

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 10:38 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 31

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29	Notice of Entry of Order and Order Regarding Nevada Wellness Center, LLC's Motion to Alter or Amend Findings of Fact and Conclusions of Law Granting Preliminary Injunction	11/6/19	AA 007058 - AA 007067
20	Order Granting in Part Motion to Coordinate Cases for Preliminary Injunction Hearing	7/11/19	AA 004938 - AA 004940
22	Order Granting Preliminary Injunction (Findings of Fact and Conclusions of Law)	8/23/19	AA 005277 - AA 005300
46, 47	Preliminary Injunction Hearing, Defendant's Exhibit 2009 Governor's Task Force Report	n/a	AA 011408 - AA 011568
47	Preliminary Injunction Hearing, Defendant's Exhibit 2018 List of Applicants for Marijuana Establishment Licenses 2018	n/a	AA 011569 - AA 011575

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

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

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6	State of Nevada, Department of Taxation's Answer to Nevada Wellness Center, LLC's Complaint	5/2/19	AA 001342 - AA 001354
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24	State of Nevada, Department of Taxation's Opposition to Motion to Amend the Findings of Fact and Conclusions of Law Granting Motion for Preliminary Injunction	9/23/19	AA 005984 - AA 005990
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28	State of Nevada, Department of Taxation's Opposition to Nevada Organic Remedies, LLC's Application for Writ of Mandamus to Compel State of Nevada , Department of Taxation to Move Nevada Organic Remedies, LLC Into "Tier 2" of Successful Conditional License Applicants	10/24/19	AA 006889 - AA 006954
10	State of Nevada, Department of Taxation's Opposition to Serenity Wellness Center, LLC et al.'s Motion for Preliminary Injunction	5/9/19	AA 002273 - AA 002534
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20	State of Nevada, Department of Taxation's Supplement to Pocket Brief Regarding Regulatory Power Over Statutes Passed by Voter Initiative	6/24/19	AA 004879 - AA 004888
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29	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 1	5/24/19	AA 007170 - AA 007404
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31	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 3 Volume 1	5/29/19	AA 007602 - AA 007699
31, 32	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 3 Volume 2	5/29/19	AA 007700 - AA 007843
32, 33	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 4	5/30/19	AA 007844 - AA 008086
33	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 5 Volume 1	5/31/19	AA 008087 - AA 008149
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34, 35	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 6	6/10/19	AA 008370 - AA 008594
35, 36	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 7	6/11/19	AA 008595 - AA 008847

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37	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 9 Volume 1	6/19/19	AA 009094 - AA 009216
38	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 10 Volume 1	6/20/19	AA 009350 - AA 009465
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39	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 11	7/1/19	AA 009624 - AA 009727
39, 40	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 12	7/10/19	AA 009728 - AA 009902
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45	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 19	8/15/19	AA 011087 - AA 011165
45, 46	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 20	8/16/19	AA 011166 - AA 011332

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APPELLANT 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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/s/ David R. Koch

Koch & Scow

1 you're referring to is the July 6th notice?

2 A Correct.

3 Q You sent it out?

4 A Yeah.

5 Q Could I have that on the screen, please.

6 THE COURT: What's the exhibit number?

7 MR. KEMP: It's Exhibit 5, Your Honor.

8 THE COURT: Thank you.

9 BY MR. KEMP:

10 Q Do you recognize this, Mr. Plaskon? I think you
11 have a screen to your left. Is that working or not?

12 A Oh. Yeah.

13 Q All right.

14 A Yes, I think I posted this on the Website, and then
15 it may have been attached to the notice, as well.

16 Q Okay. Can we skip over to page 17, please.

17 You see the application evaluation and award
18 process?

19 A Correct.

20 Q Who actually drafted this?

21 A I don't know.

22 Q So you had no involvement in the drafting?

23 A No, not the original drafting. The original
24 application was from 2014-2015, I believe. And then I worked
25 with staff to ensure that it was up to date. If you see on

1 that 60-point section it says R092-17.

2 Q Correct.

3 A Things like that would have been added in by me and
4 staff. Updates to 454. 453A would have been there
5 previously.

6 Q So is it your understanding in the previous
7 application process 60 points were given for the
8 organizational structure?

9 A I would not know.

10 Q Don't know one way or the other?

11 A No.

12 Q Okay. Any nongovernmental persons involved with
13 regards to the 2018 application, drafting it?

14 A What do you mean by nongovernmental?

15 Q It was drafted by the DOT; correct?

16 A I do not know who drafted it.

17 Q I thought you just said you helped draft part of it.

18 A We worked on part of it. But, like I said, it was a
19 2014-2015 application that we adjusted. So I don't know who
20 came up with the original.

21 Q And when you say we adjusted, that's DOT.

22 A Uh-huh. Correct.

23 Q Did anyone help DOT do that?

24 A I do not know.

25 Q And when you did that, you at DOT, did you look at

1 the Governor's guidelines, the advisory guidelines?

2 A I did not.

3 Q Do you know if anybody did?

4 A I do not know.

5 Q So basically you're telling me you took the 2014
6 application for medical marijuana and you just tooled it over
7 in some fashion for the 2018?

8 A Correct.

9 Q Who was the primary person at DOT responsible for
10 that?

11 A My direct supervisor is Steve Gilbert. I do not
12 know who may have been reviewing it in addition to Steve
13 Gilbert. We reviewed it, gave it to Steve Gilbert, and then
14 it would go to whomever he sent it to.

15 Q Did there come a time that it was decide that
16 diversity would get 20 points?

17 A I'm not aware of that discussion or how that ended
18 up in there.

19 Q Okay. Somehow or another diversity got 20 points;
20 yes?

21 A It's in the application, yes.

22 Q And they got 20 points?

23 A I believe so.

24 Q And that was different than the 2014 process?

25 A Yes.

1 Q And so, assuming for the sake of -- well, strike
2 that.

3 The 20 points in the diversity came from the first
4 60 points we saw; right?

5 A I do not know who divided it up or how it was
6 divided.

7 MR. KEMP: Can you pop that back up, Shane? Let's
8 try to get this straight.

9 BY MR. KEMP:

10 Q Do you see that 60 points? Is that where the 20
11 points given for diversity came from?

12 A I do not know. I was not a part of that.

13 Q Okay. Who was?

14 A I do not know.

15 Q So someone that you don't know decided that
16 diversity would be given 20 points. Is that your answer?

17 A That is correct. I do not know.

18 Q When was that decision made?

19 A I was not a part of the decision.

20 Q Okay. Now, were you given any information as to how
21 the 2014 grading process was done?

22 A Yes.

23 Q And as I understand it, that was led by Chad Weston;
24 correct?

25 A I do not know.

1 Q Okay. That was done by the Department of Health
2 Services; right?

3 A Department of Public and Behavioral Health.

4 Q It was not done by the DOT. It's done by a
5 completely different agency at the State of Nevada; right?

6 A That's right.

7 Q Okay. And as I understand it, approximately 18 to
8 20 full-time governmental employees took part in the 2014
9 process. Is that also your understanding?

10 A I do not know.

11 Q Don't know one way or the other?

12 A No.

13 Q Okay. And if I told you that 18 to 20 full-time
14 State employees were involved in the 2014 process for
15 approximately four months, would you have any basis to
16 disagree with that?

17 A I have no knowledge of that period or the number of
18 staff that were involved at that time.

19 Q Assuming there were 18 to 20 full-time employees for
20 four months working on the 2014 process, would you agree with
21 me that the evaluation was more rigorous than the 2018
22 process?

23 A I would not agree on information that I do not have,
24 that I do not hold myself.

25 Q Assuming for the sake of argument that there were 18

1 to 20 full-time State employees involved in the 2014 process
2 for four months, would you agree with me that that was more
3 rigorous than the 2018 process as you understand it?

4 A No, I would not agree.

5 Q Okay. Would I be correct that Manpower employees
6 were the primary evaluators in the 2018 process?

7 A You are correct.

8 Q And would I also be correct that that was not the
9 case for the 2014 process?

10 A My understanding is that they were contractors in
11 2014, as well.

12 Q Contractors assisting the 18 to 20 permanent State
13 employees. Is that your understanding?

14 A No.

15 Q How many Manpower contractors were there in the 2018
16 process?

17 A You would have to ask Steve Gilbert. I do not know.

18 Q Okay. As I understood, you were the primary contact
19 for these Manpower people. Is that right?

20 A I was one of four employees who were in direct
21 contact with the Manpower employees at any given time.

22 Q And you were in contact with them for a period of
23 three or four months?

24 A Yes.

25 Q And so you're telling me today you can't remember of

1 them there were?

2 A No, that's not what you asked. You asked --

3 Q How many of them were there?

4 A There were six to eight. There were eight total.

5 Q Six to eight.

6 A No. There were eight.

7 Q Eight at the start?

8 A Eight at the end, as well.

9 Q Okay. Well, we'll see about that.

10 And do you think that eight Manpower employees are a
11 sufficient number of people to rate 462 applications such as
12 this?

13 A We were successful.

14 Q Well, obviously you weren't successful, because here
15 we are, okay.

16 Respond to my question directly.

17 THE COURT: Mr. Kemp --

18 BY MR. KEMP:

19 Q Do you think eight --

20 THE COURT: -- you need to rephrase your question,
21 please.

22 BY MR. KEMP:

23 Q Do you think eight Manpower people were enough to
24 rate applications such as this, 462 applications?

25 A Yes.

1 Q And some of these applications were a thousand pages
2 long, were they not?

3 A I believe so.

4 Q So 462 times a 1,000, that's 462,000 pages of
5 material. You think eight Manpower people were enough to do
6 that?

7 A I would challenge your math.

8 Q What is it about 462 times 1,000 that doesn't make
9 it 462,000?

10 A Not all applications are a thousand pages.

11 Q Okay. Did you have any concerns at any time that
12 the Manpower graders were understaffed?

13 A We were constantly monitoring their needs. We are
14 concerned at any given time whether we are providing the
15 resources that are necessary to meet the needs.

16 Q So that is a yes answer to my question there were
17 times you were concerned that you were understaffed?

18 A No, we were not concerned that we were understaffed.
19 We were monitoring their needs.

20 Q Isn't it true that some of the Manpower employees
21 quit in the middle of the process?

22 A One did, yes.

23 Q And that would be Pam Evans; right?

24 A Correct.

25 Q What was her specialty?

1 A She was an administrative assistant.

2 Q Do you remember when she quit?

3 A No, I do not recall.

4 MR. KEMP: Okay. Shane, could I have the slide,
5 please.

6 BY MR. KEMP:

7 Q Does this refresh your recollection as to when she
8 quit?

9 THE COURT: What's the exhibit number?

10 MR. KEMP: It is 110, Your Honor.

11 THE COURT: Thank you.

12 MR. KEMP: 108.

13 THE CLERK: Your Honor, it's proposed, I believe.

14 THE COURT: Any objection to 108?

15 MR. KEMP: Your Honor, these are the text messages
16 back and forth from this witness's computer.

17 THE COURT: Well, but if they're not admitted, I
18 don't want to see them yet.

19 MR. KOCH: We don't know what they are. We ask for
20 foundation for the exhibit or the text messages themselves to
21 be established.

22 THE COURT: So I can't look at them till they're
23 admitted.

24 MR. KEMP: Okay.

25 //

1 BY MR. KEMP:

2 Q Mr. Plaskon, did you have to turn your phone over
3 for a download process?

4 A Yes, I did.

5 Q And when you turned that over it was your
6 understanding it was going to be downloaded?

7 A Yes.

8 Q And do you know as you sit here today whether or not
9 the download process has resulted in downloads from your
10 phone?

11 A It did result in that, yes.

12 Q Okay. Have you had a chance to look at those?

13 A Yes, I have.

14 Q Okay. And does Exhibit 108 contain the downloads
15 from your phone?

16 A I can't see it now.

17 MR. KEMP: Okay. Did you have a 108 up there?

18 THE WITNESS: I do have something in front of me
19 now.

20 BY MR. KEMP:

21 Q It's behind you, the bigger package of 108.

22 MR. KOCH: Your Honor, I consulted with Mr.
23 Shevorski. He indicates that the State is fine with this
24 Exhibit. It shows State text messages. Based upon that, I
25 don't have any objection to it.

1 THE COURT: 108 will be admitted.

2 Now you can put it up on the screen.

3 (Plaintiffs' Exhibit 108 admitted)

4 MR. KEMP: Okay. Let's have the screen again.

5 BY MR. KEMP:

6 Q Does that refresh your recollection as to when she
7 quit?

8 A Yes, sir.

9 Q When was that?

10 A I've got November 1st, 2018, is the date that the
11 text message was sent, so it would have been at some point
12 prior to that.

13 Q Sort of in the middle of the process?

14 MR. GENTILE: Do we have the Bates stamp number of
15 this page, please.

16 MR. KEMP: That is KP00000006.

17 MR. GENTILE: Thank you.

18 BY MR. KEMP:

19 Q She left in the middle of the process?

20 A I would not say the middle.

21 Q When would you say?

22 A Towards the end.

23 Q Do you think you were almost done on November 1st?

24 A We were very close.

25 Q If you were almost done on November 1st, why was it

1 the results weren't released until December 6th?

2 A There was a lot of information that needed to be
3 gone through.

4 Q So you weren't almost done on November 1st?

5 A We were very close.

6 Q Okay. After Evans quit isn't it true that you
7 didn't do anything to replace her?

8 A That is incorrect.

9 Q You did replace her?

10 A We did replace her.

11 Q Who replaced her?

12 A I don't recall.

13 Q So do you think you stayed eight Manpower graders
14 the whole time?

15 A We did have eight Manpower employees.

16 Q And the Manpower people were the ones that did the
17 grading; right?

18 A That's correct.

19 Q And you didn't do the grading, Mr. Gilbert didn't do
20 the grading, no one at DOT did the grading?

21 A That's right.

22 Q It was these Manpower people?

23 A That's correct.

24 Q Okay. All right. Now, did the DOT indicate what
25 qualifications it wanted with regards to these Manpower

1 graders before they were hired?

2 A Yes.

3 Q And were any of the Manpower graders CPAs?

4 A I do not recall.

5 Q As we sit here today can you tell me anyone that you
6 had from Manpower that was a CPA?

7 A As I said, I do not recall their qualifications.

8 Q Okay.

9 A We have posted them on the Website, if you'd like to
10 them.

11 Q And you understood that these people would be
12 grading relatively complex financial documents; correct?

13 A Yes, sir.

14 Q So can I assume from that the you knew accounting
15 experience would be helpful?

16 A Not being an accountant or someone who has studied
17 it at all, I can't say yes or not to that.

18 Q You can't say yes or no in this court today?

19 A I can say yes or no in this court today.

20 Q It was helpful?

21 A To that specific question I cannot say yes or no.

22 MR. KEMP: Can I have the Item 564 from the admitted
23 exhibits, Shane, please.

24 THE COURT: 564?

25 MR. KEMP: Item 564. It's the same exhibit we had

1 before with the text messages.

2 THE COURT: Okay. Thank you. So we're still on
3 Exhibit 108?

4 MR. KEMP: Correct, Your Honor.

5 THE COURT: Thank you.

6 BY MR. KEMP:

7 Q And now that's a text sent to whom?

8 A It's a friend of mine. We were looking at the time
9 for folks to work in this area.

10 Q But you sent this text?

11 A Yes, I did.

12 Q And what did you say there on the right?

13 A I said, we still need people, IT experience,
14 accounting experience.

15 Q And this was on August 14th, 2018?

16 A Yes.

17 Q So before the process started you thought you needed
18 accounting experience?

19 A Apparently, yes.

20 Q But now as we sit here in court you don't think we
21 need accounting experience?

22 A Well, I don't know, you know, thing about
23 accounting. But that does refresh my memory, and apparently
24 we were looking for folks with accounting experience.

25 Q But you didn't find any, did you?

1 A The people who were hired to work for us through
2 Manpower I believe had accounting experience.

3 Q Who had accounting experience?

4 A One -- at least some of the three that were on the
5 identified team.

6 Q And just for clarification for the Court, you had
7 two teams, the identified team and the non-identified team;
8 right?

9 A That's correct.

10 Q And the identified team granted the identified
11 factors, and the non-identified team graded the non-identified
12 factors?

13 A Right.

14 Q Okay. Who was on the identified team?

15 A The identified team. I don't recall all their last
16 names or all their first names.

17 Q You don't recall anyone's last name or first name?

18 A I don't recall all of them. Roxanne Spring I
19 believe was on the identified team.

20 Q Okay.

21 A Margene Stenger was on --

22 Q Excuse me. Roxanne Spring was on the identified
23 team, or the non-identified team?

24 A On the identified.

25 Q Okay. Great.

1 A Margene Stenger on the identified team.

2 Q Okay.

3 THE COURT: So you have two that, Roxanne and
4 Margene?

5 THE WITNESS: Yes. And there was a third --

6 BY MR. KEMP:

7 Q I've got some pictures here. Maybe it'll help you
8 out.

9 A Yes.

10 Q But before we get to that let me ask a couple
11 preliminary questions.

12 Did you require, you being the DOT before you hired
13 any of this Manpower, that they had any experience in the
14 marijuana industry?

15 A No.

16 Q And to the best of your knowledge did any of these
17 six or eight Manpower graders have any knowledge of the
18 marijuana industry?

19 A No.

20 Q So you had no knowledge in the marijuana industry
21 until you joined the DOT, and the graders had no knowledge in
22 the marijuana industry; is that right?

23 A That's correct.

24 Q And DOT understood that it was going to be grading
25 relatively sophisticated seed-to-sale procedure plans; right?

1 A Correct.

2 Q Okay. Did you take any of these -- the six Manpower
3 graders, did you take -- and by the way, there were six
4 Manpower graders; right?

5 A There were -- the ones who graded the applications,
6 there were six of them, and there were two administrative
7 assistants.

8 Q And one was the HR person, and I think that one was
9 Mr. Hellian. Or is he one of the graders?

10 A He was one of the graders.

11 Q Okay. So there was an HR person and some other
12 administrative person.

13 A There were two administrative assistants and six
14 graders.

15 Q Okay. And what was the function of the
16 administrative system?

17 A They would assist the graders with whatever they
18 needed, getting the applications and taking them to the
19 evaluators, getting them paper, pens, things of that sort,
20 recording their scores, as well.

21 Q So most of the heavy lifting was done by the six
22 graders; correct?

23 A That's correct.

24 Q All right. And did you take them on any tours of
25 any existing marijuana facility before the grading process?

1 A No, we did not.

2 Q Take them to any dispensary, cultivation house,
3 anything?

4 A No, we did not.

5 Q Show them videos of an existing dispensary,
6 cultivation house, anything like that?

7 A We did show them some pictures of facilities.

8 Q And so as far as you know, the only experience these
9 six persons who were grading these applications had with
10 marijuana facilities was pictures that the DOT showed them.
11 Is that right?

12 A And we did educate them, as well.

13 Q Prior to them being hired by the DOT, to the best of
14 your knowledge the only experience they -- or they had no
15 experience in the marijuana industry. That's what you said;
16 right?

17 A That's correct.

18 Q Okay. You mentioned Margene Stenger.

19 MR. KEMP: Bring up her picture on the board,
20 please, Shane.

21 BY MR. KEMP:

22 Q Is that Margene Stenger?

23 A Yes, it is.

24 Q Okay. And apparently she's some sort of independent
25 consultant for Arbonne. Did you know that?

1 A No.

2 Q Do you know what Arbonne is?

3 A Avon? Is that --

4 Q Well, it's kind of an Avon. It's a high-priced
5 Avon.

6 A Arbonne. Okay.

7 Q Did she try to sell you any during the time period?

8 A No.

9 Q Okay. Did you know prior to today that she was an
10 Avon/Arbonne saleswoman?

11 A No.

12 Q Do you think an Avon/Arbonne saleswoman should
13 really be grading these type of marijuana applications?

14 A I don't think you're covering the breadth of her
15 experience at all.

16 Q You've already said she's not a CPA; yes?

17 A I'm not aware of her qualifications completely. We
18 could look at the Website and look at her qualifications
19 there.

20 Q Well, you're here. She's not a CPA; right?

21 A I don't know. I'd have to look at her
22 qualifications again, and her resume.

23 Q All right.

24 A I don't have them in front of me.

25 Q Well, let's take a look at the other one you

1 mentioned. Roxanne Springs.

2 Can I have that, please.

3 Q Is that Roxanne Spring, sir?

4 A Yes.

5 Q And she worked for some company that makes glue for
6 airplanes. Do you see that? Click Bond. You knew that
7 before you hired her?

8 A I believe that was part of her resume when she came
9 in to interview.

10 Q How did glue for airplanes -- was that a relevant
11 factor in this marijuana process?

12 A We'd have to look at her role at Click Bond. Was
13 she an accountant there, for instance? That would be a good
14 question to ask.

15 Q Okay. Was she an accountant there?

16 A I don't know. I'd have to look at her resume again,
17 and I don't have it here in front of me.

18 Q The answer's no. She was an information technology
19 specialist; isn't that --

20 THE COURT: Wait. Mr. Kemp, you can't testify.

21 BY MR. KEMP:

22 Q Isn't it true that she was an informational
23 technology specialist, sir?

24 A She has worked in information technology, I do know
25 that, and that's important for the seed-to-sale tracking

1 program.

2 Q But that's what she did at the prior company. She
3 did information technology. She didn't do accounting;
4 correct?

5 A I don't know. I'd have to look at her resume, and I
6 don't have in front of me.

7 Q Okay. And do you know whether or not Stenger or
8 Spring have any particular knowledge of building design in
9 general?

10 A No, I do not.

11 Q Did it concern you that you, with no marijuana
12 experience, were overseeing Manpower employees that had no
13 marijuana experience to rate relatively complex marijuana
14 applications?

15 A No.

16 Q Did that concern you?

17 A No.

18 Q Didn't have any problem with that?

19 A No.

20 Q Okay. So you knew that one of the things you'd be
21 grading was what's called the -- quote, "The Integrated Plan
22 of the Proposed Marijuana Establishment for the Care, Quality,
23 and Safekeeping of Marijuana from Seed to Sale," unquote?

24 MR. SHEVORSKI: Objection to form, Your Honor.

25 THE COURT: Overruled.

1 BY MR. KEMP:

2 Q That was one of the things that was being graded?

3 THE COURT: You can answer.

4 THE WITNESS: Can you repeat the question. I'm
5 sorry. I was a little distracted there.

6 BY MR. KEMP:

7 Q I'm just reading it straight from the form. You
8 were grading, quote, "The Integrated Plan of the Proposed
9 Marijuana Establishment for the Care, Quality, and Safekeeping
10 of Marijuana from Seed to Sale." That's one of the things
11 that was being graded?

12 A That does sound correct.

13 Q Okay. And what's the difference between an
14 integrated plan with respect to that subject and a plan that's
15 not integrated?

16 A I do not know the answer to that, sir.

17 Q And prior to this process, the 2018 process, had you
18 ever even seen any sort of plan, integrated or nonintegrated
19 for seed to sale?

20 A No, sir. That's not my role in the Department of
21 Taxation now, either.

22 Q Okay. And did the DOT provide any sample plans to
23 the six Manpower graders for the integrated seed-to-sale
24 safekeeping?

25 A Yes, sir.

1 Q Where'd you get those from?

2 A 2014 to 2016 application periods.

3 Q So you took plans that had been provided before an
4 applicant had been selling marijuana the state of Nevada, and
5 you gave it to them; is that right? That's what you're
6 telling me?

7 A No, that's not what I'm saying.

8 Q Well, these plans were for the medical licenses,
9 were they not?

10 A Yes.

11 Q So you took some integrated plans from the medical
12 licenses and you gave those to Manpower graders as an example
13 of what was good or bad for the recreational licensing?

14 A Actually, I believe the 2016 applications may have
15 been for recreational. But I would have to look closer at
16 that.

17 Q Okay. And with regards to plans you gave them, did
18 you call these anything? Were they model plans, or --

19 A Mock applications.

20 Q Excuse me?

21 A Mock applications.

22 Q Oh. You went through a mock application process?

23 A Yes, sir.

24 Q And that was the process where they were having
25 trouble scoring the diversity; is that right?

1 A There were some questions that were related to it,
2 yes.

3 Q Lots of questions, weren't there?

4 A No.

5 Q Okay. Well, let's go back to the mock process,
6 then. In the mock process you gave them some sample plans?

7 A Sample -- can you repeat that question. I'm sorry.

8 Q You said you'd given the graders some sample plans
9 on the integrated seed-to-sale plan?

10 A We gave them mock applications. I'm not aware of
11 everything that was inside those.

12 Q Just tell me in general how many you gave them .
13 Five, wasn't it?

14 A No.

15 Q More than five?

16 A More than 12, I believe.

17 Q Twelve. Okay. And I assume -- given that diversity
18 was a new factor for this application period, how was it that
19 they could be grading diversity in these mock plans?

20 A We produced a procedure for them, a three-page
21 procedure to assist them in that.

22 Q Are you talking about the diversity desktop
23 procedure that was drafted sometime in late --

24 A Yes, sir.

25 Q -- September?

1 A Yes, sir.

2 Q Okay. That's what you're referring to as the
3 procedure?

4 A Yes, sir.

5 Q Now back to the practice plans or mock plans. You
6 didn't have any mock plans for diversity, did you?

7 A It may have been in the 2016. I don't know. It
8 would be speculation on my part.

9 Q Okay. Given that it came out of a bill that was
10 enacted in legislature in 2017, that's probably wrong; right?

11 A Yeah. Sorry.

12 Q Okay. So the better answer to my question or the
13 accurate would be, Mr. Kemp, no, we did not give any diversity
14 plans for anyone to practice on.

15 A That's correct.

16 Q Okay. And diversity is a tricky little thing to
17 rate; isn't it?

18 A Our procedures are pretty clear. I do not believe
19 that they were tricky.

20 Q Our procedures are pretty clear. And would you
21 write that down, please. Our procedures are pretty clear.

22 THE COURT: Sir, do you need the legal pad?

23 THE WITNESS: Yeah. I need a piece of paper, as
24 well.

25 MR. KEMP: I want to make sure that we have that

1 best --

2 THE COURT: Hold on.

3 Ramsey, can you grab him a legal pad.

4 MR. KEMP: I've got one, Your Honor. I can --

5 THE COURT: We have one. Ramsey's going to --

6 Oh. You just want to give him a single sheet of

7 paper.

8 MR. KEMP: That's right, Your Honor.

9 THE COURT: All right.

10 MR. KEMP: It's not that long a sentence.

11 THE COURT: Sir, do you need a writing utensil?

12 THE WITNESS: Yes, please. Thank you.

13 THE COURT: We're going to break in two minutes.

14 THE WITNESS: There's a sentence that you would like

15 me to write down. Or a phrase.

16 BY MR. KEMP:

17 Q I would like you to write down your answer,

18 actually, which is, quote, "Our procedures are pretty clear,"

19 unquote.

20 MR. KEMP: Judge, it's almost 12:00.

21 THE COURT: It's 11:59.

22 MR. KEMP: Well, I don't want to break, but I'm just

23 asking what you want to do.

24 THE COURT: I've got to break, because I have a

25 12:00 o'clock meeting.

1 So, sir, we're going to take a lunch break. This is
2 not a requested break under BrightSource.

3 So if you guys can be back -- I understand my
4 meeting will be shorter than anticipated if everyone is on
5 time. I may be able to start in 15 minutes. I am planning to
6 start at 12:30. If everyone's back earlier and I'm done, I
7 will be happy to start earlier.

8 And we are breaking at 1:45 for the day so I can let
9 my courtroom be used by the Mental Health Court team because
10 there's no other courtroom on the floor today.

11 MR. KEMP: Judge, one question. As I understand
12 it --

13 THE COURT: And then we start at 9:00 tomorrow.

14 MR. KEMP: Given that he's in the middle of adverse
15 examination, he's not allowed to talk to --

16 THE COURT: That is not what I just said. I said
17 this is not a requested break. Under BrightSource versus
18 Coyote Springs there are times it's a requested break, and
19 times it's not a requested break. This is not a requested
20 break.

21 MR. KEMP: Thank you, Your Honor.

22 (Court recessed at 12:00 noon, until 12:20 p.m.)

23 THE COURT: Sir, I'd like to remind you you're still
24 under oath.

25 Mr. Kemp, you may proceed.

1 BY MR. KEMP:

2 Q Okay. Sir, did you finish the piece of paper?

3 A Yes, sir.

4 Q And you wrote "Our procedures are pretty clear";
5 right?

6 A Yes.

7 Q And that includes the diversity grade? You think
8 that was pretty clear?

9 A Yes. Our procedures are pretty clear.

10 Q So the procedures on diversity rating were pretty
11 clear?

12 A That's correct.

13 Q I said rating. I meant grading. Same thing; right?

14 A Grading.

15 Q Okay. All right. Now, there was something
16 developed that was called an application criteria points
17 breakdown; correct?

18 A I would have to see the document that you're
19 referring to.

20 MR. KEMP: Shane, can you pop up 209, which is an
21 admitted exhibit.

22 THE COURT: Thank you.

23 BY MR. KEMP:

24 Q Okay. Does that look familiar to you, sir?

25 A May I see the top of the document?

1 Q Sure. I think that is the top of it, but -- okay.
2 I'm not suggesting it was only one page long, if that's what
3 you're concerned about.

4 A So you had a question related to this document?

5 Q Have you seen this before?

6 A I believe so.

7 Q Okay. And this is one of the documents that was
8 given to the Manpower graders; right?

9 A I don't know. I'd have to look at documents. I'm
10 not sure if that's --

11 Q First of all, do you know when this was drafted?

12 A I don't.

13 Q Do you know who drafted it?

14 A Possibly Steve Gilbert.

15 Q When did you first see the application criteria
16 points breakdown?

17 A I saw it prior to the application period.

18 Q So that would be prior to July 6th?

19 A No. Prior to the application period, which was in
20 September.

21 Q So, as I understand it, the applications were being
22 filed from September 10th, was it, to September 20th?

23 A That's correct.

24 Q Okay. So you saw it sometime prior to
25 September 10th.

1 A Yes.

2 Q Was there just one version of it?

3 A Yes. One version of it prior -- actually two
4 versions prior.

5 Q Okay. And so Mr. Gilbert wasn't working on this as
6 the process went on, changing it after September 10th; is that
7 correct?

8 A I don't know. You'd have to ask Mr. Gilbert.

9 Q I'm asking you. Are you aware of any changes after
10 September 10th?

11 A After September 10th, no.

12 Q Okay. Any input on this particular form from the
13 government advisory board?

14 A I don't know.

15 Q Do you know if there was an input on nongovernmental
16 employees?

17 A No.

18 Q Did you have any input?

19 A No.

20 Q Now, you see the term "Diversity" on there?

21 MR. KEMP: Can we pop that up, Shane.

22 THE WITNESS: Yes, I see that there.

23 BY MR. KEMP:

24 Q Okay. How many points is that given?

25 A Twenty.

1 Q Twenty points. That's a lot of points out of 250,
2 isn't it?

3 A I'm not going to make that judgment.

4 Q Okay. Isn't it true that the DOT did not have a
5 comprehensive plan as to how it was going to grade diversity
6 prior to July 6th when you filed the notice of applications?

7 A I'm not the Department of -- I am --

8 Q Excuse me Department of Taxation.

9 A I'm not the Department of Taxation. I have a
10 particular role in the process.

11 Q Okay. And as we sit here today do you know one way
12 or the other whether or not the DOT had a comprehensive plan
13 as to how it was going to grade diversity prior to July 6th?

14 A This document shows a very small section, I believe,
15 of the entire evaluation process. And if you looked more
16 closely at Element 5, I believe that's broken down more in
17 depth.

18 Q Okay. Is that a yes answer to my question, or a no?

19 A I think you said that we didn't have a plan. And I
20 think that we did. And if you looked at this document --

21 Q Prior to July 6th you think you had a plan?

22 A I don't know. You'd have to ask Steve Gilbert.

23 Q Okay. Do you think you had a plan prior to
24 September 7th?

25 A I didn't develop this document, so I don't know.

1 Q Do you think you even had a plan prior to September
2 19th?

3 A I didn't develop the document.

4 Q Isn't the truth of the matter, sir, that DOT
5 didn't even know if diversity was going to get points as of
6 September 19th?

7 A September 19th?

8 Q September 19th.

9 A We did have a plan in place prior to September 19th.

10 Q So as of September 19th you believed that diversity
11 was going to be graded; correct?

12 A It's in the document, so --

13 Q I'm just asking what you --

14 A -- yes.

15 Q -- believed as of September 19th.

16 A Yes.

17 Q And months prior to that you believed diversity was
18 going to be graded?

19 A Yes.

20 MR. KEMP: Okay. Can I have Exhibit 110, 30, 31
21 please, Shane.

22 THE COURT: Is 110 admitted?

23 MR. KEMP: Yeah, these are admitted, Your Honor.

24 THE COURT: You are back on 108?

25 MR. KEMP: Oh. I'm sorry, Your Honor. My notes.

1 THE COURT: I just want to make sure.

2 MR. KEMP: You got it correct, Your Honor.

3 THE COURT: Well, no, it's not me. It was somebody
4 in the back who knows that if he puts up an unadmitted exhibit
5 I'll scold him.

6 MR. KEMP: That's Mr. Rulis's responsibility.

7 Okay. Can I see 376 and 377.

8 BY MR. KEMP:

9 Q Can you read that, sir?

10 A Yeah. "Janine, Diane and I didn't find a race or
11 ethnicity in 453D. Should race have been removed as part of
12 the retail applications? Should evaluators be even look at
13 diversity? AB422 doesn't seem to apply, because it's just
14 medical. Did we leave it in the app on accident? Just some
15 thoughts."

16 Q That's your text; right, sir?

17 A Yes, sir.

18 Q And you just told me that the months before that you
19 knew diversity was going to get points.

20 A Yes.

21 Q But you're writing this text saying, gee, I don't
22 even think diversity should be considered. Right?

23 A No. I'm not sure I understand your question.

24 Q You're saying right there that you don't know
25 whether or not race should be in diversity, whether or not it

1 should even be used, whether or not it only applies to
2 medical. That's what you're saying in this text.

3 A In the Department we have a culture of asking
4 questions whenever they may come up. And so that was a
5 question that we had, and decided to ask it per the Department
6 culture.

7 Q So do you want to correct this? As of
8 September 19th you didn't know one way or the other whether
9 not diversity was going to be given points; is that correct?

10 A That is incorrect. We had it in the --

11 Q Oh. So you knew that, but you --

12 THE COURT: Wait. You've got to let him finish.

13 Sir, did you finish your answer?

14 THE WITNESS: No, I did not.

15 THE COURT: Could you finish it.

16 THE WITNESS: We had it in the scoring tool, and it
17 was there prior to September 19th.

18 BY MR. KEMP:

19 Q Are you talking about the --

20 THE COURT: Wait. Mr. Kemp, you've got to let him
21 finish.

22 BY MR. KEMP:

23 Q When you say scoring tool are you talking about
24 the --

25 THE COURT: Mr. Kemp.

1 BY MR. KEMP:

2 Q Are you done?

3 THE COURT: Sir, can you finish your answer, please.

4 THE WITNESS: The scoring tool that you were showing
5 earlier I believe has much more in-depth information than
6 you're showing that did show --

7 BY MR. KEMP:

8 Q When you say --

9 A -- our scoring for diversity.

10 Q When you say scoring tool are you talking about the
11 diversity desktop scoring tool?

12 A No.

13 Q Okay. All right. So, for whatever reason, you're
14 asking these people on September 19th whether or not diversity
15 should even be part of this.

16 A When you're referring to "these people" are you
17 talking about Steve Gilbert?

18 Q Whoever you sent this text to.

19 A I sent it to Steve Gilbert, who's my supervisor.
20 And again, we have a culture in the Department to ask
21 questions whenever they may arise. There are no stupid --

22 Q Ask questions when something's not clear to you?

23 A Yes.

24 Q And so it wasn't clear to you on September 19th
25 whether or not diversity was going to be graded; correct?

1 A On September 19th it was clear very shortly after
2 that text, and it was clear prior to that text that it was
3 going to be graded.

4 Q Okay. At 9:51, when you sent the text on September
5 19th, it wasn't clear to you whether or not diversity was
6 going to be graded?

7 A No. Diversity was going to be graded.

8 Q All right. Didn't you at or about this point in
9 time ask Mr. Gilbert to go to Mr. Pupo and give you more input
10 on what diversity was and wasn't?

11 A That is correct.

12 MR. KEMP: Okay. Let's see the next one, please,
13 Nate.

14 BY MR. KEMP:

15 Q First of all could you read the one on the right.

16 A Yeah. "Could Jorge give us any clarification on the
17 diversity section?"

18 Q And what's the date of that?

19 A September 18th.

20 Q Okay. So this is right after -- or, excuse me.
21 It's before your text of September 19th questioning whether
22 diversity should even be considered.

23 A That's correct. It shows that I knew that diversity
24 was going to be scored.

25 Q But you needed more guidance; is that right?

1 A Yes.

2 Q And the reason you needed more guidance was because,
3 in your words, the diversity guiding procedures were already
4 pretty clear; right? That's why you needed more guidance?

5 A When I said that our procedures are pretty clear I'm
6 referring to the procedure that was created shortly thereafter
7 9/18, 2018.

8 Q So prior to 9/18, 2018, the diversity grading
9 procedure was not clear; is that right?

10 A No, it's not.

11 Q No, it's not correct, or --

12 A That would be a judgment call.

13 Q Okay. In your judgment it wasn't clear, because you
14 wanted Mr. Pupo to give you more input; right?

15 A We asked for additional clarification.

16 Q And you asked for additional clarification about the
17 diversity procedure on September 18th because it wasn't clear
18 to you what the diversity procedure should be; right?

19 A No.

20 Q Okay. Did you ultimately get some guidance from Mr.
21 Pupo?

22 A Yes, we did.

23 Q And basically what Mr. Pupo did is he downloaded the
24 federal guidelines on minorities from the Internet and sent it
25 to you; right?

1 A Incorrect.

2 Q Incorrect. Okay. Well, we'll get you the document.

3 Let me ask a prior question. Isn't it true that
4 originally the DOT intended that diversity only be used as a
5 tie breaker, not a point criterion?

6 A I do recall that in the Department of Taxation among
7 the rules.

8 Q Well, not only do you recall --

9 THE COURT: Wait. You've got to let him finish.

10 MR. KEMP: I thought he was finished.

11 THE WITNESS: I'm done. It's okay.

12 THE COURT: Okay.

13 BY MR. KEMP:

14 Q Not only do you recall that, but you were training
15 people that diversity was going to be a tie breaker; right?

16 A Yes.

17 MR. KEMP: Can I have my next one from Exhibit 114.

18 THE COURT: This is still in Exhibit 108?

19 MR. KEMP: No. This is a new exhibit, Your Honor.

20 THE CLERK: That's proposed.

21 MR. KEMP: Oh. Let me lay a little foundation.

22 BY MR. KEMP:

23 Q Sir, did the Department of Taxation have something
24 called a compliance training certificate program that it
25 applied with regards to marijuana?

1 A That was something that I produced --

2 MR. SHEVORSKI: I could stop this, Your Honor.

3 State has no objection to this exhibit.

4 THE COURT: Any other objections? Be admitted.

5 Thank you.

6 (Plaintiffs' Exhibits 114 admitted)

7 MR. KEMP: That was 114.

8 BY MR. KEMP:

9 Q All right. So can you take a look at the date of
10 this, first of all, sir.

11 A I believe it says 5/24, 2019. Is that right? I
12 can't --

13 Q 5/24, 2019.

14 MR. KEMP: Okay. Can I have Question 8, please.

15 BY MR. KEMP:

16 Q And what does that question say, sir?

17 A "In the case of a tie in the scoring between
18 applicants for a license the Department will do what?
19 Section 80."

20 Q And that's the diversity section; right?

21 A I would need to look at the section.

22 Q Okay. Isn't it true that the Department of Taxation
23 was training its employees that diversity would be a tie
24 breaker?

25 A Yes.

1 Q So at some point someone made the decision to flip
2 it from a tie breaker to a graded category; right?

3 A I don't know.

4 MR. KEMP: Okay. Shane, can we have 8 back up,
5 because I thought there was a date on it, September 24th.

6 BY MR. KEMP:

7 Q See that date, sir?

8 A No, I can't. It's -- 5/24, 2019.

9 Q Okay.

10 THE COURT: That may be a print date. Because that
11 was last week.

12 MR. KEMP: That may be the day it was printed. All
13 right.

14 BY MR. KEMP:

15 Q Well, sir, after the results were released, grades,
16 you know, the winners, the non-winners, isn't that true that
17 the Department of Taxation was telling applicants that
18 diversity had been used only as a tie breaker?

19 A Prior to when?

20 Q After the results were released, who won and who
21 lost, that's December what?

22 A 5th.

23 Q Okay. After December 5th isn't it true that the
24 Department of Taxation was telling people that diversity had
25 only been used as a tie breaker?

1 A I was not the public information officer at the
2 time, so I don't know what information was publicly being sent
3 out.

4 Q So you deny being on a call with Damon Hernandez and
5 another applicant, an unsuccessful applicant in December of
6 2018 where it was said to that applicant that diversity had
7 been used as a tie breaker?

8 A I don't recall that conversation.

9 Q Could have happened, though?

10 A You're asking if that conversation could have
11 happened?

12 Q Do you deny that happened? You said you don't
13 recall.

14 A I don't recall that conversation.

15 Q Were you on calls with Damon Hernandez with
16 unsuccessful applicants?

17 A Yes, I was.

18 Q And were they asking how diversity was scored?

19 A I believe some did.

20 Q And did Damon Hernandez tell at least one person, to
21 your knowledge, that diversity was only used as a tie breaker?

22 A I don't recall that.

23 Q And do you remember other people in the Department
24 saying -- in either November or December 2018 or January of
25 2019 do you recall other people in the Department saying that

1 diversity was a tie breaker?

2 A No, I don't recall.

3 Q Given that you're training people to certify them
4 that diversity is a tie breaker, you can see how people would
5 be confused on this point; right?

6 A Can you clarify where people might be confused?

7 Q On whether or not diversity was going to be graded
8 and given points or it was only going to be used as a tie
9 breaker?

10 A No.

11 Q Nobody could be confused on that?

12 A The scoring tool states diversity will be scored.

13 Q Okay. So Damon Hernandez could not possibly be
14 confused on that point in your view?

15 A Damon Hernandez was not trained and did not use the
16 scoring tool to evaluate applications.

17 Q Isn't he pretty high up in the DOT?

18 A Damon Hernandez is the chief compliance and audit
19 investigator.

20 Q So you're telling me that after the results came out
21 the chief compliance and audit investigator in your view
22 wouldn't be expected to know whether or not diversity was
23 graded or whether it was used as a tie breaker. Is that what
24 you're telling me?

25 A What I am telling you is that I don't recall what he

1 told folks.

2 Q Okay. All right. So let's sum up a little bit. On
3 September 19th you questioned whether or not diversity should
4 even be used in this process; right? Right? We saw the
5 text.

6 A I was raising a question.

7 Q A question as to whether or not diversity should
8 even be used in this process.

9 A Asking for clarification.

10 Q As to whether or not diversity would even be used in
11 this process.

12 A No. I knew that it would be used in this process.
13 It was in the scoring tool already.

14 Q Okay. Do you know when it was decided that
15 diversity would flip from a tie breaker to a graded category?

16 A I do not. I did not develop the tool.

17 Q Did you have any input in that decision?

18 A No.

19 Q Now, the legislative directive was that one of the
20 criteria would be, quote, "diversity on the basis of race,
21 ethnicity, or gender of the persons proposed to be owners,
22 officers, or board members," unquote. Is that your
23 understanding?

24 A You said that that was direction from the
25 legislature?

1 Q That's in the statute that the legislature enacted
2 that the DOT subsequently adopted in recognition; right?

3 A I don't believe you're correct.

4 Q Okay. What do you think the legislature said?

5 A NRS 453D.200, that the it should be directly related
6 to the operation of an establishment.

7 Q Can you explain -- and one of the criteria was
8 gender, female or male; right?

9 A Yes.

10 Q Can you explain to me how whether you're a male or
11 female is directly related to the operation of a marijuana
12 establishment?

13 A The diversity of an establishment and its
14 application in this scoring. And that's what I can tell you.
15 I'm not the legislature, I'm not the person who came up with
16 those rules.

17 Q So you can't tell me as we sit here today whether or
18 not being a male or a female is directly related to the
19 operation of a marijuana establishment; is that correct?

20 A What I can tell you is that an establishment should
21 be representative of the community that it serves. That's
22 been a call.

23 Q But you can't -- you can't tell me whether or not
24 gender is directly related; is that right?

25 A To the operation of an establishment?

1 Q The operation of an establishment.

2 A I cannot tell, you no.

3 Q Who at the DOT can tell me that?

4 A Whomever it was that came up with the scoring tool.

5 Q Are you talking about the desktop, the diversity
6 desktop --

7 A No, sir.

8 Q Oh. Okay. All right. Now, the legislature did not
9 indicate whether or not race and gender should be assigned the
10 same or different points; is that correct?

11 A I would need to look at the law.

12 Q Okay. To the best of your knowledge that wasn't
13 something the legislature did; right?

14 A I would need to look at the law.

15 Q Okay. And the legislature did not decide that
16 owners and advisory board members and officers should all be
17 treated the same for diversity purposes, did it?

18 A I would need to look at the law again.

19 Q Okay. But that's what DOT did, didn't they?

20 A The Department -- I'm just a person within the
21 Department. I had a particular role in this process. I
22 cannot speak for the entire Department.

23 Q When you were grading diversity isn't it true that
24 an owner was given the exact same weight as an advisory board
25 member or someone on the board of directors, their sex or

1 race, exact same way?

2 A I would need to look at the desktop procedures to
3 answer that correctly.

4 Q Okay. Did you know that the legislature expressed
5 concerns that dispensary owners were white males and they
6 wanted to diversify the dispensary group? Do you know that?

7 A No, I did not know that.

8 Q Okay. Did anyone tell you that Mr. -- or Senator --
9 I guess Commissioner Segerblom said, quote, "This criterion
10 would look at diversifying because currently most of the
11 dispensary owners are white males, and we are trying to expand
12 this into the community," unquote? Did you know that that was
13 part of what the legislature was discussing when this was
14 passed?

15 A No.

16 Q And do you know that --

17 MR. KEMP: Can I have Mr. Segerblom up there in
18 front of the witness.

19 THE COURT: Which exhibit is this?

20 MR. KEMP: Oh. It's not an exhibit, Your Honor.
21 Take it down.

22 THE COURT: Thanks. But that does sound something
23 like he'd say.

24 MR. KEMP: It's legislative history, Your Honor.

25 MR. SHEVORSKI: Object to that characterization,

1 Your Honor.

2 MR. KEMP: How can you object to --

3 THE COURT: Come on. Let's keep going.

4 MR. SHEVORSKI: Because it's a statement of one
5 person.

6 MR. KEMP: Oh. Okay.

7 THE COURT: Wasn't he chair of the committee then?

8 MR. KEMP: And he --

9 MR. SHEVORSKI: Seem to remember a case about that,
10 Your Honor.

11 BY MR. KEMP:

12 Q He also said, quote, that "diversity would not be a
13 determining factor," unquote. Did you know that?

14 A No, I don't recall that.

15 Q Isn't it true that the way the DOT applied and
16 graded diversity it became a determining factor, became a
17 determining factor in the grading?

18 A Diversity was a factor in the grading of
19 applications, yes.

20 Q It was a determining factor. Some people won
21 because of diversity that would have lost; right?

22 A I did not -- I have not looked at scores that
23 closely.

24 Q Okay. Did the DOT before it came up with its
25 diversity grading procedure, did it review the diversity

1 procedures used by other governmental entities in Nevada?

2 A When you say the Department of Taxation or DOT who
3 in particular are you referring to?

4 Q Anybody. Do you know of anybody at the DOT that
5 looked at the way other governments here in Nevada were
6 evaluating diversity?

7 A I do not know of -- I didn't.

8 Q Okay. Do you know as we sit here today whether or
9 not the Clark County Aviation Authority has a rather
10 comprehensive diversity procedure that requires people to be
11 at least 51 percent owners and diverse before they're
12 considered to be diverse? Did you know that?

13 A In the licensing of a pilot, or what are you
14 referring to?

15 Q No. I'm talking about the spaces at the airport,
16 the slot machine concession, the gift shops, things like that.

17 MS. SHELL: Your Honor, objection as to relevance.

18 THE COURT: Overruled.

19 MS. SHELL: What another -- how another industry --

20 THE COURT: Overruled.

21 MS. SHELL: Thank you, Your Honor.

22 THE COURT: Please don't make a speaking objection.

23 You can answer, sir.

24 BY MR. KEMP:

25 Q Did you know that?

1 A Are you telling me that there's some sort of
2 requirement like that?

3 Q I am. Did you know?

4 A No, I did not.

5 Q Okay. Did you know that Clark County Water District
6 has a diversity program?

7 A No, I did not.

8 Q Okay. So at least you didn't look at any of these
9 other programs from -- by any other entity here in the state
10 of Nevada before adopting what the DOT used; correct?

11 A I did not.

12 Q And to the best of your knowledge no one else did;
13 right?

14 A I can't speak for others in the Department.

15 Q Okay. Can you tell me who in the Department did?

16 A I can't speak for anybody else in the Department.

17 Q Okay. Now, let's take --

18 THE COURT: Can I interrupt for just a second.

19 Sir, what was your job with respect to this project?

20 THE WITNESS: I'm the education information officer,
21 so my purpose was to assist the evaluators in receiving the
22 information that they needed from the appropriate persons, you
23 know, within the Department.

24 THE COURT: So you were supposed to train the
25 Manpower folks?

1 THE WITNESS: No, I was not -- I was one portion of
2 the training. There were multiple --

3 THE COURT: Okay.

4 THE WITNESS: -- areas that they were being trained
5 in by --

6 BY MR. KEMP:

7 Q You were one of the DOT people training the Manpower
8 people; correct?

9 A Oh, yeah. One of many.

10 THE COURT: Thank you. Sorry for the interruption,
11 Mr. Kemp.

12 THE WITNESS: No, that's okay. Thank you, Your
13 Honor.

14 BY MR. KEMP:

15 Q All right. Now let's take a look at some -- this is
16 from Exhibit 209.

17 MR. KEMP: Let's pop it up, please.

18 BY MR. KEMP:

19 Q This is again from the application criteria.

20 A Is this from the application itself?

21 Q No, no, no. This is from the criteria you were
22 supposed to use to grade the application.

23 A Okay.

24 Q Okay. Is this the first time you're seeing the
25 criteria you're supposed to use to grade the applications?

1 A No, sir.

2 Q Okay. All right. Let's pop that up. Can you read
3 that for me, please, sir.

4 A "Points awarded for percentage of principals which
5 are non-Caucasian female, non-Anglo/European American. Must
6 provide proof. May check in --" and then the screen's kind of
7 cut off there.

8 Q Okay. And who drafted that language?

9 A I don't know.

10 Q Do you know where it came from?

11 A I do not know.

12 Q But this was the language that was given to the
13 graders to use?

14 A I believe so.

15 Q And the word there is "and"; correct?

16 A "...non-Caucasian female and non-Anglo/European
17 American."

18 Q Okay. It's not "or," it's "and"; right?

19 A That is the word there.

20 Q So you had to be both a female and in addition non-
21 Anglo/European American to get diversity points; right?

22 A No.

23 Q So the "and" is wrong?

24 A "Points awarded for percentage of principals which
25 are "non-Caucasian female and non-Anglo/European American must

1 provide proof and may check in --" they could be either, and I
2 believe that that could have been better phrased.

3 Q Well, not only could it have been better phrased,
4 but it should have been "or," not "and"; right?

5 A I think that would have been a better way to phrase
6 it.

7 Q Is this one of those procedures that are pretty
8 clear that you told us about earlier?

9 A No, this is not.

10 Q Oh. Okay. All right. Now, is this -- was this
11 language created after -- before or after the decision was
12 made that diversity should be graded and not a tie breaker?

13 A Was this the final scoring tool?

14 Q We're going to get to all the scoring tools.

15 A Well, for me to be able to answer that correctly I
16 need to know which tool I'm looking at here.

17 Q So you don't know as we sit here today whether this
18 was used to grade applications?

19 A I'm asking you is this the final scoring tool.

20 Q Yeah. I get to ask the questions.

21 THE COURT: Sir, he doesn't have to answer
22 questions. You get to answer questions. Do you know?

23 THE WITNESS: Without looking at the final scoring
24 tool I wouldn't know if this was the final wording that was in
25 it.

1 BY MR. KEMP:

2 Q And by the final scoring tool you're talking about
3 the tool -- you're talking about the diversity desktop
4 whatever it's called?

5 A No. I'm talking about the evaluation document that
6 was used by the evaluators to score the applications.

7 Q Do you know whether or not this was approved by the
8 AG's Office, this language?

9 A I do not know.

10 Q And would I be correct that it's standard procedure
11 here in the state of Nevada that the AG's Office has to
12 approve any language used for a diversity program?

13 A I do not know the answer to that.

14 Q Don't know one way or the other. Okay.

15 Did you anticipate that the diversity scoring could
16 become controversial?

17 A It was already controversial.

18 Q It was controversial during the grading process?

19 A Nationwide it's been a controversial topic.

20 Q But it was controversial during the grading process,
21 too?

22 A No. I think there were questions that were related
23 to it in the scoring.

24 Q Can you tell me any specific procedures that the DOT
25 took to ensure that the diversity point system that it was

1 applying was applied fairly and accurately?

2 A Yes. We wrote a procedure.

3 Q Are we talking about the desktop again?

4 A I believe so. I don't know if it actually says --

5 Q We're going to get to that.

6 A I don't know if it actually says desktop procedure,
7 but I know that it's a procedure.

8 Q I think it does. Okay. All right. So, other than
9 the desktop procedure, you're not aware of anything?

10 A The document that we're looking at on the screen is
11 something that could be used.

12 Q Even though it says "and" and it should say "or
13 should be used"?

14 A It could be, yes.

15 Q And by the way, as we sit here today you can't tell
16 me that any of the Manpower graders misapplied this because
17 they used "and" --

18 A No. Because we --

19 Q -- for "or"?

20 A -- we worked on that desktop procedure to ensure
21 that they were scoring accurately and fairly and consistently.

22 Q Okay. The desktop procedure.

23 A Yes.

24 Q We'll get to that.

25 Okay. Let's see if I -- pop that procedure back up

1 and let's see if we can see how this actually works.

2 So you get -- if you have a percentage, you get
3 zero points -- zero percent gets zero points, zero to 10 gets
4 2 points, 11 to 20 gets 4 points, and on and on we go; right?
5 Right?

6 A Yes, if you're reading that off of the screen.

7 Q Read it for yourself. Am I right or wrong?

8 A Zero to 10 percent would get 2 points, yes.

9 Q Okay. What does 61 through 70 get?

10 A 61 to 70, 14 points.

11 Q Okay. So basically what -- the intention here is to
12 take all the owners, board members, and officers, however many
13 that is, let's say 20, decide whether they're diverse or non-
14 diverse under this definition or whatever other definition
15 we're going to see in a minute, and then do some sort of
16 calculus for percentage of diversity; right?

17 A Correct.

18 Q Okay. And let's see if I can -- if I understand
19 exactly how this works.

20 MR. KEMP: Can I have my first one, Shane.

21 BY MR. KEMP:

22 Q Okay. This is just a hypothetical for you, okay.
23 Dr. Evil's Wellness Center. So Dr. Evil sets up a Nevada
24 corporation, he's the only owner, the only director, the only
25 officer. He gets zero diversity points; right? Right?

1 THE COURT: This is called a hypothetical question,
2 sir. If you could do the best to assume whatever he says,
3 including the picture of Dr. Evil, please let us know.

4 THE WITNESS: You have here on the screen that if
5 Dr. Evil is a white female she gets 20 diversity points.

6 BY MR. KEMP:

7 Q Well, this is the transgender age, is it not, sir?

8 A You're asking me to do the job of an evaluator here.

9 Q Well, didn't you train the evaluators?

10 A No, I did not.

11 Q Oh. You didn't train them on diversity?

12 A No. That's facilitator.

13 Q Who trained evaluators on diversity?

14 A The -- our -- Damon Hernandez, Kara Cronkhite, Steve
15 Gilbert.

16 Q Well, those are the ones that specifically trained
17 on diversity?

18 A They walked them through the applications, yes.

19 Q Okay. Great. So if Dr. Evil's Black or Hispanic,
20 he gets 20 points because he's the sole person in this rating
21 system; right?

22 A In a hypothetical, yes, situation.

23 Q Okay. Let's change over to an LLC. Keep Dr. Evil.
24 Okay. Now we have --

25 MR. KEMP: Isn't that the same one we just saw?

1 Shane, isn't that a repeat? Do you have an LLC next?
2 THE COURT: He's now a corporation.
3 MR. KEMP: Oh. Was he an LLC before? I'm sorry.
4 Pop back, Shane. Let me see if we got out of order here.
5 THE COURT: Want me to look up [unintelligible] now?
6 MR. KEMP: Huh?
7 THE COURT: It's a Business Court joke. I'm sorry.
8 MR. KEMP: Okay. Can we have the previous one,
9 Shane. Maybe I misread it.
10 BY MR. KEMP:
11 Q Let me just ask it this way.
12 THE COURT: So you said this was a classic movie?
13 MR. KEMP: A classic what? Oh. I think it was a
14 classic, Your Honor. And, you know, my taste runs more
15 towards [inaudible].
16 BY MR. KEMP:
17 Q All right. Let's suppose that we have an LLC here
18 and Dr. Evil is the only member, the only one on the advisory
19 board, the only one called an officer. He gets -- still gets
20 zero; right? Right?
21 A As a white male?
22 Q White male.
23 A As the only owner, officer, and board member, yes.
24 Q Okay. But if he -- if Dr. Evil's instead a female,
25 he gets 20; right?

1 A Yes.

2 Q Okay. And if he's Black or Hispanic, whether he's
3 male or female he gets 20?

4 A Yes.

5 Q And you don't get any more points for being a Black
6 female or a Black Hispanic. You still just get the 20; right?

7 A Right.

8 Q So it's gender or minority status; right?

9 A In this hypothetical situation, yes.

10 Q Okay. Let's get a little more complicated, okay.
11 Next one, please. Okay. Now we have Dr. Evil, and here we
12 have a Nevada corporation. Dr. Evil's the sole shareholder.
13 He has all the offices, sole owner, all the offices, but on
14 the board he puts these 10 minority female or minority
15 directors. And just for the record, I do most of them. Betty
16 Boop, Jessica Rabbit, Tinker Bell, Ariel, Belle maybe,
17 Princess Tiana. So he puts 10 females on the board of
18 directors. How many points --

19 THE COURT: You forgot Minnie Mouse.

20 MR. KEMP: Ah. And Minnie Mouse. And I think I
21 forgot Mulan, Pocahontas, and --

22 THE COURT: And Jasmine.

23 MR. KEMP: Princess Tiana and Jasmine, Your Honor.

24 THE COURT: Yeah.

25 //

1 BY MR. KEMP:

2 Q How many diversity points --

3 MR. GENTILE: I object. Minnie Mouse is not human.

4 It says -- although it doesn't say "female human."

5 THE COURT: Mr. Gentile --

6 MR. GENTILE: I apologize.

7 THE COURT: -- you can't object to your colleague on

8 your same team's questioning.

9 BY MR. KEMP:

10 Q Okay. In this scenario how many points does Dr.

11 Evil get?

12 MR. SHEVORSKI: I'm going to object. Incomplete

13 hypothetical, Your Honor.

14 THE COURT: Overruled. If you can answer, sir,

15 you're welcome to.

16 BY MR. KEMP:

17 Q Eleven principals, one white male and 10 women.

18 A We would have to do that calculation according to

19 the desktop procedure.

20 Q Well, we would divide 11 into 10; right?

21 A Okay.

22 Q That's 91 percent; yes? 91 percent? 11 into 10.

23 A I would prefer to have a calculator to say for sure.

24 Q Okay. Why don't we assume that 11 into 10 is

25 91 percent just so we can move on here. Assuming that it's

1 91 percent, how many points does Dr. Evil get?

2 A Oh. Well, let's looking at the scoring tool.

3 MR. KEMP: Can we go back.

4 THE WITNESS: I believe you have your answer there,
5 sir.

6 BY MR. KEMP:

7 Q 20 points?

8 A Yes, sir.

9 Q So even a corporation that's solely owned by a white
10 male, just as long as he puts 10 females on the board of
11 directors he gets 20 points; is that right?

12 A I believe our procedures show that owners, officers,
13 and board members are all considered in the diversity.

14 Q I'm just asking is that right. He gets the maximum
15 20 points?

16 A If that's what our desktop procedures say, then yes.

17 Q Okay. Does that seem appropriate to you that a
18 company that's 100 percent owned by a white male should get
19 the full, the maximum, the full 20 points for diversity? That
20 seem appropriate to you?

21 A Wouldn't make that judgment call.

22 Q Okay. All right. Now, what was the DOT's procedure
23 to make sure that applicants just weren't throwing people or
24 claiming that they were on their boards and they really
25 weren't to increase diversity or taxes paid or some other

1 category? What was the procedure to monitor that?

2 A Owners, officers, and board members were cross-
3 checked with the current owner, officer, and board members.

4 Q Cross-checked with the Nevada Secretary of State?

5 A With the -- with our records, and those record are
6 cross-checked with the Nevada Secretary of State, yes.

7 Q So the DOT expected that the only people that were
8 identified with the Nevada Secretary of State as officers and
9 directors would be included in the diversity calculate; is
10 that correct?

11 A No. I believe that we were looking at our own
12 records, and our records at some point along the way would be
13 checked with the Nevada Secretary of State, as well.

14 Q Well, you didn't have records on some of these
15 applicants. Essence was a brand-new LLC; right? Both
16 Essences, Essence Henderson and Essence Tropicana, were brand-
17 new LLCs. You didn't have records on them.

18 A I do not know.

19 Q Okay. Was there any verification or audit procedure
20 to make sure people just weren't making up names and putting
21 them on boards?

22 A We did check owners, officers, and board members
23 with current owners, officers, and board members at
24 establishments.

25 Q You checked with regards to the DOT records, or with

1 the Nevada Secretary of State of records?

2 A Our Department of Taxation records. That's what we
3 checked.

4 Q Okay. And what was the procedure if someone wasn't
5 in your records and the applicant had listed them as an owner,
6 board member, or director?

7 A There was a letter that went out on the awardees
8 that said that the ownership must match for a final license, I
9 believe. I'd have to look at the letter itself for sure.

10 Q Okay. So you gave them the license anyway, but you
11 told them to change it?

12 A No. It's a conditional license, so it's not final.

13 Q They were announced as a winner, but you told them
14 they had to change it to match up with what they claimed in
15 the application; is that right?

16 A I would need to see the letter in order to be able
17 to say what it says.

18 Q How many of those went out?

19 A I don't recall.

20 Q Can you tell me the names of any applicant who
21 didn't have a match that you gave a license to -- a
22 conditional license to anyway?

23 A No. I don't want to speculate on the names.

24 Q Was it one, or more than one?

25 A It was more than one.

1 Q More than five?

2 A I don't want to try and come up with a number.

3 Q So you're telling me that the DOT made a
4 determination that the claimed owners, board members, and
5 directors didn't match up with either your records or the
6 Secretary of State's, yet nevertheless issued a conditional
7 license to these people; is that correct?

8 A That's correct.

9 Q That seem a little sloppy to you?

10 A No, sir.

11 Q Okay. Is there a penalty if you discovered that was
12 intentionally gaming the system? And by that I mean just
13 putting Princess Tiana and Jessica Rabbit and the others on
14 the board just to get more diversity points. Was there a
15 penalty for that?

16 A A penalty for putting Jessica Rabbit on their
17 application?

18 Q For manufacturing diversity where it really didn't
19 exist on your application. Was there a penalty for that?

20 A Giving the Department of Taxation false information
21 does carry penalties.

22 Q So the application should be stricken.

23 A That would not be my call.

24 Q Whose call is that?

25 A Steve Gilbert, Jorge Pupo, someone else.

1 Q So with regards to these letters that went out,
2 these fix for diversity letters -- let's call them that. Can
3 we call them that?

4 A No, I don't think you can call them --

5 Q Match up your ownership letters? What do you want
6 to call them?

7 A I would need to see the letter to know what we
8 called it. But I believe it was a -- an ownership.

9 Q Why didn't you just recalculate the diversity using
10 the true owners, board members, and directors, as opposed to
11 giving them a conditional license and telling them to fix it
12 later?

13 A That was not my role in this application process to
14 make that determination.

15 Q That could have been done.

16 A That's your statement.

17 Q Well, could you have done that? Could you have
18 calculated --

19 A It's not my role to make that determination.

20 Q Okay. I'm not asking if it was your role to decide
21 to do that or not. I'm asking in theory you and the graders
22 could have done that.

23 A You'd need to look at the law in order to make that
24 determination as to whether we had the authority to do that.

25 Q Okay. Next example, we've got the same cast of

1 characters, only we've changed it from an LLC -- from a
2 corporation to an LLC. Same result; right? Same result if
3 they're claimed to be board members or advisory board members,
4 they still get the same rating?

5 A I'm not sure what the definition here is of advisory
6 board members.

7 Q Well, there were people that put in, quote,
8 "advisory board members," unquote, on their applications;
9 right?

10 A I'm not aware of that.

11 Q And if you had become aware of that, what would you
12 have done? Would you have scored it the same, or would you
13 have made further inquiry, would you have disqualified them?
14 What would you have done?

15 A I think that if the evaluators had brought up that
16 kind of issue with I or anybody else in the Department, we
17 would have brought it to our supervisors, as we do with
18 everything, and discussed it with them and come up with a
19 clarification.

20 Q Okay. But the general expectation, you've told me,
21 is that these people that were listed as owners, board
22 members, or directors were truly owners board members, and
23 directors in some legal sense. They were truly legally --

24 A Owners, officers, and board members.

25 Q Your expectation was they were truly that in some

1 sort of a legal sense; right?

2 A The information that we received on the application
3 was judged on the merits of the application.

4 Q Okay. But basically it was the honor system, wasn't
5 it? The applicants could claim people were board members,
6 list them as advisory board members, and you'd take that on
7 face value?

8 A No.

9 Q You wouldn't take that on face value?

10 A We checked it.

11 Q You checked it.

12 A Yes, we did, sir.

13 Q Who checked?

14 A Our program officer, one, Diane O'Connor and Janine
15 Warner, I believe, at the time.

16 Q So it was their two responsibilities to make sure
17 that people that were listed as owners, board members, and
18 officers were in fact legally owners, officers, and board
19 members?

20 A Yes, sir.

21 Q That was their job.

22 A Yes, sir.

23 Q And as far as you know, that was done?

24 A Yes, sir.

25 Q Okay. Let's talk about a specific applicant. Have

1 you ever heard of an entity known as GreenMart NVL LLC?

2 A That sounds familiar.

3 Q Okay. They got a 16 diversity score; right?

4 A I can't recall.

5 MR. KEMP: Shane, could you pop it up, please,
6 Exhibit 47.

7 Which is admitted, Your Honor.

8 THE COURT: Okay.

9 BY MR. KEMP:

10 Q See that 16 there?

11 A Yes, sir.

12 Q So they got a 16 diversity score.

13 A Uh-huh.

14 Q Right?

15 A That is what it looks like there, yes.

16 Q Okay. I want you to assume -- this is a
17 hypothetical -- that GreenMart listed -- on its organizational
18 chart listed a person named Stavola, a female, as the owner; a
19 person named Boise, a male, as an owner; a person named Hae
20 Lee as a board member; a person named Shelby Brown as a board
21 member; a person named Caroline Clark as a board member; and
22 five other people as board members, four female and one male.
23 I want you to assume that, and I'm going to pop it up here
24 just so you can see it, okay.

25 All right. Now, you've said that someone at DOT was

1 -- do you recognize Lucy Florez there?

2 A No.

3 Q You haven't been watching the news about her
4 alleging that Vice President Biden --

5 MS. SHELL: I'm just going to object as to
6 relevance, Your Honor.

7 THE COURT: Sustained.

8 BY MR. KEMP:

9 Q Okay. Do you recognize any of these people here?
10 Mr. Lee there from Lee's Liquor?

11 A No, sir.

12 Q Okay. You're from the north; right? You live in
13 the north?

14 A I do live in the north.

15 Q Okay. So, as I understand the rules, correct me if
16 I'm wrong, the rules were that Stacy Dugan had to be legally
17 recognized in some way as a board member, an owner, or an
18 officer or she shouldn't have been put there for diversity
19 rating; is that correct?

20 A An owners, officers, or board member.

21 Q Right?

22 A Yes.

23 Q Okay. So we've got Stacy Dugan, African-American
24 female; right? Right? See her?

25 A Yes, I do.

1 Q Okay. You just get -- that just counts as one
2 diversity principal? Doesn't count as two because she's
3 female and African-American; right?

4 A Right.

5 Q Okay. And we've got Laura Martin, female; right?

6 A Yes.

7 Q Lucy Florez, female.

8 A She appears to be female.

9 Q Ms. Hayes, female?

10 A Yes.

11 Q Are you seeing a pattern here, sir?

12 A A pattern of females?

13 Q Yes.

14 A They are all females, sir.

15 Q Okay. And then Shelby Brown, we've got her depicted
16 as a female because we couldn't find a picture. Female.

17 A Yes.

18 Q And Caroline Clark, female?

19 A Uh-huh.

20 MS. SHELL: Your Honor, can I just -- I don't --

21 THE COURT: So, Mr. Kemp, have you shared your
22 pictures with anybody? I know you've got several illustrative
23 slides that you're using.

24 MR. KEMP: No, Your Honor, I haven't.

25 THE COURT: Okay.

1 MS. SHELL: And I would just object to the depiction
2 of Shelby Brown, right. I find it patently offensive.

3 THE COURT: Okay.

4 MS. SHELL: To be honest, I don't even know Shelby
5 Brown's racial or ethnic identity. I think they're making --
6 it looks like they're making a leap there.

7 MR. KEMP: It doesn't matter what her racial or --
8 she's a she.

9 MS. SHELL: I'm just objecting on principle, Your
10 Honor.

11 THE COURT: Are we all stipulating that Shelby Brown
12 is female, though?

13 MS. SHELL: Yes, she is.

14 THE COURT: All right.

15 MR. KEMP: All right. Your Honor --

16 THE COURT: Wait. Wait. I need you after you
17 finish using all of your depictions that are slides on your
18 PowerPoint, Mr. Rulis, to drop them to a thumb drive so I mark
19 them as a demonstrative exhibit so when you go to the next
20 stage those folks will know what it is we were laughing about
21 and what Mr. Kemp thought was a classic movie.

22 MR. KEMP: Okay. Fair enough, Your Honor. Not was.
23 Is a classic movie.

24 BY MR. KEMP:

25 Q Okay. So we have seven women here; right?

1 A Yes.

2 Q And we have one, Mr. Lee, Oriental; right?

3 MS. SHELL: I'm going to object to the use of the
4 term "Oriental," too, Your Honor.

5 MR. KEMP: Well --

6 THE COURT: Mr. Kemp, could you use the proper term.

7 MR. KEMP: He's from Taiwan. Is that better?

8 MS. SHELL: I'm going to object to that, as well.
9 He's -- why does that matter, Your Honor?

10 BY MR. KEMP:

11 Q Well, does it matter for purposes of diversity
12 points, sir?

13 THE COURT: The objection's overruled to the extent
14 he is specifically recognizing the country he comes -- his
15 origin.

16 BY MR. KEMP:

17 Q Does it matter for purposes of diversity points?

18 A If he reported his race or ethnicity on the
19 application or in his agent cards as an ethnicity minority as
20 defined by the EEO, then, yes, it would matter.

21 Q And the way it would matter is he would get -- the
22 application would get more diversity points; correct?

23 A Correct.

24 Q Okay. So if we have 8 out of 10 here being
25 considered to be either diverse as minorities or because of

1 gender, what would their ranking be?

2 A Do you want to do the math again for me?

3 Q Do you want me to pop up a calculator here?

4 A Sure.

5 MR. KEMP: Shane, could we have a calculator.

6 THE WITNESS: And that sheet that we just showed,
7 the RD504, I don't know that it is GreenMart of NV LLC or
8 associated with that board that you showed me.

9 BY MR. KEMP:

10 Q Okay. It's an admitted exhibit.

11 So 8 out of 10 would be 80 percent; right? Right?

12 A Yes.

13 Q And how many points would that be?

14 A 16.

15 Q 16. Okay. And without those 16 points do you know
16 whether GreenMart would have won a Clark County license?

17 A I don't know.

18 Q Okay. Did you know that MPX Bioceutical Corporation
19 owns about 99 percent of GreenMart NLV LLC? Did you know
20 that?

21 MS. SHELL: I'm going to object again as to
22 relevance, Your Honor.

23 THE COURT: Overruled.

24 THE WITNESS: I did not evaluate the applications,
25 so --

1 BY MR. KEMP:

2 Q So you didn't know that?

3 A No.

4 Q And do you know that MPX is a Canadian public
5 company that has a market capitalization of approximately
6 \$454 million as of the close of the Canadian Exchange on
7 Friday? Did you know that?

8 A No.

9 Q Okay. And I don't see anywhere the board of
10 directors for MPX, the Canadian public company, on this
11 hypothetical I've given you. Do you see that?

12 A You have not written "MPX" anywhere on this, no.

13 Q Okay. Assuming for the sake of argument that MPX
14 had a board of directors as a public company, and assuming
15 that they were the owner of GreenMart LLC, would those
16 directors also be listed on this application?

17 A If they were one of the applicants, then they should
18 have been included in the application.

19 Q So the board of directors and officers of public
20 companies should be included on the application for purposes
21 of the diversity calculation; is that correct?

22 A All owners, officers, and board members should have
23 been included in the application, yes.

24 Q Including those of a public company that an owner of
25 the LLC; right?

1 A At the very least the company should have been
2 listed.

3 Q So you're changing this? Now it's the company that
4 should be listed, and before it was the board and the officers
5 that should be listed?

6 A If the company's the owner.

7 Q Company's the owner, you should the board and the
8 officers; right?

9 A If that issue had come up, then we would have
10 brought it up to Steve Gilbert and Jorge Pupo.

11 Q Well, it did come up, because GreenMart NLV was
12 owned by MPX Bioceutical Corporation. It did come up.

13 A No, I don't recall that coming up.

14 Q Oh. So if the applicant doesn't tell you who the
15 Canadian public company is that owns it, you don't care? DOT
16 doesn't care?

17 A No.

18 Q Okay. Assuming for the sake of argument that MPX
19 Bioceutical Corporation owned GreenMart prior to the time that
20 the application was being put in, they should have listed the
21 officers and directors of MPX Bioceutical; correct?

22 A Are we talking about a hypothetical here, or a real
23 situation? I'm getting a little confused. I'm sorry.

24 Q Well, let's talk about a hypothetical first.

25 A Okay.

1 Q Okay. Assuming a Canadian corporation is the owner
2 of an LLC that's an applicant, the Canadian corporation should
3 have put the board of directors and the officers of the
4 Canadian public company into the application; correct?

5 A I believe that the Department would have to -- you'd
6 have to turn to someone else higher up than me to make that
7 determination.

8 Q Well, earlier you told me they were supposed to, and
9 now you're waffling?

10 A They're reporting their owners, officers, and board
11 members in their application, and that was the information
12 that was being evaluated.

13 Q Okay.

14 A We issue a license that says the owners, officers,
15 and board members, and when the license is issued then it has
16 those specific people on it.

17 Q Let's see if we can clear this up --

18 A Okay

19 Q -- because I think we're going two different ways in
20 a couple of your answers.

21 If a Canadian public company owns a Nevada
22 corporation or a Nevada LLC that's a application, the Canadian
23 public company should list their officers and directors; is
24 that correct?

25 A Again, you'd have to turn to somebody who's

1 qualified to make that determination. And I'm not.

2 Q In fact, DOT did not consider that possibility, did
3 they?

4 A Again, you'd have to go to Steve Gilbert or Jorge
5 Pupo to ask that question.

6 Q You did not -- you did not consider that --

7 A I did not face that question, no.

8 Q And when you trained the Manpower graders you didn't
9 train them about that subject, did you?

10 A We trained them on the information that was
11 submitted in the application.

12 Q But you didn't train them how to grade public
13 companies for diversity, did you?

14 A Owners, officers, and board members were listed in
15 the application, and we graded them on the diversity that was
16 reported in the application. Based on the owners, officers,
17 and board members in the application that was reported.

18 Q Okay. We've got some examples of the training you
19 did. Tell you what. I'm going to hold them.

20 What if -- what if you discover that a public
21 company did not list -- that owned the applicant did not list
22 owners and officers and it would have made a difference in the
23 diversity calculation. What should be done at this point?

24 A We did not seek additional information outside of
25 what was submitted by the applicant.

1 Q Okay. That's fine. What if you found out at DOT
2 right now that some public companies were getting their board
3 members, officers of the parent public company and others
4 weren't, so that there was a inconsistency in the way
5 diversity was being calculated by DOT, okay? What if you
6 found that out right now? What would you do?

7 A That would be a question for Jorge Pupo or Steve
8 Gilbert.

9 Q It should be fixed; right?

10 A That would not be my call.

11 Q If it was your call, what do you do?

12 A If there was incorrect information supplied to us,
13 then I think that seeking clarification would be a valuable
14 thing.

15 Q And if it turns out that the diversity scores change
16 to the extent that someone that had been a winner by not
17 listing its officers and directors of their public company now
18 becomes a loser, wouldn't you agree with me that that
19 correction should be made?

20 A It's not my call.

21 Q If it was your call, you would make that correction,
22 wouldn't you, sir?

23 A It's not.

24 Q But if it was, you would, wouldn't you?

25 A If I had made a mistake, then I would want to

1 correct my mistake.

2 Q And if the DOT makes a mistake, it should correct
3 its mistake, too, shouldn't it, sir?

4 A That's not my call.

5 Q As a taxpayer don't you think if the DOT makes a
6 mistake involving licenses that are worth someone said earlier
7 today \$10 million, don't you think the DOT should correct that
8 mistake?

9 A I'm here as employee of the Department. I'm not
10 here as a taxpayer.

11 Q Okay. As an employee of the Department don't you
12 think the DOT should correct a mistake like that?

13 A I think I'd want you to repeat what you believe is
14 the mistake.

15 Q Some public corporations listed their officers and
16 directors that were owners of an applicant. Others didn't.

17 A And you know that for sure?

18 Q I do. I do know that for sure.

19 THE COURT: Mr. Kemp --

20 BY MR. KEMP:

21 Q I'm giving you a hypothetical.

22 THE COURT: -- you're not supposed to be
23 [inaudible].

24 MR. KEMP: [Unintelligible].

25 //

1 BY MR. KEMP:

2 Q Hypothetically. Let's give you hypothetical. Let's
3 assume that --

4 A Okay. So we're talking about a hypothetical now.

5 Q Hypothetically. If that happened and you found out
6 about it, wouldn't you agree with me that the DOT should
7 correct that mistake?

8 A I am an employee of the Department of Taxation. My
9 job is as a facilitator to assist in educating the evaluators.
10 My position is not one to make a determination like that on
11 what the Department should or should not do.

12 Q Okay. Let's talk about some of the what I would
13 consider more prominent flaws of the diversity grading system.
14 Basically the DOT gave an equal number of points for owners as
15 they did for advisory board members and officers; correct?

16 A An equal number of points for owners as they did for
17 officers and board members in those positions. I believe you
18 are correct.

19 Q Okay. And in retrospect would you agree with me --
20 because that can create situations where half-a-million-dollar
21 Canadian public companies are deemed to have 80 percent
22 diversity. In retrospect would you agree with me that owners
23 should have been weighted more heavily?

24 A That's not for me to determine.

25 Q Okay. All right. You've referenced something

1 called a marijuana application diversity scoring desktop
2 procedure a couple times; right?

3 A Yes, sir.

4 Q Let me show you Exhibit 111, and you tell me if
5 that's what you are referring to.

6 THE CLERK: 111 is proposed.

7 MR. KEMP: Is that admitted?

8 THE COURT: Any objection?

9 MR. RULIS: It's admitted, Your Honor.

10 THE COURT: It's admitted.

11 THE WITNESS: Yes, sir, this is what I've been
12 referring to.

13 BY MR. KEMP:

14 Q So when you sent the text saying, we need guidance
15 from Mr. Pupo, this is what came back; right?

16 A Yes, sir.

17 Q All right. And this is dated September 2018; right?

18 A Yes, sir.

19 Q And when we get to the federal guidelines it has a
20 different definition of minority than the one we've been
21 looking at previously with the word "and" in it, does it not?

22 A I would need to look at the two and compare.

23 Q Okay. We'll get there.

24 All right. Was this the one that was used to score
25 diversity, or was it the one we saw previously that had the

1 word "and" in it that should have been "or," in your view?

2 A This was used as guidance for the evaluators. The
3 score that was -- that you showed earlier --

4 Q Uh-huh.

5 A -- that scoring percentages --

6 Q Uh-huh.

7 A -- those were the percentages that were used. I do
8 not believe that the percentages on that desktop procedure --
9 there's no percentages on the destructive procedure there.

10 Q Okay.

11 A There's some examples, but the tool was used.

12 Q Am I not correct that the desktop tool has a
13 different definition of diversity than the previous one that
14 we called the application criteria points breakdown?

15 A I think I would have to really compare the two. And
16 it looks like we have the capability of doing that here.

17 MR. KEMP: I think we do. Can I have the next one,
18 Shane.

19 BY MR. KEMP:

20 Q So the application criteria points breakdown uses
21 the term "and"; right?

22 A Yes.

23 Q But when you issued this other one in September 2018
24 it was changed to "and/or"; right?

25 A Maybe if we could look back at the other one.

1 Q The other one's on top. It's on top. You have the
2 two definitions right there.

3 A Right. No. I see the "and" one, and I recall that,
4 but I haven't looked that closely at the desktop procedure to
5 recall the "or" being in there.

6 MR. KEMP: Shane, will you show him exactly where
7 this comes from the desktop procedure.

8 THE WITNESS: Yes.

9 BY MR. KEMP:

10 Q So someone changed "and" to "and/or"; right?

11 A Correct.

12 Q And the result would be under the first definition
13 you have to be a female and a minority, but in the second
14 definition you can be a female and/or, or a minority; right?

15 A Yes.

16 Q Pretty good change, wouldn't you think?

17 A We asked for clarification, and we received that
18 clarification.

19 Q My question was don't you think that's a big change.

20 A That's not my decision to decide whether it's a big
21 change.

22 Q I'm just asking what you think. Don't you think
23 that is a big change?

24 A I'd like to just say it's a change.

25 Q Okay. Now, with regard to the first one --

1 MR. KEMP: Let's go back to the first one, Shane.

2 BY MR. KEMP:

3 Q -- you see the definition of minority there? You
4 have to be non-Caucasian and non-Anglo/European American. Did
5 I read that right?

6 A Well, which letter are you reading here?

7 Q I'm reading --

8 MR. KEMP: The first one, Shane. It would be the
9 application criteria points breakdown. Yeah. There we go.

10 BY MR. KEMP:

11 Q Okay. So you have to be both -- it's either non-
12 Caucasian and/or, whatever, and non-Anglo/European American;
13 right?

14 A That's what it says.

15 Q Those were the diversity definitions used for
16 minorities; correct?

17 A Yes.

18 Q Now, Mr. Pupo decided to go a whole new direction,
19 didn't he?

20 A I don't know.

21 Q All right. Isn't it true that Mr. Pupo or someone
22 at DOT decided that instead of these categorizations he would
23 use the 1964 definition of minorities from the federal
24 government?

25 A You'd have to ask Mr. Pupo.

1 Q I didn't ask whether it was Mr. Pupo. Someone at
2 DOT decided this; right?

3 A Yes.

4 Q Okay. And that's what was used from this point
5 forward; right?

6 A We used the desktop procedures, as well as this
7 document here that you're showing.

8 Q So you used both of them.

9 A Yes.

10 Q And -- okay. Well, let's -- first of all let's see
11 the federal procedures. These are from the 1964 Civil Rights
12 Act. You see that, sir?

13 A Yes, sir.

14 Q Would it surprise you to know that the federal
15 government has not used this form since 2007? No one in the
16 federal government has used this form. Would that surprise
17 you?

18 A No.

19 Q No, it wouldn't surprise you, or, yes, it would
20 surprise you?

21 A The federal government often changes things that
22 they do, and so if something has changed since 1964, I would
23 not be surprised.

24 Q And they abandoned this because there were problems
25 with it and it was thought to be antiquated. Do you know

1 that?

2 A No.

3 Q Doesn't surprise you, does it?

4 A No.

5 Q Now, where did this come from?

6 A I don't recall where that came from.

7 Q Isn't it true that someone at DOT in September, late
8 September, after you wanted more guidance, someone at DOT just
9 went on the Internet and pulled this up? Isn't it true?

10 A It's possible. I don't know.

11 Q Okay. And more specifically, didn't Mr. Pupo do it?
12 Do you know that?

13 A No, I don't know.

14 Q Okay. Let's take a look at some of the criteria in
15 this thing, and we're going to keep -- do you have the other
16 one in mind just so I can make a point here?

17 A The other one that you were showing earlier. Yeah.

18 Q Yeah. It's the one that says --

19 A Non-Caucasian --

20 Q -- non-Caucasian, non-Anglo/European American.

21 Okay. So would I be correct that there are some minorities --
22 or some people, more accurately, that would be considered a
23 minority under one definition, but would not be a minority
24 under the other definition?

25 A I don't know.

1 Q Okay. Well, let's take a person that is of Spanish
2 descent, born in Spain, okay, persons born in Spain. And
3 let's apply the 1964 guidelines. Would that person be
4 considered a minority because they come within the
5 qualification, quote, "other Spanish culture of origin
6 regardless of race," unquote?

7 A Would a Spanish person from Spain fall under Spanish
8 culture of origin?

9 Q Yes.

10 A I believe so.

11 Q Okay. But they -- let's have the other one. Same
12 question -- oh. No. The previous one, which is F. Yeah.
13 There we go

14 So Spanish person, how do they fall under this one,
15 sir?

16 MR. KEMP: Can you blow that up a little bit, Shane.
17 I can't read it. Not that I'm the arbiter vision, Your Honor.

18 THE COURT: The wrap on it is not real good when you
19 blow it up.

20 THE WITNESS: I can see it.

21 BY MR. KEMP:

22 Q Okay. So someone from Spain, how would they fare as
23 trying to be a minority under this definition?

24 A I think the value of the clarification is that it
25 goes more in depth into -- than what's just said here.

1 Q Okay. Well, before we talk about the value of the
2 clarification, would you agree with me that someone that was
3 born in Spain would not be a minority under this first
4 definition because they would be considered not to be within
5 the non-Anglo/European American category? Agree with me?

6 A No. I think it was more complicated than that.

7 Q Okay. So you think someone from Spain is not a,
8 quote, "non-Anglo/European American"?

9 A The information that was provided on the application
10 was what was used.

11 Q Let's boil down to it. Spain is in Europe; right?

12 A Yeah.

13 Q So someone from Spain is a non-Anglo/European
14 American; yes?

15 A I'm not an expert on who is ethnic and who's not or
16 a minority. So I --

17 Q And neither were the Manpower graders, were they?

18 A No.

19 Q They weren't experts on who was ethnic and who are
20 minorities, were they?

21 A That's right.

22 Q Okay. How about the Bahamas? Would I be correct
23 that under the federal guidelines someone from the Bahamas
24 would not be a minority because that is not a county of
25 African origin or in the Pacific Islands, since the Bahamas

1 are in the Atlantic? Would I be correct?

2 A I don't know.

3 Q Okay. But someone from the Bahamas, if they're
4 African-American, could be, could be considered a minority
5 under the previous guidelines; right?

6 A If they identified themselves as being African-
7 American, then they would be considered a minority in the
8 application process.

9 Q Under whose definition?

10 A Under the definition here, Black, not Hispanic, I
11 believe.

12 Q Let's read what it says about Black and Hispanic
13 there. It says, "All persons having origins in any of the
14 Black racial groups of Africa"; correct?

15 A That's what it says there, yes. You're correct.

16 Q Doesn't just say Black, does it?

17 A No, it doesn't.

18 Q You do recognize that there are --

19 A It does -- actually, it does say Black right there
20 at the top, "a Black," and then it has a dash, but it does say
21 Black.

22 Q Okay. Now, part of the procedure was that the
23 applicant was supposed to self identify --

24 A Yes.

25 Q -- himself as a minority; right?

1 A Yes.

2 Q And the applicant was supposed to do that without
3 knowing what definition that you were going to use with
4 regards to minorities; right?

5 A No.

6 Q The applicants were given this '64 thing?

7 A No.

8 Q And the applicants weren't given the thing I -- the
9 "and/or" one; right?

10 A No.

11 Q No, they were not given it?

12 A They were not given that tool, no.

13 Q So the applicant had to anticipate what the DOT
14 would use for its minority definition and self identify. Is
15 that what you're telling me?

16 A No. It was identified in the -- on their agent card
17 applications, as well. And they also did it in their
18 application itself.

19 Q Oh. The agent cards.

20 A And in the application itself.

21 Q And you're aware, are you not, that a lot of these
22 people didn't have agent cards?

23 A No, I'm not.

24 Q You aren't aware of that?

25 A No.

1 Q So you think all the officers and directors of the
2 Canadian public company had agent cards?

3 A That was not my section to be evaluating.

4 Q Okay. Would you agree with me that the applicants,
5 if they didn't know you were going to apply the '64 federal
6 guidelines, they wouldn't be able to accurately self identify
7 themselves?

8 A We were asking for the information on their
9 application, and the application information was what was used
10 to identify their minority status.

11 Q Okay. So the applicants decided themselves whether
12 they were minorities or not, and the DOT accepted that without
13 regards to whether or not it met any of these definitions that
14 we've gone over.

15 A I believe they signed it under penalty of perjury or
16 something of that sort.

17 Q But the answer to my question is, yes, the
18 applicants self identified --

19 A The applicants identified whether they are were a
20 minority or female.

21 Q Without knowing the definitions. And the DOT
22 accepted that. So it was the honor system; right?

23 A They had to sign it under penalty of perjury or
24 something of that sort. I'm not in charge of the agent card
25 section, so I don't know all of the requirements.

1 Q Okay. Earlier I told you we would get to public
2 company training that you did or didn't give to the Manpower
3 people. Remember that?

4 A Public company training. Yes, sir.

5 Q Okay. Isn't it true that the DOT did not consider,
6 plan for, anticipate the possibility that some of these
7 applicants would be owned by public companies? Isn't it true?

8 A No.

9 Q So the DOT, to your knowledge, did plan some on some
10 of these applicants being public companies?

11 A There are many public --

12 Q Being only public --

13 A There are many publicly traded companies currently
14 in ownership positions. And so it is something that we have
15 had to deal with previously.

16 Q Okay. Well, let's go back to what you trained the
17 Manpower people. Let's go back to desktop diversity whatever
18 it was called, okay.

19 MR. KEMP: All right. Can we pop up the examples,
20 Shane.

21 BY MR. KEMP:

22 Q Owner a male, not a public company; right? That's
23 Example A?

24 A Yes.

25 MR. KEMP: Example B, Shane.

1 BY MR. KEMP:

2 Q Owner a female, not a public company; right?

3 A Yes, sir.

4 Q C, owner a female, not a public company; right?

5 A Correct.

6 Q Next one. Owner a female, not a public company;

7 right?

8 A Correct.

9 Q Next one. Owner a male, not a public company;

10 right?

11 A Correct.

12 Q So would you agree with me that the DOT did not

13 train the Manpower people with regards to what they should do

14 if the owner was a public company?

15 A If it was an issue that came up during the

16 application period, then we would have discussed it. And we

17 did discuss it during training. I don't recall to what extent

18 we did and what that training was.

19 Q So you don't -- you don't know as we sit here today

20 one way or the other how the Manpower graders were trained

21 with regards to the public companies?

22 A I believe that we required the owners, officers, and

23 board members for the publicly traded company that was

24 identified in the application to be submitted, as well.

25 Q And those should have been evaluated for diversity

1 purposes; right?

2 A For what purposes?

3 Q For diversity purpose. They would go through the
4 diversity calculator?

5 A Yes.

6 Q All right. Now, you said that was discussed. But
7 there's no written guidelines, are there, that were given to
8 the Manpower graders?

9 A On publicly traded companies?

10 Q Right.

11 A Not that I recall.

12 Q All right. Let's switch over to a different area,
13 On the organizational structure. And this comes from the
14 application, page 11, sir.

15 MR. KEMP: Can I have it up, Shane.

16 Your Honor, what's my stop time?

17 THE COURT: 1:45. In six minutes.

18 MR. KEMP: Thank you, Your Honor.

19 BY MR. KEMP:

20 Q You see the word "all" there?

21 A Yes, sir.

22 Q So the applicant was required to provide an
23 organizational chart showing all of its owners, including a
24 percentage of ownership for each individual; correct?

25 A Yes, sir.

1 Q And that applied equally to public companies that
2 own applicants as it did to private companies that own
3 applicants; right?

4 A Yes, sir.

5 Q And you do know that some public companies have
6 hundreds, if not thousands, of shareholders?

7 A Publicly traded company I believe have lots of
8 owners.

9 Q So the publicly traded company should have provided
10 some kind of schedule, chart, whatever you want to call it
11 that had the percentage of ownership for each individual that
12 was a shareholder; right?

13 A According to these instructions, yes.

14 Q But you didn't follow those instructions, did you?

15 A We did follow these instructions.

16 Q Are you telling me that the various public companies
17 that were involved in this matter, the one I just mentioned
18 with regards to GreenMart, the one that's involved with Nevada
19 Organic Remedies, the one that's involved with Essence, are
20 you telling me that all three of those public companies gave
21 the DOT names -- excuse me, not names, the percentages for
22 each one of the shareholders of the public company? Is that
23 what you're telling me?

24 A I did not evaluate the applications, so I didn't
25 look at them that closely. But I have seen transfers of

1 ownerships that have come in that way, yes.

2 Q We're not talking about transfers of ownership. I'm
3 talking about whether or not the public companies complied
4 with the specific language of the application.

5 A I was not one of the evaluators.

6 Q And if they didn't, if they didn't list each and
7 every one of their shareholders and the percentage of
8 ownership, that license application should have been bounced
9 at the outset; right?

10 A No. You're making a hypothetical and one that I did
11 not face.

12 Q Okay. And if you did face it and you found out that
13 there was a public company that owned an applicant and that
14 public company did not provide percentage of ownership of its
15 shareholders, that should have been bounced; right?

16 A We did not seek additional information beyond the
17 applicant's information that was provided.

18 Q So if the public company didn't volunteer that it
19 was a public company, you didn't care?

20 A We based our evaluation on the application itself.

21 Q All right. Let's move to building establishment
22 information.

23 MR. KEMP: This is my second-to-last area, Your
24 Honor.

25 //

1 BY MR. KEMP:

2 Q Now, that requires a determination be made as to
3 whether or not a proposed marijuana dispensary is an adequate
4 size; correct?

5 A That's what it says, adequacy of size of the
6 establishment.

7 Q Doesn't say biggest; right?

8 A It does not say biggest.

9 Q Doesn't say smallest. It says adequate, okay. Did
10 the Manpower employees get any metric from DOT as to what an
11 adequate size for a dispensary was?

12 A What do you mean by metric?

13 Q Well, for example, there's dispensaries existing now
14 in Clark County; right?

15 A Correct.

16 Q Did you provide the Manpower people with the average
17 size of all the dispensaries in Clark County or even the state
18 of Nevada?

19 A No, we did not.

20 Q And did you provide them with the range of sizes in
21 Clark County, say from the lowest to the highest, or in the
22 state of Nevada?

23 A I was not in charge of that part of the training.
24 Damon Hernandez, Kara Cronkhite, and David Witkowski, who
25 regularly evaluate applications, provided that section of the

1 training and may have gone over adequacy of size of a building
2 or the size of buildings in the state.

3 Q Would you agree with me that it would be difficult
4 for someone that was a grader that had no marijuana experience
5 whatsoever to decide what size dispensary is adequate and what
6 size is not adequate?

7 A One of our evaluators was a fire inspector. Another
8 a health and safety inspector, and I believe they regularly
9 look at the adequacy of the size of a building for the number
10 of people that are expected to come into the building. And so
11 I would leave it to that judgment. And I wasn't in charge of
12 that section, training on that section, either. So when David
13 Witkowski, Kara Cronkhite and the third person that I named
14 did that training in looking at the adequacy of the size of
15 the building plan they discussed that directly with those
16 people who had experience looking at the adequacy of size of
17 buildings for decades in some cases.

18 Q Not marijuana buildings, though?

19 A No, not marijuana buildings.

20 THE COURT: Mr. Kemp, is this a good place to break?

21 MR. KEMP: This is a good place, Your Honor.

22 THE COURT: All right. So my plan is, since we
23 didn't hit the motion to compel this afternoon, to start with
24 it at 9:00 o'clock.

25 What's the scoop on the motion for a protective

1 order?

2 MR. KOCH: I will call Mr. Connor this afternoon and
3 report to the Court if we can it heard tomorrow morning.

4 THE COURT: So I don't you need to hear it at 9:00
5 o'clock tomorrow, because I haven't read it yet.

6 MR. KOCH: It's short. It's about a page and a
7 half.

8 THE COURT: Okay. Mr. Kahn, did you get a remand
9 yet?

10 MR. KAHN: We have not received a remand order.

11 THE COURT: Okay. So I only have one thing left at
12 8:30, and I do not anticipate that hearing will take very
13 long. So I'll be prepared to start --

14 (Off-record colloquy - Clerk and Court)

15 THE COURT: So apparently all of my 8:30s are now
16 off. If anybody wants to come at 8:30 and argue the motions,
17 I would be happy to come then. Otherwise they can come at
18 9:00 and do the motions.

19 (Off-record colloquy - Clerk and Court)

20 THE COURT: Oh. That's right. I have 8:30 motions
21 on a receivership. Okay. So -- but it won't be very long.
22 So if you guys want to come at 8:30, I can do the motions at
23 8:30. If you don't want to come till 9:00, I can do that.

24 So what's the consensus?

25 MR. PARKER: See you at 9:00, Your Honor.

1 THE COURT: All right. Leave it to Teddy. He's
2 always picking 9:00 o'clock.

3 (Pause in the proceedings)

4 MR. HYMANSON: Your Honor, do we have a list of
5 witnesses for tomorrow?

6 THE COURT: What's the plan tomorrow?

7 MR. KEMP: Your Honor, we plan on finishing the
8 witness on the stand. And then I believe Mr. Gentile has --

9 MR. GENTILE: Oh. I have a question or two.

10 THE COURT: No. Your witness after this one.

11 MR. GENTILE: Oh. Tomorrow Dr. Fridland.

12 THE COURT: Okay. So that sounds like a whole day
13 to me.

14 MR. GENTILE: I don't know -- I don't know who else
15 we have lined up. I do know we have Dr. Fridland.

16 THE COURT: Who's the next person after that?

17 MR. GENTILE: Oh. And Michael [inaudible]. Where
18 are you? And he's not here right now, but Dave Thomas.

19 THE COURT: Okay. So I believe you now have all the
20 witnesses that are likely to be called tomorrow.

21 The motion for protective order, I really do need to
22 see a copy even if it's short before I take the bench if I'm
23 hearing it tomorrow. And I will see you guys at 9:00.

24 (Court recessed at 1:47 p.m., until the following day,
25 Wednesday, May 29, 2019, at 9:00 a.m.)

INDEX

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PLAINTIFFS' WITNESSES

Kyril Plaskon	3	-	-	-
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EXHIBITS

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

108	16
114	44

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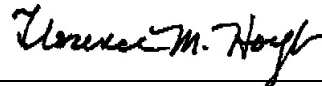
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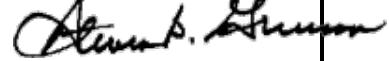
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DATE



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC,)
et al.,)

Plaintiffs,)

vs.)

STATE OF NEVADA DEPARTMENT OF)
TAXATION,)

Defendant.)

CASE NO. A-19-786962-B
DEPT NO. XI

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

WEDNESDAY, MAY 29, 2019

EVIDENTIARY HEARING - DAY 3

VOLUME I OF II

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

APPEARANCES:

FOR THE PLAINTIFFS:

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ROSS J. MILLER, ESQ.
WILLIAM S. KEMP, ESQ.
NATHANAEL R. RULIS, ESQ.
ADAM K. BULT, ESQ.
MAXIMILIEN D. FETAZ, ESQ.
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STEVEN G. SHEVORSKI, ESQ.
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ERIC D. HONE, ESQ.
DAVID R. KOCH, ESQ.
ALINA SHELL, ESQ.
JARED KAHN, ESQ.
PHILIP M. HYMANSON, ESQ.
JOSEPH A. GUTIERREZ, ESQ.

I N D E X

W I T N E S S E S

WITNESSES FOR THE PLAINTIFF:

KYRIL PLASKON

Continued Direct Examination by Mr. Kemp 7

Direct Examination by Mr. Gentile 25

1 **LAS VEGAS, CLARK COUNTY, NEVADA, MAY 29, 2019, 9:44 A.M.**

2 *** * * * ***

3 THE COURT: Anything else?

4 (No audible response)

5 THE COURT: All right. Are we ready to resume with
6 our witness?

7 MR. KEMP: Your Honor, you asked me a question.

8 THE COURT: Oh, yeah. Mr. Kemp, I asked you to think
9 about while I was doing the motion practice, given the pace at
10 which we are currently proceeding, how many more days do you
11 think you need understanding today is our third day. I know we
12 had a short day yesterday because of mental health court.

13 MR. KEMP: I think Mr. Gilbert, who I understand
14 might be tomorrow, and Mr. Pupo are probably going to be fairly
15 long witnesses, and with that in mind, I think we'll probably
16 need another five days. Mr. Gentile said four days, but I
17 think five days, and that would include the day we've already
18 set aside. I can't remember [inaudible], but whatever for
19 Mr. Pupo.

20 THE COURT: I don't know which day we set aside. I
21 was worried about findings of fact and conclusions of law
22 yesterday because you asked me if you had to do them today, and
23 I gave you more time.

24 MR. SHEVORSKI: Just for the record, Your Honor, I
25 think we talked with Mr. Kemp, and Mr. Pupo will be the fourth.

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1 THE COURT: Well, and I said I might be in trial on
2 the 4th. It hasn't settled yet.

3 MR. SHEVORSKI: Very good, Your Honor.

4 THE COURT: Okay. So five days or more?

5 MR. KOCH: It should be fewer. They represented
6 initially three days. Then maybe two and a half.

7 THE COURT: I thought it would be a day.

8 MR. KOCH: And then as we said, once you put a time
9 out there, the gas expands to fill that time. We've had a lot
10 of gas being spread about, some of the discussion about the
11 experts that weren't really experts. They can move this along.
12 We don't need to take five more days. This is going so slowly
13 and so in-depth on some of these issues that that's not what
14 the Court needs to hear.

15 Let's move along. Let's get to Mr. Gilbert, get to
16 Mr. Pupo and get this thing over with. These lawyers here with
17 a lot of time being spent sitting here through this process.
18 For this to wrap up this week would be a timely way to do that.

19 THE COURT: Okay. I think that is impossible given
20 what I've seen that it will wrap up this week, but you think --
21 at least the plaintiffs think between 4 and 5 days?

22 MR. KOCH: Does that include today?

23 MR. KEMP: No, that's four and five days after
24 Friday, Your Honor.

25 THE COURT: So another whole week.

1 MR. KOCH: No. We would object to that completely.

2 THE COURT: Well, no, it's not an object. It's a I'm
3 trying to manage my calendar.

4 MR. KOCH: I understand.

5 THE COURT: You don't get to object to how long it
6 takes. I've got to figure out where to put you is the
7 question.

8 MR. KOCH: And I can -- we can look at all of our
9 calendars I assume.

10 THE COURT: Okay.

11 MR. KOCH: But we have trial starting and other
12 things that were going to preclude that schedule.

13 THE COURT: All right. Well, I'm not going to
14 continue next week just so we're clear because I have a trial
15 that currently is going. If it settles, I told you guys I can
16 backfill you in, but currently they have not told me they're
17 settled, although I can't imagine they won't.

18 All right. So can we continue with our witness now
19 that I know that I've got to find a whole another week
20 sometime?

21 MR. KEMP: Yes, Your Honor.

22 THE COURT: Sir, if you can come back up.

23 **KYRIL PLASKON**

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

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

3 THE WITNESS: Kyril, K-y-r-i-l. Plaskon,
4 P-l-a-s-k-o-n.

5 THE COURT: Thank you. And, sir, you remember from
6 yesterday you have exhibit binders there. They may show them
7 to you on the monitor. There's water in the pitcher, and there
8 are M&Ms in the dispenser behind me.

9 You may continue, Mr. Kemp.

10 CONTINUED DIRECT EXAMINATION

11 BY MR. KEMP:

12 Q Good morning.

13 A Good morning.

14 Q Yesterday you told us that Damien Hernandez was one
15 of the trainers for the manpower people.

16 A Damon.

17 Q Damon. Excuse me.

18 Yes, he was a trainer?

19 A Yes, he was a trainer.

20 Q I thought Mr. Hernandez was located down here?

21 A He flew up to Carson City.

22 Q Oh. So he flew up to Carson City to train people?

23 A That's right.

24 Q On one occasion? Two occasions? What?

25 A Once.

1 Q Once. Okay. And did anyone else from Las Vegas fly
2 up to Carson City to train?

3 A The others that I mentioned yesterday, Kara Cronkhite
4 and David Witkowski.

5 Q Okay. Why was the Manpower grading in Carson City as
6 opposed to in Las Vegas where all these trainers were?

7 A There's other staff that was receiving applications
8 there. We needed to centralize, one location where all of this
9 was happening. Mr. Gilbert was there. I was there, and
10 program officers were there.

11 Q Okay. And we talked yesterday about the fact that
12 Mr. Hernandez may have been involved in conversations with you
13 and applicants after the winners were announced where he told
14 them that diversity was just a tiebreaker.

15 A You --

16 Q Do you recall that discussion yesterday?

17 A I do recall that discussion.

18 Q Got any further clarification on that? Did or did
19 that not happen?

20 A I have not received any further clarification on
21 that.

22 Q Okay. And if that did happen, do you have any
23 explanation for why Mr. Hernandez, a trainer, of the Manpower
24 people didn't know as long as -- as far as after the -- after
25 the application results were announced, he still didn't know

1 that diversity was being scored as opposed to being a
2 tiebreaker?

3 A I'm not going to speculate on --

4 MS. SHELL: Oh, objection.

5 THE COURT: Wait. I have an objection.

6 MS. SHELL: I was going to say it calls for
7 speculation. If he doesn't remember the conversation taking
8 place, how can he opine about what Mr. Hernandez might have
9 been thinking?

10 MR. KEMP: I didn't ask that question. I asked if he
11 had any explanation.

12 THE COURT: The objection is overruled.

13 You can answer.

14 THE WITNESS: I'm not going to speculate on what he
15 may have been thinking at the time if that's something that he
16 said.

17 BY MR. KEMP:

18 Q Okay. But if he was saying that, that was wrong?

19 A And can you repeat what it was that he said.

20 Q If he was telling applicants after the results were
21 announced that diversity had just been used as a tiebreaker,
22 that was incorrect?

23 A If he had said that, that would be incorrect.

24 Q Okay. Now, we finished talking about the adequacy of
25 size of dispensary. Do you remember that subject matter?

1 A I think that's where we ended yesterday.

2 Q Okay. And you told me -- I think you started to tell
3 me that some of the Manpower people had experience with
4 other -- excuse me -- yeah, the Manpower people had experience
5 with other buildings. So they were capable of determining the
6 adequacy of size of the dispensary. Is that what you told me?

7 A Our evaluators did have experience with determining
8 the adequacy of the size of buildings.

9 Q Of buildings in general?

10 A Yes.

11 Q Do buildings vary?

12 A Excuse me? Buildings --

13 Q Buildings vary in size?

14 A Yes, they do.

15 Q For example, the stadium we're building is bigger
16 than this courthouse?

17 A Yes.

18 Q So someone note -- this courtroom -- someone who
19 knows what's adequate for a stadium wouldn't necessarily know
20 what's adequate for a courthouse?

21 A That would be a question for the person who's doing
22 that evaluation.

23 Q You just trusted the fact that these people knew
24 something about buildings so they would somehow know the
25 adequacy of the size of a dispensary?

1 A We do rely on the experience of our evaluators.

2 Q The experience of the evaluators that have no
3 experience in the marijuana business?

4 A Correct.

5 Q So you knew they had no experience with regard to the
6 adequacy of the size of dispensaries?

7 A They were trained.

8 Q Well, they were trained, but they were trained by
9 people like you who also had no marijuana experience.

10 A No, they were trained by a Kara Cronkhite, who has
11 lots of experience; Dave Witkowski, who has lots of experience;
12 and Damon Hernandez, who has lots of experience.

13 Q Okay. All right. Is this a binary decision as to
14 whether a dispensary has adequate size a yes or no decision?

15 A You would have to ask the trainers.

16 Q So you left it up to the Manpower trainers to decide
17 whether this category was binary or not?

18 A The evaluators were employed by the State and paid
19 through Manpower. So our evaluators did make a decision when
20 they looked at the -- based on our training did make a decision
21 on the adequacy of the size of the building.

22 Q All I meant do you think it's a binary decision,
23 whether a dispensary is adequate in size? Yes or no.

24 A I can't answer that.

25 Q If it's a binary decision and 10 points are assigned

1 to that decision, either you should get 0 or 10; right?

2 A I wasn't one of the evaluators, and I wasn't one
3 of --

4 Q No, I'm just asking --

5 A -- the trainers.

6 Q -- that's the way a binary decision works. Either
7 you get 0 or 10; right?

8 A We would have to look at the way that the evaluations
9 were done.

10 Q And how were they done? Did they give them 0 or 10?

11 A Um --

12 Q Or did they give them some degree in between?

13 A I have not looked at those evaluations.

14 Q Did you give the Manpower people any guidance
15 whatsoever as to whether it should be binary or some sort of
16 gradient?

17 A Again, you would have to talk to Damon Hernandez,
18 Kara Cronkhite or Dave Witkowski, the trainers.

19 Q So you don't know?

20 A I don't know.

21 MR. KEMP: Okay. All right. Can I have my next
22 slide, which I think is 209 -- 209, the points.

23 UNIDENTIFIED SPEAKER: Which exhibit is it, Mr. Kemp?

24 MR. KEMP: It's Exhibit 209. I have it as 209.

25 / / /

1 BY MR. KEMP:

2 Q This is again from the document that we talked about
3 yesterday, which was the --

4 A I can't see it on the screen here. It says, Out of
5 range.

6 THE COURT: Ramsey is coming to help.

7 Hold on a second, sir. The marshal is going to take
8 care of it for you.

9 (Pause in the proceedings.)

10 THE COURT: Mr. Parker, Mr. Hymanson and company, if
11 you want to get up and come stand over here by me where you can
12 see the big monitor, you're welcome to.

13 (Pause in the proceedings.)

14 THE WITNESS: I turned it off, and I turned it on,
15 and it seems to be working now.

16 (Pause in the proceedings.)

17 THE COURT: All right. So, Mr. Parker, Mr. Hymanson,
18 Mr. Gutierrez, you can, if you need to move to see the big TV,
19 please feel free to move a little bit.

20 ATTORNEYS: Thank you, Your Honor.

21 THE COURT: And, Mr. Kemp, you can continue now that
22 we've solved that technical problem.

23 BY MR. KEMP:

24 Q So out of the 20 points, 10 were assigned to one
25 category, which was building plan details; correct?

1 A It appears the --

2 Q And the other was assigned --

3 A -- on this document that, yes.

4 Q -- assigned to another category, whether or not the
5 building plan complied with regulations?

6 A Yes.

7 Q Okay. Now, building plan details, to me that means
8 that it should just -- shouldn't be a piece of paper saying
9 building -- you know, scratch paper. It should be plans and
10 specs. It should be a detailed plan?

11 A I'll give the same answer that I gave to applicants
12 when they called me which was the more information that's
13 provided the better.

14 Q Okay. And the most possible information you could
15 provide would be an as-built building, I assume?

16 A I don't work in construction. So I don't know --

17 Q Well --

18 A -- the extent of information that can be provided.

19 Q Well, how can an actual as-built building not have
20 more details than a building that you planned to build?

21 MR. KOCH: Your Honor, objection. Speculation. This
22 is part of --

23 THE COURT: Overruled.

24 MR. KOCH: -- five days.

25 THE COURT: Overruled.

1 THE WITNESS: Your question again is how can an
2 as-built building have --

3 BY MR. KEMP:

4 Q Let's say some applicant put in a dispensary that had
5 actually been operating for two or three years. Would you
6 agree with me that that would be more detailed than someone who
7 just threw in generic plans for a post office box?

8 A No.

9 Q Why is that?

10 A I haven't seen plans. So I can't comment on whether
11 they would or would not be.

12 Q So you are aware that some people didn't put actual
13 addresses for the proposed buildings? Are you aware of that?

14 A I believe so.

15 Q Okay. So basically they just gave post office or UPS
16 boxes, somewhere in the county, and they said they were going
17 to build at a different address? You knew that?

18 A No.

19 Q Okay. Assuming that to be true, would you agree with
20 me that if you didn't know what type of building it is, one
21 story, two story, strip center, standalone, it would be
22 difficult to evaluate building plans for that building?

23 A You'd have to ask the trainers -- Damon Hernandez,
24 Kara Cronkhite and Dave Witkowski -- that see these on a
25 regular basis.

1 Q You have no opinion on it?

2 A No.

3 Q All right. Is that the mantra we're going to hear
4 today, that I have to ask someone else and you have no opinion
5 on it?

6 A My role as a trainer in the department was to
7 provide --

8 Q If you just said yes, it would make things a lot
9 quicker. Yes, that's the mantra we're going to hear today --

10 A It depends on your question, sir.

11 MR. SHEVORSKI: Your Honor, I'd object. That's
12 argumentative.

13 THE COURT: Overruled.

14 MR. KEMP: I'm just trying to move it on, Your Honor.

15 THE COURT: I understand, Mr. Kemp.

16 MR. KEMP: Okay. Can I have my next one up. Okay.
17 Let's blow that up a little bit.

18 BY MR. KEMP:

19 Q This is what graders were told with regards to how to
20 grade the adequacy of the building. Okay? And first of all,
21 you see that the focus on the top is Building and Construction?

22 A Yes, sir.

23 Q Isn't it true that the whole focus of this exercise,
24 looking at plans, looking at the adequacy of the size, the
25 whole focus of it was making sure they could build a dispensary

1 out in 12 months; right?

2 A I believe it says 12 months here on the tool.

3 Q Okay. So that was the focus. You wanted to make
4 sure that these people were coming in prepared to be able to
5 build a building in 12 months?

6 A When you say "you," are you talking about me --

7 Q The Department of Taxation.

8 A -- Kyril Plaskon?

9 Q The Department of Taxation?

10 A I can't speak for the Department of Taxation.

11 Q Okay.

12 THE COURT: Okay. Ramsey, get it back up.

13 Sir, do you have a little blue strip on this left
14 side of your monitor?

15 THE WITNESS: I do not. I can't see the entire
16 screen. The B is cut off on "building."

17 THE COURT: All right.

18 (Pause in the proceedings.)

19 MR. KEMP: Judge, I think I could work around the --

20 THE COURT: That's okay. Let's work around the blue
21 bar.

22 (Pause in the proceedings.)

23 BY MR. KEMP:

24 Q Okay. Can you read that, sir?

25 A Yes. The left side of it's cut off.

1 Q Let me read it for you.

2 A Okay.

3 Q An excellent response would include all the following
4 elements: The building plan demonstrates a clear division -- a
5 clear definition of work tasks; estimation of required
6 resources and duration for individual tasks; the planning of
7 scheduled activities along with an estimated resources and
8 duration are realistic and achievable within the 12 months to
9 be fully operational.

10 Okay. You got that?

11 A Yes, sir.

12 Q So the objective here to get an excellent response
13 was you have to be able to show someone that you can build the
14 building in 12 months; right?

15 A I cannot see the excellent response part of that.

16 Q Right at the beginning it says, quote, An excellent
17 response would include the following elements.

18 A I'll have to let the tool speak for itself, and it's
19 interpretation and application was handled by the trainers,
20 Dave Witkowski, Damon Hernandez and Karalin Cronkhite.

21 Q So they're going to be able to answer these
22 questions?

23 A Yes. They handled this part of the application and
24 the use of this tool.

25 Q Am I correct that this was cribbed from the previous

1 applications?

2 A I don't know.

3 Q The 2014 --

4 A That would be a question for Steve Gilbert.

5 Q Okay. Because Steve Gilbert was the one who came up
6 with this stuff?

7 A He was the one that provided it.

8 Q Okay. And isn't it true that he didn't provide you
9 with the exact criteria to be used until sometime in mid to
10 late October?

11 A I don't recall the exact date or -- I'd have to look
12 at my record somehow or email or something of that sort.

13 Q You do recall that they started grading applications
14 using criteria that was changed or revised, and then they came
15 up with new criteria? You do recall that, don't you?

16 A I believe in the training process we did use some
17 older tools possibly. I'm speculating there --

18 Q Well, you actually started grading --

19 A -- I don't recall.

20 Q -- applications in September --

21 A That's --

22 Q -- and early October that were using old criteria;
23 did you not?

24 A No.

25 Q Didn't happen?

1 A No.

2 Q Okay. So if I show you grades of applications that
3 were graded in September, and I show you documents that suggest
4 that Mr. Gilbert changed the criteria, you don't think that
5 happened?

6 A No.

7 Q Because if that happened that would be wrong because
8 some applications would have been graded using one set of
9 criteria, and other applications would have been graded using a
10 different set of criteria. That's why it would be wrong;
11 right?

12 A To my knowledge, that did not happen.

13 Q Okay. All right. Let's move on to another area.
14 There was a requirement --

15 MR. KEMP: Can we have the next one, please, Joe.

16 BY MR. KEMP:

17 Q There was a requirement that the applicant had to
18 have 250,000 in liquid assets; correct?

19 A Yes.

20 Q Is cash a liquid asset?

21 A Yes.

22 Q So if someone had 250,000 cash, that would meet this
23 requirement?

24 A Yes.

25 Q Okay. Now, with regards to the financial component

1 section, that was given 40 points?

2 A I'd have to see the tool.

3 Q Okay. Will you trust me on that? I'm trying to get
4 through this.

5 A I'll go with what you say, yes.

6 Q All right. Knowing nothing else, knowing nothing
7 else, if you knew an applicant -- and let's use GreenMart as an
8 example -- had total assets over 212 million, what would you
9 expect them to get on that 40-point section?

10 A I was not the evaluator on that section, and I didn't
11 train the evaluators on that section. So I can't answer that
12 question.

13 Q So you don't think that 212 million is going to do
14 it, get you the whole 40 points?

15 A I didn't do the training on that section.

16 Q Okay. All right. And basically most of the big
17 companies got the full 40 points; right?

18 A I don't know.

19 Q Well --

20 MR. KEMP: Can I have the next chart, please.

21 BY MR. KEMP:

22 Q Here we have the top 10 --

23 MR. KEMP: Can I get that blown up a little bit, Joe.

24 BY MR. KEMP:

25 Q Here we have the top 10 winners for unincorporated

1 Clark County. Essence Trop, 40 points; right?

2 A Yes, sir.

3 Q Did you know Essence Trop was a Nevada LLC that
4 wasn't formed until December 29th of 2017?

5 A No.

6 Q Essence Henderson, 40 points?

7 A Yes, sir.

8 Q Nevada Organic Remedies, 40 points?

9 A Yes, sir.

10 Q Deep Roots, 40 points?

11 A Yes, sir.

12 Q Helping Hands, the women from North Las Vegas, 40
13 points?

14 A Yes, sir.

15 Q Cheyenne Medical, Thrive, the Thrive group, 40
16 points?

17 A Yes, sir.

18 Q And GreenMart, 40 points?

19 A All the people you have listed on the screen have 40
20 points.

21 Q Everybody got 40 points that won?

22 A I do not have the complete list of people who won
23 here in front of me.

24 Q Well, you do have the complete list for Clark County
25 because that's the top 10. 10 winners; right?

1 A I don't know where this came from.

2 Q Do you have any explanation for an entity that has
3 more assets, more listed assets than the 212 million that
4 GreenMart had getting less than 40 points? Any explanation?

5 A It's possible that the applicant didn't provide the
6 information.

7 Q Other than that explanation, you don't think that the
8 Manpower graders somehow screwed up?

9 A Our Manpower and evaluators acted independently, and
10 I trusted their judgment, yes.

11 Q Independently of the Department of Taxation?

12 A Yes.

13 Q And so if someone had 220 million on their -- on
14 their financial statement, and it just wasn't adequately
15 graded, there's no way to correct that, or is there a way to
16 correct that?

17 A What I know is that many applicants did not provide
18 all the information. They sometimes left off a lot of
19 information.

20 Q All right. Let's go to my last area.

21 MR. KEMP: Can I have 108, please, Joe.

22 BY MR. KEMP:

23 Q Sir, this is a printout of your text messages, and
24 I'm just going to focus on the time period of December 13th to
25 January 2nd, '19. Okay?

1 A What were the dates again?

2 Q December 13, 2018, to January 2nd, 2019. And the
3 reason I select the December 13th date is that was the date
4 that Judge Bailus signed the preservation order ordering that
5 the State preserve all electronic communication.

6 A Oh, yes, sir.

7 Q Okay. You've seen that order; right?

8 A No, I have not.

9 Q No one showed you that order and told you you should
10 preserve all your electronic information?

11 A Nobody showed me the order at least that I don't
12 remember, but I did know that I needed to preserve everything,
13 yes.

14 Q Okay. Now, during this time period, 12/13 to January
15 2nd, 2019, by my count, you sent or received 18 texts to
16 Mr. Gilbert?

17 A Uh-huh.

18 Q Okay. And if you want to confirm that, go ahead, but
19 that's my count. There's 18 texts back and forth between you
20 and Mr. Gilbert that we got off your cell phone.

21 A Yeah. I believe so.

22 Q Okay. Can you explain to me why when we downloaded
23 Mr. Gilbert's cell phone we did not find those 18 texts?

24 A No.

25 Q Did you have any discussion with Mr. Gilbert, or did

1 he indicate to you in any way, shape, or form that he was
2 deleting portions of his cell phone?

3 A No.

4 Q Did any DOT employee indicate to you at any time that
5 they were going to delete portions of their cell phone?

6 A No.

7 MR. KEMP: No further questions.

8 THE COURT: Cross -- any other plaintiffs wish to ask
9 any questions?

10 Mr. Gentile, as long as it's not duplicative. No
11 cumulative.

12 MR. GENTILE: I don't think I have any cumulative.

13 DIRECT EXAMINATION

14 BY MR. GENTILE:

15 Q Mr. Plaskon --

16 A Yes.

17 Q -- is that how you say your name?

18 A Yes. Thank you.

19 Q If I understood the testimony from you thus far, you
20 joined the Department of Taxation and commenced working there
21 in February of 2018.

22 A I think that's correct. Yes. Yes. I think I
23 accidentally said 2017 or something like that, but I think
24 that's [inaudible] 2018 I believe.

25 Q Are you saying you think it's correct that I

1 understand your testimony, or you think it's correct --

2 A The date you said is correct.

3 Q Thank you. Please let me finish before you speak.

4 Thank you. And I'll give you the same courtesy.

5 And prior to that you were a teacher?

6 A Yes.

7 Q For how long?

8 A I believe I started in, for the Washoe County School
9 District in 2014 as an adult education and in adult education.
10 Prior to that I worked teaching at University of Alaska,
11 Fairbanks; UNLV. I've also taught at UNR as well.

12 Q And so your teaching career has been --

13 When did you commence being a teacher?

14 A As a licensed teacher with the State, I think I was
15 licensed in 2014 I believe. I'd have to look at my license. I
16 don't recall.

17 Q Well, you're speaking about the State of Nevada?

18 A Yeah, the State of Nevada license, and then I started
19 teaching almost immediately thereafter getting a license.

20 Q Prior to that you taught in Alaska?

21 A In college I taught in Alaska.

22 Q And what --

23 A And when I was working --

24 Q What year --

25 A -- here in Las Vegas, I taught at UNLV.

1 Q What years did you teach in Alaska?

2 A 1995 I believe, the radio station there as a news
3 director.

4 Q The question was what years did you teach --

5 A I believe it was 1995 only.

6 Q Oh.

7 A I think.

8 Q Oh, from 1995 to 2014, what did you do?

9 A I worked as a -- in public radio and in television.

10 Q As a what?

11 A As a reporter.

12 Q And was that in Alaska?

13 A In Alaska I worked in commercial radio.

14 Q Okay. Let me ask it a different way so that you can
15 narrate and be forthcoming.

16 A Yes.

17 Q All right. Tell me what you did from 1995 to 2014
18 sequentially, please.

19 A Okay. In 2014, I was a -- well, okay. In 1994 I was
20 a college student at the University of Alaska, Fairbanks. I
21 also taught at the radio station there on campus and as a news
22 director. And then following there, I worked for CBS radio in
23 Fairbanks, Alaska producing public affairs content to educate
24 the public on community issues.

25 Q Were you the voice actor?

1 A I was the reporter or the anchor. So I researched,
2 wrote and recorded and produced all content.

3 Q Okay.

4 A Voice actor is incorrect I guess is what I'm saying,
5 an incorrect characterization of what I did.

6 Following that, I went to work in San Diego, and I
7 worked for Uptown News magazine as a print reporter there. I
8 did that for a few years. Then I think in 1999 I started
9 working for KPBS on web content as the first web producer for
10 an election project from the corporation for Public
11 Broadcasting.

12 Q In San Diego?

13 A In San Diego, yes, sir.

14 And I also reported on border issues. As a fluent
15 Spanish speaker, I was able to talk about complex issues
16 including power in Mexico and translate that for an American
17 audience for public radio.

18 Following that I --

19 Q What year are we in now?

20 A 2002. In 2002 I moved here to Las Vegas and worked
21 for KNPR as an anchor and reporter as well. I was an anchor
22 and reporter for at least one of those years, and then I was a
23 full-time reporter for KNPR. That was until 2005.

24 Then I moved on to KLAS TV where I was a morning
25 reporter and a weekend reporter. I worked there until 2008,

1 and in 2008 I moved up to Reno. And in Reno I worked for
2 Channel 8 there, KLAS -- or no, KOLO, K-O-L-O, and worked as a
3 morning anchor there for a few years.

4 Then I moved to Capital Public Radio and got my
5 teaching license. That was likely in 2014 I believe. It could
6 have been as early as -- I think I started working on getting
7 my teaching license maybe in 2012, and then it wasn't issued
8 until a little while after that, maybe in 2013. I don't recall
9 all the dates there, but that's also around the time that I
10 started teaching at UNR as well.

11 Once I got my license, then I started teaching at
12 adult education, and I started working, and I was teaching an
13 alternative English class for adults, students who had
14 difficulty in traditional schools, and so I wrote curriculum
15 there and ushered students who had difficulties as adults to
16 get their -- their degrees or whatever you call it, their
17 diplomas.

18 Then I was continuing through school in career and
19 technical education. I don't recall the number of credits that
20 I received, but career and technical education requires a lot
21 of study of curriculum production and methods of effective
22 education, lecturing, group work, examples, individual work,
23 assessments and finally reteaching if necessary.

24 Then I moved on to Damonte Ranch High School and
25 worked as a job skills teacher for at risk youth as well. I

1 did that for two years.

2 Q What years were those?

3 A 2015 and '16 believe, and in 2017, I moved to Hub
4 High School.

5 During this time I also continued to produce for
6 Capital Public Radio educational media and for a national
7 public radio.

8 And then when I moved to Hub High School, I actually
9 prior to moving to Hub High School, I also started the Reno
10 youth radio program, which was writing all of the curriculum
11 for how students might be able to present information in an
12 effective way for a large audience and educate them on issues
13 that are of importance to the general public. That -- I
14 designed and built that program and then continued it for a
15 full year and then moved to the state of Nevada in February
16 of 2018.

17 Q How did you get the job?

18 A I was producing radio for Capital Public Radio as
19 well as NPR, and so I was in communication with folks in the
20 department --

21 Q Which folks?

22 A Deonne Contine, Stephanie Clappstein [phonetic],
23 likely a public information officer. So they were familiar
24 with me, and when the position opened up, I applied and was the
25 successful candidate.

1 Q How did you learn that the position opened up?

2 A I don't recall. It could have been an email. It
3 could have been --

4 Q From Ms. Contine or Clappstein?

5 A I don't recall.

6 Q Okay. With regard to the job, did you have to
7 compete for it?

8 A Yes. I was told --

9 Q Go ahead. I'm sorry.

10 A No, I'm done.

11 Q You were told what? Please.

12 A That there were over 30 candidates for the position.

13 Q All right. And who told you that?

14 A Deonne Contine.

15 Q Okay. Now, when did you learn that you were going to
16 testify at this hearing?

17 A I never knew that I was going to testify at this
18 hearing until I was actually called. I didn't know what time
19 and date I would really be here until I was here.

20 Q All right. Let me -- perhaps I didn't ask the
21 question in a way that I should have.

22 A Okay.

23 Q When did you learn that there was a hearing scheduled
24 in this matter?

25 A I don't recall.

1 Q Give us your best estimate.

2 A A hearing scheduled for anyone, or --

3 Q A hearing was scheduled in this matter. When did it
4 first come to your attention that a hearing was scheduled in
5 this matter?

6 A I really don't -- I don't recall. It could have been
7 through news media that I heard about it.

8 Q I didn't ask you how you learned about it. I asked
9 you when. Could you answer the question I asked, please.

10 A I -- I don't know.

11 Q You don't know. Okay. Was it more than a week ago?

12 A Yeah. I would say so.

13 Q Was it more than two weeks ago?

14 A I don't know, but it was definitely more than a week
15 ago.

16 Q All right. And then the Court -- when did you learn
17 that you may be called as a witness in this matter?

18 A May be called as a witness in this manner -- or in
19 this matter some time last week I think.

20 Q And once you -- from whom did you learn that you
21 might be called as a witness?

22 A From Steve, my attorney I believe and our state
23 attorneys. I believe Dave Pope maybe. I think he might have.

24 Q Okay. And then from learning that you might be
25 called as a witness in this case until you were actually called

1 as a witness in this case, with whom have you had discussions
2 regarding your testimony in this case?

3 A With my attorneys.

4 THE COURT: Don't tell us the content of any of those
5 discussions, please.

6 MR. GENTILE: Yes. Don't.

7 BY MR. GENTILE:

8 Q Your attorneys?

9 A Yes.

10 Q And who are your attorneys?

11 A Steve, Dave, Keyoni [phonetic]? Is that -- am I --

12 MR. BHIRUD: Ketan.

13 THE WITNESS: Ketan. Sorry.

14 MR. BHIRUD: Close enough.

15 THE WITNESS: I'm sorry. Ketan.

16 MR. BHIRUD: But I am Hawaiian.

17 THE WITNESS: There's a lot of attorneys that I've
18 spoken to over the course of time here.

19 BY MR. GENTILE:

20 Q Okay. Let's talk about that. Where did these
21 discussions take place?

22 A Over the phone.

23 Q All right. And how many of them were there?

24 A I don't recall how many.

25 Q More than one?

1 A Yes.

2 Q More than two?

3 A Yes.

4 Q More than three?

5 A If you include email, probably more than three.

6 Q Okay. And with whom have you exchanged email?

7 A With Steve, I believe Ketan, and David and -- oh, Rob
8 as well. Rob.

9 Q Rob?

10 A I think Rob Werbicky.

11 Q Okay. With regard to the emails, who was CCed on the
12 emails?

13 A Oh, I don't know.

14 Q You don't know?

15 A No. I'd have to look at the email, sir.

16 Q Okay. But were there other people CCed on the
17 emails?

18 A I don't know. I'd have to look at the emails.

19 Q Do you have your phone with you?

20 A I do. It's not on me.

21 Q Are your emails on your phone?

22 A I've had difficulty logging in lately. I had to
23 reset my phone, and I've had difficulty trying to get --

24 Q Okay. Well, look, we'll get you all the technical
25 help you need.

1 A Okay.

2 Q Do you have your phone with you?

3 A I do.

4 Q Are your emails on your phone?

5 A I don't think so.

6 Q How about you try to access them right now.

7 MS. SHELL: Your Honor, I'm going to object for so
8 many reasons, but the first is this is really argumentative
9 questioning.

10 THE COURT: Overruled.

11 So, sir, if you are unable to access your phone, it
12 won't surprise any of us given the poor reception in this
13 particular courtroom.

14 THE WITNESS: Thank you.

15 THE COURT: Beyond any other technical difficulties
16 you might have.

17 THE WITNESS: It's starting up.

18 THE COURT: Thank you for turning it off before.

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

20 THE COURT: Mr. Gentile, while he's doing that, your
21 best estimate of your examination of this witness?

22 MR. GENTILE: Till lunch.

23 THE COURT: Are you planning on me taking a break
24 between now and then?

25 MR. GENTILE: It would be a nice time to do it if

1 you're going to.

2 THE COURT: Okay. Sir, we're going to take a break.
3 This is not a requested break. So we're going to take a rest
4 room break right now, and if somebody needs to help you access
5 your phone, you are perfectly willing or perfectly able to
6 have --

7 MR. GENTILE: Your Honor, I would suggest to enhance
8 his ability to do that that he attempts to do it outside of
9 this courtroom.

10 THE COURT: Well, that was why I suggested he have
11 assistance --

12 MR. GENTILE: I see.

13 THE COURT: -- from those fine people at the attorney
14 general's office who are probably more tech savvy than me.

15 MR. SHEVORSKI: Ketan, Your Honor.

16 THE COURT: You went back to the leader, huh?

17 MR. SHEVORSKI: That's right.

18 THE COURT: The team leader.

19 (Proceedings recessed at 10:28 a.m., until 10:41 a.m.)

20 THE COURT: Are we all here? Are we missing anybody
21 that we need to wait for?

22 (No audible response)

23 THE COURT: Okay. You may continue, Mr. Gentile.

24 BY MR. GENTILE:

25 Q Mr. Plaskon, have you had an opportunity to attempt

1 to get your emails from your phone?

2 A I did have an opportunity to attempt to get.

3 Q And what did you do in making that attempt?

4 A I turned on my phone. I explained to Ketan that I
5 don't have the link --

6 THE COURT: Wait. We don't want to tell you -- know
7 what you told us.

8 THE WITNESS: Okay. I tried --

9 THE COURT: So you worked with counsel.

10 THE WITNESS: Yes, I worked with counsel.

11 And I don't have the web link. I don't have State
12 email on my phone, set up on my phone through taxation, and I
13 don't have the web link to be able to go and login. So I can't
14 access my email via my phone.

15 BY MR. GENTILE:

16 Q Okay. Well, then let's do the best we can with your
17 memory given that you can't refresh it at this moment but also
18 understanding that you have to try. Okay?

19 A And I did recall that Theresa was on some -- CCed on
20 some of the emails as well.

21 Q And Teresa is --

22 A I don't recall her last name. I'm sorry --

23 THE COURT: Ms. Haar.

24 THE WITNESS: -- but I don't want to leave her --

25 / / /

1 BY MR. GENTILE:

2 Q She's also an assistant deputy attorney general?

3 A I don't know what her title is.

4 THE COURT: [Indiscernible] title. She's sitting
5 right there.

6 THE WITNESS: She, yeah. She's behind --

7 THE COURT: [Indiscernible.]

8 THE WITNESS: -- Steve.

9 MR. GENTILE: All right. I would accept a --
10 Hi.

11 THE COURT: Theresa, this is Mr. Gentile.

12 This is Ms. Haar, Mr. Gentile.

13 MR. GENTILE: Thank you.

14 THE COURT: All right.

15 MR. GENTILE: Your Honor, could the Court inquire, as
16 I cannot, as to whether Ms. Haar is --

17 THE COURT: She's an attorney.

18 MR. GENTILE: -- a Deputy Attorney General.

19 THE COURT: I do not know the level of her position
20 within the Attorney General's Office, but as the Chief Judge of
21 the Eighth Judicial District Court, I interacted with her as
22 well as many of the other Attorney Generals, including all of
23 the ones sitting in this room.

24 MR. GENTILE: That's fine. That's fine, Judge.

25 THE COURT: But I can't tell you what level they

1 are --

2 MR. GENTILE: No, I don't care about that.

3 THE COURT: -- because they change.

4 MR. GENTILE: I don't care about that. I care about
5 the privilege. It's the only reason I'm asking, okay.

6 THE COURT: She is an attorney with the Attorney
7 General's office.

8 MR. GENTILE: Okay.

9 BY MR. GENTILE:

10 Q You see other counsel at the table to my right, your
11 left?

12 A Do I see other counsel?

13 Q At the table to my right, to your left.

14 A Are you talking about attorneys? Do I see other
15 attorneys?

16 Q Yes.

17 A I think that these are all attorneys to your right
18 and left, yes.

19 Q No, I didn't say my right and left. I said to my
20 right and your left?

21 THE COURT: Are you mean the people --

22 BY MR. GENTILE:

23 Q No, your other left. Your other left.

24 THE COURT: The people sitting next to Mr. Shevorski.

25 THE WITNESS: Uh-huh.

1 MR. GENTILE: Okay. We could -- well, he doesn't
2 know it's Mr. Shevorski --

3 THE COURT: He does --

4 MR. GENTILE: -- he says it Steve.

5 No, he didn't. He said it's Steve. Let the record
6 be clear.

7 MR. SHEVORSKI: I try to be a friend of everyone.

8 MR. GENTILE: We could take judicial notice of that
9 if you want.

10 THE COURT: I can, yes.

11 BY MR. GENTILE:

12 Q All right. Do you see anybody else at that table
13 that you have spoken with or has been present when you have
14 spoken with your counsel?

15 A No.

16 Q Nobody. Okay. Now, with regard to telephonic, you
17 said you had some telephonic discussions with deputy attorney
18 generals; right?

19 A Yes, sir.

20 Q Okay. Who else was on the telephone besides deputy
21 attorney generals?

22 A No one.

23 Q No one?

24 A No one.

25 Q Okay. In the course of preparing for your testimony,

1 I take it that, you know, some of the things that you're being
2 asked about, and you clearly demonstrate that you don't have
3 memory, some of the things that you're being asked about
4 took -- took place almost a year and a half ago, 15, 16 months
5 ago; right?

6 A Have I had -- you're saying have I had conversations
7 with -- I'm not clear on your question, sir. I apologize.

8 THE COURT: Why don't we start over --

9 MR. GENTILE: I will --

10 THE COURT: -- because I think you're on different
11 paths.

12 MR. GENTILE: -- ask the question again, anew.

13 THE WITNESS: Okay.

14 BY MR. GENTILE:

15 Q You have been asked questions relating to your time
16 with the Department of Taxation. Am I correct?

17 A You are correct.

18 Q And that covered a period of about 16 months or very
19 close to it?

20 A You've gone all the way back to 1994.

21 Q Right. I understand that. But I'm specifically
22 talking about the last 16 months. You're not here because you
23 were a -- I almost said disc jockey. That would have been two
24 mistakes I've made because you were a radio personality.

25 You're here because of your activity with the

1 Department of Taxation. You understand that?

2 A That's correct.

3 Q Okay. And it is -- unless you are different than
4 most humans, you don't have perfect recall. Do you have
5 perfect recall?

6 A No, sir.

7 Q All right. So what have you done to refresh your
8 recollection with regard to your conduct at the Department of
9 Taxation in the last 15 months?

10 A I've reviewed the discovery of my cell phone records,
11 and I've reviewed training materials and -- and thought about
12 it.

13 Q And thought about it?

14 A Yes.

15 Q We're going to get to your cell phone records, I
16 promise. The cell phone records that you reviewed, would
17 you -- can you describe them? Were they a hard copy?

18 A Yes, sir.

19 Q All right. And when did you review them?

20 A When I received them via email. Possibly a week ago.

21 Q And were these the hard copy printouts from the Holo
22 company that did the review? Holo is H-o-l-o.

23 A I believe I saw that name on the document.

24 Q Okay. Well, later on when we get into it you can
25 tell us if those are the ones you reviewed, and if they're not,

1 please be sure to tell us. Okay?

2 A Yes, sir.

3 Q All right. Now, you testified this morning that you
4 would from time to time get telephone calls or be contacted by
5 applicants, and you would answer their questions. Do you
6 recall that testimony?

7 A Yes, sir.

8 Q All right. Do you recall which applicants you spoke
9 with?

10 A There were hundreds of people that called me.

11 Q Okay. And what were the nature of the questions that
12 they would ask?

13 A Uh --

14 Q Do the best you can to exhaust your memory of it,
15 please.

16 A I believe the majority of them were asking for what
17 would qualify as documents related to the application.

18 Q Can you give us a little bit more detail with regard
19 to what aspects of the application?

20 A I believe it was every portion of the -- of the
21 criteria.

22 Q You were not there in 2014 during the medical
23 marijuana application process; correct?

24 A That's correct.

25 Q Have you ever looked at the medical marijuana

1 application?

2 A Yes.

3 Q All right. And on the medical marijuana application
4 at page 9, it actually had a full printed process and time
5 frame for applicants to make inquiry of the department. Do you
6 recall that?

7 A No, I don't. I do not.

8 Q Okay. The current application, the one that we are
9 here about, did not have such information on it, did it?

10 A I would have to look at the application.

11 Q So you don't remember?

12 A I don't recall.

13 Q All right. You didn't create the application?

14 A I did not.

15 Q Did you review the application before it was
16 approved?

17 A Yes, I did with multiple staff members.

18 Q Well, let's talk about that. Because you've used the
19 word "we" a lot. I don't like "we," and I don't like "you"
20 because it can mean you, or it can mean the royal you. Okay.

21 So let's talk about who you dealt with with regard to
22 reviewing that application.

23 A [No audible response.]

24 Q Who did you deal with with regard to that, reviewing
25 that application?

1 A Steve Gilbert and Janine Warner and Kara Cronkhite,
2 Damon Hernandez I believe was involved, and Diane O'Connor.

3 Q Anybody else?

4 A There could have been others, but those are the names
5 off the top of my head.

6 Q And was this some sort of a meeting where everyone
7 was present and did the review?

8 A We did multiple meetings on the -- this application,
9 yes.

10 Q And with regard to the people that you've just named,
11 who -- what were their roles? I don't mean in the review
12 process, I mean with the Department of Taxation?

13 A Damon Hernandez is a chief compliance audit
14 investigator. Karalin Cronkhite at the time was program
15 supervisor.

16 Q Which program?

17 A The marijuana enforcement division.

18 Q Okay.

19 A Diane O'Connor is a program officer. Janine --

20 Q Marijuana Enforcement Division?

21 A Yes.

22 Q Please --

23 A All of these folks are in the Marijuana Enforcement
24 Division?

25 Q Thank you.

1 A And Janine Warner also a program officer.

2 Q You missed Steve Gilbert.

3 A Oh, Steve Gilbert, a program manager.

4 Q And when -- what was your role? What were you asked
5 to do with regard to the review of the application?

6 I'm going to start off, to make it easy, I'm going to
7 assume read it.

8 A Yes, sir.

9 Q Okay. What else besides read it?

10 A Look at instances where 453A is referenced, and see
11 if 453D applies and then replace it if it does. Then --

12 Q What if it -- what if 453 --

13 A I wasn't done, sir.

14 Q I'm sorry?

15 A And then it --

16 THE COURT: He wasn't done.

17 BY MR. GENTILE:

18 Q Oh, I apologize. Okay.

19 A And then if 453A did not apply, and 453D did apply,
20 then to work with staff to make sure that what we were doing
21 was the right thing to do according to the statutes.

22 Q Statutes. And who gave you advice as to what the
23 right thing to do according to the statutes was?

24 A That would be the team that was reviewing this, the
25 team that I mentioned earlier.

1 Q So everybody had input as to what the right thing to
2 do pursuant to 453D was?

3 A According to the statutes. It may not just be 453D,
4 but maybe some other elements as well, like R092-17, which is
5 now NAC 453D.

6 Q Among the people that you named that were on this
7 review team, which of them is a lawyer?

8 A None of those mentioned are attorneys. Shelly, who
9 works for the Department of Taxation may have been involved,
10 who is an attorney, but I'm not sure.

11 Q You're not sure that she was involved?

12 A I'm not sure. You'd have to ask Steve Gilbert or
13 Jorge Pupo or whether Rob Werbicky was involved or anybody
14 else.

15 Q But somehow, as a group and through discussion when
16 an issue came up as to what the statute -- what the right thing
17 to do pursuant to the statute was, you discussed it as a group
18 and came up with an answer. Is that fair to say?

19 A Yes.

20 Q In the course of those discussions -- let me take a
21 step back.

22 THE COURT: Thanks.

23 BY MR. GENTILE:

24 Q How many such issues, separate issues described as
25 you did, whether 453A applied, whether it didn't, whether 453

1 applied, if it did what did it -- what was the right thing to
2 do, how many such discussions, how many such issues did you
3 have with this group?

4 A I didn't understand your question, sir. I would have
5 to review the document. That is not something that I came
6 prepared to discuss --

7 Q More than one?

8 A Definitely more than one.

9 Q More than five?

10 A I cannot say that it was more than five.

11 Q It wasn't more than five or you --

12 A I don't know.

13 Q You don't know. That's --

14 A As I said, I --

15 Q I think that's the first time you've said that in two
16 days, not knowing is okay. All right?

17 If you will, were you -- when such an issue came up
18 in the five or fewer times that you do recall, were you all in
19 agreement at the beginning of the discussions as to what the
20 right thing to do was?

21 A At the very beginning?

22 Q Yes.

23 A I don't recall.

24 Q With regard to any of those five discussions, you
25 don't recall?

1 A As to whether there was disagreement or not
2 disagreement, consensus?

3 Q At the beginning, yes, at the beginning?

4 A No, I do not recall.

5 Q You don't recall. Okay. At the end of the day, with
6 regard to these five or fewer, were all of you in agreement, or
7 were there some who were not?

8 A When the document was finalized by our team and ready
9 for review, and I don't know who may have possibly reviewed it
10 after us, we were all in agreement.

11 Q Again --

12 A We were in agreement.

13 Q I'm really failing to ask the right questions. So
14 bear with me if you will.

15 A Okay.

16 Q Okay. I wasn't talking about when it was ready. I'm
17 talking about in the course of preparing it. Okay? You
18 understand that concept?

19 A Yes, I understand the difference between the two.

20 Q And in the course of preparing it, you have testified
21 already that at least five times, perhaps more, but you're not
22 willing to go that far, there were things that came up with
23 regard to the applicability of 453A, whether it transitioned to
24 453D --

25 Which of course medical was very different than

1 recreational; fair to say?

2 A Yes.

3 Q Okay.

4 -- those issues came up, and you as a group had
5 discussions about them to basically decide what to do; fair to
6 say?

7 A Yes.

8 Q Okay. In those discussions, at that point in time,
9 was there ever somebody on your team that differed from the
10 opinion on each occasion prior to final approval of the
11 majority of that team?

12 A Not what I -- not to my knowledge.

13 Q Okay.

14 A Not that I'm aware of.

15 Q Okay. But at the beginning of each discussion,
16 everybody was not necessarily on the same page. Is that fair
17 to say?

18 A No.

19 Q So why discuss it?

20 A I think everyone --

21 Q I take it these discussions lasted a minute?

22 A You had a question.

23 Q That was a question.

24 A Okay.

25 Q Did these discussions last a minute?

1 A No.

2 Q Did they last five minutes?

3 A No.

4 Q Did they sometimes last quite some time?

5 A Yes.

6 Q Sometimes even over days?

7 A Yes.

8 Q Okay. Why waste all that time if you were all in
9 agreement from the beginning? You realize that's taxpayer
10 money.

11 A We wanted to get it right, sir.

12 Q Oh, okay. So I take it that you weren't sure it was
13 right until finally you all decided this is the way to do it?

14 A We worked together to come to a consensus on what
15 needed to happen with that application and to get it right.

16 Q And in your opinion, when you approved that it was
17 right?

18 A We did the best to our ability, sir.

19 Q But your team did not have -- well, never mind.

20 Have you ever looked at the ballot question Number 2
21 that bred life into 453D?

22 A Yes, sir.

23 Q Is this the first time that in your -- strike that.
24 You started in February of 2018 with the state. Prior to that,
25 did you deem yourself to be a constitutional scholar?

1 A No, sir.

2 Q Okay. Do you know what a ballot initiative is?

3 A I believe I have a layman's understanding of what it
4 is.

5 Q What's your understanding?

6 A That voters or people sign a petition to have an
7 issue on the ballot, and then if it receives enough signatures,
8 then it goes to the -- it goes to the election, and then people
9 decide whether they want to enact it into law or not.

10 Q In your layman's understanding, how does that differ
11 from legislation?

12 A That --

13 Q By the Nevada Legislature.

14 A That's the difference, that the legislature would
15 write the law and then vote on it, and then it becomes law
16 after the signature of the governor.

17 Q So it is different than --

18 A Yes, sir.

19 Q -- when the legislature?

20 A It is different.

21 Q Okay. And you knew that?

22 A Yes, sir.

23 Q Now I want to talk with you a little bit about the
24 people that you work with over at the Department of Taxation.

25 By the way, before I do this, you're -- if my math is

1 correct, you're about to turn 50?

2 A No, sir.

3 Q Oh, okay. You're younger then?

4 A Thank you.

5 Q Okay. Well, I was just figuring -- oh, wait a
6 minute, that was law school. I was thinking about how old I
7 was when I graduated, but I went to law school. So that's
8 another couple of years. I apologize.

9 But nevertheless, have you ever heard of a man named
10 Harry Truman?

11 A Yes, sir.

12 Q What was he?

13 A A president.

14 Q A president?

15 A Yeah. I believe.

16 Q Yeah. Well, now you were a journalist; fair to say?
17 Can I call you a journalist at least given your how many years
18 you spent in radio journalism?

19 A Are you talking about currently?

20 Q No, not now, but --

21 A During Harry Truman's --

22 Q No, sir. No, sir.

23 A Okay.

24 Q No, sir. Let me ask it directly: Did you ever --
25 did you ever learn about a sign that Harry Truman had on his

1 desk?

2 A No, sir.

3 Q No. Well, that sign said, "The buck stops here," and
4 I see you're writing it down.

5 A Yes, sir.

6 Q I am going to ask you questions because I need to
7 find out where the buck stops in this case, and I think the
8 Court might like to know that too. Okay.

9 Who is Jorge Pupo?

10 A The deputy director, sir.

11 Q And was he deputy director when you became employed
12 by the Department of Taxation?

13 A Yes, sir.

14 Q Okay. So you've always worked for him. Who's the
15 director?

16 A Deonne Contine.

17 Q Is she still the director?

18 A No, sir.

19 Q All right. So there is no director at this point?

20 A No, sir, incorrect.

21 Q Who is the -- I asked -- okay. Who is the current
22 director?

23 A The current director is Melanie Young.

24 Q Melanie Young. Was Melanie Young the director during
25 the -- during 2018?

1 A During which -- during the entire year of 2018?

2 What --

3 Q Prior to December 5th of 2018?

4 A Bill -- I don't recall his last name for some
5 reason -- was the director during that time I believe.

6 Q Bill?

7 A Yeah.

8 Q Bill, last name --

9 A Yeah. Sorry. It's --

10 Q -- unremembered?

11 A Yeah. It's not --

12 Q He made a big impression on you. He was your boss,
13 wasn't he?

14 A Yes, sir, he was.

15 Q All right. Bill the boss was the director at the
16 time?

17 A Yeah, Anderson.

18 THE WITNESS: Thank you. I appreciate that,
19 Mr. Kemp.

20 BY MR. GENTILE:

21 Q And was he the director when you were hired, or was
22 Deonne Contine the director?

23 A Deonne Contine was the director.

24 Q Deonne Contine.

25 A Yes.

1 Q Okay. When did Mr. Anderson become the director?

2 A I don't recall the date, sir.

3 Q All right. But was Mr. Pupo the deputy director
4 during the entire 2018 when you worked there?

5 A Yes, sir.

6 Q Okay. And what was his relation to the -- to the
7 medical marijuana program -- excuse me, not medical marijuana,
8 to the recreational marijuana program?

9 A He's the deputy director of the Marijuana Enforcement
10 Division, sir.

11 Q I see. So he's not the deputy director of the
12 Department of Taxation. He's the deputy director of the
13 medical enforcement division?

14 A I think you'd have to talk to the HR department of
15 the -- of the Department of Taxation to really get a clear
16 understanding if he's the Department of Taxation or Marijuana
17 Enforcement Division.

18 Q All right. But at least your impression is that he's
19 the deputy director of medical -- excuse me, of the Marijuana
20 Enforcement Division?

21 A Yes. I believe we have a organizational chart that
22 has Kara Cronkhite -- Karalin Cronkhite, Steve Gilbert and then
23 Jorge Pupo in the --

24 Q All right. We're making progress.

25 So Mr. Pupo is the supervisor of Mr. Gilbert.

1 Ms. Cronkhite is supervised by Mr. Gilbert.

2 A That's correct.

3 Q What's your relationship organizationalwise to
4 Ms. Cronkhite?

5 A I would be underneath Ms. Cronkhite.

6 Q All right. So you answer to her; she answers to
7 Mr. Gilbert; he answers to Mr. Pupo?

8 A Yes, sir.

9 Q Now, specifically does Mr. Gilbert -- is Mr. Gilbert
10 involved only with the Marijuana Enforcement Division insofar
11 as you know?

12 A Yes, sir.

13 Q All right. And what is his job title?

14 A Pro --

15 Q Insofar as you know.

16 A Program manager.

17 Q And which program is it that he's the manager of?

18 A Marijuana Enforcement Division.

19 Q So when the application was submit -- when your team
20 that did not include any of these people except well, it
21 included Ms. Cronkhite and Mr. Gilbert -- when they approved
22 the application after doing what you did and discussing it, it
23 was handed up to Mr. Pupo?

24 A I do not know, sir.

25 Q You don't know what happened to it at that point?

1 A I do not know.

2 Q Next time you saw it it was printed?

3 A It was probably e-mailed back to me with an approval.

4 Q Okay. Now, there were subparts in this application,
5 many. I actually found half of it here. There were categories
6 and then the applicant was advised as to how many points each
7 category would carry, but somewhere along the line those
8 categories were -- were given more parts, shall we say, in
9 other words, the points were subdivided; do you understand what
10 I'm saying?

11 A I do.

12 Q All right. Do you agree with that?

13 A I do not recall.

14 Q So you don't recall who it was that made the
15 decisions with regard to how many points should be awarded to
16 any subpart to any category?

17 A I am not aware of who made those decisions.

18 Q You know you didn't?

19 A I did not.

20 Q And to your knowledge, sir, were they discussed at
21 your group meeting that was designed to essentially connect
22 453A or 453D doing the right thing with regard to the
23 application?

24 A I do not recall discussing point values.

25 Q When did it first come to your attention that the

1 point values had been subdivided among the categories?

2 A I don't think it ever came to my attention. I think
3 I had the application and that was it.

4 Q So you saw what the applicant saw?

5 A Yes, sir.

6 Q Do you know whose decision it was to assign
7 specific -- a specific number of maximum points for each of
8 those categories?

9 A I do not.

10 Q Do you know what was considered or if anything was
11 considered with regard to how many points should be assigned to
12 any subcategory or category?

13 A I do not know.

14 Q Who would know?

15 A Steve Gilbert Jorge Pupo possibly.

16 Q Now, you testified earlier this morning that the
17 Manpower personnel, that's what I call it -- let me take a step
18 back on that. When did it come to your attention that the
19 Department of Taxation was going to have nondepartment of
20 taxation personnel do the evaluations of the applications?

21 A I don't recall the exact date, but I remember that it
22 was very early on in the discussions of this application period
23 and how they occurred.

24 Q Were you a part of those discussions?

25 A I was.

1 Q Okay. So tell us your memory of the subject matter
2 with regard to having nondepartment personnel do the
3 evaluations of these applications. And this time I'm using you
4 the second person plural. So I want to know who was involved
5 in the discussions.

6 A Okay. Steve Gilbert and I probably began our
7 discussion shortly after I started with the Department of
8 Taxation about the 2014 application period and how it occurred
9 and that there were nondepartmental employees hired at that
10 time to conduct that evaluation process and that we would do
11 the same in upcoming -- in the upcoming period possibly with
12 approval of the right entities.

13 Q Entities?

14 A Yeah, I believe -- I don't have the exact agency or
15 entity that we are required to get approval from.

16 Q So that you could spend the money?

17 A I am not in charge of the budget, sir, so I don't
18 know exactly how funds are appropriated.

19 Q All right. And now you started in February. So when
20 do you think that discussion with Mr. Gilbert occurred?

21 A I don't recall. Shortly after I began.

22 Q February? March?

23 A I don't recall.

24 Q And it was only you and Mr. Gilbert that had that
25 discussion?

1 A Yes.

2 Q And it sounds like, but you correct me if I'm wrong,
3 it sounds like Mr. Gilbert said albeit in different words,
4 that's the way we always do it?

5 A No, sir.

6 Q Oh, okay. Well, he said that's the way they did it
7 for the medical marijuana; am I right?

8 A Yes. That is how the application --

9 Q And that's the only time that this application
10 process had ever occurred before?

11 A Correct.

12 Q So it is in fact the way you always did it; fair to
13 say?

14 A Those are your words, yes.

15 Q Okay. Did he say anything to you with regard to why
16 it was so wise to do it that way or why they decided to do it
17 that way in the medical marijuana application process?

18 A No.

19 Q But it's not your job to question them; is that fair
20 to say?

21 A It's not in my job description.

22 Q What's the next time it came to your attention that
23 outside personnel were going to be used to do the evaluation
24 process?

25 A We discussed it on multiple occasions. I was very

1 interested in how this process occurs.

2 Q Okay. So are we, okay, so we at least have some
3 common ground, sir. The -- you said, We discussed it on
4 several occasions; was it always you and Mr. Gilbert?

5 A As the education information officer I would often
6 relay those to other staff members as well.

7 Q Okay. So basically you would go to other staff
8 members and said Steve says we're going to use outside
9 personnel, not in those words --

10 A No.

11 Q -- but you would convey the information?

12 A No.

13 Q Well, then what did you do?

14 A This is how we did it in 2014.

15 Q That's what you told them?

16 A That we -- that we did this in 2014, that we hired
17 contractors in 2014. That was the extent of the information,
18 and it wasn't necessarily going to apply to the 2018
19 application period.

20 Q Okay. Did you use Manpower -- do you -- well, you
21 weren't there in 2014, but has it come to your attention what
22 outside contractors were used in 2014?

23 A Has it come to my attention that outside contractors
24 were used in 2014, yes.

25 Q You've already said that --

1 A Yes.

2 Q But again I'm just not asking the right questions.

3 A Okay.

4 Q I sincerely apologize. With regard to your knowledge
5 now, has that come to your attention as to whether or not
6 Manpower was used in 2014?

7 A I believe I was told that Manpower was not used in
8 2014.

9 Q Who told you that?

10 A Steve Gilbert.

11 Q Did he tell you who was used in 2014?

12 A I don't recall.

13 Q Would it be fair to say that you know nothing of the
14 qualifications or backgrounds of the people that did this in
15 2014?

16 A That is fair to say.

17 Q Today with regard to the Manpower contractors that
18 were doing the evaluation process in 2018, you said that they
19 acted independently; what did you mean by that?

20 A Independent of the department.

21 Q Independent of the department. So the department had
22 no input -- well, no, I don't want to put words in your mouth.
23 How were they acting independently of the department other than
24 the fact they weren't employees?

25 A They were trained and used that knowledge to apply to

1 the evaluation of applications. We did not intervene in that
2 process.

3 Q So you did not conduct any -- again, what if any
4 supervision applicant by applicant, application by application
5 did the Department of Taxation have over the evaluator?

6 A None.

7 MR. GENTILE: Can you please -- can you please pull
8 up Exhibit 108.

9 BY MR. GENTILE:

10 Q Remember a bit ago you said that you looked at your
11 telephone logs?

12 A Yes, sir.

13 Q Does that look like what you looked at to prepare for
14 your testimony today?

15 A Yes, sir.

16 Q Okay. You know, before I get through this -- well,
17 actually it's the same thing. Who is Denise Househouser?

18 A A former employer at the Damonte Ranch High School,
19 the principal.

20 Q Who was Elizabeth Harrison?

21 A A psychologist.

22 Q A psychologist where?

23 A In Reno.

24 Q Does she work for the Department of Taxation?

25 A No, sir.

1 Q Who is Rebecca Gaska?

2 A A friend of mine.

3 Q Who is Danielle Myers Kluever?

4 A I think that's Danette Kluever I believe --

5 Q Well, among other things my eyes aren't so --

6 A -- which would have been -- I think that was one of
7 our evaluators Danette.

8 Q Who was Pamela Rawlings?

9 A A administrative assistant.

10 Q To who?

11 A To the evaluators.

12 Q Was she a Department of Taxation employee?

13 A We paid her through Manpower.

14 Q So she's not a -- she was a temporary contractor with
15 the Department of Taxation; am I right?

16 A Correct.

17 Q Who is Diane Taxation, and my guess is that that's
18 not a real name?

19 A No, sir.

20 Q What is her real name?

21 A Diane O'Connor.

22 Q Diane O'Connor?

23 A Uh-huh.

24 Q Okay. And who is -- sir, you have to use a yes or
25 no. This is being written and the court transcript is not

1 going to indicate what uh-huh means, okay?

2 A Yes, sir.

3 Q Okay. Who is Roxanne Contractor?

4 A Roxanne Spring.

5 Q Okay. And who is she?

6 A One of the evaluators paid through Manpower.

7 Q All right. Do you have a hard -- well --

8 A I do not have a hard copy of this.

9 Q You don't have a hard copy of that?

10 A No, sir.

11 THE COURT: It's in the binders.

12 MR. GENTILE: All right. I --

13 THE COURT: So, sir, in the white binders behind you.

14 MR. GENTILE: He's probably not going to need -- if
15 he needs it, great. I know it's -- I'm going to call up
16 through the screen those parts that I need, but if you need it
17 and you want to look at more than what's on the screen, I
18 invite you to do so.

19 THE COURT: And, sir, if you need to give yourself
20 context in looking at the chain of messages, you can of course
21 look at the exhibit as well.

22 THE WITNESS: May I ask which binder it's in?

23 THE CLERK: It's in the very last -- behind you
24 towards the right. I think it's Exhibit (inaudible) 14, 108,
25 yeah.

1 THE COURT: All right. Keep going, Mr. Gentile,
2 you've got 25 more minutes.

3 MR. GENTILE: Joe, if you could focus in with regard
4 to that exhibit at page 40.

5 Are you there?

6 THE WITNESS: Yeah.

7 BY MR. GENTILE:

8 Q Okay. Mr. Plaskon, if you would look at the entries
9 and you'll note that the higher the number the older the text
10 message, okay. So if we're looking at -- and specifically this
11 time I want you to look at the range of 544 to 542?

12 A Yes, sir.

13 Q And now this appears to be a series that -- 544 to
14 542 appears to be a series of text messages back and forth
15 between you and Denise Househouser; am I right?

16 A That's correct.

17 Q And at 544 are you basically advising Denise
18 Househouser that -- well, here's what it says. It says, It
19 looks like we do have some flexibility with the positions now.
20 Would your husband like to chat with the program manager.
21 What's that about?

22 A We were trying to identify folks that may be
23 interested in applying for positions.

24 Q Positions doing what?

25 A Evaluating applications.

1 Q Evaluating applications?

2 A Yes, sir.

3 Q And you were inviting a friend of yours to become an
4 evaluator?

5 A A former supervisor. I was -- I reached out to a
6 former supervisor to see if she knew someone who might be
7 interested in applying.

8 Q Okay. And she responds to you, Yes, he would. Thank
9 you. And then you respond to her, and all of this takes about
10 20 minutes from start to finish. Can you ask him to e-mail me
11 with his resume to Caplexcon (phonetic) at text date Nevada US
12 and include the vacation applications. Thank you. So I take
13 it she had someone that was interested?

14 A Yes. I believe she had somebody who was interested
15 in considering the position.

16 Q Would you please look at 541 to 539. 541 appears to
17 be a text that you sent to Elizabeth Harrison and you've told
18 us --

19 A Hold on. 531 or 541?

20 Q No, 541.

21 A Okay. Sorry.

22 THE COURT: So we have on the screen 541, 540, and
23 539. Is that what you wanted, Mr. Gentile?

24 MR. GENTILE: That's what I want to screen.

25 THE COURT: Okay. Thank you.

1 MR. GENTILE: Unfortunately I don't have a screen,
2 and I can't see that one. I can see the screen; I can't see
3 what's on it.

4 BY MR. GENTILE:

5 Q You see those?

6 A 541 -- 541 to what?

7 Q To 539 but we're going to take them slowly, okay?

8 A Okay.

9 Q This is August the 20th of 2018; am I right?

10 A Yes.

11 Q About a couple minutes before noon and you are
12 sending an e-mail to your psychologist or a psychologist that
13 you know?

14 A Yes, sir.

15 Q Okay. And it says, Application evaluation the topic
16 is top-secret. We're looking for -- with a little smiley face,
17 topic is top-secret. We are looking for someone in the medical
18 industry, but others can apply as well. And then if you go up
19 to 539 she replies to you, I just thought of someone else that
20 lives in Carson and works in the medical field for an
21 ophthalmologist. Her name is Rosie A-b-d-s-g-e. Is that text
22 speak? Is A-b-d-s-g-e text speak?

23 A I don't know.

24 Q Or is it just a poorly spelled couple of words?

25 A You'd have to ask the person who sent me the text.

1 Q Is very interested. So that's the response that she
2 gave to you. What job was it that you were looking for someone
3 with medical industry background?

4 A That was for evaluators.

5 Q Evaluators. And how is a medical industry background
6 going to qualify somebody for making a determination with
7 regard to whether something should be assessed a certain number
8 of points available on a recreational medical marijuana
9 application, excuse me, recreational marijuana application?

10 A The direction that was given was to find someone that
11 fit -- that potentially could fit the job descriptions that we
12 have posted online. Among those is a, I believe, a health
13 program supervisor.

14 Q And this was for the Marijuana Enforcement Division?

15 A Yes.

16 Q And who gave you those instructions?

17 A Steve Gilbert.

18 Q Rebecca Gaska is a friend of yours?

19 A Yes, sir.

20 Q You see that entry at 540? Do you see that one?

21 A Yes, sir.

22 Q So on the 21st of August you send her a text message
23 that said, Anyone doing a dispensary app in Pershing County,
24 question. Steve says someone should apply and just open it up
25 the week of burning man. Did Mr. Gilbert tell you that someone

1 should apply for an application in Pershing County, or did you
2 mislead Ms. Gaska?

3 A It was a off-the-cuff discussion with Mr. Steve
4 Gilbert that he said that to me. We both were curious --

5 Q That's fine.

6 A -- well, we were both curious as to whether people
7 would be applying in these rural counties. Rural counties have
8 been kind of left off the chart by it seemed many of the --
9 public or applicants, and so we were curious as to whether how
10 many applications would be coming in from these small -- for
11 these small rural counties.

12 Q In August of 2018, how many applications did you
13 think -- this time I'm asking you singular, okay, how many
14 applications did you think you were going to receive for these
15 61 licenses?

16 A 320.

17 Q You underestimated it by about 30 percent?

18 A The number that came in was 470, 420; I don't recall
19 exactly, and I don't have a calculator to do math.

20 Q With regard to your job description and in so far as
21 you know Mr. Gilbert, was it part of your job description to go
22 out and encourage people to apply for marijuana retail stores?

23 A No.

24 Q Just for a moment, would you please go to page 32.
25 We're going to come back, but since we're dealing with

1 Ms. Gaska. Ms. Gaska's a friend of yours; right?

2 A Yes, I've known her --

3 Q Let's go to entry at 404 --

4 A -- I've known her for a long time.

5 Q -- entry 404. Are we at 404 yet?

6 THE COURT: Gentlemen, it's really important that
7 only one of you speak at a time so that Flo the transcriber can
8 accurately identify who is speaking and what they are saying.

9 THE WITNESS: I apologize, Your Honor.

10 THE COURT: It's okay. It's not just you, sir.

11 BY MR. GENTILE:

12 Q You see that entry at 4 -- that entry at 404 this was
13 9/18/2018?

14 A Yes, sir.

15 Q Right at the cusp of the commencement of evaluations;
16 am I right?

17 A Yes, sir.

18 Q The threshold, and you sent to Rebecca Gaska, Jorge
19 Pupo is the M-e-d deputy director. Steve Gilbert is program
20 manager and reports to Jorge. I report to Steve. Steve prefers
21 to not have the world know our structure. He likes industry
22 folks knowing though and addressing them. He has all questions
23 come to me. Ones I can't answer he fields and has me respond.
24 Then if he can't, then Jorge gets them, and Jorge has me
25 respond. That's the goal anyway. Why are you sending her,

1 what does she have to do with the Department of Taxation at
2 that time?

3 A I believe she was an applicant, and she had questions
4 and was wondering who to send them to, whether to send them to
5 Jorge or to Steve Gilbert.

6 Q Okay. So she's a friend of yours. We start with
7 that.

8 A Long before any of this.

9 Q And you are giving her information about the
10 structure when Steve Gilbert doesn't want it out there; is that
11 fair to say?

12 A He does not mind industry folks, per the text
13 message, knowing.

14 Q That Rebecca Gaska already possess a medical
15 marijuana license?

16 A Yes.

17 Q Where?

18 A I believe Wendover.

19 Q So when you told --

20 A Oh, actually it's a conditional license.

21 Q So when you were communicating with her a month
22 earlier about making an application for Pershing County, you
23 knew she was already in the medical marijuana business shall we
24 say?

25 A Yes, sir.

1 Q And as a result of her medical marijuana license, was
2 she -- did she obtain under the Rapid Start Program that the
3 governor initiated also a retail license?

4 A No, I do not believe so.

5 Q You don't know?

6 A I don't think she did.

7 Q Okay.

8 A She does not have a store.

9 Q All right. While we're still on page 32 over here,
10 could you pull up numbers 409 through 407.

11 A Yes, sir.

12 Q This was on the 17th of September; am I correct?

13 A Yes, sir.

14 Q All right. And at that point in time you had
15 received only three applications; is that with this sequence is
16 discussing?

17 A That is what it says.

18 Q So three days prior to the deadline you had only
19 three applications filed that you had received?

20 A Yes. That is consistent with 2014. From what I
21 heard the majority of the applications don't come in until the
22 very last day.

23 Q I never asked you that. I didn't ask you that, sir.

24 A Okay.

25 Q Okay. Would you confine your answer to my question

1 unless it's somehow relevant.

2 A I believe it is.

3 Q Okay. You thought you'd have a hundred applications
4 by the deadline, that's what this says. Isn't that what that
5 says when you're sending Danette a text message in response to
6 receiving hers you say, Good morning. We have three. We will
7 have possibly more than a hundred by the end of the week. The
8 end of the week was the deadline; we can agree on that; right?

9 A Yes, sir.

10 Q Okay. You got over 450, 462 I think is the word --
11 the number?

12 A So to help you understand the difference between an
13 application --

14 Q I'm just asking you, sir, what this says.

15 A And I'm about to explain.

16 Q Okay. This says you were going to have more than a
17 hundred by the end of the week. And it responds to Danette
18 saying to you, How many applications do we have now; right?

19 A Correct.

20 Q All right. You told her we have three now; we'll
21 have more than a hundred by the end of the week?

22 A Yes, sir.

23 Q Okay. About how much time did you anticipate prior
24 to the applications being received and reviewed at the time
25 when you're still talking with Steve Gilbert about having

1 outside people doing it? About how much time did you
2 anticipate it was going to take to review, to thoroughly review
3 an application, per application?

4 A I don't recall what my estimate was.

5 Q I read somewhere 33 hours.

6 A I did see that, and I -- that must have been some
7 sort of typo.

8 Q A stutter?

9 A A typo.

10 Q Well, I mean, what was the typo part the first digit
11 or the second?

12 A It could have been either.

13 Q It could have been either. Or it could have been a
14 stuttering typist.

15 A You mean transcriber you're saying --

16 Q In other words, it could have been 3 and it turned
17 out to be 33; is that what you're saying?

18 A Possibly.

19 Q Yeah. But you're certain that that number was wrong,
20 the 33?

21 A Yes.

22 Q How much time did you think it was going to take to
23 review each application?

24 A As I said before, I don't recall.

25 Q Were there discussions that you had with Mr. Gilbert

1 or anyone else in the course of making a determination as to
2 how many of these evaluators you needed to hire with regard to
3 how long it was going to take to do a good job reviewing an
4 application?

5 A Yes.

6 Q Who were the discussions with?

7 A With Mr. Gilbert.

8 Q And what did Mr. Gilbert say with regard to his
9 opinion as to how long it was going to take to do a thorough
10 job evaluating each application?

11 A We didn't have a discussion on the time.

12 Q So nobody ever -- as far as you know you don't know
13 what Mr. Gilbert thought it was going to require to do the
14 thorough job reviewing an application?

15 A Correct.

16 Q Did you ever express to him how long you thought it
17 was going to take?

18 A No.

19 Q You had no experience evaluating applications; am I
20 right?

21 A That's correct.

22 MR. GENTILE: Could you turn to page 30 of 108,
23 please. Oh, I'm sorry let's go to 31 first.

24 BY MR. GENTILE:

25 Q Could you take a look at page 31 entry 377. This is

1 a text message that you sent to Steve Gilbert.

2 By the way, do you know why Steve Gilbert's phone
3 doesn't contain text messages that you sent to him?

4 A I do not.

5 Q 377 is from you to Steve Gilbert. It's dated the
6 19th of September 2018. Who is Janine?

7 A Program officer at the time.

8 Q Okay.

9 A In the Marijuana Enforcement Division.

10 Q All right. So she works for the Department of
11 Taxation?

12 A Yes, sir.

13 Q Who is Diane?

14 A Program officer in the Department of Taxation
15 Marijuana Enforcement Division.

16 THE COURT: Is there an objection?

17 MS. SHELL: I apologize, Your Honor. You had asked
18 that Mr. Gentile limit his questions to material that was not
19 duplicative of yesterday's examination. And we've already
20 looked at this -- we've already listened to testimony from this
21 witness on this precise exchange.

22 THE COURT: Overruled.

23 BY MR. GENTILE:

24 Q And who is I?

25 A Me, sir.

1 Q Okay. All right. So Janine and Diane both of whom
2 are Department of Taxation employees?

3 A Yes, sir.

4 Q And you who is a Department of Taxation employee?

5 A Uh-huh.

6 Q You have to say yes or no.

7 A Yes, sir. I'm sorry. Yes.

8 Q So three of you the day before this deadline for
9 filing these applications are sending a text message to
10 Mr. Gilbert saying that the three of you didn't find race or
11 ethnicity in 453D. Now, that's true on September the 19th;
12 right?

13 A Yes, sir.

14 Q Okay. Should -- you're asking the question then
15 should race been removed as part of retail applications; right,
16 you're asking him that?

17 A Yes, sir, that is the question there.

18 Q Okay. And then you say, Should evaluations be --
19 should evaluators -- and I'm going to parenthetically say
20 people that don't work for the Department of Taxation and who
21 are temporary contractors through Manpower, okay, that's the
22 parenthetical I'm going to close the paren now -- should
23 evaluators be even looking at diversity; you're asking him that
24 question?

25 A That is correct.

1 Q And then you obviously have read AB422 by that day;
2 right?

3 A Yes, sir.

4 Q And you say AB422 doesn't seem to apply because it's
5 just medical, and that was true; right?

6 A Correct.

7 Q Okay. And then you say, Did we leave it in this app
8 on accident, and you're asking that; right?

9 A Yes, sir.

10 Q Okay. Because you made the -- okay, never mind.

11 MR. GENTILE: Go to page 30, please.

12 BY MR. GENTILE:

13 Q You then two minutes later sent --

14 MR. GENTILE: At 376, please. You got that already?
15 Okay.

16 BY MR. GENTILE:

17 Q -- sent to Mr. Gilbert another e-mail before he
18 responds to you, and you say, Nevermind, we found in
19 Section 80. Now, you're talking about the regs there?

20 A Yes, sir.

21 Q Okay. Who drafted the regs?

22 A I don't know.

23 Q Does the word Quantummark, and it's one word it
24 sounds like two, but it's one, ring a bell with you?

25 A Yes.

1 Q What does that bell sound like as it's ringing?

2 Okay. What does Quantummark mean to you?

3 A The bell that it rings is related to training
4 materials.

5 Q Training materials?

6 A Yes, sir.

7 Q Okay. And what training materials?

8 A Training materials that I received from Mr. Gilbert
9 to adjust according to our new application.

10 Q So those training materials were dated back to the
11 medical marijuana days?

12 A Yes, sir.

13 Q They were four years old by that time; right?

14 A Yes, sir.

15 Q Okay. And they were not recreational marijuana
16 specific; correct?

17 A Correct.

18 Q And it was your job to do what, transmit -- translate
19 them or make them apply to recreational marijuana?

20 A To update them according to history and recreational
21 marijuana, yes.

22 Q History?

23 A Yes.

24 Q What aspect of history, sir?

25 A We had a history section in the Quantummark training

1 materials and they, mas you said, were four years old. So we
2 had another four years to include in there.

3 Q So it was modern history?

4 A Yes, sir.

5 Q Okay. And you did that; you basically learned what
6 happened in the last four years and plugged it in?

7 A Correct.

8 Q Okay. Have you dealt with Quantummark -- wrong
9 question. To your knowledge what if any input did Quantummark
10 have with regard to the regulations?

11 A I don't know. You'd have to ask Steve Gilbert.

12 Q Take a look at page 30 entry 361, please. Pamela
13 Rawlings, she's a Department of Taxation employee?

14 A She was a contractor.

15 Q Oh, so she was not an employee; she was a Manpower;
16 right?

17 A An administrative assistant, yes.

18 Q Right, Manpower person?

19 A That's correct.

20 Q Administrative assistant. And she is texting you on
21 the 26th of September which is six days after the deadline for
22 receiving applications; am I right?

23 A Yes, sir.

24 Q Okay. Receiving the 462 applications as opposed to
25 the 100 you thought you'd have by the end of that week; right?

1 A Incorrect.

2 Q And she says to you she says, Will do, which I assume
3 is in response to something you sent her, but it's certainly
4 not on this page. I also have a question. This is her talking
5 to you; correct?

6 A Yes.

7 Q I also have a question on a couple of formulas for
8 the scoresheet you gave me. Before I make changes, I want you
9 to see it first so I need two minutes of your time here,
10 please. Thank you. She said that to you?

11 A Yes.

12 Q Okay. Didn't you say earlier that the Department of
13 Taxation personnel had nothing to do with the evaluation
14 process?

15 A They worked independently, yes.

16 Q She's telling you that the formulas -- she was going
17 to make changes to the formulas, but wanted to talk to you
18 first?

19 A Correct.

20 Q Did you talk to her?

21 A Yes, I did, sir.

22 Q Did it have to do with the evaluation process?

23 A No, it did not.

24 Q Have to do with the formula?

25 A It had to do with a tally sheet --

1 Q Please answer my question, and then you can add to
2 it. Did it have to do with the formula or did she --

3 A Which formula?

4 Q I don't know. The one she's talking about.

5 A Okay. May I explain?

6 Q A couple of formulas for the scoresheet you gave me.

7 THE COURT: So first if you could say yes or no and
8 then explain.

9 THE WITNESS: Me. Explain it, say yes or no to?

10 THE COURT: His question.

11 THE WITNESS: Which is?

12 BY MR. GENTILE:

13 Q Did it have to do with the formulas?

14 THE COURT: Shhh, Mr. Parker, don't help.

15 MR. PARKER: I was trying to get him to --

16 THE COURT: I know.

17 THE WITNESS: Which formula?

18 BY MR. GENTILE:

19 Q Which formula?

20 A Yes.

21 Q This happened six days after you started doing
22 application evaluations, and you don't remember which formula
23 she's asking about?

24 A I do. And I'd like to explain if you'll give me the
25 opportunity to do that.

1 Q That's what I've been trying to get you to do.

2 A Okay, great. Can I do it now?

3 Q Certainly.

4 A Okay, great. Once the evaluators have done their
5 scoring, then it's provided to the administrative assistants,
6 and they entered it into a spreadsheet, and that spreadsheet
7 had some calculations that were associated with it. And so the
8 calculations were from 2014, and they were wrong, and she
9 recognized that immediately, wanted to talk to me about fixing
10 that calculation before she did.

11 Q How many others were wrong or shouldn't say that.
12 The question I want to ask is should -- how many other wrong
13 ones came to your attention?

14 A Only those two, sir. A few.

15 Q Now, it appears that at the early part of the
16 evaluation process your team was running a little behind? If
17 you -- let me help you out there. Okay. Turn to page 28,
18 please. And I'm looking here at 341 specifically. And there
19 is a text from Diane Connor, right, that's what Diane Taxation
20 is?

21 A O'Connor, yes, sir.

22 Q O'Connor to you saying that Danette is the only ID
23 team person here today. According to the tracking sheet that
24 Pam just did for me, we are 20 applications short of reaching
25 goal as of right now. The nonID team is actually one ahead.

1 So you were running a little behind on the ID team at that
2 time; fair to say?

3 A No.

4 Q No. What does 20 applications short mean? Doesn't
5 that mean that they haven't reached a goal that had 20 more
6 applications in it than they had actually been able to process?

7 A No.

8 Q Does it mean that -- nevermind. What does it mean,
9 sir?

10 A We were in a learning process as this was moving
11 forward, and there was a point in time when the teams would
12 come together for a three-person meeting, and they would often
13 have many ready to go and waiting for that three-person meeting
14 to be able to discuss their scores prior to sending it over to
15 the administrative assistants. And there was a lot of
16 applications that they had ready for that three-person meeting.
17 Three-person meeting would happen once a week, and we just
18 hadn't reached to that point in that week.

19 Q Did you not have these Manpower people scheduled to
20 work a certain number of hours every day?

21 A Yes, we did.

22 Q I take it that they did not obey that schedule all
23 the time?

24 A We were very flexible with our evaluators, sir.

25 THE COURT: Is this a good place to take our lunch

1 break?

2 MR. GENTILE: Yes.

3 THE COURT: So you didn't finish before lunch?

4 MR. GENTILE: I didn't.

5 THE COURT: How much longer do you think you have?

6 MR. GENTILE: Another half hour.

7 THE COURT: Okay. All right. I have a conference
8 call at 1:00 o'clock on another case. We should be done in 10
9 minutes or so with that conference call so if you guys could be
10 here at 10 after that would be lovely. Have a nice lunch.

11 MR. SHEVORSKI: Thank you, Your Honor.

12 (Proceedings recessed 11:56 a.m.)

13 -oOo-

14 ATTEST: I do hereby certify that I have truly and correctly
15 transcribed the audio/video proceedings in the above-entitled
16 case.

17 
18

19 Dana L. Williams
20 Transcriber
21
22
23
24
25

<p>BY MR. GENTILE: [23] 25/14 33/7 33/19 36/24 37/15 38/1 39/9 39/22 40/11 41/14 46/17 47/23 55/20 64/9 67/7 69/4 72/11 77/24 78/23 80/12 80/16 84/12 84/18</p> <p>BY MR. KEMP: [11] 7/11 9/17 13/1 13/23 15/3 16/18 17/23 20/16 21/21 21/24 23/22</p> <p>MR. BHIRUD: [3] 33/12 33/14 33/16</p> <p>MR. GENTILE: [31] 25/12 33/6 35/22 35/25 36/7 36/12 38/9 38/13 38/15 38/18 38/24 39/2 39/4 39/8 40/1 40/4 40/8 41/9 41/12 64/7 66/12 66/14 67/3 68/24 69/1 77/22 80/11 80/14 87/2 87/4 87/6</p> <p>MR. KEMP: [15] 4/7 4/13 5/23 6/21 9/10 12/21 12/24 16/14 16/16 17/19 20/15 21/20 21/23 23/21 25/7</p> <p>MR. KOCH: [9] 5/5 5/8 5/22 6/1 6/4 6/8 6/11 14/21 14/24</p> <p>MR. PARKER: [1] 84/15</p> <p>MR. SHEVORSKI: [7] 4/24 5/3 16/11 36/15 36/17 40/7 87/11</p> <p>MS. SHELL: [4] 9/4 9/6 35/7 78/17</p> <p>THE CLERK: [2] 7/1 66/23</p> <p>THE COURT: [80] 4/3 4/5 4/8 4/20 5/1 5/4 5/7 5/19 5/25 6/2 6/5 6/10 6/13 6/22 7/5 9/5 9/12 13/6 13/10 13/17 13/21 14/23 14/25 16/13 16/15 17/12 17/17 17/20 25/8 33/4 35/10 35/15 35/18 35/20 35/23 36/2 36/10 36/13 36/16 36/18 36/20 36/23 37/6 37/9 37/23 38/4 38/7 38/11 38/14 38/17 38/19 38/25 39/3 39/6 39/21 39/24 40/3 40/10 41/8 41/10 46/16 47/22 66/11 66/13 66/19 67/1 68/22 68/25 72/6 72/10 78/16 78/22 84/7 84/10 84/14 84/16 86/25 87/3 87/5 87/7</p> <p>THE WITNESS: [25] 7/3 9/14 13/14 15/1 17/15 33/13 33/15 33/17 35/14 35/17 35/19 37/8 37/10 37/24 38/6 38/8 39/25 41/13</p>	<p>55/18 66/22 67/6 72/9 84/9 84/11 84/17</p> <p>UNIDENTIFIED SPEAKER: [1] 12/23</p> <p>'</p> <p>'16 [1] 30/3 '19 [1] 23/25</p> <p>-</p> <p>-oOo [1] 87/13</p> <p>1</p> <p>10 [11] 11/25 12/1 12/7 12/10 13/24 21/22 21/25 22/25 22/25 87/8 87/10</p> <p>100 [1] 82/25</p> <p>108 [4] 23/21 64/8 66/24 77/22</p> <p>10:28 a.m [1] 36/19</p> <p>10:41 a.m [1] 36/19</p> <p>11:56 [1] 87/12</p> <p>12 [5] 17/1 17/2 17/5 18/8 18/14</p> <p>12/13 [1] 24/14</p> <p>13 [2] 24/2 24/14</p> <p>13th [2] 23/24 24/3</p> <p>14 [1] 66/24</p> <p>15 [2] 41/4 42/9</p> <p>16 [3] 41/4 41/18 41/22</p> <p>17 [1] 47/4</p> <p>17th of [1] 74/12</p> <p>18 [3] 24/15 24/19 24/23</p> <p>1994 [2] 27/19 41/20</p> <p>1995 [4] 27/2 27/5 27/8 27/17</p> <p>1999 [1] 28/8</p> <p>19th [1] 79/11</p> <p>19th of [1] 78/6</p> <p>1:00 [1] 87/8</p> <p>2</p> <p>20 [5] 13/24 68/10 85/24 86/4 86/5</p> <p>2002 [2] 28/20 28/20</p> <p>2005 [1] 28/23</p> <p>2008 [2] 28/25 29/1</p> <p>2012 [1] 29/7</p> <p>2013 [1] 29/8</p> <p>2014 [21] 19/3 26/9 26/15 27/8 27/17 27/19 29/5 43/22 60/8 62/14 62/16 62/17 62/21 62/22 62/24 63/6 63/8 63/11 63/15 74/20 85/8</p> <p>2015 [1] 30/3</p> <p>2017 [3] 22/4 25/23 30/3</p> <p>2018 [15] 24/2 25/21 25/24 30/16 51/24 54/25 55/1 55/3 56/4 62/18 63/18 69/9 71/12 72/13 78/6</p> <p>2019 [4] 1/12 4/1 24/2 24/15</p> <p>209 [4] 12/22 12/22 12/24 12/24</p>	<p>20th [1] 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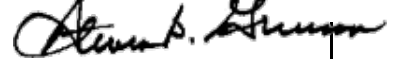
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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC,.
et al.

Plaintiffs

vs.

STATE OF NEVADA DEPARTMENT OF
TAXATION

Defendant
.

CASE NO. A-19-786962-B

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**EVIDENTIARY HEARING - DAY 3
VOLUME II**

WEDNESDAY, MAY 29, 2019

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

APPEARANCES:

FOR THE PLAINTIFFS:

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

FOR THE DEFENDANTS:

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STEVE SHEVORSKI, ESQ.
THERESA HAAR, ESQ.
BRIGID HIGGINS, ESQ.
ERIC HONE, ESQ.
DAVID KOCH, ESQ.
ALINA SHELL, ESQ.
JARED KAHN, ESQ.
PHILIP HYMANSON, ESQ.
JOSEPH GUTIERREZ, ESQ.

1 LAS VEGAS, NEVADA, WEDNESDAY, MAY 29, 2019, 1:10 P.M.

2 THE COURT: Good afternoon again, everyone.

3 MR. KEMP: Good afternoon, Your Honor.

4 MR. GENTILE: Good afternoon, Your Honor.

5 (Pause in the proceedings)

6 MR. SHEVORSKI: Good afternoon, Your Honor.

7 THE COURT: Good afternoon, Mr. Shevorski. I see
8 you and your friend Mr. Gentile are up there at the podium
9 together.

10 MR. GENTILE: We're getting there. We're getting
11 there.

12 MR. SHEVORSKI: Well, I'll tell you, I was trained
13 by Mr. Lenhard to talk that way, and I try to keep up with
14 that tradition. We brought Mr. Gilbert down from Carson. He
15 is here today. I don't know if Mr. Gentile -- or how the
16 progress is going.

17 THE COURT: He told me he had another half hour when
18 we broke for lunch.

19 MR. SHEVORSKI: And then I think he's got some more
20 witnesses before Mr. Gilbert.

21 MR. GENTILE: Well, we have like two more. We have
22 an expert, Valerie Fridland. We anticipate with cross an hour
23 and a half to two. So, and then we have one of our clients
24 [inaudible].

25 THE COURT: We're here until 4:45.

1 MR. CRISTALLI: He's here but he's not here. There
2 he is.

3 MR. GENTILE: All right. Well, I just -- but Mr.
4 Gilbert is here. He's just at their office. I didn't see any
5 wisdom in letting him --

6 THE COURT: His office is ten minutes away.

7 MR. GENTILE: Yeah, right.

8 MR. SHEVORSKI: Yes.

9 MR. GENTILE: So I think we should be okay.

10 MR. SHEVORSKI: And I think just for the Court --

11 MR. KEMP: Yes, Your Honor. We have a witness for
12 first thing in the morning that will probably go for --
13 assuming we start at nine, I would think he'll go until at
14 least ten.

15 MR. SHEVORSKI: Okay.

16 THE COURT: We're probably not going to start until
17 9:30 because while I have moved several things off of the
18 calendar, I've still got about six. I start at 8:30 tomorrow.

19 MR. SHEVORSKI: So we'll probably -- I would suspect
20 we're not going to -- I'm sorry, Your Honor.

21 THE COURT: We'll start about 9:30.

22 MR. SHEVORSKI: Yeah. If we start Mr. Gilbert
23 today, I've agreed with Mr. Kemp to take his witness out of
24 order and then Mr. Gilbert. If that's what you -- I think
25 that's what he wanted because this guy has got to get on a

1 plane.

2 THE COURT: I don't care.

3 MR. KEMP: I don't know that Mr. Gilbert will start
4 today, so.

5 MR. SHEVORSKI: Okay. Fair enough.

6 THE COURT: I'm just taking notes and asking you
7 guys questions occasionally and trying to find a way to get
8 through this expeditiously.

9 MR. SHEVORSKI: I'm trying to make the universe
10 happy, Your Honor.

11 MR. KOCH: That would be nice.

12 MR. HYMANSON: Your Honor, would the Court consider
13 invoking the two-shot rule at any point in time in next
14 several weeks?

15 THE COURT: No. No. Nor the Gene Backus rule,
16 which predates that rule. Okay.

17 All right, Mr. Gentile.

18 Sir, you're still under oath. Let's see if we can
19 get you done.

20 THE WITNESS: Okay.

21 MR. GENTILE: Let's get 108 back up on the screen,
22 please. 108. Have we got a page?

23 THE COURT: Back to the text messages.

24 MR. GENTILE: What page? Page 12.

25 THE COURT: So I was thinking tomorrow morning I

1 will know about scheduling. I have several dates I've written
2 down, depending on what happens on a motion that is on
3 calendar tomorrow, so we can talk about scheduling when you
4 guys get here tomorrow at 9:30 or at the lunch break if that's
5 easier.

6 All right. Keep going.

7 KYRIL PLASKON, PLAINTIFFS' WITNESS, PREVIOUSLY SWORN

8 DIRECT EXAMINATION (Continued)

9 BY MR. GENTILE:

10 Q We're on Exhibit 108, page 12, Mr. Plaskon, and it
11 should be on the screen. All right. And I want to call your
12 attention to page 12, entries 60 and 59. On the morning of
13 the 13th of December you learned that an order had been
14 entered and that the I.T. Department was going to be taking
15 into their custody the computers and telephones and things of
16 that nature, am I correct?

17 A Correct.

18 Q Okay. And you advised Mr. Gilbert -- well, first of
19 all, how did you learn about that?

20 A I think I.T. told me.

21 Q Were you aware at that time that litigation had
22 commenced?

23 A No. I didn't know what was going on.

24 Q But in any case, I.T. told you that they were taking
25 the Manpower computers into their possession; right?

1 A No.

2 Q Well, maybe I misspoke. They told you that they
3 were taking the contractor laptops into their possession?

4 A Correct.

5 Q Okay. Those laptops were owned by the State?

6 A Yes.

7 Q Okay. And you told Mr. Gilbert that at about 9:31;
8 right?

9 A Yes.

10 Q And then like less than a minute -- well, just about
11 a minute later you told Roxanne to pull her thumb drives, am I
12 correct?

13 A Correct.

14 Q What thumb drives were you talking about then?

15 A They had thumb drives that they were using to insure
16 that we had copies of information that were on the computers.

17 Q And where was she pulling them from?

18 A From the laptops.

19 Q Okay. And did you collect those?

20 A The contractors kept them.

21 Q The contractors did what?

22 A They kept them.

23 Q Kept what?

24 A The thumb drives.

25 Q All right. So the thumb drives she kept, the

1 computers she had to give back?

2 A Yes.

3 Q Okay. And that was true with regard to all of your
4 contractors?

5 A Yes.

6 THE COURT: Where are the thumb drives now?

7 THE WITNESS: I don't know, Your Honor.

8 MR. GENTILE: That was my next question.

9 THE COURT: Now you know.

10 BY MR. GENTILE:

11 Q You don't know where they are?

12 A No.

13 Q So as far as you know, they're still in the
14 possession of the contractors?

15 A They would not have left the State with those thumb
16 drives, so if they're not working for the State anymore,
17 they're likely still in our possession.

18 Q And who would be the person most likely to either
19 have them or know where they are?

20 A I don't know. I don't know. It would take research
21 on my part, talking to lots of people to try and figure out
22 where those might be. I know that the information was taken
23 from the thumb drives and then put on other computers so the
24 information could be maintained.

25 Q Well, how do you know that?

1 A That was the purpose of taking the thumb drives so
2 that we would have copies of information that was on the
3 laptops.

4 Q All right. But again, I didn't ask the right
5 question. What was your source of information, what person
6 was your source of information knowing that those thumb drives
7 were placed into either their possession or the possession of
8 someone that works for the Department of Taxation?

9 A I'm sorry, I'm having difficulty understanding your
10 question.

11 Q Okay.

12 A I apologize.

13 Q You used the words you know. You said I know. I
14 know that.

15 A In reference to?

16 Q To your last answer, okay.

17 A In reference to where the thumb drives are?

18 Q Right. In other words, I asked you if the
19 contractors still had them and you said no, I know that
20 they're in the possession of the State because I know that we
21 took them and put them on other --

22 A They did not leave with Department information.

23 Q That's not the question I'm asking. The question
24 I'm asking is who -- what person is your source of information
25 so that you could say you know that?

1 A Me.

2 Q How could you be? You said -- did you take those --
3 I asked you earlier, did you take the thumb drives from the
4 contractors and you said no.

5 A No.

6 Q And I asked you where -- who did they give them to
7 and you said you didn't know.

8 A I don't know.

9 Q So then what is your source of information when you
10 say that you do know that those thumb drives were placed on
11 another device?

12 A I am the source of that information.

13 Q I'm confused.

14 THE COURT: How did you learn that, sir?

15 THE WITNESS: I gave them instruction to not leave
16 with the thumb drives. I gave them instruction to use the
17 information on the computers that they would be working on
18 following that time.

19 BY MR. GENTILE:

20 Q Did you tell them what to do with the thumb drives?

21 A Yes. To use them.

22 Q What did you tell them to do with the thumb drives?

23 A To put them into their computers and use the
24 information that they had collected.

25 Q Are these the same computers that --

1 A No.

2 Q -- that the I.T. Department confiscated?

3 A No.

4 Q Different computers?

5 A Yes.

6 Q Okay. How do you know they did it?

7 A Because I watched them use the information that was

8 on the thumb drives.

9 Q Later?

10 A Yes.

11 Q But you don't know where the thumb drives are?

12 A They are at the Department.

13 Q How do you know that?

14 A Because they were instructed not to leave with the

15 thumb drives.

16 Q And that's all it took, you just instruct them and

17 you know that they did it; right?

18 A Yes.

19 Q Okay. Take a look at entries 52 through 51; 52 and

20 51, please, on that page. At some point in time you advised

21 Danette Kluever and Roxanne -- now, those are both

22 contractors; right?

23 A Yes, sir.

24 Q Both Manpower people?

25 A Yes, sir.

1 Q That the lawsuit is from MedMen. They allege they
2 scored well last time so they should have got a license this
3 time. You tell them both the same thing. How did you learn
4 that?

5 A I don't recall and that was incorrect.

6 Q Were you told at that time not to discuss the
7 lawsuit with anyone?

8 A No.

9 Q Have you ever been told that?

10 A I don't believe so. I don't recall.

11 Q Now, at the top of that page, entry 44. You receive
12 a text message from Steve Gilbert at 11:17 on the 14th of
13 December and he says to you, "Talking points for what?" Do
14 you see that?

15 A Yes, sir.

16 Q I want you to look at that page or look as far as
17 you want to and can you tell me what text message he is
18 responding to?

19 A I don't see anything directly related to that
20 previous to that time on this one page.

21 Q Well, look later. Look later in time.

22 A The next day would have been pages or days --

23 Q You mean the day previous?

24 A Yeah, days before.

25 THE COURT: So, sir, take as much time as you need

1 to review all of the text message to see if you can link that
2 text message response with the original message, please.

3 MR. GENTILE: Thank you, Your Honor.

4 (Pause in the proceedings)

5 THE WITNESS: I don't see anything here that rings a
6 bell in terms of what he would have been responding to, no.

7 BY MR. GENTILE:

8 Q All right. So that leaves a couple of
9 possibilities, doesn't it?

10 A Yes.

11 Q For example, he could have on his own, without
12 having received any information to cause it, decided to send
13 you a text message a day after you learned about the lawsuit
14 and him then text message, Re: Talking points for what,
15 question mark. That's a possibility, am I right?

16 A Just inadvertently sending a text message that says
17 that?

18 Q It's a possibility; right?

19 A Yeah, maybe it was sent to the wrong person. I
20 don't know. Maybe it was meant for Stephanie Klapstein who
21 developed talking points.

22 Q Okay. And then the next message is you sending back
23 to him the message, For media on the licensing period. Do you
24 see that?

25 A Uh-huh.

1 Q Yes, you see it?

2 A Yes, I do. I'm sorry. Yes.

3 Q Okay. All right. So that would kind of indicate

4 that that first message, "Talking points for what?" was in

5 response to something that you sent him, wouldn't it?

6 A Yes.

7 Q So where is the message that you sent him?

8 A It could have been a voicemail that I left.

9 Q It could have been. It could have been. It could

10 have been an email?

11 A Yes.

12 Q Because we don't have your emails?

13 A No.

14 Q No, what?

15 A No, you do not.

16 Q Right. And you don't have them on your phone;

17 right?

18 A I can't access them, no.

19 Q Right. Or it could have been you deleted something?

20 A No.

21 Q It couldn't have been that?

22 A No.

23 Q Okay. So we're I guess free to speculate as to what

24 it was?

25 A I would prefer not to.

1 Q I didn't ask you that. I didn't ask you to
2 speculate at all. I said we are free to speculate.

3 A Who's "we"?

4 Q It doesn't include you.

5 THE COURT: Maybe all of us in the room.

6 THE WITNESS: Okay.

7 MR. GENTILE: It doesn't include you. Let's put it
8 that way.

9 THE WITNESS: All right. Thank you.

10 THE COURT: However, if you would like to tell us
11 your best recollection, we would be happy to listen to it.

12 BY MR. GENTILE:

13 Q Best recollection is a very benign term, so embrace
14 it.

15 A My best recollection of what that would be is that I
16 think at the time I wanted to present information regarding
17 the application period for the Director at the time or for
18 someone, and so I may have been asking Steve Gilbert for -- to
19 work on that. I think we had a media request at the time.
20 Stephanie Klapstein may have been out. I had not been
21 handling much with -- related to media at that time, so. I'm
22 sorry, I'm not very good at speculating.

23 Q Well, actually you're very good at it.

24 A Am I?

25 Q Go to the next page, because the question that I've

1 asked you is what was the first message and that you can't
2 answer other than by speculation. But if you take a look at
3 slide 42, 41 and 40, it is exactly what you just said.

4 A Oh.

5 Q So you're a good speculator but you can't tell us
6 what got that message, that thread started?

7 A No, I can't say whether it was an email, a phone
8 call or a voicemail or a text.

9 Q Okay. Take a look at page 27, slide 324, please.
10 Do you see it? Do you remember getting your -- well, I'm not
11 exactly sure how to phrase this. Do you remember having
12 somebody do your hair on October 11th of 2018?

13 A Yes.

14 Q All right. Who's Stephanie?

15 A The hairdresser.

16 MR. KOCH: I think we're zoomed in on the wrong
17 email. You referred to 324?

18 MR. GENTILE: 324, yeah.

19 THE WITNESS: "Hello, Ky, my name is Stephanie."
20 That one?

21 MR. GENTILE: Yeah, that one.

22 THE WITNESS: Yeah.

23 BY MR. GENTILE:

24 Q Okay. You told her to submit a resume to Manpower;
25 right?

1 A Yes.

2 Q And Manpower was providing work -- contractors for
3 the Department of Taxation at that time to do the evaluations,
4 am I right?

5 A We were identifying contractors that we wanted to
6 pay through Manpower.

7 Q You were identifying contractors, what?

8 A We identified the evaluators that we wanted to use
9 and then we sent them to Manpower to be paid through Manpower.

10 Q I see. So you identified your hairdresser as
11 somebody that you might want to have act as an evaluator and
12 you told her to go to Manpower?

13 A She had administrative experience.

14 Q Sir, is the answer to my question yes?

15 A Yes.

16 Q Thank you. It's easy. Turn to page 24, please, and
17 we're looking -- it starts 261 to 259. Are you there?

18 A 261. Yes.

19 Q This is communications between you and Steve
20 Gilbert; right?

21 A Correct.

22 Q And you started with advising Steve Gilbert that
23 "the interview went well, she can start Monday."

24 A Yes.

25 Q Do you see that?

1 A Yes.

2 Q Whose interview? Stephanie's?

3 A No.

4 Q Whose?

5 A I don't recall who we interviewed on that day.

6 Q Okay. When you say "we interviewed," did you

7 interview her or did you and Mr. Gilbert interview her or --

8 who's we?

9 A I believe it was I, Diane O'Connor and Janine

10 Warner, or instead of Janine Warner it may have been Marilyn

11 Grand. I don't recall which.

12 Q And who were you interviewing?

13 A I don't recall who we were interviewing there, but

14 it was not Stephanie.

15 Q Well, you by that time -- that's November 1st, so

16 you're into five or six weeks already of evaluations, am I

17 right?

18 A I believe so.

19 Q Did you need more help?

20 A No.

21 Q Why were you interviewing somebody?

22 A We -- somebody left.

23 Q Somebody left?

24 A Yes.

25 Q Pam?

1 A Pam Evans.

2 Q Pam Evans?

3 A Yes.

4 Q Did you make this interview before Pam left?

5 A I don't recall. We could review the text messages
6 here and figure that out.

7 Q Just a moment please.

8 THE COURT: So, sir, if you'd like to do that,
9 please feel free to look to see if you can find it. And then
10 if you identify it, give us the number.

11 MR. GENTILE: Uh --

12 THE COURT: Mr. Gentile, I have him looking for the
13 text message.

14 MR. GENTILE: Okay.

15 THE WITNESS: If anybody else wants to help, I'm
16 looking for one that says Pam Evans quit.

17 BY MR. GENTILE:

18 Q How long after Pam Evans quit did you make this
19 interview?

20 A That's what I'm trying to figure out, sir.

21 Q Well, can you remember on your own?

22 A No. I would rather be specific.

23 Q But you do know that Pam didn't tell you in advance
24 that she was quitting, she basically told you she quit and you
25 had to go look for somebody?

1 A No.

2 Q You don't know that, either?

3 A No. We had concerns that she may not stay on, I
4 believe.

5 MS. SHELL: Your Honor, I think we can help out Mr.
6 Plaskon with his review.

7 THE COURT: Give us the number, Ms. Shell.

8 MS. SHELL: It's page 6, item 22.

9 THE COURT: Thank you.

10 Sir, they think it might be the answer. It doesn't
11 have to be, though.

12 BY MR. GENTILE:

13 Q You had concerns. Well, let me make this a little
14 easier for you. If you look at 261, which is on page 24, you
15 will see that you are telling Steve Gilbert at 11:16 a.m. that
16 day that "The interview went well, she can start Monday."
17 Right?

18 A Yes.

19 Q And if you look at page 6, entry 22, two minutes
20 earlier that same day --

21 A Yes.

22 Q -- Pam quit?

23 A Yes.

24 Q You have a really good employment agency. They got
25 you somebody in a minute?

1 A As I said, we had concerns that she might leave.

2 Q So you started interviewing --

3 A In anticipation, in preparation.

4 Q -- in anticipation?

5 A Yes.

6 Q Okay. Were there problems with Pam Evans? Now, I'm
7 going to tell you we're going to talk to her, so you might as
8 well give it up right now.

9 A Other contractors expressed some difficulty in
10 working with Pam Evans.

11 Q What concerns did they have?

12 A It was interpersonal. That's all I really recall.

13 Q You don't recall any specifics, just that it was
14 interpersonal?

15 A Yes, interpersonal.

16 Q But it was strong enough, these concerns were strong
17 enough that you started interviewing to replace her and
18 actually interviewed somebody a minute and a half before she
19 quit? Excuse me, a minute and a half after. But you don't
20 remember what those concerns were?

21 A One of the concerns was that she was looking for
22 other work and expressed that to us.

23 Q Okay. Did she express to you why she was looking
24 for other work?

25 A I don't recall.

1 Q Maybe she will.

2 THE COURT: If there was a jury here I would tell
3 them he's not supposed to make those kind of comments, but
4 it's just me, so.

5 MR. SHEVORSKI: That's what I figured, Your Honor.

6 BY MR. GENTILE:

7 Q Turn to page 21, please, and I'm talking about entry
8 211. Do you see that?

9 A Yes, sir.

10 Q What's the Monopoly? Well, that's got a capital M,
11 but I'm going to assume that you weren't playing the game or
12 talking about playing the game, even though you gave it
13 capital in your text message. I'm going to assume that you're
14 talking about monopoly in its non Parker Brothers meaning. Is
15 that a good assumption?

16 A That's a good assumption.

17 Q Okay. What is a monopoly analysis that you were
18 conducting on the 26th of November, 2018?

19 A We were collecting names of the owners, officers and
20 board members and putting them into a spreadsheet.

21 Q And what was the purpose of that?

22 A To be able to conduct monopoly analysis. We took
23 the tool and we would give it to our supervisors and then they
24 were able to work on that.

25 Q Now, I want to call your attention to just one

1 successful -- well, actually two successful applicants, but
2 maybe not. And they're both identified with the word Essence.
3 You've heard that before?

4 A Yes, sir.

5 Q And there was -- and they were basically two
6 separate LLCs. You've heard that before?

7 A Yes, sir.

8 Q And they had the same owners and officers and
9 directors, didn't they?

10 A I don't recall. I'd have to look at them closely.

11 Q Okay. Doesn't -- doesn't ring a bell?

12 A Essence Tropicana and Essence Henderson do ring a
13 bell.

14 Q Yeah, they do. They do. And as a matter of fact,
15 if you look on that same page and you look at entry 206, you
16 are sending something to Danette Kluever; right?

17 A Yes.

18 Q And you were saying to her, "Essence wasn't in there
19 because there is no ownership discrepancy." Now, you have
20 been a teacher and a wordsmith of sorts because of your
21 involvement in radio and television and news. How were you
22 using the word discrepancy? Because usually that means that
23 there's a difference between the two.

24 A I don't know how I -- what I was referring to or why
25 I chose that word at the time. Sorry.

1 Q Say that again, you're what?

2 A I don't recall why I chose that word, if it was in
3 relationship to Essence Tropicana and Essence Henderson, which
4 I think is where you're going with this.

5 Q Why don't you let me worry about where I'm going.
6 Just answer the questions.

7 A No.

8 Q What's a CHOW?

9 A That was an acronym that was used previous to
10 transfers of interest, which is what we use now, and it stood
11 for change of ownership.

12 Q Change of ownership?

13 A Yes, sir.

14 Q And in what way was a CHOW -- how did a CHOW come to
15 someone's attention that was working in the Department of
16 Taxation Marijuana Enforcement Group?

17 A Change of ownerships come in whenever someone wants
18 to sell or transfer part of an interest in a marijuana
19 establishment and they must be approved by the Department
20 prior to that transfer taking place.

21 Q Right.

22 A So Program Officer Janine Warner at the time was
23 handling that.

24 Q And that approval and that whole process is not a
25 competitive process, is it, such as was the 462 applications

1 for 61 licenses?

2 A I've never been a program officer for that section,
3 so I don't know for sure.

4 Q You don't know? So you don't know --

5 A But I do not believe it is a competitive process.

6 Q All right. Thank you. You would agree, would you
7 not, that in a competitive process it was important for the
8 Department of Taxation to know whether the applicant had
9 already sold or entered into an agreement to sell their
10 license, should they get one, because in reality they're a
11 shill? Do you know what a shill is?

12 A No.

13 Q Okay. Do you know what a beard is?

14 A Yes.

15 Q What is a beard the way I'm using it?

16 A On your face.

17 Q It's something that one hides behind, sir.

18 A Ahh.

19 Q Okay. You would agree, would you not, that if the
20 applicant had already entered into an agreement to sell the
21 license that they might get in a competitive process to
22 someone and had already done it before getting the license
23 approval, getting awarded the license, that's something that
24 would be material, wouldn't it?

25 A It was not in the application.

1 Q No, it wasn't in the application. In the
2 application it called for, you know, list the people that were
3 going to be owners, didn't it?

4 A Yes, sir.

5 Q And if you have already made a deal to sell it to
6 someone else, then to say that the applicant, the people that
7 were listed were going to be the owners, it's a
8 misrepresentation, isn't it?

9 A No.

10 Q It's not?

11 A No.

12 Q Okay. I'm dying to hear your logic.

13 A All transfers of interest must be approved by the
14 Department prior to them taking place.

15 Q Right.

16 A So anyone can enter into any kind of agreement that
17 they want, but if we haven't approved it then it's not going
18 to take place.

19 Q Sir, if the purchaser that you didn't know about,
20 had they entered into the competitive system, they might not
21 have gotten that license. Can we agree on that?

22 A Anyone who applied may not have got a license.

23 Q Okay. And so if the real party in interest, if the
24 entity that is going to wind up with that license and operate
25 that place has not disclosed themselves and their owners and

1 their directors and their board and officers, you are
2 operating with a false set of information in the competitive
3 process. Can we agree on that?

4 A No.

5 Q So it was fine for all 462 of these applicants to
6 have already assigned or sold their interest, subject of
7 course to the later approval, and you are going to take your
8 time, maybe 33 hour per application, unless you're right, and
9 you were going to spend all that time investigating the people
10 that were disclosed to you and in reality it was a waste of
11 time because they never were going to operate, the licensee.
12 Can we agree to that?

13 A No.

14 Q No? How is not a waste of time?

15 A Because those who applied for the licenses are those
16 who were approved if they received a license to operate the
17 establishment. Any subsequent transfer of interest must be
18 approved by the Department.

19 Q I get that, but that's not a competitive process, is
20 it?

21 A The applicants competed for licenses.

22 Q No, the transfer. The transfer is not a competitive
23 process, is it?

24 A It's an application.

25 Q It's not a competitive process, is it?

1 A You'd have to ask the program officer for that
2 section.

3 Q Do you know what a ringer is?

4 A No, sir.

5 Q You don't? Okay. All right. Have you ever been to
6 a county fair?

7 A Yes.

8 Q Have you ever been to a horse race at a county fair?

9 A No.

10 Q You lead an exciting life.

11 A I try to do my job.

12 THE COURT: Mr. Gentile, it's been more than the
13 half hour you told me when we came back from lunch.

14 MR. GENTILE: I'm almost done. I'm almost done.

15 THE COURT: Okay.

16 BY MR. GENTILE:

17 Q Take a look at page 21, 206, please. Wait a minute.

18 THE COURT: That was what we were just on.

19 MR. GENTILE: Yeah, I know. I've got get a
20 different one.

21 BY MR. GENTILE:

22 Q Page 20. Page 20, 200 to 196. This is Danette
23 Myers Kluever, who you say was a contractor; right?

24 A On line 200. Yes.

25 Q All right. And she sends you at -- on the 27th of

1 November a text message that says, "I'm here." And you send
2 back to her, "Can I come down to get them mail merge?" And
3 she then says to you, "Yes, bring a flash drive, please." And
4 then you say to her, "The winners may change, so we will wait
5 until it's finalized." Do you see that?

6 A Yes, sir.

7 Q How are the winners going to change?

8 A My question at that time was to -- we had the mail
9 merge ready and I asked Steve if we were ready to work on that
10 mail merge, which would have been one of the final steps in
11 this process, and that's what he told me is that owners may
12 change.

13 Q Owners may change?

14 A I don't know. The --

15 Q Owners did change, but that's another issue.

16 A I'm sorry, I was incorrect. The winners may change.
17 I'm sorry.

18 Q The winners may change?

19 A Yes.

20 Q Take a look at page 15, please. And we are
21 specifically talking about entry 100. Just a moment, please.
22 Yeah, entry 100, and we're going to go to the next page to
23 page 14 at 86. At entry 100 you sent Steve Gilbert a text
24 message that says, "Green Thumb bought Essence last month
25 according to the Reno Gazette Journal." Is that what that

1 says?

2 A Yes, sir.

3 Q Okay. Now, last month -- this is December 11th.
4 This is six days after the announcements were made as to who
5 the winners were; right?

6 A Yes.

7 Q And are you saying that that's the first time that
8 you learned that Green Thumb bought Essence the month prior?

9 A I was reading a media report, yes, and so that was
10 the first time I had --

11 Q So you did not know?

12 A No.

13 Q Okay. So Green Thumb never told you?

14 A No.

15 Q And Essence never told you?

16 A I was not the program officer for that section, so
17 that program officer for that section may have been aware of a
18 pending transfer of interest.

19 Q That's not the question I asked.

20 A I was not aware.

21 Q Okay. And you don't know if the officer was aware,
22 either, do you?

23 A No, I don't.

24 Q But apparently Steve Gilbert responded to you,
25 "Yeah, I'm aware. They're preparing the transfer paperwork to

1 be submitted." And then Roxanne said to you, "GTI bought
2 Essence." Now, Roxanne wasn't on your first text message, so
3 she's basically telling you what she just learned as well;
4 right?

5 A Yes.

6 Q Okay. And then -- No, I'm sorry, that's you telling
7 Roxanne GTI bought Essence.

8 A Uh-huh.

9 Q Yes?

10 A Yes.

11 Q And then she responds, "That happened fast." Right?

12 A Yes.

13 Q Let's go to the next -- It actually didn't happen
14 fast, it had already happened?

15 A It had not happened. My understanding is that --

16 Q But then you tell Roxanne, "They did it last month."
17 Right? Which is consistent with what you told Steve Gilbert
18 ten minutes earlier. Am I right?

19 A What line are you referring to?

20 Q You told Steve Gilbert at entry 100 that "Green
21 Thumb bought Essence last month according to the Reno Gazette
22 Journal."

23 A Right.

24 Q Right?

25 A Yeah, right.

1 Q And then you are telling Roxanne at entry 96, "The
2 did it last month." Right?

3 A Right.

4 Q And then she responds to you, "Can they sell before
5 it's awarded? All Essence?" Right, she said that to you?

6 A Yes.

7 Q And you respond, "Yes. Whatever their purchase
8 agreement says. I'll bet GTI funded their license and app.
9 fees." Didn't you say that?

10 A Oh, I did text that, yes.

11 Q Yeah, you did. And they didn't disclose to you that
12 they did that, did they?

13 A No.

14 Q And that's one of the things that's material, isn't
15 it, who's paying the application fee?

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

17 Q Okay. And then Roxanne responds with what I've been
18 trying to get you not to respond with, which is H-m-m-m,
19 "Hmmm." Right?

20 A Yes, sir.

21 Q And then you say --

22 THE COURT: And you're doing better, sir, by the
23 way.

24 THE WITNESS: Thank you, Your Honor.

25 //

1 BY MR. GENTILE:

2 Q And then you say to Roxanne, "Now the group has
3 Washoe and Carson dispensaries." Right?

4 A Yes.

5 Q And she then says to you, "Isn't that monopoly?"
6 This time with a lower case m. She says that to you?

7 A She did say that in the text message.

8 Q Okay. And then you say to her, "Well, I don't think
9 monopoly provisions apply to Carson." You say that to her?

10 A Yes.

11 Q You don't think they do?

12 A Right.

13 Q You didn't say to her, they don't, you said I don't
14 think they do; right?

15 A Right.

16 Q Okay. All right. And then -- hold on. At 86 --
17 wait, wait, wait. Excuse me. You then at 87 send to Roxanne,
18 "Reno and Sparks might be an issue. That would be three in
19 Washoe County." Right?

20 A Right.

21 Q And then you also then say to her, "Steve is aware"
22 -- "Steve is aware so it's probably okay." Now, what was
23 Steve aware of, that GTI had bought Essence a month earlier?
24 And when was Steve aware of it? I guess we have to ask him,
25 huh?

1 A No, it says in the text message, I believe.

2 Q Okay. What does it say? It says, "Steve is aware
3 so it's probably okay."

4 A No. I think that when I was talking about the --
5 when I texted Steve on Green Thumb bought Essence last month,
6 on line 100, he wrote back, "Yes, I'm aware. They're
7 preparing the transfer paperwork."

8 Q All right. So he was already aware on the 11th of
9 December; right?

10 A Yes.

11 Q All right. You don't know when he became aware, do
12 you?

13 A I do not.

14 Q But you don't think there's anything wrong with
15 using a shill or a ringer or a beard to be in front for you
16 because they've got a better chance of winning the lottery and
17 then you just buy it?

18 MR. KOCH: Objection. Argumentative. Lacks
19 foundation.

20 MR. GENTILE: You can answer.

21 THE COURT: Overruled. I get to say overruled first.

22 MR. GENTILE: I thought you said it. I'm sorry.

23 THE COURT: No.

24 BY MR. GENTILE:

25 Q Is there something funny about this, sir?

1 A I'm enjoying this process.

2 Q Can you answer the question?

3 THE COURT: That's scary.

4 So can you ask your question again and see if he --

5 THE WITNESS: I think I've got it, Your Honor.

6 THE COURT: Okay.

7 THE WITNESS: We based our analysis on the
8 applicants. Transfers of interest must be approved by the
9 Department. The applicants who applied were the ones that
10 were evaluated. If they had agreements prior, that's their
11 business. It would still need to be approved by the
12 Department.

13 MR. GENTILE: Just a moment, Judge, I'm almost done.
14 I'm looking for one thing.

15 BY MR. GENTILE:

16 Q You're familiar with NAC 453D.312?

17 A No, not off the top of my head, sir.

18 Q I'll read it to you, okay.

19 A Thank you. I appreciate it.

20 Q I bet you are. I bet you are because you testified
21 about it already only you didn't name the part of it. "There
22 are grounds for denial of issuance or renewal of licenses and
23 grounds for revocation of a license." Am I correct?

24 A Yes.

25 Q All right. Just a second. "And the Department will

1 deny an application for the issuance or renewal of a license
2 for a marijuana establishment if an owner, officer or board
3 member of the marijuana establishment provides false or
4 misleading information to the Department." Are you familiar
5 with that?

6 A Yes.

7 Q But it is your position, if I'm understanding
8 correctly, that if an applicant knowing full well that it has
9 sold to someone else, if it wins this contest does not
10 disclose to you that fact, that you do not think that that's
11 misleading information?

12 A A license has not been sold and may not be
13 transferred until it's been approved by the Department.

14 Q We're not talking about a transfer, sir. We are
15 talking about a contest amongst 462 applicants for 61
16 licenses, which has nothing to do with nor is it even similar
17 to the process for a transfer. You would agree to that?

18 A Correct.

19 Q All right. And you don't think that it's misleading
20 information to tell the Department of Taxation Marijuana
21 Enforcement Group that you've already sold; you're the
22 applicant but you've already sold? You don't think it's
23 misleading at all?

24 A A license may not be sold until the Department has
25 approved that transfer. A license cannot be sold, according

1 to the law.

2 Q If you're going to keep making that answer to
3 questions that don't call for it, fine, but I'm going to ask
4 you one more time. We are talking about a contest that --
5 race for a license of -- where your odds are 8 to 1 against if
6 you're looking at pure numbers, and you don't believe that
7 there is a duty on the part of the applicant to disclose to
8 you who they really did this competition for? Is that right?
9 And it calls for a yes or a no.

10 A I'm misunderstanding your answer or your question,
11 sir. Who it calls for -- it's a specific section of your
12 question that I'm not really understanding.

13 Q You conduct in a contested licensing environment
14 investigations, or you're supposed to, with regard to many
15 things, including the background and the finances of the
16 people who are saying to you that they will be owners, they
17 will be board members, they will be officers of the applicant;
18 right? You got me so far?

19 A No. You said conducted investigations and that's
20 not what we did.

21 Q You conducted evaluations; right?

22 A Based on what they submitted, yes.

23 Q And you just believe them?

24 A We did --

25 Q I know that.

1 A -- evaluate the applications based on the
2 information that was submitted.

3 Q Right. And you don't find it misleading to not
4 disclose that, you know what, we're really here only until we
5 either win or lose, and if we win we won't be here, we won't
6 be the officers, we won't be the directors and we won't be the
7 owners? You don't find that misleading?

8 A No, that's not possible.

9 MR. GENTILE: Okay. There comes a point in time
10 when you've just got to give up, okay, and I'm doing that
11 right now. Thank you, sir.

12 THE COURT: Anybody else on the plaintiff side like
13 to make inquiry?

14 MR. PARKER: Your Honor --

15 THE COURT: Mr. Parker.

16 MR. PARKER: Yes, Your Honor. Despite all of the
17 questions from Mr. Kemp and Mr. Gentile, I only have a few.

18 DIRECT EXAMINATION

19 BY MR. PARKER:

20 Q Mr. Plaskin. Is that correct?

21 A Plaskon.

22 Q Plaskon. You're a program officer, is that correct?

23 A No.

24 Q What are you?

25 A I'm an education information officer.

1 Q I heard that when you responded to Judge Gonzalez,
2 but I was concerned because no one has asked you what your
3 role was definitively and I was surprised that question has
4 never been asked. You told them what you didn't do, but no
5 one has asked you what you did. Can you tell me --

6 THE COURT: Mr. Shevorski was going to ask it. You
7 stole his thunder, Mr. Parker.

8 MR. PARKER: Well, sorry about that.

9 MR. SHEVORSKI: You're a better lawyer than I am.

10 MR. PARKER: You know, I got here first, that's all
11 I can say.

12 THE COURT: All right. Keep going.

13 BY MR. PARKER:

14 Q Mr. Plaskon, can you tell me what you did, what your
15 role was on this 2018 application process, if anything?

16 A Yes, sir. To look at the application, work with
17 staff to identify areas to make it applicable to the
18 recreational licensing. Then to adjust QuantumMark education
19 that had been provided in 2014 so that it would apply to 2018.
20 Design training that -- for the evaluators using our staff.
21 Work with staff to make sure that the evaluators had
22 everything that they needed, including additional resources,
23 if necessary. And fill in wherever necessary, as well as send
24 emails.

25 Q And text messages?

1 A And text messages, sir. Emails as to the awardees
2 and those who did not win licenses.

3 Q All right. So in terms of looking at the
4 application, which was number one, I believe, on your list of
5 things that you did, you're referring to the 2014 application
6 process, is that correct?

7 A I'm referring to the 2014 application.

8 Q Right. And you were not there in 2014, is that
9 correct?

10 A I was not.

11 Q Were any of the people that you worked with from the
12 DOT a part of the 2014 application process?

13 A Yes, sir.

14 Q Who?

15 A Steve Gilbert.

16 Q Is that the only person?

17 A Possibly Karalin Cronkhite. I don't know. You'd
18 have to ask her.

19 Q Okay. But to your knowledge for sure, only Steve
20 Gilbert?

21 A For sure.

22 Q Okay. And I think you've agreed with Mr. Kemp that
23 the 2014 application process did not adequately reflect the
24 needs of the DOT for purposes of the recreational application,
25 is that correct?

1 A The application needed to be adjusted.

2 Q That's right. But we've also learned through your
3 testimony that some of the 2014 medical marijuana application
4 information found its way into the 2018 application, is that
5 correct?

6 A Yes, sir.

7 Q All right. In fact, there was no applicability to
8 some of those provisions that transitioned from '14 to '18, is
9 that correct?

10 A No.

11 Q Okay. For example, I think there was a part of the
12 application that dealt with compassion, I think the word
13 compassion was used. Do you remember that?

14 A Yes.

15 Q Now, I can see where compassion would fit 2014
16 because there's medical considerations, health considerations
17 relative to the 2014 application process. Is that correct?

18 A Can you repeat the question? I'm sorry.

19 Q Certainly. The word compassion used in the 2014
20 application process made its way into the 2018, is that
21 correct?

22 A The word -- I don't know, I'd have to look at the
23 application.

24 Q Okay. I remember that being discussed with you a
25 day or so ago. You don't recall it?

1 A Compassion?

2 Q The word compassion.

3 A No, I don't recall. I'm sorry.

4 Q It was -- I certainly understood why it was used in
5 the 2014 application process because that was based on
6 medical, the right to sell medical marijuana. Do you recall
7 that?

8 A Yes.

9 Q All right. Now, do you recall any items or
10 requirements from the 2014 application process that
11 transitioned to the 2018 process that was not particularly
12 applicable to a recreational marijuana establishment?

13 A No.

14 Q All right. So let me make sure we're clear. Of the
15 four or five people that were a part of the DOT process for
16 2018, only one had experience, to your knowledge, dealing with
17 the 2014 application process or the application and that was
18 Mr. Gilbert, is that correct?

19 A Correct.

20 Q All right. The evaluators for the 2014 application
21 process, I don't think you remember the third party evaluator,
22 is that correct, or evaluation process?

23 A I wasn't there at the time and I don't know the name
24 of the company that was used.

25 Q Is it fair to say that none of the evaluators from

1 the 2014 process took part in the evaluations for the 2018
2 process?

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

4 Q All right. Do you know of anyone who had any
5 evaluation experience, not just application experience but
6 actual evaluation experience that participated in the 2018
7 process?

8 A What do you mean by evaluation experience?

9 Q Okay. We've only had two processes in this state,
10 is that correct, 2014 and 2018?

11 A Yes.

12 Q All right. I'm trying to figure out whether or not
13 there was any carryover in experience in evaluating the 2014
14 application that found itself or found themselves in the 2018
15 process. Do you know of any?

16 A Yes.

17 Q Tell me who.

18 A Steve Gilbert. Likely Karalin Cronkhite and Dave
19 Witkowski, who were there during that first application
20 period. They carried their knowledge with them to the 2018
21 application process and transferred that knowledge to the
22 evaluators.

23 Q Okay. So I want to be -- I'm not going to be like
24 Mr. Gentile and, you know, strictly ask you to confine your
25 answer to my question, but I'm going to ask you to focus on

1 this question because I think you've said now after a day and
2 a half that the DOT people were a part of the process in terms
3 of preparing the application. Is that correct?

4 A Yes, sir.

5 Q None of them actually evaluated the 2014
6 applications, is that correct?

7 A That's correct.

8 Q So let me ask it one more time. Is it a true
9 statement, sir, that no one who took part in the 2014 process
10 in terms of evaluating those applications also took part in
11 the evaluation in 2018?

12 A You'd have to ask Steve Gilbert what his role was at
13 the time. He may have worked with the evaluators at the time
14 in 2014. You'd have to ask Steve Gilbert.

15 Q To your knowledge, no one did, is that correct?

16 A I have not been told one way or another.

17 Q You can't say -- you can't name a single person that
18 evaluated the 2014 applications and evaluated the 2018
19 applications, is that correct?

20 A That's correct.

21 Q Thank you. Now, if that's the case, if we have no
22 prior, to your knowledge, no prior evaluators of the 2018
23 process, how could you, being a member of the Department of
24 Taxation, feel confident that the six Manpower employees would
25 know how to evaluate the 2018 applications?

1 A We had Karalin Cronkhite, Dave Witkowski and Damon
2 Hernandez, as well as Steve Gilbert, working with the
3 evaluators. They regularly evaluate applications, and so they
4 are the ones who trained the evaluators on this specific
5 application period, with a lot of experience, years of
6 experience having evaluated applications.

7 Q Okay. So then let me ask it this way. Was there
8 any QC -- have you ever heard the word --

9 A Quality Control?

10 Q Bingo.

11 A Yeah.

12 Q Okay. You're familiar with it?

13 A I got one.

14 Q Good.

15 THE COURT: See, you use different words than Mr.
16 Gentile. I understand your language, Mr. Parker.

17 MR. PARKER: You know, this is my wheelhouse, Your
18 Honor.

19 BY MR. PARKER:

20 Q So in terms of QC, was there any QC responsibility
21 performed as a part of the 2014 process, to your knowledge?

22 A I wasn't there in 2014.

23 Q To your knowledge were there any QC responsibilities
24 undertaken after the 2000-- or a part of the 2018 process?

25 A Yes.

1 Q Tell me what QC efforts were taken after the 2018 or
2 as part of the 2018 process?

3 A Looking at the notes that the evaluators were
4 writing down and insuring that they were detailed and
5 comprehensive. Also, audits of the scores.

6 Q So let me break these down a little bit. In terms
7 of notes, have all those notes been produced, to your
8 knowledge, to counsel, and as a result everyone else here in
9 the room?

10 A I don't know what's been provided.

11 MR. PARKER: All right. So I didn't see them, Your
12 Honor. I just wanted to make sure.

13 BY MR. PARKER:

14 Q Okay. So do you know where those notes are and
15 whether or not they still exist?

16 A Yes.

17 Q Okay. Can you produce those notes to your counsel
18 sometime after today?

19 A That would be at the direction of my counsel.

20 Q Well, we have the Court right here.

21 MR. PARKER: So, Your Honor, I don't know what the
22 plan is in terms of him, if we're going to be able to finish
23 Mr. Plaskon today.

24 THE COURT: So why don't we talk about the documents.
25 So, sir, make sure nothing happens to those notes,

1 just in case, so when your counsel asks for them you can give
2 them to them.

3 THE WITNESS: Yes, Your Honor.

4 MR. PARKER: Thank you.

5 THE COURT: Okay.

6 MR. PARKER: Thank you so much, Your Honor.

7 BY MR. PARKER:

8 Q In terms of audits, the QC responsibilities related
9 to notes and audits, reviewing those, was there any written
10 documentation related to those QC responsibilities?

11 A Not that I'm aware of.

12 Q All right. In terms of the audits, would that
13 information have been produced?

14 A Yes.

15 Q Okay. And would the audits indicate those
16 responsible for actually performing the QC responsibilities?

17 A I don't know.

18 Q How would we figure out who actually performed those
19 QC responsibilities?

20 A You could ask me.

21 Q Ask you?

22 A Yeah.

23 Q Perfect. So, and you've probably learned this
24 already, Mr. Plaskon, I prefer to ask you what you know as
25 opposed to what you don't know, so I will be more than happy

1 to ask you that. Please tell me who performed the audits or
2 performed the QC services relate to the evaluators' work?

3 A The contractors and Steve Gilbert.

4 Q Okay. So let me just say I'm a little concerned
5 here. You had the evaluators QC-ing their own work?

6 A We had the evaluators of each team evaluate each
7 other's work or do the auditing of each other's work.

8 Q So are you familiar with the purpose of QC-ing work?

9 A I am not that knowledgeable in quality control.

10 Q Let me introduce you to something. Have you heard
11 that the purpose of QC work is to have someone with superior
12 knowledge actually look upon and evaluate the work of someone
13 with perhaps lesser knowledge or experience? Have you been
14 made aware of that?

15 A No.

16 Q Okay. So the QC services, as I understand now, were
17 performed by the same people doing the evaluations, just
18 looking over each other's work?

19 A And Steve Gilbert.

20 Q All right. Would Steve Gilbert QC all of the work
21 performed by the evaluators or would he sample the work
22 randomly?

23 A You would have to ask Steve.

24 Q So you don't know how much or how he determined what
25 applications to QC, is that correct?

1 A That's correct.

2 Q Thank you. The next line item I think you gave me,
3 you said your responsibility was to make the 2014 application
4 applicable to recreational marijuana use, is that correct?

5 A Yes, sir.

6 Q All right. Now, a lot of the questions I would
7 typically ask have been asked in one form or another, but I
8 have a couple questions in terms of certain portions of the
9 application. So, for example, education. Education was one
10 of the criteria in the application process, is that correct?

11 A Yes, sir.

12 Q Did you have any particular role in designing that
13 part of the application?

14 A No, sir.

15 Q Was that a carryover from the medical marijuana?

16 A I don't recall, sir.

17 Q Okay. Do you know why education was a part of the
18 application for 2018?

19 A No.

20 Q Okay. Do you think for a second that it had
21 anything to do with being directly or demonstrably related to
22 the operation of a marijuana establishment?

23 A I would need to look at the regulations, sir.

24 Q Okay. Was that -- was there a baseline or a
25 threshold in terms of education level for the owners of the

1 applicant?

2 A I'd need to look at the scoring tool.

3 Q To your knowledge, you don't know?

4 A No, not without looking at the scoring tool.

5 Q Now, I think Mr. Kemp asked you about the binary
6 position of certain factors. For example, the financial
7 provision. Do you recall that, \$250,000 worth of liquid
8 assets?

9 A I do recall that \$250,000 of liquid assets. This
10 binary, I am not super clear on.

11 Q Yeah, I wouldn't have used that word, but I
12 understood I think everyone in the courtroom understood. Let
13 me ask it a different way. Why couldn't the adequacy of
14 financial liquidity be a pass/fail, either you have it or you
15 don't?

16 A Rather than a score?

17 Q Yeah, rather than a score.

18 A So, not a competitive scoring process?

19 Q Not in terms of the financial liquidity.

20 A So it's a competitive scoring process outlined by
21 law.

22 Q On certain things, but not everything had to be
23 competitive. It could be pass/fail. For example, in 2014
24 before the State had any experience with regulating a
25 marijuana establishment, there may have been questions in

1 terms of how much financial strength you needed to have to
2 operate a marijuana location for a year or three years or two
3 years or whatever the case may be, but after four years of
4 experience in terms of medical marijuana, it appeared that the
5 State at least determined that \$250,000 as a threshold was
6 necessary for a year. Is that correct?

7 A I'd need to look at the application.

8 Q You do recall \$250,000 being the figure?

9 A I remember that being a figure in the application,
10 yes.

11 Q So the reason I ask you this question, which may
12 help you in responding, is if there is a requirement, a
13 threshold requirement that's necessary, why couldn't that have
14 been a pass/fail so that the other items that are more -- that
15 lend itself more to a scoring or a competitive process could
16 be utilized to discern winners from losers?

17 MS. SHELL: Your Honor, I'm just going to object as
18 it calls for speculation.

19 THE COURT: Overruled. You can answer.

20 THE WITNESS: It's a competitive scoring process
21 that's outlined by law. The law says that it will be
22 competitively scored based on certain criteria. Financial
23 aspects are part of that criteria.

24 BY MR. PARKER:

25 Q So do you believe that not doing a pass/fail and