remain the same for each category from '14 to '18?

21 A No, it did not.

22 Q And do you know why they did not?

23 A Well, there's a few things from 2014 that no longer
24 had regulatory necessity in 2018 such as location in 2014 was
25 required, as well, as -- I forget what it was called -- the

1 ability to provide for the patients. And that was in location,
2 I think, if I recall correctly.

3 Q Well, let me ask you this: If the scoring -- you
4 said the scoring for some of these categories changed for
5 reasons like the removal of the location requirement.

6 Did the language for that category, Impact on
7 community, change in any way?

8 A I don't recall. I'd have to look at both of them and
9 see if the language -- I -- I can't recall.

10 Q Why would you even include impact on community if the
11 location is not necessary? How do you know what part of the
12 community you're servicing? So, for example, before you
13 respond, you would agree with me that the west part of
14 Las Vegas which includes Summerlin at one end, let's say
15 Centennial, Northwest, would be different communities all on
16 the west side of Las Vegas; would you agree?

17 A I'm not from Las Vegas, but what I know of Summerlin
18 and some of the areas, I would say there's differences between
19 the communities throughout Las Vegas.

20 Q Right. There's areas with bus routes and there's
21 areas without bus routes; would you agree?

22 A I would believe so, yes.

23 Q It's no different than -- you're from Reno; is that
24 correct?

25 A Carson City.

1 Q All right. I've only gone there for arguments, but I
2 would imagine --

3 THE COURT: You've never had to testify in front of
4 the legislature, Mr. Parker?

5 MR. PARKER: You know, that is true.

6 THE COURT: All right. Never mind. Keep going.
7 Sorry to interrupt.

8 MR. PARKER: Sorry about that. All right. Most
9 (indiscernible).

10 MR. SHEVORSKI: I think he was just impeached.

11 THE COURT: Yeah. Luckily, it has no relevance to
12 these proceedings.

13 MR. PARKER: That's right.

14 BY MR. PARKER:

15 Q And so, Mr. Gilbert, given that the location would
16 have a part to play on the impact in the community and you
17 removed location, why did you maintain within the application
18 process the impact on community?

19 A Well, I believe that the criteria for that, it
20 shows -- it shows them being an applicant reading the regs,
21 digesting the regs, understanding what's required, and then
22 putting together a comprehensive plan that can be scored and
23 valued.

24 Q Right. But you can do that simply based on a
25 jurisdiction you're applying for. Community actually is a

1 smaller subset of that jurisdiction, isn't it?

2 A Yes.

3 Q All right. So if you're going to remove location,
4 why include impact on community since the impact really is to
5 the jurisdiction? Isn't that true?

6 A It would be that their overall plan and how they
7 present it within their application of their plan to -- you
8 know, everything from what the plan is for the community.

9 Q Isn't it true, sir, that if you're applying for a
10 jurisdiction, then it would be the impact on a jurisdiction
11 because communities differ within a jurisdiction? Isn't that a
12 true statement?

13 A I believe, yeah, communities are different within a
14 jurisdiction.

15 Q Thank you. But in terms of who would be able to
16 answer these questions even more -- on a more detailed level --
17 or strike that.

18 The person who ultimately had the decision-making
19 authority for the inclusion of the impact on community, would
20 that be Mr. Pupo as well?

21 A Well, again, the impact on community was part of the
22 2014 criteria just brought over to 2018 recreational.

23 Q All right. So in terms of allowing for P.O. boxes,
24 you said that decision was made and some information was sent
25 on a LISTSERV; is that correct?

1 A A clarification was sent on a -- sent out on a
2 LISTSERV to clarify any confusion that the application might,
3 you know, provide.

4 Q All right. There are certain applicants who did not
5 get that clarification. Do you know why that clarification was
6 not sent out in the same manner as the applications, or was it?

7 A It was. It was -- well, the -- on June 5th --

8 Q Okay. June 5th?

9 A Yeah -- or, I'm sorry, July 5th.

10 Q Okay. Thank you.

11 A It might have been July 6th. I'd have to look at the
12 dates.

13 Q You said July 6th is when the application became
14 available.

15 A That's that -- yeah, the posting notice, July 6th.

16 Q Was that posted in the same ways of clarification
17 that you're speaking of was disseminated?

18 A It was sent out on the LISTSERV to all subscribers to
19 the LISTSERV.

20 Q Is that a yes or a no? Was it sent out, in terms of
21 the application availability, in the same way as the
22 clarification was sent out?

23 A It was to the LISTSERV. It wasn't posted at all
24 the --

25 Q Why wasn't the clarification posted so that those who

1 got the application would have the same information?

2 A Well, it's sent out through the LISTSERV. That's
3 our -- but it wasn't posted at --

4 Q Your website?

5 A No, it was at -- it was at the website.

6 Q So how was it posted?

7 A On the website and also there's a link, I think, on
8 the LISTSERV. I'd have to go back and look. But I think
9 there's a link and an attachment to the LISTSERV.

10 Q All right. Let me ask it one more time. The manner
11 in which you made the public aware of the availability of the
12 application, how is that done?

13 A On July 6th?

14 Q Yes. How was it done on July 6th?

15 A That was done through a LISTSERV, posting on the
16 website, and then also posted at six, I think, public places.

17 Q Okay. Was the clarification done in that exact same
18 way -- website, LISTSERV, posting in public places?

19 A It wasn't at the public places.

20 Q All right. Any other differences?

21 A I'd have to go back and check the -- I'm not at a
22 website.

23 Q Why wasn't it posted at public places?

24 A I don't -- I wouldn't -- I'm not the one to answer
25 that question. I'm not sure.

1 Q Are you at all familiar with the Nevada open meetings
2 law?

3 A I am.

4 Q Okay. Great. Are you also familiar with the fact
5 that public agencies of this state are required to post not
6 only on electronic formats, but also at locations, public
7 locations?

8 A Yes, for public meetings.

9 Q Would you agree with me that Nevada Department of
10 Taxation is a Nevada state political subdivision?

11 A Yes.

12 Q Do you believe that it also has the obligation to
13 comply with the Nevada open meetings law in terms of public
14 posting?

15 A Yes, I do.

16 Q All right. Would you agree with me now, based upon
17 what you just said, that the Department -- the Nevada
18 Department of Taxation failed to comply with the Nevada open
19 meetings law as it pertains to public posting of its
20 information?

21 MR. SHEVORSKI: Object to form.

22 THE COURT: Overruled.

23 THE WITNESS: I don't know if I'm the right person to
24 speak to the legality of the open meeting law. However, the
25 LISTSERV that we sent out was a clarification.

1 BY MR. PARKER:

2 Q Yes, sir. And it was not posted at any public
3 places; is that correct?

4 A Not that I'm aware of, no.

5 Q Thank you. Now, when you made this determination
6 that the P.O. box would be allowed, the locations were not
7 necessary, did you at that point send out a new application or
8 revise the application Attachment A to reflect that no longer
9 would locations be required?

10 A But the original application was revised, if I recall
11 correctly.

12 Q Was it sent out or made available in the same way
13 that the prior application was made available?

14 A I believe it was.

15 Q So, you believe that the application that we have
16 here in front of us, which was on a website during -- and
17 available on your website during these hearings, was changed at
18 sometime which said that P.O. boxes are now allowed and
19 locations are not necessary? You believe that actually
20 occurred?

21 A I was not aware of that.

22 Q All right. Is it fair to say, sir, that you're not
23 aware of the Attachment A of Exhibit 5 ever being modified,
24 provided to Department of Taxation, between July 6th and
25 September 7th, 2018?

1 A Can you -- I'm sorry. Can you repeat that question,
2 sir.

3 Q Yes, sir. Are you aware of Attachment A to Exhibit 5
4 being modified between July 6th and September 7th, 2018?

5 A I would have to look at the Attachment A. Again,
6 there's a --

7 MR. PARKER: Would you bring that up for me, Shane.

8 BY MR. PARKER:

9 Q Was this attachment changed between July 6th and
10 September 7th, 2018?

11 A I'd have to look at the Attachment A after the
12 clarification was sent out.

13 Q Did you change it?

14 A I did not.

15 Q All right. Do you know who would have changed it if
16 it was changed?

17 A Well, I know there -- well, that the clarification
18 that we sent out on the LISTSERV in July, later in July, was
19 based on the guidance from Mr. Pupo. As far as -- I don't
20 know -- I don't know who changed it. Clyde Plaskon does a lot
21 of the form -- forms management, but it was -- it was probably
22 discussed and then, you know, our original -- the application
23 was sent up to Mr. Pupo for final review.

24 Q But sitting here today, you didn't change it. And
25 did you ever see it in a revised format, something different

1 than what we have in front of you right now?

2 THE COURT: And by "what in front of you," you're
3 referring to Attachment A contained in Exhibit 5 to the
4 hearing?

5 MR. PARKER: Yes, Your Honor. Thank you so much.

6 THE WITNESS: I would have to look at the application
7 after the clarification.

8 BY MR. PARKER:

9 Q Okay. My question is: Did you ever -- do you ever
10 recall seeing a version of Attachment A different from the one
11 that's attached to Exhibit 5?

12 A I don't recall. I'd have to look.

13 Q All right. Now, if there were changes made to
14 Attachment A to Exhibit 5, should there have been other changes
15 made to Exhibit 5 which also touched upon the need or the
16 no-longer need to have a location?

17 A Can you repeat that question?

18 Q Certainly. Were there other portions of Exhibit 5
19 that also called for or required a location?

20 A Exhibit 5-A in the entire application?

21 Q The entire application, yes, sir.

22 A Yes, there was. There was a clarification. There
23 was a few bold points on the clarification e-mail LISTSERV.

24 Q Okay. And do you know if those were made? Were
25 actual changed made -- let me tell you why I'm asking it this

1 way. You spoke of clarifications that were sent out by way of
2 LISTSERV, but I'm wondering if those clarification actually
3 made their way into a changed application or application form.

4 A I believe they did, yes.

5 Q Did you ever see those differing or changed
6 application forms?

7 A Yes, I did.

8 Q Okay. You don't recall seeing Attachment A being
9 changed --

10 A I'd have to look at -- I don't recall A.

11 Q All right. Well, let's take a look at another thing.
12 Let's take a look at Exhibit 5, Attachment E, which I believe
13 to be --

14 MR. PARKER: Your Honor, page 40, which is MMLF40,
15 which is page 2,934.

16 And if you could highlight the top line for me,
17 Shane. Not the -- the top line in the box, first line in the
18 box. There we go.

19 BY MR. PARKER:

20 Q Do you see that, Mr. Gilbert?

21 A Yes, I do.

22 Q It says, "To be completed by the applicant for the
23 physical address of the proposed marijuana establishment." Do
24 you see that? Physical address?

25 A Yes.

1 Q That's not a P.O. box, is it?

2 A No, it's not.

3 Q So when you made the decision not to include
4 locations or require locations, would you agree with me that
5 Attachment E still requires a physical address?

6 A It reads -- it reads as if a physical address is --

7 Q All right. Do you recall Exhibit E to -- I'm sorry.
8 Attachment E to Exhibit 5 being changed?

9 A I think that was part of the clarification that was
10 made.

11 Q All right. Remember, I'm asking about the actual
12 attachment being changed. So that when someone came onto the
13 website and saw this application for the first time,
14 Attachment E says we don't need a physical address, we only
15 accept a P.O. box. Do you recall that change being made to the
16 actual attachment?

17 A I believe -- I believe it was changed on this
18 Attachment E.

19 Q Do you recall seeing it?

20 A Yes.

21 Q You saw a different Attachment E?

22 A Yes.

23 Q All right. Let's take a look at Attachment F.

24 MR. PARKER: And, Shane, if you could highlight the
25 third -- it's the second box, second line. Starts out with the

1 word "recreational."

2 BY MR. PARKER:

3 Q Do you see that, sir?

4 A Yes, I do.

5 Q It says, "Recreational marijuana establishments
6 proposed physical address must be a Nevada address, not a
7 P.O. box." Do you see that?

8 A Yes, I do.

9 Q So for the last several days, we've been talking
10 about Attachment A, but I wanted to see if you recall any
11 changes being made to Attachment F to Exhibit 5.

12 A I don't -- I don't specifically remember the changes
13 or the clarification that we made. I'd have to look and see if
14 that was part of the clarification that was sent out in July.

15 Q All right. And let's talk about Attachment F for a
16 second. Do you understand the reason why Attachment F was
17 required to be filled out?

18 A This form was for -- I believe for ranking of your
19 selections.

20 Q Well, read through it because I don't believe it's
21 so. I believe it's related to trying to prevent the novelties,
22 but read through it just to make sure.

23 It says, "Section 80, within parentheses, five,
24 places limitations on the number of recreational marijuana
25 retail stores located in one government jurisdiction and a

1 limitation on the number of licenses issued to any one person,
2 group, or entity." Do you that?

3 A I do.

4 Q All right. Now, while I wanted to -- I thought this
5 form was useful for two things. One, showing that your -- the
6 State's position with regards to the changes relative to
7 location was inconsistent with these attachments. I also
8 thought it was important for you to consider what the judge
9 questioned you about last week and what I questioned you about,
10 as well, regarding how do you determine that there's perhaps
11 more than one owner of more than one location in the same
12 jurisdiction if you don't know all the owners. Understood?

13 A Yes.

14 Q All right. And you agree with me that Attachment F
15 was meant to be use by the State to be able to identify all
16 owners so that they can then identify whether or not any owners
17 had an interest in more than one location in the same
18 jurisdiction. Is that a true statement, sir?

19 A I don't know if that asks for ownership.

20 Q All right. Now, let's take a look at Attachment I.
21 Are you familiar with this attachment?

22 A Yes, I am.

23 Q All right. What's the purpose of this attachment?

24 A The purpose of this attachment is for the applicants
25 to be able to submit just one application and then apply it to

1 the jurisdictions that they wish to apply for.

2 Q All right. And it says here -- towards kind of like
3 maybe the first paragraph portion, it says, "You must submit
4 Attachments A and E for each jurisdiction and location and the
5 appropriate application fee." Do you see that?

6 A Yes.

7 Q Again, do you recall there being a clarification with
8 regards to location in this attachment?

9 A I'd have to -- I'd have to look.

10 Q You'd agree with me that each of the attachments I've
11 shown you today, Attachments A, E, and F, all indicate that a
12 location, not a P.O. box, is required; is that correct?

13 A Do you mind repeating that, sir? I'm sorry.

14 Q Certainly. Wouldn't you agree with me that the
15 attachments that we've looked at, Attachments A, E, F, and I,
16 all require a location, not a P.O. box?

17 A I'd have to go back and look, but I believe so.

18 Q All right.

19 A The ones that we did look at.

20 Q Good enough. And would you also agree with me
21 that -- strike that.

22 Do you recall seeing exhibit -- or Attachment I, I'm
23 sorry, Attachment I to Exhibit 5 being modified to remove the
24 word "location" and allowing for P.O. boxes, or is that one
25 that slipped under the radar?

1 A I don't -- I don't know if it did or not. I'd have
2 to look.

3 Q Okay. You don't have a recollection of it being
4 changed or modified to remove the word "location," do you?

5 A On this particular one, I don't. I'd have to look at
6 the modifications or the clarifications that we sent out.

7 Q Good enough.

8 MR. PARKER: Can we go to Attachment B, Shane, B as
9 in bravo.

10 MR. SHEVORSKI: Which exhibit are you on?

11 MR. PARKER: Still Exhibit 5, Attachment B as in
12 bravo.

13 MR. SHEVORSKI: Thank you.

14 BY MR. PARKER:

15 Q Now, the Department of Taxation, does it have an
16 enforcement wing or an investigative wing?

17 A The Department of Taxation?

18 Q Yes.

19 A They have quite a few, I believe.

20 Q All right. So it has the ability, the Department of
21 Taxation has the ability to do a thorough background check or
22 an investigation on an owner; is that correct?

23 A I can't speak to the Department of Taxation. That
24 would be an executive-level question.

25 Q Would Mr. Pupo be able to answer that question?

1 A He may.

2 Q All right. Good enough. So if I were to change the
3 word from "enforcement" to "investigation," would you still not
4 be able to answer the question?

5 A I can speak to the Marijuana Enforcement Division,
6 not the Department of Taxation as a whole.

7 Q All right. Good enough. Let's go with that. Is
8 there an enforcement division or group that handles Department
9 of Taxation inquiries or enforcement obligations?

10 THE COURT: In Marijuana Enforcement Division?

11 MR. PARKER: Yes, Your Honor.

12 THE COURT: Okay.

13 THE WITNESS: Yes, we do have a compliance component.

14 BY MR. PARKER:

15 Q And is that group of State employees able to do a
16 thorough background check or to enforce the rules or the
17 statutes?

18 A I don't know if I can -- I don't know if I'm the one
19 to answer that question. That has a lot to do with, you know,
20 job specifications, something above myself.

21 Q So let's use an example that Mr. Jolley discussed
22 with us when he was on the stand. If a marijuana establishment
23 sold to an underaged person, how would the Department of
24 Taxation and marijuana group handle that?

25 A We would do an investigation if -- if necessary. You

1 know, we have a process in place to intake complaints,
2 investigations, and investigate them accordingly.

3 Q All right. And would you be able to determine if the
4 owner of that marijuana establishment owned any other marijuana
5 establishments that had similar infractions?

6 A Yeah, we do. I mean, we'd be able to -- we keep a
7 record of infractions.

8 Q How about if that owner owned a location in Colorado
9 or Canada and had numerous violations like that, could you do
10 that investigation?

11 A I don't believe we have the capabilities to reach out
12 that far.

13 Q Colorado? Is that too far?

14 A Well, we look at the licensees in the state.

15 Q Right. But if the licensee --

16 A That's our jurisdiction.

17 Q -- was the owner of a location in Colorado who had
18 similar infractions, numerous, wouldn't that play a part in how
19 you treated that licensee here in Nevada?

20 A I don't -- I don't -- well, we hold them accountable
21 to the regulations in Nevada, and that's what -- that's what
22 our enforcement parameters are.

23 Q All right. Attachment B says, "I have not been
24 convicted of an excluded felony offense as defined by
25 NRS 453D." Do you see that?

1 A Yes, I do.

2 Q Does that mean that the person hasn't convicted of a
3 felony in Nevada only or anywhere?

4 A So that's Nevada and FBI.

5 Q All right. So that would be in other states,
6 potentially?

7 A Yes.

8 Q All right. So if that could occur in other states,
9 wouldn't you have the obligation to check to see if that owner
10 has violated or committed a felony as described as 453D
11 elsewhere?

12 A Yeah, we do. Through the agent code process.

13 Q Good. But to do that, you'd actually have to know
14 all the owners so that that process was followed by all those
15 owners; isn't that correct?

16 A We -- we vet the owners that are provided to us in
17 the application.

18 Q Right. Which means you have to know all the owners
19 if you were going to actually perform what's -- and do the
20 analysis that's prescribed here in Attachment B; isn't that
21 correct? Not just some, but all?

22 A Well, yeah. Well, it goes back to the shareholders.
23 We don't require the shareholders to be provided to the
24 Department of Taxation, so --

25 Q Sir, I didn't mention the word shareholders. I just

1 said owners. You can say shareholders are owners. I would
2 agree with that, but in terms of my question, I'm just saying
3 owners right now. We can get the shareholders in a second.

4 Wouldn't you agree with me that all owners, be it a
5 shareholder or not, would have to be provided to you so that
6 you could perform this investigation?

7 A We -- all of -- well, based on this, on the NRS, the
8 owners, officers, and board members should be provided to us so
9 we can vet them with background FBI in the state.

10 Q Thank you. And the purpose of that, of course, is to
11 protect Nevada residents and -- when I say Nevada residents,
12 those who may actually purchase marijuana in the state of
13 Nevada; is that correct?

14 A Yeah, that would be one of the reasons, sure.

15 Q All right. But to do so, they have to let you know
16 all the owners; isn't that correct?

17 A Yes.

18 Q Thank you very much. Now, the next line says, "I
19 agree that the Department may investigate my background
20 information by any means feasible to the Department." Do you
21 see that?

22 A I do.

23 Q That doesn't mean simply checking your records for
24 the Secretary of State to see if they match up with the owners
25 identified; isn't that correct?

1 A Can you repeat that? I'm sorry.

2 Q Yeah. Do you remember your testimony last week when
3 you were telling us that the only background check that you did
4 for purposes of the application was making sure through your
5 own data files for 2014 or through the Secretary of State's
6 office that the officers or owners matched up. Do you remember
7 that?

8 A I don't know if that was my -- like, I might remember
9 that. I think we -- in the application, we look to see if
10 they're registered with the Secretary of State.

11 Q Okay. That's all you did; right?

12 A Yes.

13 Q Right.

14 A I believe so.

15 Q You didn't do what Attachment B says. You didn't go
16 and do a criminal background check on every owner identified,
17 did you?

18 A We did criminal background checks on the owners,
19 officers, and board members that were listed in the
20 application.

21 Q All right. And for those who did not list all their
22 owners, that would not have been done; is that correct?

23 A I wouldn't know if they listed all their owners or
24 not.

25 Q Right. But let's say that there are owners who were

1 not identified because I think we received testimony supporting
2 that -- this position, would you agree with me that no
3 background check would have been done on owners not identified
4 by the applicants?

5 A Yes --

6 Q All right.

7 A -- I would.

8 Q The Department of Taxation did not do its own
9 investigation to determine if there were other owners out there
10 of all the applicants; isn't that correct?

11 A Well, we do -- we do compare it to the list of owners
12 that we have on record, which would have been a history of any
13 transfers of ownership, any owners coming in or coming out, and
14 what they've reported to us as their ownership.

15 Q But that also means, sir, that you've totally relied
16 upon the applicant to list their owners, and then you would
17 check and verify if those were owners you had on record. But
18 for those not listed, you did not do a criminal background
19 check; is that a true statement, sir?

20 A Not for the ones that aren't listed.

21 Q Thank you. Which means there could be -- potentially
22 be applicants right now with owners that committed felonies
23 defined under NRS 453D; isn't that correct?

24 A I don't know if I can speculate on that.

25 Q You wouldn't know whether or not there are? Isn't

1 that another way of saying it?

2 A Not if we didn't run the background check.

3 Q That's good enough. Now, right below the -- right
4 above the box, it says "Signature of owner, officer, or board
5 member." Do you see that?

6 A Yes, I do.

7 Q All right. And you don't see any limitations there
8 in terms of percentage of ownership, do you?

9 A I don't -- can you scroll down just a bit. No, I
10 don't.

11 Q You don't see anything that says only
12 5-percent-and-above owners, do you?

13 A Not on this one, no.

14 Q You don't see anything that says only owners in
15 Nevada, do you?

16 A I don't; however, it might be -- I'm sorry.

17 Q You don't see anything that says only owners in
18 Nevada, do you?

19 A No, I don't.

20 Q Now, let me show you Attachment C.

21 THE COURT: And we're still on Exhibit 5?

22 MR. PARKER: Yes, Your Honor. Thank you.

23 BY MR. PARKER:

24 Q And Attachment C at the top says, "Owner, officer,
25 board member information form." Do you see that?

1 A Yes.

2 Q Again, it says, "Provide the following information
3 for each owner." Do you see that?

4 A Yes, I do.

5 Q Again, it does not have any limitation on what owners
6 should be listed; is that correct?

7 A Not on the form.

8 Q Right. Did you send out any clarification notices
9 that changed Exhibit C?

10 A Not that I can recall.

11 Q All right. Now, if you go to the next page of
12 Attachment C, which is, again, a part of Exhibit 5 -- and I'm
13 going to go from MMLF36 to 37. At the top it says, "Attachment
14 C continued." Do you see that?

15 A Yes.

16 Q All right. The first line in the box says, "has an
17 ownership or financial interest in any other MME or ME." Do
18 you see that?

19 A Yes.

20 Q Now, this -- when I read this, it seemed even more
21 expansive than any other category we've discussed previously.
22 It does not say owner. It does not say officer. It doesn't
23 say board member. It says has an interest -- ownership
24 interest or financial interest. Do you see that?

25 A Yes.

1 Q Do you have an understanding of what financial
2 investment interest would be?

3 A I mean, I can -- that would be have an investment in
4 an establishment?

5 Q Doesn't that sound and feel like shareholder to you?
6 Any --

7 A I don't --

8 Q -- financial investment interest, investment
9 interest. Doesn't that sound like it would be someone who has
10 perhaps a shareholder interest to you?

11 A I don't know. I mean, I'd -- it could be that and
12 something else.

13 Q Well, if you don't know -- and you had a part to play
14 in the preparation and creation of this application -- who
15 would know?

16 A It wouldn't -- I mean, I guess -- can you repeat the
17 question? Maybe I can answer it.

18 Q Yes. Do you know what "financial investment
19 interest" means?

20 A It could mean that --

21 Q -- for purposes of this application?

22 A It could mean a shareholder. It could mean --

23 Q That's what I thought too.

24 A It could mean a nonshareholder.

25 Q All right. But this attachment requires you to list

1 them all; isn't that correct?

2 A Yes.

3 Q Anyone.

4 A I think it says all.

5 Q So if it didn't -- if they for some reason were
6 confused or ignorant, as Mr. Jolley said, this should have
7 cleared it up. You list everybody; isn't that correct?

8 MR. SHEVORSKI: Objection. Misstates testimony.

9 THE COURT: Overruled.

10 BY MR. PARKER:

11 Q Isn't that correct, sir?

12 A What the Department is asking for, is everybody.

13 Q That's right. So one way or another, be it from
14 Attachment A to I, Attachment C continued, this document
15 catches everybody left, doesn't it? It says, "any ownership or
16 financial investment interest." That catches everyone, doesn't
17 it?

18 A Well, then again, what the Department is asking for
19 is -- I can't see that first word. All?

20 Q What are you looking for? What first word?

21 A Oh, "has." It was --

22 Q Yeah. "Has an ownership" --

23 A Has an ownership.

24 Q -- "or financial investment interest in." Do you see
25 that?

1 A Uh-huh.

2 Q Is that a yes? You said "uh-huh." Is that a yes?

3 THE COURT: "Uh-huh" doesn't come out very well on
4 our transcript. Was that yes or no?

5 THE WITNESS: I understand, Your Honor. Could you go
6 back to the previous attachment?

7 MR. PARKER: Could you go back for us, Shane.

8 THE WITNESS: Scroll down to the bottom, if you
9 could, please. I'd like to read the definition of
10 attachment -- or the instructions for Attachment C, if there is
11 any.

12 MR. PARKER: Can we go to the definitions?

13 BY MR. PARKER:

14 Q Let see. Do you know where the definitions are, sir?

15 A We gave the instructions a little lower.

16 Q Okay. So that would be page -- they start at page
17 4 of this exhibit, Exhibit 5, and go through page 7. So you --
18 do you want me to pull the volume out so you can just page
19 through it?

20 A Sure, that --

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

22 THE COURT: You may.

23 BY MR. PARKER:

24 Q Okay. Have you had a chance to look at the
25 definitions, Mr. Gilbert?

1 A Yes, so -- I did. So I was looking at page 11.

2 Q Yes, sir.

3 A Eleven. It would be 5.2.10.3 -- or, no, I'm sorry.
4 Yes, 5.2.10.3: "Supplemental owner, officer, and board member
5 information form should be completed for each individual named
6 in this application. This attachment must also include the
7 diversity information required by our (indiscernible) 092-17,
8 Section 80 in Attachment C."

9 So what the Department was asking for on that
10 attachment is everybody that was listed in the application.

11 Q Okay. My point -- the point being is Attachment C
12 includes a request or requirement, not a request, but a
13 requirement, that all -- or that anyone that has a financial
14 investment interest be identified; is that correct?

15 A That's what that -- the top of that form says.

16 Q Right. And you would also agree with me that there
17 is no definition that includes investment or financial
18 investment interest; is that correct?

19 A I believe that's correct.

20 Q Good. Now, looking at Exhibit 5, I went over -- or
21 we went over this attachment in terms of perhaps preventing
22 monopolies or having one company having more than one license
23 in any particular jurisdiction. Do you recall that?

24 A Yes.

25 Q All right. Did you review --

1 MR. PARKER: Is Exhibit 13 admitted, madam clerk?

2 THE CLERK: Yes, sir.

3 MR. PARKER: Can we put Exhibit 13 on?

4 BY MR. PARKER:

5 Q Are you familiar with Essence Tropicana and Essence
6 Henderson?

7 A I'm aware of the name, yes.

8 Q Are you aware that they have similar ownership?

9 A Yes.

10 Q And do you -- are you aware of the fact that they
11 both receive licenses in Clark County?

12 A Yes, I am.

13 Q All right. Do you believe that to be a violation of
14 attachment -- I'm sorry, violation of the statute owner
15 regulation?

16 A I do not, based on the guides that we were given,
17 based on, you know, the entity, issued to the entity.

18 Q So similar owners. You don't believe -- you believe
19 that similar owners can own or have more than one recreational
20 marijuana establishment in the same jurisdiction?

21 A It's to be issued to the entity. The license is
22 issued to the entity.

23 Q Let me ask the question one more time. Do you
24 believe that similar owners -- if I own a hundred percent of
25 Essence Tropicana and a hundred percent of Essence Henderson,

1 you believe I can own two recreational marijuana establishments
2 in Clark County?

3 A Yeah, based on the guidance that we got, yes.

4 Q And what guidance was this?

5 A It came from -- I can't speak to where it came from
6 because I don't know. But this was vetted. Actually, they're
7 scored and -- after they were scored and ranked, this was sent
8 up to the executive level for review, and it was approved.

9 Q So let me see if I can understand this more now. Who
10 said it was okay? Give me a name.

11 A It came from Mr. Pupo to me. I don't know who spoke
12 to Mr. Pupo.

13 Q All right. And was this guidance ever disseminated
14 to everyone else in the world of Nevada?

15 A I don't know. Not from me.

16 Q Did anyone ever say, listen, the statute may say this
17 or the regulation may say this, but as long as you've got two
18 different companies and you own a hundred percent of both, you
19 can have two locations in the same jurisdiction?

20 A I -- I never said that. I never communicated that.

21 Q And you don't recall the Department of Taxation ever
22 indicating that in a form of LISTSERV or a publication or a
23 posting or website information?

24 A Not -- not that I recall.

25 Q All right. When was this decision made by Mr. Pupo

1 to your knowledge?

2 MS. SHELL: Objection. That's not in evidence.

3 THE COURT: Overruled.

4 THE WITNESS: Can you repeat the question?

5 BY MR. PARKER:

6 Q Yes. When was that decision made, to your knowledge,
7 by Mr. Pupo?

8 A I -- I don't -- I don't know when that decision was
9 made by Mr. Pupo.

10 Q Is there anything in writing describing how that
11 decision was made?

12 A I don't recall. I don't know.

13 Q Do you know whether or not Mr. Pupo ran that by the
14 Attorney General's office?

15 A I do not.

16 Q Do you know if Mr. Pupo ran that question by the
17 Governor's Task Force?

18 A I do not.

19 Q Do you know if Mr. Pupo got any authority from any
20 other state of Nevada employee allowing for this --

21 THE COURT: Don't you think we should ask Mr. Pupo
22 that?

23 MR. PARKER: I'm just trying to make sure. Because
24 once I'm done with him, I can't ask him anymore.

25 THE COURT: All right.

1 BY MR. PARKER:

2 Q No one else you can think of?

3 A Yeah, I can't answer for Mr. Pupo.

4 Q All right. How about Cheyenne Medical and Commerce
5 Pack -- Park, I'm sorry, Commerce Park having two licenses in
6 Clark County? Were you aware of that?

7 A Yes.

8 Q And you're aware that they have similar owners?

9 A I do, yes.

10 Q Was that decision that was made by Mr. Pupo made with
11 regard to these two companies?

12 A I -- I believe so. I mean, I get guidance from
13 Mr. Pupo.

14 Q Do you know if anything was written regarding his
15 decision with regards to Cheyenne Medical and Commerce Park?

16 A I don't know.

17 Q You've not seen anything in written form regarding
18 any four of these entities having more than one location based
19 on similar ownership?

20 A Not that I can recall, no.

21 Q Okay. Good enough.

22 I'll try one more time.

23 You indicated that Mr. Pupo got guidance from
24 somewhere. Do you know where that guidance came from?

25 A I don't know specifically. He --

1 MR. PARKER: She was right.

2 THE WITNESS: You know --

3 THE COURT: Sorry. That was my exasperation thing,
4 that Mr. Kemp didn't have the confidence, and I knew the
5 witness didn't know the answer to the question after listening
6 to him for two days.

7 MR. KEMP: He said not specifically, Your Honor.

8 THE COURT: Yeah, okay.

9 MR. KEMP: He may know generally.

10 THE COURT: All right.

11 MR. PARKER: I was ready to stop.

12 BY MR. PARKER:

13 Q So do you recall when we left off on last week
14 Wednesday, I asked you some questions regarding the training?
15 Do you remember that?

16 A Yes.

17 Q All right. And when we left off, we were talking
18 about one of the training slides that said it would take two to
19 three days to review and score an application. Do you remember
20 that?

21 A I don't recall that.

22 Q I can show it to you again if that would help refresh
23 your recollection. If we could go to -- I believe it's DOT227
24 and, I think, Exhibit 206.

25 THE COURT: Is 206 admitted?

1 MR. PARKER: I think it's been admitted.

2 THE COURT: Thank you.

3 BY MR. PARKER:

4 Q Yeah, if we can go to DOT -- I think it's 227. Yes.
5 Do you see that?

6 A Yes.

7 Q It says -- this discusses the mock applications. It
8 says, "Goal: Try to get through two to three applications a
9 day;" is that correct?

10 A That's what the slide says, yes.

11 Q All right. Was that a true goal for the agency, to
12 have your scorers get through an application every two to three
13 days?

14 A No, not necessarily. I mean, this was training
15 before the applications came in, so we tried to set some sort
16 of a standard. Because we didn't know -- we only --
17 statutorily, we only had 90 days to review the applications.
18 And without knowing how many we're going to get, it's hard
19 to -- it's hard to manage, you know, being able to comply to
20 the 90 days.

21 Q Was that number ever refined?

22 A You know, I know that throughout the 90-day process,
23 we did have a good idea -- or after the -- after the 20th, we
24 knew how many applications we had to review. So we had a good
25 idea of how many had to be completed, you know, in a day's --

1 you know, in order to get done, but we didn't know the
2 complexity of them, the size of them.

3 Q And how did you refine the number? What was the --
4 ultimately, how many days or hours were allotted for these
5 evaluators to score the applications?

6 A We had 90 days.

7 Q I understand the 90-day window. What did that result
8 in in terms of per application? How much time was allotted to
9 each application?

10 A I don't know what -- I don't know. We didn't figure
11 that out. What we figured out was how many we were completing
12 on a daily basis, like Mr. Plaskon had a tracking process. So
13 he knew how many we had left, how many we completed, and how
14 many we had to get done.

15 Q And how many were you completing in a day?

16 A I -- I don't know that number.

17 Q Okay. You had 462 applications; right?

18 A Yes.

19 Q And you had 90 days. You were doing roughly 150 per
20 month; is that correct?

21 A I'd have to --

22 Q Give or take a few?

23 A -- do the math.

24 Q 150 per month is 450, so you'd have to do a little
25 bit more than that.

1 A Yeah, that makes -- logic.

2 Q If you're doing 150 in a month, that's five per day,
3 isn't it? And that's including weekends at that point; isn't
4 that correct?

5 A I'd have to --

6 Q Well, 150 divided by 30, wouldn't that be five?

7 A Yeah.

8 Q All right. So if you're doing five a day, that's
9 certainly a lot more than two -- one every two to three days,
10 isn't it?

11 A Yes, it is.

12 Q Right. Now, let's look at --

13 THE COURT: It says two to three applications a day,
14 not one every two to three days.

15 MR. PARKER: I'm sorry, Your Honor.

16 THE COURT: Which would be very different.

17 So can we take a break, because we've been going
18 here, my staff and I, since 9:00, so it's 10:30.

19 MR. PARKER: That sounds good, Your Honor.

20 THE COURT: So can we take a short break?

21 MR. PARKER: Go for it.

22 THE COURT: This is not a requested recess by you
23 guys.

24 (Proceedings recessed at 10:34 a.m., until 10:42 a.m.)

25 THE COURT: All right. I've got enough. I've got

1 enough lawyers.

2 So is the consensus you are all able to come at
3 9:00 o'clock tomorrow morning, or would you like me to start at
4 9:30?

5 ATTORNEY: 9:00 is great.

6 ATTORNEY: 9:00 is fine with me.

7 THE COURT: I'm trying to get as many hours in a day
8 as possible. 8:30 was rejected by my staff because we've got
9 to come in at 8:30 on Thursday.

10 So 9:00 o'clock tomorrow, guys?

11 ATTORNEYS: Yes, Your Honor.

12 THE COURT: I have to wait for Dulce before we're
13 official, and I'm waiting for Ms. Higgins.

14 Can someone make sure there's no block so she can
15 access the special chair we've set up for her -- that she set
16 up for herself.

17 Don't knock her down, Mr. Parker.

18 MR. PARKER: I will not.

19 MS. HIGGINS: I'm coming. I'm coming.

20 THE COURT: It's all right. We're not rushing you.

21 Sir, I'd like to remind you you are under oath.

22 Do you need anything else besides the cup I was able
23 to find?

24 THE WITNESS: No, I'm fine, Your Honor. Thank you.

25 THE COURT: All right. If you need a break, you let

1 us know. We're going to break around lunchtime.

2 THE WITNESS: Okay.

3 THE COURT: Around noon.

4 Mr. Parker, you're up. You're going to finish up
5 fairly quickly; right?

6 MR. PARKER: I am. I am. In Mr. Gilbert's
7 vernacular, quickly is, you know --

8 THE COURT: Relative.

9 MR. PARKER: -- all relative.

10 THE COURT: Relative. Yes.

11 MR. PARKER: All relative.

12 THE COURT: I've known that about you for years,
13 Mr. Parker.

14 MR. PARKER: That is true. That is true.

15 BY MR. PARKER:

16 Q Mr. Gilbert, I want you to take a look at the
17 definition of "applicant" because of something you said a
18 second ago. You said you were only concerned about the
19 organization, but the definition of "applicant" in your -- one
20 of the few definitions we actually can use in this exhibit
21 says, Organization, slash, individual. Do you see that?

22 A Yes.

23 Q So it's not just the organization that's at stake
24 here. It's also the individual. Isn't that true?

25 A Yeah. They list all their --

1 Q All right.

2 A -- owners, officers and board members.

3 Q Now, someone, one of my colleagues here, thought
4 about what you said during the break and wanted to pass this on
5 to me. So I'll ask the question: If we were to simply accept
6 what you said to the Court a little while ago regarding there
7 not being a conflict between similar owners with similar
8 companies having more than one license, would it be fair to say
9 that one owner with 61 different companies could own all of the
10 recreational marijuana locations in the state?

11 A Can you rephrase that or ask it again.

12 Q Yeah. You said that Mr. Pupo said to you that it was
13 okay for Essence Trop and Essence Henderson, despite the fact
14 that they have the same owners, to have more than one -- one
15 location in the same jurisdiction. Do you recall that?

16 A Yes, I do.

17 Q So if Teddy Parker had 61 companies all applying for
18 licenses in -- for all the jurisdictions, could I own them all?

19 A (No response.)

20 Q As long as I had 61 different companies, can I own
21 all of them, and that wouldn't violate the monopoly regulation
22 or statute?

23 A I don't know if I can answer that on the fly up here
24 on the stand.

25 Q Well, you said two was enough. Two was fine. How

1 about three?

2 A I think three would -- I mean, you'd have to look at
3 the ownership of the other -- the other licensees or the
4 licenses that the entities already hold.

5 Q Well, you said it was okay for Essence Trop and
6 Essence Henderson. They had similar owners. So if I was a
7 similar owner of three locations, could I have three in the
8 same jurisdiction?

9 A Again, I'd have to do the analysis. I don't know if
10 I could answer that question up here on the stand.

11 Q When we left off, you didn't say there was an
12 analysis. You said that Mr. Pupo told you that two is okay.

13 A Based on their ownership of their existing license
14 also.

15 Q All right. You're not foreclosing the idea of me or
16 someone having three locations in the same jurisdiction as long
17 as it was three different companies, even if they owned a
18 hundred percent of all three?

19 A And, again, I'd have to look at -- I'd have to look
20 at the whole picture.

21 Q Is there any regulation or statute that would guide
22 your determination?

23 A It's either 10 percent or the 1 like we put in the
24 red bold.

25 Q I'm sorry. Say that again.

1 A The 10 percent within a county.

2 Q Okay. So getting back to the timing, let me show you
3 another slide that deals with the timing related to --

4 THE COURT: Sir, can you push the bottom left-hand
5 corner of your monitor to see if we can get rid of those lines.

6 THE WITNESS: Uh-huh.

7 THE COURT: Thank you so much.

8 BY MR. PARKER:

9 Q If we could look at Exhibit, I think, 207. Yeah,
10 207.

11 MR. PARKER: And it's page DOT298, Shane.

12 I think this has been admitted, Your Honor.

13 THE CLERK: It is.

14 THE COURT: Okay.

15 BY MR. PARKER:

16 Q This says, Each application is estimated to take
17 33 hours to review. Is that a goal that was achieved during
18 the application-review process?

19 A I don't know. This was prior to any applications
20 being received.

21 Q Was that achieved during the process?

22 A Again, I didn't -- I haven't done an analysis on the
23 total time it took.

24 Q All right. Did you review the scoring sheets of the
25 evaluators?

1 A After they evaluated them?

2 Q Yes.

3 A No, I did not.

4 Q Did you review the tally sheets?

5 A No, I did not, not before -- not before the licenses
6 were awarded.

7 MR. PARKER: All right. Your Honor, I don't know if
8 Exhibit 44 has been admitted.

9 THE COURT: Dulce will know.

10 THE CLERK: It has been.

11 MR. PARKER: Great.

12 THE CLERK: 44.

13 MR. PARKER: 44?

14 THE CLERK: Uh-huh.

15 MR. PARKER: Could you put that on the screen for me,
16 Shane.

17 BY MR. PARKER:

18 Q So this is a tally sheet. Do you recognize this
19 tally sheet?

20 A Yes.

21 MR. PARKER: All right. If we go down to the bottom,
22 Shane -- yeah, a little further down. Right there.

23 BY MR. PARKER:

24 Q Do you see where it says total score?

25 A Yes.

1 Q Okay. So all three of these evaluators came up with
2 the same score; is that correct?

3 A That's correct.

4 Q Now, if you go under Organizational, it says here
5 1.50 hours; is that correct? Right there. Is that correct?

6 A Yes.

7 Q Does that mean that Evaluator 1 took 1.5 hours to
8 review the organizational portion of the identified part of the
9 application?

10 A Yes, it does.

11 Q Does it also mean that all three evaluators took the
12 exact same amount of time?

13 A That's what it indicates.

14 Q Does it also mean below that, in terms of the
15 financial portion of the identified area of the application,
16 that all three of the evaluators took the exact same time
17 looking at that portion?

18 A Yes.

19 Q And does it also mean that when it comes -- where it
20 discusses taxes that each one of the evaluators took the exact
21 length of time, .25 hours, to evaluate that section?

22 A Yes.

23 Q And, finally, a total time, is it true that each of
24 the evaluators, not only coming up with the exact same points,
25 spent the exact same amount of time for each category and then

1 totaling to the exact same time -- amount of time?

2 A That's what the tally sheet indicates, yes.

3 Q All right. Look at --

4 MR. PARKER: Has Exhibit 53 been admitted, Madame
5 Clerk?

6 THE CLERK: Yes.

7 BY MR. PARKER:

8 Q All right. Can we look at 53, please. And go to the
9 bottom as well.

10 Would your answers be the same if my questions were
11 the same in terms of this part of the application?

12 A It looks like the times are the same.

13 Q Points are the same? Times it would take, the same
14 for each of the categories?

15 A Yeah --

16 MR. GRAF: Well, objection, Your Honor. Misstates
17 the evidence.

18 THE COURT: Overruled.

19 MR. GRAF: The points aren't the same.

20 THE COURT: I said overruled.

21 MR. GRAF: Yes, Your Honor.

22 BY MR. PARKER:

23 Q All right. There is one variation in Evaluator 1 is
24 what Mr. Graf is pointing out. The time is the same, sir, for
25 each --

1 A Yes.

2 Q Okay.

3 A For each category, the time is the same.

4 Q Thank you.

5 MR. PARKER: And then if we could look at Exhibit 57
6 if that's been admitted.

7 THE CLERK: It has.

8 MR. PARKER: Thank you.

9 BY MR. PARKER:

10 Q Would you agree that the points are the same and the
11 time for each category is the same?

12 A The points up top, the one, zero (unintelligible)
13 one, twenty, one, zero, one?

14 Q Yes, sir.

15 A Yes, those are the same.

16 Q And then for each evaluation for the three categories
17 under the identified, the length of time taken by each
18 evaluator is the same for each category; is that correct?

19 A Yes.

20 Q Now, we discussed why it's your belief that location
21 was taken out of consideration; is that correct?

22 A Uh --

23 Q You said it was taken out of the application by
24 virtue of a clarification; is that correct?

25 A Well, there -- we sent out clarification to the

1 application.

2 Q Right. We've seen that the word "location" and the
3 prohibition against using PO boxes remained in the application.
4 That's Exhibit 5. We've seen that today. Is that correct?

5 A I saw it in Exhibit 5.

6 Q All right. Now, would you be surprised that the
7 evaluators looked at location in their evaluations, not on all
8 but on some?

9 A I would have to look and see what you're referring
10 to.

11 Q If the evaluators looked at location, that would be
12 against your instruction; is that correct?

13 A Well, if it was provided in the application, they may
14 have had to look at it, but it wasn't scored.

15 Q So if they scored location, then that would be
16 against your training?

17 A Well, location wasn't scored. It wasn't part of the
18 criteria.

19 Q One more time. If they scored location, that would
20 be against your training; is that correct?

21 A It would be against the training that they got based
22 on the criteria that was provided that they used to evaluate
23 the applications.

24 Q So it would be against the training and the criteria?

25 A It would be -- well, there's no points allowed in the

1 criteria for location.

2 Q If we see indications within the scoring that
3 location was taken into consideration, would that be against
4 your training? Yes or no?

5 A I would have to -- I don't know if I can answer -- I
6 can't answer that without, number one, seeing what I'm looking
7 at.

8 Q No, sir. Let me -- would it be against the criteria?

9 A Yeah, because there is no points for criteria for
10 location.

11 Q All right. And you said that you trained these
12 evaluators not to consider location; right?

13 A It was part of the training.

14 Q Thank you.

15 MR. PARKER: So let me see if I can get a stipulation
16 as to this document, Your Honor.

17 (Pause in the proceedings.)

18 THE COURT: Proposed exhibit number, Mr. Parker?

19 MR. PARKER: It would be the next in order. It's
20 produced by the --

21 MR. SHEVORSKI: The State produced this. We have no
22 objection to our own document.

23 THE COURT: So, Dulce.

24 THE CLERK: 304.

25 THE COURT: 304. Have you shown 304 to everybody it

1 impacts?

2 MR. PARKER: I'm going to show it to, I think,
3 Mr. Graf.

4 (Pause in the proceedings.)

5 MR. PARKER: Joe that is, Your Honor.

6 THE COURT: Any objection to 304?

7 MR. GUTIERREZ: No objection, Your Honor.

8 THE COURT: Be admitted.

9 (Plaintiffs' Exhibit Number 304 admitted.)

10 MR. PARKER: Your Honor, may I approach the witness?

11 THE COURT: You may. And you need to give one to the
12 clerk.

13 MR. PARKER: Of course. I brought one just for her.

14 Do you want me to show him the one you marked?

15 Let me take that back, Mr. Gilbert, please. I knew
16 better. I should have given it to her first.

17 THE COURT: When we give you the sticker one, make
18 sure we get the one with the sticker back.

19 THE WITNESS: Okay.

20 THE COURT: So don't take it when you leave.

21 THE WITNESS: I'll return it.

22 THE COURT: All right.

23 BY MR. PARKER:

24 Q So you've been handed Exhibit 304, and this was
25 produced by the Department of Taxation.

1 MR. PARKER: If we can put it on the screen. Do you
2 have it?

3 UNIDENTIFIED SPEAKER: I do not --

4 MR. PARKER: Could I use the Elmo, Your Honor?

5 THE COURT: You may. Ramsey is going to help you.

6 MR. PARKER: Thanks, Ramsey.

7 THE MARSHAL: You're welcome.

8 BY MR. PARKER:

9 Q So Exhibit 304 was produced by the Department of
10 Taxation, Mr. Gilbert. Do you see that? Do you see the
11 document?

12 A Yes.

13 Q It appears to be an evaluator --
14 Is it Lennon or Lemons?

15 A That's Lemons, Mr. Lemons.

16 Q Mr. Lemons. Was he an evaluator?

17 A Yes.

18 Q All right. And he was charged with doing an
19 evaluation of the nonidentified?

20 A Yes. That's correct.

21 Q And nonidentified would include adequacy of size,
22 building plans, which is stated at the top of this document?

23 A Yes.

24 Q Is that a yes? All right.

25 And do you see the comments here?

1 A I do.

2 Q It says, 2500 to 3200 square feet, I'm assuming; is
3 that correct?

4 A That's what it looks like to me.

5 Q And this says, Public -- I'm sorry, Public bus stop
6 nearby. How would you know if a public bus stop is nearby
7 without knowing the location?

8 A I don't know. That would be a question for the
9 evaluator. I don't -- I don't know where he got those.

10 Q You would agree with me that at the very least
11 someone considered the location for purposes of public
12 transportation?

13 A I don't know if the -- again, I can't answer to him,
14 why he put those notes there. It might have been included in
15 the application. It might have been something that the
16 applicant pointed out that he just put a note down.

17 Q All right.

18 A I don't know. That would be a question for the --
19 Mr. Lemons.

20 Q All right. When you saw this -- or did you ever see
21 this?

22 A First time I've seen it.

23 Q All right. So did anyone ever consider seeing this,
24 somebody from the State, and saying, hey, Evaluator, why would
25 you comment on a nearby bus stop if location is not a part of

1 the criteria?

2 A We wouldn't -- we didn't look at their notes. We
3 didn't look at what they wrote in the notes. (Indiscernible)
4 that's --

5 Q And that's because no one from the State actually did
6 any quality assurance; isn't that correct?

7 A We did quality assurance on the auditing of the
8 tallies of the scores.

9 Q Um-hmm. You didn't do any quality assurance or
10 quality control when it came to the evaluation of the
11 nonidentified portions of the applicant -- application? I'm
12 sorry.

13 A We relied on the evaluators and their experience and
14 skills to evaluate appropriately.

15 Q Sure. All right.

16 (Pause in the proceedings.)

17 THE COURT: Is this your next in order, Mr. Parker?

18 MR. PARKER: It will be, Your Honor.

19 THE COURT: So, Dulce, we'll be up to 305.

20 MR. PARKER: Your Honor, this is not a intervener
21 that's here --

22 THE COURT: So why don't we not?

23 MR. PARKER: -- but the State has no objection to it.

24 MR. SHEVORSKI: I mean, I don't have an objection
25 other than the confidentiality --

1 THE COURT: Is there any confidential information
2 that appears on the document?

3 MR. PARKER: No, I don't believe so, Your Honor.

4 THE COURT: Mr. Shevorski?

5 MR. SHEVORSKI: I don't believe it does, Your Honor.

6 THE COURT: Okay.

7 MR. SHEVORSKI: But I'm going to have Mr. Bhirud look
8 at it real quick. He's our guru --

9 THE COURT: He is. He's in charge.

10 UNIDENTIFIED SPEAKER: I don't believe so either.

11 MR. GRAF: Your Honor, Clear River would object to
12 any document being used as to any nonparty to this proceeding.

13 THE COURT: Overruled.

14 MR. GRAF: Thank you.

15 THE COURT: As long as there is no confidential
16 information, it'll be admitted.

17 (Plaintiffs' Exhibit Number 305 admitted)

18 UNIDENTIFIED SPEAKER: I don't see any, Your Honor.

19 THE COURT: And the State has confirmed it does not
20 appear to.

21 And, Mr. Parker, you've confirmed as well.

22 UNIDENTIFIED SPEAKER: Nothing readily --

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

24 THE COURT: You may.

25 MR. PARKER: This will be 305, Your Honor.

1 May I approach?

2 THE COURT: You may.

3 (Pause in the proceedings.)

4 BY MR. PARKER:

5 Q So I believe you have Exhibit 305 in front of you, do
6 you not?

7 A Yes, I do.

8 Q Now, this document appears to be another application
9 reviewed by Mr. Lemons related to a nonidentified portion of
10 the application, particularly the adequacy of size and building
11 plans. Adequacy of size and then building plans. Do you see
12 that?

13 A Yes.

14 Q This comment indicates that there is a receiving door
15 to the enclosed garage. Do you see that?

16 A Yes, I do.

17 Q Now, it's my belief that based upon this notation
18 that someone would have to know that there is a garage also
19 attached or available to those parking or intending to
20 patronize a medical -- the recreational medical
21 establishment -- recreational marijuana establishment. Would
22 that seem consistent with your review of this?

23 A I mean, it could mean a number of things. Can you
24 repeat your understanding.

25 Q Well, my point is typically you don't have on a floor

1 plan a garage. Would you agree with that?

2 A It could be a facility garage, a mantrap.

3 Q Well, the mantrap, which is also mentioned in the
4 other, in Exhibit 304, I thought about that as well, and I
5 believe that the -- a mantrap would be associated with an exit
6 so you can close the exit to prevent somebody from getting out
7 or getting in. Understood?

8 A Yes.

9 Q Is that your understanding as well?

10 A Yes.

11 Q All right. But when it comes to a garage, in all of
12 the documents I've reviewed, I have not seen a single floor
13 plan that has a garage as a part of the floor plan. Do you
14 recall seeing any?

15 A I didn't review any of them.

16 Q All right. Would you agree with me to know that
17 there is a garage you'd actually have to have at least some
18 information on the location?

19 MS. SHELL: Objection. Calls for speculation.

20 THE COURT: Overruled.

21 THE WITNESS: I mean, it's hard for me to speak to
22 what the evaluator saw in this floor plan as to why he -- he
23 would have wrote garage, and I can't speak to -- I can't speak
24 to what he evaluated.

25 MR. PARKER: Good enough.

1 THE COURT: And this is the same evaluator
2 Mr. Lemons?

3 MR. PARKER: It is, Your Honor. Thank you.

4 BY MR. PARKER:

5 Q All right. But the importance of a receiving door to
6 an enclosed garage, that was something that Mr. Lemons thought
7 was important enough to actually add as a part of his notes for
8 this applicant; is that correct?

9 MR. SHEVORSKI: Objection. Speculation.

10 UNIDENTIFIED SPEAKER: Objection.

11 THE COURT: Overruled.

12 UNIDENTIFIED SPEAKER: We thought it (indiscernible)
13 for a twofer, Your Honor.

14 UNIDENTIFIED SPEAKER: A synchronized objection.

15 THE WITNESS: Mr. Lemons wrote it down for a reason,
16 but as to the reason why, I don't -- don't think I can speak to
17 that.

18 MR. PARKER: Good enough.

19 BY MR. PARKER:

20 Q Now, I want to look at an extraction report reference
21 that we did not go over last week, and this is SG91.

22 MR. PARKER: So I believe the exhibit has already
23 been admitted, Your Honor, and I think it's one, oh --

24 THE COURT: One, oh, which?

25 THE CLERK: Nine.

1 THE COURT: Dulce thinks it's 109.

2 MR. PARKER: We have 109. It is 109.

3 THE COURT: Thank you, Dulce.

4 MR. PARKER: Thank you, Dulce.

5 And it's page 91. And it's the top --

6 (Pause in the proceedings.)

7 MR. PARKER: Can you pull that up for me, Shane.

8 Thanks.

9 BY MR. PARKER:

10 Q So, it says, The training was dumb. Do you see that?

11 A I do.

12 Q And it appears to have been sent by Karra; is that
13 correct?

14 A That's Kara --

15 Q Kara?

16 A -- Cronkhite.

17 Yes.

18 Q Ms. Cronkhite?

19 A Yes.

20 Q Or Cronhite. All right.

21 And then I believe you indicate, I know, not real
22 relevant. What training were you speaking of?

23 A I don't recall.

24 Q Would it have had anything to do with the 2018
25 application process?

1 A It looks like it was in January of 2019.

2 Q Okay.

3 A So, no.

4 Q You have no idea?

5 A I don't.

6 Q And I wanted to also ask you about this part of the
7 training. And it's page -- it's DOT20832, and I think that's
8 Exhibit --

9 MR. PARKER: I believe it's already been admitted,
10 Your Honor, as part of the training -- I think it's -- is it
11 305?

12 THE COURT: Probably not. 305 was the score sheet.

13 MR. PARKER: All right.

14 THE COURT: With Mr. Lemons's handwritten comments.

15 MR. PARKER: Okay. I think it's 111.

16 (Pause in the proceedings.)

17 THE COURT: What's the Bates number, Mr. Parker?

18 MR. PARKER: Two, zero --

19 THE COURT: What's the alpha?

20 MR. PARKER: DOT.

21 THE CLERK: DOT?

22 MR. PARKER: DOT20832.

23 THE CLERK: 111 starts at 20839. So 114, Mr. Parker.
24 DOT020832?

25 MR. PARKER: Yes.

1 THE CLERK: I think that's 114.

2 MR. PARKER: Has that been admitted?

3 THE CLERK: And it's been admitted.

4 MR. PARKER: That's what I thought. I thought it was
5 admitted.

6 THE COURT: Okay.

7 BY MR. PARKER:

8 Q All right. Can we go to the top question.
9 Mr. Gilbert, can you read that to yourself. Can you tell me
10 what you believe the answer to that question was.

11 A In the case of a tie in the scoring between
12 applicants for a license, the department will do what?

13 Q All right. Do you know what the answer is to this
14 question?

15 A The answer to a tie for these situations would be the
16 organizational chart.

17 Q Would be what?

18 A The review of the organizational chart.

19 Q And what about the organizational chart would you use
20 to break a tie?

21 A The score of the organizational chart.

22 Q That's it? So if the organizational chart was
23 identical, let's say the number was identical, then what would
24 you do?

25 A I'm sorry. Can you rephrase --

1 Q Yeah. Let's say you had a tie. The overall
2 applications were a tie in terms of numbers, and then you went
3 to the organizational chart, and those numbers were identical.
4 What do you do then?

5 A That I would have to reach out for guidance from a --

6 Q Okay. So Mr. Kemp asked you --

7 A -- the attorney general.

8 Q -- and I took a note on this, Mr. Kemp asked you
9 whether or not at one point diversity was a tiebreaker. Do you
10 remember that?

11 A Possibly.

12 Q Okay. Was diversity ever considered the tiebreaker
13 as a part of the organizational chart?

14 A (No response.)

15 Q Do you know?

16 A I'm sorry?

17 Q Yeah. Do you know whether or not diversity was ever
18 a part of the tie-breaking -- was ever considered the
19 tiebreaker under the identified portion of the application?

20 A Not in the criteria.

21 Q No?

22 A No, not in the criteria.

23 Q All right. Do you recall that the application
24 required not only officers, board members, but also employees
25 and volunteers have agent cards?

1 A Well, I don't -- as far -- can you repeat the
2 question.

3 Q Yeah. Did the application or does the process
4 require for employees of a recreational marijuana establishment
5 to have an agent card?

6 A Not the -- not the application itself if I understand
7 your question correctly because --

8 Q But eventually employees?

9 A Eventually employees, yes.

10 Q How about volunteers?

11 A Yes.

12 Q So if employees and volunteers would have to have
13 one, is there any reason why every owner, including, in your
14 words, a shareholder, would not have to have an agent card?

15 A That depends on their ownership percentage.

16 Q Okay. Now you're saying it's a percentage.

17 A No, that's what the statute and regulations read.

18 Q Okay. But that's --

19 A That's their own percent.

20 Q -- not what your application said; is that true?

21 A It says background -- well, that's for the
22 existing -- the ownership. So when the Department looked at
23 who was listed in the application and they compared it to the
24 ownership on record, and those requiring an agent card should,
25 you know, they need to be valid and up to date, which is part

1 of the background check.

2 Q So I'm trying to finish up with you, Mr. Gilbert. I
3 want to make sure this is the case. If I were to show you
4 Nevada Wellness Center application or scoring information,
5 would your answers be the same, I would have to ask the
6 evaluators why they may have put certain information in the
7 notes?

8 A Most likely yes. I mean I can't answer to why they
9 wrote some notes.

10 Q Okay. And let finish with this line of questioning,
11 since I was asking you. So are you familiar with Clear
12 River LLC?

13 A I'm aware of the licensee, yes.

14 Q Okay. Did Clear River ever receive a traditional
15 license in unincorporated Clark County, to your knowledge?

16 A I'd have to look at the listing.

17 MR. PARKER: Can we put up Exhibit 13, please.

18 BY MR. PARKER:

19 Q Do you see it there?

20 A Yes, I do. Number 10.

21 Q All right. And is it true that only 10 licenses were
22 handed out in unincorporated Clark County?

23 A Yes, that's correct.

24 Q Okay. Was Wellness Connection of Nevada the 11th --
25 in the 11th spot?

1 A Yes, they are.

2 Q And the differential between Wellness Center getting
3 in, that Clear River's about 1.66 points; is that correct?

4 A Yes, that's correct.

5 Q So if Clear River would have lost two more points,
6 then it would not have received a conditional license for
7 unincorporated Clark County; is that correct?

8 A Yeah, or -- yeah. Or the other one gained more.

9 Q Do you know how many points Clear River LLC got in
10 diversity scoring?

11 A I don't.

12 Q All right. Let me take a look at Exhibit 58. I
13 think that's been admitted, Your Honor.

14 THE COURT: Dulce says it has.

15 MR. PARKER: Perfect. Thank you.

16 BY MR. PARKER:

17 Q Would you agree with me that Clear River received 12
18 points to diversity?

19 A Yes.

20 Q All right. Clear River's an LLC. Do you know
21 whether or not it listed -- how it listed its owners or
22 managers or members or whomever, did you take a look at that?

23 A No, I did not.

24 Q Give me your understanding of what they -- whom they
25 should have listed based upon the application?

1 A They should have listed their owners, officers, and
2 board members.

3 Q All of them, right?

4 A Yeah.

5 Q All right. And in terms of diversity, they would be
6 entitled only for consideration of those people occupying those
7 positions, the owners, officers, or board members; is that
8 correct?

9 A Yes.

10 Q How many people did Clear River include as a part of
11 its diversities form; do you know?

12 A I do not know.

13 MR. PARKER: I don't know if Exhibit 132 has been
14 admitted, Your Honor.

15 THE COURT: Dulce says no.

16 MR. PARKER: Mr. Graf, do you have objection to 132?
17 I think it's the part of your application submitted to the DOT.

18 THE COURT: Which portion, Mr. Parker?

19 MR. PARKER: I believe it's the identifiers portion.
20 Is 30 -- (indiscernible).

21 THE COURT: Well, why don't you show Mr. Graf the --

22 MR. PARKER: Well, I was just going to use the -- use
23 that. I think he --

24 MR. GRAF: And, Your Honor, we -- if -- just if
25 Mr. Parker can confirm, this is what you're talking about?

1 MR. PARKER: That's 37.

2 MR. GRAF: So which part are you talking about?

3 MR. RULIS: Handwritten notes?

4 MR. PARKER: Yeah.

5 MR. GRAF: Oh, the handwritten notes?

6 MR. PARKER: Yeah.

7 MR. GRAF: Your Honor, our concern is, is that there
8 are -- yes, we object, Your Honor. There is personal and
9 proprietary information included in there, and this is also
10 subject to our previous Motion for a Protective Order. We're
11 just trying to be consistent, Your Honor.

12 THE COURT: Okay. So can I see a copy so I can look
13 at it to make a determination as to whether it appears to me to
14 be confidential? Does anybody know where it is?

15 MR. GRAF: Your Honor, Mr. Rulis was good enough to
16 give me a copy this morning. If you want to look at my copy --

17 THE COURT: Nobody gave me one.

18 MR. GRAF: If you want to look at my copy, Your
19 Honor, you should have a copy.

20 THE COURT: Giving Dulce a copy doesn't give me a
21 copy.

22 MR. PARKER: I gave Dulce two copies.

23 THE COURT: Oh. Well, she didn't -- Which one,
24 Mr. Parker? 130 or 130?

25 MR. PARKER: 132 and then we're going to go to 130

1 after that.

2 THE COURT: Page number?

3 MR. PARKER: Page number 30782, the Alpha Americas
4 DOT.

5 THE COURT: Hold on. Counsel, I am looking at this
6 solely for purposes of making an evaluation on the
7 confidentiality objection on this page.

8 MR. GRAF: Which page again? I'm sorry.

9 MR. PARKER: 30 --

10 THE COURT: I am on DOT030782. The information that
11 appears on DOT030782 does not appear confidential. If you are
12 only seeking to use that page, we will mark it as 132A. If
13 there's other information in here, I will address them on a
14 page-by-page basis according to Mr. Graf's objection.

15 MR. GRAF: Thank you, Your Honor.

16 THE COURT: So can we mark that one as A?

17 MR. PARKER: Yes, Your Honor.

18 THE COURT: All right.

19 THE CLERK: Can I have the Bates number again?

20 MR. PARKER: Yes. It's 307 -- it's DOT03 --

21 THE COURT: 30782.

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

23 THE COURT: I didn't take it out. Sir, do you have a
24 book that looks like this somewhere?

25 / / /

1 BY MR. PARKER:

2 Q Did you find the page, Mr. Gilbert?

3 A On the --

4 Q It should be on the screen, but --

5 A I got it on the screen.

6 Q Okay. Good enough. But you agree now that there are
7 12 people that were taken into consideration by the evaluator
8 for purposes of diversity?

9 A Yes, based on the notes.

10 Q And would you also agree that they were -- as a
11 result of their calculation on the evaluators' calculation,
12 they gave them 12 points?

13 A Yes.

14 Q And they identify six females, one black person; is
15 that correct?

16 A Yes.

17 Q Did -- do you know what positions the females held or
18 the black person?

19 A I do not.

20 Q Do you know who the owner of Clear River is?

21 A Not that I can recall.

22 Q Okay. Do you know whether or not an advisory board
23 was created by Clear River that added the black gentleman or
24 black female and the other six females?

25 A I'm not aware.

1 Q Do you know whether or not the evaluators determined
2 that there was an advisory board as opposed to a board member
3 that was being included in the diversity listing?

4 A I'm sorry, can you repeat that, sir?

5 Q Yes. Do you know whether or not the evaluators
6 determined whether or not this was an advisory board or a board
7 member that was being added to their diversity count?

8 A I do not know.

9 Q Were you aware that Clear -- do you know whether or
10 not the Department of Taxation informed the owner of Clear
11 River that the ownership listed did not have to match the
12 Department's records?

13 A I'm not aware.

14 Q Did you look at the Secretary of State's information
15 to determine whether or not Mr. Black -- Randy Black Sr. was
16 the only manager and member of Clear River LLC?

17 A I did not.

18 Q Do you know if the evaluators would have done that?

19 A They should have looked to see if they're registered
20 with the Secretary of State.

21 Q Should they have looked to determine whether or not
22 any of the 12 members or 12 individuals listed for the purposes
23 of diversity would have been consistent with your historical
24 information or the Secretary of State's information?

25 A It should have been looked at for historical

1 information. However, if they're -- I think I spoke to them
2 last week or the week before regarding the transfer of
3 ownerships, if they -- if an entity had a transfer of ownership
4 in the house, then we would look at that also.

5 Q Let's take a look at Exhibit 130. If we can, Your
6 Honor, let me first --

7 THE COURT: That's a proposed exhibit, Mr. Parker.

8 MR. PARKER: Oh. Okay. And that was dealing with
9 the monopoly analysis, Your Honor. I don't know if there's an
10 objection to that. I don't know if there was.

11 MR. SHEVORSKI: Well, Ted, I don't know what it is.

12 THE COURT: 130, and somebody coded it in the books,
13 looked at it.

14 MR. PARKER: It's DOT044450.

15 MR. SHEVORSKI: No objection from the State, Your
16 Honor.

17 THE COURT: And which dispensary does it relate to?

18 MR. PARKER: It's all of them, Your Honor.

19 MR. SHEVORSKI: It's all of them.

20 MR. PARKER: It's all of them.

21 THE COURT: Okay. Let's see if anybody objects.

22 MR. PARKER: And it's -- Your Honor, for the record,
23 it's DOT044450 through DOT044452.

24 MR. KOHN: No objection for Nevada Organic Remedies.

25 MR. HONE: No objection.

1 MS. SHELL: No objection, Your Honor.

2 MR. GRAF: Your Honor, no objection.

3 MR. GUTIERREZ: No objection, Your Honor.

4 THE COURT: Be admitted. Thank you for all looking
5 at it.

6 (Plaintiffs' Exhibit Number 130 admitted)

7 BY MR. PARKER:

8 Q So if you look on the first page, it lists
9 Clearwater -- Clear River, I'm sorry, LLC. And it lists the
10 names of those identified by Clear River for purposes of
11 diversity; do you see that?

12 A Yes.

13 Q All right. And looking at this document, it says
14 here, Current owners officers or board members for this entity.
15 Do you see that column which is eighth from the left?

16 Look at the top. Can you see that? I know the print
17 is small. This is a very tight --

18 A Yeah. I think I saw it when you enlarged it.

19 MR. PARKER: Your Honor, may I approach?

20 THE COURT: You may.

21 THE WITNESS: Yes. I knew it was somewhere.

22 BY MR. PARKER:

23 Q Okay. So the O, O, and B stands for Owners,
24 Officers, and Board Members, correct?

25 A Yes.

1 Q And so we go below that list, Clear River indicates
2 no in terms of these individuals listed; is that correct?

3 MR. GRAF: Objection, Your Honor, as to form, as to
4 what the document indicates.

5 THE COURT: Overruled.

6 MR. GRAF: Thank you.

7 BY MR. PARKER:

8 Q Do you notice that?

9 A Can you repeat it, please.

10 Q Yes. The word, No, is below -- is in that column and
11 has reference to Clear River LLC for all 12 of these
12 individuals; do you notice -- did you notice that?

13 MR. GRAF: Objection, Your Honor. Misstates the
14 evidence.

15 THE COURT: Overruled.

16 BY MR. PARKER:

17 Q Well, I'm sorry. It says yes as to one person, Mr.
18 Black Sr. Other than that, if you can believe that the other
19 11 people all has a -- or all have a No to the right of
20 their --

21 A Yes.

22 Q All right. And instead, they even listed it as
23 prospective officers in the notes; do you see that?

24 THE COURT: Or BM.

25 / / /

1 BY MR. PARKER:

2 Q Or Board Member; that's correct.

3 A Yes, that's correct.

4 Q So I want you to consider the dichotomy of what you
5 said earlier regarding listing all owners, shareholders; do you
6 remember that conversation?

7 A I believe so.

8 Q All right. And you've told me that you didn't
9 expect, perhaps, that all shareholders will be listed or all
10 owners will be listed unless they came up to 5 percent or
11 greater; do you remember that?

12 A I do. I don't know if that's necessarily my opinion
13 or guidance, but that's what the application required.

14 Q Right. But the application didn't say 5 percent or
15 greater; it just said owners, correct?

16 A Yes.

17 Q And it didn't -- would you agree with me that taking
18 into consideration prospective officers, not current, would be
19 a very liberal approach at getting diversity points when you're
20 not requiring to be, I think, very conservative and responsible
21 all owners to be identified for purposes of determining
22 ownership for monopoly; do you understand the two
23 consideration?

24 A Can you repeat that, please?

25 Q Sure. You're giving someone diversity points for

1 prospective potential officers on the one side; do you see
2 that?

3 A Well, I don't know if this is -- does this match what
4 they put in their application?

5 Q Well, this is --

6 A Because this isn't the diversity analysis.

7 Q There are 12 people here, and the scores indicated
8 that there were 12 people considered. I showed you that first
9 under Exhibit 132A. Remember that?

10 A I do. Yes.

11 Q All right. So that's what the scores decided. The
12 scores decided, using your training, to include these 12 people
13 in this diversity calculation; is that true?

14 A I'd have to look at the attachment.

15 MR. PARKER: Can we go back to 132A again, please?

16 THE COURT: You see it there, sir?

17 THE WITNESS: Yes. I do see that.

18 BY MR. PARKER:

19 Q All right. And I'm guessing that the one black
20 doesn't mean Mr. Black Sr. Would you agree with that?

21 A I read it. Hope so, yes.

22 Q All right. Good enough. So if we were to do a count
23 here of the Clear River individuals listed, do we come up with
24 12?

25 A Yes. There's 12.

1 Q All right. So that would match with the scores used
2 for their diversity and valuation; is that correct?

3 A Based on the number, yes. But I'd have to look at
4 Attachment C.

5 Q Okay. You can't accept the scores information here?
6 It says the numbers match in terms of the listing.

7 A It did -- they did take 12 individuals into account.

8 Q Well, why don't we do this to see if this helps. How
9 many of those listed would be female, just based on the name?
10 Do you see six females based on first names?

11 A It's hard for me to say on some of them.

12 Q There's some easy ones.

13 A Yeah.

14 Q Lorraine, Rita, Risha, Lisa, Jade, I don't know if
15 it's Sayde or not, S-A-Y-D-E.

16 A I would say they're --

17 Q All right.

18 MR. PARKER: Your Honor, Mr. Campbell is suggesting
19 that we take a look at Exhibit 37. I think it was proposed,
20 but it's not been admitted, which may be helpful to Mr.
21 Gilbert.

22 THE COURT: Sir, you can look at Exhibit 37 if you
23 want, even though it's not admitted. It's in the books.

24 MR. PARKER: Do you have an issue with 37, Mr. Graf?

25 MR. GRAF: Which one's 37?

1 MR. PARKER: I think that's your listing, the actual
2 Clear River listing. Let's see, I can tell you the DOT number.

3 THE COURT: Do you have an objection, Mr. Graf?

4 MR. GRAF: I do, Your Honor. This is the document
5 that's subject to our previous Motion for Protective Order, Her
6 Honor ordered that we produce certain information, and we did.
7 We marked it as highly confidential.

8 THE COURT: Hold on a second. Dulce is handing me a
9 copy. For purposes of this examination, Mr. Parker, what pages
10 do you intend to use?

11 MR. PARKER: I think it's just page 2.

12 THE COURT: Page 2 of what?

13 MR. PARKER: Of Exhibit 30 -- of Exhibit 30.

14 THE COURT: So the second page?

15 MR. PARKER: Yeah, I think it maybe Attachment C.

16 THE COURT: Which is a redacted Attachment C?

17 MR. PARKER: Yes, Your Honor.

18 THE COURT: For the purposes of this examination,
19 there does not appear to be any confidential information on
20 DOT-Clear River 001737.

21 MR. GRAF: And just before you admit it, Your Honor,
22 for purposes of this hearing, we want to reiterate our
23 objection based upon SB32 and it's inaction by the State.

24 THE COURT: Okay.

25 MR. PARKER: Your Honor, let me --

1 MR. GRAF: But the applications are confidential.

2 MR. PARKER: Excuse me. I'm sorry.

3 THE COURT: And this is Exhibit 37A, will be Bates
4 Number DOT, Dot, Clear --

5 MR. GRAF: It's (indiscernible) privilege, Your
6 Honor. Sorry, I apologize.

7 THE COURT: 001737. I understand your position,
8 Mr. Graf.

9 MR. PARKER: Your Honor, this -- it's still
10 Exhibit 37 we're concerned about. But Mr. --

11 THE COURT: That's 37A now. Of you have another page
12 you want me to look at to resolve the confidentiality objection
13 that's been raised?

14 MR. PARKER: Yes, Your Honor. The problem is, and
15 you probably understand this based upon the many days we've
16 been here, the explanation and the description of each of these
17 people would be in the following pages 2 through 37 under
18 Exhibit 37A.

19 THE COURT: Which are fully redacted? Yeah.

20 MR. PARKER: Yeah. So --

21 THE COURT: I got that part.

22 MR. PARKER: So the question is will your ruling be
23 the same if he's allowed to look at that information?

24 THE COURT: The unredacted information?

25 MR. PARKER: No, the redacted 2 through page 37 and

1 37A.

2 THE COURT: Bates numbers?

3 MR. GRAF: I'm not understanding what you're saying,
4 actually.

5 MR. PARKER: I believe there's -- from page 32 to
6 page 37 --

7 MR. GRAF: You'd want him to look at.

8 MR. PARKER: Yes.

9 MR. GRAF: Okay.

10 MR. RULIS: And we have the same objections, Your
11 Honor.

12 THE COURT: I need Bates numbers, Mr. Parker, to
13 review it for confidentiality.

14 MR. PARKER: Certainly, Your Honor.

15 MR. RULIS: Your Honor, can I give you Bates numbers?

16 THE COURT: You may.

17 MR. RULIS: It's DOT-Clear River 001736.

18 THE COURT: 17 --

19 MR. RULIS: Hang on, sorry.

20 THE COURT: -- 36 is not in this packet Dulce handed
21 me.

22 MR. RULIS: No, 37. I apologize.

23 THE COURT: That's the one I admitted as A.

24 MR. RULIS: Through --

25 MR. GRAF: Your Honor, while you're looking at that,

1 I just want, for purposes of the record --

2 THE COURT: I'm just trying to get numbers.

3 MR. GRAF: I know. I got it.

4 THE COURT: Let me get the numbers first, Mr. Graf.

5 MR. RULIS: Through 1772.

6 THE COURT: So 1738 through 1772, which appears to be
7 the entire document. So the objection is sustained, unless you
8 want to give me particular pages within there to look at.

9 MR. RULIS: That's the entire of Attachment C.

10 THE COURT: I understand. Which is why I'm asking,
11 are there particular pages with any exhibit you would like me
12 to look at --

13 MR. RULIS: Sure.

14 THE COURT: -- like I did with 1737, which I admitted
15 as Exhibit 37A? Not saying you can't use it with the witness.
16 It's just an admission for public purposes.

17 MR. RULIS: Understood.

18 THE COURT: You can, of course, ask the witness
19 questions about an unadmitted document all day long.

20 MR. GRAF: Let's not do it all day long.

21 THE COURT: Well, especially since I was told that
22 Mr. Gilbert was a half day more and I got 28 more minutes in my
23 half day.

24 MR. PARKER: I'm almost done.

25 THE COURT: Yeah.

1 MR. PARKER: This is my --

2 MR. GRAF: He said that an hour ago.

3 MR. PARKER: I did not say that an hour ago.

4 MR. SHEVORSKI: So is the first page here the
5 Secretary o State's, is that 37? And then the next page is
6 37A?

7 THE COURT: I have only admitted 37A, which is D-O-T,
8 DOT Clear River 001737, after doing an evaluation of the
9 confidentiality issue, when Mr. Rulis suggested that I admit
10 the entire document, Exhibit 37, I sustained Mr. Graf's
11 objection related to confidentiality as well as understanding
12 he's also making a number of other objections related to
13 privilege.

14 MR. GRAF: Thank you, Your Honor.

15 MR. RULIS: Thank you, Your Honor.

16 THE COURT: Which I didn't rule on.

17 MR. GRAF: Thank you for dodging that and putting
18 that.

19 THE COURT: Which I didn't rule on.

20 MR. PARKER: So, Your Honor -- right. So I think we
21 can limit it to the page you already approved, admitted, then
22 one page, 1741 and 1744.

23 THE COURT: So, anything else on 1741 and 1744, which
24 are heavily redacted pages?

25 MR. GRAF: Your Honor, just the same objection, but

1 want to reiterate the fact that we believe that it's also
2 privilege, and we'd ask that the Court rule on our objection
3 based on privilege, also.

4 THE COURT: I deny it on the privilege basis and --

5 MR. GRAF: Thank you, Your Honor.

6 THE COURT: -- with respect to 1741 and 1744, given
7 the redactions, there does not appear to be any confidential
8 information in those. So 41 and 44, I can either make them
9 part of 37A or make them a 37B and C.

10 MR. GRAF: That's up to Her Honor.

11 THE COURT: It's up to Dulce, actually.

12 MR. GRAF: All right.

13 THE CLERK: Let's just do A.

14 THE COURT: So she's going to put those three pages
15 in 37A.

16 MR. PARKER: Thank you, Your Honor.

17 MR. GRAF: And, Your Honor, we would ask that that --
18 those be sealed by the Court following this hearing.

19 THE COURT: No.

20 MR. GRAF: Okay.

21 THE COURT: Did that once, never doing it again.

22 MR. GRAF: All right.

23 MR. PARKER: State and the federal courts don't like
24 that anymore. I've had to deal with that.

25 MR. GRAF: I think that's what SB32 requires, though.

1 That's why I'm saying, not --

2 THE COURT: That's not what SB32 requires, Mr. Graf.
3 You want to point me to a particular section of SB32, I have it
4 right here. Be happy to look at it with you and have a
5 discussion.

6 MR. GRAF: Okay.

7 THE COURT: But that's not what it requires.

8 MR. PARKER: All right. So may I approach, Your
9 Honor?

10 THE COURT: You may.

11 BY MR. PARKER:

12 Q So can you look at -- Mr. Gilbert, can you look at
13 Exhibit 37 and look at just the pages, page 2, which has been
14 admitted, 1737 and 1741 and 1744. So this is Clearwater's
15 Attachment C.

16 A Is that in here?

17 Q Well, it's on the screen now.

18 A Okay.

19 Q Makes it easier.

20 MR. PARKER: Your Honor, may I approach?

21 THE COURT: You may.

22 BY MR. PARKER:

23 Q So you're familiar with Attachment C; is that
24 correct?

25 A Yes.

1 Q And so this is the attachment which is a part of the
2 application that each applicant must fill out; is that correct?

3 A That's correct.

4 Q All right. It appears here that Mr. Black Sr.,
5 Robert Black Sr. assigned this -- or appears -- is identified
6 in the document; is that correct?

7 A Yes, that's correct.

8 Q And he's identified as a Caucasian male; is that
9 correct?

10 A Yes.

11 Q And he's identified as an owner?

12 A Yes.

13 Q Can you tell from this document or from this page
14 alone whether or not there are any other owners identified for
15 Clear River?

16 A Not on this document.

17 Q All right. Is the rest of the document redacted --
18 changed, if you go all the way up to the bottom -- or go all
19 the way down to the bottom?

20 A (No audible response.)

21 Q All right. Let's go to page 1741.

22 A (Witness complies.)

23 Q So Mr. Flintie Williams; do you know him?

24 A I do not.

25 Q He's identified as an African-American non-Hispanic;

1 do you see that?

2 A Yes.

3 Q And he's identified as a male. And if you go up
4 above, he's identified as a board member; is that correct?

5 A Yes, that's correct.

6 Q Did the Manpower graders, I believe, identified Mr.
7 Williams as an advisory board member; did you know that?

8 A I do not know that.

9 Q Okay. So we were to look back at Exhibit 132 --
10 THE COURT: Proposed.

11 MR. PARKER: Proposed. I thought it was 132A now,
12 Your Honor.

13 THE COURT: Only one page.

14 MR. PARKER: Yeah, you're right. I'm going to need
15 130784.

16 THE COURT: So --

17 MR. PARKER: So let me ask if anyone has an objection
18 to that.

19 THE COURT: Or you can just ask the witness to look
20 at it in the book and not admit it and use it otherwise.

21 MR. PARKER: That's true, Your Honor.

22 BY MR. PARKER:

23 Q Mr. Gilbert, can you take a look at DOT03078 --

24 THE COURT: You're back in this book, sir.

25 / / /

1 BY MR. PARKER:

2 Q It's in the small book.

3 A Okay. Got it.

4 MR. SHEVORSKI: Which exhibit is that?

5 THE COURT: Proposed 132.

6 MR. PARKER: It's Proposed 132.

7 MR. SHEVORSKI: Thank you.

8 MR. PARKER: It's DOT030784.

9 THE CLERK: Mr. Parker, I believe it only goes up to
10 0830.

11 MR. PARKER: All right.

12 THE COURT: 132? Is it okay if I look at the last
13 page to see what the Bates number is? My last page says 30.

14 MR. SHEVORSKI: 784 there --

15 MR. PARKER: That's the one I want, 784.

16 THE COURT: 030830 is the last one in my book.

17 MR. SHEVORSKI: My only concern is that there is --
18 or it looks like there is confidential material that's on that
19 page.

20 THE COURT: I'm not -- he hasn't offered it. I'm not
21 dealing with it. He's showing it to the witness.

22 MR. SHEVORSKI: Very good, Your Honor.

23 MR. PARKER: And I'm only concerned with the top of
24 it, it has nothing to do with the financials, Your Honor.

25 THE COURT: Try to deal with the confidentiality and

1 sealing issues so Mr. Graf doesn't have to keep making that
2 objection.

3 BY MR. PARKER:

4 Q Do you see that, Mr. Gilbert? Are you looking at
5 that page?

6 A I think -- you want to confirm I'm looking at the
7 right one?

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

9 THE COURT: You may.

10 BY MR. PARKER:

11 Q Yep, that's it. It kind of mixed in with the --

12 A Got it.

13 MR. PARKER: And, Your Honor, the problem is that the
14 Bate number is kind of mixed in with the writing, so it's hard
15 to tell the number.

16 THE COURT: Okay.

17 MR. PARKER: So -- and we've confirmed that we have
18 the right page that he's looking at.

19 BY MR. PARKER:

20 Q Sir, do you see an indication there that the Manpower
21 grader or evaluator indicated Mr. Williams is an advisory board
22 member?

23 A I see that they wrote Advisory in that column or that
24 cell.

25 Q Would you agree with me, we've discussed this before,

1 there is no application information that allows for advisory
2 board members to be listed. In fact, advisory board is not
3 identified anywhere on the application; is that correct?

4 A To my knowledge it's not, no.

5 Q All right. And certainly this is even a further
6 stretch, because based upon Clear River's listing, they listed
7 Mr. Williams as a prospective as opposed to a current; is that
8 correct?

9 MR. GRAF: Well, objection, Your Honor. Misstates
10 the evidence.

11 THE COURT: Overruled.

12 BY MR. PARKER:

13 Q Do you see that? It says, Prospective BM, or Board
14 Member. Do you see that? That was Exhibit 37 that we looked
15 at, I believe.

16 THE COURT: 37A, Mr. Parker?

17 MR. PARKER: 130, I apologize. Yeah, it was 130,
18 Your Honor.

19 THE COURT: And this is the Department of Taxation
20 document --

21 MR. PARKER: It is.

22 THE COURT: -- not a Clear River document.

23 MR. PARKER: That's right.

24 THE COURT: All right. Thank you.

25 MR. PARKER: It's DOT44450.

1 THE WITNESS: Yeah, Mr. Williams is a prospective
2 board member --

3 BY MR. PARKER:

4 Q Yes.

5 A -- on this document.

6 Q Yes.

7 A Yes.

8 Q But -- and the listing evaluator indicated Mr.
9 Williams is a advisory board member; do you see that?

10 A All's I see is they wrote, Advisory, in the
11 Organizational column or row.

12 Q All right. So was there any training that allowed
13 for evaluators to consider non current board members in their
14 diversity evaluation or scoring?

15 A Well, like I said earlier, so if the ownership,
16 owners, officers, board members, that they submit in their
17 application didn't match what we currently had on record, we
18 looked for the transfer of ownership in the house.

19 Q Would there be a transfer of ownership necessary for
20 an advisory board member? Since an advisory board member may
21 not be an owner?

22 MR. GRAF: Object. Calls for a legal conclusion.

23 THE COURT: Overruled.

24 THE WITNESS: I'm sorry, can you repeat the question,
25 sir?

1 BY MR. PARKER:

2 Q Certainly. Is there a change of ownership document
3 necessary for a board member that's not an owner?

4 A No, there's not.

5 Q Oh. So was there any training on giving diversity
6 points to a noncurrent board member or noncurrent owner or
7 noncurrent officer?

8 A They went off the -- so if we compared the ownership
9 and the application, owners, officers, board members, to what
10 we currently had on record, and it didn't match the record,
11 then we would look to see if there was man owner or transfer of
12 ownership already submitted to the Department which matched the
13 application that was submitted. If that was the case, then if
14 it was cleared to go forward based on that information, then we
15 would use the diversity listing that was in Attachment C.

16 Q All right. But if you -- it's clear that if someone
17 identifies individuals as prospective, not current, that your
18 historical information wouldn't show those people; isn't that
19 true?

20 A The historical -- the records?

21 Q Right.

22 A No, they wouldn't.

23 Q Thank you.

24 A But the transfer of ownership should.

25 Q All right. But that's only if they're -- if they're

1 becoming an owner, not if they're simply a board member or an
2 officer with no ownership interest, right?

3 A They should be listed in -- we did --

4 (Pause in proceedings.)

5 THE WITNESS: I apologize. Can you repeat that?

6 MR. PARKER: No problem. It's not your fault.

7 We know Shelby?

8 THE COURT: Randy's going to go investigate.

9 BY MR. PARKER:

10 Q So if someone's not a current officer, current owner,
11 or current board member, you wouldn't have any historical
12 information to confirm one way or the other; is that true?

13 A Not on record.

14 Q Right.

15 A Right.

16 Q So if I said I'm going to open up ABC Recreational
17 Marijuana Establishment, and I'm going to hire as my -- or
18 bring on as my board the Aces front line -- do you know the
19 Aces are?

20 THE COURT: Do you know what the Aces are?

21 BY MR. PARKER:

22 Q The --

23 A Yes.

24 Q -- local professional women's basketball team.

25 A Okay.

1 Q Are you familiar with that?

2 A I --

3 Q I'm going to bring them on as my advisory board, I
4 just -- that's what I'm planning on doing if I get an
5 application.

6 Are your evaluators supposed to give me points for
7 those -- that potentiality?

8 A Only if you had submitted the transfer of ownership
9 prior to the application period.

10 Q Even if they didn't have an ownership change? Even
11 if they're not getting an ownership interest?

12 A We'd have to look at the -- we'd have to look at that
13 transfer. We'd have to verify that information.

14 THE COURT: So do you believe transfers in ownership
15 are submitted for board member positions?

16 THE WITNESS: Sometimes they are. Sometimes they
17 are, if there's a percentage of ownership.

18 THE COURT: No. Just board members. Are transfers
19 of ownership submitted when there's a change in board members
20 who are not equity owners?

21 THE WITNESS: Not always, no.

22 THE COURT: All right.

23 MR. GRAF: I doubt he heard that, Your Honor.

24 THE COURT: It doesn't matter. I'm not the important
25 one, Mr. Graf.

1 MR. GRAF: I agree. We'll keep that between us then.

2 BY MR. PARKER:

3 Q So, Mr. Gilbert, was there a transfer of ownership
4 document created or submitted by Clear River for these
5 prospective board members, officers, or owners?

6 A That I would have to go back and look at to answer
7 the question.

8 MR. PARKER: Your Honor, I believe we have, as
9 Exhibit 131, the DOT letter to Clear River regarding a change
10 of ownership. Has that been admitted?

11 THE COURT: It's a proposed exhibit, Mr. Parker.

12 MR. PARKER: Okay. Any objection?

13 THE COURT: Go to go see Mr. Graf with it.

14 MR. GRAF: I have it here, Your Honor.

15 THE COURT: Any objection?

16 MR. GRAF: No, Your Honor.

17 THE COURT: Be admitted.

18 (Plaintiffs' Exhibit Number 131 admitted)

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

20 THE COURT: You may.

21 MR. PARKER: Thank you.

22 MR. GRAF: What is this exhibit again?

23 MR. PARKER: 131.

24 MR. GRAF: 131?

25 MR. PARKER: Yes, sir.

1 MR. GRAF: Thank you.

2 MR. PARKER: All right. If you could go up a little
3 bit more, Shane.

4 BY MR. PARKER:

5 Q Now, can you tell me what change of ownership
6 happened and how could it match if you didn't have any
7 historical information related to these other 11 prospective
8 board members and officers?

9 MR. GRAF: Objection as to form, Your Honor. Assumes
10 facts not in evidence. Calls for speculation.

11 THE COURT: Overruled.

12 THE WITNESS: I apologize, can you --

13 BY MR. PARKER:

14 Q No worries.

15 MR. PARKER: Go all the way to the bottom, Shane.
16 All right.

17 Q So Mr. Pupo signed this letter. Were you involved in
18 any way of Clear River's request or furnishing of information
19 for the change of ownership?

20 A We have a program officer 3 who reports to me, who
21 processes the transfers.

22 Q Okay. Were you familiar with this document?

23 A Is that the -- that's the conditional licensee award
24 letter?

25 Q Yes.

1 A Yes.

2 Q All right. And tell me, how did -- did you perform
3 any exercise to determine whether or not there was actual
4 change in ownership by the listing of these 11 other
5 prospective officers and board members?

6 A I'm sorry, can you --

7 MR. GRAF: Object as to form, misstating the
8 evidence.

9 THE COURT: Overruled.

10 MR. GRAF: Thank you.

11 BY MR. PARKER:

12 Q Yes. The Department of Taxation under your charge do
13 any investigation to determine if there was a change of
14 ownership?

15 A Well, the Department of Taxation isn't under my
16 charge, but what we did was when the applications came in, if
17 the ownership listing on the application didn't match what we
18 had on record, then we would go to see if there was a transfer
19 of ownership already previously submitted to the Department.
20 We're slow getting -- slow process those, and it's not the
21 Department's, you know, intent to do them slow, but if it was
22 already submitted to the Department, then it was looked at.

23 Q Were any of these people given an ownership interest
24 in this LLC?

25 A I do not know.

1 Q When this letter was sent out, do you know if anyone
2 investigated whether or not any of the 11 other individuals
3 listed as prospective officers or board members were given an
4 ownership interest in Clear River?

5 A I wouldn't --

6 MR. GRAF: Objection. Vague as to time, Your Honor.

7 THE COURT: Overruled. He said when this photo was
8 sent out.

9 MR. GRAF: I'm just saying when that transfer --

10 THE COURT: Okay. Overruled.

11 MR. GRAF: Thank you, Your Honor.

12 THE WITNESS: Can you repeat, please?

13 BY MR. PARKER:

14 Q Certainly. Did your department do any investigation
15 when this change of ownership was submitted to determine
16 whether or not any of the 11 people listed were actually
17 getting an ownership interest in Clear River?

18 A Well, the transfer of ownership was processed like
19 any other. And then when we verified the owners, officers, and
20 board members in the application to the transfer of ownership
21 that was in house, that matched to proceed with the
22 recreational application.

23 Q It matched the listing of people. Did it -- was
24 there any investigation to determine if they had an ownership
25 interest?

1 A Not that I'm aware of. I did not do that.

2 Q Thank you. Are you aware that based upon the
3 Secretary of State's filing requirements, that LLCs are either
4 member managed or -- yeah, they're managed by members as
5 opposed to a board?

6 A I think I've seen that category down there as a
7 member.

8 Q All right. Did you see any of them listed as
9 prospective members or managers?

10 A I didn't look at it.

11 Q All right. To this date, you're not aware of any of
12 these 11 other people receiving an ownership interest in Clear
13 River, are you?

14 A I'm sorry, can you repeat that one?

15 Q Yes. To the -- until today, up to today, you're not
16 aware of any of these 11 other individuals being given or
17 buying an ownership interest in Clear River, are you?

18 A I wouldn't know. We'd have to -- I think -- if I
19 understand your question correctly, I'd have to look and see if
20 there's a transfer of ownership submitted. That would be our
21 only indication.

22 MR. PARKER: That's all I have, Your Honor.

23 THE COURT: Thank you, Mr. Parker.

24 MR. PARKER: Thank you.

25 THE COURT: Mr. Shevorski?

1 MR. SHEVORSKI: Mr. Bult had a few.

2 THE COURT: Mr. Bult, you said Teddy was going to
3 cover everything you could have possibly asked when I talked to
4 you last.

5 MR. BULT: He did. Thank you, Your Honor.

6 THE COURT: Yeah. Okay. Mr. Shevorski?

7 MR. SHEVORSKI: Okay. Sorry.

8 THE COURT: And if you don't want to start with the
9 eight minutes I have before lunch, all you have to do is tell
10 me.

11 MR. SHEVORSKI: No, I'll start. He's been here
12 for --

13 THE COURT: Days.

14 MR. SHEVORSKI: I was going to make a joke about four
15 score and several weeks ago. But --

16 CROSS-EXAMINATION

17 BY MR. SHEVORSKI:

18 Q Why don't we take a look at -- first of all, good
19 morning. And thank you very much on behalf of the State --

20 A Good morning.

21 Q -- for being so patient with us. Lawyers like to
22 talk and I'm no different. But I think this case is important,
23 so I appreciate your participation.

24 A You're welcome.

25 Q Please take a look at Exhibit 304 that Mr. Parker

1 handed you earlier.

2 A (Witness complies.)

3 Q Are you there?

4 A Yes, I am.

5 Q Okay. Now, Mr. Parker asked you about building
6 location, if I understood your testimony correctly, is that the
7 training for the Manpower personnel, and that would include Mr.
8 Lemons, would be not to score location; is that correct?

9 A Yes.

10 Q Do you see a score for location on that page?

11 A I do not.

12 Q So as far as we know -- we don't have Mr. Lemons
13 here -- Mr. Lemons did it right; correct?

14 A Yes. It appears yes, he did.

15 Q Let's look at page 305. Or, excuse me, Exhibit 305.
16 I'm out of practice. This should be a one-page document,
17 Mr. Gilbert.

18 A I've got it. I have it.

19 Q And this is also by the same fellow, Mr. Lemons?

20 A Yes, it is.

21 Q The Manpower associate?

22 A Yes.

23 Q And am I correct, Mr. Parker showed you this earlier?

24 A Yes.

25 Q Do you see a score for location there?

1 A No, I do not.

2 Q So again, Mr. Lemons did it right, didn't he?

3 A Yes.

4 Q So we talked about Mr. Lemons; are you familiar with
5 any of the other Manpower personnel?

6 A Yes, I am.

7 Q Now, as I understand it, there were six graders and
8 two administrative assistants; is that correct?

9 A Yes, it is.

10 Q Let's talk about -- let's talk about the graders.
11 Now, based on the information on the Nevada Department of
12 Taxation website, there was a fire inspector; is that correct?
13 Someone who had fire inspecting experience?

14 A Yes, that's correct.

15 Q There was a person who had real estate
16 development/accounting experience; is that correct?

17 A Yes.

18 Q There was a person who it's described as MBA project
19 manager; is that correct?

20 A Yes.

21 Q There was a person described as government accounting
22 and IT; is that correct?

23 A Yes.

24 Q There was a person described as government operations
25 and fiscal manager; is that correct?

1 A Yes.

2 Q And they would be the actual graders, not the
3 administrative assistants, correct?

4 A That's correct.

5 Q And then we'd have -- this is precisely government
6 speak -- Administrative Assistant II, it's almost like it's in
7 the military, and those would be the people who were providing
8 support, procedural supports to the graders?

9 A Yeah, that's the two administrative assistants.

10 Q Before we get started on them, Your Honor, why don't
11 we take a break, if that's all right.

12 THE COURT: Okay. So, guys, this is our lunch break.
13 We'll be in recess until 1:15. Have a nice lunch.

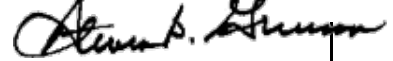
14 (Proceedings recessed at 11:56 a.m., until 1:15 p.m.)

15 -oOo-

16 ATTEST: I do hereby certify that I have truly and correctly
17 transcribed the audio/video proceedings in the above-entitled
18 case.

19 
20

21 Dana L. Williams
22 Transcriber
23
24
25



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC, .
et al. .

Plaintiffs .

CASE NO. A-19-786962-B

vs. .

STATE OF NEVADA DEPARTMENT OF .
TAXATION .

DEPT. NO. XI

Defendant .

**Transcript of
Proceedings**

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BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**EVIDENTIARY HEARING - DAY 8
VOLUME II**

TUESDAY, JUNE 18, 2019

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

APPEARANCES:

FOR THE PLAINTIFFS:

DOMINIC P. GENTILE, ESQ.
MICHAEL CRISTALLI, ESQ.
ROSS MILLER, ESQ.
WILLIAM KEMP, ESQ.
NATHANIEL RULIS, 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.
JOSEPH GUTIERREZ, ESQ.

1 LAS VEGAS, NEVADA, TUESDAY, JUNE 18, 2019, 1:15 P.M.

2 (Court was called to order)

3 THE COURT: Sir, I'd like to remind you you're still
4 under oath.

5 THE WITNESS: Okay.

6 THE COURT: And I think Dulce has added some more
7 documents to your pile over there. Let's see what happens.

8 THE WITNESS: Okay.

9 THE COURT: We're trying to be organized, but if you
10 can't find something that somebody's looking for you, please
11 ask for help and we will assist you, because this is a rather
12 complex group of documents.

13 THE WITNESS: I will, Your Honor. Thank you.

14 THE COURT: Mr. Shevorski, you're up.

15 MR. SHEVORSKI: Thank you, Your Honor.

16 CROSS-EXAMINATION (Continued)

17 BY MR. SHEVORSKI:

18 Q Mr. Gilbert, when we left off we were talking about
19 our good friends the Manpower people, and we had left off
20 where there were six people who were graders and two people
21 who were assisting them in administrative capacity. Does that
22 sound correct?

23 A Yes.

24 Q So let's pick up where we left off. So I understand
25 it, correct me if I'm wrong, there was a person who had

1 experience as a fire inspector?

2 A Yes, that's correct.

3 Q Okay. And what, if anything, do you know about that
4 person's experience?

5 A Well, based on, you know, the experience that we
6 were looking for in that position he had over 30 years of
7 being a fireman, fire inspector, building inspector, you know,
8 he had experience reviewing plans based on fire code, the
9 layout of floor plans and basically what the fire department
10 requires as far as approved plans.

11 Q And were you a part of the interview process for
12 that person?

13 A Yes, I was.

14 Q Okay. With respect to -- let's dive a little bit
15 into the experience. You said reviewing plans. What kind of
16 plans? Was it residential, commercial?

17 A I think Mr. Lemons says both. He's a building
18 inspector, he's got that experience along with, you know, fire
19 code inspection.

20 Q You say he's -- Mr. Lemons is the fire inspector?

21 A Yes, he is.

22 Q That's the fellow we just talked about with Exhibits
23 304 and 305?

24 A Yes, I believe so.

25 Q And do you recall how long Mr. Lemons was a building

1 inspector?

2 A I don't recall specifically how many years of
3 experience he had per se in that position, but I know he had a
4 pretty good chunk of time throughout his career where he was,
5 you know, involved in that type of duty.

6 Q And he also was a fire inspector. I assume that was
7 for longer than one day.

8 A Yes.

9 Q How -- about how long do you recall he was a fire
10 inspector?

11 A I don't recall the dates, but, you know, his whole
12 life was -- or his whole career was based around working for
13 the fire department, working as a building and construction
14 inspector, which spanned over 30 -- over 30 years.

15 Q So Mr. Lemons was not 18 years old?

16 A No, he was not.

17 Q I don't want to make him blush, even though he's not
18 here. Was he over 50?

19 A Yes.

20 Q With respect to the next person I believe they had
21 experience in real estate development and accounting. Do you
22 recall what experience, if any, that person had with respect
23 to those topics?

24 A Yes, I do. So that individual had years of
25 experience. I want to say it was maybe 15 years' experience,

1 I'd have to go back and look, but as an owner/operator of a
2 real estate development company. And then she managed all the
3 books, all of the bids, and the general, you know, day-to-day
4 duties that are for those.

5 Q And she owned her own company?

6 A Yes, she did.

7 Q Do you know about for how long she owned her own
8 company?

9 A I want to recall that it was about 15 years, but,
10 again, I'd have to go back and verify that.

11 Q What kind of properties, if any, did she develop
12 rather -- strike that. What properties were the subject --
13 what kinds of properties were the subject of her real estate
14 development business?

15 A That I'm not sure on.

16 Q And you mentioned accounting. What experience, if
17 any, did she have in accounting?

18 A The day-to-day experience with the books for the
19 overall business. And then after her time as being an
20 owner/operator she had various experience as an
21 accountant/bookkeeper with various other real estate
22 development companies.

23 Q So separate and apart from her own real estate
24 company she had experience in accounting with respect to other
25 development companies, real estate development companies?

1 A Yes.

2 Q Okay. And this person, was she 18 years old?

3 A She was not.

4 Q Was she over 50?

5 A I would say yes.

6 Q And there was also I believe, correct me if I'm
7 wrong, an environmental health specialist?

8 A Yes.

9 Q What experience, if any, did that person have in
10 environmental health?

11 A He was retired 20-something years with the State of
12 Nevada working for the Environmental Health Division, which
13 included, you know, health inspections, floor plan reviews,
14 plan reviews, kitchen inspections, laboratory inspections, all
15 the various duties of a environmental health specialist. He's
16 a registered environmental health specialist.

17 Q What is your understanding of what environmental
18 health means?

19 A It means the inspection and adherence to the
20 regulations for all the health and safety of commercial
21 businesses.

22 Q And this person had done that their entire career?

23 A Yes.

24 Q And was retired by the time that -- that they worked
25 for Manpower for the State of Nevada?

1 A Yes, he was retired.

2 Q Next person is described as an MBA project manager.
3 What does that mean?

4 A So she had -- she was on the identified side. She
5 had multiple years of experience working with large
6 corporations. One of them was Microsoft, as a senior manager
7 with Microsoft. She had, you know, other experience in some
8 aerospace companies working as a project manager, fiscal
9 manager -- I use the word fiscal, that's more of a state, but,
10 you know, a financial budget manager for senior levels.

11 Q And how long, as an estimate, did that person work
12 for Microsoft?

13 A I think it was 10 years maybe. I'd have to go back
14 and verify that.

15 Q How long, if you can recall, approximately did that
16 person work in the aerospace industry?

17 A I don't recall the number of years, but it was just
18 under 10, I think.

19 Q About 10, so --

20 A Under 10.

21 Q About 10 years with Microsoft in the senior
22 capacity, and about 10 years in the aerospace industry?

23 A Yeah, give or take, uh-huh.

24 Q What specific duties, if at all, did that person
25 have working in a senior capacity at Microsoft?

1 A Well, based on her resume, the discussions that we
2 had, she played a, you know, an integral role in managing a
3 small component within the corporation.

4 Q The next person is described as government
5 accounting and IT. Let's deal with the government accounting
6 first. What does that mean?

7 A So within governmental agencies they call the
8 positions fiscal related. And that could be, you know,
9 preparing budgets, annual -- biennial budgets. It could be,
10 you know, going to the Interim Finance Committee and
11 testifying on the needs for funds to be used to run the
12 agency. And then when you get to the administrative level
13 it's a lot of managing of the fiscal-related folks.

14 Q What experience, if any, did that person have in
15 government accounting?

16 A Quite a few years. The number of years I'm not
17 positive on, but I know she worked her way up through the
18 ranks up to deputy administrator.

19 Q And based on her resume and your discussions with
20 her, what kind of tasks did she perform on the government
21 accounting side?

22 A So the tasks -- a lot of the experience that we
23 looked for in those folks was their ability to interpret the
24 regulations and apply them to criteria. So with her, you
25 know, 30 years' or so experience reading and interpreting and

1 applying regulations to either a fiscal ledger-related aspect
2 of the agency or, you know, organizational structure. You
3 know, there's a lot of structure within the government that
4 needs to be organized, and that's part of the job when you get
5 to that level.

6 Q The second part of her qualifications says IT. What
7 does IT mean?

8 A IT is the computer segment of the technical side of
9 agencies.

10 Q What importance, if any, did you place on her IT
11 capabilities?

12 A Quite a bit. I mean, we were looking more for the
13 fiscal related and the organizational management, but what
14 that does show is she had the capabilities of managing the
15 project, managing time, managing folks, people, which was in
16 her role, you know, very important with, you know, the
17 managing of the 90-day process.

18 Q Next person, it looks like it's government
19 operations and fiscal manager. What does government
20 operations mean?

21 A So that's more at the administrative level where
22 this individual, she was, you know, at one of the top levels
23 within an agency as a deputy administrator. A lot of times
24 that's a level or two away from the governor, able to manage
25 the operation of a large agency.

1 Q And was this person a female?

2 A Yes.

3 Q And how many years', if you recall, experience as an
4 estimate did she have on the government operations side?

5 A Well, she was a retired 30-year state employee, at
6 the upper level I would -- about 15 years I would think would
7 be at the management level.

8 Q And she also had experience as a fiscal manager?

9 A Yes.

10 Q And what does a fiscal manager mean?

11 A Managing the biennial budgets, putting them
12 together, looking at costs, projections, working with, you
13 know, the Governor's Finance Office and the Legislative
14 Council Bureau Budget Office.

15 Q And how many years did that person have as a fiscal
16 manager?

17 A I think it was about 15. I'd have to go back and
18 verify all that, but --

19 Q The persons we just discussed which were on the --
20 strike that. The criteria for grading, there was an
21 identified side and a non-identified side; correct?

22 A Correct.

23 Q Okay. Which persons were on the identified side?

24 A The three last individuals that you described.

25 Q So government accounting, government operations, and

1 MBA project manager?

2 A Yes.

3 Q Okay. And so by process of elimination, fire
4 inspector, real estate development, environmental health
5 specialist were on the non-identified side?

6 A Yes.

7 Q Okay. With respect to those persons did anyone have
8 any college-level courses in the business of marijuana?

9 A No.

10 Q Okay. Back in the mists of time there was a fellow
11 who came to testify named Paul Seaborn, and he's from the
12 University of Denver. Have you ever heard of Mr. Seaborn?

13 A I have not.

14 Q I'll represent to you that the first class he has
15 offered in the business of marijuana was in the spring of
16 2017, and he represented to the Court that that was, if not
17 the first, one of the first business school courses ever in
18 the business of marijuana. Does it surprise you that the
19 applicant -- the persons you hired did not have any college-
20 level courses in the business of marijuana?

21 A No, it doesn't surprise me.

22 Q So in the states that have legalized retail
23 marijuana, California, Oregon, Washington, let's stick with
24 those three, did any persons from those states apply to work
25 this particular task for Manpower?

1 A No, they did not.

2 THE COURT: So while you're taking a breath let me
3 ask you a question. Sir, did you identify the individuals who
4 were going to work on identified, non-identified, and
5 administrative team before they went to Manpower to just be
6 serviced as temp employees, or did Manpower send you their
7 resumes?

8 THE WITNESS: We identified the six evaluator
9 graders. The administrative assistants were sent from
10 Manpower.

11 THE COURT: So you did a recruitment of some sort,
12 identified folks, and then sent them to Manpower to process
13 the temporary employee stuff that has to be done for the
14 State?

15 THE WITNESS: Yes.

16 THE COURT: Okay. Sorry.

17 MR. SHEVORSKI: Not at all, Your Honor.

18 BY MR. SHEVORSKI:

19 Q My friend Mr. Gentile discussed the differences
20 between --

21 That was for you, Your Honor --

22 -- the differences between 453A, which was passed by
23 the legislature on or in sometime in 2013, and 453D that was
24 created as the result of an initiative. Do you recall that?

25 A Yes.

1 MR. SHEVORSKI: Okay. Let's go to Exhibit 2020.

2 That was the exhibit from today, Your Honor. May I
3 approach, Your Honor?

4 THE COURT: You may.

5 MR. SHEVORSKI: I'll find it, Your Honor.

6 THE COURT: I know you will. I have confidence in
7 you.

8 MR. SHEVORSKI: Dulce, do you remember where you put
9 it?

10 THE CLERK: At the very bottom.

11 MR. SHEVORSKI: Okay.

12 THE CLERK: The second State's binder.

13 MR. SHEVORSKI: Perfect. Thank you. Good job.

14 BY MR. SHEVORSKI:

15 Q Mr. Gilbert, you've been handed what's been marked
16 as Exhibit 2020. Please take a moment to review it, and let
17 me know when you're done.

18 A Okay. Yes.

19 Q Okay. Thank you. So you've had a chance to review
20 Exhibit 2020?

21 A Yes.

22 Q What does that exhibit appear to be?

23 A It's the statewide ballot questions.

24 Q And just limited to Question 2 in 2016; correct?

25 A Yes.

1 Q Now, when my friend Mr. Gentile asked you questions
2 regarding the differences between initiatives and a law passed
3 by the legislature -- you're not a lawyer are you?

4 A I'm not.

5 Q Okay. And Judge said you weren't allowed to say --
6 he wasn't allowed to ask you how you voted, but I do believe
7 you said you had read the initiative before.

8 A Yes.

9 Q Okay. And had you read the material that's
10 identified as 2020 that is provided by the Secretary of State
11 -- the Nevada Secretary of State for voters?

12 A Yes, I did.

13 Q Okay. Please turn to what's marked at the bottom as
14 page 14, and look up at the paragraph that's just below "State
15 Question Number 2, an amendment to the Nevada Revised
16 Statutes." Will you please read that paragraph to yourself,
17 and let me know when you're through.

18 A On page 14?

19 Q Yes, sir. It's the first full paragraph.

20 A I'm sorry. Which paragraph?

21 Q The first full paragraph right below "amendment to
22 the Nevada Revised Statutes."

23 A Okay.

24 Q And below that paragraph there are two boxes. It
25 says "Yes" and the other one says "No." What is your

1 understanding of those boxes, if any, as someone who read
2 this?

3 A I would say yes, you agree -- yes or no to the
4 previous paragraph.

5 Q To the question presented to the voters?

6 A Yes.

7 Q If you look at the second-to-last sentence, it says,
8 "Require the regulation in licensing of marijuana cultivators,
9 testing facilities, distributors, suppliers and retailers and
10 provide for certain criminal penalties." Did I read that
11 correctly?

12 A Yes.

13 Q Do you see anywhere in that paragraph that the
14 question states the initiative is going to provide the details
15 of the regulation that the Department of Taxation must
16 provide?

17 A No, I don't.

18 Q Maybe we'll look a little further. Page 15. Look
19 at the first full paragraph, and let me know when you're
20 through. It's the one that starts, "In addition to
21 licensing."

22 A I've read it.

23 Q Okay. It says, "In addition to licensing, the
24 Department of Taxation --"

25 And that's who you work for; correct?

1 A Yes.

2 Q "-- would be charged with adopting regulations
3 necessary to carry out the provisions of this ballot measure."
4 Did I read that correctly?

5 A Yes.

6 Q It says, "regulations necessary." Now, you know
7 from several days that you've been testifying that's actually
8 different from what's in the initiative itself, is it not?

9 A Yes, it is.

10 Q "The regulations must address licensing procedures,
11 licensee qualification." Do you see anywhere that this
12 explanation is saying that the initiative is going to dictate
13 the details of marijuana licensing procedures to the
14 Department of Taxation?

15 A I don't.

16 Q What about licensee qualifications?

17 A Not in that paragraph, no.

18 Q Okay. Now, we discussed that that language,
19 "regulations necessary to carry out provisions," that's --
20 and you agree that that is different than what's actually in
21 the initiative itself; correct?

22 A Yes.

23 Q So let's look at the language -- you should have --
24 It should be in the back, Eric.
25 Nevada Revised Statute 453D, and it's 201(b).

1 A Is that page 25?

2 Q Yeah. Start at 1. Do you need help in getting
3 there?

4 A No. It's page 25?

5 Q I'm not sure if it's on page 25 or not. It's NRS
6 453D.200.

7 THE COURT: Does he have the ballot question or the
8 statute --

9 MR. SHEVORSKI: He does, yes.

10 THE COURT: -- because the statute is Section 5 --

11 MR. SHEVORSKI: In Section 5.

12 THE COURT: I mean, the ballot question is
13 Section 5.

14 MR. SHEVORSKI: May I approach, Your Honor?

15 THE COURT: You may.

16 MR. SHEVORSKI: Thank you.

17 THE COURT: I have the cross-reference on my notes.

18 MR. SHEVORSKI: Thank you, Your Honor.

19 THE COURT: Uh-huh.

20 BY MR. SHEVORSKI:

21 Q On Section 5 there, you know, you've seen this
22 language before, it says, "Not later than January 1st, 2018,
23 the Department shall adopt regulations necessary or convenient
24 to carry out the provisions of this chapter." Now, you would
25 agree with me that that language adds the word "convenient"

1 with regard to the regulations that the Department is charged
2 to adopt; correct?

3 A Yes. Uh-huh.

4 Q You would agree with me that actually the language
5 in the initiative gives the Department broader power to adopt
6 regulations than even is in the explanation of the initiative
7 to the voters?

8 A I would agree with that, yes.

9 Q We've talked a lot about background checks. We
10 haven't talked about how it's actually carried out. Now, in
11 NRS 453D and this 200(6) it says, "The Department shall
12 conduct a background check of each prospective owner, officer,
13 board member of a marijuana establishment license applicant."

14 MR. GENTILE: Can I ask the exhibit that is on the
15 screen, please?

16 MR. SHEVORSKI: That was the statute.

17 THE COURT: This is the statute.

18 MR. GENTILE: But is it marked as an exhibit?

19 THE COURT: The statutes?

20 MR. GENTILE: Yes.

21 THE COURT: The statutes are not marked as an
22 exhibit. That's law.

23 MR. GENTILE: No, I understand that. I just wanted
24 to know what he was referencing. We have a lot of material
25 here.

1 THE COURT: I know, which is why I had the question
2 about the ballot question in Section 5 pursuant to the statute
3 in Exhibit 2020.

4 BY MR. SHEVORSKI:

5 Q Okay. Now, prior to the adoption of that particular
6 provision -- rather the enactment of that provision was there
7 a background check process used by the Department of Public
8 Health -- Health and Public Behavioral Health with respect to
9 medical marijuana?

10 A Yes.

11 Q And what was that process?

12 A Similar to the process we do now, and it's just have
13 the applicant or the owners, officers, and board members,
14 employees, volunteers and contractors submit fingerprints to
15 the Department of Public Safety, and we've received their FBI
16 and State background check.

17 Q So the first thing that happens is there is a
18 fingerprint; correct?

19 A Yes.

20 Q And then that is sent to the Central Repository for
21 Nevada Records of Criminal History; correct?

22 A Yes.

23 Q That's the second part. The third part is it has to
24 go to our friends the FBI.

25 A Yes.

1 Q Now, is there any -- can the Department of Taxation,
2 for example, force the FBI to turn that around in a series of
3 days?

4 A No, we can't. We've actually experienced delays
5 with them in the past. It's their workload that probably
6 dictates our turnaround.

7 Q They can take as long as they want, can't they?

8 A I believe so.

9 Q So once the FBI is done with that part what happens
10 next?

11 A It goes back to the Department of Public Safety, the
12 report.

13 Q Okay. When that process was first adopted was it
14 2013?

15 A Yeah, right around probably '14

16 Q '14?

17 A Yeah, end of '13.

18 Q Do you recall how long that process was taking from
19 start to finish.

20 THE COURT: Just the fingerprints?

21 BY MR. SHEVORSKI:

22 Q The entire process.

23 A From my -- it's fluctuated throughout the years, but
24 there has been a time, and I think it was in 2014, where FBI
25 was taking an extended amount of time, a couple of months.

1 Q Couple months?

2 A Yes.

3 Q Because we already discussed the Department of
4 Taxation nor the Department of Public Health can force them to
5 go faster.

6 A No, we can't.

7 Q They can actually just say no, couldn't they?

8 A I would think so, yes, on the FBI side.

9 Q And going back to 453D.200(6), it says, "Prospective
10 owner, officer, and board member of the marijuana
11 establishment license applicant."

12 THE COURT: It's "a," not "the." "A marijuana
13 establishment."

14 BY MR. SHEVORSKI:

15 Q "...a marijuana establishment." And Mr. Gentile,
16 Mr. Parker both asked you at length about "owner," the phrase
17 "owner." And we've been over this before many times. "Owner"
18 is not defined in Chapter 453D; correct?

19 A Correct.

20 Q Is the word "prospective" defined in 453D?

21 A Not that I can recall.

22 Q Is the word "officer" defined in 453D?

23 A I don't think it is.

24 Q And certainly not "board member"; correct?

25 A Right. Correct.

1 Q Would you agree with me that a common description
2 possibly of the word "prospective" might be "in the future"?
3 Correct?

4 A I would agree with that, yes.

5 Q We don't know what the drafters of the initiative
6 meant by that word one way or the other, do we?

7 A I don't.

8 Q There's a lot of talk about -- many questions about
9 listed corporations occasionally on the Canadian Securities
10 Exchange, occasionally possibly on other listed Exchanges;
11 correct?

12 A Correct.

13 Q Do you know what daily volume means in the context
14 of a company listed on a Securities Exchange?

15 A I mean, I can -- it's kind of outside of my
16 specialty, but I would think that the amount of movement
17 throughout the day.

18 Q I'm going to proffer a definition. It's probably a
19 bad one, but let me know if you agree or disagree. Daily
20 volume means the amount of times that a share is bought and
21 sold for a particular stock on that day. Is that a fair
22 definition?

23 A Yes.

24 Q Okay. Now, let's assume that one of the companies
25 that's a party to this case is a listed company, let's just

1 make that wild assumption, might be more than one, and the
2 daily volume is 500,000 shares for a company that has let's
3 say 70 million common shares trading on that day. Now, you
4 wouldn't know one way or the other whether that's a high
5 volume -- high daily volume or a low daily volume, would you?

6 A I wouldn't.

7 Q Safe to assume that some listed companies might have
8 a higher volume, for example, if they have more outstanding
9 shares that could be traded or there was greater interest in
10 that stock; correct?

11 A Yes.

12 Q Now, earlier we discussed that the start of the
13 background checks where the State -- where the medical
14 marijuana sphere were taking at least several months. Is it
15 possible to do a background check on shareholders of a listed
16 company that exchanged hundreds of thousands of times per day?

17 A Not on the process, no, it wouldn't be.

18 Q Do you know what a court -- what a legal
19 interpretation -- what a court should do where a statute is
20 legally impossible to comply with?

21 A I do not.

22 THE COURT: No objections.

23 MR. KOCH: Just asked if he knows.

24 BY MR. SHEVORSKI:

25 Q And the same process that the Department of Taxation

1 uses for background checks -- used for background checks in
2 September 8, 2018, that was the same process that was used in
3 the medical marijuana sphere in 2014?

4 A Yeah. I mean, it evolved over time to where we
5 worked more closely with DPS, but, yes, it's the same process.

6 Q So presumably the drafters of the initiative knew
7 that was your process; correct?

8 A Yes.

9 Q My friend Mr. Gentile discussed diversity quite a
10 bit with you. And a lot of his questions dealt with how can
11 diversity be related to someone's ability to operate a
12 marijuana establishment. Do you recall those questions?

13 A Yes.

14 Q In NRS 453D.201(b) is the word "ability" mentioned?

15 A What was the number? It's not mentioned in (b).

16 Q And preceding that subpart (b), before we get to
17 subpart (a) it says, "The regulation shall include," whose
18 regulations are those?

19 A The Department of Taxation's.

20 Q So whose perspective -- from whose perspective are
21 the qualifications if the Department of Taxation is creating
22 the regulations?

23 A Department's.

24 Q We've talked a lot about directly and demonstrably.
25 Is the word "operation" defined anywhere in Chapter 453D to

1 your recollection?

2 A Not to my recollection.

3 Q Now, does Chapter 453D contain any possible elements
4 to what an operation of a marijuana establishment may be?

5 A Not that I can recall. Nothing specific.

6 Q I'm going to list a series of elements that may or
7 may not be pertinent to the operation of a marijuana
8 establishment, and let me know if you agree. Security, is
9 that possibly related to the operation of a marijuana
10 establishment?

11 A Yes, it is.

12 Q Economic security, is that possibly related to the
13 operation of a marijuana establishment?

14 A Yes.

15 Q Human resources, is that possibly related to the
16 operation of a marijuana establishment?

17 A Yes.

18 Q Finance, is that possibly related to the operation
19 of a marijuana establishment?

20 A Yes.

21 Q Marketing, is that possibly related to the operation
22 of a marijuana establishment?

23 A Yes.

24 Q Business strategy, is that related to the operation
25 of a marijuana establishment?

1 A Yes.

2 Q Physical operations, is that related to the
3 operation of a marijuana establishment?

4 A Yes, it is.

5 Q Inventory management --

6 A Yes.

7 Q -- is that related to the operation of a marijuana
8 establishment?

9 A Yes.

10 Q Management itself, the ability to manage people, is
11 that related to the operation of a marijuana establishment?

12 A I believe it is, yes.

13 Q Quite possibly many different elements that are
14 related to the operation of a marijuana establishment other
15 than aptitude; correct?

16 A Yes.

17 Q With respect to diversity in the category of --
18 element, rather, of human resources is it rational to believe
19 that diversity might be related to human resources creating a
20 inclusive environment within the operation?

21 A I'm sorry. Can you be more specific.

22 Q Certainly. If you had a characteristic that was
23 inherent to you, for example, if you -- your gender, do you
24 think it's rational to believe that if the operation had an
25 inclusive environment where there were other women who had

1 hired possibly on the management team, would that be related
2 to the human resources of that operation?

3 A I don't. It would be an aspect of it.

4 Q It would certainly be an aspect, wouldn't it?

5 A Right.

6 Q Respect to marketing and a particular member of a
7 team had an inherent diversity trait, such as race, and that
8 inherent diversity trait possibly was consistent with an
9 underrepresented community that the business wanted to serve,
10 do you think that person might have something important to
11 contribute about how to market to that underrepresented
12 community?

13 A Potentially, yes.

14 Q Who is the end user for a retail business?

15 A The consumer.

16 Q Consumer, the person buying the product; correct?

17 A Yes.

18 Q And the people buying the product may have inherent
19 diversity characteristics; correct?

20 A Yes.

21 Q Is it possible that an employee who shared those
22 characteristics might be useful to the operation in order to
23 market to that end user who shares those diversity
24 characteristics?

25 A Yes.

1 Q My friend Mr. Gentile mentioned taxes, and he asked
2 you how are taxes directly and demonstrably related to the
3 ability to operate a marijuana establishment. Do you remember
4 that?

5 A I do.

6 MR. GENTILE: Objection. It misstates the question
7 that was put to him.

8 THE COURT: Overruled.

9 BY MR. SHEVORSKI:

10 Q Now, we already discussed that the word "ability"
11 does not appear in 453D.2101(b); correct?

12 A Yes.

13 Q Payment of taxes in Nevada, one of those things
14 might be sales tax; correct?

15 A Correct.

16 Q And in this particular context we're looking back
17 five years; correct?

18 A Right.

19 Q And we already discussed that economic stability is
20 possibly related to the operation of a marijuana
21 establishment; correct?

22 A Yes.

23 Q Is it possible that taxes is related to the
24 characteristic of economic stability, the payment of taxes?

25 A Yes, it is. It could show a solid history or a

1 weak.

2 Q Economic stability might just be relevant to the
3 State of Nevada where an initiative has launched a nascent
4 industry; correct?

5 A Correct.

6 Q And what kind of product were they selling? Was it
7 candy bars, or was it something else?

8 A I'm sorry. Can you repeat that question.

9 Q What kind of product were they selling, this nascent
10 industry? It was marijuana; correct?

11 A Correct.

12 Q Are there special security concerns that the State
13 of Nevada might have with respect to that product?

14 A Yes, there are.

15 Q And are those security -- in order for those
16 security concerns to be met is it expensive to secure a
17 marijuana establishment?

18 A Yes, it is.

19 Q So it's rational, in your opinion, for the State of
20 Nevada to care about economic stability to ensure that those
21 security mechanisms can continue to be met for that product;
22 correct?

23 A Yes.

24 Q Friend Mr. Gentile also talked about charitable
25 contributions. And these are charitable contributions over

1 the last five years, prior to the application date?

2 A Yes.

3 Q Would you agree with me that the level of charitable
4 giving over the last five years with respect to -- in the
5 State of Nevada is relevant to that company's level of
6 commitment to the community it's operating in?

7 A I do, yes.

8 Q And that's related to the stability of that
9 particular operation?

10 A Sure. It's a good indicator.

11 Q Friend Mr. Gentile also talked about wealth, and he
12 wasn't talking about the day-to-day operations, but the wealth
13 in a global sense of the applicant, how much money do they
14 have, not to cover the day-to-day expenses, but how much money
15 in general do they have. Do you recall that?

16 A I recall.

17 Q He said, how could it be that being wealthy makes
18 someone more qualified to run a marijuana establishment, or
19 words to that effect. Do you recall that question to you?

20 A I do.

21 Q Did you live here in 2008?

22 THE COURT: Here or in --

23 MR. SHEVORSKI: In the State of Nevada.

24 THE COURT: -- Carson --

25 THE WITNESS: Myself?

1 BY MR. SHEVORSKI:

2 Q Yes.

3 A Yes, I did.

4 Q How did the -- in your experience how did the
5 economic crash, or however you want to phrase it, affect where
6 you lived?

7 A Tremendously to the negative.

8 Q Companies go out of business?

9 A Yes.

10 Q The ability to weather a macroeconomic storm like
11 that might be -- it might be that the person's wealth might be
12 relevant to that; correct?

13 A Sure, it could.

14 Q So with respect to being able to weather an economic
15 storm like the crisis that hit this State in 2008 it might be
16 that wealth is relevant to the operation of a marijuana
17 establishment; correct?

18 A Yes.

19 Q It's related to the stability of that business, is
20 it not?

21 A Yes, it is.

22 Q My friend Mr. Parker asked you quite a bit about
23 location and how could you judge the impact on the community
24 if you didn't know the location of the particular marijuana
25 establishment. Do you recall that?

1 A Yes, I do.

2 Q Was this application process just for Las Vegas, or
3 was it for -- was it statewide?

4 A It was statewide.

5 Q Let's talk about some of the communities that were
6 going to be served. White Pine County is one of them;
7 correct?

8 A Yes.

9 Q Storey County is one of them; correct?

10 A Yes.

11 Q Pershing County was another one?

12 A Yes.

13 Q Nye County was another one?

14 A Yes.

15 Q Mineral County was another one?

16 A Yes.

17 Q Lyon County was another one?

18 A Yes.

19 Q Humboldt County was another one?

20 A Yes.

21 Q Eureka County was another one?

22 A Yes.

23 Q Esmeralda County was another one?

24 A Yes.

25 Q Was there any requirement in the initiative, that

1 you recall, that the State of Nevada develop an application
2 specific to one county?

3 A Not that I can recall.

4 Q So the differences that my friend Mr. Parker was
5 mentioning, do you have any idea whether or not those are
6 relevant to Humboldt County?

7 A I don't.

8 Q It's a small county, is it not?

9 A Yes.

10 Q What about Mineral County?

11 A It's small, too.

12 Q Let's go to Exhibit 20, please. It should be right
13 behind you. It should be right behind you in those white
14 binders. And it should be in the one that starts DOTMM1
15 through 182.

16 A Where do I find that?

17 THE COURT: You may approach, Counsel.

18 MR. SHEVORSKI: Thank you, Your Honor.

19 BY MR. SHEVORSKI:

20 Q It's here in Volume 5. Starting at 00629A will be
21 the first page.

22 THE COURT: Do you need Dulce's help?

23 MR. SHEVORSKI: Probably.

24 THE COURT: Dulce, they're missing some exhibits.
25 They think they're missing some exhibits.

1 MR. SHEVORSKI: Exhibit 20, Volume 1?

2 THE COURT: She's coming.

3 (Pause in the proceedings)

4 BY MR. SHEVORSKI:

5 Q Let's turn to page, it's page labeled DOTMM6. Are
6 you there?

7 A Yes, I am.

8 Q Who is the applicant on that page?

9 A It's MM Development, Incorporated.

10 Q Okay. My friend Mr. Kemp mentioned before that half
11 the applicants got what's been marked as Exhibit 5 and half
12 the applicants got what's been marked as Exhibit 5A. Do you
13 recall -- do you recall that?

14 A I think so.

15 Q Okay. And then he later clarified maybe some of the
16 applicants got Exhibit 5 and some of the other applicants got
17 5A. Does that refresh your recollection?

18 A Yes, it does.

19 Q Now, with respect to MM we can see that they got
20 Exhibit 5A; correct?

21 A Yes.

22 Q If you'd turn to page DOTMM950. Can you let me know
23 when you're there.

24 A I'm there.

25 Q Okay. And my friend Mr. Parker mentioned whether or

1 not the clarification on Exhibit E actually made it into
2 Exhibit 5A. Do you recall that?

3 A I do.

4 Q So with respect to at least MM, MM got the
5 clarification; correct?

6 A It looks to be, yes. That's correct.

7 Q We're going to use that in a second. Why don't you
8 put that aside for right now.

9 There's been a lot of talk by my friend Mr. Kemp, my
10 friend Mr. Parker about this concept of real officers versus
11 what's called non-real officers. And I understand you're not
12 a lawyer. Do you know if that question, their question,
13 distinguished between real officers and someone else who is
14 called an officer? Does that have any basis in law?

15 A I don't know. I wouldn't know.

16 Q Let's look at Chapter 78.

17 THE COURT: Really? You're going to have him go to
18 Chapter 78?

19 MR. SHEVORSKI: Well, the concept came up, Your
20 Honor.

21 THE COURT: I'm just wondering, because we are in
22 Business Court. So --

23 MR. SHEVORSKI: I know, and I recall that Your Honor
24 was looking at Chapter 78 --

25 THE COURT: I was. I look at Chapter 78 a lot. Do

1 you want me to give it to the witness?

2 MR. SHEVORSKI: Yes, Your Honor.

3 THE COURT: Sir, it's in this book. I don't think
4 you have to go to the -- there's not a pocket book, still have
5 to order that.

6 BY MR. SHEVORSKI:

7 Q Now, it was last amended in 2011, so -- this
8 particular part. We should be good. Would you go to NRS
9 78.130, and we're going to be on Parts 1 and 2. Are you
10 there?

11 A Okay. I think I'm there.

12 Q It says, "Every corporation must have a president, a
13 secretary, and a treasurer or the equivalent thereof." Did I
14 read that correctly?

15 A Yes, you did.

16 Q Part 2, "Every corporation may also have such other
17 officers and agents as may be deemed necessary." Did I read
18 that correctly?

19 A Yes, you did.

20 Q It looks like below --

21 And I was wrong, Your Honor.

22 -- this particular version was "last amended in
23 2015." Did I read that correctly? If you look right below
24 the statute. It says, "2015 3220." I'll represent to you
25 that that's the statutes of Nevada, which shows the amendment.

1 A I see that.

2 Q Do you see where that's indicated?

3 A Yes.

4 Q Okay. And that's prior to the initiative; correct?

5 A Yes.

6 Q So presumably the persons who drafted the initiative
7 would know that, right, that an officer can be whomever the
8 corporation directs? That's a safe assumption; correct?

9 A I would think so, yes.

10 Q There's been a lot of talk about limited liability
11 companies and what kind of personnel they can have. There's
12 been a great deal of talk about advisory boards and whether or
13 not limited liability companies can even have officers. Do
14 you recall that?

15 A Yes.

16 Q And I know I'm on a short leash here. Let's look at
17 Chapter 86 real quick.

18 I should have a copy for him, Your Honor, so you
19 don't have to --

20 THE COURT: It's okay, I can share my book on LLCs.

21 MR. SHEVORSKI: Okay.

22 THE COURT: He's welcome to look at it.

23 MR. SHEVORSKI: May I have the book, Your Honor?

24 THE COURT: Can you have the book?

25 MR. SHEVORSKI: May I give it to the witness.

1 THE COURT: He has it.

2 MR. SHEVORSKI: Oh. He does?

3 THE COURT: It's in the same volume.

4 MR. SHEVORSKI: It's in the same volume.

5 THE COURT: Yeah. 78 and 86 are close to each
6 other.

7 MR. SHEVORSKI: Almost cousins, Your Honor.

8 BY MR. SHEVORSKI:

9 Q Okay. Why don't we go to 86.263. This is what
10 you're supposed to file as part of your annual list to the
11 Nevada Secretary of State.

12 A Okay. I'm there.

13 Q Okay. Now please look at 1(a) through (e).

14 A Okay. I went over it.

15 Q Do you see the word "officer" mentioned there?

16 A I don't.

17 Q Okay. Why don't you go to 86.311.

18 A Okay.

19 Q Are you on subpart (c)? And read that and let me
20 know when you're done.

21 A Of 1?

22 Q Yes, sir.

23 A Okay.

24 Q You can see from that paragraph that a limited
25 liability company can have officers; correct?

1 A Well, yeah, (c) says, "Any agent, officer."
2 Q "Any agent, officer, employee." So a limited
3 liability company is not limited to members and managers;
4 correct?
5 A Looks like based on this language, yes.
6 Q Let's go to 86.281.
7 A Okay.
8 Q And what is the title of that particular section?
9 A "General Powers."
10 Q I want you to read Part 9, and then read Part 11.
11 A Would you like me to read it out loud?
12 Q Just read to yourself.
13 A Okay.
14 Q Part 9 says, "Appoint managers and agents, define
15 their duties, and fix their compensation." Is it just
16 possible that an advisory board member is an agent of a
17 limited liability company?
18 MR. PARKER: Your Honor, I just can't help it. I've
19 got to object on that one.
20 THE COURT: Sustained.
21 MR. PARKER: Thank you. I was forced --
22 THE COURT: Sir, we're going to go to a new question
23 now.
24 THE WITNESS: Okay.
25 //

1 BY MR. SHEVORSKI:

2 Q Let's look at Chapter 86. Let's go back to Exhibit
3 20. And we're going to go to page DOTMM1112. And you recall
4 this exhibit pertains to MM Development; correct?

5 A Yes.

6 Q The paragraph that starts "The first budget," it
7 says, "The first budget is for Location 1 in the application,
8 which is an already built, inspected, and fully compliant to
9 Nevada dispensary previously operated and currently leased by
10 the company." Did I read that correctly?

11 A Yes, you did.

12 Q Now I want you -- "previously operated." What does
13 that mean to you?

14 A It was, you know, previously operational and open
15 for business.

16 Q And possibly closed, correct, by this time?

17 A Yes.

18 Q Previously means past tense, does it not?

19 A Yes, it does.

20 Q This would be in September of 2018?

21 A Yeah, it could have been around that time.

22 Q Let's go to DOTMM9. There's so many zeros there --

23 A Okay. I'm there.

24 Q Okay. It says, "License location preference is 1";
25 correct?