

**SUPREME COURT OF NEVADA**

Case No. 79668

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Elizabeth A. Brown  
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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

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**APPELLANT'S APPENDIX – VOLUME 39**

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## **CERTIFICATE OF SERVICE**

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

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1           Q     Now, let me stop for one second. With all of these  
2 indicators both from the ballot question, the statutes now,  
3 and at least two references to the Code why wouldn't you score  
4 that? Is it just because Ms. Amanda Connor was calling you,  
5 bugging you about it? I mean, why would you -- and I'm glad  
6 you're smiling, you took it in the manner in which I wanted  
7 you to. Why would you not include scoring on physical  
8 location?

9           A     You know, from what I remember, the discussions and  
10 the workshops and discussions with industry it's just  
11 something that I believe they didn't want.

12          Q     So you're telling me all of these people on this  
13 side of the room, that would be the plaintiffs' side of the  
14 room, who have physical locations -- and I know you didn't  
15 hear some of the testimony, but there was testimony given that  
16 people went through a lot of work to --

17               THE COURT: Some people.

18               MR. PARKER: Some people.

19               THE COURT: Okay. Just so we're clear. It's not  
20 all of them.

21 BY MR. PARKER:

22          Q     Not all people, some people went through a lot of  
23 work to find suitable locations and spent money in terms of  
24 lease payments and early deposits. Were you aware of that?

25               MR. KOCH: Objection. Lacks foundation.



1 THE COURT: Overruled.

2 THE WITNESS: You know, generally just by keeping my  
3 finger on the pulse of industry I did hear that some people  
4 were going out getting locations.

5 BY MR. PARKER:

6 Q Right. Did you know based upon what you heard and  
7 being familiar with the industry that finding a location was  
8 difficult?

9 A In some jurisdictions I heard this, yes.

10 Q Right. Because those looking for locations also  
11 were aware of the suitability requirements in terms of  
12 distance laid out in the ballot question; is that correct?

13 A Yes, I would think they were aware of distance  
14 requirements.

15 Q Right. So addition -- let's look at 453D.268(6).

16 A Oh. You've got it highlighted here. Okay.

17 THE COURT: Are you on sub (6) or actual 6?

18 MR. PARKER: I think we need to go back up, Shane.

19 THE COURT: I think you want the actual 6. "The  
20 size of the proposed marijuana establishment --"

21 MR. PARKER: Yeah. There we go. That's it.

22 BY MR. PARKER:

23 Q It says, "Documentation concerning the size of  
24 proposed marijuana establishment, including, without  
25 limitation building and general floor plans with supporting

1 details." Do you see that?

2 A Hold on one second --

3 Q All right.

4 A -- because it's not highlighted on the --

5 Q It's not?

6 A No, I don't think so. Where are we at? Actual 6.

7 Okay. Here, this other page. Okay.

8 Q So not only was location important in the Code, but  
9 this paragraph speaks to size, adequacy of size; right?

10 A Yes.

11 Q And that was actually one of the criteria on the  
12 application, the face of the application; is that correct?

13 A Yes.

14 Q Would you agree with me when you have an application  
15 requiring an address, and saying P.O. boxes are not allowed,  
16 and then you have a section of the application indicating  
17 adequacy of size of the building wouldn't you think as an  
18 applicant that that's an important part of the process?

19 MR. KOCH: Vague and speculation.

20 THE COURT: Overruled.

21 THE WITNESS: Okay. One more time. The adequacy of  
22 size?

23 BY MR. PARKER:

24 Q Yes. It says that right on the top of the page for  
25 the part of the non-identified portion of the application;

1 right?

2 A Right. You're asking me if the adequacy of size is  
3 important to the applicant?-

4 Q Yeah. Wouldn't the applicant think that's -- if  
5 they were being asked for that information that location is  
6 required on the face of the Attachment A, that that is  
7 something that's being considered by the evaluators?

8 A Yes.

9 MR. KOCH: Objection. Speculation.

10 THE COURT: Overruled.

11 BY MR. PARKER:

12 Q All right. Now, did you provide -- or to your  
13 knowledge were the evaluators provided with any samples or any  
14 information in terms of what is adequacy of size, not just a  
15 floor plan, but adequacy of size of building?

16 A I don't know if they were provided anything.

17 Q We were told that the QA or quality assurance  
18 performed on this -- on the evaluators' work was left up to  
19 the evaluators themselves. Were you aware of that?

20 A No.

21 Q Okay. When I went through the scoring -- strike  
22 that. When I went through the training slides with Mr.  
23 Gilbert I asked him who did the QC work or the QA work, and he  
24 said the evaluators QC-ed their own work or one evaluator  
25 would QC another evaluator's work. Was that your

1 understanding or impression?

2 A I don't know. I didn't know that was part of the  
3 process there.

4 Q You had nothing to do with QC-ing or QA-ing the  
5 work; is that correct?

6 A Right. Correct.

7 Q Good enough. Can we look at section 4 -- NAC  
8 453D.268 I think it's (4) (b) (11). It should be highlighted,  
9 Mr. Pupo.

10 THE COURT: Whether the person has an ownership or  
11 financial investment interest?

12 MR. PARKER: Yes, Your Honor.

13 THE COURT: Okay.

14 BY MR. PARKER:

15 Q Have you seen this part of the Administrative Code?

16 A Yes.

17 Q Okay. Are you familiar with what this requires?

18 A Yes.

19 Q Do you see anything in this language that says  
20 shareholders are not included in the term "owner"?

21 A No.

22 Q All right. Would you agree with me that a  
23 shareholder is someone who has a financial interest in a  
24 company?

25 A Sure.

1           Q     And doesn't it say that you're supposed to provide  
2 information on anyone with a financial interest?

3           A     Yes, whether a person has a financial investment.

4           Q     So in terms of public companies everyone with a  
5 financial interest should have been identified on the  
6 application. Isn't that correct based upon this  
7 Administrative Code section?

8                     MR. KOCH: Objection. Legal conclusion.

9                     THE COURT: Overruled.

10                    THE WITNESS: Yeah, I would say so.

11 BY MR. PARKER:

12           Q     Right. And so would you also agree with me that if  
13 companies submitted applications without complying with this  
14 Administrative Code reference, that they failed to comply with  
15 the application that requires the identification of all  
16 owners?

17                    MR. GRAF: Objection, Your Honor. He's misstating  
18 the Code, what it states.

19                    THE COURT: Overruled.

20                    MR. GRAF: Thank you, Your Honor.

21 BY MR. PARKER:

22           Q     Isn't that true, sir?

23                    MR. GRAF: Your Honor, and I don't mean to interrupt  
24 Mr. Parker, but is there going to be a point when we could  
25 make more of a record regarding some of these objections

1 outside the presence of the witness?

2 THE COURT: Yes.

3 MR. GRAF: Okay. Then I would ask --

4 THE COURT: When we take a break.

5 MR. GENTILE: Thank you.

6 MR. PARKER: Can I get the answer to this one.

7 THE COURT: We are trying to get an answer.

8 MR. PARKER: Thank you.

9 MR. GRAF: Sorry. I didn't mean to --

10 MR. PARKER: I know you didn't mean to interrupt.

11 THE COURT: I'm not --

12 BY MR. PARKER:

13 Q Isn't that true, sir, that if an applicant failed to

14 identify every person with a financial interest in the company

15 they've failed to comply with the -- they failed to provide a

16 complete application?

17 MR. KOCH: Objection. Legal conclusion.

18 THE COURT: Overruled.

19 BY MR. PARKER:

20 Q Isn't that true, sir?

21 A I would say that it can, yeah, possibly be deemed

22 incomplete.

23 MR. PARKER: Thank you, sir.

24 Do you want to take a break now, Your Honor?

25 THE COURT: No, I'll take a break at about 3:00.

1 MR. PARKER: Oh. Okay. I thought you were --

2 THE COURT: No. No. I told Mr. Graf at our next  
3 break.

4 MR. PARKER: Oh. Okay. I thought you were --

5 THE COURT: So like in a trial I tell you guys to  
6 keep track of all the stuff you want to make a record on when  
7 we're outside the presence of the jury. So keep track of it  
8 all.

9 MR. PARKER: All right.

10 BY MR. PARKER:

11 Q Now, I have a whole bunch of questions to ask you,  
12 but I don't know if you know the answers. So this may shorten  
13 my time with you, Mr. Pupo.

14 Do you have any information related to individual  
15 applications and the scoring for those applications?

16 A Do I have?

17 Q Yeah. Are you familiar with any of them? Did you  
18 go by and say, hey, I randomly need to take a look and see  
19 what's going on with these evaluators and how they're scoring?

20 A No.

21 Q All right. If I were to show you portions of my  
22 client's application and ask you and inquire whether or not  
23 you have any understanding of why this person -- this  
24 evaluator came up with this number, would you be able to shed  
25 any light on that?

1           A     No.

2           Q     If I showed you scoring notes that indicated that  
3 certain evaluators made reference to location, would that give  
4 you any insight as to why they did or did not?

5           A     No.

6           THE COURT: So you're going to cross that whole area  
7 out; right?

8           MR. PARKER: I am. I'm crossing them out as we go,  
9 Your Honor.

10 BY MR. PARKER:

11          Q     Were you even in Las Vegas from September 7 through  
12 September 20th of 2018, when the evaluators were doing their  
13 thing?

14          THE COURT: They were in Carson, weren't they?

15          THE WITNESS: Yes, they were.

16          MR. PARKER: Let's go to Carson.

17          THE WITNESS: I'm sorry.

18          MR. PARKER: Thank you, Your Honor.

19 BY MR. PARKER:

20          Q     When the evaluators were in Carson reviewing the  
21 applications?

22          A     No.

23          Q     Okay.

24          A     Not that I know of.

25          Q     All right. Good enough.



1 THE COURT: It's Day 10. I know it was being done  
2 in Carson, because I've been listening.

3 MR. PARKER: I was listening, Your Honor. I like  
4 Las Vegas a lot, you know.

5 BY MR. PARKER:

6 Q And you would have held Mr. Gilbert or Mr. Plaskon  
7 responsible for attending to the evaluators; is that correct?

8 MR. KOCH: Objection. Lacks foundation.

9 THE COURT: Overruled.

10 THE WITNESS: Yes.

11 BY MR. PARKER:

12 Q I'm thinking in your absence. Is that correct?

13 A Yes.

14 Q All right. Now, one thing that I believe you will  
15 be able to give me some information on --

16 (Pause in the proceedings)

17 MR. PARKER: Your Honor, I'd provided to the Court  
18 this big binder here, and I think Dulce has given it 307; is  
19 that correct?

20 THE CLERK: Uh-huh. Yes. Sorry.

21 MR. PARKER: And it is Nevada Wellness, its  
22 application. It's DOTNVWELL1 through 678. I'd like to have  
23 this big binder admitted. I'm only going to use a few pages  
24 with Mr. Pupo, though.

25 THE COURT: Any objection?

1 THE CLERK: I'm sorry. Mr. Parker?

2 MR. PARKER: Yes.

3 THE CLERK: The big binder you gave me today, or  
4 yesterday?

5 MR. PARKER: Today. Well, wait a second. I thought  
6 I gave this one to you today. 307 I gave today; right?

7 THE CLERK: Yes.

8 THE COURT: And is there any objection to Mr. Parker  
9 having 307 admitted?

10 MR. SHEVORSKI: It's just your app?

11 MR. PARKER: It's just my app, and it's redacted.

12 THE COURT: It's his client's.

13 MR. SHEVORSKI: No objection, Your Honor.

14 THE COURT: Okay. Be admitted.

15 (Plaintiffs' Exhibit 307 admitted)

16 MR. PARKER: Thank you, Your Honor.

17 THE COURT: Dulce's going to give you Exhibit 307,  
18 sir. And then Mr. Parker has said he will refer you to  
19 certain pages. They have little numbers on the bottom which  
20 we call Bates numbers, which we don't have Bates numbering  
21 machines anymore. They ran out of ink, and we can't get the  
22 ink anymore.

23 THE WITNESS: Okay, Your Honor.

24 THE COURT: But they use little stickers now for the  
25 alphanumeric designation.

1 (Pause in the proceedings)

2 THE WITNESS: Is this the entire application?

3 BY MR. PARKER:

4 Q Yeah. But we're going to only look at a couple of  
5 pages, okay.

6 Sir, I want you to take a look at DOTNBWELL2. So  
7 it's page 2.

8 A Okay.

9 Q Are you familiar with this form -- document?

10 A With this letter, yeah. Yes.

11 Q Is this a form that is utilized by the Department of  
12 Taxation Marijuana Enforcement Division?

13 A Yes.

14 Q All right. And can you tell me -- this was sent out  
15 September 18th, 2018, to Mr. Frank Hawkins. Do you know who  
16 he is?

17 A Yes.

18 Q Have you met him before?

19 A Yes.

20 Q When?

21 A This week.

22 Q Okay. Other than this week have you met him before?

23 A No.

24 Q Have you ever gone to lunch or dinner with him?

25 A No.

1 Q Has he ever called you on the phone?

2 A No.

3 Q All right. It says here, "On September 12th, 2018,  
4 The Department of Taxation Marijuana Enforcement Division  
5 conducted a routine inspection/audit of your establishment  
6 located at 3200 South Valley View Boulevard, Las Vegas,  
7 Nevada." And it has certificate numbers and the license  
8 number. Do you see that?

9 A Yes.

10 Q All right. The next paragraph says, "The  
11 audit/inspection results reveal that your establishment was in  
12 compliance with Nevada Revised Statutes..., " and it references  
13 453A and 453D; is that correct?

14 A Yes.

15 Q All right. And it also says, "...the Administrative  
16 Code, and no deficiencies were noted during the inspection."  
17 Do you see that?

18 A Yes.

19 Q What does that mean in terms of the operation of  
20 Nevada Wellness Center at this location?

21 A It means at this time upon the inspection from my  
22 inspectors that they found nothing out of compliance.

23 Q All right. Would that mean that the location as  
24 it's being operated would be suitable both in terms of  
25 location and suitable in terms of adequacy of size to sell

1 medical marijuana and recreational marijuana?

2 A I don't believe that looking at adequacy of size or  
3 the location on these inspections is part of their inspection.

4 Q Okay. It does mention 453A and 453D; is that  
5 correct?

6 A Yes.

7 Q Which would refer to medical and recreational  
8 marijuana sales; right?

9 A Yes.

10 Q All right. If there was something wrong with the  
11 location, wouldn't that be noted in some type of deficiency  
12 report?

13 A Yes.

14 Q All right. And if there was something wrong with  
15 the size of the building or the layout of the building,  
16 wouldn't that also be noted on this report or some type of  
17 deficiency report?

18 A Yeah, I believe so.

19 Q All right. So can it be said based upon a non  
20 finding of any deficiencies that the building location and the  
21 building size were at least adequate?

22 A I would say so.

23 Q All right. Now, let's suppose that Nevada Wellness  
24 Center used that floor plan and that building layout for  
25 purposes of one of its applications. Wouldn't you agree with

1 me that the evaluators, because this was a part of his  
2 application, would come to the same determination that the  
3 medical -- I'm sorry -- that the Marijuana Enforcement  
4 Division came to, that this building would be adequate and  
5 this floor plan would be adequate?

6 A Yeah, I don't know what an evaluator is, you know --

7 Q No. And that's fine. That's fair enough. But my  
8 question to you is if an evaluator came to a different  
9 conclusion than the medical -- I'm sorry -- the Marijuana  
10 Enforcement Division came to in terms of the adequacy of this  
11 building and the suitability of its size, wouldn't that  
12 concern you?

13 MR. GRAF: Objection, Your Honor. Misstates the  
14 law.

15 THE COURT: Overruled.

16 MR. GRAF: Thank you, Your Honor.

17 THE WITNESS: If we're strictly talking adequacy of  
18 size, probably I'd -- I'd probably raise a eyebrow.

19 BY MR. PARKER:

20 Q Right. Because you would think that if this is a  
21 model that has worked and has been approved by the Marijuana  
22 Enforcement Division it should be able to be approved in a  
23 replicated building, right, in terms of adequacy?

24 A I would say so.

25 Q That's right. So Nevada Wellness Center used that

1 building size, that layout as an example with building plans  
2 actually attached for its building it would replicate so --  
3 along with a location. Now, wouldn't you agree with me that  
4 if someone had gone through the process of getting building  
5 plans, has described in detail its intention to replicate that  
6 building, and then has given you a location that meets the  
7 ballot question, meets the statute, and meets the regulation,  
8 that that building should have been approved or scored  
9 appropriately by your evaluators?

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

12 THE COURT: Overruled.

13 THE WITNESS: You know, again, I'm not comfortable  
14 substituting my judgment, you know, for the evaluators'.

15 BY MR. PARKER:

16 Q Right. That's why I'm saying isn't it your opinion  
17 that the evaluators should have scored that appropriately.

18 A Yeah, I think it should be scored appropriately as  
19 required.

20 Q Right. Because if the Marijuana Enforcement  
21 Division finds it adequate, it should be adequate for purposes  
22 of the application review?

23 A I would think so, yes.

24 Q All right. So let me show you --

25 MR. PARKER: Dulce, this is 306.

1 THE CLERK: Okay. Proposed.

2 MR. PARKER: Proposed.

3 THE COURT: And that was the other book.

4 MR. PARKER: This is. This is the scoring of Nevada  
5 Wellness, Your Honor.

6 THE COURT: Any objection to that?

7 MR. SHEVORSKI: No objection, Your Honor.

8 THE COURT: Be admitted.

9 (Plaintiffs' Exhibit 306 admitted)

10 MR. PARKER: Thank you, Your Honor.

11 THE WITNESS: Are we done with this?

12 MR. PARKER: No. Hold on to it. But let me see if  
13 I can find you 306.

14 Is it over there, Dulce?

15 THE CLERK: It's under the top of that cart.

16 (Pause in the proceedings)

17 MR. PARKER: We're not going to go back and do much,  
18 because I'm almost just about done.

19 THE COURT: Good. Because I've got questions.

20 MR. PARKER: All right.

21 BY MR. PARKER:

22 Q All right. So if you were to look at 306 and the  
23 Bate Number's DOT0033454 -- so it's kind of in the middle of  
24 the stack, sir.

25 A Okay.



1 Q So it says here -- it appears that Mr. Lemons -- do  
2 you see that?

3 A Yes.

4 Q Okay. He indicates that the location is near public  
5 transportation. Do you see that?

6 A Yes, in front of something.

7 Q So at least this -- Mr. Lemons is considering the  
8 location for purposes of public transportation; is that  
9 correct?

10 A Apparently.

11 Q All right. And then it says, "Front doors open into  
12 display, no barriers." Do you see that?

13 A Yeah. I don't know what that -- what he's trying to  
14 say with that abbreviation. Is it "display"?

15 Q I'm assuming.

16 A Front door opens into dispensary maybe? No  
17 barriers.

18 Q Maybe dispensary.

19 A Okay. I'm sorry. What's your question, again?

20 Q And then below that it says, "Construction plan."  
21 Do you see that all the way at the bottom of the notes,  
22 CONTPLAN?

23 A Yes.

24 Q All right. So they looked at the location at least  
25 for purposes of public transportation, and they recognized

1 that construction plans were provided. Do you see that?

2 A Yes.

3 Q All right. Do you know whether or not these  
4 evaluators were told not to consider location, or were they  
5 looking at it in terms of some applicants, but not others?

6 A No, I don't think they were told, you know, not to  
7 consider one item, you know, for some applicants and one the  
8 other. I don't -- I'm not sure what exactly the instruction  
9 that they were given. I was -- you know, it was part of their  
10 training or whatnot.

11 Q It wouldn't be right to give -- to take away points  
12 in this case -- it says minus 2. Do you see that?

13 A Yes.

14 Q It would not be appropriate to subtract points when  
15 someone has gone beyond simply giving a floor plan, but giving  
16 construction plans, indicated that the building that they  
17 intend to replicate has been approved by the Marijuana  
18 Enforcement Division. That doesn't seem right, does it?

19 MR. KOCH: Objection. Speculation. Lacks  
20 foundation.

21 THE COURT: Overruled.

22 THE WITNESS: Yeah, I don't -- again, you know, I  
23 don't -- I'm not seeing it through their eyes, so I can't tell  
24 you what all they were looking at, what their thinking process  
25 was to score it the way they did.

1           Q     All right.  Would you agree with me, sir, then, that  
2 based upon on how you thought the application process would  
3 work that if someone was going to provide the location that's  
4 suitable, one that complies with the ballot question, the  
5 statutes, and the Administrative Code, provide construction  
6 plans and a floor plan, and demonstrate by virtue of the  
7 letter that their location has been inspected by the Marijuana  
8 Enforcement Division, that person should get a full -- the  
9 full points allowed on that section; right?

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

12           THE COURT:  Overruled.

13           MR. GRAF:  Objection.  Incomplete hypothetical, Your  
14 Honor.

15           THE COURT:  Overruled.

16           MR. GRAF:  Thank you, Your Honor.

17           THE COURT:  You can answer.

18           THE WITNESS:  Yeah, I don't know if they're entitled  
19 to full points.  If it meets the criteria for full points,  
20 then they should get full points.  It's what --

21 BY MR. PARKER:

22           Q     Can you think of anything else in the criteria that  
23 would not have been complied with if you provided that much  
24 information?

25           MS. SHELL:  Objection.  Calls for speculation.

1 THE COURT: Overruled. You can answer.

2 THE WITNESS: Well, I see a note here. It says, "No  
3 work tasks."

4 BY MR. PARKER:

5 Q Okay. I'm talking about the building at this point.  
6 I see the "no work tasks" --

7 A Under construction. Okay.

8 Q -- and I also see the building notation. I was  
9 wanting to actually stick to building for a second, because  
10 I've got another one that goes again to the building.

11 So in terms of the building in your opinion would  
12 you agree with me that if you're providing a suitable  
13 location, one that meets all the distance requirements --

14 A Okay.

15 Q -- is adequate in size -- because we know the  
16 Marijuana Enforcement Division's already inspected it, that  
17 letter is a part of the application that's given -- shouldn't  
18 that location and the replication of that location get full  
19 points in your opinion?

20 MS. SHELL: Objection. [Inaudible].

21 THE COURT: Overruled.

22 BY MR. PARKER:

23 Q I don't care what the evaluators did. Based upon  
24 what you know.

25 MR. GRAF: Your Honor, I'm going to object as to

1 form.

2 THE COURT: Overruled.

3 MR. GRAF: Thank you.

4 THE WITNESS: If that's the only requirement for  
5 their criteria?

6 BY MR. PARKER:

7 Q Uh-huh.

8 A Then possibly. You know --

9 Q All right.

10 A -- it depends what the entire criteria calls for.

11 Q Take a look at DOT33514. And even before you get  
12 there. Do you know if any of the evaluators were given any  
13 training on how to read plans? When I looked through the  
14 slides there's no information on how to read plans or how to  
15 determine adequacy of size. Do you know if they were given  
16 any training like that that's not reflected in the training  
17 slides?

18 MR. GRAF: Object, Your Honor. Compound. And again  
19 as to form.

20 THE COURT: Overruled.

21 MR. GRAF: Thank you, Your Honor.

22 THE WITNESS: Okay. No, I don't know. I'm sorry.  
23 Did you say 514 earlier?

24 BY MR. PARKER:

25 Q It's DOT33514.

1           A     Okay.

2           Q     All right. So this is a different evaluator. I  
3 can't make out the name at the top. I don't know if you  
4 recognize it.

5           A     No, I don't.

6           Q     Okay. And it says, "Plans difficult to read." Do  
7 you see that?

8           A     Yes.

9           Q     All right. Do you have any training in reading  
10 construction plans?

11          A     I don't.

12          Q     Anybody in your charge, Mr. Plaskon, Mr. Gilbert,  
13 anyone that you are aware of who actually could read plans or  
14 knew how to read plans?

15          A     Not that I know of.

16          Q     All right. Do you know if someone could not read  
17 the plans, whether or not there was someone available to the  
18 evaluators to help them read the plans?

19          A     Well, from what I understand, I believe one of the  
20 evaluators has a construction background.

21          Q     Do you know which one?

22          A     No.

23          Q     Okay. Did you receive resumes on all of the  
24 evaluators?

25          A     Personally?

1 Q The Department.

2 A The Department. I believe they did.

3 Q Have you produced those to your counsel?

4 A I believe so.

5 Q Okay. And if you look at 33518, it does not  
6 indicate who the evaluator is on this page, but it says,  
7 "Overall plan confusing." Do you see that?

8 A Yes.

9 Q So my concern is did anyone provide any help to  
10 these evaluators in understanding construction plans? To your  
11 knowledge do you know of anyone?

12 A I don't know.

13 Q Good. And do you know whether or not any training  
14 information, something other than the slides that we've seen,  
15 would have been provided to the evaluators on how to discern a  
16 good plan from a bad plan?

17 A I don't know.

18 Q Okay. All right. Can we go to NAC 453AD.272(5).

19 MR. GRAF: A, or D? You said AD.

20 MR. PARKER: D as in David.

21 MR. GRAF: D. Thank you.

22 MR. PARKER: Delta.

23 BY MR. PARKER:

24 Q So when we left off we were talking about  
25 monopolies. When I say we -- when Mr. Miller was talking to

1 you about it, and I started, but then kind of moved away from  
2 it. It says here "To prevent..." Do you see that?

3 A Yes.

4 Q Are we on the same page? Good. You were talking  
5 about how you believe based upon the definition of applicant  
6 that one company, even if it had similar owners, could have  
7 more than one location in the same jurisdiction; is that  
8 correct?

9 A Yes.

10 Q All right. Now, this -- it says, "Does not issue to  
11 any person, group of persons, or entity." You understand  
12 that?

13 A Yes.

14 Q Isn't that different than your application in terms  
15 of "individual" and "applicant"? Doesn't this regulation or  
16 Administrative Code section indicate that similar ownership is  
17 prevented, because it says, "...to any person," which means  
18 similar owners having two different companies shouldn't be  
19 allowed to have ownership in more than one recreational  
20 marijuana establishment in the same jurisdiction; right?

21 MR. KOCH: Objection. Legal conclusion.  
22 Argumentative.

23 THE COURT: Overruled.

24 THE WITNESS: I believe if you continue to read, it  
25 says, "the greater -- or the greater of more than 10 percent



1 of the licenses."

2 BY MR. PARKER:

3 Q Well, did you check to determine the ownership  
4 interest of any of the similar owners for any of the company  
5 we talked about earlier today, Essence Trop, Essence  
6 Henderson, Commerce, or Cheyenne?

7 A Yes, a monopoly check was done.

8 Q Did you figure out what the interests were on those?  
9 The gentleman that owned both of them, you know, one gentleman  
10 owned Henderson Trop and Henderson -- I'm sorry -- Essence  
11 Trop and Essence Henderson; right?

12 A Right.

13 Q Did he have more than a 5 percent interest in both  
14 companies or 10 percent interest in both companies?

15 A Yeah, I don't what the percent interest is.

16 Q So how could you determine that there was a monopoly  
17 created if you didn't know the ownership interest?

18 A Well, the owners are checked regardless of ownership  
19 interest percentage to ensure that they don't have more than,  
20 like I say, in Clark County would be eight licenses in the  
21 County.

22 Q That's not what you said, sir. You told me that  
23 based upon the slide we put on right after lunch -- which  
24 exhibit number was that? I think it was -- the one that shows  
25 per -- here we go. When we placed on the screen Exhibit 252,

1 and it says, "Per" in red --

2 A Right.

3 Q Right there. Look in front of you.

4 A I know.

5 Q "Per Jorge."

6 A Right.

7 Q Right. This was the monopoly issue, and you allowed

8 these four companies to have more than one location in the

9 jurisdiction. Do you recall that?

10 A Yes.

11 Q All right. Did you determine the ownership

12 percentage for the similar owners for all four locations?

13 A The ownership percentage in the entity -- that they

14 had in the entity?

15 Q Yes. Exactly.

16 A I'm sure it was listed on the application. I don't

17 know -- what I'm trying to say -- so you have the entity. The

18 entity is separate from the ownership interest. So when you

19 do a monopoly check you check every person or owner or group

20 of persons --

21 Q You're supposed to?

22 A Yes. Well, we did.

23 Q Well, no. You told me --

24 A That's my understanding.

25 Q You told me you only checked the ones listed.

1 THE COURT: Mr. Parker, don't argue with him.

2 MR. PARKER: All right.

3 THE COURT: Thank you.

4 THE WITNESS: Did a -- check a monopoly provision.

5 We checked every individual that's listed on the application

6 to ensure that they didn't have more licenses than what's

7 allowed under this provision and the jurisdiction.

8 BY MR. PARKER:

9 Q Okay. So let me accept what you just said, because

10 I think that's pivotal. You said you would check each owner

11 listed to make sure each owner didn't have more than one

12 location in that jurisdiction; right?

13 A That had more than what?

14 Q One location in a particular jurisdiction.

15 A No, not one location. This provision allows more

16 than 10 percent of the licenses allocable in the county.

17 Q Okay. So if you only had 10 in the county, right --

18 you give up 10 licenses in the county?

19 A I think it was more than that, 31 in the county.

20 Q In the county? How many did you give out in the

21 city?

22 A The city of Las Vegas?

23 Q Yeah.

24 A I believe it was 10.

25 MR. PARKER: Go back to the statute, Shane, so I can

1 see the [inaudible].

2 BY MR. PARKER:

3 Q All right. So did you determine whether or not  
4 allowing for Essence Trop and Essence Henderson would exceed  
5 this restriction?

6 A Yes.

7 Q Okay. Would there be something that would allow me  
8 to verify that, something in writing other than this document?

9 A Yes. I don't know if -- I'm sure it's been  
10 provided. I don't know where.

11 Q Okay. I don't know if it has or not. We can figure  
12 it out.

13 Now, did the -- what did the -- did the ballot  
14 question address this issue for you?

15 A You know, I don't remember.

16 Q In terms of restriction on monopolies.

17 A I don't remember.

18 Q Did the statute address this issue for you?

19 A You know, I don't remember if it's part of the  
20 initiative or not.

21 Q Okay.

22 A I'd like to say it is, but I don't know for sure. I  
23 don't remember.

24 Q All right. So for you to figure this out wouldn't  
25 you have to know all the owners and all their interests -- all

1 their percentages of interests and then determine whether or  
2 not having more than one location would exceed or violate this  
3 part of the Code?

4 A I don't need to know their percentage of interest,  
5 just that they're an owner.

6 Q Okay. Is it your position that any one owner can  
7 have more than 10 percent of the locations in any  
8 jurisdiction?

9 A Right. Any individual.

10 Q And that's not defined by the name of the company,  
11 it's the owner and owner of that company?

12 MR. GRAF: Objection, Your Honor. Misstates the  
13 law.

14 THE COURT: Overruled.

15 MR. GRAF: Thank you, Your Honor.

16 BY MR. PARKER:

17 Q Isn't that correct, sir?

18 A Well, I would think that it's any person.

19 Q Right. Which would be an owner; right?

20 A Right.

21 Q Right. And that's what I think the importance of  
22 the statute is. It doesn't just say "entity." It says, "Any  
23 person or group of persons." Right?

24 A Right.

25 Q So when you gave this --

1 MR. GRAF: Objection, Your Honor. I'm sorry. I  
2 know it's belated. Just very quickly. Object as to form.  
3 Misstates the law.

4 THE COURT: We're on the regulation. This is NAC.

5 MR. PARKER: We're on the Administrative Code.

6 THE COURT: I understand.

7 MR. GRAF: And it does say --

8 THE COURT: The objection's overruled.

9 MR. GRAF: Thank you, Your Honor.

10 BY MR. PARKER:

11 Q So, sir, to kind of put an end to this conversation.  
12 When you made this determination, you performed that analysis  
13 you looked at the owners, you looked at interest to know who  
14 was an owner of each company and decided whether or not it  
15 violated this Administrative Code section; is that correct?

16 A Yeah. Just for clarity, when you say "you" I  
17 personally didn't do it, but --

18 Q Your Department?

19 A Yes.

20 Q All right. Good enough.

21 A There was a monopoly analysis performed.

22 Q All right. And then finally, sir --

23 MR. PARKER: I don't know if this had been admitted,  
24 Your Honor. It's 446?? Has that been admitted?

25 THE CLERK: Is that ETW's 446?

1 MR. PARKER: Yes.

2 THE CLERK: That's proposed.

3 THE COURT: Any objection?

4 MR. BULT: We all stipulated to it, but we never got  
5 it admitted.

6 THE COURT: So we're going to take a break now. So  
7 we're going to take 20 minutes, because Mr. Graf has a whole  
8 lot of things he wants me to know that I won't listen to. So  
9 get up, walk around, and enjoy yourself. I wouldn't go all  
10 the way to outside, though.

11 THE CLERK: Will 446 be admitted?

12 THE COURT: Yes. Well, no. I'm giving you guys  
13 10 minutes to argue, 10 minutes for a break. So that means  
14 the witness gets 20.

15 Mr. Graf, you wanted to say stuff.

16 MR. GRAF: Yes, Your Honor. I move to strike every  
17 question where Mr. Parker referenced adequacy of size. That  
18 is not how the statute reads. NAC -- or excuse me, the Code.  
19 NAC 453D.268 provides that you just have to provide a  
20 description of the facility, including the size -- or we can  
21 read it in exactly, Your Honor. It's 453.268(6) it says,  
22 "Documentation concerning the size of the proposed marijuana  
23 establishment, including, without limitation, building and  
24 general floor plans with supporting details." "Adequacy" is  
25 nowhere there, Your Honor. He referenced that in numerous

1 sections. That was my objection as to form. It is -- and I  
2 know you're the trier of fact, so I'll leave it up to you,  
3 Your Honor to be able to read the statute and understand the  
4 statute.

5 THE COURT: Thank you, Mr. Graf.

6 MR. GRAF: But I think that those --

7 MR. PARKER: [Inaudible].

8 MR. GRAF: And I'll put that out there. But, Your  
9 Honor, I think everybody started this hearing, and I don't  
10 know if it was Mr. Kemp or Mr. Gentile that said words mean  
11 things. We're getting very loose with the words here, and I  
12 think that these words, especially when you're starting to  
13 create new standards, don't exist, need to be ferreted out,  
14 and called to the carpet. And that's what I'm doing, Your  
15 Honor.

16 THE COURT: All right.

17 MR. GRAF: Adequacy of size is not the standard.  
18 And he asked that question numerous times. And now you, as  
19 the trier of fact, have that in your head. So I just wanted  
20 to make sure that was on the record.

21 THE COURT: No. Actually, Mr. Graf, I don't have  
22 any of that stuff in me head, but thank you.

23 MR. GRAF: Okay.

24 THE COURT: So your objection's overruled. I  
25 certainly understand your objection, and, luckily, I have the



1 Nevada Administrative Code and the Nevada Revised Statutes  
2 Section 453D sitting on my computer. So I can read them  
3 instead of relying upon what is stated by counsel and can  
4 interpret them and give them the deference the agency is  
5 entitled to. All right.

6 MR. GRAF: And then the other objection or  
7 clarification I wanted to make was NAC 453D.268(4)(11) and  
8 he's talking --

9 THE COURT: Hold on. Let me get there.

10 MR. GRAF: Yeah.

11 THE COURT: All right. I stopped reading at  
12 "interest" when I was asking Mr. Parker if he was at the right  
13 place. So okay.

14 MR. GRAF: Okay. So it says -- 450D(11) [sic]. And  
15 I'm just going to go from 4, Your Honor. "A description of  
16 the proposed organizational structure of the proposed  
17 marijuana establishment, including, without limitation." Then  
18 (b) it says, "A list of all owners, officers, and board  
19 members of the proposed marijuana establishment that contains  
20 the following information for each person." Then it lists a  
21 bunch of stuff, and then Mr. Parker referenced subpart (11)  
22 that says, "Whether the person has an ownership or financial  
23 investment interest in any other medical marijuana  
24 establishment or marijuana establishment." He was referencing  
25 the 5 percent at that point in time, Your Honor, and he was

1 talking about --

2 THE COURT: I don't think he was referencing the  
3 5 percent, Mr. Graf, because I don't know that the 5 percent  
4 is compliant with the ballot question. I certainly --

5 MR. PARKER: Bingo.

6 THE COURT: Mr. Parker, can you stop helping me.

7 MR. PARKER: I'm sorry. But you were right.

8 THE COURT: So I'm listening to all the evidence  
9 that you all present and hopefully sometime the other people  
10 in the room are going to get to present evidence and I'm going  
11 to listen to them, too.

12 MR. GRAF: Okay.

13 THE COURT: Anything else?

14 MR. GRAF: Yes, Your Honor.

15 THE COURT: Okay.

16 MR. GRAF: So then it's NAC 453D.272.

17 THE COURT: Okay. Hold on. Let me get there. All  
18 right.

19 MR. GRAF: Which he was talking about the 10 percent  
20 of ownership.

21 THE COURT: That's in section (5)(a) and (b). 5(a)  
22 and (b).

23 MR. GRAF: I'll leave that to Her Honor.

24 [Inaudible] person...or entity. And then, Your Honor, that  
25 statute is providing for what or who the applicant is and who

1 was actually issued the license.

2 Mr. Parker was trying to say that everybody that's  
3 an owner of an applicant, they'd have to be listed. What I  
4 think, and I object to, is the loose determination that an  
5 entity cannot be the person to whom the license is issued.

6 THE COURT: Okay. I understand your position on  
7 that, Mr. Graf.

8 MR. GRAF: Thank you.

9 THE COURT: Did anybody else want to say anything  
10 for purposes of my record because you don't think you have  
11 enough time to argue any objections and I wouldn't let you  
12 make a speaking objection?

13 All right. So you can all have a break now.

14 MR. KOCH: Thank you, Your Honor.

15 (Court recessed at 2:32 p.m., until 2:41:49 p.m.)

16 MR. PARKER: All right. So it's Exhibit 46, I think  
17 you said. Is that the number?

18 MR. KOCH: 446.

19 MR. PARKER: 446.

20 THE COURT: I admitted it already --

21 MR. PARKER: Thank you, Your Honor.

22 THE COURT: -- before the break pursuant to the  
23 stipulation.

24 MR. PARKER: All right. So Shane --

25 We don't have Shane, Your Honor.

1 THE COURT: The A-V guys are allowed to have a  
2 break. Here he comes.

3 (Pause in the proceedings)

4 THE COURT: Okay. Now we're ready.

5 MR. PARKER: Thank you, Your Honor.

6 THE COURT: Okay.

7 MR. PARKER: May I proceed?

8 THE COURT: You may.

9 MR. PARKER: So can we look at Exhibit 446, page 1,  
10 please.

11 BY MR. PARKER:

12 Q It should be coming up, Mr. Pupo.

13 So this is the Marijuana Nevada email to Ramsey, is  
14 it Davise? How do you pronounce that?

15 Oh. Is yours not on?

16 A It's not on the screen here.

17 MR. PARKER: May I approach?

18 THE COURT: You may. Are you going to use the turn  
19 off and hopefully it comes back on method?

20 (Pause in the proceedings)

21 BY MR. PARKER:

22 Q All right. Do you recognize that email address in  
23 terms of the sender? It says "From: Marijuana Nevada."

24 A Okay. Yes.

25 Q Is that from the Department of Taxation?

1           A     That's one of our boxes, yes.

2           Q     Okay. And it's dated September 9, 2018. So this is  
3 during the application process, is that correct, after  
4 applications are being -- the window in terms of submission of  
5 applications? Wasn't it the 7th through the 20th?

6           A     Yeah. Okay. I believe it was the 7th through the  
7 20th.

8           Q     All right. So it appears here that Mr. Ramsey was  
9 being responded to by Mr. Plaskon; is that correct?

10          A     Yes.

11          Q     All right. And he indicates here that he cannot  
12 answer the question being asked; is that correct?

13               MR. KOCH: Objection. Document speaks for itself.

14               THE COURT: Overruled.

15               THE WITNESS: It's that would not provide guidance  
16 to individual applicants.

17 BY MR. PARKER:

18          Q     Now, tell me. That seems at odds with what has been  
19 said earlier in this trial -- or in this hearing. I was told  
20 that, you know, you've had conversations and others have had  
21 conversations with representatives of applicants, as well as  
22 applicants. Why would Mr. Plaskon take this position on  
23 September 9th, 2018?

24               MR. KOCH: Objection. Speculation.

25               THE COURT: Overruled.

1 THE WITNESS: He must have gotten instruction.

2 BY MR. PARKER:

3 Q Okay. Did you give any instruction to not provide  
4 information to this person?

5 A No.

6 Q Are you familiar with Libra Wellness?

7 A Yes.

8 Q Do they have a medical marijuana license?

9 A I believe so, yes.

10 Q Did they apply for or receive a conditional  
11 recreational license?

12 A I don't know.

13 Q All right. Was this the position taken by the  
14 agency, your Department, on September 9th, that there would be  
15 no more answers given?

16 MR. KOCH: Objection. Mischaracterizes the  
17 document.

18 THE COURT: Overruled.

19 THE WITNESS: Yeah. I don't know that was  
20 instructions.

21 BY MR. PARKER:

22 Q It says, "With that said, the Division cannot  
23 provide guidance to individual applicants.

24 THE COURT: Hold on a second.

25 THE COURT RECORDER: I'm having a hard time hearing

1 the witness.

2 THE COURT: Mr. Pupo, I'm going to need you to speak  
3 up again. I'm sorry.

4 THE WITNESS: Oh. I'm sorry. Let me move over  
5 here. Sorry.

6 MR. PARKER: So want me to start from the beginning?

7 THE COURT RECORDER: Not from the beginning.

8 THE COURT: Please no. You can start over on this  
9 sentence. That would be good.

10 BY MR. PARKER:

11 Q All right. "With that said, the Division cannot  
12 provide guidance to individual applicants beyond what is  
13 included in the instructions." Do you see that?

14 A Yes.

15 Q How, you would agree with me that's different than  
16 what you've told -- how you responded to questions from Mr.  
17 Miller. You said that questions came in all the time, people  
18 needed clarification, you provided information; is that  
19 correct?

20 A Yes.

21 Q All right. So tell me, when did the approach to  
22 answering questions change, to your knowledge?

23 A Yeah. I don't know.

24 Q Okay. Would this be -- would you agree with me that  
25 it would be unfair to allow certain applicants to get

1 information from your Department while others were denied  
2 answers?

3 A Yes.

4 Q Okay. And would you agree with me that if certain  
5 applicants are provided with information while others are not,  
6 that potentially those who receive the information or answers  
7 to their questions would have an advantage over those who were  
8 not answered?

9 A Generally, yes, depending on the type of  
10 information.

11 Q Okay. I want to go back to Exhibit 252, and I want  
12 compare it to Exhibit 5.

13 THE COURT: Sir, can you touch the lower left-hand  
14 corner of your monitor and see if you can clear those pink  
15 marks for me.

16 THE WITNESS: Oh. You can see that? I wondering  
17 what that was.

18 THE COURT: Lower left-hand corner. Thank you so  
19 much.

20 BY MR. PARKER:

21 Q So back to the red language on both 272 [sic] and on  
22 Exhibit 5. So on 272 this is what it says. Per Jorge you  
23 can allow these monopolies to exist; is that correct? I'm  
24 paraphrasing.

25 A No, I would not say that.



1 MR. PARKER: All right. Well, let's pan a little  
2 bit -- to the left a little bit on Exhibit 252. 252. The one  
3 on the bottom.

4 Your Honor, may I approach again?

5 THE COURT: You may.

6 BY MR. PARKER:

7 Q All right. It indicates there duplicate ownership  
8 against [inaudible]. Is that correct?

9 A Yes.

10 Q All right. So there's a recognition of that point  
11 by you that you had duplicate owners for certain locations;  
12 correct?

13 A Yes.

14 Q And then you indicate in the red language there that  
15 you're going to allow it; is that correct?

16 A Yes.

17 Q All right. Now, if you go to Exhibit 5, page 19, it  
18 says here, "No applicant may be awarded more than one retail  
19 store license in a jurisdiction locality unless there are less  
20 applicants than licenses allowed in the jurisdiction."

21 A Yes.

22 Q You see that?

23 A Yes.

24 Q Now, when we talk about -- when we looked at the  
25 Administrative Code I believe you agreed with me that an

1 applicant as reflected in the Administrative Code would  
2 include a person or a group of persons; isn't that correct?

3 MR. KOCH: Objection. Legal conclusion.  
4 Argumentative.

5 THE COURT: Overruled.

6 THE WITNESS: I don't think I agreed to that.

7 BY MR. PARKER:

8 Q Okay. That's what the Administrative Code says,  
9 isn't that true, NAC 453D.272(5); right?

10 MR. KOCH: Objection. Legal conclusion.

11 THE COURT: Overruled.

12 BY MR. PARKER:

13 Q And if you want, I can bring it to you --

14 A Yes. Well, you took the binder.

15 Q That's why I said I'll have to bring it back.

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

17 THE COURT: You may.

18 THE WITNESS: Okay. I'm sorry. The question again?

19 BY MR. PARKER:

20 Q Yeah. Have you read that section again?

21 A Yes.

22 Q And that section deals with no monopolies; right?

23 A Yes.

24 Q Okay. And doesn't it describe persons and groups of  
25 persons?

1           A     Yes.

2           Q     All right.  And that's what I thought we said when  
3 we left off.  So if you had identified in your review of the  
4 applications duplicative ownership and we have the portion of  
5 the application, of Exhibit 5, that says, "No applicant may be  
6 awarded more than one retail store," how do you reconcile a  
7 single owner owning more than one location in the same  
8 jurisdiction?

9                   MR. KOCH:  Objection.  Calls for a legal conclusion,  
10 Your Honor.

11                  THE COURT:  Overruled.

12                  MR. KOCH:  Also looks foundation.

13                  THE COURT:  Overruled.

14                  THE WITNESS:  Okay.  So we if read on, it says, "or  
15 more than 10 percent of the licenses for retail marijuana  
16 stores allocable in the county.  So in Clark County there are  
17 80 licenses allocable in the county.  Which means any group,  
18 group of persons -- what else does it say -- person, group of  
19 persons can have up to eight licenses.

20 BY MR. PARKER:

21           Q     Okay.  And so you're telling me your language in  
22 Exhibit 5 that says "No applicant," you still meant that to  
23 mean what?

24           A     That --

25           Q     Just the name of the company --

1           A     The entity/individual.

2           Q     -- couldn't be the same?

3                     Okay. So could Essence have Essence LLC 1, 2, 3, 4,  
4 5, 6, 7, 8, 9, 10, all the way up to 80, have 80 Essences,  
5 just LLC 1 through 80 submit the same application and got them  
6 all because it'd be a different LLC for each?

7           A     They're separate and distinct entities --

8           Q     Right.

9           A     -- right, so they're -- each one would be considered  
10 an applicant.

11          Q     Which means they could have gotten all 80. There  
12 could be 80 Essences, 1 through 80, LLC 1, 2, 3, all the way  
13 through 80; is that correct? That would be your --

14          A     Potentially. That's why we did the one retail  
15 store. That's why we did this -- or that's why I did this, so  
16 that wouldn't happen.

17          Q     So --

18          A     So that was my fear, that a license -- an entity --  
19 I looked at it -- I did this in the interest of fairness, for  
20 everyone to have an equal shot at getting a license in a --  
21 basically two jurisdictions everyone wants, right, Clark  
22 County and Washoe. Potentially if you look at it in a  
23 scenario, if I allow an entity to -- let's say they maxed out  
24 on points, right --

25          Q     Right.

1           A     -- and they could say, well, I want -- I have -- and  
2 they say, I have one current retail store in Las Vegas and  
3 there are 10 licenses in Las Vegas available. They say, all  
4 right, well, I want 1 through 9, or, I want an additional --  
5 I'm allowed 8,, so I want 7 licenses in Las Vegas. When you  
6 play it out, instead of having 17 entities that won, we would  
7 have been down to like 5; 5 entities would have gotten all the  
8 licenses.

9           Q     If you want to --

10          A     Roughly.

11          Q     I'm sorry, sir. Let me see if I can understand you.  
12 If you wanted to provide the ability for more participants to  
13 have conditional licenses, you simply could have enforced your  
14 rule and said, one per owner, entity, regardless of ownership  
15 interest; right? Just one. If you own more than one, I'm  
16 sorry, you only get one; right? And then you --

17          A     You mean total?

18          Q     Right.

19          A     Like if you're saying --

20          Q     Just one per jurisdiction.

21          A     And then they wouldn't be able to apply in that  
22 jurisdiction; is that what you're saying?

23          Q     That's right.

24          A     Yeah. I guess potentially.

25          Q     That would have been the easiest and the cleanest

1 way of ensuring that no more than one owner, regardless of the  
2 number of companies he or she has an ownership in, would not  
3 have more than one location in a jurisdiction; right?

4 MR. KOCH: Objection. Argumentative.

5 THE COURT: Overruled.

6 THE WITNESS: No. Potentially I think that would  
7 have brought on a different set of problems.

8 BY MR. PARKER:

9 Q But that would prevent any monopolies or  
10 duplications of ownership in any entity, right, in the same  
11 jurisdiction?

12 A Well, monopolies going to be prevented anyway,  
13 because you have to do the monopoly analysis.

14 Q Okay. And did you do the monopoly analysis here?

15 A Yes.

16 Q Right. But we still now have one owner that owns  
17 more than one location in the same jurisdiction; right?

18 A Yes.

19 Q Right. But you could have prevented any of that by  
20 simply saying, I don't care how many companies apply, if you  
21 have an ownership in more than one you only get one location  
22 for that owner per jurisdiction; right?

23 MR. KOCH: Objection. Argumentative. Lacks  
24 foundation.

25 THE COURT: Overruled.

1 THE WITNESS: I could have. I think that would have  
2 created more problems.

3 BY MR. PARKER:

4 Q Okay. Thank you.

5 MR. PARKER: Now, let's stay right here in terms of  
6 Exhibit 252, Shane. I don't need the other email.

7 BY MR. PARKER:

8 Q You told Mr. Miller that you went to -- you were  
9 offered ownership -- you were offered jobs by I believe one of  
10 the owners that you allowed to have more than one location in  
11 this jurisdiction; is that correct?

12 A Yeah. I don't characterize them as offers. They  
13 were saying, hey, if you leave the State, make sure I'm the  
14 first one to call, or, give me a call.

15 Q And who was that again? Was this the owner of  
16 Essence?

17 A Yes.

18 Q Okay. And did anyone else or any of the other  
19 owners from Essence -- did you meet with any of them?

20 A No.

21 Q Did you meet with any of the owners of Cheyenne or  
22 Commerce Park?

23 A Regarding?

24 Q Any offers of employment.

25 A No.

1 Q Did you meet with any owners -- do you know the  
2 owners of Commerce Park and Cheyenne?

3 A I know -- I know some.

4 Q Okay.

5 A Yeah. I don't know that I know all the owners.

6 Q What owners do you know?

7 A Mitch Britten and Phil Peckman.

8 Q Okay. And who are the owners that you're aware of  
9 in terms of Essence Trop and Essence Henderson?

10 A Just Armen.

11 Q No one else have you met with or are familiar with  
12 that own that company?

13 A Not that I'm familiar with.

14 Q Okay. And did the owners of both these companies  
15 the ones that you know in common -- you've spoken to them,  
16 you've gone to lunch with them and/or dinner with them; right?

17 A Yes.

18 Q All right. And you turned them both down on the  
19 offers?

20 A I am not interested in staying in the marijuana  
21 space here.

22 MR. PARKER: Thank you. I appreciate your time.

23 THE COURT: Sir, I'm going to switch gears, if it's  
24 okay. Since the people on that side of the room have finished  
25 asking questions, I'm going to ask some, because I need a



1 little bit better background and feel. So let's start at the  
2 beginning.

3 When did you find out you were going to be involved  
4 with the Marijuana Enforcement Division?

5 THE WITNESS: Well, initially there was no Marijuana  
6 Enforcement Division. When the ballot passed, shortly after  
7 the director at the time I believe went to IFC to ask for some  
8 positions. I believe one of those positions was the deputy  
9 director of -- to oversee the marijuana program. That person  
10 was hired and was there for a while, she was struggling, and I  
11 was a revenue tax manager at the time, and the director asked  
12 me to assist. So it was, I don't know, shortly after -- I  
13 believe it was shortly after the initiative passed.

14 THE COURT: After the initiative passed did you  
15 reread it again when you learned you were going to have to be  
16 involved with the Marijuana Enforcement Division?

17 THE WITNESS: Yes. I mean, along the way we tried  
18 to read and interpret it several times.

19 THE COURT: You've mentioned Mr. Werbicky's name  
20 again. Is he the assigned Deputy Attorney General for your  
21 area in Department of Taxation?

22 THE WITNESS: You know, Your Honor, I don't know the  
23 AG's Office has specifically assigned him, but he spends a lot  
24 of time with us.

25 THE COURT: Okay. So when you read Ballot

1 Question 2 after you learned you were going to have to step in  
2 and help out on Marijuana Enforcement Division did you do an  
3 analysis over how that ballot question was going to impact  
4 your ability to regulate the recreational marijuana space?

5 THE WITNESS: You know, Your Honor, in the beginning  
6 -- again, I was the -- when I came in I was the revenue tax  
7 manager. so I was brought in to -- the person that was the  
8 deputy executive director at the time came from the outside,  
9 wasn't an employee that was already with the Department. So I  
10 came in to assist with let's say the infrastructure, IT work,  
11 getting forms done, tried to set these things up for the  
12 implementation of the program. And that's what I was kind of  
13 guiding her through. Because she didn't even know who to  
14 contact within the Department itself to get these things done.  
15 So I was trying to say, well, we need to get the initial  
16 applications done, we need to get the forms done, what about  
17 the tax forms, you know, what's that going to look like. I  
18 did a lot of that -- that type of work in the beginning.

19 THE COURT: Okay. So after she's not doing so well  
20 and she leaves and you learn that you are stuck with it did  
21 you do an analysis of Ballot Question 2 and what you were  
22 going to have to do to administrator recreational marijuana?

23 THE WITNESS: Yeah. I don't know if we want to call  
24 it an analysis. I read it and I tried rereading it and tried  
25 rereading it again to try to interpret it the best I can with

1 the information. I looked at question, I said, okay, well,  
2 you know, there's not a whole lot here, we're going to work  
3 through it. And I tried working with my director at the time,  
4 and she took -- she pretty much took the lead in getting the  
5 -- a lot of things were happening at the time, the Governor's  
6 Task Force kicked in, Governor Sandoval signed the executive  
7 order. She took care of handling of bringing in the  
8 contractor, the vendor, QuantumMark, and I kind of just  
9 landed in that fold. As that developed with the vendor, then  
10 I got introduced to that process.

11 THE COURT: So let me see if I can ask my question a  
12 different way. At some point did you get involved in the  
13 development of the regulations?

14 THE WITNESS: Yes, ma'am.

15 THE COURT: How did you get involved in that part?

16 THE WITNESS: So when that process I was just  
17 explaining started to develop they were like, we're having a  
18 meeting on these regulations and we've got the QuantumMark  
19 vendor and I was also part of that Governor's Task Force. I  
20 was on the Lab Subcommittee, and that's how I started getting  
21 into the regulation process.

22 THE COURT: Okay. So you were told you had a  
23 meeting about the regulations, and so you went. Was it just  
24 your Department who was involved in proposing the regulations  
25 and QuantumMark, or were there outside people there in the

1 regulation development process?

2 THE WITNESS: In those meetings it's just the  
3 Department and QuantumMark.

4 THE COURT: Okay. So how did you ensure that the  
5 regulations that were being developed were compliant with  
6 Ballot Question 2?

7 THE WITNESS: Well, as a group we would bounce off  
8 -- the initiative said, you will make regulations regarding  
9 these items, right, and then QuantumMark assisted in that, as  
10 well, right, and ensure that we were meeting the requirements.  
11 And collectively, you know, we were bouncing off what we were  
12 writing with the initiative.

13 THE COURT: So how many people were working on that  
14 with QuantumMark besides you?

15 THE WITNESS: Besides -- you said besides  
16 QuantumMark?

17 THE COURT: Besides you and QuantumMark.

18 THE WITNESS: I want to say about five.

19 THE COURT: So Mr. Gilbert --

20 THE WITNESS: So Mr. Gilbert, Kara Cronkhite, Shelly  
21 Hughes, Deon Contine, and Deputy Director at the time Anna  
22 Thornly.

23 THE COURT: Okay. So after you kick around how  
24 you're going to comply with Ballot Question 2 and develop  
25 these regulations to reasonably and conveniently regulate the

1 business of recreational marijuana where do your regulations  
2 go next after you as a group have done your job?

3 THE WITNESS: So they go to the Nevada Task  
4 Commission for adoption.

5 THE COURT: And so you have a public hearing?

6 THE WITNESS: We have public hearings. I think we  
7 had more than one, because I believe that there were some  
8 changes, some red lights --

9 THE COURT: So tell me about that.

10 THE WITNESS: I don't remember the specifics. There  
11 were -- there were -- through the public comments and meetings  
12 I believe there were some areas that were changed and redlined  
13 to -- after the adoption to go to LCD, and then, you know, LCD  
14 approved them. It took them a while to get the permanent regs  
15 approved. And then once -- they went to Leg Commission for  
16 final approval.

17 THE COURT: Okay. And then once that is then  
18 completed the regulations were approved by the Tax Commission,  
19 LCD signs off, you start implementation?

20 THE WITNESS: After, right, Leg Commission signs  
21 off.

22 THE COURT: So let me go to my next --

23 THE WITNESS: After they're filed with the Secretary  
24 of State, Your Honor.

25 THE COURT: They have to be official.

1           The application adaptation, when did you learn you  
2 were going to be involved in the application adaptation for  
3 recreational marijuana?

4           THE WITNESS: What do you mean by application  
5 adaptation?

6           THE COURT: So you have an application from 2014  
7 that you're going to modify, apparently.

8           THE WITNESS: Yes.

9           THE COURT: When did you first learn you were going  
10 to be involved in that process?

11          THE WITNESS: For this -- for this application  
12 period?

13          THE COURT: No. For the first one where we were one  
14 for one --

15          THE WITNESS: From the very beginning? For the  
16 initial one I don't even remember really being part of forming  
17 that application.

18          THE COURT: Okay.

19          THE WITNESS: I was more coordinating. I had to  
20 pull staff from Revenue, because there was no marijuana staff,  
21 there was no marijuana budget.

22          THE COURT: Okay.

23          THE WITNESS: So I was coordinating the pulling  
24 other Revenue officers to help review these applications and  
25 things, so I kind of set up a war room with the computers and

1 -- that's the kind of stuff that I was doing. And then  
2 they're like, okay, we're getting ready to accept  
3 applications.

4 THE COURT: Why did you decide at that time to pull  
5 Revenue officers to do the review?

6 THE WITNESS: We had no marijuana staff, no staff  
7 dedicated to marijuana. There was no -- when we got the  
8 charge of administering the program it didn't come with a  
9 budget. So --

10 THE COURT: That happens a lot.

11 THE WITNESS: Yes, I know. Too often.

12 So at that time the -- if I remember correctly, the  
13 director went to IFC, and we borrowed money to start getting  
14 the things we needed, like IT. And I think that's where the  
15 -- I think we got money for three positions.

16 THE COURT: Okay.

17 THE WITNESS: And I believe that was one the deputy  
18 director -- don't hold me to that, but there were I believe  
19 three positions that we got money for.

20 THE COURT: And you got Revenue officers who already  
21 were experienced in the Department of Taxation and working  
22 with other industries in collecting taxes, reviewing their tax  
23 statements they were filing, and do enforcement if it was  
24 necessary?

25 THE WITNESS: Yes, ma'am.

1 THE COURT: Okay.

2 THE WITNESS: I mean, the revenue officer position  
3 embarks a lot of areas. It's a pretty complex job.

4 THE COURT: So those one-for-one licenses, revenue  
5 officers were the reviewers?

6 THE WITNESS: So when it comes time to open it up  
7 more to the second set of application processes when did you  
8 learn you were going to become involved in the development and  
9 modification of that application?

10 THE WITNESS: For the second --

11 THE COURT: The round that we just did. This round.

12 THE WITNESS: Oh. The round that we just did?

13 THE COURT: The one that's summer of 2018, September  
14 2018 submissions.

15 THE WITNESS: I don't -- I don't remember a time  
16 frame. I don't know -- when you say involvement --

17 THE COURT: I'm trying to be as broad as possible to  
18 get every nugget of information out of you.

19 THE WITNESS: I'm just trying to explain -- I'll try  
20 to explain it as best I can, Your Honor, to you. I wasn't  
21 like on-the-ground involved with this is how the application  
22 is going to be. You know, I went to my staff. They had  
23 experience from 2014, they had done this, and, you know, we  
24 had the information that said, hey, do it like 2014. They  
25 took that application and adapted it to the recreational from



1 the medical.

2 THE COURT: And that's Mr. Gilbert and his group?

3 THE WITNESS: Yes, ma'am.

4 THE COURT: So explain to me as the person who got  
5 stuck in charge even though you didn't ask for it how you made  
6 sure that Mr. Gilbert and his group had the new application  
7 they were developed in compliance with Ballot Question 2.

8 THE WITNESS: I tried to the best of my ability of  
9 looking through -- you know, through the application and  
10 bouncing it off the initiative as much as I could and the  
11 regulations.

12 THE COURT: Okay. Prior to the discussion you had  
13 with Mr. Werbicky about the questions and clarification issues  
14 on the applications in the summer of 2018 had you ever had a  
15 discussion with him about Ballot Question 2 and the  
16 application? And that's a yes or a no. I don't want to know  
17 any substance of the information.

18 THE WITNESS: No.

19 THE COURT: Okay. So how did you decide to use  
20 temps to evaluate these applications in 2018?

21 THE WITNESS: Because that process was used by DPBH  
22 in 2014.

23 THE COURT: But you'd use revenue officers for the  
24 one-for-one.

25 THE WITNESS: Yes, ma'am, initially.

1           THE COURT: So why did you decide to use temps, as  
2 opposed to people from inside the organization?

3           THE WITNESS: Honestly, Your Honor, I didn't even  
4 know I could get temps at that time. I used the resources I  
5 had. Everything was moving very fast. If you look at the  
6 timeline, you know, we're in the middle of session, the  
7 Governor's Task Force was going at the same time. Session at  
8 the end was a mess. There were something like 20, 30  
9 marijuana bills. Some were being held hostage. It was --  
10 until the very last minute we didn't even know -- it was still  
11 touch and go, yes, we're going to get time, no, we're going to  
12 get it, we're not going to get it.

13          THE COURT: But that's how the legislature is every  
14 session.

15          THE WITNESS: I've learned that along the way.

16          THE COURT: Okay. Once you have got the application  
17 finalized -- and I'm going to use finalized in a generic term,  
18 because I know there was this clarification in July, but I'm  
19 talking about the July time frame when you have an application  
20 that you think is good and there may be some clarifications  
21 that go out in some format by your staff. That's the time  
22 frame I'm talking about. Once you had that application done  
23 what process did you establish for the receipt of  
24 applications, and what procedures would be followed upon  
25 receipt? Walk me through as many steps as you set up.

1           THE WITNESS: I didn't set that up, Your Honor. To  
2 be honest with you, that was left up to Steve Gilbert and his  
3 group. Again, they had done it before. I relied on them to  
4 do it again.

5           THE COURT: So I'm going to ask you the elephant in  
6 the room question. Do you understand that there are  
7 significant differences legally in the difference between the  
8 medical marijuana under 453A and the 453D which came from  
9 Ballot Question 2?

10          THE WITNESS: Differences legally?

11          THE COURT: Yes.

12          THE WITNESS: I would assume so, yes.

13          THE COURT: So how did you account for those  
14 differences? And since you're relying on Mr. Gilbert, who did  
15 it one way for the 453A, and now we've got 453D, which is from  
16 the ballot question which can't be amended or modified by  
17 anybody for three years --

18          THE WITNESS: Right.

19          THE COURT: -- how are you going to make sure that  
20 those two things -- that he doesn't do it just the way he did  
21 it for 453A, but he complies with 453D and the ballot  
22 question?

23          THE WITNESS: Right. So you refer back to the  
24 initiative --

25          THE COURT: Right.

1 THE WITNESS: -- and see what's different --

2 THE COURT: Uh-huh.

3 THE WITNESS: -- and what we can do according to the  
4 initiative, and then the rest basically came on those  
5 regulations that came out of the initiative.

6 THE COURT: So you relied upon him to do it,  
7 basically.

8 THE WITNESS: As far as the application you mean?  
9 Yes.

10 THE COURT: No. And the procedure.

11 THE WITNESS: Yes.

12 THE COURT: Okay. All right. I'm done.  
13 You're up, Mr. Shevorski.

14 MR. SHEVORSKI: Thank you, Your Honor.

15 THE COURT: Thank you, Mr. Pupo.

16 THE WITNESS: You're welcome, Your Honor.

17 THE COURT: I was just trying to get some more  
18 broader understanding.

19 THE WITNESS: I understand.

20 CROSS-EXAMINATION

21 BY MR. SHEVORSKI:

22 Q 'Afternoon, Mr. Pupo. It's been a long day, I know.  
23 I appreciate your time and your service to the State. I know  
24 this can't be easy. Thank you for being here.

25 A You're welcome.

1           Q     Let's start off where the Judge just finished, which  
2 is the ballot question and was also something that my friend  
3 Mr. Parker was interested in quite a bit. And he started off  
4 with the ballot pamphlet, and that's Exhibit 2020. Do you  
5 happen to have a paper copy of --

6           A     No.

7           Q     Might be able to pull it up for you. Let's go to  
8 page 14 right where the question was asked of the voters. It  
9 has the "yes" or "no" highlights. And please -- I know you've  
10 probably reviewed this before. Just take a second to  
11 familiarize yourself.

12          A     Okay.

13          Q     Okay. And my friend Mr. Parker asked you about why  
14 you thought you could change what supposedly was the location  
15 requirement, but not change age, the age of a person  
16 authorized to use marijuana under the law. Let's read the  
17 first part.

18                "Shall the Nevada Revised Statutes be amended to  
19 allow a person 21 years or older to purchase, cultivate,  
20 possess, or consume a certain amount of marijuana or  
21 concentrated marijuana..." Let's stop there. You'd agree  
22 with me, is it not, that in that question put to the voters  
23 there is a specific policy choice that the voters are being  
24 asked to review, and it's about who can use marijuana;  
25 correct?

1           A     Yes.

2           Q     Now, with respect to the remainder of that question  
3 do you see anything where the drafters of the initiative are  
4 putting a choice about whether or not any kind of  
5 qualification for licensure is being put to the voters there?

6           A     No.

7           Q     Do you see a policy choice in that question about  
8 what kind of points should be awarded for certain categories  
9 in the application process that's being put to the voters  
10 there?

11          A     No.

12          Q     Do you see any commands to the Department of  
13 Taxation in that question about how the Department of Taxation  
14 should draft the application?

15          A     No.

16          Q     Do you see any command to the Department of Taxation  
17 in that question about requirements for communicating for  
18 prospective applicants?

19          A     No.

20          Q     Is it fair to say that in that ballot question, in  
21 that question where they asked yes or no, it's the policy  
22 choice as to whom can use marijuana in this state; correct?

23          A     Yes.

24          Q     And then people who wrote that question specifically  
25 said all that's going to be -- is going to happen is that

1 there's going to be regulation, in the question itself put to  
2 the voters?

3 A Wait. Say that again.

4 Q In the question put to the voters all it says is  
5 there's going to be regulation. It doesn't say what the  
6 details are; correct?

7 A Yes.

8 Q Now, my friend Mr. Parker talked about the  
9 importance of location and the explanation and digest. If we  
10 look at the bottom of page 14, and it's the paragraph that  
11 starts "If the ballot is approved..." --

12 A Yes.

13 Q -- do you see any command to the Department of  
14 Taxation there that location must be scored?

15 A No.

16 Q Do you see any command in that paragraph that Mr.  
17 Parker asked you to look at that location has to be on the  
18 application -- at conditional approval or any other kind of  
19 approval from the Department of Taxation?

20 A No.

21 Q Let's go to the next paragraph. This is the  
22 paragraph that starts on page 15. I'm sorry. Starts, "In  
23 addition to licensing -- in addition to licensing the  
24 Department of Taxation will be charged with adopting  
25 regulations necessary to carry out the provisions of this

1 ballot measure. The regulations must address licensing  
2 procedures, licensee qualifications." Do you see in that  
3 paragraph any command to the Department of Taxation about the  
4 specifics of the licensing procedures that must be applied?

5 A No.

6 Q Do you see any command about the specifics of the  
7 licensing qualifications that must be applied?

8 A No.

9 Q Now let's talk about the backdrop that you would  
10 assume the voters knew when this was happening. A lot of my  
11 friends here are from the southern part of the state, but  
12 there are other parts of the state, as well. And this is a  
13 statewide ballot initiative. This is not a county ordinance  
14 in Clark County; correct?

15 A Correct.

16 Q And each one of those counties, they have the power  
17 themselves to pass ordinances throughout their existence;  
18 correct?

19 A Yes.

20 Q And some of those counties, for example, let's talk  
21 about them, Storey County. Are you familiar with Storey  
22 County?

23 A Yes.

24 Q Pershing County?

25 A Yes.



1 Q Churchill County?

2 A Yes.

3 Q Douglas County?

4 A Yes.

5 Q Did they have ordinances at this time when the  
6 ballot was being considered that made it unlawful to have  
7 retail marijuana in that county?

8 A Yes. I believe so.

9 Q At the time the applications were being sent out,  
10 let's say of July of 2018, in those rural counties do you know  
11 whether or not it was still unlawful according to local  
12 ordinances to have retail marijuana?

13 A Yes. I believe so.

14 Q Now I want you to assume a hypothetical. A person  
15 wants to open a retail marijuana establishment in a rural  
16 county where there is an existing ordinance that says no. And  
17 that person goes about their business, petitions the county,  
18 and demands, there's a statewide ballot initiative, I can't  
19 enter into a lease to find a building, I can't buy a property  
20 to open a retail marijuana establishment because you have this  
21 ordinance that prohibits me from exercising my rights to open  
22 a retail marijuana establishment in your county and the county  
23 says no. Would you expect that applicant to put on their  
24 application a physical address when the county has said, it's  
25 illegal in my county to open that establishment?

1           A     No.

2           Q     That applicant may have to sue that county, correct,  
3 and say -- and to get relief; correct?

4           A     They may have to.

5           Q     It may go up to our friends the Nevada Supreme  
6 Court, who have no timeline to decide whether or not the  
7 county is correct or the applicant is correct. Do you  
8 understand that?

9           A     Yes.

10          Q     And you would presume that the voters knew all of  
11 that, because those ordinances in the rural counties were in  
12 existence at the time, were they not?

13          A     Yes.

14          Q     My friend Mr. Parker also talked about the  
15 Governor's Task Force. And that is Exhibit 2009. And he  
16 cited to you page 2500. And he looked at -- I'm not going to  
17 call it a subpart, that's too lawyerly -- let's call it Number  
18 (7) --

19                THE COURT: Of the Guiding Principles and Goals.

20 BY MR. SHEVORSKI:

21          Q     -- of the Guiding Principles and Goals.

22          A     Yes.

23          Q     "Take action that is faithful to the text of  
24 Question 2." Now, back in the mists of time, as I like to  
25 say, there was a fellow called John Ritter who testified in

1 this action. He's associated with one of the plaintiffs, and  
2 I don't point at people, but he's over on that side of the  
3 table. And if you go to page 2515 -- and I'll represent to  
4 you that he is on the Governor's Task Force. Are you familiar  
5 with Mr. Ritter?

6 A Yes.

7 Q Okay. And the rating criteria on the applications  
8 provision, the Task Force recommends that the impartially  
9 numerically scored process used by the medical marijuana  
10 program be revised for retail marijuana stores to remove  
11 consideration of location and focus only on the applicant  
12 qualifications for operation of a marijuana establishment.  
13 There was no dissent on the recommendation. Do you believe  
14 that the Governor's Task Force and the people who wrote that  
15 sentence were being dishonest when they said they were being  
16 faithful to the text of Question 2?

17 A No.

18 Q Let's go to our friend the statute which we've spent  
19 too much time with. It's 453D. NRS. And let's go to NRS  
20 453D.210(4). It says, "Upon receipt of a completed [sic]  
21 marijuana license application the Department shall within  
22 90 days issue the appropriate license if the license  
23 application is approved."

24 If you didn't have the power to issue conditional  
25 licenses, why would the voters have chosen the -- the drafters

1 of the initiative chosen the word "appropriate"? It would  
2 just say "license," wouldn't it? That would be it.

3 A I would say so.

4 Q There wouldn't be anything appropriate about it.  
5 You've got 90 days; right, sir?

6 A Yes, sir.

7 Q Let's go to 453D.200(1). It says, "Not later than  
8 January 1st, 2018, the Department shall adopt all regulations  
9 necessary or convenient to carry out the provisions of this  
10 chapter."

11 What did you -- you've read that, have you not, sir?

12 A Yes.

13 Q Many times; correct?

14 A Yes.

15 Q What did you understand that to mean?

16 A That we would write regulations necessary to  
17 administer the program.

18 Q Or convenient; correct?

19 A Right, convenient.

20 Q What does convenient mean to you?

21 A Not to be burdensome either to the State or the  
22 industry.

23 Q And you would look at the conditions on the ground,  
24 correct, to determine whether or not ambiguous phrase in the  
25 initiative may take a regulation to fit the conditions on the

1 ground, correct, in the particular counties where licensees  
2 wanted to do business?

3 A Yes, I would say so.

4 Q And you knew that because it was public knowledge  
5 that in many of the communities there were ordinances on the  
6 books that made it impossible to open up a retail marijuana  
7 establishment; correct?

8 A Yes.

9 Q That subpart (a) of the same provision, "The  
10 regulations shall include procedures for the issuance,  
11 renewal, suspension, and revocation of a license to operate a  
12 marijuana establishment."

13 (Pause in the proceedings)

14 BY MR. SHEVORSKI:

15 Q Because the Department of Taxation was given the  
16 power to develop procedures for issuances -- issuance of  
17 license, renewal, suspension, revocation, what did you  
18 understand from your perspective that power to mean in terms  
19 of whether or not you could draft conditional licenses or you  
20 were required by the initiative to grant a final license  
21 within 90 days?

22 A So the 90 days is we have to make a decision within  
23 90 days the license could be granted or denied -- or, yeah,  
24 not approved. You know, I believe -- you know, the Department  
25 believes that they granted us the authority to issue, renew,

1 suspend, and revoke a license. We believe that that authority  
2 allows for a license to be conditional.

3 Q Because that would be part of the procedures you  
4 were empowered to create for issuance of licensure; correct?

5 A Yes.

6 Q Let's look at Exhibit 5A. And I'm on page 17 of 34.  
7 I believe it was my friend Mr. Parker who talked about a  
8 command from the regulations to tell the applicants about the  
9 points. Is there anything in the initiative, a command from  
10 the voters that says the Department of Taxation shall disclose  
11 the point breakdown for scoring the competitive bidding  
12 process?

13 A No.

14 Q Is there anything in the initiative, the command  
15 from the voters that tells the Department of Taxation how it  
16 ought to describe the categories that are going to be scored,  
17 tells it what words to use?

18 A No, there's not.

19 Q My friend Mr. Parker appears to disagree with how  
20 the Department of Taxation drafted that particular page on 5A.  
21 Do you know of any provision in 453D that commands you do it a  
22 different way?

23 A No.

24 Q The command from the voters was simply under  
25 453D.210(6) to create a competitive scoring -- numeric and

1 competitive bidding process; correct? I'm paraphrasing.

2 A Yes.

3 Q There's nothing in that section, correct, that tells  
4 you how many points you must or must not give for a particular  
5 category; correct?

6 A Correct.

7 Q Now, I'm not sure if you're aware of this, but Judge  
8 Gonzales has served as the Business Court judge in Clark  
9 County in the Eighth Judicial District for quite a long time,  
10 so I'm not going to test her patience by bringing out Chapter  
11 78 of the Nevada Revised Statutes. Because I tried that once,  
12 and I won't do it again.

13 THE COURT: Sorry.

14 MR. SHEVORSKI: Not at all, Your Honor.

15 BY MR. SHEVORSKI:

16 Q If I represented to you, and Judge Gonzales is  
17 listening, that there is -- when the Nevada Legislature in  
18 Chapter 78 wants to describe the board of a corporation and  
19 the people who work on it it uses the phrase "board of  
20 directors." Do you have any reason to disagree with that?

21 A No, I don't.

22 Q In the definition section of Chapter 78 it says that  
23 a "director" or "trustee" are synonymous terms.

24 MR. SHEVORSKI: And I'm paraphrasing, Judge  
25 Gonzales.

1 THE COURT: It's okay, Counsel.

2 BY MR. SHEVORSKI:

3 Q Do you have any reason to disagree with that?

4 A No.

5 Q And that was existing Nevada law. Now, you would  
6 assume that the people who drafted the initiative knew that,  
7 wouldn't you?

8 A I would.

9 Q So if we go to NRS 453D.200(6), it says, "The  
10 Department shall conduct a background check of each  
11 prospective owner, officer and board member of a marijuana  
12 establishment license applicant." Do you see the word  
13 "director" there?

14 A No.

15 Q So they could have chosen, the people who drafted  
16 the initiative and the voters approved this, if you wanted --  
17 if they wanted to limit the phrase board member to a director,  
18 they would have used that term; correct?

19 A I would assume so.

20 Q Now, with respect to the training on organizational  
21 structure that was done for the Manpower associates, you  
22 didn't do that training, did you, sir?

23 A No.

24 Q That was somebody else?

25 A Yes.



1 Q So if it was the case that the Department of  
2 Taxation did training on how to evaluate advisory board  
3 members, you wouldn't know anything about that; correct?

4 A Correct.

5 Q Back when my friend, Mr. Miller, was starting off  
6 his examination of you, he mentioned the sword of Damocles  
7 that is essentially hanging over every state that has voted to  
8 allow retail marijuana and indeed medical marijuana. Do you  
9 recall that?

10 A Yes.

11 Q And he mentioned the now rescinded Cole memo?

12 A Yes.

13 Q Do you read the newspaper?

14 A When I can.

15 Q Fair to say that even this year and even the month  
16 of May, there's been some development with the federal  
17 government on whether or not to amend the Controlled  
18 Substances Act. Are you familiar with that?

19 A Yes.

20 Q And that Senator Schumer has once again proposed a  
21 bill in the United States Senate to legalize retail marijuana  
22 and remove cannabis from Schedule I of the Controlled  
23 Substances Act. Do you know that?

24 A Yes.

25 Q And it's now -- you may know this, you may not, it

1 is with the Senate Judiciary Committee at this moment.

2 A Yeah, I don't know where it's at.

3 Q So even though we've seen the Cole memo, we have  
4 some guidance about SARs that we'll get to in a little bit,  
5 you may have had some experience with those over the past  
6 almost two decades, it's pure speculation, is it not, how the  
7 federal government is going to respond to the regulations  
8 proposed or adopted in any state, let alone Nevada?

9 A Yes.

10 Q It may be next week that Senator Warren, who knows  
11 something about financial regulation, decides to propose a  
12 bill regarding the restrictions that exist or may not exist  
13 regarding financing for marijuana businesses; correct?

14 A Yes.

15 Q And it's pure speculation whether or not such a bill  
16 will be passed or not. We don't know the position of the  
17 federal government as we sit here today?

18 A That's correct.

19 Q Right now cannabis is a Schedule I -- on the  
20 Controlled Substances Act is a Schedule I controlled  
21 substance, but the position of the federal government may  
22 change, will it not?

23 A It may.

24 Q My friend, Mr. Miller, talked about SARS. Now,  
25 you're not a consumer finance attorney, are you?

1           A     No.

2           Q     You don't spend your late evenings reading the Bank  
3 Secrecy Act of 1970?

4           A     No, I try not to.

5           Q     Some people do or have been forced to. Now, my  
6 friend, Mr. Miller, said that the failure of Nevada to have  
7 effective regulations may cause a SAR. Do you know if -- to  
8 be issued. Do you know if that's true or not?

9           A     I'm sorry, can you repeat that again?

10          Q     Certainly. My friend, Mr. Miller, said that if  
11 Nevada has inadequate regulations that may cause a financial  
12 institution to issue a SAR. Do you know what a SAR is?

13          A     Somewhat, yes.

14          Q     What is your understanding of a SAR?

15          A     It's where a bank reports suspicious activity on an  
16 account. And there's I believe maybe three different types of  
17 SARs, a limited SAR, I think there's a termination SAR. There  
18 might be another one.

19          Q     If that were to -- the different types of SARs  
20 you're talking about don't come from the Bank Secrecy Act  
21 itself, correct? They come based upon an interpretation of  
22 the Bank Secrecy Act by the regulatory body that interprets  
23 it; correct?

24          A     I believe so.

25          Q     Because there is an open issue about how the

1 financial industry is or should interact with this nascent  
2 cannabis industry as states of their own accord, principally  
3 through initiatives, have decided to legalize marijuana in one  
4 form, whether medical or retail; correct?

5 A Yes.

6 MR. SHEVORSKI: Your Honor, may I please have the  
7 ELMO?

8 THE COURT: You may.

9 (Pause in the proceedings)

10 BY MR. SHEVORSKI:

11 Q So for the record, this is part -- this is -- there  
12 are many different regulations applicable to SARs, whether or  
13 not they are a credit union that happens to participate in the  
14 Federal Reserve. This is -- I'll represent to you that this  
15 is the particular part of the Code of Federal Regulations that  
16 deals with national banks.

17 A Okay.

18 Q Okay. It says SARs -- we're on subpart (c). "SARs  
19 required. A national bank shall file a SAR with the  
20 appropriate Federal law enforcement agencies and the  
21 Department of the Treasury on the form prescribed by the OCC"  
22 -- that's the Office of the Comptroller of the Currency.  
23 You're familiar with that?

24 A Yes.

25 Q "In accordance with the form's instructions." So

1 when Mr. Miller was talking before to you about SARs, I want  
2 to make sure you're clear that that's what he's talking about.  
3 He's talking about a particular form required by the  
4 Department of Treasury that a national bank or another bank  
5 subject to the Bank Secrecy Act must send to the Department of  
6 Treasury. Are we on the same page?

7 A Yes.

8 MR. SHEVORSKI: Let's go to -- the same regulation,  
9 Your Honor, subpart (2).

10 BY MR. SHEVORSKI:

11 Q Now, my friend Mr. Miller's conversation with you  
12 was against the backdrop of nefarious persons who may own an  
13 interest in an applicant by purchasing shares. Do you know --  
14 let's look at the first requirement of 12 CFR 21.11. It says,  
15 "Violations aggregating \$5,000 or more where a suspect can be  
16 identified. Whenever the national bank detects any known or  
17 suspected federal criminal violation." Do you know whether or  
18 not purchasing a share in a listed cannabis company is a  
19 violation of federal law?

20 A I don't think so.

21 Q So the very first requirement is not met if someone  
22 purchases -- in and of itself if someone purchases a share in  
23 a cannabis company?

24 A No.

25 Q There would not be a SAR. There's no danger to

1 Nevada's nascent cannabis industry if a person purchases a  
2 share in an applicant that happens to be a listed company;  
3 correct?

4 A Correct.

5 Q Now, I'll represent to you for the purpose of this  
6 question that the Bank Secrecy Act was passed for the purpose  
7 -- one of the purposes was to counter money laundering. And  
8 it may be that the cartel that Mr. Miller was talking about  
9 purchased that share for a nefarious purpose. Now, look at  
10 the monetary requirement. Is there a monetary requirement  
11 there for a SAR to be triggered?

12 A Yes.

13 Q What is it?

14 A \$5,000 or more.

15 Q Or more. Also, does the bank have to know or  
16 suspect that that purchase of a share through a national bank  
17 constitutes criminal activity under federal law?

18 A Yes.

19 Q Earlier my friends were saying that the very fact  
20 that you don't conduct a background check on every single  
21 shareholder of a listed company could endanger Nevada's  
22 nascent industry because a cartel member might purchase one  
23 share of a listed company that owns part or all of the  
24 applicant. After reading the Code of Federal Regulations, is  
25 that true?

1 A No.

2 Q Do you know of a company that -- strike that. Have  
3 you ever heard of Marlboro cigarettes?

4 A Yes.

5 Q Have you ever heard of the Standard and Poor's 500?

6 A Yes.

7 Q I'll represent to you that the Altria Group is the  
8 owner of the brand Marlboro.

9 A Yes.

10 Q Do you know whether or not the Altria Group has made  
11 an investment in a listed cannabis company in Canada to the  
12 tune of 1.4 billion?

13 A No, I'm not sure.

14 Q Do you think they were -- let's assume that that  
15 happened. Do you think they were violating federal law by  
16 doing that?

17 A No.

18 Q Now, I'll also represent to you that the Altria  
19 Group is a member of the S&P 500. Have you heard of a company  
20 called Vanguard?

21 A Yes.

22 Q Do you know whether or not Vanguard allows you to  
23 purchase an index fund that will give you -- that will track  
24 the S&P 500?

25 A I believe so.

1           Q     And just assume that it's true that Altria Group now  
2 owns to the tune of 1.4 billion a cannabis company called  
3 Cronos Group, which is listed -- is a publicly listed company  
4 on the equivalent of the Canadian S&P. By purchasing the  
5 Vanguard Group index fund and using a national bank to do it,  
6 would you think that person believes that they're violating  
7 federal law?

8           A     I wouldn't think so.

9           Q     If the Altria Group owned an interest in one of the  
10 applicants, do you think the voters of our initiative intended  
11 that every single shareholder of the Altria Group had to be  
12 listed on the application for a retail marijuana  
13 establishment?

14          A     I don't think so.

15          Q     In the ballot initiative itself, and you've read it  
16 countless times, did the drafters of the initiative make any  
17 attempt to define owner?

18          A     No.

19          Q     My friend, Mr. Miller, showed you snapshots of  
20 gaming law and he talked about suitability, and my friend, Mr.  
21 Parker, brought that up as well. Do you recall if he showed  
22 you any provision where the Gaming Commission mandates that  
23 every single shareholder of a listed company, regardless of  
24 how much they own, is required to be subject to a suitability  
25 determination?



1           A     No.

2           Q     My friend, Mr. Miller, first mentioned 463.170. Do  
3 you recall that? And subpart 1, specifically. I'm going to  
4 let you have a look at that and let me know when you're  
5 through.

6           THE COURT: And I think you still have my book, sir,  
7 if you need to use it.

8           MR. KOCH: Just zoom it in. It's kind of small on  
9 there.

10          THE WITNESS: Is 463 included in here? Yes. Okay.  
11 Can you move it over a little bit more?

12          MR. SHEVORSKI: Certainly.

13          THE WITNESS: There you go. Right there.

14          MR. SHEVORSKI: Is that better?

15          THE WITNESS: Yes.

16 BY MR. SHEVORSKI:

17          Q     And so please review it and let me know. Just  
18 subpart 1.

19          A     Okay.

20          Q     Just the last -- "The burden of proving an  
21 applicant's qualification to receive any license, be found  
22 suitable or receive any approval required by this chapter is  
23 on the applicant." There's nothing in that provision, sir,  
24 and correct me if I'm wrong, that states who is required --  
25 required to be found suitable by the Gaming Commission;

1 correct?

2 A Correct.

3 Q Let's look at a section my friend, Mr. Miller,  
4 didn't talk about, which is 463.530. And the title of this,  
5 just read along with me, is "Individual licensing of officers  
6 and directors of corporations other than publicly traded  
7 corporations; other persons required to be licensed  
8 individually." And please have a look at that and let me know  
9 when you're through.

10 A Okay.

11 Q It says, "All officers and directors of a  
12 corporation, other than a publicly traded corporation" --  
13 we'll get to them in a moment -- "which holds or applies for a  
14 state gaming license must be licensed individually according  
15 to the provisions of this chapter, and if in the judgment of  
16 the Commission the public interest will be served by requiring  
17 any or all of the corporation's individual stockholders,  
18 lenders, holders of evidence of indebtedness, underwriters,  
19 key executives, agents or employees to be licensed, the  
20 corporation shall require those persons to apply for a  
21 license." Would you agree with me, sir, that the Commission  
22 is leaving it up to their discretion whether to require  
23 stockholders of a corporation, even one that isn't publicly  
24 traded, to apply for a license and therefore be subject to  
25 suitability requirements?

1           A     Yes, it's up to their discretion.

2           Q     Let's look at one my friend, Mr. Miller, did talk  
3 about. It's 463.5735.

4           A     Can you drop it a little bit? No, the other way.

5           Q     Can you see the top?

6           A     Now over a little bit. Okay.

7           Q     Sorry. And my friend, Mr. Miller, asked you about  
8 subpart 2, so let's start there.

9           A     Okay.

10          Q     Are you done?

11          A     Yes.

12          Q     Thank you, sir. Now, correct me if I'm wrong, but  
13 it looks to me in subpart 2 that says nothing about who is  
14 required to submit to a suitability determination, but rather  
15 it says who must submit to the jurisdiction of the Commission;  
16 correct?

17          A     Yes.

18          Q     Now let's go to part 4. Strike that. Let's stay on  
19 2 for a second. It says, "All members seeking to hold a 5  
20 percent or less ownership interest in a limited liability  
21 company, other than a publicly traded limited liability  
22 company," those are the persons who are required to submit to  
23 the jurisdiction of the Commission. It says nothing about  
24 people who might own a publicly traded limited liability  
25 company; correct?

1           A     Correct.

2           Q     They're exempted from that.  Maybe we'll find out  
3 what happens to them in a second.  Let's go look at subpart 4.  
4 Can you see that okay, sir?

5           A     Yes.

6           Q     "A publicly traded corporation which is a member of  
7 a limited liability company is not required to be licensed,  
8 but shall comply with NRS 463.635 to 463.645."  Is it fair to  
9 say that the provision that my friend, Mr. Miller, was talking  
10 about simply doesn't apply to publicly traded corporations?

11          A     Correct.

12          Q     Let's go to NRS 463.643 and we're going to stay on  
13 subpart 1, (a) through (b).  Let me know when you're through.

14          A     Okay.

15          Q     "Each person who acquires, directly or indirectly,  
16 beneficial ownership of any voting security or beneficial or  
17 record ownership of any non-voting security in a publicly  
18 traded corporation which is registered with the Commission may  
19 be required to be found suitable."  Now, based upon your  
20 reading of that section I just read to you, is it mandatory or  
21 discretionary for that person to be required to be found  
22 suitable?

23          A     It's discretionary.

24          Q     You can tell that by the use of the word "may;"  
25 correct?

1           A     Correct.

2           THE COURT:  As opposed to the word "shall."

3           MR. SHEVORSKI:  That's a good point.

4  BY MR. SHEVORSKI:

5           Q     Let's look on to paragraph 3 to see about people who  
6  may own even more than one share.  And let me know when you're  
7  through.

8           A     Okay.

9           Q     With respect to subpart 3, there's a notification  
10 requirement; correct?

11          A     Yes.

12          Q     Now, and this deals with people who own more than 5  
13 percent of the publicly traded corporation?

14          A     Yes.

15          Q     Does it look like the Gaming Commission is doing its  
16 own investigation to determine whether or not that person owns  
17 more than 5 percent?

18          A     No.

19          Q     They're requiring that person to be honest with them  
20 and notify them; correct?

21          A     Yes.

22          Q     Let's go to subpart 4.  No, strike that.  Going back  
23 to subpart 3, there's no requirement from the Commission that  
24 the person owning 5 percent or more have to submit to a  
25 suitability determination by the Commission; correct?  There's

1 nothing in that section that requires that?

2 A Correct.

3 Q Let's go to subpart 4.

4 A Can you scoot it up a little --

5 Q Of course.

6 A Or is written notice the last -- okay. Okay.

7 Q Now, these are -- how much of a publicly traded  
8 corporation do you have to have for the Commission to mandate  
9 that you submit to a suitability determination?

10 A At least 10 percent.

11 Q Now, looking at that paragraph, is the Commission  
12 out there investigating who has 10 percent or not?

13 A It doesn't look like it.

14 Q It's up to the applicant to report to the  
15 Commission, correct, once they've obtained that 10 percent  
16 threshold?

17 A Yes.

18 THE COURT: Well, and the regulated entity.

19 MR. SHEVORSKI: And the regulated entity. Fair  
20 point, Your Honor. Our federal friends might have something  
21 to say about that.

22 BY MR. SHEVORSKI:

23 Q Now, these statutes enacted for gaming, they were in  
24 existence at the time of the ballot initiative; correct?

25 A Yes.

1           Q     So presumably the voters knew that in a heavily  
2 regulated industry such as gaming even the Commission does not  
3 mandate suitability determinations unless the person acquires  
4 10 percent or more. They left it up to the discretion of the  
5 Gaming Commission; correct?

6           A     Correct.

7           Q     If our friends, the Altria Group, owned one of the  
8 applicants that are part of this process, would it be possible  
9 to do a background check on every single shareholder of the  
10 Altria Group?

11          A     No. I think that's a pretty impossible task.  
12 Shares change by the second.

13          Q     They may. Have you ever heard of high frequency  
14 trading?

15          A     Uh, no.

16          Q     We'll leave it, then. Maybe the Judge has.

17          A     There was a lot of talk and a lot of questions about  
18 -- the premise was that applicants were confused about whether  
19 or not to put a physical address in their application. Do you  
20 recall those questions?

21          A     Yes.

22                         (Pause in the proceedings)

23           THE COURT: You've got a half hour more. Come on.

24           MR. SHEVORSKI: Very good, Your Honor. I apologize.

25           THE COURT: It's okay.

1 BY MR. SHEVORSKI:

2 Q Do you know if Serenity Wellness was confused?

3 A I don't know.

4 Q What about MM Development, were they confused?

5 A I don't know.

6 Q My friend, Mr. Miller, mentioned Mr. Viellion, and  
7 I'll represent to you that he's associated with GBS.

8 MR. SHEVORSKI: Why don't we look at -- what exhibit  
9 is that, Ms. Haar?

10 MS. HAAR: 2,019.

11 MR. SHEVORSKI: 2,019. May I approach, Your Honor?

12 THE COURT: You may.

13 BY MR. SHEVORSKI:

14 Q I'll represent to you this document is in evidence,  
15 so feel free to look at it. Now, who is the applicant there?

16 A GBS Nevada Partners, LLC.

17 Q Now, throughout your questioning today we've heard a  
18 lot of talk about exhibit -- about two different applications,  
19 Exhibit 5 versus 5A. Do you recall that discussion?

20 A Yes.

21 Q I believe you testified that you weren't really  
22 familiar with 5A; correct?

23 A Correct.

24 Q But you are familiar that there were going to be  
25 clarifications coming out; correct?



1           A     Correct.

2           Q     Okay.  And feel free to look at Exhibit 5A if you  
3 need to.  Can you tell from there which -- whether Mr.  
4 Viellion -- excuse me, GBS Nevada Partners was using Exhibit 5  
5 or Exhibit 5A?  Does it look like they got the clarified  
6 language?

7           A     Yes.

8           Q     Now, there was a lot of talk that Mr. Viellion was  
9 quite upset that he spent a lot of money going out and getting  
10 addresses.  Does that appear to be an address in the quadrant  
11 there or is that -- are those cross streets?

12          A     Those are cross streets.

13               MR. SHEVORSKI:  That's all I have, Your Honor.  
14 Thank you.

15               THE COURT:  Anyone else on the defendants in  
16 intervention side of the tables?

17               Mr. Koch.

18               MR. KOCH:  Yes.  I will go as quickly as I can and  
19 see if we can get done today, but we'll hope.

20                               CROSS-EXAMINATION

21 BY MR. KOCH:

22          Q     So, Mr. Pupo, my David Koch.  I represent Nevada  
23 Organic Remedies.  You're familiar with that entity, you know  
24 who they are?

25          A     Yes.

1 Q We've talked about them some today; right?

2 A Yes.

3 Q And through the course of the questioning you've had  
4 by Mr. Miller, who questioned you all day yesterday, did a  
5 pretty good job of questioning and you answered a lot of those  
6 questions, there were a couple of mistakes that he made;  
7 right? He sometimes pointed to the wrong exhibits, sometimes  
8 pointed to the wrong statute. Do you remember some of those  
9 instances that occurred?

10 A Yes.

11 Q Sometimes his staff would help clarify and get him  
12 on the right spot. Other times, though, he just kind of moved  
13 on and said let's just not talk about that exhibit. Do you  
14 remember any of those instances?

15 A Yes.

16 Q In spite of all that, do you think Mr. Miller did a  
17 pretty good job of questioning you?

18 A Yes.

19 Q Mr. Parker today, the same thing. He did a great  
20 job, asked lots of good questions, got lots of good answers.  
21 Other times, though, he'd point to the wrong statute, wrong  
22 subsection, wrong place as far as where he was looking. Do  
23 you remember that?

24 A Yes.

25 Q And notwithstanding those mistakes, do you think he

1 did a decent job questioning you?

2 A Yes.

3 Q Some of those mistakes we talked about, you pointed  
4 to what you called the human element. Those types of  
5 mistakes, would you characterize those as the human element,  
6 perhaps?

7 A Sure.

8 Q Now, let me show you something. We are not going to  
9 admit this into evidence, but I will represent to you the  
10 State produced back to us the handwritten score sheets for my  
11 client, Nevada Organic Remedies. This is the stack of pages  
12 that is allocated to Nevada Organic Remedies, about 1,500  
13 pages. Have you ever looked at the handwritten sheets for  
14 Nevada Organic Remedies?

15 A No.

16 Q You were shown some of those sheets. I think Mr.  
17 Miller had you look at some of those and looked at the  
18 building plans in particular. You saw where he wrote down 7  
19 and 8 and then it was put over into the tally sheet  
20 incorrectly. Do you remember that?

21 A Yes.

22 Q And actually it looked like some of those scores my  
23 client got shortchanged at least a point, it looked like. Do  
24 you remember looking at that?

25 A Yes.

1           Q     Can I get that point back today if I come and ask  
2 you?

3           A     No.

4           Q     That point total, it's set, it's not going to  
5 change, is that right?

6           A     That's right.

7           Q     Even if I ask you really nicely?

8           A     Even if you ask me really nicely.

9           Q     Now, I bet we could go through this stack of  
10 documents here for the next week or so. The judge wouldn't  
11 let us. We'd probably have to do that in the hallway. But we  
12 could go through this stack of documents and find all sorts of  
13 little things in these handwritten notes and probably come up  
14 with a bunch of mistakes that might be in there, based upon  
15 that process. Do you think there might be more than that one  
16 mistake that Mr. Miller showed you as far as some sort of  
17 calculation or other error?

18          A     Potentially, yes.

19          Q     Okay. And do you think it would be appropriate if I  
20 took you out in the hall and reviewed these handwritten sheets  
21 and asked for changes to be made for Nevada Organic Remedies  
22 based upon the mistakes that you and I found together?

23          A     No.

24          Q     Why not?

25          A     It disrupts the process. It's not fair to the other

1 applicants.

2 Q Do you think the evaluators, based upon the  
3 information you've been able to review and observe, did a  
4 pretty good job of scoring these applications?

5 A I do.

6 Q And you were not there watching them, looking over  
7 their shoulders. In spite of that fact, do you still believe  
8 that that's true, that they did a decent job?

9 A Yes.

10 Q And what do you base that upon?

11 A Reports back from my staff. You know, I believe  
12 that they were comfortable with the process. I believe they  
13 were comfortable with the evaluators. They would read all the  
14 documents. I believe that overall, yes, they did a fair job.

15 MR. KOCH: Okay. I'd like to pull up Exhibit --  
16 well, Proposed Exhibit 5044. This is an appeal letter.

17 THE COURT: Any objection to 5044?

18 MR. KEMP: No, Your Honor.

19 THE COURT: It will be admitted.

20 (Defendants' Exhibit 5044 admitted)

21 BY MR. KOCH:

22 Q Exhibit 5044 is a letter from the Department of  
23 Taxation to MM Development Company dated January 10th, 2019.  
24 And it looks like you signed this letter.

25 A Yes.

1 Q Can you tell us what this letter is?

2 A It's a letter to -- replying to their request for  
3 appeal to the Nevada Tax Commission.

4 Q Did MM Development send a request or a notice of  
5 appeal to the Nevada Tax Commission?

6 A Yes.

7 Q And you were the one tasked to respond to that  
8 notice?

9 A Yes.

10 Q And what was your response to that notice of appeal?

11 A That there's no allowance for an appeal.

12 Q And you cited NRS 233B.127, it looks like?

13 A Yes.

14 Q Regarding adjudication of contested cases, they do  
15 not apply to the grant, denial or renewal of a license unless  
16 notice and opportunity for hearing are required by law to be  
17 provided to the applicant before the grant, denial or renewal  
18 of the license. Are you quoting the statute there?

19 A Yes.

20 Q And you think that statute applied to the notice of  
21 appeal that was sent to your office?

22 A Yes.

23 Q Do you think the determination that you made that  
24 the notice -- there would be no appeal of that process was  
25 proper?

1           A     Yes.

2           Q     And do you believe you followed the law in making  
3 that determination?

4           A     Yes.

5           Q     You went on to say, "The Department scored timely  
6 submitted applications using an impartial and numerically  
7 scored competitive process in accordance with NRS 453D.210 6."  
8 That's the part of the initiative that we looked at many times  
9 here, is that right?

10          A     Yes.

11          Q     And do you believe that the Department indeed timely  
12 -- or scored timely submitted applications as is stated there?

13          A     Yes.

14          Q     And did it impartially?

15          A     I believe so.

16          Q     Let me just ask you about that partiality. We  
17 talked a lot about a lot of the contact or communications you  
18 may have had with owners or representatives. You did not  
19 participate personally at all in the scoring of the  
20 applications, did you?

21          A     Not at all.

22          Q     Did you ever call any of the evaluators and say,  
23 hey, why don't you add another 10 points on to such and such's  
24 application?

25          A     No.

1 Q You never did anything like that?

2 A Never.

3 Q So an appeal is not permitted, and for us to kind of  
4 weed through all these applications looking at points, what  
5 should have been done, it's kind of a useless exercise; right?

6 A I believe so.

7 Q I think the judge would probably agree with that.  
8 So let's talk about what might matter here today and that's  
9 the initiative and the language that is there. First of all,  
10 let's turn to Proposed Exhibit 5042. It's just the initiative  
11 that was submitted to the Secretary of State.

12 MR. KEMP: No objection.

13 MR. KOCH: I'd move to admit 5042.

14 THE COURT: It will be admitted.

15 (Defendants' Exhibit 5042 admitted)

16 BY MR. KOCH:

17 Q 5042 is the original initiative as submitted to the  
18 Secretary of State. Do you know when the initiative was  
19 drafted?

20 A I don't know.

21 Q At the top right there there's a file date. Can you  
22 read that?

23 A Right. It's April 23rd, 2014.

24 Q All right. That's filed with the Secretary of State.  
25 Are you aware of that?



1           A     Yes.

2           Q     At that time it was actually our good friend Ross  
3 Miller was the Secretary of State, I believe. But I don't  
4 think that has anything to do with this initiative. I don't  
5 think he wrote it. But he received that statute and it was  
6 put into place or recorded or filed at that time. Are you  
7 aware of that?

8           A     Yes.

9           Q     All right. April 2014, what was the state of the  
10 marijuana industry in the state of Nevada, to the best of your  
11 knowledge, on that date?

12          A     I have no clue. I really wasn't involved in  
13 marijuana at all.

14          Q     Do you know if recreational marijuana was permitted  
15 in the state of Nevada in April of 2014?

16          A     I'm sorry?

17          Q     Do you know if recreational marijuana sales were  
18 permitted under the law in April of 2014?

19          A     Not recreational.

20          Q     Do you know when the first medical marijuana  
21 applications were submitted to have a medical marijuana  
22 establishment?

23          A     I don't. Sometime in 2014.

24          Q     In 2014. August 2014, does that sound about right?

25          A     It could be, yes. I don't --

1 Q Would it surprise you if this initiative that was  
2 drafted, it was actually drafted prior to any applications for  
3 medical marijuana establishments being submitted and approved  
4 by the Department or the Division of Public and Behavioral  
5 Health? Is that what it is?

6 A Right. Uh-huh.

7 Q Okay. That this was drafted prior to that time?

8 A No.

9 Q And do you have any opinion or idea of what the  
10 drafters of this statute had in mind when it came to the  
11 marijuana industry in 2018?

12 A No.

13 Q Do you think that they could see into the future  
14 four years out and see what that marijuana industry might look  
15 like four years from then?

16 A I doubt it.

17 Q In 2014, are you aware of any publicly traded  
18 companies that operated marijuana establishments in the state  
19 of Nevada?

20 A I don't believe there were any at the time.

21 Q Mr. John Ritter was here earlier and he testified  
22 that even after medical was passed most of the companies  
23 sitting here today, they weren't profitable really until the  
24 Early Start Program rolled out in 2017 and then once that came  
25 off some profits started being made. Would it surprise you if

1 any publicly traded companies were eager to buy in in 2014 to  
2 the medical marijuana program?

3 A Yes.

4 Q And do you know when the first publicly traded  
5 company became an owner or operator of a medical marijuana  
6 company establishment in the state of Nevada?

7 A Of a medical marijuana?

8 Q Any, medical or recreational.

9 A No, I don't know when the first one was.

10 Q Was it before 2019, do you know?

11 A I'm sure it was.

12 Q Okay. 2014, 2015? You don't have any ideas of --

13 A I don't. I don't have any idea.

14 Q Would it surprise you if any publicly traded company  
15 came into Nevada prior to recreational marijuana, the Early  
16 Start Program being approved?

17 A Yes.

18 Q Especially when there was so little profit to be  
19 made, is that right?

20 A That's right.

21 Q All right. So let's -- and I guess I asked that for  
22 the context of it would be somewhat surprising in 2014 when  
23 this initiative was filed with the Secretary of State if  
24 anyone could have contemplated a publicly traded company being  
25 addressed specifically in this initiative and the statute that

1 would come out of this initiative. Would that be surprising  
2 to you if they contemplated that?

3 A Yes.

4 Q All right. So let's look at the statute and the  
5 initiative that we have been talking about. We can stick with  
6 this initiative here. Let's go down to Section 5. All right,  
7 we're on Section 5 and subsection (6). This is the powers and  
8 duties of the Department. This is one of the sections that we  
9 have talked about ad nauseam.

10 MR. KOCH: Keep going down to (6), Brian. All  
11 right. So here's 6. This is part of the initiative.  
12 Actually, sorry, Section 5, subsection (6), which is two  
13 paragraphs above what you've highlighted.

14 BY MR. KOCH:

15 Q This is, "The Department shall conduct a background  
16 check of each prospective owner, officer and board marijuana  
17 of a marijuana establishment license applicant." We've read  
18 that many, many times. That's what became 453D.200,  
19 subsection 6. Are you aware of that?

20 A Yes.

21 Q Okay. Is the term or phrase "background check"  
22 defined anywhere in the initiative that you're aware of?

23 A No.

24 Q What was that?

25 A It's not defined.

1 Q No definition at all?

2 A No.

3 Q Would it surprise you if in fact this is the only  
4 mention of background check in the entire initiative at all?

5 A Yeah.

6 Q When you read that, do you know what a background  
7 check is?

8 A Yes.

9 Q What do you understand it to be?

10 A A check of a prospective owner, officer or board  
11 member's background or history, criminal history.

12 Q All right. When it says background, could I get on  
13 Facebook and check out their background, do something like  
14 that?

15 A Yeah, I don't think that's what is intended, but.

16 Q It doesn't say that; right?

17 A It doesn't say that. Right.

18 Q You have a lot of backgrounds. We could look at the  
19 background of a photograph. That would be pretty absurd,  
20 checking the background of a photo. That's not what it means;  
21 right?

22 A Right.

23 Q You understood it to mean checking for a criminal  
24 history, is that right?

25 A That's right.

1 Q Even though it doesn't say that?

2 A Yes.

3 Q And you made that judgment, an exercise of your  
4 judgment based upon the words that are there?

5 A Yes.

6 MR. KOCH: Let's keep that open and we're going to go  
7 to 5040-- let's go to 5043.

8 THE CLERK: Proposed.

9 MR. KOCH: Proposed 5043.

10 THE COURT: Any objection to 5043?

11 MR. KOCH: This is about a pamphlet, I believe, that  
12 we looked at several times, but this has the full thing.

13 THE COURT: It's already in on 2020, but okay.

14 MR. KOCH: 2020 doesn't have the full thing.

15 THE COURT: Any objection?

16 MR. KEMP: No, Your Honor.

17 THE COURT: It will be admitted.

18 (Defendants' Exhibit 5043 admitted)

19 MR. KOCH: Okay. 5043 --

20 THE COURT: Sixteen minutes.

21 MR. KOCH: Let's actually jump to page 14 first.

22 Can we go to 14? And we can take off the other -- Brian, take  
23 off the other one.

24 BY MR. KOCH:

25 Q All right. So page 14 is where Question 2 starts

1 and Mr. Shevorski asked you quite a bit about that, what the  
2 Question says there. And now I didn't find any reference to  
3 background check until page 24. There's actually four  
4 mentions of background check in this entire ballot pamphlet.  
5 One of them is what we just looked at, Section 5, subsection  
6 (6), and there's three more in one paragraph. If we can go to  
7 page 24. And 24, this is under the fiscal analysis that this  
8 initiative may have. You're aware there's a fiscal analysis  
9 that's conducted when an initiative is proposed?

10 A Yes.

11 Q And so page 24, paragraph number 2 is the only other  
12 reference to background check in this entire pamphlet. It  
13 says, "Question 2 requires the Department of Taxation to  
14 conduct a background check of each prospective owner, officer  
15 and board member of a marijuana licensed establishment."  
16 Question 2 also requires the operator of each marijuana  
17 establishment "to determine the criminal history of each  
18 worker or volunteer for suitability of employment." One more  
19 reference there. I want to ask you, though, about the last  
20 sentence there. It talks about the cost and the last sentence  
21 starting with "However." "However, the Fiscal Analysis  
22 Division cannot determine the process that the Department of  
23 Taxation will choose to conduct these background checks."  
24 Do you believe the Department of Taxation had the ability to  
25 choose the process to conduct the background checks referenced

1 in the statute?

2 A Yes.

3 Q And what is stated here, you believe that there was  
4 some discretion that would be involved that the Department  
5 could have in determining how and when to conduct those  
6 background checks?

7 A Yes.

8 Q Now, what's interesting, we kind of skipped over, we  
9 said Question 1 in this packet that's all about guns and we  
10 don't need to look at that, but let's actually -- it may be  
11 interesting but it may be helpful, let's go back to Question  
12 -- the very first numbered page 1 of this packet. Number  
13 page 1 has a summary and what is Question 1 called?

14 A The Background Check Initiative.

15 Q A little bit ironic, perhaps, that the question that  
16 we skipped over is actually called the Background Check  
17 Initiative. Do you know what that was about?

18 A No, I don't.

19 Q Let's go to the next page.

20 THE COURT: I do. I do.

21 MR. KOCH: The judge knows. Maybe she can testify  
22 next.

23 THE COURT: No, no.

24 MR. KOCH: All right, we won't call the judge.

25 THE COURT: And how the FBI does or does not want to



1 cooperate.

2 MR. KOCH: All right.

3 MR. SHEVORSKI: No comment, Your Honor.

4 MR. KOCH: Sounds like a lot in here have some bad  
5 memories related to this Question.

6 BY MR. KOCH:

7 Q So, Question 1 talks about the requirement and the  
8 ability to conduct a federal background check on the potential  
9 buyer of a gun. Do you see that?

10 A Yes.

11 Q And I -- thankfully through the ability to search on  
12 a computer, I saw 95 different references to background check  
13 in this Question in the pamphlet that is described there,  
14 including -- if we go to page 2, here if we look at the bottom  
15 of this page there's definitions that are provided, I believe.  
16 Oh, it's probably a little bit later. We're going to go to  
17 the next page. Let me see the hard copy of the exhibit.

18 THE COURT: So it says, "The background check will  
19 be conducted using the NIC Background Check System  
20 administered by the FBI." Is that the part you want?

21 MR. KOCH: There we go. That's --

22 THE COURT: Look at Brian. He found it for you.

23 MR. KOCH: Well done, Brian. Thank you.

24 BY MR. KOCH:

25 Q So this -- you see that this initiative actually

1 defined the process that the background check would be  
2 conducted by. The actual process is laid out there. Do you  
3 see that?

4 A Yes.

5 Q Okay. And presumably the drafters of Question 2  
6 could have done the same thing, determined how that background  
7 check would be conducted; right?

8 A Sure.

9 Q Okay. They didn't do that?

10 A No.

11 Q All right. And so, did you have any guidance on how  
12 to conduct the background check in the statute that you saw?

13 A No.

14 Q Now, here's where there's something that's  
15 interesting. 453D, chapter -- NRS 453D, we've been looking at  
16 this on and on and on and you've looked at the book. Let me  
17 just hand you, I've got a printout of 453D. I promise you  
18 it's the same as what's in the book.

19 MR. KOCH: If I can approach, Your Honor?

20 THE COURT: You may.

21 BY MR. KOCH:

22 Q Okay. 453D came about from the initiative and if we  
23 look at the start of those, the first page, what does it say  
24 next to NRS 453D.010, Short Title? What does that say in the  
25 brackets?

1           A     "This section was proposed by an initiative petition  
2 and approved by the voters at the 2016 General Election and  
3 therefore is not subject to legislative amendment or repeal  
4 until after November 22, 2019."

5           Q     All right. In fact, that same bracketed section is  
6 listed next to the title of each of the code sections that are  
7 referenced there. Do you see that?

8           A     Yes.

9           Q     Actually not all of them, because if we go to the  
10 second page, all of them until we get to 453D.205. And this  
11 is the first one I see in this chapter. In fact, this is the  
12 only section of Chapter 453D that was not a part of the  
13 initiative that was in effect at the time that the application  
14 process took place. And we can look at it, but do you see any  
15 reference there on 453D.205 to the initiative being applicable  
16 to this?

17          A     No.

18          Q     Okay. And then the rest of them there, if you keep  
19 looking down have the same initiative language except for .310  
20 and .320 which talk about vending machines and sales and  
21 advertising, which are not effective until 2020. Do you know  
22 about those --

23          A     Yes.

24          Q     -- rules coming up?

25          A     Yes.

1 Q Okay. Let's go into the body, then, of that statute  
2 and see what it says. NRS 453D.205. And tell me when you're  
3 there.

4 A Okay.

5 MR. KOCH: 205, Brian. 205.

6 BY MR. KOCH:

7 Q All right, 205. First of all, can you tell me,  
8 underneath that statute there's a parenthetical that says  
9 added. What does that say?

10 A "Added to the NRS by 2017."

11 Q Right. 3711.

12 A 3711.

13 Q Do you know what that means?

14 A I believe it's the 2017 legislative session --

15 Q Right.

16 A -- and I believe 3711 is the statutes of Nevada.

17 Q And so this statute was added to the NRS in 2017, is  
18 that right?

19 A Yes.

20 Q Do you know why this statute -- well, let's read the  
21 title here first. "Department or marijuana establishment  
22 authorized to require a person to submit fingerprints when  
23 conducting background check or determining criminal history."  
24 Do you know why this statute was added to the NRS in 2017?  
25 And if you need to take a look at what it says, go ahead and

1 take a look at it.

2 A I believe it was to -- and I may be wrong, but if I  
3 remember correctly I believe it was to give the Department the  
4 authority to use the FBI.

5 Q Okay.

6 A For criminal -- for the background checks.

7 Q And it specifically says, "When conducting a  
8 background check," like you mentioned, "pursuant to subsection  
9 6 of 453D.200, the Department may require each prospective  
10 owner, officer and board member of a marijuana establishment  
11 license applicant to submit a complete set of fingerprints and  
12 permission." Do you know why the legislature -- do you have  
13 any idea why they felt it necessary to add that to the  
14 statute?

15 A I don't -- I don't remember what the reasoning was.

16 Q Did this statute assist the Department of Taxation  
17 in conducting background checks for purposes of licensing and  
18 regulation of marijuana establishments?

19 A Right. That's correct. The issue was, I think back  
20 then, as the Department of Taxation we didn't have the  
21 authority to conduct background checks. We needed to get the  
22 authority because DPPH had the authority under 453A and there  
23 was no authority to use FBI for the Department of Taxation.  
24 We had to apply for our own account.

25 Q And this statute gave you that authorization?

1           A     Yes.

2           Q     It didn't exist in the as written 2015 initiative,  
3 did it?

4           A     No.

5           Q     So something had to change in order for you to  
6 complete the background checks that are called for in Section  
7 6 of the initiative?

8           A     Yes.

9           Q     Do you think that was an appropriate addition to the  
10 statute that was made by the legislature?

11          A     Yes.

12          Q     And did you ask each owner, officer and board member  
13 to submit a complete set of fingerprints for the background  
14 checks?

15          A     Yes.

16          Q     So that was necessary in order to complete those  
17 background checks, is that right?

18          A     Yes.

19          Q     And these fingerprints, have you ever asked a  
20 corporation to submit corporate fingerprints for a background  
21 check?

22          A     A corporation?

23          Q     Right. Corporate -- you referenced, what was it,  
24 Marlboro's owner, whatever it was.

25               MR. SHEVORSKI: Altria Group.

1 MR. KOCH: What is it?

2 MR. SHEVORSKI: Altria Group.

3 BY MR. KOCH:

4 Q Altria Group. Do you think the Altria Group could  
5 submit Altria Group fingerprints to the Department?

6 A I suppose they can.

7 Q Whose fingerprints would those be?

8 A The owners, officers and board members.

9 Q Right. So you don't conduct a background check of  
10 the corporation itself as a separate entity from the officers,  
11 owners and board members, do you?

12 A No.

13 Q And are fingerprints referenced anywhere in the  
14 initiative that you're aware of?

15 A No.

16 Q So this was an addition in order to allow the  
17 Department to carry out the requirements of the initiative, is  
18 that right?

19 A Yes.

20 Q Okay. I'm going to run out of time, but let me ask  
21 you about the next section.

22 THE COURT: You've got four minutes.

23 MR. KOCH: Okay.

24 BY MR. KOCH:

25 Q We've talked a lot about this shall conduct a

1 background check. We've talked a lot about the words owner,  
2 officer and board member. But in 453D.200, subsection 6,  
3 there's a word that we haven't really talked much about at all  
4 and that comes right before owner. Let's look at 6, if we can  
5 get there.

6 THE COURT: That would be "prospective"?

7 MR. KOCH: That would be "prospective."

8 BY MR. KOCH:

9 Q We have not talked about the word prospective very  
10 much in this -- I don't know how long we've been here, but  
11 it's been a long time.

12 THE COURT: This is Day 10.

13 MR. KOCH: Day 10. Okay.

14 BY MR. KOCH:

15 Q Prospective. Is there any definition of prospective  
16 -- prospective owner, officer and board member that's provided  
17 in this statute or the initiative?

18 A No.

19 Q Do you think that word might be important?

20 A Sure.

21 Q Do you have an understanding of what the word  
22 prospective means?

23 A Potential owner.

24 Q Potential owner? All right. I'm going to --

25 THE COURT: You brought a Black's Law Dictionary?



1           MR. KOCH: A Black's Law Dictionary. I don't  
2 usually use this. I had it on my bookshelf and I thought I've  
3 got to bring it today and I'm glad I can use it and take it  
4 back and not bring it again.

5 BY MR. KOCH:

6           Q     Let me read to you the definition of prospective  
7 from Black's Law Dictionary. Black's Law says prospective  
8 means "in the future, looking forward, contemplating the  
9 future." Would you agree with that definition?

10          A     Yes.

11          Q     And so we could read that statute to say the  
12 Department shall conduct a background check of each future  
13 owner, officer and board member of a marijuana establishment  
14 license applicant, couldn't we?

15          A     Yes.

16          Q     Do you think that the Department could conduct  
17 background checks of future owners, officers and board members  
18 of an applicant?

19          A     No.

20          Q     Let's say somebody goes out next year and purchases  
21 -- an example, LivFree. We've heard some testimony about  
22 LivFree, that there was an announcement perhaps made last fall  
23 that they were in negotiations to purchase and Mr. Kemp, I  
24 think, told us that within the last couple of weeks a deal was  
25 formalized, closed, that something happened to complete the

1 sale of LivFree to a publicly traded company. Do you know if  
2 that sale was listed in LivFree's application in September of  
3 2018?

4 A I don't know.

5 Q If that sale did not take place until May of 2019,  
6 did the Department check the backgrounds of each of those  
7 owners, officers and board members that are now going to take  
8 place in May of 2019 when it conducted its application review  
9 in September of 2018?

10 A No.

11 Q Could it do that?

12 A Not if they weren't listed in the application.

13 Q Okay. Let's say -- we're talking about publicly  
14 traded companies. Who can buy a share of publicly traded  
15 stock?

16 A Anyone.

17 Q Anyone. Okay. So I go out today and I buy a share  
18 of a Canadian company that owns one of the parties that's  
19 listed here. I'm now an owner of that company; right? I  
20 might sell it to someone tomorrow. Do you know who I'm going  
21 to sell it to tomorrow?

22 A No.

23 Q Now, if I decide to buy another share in the future,  
24 I'm a prospective owner, aren't I?

25 A Yes.

1           Q     Anybody in this room may be a prospective owner  
2 because maybe in the future at some time they might buy that  
3 share of stock; right?

4           A     Yes.

5           Q     So did the Department conduct background checks of  
6 everyone in the United States when it carried out its  
7 obligation to conduct background checks here?

8           A     Definitely not.

9           Q     What about everyone in the country of Canada?

10          A     Definitely not.

11          Q     That would be absurd, wouldn't it?

12          A     Yes.

13          Q     It would be ridiculous to require the Department to  
14 carry out that type and scope of background checks?

15          A     I believe so.

16          Q     And there would have to be something done to rein  
17 that in to be able to control the scope of background checks  
18 in order to make it reasonable for the Department to actually  
19 carry out that requirement, is that right?

20          A     That's correct.

21                MR. KOCH:   Okay.   Why don't we break here and we'll  
22 pick up from there.

23                THE COURT:   All right.   So we're going to break, so  
24 that means you can get up.

25                Before counsel leaves the room, Dulce goes on

1 vacation and so she may not be here when we resume. What I am  
2 going to encourage you to do is one person from each group,  
3 and I don't care how you define group, come see Dulce, I would  
4 prefer you to it together, to identify for all of your records  
5 what exhibits are or are not admitted, because I am not  
6 prepared to rely on whatever substitute clerk they send me  
7 when Dulce is gone for accurate information. So I'd prefer  
8 you guys take a minute to meet with Dulce and try and resolve  
9 that.

10 Are we having a hearing Tuesday or Wednesday or  
11 both?

12 MR. BULT: So, I talked to all counsel and here's  
13 the report. So we're going to file our TRO tomorrow at noon.  
14 The opposition will be filed by close of business. The  
15 hearing will be 8:45 on Tuesday.

16 THE COURT: Close of business Monday?

17 MR. BULT: Yes, ma'am, Your Honor.

18 THE COURT: Okay.

19 MR. BULT: And then on the release of the bond  
20 objection from Rusty, he's going to get his opposition --

21 MR. GRAF: Clear River.

22 MR. BULT: Clear River. I apologize. By close of  
23 business on Monday, and then that hearing will also be on  
24 Tuesday morning at 8:45.

25 THE COURT: So I will not see you all on Wednesday,

1 only on Tuesday at 8:45?

2 MR. BULT: Yes.

3 THE COURT: All right.

4 MR. CRISTALLI: Your Honor, with regard to the issue  
5 of the bond, you did execute an order after Mr. Graf, I think,  
6 raised his objection this morning, which I wasn't here for.  
7 You have signed it and I have it, but I don't want to do  
8 anything with it.

9 THE COURT: Well, but it's only setting the date,  
10 isn't it?

11 MR. CRISTALLI: No. I think this was the release.

12 THE COURT: I think -- isn't it the one that had a  
13 hearing date on it?

14 MR. CRISTALLI: No, this is the release, I think.

15 THE COURT: I thought you gave me one that had a  
16 hearing date. Maybe I had too many pieces of paper.

17 MR. CRISTALLI: Okay. Maybe I'm wrong. I just want  
18 to make sure.

19 THE COURT: Yeah. So this is what I signed.

20 MR. CRISTALLI: Okay. I'm sorry. Okay.

21 THE COURT: Okay. Got it?

22 MR. CRISTALLI: [Unintelligible].

23 THE COURT: There were two checked boxes and I  
24 didn't check either, but I wrote in the answer on the second  
25 one.

1 MR. GRAF: So nothing is getting released, right?

2 THE COURT: No, nothing was getting released.

3 MR. GRAF: Okay.

4 THE COURT: We're having a hearing Tuesday morning  
5 at 8:45.

6 All right. Does anybody have a scheduling conflict  
7 next month? July.

8 MR. GRAF: What do you mean by next month?

9 THE COURT: That's July.

10 MR. GRAF: Yes.

11 MS. SHELL: Yes.

12 MR. KOCH: Yes. [Inaudible].

13 THE COURT: Okay. I have calendar calls Tuesday  
14 morning after you leave me at 8:45. I am trying -- at the  
15 moment I'm shooting for the week of the 8th, but if somebody  
16 is out the week of the 8th, that's not going to work.

17 MR. KOCH: I'll be back on the 10th, but.

18 THE COURT: How many more days do you need? Not  
19 hours, days. How many more? Best guess. I know Mr. Gentile  
20 still has an expert that he wants to call. We need to finish  
21 Mr. Pupo and then I've got four other witnesses that you've  
22 told me about.

23 MR. GENTILE: Two.

24 THE COURT: No.

25 MR. GENTILE: Three. Seriously. I mean --

1 THE COURT: Three?

2 MR. GENTILE: Yeah, I think so. I mean, the other  
3 four witnesses are primarily Mr. Shevorski's, as I understand.

4 THE COURT: And he is always very efficient in his  
5 use of time.

6 (Colloquy among counsel)

7 MR. SHEVORSKI: One thing I would say, Your Honor,  
8 is I don't know what the intervenors -- if they have  
9 witnesses. I haven't talked to them about that, so.

10 MR. KOCH: My witness has been called. I don't have  
11 anybody else.

12 MR. SHEVORSKI: I don't know what anybody else plans  
13 to do.

14 THE COURT: Okay. So I'm looking for three days.

15 MR. KEMP: Your Honor, I think the big issue is what  
16 the State intends to do in terms of Hernandez and Cronkhite.

17 MR. SHEVORSKI: After Mr. Miller's examination,  
18 we're for sure calling them.

19 THE COURT: Okay. So three to four days. Then  
20 after we finish the evidence, how long will you need to argue?

21 MR. GENTILE: Oh, I'm going to make -- you know,  
22 from our side I think we can cut it off. I think that we can  
23 share --

24 THE COURT: Yes, you can share it, but the question  
25 is how long? Do I need a whole day of argument? Do I need a

1 half day of argument? Can you do it in an hour for all of  
2 you?

3 MR. KEMP: I think a half day would be wise, Your  
4 Honor.

5 (Colloquy among counsel)

6 MR. GENTILE: I think a half day with the strict  
7 enforcement of the Peek rule.

8 MR. GRAF: If you're going to do plaintiffs,  
9 defendants, and intervenors, then, yeah, I think that's  
10 appropriate.

11 THE COURT: Okay. So I'm looking for five days.  
12 Okay, I will work on that and I will let you know what I find  
13 out. If the jury trial I'm in starting on Monday resolves, I  
14 will immediately notify you. I have a case that I guess Mr.  
15 Kahn is no longer involved in. It's a non-jury trial  
16 involving some balloons and a bicycle, but it will only take  
17 three days. And then I have a bunch of HOA foreclosure cases.

18 (Court recessed at 4:50 p.m., until  
19 a date and time to be determined)

20 \* \* \* \* \*

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INDEX

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

Jorge Pupo	6	96/125	-	-
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EXHIBITS

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

306	52
307	46

\* \* \*

DEFENDANTS' EXHIBIT NO.

5042	132
5043	138
5044	129

\* \* \*

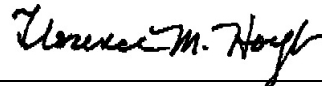
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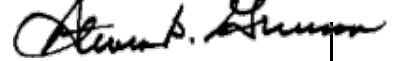
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Las Vegas, Nevada 89146**



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6/21/19

\_\_\_\_\_  
DATE



TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

SERENITY WELLNESS CENTER LLC,.  
et al.

Plaintiffs

vs.

STATE OF NEVADA DEPARTMENT OF  
TAXATION

Defendant  
. . . . .

CASE NO. A-19-786962-B

DEPT. NO. XI

**Transcript of  
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**EVIDENTIARY HEARING - DAY 11**

MONDAY, JULY 1, 2019

COURT RECORDER:

JILL HAWKINS  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript  
produced by transcription service.

APPEARANCES:

FOR THE PLAINTIFFS:

DOMINIC P. GENTILE, ESQ.  
MICHAEL CRISTALLI, ESQ.  
ROSS MILLER, ESQ.  
WILLIAM KEMP, ESQ.  
NATHANIEL RULIS, ESQ.  
ADAM BULT, ESQ.  
MAXIMILIEN FETAZ, ESQ.

FOR THE DEFENDANTS:

KETAN BHIRUD, ESQ.  
STEVE SHEVORSKI, ESQ.  
RUSTY GRAF ESQ.  
BRIGID HIGGINS, ESQ.  
ERIC HONE, ESQ.  
DAVID KOCH, ESQ.  
ALINA SHELL, ESQ.  
JARED KAHN, ESQ.  
JOSEPH GUTIERREZ, ESQ.  
BRODY WIGHT, ESQ.

1 LAS VEGAS, NEVADA, MONDAY, JULY 1, 2019, 9:58 A.M.

2 (Court was called to order)

3 THE COURT: We're two minutes early. So if you're  
4 not ready that's okay. I have a clerk helping, since Dulce is  
5 on vacation. That means I'm going to make every single one of  
6 you who's going to speak, and that includes the A-V guys,  
7 identify yourselves and say who you represent so she can make  
8 a chart to try and keep up, because all of us forget how  
9 competent Dulce is after living with you for so long.

10 So, Ms. Higgins, you're up, you're first.

11 MS. HIGGINS: Brigid Higgins on behalf of Clear  
12 River LLC.

13 MR. GRAF: And Rusty Graf on behalf of Clear River  
14 LLC.

15 MR. GUTIERREZ: Joseph Gutierrez on behalf of  
16 Essence and Thrive.

17 MR. FETAZ: Maximilien Fetaz on behalf of the ETW  
18 plaintiffs.

19 MR. BULT: Adam Bult on behalf of the ETW  
20 plaintiffs, as well.

21 MR. GODFREY: Shane Godfrey on behalf of this entire  
22 side's presentation.

23 MR. RULIS: Nate Rulis on behalf of MM Development  
24 and LivFree Wellness.

25 MR. CRISTALLI: Michael Cristalli appearing on

1     behalf of plaintiffs Serenity, et al.

2             MR. GENTILE:   Dominic Gentile appearing on behalf of  
3     et al.

4             MR. KOCH:   David Koch for Nevada Organic Remedies.

5             MR. SHEVORSKI:   Steve Shevorski on behalf of the  
6     State.

7             MR. BHIRUD:   Ketan Bhirud on behalf of the State, as  
8     well.   And I might make a note.   Mr. Koch sits here, if you're  
9     making a chart.   Just trying to be helpful.

10            THE COURT:   Well, I was going to tell her where Mr.  
11     Parker is when you all finish, since he's always late.

12            MR. WIGHT:   Brody Wight on behalf of Nevada Organic  
13     Remedies.

14            MR. KAHN:   Jared Kahn for Helping Hands Wellness  
15     Center.

16            MS. SHELL:   Alina Shell on behalf of GreenMart of  
17     Nevada NLV.

18            MR. HONE:   Eric Hone for Lone Mountain Partners.

19            MR. CLARK:   I'm Brian Clark here helping with the  
20     A-V for the defense side.

21            THE COURT:   So the chair next to Mr. Gutierrea in  
22     the box over here, that is usually occupied by Mr. Parker.  
23     Mr. Parker will walk in 10 minutes late, because he always  
24     does.

25            So before I swear in Mr. Pupo --

1 MR. CRISTALLI: Your Honor, we have another one.  
2 The chair next to Dominic will be Will Kemp.

3 THE COURT: Oh. Mr. Kemp will sit on the end. He's  
4 also always late, but not as late as Mr. Parker. So --

5 MR. CRISTALLI: Your Honor, we don't have Mr. Miller  
6 here yet, either.

7 THE COURT: Mr. Miller's been here all morning.

8 MR. CRISTALLI: I know, but he's not here right now.

9 THE COURT: Is Mr. Miller going to sit next to you,  
10 Mr. Cristalli?

11 MR. CRISTALLI: Yes.

12 MR. GENTILE: Well, if I may withdraw. This is his  
13 witness. He ought to be for him. So let me go get him.

14 THE COURT: Well, I'm not on the witness yet.

15 MR. GENTILE: Oh.

16 THE COURT: I'm just making a chart of who's here.

17 MR. GENTILE: I see. Okay.

18 THE COURT: So Ross Miller will be sitting somewhere  
19 around Mr. Cristalli.

20 MR. GENTILE: He will be to Mr. Cristalli's left.

21 THE COURT: Okay. Anybody else who's going to be  
22 here who's typically late? And here comes Mr. Kemp. I told  
23 you he was not always as late as Mr. Parker. So Mr. Kemp is  
24 here. You've already got his chair designated. So before Mr.  
25 Pupo gets sworn in let me ask a couple questions.

1 I have two motions that I'd like to entertain today.  
2 I was thinking we'd do it at the lunch break. The two  
3 motions, and I don't know if you all received the minute order  
4 on Monday, but I have a problem with the motion to seal  
5 exhibits that was filed, Mr. Fetaz, by your firm, because the  
6 documents in the exhibits, while designated confidential by  
7 the parties, are not confidential, and I'm not going to grant  
8 the motion to seal based on a cursory review of those  
9 documents. But I'm happy to listen to the producing parties,  
10 who are the defendants, related to any specific objections  
11 within Exhibits A through F.

12 And then on the motion for leave I have an OST that  
13 is set for tomorrow. If all parties are in agreement, I will  
14 move it to today around the lunch hour if that will help you.

15 Yes, Mr. Graf?

16 MR. GRAF: Your Honor, we planned on filing a  
17 written opposition to that.

18 THE COURT: Then I won't do it. Thank you, Mr.  
19 Graf. I'm crossing that off my list of things to talk to you  
20 guys about.

21 Anything else before we wait for Mr. Miller and  
22 swear the witness when he gets here? Because he's been here  
23 all morning.

24 MR. GRAF: Your Honor, one thing.

25 THE COURT: Yes.



1 MR. GRAF: We didn't get the motion to seal, so --

2 THE COURT: You would have gotten the motion to  
3 seal, because it was filed a month ago. See, the motion to  
4 seal got filed -- the motion it related to was on an OST. So  
5 we heard the motion in April or May and the exhibits -- Dani  
6 says if you'd like to look at the motions, that you could. It  
7 was filed on May 24th. And if you'd like to look at my copy,  
8 I would be happy to share it with you, Mr. Graf.

9 MR. GRAF: Yeah, if --

10 THE COURT: Come on up.

11 MR. GRAF: Indeed. Thank you.

12 THE COURT: But don't write in it, please.

13 MR. FETAZ: And the other sealed exhibits were also  
14 served on all parties, as well, around that time.

15 THE COURT: They're all in that binder. Because I  
16 think you sent me a courtesy copy on Friday when I said no.

17 MR. FETAZ: We did, Your Honor.

18 THE COURT: All right. So we're still waiting for  
19 Mr. Miller, who is now here. Okay. Are we missing anyone  
20 else besides Mr. Parker, who will eventually get here?

21 Mr. Pupo, if you'd raise your right hand, please.

22 We have to swear him in.

23 JORGE PUPO, PLAINTIFFS' WITNESS, SWORN

24 THE CLERK: Please be seated. And please state and  
25 spell your first and last name.

1           THE WITNESS: My name's Jorge, J-O-R-G-E. Last name  
2 Pupo, P-U-P-O.

3           THE COURT: And, Mr. Pupo, thank you again for  
4 coming back for this continued examination. I think you still  
5 have water in the pitcher next to you, M&M's behind you, and  
6 you know the situation with the exhibits from your prior  
7 examination.

8           Mr. Koch, you may continue your examination.

9                   CROSS-EXAMINATION (Continued)

10 BY MR. KOCH:

11           Q All right. Mr. Pupo, we left off I think it was a  
12 week and a half ago, some time ago, talking about the phrase  
13 "prospective owner." Do you remember talking about that  
14 phrase?

15           A Yes.

16           Q And we looked at the definition that we saw in the  
17 dictionary about "prospective" being a future owner. Do you  
18 remember that?

19           A Yes.

20           Q And you would agree that it would not be possible  
21 for the Department to conduct background checks on future  
22 owners that were not known at the time the application was  
23 submitted; is that right?

24           A That's right.

25           Q And if we looked at other potential definitions for

1 "prospective" like "possible" or "potential" owner, and we  
2 talked about the fact that maybe any person living in the  
3 United States could buy a share of stock and could be an owner  
4 so that could be a prospective owner. And this Department  
5 couldn't do background checks on every possible person in the  
6 United States who might buy a share, could it?

7 A That's right.

8 Q And so under either of those definitions for  
9 "prospective," either a future owner or a possible or  
10 potential owner, the Department did not undertake to try to  
11 conduct background checks on everyone who might fit under  
12 those definitions; is that right?

13 A That's correct.

14 Q And fair to say it would be impractical for the  
15 Department to conduct background checks in such a manner?

16 A Yes.

17 Q Now, you're aware in 2018 that there were certain  
18 marijuana establishments that were owned by public companies  
19 in full or in part; is that right?

20 A Yes.

21 Q Was there ever discussed within the Department  
22 about, you know, saying maybe we should conduct a background  
23 check of every owner of a share of a public company who owns a  
24 marijuana establishment?

25 A No.

1           Q     So there's no discussion about potentially carrying  
2 out that level of ownership check?

3           A     No.

4           Q     In the background check itself can you just describe  
5 how the Department carries out that process to perform a  
6 background check.

7           A     Well, as far as I know, the individual would submit  
8 their -- they get fingerprinted. They go to a fingerprint  
9 location and they submit a form to us, and then they go  
10 straight to DPS and I think the FBI. And then we wait for a  
11 report to come back.

12          Q     Do you know how long that report takes?

13          A     Thirty to 45 days potentially.

14          Q     Okay. And is there a cost associated with  
15 completing that background check?

16          A     Yes.

17          Q     How much is the cost?

18          A     I don't know for sure. It's 30, \$40 maybe.

19          Q     Okay. And I've also seen indications in the  
20 statutes, maybe the regulations, that when someone submits for  
21 a background check with respect to an owner/agent card that  
22 you need to pay a fee of \$75; is that right?

23          A     Yes.

24          Q     And that needs to be paid at the time that the  
25 request for a background check is made?

1 A Yes.

2 Q And who pays that \$75?

3 A The individual.

4 Q You said the individual. The individual potential  
5 owner of the company; is that right?

6 A Yes.

7 Q All right. Did you ever consider asking each  
8 shareholder of a public company to submit a check for \$75 in  
9 order to run a background check on each of those shareholders?

10 A No.

11 Q And do you believe it was necessary for the  
12 Department to limit the scope of the background checks that  
13 would be performed in order to complete its function?

14 A Limit the scope of the background check?

15 Q Limit the scope in a sense of limit the number of  
16 people that it be performed on. When I say limit the scope I  
17 guess I mean limit -- not performing background checks on  
18 every single shareholder of a public company. Would you agree  
19 that --

20 A Right. That's correct.

21 Q -- that was necessary?

22 A Right, we had to limit it.

23 Q All right. Let's move to another section of the  
24 statute. And I think I gave you a printout. We're just going  
25 to go to 453 --

1 MR. KOCH: Your Honor, it's 453D.200, the statute  
2 looked at quite a bit. I'll, if I can, Your Honor, just  
3 approach with a copy of that.

4 THE COURT: Okay.

5 MR. KOCH: And actually, let's do this. Do we have  
6 -- I don't know if we have -- Brian, do you have NRS 453D.030?  
7 It's a definition section.

8 BY MR. KOCH:

9 Q NRS 453D.030 is the section of definitions. Have  
10 you seen this provision of the statute before?

11 A Yes.

12 Q All right. Let's go to Number 19, subsection 19.  
13 There's a definition there for unreasonably impracticable.  
14 Have you seen that before?

15 A Yes.

16 Q And that says, "Unreasonably impracticable means  
17 that the measures necessary to comply with the regulations  
18 require such a high investment of risk, money, time, or any  
19 other resource or asset that the operation of a marijuana  
20 establishment is not worthy of being carried out in practice  
21 by a reasonably prudent businessperson." You've seen that  
22 definition before; correct?

23 A Yes.

24 Q Do you know how many times that phrase "unreasonably  
25 impracticable" appears within the rest of NRS 453D?

1           A     No, I don't.

2           Q     Would it surprise it's only one other time?

3           A     No.

4           Q     Let's look at that one other time, and that's in  
5 453D.200, which you've looked at many, many times. And I  
6 think you've got that right there in front of you. If you  
7 could draw your attention to Item Number 1 on 453D.200, which  
8 talks about the Department adopting regulations. You've read  
9 this before?

10          A     Yes.

11          Q     And we've read that first sentence quite a bit.  
12 "The Department shall adopt all regulations necessary or  
13 convenient to carry out the provisions of this chapter." Then  
14 the next sentence says, "The regulations must not prohibit the  
15 operation of marijuana establishments either expressly or  
16 through regulations that make their operation unreasonable  
17 impracticable." I'll represent the only other time that it  
18 appears in the entirety of NRD 453D. Do you have an  
19 understanding of what that means based on the definition?

20          A     Yes.

21          Q     If you were to explain that to somebody, what would  
22 you -- how would you explain that, that the regulations should  
23 not be unreasonably impracticable?

24          A     That the regulations are not to be overburdensome on  
25 the licensees.

1 Q And if we look just right below that, that relates  
2 to regulations that include the procedures for issuance,  
3 renewal, suspension, and revocation of a license to operate a  
4 marijuana establishment. So do you have an understanding that  
5 the procedures for the issuance of a license should not be  
6 unreasonably impracticable?

7 A Yes.

8 Q And do you believe that the procedures and  
9 regulations the Department passed were adopted in order to  
10 carry out this function in fact fulfill that aspect of the  
11 law?

12 A Yes.

13 Q When the drafters of this initiative back in 2014  
14 that we looked at some time ago would that initiative -- you  
15 don't have any understanding of their ability to look at the  
16 future in 2018 what the industry was, do you?

17 A No.

18 Q This appears to be sort of a phrase written to give  
19 the Department some ability to conduct its business and its  
20 regulations in a way that would account for changes in the  
21 industry; is that right?

22 A Yes.

23 Q And the Department did pass or adopt regulations;  
24 right?

25 A Yes.



1 Q And those final regulations came out in 2018, early  
2 2018?

3 A Yes.

4 Q And that was after the Task Force report was issued?

5 A Yes.

6 Q And then let's look at one other word before we come  
7 off of this section here. And it's a word that the Judge has  
8 asked quite a bit about. It's right at the beginning. "The  
9 Department shall adopt all regulations necessary or convenient  
10 to carry out the provisions of this chapter." Do you have an  
11 understanding of what the word "convenient" means?

12 A Sure.

13 Q What -- if you were to just off the top of your head  
14 define it, how would you explain what "convenient" means?

15 A Practical.

16 Q Okay. Practical.

17 A Easy.

18 Q Yeah. You know, I actually looked at, I think this  
19 is the second time since I graduated from law school, Black's  
20 Law Dictionary, the first time was a couple weeks ago, looked  
21 at the definition of "convenient" in Black's Law Dictionary,  
22 and there it says, "convenient" is proper, just, suitable,  
23 fit, adaptive, proper," maybe you talk to the editors about  
24 including "proper" twice, and then, becoming appropriate. So  
25 "convenient" here, according to Black's Law Dictionary, would

1 be things like suitable. The regulations would be suitable  
2 for the circumstances that the Department is dealing with; is  
3 that right?

4 A Yes.

5 Q And becoming appropriate, did you believe that the  
6 regulations over time would change and potentially adapt based  
7 upon the industry?

8 A Sure. Many times.

9 Q Another definition. Merriam Webster says  
10 "convenient" means suited to a particular situation. Do you  
11 have any disagreement with that definition of suited to a  
12 particular situation?

13 A No.

14 Q And the situation here we had in 2014 there were no  
15 public companies, and then by 2018 there were; is that right?

16 A Yes.

17 Q All right. Let's look at one of the regulations  
18 that we've talked about a fair amount. That's NAC 453D.255.  
19 We'll put it up. I'll provide you with a copy of that.

20 THE COURT: Can you see it on the screen, sir?

21 THE WITNESS: Yes.

22 BY MR. KOCH:

23 Q NAC 453D.255 is the 5 percent threshold that we've  
24 talked about a fair amount. You're familiar with this  
25 regulation?

1           A     Yes.

2           Q     And under section (1) it says that, "Except as  
3 otherwise required in subsection (2), the requirements of this  
4 chapter concerning owners of marijuana establishments only  
5 apply to a person with an aggregate ownership interest of  
6 5 percent or more in a marijuana establishment." You're  
7 familiar with that provision?

8           A     Yes.

9           Q     You believe that that was a necessary and convenient  
10 provision for purposes of carrying out the Department's  
11 function?

12          A     Yes.

13          Q     And it certainly would be -- the Department could  
14 conduct background checks -- let's say if an applicant  
15 submitted 20 individuals, each of them had a 5 percent  
16 ownership interest, could the Department carry out background  
17 checks on that number of people?

18          A     Yes.

19          Q     In fact, represent that Nevada Organic Remedies had  
20 I believe it was 22 individuals that were listed as part of  
21 its owners, officers, or board members, and background checks  
22 would have been conducted on each of those individuals; is  
23 that right?

24          A     Yes.

25          Q     And what if you had 20,000 individuals for a single

1 establishment? Would that have been feasible to conduct  
2 background checks?

3 A No.

4 Q Subsection (2) in that same regulation says, "If in  
5 the judgement of the Department the public interest will be  
6 served by requiring any owner with an ownership interest of  
7 less than 5 percent in a marijuana establishment to comply  
8 with any provisions of this chapter concerning owners of  
9 marijuana establishments, the Department will notify that  
10 owner and he or she must comply with those provisions."

11 So the Department had the ability to require a  
12 background check of an owner of less than 5 percent if it  
13 determined it was necessary?

14 A Yes.

15 Q If -- we heard these examples of the Sinaloa Cartel  
16 coming in and buying up all these -- strategically staying  
17 below 5 percent in order to buy up a marijuana establishment,  
18 if you receive an application that listed no owners because  
19 25 people held 4 percent each of that establishment, do you  
20 think the Department would raise a question with that  
21 application?

22 A Yes.

23 Q In fact, if there are no owners at all listed, that  
24 would put up a red flag, wouldn't it?

25 A Yes.

1           Q     And it says, "if the public interest would be  
2 served." So let's say you got an application, it came in, and  
3 you saw that a guy named Joaquin Guzman a/k/a El Chapo was  
4 listed on there, he's listed as a 1 percent owner --

5           THE COURT: Isn't he in New York somewhere right  
6 now?

7           MR. KOCH: I think he is, but --

8           THE COURT: Yeah.

9           MR. KOCH: -- he seems to have a sphere of influence  
10 that might span a little further.

11 BY MR. KOCH:

12          Q     But let's say El Chapo is on there. Would you  
13 potentially run a background check on that individual if some  
14 suspicion came up about this might be the guy?

15          A     Sure.

16          Q     If there were anyone suspicious on there, in fact,  
17 the Department would have the ability to check that person  
18 out; right?

19          A     Yes.

20          Q     And let's go the other way. If someone did in fact  
21 -- applicant listed just a 1 percent owner and asked for an  
22 agent card to be provided, even if they were under 5 percent,  
23 would the Department check the background of that individual?

24          A     Yes.

25          Q     So that standard of 5 percent, did you believe that

1 that was necessary for the Department to carry out its  
2 function in regulating this industry?

3 A Yes, I do.

4 Q And it might be unreasonably impracticable to  
5 conduct checks some other way; is that right?

6 A Yes.

7 Q We looked at a few of those gaming statutes. I  
8 think Mr. Miller took you through those quite a bit, and Mr.  
9 Shevorski asked you a little bit about those statutes. Is the  
10 gaming industry -- would you say it's more mature or less  
11 mature than the marijuana industry in Nevada?

12 A More mature, definitely.

13 Q And to your understanding, is it pretty heavily  
14 regulated?

15 A Yes.

16 Q All right. Let's pull up NRS 463.490.

17 THE COURT: I don't know that that's in the same  
18 book you have --

19 MR. KOCH: Were' actually -- we've got it on the  
20 screen. We can pull it up unless there's an issue with the --  
21 BY MR. KOCH:

22 Q All right. So we put on the screen there, Mr. Pupo,  
23 that statute that I've referenced. First of all, the title  
24 there is "Qualifications for State gaming license for  
25 corporations other than publicly traded corporations." So

1 there appear to be a distinction in the gaming statutes with  
2 respect to regulation of publicly traded companies and not  
3 publicly traded companies. Does marijuana have that  
4 distinction in place as of today?

5 A No.

6 Q Might it be something that the Department or the  
7 legislature look at in the future?

8 A Well, sure.

9 Q If we look at the bottom of this statute, there's a  
10 section down there where it says when its added to the NRS.  
11 And it says added to the NRS by 1967, 1969, and 1993. So  
12 would it surprise you that this statute was first -- or the  
13 first iteration of it was adopted in 1967?

14 A No.

15 Q Fifty-two years ago is when it was adopted, and  
16 changes were made to that; is that right?

17 A Yes.

18 Q Let's look at a couple of other items just in gaming  
19 so we can have some perspective there. Can we go to 463.520.  
20 And this deals with regulations with board by -- registration  
21 with the board by corporations other than publicly traded  
22 corporations. And if we look at this, there is a requirement  
23 to register. And so this has a description in the subsection  
24 here, Item 1. It requires "The organization, financial  
25 structure, and nature of the business to be operated,

1 including, (a) the names and personal history of," and I  
2 underlined this, this isn't part of the statute, "of all  
3 officers, directors, and key employees." Do you know why  
4 there "owners" is not listed among the gaming statutes?

5 A No.

6 Q And then (b) says, "A complete set of the  
7 fingerprints of all officers, directors, and key employees  
8 which the board may forward to the Central Repository," et  
9 cetera. [Unintelligible] FBI [unintelligible]. So do you  
10 know why the owners were not background checked for  
11 fingerprints here?

12 A No.

13 Q There was a distinction apparently that was made in  
14 the gaming statutes between owners, officers, board members;  
15 is that right?

16 A Yes.

17 Q Okay. And let's look at one or two more. We're  
18 going to go to 463.5735. This relates to individual licensing  
19 of members, directors, managers, and other persons of limited  
20 liability companies. And Item 1, I think Mr. Miller might  
21 have shown you this before, but it says, "Every member and  
22 transferee of a member's interest with more than 5 percent  
23 ownership interest in a limited liability company and every  
24 director and manager of a limited liability company which  
25 holds or applies for a State gaming license must be licensed



1 individually according to the provisions of this chapter."

2           Now, do you personally know why this 5 percent  
3 threshold was put in the gaming statutes?

4           A     No, I don't.

5           Q     Must have had a reason for it, though?

6           A     Sure.

7           Q     You believe that this 5 percent limitation is a  
8 reasonable part of the statute based on your understanding?

9           A     Yes.

10          Q     All right. And then let's go to NRS 463.625. It's  
11 the section about -- actually a subsection of the chapter that  
12 talks specifically about publicly traded companies. And it  
13 says that "The Commission may exempt a publicly traded  
14 corporation from compliance with any provisions listed there."  
15 Do you know why there might have been an exemption for  
16 publicly traded companies in the gaming statutes?

17          A     No.

18          Q     All right. But there was, it appears?

19          A     Yes.

20          Q     Let's go to NRS 463.635. It's about publicly traded  
21 corporation owning or controlling an applicant or licensee.  
22 And here I want to just ask you -- we looked at the issue  
23 about ownership, and this in Item 1 says, "If a corporation,  
24 partnership, limited partnership, LLC, or other business  
25 applying for or holding a State gaming license is or becomes

1 owned in whole or in part or controlled by a publicly traded  
2 corporation, then publicly traded corporations shall, Item  
3 (a), maintain a ledger in the principal offices of its  
4 subsidiary which is licensed to conduct gaming in the state,  
5 which must reflect the ownership of record." It goes on. It  
6 essentially says you can provide a shareholder list that's  
7 held by the subsidiary. Do you see that?

8 A Yes.

9 Q Okay. Do you know of any gaming regulation that  
10 requires the licensee to regularly update the Commission on a  
11 daily basis with owners of its shares of stock?

12 A No, I don't.

13 Q And this statute which requires maintenance of a  
14 ledger with the company that can be available for inspection  
15 in subsection (2), do you believe that's a reasonable way of  
16 handling ownership of a publicly traded company that's  
17 licensed?

18 A Yes.

19 Q All right. One more. This is the last one for  
20 gaming. We're going to look at NRS 463.643. And this is  
21 about suitability of persons acquiring beneficial ownership of  
22 any voting security or beneficial record ownership of any  
23 nonvoting security, et cetera. And, again, this is one I  
24 think Mr. Shevorski looked at with you. Do you have an  
25 understanding that the Gaming Commission requires suitability

1 checks to be done on potential owners of gaming companies?

2 A Yes.

3 Q And here it says that "Each person who acquires, in  
4 section (1), directly or indirectly beneficial ownership of  
5 any voting security may -- or even skip down -- may be  
6 required to be found suitable if the Commission has reason to  
7 believe that the person's acquisition of ownership would  
8 otherwise be inconsistent with the declared policy of the  
9 State." So Commission's going to conduct suitability checks;  
10 is that right?

11 A Yes.

12 Q And it appears that the Commission may have some  
13 discretion -- we'll jump down to section (3) -- or in red,  
14 again, it's not part of the original, that's my highlight  
15 there. But if someone has ownership of more than 5 percent,  
16 they're required to submit a report with the SEC. If they're  
17 required to submit that report, send it to the Gaming  
18 Commission. Do you see that?

19 A Yes.

20 Q Does the Department of Taxation require currently  
21 owners of 5 percent or more to submit SEC reports to the  
22 Department?

23 A No.

24 Q That might be something that in the future might be  
25 considered?

1           A     Yes.

2           Q     And then Item (4) has a distinction for beneficial  
3 ownership of more than 10 percent. And if someone has more  
4 than 10 percent, last lines, "shall apply to the Commission  
5 for a finding of suitability within 30 days after the chair of  
6 the board mails the written notice." So Commission has  
7 decided on 10 percent threshold for suitability checks as an  
8 automatic requirement. Do you see that?

9           A     Yes.

10          Q     And does the Department have a 10 percent threshold?

11          A     No.

12          Q     It has a 5 percent threshold; is that right?

13          A     Yes.

14          Q     Let's look at some examples or applications of that.

15               MR. KOCH: If we can go to Exhibit I think it's  
16 Proposed 5035.

17                       (Pause in the proceedings)

18               MR. KOCH: I think there's no objection to 5035.

19               THE COURT: Any objection?

20               MR. MILLER: No.

21               THE COURT: Be admitted.

22                       (Plaintiffs' Exhibit 5035 admitted)

23 BY MR. KOCH:

24          Q     All right. Exhibit 5035, Mr. Pupo. This is a  
25 letter, appears, from the Oasis Cannabis Dispensary, which is,

1 if we look below the logo, Serenity Wellness Center LLC d/b/a  
2 Oasis Canabis. You're familiar with Serenity Wellness Center  
3 d/b/a Oasis Canabis?

4 A Yes.

5 Q That's one of the entities that Mr. Miller, who  
6 asked you questions earlier, he represents; is that right?

7 A Yes.

8 Q It's a letter from September 13th, 2018. That was  
9 in the middle of the application timeframe?

10 A Yes.

11 Q Okay. And the subject of this letter is "Pending  
12 ownership transfer during retail store application period."  
13 And it says, "CLS Holdings USA, a publicly traded company  
14 listed as CLSH on the OTCQV Exchange recently acquired  
15 100 percent of the membership interests in Serenity Wellness  
16 Center LLC d/b/a Oasis Canabis." So Serenity notified you of  
17 this transfer; is that right?

18 A Apparently.

19 Q Okay. Who would get this type of a letter? If this  
20 came in -- it just says, Department of Taxation. Do you know  
21 who would get this?

22 A Go to Carson City staff, Steve Gilbert's group.

23 Q Okay. Goes on to say, "The ownership transfer  
24 request has been submitted to the Department of Taxation in  
25 accordance with the applicable laws and procedure." If that

1 was the case, if a transfer was going to come down, they would  
2 have to make that request and be approved by the Department;  
3 is that right?

4 A Yes.

5 Q But it was still pending review when this  
6 application was submitted. "Please note that the application  
7 was submitted as if the pending transfer had already been  
8 approved in expectation that the transfer will be completed  
9 prior to or at the time of the final scoring and ranking of  
10 retail store applications."

11 Now, that process, do you believe that that was a  
12 proper way to do it? They've got a transfer pending, they put  
13 on the application the owners as of a potential transfer that  
14 may be granted in the future?

15 A Yes.

16 Q And then we'll look at the next paragraph where it  
17 says, "All of the former owners and founders of Oasis Cannabis  
18 are now stockholders in CLSH, and together they own about  
19 29 percent of the outstanding shares of the public company.  
20 We had included information from a few significant  
21 stockholders that were part of the previous ownership group.  
22 The stockholders were included are," and it appears those  
23 names are redacted. "The remaining owner of information  
24 contained in this application relates to officers and board  
25 members." Do you know why Serenity only listed some of its

1 stockholders there?

2 A No, I don't.

3 Q Did they ever ask, the Department, why or about the  
4 listing of only significant stockholders?

5 A I don't.

6 Q Perhaps they read the regulation of 5 percent and  
7 listed those that were above 5 percent?

8 A Perhaps.

9 Q Do you have any problem with what they've provided  
10 here in the letter that you've read?

11 A No.

12 Q And if there were in fact 71 percent of shares held  
13 by non-insiders, general public, of the CLSH entity and if  
14 there were millions of shares out there, do you believe that  
15 it would be unreasonably impracticable for the Department to  
16 check every one of those 71 percent owners of public stock as  
17 part of the application here?

18 A Yes.

19 Q Asked also about MM Development, Mr. Kemp's client.  
20 We've talked about them from time to time. I think I might  
21 have asked you a couple of questions about them. But I  
22 believe there's about 20 million shares of MM Development  
23 stock that's not held by insiders, give or take. If the  
24 Department were asked to conduct background checks of  
25 20 million shareholders, could it do that?

1           A     No.

2           THE COURT: Mr. Koch, you used a term you haven't  
3 used with this witness before, "insiders." Can you define for  
4 him, who is not someone in our Business Court, what that  
5 means.

6 BY MR. KOCH:

7           Q     So let's just say owners -- not owners, we can skip  
8 that. Officers or board members, individuals that have  
9 positions within the company that own shares of stock may be  
10 deemed to be insiders, because they have information that's  
11 not privy to the general public. Do you understand what an  
12 insider is generally?

13          A     Yes.

14          Q     And maybe I'll clear that up by not saying  
15 "insiders." Owners who are not officers or board members own  
16 at least 20 million shares of MM Development stock, it appears  
17 based upon the filings. Are you aware of that?

18          A     Will you say it again.

19          Q     Owners who are not officers or board members of MM  
20 Development, or Planet 13 Holdings I think is the actual  
21 public entity, own approximately 20 million shares of that  
22 stock. Are you aware of that?

23          A     No.

24          Q     Okay. And if those 20 million shares and their  
25 owners were all submitted to the Department for background



1 checks, could the Department run those checks in a timely  
2 fashion?

3 A No.

4 Q If someone bought a share of stock and traded it  
5 within a week, do you have any expectation that the Department  
6 could complete a background check within that period of time?

7 A No.

8 Q And if on a daily basis three or 400,000 shares of  
9 stock changed hands, does the Department have any ability to  
10 do background checks on owners of three or 400,000 shares of  
11 stock? Let me back up. Unless one person trades all that  
12 stock, I suppose, does the Department have that ability to do  
13 that?

14 A No.

15 Q And even if one person did own all that stock and  
16 they held it for a week, the Department wouldn't get that  
17 background check done before they sold the stock, would they?

18 A No.

19 Q And so you were presented with all these theoretical  
20 ownership scenarios where the Sinaloa Cartel comes in and buys  
21 stock and owns companies and runs its drug trafficking through  
22 these entities. But isn't it true that in 2018 in order to be  
23 an applicant you had to have already held an MME certificate?  
24 Is that right?

25 A Yes.

1           Q     And that's part of the statute, actually, said you  
2 must be holding a medical license in order to submit a  
3 recreational application; right?

4           A     Yes.

5           Q     And so are you aware of any Sinaloa Cartel members  
6 who held MME certificates in 2018?

7           A     No.

8           Q     Are you aware of any Canadian Mafia bosses who held  
9 medical certificates in 2018?

10          A     No.

11          Q     If they did, you know, the fox is already in the hen  
12 house; right? They're already there, they've already got  
13 ownership. Was anything done to try to check back to see if  
14 any of those existing medical certificate owners might  
15 actually be Sinaloa Cartel members?

16          A     No.

17          Q     Because the background checks had already been run;  
18 is that right?

19          A     Yes.

20          Q     And if a new transfer were proposed, a new  
21 background check would be submitted?

22          A     Yes.

23          Q     And if an application or transfer of ownership was  
24 listed, submitted to the Department that said everybody who is  
25 a current owner will no longer be an owner and everyone who's

1 buying our stock is under 5 percent so we're not going to tell  
2 you who those owners are, would the Department approve that  
3 transfer of ownership?

4 A Wait. Say it again.

5 Q If a transfer of ownership came in which stated that  
6 no one is going to be listed as new owners because they're all  
7 under 5 percent, would the Department approve that transfer?

8 A Probably not.

9 Q Would the Department look into that transfer?

10 A Yes.

11 Q Would the Department be suspicious of that transfer?

12 A Yes.

13 Q All right. So we have talked a lot about background  
14 checks, a lot about a lot of different scenarios or theories  
15 or different things that may go on with that. But have you  
16 had any instance that you've seen here during this proceeding  
17 or previously with a background check that somebody's come to  
18 you and said, hey, you should have run a background check on  
19 this person because if you did it would have disqualified  
20 them?

21 A No.

22 Q Have you seen any exhibits or anything offered that  
23 show a background check on someone who was in fact a convicted  
24 felon with an excludable felony who was approved for ownership  
25 in the Department's licensing program?

1           A     No.

2           Q     And assuming those background checks were run as we  
3 discussed, that did not have any bearing necessarily on the  
4 actual evaluation and scoring process, did it?

5           A     No.

6           Q     I guess the individuals did not get points for  
7 having background checks done, did they?

8           A     No.

9           Q     They had to have the background checks done as a  
10 condition to be able to get their license finalized; is that  
11 right?

12          A     Yes.

13          Q     And so just because a background check was -- nobody  
14 got 1 point or 2 points background check passed, anything like  
15 that?

16          A     No.

17          Q     Okay. And so everything we've talked about with  
18 these background checks, that would not have changed the  
19 outcome of the rankings that we've looked at, 1 to 100 or  
20 whatever it would have been. Conducting background checks had  
21 no bearing on the points that were assigned; is that right?

22          A     That's right.

23          Q     Change topics a little bit. Let me ask you on  
24 partiality. Are you aware that the statute said that the  
25 Department was required to have an impartial and numerically

1 scored bidding process?

2 A Yes.

3 Q And do you believe the Department carried out an  
4 impartial process?

5 A Yes.

6 MR. KOCH: We looked at -- let's go to Exhibit 239.  
7 Do you have that, Brian, 239?

8 BY MR. KOCH:

9 Q All right. This was I believe a series of texts,  
10 and there are Facebook posts as part of this regarding Dr.  
11 Spirtos. Do you remember that?

12 A Yes.

13 MR. KOCH: Do you have that page, Brian? I can't  
14 remember what page it's on. If you can't find it, let's just  
15 move along.

16 BY MR. KOCH:

17 Q So in that post do you remember Mr. Miller asking  
18 you the question about a phrase or a sentence you said, what a  
19 dumbass, about Dr. Spirtos; is that right?

20 A Yes.

21 Q Do you remember that?

22 A Yes.

23 Q That's how you felt at the time?

24 A Yes.

25 Q If you felt someone was a dumbass would you have

1 potentially -- if you were scoring the application had some  
2 mental bias or feeling toward that person as part of the  
3 process?

4 A It's possible.

5 Q Right. In that stack we showed you last time, NOR's  
6 stack of scoring sheets, about 1500 pages, a lot of other  
7 scoring sheets have been produced in this case. I looked  
8 through a lot of them, not all of them, but I have not seen  
9 one statement in there that this applicant is a dumbass. Did  
10 you ever see anything like that in those scoring sheets from  
11 the evaluators?

12 A No.

13 Q Do you, based on your observation and understanding  
14 of the evaluators, believe that those evaluators were  
15 impartial in their scoring?

16 A Yes.

17 Q Do you know if they knew any of the individuals who  
18 were applicants or owners of those applicants?

19 A I don't believe so.

20 Q And I've seen you from time to time here. You've  
21 been here now I think several days, probably a few days longer  
22 than you would have liked, but talking with some individuals.  
23 I saw you speaking with Mr. Frank Hawkins. Do you know Mr.  
24 Hawkins?

25 A Yes.

1 Q He's one of the owners of I believe it's Nevada  
2 Wellness Center. Are you aware of that?

3 A Yes.

4 Q And did you -- you testified last time you were here  
5 that you hadn't met him in person prior to that meeting; is  
6 that right?

7 A Yes.

8 Q Do you know his name, do you know who he was prior  
9 to that?

10 A Yes.

11 Q Okay. So you were aware of him, you just hadn't met  
12 him in person?

13 A Right.

14 Q Okay. And looked like you were having a good  
15 conversation with him out in the hallway --

16 A Sure.

17 Q -- right? You're a friendly guy?

18 A Yeah, for the most part.

19 Q And when it comes to that discussion with Mr.  
20 Hawkins after you met him, after you talked to him, got to  
21 know him if you saw his application come in yourself, would  
22 that have affected at all your perception of what was  
23 submitted by Mr. Hawkins in his application?

24 A No.

25 Q Okay. And do you know if any evaluators met with

1 Mr. Hawkins or anybody else from Nevada Wellness Center?

2 A I don't think so.

3 Q Okay. Do you believe that having some distinction  
4 between that personal contact would be an important thing for  
5 the evaluators?

6 A I don't know.

7 Q Do you believe that bringing in outside evaluators  
8 made the process more impartial than it would have been if the  
9 Department of Taxation employees, who meet these individuals  
10 or know who they are, had conducted the same process?

11 A Yes.

12 Q Okay. Now, speaking of Mr. Hawkins, I believe he's  
13 listed as an African-American in his application. Are you  
14 aware of that?

15 A Okay. I would assume so.

16 Q You didn't read his application; right?

17 A No.

18 Q Now, you've talked with him, met with him, talked to  
19 him out in the hallway, surprise you that he's listed as  
20 African-American on his application?

21 A No.

22 Q He appears to you to be African-American?

23 A Yes.

24 Q Okay. But based on his application, you hadn't met  
25 him before, did you do anything to verify in fact that he was



1 African-American as part of his application?

2 A Me?

3 Q Right.

4 A No.

5 Q Do you know if anybody went out and met with him to  
6 check just to make sure that he was African-American?

7 A No.

8 Q No DNA tests?

9 A No.

10 Q No family pedigree charts submitted?

11 A No.

12 Q Did you ever ask Mr. Hawkins out in the hall, are  
13 you really African-American?

14 A No.

15 Q Okay. I didn't think you had. You trusted him;  
16 right?

17 A Yes.

18 Q And for the Department in order to be able to  
19 consider diversity in the races, genders, ethnicities it was  
20 required -- do you believe it was necessary for the Department  
21 to trust the information provided by the applicant?

22 A Yes.

23 Q And you believe it would have been unreasonably  
24 impracticable for the Department to check individually the  
25 race, ethnicity, or gender of each owner, officer, or board

1 member on an application?

2 A Yes.

3 Q Now, what would have happened if Mr. Hawkins showed  
4 up here this week and he was actually blonde hair, blue eyes,  
5 and he told you, hey, I'm actually from Norway, would you have  
6 gone back and docked him points from his application?

7 A No.

8 Q Is there a process in place to do anything about  
9 that, if somebody puts down something falsely on the  
10 application?

11 A Yes.

12 Q NAC 453D.312 is a regulation regarding false or  
13 misleading information that's provided. Are you aware of that  
14 regulation?

15 A Yes.

16 Q And does the Department have the ability to take  
17 steps if someone does in fact provide false or misleading  
18 information to the Department?

19 A Yes.

20 Q So there is a procedure in place for that?

21 A Yes.

22 Q All right. Just a couple more questions about  
23 diversity. If someone were let's say 50 percent African-  
24 American, 50 percent Caucasian and they listed themselves as  
25 African-American on their application, any issue with that?

1 A No.

2 Q And did the Department ask for percentage background  
3 of any race or ethnicity?

4 A I don't believe so.

5 Q It allowed the applicants or the individuals to list  
6 their stated race or ethnicity; is that right?

7 A Yes.

8 Q Same with gender. If someone, for example, has  
9 "male" on their birth certificate, later on in life decides  
10 they identify as a female, they decide to put "female" on  
11 there, does the Force go out -- or the Department go out and  
12 check to make sure they in fact are female?

13 A No.

14 Q And there's no hormone tests to know, DNA tests or  
15 anything like that?

16 A No.

17 Q And, you know, Mr. Kemp put up all these princesses  
18 and different things like that, body silhouettes.

19 THE COURT: Disney Princesses.

20 BY MR. KOCH:

21 Q Disney Princesses. Did he show you the silhouettes  
22 of individuals that were up there?

23 A I don't recall.

24 Q There were some silhouettes of some say curvaceous  
25 women that were up there. You didn't see those?

1           A     I don't remember.

2           Q     Ms. Shell I think objected to that as being perhaps  
3 not appropriate.

4           THE COURT: Was that the Jessica Rabbit figure that  
5 you objected to?

6           MS. SHELL: No. It was more like a stereo -- it's  
7 that exactly.

8           THE COURT: All right. There. See, there it is  
9 right there, sir. Okay.

10 BY MR. KOCH:

11          Q     There you go. So Shelby Brown we see. We don't  
12 know what Shelby Brown looks like, but that was submitted to  
13 show that she was in fact female. Do you see that?

14          A     Yes.

15          Q     Okay. Did you ask any applicants to submit  
16 silhouettes of their bodies in order to check whether they  
17 male or female?

18          A     No.

19          Q     So that would be inappropriate, to actually send in  
20 a silhouette to prove that you're male or female; is that  
21 right?

22          A     Yes.

23          Q     So suffice it to say diversity may be kind of a  
24 difficult subject for the Department to put a process in place  
25 and score it without some sort of arguments or some sort of

1 problems that could come into play; is that right?

2 A Sure.

3 Q And you were tasked with coming up with a definition  
4 of "diversity"; is that right?

5 A Yes.

6 Q All right. You didn't go call experts that hail  
7 from diverse places like Boise to give you some definitions  
8 about diversity, did you?

9 A No.

10 Q You came up with your definition based upon federal  
11 law from the '60s; is that right?

12 A Yes.

13 Q And that may have changed over time, but in your  
14 mind that was a reasonable way of considering race; is that  
15 right?

16 A Yes.

17 Q All right. And we could, I suppose, have a system  
18 in place that would be very, very thorough about diversity,  
19 checking those things, DNA, checking backgrounds, checking  
20 family history. The Department did not do that, did it?

21 A No.

22 Q Would it have been unreasonable for the Department  
23 to have adopted such a system?

24 A I believe so.

25 Q And based upon your review of what you have seen in

1 the scoring, what you've seen in the process do you believe  
2 the Department did a reasonably good job of considering  
3 diversity as part of the application process?

4 A Yes, I do.

5 Q Ask you about location. There have been some  
6 questions about this location talk, whether you needed a  
7 specific location or not. Do you remember that question from  
8 Mr. Miller and Mr. Parker?

9 A Yes.

10 Q And at some point in time the Department made the  
11 determination that location would not be scored as part of the  
12 rankings; is that right?

13 A Yes.

14 Q But ultimately an applicant, if they were awarded a  
15 conditional license, had to nail down a specific location, and  
16 the Department had to approve that location; is that right?

17 A Yes. Before the final certificate's issued.

18 Q Okay. And there's been some discussion about the  
19 P.O. box versus the UPS address. Do you remember that?

20 A Yes.

21 Q Do you know what P.O. stands for in the P.O. box  
22 context?

23 A Yes.

24 Q What does it stand for?

25 A Post Office.

1 Q Do you know if anyone submitted a Post Office box as  
2 part of their address?

3 A I don't know.

4 Q And have you ever sent anything to a P.O. box?

5 A Yes.

6 Q Send your taxes maybe to a P.O. box?

7 A Yes.

8 Q On those P.O. boxes is there ever a street address  
9 on it, do you recall?

10 A No.

11 Q Let me read something to you. Proposed Exhibit  
12 5041.

13 THE COURT: Any objection, Mr. Miller?

14 MR. KOCH: It's just this UPS store -- I'm just  
15 going to read a couple sentences from it.

16 MR. MILLER: This is from UPS --

17 MR. KOCH: UPS Store Website.

18 MR. MILLER: Okay. You know, if you'd lay  
19 demonstration or foundation as to what it is or something.

20 MR. KOCH: Yeah.

21 MR. MILLER: That's fine.

22 MR. KOCH: All right. I'll represent, Your Honor,  
23 that Exhibit -- Proposed Exhibit 5041 is a printout from the  
24 UPS Store Website that I printed out, a printout that came off  
25 6/19/19. I don't think there's any objection to it.

1           MR. MILLER: I'd just ask him to lay a little bit of  
2 foundation as to what it is.

3           THE COURT: For what purpose are you offering it?

4           MR. KOCH: To distinguish between a UPS address and  
5 a P.O. box.

6           THE COURT: Okay. Anything else? Since he's the  
7 one who did it, I'm not going to make him testify as to how he  
8 went and grabbed it off of Google or wherever.

9           MR. MILLER: Right.

10          MR. KOCH: Right. Actually, I won't even admit it.  
11 I'll just read from it.

12          THE COURT: Okay.

13          MR. KOCH: We'll make it simple.

14 BY MR. KOCH:

15          Q     UPS states that a UPS Store mailbox gives you a real  
16 street address, rather than a number of a P.O. box. Are you  
17 aware of that distinction?

18          A     Yes.

19          Q     And you've seen some of those UPS addresses that  
20 were submitted by applicants such as Nevada Organic Remedies,  
21 such as Essence, such as TGIG, who have submitted UPS Store  
22 addresses, rather than an actual P.O. box; is that right?

23          A     Yes.

24          Q     And the Department did not reject those addresses,  
25 because they were addresses; right?



1           A     Right.

2           Q     It comes down to a company, an applicant was not  
3 even required to submit an address at all, were they?

4           A     Can you say that again.

5           Q     An applicant was not even required to submit an  
6 address at all as part of its application, was it?

7           A     I believe the application requests a physical  
8 address of the proposed establishment.

9           Q     And that was -- that clarification was made in July  
10 of 2018, if the applicant has a lease or other arrangement for  
11 that location; correct?

12          A     Yes.

13               MR. KOCH: Okay. And so let's go to Exhibit 303.  
14 We'll zoom in on this. It's very small type.

15 BY MR. KOCH:

16          Q     And Exhibit 303 was a recreational application  
17 period chart that we looked at earlier. Have you looked at  
18 this string of testimony, Mr. Pupo?

19          A     I don't remember. I don't think so.

20          Q     Do you recognize this document?

21          A     No.

22          Q     Did the Department keep track of applications when  
23 they came in as far as the process for moving those through  
24 the evaluation system?

25          A     Yes.

1 Q And who was in charge of that, to the best of your  
2 knowledge?

3 A Steve Gilbert's group.

4 Q All right. So Mr. Gilbert testified about this  
5 exhibit and testified that it was a spreadsheet that contained  
6 information about the applications that came in. And I just  
7 want to ask you about a couple of the items there.

8 First, the very first page next to company name  
9 there's a column for address. Do you see that?

10 A Yes.

11 Q Is that legible to you?

12 A Yes.

13 Q Okay. And at the very first company, Blossom Group,  
14 can you read what it says under address.

15 A TBD.

16 Q To be determined; is that right?

17 A Yes.

18 Q Do you know if Blossom Group was the only one who  
19 submitted something like that?

20 A I don't know.

21 MR. KOCH: Let's go to page 4138, DOT4138, which is  
22 the fourth page of the document.

23 BY MR. KOCH:

24 Q Okay. 4138, on the bottom of that page is the  
25 listing for MM Development Company. Let's go there. All

1 right. So MM Development company for its address has listed  
2 there, there are some that have addresses. And then can you  
3 read the -- let's just look at the last line. Can you read  
4 what it says by MM Development Company, its address.

5 A Which one?

6 Q The very bottom one.

7 A To be determined, Mesquite, Nevada.

8 Q All right. And two above that what does it say?

9 A To be determined, Las Vegas, Nevada.

10 Q And above that?

11 A To be determined, Reno, Nevada.

12 Q So it wasn't unique to Blossom Group to put "to be  
13 determined"; right?

14 A Right.

15 Q And the Department did not reject MM Development's  
16 application for listing "to be determined," did it?

17 A No.

18 MR. KOCH: Let's go to page 41840. And about three  
19 quarters of the way down.

20 BY MR. KOCH:

21 Q Here we have entries -- actually, let's look at the  
22 top first. There's another one, CN License Co. I don't know  
23 if they're a party to this case, but what does it say under  
24 their addresses?

25 A To be determined.

1           Q     Okay.  They're not the only one on this page.  Let's  
2 go down now, about two thirds of the way down, to Serenity  
3 Wellness Center.  Do you see those starting at RD322 it looks  
4 like?

5           A     Yes.

6           Q     Serenity Wellness Center, and that's one of the  
7 entities that Mr. Miller represents in this proceeding.  What  
8 does it say under each of the location -- or addresses for  
9 Serenity Wellness Center?

10          A     To be determined.

11          Q     Okay.  So at least so far MM and Serenity both knew  
12 they didn't have to submit an actual address based upon what  
13 we see here; is that right?

14          A     Yes.

15          Q     Let's look at one more on 41842.  About two thirds  
16 of the way down is Southern Nevada Growers.  And what does it  
17 say for the location of Southern Nevada Growers?

18          A     To be determined.

19          Q     All right.  So another one -- there's another one up  
20 above there, MMOF to be determined.  But let's look back below  
21 Souther Nevada Growers.  Circle S Farms.  Do you see that?

22          A     Yes.

23          Q     All right.  Let's zoom in and see what it says for  
24 those locations.

25          A     4744 Paradise Road, Las vegas, Nevada 89169.

1 Q All right. So that's the first one. What does it  
2 say for the second one?

3 A The same, 4744 Paradise Road, Las Vegas, Nevada  
4 89169.

5 Q And the third?

6 A The same.

7 Q Fourth and fifth? They're all the same?

8 A They're all the same.

9 Q And did Circle S Farms get docked for putting the  
10 same address for each of its applications?

11 A No.

12 Q If we continue on, if you flip through, there are  
13 numerous entities or applicants that are listed here with  
14 addresses to be determined. Does that surprise you, that  
15 there are so many applicants with addresses to be determined?

16 A No.

17 Q Based on your understanding applicants knew that  
18 they didn't have to need to submit a specific address at the  
19 application stage?

20 A Correct.

21 Q You notated that some of those entities that -- do  
22 you know if all of those entities were represented by Amanda  
23 Connor?

24 A No.

25 Q MM Development, do you know if they were represented

1 by Amanda Connor?

2 A I don't believe so.

3 Q Serenity Wellness, do you know if they were  
4 represented by Amanda Connor?

5 A I don't believe so.

6 Q So the insinuation or questions that were asked  
7 about you giving the information about the specific address  
8 not being needed to Amanda Connor only, does it surprise you  
9 at all that people that are not represented by Amanda Connor  
10 also had the same understanding?

11 A Yes.

12 Q It surprises you that they had that same  
13 understanding?

14 A Right. I'm sorry. Say the question, restate.

15 Q Does it surprise you that someone that was not  
16 represented by Amanda Connor also understood that they did not  
17 need to submit a specific address?

18 A Oh. No, it doesn't surprise me.

19 Q While we're on that subject, Mr. Miller asked you a  
20 lot of questions about Amanda Connor, talking with her, but  
21 it's not in fact the case that all of her clients got  
22 licenses, did they?

23 A It's my understanding.

24 Q TGIG, that's The Grove, did they get a license this  
25 go around?

1           A     No.

2           Q     That was Mr. Ritter's company; is that right?

3           A     Yes.

4           Q     And they're represented by Ms. Connor, do you know  
5 that?

6           A     Yes.

7           Q     They didn't get a license?

8           A     No.

9           Q     Even though Mr. Ritter was on the Governor's Task  
10 Force, he was a member of that Task Force, but he didn't get a  
11 license; is that right?

12          A     That's right.

13          Q     So there was no extra points given for someone being  
14 on the Task Force; is that right?

15          A     That's right.

16          Q     All right. We're getting close here. So we talked  
17 about conditional license. Why the conditional license and  
18 not a final license?

19          A     All the requirements can't be met up front to get a  
20 final license. There's local jurisdictional requirements that  
21 have to be met.

22          Q     And if a conditional licensee eventually meets those  
23 requirements, gets a final inspection, what do they receive?

24          A     They get their final license.

25          Q     Okay. Other than securing the location and getting

1 all the approvals and inspections that come along with  
2 securing your final location, what else is conditional about  
3 that license, if anything?

4 A I don't recall anything. I mean --

5 Q So it's really just the location that makes these  
6 licenses conditional, and that's the only reason they're  
7 conditional; is that right?

8 A Right.

9 Q And that was a specific part of the Task Force  
10 report and recommendation. I won't make you turn to it, but  
11 we've looked at it before, Exhibit 2009, where it said, "The  
12 Department of Taxation should rank the applicants based on the  
13 applicants' qualifications without respect to the planned  
14 location of their business." Is that a recommendation that  
15 you're aware the Governor's Task Force made?

16 A Yes.

17 Q And did you agree with that recommendation?

18 A Sure.

19 Q What problems, if any, were you aware of that might  
20 be posed if someone needed to secure a location prior to  
21 submitting an application?

22 A Remember there had been discussions of the costs and  
23 expenditures involved in securing the location, and industry  
24 had expressed that they had spent thousands and thousands of  
25 dollars in getting blueprints and several copies of blueprints



1 to supply in an application and sometimes it was a location  
2 they wouldn't even end up using.

3 Q And let me ask you about -- did you ever hear about  
4 the other way around, anyone that ever attempted to secure a  
5 location, received a license, but then later on the landlord,  
6 once they learned they got the license, raised the price,  
7 anything like that?

8 A I did hear that.

9 Q And in that type of a scenario would it potentially  
10 be favorable or beneficial for an applicant to secure a  
11 location so that in the event that they got a conditional  
12 license they wouldn't be extorted or held for ransom by the  
13 landlord?

14 A You know, I guess that's a business decision.

15 Q Right. So that business may make that decision, but  
16 the Department didn't have anything to do with that; right?

17 A No.

18 Q All right. So just kind of make a conclusion. You  
19 looked at this process, you've had questions about it -- or  
20 you've been asked questions about it. Would you acknowledge  
21 that the Department was not perfect in carrying out the  
22 application and scoring process?

23 A Yes.

24 Q Do you believe that if you are doing this process  
25 again three years later, and I don't think you -- you said

1 you're ready to be done with marijuana, but if the Department  
2 were doing this three years from now, suppose, would the  
3 Department perhaps make some changes to how it did it in 2018?

4 A Sure.

5 Q And it would learn from what happened in 2018 and  
6 maybe make some improvements; is that right?

7 A Sure.

8 Q And Mr. Gilbert said the same thing. Are you aware  
9 of anyone that's told you this process is perfect, we should  
10 keep it intact for the indefinite future?

11 A No.

12 Q But based upon the circumstances that you've seen do  
13 you believe the Department carried out its duty to conduct an  
14 impartial and numerically scored bidding process in a manner  
15 that complied with the regulations and statutes?

16 A I do.

17 Q And to comply with the initiative that was passed by  
18 the voters in the state?

19 A I do.

20 MR. KOCH: Thank you. No further questions.

21 THE COURT: Any other defense counsel wish to ask  
22 questions?

23 CROSS-EXAMINATION

24 BY MR. GUTIERREZ:

25 Q Good morning, Mr. Pupo.

1           A     Good morning.

2           Q     My name is Joseph Gutierrez. I'm counsel for  
3     Essence and Thrive. Some followup questions from Mr. Koch.

4                     The regulations that were adopted, they were  
5     approved in February 2018; is that correct?

6           A     Yes.

7           Q     And tell us about the process again. Who reviewed  
8     the regulations prior to final approval?

9           A     So once they're adopted by the Tax Commission they  
10    go to LCB. LCB reviews it, may come back with some changes or  
11    not. Then it goes to the Leg Commission for approval. And  
12    then once they're approved by Leg Commission they're recorded  
13    with the Secretary of State.

14          Q     And the regulations were subject to a year's worth  
15    of open meetings and public comment; is that correct?

16          A     Something like that, yeah.

17                     MR. GUTIERREZ: And I'd like to admit Proposed  
18    Exhibit 5045, which is the February 27th, 2018, minutes of the  
19    Legislative Council Bureau.

20                     THE COURT: Any objection?

21                     MR. KEMP: No, Your Honor.

22                     THE COURT: Be admitted.

23                     MR. GUTIERREZ: I'd like to go to page 3 on this  
24    document.

25    //

1 BY MR. GUTIERREZ:

2 Q And before we get there, Mr. Pupo, what was Deonne  
3 Contine's role with the adoption of the regulations.?

4 A She was executive director.

5 Q And what did she do as executive director in  
6 adopting the regulations?

7 A She spearheaded the regulations.

8 Q When you say spearheaded what does that mean?

9 A Basically she led the forming of the regulations,  
10 the writing of the regulations.

11 Q She worked with the Task Force and did everything to  
12 -- on behalf of the Department to get the regulations adopted,  
13 is it fair to say?

14 A Yes.

15 Q So when you were asked by Counsel that the buck  
16 stops with you can you explain that the buck stopped with you  
17 with every single process that was done by the Department?

18 A Maybe not. But I'm here.

19 Q Right. So -- you're here. Well, she'll be here,  
20 hopefully, soon, too. But the buck didn't stop with you with  
21 the adoption of the regulations; is that fair to say?

22 A Yes.

23 Q Deonne had a lot of say in how the regulations were  
24 adopted?

25 A Yes.

1 Q Okay. Now, on page 3 there were public comments  
2 from some people, and Will Adler on page 3, if you can see  
3 this paragraph, he states that, "The regulation was reviewed  
4 at length in multiple hearings." The last sentence says that,  
5 "He concluded the Department of Taxation has done a great job  
6 and fully supports R092-17 as written." Do you see that?

7 A Yes.

8 Q Well, do you agree the Department did a great job in  
9 adopting the regulations?

10 A Yes.

11 Q Going down -- going to the next page, page 4, Riana  
12 Durette on behalf of the Nevada Dispensary Association states  
13 that, "The Association supported R092-17 as written." Do you  
14 see that?

15 A Yes.

16 Q Amanda Connor also gave comments. She states that  
17 on behalf of 40 Nevada marijuana license holders that the NCC  
18 states that R092-17 is impartial and gives everyone who is  
19 eligible to apply for a license the opportunity to rank in  
20 various categories. Do you see that?

21 A Yes.

22 Q Do you agree with that statement?

23 A Yes.

24 Q I want to go to page 6.

25 THE COURT: You're going to skip the Equine Dental

1 Services?

2 MR. GUTIERREZ: I am, Your Honor. I didn't give you  
3 one for every single one in here.

4 All right. Go to page 6.

5 BY MR. GUTIERREZ:

6 Q And I want to point your attention to Dr. Spirtos's  
7 comments. And I think we've had some discussion about him.  
8 He's a plaintiff in one of these lawsuits, as well. I want to  
9 read to you his comments. His first comment that he made to  
10 the LCB was, "There are no perfect regulations." Do you see  
11 that?

12 A Yes.

13 Q Do you agree with that statement?

14 A Yes.

15 Q He also states that not everyone got what they  
16 wanted during discussions on R092-17, but everybody was heard.  
17 Do you agree with that?

18 A Yes.

19 Q Everybody had the opportunity to be heard during  
20 this process?

21 A Yes.

22 Q He also states there should be flexibility in the  
23 legislature and the Department of Taxation. Do you agree with  
24 that statement?

25 A Yes.

1 Q Number 5, he says, "If R092-17 is not adopted, the  
2 dispensary industry would be operating without guidance." Do  
3 you know what that means?

4 A Yes.

5 Q Explain that.

6 A That if the regulations were not adopted, there's  
7 basically no structure for industry to operate.

8 Q Okay. Let's go to page 7. Ben Sillitoe, CEO of  
9 Oasis Cannabis that we've talked about, do you see that?

10 A Yes.

11 Q Stated that the regulation process R092-17 was  
12 followed and there were adequate opportunities for input from  
13 interested parties. He is of the opinion the intent of the  
14 law was to allow the best operators to be the ones to face the  
15 public because the public perception is important. Do you  
16 see?

17 A Yes.

18 Q Do you agree with that statement?

19 A Sure.

20 Q Okay. You're kind of -- explain that. Do you have  
21 an opinion on that?

22 A No. I don't necessarily think that was the intent  
23 of the law, but --

24 Q What do you believe the intent was?

25 A The intent of the law is to strictly regulate

1 industry for the public.

2 Q Okay. And were you part of the Governor's Task  
3 Force in any way, any of the workshops or working groups?

4 A Yes.

5 Q What was your role again?

6 A I was on the laboratory committee.

7 MR. GUTIERREZ: Okay. Let's go to Exhibit 2009,  
8 which is already admitted, which is the final report of the  
9 Governor's Task Force. And the title of this document, Mr.  
10 Pupo, says Implementation of Question 2. Do you see that?

11 A Yes.

12 Q And do you believe that was the role of the  
13 Governor's Task Force, to work to implement Question 2 into  
14 the regulations?

15 A Yes.

16 Q Okay. Let's go to page 3.

17 THE COURT: And you're in Exhibit 2009?

18 MR. GUTIERREZ: Yes, Your Honor.

19 THE COURT: Okay.

20 MR. GUTIERREZ: It should say Overview of the Task  
21 Force. Okay. And go down to the bottom, where it says  
22 Mission Statement.

23 BY MR. GUTIERREZ:

24 Q And, Mr. Pupo, what was the mission statement for  
25 the Task Force as stated in this document?



1           A     The Task Force's mission was to identify the legal,  
2 policy, and procedural issues that need to be resolved and to  
3 offer suggestions and proposals for legislative regulatory and  
4 executive actions that need to be taken for the effective and  
5 efficient implementation of the Act.

6           Q     So the Governor's Task Force was tasked with  
7 ensuring that the ballot initiative was followed; is that  
8 correct?

9           A     Yes.

10          Q     Okay. And let's talk -- Mr. Koch covered a lot on  
11 the actual proposed location, but let's go to page 19. This  
12 talks about the application and licensing process. Where it  
13 says, "Grading criteria and applications. The Task Force  
14 recommends that an impartial numerically scored process used  
15 by the medical marijuana program be revised for the retail  
16 marijuana stores to remove consideration of location and focus  
17 only on the applicant qualifications for operation of a  
18 marijuana establishment." Do you see that?

19          A     Yes.

20          Q     And is that what was done by the Task Force, to take  
21 the medical, what was good with the medical and use that for  
22 the regulations for the recreational?

23          A     Yes.

24          Q     Okay. It says, "Remove consideration of location."  
25 Do you see that?

1           A     Yes.

2           Q     Again, that was discussed thoroughly at the Task  
3 Force to remove consideration of location for all the reasons  
4 we've already talked about; is that correct?

5           A     Yes.

6           Q     And we'll get to that one. Mr. John Ritter, who's a  
7 plaintiff, had no dissent and actually supported that  
8 provision; is that correct?

9           A     Yes.

10          Q     Let's go to page 109. This discusses the  
11 application process. And do you see John Ritter's name on the  
12 -- as one of the sponsors on this?

13          A     Yes.

14          Q     Okay. The second bullet point discusses one of  
15 recommendations by the Task Force. Can you read that for us.

16          A     "The Department will not require zoning approval to  
17 be submitted in the marijuana establishment application. If  
18 an applicant does have zoning and land use approval and  
19 chooses to include it in their application, no extra points or  
20 merit will be awarded for it being included."

21          Q     Okay. And is that what happened during the  
22 application process? No extra points were awarded for people  
23 who put land use approval in the application?

24          A     Correct.

25          Q     Okay. And this was contemplated by John Ritter,

1 who's one of the plaintiffs, that the Department would not be  
2 looking at proposed location for the application; correct?

3 A Correct.

4 Q And the Department took what the Task Force  
5 recommended in adopting the regulations; is that fair to say?

6 A Yes.

7 Q On the next page it talks about guiding principles,  
8 the guiding principles that the actual Task Force needs to  
9 abide by or what they're abiding by in giving these  
10 recommendations. Do you see that?

11 A Yes.

12 Q And do you see Guiding Principle Number 3?

13 A Yes.

14 Q And it says that one of the guiding principles is  
15 that the regulation is clear and reasonable and not unduly  
16 burdensome. Do you see that?

17 A Yes.

18 Q And is that your understanding of the purpose of  
19 making sure the proposed location was not removed and put in  
20 the way it was to not make it unduly burdensome in the  
21 regulations?

22 A Yes.

23 Q And we've talked about that at length; correct?

24 A Yes.

25 Q Okay. Next page -- let's go to page 112. Now, this

1 section of the Task Force report discusses rating criteria on  
2 applications. Do you see that?

3 A Yes.

4 Q And who was the sponsors?

5 A John Ritter and Amanda Connor.

6 Q Okay. And is it your understanding -- or correct me  
7 if I'm wrong, but it's my understanding that the  
8 recommendation here is to give the Department the criteria  
9 that the applications need to be weighted and what needs to be  
10 considered; is that correct?

11 A Yes.

12 Q And was that considered by the Department?

13 A Yes.

14 Q And the actual weights given for each category, was  
15 that also considered by the Department? Can you see that? Do  
16 you see where it says, "The follow criteria weighting to be  
17 included?"

18 A Right. Uh-huh. Yes

19 Q Okay. Go to the next page. It says, "What  
20 provisions of Question 2 does the recommendation apply to?"  
21 Do you see that?

22 A Yes.

23 Q And what the Task Force did was when they were given  
24 a recommendation they wanted to make sure that it complied  
25 with Ballot Initiative Question 2; is that correct?

1           A     Correct.

2           Q     Okay.  And did the Department have -- I know you  
3 talked about this, but did the Department have an Attorney  
4 General also reviewing the regulations that were being  
5 adopted?  Someone from the Attorney General's Office?

6           A     I don't remember.

7           Q     Are some of these questions better for Deonne  
8 Contine, who seemed to be more involved with the adoption of  
9 the regulations than you were?

10          A     Yes.

11          Q     Okay.  All right.  Now, the next -- go to page 116.  
12 Actually, I'm sorry, 114.  We've talked a lot about the  
13 5 percent requirement for background checks.  But, again, who  
14 was one of the sponsors of this bill when it talked about  
15 ownership issues and licensing requirements?

16          A     John Ritter.

17          Q     And he's a plaintiff in this case; correct?

18          A     Yes.

19          Q     And David Goldwater.  Do you know who he is?

20          A     Yes.

21          Q     And is he a plaintiff in this litigation, as well?

22          A     I don't know.

23          Q     Okay.  I'll represent he's a plaintiff in one of the  
24 other litigations.

25          A     Okay.

1 Q But the were the sponsors of this bill on behalf of  
2 the Task Force; correct?

3 A I'm sorry?

4 Q They were the sponsors of this bill on behalf of the  
5 Governor's Task Force?

6 A Yes.

7 Q Okay. And the recommendation was to require owners,  
8 5 percent or more to be fingerprinted and background checked;  
9 is that correct?

10 A Yes.

11 Q Okay. If you'd go to the next page. Was there any  
12 dissent by the Task Force on this issue?

13 A I don't remember. Oh. No dissent.

14 Q Okay. And it says -- and under Number 6 it says,  
15 "What issues does the recommendation resolve?" Do you see  
16 that?

17 A Yes.

18 Q And go ahead and just read that first sentence.  
19 What issue does -- are they putting forth to resolve?

20 A "To allow companies that own marijuana establishment  
21 licenses in which there are multiple owners that own less than  
22 5 percent, in some cases far less, to be able to operate  
23 practically and efficiently."

24 Q And that's -- that was the intent of the Task Force  
25 and what was followed by the Department; correct?

1           A     Yes.

2           Q     And the Department complied with Ballot Question 2  
3 in adopting this recommendation for the regulation; correct?

4           A     Yes.

5           Q     Okay. Now, use of independent contractors as  
6 graders, you said that was to eliminate any perceived bias. I  
7 think that was your testimony; right?

8           A     Yes.

9           Q     And you believe the evaluators were qualified to do  
10 their job?

11          A     Yes.

12          Q     And you believe they were well trained?

13          A     Yes.

14          Q     And they took their job seriously?

15          A     Yes.

16          Q     You've also talked about the -- I think you used the  
17 term "human element." Do you recall that?

18          A     Yes.

19          Q     We've talked about this. But do you remember the  
20 Saints versus Rams NFC Championship? Did you watch that game?

21          A     I don't remember that, but --

22          Q     Somebody talked about it. But at the same time  
23 there's mistakes that are made; correct?

24          A     Sure.

25          Q     You talked about a human element being involved; is

1 that right?

2 A Yes.

3 Q Now, you don't throw out the entire process because  
4 a mistake is made; is that a fair assertion?

5 A Yes.

6 Q Okay. At the same time you don't throw out the  
7 entire process if two companies were not paying attention and  
8 submitted the wrong application; is that fair to say?

9 A Right.

10 Q Okay. You said you learn from your mistakes and  
11 change going forward?

12 A Sure.

13 Q Okay. And you think there's areas of improvement  
14 for the State in this application process?

15 A Sure.

16 Q Do you also think there's areas of improvement on  
17 behalf of the licenses who are submitting applications in  
18 submitting better applications?

19 A Oh, yeah.

20 Q Or paying more attention?

21 A Yes.

22 Q You said, oh, yeah. I mean, are you aware of the  
23 fact that certain licensees or people that made applications  
24 thought because they got approved in 2014 for a medical  
25 license they would get approved in this process if they



1 submitted the same application?

2 A No.

3 Q Are you aware that some companies actually made a  
4 find and replace on their 2014 application and just got rid of  
5 the word "medical"?

6 A No.

7 Q Do you believe that some applicants put more time  
8 and effort in their application than others?

9 A Yes.

10 Q Okay. We talked about the use of multiple  
11 applications by the same company.

12 A Yes.

13 Q You talked about that. Thrive, one of my clients,  
14 submitted applications on behalf of Commerce Park LLC and  
15 Cheyenne Medical LLC; is that --

16 A Yes.

17 Q And you testified you had no issues with that  
18 application process?

19 A Right.

20 Q Are you aware that some of the plaintiffs also  
21 submitted multiple applications similar to how Thrive and  
22 Essence did?

23 A Yes.

24 Q Nuveda did, Tryke did, and also Fidelis Holdings?

25 A Yes.

1 Q Okay. Do you believe the scoring criteria favored  
2 any group of applicants over another?

3 A No.

4 Q And we've talked enough about diversity, but do you  
5 believe diversity is a criteria that's directly and  
6 demonstrably related to the operation of a business -- a  
7 marijuana business?

8 A Yes.

9 Q And can you explain for us why you believe that.

10 A It's important on how they interact with the  
11 community, interact with customers they serve, how they will  
12 market to certain a demographic or customer base, services  
13 they may provide.

14 Q Okay. One of the things we haven't talked much  
15 about is what they called irreparable harm or harm to the  
16 plaintiffs if this injunction is not granted. Is there -- is  
17 it your understanding the plaintiffs are all still operational  
18 under their current licenses?

19 A Yes.

20 Q Okay. And if the plaintiffs don't receive any of  
21 the new licenses, that's not going to have any effect on their  
22 existing operation; is that correct?

23 A No.

24 Q Do you believe that tax revenue is apartment to be  
25 lost because of this litigation and the inability of licensees

1 to open new locations?

2 A Sure.

3 Q Do you also believe that this process which is  
4 preventing companies from opening, such as my client, Thrive,  
5 is harming the ability of Nevada citizens to get to work and  
6 work for these new locations?

7 A Sure. I mean, it'll bring new employment.

8 MR. GUTIERREZ: Okay. Thank you, Mr. Pupo.

9 THE COURT: Any other defendants have questions?

10 Sir, before I let --

11 Ms. Shell, you have some?

12 MS. SHELL: I just have a couple very brief  
13 questions.

14 THE COURT: Great. Could you come to the podium,  
15 though.

16 And then I have some after the defense lawyers  
17 finish.

18 THE WITNESS: Okay, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. SHELL:

21 Q Good morning, Mr. Pupo.

22 A Good morning.

23 Q My name is Alina Shell. I represent GreenMart of  
24 Nevada. And I just had a couple of quick questions for you.  
25 And I wanted to talk to you about the Nevada Administrative

1 Code, since it's a favorite part of this examination.

2 MS. SHELL: And can you put that up for me.

3 BY MS. SHELL:

4 Q I wanted to specifically ask you about NAC 453D.268,  
5 which is about submission of application by person who holds a  
6 medical marijuana establishment registration certificate for  
7 another marijuana establishment of the same or different type.  
8 Are you familiar with this regulation?

9 A Yes.

10 Q Okay. Now, I'd like you specifically to look at  
11 subsection (2)(c). Back up. So it's (2) -- so it says, "an  
12 application on a form prescribed by the Department." So they  
13 have to submit a form; correct?

14 A Yes.

15 Q Okay. And "the application must include, without  
16 limitation, the type of business organization the applicant,  
17 such as individual, corporation, partnership, limited  
18 liability company, association, or cooperative, joint venture,  
19 or other business organization." Did I read that correctly?

20 A Yes.

21 Q Are you familiar anywhere -- .268 or anywhere within  
22 the NAC that if -- well, let me back that question up.

23 So you're asking for information by the organization  
24 that is applying for a marijuana license; correct?

25 A Yes.

1           Q     Okay. Is there anywhere within .268 that says you  
2 have to submit information about -- let's back this up.  
3 Sorry. I should have -- it's Monday. I haven't had enough  
4 coffee today.

5                     So you're aware that some applicants for these  
6 marijuana licenses in 2018 were owned by publicly traded  
7 corporations; correct?

8           A     Yes.

9           Q     Is there anywhere within the NAC that says they have  
10 to list on their application that they are owned by a publicly  
11 traded company?

12          A     No.

13                     MS. SHELL: Okay. And I'm going to stick in the  
14 same subsection -- I mean .268, and then I wanted to go to  
15 4(a), Brian.

16 BY MS. SHELL:

17          Q     And it says, "When --" another thing that has to be  
18 included in the application is a description of the proposed  
19 organizational structure of the proposed marijuana  
20 establishment, including, without limitation, subsection (a)  
21 an organizational chart showing all owners, officers, and  
22 board members of the proposed marijuana establishment." Do  
23 you see that?

24          A     Yes.

25          Q     And are you familiar with this requirement?

1           A     Yes.

2           Q     Now, does this requirement -- so if we have an  
3 example of an LLC that's owned by a publicly traded  
4 corporation, is there anywhere in .268 that says you have to  
5 list the information of the owner of the applicant?

6           A     No.

7           MS. SHELL: Okay. Those were my only questions,  
8 Your Honor. Thank you.

9           THE COURT: Anybody else on the defense side?  
10          Following up on that, sir, tell me how you define  
11 "owner."

12          THE WITNESS: How I define "owner"?

13          THE COURT: Uh-huh.

14          THE WITNESS: I would say individual or entity with  
15 a majority or an interest in a company that has like decision  
16 making or control of the company. Some sort of control.

17          THE COURT: So in your mind it has to be someone who  
18 has control of the company?

19          THE WITNESS: No, not necessarily, I guess. Just  
20 has an interest in the company.

21          THE COURT: And where did you come up with that  
22 definition?

23          THE WITNESS: There's -- haven't seen a definition  
24 for "owner."

25          THE COURT: Well, you came up with a definition of

1 "owner."

2 THE WITNESS: Yeah. I just thought -- I'm thinking  
3 about it right now.

4 THE COURT: Okay. So let me then step back. As  
5 part of Ballot Question 2 there are certain duties that the  
6 Department of Taxation has related to owners of applicants for  
7 prospective licensure. In going through the process of  
8 creating the application and developing the evaluation process  
9 who came up with the definition or parameters for "owner"?

10 THE WITNESS: Those parameters were, you know, set  
11 from the medical program. When we took over from -- when we  
12 brought over DPBH --

13 THE COURT: Okay.

14 THE WITNESS: -- we just went with what was  
15 currently being used at the time.

16 THE COURT: So you went with whatever Mr. Gilbert  
17 and his team had used before?

18 THE WITNESS: Yes, as far as DPBH goes.

19 THE COURT: And do you have an understanding as to  
20 whether the requirements related to vetting owners under NRS  
21 453A and NRS 453D, also known as Ballot Question 2, are  
22 different?

23 THE WITNESS: I believe they're the same.

24 THE COURT: And why do you believe they're the same?

25 THE WITNESS: Trying to think back to 453A. But

1 I --

2 THE COURT: You have the book there in front of you.  
3 You're welcome to look at 453A. This is not a trick or a  
4 test. I'm trying to make sure I understand --

5 THE WITNESS: No, I understand, Your Honor. Because  
6 we --

7 THE COURT: Wait. Let me finish.

8 THE WITNESS: Yes, ma'am.

9 THE COURT: I'm trying to understand the process the  
10 Department used in implementing Ballot Question 2 so I can  
11 make a determination as to whether it was reasonable and  
12 convenient and compliant with Ballot Question 2.

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: Okay.

15 THE WITNESS: So the majority or a lot of the  
16 regulation came from what was brought over from 453A and  
17 incorporated into these regulations, and then, you know, we  
18 looked at the initiative to see what differences there were,  
19 cut out what applied and what didn't apply.

20 THE COURT: Okay. So you think the definition of  
21 "owner" that was used by the Department in the application  
22 process required under Ballot Question 2 came from 453A?

23 THE WITNESS: I believe so.

24 THE COURT: Okay. Can you point to me where in 453A  
25 that definition of "owner" is.



1 THE WITNESS: I don't know that there is a  
2 definition for "owner."

3 THE COURT: So you rely upon the process that the  
4 medical marijuana team that Mr. Gilbert had headed in the  
5 medical marijuana application process utilized?

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: So let me go to my next area of  
8 questions.

9 So can you tell me who made the decision that the  
10 compliance record would not be rated as part of the  
11 application process?

12 THE WITNESS: I don't know that that was discussed.

13 THE COURT: Well, doesn't NRS 453D.210(4)(f)(2)  
14 require the compliance record to be part of that application  
15 and evaluation process?

16 THE WITNESS: Yes.

17 THE COURT: Okay. So can you tell me why it wasn't  
18 included.

19 THE WITNESS: I don't know, Your Honor.

20 THE COURT: Okay. So let's go to the diversity  
21 section. Can you tell me where in 453D diversity is included?

22 THE WITNESS: In the statute?

23 THE COURT: Yep.

24 THE WITNESS: It is not.

25 THE COURT: So can you tell me why the Department --

1 and I understand you just gave me an answer that said it was  
2 important to the community -- why the Department decided to  
3 include it in the application process when it was not included  
4 in Ballot Question 2?

5 THE WITNESS: It was -- it's included -- it was  
6 included in the regulations, in the 453D regulations.

7 THE COURT: I understand. But you understand that  
8 nobody can change Ballot Question 2 for several years after  
9 it's implemented based upon the manner by which initiative  
10 petitions occur under the Constitution; right?

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: Okay. So, understanding that and that  
13 nobody can change it, can you tell me why the Department  
14 decided to include it?

15 THE WITNESS: I would say it was part of the process  
16 of the -- for establishing the procedures and the regulations  
17 for the qualifications for licensure.

18 THE COURT: Okay. So you think it was part of the  
19 "reasonable and convenient" part of the language?

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: Okay. So then let's go to a person  
22 thing you did. You made some decisions about anti-monopoly  
23 issues related to two types of applicants or two groups of  
24 applicants. Can you tell me the basis for your decision.

25 THE WITNESS: What do you --

1 THE COURT: So I think there was a decision that you  
2 made that two LLCs that were owned by common people who  
3 already had a bunch of licenses weren't going to be subject to  
4 anti-monopoly?

5 THE WITNESS: I wouldn't say that, Your Honor.

6 THE COURT: Okay. Explain it to me, then.

7 THE WITNESS: So --

8 THE COURT: Because that's how it sounded when you  
9 answered the last time.

10 THE WITNESS: No. So the monopoly provision is, you  
11 know, 10 percent of allocable licenses in the county. So you  
12 have in Clark County there's 80 allocable licenses. So a  
13 licensee can hold up to eight licenses in the county.

14 THE COURT: And how'd you come up with that  
15 analysis?

16 THE WITNESS: It's in the statute.

17 THE COURT: So is in the statute, or regulation?

18 THE WITNESS: Or regulation.

19 THE COURT: Yeah. So how'd you come up with the  
20 determination that that was the definition for anti-monopoly  
21 you were going to use to comply with Ballot Question 2?

22 THE WITNESS: That's -- that's in the regulation.  
23 We -- that's how we do the monopoly provision, the analysis.

24 THE COURT: So but that's how you do the monopoly  
25 analysis for other things, right, other than 453D?

1 THE WITNESS: I believe that was in 453A, also, yes.

2 THE COURT: Yeah. So it sounds to me like -- and  
3 I'm trying to make sure I understand the Department's  
4 motivation, because I have to make a determination as to  
5 whether the Department utilized regulations that were  
6 reasonable and convenient, which seems to be a broad  
7 definition.

8 So did it appear to you that the Department just  
9 took 453A and made a few changes and then developed  
10 regulations for 453D?

11 THE WITNESS: We took -- we took a good portion of  
12 453A, yes, Your Honor.

13 THE COURT: So tell me why the Department decided  
14 that it was going to use a 5 percent level for owner?

15 THE WITNESS: Well, you know, I don't know if that  
16 came over from 453A, as well. But it was part of the  
17 Governor's Task Force recommendation, and it's just  
18 impractical. We can't possibly vet all these -- some of these  
19 companies have -- they don't even have to be publicly traded.  
20 They have investor pools of several people, 50, 60, 100 people  
21 or more, that own very little. It might be something like  
22 .001 percent of the company. And we just can't handle that  
23 kind of volume through DPS in such a short time frame.

24 THE COURT: So 453D.200(6) says, "The Department  
25 shall conduct a background check of each prospective owner,

1 officer, and board member of a marijuana establishment license  
2 applicant." So is it your testimony that the Department made  
3 a decision that it was unable to comply with that portion of  
4 Ballot Question 2?

5 THE WITNESS: Yes, Your Honor.

6 THE COURT: And as a result, the Department placed a  
7 5 percent ownership limitation on Ballot Question 2 through  
8 its regulations?

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: And do you think that's appropriate?

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: And again tell me why.

13 THE WITNESS: Because it's just -- it's not possible  
14 to vet all those people in a time frame we have.

15 THE COURT: Okay. I only have one more set of  
16 questions, but let me see if you've already answered it.

17 Oh. Conditional licenses. Other than local  
18 government approval related to the specific location, what  
19 else were the conditional licenses limited by or based upon,  
20 or what other factors are the conditions that still exist?

21 THE WITNESS: I don't remember all of it. I think  
22 they pretty much all revolve around the specific location,  
23 distance requirements, certificate of occupancy, things like  
24 that, local jurisdictions, land use, SUP permits.

25 THE COURT: So the only conditions placed upon the

1 conditional licenses that were issued by the Department in  
2 December related to approvals by local government authorities  
3 related to the specific location that was not disclosed in the  
4 application?

5 THE WITNESS: Also the final inspection from our  
6 inspectors. They have to pass the final inspection, Your  
7 Honor.

8 THE COURT: Okay. And that's after construction and  
9 the tenant improvements are done if it's in an occupied  
10 building?

11 THE WITNESS: Yes.

12 THE COURT: Okay. Anything else?

13 THE WITNESS: Not that I can remember right now,  
14 Your Honor.

15 THE COURT: Okay. Thank you.

16 Mr. Miller.

17 REDIRECT EXAMINATION

18 BY MR. MILLER:

19 Q 'Morning.

20 A Good morning.

21 Q Mr. Pupo, there was reference made this morning that  
22 there was an entire year of workshops and the like dealing  
23 with the permanent regulation that was issued. But that was  
24 not issued and released to the public until January 6th, 2017;  
25 is that correct?

1           A     What was it?

2           Q     The regulation workshops that were conducted.  There  
3     were some statements this morning that there was a number of  
4     public workshops that were conducted.  That in fact -- that  
5     regulation was not released -- the issue that's on the notice  
6     of regulatory workshop and the posted permanent regulation was  
7     not issued until July 6th, 2017; is that right?

8           A     On the permanent?  We had workshops in, you know,  
9     like July or something like that.

10          Q     Right.  July 6th, 2017, is when you released it, and  
11     July 24th, 2017, is when the workshop was held.  Does that  
12     sound accurate?

13          A     Something like that, yeah.

14          Q     All right.  And with respect to Legislative  
15     Commission adoption, that hearing was conducted in February of  
16     2018; is that correct?

17          A     Yes.

18                 MR. MILLER:  Okay.  Can we pull up -- well, it's  
19     part of the Commission meeting minutes, 236.  I've got the  
20     Legislative Commission meeting minutes that were just  
21     admitted.  Then I'll move to the Tax Commission meeting  
22     minutes.  Okay.  Pull up Exhibit 236.

23     BY MR. MILLER:

24          Q     Sir, did you attend this Commission meeting?

25          A     Yes.

1           Q     You were aware that on a public comment that there's  
2 -- numerous individuals had testified that had either  
3 objections or concerns about the proposed regulations; is that  
4 correct?

5           A     Yes.

6           Q     And on page 2 of that document Jefferson Boswell  
7 submitted a lengthy letter detailing some of his concerns.  
8 Did you read that letter?

9           A     I don't remember.

10          Q     Generally aware that Mr. Boswell expressed concerns  
11 about how these applications would be scored and whether or  
12 not there was enough clarity in the regulation in order to  
13 conduct the process?

14          A     Okay. Yeah, I don't remember the letter, but --

15          Q     And on page 3 Mr. Lawrence citing similar concerns.  
16 You just recall a number of people testifying with concerns;  
17 correct?

18          A     Yes.

19               MR. MILLER: Could we go to page 12. At the bottom  
20 there.

21 BY MR. MILLER:

22          Q     Do you recall that there was two senators, Senator  
23 Hammond and Senator Goicechea, who expressed their concerns  
24 about the regulatory process and then -- you see there Chair  
25 asked Brenda Ertos, previously identified, to confirm whether



1 or not the regulation could be extended? Do you recall that?

2 A No. But it's in the minutes, so --

3 Q Okay. And page 13, the very top. Ms. Ertos  
4 explained that shortly after the 2017 session the Department  
5 of Taxation adopted temporary regulation set to expire in  
6 November of 2017. The Department then adopted an emergency  
7 regulation effective for 120 days that cannot be extended,  
8 which will expire on March 1st. She said, "If the regulation  
9 is not approved at this meeting, there will be no marijuana  
10 regulations." Do you recall that?

11 A Yes.

12 Q Okay. So the Legislative Commission did not have an  
13 opportunity to make any proposed revisions or suggest changes  
14 to that regulation; is that correct?

15 A Guess they could have, but they didn't.

16 Q Well, you look at -- the Council -- provided by  
17 Legislative Council Bureau's attorney it doesn't appear that  
18 she indicated that that could be continued; correct?

19 A Right. That they can't be extended.

20 Q Right. And the Tax Commission was faced with a  
21 similar issue; is that correct?

22 A Yes.

23 Q Because that Commission meeting was held on January  
24 16th, which was beyond the timeline that the regulations were  
25 supposed to have been adopted; is that correct?

1           A     I believe so. I think the regulations were -- it  
2 took a while -- if I remember correctly, it took a while to  
3 get them back from LCB.

4           Q     Right. In fact, I think you received them back from  
5 LCB in December. Does that sound accurate?

6           A     Yeah. Possibly.

7           MR. MILLER: Okay. All right. Do you have any  
8 problem with the admission of Exhibit 235, which is the Tax  
9 Commission? I won't go through all of that.

10          MR. SHEVORSKI: I'm sorry. Just let me look at it  
11 real quick.

12          MR. KOCH: What exhibit were we just looking at?

13          MR. MILLER: 236.

14          THE COURT: Any objection to 235?

15          MR. KOCH: No objection, Your Honor.

16          THE COURT: Be admitted.

17                 (Plaintiffs' Exhibit 235 admitted)

18 BY MR. MILLER:

19          Q     So, sir, as a result of all the meetings that  
20 included public comment on the adoption of the regulations did  
21 you do anything different in how you assembled the  
22 application?

23          A     Say it again.

24          Q     As a result of these workshops and meetings are you  
25 aware if anything the Department did differently based on the

1 comments and suggestions by members of the public who attended  
2 those hearings?

3 A In the application? I don't recall.

4 Q Move quickly to -- the statutory language, sir, with  
5 respect to proposed physical address, are you generally  
6 familiar with the provisions within NRS 453A as they apply to  
7 whether or not proposed physical location was required and  
8 scored?

9 A I don't remember. I'd have to go back and look.

10 Q Okay. We can pull up NRS 453A.322(3). I'll just  
11 read it for you. (3)(a)(2). Do you have your statute book in  
12 front of you?

13 A No.

14 THE COURT: You mean my statute book? I think you  
15 still have it, don't you?

16 THE WITNESS: No, Your Honor. It's not here.

17 THE COURT: Here you go, sir. I thought you had it  
18 already.

19 THE WITNESS: 453A what?

20 BY MR. MILLER:

21 Q 453A.322(3)(a)(2).

22 A Okay. .322(3)(a)(2)?

23 Q Yes.

24 A Okay.

25 Q "The application must include evidence that the

1 applicant owns the property on which the proposed medical  
2 marijuana establishment will be located or has the written  
3 permission of the property owner to operate a proposed medical  
4 marijuana establishment on that property." So you recognize  
5 that as being nearly identical to the provisions that control  
6 the recreational marijuana application process?

7 A I'm sorry. I thought you said -- 322(3)(a)(2) you  
8 said?

9 Q Subsection (4)(a)(2), subparagraph 4.

10 A Okay. Yes.

11 Q Okay. That's almost identical, isn't it, to the  
12 provisions that would apply to the recreational marijuana  
13 application?

14 A Yes.

15 Q Okay. And in fact when this process was run in 2014  
16 are you aware that if an applicant had not provided a proposed  
17 physical address as part of the application, that application  
18 would have been rejected?

19 A No, I don't.

20 MR. MILLER: Can you show Proposed Exhibit 245.  
21 It's an exhibit from your PowerPoint. Department of Taxation  
22 Bates Number 21177. It's the PowerPoint and training  
23 materials.

24 MR. KOCH: I'm sorry. What's the exhibit again?

25 MR. MILLER: 21177.

1 UNIDENTIFIED SPEAKER: Exhibit 245.

2 MR. KOCH: No objection.

3 THE COURT: Be admitted.

4 (Plaintiffs' Exhibit 245 admitted)

5 THE COURT: 245; right?

6 MR. MILLER: Yes.

7 BY MR. MILLER:

8 Q Sir, can you read it at the very top? It's a little  
9 blurry there. Regulatory [inaudible and unintelligible].

10 A Yes.

11 Q Do you see that that appears to be a grid that's  
12 recommended in 2014 that the Department follow?

13 A Yes.

14 Q Can you read the far right box for us.

15 A Far right?

16 Q Yes.

17 A Under "Descriptive Elements"?

18 Q Checkmarks where it says yes or no.

19 A Okay. It says, "Eligible applicant, yes or no -- no  
20 or yes?"

21 Q And to the left of that there's criteria indicating  
22 that it first establish whether or not the proposed applicant  
23 has a physical address; is that correct?

24 A Yes.

25 Q Okay. So it appears that in 2014 if you did not

1 have a proposed physical address as part of your application  
2 and evidence, that your application would have been rejected;  
3 is that correct?

4 A Yeah. I don't know if it would have been rejected  
5 or not.

6 Q As you see this here does it appear to indicate that  
7 if you're an eligible applicant, the checkbox for yes or no,  
8 you were ineligible applicant based on that criteria?

9 A I'm not sure what they meant by that in 2014.  
10 BY MR. MILLER:

11 Q Can we show -- the criteria that was provided to the  
12 evaluators, are you aware that for the building adequacy it is  
13 nearly identical to the provisions that were provided to the  
14 evaluators in 2014?

15 A No.

16 Q You're not?

17 MR. MILLER: Can we show Proposed Exhibit 246.

18 THE COURT: Any objection to 246?

19 MR. SHEVORSKI: No objection from the State, Your  
20 Honor.

21 THE COURT: Anybody else have an objection?

22 MR. MILLER: And side by side with Exhibit 9.

23 MR. KOCH: No.

24 THE COURT: Be admitted.

25 (Plaintiffs' Exhibit 246 admitted)

1 UNIDENTIFIED SPEAKER: What page of 246?

2 MR. MILLER: It's 246, 21300.

3 BY MR. MILLER:

4 Q Can you read the evaluation criteria that was  
5 provided in 2014 as it applied to the building adequacy  
6 section.

7 A "453A.328(7), The adequacy of the size of the  
8 proposed medical marijuana establishment to serve the needs of  
9 persons who are authorized to engage in the medical use of  
10 marijuana."

11 Q Read on.

12 A The elements?

13 THE COURT: Sir, can you read it on the screen, or  
14 do you need to actually look at the paper copies?

15 THE WITNESS: No, I can read it on the screen.

16 THE COURT: Okay.

17 THE WITNESS: Which one?

18 BY MR. MILLER:

19 Q Read the "Excellent response...."

20 A "An excellent response would include all the  
21 following elements: the building and construction plan  
22 demonstrates a clear definition of work tasks, estimation of  
23 required resources and duration for individual tasks, the  
24 planning of scheduled activities, along with the estimated  
25 resources and duration are realistic and achievable within the

1 required 18 months to be fully operational."

2 Q Other than changing the date from being open and  
3 operational within 18 months to 12 months, that language is  
4 identical, is it not, to the recreational application?

5 A Yeah, looks the same.

6 MR. MILLER: Yeah. And Exhibit -- Proposed Exhibit  
7 245, [inaudible] PowerPoint 21227.

8 MR. SHEVORSKI: No objection from the State, Your  
9 Honor.

10 THE COURT: Be admitted.

11 (Plaintiffs' Exhibits 245)

12 MS. SHELL: I'm sorry, Mr. Miller. What exhibit did  
13 you say?

14 MR. MILLER: I'm sorry. 245.

15 THE COURT: I think 245 was already admitted.

16 MS. SHELL: Okay.

17 MR. MILLER: 21227. And compare that with Exhibit  
18 10.

19 BY MR. MILLER:

20 Q Can you read that language, sir, from the 2014  
21 application. Does that appear to be substantially similar or  
22 identical?

23 A Yes.

24 Q So even though a proposed physical address was  
25 required as part of the 2014 application, the evaluation



1 criteria for the two applications were the same; is that  
2 correct?

3 A Yes.

4 MR. MILLER: Nothing further.

5 THE COURT: Any other plaintiffs or interveners have  
6 any questions?

7 Any other defense questions?

8 MR. SHEVORSKI: Very briefly, Your Honor.

9 THE COURT: Mr. Shevorski.

10 MR. SHEVORSKI: Very briefly.

11 THE COURT: Okay. Because I've got 11 minutes  
12 before I break for lunch.

13 MR. SHEVORSKI: Understood, Your Honor.

14 RECROSS-EXAMINATION

15 BY MR. SHEVORSKI:

16 Q Mr. Pupo, can you go to Exhibit 2016. It should be  
17 in one of the binders.

18 THE COURT: Where are the binders? Dulce sends them  
19 to the vault, because she's required to.

20 What exhibit number, Counsel?

21 MR. SHEVORSKI: It's 2016, Your Honor.

22 (Pause in the proceedings)

23 MR. SHEVORSKI: I can give him Mr. Koch's, if that's  
24 okay, Your Honor.

25 THE COURT: Yes, he can use Mr. Koch's.

1 I'm sorry, sir. I take Dulce for granted.

2 MR. SHEVORSKI: May I approach, Your Honor?

3 THE COURT: You may.

4 BY MR. SHEVORSKI:

5 Q Mr. Pupo, you've just been handed what's been marked  
6 as Exhibit 2016. And we're going to be talking about merit  
7 criteria per NRS and R092-17. You understand R092-17 is the  
8 regulations passed after Question 2 was enacted by the voters?

9 A Yes. That's the LCB file number.

10 Q Okay. Now, and we're going to be talking about the  
11 shaded material to the left. And we're going to start with  
12 R092-17, Section 80(g). Do you see where that's indicated?

13 A Yes.

14 Q "Whether the owners, officers, or board members of a  
15 proposed marijuana establishment have direct experience with  
16 the operation of a medical marijuana establishment or  
17 marijuana establishment in the state and have demonstrated a  
18 record of operating such an establishment in compliance with  
19 the laws and regulations of this state for an adequate period  
20 of time to demonstrate success." Did I read that correctly?

21 A Yes.

22 Q And on the next page marked Bates Number 2680,  
23 R092-17, Section 80(h), "The experience of key personnel that  
24 applicant intends to employ in operating the type of marijuana  
25 establishment for which the applicant seeks a license." Did I

1 read that correctly?

2 A Yes.

3 Q And those were considered in the merit criteria in  
4 2018; correct?

5 A Yes.

6 MR. SHEVORSKI: No further questions.

7 THE COURT: Anything further from anyone?

8 Mr. Koch.

9 MR. KOCH: We don't have NAC? Do we have the book  
10 NAC?

11 THE WITNESS: Yes, I --

12 THE COURT: I don't have NAC. They don't give them  
13 to the judges.

14 RECROSS-EXAMINATION

15 BY MR. KOCH:

16 Q And, Mr. Pupo, you talked about the ownership and  
17 the 5 percent threshold. Do you know if that was in fact a  
18 part of the medical marijuana regulation program?

19 A Yeah, I don't recall.

20 Q NAC 453A.302 has regulations regarding 5 percent  
21 threshold that were adopted in 2014, would it surprise you if  
22 there were the same 5 percent threshold in medical in 2014 as  
23 was later adopted in the regulations for a recreational  
24 license?

25 A No, it wouldn't surprise me.

1 MR. KOCH: Thank you.

2 THE COURT: Anything else? Anyone else? Anything?

3 Mr. Pupo, thank you for coming back again. And you  
4 may depart before the parties change their minds and ask you  
5 more questions.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: Thank you.

8 (Pause in the proceedings)

9 THE COURT: All right. So I have one motion I was  
10 going to talk about, which was my motion to seal. Mr. Graf  
11 borrowed my copy. Do you want to talk about it now, or after  
12 lunch, or tomorrow, Mr. Graf?

13 MR. GRAF: We can talk about it now, Your Honor.  
14 Here's your motion back.

15 (Motion to seal transcribed under separate cover)

16 THE COURT: Anything else that I can do today? So  
17 I've crossed off Mr. Pupo on my list of witnesses to be  
18 finished. I now have nine more. Anybody this afternoon?

19 MR. SHEVORSKI: I don't know, Your Honor.

20 THE COURT: I know we were just on Mr. Pupo this  
21 afternoon, but if we have somebody else who wants to testify  
22 this afternoon, I am here working.

23 MR. KEMP: Judge, I'd understood we were going to do  
24 Mr. Hawkins that day, but I do not see Mr. Parker here.

25 THE COURT: I don't see Mr. Parker, either.

1 Somebody told me he was in South Carolina, but I didn't know  
2 for sure.

3 MR. KEMP: I thought he was coming back last night,  
4 Your Honor.

5 MR. SHEVORSKI: I honestly -- we got an email, I  
6 think everyone got an email saying he was coming back the 8th,  
7 but that's my recollection. Maybe I'm wrong.

8 THE COURT: So when I made the record that he was  
9 late, it wasn't that he was late, it was that you weren't  
10 expecting him today.

11 MR. SHEVORSKI: I don't know, Your Honor. I'm just  
12 -- that's my recollection of his email. I think the Court got  
13 it, as well, may have got that one.

14 THE COURT: I don't get them. My law clerk may  
15 have.

16 MR. SHEVORSKI: Okay.

17 THE COURT: Remember, I don't read anything from you  
18 guys.

19 MR. SHEVORSKI: Very good, Your Honor.

20 THE COURT: So were we going to do something? My  
21 question is are you coming back after lunch. That's really my  
22 question. Or am I done so I can let Jill go work on --

23 MR. GENTILE: Your Honor, on behalf of Serenity, we  
24 don't have another witness, because we were anticipating this  
25 was going to go a lot longer.

1           THE COURT: I asked my questions. I, you know,  
2 lengthen to the proceeding to the extent I thought was  
3 necessary.

4           Anything else?

5           Okay. As I have told you, I have some scheduling  
6 issues that we're still trying to deal with. If any of those  
7 days that we've talked about come up or come open, we will  
8 contact you. I understand you have a lot of scheduling issues  
9 on your side at this point, and so we'll let you know as soon  
10 as I have additional days that open up. But until a trial  
11 settles I don't have anything earlier than what I've already  
12 offered you.

13          MR. KOCH: We're planning the 10th, right, in the  
14 afternoon?

15          THE COURT: That's all I think you've agreed to.  
16 And then we go the 11th some and then the 12th. I do have two  
17 short things on the 12th, one in the morning, and one in the  
18 afternoon, and a lunch meeting on the 11th, but I've got you  
19 pencilled in.

20          MR. SHEVORSKI: Just for your scheduling, I've  
21 accepted service of a subpoena for Ms. Contine. I'm not sure  
22 if she's already on the list.

23          THE COURT: She was not on the list.

24          Anything else that you guys want to tell me?

25          MR. KEMP: Judge, can we go through the schedule one

1 more time? Because I'm not sure.

2 THE COURT: Right now I think you're coming at 1:00  
3 on July 10th, I don't know why, and that you're coming back on  
4 the 11th and you're coming back on the 12th. I have a lunch  
5 meeting on the 11th, which means I'm going to have to break at  
6 11:30, and I should be back by 1:15.

7 On July 12th I have a 9:30 that's short, and then I  
8 have a 3:00 o'clock that's short.

9 MR. KEMP: And what about the morning of the 11th?

10 THE COURT: I'm here for you. 9:30.

11 MR. KEMP: 9:30. Okay.

12 MR. CRISTALLI: And then 10:00 o'clock on the 12th,  
13 Your Honor?

14 THE COURT: Sure. It may be 10:15. I have some  
15 lawyers who are doing a closing argument on a home foreclosure  
16 under the HOA process.

17 MR. SHEVORSKI: I just got the chills, Your Honor.

18 THE COURT: Tell me about it.

19 MR. CRISTALLI: And, Your Honor, when did you want  
20 to --

21 THE COURT: You know how lucky I was not to have to  
22 do regular civil for like 10 years. And then I came back to  
23 it.

24 MR. CRISTALLI: Your Honor, when do you want to hear  
25 the motion to amend?

1 THE COURT: Tomorrow at 9:00 o'clock. Mr. Graf said  
2 he was going to get me an opposition in writing, so I was  
3 going to read it.

4 MR. GRAF: You'll have it by it 4:00 o'clock, Your  
5 Honor.

6 THE COURT: I'm going to have it by 4:00. So I'll  
7 read it today.

8 Anything else?

9 MR. SHEVORSKI: Not from the State, Your Honor.

10 THE COURT: For those of you who care, we have a  
11 hearing tomorrow. For those of you who don't, have a great  
12 Fourth of July. Enjoy your families.

13 (Court recessed at 12:02 p.m., until  
14 Wednesday, July 10, 2019, at 1:00 p.m.)

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INDEX

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

Jorge Pupo	-	8/56/73	86	95/97
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\* \* \*

EXHIBITS

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

235	88
245	91
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DEFENDANTS' EXHIBIT NO.

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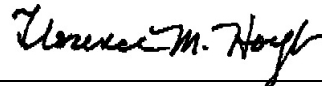
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I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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

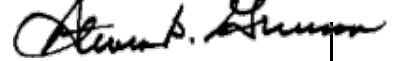
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Las Vegas, Nevada 89146**



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DATE



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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 12**

WEDNESDAY, JULY 10, 2019

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS  
District Court

FLORENCE HOYT  
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript  
produced by transcription service.

APPEARANCES:

FOR THE PLAINTIFFS:

DOMINIC P. GENTILE, ESQ.  
MICHAEL CRISTALLI, ESQ.  
ROSS MILLER, ESQ.  
WILLIAM KEMP, ESQ.  
NATHANIEL RULIS, ESQ.  
ADAM BULT, ESQ.  
MAXIMILIEN FETAZ, ESQ.  
THEODORE PARKER, ESQ.

FOR THE DEFENDANTS:

KETAN BHIRUD, ESQ.  
STEVE SHEVORSKI, ESQ.  
THERESA HAAR, ESQ.  
BRIGID HIGGINS, ESQ.  
MOOREA KATZ, ESQ.  
DAVID KOCH, ESQ.  
ALINA SHELL, ESQ.  
JARED KAHN, ESQ.  
JOSEPH GUTIERREZ, ESQ.

1 LAS VEGAS, NEVADA, WEDNESDAY, JULY 10, 2019, 1:02 P.M.

2 (Court was called to order)

3 THE COURT: Good afternoon, counsel. Who's our  
4 first witness today? Who's our first witness today? Mr.  
5 Parker, thank you for being on time.

6 MR. PARKER: Of course, Your Honor. Of course.

7 THE COURT: Or I could say, next witness.

8 MR. KEMP: Judge, as I understand, the State's going  
9 to put on three witness today --

10 THE COURT: Okay.

11 MR. KEMP: -- an IT guy, Ms. Cronkhite, and Mr.  
12 Hernandez.

13 THE COURT: So we're calling some witnesses out of  
14 order for the State?

15 MR. SHEVORSKI: Well, that's my question, Your  
16 Honor, is I'm not sure what the plaintiffs -- where they're at  
17 in terms are they resting, are we calling out of order?

18 MR. KEMP: Judge, we're not resting, because I'm  
19 still debating with Mr. Koch as to whether we need Mr.  
20 Groesbeck, and I'm trying to get Mr. Groesbeck here on Friday.  
21 I don't have a firm commitment yet. I'd like to keep trying,  
22 and if we do get Mr. Groesbeck here, I plan on asking him five  
23 minutes' worth of questions. So I'm not going to rest until  
24 [inaudible].

25 THE COURT: Okay. So we're calling some witnesses

1 out of order.

2 MR. SHEVORSKI: Well, I know that's what Mr. Kemp is  
3 saying. I want to -- if I could inquire what Mr. Gentile is  
4 doing.

5 MR. GENTILE: Your Honor, as of this point we're  
6 going to rest.

7 THE COURT: Okay.

8 MR. GENTILE: We have an expert witness --

9 THE COURT: Well, I'm not resting in parts.

10 MR. GENTILE: I'm sorry?

11 THE COURT: Just so we're clear. I'm not resting in  
12 parts.

13 MR. GENTILE: Well, then we don't rest.

14 THE COURT: Okay. So they don't rest yet, because  
15 we just heard what Mr. Kemp said. It doesn't really matter  
16 what everybody else is thinking. I've got one of the group  
17 who's not done yet.

18 MR. SHEVORSKI: Very good, Your Honor.

19 THE COURT: But I think Mr. Parker's decided he's  
20 not calling Mr. Hawkins, but if he changes his mind we'll have  
21 that, as well.

22 MR. SHEVORSKI: All right. So let's not waste the  
23 Court's time.

24 THE COURT: We're not calling a gaming enforcement  
25 expert, or gaming expert.

1 MR. GENTILE: Your Honor, we are not calling a  
2 gaming enforcement expert. We still may have -- as long as  
3 we're not resting, depending upon availability, we still may  
4 have a Drug Enforcement Administration expert.

5 THE COURT: Anderson and Groesbeck are the two that  
6 I have still on the plaintiffs' list. I understand there's an  
7 issue with Mr. Hawkins. Does anybody know who Anderson is?

8 MR. KEMP: Anderson would be the former director.

9 MR. SHEVORSKI: Former director, Your Honor.

10 MR. KEMP: Yeah. He's not on my list, Your Honor.

11 THE COURT: So I can cross him off?

12 MR. SHEVORSKI: The State isn't calling Anderson.

13 THE COURT: So we're going to call some witnesses  
14 out of order, Mr. Shevorski.

15 MR. SHEVORSKI: Very good, Your Honor.

16 THE COURT: Do you want to tell me a name.

17 MR. SHEVORSKI: Sure. Charles Davidson, Your Honor.

18 THE COURT: Mr. Davidson is outside?

19 MR. SHEVORSKI: He's here.

20 THE COURT: Sir, if you'd come up, please.

21 CHARLES ROY DAVIDSON, DEFENDANT STATE'S WITNESS, SWORN

22 THE CLERK: Please be seated. Please state and  
23 spell your name for the record.

24 THE WITNESS: Charles Roy Davidson, C-H-A-R-L-E-S,  
25 and Roy is R-O-W -- or R-O-Y. Excuse me.

1 THE COURT: This is a test.

2 THE WITNESS: Yes. I don't normally spell that  
3 part. And then Davidson's like son of David only backwards.

4 THE COURT: All right. So, sir, there are a bunch  
5 of binders that you see. They're not just behind you, they're  
6 also on a cart. If counsel needs you to touch one, they will  
7 let you know and help you find the correct one.

8 THE WITNESS: Okay.

9 THE COURT: There's also a pitcher with some water  
10 in it next to you. If it runs out, please let us know. And  
11 Ramsey's going to make sure that the M&M dispensers get  
12 refilled, because while he was on vacation the cleaning people  
13 cleaned them out. So he's going to get you some M&M's just in  
14 case you need them.

15 THE WITNESS: Thanks.

16 THE COURT: Mr. Shevorski, you may continue.

17 MR. SHEVORSKI: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. SHEVORSKI:

20 Q Mr. Davidson, thank you for being here. And we've  
21 met before. My name is Steve Shevorski. I'm with the Office  
22 of the Attorney General. I appreciate your time today. Could  
23 you please give me some background on your education and work  
24 experience.

25 A I have a Bachelor's degree in information



1 technology. I'm a Microsoft-certified systems engineer, and I  
2 have some other assorted certificates and whatnot for IT. I  
3 have been working on computers since approximately '78, and  
4 been with the State for 12 years.

5 Q And where did you get your Bachelor's degree?

6 A Dixie State University.

7 Q And that's in Utah?

8 A Yes, sir.

9 Q Okay. Any education after that?

10 A No, except for classes to keep current. Other than  
11 that, no.

12 Q Classes to keep current. In what field were those  
13 classes?

14 A Well, they're all for IT. Specifically for UNIX  
15 systems administration and some coding, keeping up on some of  
16 the scripting languages.

17 Q And you're using an acronym, IT. And what does that  
18 acronym mean to you?

19 A Information technology.

20 Q And that would encompass computers that --

21 A Computers, operating systems, and scripting  
22 languages to control operating systems.

23 Q Would that also encompass how information is stored  
24 -- information technology -- information that's stored  
25 electronically?

1           A     Yes. That includes the security for the file-level  
2 security.

3           Q     Would that include -- have you ever heard the term  
4 "server" in connection with information technology?

5           A     Yes. That's mostly what I work on.

6           Q     Okay.

7           THE COURT: I was going to ask you if you did punch  
8 cards back in the beginning, but we'll skip that.

9           THE WITNESS: Yes.

10          THE COURT: Okay. Keep going.

11          MR. SHEVORSKI: I'm not even sure I know what a  
12 punch card is, Your Honor.

13          THE COURT: Yeah. It's before your time. For those  
14 of us who learned computers in the '70s they were highly  
15 programmable.

16          MR. SHEVORSKI: Is that right?

17          THE COURT: Yes.

18          MR. SHEVORSKI: My goodness. I lost my train of  
19 thought.

20 BY MR. SHEVORSKI:

21          Q     Let me turn -- are there such things as virtual  
22 servers?

23          A     Yes. The State does mostly virtual servers. We do  
24 have a few physicals, but most of them are virtualization.  
25 That saves money on the hardware.

1 Q What is a virtual server?

2 A It allows you to have a server that can move around  
3 -- or a virtual server is considered software that appears to  
4 be hardware, and it moves across the different hardware  
5 platforms as needed for either resources or for redundancy.

6 Q And how, if at all, does a virtual server interact  
7 with a physical server?

8 A Almost the exact same way. They connect in through  
9 the network. The server itself does not know the difference  
10 between a virtual and if it's hard.

11 Q Have a kind of symbiotic relationship?

12 A Yes.

13 Q Was that yes? I'm sorry, I couldn't hear over --

14 A That is correct.

15 Q Okay. Are you familiar with how the State maintains  
16 Listservs that it may send out to various constituents?

17 A Yes. That is my -- that is what funds my position.

18 Q And what is your current -- do you have a title?

19 A ITP4.

20 Q And what department do you work in of the State  
21 Government?

22 A It's now the Department of Administration, Division  
23 of -- or Enterprise IT Services.

24 Q The acronym is EITS, I think it is?

25 A EITS, yes.

1 Q Of course. It's a government, so it has to have an  
2 acronym. And just so we're clear, how long have you worked at  
3 EITS?

4 A Twelve years.

5 Q Okay. So the entire time for the State you worked  
6 at EITS?

7 A Correct.

8 Q And your entire career has basically been in  
9 information technology?

10 A No. For the past three decades it has been. Prior  
11 to that, no.

12 Q Okay. Fair enough. And you mentioned your  
13 familiarity with Listserv. Are you familiar with how they're  
14 stored by the State electronically?

15 A Yes. It is stored on a -- currently it's stored on  
16 a Windows 2016 server.

17 Q So can you explain, if at all, how they're stored --  
18 the relationship between the virtual server and the physical  
19 server in terms of storage of the Listserv information.

20 A The Listserv stores its information on a virtual  
21 hard drive. The virtual hard drive is actually residing on a  
22 massive storage device, which then the storage is broken out  
23 and allocated to each virtual server. To the server it  
24 appears as if it's on a single hard drive. It's actually  
25 stored on multiple hard drives on that mass device.

1           Q     And you're familiar with that storage process as  
2 part of your professional duties for EITS?

3           A     Yes. I don't usually mess with it too much, because  
4 I go through -- when I'm building a server I use the virtual  
5 environment to build with. I don't actually have to go out  
6 and mess with the hardware itself.

7           Q     Very good. And does EITS maintain those virtual and  
8 physical servers in the ordinary course of its business?

9           A     Yes, it does.

10          Q     Were you asked to pull Listserv information for the  
11 Listserv described as State MME?

12          A     Yes, I was.

13               MR. SHEVORSKI: Your Honor, I have a proposed  
14 exhibit.

15               THE COURT: Okay. What's its number?

16               MR. SHEVORSKI: 2021.

17               THE COURT: Thank you.

18               MR. SHEVORSKI: May I approach the witness, Your  
19 Honor?

20               THE COURT: You may.

21               Anybody objecting to 2021?

22               MR. KEMP: No objection, Your Honor.

23               THE COURT: No objection?

24               MR. KEMP: No objection.

25               THE COURT: Be admitted.

1 (Defendants' Exhibit 2021 admitted)

2 BY MR. SHEVORSKI:

3 Q Mr. Davidson, please have a look at Exhibit 2021,  
4 and let me know when you're through.

5 A Through.

6 Q And have you reviewed it?

7 A I've gone through it, yes.

8 Q Yes. Okay. Have you seen these documents before?

9 A Yes.

10 Q And let's go through -- since they're already in  
11 evidence, let's just go through that first page. What is that  
12 first page, do you know?

13 A That is the landing page for the Listserv.

14 Q Okay. And the next page?

15 A The login page for the Listserv to gain access.

16 Q And the page after that?

17 A This is the screen shot of the menu system for  
18 pulling reports, subscriber reports.

19 Q And the next page, sir?

20 A This is where you define what you want to have  
21 pulled in that particular subscriber report.

22 Q And the page after that?

23 A That is the export of the subscriber report.

24 Q When you say, export, is it a subscriber report for  
25 any particular Listserv?

1           A     This particular one is for the State MME.

2           Q     And looking at the subscriber report, there are a  
3 number of headings. It says, "Email" at the top, "Name,"  
4 "Mail Status," "Restrictions," and "Subscription Date." Do  
5 you see where those are indicated?

6           A     Yes.

7           MR. PARKER: Your Honor, can we have a Bate number,  
8 please.

9           THE COURT: Can you give us a Bate label.

10          MR. SHEVORSKI: Yes, certainly. The subscriber list  
11 starts at DOT044706. And for some reason -- so it looks like  
12 they're out of order. But the one I have, it ends at 44720.  
13 Never mind, Your Honor.

14          THE WITNESS: No, that'll be the last page.

15          MR. SHEVORSKI: Yeah, 720.

16          THE COURT: You've had too long a break.

17          MR. SHEVORSKI: Huh?

18          THE COURT: You've had too long a break from the  
19 hearing.

20          MR. SHEVORSKI: I have, Your Honor. The muscles  
21 aren't working.

22 BY MR. SHEVORSKI:

23          Q     So what is indicated by these various headings? Can  
24 you describe that information.

25          A     This is a list of all the subscribers for this

1 particular list on the Listserv. The email is the actual  
2 email address inputted into the Listserv to send whatever the  
3 owner or editors want to the subscriber. So that would be the  
4 list of the subscriber's email address. The name is the list  
5 of the subscriber as inputted into the Listserv. Mail status  
6 is whether or not they will be getting email. The post  
7 restrictions is what they are allowed to do. In this case  
8 they are allowed to re-post back to the person who sent the  
9 message. Subscription date is the date that they were added  
10 to that particular list or they joined that list.

11 Q And how is the subscription date entered? Is it  
12 automatically, or is it manually?

13 A It's all automatically by the application itself.

14 MR. SHEVORSKI: I have another proposed exhibit,  
15 Your Honor.

16 THE COURT: Okay. Sir, do you know how many  
17 different Listservs there are for the MME group?

18 THE WITNESS: The MME group just has -- well,  
19 there's -- MME is one list. The Listserv itself houses  
20 approximately more than 500 lists that are handled by the  
21 State, and they cover just about everything.

22 THE COURT: Right. But for the marijuana group, the  
23 Marijuana Enforcement Division how many different Listservs  
24 are there?

25 THE WITNESS: It looked like there was about five



1 marijuana lists. There is only one Listserv, that's the  
2 actual server itself that pushes out the different lists of  
3 things.

4 THE COURT: So how is a determination made as to  
5 which list or group of emails or notifications a particular  
6 subscriber will receive?

7 THE WITNESS: Those lists that they subscribe to  
8 they will get messages from. I'm probably not answering your  
9 question.

10 THE COURT: Well, let me ask the question  
11 differently. So on the application for someone to join a  
12 Listserv are there checkboxes in the State's system for them  
13 to identify what their areas of interest are for the Listserv?

14 THE WITNESS: No. They need to -- if they're coming  
15 into the Listserv itself, just the landing screen, there will  
16 be about 250 lists that are -- that will be visible. Those  
17 are publicly available lists.

18 THE COURT: Uh-huh.

19 THE WITNESS: There are lists that are not publicly  
20 available. If they wish to subscribe to a particular list,  
21 they can click on that and subscribe to it. If they are going  
22 through via a Website, then that will allow them to subscribe  
23 to whatever list that Website is posting on.

24 THE COURT: Okay. Let me ask the question  
25 differently, because I think you were talking at this level

1 and I'm down on the ground for this --

2 THE WITNESS: I'm sorry.

3 THE COURT: It's okay. That's why you're here.  
4 It's my understanding from the prior testimony, because  
5 today's Day 12, that there is a separate list for medical  
6 marijuana and another Listserv for recreational marijuana.  
7 Can you confirm that for me?

8 THE WITNESS: Yes.

9 THE COURT: How did somebody sign up for one or the  
10 other of the two Listservs?

11 THE WITNESS: I'd actually have to look at the  
12 individual list to see how their subscriptions are being done.  
13 Like the State MME, the subscribers are put in through the tax  
14 organization. So they evidently were getting them -- getting  
15 the name somewhere and inputting it into the list.

16 THE COURT: And you don't know where that came from?

17 THE WITNESS: No, I do not.

18 THE COURT: Okay. Do you know if there were more  
19 than two lists for the marijuana group?

20 THE WITNESS: Yes. I can --

21 THE COURT: How many do you think there are?

22 THE WITNESS: I think there's five, maybe six.

23 THE COURT: Okay.

24 THE WITNESS: I can pull it up if you want.

25 THE COURT: No. I'm just trying to get your best

1 information.

2 Thank you, Mr. Shevorski. I was trying to cut to  
3 the chase.

4 MR. SHEVORSKI: Appreciate that, Your Honor. May I  
5 approach the witness, Your Honor?

6 THE COURT: You may.

7 BY MR. SHEVORSKI:

8 Q Mr. Davidson, you've just been handed what's marked  
9 as Proposed Exhibit 2022. Can you please take a moment to  
10 review it, and let me know when you're through.

11 A I've done a quick overview. I hope that's good  
12 enough.

13 Q Do you recognize what's been marked as State's  
14 Proposed 2022?

15 A I recognize the first page, and I assume that the  
16 other pages are the attachments.

17 Q Were you asked to go into the archive for the State  
18 MME Listserv to retrieve information?

19 A Yes.

20 Q Does what's been marked as Proposed Exhibit 2022  
21 appear to be a true and correct copy of the information that  
22 you obtained from the archive?

23 A Yes.

24 MR. SHEVORSKI: Okay.

25 THE COURT: Any objection to 2022?

1 MR. KEMP: No, Your Honor.

2 MR. CRISTALLI: No objection.

3 THE COURT: Be admitted.

4 (State's Exhibit 2022 admitted)

5 BY MR. SHEVORSKI:

6 Q What is the -- who are the recipients of the email  
7 on the front page?

8 A That would be the subscribers on the list at the  
9 date that that was sent out.

10 Q On the date that it was sent out. And that would be  
11 July 30th, 2018?

12 A Correct.

13 MR. SHEVORSKI: No further questions, Your Honor.

14 MR. PARKER: Your Honor, can we have again the Bates  
15 numbers for this exhibit.

16 THE COURT: The end for this particular exhibit?

17 MR. PARKER: Yes, Your Honor, 2022.

18 THE COURT: The one that I have in my hand goes all  
19 the way to DOT044756.

20 MR. PARKER: It starts at?

21 THE COURT: The first page starts at DOT044721. I  
22 did not determine if they are sequential and if there are any  
23 gaps.

24 MR. PARKER: What was the last page?

25 THE COURT: 44756.

1 MR. PARKER: Thank you, Your Honor.

2 THE COURT: So do any of the defendants in  
3 intervention wish to inquire? Okay. Mr. Kemp, you're up.

4 CROSS-EXAMINATION

5 BY MR. KEMP:

6 Q Good afternoon, Mr. Davidson.

7 A Greetings.

8 Q Following up with a question that Your Honor had, as  
9 I understand it this is the State MME list.

10 A Correct.

11 Q Which is Exhibit 2021; right? Right?

12 A Yes. And 2022. They both refer to the same list.

13 Q And there's five or six other marijuana-related  
14 lists out there?

15 A Correct.

16 Q And so, for example, there's the medical marijuana  
17 list?

18 A Correct.

19 Q There's the public list? There's a list that anyone  
20 in the public can sign up?

21 A Probably.

22 Q Okay. Do you know what the other three are -- or  
23 four?

24 A Let's see. One was dispensary, one was something  
25 about growers, I think. If you want, I can pull it up.

1           Q     It really doesn't matter. But the only people that  
2 were sent the information on Exhibit 2022 were the people on  
3 the State MME list, correct, not the other five lists?

4           A     I did not pull any archives from the other lists.  
5 So they may have been sent something, but I don't know.

6           Q     So you're only here today to say that you sent  
7 something -- or the State sent something to the State MME  
8 list?

9           A     Correct.

10          Q     And as we sit here today do you know one way or the  
11 other whether or not there was a similar transmittal to the  
12 other five lists?

13          A     I do not know offhand. I can pull that information,  
14 though.

15          Q     Okay. And were you the one that actually sent the  
16 email that we have here as Exhibit Number 2022?

17          A     No, I was not.

18          Q     All right. The State could have easily sent to all  
19 five lists if they wanted to; right?

20          A     Correct.

21          Q     And that would have been a more expansive type of  
22 notification, because there's people on one list that aren't  
23 on another?

24          A     Very possible.

25               MR. KOCH: Objection, Your Honor. Foundation.

1 THE COURT: Overruled.

2 BY MR. KEMP:

3 Q And did you have any part in the decision making as  
4 to using just the State MME list, as opposed to the other four  
5 or five lists?

6 A No.

7 Q Okay. And do you know one way or the other whether  
8 the original submittals that we see here in 2022, and by that  
9 I mean the application subparts, do you know whether or not  
10 they were posted in four or five different locations?

11 A I do not know.

12 Q Okay. And do you know one way or the other whether  
13 or not when you sent -- or I guess Mr. Plaskon technically  
14 sent the email on July 30th; right?

15 A Yes.

16 Q Okay. Do you know one way or the other whether or  
17 not he also posted it in some or all of the areas where it had  
18 been posted previously?

19 A I would not know that.

20 Q Okay. Now, do you know who Ms. Tia Dietz is?

21 A No, sir.

22 MR. KEMP: Okay. Shane, can you pop up Tia's email  
23 for me on the application.

24 THE COURT: What exhibit number is it from?

25 MR. SHEVORSKI: It's Exhibit 21.

1 MR. KEMP: 21, Your Honor.

2 THE COURT: Thank you.

3 MR. KEMP: It's an admitted exhibit.

4 THE COURT: And, sir, this is on your screen. If  
5 you need him to enlarge part of it, please let them know.

6 BY MR. KEMP:

7 Q And if I told you Tia Dietz was listed as the  
8 contact for LivFree on the LivFree marijuana application  
9 that'd be news to you?

10 A Yeah. I don't know. I'm not responsible for  
11 knowing who or who doesn't get added to the subscriber list of  
12 the lists.

13 Q Okay. So if I went through Exhibit 2021, which is  
14 the State MME list, and I did not find Tia Dietz's email or  
15 her name, would it be fair to assume that she did not get the  
16 email that was sent to the people on this list?

17 MR. KOCH: Objection. Personal knowledge.

18 THE COURT: Overruled. You can answer.

19 THE WITNESS: Okay. Thanks.

20 BY MR. KEMP:

21 Q If she's not on the list and her email isn't on the  
22 list, she didn't get this 2022 email; right?

23 THE COURT: Unless someone forwarded it to her.

24 THE WITNESS: Unless she has been dropped after that  
25 fact or after that date.



1 BY MR. KEMP:

2 Q Okay. But assuming that to be the case, assuming  
3 that she was never on the list she didn't get the email?

4 A That is correct.

5 Q All right. As far as you know, was anything done to  
6 try to contact people that may not be on the State MME list?

7 A That would be the responsibility of the owner of the  
8 list.

9 Q Okay. But as far as you know, was anything done --

10 A I'm not the owner, so I wouldn't know anything about  
11 that.

12 Q All right. Now, with regards to the State MME list  
13 I assume it changes over time, because people join it or drop  
14 out?

15 A Correct.

16 Q And does the State call the list on a periodic  
17 basis?

18 A That would be the responsibility of the owner of the  
19 list. I wouldn't do the calling.

20 Q Who is the owner of the list?

21 A I'd have to look at that up, actually.

22 Q Would that be Mr. Plaskon's responsibility or DOT?

23 A He would definitely be one of the owners. There  
24 could be multiple owners for any list. I mean, it's not just  
25 assigned to the Department, but there's individuals that are