

SUPREME COURT OF NEVADA

Case No. 79669

GREENMART OF NEVADA NLV LLC,; and
NEVADA ORGANIC REMEDIES, LLC
Appellants/Cross-Respondents,

Electronically Filed
Apr 15 2020 10:35 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

v.

ETW MANAGEMENT GROUP LLC; GLOBAL HARMONY LLC; GREEN
LEAF FARMS HOLDINGS LLC; GREEN THERAPEUTICS LLC; HERBAL
CHOICE INC.; JUST QUALITY LLC; LIBRA WELLNESS CENTER LLC;
ROMBOUGH REAL ESTATE INC. D/B/A MOTHER HERB; NEVCANN LLC;
RED GARDENS LLC; THC NEVADA LLC; ZION GARDENS LLC; and
MMOF VEGAS RETAIL INC.,
Respondents/Cross-Appellants,

and

THE STATE OF NEVADA DEPARTMENT OF TAXATION,
Respondent,

Appeal from the Eighth Judicial District Court,
Clark County, Nevada
District Court Case # A-19-797004-B
The Honorable Elizabeth Gonzalez

APPELLANT'S APPENDIX – VOLUME 30

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APPELLANT NEVADA ORGANIC REMEDIES, LLC'S OPENING BRIEF** was filed electronically with the Nevada Supreme Court on the 17th 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 fair to all applicants and give all the information in a
2 consistent basis?

3 A Yes. I'll answer that in two ways. So in my
4 consulting career I did a fair amount of work in supply chain
5 consulting where we would be involved in RFP processes, and
6 some of those involve government RFPs, some of them private
7 sector. I think it's a typical approach would be to have some
8 sort of a email, phone number, or, you know, face-to-face
9 opportunity for submission of questions. You know, they could
10 come from any of the applicants. And then on the flip side
11 some sort of process by email, by, you know, Website, you
12 know, meeting of participants or responding back with answers.
13 I think there's generally concern with consistency across
14 those discussions that every applicant is getting the same
15 information. And then I guess also, you know, a fairness
16 factor that everyone is fully informed.

17 When I looked at the medical marijuana application
18 form which predated this one, this would have been for the
19 original --

20 Q Just want to back you up for the Court here. You're
21 talking about the medical marijuana application and 2014?

22 A In Nevada, yes.

23 Q In Nevada.

24 A So the application instruction section is very
25 similar in its beginnings, and then it adds one more section

1 which basically provides for a mechanism to solicit requests
2 for clarification and then communicate them back to the
3 applicant.

4 Q Okay. And how was that done?

5 A I'm not sure I recall the specific manner in which
6 it was done. It seemed to refer to a phone number, I think,
7 for submitting. And I'm not sure -- I don't recall the
8 mechanism for providing back.

9 Q But the indication was that they were providing all
10 the information on a consistent basis to all the applicants
11 that sent their clarifying questions?

12 A That was the way the instructions were written for
13 the medical application in Nevada, yes.

14 Q And so pulling back up -- we lost it -- the
15 evaluation score sheet for diversity, the second part of that,
16 you know, the quantitative breakdown; is that right? Can you
17 describe how they're evaluating diversity?

18 A So again we're considering all individuals
19 identified on the application equally, whether they would be
20 owners, directors, or board members. So whatever that number
21 is, it could be one person or it be, I guess, you know, a
22 large number. So if it was one person, if they fit the
23 diversity category, you'd get a 100 percent, 20 points.
24 Otherwise zero, I suppose. If half the individuals were on
25 the application deemed in one of the categories, that would

1 put in the 41 to 50 percent, 10 points, and et cetera. So for
2 each percentage decile, zero to 10, 11 to 20, you'd get
3 another 2 points to your total score out of 250. And in
4 reviewing the applications I think I saw pretty well that full
5 range, from applicants that received 20, I think saw an
6 applicant at .3 where I guess one of the three evaluators
7 issued a point and then they averaged it down to .3. There
8 may have even been some zeroes. I'm not sure. So --

9 Q If going to weigh diversity as an important
10 characteristic does the manner in which they have defined the
11 way that they, you know, applied diversity and then the
12 criteria that they've established for it and the appropriate
13 weights, does that seem an effective way to carry that out?

14 A I think that'd be a difficult to question to say
15 that there's an ideal, standard way to evaluate diversity. I
16 would not say that this is -- makes no sense or that this is
17 not logical. I do think it's problematic when you have such a
18 range of number of principals on an application. So if I have
19 an application with two principals, I'm only going to get
20 zero, 50 percent, or a hundred. Those are the only
21 possibilities as far as I can think. If I somehow have a
22 large board with 20 board members and maybe some other
23 directors and owners, the percentage calculation is going to
24 be very different. You might have a very diverse board and
25 the owners are not deemed diverse under this criteria, they

1 would still score very highly. So, I mean, there's
2 considerations in terms of that. But, you know, what's the
3 right approach? I wouldn't claim to say that there's a
4 standard approach. And so it's a tricky one for any
5 evaluation body, I think.

6 Q But if you new this criteria in advance, you might
7 be able to orchestrate a strategy by adding advisory board
8 members or other individuals that would meet the criteria
9 established in order to get yourself higher points; is that
10 correct?

11 A So I didn't see a definition of board member in the
12 definition section of the application. Perhaps it exists in
13 another place. But especially with the other definition of
14 board member, yeah, I would assume there's a fair bit of
15 opportunity to decide who's included in the list of officers,
16 owners, directors, and board members. I think that's just a
17 question of how those terms are defined. And presumably, you
18 know, applicants have a team and they're applying with that
19 team and they under this scheme. I wouldn't now of any other
20 consideration here.

21 Q Okay. But it's fair to say that the manner in which
22 they implemented this would be subject to different scoring
23 based on if it wasn't available, wasn't self descriptive based
24 on the application; is that correct?

25 A I mean, you have so many options you could say if

1 you have X number of non- -- or diverse principals, you know,
2 you get full points. If you have a broad range of gender
3 diversity, ethnicity, and race, that would be another way to
4 score it. You could give privilege to a gender over diversity
5 or a race over gender. You know, there's an infinite number
6 of ways to evaluate. And they've chosen one, I think it's
7 very clear. You know, the mapping is a lot more clear here
8 than some of the other categories, but, an any event, it's the
9 choice that was made, you know, not in the application form,
10 but in the grading process.

11 Q To the evaluators.

12 A To the evaluators or graders.

13 Q Is it clear anywhere in this evaluation sheet how
14 this would be applied in the context of companies that might
15 be publicly owned?

16 A So I would say that's a question that would apply to
17 this category, all but also to a number of other categories.
18 So if you look at the application and a large percentage of
19 the total points are derived from the backgrounds and
20 demographic characteristics, taxes paid, volunteer time, a
21 variety of things that are specific to individuals on the
22 application. So this would just be one of those items.

23 A publicly traded company has shareholders. I guess
24 it's a question in the legal sense as to if they're deemed to
25 be owners. If they're owners, then my understanding of the

1 application form is that they should be listed with their
2 information and then you would use that to evaluate their
3 personal characteristics. So it seems possible to me that you
4 could do it, but you would need to go whatever the definition
5 of owner is in this context.

6 Q Well, that's not provided on this form that was
7 given to the evaluators; right? I mean, there's no criteria
8 that says whether a shareholder as an owner is somebody listed
9 that the ownership was controlled by a publicly traded
10 corporation. Is it clear on those instructions as to how you
11 would evaluate their criteria for diversity?

12 A I think the first sentence says that diversity
13 information comes from the owner, officer, and board member
14 information form. So whatever forms were provided with the
15 application would be available to the grader. That could be
16 one. If there's one principal, there could be I guess a
17 thousand if there are a thousand principals. So that would be
18 their approach. It seems like as long as you had all those
19 individuals you could do the calculation.

20 Q Okay. Let's turn to Number 12, evaluation sheet
21 that applies to finances. So we went through the
22 organizational structure that on the application and
23 evaluation of award process on the application is defined as
24 60 points. Finances would be the next category; is that
25 right? And this is the evaluation score sheet that was

1 provided to the evaluators that deals with that section.

2 I guess before we get there can I go back to the
3 application itself, page 17, which show the instructions,
4 which is on page 17 again. The second section -- briefly
5 characterize the second section and what information they
6 appear to be asking for.

7 A So that section refers to historical records of
8 taxes paid and other beneficial financial contributions over
9 five years by all of those principals. It actually does not
10 relate to the next criteria on the grading scheme. It's the
11 third and fourth that relate to that one.

12 Q Yeah. So -- okay. And that one is worth, sorry,
13 25 points. I'll stick with the taxes. So we'll move back to
14 Exhibit Number 11. If we look here at, you know, the first
15 component where they've broken down those 25 points, what's
16 the first subcategory that they're looking to evaluate?

17 A So we have three categories under taxes paid and
18 other financial. First is 10 points for taxes paid to the
19 state of Nevada. It's the sum, I believe, of the owners,
20 officers, and board members of the applicant. And it
21 identifies the specific types of taxes paid. And then there's
22 a multi-level scale. So if you get above \$8 million total,
23 you get full points. If you're between five and eight, 8;
24 three to five is 6, all the way down below 500,000 1 point.
25 If you've never paid taxes you would get zero points.

1 Q Again, was that criteria in terms of the breakdown
2 of the points in terms of numerical values that they assigned
3 to those, was that made available to the applicants to the
4 face of the application or the regulations?

5 A No. Applicants were informed there were 20
6 points total for -- or, sorry, 25 points total for taxes and
7 other financial contributions, but they did not know that it
8 was 10 for taxes, and they did not know that there was a six-
9 level grading calculation.

10 Q Okay. So, again, when you look at rank that they've
11 published on the left-hand side of that chart and how they
12 define it and then chose how to apply it can you envision ways
13 that that process might be open to meeting that criteria in
14 ways that wouldn't have been immediately apparent to the
15 applicant?

16 A So on this comparison alone there's no reference to
17 a time period on the left. There's a reference to the five-
18 year time period on the right. Similarly to any other
19 category, I think you are treating all principals, whether
20 they're owners, officers, or board members equally, and so
21 that's one way to do it. It just wasn't clear, I guess, how
22 that would be executed. It could have been that owners were
23 worth 4 points and officers were worth 4, and directors were
24 worth 2, or you could imagine a number of ways to
25 operationalize this given how many potential principals there

1 were. But they've taken just the sum total. So the taxes
2 paid by a board member would be equally weighted to anyone
3 else.

4 Q Right. So if you had a scenario where a board
5 member was added to the organization that had paid substantial
6 taxes but wasn't really related to, you know, the operation of
7 a marijuana establishment, what weight would that be given?

8 A It's given equal weight to others, because there's a
9 reg that has identified amount of taxes paid as a potential
10 criteria. So that's a justification for it.

11 Q Okay. So if an applicant were just looking at the
12 face of the application and somehow determined that this is
13 going to be weighted that way, they could potentially add a
14 board member that had paid substantial taxes and get full
15 points in that criteria; is that correct?

16 A That's correct.

17 Q Okay. Jumping to the next section, the next page,
18 what does the second subcategory that was defined for the
19 evaluators break down?

20 A So we've we've got again 10 points, but
21 contributions -- it doesn't relate to taxes. This relates to
22 other contributions to either public charities and foundations
23 or political subdivisions. And there's I think a very
24 detailed and comprehensive list there of what should be
25 included, so it's very clear for the graders.

1 And then if you scroll down, I believe they have
2 again a weighting scheme. So instead of 8 million this time
3 we're going to use 1 million as the cutoff with some
4 subcategories below. So you would sum political contributions
5 and nonprofit of all the principals, and you get to a total.
6 So I think the mechanics are very clear of how this is
7 calculated.

8 Q Okay. And then the final one, the third
9 subcategory, what does that relate to and how do they define
10 it?

11 A So this category is taxes and other beneficial
12 financial contributions. That is a financial contribution
13 category, but the third point value is 5 points for time and
14 energy that a volunteer has put into working for nonprofit
15 organizations. This is the first time we've had reference to
16 a volunteer, so I'm assuming that refers to owners, directors,
17 and board members. And this time we don't have any sort of
18 calculation of how many hours of time or how much energy.
19 We just have a more qualitative evaluation, I guess, and the
20 5 points.

21 Q Okay. So in the context of experience
22 [unintelligible] qualifications of running a marijuana
23 establishment the overall 25 points for taxes paid, how fair
24 do you think that assessment is?

25 A We're talking about a 250-point scale. 25 points, I

1 feel comfortable that that at that level it has some direct
2 and demonstrable connection, depending on how it's defined,
3 right. And so there's a question of do you count just owners,
4 or everyone on the application. But as we get into volunteer
5 time and these contributions to other organizations I think it
6 becomes much harder to see the direct and demonstrable link.

7 Q Okay. Let me take it one by one, then. On the
8 evidence of taxes paid to the state of Nevada within the last
9 five years does 10 points seem appropriate to you?

10 A I mean, that would put it below other categories we
11 talked about and equal to your total marijuana experience. It
12 seems -- 4 percent out of the total, that seems fine, yeah, I
13 think.

14 Q Okay. And -- but you indicated that it's
15 potentially problematic in that one board member could inflate
16 the taxes paid, that that may not be overall relevant to the
17 operation of that organization; is that right?

18 A Yes. So that's a different question than a
19 weighting question. That's more of a who is included and what
20 recognition do they get, depending on whether they're officer,
21 board, or director.

22 Q All right. So and then on the evidence of other
23 beneficial contributions and the weight that was given there
24 how appropriate does that seem to you?

25 A So volunteer time and energy has less than the other

1 two. That seems -- you'd want I think that. Again, these are
2 small relative to the 250, but in comparison they do have
3 exact same values as total marijuana experience and total
4 other business experience. So they're actually getting that
5 same weight, contrary, I guess, to the very heavy or heavy
6 weighting that was recommended by the Task Force.

7 Q Okay. All right. We move on from --

8 THE COURT: How much longer do you think you have,
9 Mr. Miller?

10 MR. MILLER: Let's see. We've got --

11 THE COURT: Best guess.

12 MR. MILLER: A half hour, 45 minutes.

13 THE COURT: Okay. So it's time for our lunch break.
14 We're going to break until 1:15. Before we leave the room --

15 Sir, you can get up. I've got to talk to the
16 lawyers now.

17 I have been handed the original of plaintiffs'
18 motion to compel on order shortening time. What would you
19 guys like to do with respect that?

20 MR. BULT: We served that on the parties last night,
21 and they received a copy of it. I'm sure they're going to
22 want a chance to oppose it or clarify. We'd like to hear it
23 as quickly as we can.

24 THE COURT: Well, I can set it Tuesday afternoon.

25 MR. BULT: I thought you were going to be dark

1 Tuesday afternoon. That's great.

2 THE COURT: I'm dark at 2:00.

3 MR. BULT: Okay.

4 THE COURT: I have to -- Mental Health Court comes
5 in right at 2:00, so we'll break at 1:45. Ramsey will kick
6 you all out, they'll come in. The jail will hopefully bring
7 my participants.

8 MR. BULT: That works for us. We'll be here.

9 THE COURT: So is everybody okay with hearing it
10 Tuesday afternoon about 1:00-ish?

11 MR. GRAF: And, Your Honor, if we want to do a
12 written response, when would we need to be doing that if we're
13 going to do it?

14 THE COURT: If you could email it to us Tuesday
15 morning before 10:00 o'clock, that would be lovely.

16 MR. GRAF: Thank you, Your Honor.

17 THE COURT: Okay. Anything else before I let you
18 guys go to lunch?

19 MR. KEMP: Your Honor, just for clarification, does
20 that mean we'll pick up witnesses after the argument, or no?

21 THE COURT: No. We're going to start Tuesday
22 morning with witnesses.

23 MR. KEMP: Right. From 9:00 to 12:00 we'll have the
24 witnesses --

25 THE COURT: No, not at 9:00. I have a morning

1 calendar. If everybody shows up, I'll be ready to start at
2 9:45. Everybody won't show up, so I'm going to start you at
3 10:00.

4 MR. KEMP: What about Tuesday afternoon after we
5 hear the motion to compel? Do you anticipate we would have
6 witnesses at that time?

7 THE COURT: How about we talk about that as we get
8 closer to the end of today to see if we get through one
9 witness today.

10 MR. GENTILE: Your Honor --

11 THE COURT: Wait. Okay. Mr. Gentile, you had
12 something?

13 MR. GENTILE: No. I did, but I think we'll just
14 deal with it later.

15 THE COURT: 1:15. I have a 1:00 hearing on another
16 matter. You're all welcome to come in. They won't take very
17 long. But if you can at least give them a spot to sit at the
18 table, it would be lovely.

19 (Court recessed at 11:52 a.m., until 1:09 p.m.)

20 THE COURT: So that takes me back to my Department
21 of Taxation case.

22 (Pause in the proceedings)

23 THE COURT: Come on back up, sir. I'd like to
24 remind you you're still under oath.

25 Mr. Miller, you may continue your best estimate

1 earlier of about a half hour. We are timing you.

2 MR. MILLER: [Inaudible] me I'm way off.

3 MR. GENTILE: Your Honor, if I may address the
4 Court. He's way off, all right. He's got at least an hour.

5 THE COURT: So you think his estimate fell way short
6 and my usual doubling what lawyers tell me will be inadequate.

7 MR. MILLER: I'll go through it as quick as I can.
8 I thought I was only up here for like 45 minutes. They said,
9 no, you were up there like two and a half hours. So I wasn't
10 off -- it's been a while since I've been up here, Judge.

11 THE COURT: Remember when you were a DA and you
12 could do it like this?

13 MR. MILLER: What's that?

14 THE COURT: When you were a DA. You got things done
15 in two days.

16 MR. MILLER: I got a little rusty; right?

17 THE COURT: Yeah. Oh, yeah. That's what happens
18 when you're not up here every day.

19 All right, guys. Let's get it going.

20 For those of you who are still entering, I've
21 advised the witness he's still under oath, and we've been
22 corrected. The estimate of a half hour was incorrect, and
23 it's probably closer to an hour, which was my guess earlier.

24 (Pause in the proceedings)

25 THE COURT: Okay. Mr. Miller, when you are ready.

1 MR. MILLER: Just a second here, Judge.

2 BY MR. MILLER:

3 Q We had an exhibit that was up. Where did we leave
4 off on that?

5 A I think we were looking at the taxes and other
6 financial contributions?

7 Q So it's Exhibit 11. So I think where we left off
8 was you were providing us an assessment of the categories
9 within volunteer time. So it should be the third provision.
10 It's worth zero to 5 points. Okay. So can you briefly
11 describe the information that they describe they're looking
12 for that would apply to that criteria.

13 A So we're in the section regarding financial
14 contributions, but we're also going to take into account
15 volunteer time and energy. It's not clear who they mean by
16 volunteers. I'm assuming it would refer to the owners,
17 directors, and board members. And unlike the other
18 categories, there's no summing or sort of threshold. I think
19 we're just looking more generally for the grader to decide
20 whether it looks excellent, average, or inadequate.

21 Q Okay. But again, as they define this criteria for
22 the evaluators, there's no distinction made. It's just within
23 the broad category of individuals that are affiliated and
24 could include board members, advisory board members that would
25 have provided the volunteer matters; is that a fair

1 assessment?

2 A Yeah. As with all these categories, my
3 understanding is anyone who was listed as a principal would
4 have been expected to attach a biographical sheet and resume,
5 and so you use that as the basis for evaluation.

6 Q Okay. Let's jump to the next one, care, quality,
7 and safekeeping under Exhibit 8. All right. So this criteria
8 is fairly lengthy, correct, in terms of the requirements and
9 the subcategories that they've broken down. I don't know if
10 we want to go through it individually, but can you just
11 broadly describe the requirements they're looking for and the
12 points that they've associated with that.

13 A Yes. I think there was a high level of detail
14 provided in the application form that was available to
15 applicants. When we get to this material which was provided
16 to the graders there's more detail and a breakdown of the
17 points. But each of these plans relates to a specific item
18 that exists in the regulations. There's reference safety of
19 the building, safety of the product, et cetera. All these to
20 me fit under the definition of directly and demonstrably
21 associated with the operation, and I think, you know, at face
22 value they seem to address important things that would be
23 relevant to, you know, the regulator's interest, you know, as
24 we talked about this being a Schedule I product, safety and
25 security being important. So to me this seems like a very

1 appropriate section, and it's given I think significant
2 weighting, 19 points out of 250 if you sum all the related
3 plans that are here.

4 Q Okay. So this appears to relate directly to direct
5 and demonstrable experience necessary, and you feel that the
6 weighting is appropriate?

7 A Yeah. It also -- it corresponds to the final
8 criterion proposed by the Task Force, so Criterion 8 from the
9 Governor's Task Force was that applicant has submitted a
10 business plan for the operation that addresses knowledge and
11 experience that is being -- with the license type that's being
12 applied for under the requirements established by the
13 Department. So it's not specific, but it talks about a
14 business plan. And these are all plans related to individual
15 aspects of operation.

16 Q Okay. And does the weighting generally correspond
17 to the weighting recommendation that was provided by the Task
18 Force?

19 A Again, I think that it rests on your definition of
20 medium-weighted. But it would be my observation there's
21 actually more weight given perhaps than the Task Force
22 envisioned. They listed this last as a medium-weighted item
23 because they had previous items related to experience more
24 directly, as I mentioned, 90 points, I guess which puts it
25 nine times higher than direct marijuana experience and nine

1 times higher than other business experience. So in the final
2 criteria this ends up playing the biggest role of all,
3 perhaps, if you sum it up as 90 points out of 250.

4 Q Right. Okay. Great. Jump to Exhibit Number 9,
5 which is the building plan. And actually before we get there,
6 if we can go back to the application itself on page 18.

7 So which of those criteria deals with the adequacy
8 of size of the building? Can you describe what the Department
9 provided to the applicants and scores generally that they
10 identified.

11 A Yes. So we have a separate item specifically for
12 this worth 20 points out of 250. And you see reference to
13 adequacy of size and then a sub-bullet that refers to building
14 and construction plans. And I would say this relates to my
15 earlier comment about a limited licensing application process.
16 You face a challenge in that you want to see sufficient
17 evidence of a plan, but it becomes a questions of degree how
18 much you expect from an applicant before they know if they're
19 going to win a license and actually execute, right. If we
20 were in the open licensing model where as soon as they meet
21 the minimum requirements they're expected to operate, I think
22 you might ask for even more proof here. So I guess my main
23 thought would be this is important, it's part of the operating
24 of an applicant. My main concern would be that it is applied
25 consistently to all applicants and whatever the criteria are,

1 however far you're asking them to go in terms of confirming
2 locations or the nature of the facility, as long as that's
3 being applied consistently across all applicants, then I think
4 that's the key here.

5 Q Great. All right. So let's jump back to Exhibit
6 Number 9, which is the evaluation criteria that was provided
7 to the evaluators scoring these. Within that 20 points they
8 appear to have broken it into two subcategories, each worth
9 10 points each; right? Can you talk about the first
10 requirement and what they've defined there.

11 A Yes. So this is worth 10 of the 20, and I think the
12 key component is adequacy of size. So it's making a
13 qualitative determination, is there a building plan that shows
14 effective and efficient building planning, definition of
15 tasks, and that would be realistic to get this up and running
16 in 12 months. There's a lot in there. But, again, I think
17 it's generally consistent with that higher-level description
18 we saw a minute ago in terms of adequacy of size and a
19 building plan.

20 Q Okay. If you look to the merit criteria per the NRS
21 or the regulation in the left-hand column and the definition
22 that's established there, what are they generally asking for
23 there?

24 A Right. This is a proposed establishment, so it's
25 not a confirmed or existing establishment, and kind of a broad

1 request for information on building and floor plans and
2 details. So I think a pretty general request for information.

3 Q Okay. And that's the information that would have
4 been supplied to the applicant in addition to the brief
5 description that we read on the application; is that correct?

6 A Assuming that applicant went back to refer to
7 corresponding regulations, I suppose. This is taken from the
8 regulation.

9 Q Okay. But in contrast, what language did they
10 provide in the evaluation elements that would have identified
11 an excellent response?

12 A So you see I think quite a bit more, right. There's
13 a reference to --

14 Q If we can pull maybe and blow up the excellent
15 response, which is the bottom right there.

16 A So here we have reference to a timeline, work tasks,
17 estimate resources, and duration. So, yeah, some more
18 specifics than just the general idea of plans and details.

19 Q Okay. So from the evaluators' perspective it
20 appears as though they were looking for plans that would have
21 required specific detail sufficient that the applicant should
22 have been able to open within 12 months; is that correct?

23 A It's listed right here, yes.

24 Q Okay. And then an average response, which is on the
25 following page, gives a little bit different description?

1 A Yes. So there's a concern over being realistic and
2 achievable, so you might only get average if you haven't
3 clearly defined tasks and it appears unrealistic and
4 unachievable with no time frame specified. But, yeah, in
5 contrast to an excellent, which had a clear assessment of
6 12 months feasibility.

7 Q And then let's move on to the second portion of the
8 criteria and the building plan. What are the criteria that
9 they've established there?

10 A They're extensive. So we can see three paragraphs
11 of details as to specific aspects of the building plans,
12 appearance, signage, the entrance being a single entrance,
13 security, cleaning and maintenance operations, placement of
14 equipment. It actually continues, I think, below, as well.
15 Lighting -- so, again, these I think are all components of
16 operating a marijuana business. You've got just a much
17 greater level of detail than what is requested verbally -- or
18 in writing in the application form.

19 Q Okay. And then they have some bold print that's at
20 the bottom of the evaluation criteria. So it's just a note to
21 the evaluators. What is it? Can you identify that for us.

22 A Yes. It says, "Evaluators use a specific criteria
23 by establishment type, as well as...." So you have all these
24 applications are for a marijuana retail store, and so I guess
25 they're just reminding the graders that this is a marijuana

1 retail store so there's a question of how you allocate space
2 and that you store products behind a counter with --
3 preventing customers from having direct access. So, again, as
4 I mentioned early on, the retail aspect of marijuana is the
5 one aspect where you have this interaction with customers, and
6 this would be quite relevant. If this was a cultivation
7 facility, it would be irrelevant, because there are no public
8 -- people coming in. So this is there and it makes sense to
9 be there because it's a retail store and not something else.

10 Q But these are based on existing regulations for
11 those facilities, some of which were operational; is that
12 correct?

13 A Yes. So anyone who already had a retail license
14 would have already been evaluated on this in obtaining that
15 license. If you were in the cultivation or processing, this
16 would be a new -- a new area that hasn't been relevant before.

17 Q So if there had been any applicants that had
18 submitted building plans or the criteria that was associated
19 with an operational retail marijuana establishment, presumably
20 -- and they were also in good standing, presumably they would
21 meet these requirements; is that correct?

22 MR. GRAF: Objection, Your Honor. Incomplete
23 hypothetical.

24 THE COURT: Overruled. You can answer.

25 THE WITNESS: Can you ask the question again,

1 please.

2 BY MR. MILLER:

3 Q If there were applicants that already had an
4 existing and open marijuana recreational facility that was in
5 good standing and compliance with the Department's regulations
6 for which these based on, would you expect that they would be
7 able to meet the criteria that the Department was evaluating?

8 MS. SHELL: Your Honor, this calls for speculation.

9 THE COURT: Overruled. You can answer.

10 THE WITNESS: So the text here is very consistent
11 with other regulations that already apply to all retail
12 establishments. You would expect that in their existing
13 operations they would be complying with all existing
14 regulations. This refers to a plan. If the plan is based on
15 their existing operations, then I would expect them to score
16 highly. If the plan had no bearing on what they were
17 currently doing in operation, I guess it's possible they could
18 get a low score. But as long as their plan reflects what
19 they're doing in their current operation, then you'd expect it
20 to be well evaluated.

21 BY MR. MILLER:

22 Q In terms of the physical location that the
23 applicants were proposing to the Department, those are found
24 within the attachments. Can we move to Attachment A within
25 the application, Exhibit Number 5.

1 So in the second box there can you just identify for
2 us what's described for the applicant and what information
3 they are being asked to provide.

4 A So they are requesting a proposed physical address.
5 Must be in Nevada, I think that makes sense, and cannot be a
6 P.O box.

7 Q And a physical address of what?

8 A It says, "Marijuana establishment's proposed
9 physical address." So I would interpret that to be where the
10 retail store would be operating.

11 Q And if you move to Attachment E.

12 A Yeah. So this language seems consistent with the
13 previous attachment. It's the physical address of the
14 proposed establishment. Again, must be a Nevada address and
15 not a P.O. box.

16 Q So they are asked to provide a physical address.

17 And then let's move to the application itself under
18 Section 4, got a page number here, under application
19 instructions. The second paragraph, what does it appear the
20 Department's asking for there?

21 A Well, there's a number of things. The one related
22 to location says that, "License will be awarded in conjunction
23 with this application as determined by the type --" which is
24 not a choice; type is retail store "-- geographic location,"
25 which I guess would refer to physical location, "and the best

1 interests of the state." So here we're talking about
2 location, and in the application forms I don't believe
3 location was mentioned specifically in the criteria or in the
4 grading. But --

5 Q Right. But then the next sentence, what
6 recommendation are they providing to the applicants?

7 A Again -- I can read it. They're encouraged to "be
8 as specific as possible regarding services provided,
9 geographic location," and other information. So to be as
10 specific as possible regarding geographic location is the
11 request.

12 Q Okay. In terms of an overall category and the
13 20 points that were awarded what's your opinion as to whether
14 or not that broad category relates to a direct and
15 demonstrable evidence that they've got experience operating a
16 marijuana establishment?

17 A Can you ask the question again, sir.

18 Q Yeah. The plan, this criteria, how does it relate
19 to the broader criteria that the criteria be based on direct
20 and demonstrable experience operating a marijuana
21 establishment?

22 A So I would see the location of a -- the proposed
23 location of an establishment as being directly and
24 demonstrably related to the operation of a marijuana
25 establishment. I don't think the word "experience" I would

1 bring in there, but it's kind of a separate point than
2 experience.

3 The challenge, as I've mentioned twice, I think, is
4 these are proposed locations and there may -- you know,
5 there's some assessment needed as to the way that this
6 criteria is applied. That would be my main concern. As long
7 as it's being applied consistently across applications, it
8 seems like a reasonable request and criteria.

9 Q And how about the weight to the scoring on the
10 20 points of 250? Does that seem appropriate to you?

11 A Yeah. I have no objection to that weighting. I
12 think it's 20 out of 250. You know, it has an impact. It's
13 not driving the overall score.

14 Q All right. Jumping to the final category that the
15 Department identified in the application that they're
16 evaluating, the community impact is Number 10. But first I
17 guess let's pull up the description on the application. So
18 it's page 18 of the application.

19 Okay. The final criteria that's worth 15 points
20 there, what does it appear the Department's requesting?

21 A So it has two components, the impact of
22 establishment in the proposed location where it could be
23 operating, and then the manner in which it would needs of the
24 persons who are authorized to use marijuana. So those would
25 be the retail customers, I suppose.

1 Q Okay. And as you reviewed the statutes and
2 regulations that control here and the criteria that the
3 Department considered did you find any of those criteria
4 identified in either the regulations or the statute?

5 A So, surprisingly, no. This is the only criteria
6 that has points assigned to it that I could not connect back
7 either to a required element of an application for a
8 recreational license or a criteria that was designated, right.
9 So in the regulations they identify required elements and they
10 identify potential criteria. I did not see this anywhere as a
11 specific item.

12 Q Okay. There is a provision in the regulations that
13 allows the Department to consider any other criteria that they
14 deem relevant; is that correct?

15 A That's right. So I guess it could come from that,
16 which allows for additional criteria. But, as I say, every
17 other item that's been listed here in some form or another is
18 referenced in the regulation. Whether or not the grading
19 criteria were consistent with that is separate. But they all
20 at least had some basis from regulation.

21 Q Going to the evaluators' score sheets, pull up
22 Exhibit Number 10. Those two components, how do they further
23 define that criteria, if at all, and how do they -- what
24 guidance did they give the evaluators as to the kind of
25 response that they're going to be looking for in order to give

1 the appropriate score?

2 A Yeah. So I think like most other categories we now
3 have more information here provided to the graders than was
4 included in the applications form, and in particular
5 comparison of both benefits and also mitigation of nuisances
6 or negative impacts. So it has more of a two-sided
7 description. Safety comes up again, which has already been
8 addressed in the safety plan. Commitment to the community,
9 improving the quality of life. Yeah. So they just expanded
10 upon the definition of "benefit," I suppose.

11 Q And, again, there's nowhere that you can find in the
12 application or the regulations or statutes that would have
13 provided that guidance to the applicants?

14 A No. In fact, the area in blue just above here, I
15 think they just draw on the ability to the include other
16 criteria as deemed relevant. So they're not making a claim
17 that it comes from any other specific criteria.

18 Q So at the top we have the criteria that was provided
19 to the applicants, the likely impact of the proposed marijuana
20 establishment that's proposedly located. And then the
21 response significantly expands upon that; is that correct?

22 A It appears so to me, yes.

23 Q All right. And then the second criteria, can you
24 give us the same analysis.

25 A So on the -- it's actually a little bit hard to read

1 right there. This has to do with the end users of the product
2 and increasing education, awareness, and positive community
3 involvement. They provide a pretty detailed list, I think, of
4 specific plans or intentions that they want to see from an
5 applicant. Excellent response is a very detailed plan with
6 materials, average response has some of the attributes with a
7 timeline at least, inadequate, no plan. So I think a pretty
8 expectation of detail here for how you interact with the end
9 users of the product.

10 Q Okay. And what weight was given for this?

11 A So and these are, like a lot of other categories,
12 getting 10 points each, so they've been deemed equally
13 important as direct marijuana industry experience or other
14 business experience. They have more weight than the
15 individual plans like are included in the care, safety, or
16 education. So, yeah, 10 points for each of these
17 subcomponents.

18 Q Okay. Turning away from the applicant, the scoring,
19 and the evaluation criteria, as part of your analysis and
20 preparation for your testimony today did you perform some
21 analysis where you attempted to look at the scoring criteria
22 that the Department provided, the associated weight, and
23 determine whether not that that could change depending upon
24 which criteria you're evaluating and how you weighted that
25 accordingly?

1 A Yes. So the Department I think quite recently
2 provided significant information on the final scores that each
3 applicant received by jurisdiction. That was posted to the
4 Website. They also had the tally sheets. The tally sheets
5 are basically the score sheets that the graders were using.
6 And as in the application, there's nonidentified criteria and
7 identified criteria. Those are in two separate files with ID
8 numbers. And the last piece they provided that I made use of
9 was a key that basically connects the name of a establishment
10 to the ID number.

11 So what I did in my analysis was to -- I picked two
12 jurisdictions, so the city of Las Vegas and the unincorporated
13 county for Clark County. And what I do is analyze the top 30
14 point scores in those two counties. Quite a number of
15 applicants in those counties, I think over a hundred in the
16 city of Las Vegas. So what I focused my analysis on was the
17 top 30. In each case the top 10 received licenses. The next
18 20 did not. And by going through each individual tally sheet
19 on each individual score that was assigned I could understand
20 how they got to their totals. If the total was 204 out of 250
21 and I went to the tally sheets, I could see the individual
22 scores that added up to 204. And so that gave me the full
23 calculation of how the score was calculated. And so I was
24 able to look at that in a number of ways.

25 Q Okay. And then you prepared charts to reflect that;

1 is that correct?

2 A Yes. So the charts that I prepared, one was just to
3 look at individual categories. So we've talked about
4 experience in the Nevada marijuana industry was kind of the
5 intention of the category. I think it was in, you know, the
6 final criteria were any experience in the marijuana industry.
7 So looked at that score individually just to see how these
8 applicants ranked on that 10-point category. I did the same
9 for financial resources, for their operating plans. And then
10 what I also did was just look at whether taking out some
11 different categories from the collection just as an exercise
12 would change the results. So, for example, if we had a
13 category such as volunteer time, if you took that out of the
14 evaluation, does that change the recipients of licenses. Or
15 if you took out diversity or if you took out something else.
16 So this was an analysis to see how sensitive the results were
17 to the various components that we've talked about.

18 Q Okay. And what did you ultimately conclude in terms
19 of the sensitivity? Do the scores change?

20 A Yes. So even for, you know, categories that are
21 worth only 10 points, and we've talked about this repeatedly,
22 that's 4 percent of the total scoring, to remove marijuana
23 establishment or remove other business experience or to remove
24 diversity or remove volunteerism, any one of those is enough
25 to change the results in both of these jurisdictions, the city

1 of Las Vegas and the unincorporated county.

2 Q So let's look at some of those charts so we can see
3 kind of a demonstration of what you did [unintelligible]
4 analysis that you provided. Could you pull up Exhibit 214.

5 So this is the analysis for the unincorporated Clark
6 County; is that correct?

7 A Yes. So what you see on the slide is exactly what
8 was provided by the Department. These are the scores as
9 reported by the Department. I haven't made any changes. All
10 I've done here is the red line indicates where the cutoff was
11 to receive a license, and I've highlighted the 11 to 20
12 applicants in gray just so that if we make any analysis we can
13 follow the different groups. So green means that you got a
14 license, gray is you were within 10 of getting a license, and
15 the white are 21 to 30.

16 Q Means they were the overall scores?

17 A The overall scores, yes. It's the sum of all those
18 categories out of 250.

19 Q If we switch to the next slide in this analysis in
20 unincorporated Clark County, what analysis did you perform
21 here?

22 A So we have a category as discussed worth 10 points
23 which was taxes paid by the applicant or owners or officers or
24 board members, anyone who's listed on the application. If you
25 remove that 10 points from the scoring, what this would show

1 is that one applicant that was not successful would be in the
2 top 10, and one applicant that had been successful would move
3 out. So the results change with regard to one license.

4 Q Okay. But your testimony as opposed to this
5 category was that you felt it wasn't appropriate criteria to
6 be used in the evaluation of direct and demonstrable
7 experience of marijuana.

8 A Not as directly and demonstrably as related as
9 experience, but, yeah, I think this is something that the
10 regulations and the Task Force gave some weight, and this is
11 something that ended up in the final criteria.

12 Q Okay. And the next slide?

13 A So in unincorporated Clark County for this
14 particular criteria, again, it's only worth 10 points, it does
15 not change the results to take out this one item, which was
16 general experience in other areas.

17 Q All right. But, again, your testimony on this point
18 was that you felt that it should probably have been awarded
19 more than 10 points --

20 A If properly evaluated, yes, I would think relevant
21 experience is important. Here we're just taking any
22 experience in business or nonprofits, so --

23 Q So if you fashioned a remedy where you took out that
24 criteria altogether, the results don't change?

25 A Not in this county area.

1 Q All right. Next slide. What happened here?

2 A So this is just the volunteer time and energy. It's
3 only worth 5 points out of 250. But just taking out that very
4 small category will still change the results. You'd get a
5 different awardee who was considered the tenth best in the
6 jurisdiction.

7 Q So you still get some changes even though it's only
8 2 percent of the overall score?

9 A Yeah.

10 Q Okay. And the next slide?

11 A This is the diversity category. It's worth
12 significantly more, 20 points, and so two of the ten licenses
13 would change hands under this scenario.

14 Q If you removed diversity entirely?

15 A Yes.

16 Q Okay. And the next slide?

17 A So we had that -- an entire section that was
18 discussed, taxes paid, other contributions, and volunteer
19 time. Together it's worth 25 points. If you remove those
20 25 points, you again have two licenses would have been awarded
21 to different groups. There's a significant change in the
22 rankings of the specific applicants.

23 Q And when you say significant, you're referring not
24 only to just the applicants that were awarded licenses, but
25 also, you know, the second tier, the ones in gray; is that

1 right?

2 A In both directions. So on the left -- I guess on
3 this side to your left is the original rank, and on the far
4 right would be the rank without this category. And so you
5 have an applicant who was considered fifteenth who's now
6 fifth, and an applicant that was considered ninth is now
7 sixteenth. So, yeah, there's some pretty big jumps from just
8 removing these 25 points.

9 Q Okay. And the next slide?

10 A Okay. So here I haven't removed anything. All I've
11 done is just focus in on one category of the application. To
12 me the category that would be seem to be most important and
13 most directly and demonstrably related to operation, which is,
14 as labelled on the score sheet, experience with marijuana in
15 Nevada. There's no referencing to that in the guidance for
16 excellent or whatever.

17 So I guess I would make two observations for this
18 10-point score. First, if you were to rank the top 30 based
19 on this score, the results change extremely dramatically. So
20 you have applicants who were ranked sixth, seventh, and ninth
21 who are now, you know, towards the bottom of the 30. They're
22 not even considered in the top 20 in terms of experience,
23 those applicants right there. Not every one changes, but,
24 yeah, there's certainly a significant jump. You have
25 applicants, the white applicants in rows 4 and 5 who overall

1 when this evaluation was done were considered not even worthy
2 of the top 25. But based on experience within the industry,
3 you know, they have perfect scores. They have a 10 out of 10
4 on this category.

5 So clearly the results that actually were based on
6 the entire set of criteria are not consistent with just this
7 particular category of experience.

8 The second point I would make is that the range of
9 scores on this 10-point category extremely wide for a set of
10 applicants that are all license holders in Nevada. So every
11 applicant on this chart is a licensed business. They may not
12 be a retail business, they may be cultivation, I suppose, or
13 production and manufacturing. And we have applicants getting
14 scores of 2.3, 3, 4. So the graders clearly felt that these
15 operators did not even have average scores on prior
16 experience, let alone, you know, strong scores. So the scores
17 themselves, without knowing these applicants or knowing, you
18 know, their applications, I was surprised at such low scores
19 for licensed operators in the state.

20 Q But if this experience criteria had been given
21 further weight, you would have likely seen a dramatic
22 difference in how the licenses were awarded? Is that your
23 conclusion?

24 A That's right. If this was the only criteria, you
25 would take these first six applicants who have 10 out of 10

1 and a few more who have 9s, and, you know, they could have
2 been the recipients. And, yeah, if you scaled up the value of
3 this individual category from 10 to 30 or 40 or 50, you could
4 expect it to have a much more dramatic effect.

5 Q So what conclusion do you make about the criteria
6 and the weight that the Department applied relative to your
7 opinion about the weight that could have been applied or
8 should have been applied under the statutory standard?

9 A Yeah. So I think if you look to the Task Force
10 recommendations, they viewed experience as something that
11 should be very heavily weighted. And so you don't see that
12 here. 4 percent to me does not meet the standard of very
13 heavily weighted. And to give more emphasis to a category
14 like this would make sense. But knowing that the definition
15 was not specific to the license type, and knowing that the
16 grading instructions eventually didn't refer to Nevada, I
17 think then there's a separate question of just the face
18 validity of these scores that we have licensed, operating
19 applicants, you know, at various stages of the industry
20 getting such low scores for experience in Nevada.

21 Q And the next slide?

22 A Yeah. So, again, I've not done any removal or
23 adding back. All I've done here is look at category points
24 which came from financial measures. I don't think we talked
25 in detail about those, but they basically look for sufficient

1 liquidity, 250,000 of liquid assets; secondly, financial
2 statements being provided; and, third, the sufficiency of
3 first year capital to get through the first year of operation.
4 So there's a whole category in the criteria that looks for
5 those three things and gives it 40 points overall. I would
6 deem that to be very directly and demonstrably related to the
7 operation of the business, because you need to have liquid
8 assets, you need to be able to get through the first year of
9 operation with some ups and down, and financial seem important
10 to assess those things.

11 So it's a very different outcome here. What I've
12 tried to show with the color coding is that in the county the
13 first 30 rows here, all these applicants got 40 out of 40.
14 And so the graders deemed them all to be very strong
15 financially, and not just strong, but worth a hundred percent
16 of that 40. And even the ones below, I don't have the scoring
17 here, but they all scored fairly high, as well.

18 So I guess I would make two observations. One is
19 basically every one of the top 25 tied. So this did not
20 determine anything in the final outcome, because everyone was
21 getting the same score. If the intention was that we just are
22 looking for a minimum standard and we think that all these
23 applicants have met it, then I think then this worked as
24 intended. But if the intention was to give greater credit to
25 the best financial perspective and maybe less credit to those,

1 it seems like the scoring just didn't really provide that kind
2 of variation. So you basically have a tie across the top 25
3 here. Very different than the previous category of marijuana
4 establishment, where I think there were only three or four,
5 maybe five tied at the top and the rest had a huge variation
6 from between zero and 10.

7 Q But you indicated that you felt that the weighting
8 given to this category should have been appropriately weighted
9 and heavily weighted based on the criteria that Nevada was
10 trying to achieve?

11 A I do. I think that these criteria are reasonable,
12 and we want to make sure that applicants have the financial
13 capabilities to be successful. There's no point in awarding a
14 license to someone who's not equipped to meet the minimum
15 standards. So I have no issue with any of the inclusion of
16 these criteria. But, you know, if you're looking for any sort
17 of ranking or assessment, we're not getting any
18 differentiation between the top 25.

19 Q If you read these results in concert with the other
20 criteria that related directly to experience, what result
21 would you expect to see if those were appropriately weighted
22 and given heavy consideration?

23 A These would seem to be the two most important
24 categories, but this one is worth four times as much as direct
25 marijuana establishment, 40 points versus 10. So it basically

1 pushes the importance of direct marijuana establishment out of
2 the calculation quite significantly, being worth four times
3 more versus maybe equal or comparable.

4 Q But if everyone tied on this one and then the other
5 one they had results that deviated significantly from the
6 awards that were ultimately granted, you would expect to see
7 results that deviated substantially from the awards that were
8 ultimately granted; is that correct?

9 A That's correct. Because this is basically a tie,
10 and the other one would drive the variation.

11 Q All right. Next slide?

12 A So I think this is the final individual category
13 that I looked at, so I just took exactly what the evaluators
14 assessed for these applicants in the category of care, safety,
15 quality plans, as we mentioned it's worth 90 points,
16 36 percent of the overall score -- if you only looked at this
17 category and you gave credit to those who had the best plans,
18 you would see significant changes in the outcome. So we have
19 an applicant who ranked seventeenth overall, but they have
20 what the graders deemed was the third best plan out of 30 for
21 care, safety, and quality, and vice versa, you know, some
22 jumps down in the other direction. So all we're looking at
23 here is if this is an important category. And it was actually
24 scored fairly highly in terms of weighting. This alone would
25 have led to different results, and, you know, it didn't really

1 predict exactly who was going to get licenses, because you
2 still see that there's quite a shift when you just look at
3 this on its own versus the overall 250 points.

4 Q Next slide. The last one.

5 A Yeah. So just let me explain what I've done here.
6 And we've just looked at three slides that had individual
7 categories, one that was worth 10, one that was worth 40, and
8 one that was worth 90. I just took the sum of those three
9 scores, I've actually showed the scores here in addition to
10 the rank, to see if we excluded some of the other categories
11 that we've talked about that either have problematic relation
12 to being -- to direct operation or maybe somewhat of a
13 surprise in the details. But if we just looked at these
14 three, which total 140 points, do the results change? They
15 do. In fact, you have applicants jumping from as low as
16 twenty-second to second overall, and, vice versa, applicants
17 jumping from you know, the top 10 down to fifteenth and
18 sixteenth. So there's three changes in the top 10 just by
19 making the criteria narrower to focus on these three.

20 Q So what conclusion did you reach in terms of the
21 importance that the Department within their discretion decided
22 to give individual categories, how they weighted those, and
23 which criteria they concluded based on this analysis?

24 A So I guess it's worth noting that we could do the
25 same walk-through for the city of Las Vegas, and we also see

1 actually a little bit -- slightly more variation on some of
2 these categories, but generally the same story. So in the two
3 jurisdictions that I looked at this evaluation is very
4 sensitive to any category. All it takes is one category, even
5 a 5-point category, to completely shift an awarding of a
6 license to a different applicant, and if you were to focus on
7 the categories that I view to be more directly and
8 demonstrably related to the operation of an establishment, you
9 know, with the exclusion of some of these others, you would
10 also get a different set of recipients. And so -- but I think
11 it speaks to the challenge of the assessment process and
12 creating criteria. This is a difficult task, but it's
13 certainly -- any decision along the way very -- has a huge
14 impact in terms of the overall outcome.

15 Q Just -- I don't want to belabor the point, but if we
16 could just pull up Exhibit 215. You referenced that you
17 performed the same analysis for the city of Las Vegas. Can
18 you just quickly walk us through this slide. It's just the
19 original slide; is that correct?

20 A That's right.

21 Q We'll move to this slide.

22 A So this is as provided on the Department Website,
23 the results.

24 Q And then next slide?

25 A Yeah. So we have the sequences are identical.

1 If we just take out some of these categories to see if they
2 change the results, on this one there's a change in the
3 top 10.

4 Q The next slide?

5 A Again there's a change.

6 Q Next slide?

7 A Again there's a change. Here you have a very
8 significant change. This is a category worth significantly
9 more points, 20 points for diversity. That particular
10 category has much more impact on the final results than the
11 previous two.

12 Q Next slide?

13 A The taxes paid section. One change where you had a
14 huge jump by one applicant. And then, yeah, this would be the
15 category that I would deem to be most important, especially
16 within an applicant period with existing licensees applying
17 again, right. We know differently than when we first started
18 in the industry that these are experienced applicants. They
19 had a track record both in what they submit and then what the
20 Department has access to. Clearly it was not driving the
21 results, because, you know, top scores in this category didn't
22 get licenses, and very low scores in this category did get
23 licenses. And, again, there's a very high variation in this
24 10-point assessment for existing license holders who
25 supposedly are in good standing and are fully compliant. So

1 average is supposed to be 5, and we have license holders
2 getting scores all the way down to 2.3 and receiving
3 additional licenses.

4 Q Okay. Next slide?

5 A So again this was just looking at financial. It's
6 uncanny how similar, I think, because a lot of these
7 applicants are actually the same applicants across
8 jurisdictions. So they were deemed to be equally strong in
9 the city of Las Vegas as they were in Clark County.

10 Q Next slide?

11 A If we just look at the operational plans, again,
12 applicants who the evaluators felt had the best plans for
13 care, quality, and safety did not necessarily win licenses
14 because of other categories.

15 Q Next slide.

16 A And then if we just take those three together as we
17 did with the other jurisdiction, you can see that these three
18 categories which seem to be most -- to my opinion most
19 directly related at least in the high-level definition to
20 operation, these are not necessarily driving the results.
21 Because we have three in the top 10 when we just look at these
22 categories that would not have been in consideration under the
23 full rating scheme. And two of them have jumped from
24 twentieth and twenty-first to second -- a tie for second,
25 because basically they're listed twice in the application set.

1 Q All right. If you look at the overall applications,
2 the limited license model, and the implications for being
3 awarded a license under this process versus being denied a
4 license, how would you describe the impact for those
5 businesses that ultimately were not successful?

6 A Yes. I think I'd make the analogy to an RFP process
7 like I referred to earlier, any sort of procurement process.
8 A lot of times when you apply for some sort of private sector
9 or government license or contract if you lose maybe you apply
10 for the next one or you apply, you know, in another location.
11 You know, the marijuana industry is unique in that only a
12 certain number of states have legalized medical or
13 recreational, so there's not that many places that have this
14 industry. And if you don't have a license, you cannot do it.
15 You can't do it as a hobby, you can't do it, you know,
16 informally in a legal way.

17 And so the stakes for either receiving or not
18 receiving a license, I think it's obvious they're more
19 significant in a setting like this than in some other setting.
20 If I'm unsuccessful here, I don't get the opportunity to learn
21 the skills that are involved operating a retail location, I as
22 an existing license holder don't get that second location that
23 gives me scale, and scale in this industry can be significant.
24 You have, you know, benefits around negotiating prices with
25 your suppliers. If I have nine dispensaries versus one or

1 nine retail stores in our terminology in Nevada, that gives me
2 negotiating power on price, on availability of products, you
3 know, kind of all aspects of my relationship with product
4 manufacturers. If I have scale, I can hire and retain
5 employees much better, I can secure key locations that might
6 otherwise go to someone else that may or may not ever be
7 available again. And so the cost of not winning I think, as
8 I'm explaining here, are significant and more significant for
9 this kind of a very regulated industry with limited venues
10 than some other industry that's just, you know, predominant
11 across the country and across a state with no limitations.

12 Q Okay. So even for the applicants that already had
13 previous marijuana retail recreational establishment that have
14 not been awarded additional licenses, you still see some
15 associated harm with that?

16 A Yeah. And again, I think you'd think of it in terms
17 of economies of scale. The number of locations you have
18 allows you to do thing across all those locations and you get
19 a number of benefits from those additional locations. And
20 that's one of the reasons that I would assume people applied
21 for these licenses. They saw those benefits.

22 Q Okay. And in the review of the statutes did you see
23 provisions that attempted to control for that, to control for
24 monopolistic practices?

25 A Yes. I don't have it in front of me, but I believe

1 that there was -- the red text that we saw in the application
2 form had a reference to the number of licenses that one
3 applicant received in a jurisdiction, but I don't believe that
4 there's any restriction across multiple jurisdictions, right.
5 So you had applicants who would apply in the city of Las
6 Vegas, we saw some of their names, and we saw some similar
7 applications in unincorporated Clark County, and so there was
8 I guess some level of restriction but not in -- not to the
9 extreme we've seen in other jurisdictions. I think in
10 Maryland they in total awarded 15 medical licenses, and they
11 only allowed each applicant to have an interest in one license
12 at the time of application. So that would be one extreme of
13 restriction. We're kind of in a middle ground here, I would
14 say.

15 Q When you talk about, you know, the harm that could
16 potentially be suffered by an applicant that was not awarded
17 an additional recreational license or wasn't awarded any
18 recreational license, does that go beyond what could be
19 associated with just pure dollars and cents, monetary
20 remuneration that could be provided to those applicants?

21 A So I think you've seen in all jurisdictions an
22 advantage to early recipients of licenses where they in our
23 state, in Colorado, seem to have survived on average and grown
24 larger, you know, later applicants even in an open license
25 state where we can continue to apply and see new people coming

1 in, you know, the largest dispensary chains, the largest
2 operators are those who were in pretty early that had, you
3 know, a longer time frame to participate in the industry, and,
4 again, it's because if you don't get a license, there's no
5 alternative. You can't, as I said, practice it as a hobby,
6 you can't do it kind of for improvident wait for another
7 opportunity. This is a controlled substance, it's in the
8 DEA's definition a Schedule I drug or substance. It's not to
9 be, you know, dealt with unless you're operating in a legal
10 state environment. So it's really an all or nothing kind of
11 situation here in contrast to other, you know,
12 [unintelligible] situations of liquor license
13 [unintelligible].

14 Q Because the license determines your success, not the
15 dollars and cents; right? So if you had a situation where
16 you're awarded some financial damages, that wouldn't
17 necessarily help the applicant in the same way that -- as if
18 they were awarded the license; is that a fair statement?

19 A Yeah. The overall impact in a limited license state
20 such as Nevada, such as Hawaii, such as Maryland I mentioned,
21 where you have a limited number, you know, 15, 30, 42,
22 whatever it is, it puts an extremely high value monetarily in
23 the immediate term, but kind of broadly in the longer term.
24 You're building a reputation and visibility and connections
25 and a network of employees and suppliers. You're part of an

1 industry community, you're a leader in that industry. You
2 know, those things go beyond I think any first-year revenue or
3 five-year revenue projection. It's hard to compensate someone
4 for losing that position where you're basically established as
5 a long-term leader of an industry versus having little or no
6 chance to ever get to that pinnacle.

7 Q Financial compensation wouldn't get you there,
8 wouldn't get you the same results?

9 A I'm not an expert on compensation, but I can't think
10 of how you would do that adequately, so --

11 MR. MILLER: No further questions.

12 THE WITNESS: Thank you.

13 THE COURT: Do any of the additional plaintiffs have
14 any questions that are nonduplicative?

15 MR. MILLER: Might be hard to do, Your Honor.

16 THE COURT: Okay. So the State gets to go next.

17 MR. SHEVORSKI: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. SHEVORSKI:

20 Q Good afternoon. I'm Steven Shevorski with the
21 Attorney General's Office. It's a pleasure to meet you.

22 A Thank you.

23 Q We haven't had a chance to talk before, have we?

24 A No.

25 Q When my friend Mr. Miller was asking you questions

1 you just recently were talking about a jurisdiction called
2 city of Las Vegas. Do you recall that?

3 A Yes.

4 Q And you described it as highly competitive within
5 that jurisdiction in terms of trying to get a license for the
6 applicants.

7 A Yes.

8 Q Is that a fair statement?

9 A Yes.

10 Q In the start of your testimony I think you
11 distinguished between open license situations and closed
12 licenses, and Nevada was closed.

13 A Or limited, yes.

14 Q Limited. Limited. And in this limited situation a
15 person might have a hope of getting a license; correct?

16 A As an applicant, yes.

17 Q But not an entitlement?

18 A No. I don't think in any jurisdiction you'd see an
19 entitlement. You apply, and then you wait for an assessment.

20 Q And you may be successful, and you may not.

21 A Yes.

22 Q My friend Mr. Miller was also asking you some
23 questions about various criteria, diversity; correct?

24 A Uh-huh.

25 Q Building plan; correct?

1 A Yes.

2 Q Financial statements?

3 A Yes.

4 Q And he asked you whether or not you felt that those
5 were appropriately included as criteria for the competitive
6 bidding process; is that correct?

7 A Yes.

8 Q My friend Mr. Miller also asked you about what kind
9 of weight might be given to the various criteria. For
10 example, how many points might be given for a building plan;
11 correct?

12 A Yes.

13 Q How many points might be given to the financial
14 statements; correct?

15 A Yes.

16 Q Did you review the statutes and regulations
17 pertaining to retail marijuana before you came to court today?

18 A I did.

19 Q When the initiative was passed and it was put into
20 law was it the Department that was given the power by the
21 legislature to determine the competitive bidding process,
22 Department of Taxation?

23 A So in the ballot initiative and the resulting
24 legislation there was an acknowledgement that there would be a
25 need for ranking, and there was a specific item, I believe,

1 that described how that should be done. And it was fairly
2 brief, as we've talked about. I think it referred to just
3 directly and demonstrably related to the operation.

4 Q And that the Department was to come up with a
5 competitive bidding process; correct?

6 A I would assume, since it was not provided to them,
7 yes.

8 Q It wasn't provided to them. Now, you just drew
9 those -- you created those charts how if you had eliminated
10 certain criteria, results may have changed. That's pretty
11 much what you did?

12 A Yeah. And then just looking at individual
13 categories one by one.

14 Q And perhaps giving more weight to certain
15 categories?

16 A Yeah.

17 Q Isn't it fair to say that you were just substituting
18 your discretion, your judgment for the Department's?

19 A The purpose of my analysis was not to recommend or
20 kind of recreate. I was just looking to understand how the
21 criteria that they used affected the results. It was an
22 analysis to understand the process that was used, not to
23 create a new one or to propose a new one.

24 Q The situation was the Department had created one and
25 you found that the Department's bidding process was rational

1 and fair? I never heard you say that any category was
2 arbitrary. You didn't testify to that.

3 A Can you ask that question again, sir.

4 Q In your testimony did you describe any category
5 chosen by the Department in its criteria for the competitive
6 bidding process as arbitrary?

7 A No. I don't believe I used the term "arbitrary,"
8 no.

9 Q And Mr. Miller's question to you is was it
10 appropriate; is that correct?

11 A Or other phrasings, I think he asked.

12 Q And whether certain weight given to a criteria was
13 appropriate; correct? That's what Mr. Miller asked you?

14 A I think so, yes.

15 Q And sometimes you agreed and sometimes you didn't
16 with the weight that the Department gave to certain criteria.

17 A Yes.

18 Q So I'll ask again in your opinion today aren't you
19 merely substituting your judgment and your discretion for the
20 Department's?

21 A I mean, I'm providing my opinion. I've spent time
22 looking at the details, and think there's been enough details
23 provided to know a certain amount. I'm actually not visible
24 to the applications themselves or how the graders matched
25 those two things together, so, I mean, I don't enough

1 information to fully assess the entire process. But I've
2 looked in as much detail as I can at the criteria and the
3 weightings, and I've offered my opinion, as you've heard, on
4 whether I feel they tie back to directly and demonstrably
5 related to the operation of a marijuana establishment.

6 Q Does the term "direct and demonstrably related"
7 defined in the statute?

8 A I don't know the answer to that.

9 Q And so in order to determine whether or not
10 something is directly and demonstrably related there's no
11 definition in the statute, is there?

12 A Not to my knowledge, no.

13 Q So it would be for the Department to decide what is
14 directly and demonstrably related, would it not?

15 A In that situation I have no idea who makes the final
16 decision of what's directly or demonstrably. I guess many
17 people would have different opinions on that.

18 Q Many people would have different opinions. Thank
19 you very much.

20 Mr. Koch has some questions for you.

21 THE COURT: Mr. Koch.

22 CROSS-EXAMINATION

23 BY MR. KOCH:

24 Q Good afternoon, Mr. Seaborn.

25 A Thank you.

1 Q You're from Canada; is that right?

2 A Originally, yes.

3 Q There seems to be a lot of Canadian volume in
4 marijuana. Do you know why that is?

5 A Yeah. I think some legislative changes there in the
6 last couple years have given Canada a very important role in
7 the industry, yeah.

8 Q So Canada legislates and regulates marijuana
9 differently than the United States does?

10 A Yes. Very much so.

11 Q You also said that there are several states that are
12 coming online that are permitting marijuana in various
13 aspects; is that right?

14 A Yes, that's correct.

15 Q How many states by your current count permit
16 marijuana of some form to be used legally?

17 A It's always hard to come up with the exact number,
18 because it depends on what degree of permission. You know,
19 there are states that only allow CBD without THC, but I think
20 you're nearing around 30-odd states that have some sort of
21 medical program, and you're at 10 with the jurisdiction of
22 D.C. that have a recreational program, and, as we've
23 discussed, more going in that direction at various stages.

24 Q And would you agree that every market for marijuana
25 regulation is different?

1 A There are definitely differences between every
2 state, yes.

3 Q So every state has its own system; is that right?

4 A Yes.

5 Q In fact, I think I read an interview by a Forbes
6 reporter saying there's really no one approach that works in
7 cannabis; is that right?

8 A Yeah. And I think I'd said that earlier, that
9 there's some commonalities, but certainly you have to be
10 attuned to your jurisdiction and have experience in that
11 jurisdiction.

12 Q And what might be a great success in Colorado might
13 be doomed to fail in California. Did you also say that?

14 A I did, yes.

15 Q So what Colorado has done with marijuana, its
16 regulation, really has no bearing on what Nevada has done or
17 should be doing; is that right?

18 A No. I mean, if that was the case, I think the
19 interest in other jurisdictions of travelling to existing
20 jurisdictions, which you've seen, you know, here in Nevada and
21 across the country, all these jurisdictions are learning from
22 each other. You know, in Colorado we host government
23 officials all the time that are looking to learn from one to
24 the next and I think particularly early states to later
25 states. So, no, I don't think I would agree with that. I

1 would say they're all related, they're all, you know, looking
2 to each other. But obviously in the end result I would
3 observe that they all come up with their own approach with
4 some difference, yeah.

5 Q So Nevada might look to Colorado for some potential
6 regulation, but Nevada didn't just adopt Colorado's regulatory
7 scheme, did it?

8 A No, not at all.

9 Q So if you were providing your opinion as to
10 Colorado's regulatory scheme and whether that should be
11 applied in Nevada, you wouldn't advocate for that, would you?

12 A Can you ask that question again.

13 Q You're not here to provide an opinion that Nevada
14 should have adopted Colorado's regulatory scheme, are you?

15 A No, not at all. I think my observation that each
16 jurisdiction had chosen their own approach I think reflects
17 the fact that each jurisdiction feels that they have their own
18 situation.

19 Q And even when it comes to licensing there's
20 different approaches for the licensing process; is that right?

21 A Yes.

22 Q Arizona's -- what is Arizona's process like per your
23 understanding?

24 A Yeah. So Arizona primarily has been a medical state
25 until recently, and so they have a limited number of licenses.

1 I don't know a great deal about all the other nuances, but --

2 Q Do they have a lottery system where applicants
3 submit and then those names are drawn out for minimum
4 qualifications?

5 A I don't recall specifically Arizona, but I know that
6 lottery systems, as I think I mentioned earlier, have been
7 used in a number of jurisdictions, yes.

8 Q Nevada hasn't used that lottery system, has it?

9 A Not to my knowledge, no.

10 Q Nevada has a scoring system; is that right?

11 A Yes. [Unintelligible] start, which was more of a
12 direct --

13 Q And in Nevada you would agree that the body that
14 regulates the licensing of marijuana has discretion to
15 determine what regulations would be applicable for that
16 licensing process, wouldn't you?

17 A Does the body that regulates have jurisdiction to
18 create regulations? Through the regulatory process, it seems
19 so, yes.

20 Q You're not here today to tell this Court that the
21 Nevada Legislature or the Department of Taxation adopted the
22 wrong regulations, are you?

23 A No. I think that's a judgment call. A lot of my
24 comments had to do with looking at the regulation and trying
25 to see whether they were -- followed through in the

1 application form, the criteria, the grading sheets, and the
2 application. So that's a different point that I was making
3 than a right or wrong assessment of the regulations,
4 absolutely.

5 Q So you were simply reading the paperwork that was
6 submitted to you and trying to trace through to see if it was
7 consistent; is that right?

8 A That was one of the primary I did, yes. So if the
9 criteria specified, you know, licenses of the same type, you
10 know, just see whether that was carried through in the
11 criteria and in the grading or if a criteria said -- I guess
12 an example would be around taxes paid from marijuana
13 establishments as the Task Force I think had recommended, did
14 that show up in the final criteria, or was it a more general
15 definition like taxes paid across all businesses.

16 Q Let's just talk a second about that Task Force.
17 You've referred to that Task Force a few times. What's a task
18 force in your mind?

19 A Yeah. I mean, my general understanding would be
20 it's not a legislative body, it's not a regulatory body. It's
21 kind of a stakeholder group that has been appointed for their
22 expertise that has a mandate from whoever charters their task
23 force to provide advice. And then, you know, the recipients
24 of that advice have the opportunity to do what they wish with
25 it, I would suppose, yeah. So advisory, but not, you know,

1 enacting legislation or regulation of any kind.

2 Q Correct. So they're providing recommendations, and
3 those recommendations can either be adopted, modified, or
4 ignored; is that right?

5 A Yes. I think you find examples of all those.

6 Q All right. And so in this case looked at the Task
7 Force report. The Task Force may have made a recommendation,
8 but you're not faulting the Department of Taxation for not
9 wholesale adopting the Task Force recommendations, are you?

10 A No. I was just looking to see how closely what they
11 -- what they did matched to what was recommended by that
12 group, in particular because that was the only group that
13 provided any guidance around weighting. So I was looking
14 through the ballot initiative, the regulations, you know,
15 criteria were mentioned, but there was really no other outside
16 information that I came across in this context where anyone
17 made a recommendation around weightings. And so that seemed
18 relevant to me for this exercise.

19 Q Okay. Let's talk about weighting for a minute. You
20 talked -- he asked you questions about that. Mr. Miller asked
21 you whether you thought this weighting was appropriate or not.
22 Do you remember those questions?

23 A Yes, very much so.

24 Q And you provided your opinion whether it was about
25 right, maybe too little, maybe too much; is that right?

1 A Yes.

2 Q That was your personal opinion?

3 A Absolutely.

4 Q And if I took -- asked that same question to
5 everybody in this room, everybody might have their own
6 opinion; is that right?

7 A To some extent I would assume so, yes.

8 Q Right. Your class you teach at University of
9 Denver, all those students in that class might have their own
10 opinion, also?

11 A Sure.

12 Q So are those opinions about the respective weight;
13 right?

14 A Yeah. They're my assessment.

15 Q And the administrative body here, the Department of
16 Taxation, might have had its own opinion on the relative
17 weight?

18 A Clearly, yes.

19 Q Those weights that were assigned there, did you find
20 any of those weights assigned by the Department to be
21 arbitrary and capricious?

22 A So I think given that there was no guidance in the
23 initiative which led to the legislation or in the regulations,
24 I mean, I think that's an open question. So you to look at
25 that to see whether they matched the intent. And the only

1 thing I saw that ballot initiative provided was just this
2 phrase I think we've mentioned a number of times about
3 directly and demonstrably related to the operation of a
4 marijuana establishment. So you had to map it against that
5 standard and make an assessment.

6 Q And so you made your personal assessment on some of
7 those factors?

8 A Yes.

9 Q And some of those factors you might make more
10 heavily than others in your opinion?

11 A Absolutely.

12 Q And did any of the government agencies who are
13 participating here today, the Department of Taxation, call you
14 and ask for your advice at the time they were passing these
15 regulations?

16 A No, they did not.

17 Q Have you ever participated with a governmental body
18 on providing advice or counsel with respect to the weighting
19 of factors of for licensing?

20 A No. So, again, in our Colorado jurisdiction where I
21 spend most of my time we have the open license model, and so
22 there's really no need for criteria to be applied. We have a
23 minimum standard, and we look to as a state evaluate
24 applications fit above. So my study of evaluation criteria
25 has been looking at other states that have the system we've

1 described here, which is more of a limited license model.

2 Q So are you provide a survey of other states, but
3 you've not yourself participated in an actual legislative or
4 regulatory weighting of those factors?

5 A No.

6 Q You talked a lot about diversity at some point, and
7 you refer to it as a policy choice that a state might make.
8 Is that how you perceive it, a policy choice?

9 A Yeah. I think everything here to some extent is a
10 policy choice, especially, you know, inside of the context of
11 the ballot initiative.

12 Q And you said some states credit diversity or
13 consider diversity in their scoring or process, some don't at
14 all, some might consider women, some might consider
15 minorities, all sorts of things; right?

16 A Absolutely, yeah.

17 Q And it's up to the state to decide that policy for
18 that state?

19 A Yeah, it's up to the state to decide within their
20 mandate, I suppose, right. So they have to operate within
21 their defined responsibility.

22 Q So there's a wide range within that mandate that
23 they can decide with respect to diversity; isn't that right?

24 A Generally, yes. So I think we've mentioned that
25 certain ballot initiatives have had very specific instruction.

1 Others, like the medical initiatives in Colorado and Nevada
2 and the recreational in Colorado very broad, and so, you know,
3 on those examples they provided no guidance whatsoever as to
4 evaluation criteria. I think here we have something, and it's
5 limited. It's that one sentence of directly and demonstrably
6 related, and so that's all we have to look at here is that one
7 important phrase.

8 Q Let's point to another statute. You read the
9 statutes in this case that you believe apply to the licensing
10 regulation process; is that right?

11 A Yes.

12 Q Do you recall reading Section 453D of the Nevada
13 Revised Statutes?

14 A If you wanted to point me to something, that would
15 be helpful.

16 Q Sure. Well, let me -- I don't I have a copy. Let
17 me read to 453D.210 --

18 A Okay.

19 Q -- subsection (6). The Court might be pulling that
20 out.

21 THE COURT: Well, I've got to find it in my books,
22 and the question [inaudible].

23 (Pause in the proceedings)

24 THE COURT: Here you go. I'm sure he will point
25 you to the right place. There's also a pocket part. I don't

1 know if you're going to need that one.

2 MR. KOCH: Can I approach?

3 THE COURT: You may.

4 BY MR. KOCH:

5 Q I haven't looked at one of these books myself in a
6 while, so good luck to us all.

7 A And we're in A. So we've got to get to D, I think.

8 Q All right. We have found it in the pocket part.

9 A There it is.

10 Q Subsection (6).

11 THE COURT: Thank you, Mr. Koch.

12 MR. KOCH: Thank you.

13 BY MR. KOCH:

14 Q Subsection (6) of NRS 453D.210 reads, "When
15 competing applications are submitted for a proposed retail
16 marijuana store within a single county the Department shall
17 use an impartial and numerically scored competitive bidding
18 process to determine which application or applications among
19 those competing will be approved."

20 You've reviewed the process -- scoring process in
21 this case. Is that scoring process impartial?

22 A On that I have no ability to assess. I don't know
23 the applicants, I don't know their applications. All I've
24 seen is basically the procedures as we've described that were
25 posted by the Department and the scores. But the scores to me

1 -- I mean, I have ability to evaluate them.

2 Q So you have no opinion as to whether the process was
3 impartial?

4 A I do not, no.

5 Q Numerically scored, that part of it, do you agree it
6 was numerically scored?

7 A I would agree. That is numerically scored.

8 Q And so that aspect of the competitive process,
9 impartial numerically scored, you had no disagreement the
10 process that was completed actually fulfilled that requirement
11 of the statute, do you?

12 A I can attest to they're numerically scored. I think
13 we all saw that. And the impartial I'll leave to someone else
14 so you can -- who has full visibility to the process.

15 Q And the numerical scoring, the points that were
16 assigned to those or the value that was given to each
17 category, that was something the Department decided?

18 A To my knowledge, yes. It came through in -- first
19 in the application form at a high level, and then in the
20 grading instructions to graders.

21 Q Right. Even the Task Force report didn't put a
22 point value on it, did it?

23 A It did not. So they had a scale of very heavily
24 weighted, heavily weighted, and then two items that they felt
25 should be medium weighted, and then I guess anything they

1 didn't identify they felt was not relevant.

2 Q Okay. So the Department in its scoring process
3 determined those values and it made its own independent
4 determination of those values; is that right?

5 A It would seem so, yes.

6 Q Let's turn -- I think we've put up some charts. I
7 think the plaintiffs have those. I don't think they're actual
8 exhibits, but I would like to refer to those if plaintiffs
9 have them.

10 MR. MILLER: No, they're exhibits.

11 THE COURT: The demonstrative exhibits that they
12 used?

13 MR. KOCH: They did use those. Which --

14 THE COURT: I didn't mark them, but they did use
15 them.

16 MR. MILLER: 214 and 215.

17 MR. KOCH: 214? All right. Could we up 214.

18 BY MR. KOCH:

19 Q So, Mr. Seaborn, on these exhibits you analyzed the
20 top 30 scores first in unincorporated Clark County; is that
21 right?

22 A Yes. So there's two parallel reports. This one, if
23 it's 214, is the unincorporated area, and 215 would be for the
24 city of Las Vegas. And I'd only shown the top 30 just for the
25 sake of not overwhelming everyone.

1 Q And that's an interesting question. The client that
2 Mr. Miller represented, the first named plaintiff is Serenity
3 Wellness Center. Do you see them on the top 30 list here?

4 A I hadn't -- no, I don't see them. No.

5 Q All right. TGIG is the next one. They're Number
6 21, it looks like.

7 A They are.

8 Q What about Nuleaf Incline Dispensary? Are they on
9 there?

10 A Let's see. I'm trying to make sure I check both
11 columns. No, I don't see them. Do you see them?

12 Q I don't see them, either. But --

13 THE COURT: But he's not supposed to testify, just
14 you.

15 THE WITNESS: Yes, that's right.

16 BY MR. KOCH:

17 Q All right. Is there actually -- of the named
18 plaintiffs that are represented by Mr. Miller here most of
19 those aren't in the top 30. Does that surprise you at all?

20 A I know nothing about their relative positions, so --
21 I actually didn't really have time to look at the identities.
22 All these scores I had to type in from the tally sheet, so I
23 was just trying to get through the calculations.

24 Q All right. So you did not assess Serenity Wellness,
25 the first named plaintiff in this case, the effect of any

1 changes in scoring on Serenity Wellness, did you?

2 A No. No. Exactly. So this was just to understand
3 the impact of different criteria or how a different approach
4 might have changed the results and to look at the scores in
5 individual categories. And I thought I was learning enough
6 from this presentation here.

7 Q Yeah. What you learned was if you change some
8 scores, if you change some values, that those ultimate scores
9 would change; right?

10 A Yes.

11 Q For example, if we give diversity 800 points,
12 presumably those scores would change dramatically; right?

13 A Absolutely.

14 Q If we multiplied something by 35 and then added --
15 we could do all sorts of things to change the scores; correct?

16 A Yes. But my interest was whether -- how robust the
17 final results were to any of those changes. And all the
18 changes I looked at certainly led to changes. Not always the
19 case. There might be something that you play with it and
20 nothing happens. You know, the ones I looked at certainly
21 were impactful and relevant.

22 Q What about Serenity Wellness? Did Serenity Wellness
23 pop up to the top 10 on any of these changes that you made?

24 A So in this exercise they had no ability to, because
25 I only started with 30, and then we did analysis. I have no

1 idea if -- maybe they were thirty-third and they would have
2 jumped to something. I have no ability to tell you that.

3 Q I believe they're forty-sixth or forty-seventh.
4 Would it surprise you if someone ranked forty-sixth or forty-
5 seventh could jump into the top 10 by changing one factor?

6 A Would it surprise me? I was already surprised, I
7 think, when I looked at some of these categories. So, yeah, I
8 would be surprised again if I saw that, too. That would
9 surprise me.

10 Q Let's go to the next slide on this exhibit, please.

11 A Yeah.

12 Q So here you change one factor that changed some
13 aspect of the point scoring. That was just taxes paid. That
14 was something that you thought might be was it less valuable
15 or more valuable than the Department thought?

16 A Less valuable, to my estimation. Because it's
17 treating owners, officers, and all board members just as a
18 sum, because they're adding up that whole group. And I wasn't
19 sure how to link that back to directly and demonstrably
20 related. So that was my interest in this category.

21 Q What about the next one? Let's go to the next
22 slide. Previous operating experience. Now, this one -- does
23 this all stay the same, then, based upon your taking that into
24 account?

25 A In unincorporated Clark County they stay the same.

1 In the city of Las Vegas they do not.

2 Q All right. Let's go to the next slide. Time and
3 energy. Here we had one part [unintelligible]. So you've
4 changed a lot of little things, and a lot of little things
5 might make a lot of little moves; is that right?

6 A So my surprise here was that changing of a 5-point
7 category was enough to change the result. I said the amount
8 of time and energy that the graders assessed, you know, that
9 changed that outcome of this whole exercise, that one
10 category, yes.

11 Q And isn't it true, though, when you take 250 points,
12 you have a whole number of categories, that would sort of
13 average out or mollify some of the extreme outliers of some of
14 the individual categories?

15 A Yeah. I guess what you're seeing here is that the
16 range was so close in the decision between who got an
17 application and who didn't, I think in both these counties
18 less than 1 point out of 250 was the cutoff, and so that's
19 really why any category is able to make a difference. I said
20 this wasn't a situation where the top 10 scorers were a
21 hundred points ahead of Number 11, 12, and 13. This was an
22 extremely -- and these two counties which I looked at are very
23 close decision between 10 and 11, 9 and 10, you know, et
24 cetera, et cetera.

25 Q And on this slide in particular we've got Wellness

1 Connections of Nevada. It moved up one. Clear River moved
2 down one. So it's possible Wellness Connection of Nevada
3 might have gone back to the State and said, hey, I think you
4 would have scored this category differently, because we would
5 have been in the top 10. They could have made that argument
6 to the State, couldn't they?

7 A I'm not sure if that's a compelling argument or not.
8 I guess they could try, yeah.

9 Q All right. So you don't think that would be that
10 compelling for Wellness to go to the State and say, actually
11 you underscored this one category, why don't you either take
12 that out or remove the volunteer category?

13 A I think it's a question of whether they -- whether
14 the process was followed under the intentions of the ballot
15 initiative and the regulation, I guess. So I don't know how
16 to map those two directly to your question. But --

17 Q All right. Let's just go through a couple more.
18 Next one. Let's skip to the next one. There's diversity, and
19 there's one that you graded just independently on its own for
20 some reason. Let's go to the next slide. Next one. Here we
21 go. So this one you just graded experience with marijuana in
22 Nevada. And rather than taking it out, you just created these
23 independently for some reason. Why'd you do this one
24 differently?

25 A Yeah. So I didn't grade anything, and I had no

1 intention to. All I'm showing here the scores that these
2 applicants received in this jurisdiction. So if we wanted to
3 pick an example, I guess at the top Essence Tropicana
4 operating as Essence received a 10 out of 10 from the graders.
5 Not from me, but from the -- that's the average of the three
6 graders. Then there's an Essence Henderson, which also is
7 operating is Essence. They also got 10. So these are the
8 assessments of the graders for the top 30. And so I was just
9 interested in prior experience in Nevada, what are the scores
10 -- how do they -- how they vary and, you know, is this really
11 driving the results as a primary category that's obviously
12 directly and demonstrably related or is it not. And I think
13 my conclusion here is that it's not particular driving --
14 well, certainly we have four at the top that scored well and
15 got licenses, but we also have the other two scenarios. They
16 scored well and didn't or they scored poorly and did. And
17 again, I'm very surprised at these scores in that these are
18 all license holders that the Department has deemed I guess in
19 good standing, but yet they're getting, you know, a wider
20 range of scores than I would have expected when we're
21 assessing a pretty low bar, I think, if you look at the
22 definition. Just knowledge would get you 5 points, where
23 you've demonstrated knowledge. If you have higher it gets in.

24 Q I think you answered my question. I think you've
25 kind of gone beyond there.

1 You said you're not here to tell the graders what
2 grade they should have given; is that right?

3 A Yeah. Well, there's a lot more information on the
4 materials that were submitted and other things. Yeah, that's
5 beyond what I have access to comment on.

6 Q And you don't know whether they've done a good job
7 or a bad job?

8 A No.

9 Q In this case have been allegations that somehow some
10 of the graders may been incompetent because they were hired
11 through Manpower. Do you have any opinion on that?

12 A No, I do not.

13 Q This process we've talked about, the weights, the
14 criteria, the factors, all those things, you're aware that
15 those applications were circulated prior to the time that the
16 applications were actually submitted; right?

17 A The applications themselves were circulated?

18 Q Right. Right.

19 A The submitted applications?

20 Q The applications in blank were circulated to
21 interested parties.

22 A The applications form? You mean the application
23 form?

24 Q Correct.

25 A The application form was available before the

1 applications were submitted, yes.

2 Q Right. And you had mentioned before that there was
3 noway to ask questions about that. If you'd go to Exhibit 5,
4 the application form. This is the application form we looked
5 at earlier; right? And actually on the bottom it shows no way
6 to ask questions, but it says, "For additional information
7 contact," and there's an email address there; right?

8 A Uh-huh. Yeah. And, see, what I was referring to
9 was a formal process by which comments or questions would be
10 submitted and then responses would be sent back to the entire
11 applicant pool. I can't tell from this whether that existed
12 or not. But, yes, there's contact information on the sheet.

13 Q And the Task Force, do you know if those reports
14 were made public?

15 A No, I don't. I was provided with a copy of the Task
16 Force recommendations, which I reviewed, but I'm not sure
17 where that went. I would assume it went to the governor and
18 his team that commissioned them. I don't know. I have no
19 knowledge of that.

20 Q The regulations themselves, those are promulgated
21 prior to the applications being submitted per your
22 understanding; is that right?

23 A Yes.

24 Q Okay. And you teach the business of marijuana?

25 A I do.

1 Q As a businessman would a businessman, if he had a
2 complaint about the process for applying for a license, would
3 it be better for him to make that complaint before the
4 applications are submitted, or afterward?

5 A I mean, I think that you would want to make a
6 complaint as soon as you felt that there was a complaint to be
7 made. And I think you might have a complaint about the form,
8 but you might have a complaint about other things that you
9 would not be aware of. You can only make a complaint when
10 you're aware of the issue on which you're complaining, I
11 guess. My recommendation to a student or anyone else would be
12 as soon as you have a complaint you should probably make it,
13 right. And I think that -- you might need to gather
14 information or -- to make an assessment, but the general idea
15 of making a complaint when you have something to complain
16 about seems reasonable.

17 Q If you had a complaint about a regulation you've got
18 to make that complaint as soon as you knew about that
19 regulation; is that right?

20 A Yeah. But I think we're talking about an
21 application process and not a regulation. The application
22 process is not -- is a different exercise.

23 Q It may be. Have you read the complaints in this
24 case?

25 A No, I don't believe so.

1 Q Have you read any of the complaints that the
2 criteria that were set forth in the regulations were
3 unconstitutional or improper in some way?

4 A So I've mostly looked at the materials we've talked
5 about, and I haven't really paid much attention to the
6 complaints.

7 Q Would it surprise you if someone who raised a
8 complaint the regulations were unfair can still submit an
9 application without a complaint?

10 A No. Again, there's no other game in town, right.
11 You either apply through this process or you don't have any
12 chance. So I think, you know, if you had a chance to stop the
13 process, you might prefer that. But barring that option, you
14 have two choices, don't apply or apply. And, you know, seems
15 like if you apply you at least have some chance higher than
16 zero.

17 MR. KOCH: Thank you. No further questions.

18 THE WITNESS: Thank you.

19 THE COURT: Do any of the other intervenors wish to
20 cross-examine?

21 MR. HYMANSON: Briefly, Your Honor.

22 THE COURT: Thank you. Mr. Hymanson, is he going to
23 need my statute book with you?

24 MR. HYMANSON: I won't.

25 THE COURT: May I have my statute book back so I can

1 put it back. Otherwise it gets lost. Thank you.

2 CROSS-EXAMINATION

3 BY MR. HYMANSON:

4 Q How are you doing, Professor?

5 A Just fine.

6 Q Tougher than a midterm?

7 A As a professor, I don't know. As a student --

8 Q When were you first hired to do this assignment?

9 A Let's see. I believe I had a contact from one of
10 the lawyers here, Mr. Gentile, a number of weeks of ago.
11 There was some delay. I think he sent me maybe an email that
12 was too big for my university mail account, and I wasn't sure
13 if I would hear back. And then it was probably only about --
14 let's see. Within the week, I guess, that we confirmed my
15 participation in this process.

16 Q And what was your assignment?

17 A So I was asked to apply my knowledge of the
18 marijuana industry broadly and the business of marijuana that
19 I study to understanding this application process and the
20 things we've talked about today, the -- how the ballot
21 initiative translated into legislation, into regulations, into
22 an application process and a set of criteria and to offer
23 assessment of that.

24 Q Were a lot of the things that you were reading
25 today your first impression? I mean, we are actually reading

1 those into the record and -- because you made a comment that,
2 my knowledge is based on me reading this. Were you reading
3 the information for the first time?

4 A Mostly not. I think, you know, I looked at the
5 Question 2, the resulting administrative AC, whatever that
6 terminology is here, then the law, the regulation. I mean,
7 there may have been some sections that I didn't look at, but I
8 looked at all those things, the application form and the
9 materials on the Website as much time as I had between when I
10 began this assignment and arrived today.

11 Q Is it fair to say that during the time of the Nevada
12 application process prior to it going out in 2018, be fair to
13 say that you'd had no contact from the Nevada State
14 Legislature on any inquiries about this?

15 A Yes, that would be fair to say.

16 Q Fair to say the Attorney General's Office didn't
17 reach out to you?

18 A They did not.

19 Q Fair to say judicial -- the Legislative Counsel
20 Bureau did some of the drafting of the statutes, they didn't
21 reach out to you?

22 A They did not.

23 Q Okay. Department of Taxation didn't reach out to
24 you?

25 A No.

1 Q Did any individuals or companies from Nevada reach
2 out to you about the application?

3 A No. I had not had any contact with any Nevada
4 individuals.

5 Q All right. So this is -- and is this the first
6 impression of a review of any application in Nevada?

7 A What do you mean by that? Is this the first time
8 that I have --

9 Q Yeah, that -- first time that you've been paid to do
10 an analysis?

11 A Yes.

12 Q And you're retained by those that didn't qualify for
13 a license; correct?

14 A I believe so, yes.

15 Q And what are they paying you per hour?

16 A I'm not getting an hourly. I'm getting paid per day
17 and [inaudible].

18 Q And what is that?

19 A Is that appropriate to say?

20 THE COURT: Yep.

21 THE WITNESS: So I have a retainer of 5,000 and
22 3,000 a day I've billed to the clients.

23 BY MR. HYMANSON:

24 Q U.S. dollars?

25 A Yes.

1 Q So you had said when you were talking with the State
2 that in looking at the application and the form that it wasn't
3 -- it didn't appear to be arbitrary. Do you recall that
4 testimony?

5 A No. I think what I said was that I hadn't used the
6 term "arbitrary" in my interaction with Mr. Miller.

7 Q Okay. So in looking at the application did it seem
8 based on other applications you've looked at that there was
9 some thought process put into it, that it wasn't simply done
10 willy-nilly?

11 A Yes. There was clearly some thought process put
12 into it, yes.

13 Q Okay. And so would you say that it wasn't done --
14 it didn't appear to be capricious?

15 A Yeah. I mean, again, it's a judgment call.
16 "Capricious" is not a word I'm great at defining, but yeah.
17 So I didn't -- it wasn't word that came to mind for me to use
18 one way or the other.

19 Q Well, it seems to me while you were testifying today
20 that the changes that you made and the suggestions, all you
21 had to do from your hypothetical or your analysis was change
22 the process; right? Because that's what you did.

23 A My analysis, yeah, was to understand the I guess
24 consistency or inconsistency of the process based on
25 individual items, you know, how much is one item driving the

1 result, how different would the results be had we not thrown
2 all these things into the criteria and maybe focused on a more
3 narrow set that I could directly tie back to what I saw as the
4 direction.

5 Q But it's not your expert opinion that the State of
6 Nevada did anything wrong in their analysis in putting
7 together the application; correct?

8 A My concern would be whether all criteria used can
9 hold up to the standard of the ballot initiative of directly
10 and demonstrably related to the operation of a marijuana
11 establishment. And so, you know, that was the one focus of my
12 concern as I expressed, I think, in my testimony. You know,
13 that seems to be a fairly high standard, you know, directly
14 and demonstrably. We could look up the definition, I guess.
15 But I think of that assuming that if I see it on an
16 application I would be confident -- or I would expect it to
17 relate to success in operation, not to be just unrelated
18 altogether or very, very weakly, kind of vaguely or unclearly
19 related. So if I'm looking for directly and demonstrably
20 related criteria, I would want to kind of have a strong
21 connection between the criteria and operation of a retail
22 establishment.

23 Q And being in the business of marijuana you
24 understand that once a decision is made by a state and they go
25 forward with the application there's a benefit to not change

1 the process?

2 A I guess it depend on the situation, whether you're
3 better off changing or not changing it. I think you've seen
4 all scenarios in other states where they've sometimes made
5 changes, sometimes they haven't. So I think I could make a
6 definitive statement on that.

7 Q You've never seen that in Nevada, have you?

8 A I guess -- my understanding has been there was
9 [unintelligible] back and forth on the distributer license
10 awardees, right. At a certain point it was only a smaller
11 group were eligible for those licenses, and then there were
12 court hearings around changing that to a broader set of
13 applicants, and then they went back and back forth. So I do
14 believe that there have been some of those back and forth
15 situations even here in Nevada. And I think similarly
16 something that we didn't mention was you often run into issues
17 between the state and local or county officials, and I
18 believe, you know, I've seen evidence of that here in Nevada,
19 as well, right, where you might have some disagreements and
20 you have to go back and forth on a number of these things
21 before you figure out the best way to make the final decision
22 about licensing.

23 Q Your basis is in mathematics; correct?

24 A That was my undergraduate degree from 1993 to 1997.
25 You know, I think of myself more as a professor of business

1 where I have an MBA and a Ph.D. in business, and so, yes.

2 Many years ago I started off in mathematics, and it's a part
3 of what do. But I would identify myself primarily as a
4 business professor.

5 Q Well, when we said 10 points you said 4 percent, so
6 that's -- to me that's a mathematician.

7 A Did I get it right?

8 UNIDENTIFIED SPEAKER: Means you're not a lawyer.

9 BY MR. HYMANSON:

10 Q How many options, how many scenarios -- you put
11 forth several scenarios today. How many more mathematically
12 do you have?

13 A How many more could I prepare, or how many have I to
14 date?

15 Q I mean, you could go on for quite a while, couldn't
16 you?

17 A Yes. I think that's the point.

18 Q And all you have to do is change the process; right?

19 A Yeah. Or even as specific as one criteria, yeah.

20 MR. HYMANSON: Thank you.

21 THE WITNESS: You're welcome.

22 THE COURT: Anything else before I go to redirect?

23 Mr. Miller.

24 MR. KEMP: Judge, I talked to -- I had one quick
25 point.

1 THE COURT: You were supposed to go before. You've
2 got to wait till after Mr. Miller.

3 MR. KEMP: This is redirect, Your Honor.

4 THE COURT: But Mr. --

5 MR. KEMP: This is redirect to Mr. Koch, and I
6 talked to Mr. Miller --

7 THE COURT: So we're going to go to Mr. Miller, and
8 when he finishes we'll go to you, Mr. Kemp.

9 MR. KEMP: Thank you.

10 THE COURT: Mr. Miller.

11 REDIRECT EXAMINATION

12 BY MR. MILLER:

13 Q You were asked about the opportunity to submit
14 questions and clarifications, that the applicant would have
15 that opportunity to go back to the Department, is that
16 correct?

17 A Yes.

18 Q And you were shown a general provision on there that
19 if you have any questions you can dial this number, is that
20 right?

21 A Yeah, and an email address as well. Yeah.

22 MR. MILLER: Can you pull up the application, page
23 19, and provision 6.6.

24 BY MR. MILLER:

25 Q Can you read that provision and generally describe

1 what it appears to outline for the applicants?

2 A Yes. So this is in the same section where we were
3 looking at previously, the grading criteria. So it says that
4 "In the Department's sole discretion they can have
5 clarification discussions with applicants. Applicants shall
6 be afforded fair and equal treatment with respect to any
7 opportunity for discussion and/or written clarifications.
8 Such clarifications may be permitted after submission" -- not
9 just before, I guess -- "and prior to the award for the
10 purpose of obtaining best and final ranking of the
11 applications. In conducting discussions there shall be no
12 disclosure of any information derived from applications
13 submitted by competing applicants." So the only clarification
14 given for the original application will be -- "Any
15 clarification given for the original application during
16 clarification discussions will be included as part of the
17 application."

18 Q Does that appear to be prescriptive in outlining a
19 formal process whereby all questions would be submitted
20 according to some deadline and the made available -- the
21 answers made available to all the applicants?

22 MR. GRAF: Objection, Your Honor. Leading.

23 THE COURT: Overruled. You can answer.

24 THE WITNESS: No. I see no mention of deadlines or
25 the method of providing back. There's certainly the criteria

1 of making sure everyone is afforded fair and equal treatment,
2 but we are not told how that might be executed.

3 MILLER: I can't get this thing operational.

4 COURT RECORDER: Do you need the ELMO now?

5 MR. MILLER: Yeah.

6 THE COURT: You've got to tell us when you want to
7 switch.

8 MR. MILLER: All right.

9 THE COURT: Different buttons she pushes. Give us a
10 second. Would you like the ELMO, Mr. Miller?

11 MR. MILLER: Yeah, I guess so. Let me switch.
12 Before we get to the ELMO, if it takes a second switch I can
13 move on. I can take it out of order. If we pull up the
14 application --

15 THE COURT: Hold on. We have to turn the power
16 button back on.

17 MR. MILLER: Okay.

18 THE COURT: It's ready for you.

19 MR. MILLER: Okay.

20 (Pause in the proceedings)

21 THE COURT: And then leave it still so it can focus.

22 BY MR. MILLER:

23 Q Okay. So let me just show you the bottom of this so
24 you can authenticate this here. This is the 2014 application
25 that you previously testified that you had reviewed?

1 A Yes.

2 Q Do you remember this portion?

3 A So again, some of these things are publicly
4 available and so I looked at this. I guess if you could
5 scroll down to the -- this last paragraph. It says, "All
6 questions related to the application process must be submitted
7 in writing to this address no later than two o'clock on the
8 20th of June. Calls should only be directed to the phone
9 number provided. No questions will be accepted after this
10 date. Answers will be posted to an FAQ section of the website
11 at a particular date, at a particular address." So that was
12 the section I referred to earlier that I was not able to find
13 in the recreational application instructions of this process.

14 Q Right. And if you look at the application timeline,
15 does it provide further clarity as to how that process was to
16 be run if you had questions or clarifications that you needed?

17 A Yes. We've got all the dates laid out here.
18 There's actually a gap between this Q&A period and the
19 application period deadline.

20 Q So in contrast, as you referenced, if we pull up
21 Exhibit 5 on page 8 of the application timeline under the
22 recreational, do you see any indication in this timeline that
23 there's a formal process and deadlines to submit questions and
24 when the Department will respond to them back?

25 A No. I don't see any specification of that here.

1 Q But the applications are substantially similar, is
2 that correct?

3 A Yeah. I think in looking through the two they are
4 substantially similar. The Legislature has changed, right, so
5 there's reference to newer legislation for the recreational
6 process, but in many ways they are similar, yes. There's
7 categories for financial resources, there's categories for
8 organizational structure, but they're operationalized
9 differently later on.

10 Q In your experience, when there is a competitive
11 bidding process or licensing process and the intention is to
12 afford fair and equal treatment with respect to clarification
13 or answers that will be provided by any department, is it more
14 typical to offer a format where all of the questions are
15 submitted and posted and all the information sent to all the
16 applicants?

17 A So that would give you one more level of visibility
18 to the process and I think you could look at those
19 communications and make an assessment of that. Here we just
20 don't have that visibility. So, I mean, it's still possible
21 that everything was fair and equally communicated, I just have
22 no way of knowing from looking at this material.

23 Q But you were asked to specifically comment on NRS
24 453D.210, is that right, subsection 6?

25 A Yes. Yeah, in the blue book.

1 Q And you were asked to comment as to whether or not
2 you felt that this was an impartial scoring method that the
3 Department carried out, is that right?

4 A Yes.

5 Q If applicants were given access to information that
6 was different or in any way provided further clarity, for
7 example, provided information that would have been on the
8 evaluation scoring criteria that was not on the application,
9 where some applicants were not provided that same information,
10 would you determine that to be impartial?

11 A Based on your description I would, yes.

12 Q Let me say it again.

13 A Yeah.

14 Q If some applicants were provided responses and
15 further clarification, even to the extent where they were
16 offered all the additional evaluation criteria that was not on
17 the application, and other applicants not provided that
18 information at all, just had to go by the information that was
19 purely on the application, would that result in a fair and
20 impartial process?

21 A I don't think so. I think you want all applicants
22 to have equal instruction or consistent instruction and equal
23 access to information, and so that would be what I would
24 consider impartial. And if there was a difference in certain
25 applicants having more information than others, I would think

1 of that as being impartial.

2 Q When you teach classes and you give exams, you don't
3 give half the class access to the test questions that will be
4 asked in a study guide and the other half just left with the
5 books and lectures to figure it out themselves, do you?

6 A I do not, no.

7 Q That would be an impartial process; right?

8 A That would not be an impartial process.

9 Q It would not be an impartial process. Sorry, I
10 misstated that. It wouldn't be a fair and impartial process?

11 A Yes, and my students would complain immediately.

12 MR. MILLER: Okay, thanks. I have nothing further.

13 THE COURT: Now, Mr. Kemp.

14 THE WITNESS: All right.

15 MR. KEMP: Thank you, Your Honor.

16 THE COURT: You're not done yet, sir.

17 MR. KEMP: Could I have 214 and 215?

18 REDIRECT EXAMINATION

19 BY MR. KEMP:

20 Q Okay. Sir, as I understand it this is the
21 applicants as they were originally scored?

22 A Yes. Yeah.

23 Q And then you have rescored them on the following
24 one?

25 A Yes. And what I've done here is to -- for these

1 first few slides remove one of the categories to see how
2 sensitive the results are to that one individual category,
3 whatever it may be.

4 MR. KEMP: Okay. And can I have the next one,
5 please? Is there another one of these?

6 BY MR. KEMP:

7 Q And would you tell me what this represents?

8 A So what we've done here is taken a 10-point
9 category, which was for the total taxes paid by applicants,
10 owners, officers and board members, and we saw there's a
11 numerical grading scheme for that. If we just remove that, so
12 we're basing now -- ranking everyone out of 240 points instead
13 of 250, the column on the far right indicates what I
14 calculated to be the revised rank. And so they don't match
15 directly, the original rank and the revised rank.

16 Q And the next one, please. This again is the
17 original one?

18 A No. We're on the one where we removed previous
19 experience at operating any sort of business or non-profit.

20 Q Okay. The next one, please. And have you analyzed
21 the plaintiffs in this case to see which categories they would
22 fit in if you make these various changes?

23 A No. What I've done here, and it's consistent across
24 all of the analysis, just looking at the top 30 in these
25 jurisdictions, whoever they may be. And as I said, I just was

1 trying to get that calculation without any --

2 Q And more specifically Mr. Koch asked you questions
3 as to whether or not it made a difference as to whether one of
4 Mr. Gentile's plaintiffs, The Wellness Center, is it, Wellness
5 Center, whether it would make a difference whether they were
6 in the top 10. Do you remember those questions?

7 A I do, yes.

8 Q Okay. And we just need to look at these charts to
9 see if those type of changes make a difference to other
10 plaintiffs such as MM Development; right?

11 A So this analysis only refers to those who are
12 already in the top 30. It makes no analysis of what would
13 have happened to number 31 or number 38 or 42. On this
14 particular page you don't see dramatic jumps, and so I guess
15 we -- but on others we did see pretty dramatic jumps. So I
16 can't speak to anything that's not in the top 30.

17 Q The next one, please. So in this page who are the
18 top 10 in this page?

19 A The top 10 as awarded licenses in unincorporated
20 Clark County are the Green companies listed, so you can see
21 them there. But if you were to remove diversity the top 10 --
22 using again the scoring not from me but from the evaluators,
23 would have the first eight and then two who did not receive
24 licenses. One says MM Development, Planet 13, Medizin, and
25 the second Wellness Connection of Nevada. Cultivate is the

1 operating name.

2 Q So let me see if I understand the bottom line here.
3 If you score by categories that you believe directly and
4 demonstrably relate to the operation of a marijuana
5 establishment, if you do that MM Development would have been a
6 winner, at least in this jurisdiction, unincorporated Clark
7 County?

8 A No, that's not quite correct. So this chart only
9 speaks to one very specific change and it has nothing to do
10 with my assessment of what the right criteria are. All I'm
11 saying is if you took the criteria as executed, you remove one
12 category, which happened to be diversity, which is worth 20
13 points, this is the impact on the results.

14 Q Okay.

15 A So that's a separate analysis than maybe some --
16 developing some new criteria overall. All I'm doing is just
17 removing a category. I'm not making any assessment of my own.

18 Q Fair enough. If you had removed diversity for
19 whatever reason --

20 A Yeah.

21 Q MM Development would have been a winner in
22 unincorporated Clark County?

23 A Yes. They would have been considered 9th and
24 another company 10th.

25 MR. KEMP: Thank you.

1 THE COURT: Anyone else on the plaintiffs' tables
2 like to do redirect? Given Mr. Kemp's questioning for the
3 first time, any follow-up questions?

4 MR. SHEVORSKI: None from the State, Your Honor.

5 THE COURT: Thank you, sir, we appreciate your time.

6 MR. GRAF: Your Honor, I have one question just real
7 quick.

8 THE COURT: You've got to be faster, Mr. Graf.

9 RECROSS-EXAMINATION

10 BY MR. GRAF:

11 Q Good afternoon, Doctor. So I represent Clear River
12 in this case, and a couple of the unincorporated Clark County
13 charts that you do, they bump down to where they're not
14 licensed or they wouldn't get a license.

15 A Okay.

16 Q Would you agree with that?

17 A I'd have to look back to be sure, yeah.

18 Q Is it 214?

19 A Yeah, let's look at it to be sure.

20 MR. GRAF: So go to the next slide, Brian. Thanks.

21 BY MR. GRAF:

22 Q So here in this next slide we're talking about --

23 A This is -- that's the original, right? And so Clear
24 River, you said, is in 10th.

25 Q Sure.

1 A .56 above.

2 Q And if you take out taxes paid, they drop down and
3 they wouldn't get a license under your theory here; right?

4 A Yeah. Even with just removing those 10 points, they
5 would drop to 12th.

6 Q So when you remove any of these categories, these 10
7 points, you're changing the weighting of the entire rest of
8 all of the categories; correct?

9 A Yes. So by removing one, you're giving more weight
10 to the rest.

11 Q You're substituting your opinion for the entire
12 rule-making process of the State of Nevada; right?

13 A I'm doing an assessment of the impact of that
14 category.

15 MR. GRAF: Thank you. Nothing further, Your Honor.

16 THE COURT: Now the final redirect. Mr. Miller.

17 MR. MILLER: No, Your Honor.

18 THE COURT: Anything? Mr. Kemp?

19 MR. KEMP: No, Your Honor.

20 THE COURT: Anybody else at your table?

21 Okay. Thank you, sir.

22 THE WITNESS: Thank you.

23 THE COURT: Have a nice day.

24 THE WITNESS: All right.

25 THE COURT: It's three o'clock. I'm going to take

1 my short afternoon biologic break so I don't have to get asked
2 in ten minutes for that.

3 Who is your next witness?

4 MR. GENTILE: Your Honor, the next witness is John
5 Ritter. He's going to be testifying from time to time. Today
6 -- and he's a client.

7 THE COURT: No, I got that part. What do you mean
8 from time to time?

9 MR. GENTILE: Well, I don't anticipate that we can
10 get him entirely in today. There are --

11 THE COURT: Okay. So you're going to start him?

12 MR. GENTILE: Yeah. Well, there are discrete
13 aspects to his testimony and I was going to deal with one of
14 them today, if that's okay with the Court.

15 THE COURT: I'll wait and see if anybody says
16 anything.

17 Mr. Parker, are you in trial next week up north? I
18 thought you were going to settle.

19 MR. PARKER: Your Honor, I actually settled with Mr.
20 Vannah yesterday.

21 THE COURT: So you're here with us?

22 MR. PARKER: I am here with you.

23 THE COURT: Okay. Then I'm going to take my recess
24 for about ten minutes.

25 (Court recessed from 2:58 p.m. until 3:24 p.m.)

1 THE COURT: All right. You can be seated. Did
2 anyone have an objection to the method of testimony that was
3 described by Mr. Gentile?

4 MR. KOHN: We have an objection to that. Mr. Ritter
5 is going to testify. He's going to testify today until he's
6 finished.

7 THE COURT: Okay. Mr. Gentile.

8 MR. GENTILE: I changed my mind anyhow, so okay.

9 THE COURT: Great, because I was going to say I
10 agree with him.

11 Witness number two, Mr. Ritter --

12 MR. GENTILE: Mr. Ritter.

13 THE COURT: -- if you'll come forward, please.

14 MR. GENTILE: Mr. Ritter actually has to leave
15 Tuesday, so we have to get him done.

16 THE COURT: Then let's try and get him done.

17 MR. GENTILE: Yeah.

18 JOHN RITTER, PLAINTIFFS' WITNESS, SWORN

19 THE CLERK: Please be seated.

20 THE COURT: Sir, I will let you -- Oh, you have to
21 spell your name. Could you spell your last name, please?

22 THE WITNESS: R-I-T-T-E-R.

23 THE COURT: Sir, there's a pitcher of water there
24 next to you. There are a bunch of exhibit binders behind you
25 and there should be some M&M dispensers back there if you

1 should need them.

2 Mr. Gentile, you may continue.

3 DIRECT EXAMINATION

4 BY MR. GENTILE:

5 Q Mr. Ritter, how old are you?

6 A That's the question we're going to start with? I am
7 61.

8 Q Okay. And how long have you been in Nevada?

9 A Since 1988.

10 Q What have you been doing in Nevada since 1988?

11 A Primarily real estate.

12 Q All right. Why don't you tell us how you got
13 started and what that means, primarily real estate. What have
14 you actually done in real estate?

15 A So we -- I started in real estate here in the land
16 business, which was -- I came here from the Phoenix area in
17 the savings and loan crash in the late '80s and I was in the
18 land business there. So I came up here, got in the land
19 business, which was at the time basically buying and selling
20 land. As time went on we started getting farther and farther
21 into the process where we would buy a piece of land and then
22 title it. Then we got to the point where we were assembling
23 larger pieces of land and then titling them and eventually we
24 got to the point where we were assembling very large pieces of
25 land and titling them and then developing them and selling

1 them in pieces to end users, home builders, apartment
2 developers and commercial developers.

3 Some of our larger projects are Mountain's Edge. We
4 developed the Mountain's Edge master-planned community, which
5 is just about at full build-out now and has about 30,000
6 people living in Mountain's Edge. We built the Providence
7 community up in northwest Las Vegas. That's about half the
8 size of Mountain's Edge, so it's pretty much fully built-out
9 now. It has about 15,000 people living in it. We developed
10 the Inspirada master-planned community. We were the master
11 plan developer of that project. Similar size to Mountain's
12 Edge.

13 That's been our primary business but we've also done
14 -- built apartment projects and retail projects. We've also
15 done some opportunistic investments. We've done some
16 investments in high tech businesses. We have invested in
17 obviously the cannabis business. So our primary business is
18 real estate, but we do some opportunistic investing as well.

19 Q You have used the word "we" thirteen times by my
20 count. Who is we?

21 A So, Focus Property Group is our company name.

22 Q Have you been active in the southern Nevada or
23 Nevada community since arriving here 31 years ago?

24 A Yes. I and also the company have been active
25 philanthropically and also from a community standpoint. I have

1 a charitable trust called the Ritter Charitable Trust that's
2 given away and/or raised millions of dollars for local
3 charities, primarily focusing in women's and children's
4 charities.

5 Q Such as?

6 A Nevada Partnership for Homeless Youth. Let's see.
7 The -- well, I've got a website that's got a whole long list,
8 but we've contributed probably to about thirty different
9 charities over the last 10 years, or the last 30 years, I
10 guess, now. We have primarily tried to focus in charities
11 that are not necessarily the most juicy or highest profile, so
12 they were generally charities in which a relatively small
13 contribution can make a big difference.

14 Q Have you ever had a relationship with the UNLV
15 Foundation?

16 A Yes. I am on the UNLV Foundation board.

17 Q How long has that been the case?

18 A Probably 20 to 25 years.

19 Q How did you get involved in the legal cannabis
20 business?

21 A So it actually started one night sitting around with
22 five guys at dinner and one of them said I heard they're
23 giving away marijuana licenses. All we have to do is put up
24 \$25,000. And everybody around the table said, oh, we'll throw
25 in \$5,000 each. And so I started looking into it a little bit

1 and at the time I felt like there was too much risk because of
2 the federal stance towards marijuana, and so I decided to pass
3 on it.

4 Q What about -- for purposes of putting this in
5 context, when were the five of you -- what year were the five
6 of you guys who saw it to be so easy to get into the legal
7 marijuana business sitting around a table?

8 A So that would have been sometime in '14.

9 Q Okay. And so what happened?

10 A So then the Obama administration --

11 Q President Obama?

12 A President Obama. President Obama's administration.
13 Eric Holder was Attorney General at the time and a memo was
14 issued called the Cole memo, which I read and it laid out some
15 guidelines under which they felt that states could operate
16 legal marijuana programs. It didn't say that they would
17 decriminalize them, but it basically said that they were going
18 to de-emphasize enforcement. And then President Obama made
19 some comments in a speech that said basically the same thing.

20 And that was probably three or four months before
21 medical applications were due, and so I said, okay, I think
22 I'm going to try to take a run at this. And of the five guys
23 sitting around the table, three weren't that interested
24 anymore and I kind of took the lead on it, and only one of the
25 five guys besides myself ended up involved in the company and

1 he made a relatively small investment.

2 So what I needed at that time was an operating
3 partner and by -- as luck would have it I -- through another
4 project I was doing I was introduced to a potential operating
5 group and met with them and they had done a lot of the
6 legwork, had been spending time in Colorado and California and
7 Arizona to kind of figure out what this kind of business
8 entails, but they needed money. So after talking a bit and
9 talking about structures and kind of negotiating a structure,
10 I went out and raised the majority of the money for the
11 company. My operating partners also contributed a meaningful
12 sum into the company and we decided to apply for medical
13 licenses.

14 Q Did you form an entity?

15 A Yes.

16 Q What was the name -- what is the name of that
17 entity?

18 A It's called TGIG, LLC.

19 Q Is it an LLC registered in Nevada?

20 A Yes.

21 Q Okay. And did it ultimately obtain a license for
22 medical marijuana?

23 A Yes. We --

24 Q How many licenses?

25 A We obtained four licenses, two dispensary --

1 Q What year was that?

2 A So I believe the applications would have been late
3 '14, early '15. I think the licenses were awarded sometime in
4 '15.

5 Q Did you open the establishments that were licensed?

6 A Yes.

7 Q Tell us where they are and how they're identified.

8 A So at that time the process was being overseen by
9 the Department of Health and Human Services, by a smaller
10 department within that agency, and they had put a deadline on
11 when you were to open. I believe it was the end of April in
12 '16, if memory serves. And so we opened all of our facilities
13 before the end of April. I think the cultivation facility
14 opened in February.

15 Q Where was that? Where is that?

16 A That's at Valley View and Decatur.

17 Q And you said in February --

18 A Excuse me. Valley View and Russell. Sorry. Valley
19 View and Russell.

20 Q You mean February of 2016?

21 A February 2016. That's a cultivation and production
22 facility. And then we had two dispensaries -- we have two
23 dispensaries, one in Nye County which opened in March of '16
24 and then one in Las Vegas which opened in April of '16.

25 Q And how are those dispensaries identified? What is

1 the business name?

2 A The Grove.

3 Q The Grove. G-r-o-v-e?

4 A Yeah.

5 Q Have they been in business since the time of them
6 opening?

7 A Yes.

8 Q All right. And they started out as medical
9 marijuana dispensaries?

10 A Yes.

11 Q Could you take us through the year 2016 with regard
12 to those dispensaries and the cultivation and production
13 facilities? Have you had in the year 2016 any disciplinary
14 action, any accusations of not complying with the law?

15 A No.

16 Q How about 2017?

17 A It terms of disciplinary actions?

18 Q Yes.

19 A No.

20 Q How about 2018?

21 A No.

22 Q Okay. So a cultivation, a production and two
23 dispensaries have been criticism-free as far as the regulators
24 are concerned?

25 A Yeah. I think we've had our share of deficiencies,

1 just like most operators do, but they've been relatively minor
2 and we responded to them quickly and were able to fix any
3 deficiencies that the inspectors may have found.

4 Q Okay. Now I want to take you to the year 2017. By
5 the way, when you sought your medical marijuana licenses and
6 you were awarded them, where did you -- how many -- to the
7 best of your memory, how many applicants were there for
8 medical marijuana establishments?

9 A I think there were 200 -- over 250 applicants, as I
10 remember.

11 Q Where did you finish? Where were you ranked?

12 A So if memory serves, our applications were ranked
13 within the top five applications in the state, I believe.

14 Q All right. Now, the process with regard to applying
15 for medical marijuana was different than it was later for
16 recreational, am I correct?

17 A Well, as I think we've heard today, there were
18 differences between the applications and some differences
19 between the application processes.

20 Q Did there ever come a time when The Grove became a
21 licensed recreational marijuana retailer?

22 A Yes.

23 Q When and how did that happen?

24 A So the initiative petition was passed by a vote of
25 the people. I think it passed by a 9 percent margin in

1 November of '16 and the thinking was that entities would not
2 be licensed until, as I recall, early '18. And so '17 was a
3 year that the Legislature met and although Governor Sandoval
4 was not a proponent of recreational marijuana, since the will
5 of the people voted it into place, he decided that given that
6 Nevada's budget is always running short of money that he would
7 try to expedite the process to get the taxes rolling in
8 sooner.

9 So he put an early start -- what was called an Early
10 Start Program together and I think we've heard some of that
11 today, but essentially what the Early Start Program said was
12 that if you had a medical marijuana dispensary or cultivation
13 or production that was in good standing and had paid its
14 taxes, that you would get a recreational license, one-to-one
15 it was called. And to me that was responsive to the statute
16 because the initiative and the statute that put it into law
17 described, as we've heard today, the single qualification
18 description is direct and demonstrable experience related to
19 the operation of a marijuana establishment. And since the
20 governor only gave those licenses to those that were up and
21 operating, that made sense. And so July 1st is when we were
22 able to start selling recreational product.

23 Q What year?

24 A So that was '17, if memory serves. And I think that
25 most of us in the industry at that time had been losing money

1 every month in the medical program. The Department of Health
2 and Human Services, the smaller department that was overseeing
3 the medical program had made it very difficult for patients to
4 get a medical license. And so we had many fewer medical
5 patients than other states, particularly Colorado being the
6 one that had really kind of led the way in this kind of a
7 process. Per capita we ended up with many less patients. And
8 so there was very few customers to go around, so we were
9 losing money each month. As soon as recreational started
10 right after midnight on the end of June, very early in the
11 morning on July 1st I think we call became profitable, those
12 of us that had obtained licenses through Early Start and were
13 up and running.

14 Q Now, Mr. Ritter, you opened The Grove, the medical
15 marijuana locations, I think you said in April of '16 or '15?

16 A So that would have been '16.

17 Q And you became operational as a retailer of
18 recreational July 1st of '17?

19 A That's correct.

20 Q So you lost money from --

21 A For over a year.

22 Q For over a year, about 15 months?

23 A Right.

24 Q Now, what, if anything, was your activity as it
25 related to the inception and the road up to it of recreational

1 marijuana in Nevada?

2 A In terms of the larger industry itself?

3 Q Right. In other words, were you active at all with
4 regard to either the initiative or anything that followed
5 that?

6 A Yes. So I was one of a group of people that were
7 very active around raising money for the initiative and to get
8 advertising and marketing out there in support of the
9 initiative. Primarily we were working against Sheldon
10 Adelson, who was throwing a lot of money at defeating the
11 initiative. So a group of us went to the larger marijuana
12 community and raised money and continued to raise money. I
13 think we started a few months before the vote and I know at
14 one point in the last six weeks or so we were raising money at
15 about two hundred to three hundred thousand dollars a week,
16 because that was about what Sheldon Adelson was spending
17 against the initiative.

18 And so then the initiative was approved and we were
19 involved in the Legislature. Ultimately, as we've heard
20 today, Governor Sandoval put together a Task Force and the
21 purpose of the Task Force was to provide recommendations for
22 what would later become the permanent regulations. And there
23 was -- if memory serves, there was about thirty people or so
24 appointed to the Task Force. There was only two people from
25 the cannabis industry appointed and one of those two was

1 representing testing labs and only one was going to represent
2 everything else, so all of the people, all of the companies
3 that are the subject of this lawsuit, your dispensary owners,
4 your cultivators, your producers, and ultimately Governor
5 Sandoval appointed me to that role on the Task Force.

6 Q So you were the only representative of what I will
7 call the legal cannabis industry, medical and otherwise?

8 A Well, I was the only person that was appointed to
9 the Task Force. You know, I don't -- I wouldn't purport that
10 I was representing the entire industry on the Task Force, but
11 I was appointed into that role on the Task Force.

12 Q So the governor designated what your role was?

13 A Well, they were -- when they put the Task Force
14 together there were slots for various categories with, as I
15 said, the vast majority of those appointed were not cannabis
16 industry representatives. There was only one spot for a
17 representative from cultivators, dispensaries and producers.

18 Q Now, you heard testimony earlier today with regard
19 to the Task Force, the Governor's Task Force report and
20 suggestions with regard to the categories that should be used
21 as components to judge the worthiness of a recreational
22 license and also the weight to be given?

23 A Yes.

24 Q Was that in fact the work of these thirty people?

25 A Well, the thirty people were tasked with making

1 recommendations on all of the regulations, so only a subset of
2 the regulations deal with the licensing process. And that's
3 the -- the recommendations of the group that was actually
4 called Taxation, Revenue and Regulatory Structure Working
5 Group, one of the things that we were tasked with was making
6 recommendations about the criteria and weighting for the
7 application process. There was a number of other working
8 groups. There was a law enforcement working group and a
9 cultivation working group. I believe, if memory serves, there
10 was eight working groups. So the Task Force members were
11 asked to volunteer to be on working groups or to chair working
12 groups, so not all the Task Force members were involved in the
13 working group that came up with these recommendations.

14 Q How many were?

15 A Probably there would be three to five generally on
16 each working group. There were three to five representatives
17 of the Task Force, but then there were also additional
18 representatives that were not on the Task Force appointed by
19 the Governor.

20 A And from that working group, how did the
21 recommendation make its way up to ultimately being included
22 in the Task Force report?

23 A So as I remember there were weekly meetings. The
24 working groups had weekly meetings and each week we would
25 decide on which kind of tasks that that working group was

1 assigned with, which ones we would tackle, and typically we
2 tackled a few tasks which would be pieces of the regulation
3 that that working group was assigned with. And typically
4 there would be a lot of discussion. It would take maybe two
5 or three weeks to settle on recommendations for those
6 particular tasks which dealt with those particular regulations
7 or recommendations on regulations and the group would vote on
8 it.

9 And then periodically the Task Force would meet to
10 talk about the progress and to kind of discuss any issues that
11 any of the working groups were having. And then ultimately at
12 the end of the process when all the working groups had worked
13 through all their tasks, so in other words had come up with
14 recommendations for the regulations that those working groups
15 were tasked with, there was a large meeting of the Task Force,
16 all the members of the Task Force, and we went through all of
17 those final recommendations from every working group and there
18 was further discussion. And then assuming there was no
19 dissension or issue with any of the recommendations, all of
20 those recommendations were rolled up into one report that was
21 made and presented to the Governor.

22 Q What, if any, activity did you -- when did that
23 working group meet? What year?

24 A So that would have been --

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

1 before or after the Legislature passed 453D in 2017?

2 A I'm not sure.

3 Q Was it before or after the regulations were
4 promulgated by the Department of Taxation?

5 A It was before the regulations were -- well, before
6 the permanent regulations were promulgated. So our -- that
7 was our task was to make recommendations to the governor and
8 ultimately to the Department of Taxation through the governor
9 for the permanent regulations. There was a set of temporary
10 regulations adopted prior to July 1st when the Early Start
11 Program was put into place.

12 Q The terms direct and demonstrably were used in the
13 initiative and in the statute. How did they play into the
14 work that the Governor's Task Force did from your point of
15 view?

16 A Well, as we've heard today the initiative petition
17 had only one specific reference to the qualifications for
18 licensure and that was one sentence. I don't know if I have
19 this exactly right, but it essentially said qualifications
20 that are directly and demonstrably related to the operation of
21 a marijuana establishment. And so our working group that was
22 tasked with coming up with recommendations for the criteria,
23 there was a lot of discussion about the fact that that was the
24 one description of qualifications for licensure, other than
25 excluded felony offenses which, you know, there are certain

1 thresholds you just had to pass before you could even be --
2 before you could even be able to get a license. And so those
3 were excluded, felony offenses and other criminal offenses, I
4 believe. But other than that, qualifications that are
5 directly and demonstrably related to the operation of a
6 marijuana establishment was the only direction we had to come
7 up with recommendations.

8 Q And what, if any, efforts did you make at the
9 Governor's Task Force and subsequent to that to see that your
10 proposals mirrored the legislation or vice versa?

11 A So this is with much discussion over many working
12 group meetings, but the ultimate list of recommendations from
13 the Taxation, Revenue and Regulatory Structure Working Group
14 were recommendations that we believed were responsive to that
15 -- to qualifications related to -- direct and demonstrably
16 related to the operation of a marijuana establishment. So
17 every one of our heavily weighted recommendations we believed
18 were direct and demonstrably related to operation of a --

19 MR. GENTILE: If I may have a moment?

20 THE COURT: You may.

21 MR. GENTILE: This binder was two feet away from me
22 but I couldn't find it.

23 THE COURT: Mr. Gentile, I've been in trial with
24 you. I know how it works.

25

1 MR. GENTILE: I hope nobody moves for a mistrial,
2 then.

3 THE COURT: We don't have a jury, we're okay.

4 MR. GENTILE: Yeah, I know.

5 Could you please pull up Exhibit 213? I'll try to
6 read it -- [inaudible].

7 THE COURT: My mark is on page 2608 of the criteria.
8 Would you like me to hand the witness my page? Will that
9 speed up this process?

10 THE WITNESS: Your Honor, I actually already have
11 this page.

12 THE COURT: Okay. The witness is there, Mr. Gentile.

13 MR. GENTILE: I'm sorry, Your Honor, I didn't hear
14 you.

15 THE COURT: The witness is ready for you.

16 MR. GENTILE: Wonderful.

17 BY MR. GENTILE:

18 Q Okay. Turn to DOT000609. I want to take you
19 through these, specifically --

20 MR. KOCH: Can you give us the page number of the
21 document, not the Bates number.

22 MR. GENTILE: 112.

23 MR. KOCH: All right.

24 THE COURT: And that in my book is 2608.

25 MR. KOCH: Mine, too.

1 MR. GENTILE: Well, I think -- Exhibit 213, 2608?

2 MR. KOCH: The Task Force report is in twice. The
3 State has it in as Exhibit 2009.

4 THE COURT: I'm on 209.

5 MR. GENTILE: All right. Well, I'm using ours.

6 THE COURT: It's all right, it's all the same.

7 MR. GENTILE: Same thing.

8 BY MR. GENTILE:

9 Q I want to ask you, let's go down to about the middle
10 of this page where it reads, "The following criteria and
11 weighting should be included." And they specifically -- I'm
12 not going to read all of this, but let's take the first one.
13 And you indicated that or the group did that this should be
14 very heavily weighted. Can you tell us why? What was the
15 sense of the group?

16 A So again, the only thing that we had to go off of
17 was the directly and demonstrably related from the initiative.
18 So if you were in business and had an existing marijuana
19 establishment license -- and temporary would refer to the
20 Early Start licenses -- clearly that was directly and
21 demonstrably. You had shown that you could run a marijuana
22 establishment. If you were still in good standing it meant
23 that you could run it according to the regulations and that
24 was very heavily weighted.

25 Q The second one deals with -- no, actually the first

1 three all deal with that, don't they?

2 A Well, the first two are very similar. The first one
3 deals with recreational marijuana. The second one deals with
4 medical marijuana.

5 Q And just so that the record is clear, when we refer
6 to the first one or second one we're really talking about
7 paragraph number one and paragraph number two on this page, am
8 I correct?

9 A So, yes, that would be Recommendation Number 1 and
10 Recommendation Number 2.

11 Q Okay. And with respect to paragraph number three,
12 Recommendation Number 3?

13 A So this literally talks about direct experience.
14 Again, being responsive to the direct and demonstrable in the
15 initiative petition. And it talks about you've demonstrated
16 that you have a track record for the specific type of
17 marijuana establishment license that you're seeking. So if
18 you're asking for a dispensary, which would be the example in
19 this case, that you would have experience running a
20 dispensary. As there was some talk about it today, running a
21 dispensary is very different than running a cultivation, just
22 like running a farm is different than running a restaurant.
23 It also pointed out that experience in a Nevada marijuana
24 establishment is preferred. And this is also very heavily
25 weighted.

1 Q Why did the sense of the Task Force that experience
2 in Nevada was heavily preferred? What did that pertain as
3 opposed as to experience elsewhere?

4 A Well, you know, I think today we've talked about a
5 lot of parts of the application in which plans were submitted,
6 which in my opinion are prospectively looking, so this is the
7 way we're going to do something, this is the way we're going
8 to handle security, this is the way we're going to build our
9 building, this is the way we're going to handle our product,
10 this is the way we're going to train our employees, which is
11 all well and good, but the initiative didn't talk about plans
12 that are prospective, it talked about experience that is
13 directly demonstrable to running a marijuana establishment.
14 So when we went through this we were talking about actual
15 experience doing that, not theoretical plans for the future.

16 Q Paragraph four seems to deal with taxes, but
17 specifically paying taxes to the Department of Taxation
18 generated by the operation of a medical or recreational
19 marijuana establishment, and you very heavily weighted that.
20 Why -- well, let me ask it a little differently. Was the
21 topic of whether taxes in general should be a measure
22 discussed, you know, as opposed to specifically taxes
23 generated by the marijuana industry, by your involvement in
24 the marijuana industry? Was that discussed in the course of
25 the group sessions?

1 A Yes. So again, we were trying to be responsive to
2 the direct and demonstrable qualification in the initiative.
3 And so taxes being paid in another industry is not direct and
4 demonstrable to the cannabis industry. So we wanted to make
5 sure that in the very heavily weighted qualifications we were
6 specifically and very clearly responsive to that qualification
7 in the initiative. And so that would mean that taxes
8 operating a marijuana establishment would be direct and
9 demonstrable. Taxes representing some other kind of company
10 is not direct and demonstrable to running a marijuana
11 establishment.

12 Q Was that the sense of the working group and the Task
13 Force?

14 A Yes.

15 Q Now, the next one, paragraph five, you went from
16 very heavily weighted with regard to the first four to heavily
17 weighted. Maybe can you explain the difference between very
18 heavily weighted and heavily weighted as it was expressed by
19 the working group or maybe even by the Governor's Task Force
20 in general?

21 A So I certainly can't quote conversations in the
22 working groups word for word, but the sense was that the very
23 heavily weighted recommendations would be absolutely
24 responsive to that section in the initiative that described
25 the only qualifications it lays out and that those --

1 Q With regard to directly and demonstrably?

2 A Directly and demonstrably. And very heavily
3 weighted so that the four very heavily weighted categories
4 would -- in my mind when we were working through this would
5 comprise the majority of the ultimate scoring.

6 Q And so the next -- five, six -- five and six were
7 heavily weighted because, if I understand you correctly, and
8 please correct me if I'm wrong because I most certainly don't
9 want to lead you, related to the sense of the committee that
10 while they were still directly and demonstrably, not as much
11 as the first four?

12 A Yes. And I think that this -- the sense that I got
13 around these recommendations were that the Department wanted
14 or we as recommending to the Governor and the Department, we
15 felt that it's easier for regulators to evaluate the known
16 than the unknown. And to the extent that you've already
17 demonstrated a long history of operating in Nevada and
18 employing Nevadans and paying state and local taxes in Nevada
19 and that you've been a good corporate citizen by giving back
20 to the community and having civic and philanthropic
21 involvement, that you are a known quantity to Nevadans and to
22 the Nevada regulators and that that's important, not as
23 important as the first four that are very heavily weighted and
24 are clearly direct and demonstrable. So that's why in our
25 recommendations we stepped down from very heavily weighted to

1 heavily weighted in those two sections.

2 Q And then the final two, numbers seven and eight, you
3 assessed them as medium weighted. How does that differ from
4 the first two? I think I know the answer, but I want to hear
5 it.

6 A So in general we're getting farther and farther away
7 from the -- in seven we're getting a little bit farther away,
8 another step away from direct and demonstrable, but we still
9 are saying that experience running another kind of business,
10 again in the state of Nevada, is less important than running
11 an actual marijuana establishment, but that if you are
12 experienced in another business in the state of Nevada is
13 applicable, then that should be given some weight, a medium
14 weight. For instance, if you are applying for a retail
15 establishment, if you've run retail establishments but not
16 necessarily cannabis establishments, that that's still
17 applicable, it's still direct and demonstrable, but not as
18 direct and demonstrable as running a cannabis business. As I
19 think has been testified here today, the cannabis business is
20 very unique to any other businesses.

21 Q Page -- I don't know which one that the Court is
22 looking at but probably 10, 2010 if I'm any good at guessing.
23 I'm looking at 610 of Exhibit -- of our Exhibit 213. And
24 paragraph seven, it appears that there was no dissent
25 regarding this recommendation from within the working group,

1 am I correct?

2 A That is correct.

3 Q And how did this make its way up the ladder into the
4 final Task Force adoption?

5 A So all of the recommendations from all the Task
6 Forces -- excuse me, all the working groups under the Task
7 Force operated under the same structure, so it made it through
8 the process like all the other recommendations. Now, you've
9 pointed out that there is a section for dissent. There were
10 other working groups that I was involved in in this process
11 that would have dissenting opinions. And so if there were
12 dissenting opinions, typically there was more discussion at
13 the Task Force level and the dissent was explained and
14 considered. If a recommendation or group of recommendations
15 in this case had no dissent, generally it was adopted without
16 a tremendous amount of discussion.

17 Q Is that your memory as to these particular
18 recommendations?

19 A Yes, it is.

20 Q Where did the Governor's Task Force report go next
21 once it was concluded?

22 A So it was presented to the Governor and then our
23 work on the Task Force was done, essentially. We were tasked
24 with at the end of the process presenting a report to the
25 Governor that included all of the final list of

1 recommendations.

2 Q TGIG --

3 A Yes.

4 Q -- is it publicly traded?

5 A No.

6 Q Is it closely held?

7 A Yes.

8 Q Did TGIG apply for any recreational retail licenses?

9 A Yes.

10 Q How many and where?

11 A So we applied for six licenses. We applied in the
12 City, the County, North Las Vegas, Nye County, and I believe
13 we applied in Reno and Sparks, if memory serves.

14 Q Would you please take a look at Exhibit 5?

15 MR. GENTILE: Could you pull Exhibit 5 up, please.

16 BY MR. GENTILE:

17 Q You know, I don't know if you could see it well
18 enough there. Why don't you turn around and get the hard copy
19 because Exhibit 5 is a lot bigger than just the first page and
20 I want to make sure that you identify this document for what
21 it is.

22 A Even though --

23 Q Behind you there are binders.

24 THE COURT: It's already been admitted, Mr. Gentile.

25 MR. GENTILE: I know that.

1 THE COURT: We all know it's the application form
2 that's blank.

3 MR. GENTILE: I'm not so sure that the witness does,
4 which is why I want him to look at it.

5 BY MR. GENTILE:

6 Q Do you recognize that as being your application?

7 THE COURT: It's the blank form.

8 MR. GENTILE: Oh, that's the blank. Right.

9 BY MR. GENTILE:

10 Q Okay. Rather than -- let's turn to page 13 of that
11 document. Well, let me ask it a different way. You applied
12 and you filled out six applications; right?

13 A My company did.

14 Q Your company did. Actually, who was the person
15 primarily responsible for that?

16 A So the person primarily responsible for assembling
17 the application and submitting it was our CEO, Demetri
18 Kouretas.

19 Q Do you recall receiving any communication from the
20 Department of Taxation with regard to what kind of information
21 was needed and the location section?

22 A I think that's the Building Plan section --

23 Q Yes.

24 A -- that we call it. After the original application
25 was released, there was --

1 Q When you say -- you mean the blank application form?

2 A The original blank application, there was
3 communication from the Department which indicated that
4 contrary to the application itself that specific addresses of
5 the proposed establishment weren't necessary. Specific
6 building plans for each jurisdiction were not necessary. And
7 so I believe -- I know within our group certain applicants
8 submitted specific addresses with specific building plans for
9 those specific addresses in each jurisdiction and some of us,
10 given the new guidance from the Department, merely submitted
11 addresses in the jurisdictions.

12 Q Now, when you say our group, we need to identify --

13 A The litigants.

14 Q You mean the other people that are plaintiffs in
15 this lawsuit?

16 A Yes.

17 Q The other applicants that are plaintiffs in this
18 lawsuit?

19 A Yes.

20 Q All right. And you know that from having spoken
21 with them and shared information with regard to your scores
22 and your applications, am I right?

23 A That's correct.

24 Q Okay. Let's take a look at -- with regard to your
25 location, the location aspect or the building plans aspect of

1 your application, how long have you been in the construction
2 business?

3 A Twenty-five years.

4 Q Have you ever seen a set of plans?

5 A A few.

6 Q Just so that the record is clear because you're
7 smiling and I'm laughing, but this is a static record, give us
8 some information -- give us an estimate with regard to how
9 many either commercial buildings or homes or apartments you
10 have been involved in the construction of.

11 THE COURT: And you're including a single tract home
12 plan as opposed to how many units were built on that plan;
13 correct?

14 MR. GENTILE: Yes, I am.

15 THE COURT: Thank you.

16 THE WITNESS: So just for clarification, the main
17 construction we've done has been of master-planned
18 communities. We don't build the houses in the master-planned
19 communities, we build the community. So that means we're
20 building parks and we're building -- we're putting in roads
21 and we're putting in miles of -- hundreds of miles of sewer
22 line and water line. We're building reservoirs, we're
23 building sewer pump stations. So we're building the
24 infrastructure for essentially small cities. So in those
25 projects we've built -- if you added it all up we've probably

1 built a billion dollars worth of infrastructure for master
2 plans. We've also built apartment projects, we've built
3 commercial projects, and that's probably hundreds of millions
4 of dollars worth of those kinds of projects.

5 BY MR. GENTILE:

6 Q So you're familiar with construction?

7 A Yes.

8 Q With regard to your application, do you recall what
9 your score was as it related to that section of the
10 application?

11 A 15 out of 20 in all applications.

12 Q On all six of them?

13 A Yes.

14 Q Because you did not have any specific designated
15 piece of real estate, either with or without a building on it,
16 am I correct?

17 A So we had addresses --

18 MS. SHELL: Objection.

19 THE WITNESS: So we had addresses --

20 MS. SHELL: Objection, Your Honor. That calls for
21 speculation.

22 THE COURT: Overruled. You can answer.

23 THE WITNESS: So in each -- given the new guidance
24 from the Department, in each jurisdiction we had an address.
25 It wasn't the address of a proposed dispensary, it was an

1 address. And for each jurisdiction we submitted the same
2 detailed set of building plans, which came from an actual
3 dispensary that we had built in Nye County.

4 BY MR. GENTILE:

5 Q Which was approved?

6 A Which was approved, yes.

7 Q And had been inspected for a couple of years?

8 A Yes.

9 Q And was still approved?

10 A Yes.

11 Q Okay. And so your score, which did not have --
12 other than the -- what was it, a Post Office box or something
13 like that?

14 A It was an address at a UPS -- each address was and
15 address at a UPS store.

16 Q A UPS location, okay. You got 15 out of 20 with a
17 UPS location?

18 A Right.

19 Q And that really wasn't the place where you intended
20 to open up a dispensary?

21 A Correct.

22 Q Okay. I'm not going to ask you what others received
23 as scores and how they were different. We're going to call
24 them later.

25 A Okay.

1 Q Okay. There's another section to your application
2 that I want to go over, and that is the -- essentially the
3 experience section, what you and I have called the experience
4 section, which deals with the time of operating and your
5 compliance and things of that nature.

6 A Right.

7 Q Now, by that time you had been operating two retail
8 locations; am I correct?

9 A That's correct.

10 Q And a cultivation location?

11 A Yes.

12 Q And a production location?

13 A Yes.

14 Q In three different -- four different communities.

15 A Well, the cultivation and production facility is one
16 facility.

17 Q Okay.

18 A And also the production facility included a
19 commercial -- includes a commercial kitchen.

20 Q Now, you're aware that that section of the
21 application and ultimately the scoring carried a total of
22 10 points; right?

23 A Yes.

24 Q How many did -- were you given by the Department of
25 Taxation's persons to whom they delegated the assignment of

1 points?

2 A 3 out of 10.

3 Q 3 out of 10. Can you explain why?

4 MS. SHELL: Your Honor, I'm going to lodge the same
5 objection. This calls for speculation.

6 THE COURT: Overruled. You can answer.

7 THE WITNESS: I have no idea why we only got 3 out
8 of 10. It's my understanding through Paul's testimony that if
9 you just had knowledge of the business you got a medium grade
10 on that. I can't imagine how when you've been operating a
11 business since the very start of the program in every facet of
12 the business successfully, you're in good standing, how we got
13 3 out of 10 for experience.

14 Q Well, had there ever been any problems stated by
15 State inspectors with regard to any of The Grove locations?

16 A Well, as I said, like many others, I guess all of
17 the operators, in inspections we would get what's called
18 deficiencies. Deficiencies are comments about something you
19 need to change or fix. But in terms of any kind of serious
20 violations or any kind of violations that resulted in some
21 kind of process where we were being censured or where our
22 license was going to be taken away, absolutely not.

23 In fact, the State on numerous occasions used our
24 facilities for tours, for -- inspectors would use it and still
25 do to this day, would use it as an example when other

1 operators would say they can't do something, and they --
2 something that we were doing in terms of compliance and being
3 responsive to the regulations. That was throughout the
4 process, through medical, through recreational into today,
5 inspectors use us as an example.

6 Q And how did that come to your attention?

7 A How did it come -- I mean, it's -- I've been on
8 tours. I've been on tours with the -- with the director of
9 taxation at the time was Deon Contine, or Deon Contine, I
10 think it is. Jorge Pupo, I've been on many tours with Jorge
11 of our facilities with him showing other people.

12 Q So he brought other people with him, people that
13 were not associated with The Grove to show them The Grove as
14 an example of what you ought to do?

15 A Yes.

16 Q And you were there?

17 A Yes.

18 Q Have you -- has it come to your attention that
19 inspectors were spoken with by the graders or by anybody from
20 the Department of Taxation and interviewed with regard to your
21 operation during the course of the application process?

22 A Yes. Yes.

23 Q Were --

24 A I mean, were not.

25 Q They were not?

1 A They were not.

2 Q And how do you know that?

3 A After the licenses were awarded we had two
4 inspectors come by our cultivation facility -- our
5 cultivation/production facility. They asked us whether or not
6 -- or how many licenses we had gotten, and we said none. They
7 said, well, we can't believe that, you guys always are
8 operating right, we don't have any problems with you. And we
9 said, well, I hope you told the Department that, you told the
10 scorers that; and they said, we had no contact whatsoever with
11 the -- with the scorers, they never asked us for any kind of
12 feedback.

13 Q In the course of your application -- do you remember
14 how large your application was in terms of pages?

15 A If you take out tax returns, I believe we had 1100
16 pages.

17 Q If you include tax returns?

18 A 10,000 I believe it was.

19 Q Do you know how long the -- there's two questions
20 coming, okay. So do you know how long was spent by those
21 performing the evaluation function for the Department of
22 Taxation of your application -- judging your application?

23 A I don't know the specific time frame. I do know
24 that our -- the time that was taken on our application was
25 very similar to other applications that were less than -- in

1 many cases substantially less than the size of our
2 application.

3 Q And how do you know that?

4 A Because the information that the Department released
5 after the legislation which recently passed about transparency
6 had information as to the number of hours the scorers spent on
7 everyone's application.

8 Q And your application, again, is the TGIG
9 applications?

10 A That's correct.

11 Q And your score of 7 out of 10 -- excuse me -- 15 out
12 of 20 for six different locations was exactly the same for all
13 six?

14 A Right.

15 Q Okay. All of which were a UPS store?

16 A Yes.

17 Q Okay. And --

18 A Except one. One we had an actual location.

19 Q And you got 15 out of 20 for that one, too?

20 A Yes.

21 Q Okay. And then with regard to your experiential
22 grade, I'll call it, for all six you got 3 out of 10?

23 A That's correct.

24 Q All right. At a time when your Grove locations were
25 being used as good examples by the Department of Taxation

1 director?

2 A Yes. Director and deputy director.

3 MR. GENTILE: If I may have a moment.

4 THE COURT: You may.

5 Mr. Shevorski, you're next.

6 MR. SHEVORSKI: Fine.

7 MR. KOCH: Your Honor, what's our time situation?

8 THE COURT: I break at 4:45, which is in 20 minutes,

9 19 minutes actually.

10 MR. SHEVORSKI: I'm quick.

11 THE COURT: I know you are. I've seen at work

12 before.

13 MR. KOCH: I may not be.

14 THE COURT: Mr. Graf, is there a reason you're

15 getting up?

16 MR. GRAF: Yes, Your Honor. I'm leaving early.

17 THE COURT: Goodbye. Have a nice Memorial Day

18 weekend. We'll see you on Tuesday at 10:00.

19 MR. GRAF: Yes. You, too, Your Honor.

20 THE COURT: Tuesday at 10:00 o'clock.

21 MR. GRAF: Yes, ma'am.

22 MR. SHEVORSKI: I guess he knows I'm not going to be

23 that good.

24 THE COURT: He left Ms. Higgins here.

25 MR. GRAF: I trust him impeccably.

1 MR. GENTILE: That's a lawyer who said that?

2 BY MR. GENTILE:

3 Q Okay. With regard to the Governor's Task Force I
4 want to call your attention to the question of background
5 checks.

6 A Yes.

7 Q Okay. Was that subject dealt with in your -- in
8 your involvement with the Governor's Task Force?

9 A I don't believe that subject was dealt with in this
10 group, but I know that subject was dealt with I believe in the
11 law enforcement group.

12 Q Okay. And what is -- what was -- what is your
13 memory of what that discussion was with regard to background
14 checks of owners?

15 A That was a fairly settled issue. The initiative
16 says that the Department "shall" background check each owner
17 or every owner.

18 Q And was it your understanding that that included
19 shareholders if a company -- if an applicant was in fact an
20 entity that would have shareholders, or members if it was an
21 entity that would have members or the like?

22 A So an owner means an owner. A shareholder is an
23 owner. So the -- my understanding and the "shall" background
24 check, every owner flows through the initiative, the statute,
25 the regulations, and the application. And it's my

1 understanding that the intent was that every single owner in
2 every single company, every single applicant was to be
3 background checked. Every single owner in our company whether
4 they had a minute percentage of ownership was background
5 checked. Every single one of my owners signed the
6 application. In the beginning or towards the beginning of the
7 applications there are a number of documents that every owner
8 is being asked to sign, attestation documents, there's an
9 addendum, there's other documents, there's fingerprint checks,
10 and every single owner even if they owned less than 1 percent
11 in our company was required to do each and every one of those
12 things, including fingerprint and background checks.

13 Q And they were required by the Department of
14 Taxation?

15 A By the Department of Taxation.

16 MR. GENTILE: I have to go talk to my coach. Excuse
17 me.

18 Pass the witness.

19 THE COURT: All right. We have 15 minutes or so for
20 you to begin your cross-examination, and then we will talk
21 about what we do next.

22 MR. SHEVORSKI: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. SHEVORSKI:

25 Q Good afternoon, Mr. Ritter.

1 A Good afternoon.

2 Q I'm Steven Shevorski from the Attorney General's
3 Office. I represent the Department of Taxation. It's a
4 pleasure to be with you.

5 You spent a lot of time talking with my friend Mr.
6 Gentile about the Governor's Task Force. Were there
7 representative --

8 MR. GENTILE: Your Honor, I barely know this man.

9 THE COURT: Mr. Gentile, it's okay for him to call
10 you a friend.

11 MR. GENTILE: Okay.

12 THE COURT: It's better than some of the things that
13 happen here.

14 You may continue, Counsel.

15 MR. SHEVORSKI: Thank you, Your Honor. I may not
16 finish now.

17 THE COURT: I know.

18 BY MR. SHEVORSKI:

19 Q Talking about the Governor's Task Force. Were there
20 -- can you describe or identify the precise people who were on
21 the Task Force with you making the recommendations,
22 specifically with respect to the criteria you described that
23 you believed was directly and demonstrably related? Who are
24 those people?

25 A Well, the two names on the recommendation or the

1 sponsors on the recommendation are myself and Amanda Connor.

2 Q And Ms. Connor's an attorney?

3 A Yes.

4 Q Were there any personnel, persons from the cannabis
5 industry from out of state that were consulted about the
6 criteria you describe as directly and demonstrably related?
7 For example, from Canada?

8 A Not to my knowledge. Not to my memory.

9 Q Colorado?

10 A That were members of the Governor's Task Force?

11 Q Or even consulted with respect to the criteria you
12 described that the Task Force came up to that you believe was
13 directly and demonstrably related.

14 A I don't know. In the Task -- in the working group
15 itself and in the Task Force --

16 Q Yes, sir.

17 A -- I believe it was all Nevadans, if memory serves.

18 Q All Nevadans. Would you look at --

19 MR. SHEVORSKI: We're on, for the record, Your
20 Honor, in the Task Force implementation of Question 2 it's
21 2009.

22 THE COURT: That's the page I'm on.

23 MR. SHEVORSKI: Very good. And we're on page 112,
24 Bates Number 2608.

25 THE COURT: Me, too.

1 //

2 BY MR. SHEVORSKI:

3 Q If you look at Category, excuse me, Number 5, do you
4 see where that's indicated, sir?

5 A Yes.

6 Q And it says, "Owners and officers and/or board
7 members have a demonstrated track record of employing Nevadans
8 and paying state and local taxes and fees in Nevada." Is that
9 a fair characterization to say that that factor favors
10 Nevadans over out-of-state persons?

11 A Yes.

12 Q And you have that heavily weighted; correct?

13 A Yes.

14 Q Now, in the initiative itself there's no language in
15 there that says experience directly and demonstrably related
16 to running a marijuana business in Nevada; correct?

17 A I don't believe that qualification section says in
18 Nevada.

19 Q And it doesn't say experience in that qualification
20 section, does it? The word "experience" is not in there?

21 A I'd have to see the clause. As I said, I was
22 paraphrasing. I'd have to actually see the --

23 THE COURT: Want me to hand him my sheet?

24 MR. SHEVORSKI: Please do, Your Honor, if you don't
25 mind

1 THE COURT: Sir, this is from Exhibit 2009, which is
2 the one I had out, and that's my Post-It note so I can find it
3 again.

4 MR. SHEVORSKI: Very good, Your Honor.

5 THE WITNESS: So in terms of directly and
6 demonstrably the reason why we talked about Nevada is that the
7 regulatory agency that was making the decisions on these
8 applications would not have direct experience with applicants
9 from out of state. They would not have regulated them in the
10 past.

11 BY MR. SHEVORSKI:

12 Q Fair enough. But my question is with respect to the
13 language in Nevada Revised Statute --

14 A No, this is -- this is -- Your Honor, I'm sorry. I
15 think he's referring to the initiative.

16 Q Well, the initiative and the statute in terms of
17 directly and demonstrably related are identical, are they not?

18 A Yes. But all I have in front of me is a rating
19 criteria on the applications. That's all I have.

20 Q I thought Your Honor was giving --

21 MR. SHEVORSKI: May I approach, Your Honor.

22 THE COURT: Yeah. I gave him the page you and I
23 discussed that has my number and my Post-It note.

24 MR. SHEVORSKI: Oh. I thought you were handing him
25 the statute, Your Honor. I'm sorry.

1 THE COURT: Oh, no. If you want me to get the book
2 out again, I will.

3 MR. SHEVORSKI: That's what I thought, you had a
4 page of the book.

5 THE COURT: No. I have the actual whole book. Here
6 you go, sir.

7 THE WITNESS: Thank you.

8 THE COURT: And I believe from our last discussion
9 it's in the pocket part, which is the part in the back.

10 THE WITNESS: Okay. What are you asking me to --

11 BY MR. SHEVORSKI:

12 Q I'm asking you if --

13 A I mean, where is the language?

14 Q Sure. It's in NRS 453D.200(1)(b).

15 A Subsection --

16 Q (1)(b), sir.

17 A (1)(b)?

18 Q As in boy.

19 THE COURT: You can approach. It's hard for regular
20 people to negotiate those books. I know it's hard for some
21 lawyers, too.

22 MR. SHEVORSKI: It is, Your Honor.

23 BY MR. SHEVORSKI:

24 Q May I help you, sir?

25 A Sure. That'd be great. Thank you.

1 Okay. Can you ask your question again now that we
2 have --

3 Q Certainly. So we're all on the same page, we're
4 both looking at Nevada Revised Statute 453D.200(1)(b).

5 A Yes.

6 Q Okay. Now, the first question is, the language
7 itself in the statute doesn't include directly and
8 demonstrably related to the operation of marijuana
9 establishments in Nevada.

10 A That's correct.

11 Q Okay. It also doesn't include the word "experience"
12 that I believe that you used prior.

13 A Right. Again, I said I was paraphrasing. But
14 certainly related to the operation I don't think that's
15 different than the experience operating, but perhaps you do.

16 Q So someone charged with interpreting that statute
17 may think that experience is relevant. Is that what you're
18 saying is relevant to the phraseology of directly and
19 demonstrably related?

20 A Well, what I'm saying is directly and demonstrably
21 related to the operation of, so that would be -- that would
22 imply that someone had operated a facility. I'm not giving
23 any special weight to the word "experience," although you
24 could say that if someone had demonstrated that they operated
25 a facility, that would also mean that they had experience

1 operating a facility. That's my meaning.

2 Q And if someone was charged with developing a
3 competitive bidding process for applicants, they may give
4 weight to experience or they may not. They may give more
5 weight than you; correct?

6 A I don't agree with that.

7 Q You don't agree that they may give more weight than
8 you might give to previous experience running a medical
9 marijuana -- excuse me, a marijuana establishment?

10 A No. What I'm saying is directly and demonstrably
11 related to the operation of would mean by the very language
12 that you would also then have experience running a facility.
13 I mean, that's what I'm saying.

14 Q Okay. It is included within directly and
15 demonstrably related, but not limited to just persons who have
16 previous experience?

17 A I disagree with your interpretation.

18 Q Okay.

19 A I don't know how you would demonstrate that you
20 could operate a facility without having operated a facility.

21 Q Okay. Look at Exhibit 2009, and I believe you saw
22 -- might have the page open.

23 A Well, I've got 2608.

24 Q 2608, perfect.

25 THE COURT: Okay. So you have it.

1 THE WITNESS: Okay. Thank you.

2 Are we done with this one?

3 BY MR. SHEVORSKI:

4 Q For now.

5 THE WITNESS: Your Honor, do you want this back,
6 or --

7 THE COURT: Not yet. He said for now. So you may
8 need it again.

9 THE WITNESS: Okay.

10 BY MR. SHEVORSKI:

11 Q Subpart 5 says, "owners, officers, and board members
12 have a demonstrated track record of employing Nevadans and
13 paying state and local taxes and fees in Nevada." You would
14 agree with me that that is not directly and demonstrably
15 related to the operation of a marijuana establishment?

16 A I would agree. Which is why it's heavily weighted,
17 not very heavily weighted.

18 Q Okay. And if you look at Part 7, "owners, officers,
19 and board members have experience operating another kind of
20 business that has given applicable -- given them applicable
21 experience to running a marijuana establishment in the state
22 of Nevada," medium weighted.

23 Now, I believe you previously in your testimony,
24 although he won't accept that I'm his friend, when you were
25 talking with Mr. Gentile you described a kind of spectrum

1 where you thought that some factors were more relevant to what
2 is directly and demonstrably related to the operation of a
3 marijuana establishment, and some factors that may not be as
4 relevant; is that correct?

5 A I'm not sure that I used those words, but generally
6 speaking, yes.

7 Q Is that a fair characterization of how -- how you
8 view, for example, the factors on page 2608?

9 A I think so.

10 Q And within that spectrum there's room for
11 disagreement, wouldn't you agree, about how much weight to
12 give to a factor, how directly and demonstrably related it is?

13 A Well, there wasn't any disagreement in this working
14 group, because there was no dissension.

15 Q That's not my question, though.

16 A Okay.

17 Q Within the spectrum that we described -- we're using
18 that phrase, I know that's not your words, but I think it's a
19 fair characterization as you've agreed, within that spectrum
20 there is room for disagreement about which factors are --
21 should be more heavily weighted or are more or less directly
22 and demonstrably related to the operation of a marijuana
23 establishment?

24 A I think that we'd have to talk about the specific
25 factor that you're referring to. I mean, we spent a lot of

1 time on the working group on these criteria and weighting.
2 There was a lot of discussion on it. So this wasn't an
3 arbitrary thing. This working group involved a number of
4 people, and then the Task Force involved in many more people,
5 believed that this was correct.

6 Q Believed it was correct. But I believe you earlier
7 testified that, for example, subpart 5, employing Nevadans, is
8 not directly and demonstrably related to the operation of a
9 marijuana establishment, and yet you included it in your
10 recommendations.

11 A Well, it's less heavily weighted, and that's why
12 it's less heavily weighted.

13 Q But it is included?

14 A It is included. It is in the recommendation.

15 Q Because there is room for disagreement about what
16 should be recommended as part of these -- as part of the
17 scoring criteria.

18 A Again, there was none in this group, and I would
19 have to -- you're in my opinion asking a hypothetical
20 question. I'd have to understand the exact qualification
21 you're talking about and sit around with a group of many
22 people and talk about it like we did here and then present it
23 to a group of many more people and talk about it. So this
24 wasn't an arbitrary conclusion that we drew, this was a
25 conclusion through a very arduous and formal process.

1 Q Similar to the arduous and formal process of
2 adopting the regulations that the Department promulgated after
3 the passage of the initiative?

4 MR. GENTILE: Objection. Assumes facts not in
5 evidence.

6 THE COURT: Overruled. You can answer.

7 THE WITNESS: Well, it was a completely different
8 process. I was not directly and demonstrably involved in the
9 regulatory process. I was very much involved in this. So I
10 would hesitate to opine on how they compared.

11 THE COURT: All right. We've reached 4:45 and I
12 know you are not finished.

13 MR. SHEVORSKI: I'm close, though, Your Honor.

14 THE COURT: Mr. Ritter, I have an understanding from
15 your counsel that you may be traveling next week. Can you
16 give me a little bit of information about your travels?

17 THE WITNESS: I'm leaving Wednesday morning, Your
18 Honor. I'm available all day Tuesday.

19 THE COURT: Can you be here at 10:00 o'clock on
20 Tuesday morning?

21 THE WITNESS: Yes, ma'am.

22 THE COURT: That would be lovely.

23 I'm down to nine things on my calendar on Tuesday.

24 I am very hopeful that I can be ready for you by 9:30, but
25 given my luck, if I say that, they'll be done at 10:15. So if

1 you guys could come at 9:45. My plan is to kick them out at
2 10:00 if they're not done. The one guy who asked me to trail
3 him has already moved off the calendar because I said I
4 couldn't do it. So if we could be here at 9:45 and ready to
5 start as soon as I get the other people out of the room.

6 MR. SHEVORSKI: Your Honor --

7 THE COURT: If you would like to leave your stuff
8 here, please place it underneath the tables. I cannot have
9 you blocking my inmate entry door, so I've got issues there.
10 We've got to figure that out. But you can put stuff under the
11 tables, take your electronic devices.

12 What did you guys want to ask me?

13 MR. KEMP: Your Honor, my friend here has --

14 THE COURT: Yes.

15 MR. KEMP: We want to clarify what we're going to do
16 on Tuesday, because they're flying in --

17 THE COURT: Tuesday morning at 10:00 o'clock I am
18 starting and finishing Mr. Ritter.

19 MR. KEMP: Well, we were trying to get the rest of
20 the day, because --

21 MR. SHEVORSKI: After 2:00 o'clock, Your Honor.

22 THE COURT: So I'm free except for 10 minutes at
23 12:00 o'clock when I have to do Mental Health Court staffing,
24 and then I will be happy to come back. If you want to take a
25 short break -- if you all agree to take a short lunch break,

1 I'll try and get coverage for my staff so they can have people
2 come in and cover them for lunch, and then we're going to do
3 the motion to compel. If you guys want to do it earlier than
4 1:00, I can do it earlier than 1:00. And then we will
5 continue until just before 2:00 o'clock when I have to
6 basically vacate anything that is in the jury box, because
7 that's where my folks in Mental Health Court who are in
8 custody sit, and some of them aren't very stable. And then I
9 have the entire audience full of my Mental Health Court
10 participants, most of whom are stable, and the staff and P&P
11 are at the tables. So if you stick things under the tables,
12 you'll be okay on Tuesday, but I've got to have you away from
13 my sallyport and I've got to have you out of my jury box.

14 MR. GENTILE: About what time do you think you'll be
15 back here for court?

16 THE COURT: We may not get back in Tuesday
17 afternoon.

18 MR. SHEVORSKI: Oh. Okay.

19 THE COURT: It is --

20 MR. KEMP: So 2:00 o'clock was your plan.

21 THE COURT: When you and I are in trial and I go do
22 my short part, which is usually from 2:00 to 2:15, sometimes
23 2:30, Bitia Yeager is continuing to do the rest of it, which
24 lasts until about 4:30. So we'll be done until Wednesday
25 morning. My calendar on Wednesday, I have an evidentiary

1 hearing on another case at 8:30, I have an OST motion for a
2 preliminary injunction on another case at 8:30, and a motion
3 to consolidate at 8:30, and then you guys at 9:00 o'clock.

4 MR. SHEVORSKI: 9:00 o'clock on Wednesday.

5 MR. GENTILE: Your Honor --

6 MR. KEMP: For the whole day.

7 MR. SHEVORSKI: Full day on Wednesday, Your Honor?

8 THE COURT: Unless you guys know something that I
9 don't know. I mean, I like to try and take lunch. I mean, I
10 have found that if we don't break for lunch, we all become
11 real punchy.

12 MR. SHEVORSKI: I appreciate that, Your Honor.

13 THE COURT: Even if we break for only a half hour, I
14 think getting up and moving around is a good idea.

15 MR. GENTILE: Your Honor, if it please the Court.
16 We learned yesterday that Mr. Pupo, who is a very high-
17 ranking player in terms of the potential witnesses in this
18 case -- well, the witnesses in this case, and I'm not accusing
19 him of anything, but somehow he left on vacation today.

20 THE COURT: When does he get back?

21 MR. GENTILE: He'll be available on the 4th.

22 THE COURT: That's a problem.

23 MR. GENTILE: He's a critical witness. And the
24 State has been kind enough to be making their witnesses
25 available to us.

1 THE COURT: So let's talk about that after I have a
2 chance to think about how I might possibly move things around
3 the week of June 3rd when I have another trial scheduled.

4 If anyone wants me to consider written proposed
5 findings of fact and conclusions of law, I would like them
6 Wednesday by noon. That means if other people on your team
7 are working on it, they can work on it while you're here. If
8 you're the ones working on it, if you could send them before
9 you come, that would be great.

10 Anything else?

11 MR. SHEVORSKI: Sounds like Mr. Kemp's writing
12 those.

13 THE COURT: I saw Mr. Rulis being delegated. Did
14 you notice, I know how that delegation signal works at Kemp,
15 Jones & Coulthard. Is it Kemp, Jones & Coulthard still?

16 MR. KEMP: It's still.

17 (Court recessed at 4:49 p.m., until the following
18 Tuesday, May 28, 2019, at 10:00 a.m.)

19 * * * * *

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EXHIBITS

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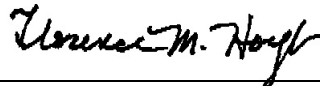
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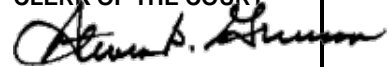
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Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER

6/14/19

DATE



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC,)
et al.,)

Plaintiffs,)

vs.)

STATE OF NEVADA DEPARTMENT OF)
TAXATION,)

Defendant.)

CASE NO. A-19-786962-B
DEPT NO. XI

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

TUESDAY, MAY, 28, 2019

EVIDENTIARY HEARING - DAY 2

VOLUME I OF II

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

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I N D E X

W I T N E S S E S

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JOHN RITTER

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1 **LAS VEGAS, CLARK COUNTY, NEVADA MAY 28, 2019, 9:44 A.M.**

2 *** * * * ***

3 THE COURT: I got done earlier than I thought. Can I
4 bring you up-to-date on something that just happened?

5 Go back to your tables.

6 Paula Walsh, who is, I guess, sitting in one of the
7 vacant departments has an attorney trying to file a motion for
8 a protective order for testimony of a witness. I don't know
9 who. My staff told Paula it would be better if it was heard in
10 front of me since the protection they are seeking relates to my
11 case and my preliminary hearing -- preliminary injunction
12 hearing. I have no idea who it is that's seeking the
13 protection.

14 MR. KOCH: I can tell you.

15 THE COURT: Okay.

16 MR. KOCH: We subpoenaed Amanda Connor to testify
17 tomorrow. Her firm filed a motion for a protective order. I
18 discussed it with them, the scope of the protection they're
19 seeking. They filed that. I guess it went to Department 8.
20 We anticipate it'll be heard here, and I don't know if there's
21 any disagreement on having it heard. It's a very limited
22 motion asking simply to have her not testify about privileged
23 or confidential matters.

24 THE COURT: Okay.

25 MR. RULIS: That's correct, Your Honor. It got filed

 JD Reporting, Inc.

1 in the MM Development case, and although I did see, just so you
2 are aware, it got set for hearing on June 24th this morning.
3 No objection to having it heard here.

4 THE COURT: Well, do you guys want to negotiate a
5 time with the movant so that we can hear in here and all of you
6 can be heard and I can make a decision?

7 MR. KOCH: Yeah. I can talk with him today at a
8 break if we want to have it heard tomorrow morning. The
9 subpoena was for her to show up and testify tomorrow. I don't
10 think based upon where we are today and where we might be
11 tomorrow she'll be testifying first thing tomorrow, but if we
12 can have it heard tomorrow, that might be best in --

13 THE COURT: That would be lovely. Okay. Anything
14 else?

15 Mr. Ritter is here now.

16 So are we ready to start?

17 MR. SHEVORSKI: Yes, Your Honor.

18 THE COURT: All right. Come on up, sir. Thank you
19 for coming back.

20 Mr. Rulis, are we waiting for Mr. Kemp?

21 MR. RULIS: He'll be here. I'll sit down, and he'll
22 show up when he shows up.

23 THE COURT: I mean, is he going to be here quickly?

24 MR. RULIS: Yes.

25 THE COURT: Well, then we'll go slow on this part.

1 MR. RULIS: Thank you, Your Honor.

2 MR. SHEVORSKI: Your Honor, are you ready for me, or
3 do you want to wait for Mr. Kemp?

4 THE COURT: Hold on.

5 Can you raise your right hand.

6 **JOHN RITTER**

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

9 THE CLERK: Thank you. Please be seated.

10 MR. SHEVORSKI: You know how I go, Your Honor.

11 THE COURT: I do.

12 THE CLERK: Please state and spell your name for the
13 record.

14 THE WITNESS: John Ritter. R-i-t-t-e-r.

15 THE COURT: All right. Mr. Shevorski, if we could go
16 slow, understanding that Mr. Kemp is on his way. So use your
17 southern voice.

18 I'm from the south. Things were slower when I was
19 down there than here.

20 MR. SHEVORSKI: I'll use my Southern California
21 voice, Your Honor.

22 CONTINUED CROSS-EXAMINATION

23 BY MR. SHEVORSKI:

24 Q Good morning, Mr. Ritter. Thank you for being here
25 again.

1 A Good morning.

2 Q In your testimony with Mr. Gentile, you talked about
3 the calendar. We'll use the calendar year. Are you aware --
4 strike that.

5 Are you aware of the difference between a calendar
6 year and a fiscal year?

7 A Yes.

8 Q And for the purposes of my question, we're going to
9 be using calendar years and not fiscal years.

10 A Okay.

11 Q Because I don't know what the fiscal year is for The
12 Grove and or any other entities. So we're going to use
13 calendar years, and if that's incorrect or confusing, please
14 interrupt me and tell me you don't know what I'm talking about.
15 Is that fair?

16 A Okay.

17 Q So for the calendar year of 2017, I believe you
18 mentioned to Mr. Gentile that firms in Nevada who had -- who
19 are selling medical marijuana were losing money each month.
20 Was that a fair characterization of your prior testimony?

21 A Yes.

22 Q And I believe you testified that The Grove had two
23 locations to sell medical marijuana; is that correct? In the
24 calendar year 2017.

25 A Yes.

1 Q Who were The Grove's competitors for those in those
2 two locations, if you recall?

3 A Well, in Nye County, we're the only dispensary in
4 Pahrump. So we don't have competitors in Nye County.

5 In Clark County, I don't know the exact number of
6 competitors that we had.

7 Q Is it more than five?

8 A Well, it depends how you define competitor. Are you
9 talking about in the geographic area, in a certain geographic
10 area or in the entire Clark County or --

11 Q Let's use Clark County as a competitor, whether or
12 not they're some perfect competition in your mind, but they're
13 located with -- let's just use located within Clark County.

14 A Okay. So when you're referring to Clark County,
15 you're talking about Las Vegas and North Las Vegas and
16 Henderson?

17 Q Yes, sir.

18 A Okay.

19 Q I'm trying to go slow for till Mr. Kemp gets here.

20 A Oh, okay.

21 Certainly more than 5.

22 Q More than 10?

23 A Yes.

24 Q More than 15?

25 A Yes.

1 Q More than 20?

2 A Yes.

3 Q More than 50?

4 A I don't think so.

5 Q Okay. Are you aware of the what we'll call the four
6 basic financial statements that a company may have?

7 A I've never heard them referred to as the four basic
8 financial statements.

9 Q Have you heard of an income statement?

10 A Yes.

11 Q And do you know what an income statement purports to
12 show?

13 A Uh --

14 Q I'm not looking for under GAAP principles or asking
15 you as a CPA, just as your understanding of what an income
16 statement shows.

17 A I think generally income statements show revenue,
18 expenses, profit, essentially or loss.

19 Q It might be something you look at to see if a company
20 is making a profit or loss by comparing the expenses to the
21 revenue that a company is earning during a calendar year, for
22 example?

23 A Yes.

24 Q And as opposed to a balance sheet which might be a
25 pinpoint looking at a company's assets and liabilities and

1 shareholder equity at a certain point in time?

2 A That's correct.

3 Q Is that a fair assessment?

4 A That's correct.

5 Q In the calendar year of 2017, you didn't review any
6 of the income statements for your competitors, did you?

7 A No.

8 Q So you're not sure, or you'd have no basis to say
9 whether or not any of your competitors were also losing money?

10 A Well, let's clarify something. You're talking about
11 '17, but July 1st, '17, recreational started. So I would
12 imagine that our company made money. I know that our company
13 made money in '17, but we were losing money when it was just
14 medical.

15 Q Your company was losing money?

16 A Right.

17 Q But you can't say the same for any of your
18 competitors because you haven't seen their income statements?

19 A Well, again, during the medical program, I talked to
20 many of my competitors that were losing money on the medical
21 program. There was much discussion about that generally
22 speaking. So I haven't seen their income and loss statement
23 for the first half of '17 if there were such a thing, but
24 certainly from the conversations, many conversations I've had
25 generally speaking, most of the industry, based on those

1 conversations, not based on looking at income statements, were
2 losing money during the medical program.

3 Q How many competitors did you talk to?

4 A Oh, many. Many. Five to ten certainly.

5 Q So less than 50 percent?

6 A Yeah, I didn't take a poll.

7 Q We talked about there may be possibly more than 25
8 competitors in Clark County, and you talked to -- and you
9 personally spoke to maybe five to ten?

10 A Yeah. I would say it this way. Every single
11 competitor that I had that conversation with was bemoaning the
12 fact that they were losing money with medical.

13 Q Okay. But back to my question. I believe you -- I
14 just want to know the numbers. Out of the over 25 competitors,
15 you talked to somewhere between five and ten; correct?

16 A Well, that's an estimate. I'm just telling you that
17 every single competitor I had a conversation with during the
18 medical program shared with me the fact that they were losing
19 money like we were.

20 Q I'm just -- all I'm asking for, sir, is your best
21 testimony -- your best estimate. Your best estimate is you
22 talked to five or ten?

23 A That is a very rough estimate. I think a better way
24 to say it is that every single person I talked to, every single
25 competitor I talked to. It might have been 10. It might have

1 been 15. It might have been 20. It was a long period. I was
2 on the board of the Nevada -- I still am -- on the board of the
3 Nevada Dispensary Association, and so there were lots of
4 conversations with lots of competitors.

5 Q It might have been five? According to your prior
6 testimony just now.

7 MR. SHEVORSKI: Mr. Kemp is here, Your Honor. So
8 I'll go faster.

9 THE WITNESS: Okay. It might have been 5 to 10, 15.
10 I don't know. I'm just telling you the feeling that I got from
11 lots of conversations is that everyone I talked to was losing
12 money during the medical program.

13 BY MR. SHEVORSKI:

14 Q In response to Mr. Gentile's questions, you also
15 discussed that you were unhappy or disagreed with some of the
16 scores that --

17 I'll just call it -- if I say The Grove, you'll know
18 who I'm talking about, the set of TGIG? Is it TGIG or TGIC?

19 A TGIG.

20 Q So when I say The Grove, I'll mean TGIG. Is that
21 fair?

22 A Sure.

23 Q In response to Mr. Gentile, you talked about that you
24 were disappointed that on the scoring of the retail application
25 you were disappointed with a few of the scores that The Grove

1 received. Do you recall that testimony?

2 A I believe we only talked about one score, which was
3 the direct experience section.

4 Q I think you also may have talked -- testified about
5 the building planning section as well. Do you recall that?

6 A Yeah. I don't know that I was necessarily
7 complaining about 15 out of 20 on the building plan.

8 Q Okay. Fair enough. I misunderstood you. Thank you.
9 The person primarily responsible for the application
10 that The Grove submitted was not yourself; it was somebody
11 else?

12 A That's correct.

13 Q With respect to the experience, that was measured in
14 2018 for the retail application according to the experience of
15 the officers, board members and owners of the retail business
16 for The Grove; correct?

17 A Well, there's two experience sections.

18 Q I believe you were talking about the experience
19 section related to cannabis.

20 A Yeah. I was referring to the experience section that
21 responsive to the initiative.

22 Q Right. Dealing with marijuana; correct?

23 A Dealing with the direct experience --

24 Q Yeah. Direct experience --

25 A -- in the marijuana business.

1 Q -- with marijuana, not experience in some other
2 business.

3 A That's correct.

4 Q Are we on the same page?

5 A Yes.

6 Q Now, you agree with me that the persons listed for
7 the owners, officers and directors of the retail -- for the
8 retail application were not the same as the owners, officers
9 and board members for the medical marijuana application you
10 submitted years prior?

11 A I believe the ownership had changed a little bit, and
12 the board had changed a little bit.

13 Q Would you agree with me that about only a third of
14 the owners, officers and board members on the retail
15 application had prior experience in the marijuana industry?

16 A Well, there are investors certainly that are involved
17 in companies that are passive investors; right? So you
18 wouldn't necessarily -- I couldn't necessarily say that every
19 owner that's invested in our company has experience. I can
20 certainly say that the people that run the company have
21 experience since the medical days.

22 Q The persons listed as owners, officers and board
23 members, only about a third of them had experience in the
24 marijuana industry for the 2018 retail application for The
25 Grove; correct?

1 A I guess it depends how you define experience.

2 Experience as investors? As owners?

3 Q Well, I think that's probably for the score to weigh;
4 isn't that correct?

5 A Well, I would imagine that most companies have
6 investors that write a check, put it in the company and wait
7 for a return. I would imagine just like a public company whose
8 owners are shareholders, that don't run the company or have
9 experience in the company that they've invested in that you
10 wouldn't expect that every owner would have experience. So if
11 you're including a number of passive owners to come to that
12 one-third number, I think it's not a fair analysis.

13 Q I'm talking about the people that The Grove listed on
14 its application to be considered for that category relating to
15 experience. They were -- only about a third of them had
16 experience in the cannabis industry; isn't that correct?

17 A Again, I'll say exactly what I've said which is that
18 if you're talking about owners, officers and board members, the
19 officers of our company all have experience. They have
20 experience since the medical days; right? And the board all
21 has experience. It's generally the same board since the
22 beginning. Okay.

23 If you're implying that only a third of our company
24 had experience because we have 20 or so investors that gave us
25 money to start the company but are not involved in the

1 day-to-day aspect of the company, I think that's very normal,
2 and I think that when you say one third that that would be
3 similar to a public company. How many shareholders in a public
4 company have experience running the company?

5 So if the graders were expecting that all the owners
6 would have experience, hands-on experience, I would imagine
7 that they would be sorely disappointed in many of the companies
8 they looked at.

9 MR. SHEVORSKI: Thank you very much. I appreciate
10 your time.

11 THE WITNESS: Thanks.

12 THE COURT: Mr. Koch.

13 CROSS-EXAMINATION

14 BY MR. KOCH:

15 Q Good morning, Mr. Ritter. My name is David Koch. I
16 represent Nevada Organic Remedies LLC in this matter. Have you
17 heard of that company before, Nevada Organic Remedies?

18 A Yes.

19 Q Operating under the name of The Source. You've heard
20 of that name?

21 A Yes.

22 Q And Andrew Jolley is one of the principals of that
23 company. And do you know Mr. Jolley?

24 A Yes, I do.

25 Q You've worked with him on the Nevada Dispensary

1 Association; is that right?

2 A Yes.

3 Q How long have you served on the Nevada Dispensary
4 Association?

5 A I think pretty close to the beginning, if not the
6 beginning of it.

7 Q When was the beginning of it?

8 A Two to three years ago.

9 Q Okay. And Mr. Jolley, is he currently serving on
10 that association?

11 A Well, I don't -- when you say serving, do you mean as
12 a member?

13 Q Well, let's just say does the association have a
14 board?

15 A The association has a board.

16 Q Does it have a president?

17 A I don't remember if it's president or chairman.

18 Q Okay. So it has a president or a chairman?

19 A Right.

20 Q And are you currently serving on the board of the
21 NDA?

22 A Yes.

23 Q And have you ever served as the president or the
24 chair of the NDA?

25 A No.

1 Q Has Mr. Jolley ever served as a president or the
2 chair of the NDA?

3 A Yes.

4 Q When he was the president or chair, did you work with
5 him?

6 A Yes.

7 Q All right. And so familiar with him, able to
8 interact with Mr. Jolley; is that right?

9 A Yes.

10 Q Was that one of the 5 or 10 -- 5 to 10 other
11 competitors that you talked to about how things were going in
12 the medical -- medical realm?

13 A I would assume so. I don't remember specifically.

14 Q All right. And to the extent that you're talking
15 with competitors about how they're doing in the medical, it
16 sounds like it's a friendly competition. It wasn't dog eat
17 dog. You weren't giving each other income statements, but at
18 least there was discussion about how businesses were going?

19 A Yeah. I would -- I would describe it in the medical
20 days as more about complaining about how things were going.

21 Q Okay. All right. And once recreational became
22 approved, then that's when things became profitable?

23 A For us for sure, and it seemed like for most other
24 people as well.

25 Q All right. Let me ask you a little bit just more

1 about the association. What's the purpose of the Nevada
2 Dispensary Association?

3 A Generally to represent the interests of its members
4 which are dispensary owners.

5 Q So existing dispensary owners?

6 A Yes.

7 Q And from the site it says,

8 The Nevada Dispensary Association is
9 dedicated to developing and promoting best
10 practices among Nevada's marijuana
11 dispensaries as well as supporting the
12 efforts of marijuana establishments to
13 provide high quality, safe marijuana to
14 Nevada's consumers.

15 Is that a fair statement of what the purpose of the
16 association is?

17 A Can you read it again.

18 Q Sure.

19 The Nevada Dispensary Association is
20 dedicated to developing and promoting best
21 practices among Nevada marijuana dispensaries
22 as well as supporting the efforts of
23 marijuana establishments to provide high
24 quality, safe marijuana to Nevada's
25 consumers.

1 A I think that's a fair statement. I would say one
2 thing it doesn't include is that we do quite a bit of lobbying.

3 Q Okay. That's a good point. So lobbying for what
4 purpose?

5 A Lobbying to protect the interest of the members of
6 the association.

7 Q And those members -- what did it take to become a
8 member of the association? Do you have to have a dispensary?

9 A Yes.

10 Q So that association, the lobbying efforts are to
11 protect existing dispensaries?

12 A Well, to protect the interest to review legislation,
13 to support legislation that supports the dispensary owners'
14 businesses, to object to legislation that doesn't on the
15 municipal level and the State level.

16 Q What about regulations that were considered or passed
17 by the Department of Taxation? Would that have been part of
18 the association's area of focus?

19 A Yes. Yeah.

20 Q And you said object to potential legislation. Would
21 it object to potential regulations that it felt were improper?

22 A I would say generally, yes.

23 Q Let's go back then to Question 2. Question 2 was on
24 the ballot in 2016; is that right?

25 A That's correct.

1 Q Do you support that, the passage of that initiative?

2 A Yes.

3 Q And after that initiative was passed, the governor
4 established a task force; is that right?

5 A That's correct.

6 Q You were appointed to that task force?

7 A That's correct.

8 Q And I think you said that there weren't other sort of
9 retail representatives that were part of that task force other
10 than you; is that right?

11 A The only other cannabis industry representative was
12 representing labs and was a lab owner.

13 Q There were also working groups that were working with
14 that task force; is that right?

15 A That's correct.

16 Q And what's the distinction between the task force and
17 the working groups that were part of the process?

18 A I guess I would describe the task force as a large
19 board and the working groups as committees on that board.

20 Q Let me turn to Exhibit 2009, which should be in the
21 State's binders. I don't know what's behind the --

22 THE COURT: That's the Task Force Criteria.

23 MR. KOCH: The task force report, final report.

24 THE CLERK: Sir, it's going to be on the cart next to
25 you.

1 THE WITNESS: Okay.

2 THE CLERK: The second level, the bottom one, the
3 black binders.

4 THE WITNESS: Okay. What numbers are we looking for,
5 or how do I find this?

6 Is this the book?

7 THE CLERK: Yes.

8 MR. KOCH: Okay.

9 BY MR. KOCH:

10 Q 2009 would be the exhibit. It should be the first
11 exhibit. Is that the correct book? Do you have that?

12 A Yes.

13 Q All right.

14 THE COURT: And are you going to page 2608?

15 MR. SHEVORSKI: Not yet. We'll get there eventually,
16 Your Honor.

17 BY MR. KOCH:

18 Q Mr. Ritter, is this the task force report that was
19 prepared by --

20 THE WITNESS: Excuse me. Can I grab my glasses?

21 THE COURT: You can.

22 THE WITNESS: I forgot to bring my glasses up.

23 THE COURT: Please go down and get them.

24 (Pause in the proceedings.)

25 BY MR. KOCH:

1 Q All right. Mr. Ritter, are you able to identify this
2 is the task force final report that was prepared by the task
3 force that you served on?

4 A It appears to be.

5 Q Let's turn to page 2497, Bates Number 2497. It's a
6 letter from the chairs. And that letter was prepared it
7 appears May 30th of 2017. I just want to call your attention
8 to the second paragraph which starts with the task force:

9 The task force which you established on
10 November 8th, 2016, by Executive Order
11 2017-2 was given the mission to identify the
12 legal policy and procedural issues that need
13 to be resolved and to offer suggestions and
14 proposals for legislative regulatory and
15 executive actions that need to be taken for
16 the effective and efficient implementation of
17 the act.

18 Did you understand that to be the mission of the task
19 force?

20 A Yes.

21 Q Okay. And it was going to make suggestions and
22 proposals regarding legislative, regulatory and executive
23 action; is that right?

24 A Yeah. It says, To offer suggestions and proposals
25 for legislative, regulatory and executive actions that need to

1 be taken.

2 Q Okay. And then let's turn a few pages in to page
3 Bates Number 2500. And these are the guiding principles and
4 goals of the task force, and you were aware of these on the
5 time that you were on the task force?

6 A Yes.

7 Q There's seven of them there. I just want to ask I
8 guess about a couple of them.

9 Number 4 says, Propose efficient and effective
10 regulation that is clear and reasonable and not unduly
11 burdensome.

12 That was one of the guiding principles for the task
13 force?

14 A Yes.

15 Q Did you believe the task force did a good job of
16 that?

17 A Generally speaking.

18 Q All right. Did the best it could?

19 A Yeah. There was always going to be a push-pull
20 between business owners and regulators. So there was
21 definitely a lot of push pull.

22 Q Same goes for Number 6:

23 Establish regulations that are clear and
24 practical so that interactions between law
25 enforcement at the local, state and federal

1 levels, consumers and licensees are
2 predictable and understandable.

3 Do you feel that the task force did a good job of
4 establishing regulations or proposing them that are clear and
5 practical?

6 A I mean, to a certain extent. I mean, by the time
7 regulations go through the whole process and go through the
8 legislative process, sometimes they get -- they're not, for the
9 layman at least for sure, are not easy to understand.

10 Q Okay. Because the task force report was not the end
11 of the process; that was part of the process; right?

12 A That's correct.

13 Q Let's go to page 2508, the Summary of Task Force
14 Recommendations. And this purports to have a reference 73
15 recommendations and a number of categories. Does that spark
16 your recollection? Was that the number of recommendations that
17 the task force made, 73?

18 A What page are you on?

19 Q Sorry. 2508.

20 A Yes.

21 Q Okay. So there's 73 recommendations that were made?

22 A Yes.

23 Q Were all of those adopted by the Department of
24 Taxation?

25 A I don't know.

1 Q Let's step back for one second. I skipped one page I
2 just want to ask you about, 2501, which has the task force and
3 working group structure.

4 This page purports to lay out the structure of the
5 task force; have you seen this before?

6 A I don't believe I've ever seen this before in exactly
7 this form, but I understand what it's saying.

8 Q Okay. You're listed there on the left side under
9 operations retail as a member of the task force for that area
10 of the task force; correct?

11 A Yes.

12 Q And it says you're a board member for the Nevada
13 Dispensary Association and also an advisory board member of The
14 Grove. What does that mean, advisory board member for The
15 Grove?

16 A At that time I was an advisory board member. I later
17 became a board member.

18 Q When did that take place, that change?

19 A I don't remember.

20 Q After May of 2017?

21 A It would have been after May, yeah.

22 Q You're also, the box below, listed as a member of the
23 cultivation section of the task force; is that right?

24 A That's correct.

25 Q All right. I'm going to move ahead then to

1 page 2515, please. 2515 is titled Application and Licensing
2 Requirements, and this appears to be a set of the proposals
3 that the task force made in this area of regulation. Does that
4 accurately depict what's shown here?

5 A What was your question?

6 Q This page shows recommendations made by the task
7 force for application and licensing requirements; is that
8 right?

9 A Yes.

10 Q Under application process, it states,

11 The task force recommends the
12 qualifications for licensure of a marijuana
13 establishment and the impartial numerically
14 scored bidding process for retail marijuana
15 stores be maintained as in the medical
16 marijuana program except for a change in how
17 local jurisdictions participate in selection
18 of locations.

19 The Department of Taxation should rank
20 the applicants based on an applicant's
21 qualifications without respect to the planned
22 location of their business.

23 And then,

24 The local governments should be
25 responsible for working with the rank listed

1 applicants prepared by the Department of
2 Taxation to determine acceptable location
3 based on requirements within the respective
4 jurisdiction.

5 So it was the task force recommendation, the exact
6 location not be considered as part of the scoring criteria; is
7 that right?

8 A Certainly that's what it says here.

9 Q And I think based on your testimony last Friday you
10 stated that the proposed locations of the addresses that TGIG
11 submitted were actually PO boxes or UPS stores. So those
12 weren't actual proposed locations that TGIG had; right?

13 A That's correct.

14 Q And so it was your understanding that, as stated
15 here, the actual specific location would not be part of the
16 scoring process. That would be up later for the local
17 jurisdictions to work with the ranked applicants to find a
18 spot?

19 A Yes. So that's what -- that's what came out of this
20 process.

21 Q Okay.

22 A That's not how the application read.

23 Q Let's go down to the next paragraph where it says,
24 If a marijuana establishment is not able
25 to receive local jurisdiction zoning and land

1 use approval within 18 months from the date
2 the Department of Taxation issues a
3 conditional license, the applicant will
4 surrender the license back to the department
5 for reissuance through another application
6 process.

7 Was that proposal adopted as part of the regulations?

8 A I believe this is -- this is a explanation of what's
9 in the recommendations at a high level. I don't remember ever
10 seeing 18 months anywhere.

11 Q Right. And the department actually never adopted an
12 18-month window, did it?

13 A No.

14 Q We've talked about a 12-month window. Once the
15 conditional license was approved, an applicant must get final
16 inspection of that location within 12 months; is that right?

17 A Yeah. And that's straight out of the initiative.

18 Q Okay. So this 18 month listed here, that was not
19 adopted by the department, was it?

20 A No. I don't even remember any conversation about it.

21 Q Okay. Let's move ahead to 2563.

22 A Okay.

23 Q And actually before we get on that page, leave that
24 open, but you said that that's not what the application read.
25 When you filled out the application or TGIG did, it still

1 listed UPS stores and PO boxes; correct?

2 A That was because prior to the application submittal
3 period the Department of Taxation issued -- I don't know
4 exactly what form it took place, but issued communication that
5 apparently some applicants got and some didn't that addresses
6 weren't required as this states. So then based on that
7 communication, regardless of what the application said was when
8 we put the UPS addresses on rather than actual physical
9 locations in most of the license applications.

10 Q All right. Are you aware of any applications that
11 were given less points because they did not have a specific
12 location as part of it?

13 A I have no idea. I do know that many of the
14 applicants for whatever reason, probably because of the
15 informal communication process that the State was using were
16 unaware that they could just submit addresses like we did, not
17 specific addresses that would be the proposed addresses and
18 went to the point of doing complete plans and tying up the
19 property and those kinds of things.

20 Q All right. Let's go back to the 2563 is the section
21 that purports to list the task force and working group
22 membership, and the first two pages behind that list the task
23 force membership. I think we talked a little bit about that.
24 I just want to ask you about some of the working groups and
25 just understand those a little bit better starting at 2566.

1 And the first one is Working Group Law Enforcement on
2 2566. Do you see that?

3 A Yes.

4 Q And on that task -- or the working group, there's a
5 Demetri --

6 How do you pronounce his last name?

7 A Kouretas.

8 Q Kouretas. He was a CEO of The Grove at that time?

9 A He still is, yes.

10 Q Okay. So he was on the working group under Law
11 Enforcement; is that right?

12 A That's correct.

13 Q Let's go to the next page, 2567. This is a working
14 group for Operations Retail, and you're listed on the top
15 there. So you were part of the task force of the board that
16 headed up this working group; is that right?

17 A I don't know what they call the people that were set
18 out on the top. I don't know what that -- what our title was.
19 I don't remember.

20 Q But you were part of the operations retail working
21 group?

22 A Yes.

23 Q And below there's Andrew Jolley is listed, President
24 of the Nevada Dispensary Association and The Source. He was
25 part of that working group?

1 A Yes.

2 Q You worked with him as part of the process of
3 proposing recommendations for operations and retail?

4 A I believe so.

5 Q Okay. The next page, 2568 --

6 A The only reason I say, "I believe so," because I
7 can't remember how many meetings that Andrew came to.

8 Q Okay. And then 2568, the next page is the working
9 group on Cultivation. Do you see that?

10 A Yes.

11 Q You were on that working group as well?

12 A Yes.

13 Q And down below your name there is Amanda Connor,
14 attorney at Connor & Connor PLLC. She was part of that working
15 group?

16 A Yes.

17 Q You worked with her as part of that working group?

18 A Yes.

19 Q How did someone get appointed to the working group?
20 Could someone just walk in off the street and say I want to be
21 part of it, or how did that process work?

22 A Well, if memory serves, I believe it was you put an
23 application in perhaps. I know for sure there was an
24 application to get on the task force, and then I think somehow
25 through a process you expressed interest in being on certain

1 working groups.

2 Q Okay. And was there -- I mean, does somebody look at
3 those applications and decide whether it was appropriate for
4 somebody to be on that task force or working group?

5 A Well, my understanding on the task force is that the
6 Governor's office made the final decision. I believe the
7 governor himself was involved in a group of three people if
8 memory serves that made the decisions for the task force.

9 Q And what about the working group?

10 A On the working group, I believe it was more decided
11 by Deonne and her -- and those working with her on that.

12 Q Deonne, is she a state employee?

13 A Well, she was the head of the Department of Taxation.

14 Q Okay. And on this page of the cultivation, you
15 worked with Amanda Connor to make proposals for regulations
16 with respect to cultivation; is that right?

17 A Well, we worked with the entire group.

18 Q Right. And everybody might have had different
19 opinions or ideas of what would be appropriate, and they all
20 weighed in, and you finally come up with the conclusion for a
21 recommendation?

22 A That's correct.

23 Q Okay. The next page, 2569, we have the working group
24 for Production and Manufacturing, and here we have Brian --

25 How do you pronounce his name, production manager?

1 A Huan.

2 Q Huan. Production manager and owner of The Grove, he
3 was part of that working group?

4 A That's correct.

5 Q And so you had multiple people from The Grove who
6 were part of either the working group or the task force; is
7 that right?

8 A Yes.

9 Q The next two pages. 2570 has the working group for
10 Labs, which includes a Darin Carpenter, director of cultivation
11 from Tryke. Do you see that?

12 A Yes.

13 Q Do know who that person is?

14 A No, I don't. I don't remember him specifically.

15 Q Okay. Tryke is one of the other plaintiffs in the
16 lawsuit that TGIG has filed. Are you aware of that?

17 A Yes.

18 Q Okay. And then on the next page we've got a Brett
19 Scolari, on 2571, general counsel, director of government and
20 regulatory affairs for Tryke. He was part of that working
21 group? Are you aware of that?

22 A It looks like it.

23 Q And then the last one I'll ask you about I think on
24 these, 2572. The working group Taxation Revenue and Regulatory
25 Structure, you and Amanda Connor were both part of that working

1 group; is that right?

2 A Yes.

3 Q Now let's go to 2608.

4 A Okay.

5 Q On 2608, I think we looked at this page on Friday.

6 This is a rating criteria on applications section. Is this the
7 recommendations that the working group made for the proposal
8 listed here?

9 A Yes.

10 Q It has the individual sponsors listed as John Ritter
11 and Amanda Connor. What did it mean to be an individual
12 sponsor of grading criteria here?

13 A So generally speaking, the sponsors would be picked
14 early in the discussion, slash, debate over a certain
15 recommendation and then would take the responsibility for
16 writing up a proposal or writing up recommendations that they
17 thought were responsive to the discussion in the group.

18 They would then bring it back to the group for
19 further discussion and debate. And then if changes were made
20 or changes were discussed that should be made, then you would
21 have the responsibility to make those changes to the
22 recommendations and come back with them at the next meeting
23 until basically you got a set of recommendations that the
24 majority of the working group agreed with, and, you know,
25 hopefully if you could that in which there was no dissents.

1 Q Right. If there were dissent, that would be noted;
2 is that right?

3 A It would be noted if there were dissent.

4 Q And on this set of recommendations, if we look at the
5 next page, Number 7, it asked if there's dissent, and it says,
6 There is no dissent regarding this recommendation. So there
7 was no dissent on these proposals; correct?

8 A That's correct.

9 Q And we go to 2608 again. Describe the
10 recommendations. It says,

11 The Taxation Revenue Regulatory
12 Structure Working Group recommends the
13 impartial and numerically scored bidding
14 process as described in IP 1 --

15 Do you know what IP 1 --

16 A Yes, that's the initiative petition.

17 Q Okay.

18 -- for retail marijuana stores include
19 the following criteria and weighting to be
20 used for scoring applications. IP 1 also
21 requires the department to adopt regulations
22 that include, quote, "qualifications for
23 licensor that are directly and
24 demonstratively related to the operation of a
25 marijuana establishment," unquote.

1 Now, you testified that's language from the statute;
2 correct?

3 A That's the only language in the statute referring to
4 qualifications.

5 Q Right. And that's 453D.200 I believe?

6 A You know, I more go off the initiative petition.

7 Q Okay.

8 A Which is what was approved by the voters.

9 Q All right. And it says, Regulations that include
10 those qualifications. So it said it would include those. It
11 didn't say limited to solely qualifications that are directly
12 and demonstratively related; correct?

13 A Yeah. I don't think it says only include the
14 following criteria, but it does again set out that the
15 department adopt regulations that include qualifications for
16 licensure that are directly [indiscernible] -- demonstratively
17 related to the operation of the marijuana establishment.

18 Q Right. I think on Friday you talked about some of
19 the items as you looked at these. You said some may not be
20 directly or demonstratively related. That's why they got less
21 weight. Is that right?

22 A In general. I mean, when you look at this there's
23 eight recommendations, five of which are directly and
24 demonstrable, four of which are very heavily weighted. So
25 generally the majority of the recommendations, and particularly

1 the heavily, heavily weighted recommendations are directly and
2 demonstrably.

3 Q Well, for example, civic and philanthropic
4 involvement in Nevada is heavily weighted. Is that in your
5 mind directly and demonstrably related to the operation of a
6 marijuana establishment?

7 A No.

8 Q Okay. Also in that statute it refers to directly and
9 demonstrably related to the operation of a marijuana
10 establishment. It doesn't describe where. What if someone had
11 proposal about an operation in another state. Would that be --
12 fall within this criteria?

13 A You know, I think that would be difficult because
14 demonstrably means that you're demonstrating to the regulators.
15 It has to because that's instructions to the Department of
16 Taxation. So, frankly, I don't know how experience in another
17 state is demonstrably unless the scorers, which I know they
18 didn't, went to the other states, interviewed the regulators,
19 looked at their regulatory experience and track record in the
20 other states, looked at the state to see how comparable the
21 state system was to the Nevada system which is a very, very
22 tough system compared to most systems.

23 So, no, I don't think out-of-state experience unless
24 you went through all those steps is demonstrable as to the
25 Department of Taxation.

1 Q All right. Before we leave that point, I'll have you
2 turn to Exhibit -- or I think it's Proposed Exhibit 5018. We
3 submitted that this morning.

4 THE COURT: Any objection to 5018? Anybody know what
5 5018 is?

6 MR. KOCH: Do you want to see it?

7 THE COURT: So don't put it on the screen, please.
8 Because it's not been admitted.

9 (Pause in the proceedings.)

10 THE COURT: So, sir, my plan is to go --

11 MR. GENTILE: Your Honor.

12 THE COURT: Hold on.

13 -- until 12:00 o'clock. You weren't here when I
14 talked to my staff -- to go till 12:00 and then break until
15 12:30 so I can go to my meeting I have to go to and then come
16 back and go 12:30 to 1:45 if we're not done with you. Okay?

17 THE WITNESS: Okay. Thank you.

18 THE COURT: All right. Yes.

19 MR. GENTILE: Are the two pages that we were handed
20 the entirety of 5018?

21 MR. KOCH: Yes.

22 THE COURT: So 5018 proposed is a two-page document?

23 MR. KOCH: Yes.

24 THE COURT: Is there any objection to the two-page
25 document proposed as 5018?

1 MR. GENTILE: If counsel can lay, by the way, just
2 make a proffer with regard to a foundation.

3 MR. KOCH: Sure.

4 MR. GENTILE: Then the likelihood is no.

5 MR. KOCH: All right. Do we have -- can we get the
6 5018 as part of the binders? Is that --

7 THE CLERK: Yes. It's at the [inaudible]. It's at
8 the bottom of that cart. The binder is at the very bottom.
9 It's [indiscernible]. It's the very back.

10 THE WITNESS: I don't -- I'm not seeing it.

11 MR. KOCH: Can I approach, Your Honor?

12 THE COURT: You may.

13 BY MR. KOCH:

14 Q Mr. Ritter, Proposed Exhibit 5018 is titled rating
15 criteria on applications recommendation, and it's a color
16 document. My understanding is that the task force or the
17 working groups would come up with proposals. Those proposals
18 might change over time, and those would be written up. Is that
19 a fair statement of the process generally?

20 A Yes.

21 Q Okay. And those changes that were made would be
22 marked in a document that would be -- show if it's changes from
23 the prior version of the proposed regulations; is that correct?

24 A That sounds right.

25 Q In this Exhibit 5018, there are two sections that are

1 marked in red which my understanding is those are simply
2 changes from the prior version of the regulation -- proposed
3 regulation. Is that accurate?

4 A Yes.

5 MR. KOCH: All right. With that, Your Honor, I'd
6 move to admit Exhibit 518 -- 5018.

7 THE COURT: Any objection to 5018? Two-page
8 document.

9 MR. GENTILE: No objection.

10 THE COURT: It'll be admitted.

11 (Defense Exhibit Number 5018 admitted)

12 BY MR. KOCH:

13 Q And then on 5018, which is dated May 12th, 2017, if
14 you look at Criteria Proposed Number 3, there's an addition
15 there. The whole criteria reads,

16 Owners, officers and/or the management
17 team have direct experience with a medical
18 and/or recreational marijuana establishment,
19 for the specific type of marijuana
20 establishment license the applicant is
21 seeking and had demonstrated a track record
22 of operating that establishment in a manner
23 that complies the requirements of the
24 applicable state regulatory authority
25 overseeing such an establishment.

1 And then the addition there is,

2 Experience in a Nevada marijuana
3 establishment is preferred.

4 Do you know why that addition was made?

5 A Well, again from my point of view, it's exactly what
6 I just explained to you in the previous question, that --

7 Q Which is what?

8 A -- that it's -- when you look at the direct and
9 demonstrably, and you're talking about it in terms of the
10 Department of Taxation, demonstrably means that you've
11 demonstrated to the Department of Taxation that you can run an
12 establishment.

13 The out-of-state companies that don't have local
14 experience have not demonstrated to the Department of Taxation
15 that they can run a marijuana establishment.

16 Q Did an applicant -- were they required to have a
17 recreational marijuana establishment to be able to apply for a
18 license in 2018?

19 A Yes.

20 Q They had to have a medical license certificate;
21 correct? Did they have to have an existing recreational?

22 A As memory serves, they just had to have a operational
23 certificate, and it wouldn't have to be in a dispensary.

24 Q Right. It could be cultivation; is that right?

25 A Yeah.

1 Q Some other area --

2 A Although this does -- this section talks very clearly
3 about how it should be specific experience to the type of
4 marijuana establishment that the applicant is seeking, and
5 they've demonstrated a track record of operating that
6 establishment in a manner that complies with the requirements,
7 which is one of the things that I think came out of this
8 process that was pretty hard to understand, which is that
9 cultivators were getting dispensary licenses. So I don't know
10 how they demonstrated direct experience in the type of license
11 they were seeking and demonstrated a track record.

12 Q Well, based upon how this is -- this proposal is
13 written, an applicant could have experience in Colorado, show
14 that track record of operating, and the department could look
15 at what was submitted on the application --

16 Because they weren't going out and inspecting these
17 places as part of the process right? They were relying upon
18 the applications; correct?

19 A Inspecting what places?

20 Q Well, for example, you talked about -- you talked
21 about I think it was [indiscernible] Poopo took a tour to The
22 Grove at some point in time?

23 A Oh, a number of them, yeah.

24 Q Okay. So they took a tour out there and showed
25 people what your dispensary looked like; is that right?

1 A Well, I don't know if it was as much cosmetic as it
2 was operations.

3 Q Okay. And did you expect Mr. Poopo to go back then
4 as part of the application process to tell the graders give
5 TGIG a high score because I took some people on a tour of The
6 Grove?

7 A Oh, absolutely not, but what I would expect is that
8 the scorers would have at least interviewed the inspectors that
9 inspect the applicant's facility and looked at the applicant's
10 track record regulatorily because that's what this whole thing
11 was all about.

12 Q Right. And you're not aware of them doing that; is
13 that right?

14 A I have heard the contrary.

15 Q Okay.

16 A And nothing in the instructions to the scorers said
17 look at their regulatory track record. Look at it from the
18 time they started business. Talk to the inspectors that
19 inspect their establishments as to how they operate and their
20 track record, which it's just unbelievable to me.

21 Q Yeah. And that didn't happen, and you didn't raise
22 an objection to that at the time of the application, did you?

23 A Oh, I had absolutely no idea how the scorers were
24 going to score it; didn't have it after the application period
25 was over; only had it when we pushed as hard as we possibly

1 could and the governor stepped forward and actually passed
2 legislation so that we could find out how it was actually
3 scored.

4 Q Right. And that legislation was passed a couple of
5 weeks ago?

6 A That's correct.

7 Q And have you reviewed what was released as part of
8 that passage of SB 32?

9 A Absolutely. Not everything, but certainly these
10 scorers -- the directions to these scorers -- or to the
11 evaluators, excuse me.

12 Q All right. And let me ask you about a couple of the
13 other recommendations that are listed here on page 2608.

14 Number 1 says, The applicant has an existing
15 temporary recreational marijuana establishment license that is
16 operational.

17 Did that license need to be in the state of Nevada?

18 A Okay. What were you looking at again?

19 Q Sorry. Page 2608 on Exhibit 2009.

20 A Okay.

21 Q Sorry. Sorry I jumped exhibits. I apologize for
22 that.

23 MR. GENTILE: Counsel, I think that's 5018, not 2009.

24 MR. KOCH: No. We're going back to 2009, State
25 Exhibit 2009, which is the task force report. We're going to

1 go back to that.

2 THE COURT: And are we still on page 2608?

3 MR. KOCH: We're still there.

4 THE COURT: Great.

5 BY MR. KOCH:

6 Q All right. Are you there, Mr. Ritter?

7 A 2608 again?

8 Q Right. Yes.

9 Item Number 1, Applicant has an existing
10 temporary recreational marijuana
11 establishment license that is operational and
12 in good standing.

13 Was that required to be an establishment license for
14 the state of Nevada?

15 A I don't believe this was required under IP 1, just
16 any -- any -- I believe it was medical or recreational.

17 Q All right. And then Number 2, Applicant has a
18 medical marijuana establishment license that is operational.

19 A Oh, well, that solves it then. Between 1 and 2, it
20 covers both.

21 Q Okay. So you believed as written here that the
22 applicant must have a medical marijuana license and a temporary
23 recreational marijuana license?

24 A I believe this is -- this should be "or" between
25 those two applications.

1 Q All right. So between 1 and 2, you thought it should
2 be "or"?

3 A Yeah. I think that's the way it functioned, that you
4 had to have an operational certificate of either a medical or a
5 recreational.

6 Q Did you consider making a proposal for a regulation
7 that the score that an applicant received in 2014 or 2015 be
8 included as part of the calculation?

9 A Absolutely not.

10 Q Because a lot of change between 2014- '15 and the
11 time of this application; is that right?

12 A Well, a few things. One, the medical program was not
13 enabled by a vote of people through an initiative process. It
14 didn't have the initiative which governed it. It didn't have
15 the statute which governed it, and it didn't have applications
16 that -- applicants that had experience. So the medical program
17 tended to weight lots of other things other than experience
18 heavier.

19 What it appears to me that the department did was
20 that they essentially were lazy, and they decided that they are
21 going to use essentially the medical application and scoring
22 process for this even though it was enabled by a completely
23 different set of legislation, and it was a completely different
24 experience at the time.

25 Q You kind of changed the subject there. So let's pop

1 back to 2515. You took issue with the department for following
2 essentially the medical marijuana application process, but on
3 2515 we read the statement that the task force proposed --

4 Under application process, do you see that?

5 A Yes.

6 Q Where it says,

7 The task force recommends that the
8 qualifications for licensure of a marijuana
9 establishment and the impartial numerically
10 scored bidding process for retail marijuana
11 stores be maintained as in the medical
12 marijuana program except for a change in how
13 local jurisdictions participate in selection
14 of locations.

15 So the task force here made that recommendation that
16 they essentially follow or be close to the medical marijuana
17 process?

18 A No, that's not a recommendation. As I mentioned,
19 this is an overview. I would say this is another example of
20 the Department of Taxation being completely inconsistent.
21 Because if you then go back to the recommendation, it says very
22 clearly on the top that it is to include qualifications for
23 licensure that are directly and demonstrably related to the
24 operation of a marijuana establishment. That comes from
25 IP 1 which didn't exist when the medical program existed.

1 Q All right. So you disagree with the task force
2 proposal on 2515?

3 A It's not a proposal. This is a description, and it's
4 an inconsistent description as you will see throughout the
5 entire process.

6 Q Okay. Then let's get back to 2608, finish off that
7 page.

8 A Okay.

9 Q Number 4 on that page,
10 Applicant has demonstrated a track
11 record of paying taxes to the Department of
12 Taxation generated by the operation of a
13 medical or recreational marijuana
14 establishment.

15 That's very heavily weighted. You would agree that
16 that's related to the operation of the marijuana establishment;
17 right?

18 A Right. And I want to point out also this says
19 "demonstrated a track record." It doesn't say that the
20 department should pick a numerical evaluation number out of
21 thin air. You can't do it the way they did it because it tends
22 to favor people with two or three dispensaries, and because
23 they put the total number of taxes -- and by the way, they
24 didn't even include that it was directly related to marijuana
25 either. So it would tend to favor those that had multiple

1 stores. That wasn't the intention.

2 All these things about paying taxes say demonstrated
3 a track record. It doesn't say demonstrated that they paid
4 more taxes than their competitors.

5 Q Right. In fact, the department sought information
6 regarding payment of taxes. As long as you were over a certain
7 threshold, you got a certain number of points that maxed out at
8 a certain place; right?

9 A Yeah.

10 Q And then if we go down to Number 5,

11 Owners, officers and board members have
12 a demonstrated track record of employing
13 Nevadans and paying state and local taxes and
14 fees in Nevada.

15 And I think you said on Friday that was the one you
16 thought, okay, that's not directly and demonstrably related to
17 operation of a marijuana establishment; correct?

18 A Correct.

19 Q So, for example, if one of your real estate companies
20 had employed Nevadans and paid state and local taxes, that
21 could be considered as part of this criteria?

22 A Yes.

23 Q And that wouldn't relate to marijuana?

24 A That's correct.

25 Q The next one,

1 Owners, officers and board members have
2 a demonstrated track record of giving back to
3 the community through their civic and/or
4 philanthropic involvement in Nevada.

5 Does that relate to the operation of a marijuana
6 establishment?

7 A No, it doesn't.

8 Q And do you know why it was recommended as being
9 heavily weighted even though it did not relate to marijuana?

10 A It wasn't very heavily weighted by it's heavily
11 weighted. I don't remember the specific conversations about
12 this, those two.

13 Q Okay. The last two, Number 7 says,

14 Owners, officers and board members have
15 experience operating another kind of business
16 that has given them applicable experience to
17 running a marijuana establishment in the
18 state of Nevada.

19 And that one is just medium weighted. Do you know
20 why it was recommended as medium weighted?

21 A Yeah. And I just realized that I said there were
22 eight recommendations and that five of them are directly
23 related. Actually there would be six of them that are directly
24 related because I believe that that's directly related.

25 And I don't remember the exact conversations as to

1 why this was medium weighted.

2 Q All right. Do you know what that actually meant,
3 having operated another kind of business that might give
4 applicable experience to running a marijuana establishment?

5 A Well, I think if you were an indoor farmer and you
6 were applying for a cultivation facility and you had grown
7 plants indoors for a while, I think that would be applicable
8 experience. If you are a retailer, I think that's applicable
9 experience --

10 Q Okay.

11 A -- if you're applying for a retail license. So I
12 think there is certain very specific experience that could be
13 applicable.

14 Q And what about an owner that owned a McDonald's?
15 Would that be applicable here?

16 A I don't see that as applicable.

17 Q Would somebody else have a difference of opinion on
18 that perhaps? Would that be something to be taken into
19 account?

20 A Sure. Everybody has different opinions.

21 Q Last item, Number 8 on the next page, 2609, it says.

22 Applicant has submitted a business plan
23 for the operation of the marijuana
24 establishment that demonstrates knowledge and
25 experience with a license type that is being

1 applied for and addresses how the
2 establishment will be operated under the
3 requirements established by a regulation of
4 the department as required by NRS 453D.200.

5 I guess my question on this, as I look at this, it
6 seems that a business plan for the operation of a marijuana
7 establishment would be pretty important, but yet it's medium
8 weighted. Why is that?

9 A It's very clear to me because these business plans
10 are theoretical. In the medical program, they were weighted
11 very heavily because no one had ever operated a facility before
12 and certainly hadn't operated a dispensary before, and so you
13 had to put a lot of weight on the plans and the thinking that
14 had gone into the planning to run a facility.

15 But we've been running, some of us for three years,
16 have been running facilities under these regulations, under the
17 medical regulations and under the recreational regulations. So
18 since all of the people applying have to have experience, I
19 don't understand why plans for the future would be weighted as
20 heavily as what you've done. Talk is cheap.

21 Q I understand.

22 A And the department seemed to put very little if any
23 weight, when you look at the whole process all the way to the
24 evaluator's guideline forms, they seem to put very little
25 weight on actual experience and lots of weight on theoretical

1 plans.

2 The best way to know how someone is going to run a
3 dispensary is to talk to the people that have been regulating
4 and inspecting that dispensary for three years.

5 Q Did you ever suggest that, that the department just
6 go out and inspect existing dispensaries and give another
7 license to existing dispensary owners based upon how well their
8 operation was running?

9 A Well, two things. That was done in the early start
10 program. So it's been done just like that, just as you just
11 described. It was done by Governor Sandoval and the
12 legislature and the Department of Taxation very much in keeping
13 with IP 1.

14 But assuming then that you were going to go through
15 this process that was described, I would -- I was flabbergasted
16 when I found out that no one actually looked at and the
17 instructions to the evaluators weren't conducive to looking at
18 the actual track records of the operators as to oppose -- as
19 opposed to business plans and security plans and building plans
20 and all that stuff which is -- I'm not saying that isn't
21 important, but anybody can say they're going to do anything.
22 How did they actually do? One of my questions is were the
23 regulatory track records of these companies looked at? Because
24 my understanding is that a couple of the companies that got
25 licenses had big regulatory issues.

1 Q Okay. You referenced that previously about
2 deficiencies, that an inspector might come and issue some
3 deficiencies; is that right?

4 A Right.

5 Q And The Grove from time to time will get a
6 deficiency; is that right?

7 A Yes.

8 Q Do you know how many deficiencies The Grove has had
9 since its inception?

10 A Are you talking about just the dispensary?

11 Q Sure, just the dispensary?

12 A I don't.

13 Q Okay. More than one?

14 A Probably more than one.

15 Q I mean, it was a regular thing. A deficiency would
16 be issued, and then The Grove would respond to that deficiency;
17 is that right?

18 A That's correct.

19 Q The Grove has never been shut down because of a
20 deficiency, has it?

21 A No.

22 Q And each time a deficiency was issued, The Grove
23 would take a step to correct the problem that was referenced in
24 the deficiency?

25 A Yes.

1 Q That was the standard practice for most of the
2 dispensaries that you're aware of; is that right?

3 A All of the dispensaries, although there were -- there
4 are deficiencies, and there are deficiencies.

5 Q Some deficiencies may be bigger than others?

6 A Yes.

7 Q All right. So these proposals were made as part of
8 the task force, and then regulations were proposed by the
9 department in -- what [indiscernible]? Do you recall?

10 A I don't know, and I do have to tell you I wasn't very
11 involved in the regulatory process on this.

12 Q All right. Final regulations were passed in January
13 of 2018. Does that sound about right?

14 A I think that's right.

15 Q Between the time that the task force issued its
16 report and the time the final regulations were passed, did the
17 public or the industry have a chance to participate in the
18 process of proposed regulations becoming final regulations?

19 A Yes.

20 Q And there were some objections that were raised
21 during that time; is that right?

22 A I think so. Again, I didn't follow that process very
23 closely.

24 Q No lawsuits were filed to stop the regulatory -- the
25 adoption of regulations prior to their final passage, were

1 they?

2 A From the distributors, yes.

3 Q Okay. When were those filed?

4 A I don't know exactly the dates, but I know that the
5 distributors had a real issue at one point and filed the
6 lawsuit.

7 Q And was that before or after the final regulations
8 were passed?

9 A I'm not sure.

10 Q What was the complaint the distributors raised?

11 A Generally speaking that IP 1 has an 18-month -- maybe
12 that's where that other 18 month came from -- 18-month period
13 in which liquor distributors were to have, this is layman's
14 terms, been given the first right to distribute assuming that
15 there wasn't a -- assuming that they could -- assuming they
16 could handle the workload, again I'm using layman's terms. And
17 the department as I recall issued a determination that there
18 weren't enough liquor establishments to serve the industry as
19 distributors.

20 Q Okay. Nothing to do with the issues that are being
21 raised here today; right?

22 A No.

23 Q Okay. Let me ask you a few questions about TGIG, and
24 what was submitted here. So TGIG is an LLC?

25 A Yes.

1 Q It didn't get a license as part of this process;
2 correct?

3 A Correct.

4 Q And it did last time -- last time it applied in 2014,
5 '15 under the medical program, it got a license?

6 A It got four licenses, yeah.

7 Q And in the early start program, it got a license to
8 sell recreational?

9 A Four licenses.

10 Q Okay. Has the structure of TGIG changed since it got
11 a medical license?

12 A Well, I think it's changed somewhat. We might have
13 additional investors. The board may have changed. Essentially
14 the operational team is the same.

15 Q So the TGIG has a board?

16 A Yes.

17 Q And it's an LLC, but does it have, like, a formalized
18 board of directors, or how is that -- how is that described?

19 A It has a board. It's not a formal structure.

20 Q Okay. So just TGIG decides who's on its board. That
21 board advises the company decisions that may be made?

22 A Yeah.

23 Q How many members are there on that board?

24 A I think there's three.

25 Q Okay. And the entity itself, TGIG, has three

1 managers; is that right?

2 A Three managers?

3 Q Right.

4 A You're getting in the legal structure that I don't --
5 that I'm not --

6 Q Are you a manager --

7 A -- tremendously familiar.

8 Q -- of TGIG?

9 A I don't believe I am.

10 Q Okay. Let's turn to Exhibit 5010.

11 And this is a printout from the Secretary of State
12 site for TGIG, LLC. This is the entity that we're talking
13 about.

14 A Okay.

15 Q This is the company that applied for the license;
16 correct?

17 A Say that again.

18 Q This is the entity that applied for the license in
19 2018; correct?

20 A I would assume so, but again, I wasn't involved in
21 that process.

22 Q You look at the list down below --

23 Have you seen the Secretary of State listing before,
24 Mr. Ritter?

25 A Yes.

1 Q And if we go down to the officers listed toward the
2 bottom of the page, this has include inactive officers. So it
3 looks like there's a couple people listed twice, but there's a
4 Nycole Cummings. Is she an officer or a manager of TGIG LLC?

5 A It looks like it.

6 Q Go to the next page, we've got Demetrious Kouretas
7 that you mentioned before.

8 A Uh-huh.

9 Q He's a manager?

10 A Yes.

11 Q And it has you listed there as a manager. So are you
12 surprised to see yourself listed there is a manager?

13 A Again, this is legal structuring stuff, and I'm just
14 not an expert on this. So, no, I guess it doesn't surprise me.

15 Q All right. So here at the secretary of state those
16 three managers. Are those all board members?

17 A I think right now that is the board.

18 Q Okay.

19 A Nycole, Demetri and I.

20 Q Let's turn to Exhibit 5013, and this one is a little
21 small, but this is what TGIG submitted in this case. Do you
22 know what this page depicts?

23 A I don't.

24 Q There are, I believe, 21, 22 individuals listed here,
25 each with a designation as owner, some other items, real

1 estate, nurse. Are all these individuals connected with TGIG?

2 A Yes, all these individuals are connected with TGIG.

3 Q And are they all owners of the company?

4 A If it says they are, they are.

5 Q Do they all actually own a piece of TGIG LLC?

6 A Well, some of them would indirectly own a piece of
7 TGIG LLC.

8 Q So some direct owners, some indirect owners; is that
9 right?

10 A Yes.

11 Q If we turn to Exhibit 5012, the one before that,
12 there's a list here -- or that's right, it's a letter from the
13 Department of Taxation to Amanda Connor dated September 13th,
14 2018. Do you know what this letter is?

15 A No.

16 Q Amanda Connor, do you know why she would have
17 received a letter for TGIG?

18 A Well, she was involved in helping us do the
19 application and submit it.

20 Q All right. If we look below this letter to Amanda
21 Connor on behalf of TGIG, it states,

22 Your notice of transfer of interest
23 pertaining to the ownership of the above
24 referenced MME has been reviewed and approved
25 effective immediately. Your MME and

1 ownership schedule of interest is recorded as
2 follows --

3 The first question before I get to this list, do you
4 know why there's a transfer of interest taking place on
5 September 15th or around that time, 2018?

6 A I don't remember.

7 Q That was during the window of applications being
8 submitted to the department; correct?

9 A I think so.

10 Q Was there a change in ownership of TGIG in order to
11 facilitate the application?

12 A I'm not intimately familiar with this. My
13 understanding is that some changes had been made, and --
14 This is an approval letter; right?

15 Q Correct.

16 A Yeah. So this would have happened long before the
17 approval. So I can't tell you when this was applied for.

18 Q All right. So the change took place. You'd submit
19 it to the department. The department would approve it, and
20 they'd send this letter to you. Right?

21 A That's my understanding. Again, I'm not intimately
22 familiar with these issues.

23 Q All right. There was an ownership change that took
24 place some time prior to September 13th, 2018?

25 A Yes. Because I think this is the approval of that

1 ownership change; right.

2 Q I think we've established that. So down below there
3 are a number of entities listed: Core TGLV LLC. It owns
4 63.12 percent of TGIG?

5 A That's what it says.

6 Q And then within Core TGLV, Palo Verde Assets LLC owns
7 certain percentages; is that right?

8 A That's what it looks like.

9 Q Below that, if we skip down past the names, there are
10 Thousand Lakes Investment LLC. That also owns a piece of --
11 I'm sorry, owns a piece of Core TGLV, which then owns a piece
12 of TGIG?

13 A Correct.

14 Q And if we continue on to the next page, there's a
15 number of additional entities: Alternative Equities LLC, CGTG
16 LV LLC, some individuals [indiscernible] Holdings LP. All of
17 these entities or individuals all had a part ownership of TGIG;
18 is that right?

19 A Well, it looks like most of these people indirectly
20 had a ownership interest.

21 Q Right. And all those people were listed on the
22 application that TGIG submitted to the state; is that right?

23 A I don't know.

24 Q Would you expect both direct and indirect owners to
25 be part of the application so those owners could be approved as

1 part of the application process?

2 A I would expect it because that's what the department
3 required. I don't believe they did that with public companies.

4 Q Just a couple last questions. They have been some
5 allegations in this case made with respect to Amanda Connor,
6 pretty remarkable allegations, frankly, based on what purports
7 to be rumors.

8 You're familiar with Ms. Connor. You know who she
9 is. Correct?

10 A Yes.

11 Q Do you consider her to be a competent attorney?

12 A She's -- she's been helpful for us regulatorily.

13 Q Helpful for TGIG regulatorily?

14 A Yes.

15 Q And you're aware that she assists clients with
16 regulatory processes such as the preparation of licensing
17 applications?

18 A Yes.

19 Q And even though Ms. Connor assisted TGIG in the
20 submission of its application, TGIG did not get a license;
21 right?

22 A That's correct.

23 Q Do you know if every one of Ms. Connor's clients got
24 a license?

25 A You mean other than us? Other than TGIG?

1 Q Is that a question, or is it a statement?

2 A I'm trying to clarify your question.

3 Q Are you aware of any other applicants that Ms. Connor
4 assisted that did not get licenses?

5 A No.

6 MR. KOCH: Okay. Pass the witness.

7 THE COURT: Next? Anyone else on the intervener team
8 wish to examine -- cross-examine?

9 (No audible response)

10 THE COURT: Redirect?

11 MR. HYMANSON: Your Honor, I --

12 THE COURT: Oh. Sorry, Mr. Hymanson. I told you
13 this monitor blocks you over there in the jury box.

14 MR. HYMANSON: I tried to move over a little further
15 I was unable to. Thank you.

16 CROSS-EXAMINATION

17 BY MR. HYMANSON:

18 Q Mr. Ritter, good morning.

19 A Good morning.

20 Q So, Mr. Ritter, your company TGIG in 2014 received a
21 license; correct?

22 A I believe we received four --

23 Q Four.

24 A -- medical licenses.

25 Q I think you said that earlier. Okay.

1 And between 2014 and 2018, you were on the Governor's
2 task force trying to develop rules and regulations for the next
3 licensing event; is that fair to say?

4 A Generally speaking, yes.

5 Q You commented in 2017 at the Governor's task force,

6 We are proud that Nevada is the most
7 highly regulated state. Nevada has an
8 incredible foundation that has been built.

9 If we work on this as a base and improve it,
10 we do not read to reinvent the wheel.

11 You believed that then; correct?

12 A Generally speaking, at a high level.

13 Q Generally speaking, do you believe that today?

14 A Yes. I wasn't specifically referring to the
15 application process, but, yeah.

16 Q As being involved in the business, would you agree
17 with me that from 2014 to 2018 there were a lot of changes in
18 the marijuana-cannabis industry in the state of Nevada?

19 A Yes.

20 Q For example, the application process that you did in
21 2014, how different was that in 2018 for TGIG?

22 A Well, it was a completely different process that
23 should have been run according to a completely different
24 regulatory -- actually statutory structure.

25 The big differences between medical and recreational

1 were that the applicants in the medical program had no
2 experience. So plans were very heavily weighted.

3 In the recreational program, it was direct and
4 demonstrable experience. Although looking back at the
5 applications and the scoring structure, it changed very little
6 from medical even though the legal-enabling structure was
7 completely different, and you are now dealing with experienced
8 applicants.

9 Q The task force, I think made some 73 recommendations;
10 is that correct?

11 A Yes.

12 Q Were they followed?

13 A I -- I would assume they were. I have not tracked
14 all of the recommendations through the entire process.

15 Q Do you recall how many applications were filed in
16 2014?

17 A I think it was something in the neighborhood of 200
18 applications or so, maybe 220, something like that.

19 Q In 2018, do you know how many applications were
20 filed?

21 A I think it was 450 or so.

22 Q 462 sound about right?

23 A Yes, close to --

24 Q And for how many --

25 A -- 450.

1 Q And for how many successful applicants?

2 A I don't know that number specifically.

3 Q Does 61 sound about right?

4 A I think that was the number of licenses given, not
5 the number of applicants.

6 Q No. No. 462 were the applicants, and some 61
7 licenses were given. Does that sound about right?

8 A Yes.

9 Q What responsibility does TGIG have given the review
10 of your license in 2018 for not qualifying for a license?

11 A What responsibility do we have?

12 Q Yeah. What could you have done differently so you
13 could've qualified?

14 A If we had known the criteria, which was -- wasn't
15 expressed. It was the application was full of descriptions,
16 not criteria. The criteria was only expressed in the
17 evaluator's guidelines, I think it's called, which was not --
18 we were not purview (sic) to.

19 Q Do you think that TGIG had made sufficient
20 adjustments over that four-year period to take into
21 consideration all the technology changes?

22 A Yes.

23 Q Okay. How about all the building design changes?

24 A I'm not sure what you're referring to about "building
25 design changes."

1 Q Well, the designs for recreational marijuana sales,
2 that's evolved over the years; correct, and they're different
3 now than they were before?

4 A Not particularly.

5 Q Okay. Do you know that? Do you --

6 A Yes, I know that.

7 Q Okay. All right. Security, has that changed quite a
8 bit?

9 A No.

10 Q No. Okay. Inventory control, has that changed?

11 A Yes.

12 Q All right. So would you agree that in 2018 you had a
13 multibillion dollar industry, whereas in 2014 you did not?

14 A Yes.

15 Q And that as a result of the final process, your
16 company came up short; correct?

17 A Yes.

18 Q So by bringing this litigation, by bringing this
19 preliminary hearing injunction, what is it that you want for
20 TGIG?

21 A Well, we're not at a stage in this litigation, I
22 don't think, that, in my opinion, we're ever going to get there
23 that we're going to be talking about what specific companies
24 want or what specific companies should have gotten.

25 What my concern was after the licensing period was

1 that the results that I saw were not consistent with the
2 industry that I knew, and when I questioned the Department of
3 Taxation, they told me that we couldn't know the criteria. The
4 criteria is absolutely key in a, obviously, in a scoring
5 situation.

6 So what we've set about to do is to figure out what
7 went wrong with the process, and the more we dug into it, the
8 more I see that there's all kinds of things that went wrong
9 with the process.

10 Q All right. So now that you have additional
11 information that you didn't have before, for example, before
12 you had a claim that there wasn't -- diversity wasn't
13 considered. You now don't consider that to be an issue, do
14 you?

15 A I don't make --

16 MR. GENTILE: Objection.

17 THE WITNESS: -- a claim that diversity wasn't
18 considered.

19 THE COURT: Overruled.

20 UNIDENTIFIED SPEAKER: I'm sorry. I couldn't hear
21 the answer, Your Honor.

22 THE WITNESS: I said I don't have a concern that
23 diversity wasn't -- I have a concern that diversity was
24 included in the application process that required it to be
25 direct and demonstrable qualifications related to the operation

1 of a marijuana establishment.

2 BY MR. HYMANSON:

3 Q So are you -- since you were unsuccessful, are you
4 challenging the entire scoring process?

5 A Yes, we are.

6 Q Okay. And so is it your desire that it's reviewed so
7 that you get a license or all of those that came below the line
8 are considered for a license?

9 A No. My position is that the process was severely
10 flawed and that the process should be redone.

11 Q You're not saying that that process was done --
12 you've referenced the Department of Taxation was lazy, sloppy.
13 You're not saying that they did anything wrong, are you?

14 A Sure, they did lots of things wrong.

15 Q Well, let me rephrase that. You're not saying they
16 did anything illegal, are you?

17 A Well, I would leave that to the law enforcement
18 officers. I don't --

19 Q And we can --

20 A -- know that they did anything --

21 Q We can do that, but based on your experience and your
22 expertise, I want your opinion. Do you think that the
23 Department of Taxation did anything illegal?

24 MR. GENTILE: Your Honor, I have to object to that.
25 That calls for a legal conclusion.

1 THE COURT: Sustained. Can you rephrase your
2 question, please.

3 MR. HYMANSON: Sure. I'd be happy to.

4 BY MR. HYMANSON:

5 Q Are you saying that -- I'll save another objection.

6 MR. GENTILE: I'll object now.

7 THE COURT: Are you going to start over?

8 UNIDENTIFIED SPEAKER: No, it's sustained.

9 THE COURT: Let's rephrase that question too.

10 BY MR. HYMANSON:

11 Q So, Mr. Ritter, if you changed the entire process and
12 other people ahead of you receive a license, then do you
13 challenge them getting a license when the process is changed?

14 A Absolutely not. If it's a fair process that's
15 responsive to IP 1 and it's not as flawed as this process was
16 in so many ways, that's fine. We get a license, or we don't
17 get a license.

18 For instance, public companies got a boatload of
19 licenses in this process. Not one shareholder in those public
20 companies, other than 5 percent or more, was background
21 checked, signed all the documents that the application
22 required. You take out those public companies, whether it's us
23 or somebody else, and there's going to be a lot more room for
24 other applicants. That was completely wrong. Okay.

25 Every single shareholder in those public companies

1 needed to be background checked. They needed to sign all the
2 documents that all of our owners and everyone else's of our
3 plaintiffs' owners -- I think with one exception because
4 they're public, I think that that was completely wrong. So the
5 statute says that every owner shall be background checked. The
6 application says -- it has a list of four or five documents or
7 processes that every single owner have to go through.

8 So for public companies that are not local companies,
9 public companies to come in and have the department just say,
10 oh, arbitrarily, arbitrarily say, oh, we're just going to --
11 we're just going to do that for those that have 5 percent or
12 more is completely wrong, and that takes a huge number -- I
13 think it's 20 licenses out of 61 -- that were awarded to public
14 companies in which the shareholders were not background checked
15 as required by law.

16 Q So all you want to do is redefine the process?

17 A I would like the process to be run according to the
18 law --

19 Q I didn't see --

20 A -- that exists.

21 Q -- those suggestions or recommendations in your 73
22 recommendations from the Governor's task force.

23 A Do you think that we had to recommend that the
24 process should be run according to law, that the regulations
25 that we -- that sheet that we had, the recommendation sheet

1 that we've been looking at over and over and over -- it says in
2 the preamble to those recommendations that it should be run
3 according to IP 1? IP 1 has one qualification: Directly and
4 demonstrable.

5 Q What effect do you think that your application had on
6 the fact that in 2014 you were a member, an owner of TGIG? And
7 then by 2018 you're no longer a member, were you?

8 A I've never been an owner of TGIG.

9 Q You've never been an owner?

10 A Never purported to be an owner of TGIG. I've been
11 either an advisory board member and a manager or apparently a
12 manager -- I didn't remember that -- and where now I'm a board
13 member.

14 Q As a result of your bankruptcy in 2016, did you need
15 to change your status within your company?

16 A From an owner?

17 Q I'm asking if you had to change your status as a
18 result of your personal bankruptcy --

19 MR. GENTILE: Objection to the form of the question.

20 BY MR. HYMANSON:

21 Q -- in 2016?

22 THE COURT: Overruled.

23 You can answer.

24 THE WITNESS: I did not have to change my status
25 regarding being an owner because of my bankruptcy.

1 BY MR. HYMANSON:

2 Q In your opinion did that, the fact that you had a
3 personal bankruptcy, did that impact TGIG's ability to get a
4 license?

5 A I don't know how it could have.

6 Q The fact that through 2016, '17, after the
7 regulations came out, after the process began, was there any
8 reason why you didn't have an issue or a complaint prior to you
9 finding out that you were not successful?

10 A Is there a reason why I didn't have a complaint?

11 Q Well, yeah. Why didn't you raise an issue? Why
12 didn't you ask for judicial review? Why didn't you say there
13 are -- there are things that should be looked at more
14 carefully?

15 A After the licenses were awarded?

16 Q Yes.

17 A We absolutely did. We tried to get the tax
18 commission to reconsider this. We filed for an appeal to the
19 decision. Nobody did anything, and eventually this was our
20 only choice left.

21 Q So how do you -- how do you balance this? You have a
22 charity that has done a lot of good things in the community
23 philanthropically, and here you sit as an owner who was
24 unsuccessful in the 2018 process --

25 MR. GENTILE: Objection to the form of the

1 question --

2 THE COURT: Can you rephrase your --

3 MR. GENTILE: -- he said owner.

4 THE COURT: Wait.

5 Can you rephrase your question, please.

6 MR. HYMANSON: Certainly.

7 THE COURT: Mr. Gentile, please don't make speaking
8 objections.

9 MR. GENTILE: There's no jury in here, Judge.

10 THE COURT: I know, but there's a witness?

11 MR. GENTILE: Okay.

12 THE COURT: It's a coaching issue.

13 And by the way, it's really Mr. Miller's witness.

14 It's okay.

15 Mr. Hymanson, keep going.

16 UNIDENTIFIED SPEAKER: No, it's not. No, it's not.

17 MR. HYMANSON: All right. Yeah.

18 BY MR. HYMANSON:

19 Q So my question was, you understand that by having
20 this injunction there are 61 licenses that are on hold, and
21 hundreds of thousands if not millions of dollars are not going
22 into the state coffers to assist education and all those other
23 things that you support individually? Does that trouble you?

24 A Well, I don't actually think that's true. I think
25 that there's a certain amount of business out there. There's

1 plenty of dispensaries around The Strip that serve The Strip.
2 There's plenty of dispensaries in suburbia that serve those
3 that live away from The Strip. I think it's going to be the
4 same business. It's just going to be cut up into smaller
5 pieces.

6 Q For example, the companies that you currently own,
7 you're so --

8 MR. GENTILE: Objection to the form of the question.

9 THE COURT: Can you rephrase your question.

10 BY MR. HYMANSON:

11 Q For example, the company TGIG, which you're a board
12 member of, they're still making money; are they not?

13 A Yes.

14 Q They're still making a profit?

15 A Yes.

16 Q The fact that you don't have additional licenses, you
17 don't have an irreparable harm; you just don't have additional
18 income; isn't that correct?

19 A Well, irreparable harm is a legal term. I'm not
20 going to respond to --

21 Q Well, I'll rephrase it.

22 A -- the definition of --

23 Q You don't have --

24 A -- a legal term --

25 Q You are not being damaged. You're not receiving --

1 you're not being hurt. You're not getting any additional
2 income because you didn't qualify. Correct?

3 A Well, we're certainly hurt without being awarded
4 licenses because the licenses themselves have values in the
5 neighborhood of \$10 million each.

6 Q And so the question that I went to before, what would
7 TGIG have done differently in their application? Do you take
8 any responsibility for coming up short in the 2018 application?

9 A Sure. I think there's -- there's -- I'm sure we bear
10 some part of the responsibility.

11 MR. HYMANSON: Thank you. No further questions, sir.

12 THE COURT: Any other intervener want to ask any
13 questions?

14 (No audible response)

15 THE COURT: Redirect?

16 Mr. Gentile, you were correct. Mr. Miller took the
17 first witness.

18 Mr. Gentile, anybody else on the --

19 MR. GENTILE: Your Honor, I'm not being paid by the
20 question. So I'm not going to ask any.

21 THE COURT: Thank you very much.

22 Mr. Ritter, have a very nice trip.

23 Your next witness.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: Yeah.

1 Who's your next witness, guys?

2 MR. SHEVORSKI: He's outside.

3 MR. KEMP: We have --

4 THE COURT: So do you want a five-minute break since
5 we're going to --

6 UNIDENTIFIED SPEAKER: No, Your Honor --

7 UNIDENTIFIED SPEAKER: Well, I would --

8 THE COURT: I'm breaking at noon.

9 UNIDENTIFIED SPEAKER: Five minutes, just five
10 minutes.

11 MR. SHEVORSKI: He's outside, Your Honor.

12 THE COURT: Okay.

13 MR. SHEVORSKI: He's outside, Your Honor.

14 THE COURT: Okay.

15 MR. KEMP: It would be Mr. Pascon, Your Honor --
16 Plaskon, Your Honor.

17 THE COURT: Okay.

18 UNIDENTIFIED SPEAKER: If I may approach your --

19 THE COURT: Mr. Rulis, this is your witness?

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1 MR. RULIS: No. I need to approach your clerk, Your
2 Honor. I've got some exhibits to add to plaintiffs'.

3 THE COURT: Good luck.

4 (Proceedings recessed at 11:22 a.m., until 11:27 a.m.)

5 -oOo-

6 ATTEST: I do hereby certify that I have truly and correctly
7 transcribed the audio/video proceedings in the above-entitled
8 case.

9 
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11 Dana L. Williams
12 Transcriber
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<p>BY MR. HYMANSON: [8] 65/17 71/2 72/4 72/10 74/20 75/1 76/18 77/10</p> <p>BY MR. KOCH: [7] 16/14 22/9 22/17 22/25 40/13 41/12 46/5</p> <p>BY MR. SHEVORSKI: [2] 6/23 12/13</p> <p>MR. GENTILE: [16] 39/11 39/19 40/1 40/4 41/9 45/23 70/16 71/24 72/6 74/19 75/25 76/3 76/9 76/11 77/8 78/19</p> <p>MR. HYMANSON: [6] 65/11 65/14 72/3 76/6 76/17 78/11</p> <p>MR. KEMP: [2] 79/3 79/15</p> <p>MR. KOCH: [15] 4/14 4/16 5/7 21/23 22/8 39/6 39/21 39/23 40/3 40/5 40/11 41/5 45/24 46/3 65/6</p> <p>MR. RULIS: [5] 4/25 5/21 5/24 6/1 80/1</p> <p>MR. SHEVORSKI: [10] 5/17 6/2 6/10 6/20 12/7 16/9 22/15 79/2 79/11 79/13</p> <p>THE CLERK: [6] 6/9 6/12 21/24 22/2 22/7 40/7</p> <p>THE COURT: [53] 4/3 4/15 4/24 5/4 5/13 5/18 5/23 5/25 6/4 6/11 6/15 16/12 21/22 22/14 22/21 22/23 39/4 39/7 39/10 39/12 39/18 39/22 39/24 40/12 41/7 41/10 46/2 46/4 65/7 65/10 65/12 70/19 72/1 72/7 72/9 74/22 76/2 76/4 76/7 76/10 76/12 77/9 78/12 78/15 78/21 78/25 79/4 79/8 79/12 79/14 79/17 79/19 80/3</p> <p>THE WITNESS: [13] 6/14 12/9 16/11 22/1 22/4 22/20 22/22 39/17 40/10 70/17 70/22 74/24 78/24</p> <p>UNIDENTIFIED SPEAKER: [7] 70/20 72/8 76/16 79/6 79/7 79/9 79/18</p> <p>\$</p> <p>\$10 [1] 78/5</p> <p>\$10 million [1] 78/5</p> <p>'</p> <p>'15 [2] 47/10 58/5</p> <p>'15 under [1] 58/5</p> <p>'17 [5] 10/11 10/11 10/13 10/23 75/6</p>	<p>-</p> <p>-oOo [1] 80/5</p> <p>1</p> <p>1 also [1] 36/20</p> <p>1 and [2] 46/19 72/15</p> <p>1 has [1] 57/11</p> <p>10 [5] 8/22 11/25 12/9 18/10 18/10</p> <p>11:22 a.m [1] 80/4</p> <p>11:27 a.m [1] 80/4</p> <p>12 [1] 29/16</p> <p>12-month [1] 29/14</p> <p>12:00 and [1] 39/14</p> <p>12:00 o'clock [1] 39/13</p> <p>12:30 so [1] 39/15</p> <p>12:30 to [1] 39/16</p> <p>12th [1] 41/13</p> <p>13th [2] 61/13 62/24</p> <p>15 [4] 8/24 12/1 12/9 13/7</p> <p>15th [1] 62/5</p> <p>18 [4] 29/1 29/10 29/18 57/12</p> <p>18-month [3] 29/12 57/11 57/12</p> <p>1:45 if [1] 39/16</p> <p>1st [1] 10/11</p> <p>2</p> <p>2 was [1] 20/23</p> <p>20 [5] 9/1 12/1 13/7 15/24 73/13</p> <p>200 [1] 67/17</p> <p>2009 [6] 21/20 22/10 45/19 45/23 45/24 45/25</p> <p>2014 [10] 47/7 47/10 58/4 65/20 66/1 66/17 66/21 67/16 69/13 74/6</p> <p>2015 [1] 47/7</p> <p>2016 [5] 20/24 23/10 74/14 74/21 75/6</p> <p>2017 [7] 7/17 7/24 10/5 23/7 26/20 41/13 66/5</p> <p>2017-2 was [1] 23/11</p> <p>2018 [17] 13/14 14/24 42/18 56/13 59/19 61/14 62/5 62/24 66/1 66/17 66/21 67/19 68/10 69/12 74/7 75/24 78/8</p> <p>2019 [2] 1/12 4/1</p> <p>21 [1] 60/24</p> <p>22 [1] 60/24</p> <p>220 [1] 67/18</p> <p>2497 [2] 23/5 23/5</p> <p>24th [1] 5/2</p> <p>25 [2] 11/7 11/14</p> 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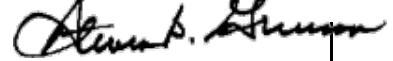
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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
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SERENITY WELLNESS CENTER LLC, .
et al. .

Plaintiffs .

CASE NO. A-19-786962-B

vs. .

STATE OF NEVADA DEPARTMENT OF .
TAXATION .

DEPT. NO. XI

Defendant .

**Transcript of
Proceedings**

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BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**EVIDENTIARY HEARING - DAY 2
VOLUME II**

TUESDAY, MAY 28, 2019

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

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

APPEARANCES:

FOR THE PLAINTIFFS:

DOMINIC P. GENTILE, ESQ.
MICHAEL CRISTALLI, ESQ.
ROSS MILLER, ESQ,
WILLIAM KEMP, ESQ.
NATHANIEL RULIS, ESQ.
ADAM BULT, ESQ.
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BRIGID HIGGINS, ESQ.
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JOSEPH GUTIERREZ, ESQ.
PHILIP HYMANSON, ESQ.
DAVID KOCH, ESQ.
JARED KAHN, ESQ.
ALINA SHELL, ESQ.

1 LAS VEGAS, NEVADA, TUESDAY, MAY 28, 2019, 11:27 A.M.

2 (Court was called to order)

3 THE COURT: Are we ready?

4 MR. GENTILE: Yes, Your Honor.

5 THE COURT: Okay. Mr. Kemp, how long is your
6 direct? How long is your direct? Best guess.

7 MR. KEMP: Hour and two minutes -- or, excuse me,
8 102 minutes.

9 MR. SHEVORSKI: Your Honor, he's here now.

10 THE COURT: Okay. Sir, come on up, please. And
11 remain standing while we swear you in, please.

12 KYRIL PLASKON, PLAINTIFFS' WITNESS, SWORN

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

15 THE WITNESS: Kyril Plaskon, K-Y-R-I-L. Last name
16 is Plaskon, P-L-A-S-K-O-N.

17 THE COURT: Sir, there's a pitcher of water there,
18 exhibit binders counsel may refer you to, and there should be
19 M&M dispensers behind you if you should need something.

20 Mr. Kemp, you may proceed.

21 DIRECT EXAMINATION

22 BY MR. KEMP:

23 Q Mr. Plaskon, do you also by Ky, K-Y?

24 A Yes, I do.

25 Q Now, as I understand it, you used to be a

1 schoolteacher for the Washoe County School District.

2 A Yes.

3 Q And when did you leave the School District?

4 A 2017, I believe. February.

5 Q What subjects did you teach?

6 A I taught radio, computers, and web design. Career
7 in technical education.

8 Q What degree did you get in college?

9 A Repeat the question, please.

10 Q What degree did you get in college?

11 A A Masters in media studies from UNLV, print
12 journalism from University of Alaska Fairbanks.

13 Q Prior to the time you left the School District in
14 2017 did you have any involvement with the marijuana industry?

15 A No.

16 Q And when did you first start working for DOT?

17 A February of 2017. Yes. February of 2018. I'm
18 sorry. I'd like to correct the previous statement. I think
19 February of 2018 is when I left the School District.

20 Q Okay. You left the School District in February
21 2018?

22 A And then immediately started with the Department of
23 Taxation.

24 Q And by the way, did you take any sort of accounting
25 classes in college?

1 A No.

2 Q So you started with the DOT just months before the
3 application process began.

4 A Application processes were going on throughout that
5 year. Which application period are you referring to?

6 Q Well, more specifically, on July 6th, 2018, the DOT
7 noticed the application process that we're here today to talk
8 about; correct?

9 A Yes. The application period did not begin till
10 quite a while after that.

11 Q So you were there March and April and May for the
12 application process?

13 A Yes.

14 Q That's it? That's the only time you were with DOT?

15 A That's correct.

16 Q And you weren't working part time while you were
17 with the School District or anything?

18 A No.

19 Q All right. Now, what was your involvement with the
20 2018 application process?

21 A I sent out the notice. I would review documents
22 prior to them being sent out, I would submit them to my
23 supervisors to ensure that they were correct. Then worked on
24 some of the training, planning.

25 Q Okay. Before we get to the training, the notice