

**SUPREME COURT OF NEVADA**

Case No. 79668

Electronically Filed  
Jan 13 2020 05:30 p.m.  
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 38**

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](mailto:dkoch@kochscow.com), [bwight@kochscow.com](mailto:bwight@kochscow.com)  
Attorneys for Appellant Nevada Organic Remedies, LLC

## **INDEX OF APPELLANT'S APPENDIX**

<b>VOL.</b>	<b>DOCUMENT</b>	<b>DATE</b>	<b>BATES</b>
24	Amended Notice of Entry of Order Granting Motion for Preliminary Injunction	9/19/19	AA 005907 - AA 005933
7, 8	Clear River, LLC's Answer to Serenity Wellness Center, LLC et al.'s Complaint	5/7/19	AA 001739 - AA 001756
20	Clear River, LLC's Answer to Serenity Wellness Center, LLC et al.'s Corrected First Amended Complaint	7/26/19	AA 004981 - AA 004998
27	Clear River, LLC's Joinder to Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al.'s Opposition to Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	10/14/19	AA 006692 - AA 006694
8	Clear River, LLC's Joinder to Nevada Organic Remedies, LLC's Opposition to Serenity Wellness Center, LLC et al.'s Motion for Preliminary Injunction	5/9/19	AA 001822 - AA 001829
20	Clear River, LLC's Joindr to Lone Mountain Partners, LLC's Pocket Brief Regarding Regulatory Power Over Statutes Passed by Voter Initiative	6/24/19	AA 004853 - AA 004856
8	Clear River, LLC's Order Granting Motion to Intervene in Serenity Wellness Center, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-786962-B	5/8/19	AA 001820 - AA 001821
11	Compassionate Team of Las Vegas LLC's Joinder to Motions for Preliminary Injunction	5/17/19	AA 002695 - AA 002696
46	Court's Exhibit 3, Email From Attorney General's Office Regarding the successful Applicants' Complainece with NRS 453D.200(6)	n/a	AA 011406, AA 011407
24	CPCM Holdings, LLC d/b/a Thrive Cannabis Marketplace's Joinder to Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al.'s Opposition to Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	9/24/19	AA 005991 - AA 005996

<b>VOL.</b>	<b>DOCUMENT</b>	<b>DATE</b>	<b>BATES</b>
27	CPCM Holdings, LLC, d/b/a Thrive Cannabis Marketplace et al.'s Joinder to Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al.'s Opposition to Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	10/10/19	AA 006681 - AA 006686
20	ETW Management Group, LLC et al.'s Answer to Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al. and CPCM Holdings, LLC, d/b/a Thrive Cannabis Marketplace et al.'s Counterclaim	7/11/19	AA 004925 - AA 004937
1, 2	ETW Management Group, LLC et al.'s Complaint	1/4/19	AA 000028 - AA 000342
2, 3	ETW Management Group, LLC et al.'s Errata to First Amended Complaint	2/21/19	AA 000427 - AA 000749
6	ETW Management Group, LLC et al.'s Joinder to Motions for Preliminary Injunction	5/6/19	AA 001355 - AA 001377
27	ETW Management Group, LLC et al.'s Notice of Cross Appeal	10/3/19	AA 006513 - AA 006515
18	ETW Management Group, LLC et al.'s Reply in support of Joinder to Motions for Preliminary Injunction	5/22/19	AA 004307 - AA 004328
18	ETW Management Group, LLC et al.'s Reply in support of Joinder to Motions for Preliminary Injunction	5/22/19	AA 004409 - AA 004496
15	ETW Management Group, LLC et al.'s Second Amended Complaint	5/21/19	AA 003649 - AA 003969
29	Euphoria Wellness, LLC's Answer to First Amended Complaint	11/21/19	AA 007068 - AA 007071
20	GreenMart of Nevada NLV, LLC's Answer to ETW Management Group, LLC et al.'s Second Amended Complaint	6/24/19	AA 004857 - AA 004874
11	GreenMart of Nevada NLV, LLC's Answer to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's First Amended Complaint	5/16/19	AA 002567 - AA 002579

<b>VOL.</b>	<b>DOCUMENT</b>	<b>DATE</b>	<b>BATES</b>
6	GreenMart of Nevada NLV, LLC's Answer to Serenity Wellness Center, LLC et al.'s Complaint	4/16/19	AA 001293 - AA 001307
20	GreenMart of Nevada NLV, LLC's Answer to Serenity Wellness Center, LLC et al.'s Corrected First Amended Complaint	7/17/19	AA 004961 - AA 004975
21	GreenMart of Nevada NLV, LLC's Bench Brief	8/15/19	AA 005029 - AA 005038
26	GreenMart of Nevada NLV, LLC's Joinder to Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al.'s Opposition to Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	9/30/19	AA 006361 - AA 006393
27	GreenMart of Nevada NLV, LLC's Joinder to Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al.'s Opposition to Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	10/15/19	AA 006695 - AA 006698
17, 18	GreenMart of Nevada NLV, LLC's Joinder to Lone Mountain Partners, LLC's Opposition to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction	5/21/19	AA 004248 - AA 004260
16, 17	GreenMart of Nevada NLV, LLC's Joinder to Lone Mountain Partners, LLC's Opposition to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction, Appendix	5/20/19	AA 003970 - AA 004247
27	GreenMart of Nevada NLV, LLC's Joinder to Lone Mountain Partners, LLC's Opposition to Nevada Wellness Center, LLC's Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	10/10/19	AA 006539 - AA 006540
6	GreenMart of Nevada NLV, LLC's Joinder to Nevada Organic Remedies, LLC's Opposition to Serenity Wellness Center, LLC et al.'s Motion for Preliminary Injunction	5/13/19	AA 002541 - AA 002547

<b>VOL.</b>	<b>DOCUMENT</b>	<b>DATE</b>	<b>BATES</b>
26	GreenMart of Nevada NLV, LLC's Joinder to State of Nevada, Department of Taxation's Opposition to Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	9/30/19	AA 006328 - AA 006360
8	GreenMart of Nevada NLV, LLC's Motion to Intervene in ETW Management Group, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-787004-B	5/7/19	AA 001757 - AA 001790
8	GreenMart of Nevada NLV, LLC's Motion to Intervene in Nevada Wellness Center, LLC v. State of Nevada, Department of Taxation Case No. A-19-787540-W	5/7/19	AA 001791 - AA 001819
5	GreenMart of Nevada NLV, LLC's Motion to Intervene in Serenity Wellness Center, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-786962-B	4/2/19	AA 001094 - AA 001126
20	GreenMart of Nevada NLV, LLC's Notice of Entry of Order and Order Granting Motion to Intervene in ETW Management Group, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-787004-B	6/24/19	AA 004875 - AA 004878
11	GreenMart of Nevada NLV, LLC's Notice of Entry of Order and Order Granting Motion to Intervene in MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's v. State of Nevada, Department of Taxation Case No. A-18-785818-W	5/16/19	AA 002690 - AA 002694
20	GreenMart of Nevada NLV, LLC's Notice of Entry of Order and Order Granting Motion to Intervene in Nevada Wellness Center, LLC v. State of Nevada, Department of Taxation Case No. A-19-787540-W	7/24/19	AA 004976 - AA 004980
6	GreenMart of Nevada NLV, LLC's Notice of Entry of Order and Order Granting Motion to Intervene in Serenity Wellness Center, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-786962-B	4/16/19	AA 001308 - AA 001312
24	GreenMart of Nevada NLV, LLC's Notices of Appeal	9/19/19	AA 005934 - AA 005949

<b>VOL.</b>	<b>DOCUMENT</b>	<b>DATE</b>	<b>BATES</b>
22	GreenMart of Nevada NLV, LLC's Objection to Court's Exhibit 3	8/26/19	AA 005301 - AA 005304
18, 19	Helping Hands Wellness Center, Inc.'s Answer to Serenity Wellness Center, LLC et al.'s Complaint	6/3/19	AA 004497 - AA 004512
27	Helping Hands Wellness Center, Inc.'s Joinder to Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al.'s Opposition to Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	10/17/19	AA 006699 - AA 006700
18	Helping Hands Wellness Center, Inc.'s Joinder to Lone Mountain Partners, LLC's Opposition to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction	5/21/19	AA 004261 - AA 004266
23	Helping Hands Wellness Center, Inc.'s Joinder to Nevada Organic Remedies, LLC's Objection to Court's Exhibit 3	8/28/19	AA 005571 - AA 005572
11	Helping Hands Wellness Center, Inc.'s Joinder to Nevada Organic Remedies, LLC's Opposition to Serenity Wellness Center, LLC et al.'s Motion for Preliminary Injunction	5/13/19	AA 002548 - AA 002563
5	Helping Hands Wellness Center, Inc.'s Motion to Intervene in Serenity Wellness Center, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-786962-B	4/1/19	AA 001064 - AA 001091
6	Helping Hands Wellness Center, Inc.'s Notice of Entry of Order and Order Granting Motion to Intervene in Serenity Wellness Center, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-786962-B	4/15/19	AA 001289 - AA 001292
22	Helping Hands Wellness Center, Inc.'s Objection to Court's Exhibit 3	8/26/19	AA 005305 - AA 005319
20	Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al. and CPCMH Holdings, LLC, d/b/a Thrive Cannabis Marketplace et al.'s Answer to ETW Management Group, LLC et al.'s Second Amended Complaint and Counterclaim	6/14/19	AA 004829 - AA 004852

<b>VOL.</b>	<b>DOCUMENT</b>	<b>DATE</b>	<b>BATES</b>
20	Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al. and CPCM Holdings, LLC, d/b/a Thrive Cannabis Marketplace et al.'s Answer to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's First Amended Complaint and Counterclaim	6/14/19	AA 004809 - AA 004828
20	Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al. and CPCM Holdings, LLC, d/b/a Thrive Cannabis Marketplace et al.'s Answer to Serenity Wellness Center, LLC et al.'s Complaint and Counterclaim	6/14/19	AA 004785 - AA 004808
18	Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al. and CPCM Holdings, LLC, d/b/a Thrive Cannabis Marketplace et al.'s Joinder to various oppositions to Motions for Preliminary Injunction	5/23/19	AA 004329 - AA 004394
4	Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al. and CPCM Holdings, LLC, d/b/a Thrive Cannabis Marketplace et al.'s Motion to Intervene in ETW Management Group, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-787004-B	3/20/19	AA 000916 - AA 000985
4	Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al. and CPCM Holdings, LLC, d/b/a Thrive Cannabis Marketplace et al.'s Motion to Intervene in Serenity Wellness Center, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-786962-B	3/19/19	AA 000879 - AA 000915
6	Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al. and CPCM Holdings, LLC, d/b/a Thrive Cannabis Marketplace et al.'s Notice of Entry of Order and Order Granting Motion to Intervene in ETW Management Group, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-787004-B	4/22/19	AA 001327 - AA 001332

<b>VOL.</b>	<b>DOCUMENT</b>	<b>DATE</b>	<b>BATES</b>
11	Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al. and CPCM Holdings, LLC, d/b/a Thrive Cannabis Marketplace et al.'s Notice of Entry of Order and Order Granting Motion to Intervene in MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's v. State of Nevada, Department of Taxation Case No. A-18-785818-W	5/17/19	AA 002697 - AA 002703
5	Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al. and CPCM Holdings, LLC, d/b/a Thrive Cannabis Marketplace et al.'s Notice of Entry of Order and Order Granting Motion to Intervene in Serenity Wellness Center, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-786962-B	4/2/19	AA 001127 - AA 001132
5	Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al. and CPCM Holdings, LLC, d/b/a Thrive Cannabis Marketplace et al.'s Order Granting Motion to Intervene in Serenity Wellness Center, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-786962-B	4/1/19	AA 001092 - AA 001093
21	Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al.'s Bench Brief	8/15/19	AA 005018 - AA 005028
24	Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al.'s Motion to Intervene in Nevada Wellness Center, LLC v. State of Nevada, Department of Taxation Case No. A-19-787540-W	9/20/19	AA 005962 - AA 005983
27	Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al.'s Opposition to Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	10/4/19	AA 006516 - AA 006527
19	Lone Mountain Partners, LLC's Answer to ETW Management Group, LLC et al.'s Second Amended Complaint	6/7/19	AA 004550 - AA 004563



<b>VOL.</b>	<b>DOCUMENT</b>	<b>DATE</b>	<b>BATES</b>
19	Lone Mountain Partners, LLC's Answer to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's's First Amended Complaint	6/5/19	AA 004527 - AA 004536
19	Lone Mountain Partners, LLC's Answer to Serenity Wellness Center, LLC et al.'s Complaint	6/5/19	AA 004537 - AA 004547
19	Lone Mountain Partners, LLC's Initial Appearance Fee Disclosure	6/7/19	AA 004548 - AA 004549
11	Lone Mountain Partners, LLC's Joinder to Nevada Organic Remedies, LLC's Opposition to Serenity Wellness Center, LLC et al.'s Motion for Preliminary Injunction	5/13/19	AA 002564 - AA 002566
23	Lone Mountain Partners, LLC's Joinder to Nevada Organic Remedies, LLC's Court's Exhibit 3	8/27/19	AA 005533 - AA 005534
5	Lone Mountain Partners, LLC's Motion to Intervene in ETW Management Group, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-787004-B	3/28/19	AA 001035 - AA 001063
4, 5	Lone Mountain Partners, LLC's Motion to Intervene in Serenity Wellness Center, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-786962-B	3/25/19	AA 000991 - AA 001021
23	Lone Mountain Partners, LLC's Motion to Strike MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's's Objection to Court's Exhibit 3	8/28/19	AA 005573 - AA 005578
26	Lone Mountain Partners, LLC's Notice of Appeal	9/27/19	AA 006324 - AA 006327
6	Lone Mountain Partners, LLC's Notice of Entry of Order and Order Granting Motion to Intervene in ETW Management Group, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-787004-B	4/23/19	AA 001333 - AA 001337

<b>VOL.</b>	<b>DOCUMENT</b>	<b>DATE</b>	<b>BATES</b>
5	Lone Mountain Partners, LLC's Notice of Entry of Order and Order Granting Motion to Intervene in Serenity Wellness Center, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-786962-B	4/4/19	AA 001133 - AA 001137
22	Lone Mountain Partners, LLC's Objection to Court's Exhibit 3	8/26/19	AA 005320 - AA 005322
15	Lone Mountain Partners, LLC's Opposition to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction	5/20/19	AA 003565 - AA 003602
14, 15	Lone Mountain Partners, LLC's Opposition to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction, Appendix	5/20/19	AA 003445 - AA 003564
27	Lone Mountain Partners, LLC's Opposition to Motion to Nevada Wellness Center, LLC's Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	10/10/19	AA 006541 - AA 006569
20	Lone Mountain Partners, LLC's Pocket Brief Regarding Regulatory Power Over Statutes Passed by Voter Initiative	6/11/19	AA 004778 - AA 004784
21	Lone Mountain Partners, LLC's Supplemental Authorities for Closing Arguments	8/15/19	AA 005039 - AA 005098
1	MM Development Company Inc. and LivFree Wellness, LLC's Affidavit/Declaration of Service of Summons and Complaint	12/21/18	AA 000026 - AA 000027
20	MM Development Company Inc. and LivFree Wellness, LLC's Answer to Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al. and CPCM Holdings, LLC, d/b/a Thrive Cannabis Marketplace et al.'s Counterclaim	7/12/19	AA 004941 - AA 004948
5	MM Development Company Inc. and LivFree Wellness, LLC's Answer to Nevada Organic Remedies, LLC's Counterclaim	4/5/19	AA 001138 - AA 001143

<b>VOL.</b>	<b>DOCUMENT</b>	<b>DATE</b>	<b>BATES</b>
1	MM Development Company Inc. and LivFree Wellness, LLC's First Amended Complaint and Petition for Judicial Review or Writ of Mandamus	12/18/18	AA 000013 - AA 000025
6	MM Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction	5/6/19	AA 001378 - AA 001407
6, 7	MM Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction, Appendix 1	5/6/19	AA 001408 - AA 001571
7	MM Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction, Appendix 2	5/6/19	AA 001572 - AA 001735
24, 25	MM Development Company Inc. and LivFree Wellness, LLC's Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	9/24/19	AA 005997 - AA 006323
27	MM Development Company Inc. and LivFree Wellness, LLC's Notice of Cross Appeal	10/3/19	AA 006509 - AA 006512
23, 24	MM Development Company Inc. and LivFree Wellness, LLC's Notice of Errata to Appendix to Objection to Court's Exhibit 3	8/28/19	AA 005579 - AA 005805
7	MM Development Company Inc. and LivFree Wellness, LLC's Notice of Filing Brief in Support of Motion for Preliminary Injunction	5/6/19	AA 001736 - AA 001738
22, 23	MM Development Company Inc. and LivFree Wellness, LLC's Objection to Court's Exhibit 3	8/26/19	AA 005496 - AA 005509
22	MM Development Company Inc. and LivFree Wellness, LLC's Objection to Court's Exhibit 3, Appendix	8/26/19	AA 005323 - AA 005495
28	MM Development Company Inc. and LivFree Wellness, LLC's Opposition to Nevada Organic Remedies, LLC's Application for Writ of Mandamus to Compel State of Nevada , Department of Taxation to Move Nevada Organic Remedies, LLC Into "Tier 2" of Successful Conditional License Applicants	10/24/19	AA 006833 - AA 006888

<b>VOL.</b>	<b>DOCUMENT</b>	<b>DATE</b>	<b>BATES</b>
21	MM Development Company Inc. and LivFree Wellness, LLC's Pocket Brief Regarding Background check Requirement	8/21/19	AA 005099 - AA 005109
21-22	MM Development Company Inc. and LivFree Wellness, LLC's Pocket Brief Regarding Background check Requirement, Appendix	8/21/19	AA 005110 - AA 005276
28	MM Development Company Inc. and LivFree Wellness, LLC's Reply in Support of Motion to Alter or Amend Findings of Fact and Conclusions of Law Granting Preliminary Injunction	10/23/19	AA 006817 - AA 006826
11	MM Development Company Inc. and LivFree Wellness, LLC's Supplement to Motion for Preliminary Injunction	5/16/19	AA 002580 - AA 002689
1	MM Development Company Inc.'s Complaint and Petition for Judicial Review or Writ of Mandamus	12/10/18	AA 000001 - AA 000012
29	Nevada Organic Remedies, LLC's Amended Application for Writ of Mandamus to Compel State of Nevada , Department of Taxation to Move Nevada Organic Remedies, LLC Into "Tier 2" of Successful Conditional License Applicants	11/21/19	AA 007072 - AA 007126
4	Nevada Organic Remedies, LLC's Answer to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's's First Amended Complaint and Counterclaim	3/15/19	AA 000754 - AA 000768
27	Nevada Organic Remedies, LLC's Application for Writ of Mandamus to Compel State of Nevada , Department of Taxation to Move Nevada Organic Remedies, LLC Into "Tier 2" of Successful Conditional License Applicants	10/10/19	AA 006570 - AA 006680
20, 21	Nevada Organic Remedies, LLC's Bench Brief	8/14/19	AA 004999 - AA 005017
27	Nevada Organic Remedies, LLC's Joinder to Integral Associates, LLC, d/b/a Essence Cannabis Dispensaries et al. and Lone Mountain Partners, LLC's Opposition to Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	10/11/19	AA 006687 - AA 006691

<b>VOL.</b>	<b>DOCUMENT</b>	<b>DATE</b>	<b>BATES</b>
18	Nevada Organic Remedies, LLC's Joinder to Lone Mountain Partners, LLC's Opposition to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction	5/21/19	AA 004267 - AA 004306
2	Nevada Organic Remedies, LLC's Motion to Intervene in ETW Management Group, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-787004-B	1/25/19	AA 000376 - AA 000400
2	Nevada Organic Remedies, LLC's Motion to Intervene in Serenity Wellness Center, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-786962-B	1/25/19	AA 000401 - AA 000426
5	Nevada Organic Remedies, LLC's Motion to Strike Serenity Wellness Center, LLC et al.'s Motion for Preliminary Injunction	3/26/19	AA 001023 - AA 001030
6	Nevada Organic Remedies, LLC's Notice of Entry of Order and Order Granting Motion to Intervene in ETW Management Group, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-787004-B	4/26/19	AA 001338 - AA 001341
3, 4	Nevada Organic Remedies, LLC's Notice of Entry of Order and Order Granting Motion to Intervene in MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's v. State of Nevada, Department of Taxation Case No. A-18-785818-W	3/18/19	AA 000750 - AA 000753
4	Nevada Organic Remedies, LLC's Notice of Entry of Order and Order Granting Motion to Intervene in Serenity Wellness Center, LLC et al. v. State of Nevada, Department of Taxation Case No. A-19-786962-B	3/22/19	AA 000986 - AA 000990
24	Nevada Organic Remedies, LLC's Notices of Appeal	9/19/19	AA 005950 - AA 005961
23	Nevada Organic Remedies, LLC's Objection to Court's Exhibit 3	8/26/19	AA 005510 - AA 005532

<b>VOL.</b>	<b>DOCUMENT</b>	<b>DATE</b>	<b>BATES</b>
8	Nevada Organic Remedies, LLC's Opposition to Serenity Wellness Center, LLC et al.'s Motion for Preliminary Injunction	5/9/19	AA 001830 - AA 001862
8-10	Nevada Organic Remedies, LLC's Opposition to Serenity Wellness Center, LLC et al.'s Motion for Preliminary Injunction, Appendix	5/9/19	AA 001863 - AA 002272
29	Nevada Organic Remedies, LLC's reply in Support of Amended Application for Writ of Mandamus to Compel State of Nevada , Department of Taxation to Move Nevada Organic Remedies, LLC Into "Tier 2" of Successful Conditional License Applicants	12/6/19	AA 007154 - AA 007163
23	Nevada Organic Remedies, LLC's Response to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's's Objection to Court's Exhibit 3	8/27/19	AA 005535 - AA 005539
5	Nevada Wellness Center, LLC's Affidavit of Service of the Complaint on the State of Nevada, Department of Taxation	3/25/19	AA 001022
2	Nevada Wellness Center, LLC's Complaint and Petition for Judicial Review or Writ of Mandamus	1/15/19	AA 000360 - AA 000372
29	Nevada Wellness Center, LLC's Joinder to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's's Opposition to Nevada Organic Remedies, LLC's Application for Writ of Mandamus to Compel State of Nevada , Department of Taxation to Move Nevada Organic Remedies, LLC Into "Tier 2" of Successful Conditional License Applicants	12/6/19	AA 007167 - AA 007169
11	Nevada Wellness Center, LLC's Joinder to Motions for Preliminary Injunction	5/10/19	AA 002535 - AA 002540
24	Nevada Wellness Center, LLC's Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	9/13/19	AA 005806 - AA 005906
26	Nevada Wellness Center, LLC's Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	9/30/19	AA 006394 - AA 006492

<b>VOL.</b>	<b>DOCUMENT</b>	<b>DATE</b>	<b>BATES</b>
29	Nevada Wellness Center, LLC's Notice of Appeal	12/6/19	AA 007164 - AA 007166
26, 27	Nevada Wellness Center, LLC's Reply in Support of Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	9/30/19	AA 006493 - AA 006505
27, 28	Nevada Wellness Center, LLC's Reply in Support of Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	10/17/19	AA 006701 - AA 006816
2	Nevada Wellness Center, LLC's Summons to State of Nevada, Department of Taxation	1/22/19	AA 000373 - AA 000375
28, 29	Nevada Wellness Center, LLC's Supplement in Support of Reply in Support of Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	10/30/19	AA 006955 - AA 007057
29	Notice of Entry of Order and Order Denying MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion to Alter or Amend Findings of Fact and Conclusions of Law Granting Preliminary Injunction	11/23/19	AA 007127 - AA 007130
23	Notice of Entry of Order and Order Granting Motion for Preliminary Injunction	8/28/19	AA 005544 - AA 005570
29	Notice of Entry of Order and Order Regarding Nevada Wellness Center, LLC's Motion to Alter or Amend Findings of Fact and Conclusions of Law Granting Preliminary Injunction	11/6/19	AA 007058 - AA 007067
20	Order Granting in Part Motion to Coordinate Cases for Preliminary Injunction Hearing	7/11/19	AA 004938 - AA 004940
22	Order Granting Preliminary Injunction (Findings of Fact and Conclusions of Law)	8/23/19	AA 005277 - AA 005300
46, 47	Preliminary Injunction Hearing, Defendant's Exhibit 2009 Governor's Task Force Report	n/a	AA 011408 - AA 011568
47	Preliminary Injunction Hearing, Defendant's Exhibit 2018 List of Applicants for Marijuana Establishment Licenses 2018	n/a	AA 011569 - AA 011575

<b>VOL.</b>	<b>DOCUMENT</b>	<b>DATE</b>	<b>BATES</b>
47	Preliminary Injunction Hearing, Defendant's Exhibit 5025 Nevada Organic Remedies, LLC's Organizational Chart	n/a	AA 011576 - AA 011590
47	Preliminary Injunction Hearing, Defendant's Exhibit 5026 Nevada Organic Remedies, LLC's Ownership Approval Letter	n/a	AA 011591, AA 011592
47	Preliminary Injunction Hearing, Defendant's Exhibit 5026 Nevada Organic Remedies, LLC's Ownership Approval Letter as Contained in the Application	n/a	AA 011593 - AA 011600
47	Preliminary Injunction Hearing, Defendant's Exhibit 5038 Evaluator Notes on Nevada Organic Remedies, LLC's Application	n/a	AA 011601 - AA 011603
47	Preliminary Injunction Hearing, Defendant's Exhibit 5045 Minutes of ther Legislative Commission, Nevada Legislative Counsel Bureau	n/a	AA 011604 - AA 011633
47	Preliminary Injunction Hearing, Defendant's Exhibit 5049 Governor's Task Force for the Regulation and Taxation of Marijuana Act Meeting Minutes	n/a	AA 011634 - AA 011641
47	Register of Actions for Serenity Wellness Center, LLC v. State of Nevada, Department of Taxation, Case No. A-18-786962-B	n/a	AA011642 - AA 011664
27	Serenity Wellness Center, LLC et al.'s Joinder to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	9/30/19	AA 006506 - AA 006508
2	Serenity Wellness Center, LLC et al.'s Complaint	1/4/19	AA 000343 - AA 000359
0	Serenity Wellness Center, LLC et al.'s Corrected First Amended Complaint	7/11/19	AA 004907 - AA 004924
5, 6	Serenity Wellness Center, LLC et al.'s Ex Parte Motion for Leave to file Brief in Support of Motion for Preliminary Injunction in Excess of Thirty Pages in Length	4/10/19	AA 001163 - AA 001288



<b>VOL.</b>	<b>DOCUMENT</b>	<b>DATE</b>	<b>BATES</b>
20	Serenity Wellness Center, LLC et al.'s First Amended Complaint	7/3/19	AA 004889 - AA 004906
40	Serenity Wellness Center, LLC et al.'s Joinder to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction	5/20/19	AA 003603 - AA 003636
23	Serenity Wellness Center, LLC et al.'s Joinder to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Objection to Court's Exhibit 3	8/27/19	AA 005540 - AA 005543
27	Serenity Wellness Center, LLC et al.'s Joinder to Nevada Wellness Center, LLC's Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	10/7/19	AA 006528 - AA 006538
4	Serenity Wellness Center, LLC et al.'s Motion for Preliminary Injunction	3/19/19	AA 000769 - AA 000878
18	Serenity Wellness Center, LLC et al.'s Reply in support of Motions for Summary Judgment	5/22/19	AA 004395 - AA 004408
29	Serenity Wellness Center, LLC et al.'s Second Amended Complaint	11/26/19	AA 007131 - AA 007153
5	Serenity Wellness Center, LLC et al.'s Summons to State of Nevada, Department of Taxation	3/26/19	AA 001031 - AA 001034
19	Serenity Wellness Center, LLC et al.'s Supplemental Memorandum of Points and Authorities in Support of Preliminary Injunction	6/10/19	AA 004564 - AA 004716
6	State of Nevada, Department of Taxation's Answer to ETW Management Group, LLC et al.'s Amended Complaint	4/17/19	AA 001313 - AA 001326
19	State of Nevada, Department of Taxation's Answer to ETW Management Group, LLC et al.'s Second Amended Complaint	6/4/19	AA 004513 - AA 004526
5	State of Nevada, Department of Taxation's Answer to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's First Amended Complaint	4/10/19	AA 001150 - AA 001162

<b>VOL.</b>	<b>DOCUMENT</b>	<b>DATE</b>	<b>BATES</b>
6	State of Nevada, Department of Taxation's Answer to Nevada Wellness Center, LLC's Complaint	5/2/19	AA 001342 - AA 001354
15	State of Nevada, Department of Taxation's Answer to Serenity Wellness Center, LLC et al.'s Complaint	5/20/19	AA 003637 - AA 003648
20	State of Nevada, Department of Taxation's Answer to Serenity Wellness Center, LLC et al.'s Corrected First Amended Complaint	7/15/19	AA 004949 - AA 004960
11	State of Nevada, Department of Taxation's Opposition to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction	5/20/19	AA 002704 - AA 002724
11-14	State of Nevada, Department of Taxation's Opposition to MM Development Company Inc. and LivFree Wellness, LLC Development Company Inc. and LivFree Wellness, LLC's Motion for Preliminary Injunction, Appendix	5/20/19	AA 002725 - AA 003444
24	State of Nevada, Department of Taxation's Opposition to Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	9/23/19	AA 005984 - AA 005990
28	State of Nevada, Department of Taxation's Opposition to Motion to Nevada Wellness Center, LLC's Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	10/24/19	AA 006827 - AA 006832
28	State of Nevada, Department of Taxation's Opposition to Nevada Organic Remedies, LLC's Application for Writ of Mandamus to Compel State of Nevada , Department of Taxation to Move Nevada Organic Remedies, LLC Into "Tier 2" of Successful Conditional License Applicants	10/24/19	AA 006889 - AA 006954
10	State of Nevada, Department of Taxation's Opposition to Serenity Wellness Center, LLC et al.'s Motion for Preliminary Injunction	5/9/19	AA 002273 - AA 002534
19-20	State of Nevada, Department of Taxation's Pocket Brief Regarding Regulatory Power Over Statutes Passed by Voter Initiative	6/10/19	AA 004717 - AA 004777

<b>VOL.</b>	<b>DOCUMENT</b>	<b>DATE</b>	<b>BATES</b>
20	State of Nevada, Department of Taxation's Supplement to Pocket Brief Regarding Regulatory Power Over Statutes Passed by Voter Initiative	6/24/19	AA 004879 - AA 004888
5	Stipulation and Order to Continue Hearing and Extend Briefing Schedule for Motion for Preliminary Injunction	4/8/19	AA 001144 - AA 001149
46	Transcripts for Hearing on Objections to State's Response, Nevada Wellness Center, LLC's Motion Re Compliance Re Physical Address, and Bond Amount Set	8/29/19	AA 011333 - AA 011405
29	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 1	5/24/19	AA 007170 - AA 007404
30	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 2 Volume 1	5/28/19	AA 007405 - AA 007495
30, 31	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 2 Volume 2	5/28/19	AA 007496 - AA 007601
31	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 3 Volume 1	5/29/19	AA 007602 - AA 007699
31, 32	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 3 Volume 2	5/29/19	AA 007700 - AA 007843
32, 33	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 4	5/30/19	AA 007844 - AA 008086
33	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 5 Volume 1	5/31/19	AA 008087 - AA 008149
33, 34	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 5 Volume 2	5/31/19	AA 008150 - AA 008369
34, 35	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 6	6/10/19	AA 008370 - AA 008594
35, 36	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 7	6/11/19	AA 008595 - AA 008847

<b>VOL.</b>	<b>DOCUMENT</b>	<b>DATE</b>	<b>BATES</b>
36	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 8 Volume 1	6/18/19	AA 008848 - AA 008959
36, 37	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 8 Volume 2	6/18/19	AA 008960 - AA 009093
37	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 9 Volume 1	6/19/19	AA 009094 - AA 009216
38	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 10 Volume 1	6/20/19	AA 009350 - AA 009465
38, 39	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 10 Volume 2	6/20/19	AA 009466 - AA 009623
39	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 11	7/1/19	AA 009624 - AA 009727
39, 40	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 12	7/10/19	AA 009728 - AA 009902
40, 41	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 13 Volume 1	7/11/19	AA 009903 - AA 010040
41	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 13 Volume 2	7/11/19	AA 010041 - AA 010162
41, 42	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 14	7/12/19	AA 010163 - AA 010339
42	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 15 Volume 1	7/15/19	AA 010340 - AA 010414
42, 43	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 15 Volume 2	7/15/19	AA 010415 - AA 010593
43	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 16	7/18/19	AA 010594 - AA 010698

<b>VOL.</b>	<b>DOCUMENT</b>	<b>DATE</b>	<b>BATES</b>
43, 44	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 17 Volume 1	8/13/19	AA 010699 - AA 010805
44	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 17 Volume 2	8/13/19	AA 010806 - AA 010897
44, 45	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 18	8/14/19	AA 010898 - AA 011086
45	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 19	8/15/19	AA 011087 - AA 011165
45, 46	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 20	8/16/19	AA 011166 - AA 011332

## **CERTIFICATE OF SERVICE**

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

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

**Clark Hill PLLC**

*Counsel for Respondents,*

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

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

**Office of the Attorney General**

*Counsel for Respondent,*

*The State of Nevada Department of Taxation*

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

**Koch & Scow, LLC**

*Counsel for Appellant,*

*Nevada Organic Remedies, LLC*

Margaret A. McLetchie, and Alina M. Shell

**McLetchie Law**

*Counsel for Appellant*

*GreenMart of Nevada NLV LLC*

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

/s/ David R. Koch  
Koch & Scow

1 limitation," if we go to (e) "The physical address where the  
2 proposed marijuana establishment will be located and the  
3 physical address of any co-owner otherwise affiliated in the  
4 marijuana establishment." Do you see that?

5 A Yes.

6 Q All right. So the law required applicants to  
7 provide a proposed physical address to be listed on that  
8 application; correct?

9 MR. GRAF: Objection, Your Honor. Misstates the  
10 evidence.

11 THE COURT: Overruled.

12 MR. GRAF: I'm just saying this is the NAC, Your  
13 Honor, not the NRS.

14 THE COURT: This is the NRS, isn't it?

15 MR. MILLER: This is the NAC.

16 THE COURT: NRS 453D.210? Oh. I'm sorry. You  
17 switched.

18 MR. MILLER: It has [unintelligible]. Sorry.

19 MR. GRAF: I'm just trying to prove that I'm paying  
20 attention, Your Honor.

21 THE COURT: I'm reading a case. So keep going.

22 BY MR. MILLER:

23 Q The regulation, which is the law in this state,  
24 required that the applicants provide a physical address;  
25 correct?



1           A     Yes.

2           Q     All right. And the plain language that was on the  
3 application itself required it; correct?

4           A     Yes.

5           MR. MILLER: If we pull up Exhibit 5. Ah, we've  
6 reviewed it enough [unintelligible].

7           MR. GRAF: Objection, Your Honor. Vague as to which  
8 application he's talking about.

9           THE COURT: You want 5 or 5A?

10          MR. MILLER: I called for Exhibit 5.

11          MR. GRAF: So is it sustained?

12          THE COURT: Yes, your objection was sustained.

13          MR. GRAF: Thank you, Your Honor.

14 BY MR. MILLER:

15          Q     Up at the top, "Must provide a physical address."  
16 "Marijuana establishment proposed physical address. Must be a  
17 Nevada address and cannot be a P.O. box"; right?

18          A     Right.

19          Q     You understand that applicants required -- many  
20 applicants understood that a physical address was required as  
21 part of the application; correct?

22          MR. GRAF: Objection. Lacks foundation as to what  
23 the applicants understood.

24          THE COURT: Overruled.

25          MR. GRAF: Thank you, Your Honor.

1 THE WITNESS: You ask the question, again.

2 BY MR. MILLER:

3 Q Sure. You're aware that many applicants believed  
4 that having a proposed physical address was required as part  
5 of the application; correct?

6 A Yes.

7 Q Because you believe it, too; right? You believe  
8 that the law says that you've got to have a proposed physical  
9 address in the application?

10 A The application requires a proposed physical  
11 address, yes.

12 Q But some applicants didn't provide a proposed  
13 physical address; is that correct?

14 A I don't know.

15 Q Not sure. All right. Are you aware that this  
16 application was changed and modified at some point?

17 A Until recently.

18 Q Okay. The first time you were made aware that this  
19 application was changed was when?

20 THE COURT: And we don't want to know when your  
21 lawyers told you, just when you became aware. Date.

22 THE WITNESS: I don't know. Three weeks ago.

23 BY MR. MILLER:

24 Q So if an applicant had not provided a proposed  
25 physical address and that was required by law, what should the

1 Department have done with that application?

2 A Process it. I mean, the initiative grants the  
3 Department the authority to issue, suspend, revoke licenses.  
4 And, you know, we looked at the Governor's Task Force. 453A  
5 talks to licensees about the physical location. And we  
6 believe that part of that authority is that a license can be  
7 conditional and if -- that the physical location requirement  
8 is not required until the end of that conditional period where  
9 we go in for a final inspection and issue the final license at  
10 that point. So I think we say industry understood. Industry  
11 was the main component to not include location let's say in  
12 the scoring criteria. And that was part of the Governor's  
13 Task Force recommendation, as well.

14 Q So I understand your response, you're saying that  
15 you understand that the proposed physical address is required  
16 as part of the application, but that only applies to a  
17 conditional license?

18 A No. I'm saying that the proposed physical location  
19 is a requirement of the application. The regulations and the  
20 statutes say you have to have a proposed location, right. But  
21 what I'm saying is the physical requirement is not -- the  
22 physical location requirement, it's not a requirement till the  
23 end of the conditional period where we would issue a final  
24 certificate and do our final inspection and then do the final  
25 certificate. And they've passed all the local jurisdictional

1 requirements.

2 Q Let's go back to NRS 453D.210. That statute doesn't  
3 provide a clause for the mandate that you provide a proposed  
4 physical address on the application, does it?

5 A I think the statute doesn't give us a whole lot to  
6 go on. It doesn't really tell you how to do it.

7 Q You define it in the reg as being required as part  
8 of the application; correct?

9 A To list a physical location.

10 Q And what the statute talked about was that you  
11 didn't need to have all your zoning entitlements and approvals  
12 at the time that you applied; correct?

13 A What's that again?

14 Q The statute you mentioned the fact you don't need to  
15 have your zoning approvals and entitlements done before you  
16 applied; correct?

17 A You know, I don't recall the statute was specific on  
18 that.

19 Q It's in the same statute. Can we scroll down.

20 THE COURT: Sir, if you want me to give you the  
21 statute book so you can look at it, I'd be happy to. I  
22 understand sometimes it's hard to look at it on the screen.

23 THE WITNESS: Right. That'd be easier.

24 THE COURT: All right. There's a pocket part in the  
25 back. Most of what you're looking at is probably going to be

1 in that annual paper in the back.

2 THE WITNESS: All right. What are we looking at,  
3 .210?

4 BY MR. MILLER:

5 Q NRS D.210(e).

6 A I'm sorry?

7 Q (e), subsection (e).

8 THE COURT: So you're in 453D.210(5)(e) I think is  
9 where he's sending you.

10 BY MR. MILLER:

11 Q There's nothing in that provision, right, that if --  
12 that makes any reference to a physical location not being  
13 required; correct? The other provisions we talked about  
14 mandated that a physical address is required; correct?

15 A Yeah. (5)(e) doesn't talk about the location.

16 Q Because the process is that you apply for a  
17 conditional license. If you obtain that conditional license,  
18 you then go and get your zoning and entitlements with the  
19 local jurisdiction, and then you're given final approval;  
20 correct?

21 A Basically, yes.

22 Q All right. And that's really what the industry was  
23 concerned about, and the Task Force and everything else, was  
24 that in 2014 there was a requirement that all that take place  
25 and they wanted to ease that restriction; correct?

1           A     Yes.

2           Q     All right.  There's nothing in there that suggests  
3 that they weren't required to have a proposed physical  
4 address; correct?  You agree that the regulation says that,  
5 that you're required to have a physical address.

6           A     Right.  On the application.

7           Q     On the application.  So if it wasn't listed, how  
8 could these applicants have been compared against other  
9 applicants who did provide a proposed physical address?

10          A     Location wasn't scored.  What's to compare?

11          Q     But location can influence how the rest of the  
12 criteria is evaluated; correct?

13          A     I don't know.

14          Q     Were you aware that some applicants had the  
15 understanding that a proposed physical address was required  
16 under the application and some were not?

17          A     No.

18          Q     You weren't aware at any point that your Department  
19 attempted to issue clarification of the fact that a proposed  
20 physical address may not be required?

21          A     Yes, I was.  Yes.

22          Q     And how were you made aware of that?

23          A     Got plenty of calls basically asking if -- you know,  
24 what -- I got calls regarding what if I own the building, what  
25 if I'm leasing the building, do we list that.

1           Q     So maybe I misunderstood. I thought you told me  
2 that you only learned of it recently that the Department had  
3 attempted to clarify and that you didn't -- you didn't know  
4 that some applicants were under the understanding that you  
5 needed a proposed physical address and some were under a  
6 completely different understanding. Now you're telling us  
7 that you did know that there was confusion.

8           MS. SHELL: Objection. Misstates --

9           THE COURT: Overruled.

10          MS. SHELL: Your Honor, you didn't let me finish.

11          THE COURT: Misstates testimony. Overruled.

12          THE WITNESS: I thought the question was whether I  
13 knew there were two versions of the application. And I --  
14 BY MR. MILLER:

15          Q     The Department attempted --

16          A     And I did not know that.

17          Q     Okay. I asked if the Department attempted to  
18 clarify, was what I intended to ask. So all right. Let's go  
19 forward with that, then.

20                 So you did understand that some people understood  
21 that a proposed physical address was not required?

22          A     There were some calls, yes.

23          Q     Okay. And some people obviously did not understand  
24 that a proposed physical address was required; correct?

25          A     Correct.

1           Q     All right. At what point did you realize that that  
2 confusion existed about the rules within the application?

3           A     Like I said, I was receiving calls regarding, you  
4 know, location, you know, I own my building, do I list that,  
5 or we're entering a lease, do I list that. So -- and then I  
6 believe we were getting emails. I think my staff told me we  
7 were getting emails with some questions. So I asked them to  
8 basically attempt to clarify, you know, that -- clarify that  
9 situation. I believed -- you know, my belief was that like a  
10 Listserv went out with the clarifications. That's why I'm  
11 saying I didn't know there were two versions of the  
12 application until recently.

13          Q     Okay. But you were aware of confusion dating back  
14 to when?

15          A     I don't know. Sometime after -- you know, I think  
16 it was shortly after that application came out.

17          Q     Okay. Were you made aware of any requests to  
18 clarify how the Department would issue the application prior  
19 to the application being released?

20          A     Say it again.

21          Q     You're saying that you received calls questioning  
22 whether or not a physical address was required, part of the  
23 application, after it was released; right?

24          A     Yes.

25          Q     And that happened on July 5th; correct?



1           A     Around there, yeah.

2           Q     Okay. Prior to July 5th did you have communications  
3 with potential applicants that wanted to know how those rules  
4 are going to be interpreted?

5           A     I believe so, yes.

6           Q     And you had conversations with potential applicants  
7 asking whether or not a proposed physical address would be  
8 required?

9           A     Yes. I believe so, yes.

10          Q     How many of those conversations do you think you  
11 had?

12          A     I don't know. There were several.

13          Q     Huh?

14          A     There were several. Several.

15          Q     You say several. How many?

16          A     I don't know.

17          Q     Who'd you have those conversations with?

18          A     Different potential applicants.

19          Q     Do you recall who?

20          A     Amanda Connor was one, or attorneys for the  
21 applicants. I think John Ritter. I don't know -- I don't  
22 remember anyone else off the top of my head. I know there  
23 were several.

24          Q     Several. But those are the only two you remember  
25 Amanda Connor and John Ritter that had asked whether or not a

1 proposed physical address would be required. And what'd you  
2 tell them?

3 A That the application required that a physical  
4 address be on the application, but it would not be scored.

5 Q Well, you say it wouldn't be scored. What more  
6 information did you convey?

7 A That's it.

8 Q Did they have any followup questions about, when you  
9 say that it won't be scored, if they're looking at my  
10 application and I don't provide a physical address and you  
11 don't require it to submit detailed plans about how this  
12 marijuana establishment is going to impact the community, how  
13 am I going to be scored? Did they have any followup  
14 questions?

15 A Well, I think that requirement for, you know,  
16 detailed plans was removed to general floor plans.

17 Q Okay.

18 A So, I mean, unlike 2014, they weren't required to  
19 submit, you know, plumbing, HVAC, electrical, that type of  
20 thing, just general floor plan.

21 Q What about impact on a community? Did they ask any  
22 questions about how they might be evaluated with respect to  
23 impact to the community if they didn't provide any address?

24 A No. Not that I remember.

25 Q So you don't remember any followup questions as to

1 how they believed the applications would be interpreted if  
2 they did not provide a physical address on the application?

3 A Yeah. I don't -- I don't recall any.

4 Q Okay. But you gave at least Amanda Connor and John  
5 Ritter guidance that physical address, although it was  
6 required by law, wouldn't be scored and so they didn't need to  
7 include it?

8 A No, I didn't say they didn't need to include it. I  
9 said the application requires that they put a physical  
10 address, but that it -- you know, that location was not  
11 scored, it's not part of the scoring criteria.

12 Q Okay. And when you gave that guidance did you go  
13 back to the Department and share that information with anybody  
14 else that might have been receiving calls from applicants  
15 about information in the application?

16 A Well, I'm sure we discussed it several times.

17 Q Okay. Who'd you discuss it with?

18 A Steve Gilbert, Kara, Damon.

19 Q And this was prior to the application being released  
20 on July 5th?

21 A Yes. There was a lot of discussion around that --  
22 during the Task Force and the public meetings or the  
23 recommendations while we were doing the regulations.

24 Q But the two you just identified, Amanda Connor and  
25 John Ritter, were the two co-chairs for the Task Force that

1 came up with the -- two co-chairs of the committee on the Task  
2 Force that were designed to help implement the regulations  
3 that are on the application; correct?

4 A Say it again.

5 Q The two individuals that you named, Amanda Connor  
6 and John Ritter, are you aware that those are the two co-  
7 chairs on the Task Force for the subcommittee that was  
8 designed and intended to review the applications for the  
9 recreational manager license applications?

10 A No, I didn't know Amanda was a co-chair. Well, I  
11 don't remember.

12 Q But nevertheless, they're very involved in the  
13 industry; correct?

14 A Yes.

15 Q You would have expected them to have attended those  
16 Task Force meetings?

17 A Yes.

18 Q All right. And participated in any public hearings  
19 where the rules might have been explained?

20 A Yes.

21 Q Okay. And yet they didn't understand whether or not  
22 a proposed physical address would be required; correct?

23 MR. SHEVORSKI: Objection. Speculation.

24 THE COURT: Overruled.

25 THE WITNESS: They would tell me -- like Amanda

1 would say she's getting questions from her clients and she  
2 just wants to confirm, right. And, you know, John also was  
3 more like a confirmation.

4 BY MR. MILLER:

5 Q Yeah. But at least for individuals that were highly  
6 involved in the process it's apparent to you that there was  
7 some confusion in this area; is that fair?

8 A Yes.

9 Q And so it's a fair assessment that other people  
10 might have also had the same confusion; correct?

11 A Yes.

12 Q Did you make any attempts to clarify it?

13 A I believe I did.

14 Q How'd you do that?

15 A Well, I don't -- maybe not necessarily that I think  
16 the clarification I was sending out was more regarding whether  
17 someone owned or leased a location. They were asking about  
18 where to put it. I don't think I put out a clarification  
19 regarding physical location must be on -- must be listed on  
20 the application.

21 Q Okay. So you knew in advance of the application  
22 being released on July 5th that there was confusion within the  
23 industry as to whether or not a proposed physical address was  
24 required and would be scored; correct?

25 A Yes.

1 Q And yet you took no corrective action that you can  
2 identify for us in order to clarify that rule to the rest of  
3 the industry; is that right?

4 A Right.

5 Q Okay. And you didn't review that with the Attorney  
6 General's Office, either; correct?

7 A Review what?

8 Q The fact that you'd gotten a request for  
9 clarification on whether or not this needed to be included --  
10 that a proposed physical address needed to be included on the  
11 application and whether or not that that may be also scored?

12 MR. SHEVORSKI: Objection to the extent it calls for  
13 attorney-client privilege.

14 THE COURT: Sir, we don't want you to tell us  
15 anything you talked about with your attorney, but if you spoke  
16 to your attorney, that's a yes or no.

17 THE WITNESS: Would you repeat the question.

18 BY MR. MILLER:

19 Q You don't tell the Attorney General's Office, did  
20 you, that there was confusion about this area of the law and  
21 how it might be interpreted and ask them for any guidance, did  
22 you?

23 MR. SHEVORSKI: Same objection, Your Honor.

24 THE COURT: Can you rephrase your question.

25 //

1 BY MR. MILLER:

2 Q Did you ask the Attorney General's office, yes or  
3 no, for any guidance on whether or not the proposed physical  
4 address needed to be included on the application?

5 MR. SHEVORSKI: I'm sorry, Your Honor. Same  
6 objection.

7 THE COURT: Can you be a little less specific in  
8 what he sought legal advice about.

9 BY MR. MILLER:

10 Q Did you consult with the Attorney General's Office  
11 about the requirements as it pertained to proposed physical  
12 location on the application?

13 MR. SHEVORSKI: Same objection, Your Honor.

14 THE COURT: Overruled. It's a yes or no, sir, on  
15 whether you consulted with the AG's Office.

16 THE WITNESS: No.

17 BY MR. MILLER:

18 Q The exhibit itself -- sorry. The application  
19 itself, turn to Exhibit 5, 5.3.3. This is a score criteria,  
20 right, building establishment information, the adequacy of  
21 size. Do you recall that was a scored part of the  
22 application?

23 A Yes.

24 Q Okay. And in that area it says that you're supposed  
25 to indicate the size or square footage of the proposed

1 establishment, which should include the maximum size of the  
2 proposed operation; correct?

3 A Yeah.

4 Q And since that's a scored area of the application  
5 that would relate to a physical address, that area would in  
6 fact be scored; correct?

7 A Say it again.

8 Q Okay. So the size or square footage for the  
9 proposed establishment should include the maximum size of the  
10 proposed operation, doesn't that indicate that you needed to  
11 have a proposed physical address?

12 A I don't think so. They could submit a plan with  
13 what you're proposing to build or move into. It doesn't  
14 necessarily have to be tied to a specific address.

15 Q Okay. The proposed physical address is required by  
16 law, but it wouldn't be scored; is that correct?

17 A Right.

18 Q So are you telling us that with respect to this  
19 provision, the proposed operation, you could just submit a  
20 model plan and have that be evaluated on the same terms as  
21 somebody who had an actual physical address?

22 A Yeah.

23 Q And that expectation was conveyed to the evaluators,  
24 you believe?

25 A I don't know.



1           Q     Okay. Because there could be big distinctions,  
2 right, between somebody that had to provide a proposed  
3 physical address versus somebody that was just able to operate  
4 off of a model plan; correct?

5           A     I think that the requirement as to the size -- I  
6 believe what -- my staff would probably be better equipped to  
7 answer this, I'll attempt -- that when they looked at adequacy  
8 of size is that they have proper divisions, an area for  
9 vaults, areas for consumer space, things like that. So -- so  
10 I don't know.

11          Q     But an applicant that's had to provide a proposed  
12 physical address may have dealt with those real world  
13 constraints; right? We've got this proposed physical address  
14 but we're adapting a leased space and it doesn't have  
15 sufficient back of the house space, but we're going to have to  
16 list that and see where this is scored anyhow; right?

17          A     I suppose they could have added a modification or --  
18 to the building.

19          Q     Well, if a proposed physical address is required,  
20 we've got to deal with the real world, right, what we put on  
21 our application if that was possible; correct?

22          A     If it was possible, yes.

23          Q     Right. They can't just invent and say, this doesn't  
24 have enough space but let me just say that I think we're going  
25 to expand into a neighborhood; correct?

1           A     No. I was referring to more of, I have this current  
2 space and we're going to, you know, add X amount of feet,  
3 we're going to tear this wall down and so we going to add an  
4 additional X square footage.

5           Q     Nothing would have prevented the applicants that  
6 actually had to secure a proposed physical address from  
7 attempting to make whatever modifications would have been  
8 necessary at that physical address in order to score at the  
9 highest level; correct? In order to meet the criteria, in  
10 order to best meet the criteria. Is that what you're telling  
11 me?

12          A     I don't understand the question.

13          Q     If somebody has to provide a proposed physical  
14 address, okay, they're faced with real world constraints,  
15 nothing would have prevented them from trying to improve that  
16 location so that it would be better scored when the evaluators  
17 reviewed their criteria; correct?

18          A     Correct.

19          Q     All right. But somebody that's able to just propose  
20 any physical location without any ties to the real world and  
21 can just invent a model plan isn't faced with those same  
22 restrictions; correct?

23          A     Correct.

24          Q     They can build -- they can put on paper they're  
25 going to build the dream retail facility that isn't tied to

1 the real world and still have it be evaluated under your  
2 analysis?

3 A Yes.

4 Q So these applications could have been entirely  
5 fictional from your perspective, and they still would have  
6 been evaluated against individuals who were faced with real  
7 world constraints; right?

8 A I guess so. I mean, we hope that the applicants are  
9 truthful in their representations to the Department, because,  
10 you know, submitting false or misleading information can bring  
11 consequences. Well, if you're not required to propose a  
12 physical address, sir, it wouldn't be untruthful, correct, to  
13 just list -- to just show a diagram that says, this is my --  
14 this is a dream facility, not one that'll ever be possible of  
15 being constructed in this jurisdiction to my knowledge, but  
16 here it is? That's not untruthful, is it?

17 A No. But we don't know -- we don't know that it will  
18 not come to fruition.

19 Q Okay. But if some applicants have been able to  
20 submit a dream facility that hadn't been -- hadn't -- that  
21 wasn't constrained by the real world and some applicants were  
22 constrained by real issues in finding a proposed physical  
23 location, that's not a fair process, is it?

24 MR. GRAF: Objection. Incomplete hypothetical, Your  
25 Honor.

1 THE COURT: Overruled.

2 MR. GRAF: Thank you, Your Honor.

3 THE WITNESS: Repeat the question.

4 BY MR. MILLER:

5 Q Some applicants are allowed to submit an application  
6 that doesn't provide a proposed address and they're able to  
7 just list their dream facility, doesn't have any constraints  
8 in the real world, other applicants submit an application with  
9 a proposed physical address that is constrained by real world  
10 issues in the location that they were able to find, how that  
11 would be adapted to the criteria? Two different kinds of  
12 applicants there. You understand that? You understand where  
13 I'm going?

14 A Right. One has a building, let's say, right, and  
15 one doesn't and is submitting proposed plans.

16 Q Yeah. And if one is allowed to submit completely  
17 fictional plans and the other real world plans, that's not a  
18 fair evaluation, is it?

19 A I don't know that I would call them fictional. I  
20 mean, I don't know that that's not their plan.

21 Q Well, you're telling me that they weren't required  
22 to provide a physical address that would indicate that that is  
23 their plan; right?

24 A They're required to provide a physical address on  
25 the application.

1           Q     Well, if they provide a physical address does it  
2 have to be the physical address of the proposed location? It  
3 can be any address.

4           A     You know, not -- even the application that -- the  
5 location they put on the application doesn't necessarily mean  
6 that's the location they're going to end up with, all right.  
7 So even in 2014 it's my understanding you had applicants that  
8 had a real location and then couldn't get zoning, couldn't get  
9 their SUP. Hell, it's my understanding one burned down. So  
10 it's not necessarily true that the location that you put in  
11 your application is the location you're going to end up with.  
12 I mean, a lot of things happen, right. People can't, you  
13 know, come to terms on a lease or they can't get their SUP for  
14 local reasons or, you know, something happens.

15          Q     Sir, I'm talking --

16               THE COURT: And, sir, for those people who are  
17 reading this in Carson City, SUP means a special use permit?

18               THE WITNESS: Yes, ma'am.

19               THE COURT: Thank you.

20 BY MR. MILLER:

21          Q     Sir, I'm talking about fairness and impartiality in  
22 this process. Can you run a fair process if some of the  
23 applicants understand that they don't need a proposed physical  
24 location while the other half are providing applications with  
25 a proposed physical address?

1 MR. GRAF: Objection, Your Honor. Incomplete  
2 hypothetical and misstates the law.

3 THE COURT: Overruled.

4 MR. GRAF: Your Honor, I'd ask for an offer of proof  
5 as to where the word "fair" is anywhere in the statute.

6 THE COURT: Overruled.

7 MR. GRAF: Thank you, Your Honor.

8 THE WITNESS: Okay. Can you restate that.

9 BY MR. MILLER:

10 Q You were asked can you run a fair process where some  
11 applicants know that a physical -- proposed physical address  
12 is not required --

13 MR. GRAF: Same objection, Your Honor.

14 BY MR. MILLER:

15 Q -- and some applicants --

16 THE COURT: Overruled.

17 MR. GRAF: Oops. Sorry. Sorry, Your Honor.

18 BY MR. MILLER:

19 Q -- understand something completely different about  
20 how the Department will evaluate it and provide a proposed  
21 physical address?

22 A One more time, please.

23 Q You have some applicants who have a proposed a  
24 physical address.

25 A Right.

1           Q     They believe that is required, and they submit their  
2 application that way. Other applicants understand that a  
3 proposed physical address will not be scored, so they don't  
4 provide a physical address. Is that a fair application  
5 process, sir?

6           A     Is it a fair application process? I think everyone  
7 had the same opportunity to request clarification. I think  
8 that everyone had access to the Department. I think everyone  
9 had access to submit their questions. I think everyone had an  
10 opportunity to attend 70-plus public meetings and workshops  
11 regarding this issue. I think the application was a fair  
12 process -- the application process was a fair process.

13          Q     Moving to 5.3.4.3, "Procedures to ensure adequate  
14 security measures for building security." Sir, wouldn't you  
15 agree that the consideration of that plan would indicate that  
16 there is some tie-in within the scoring criteria to an actual  
17 proposed physical address versus a fictional one?

18          A     No.

19          Q     So if you develop a plan that is designed to ensure  
20 adequate security measures of a proposed physical location  
21 that is tied to an actual address, has a real neighborhood  
22 around it, may have additional security concerns, that one is  
23 the same as one that could be submitted that doesn't have any  
24 physical address associated with it at all?

25          A     Pretty much, yeah.

1           Q     Okay. 5.3.6.1, "Operations and resource plan.  
2 Detailed budget for the proposed establishment, including pre-  
3 opening construction and first year operating expenses." Do  
4 you understand that when you budget for an opening of a  
5 facility that you get some indication of costs, right, and  
6 sometimes that can fluctuate, depending upon where your  
7 location is located; correct?

8           A     Sure. I think there's a lot of factors that go into  
9 that.

10          Q     Okay. So, again, someone that submitted a proposed  
11 physical location that was tied to real world requirements and  
12 was required to develop a detailed budget wouldn't be on a  
13 level playing field with someone who's just pulling numbers  
14 out of thin air; correct?

15          A     I don't think so. All these applicants are already  
16 certificate holders. They've set up marijuana establishments,  
17 they know what costs are involved. I think they're capable to  
18 -- capable enough to submit a detail budget, an accurate one.

19          Q     Well, how would you know whether or not that  
20 reflected real world constraints if a physical address wasn't  
21 required?

22          A     Like I said, they already -- they're already  
23 establishment owners. I think that they can accurately  
24 reflect what it would cost to operate a business and the first  
25 year operating expenses.



1           Q     We heard testimony from one of the applicants, like  
2 Viellion, who is a developer --

3           A     I'm sorry. Like who?

4           Q     Mike Viellion. [Unintelligible]. He indicated that  
5 the building expenses are different [unintelligible] which  
6 location you pick. That if you choose a location that's by  
7 the Strip, you may have increased business costs, increased  
8 construction costs, that there are certain fees associated  
9 with it; choose one, you know, that's a more remote area of  
10 Las Vegas, that that might carry less expense. Is that an  
11 accurate assessment of your understanding, as well?

12          A     Well, I would agree that property near the Strip is  
13 going to be more expensive to acquire and build on.  
14 Construction costs tend to vary. Raw materials costs tend to  
15 vary. They make the best estimate.

16          Q     But -- so if those costs vary, you've got one group  
17 of applicants that's required to submit a proposed physical  
18 address that is tied to that address and another group of  
19 applicants that's just listing a theoretical exercise of what  
20 a budget may look like, that's not an apples-to-apples  
21 comparison, is it?

22          A     The comparison being someone with a location in  
23 hand, if you will, versus someone who doesn't? I think it'd  
24 be fairly close.

25          Q     Fairly close can make a difference; right? If

1 somebody's able to submit numbers and say, here's my  
2 theoretical budget of what it might look like if I have to  
3 actually find a proposed address, might be quite different and  
4 that could result in a difference in scoring here; correct?

5 A Well, I don't -- I don't know if that -- even if  
6 that applicant that has a location already, is it built out,  
7 have they done the tenant improvements? Those costs tend to  
8 vary, you know, the way whatever construction and raw material  
9 varies. So, you know, I don't know to what extent are they  
10 built out, are the tenant improvements done, are the security  
11 features built in. I mean, those are all costs that everyone  
12 bears in this industry whether they have a location in hand or  
13 they're looking to build or lease and build out.

14 Q But my question was some applicants were limited by  
15 real world constraints, some of the ones you just cited. They  
16 don't know if that location already has tenant improvements,  
17 you don't know about any number of things until you actually  
18 have a proposed physical location and you say, here's what our  
19 budget's going to look like, here's our expenses, here's our  
20 pre-opening costs, here's our construction costs, we know this  
21 because we have a proposed physical address. You have another  
22 group of applicants that just say, theoretically this is kind  
23 of what we think it's going to cost. Two different scenarios,  
24 aren't they?

25 A Well, yes, like I said. But I think they can

1 accurately reflect what those costs would be.

2 MR. MILLER: Pull up the transcript of May 30th,  
3 page 157.

4 THE COURT: Is this Mr. Gilbert?

5 MR. MILLER: Sorry. This is Mr. Viellion.

6 THE COURT: Okay.

7 BY MR. MILLER:

8 Q Line 6, "...spent a lot of time, effort, and money  
9 taking the specific location that we had secured and adapting  
10 them to the method in which we like to operate, and that  
11 includes basically measurements, layouts, function, and flow  
12 in terms of the Department's requirements with respect to  
13 security that in this industry are more rigorous than they are  
14 in just the regular retail industry for obvious reasons, you  
15 know, cash and product."

16 See, sir, that's an applicant that had an  
17 understanding that a physical location was required, and he's  
18 detailing some of the constraints that he faced in dealing  
19 with the real world constraints. He's not on a level playing  
20 field with somebody that had an understanding that a physical  
21 address wasn't going to be required and scored [inaudible];  
22 correct?

23 A Those costs will be --

24 MR. GRAF: Your Honor, I object as to form.

25 THE COURT: Overruled.

1 MR. GRAF: Thank you, Your Honor.

2 THE COURT: And, Mr. Miller, when you get a breaking  
3 place let us know, because it's almost 3:00 o'clock.

4 MR. MILLER: Okay. Soon as he answers I'll take a  
5 break.

6 THE WITNESS: Can I answer?

7 THE COURT: Yes.

8 BY MR. MILLER:

9 Q Yes.

10 A Yeah. I think those costs would be borne  
11 regardless, whether you have a proposed location or a location  
12 in hand.

13 MR. MILLER: We can take a break.

14 THE COURT: Is it time for a break? This is not a  
15 requested recess.

16 (Court recessed at 2:58 p.m., until 3:11 p.m.)

17 THE COURT: Mr. Miller, are you ready?

18 (Pause in the proceedings)

19 THE COURT: All right. Mr. Miller, you're up.

20 BY MR. MILLER:

21 Q Again, sir, showing you the application itself on  
22 Attachment A. So you understood that there was some confusion  
23 within the industry about whether or not a proposed physical  
24 location was required or would be scored, and yet the  
25 attachment itself requires that you list a proposed physical

1 address and has a box for it; right?

2 A Yes.

3 Q Now, if a proposed physical address wasn't going to  
4 be scored at all, why do you even have that box?

5 A Because the regulation says that it needs to be on  
6 the application.

7 Q Yes. And you left that provision in there because  
8 it said proposed physical address must be submitted as part of  
9 the application.

10 MR. GRAF: Your Honor, can we have clarification as  
11 to whether it's 5A or --

12 THE COURT: Is this 5A, or 5?

13 MR. MILLER: This is 5A.

14 THE COURT: Shane?

15 IT TECHNICIAN: 5.

16 THE COURT: 5. We're not asking you. We're asking  
17 Shane. He said it was 5.

18 MR. MILLER: You're right about that. All right.  
19 Exhibit 5.

20 THE COURT: Attachment A to Exhibit 5.

21 MR. MILLER: Attachment A to Exhibit 5.

22 BY MR. MILLER:

23 Q So you left that in there because it was required in  
24 the reg that a provide a proposed physical address as part of  
25 the application?

1           A     The regulation detailed all the items that must be  
2 on the application itself. And that is one of them.

3           Q     But you didn't provide any additional clarification  
4 that what you really meant is this is just compliance with the  
5 regulation that says you've got to have an address, but we're  
6 in no way requiring that you actually have a physical address;  
7 right?

8           A     No. I mean, I think we -- we expect applicants to  
9 fill out their application completely, you know, fill in what  
10 we ask for. It asks for a proposed physical address, then  
11 provide one.

12          Q     I asked you didn't provide any additional  
13 clarification to the applicants if a proposed physical address  
14 was only listed in order to comply with that provision of the  
15 regulation that the applicants wouldn't need to actually have  
16 a proposed physical address that would be evaluated as part of  
17 their application; is that correct?

18          A     Yeah. I don't -- it's two separate things. One is  
19 that the application requires a proposed physical address.  
20 The other is that the location for scoring criteria purposes  
21 is not scored.

22          Q     So are you saying that proposed physical address  
23 under your interpretation that would have been listed on the  
24 application did not need to be tied to an address that would  
25 have, for example, been accurate plans and the like; correct?

1           A     Correct.

2           Q     You didn't provide that clarification anywhere in  
3 the application; correct?

4           A     No.

5           Q     Nowhere in here I'm going to find that once a  
6 proposed physical address it doesn't mean that that physical  
7 address has to be associated with any of the criteria that  
8 we're evaluating here?

9           A     Correct.

10          Q     I want to bring your attention to diversity. You  
11 previously heard testimony that the scores related to  
12 diversity don't necessarily correspond to a diversity  
13 ownership. I'm going to show you testimony on May 28th,  
14 page 65, at line 9.

15               THE COURT: And is this Mr. Gilbert's testimony?

16               MR. MILLER: This is -- this is Mr. Plaskon's  
17 testimony.

18               THE COURT: Okay. Thank you.

19 BY MR. MILLER:

20          Q     The question was, "So even a corporation that's  
21 solely owned by a white male, just as long as he puts 10  
22 females on the board of directors he gets 20 points; is that  
23 right?"

24               And he says, "I believe our procedures show that  
25 owners, officers, and board members are all considered in the

1 diversity."

2           Is that your understanding of how the diversity  
3 section would have been scored?

4           A     I would believe so. Owners, officers, and board  
5 members are considered.

6           Q     So if you had a corporation that was solely owned by  
7 a white male and you put 10 females on the board, you would  
8 have gotten the full points; is that correct?

9           A     I would think so, yeah.

10          Q     We also heard a summary opinion of Dr. Christian  
11 Wuthrich, who developed diversity training programs for  
12 several higher-education programs and taught student  
13 development theory. Let's show you his assessment on page --  
14 on May 30th, page 26, line 1.

15                He was asked after a series of foundational  
16 questions that he had reviewed the criteria along with the  
17 desktop scoring criteria that was used in the evaluation  
18 process and the definition of what constitutes diversity and  
19 rendered his opinion about how effective that evaluation would  
20 have been in trying to achieve diversity.

21                And he testified -- page 26, line 1, "I think as  
22 this was administered it's horribly antiquated and  
23 ineffective, and the results will not lead to this agency to  
24 achieve diversity."

25                And he also testified that to his knowledge no



1 government used the 55-year-old definition of "diversity" that  
2 was used in this application except for your Division. Who  
3 came up with that criteria?

4 A The definitions?

5 Q Yes.

6 A I provided those.

7 Q Okay. So you provided the definitions of what would  
8 constitute diversity?

9 A Yes.

10 Q By yourself? Did you consult with the Attorney  
11 General's Office on that?

12 A No. I looked -- I tried looking at the Nevada EEOC  
13 site. They referred to the federal guidelines. I looked at  
14 the NRS, tried to find a definition. Didn't find anything.  
15 So I made an attempt to find what the federal guideline  
16 definitions.

17 Q Okay. So you just researched it by Google or  
18 something?

19 A Right. I just went to the Internet.

20 Q And came up with a definition and then sent that out  
21 and said, here's the criteria that we'll use?

22 A Yes.

23 Q And you determined that based on that definition and  
24 how these applications would be evaluated according to that  
25 definition that the diversity would be given 20 points; is

1 that correct?

2 A That diversity be awarded 20 points total, yes.

3 Q Yes. And when coming up with the methodology as to  
4 how you would evaluate diversity you limited that to owners,  
5 officers, and board members; is that correct?

6 A I'm sorry?

7 Q You limited the consideration of diversity, whether  
8 or not a licensee is diverse, to whether or not the owners,  
9 officers, or board members of that licensee met your  
10 definition of diversity; is that correct?

11 A Yes.

12 Q All right. But nothing would have prevented you  
13 from further defining those terms, "owner, officer, or board  
14 member"; correct?

15 A Correct.

16 Q And nothing would have allowed you to define it  
17 differently to consider the diversity of the organization as a  
18 whole, also; is that correct?

19 A What do you mean the organization as a whole?

20 Q Well, the licensee as a whole, whether they're  
21 employees or how strongly they value diversity, any of that  
22 kind of criteria that also could be used. And we heard some  
23 of the testimony from the professor as to how diversity is  
24 ultimately [unintelligible] in other areas. You could have  
25 defined it much differently; correct?

1           A     I suppose, yes.

2           Q     Do you believe that the conditional licenses that  
3 were issued as the result of this application process, that  
4 you achieved diversity?

5           A     I believe they achieved some, yes.

6           Q     Show you Exhibit 253, 42986.

7           THE CLERK:   It's proposed.

8           THE COURT:   Any objection?

9           MR. SHEVORSKI:  No objection, Your Honor.

10          THE COURT:   Be admitted.

11                       (Plaintiffs' Exhibit 253 admitted)

12          MR. MILLER:   I'm going to be looking for a grid up  
13 on that document -- I can't see -- that would isolate among  
14 owners showing diversity statistics.  Exhibit 253, 42986.

15          BY MR. MILLER:

16          Q     So without looking at this grid -- we may not need  
17 it -- are you familiar that the Department of Taxation  
18 prepared some statistics identifying the diversity of the  
19 ownership interests among the licensees that were awarded  
20 conditional licenses?

21          A     I believe I remember seeing something.  I don't  
22 recall the details.

23          MR. MILLER:   Okay.  So try 42988.  The top.  Isolate  
24 those up at the top.

25          //

1 BY MR. MILLER:

2 Q If you isolate among owners, only 20 percent of the  
3 licenses were awarded to female owners. I don't think it's  
4 going to show that there. It'd be way up at the top in one of  
5 those boxes.

6 There it is. Diversity. Awarded Owner Pool. You  
7 see that it's only 20 percent female and 16 percent minority.  
8 One of the conditional licenses 64 percent awarded to non-  
9 minority. You think those statistics achieve the diversity  
10 that you wanted to have evaluated as part of this application?

11 MR. KOCH: Objection. Lacks foundation.  
12 Speculation as to the law.

13 THE COURT: Overruled.

14 THE WITNESS: I believe it's a definite improvement.

15 BY MR. MILLER:

16 Q The law required you to conduct a numerically scored  
17 application process; right? Familiar with that requirement?

18 A Yes.

19 Q If the DOT conducted a numerically scored bidding  
20 process that the final scores to determine the winners weren't  
21 accurate, that process wouldn't comply with the law obviously;  
22 correct?

23 MR. GRAF: Objection, Your Honor. Calls for a legal  
24 conclusion.

25 THE COURT: Overruled.

1 MR. GRAF: Thank you.

2 BY MR. MILLER:

3 Q Showing you Proposed Exhibit 220. It's Nevada  
4 Organic Remedies' just the final score sheets that we were  
5 using yesterday.

6 THE CLERK: 220 was admitted on May 31st.

7 MR. MILLER: I'm sorry?

8 THE CLERK: Exhibit 220 has been admitted.

9 [Inaudible].

10 THE COURT: So it's previously been admitted.

11 MR. KOCH: Okay. It's just the tally sheet, looks  
12 like?

13 MR. MILLER: Yeah. It's the tally sheet. Yeah.  
14 This should be the tally sheet on page 10.

15 BY MR. MILLER:

16 Q Okay. You see this is -- Nevada Organic Remedies  
17 submitted a number of licenses. This is Application Number  
18 215. You see there at the top under "Building Plan Details,"  
19 can you read me those scores from each of the different  
20 evaluators. Evaluator 1 scored it as a 7; correct?

21 A Yes.

22 Q Evaluator 2?

23 A 8.

24 Q Evaluator 3?

25 A 8.

1           Q     And turning quickly to Number 216, Application 216,  
2 the next page. Evaluator 1 is a 7, Evaluator 2 an 8, correct,  
3 and Evaluator 3 an 8; is that correct?

4           A     7, 8, and 8.

5           Q     Yep.

6           A     Yes.

7           Q     Is that right? All right. And then 217, just to go  
8 through this exercise, the next one, is a 9, 8, 8; correct?

9           A     9, 8, 9, yes.

10          Q     And that applies to the building plan details  
11 section.

12                     So we've got different scores, then they've got a  
13 series of applications that follow that have that same score,  
14 9, 8, 9. Accept my representation there on the final tally  
15 sheet?

16          A     Yes, 9, 8, 9.

17          Q     They got a different scoring on applications 215 and  
18 216 than the rest of the applications. In his testimony last  
19 week Andrew Jolley testified that he submitted identical  
20 applications and simply checked the boxes for different  
21 jurisdictions. He was asked if it surprised him they received  
22 identical scores, and he indicated it didn't because the  
23 applications were identical, but also pointed out that scores  
24 were slightly different.

25                     MR. MILLER: Can we pull up the transcript where

1 he's describing this on June 10th, page 33, line 5.

2 (Pause in the proceedings)

3 BY MR. MILLER:

4 Q Well, without the benefit of the transcript, you  
5 know, he indicated the scores were slightly different, and  
6 then he goes on to describe that he theorized that the size of  
7 the building might have been evaluated differently in  
8 accordance with the building plan being in different  
9 communities. He brought it back to [unintelligible] I don't  
10 know understand how these scores could have been different if  
11 we submitted identical plans in every jurisdiction. And they  
12 theorized, well, maybe the evaluators looked at it differently  
13 because maybe our building plan would have fit differently in  
14 one community versus another. You understand my synopsis of  
15 his testimony?

16 A Right.

17 Q Okay. But we know through the evaluation sheets  
18 that that didn't occur; right? You know that they didn't  
19 evaluate identical plans differently based on different  
20 jurisdictions; correct?

21 MR. KOCH: Objection. Lacks foundation.

22 THE COURT: Overruled.

23 THE WITNESS: Yeah. No, I don't know what the  
24 evaluators were looking at as far as --

25 //

1 BY MR. MILLER:

2 Q But if somebody had submitted -- if somebody had  
3 submitted identical plans so they were in essence evaluating  
4 identical criteria, you wouldn't have expected them to  
5 evaluate differently in one jurisdiction versus another, would  
6 we?

7 A You know, I don't know unless there's something  
8 special with these jurisdictions that affect the adequacy of  
9 size. You know, I don't know. I would -- on the face of it I  
10 would agree, you know, if you have identical plans across  
11 jurisdictions you -- you know, they'd be the same.

12 Q In fact, it should have been the same; right? You  
13 would expect identical scores if they -- if it was permissible  
14 to submit identical plans and identical information for  
15 different jurisdictions, the scoring should have been the  
16 same; correct?

17 A Well, on the face, on the surface, you know, I would  
18 tend to agree, but I don't want to substitute -- I don't think  
19 it's fair to any of the applicants that I try to substitute my  
20 judgment for that of the evaluators. I don't know what they  
21 were thinking, what they saw, you know, what their perspective  
22 of what they were looking at was, you know.

23 Q They were expected after two weeks of training to  
24 appropriately apply the law in respect to those applications;  
25 correct?



1           A     Right. We also expect them to use their training  
2 and experience. I believe we had someone that had years of  
3 experience in construction. So, you know, you have that human  
4 element. They have their perspective in what they're looking  
5 at. Like I said, I don't think it's fair to anyone here for  
6 me to substitute my judgment for theirs of what they saw.

7           Q     So you weren't going to go and question it at all,  
8 if somebody submitted an identical application and it was  
9 graded differently?

10          A     I'm not going to question the evaluators, no.

11          Q     And you wouldn't review and ask those evaluators how  
12 did you come to a different conclusion even though somebody  
13 submitted identical applications?

14          A     No, I would not, sir.

15          Q     So it wouldn't generate any red flags that identical  
16 applications were reviewed by this evaluator and he came to  
17 different results?

18          A     That's their -- that's their prerogative, I guess,  
19 how they evaluate those.

20          Q     Because in the instance I just showed you, Evaluator  
21 1 scored a 7 on that same criteria on an identical application  
22 on 215 and 216, and on the remainder of the applications he  
23 scored that same application, according to the final tally  
24 sheet, a 9.

25          A     Right.

1 Q You see those scores, you don't think the Department  
2 had any obligation to go any further and say how did you score  
3 identical applications differently?

4 A No. I think that hurts the process.

5 Q What hurts the process?

6 A To interject ourselves into the evaluators'  
7 evaluation process. You know, I don't know -- I don't know  
8 that -- they're independent, supposed to be independent. And  
9 again, I don't know if there was something different, remotely  
10 different. I don't know what that evaluator saw to cause them  
11 to score it differently.

12 MR. MILLER: Pull up Exhibit 254; 28364. This is  
13 the handwritten scoring criteria, the sheet. Is this 28364?

14 I.T. TECHNICIAN: No. One moment.

15 BY MR. MILLER:

16 Q I think the score is on the next page. We'll start  
17 at the top just so you can verify that this applies to  
18 Application 215. It says, Application 215 and it's the first  
19 evaluator, Mr. Lemons. Look at the score that he writes down  
20 on the sheet at the bottom there. Next page. The final score  
21 sheet indicated that he scored this application a 7, but in  
22 fact it looks like he scored it as a 9. Do you see that?

23 A Yes.

24 Q 28474. A different evaluator, same application.  
25 This is Evaluator Number 3. Your final score sheet indicated

1 that this evaluator scored that as an 8.

2 A Is that an 8?

3 Q You can't really tell, can you?

4 A Uh-uh.

5 Q It looks like a 9. But fortunately you've got a  
6 process for this, there's a master sheet. If you'll turn to  
7 28220. Again, 9, 8, 9. Do you see that?

8 A Yes.

9 Q So your final tally sheet recorded those as 7, 8, 8;  
10 correct?

11 MR. GRAF: Objection, Your Honor. Misstates the  
12 evidence.

13 THE COURT: Overruled.

14 BY MR. MILLER:

15 Q Let's go to Application 216; 28239.

16 A 215?

17 Q I'm sorry?

18 A The score -- you're saying that this doesn't match  
19 what's on 215 score sheet? This is for 215.

20 Q These are the master tally sheets, correct, that  
21 they all signed off on. It includes all their signatures and  
22 they hand wrote the final scores for this applicant --

23 A Right.

24 Q -- on 215?

25 A For RD215. Yes.

1           Q     RD215. And you recall that on RD215 the final score  
2 sheet and the ultimate tally for which you issued the licenses  
3 said that the evaluators scored 215 in this same category as  
4 7, 8, 8.

5           A     Can I --

6                 MR. GRAF: Your Honor, same objection.

7                 THE COURT: Overruled.

8                 MR. GRAF: Thank you, Your Honor.

9                 THE WITNESS: Can we go back to do a side-by-side  
10 comparison of that tally sheet?

11                MR. MILLER: Sure. Can you show them side-by-side,  
12 Shane?

13                I.T. TECHNICIAN: What was that earlier exhibit?

14                MR. MILLER: That's exhibit --

15                MR. GRAF: 28634, 28774 and 28220.

16                MR. MILLER: That's going to be a lot.

17                MR. GRAF: Those are the pages that we need compared.

18                THE COURT: No, those were the individual score  
19 sheets. I think --

20                MR. GRAF: But that's what I think he wants to see.

21                THE WITNESS: Right. If we can see the, whatever  
22 it's called, tally sheet that we were talking --

23                THE COURT: The summary tally sheet?

24                THE WITNESS: That he showed me earlier to see --

25                MR. MILLER: Yeah.

1 THE COURT: The first one.

2 THE WITNESS: The first one, yes.

3 BY MR. MILLER:

4 Q The first one is I believe 28364. No. It's Exhibit  
5 220.

6 THE COURT: Are we displaying 220 right now?

7 MR. MILLER: Yes.

8 THE COURT: Okay.

9 MR. MILLER: We're displaying Exhibit 220 with a  
10 side-by-side comparison with the master tally sheet, which is  
11 Bates stamped 28220.

12 THE COURT: Thank you.

13 BY MR. MILLER:

14 Q Do you see that, sir?

15 A Okay. 215, 215. Okay.

16 MR. MILLER: I think he wants to see the master  
17 sheet.

18 THE WITNESS: He moved up. Yeah.

19 MR. MILLER: If you can leave the master sheet up,  
20 which is 28220.

21 THE COURT: So, sir, is that what you asked to  
22 compare the two?

23 THE WITNESS: Yes. Yes.

24 THE COURT: All right. Just a moment. You can look  
25 at it and then tell us when you're done.

1 THE WITNESS: Can you move it over so I can see what  
2 the criteria is there, make sure it's the same one.

3 MR. MILLER: Which side? I don't know what cuts  
4 off.

5 THE WITNESS: We're looking at building construction,  
6 is it?

7 MR. MILLER: Oh, he wants to see it and verify, I  
8 believe, that that's the criteria sheet for building  
9 construction.

10 THE WITNESS: On the master, on the master sheet,  
11 what does that say there? Yeah, it's cut off on my screen.  
12 Can I get up and look at this?

13 THE COURT: You can. Here, sir, if you want to use  
14 my magnifying glass --

15 THE WITNESS: No, it's just cut off there.

16 THE COURT: Okay.

17 MR. GENTILE: This is unbelievable.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: You okay?

20 THE WITNESS: Yes, ma'am.

21 THE COURT: All right.

22 THE WITNESS: Okay.

23 BY MR. MILLER:

24 Q Do you see that now, sir?

25 A Yes.

1 Q All right. So it appears as though the master sheet  
2 that was provided to us that contains all the signatures of  
3 the evaluators does not correspond to the final tally sheet  
4 upon which you based your award of the licenses, is that  
5 correct?

6 A It appears that the master does not match the tally  
7 sheet for that criteria.

8 Q Okay. And same for 216; 28239?

9 I.T. TECHNICIAN: 2823 what?

10 MR. MILLER: I'm sorry? Application Number 216.  
11 Yeah, okay.

12 BY MR. MILLER:

13 Q Do you see the master sheets, 9, 8, 9 and then the  
14 next one that has the quote 216 as well?

15 A Okay. Thank you. Yeah, that doesn't appear to  
16 match, either.

17 Q Okay. So [unintelligible] context, Mr. Jolley posed  
18 a question as to if you submit identical applications, how  
19 could they be different? He was awarded licenses. He  
20 reviewed it with his own staff. And we see that the  
21 difference here appears to indicate that your final records  
22 didn't reflect the scores that were actually provided by the  
23 evaluators; right?

24 A Right. It appears that way.

25 Q So if we look through all these applications, there

1 might be other instances of errors where an evaluator's score  
2 wasn't accurately reflected on the final tally sheet; correct?

3 A Possibly. I mean, the human element, right?  
4 Mistakes may happen. Licensees weren't promised perfection,  
5 I'll tell you that.

6 Q Well, you could have imposed some quality controls,  
7 though; correct?

8 A I'm sorry?

9 Q You could have imposed some quality controls;  
10 correct?

11 (Cell phone rings)

12 THE COURT: Mr. Kemp.

13 MR. KEMP: Sorry, Your Honor.

14 (Pause in the proceedings)

15 THE COURT: Mr. Miller, if you and the witness are  
16 ready, we'll start again.

17 MR. MILLER: Scratch that, Judge.

18 Move to the transcript on May 29th, page 85, line 4.

19 I.T. TECHNICIAN: 85, line 4?

20 MR. MILLER: Yes.

21 BY MR. MILLER:

22 Q This is testimony from Mr. Plaskon on May 29th, page  
23 85, line 4.

24 A Which number?

25 Q I'm sorry. It should be up on the screen. Mr.



1 Gentile asked him about, "Which part did you miss?" And he  
2 says, "It was where they started to walk through -- they had  
3 already gone through, I believe, one application, possibly,  
4 the mock application. But it was where they were going  
5 through the mock application with Kara and Steve and Damon and  
6 Dave." Read the rest if you can. I can't see it from here.

7 A Do you want me to keep reading?

8 Q Go ahead, read the rest.

9 A "So other Department personnel" -- "Yes." -- "were  
10 participating in training the evaluators"-- "Correct." "--  
11 when you were gone. Do you recall when you were talking to my  
12 friend, Mr. Gentile, he was discussing that there was an  
13 interview that took place a minute after I believe it was Pam  
14 had decided to jettison her current position?"

15 I.T. TECHNICIAN: I'm sorry, Your Honor, but I think  
16 you need the morning session.

17 THE COURT: Hold on a second. Let's switch.

18 MR. MILLER: The other transcript. It doesn't sound  
19 right, Judge.

20 THE WITNESS: Yeah, it was a little confusing.

21 MR. MILLER: There we go. Now it looks like I can  
22 see it upright.

23 BY MR. MILLER:

24 Q (Reading) "Okay, great. Once the evaluators have  
25 done their scoring, then it's provided to the administrative

1 assistants and they enter it into the spreadsheet and that  
2 application has some calculations that were associated with  
3 it. So the calculations -- [inaudible] for 2014 and they are  
4 wrong and she recognized that immediately and wanted to talk  
5 to me about fixing the calculations before she did?" Do you  
6 see that?

7 A Yes.

8 Q So we have some testimony there's some other errors  
9 that the Department knew about it appears; correct?

10 A I'm sorry?

11 Q We have testimony here about other errors in the  
12 application process that were identified by the Department;  
13 correct? Do you understand the context here?

14 A Well, I'm trying to put in place where -- what  
15 exactly they're talking about.

16 Q She's talking --

17 A (Witness reading to himself). You know, I don't  
18 understand what they're talking about. It looks like -- and  
19 so the calculations were from 2014.

20 Q Well, it appears to be a synopsis that there was a  
21 mistake and Mr. Plaskon was trying to fix it, how the scores  
22 were ultimately inputted into your system and report the final  
23 scores. Do you accept that? Would you accept that that's  
24 essentially what he testified to?

25 MR. KOCH: Objection. Mischaracterizes the

1 testimony.

2 THE WITNESS: No. I don't --

3 THE COURT: Overruled.

4 THE WITNESS: I don't know.

5 BY MR. MILLER:

6 Q Well, we can go through it and drag it out. You  
7 won't accept that?

8 A It's not clear to me what he was talking about.

9 Q Okay. We'll let it stand for itself. But if the  
10 Department had evidence that it was using an inaccurate  
11 numerically scored scoring process, you wouldn't proceed  
12 without correcting it; right?

13 A If --

14 Q You were using an inaccurately scored scoring  
15 process, you would correct that, wouldn't you?

16 MR. GRAF: I'm going to object as to form, Your  
17 Honor.

18 THE COURT: Overruled.

19 MR. GRAF: Thank you, Your Honor.

20 THE WITNESS: Yes.

21 BY MR. MILLER:

22 Q Because otherwise you would award licenses on  
23 inaccurate results; right?

24 A Potentially.

25 Q We heard that Manpower's employees conducted their

1 own quality assurance; right?

2 A That's what you said, yes.

3 Q Are you aware that that wasn't the case in 2014?

4 A No, I do not.

5 Q -- when the applications were evaluated?

6 A I do not know.

7 Q In 2014, the application process was subject to an  
8 extensive quality control process. Are you familiar with  
9 that?

10 A No.

11 MR. MILLER: Can we bring up 250; 21451.

12 THE CLERK: I'm sorry, which exhibit number, Mr.  
13 Miller?

14 MR. MILLER: Proposed Exhibit 250.

15 THE CLERK: Proposed.

16 MR. MILLER: It's 21451.

17 THE CLERK: Exhibit 250 is proposed.

18

19 THE COURT: Any objection?

20 MR. SHEVORSKI: No, Your Honor.

21 THE COURT: It will be admitted.

22 (Plaintiffs' Exhibit 250 admitted)

23 BY MR. MILLER:

24 Q I'm showing you part of a PowerPoint training where  
25 it identifies a flow chart of a process that QuantumMark

1 recommended be implemented in the 2014 application process and  
2 that deals with quality assurance. Do you see that?

3 A Yes.

4 Q It appears to be a rather extensive process, does it  
5 not?

6 A It appears to be.

7 Q And if they find mistakes, there's areas in there  
8 where they address them?

9 A Can you ask the question again? I don't --

10 Q It shows in there that if they identify mistakes  
11 through this process with the quality assurance program that  
12 they make efforts to fix those mistakes; correct?

13 A I see where it says corrective action, but it's  
14 regarding a schedule for the week, attend and observe  
15 meetings, answer questions as asked and provide verbal  
16 feedback. I don't see where, you know, it says, hey, mistakes  
17 identified, this is the corrective action you take.

18 Q Well, addressing mistakes through some process is  
19 the appropriate course of action if you're going to run an  
20 application process that is dependent on accurate numbers, is  
21 that correct?

22 A The -- are we still talking about this process or in  
23 general?

24 Q No, I'm just saying -- addressing it in general.  
25 You've got to address it; right?

1 A Yes.

2 Q If you find a problem with it, you've got to address  
3 it?

4 A Yes.

5 Q All right. And that's important here because some  
6 scores were close; right?

7 MR. MILLER: Can we have Exhibit 15?

8 BY MR. MILLER:

9 Q We're going to look at the results in Henderson.  
10 The difference between Clear River being awarded a license, it  
11 was awarded 210.16 versus QualCan 209.66. This is a very  
12 close distinction, sir, isn't it?

13 A Pretty close, yes.

14 Q So a point or two can really matter here; right?

15 A Yes.

16 Q And Las Vegas. Circle S Farms.

17 MR. GRAF: Your Honor, I'd object at this point.

18 Qualcan is not a party to any of the matters involved in this  
19 case.

20 THE COURT: Overruled.

21 MR. GRAF: Thank you, Your Honor.

22 BY MR. MILLER:

23 Q Circle S Farms, 208. Qualcan again 207.33. Okay?

24 A Yes.

25 Q And the Department even anticipated that a one point

1 difference could matter in determining who got a license  
2 because you define criteria for what happen if you had a tie;  
3 right?

4 A Yes.

5 Q And even though you anticipated those close results  
6 and you might have needed strong quality controls to make sure  
7 that you reported accurate numbers, you didn't even utilize  
8 the full resources the State provided you to administer the  
9 program; correct?

10 MR. KOCH: Objection. Argumentative. Lacks  
11 foundation.

12 THE COURT: Overruled.

13 THE WITNESS: Yeah, could you be more specific?

14 BY MR. MILLER:

15 Q Did you utilize the full resources that the State  
16 provided to you in order to implement this program and make  
17 sure that you were doing an effective job?

18 A I believe we did.

19 Q Didn't you appear before the Interim Finance  
20 Committee and seek and obtain approval to hire fifteen  
21 temporary employees to evaluate these applications?

22 A I don't believe it was fifteen. I don't recall the  
23 exact number. It may have been --

24 Q But you only utilized eight, is that correct?

25 A You know, I'm not even sure of that. Six, eight.

1 MR. MILLER: Show Exhibit 259.

2 THE COURT: Any objection?

3 MR. SHEVORSKI: No objection, Your Honor.

4 THE COURT: It will be admitted.

5 (Plaintiffs' Exhibit 259 admitted)

6 MR. MILLER: Page 227. Is this is the Interim  
7 Finance Committee documents, page 227?

8 I.T. TECHNICIAN: 927?

9 MR. MILLER: 227. Page 227. Maybe I mixed these  
10 up. Is it 260?

11 I.T. TECHNICIAN: Yes.

12 MR. MILLER: There we go.

13 BY MR. MILLER:

14 Q So you recognize this generally as a work program --

15 A Yes.

16 Q -- document that would have been provided to the  
17 Interim Finance Committee?

18 A Yes.

19 Q And do you recognize -- does this refresh your  
20 recollection as to the work program that you would have  
21 submitted to the Interim Finance Committee?

22 MR. SHEVORSKI: I'm sorry, I don't think that's 260.

23 THE COURT: Page 260?

24 MR. SHEVORSKI: Oh, page 260 or is it Exhibit 260?

25 I.T. TECHNICIAN: It's not admitted, Ross.



1 MR. MILLER: Huh?

2 THE COURT: Exhibit 260? Any objection to 260?

3 MR. SHEVORSKI: No, Your Honor. I was just trying  
4 to figure out what was going on.

5 THE COURT: It will be admitted. It's part of the  
6 Interim Finance Committee presentation and agenda.

7 MR. SHEVORSKI: Yeah. No, 260 is fine.

8 THE COURT: Okay. Let's go.

9 BY MR. MILLER:

10 Q This shows that you were authorized fifteen  
11 employees by the Interim Finance Committee in order to be able  
12 to administer this program; correct?

13 A Yes.

14 Q You don't recall specifically -- it looks like you  
15 only utilized eight, is that correct?

16 A Yes. Something like that.

17 Q There were three evaluators on either side; correct?

18 A Right. Yeah, and I think a couple of support.

19 Q So the Department chose to not use seven positions  
20 that were authorized that could have been used in this  
21 evaluation process; correct?

22 A I believe there was an issue. I recall a  
23 conversation or something that I believe that there were --  
24 between our ASO, conversations between our ASO and Steve  
25 Gilbert or whatever that they were having problems getting --

1 getting qualified people at whatever rate they were offering  
2 at the time, so I think they used some of those funds to pay  
3 the more qualified people a higher rate. I think that's what  
4 happened there.

5 Q Okay. So maybe the qualifications would have  
6 prevented you from being able to utilize your full resources;  
7 right?

8 A I'm sorry?

9 Q As I understand it, you're saying that the inability  
10 to hire the right people with the right qualifications for the  
11 job that you needed prevented you from using the additional  
12 resources that you were allocated; correct?

13 MS. SHELL: Objection. Misstates testimony.

14 THE COURT: Overruled.

15 Sir, can you explain what you meant, though?

16 THE WITNESS: Yes. So let me see if I could --  
17 they had identified the qualified individuals that met the  
18 requirements that they were looking for. I believe those  
19 individuals were reluctant to do the job for the rate that was  
20 being offered, so I believe that the contract funds -- some of  
21 the contract funds were used to increase the rate that they  
22 were being paid so they would do the job.

23 THE COURT: So is what you were saying, you paid  
24 them a higher hourly rate as a temp employee than what is  
25 listed on the chart that was presented at Interim Finance?

1 THE WITNESS: I believe so.

2 THE COURT: Okay.

3 BY MR. MILLER:

4 Q You were allocated a total budget funds of two  
5 hundred and some thousand dollars. It's true that you didn't  
6 utilize all those funds; correct?

7 A I don't know.

8 Q You don't have any reason to believe that you didn't  
9 utilize all those funds; correct?

10 MR. GRAF: Objection, Your Honor. Asked and  
11 answered.

12 THE COURT: Overruled. You can answer, sir.

13 THE WITNESS: Yeah, I don't know anything about  
14 those funds or were they all used, not, and what's left over,  
15 if anything.

16 BY MR. MILLER:

17 Q You're aware that in the course of this case some  
18 details about text messages were provided to us that were sent  
19 from your phone, is that correct?

20 A Yes.

21 Q Do you recall a series of messages sent that related  
22 a Facebook post by Dr. Nick Spirtos?

23 A Yes.

24 Q And Dr. Spirtos is a current licensee who was  
25 unsuccessful in this last round; correct?

1           A     Yes.

2           Q     And at some point did you become aware of a FaceBook  
3 post by Dr. Spirtos?

4           A     Yes.

5           Q     What did that FaceBook post say?

6           A     I don't remember.

7           MR. MILLER: Show Exhibit 239.

8           THE COURT: Any objection?

9           MR. SHEVORSKI: No, Your Honor.

10          THE COURT: Okay. It will be admitted.

11                   (Plaintiffs' Exhibit 239 admitted)

12          MR. MILLER: Turn to page 2 of the exhibit, text  
13 message from Kara Cronkhite. No, these are the iMessages.  
14 Can you turn to page 2 or Kara Cronkhite? Are they  
15 categorized for you?

16          I.T. TECHNICIAN: This is page 2 of the exhibit.  
17 Do you know --

18          THE COURT: This is page 2 of 239?

19          I.T. TECHNICIAN: Correct.

20          THE COURT: Do you want a different exhibit, Mr.  
21 Miller?

22          MR. SHEVORSKI: I thought you wanted the FaceBook  
23 post.

24          MR. MILLER: It's a text exchange that would have  
25 come from Kara Cronkhite. Are they categorized or are they

1 just lumped together?

2 I.T. TECHNICIAN: Do you have a Bates number?

3 (Pause in the proceedings)

4 THE COURT: Mr. Parker, when it's your turn, how  
5 long are you going to have with this witness?

6 MR. PARKER: I think less than an hour.

7 THE COURT: That's what you told me with Mr. Gilbert.

8 MR. PARKER: Mr. Gilbert was interesting.

9 MR. GENTILE: And this guy's not?

10 THE COURT: Hmm. Okay.

11 THE WITNESS: I've always said I'm not that  
12 interesting.

13 MR. PARKER: Well, I don't know yet. I'll have to  
14 find out.

15 THE COURT: So, sir, we're not starting until 9:30  
16 tomorrow because I have a nine o'clock calendar and an 8:30  
17 calendar. Or maybe we could start at 9:15. Only two things  
18 on the nine o'clock calendar.

19 MR. SHEVORSKI: Whatever your pleasure is, Your  
20 Honor.

21 (Pause in the proceedings)

22 THE COURT: Mr. Miller, did you find it?

23 MR. MILLER: Yeah. I'm sorry, Your Honor.

24 BY MR. MILLER:

25 Q All right. (702) 306-3085, is that your phone?

1           A     Yes.

2           Q     Okay.  So that's a FaceBook post that was posted by  
3 Dr. Spirtos, apparently; correct?

4           A     Yes.

5           THE CLERK:  I'm sorry.  Is this Exhibit 239 or 240?

6           THE COURT:  Which exhibit is this?

7           I.T. TECHNICIAN:  239.

8           THE COURT:  Which one?

9           I.T. TECHNICIAN:  239.

10          THE CLERK:  Okay.  Thank you.

11          THE COURT:  239.  Thank you.  Let's keep going.

12          MR. MILLER:  Okay.  Scroll down.

13 BY MR. MILLER:

14          Q     You sent that out to Damon Hernandez and Kara  
15 Cronkhite, is that right?

16          A     Yes.

17          Q     And what did you say?

18          A     "You guys have joined me in the most hated."

19          Q     All right.  And then the next text message?

20          A     It's from Damon to Kara and myself.  It says, "Yep.  
21 It's a sense of relief now that it's out in the open."

22          THE COURT:  Sir, you've got to speak up, please.

23          THE WITNESS:  Me?

24          THE COURT:  Yep.

25          THE WITNESS:  Yes, ma'am.  So it says, "Yep."

1 That's from Damon to myself and Kara. It says, "Yep. It's a  
2 sense of relief now that it's out in the open."

3 BY MR. MILLER:

4 Q And the next message. You can read it all the way  
5 down to the middle part of the page there.

6 A From Kara to myself and Damon: "Haha. At least he  
7 spelled my last name wrong. It's that attention to detail  
8 that scored him so low." And then from myself to Damon and  
9 Kara: "LOL." From myself to Damon and Kara: "Yeah, right.  
10 Dumb ass."

11 Q That's good. So obviously that exchange was mocking  
12 Dr. Spirtos' lack of attention to detail in his applications  
13 and the fact that it may have contributed to his lack of  
14 winning. But the same obviously could be true of your  
15 Department scoring on these applications, is that correct?

16 A Everybody has an opinion.

17 Q You saw that at least the Interim Finance Committee  
18 had authorized seven additional positions. Actually the  
19 budgeting process, you could have utilized those same  
20 resources to do simple things like insuring that there were no  
21 clerical errors, is that right?

22 A Whatever the budget allowed. The ASO obviously had  
23 to make some adjustments in order to get the evaluators.

24 Q Okay. In the course of those adjustments, if you  
25 had seven additional positions authorized whose job duty was

1 to simply compare the scores on the evaluators' final sheet  
2 and make sure that it matched and corresponded with the final  
3 tally sheet, presumably that wouldn't require any high level  
4 of qualifications; correct?

5 A Right. I don't think that requires a high level of  
6 qualifications.

7 Q Probably wouldn't need a higher education medical  
8 degree like Dr. Spirtos; right?

9 A No.

10 Q Maybe a fourth grade degree to compare those and  
11 make sure --

12 A Maybe. Yeah.

13 Q Yeah. The truth is we can't rely on the final  
14 scores that you posted; correct?

15 A No, I believe you can rely on them. Mistakes  
16 happen. Like I said, they weren't guaranteed perfection. The  
17 human element is there, whether we want to see it or not.

18 Q You're aware that my clients tried to appeal the  
19 determination that you made with respect to the issuance of  
20 the licenses; correct?

21 A Yes.

22 Q And we sought review by the Task Commission;  
23 correct?

24 A Yes.

25 Q And you denied that request; right?



1           A     Yes.

2           Q     And we also issued a request for public records so  
3 that we could verify it ourselves; correct?

4           A     Verify what? Public records for what?

5           Q     Yeah, we issued a public records request so that we  
6 could try to get access to information and figure out if any  
7 mistakes had happened.

8           A     I believe so. I don't recall specific ones, but.

9           Q     But you don't recall --

10          A     I don't see all the public requests.

11          Q     I'm sorry?

12          A     I don't see all of the public requests.

13          Q     Okay. But you're certainly aware that the  
14 Department did not turn over any information related to this  
15 licensing process; correct?

16          A     Prior to SB32?

17          Q     Prior to SB32.

18          A     That's correct.

19          Q     So the applicants themselves wouldn't have been able  
20 to verify whether or not a mathematical error or a clerical  
21 error resulted in them not winning a license; correct?

22          A     That's correct.

23          Q     So we just had to take your word for it and your  
24 assurance that you were trying to do your best but that the  
25 licenses could have been awarded on an imperfect process, is

1 that correct?

2 A Yes.

3 Q All right. The initiative itself didn't mention at  
4 all ranking licensees by locality, is that correct?

5 A That's correct.

6 Q In fact, NRS 253D.200 says, "Upon receipt of a  
7 complete marijuana establishment license application, the  
8 Department shall within 90 days" -- it says "Issue the  
9 appropriate license if the license application is approved."  
10 And subsection 5 says, "The Department shall approve a license  
11 application if the proposed marijuana establishment is a  
12 proposed marijuana retail store and there are not more than 80  
13 licenses issued in a county whose population is greater than  
14 700,000." Do you need to read that, sir?

15 THE COURT: So you're in 453D.210?

16 MR. MILLER: Yes.

17 THE COURT: Okay. Thank you.

18 Subsection 5, sir, is where he is.

19 THE WITNESS: Okay.

20 THE COURT: Or subsection 4. I'm sorry.

21 THE WITNESS: I see the 90 days, yes.

22 BY MR. MILLER:

23 Q Yeah. And then go down to 5, "The Department shall  
24 approve a license application if: -- and then I'm going to be  
25 under subsection (d).

1           A     "The proposed marijuana establishment is a proposed  
2 retail marijuana store."

3           Q     "And there are not more than 80 licenses already  
4 issued in a county with a population greater than 700,000."  
5 Okay?

6           A     Yes.

7           Q     There's nothing in the initiative itself that places  
8 any limitation at all on ranking licensees by locality;  
9 correct?

10          A     No, not in the statute.

11          Q     That was only a limitation that your Department  
12 decided to impose through the regulatory process; correct?

13          A     That was a -- I believe that was a Governor's Task  
14 Force recommendation and a request from the industry,  
15 actually. I think it's consistent, I believe, with 453A.

16          Q     Well, it only came about as a result of the  
17 regulatory process; correct?

18          A     Yes.

19          Q     That limitation?

20          A     Yes.

21          Q     And if you had instead ranked all of these licenses  
22 just according to the criteria that was provided for on the  
23 plain language of the initiative itself that was implemented  
24 by the people, there is no such restriction; correct?

25               MR. KOCH: Objection. Legal conclusion.

1 THE COURT: Overruled.

2 MR. GRAF: And, Your Honor, I'm going to interpose  
3 an objection that it misstates the law.

4 THE COURT: Overruled.

5 MR. GRAF: And what the referendum says.

6 THE COURT: Overruled.

7 MR. GRAF: Thank you, Your Honor.

8 THE WITNESS: Okay. I'm sorry, can you ask the  
9 question again? I was reading the statute here.

10 BY MR. MILLER:

11 Q The plain language of the initiative petition says  
12 that once you receive a complete marijuana establishment  
13 license application, the Department is required within 90 days  
14 -- the Department shall within 90 days issue the appropriate  
15 license if the license application is approved. The  
16 Department shall approve a license application if the proposed  
17 marijuana establishment is a proposed marijuana retail store  
18 and there are not more than 80 licenses already issued in a  
19 county with a population greater than 700,000.

20 A Right. So if there's --

21 MR. GRAF: I didn't hear the end of that question,  
22 Your Honor Could I have that restated? I'm sorry.

23 THE COURT: Are you saying Mr. Miller dropped off  
24 his tone and you didn't hear it?

25 MR. GRAF: He did drop off that time. Yes, Your

1 Honor.

2 THE COURT: Mr. Miller, can you restate your  
3 question --

4 MR. GRAF: Please.

5 THE COURT: -- for Mr. Graf?

6 MR. MILLER: Sure.

7 BY MR. MILLER:

8 Q The plain language of the statute does not place any  
9 limitation that would restrict the awarding of licenses based  
10 on locality; correct? It simply says that it shall issue  
11 those licenses if it meets the criteria on an approved  
12 application and there are less than -- there are not more than  
13 80 licenses in Clark County. Is that correct?

14 MR. GRAF: And, Your Honor, again, objection. It  
15 misstates the law.

16 THE COURT: Overruled. Thank you.

17 MR. GRAF: And what the referendum says.

18 THE WITNESS: I believe it says so long as there's  
19 not more than 80 licenses already issued in the county with a  
20 population greater than 700,000, which would be Clark County.

21 BY MR. MILLER:

22 Q Right. So according to the plain language of the  
23 initiative itself, if we're just going to go by that, if you  
24 had not issued already 80 licenses and you still had  
25 applications that were approved, you would approve those

1 licenses irrespective of whether or not they designated a  
2 locality, is that correct?

3 A Yes, up to 80.

4 Q Now, if we had administered the initiative petition  
5 under that criteria, it would have produced presumably much  
6 different results; right?

7 MR. KOCH: Objection. Legal conclusion.

8 THE COURT: Overruled.

9 MR. GRAF: Objection. Incomplete hypothetical, Your  
10 Honor.

11 THE COURT: Overruled.

12 MR. GRAF: Thank you, Your Honor.

13 THE WITNESS: Yeah, I believe so.

14 BY MR. MILLER:

15 Q You issued 31 licenses in Clark County; correct?

16 A Yes, I believe that's the number.

17 Q And if 31 licenses was under the cap of 80 and you  
18 just issued those to the county among applicants and ranked  
19 the application accordingly, we might have had 31 different  
20 licensees being awarded, 31 different licenses; correct?

21 A Yes, I would think so.

22 Q So it was the regulation that decided to change that  
23 process so that individuals only had to choose and apply by  
24 different jurisdiction or locality; right?

25 A Yes.

1 Q And when you issued the recreational licenses to  
2 begin with, there were 48 existing dispensary retail stores,  
3 is that right?

4 A I'm not sure of the number. I believe so.  
5 Something near there, yeah.

6 Q Okay.

7 A In Clark County, you mean?

8 Q I'm sorry?

9 A In Clark County you're talking about or statewide?

10 Q In Clark County.

11 A Yeah, Clark County.

12 Q It might be on -- yeah, it's 48 or 47. Let's say  
13 it's --

14 A Something like that sounds right. Yeah.

15 Q It sounds right? Okay. Some documentation saying  
16 there was 47 and some 48, but it's one of the two, isn't it?

17 A Yes.

18 Q Okay. So if the statute says that if an application  
19 meets that criteria and you're to issue 80 licenses as long as  
20 that cap up to -- and you're to approve it if there are not  
21 more than 80 licenses already issued, why didn't you issue the  
22 other two licenses?

23 A I think we issued the 80.

24 Q Did you?

25 A Yes.

1           Q     You told me that there were 47 or 48.  There's 48  
2 and you issued 31, is that correct?

3           A     Right.  Something like that.  I don't know the exact  
4 number.  But there may have been a couple of conditional  
5 license out there already.  There is -- I know there is a  
6 license that is a stand-alone prior to this application period  
7 that was issued as well from -- as a result of a supreme court  
8 decision.

9           MR. MILLER:  All right.  Can you show Exhibit 252.

10          THE CLERK:  Proposed.

11          THE COURT:  Any objection to 252?

12          MR. MILLER:  It's going to be 42442.

13          MR. SHEVORSKI:  No objection, Your Honor.

14          THE COURT:  It will be admitted.

15                 (Plaintiffs' Exhibit 252 admitted)

16 BY MR. MILLER:

17          Q     This will show on there that according to the  
18 records of your Department how many licenses were issued in  
19 Clark County.  Did you find that?

20          A     I'm sorry?  Say that again.

21          Q     Did you find how many licenses that it indicates?  
22 Current number of licenses issued.  What does it say there?

23          A     61.

24          Q     In --

25          A     Oh, down at the subtotal, 49.



1 Q In Clark County?

2 A Oh, Clark County. It says 41. Unincorporated, 47  
3 in Clark County.

4 Q Your records indicate that there were 47 licenses  
5 already issued at the time that you opened up the application  
6 process, and yet you only issued 31?

7 A Yeah. I don't know what this document -- when it  
8 was made or who made it or whatever. It's my understanding  
9 that 80 licenses were issued or have been issued, either  
10 conditional or final in Clark County.

11 Q But there's no doubt about that requirement, so if  
12 there weren't 80 licenses issued, then that would have been an  
13 error; correct?

14 A Yes.

15 Q Okay.

16 MR. MILLER: All right. Turn to Exhibit Number 5  
17 and let's go to page 8. Go to the red letter.

18 BY MR. MILLER:

19 Q Can you read that red letter to us?

20 A "No applicant may be awarded more than one retail  
21 store license in a jurisdiction/locality unless there are less  
22 applicants than licenses allowed in the jurisdiction."

23 Q And where is the Department's authority, either in  
24 statute or regulation, that they gave you the authority to  
25 impose that rule?

1 MR. KOCH: Objection. Legal conclusion.

2 THE COURT: Overruled.

3 THE WITNESS: There is no specific authority but  
4 there's no prohibition, either, that I can find.

5 BY MR. MILLER:

6 Q So because you couldn't find a prohibition on it,  
7 you thought you could just issue a rule on the application  
8 that the applicants would have to abide by?

9 A I did consult with the AG's Office. I had several  
10 discussions regarding this.

11 MR. SHEVORSKI: Sir, I want to caution you not to  
12 reveal attorney-client privileged communications.

13 THE WITNESS: Yes, sir.

14 THE COURT: But you can say yes or no as to when you  
15 consulted with them. So thank you for that.

16 BY MR. MILLER:

17 Q Following that consultation, you put on this  
18 application in two places in red lettering this rule. Did you  
19 expect the applicants to adhere to it?

20 A Yes.

21 Q You understood that they would read that rule and  
22 understand that it should be given meaning and that they  
23 shouldn't apply for more than one retail license in a  
24 jurisdiction/locality in that jurisdiction because they  
25 couldn't be awarded those licenses; correct?

1           A     I mean, you can apply but you won't get more than  
2 one.

3           Q     And was that rule followed?

4           A     I believe so.

5           MR. MILLER: Can you show me Exhibit 252.

6           THE CLERK: I'm sorry, Mr. Miller, 252 or --

7           MR. MILLER: Sure. Exhibit 252.

8           THE CLERK: 252 is admitted.

9           MR. MILLER: Go to -- sorry, I can't see. I'm going  
10 to step up there.

11          MR. SHEVORSKI: She has a magnifying glass.

12          THE COURT: I do. It's right here, but it doesn't  
13 work very good on the monitors.

14

15          MR. MILLER: It's going to have to be the next one,  
16 42455.

17          I.T. TECHNICIAN: 455?

18          MR. MILLER: Yep. 42455.

19 BY MR. MILLER:

20          Q     Do you see that, sir? Can you identify for me --  
21 the licensee that ranked number one was Essence Tropicana;  
22 correct?

23          A     Yes.

24          Q     And you really can't see this, what was the address  
25 that was provided as the proposed physical address for Essence

1 Tropicana according to this record?

2 A It looks like 10624 South Eastern Avenue, Suite  
3 A718.

4 Q Okay. And number two, Nevada Organic Remedies?

5 A Ranked number two, Nevada Organic Remedies, address  
6 of 10624 South Eastern Avenue, Suite A719.

7 Q That's the same physical address, right, just a  
8 different suite number?

9 A It appears to be, yes.

10 Q What about number four, Cheyenne Medical?

11 A Cheyenne Medical, 106424 (sic) South Eastern Avenue.

12 Q Oh, sorry, it cuts off there, doesn't it? That's the  
13 same physical address as well, isn't it?

14 A Yes.

15 MR. MILLER: Over to -- if you could scroll over,  
16 Duplicate Ownership Identified. You went too far.

17 BY MR. MILLER:

18 Q See this column here, Duplicate Ownership  
19 Identified?

20 A Right.

21 Q See where it references that you've identified that  
22 the ownership applications are the same as other applicants;  
23 correct?

24 A Apparently, yes. I guess that's what that means.

25 Q And you awarded three conditional licenses to

1 Henderson that provided you with the exact same proposed  
2 physical address, is that right?

3 A If that's what that address is.

4 Q Would that have been allowable?

5 A Yes.

6 Q Were applicants allowed to list P.O. boxes?

7 A No.

8 Q So if those --

9 A I believe not. I believe the application says it  
10 can't be a P.O. box.

11 Q I believe when we read it it said must not be a P.O.  
12 box; correct?

13 A Something like that, yes.

14 Q So if it had been a P.O. box, that wouldn't have  
15 been allowable; right?

16 A Not -- no.

17 Q So if all of those applicants listed the same  
18 address and it turns out to just be P.O. boxes, that would not  
19 have been allowable; correct?

20 A Well, I don't know -- a P.O. box from Post Office  
21 versus -- I know that there's mail boxes available that allow  
22 you to use a physical address. Regardless, it's a box.

23 THE COURT: So you're saying a UPS Store is okay but  
24 a P.O. box isn't at a USPS?

25 THE WITNESS: No. I'm just -- Your Honor, I was

1 just saying --

2 THE COURT: Just checking.

3 THE WITNESS: No. I'm just saying that some of  
4 these locations will reference a physical address versus a  
5 P.O. box, so I can't tell from this.

6 MR. MILLER: Sure. All right. Can we show 42448,  
7 which is Clark County's. So if you could scroll up and just  
8 show Essence Tropicana. Start here.

9 BY MR. MILLER:

10 Q Essence, if you look at that same address -- Essence  
11 Tropicana ranked number one; right? Do you see the address  
12 that they provided?

13 A I can't see it. It looks like it says Fort Apache.

14 Q Yeah. 8130 South Fort Apache, Suite 215147.

15 A Okay.

16 Q The next one, it's Nevada Organic Remedies with the  
17 same address, is that correct?

18 A Yes.

19 Q Okay. And number six, Cheyenne Medical.

20 A Okay.

21 Q Commerce Park. The same, right? So in Clark County  
22 they have five of the successful applicants all utilizing the  
23 same proposed physical address, is that right?

24 A Yes.

25 Q Okay. Let's go over here to, again, the ownership,

1 whether or not they identified common ownership.

2 A Okay.

3 Q Do you see Duplicate Ownership Identified? For  
4 Essence Tropicana and Henderson it says Yes; correct?

5 A Yes.

6 Q Do you recognize that they referenced the  
7 application numbers that correspond?

8 A Yes.

9 Q So it's the same owners for Essence Tropicana and  
10 Essence Henderson, is that right?

11 A Yes.

12 Q All right. And Cheyenne Medical and Commerce Park  
13 Medical?

14 A Yes.

15 Q The same owners; right?

16 A Yes.

17 Q And yet the rule you just read me, you admitted that  
18 there was nothing in the law authorizing, told applicants in  
19 red letters twice that they couldn't obtain more than one  
20 license in a locality, is that correct?

21 A Yes, and we didn't.

22 Q How are they not?

23 A Two different applicants.

24 Q "No applicant may be awarded more than one retail  
25 store license in a jurisdiction/locality unless there are less

1 applicants than licenses allowed in the jurisdiction." Will  
2 you tell me your interpretation of that is?

3 A So I think applicant is defined in the application  
4 as an entity or individual because you can -- I don't know why  
5 anyone would, but you can apply as a sole proprietor. So when  
6 I look at this, I see Essence Tropicana versus Essence  
7 Henderson is -- are two different entities, two different  
8 applicants --

9 Q I see.

10 A -- with common ownership.

11 Q So you identified those having duplicate ownership;  
12 correct? Is that what that criteria says?

13 A For common ownership, yeah, duplicate ownership.

14 Q It says duplicate ownership; right?

15 A Yes, that's what it says.

16 Q That what it says, duplicate ownership identified,  
17 and it says yes, okay. And you're telling me that the  
18 distinction that allows them to get around the rule is that  
19 that same -- those same duplicate owners have created  
20 different LLCs?

21 A Yeah, they're separate entities.

22 Q Oh. So in order to eat all the licenses up, up to  
23 the 10 percent for a monopoly, all anybody had to know was  
24 they had to just create different LLCs with the same  
25 application, is that right?



1           MR. GRAF: Objection, Your Honor. Incomplete  
2 hypothetical.

3           THE COURT: Overruled.

4           MR. GRAF: Thank you, Your Honor.

5           THE WITNESS: I don't know if they've gone and  
6 created them. I know several -- I believe several applicants  
7 applied under different entities with the same ownership. Not  
8 all got awarded licenses.

9 BY MR. MILLER:

10          Q     Okay. But other licensees, right, may have applied  
11 more than once in a jurisdiction with different proposed  
12 physical addresses; correct?

13          A     Wait, say that again.

14          Q     Other proposed licensees that applied multiple times  
15 in the same jurisdiction may have provided different proposed  
16 physical addresses; correct?

17          A     May have, yes.

18          Q     Okay. We heard testimony from Mr. Jolley that he  
19 submitted identical applications in this regard. If any of  
20 those -- if either Essence or Thrive submitted identical  
21 applications that were then evaluated, do you think that rule  
22 would have been violated? If the only thing that was creating  
23 any distinction in the criteria here was the fact that it was  
24 labeled under a separate LLC, do you think that they could  
25 have still obtained more than once license in a jurisdiction

1 or locality?

2 A I'm not sure I'm getting your question. The  
3 applicant is a separate entity. That's what the definition  
4 says in the application. Entity slash individual, I believe  
5 it says. So ownership interest or ownership is one thing and  
6 the entity is another.

7 Q So an applicant with the same owners -- you have  
8 identical applications and lists the same proposed physical  
9 address but a different entity name was an LLC, they could get  
10 more than one license in that jurisdiction?

11 THE COURT: You're asking if each of those separate  
12 LLCs could receive a separate license?

13 MR. MILLER: Thank you, Judge. Yes.

14 THE COURT: All right.

15 THE WITNESS: Yes.

16 BY MR. MILLER:

17 Q Do you recall any questions about this rule and how  
18 it would be applied?

19 A No.

20 Q You don't know how the industry may have been  
21 interpreting that rule; right?

22 A No, I don't.

23 Q And unlike the regulations that were subject to  
24 public workshops and arguably approved before the legislative  
25 commission, there would have been no public testimony that we

1 can look to in order to figure out what his provision means;  
2 right?

3 A No.

4 Q You didn't provide any additional guidance anywhere  
5 in the application as to how that rule was going to be  
6 interpreted or applied; correct?

7 A No. I think to me it was clear. It says no -- you  
8 know, no one applicant. If you looked at -- if you reviewed  
9 your application and looked at the definition of applicant, it  
10 would be clear that an applicant is an entity or an  
11 individual.

12 Q It's clear to you because you wrote it; right?

13 A It could be. I mean, you know, some people don't  
14 read the entire application packet.

15 Q Okay. I'm going to ask you a series of hypotheticals  
16 based off of some slides I've prepared. Some of these are  
17 familiar. We've used at least one of these in your prior  
18 testimony. All right. So if had, for the sake of argument,  
19 Dr. Evil's Wellness Center application; right?

20 THE COURT: Where's Mr. Kemp? Okay, because he says  
21 this is a classic, so we have to all give him credit.

22 MR. KEMP: I'm paying attention, Your Honor.

23 MR. MILLER: Did you lose it, Shane?

24 I.T. TECHNICIAN: Yeah, sorry. One moment.

25 THE COURT: Mr. Rulis, are you okay?

1 MR. RULIS: It wasn't me, Your Honor.

2 MR. CRISTALLI: Yes, it was.

3 THE COURT: Ms. Higgins, are you doing okay?

4 MS. HIGGINS: Yes -- [inaudible].

5 THE COURT: All right. Okay. Anybody else need to  
6 stretch? This is like a seventh inning stretch thing.

7 THE WITNESS: Yes. I'll stand up for a second.

8 MS. HIGGINS: Can we sing?

9 THE COURT: You can if you'd like. I will not.

10 So this was earlier accompanied with a slide with  
11 Dr. Evil and Disney princesses and Jessica Rabbit and a mouse.  
12 We're going to see what we've got this time.

13 MR. MILLER: All right. So here we've got an  
14 application, we've got some cartoon characters where they've  
15 identified on Attachment A and designated themselves as  
16 owners, officers and board members, okay. Turn to the next  
17 slide.

18 BY MR. MILLER:

19 Q So, Dr. Evil's the largest -- Wellness Center. It's  
20 a Nevada corporation. He's the largest shareholder and  
21 managing member but he lists him on Attachment A as an owner,  
22 officer or board members. So if we were going to apply that  
23 criteria to the diversity section, we've done this before but  
24 I just want to confirm it -- skip to the next slide -- with  
25 20 points. If we do the math there, we would get the full

1 points, is that correct?

2 A Yes.

3 Q All right. Next slide. Now Dr. Evil has a  
4 cultivator license but no retail experience. He has an  
5 advisory board of ten board members who served previously  
6 under the existing license but had no day-to-day experience.  
7 We're going to try to evaluate the experience with marijuana  
8 in Nevada.

9 A What did you say? No marijuana experience in  
10 Nevada?

11 THE COURT: For the ladies.

12 MR. MILLER: [Unintelligible] -- experience with  
13 marijuana in Nevada.

14 THE WITNESS: Okay.

15 BY MR. MILLER:

16 Q Remember that in the application?

17 A Right.

18 Q We'll turn to the next slide and maybe we'll see it.  
19 Do you understand? Okay. So we agree in that scenario that  
20 we had eleven members with some experience in Nevada; correct?

21 A Sure.

22 Q And even though it was in cultivation, which is not  
23 what the statute required, instead of retail, they still would  
24 meet the full criteria that's awarded under the mathematical  
25 analysis that the scorers applied; correct?

1           A     Again, I don't know that they did --

2           MR. GRAF:  Objection, Your Honor.  Misstates the  
3 law.

4           THE COURT:  Overruled.  I don't think he's going on  
5 the law, he's going on the score sheet.

6           MR. GRAF:  I get that, Your Honor, but it says  
7 marijuana establishment.  It doesn't delineate between  
8 cultivation --

9           THE COURT:  We're not supposed to be arguing now,  
10 Mr. Graf.

11          MR. GRAF:  I know, I know, but I felt that that  
12 point you were asking for an explanation.

13          THE COURT:  Okay.

14          THE WITNESS:  Again, I think, like I was saying  
15 earlier, I don't know that they don't have that experience  
16 just because they're a cultivator or their staff or whatnot.

17 BY MR. MILLER:

18          Q     So long as they list it, you'd give them the full  
19 points; right?

20          A     Right.

21          Q     Okay.  Next.  He's got the worst compliance record  
22 in Nevada, including multiple serious violations and the  
23 payment of substantial fines.  The same criteria; right?  The  
24 next slide.  Same score; right?  We don't deduct anything  
25 because we didn't even evaluate that?

1           A     Sure.

2           Q     Okay. Next slide. He's got advisory board members  
3 that list resumes showing they've got degrees from an  
4 identical on-line college, right, so he stacked his board  
5 again. So the criteria there, simple mathematical analysis;  
6 right? We're not giving more weight for the education that  
7 they had. As long as they meet some minimum qualification,  
8 we're giving them all of the points; right?

9           A     If that's what the criteria calls out. I don't  
10 remember exactly on the education.

11          Q     You can read it right there on the scan next to it.  
12 That's what the evaluators were provided with; correct?

13          A     Right. Is this all of it?

14               MS. SHELL: Your Honor, I'm just going to object to  
15 the math on this slide because 11 divided by 11 doesn't  
16 actually equal 100 percent, if we're just going with straight  
17 math.

18               THE COURT: Okay.

19               THE WITNESS: This is regarding the narrative, the  
20 education achievements?

21               MR. MILLER: What's that?

22               THE WITNESS: The narrative. It's regarding the  
23 narrative, not the education achievements? Or was the  
24 education achievements part of the narrative? I don't  
25 remember.

1 MR. MILLER: Say it again? What's your question?

2 THE WITNESS: Well, it says educational  
3 achievements.

4 MR. MILLER: Yeah.

5 THE WITNESS: Right. I don't remember if that  
6 criteria was under the narrative or was it graded separately?

7 BY MR. MILLER:

8 Q Well, the bottom line is you can't tell me if that's  
9 -- if the evaluators wouldn't reduce these categories to a  
10 numerical analysis based on a mathematical formula and it was  
11 just based off checkmarks, and remember when we went through  
12 the criteria --

13 A Right.

14 Q -- and did they have education or not; right?

15 A Right.

16 Q If they had college degrees, they'd get a checkmark.  
17 If they didn't have college degrees, they wouldn't get a  
18 checkmark; right?

19 A Yes.

20 Q All right. So if that's the only criteria that  
21 we're using to evaluate they'd get 100 percent; right?

22 A Okay. Yes.

23 Q Next slide. Let's speed this up. Personal business  
24 experience, the same result; right? You've got to concede  
25 that so long as they have just met the requirements in order



1 to obtain a checkmark --

2 A Sure.

3 Q -- they're going to obtain 100 percent. Next slide.  
4 Organizational structure. Now, he only got -- the role is  
5 clearly defined, but key employees have zero experience in the  
6 marijuana industry, they'd still get the full points under  
7 that evaluation; correct?

8 A Right.

9 Q Next slide. Financial resources. We're just  
10 looking -- the way they define the criteria is total assets;  
11 right? It doesn't matter where those assets are coming from;  
12 correct?

13 A No, I wouldn't agree with that.

14 Q Is there some criteria in there that you can show me  
15 that says you're supposed to draw a distinction between what  
16 the source of the assets are?

17 A Well, there's other parameters to have those  
18 resources counted, like cash. You know, it has to be from a  
19 U.S. financial institution.

20 Q What does the criteria there say? It says we're  
21 going to include what?

22 A It says documentation to be considered, so state or  
23 federal banks, savings banks. Yeah.

24 Q Jewelry?

25 A Right.

1 Q You can't tell me that the evaluators wouldn't reach  
2 a conclusion because Minnie Mouse had a diamond ring that was  
3 appraised at 2.5 million, in conjunction with the other  
4 resources the other ones have, that that would have met the  
5 full threshold and it should have gotten the full points;  
6 right?

7 A Yeah, I mean, so long as it meets all the criteria.

8 Q But that's the criteria that your Department chose  
9 to evaluate these applications; right?

10 A Yes.

11 Q Okay. Next. Adequate first year start-up expenses.  
12 So the start-up budget is based entirely on theoretical  
13 assumptions. They don't have any proposed address. You're  
14 just going to rely entirely on what they've told you. They  
15 still could get the full 20 points; right?

16 A Yes.

17 Q Okay. Next slide. Taxes paid. Now, here we've got  
18 Princess Jasmine, who only represents a 1 percent ownership in  
19 Dr. Evil's Wellness Center, but she owns a car dealership. So  
20 she paid eight million in taxes the last five years. The rest  
21 of them combined, including the head managing member and those  
22 more intimately involved with this applicant paid very little.  
23 They're still going to get the full 10 points; correct?

24 MR. SHEVORSKI: I'm going to object. That's  
25 Princess Tiana, Your Honor.

1           THE COURT: Is it? Well, thank you, Mr. Shevorski.  
2 I appreciate that. You have young daughters, so we understand  
3 you're accurate, not Mr. Miller.

4           THE WITNESS: Yes.

5 BY MR. MILLER:

6           Q     Other beneficial contributions. So long as they met  
7 the criteria and they volunteered in some capacity under that  
8 same checkmark that we showed on these other score sheets,  
9 they're going to get the full points; right?

10          A     I mean, yeah, if that's what the evaluator  
11 determined, you know, to be awarded.

12          Q     Okay. Next. These are building plan details. So  
13 these would -- this is Exhibit 5 applicant. Exhibit 5, you  
14 see up there, has a physical address, a proposed location;  
15 right? So it lists an address there, that that is their  
16 physical location that they selected, okay. Next slide.

17          MR. SHEVORSKI: Objection. It misstates the  
18 exhibit. It would be 5A.

19          THE COURT: This one is 5A.

20          MR. KOCH: It should be 5, right?

21          MR. SHEVORSKI: Is that 5?

22          MR. KOCH: Or that's E.

23          MR. MILLER: Mr. Shevorski is wrong for once in his  
24 life. That's the first time I heard it, including law school,  
25 Judge -- [unintelligible].

1 THE COURT: He had you on the princesses.

2 MR. KOCH: That's 5A.

3 MR. SHEVORSKI: This one is 5A.

4 MR. KOCH: Yeah.

5 MR. SHEVORSKI: And this is 5A as well.

6 THE COURT: So are they reversed or are they both  
7 5A?

8 MR. SHEVORSKI: They're both 5A.

9 MR. KOCH: Both 5A.

10 MR. SHEVORSKI: The top box -- [inaudible].

11 MR. MILLER: The distinction on what the form says,  
12 that's not the point of that. The point is that this  
13 applicant is --

14 THE COURT: Dr. Evil.

15 MR. MILLER: One applicant -- See, I can make up  
16 rules, too, Judge.

17 BY MR. MILLER:

18 Q One applicant provides a real proposed physical  
19 address and the other one is giving us something that is made  
20 up. Do you understand that? So this is --

21 A I missed that. It was all garbled.

22 Q He's got -- he lists 5131 W. Sahara, P.O. Box 5341,  
23 and he says the P.O. box directly adjacent the five owner P.O.  
24 boxes that he registered with competing applicants is the same  
25 address. That's fine; right?

1           A     Yeah, I don't think that's the legal description of  
2 the property.

3           Q     Does that matter?

4           A     Well, we asked for the legal description of the  
5 property.

6           Q     Okay. So if that legal description -- if that's  
7 what he provides, are you going to reject the application?

8           A     Probably not.

9           Q     It provides up there in the box, it says you can't  
10 list a P.O. box but he puts a P.O. box, are you going to  
11 reject the application?

12          A     No. I think the application would move forward.

13          Q     Okay. So you'd give it to the evaluators in order  
14 to evaluate it; right?

15          A     Yes.

16          Q     Okay. The next one. So now it's 550 South Main  
17 Street and the legal description of the property is the  
18 Federal Drug Enforcement Agency headquarters in Las Vegas.  
19 That one is okay, too?

20          A     I guess so.

21          Q     Okay. The next one. This proposed location of 250  
22 West Rome Boulevard is directly across the street from Ruby  
23 Duncan Elementary. How about that one? Are you going to  
24 process that application or weigh it according to the  
25 evaluation criteria?

1           A     Yes.

2           Q     Okay.  Next slide.

3           THE COURT:  So is this a good place to break since  
4 we're changing from buildings to marketing?

5           MR. MILLER:  Same subject, Judge, but sure.

6           THE COURT:  Yeah.  Okay.  So it's 4:45.  I'm going  
7 to let everybody go for the day.  If you guys could be back at  
8 9:15 that would be lovely.  And tomorrow I will still not know  
9 if my jury trial is settling because they're not coming in  
10 until Friday morning at nine o'clock.  But if they do resolve,  
11 do you want me to try and reach out to you to let you know the  
12 days that become available before the 4th of July?  Or are  
13 some of you going to family reunions for the 4th of July  
14 holiday?  (No response).

15           Okay.  So I'll reach out to you after I know the  
16 answer and you can tell me yes or no whether you're available.  
17 But tomorrow is the last day I have available until somebody  
18 blinks in some other case for awhile.

19           MR. CRISTALLI:  Your Honor --

20           THE COURT:  At which time I would typically in a  
21 normal business court case offer you a settlement conference,  
22 but given the fact this is an agency case, I don't know if  
23 that's appropriate.

24           MR. CRISTALLI:  Your Honor, before we recess --

25           THE COURT:  For today?

1           MR. CRISTALLI: Yes. Just one quick matter. There  
2 was a motion -- actually two motions for summary judgment and  
3 I believe some joinders with regard to that. I think the  
4 first hearing on the first motion for summary judgment is --

5           MR. GENTILE: Eighth.

6           MR. CRISTALLI: -- July 8th, which would mean that  
7 our first -- our opposition to that would be due today. We'd  
8 ask the Court if we can consolidate the two motions, since the  
9 second one is I think scheduled for July 22nd, which would  
10 then afford us some additional time to oppose the motions for  
11 summary judgment.

12          THE COURT: Does anybody care? Who are the movants  
13 on the summary judgment motions?

14          MR. KAHN: We are, Your Honor. We have the first  
15 one and Rusty's got the second one.

16          THE COURT: So what is your position?

17          MR. KAHN: Your Honor, I discussed it with Rusty and  
18 I talked about consolidating them together. We thought maybe  
19 we should move them all up to July 8th, but that's probably  
20 unreasonable. So moving it to Rusty's second scheduled one so  
21 it's all complete before Your Honor is fine.

22          THE COURT: And what day would you like the  
23 opposition to be due then?

24          MR. KAHN: We can have the opposition due on the  
25 schedule with Rusty's motion.

1 MR. GRAF: That's the 22nd, right?

2 MR. KAHN: Yes.

3 MR. GRAF: Yeah, I filed on Monday.

4 THE COURT: All right. So, Dulce, if you would move  
5 the July 8th motion for summary judgment in this case to July  
6 22nd.

7 MR. CRISTALLI: Thank you, Your Honor.

8 THE COURT: No, thank them. I didn't do it, it was  
9 them.

10 MR. GENTILE: So the oppositions would be due a week  
11 from next Monday? Fourteen days, right?

12 (Colloquy among counsel)

13 (Court recessed at 4:46 p.m. until the following day,  
14 Thursday, June 20, 2019 at 9:15 a.m.)

15 \* \* \* \* \*

16

17

18

19

20

21

22

23

24

25



INDEX

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
-------------	---------------	--------------	-----------------	----------------

PLAINTIFFS' WITNESSES

Jorge Pupo	3	-	-	-
------------	---	---	---	---

\* \* \*

EXHIBITS

<u>DESCRIPTION</u>	<u>ADMITTED</u>
--------------------	-----------------

PLAINTIFFS' EXHIBIT NO.

239	95
250	80
251	24
252	107
253	70
254	14
256	9
257	31
259	91

\* \* \*

DEFENDANTS' EXHIBIT NO.

None admitted in afternoon session

\* \* \*

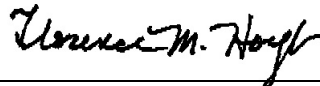
**CERTIFICATION**

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.

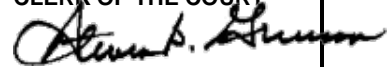
**FLORENCE HOYT  
Las Vegas, Nevada 89146**



\_\_\_\_\_  
FLORENCE M. HOYT, TRANSCRIBER

6/20/19

\_\_\_\_\_  
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

THURSDAY, JUNE, 20, 2019

**EVIDENTIARY HEARING - DAY 10**

**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.  
ERIC D. HONE, ESQ.  
DAVID R. KOCH, ESQ.  
ALINA SHELL, ESQ.  
JARED KAHN, ESQ.  
RUSTY J. GRAF, ESQ.  
JOSEPH A. GUTIERREZ, ESQ.

**I N D E X**

**W I T N E S S E S**

**WITNESSES FOR THE PLAINTIFFS:**

JORGE PUPO

Continued Direct Examination by Mr. Miller 6

Direct Examination by Mr. Parker 92

**E X H I B I T S**

**PLAINTIFFS' EXHIBITS ADMITTED:**

238 60

261 44

262 10

1       **LAS VEGAS, CLARK COUNTY, NEVADA, JUNE 20, 2019, 9:15 A.M.**

2                   \* \* \* \* \*

3               THE COURT:  -- get the motion for release of cash  
4 bond from Serenity?  So it's your -- you care.  Come read this.

5               MR. GRAF:  I've got it, right.

6               THE COURT:  Well, no, I want you to read it now.  And  
7 while we're waiting for Dominic or Mr. Cristalli to get here,  
8 we'll look at it.  And then give it back to me when you finish  
9 reading it.  It says we overpaid.  I just want to make sure  
10 everybody agrees we overpaid.

11                   (Pause in the proceedings)

12               MR. GRAF:  We're going to object, Your Honor.

13               THE COURT:  Yeah.  You are?

14               MR. GRAF:  Yes.

15               THE COURT:  Okay.

16               MR. GRAF:  We were planning on filing a written  
17 motion to object to the release of the (indiscernible).  So are  
18 you going to set that for hearing?

19               THE COURT:  Once I have Mr. Cristalli and Mr. Gentile  
20 here, yes, because I'm not giving Mr. Miller -- I'm not going  
21 to do it today.

22               MR. GRAF:  No.  Okay.  I would like to  
23 (indiscernible) put on when it's occurred, Your Honor, and the  
24 opportunity to file an opposition --

25               THE COURT:  Will you come back after your hearing?

                  JD Reporting, Inc.

1 MR. GRAF: I am. It should only be real quick.

2 THE COURT: So maybe before lunch, we'll decide when  
3 to set it.

4 MR. GRAF: Yes, ma'am. Thank you.

5 THE COURT: Is Mr. Pupo here? Come on up, Mr. Pupo.  
6 It's a new day. It's a new day so we have to reswear you.

7 MR. PUPO: I'm sorry?

8 THE COURT: It's a new day, so we have to reswear  
9 you. And, again, sir, if you need to stand up during the  
10 testimony because you're uncomfortable or you need to take a  
11 break, you let me know. Okay.

12 THE CLERK: Please raise your right hand.

13 **JORGE PUPO**

14 [having been called as a witness and being first duly sworn,  
15 testified as follows:]

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

18 THE WITNESS: It's Jorge Pupo. And that's J-o-r-g-e.  
19 Last name is P-u-p-o.

20 THE CLERK: Thank you.

21 THE COURT: Before Mr. Miller starts, Mr. Cristalli  
22 and Mr. Gentile, before you got here, I asked if any of the  
23 defendants had an objection to your motion for release of bond.  
24 I was told they did. So before lunch, we will discuss when I  
25 schedule that for hearing. So don't let me forget. I have it

1 sitting up here so we can put a date in there, and I can sign  
2 it.

3 Mr. Miller, you're up.

4 CONTINUED DIRECT EXAMINATION

5 BY MR. MILLER:

6 Q Good morning.

7 A Good morning.

8 MR. MILLER: Pull up the same Exhibit 5 that we were  
9 on.

10 BY MR. MILLER:

11 Q Do you recall that when we were going through a  
12 hypothetical scenario as to how scoring may be applied based on  
13 your understanding of the rules in the evaluation process --  
14 and this particular slide deals with the scoring criteria for  
15 building plan details. Do you recall that we had run previous  
16 examples where we had two different sets of applicants, one  
17 was -- which was a fine (phonetic) criteria. It was responsive  
18 to the application that was under the -- would have been under  
19 the understanding that a physical address would be required,  
20 and another set of applicants that knew a physical may have  
21 been required but it wouldn't be scored; is that correct? Do  
22 you remember that?

23 A Yes.

24 Q All right. So the exhibit here I'm showing you --  
25 the demonstrative exhibit I'm showing you, this individual has



1 responded in the application to the tab there where it was  
2 requested. And in response to the request for adequacy of  
3 size, they have gone through and done a market analysis of how  
4 many people might be within a certain radius of that physical  
5 location, who are over 21, and might be able to access that  
6 facility. Do you see that?

7 A Yes.

8 Q And they also have several locations that they  
9 proposed. Do you see that?

10 A Yes.

11 Q And they've provided different figures based on their  
12 analysis for some of those locations; is that correct?

13 A Yes.

14 Q Next slide.

15 You can also see that you responded to them with a  
16 demographic analysis for adequacy of size, including the makeup  
17 of a community where this proposed location would be placed.  
18 Do you see?

19 A Barely, but, yes.

20 Q Okay. Next slide.

21 Building plan details. They could have provided  
22 specific floor plans that are designed for that location. So  
23 in Location 1, we see that it's a completely different layout  
24 than their Locations 2 and 3. And it explained on their  
25 applications the limitations for doing that because they

1 selected a particular address. Do you see that?

2 A Yeah.

3 Q All right. Next slide.

4 And incorporated specific security plans that would  
5 be different and would meet the needs of the community. And  
6 you see how Location 1 reflects completely different camera  
7 angles that they would be able to access and would be provided  
8 on Locations 2 and 3?

9 A Yes.

10 Q And those camera angles and the security details were  
11 required as part of the application; is that correct?

12 A Yes.

13 Q And that was part of the criteria that the evaluators  
14 were expecting to score?

15 A Yes.

16 Q Next slide.

17 So here we have the applicant that was -- may have  
18 been under the understanding that the physical location  
19 wouldn't have been scored; correct?

20 A (No audible response.)

21 Q So as we discussed, this individual could have just  
22 put any size facility that they deemed appropriate; correct?

23 A Yes.

24 Q All right. And when they include their operations  
25 and resource plans, it could have been completely theoretical,

1 so they could have put anything they wanted; correct?

2 A Yes.

3 Q And in terms of security plans, they could have put  
4 anything under the sun, including that they were going to have  
5 SEAL Team 6 monitoring the location to make sure that it was  
6 absolutely secured; correct?

7 A I suppose, yes.

8 Q And they weren't constrained in terms of budget or  
9 construction timeline challenges that others may have faced;  
10 correct?

11 A I don't know if I would say "constrained," but they  
12 were to provide a budget.

13 Q Okay. But when they came up with a budget, they  
14 could have put any proposed numbers that they wanted; correct?

15 A Yes.

16 Q Okay. Next slide.

17 If they had put that criteria, they wouldn't have  
18 been scored any differently, according to your testimony, than  
19 the applicant that was constrained to the physical address?

20 A Correct.

21 Q Next slide -- oh, that's it. Thank you. I thought  
22 we had one more slide.

23 THE COURT: And you got Barbie into one of your  
24 slides, so --

25 MR. MILLER: I did.

1 THE COURT: We got the princesses and now we've got  
2 Barbie.

3 MR. SHEVORSKI: I'm not as good at those, Your Honor.

4 THE COURT: You're not as good at the Barbies?

5 MR. SHEVORSKI: No.

6 THE COURT: Give your daughters time.

7 MR. MILLER: All right. Please pull up Exhibit 262.

8 THE CLERK: Proposed.

9 THE COURT: Any objection?

10 MR. SHEVORSKI: I'm sorry, Your Honor. Are these  
11 your Notices of Appeal?

12 MR. MILLER: Yeah.

13 MR. SHEVORSKI: I've only got up to 261, but if it's  
14 a Notice of Appeal, that's fine.

15 THE COURT: They'll be admitted.

16 (Plaintiffs' Exhibit Number 262 admitted)

17 MR. MILLER: Can you see the letter (inaudible)  
18 request dated February 26th?

19 MR. SHEVORSKI: Ross, I have no objections to your  
20 Notice of Appeal.

21 MR. MILLER: Thank you.

22 THE COURT: And I already admitted it.

23 MR. SHEVORSKI: I guess it's already admitted.

24 THE COURT: I admitted it already. We're trying to  
25 get ahead of the game so we can get finished with this witness

1 today.

2 MR. MILLER: Got it.

3 (Pause in the proceedings)

4 BY MR. MILLER:

5 Q Okay. Well, so you're aware that -- you may or may  
6 not have been aware that I sent you a letter on behalf of my  
7 clients requesting the records; right? We discussed that  
8 previously --

9 A Yes.

10 Q -- or (indiscernible)? And you denied that request;  
11 correct?

12 THE CLERK: Mr. Miller?

13 BY MR. MILLER:

14 Q Are you aware that your department denied that  
15 request?

16 THE CLERK: I'm sorry. Is this Serenity -- is the  
17 Bates number for 262.4953531, is that the one we -- right?

18 MR. MILLER: Good question.

19 THE COURT: I can't read the Bates number on the  
20 bottom of that. Sorry.

21 THE CLERK: Is this the correspondence between  
22 Gravitas and --

23 THE COURT: It is 495 on the bottom.

24 THE CLERK: Okay. Thank you.

25 MR. MILLER: Yes.

1 THE CLERK: Sorry.

2 THE COURT: Thank you for blowing that up, Shane.

3 EXHIBIT TECHNICIAN: You're welcome. And I don't  
4 find a letter with that date on it.

5 MR. MILLER: Okay.

6 BY MR. MILLER:

7 Q So we requested e-mails to and from staff,  
8 contractors, agents, regarding scoring. We requested e-mails,  
9 text messages; reasons, analysis, or rationale for issuing or  
10 denying licenses; e-mails showing or describing how or when the  
11 assigned point values were provided; e-mails describing or  
12 detailing how the regulations were implemented.

13 We were told by your department that we should wait  
14 until the transparency bill was passed. We still haven't  
15 received any of the communications. So are you aware that that  
16 information still has not been provided to us?

17 A No.

18 Q But you intend to comply with the public records  
19 request?

20 A Within the law, yes.

21 Q Okay. Can we show Exhibit 206.

22 Sir, you're familiar in this PowerPoint, where they  
23 provided training, that the first several pages of each day,  
24 they went through several slides where it would indicate and  
25 stress the importance of confidentiality in the process. Are

1 you aware of that?

2 A No.

3 Q No. Well, you haven't reviewed any of these  
4 materials?

5 A No, I've never reviewed this.

6 Q You understand that was an important area in your  
7 department, was stressing the confidentiality of this process  
8 to all the evaluators?

9 A Yes, I do -- I do know that was, you know, passed on  
10 to the evaluators.

11 Q Okay. And what would the purpose of stressing  
12 confidentiality have been to the evaluators?

13 A To the evaluators?

14 Q Uh-huh.

15 A I would assume it's to preserve the integrity of the  
16 process.

17 Q And that would have also applied to the impartiality;  
18 is that right?

19 A Yes.

20 Q And an impartial process means that everyone should  
21 have access to the same rules; is that right?

22 A Yes.

23 Q And an impartial process would mean that everybody  
24 has access to the same instructions; is that correct?

25 A Yes.

1 Q Well, you made changes on how information about rules  
2 and instructions were communicated to applicants relative to  
3 the process that was run in 2014 to evaluate applications; is  
4 that correct?

5 A Wait. Say that again.

6 Q You made changes how you ran the process this time,  
7 in 2018, relative to how you conducted it in 2014, as to how  
8 you communicated the rules and regulations to applicants?

9 A Yes, I believe so.

10 Q Pull up Exhibit 5002. Can we go to Section 3. On  
11 the application instructions -- a little bit lower, for the  
12 application instructions -- okay. Here.

13 Deadline for submitting questions. Do you see that?

14 THE COURT: And this is the medical application?

15 BY MR. MILLER:

16 Q 6/20/2014, this is the medical application from 2014.

17 THE COURT: Thank you.

18 MR. MILLER: Thank you.

19 THE WITNESS: Yes, I see that.

20 BY MR. MILLER:

21 Q Okay. And the answers would be posted to the website  
22 on July 7th?

23 A Yes.

24 Q So does this appear that they had a formal process  
25 for submitting questions and a uniform process for posting



1 answers to those questions on their website -- on their  
2 application, rather?

3 A Yes.

4 Q All right. And you did not incorporate that as part  
5 of the process here; correct?

6 A Correct.

7 Q And, sir, are you aware that in helping to develop  
8 the process by which to evaluate the applications, Quantummark  
9 had a process in 2014 that they recommended be implemented in  
10 order to deal with questions and answers from applicants? Are  
11 you aware of that?

12 A No.

13 Q Pull up the -- is it 206, is that what it is, the  
14 2014 PowerPoint. It's Bates Number 21424. That would be -- I  
15 believe that's 250. It says 21424.

16 Do you see here this is taken from the -- it's 2014  
17 PowerPoint materials that were provided to training  
18 evaluators -- it was provided to evaluators at that time. Do  
19 you see there's, like, a flowchart that's identified. Do you  
20 see this?

21 A Yes.

22 Q All right. It says, Number 1, is request for  
23 applications posted to the website. And then move to  
24 questions --

25 THE COURT: Mr. Miller, you've got to be near a mic.

1 MR. MILLER: All right.

2 BY MR. MILLER:

3 Q Number 2 says questions submitted from applicants --

4 THE COURT: That's not near a mic. That's just  
5 raising your voice.

6 BY MR. MILLER:

7 Q Sir, can you read the next step for me.

8 A Sure. Which one are we on? Number 2?

9 Q Number 3.

10 A Three. Division reviews list of questions.  
11 Number 4, division removes duplicates, categorizes, and  
12 develops list of questions for response. Number 5, division  
13 develops answers to questions, 6/20 through 7/1/2014.  
14 Number 6, division reviews responses with DPBH and AG for  
15 approval on responses. Number 7, responses approved, and if  
16 no, division reviews answers to the questions; if yes, the  
17 answers are posted on division website on or before 7/7/2014.

18 And then it ends there.

19 Q And your department chose not to follow that process  
20 at all; is that right?

21 A I wouldn't say we chose to. I wasn't aware of that  
22 process.

23 Q You weren't aware of this process, but your  
24 department didn't follow anything like that, did they?

25 A No.

1           Q     All right. What process did you implement in order  
2 to deal with questions and answers from applicants as part of  
3 the application?

4           A     I don't think we followed a process per se. We had  
5 gone through, you know, almost 70 public meetings around there.  
6 You know, we had the Governor's Task Force which had several  
7 subcommittees and workshops and regulation workshops where they  
8 all had, you know, opportunity to comment and ask questions.  
9 And I believe we had an open public comment period for -- I  
10 believe it was well over a month, maybe even two, to make  
11 comments. But we didn't set forth a process, a Q and A process  
12 as it's described here.

13           THE COURT: So, sir, to make comments to what?

14           THE WITNESS: Comments to the regulations. Basically  
15 any comment. We're inviting comments regarding the regulations  
16 as a whole.

17           THE COURT: I just wanted to make sure I understand  
18 what you had a comment process for.

19           THE WITNESS: Yes, Your Honor.

20           THE COURT: Thank you. Sorry for the interruption,  
21 Mr. Miller.

22           MR. MILLER: No, that --

23 BY MR. MILLER:

24           Q     So as I understand it, you believe that --

25           THE WITNESS: Sorry.

1 THE COURT: It's okay. The marshal's phone went off  
2 last week.

3 THE WITNESS: I keep telling it to turn off and it  
4 won't.

5 MR. SHEVORSKI: Gavel?

6 THE COURT: If you use your gavel, you've lost  
7 control.

8 THE WITNESS: Okay. I'm sorry.

9 BY MR. MILLER:

10 Q So I understand your response, you believe that  
11 through the process of these public workshops and the task  
12 force and the hearings that you conducted, that all the  
13 applicants would have understood the rules that would have  
14 applied to this application; is that correct?

15 A I don't know if they would have understood. They had  
16 the opportunity to ask for clarifications on the regulations  
17 and participate in the process.

18 Q Okay. So if they had questions during that process  
19 that were unresolved, where they still had areas that needed  
20 further clarification, what was the process in order to get  
21 answers then?

22 A Well, they can submit -- you know, submit their  
23 concerns and we would try to resolve them.

24 Q And how could they submit their concerns?

25 A They could have written to the Department. They

1 could have picked up the phone and called. We're very  
2 accessible, you know, from the director on down, and voiced  
3 their concerns.

4 Q Okay. Not looking at concerns. What if they just  
5 had questions about how to interpret some provision of the  
6 rules?

7 A Questions were being taken through our marijuana  
8 inbox, and then I believe Ky was -- Ky or our PIO was  
9 responding to questions.

10 Q Okay. So questions were taken under the marijuana  
11 inbox -- was the process, is that correct, if you wanted to ask  
12 a question?

13 A Yes.

14 Q All right. And could you ask questions through any  
15 other way or just that marijuana inbox?

16 A I believe everyone is pretty much directed to the  
17 marijuana inbox.

18 Q Okay. So there weren't any communications outside of  
19 the marijuana inbox?

20 A Well, like I said earlier, I received some calls.

21 Q Okay. So there were communications outside the  
22 marijuana inbox?

23 A Yes.

24 Q So it was allowed to have communications outside the  
25 marijuana inbox that Ky would have responded to?

1 A Yes.

2 Q And --

3 A It's my understanding he received calls as well.

4 Q All right. And who else received calls asking for  
5 clarification?

6 A I believe maybe Steve Gilbert.

7 Q And who else?

8 A I don't know.

9 Q You're not sure?

10 A Not sure.

11 Q Was there any directive within the Department as to  
12 who had the authority to answer calls about the application?

13 A No, I don't think so.

14 Q So anybody in the Department could have fielded a  
15 call with a question about the application and try to do the  
16 best they could to provide that applicant information?

17 A I believe if someone received a call -- you know, if  
18 an admin received a call, whatever, they would forward or  
19 direct that call to either Steve Gilbert or Ky.

20 Q Okay. So the process was that if anyone receives a  
21 call with a question about the application, they should direct  
22 it to Steve Gilbert or Ky?

23 A Yes.

24 Q But not to you?

25 A No, they weren't directed to me. I normally received

1 direct calls.

2 Q And do you know how many calls Steve Gilbert or Ky  
3 Plaskon would have received?

4 A I have no idea.

5 Q So that wasn't documented?

6 A Not to my knowledge.

7 Q And when they received those calls, what was the  
8 process in order to respond to an applicant with a question  
9 that they had?

10 A You know, I'm not sure. They -- we'd direct them to  
11 submit their questions through the marijuana inbox. They may  
12 have answered the question on the phone. I don't know what --  
13 how they were directed.

14 Q So you don't know whether or not, you know, they  
15 recorded the question that was asked and distributed it through  
16 the Department to make sure that it was a uniform answer?

17 A I don't -- I don't think they would have -- they  
18 would have recorded the question on a, you know, phone call or  
19 whatever. They probably handled it on the spot. If it went to  
20 the inbox, there would be a record of it.

21 Q Okay. What was the process to make sure that the  
22 answers that Ky and Mr. Gilbert were providing were the same?

23 A It's my understanding that they were a very general  
24 response. So they may have a certain set general response.

25 Q Okay. Is that general response documented somewhere?

1           A     You know, I don't -- I don't know that, if Steve or  
2 Ky have it recorded somewhere.

3           Q     So it could have very well been different responses  
4 that they provided to applicants, for all you know; correct?

5           A     Potentially, yeah.

6           Q     And what about the communications with you? Is there  
7 any process to make sure that the information that you were  
8 giving to applicants, if you were higher up in the Department  
9 and had more authority, was the same information that Ky and  
10 Mr. Gilbert provided?

11          A     No. I mean, if -- I don't think there was a time  
12 where I had to pass something on to them as -- you know,  
13 regarding a question.

14          Q     So you don't recall any instances where you fielded a  
15 question and felt that it needed to be communicated to Ky or  
16 Mr. Gilbert?

17          A     I would -- I would -- there was the time when I was  
18 getting these calls about the -- you know, what if I owned a  
19 building, what if I lease, something like that. I would tell  
20 them, "Hey, I'm getting these questions. We need to attempt to  
21 clarify this."

22          Q     Okay. So you had a discussion about the physical  
23 location questions, that you remember?

24          A     Yes.

25          Q     What did you tell Mr. Plaskon and Mr. Gilbert about



1 the conversation that you had?

2 A That I was getting those type of questions and that  
3 we needed to make an attempt to clarify it.

4 Q When did you have that conversation with Mr. Plaskon  
5 and Mr. Gilbert?

6 A Well, I don't know.

7 Q Was it before the application was released?

8 A No. It was after.

9 Q So after the application was released. This was on  
10 July 5th; correct?

11 A Right.

12 Q Okay. Are you aware of whether or not that  
13 conversation occurred before July 30th, when the Department  
14 issued a different version of the application?

15 A Well, it was around that time. We think that's  
16 where -- where I was saying yesterday, I didn't know that they  
17 didn't put out the -- like a second application. I thought  
18 that that communication for clarification was going to be put  
19 out, like, in a memo to -- or on Listserv or something like  
20 that. But that -- apparently that change was put on the  
21 application, and that second application came out with that  
22 wording, if owned or leased property, put here.

23 Q Okay. So you became aware that there were some  
24 questions about whether or not a physical location would be  
25 scored by the application. And you directed Mr. Gilbert and

1 Mr. Plaskon to do what? What did you direct them to do in  
2 response to that?

3 A That we were going to clarify or attempt to clarify  
4 these items. There was another question regarding the word  
5 "construction," I believe -- or, you know, versus "general  
6 floor plans." So I think -- I don't remember how many  
7 clarifying points we wanted to make. And then I asked them to  
8 make those clarifications and communicate it.

9 Q So you provided them with criteria related to what a  
10 physical location would require, and what was the other detail?

11 A Not whether it was required.

12 Q It was -- sorry?

13 A I'm sorry?

14 Q Physical location was scored; correct?

15 A No. There was a question -- we were getting calls  
16 like, they say: Hey, I own this building or I lease this  
17 building. You know, do I put this address here or where do I  
18 put it.

19 Q All right.

20 A So then -- and then there was a -- I remember a  
21 question regarding the word "construction" because I believe  
22 that was changed to general floor plans in the regs. So I know  
23 I -- those are two items I remember that we wanted clarified.  
24 So my instruction to them was, you know -- and I don't know if  
25 they had some items as well. I think they brought up some

1 items. Don't remember what they are. But a clarification was  
2 -- were, like, three, four, five items, something like that.  
3 My instruction to them was this gets us clarified and  
4 communicated. That's why I thought they did it by Listserv.

5 Q And when that occurred, did you ever follow up to see  
6 what kind of answer that they provided to the applicants?

7 A No. I trust them to do what they had to do.

8 Q So it wasn't important enough to you to say, look,  
9 these questions came up, and I'd better review it to make sure  
10 that they had accurately communicated that they were given the  
11 response so they follow the applicants by way of this rule?

12 A It's not that it's not important to me. I have  
13 people that work for me that are high grades in State service,  
14 professional level, and I expect them to do what they need to  
15 do and do it right.

16 Q And you delegate it, that task for them to do, to  
17 communicate to the applicants --

18 A Yes.

19 Q -- is that correct?

20 When you got that -- any of these questions at all,  
21 do you remember reviewing any of them with the attorney  
22 general's office?

23 THE COURT: And don't tell us what they told you, if  
24 you did.

25 MR. MILLER: Thank you, Your Honor.

1 THE WITNESS: Yes.

2 BY MR. MILLER:

3 Q Which ones? Which one or ones do you recall?

4 A I don't -- I believe all of them.

5 Q You reviewed all the responses with the attorney  
6 general's office?

7 A All the points where we're going to make the  
8 clarifications.

9 Q Okay, sir. Sorry. That's the wrong question, but  
10 let's stick there.

11 So you provided guidance to Mr. Gilbert and  
12 Mr. Plaskon that they should come up with a response; is that  
13 right?

14 THE COURT: He called it a clarification.

15 BY MR. MILLER:

16 Q So the question is about getting clarifications, the  
17 eight criteria that you described in your earlier testimony;  
18 right?

19 A Right, clarifications to those inquiries were where  
20 we were getting.

21 Q And you believe that that was vetted with the  
22 attorney general's office?

23 A The clarifications, yes.

24 Q And how do you know that that was vetted?

25 A I went over them with the AG's office.

1           Q     So you had one meeting with Mr. Plaskon and  
2 Mr. Gilbert. Did you have a subsequent meeting with the  
3 attorney general's office or were they present at that meeting?

4           A     No, it was separate.

5           Q     Okay. So you went over the responses with the  
6 attorney general's office or the questions?

7           A     I don't know what I could say.

8           THE COURT: So we don't want to know the substance of  
9 your communications with the attorney general, but if you  
10 sought legal advice related to the way to respond to a  
11 question, you can say, yes, you did, but not tell us what you  
12 did as a result or what the AG told you.

13          THE WITNESS: Okay.

14          THE COURT: Does that help?

15          THE WITNESS: That -- that helps some.

16          THE COURT: Okay.

17          THE WITNESS: Some.

18          THE COURT: And if you want a minute to consult with  
19 your counsel about how to answer the question without waiving  
20 the privilege, I would be happy to give you a short recess to  
21 address that issue so you can navigate that difficult privilege  
22 issue. And you just have to ask me for that, sir.

23          THE WITNESS: Yes, I'd like a few minutes.

24          THE COURT: Okay. So I'm going to have a requested  
25 recess for you to address the privilege issue that is present

1 in the answer.

2 MR. SHEVORSKI: Thank you, Your Honor.

3 THE COURT: Five minutes, guys.

4 (Proceedings recessed at 9:48 a.m., until 9:54 a.m.)

5 THE COURT: Mr. Pupo, did you have an opportunity to  
6 consult with your counsel?

7 THE WITNESS: Yes, Your Honor.

8 THE COURT: Do you feel like you understand the issue  
9 related to privilege?

10 THE WITNESS: Yes.

11 THE COURT: Okay. Mr. Miller, we're going to try and  
12 navigate the privilege issue since the witness has had an  
13 opportunity to consult with his counsel.

14 MR. MILLER: So is that question before the witness,  
15 Your Honor?

16 THE COURT: It is still before the witness.

17 MR. MILLER: Okay. All right.

18 THE WITNESS: Okay. Can you repeat the question?

19 THE COURT: No, you can't have a read back, because  
20 we are on video.

21 MR. MILLER: Right. It's not -- I get it.

22 BY MR. MILLER:

23 Q You had a communication with the attorney general's  
24 office, I believe, as you testified; is that right?

25 A Yes.

1 Q Okay. And did you consult with the attorney  
2 general's office about the questions that had been asked or  
3 about the response that your department ultimately issued?

4 MR. SHEVORSKI: Your Honor, I think that gets a  
5 little too close about the substance of communications between  
6 counsel and client.

7 THE COURT: So how about we ask it this way: Sir,  
8 did you consult with the attorney general's office before you  
9 gave direction to Ky and Mr. Gilbert on how to respond?

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: Okay.

12 BY MR. MILLER:

13 Q And when did that meeting occur?

14 A I don't remember the date.

15 Q Okay. Were Mr. Gilbert or Mr. Plaskon also in  
16 attendance at that meeting?

17 A No.

18 Q All right. And did it occur in person?

19 A Yes.

20 Q And who from the attorney general's office did you  
21 meet with?

22 A What --

23 MR. SHEVORSKI: That's a fair question.

24 THE COURT: The identity of the deputy attorney  
25 general that you talked to?

1 THE WITNESS: Yes. Robert Werbicky.

2 BY MR. MILLER:

3 Q So as I said, you reviewed the information with the  
4 attorney general's office and then you relayed that information  
5 to Mr. Gilbert and Mr. Plaskon?

6 MR. SHEVORSKI: Counsel, you --

7 BY MR. MILLER:

8 Q You related a direction --

9 THE COURT: So and then you told Mr. Plaskon and Mr.  
10 Gilbert what you wanted them to do?

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. SHEVORSKI: Thank you, Your Honor.

14 BY MR. MILLER:

15 Q And after that occurred, you had no more follow-up as  
16 to what response was provided to the applicants, correct?

17 MR. SHEVORSKI: Objection. Vague, Your Honor.

18 THE COURT: Overruled.

19 THE WITNESS: Yeah, I don't recall or I don't  
20 remember if I, you know, reviewed the document -- I don't  
21 believe so.

22 BY MR. MILLER:

23 Q You don't believe you reviewed the response that was  
24 ultimately provided --

25 A I don't remember reviewing what they put out.



1 Q And you testified that you weren't aware of how they  
2 communicated that information to the applicants, correct?

3 A Yes, that's correct.

4 Q All right. So you're not aware of whether or not  
5 that information was related to all applicants; is that also  
6 true?

7 A I believed that they were going to put out a list to  
8 all applicants.

9 Q So other than the areas that you just identified that  
10 would have been clarified in that response, how many other  
11 areas that pertain -- of questions that pertain to the  
12 application did your office receive questions on and you  
13 believed your office provided some type of response to?

14 A I don't remember the number. I'm guessing something  
15 like five, maybe.

16 Q Maybe five other areas that your office provided  
17 responses to?

18 A I believe we -- there were maybe, like, five areas  
19 that we provided clarification on the application.

20 Q Okay. And which areas are those?

21 A I don't remember. Like I say, I remember there was a  
22 construction one.

23 Q The construction one, what was the question?

24 A Regarding -- I believe there was -- I believe the  
25 application said construction plans, maybe? And it was changed

1 to general floor plan. That's the main one I remember. I  
2 don't remember what the other ones were.

3 Q There was a question from -- relating to there were  
4 construction plans, and you believe that the application  
5 required just floor plans; is that correct?

6 A General floor plans.

7 Q General floor plans. And do you know how that  
8 question was presented? Who did it come from?

9 A I don't remember.

10 Q Okay. So is that a question you recall that you  
11 received, or was it filtered by somebody else on your staff?

12 A I don't remember. It's -- could have a call I  
13 received, it could have been something that was collected by Ky  
14 and Steve Gilbert. And they told me this was a common question  
15 or something to that effect.

16 Q Okay. And do you believe that it was a common  
17 question? Did it seem like it was coming from -- do you recall  
18 it sitting here today, do you recall that that's the question  
19 that -- what was asked by multiple applicants?

20 A You know, I don't know. I know that it was something  
21 that we felt we needed to clarify and we attempted to clarify.  
22 So I, you know, I don't know if it was common -- uncommon or  
23 just something that we felt needed to be clarified.

24 Q Okay. And how did you provide clarification in that  
25 area?

1           A     So same thing, the clarifications were provided to  
2 Steve Gilbert and Ky, and I thought they were going to put them  
3 out to applicants on all list -- on the listservs.

4           Q     Okay. So in that instance, when you became aware of  
5 questions that may have been posed by an applicant, did you  
6 review that question with the attorney general's office?

7           A     Okay. Say that again?

8           Q     Did you that review that question that we were just  
9 talking about here with the attorney general's office?

10          A     Which question?

11          Q     The one relating to the construction plan and how it  
12 might relate to the general field plan -- game plan?

13          A     So my recollection is we had -- it wasn't, like,  
14 piecemeal. We had a set number of areas that we felt needed to  
15 be clarified in the application, and then that was reviewed.

16          Q     So you believe that --

17          A     The clarification was put out at one time for, like,  
18 the five or six areas, whatever it was.

19          Q     Okay. So maybe I didn't ask that question. So other  
20 than the criteria that we discussed, where you met with Mr.  
21 Werbicky and then directed Mr. Plaskon and Mr. Gilbert to  
22 provide a response, other than the criteria that was part of  
23 that discussion, do you remember any other questions being  
24 asked from applicants that may have resulted in a response  
25 being provided from your department?

1 A No.

2 Q So everything that was asked up to that point when  
3 you met with Mr. Werbicky would have been addressed, you  
4 believe, through the notification that was ultimately sent out  
5 at your direction?

6 A As far as I recall.

7 Q And you don't have any documentation, correct, as to  
8 how many questions might have come in to the department asking  
9 for clarification?

10 A No, not that I know of other than probably the email  
11 record from the marijuana inbox.

12 Q Okay. And we asked for those emails, right, and  
13 you're going to provide those?

14 A Yes, I guess. Uh-huh.

15 Q And since it was a common one, that when the  
16 questions came into the inbox there, that you would distribute  
17 those questions throughout the department?

18 A No, I believe Ky was responsible for responding to  
19 the marijuana inbox.

20 Q Okay. So if the question came into the marijuana  
21 inbox, then Ky was tasked with giving the response?

22 A Yes.

23 Q Okay. And do you recall Ky asking you the  
24 clarification on any of the questions that came into the  
25 marijuana inbox?

1           A     It's possible. I don't remember any specific  
2 instance.

3           Q     Are you aware whether or not Ky would have discussed  
4 it with Mr. Gilbert as to any questions that came in through  
5 the marijuana inbox before providing a response?

6           A     He may have. That would probably -- that would be  
7 his go-to person.

8           Q     Okay. And if a question came in through the  
9 marijuana inbox, your understanding that Mr. Plaskon would have  
10 answered that question directly to that applicant?

11          A     I believe so.

12          Q     And would he then make that information available to  
13 all applicants?

14          A     I don't know.

15          Q     But that wasn't part of the process that you directed  
16 him for, correct?

17          A     No.

18          Q     I want to show you Exhibit 251.

19               MR. MILLER: Was that admitted?

20               THE CLERK: It's admitted.

21               MR. MILLER: Okay.

22 BY MR. MILLER:

23          Q     401859. Page 2, it says, you know, I'll read it  
24 here. All applicant questions were directed to the EIO to  
25 receive a consistent message. See that part?

1 A Yes, Number 18?

2 Q Yes. Can you read that for us?

3 A All applicant questions were directed to the EIO to  
4 receive a consistent message, a message from the EIO was that  
5 applicants should include as much information as possible for  
6 all sections.

7 Q So this is an email from Mr. Plaskon; is that  
8 correct?

9 A From where? Okay. Yes.

10 Q Yes, is that true?

11 A Yes.

12 Q All right. And what's -- what was the date of that  
13 email?

14 A January 15, 2019.

15 Q And who's it to?

16 A Stephanie Klapstein, Steve Gilbert, and myself.

17 Q Okay. What was the general purpose of this email?

18 MR. PARKER: Your Honor, may I approach? Just to  
19 take a look.

20 THE COURT: To read it?

21 MR. PARKER: Yes, please.

22 THE COURT: You may.

23 THE WITNESS: Yeah, I don't remember what this is  
24 for.

25 / / /

1 BY MR. MILLER:

2 Q Is this an email that was sent out after the  
3 applications process had been completed, correct?

4 A Yes.

5 Q And this is, you know, it was sent out after you had  
6 announced the winners?

7 A Yes, right.

8 Q And this is an email that's sent in January, so it  
9 was before -- that was after this lawsuit had been filed,  
10 correct?

11 A Yes.

12 Q All right. So is this email not provide a response  
13 that could be distributed to any parties as to the process that  
14 occurred?

15 A I'm sorry?

16 Q Review the email. I'm just looking for a  
17 characterization of what you think this email is intended to  
18 convey.

19 MR. SHEVORSKI: Your Honor, is there a paper copy of  
20 that so you can see the whole thing without it being slow.

21 THE COURT: Yes. What's this number again?

22 MR. SHEVORSKI: 251. I think it's a little  
23 challenging to read.

24 THE COURT: So my guess, sir, is it's going to be  
25 near here.

1 THE CLERK: It's at the very bottom of the cart, Your  
2 Honor.

3 THE COURT: I'm sorry, it's at the very bottom of the  
4 cart, sir, because it's a multipage document. You may want to  
5 look at the paper copy.

6 THE WITNESS: Okay.

7 THE COURT: That aren't right there? Ramsey, cart by  
8 the witness. 251?

9 (Pause in proceedings.)

10 THE COURT: So, Mr. Shevorski, he has the binder. I  
11 don't know if that will be helpful.

12 MR. SHEVORSKI: Thank you, Your Honor. We'll see.

13 THE WITNESS: Okay.

14 BY MR. MILLER:

15 Q So what's your understanding of the purpose of this  
16 email?

17 A Looks like it's, basically, a timeline of some  
18 actions that were taken by the department, except for the  
19 application process and -- you got some sort of timeline or  
20 step-by-step of what the process was?

21 Q Okay. And in the documentation of step-by-step of  
22 what the process was, that would apply to an explanation of the  
23 department's process for the evaluation of these applications;  
24 is that correct?

25 A I don't think it's the full picture of the training



1 step by step that they took. So it's a step-by-step of the  
2 training, it looks like.

3 Q It's a -- does it not provide information that would  
4 have been respected that relate to interested parties as to  
5 what process the Department (indiscernible) in evaluating these  
6 applications?

7 A No, I don't believe so.

8 Q No? What does it do?

9 A I'm sorry?

10 Q What is it saying I'll do that?

11 A Yeah, it could have been a request from someone that  
12 wanted this information. I don't know, I -- a lot of these  
13 things I just get cc'd on. I don't remember a particular  
14 request for this information.

15 Q Got it. But that section, all applicant questions  
16 were directed to the EIO to receive a consistent message,  
17 that's not true, is it? It's not accurate.

18 A I think generally it is. I mean, I did receive calls  
19 that weren't directed to the EIO.

20 Q Is that all applicant questions are directed to the  
21 EIO to receive a consistent message, that's not accurate,  
22 right?

23 A Right.

24 Q You're aware of many instances where that procedure  
25 wasn't followed, correct?

1 A Yes.

2 Q Are you familiar with the State's Division of  
3 Purchasing -- Department of Purchasing?

4 A Somewhat.

5 Q Okay. You've interacted with them before, correct?

6 A Not directly.

7 Q None of the board examiners of the -- they administer  
8 and gone through the process of getting state contracts  
9 approved, correct?

10 A Do you know in 15 years, I've never on the board of  
11 examiners.

12 Q You have not, huh?

13 A Right.

14 Q Amazing. You avoided that torture.

15 A Yeah.

16 Q But you were aware of the process that in order to  
17 get contracts approved in the state, you'd have to bring it to  
18 the board of examiners, correct?

19 A Generally, I think there's a threshold, a dollar  
20 threshold that may not have to go through the board of  
21 examiners.

22 Q Right. But if it's under \$10,000, you have -- you  
23 may not have to go through the board of examiners. But we have  
24 reviewed contracts that the department head approved  
25 (indiscernible) testimony yesterday that were over \$10,000; you

1 recall that, correct?

2 A I don't recall reviewing a contract.

3 Q Okay. Well, you recall that we discussed the money  
4 that was allocated to you from the interim finance committee  
5 and in order to contract with the employees of Manpower,  
6 correct?

7 A Yes.

8 Q All right. And you're aware that also required a  
9 contract of employment for each of those individuals that would  
10 have then been reviewed by the board of examiners?

11 A I'm not sure that process -- I don't get involved in  
12 that, we have our fiscal department deals with that.

13 Q Got it. Got it. Have you had any involvement with  
14 the State's Department of Purchasing, then? You aware of their  
15 role?

16 A In -- yeah, I'm aware of their role.

17 Q What is their role?

18 A They manage state contracts.

19 Q And what's the purpose of having the State Department  
20 of Purchasing manage those contracts; you aware of that?

21 A Generally, I guess.

22 Q Okay. And are you aware that those contracts that  
23 govern by entire chapter of statutes?

24 A Yes.

25 Q Okay. And the driving purpose behind many of those

1 statutes is to provide -- make sure that when -- through the  
2 contract process, there's impartiality and fairness; is that  
3 correct?

4 A I believe so, yes.

5 Q Okay. The mission of the Purchasing Department, the  
6 State of Nevada Purchasing Division is a public purchasing  
7 entity securing goods and services to govern and is statewide.  
8 The staff of the purchasing division maintains the highest  
9 standard professional ethics and professional integrity  
10 including, but not listening -- limited to the following:

11 No employee shall engage in any action,  
12 communication, or relationship that compromises or gives the  
13 appearance of compromising their ability to reach fair and  
14 impartial decisions regarding any procurement or procurement  
15 process.

16 The employees will refrain of soliciting or accepting  
17 money, loans, credits, or prejudicial discounts in the  
18 acceptance of gifts, entertainment, gratuities or services from  
19 present or potential suppliers?

20 Gratuities, gifts, and other considerations as a  
21 result of any past, current, or future business relationship to  
22 any employee or a member of their family is prohibited. Each  
23 employee will abide by the laws of the state of Nevada and the  
24 United States of American, including, without limitation, NRS  
25 Chapter 333, NRS Title 8, NRS 281.441.

1           Then it cites another statute. You're generally  
2 familiar with the purchasing department's role in providing and  
3 adhering to that mission, did you not?

4           A     Generally.

5           Q     Okay. Are you aware that the Department of  
6 Purchasing maintains an RFP template? Are you familiar with  
7 the term RFP?

8           A     Yes.

9           Q     Okay. And it's a Request for Proposal, right?

10          A     Yes.

11          Q     (Indiscernible) contract, it is a template that may  
12 be used; is that correct?

13          A     Yes.

14          Q     All right. And you're familiar with the Department  
15 of Purchasing maintains a template that could be used by  
16 departments of divisions within the state of Nevada that those  
17 departments could then modify before they quote out a bid?

18          A     I recently learned that, yes.

19          Q     Okay. I'm going to show you Exhibit 261.

20                THE COURT: What's 261?

21                MR. MILLER: It's the state's proposal.

22                THE COURT: Any objection?

23                THE CLERK: Proposed.

24                MR. SHEVORSKI: No, Your Honor.

25                THE COURT: Be admitted.

1 (Plaintiffs' Exhibit Number 261 admitted)

2 BY MR. MILLER:

3 Q Sir, you said you recently became familiar with this  
4 document?

5 A Not the -- I -- yeah, basically. Yes.

6 Q Have you had an opportunity to review it?

7 A No.

8 Q Okay. Would you like to review it now?

9 A Sure.

10 Q Okay.

11 THE COURT: You want the hard copy, sir?

12 THE WITNESS: Yes, ma'am.

13 THE CLERK: It's in the same binder.

14 THE COURT: It's in the same binder you're already  
15 in.

16 THE WITNESS: What's the number? I'm sorry, what's  
17 the number?

18 MR. MILLER: 261.

19 BY MR. MILLER:

20 Q Sir, it's not necessary to read the entire contract.  
21 (Indiscernible.) I'll help you. I'll just read specific parts  
22 for -- if you could just -- generally flip through it.

23 A (Witness complies.) Okay.

24 Q When you flipped through it, does it appear as  
25 thought it's generally similar to applications from both 2014

1 and 2018 in terms of layout?

2 A I don't believe so.

3 Q Where does it look like it's not similar?

4 A Form and content.

5 Q Okay. There are provisions that provide for  
6 instructions and maybe the same headings as you see in 2014 and  
7 2018?

8 A Not the headings. I guess generally the 6.2, 6.21,  
9 6.2-something, you know, that -- that looks similar.

10 Q All right. And on page -- Bates stamp 938, 939, the  
11 tasks and the date and time, that doesn't look generally  
12 familiar to you relative to the medical marijuana application  
13 or the recreational marijuana application?

14 A 939 looks familiar to what you showed me earlier from  
15 the 2014 application.

16 Q I'm sorry?

17 A 939 looks familiar to what we saw earlier on the  
18 application.

19 Q Okay. What about near the end, Bates stamp 964?

20 A Okay.

21 Q See that, sir?

22 A Yes.

23 Q It's identified here as Attachment I, Federal Laws  
24 and Authorities.

25 A Yes.

1 Q Do you recognize that?

2 A Yes.

3 Q Okay. Do you recognize that as appearing in the 2018  
4 application?

5 A Yes, I don't -- yeah. Without going through each  
6 point, I would say generally, yeah, it looks like the document.  
7 Similar.

8 Q Similar?

9 A Similar, if not the same.

10 Q Okay. Looks pretty close to the same --

11 A Yes.

12 Q -- is that fair?

13 A Yes.

14 Q All right. And read for me at the top there's a  
15 highlighted section in blue; what does that say?

16 A You want me to read the highlighted section or below  
17 it.

18 Q Yes.

19 A Both?

20 Q Just the highlighted section.

21 A Just the highlighted section?

22 Note to RFP preparer: This attachment is included  
23 only if the project is fairly funded. Agency shall review to  
24 delete those laws and authorities are not necessary to their  
25 project contract.



1 Q Okay. So we discussed the fact that this -- it's  
2 Attachment J in the 2018 application, was not included in the  
3 2014 version, correct, of the application?

4 A Right.

5 Q But it was, obviously, included in the 2018; is that  
6 right?

7 A Yes, it appears so.

8 Q And your knowledge, you testified that you weren't  
9 sure where that came from, but does it look like --

10 A Right.

11 Q -- it's substantially similar, right? Might have  
12 been pulled from the RFP?

13 A Looks like yes.

14 Q Okay. So it looks like at least somebody in the  
15 department may have reviewed the state's RFP packet before your  
16 application (indiscernible), right?

17 A It appears that way.

18 Q In reviewing that -- this template, there's some  
19 other sections, obviously, they would have chose not to  
20 include; is that a fair statement?

21 A I'm sorry, can you say that again?

22 Q We'll just skip to it. Let's -- to -- I'll strike  
23 that.

24 Go to Bates stamp 938, 939.

25 A (Witness complies.)

1 Q 938, yeah. Start at the very top.

2 A (Witness complies.) Okay.

3 Q See here, sir, under Section 7.1, they have criteria  
4 that an agency could follow for questions and answers. It  
5 says -- there's a first set of questions and answers, in lieu  
6 of a (indiscernible) conference, your agency (indiscernible)  
7 jobs have questions and/or comments in writing received either  
8 by email or facsimile, questions are referenced, they identify  
9 an RFP number, they've addressed to the State of Nevada. And  
10 there's provided a deadline for submitting questions. And then  
11 all questions and comments should be addressed in writing and a  
12 response emailed or faxed sent to vendors on or about the date  
13 specified; see that? Under Section 7.1?

14 A 7.1. Yes.

15 Q And they identify a process where you could have a  
16 second set of questions and answers, right? And they give you  
17 instructions on how that would be conducted, right?

18 A Yes.

19 Q If you look at the bottom of it, they've got  
20 deadlines that would be for submitting first set of questions.  
21 Flip to the next page, (indiscernible) how you would post those  
22 answers to a Web site, deadlines for submitting second set of  
23 questions.

24 A Yes.

25 Q And you would post those answers to the website.

1 Turning your attention to 940, page 940, page 12, of that  
2 document. Look under 9.1.13. Can you read that for us?

3 A Shows: For purposes of addressing questions  
4 concerning this RFP, the sole point of contact shall be the  
5 contact that's specified on page 1 of this RFP upon issuance of  
6 this RFP, other employees and representatives of the agencies  
7 identified in the RFP shall not answer questions or otherwise  
8 discuss the contents of this RFP with any prospective vendor to  
9 the representatives. Failure to observe this restriction may  
10 result in disqualification of any subsequent proposal per NAC  
11 333.155(3). This restriction does not preclude discussions  
12 between affected parties for the purposes -- or for the purpose  
13 of conducting business unrelated to this procurement.

14 Q And that regulation, 333.155(3), are you familiar  
15 with that provision?

16 A No.

17 Q Okay. Can you -- NAC 333.155.

18 MR. MILLER: You have that, Shane?

19 UNIDENTIFIED SPEAKER: I do not.

20 MR. MILLER: Okay.

21 BY MR. MILLER:

22 Q It provides that -- before that, it says in here:  
23 Request for proposal, the agency -- the administrator using  
24 agency must designate the person to answer questions concerning  
25 the contract that will be awarded by competitive selection

1 pursuant to the request for proposals. Except as otherwise  
2 provided in NAC 333.165, the percent must be the only contact  
3 person throughout the process of awarding the contract.

4           The person that wishes to submit a proposal or a  
5 representative of such a person shall not ask questions of or  
6 otherwise discuss the contents of a request for proposals with  
7 an employee or representative of a using agency identified in  
8 the request for proposals as the agency for list of purchases  
9 to be made unless the employee or representative of the using  
10 agency is the person designated by the using agency as the  
11 contact person pursuant to Subsection 1.

12           And here's the provision that they cite that would be  
13 a penalty for a violation of that: The administrator of the  
14 division or the chief of the using agency may disqualify a  
15 proposal submitted by a person who violates the provisions of  
16 Subsection 2.

17           Your department didn't follow that at all, right?

18           A    No. This application process is not through the  
19 purchasing division.

20           Q    Okay. But you acknowledge that there's a standard of  
21 set of criteria that are used in the state of Nevada for  
22 competitive contracts, correct?

23           A    Yes, through the purchasing division.

24           Q    And you didn't follow that?

25           A    No.

1 Q You didn't designate a sole point of contact that  
2 would have received all the questions and disseminated all that  
3 information to all the applicants, correct?

4 A Correct.

5 Q And even though you didn't use the Department of  
6 Purchasing, nothing would have prevented you from having that  
7 department come in and help you administer this process, right?

8 A Right.

9 Q So you could have asked the division or person to  
10 come in and help administer this so that I would have been a  
11 fair process for everybody, correct?

12 A I believe so.

13 Q You indicated that you thought that your department  
14 was accessible, right?

15 A Yes.

16 Q And able to answer questions, correct, from  
17 applicants?

18 A Yes.

19 Q And does that include yourself, you're accessible to  
20 all applicants?

21 A I try to be, yes.

22 Q At all times?

23 A At all times.

24 Q Okay. You think all applicants had equal means of  
25 getting a hold of you?

1 A Yes, I believe so.

2 Q So the -- all applicants have access to a direct  
3 phone line where you could be reached?

4 A I believe so.

5 Q All applicants have access to your email address?

6 A Yes, I believe so.

7 Q All applicants have access to your cell phone?

8 A I don't believe so.

9 Q How many cell phones do you have?

10 A Two.

11 Q Okay. And is there a personal cell phone that you  
12 carry?

13 A Yes.

14 Q And is there a cell phone that the State pays for?

15 A Yes.

16 Q Okay. So you had one of each; you've got a personal  
17 phone and a State cell phone?

18 A Yes.

19 Q And that's it, no other cell phones?

20 A No other cell phones.

21 Q Okay. And you believe that the applicants had  
22 access -- some applicants had access to your State cell phone;  
23 is that correct?

24 A Yes.

25 Q Okay. But not all?

1 A No, not all.

2 Q Okay. And did some applicant have access to your  
3 private cell phone?

4 A Yes.

5 Q But not all applicants, obviously, didn't have access  
6 to your private cell phone either, right?

7 A I don't believe so.

8 Q And did you use your State issued cell phone to  
9 communicate with applicants about the application?

10 A I'm sorry?

11 Q Did you ever use your State issued cell phone to  
12 communicate with applicants about the application?

13 A I don't believe so.

14 Q Okay. Did you ever use your State cell phone to  
15 communicate with any applicant representatives about the  
16 contents of the application?

17 A I don't believe so.

18 Q You ever use your personal cell phone to communicate  
19 with applicants or applicants' representatives about the  
20 contents of the application?

21 A I don't believe so.

22 Q Okay. Do you believe all communication happen on the  
23 phone or through email?

24 A Yes.

25 Q Okay.

1 A Well, you said on the phone or through email? No.

2 Q No? How else did communications take place?

3 A In person.

4 Q Person? In person also. All right. Do you recall  
5 calls on either your private or personal cell phone that's a  
6 private or State issued cell phone from any applicants asking  
7 questions for clarification on an application?

8 A Okay. Say it again?

9 Q Do you recall receiving any calls on either of your  
10 cell phones from applicants or their representatives with  
11 questions about the application?

12 A Generally, I think I did.

13 Q All right. And did you communicate with them on just  
14 your State phone or did you also communicate with them on your  
15 personal phone?

16 A I think it was my personal phone.

17 Q Okay. So primarily the questions that you received  
18 on your personal phone were -- that's where they asked  
19 questions; is that right? Want me to restart that question?

20 How many calls do you think you received on your  
21 personal phone with questions about the application?

22 A I don't know. I have no idea.

23 Q A lot?

24 A I wouldn't say a lot.

25 Q It wasn't an irregular occurrence?



1 A Yeah, I think it was a rare occurrence.

2 Q Okay. If it was a rare occurrence, who do you  
3 remember talking to on your personal cell phone with questions  
4 about the application?

5 A Amanda Connor. She's really the only one I kind of  
6 remember.

7 Q Did this conversation --

8 A On the phone.

9 Q I'm sorry?

10 A On the phone, that's the only one I can remember.

11 Q Okay. So Amanda Connor was able to call your  
12 personal cell phone and ask questions about the application.  
13 Did you give her responses to those questions?

14 A She really only kept bugging me and annoying me about  
15 one question.

16 Q Okay. What question was that?

17 A Physical location. Physical address.

18 Q What was the question that Amanda Connor asked you  
19 with respect to physical address?

20 A It was something to the effect of is physical address  
21 required or do they need a physical address if it's not scored.

22 Q Okay. You said she kept bugging you. When did she  
23 first call you and ask you a question about physical address?

24 A I believe it was a email, maybe.

25 THE COURT: Can I interrupt? How did you know -- how

1 did she know it wasn't going to be scored?

2 THE WITNESS: It's in the regs, Your Honor.

3 THE COURT: Where in the regs?

4 THE WITNESS: Doesn't exactly say you won't be  
5 scored, says land -- I believe it says land use or zoning is  
6 not part of the criteria.

7 THE COURT: Right.

8 THE WITNESS: Right. So physical location is not  
9 part of the scoring criteria.

10 THE COURT: So you think the fact that land use and  
11 zoning aren't going to be considered means physical location  
12 under the regs is not going to be considered as part of the  
13 application process for qualification?

14 THE WITNESS: The -- I don't remember the exact  
15 wording, but --

16 THE COURT: So how did Ms. Connor know --

17 THE WITNESS: -- basically, yes.

18 THE COURT: -- physical location wasn't going to be  
19 scored?

20 THE WITNESS: Well, because it was also part of  
21 the -- all the conversations between -- in the governor's task  
22 force and the workshops. And that's something that I believe  
23 industry wanted, was that the physical location wasn't part of  
24 the scoring criteria.

25 THE COURT: Sorry for the interruption, Mr. Miller.

1 MR. MILLER: No problem.

2 BY MR. MILLER:

3 Q Discussed this yesterday, you keep referencing that  
4 it's part of the governor's task force that provided a  
5 recommendation of that physical location, right?

6 A I believe so, yes.

7 Q All right. And you're aware that Amanda Connor was  
8 one of the co-chairs of the subcommittee to evaluate the  
9 regulations that would have been included in the criteria,  
10 right?

11 A Yeah, that's what you told me yesterday. I didn't  
12 recall she was a co-chair.

13 Q And are you also aware that Amanda Connor was one of  
14 the three individuals that wrote the arguments in support of  
15 the ballot question to ask recreational marijuana in the first  
16 place?

17 A No.

18 Q Okay. She was certainly present at all the rest of  
19 the hearings that your office would have conducted, right?

20 A Yes.

21 Q And you're telling her that --

22 A I believe so.

23 Q -- she nevertheless still had a question about how  
24 physical -- post-physical location was going to be evaluated as  
25 part of my scoring criteria, correct?

1           A     Right. I mean, she -- she said she just want to  
2 confirm, because her clients were asking.

3           Q     Okay. And she sent you an email, I think you were  
4 starting to --

5           A     I believe I received an email.

6           Q     Okay. When was that?

7           A     Oh, I don't know.

8           Q     Prior to the application being released is what you  
9 told us yesterday, I believe; is that correct?

10          A     Prior to the application? Yeah, I believe so.

11          Q     First and you said she pestered you. What was the  
12 next communication that you had with her?

13          A     Oh, I don't know.

14          Q     She asked that question via email and what did you  
15 tell her?

16          A     That location wasn't scored. That, you know, they've  
17 basically -- they just put -- they need to put an address  
18 because the application requires an address.

19          Q     Okay. And you thought that answer was pretty clear?

20          A     I thought so.

21          Q     Okay. So then she contacted you again. How did that  
22 communication -- did she call you, email you, do you recall?

23          A     Probably another email.

24          Q     Other email? What did she ask that time?

25          A     Same thing.

1 Q She asked the same question again?

2 A Yes.

3 Q All right. And what did you say?

4 A I don't know the specifics. I don't remember  
5 specific, but it was something like probably for the millionth  
6 time that, you know, location's not scored.

7 Q So eventually were you able --

8 A Something to that effect.

9 Q If eventually we're able to obtain these emails, you  
10 think that answer's going to be in there, right?

11 A Yes.

12 Q Okay. And you communicated with her over the phone  
13 at some point, when did that occur?

14 A I don't know.

15 Q You don't know? Was it before the application was  
16 released?

17 A Yes. I believe so.

18 Q Okay. What did you discuss on that conversation?

19 A I don't know. She calls me a lot. A lot of  
20 different things, and not always -- I mean, regarding the  
21 application itself, that's probably the only question I got  
22 from her.

23 Q So the only questions you got from Amanda Connor were  
24 the two emails that were -- that you received prior -- about  
25 this -- (indiscernible) location were the two emails that you

1 received prior to the application being released?

2 A Yeah, I don't know if it was two, could have been  
3 three, I don't know.

4 Q In either of those communications or -- did she ever  
5 persuade you or try to persuade you change the location  
6 requirement?

7 A No.

8 Q Did she at any subsequent point have any conversation  
9 with you about issuing any guidance about changing the proposed  
10 physical location requirements?

11 A No.

12 Q Let me show you Exhibit 238.

13 THE COURT: 238?

14 MR. MILLER: Yes.

15 BY MR. MILLER:

16 Q You're aware that -- turn to July 17th.

17 THE CLERK: I'm sorry, that's proposed.

18 MR. MILLER: Proposed, sorry.

19 THE COURT: Any objection?

20 MR. SHEVORSKI: No objection, Your Honor.

21 THE COURT: Be admitted.

22 (Plaintiffs' Exhibit Number 238 admitted)

23 THE CLERK: Thank you.

24 BY MR. MILLER:

25 Q July 17. Is this a copy of your calendar entries

1 that would have been provided to us as part of our request?

2 A Yes.

3 Q And who maintains these calendar entries?

4 A My assistant and sometimes other people send an  
5 invite and just accept them.

6 Q And you accept them? Okay. All right. So we note  
7 that the application that was released on July 5th and on July  
8 30th, are you aware now that the department issued, according  
9 to your directive, some clarification on a number of things.

10 On July 17th, looks like you had a calendar entry,  
11 you went to dinner with Amanda Connor on the 6th at 7:00; is  
12 that right?

13 A Yes.

14 Q All right. Who else, if anyone, was present at that  
15 dinner?

16 A If I remember, her husband, Derek (phonetic).

17 Q Okay. It was just the three of you?

18 A Yes.

19 Q And you went to Hank's?

20 A I believe I went there, yes.

21 Q Okay. You believe you went there, or did you go  
22 there?

23 A No, I went there.

24 Q Okay. And the three of you were at dinner, do you  
25 recall discussing anything about the application?

1 A No.

2 Q The application didn't come up at all?

3 A Not at all.

4 Q All right. On July 19th, we have a calendar entry  
5 there. You had another dinner with Amanda Connor at Bacho  
6 Sushi?

7 A Yeah. I didn't go to that.

8 Q So you skipped that one?

9 A Right.

10 Q Do you recall where that invite came from?

11 A No.

12 Q Do you recall why you didn't go to that dinner?

13 A No.

14 Q Do you know what the purpose of that dinner would  
15 have been?

16 A No.

17 Q Okay. On July 20th, 12:00 p.m., lunch meeting with  
18 Amanda Connor at Claim Jumper. Did you have lunch with Amanda  
19 Connor that day?

20 A Don't remember.

21 Q Can't recall if you went to the Claim Jumper with  
22 Amanda Conner at noon that day?

23 A No, I don't remember.

24 Q So was it a pretty regular occurrence for you to --  
25 well, Amanda Connor, you guys are friends, right?



1           A     It's, you know, I meet with everyone. It's -- we  
2 meet often. She has a lot of clients and we discuss a lot of  
3 things.

4           Q     So it's a pretty regular occurrence for you to have  
5 either lunch or dinner with Amanda Connor?

6           A     I don't know if you'd call it a regular occurrence.  
7 I mean, not everything on my calendar I get to or I attend.

8           Q     Okay. So sometimes do you attend things that aren't  
9 on your calendar?

10          A     Yes.

11          Q     So sometimes you go to lunch or dinner with Amanda  
12 Connor and wouldn't necessarily appear on a calendar, right?

13          A     It's possible, yes.

14          Q     And on July 27th, you've got another entry there for  
15 lunch. Do you remember going to a lunch meeting with Amanda  
16 Connor at the Barcelona at the Artisan?

17          A     Yes.

18          Q     All right. And was anyone else present at that  
19 lunch?

20          A     Yes.

21          Q     Who else was there?

22          A     It was Mitch Britton.

23          Q     Who is Mitch Britton?

24          A     Mitch Britton -- I think his last name's Britton.

25          Q     Britton. Okay. Who is Mitch Britton?

1 A The owner of Thrive.

2 Q Owner of Thrive. Okay. And what was discussed at  
3 that luncheon?

4 A I believe it was -- you know, I don't recall  
5 entirely, but had to do, I believe, something with wrap on his  
6 vehicle, some advertising issues.

7 Q Did you discuss the application at that luncheon?

8 A No.

9 Q Discuss the application or any of its requirements?

10 A No.

11 Q And Amanda Connor represents Thrive; is that correct?

12 A Yes.

13 Q Who else does she represent? Let me narrow it for  
14 you. Among the winning applicants, who else does she  
15 represent?

16 A TGIG wasn't a winning applicant, right? Essence.

17 Q Okay.

18 A Thrive.

19 Q She also represent Nevada Organic Remedies?

20 A Yes.

21 Q Okay. In fact, does she represent all of the  
22 entities that we reviewed yesterday where they provided  
23 identical physical address, right?

24 A I believe so, yes.

25 Q You want to re-review it?

1           A     No, I think so. I think -- yeah, I think that's  
2 accurate.

3           Q     She does represent all those entities, doesn't she?

4           A     As far as I know, yes.

5           Q     Okay. And she represents both of the entities that  
6 were given two licenses in Clark County, right?

7           A     Yes.

8           Q     Okay. Let me show you Exhibit 209. Let's turn your  
9 attention to the scoring breakdown here on this exhibit. You  
10 see on the left-hand side that is the criteria and the scores  
11 as they were provided to the applicants; is that correct? Not  
12 necessarily criteria; those are the general framework of the  
13 criteria that was to be evaluated and the possible points that  
14 would be allocated to each of those individual categories; is  
15 that correct?

16          A     Yeah, I believe so.

17          Q     And on the right-hand side of that document, you have  
18 the evaluation criteria points where they've got a sub  
19 breakdown of how your department actually evaluated the  
20 applications; is that correct?

21          A     Yes.

22          Q     Those have point values, right? So within the 60  
23 possible points under organizational structure, there are five  
24 subcategories for which all awarded smaller numerical point  
25 totals, right?

1 A Yes.

2 Q And yesterday you told us that you made the  
3 determination in consultation with your staff as to how you  
4 awarded those separate point totals, right?

5 A Yes.

6 Q Okay. But the applicants on the application form  
7 weren't aware of those point totals, right?

8 A Yes.

9 Q Okay. Because you told us that --

10 A They were not --

11 Q They were not awarded?

12 A They were not aware of the breakdown.

13 Q Okay. To your knowledge, they weren't aware of it;  
14 that's your statement, right?

15 A Yes.

16 Q All right. But you're not aware of communications  
17 that broadly took place with all the applicants, right? You  
18 didn't have a single point of contact, we discussed that,  
19 right?

20 A Right.

21 Q Can you sit here today and tell us that any of the  
22 applicants didn't have access to that point breakdown?

23 MR. GRAF: Objection, Your Honor, as to form.

24 THE COURT: Overruled.

25 MR. GRAF: Thank you.

1 THE WITNESS: Yeah, to my knowledge, I believe they  
2 didn't.

3 BY MR. MILLER:

4 Q Because if they had access to the point totals, that  
5 would have given them an advantage, right?

6 A Yes.

7 Q You said that your reason for not releasing it to  
8 everybody was that you're dealing with test answers, correct?

9 A You know, in a sense, the -- basically, the  
10 instruction is to keep it as -- the same as in 2014. In 2014,  
11 according to my staff, those weren't published. So they  
12 weren't published in 2018.

13 Q Okay. But diversity was awarded 20 of the 60 points,  
14 right?

15 A Yes.

16 Q That's twice as much as marijuana experience in  
17 Nevada and what was supposed to be scored but was not, the  
18 track record of regulatory compliance, right?

19 A Yes.

20 Q That's a relative heavy weighting for that criteria,  
21 right?

22 A Yes.

23 Q Can you give me an explanation for it that it was  
24 apparent through the legislative process in 2017 that you  
25 believed it should be a priority, right?

1 A Yes.

2 Q And don't you think that by publishing these secret  
3 point totals would have -- if you'd published them to all  
4 applicants, the applicants might have been better prepared to  
5 try to address the diversity criteria, correct?

6 MR. KOHN: Objection. Speculation.

7 THE COURT: Overruled.

8 THE WITNESS: You know, sure. I think there's room  
9 for improvement and that's something I definitely would look at  
10 in an application going forward.

11 BY MR. MILLER:

12 Q That's a true statement, right? I'm asking -- if you  
13 were trying to drive more diversity in the industry, if you had  
14 told the applicants in advance, look, this section's going to  
15 be worth 20 points out of the 60, it's going to be worth more  
16 than your marijuana experience, that might have caused  
17 applicants to reconfigure their owners, officers, and board  
18 members that will even listen so that they'd get high point  
19 totals, right?

20 A Yes.

21 Q Okay. So, in fact, it's not let's give them the test  
22 answers in advance; that's -- you should have done that with  
23 all the applicants, put all those numbers out if you're trying  
24 to achieve diversity, right?

25 MR. KOHN: Objection. Argumentative.

1 THE COURT: Overruled. You can answer.

2 THE WITNESS: I would say that that's something I  
3 would look into going forward.

4 BY MR. MILLER:

5 Q So in reviewing the test answers, if some applicants  
6 know that criteria and know how important diversity or any of  
7 this other criteria are going to be, and some applicants do  
8 not; is that a fair statement?

9 MR. GRAF: Objection, Your Honor. Misstates the  
10 evidence.

11 THE COURT: Overruled.

12 THE WITNESS: Yeah, can you say that again?

13 BY MR. MILLER:

14 Q You'll only be giving out the test answers if some  
15 applicants were given the secret scoring points while others  
16 were only given the possible points that was provided on the  
17 application, correct?

18 A Yeah, I don't understand what you're trying to say --  
19 what you're trying to ask. It's --

20 Q Some applicants --

21 A If you were going to give out the test answers, you  
22 know, it would be available to everyone.

23 Q Well, that's not what I'm asking you. If you -- sir,  
24 if you gave out the secret points that were awarded for those  
25 major categories to some applicants, and some applicants didn't

1 have access to that information, the people that had the secret  
2 points criteria would be at a -- would have an advantage in the  
3 applications; is that correct?

4 MR. GRAF: Object as to form. Argumentative, Your  
5 Honor.

6 THE COURT: Overruled.

7 MR. GRAF: Thank you, Your Honor.

8 THE WITNESS: Yes, that would be true.

9 BY MR. MILLER:

10 Q Okay. Sir, are you familiar with the phrase stacking  
11 the deck?

12 A I've heard it.

13 Q What do you understand that term to mean?

14 A I'm not sure. Will you explain it to me.

15 Q All right. If you're playing cards, right, and  
16 you're engaged in a game and somebody wants the game favorite  
17 in that contest, right, that game, they can arrange the cards  
18 in a way that benefits them so that they're able to win?

19 A Okay.

20 Q So if there are certain cards that are going to hurt  
21 them, they can take out those cards and if there's certain  
22 cards that are going to help them, they can flip those cards  
23 in.

24 A Okay.

25 Q Is that your understanding of stacking the deck?



1 A All right.

2 Q Okay. Well, if I gave you that definition of  
3 stacking the deck and told you that we were going to apply that  
4 concept, if we apply that term, stacking the deck, to  
5 Attachment A, so it's such that somebody could stack the  
6 individuals that they list on Attachment A in order to obtain a  
7 higher percentage and score better on the application, will  
8 that term make sense to you?

9 MR. GRAF: Object as to form. Incomplete  
10 hypothetical.

11 THE COURT: Overruled.

12 MR. GRAF: Thank you, Your Honor.

13 THE WITNESS: Yeah, I think so. Yeah, I think I get  
14 what you're saying.

15 BY MR. MILLER:

16 Q Okay. Let's make sure. So on Attachment A, right,  
17 your --

18 A Attachment A is --

19 Q Attachment A?

20 A Yeah.

21 Q Sorry.

22 MR. MILLER: (Indiscernible) applications are on  
23 attachment. It's the next section, isn't it. Officers and  
24 directors?

25 Q This is where they're going to list any owner,

1 officer, or board member, right?

2 A Yes.

3 Q And they'll do so by providing the checkmark next to  
4 that person's name, right?

5 A Yes.

6 Q So when I say stack Attachment A with individuals  
7 that would meet the criteria, I mean, that you would list  
8 individuals that would meet any specific criteria and maybe not  
9 include people that wouldn't meet that criteria; you understand  
10 what I'm saying?

11 A Yes.

12 Q Would you have any discussion, sir, with Amanda  
13 Connor at any point about how you could stack Attachment A with  
14 individuals who had any experience at all in marijuana?

15 A No.

16 Q Did you have any discussion with any other applicant  
17 about how you could stack Attachment A with individuals who had  
18 any experience at all in marijuana?

19 A No.

20 Q We heard testimony yesterday about the fact that you  
21 came up with a definition of diversity that was distributed  
22 to -- within the department, right?

23 A Yes.

24 Q All right. With that definition and the desktop  
25 manuals not made available to all applicants, right?

1 A Right.

2 Q So that was a secret, right?

3 A Right.

4 Q Okay. You believe that everybody in the department  
5 was aware of that criteria?

6 A I believe the people that needed to know knew of the  
7 criteria.

8 Q Pull up Exhibit 108. Page 376.

9 A (Witness complies.)

10 MR. MILLER: Okay. Sorry. Maybe it's the next page?  
11 Does it start at the next page? Okay.

12 Q We've reviewed this previously. It's a text message  
13 from Mr. Plaskon to Mr. Gilbert. Okay. And can you read us  
14 what that text message says?

15 A It says, Jeanine, Diane, and I didn't find race or  
16 ethnicity in 453D. Should race have been removed as part of  
17 retail applications? Should evaluators be even looking at  
18 diversity? AB422 doesn't seem to apply because it's just  
19 medical. Did we leave it in this app on accident? Just some  
20 thoughts.

21 Q What's the date of that text?

22 A September 19th.

23 Q September 19th, was that after the date that the  
24 applications would have been submitted?

25 A I believe the window for application to be submitted

1 went through September 20th.

2 Q Okay. So this is right (indiscernible) applications  
3 are being submitted, correct?

4 A Yes.

5 Q Certainly past the point where the application has  
6 been released and there's any opportunity for clarification  
7 from applicants, correct?

8 A Yes.

9 Q And this text comes from Mr. Plaskon, who reviewed  
10 the previous email, says that if he was the education  
11 information officer, was the designated person that was going  
12 to review all the questions that came in and provide responses  
13 to people, right?

14 A Yes.

15 Q It appears he's asking a person that doesn't even  
16 know if diversity should be included in their application at  
17 all, right?

18 A Apparently, yes.

19 Q Yeah. So the testimony (indiscernible) believing  
20 that everybody understood your secret definition of diversity  
21 doesn't appear to be accurate, right?

22 A I wouldn't call it --

23 MR. SHEVORSKI: Objection. Argumentative.

24 THE WITNESS: -- secret.

25 THE COURT: Overruled.

1 THE WITNESS: There's nothing secret about it.

2 BY MR. MILLER:

3 Q Would you call it confidential?

4 A No, I mean, I think there's nothing confidential  
5 about the definition of races or ethnicity.

6 Q No, you didn't make that information available to all  
7 applicants, did you?

8 A I think it's public knowledge.

9 Q It's public knowledge how you're going to define  
10 diversity?

11 A I think public knowledge as to what the breakdowns of  
12 race and ethnicity are.

13 Q Okay. But you made some revisions as to how you  
14 initially defined diversity, right? You recall that you  
15 eventually define it as female and not Anglo/European?

16 A No, I don't recall that.

17 Q You don't recall that? And you don't recall issuing  
18 a subsequent desktop memorandum that provided the 1964 of a  
19 55-year-old definition of diversity?

20 A I remember providing a definition. I don't know when  
21 it's from. I mean, I think that it's -- that definition is  
22 representative of what the definition is today.

23 Q You've got to Google it, right? You testified  
24 yesterday that --

25 A Yes.

1 Q -- if you have some questions about it and you Google  
2 it?

3 A Yes.

4 Q And you came up with an answer?

5 A Yes.

6 Q All right. So when you say it's common knowledge,  
7 does that mean that everybody should just use Google if you  
8 have any questions about diversity, just put in, you know,  
9 what's diversity? And pick the first, you know, entry on  
10 Google; is that what we're going to go by here?

11 A Not necessarily, no.

12 Q Okay. Maybe it wasn't public knowledge as to how the  
13 department would have defined it, right?

14 A No, not as to the department would have defined it.

15 Q Okay. All right. Did you have any discussion with  
16 Amanda Connor about how you might stack the individuals listed  
17 on Attachment A with people who met your definition of  
18 diversity?

19 A No.

20 Q Did you have any discussions with any individual at  
21 all about how you might stack Attachment A with people who met  
22 that definition of diversity?

23 A No.

24 Q Do you have any conversations with Amanda Connor  
25 about how you might stack Attachment A with people who met the

1 education requirements --

2 A No.

3 Q -- that were valued? Have any of that -- discussion  
4 with any applicant about that?

5 A No.

6 Q Did you have any discussions with any applicants at  
7 all about how you might stack Attachment A with individuals  
8 that would meet the criteria previous business expense?

9 A No.

10 Q You have any discussion with any applicants at all  
11 about whether -- how you might stack Attachment A with people  
12 who might meet the definition under the financial section?

13 A No.

14 Q Sir, turn back to that dinner that you went to on the  
15 17th with Amanda Connor and her husband. Who paid for that  
16 dinner?

17 A I didn't eat. They paid whatever they ate, I guess.

18 Q Okay. So you went to dinner and they ate at Hank's,  
19 you didn't eat anything?

20 A No, I was there briefly, there to meet her husband.

21 Q You just had water or something?

22 A Didn't even have that.

23 Q Okay. So you went to dinner -- it's on your  
24 calendar, you went to dinner with Amanda and her husband; how  
25 long were you there?

1           A     20 minutes maybe.

2           Q     So you popped in for 20 minutes, had a light  
3 discussion, didn't eat, didn't order any drinks, and left?

4           A     Right. I just met her husband. I had not met her  
5 husband before, as I recall.

6           Q     What about the once that you said you attended with  
7 the owner of Thrive and Amanda Connor on the 27th; did you eat  
8 at that lunch?

9           A     Yes.

10          Q     And who paid for that lunch?

11          A     I don't remember. Sometimes I pick it up, sometimes  
12 I don't eat, sometimes they -- whoever I'm meeting with picks  
13 it up, varies.

14          Q     Okay. So you said you meet with a lot of applicants;  
15 is that right?

16          A     Yes.

17          Q     When you meet with other applicants, sometimes you go  
18 to lunch or dinner, right?

19          A     Yes.

20          Q     All right. And who pays for the meal when you meet  
21 with those applicants?

22          A     I guess that sometimes they, you know, it varies. I  
23 don't. Sometimes I don't even eat, sometimes I pick up the  
24 bill, sometimes they'll pick up the bill.

25          Q     Okay. And have you gone to lunch or dinner with all



1 the applicants?

2 A I wouldn't say all of them, but a lot of them, yes.

3 Q Okay.

4 A Mainly lunch.

5 Q Okay. But so all the applicants have equal access to  
6 invite you out to lunch or dinner?

7 A Sure.

8 Q And those applicants have equal opportunity to buy  
9 you lunch or dinner?

10 A I guess.

11 Q Have you received anything of value other than the  
12 lunch or dinners we're talking about from any applicant?

13 A No.

14 Q Have you accepted any service that might have a value  
15 attributed --

16 A No.

17 Q -- from any applicant? Accepted any favor from any  
18 applicant?

19 A No.

20 Q Have you ever accepted any offer of employment,  
21 including any offer for future employment from any applicant?

22 A It pops up here and there. Something like, Hey, if  
23 you're -- if you ever leave, you know, make sure I'm the first  
24 one to call. Or, Hey, if you leave, call me.

25 Q Okay.

1 A Something to that effect.

2 Q When it pops up, which conversations do you remember  
3 having about that? Who did you have a conversation about if  
4 you ever leave the State, make sure I'm the first one to call?

5 A Remember what's his name, Ed Alexander.

6 Q And who is Ed Alexander?

7 A Licensee up north. I don't recall the name of his  
8 business.

9 Q Okay. What did that conversation consist of? What  
10 do you remember?

11 A He was, like, basically, if you leave the State, I'd  
12 like to make you part of my team to -- he had some  
13 opportunities in New Jersey or something.

14 Q And when did that conversation occur?

15 A That one was pretty recent.

16 Q Recent, we're talking when?

17 A A few weeks ago.

18 Q And was Ed Alexander one of the winning applicants in  
19 this last round?

20 A No.

21 Q Okay. Other than Ed Alexander, you mentioned that  
22 this happened a few times; well, who else did you have a  
23 conversation with like that?

24 A I believe Al Fasano.

25 Q Who is Al Fasano?

1 A He's an owner for Relief.

2 Q Relief?

3 A Yes.

4 Q And is Relief one of the winning applicants?

5 A I don't believe so.

6 Q And what was the content of that conversation as far  
7 as you remember?

8 A Same thing. You know, if you leave here, come see  
9 me.

10 Q Okay. And when did that conversation occur?

11 A I don't know. Many months ago.

12 Q Many months ago? All right. And other than Ed  
13 Alexander and Al Fasano, did you have any other conversations  
14 where somebody offered you a job?

15 A I believe -- you know, Essence did the same thing,  
16 Armen.

17 Q The conversation was with the representative from  
18 Essence, Armen?

19 A Right.

20 Q What's his last name? Yemenidjian, is that right?

21 A Right.

22 Q And what's his role with Essence?

23 A He's an owner.

24 Q Okay. And what did that conversation consist of?

25 A Basically the same thing, that if I leave, to give

1 him a call.

2 Q Okay. And when did you have that conversation with  
3 Mr. Yemenidjian?

4 A I don't recall, several months, a year ago, something  
5 like that.

6 Q Several months ago or a year ago? So did -- you  
7 remember it being prior to the application process?

8 A I don't remember.

9 Q You don't remember whether or not he offered you a  
10 job prior to the evaluation of his applications?

11 A I don't remember. I -- to me they're not really  
12 offers. They're just, like, Hey, if you leave, you know come  
13 see me, we could use you, type thing.

14 Q Okay. You never had any follow-up questions --  
15 conversations with Armen about an offer for a job?

16 A No. I'm not interested in staying in the marijuana  
17 space.

18 Q Sir, when did you become aware of the court order  
19 that you may need to preserve your phone, the records of your  
20 phone?

21 A Basically, I want to say when -- a day or two before  
22 it hit, I guess.

23 Q A day or two before it hit; what do you mean by that?

24 A Well, I think there was a -- the -- there was a  
25 motion filed, so around that time that the motion was filed.

1 Q Okay. So you're talking about the December 8th order  
2 from Judge Bailus; is that right?

3 A I don't think it was December 8th.

4 MR. MILLER: Is that right, Bailus's order?

5 UNIDENTIFIED SPEAKER: December 13.

6 BY MR. MILLER:

7 Q December 13, does that sound right?

8 A Around there, 13th, 14th.

9 Q And you became aware of it a day or two before the  
10 judge ordered that?

11 A Yeah, I think so. Maybe a day or something, that a  
12 motion had been filed.

13 Q Okay. And you're aware that there was a more  
14 specific order relative to your cell phone that was  
15 subsequently issued, correct?

16 A No, not to my cell phone.

17 Q Okay. You've become aware of the public records  
18 request, or did you, that I requested of your cell phone on  
19 March 16, 2019?

20 A Sometime after that, I don't know.

21 Q So you became aware that I had in a public records  
22 request sometime in March for your cell phones?

23 A Yeah, I don't know if it was March or April.

24 Q All right.

25 MR. MILLER: Could you show Exhibit 239 and page 895.

1 BY MR. MILLER:

2 Q This appears to be a text thread to and from your  
3 phone; is that correct? With an individual that's identified  
4 as John Mueller; is that right?

5 A Yes.

6 Q And what's the date where this thread begins?

7 A Looks like December 14th, 2018.

8 Q All right. He sends a message at 1:01 p.m. it looks  
9 like, right? Can you read the contents of that message?

10 A Will weed work if talking about illegal?

11 Q And the rest of it?

12 A I know regs say no weed language, but talking down to  
13 illegal stuff might fly.

14 Q You know what he was talking about?

15 A Can you scroll up? He's talking about that picture  
16 there, it's a proposed billboard or advertisement.

17 Q Okay. So is this a current licensee?

18 A Yes.

19 Q And who is John Mueller, which license did he have?

20 A Achers.

21 Q And is that the owner?

22 A Yes. Or one of the owners.

23 Q One of the owners? And can you read the next text  
24 message?

25 A Hope you have a great birthday. Take the day off.

1 You deserve it.

2 Q And response on January 18?

3 A That's a auto response: Please contact me at my new  
4 number.

5 Q What do you mean that's an auto response?

6 A It's a text message that auto responds.

7 Q Okay. So how does that work?

8 A You call me and if you're on a list, because I have a  
9 list of, like, say business contacts, you'll get that number --  
10 that message.

11 Q Okay. Is this your State issued cell phone?

12 A No, this is my personal line.

13 Q This is your personal line?

14 A Yes.

15 Q Okay. You have a -- what's your State issued cell  
16 phone number?

17 A 775-430-1172, I think.

18 Q I see. So that's the number that's listed there,  
19 right?

20 A It's just -- you asked. I'm sorry.

21 Q Okay. So your State issued cell phone, so you're  
22 redirecting Mr. Mueller by, I don't know, auto program function  
23 to your State issued cell phone?

24 A Yes.

25 Q All right. Finish scrolling (indiscernible). So he

1 posted another message showing a picture of something, right,  
2 on January 18th, 2019, and then you reply with the auto reply,  
3 right?

4 A Yes.

5 Q Directing the State cell phone. And then you  
6 replied: Good deal. Right?

7 A Yes.

8 Q So that they could continue to communicate with you  
9 on your personal cell phone; is that right?

10 A I'm sorry?

11 Q They could continue to communicate with you on your  
12 personal cell phone?

13 A Right, it doesn't block.

14 Q Okay. And how often did you have discussions with  
15 applicants on your personal cell phone?

16 A Pretty frequently. The ones that have my number.

17 Q Okay. Turn to page 908.

18 A (Witness complies.)

19 Q There's a series of messages from Amanda Connor,  
20 right?

21 A Yes.

22 Q And if you scroll through them, you see quite a  
23 number of instances where she continues to contact you on your  
24 personal number.

25 A Yes.



1 Q And you're redirecting her to your State issued cell  
2 phone?

3 A Yes. I've set it to auto reply.

4 Q Okay. And you're aware that your State issued cell  
5 phone records have not been provided to us, right?

6 A No, I'm not aware.

7 Q Okay. I had asked you in March; did you review that  
8 request in my public records request?

9 A I reviewed at some point, yes.

10 Q Okay. So you're aware that I asked in March for all  
11 cell phone records, for any State issued cell phone or personal  
12 cell phone used to conduct official business of Jorge Pupo for  
13 the period beginning June 1st, 2018, to the present.

14 A Yes.

15 Q You're aware that you reviewed these text messages  
16 that are attached to this exhibit?

17 A Yes.

18 Q All right. So you're aware that these don't go back  
19 to June; is that right?

20 A Yes.

21 Q And you're aware that you've now only provided me  
22 with excerpts of your personal cell phone?

23 A No. You have what I have for the business cell  
24 phone, as well.

25 Q These are for the business cell phone communications?

1 A I provided them.

2 Q So the entirety of what's been provided to me include  
3 any communications you would have had with any applicant on --  
4 from -- with respect to the applications and official business?

5 A I have -- you have what I have. And I provided the  
6 work cell phone as well as --

7 Q What I was provided, sir, was listed under the  
8 individual names. I was provided file numbers. So what I have  
9 would be any communications from Amanda Connor, this is the  
10 entirety of what I received. It doesn't look like I'm getting  
11 the entirety of the conversation, does it?

12 A I thought you asked me that -- if you didn't -- they  
13 didn't have the work cell records.

14 Q Which records --

15 A Then I --

16 Q -- do I have? Which one is that?

17 A These are -- pertain to my personal cell phone.

18 Q Okay. Where are the work records?

19 A I provided them.

20 Q Well.

21 A No, I provided them to our PIO who handles the public  
22 records request.

23 Q Okay. Well --

24 THE COURT: And is that Ky or someone else?

25 THE WITNESS: No. We had Stephanie Klapstein, but

1 she left. And then it was, to assist while she was gone, I  
2 believe it was Kathleen Douglas in conjunction with Ky, maybe,  
3 and our chief deputy, I believe, was dealing with public  
4 records requests.

5 THE COURT: Okay.

6 BY MR. MILLER:

7 Q So you believe that you provided all the  
8 communications on the 775 line?

9 A Yes.

10 Q I mean, if you hadn't, you'd be happy to provide  
11 those records to us at this point?

12 A Yes.

13 Q All the records preserved on your cell phone?

14 A They're -- nothing's -- everything's preserved  
15 from -- or nothing -- everything's preserved from the  
16 preservation order.

17 Q Okay. Well, I made a records request in March of  
18 2018. Did you preserve any of those records?

19 A March of 2018?

20 Q 2019, sorry.

21 A Okay. March of -- that's after the preservation  
22 order, right? Where are we at?

23 Q I think you said the preservation order was December  
24 13th. I sent you a letter March 16th --

25 A December 13th, so those --

1           Q     -- asking for all cell phone records for any State  
2 issued cell phone or personal cell phone used to conduct  
3 official business or for the period beginning June 1st, 2018,  
4 to the present.

5           A     I have provided what I have.

6           Q     Okay. Do you believe that you had preserved the  
7 records that would have been on your cell phone?

8           A     Right. Whatever -- since the preservation order.

9           Q     I'm not talking about the preservation order, sir.  
10 That happened in December.

11          A     Right.

12          Q     I sent you a records request in mid March asking for  
13 all the cell phone communication of June 1st, 2018, to the  
14 present.

15          A     Right. And so I've provided what I have.

16          Q     (Indiscernible) clue of the communications that I had  
17 requested as of that date?

18          A     I provided whatever I had for those dates.

19          Q     Okay. All right. You understand that, you sit here  
20 today, one individual makes a records request, that there are  
21 consequences if you conceal or obliterate a public record,  
22 right?

23          A     Sure.

24          Q     All right. And you understand that that's a  
25 Category C felony, right?

1           A     Didn't know that, but okay.

2           Q     Okay. So you wouldn't do that. You're going to make  
3 every effort you can in order to provide us those records?

4           A     Yes.

5           Q     Okay. Thank you.

6           MR. MILLER: Nothing further, thank you, Judge.

7           THE COURT: Thank you.

8           Mr. Kemp?

9           MR. KEMP: No questions, Your Honor.

10          THE COURT: Mr. Bult?

11          MR. BULT: No questions, Your Honor.

12          THE COURT: Mr. Parker, you told me about an hour.

13 It's 11:15. So let's get started.

14          MR. PARKER: Sounds good, Your Honor. Your Honor, we  
15 going to go to a quarter till 12:00?

16          THE COURT: No, we can break about noon.

17          MR. PARKER: The reason I ask is I have a board  
18 meeting at 12:00.

19          THE COURT: Then we will break at 11:45, in a half  
20 hour.

21          MR. PARKER: Thank you, Your Honor.

22          THE COURT: All you had to do was ask, Mr. Parker.

23          MR. PARKER: I wanted -- I was trying to see if you'd  
24 give it to me without asking first. I only have so many  
25 requests I can make. I like to save them.

1 THE COURT: Okay.

2 DIRECT EXAMINATION

3 BY MR. PARKER:

4 Q Good morning, Mr. Pupo. How are you?

5 A Good morning, how are you.

6 Q I'm good.

7 A I'm good.

8 Q I'm going to start off kind of where Mr. Miller  
9 finished up.

10 You understand the obligation of testifying  
11 truthfully; is that correct?

12 A Yes.

13 Q And the importance of giving your best answers today?

14 A Yes.

15 Q All right. And you, I believe, testified earlier  
16 that you expected the applicants to do the same in terms of  
17 their obligation to give truthful and accurate information or  
18 response to the application process; is that correct?

19 A Yes.

20 Q All right. You also indicated that, a few moments  
21 ago, that there were things that you could have improved upon  
22 in terms of this 2018 application process; do you recall saying  
23 that a second ago?

24 A Yes.

25 Q All right. Can you tell me, looking back now,

1 considering some testimony you've given, what portions of this  
2 process of the application could you improve upon?

3 A Generally, I mean, what I would do is I would go back  
4 and look at this entire process and pinpoint specific areas. I  
5 wouldn't pinpoint any specific area right now, but I would say  
6 that there's room for improvement. Obviously, I think, you  
7 know, better language, you know, clarifying, making sure  
8 everyone understands what's being asked of them.

9 Q Well, let's start from the top. Would you agree with  
10 me, and I'm going to go, again, in inverse order, you -- would  
11 you agree with me that perhaps it's not wise to speak as much  
12 to an attorney representing several applicants during the  
13 application process?

14 MR. KOHN: Objection. Lacks foundation.

15 THE COURT: Overruled.

16 THE WITNESS: No, I mean, we conduct a business that  
17 needs to be conducted for the State, and because there is an  
18 application process, the rest of the business doesn't stop.

19 BY MR. PARKER:

20 Q Okay. How about -- well, you knew Ms. Connor was on  
21 the governor's task force; is that correct?

22 A I didn't know she was co-chair. I knew she was  
23 involved.

24 Q All right. And you knew that she represented several  
25 of the applicants?

1 A Yes.

2 Q All right. Did you have an understanding of how much  
3 she was being paid by the applicants?

4 A Not really.

5 Q What's that mean?

6 A I'd hear rumors.

7 Q What have you heard?

8 A Somewhere around \$150,000.

9 MR. GRAF: Objection, Your Honor. Calls for hearsay.

10 THE COURT: Overruled.

11 BY MR. PARKER:

12 Q You can testify, sir.

13 A Yes. I heard something like \$150,000.

14 Q All right. So you knew she had a financial interest  
15 in this process when you were talking to her, when you were  
16 meeting with her; is that correct?

17 A Sure.

18 Q All right. And knowing that she had a financial  
19 interest in this, did you stop for a second to think that  
20 perhaps having conversations with someone who had a financial  
21 interest in representing applicants to this process may not be  
22 the best thing to do?

23 A That's something I'm going to have to go back and  
24 think about.

25 Q Understood. And that --



1           A     Do some self-analysis here.

2           Q     Right. And it's good that you're doing it in front  
3 of the Court now, because it's something you can admit to and  
4 perhaps not do in the future, right?

5           A     Possibly, yes.

6           Q     Right. And the same would be true in terms of having  
7 conversations with applicants that you knew would take place --  
8 take part in this 2018 process, right?

9           A     Can't stop talking to everyone.

10          Q     All right.

11          A     They have a lot more business than an application.

12          Q     Understood. But you would agree with me that if for  
13 some reason during these conversations, certain information --  
14 inadvertently, even -- creeps out about the process, that those  
15 conversations could give someone a material advantage in the  
16 process?

17          A     It's possible.

18          Q     That's right. And so for that reason, at least in a  
19 2014 application process, there was a manner in which  
20 information can be disseminated to all potential applicants to  
21 the public, I would say, and through a question-and-answer  
22 process, a written question-and-answer process; is that  
23 correct?

24          A     Yes.

25          Q     That same question-and-answer process was not

1 utilized in the 2018 application process; is that correct?

2 A That's correct.

3 Q All right. And so when Mr. Miller was trying to  
4 discuss with you the State's procurement regulations, he didn't  
5 ask that question as definitively, but you understood generally  
6 what he was trying to suggest to you, right?

7 A Yes.

8 Q All right. But definitively, asking -- answering the  
9 precise question, you would agree with me that the way to  
10 improve this process would be to have a single point of contact  
11 for questions as well as responses; is that correct?

12 A I believe that's an area of -- that could be looked  
13 at for improvement, yes.

14 Q All right. Because then the public has access to all  
15 the same information, regardless of who the question was  
16 presented by; is that correct?

17 A Yes.

18 Q And then that also prevents anyone from having a  
19 material advantage for access to DOT employees not afforded to  
20 others; is that correct?

21 A Yes.

22 Q All right. Now, do you understand that several of  
23 the lawyers on this side of the room and now in that box  
24 represent applicants that were awarded conditional licenses?

25 A Yes.

1 Q Do you know that most of them utilize Ms. Connor's  
2 services?

3 A No.

4 MR. GRAF: Objection, Your Honor. Lacks foundation.  
5 Misstates the facts.

6 THE COURT: Overruled.

7 BY MR. PARKER:

8 Q Did you have any --

9 MR. GRAF: We didn't represent -- or Ms. Connor  
10 doesn't represent --

11 MR. PARKER: That's a speaking objection, Your Honor.

12 THE COURT: Mr. Graf.

13 MR. GRAF: I just want to (indiscernible) for the  
14 record --

15 THE COURT: Please stop making -- Mr. Graf.

16 MR. GRAF: -- Your Honor.

17 THE COURT: Don't make a speaking objection in front  
18 of the witness or we will have a problem.

19 MR. GRAF: Understood. Understood, Your Honor.

20 Thank you.

21 THE COURT: I'm familiar from the Motion for  
22 Protective Order that was filed by Ms. Connor what the issues  
23 are related to her representation.

24 MR. GRAF: Yes, Your Honor.

25 THE COURT: The objection is overruled.

1 MR. GRAF: Thank you, Your Honor.

2 THE COURT: Thank you.

3 MR. GRAF: Appreciate it.

4 BY MR. PARKER:

5 Q So, Mr. Pupo, do you have an understanding that  
6 Ms. Connor has represented several of the applicants that were  
7 awarded conditional licenses?

8 A Yes, some.

9 Q Now, as a -- as the head guy, and I said head guy,  
10 you've taken responsibility for the overall effectiveness of  
11 this application process over the last day and a half; is that  
12 correct?

13 A Yes.

14 Q All right. Now, would you agree with me, based upon  
15 the ballot question, the people of this state were concerned  
16 about how this process would work and whether or not allowing  
17 the sale of recreational marijuana would be a detriment to our  
18 state?

19 A I believe there was some argument for that, yes.

20 MR. PARKER: Can we pull up Exhibit 2020, please. I  
21 think that's the ballot question.

22 MR. SHEVORSKI: It's in twice.

23 MR. PARKER: It is in twice? 2021?

24 THE COURT: But it's easier to find in 2020.

25 MR. PARKER: Thank you, Your Honor.

1 THE COURT: Because it's just that part of the ballot  
2 question.

3 MR. PARKER: Thank you, Your Honor.

4 UNIDENTIFIED SPEAKER: 2020?

5 MR. PARKER: 2-0-2-0. Brian, do you have it? I need  
6 an assist.

7 THE COURT: Could you ask him nicely?

8 MR. PARKER: I did. Brian, can I have it, please?

9 THE COURT: Thank you.

10 MR. PARKER: We go way back.

11 BY MR. PARKER:

12 Q While he's pulling it up, Mr. Pupo, would you also  
13 agree with me that an area of improvement would include having  
14 one application that said the same thing throughout the  
15 process? For example, not one that says either you can use a  
16 P.O. box or you cannot use a P.O. box, but not having more than  
17 one that has differing information in it? Or were you aware of  
18 that?

19 A Okay.

20 Q Let me ask the last question first. Did you know  
21 there was a difference between Exhibit 5 and Exhibit 5A?

22 A Yeah, not till recently.

23 Q Well, when did you first find out?

24 A Probably, I don't know, a month ago, maybe. Few  
25 weeks ago.

1 Q About a month and a half ago?

2 A Something like that. Few weeks.

3 Q So do you have an understanding why you as the head  
4 guy charged would not be aware of the fact that there were two  
5 different applications available to the applicants?

6 A Like I said earlier, when I put out the  
7 clarifications to my staff, to put out the clarifications --

8 THE COURT: Are you listening, Mr. Parker? The  
9 witness is waiting for you to listen.

10 MR. PARKER: Oh, I'm sorry, Mr. Pupo.

11 THE COURT: So he's --

12 BY MR. PARKER:

13 Q Please go ahead.

14 A So when I asked my staff to put out the  
15 clarifications, I believed that it was going to go out through,  
16 like, a listserv or a memo type. I did not know that they had  
17 made, you know, revamped or redid the application where a  
18 second one came out.

19 Q Were you also aware of the fact that as late as  
20 perhaps two weeks ago, while we were in court, we also  
21 discovered that Exhibit 5 was still available on your website?

22 A No, I didn't know.

23 Q Okay. Now, just for purposes of the record, it's our  
24 belief that approximately -- or over 20 of Ms. Connor's clients  
25 were awarded conditional licenses; is that -- does that comport

1 with your understanding?

2 A I don't know.

3 Q Okay. At 150,000 per application, it's roughly \$3  
4 million. Did you have any understanding of that?

5 A No.

6 Q So looking at Exhibit 2020, you're familiar with this  
7 document, are you not?

8 A Yes.

9 Q All right. If we go to page 14 of this document,  
10 it's State's Question Number 2 --

11 MR. PARKER: And if you could go to the bottom of  
12 this, Brian, please? The last paragraph.

13 Q Have you read this paragraph before?

14 A If you give me a second, I can read it now.

15 Q Oh, take your time.

16 THE COURT: As it continues on the next page, if you  
17 need Brian to go there, please let us know.

18 THE WITNESS: Yes, ma'am.

19 THE COURT: And thank you, Brian, for helping Mr.  
20 Parker.

21 (Pause in proceedings as witness reads document.)

22 THE WITNESS: Can we go onto the next page? Thank  
23 you.

24 (Pause in proceedings as witness continues to read document.)

25 THE WITNESS: Okay.

1 BY MR. PARKER:

2 Q Thank you. And would you agree with me, based upon  
3 your reading of this paragraph, that location of marijuana  
4 establishments was an important factor in State Question Number  
5 2?

6 A Yes.

7 Q All right. Now, do you also have an understanding  
8 that your role in the role of the Department of Taxation was to  
9 follow the direction of the ballot question in terms of the  
10 creation of regulations?

11 A Yes, follow the initiative.

12 Q And would you agree with me that the governor's task  
13 force also requested in its documentation that the Department  
14 of Taxation take action to faithfully follow Question Number 2?

15 A Yeah, I don't know if it says faithfully, but --

16 Q Let's take a look at --

17 A -- that's --

18 Q -- Exhibit 213. Let me see if I can help you.

19 A I'll take your word for it.

20 Q No, I appreciate that. But I like to have the  
21 exhibit in the record.

22 A Yeah.

23 THE COURT: It's already in the record, Mr. Parker.

24 MR. PARKER: That's great. Can we put page 501 of  
25 it?



1 THE COURT: It's okay, you could still look at it.

2 MR. PARKER: Just -- I'd appreciate it, Your Honor.

3 That means I don't have to ask anyone else's permission on that  
4 side of the room.

5 BY MR. PARKER:

6 Q My concern, so I can make it quick, is paragraph  
7 number 7. If you could blow that up for me.

8 A Okay.

9 Q So it says, Take action that is faithful to the text  
10 of Question Number 2. Do you see that?

11 A Yes.

12 Q All right. Now, I would think, given what we just  
13 read from Ballot Question Number 2, that location is something  
14 that's very important, was very important to the people and  
15 should have been very important to the Department if it was  
16 going to actually be faithful to the ballot question; is that  
17 correct?

18 A I'm sorry, can you state that again?

19 Q Certainly.

20 A I'm just trying to --

21 Q If your mandate from the governor's task force was to  
22 be faithful to Question Number 2, which we have right there --

23 A Yes.

24 Q -- and we just read the importance of the location in  
25 Question Number 2 into the record a few moments ago, wouldn't

1 the Department of Taxation have an obligation to ensure that  
2 location was equally important in this application process?

3 MR. KOHN: Objection. Misstates this document.

4 THE COURT: Overruled.

5 THE WITNESS: Sure. Yes.

6 BY MR. PARKER:

7 Q That's right. And so why, if it's -- if the ballot  
8 question says it, the governor's task force embraced and  
9 mandated the faithful -- the action taken to be faithful to  
10 Question Number 2, why would the DOT marginalize the location  
11 by removing it from the application process?

12 A Well, I believe that the Department has been faithful  
13 to the text of Question 2. I believe that the governor's task  
14 force -- these are the guiding principles. I believe this is  
15 where this language comes from, the guiding principles for the  
16 governor's task force. And we followed the governor's task  
17 force recommendations.

18 Q Okay. I asked a very focused question, sir, and you  
19 gave me a general response. I'd like a focused response,  
20 please, in terms of location.

21 A Okay.

22 Q So I started you by reading the portion of Question 2  
23 that dealt with location.

24 A Yes.

25 Q I took you to that very paragraph. Then I took you

1 to this information from the governor's task force  
2 recommendations, the final report. You understand that?

3 A Yes.

4 Q And then I asked you the follow-up: If location was  
5 that important to the state of Nevada citizens and you were  
6 mandated by the governor's task force to take action faithful  
7 to Question Number 2, why did you remove location from the  
8 scoring in the 2018 application process?

9 A Yeah, no, the only think I can think of, really, is  
10 that was part of the request, you know, from the industry and  
11 the governor's task force. I don't have any other explanation.

12 Q I understand. And the record can't necessarily  
13 reflect how long it's taken you to, you know, respond. So I  
14 can tell you were pondering it, everyone in the room can. And  
15 I pondered it last night. So let me ask a couple of follow-up  
16 questions to see if we can help get a more - more of a response  
17 to the question. Okay?

18 A Sure.

19 Q Would you agree with me that that was a mistake that  
20 the people of Nevada though that location was important, it  
21 should have been reflected as scored in the 2018 application?

22 MR. KOHN: Objection. Speculation. Lacks  
23 foundation.

24 THE COURT: Overruled.

25 THE WITNESS: You know, I don't think it was a

1 mistake. I think that Question 2 grants the Department the  
2 authority to issue, suspend, and revoke licenses. Part of that  
3 authority is to -- that it can -- a license can be conditional.  
4 And the physical requirement is not -- how would I say, it's  
5 not a -- it's not required until the end of that conditional  
6 period, where we then have -- you know, we do our final  
7 inspection of the location and issue the final license.

8 BY MR. PARKER:

9 Q Okay. So let's --

10 A So location is important.

11 Q Right. And if it's important, it should be a part of  
12 the application, just like everything else that's important.  
13 Like you said, safety. You said one of the most important  
14 things to you was safety. Remember that?

15 A Yes, public safety and health. Yes.

16 Q That's right. Public safety. And that's important,  
17 you include it, you include it in the application process  
18 because it's important to be scored and evaluated; is that  
19 correct?

20 A Say that again?

21 Q That it's important to you in terms of public safety,  
22 then it should be considered and valuated as a part of the  
23 application process. When I say you, I'm using you generally  
24 as the Department of Taxation at this point.

25 A Right. I don't necessarily think so. I think that

1 we take into consideration the location and, you know, this  
2 ballot also says it's important enough to keep it 300 -- you  
3 know, the distance requirements. And I think that's what was  
4 important in this paragraph that you showed me earlier. Talked  
5 about the distance requirement. And that is a requirement. We  
6 feel it's a requirement at the end of the conditional period.

7 Q Did you -- let me ask it again. Did you see anywhere  
8 in the ballot question that location was only important after  
9 conditional licenses have been awarded? Do you see anything  
10 like that, any caveat or disclaimer or condition like that?

11 A No.

12 Q All right. So let me stop you right there. Did you  
13 see anything that said something like that in the statute?  
14 Location is only important in the statute after the conditional  
15 licenses are approved; did you see anything like that?

16 A No. The initiative has very little to go on.

17 Q Did you see it in the regulation?

18 A (No audible response.)

19 Q Did you add anything in the regulation saying  
20 location is only important after conditional license are  
21 approved?

22 A No.

23 Q So if the ballot question considered location  
24 important and these conditions that you've mentioned a second  
25 ago, after conditional licenses are approved, they're not

1 included in the ballot, the statute, or the regulation, what  
2 made you believe that the Department had the authority to  
3 marginalize location by taking it out of the application and  
4 not scoring it?

5 A I think the initiative says that -- I'm sorry?

6 MR. KOHN: Objection. Argumentative.

7 THE COURT: Overruled. You think the initiative says  
8 that, you were finishing.

9 THE WITNESS: Yes. I think the initiative says that  
10 the Department will make regulations that are necessary and  
11 convenient. And we would develop regulations. And I think  
12 that's part of that. I think it gives us the authority to make  
13 those regulations and make those rules.

14 BY MR. PARKER:

15 Q Okay. Let's say you're correct. It's not in the  
16 regulation. The regulation does not say -- that's why I asked  
17 the question the way I did --

18 A Right.

19 Q -- it does not say that location is only important  
20 after conditional licenses are approved.

21 A No.

22 Q Isn't that true?

23 A That's true.

24 Q So if that's true, then you -- listen, Mr. Pupo, I  
25 don't -- I'm not trying to trick you in anything. You already

1 understand that it's not -- that location's important in the  
2 ballot question.

3 A Yes.

4 Q Right? Then we already understand that the  
5 conditions that you've discussed aren't in the statutes or the  
6 regulations, right?

7 A Right.

8 Q So --

9 A It's --

10 Q -- where do you get the authority to take it out of  
11 the application?

12 MR. KOHN: Objection. Lacks foundation.

13 THE COURT: Overruled.

14 THE WITNESS: I -- you know, I think that, again, the  
15 initiative gives us the authority to issue, suspend, revoke,  
16 renew licenses, and to make -- the initiative is not specific  
17 on to how to do this.

18 BY MR. PARKER:

19 Q Well, sir, let's just make it easy. You'd agree with  
20 me that the ballot initiative does not give you authority to  
21 remove location?

22 A Okay. I can agree to that.

23 Q Thank you. You'd agree with me that the statute does  
24 not give you authority to remove location -- the importance of  
25 location?

1 A Right, I agree. I --

2 Q That's right.

3 A Okay.

4 Q And we're just going to walk it down.

5 A Okay.

6 Q And you agree with me that the regulation does not  
7 give you authority to remove location? In fact, the regulation  
8 says location is important.

9 A Correct.

10 Q All right. So at the end of the day, and I know it  
11 took us a little while, you would agree with me that you had no  
12 statutory authority, no regulatory authority, and no ballot  
13 authority to remove location from the application process;  
14 isn't that true?

15 MR. GRAF: Objection as to form, Your Honor.

16 THE COURT: Overruled.

17 MR. GRAF: Thank you, Your Honor.

18 BY MR. PARKER:

19 Q Isn't that true, sir?

20 A From the application process.

21 Q None of those items, you just admitted, do not  
22 provide you that authority?

23 A I don't think I agree with that statement. Location  
24 is considered upon licensure. So it's not like we discount it.  
25 And the initiative doesn't say whether or not it has to be



1 included in an application.

2 Q Sir, you testified yesterday that the physical  
3 address was required, but not scored; do you remember that?

4 A Yes.

5 Q All right. So would you agree with me -- and I'm  
6 going to go about it this way.

7 I believe Mr. Miller informed you that there's a  
8 consequence for not telling the truth?

9 A Yes.

10 Q All right. And there's a consequence for not  
11 providing a accurate or truthful application; is that correct?

12 A Yes.

13 Q Tell me, what is the remedy for that? Let's say that  
14 a -- someone on this side of the floor submitted an application  
15 with inflated numbers or manipulated the process  
16 inappropriately. Is there a remedy for that conduct?

17 MR. GENTILE: Could the record reflect that this side  
18 of the floor was a part of a gesture pointing to the table at  
19 which the intervenors are, please.

20 UNIDENTIFIED SPEAKER: I'll go there.

21 MR. GRAF: That's a speaking objection, Your Honor.

22 THE COURT: Yeah, don't make speaking objections, Mr.  
23 Gentile.

24 MR. GENTILE: That wasn't an objection. I'd ask for  
25 the record --

1 THE COURT: Oh, Mr. Gentile, wait. Yes, the record  
2 will reflect that he was pointing to the long table which has  
3 the little label called Defendant.

4 MR. GENTILE: Thank you, Your Honor.

5 MR. GRAF: Objection, Your Honor. Calls for a legal  
6 conclusion.

7 THE COURT: And he didn't point at you, Mr. Graf.

8 MR. GRAF: I know.

9 THE COURT: Okay. Overruled.

10 MR. PARKER: Thank you.

11 BY MR. PARKER:

12 Q So you can answer the question, Mr. Pupo. Would  
13 you --

14 A Okay.

15 Q -- tell me --

16 THE COURT: Sir, he has asked you what the remedy is  
17 if one of the applicants that was awarded a conditional license  
18 lied on their application.

19 MR. PARKER: That's right.

20 THE COURT: That's all he's asking you.

21 THE WITNESS: Right. So the Department would  
22 investigate any of those complaints, and if substantiated, the  
23 Department can revoke that license.

24 BY MR. PARKER:

25 Q Okay. Are you familiar with advisory boards? Have

1 you ever heard the term used in the context of the marijuana  
2 application processes '14 or '18?

3 A I've heard something about it.

4 Q You agree with me that the -- there is no advisory  
5 board definition or identification in the 2018 process?

6 A Yes.

7 Q All right. Did you envision when Attachments A  
8 through I think J were created, that applicants would create  
9 advisory boards to perhaps garner more diversity points or  
10 improve their position in terms of education or financial  
11 strength?

12 A No.

13 Q Thank you. And so when -- have you found out through  
14 these proceedings that, in fact, advisory boards were even  
15 created by one or more applicants that gave them greater points  
16 in terms of diversity?

17 A I've heard that, yes.

18 Q That was not what you, as the head guy, thought would  
19 be done or envisioned as a part of this 2018 application  
20 process, was it?

21 A Honestly, no.

22 Q Thank you. So to the extent that we have applicants  
23 who may have manipulated the system in attempt to gain  
24 diversity points through adding women, adding blacks,  
25 Hispanics, Asians, any minorities, would you agree with me

1 that's not what this application process was intended to allow?

2 MR. KOHN: Objection. Speculation.

3 THE COURT: Overruled.

4 BY MR. PARKER:

5 Q Isn't that true, sir?

6 A I believe that -- yeah, that's not the intent.

7 Q Thank you. Now, the problem that I and I think  
8 everyone in this courtroom will acknowledge, and hopefully you  
9 will as well, is that the State was simply relying upon the  
10 accuracy and the information in the applications provided by  
11 the applicants without doing any additional offline searches to  
12 determine whether or not the information was accurate; is that  
13 a fair statement?

14 A Can -- I'm sorry, can you say that again?

15 Q Sure. Your department relied on the applicants being  
16 honest?

17 A Yes.

18 Q And because we know not everyone is honest, perhaps  
19 the system was not created to catch the dishonest people or  
20 dishonest applicants; is that correct?

21 A Yes. I mean, it's impossible to do that type of  
22 research under the statutory requirement of, you know, 90 days.

23 Q All right. Now, in terms of the 90-day period, was  
24 that self-inflicted time period or was that created by the  
25 ballot?

1 A That was created by the ballot.

2 Q All right. And the ballot came out in what year?

3 A 2016, I believe.

4 Q And so there was a lot of time provided to figure out  
5 how you would approach doing everything that the ballot  
6 required within that time period?

7 A No, not really.

8 Q Okay. Well, certainly, you could have hired more  
9 than six evaluators, right?

10 A I don't know. If it was -- the -- you know, however  
11 the budget and money fell.

12 Q Okay. Based upon 462 applications at \$5,000 apiece,  
13 that's 2.4 million, somewhere in there?

14 A Something like that.

15 Q All right. Are you saying there was not enough in  
16 the budget to perhaps cover the cost of more than six  
17 evaluators?

18 A Yes, because we don't control that budget. Those  
19 monies go into whatever state buckets they go into. It's not  
20 like I have access to write a check or go into a bank account  
21 and say, I need this amount for that. It's not how the State  
22 works.

23 Q All right. With that, you've given me a tutorial on  
24 how --

25 THE COURT: Oh, you want to know about interim

1 finance and how fun that is and go through a budget process?

2 MR. PARKER: No. No, I --

3 THE COURT: Come on, baby, ask it. Come on.

4 MR. PARKER: I looked in your eye, Judge, and I said,  
5 This is not a line I'm going down.

6 MR. SHEVORSKI: You've got one minute. It's 11:44.

7 MR. PARKER: Good lord, he's giving out the time now?

8 MR. SHEVORSKI: You asked for the time.

9 MR. PARKER: All right. Good enough.

10 THE COURT: Are you ready for --

11 MR. PARKER: We can break right now.

12 THE COURT: All right. Mr. Parker has a -- he's on a  
13 board of directors. He's on several board of directors. But  
14 apparently he has a board meeting today. So we're going to  
15 break until 1:15.

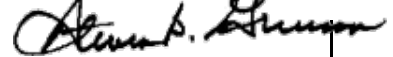
16 (Proceedings recessed at 11:46 a.m., until 1:12 p.m.)

17 -oOo-

18 ATTEST: I do hereby certify that I have truly and correctly  
19 transcribed the audio/video proceedings in the above-entitled  
20 case.

21   
22

23 Dana L. Williams  
24 Transcriber  
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**

. . . . .

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**EVIDENTIARY HEARING - DAY 10  
VOLUME II**

THURSDAY, JUNE 20, 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, THURSDAY, JUNE 20, 2019, 1:19 P.M.

2 (Court was called to order)

3 THE COURT: So we were going to discuss before the  
4 lunch break, but I didn't because Mr. Parker needed to get to  
5 his board meeting, when I hear the Serenity motion for return  
6 of the excess moneys they deposited with bond.

7 Mr. Graf, you said you wanted to oppose it.

8 Mr. Gutierrez, you wanted to oppose it. When do you  
9 want me to hear it?

10 MR. GRAF: Your Honor, if you'll give us until  
11 Monday to file a written opposition. You can set it anytime  
12 after that.

13 THE COURT: Wednesday?

14 MR. CRISTALLI: Yes.

15 THE COURT: Wednesday at 9:00.

16 THE CLERK: That'll be June 26th.

17 THE COURT: Mr. Cristalli, here you go.

18 MR. BULT: Your Honor, since we're talking  
19 housekeeping, can we bring up something else?

20 THE COURT: Yes.

21 MR. BULT: We understand that Essence of Tropicana  
22 is applying for a special use permit, and that is being heard  
23 on June 25th, at 6:00 p.m. The ETW plaintiffs are inclined to  
24 make an oral motion right now, or we can submit something  
25 overnight.

1 THE COURT: You're going to have to submit something  
2 in writing.

3 MR. BULT: Okay. And then you'll just get it on OST  
4 for --

5 THE COURT: I will.

6 MR. BULT: Okay. Appreciate it.

7 THE COURT: Maybe set it for Wednesday.

8 MR. BULT: Sounds good. Well, it looks like this is  
9 on for Tuesday at 6:00.

10 THE COURT: So maybe I'll set it for Tuesday if I  
11 get it tonight or this afternoon.

12 MR. BULT: You'll have it this afternoon.

13 MR. GUTIERREZ: Well, I'm out Monday and Tuesday.

14 THE COURT: Well, if you had a hearing on Tuesday if  
15 you're not going to stipulate take it off, I've got to hear it  
16 before the hearing.

17 MR. GUTIERREZ: We'll find somebody to be here.

18 THE COURT: Unless you want me to hear it tomorrow.  
19 Unless you want me to hear it tomorrow or orally.

20 MR. GUTIERREZ: No. I'd rather [inaudible].

21 THE COURT: Okay.

22 MR. KEMP: And, Judge, we have Exhibit 20A ready to  
23 be introduced, which was DOTMM001122 and 23, which --

24 THE COURT: We discussed this yesterday. If you  
25 have it, Dulce will admit it, because I made the record

1 yesterday.

2 MR. KEMP: Okay. Thank you, Your Honor.

3 MR. SHEVORSKI: Thank you, Your Honor. We just  
4 wanted to put it on the record.

5 THE COURT: We already put it on the record  
6 yesterday.

7 MR. SHEVORSKI: Perfect.

8 THE COURT: I was just waiting for the document to  
9 get here.

10 Mr. Miller, did you get me the demonstrative  
11 exhibits from your PowerPoint slips?

12 IT TECHNICIAN: Coming in 30 minutes, Your Honor.

13 THE COURT: All righty. Thank you, Shane. Anything  
14 else?

15 Mr. Parker, are you ready to continue?

16 MR. PARKER: I am, Your Honor.

17 JORGE PUPO, PLAINTIFFS' WITNESS, PREVIOUSLY SWORN

18 THE COURT: Mr. Pupo, are you ready to continue?

19 THE WITNESS: Yes, ma'am.

20 THE COURT: You remember, if you need a break or you  
21 need to stand up, you let me know.

22 THE WITNESS: Yes, ma'am.

23 THE COURT: Okay. Go on, Mr. Parker.

24 MR. PARKER: Thank you. And, Your Honor, can I have  
25 Exhibit 252 just to get this out of the way?

1           Shane, is that you, or Brian? Who am I thanking?  
2 I'm thanking Shane, thanks.

3                         DIRECT EXAMINATION (Continued)

4 BY MR. PARKER:

5           Q     So, Mr. Pupo, can you take a look at the screen and  
6 in particular the red language there. And if you could, could  
7 you read that into the record.

8           A     The screen's not working.

9           Q     It's not. We have the Plaskon --

10          A     Well, hold on. It just flashed.

11          Q     -- approach to technology. You just turn it off and  
12 on.

13                   THE COURT: And you thought your computers were old  
14 at the State.

15                   THE WITNESS: I know.

16                   THE COURT: All right. He wants you to read that  
17 red lettering up above the bunch of green stuff. And maybe  
18 they're going to blow it up so you can actually read it.

19                   THE WITNESS: Yeah, I see it.

20                   THE COURT: Oh. Good.

21 BY MR. PARKER:

22          Q     Can you read it?

23          A     Yes. It says, "Per Jorge 11/28/18, Essence  
24 Tropicana in Henderson and Thrive, Cheyenne, and Commerce  
25 will be issued both licenses for unincorporated Clark."

1           Q     So can you tell me -- first, does that Jorge refer  
2 to you?

3           A     Yes.

4           Q     All right. Can you tell me why you decided that it  
5 was okay for these companies to have multiple licenses in the  
6 same jurisdiction.

7           A     Because, like I explained yesterday, the definition  
8 of "applicant" on the application says entity/ -- I believe  
9 individual. And the applicants in these were two separate  
10 legal entities.

11          Q     Do you recall the part of the application that said,  
12 list all your owners for purposes of determining whether or  
13 not any owners had interest in multiple applicants?

14          A     Yes, I believe so.

15          Q     All right. Do you recall the statute or the  
16 regulation prohibiting more than one owner in having a  
17 recreational medical -- I'm sorry, a recreational marijuana  
18 establishment in the same jurisdiction?

19          A     No.

20          Q     You don't? All right. Now, did you consult with  
21 anyone regarding this decision to allow these companies to  
22 have multiple licenses?

23          A     Yes.

24          Q     Who did you consult with?

25          A     My Deputy Attorney General.

1 Q And the name of that person?

2 A Robert Werbicky.

3 Q All right. And did you -- by virtue of this  
4 information being on this document did you know that these  
5 companies all had -- or had similar owners?

6 MR. SHEVORSKI: I caution you not to reveal any  
7 communications between yourself and Mr. Werbicky regarding  
8 that subject.

9 THE WITNESS: Yes, sir.

10 Okay. I'm sorry. Can you say that, again.

11 BY MR. PARKER:

12 Q Yes. After that admonition basically we can start  
13 all over again.

14 A Okay.

15 THE COURT: Try and ask it so you so you don't  
16 elicit --

17 BY MR. PARKER:

18 Q Did you, without the benefit of Mr. Werbicky, know  
19 that these companies had similar owners?

20 A Yes.

21 Q All right.

22 THE COURT: How'd you know that, sir?

23 THE WITNESS: Just by the course of normal business.

24 BY MR. PARKER:

25 Q The course of knowing the business, or the owners?

1           A     Normal business.

2           Q     Okay. Explain that.

3           A     My day-to-day interactions, you know, managing the  
4 industry.

5           Q     Okay. Day-to-day managing of the industry, or day-  
6 to-day familiarity with these owners?

7           A     No. Just day-to-day management of, you know, the  
8 industry. And I don't know all the entire ownership. I know,  
9 you know, maybe one or two people may have common ownership.  
10 I'd have to go into the records to see, you know, what the  
11 exact ownership is.

12          Q     But you knew -- tell me, did you know names in terms  
13 of owners?

14          A     One of each probably.

15          Q     Tell me who you are familiar with that had ownership  
16 interest in these companies. And we can start with Essence  
17 Trop and Essence Henderson.

18          A     Armen Yemenidjian or however you pronounce it.

19          Q     Do you know how to spell it?

20          A     No.

21          Q     Okay. Good enough. And how about Cheyenne and  
22 Commerce Park, which is Thrive?

23          A     Yeah, I believe that's Mitch Britten and --

24          Q     Had you spoken with either of them before the first  
25 gentleman you named or the second?

1           A     Yes.

2           Q     On more than one occasion?

3           A     Yes.

4           Q     So when I asked you about your familiarity with the  
5 owners it goes beyond simply the industry. You actually knew  
6 these owners; is that correct?

7           A     No, I know them from my interactions with the  
8 industry.

9           Q     Right. But you actually know -- there are a lot of  
10 people in the industry. You may not know the owners; right?

11          A     Yes.

12          Q     Right. But in this case you knew the owners of all  
13 four locations?

14          A     Yes.

15          Q     All right.

16          A     Or at least some of them, right.

17          Q     Good enough. And had you spoken to them prior to  
18 the submission of the applications?

19          A     Yes.

20          Q     Did you speak with them between July of 2018 and  
21 September 20th of 2018?

22          A     I believe so. Possibly, yes.

23          Q     Would your phone records reflect telephone  
24 conversations with those gentlemen?

25          A     Possibly, yes.



1 Q Were either of those gentlemen represented by Ms.  
2 Amanda Connor?

3 A When you say either --

4 Q Their companies.

5 A Yes.

6 Q All right.

7 A Yes.

8 Q And had you been introduced to them through Ms.  
9 Connor, or independent of Ms. Connor?

10 A I don't remember.

11 Q Do you recall whether or not any of these -- either  
12 of these two gentlemen asked any questions of you regarding  
13 the 2018 process?

14 A No.

15 Q And tell me whether or not you know what their  
16 ownership interests are in these companies.

17 A As far as I know, they're owners or part owners.

18 Q Okay. They're not just board members; right?

19 A Not that I know of.

20 Q They're not advisory board members?

21 A Not that I know of.

22 Q Okay. Good. Do you know if they're officers?

23 A No. I know them as owners --

24 Q And had you --

25 A -- or part owners, whatever.

1 Q Do they have medical marijuana locations?

2 A Yes.

3 Q Have you known them since 2014?

4 A No.

5 Q When did you meet the owner of Essence Trop and  
6 Essence Henderson?

7 A Sometime after the Department of Taxation started  
8 administering the marijuana program.

9 Q What year would that be?

10 A I believe it was July 1st, 2017.

11 Q Okay. So after it became clear that recreational  
12 marijuana would be available?

13 A Yes.

14 Q Same with the owner of Commerce and Cheyenne?

15 A Yes.

16 Q Okay. And can you tell me the circumstances in  
17 terms of how you met them.

18 A I don't recall specifically. It could have -- you  
19 know, I've met a lot of people through meetings or  
20 regulations, things like that.

21 Q All right. Now, you indicated you've spoken to them  
22 and you've met them, and you said your phone records would  
23 reflect conversations with them. Did you ever text either of  
24 them?

25 A Yes.

1           Q     Okay.  Have you produced records indicating that you  
2 -- your phone records indicating text messages between  
3 yourself and those owners?

4           A     Yes.

5           Q     Okay.  Have you received any emails from them?

6           A     Don't know.  Not sure.

7           Q     Have you gone to dinner with either of them?

8           A     Dinner, I believe, yes.

9           Q     Have you gone to lunch with either of them?

10          A     Yes.

11          Q     More than one occasion?

12          A     Possibly, yes.

13          Q     And would it also -- would those lunches or dinners  
14 have occurred between 2017 and September 20th of 2018?

15          A     Yes.

16          Q     All right.  Now, let me get back to a couple more  
17 questions.  We may come back to that, but I want to get back  
18 to the statutes, the regulations first.

19                When we left off you told me that while location was  
20 important in the ballot, location was important in the  
21 statutes, and location was important in the regulations, you  
22 thought you had the ability to remove it from the scoring on  
23 the application process; is that correct?

24          A     Yes.

25          Q     All right.  Now, do you think you also had the power

1 in your position, the way you remove location, to change the  
2 age in terms of what person can purchase recreational  
3 marijuana? Because that seemed also important in the ballot  
4 question that it'd be someone over 21. Did you have the  
5 authority to change it to 20?

6 A No.

7 Q What makes you think you had the ability to change  
8 the location, since that was important and actually a question  
9 within the ballot, but you couldn't change the age?

10 MR. KOCH: Objection. Lacks foundation.

11 THE COURT: Overruled.

12 THE WITNESS: I think I explained before. I don't  
13 think we -- the initiative doesn't say how to score an  
14 application.

15 BY MR. PARKER:

16 Q Wait a second, sir. Let's make sure we're on the  
17 same page. I didn't ask about scoring this time.

18 A I'm sorry.

19 Q You removed location as a scoring item, I  
20 understand.

21 A Yes.

22 Q But you told me right before we left and you gave me  
23 time to think about your response, the Court did, that you had  
24 the authority to remove location as a scoring item. Do you  
25 remember that?

1           A     Yes.

2           Q     All right.  If you can change something that was  
3 important to the citizens of Nevada like location, which is  
4 represented in the ballot question, do you think you also have  
5 the ability to change the age a person can be to buy  
6 recreational marijuana?

7           A     No.

8           Q     Is there anything in the ballot that differentiates  
9 your authority in terms of locality versus age?

10          A     No.

11          Q     That's what I thought.  All right.

12                 So now let's go to the statute.

13                 THE COURT:  And, sir, if you'd like the book if it's  
14 easier, I'd be happy to get it for you.

15                 THE WITNESS:  Sure, Your Honor.

16                 MR. PARKER:  He may need it, Your Honor.  I'm going  
17 to be flipping back and forth a little bit.

18                 THE COURT:  I've just got to make sure I grab the  
19 right one.  453; correct?  There you go.

20                 THE WITNESS:  Thank you, ma'am.

21 BY MR. PARKER:

22          Q     And we're going to start with the statutes, and then  
23 we'll work to the regs, okay?

24          A     Okay.

25          Q     All right.  And the first one we're going to look at

1 is NRS 453D.200.

2 A Okay.

3 Q So if you look at NRS 453D.200, this says, "Duties  
4 of the Department"; right?

5 A Yes.

6 Q So this is the statutory authority from which your  
7 Department acted relative to the regulation of a marijuana  
8 establishment; is that correct?

9 A Yes.

10 Q All right. Now I want you to look at -- from the  
11 section (1)(j). See that?

12 A Yes.

13 Q It says, "Procedures and requirements to enable the  
14 transfer of a license for a marijuana establishment to another  
15 qualified person --" do you see that?

16 A Yes.

17 Q "-- and to enable a licensee to move the location of  
18 its establishment to another suitable location." Do you see  
19 that?

20 A Yes.

21 Q Now, yesterday there was a conversation regarding  
22 suitability of ownership. Do you remember that conversation?  
23 We were talking about you don't want to have a cartel  
24 involved.

25 A Yes.

1 Q Remember that?

2 A Yes.

3 Q Suitability of an owner. This deals with  
4 suitability of a location. This to me implies that the  
5 statute believed that in terms of changing location you had to  
6 determine from one suitable location to another suitable  
7 location; is that correct?

8 A Yes.

9 Q So if suitability of location is indicated in this  
10 part of the statute, wouldn't you agree with me that it's also  
11 important for purposes of the application process, suitability  
12 of location?

13 A Yes.

14 Q Right. You would also agree with me you cannot  
15 determine suitability of location based upon a floor plan;  
16 isn't that true? You can discern suitability of a floor plan,  
17 but not suitability as it applies to a location; isn't that  
18 correct?

19 A Okay.

20 Q You agree, sir?

21 A I'll agree.

22 Q Now, the reason I bring this up to you is if you  
23 look at the ballot, the ballot discussed all of the  
24 requirements in terms of determining whether or not a location  
25 is suitable, certain distance from a church, certain distance

1 from the liquor store, from the school those things. Do you  
2 recall?

3 A Yeah. I don't know if liquor store is there, but  
4 okay.

5 Q Yeah, I just threw that one in.

6 A Okay.

7 Q But you understand where I'm coming from?

8 A Yes.

9 Q Right?

10 A Right. Distance --

11 THE COURT: That's why you never trust lawyers.

12 THE WITNESS: Distance requirements.

13 BY MR. PARKER:

14 Q Distance requirements. There we go. And you cannot  
15 determine from the application suitability based upon a floor  
16 plan; isn't that the truth, sir?

17 A Based on the floor plan, no.

18 Q Right. Do you know or were you aware of the fact  
19 that many of the conditional awardees used floor plans without  
20 locations?

21 A Probably, yes.

22 Q Do you actually know the ones that did?

23 A No.

24 Q Or you just know generally?

25 A Generally.



1           Q     All right. Now, when you told Mr. Miller yesterday  
2 that location -- a location was required but not scored does  
3 that mean that every applicant who gave a floor plan without a  
4 location had presented an incomplete or inadequate  
5 application?

6           A     I don't believe so.

7           Q     Well, that's what you said. You said yesterday more  
8 than once, and I was --

9           A     Maybe I misunderstood the question.

10          Q     Well, maybe you --

11          A     Your question. Can you just say it again.

12          Q     Certainly. Because I found this interesting. You  
13 said that locations were required, but would not be scored.  
14 Do you remember saying that more than once yesterday?

15          A     Yes.

16          Q     Right. So given what you've told me right before we  
17 broke for lunch, that location was required, doesn't that mean  
18 every applicant who provided a floor plan without a location,  
19 even if a location wasn't scored, would have presented an  
20 inadequate and incomplete application?

21          A     I believe I said that location was required on the  
22 application.

23          Q     Right. So they provided an application that did not  
24 have a location. Each one of those applicants' applications  
25 were incomplete and should not be considered by your

1 Department; isn't that correct?

2 A I would say it can be considered incomplete, but it  
3 would move forward.

4 Q Thank you. But it would be incomplete?

5 A If it's missing an element, yes. You know, we  
6 expect the information --

7 Q You said location --

8 A -- that we ask for.

9 Q Right. You expected a location even if it wasn't  
10 scored; isn't that correct?

11 A Yes.

12 Q Thank you. Now let's go to 453D.205 and paragraph  
13 (1). Do you have that in front of you?

14 A Yes.

15 Q And it talks about background checks. And again it  
16 refers to subsection (6), 453D.200, which is right above it,  
17 okay?

18 A Okay.

19 Q And if you want, I can read what subsection (6) says  
20 of 453D.200 --

21 A No, I see it.

22 Q You can see it?

23 A Yes.

24 Q Okay. Good. So yesterday when you were speaking  
25 with Mr. Ross you talked about --

1 THE COURT: You mean Mr. Miller?

2 MR. PARKER: I'm sorry. Mr. Miller. Thank you,  
3 Your Honor.

4 BY MR. PARKER:

5 Q -- Mr. Miller you talked about how difficult it  
6 would be to actually conduct all of the background checks of  
7 all publicly traded companies and their owners or  
8 shareholders. Do you recall that?

9 A Yes.

10 Q All right. Do you believe that this statute gives  
11 you that flexibility? Because it says in both locations you  
12 "shall" it doesn't say "may," but ""shall" in section (6)  
13 above, and then it says here in addition to that "conducting a  
14 background may require each prospective owner, officer, and  
15 board member to submit a complete set of fingerprints and  
16 written permission authorizing the Department to forward the  
17 fingerprints to the Central Repository for Nevada Records of  
18 Criminal History for submission to the Federal Bureau of  
19 Investigation for its report." Do you see that?

20 THE COURT: Mr. Graf, you're standing up.

21 MR. GRAF: Object as to form, Your Honor. I think  
22 he read it wrong.

23 THE COURT: I think he did, too.

24 MR. GRAF: Okay.

25 MR. PARKER: I did. I skipped over some of it just

1 because I think he can see it.

2 THE COURT: Sir, since you have the statute book in  
3 front of you, I'm not going to sustain the objection, but I'd  
4 like you to focus on what you're reading out of the statute  
5 book, rather than what Mr. Parker might have said.

6 THE WITNESS: Okay.

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

8 BY MR. PARKER:

9 Q So my question, Mr. Pupo, and I know you're reading  
10 it, just keep it in your mind --

11 A Sure.

12 Q -- is whether or not there's any authority given to  
13 you to disregard the "shall" in 453D.200(6), which is also  
14 referenced again in 453D.205?

15 A No.

16 Q Thank you. So as long as owners -- all owners are  
17 identified, then you'd have -- you would then have the ability  
18 to conduct the search, the background check; isn't that  
19 correct?

20 A Yes.

21 Q All right. So if an applicant did not provide all  
22 of the owners, would you agree with me, as well, that those  
23 applicants failed to provide a complete application as  
24 required?

25 A Yes.

1           Q     Thank you. And, again, the remedy for that, not  
2 unlike the remedy for not providing a location, is that  
3 application could be deemed insufficient and not evaluated,  
4 may be too late for that, but should not have been evaluated,  
5 at least some followup should have been done; is that correct?

6           A     I guess it could be deemed incomplete.

7           Q     All right. Thank you. Now let's go to 453D.210,  
8 paragraph (5)(b), as in boy. And this goes back to the  
9 physical address.

10          A     Right.

11          Q     Can you see? And I'm doing this, Mr. Pupo, just so  
12 you have an understanding where we're going. I wanted you to  
13 see all of the locations in the statutes that require a  
14 referenced physical location. Do you understand?

15          A     I understand.

16          Q     Perfect. So it says here "The physical address  
17 where the proposed marijuana establishment will operate." Do  
18 you see that?

19          A     Yes.

20          Q     All right. So doesn't this reinforce the position  
21 that at a minimum, even if it wasn't scored, that physical  
22 address had to be in that application?

23               MR. KOCH: Objection. Legal conclusion.

24               THE COURT: Overruled.

25               THE WITNESS: I would say yes, except for -- I'm

1 trying to remember where the language "proposed establishment"  
2 is, because this one says "will operate" and I think the  
3 language says "proposed establishment."

4 BY MR. PARKER:

5 Q Well, it's in the same paragraph. I'll keep reading  
6 for you, "will operate or is owned by the applicant or the  
7 applicant has a written permission of the property owner to  
8 operate the proposed --"

9 A There we go. Okay. Yeah. I'm sorry.

10 Q No worries.

11 THE COURT: He was almost there.

12 BY MR. PARKER:

13 Q So now you see it?

14 A I see it, yeah. Okay.

15 Q Now, would you agree with me based upon what you  
16 just read, and you -- obviously you've read it before, that  
17 the physical address was a requirement of this process?

18 A Yes.

19 Q Thank you. And then -- and this is -- I think this  
20 is a further reinforcement of the ballot question -- It goes  
21 through in terms of (c) and (d) and provides all the distance  
22 requirements; is that correct?

23 A Yes.

24 Q Doesn't that also reinforce the prior statute we  
25 were looking at in terms of suitability of location?

1           A     Yes. For suitability, yes.

2           Q     All right. So now I'm going to go to the  
3 Administrative Code, okay?

4           THE COURT: No, sir. I don't have a copy of that to  
5 help you with. I just get the statutes.

6           THE WITNESS: You don't have a copy. Okay. We'll  
7 deal with it, Your Honor.

8           THE COURT: Okay.

9           MR. PARKER: I was going to say the same thing. so  
10 I can use the Elmo, Your Honor, if you'd like.

11          THE COURT: You may. Or you can show it up on --

12          MR. PARKER: Do we have it, Shane?

13          IT TECHNICIAN: I have it.

14          MR. PARKER: Okay.

15          THE COURT: You can show it on the screen, too.

16          MR. PARKER: Okay. I will -- let's see.

17          THE COURT: What are you going to do, Mr. parker, so  
18 Jill can turn on the right permission.

19          MR. PARKER: All right. Shane, can you put it up.

20          I'm going to give it to you, Mr. Pupo.

21          THE WITNESS: Okay.

22          MR. PARKER: Which means I'm going to have a problem  
23 reading it.

24          THE COURT: Mr. Parker, you need to keep your voice  
25 up if you're somewhere other than right at that lectern.

1 BY MR. PARKER:

2 Q I've highlighted it for you, too.

3 A Okay.

4 Q So I've got my notes so I can tell you where to go.  
5 And then I will keep my voice up so that we can hear me on the  
6 record. So 453D.255. And this deals with ownership again?

7 A Yes.

8 Q All right. So you're familiar with this statute -  
9 or this Code, I'm sorry, Administrative Code?

10 A Yes.

11 Q And this deals with the 5 percent requirement in  
12 terms of ownership?

13 A Yes.

14 Q All right. Was there a 5 percent requirement in the  
15 2014 application process in terms of designation of owners,  
16 officers, and board members?

17 A No.

18 Q Why was it utilized for this regulation when the  
19 statute nor the ballot question said 5 percent or more?

20 A I believe the statute says we would do regulations  
21 that are necessary and convenient. So at some point it was  
22 determined 5 percent interest. This may have, you know, come  
23 from somewhere else, Gaming. or I don't know. I'm not sure.

24 Q So that's what the Court wants to know, and that's  
25 what I would like to know. So tell me, where did it come



1 from? Someone said let's do 5 percent.

2 A I don't remember where it came from, but --

3 Q Was there any analysis performed which would support  
4 deviating from the ballot question or the statute?

5 A Was there an analysis performed was your question?

6 Q Yeah. Any kind of scientific approach to this  
7 determination? Did someone consult with an expert in the  
8 field of corporate structures or with determining the value of  
9 ownership? Was anything done to come to this decision that  
10 5 percent would be the mark or the threshold for ownership  
11 identification?

12 A No, I don't believe so.

13 Q It was just picked out of the air?

14 A I don't know. It may -- I don't know. It could be  
15 something from Gaming. I don't know where it came from.

16 Q Did someone sneak this by you?

17 MR. GRAF: Object as to form, Your Honor.

18 THE COURT: Overruled.

19 MR. GRAF: Thank you, Your Honor.

20 THE WITNESS: I wouldn't say sneak. I just don't  
21 remember what the --

22 BY MR. PARKER:

23 Q Good enough. But knowing that we don't know where  
24 it came from, we can agree it didn't come from the statute or  
25 the ballot question; right?

1           A     Yes.

2           MR. KOCH:  Objection.  Legal conclusion.

3           THE COURT:  Overruled.

4  BY MR. PARKER:

5           Q     All right.  Good enough.  Now, would you also agree  
6  with me that your Department did not verify whether or not all  
7  applicants provided ownership -- identified all owners with  
8  5 percent interest or greater?

9           A     I'm sorry.  One more time.

10          Q     Yes.  So your attachments to the application said  
11  all owners; right?  It says, "owners, officers, and board  
12  members."

13          A     Yes.

14          Q     It doesn't say 5 percent owners.  It says "owners."  
15  Is that correct?

16          A     Yes.

17          Q     All right.  Where you did not -- did the Department  
18  of Taxation do any background check to determine whether or  
19  not these applicants identified all owners with a 5 percent  
20  interest or better?

21                THE COURT:  You're talking about background checks  
22  to determine the structure of the organization?

23                MR. PARKER:  Exactly.

24                THE COURT:  Okay.

25                MR. PARKER:  That's a lot better question.  Sounded

1 better coming from you, Judge.

2 THE COURT: That's different than a background  
3 check, because we're using "background checks" as a term of  
4 art in the ballot question and the statute. So we probably  
5 should use a different term.

6 MR. PARKER: That's good advice, Your Honor.

7 BY MR. PARKER:

8 Q So let me ask you this, Mr. Pupo. Let me rephrase  
9 it. Did the Department do any investigation to determine  
10 whether or not applicants were actually listing owners of  
11 5 percent or greater interest?

12 A On the application, no.

13 Q All right.

14 A Not that I know of.

15 Q And which means that there's no way the Department  
16 of Taxation could have done a background check as indicated  
17 under the Code or the statute without knowing if not -- if you  
18 did not know all 5 percent owners or greater are actually  
19 identified; is that correct?

20 A Okay. So --

21 Q The short story is you can't check on somebody you  
22 don't know?

23 A Okay. That's what I was getting at. Right.

24 Q Understood?

25 A Correct.

1           Q     And you didn't verify to determine if all of them  
2 had been identified, all owners with 5 percent or greater  
3 interest?

4           A     Right. Correct.

5           Q     Do you have any documentation which would tell me  
6 how you came up with 5 percent, any emails, letters, memos,  
7 anything you can think of?

8           A     I don't know.

9           Q     Do you recall getting any authority from anyone  
10 above you saying that you can change the ownership interest --  
11 the owners that should be identified that varied from what the  
12 ballot question said or the statute?

13                 MR. KOCH: Objection. Lacks foundation.

14                 THE COURT: Overruled.

15                 THE WITNESS: No, I don't think so.

16 BY MR. PARKER:

17           Q     Let's go to 453D.260(2).

18           A     Okay.

19                 MR. PARKER: Your Honor, can I stay here for a  
20 second?

21                 THE COURT: If you keep your voice up.

22 BY MR. PARKER:

23           Q     All right. It says, "When the Department issues a  
24 request for applications pursuant to this section the  
25 Department will include in the request the point values that

1 we allocated to each applicable portion of the application."

2 Do you see that?

3 A Yes.

4 Q You said to Mr. Miller that you didn't want to give  
5 the answers to the questions. Do you recall that?

6 A Yes.

7 Q Doesn't this regulation require you to?

8 A I would say so.

9 Q I think so, too. And so every applicant pursuant to  
10 the regulation were -- they were entitled to know the point  
11 structure. Now, you may not have seen this regulation. I'm  
12 taking it from the way you looked at it that you had not seen  
13 it before; is that correct?

14 A Yeah. I don't recall.

15 Q Right. But you have to admit today in front of this  
16 courtroom that pursuant to this statute -- I'm sorry, this  
17 regulation or Administrative Code that information should have  
18 been provided with the application when the requests were  
19 made; isn't that correct? Isn't that correct, sir?

20 A I believe.

21 Q Thank you. Now, that means that from day one when  
22 these applications were put out for responses they were flawed  
23 based upon your own Administrative Code?

24 MR. KOCH: Objection. Legal conclusion.  
25 Argumentative.

1 THE COURT: Overruled. You can answer.

2 THE WITNESS: I believe we set out the point values  
3 for the categories that were being graded.

4 BY MR. PARKER:

5 Q Sir, you did not provide a manner in which these  
6 applications would be judged based upon scoring as required by  
7 this Administrative Code. That simply wasn't done; isn't that  
8 true?

9 MR. GRAF: Objection, Your Honor. Misstates the  
10 law.

11 THE COURT: Overruled.

12 MR. GRAF: Thank you.

13 THE WITNESS: I believe we submitted the point  
14 values for the categories that will be graded on the  
15 application.

16 BY MR. PARKER:

17 Q You're changing your position, sir?

18 A No. We did supply point values for the categories.

19 Q No, you didn't. You did not explain --

20 THE COURT: Mr. Parker, don't argue with him.

21 MR. PARKER: I'm sorry.

22 THE COURT: Just let him explain to you why he  
23 thinks that's true.

24 MR. GRAF: I was going to object as argumentative.

25 MR. PARKER: It's too late. It's too late. Too

1 late. It was preempted by the Judge --

2 THE COURT: I can't let you have a sustain today.

3 MR. GRAF: I have one.

4 MR. PARKER: That was weeks ago. Quit living in the  
5 past, Mr. Graf.

6 MR. GRAF: It was today.

7 THE COURT: Sir, he wants you to explain to him why  
8 you think you supplied the point values. If you'd do so.

9 BY MR. PARKER:

10 Q I'm sorry. I was being gregarious with Shevorski  
11 there.

12 A Well, I believe we did supply the point values for  
13 the categories that were going to be graded by the evaluators  
14 on the application.

15 Q Sir, Mr. Miller asked you right before he concluded  
16 his questioning whether or not you'd have actually gotten  
17 better applications, ones tailored to meet the issues that you  
18 were particularly interested in and would be related to the  
19 manner in which you were doing the scoring. Do you remember  
20 that question?

21 A Yes.

22 Q All right. Wouldn't you agree with me if you had  
23 provided all of that information and then tried to keep the  
24 scoring secret, that you would have gotten applications  
25 tailored to what was important to the reviewers -- or to the

1 Department, I should say?

2 A Yes, I could agree to that statement.

3 Q Good enough. So let's take a look at NAC 453D.265.  
4 Are you familiar with that?

5 THE COURT: Mr. Parker, the whole thing?

6 MR. PARKER: Yeah, I'm getting ready to tell him  
7 which portion, Your Honor. It's .265(1)(a)(3), I believe.

8 THE COURT: Thank you.

9 MR. PARKER: You're welcome, Your Honor.

10 THE COURT: Did you really want this section on  
11 fees?

12 MR. PARKER: I don't think so. You know, Mr. Graf  
13 is over here telling me, it's not the one you want.

14 MR. GRAF: Sustained.

15 THE COURT: You know, yesterday Mr. Miller had a  
16 written-down number wrong. So maybe you want a different  
17 section.

18 MR. PARKER: You know, it has something to do with  
19 something important to me, Your Honor. I'm going to figure  
20 this out I think very quickly.

21 THE COURT: So maybe you meant .268, and your 5  
22 looks like an 8.

23 MR. PARKER: You are very smart, because that's  
24 coming next. It's .268(2)(e) for those who want to get ahead  
25 of me. But I'm still after 453D.265. Maybe it's (b). There



1 it is. (b)(3), Your Honor.

2 BY MR. PARKER:

3 Q So it's (b)(3). Can you read that for me, Mr.  
4 Pupo.

5 A Yeah.

6 Q And it says, "The physical address where the  
7 proposed marijuana establishment will be located and the  
8 physical address of any co-owned or otherwise affiliated  
9 marijuana establishment." Do you see that?

10 A Yes.

11 Q Another indication of the importance of a physical  
12 location; is that correct?

13 A Yes.

14 Q All right. Now let's go to 453D.268(2)(e). I  
15 believe. It's either (e) or (c).

16 A (e)?

17 Q Yep.

18 A You have it.

19 Q Thank you, Mr. Pupo. You're on top of it. And it  
20 says here, "The physical address where the proposed marijuana  
21 establishment will be located and the physical address of any  
22 co-owned or otherwise affiliated marijuana establishment,"  
23 another reference in the Code demonstrating the importance of  
24 the proposed physical location; is that correct?

25 A Yes.