

**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 42**

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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 percent. I don't know what their process is if that happens,  
2 but maybe it could be rebid or -- I don't know exactly because  
3 disqualified is a different term than just going out for  
4 rebid. So there's something that could happen, yes.

5 Q We talked about -- I understand you were not present  
6 at the adoption hearing in front of the Legislative Commission  
7 when the regulations were adopted; right?

8 A I wasn't. Right.

9 Q But you're generally aware of what happened at that  
10 meeting?

11 A Not really. I didn't watch it. I knew that at the  
12 end of the day the regulations were adopted by or approved by  
13 the Legislative Commission, but I wasn't there.

14 Q You talked a little about the timing that's  
15 necessary in order to adopt the permanent regulations  
16 yesterday, and based on the timing and the requirement that  
17 the Department adopt the regulations prior to January 1st,  
18 2018, the Legislative Commission could not have revised those  
19 -- these regulations in any manner, right, and still comply  
20 with that timeline?

21 A Oh, well they wouldn't have revised them, they would  
22 have just not approved them and sent them back. They do that  
23 on a regular basis. But, yeah, I mean, there were issues with  
24 the timing because of the way that this all came together.

25 MR. MILLER: Can you pull up Exhibit 236, page 12.



1 THE CLERK: That's proposed.

2 THE COURT: Any objection?

3 MR. SHEVORSKI: No objection from the State, Your  
4 Honor.

5 THE COURT: It will be admitted.

6 (Plaintiffs' Exhibit 236 admitted)

7 BY MR. MILLER:

8 Q And here is -- can you read the provision that  
9 pertains to the response from Brenda Erdos that you read  
10 before that -- actually I think Jason Frierson asked a  
11 question about the timing of the regulations and whether or  
12 not they could address any of the concerns outlined in the  
13 public comment. I think it's at the bottom of this. "Senator  
14 Hammond commented on" -- maybe you can read it because the  
15 microphone I don't think will pick it up.

16 A "Senator Hammond commented on the overall lack of  
17 transparency regarding the regulation process and he  
18 questioned the distance between legislating, regulating and  
19 the relationship with industry lobbyists. He also expressed  
20 concern regarding the Department's ability to keep up with the  
21 regulations. Chair Frierson asked Brenda Erdos, previously  
22 identified, to confirm whether the regulation could be  
23 extended."

24 Q Next page.

25 A "Ms. Erdos explained that shortly after the 2017

1 session the Department adopted a temporary reg which was set  
2 to expire in November. The Department then adopted an  
3 emergency regulation that was effective for 120 days that  
4 cannot be extended, which will expire on March 1st, 2018. She  
5 said that if R092-17 is not approved, there will be no  
6 marijuana regulations." Do you want me to stop?

7 Q So despite the public comments and concerns about  
8 provisions of the regulations or the individuals identified  
9 areas that they thought could be further defined, there was  
10 really no effective ability for the Legislative Commission to  
11 revise any of the proposed regulations in response to the  
12 concerns; right?

13 A Well, I think they could have if they wanted to. I  
14 mean, it's within their power to do so. I think there were  
15 some concerns and some criticism at public comment, but I  
16 think there was general consensus and that's reflected as  
17 well. So I think they could have. If they really wanted to,  
18 they could have. That would have stopped the program,  
19 essentially, but.

20 Q But do you disagree with Brenda Erdos that it would  
21 affect -- not having any regulations; right?

22 A Right.

23 Q And if you didn't have any regulations, would you  
24 have been able -- do you believe the Department would have  
25 been able to carry out the application process?

1           A     No.

2           Q     So in effect they were faced with the decision of  
3 trying to revise the regulations or not have any regulations  
4 and not having an application period process at all; right?

5           A     Right. Or they could have said, you know, there  
6 doesn't seem to be enough consensus here or we want these  
7 issues to be further explored. They could have given future  
8 direction to start regulations again or they could have --  
9 you know, they could have done various things.

10          Q     They could have done any number of things, but doing  
11 any of those number of things would have resulted in no  
12 application process being conducted; right?

13          A     Right. So there wouldn't have been an application  
14 process, so the program would have been on hold.

15          Q     And where is the authority for the legislature to be  
16 involved in this process at all?

17          A     It's in 233B.

18          Q     Okay. And where is the authority for the provision  
19 within 233B? Are you familiar with that?

20          A     Where is -- I don't understand.

21          Q     Who gave the legislature the authority to review  
22 regulations or make the determination at all? Where does that  
23 come from?

24          A     It comes from --

25          Q     It comes from Article 3 of the Constitution; right?

1           A     Okay. It comes from legislation.

2           MR. MILLER: Can we pull up Article 3?

3           I.T. TECHNICIAN: What was that?

4           MR. MILLER: Do you have Article 3 of the  
5 Constitution?

6           MR. SHEVORSKI: The United States Constitution?

7           MR. MILLER: Yes.

8           THE COURT: That would be the Nevada Constitution.

9           MR. SHEVORSKI: I'm sorry, I went to school with  
10 him. I had to.

11          MR. MILLER: I just -- I forgot he --

12          THE COURT: You just ignore him, don't you?

13          MR. MILLER: I forgot he's sarcastic. No, I'm so  
14 used to him always having the right answer, so if he says  
15 something, yes, and I'm not even listening.

16          MR. SHEVORSKI: I'm sorry, Your Honor.

17          THE COURT: It's okay. I just knew it wasn't under  
18 the judiciary section.

19          MR. MILLER: He's throwing it out. He knows from  
20 law school I'm easy to trick.

21 BY MR. MILLER:

22          Q     So it says, Separation of Powers. It says, "If the  
23 legislature authorizes the adoption of regulations by an  
24 executive agency which bind persons outside the agency, the  
25 legislature may provide by law for the review of those

1 regulations by a legislative agency." Right?

2 A Yes.

3 Q And are you familiar that that provision resulted  
4 from a ballot question that was put in front of the voters in  
5 1996?

6 A No.

7 Q You're familiar, obviously, the legislature only  
8 meets 120 days every two years?

9 A Yes.

10 Q And that in the interim the Legislative Commission  
11 has reviewed regulations that are adopted by executive  
12 agencies, but that's not the entire legislature; right?

13 A Right.

14 Q It's just a subset of legislators?

15 A Yes.

16 Q And so they needed a constitutional provision that  
17 would allow review of regulations by the subset of the  
18 legislature; right?

19 A Okay.

20 Q Does that make sense? Yes?

21 MR. MILLER: Can we pull up, Shane, NRS 233B.0633(1).

22 IT TECHNICIAN: I have .633.

23 MR. MILLER: Yeah. The one I emailed yesterday.

24 BY MR. MILLER:

25 Q "Upon the request of a legislator, the Legislative

1 Commission may examine a temporary regulation adopted by an  
2 agency that is not yet effective pursuant to subsection 2 of  
3 NRS 233B.070 to determine whether the temporary regulation  
4 conforms to the statutory authority pursuant to which it was  
5 adopted and whether the temporary regulation carries out the  
6 intent of the legislature in granting that authority." Right?

7 A Yes.

8 Q But this was an initiative; right?

9 A Yes.

10 Q The entire purpose of an initiative is to take it  
11 outside the hands of the legislative process; right?

12 A Yes. Or it is outside the hands of the legislative  
13 process.

14 Q There's no authority at all --

15 MR. PARKER: I'm sorry. Could you repeat what you  
16 said? You kind of trailed off.

17 THE COURT: She said it is outside the legislative  
18 process. Right?

19 THE WITNESS: Yes.

20 MR. PARKER: Thank you.

21 BY MR. MILLER:

22 Q There's no authority at all for any legislative  
23 review of these regulations, is there?

24 A That's kind of out of my pay grade. I mean, I was  
25 following the law. I think if I would have said I don't have

1 to use 233B to make these regulations that there would have  
2 been a lot of disagreement, so.

3 Q But you don't know whether or not the Legislative  
4 Counsel Bureau's review of the regulations that you talked  
5 about at length yesterday were substantively the same as any  
6 other -- the review of any other regulations; that they could  
7 have been looking at it through the lens and saying our  
8 purpose is to follow the statute that says we're supposed to  
9 look to make sure it matches the legislative intent?

10 MS. SHELL: Objection.

11 BY MR. MILLER:

12 Q And that would have been impossible to do in this  
13 context; right?

14 MS. SHELL: It's compound and argumentative, Your  
15 Honor.

16 THE COURT: Overruled.

17 THE WITNESS: Well, I think they would have still  
18 done the review that they're required to do by the statute.  
19 It also says that it conforms to the statutory authority, so  
20 I think they would have looked at that and I think they did.

21 BY MR. MILLER:

22 Q The statutory authority by which it was adopted.  
23 They would not have had any ability as a legislative body to  
24 review the intent behind an initiative petition; right?

25 A I think they have the authority, yes.

1 MR. MILLER: Nothing further, Your Honor.

2 THE COURT: All right. It's 12:10. How much more  
3 do we have, Mr. Parker?

4 MR. PARKER: I have about 35, 40 minutes, Your Honor.

5 THE COURT: Okay. I have a one o'clock conference  
6 call that will be very short. I would like to go until 12:30  
7 or so and then take a break so everybody can walk around, get  
8 something to drink or eat if you want to shortly and then  
9 resume at 1:10. And remember, we are breaking at 2:45.

10 Mr. Parker, you're up.

11 MR. PARKER: Thank you, Your Honor.

12 THE COURT: I'm sorry. Mr. Bult, Mr. Fetaz, did you  
13 have --

14 MR. BULT: No, Your Honor.

15 THE COURT: Okay. Goodbye, Mr. Hymanson.

16 MR. HYMANSON: I'm just going to wish Mr. Parker  
17 luck.

18 MR. PARKER: Thank you. Thank you, Phil, I  
19 appreciate that.

20 CROSS-EXAMINATION

21 BY MR. PARKER:

22 Q All right. Good afternoon.

23 A Good afternoon.

24 Q I have a couple questions for preliminarily, and  
25 then we'll get into the meat of my questions, okay.



1           A     Sure.

2           Q     Are you familiar with any of the applicants -- and I  
3 don't know if you are familiar with any of the applicants,  
4 because you said you weren't a part of the application  
5 process; is that correct?

6           A     Well, I'm familiar with the industry, with generally  
7 the main people who have participated in the regulatory  
8 process, participated in the work -- the Governor's Task  
9 Force, the workshops related to that.

10          Q     Can you tell me some of the people that you're  
11 familiar with that you would include in the general  
12 description "within the industry" by applicants perhaps.

13          A     I don't know everybody's affiliation and how people  
14 are related, but John Ritter was on the Governor's Task Force;  
15 Amanda Connor worked -- works in -- you know, has clients;  
16 Riana Durette, I guess she's not a -- but she's the  
17 association. I know Brett Scolari, I know -- I mean, I know a  
18 lot of people -- I know most of the people who were involved  
19 in the regulatory process. I couldn't really list everybody  
20 at this point, because I would be -- I would be afraid to not  
21 include somebody. But anybody that has been involved in the  
22 process through the working group and the Task --

23          Q     How about Andrew Jolley?

24          A     I know him, yes.

25          Q     Brian Greenspun?

1           A     I've never met him. I mean, I know who he is,  
2 but --  
3           Q     Armand?  
4           A     Armand -- yes, I know Armand.  
5           Q     What's his last name?  
6           A     I don't know.  
7           Q     Okay. All I know is Armand, as well.  
8           A     Armand -- I don't know. Somebody who understands  
9 his last name better could probably say it. I don't know.  
10          Q     Phil Peckman?  
11          A     I know him.  
12          Q     Do you know the names of any of the marijuana  
13 establishments that may have applied?  
14          A     I know -- I mean, I know -- I don't -- when I looked  
15 at -- I didn't look too closely at the caption here.  
16          Q     How about Essence?  
17          A     Is Essence Armand? I'm not sure.  
18          Q     Thrive?  
19          A     Thrive I think is Mr. Peckman and his group.  
20          Q     Nevada Organics?  
21          A     I don't know who that is.  
22          Q     Okay. Have you had lunch, dinner, or even coffee  
23 with any of these people that you listed?  
24          A     Yes.  
25          Q     On more than one occasion?

1           A     Yes.

2           Q     Tell me who you recall having lunch with.

3           A     I think I've had lunch with Mr. Ritter --

4           Q     Anyone else?

5           A     -- a couple times. I've known Brett Scolari for  
6 years before marijuana. I've had lunch or coffee with him in  
7 the past.

8           Q     How about dinner?

9           A     Brett. I don't -- I don't know.

10          Q     All right.

11          A     I think I've had dinner with Mr. Ritter, as well.  
12 Or lunch or dinner. I can't recall.

13          Q     Okay. Would any of these people have your cell  
14 phone number?

15          A     Yes.

16          Q     Would that include Amanda Connor?

17          A     Yes.

18          Q     Phil Peckman?

19          A     I don't know.

20          Q     Andrew Jolley?

21          A     I don't know. I mean, generally I worked to make  
22 the regulations, to create the process. So I will have had  
23 some contact and know pretty much anyone that was involved in  
24 that process.

25          Q     Okay.

1           A     Either -- yeah.

2           Q     Did you run for political office?

3           A     Yes.

4           Q     And what position did you run for?

5           A     I ran for the Nevada State Assembly.

6           Q     And when did you run?

7           A     In 2018.

8           Q     Okay. Did you have any fundraisers for that

9 campaign?

10          A     Yes.

11          Q     Were any of the people you listed a participant or a

12 contributor to your campaign?

13          A     Yes.

14          Q     Can you tell me which people, entities contributed

15 to your campaign?

16          A     No, I can't -- I mean, I know some. I can't -- I

17 can't list them all.

18          Q     Can you tell me of the applicants that are involved

19 in the marijuana business which ones contributed to your

20 campaign?

21          A     I don't know.

22          Q     You don't know any of them by name?

23          A     Well, I know some of them by name, but I can't give

24 you -- I know TGIG did, I think Essence did, Thrive, Tryke.

25          Q     Anyone else?

1           A     There were others, but I just can't remember.

2           Q     All right. And do you remember because you remember  
3 them attending, or do you remember them because you remember  
4 checks coming to you with their names on them? Or both?

5           A     I mean, I remember -- I remember people attending  
6 and then generally contributions, but I don't remember -- but  
7 I don't necessarily know who everybody's group was, and so I  
8 might have to look that up. So --

9           Q     Did you ever receive any inquiries, or has anyone  
10 ever hypothecated to you perhaps hiring you, any of the  
11 applicants?

12          A     I did -- no. Not in this case.

13          Q     I'm sorry. You did what?

14          A     No. No, not in this case.

15          Q     Not in this case. What do you mean by that?

16          A     Do you mean anybody?

17          Q     Anybody.

18          A     Yeah. I did some -- a little of application work --

19          Q     And when did you do this application work?

20          A     In July to November.

21          Q     July what?

22          A     To November.

23          Q     Of what year?

24          A     2018.

25          Q     When did you leave the State originally?

1           A     January.

2           Q     Of 2018?

3           A     Yes.

4           Q     Isn't there a one-year cooling-off period?

5           A     I didn't work on any -- there's not a one-year  
6 cooling off. There's a -- not representing people that  
7 appeared before the Department. And that's what I -- that's  
8 what I didn't -- I didn't work on any issues that were pending  
9 for the Department when I left.

10          Q     Okay. Let me make sure we're clear. You left in  
11 January of 2018, but you did some work on applications between  
12 July of 2018 and November 2018.

13          A     Yes. Yes, I did.

14          Q     Is that correct?

15          A     Yes.

16          Q     And certainly that's within a year, right, of you  
17 leaving?

18          A     Yes.

19          Q     All right. And applications would be for purposes  
20 of some applicant attempting to get a license; is that  
21 correct?

22          A     Yes.

23          Q     And that license and that application would be  
24 derivative of the Administrative Code that you'd been working  
25 on until you left.

1           A     But I wasn't --

2           MR. KOCH:  Objection.  Legal conclusion.

3           THE COURT:  Overruled.

4           THE WITNESS:  I wasn't involved in the application  
5 -- in applying the application -- for the applications.  I  
6 didn't review any applications, I'd never been part  
7 application process.

8 BY MR. PARKER:

9           Q     Okay.  Let's go back.  Between July and November  
10 2018 what did you specifically do in terms of assisting with  
11 applications?

12          A     Assisting gathering information, pulling information  
13 together.

14          Q     And for whom?

15          A     For WSCC.

16          Q     WFC --

17          A     --SCC.

18          Q     WS, as in Sam, CC?

19          A     Right.

20          Q     All right.  And was that company applying for a  
21 recreational marijuana license?

22          A     Yes.

23          Q     Now, you would agree with me that although you did  
24 not put the application together, you created the regulations  
25 upon which we've heard multiple State employees say the

1 application was supposed to be based upon; isn't that correct?

2 A I didn't regulate the license applications.

3 Q I didn't ask that you did that. Let's focus on the  
4 question I'm asking you. Please answer that question, okay.

5 A Okay.

6 Q All right. So we've had Mr. Pupo, Mr. Gilbert, Mr.  
7 Plaskon, and Ms. Cronkhite all testify that the application  
8 was supposed to be consistent with the ballot question, the  
9 statutes, and then the Administrative Code.

10 A Yes.

11 Q Would you agree with that?

12 A Yes.

13 Q Right. So, although you may not have put pen to  
14 paper in terms of creating the application, you created the  
15 Code upon which the application was supposed to be tied to; is  
16 that correct?

17 A Yes. Well, I was involved in the process, yes.

18 Q Yes, you were. In fact, although I was not here  
19 yesterday, I got pretty good notes indicating that you took  
20 quite a bit of responsibility in putting those Codes together,  
21 the Administrative Code together with regards to 453D. Is  
22 that correct?

23 A Yes.

24 Q So within six months of leaving the State you were  
25 already helping an applicant put together their application,



1 which, again, would have been modeled at least derivatively  
2 from the Administrative Code that you put together; is that  
3 correct?

4 A Yes.

5 Q Thank you. Did you seek clearance from the Attorney  
6 General's Office before you began doing that?

7 A No, I didn't. I didn't work for the State.

8 Q Did you hire Mr. Pupo?

9 A He worked for the Department. He's worked for the  
10 Department for about 14 years.

11 Q Okay. Did you have anything to do with him --

12 A Yes. He took the -- he became the deputy under --

13 Q Continue.

14 A He promoted to that position, yes.

15 Q After you left?

16 A No, no. When I was there.

17 Q Okay. Did you have anything to do with his  
18 promotion?

19 A Yes.

20 Q Did you also know that he had lunches and dinners  
21 with some of the applicants?

22 A Yes.

23 Q Was that the culture?

24 A Well, I -- I don't -- I don't know when, but I know  
25 at some time there was -- I don't know if it was during the

1 application or -- but I do know that he had been to lunch or  
2 two.

3 Q Was that the culture within that Department, to be  
4 entertained by applicants, be it lunch, dinner, coffee,  
5 whatever the case may be?

6 A Well, I wouldn't have called them applicants at the  
7 time. You know, there was a culture of openness and, you  
8 know, that you would grab a cup of coffee or something like  
9 that. And it wouldn't be being entertained, it would be  
10 everybody paying for themselves.

11 Q Well, did you ever go to dinner with Mr. Hawkins?

12 A No, I don't think so.

13 Q Mr. Pupo said he didn't, as well. Did you -- do you  
14 believe or do you have any understanding whether or not Mr.  
15 Gilbert or anyone else within that Department had lunch,  
16 dinner, or coffee with any of the applicants?

17 A I don't. Maybe.

18 Q All right. Did you put together any policies or  
19 procedures or any checks in place to make sure that the Code  
20 was consistent with the ballot?

21 A Other than the procedure of the Task Force and the  
22 regulation making, no. Not other than that.

23 Q Well, the Task Force didn't review the  
24 Administrative Code that you put together, did they?

25 A No.

1           Q     Right. So that's not a check. Was there something  
2 internally done to make sure that you kept taking proposed  
3 Administrative Code sections back to the ballot to make sure  
4 they were consistent?

5           A     Yes. I mean, we would look at the authority in the  
6 initiative and determine if we could make a regulation, and  
7 then we'd draft the regulation and it would go through the  
8 process.

9           Q     All right. So Mr. Miller pointed out at least a  
10 couple of occasions where there were -- appeared to be  
11 liberties taken in terms of creating the Administrative Code  
12 not based expressly on the ballot question. For example, he  
13 discussed with you ranking. Do you recall that?

14          A     Just now?

15          Q     Yes.

16          A     Yes.

17          Q     All right. Did you see the word "ranking" in the  
18 ballot question?

19          A     I think there's a requirement for the Department to  
20 rank the applicants if there's more than one applicant in the  
21 initiative.

22          Q     Okay. So you recall seeing it in the initiative.

23          A     Yes.

24          Q     All right. And did you see how that was supposed to  
25 be done? Was there any manner of ranking described?

1           A       It was supposed to be done by regulation.

2           Q       Okay. And Mr. Miller discussed with you  
3 similarities or comparisons with the purchasing statutes of  
4 Nevada. Do you recall that?

5           A       Yes.

6           Q       All right. Now, Mr. Kemp briefly referred to you  
7 the -- what the County and State may do when it comes to bids.  
8 Are you familiar with any State, County, City, for example,  
9 construction bidding processes?

10          A       No.

11          Q       All right. Those are done typically by the lowest  
12 response of a responsible bidder. Are you familiar with that?

13          A       Part of one of the agencies within my Department is  
14 the Department of Public Works, and I'm not -- I haven't dealt  
15 with any issues with them on that. But I understand that  
16 that's part of the process.

17          Q       Okay. We'll come back to that, because that's going  
18 to take a little longer than before we take this break.

19                 I want to go back for one second to your campaign.  
20 You reported all of the contributions you received?

21          A       Yes.

22          Q       So that would identify all the people who gave you  
23 money --

24          A       Yes.

25          Q       -- some of which would be these applicants we've

1 been talking about; is that correct?

2 A Yes.

3 Q Okay. Do you have any recollection in terms of  
4 amount of money any one applicant may have given you, for  
5 example, Essence or Thrive or Tryke or TGIG?

6 A I don't remember, no.

7 Q Do you remember if anyone gave you over \$5,000?

8 A No. I don't -- I don't think so. I don't know,  
9 though.

10 Q You don't remember? All right.

11 Now, have you spoken to any of these contributors to  
12 your campaign since the litigation has begun?

13 A No. I don't think so.

14 Q When was the last time you recall speaking to Amanda  
15 Connor?

16 A I don't recall the last time I spoke to her. Maybe  
17 the fall.

18 Q During the application process?

19 A Yeah, probably.

20 Q All right. And did Amanda Connor represent Essence,  
21 Thrive, Tryke, or TGIG?

22 A I think so. I'm not sure, though.

23 Q All right. So purchasing is under 333; is that --

24 A Chapter for State purchasing is under Chapter 333.

25 Q And under NRS 233B, that refers to what?

1           A     That's the Administrative Procedures Act, so rule  
2 making and adjudicating contested cases.

3           Q     Are you aware that NRS 233B is referred to in the  
4 NAC 453D?

5           A     Yes.

6           Q     Okay. Do you know the purpose by which --

7           A     I think it's the -- for the -- I'm sorry.

8           Q     Go ahead.

9           A     Oh. I think it's for purposes of contested cases.

10          Q     Do you know whether or not the words "contested  
11 cases" are defined in the regulation or the Administrative  
12 Code?

13          A     I think that -- I think the term "contested case" is  
14 defined in NRS Chapter 233B.

15          Q     Okay. But you don't believe it's defined in the  
16 regulation or the statute?

17          A     In --

18          Q     453D NAC.

19          A     I think it's referencing to 233B.

20          Q     Well, we can take a look at it. It's referenced in  
21 NAC 453D.996, judicial review. Are you familiar with that?

22          A     Well --

23                 MR. PARKER: Can you put that up on the screen,  
24 Shane.

25                 Your Honor, we've got -- it's right there at 12:30.

1 What do you want to do?

2 THE COURT: I was going to take a break after you  
3 finished this particular exhibit.

4 BY MR. PARKER:

5 Q Okay. So, looking at paragraph (2), the words  
6 "contested case" is used at the end of that sentence. Do you  
7 see it?

8 A Yes.

9 Q All right. If you look at the definitions contained  
10 in the NAC 453D, the words "contested case" is not defined;  
11 would you agree?

12 A I don't think it is.

13 Q All right. Do you know why you did not define  
14 "contested case" in the NAC?

15 A I think the NAC 233B defines "contested case."

16 Q Well, that statute does not reference the marijuana  
17 application process, does it? NRS 233B?

18 A No.

19 Q Okay. And you did not include a definition in terms  
20 of the marijuana application process under "contested case" or  
21 in any --

22 A Yeah. There's no -- I don't believe there's a  
23 definition.

24 MR. PARKER: All right. We'll stop there, Your  
25 Honor.

1 THE COURT: All right. So 1:10, please. That way  
2 you guys can move around, get something to drink, maybe get a  
3 little snack. I'm sure Capriotti's is downstairs and ready to  
4 serve you if you want a quick sandwich or soup.

5 (Court recessed at 12:31 p.m., until 1:17 p.m.)

6 THE COURT: All right. Are we ready, guys?

7 MR. PARKER: Yes, Your Honor.

8 THE COURT: The witness and I are both getting our  
9 water pitchers refilled. We're going to stay hydrated. You  
10 guys keep going.

11 MR. PARKER: All righty.

12 BY MR. PARKER:

13 Q So, Ms. Contine, is it Contine?

14 A It's Contine.

15 Q Contine. When you left in January of 2018 from the  
16 State did you take any of the information you worked on  
17 relative to creating the NACs with you?

18 A No.

19 Q Did you take any of the scoring guides or the  
20 evaluation guides?

21 A No, those weren't done at that point.

22 Q How about any of the training guides?

23 A No.

24 Q Okay. You don't recall taking anything away, be it  
25 electronic or hard copies, relative to the 453D to either the



1 statute or the Administrative Code?

2 A I might have had a printed-out copy of the regs that  
3 I took with me. But other than that, I don't -- there was  
4 nothing.

5 Q All right. Now, do you specifically recall any  
6 differences between -- and this is a general question --  
7 between 453A and 453D that you in particular created?

8 A Well --

9 MR. SHEVORSKI: Object to vague, Your Honor.

10 THE COURT: Overruled.

11 THE WITNESS: Some of the differences from the  
12 initiative were some additional requirements such as the civil  
13 penalties. That's not, I don't believe, in 453A. There was a  
14 new licensing structure and a few other things that maybe  
15 there wouldn't have been other regulations or -- is that what  
16 you're asking?

17 BY MR. PARKER:

18 Q Yeah. Generally.

19 A Okay.

20 Q Were there any requirements under 453A regarding the  
21 location, the physical location of the proposed establishment?

22 A I think so.

23 Q Okay. Does 453D have any differences in respect to  
24 the physical location requirement than 453A?

25 A I think the way that it's worded it has a slightly

1 different application in that I think there was some confusion  
2 under medical. Again, I know there was some litigation. I  
3 was aware at some point that there was some litigation about  
4 whether the County approved first or the State approved first,  
5 and so I think there was some language in 453C that was  
6 interpreted to essentially require the location to be  
7 determined after the marijuana license was essentially  
8 determined.

9 Q Okay.

10 A So -- okay. Go ahead. Sorry.

11 Q Let's go back. In terms of suitability of location,  
12 you know, certain distances from schools, churches, is that  
13 the same for 453A and 453D?

14 A Well, 453D has provisions in the actual statute.

15 Q Right.

16 A And I'm not sure if they're the same.

17 Q Okay. Is there a definition of a retail marijuana  
18 establishment in the Administrative Code?

19 THE COURT: Is everybody okay?

20 MS. HAAR: I just dropped my water bottle.

21 THE COURT: All right, Ms. Haar.

22 MS. HAAR: Apology.

23 THE WITNESS: I'm not sure. I think there is, but I  
24 think it would be based on the definition in the statute -- or  
25 the initiative.

1 BY MR. PARKER:

2 Q Okay. Well, we can pull up the NAC definitions, and  
3 you can take a look and tell me if you see the definitions of  
4 "retail" or "recreational marijuana establishment" in the  
5 definitions.

6 THE COURT: And they're also in the book that you  
7 have, as well, if you'd prefer that way.

8 BY MR. PARKER:

9 Q You can tell -- you can go to -- since it's  
10 alphabetically arranged, you can go to between T and S.  
11 There's only one definition that has an R before "registry."  
12 Is that correct?

13 A Okay. So -- I'm sorry.

14 Q You don't see the definition of a "retail" or  
15 "recreational marijuana establishment" in the NAC --

16 A Right.

17 Q -- is that correct?

18 A Right.

19 Q But for some reason you have the definition of a  
20 medical marijuana establishment in the NAC under 453D. Do you  
21 know why you didn't include a recreational or retail marijuana  
22 establishment in the definitions?

23 A I think that's a drafting issue with the Legislative  
24 Council Bureau so that -- because the definition of "retail  
25 marijuana store" is in NRS 453D. So they didn't put it in the

1 reg, they wouldn't -- and there's probably some reference in  
2 this regulation to a medical marijuana establishment, and so  
3 they defined it in this reg. That would be my understanding.

4 Q Okay. So why would you include a definition of  
5 "medical marijuana" under 453D?

6 A There's -- someplace else there's a reference. I  
7 don't know exactly where it is, but there's a reference to  
8 "medical marijuana establishment."

9 Q Okay.

10 A And that might have been a drafting that LCB did.  
11 When they looked through the regs they see that there's a  
12 definition and then they would clarify that -- or it might  
13 have come in in the original.

14 Q You have no idea why it's still in there?

15 A Well, I don't -- I could look through the reg and  
16 probably find a definition or a reference to "medical  
17 marijuana establishment," but from my memory I don't know  
18 exactly where it is.

19 Q Good enough. Can you go to NAC 453D.210. Are you  
20 familiar with this?

21 A Yes.

22 Q Okay. Did you have anything to do with creating  
23 this regulations?

24 A Yes.

25 Q All right. It says here that "The Department can

1 collect fees for investigating a complaint." Do you see that?

2 A Yes.

3 Q Now, could the Department also charge fees for doing  
4 background checks for owners?

5 A I believe the background check fees would be  
6 incorporated in the license fees.

7 Q Okay.

8 A So that's probably why there's not a separate one.  
9 But I guess an argument could be made there could be a  
10 separate regulation for that.

11 Q Right. And so when comments were made earlier about  
12 not having the resources to do background checks for all  
13 owners, the Department of Taxation could have created a  
14 regulation that included the cost of doing so; isn't that  
15 correct?

16 A I mean, I think that it was created by the license  
17 fee, yes.

18 Q Okay. So there was enough money in the license fee  
19 to do the background checks?

20 A There's money in the license fee, yes.

21 Q Enough money to do the background checks?

22 A Yes.

23 Q All right. So when I -- we've heard arguments  
24 earlier in this process or these hearings that it would be too  
25 onerous for the Department of Taxation to do background checks

1 on all owners, that's not a true statement, is it?

2 MR. KOCH: Objection. Argumentative.

3 THE COURT: Overruled.

4 THE WITNESS: I think it is a true statement.

5 BY MR. PARKER:

6 Q Well, you just told me the money was in the fees and  
7 there was sufficient money to do background checks; right?

8 A Well, money's not everything. Oh. Wait. Maybe it  
9 was.

10 Q Oh. All right.

11 MR. GENTILE: Your Honor, I move for a competency  
12 examination.

13 THE WITNESS: I'm a public servant.

14 THE COURT: This is not a criminal proceeding.

15 MR. GENTILE: Oh. Okay.

16 THE WITNESS: I think just in -- in addition to the  
17 money, that you have to have people that can process things.  
18 And when you're balancing those types of issues with the  
19 issues related to it being burdensome on the industry and the  
20 ability to protect the public it's basically, you know, again,  
21 it's just weighing all of that together.

22 BY MR. PARKER:

23 Q Ms. Contine, I'm going to bring you back in, okay?  
24 So when I first asked the question if the money was available  
25 you said, yes, it's in the fees.

1           A     Well, there's money in the fees.

2           Q     To do the background checks. So then --

3           A     It doesn't say specifically that the money for the  
4 fees goes to the background check, but the point I was trying  
5 to make is that that's -- it's my assumption that that's why  
6 there's not a separate provision for that. It would --

7           Q     Good enough. So, Ms. Contine, let me start all  
8 over, again. I asked you the question whether or not there  
9 was sufficient money to do background checks for all owners.  
10 You said, yes, it's in the fees. Do you recall saying that?

11          A     There's money to do the work, yes.

12          Q     Thank you. And then after I told you what I'd heard  
13 before from other members of the Department of Taxation then  
14 you seemed to give me conditions and caveats to your position.  
15 So I want to bring us back to a clear answer, and I'm going to  
16 try to give you a very clear question, okay?

17          A     Okay. Thank you.

18          Q     If the Department of Taxation wanted to charge more  
19 for background checks of the owners, could it have done so?

20          A     It could have created -- gone through the regulatory  
21 process to do that. I don't know if it ultimately would have  
22 been approved or how that would have shaken out during  
23 discussion, but it would be possible to make the regulation --  
24 to at least go through the process of making a regulation.

25          Q     Right. And, Ms. Contine, when it was determined

1 what the fee would be for the application the Department of  
2 Taxation believed that was sufficient to do the background  
3 check of owners; is that correct?

4 A The Department didn't determine the fee. The fee  
5 was determined in the initiative.

6 Q Okay. So at that point the initiative said "all  
7 owners," and it established the fee; is that correct?

8 MR. KOCH: Objection. Misstates the initiative.

9 THE COURT: Overruled.

10 THE WITNESS: It says -- it provides the fees for  
11 the various license types, yes.

12 BY MR. PARKER:

13 Q For all owners; is that correct?

14 MR. KOCH: Objection. Misstates the initiative.

15 THE COURT: Overruled.

16 THE WITNESS: For the establishments for their  
17 applications.

18 BY MR. PARKER:

19 Q The owners of those establishments; is that correct?

20 A I don't -- I don't read it that way. It's related  
21 to something different than the owners.

22 Q Do you have a different recollection of what the  
23 statute says or the initiative says in terms of doing  
24 background checks for all owners?

25 A No.



1 Q So let's take a look at 453D.205(1). This way I can  
2 remind you of it. NRS 453D.205(1). Do you see that, Ms.  
3 Contine?

4 A Yes.

5 Q It says, "Each prospective owner, officer, and board  
6 member"; is that correct?

7 A Right.

8 Q All right. So the amount was established in terms  
9 of the fee, and the scope was established by the initiative  
10 and the statute; is that correct?

11 MR. KOCH: Objection. It's not part of the  
12 initiative.

13 THE COURT: Overruled.

14 THE WITNESS: I'm sorry. Can you restate that.  
15 BY MR. PARKER:

16 Q Yes. You see in the statute where the scope in  
17 terms of officers, owners, and board members are listed there.  
18 Can you see it?

19 A Yes.

20 Q And we know the fee was \$5,000; is that correct?

21 A I don't -- there's different licenses and there were  
22 different license fees.

23 Q Okay. For whatever the license fee amount was was  
24 that established by the initiative, or by the statute?

25 A By the initiative -- by the statute essentially.

1           Q     All right. So within that amount of money and based  
2 upon the scope we saw just a second ago under the statute the  
3 Department of Taxation should have been able to do what's  
4 described there, is that correct, in terms of background  
5 checks?

6           A     Yes.

7           Q     Good. Now, did the Department of Taxation ever  
8 complain or ask for additional money to do background checks  
9 to accomplish the scope identified in the statute?

10          A     Not specifically to that, no.

11          Q     Right. Now let's take a look at NAC 453D.239. And  
12 this is the annual reimbursement of costs to local  
13 governments. Do you see that?

14          A     Yes.

15          Q     Are you familiar with that regulation?

16          A     Yes.

17          Q     What's the point of that regulation?

18          A     The initiative said that the cost should be paid to  
19 the Department and to each locality in administering the  
20 provisions of this chapter. And so that was a -- that was the  
21 regulation that determined how much the local governments  
22 would get.

23          Q     All right. And the local governments got or  
24 allocated these amounts based on the number of licenses you  
25 anticipated for those jurisdictions?

1           A     There was ongoing discussion through the working  
2 group and the legislature about the -- what essentially that  
3 provision meant. And the legislature essentially determined  
4 that in 453A and D that that was the amount of money based on  
5 the testimony that had occurred.

6           Q     Okay.

7           A     So they were making the change -- or they were doing  
8 it with respect to 453D, and a certain amount of money was put  
9 in the budget. So that's reflecting that.

10          Q     All right. Good enough. Now, NAC 453D.250 says,  
11 "Designation of persons responsible for providing information,  
12 signing documents, and ensuring certain actions are taken."  
13 Do you see that?

14          A     Yes.

15          Q     Were you responsible in part for preparing or  
16 creating this regulation?

17          A     Yes, I was involved in the process.

18          Q     1(b) says that, "If a corporation is applying for a  
19 license for a marijuana establishment, a natural person who's  
20 an officer of the corporation shall provide the information";  
21 is that correct?

22          A     Right.

23          Q     All right. I don't see a distinction between  
24 corporation and public corporation within this chapter. Do  
25 you?

1           A     I don't see the language, no.

2           Q     Do you see within the definition of -- the  
3 definitions portions of this chapter a definition for the word  
4 "owner"?

5           A     No.

6           Q     Would you agree with me that there is no distinction  
7 in terms of this chapter between public corporations and any  
8 other corporation in how it's treated?

9           A     I don't think there's a distinction there.

10          Q     Which means if you have a corporation with 10  
11 people, you do background for those 10. If you have a  
12 corporation with 100 people, you do background on 100; is that  
13 correct?

14               MR. KOCH: Objection. Incomplete hypothetical.

15               THE COURT: Overruled.

16               THE WITNESS: Right. And then the regulation  
17 addressed the 5 percent.

18 BY MR. PARKER:

19          Q     Well, we'll get to that. But in terms of this  
20 section there is no distinction, and it doesn't even say the  
21 5 percent in terms of this type of corporation; right? It  
22 doesn't mention 5 percent in this part of NAC 453D.250; right?

23          A     Right. And this is just a single person who can  
24 sign documents on behalf of the entities.

25          Q     Understood. Understood.

1           A     Okay.

2           Q     I'm just making sure that at this point there is no  
3 distinction between a corporation and a public corporation; is  
4 that correct?

5           A     Okay.

6           Q     Is that correct?

7           A     Yes.

8           Q     All right.

9           A     Well, that's what it -- there's no definition there,  
10 yes.

11          Q     Thank you. And if the Department of Taxation wanted  
12 to draw a distinction between the two in treating them  
13 differently, they should have done so in this regulation;  
14 right?

15          A     It could have, yes.

16          Q     But chose not to?

17          A     I don't know if there was a choice in that context  
18 to do that.

19          Q     Let's just say it didn't. How about that?

20          A     Did not.

21          Q     Good enough. Looking at 2(a) it says, "For purposes  
22 of this chapter and Chapter 453D of the NRS the following  
23 persons must comply with the provisions governing owners,  
24 officers, and board members of a marijuana establishment." Do  
25 you see that?

1           A     Yes.

2           Q     Again, there's no distinction between corporation  
3 and public corporation; right?

4           A     Correct.

5           Q     All right. Let's take a look at 453D.255. Now,  
6 this is the 5 percent that you were speaking of earlier;  
7 right?

8           A     Right. Yes.

9           Q     Okay. Now, how do you reconcile 453D.255 and  
10 NRS 453D.210?

11               MR. SHEVORSKI: Objection. Asked and answered, Your  
12 Honor.

13               THE COURT: Overruled.

14               THE WITNESS: Again, as -- I know you weren't here  
15 yesterday.

16 BY MR. PARKER:

17           Q     I was not.

18           A     As I've explained extensively, the regulation  
19 interprets and applies the provisions, and in making the  
20 5 percent regulation it was a recommendation through the  
21 Governor's Task Force, through the working group, through the  
22 Task Force that was then -- it was a requirement or it was  
23 asked to be a requirement in 453A, as well, and then it was  
24 put into the regulations in 453D looking at what is the  
25 purpose -- what are we trying to protect here and if we have

1 this 5 percent are we still able to protect the public safety  
2 by only evaluating those people who have more than 5 percent.  
3 I mean, I've said -- I've testified extensively on this and --

4 Q So what happens if someone who owns 4 percent has a  
5 felony conviction not allowed under the Administrative Code?  
6 Have you protected the public when you've done so -- when you  
7 failed to do the background check with someone less than  
8 5 percent?

9 MR. KOCH: Objection. Argumentative.

10 THE COURT: Overruled.

11 THE WITNESS: I think the rationale in the  
12 discussion that occurred throughout the process was that there  
13 would be such a low amount of ownership interest that the  
14 public health or safety would be protected.

15 BY MR. PARKER:

16 Q Let me ask it one more time. I'm not concerned  
17 right now with all of the backdrop that you're giving me. I  
18 want you to answer the question directly. If someone had a  
19 4 percent interest in the company but had a felony conviction,  
20 a Category 1 under the Administrative Code --

21 You're familiar with that, are you not? Is that a  
22 yes?

23 A Yes. Sorry.

24 Q Okay. -- would you agree with me that by failing to  
25 do what the statute did you failed to protect the public?

1 Because the statute said every owner, every prospective owner.

2 MR. KOCH: Objection. Misstates the statute.

3 THE COURT: Overruled.

4 THE WITNESS: No.

5 BY MR. PARKER:

6 Q So you think it's okay to have a 4 percent owner  
7 have a Category 1 felony conviction prohibited by the  
8 Administrative Code to be an owner?

9 MR. KOCH: Objection. Misstates testimony.

10 THE COURT: Overruled.

11 THE WITNESS: No. I think that -- as I've explained  
12 before, again, the thought process in developing the  
13 regulation and having it go through the process, there would  
14 still be a level of protection. Interpreting the provisions  
15 and applying them, there would still be a level of protection  
16 that would exist that would protect the public health and  
17 safety.

18 BY MR. PARKER:

19 Q Ms. Contine, I'm going to assume that you are doing  
20 your best, and I'm going to re-ask the question. Because the  
21 Judge has been kind enough to allow us to ask questions as  
22 long as we are trying to get answers.

23 A Right.

24 Q So I'm going to ask it one more time. If you  
25 allowed a 4 percent owner -- if you failed to do a background



1 check on a 4 percent owner who has a felony conviction  
2 prohibited under the Administrative Code, did you fail in  
3 carrying out the NAC or the NRS?

4 A No.

5 Q Tell me why not. Should that owner be allowed to  
6 have --

7 A I don't have any other -- I don't have anything to  
8 add to this. I've mentioned -- I've spoken --

9 THE COURT: Ma'am, can you answer the question,  
10 please.

11 MR. PARKER: Thank you.

12 THE WITNESS: I've spoken to this. It's the same  
13 answer that I've provided.

14 THE COURT: Ma'am, answer the question, please.

15 MR. PARKER: Thank you.

16 THE WITNESS: That there was the balance of the  
17 unduly burdensome and the public safety and making the  
18 regulation and having the regulation go through the process.  
19 I believe that it was protecting the public health and safety.  
20 And the regulations complied with the statute.

21 THE COURT: So, Ma'am, you believed you could  
22 substitute your judgments for the voters' of the State of  
23 Nevada?

24 THE WITNESS: I believe that we went through the  
25 process that we went through and we interpreted the provisions

1 and we considered all the responsibilities that we had under  
2 the initiative. And I believe that the regulation was validly  
3 adopted and it is valid, yes.

4 THE COURT: Okay. Thanks.

5 BY MR. PARKER:

6 Q Should a 4 percent owner with a felony conviction be  
7 allowed to be an owner of a retail marijuana establishment in  
8 the state of Nevada?

9 A Yes. Under the regulation and the statute, yes.

10 Q Let's take a look at that. Category 1 is under NAC  
11 453D.905. Are you familiar with that?

12 A Yeah.

13 Q And Category 1 is under Section (3)(a). Are you  
14 familiar with that?

15 MR. PARKER: So, Shane, it's 453D.905(3).

16 BY MR. PARKER:

17 Q It says here "Category 1 violations are violations  
18 of a severity that make a person ineligible to receive a  
19 license, including, without limitation, conviction of an  
20 excluded felony offense." That's number (3)(a)(1). Is that  
21 correct?

22 A Yes.

23 Q So if a 4 percent owner is an excluded -- has a  
24 conviction of an excluded felony offense, doesn't the Code say  
25 he cannot be an owner? It says, "ineligible"; is that

1 correct?

2 A That's what the statute says, yes.

3 Q And it doesn't say in this part of the statute  
4 5 percent or 2 percent. It just says an owner; is that  
5 correct?

6 A Yes.

7 Q So do you believe -- let's take what you said  
8 earlier as being correct. So, Ms. Contine, under this section  
9 that 4 percent owner is ineligible if he has a conviction --  
10 he or she has a conviction of an excluded felony offense;  
11 isn't that correct?

12 A Yes.

13 Q Thank you. And the only way you would have known  
14 that that person had that conviction of that excluded felony  
15 offense is to actually do a background check for all  
16 prospective owners; isn't that correct?

17 A Yes.

18 Q That's right.

19 MR. PARKER: Took a while, Your Honor.

20 BY MR. PARKER:

21 Q All right. So let's take a look at NAC 453D.265,  
22 and I'm interested in (1)(b)(3). Do you see the physical  
23 address requirement?

24 A Right.

25 Q All right. Now, I know you said you didn't work on

1 the application. When you created this part of the  
2 Administrative Code did you believe that the physical address  
3 was important for the proposed marijuana establishment?

4 A Yes.

5 Q And tell me why you believed it was important to  
6 have a physical address.

7 A Well, you'd have to have a physical address to have  
8 local government review.

9 Q Good answer. I looked through your definitions and  
10 I don't see the word "locality" defined. Do you know why  
11 "locality" was not defined in your definition?

12 MR. SHEVORSKI: Objection. Vague.

13 THE COURT: Overruled.

14 THE WITNESS: You mean with respect to jurisdiction?  
15 BY MR. PARKER:

16 Q And see, that's different, and I was going there  
17 next. Because some parts of the Code says "locality," others  
18 said "jurisdiction." Some they even use it in the same  
19 paragraph. So is there a distinction in your mind between  
20 locality and jurisdiction? Neither are defined in the  
21 Administrative Code.

22 A The locality, I would interpret that to be the local  
23 government jurisdiction. So --

24 Q Okay. And what would you consider jurisdiction,  
25 then?

1           A     I mean, it's the -- it's the local government.

2           Q     So you think they're interchangeable?

3           A     I don't know if they're interchangeable, but I think  
4 of them the same way.

5           Q     Okay. So as the creator of the Administrative Code  
6 you don't know if there's a difference between jurisdiction  
7 and locality?

8           A     I think of them as the same way.

9           Q     They're the same?

10          A     So the local government jurisdiction.

11          Q     They're the same to you?

12          A     I think of them in the same way, yes.

13          Q     All right. So when you created this provision  
14 453D.265, in particular (1) (b) (3) you had an idea of why a  
15 physical address was important, and I think you just said that  
16 a second ago; correct?

17          A     Yes.

18          Q     And did you notice that the statute also placed an  
19 importance on the physical address?

20          A     Right.

21          Q     Did you also notice that the Ballot placed an  
22 importance on the physical address?

23          A     Yes.

24          Q     So do you have any explanation why the Department of  
25 Taxation, after you left, changed the application to remove

1 physical address? Do you have any information on that?

2 A I don't know about that, no.

3 Q All right.

4 A But I --

5 Q If you don't know I'm going to move on. Look at  
6 NRS 268 -- it's 453D.268 --

7 THE COURT: NRS, or NAC?

8 MR. PARKER: NAC. I'm sorry, Your Honor.

9 THE COURT: Okay.

10 BY MR. PARKER:

11 Q -- (2)(e). And in this portion -- this provision it  
12 says the physical address where the proposed marijuana  
13 establishment will be located, as well. Is that correct?

14 A Yes.

15 Q Is this another reinforcement of the importance of  
16 the physical address for the purposes of the application?

17 A I think it's discussing each individual application,  
18 yes.

19 Q Good. Looking at 453D.268(3), it says, "evidence of  
20 the amount of taxes paid." How is that -- why was that added  
21 to this provision?

22 A It demonstrates the ability to operate a business,  
23 that you've operated a business in compliance, that you  
24 followed the rules, that you've contributed to the community  
25 so that there can be some analysis of community or economic

1 stability.

2 Q Okay. Let's take those individually. We've learned  
3 that one of the applicants and owners had over 30 deficiencies  
4 noted. Certainly taxes doesn't equate to compliance, does it?

5 A Regulatory or --

6 Q Yeah. Deficiencies noted by the Marijuana  
7 Enforcement Division, over 30, including selling to a minor.  
8 So you would agree with me that paying taxes doesn't equate to  
9 compliance?

10 MR. KOCH: Objection. Misstates testimony.

11 THE COURT: Overruled.

12 THE WITNESS: I don't know specifically what you're  
13 talking about. I just -- I tried to express my understanding  
14 and the rationale behind one piece of the puzzle that you can  
15 demonstrate an economic stability.

16 BY MR. PARKER:

17 Q Well, you can -- the only thing you can decide or  
18 determine from that is that you paid taxes; right? That's it,  
19 it's just the amount of money you've paid; isn't that correct?

20 A Right.

21 Q Thank you. It doesn't make you a better operator  
22 just because you pay taxes; right?

23 A Well, it demonstrates that you've complied with the  
24 provisions, that you've been involved in the community, that  
25 you -- and it's just -- it's not just --

1 Q Let me -- we can use our own president. We don't  
2 know how much Mr. Trump paid, but I doubt that any of us would  
3 equate how much taxes he paid with compliance; right?

4 A Right. Other beneficial financial contributions, I  
5 mean, it's -- yeah, I think that -- what I explained -- the  
6 rationale behind that is what I would say. I don't know --  
7 regulatory compliance, no.

8 Q So if you were a strip club owner and you paid a lot  
9 of taxes, does that necessarily mean that you're going to be a  
10 good marijuana establishment owner?

11 THE COURT: And you're referring to live  
12 entertainment taxes?

13 MR. PARKER: Yes. Sounded a lot cleaner when you  
14 said it, Your Honor.

15 BY MR. PARKER:

16 Q That's exactly what I meant, Ms. Contine.

17 A Not necessarily, no.

18 Q Right. The amount of money you pay in taxes does  
19 not determine whether or not you're going to be a better  
20 marijuana operator, will it?

21 A It's going to demonstrate an economic stability that  
22 is an indication of whether you can operate a business.

23 BY MR. PARKER:

24 Q All right. Ms. Contine, we got, you know,  
25 interrupted twice now.



1           The amount of money you pay in taxes, if it's not a  
2 marijuana establishment, does it really have any relationship  
3 to how you operate a marijuana retail establishment?

4           MR. KOCH: Objection. Asked and answered.

5           THE COURT: Overruled.

6           THE WITNESS: I think it's one piece that can go  
7 into the analysis.

8 BY MR. PARKER:

9           Q     All right. So if you continue to 453D.268(5)(2), it  
10 says, "Any previous experience at operating other businesses  
11 or nonprofit organizations." Do you see that?

12          A     Right.

13          Q     Was that your brainchild to include nonprofit  
14 organizations, or did someone else come up with that?

15          A     I think it might have been a discussion in the  
16 working group or maybe somebody -- I don't, I mean, I don't  
17 know that I sat down and typed that up. I don't think I did,  
18 but I didn't say, oh, we should include nonprofits. I don't  
19 recall that I said that, but throughout the process it might  
20 have been discussed and it was incorporated.

21          Q     And did someone believe working at a thrift store  
22 would be helpful to running a marijuana establishment?

23          A     I don't think so. I don't know.

24          Q     Did you see it in the ballot initiative?

25          A     No.

1 Q Did you see it in the statutes?

2 A No.

3 Q So this is something -- a deviation from both  
4 created by someone during the working group?

5 MR. KOCH: Objection. Argumentative.

6 THE COURT: Overruled

7 THE WITNESS: I don't think it's necessarily a  
8 deviation. I think that -- that specifically is so that a  
9 person can demonstrate that they have some experience in  
10 running a business or a nonprofit or some level of, again,  
11 experience that creates stability. Again, we're going through  
12 a process where we're trying to develop ways that people can  
13 distinguish themselves because there's ranking. So you have  
14 to have some categories in there that gives people opportunity  
15 to distinguish themselves, and I think that was the thought  
16 behind that provision and some of the others. So --

17 BY MR. PARKER:

18 Q Wouldn't a way of distinguishing yourself as a owner  
19 of a medical marijuana establishment is to show that you have  
20 fewer deficiencies than someone else, did you run your  
21 operation with less compliance issues than the next person?

22 A I think that would be relevant, yes.

23 Q Wouldn't that be relevant to show that you had a  
24 spotless four or five years, whereas someone who's had over  
25 30 compliance issues, that would be a way of differentiating

1 two operations; right?

2 A Right. I mean, if you were -- you know, you'd have  
3 to look at the level of the violations. And what spotless  
4 means I'm not sure.

5 Q Right. Well, that means none, zero.

6 A Okay.

7 Q All right. Or even if somebody had five and someone  
8 had 35?

9 A Yeah, in that particular category you'd look at  
10 that, yes.

11 Q Right. That is a better way of judging how someone  
12 will operate a marijuana establishment in the future based  
13 upon how many deficiencies they've had in the past; isn't that  
14 correct?

15 A And that was a consideration, yes.

16 Q Well, that was taken out of the application; did you  
17 know that?

18 A No.

19 Q Yeah, it sure was. Someone thought it was more  
20 important to consider nonprofit organizations and your  
21 contributions towards those, as opposed to how many  
22 deficiencies you may have had over four years. That was not  
23 your decision, was it?

24 MR. KOCH: Objection. Misstates the evidence.

25 THE COURT: Overruled.

1 THE WITNESS: I don't think I would have decided to  
2 take something out that was in the regulation, but I don't  
3 know all the facts behind what you're talking about.

4 BY MR. PARKER:

5 Q Because you know under 453D.272 compliance is an  
6 important factor, isn't it?

7 A Yes.

8 Q Isn't that correct, ma'am?

9 A It's in the regulation, and it was part of the  
10 ongoing discussions that -- there's a lot of testimony. I  
11 think I read some today even where I testified to such.

12 Q That's right. Let me take a look at Exhibit 96,  
13 please, so you can see what your successor did in terms of  
14 deficiencies. Are you familiar with Nevada Organics?

15 A No.

16 Q You're familiar with Andrew Jolley?

17 A Yes.

18 Q Okay. That's the same -- that's his company, I  
19 believe.

20 A Oh. Okay.

21 Q And you can read that to yourself. So this is May  
22 2018, approximately four, five months after you left. And Ms.  
23 Kara Cronkhite --

24 Do you know her?

25 A Yes.

1 Q She's indicating that an investigation, SOD  
2 regarding -- a self-reported event regarding the sell -- or  
3 sale of marijuana to a minor be removed. Do you see that?

4 A So -- yes.

5 Q And you would agree with me selling marijuana to a  
6 minor is a serious offense?

7 A Yes.

8 Q And you would agree with me that that's something  
9 that the initiative said was prohibited?

10 A Yes.

11 Q And in fact it's reinforced in the statute?

12 A Yes.

13 Q And in fact it's a Category 2 violation under the  
14 Code; is that correct?

15 A Under the civil penalties you mean?

16 Q Yes, under 905 -- NAC 453D.905; is that correct?

17 A Uh-huh.

18 Q Is that a yes?

19 A I'd have to --

20 Q You keep saying uh-huh, and I keep saying is that a  
21 yes.

22 A Sorry. I apologize for that.

23 What did you reference?

24 Q In terms of selling to a minor?

25 A Well, you just said it's in 453D --

1 Q 453D.905.

2 A Okay. In the regulation, then?

3 Q Category 2. And I'll tell you exactly where it is.

4 A Yeah. Okay. I would say that if you're  
5 representing that it's in the regulation, yes, I think it's --

6 Q You think it's a serious offense, do you not?

7 A Well, it's a Category 2 violation in the regulation,  
8 so yes.

9 Q Yeah. I can show it to you if you want to take a  
10 look at that. It's under --

11 A It's on the screen here.

12 Q Yeah. All right. Good. Yeah, it's (3) (b) (7).  
13 Well, is it (7)?

14 A Yes.

15 Q Yeah. Somewhere in there.

16 A Oh. Wait. No. I'm sorry. Yeah, it's (b) (7).

17 Q Oh. Okay.

18 A Yeah.

19 THE COURT: Shane had it for us.

20 MR. PARKER: Yeah, I know it's in here.

21 THE COURT: It's on the screen, Mr. Parker. It's in  
22 yellow on the screen.

23 BY MR. PARKER:

24 Q Here we go. It's actually under (c). "For failing  
25 to verify the age or selling or otherwise providing marijuana

1 to persons less than 21 years of age." Do you see that?

2 A Yes.

3 Q All right. So it's a Category 2(b) violation, to be  
4 exact. So that type of violation and deficiencies, that's a  
5 way of determining who will be a better operator. Would you  
6 agree as you did previously?

7 A It could be considered in that category, yes.

8 Q Isn't that more important, to know how a operator  
9 has done over the past several years when considering whether  
10 or not to give them a license for recreational, to know they  
11 had deficiencies and these types of violations?

12 MR. KOCH: Objection. Argumentative.

13 THE COURT: Overruled.

14 THE WITNESS: I think the regulation anticipates  
15 that there would be some review of compliance.

16 BY MR. PARKER:

17 Q Thank you.

18 A In that email -- I'm not saying that -- I don't know  
19 for a fact that they didn't get some type of a violation. It  
20 looked like there was some other language about applying a  
21 different process, like allowing for a plan of correction,  
22 which is what comes after the deficiencies. So I don't really  
23 know the ins and outs of all of that.

24 Q No worries. So look at NAC 453D.272. This is one  
25 of the provisions where I've indicated to you that the word

1 "locality" and "jurisdiction" is used in the same paragraph,  
2 and in fact the same sentence. So 453D.272(1). It says,  
3 "Within each applicable locality for any applicants which are  
4 in a jurisdiction that limits the number of retail marijuana  
5 stores." Do you see that?

6 A Yes.

7 Q What was your understanding or meaning behind  
8 "locality" and then "jurisdiction" in this provision?

9 A I think that would be the local government locality  
10 in the County. So they wouldn't be in the -- they wouldn't be  
11 -- well, that's what I understand it to be.

12 Q So that would be Henderson within Clark County?

13 A Yes.

14 Q So there would be no locality you could use to the  
15 City of Las Vegas?

16 A The City of Las Vegas is in Clark County.  
17 Henderson's in Clark County. Unincorporated Clark County is  
18 in Clark County.

19 Q Okay.

20 A North Las Vegas is in Clark County.

21 Q Okay.

22 A I think that's the --

23 Q But aren't they also in separate jurisdictions for  
24 purposes of applying for a license?

25 A Well, they're in separate local government



1 jurisdictions, yes.

2 Q Right. Okay. Now, 453D.305, did you prepare or  
3 create this regulation?

4 A Yes. I mean, it's part of the process, yes.

5 Q Okay. And under (1) -- I'm sorry, (2)(d) it says --  
6 first it says, "A person or entity that wishes to renew a  
7 license for a marijuana establishment must annually submit to  
8 the Department," and it says (d), "A list and description of  
9 each of the following which has not been previously reported  
10 to the Department. A conviction of an owner --"

11 Do you see that?

12 A Yes.

13 Q "-- officer or board member." See that?

14 A Yes.

15 Q Now, if the Department required such would, you  
16 agree with me that this provision does not limit it to  
17 5 percent owners, board members, or officers?

18 A Not in that language, no.

19 Q Right. So if it was required annually to provide  
20 that information for all owners, all officers, and all board  
21 members, why wouldn't it be required in the initial  
22 application process?

23 A I think it would be interpreted that that provision  
24 would apply in this case, as well.

25 Q It doesn't say it?

1           A     No, it doesn't.

2           Q     In fact, the 5 percent is not mentioned anywhere  
3 else in chapter 453D; isn't that correct?

4           A     I don't know.

5           Q     You don't recall seeing it anywhere else?

6           A     I don't recall if it -- if you're telling me that it  
7 doesn't, at this point in time I don't have any basis to say  
8 that you're not telling the truth.

9           Q     It also requires you to report -- or requires the  
10 licensee to report a civil penalty or judgment entered against  
11 an owner, officer, or board member; isn't that correct?

12          A     That's what it says, yes.

13          Q     Now, let me tell you why I believe that 5 percent  
14 makes no sense, okay. Why would you differentiate between a  
15 5 percent owner, but require every officer and board member to  
16 provide the information? Wouldn't the owner be more important  
17 than the officer or board member? Wouldn't you want to know  
18 more about the owners than an officer and a board member?

19               MR. KOCH: Objection. Argumentative.

20               THE COURT: Overruled.

21               THE WITNESS: I don't know that it says that.

22 BY MR. PARKER:

23          Q     Well, you would agree with me, if we go back to NAC  
24 453D.255, it says, "An ownership interest of less than  
25 5 percent"; right? It doesn't say a 5 percent or lesser of an

1 officer or lesser of a board member. It does not qualify or  
2 -- it doesn't qualify the type of officer or board member;  
3 right? Which means all officers and all board members; right?

4 A Yes.

5 Q Right. Wouldn't you agree with me that an owner is  
6 the more important person in terms of the hierarchy of a  
7 business?

8 MR. KOCH: Objection. Vague.

9 THE COURT: Overruled.

10 THE WITNESS: I don't know.

11 BY MR. PARKER:

12 Q So a board can fire an officer; right?

13 MR. SHEVORSKI: Objection. Vague.

14 THE COURT: Overruled.

15 BY MR. PARKER:

16 Q Isn't that true?

17 A I don't know.

18 Q You don't know? Wait a second. You're an attorney;  
19 right?

20 A Yeah. but I --

21 Q You're telling me -- wait a second. Wait. Wait.  
22 Wait. Wait. You're an attorney; right?

23 A Yes.

24 Q You had corporate law as a requirement in law  
25 school; right?

1           A     No.

2           THE COURT: Mr. Parker, we don't need to go through  
3 this.

4           MR. PARKER: All right. All right. no worries.

5           THE COURT: I've had lots of lawyers who don't know  
6 who can fire who.

7           THE WITNESS: I don't know.

8 BY MR. PARKER:

9           Q     If you don't know, that's fine. I will skip it. I  
10 just -- I'm surprised.

11          A     I don't know that an owner -- I don't know if an  
12 owner can -- you're asking me can an owner fire an officer?

13          Q     Yes. Can I go -- I own my practice. Can I go in  
14 and fire anyone in that office?

15          MR. KOCH: Objection. Need to look at his  
16 documents.

17          THE COURT: Very good, Mr. Koch. Sustained.

18          THE WITNESS: Yeah. I mean, I'm guessing that's the  
19 point. I don't understand how everybody's structures are set  
20 up and that type of thing.

21 BY MR. PARKER:

22          Q     Okay. That's fine, Ms. Contine. That is fine. You  
23 don't know if an owner can fire an officer. Then that's based  
24 on not knowing the organizational setup of a particular  
25 company. Is that your position?

1           A     Right.

2           Q     All right. Good enough. If there's a 100 percent  
3 owner with three officers and the owner of this corporation is  
4 the president, he has a vice president, he has a treasurer,  
5 that's the three officers and one owner, do you believe that  
6 that owner could fire the treasurer?

7           A     And there's no board or --

8           Q     No board. I'm trying to make this simple.

9           A     I would think that they could at that point.

10          Q     All right. Which would make the owner more  
11 important in terms of the running of that operation -- at  
12 least the ownership of that operation than the treasurer,  
13 right, or any other officer?

14               MR. KOCH: Objection. Vague.

15               THE COURT: Overruled.

16 BY MR. PARKER:

17          Q     Isn't that true? This is a simple concept.

18          A     I don't know.

19          Q     All right.

20          A     More important, I don't know how -- I don't know.

21          Q     The point is, Ms. Contine, you did not have any  
22 restrictions or limitations on checking the background of all  
23 officers and board members; right?

24          A     Right.

25          Q     Which means that every officer and every board

1 member under the regulation had to be checked based upon the  
2 regulation; right?

3 A Yes.

4 Q Both at license applications and at renewals; right?

5 A Yes.

6 Q And here, unlike 453D.255, .305 says at renewal  
7 there is -- as far as all owners. It doesn't say the  
8 5 percent owners; right?

9 A Right.

10 Q Thank you. And if you wanted it to be 5 percent on  
11 renewals under the Administrative Code, you could have put it  
12 in this section; right?

13 A It could have been in that section, but it could  
14 also be interpreted under the other section.

15 Q All right. Good enough. And the same in terms of  
16 fingerprinting under .305(3). So if you go to paragraph (3),  
17 it says, "Each person who is an owner, officer or board member  
18 of a marijuana establishment must complete a set of person's  
19 fingerprints and written permission of the person authorizing  
20 the Department to forward the fingerprints to the Central  
21 Repository for Nevada." Do you see that? 453D.305(3).

22 A Yes.

23 Q Now, if you -- how would you know you're getting all  
24 of the owners, officers, and board members if the applicant  
25 has not identified all of them, not just those that are

1 5 percent? Because when you're doing a renewal this provision  
2 doesn't say 5 percent. So how would you be able to cross-  
3 reference if you'd gotten fingerprints for all of the owners  
4 if you limited in part for the application to 5 percent or  
5 greater but not limited specifically or expressly in the  
6 renewals?

7 MS. SHELL: Your Honor, misstates the regulations.

8 THE COURT: Overruled. You can answer.

9 THE WITNESS: Yeah. I don't -- I don't know if  
10 that's how it would be applied. I think that there would be a  
11 requirement to list everybody whether they had a 5 percent or  
12 not.

13 BY MR. PARKER:

14 Q Good enough. And that's what I tried to get to.

15 A But I'm not -- but I've never -- I don't know what  
16 the documents look like, and so I'm not --

17 Q That's fine. But you just said you have an  
18 obligation to list them all, otherwise you could not know; is  
19 that correct?

20 A I don't think you could know.

21 Q Perfect. So even if you did not do a background  
22 check of those with less than 5 percent, the only way you  
23 could know who the owners were were for them -- for the  
24 applicant to list them all?

25 A Right.

1           Q     And if they failed to list them all, then they  
2     didn't comply with your regulation. I'm not talking about the  
3     application. I'm divorcing myself from the application, since  
4     you didn't prepare it.

5           A     I think there's an expectation that they would  
6     provide them all because of the second part of that provision  
7     that gives the Department the authority to look at it globally  
8     and decide whether they thought there was a need to --

9           Q     That's what I thought, too. Thank you so much.

10                  Okay. Look at 453D.312. And these are the grounds  
11     for denial of issuance or renewal of license, grounds for  
12     revocation, and notice or opportunity to correct situation.  
13     Do you see that?

14           A     Yes.

15           Q     Ground (1)(a) says, "The application or the  
16     marijuana establishment is not in compliance with any  
17     provision of chapter 453D of the NRS."

18           A     Uh-huh. Yes.

19           Q     So is that an indication that the Administrative  
20     Code is deferring to the statute, it would have priority in  
21     terms of compliance obligations?

22           A     Yeah, if there were -- if they weren't -- you know,  
23     if they weren't operating in compliance with the provisions  
24     that they operate under, yes.

25           Q     Okay. And so if an applicant is not compliant with



1 the statute that says, provide all owners' information, then  
2 they're not in compliance with the Code, as well, because the  
3 Code defers to the statute; right?

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

6 THE COURT: Overruled.

7 BY MR. PARKER:

8 Q Isn't that correct?

9 A I mean, if you weren't -- if you weren't in  
10 compliance and the Department knew, yes, I think that  
11 provision would come into play.

12 Q All right. So tell me, and this is kind of getting  
13 towards the end now, how do you --

14 MR. PARKER: Don't give me that look.

15 [Unintelligible]

16 BY MR. PARKER:

17 Q How can you reconcile NRS 453D.200, which expressly  
18 says, "All -- each prospective owner," and 453D.255 when  
19 453D.312 requires you to be compliant with the NRS? Do you  
20 understand the question?

21 A Yes. And this has been the ongoing question in the  
22 -- again, the regulations were fully vetted, discussed,  
23 adopted, gone through the whole process, reviewed for  
24 compliance, and based on that authority and also the  
25 understanding that the Department was looking at the various

1 balancings, that balancing that had to take place under the  
2 initiative, that that would be valid.

3 THE COURT: What do you mean by balancing?

4 THE WITNESS: Well, looking at the requirement to  
5 not have -- to not apply the statute as to make it impractical  
6 for businesses to operate, to have regulations that were  
7 necessary and compliant, looking at protecting the public  
8 health and safety, and making sure the regulations did that.  
9 So all those factors that went into that.

10 THE COURT: And when you were mentioning the burdens  
11 on the industry you're referring to the definition of  
12 "unreasonably impracticable"?

13 THE WITNESS: Right.

14 BY MR. PARKER:

15 Q The problem I have with your response, Ms. Contine,  
16 is that you speak of the impracticalities on the problems  
17 associated from the establishment's point of view. But you  
18 started your conversation today and, from what I've read in  
19 the notes, you were talking about how difficult it would be  
20 for the Department of Taxation to undertake certain things.  
21 So I want to make sure we have those separated, okay.

22 A And I think they both go into the analysis.

23 Q But the statute trumps the Administrative Code;  
24 right?

25 A I believe that the regulations are valid under the

1 process under 233B that we went through.

2 Q All right. But the regulation defers to the statute  
3 under .312, 453D.312, which we just read in the record; right?

4 A Yeah.

5 Q Isn't that correct?

6 A I'm sorry. I don't --

7 MR. KOCH: Objection. Vague.

8 THE WITNESS: I don't know.

9 THE COURT: Overruled.

10 MR. PARKER: Can you put that right back up, Shane,  
11 just quick.

12 THE COURT: There it is. It's on the screen, again.

13 BY MR. PARKER:

14 Q 453D.312(1)(a). Yeah. It says, "The application or  
15 the marijuana establishment is not in compliance with any  
16 provision of Chapter 453D of the NRS." Isn't that correct?

17 A Yes.

18 Q So in terms of compliance of any applicant or  
19 licensee the Administrative Code refers back to compliance  
20 with the statute; right?

21 A Right. And I -- I mean, I understand what you're  
22 getting at, but I believed at that time and I believe now that  
23 the regulations were adopted under the statute in that they  
24 interpret or carry out the provisions of the statute. And  
25 based on that process I believe they're valid. So you would

1 look at that globally.

2 MR. PARKER: No further questions, Your Honor.

3 THE COURT: Okay. Anyone else from the plaintiffs'  
4 side wish to ask any questions? Anyone else from the  
5 defendants' or the defendants in intervention?

6 Mr. Gutierrez, Mr. Shevorski would like to go before  
7 you. He has not had an opportunity.

8 MR. SHEVORSKI: Thank you, Your Honor.

9 THE COURT: And we're breaking in a half hour so the  
10 witness can make it to where she needs to be.

11 MR. SHEVORSKI: I only have a few, Your Honor.

12 It won't be like my promise with the Gilbert  
13 situation where I got a similar look to -- now I remember his  
14 name -- Mr. Parker. And I did confess to him earlier that I  
15 blew it.

16 DIRECT EXAMINATION

17 BY MR. SHEVORSKI:

18 Q So I'd like to talk a little bit about -- I believe  
19 Mr. Parker, my friend Mr. Parker, who I remember, asked you  
20 about the differences between 453A and 453D, and I'm referring  
21 to the statute. Do you recall that?

22 A Yes.

23 Q Can you go to 453A.370.

24 THE COURT: And I don't know if that's in the pocket  
25 part or the regular part.

1 THE WITNESS: Okay. 453A.370?

2 BY MR. SHEVORSKI:

3 Q .370.

4 A Okay.

5 Q It says, "The Department shall adopt such  
6 regulations as it determines to be necessary or advisable to  
7 carry out the provisions of NRS 453A.320 to 453A.370,  
8 inclusive." Now, if you compare that back to NRS 453D.200,  
9 that is a distinction, isn't it?

10 A Yes. The language is different.

11 Q Right. It's broader.

12 A Right.

13 Q It gives the Department broader authority to  
14 regulate, doesn't it?

15 A Yes.

16 Q There's a great deal about background checks, and  
17 cost, and burden. Let's assume -- let's take our friends the  
18 publicly traded companies again. And I believe Mr. Parker,  
19 and I accept his -- that it's -- there's a one-time  
20 nonrefundable \$5,000 fee.

21 A Okay.

22 Q And some of that money was going to be used to cover  
23 background checks, or the Department could -- let's say the  
24 Department could charge a fee. Now I want you to assume a  
25 hypothetical, that there's a publicly traded corporation with

1 a daily volume of trade shares or a willing buyer to a willing  
2 seller and that is traded 500,000 times a day. You with me?

3 A Yes.

4 Q Do you have an estimate of how much that's going to  
5 cost to run, to do a background check?

6 A No.

7 Q Every single day?

8 A No.

9 Q Every single time that share changes hand?

10 A Right. No. I don't know how that would be  
11 estimated.

12 Q Who's going to bear the burden of that -- of that  
13 cost? It could either be the applicant, or it can be the  
14 Department. Can the Department afford to absorb that cost  
15 itself every single day?

16 A Well, you know, the money is the one thing, but it's  
17 also the time and how long that could take and the things that  
18 are outside of the control of the Department when it came to  
19 that. And it would basically -- how I would see it playing  
20 out, it would basically shut down the ability to operate.

21 Q Let's start with -- before we get to effort  
22 externalities is how I'll call them, and a nod to my friend  
23 the economist, Mr. Bhirud, let's talk about the money first.

24 Could the Department afford to absorb the cost of  
25 running itself 500,000 background checks a day?

1           A     No. I mean, they'd have to get budgetary authority.  
2 And that's a process. There wouldn't be enough money to do  
3 it.

4           Q     What about the manpower, the -- setting aside the  
5 money, what about the administrative cost to run those  
6 background checks?

7           A     That's kind of what I was talking about. I was  
8 talking about it globally. I just -- I don't know how  
9 administratively you do that.

10          Q     And my friend Mr. Kemp mentioned that the Department  
11 could have chose a less burdensome background check than going  
12 to the Central Repository and then to the FBI. Do you  
13 remember that?

14          A     Oh, yes.

15          Q     Okay. What was the process that the voters gave to  
16 the Department in 453D.205(1)? It says --

17          A     Yeah. It says to -- "the Department to forward the  
18 fingerprints to the Central Repository for Nevada Records of  
19 Criminal History for submission to the FBI."

20          Q     Submission to the FBI.

21                THE COURT: That's not exactly what it says, is it,  
22 ma'am? It says, "When conducting a background check pursuant  
23 to --"

24                THE WITNESS: Right.

25                THE COURT: "-- subsection of NRS 453D.200 the

1 Department may require each prospective owner, officer and  
2 board member of a marijuana establishment license applicant to  
3 submit a complete set of fingerprints and written permission  
4 authorizing" it to go to a central repository.

5 MR. SHEVORSKI: That's right.

6 THE WITNESS: Yes. That's right.

7 BY MR. SHEVORSKI:

8 Q It may.

9 A Right.

10 Q The voters gave that choice to the Department, did  
11 they not?

12 A Yes.

13 Q Can the Department in terms of how long it takes the  
14 Federal Bureau of Investigation -- can it tell the FBI how  
15 long to take to do its job?

16 A No.

17 Q And the voters -- the voters put that in there, you  
18 would presume to know -- they would know that the State of  
19 Nevada cannot tell the FBI how long it takes to do a  
20 background check and do its report.

21 A I would think that they would know that they're  
22 different, different branches of government, different levels  
23 of government.

24 Q Was there a time period for these applications to be  
25 submitted and scored?



1           A     Yes; 90 days is when the Department had to issue the  
2 -- under the initiative.

3           Q     And the Department can't control how long the FBI is  
4 going to take to do those background checks, can they?

5           A     No.

6           Q     So you would have to come up with some  
7 interpretation to effectuate the voters' intent; correct?

8           A     Yes.

9           Q     There was a lot of talk about public safety and  
10 owners being more important. But owners of public  
11 corporations, if there are -- for example, I'll represent to  
12 you that there happens to be a company called Microsoft with  
13 over a billion shares outstanding, and there's a person out  
14 there who owns one share and that person has a felony  
15 conviction. Does that person pose any threat to public safety  
16 if Microsoft becomes an owner of a licensee?

17          A     I don't think so.

18          Q     My friend Mr. Kemp put up before the -- he said  
19 there was a cut and paste between various provisions of  
20 NAC 453A and NAC 453D with respect to background checks. Do  
21 you recall that?

22          A     Yes.

23          Q     Is that a fair representation of how the regulatory  
24 process works in Nevada?

25          A     Well, generally you don't start from nowhere. You

1 have some type of -- either some type of outside -- so when we  
2 implemented the commerce tax we looked at other states that  
3 have revenue taxes, we looked at how they regulated and  
4 borrowed that. So you usually are not starting from a blank  
5 screen per se, you're kind of pulling stuff together and then  
6 having it go through the process for the discussion, at the  
7 workshop, and then to the -- to review, and then to adoption.

8 Q My friend Mr. Miller mentioned the Cole memo and the  
9 importance to Nevada of keeping undesirable persons out of the  
10 marijuana industry. He mentioned, you know, people who might  
11 have ill intent. And the Cole memo, if I recall correctly,  
12 mentions suspicious activity reports that the Judge, I'm sure,  
13 is well aware of.

14 If a member of the Sinaloa Cartel purchases a share  
15 of a Canadian publicly traded corporation and it's under  
16 \$5,000 and that financial institution actually knows it's the  
17 Sinaloa Cartel, do you know if under federal law that  
18 financial institution has any obligation to report that as a  
19 suspicious activity report?

20 A I think they would, yes. It's like -- I think  
21 there's some various components, and know your client is kind  
22 of one of them, so they would -- if they knew that, they would  
23 have to report it, I believe.

24 Q Would it surprise you to learn that they don't?

25 A That financial institutions don't?

1 Q Because there is a monetary limit, and it only  
2 applies to transactions over \$5,000.

3 A Oh. Yeah. Okay.

4 MR. SHEVORSKI: No further questions, Your Honor.

5 THE COURT: Thank you.

6 Mr. Gutierrez.

7 MR. GUTIERREZ: Thank you, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. GUTIERREZ:

10 Q I'll be brief, Ms. Continue. You've been here for a  
11 while.

12 A Thank you.

13 Q We talked about this, and I just want to be clear,  
14 the regulations that you worked on, they went through  
15 Legislative Council Bureau; correct?

16 A Correct.

17 Q They went through the Tax Commission; correct?

18 A Right.

19 Q You had multiple public workshops; correct?

20 A Yes.

21 Q You had a lot of input from the Governor's Task  
22 Force, including some of the plaintiffs, like Mr. Ritter, who  
23 had input on the 5 percent requirement; correct?

24 A Yes.

25 Q And then they were ultimately adopted; is that fair?

1 A Yes.

2 Q And in your opinion did the regulations follow the  
3 recommendations of the Task Force and all the input that you  
4 received?

5 A Yes.

6 Q And did the regulations follow the ballot  
7 initiative?

8 A Yes.

9 Q And the statute NRS 453D?

10 A Yes.

11 MR. GUTIERREZ: Okay. No further questions.

12 THE COURT: Anybody else have any more questions?  
13 She has a meeting, and we're going to let her go.

14 MR. KOCH: I have a couple.

15 THE COURT: Mr. Koch.

16 REDIRECT EXAMINATION

17 BY MR.KOCH:

18 Q Ms. Contine, you have been asked a lot of questions  
19 about your post-Department activities, and you referenced you  
20 had helped a company with an application; is that right?

21 A Yes.

22 Q And that was WSCC?

23 A SCC, yeah.

24 Q Okay. And in fact you're actually listed as an  
25 officer of the WSCC when you quit the Department; is that

1 right?

2 A Yes.

3 Q And WSCC, did it get any license granted as part of  
4 this application process?

5 A No.

6 Q WSCC got no licenses?

7 A No licenses.

8 Q The companies that Mr. Miller asked you about,  
9 Tryke, TGIG, that made campaign donations, any of those  
10 companies get licenses that you're aware of?

11 A I don't think so. Because they're part of the  
12 litigation, so I'm assuming they did not.

13 Q Right. Now, Mr. Ritter, you talked about you may  
14 have gone to lunch with him or met with him one time -- from  
15 time to time.

16 A Dinner.

17 Q Do you know if his companies got any licenses?

18 A I don't think so. I don't -- I don't.

19 Q So even the fact that you're an officer of a  
20 company, you may have helped them with the application, there  
21 was no undue influence or partiality given because of the fact  
22 that you are an officer of WSCC, was there?

23 A No.

24 Q Were you aware of any partiality with respect to the  
25 scoring and ranking process that you observed or learned about

1 at any point in time?

2 A No.

3 Q With respect to the provisions in the drafting of  
4 the regulations did anyone in any of these meetings say, look,  
5 I know what the Initiative says, but we're going to do  
6 something completely different?

7 A No. Along the way we were attempting to make  
8 regulations that implemented the initiative reasonably and  
9 without undue burden, but still protecting public health and  
10 safety.

11 Q And --

12 A And we thought we were doing that.

13 Q There was some talk about the Colorado and its  
14 regulatory legal structure with respect to public companies,  
15 and Mr. Miller, I think, read you part of the governor's veto.  
16 Have you heard that in recent weeks Colorado's actually  
17 adopted a statute that provides for disclosure of 10 percent  
18 ownership in a publicly traded company that's part of a  
19 marijuana establishment?

20 A I haven't heard that, no.

21 Q Would it surprise you if Colorado in fact determined  
22 that 10 percent was a reasonable threshold for disclosure of  
23 ownership of publicly traded companies?

24 A No.

25 Q Is -- the threshold for ownership, is that something

1 in your experience that is unique to marijuana establishments  
2 or regulation?

3 A I think there's -- no. There's other licensing,  
4 liquor and other things like that where there's ownership  
5 that's required to be presented.

6 Q And in fact in the medical marijuana regulation  
7 NAC 453A contained a 5 percent threshold already --

8 A Right.

9 Q -- starting in 2014; is that right?

10 A Yes, I think so. I'm not 100 percent sure when  
11 things changed in 453A, but --

12 Q Okay. Well, I did -- looking at it yesterday I  
13 think we established that a regulation under 453A NAC provided  
14 the one that I think Mr. Parker showed you earlier, that was  
15 -- maybe I'm getting them confused, showed it to you, somebody  
16 showed it to you, and that was actually regulated and adopted  
17 2014 and that had the 5 percent threshold; is that right?

18 A (No audible response)

19 Q Yes?

20 A Okay. I believed that that was what is reflected in  
21 the documents, yes.

22 Q There's some questions about scoring errors, and Mr.  
23 Kemp asked if there's a 20-point error someplace might you do  
24 something about that. If you found out that there was a  
25 20-point math error for one of the entities that filed an

1 application, would you have gone in and said, hey, we're  
2 throwing out the whole process because of this math error?  
3 What would you have potentially done?

4 A I mean, I'd like to think I would have looked at it,  
5 you know, looked at the issue, tried to confirm if something  
6 had happened, and then work on a problem related to that one  
7 entity, not disrupting the whole -- you know, working on  
8 solving the problem that was related to that one entity.

9 Q And Mr. Parker asked you about this compliance  
10 issues. Are you aware of anyone in the industry who did not  
11 have a single deficiency on their record?

12 A I don't know. I don't know the number of  
13 deficiencies.

14 Q That wasn't your --

15 A You know, it's been communicated that deficiencies  
16 are handed out pretty liberally, at least under the medical  
17 and as we transition into recs. So I don't -- I don't know.

18 Q Last, with respect to background checks. An  
19 applicant -- the background checks that are called for under  
20 the statute, those could be conducted after an application was  
21 submitted; correct?

22 A Right.

23 Q For example, a conditional license -- with the  
24 timing of that conditional license there's some things that  
25 have to happen before that license is finalized; is that



1 right?

2 A That's right.

3 Q And a background check if -- let's suppose an  
4 applicant submits their application and then a month later  
5 somebody comes in, buys 25 percent of the company, would you  
6 anticipate running a background check on that new 25 percent  
7 owner?

8 A So in the process?

9 Q So there -- let's say right now my client has  
10 received a conditional license, somebody else comes in and  
11 buys a portion of that company in the meantime. Would you  
12 still run a background check on that new owner that came in  
13 after the fact?

14 A So that transfer of ownership couldn't occur until  
15 there was compliance with the other regulations that deal with  
16 transfer of ownership. So that would be dealt with in that  
17 process. I don't know the timing and how it would all work  
18 together, but you would have to notify of a transfer of  
19 ownership.

20 Q Right. And so any owner, whether they purchased  
21 before or purchased after, a background check would have to be  
22 run on those individuals; is that right?

23 A Right. At the 25 percent you're talking about, yes.

24 Q And you're aware the regulations would allow the  
25 Department to check the background of any owner irrespective

1 of the 5 percent threshold; is that right?

2 A Yes.

3 Q And so if the Department has reason to check into  
4 that background, they'll do it?

5 A I would -- they would have the authority to do it,  
6 yes.

7 Q There's also -- are you aware that there's an  
8 attestation form that each individual owner, officer, or board  
9 member was required to submit as part of the application?

10 A Right.

11 Q And part of that attestation stated specifically  
12 that they have not been convicted of an excludable felony; is  
13 that right?

14 A Correct.

15 Q May or may not be true. You've got to have some  
16 trust in that attestation form, otherwise, why even have it,  
17 though; right?

18 A Right.

19 Q Okay. Thank you.

20 THE COURT: Anybody else have any more questions for  
21 her before I let her leave to go to her meeting?

22 And thank you very much for your time. We  
23 appreciate it. Sorry you had to come back today.

24 THE WITNESS: Thank you. That's okay.

25 THE COURT: Good luck.

1 THE WITNESS: Thank you.

2 THE COURT: And thank you for making the computer  
3 systems for the State run smoothly.

4 All right. Guys, what's our plan for Monday, 10:00  
5 o'clock?

6 MR. KEMP: They've given us five witness, I think.  
7 So we're going to try and get them all here on Monday.

8 MR. KOCH: 10:00 o'clock starting with Mr.  
9 Groesbeck?

10 MR. KEMP: Well, depending on whose schedule is  
11 what.

12 THE COURT: We're starting at 10:00 o'clock with a  
13 bunch of representatives from different plaintiffs. Do you  
14 anticipate getting through all of those witnesses on Monday?

15 MR. KEMP: Well, Mr. Koch --

16 MR. KOCH: I anticipate it.

17 MR. KEMP: Mr. Koch said yesterday Mr. Groesbeck was  
18 20 to 30 minutes.

19 MR. KOCH: Just like Teddy's 20 to 30.

20 THE COURT: My eye roll did not make the record.  
21 But Teddy can't do anything in 20 to 30 minutes.

22 MR. KEMP: Seriously, Your Honor, that is important,  
23 because I've told Mr. Koch already that Mr. Groesbeck has to  
24 be somewhere afterwards. So if he's telling me now that he  
25 thinks it's going to be a lot more than 20 or 30 minutes --

1 MR. KOCH: I don't think it's going to be a lot  
2 more. The plaintiffs, I don't know what they're going to ask.  
3 I don't know. My examination is going to be quick.

4 THE COURT: Okay. So we'll take Mr. Groesbeck first  
5 if he's here. How's that?

6 MR. KEMP: The's fine, Your Honor.

7 THE COURT: Otherwise, we'll do somebody else first,  
8 and he'll have to wait.

9 MR. KEMP: If not, we'll have someone else here.

10 THE COURT: So what I'm trying to say, Mr. Kemp, is  
11 if he wants to be out of here, the only way he's going to have  
12 control is if he's first.

13 MR. KEMP: I have told him that.

14 THE COURT: Okay. So we will take him first when he  
15 gets here. Then Tuesday I understand some people cannot come  
16 because they have other obligations.

17 MR. SHEVORSKI: And Wednesday, Your Honor.

18 THE COURT: And Wednesday.

19 MR. PARKER: And Thursday, and Friday. So I'm  
20 hoping we're done on Monday, Your Honor.

21 THE COURT: When are we going to do closing  
22 arguments?

23 MR. PARKER: I can do Thursday morning. I have a  
24 board meeting in the afternoon. I can do Thursday morning.

25 THE COURT: How long do you need for closing

1 arguments?

2 MR. KEMP: I would say about two hours.

3 MR. PARKER: I can do it tomorrow. I mean, I can do  
4 Tuesday and Wednesday, and Thursday morning.

5 MR. KEMP: Judge, I'd like to finish the testimony  
6 Monday first, before we --

7 MR. KOCH: Right.

8 MR. KEMP: Because, you know, we've joked about 20  
9 or 30 minutes apiece turns into a little bit longer. So --

10 THE COURT: I am aware of that, Mr. Kemp. That's  
11 why I'm trying to plan. That's why I told you guys I had all  
12 week next week, except Tuesday afternoon.

13 MR. KOCH: Thursday, I don't know that Thursday  
14 morning's --

15 MR. PARKER: I can do Thursday morning.

16 THE COURT: I can do Thursday morning.

17 MR. PARKER: I don't think I'm going to take very  
18 long. The Court knows the case.

19 MR. BHIRUD: Could we go all day Thursday? Teddy's  
20 got the morning, but everybody else is here.

21 You will need to be here?

22 MR. PARKER: I'd like to be here.

23 Well, is it going to take that long for us to sum  
24 this case up?

25 MR. BHIRUD: I mean, you're not going to be

1 objecting or anything.

2 MR. KEMP: Judge, Mr. Rulis reminded me we have the  
3 MSJ set for the 22nd.

4 THE COURT: Yeah. This is a preliminary injunction  
5 hearing.

6 (Colloquy among counsel)

7 THE COURT: Guys, just tell me when you want me to  
8 listen to your closing arguments.

9 MR. PARKER: Could we do the following week, Your  
10 Honor? I mean, all of our witnesses will be done.

11 MR. CRISTALLI: Well, I don't know if Mr. Gentile's  
12 going to be here the following week.

13 THE COURT: The following week, which is the week of  
14 July 22nd, I have some time available that week, not as much  
15 as next week.

16 MR. GENTILE: Can we have until Monday to decide, or  
17 do you need to hook it up now?

18 THE COURT: No, I don't. I've been putting people  
19 off, and I will put them off some more.

20 MR. GENTILE: I'll do what you guys want to do.

21 THE COURT: Are we done? Have a lovely weekend.  
22 Enjoy spending time with your families and relaxing. And I  
23 will see you all Monday at 10:00 o'clock.

24 (Court recessed at 2:37 p.m., until the following  
25 Monday, July 15, 2019, at 10:00 a.m.)

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EXHIBITS

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PLAINTIFFS' EXHIBIT NO.

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DEFENDANTS' EXHIBIT NO.

NONE ADMITTED

\* \* \*

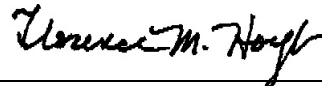
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**AFFIRMATION**

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**

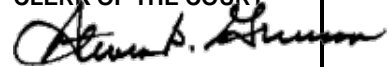


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7/14/19

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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

MONDAY, JULY, 15, 2019

**EVIDENTIARY HEARING - DAY 15**

**VOLUME I OF II**

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

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1       **LAS VEGAS, CLARK COUNTY, NEVADA, JULY 15, 2019, 10:33 A.M.**

2                               \* \* \* \* \*

3               THE COURT: I apologize for being late. My morning  
4 took longer than I anticipated for a number of reasons.

5               Have we got our first witness?

6               MR. KOCH: Robert Groesbeck.

7               THE COURT: Mr. Groesbeck, if you'd come forward,  
8 please.

9               MR. KEMP: Judge, I reminded Mr. Groesbeck  
10 [inaudible] at 11:20 and I've talked to Mr. Koch about it, but  
11 I've offered Mr. Koch an additional witness in the event  
12 Mr. Groesbeck [inaudible].

13              MR. KOCH: And --

14              THE COURT: I'm sure we're going to get done.

15              MR. KOCH: You're sure we are?

16              THE COURT: I know you. You are direct and to the  
17 point.

18              MR. KOCH: Oh, I like to hear that. I try.

19              THE COURT: Raise your right hand, please,  
20 Mr. Groesbeck.

21                               **ROBERT GROESBECK**

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

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

                              JD Reporting, Inc.

1 THE WITNESS: Robert Groesbeck. G-r-o-e-s-b-e-c-k.

2 THE COURT: And, sir, there's a water pitcher there  
3 and M&Ms behind you and tons of exhibits.

4 THE WITNESS: Thank you, Judge. I'll take you up on  
5 that.

6 DIRECT EXAMINATION

7 BY MR. KOCH:

8 Q Mr. Groesbeck, my name is David Koch, and I'm an  
9 attorney representing Nevada Organic Remedies in this action.  
10 Are you aware of the company known as Nevada Organic Remedies?

11 A I'm sorry, Counsel.

12 Q Are you aware of the company known as Nevada Organic  
13 Remedies? Operating as The Source.

14 A Oh, indeed, yes.

15 Q Are you familiar with some of the players in the  
16 marijuana industry?

17 A I think I'm familiar with most.

18 Q And your background, my understanding, is you  
19 practiced law for about 25 years; is that right?

20 A That's roughly correct, yeah.

21 Q And formally the mayor of the City of Henderson also?

22 A Correct.

23 Q You're familiar with the legal system in general, how  
24 the legal system of regulations work with respect to an  
25 industry?

1           A     I am.

2           Q     And in particular, the client, the party that you're  
3 here representing is MM Development operating as Planet 13; is  
4 that right?

5           A     That is correct.

6           Q     You are one of the owners of that entity?

7           A     I was an owner. Now I'm a shareholder.

8           Q     Okay. A shareholder, what percentage of Planet 13?

9           A     Oh, I think my interest in the Planet 13 holdings  
10 group is probably right around 30 -- 28 to 30 percent. It  
11 varies.

12          Q     Mr. Scheffler, he's the other large shareholder of  
13 that entity; is that right?

14          A     That is correct.

15          Q     And that's -- is that the single largest retail  
16 dispensary as far as volume of sales in the state of Nevada?

17          A     I'm not certain of that. I'd like to believe so.

18          Q     Yeah. There's been representation I think in the  
19 motion that your company filed in this case saying that it  
20 sells approximately 10 percent of all recreational marijuana in  
21 the state of Nevada. Does that sound about right?

22          A     Excuse me. I don't know if we put that out, but  
23 that's been out there certainly.

24          Q     Okay. That doesn't sound too far off base, about  
25 10 percent of all retail recreational marijuana sales in the

1 state of Nevada from Planet 13?

2 A I think that that's fair.

3 Q So doing pretty well. Any other company that you're  
4 aware of that has more than 10 percent sales?

5 A I don't know because I don't have privy to the  
6 private companies and what they're doing.

7 Q Do you consider Planet 13 or MM Development to be an  
8 industry leader as far as it's practices in this business?

9 A I do.

10 Q And are you aware of the legal positions that are  
11 being taken by your company or counsel in this case?

12 A Generally.

13 Q Are you aware that any legal positions that are being  
14 asserted may cause Planet 13 to have to shut down its current  
15 retail operation?

16 A I'm sorry. I didn't follow that question.

17 Q Do you have any awareness of any legal positions  
18 being taken by your counsel in this case that may cause Planet  
19 13 to have to shut down its current retail operation?

20 A No.

21 Q And Planet 13 does have a retail operation; right?

22 A That is correct.

23 Q And are you aware that that's governed by  
24 NRS Chapter 453D?

25 A That is correct.

1 Q Are you generally familiar with the statutes and  
2 regulations that apply to retail marijuana establishments?

3 A General.

4 Q Let's pull up NRS 453D.200.

5 THE COURT: Sir, if you'd like to look, the book is  
6 there. 453D is in the pocket part.

7 BY MR. KOCH:

8 Q We'll actually put it on the screen. If you like the  
9 book, let me know. I'll try to point to the parts that are --

10 A I can --

11 Q -- relevant because I know you're crunched on time.

12 A I can see it here on the computer.

13 Q All right. 453D.200, have you seen this section  
14 before?

15 A Well, I'm sure I have.

16 Q It relates to the, Duties of department relating to  
17 regulation and licensing of marijuana establishments,  
18 information about consumers. You believe you've read this  
19 before?

20 A Yeah, I believe I have.

21 Q And this relates to regulations for the licensing and  
22 operation of marijuana establishments. Do you understand that?

23 A Yes.

24 Q Okay. One of the sections that we've talked about at  
25 some great length in this case is Subsection 6, which is on the



1 next page. We'll take a look at it.

2 And Subsection 6 says, The department shall conduct a  
3 background check of each prospective owner, officer and board  
4 member of a marijuana establishment license applicant. Are you  
5 aware of that section?

6 A Yes.

7 Q Okay. Has the Department of Taxation conducted a  
8 background check of each of Planet 13's owners?

9 A Well, I guess it depends on owners.

10 Q Right. It depends on how we define owner; is that  
11 right?

12 A Correct.

13 Q And if we took a broad view of owners, anybody who  
14 owns a share of Planet 13 stock, has the department conducted a  
15 background check of each of those shareholders?

16 A I'm not sure what they've done.

17 Q Has Planet 13 submitted a shareholder list to the  
18 department for purposes of conducting a background list of  
19 those -- a background check of those shareholders?

20 A Well, it's my understanding with respect to the  
21 applications that are subject to this litigation our general  
22 counsel prepared all documents responsive to the application.  
23 That would've included owners, officers, directors, things of  
24 that nature.

25 Q Right.

1 A And background checks.

2 Q So MM Development submitted an application. We're  
3 talking about that. I'm asking general, other than the  
4 application, you currently have a retail operation; correct?

5 A That is correct.

6 Q Does 453D.200 apply to the operation of your current  
7 retail operation?

8 A I think it applies to all marijuana operations.

9 Q Current and prospective; is that right?

10 A Well, certainly current, yes.

11 Q Right. And so your current operation, has the  
12 department conducted a background check of each of your owners,  
13 officers and board members?

14 A That I don't know.

15 Q Has it conducted a --

16 Well, let me ask this: How many shares does Planet  
17 13 have outstanding?

18 A On a fully diluted basis, probably 154 million.  
19 Trading, probably 125, a hundred -- yeah, about 125 million  
20 probably.

21 Q So about 125 million trading shares?

22 A Well, I should qualify that. The 61 percent  
23 basically, most of those shares are owned by me, my co-CEO  
24 Larry Scheffler and our third cofounder Chris Rin [phonetic].  
25 We're basically restricted. So we aren't actively trading.

1           Q     The rest of the shares at Planet 13 are owned by  
2 somebody else?

3           A     Yeah. They could be owned by institutional investors  
4 or retail buyers.

5           Q     And retail buyer, that would just be an individual  
6 who might have a brokerage account, might buy him some Planet  
7 13 shares; is that right?

8           A     That's correct.

9           Q     As you sit here today, I would expect you don't know  
10 the names of all those potential individual investors, do you?

11          A     I do not.

12          Q     And do you know if any of those investors or owners  
13 of Planet 13 stock has a felony?

14          A     I do not.

15          Q     Has Planet 13 put any safeguards or checks in place  
16 to ensure that no one with a felony, excludable felony would be  
17 an owner of Planet 13 stock?

18          A     Well, I don't know if we've independently done that.  
19 We've prepared documentation that is available for the  
20 regulators to look at at any time. If they direct us to  
21 provide that information, I'm sure we could through our trust  
22 administrators.

23          Q     You're talking about the transfer agent that keeps a  
24 shareholder list?

25          A     Well, them, yeah. Yeah. Them and our lawyers I

1 would imagine, you know. When we went out into the RTO, went  
2 public in June -- I always lose track of the time -- June of  
3 last year, there were probably a sum total of 250 total  
4 investors at that time. So that was pretty manageable.

5 Q All right. Today there's a lot more than 250  
6 investors; right?

7 A Yeah. I would agree with that now that we're selling  
8 to the retail market.

9 Q Do you have any idea of how many current investors  
10 you have?

11 A As we sit here now I don't. I do not know.

12 Q More than a thousand?

13 A I would think not.

14 Q You don't know. Have you looked at your shareholder  
15 list recently?

16 A You know, I don't spend any time looking at the  
17 shareholder list. We have a CFO and accountants and tax  
18 lawyers that do all that. So --

19 Q All right. They don't -- any of those individuals,  
20 your lawyers, accountants, CFOs -- they don't scan the  
21 shareholder list and look for or run background checks  
22 themselves for felons, do they?

23 A No, I'm not sure that they do, but we're also  
24 regulated. We're a publicly traded company. We're highly  
25 regulated.

1 Q Right. Have you asked any shareholders to submit  
2 fingerprints for background checks?

3 A Only owners, insiders, owners, directors, officers,  
4 as required by the department.

5 Q All right. So it's your understanding that only  
6 those insiders, large owners, officers and board members are  
7 required to submit fingerprints; is that right?

8 A Again, I don't know one way or the other. I don't  
9 think that's the case.

10 Q You don't think that's the case?

11 A I don't think we've been asked to do that, to have  
12 our shareholders submit to fingerprints.

13 Q Okay. Have you suggested that to the department,  
14 that the statute says something, and we want to make sure as an  
15 industry leader we're setting the pace for background checks?  
16 Have you made that suggestion?

17 A No. I typically don't suggest to the regulators.  
18 They suggest or direct me.

19 Q Very good. Let's pull up Exhibit 20 is the  
20 application that MM Development submitted in this case. I just  
21 want to look at Bates Number 787. This is a chart of MM  
22 Development, Planet 13. Have you seen this document before?

23 A Not that I recall, but I have no reason to disbelieve  
24 that it's something that we produced if you represent that.

25 Q All right. It says that MM Development Company, Inc.

1 in the bottom left corner is the entity applying for licenses.

2 A Correct.

3 Q Does MM Development Company, Inc. currently hold  
4 marijuana licenses?

5 A It does.

6 Q Has it transferred any licenses to Planet 13  
7 Holdings?

8 A No, it has not to my knowledge.

9 Q Even when Planet 13 opened in November 1st, 2018,  
10 did it transfer any of those license to Planet 13?

11 A Excuse me. Planet 13 Holdings is a holding company.  
12 It holds the assets. All the assets of the Canadian  
13 corporation are held by a Nevada corporation.

14 Q Right. Okay. And that's what it shows; right?  
15 Planet 13 Holdings up above MM. It shows it owns 100 percent  
16 of MM Development; is that right?

17 A That is correct.

18 Q And that's the Canadian public corporation; is that  
19 right?

20 A That is correct.

21 Q Above that it shows beneficial owners and  
22 stockholders a hundred percent ownership, and that's what we've  
23 got yourself and Mr. Scheffler as 33 percent owners here.  
24 Mr. Rin is 4 percent.

25 And you read that bottom line for us. Can you read

1 that.

2 A Investors, public stockholders none 5 percent  
3 individually, 29.2453 --

4 Q All right. At the time of the preparation of this  
5 chart, there was 29.2-and-some-change percent of MM Development  
6 stock, Planet 13 stock owned by investors public stockholders;  
7 is that right?

8 A That would appear to be the case.

9 Q What about the, None greater than 5 percent? Why is  
10 that on there?

11 A I couldn't answer that. That was prepared by our  
12 general counsel.

13 Q What's that?

14 A That was prepared by our general counsel. I would  
15 imagine he was following the directives of the department in  
16 the application process.

17 Q Okay. So you believe that he was following the rules  
18 and regulations that were applicable to applications submitted  
19 at that time; is that right?

20 A I would agree.

21 Q That 5 percent, there's a 5 percent threshold in the  
22 regulations. Are you aware of that?

23 A Yeah, I'm aware that there is a number 5 percent.

24 Q All right. Have you looked at that, considered that,  
25 discussed it at all with members of your company at all?

1           A     No. I've deferred to general counsel.

2           Q     All right. General counsel. That's Mr. Koehler; is  
3 that right?

4           A     Correct.

5           Q     Have any of the individuals that are listed just  
6 described generally there -- investors, public stockholders,  
7 none greater than 5 percent individually -- have any of them  
8 submitted for a background check with the Department of  
9 Taxation?

10          A     I have no idea.

11          Q     Have you in any of your press releases or shareholder  
12 reports ever notified shareholders that they may need to submit  
13 to a background check with the Nevada Department of Taxation if  
14 they buy your shares?

15          A     I'm not sure that we've ever done that.

16          Q     Do you know if any other public company -- there are  
17 other entities involved in marijuana in Nevada that are owned  
18 by publicly traded companies. Are you aware of that?

19          A     I am.

20          Q     Okay. What other companies are you aware of that are  
21 publicly traded?

22          A     I believe Essence is now publicly traded. I believe  
23 your company -- your client's company is now publicly traded.  
24 I understand Acres [phonetic] is now sold out to an MSO. I'm  
25 sure there are others. I --



1           Q     How about Serenity Wellness? Do you know if they're  
2 publicly traded?

3           A     I'm not familiar with Serenity.

4           Q     What about LivFree? That's another company that's  
5 represented by your same counsel?

6           A     That is true. Yeah.

7           Q     There are now -- they've sold to a public company, or  
8 a public company owns them?

9           A     Yeah. It's my understanding they rolled into a SPAC,  
10 which is a special-purpose acquisition corp. that subsequently  
11 rolled into a publicly trading entity.

12          Q     Do you know if any of those entities have provided  
13 shareholder lists for background checks to the Department of  
14 Taxation?

15          A     I have no idea.

16          Q     Do you have any opinion as to whether providing  
17 shareholder lists for the department is necessary under the law  
18 in order to be able to sell retail marijuana in the state of  
19 Nevada currently?

20          A     Well, I don't really have an opinion. Again, I  
21 follow the directives of the department. If they tell us to do  
22 something, we'll do it. So if they want to see our shareholder  
23 lists, I'll instruct my general counsel and our CFO to produce  
24 whatever they request.

25          Q     All right. What if the department asks you every day

1 to submit a new shareholder list to the department for  
2 background checks. Do you think that would be a reasonable  
3 request?

4 A Well, I don't know about reasonable. I think it  
5 would potentially have a chilling effect on the industry,  
6 publicly traded companies. I'm not aware of any industry that  
7 requires that.

8 Q Right. And so if an individual -- an individual  
9 investor -- let's say I go out and decide to buy a share of  
10 Planet 13, buy it this morning, price goes up, afternoon I sell  
11 it. Would you expect that a background check would have been  
12 performed on me during that seven or eight hours that I held a  
13 share of stock?

14 A And your question?

15 Q Would you expect that a background check would have  
16 been performed on me for the seven or eight hours that I held a  
17 share of Planet 13 stock?

18 A No, I would not have expected that.

19 Q It wouldn't really be a reasonable way of doing  
20 business because it would have a chilling effect on my desire  
21 to purchase that stock perhaps?

22 A Well, particularly with a retail investor, but the  
23 institutional investors, most of whom invest in sector in our  
24 company, it's readily obtainable.

25 Q Let me ask about this litigation. What do you think

1 the department did wrong with respect to the applications?

2 A Well, primarily, first and foremost, they didn't  
3 award us any licenses. That's -- that's why we're here. We  
4 are an excellent operator with a great record, track record.  
5 We've been -- great track record of providing taxes and  
6 revenues and creating jobs. We've been long-standing members  
7 of the community. When we originally applied for the medical  
8 licenses, we ranked at the very top of the percentile list, and  
9 yet this comes out, and we get nothing, and yet we see a  
10 handful of operators take a lion's share of the applications.

11 Q All right.

12 A And that inherently in my opinion raised some  
13 concerns.

14 Q Do you think the department should have just taken  
15 the scores to the medical applications 2014 and '15 and just  
16 carried them over to 2018 then?

17 A No, not necessarily.

18 Q So scores from that period of time don't matter with  
19 respect to the 2018 application process; right?

20 A Well, I think they matter. I think it's an  
21 application process. It's a process that they implemented in  
22 '14 that seemed to work well overall. And then you  
23 fast-forward a couple of years, and you've got a host of  
24 licenses being issued to a handful of operators, and again, I  
25 didn't feel that that was fair, that it was equitable to our

1 company, and we hired counsel, and here I sit.

2 Q All right. And I guess other than the fact that your  
3 company didn't get a license, what did the department do wrong?

4 A Well, like I said, I didn't sit and micromanage what  
5 the department did, but I can assure you the lack of  
6 transparency. I mean, you know, I didn't even -- you know, I  
7 sat over with the department after the scores were announced  
8 publicly, and I couldn't even get them to address my score  
9 matrix in any detail. So, yeah, it was frustrating.

10 Q Okay. So lack of transparency, you're aware that  
11 SB 32 has been signed by the governor --

12 A Correct.

13 Q It seems like recently, but it's dating back in the  
14 past now, back in May; right?

15 THE COURT: The first day of our hearing; right?

16 MR. KOCH: I think so. I think so.

17 MR. SHEVORSKI: I don't remember.

18 BY MR. KOCH:

19 Q You're aware of that, the passage of that law; right?

20 A I am.

21 Q That was adopted for the purpose of providing some  
22 additional transparency. You're aware of that?

23 A I am.

24 Q Okay. And other than the transparency, the sort of  
25 the overall issues, anything in particular that you believe the

1 department did wrong on a global scale? Because everybody here  
2 at this table has the same opinion as you.

3 A Right.

4 Q It's we're here because I didn't get a license.

5 A Right.

6 Q Other than that fact or that outcome, is there  
7 something specific the department did wrong other than lack of  
8 transparency?

9 A Well, look, like I said, with respect to us, we were  
10 unique at least in one respect. We had an operational  
11 facility, Medizin, that had been operating for close to two  
12 years before we transferred the license to our new superstore  
13 facility. We had an operational history in that facility, and,  
14 you know, we were generating, you know, our run rate was 18,  
15 probably would've been \$20 million in 2018. And we get nothing  
16 for that?

17 I mean, it's probably one of the best-performing  
18 dispensaries in the state of Nevada.

19 Q Do you know --

20 A That was troublesome.

21 Q -- that there's been a lot of discussion about that  
22 Medizin facility --

23 A Right.

24 Q -- and the fact that MM Development submitted photos  
25 of that facility as part of its application? Are you aware of

1 that?

2 A I don't remember what was submitted.

3 Q All right. So you don't know whether that -- those  
4 photos, any of the plans were part of the identified section or  
5 part of the nonidentified section, do you?

6 A No. I'd have to direct you to Mr. Koehler and his  
7 team.

8 Q So he would know what's in which part of that  
9 application?

10 A Correct.

11 Q And if MM Development maybe made a mistake and put  
12 something in one side of the application instead of the other,  
13 he would answer those questions for us?

14 A Well, you need to talk to him because I can't speak  
15 to it directly.

16 Q Let's go to Exhibit --

17 MR. KOCH: Proposed 5055.

18 MR. KEMP: No objection, Your Honor.

19 THE COURT: Be admitted.

20 (Defense Exhibit Number 5055 admitted)

21 BY MR. KOCH:

22 Q Exhibit 5055 is a recent management discussion --  
23 hand the Court -- let me get my copy here.

24 THE CLERK: Mr. Koch, would you like to -- is this  
25 for the witness or --

1 MR. KOCH: Oh. Sure. Thank you.

2 May I approach?

3 THE COURT: You may. Thank you.

4 THE WITNESS: Thanks.

5 BY MR. KOCH:

6 Q You can look at the screen or the hard copy if you'd  
7 like. This is a management discussion and analysis report for  
8 the three months ended March 31st, 2018; is that right?

9 A I have it. Yes. Thank you.

10 Q And you reviewed and assisted with the preparation of  
11 this document?

12 A Well, yeah, I looked at it, for sure.

13 Q And before it was submitted -- because this is a  
14 public filing; right?

15 A It is.

16 Q And for the publicly traded company?

17 A It is.

18 Q And so you want to make sure that that information  
19 that's in there is correct and accurate so shareholders can  
20 rely upon it?

21 A That's correct.

22 Q And we'll go to page 19, and I'm sure you've looked  
23 at this, and I won't ask if you looked at this in preparation.  
24 I just assume that you're familiar with this section now.

25 Page 19 talks about this litigation. Have you read

1 this paragraph before today?

2 A Well, why don't you direct me to the paragraph and  
3 refresh me.

4 Q Top paragraph.

5 A Okay. Is there a section there you want me to --

6 Q Just the whole paragraph. Are you familiar with this  
7 paragraph?

8 A Well, as I said, Counsel, obviously as co-CEO of the  
9 company, I participated in preparation of the document with our  
10 attorneys and advisers, but I don't remember exactly. So if  
11 you want to --

12 Q Okay.

13 A -- send me to a section, I'm happy to address your  
14 question.

15 Q Let's go there then. So fourth line down toward the  
16 end, after November 1st, 2018, the sentence starts, The  
17 company applied for. Do you see that?

18 A Yes, I do.

19 Q And it says,

20 The company applied for six additional  
21 licenses in the state of Nevada but was  
22 unsuccessful in obtaining any additional  
23 licenses when the State of Nevada awarded  
24 licenses on December 5th, 2018.

25 That's the applications we're talking about in this



1 case; right?

2 A That's true.

3 Q The company along with other industry participants  
4 were also unsuccessful in their applications for new licenses  
5 have launched a lawsuit against the State seeking to overturn  
6 the licensing process.

7 A Correct.

8 Q First of all, let me ask about that. What does that  
9 mean in your mind, "to overturn the licensing process"?

10 A Well, I don't know what they were referring to when  
11 the drafters put the word overturn in, but it's very clear that  
12 the board we moved forward and approved moving forward with the  
13 lawsuit. So --

14 Q Okay. And maybe the next two sentences will help us  
15 there which says,

16 There can be no certainty with respect  
17 to the outcome of such a lawsuit should a  
18 company not be successful with its lawsuit in  
19 obtaining a license in this round of grants.

20 Let's stop there. So is it the company's intention  
21 to obtain a license through the lawsuit?

22 A Yes.

23 Q Okay. Just one license or all six that it applied  
24 for?

25 A Well, ideally every one we applied for, but

1 realistically, I mean, most importantly was Medizin, reopening  
2 that.

3 Q Okay.

4 A I don't think we made any secret of that.

5 Q It goes on to say,

6 If the company is not successful with  
7 its lawsuit in obtaining a license in this  
8 round of grants, then it may seek to purchase  
9 a license in the open market in order to  
10 reopen the Medizin location.

11 A That's correct.

12 Q So it's the company's intention if the lawsuit is not  
13 successful or if this injunction is not successful to purchase  
14 a license in the open market; is that right?

15 A Well, obviously I have an obligation to the  
16 shareholders to put that asset to its best use, and I can only  
17 do that by opening and running it. Again, as I said earlier,  
18 we had a run rate between 18 and \$20 million there. Yeah,  
19 that's pretty significant.

20 Q So it is the company's intention to purchase a  
21 license in the open market if it's not successful with its  
22 suit?

23 A Well, yeah. I think the company's intention is to  
24 reopen that facility as soon as possible.

25 Q And licenses can be bought and sold in this industry;

1 right?

2 A Well, they can, yes.

3 Q Has Planet 13 or MM Development made an effort to buy  
4 a license prior?

5 A Well, we --

6 Q After December 5th through today, have you made any  
7 efforts to buy a license?

8 A Well, we've had a number of groups approach us, talk  
9 about selling not only the lease, but also about talking about  
10 potentially buying licenses, and it hasn't gone beyond any  
11 preliminary discussion.

12 Q Right.

13 A We've never entered into LOIs or term sheets or --

14 Q So there's discussions that are ongoing? And I don't  
15 want to ask --

16 A No, not ongoing.

17 Q -- I guess in the context --

18 A Yeah, I'm sorry, Counsel. Not ongoing. I apologize.  
19 I didn't mean to misstate.

20 Q Did MM Development, Planet 13, didn't make any  
21 offers, formal offers, dollars on the table for a license?

22 A To buy one?

23 Q Right.

24 A Not that I'm aware of. We've talked in very general  
25 terms. Our general counsel again has led most of those

1 negotiations and discussions. I have not been privy to all of  
2 those.

3 Q Has MM Development made any proposals as far as  
4 dollar amounts as to what it thinks a license is worth?

5 A Well, again, there's been a huge variance in what the  
6 perceived value of these licenses are. I can assure you one  
7 thing I do know, the cost to my company to tuck in a license  
8 had it been awarded through this process would have been  
9 substantially cheaper than going into the open market, paying  
10 millions of dollars to do that.

11 Q Right. So it would have been cheaper to get a  
12 license through the application, but it's still possible  
13 afterwards. You just have to pay a lot more for it; is that  
14 right?

15 A Yeah, of course.

16 Q Okay. And this litigation do you anticipate that  
17 this litigation will be a cheaper option to obtain a license  
18 through payment of fees and costs and hopefully overturning the  
19 process to get a license for MM?

20 A That's a great question. I could tell you it's  
21 expensive either way.

22 Q Yeah.

23 A So --

24 Q You know, I saw, and, I mean, we can for purposes of  
25 time maybe skip it for now, but in the same report that the

1 company paid \$748,000 in legal fees in the first quarter of  
2 this year. Are you aware of that?

3 A No, I'm not aware of the exact dollar amount, but you  
4 answered my question --

5 Q Sound about right?

6 A -- very expensive.

7 I know it's very costly.

8 Q And that was before this hearing, which has gone on  
9 longer than any of us would have anticipated it even began;  
10 right? That went through March of this year; is that right?

11 A Yeah, I believe -- I believe this report, yeah,  
12 through March.

13 Q All right. All right. I'm going to have to tell my  
14 client they're getting a great deal on this case. So  
15 [indiscernible].

16 A I don't think there are any great deals when your  
17 bills come out.

18 Q In your -- MM's motion in this case, are you aware  
19 that MM stated, let me just read from a conclusion:

20 Press reports suggest that marijuana  
21 licenses may be worth as much as \$30 million  
22 or more per license.

23 Do you have an opinion on that statement?

24 A They are valuable. Again, licenses are dependent --  
25 you know, the value is dependent on location primarily and the

1 ability to operate in those locations.

2 Q Right.

3 A They're valuable. Do I have a fixed dollar amount?

4 I don't know. Was that represented through one of our

5 representatives? I don't know, but --

6 Q Yeah.

7 A -- they're valuable.

8 Q Yeah. A license in the City of Las Vegas would be  
9 more valuable than a license in Churchill County or something  
10 like that; right?

11 A Generally that would be the case, yes.

12 Q All right.

13 A For sure.

14 Q Okay. So some are some valuable than others.

15 Have you offered \$30 million, MM, for anyone's  
16 license in this case?

17 A No, not that I'm aware of.

18 Q Do you think someone, if MM said or Planet 13 here's  
19 a briefcase with \$30 million to buy your license, do you think  
20 you'd have a potential seller?

21 A If MM offered to buy?

22 Q Right.

23 A Well, that's not going to happen. So --

24 Q Because it's too much to pay?

25 A Yeah. It wouldn't be consistent with market for one.

1 Q What about \$10 million? MM put \$10 million on the  
2 table, anybody sell?

3 A Well, there have been sales. I'm aware of sales in  
4 the market.

5 Q Right.

6 A Again, a lot of it has to do with the operation. Is  
7 it generating revenue? Where is it located? A lot of  
8 variables.

9 Q Right. So you don't -- 10 million may or may not get  
10 it done depending on location.

11 \$30 million, let's say MM were willing to do that.  
12 Let's say it's crazy [indiscernible]. It's going to put  
13 30 million on the table. Do you think you'd have a potential  
14 seller irrespective of location?

15 A Again, it's possible.

16 Q Yeah. What about a hundred million dollars? You'd  
17 probably have a pretty long list of sellers; right?

18 A Yeah, I think that would change the dynamic  
19 considerably.

20 Q All right. And we can go -- I can go up to a  
21 billion. We could go extreme, but at some point there's a  
22 price --

23 A At a billion you can have it right now. It's yours.

24 Q Good. All right. We've got a market --

25 THE COURT: We've got the upper limit now.

1 BY MR. KOCH:

2 Q We've got an upper limit. If you'd offered a dollar  
3 though, probably no one would be willing to sell that; right?

4 A Look, again, we're comparing apples and oranges.  
5 Until I see the asset and compare it to another, I --

6 Q So there's a price to be had. It's just a question  
7 of reaching an agreement on that price?

8 A Well, but it's not that simple. You know, as I sit  
9 here today, I'm losing a million and a half; a million, eight  
10 per month on a mothball facility. Those are very real  
11 damages --

12 Q When you say --

13 A -- they have a very real impact to my bottom line.

14 Q All right. You're losing that amount. That's in  
15 potential sales from that spot; right? You're not paying a  
16 million and a half in rent?

17 A No. But that's what I would have generated in  
18 revenue had it been opened, had I secured one of these  
19 licenses.

20 Q Right. And that's what another operator perhaps that  
21 has a conditional license if they had been open something like  
22 that perhaps; right? Million, million and a half?

23 A No, probably not. We had a two-year operational  
24 history getting 850 customers a day. Like I said, this isn't a  
25 projection. These were real dollars. These were, you know,



1 real sales.

2 Q Right. Right. Okay. Let me ask about the personnel  
3 at MM Development.

4 A Okay.

5 Q Fair to say that as far as officers and board  
6 members, MM is not at the high end of the scale as far as  
7 diversity goes?

8 A I don't know what diversity looks for the other  
9 groups.

10 Q We've talked about it a lot here. I know you haven't  
11 been here. Let me just put up Exhibit 5022. Bryan will put  
12 that on the screen for you.

13 All right. So this is a printout just from the  
14 Planet 13 website under the tab The Team.

15 A Okay.

16 Q Are you aware of this part of the website?

17 A Well, I'm aware of all these pictures. What's the  
18 time frame here those were put up?

19 Q I believe that was printed out May or June. Do know  
20 if that's changed since May or June of this year in the past  
21 several weeks?

22 A Well, when we filed the applications, we've had some  
23 executive turnover. We had a woman Tanya Lupien] who left the  
24 company in November.

25 Q Right.

1           A     And then we've since when we converted MM DC from an  
2     LLC into a corp, we created a board pursuant to the statute,  
3     and we brought in Adrienne O'Neill.

4           Q     Right.

5           A     She's a very successful local entrepreneur here. And  
6     she has now moved to our parent board.

7                     So this is a bit old. Greg Wilson did not sit for  
8     reelection. He's no longer with the company. Adrienne O'Neill  
9     has stepped into his position.

10          Q     Right. So Adrienne O'Neill, let me ask you about  
11     here. She's African-American woman?

12          A     She is.

13          Q     She's a marriage and family therapist; is that right?

14          A     Correct.

15          Q     Okay. And --

16                     THE COURT: Used to be in charge of the CCBA many,  
17     many, many years ago.

18                     MR. KOCH: Nice.

19                     THE COURT: How's that for the way back club?

20                     THE WITNESS: Very good, Judge.

21                     MR. KOCH: I was wondering where she is on here.

22     BY MR. KOCH:

23          Q     She was part of the application listed as one of the  
24     board members; correct?

25          A     I believe she was part of the Nevada board. Correct.

1 Q Okay. The Nevada board, not part of the Canadian  
2 board?

3 A Again, the parent company is a Canadian holding  
4 company corporation and MMDC was a wholly-owned subsidiary of  
5 that parent.

6 Q She was only on the wholly-owned subsidiary; is that  
7 right?

8 A At that time.

9 Q And that wholly-owned subsidiary, is it owned and  
10 controlled by Planet 13 Holdings?

11 A Yes.

12 Q So it has two separate boards?

13 A Yes.

14 Q The board of MM Development, does that -- what if MM  
15 Development's board decides to do something; the Planet 13  
16 Holdings board says no, no, no, you're not doing that? Who has  
17 authority?

18 A Well, ultimately we've got a lot of overlap between  
19 the two boards. So I would be aware of that as would Larry  
20 Scheffler for instance. We've never had that issue. So the  
21 two boards are very similar in composition.

22 Q All right. Any reason in the report that we looked  
23 at earlier, Exhibit 5055 --

24 A The MDNA?

25 Q Right. Page 29 of that document.

1 A Okay.

2 Q Page 29 has a list of the officers and directors of  
3 Planet 13; is that right?

4 A Yes.

5 Q And Tanya Lupien you said she's listed there, but as  
6 is indicated by the footnote, she resigned in November 2018?

7 A That's correct --

8 Q Do you know if MM Development or Planet 13 notified  
9 the department in November of 2018 when she had left?

10 A I'm not sure what we did again. That would be a  
11 question directed to Mr. Koehler.

12 Q Okay. Do you know if Ms. Lupien's absence from the  
13 board or as an officer of the company would have affected MM  
14 Developments diversity score?

15 A I have no idea.

16 Q Any other women besides Ms. Lupien listed here on  
17 this list of officers and board members?

18 A No. This generally appears to be the list at the  
19 time.

20 Q So there's no other women besides Ms. Lupien; is that  
21 right?

22 A As owner, officer or director, no.

23 Q And Ms. O'Neill is not listed here?

24 A She doesn't appear to be on this.

25 Q Do you know why she's not listed here?

1 A No.

2 Q Any --

3 A Well, I do know why. This is ending March of this  
4 year. So our annual meeting was June of this year. So I'm  
5 sure that's been amended and reflected to include her  
6 membership on the board.

7 Q So since this lawsuit has been pending she's been  
8 pushed up to the board of Planet 13; is that right?

9 A Correct, of holdings. That is correct.

10 Q She is the only one, as I look at this list and the  
11 list that MM Development filed in September of 2018, she's the  
12 only one who's not on this list that was on the prior list.  
13 You're aware of that?

14 A You're probably correct there.

15 Q Yeah. And is there any reason why Ms. O'Neill is not  
16 part of the team that we looked at earlier at 5022?

17 A Yeah, again I'd have to direct you to Mr. Koehler for  
18 that because as of March 31 of '19 I believe she was on the MM  
19 DC board. I don't know if it's in a note or --

20 Q Yeah. And Planet 13 had stated in these reports  
21 actually operates the facility on Desert Inn Road; right? I  
22 mean, through MM, Planet 13 is the one that controls the  
23 operation of that facility?

24 A Yeah, that is correct. Well, the Nevada corporation  
25 operates the Nevada asset.

1 Q So decisions with respect to ownership and operation  
2 will be made by the Planet 13 board; is that right?

3 A That is true.

4 Q Last area, location. Let's look at Exhibit 20, and  
5 we're going to go to page --

6 MR. KOCH: Do you have that, Bryan, Exhibit 20?

7 BY MR. KOCH:

8 Q This is MM's application. We can go to page 23 of  
9 Exhibit 20. Exhibit 23 is one of the attachments, attachment  
10 A's, that MM Development submitted. Are you familiar with this  
11 document?

12 A Well, I'm generally familiar with the application  
13 form.

14 Q With respect to the City of Las Vegas, Box 2,  
15 actually right above the one that was highlighted, it says,

16 Marijuana establishment's proposed  
17 physical address if the applicant owns  
18 property or has secured a lease and other  
19 property agreement -- or other property  
20 agreement.

21 Do you see that?

22 A That's correct.

23 Q What is it --

24 A I see it.

25 Q What did MM Development enter there?

1 A Well, looks to me a TBD, to be determined.

2 Q So for purposes of Las Vegas, MM Development did not  
3 submit a specific address, did it?

4 A Well, according to this document, you're right.

5 Q Anything wrong with that?

6 A Well, I don't know if there's anything wrong with it.  
7 I know initially the application required locations to be  
8 determined. I know Mr. Koehler and the app-writing team were  
9 working diligently with our counsel and Realtors to identify  
10 specific addresses. And if memory serves me correctly,  
11 something that the department changed or revised the rule to  
12 say you didn't have to identify a spot.

13 I know Mr. Koehler was looking on all applications to  
14 identify licenses or hone in specific locations in a geographic  
15 area of the community because either we didn't have an LOI, or  
16 we didn't have a lease finalized, you know, prior to submittal.

17 Q The inclusion of to be determined here, do you  
18 believe that should have disqualified MM Development's  
19 application?

20 A No, not if it was consistent with the State's  
21 directives.

22 Q Let's turn to page 26 in that same document three  
23 pages later. This is a discussion from MM. It says.

24 Summary. MM Development, Inc. will work  
25 with the City of Las Vegas to place the

1 location on the currently underserved western  
2 portions of the city's jurisdiction, such as  
3 the Summerlin area.

4 Probably one of the few times underserved and  
5 Summerlin are in the same sentence.

6 A I'll give you that.

7 Q So did you have an expectation that you would work  
8 with Las Vegas to find a final location?

9 A Well, again I -- I don't know -- I don't want to  
10 guess as to what Mr. Koehler was thinking but again I do know  
11 in meetings with him and our management team that he was trying  
12 to really narrow those areas in the community where we thought  
13 warranted additional dispensaries.

14 Q Do you know if Summerlin has any restrictions with  
15 respect to operation of marijuana facilities?

16 A You know, I don't know specifically what Summerlin  
17 has.

18 Q What about limitations with respect to operation of  
19 medical facilities? Do you know if there's a limitation like  
20 that?

21 A I do not.

22 Q Are you aware of any CC&Rs that Howard Hughes Company  
23 has in the city of Summerlin or the area of Summerlin that  
24 would preclude any medical operation from opening in that area?

25 A I'm not familiar with their CC&Rs, no.



1 Q Do you know if there's any reason why any medical  
2 facility, medical marijuana establishment did not open in the  
3 city of Summerlin previously?

4 A No, I'm not aware.

5 MR. KOCH: No further questions. Pass the witness.

6 THE COURT: Good job.

7 Any other defendants or defendant intervenors,  
8 Mr. Gutierrez.

9 MR. GUTIERREZ: Thank you, Your Honor.

10 THE COURT: And we lose the witness in nine minutes.

11 DIRECT EXAMINATION

12 BY MR. GUTIERREZ:

13 Q Mr. Groesbeck, good morning.

14 A Good morning, Counsel.

15 Q My name is Joe Gutierrez. I represent Essence and  
16 Thrive. Do you know who the owners --

17 A I do.

18 Q -- and some of the operators are of Essence and  
19 Thrive?

20 A Yeah. Both good operators.

21 Q Do you know Mr. Phil Peckman who's here in court  
22 today?

23 A I've known Phil for many years.

24 Q Okay. At some point after you didn't receive a  
25 license, did you meet with Mr. Peckman and Mitch --

1 [indiscernible] to offer to buy one of their licenses?

2 A Well, we talked generally about that, and I think  
3 there was some discussion about buying our lease space as well.

4 Q Okay. And hypothetically, if you would've bought a  
5 license at that point, sometime in December of 2018, would you  
6 still be here bringing this litigation?

7 A If I had been able to open Medizin?

8 Q Yes.

9 A Well, that's a great question. You know, we had  
10 multiple applications, but obviously that was the most  
11 important one for us.

12 Q Right. But would you be bringing this litigation  
13 asking the Court to stop the process through this injunction?

14 A Well, there again I think I had 20 million reasons  
15 probably to make me feel better had we reopened that. I don't  
16 know. Like I said, we had five other licenses I believe  
17 pending throughout the State. It was part of the process. So  
18 I'm not certain of that.

19 Q Right. But -- and you said what, that location is  
20 making 18 to 20 million a year? Is that correct?

21 A Yeah. That was the run right then.

22 Q Okay. And you believe you would make that if you  
23 were able to open it, reopen that location?

24 A Yeah, I believe that. I believe I'd be able to make  
25 more.

1           Q     That would generate a lot of tax revenue for the  
2 State; is that correct?

3           A     Of course.

4           Q     Okay. And that's important to you?

5           A     It is.

6           Q     And that was important for the ballot initiative when  
7 this was passed in 2016; isn't that right?

8           A     I would agree.

9           Q     It's in fact right in the statute it says that the  
10 money is to go to the public school system; isn't that correct?

11          A     I think you're correct.

12          Q     Okay. Can you explain to me how the harm to your  
13 company is outweighed by the public getting money for the  
14 school system if your injunction is granted?

15          A     Well, again, as I said earlier, I had an operational  
16 facility for about two years there with a demonstrated track  
17 record with numbers that were growing month over month, strong  
18 sequential growth, and everyone would have benefited had that  
19 store stayed open. As you just said earlier, I would've been  
20 able to pay additional revenues or revenues through taxes that  
21 could fund education.

22                But again, as a result of what happened, I was forced  
23 to mothball that. So now it's an expense on my balance sheet.

24          Q     My question to you though was how does the harm to  
25 the public, how is that outweighed by your harm of this

1 financial harm to your shareholders?

2 A You know, that's not for me to decide. The fact  
3 finder will make that decision at some point. I just know I've  
4 been harmed.

5 Q Are you aware that my client Thrive was prevented  
6 from opening their location on Sahara under their City of Las  
7 Vegas license because of the injunction filed by your side?

8 A No.

9 Q You're not aware of that?

10 A No, I haven't spent much time. I've got my own  
11 issues here.

12 Q Okay. Well, so do you agree that Thrive should be  
13 able to open up their location on Sahara under their City of  
14 Las Vegas license?

15 A No, Counsel, I'm not going to say I agree with that.  
16 I'm going to say that there's a process here. There are  
17 multiple parties involved in a litigation, not just us, and I  
18 am hopeful at some point there's a resolution.

19 But my attorneys, very capable, have advised us on a  
20 procedure and a process, and I'm obviously going to defer to  
21 their expertise.

22 Q My question to you was about Thrive, specifically  
23 their location on Sahara --

24 A Right.

25 Q -- specifically regarding their City of Las Vegas

1 license.

2 A Right.

3 Q Don't you agree that if they were able to open in May  
4 when they were ready to open they would be generating much  
5 needed tax revenue to the State of Nevada?

6 A Well, again I think it's pretty fair to assume that  
7 had they opened they'd be generating revenue. I can't disagree  
8 with that.

9 Q Okay. And what's the harm to your company  
10 specifically if Thrive is not allowed open -- or if Thrive is  
11 allowed to open, what's the harm to your company?

12 A Okay. You've got a handful of licenses in play here.  
13 So all the operators who successfully won in the first round  
14 operate. What happens at the end of the day if we were  
15 successful on the merits? There's no license. They're  
16 operational facilities.

17 Q I'm confused. My question to you is what is the harm  
18 to your company Planet 13 --

19 A Right.

20 Q -- if Thrive is able to open their Sahara location?

21 A Again, my point is there are multiple licenses out  
22 here. I've been irreparably harmed from day one, and I'm  
23 harmed every day. Why should I not be allowed to participate  
24 in the market and they open while we have pending litigation?

25 Q So stop Thrive from opening because you're being

1 harmed financially; is that your position?

2 A I'm not out to stop Thrive on anything. All I'm  
3 trying to do is protect my company, my shareholders and my  
4 interests. That's what I'm trying to do.

5 Q So as you sit here today, you have no problem if  
6 Thrive were to open this week their Sahara location under their  
7 City of Las Vegas license?

8 A I want Thrive to be very successful, and I want the  
9 opportunity to be so as well.

10 Q And you agree if they were to open that would  
11 generate tax revenue for the State; correct?

12 A Any dispensary to open up would generate tax revenue  
13 for the State.

14 Q You were asked about and you said a chilling effect  
15 on the industry doing background checks. Is that what you  
16 said?

17 A Yeah. I said as relates specifically to a retail  
18 investor who maybe owned a share or two who's buying and  
19 selling on the markets.

20 MR. GUTIERREZ: Pull up 453D.200.

21 BY MR. GUTIERREZ:

22 Q You've seen this statute before?

23 THE COURT: NRS or NAC.

24 MR. GUTIERREZ: NRS. I'm sorry. Thank you, Your  
25 Honor.

1 (Pause in the proceedings.)

2 BY MR. GUTIERREZ:

3 Q Mr. Groesbeck, you've seen this, correct, that the  
4 department adopting these regulations need to ensure that they  
5 need to adopt all regulations necessary or convenient to carry  
6 out the provisions of this chapter? Do you see that?

7 A I do see it, yes.

8 Q The next sentence says,  
9 The regulations must not prohibit the  
10 operation of a marijuana establishment,  
11 either expressly or through regulations that  
12 make their operation unreasonably  
13 impracticable.

14 Do you see that?

15 A I do.

16 Q And do you think requiring a public company like  
17 yours to now have to do background checks on every single  
18 shareholder would be unreasonably impracticable?

19 A Well, as I said earlier today, that's not my  
20 decision. As the CEO -- a co-CEO of my company, if the State  
21 directs me to do something, I'm going to do it. They don't  
22 listen to me. They aren't interested in my input. They're the  
23 regulator. I'm going to follow their directives.

24 Q My question to you is do you think that would be a  
25 harm on your business if they are able to say you need to do a

1 background check on every single shareholder?

2 A Well, again, I think we need to make a distinction  
3 between an institutional investor and a retail investor. It's  
4 fairly simple to put together a retail list. I mean, that's a  
5 couple clicks on the -- keystrokes on the computer.

6 The retail side, I'll give you that it would be a  
7 little more problematic, particularly if you are widely traded  
8 and, you know.

9 Q You said a chilling effect on the industry. If a  
10 public company was required to do that, it would have a  
11 chilling effect on the industry; don't you agree?

12 THE COURT: What he said was if you made me do it  
13 every day it might have a chilling effect.

14 MR. GUTIERREZ: Okay.

15 THE WITNESS: That's correct.

16 MR. GUTIERREZ: Okay.

17 THE WITNESS: Thank you, Judge. And that's true.

18 BY MR. GUTIERREZ:

19 Q Now, Mr. Groesbeck, if you were to buy a license  
20 today, my client Mr. Peckman were to sell you a license  
21 today --

22 A Uh-huh. Right.

23 Q -- would you still be requesting an injection from  
24 this Court?

25 A Well, there again, as I said, that's one of multiple



1 licenses that we had in play that we were looking to acquire.

2 Q Would you still be challenging the process that the  
3 department took in adopting the regulations?

4 A You know, as we sit here right now, I don't know. My  
5 goal, of course, is to prepare my -- protect my shareholders  
6 and our interests and specifically, you know, we mentioned the  
7 Medizin facility numerous times.

8 Q Uh-huh.

9 A And that's my intent.

10 Q Now, with that Medizin facility, you said 18 to  
11 20 million per year --

12 A Yeah --

13 Q -- is that correct?

14 A -- roughly.

15 Q Okay. And if that facility is allowed to open, then  
16 you wouldn't have any issue with this litigation against the  
17 State? You wouldn't still be pursuing it?

18 A No, I didn't say that. I said that would certainly  
19 make things much more palatable. We can talk about that, and I  
20 could sit with my attorneys and look at it from a different  
21 perspective.

22 Q Other than any financial harm, do you have -- is your  
23 company going to suffer any harm if this injunction is not  
24 granted?

25 A Our company has suffered tremendous harm outside of

1 the revenue side. We took a massive hit in the market. Our  
2 market cap probably decreased about 40 percent initially as a  
3 result of this license issue. Yeah, this was ongoing. This is  
4 something I live with every day.

5 Q Financial harm is what your company has suffered; is  
6 that correct?

7 A Well, at the end of the day, everything is financial.  
8 We are businesses. We are in business to make money. We're  
9 business to get returns for our shareholders.

10 Q I understand. And in your report, your Planet --  
11 your report that we just looked at --

12 A The MDNA.

13 Q -- you would have outlined if there was some  
14 immediate harm to the company if this injunction is not  
15 granted; is that fair?

16 A No, I -- no, I'm not sure we would say that.

17 Q And is -- can you outlined for us what the immediate  
18 harm to your company is other than financial if this injunction  
19 is not granted?

20 A Well, I think we walked through that. It all ties  
21 into financial. I can't operate my company.

22 MR. GUTIERREZ: Thank you, Your Honor. Pass.

23 THE COURT: Thank you.

24 It's 11:20. I lose the witness at this time I've  
25 been told. If --

1 MR. KEMP: No questions, Your Honor.

2 THE COURT: Is anyone going to have additional  
3 questioning for this witness?

4 Mr. Graf, how --

5 MR. GRAF: Two questions.

6 THE COURT: Quickly.

7 MR. GRAF: Yes, Your Honor.

8 THE COURT: Keep your voice up. Stay where you are.

9 MR. GRAF: I'll ask while I'm walking.

10 DIRECT EXAMINATION

11 Q Mr. Groesbeck, I represent Clear River LLC in this  
12 action. You said or testified earlier that you -- the cost to  
13 get a license was cheaper than buying a license. Do you  
14 remember that testimony?

15 A Yes. Basically that's what I said --

16 Q Okay. So --

17 A -- to acquire a license through the application  
18 process is cheaper than going to the open market.

19 Q So the people at your company have done an analysis  
20 of the cost to go through the licensing process, and they've  
21 done an analysis of the cost to buy a license; correct?

22 A I'm sure we have.

23 Q And they have numbers for both of those right, the  
24 dollars that those would cost?

25 A I'm sure there have been multiple discussions about,

1 you know, again how to promote the company moving forward,  
2 particularly with respect to the Medizin store.

3 Q And then just one other question, sir. The market  
4 cap, what is the market cap for Planet 13 today?

5 A You know, I don't know today as we sit here, but the  
6 market overall, the sector has been down considerably, but last  
7 year at the time when these licenses issued, we were trading  
8 roughly at about three, forty, Canadian. That would put us at  
9 two, eighty; two, ninety U.S. That dropped all the way down to  
10 less than \$2, I believe, within a matter of, you know, 60, 90  
11 days.

12 Q And all of the shares that you previously testified  
13 to, we could make a calculation as to what damage has been done  
14 to your market cap using those numbers; right?

15 A Well, I think you can do an analysis certainly to see  
16 how, you know, the trading activity and how it's trading out.

17 MR. GRAF: Thank you, Your Honor. That's it.

18 THE COURT: No one else has any questions for  
19 Mr. Groesbeck?

20 MR. SHEVORSKI: The State has questions, but we don't  
21 need Mr. Groesbeck for that, no.

22 THE COURT: All right. Thank you.

23 Have a nice day, Mr. Groesbeck. It appears your  
24 testimony has been concluded within the time frames we were  
25 able to set even though I was late.

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: If, for some reason, Mr. Shevorski, it  
3 turns out you need to ask him questions, given my rush that I'm  
4 giving you --

5 MR. SHEVORSKI: Yeah.

6 THE COURT: -- please talk to Mr. Kemp.

7 Bye, Mr. Groesbeck.

8 THE WITNESS: Thank you.

9 THE COURT: Next witness.

10 MR. SHEVORSKI: I thought Mr. Kemp --

11 THE COURT: Next witness.

12 MR. SHEVORSKI: -- had somebody else from --

13 (Pause in the proceedings.)

14 MR. SHEVORSKI: I just didn't want to -- their broker  
15 is leaving on a plane. I don't want to hold him up, and I  
16 thought he had somebody else to --

17 THE COURT: Well, let's see if he has someone else.

18 MR. SHEVORSKI: Yeah. I just wanted to explain, Your  
19 Honor.

20 THE COURT: I'm not worried about it. I'm pausing.  
21 The sign says patience is a virtue that's on my bench. I'm  
22 trying really hard.

23 MR. SHEVORSKI: And I heard something about  
24 incompetent earlier. I didn't want to be in that category.

25 THE COURT: Nope, you weren't in that group,

1 Mr. Shevorski. In fact, no one in this room has been in that  
2 group. You all have been very competent, professional and  
3 well-prepared. It's a joy to have you all in my courtroom as  
4 practicing attorneys.

5 I'm serious. The subject matter is a little making  
6 my brain work, but having you all here has been a very pleasant  
7 excursion as opposed to some of the people on my 9:00 o'clock  
8 calendar.

9 MR. SHEVORSKI: Fair enough, Your Honor, but I'll  
10 keep it in mind that the day ain't over yet. So I'm trying to  
11 stay on your right side.

12 THE COURT: Oh, you're doing fine, Mr. Shevorski.

13 If anybody needs to stand up, stretch, go to the rest  
14 room real quick while we figure out what the next witness is,  
15 please feel free to do so.

16 This is not a sprint; it is a marathon.

17 (Pause in the proceedings.)

18 THE COURT: How are we doing, guys? Did we find our  
19 witness?

20 MR. SHEVORSKI: Yeah, he's here.

21 THE COURT: Sweet.

22 (Pause in the proceedings.)

23 THE COURT: Since Mr. Rulis is here for Mr. Kemp, I'm  
24 going to go ahead and swear the witness.

25 THE CLERK: Please raise your right hand.

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**LEIGHTON KOEHLER**

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

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

THE WITNESS: Leighton Koehler. Last name  
K-o-e-h-l-e-r.

DIRECT EXAMINATION

BY MR. SHEVORSKI:

Q Mr. Koehler, good morning. Thank you for being here.  
My name is Steven Shevorski. I'm with the office of the  
Attorney General. Just a couple of quick questions for you.

Were you present for Mr. Groesbeck's testimony?

A I was.

Q And you heard him discuss the approximately -- the  
approximate split. Let's call it about 70 percent insiders and  
maybe 30 percent widely held of the outstanding traded shares  
for MM Development. Does that sound about fair?

A Yes.

Q Okay. I'm assuming you're a lawyer?

A I am.

Q Okay. Did you take antitrust in law school?

A I may have.

Q May have. Okay. An issue has come up in this  
litigation about monopoly, and I want to talk to you about

1 monopoly power. So it's a subset of an antitrust analysis the  
2 Judge is aware of, and I want you to --

3 First of all, do you have a working definition of  
4 what monopoly power is?

5 A Am I being called to testify about as an expert or  
6 can provide opinions about legal definitions?

7 Q No, sir. There's an expert sitting right next to  
8 you.

9 A Okay.

10 Q I'm just asking for your definition of, if you have  
11 one, of monopoly power.

12 A As I sit here, no.

13 Q Okay. If I give you a definition that it's the power  
14 to control prices or exclude competition, do you accept that  
15 definition?

16 A I do.

17 Q Okay. With respect to -- and you're aware that  
18 generally speaking, where a company is a corporation, its  
19 owners are the shareholders; correct?

20 A Yes.

21 Q Okay. With respect to the widely held shares of  
22 MM Development, does a person who is a shareholder who owns two  
23 or three shares of MM -- of Planet 13 Holdings, excuse me, have  
24 the power to control prices for MM Development?

25 A That's an interesting question. Since we just are



1 coming off of our annual shareholders' meeting, every  
2 shareholder has a right to vote on the board members and the,  
3 you know, and then the board will eventually decide who are the  
4 officers. So even though it's a small amount of control, there  
5 is a very small degree of control given to every shareholder as  
6 of the record date. If they're a shareholder as of the record  
7 date, they have a say in corporate action.

8 Q Do they have -- does a person who owns one share of  
9 Planet 13 Holdings have the power to control what price you  
10 sell marijuana at?

11 A Absolutely not, but if that one shareholder bands  
12 together with other shareholders, then they may have an ability  
13 to sway the direction of the company. They may -- they may  
14 say, hey, we don't want Planet 13 to be a marijuana company  
15 anymore. Shareholders control their corporations.

16 Q I think the example you have, have you heard of a  
17 gentleman by the name of Carl Icahn?

18 A I've heard of him.

19 Q Bill Ackman?

20 A I've heard of him.

21 Q Are those kind of activist investors who may start  
22 purchasing shares? What about T. Boone Pickens?

23 A Where are you going? I --

24 Q Do you know Mr. Pickens?

25 A I've heard some of these names.

1 Q Okay. So if Mr. Ackman starts purchasing shares, he  
2 might have a little more ability to affect a company's  
3 operations; correct?

4 A Potentially.

5 Q Potentially. And control the -- how the company  
6 operates? The more shares he purchases, the more control he  
7 gathers; correct?

8 A Potentially.

9 Q Okay. Now let's contrast that to one shareholder.  
10 Assuming that person does not combine with other shareholders,  
11 does one shareholder have the power to control the price that  
12 MM Development sells marijuana at?

13 A I would go back to my previous answer since is this  
14 the same question. Every shareholder has a say in, you know,  
15 as to that share. That's what they're entitled to do with it.  
16 They're entitled to vote on the corporate covenants.

17 Q How often do you have a shareholder meeting?

18 A Annually. Or in the case of special actions, there  
19 may be a special meeting called.

20 Q Is the price of -- is the price of marijuana  
21 something that's set annually?

22 A I don't believe that would be appropriate, no.

23 Q One more. Something Mr. Groesbeck mentioned.  
24 Mr. Koch -- and you were here for the testimony mentioned in a  
25 hypothetical where a person wanted to buy a couple shares,

1 let's call it two shares, on the Canadian Securities Exchange  
2 for Planet 13 Holdings, and they sold it later that day, and  
3 they were -- so you would agree with me that during that time  
4 period, let's call it seven hours, that person was held an  
5 ownership interest in Planet 13 Holdings and indirectly of  
6 MM Development?

7 A That's correct.

8 Q Okay. During that time period, did that person who  
9 owns two shares pose a security threat to MM Development?

10 A I certainly wouldn't think so.

11 MR. SHEVORSKI: Okay. No further questions, Your  
12 Honor.

13 THE COURT: Thank you. Any other defendants or  
14 defendant intervenors have questions?

15 MR. KOCH: Me.

16 THE COURT: Mr. Koch.

17 DIRECT EXAMINATION

18 BY MR. KOCH:

19 Q Mr. Koehler, I had to -- my name is David Koch.  
20 We've talked on multiple occasions I believe.

21 When Mr. Groesbeck was here, we looked at that  
22 corporate chart which was page 787 of Exhibit 20.

23 MR. KOCH: Put that back up one more time, Bryan.

24 UNIDENTIFIED SPEAKER: Exhibit 12?

25 MR. KOCH: Exhibit 20.

1 BY MR. KOCH:

2 Q While he's pulling that up, let me ask you, were you  
3 primarily responsible for the preparation of the application  
4 that MM Development submitted in September of 2018?

5 A I was.

6 Q Okay. 787, which I think is the actual page number,  
7 108 or -9. All right. You've seen this chart?

8 A I prepared this chart.

9 Q All right. In that top box, we asked Mr. Groesbeck  
10 about respective beneficial owners and stockholders. He  
11 answered some questions about that on the bottom line there.  
12 It stated, Investors, public stockholders, none greater than  
13 5 percent individually. You drafted that?

14 A I did. In response to the department identifying  
15 that shareholders under 5 percent were not required, and they  
16 had established this through previous activities, when we had  
17 transferred our license and when we went public from  
18 MM Development company ownership changing, when we transferred  
19 the license at the time back in June 11th of 2018, when we  
20 went public, the department did not require stockholders under  
21 5 percent to be reported, although we did have the exact list  
22 at the time, and we were prepared to provide it, it was 243  
23 shareholders exactly.

24 And since then we do check in from time to time on  
25 the number of shareholders and the identity of the

1 shareholders. It was never required. So upon instructions  
2 from the department, this was what went in to our -- our  
3 application.

4 Q Right. Since that time -- you said 243 shareholders  
5 at that time. How many do you have today?

6 A I couldn't tell you as I sit here right now.

7 Q More than 243?

8 A I would assume so.

9 Q More than a thousand?

10 A I don't know.

11 Q Okay. And I think you heard Mr. Groesbeck and the  
12 Judge comment on the issue if the department asked you to  
13 submit a shareholder list every day, and the department were to  
14 conduct a background check on that list every day, do you think  
15 that that would have an effect on MM Development or Planet 13's  
16 ability to operate as a public company?

17 A Given that bizarre and -- hypothetical is what I'm  
18 going to call it, I think that would have a chilling effect on  
19 investors.

20 Q Right. That would be a bizarre situation?

21 A That sounds bizarre to me.

22 Q Yeah. Not a reasonable, normal situation you would  
23 expect the department to carry out?

24 A Let me -- you know, I think that hypothetical does  
25 sound unreasonable, but I think if we're talking in

1 hypotheticals, I think if there was a requirement annually or  
2 as part of a limited opportunity license application window  
3 like this, I firmly believe I could have prepared a  
4 comprehensive shareholder list and identified everybody.

5 I think one of the, if I may, I think where this  
6 heads is, you know, doing background checks, providing a list  
7 of names is doable, and it always has been. If the department  
8 directed our company to do that, we would do it, and that's the  
9 end. I mean, that's what would be required. We're going to  
10 protect those licenses, and we would do what we're told.

11 Q Good. Good. And if you provided that list, would  
12 you expect the department to actually perform a background  
13 check on each of those shareholders on the list you provide?

14 A What's your definition of background check?

15 Q Well, that's a good question. The statute says  
16 background check. It doesn't define it, and I'm asking you if  
17 you've ever talked with your stockholders about the fact that  
18 they may be subject to background checks for purchasing a share  
19 of Planet 13 stock?

20 A I haven't.

21 Q Okay. And you said it may be reasonable to do it on  
22 an annual basis. So you may take an annual list, submit that  
23 list. The department could review it, do whatever it's going  
24 to do. What about somebody who buys on Day 2 of the year and  
25 sells on day 364; they have a felony; it's a drug lord from

1 Mexico; he buys 4 percent of the company stock? Would that  
2 person be on the list if you provided an annual list?

3 A I don't know, and to go back and clarify what I said  
4 earlier is I said, as part of a license application process or  
5 annually or, you know, some reasonable establishment of  
6 providing shareholder lists, if that were required by the  
7 department, we could comply.

8 Obviously there's a certain level if every minute I  
9 have to provide a shareholder list where the cost is  
10 prohibitive and the company closes, and if that's where the  
11 State of Nevada heads, that's tragic, but this is something we  
12 can do, and we were never asked to.

13 Q Okay. And the 5 percent item there, did you ever  
14 you, yourself, go to the department and say, you know what,  
15 5 percent, that's unreasonable; I think we should go to  
16 1 percent or maybe 10 percent or provide some other percentage?

17 A No.

18 Q Okay. So the 5 percent was part of the regulation.  
19 You understood it, and you submitted your application in  
20 accordance with that regulation?

21 A I don't know that it was part of the regulation. As  
22 we sit here, I don't know if it is part of the regulation.  
23 What I'm going to say is this was the requirement that the  
24 department informed us as an applicant of and that we met.

25 Q Right. NAC 453D.255, that's the regulation regarding

1 5 percent. Have you ever read that?

2 A I have.

3 Q Okay. And that is the regulation that was in place  
4 beginning in January or February of 2018. You're aware of  
5 that?

6 A I am.

7 Q Okay. And so this 5 percent that you included in the  
8 corporate ownership structure, that didn't just come from  
9 nowhere. That came from somewhere. That was a decision that  
10 was made based upon something that you read. Right?

11 A Not based on something that I read, that we were  
12 informed by the department that ownership under 5 percent we  
13 weren't going to be required to submit.

14 I might add though that we were ready and prepared to  
15 provide this if it ever came up. My assumption, although  
16 incorrect, was that if there were follow-up questions after  
17 submitting the application that the department would reach out.  
18 I don't know if they were understaffed or that they just rushed  
19 through the process. There was no follow up on the  
20 applications.

21 Q So if the department -- let's say you got a  
22 conditional license and the department came back to you and  
23 said that 29.2453 percent that you got listed there, we need to  
24 follow up on them. The department could then make that  
25 request, and you could provide that list of shareholders, and



1 they could do whatever they needed to do with it at that time;  
2 right?

3 A Well, it blows my mind that there would be a  
4 conditional license awarded if that was a question that was  
5 going to be asked instead of coming to us before awarding the  
6 license and then saying, well, we need you to follow up and  
7 verify this for us, and then we're going to award, you know,  
8 even the conditional because there's a limited number of  
9 licenses, and only, you know, winning applicants, you know, the  
10 people that deserve these licenses should get them.

11 Q Right.

12 A So --

13 Q The pool of conditional license recipients is smaller  
14 than the total number of applicants; right?

15 A I believe so.

16 Q And so if the department decided to only run  
17 background checks on conditional applicant recipients,  
18 conditional license recipients, it would be a smaller burden on  
19 the department; is that right?

20 A Potentially. But maybe there's a window between --  
21 and I don't know exactly what happened inside the black box as  
22 it appears to have been treated. Once a scoring determination  
23 was made, there could have been a reasonable follow-up period  
24 where they verify and validate; look at compliance history,  
25 which I don't know if they ever did -- I haven't been here

1 every day -- follow up on ownership issues. There's so many  
2 things that could have been done that I don't think were.

3 Again not my place here. I'm here to answer your  
4 questions. So --

5 Q Right. So the department could have done a lot of  
6 things. You're not here to say what they should have done, but  
7 they could have done other things; right?

8 A Maybe.

9 Q With respect to the last topic, those locations, you  
10 saw that application with respect to the City of Las Vegas that  
11 the MM on Exhibit 20, page 23, and this is where MM listed to  
12 be determined for its City of Las Vegas location. You're  
13 familiar with that?

14 A I am.

15 Q Okay. And you understood that it was permitted at  
16 this stage to put something like to be determined on the  
17 application with respect to a potential location; is that  
18 right?

19 A Again, it was my understanding that that was  
20 permitted, but that was only after the Department of Tax  
21 started announcing that this was no longer a requirement. Even  
22 after they announced that this was no longer a requirement,  
23 because of the community-impact portion and also my mistaken  
24 belief that having specific locations identified would be  
25 helpful, we worked diligently up to even a week before the

1 application was filed, narrowing in locations.

2 We were in lease negotiations with landlords. I was  
3 talking with multiple city departments, and we were trying to  
4 identify and be forward looking as to places that were  
5 underserved and, you know, meet the needs of the State and the  
6 people of the State who were going to be participating with us  
7 that, you know, were our customers. We tried.

8 Q Okay. And that's, I won't turn to it, but page 26  
9 where we read Mr. Groesbeck saying that MM would work with the  
10 City of Las Vegas to find a location that would serve the  
11 community; is that right?

12 A I drafted this.

13 Q Okay.

14 A And some of what you were saying today in court when  
15 you were talking with Bob Groesbeck, that was news to me.

16 Some of what I put in this was aspirational. It was  
17 my desire and remains my desire to work with that section of  
18 town and see if a dispensary could be opened. My understanding  
19 was is that it couldn't at the time of the application, but it  
20 definitely was our intent to work on this.

21 Q And the fact that MM included "to be determined" on  
22 its location, you did not believe that that would disqualify MM  
23 from potentially receiving a conditional license, did you?

24 A I did not believe that, but only because of  
25 instructions given by Department of Tax.

1           Q     And you said that was an announcement that the  
2 Department of Tax made; is that right?

3           A     Yes.

4           Q     That wasn't -- you didn't invite Jorge Pupo to  
5 dinner, did you, and he gave you that secret information?

6           A     No. Unlike others, I did not have that type of  
7 relationship with Mr. Pupo.

8           Q     And that was information that had been given to all  
9 applicants, not at a dinner, not anywhere else, but it was  
10 actually announced; right?

11          A     Well, I can't testify as to that. What I can say is  
12 that I was made aware by outside counsel that this was a  
13 development. I might have missed it but for outside counsel  
14 telling me, hey, this just changed. Let's see where we head in  
15 our application strategy.

16          Q     Who was your outside counsel?

17          A     Jay Brown.

18               MR. KOCH: All right. Thank you.

19               No further questions.

20               THE COURT: Anyone else from the defendants,  
21 defendant intervenors have questions?

22                               (No audible response)

23               THE COURT: Anybody from the plaintiff side?

24                               (No audible response)

25               THE COURT: Sir, I have a couple questions.

JD Reporting, Inc.

1           You said the department informed you of the 5 percent  
2 limit on the application for shareholders?

3           THE WITNESS: Yes, Your Honor.

4           THE COURT: Can you tell me how you learned of that  
5 from the department.

6           THE WITNESS: Outside counsel was in contact with the  
7 department, and so a week before the announcement, outside  
8 counsel was made aware, and then they told me. So around July  
9 31st I received an email from outside counsel. I may have  
10 the date a little bit off.

11          THE COURT: It's okay.

12          THE WITNESS: But around then I got a --

13          THE COURT: And that was from Mr. Brown?

14          THE WITNESS: That was from Mr. Brown's office.

15          THE COURT: Okay. So give me a couple other areas.  
16 You recently had an annual meeting probably April or March?

17          THE WITNESS: Just in June 24th.

18          THE COURT: June. Okay. What was the record date  
19 for that meeting?

20          THE WITNESS: Oh, I don't have that off the top of my  
21 head. That was about a month before.

22          THE COURT: About a month.

23          THE WITNESS: Sometime in May.

24          THE COURT: So how many shareholders did you have on  
25 your record date before the annual meeting?

1 THE WITNESS: I don't have that number, but I can --

2 THE COURT: Best estimate?

3 THE WITNESS: I can't. I have no idea.

4 THE COURT: Okay. So give me an order of magnitude.

5 250? 20,000?

6 THE WITNESS: I'm guessing --

7 THE COURT: I don't want you to guess.

8 THE WITNESS: -- and if I'm guessing, then it is a  
9 thousand or more.

10 THE COURT: Okay. So somewhere between a thousand  
11 and 2,000?

12 THE WITNESS: Total guess, Your Honor. That's --

13 THE COURT: Okay.

14 THE WITNESS: I --

15 THE COURT: I don't want you to totally guess. I'm  
16 trying to spark your memory.

17 THE WITNESS: There's no memory to spark here. I do  
18 not know the exact number of shareholders as of that date, and  
19 part of that process is, is that we reach out through a --  
20 through our trust company and a mailing company. Some of those  
21 are maintained anonymously through their brokerage accounts.  
22 So our retail --

23 THE COURT: They're beneficial interest holders;  
24 right?

25 THE WITNESS: Some of them.

1           Now, all of those go through -- and just to be clear,  
2 there is a verification and a know-your-customer vetting  
3 process for all investors in, you know, with brokerage accounts  
4 and indeed with any retail investor where they have to go  
5 through and attest source of funds, their activities. I don't  
6 know if that rises to the level of what the State might  
7 consider a background check, but it might be an indication of a  
8 type of background check being conducted on the shareholders.

9           THE COURT: So let me try and approach it slightly  
10 differently. Because you're traded on the Canadian markets and  
11 I don't usually deal with people traded on the Canadian  
12 markets, I'm trying to get a little bit of information from you  
13 about the process.

14           THE WITNESS: Got it.

15           THE COURT: Do you prepare proxy statements that go  
16 to your shareholders prior to an annual meeting?

17           THE WITNESS: We do.

18           THE COURT: And are those sent out?

19           THE WITNESS: Yes.

20           THE COURT: And how are they sent out?

21           THE WITNESS: They're sent out through a third party  
22 proxy statement mailer service that we engage.

23           THE COURT: So I know now that in the American system  
24 some are sent out electronically. Some are sent out on  
25 listserv, and some are still sent out by snail mail. Do you

1 know how your trust company and proxy service sends the proxy  
2 notices for your shareholders?

3 THE WITNESS: I do. It was very expensive. We  
4 mailed it.

5 THE COURT: Okay. And you mailed it to all record  
6 owners on the record date?

7 THE WITNESS: Yes.

8 THE COURT: And some of those would be institutional  
9 investors; some of them would be brokerage account; and some of  
10 them would be individuals?

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: And if you were to be required to provide  
13 the shareholder list on a particular date every year, how  
14 burdensome would that task be?

15 THE WITNESS: Slightly burdensome, but very doable.

16 THE COURT: As opposed to the every day that Mr. Koch  
17 had referred to?

18 THE WITNESS: That's correct, Your Honor.

19 THE COURT: Okay. Those were all my questions.  
20 Thank you.

21 Anybody else have questions?

22 MR. KEMP: No, Your Honor.

23 THE COURT: All right. Thank you, sir. We  
24 appreciate your time. Very nice afternoon.

25 THE WITNESS: Thank you, Your Honor.



1 THE COURT: It's 11:51. Do we have a nine minute  
2 witness?

3 MR. GUTIERREZ: We can call the next witness, Your  
4 Honor, and go as far as we can.

5 THE COURT: I'm not going to even get him sworn in in  
6 nine minutes. Who is our next witness?

7 MR. GUTIERREZ: Bret Scolari.

8 THE COURT: Okay. So we have -- wait. Stay where  
9 you are, sir.

10 I've got Mr. Scolari. Who else I got today?

11 Mr. Kemp, who else I got?

12 MR. KEMP: Mine are done, Your Honor.

13 THE COURT: Okay. Mr. Cristalli? Mr. Miller?

14 MR. CRISTALLI: We have Sean Lewis, who is available;  
15 and Ben Sillitoe, who is also available.

16 THE COURT: And they're coming this afternoon?

17 MR. CRISTALLI: Yes, Your Honor.

18 THE COURT: All right.

19 MR. CRISTALLI: They'll be prepared to go.

20 THE COURT: Okay.

21 MR. CRISTALLI: And also one other, Your Honor,  
22 Danielle Stewart [phonetic] from Fidelis.

23 THE COURT: Okay. So I got four more of the --

24 MR. GUTIERREZ: And Frank Hawkings --

25 THE COURT: And Mr. Hawkings is here. I'm not

1 worried about him. He will be easy for us to get up here.

2 Anybody else?

3 (No audible response)

4 THE COURT: Okay. So after you finish these  
5 witnesses, Mr. Kemp and Mr. Gentile, I will ask you the  
6 following questions: Do you have a rebuttal case? I'll then  
7 anticipate you'll tell me what the timing is related to that.

8 MR. GENTILE: Okay.

9 THE COURT: I'm not asking yet. Okay. So I've got  
10 these witnesses, and then we're going to be done with the  
11 defendants and defendant intervention cases.

12 MR. GUTIERREZ: Your Honor, there was one or two  
13 witnesses from Mr. Bult's clients that we're trying to get for  
14 or Thursday morning that we're coordinating on, but again the  
15 timing wouldn't be as long as the witnesses we have today.

16 MR. BULT: Your Honor, and that was only because of  
17 our understanding we're dark tomorrow and Wednesday.

18 / / /

19 / / /

20 / / /

21 / / /

22 / / /

23 / / /

24 / / /

25 / / /

1 THE COURT: I'm not dark tomorrow and Wednesday.  
2 It's just none of you guys can all come. I'm here. Mr. Graf  
3 has hearings all day tomorrow. Okay.

4 So we're not going to be done with the witnesses the  
5 defense intends to call today. So I won't ask you the  
6 question, Mr. Gentile. Sorry.

7 Okay. I guess I will see you guys at 1:00.

8 (Proceedings recessed at 11:53 a.m., until 12:59 p.m.)

9 -oOo-

10 ATTEST: I do hereby certify that I have truly and correctly  
11 transcribed the audio/video proceedings in the above-entitled  
12 case.

13

14



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Dana L. Williams  
Transcriber

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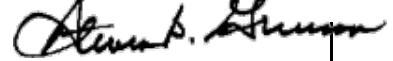
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TRAN

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

SERENITY WELLNESS CENTER LLC, .  
et al. .

Plaintiffs .

CASE NO. A-19-786962-B

vs. .

STATE OF NEVADA DEPARTMENT OF .  
TAXATION .

DEPT. NO. XI

Defendant .

**Transcript of  
Proceedings**

. . . . .

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**EVIDENTIARY HEARING - DAY 15  
VOLUME II**

MONDAY, JULY 15, 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:

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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.  
RUSTY GRAF, ESQ.  
ERIC HONE, ESQ.  
DAVID KOCH, ESQ.  
ALINA SHELL, ESQ.  
JARED KAHN, ESQ.  
JOSEPH GUTIERREZ, ESQ.  
PHILIP HYMANSON, ESQ.

1 LAS VEGAS, NEVADA, MONDAY, JULY 15, 2019, 12:59 P.M.

2 (Court was called to order)

3 THE COURT: Who's our next witness?

4 MR. GUTIERREZ: Your Honor, we'll call Brett  
5 Scolari.

6 THE CLERK: Please be seated. Please state and  
7 spell your name for the record.

8 THE WITNESS: Brett Scolari, S-C-O-L-A-R-I.

9 BRETT SCOLARI, DEFENDANTS' WITNESS, SWORN

10 THE COURT: Sir, there's water in the pitchers.  
11 There's M&M's in the dispenser, and there's a ton of binders.  
12 If someone refers you to the statute it's in the back of that  
13 book right there. Good luck.

14 MR. GUTIERREZ: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. GUTIERREZ:

17 Q Good afternoon, Mr. Scolari. Can you tell us what  
18 your current position is.

19 A General Counsel for Tryke Companies.

20 Q And how long have you been with Tryke?

21 A About four and a half years.

22 Q Since 2015?

23 A Yeah, February 2015 is when I started with Tryke.

24 Q And what are your -- the scope of your duties with  
25 the company?

1           A     I am General Counsel. I do the day-to-day legal  
2 counseling of the company, and then I'm in charge of the  
3 regulatory and compliance efforts of the company as well as  
4 analyzing any markets that the company will move into.

5           Q     So as part of --

6           A     So a business development piece.

7           Q     Is part of understanding the regulatory compliance  
8 do you -- are you familiar with the regulations under NAC 453A  
9 and D?

10          A     Yes.

11          Q     Yes? And were you involved with filling out the  
12 application for Tryke in the 2018 process?

13          A     I was along with certain members of our executive  
14 team.

15          Q     And who else would be?

16          A     We had help from our marketing director, our human  
17 resources director, our construction and facilities person,  
18 our CEO, maybe a couple others I'm forgetting, but it was a  
19 team effort.

20          Q     And are you currently part of the NDA?

21          A     I am.

22          Q     And what are you -- what's your position with the  
23 NDA?

24          A     I'm a director on the board.

25          Q     And how long have you been with the NDA?

1           A     About two years.

2           Q     Two years?

3           A     Uh-huh.

4           Q     And is the role of the NDA to represent the industry  
5 in legislative matters before the Department?

6           A     Yes, generally. It has a membership of I think the  
7 majority of the industry and it advocates for legislative and  
8 regulatory issues on behalf of the industry as a whole.

9           Q     Now, how many medical marijuana licenses did Tryke  
10 have?

11          A     Are you asking how many we have now?

12          Q     How many did you have about the time you applied for  
13 the recreational license in 2018?

14          A     We had six medical licenses prior to the Early Start  
15 program operating, six medical licenses operating.

16          Q     Were the medical licenses held in different LLC  
17 names?

18          A     Yes.

19          Q     And one of those names like Tryke Companies, Reno  
20 LLC, for example, is that one?

21          A     Correct.

22          Q     So that company held one medical license; is that  
23 fair?

24          A     Tryke Companies, Reno, in their initial round held  
25 four provisional medical licenses. It had two dispensaries,



1 and it had a cultivation and production license in a 2015  
2 allocation.

3 Q And there was also Tryke Companies Southern Nevada  
4 LLC; is that correct?

5 A Tryke Companies SONV LLC, yes. It had four  
6 licenses, as well. It had two medical dispensaries, a  
7 cultivation and a production.

8 Q How much time, can you estimate for us, did you  
9 spend on the 2018 application process?

10 A I don't know. Probably -- I'd be guessing. I don't  
11 know. I didn't keep track of time. Anyway, it pretty much  
12 dominated a couple of months here and there -- that I had  
13 other duties, as well, obviously with operations in Arizona.  
14 So it was -- it probably dominated half of my days for a  
15 couple months.

16 Q You were in charge of filling out the application  
17 and also gathering the information?

18 A Yeah, it was -- again, it was a group effort in the  
19 company. So it was our executive team put it together.

20 Q When did you start working on the 2018 application?

21 A Well, if you -- we -- prior to the July release we  
22 were probably had worked four to five months to secure  
23 properties, whether in an LOI or a contingent lease to  
24 identify locations that we'd be applying for licenses on. So  
25 I would say early 2018 we began.

1 Q How many employees other than yourself did you have  
2 dedicated for the process, the application process?

3 A Five.

4 Q Five.

5 A Five or six.

6 Q And Tryke applied for licenses in the City of Las  
7 Vegas, North Las Vegas, and Clark County; is that correct?

8 A Yeah, both the Tryke Reno entity and the Tryke SONV  
9 entity each applied for three licenses, and it was a mix of  
10 jurisdictions in each. But they were all Southern Nevada  
11 jurisdictions.

12 Q So Tryke SONV was able to apply for multiple  
13 licenses in the same jurisdiction; is that correct?

14 A We applied for -- and the reason we applied for -- I  
15 think Tryke SONV applied for two locations in Clark County.  
16 We rank those, as the State required, with the understanding  
17 that we would only get one in that location.

18 Q What was your understanding as to why you would only  
19 get one in that location?

20 A It was based on what the application said.

21 Q Okay. You would follow -- you're following the  
22 regulations and the Statute, correct, when you were filling  
23 out the applications?

24 A Correct.

25 Q And you were familiar with the regulations?

1           A     Correct.

2           Q     The regulations in NRS 453D, where did it say that  
3 you could only apply for one application per jurisdiction?

4           A     Again, we were complying with what the -- I had the  
5 understanding from the application itself that we would be  
6 only awarded one in a particular jurisdiction. So the State  
7 asked us to rank those. So it was my understanding, rank  
8 them, because we cannot award them two in one jurisdiction.  
9 So that's why we ranked them the way we did.

10          Q     My question to you though is in the regulations, NAC  
11 453D, where does it say you could only apply for one?

12          A     I'm not familiar if it says that.

13          Q     It doesn't say that; correct? There's what we call  
14 a anti-monopoly provision. You're familiar with that;  
15 correct?

16          A     Correct.

17          Q     And it talks about the percentage of ownership per  
18 jurisdiction? You're nodding your head. Is that a yes?

19          A     Yes.

20          Q     Okay. So you're familiar with that provision, but  
21 you don't know of anywhere in the regulations that discusses  
22 -- that prevents an applicant from submitting multiple  
23 applications in the same jurisdiction?

24          A     I don't have it off the top of my head, but, again,  
25 it was clear to us that you would not be awarded more than one

1 in a jurisdiction. And essentially in my mind it linked up,  
2 because the State asked us to rank our applications by  
3 preference.

4 Q But you submitted three in the City of Las Vegas; is  
5 that correct? Three applications in the City of Las Vegas?

6 A If I recall, yeah, potentially. I don't have it in  
7 front of me and don't know the breakdown.

8 Q You submitted one for Tryke Companies SONV, score of  
9 189.33. Do you recall that? Is that a yes?

10 A Generally, yes.

11 Q Okay. Tryke Companies Reno LLC scored a 182. Do  
12 you recall that in the City of Las Vegas?

13 A Yes.

14 Q And then Tryke Companies Reno LLC, again, in the  
15 City of Las Vegas scored a 181.33. Do you recall that?

16 A Yes.

17 Q Okay. Now, you submitted all three, but you said  
18 all three, and you had the understanding even after you paid  
19 all the fees that you would only get one?

20 A Tryke Companies SONV could only be granted one.  
21 Tryke Companies Reno could be granted one.

22 Q Okay.

23 A So, again, it was separated by company.

24 Q Now, when did you find out that Tryke did not  
25 receive any licenses?

1           A     I believe it was the morning that the State released  
2 the results. Started seeing the rejection letters come  
3 through.

4           Q     And they came through to you?

5           A     Yes.

6           Q     Was that on December 5th, 2018?

7           A     Yes, I believe it was December 5th, yes.

8           Q     Do you recall communicating with other applicants  
9 about the results of their licenses on that time?

10          A     Yeah, we had some friendly back and forth on that  
11 day.

12          Q     Do you recall texting my clients, Armen Yemenidjian  
13 at Essence and Mitch Britten at Thrive, on that day about the  
14 results of their applications?

15          A     I remember Mr. Yemenidjian texting me and asking me  
16 how we did.

17          Q     We can move to admit Proposed Exhibit 5047, which is  
18 the text message between Mr. Scolari and Mr. Yemenidjian.

19               THE COURT: Yes. Any objection?

20               MR. SHEVORSKI: No objection.

21               THE COURT: Be admitted.

22               (Pleadings' Exhibit 5047 admitted)

23               THE COURT: Sir, it will be on the screen, but if  
24 you want the hard copy let us know.

25               THE WITNESS: Thank you.

1 THE COURT: Mr. Hymanson, welcome to our party.

2 MR. HYMANSON: Nice to be here. Judge.

3 THE COURT: Do you need any help?

4 MR. HYMANSON: I think I'm doing all right, but  
5 thanks for checking in.

6 BY MR. GUTIERREZ:

7 Q Mr. Scolari, the 5047, and you've been handed it, as  
8 well, it's on your screen. Do you have that in front of you?

9 A I do.

10 Q Okay. And this is a text message between you and  
11 Armen at Essence; is that fair to say?

12 A Yes.

13 Q Okay. And the right side of this would be Armen's  
14 text response to you; is that correct?

15 A Yes.

16 Q And then the left would be your messages to Armen;  
17 is that fair?

18 A Yes.

19 Q Okay. So on this text you ask him, right down, it  
20 says, "Want to sell us a couple? We have some good sites.  
21 I'm serious." So at this stage you were requesting to buy  
22 some of the licenses that Essence received; is that fair?

23 A I don't think it's fair. I think it was one moment  
24 in time when -- probably found out about 30 minutes before  
25 these texts went out that we struck out. So it was some

1 collegial banter with a colleague who I, you know, still  
2 consider a friend. I mean, it wasn't -- that never went past  
3 that text.

4 Q In a text you say, "City of Las Vegas, NLV, and  
5 County." Is that correct? Those are the three jurisdictions  
6 you were looking to buy licenses?

7 A Those are the three jurisdictions that we had  
8 secured properties for the application.

9 Q The question was, you were looking to buy licenses  
10 for those jurisdictions; correct?

11 A I think Armen asked me, would you sell me some  
12 sites.

13 Q Okay. So did you have specific locations and  
14 licenses that you were looking for?

15 A We had specific locations locked up in the City of  
16 Las Vegas, North Las Vegas, and Unincorporated Clark County.

17 Q So you're saying you got those sites already under  
18 lease; is that correct?

19 A We had them under a letter of intent or a contingent  
20 lease.

21 Q You had an actual signed lease?

22 A Yes.

23 Q Okay. Now, you're saying the conversation with  
24 Armen didn't go farther than this; is that correct?

25 A Nope.

1 Q Okay. But you had the ability to buy licenses --  
2 under the statute you could buy a license from another  
3 individual or entity; correct?

4 A Yeah, I think anyone could buy --

5 Q Okay.

6 A -- willing buyer, willing seller can buy a license  
7 at this -- today.

8 Q Move to admit, Your Honor, 5048, which is the next  
9 text message with Mr. Scolari --

10 THE COURT: Any objection?

11 MR. SHEVORSKI: No objection.

12 THE COURT: Be admitted

13 (Plaintiffs' Exhibit 5048 admitted)

14 BY MR. GUTIERREZ:

15 Q And, Mr. Scolari, this is a text message between you  
16 and Mr. Britten at Thrive; correct?

17 A Yes.

18 Q Okay. Again, you're requesting licenses or asking  
19 if he's willing to sell licenses; is that fair to say?

20 A Yeah, I think at that moment in time that was my  
21 thought.

22 Q What were you willing to pay for the license at that  
23 time?

24 A There was not even a price in my head.

25 Q Have you tried to buy licenses since --



1           A     I'm not -- I wouldn't make that decision at Tryke.

2           Q     Was Tryke in the market to buy licenses after they  
3 found out they were not granted licenses?

4           A     Not necessarily. We were just putting the feelers  
5 out, and it was all, again, preliminary discussions, and we  
6 didn't have all the facts of what had happened or not had  
7 happened with the licensing process.

8           Q     And you also state in this -- if you look at 3:23  
9 p.m., "Did you hire -- did Amanda do your applications? We  
10 should have hired someone to focus exclusively on that." Do  
11 you see that??

12          A     Uh-huh.

13          Q     Is that a yes?

14          A     Yes.

15          Q     You're referring to Amanda Connor?

16          A     Yes.

17          Q     Okay. And what was the reason you said, we should  
18 have hired someone to focus exclusively on that?

19          A     Just conversation, again, there wasn't really any --  
20 again, we were shock, you know, probably trying to find  
21 reasons why we hadn't been successful. Stoking their ego a  
22 little bit, but they did it the right way and maybe had the  
23 right person doing it. Again, we didn't have the -- didn't  
24 have all the facts or the circumstances of -- by that time I  
25 hadn't -- I didn't know that 16 companies got the lion's share

1 of all the licenses. So it was just conversation.

2 Q Do you believe that if someone that would have  
3 full-time been working on the application may have helped you  
4 score higher?

5 A Potentially. I don't know. I don't know. I think  
6 we did a very good job on our applications. So potentially.

7 Q Potentially?

8 A Maybe someone who was a little bit closer to the  
9 process and had a little bit more insight into what the  
10 Division was looking for.

11 Q What does that mean?

12 A What's that?

13 Q What does that mean, more insight to what they're  
14 looking for?

15 A Again, I don't -- the reason I'm sitting here and  
16 our company's sitting here, we don't think there was an even  
17 playing field that occurred here. There's -- so that's --  
18 maybe there was other folks that had a little bit more  
19 information and insight into what the Department was looking  
20 for. That's all it means.

21 Q Right. But we're here -- we've been here for almost  
22 two months on a hearing, and is there any evidence you have  
23 that there was something that Amanda Connor did wrong?

24 A No.

25 Q You don't have any evidence of that; correct?

1           A     I don't have any evidence.

2           Q     All right.

3           A     I'm just -- all I said was there might have been  
4 folks that had -- were a little bit closer to the process than  
5 others.

6           Q     But you brought a lawsuit -- your company brought a  
7 lawsuit against the State of Nevada; correct?

8           A     Correct.

9           Q     After this process was released? Is that a yes?

10          A     Correct.

11          Q     And what is the relief specifically your company's  
12 looking for from this injunction?

13          A     I think from our perspective we would like to -- we  
14 don't believe that at the end of the day there was an even  
15 playing field -- folks -- and it goes back, it was evident  
16 here today. Even folks on our side, it was unclear whether or  
17 not a physical address was required or not. And there's  
18 plaintiffs that didn't put a physical address. There's  
19 defendants that didn't put a physical address. So to me there  
20 was a lot of confusion in the process, and it did not create  
21 an even playing field, and that's why we're sitting -- that's  
22 why Tryke is sitting here today.

23          Q     Tryke's position was limited to the physical  
24 address; is that fair to say?

25          A     No.

1 Q What else is Tryke concerned with about the process?

2 A I don't think the evaluation criteria were broken  
3 down in a cohesive and -- in a cohesive manner so you knew  
4 exactly what points that you needed to hit. Now that I see  
5 the scoring sheets, you know, obviously it was, you know,  
6 obviously it was -- but that wasn't communicated at least in  
7 the application itself.

8 Q What else, do you have a position on diversity being  
9 included?

10 A No, I really don't have a thought on diversity. I  
11 mean, our ownership's pretty simple. So, I mean, that is what  
12 it is for Tryke. So I don't really have a position on that.

13 Q So you don't believe the Department deviated from  
14 the statute and the valuation by including diversity as a  
15 criteria for grading?

16 A I don't believe the Division laid out what diversity  
17 really meant for the application. I don't really have an  
18 opinion whether it -- I think that's for a brighter legal mind  
19 than mine whether or not diversity was violating the statute  
20 or not.

21 Q But, do you have an opinion, you've been in the  
22 industry, you're part of the NDA --

23 A Uh-huh.

24 Q -- as to whether or not diversity is directly and  
25 demonstrably related to the operation of a marijuana

1 establishment?

2 A I'm not sure I understand.

3 Q Have you been to any of these proceedings and heard  
4 any of the argument set forth by your side?

5 A This is the first time I've been here.

6 Q Okay. Well, one of the arguments being made is that  
7 diversity should not have been considered as part of the  
8 application, because it's not directly or demonstrably related  
9 to the operation of a marijuana establishment.

10 A My understanding was that the direct and  
11 demonstrative evidence of -- was your history of operating  
12 establishments in the State of Nevada, and that's what we  
13 tried to focus on for Tryke, because we've been established  
14 since 2015.

15 Q The question is, do you believe diversity should be  
16 part of that?

17 A Do I believe it should be part of that?

18 Q Yes.

19 A Again, if that was a criteria that was set out in  
20 the law and it was defined as what diversity means then I  
21 guess. I don't have an opinion whether that was -- we dealt  
22 with it the way we dealt with on the application. I mean,  
23 that's --

24 Q It was in the regulations and you dealt with it, you  
25 complied with it; correct? Yes?

1           A     We answered the diversity question by filling out  
2 the owner, officer, board member sheets.

3           Q     But what relief are you seeking for -- this is --  
4 we're not in a trial, we're here for an injunction. You're  
5 asking the Court to stop a certain process. What is the basis  
6 for that request?

7           A     Again, I'll go back to what I stated earlier. My  
8 thought is that there was a lot of confusion on -- and I'm  
9 picking on the proposed physical address piece, but that's the  
10 one that sticks in my mind. We were under the impression you  
11 needed to -- it asked for a proposed physical address. We  
12 went out and secured properties, paid money, reservation fees  
13 on letter of intents and contingent leases. And I think there  
14 was enough confusion there to warrant that this was not a fair  
15 process.

16                     And the other issue that I -- that jumped out on me  
17 was the amount of licenses that each company was given. I  
18 don't think anyone in this industry had the impression that  
19 certain companies were going to get, you know, a lion's share  
20 of the licenses.

21           Q     You understood that proposed location -- that the  
22 location would be determined after final approval, correct,  
23 for license? That was in the regulations?

24           A     That wasn't my impression.

25           Q     Let's go to NAC 453D.282. Are you familiar with

1 this provision of the regulations?

2 A Yes.

3 Q Okay. And that the marijuana establishment needs to  
4 be -- that a license is conditional, do you see that, until  
5 certain requirements for approval to begin are satisfied. Do  
6 you see that?

7 A Yes.

8 Q And you read these before you did your application;  
9 correct?

10 A Yes.

11 Q You read these before you went out and secured  
12 property; correct?

13 A Yes. Yes.

14 Q You read these before you signed leases; correct?

15 A Yes.

16 Q So you knew that a marijuana license would be  
17 conditional until local governments would approve the  
18 location, and there would be then final approval by the State;  
19 correct?

20 A Yes.

21 Q Okay.

22 A And, yes, we knew we would have to go get zoning  
23 approval for our sites that we were paying money on.

24 Q Now, if my client sold you a license today, would  
25 you still be pursuing a lawsuit against the State of Nevada?

1           A     If they were to sell us a -- again, that's a  
2 hypothetical. I don't make those decisions.

3           Q     Hypothetically, if my clients were to sell you a  
4 license at Tryke today, would you still be pursuing a lawsuit  
5 against the State of Nevada?

6           A     That would be a decision for our owners.

7           Q     Okay.

8           A     I didn't make the decision to file the suit either.

9           Q     Specific to an injunction, there's been an  
10 injunction against my client Thrive from opening their  
11 location at Sahara, 3500 West Sahara under their City license.  
12 Are you aware of that?

13          A     Yes. Vaguely, yes.

14          Q     Okay. Vaguely. But you are aware there's an  
15 injunction in place, and there was a bond that was posted in  
16 order to prevent Thrive from opening under their City of Las  
17 Vegas license. Are you aware of that?

18          A     Yes.

19          Q     Okay. Explain to me what the harm is to your  
20 company, to Tryke, if my client Thrive was able to open  
21 tomorrow.

22          A     Again, if we all started from what I believe to be  
23 an even playing field I would have no problem with Thrive. I  
24 still don't have a problem with Thrive. I think they should  
25 be able to conduct their business in a fair way. So we --



1 again, the securing of these licenses, I don't believe  
2 everyone is on the same playing field.

3 Q I understand that. But I'm saying, what's your harm  
4 if Thrive opens tomorrow and starts generating revenue that  
5 could be given to the public, tax revenue that would be given  
6 to the public, which was the intent of the Ballot Initiative.  
7 What's your position as to Thrive as the harm is to your  
8 company if they're able to do that?

9 A Again, based on how these licenses were awarded our  
10 right to a fair process and to preserve, you know, the market  
11 share that we have there was -- in my opinion there was not a  
12 fair process to get there. So we've been harmed by a market  
13 share that could be threatened without having our fair  
14 process.

15 Q What is your future harm if Thrive opens tomorrow?

16 A I don't know how to answer that. I don't know --

17 Q There isn't any; right?

18 A -- I don't even know what their -- I don't know what  
19 their location -- we haven't done the analysis if it has  
20 enough --

21 Q Don't you think you should have done the analysis  
22 before you asked this Court to enter that injunction?

23 A Again, there was a process that we did not believe  
24 was fair, and it has had a detrimental impact -- it could have  
25 a detrimental impact on our business.

1           Q     That wasn't the question I asked. I asked, don't  
2 you think you should have done that analysis before coming to  
3 this Court and asking the Court to stop Thrive from opening  
4 that location?

5           A     I don't have an answer for that.

6           Q     You realize 27 people are ready to start working,  
7 and they cannot work because there's that injunction in place,  
8 are you aware of that?

9           A     I was not aware of that.

10          Q     Okay. Think that's fair?

11          A     I don't think the process was fair.

12          Q     So do you think that the process is not fair you  
13 stop everybody, including Thrive, from opening to the public?

14          A     Absolutely, until the industry can figure out what  
15 happened and where we go from here.

16          Q     But if you were sold a license today --  
17 hypothetically, if you were sold a license you'd be fine with  
18 the process; correct?

19          A     It's not correct. I told you, I don't make those  
20 decisions.

21          Q     Okay. So if Tryke had a license on December 5th  
22 that was sold by Thrive would you still be bringing this  
23 lawsuit?

24          A     I don't know the answer to that.

25          Q     Okay.

1           A     It's not my decision to make.

2           Q     We talked about diversity, already, as a scoring  
3 tool; right? You don't have an opinion that, as well, as to  
4 whether or not that was part of the process or should have  
5 been considered?

6           A     Are you talking from a political standpoint or from  
7 whether or not it should be in, I mean, diversity can mean a  
8 lot of different things. We answered those questions for our  
9 owners and officers and it was analyzed the way it was  
10 analyzed. I don't have any more to say on that.

11          Q     Right. But NAC453D.272(1)(b) says, "The diversity  
12 of the owners, officers, or board members of the proposed  
13 marijuana establishment could be considered as part of the  
14 application process." You were aware of that; correct?

15          A     Correct.

16          Q     And when you read these regulations you didn't have  
17 an objection to diversity being included; correct?

18          A     No.

19          Q     Okay. Do you have an objection now?

20          A     No.

21          Q     Okay. Now I want to go -- one of the considerations  
22 the Court's going to have is the harm to the public if an  
23 injunction's granted. You are aware that one of the arguments  
24 in favor of the passage of Ballot Question 2 was that tax  
25 revenue would be generated and given specifically to the

1 school district or the schools; correct?

2 A Correct.

3 Q That's in the statutes, in the Ballot Initiative;  
4 correct? Was that a yes?

5 A Correct. Yes.

6 Q Do you want to go back to that or do you take me at  
7 my word that that's what it says?

8 A I'll take your word on it.

9 Q Okay. I'm just -- for the record, 453D.020 NRS  
10 says, "The people of the State of Nevada find and declare that  
11 cultivation and sale of marijuana should be taken from the  
12 domain of criminals and be regulated under a controlled  
13 system, where businesses will be taxed and the revenue will be  
14 dedicated to the public education and the enforcement of the  
15 regulations of this chapter." You were aware of that;  
16 correct?

17 A Uh-huh.

18 Q It's a yes?

19 A In a general sense, yes.

20 Q Okay. Are you aware that tax revenue's actively  
21 being lost because of the injunction that is in place?

22 A I haven't done that math. I don't know to answer  
23 yes or no to that question.

24 MR. GUTIERREZ: We move to admit Proposed Exhibit  
25 5056, which is supplemental registration.

1 THE COURT: Any objection?

2 MR. GENTILE: Just a moment, Judge.

3 THE COURT: 56?

4 MR. GUTIERREZ: 5056.

5 THE COURT: So we're skipping from 48 to 56?

6 MR. GUTIERREZ: Yeah, we had some proposed ones,  
7 Your Honor, that we haven't moved to admit yet.

8 MR. KOCH: 55 was admitted, right?

9 THE COURT: Okay.

10 MR. MILLER: Your Honor, I don't believe we were  
11 provided in advance, and I'm just not sure what it is. Could  
12 we have a little bit of --

13 THE COURT: It's all right, Mr. Miller. You do not  
14 have to stipulate.

15 MR. MILLER: No, it's all right. I just want to  
16 have a little bit of foundation as to what this is and --

17 THE COURT: We'll get some foundation for you.

18 MR. MILLER: -- if this is a public document.

19 MR. GUTIERREZ: For the record, Your Honor, this was  
20 attached to our opposition to the TRO, which is a -- it's a  
21 supplemental registration to the State provided by Thrive in  
22 March of this year.

23 THE COURT: So, counsel, I need the foundation laid  
24 by the witness.

25 MR. GUTIERREZ: Okay.

1 THE COURT: And if he doesn't know then you'll have  
2 to utilize some other person to lay the foundation.

3 MR. GUTIERREZ: Oh. Just ask him about the  
4 document, fair enough.

5 BY MR. GUTIERREZ:

6 Q Mr. Scolari, are you required to submit a  
7 supplemental registration to the Department of Tax for your  
8 companies?

9 A I believe so, yes.

10 Q And tell us what that document is.

11 A Estimates the amount of taxes for the company, for  
12 their quarter or for a year.

13 Q And it's a document that you've prepared in the  
14 regular course of your business for these establishments;  
15 correct?

16 A Yeah, our CFO and the accounting department would do  
17 that.

18 Q And you estimate the total monthly receipts that a  
19 facility may make; is that correct?

20 A I believe so, yes.

21 Q And you also estimate the total monthly taxable  
22 receipts, as well; correct?

23 A I believe so.

24 Q Okay. Your Honor, we just move to admit the  
25 supplemental registration by Thrive that was propounded in

1 March, on March 13th of this year.

2 MR. MILLER: Judge, same objection. Lack of  
3 foundation.

4 THE COURT: Same, it's overruled. Or the objection  
5 is sustained. Sorry. The document's not admitted. he  
6 doesn't have any information about your client's supplemental  
7 filing.

8 MR. GUTIERREZ: Okay. Understood.

9 BY MR. GUTIERREZ:

10 Q Now, Mr. Scolari, if Thrive were to estimate that  
11 their monthly receipts for their location at Sahara would be  
12 1.3 -- taxable receipts would be 1.3 million --

13 THE COURT: You can't read from it, Mr. Gutierrez.  
14 So look up while you're saying stuff.

15 BY MR. GUTIERREZ:

16 Q Mr. Scolari, if Thrive were to estimate that they  
17 would have, hypothetically, \$1 million in receipts from this  
18 location -- are you with me on that?

19 A Uh-huh.

20 Q -- \$1 million in receipts from the Sahara location  
21 hypothetically, would you agree that would be tax revenue that  
22 would be lost if they're not allowed to open?

23 A I don't know the answer to that. That could be  
24 1.3 million from a competitor who didn't have a fair shot at  
25 the application process.

1 Q Okay. So you think that additional dispensaries are  
2 just going to dilute the whole process; is that your position?

3 A It could. I don't know if it's my position, but  
4 it's a possibility.

5 Q Then why do you want more licenses?

6 A We want to compete for licenses.

7 Q The question was -- you're saying that additional  
8 dispensaries are just going to dilute from the existing  
9 businesses. Is that your position?

10 A I don't know. I don't know if that's my position.  
11 I said it's a possibility.

12 Q And hypothetically if Thrive were to open and  
13 generate \$1 million in taxable receipts, per month, you agree  
14 that the public is losing out on that income; correct?

15 A I don't know that. I'm not a financial wizard. I  
16 do not know whether or not -- where those revenues would come  
17 from.

18 Q Okay. Let's hypothetically say that Thrive were to  
19 generate even \$500,000 for taxable revenue for the State,  
20 okay. How is that -- how is that harm that the public is  
21 incurring from lack of revenue, how is that more important or  
22 less important than the harm that you're claiming your client  
23 is incurring?

24 A Again, if it was new revenue, I don't think there  
25 would be a difference.



1 MR. GUTIERREZ: Okay. I'll pass the witness, Your  
2 Honor. Thank you.

3 THE CLERK: Mr. Gutierrez, your actual document?

4 MR. GUTIERREZ: We didn't admit -- oh. I'll get you  
5 a copy.

6 THE COURT: It doesn't matter. You offered it.

7 MR. GUTIERREZ: I'll get you a copy, Your Honor.

8 THE COURT: All right. Anyone else have questions?  
9 Mr. Cristalli, you want to give yours to Dulce? Thank you,  
10 Mr. Cristalli. That is very kind of you.

11 MR. CRISTALLI: You're welcome, Your Honor.

12 THE COURT: You're saving Mr. Gutierrez extra steps.

13 MR. CRISTALLI: I thought that would help.

14 THE COURT: Was there anyone who wanted to ask Mr.  
15 Scolari any additional questions? Mr. Shevorski.

16 MR. SHEVORSKI: The State, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. SHEVORSKI:

19 Q Good afternoon, Mr. Scolari. It's always good to  
20 see a Jones Vargas alumni.

21 A Good to see you.

22 Q That was for the Judge.

23 THE COURT: I'm not a Jones Vargas alumni.

24 MR. SHEVORSKI: No, you're not.

25 THE COURT: But Mr. Kemp is.

1 MR. SHEVORSKI: Yes, he is.

2 THE COURT: Sort of.

3 MR. SHEVORSKI: Well, it was Jones, Jones, Close &  
4 Brown I think at the time, Your Honor.

5 BY MR. SHEVORSKI:

6 Q Mr. Scolari, good afternoon. My name is Steven  
7 Shevorski. I'm with the Attorney General's Office. Do you  
8 have an email address bscolari@trykecompanies.com?

9 A Yeah.

10 Q Can you please turn to Exhibit 21. It should be --  
11 may I approach, Your Honor.

12 THE COURT: You may.

13 BY MR. SHEVORSKI:

14 Q Try to help you out, but usually it's -- Dulce  
15 usually helps me. Dulce, State's 21?

16 THE CLERK: [Inaudible].

17 MR. RULIS: Steve, Just to be clear, you mean 2021?

18 MR. SHEVORSKI: 2021, excuse me.

19 THE CLERK: Here, Mr. Shevorski.

20 MR. SHEVORSKI: Thank you, Dulce.

21 BY MR. SHEVORSKI:

22 Q Could you please turn to -- you're familiar with the  
23 term "Bates numbers"; correct?

24 A Uh-huh.

25 THE COURT: Is that yes?

1 THE WITNESS: Yes.

2 BY MR. SHEVORSKI:

3 Q DOT044715. Read that, sir.

4 A Yes.

5 Q Do you see your email address indicated on about the  
6 fifth or the sixth from the top?

7 A I do.

8 Q And the date indicated in the far right is April  
9 10th, 2018?

10 A Yes.

11 Q Okay. My friend Mr. Gutierrez was asking you a few  
12 questions about addresses, and you mentioned that they were --  
13 properties were locked up. Do you recall that?

14 A Yes.

15 Q And you've been a lawyer for quite a long time. For  
16 a letter of intent -- there are letters of intent that are  
17 contracts, and there are letters of intent that are not  
18 contracts. Is that familiar to you?

19 A Yes.

20 Q Okay. With respect to the Craig Road property, you  
21 had a letter of intent for that property; correct?

22 A I believe so. There were some that had contingent  
23 leases, some that had letter of intents, yes.

24 Q You know, with respect to the Craig Road property,  
25 you would agree that that letter of intent was not an

1 agreement; correct?

2 A Correct.

3 Q Okay. And Tryke Companies was not bound by that  
4 letter of intent?

5 A No, we are not.

6 Q With respect to contingent leases, are you familiar  
7 with the distinction between an expressed condition that has  
8 to take place before there is an agreement and a condition  
9 which may occur subsequent?

10 A Yes.

11 Q Those conditional leases, was there an expressed  
12 condition before that lease became a contract?

13 A Yes.

14 MR. SHEVORSKI: Okay. No further questions, Your  
15 Honor.

16 THE COURT: Thank you. Anyone else from the  
17 defendants, defendants' intervention wish to ask Mr. Scolari  
18 any questions? Anyone from -- Mr. Miller.

19 CROSS-EXAMINATION

20 BY MR. MILLER:

21 Q Sir, I believe you indicated that you are familiar  
22 with the limitation in the application that suggested that an  
23 applicant could not obtain more than one license per  
24 jurisdiction; correct?

25 A Yes.

1           Q     Do you remember that testimony? Why did you apply  
2 for and put in more than one application per jurisdiction?

3           A     We did that as a strategy. We figured if we -- we  
4 were only allowed one in a jurisdiction we would try to lock  
5 up, because we really wanted to get another license or two in  
6 Clark County so we went out and searched for properties, and  
7 if they fell in the same jurisdiction then we figured we could  
8 rank them for the State, and if we were awarded one we'd get  
9 one that would be, you know, desirable that we had, you know,  
10 we had locked up ready to go. But we had the understanding  
11 that we would not get more than one in each jurisdiction.

12          Q     Okay. And was that based in part upon your  
13 understanding that those specific proposed physical locations  
14 might have been evaluated differently through the application  
15 process based on those locations?

16          A     Absolutely. So what -- and this was my  
17 interpretation and I did not seek any clarification with the  
18 Department, but my understanding was when the State asked for  
19 a proposed physical address we better have some rights to that  
20 address. We didn't put TBD, we didn't put P.O. BOX, we went  
21 and put actual addresses we had some rights to under those  
22 LOIs and contingent leases.

23               From that, when we got to the non-identified portion  
24 each of those locations we analyzed specifically for the  
25 market around those locations, including whether or not the

1 square footage of those buildings that we had at least on  
2 contingencies would be adequate to serve that -- serve the  
3 public around it. So we analyzed 21-and-over folks in the  
4 areas as well as put together, you know, some general plans  
5 that showed the security and everything else that would be a  
6 part of that location.

7 Q And in preparation for your testimony today did you  
8 review a provision of those applications that references the  
9 testimony that you just referred to under building  
10 establishment information?

11 A Correct.

12 Q Okay. The Proposed Exhibit 264 that had been  
13 previously provided to authorities I'd like to try to admit  
14 without objection.

15 THE COURT: Any objection to 264?

16 MR. SHEVORSKI: I'm sorry, Your Honor, one second.

17 MR. MILLER: Excerpt of a --

18 THE COURT: Was it 264?

19 MR. MILLER: Yes.

20 THE COURT: I've got the number right?

21 MR. MILLER: Hope so.

22 THE COURT: Hold on a second, Shane.

23 MR. SHEVORSKI: Oh. That you -- that got the email  
24 today?

25 MR. MILLER: I think Friday.

1 MR. SHEVORSKI: Yeah, no problem, Your Honor.

2 THE COURT: Any objection? Be admitted.

3 (Plaintiffs' Exhibit 264 admitted)

4 BY MR. MILLER:

5 Q Mr. Scolari, let's turn to the Bates Stamped -- I  
6 believe the Bates Stamped was 536, is that correct, on the  
7 first page of that?

8 A Yes.

9 Q Can you communicate what this is, and indicate what  
10 it is.

11 A This is answering -- this is answering a non-  
12 identified portion where we analyzed -- again, there's three  
13 locations on each of our applications so we analyzed the  
14 square footage, we put together how many terminals would be  
15 needed, the 21-plus adults in the area, adults per square  
16 foot. And then we also analyzed kind of what the stores --  
17 each store would do from day to day as far as point of sale.

18 Q Okay. So on those three locations some of them have  
19 different square footage that you identified; correct?

20 A Correct.

21 Q All right. And you indicated that some of them have  
22 additional areas that may have been different based on the  
23 proposed locations as you were able to secure; is that right?

24 A Right. So depending on square footage, because, you  
25 know, we analyzed how many point of sales we could have in

1 those locations and whether it was adequate to serve the  
2 community around it.

3 Q Okay. And why did you include that information as  
4 part of the application?

5 A We felt the question was asked up above -- if you  
6 scroll up above it's asking, "authorized to engage in the use  
7 of marijuana must be included in this tab. So serve the needs  
8 of persons who are authorized." So that's why we did the 21-  
9 plus analysis around each site.

10 Q And with respect to adequacy of size, you testified  
11 that you performed additional analysis to try to be responsive  
12 to the application. Can we turn to the next page, 537. Can  
13 you tell us what this page generally describes.

14 A This is kind of the backup to the chart that was on  
15 the first page. So it analyzes adults per square foot, adults  
16 per POS terminal based on the square footage of what we could  
17 fit in those proposed sites that we had.

18 Q Okay. So say you made a specific attempt to  
19 identify a number of people that might be able to purchase  
20 marijuana within the radius of the proposed locations; is that  
21 right?

22 A Correct.

23 Q Okay. Let me turn to page 540. What's reflected on  
24 this page?

25 A This is a floor plan that -- so for a plus or minus



1 6,000 square foot, which was one of our proposed sites. This  
2 is a floor plan that we would -- we were proposing to overlay  
3 at that site and put together. It was part of our -- it was  
4 part of the general floor plan that was requested as part of  
5 the question.

6 Q Okay. And page 541. What's reflected on that page?

7 A This would show the security features of that  
8 particular site. And the security camera coverage, we felt  
9 that was important to show the State.

10 Q And this square footage and the security plan  
11 portion are they different than the other applications that  
12 you provided, different than the other locations?

13 A Yeah, because we had locations that were different  
14 square footages that we had tied up in the LOIs or contingent  
15 leases. So we tried to be specific to those types of square  
16 footages or those sizes.

17 Q And if we go to page 542. Can you tell what this  
18 floor plan indicates.

19 A This would be the floor plan for one of our sites  
20 that was around 4500 square feet. So it was a little bit  
21 different analysis than the 6,000 square foot facility.

22 Q Okay. And the next page, 543. Can you tell us what  
23 this is.

24 A Yeah, same thing. So another 4500 square foot, a  
25 little bit different analysis on cameras and point of sales,

1 et cetera.

2 Q Okay. So you changed and modified the plan based on  
3 the specific proposed locations; is that correct?

4 A Correct.

5 Q Okay. And page 545. Can you tell us what -- I'm  
6 sorry. Display the entirety of it. Can you see that?

7 A Yes.

8 Q Okay. Can you tell us what this page reflects.

9 A I haven't seen this in a while, but my recollection  
10 is that this would show kind of the backup of our financials  
11 to roll these locations out. And this talks about the actual  
12 hardware and equipment that would be required to equip the  
13 different size of facilities we were considering at those  
14 locations. And this would tie directly into the budgets that  
15 we gave the State and the financial piece.

16 Q Okay. And all of that would have been different  
17 based on the proposed locations; is that correct?

18 A Yeah, it would vary on the square footage that we  
19 were proposing, because the different sites that we had tied  
20 up were different square footages.

21 Q So if you look on this page the point of sale, for  
22 example, on Location Number 1 would be different form Location  
23 2 and 3, because there is a different square foot that it  
24 relates to; correct?

25 A Correct.

1           Q     And when you compiled this information did you  
2 expect that those applications would be evaluated differently?

3           A     I would expect they would, because, again, I go back  
4 to the original question. Is the adequacy of size to serve  
5 the patrons, I mean, to us the location was very important,  
6 because if it wasn't required we should have just all checked  
7 the box to say what jurisdiction we want to be in. I don't  
8 know why proposed physical address was ever asked. If the  
9 intent was not to have a physical address I don't know why  
10 they asked about adequacy of size and community impact,  
11 because how would you know?

12          Q     Can you tell us the amount of approximate resources  
13 that you spent preparing these locations to be specific to a  
14 proposed location.

15          A     Well, I think it was a lot of staff time and then to  
16 pay reservation fees on the leases and LOIs, you know, has  
17 probably approached, you know, 50 or \$60,000.

18          Q     And each of the applications that you submitted that  
19 would have been from one applicant it's specific to a location  
20 also that added a location fee that you had to pay, right,  
21 application fee that you had to pay?

22          A     Yes.

23          Q     And did you go through that entire process because  
24 you expected that this might be evaluated differently and  
25 attempt to give yourself a better chance of winning one of

1 those licenses?

2 A Yeah, again, I think we were trying to answer this  
3 question specific to locations, and we felt that it was  
4 important to show the State that we had sites, we had a plan  
5 to move forward and get these up and running in the time frame  
6 that, you know, everyone was living under, which was the, you  
7 know, operational by 12 months.

8 MR. MILLER: I have nothing further.

9 THE COURT: Anyone else have any questions for Mr.  
10 Scolari?

11 MR. SHEVORSKI: Just one real quick, Your Honor.

12 THE COURT: Yes, Mr. Shevorski.

13 REDIRECT EXAMINATION

14 BY MR. SHEVORSKI:

15 THE COURT: So, sir, would it be fair to say you  
16 expected each of your applications to be evaluated on an  
17 individual basis given the differences in locations you chose?

18 THE WITNESS: Yes.

19 THE COURT: Okay.

20 MR. BULT: Your Honor, do you mind repeating the  
21 question you just asked. We didn't hear you.

22 THE COURT: Why?

23 MR. BULT: We didn't hear you.

24 THE COURT: Why didn't you hear me?

25 MR. BULT: I've got it. Sorry.

1 THE COURT: I asked if he thought each of his  
2 applications would be evaluated on an individual basis because  
3 he went to the trouble of having an individual location and  
4 plan for each one.

5 MR. BULT: Thank you, Your Honor.

6 THE COURT: It's all I asked. And he said, yes.  
7 And it wasn't a leading question, but, you know --

8 MR. SHEVORSKI: May I approach, Your Honor.

9 THE COURT: You may. What's the proposed exhibit  
10 number?

11 MR. SHEVORSKI: 2023, Your Honor.

12 THE COURT: Thank you.

13 MR. SHEVORSKI: It's actually --

14 THE COURT: Any objection, Mr. Miller?

15 MR. MILLER: No objection.

16 THE COURT: Be admitted.

17 (Defendants' Exhibit 2023 admitted)

18 BY MR. SHEVORSKI:

19 Q Mr. Scolari, you've just been handed Exhibit 2023.  
20 Do you recognize that document?

21 A I do.

22 Q And if you look at -- is this concerning the Craig  
23 Road property the we were talking about before?

24 A Yes.

25 Q Is this the letter of -- for the Craig Road property

1 the letter of intent that you were referring to?

2 A Yes.

3 Q If you look at Bates Number DOTTRYKERENO, I'll just  
4 short it, 28. Can you look at that page, sir.

5 A Yes.

6 Q It says, "This proposal is not intended to ask and  
7 does not constitute a binding agreement by any party, nor an  
8 agreement by any party to enter into a binding agreement but  
9 is merely intended to specify some of the proposed terms and  
10 conditions of the transaction contemplated herein." Did I  
11 read that correctly?

12 A Uh-huh. Yes.

13 MR. SHEVORSKI: No further questions, Your Honor.

14 THE COURT: Anybody else. Any more questions for  
15 Mr. Scolari? Thank you, sir. Have a nice day. Next witness.

16 MR. GUTIERREZ: Your Honor, we would call Frank  
17 Hawkins.

18 THE COURT: Mr. Hawkins, if you'd come on up. I  
19 know you've been here almost every day. So now you get to  
20 switch to a different chair.

21 FRANK HAWKINS A PLAINTIFF HEREIN, SWORN

22 THE CLERK: Please be seated. Please state and  
23 spell your name for the record.

24 THE WITNESS: Frank Hawkins, F-R-A-N-K  
25 H-A-W-K-I-N-S.

1 THE COURT: Thank you, Mr. Hawkins. You've been  
2 here a long time, but you've heard me tell people about the  
3 water in the pitcher and the M&M's in the dispensers and the  
4 exhibits. If you need anything you let us know. Mr.  
5 Gutierrez, you're up.

6 MR. GUTIERREZ: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. GUTIERREZ:

9 Q Good afternoon, Mr. Hawkins.

10 A Good afternoon.

11 Q Mr. Hawkins, can you just tell us the relief that  
12 you're seeking in this litigation.

13 A We're asking the Judge to continue to grant TRO. At  
14 the end of the day we're hoping that the process is thrown out  
15 and that the process has to be redone.

16 Q You're saying keep the TRO in place, throw the  
17 process out and then redo it all; correct?

18 A That's correct.

19 Q Okay. And you want to keep a TRO in place to --

20 A Well --

21 Q -- go ahead. I'm sorry. Go ahead.

22 A Basically the process has flaws. It's clear that  
23 the process was manipulated and that people were manipulated,  
24 and I'll just use the simple word that people cheated, and  
25 therefore the awards shouldn't be able to stand and whatever

1 course the Judge takes that's what should happen.

2 Q You're saying people cheated?

3 A Well, I deem it to be cheated.

4 Q I'm sorry?

5 A Yes.

6 Q Who cheated?

7 A Whoever manipulated the process to change the  
8 locations. Whoever manipulated the process to convince the  
9 Deputy Director to make the changes he did to the location, I  
10 mean, I've been sitting here listening. Whoever decided not  
11 to follow the law, whomever all of those people were they  
12 elected not to follow the law, therefore, they cheated.

13 Q You mentioned proposed location as one of them.  
14 What else?

15 A First of all, I think they should have had public  
16 hearings like they did in 2014. It started out a closed  
17 system without people having information. We sit here, we  
18 heard them talk about training the trainers. Well, obviously  
19 from what we heard of the Taxation people he elected not to --  
20 or did not know how to train the folks who were going to  
21 evaluate the scores. I really found it interesting that when  
22 we talk about the three modules that the State of Nevada used  
23 to train, none of those dealt with scoring. And as we talked  
24 about scoring that training was all verbal. Doesn't make  
25 sense to me.



1 THE COURT: And that was sarcasm?

2 THE WITNESS: Sarcasm?

3 THE COURT: Yeah.

4 THE WITNESS: Oh. I'm sorry.

5 THE COURT: Just trying to make sure, because  
6 sometimes sarcasm doesn't come clear on the printed word.  
7 It's okay, I get in trouble for that all the time.

8 BY MR. GUTIERREZ:

9 Q Mr. Hawkins, you mentioned lack of public hearings?

10 A Sure.

11 Q Lack of public hearings for what, adopting the  
12 regulations?

13 A No. Prior to the applications coming out, 2014,  
14 there were hearings. Other states have hearings. In 2018  
15 even though it was only available to those folks who currently  
16 had an MMJ license there was no discussion.

17 Q With respect to the regulations that were adopted  
18 under NAC 453D what are your objections, and what's your  
19 position on anything the State did wrong with that?

20 A Well, I don't think the State followed that. I  
21 think that's been clearly stated, as well, from the witnesses  
22 that came here.

23 Q When you initially brought this lawsuit that wasn't  
24 your complaint though; correct?

25 A No. My complaint was the fact that we submitted an

1 application to best of our ability based on the information  
2 that we had. When the scores came out -- we received our  
3 scores at the end of the day. I sent emails to the State  
4 saying I would like clarification. There are inconsistencies  
5 that I believe based on my score. I would like to have time  
6 to sit down and go through the application. The answer was we  
7 don't do that.

8 Q Okay. Go ahead.

9 A If I may. I sent four or five emails, and they say  
10 you will ultimately have a hearing date after 30 or 40 days.  
11 I then called my attorney and said, I have a concern because I  
12 believe that if we don't do something we might lose our PO  
13 rights, asked the State, they would not answer. Finally they  
14 gave us a date.

15 We went to the State meeting at the State building,  
16 they had a piece of paper there, and they said this all you  
17 can do. You can look at the score, you can't take a picture,  
18 you can't make a copy, you can't do anything. Subsequently I  
19 found out through here and reading, following, tracking, that  
20 they were also supposed to make the applications available,  
21 which they never did for that meeting.

22 And Ms. Cronkhite said to me in that hearing, number  
23 one, that diversity -- and I know in my head, but I want to  
24 lay it out -- that diversity was never supposed to be a part  
25 of the application. It was supposed to be used as a tie

1 breaker. Now, I don't even know what role diversity played,  
2 because I hadn't been here and only saw what score we  
3 received.

4 And then she told me in the meeting that she trained  
5 all the trainers. I said, well, I had heard that Manpower was  
6 selected; oh, we can't talk about that. So that was the end  
7 of that. But no resolution from that meeting, no going  
8 through our application, simply 30 minutes to write down what  
9 was on that one single page.

10 Q You mentioned diversity. One of your initial  
11 complaints was that you believe diversity should have been  
12 scored and it wasn't. Is that your complaint as you sit here  
13 today?

14 A That's what I thought. No, my complaint isn't that  
15 today.

16 Q Okay.

17 A It's that today we all know it was manipulated from  
18 every kind of way possible. And based on what happened --  
19 based on what we know, there should not have been any  
20 diversity because of the manipulation of the process.

21 Q Is it your position today as you sit here that  
22 diversity should not have been included in the application  
23 process as a criteria?

24 A My opinion today, Frank Hawkins's opinion is, based  
25 on what I've learned in this court over the past three months

1 or however long it's been, that diversity was used,  
2 manipulated as a tool to allow those people who didn't have  
3 diversity to garner points through their employees who they  
4 called officers, through putting people on the board that for  
5 whatever reason -- but obviously certain people knew more  
6 information than others. So I don't have to worry about  
7 diversity, because what they were talking about is part of me,  
8 okay?

9 Q I understand. Let me --

10 A Okay.

11 Q Let me -- answer --

12 A Sure.

13 Q -- the question I'm asking. You understood  
14 diversity was added from AB 422 to the medical application  
15 process, right, and to the NRS 453A. You understood that;  
16 correct?

17 A My understanding of that was that they wanted more  
18 owners, O-W-N-E-R-S, in the marijuana business, not board  
19 members, not employees who are officers, owners. That's my  
20 understanding.

21 Q Mr. Hawkins, I understand you've been here since day  
22 one. I've seen you here every day.

23 A Yes.

24 Q Other than my client, I think you're the only two  
25 that have been here every day. Can you recall back -- let's

1 go all the way back to Day 1 when John Ritter testified, and  
2 he said, I don't believe diversity should be included as a  
3 criteria because it's not directly or demonstrably related to  
4 the operation of a marijuana establishment. You heard him  
5 when he said that; right?

6 A I heard him.

7 Q And do you agree or disagree with him?

8 A He's entitled to his opinion.

9 Q So do you agree or do you disagree with him?

10 A No, I don't disagree or agree. He's entitled to his  
11 opinion.

12 Q What's your opinion as to whether diversity should  
13 be included?

14 A My opinion is that 422 was going to include and  
15 ensure there were more ethnic minority owners in the marijuana  
16 industry. That was my understanding of what 422 and Tick  
17 Segerblom and the other legislators said that their intent was  
18 to do, diversify the industry, not diversify the industry with  
19 public companies, and I don't have a problem with that, but  
20 diversify the industry with ethnic minority people.

21 Q But using diversity as a scoring tool as part of the  
22 application, do you have a problem with that?

23 A No, I don't have a problem. I think it was misused  
24 in this process.

25 Q When you say misused do you think it should have

1 been scored higher or lower or what's your position?

2 A No, I don't think they should have let the people  
3 who manipulated the process manipulate it.

4 Q Specifically, who are you talking about?

5 A Whoever got 16 and 20 points and didn't have ethnic  
6 minority people as owners.

7 Q You got a 20 out of 20, is that correct, your  
8 company?

9 A No.

10 Q On diversity?

11 A No.

12 Q What did you get?

13 A Well, we got -- we ended up with 20 because of the  
14 percentage.

15 Q What was your score on diversity?

16 A It ended up at 20.

17 Q Okay.

18 A But if you look at the scoring. I think they scored  
19 it 1 percentage off. So it was technically 19, but, yes, 20  
20 for the purposes of the points, because we had one white  
21 veteran on our board. So he didn't count.

22 Q Did you ever go to any of the meetings for AB 422?  
23 Did you ever testify in front of legislature for that?

24 A I called in.

25 Q And did you give testimony in support of adding

1 diversity to AB 422?

2 A Yes.

3 Q Okay. You also remember Paul Seymour, remember the  
4 expert that came in from Colorado on Day 1?

5 A Yes.

6 Q He said diversity shouldn't be considered. Do you  
7 disagree or agree with him?

8 A No, I disagree with him. If the legislature approved  
9 it I'm for it. If I may add, if you're okay. What the  
10 legislature's intention was is not what came out in the  
11 reality.

12 Q Mr. Hawkins, one of your initial complaints in your  
13 complaint was that you scored really well in 2014; is that  
14 correct?

15 A Correct.

16 Q And that you felt because you scored well in '14 --  
17 the process hadn't changed much from '14 to '18, so you  
18 thought you should have scored well in '18 because you had the  
19 additional criteria of diversity; is that fair to say?

20 A No.

21 Q Does that sum up what your complaint said? We could  
22 read from it, if you want.

23 A Go ahead.

24 Q Okay. This is your complaint, page 4, through  
25 paragraph 12. You say, "Plaintiff received a score of -- at

1 that time --" we're talking about 2014 -- or the 2015 process  
2 "-- Plaintiff received a score of 198.62. It was ranked as  
3 the highest applicant for the medical marijuana dispensary in  
4 Las Vegas, Nevada, and received a score of 193.62." Is that  
5 true?

6 A Yeah.

7 Q "And was ranked the 7th highest applicant for the  
8 medical marijuana dispensary in the City of Henderson" Is  
9 that true?

10 A Yes.

11 Q You also say, "The factors used for 2015 rankings  
12 were substantially similar to the factors to be used by the  
13 Department for the 2018 rankings for the allocated licenses."  
14 Is that true?

15 A I believe so.

16 Q Okay. "The only difference," you say in paragraph  
17 14, "between the factors assessed for the 2015 rankings and  
18 the 2018 rankings was the addition of diversity of race,  
19 ethnicity, or gender of applicants, owners, officers, or board  
20 members to the existing merit criteria." Is that true?

21 A Yes.

22 Q So you're saying everything was similar, however,  
23 you add diversity, you should have scored higher; correct?

24 A Yes.

25 Q And you state on paragraph 16, "On or about December



1 5th, 2018, despite its prior exceptional rankings, plaintiff  
2 was informed by the Department that all of its applications to  
3 operate recreational marijuana retail stores were denied."

4 Correct?

5 A Correct. Yes.

6 Q So what you were saying is you did well in '14.

7 Process is similar; correct?

8 A Correct.

9 Q '18 you send in your application, they add  
10 diversity, you should score higher; correct?

11 A Yes.

12 Q But you didn't, so you believe there was something  
13 that the Department did wrong; is that fair to say?

14 A That's fair to say.

15 Q Okay.

16 A And I asked the Department would you please meet  
17 with me and show me. The Department said, no.

18 Q Who filled out your applications in 2015 process?

19 A I did.

20 Q And you did it yourself?

21 A Yes.

22 Q Who helped you?

23 A Who helped me?

24 Q Anyone help you gather the documents to do all that?

25 A Yeah. Yeah.

1 Q I'm sorry?

2 A Andre, my partner.

3 Q Okay.

4 A And two of our employees.

5 Q And then who helped you with the 2018 process?

6 A I did.

7 Q Okay. And you did everything by gathering the  
8 information, putting -- submitting it to the Department;  
9 correct?

10 A Yes.

11 Q What did you do to improve on your application from  
12 '14 to '18?

13 A Read, as best I could, what they were asking for in  
14 2018 and tried to answer the questions.

15 Q Anything else that you did?

16 A No.

17 Q Now, Mr. Hawkins, we're here -- you understand we're  
18 here and it's not a trial, this is what they call an  
19 injunction hearing; is that --

20 A Sure.

21 Q Okay. You've been here. Now, what's the harm to  
22 your company if the 61 conditional license holders are able to  
23 open tomorrow and get final approval and open to the public?

24 A The harm to our company. One of my partners decided  
25 to come down here from Reno, Luther Mack [phonetic]. He's 80

1 years old. And he was a mentor of mine, and Andre, who has  
2 been sitting in here the last couple of weeks, who's our other  
3 partner, if we aren't able -- and we're all Nevadans -- to  
4 open, and we aren't public, but we have a brand, we've hired  
5 people from the community, and we want to be able to compete  
6 like everyone else. So if we are not afforded licenses, it  
7 negatively affects our ability to grow our business, to grow  
8 our brand, to help the community which we give back to. And  
9 we want to continue that. And more importantly, we want to  
10 have a legacy. Brian Greenspun, a friend of mine, sat out  
11 here for a few days. I knew his father, Hank Greenspun.  
12 Great guy. But Brian is here because of Hank. That's legacy.  
13 In 15 or 20 or 30 years I want my daughter to be sitting out  
14 there because of legacy. And if we don't get more licenses,  
15 if we can't compete, especially with the public companies,  
16 they've got big money, then we may be forced out of business.  
17 That's the harm we face.

18 Q Have you attempted to buy a license?

19 A No.

20 Q Why do you say that?

21 A Why would I buy a license?

22 Q It's an option, though; correct?

23 A Not for me. The option was to win licenses in the  
24 process.

25 Q Okay. But it's an option for certain people who

1 didn't win licenses. They had the ability legally to buy a  
2 license and have that transfer pursuant to the statute;  
3 correct?

4 A Well, that's their -- I don't know. I can't speak  
5 for them. It's not an option for us.

6 Q Okay. And let's use my client, Thrive, for example.

7 A Go ahead.

8 Q If Thrive's able to open say their Sahara location  
9 on their City license, does that affect your existing  
10 operations?

11 A You know it does.

12 Q Tell me how.

13 A It's within a mile of my operations.

14 Q So from a competitive standpoint you lose business;  
15 fair to say?

16 A Right. Right. I don't know, but I'm willing to  
17 compete against him.

18 Q Okay.

19 A But here's my issue with that. I believe he's on  
20 300 feet of a church, so he shouldn't be able to open that  
21 location.

22 Q Is that your decision, though, or is that the local  
23 government's?

24 A That's the local government, and the State's  
25 supposed to check it.

1 Q Okay.

2 A I don't know if they have or not, but hopefully they  
3 will.

4 Q Well, assuming the local government's approved it  
5 and assuming the State's approved it, would you still have an  
6 objection?

7 A Sure I do. It's within 300 feet of a church.  
8 That's the law.

9 Q You understand the law. You know when that church  
10 came into play?

11 A No. The same time as the church in 2014 that  
12 they're right next door to. The same as the one on West  
13 Cheyenne that there's not only a gym, but gymnastics and  
14 everything else within 300 feet.

15 Q Okay.

16 A The State's not doing nothing about that, either.  
17 Neither did the local jurisdiction.

18 Q Did you appear at the local City Council meeting in  
19 May when they were getting approval from the City?

20 A Not my job.

21 Q Okay. You're right, it's not your job. It's the  
22 job of the City; correct?

23 A That's correct.

24 Q And if the City approved it, then you have no  
25 objection; correct?

1           A     That doesn't mean it's right.

2           Q     Okay. And if the State approved it, then you have  
3 no objection?

4           A     Doesn't mean it's right.

5           Q     Okay. Well, let's get back to the initial question.

6           A     Okay, sir.

7           Q     The initial question was the harm to your company.

8           A     Right.

9           Q     And you talked about competitive harm, you talked  
10 about you would have no problem competing, but it would be  
11 purely financial, though; correct?

12          A     No, not financial.

13          Q     What other harm --

14          A     It's about legacy. It's about hiring new people.  
15 We get four new locations, we got 29 employees. Somebody  
16 talked about they have 25. We got 29 employees. That allows  
17 the people that we've trained to now become managers who are  
18 ethnic minorities. If that doesn't happen, then they might be  
19 stagnant.

20          Q     Have you hired those employees yet?

21          A     They work for me now. They'll be promoted up.

22          Q     I'm talking -- okay. But for those locations that  
23 you don't have yet, have you hired employees for those --

24          A     No. We trained our current employees to be able to  
25 move to new locations.

1           Q     What about the current employees from Thrive, the 27  
2 people that were ready to start work on May 15th before this  
3 injunction was issued? What about them?

4           A     What about them? I didn't tell Thrive to go close  
5 their location on Commerce. They closed that on their own.

6           Q     They have a new license from the City of Las Vegas  
7 that they were awarded that they have ready to open for the  
8 Sahara property on 3500 West Sahara. You understand that;  
9 correct?

10          A     No. Is that -- okay, let me ask you a question. Is  
11 that the new license, or is that the transfer license?

12          Q     It's a new license.

13          A     Oh. I called the City the other day and the City  
14 seems to think that's a transfer from Commerce to Sahara.

15          Q     The injunction's very clear that Thrive cannot open  
16 under their new City license at that location. Are you aware  
17 of that?

18          A     Yes.

19          Q     Okay. Now, if they had 27 people that are ready to  
20 open at that location, they still have Commerce, they still  
21 have Cheyenne, those people are out of a job; correct?

22          A     Well, I don't think they should be able to open  
23 3500, not only because of this case, but because it's from  
24 300 feet of a church.

25          Q     Okay. But you said that's the City and the State's

1 decision; correct?

2 A Or maybe they'll go look today after this meeting.

3 Q Okay. We've been here for two months, and I still  
4 don't understand what's the harm to your company if these  
5 licenses are allowed to open. You can still challenge the  
6 process out of trial. What's the harm to your company?

7 A No, you can't. How are you going to do that and  
8 they're doing business.

9 Q So fair to say stop them from doing business, stop  
10 the public from getting much-needed tax revenue so that you  
11 have a chance to get a license? Is that fair?

12 A So we sent on the revenue. The State is getting  
13 revenue from the current operations that are open. If there  
14 had been no licenses issued, no businesses open, there's no  
15 loss of revenue. There's loss of what you make off projected  
16 revenue, but that ain't real revenue.

17 Q But that's the reason in the ballot initiative that  
18 Question 2 was passed; correct? That was how it was sold to  
19 the public; correct?

20 A Well, I don't know about what they were trying to do  
21 about the ballot initiative, because obviously what they  
22 thought and what happened and obviously didn't happen -- well,  
23 we all wouldn't be here.

24 Q But you understand the ballot initiative of the  
25 statute says that marijuana was passed to generate tax revenue



1 for the school system; correct?

2 A Sure.

3 Q You understand that?

4 A Yes.

5 Q You understand there's a lawsuit going down a few  
6 courtrooms down where there's an injunction to prevent the  
7 deans' positions from all the schools from being eliminated?  
8 Are you aware of that?

9 A No.

10 Q Are you aware of the budget shortfall that the Clark  
11 County School District is facing?

12 A No.

13 Q Okay. Does it matter? It should matter in this  
14 case, though; right?

15 A It shouldn't matter in this case, because has the  
16 Department of Taxation given the money prior years to the  
17 District, get to any of the Districts? I don't know that  
18 answer. And if they haven't, my question would be why not.  
19 So why are you going to promise something in the future and  
20 you haven't given what you already have? I don't know the  
21 answer.

22 Q Right. But the purpose of -- the only reason  
23 everyone's here is because the purpose of the ballot  
24 initiative was to generate tax revenue for the school system;  
25 correct? You can agree on that?

1           A     No. No, I don't believe that.

2           MR. GENTILE: Objection. Objection to the form.

3           THE COURT: Sustained

4           MR. GENTILE: Thank you.

5 BY MR. GUTIERREZ:

6           Q     Are you aware what the ballot initiative says about  
7 taxable revenue for the school, for the public schools?

8           A     I'm aware that the State is supposed to give them  
9 X amount of percentage of money. But those of us who have  
10 some experience with government know that that money could be  
11 transferred from one pot to another and the end number never  
12 changes.

13          Q     Right. But you're aware that's why the initiative  
14 was put in place?

15          A     No. I think the initiative was put in place because  
16 people wanted recreational marijuana, and they pay. They got  
17 the money from some other people to sponsor the initiative,  
18 period. They didn't give a rat's butt about the School  
19 District. Give me a break.

20          Q     Right. Let's turn to Ballot Question 2, page 17.

21          THE COURT: Mr. Hawkins, thank you for making me  
22 smile today.

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

24          THE COURT: I appreciate it.

25          MR. GUTIERREZ: Actually, Brian, turn to NRS

1 453D.020.

2 BY MR. GUTIERREZ:

3 Q Mr. Hawkins, you've seen this, we've been here for a  
4 while, 453D.020. Do you see that?

5 A Yes.

6 Q Subsection (2)?

7 A Yes.

8 Q Where it says, "The people of the State of Nevada  
9 finally declare that the cultivation, sale of marijuana should  
10 be taken from the domain of criminals and it be regulated  
11 under a controlled system or business, will be taxed, and the  
12 revenue will be dedicated to public education and the  
13 enforcement of the regulations of this chapter."

14 A Yes.

15 Q Correct?

16 A Yes.

17 Q And that statute becomes what the ballot question  
18 had?

19 A I agree.

20 Q Okay. So if that's the intent of the public, to  
21 generate revenue, taxable income, that would be -- you'd  
22 consider that a -- that's the interest of the public in this  
23 case?

24 A Yes, as well as removing marijuana from criminals.

25 Q Okay. So let's talk about the first, and we'll get

1 to the second.

2 A Okay.

3 Q If the public's interest is to generate tax revenue,  
4 how does an injunction which prevents companies from opening  
5 to generate revenue, how does that help the public?

6 A Oh. I don't think it hurts the public. Once the  
7 licenses are issued then -- if there are licenses issued,  
8 then this process can take place.

9 Q Okay. This process, though, Thrive is already at  
10 the point where it's ready to open. And you understand that  
11 under their City of Las Vegas license they're a conditional  
12 licensee?

13 A So why are they at that point if there was an  
14 injunction? They ignored the injunction? They decided, we  
15 don't care what the injunction is, we're going to sign a  
16 lease, get our building ready, hire the people and open  
17 anyway?

18 Q Well, yeah, the injunction's very clear. It says,  
19 they cannot open to the public.

20 A Okay.

21 Q The injunction also said they're not -- Judge says,  
22 I'm not preventing them from getting City approval, okay?

23 A Uh-huh.

24 Q Now, if --

25 A Didn't they get City approval?

1 Q Let me ask the question, though, Mr. Hawkins.

2 A Yes.

3 Q If the injunction was so important, why did you wait  
4 until May to bring it and didn't bring it back in December  
5 when you found --

6 A We brought it as soon as we could. We couldn't get  
7 information from the State.

8 Q You filed your lawsuit on January 15th, 2019. The  
9 injunction wasn't filed until almost May to stop them from  
10 opening.

11 A Right.

12 Q Why?

13 A You mean Thrive?

14 Q I mean Thrive.

15 A Oh.

16 Q You're okay with them opening; is that what you're  
17 saying?

18 A No. Yeah, no. No, of course not.

19 Q Okay. Well, then that's what I'm trying to figure  
20 out. Because that's -- the law is what's the harm to your  
21 company when it comes to them being able to open. You can  
22 still dispute the suit. What's the harm to your company?

23 A Okay. I just want to be clear about your question.  
24 So you're asking me the harm of Thrive opening at West Sahara,  
25 3500, and it's not a transfer from Commerce, it's the new

1 recreational license issued by the State?

2 Q Correct.

3 A Why should they be able to open?

4 Q That's not the question. The question is what's the  
5 harm to you if they do open.

6 A The harm to me is that they would be not following  
7 the law.

8 Q Okay. What's the harm to you?

9 A The harm to us is that they have a potential --  
10 they're going to be a friendly competitor, I've got no problem  
11 with that. But they need to follow the law. They should not  
12 be overawarded or rewarded or they should not be special  
13 entitlement, privileged, and I'll put the word before  
14 privileged privilege, they don't have that and shouldn't have  
15 it. They're no different than anybody else. They followed  
16 the law, too. That's what we were taught, the rich and the  
17 powerful shouldn't be able to manipulate the system because  
18 they're the rich and the powerful or they're connected, and  
19 that's what happened as I see through my lens in this court  
20 and this process from 2018.

21 Q Assuming they're following the law, should they be  
22 allowed to open?

23 A No.

24 Q Okay. Thank you, Mr. Hawkins.

25 A You're welcome.

1 MR. GUTIERREZ: Pass the witness.

2 THE COURT: Anyone else haven't asked Mr. Hawkins  
3 any questions? Mr. Shevorski.

4 MR. SHEVORSKI: The State, Your Honor. Thank you.

5 DIRECT EXAMINATION

6 BY MR. SHEVORSKI:

7 Q Good afternoon, Mr. Hawkins.

8 A Good afternoon, Mr. Shevorski.

9 Q Does Nevada Wellness have an email address for  
10 people to contact them on its Website?

11 A I don't know.

12 MR. SHEVORSKI: May I approach, Your Honor?

13 THE COURT: You may.

14 BY MR. SHEVORSKI:

15 Q It's to refresh your recollection. Turn to the  
16 third page of that document.

17 A I saw it.

18 Q nvwellnesscenter@gmail.com?

19 A Right.

20 Q Does this appear to be a true and correct copy of  
21 information contained on Nevada Wellness Center's Website?

22 A Correct. It is.

23 MR. SHEVORSKI: Move for admission, Your Honor.

24 THE COURT: Any objection?

25 MR. PARKER: No objection, Your Honor.

1 THE COURT: Be admitted.

2 (State's Exhibit 2024 admitted)

3 THE CLERK: Mr. Shevorski, can I get a copy of that.

4 MR. SHEVORSKI: Yes. Of course. I'm sorry.

5 THE CLERK: And that will be 2024.

6 MR. SHEVORSKI: May I approach, Your Honor.

7 THE COURT: You may.

8 MR. PARKER: Steve, can you say the number, again,  
9 please.

10 THE CLERK: 2024.

11 MR. PARKER: Thank you, Dulce.

12 THE COURT: At least you're going in order.

13 MR. SHEVORSKI: The day ain't over yet, Your Honor.  
14 I can still mess it up.

15 (Pause in the proceedings)

16 BY MR. SHEVORSKI:

17 Q Mr. Hawkins, you've been handed what's now Exhibit  
18 2024. And can you read what the email address says there,  
19 sir.

20 A nvwellness@gmail.com.

21 Q Okay. Would you please turn to Exhibit 21 -- 2021,  
22 excuse me, which should be right next to you. It's the one  
23 that's open. It should be on page DOT044715.

24 A You're talking about the numbers at the bottom of  
25 the page?



1 Q Yes, sir. I apologize.

2 A Okay. What's the number again?

3 Q 44715. I think it might have been opened to the  
4 same page before --

5 A This is 24 to 2500.

6 Q Were you here when Mr. Scolari was here?

7 A Yes.

8 MR. SHEVORSKI: May I approach to help the witness?

9 THE COURT: You may.

10 (Pause in the proceedings)

11 MR. PARKER: Your Honor, may I approach while he's  
12 on this?

13 MR. SHEVORSKI: Yeah. Of course.

14 THE COURT: Sure. Not me; right? Them?

15 MR. PARKER: Yes.

16 (Pause in the proceedings)

17 BY MR. SHEVORSKI:

18 Q Mr. Hawkins, are you at page DOT44715?

19 A Yes.

20 MR. RULIS: Steve? Sorry. Just to be clear. 2021  
21 goes from 44721 to 44756. At least that's on your exhibit  
22 list.

23 MR. SHEVORSKI: That's not the one he has up there.

24 MR. RULIS: Okay. Just trying to be quick.

25 THE COURT: We're using the one the guy from the

1 Department of Administration who knows how Listservs were  
2 brought.

3 MR. RULIS: Thank you, Your Honor.

4 BY MR. SHEVORSKI:

5 Q If you look about 15 lines down from the top do you  
6 see email address [nvwellnesscenter@gmail.com](mailto:nvwellnesscenter@gmail.com)?

7 A Yes.

8 Q Okay. And the date indicated across from that is  
9 April 10th, 2018?

10 A Yes.

11 Q And before we -- my friend Mr. Gutierrez was talking  
12 to you, and you talked about manipulating the system with  
13 respect to diversity. Do you recall that?

14 A Yes.

15 Q Okay. And I know you've been here a lot, and I  
16 appreciate your dedication to the suit. Part of it -- I think  
17 some of the arguments you may have heard is that the system  
18 was manipulated -- diversity was manipulated by advisory  
19 boards; is that a fair characterization?

20 A No.

21 Q Okay. Does NV Wellness Center have an advisory  
22 board?

23 A An advisory board, yes.

24 Q And NV Wellness Center is a limited liability  
25 company?

1           A     Yes. And if I may, the advisory board was put  
2 together to help us expand into our new location so we could  
3 have the same community impact as we currently have at our  
4 current location.

5           Q     The members of your advisory board, you also refer  
6 to them as a community board; is that correct?

7           A     Yes.

8           Q     Okay. And on Exhibit 2024 I believe you provide a  
9 paragraph that celebrates the diversity of your community  
10 board; correct?

11          A     Yes.

12          Q     Okay. And the language skills that they have?

13          A     Yes.

14          Q     And perhaps their -- how their inherent diversity  
15 may impact the customers they serve; correct?

16          A     Yes.

17          Q     You felt that was important, important enough to put  
18 on your Website so that the customers, the end user of your  
19 product could see that; correct?

20          A     We are updating and upgrading our Website, yes.

21               MR. SHEVORSKI: No further questions, Your Honor.

22               THE COURT: Anybody else have questions for Mr.

23 Hawkins? Mr. Koch.

24 //

25 //

DIRECT EXAMINATION

BY MR. KOCH:

Q Good afternoon, Mr. Hawkins. I like a guy who tells it like it is. It's refreshing.

A No, you don't. No, you don't.

Q I do. I try to cut to the chase like the judge says. I mean, I think I agree with you. On Question 2 it's your opinion that the voters were going to the polls thinking yes or no on recreation marijuana. Is that what you understood?

A Yes.

Q As far as the actual language of the statute, did you have anyone come to you and say, hey, Frank, what do you think about this language in the statute that's on the Question?

A Of course not.

Q Yeah, I didn't think so. Did you ever have anybody ask you any question about what a word meant in the statute, the proposed statute as part of the initiative?

A No.

Q Did they ever come to you and ask about what this means doing background checks or any of this kind of stuff?

A They didn't care about my opinion, no.

Q And did they -- well, you were in the business at that time; right?

1           A     Yes.

2           Q     And so kind of like people come to me and ask me  
3 about judges and I only know a little bit --

4           A     Right.

5           Q     -- I can only help them out a little bit, you could  
6 help them out but they didn't come to you even though you were  
7 operating a marijuana business?

8           A     That's correct.

9           Q     With respect to the manipulation that you've talked  
10 about, it sounded like the manipulation you were referring to  
11 was relating to setting the parameters, the rules that were  
12 adopted by the Department, is that right?

13          A     Yes.

14          Q     Was there any manipulation that you're aware of or  
15 you're claiming that the actual scores themselves, that anyone  
16 went in and manipulated what the evaluators did while they  
17 were scoring?

18          A     If I can, I think when Mr. Pupo was here, Mr. Pupo  
19 admitted going to lunch and breakfast and dinner and trips and  
20 all of those things. Mr. Pupo said, But I didn't score the  
21 application. And I sat back there and I said to myself, maybe  
22 he doesn't understand. Whether or not he scored the  
23 application, he put in motion what changed the application.  
24 When he single-handedly, as he said, he decided that there  
25 would be no location, he single-handedly did that. He went

1 against, in my opinion, the law.

2 Q Okay.

3 A When -- if I may, one more?

4 Q Sure.

5 A When they talked about MJ in Nevada and everyone is  
6 applying for a recreational license to operate a dispensary  
7 but yet they score everybody -- I can't say everybody because  
8 I don't know what any scores are -- the language that they  
9 used was not specific for marijuana recreation current. So  
10 therefore they gave people who have never operated a  
11 recreational marijuana, which is what they were talking about,  
12 higher scores, obviously from what we see without going to see  
13 the details.

14 And lastly, I'm not quite sure in non-identified  
15 that you would know to put lighting or lights, standard, in a  
16 dispensary and/or a sink in a dispensary when what they're  
17 talking about, in my view, is cultivation for lighting and  
18 production for sinks. So if people knew that and got points  
19 and maxed that out, hmm.

20 Q It raises some suspicions?

21 A I'm just saying.

22 Q Let's talk about the sink. I thought we might be  
23 done with that for this hearing --

24 A Okay.

25 Q -- but we're going to go back to the sink. Were you

1 here when we talked with Kara Cronkhite about the handwashing  
2 sinks?

3 A The first day, yes.

4 Q Okay.

5 A Yes.

6 THE COURT: And Norovirus.

7 MR. KOCH: And the Norovirus.

8 THE WITNESS: Oh, yes, I was here.

9 BY MR. KOCH:

10 Q Okay. I asked her some questions. A particular  
11 point is there's a regulation, are you aware, regarding  
12 washing of hands by employees or volunteers at a business?

13 A Yes.

14 Q And that regulation requires employees or people  
15 working at the business to wash their hands on -- I think  
16 there are 11 different types of occasions that somebody needed  
17 to wash their hands. Are you familiar with that?

18 A Not the 11 different types, but I'm familiar with  
19 the washing of the hands.

20 Q Right.

21 A And if I may, so the washing of the hands takes  
22 place when you're weighing or handling product. So throughout  
23 the valley there's all different kinds of processes that we  
24 all use. In the City of Las Vegas we're like a 7-Eleven. You  
25 buy the marijuana already prepackaged. In the County you can

1 look at the marijuana and then you can say I want that nub and  
2 they take it out with a thong and put it -- weigh it for you  
3 and then you can take it and go away. We don't have that  
4 process in the City and if you aren't weighing then that is  
5 not applicable. However, we have a sink, anyway. But for  
6 them to score that on the application makes me say hmm again.

7 Q And would it be possible for an applicant to read  
8 the regulations that were adopted in January of 2018, see that  
9 handwashing sinks are required not just in the toilet facility  
10 but also another one outside and say, hmm, per the regulation  
11 I better put a handwashing sink in there someplace? Is that a  
12 possibility?

13 A Possibility. On the floor plan?

14 Q On the floor plan. Yeah, that's right, we'll put it  
15 on the floor plan. That's a good place to put it.

16 A Okay. Yeah, it's possible.

17 THE COURT: For the location at the post box, the  
18 Mailboxes, Etcetera or the UPS Store.

19 THE WITNESS: Right.

20 BY MR. KOCH:

21 Q So that sink is going to be there. And then what  
22 was the other thing you said that you thought --

23 A The lighting.

24 Q The lighting. Okay.

25 A The lighting is typically applicable to cultivation



1 because they need special lights so the plant grows.

2 Q All right. So lighting was something that you  
3 thought somebody could not have known to put on the plan  
4 unless they maybe got some information from somebody, is that  
5 what you're saying?

6 A That's what I'm saying. If you're writing about  
7 lighting but you don't show it on your plan.

8 Q And are you aware of any regulations with respect to  
9 lighting a marijuana establishment?

10 A Just that lighting is required.

11 Q Okay. You talked about Mr. Pupo saying that some of  
12 the changes that he may have made to take out or put in some  
13 things that may have been there. You're not saying Mr. Pupo  
14 went and talked to the evaluators while they were scoring and  
15 asked them to change their scores; right?

16 A Okay. No, I'm not saying that about Mr. Pupo. What  
17 I'm suggesting about the evaluators, number one, they may not  
18 have been qualified. We don't know because we haven't brought  
19 any of them here. But that's the responsibility of the State  
20 to train them. It's clear from testimony from the State that  
21 they haven't trained them.

22 Q So you haven't actually talked with any of these  
23 evaluators yourself, have you?

24 A No. I've been trying.

25 Q Okay. And you've read kind of what's been said

1 about them --

2 A Sure.

3 Q -- both for and against?

4 A Sure.

5 Q So there's some explanations of what their  
6 qualifications are. You read those?

7 A Well, they say they're qualified, so other than  
8 that, I'm going to go back to the training because that's what  
9 the State showed. But when you asked the question, How did  
10 you teach them to score -- We didn't. We did it verbally. So  
11 if you tell me something one time, I don't know, I may or may  
12 not get it.

13 Q All right. So you thought there maybe should have  
14 been better training for those evaluators, possibly?

15 A For sure, without question. I think the State  
16 admitted that.

17 Q And, but you're not -- I guess other than the  
18 testimony that's been provided here during this hearing,  
19 you're not aware of what that training encompassed, is that  
20 right?

21 A If it was more than what we received or what the  
22 plaintiffs have received, then Mr. Shevorski didn't give it to  
23 the plaintiffs.

24 Q Let me ask you about the actual scoring, then.  
25 You've seen the scores that Nevada Wellness Center got from

1 its applications; correct?

2 Q Yes.

3 Q And if you'd turn to Exhibit 5004, which is the  
4 rankings, score and rankings.

5 MR. KOCH: Do you have that, Brian? All right.

6 BY MR. KOCH:

7 Q You've looked at this sheet before. I think this  
8 was provided after SB32 was passed.

9 A Yes.

10 Q And Nevada Wellness Center, it looks like -- let's  
11 just start with City of Las Vegas on the bottom of page 1.  
12 Nevada Wellness Center applied for a license in Las Vegas;  
13 correct?

14 A Yes.

15 Q And on that scoring rubric Nevada Wellness Center  
16 scored 72nd, it looks like, is that right?

17 A Yes.

18 Q Okay. So out of 156 --

19 A Well, that says 72, but it's far enough down where  
20 it don't matter.

21 Q Okay. And maybe that's my question. 156 points were  
22 awarded, 156.51 to Nevada Wellness Center; right?

23 A Right.

24 Q And the cutoff for this rubric is 208 points was  
25 Number 10 in Las Vegas; right?

1           A       Yes.

2           Q       Okay. So Nevada Wellness was about 52 points away  
3 from falling within that top 10. Are there particular points  
4 that you thought Nevada Wellness Center did not get that it  
5 should have that were scored incorrectly in particular?

6           A       Without the State being able to articulate how they  
7 scored each section and why and how they trained the  
8 evaluators, it's virtually impossible. And herein lies the  
9 reason that I'm confident that we did the right thing by  
10 filing the lawsuit. We could not get information and I'm not  
11 sure the State knows what they were doing. And so if they  
12 don't know what they were doing, how could they train the  
13 evaluators to score? So, for example, they took points away  
14 from us because they said when you walked into the dispensary  
15 you walked right into it. Well, obviously whoever is reading  
16 the plan doesn't know how to read plans. Andre Rhodes, one of  
17 our partners, is a fire captain. Just because you're a  
18 fireman or a fire inspector does not know you know how to read  
19 plans. We have a mantrap in both locations. They deducted  
20 points for that.

21          Q       Okay. So there's some spots that you could look  
22 back on and think they scored this incorrectly in our opinion.  
23 Is that fair to say?

24          A       All I would like to know -- I would have liked to  
25 sit down with the State and gone through. For example, we

1 build affordable housing through the State. The State has a  
2 program and they have public hearings, and they say this is  
3 what we're going to do, this is how we're going to score it.  
4 And at the end of the day before they make any awards they  
5 send everybody their score and they say you have to sign off  
6 on your score. So you say, oh, no, you scored me 158, I think  
7 I should be a lot higher. So you go in and meet with them.

8 Q Right. And what --

9 A And you agree on a score and then all the scores are  
10 released; there is no problem.

11 Q What department runs that process?

12 A Department of -- the Housing Division.

13 Q Okay. And the rules and regulations on that you  
14 would agree are different than the Department of Taxation has  
15 for the marijuana applications; correct?

16 A That's correct.

17 Q And are you aware of any rule or regulation that  
18 would allow an applicant to have that same type of process,  
19 get your score first, go in, sit down and walk through the  
20 scores, make corrections to them in the marijuana application?

21 A Missouri is doing it right now. Everything is  
22 transparent. You have the weight, how it's going to be scored  
23 each section, how many words they want, how many pages they  
24 want. I don't think it's going to be a problem at the end of  
25 the day.

1 Q Okay. So Missouri does it differently than Nevada;  
2 right? Is that right?

3 A Yes. I think Nevada did it wrong.

4 Q Okay. And if Nevada were doing this process again,  
5 let's say in 2021, is it possible Nevada might look at  
6 Missouri and say, hey, that was a great process, maybe we  
7 should adopt some of that? Is that possible?

8 A I think because of you great lawyers Nevada is going  
9 to do it right the next time.

10 Q I hope so. There will be somebody complaining, I  
11 guarantee you that.

12 A That's true.

13 Q All right. So if there's different ways to do it,  
14 you believe that Nevada maybe could make some improvements to  
15 the way that they did it. Is that fair to say?

16 A Oh, I think they need to throw it out and start over  
17 and do it properly.

18 Q And who's going to tell them how to do it properly  
19 next time? Frank Hawkins or somebody else?

20 A Oh, no. I think if they involve the people in the  
21 business and the public and they are transparent about this is  
22 how we're going to score, this is what we want from diversity,  
23 this is what we mean when we say adequacy of building, this is  
24 what we mean when we say MJ in Nevada, I think it's all clear.  
25 They can clarify it.

1           Q     All right.  You're aware that there was a Governor's  
2 Task Force that worked on some of the items that you're  
3 talking about there as far as what would be expected, what  
4 would be scored; right?

5           A     Yes.

6           Q     Did you participate in that Task Force?

7           A     Yes.

8           Q     And how did you participate?

9           A     I called in on some of those items that related to  
10 retail.

11          Q     Okay.  And one of the overall recommendations was to  
12 keep the regulations similar to medical marijuana except for a  
13 few changes.  You're aware of that?

14          A     Yes.

15          Q     And one of those items, you're probably been here,  
16 you've seen a lot was similar to marijuana except for scoring  
17 of a location.  The location would not be scored.  Are you  
18 aware of that recommendation?

19          A     No.

20          Q     You didn't see that when Mr. Ritter was asked about  
21 it?

22          A     So, what Mr. Ritter was asked and my interpretation  
23 of what was written is different.  So what was written was  
24 that the concern of the Task Force was that the local  
25 governments would hinder the application process from going

1 forward. Therefore, they wanted to keep the locations in.  
2 They didn't want to have the location evaluated by the local  
3 government until the awards happened. They never said one  
4 time that I read anywhere, and I've looked, where it says  
5 don't score based on location, don't require location as a  
6 part of the application.

7 Q The Task Force didn't recommend that?

8 A The Task Force didn't say that. Mr. Pupo said here  
9 that he got calls from some industry friends that asked him to  
10 make that change and thereby he did, if I recall correctly.

11 Q Okay. You know, we'll think about that but I think  
12 it's already in as far as what the report actually said. So  
13 was there any discussion about taking the location off  
14 completely for purposes of scoring at the Governor's Task  
15 Force that you're aware of?

16 A Not that I'm aware of.

17 Q You didn't attend any of those meetings in person,  
18 it sounds like?

19 A No.

20 Q So it would surprise you if there was an express  
21 recommendation that location would not be scored as part of  
22 the application process?

23 A Not required to be listed or scored?

24 Q Let's just say scored first.

25 A Okay. I would be surprised on both.



1 Q Okay. Or listed, you would be surprised with that,  
2 too. You talked a little bit about diversity. You said that  
3 Tick Segerblom said that minorities should become owners, is  
4 that --

5 A No, no. No.

6 Q Go ahead.

7 A I'm saying the concern was ownership. There is no  
8 diversity of ownership. Now, what the puppetmasters spun that  
9 to say, it's going to be board members and officers and all  
10 this other stuff. I don't know where that came from.

11 Q Okay.

12 A But my concern and the concern of others was  
13 ownership.

14 Q And practically, you're aware that in order to apply  
15 in September 2018 you needed to have a medical certificate;  
16 correct?

17 A True.

18 Q And the existing ownership of those medical  
19 establishments was -- it was what it was in 2018 --

20 A Yes.

21 Q -- it wasn't -- I mean, there was nobody new coming  
22 in; right?

23 A Right.

24 Q And so how did you envision that happening, that  
25 minority ownership only would be increased through the